

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
PAMELA KAY MEREDITH,	)	CASE NO. 13-32432 HCD
	)	CHAPTER 7
DEBTOR.	)	
	)	
INDIANA DEPARTMENT OF WORKFORCE	)	
DEVELOPMENT,	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 13-3071
	)	
PAMELA KAY MEREDITH,	)	
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

Pamela Kay Meredith, *pro se*, 11502 West 1200 South, Wanatah, Indiana 46390.

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 7 debtor Pamela Kay Meredith (“defendant” or “Meredith”). 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.<sup>1</sup>

BACKGROUND

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<sup>1</sup> 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).

Pamela Kay Meredith, by counsel, filed a voluntary chapter 7 petition on August 20, 2013. On Schedule F she listed the IDWD as an unsecured nonpriority creditor holding claims in the amounts of \$1,678.00 and \$14,099.85. The IDWD timely filed a proof of claim in the amount of \$14,148.75. After the § 341 meeting of creditors was held, the chapter 7 Trustee filed his Report of No Distribution, certifying that there was no estate property available for distribution and that the debtor's estate had been fully administered. On November 25, 2013, the Order granting the debtor her discharge under 11 U.S.C. § 727 was issued, but the Order explained that "debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged." R. 14, Order, p. 2, Case No. 13-32432. The IDWD had timely filed its adversary proceeding against the defendant-debtor. Although the main bankruptcy case was closed on December 10, 2013, the adversary case remained pending.

The IDWD's Complaint generally alleged that the defendant received unemployment compensation benefits, in the total amount of \$12,226.25, 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 at 3. Count I, the Complaint's only count, alleged that the defendant applied for emergency unemployment compensation benefits but under-reported the earnings she received from RMC Enterprises LLC ("RMC") during the compensable weeks of March 19 to December 31, 2011. The plaintiff requested repayment of the \$9,781.00 paid to the defendant in benefits for that period. It also claimed entitlement to a 25% civil penalty of \$2,445.25, and sought that the total amount of \$12,226.25 be declared excepted from the defendant's chapter 7 discharge.

The defendant did not appear or respond to the Complaint. Following the plaintiff's timely request for entry of the defendant's default, the Clerk of the Court issued the Entry of Default. *See* R. 6. Now before the court is the plaintiff's Motion for Default Judgment. *See* R. 8.

#### 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 timely service of process of the summons and Complaint upon the defendant and her bankruptcy attorney. The plaintiff’s Certificate of Service also affirmed service by regular and certified mail upon both the defendant and her bankruptcy attorney of record, Nataly Carrasco. *See R. 4; 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 a person 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 \$12,226.25.

Also attached to the Motion were three documentary exhibits: a page from the "Claim Voucher" on-line guide explaining "How Do I Get My Benefit Payment?" (Exhibit A)<sup>2</sup>; the on-line "Uplink Help" dialog box linked to the weekly claim form (Exhibit C)<sup>3</sup>; and the defendant's Sworn Statement, executed

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<sup>2</sup> The plaintiff's electronic information concerning "How Do I Get My Benefit Payment?" contained this advice:

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

- Registered for work on [IndianaCAREERconnect.com](http://IndianaCAREERconnect.com) and that you completed your work search requirements.
- 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, ¶ 8.

<sup>3</sup> Exhibit C of the Motion for Default Judgment is illegible.

December 19, 2012, after appearing at an interview scheduled by an IDWD Investigator (Exhibit B). In the Statement, the defendant declared she “honestly didn’t know [she] was under reporting.”

Q: Why did you fail to report your employment and earnings or correct earnings from RMC Enterprises LLC dba McDonald’s when you claimed benefits on your emergency claim for weeks ending 02-19-11 to 12-31-11 and on your regular claim for weeks ending 01-07-12 to 04-07-12?

A: I understood the week to run from Sunday to Saturday. McDonald’s (RMC) pay weeks run Thurs. to Wed. So I was going according to that. I honestly didn’t know I was under reporting. I also found out in June or July of 2012 that I was being paid a misc. pay for travel time that I was unaware of. When reporting my wages I was keeping track of my hours and multiplying that by my hourly wages. I also deducted for taxes and my health ins. each week.

R. 8, Ex. B, p. 4.

In the Motion itself, the plaintiff began its argument under § 523(a)(2)(A) by setting forth its undisputed facts. *See id.*, ¶¶ 8-10. According to the IDWD, Meredith received emergency 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. IDWD found, however, that Meredith claimed benefits for the compensable weeks between March 19 and December 31, 2011, in which she under-reported her earnings from RMC, earnings which constituted deductible income when determining eligibility for unemployment compensation benefits. *See id.*, ¶¶ 9, 10.

The Motion reported the IDWD Investigator’s interview with the defendant in this way:

[T]he Defendant appeared and stated that she failed to properly report her employment and earnings from RMC Enterprises LLC, because she understood the week to run from Sunday to Saturday, but that she was following the pay week of RMC Enterprises LLC when calculating her wages. She further stated that she was deducting taxes and health insurance from her earnings each week. Based on the available information, the Department made a determination of ineligibility, pursuant to Ind. Code § 22-4-17-2, and sent notice to the Defendant on February 28, 2013.<sup>4</sup>

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<sup>4</sup> Chapter 17 of Indiana’s employment law concerns “Claims for Benefits,” and Indiana Code § 22-4-17-2 establishes procedures to be followed by the IDWD for “Examination and determination of claims – Notice – Requests for review – Hearings – Correction of errors.”

*Id.*, ¶ 11 (citing Compl. Exs. B, E; Motion Ex. B).<sup>5</sup> The Investigator’s Determination of Eligibility was not appealed, and it became final on March 11, 2013.<sup>6</sup> *See id.*, ¶ 19.

The plaintiff then argued in its Motion that, because the internet help link instructed claimants to enter gross earnings, Meredith “knew how to properly report her wages.” *Id.*, ¶ 15. Nevertheless, she reported a wage “significantly less than her actual gross wages.” *Id.*, ¶ 13. That failure to report her wages properly resulted in the IDWD’s determination of ineligibility and its demand for repayment of overpayments and the 25% penalty. The plaintiff then summarized its argument for nondischargeability of the debt thus:

In summary, the Defendant, Pamela Meredith, 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 had significantly higher gross earnings reported by her employer – RMC Enterprises LLC – while she underreported her earnings on her weekly claims vouchers. The Defendant knew that her representations were false because the claims submitted with an incorrect amount of wages [were] not an unintentional mistake and [were] not a listing of net wages rather than gross wages, which further shows that

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<sup>5</sup> The Investigator’s Determination of Eligibility, in full, described the interview in these terms:

On [12/19/2012] you appeared and stated that you understood the week to run from Sunday to Saturday but McDonald’s (RMC) pay weeks ran Thursday to Wednesday so you were going according to that. You also found out in June or July of 2012 that you were being paid a miscellaneous pay for travel time that you were unaware of. When reporting your wages, you were keeping track of your hours and multiplying that by your hourly wages. You also deducted for taxes and your health insurance each week.

R. 1, Ex. B. It then concluded: “Based on available evidence, it must be concluded that you knowingly failed to disclose, or falsified material facts. Therefore, the penalties prescribed by Chapter 13, Section 1.1 of the Laws of Indiana relating to the Department of Workforce Development apply.” *Id.*

<sup>6</sup> The notification of the right to appeal, found at the bottom of the Determination of Eligibility, is written in a font much smaller than the one used in the body of the Determination of Eligibility itself. *See* R. 1, Ex. B. It states: “This determination will become final on 3-11-13 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.* The Interviewer did apprise the claimant of her right to appeal but told her she “would be appealing whether [she] worked, not whether [she] owe[d] the money back.” R. 8, Ex. B at 5.

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.

*Id.*, ¶ 21. It asked the court to declare judgment by default in its favor and to declare the debt of \$12,226.25 plus costs to be nondischargeable.

Before entering a default judgment, however, Rule 55(b) 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 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) the 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 its attachments, contains *prima facie* facts to establish that the defendant obtained unemployment benefits through knowingly false representations or willful misrepresentations. The Complaint alleged that the defendant failed to properly report, and in fact under-reported, her earnings on her claims vouchers for each week that she was employed and collected benefits. See R. 1, ¶¶ 9-10. The Motion for Default Judgment then added the argument that the internet help link showed the defendant how to report her wages properly; that she improperly reported earnings that were significantly less than her gross wages; and that the IDWD paid her benefits in the amount of \$9,781.00, benefits to which she was not entitled. See R. 8, ¶¶ 12-16.

The court finds that the Complaint contains no allegations of actual fraud or false representations. See *McClellan v. Cantrell*, 217 F.3d 890, 893 (7th Cir. 2000) (explaining that "actual fraud [under § 523(a)(2)(A)] is broader than misrepresentation" and includes "any deceit, artifice, trick, or design involving direct and active operation of the mind, used to circumvent and cheat another") (quoting 4 *Collier*

on *Bankruptcy* ¶ 523.08[1][e], at 523-45). The IDWD simply alleges that the defendant under-reported her earnings and that the help guide told her how to report earnings properly, but it fails to plead – or to present any factual allegations in support – that the defendant *knowingly* made a misrepresentation of her earnings.<sup>7</sup> The court declines to infer, from the mere fact that the internet help link instruction explained how to report earnings, that this defendant knowingly misrepresented her earnings. It concludes that the plaintiff failed to make the necessary showing on the first element of § 523(a)(2)(A). It has not made a *prima facie* case, and therefore a judgment by default cannot be entered.

Moreover, because the plaintiff seeks default judgment in connection with a Complaint based upon allegations of fraud, the court has evaluated the evidence before it to ascertain whether a determination of nondischargeability has been proven herein by the presentation of a *prima facie* case. See *In re Rowell*, 440 B.R. 117, 119 (Bankr. D. S.C. 2010); *In re Trevisan*, 300 B.R. 708, 714 (Bankr. E.D. Wis. 2003). The factual bases underpinning the plaintiff’s Complaint include:

- 1) the defendant’s vouchers filed for the weeks of March 19, 2011 through March 31, 2012;
- 2) the Determination of Eligibility, mailed to the defendant February 28, 2013;
- 3) IDWD’s Investigation Case History;
- 4) IDWD’s Verification of Weekly Earnings; and
- 5) IDWD’s Notice of Potential Overpayment, mailed to the defendant February 28, 2013.

R. 1, Exs. A-E. The Motion for Default Judgment added the following exhibits:

- 6) Online Claim Voucher information on “How Do I Get My Benefit Payment?”;
- 7) IDWD’s Sworn Statement of the defendant, executed December 19, 2012;
- 8) the UpLink Help guide on “How much did you earn?”; and a blank claim voucher.

R. 8, Exs. A-C. The court finds that the vouchers, case history, and earnings verification sheet, taken together, document the defendant’s under-reported earnings. The exhibits added to the default judgment motion illustrate the types of online services provided to claimants to answer questions and to guide them through the procedures for claiming benefit payment. Nothing in those documents or in the plaintiff’s

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<sup>7</sup> In contrast to the circumstances found in this case, a debtor who admitted a complaint’s allegation of knowing misrepresentation and of every allegation made pursuant to § 523(a)(2)(A) necessarily conceded that the debt owed to the plaintiff was excepted from his discharge. See *In re Sanderson*, 509 B.R. 206 (Bankr. W.D. Wis. 2014).

Complaint and Motion, however, provides direct or circumstantial evidence of the defendant's knowing falsifications of the vouchers, concealment of information on the vouchers, or intent to misrepresent information in order to trick the IDWD. The *prima facie* facts do not 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 reckless disregard for the truth as to constitute willful misrepresentation." *In re Weichman*, 422 B.R. 143, 150 (Bankr. N.D. Ind. 2010). Even though the Investigator concluded, in the Determination of Eligibility, that the defendant "knowingly failed to disclose, or falsified material facts," and even though she stated that she based her conclusion "on available evidence," she did not point to any evidence to verify that conclusion. More importantly, no evidence to prove the essential criteria of § 523(a)(2)(A) was presented.

The court further finds in the record a document actually asserting the nonexistence of a knowing representation or intent. The court is persuaded that the evidence of the defendant's Sworn Statement, declaring she "honestly didn't know [she] was under reporting," contradicts the Investigator's undeveloped decision that the defendant "knowingly failed to disclose, or falsified material facts." Having found that no facts were alleged that might substantiate knowingly false representations, and that the defendant's Sworn Statement denied knowingly false representations, the court concludes that a factfinder could only find genuine issues of material fact; he or she could not find a knowing misrepresentation from this record. Without a *prima facie* showing of the first required factor of § 523(a)(2)(A), this Complaint is insufficient.

#### B. *Intent to Deceive*

The court also found that the plaintiff failed to make an adequate showing of the second essential element, the defendant's intent to deceive the plaintiff. Both this requirement and the first factor discussed above are fraud-based requirements, and they must be pleaded with particularity under Rule 9(b) of the Federal Rules of Civil Procedure.<sup>8</sup> See *In re Casali*, 2014 WL 4296664 at \*4 (Bankr. N.D. Ill. Aug. 29,

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<sup>8</sup> 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 (continued...)

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 fraud with particularity; complaint alleged no facts to establish the debtor obtained money by actual fraud).

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 fraud).

In its Complaint the plaintiff made no allegation whatsoever of the defendant’s fraudulent intent. It alleged that the under-reporting of her earnings when she “knew how to properly report her wages” was proof of the nondischargeability of the benefits received. 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 *prima facie* facts 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:

The Defendant knew that her representations were false because the claims submitted with an incorrect amount of 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, ¶ 21. 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 the wrong amount of wages, (2)

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<sup>8</sup>(...continued)  
9 in bankruptcy adversary proceedings.

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. However, the defendant in her Sworn Statement described her unintended mistakes in her claims in this way: (a) She reported her earnings according to McDonald’s pay periods, from Thursdays to Wednesdays; (b) she calculated her wages by multiplying the hours she worked times her hourly wage; (c) she didn’t know, until June or July of 2012, that she was receiving extra pay for travel time; and (d) she deducted her taxes and health insurance. The court finds that the defendant’s sworn declaration that she honestly didn’t realize she was reporting too little income contradicts the IDWD’s assertions that the defendant knew that her representations were false and that she intended to deceive the IDWD. In fact, the court finds it noteworthy that, even though the defendant made that statement to the Investigator during her interview, the Investigator in her Determination of Eligibility ignored Meredith’s explanations and also failed to describe the “available evidence” on which she based her decision. The Investigator simply concluded that the defendant had knowingly failed to disclose or falsified material facts. In the court’s view, the record in this case does not contain evidence to support the Investigator’s cursory conclusion.

In light of the complete lack of allegations or *prima facie* facts concerning the defendant’s intent, the court determines that the plaintiff has failed to prove that the defendant’s conduct or the surrounding circumstances concerning her filed vouchers reflected any intent to deceive the plaintiff. Neither the factual allegations in the Complaint nor the appended exhibits support a finding of fraudulent intent, and the Sworn Statement attached to the Motion for Default Judgment contradicts such a finding. *See 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.”). Based on the record before it, a factfinder could reasonably find that there were genuine issues of material fact but could not reasonably find that the defendant made false representations intending to trick IDWD. The court concludes that the plaintiff was

not successful in its burden of proving a *prima facie* case with respect to the defendant's intent to deceive, the second element of § 523(a)(2)(A). For that 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, ¶ 21.

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 of any element in its claim of nondischargeability, and it is not entitled to its requested relief.<sup>9</sup>

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. at 120; *In re Trevisan*, 300 B.R. at 719. 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 present evidence sufficient to 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 testimony at that hearing, this adversary proceeding against the defendant Pamela Kay Meredith 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 Pamela Kay Meredith 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 testimony to prove

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<sup>9</sup> 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 the Complaint under the criteria of § 523(a)(2)(A).

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