IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Camille McClain,

      Plaintiff,

      vs.   Case No. 13-2453-JTM

Swanson, Walker & Assoc., *et al.*,

      Defendants.

MEMORANDUM AND ORDER

This is an action for damages under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692

et seq. The plaintiff complains of certain debt collection efforts by the defendants Swanson, Walker

and Associates, a New York business entity, and one of its agents, Olivia Weston. McClain served

Swanson, Walker by certified mail delivered to its registered service agent, United States

Corporation Agents, Inc., in Brooklyn, New York. Service was executed and returned on December

27, 2013. On January 6, 2014, McClain moved for default judgment against Swanson, Walker

"pursuant to Rule 55 of the Federal Rules of Civil Procedure." (Dkt. 4, at 2).

> Rule 55 mandates a two-step process for a party who seeks a default judgment in his
> favor. First, the party wishing to obtain a default judgment must apprise the court
> that the opposing party has failed to plead or otherwise defend by requesting "by
> affidavit or otherwise" that the clerk enter default on the docket. Fed.R.Civ.P. 55(a);
> *see also Meehan v. Snow*, 652 F.2d 274, 276 (2d Cir.1981). Second, following an
> entry of default by the clerk, "the party entitled to a judgment by default shall apply
> to the court therefor." Fed.R.Civ.P. 55(b)(2).

Williams v. Smithson, 1995 WL 365988, *1 (10th Cir. 1995). Failing to observe this "set sequence" effectively "asks the court to act out of term." *Lott v. Marietta Mun. Ct.*, 2013 WL 6662836, *2 (S.D. Ohio, 2013).

Here, McClain has moved for default judgment directly without a prior entry of default. The plaintiff is directed to make the appropriate application with the Clerk of the Court. Following entry of default, the court will again take up plaintiff's Motion for Default Judgment, and schedule a hearing on damages pursuant to Rule 55(b)(2).

IT IS SO ORDERED this 1st day of April, 2014.

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