

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**BOARD OF TRUSTEES OF OHIO  
LABORERS' FRINGE BENEFIT  
PROGRAMS,**

**Plaintiffs,**

**v.**

**Civil Action 2:17-cv-323  
Judge Algenon L. Marbley  
Magistrate Judge Chelsey M. Vascura**

**UTTER CONSTRUCTION, INC.,**

**Defendant.**

**ORDER**

This matter is before the Court for consideration of Plaintiffs' Motion for Default Judgment. (ECF No. 6.) For the reasons that follow, Plaintiffs' Motion for Default Judgment is **DENIED WITHOUT PREJUDICE.**

The Court cannot enter default judgment because Plaintiffs did not first apply for and obtain an entry of default from the Clerk. An entry of default is distinct from entry of a default judgment. *See O.J. Distrib., Inc. v. Hornell Brewing Co., Inc.*, 340 F.3d 345, 353 (6th Cir. 2003); S. D. Ohio Civ. R. 55.1(b). By asking only for a default judgment, Plaintiff has failed to follow the sequential procedure set forth in Rule 55. *See Brantley v. Runyon*, No. C-1-96-842, 1997 WL 373739, at \*1 (S.D. Ohio June 19, 1997) ("In order to obtain a default judgment under Rule 55(b)(2), there must first be an entry of default as provided by Rule 55(a)." (citation omitted)). The Court therefore cannot enter a default judgment under Rule 55(b). *Cf. O.J. Distrib., Inc.*, 340 F.3d at 352 ("Rule 55 permits the clerk to enter a default when a party fails to defend an action as

required. The court may *then* enter default judgment.’” (emphasis added)) (quoting *Weiss v. St. Paul Fire & Marine Ins. Co.*, 283 F.3d 790, 794 (6th Cir. 2002)).

Accordingly, without expressing any opinion as to whether Plaintiffs are entitled to an entry of default or subsequent default judgment, Plaintiffs’ Motion for Default Judgment is **DENIED WITHOUT PREJUDICE.** (ECF No. 6.)

**IT IS SO ORDERED.**

/s/ Chelsey M. Vascura  
CHELSEY M. VASCURA  
UNITED STATES MAGISTRATE JUDGE