

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

CARA SMELCER,

Plaintiff,

v.

Case No. 09-2652-JTM

LOCKHART, MORRIS &
MONTGOMERY, INC.,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on plaintiff Cara Smelcer's motion for default judgment. (Dkt. No. 8). As set forth below, plaintiff's motion is denied.

Plaintiff Cara Smelcer ("Smelcer") requests the court to enter default judgment pursuant to Federal Rule of Civil Procedure 55, on the grounds that defendant Lockhart, Morris & Montgomery, Inc. ("Lockhart") has failed to plead or otherwise defend this lawsuit. Smelcer states that Montgomery signed a waiver of service summons form on February 21, 2010, which was filed on April 22, 2010. (Dkt. No. 8 at 1; Dkt. No. 4). Smelcer alleges that Montgomery has "failed to plead or otherwise defend, and the time for such response has passed." (Dkt. No. 8 at 2).

The court finds that Smelcer's request to proceed directly to default judgment does not comport with the two-step process required under Federal Rule of Civil Procedure 55. First, a party wishing to obtain a default judgment must apprise the Clerk of Court "by affidavit or otherwise" that the opposing party has failed to plead or otherwise respond, and must request the clerk to enter

default on the docket. Fed.R.Civ.P. 55(a). Second, following entry of default, the plaintiff may move the court for default judgment. Fed.R.Civ.P. 55(b)(2). In this case, Smelcer has not requested that the Clerk enter default against Lockhart pursuant to Rule 55(a). Consequently, the court finds that plaintiff's motion is not ripe for review. *Accord Smith v. Galen of Kan., Inc.*, No. Civ. A. 01-2475-CM, 2002 WL 500579, at*1 (D.Kan. Mar. 27, 2002).

IT IS THEREFORE ORDERED this 27th day of May, 2010, that plaintiff's motion for default judgment (Dkt. No. 8) is denied.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE