

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

DERON MCCOY, JR.,

Plaintiff,

v.

**ARAMARK CORRECTIONAL SERVICES,
et al.,**

Defendants.

Case No. 16-3027

MEMORANDUM & ORDER

This matter comes before the court upon plaintiff DeRon McCoy's Motion for Default Judgment (Doc. 78).

Plaintiff moves for default judgment against Defendant Cheryl Allen because he claims that she failed to timely file an answer or otherwise respond to plaintiff's Third Amended Complaint (Doc. 64). Fed. R. Civ. P. 55 governs default judgments. Rule 55 requires parties seeking default judgment to follow a two-step process. *Christenson Media Grp., Inc. v. Lang Indus., Inc.*, 782 F. Supp. 2d 1213, 1222 (D. Kan. 2011). First, the party seeking default must apply to the clerk for an entry of default against the opposing party for failure to plead or otherwise defend under Rule 55(a). Only once a clerk's entry of default is entered may the party file a motion for default judgment under Rule 55(b). Plaintiff never filed a motion for clerk's entry of default.

Instead, plaintiff argues that defendant's Motion to Dismiss should not count as "otherwise defend[ing]" against plaintiff's Third Amended Complaint. Plaintiff filed his Third Amended Complaint on June 14, 2017. (Doc. 56.) Defendant Allen was served on July 24, 2017 (Doc. 68) and timely filed her Motion to Dismiss on August 14, 2017. (Doc. 70.)

Plaintiff argues that defendant Allen's Motion to Dismiss is insufficient because it is more like a motion to join. As defendant Allen suggests, the court finds that whether or not the substance of defendant's motion is determined to be a sufficient basis for dismissal, it does sufficiently respond to plaintiff's Third Amended Complaint for default to be inappropriate at this time.

IT IS THEREFORE ORDERED that plaintiff's Motion for Default Judgment (Doc. 78) is denied.

Dated January 29, 2018, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge