

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Fagen, Inc., and Fagen Engineering LLC,

Plaintiffs,

v.

Civil No. 13-2833 (JNE/JJG)  
ORDER

Homeland Renewable Energy Inc.,

Defendant.

This is an action for breach of contract and unjust enrichment brought by Fagen, Inc., and Fagen Engineering LLC against Homeland Renewable Energy Inc. The case is before the Court on Fagen and Fagen Engineering's Motion for Entry of Default Judgment. *See* Fed. R. Civ. P. 55(b). For the reasons set forth below, the Court denies the motion.

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a). “[E]ntry of default under Rule 55(a) must precede grant of a default judgment under Rule 55(b).” *Johnson v. Dayton Elec. Mfg. Co.*, 140 F.3d 781, 783 (8th Cir. 1998). In this case, Fagen and Fagen Engineering moved for a default judgment under Rule 55(b) without obtaining the entry of Homeland Renewable Energy's default under Rule 55(a). Consequently, the Court denies Fagen and Fagen Engineering's motion and cancels the hearing on February 18, 2014. *See id.*

Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Fagen and Fagen Engineering's Motion for Entry of Default Judgment [Docket No. 5] is DENIED.
2. The hearing on February 18, 2014, at 9:30 a.m. is CANCELLED.

Dated: February 10, 2014

s/Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge