

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

**MCA Ventures, LLC,**

**Plaintiff,**

**v.**

**Case No. 15-9074-JWL**

**Leonard Zella,**

**Defendant.**

**MEMORANDUM & ORDER**

Plaintiff filed this lawsuit against defendant Leonard Zella alleging breach of contract claims. This matter is presently before the court on plaintiff's motion for "default judgment entry" (doc. 9).

Federal Rule of Civil Procedure 55 envisions a two-step process for obtaining a default judgment. *Meyers v. Pfizer, Inc.*, 581 Fed. Appx. 708, 710 (10th Cir. 2014). 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. *Id.*; Fed. R. Civ. P. 55(a). Second, following an entry of default by the clerk, the party entitled to a judgment by default shall apply to the clerk or the court under Rule 55(b), depending on the nature of the relief requested. *Id.* & n.3.

In its motion, plaintiff seems to conflate the two steps. Plaintiff references Rule 55(a) and the need for an "entry" of default, but also asks the court to enter judgment in favor of plaintiff in the amount of \$142,096.49 on Count I of the complaint and in the amount of \$68,153.67 on Count II of the complaint. The court cannot enter default judgment at this

juncture because no entry of default has been requested or entered under Rule 55(a). *See id.* at 710-11. Thus, the court construes plaintiff's motion as a request for entry of default under Rule 55(a) and grants the motion. The docket reflects that plaintiff obtained personal service on Mr. Zella on June 2, 2015 at 8:40pm and the process server has filed a proof of service under penalty of perjury. Mr. Zella has not filed an answer to the complaint or otherwise appeared in this case. The court, then, will direct the Clerk to enter default against Mr. Zella on the claims set forth in the complaint. Once default is entered, plaintiff may file a motion for default judgment under Rule 55(b) with the court.

**IT IS THEREFORE ORDERED BY THE COURT THAT** plaintiff's motion for default judgment entry (doc. 9) is construed as a motion for entry of default and is granted.

**IT IS FURTHER ORDERED BY THE COURT THAT** the Clerk shall enter default against defendant Leonard Zella on the claims set forth in the complaint.

**IT IS SO ORDERED.**

Dated this 14<sup>th</sup> day of August, 2015, at Kansas City, Kansas.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge