

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MAY 4, 2016
CALENDAR: 10:30 A.M. CHAPTER 7 ADVERSARY PROCEEDINGS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [15-11835](#)-A-7 JAMES/JAMIE CANNON
[16-1004](#)
CATERPILLAR FINANCIAL SERVICES
CORPORATION V. CANNON
MARK PONIATOWSKI/Atty. for mv.

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
3-29-16 [[13](#)]

Tentative Ruling

Application: For Entry of Final Judgment

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Denied as moot and this adversary dismissed as moot

Order: Civil minute order

MOOTNESS

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

"[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (alteration in original) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)) (internal quotation marks omitted). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

The court has issued judgment has been entered against the debtor-defendant James Floyd Cannon in the underlying bankruptcy case. This judgment denied his discharge under § 727(a)(11) and § 727(a)(2)(B).

A judgment denying discharge of a debtor under § 727(a)(2) renders all Cannon's debt that was or could have been scheduled in this underlying case nondischargeable in any subsequent bankruptcy case. See 11 U.S.C. § 523(a)(10). Any claim that could have been scheduled in this bankruptcy case will not be dischargeable in any subsequent case. Thus, the court cannot grant effective relief. Plaintiff no longer has the requisite personal interest in obtaining a determination of nondischargeability under § 523(a)(6) as the debt owing to the plaintiff Caterpillar Financial Services Corporation is already excepted from discharge in this case and any subsequent bankruptcy case.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Plaintiff Caterpillar Financial Services Corporation's application for entry of default judgment has been presented to the court. Having considered the motion, together with papers filed in support and

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time

frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

"[A] case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287 (2000) (alteration in original) (quoting *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979)) (internal quotation marks omitted). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

The motion to dismiss was filed March 28, 2016. Since the filing of the motion to dismiss, the plaintiff has filed an amended complaint. The original complaint to which the motion to dismiss was directed has been superseded.

The amended complaint was filed on April 15, 2016. This complaint was timely filed pursuant to Rule 15 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 15(a)(1)(B).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Defendants Jerad and Alice Sanders's motion to dismiss has been presented to the court. Given the filing of an amended complaint after the filing of the motion,

IT IS ORDERED that the motion is denied as moot.

5.	<u>15-11995-A-7</u>	JIMMY/GWENDOLYN CANNON	MOTION FOR ENTRY OF DEFAULT
	<u>16-1002</u>		JUDGMENT
	CATERPILLAR FINANCIAL SERVICES		3-30-16 [<u>20</u>]
	CORPORATION V. CANNON		
	MARK PONIATOWSKI/Atty. for mv.		

Final Ruling

Motion: Entry of Default Judgment

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

The clerk has entered default against the defendant in this proceeding. The default was entered because the defendant failed to appear, answer or otherwise defend against the action brought by the plaintiff. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed R. Bankr. P. 7055. The plaintiff has moved for default judgment.

Under Federal Rule of Civil Procedure 8(b)(6), the allegations of the complaint are admitted except for allegations relating to the amount of damages. Fed. R. Civ. P. 8(b)(6), *incorporated by* Fed. R. Bankr. P. 7008(a). Having accepted the well-pleaded facts in the complaint as true, and for the reasons stated in the motion and supporting papers, the court finds that default judgment should be entered against the defendant. Fed. R. Civ. P. 55(b)(2), *incorporated by* Fed. R. Bankr. P. 7055.

For the reasons stated in the motion, the court will grant default judgment in the amount requested. The entire debt requested in the complaint's prayer for relief shall be determined nondischargeable.

6. [15-11995](#)-A-7 JIMMY/GWENDOLYN CANNON CONTINUED STATUS CONFERENCE RE:
[16-1002](#) COMPLAINT
CATERPILLAR FINANCIAL SERVICES 1-5-16 [[1](#)]
CORPORATION V. CANNON
MARK PONIATOWSKI/Atty. for pl.

Final Ruling

The status conference is continued to July 6, 2016, at 10:30 a.m. to allow time for judgment to be entered. If the judgment has been entered prior to the time of the continued hearing, no appearance will be required.