

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

Eric Cannon,

Plaintiff,

v.

Case No. 18-2364-JWL

**SFM, LLC
d/b/a Sprouts Farmers Market,**

Defendant.

MEMORANDUM & ORDER

Plaintiff filed this lawsuit against defendant alleging discrimination and retaliation claims arising out of his employment with defendant. This matter is presently before the court on plaintiff's motion for default judgment (doc. 5).

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. *Meyers*, 581 Fed. Appx. at 708 & n.3.

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 defendant waived the service of summons in this case such that defendant's answer was due within 60 days of July 19, 2018, the date the waiver request was sent. Defendant has not filed an answer to the complaint or a motion under Rule 12 within 60 days from July 18, 2018. The court, then, will direct the Clerk to enter default against defendant 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 (doc. 5) 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 on the claims set forth in the complaint.

IT IS SO ORDERED.

Dated this 27th day of September, 2018, at Kansas City, Kansas.

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