

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JOHN STAFFORD, et al.,	:	Case No. 3:16-cv-00125
	:	
Plaintiffs,	:	Magistrate Judge Sharon L. Ovington
	:	(by full consent of the parties)
vs.	:	
	:	
DONNA WARD, et al.,	:	
	:	
Defendants.	:	
	:	

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**DECISION AND ENTRY**

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This case is before the Court upon Plaintiff John Stafford’s Motion for Default Judgment (Doc. #28). Plaintiff seeks an Order entering Default Judgment under Fed. R. Civ. P. 55(a) against Merrill Solomon. He explains that Mr. Solomon was added as a new Defendant in the Amended Complaint. He further explains that Mr. Solomon has been properly served, has declined to waive service, and has not pled or otherwise timely responded to the Amended Complaint.

Rule 55 of the Federal Rules of Civil Procedure provides for the entry of default and judgment by default against a party who fails to plead or otherwise defend as provided for under the Civil Rules. *See O.J. Distrib., Inc. v. Hornell Brewing Co.*, 340 F.3d 345, 352 (6th Cir. 2003). Although Plaintiff cites Rule 55(a), he asks the Court “for an order granting default judgment in his favor and against defendant Merrill Solomon.” (Doc. #28, *PageID* #405). He thus effectively seeks relief under Rule 55(b), which is available only after the Clerk of Court enters a party’s default under Rule 55(a). *See*

*Hickman v. Burchett*, No. 2:07cv743, 2008 WL 926609, at \*1 (S.D. Ohio 2008) (Frost, D.J.). Plaintiff is not entitled to default judgment against Mr. Solomon at this time because there has been no entry of default by the Clerk of Court. In other words, Plaintiff has skipped a step on the road to possibly obtaining a default judgment. He must first file an application for entry of default by the Clerk of Court under Rule 55(a). *See id.* (and cases cited therein).

Accordingly, Plaintiff's Motion for Default Judgment (Doc. #28) is DENIED without prejudice to renewal.

January 10, 2018

*s/Sharon L. Ovington*

Sharon L. Ovington  
United States Magistrate Judge