

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

DAVID J. KIEWEL and,  
K9 WORKING DOGS  
INTERNATIONAL, LLC,

Plaintiffs,

v.

Case No. 10-2113-JTM

IVAN BALABANOV and  
THE DOGHOUSE, LLC,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on plaintiffs David Kiewel and K9 Working Dogs International, LLC's motion for default judgment. (Dkt. No. 7). As set forth below, plaintiffs' motion is denied.

The plaintiffs request the court to enter default judgment pursuant to Federal Rule of Civil Procedure 55, on the grounds that the defendants Ivan Balabanov and the Doghouse, LLC have each been served with process and neither defendant has answered or otherwise responded to the Complaint. (Dkt. No. 7).

The court finds that plaintiffs' 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, the plaintiffs have not requested that the Clerk enter default against the defendants 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 27<sup>th</sup> day of May, 2010, that plaintiffs' motion for default judgment (Dkt. No. 7) is denied.

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