

**IN THE UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF ARKANSAS**  
**JONESBORO DIVISION**

DERHIM SALEH, doing business as	*	
Danny's Grocery, and WISAM	*	
ANAAM, doing business as Danny's	*	
Grocery	*	
	*	
Plaintiffs/Counter Defendants	*	NO: 3:11CV00033 SWW
	*	
V.	*	
	*	
DEPARTMENT OF AGRICULTURE	*	
	*	
Defendant/Counter Claimant	*	

**ORDER**

Before the Court is Plaintiff/Counter Defendants' response in opposition to Defendant/Counter Plaintiffs' motion for entry of default with respect to the counterclaim filed on May 13, 2011. Plaintiffs object to consideration of the motion and assert that the counterclaim should be dismissed.

A clerk's entry of default under Rule 55(a) of the Federal Rules of Civil Procedure may be entered by the Clerk with regard to a claim for affirmative relief against a party who has failed to plead or otherwise defend. Plaintiffs do not assert that the prerequisites for entry of default under Rule 55(a) are absent, nor do they state a reason for failing to file a timely answer or motion to dismiss.<sup>1</sup> Accordingly, the Court finds that the Clerk of the Court should consider

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<sup>1</sup>Before entering a default judgment, the Court must determine whether the facts plead constitute a legitimate cause of action. *See Thomson v. Wooster*, 114 U.S. 104, 113, 5 S. Ct. 788 (1885). Accordingly, in the event that the Clerk of the Court determines that entry of default under Rule 55(a) is proper, Plaintiffs will have an opportunity state their objections in a timely response in opposition to a motion for default judgment.

Defendant/Counter Plaintiff's motion for a clerk's entry of default (docket entry #11).

IT IS SO ORDERED THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2011.

/s/Susan Webber Wright  
UNITED STATES DISTRICT JUDGE

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