

JUDGE JANICE MILLER KARLIN'S GUIDELINES FOR CONCLUDING AN ADVERSARY PROCEEDINGS

There are 3 ways to resolve an adversary proceeding to effect its closing:

1. **Dismissal**¹ - resolves the legal action from a procedural perspective (Fed. R. Civ. P. 41 made applicable in adversary proceedings by Fed. R. Bankr. P. 7041—copy attached).
 - a. Before service of a response – The plaintiff may dismiss an adversary proceeding without court order by filing a “Notice of Dismissal” at any time before the defendant responds. *See* Fed. R. Civ. P. 41(a)(1)(i). *See* Exhibit A for a “Notice of Dismissal” form.
 - b. After service of a response –
 - i. The adversary proceeding may be dismissed upon the filing of an “Agreed Stipulation of Dismissal” signed by counsel for all parties who have appeared in the action (or by pro se parties if no counsel has entered appearance for an answering defendant). *See* Fed. R. Civ. P. 7041(a)(1)(ii). *See* Exhibit B for an “Agreed Stipulation of Dismissal” form.
 - ii. Plaintiff may file a “Motion to Dismiss” to obtain an Order of Dismissal. *See* Fed. R. Civ. P. 41(a)(2). *See* Exhibit C for a “Motion to Dismiss” form.
 - (1) Because this is a dispositive motion, a 21-day response time is allowed unless it is a motion signed by all parties who have entered an appearance. *See* D. Kan. Rule 6.1(d)(2) regarding response times for dispositive and non-dispositive motions in adversary proceedings.
2. **Settlement** - an agreement between the parties that resolves the substance of the dispute.
 - a. Parties may dismiss an adversary proceeding as set forth above, or they may submit an “Agreed Journal Entry of Judgment” and the court will enter a judgment and close the adversary proceeding after the appeal time has run. Enforcement of the settlement agreement must be sought in state court unless there is some independent basis for federal jurisdiction or the judgment

¹A plaintiff may not dismiss a complaint objecting to a debtor’s discharge (§ 727 action) without notice to all parties in interest. A motion to dismiss the adversary proceeding should be accompanied by the affidavits required, and should be prepared in accordance with D. Kan. LBR 7041.1 and served upon the case trustee, the United States Trustee, all creditors and any person who has requested notice. *See* Fed. R. Bankr. P. 7041; D. Kan LBR 7041.1.

specifically calls for retention of jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375 (1994).²

- b. The parties may agree to stay execution of the judgment pursuant to the terms of the settlement agreement. *See Exhibit D* for an “Agreed Journal Entry of Judgment” form.
 - i. Parties may request that the court close the adversary proceeding subject to reopening, without a fee, for the purpose of entering judgment against the defendant (in the event of default). *See Fed. R. Civ. P. 41(a)(1)(ii)*. Parties should file an “Agreed Stipulation of Dismissal” specifically requesting that the Order of Dismissal incorporate the terms of the settlement agreement and/or that the court specifically retain jurisdiction over the settlement agreement. *See Morris v. City of Hobart*, 39 F.3d 1105 (10th Cir. 1994). *See Exhibit E* for a “Agreed Stipulation of Dismissal” form.
 - c. Upon full performance of a settlement agreement, the parties shall file an “Agreed Stipulation of Dismissal” signed by all parties who have appeared in the action.” *See Fed. R. Civ. P. 41(a)(1)(ii)*. *See Exhibit B* for an “Agreed Stipulation of Dismissal” form.
3. **Judgment** - Final legal determination of disputed legal or factual issues that resolves legal rights from which an appeal can be taken. The adversary proceeding will be closed by the Court Clerk 14 days after entry of the final judgment unless the judgment is appealed or there are other issues pending.³ *See Exhibit F* for a form commonly used by Chapter 7 Trustees. It grants a money judgment against Debtor/Defendant but then stays execution while allowing repayment of the sum certain. It also contains an agreement that discharge will be revoked only if the money judgment is not paid, and after notice is provided.

²Bankruptcy Rule 9019 provides that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a).

³Remember that when defendants(s) have satisfied the judgment, a Satisfaction of Judgment must be filed by Plaintiff.

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

IN RE:

Debtor(s).

**Case No.
Chapter**

Plaintiff,

v.

Adv. No.

Defendant.¹

NOTICE OF DISMISSAL

Plaintiff _____ (“Plaintiff”) seeks to dismiss the above-referenced adversary proceeding pursuant to Federal Rule of Civil Procedure 41(a)(1)(i), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041. Defendant _____ has not filed a responsive pleading in this adversary proceeding. Accordingly, Plaintiff seeks dismissal without court order.

Dated this ____ day of _____, 201____.

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

¹If more than one Defendant, the Notice must address the status of each Defendant if Plaintiff’s intent is to dismiss the entire case.

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

IN RE:

Case No.

Debtor(s).

Plaintiff,

v.

Adv. No.

Defendant.¹

AGREED STIPULATION OF DISMISSAL

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff _____ and Defendant _____, being all parties who entered an appearance in the above-referenced adversary proceeding, hereby jointly and mutually stipulate to the dismissal of all claims asserted herein by virtue of any pleading entered or filed in this proceeding, [with/without] prejudice to refileing.

Dated this ____ day of _____, 201 ____.

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR DEFENDANT

¹If there is more than one Defendant, the Notice must address the status of each Defendant if Plaintiff's intent is to dismiss the entire case.

EXHIBIT C

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

IN RE:

Debtor(s).

**Case No.
Chapter**

Plaintiff,

v.

Adv. No.

Defendant.

MOTION TO DISMISS

On _____, Plaintiff _____ (“Plaintiff”) filed the Complaint to
[describe nature of claims and the relief sought] (the “Complaint”). On _____,
Defendant _____ (“Defendant”) filed an Answer to the Plaintiff’s Complaint.

Pursuant to Federal Rule of Civil Procedure 41(a)(2), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff seeks to dismiss all claims set forth in the Complaint.

Dated this ____ day of _____, 201 ____.

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

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EXHIBIT D

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

IN RE:

Debtor(s).

Case No.
Chapter

Plaintiff,

v.

Adv. No.

Defendant.¹

AGREED JOURNAL ENTRY OF JUDGMENT

Plaintiff _____ (“Plaintiff”) and Defendant _____ (“Defendant”)

jointly and mutually agree that judgment shall be entered against the Defendant pursuant to
[insert statutory or other authority].

Plaintiff and Defendant agree that [describe terms of agreement between the parties].

IT IS, THEREFORE, ORDERED that [insert specific terms of the agreed judgment,
e.g. amount of judgment, terms of repayment, interest calculation] is granted [in the amount of]
[any non-monetary relief] _____.

IT IS FURTHER ORDERED that [if applicable, insert consequences of default under a
payment plan, or other additional terms].

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¹If there is more than one Defendant, the Agreed Journal Entry should address all Defendants or indicated if there is an intent to separately deal with/or litigate against any remaining Defendant(s).

APPROVED BY:

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR DEFENDANT

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EXHIBIT E

UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS

IN RE:

	Debtor(s).	Case No.
		Chapter
<hr/>		
	Plaintiff,	
v.		Adv. No.
	Defendant.	
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AGREED STIPULATION OF DISMISSAL
[If applicable, (Subject to Reopening, without fee, for purposes of entering judgment in the event of default)]

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), made applicable to adversary proceedings by Federal Rule of Bankruptcy Procedure 7041, Plaintiff _____ (“Plaintiff”) and Defendant _____ (“Defendant”), being all parties that entered an appearance in the above-referenced adversary proceeding, hereby jointly and mutually stipulate to the dismissal of the adversary proceeding [*subject to reopening for purposes of entering judgment against the Defendant in the event of default under the settlement agreement*]. The parties have agreed that [*insert terms of agreement, repayment terms, if any, terms of default, etc.*]

Dated this ____ day of _____, 201____.

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR PLAINTIFF

Attorney Name, KBA # _____
[Address/Telephone/Fax/Email]
ATTORNEY FOR DEFENDANT

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EXHIBIT F

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

IN RE:

Case No.

Debtor.

Plaintiff,

vs.

Adv. No.

Defendant.

AGREED JOURNAL ENTRY OF JUDGMENT

Plaintiff's Complaint is before the Court upon the agreement of the parties.

_____ appears by and through _____. _____ appears
by and through _____.

The parties agree, and the Court FINDS:

1. Trustee filed a Complaint seeking revocation of Debtor's discharge pursuant to 11 U.S.C. § 727_____ for Debtor's failure to turnover property of the bankruptcy estate;
2. The Trustee properly served a copy of the Complaint and Summons upon the Debtor, who is the defendant herein, and service is proper;
3. This Court has personal and subject matter jurisdiction over this core proceeding;
4. Defendant has advised Trustee that he/she has spent the funds being sought by the Trustee, but wishes to repay those funds.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that the Trustee is

granted judgment against _____ in the sum of _____,
plus _____ court costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Trustee will not
and cannot execute upon the judgment, provided that [set out terms of repayment here]:

1. Prior to __[DATE]_____, Defendant remits __[SUM]_____ to
Trustee;
2. Commencing on or before _____, Defendant makes payments
to the Trustee of _____ and continues to make _____ monthly
payments by the ___ day of each succeeding month until the judgment is paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if Defendant makes
all payments to the Trustee in a timely manner, the Trustee shall submit a Satisfaction of Judgment
to the Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that if Defendant fails to
make the payments in a timely manner, the Trustee, after providing Defendant and his/her attorney
with fourteen (14) days written notice of default, may submit an Order to the Court revoking
Debtor's discharge pursuant to 11 U.S.C. § 727_____, which shall be granted without hearing.

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APPROVED BY:

Attorney Name, KBA # _____

[Address/Telephone/Fax/Email]

ATTORNEY FOR PLAINTIFF

Attorney Name, KBA # _____

[Address/Telephone/Fax/Email]

ATTORNEY FOR DEFENDANT

Rule 7041. Dismissal of Adversary Proceedings

Rule 41 F. R. Civ. P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper.

Rule 41. Dismissal of Actions**(a) Voluntary Dismissal.****(1) By the Plaintiff.**

(A) Without a Court Order. Subject to Rules 23(e), 23.1(c), 23.2, and 66 and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) Effect. Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) By Court Order; Effect. Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) Involuntary Dismissal; Effect. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

(c) Dismissing a Counterclaim, Crossclaim, or Third-Party Claim. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 41(a)(1)(A)(i) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) Costs of a Previously Dismissed Action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

Code Reference: § 727

West's Key Number Digest, Bankruptcy ⇌ 2162, 3318.1, 3387.1; Federal Civil Procedure ⇌ 1691-1729