

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

BANK OF THE WEST,

Plaintiff,

v.

AMERICAN AUTO GLASS INC.,

et al.,

Defendants.

Case No. 18-2324-DDC-GEB

MEMORANDUM AND ORDER

Before the court is plaintiff Bank of the Midwest's Motion for Default Judgment against defendant American Auto Glass Inc. Doc. 10. For the reasons explained below, the court denies plaintiff's Motion.

Securing a default judgment under Rule 55 of the Federal Rules of Civil Procedure is a two-step process. *See, e.g., Meyers v. Pfizer, Inc.*, 581 F. App'x 708, 710 (10th Cir. 2014); *see also Christenson Media Grp., Inc. v Lang Indus., Inc.*, 782 F. Supp. 2d 1213, 1223 (D. Kan. 2011) ("By moving for default judgment first, plaintiff is trying to skip step one and jump to step two. A plaintiff may not seek default judgment before it has applied for entry of default.") (citations omitted). First, the party seeking default must apply to the clerk for a Clerk's Entry of Default under Federal Rule of Civil Procedure 55(a), which requires the movant to prove, by affidavit or otherwise, that the opposing party has failed to plead or otherwise defend against judgment for affirmative relief. Fed. R. Civ. P. 55(a). After the Clerk's Entry of Default is entered, the plaintiff may then move for an Entry of Default Judgment under Rule 55(b). *Id.* at 55(b). If plaintiff's claim is for a sum certain, then plaintiff may request that the clerk enter

judgment against defendant, provided the requisite showings are made. *Id.* at 55(b)(1). Because plaintiff has not yet completed step one, the court denies plaintiff's Motion for Default Judgment under Rule 55(b), but without prejudice to refile after completing step one.

IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's Motion for Default Judgment (Doc. 10) is denied without prejudice.

IT IS SO ORDERED.

Dated this 13th day of September, 2018, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge