

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

JOREL SHOPHAR,

Plaintiff,

v.

STATE OF KANSAS, et al.,

Defendants.

Case No. 16-CV-4043-DDC-KGS

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff Jorel Shophar's Motion for Default Judgment (Doc. 14). Plaintiff asks the Court to enter a default judgment under Fed. R. Civ. P. 55(b) because he served defendant State of Kansas with process more than 21 days ago and it neither has answered nor otherwise responded to the Complaint (Doc. 1). For reasons explained below, the Court denies plaintiff's motion without prejudice.

Plaintiff's request that the Court proceed directly to default judgment does not comply with the two-step process mandated by Fed. R. Civ. P. 55. First, a party seeking a default judgment must inform the Clerk of Court "by affidavit or otherwise" that the opposing party has failed to plead or otherwise respond, and then must request that the Clerk enter default on the docket. Fed. R. Civ. P. 55(a). Second, after the Clerk's entry of default, the party may move the Court for default judgment. Fed. R. Civ. P. 55(b)(2). Here, plaintiff has not asked the Clerk to enter default against defendant State of Kansas under Rule 55(a). Thus, plaintiff's motion is premature, and the Court denies it. *See Garrett v. Seymour*, 217 F. App'x 835, 838 (10th Cir. 2007) (affirming district court's decision to deny plaintiff's request for a default judgment because, among other things, plaintiff was not entitled to default judgment when the clerk had

not yet entered default under Rule 55(a), which is a “prerequisite for the entry of a default judgment under Rule 55(b)(1)”. Plaintiff may renew his motion when the Clerk has acted in the manner required by the rule.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff’s Motion for Default Judgment (Doc. 14) is denied without prejudice.

IT IS SO ORDERED.

Dated this 1st day of June, 2016, at Topeka, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge