

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

SARA ROGERS,

Plaintiff,

v.

THOMAS J. VILSACK, in his official
capacity as Secretary of Agriculture,
et al.,

Defendants.

No. 2:21-cv-01779-DDD-SKC

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

As the clerk has recognized, Plaintiff has not satisfied the threshold requirement to even apply to the Court for a default judgment. Accordingly, no response to Plaintiff's improperly filed motion seeking default judgment against the Government is required. Nevertheless, the Government files this response out of an abundance of caution to apprise the Court of its position.

On July 19, 2021, Defendants moved to stay this case pending resolution of a related lawsuit in the Northern District of Texas where the court certified two classes to which Plaintiff belongs. Defs.' Mot. for Stay, ECF No. 8. On September 1, 2021, Defendants moved to continue the deadline to respond to Plaintiff's Complaint "until 14 days after the motion to stay is denied or, if granted, 14 days after the stay is lifted." Defs.' Mot. to Continue 1, ECF NO. 13. Plaintiff has opposed both motions, which remain pending.

One month later, on October 4, 2021, Plaintiff filed a motion for default judgment or, alternatively, for the setting of a date certain for filing an answer to Plaintiff's Complaint. Pl.'s Mot. for Def. Judg., ECF No. 20. As stated in Plaintiff's motion, Defendants oppose the motion for default judgment because Plaintiff has provided no grounds for seeking default judgment

against the Government. *Id.* at 2. Regarding Plaintiff’s request to set a deadline to respond to the Complaint, Defendants represented—consistent with their motion to continue—that they would consent to a deadline 14 days after the motion to stay is denied or, if the motion is granted, 14 days after the stay is lifted. *Id.*

The day after Plaintiff moved for default judgment, the Clerk entered a notice stating that an entry of default would not be entered because “a motion for extension of time to answer or to file a responsive pleading is pending” and because Plaintiff failed to comply with the requirements of Federal Rule of Civil Procedure 55. Clerk’s Note Regarding Default, October 5, 2021, ECF No. 21. Since then, Plaintiff has not taken steps to comply with the Federal Rules.

Federal Rule 55 establishes “a two-step process for a party who seeks a default judgment in his favor.” *Williams v. Smithson*, 57 F.3d 1081, 1081 (10th Cir. 1995) (unpublished table decision). First, the party seeking 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.* (quoting Fed. R. Civ. P. 55(a)). Second, after the clerk enters default, the party “must apply to the court for a default judgment.” Fed. R. Civ. P. 55(b)(2); *Williams*, 57 F.3d at 1081.

Plaintiff has not filed “the affidavit or declaration required” at the first step. On that basis the Clerk entered the aforementioned Notice on October 5, 2021, advising that “the Clerk’s Entry of Default would not be entered.” Clerk’s Note. And because the Clerk has not entered default, Plaintiff’s motion for default judgment—which may be filed only after the Clerk’s entry of default—is not properly before the Court and does not require a substantive response. In addition, as the Clerk also noted, a motion for extension of time to answer is pending, *id.* (as is a motion to stay proceedings altogether, ECF No. 8). Defendants are thus not obliged to answer at this time.

Dated: October 25, 2021

Respectfully submitted,

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/s/ Kyla Snow
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Counsel for Defendants

I hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2021, a copy of the foregoing Response to Plaintiff's Motion for Default Judgment was filed electronically via the Court's ECF system, which effects service on counsel of record.

/s/ Kyla Snow _____
KYLA M. SNOW
United States Department of Justice