

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

AVD BELLMONT LLC,)
)
) **Plaintiff,**)
)
v.)
)
DANIEL LOWE,)
LEGACY VENTURE WEST II, LLC,)
VENTURE WEST II, LC,)
LEGACY SHAWNEE, LLC,)
VENTURE WEST DEVELOPMENT, LLC,)
LEGACY OC, LLC,)
VENTURE WEST III DEVELOPMENT, L.L.C.,)
VENTURE WEST DEVELOPMENT III, LLC,)
RICHARD B. KATZ,)
SANDBERG PHOENIX VON GONTARD, P.C.,)
THE KATZ LAW FIRM, L.C.,)
LYNN E. RUSSELL,)
RUSSELL LAW OFFICES, LLC,)
)
) **Defendants.**)
)
_____)

CIVIL ACTION

No. 22-2153-KHV

MEMORANDUM AND ORDER

This matter is before the Court on plaintiff’s Application For Clerk’s Entry Of Default Judgment On Counts I, II, V, VI And VII (Doc. #12) filed June 21, 2022, which the Court construes as a motion for entry of default. For reasons stated below, the Court sustains plaintiff’s motion and directs the Clerk to enter default under Rule 55(a), Fed. R. Civ. P.

Rule 55, Fed. R. Civ. P., which governs default judgments in federal court, provides a two-step process to obtain a default judgment. Williams v. Smithson, 57 F.3d 1081 (Table), 1995 WL 365988, at *1 (10th Cir. June 20, 1995). First, the moving party must ask the clerk to enter default against the opposing party for failing to timely plead or otherwise defend. Fed. R. Civ. P. 55(a). Second, after the clerk enters default, a plaintiff may apply for default judgment. Fed. R. Civ.

P. 55(b). Neither the Clerk nor the Court has entered default against defendants. Because plaintiff cannot proceed directly to default judgment, the Court construes its motion as one for entry of default.

On May 14, 2022, plaintiff effected service on eight of the defendants in this action: Daniel Lowe, Legacy Venture West II, LLC, Venture West II, LC, Legacy Shawnee, LLC, Venture West Development, LLC, Legacy OC, LLC, Venture West III Development, L.L.C., and Venture West Development III, LLC. Under Rule 12(a)(1)(A)(i), Fed. R. Civ. P., defendants had 21 days, or until June 6, 2022, to file an answer or otherwise respond to plaintiff's claims. Defendants have not done so. Because defendants have failed to plead or otherwise defend, plaintiff is entitled to an entry of default under Rule 55(a).

IT IS THEREFORE ORDERED that plaintiff's Application For Clerk's Entry Of Default Judgment On Counts I, II, V, VI And VII (Doc. #12) filed June 21, 2022, which the Court construes as a motion for entry of default, is **SUSTAINED**. **The Court directs the Clerk to enter default against defendants Daniel Lowe, Legacy Venture West II, LLC, Venture West II, LC, Legacy Shawnee, LLC, Venture West Development, LLC, Legacy OC, LLC, Venture West III Development, L.L.C., and Venture West Development III, LLC.** Plaintiff's motion is otherwise overruled.

Dated this 26th day of July, 2022 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge