

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

LAWRENCE L. KELLY,

Plaintiff,

v.

**MYRTLE WILSON,
et al.,**

Defendants.

**CIVIL ACTION
No: 09-2188-KHV**

MEMORANDUM AND ORDER

On April 14, 2009, Lawrence L. Kelly, pro se, filed this action against the United States Department of Housing and Urban Development (“HUD”) and HUD employees Myrtle Wilson and Bryan Green. Kelly alleges that defendants violated the Fair Housing Act, 42 U.S.C. § 3601 et seq., and seeks damages in excess of \$3,000,000. On July 15, 2009, plaintiff filed a Motion for Default Judgment (Doc. #8) which the Court construed as a motion for entry of default. The Court noted that plaintiff had not shown service on defendants and found that plaintiff therefore was not entitled to entry of default. See Doc. #11. On February 5, 2010, plaintiff filed a motion titled Default Judgement Federal Rule Of Civil Procedure 55 (Doc. #22). This matter comes before the Court on Defendants’ Motion To Strike Plaintiff’s “Default Judgement Federal Rule Of Civil Procedure 55” [Doc. #22] (Doc. #24) filed February 8, 2010.

Defendants assert that plaintiff has not yet served the United States as required by Rule 4(i), Fed. R. Civ. P., so the time for defendants to answer or otherwise respond has not even commenced. Nevertheless, because the Court set this case for a scheduling conference, defendants have filed a Motion to Dismiss. See Doc. #15 (filed January 8, 2010). Defendants’ motion to dismiss is a timely responsive pleading to plaintiff’s unserved complaint and the Court therefore has no basis to enter

default or default judgment. See Brooks v. Graber, Case No. 00-2262-DES, 2000 WL 1679420, at *2 (D. Kan. Nov. 6, 2000). The Court therefore sustains defendants' motion to strike.

IT IS THEREFORE ORDERED that Defendants' Motion To Strike Plaintiff's "Default Judgement Federal Rule Of Civil Procedure 55" [Doc. #22] (Doc. #24) filed February 8, 2010 be and hereby is **SUSTAINED**.

Dated this 6th day of April, 2010 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge