

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
FABIOLA LUCIO,)	CASE NO. 13-33219 HCD
)	CHAPTER 13
)	
DEBTOR.)	
)	
)	
INDIANA DEPARTMENT OF WORKFORCE)	
PLAINTIFF)	
vs.)	PROC. NO. 14-3008
)	
FABIOLA LUCIO,)	
)	
DEFENDANT.)	

Appearances:

Maricel Elaine Villacampa Skiles, Esq., counsel for the plaintiff, Office of the Attorney General, 302 West Washington Street, IGCS 5th Floor, Indianapolis, Indiana 46204; and

Fabiola Lucio, pro se, 2441 West 250 Lot # 31, Warsaw, Indiana 46580.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 17, 2014.

Before the court is the Motion for Default Judgment filed in this adversary proceeding by the plaintiff, State of Indiana on the relation of the Indiana Department of Workforce Development (“plaintiff” or “IDWD”), against the chapter 13 debtor Fabiola Lucio (“defendant” or “Lucio”). The plaintiff commenced this adversary proceeding by filing a Complaint To Determine Dischargeability of Debt pursuant to 11 U.S.C. § 523(a)(2)(A). The defendant did not respond to the Complaint or to the Motion for Default Judgment. For the reasons stated below, the court denies the Motion for Default Judgment.¹

¹ The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

BACKGROUND

Fabiola Lucio, by counsel, filed a voluntary chapter 13 petition on November 8, 2013. On her Schedule E she listed IDWD as an unsecured priority creditor holding a priority claim in the amount of \$1,388.00 and a nonpriority claim in the amount of \$4,462.00. The IDWD timely filed a proof of claim in the amount of \$16,561.75. In the Chapter 13 Plan, which was confirmed by Special Order on April 29, 2014, all priority claims were to be paid as allowed during the Plan. *See* R. 33, Order, Case No. 13-33219.²

The IDWD timely filed its adversary proceeding against the defendant-debtor on February 17, 2014. Its Complaint generally alleged that the defendant received emergency unemployment compensation benefits to which she was not entitled, and sought to have that debt declared nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) as a debt for money obtained by false pretenses, false representation, or actual fraud. *See* R. 1. Count I alleged that the defendant applied for emergency unemployment compensation benefits but failed to disclose that she was employed by and received wages from Gulf Stream Coach Inc. (“Gulf Stream”) during the compensable weeks of June 25 to July 2, 2011; July 16 to September 3, 2011; and September 24 to October 1, 2011. It further alleged that the defendant failed to report any of her earnings during the weeks she was collecting benefits. The plaintiff requested repayment of the \$4,680.00 paid to the defendant in benefits for that period. It also claimed entitlement to a 25% civil penalty of \$1,170.00, and sought that the total amount of \$5,850.00 be declared excepted from the defendant’s discharge under this Count.

Count II alleged that the defendant applied for regular unemployment compensation benefits without disclosing that she was employed by and received wages from Gulf Stream during the compensable weeks of October 15, 2011; October 29 to November 5, 2011; December 3 to 17, 2011; January 7 to 21, 2012; February 4 to 11, 2012; and February 25 to March 3, 2012. It also alleged that the defendant failed

² Throughout this court’s record of the defendant-debtor’s bankruptcy case, reference to the defendant-debtor is female; that is, she is referred to as “she.” The IDWD refers to the defendant as male. The defendant-debtor’s counsel and Chapter 13 Trustee have seen the defendant; the court therefore will continue to refer to the defendant as a female.

to report any of her earnings during those weeks she collected benefits. It requested repayment of benefits in the amount of \$5,070.00 and claimed a 50% penalty payment of \$2,535.00. The IDWD asserted that the amount outstanding was \$7,605.00 on Count II. In all, the plaintiff asked that \$13,455.00 be excepted from the defendant's chapter 13 discharge.

DISCUSSION

The plaintiff asks the court to enter default judgment against the defendant, who neither appeared nor responded in this adversary proceeding. Rule 7055 of the Federal Rules of Bankruptcy Procedure governs defaults. That bankruptcy rule applies Rule 55 of the Federal Rules of Civil Procedure in adversary proceedings. Rule 55 clearly distinguishes between an "entry of default" and "judgment by default." *See Lowe v. McGraw-Hill Cos., Inc.*, 361 F.3d 335, 339 (7th Cir. 2004). An entry of default is made by the clerk when two acts occur: (1) the defendant fails to plead or defend, and (2) that failure is shown "by affidavit or otherwise." *See Fed. R. Civ. P. 55(a)*.

The court finds that the plaintiff followed the criteria set forth in the rule governing entry of defaults. It complied with Rule 55(a) by establishing the defendant's default and by requesting the Clerk's Entry of Default. *See R. 5, Motion, Affidavit in Support; see also Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008). By affidavit the plaintiff declared that timely service of process of the summons and Complaint was made upon the defendant and her bankruptcy attorney. The plaintiff's Certificate of Service also affirmed service by regular and certified mail upon the defendant and her bankruptcy attorney of record, Anita K. Gloyeski. *See R. 5; see also Fed. R. Bankr. P. 7004(b)(9); 7004(g)*. Attached to the Certificate were the signed return certified mail receipts and the Postal Service Tracking Information, making delivery and notice clear. The plaintiff also declared the defendant's non-response to the Complaint. *See Fed. R. Bankr. P. 7012(a)*. Having "establish[ed] the fact of default by evidence," the plaintiff fulfilled the criteria of Rule 55(a), and the Clerk of the Court entered default against

the defendant. 10 *Collier on Bankruptcy* ¶ 7055.02 at 7055-3 (A.N. Resnick & H.J. Sommer eds., 16th ed. 2013); *see* R. 6.

The plaintiff then requested that the court enter a judgment by default, in accordance with Rule 55(b). *See* R. 8. Attached to the Motion for Default Judgment were two supporting Affidavits. The first was the Affidavit of plaintiff's counsel, verifying the defendant's status as not an infant, an incompetent person, or one on active military duty, as confirmed by the Department of Defense Manpower Data Center. It presented the appropriate information that complied with the Servicemembers Civil Relief Act and satisfied the affidavit requirement of Rule 55(b). *See* 50 U.S.C.S. Appx. § 521(b)(1) (1996 & Supp. 2013); 10 *Collier on Bankruptcy* ¶ 7055.03[1] at 7055-4 to -5 (A.N. Resnick & H.J. Sommer eds., 16th ed. 2013); *In re Redmond*, 399 B.R. at 632 (citing cases). The second was an Affidavit of the plaintiff's Collection Specialist, declaring that the defendant filed unemployment benefit claims and received benefits but was ineligible to receive those benefits, and that the defendant owed the plaintiff the total amount of \$13,455.00. Also attached to the Motion were two documentary exhibits: a sample Claimant Voucher (Exhibit A) and the on-line "Uplink Help" dialog box linked to the weekly claim form (Exhibit B).³

In the Motion for Default Judgment itself, the plaintiff began its argument under § 523(a)(2)(A) by setting forth its undisputed facts. *See* R. 8, ¶ 10 ff. According to the IDWD, Lucio received emergency and regular unemployment benefits from time to time by certifying when she submitted each weekly claim voucher that she had reported all her work and earnings, had answered truthfully and accurately, and had reported anything that interfered with her ability to work.⁴ IDWD found, however, that Lucio claimed

³ The plaintiff's Exhibit B is illegible.

⁴ The plaintiff's evidence of this certification was the on-line information in the section "How Do I Get My Benefit Payment?" The instructions stated:

Every time you submit a claim voucher, you are certifying that you:

- Registered for work on IndianaCAREERconnect.com and that you completed your work search requirements.

(continued...)

benefits for specific compensable weeks between June 25, 2011 and March 3, 2012, in which she failed to report her earnings from Gulf Stream, earnings which constituted deductible income when determining eligibility for unemployment compensation benefits. *See id.*, ¶¶ 11-14.

The IDWD sent the defendant a letter on July 29, 2013, requesting a statement from her. The defendant did not respond to the plaintiff's letter. On September 12, 2013, the IDWD issued two Determinations of Eligibility. The first described an investigation of her claimed benefits during the period from June 25, 2011 to October 1, 2011. *See R. 1, Ex. D.* The second described the investigation of her claimed benefits during the period from October 8, 2011 to September 15, 2012. *See id.*, Ex. I. Each Determination acknowledged that the defendant failed to respond to the IDWD's letter, and then concluded:

Based on available evidence, it must be concluded that you knowingly failed to disclose, or falsified material facts.

Id., Exs. D, I. The defendant did not appeal those Determinations, and they became final on September 23, 2013.⁵ The defendant filed a chapter 13 petition on November 8, 2013.

⁴(...continued)

- Are not receiving subsistence allowance (payment) for training or education that would make you ineligible for unemployment benefits.
- Have reported any and all work, earnings and self-employment activity for this week, even if you haven't received payment for it yet.
- Have reported anything that interfered with your ability to work full-time this week.
- Have given only true and accurate answers and information in the application for benefits.
- Are aware that if you knowingly or purposely fail to disclose information or make false statements to receive unemployment benefits, you may:
 - Lose your unemployment benefits.
 - Be required to repay benefits received improperly with interest and penalty. That may include referral of your account to a collection agency.
 - Eliminate your chance to use the wages for future benefits.
 - Be subject to civil and criminal prosecution.

R. 1, Ex. A. A recent decision of the Indiana Court of Appeals stated that a claimant was required to read that screen and then to click the button "Yes I agree, file my claim" in order to submit a claim voucher. *See Telligman v. Review Bd. of IDWD*, 996 N.E.2d 858, 860-61 (Ind. App. 2013). The court presumes that the IDWD referred to that method of certification in its Motion for Default Judgment. *See R. 8, ¶ 10.*

⁵ The notification of the right to appeal, found at the bottom of the Determination of Eligibility, is (continued...)

The plaintiff argued in its Motion that, because the internet help link instructed claimants to enter gross earnings, Lucio “knew how to properly report [her] wages.” R. 8, ¶ 16. However, she failed to report any earnings. The plaintiff then summarized its argument for nondischargeability of the debt thus:

In summary, the Defendant, Fabiola Lucio, obtained unemployment benefits from the Department by certifying that [she] had (1) reported *any and all* work, *earnings*, and self-employment activity for the week, (2) given only true and accurate answers and information in the application for benefits, and (3) reported anything that interfered with [her] ability to work full-time during the week. During the compensable weeks, the Defendant failed to report [her] earnings reported by [her] employer – Gulf Stream Coach, Inc. – on [her] weekly claims vouchers. The Defendant knew that [her] representations were false because the claims submitted without wages [were] not an unintentional mistake and [were] not a listing of net wages rather than gross wages, which further shows that the Defendant made the false representations with an intent to deceive. As a result of Defendant’s certifications and reported earnings to the Department, the Department justifiably relied on the Defendant’s deceptions to its detriment, i.e., it erroneously paid unemployment benefits to the Defendant – benefits in which the Defendant was not entitled.

R. 8, ¶ 22. It asked the court to declare judgment in its favor and to declare the debt of \$13,455.00 plus costs nondischargeable by default.

Before entering a default judgment, however, the court also requires that a plaintiff establish a *prima facie* showing on the merits of its claim. *See In re Liebl*, 434 B.R. 529, 536 (Bankr. N.D.Ill. 2010) (requiring plaintiff to show “at least *prima facie* facts meeting the legal requirements to except a debt from discharge”); *In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003) (“[B]efore a litigant is awarded the relief it seeks when the opposing party fails to respond, the court needs to satisfy itself that the facts before it demonstrate a *prima facie* entitlement to that relief.”); *cf. Ojeda v. Goldberg*, 599 F.3d 712, 718 (7th Cir. 2010) (stating that “exceptions to discharge are to be construed strictly against a creditor and liberally in favor of the debtor”) (quoting cases). Even when a defendant affirmatively has conceded or admitted by

⁵(...continued)

written in a font much smaller than the one used in the body of the Determination of Eligibility itself. *See* R. 1, Exs. D, I. It states: “This determination will become final on 9-23-13 if not appealed. Either party may appeal this determination and request a hearing before an administrative law judge within ten days of the date this determination was mailed or otherwise delivered. Please see reverse side for appeal procedure.” *Id.* In an even smaller font, the final admonition is presented: “Important notice to claimant: If you appeal this determination, you must continue to submit vouchers each week while unemployed.” *Id.*

default the allegations in the complaint, a court “has an independent responsibility to verify that the debts in question are indeed nondischargeable.” *In re Sanderson*, 509 B.R. 206, 209 (Bankr. W.D. Wis. 2014). Courts have found that a plaintiff’s *prima facie* showing was successful when, from the evidence presented, “a factfinder could reasonably find every element that the plaintiff must ultimately prove to prevail in the action.” *In re Thanh V. Truong*, 271 B.R. 738, 742 (Bankr. D. Conn. 2002).

Moreover, bankruptcy courts have discretion whether to enter a judgment by default. *See Sun v. Board of Trustees of Univ. of Ill.*, 473 F.3d 799, 810 (7th Cir.), *cert. denied*, 551 U.S. 1114, 127 S. Ct. 2941, 168 L.Ed.2d 262 (2007). It may be denied when the facts are insufficient to support the claim in the complaint. *See In re Mergen*, 473 B.R. 743, 744 (Bankr. W.D. Wis. 2012). Particularly in a bankruptcy setting, in which “a debtor has a presumptive right to a discharge, default motions should not be granted unless the movant demonstrates that its debt is nondischargeable as a matter of law.” *In re Dade*, 2012 WL 1556510 at *4 (Bankr. C.D. Ill. May 1, 2012) (citations omitted); *see also In re Liebl*, 434 B.R. at 536; *In re Hostetter*, 320 B.R. 674, 678 (Bankr. N.D. Ind. 2005). Thus the plaintiff herein must show a *prima facie* case for each element of § 523(a)(2)(A) to obtain a default judgment on its fraud-based nondischargeability complaint. *See In re Zecevic*, 344 B.R. 572, 576 (Bankr. N.D. Ill. 2006).

The plaintiff’s Complaint asked the court to declare nondischargeable the defendant’s debt to IDWD under § 523(a)(2)(A) as a debt for money obtained by false pretenses, false representation, or actual fraud. Under that subsection of § 523(a), a plaintiff must establish that (1) this defendant obtained the plaintiff’s money through representations that the defendant either knew to be false or made with such reckless disregard for the truth as to constitute willful misrepresentation; (2) the defendant acted with an intent to deceive the plaintiff; and (3) the plaintiff justifiably relied on the defendant’s false representations to its detriment. *See, e.g., In re Davis*, 638 F.3d 549, 553 (7th Cir. 2011); *Ojeda*, 599 F.3d at 716-17; *In re Maurice*, 21 F.3d 767, 774 (7th Cir. 1994).

A. *False Representations*

This court first considers whether the plaintiff's Complaint, together with the attachments, contains *prima facie* facts to establish that the defendant obtained unemployment benefits through knowingly false representations or willful misrepresentations. The court finds that IDWD demonstrated that the defendant obtained the plaintiff's unemployment compensation benefits by failing to report any earnings from Gulf Stream on her weekly claims vouchers. Lucio collected benefits during the compensable weeks at issue while she was employed and paid by Gulf Stream. The exhibits show that, on twelve weekly claims vouchers between June 25 and October 1, 2013, the defendant answered "no" to the question "Did you work?". See R. 1, Ex. B. The Investigation Case History reflected that she worked for Gulf Stream and earned wages for each of those weeks. See *id.*, Ex. C. The record thus demonstrates that Lucio *did work* each of the weeks she stated on her vouchers that she did not work. The IDWD paid Lucio unemployment benefits for those weeks, and it concluded, based upon Lucio's failure to respond to its letter with some reasons, that she failed to disclose her employment or falsified material facts. See *id.*, Ex. D. The IDWD gave the defendant the opportunity to explain whether and why she mistakenly believed that she was filling out the vouchers appropriately, and this court provided a further venue for her to justify her answers on the weekly claims vouchers. See, e.g., *In re Carey*, 2010 WL 936117 at *2 (D.N.J. March 11, 2010) (noting that "a 'knowing' misrepresentation . . . could result from a 'mistaken belief'"); *In re Olsen*, 2014 WL 4327886 at *27 (Bankr. D.Mont. Aug. 28, 2014) (finding, after a trial, that no evidence in the record showed that defendant knew his representations were false); *In re Ortiz*, 2014 WL 4187474 at *4 (Bankr. D.N.J. Aug. 21, 2014) (finding, after a trial, that plaintiff submitted insufficient evidence of defendant's knowledge of a misrepresentation in filing unemployment claims). In this case, the defendant did not appear to offer a response to the state agency or to the bankruptcy court.

The court finds that the record supports the finding that the defendant, when employed by Gulf Stream, submitted claims vouchers stating that she was not working and received unemployment benefits based upon those representations. The *prima facie* facts show that, "at the time of the representation [on each

voucher], the debtor knew it to be false or the representation was made with such disregard for the truth as to constitute willful misrepresentation.” *In re Weichman*, 422 B.R. 143, 150 (Bankr. N.D. Ind. 2010). Therefore, because a factfinder could reasonably find that the defendant’s statement on each of the vouchers was false, this court determines that the plaintiff successfully made a *prima facie* showing of the first prong of § 523(a)(2)(A).

B. *Intent to Deceive*

However, the plaintiff’s showing that the defendant made a false representation is not enough; it is also required to make a *prima facie* showing that the debtor actually intended to deceive the plaintiff. *See In re Westfall*, 379 B.R. 798, 804 (Bankr. C.D. Ill. 2007) (finding after a trial that plaintiff proved defendant’s intent to deceive plaintiff at time representations were made). In this case, the plaintiff’s showing concerning the second essential element was not sufficient. This element, like the first one, must be pleaded with particularity under Rule 9(b) of the Federal Rules of Civil Procedure.⁶ *See In re Casali*, 2014 WL 4296664 at *4 (Bankr. N.D. Ill. Aug. 29, 2014) (“The particularity requirement of Rule 9(b) applies equally to all claims based upon an underlying fraud, including fraud claims under § 523(a)(2)(A).”); *In re Weichman*, 422 B.R. at 154 (concluding plaintiff failed to plead actual fraud with particularity because complaint alleged no facts to establish the debtor obtained money by actual fraud). Intent may be shown directly or indirectly, in the totality of the circumstances surrounding each false representation.

Intent to deceive is measured by the debtor’s subjective intention at the time the representation was made. Because proof of fraudulent intent may be unavailable, the scienter requirement may be inferred from the surrounding circumstances.

In re Aguilar, 511 B.R. 507, 512-13 (Bankr. N.D. Ill. 2014) (citations omitted); *accord In re Slaton*, 469 B.R. 814, 819 (Bankr. W.D. Wis. 2012) (stating same test, noting that debtors “had to be lying from the start”); *In re Weichman*, 422 B.R. at 150 (stating same test, finding complaint failed to state any facts to show actual

⁶ Federal Rule of Civil Procedure 9(b) requires: “In alleging fraud . . . , a party must state with particularity the circumstances constituting fraud.” Federal Rule of Bankruptcy Procedure 7009 applies Rule 9 in bankruptcy adversary proceedings.

fraud). With those guidelines in mind, the court returns to the Complaint to establish whether a *prima facie* case of intent to deceive has been shown.

In its Complaint the plaintiff made no allegation at all of the defendant's fraudulent intent. In each of the two Counts, the Complaint alleged that Lucio worked for Gulf Stream but failed to report any earnings for the weeks she claimed unemployment benefits. It further alleged that she knew how to report her wages properly but failed to do so. Each Count then sought to have the debt excepted from discharge as a debt under § 523(a)(2)(A). There were no factual allegations of specific representations made by the defendant, however, to show that the defendant intended to defraud the plaintiff each time she filed a voucher in order to obtain her benefits. The court finds that the Complaint's allegations failed to present a scintilla of a *prima facie* showing of the defendant's intentional deception.

In its Motion for Default Judgment, however, the IDWD did at least acknowledge the element of intent. It argued:

Defendant knew that [her] representations were false because the claims submitted without wages [were] not an unintentional mistake and [were] not a listing of net wages rather than gross wages, which further shows that the Defendant made the false representations with an intent to deceive.

R. 8, ¶ 22. This opaque contention attempted to prove the defendant's knowingly false representations and her intent to deceive by describing the claims she submitted as (1) listing no wages, (2) listing neither her net wages nor her gross wages, and (3) listing claims that were "not an unintentional mistake," which must mean an intended mistake. In making this argument, the IDWD adopted boilerplate language it has used in many of its Motions for Default Judgment, but it does not fit these circumstances. The defendant in fact did not list her wages and did not list either net or gross earnings, not because she intended to deceive the plaintiff, but rather because she claimed she was not working at all. So assertions (1) and (2) are without any merit. The third argument is actually a legal conclusion, not a factual allegation or legal argument. It presents no factual showing that the defendant made intentional mistakes, and the court will not infer an intent to deceive solely from the representations on the face of the vouchers or the IDWD's cursory

contention that the defendant's "claims submitted without wages" were "not an unintentional mistake." *See, e.g., In re Carey*, 2010 WL 936117 at *2 (D. N.J. Mar. 11, 2010) (stating "the Bankruptcy Code required specific intent to deceive that could not be inferred from the circumstances presented"); *In re Sanderson*, 509 B.R. 206, 210 (Bankr. W.D. Wis. 2014) (finding that debtor's admissions of his circumstances concerning his weekly certification permitted inference of intent). This court declines to infer intent by default on such sparse allegations and arguments. *See In re Sheridan*, 57 F.3d 627, 634 (7th Cir. 1995) (stating that "[w]hether to infer the requisite intent is left to the bankruptcy court" because it "is in the best position to observe the witnesses and presentment of the evidence").

In light of the Complaint's complete lack of allegations or *prima facie* facts concerning intent, and after consideration of the plaintiff's brief argument in its Motion for Default Judgment, the court determines that the plaintiff has failed to present a *prima facie* showing of the defendant's intent to deceive the plaintiff. *See, e.g., In re Ortiz*, 2014WL 4187474 at *5 (Bankr. D.N.J. Aug. 22, 2014) ("Here, the evidence (or lack thereof), including the trial testimony, leads the Court to conclude, from the totality of the circumstances, that the Debtor had no knowledge, let alone intent, to defraud or misrepresent."); *In re Macias*, 324 B.R. 181, 192 (Bankr. E.D.N.Y. 2004) (finding that the record showed, in the totality of the circumstances, that plaintiff sufficiently made a *prima facie* case of intent to deceive; granting default judgment). The court concludes that the plaintiff herein was not successful in its burden of proving a *prima facie* case with respect to the second element of § 523(a)(2)(A). For this reason, a judgment by default cannot be entered.

C. *Justifiable Reliance*

Following the same analysis, the court finds that the Complaint contained no allegation of the third factor, IDWD's justifiable reliance, and the Motion for Default Judgment simply concluded its summary paragraph by asserting that the "Department justifiably relied on the Defendant's deceptions to its detriment." R. 8, ¶ 22.

The court recognizes the importance of an efficient unemployment compensation system, which depends on the honesty of claimants seeking benefits, and the need for the procedures established under Indiana law to carry out its statutory purposes. When determining the eligibility of claims, the IDWD must be able to rely on the valid information recorded in those vouchers. *See, e.g., In re Yuppa*, 2013 WL 4854479 at *4 (Bankr. S.D. Ohio, June 12, 2013). However, in a bankruptcy nondischargeability setting, this court requires that the IDWD's reliance be shown to be justified when the defendant has demonstrated both a knowingly fraudulent misrepresentation of information on each filed voucher and an intention to deceive the IDWD. The plaintiff's cursory assertion of justifiable reliance, without any *prima facie* factual support, is simply inadequate. *Cf. In re Razo*, 446 B.R. 918, 920-21 (Bankr. N.D. Ind. 2011) (denying IDWD motion on ground it failed to satisfy its burden of proof in bankruptcy court).

Accordingly, the court finds that the Complaint's § 523(a)(2)(A) allegations are insufficient under the default judgment requirements of Federal Rule of Bankruptcy Procedure 7055 and Federal Rule of Civil Procedure 55. They are equally insufficient under Rule 9(b)'s requirement that fraud be alleged with particularity. Having failed to establish a *prima facie* showing on the required elements of nondischargeability under § 523(a)(2)(A), the plaintiff will not be awarded the default judgment it seeks. *See In re Forrest*, 424 B.R. 831, 835 (Bankr. N.D. Ill. 2009) (bankruptcy court has discretion to deny default judgment if insufficient facts are pleaded to support a cause of action); *see also In re Mercer*, 2013 WL 3367253 at *5-*6 (Bankr. M.D. Ala. July 5, 2013) (concluding, after hearings, that plaintiff did not carry its burden of proof, despite parties' stipulated judgment of nondischargeability and defendant's default; dismissing complaint with prejudice). This plaintiff has not made the requisite *prima facie* showing with respect to two elements in its claim of nondischargeability, and it is not entitled to its requested relief.⁷

⁷ The court adds that the plaintiff has made no showing to justify its claimed entitlement to the nondischargeability of the civil penalties it included in each count of the Complaint under the criteria of § 523(a)(2)(A).

In light of this Complaint's multiple insufficiencies, the court must deny the Motion for Default Judgment. Nevertheless, it may, in its discretion, allow the plaintiff an opportunity to present additional evidence and testimony to prove its entitlement to the nondischargeability of the defendant's obligation under § 523(a)(2)(A). See *In re Rowell*, 440 B.R. 117, 120 (Bankr. D.S.C. 2010); *In re Trevisan*, 300 B.R. 708, 719 (Bankr. E.D. Wis. 2003). The plaintiff is directed to advise the court whether it chooses to have a hearing. Within fourteen (14) days of the date of entry of this Memorandum of Decision, IDWD must request that an evidentiary hearing be scheduled. At that hearing, the plaintiff must prove its entitlement to an exception to discharge pursuant to § 523(a)(2)(A). However, if the plaintiff fails to timely request such a hearing or fails to present adequate additional evidence and/or testimony at that hearing, this adversary proceeding against the defendant Fabiola Lucio will be dismissed in accordance with the foregoing Memorandum of Decision.

CONCLUSION

For the reasons stated in this Memorandum of Decision, the Motion for Default Judgment filed by the plaintiff Indiana Department of Workforce Development against the defendant Fabiola Lucio is denied.

The court in its discretion grants the plaintiff fourteen (14) days from the entry of this Memorandum of Decision to request a hearing in order to present additional evidence and/or testimony to prove its entitlement to the nondischargeability of the defendant's debt under 11 U.S.C. § 523(a)(2)(A). The failure to make such a timely request will result in dismissal of this adversary proceeding.

SO ORDERED.

/s/ HARRY C. DEES, JR.

HARRY C. DEES, JR., JUDGE
UNITED STATES BANKRUPTCY COURT