UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
GABRIEL CHRISTOPHER QUAGLIO and	)	CASE NO. 13-30136 HCD
LORETTA JO QUAGLIO,	)	CHAPTER 13
	)	
DEBTORS.	)	
	)	
	)	
STATE OF INDIANA on the relation of the	)	
INDIANA DEPARTMENT OF	)	
WORKFORCE DEVELOPMENT,	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 13-3014
	)	
LORETTA JO QUAGLIO,	)	
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

Loretta Jo Quaglio, pro se, 6181 W. County Road 50 S., Logansport, Indiana 46947-6961.

MEMORANDUM OF DECISION

At South Bend, Indiana, on September 18, 2014.

Before the court is the Second Motion for Default Judgment ("Second Motion") filed by the plaintiff, State of Indiana on the relation of the Indiana Department of Workforce Development ("plaintiff" or "IDWD"), against the chapter 13 debtor Loretta Jo Quaglio ("defendant" or "Quaglio"). It seeks a judgment by default on the plaintiff's Amended Complaint To Determine Dischargeability of Debt pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7) ("Amended Complaint"). For the reasons stated below, the court denies the Second Motion for Default Judgment and dismisses the Amended Complaint.[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

Loretta Jo Quaglio and her husband Gabriel Christopher Quaglio filed a chapter 13 petition on January 27, 2013. On Schedule F they listed IDWD as an unsecured nonpriority creditor holding a claim in the amount of $22,572.00. The IDWD timely filed a proof of claim in the amount of $22,609.43. In the Chapter 13 Plan, which was confirmed by Special Order on May 9, 2013, general unsecured claims were to be paid a "pro rata share of $0." R. 9 (Plan), ¶ 8; R. 25 (Order), Case No. 13-30136.

The IDWD timely filed its adversary proceeding against the defendant-debtor on March 6, 2013. Because the plaintiff failed, as a matter of law, to establish nondischargeability under § 523(a)(2)(A), the court denied the plaintiff's Motion for Default Judgment and dismissed the Complaint. *See* R. 10, 11. However, the court granted IDWD's Motion to Alter or Amend Judgment and granted it leave to amend its Complaint. *See* R. 16. The Amended Complaint now before the court generally alleged that the defendant received regular and 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. 19. Count I alleged that the defendant applied for regular benefits but failed to report her earnings properly and in fact under-reported the wages from Help at Home Inc. ("Help at Home") during the compensable weeks of August 15 to November 14, 2009; and December 12, 2009 to January 9, 2010. *See id.*, ¶¶ 12-13. It further alleged that Quaglio, who worked as a part-time home health aide, was required to submit records of the hours she worked for each client for each week. IDWD concluded:

> [A]s a result, [she] knew her total gross earnings that she would receive for the compensable week prior to filing for unemployment compensation benefits.

Id., ¶ 16. However, it asserted, the defendant failed to report her earnings properly on her claims vouchers, and thus she collected benefits of $6,049.00 for the specified compensable weeks, benefits to which she was not entitled. It also claimed entitlement to a 25% civil penalty in the amount of $1,512.25 pursuant to

11 U.S.C. § 523(a)(7). IDWD sought, in all, that $7,561.25 be declared excepted from the defendant's discharge under Count I.

Count II alleged that the defendant applied for emergency unemployment compensation benefits but under-reported the earnings she received from Help at Home during the compensable weeks of January 23 to February 13, 2010. *Id.*, ¶¶ 24-25. Repeating the same allegations presented in Count I, the plaintiff asserted that the defendant, by completing her paperwork each week, knew the total number of hours she worked and thus knew her total wages for the week. Because she failed to report her earnings properly when she submitted her claims, she collected benefits in the amount of $1,396.00 for the specified compensable weeks, benefits to which she was not entitled. The plaintiff requested repayment of those benefits and claimed a 50% penalty payment of $698.00. The IDWD asserted that the amount outstanding was $2,094.00 on Count II. In all, the plaintiff asked that $9,655.25 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. 22, Second 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 alias summons and Amended 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, James K. Tamke. *See* R. 21; *see also* Fed. R. Bankr. P. 7004(b)(9); 7004(g).[2] The plaintiff also declared the defendant's non-response to the Amended 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. 23.

The plaintiff then requested that the court enter a judgment by default, in accordance with Rule 55(b). *See* R. 25. Attached to the Second Motion for Default Judgment ("Second Motion") 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; *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 $9,655.25.

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[2] Attached to the Certificate of Service were the USPS Tracking Information print-out and the certified mail return receipt verifying proper proof of service on the defendant's counsel. *See, e.g.*, *Relational, LLC v. Hodges*, 627 F.3d 668, 672 (7th Cir. 2010) ("To make a prima facie showing (of valid service), the movant must simply produce a return of service identifying the recipient and noting when and where service occurred."); *IDWD v. Coapstick*, Adv. Proc. 12-3048, Case No. 12-31404, Mem. Dec. of Dec. 12, 2012, at 4 (finding electronic receipts of mail tracking services to be sufficient method of corroborating proof of service). However, neither type of verification was provided to demonstrate completion of service to the defendant herself. Nevertheless, the court confirmed that its mailings, sent to the defendant at the same address used by the plaintiff, were not returned as undeliverable. Therefore there is a rebuttable presumption that service of process upon the defendant was valid and successful.

Also attached to the Second Motion was Exhibit A, which showed a blank Claimant Voucher and the on-line "Uplink Help" dialog box linked to the weekly claim form.[3]

In the Second Motion for Default Judgment itself, the plaintiff began its argument under § 523(a)(2)(A) by setting forth its undisputed facts. *See* R. 25, ¶ 8 ff. According to the IDWD, Quaglio 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 Quaglio claimed benefits for the specific compensable weeks at issue by reporting wages significantly less than the actual wages she earned. It noted that the defendant reported, on the vouchers, wages between $40.00 and $100.00, when in fact her actual gross wages for those weeks varied from $85.50 to $213.75.

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[3] The plaintiff's Exhibit A 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.
– 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. 19, Ex. D. 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 Second Motion for Default Judgment. *See* R. 8, ¶ 10.

By under-reporting her earnings, she collected both regular and emergency benefits to which she was not entitled. *See id.*, ¶¶ 8-15.

IDWD scheduled an interview with the defendant, but she did not appear. Based upon the available information, therefore, the IDWD issued two Determinations of Eligibility on June 21, 2011. The first encompassed an investigation of her claims during the period from August 8, 2009 to January 9, 2010. The second reviewed her claims from January 16, 2010 to November 6, 2010. *See* R. 19, Exs. A, B. Each Determination acknowledged that the defendant failed to appear or call, and then concluded:

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

Id.

The defendant appealed only the first Determination, which found her ineligible for the regular benefits. Michael Botkin, Esq., an Administrative Law Judge ("ALJ"), conducted the appeal hearing. He reviewed in detail the defendant's claims and determined that she under-reported her earnings:

> As a result of not accurately reporting and underreporting her gross earnings the claimant received on average about $73 a week in unemployment compensation benefits to which she was not entitled for this nineteen week period after allowing for the exclusion in the amount of $64.

Id., Ex. C, p. 2. The ALJ then concluded:

> The claimant did not present substantive evidence as to the reason for her underreporting her earnings and generally testified that she made a mistake. The evidence is persuasive that the claimant knowingly falsely reported her earnings and knowingly failed to report her total gross earnings for each of the nineteen weeks for which she underreported her earnings.

Id. He then affirmed the Determination of Eligibility. No further appeal was made. Therefore both Determinations became final decisions of the IDWD, and the total amount the defendant owed under those final decisions was $9,655.25.

In the Second Motion for Default Judgment the plaintiff summarized its argument for nondischargeability in a single paragraph:

> In summary, the Defendant, Loretta Jo Quaglio, 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 – Help at Home Inc. – 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 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. 25, ¶ 33. It asked the court to declare judgment in its favor and to declare the debt of $9,655.25 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 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) (citations omitted).

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 Amended Complaint. *See In re Zecevic*, 344 B.R. 572, 576 (Bankr. N.D. Ill. 2006).

The plaintiff's Amended 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 Amended 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 benefits by under-reporting her earnings from Help at Home on her weekly claims vouchers. The exhibits show that, on the weekly claims vouchers at issue, the defendant reported wages less than the actual gross wages reported by the defendant's employer.[5] The IDWD paid

[5] In its earlier Memorandum of Decision, the court questioned the distinctions in the reporting terminology used in IDWD documents: The defendant was asked "how much did you earn for the week?", (continued...)

Quaglio unemployment benefits for those compensable weeks based on her improperly reported earnings. When Quaglio appealed the Determination of Eligibility, the ALJ affirmed that she knowingly failed to disclose or falsified material facts.

The court finds that the record supports the finding that the defendant, when employed by Help at Home, submitted claims vouchers that under-reported her earnings. She testified at the appeal hearing that she made a mistake. However, she failed to provide the ALJ with any substantive evidence to justify her under-reporting, and the ALJ, after thoroughly reviewing the evidence before him, found persuasive evidence to support his conclusion that she "knowingly falsely reported her earnings and knowingly failed to report her total gross earnings for each of the nineteen weeks for which she underreported her earnings." R. 19, Ex. C, p. 2. Based upon the record before it, therefore, this court can find *prima facie* facts that 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) (quoting *In re Hostetter*, 320 B.R. at 681); *see also 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,'" citing *In re Chen*, 227 B.R. 614 (D.N.J. 1998)). Because a factfinder could reasonably find that the defendant's statement on each of the vouchers was knowingly 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*

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[5](...continued)
for example, and the employer was asked to report her "gross wages." *See* R. 10 at 7-8. Even with the use of the "Uplink Help" tool, it is not clear that claimants and their employers understand those earnings calculations in the same way and know what is encompassed in "gross wages." The IDWD has not clarified the court's questions in its Amended Complaint or its Second Motion for Default Judgment.

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

In its Amended Complaint the plaintiff made no allegation at all of the defendant's fraudulent intent. In each of the Counts, the Amended Complaint alleged that Quaglio worked for Help at Home and under-reported her 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

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[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.

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 Amended Complaint's allegations failed to present a scintilla of a *prima facie* showing of the defendant's intentional deception.

Nor did the administrative record attached as exhibits to the Amended Complaint provide any proof of the defendant's fraudulent intent. The record reflected the IDWD's demonstration under Indiana Code § 22-4-13-1.1(a) that the defendant knowingly failed to disclose the amounts she earned, failed to disclose other facts, or falsified facts. *See* R. 19, Ex. C, ALJ Decision; *see also, e.g., Telligman v. Review Bd. of IDWD*, 996 N.E.2d 858, 867 (Ind. App. 2013) (affirming administrative decision that claimant knowingly failed to disclose or falsified facts). Under the Bankruptcy Code, however, the plaintiff must show that a debtor made a knowingly false representation and, as a separate requirement, that the debtor made it with the intent to deceive the plaintiff, before the court can find that the debtor's debt to the plaintiff is nondischargeable under § 523(a)(2)(A).[7] In this case, the plaintiff's Amended Complaint is based on *prima facie* facts from the plaintiff's administrative record, and it fails to contain any allegation or evidence of fraudulent intent, an essential element under§ 523(a)(2)(A).

In its Second 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.

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[7] Courts have recognized that other states' unemployment compensation laws do not have an "intent to deceive" requirement equivalent to the Bankruptcy Code's requirement under § 523(a)(2)(A). *See, e.g., In re Chen*, 227 B.R. 614, 626 (D.N.J. 1998) (concluding that element of intent required under New Jersey unemployment law is not identical to the level of intent required by § 523(a)(2)(A)); *In re Neff*, 2013 WL 6713071 at *8 (Bankr. D. Mont. Dec. 19, 2013) (finding that administrative decision under Montana's unemployment insurance statute did not satisfy heavy burden of showing fraud under § 523(a)(2)(A)).

R. 25, ¶ 33. 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 incorrect 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. The defendant in fact did list her wages incorrectly and did not list her gross earnings. However, the IDWD did not show that the amounts she reported were not her net earnings. In any case, the plaintiff has not explained why the defendant's reporting of her net wages would reflect a false representation with an intent to deceive the plaintiff. The incorrectly reported earnings simply confirm that the defendant made a mistake. Something more must demonstrate her deception.

The third argument, that the claims Quaglio listed were "not an unintentional mistake," is actually a legal conclusion, not a factual allegation or legal argument. *See, e.g.*, *In re Zaldana*, 2013 WL 2369754 at *4 (Bankr. E.D. Cal. Mar. 21, 2013) ("The bankruptcy court cannot accept as true any legal conclusions couched as factual allegations.") (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007), citing in turn *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L.Ed.2d 209 (1986)). IDWD 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 contentions that the defendant's claims were incorrect and were "not an unintentional mistake." *See, e.g.*, *In re Carey*, 2010 WL 936117 at *2 (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 the IDWD's 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 Amended Complaint's complete lack of allegations or *prima facie* facts concerning intent, and after consideration of the defendant's assertion of her mistake, which casts doubt upon an intent to deceive, 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. 21, 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 Amended Complaint contained no allegation of the third factor, IDWD's justifiable reliance, and the Second 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. 25, ¶ 33.

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 Amended 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 is not entitled to the default judgment it seeks.[8] *See In re Zecevic*, 344 B.R. 572, 579 (Bankr. N.D. Ill. 2006) (denying motion for default judgment, dismissing adversary proceeding after finding that *prima facie* elements were not proven); *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). Consequently, the court denies the Second Motion for Default Judgment.

The plaintiff's original Motion for Default Judgment was denied and its original Complaint was dismissed. In its Memorandum of Decision of November 20, 2013, the court set out the factors to be considered for entry of a default judgment under § 523(a)(2)(A) and § 523(a)(7). *See* R. 10. It concluded that the plaintiff had not established, as a matter of law, the fraud-based elements essential to a *prima facie* case under § 523(a)(2)(A). *See id.* at 8-9. It also determined that, without proof of the nondischargeability of the underlying debt, no fine or penalty could be shown to be nondischargeable under § 523(a)(7). *See id.* at 9.

After a thorough consideration of the pleadings and amended pleadings herein, the court now determines that the plaintiff's Amended Complaint again has not offered the necessary *prima facie* facts to

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[8] The court adds that the plaintiff, having failed to make its *prima facie* case under § 523(a)(2)(A), also has made no showing to justify its claimed entitlement to the nondischargeability of the civil penalties it included in each count of the Amended Complaint under the criteria of § 523(a)(7).

demonstrate that the debtor knowingly made a false representation with the intent to deceive IDWD each time she requested benefits. Nor has it succeeded in showing that the IDWD's reliance on the defendant's fraudulent information was justifiable. It is clear that the IDWD must depend on the administrative record before it, and that record demonstrated the defendant's nonentitlement to Indiana's unemployment compensation benefits. However, the IDWD, relying on that record, has failed twice in its burden of proving a *prima facie* case concerning the nondischargeability of the defendant's obligation to the IDWD under the Bankruptcy Code criteria of § 523(a)(2)(A). Neither a further amendment of the pleadings nor a hearing would serve a further purpose in this adversary proceeding. Consequently, the court denies the plaintiff's Second Motion for Default Judgment and dismisses its Amended Complaint with prejudice. *See In re Zecevic,* 344 B.R. at 579 ("The Adversary proceeding will be dismissed with prejudice since Plaintiff was aware of the Court's questions about the case and apparently lacks any more evidence that would meet its need.").

CONCLUSION

For the reasons stated in this Memorandum of Decision, the Second Motion for Default Judgment filed by the plaintiff Indiana Department of Workforce Development against the defendant Loretta Jo Quaglio is denied. The Amended Complaint is dismissed with prejudice.

SO ORDERED.

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