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IT IS SO ORDERED.

Dated: April 23, 2024



Mina Nami Khorrami
United States Bankruptcy Judge

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

In re:

Erica M. Yount, : Case No. 24-50365
: Chapter 7
: Judge Nami Khorrami

Debtor.

The Huntington National Bank, :

Plaintiff, :
v. : Adv. Pro No. 24-02008

Erica M. Yount, :

Defendant.

**OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT
(DOC. 8) WITHOUT PREJUDICE**

Before the Court is *Plaintiff's Motion for Entry of Default* (Doc. 8) (the "Motion"). The Motion is supported by an *Amended Affidavit of Phyllis Ulrich in Support of Plaintiff's Request for Entry of Default Judgment* (the "Affidavit") (Doc. 10).

The Motion, the Affidavit, and the *Amended Certificate of Service of Summons and Complaint* (Doc. 13) indicate that the summons and complaint were served upon the Defendant, Erica M. Yount, and her Chapter 7 attorney, Sean Cydrus, by regular U.S. Mail, which complies with Fed. R. Bankr. P. 7004. However, the Motion and the Affidavit do not demonstrate compliance with the default judgment provision of the Servicemembers Civil Relief Act, 50 U.S.C. § 3931 (the "SCRA").

Paragraph 6 of the Affidavit attempts to satisfy the SCRA by stating that "[t]o the best of my knowledge, information, and belief, the Defendant, Erica M. Yount, is neither an infant or incompetent person, nor is the Defendant in the military service within the purview of the Servicemembers Civil Relief Act, 50 U.S.C. § 501, *et seq.*¹ at this time." Because the Affidavit does not satisfy the SCRA's requirements for default judgments, the Motion is denied without prejudice.

One of the key protections afforded to those serving in the nation's armed forces by the SCRA is found in 50 U.S.C. § 3931(b)(1), which provides that:

In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit—

¹ Prior to December 1, 2015, the SCRA was found in the Appendix to Title 50 of the U.S. Code. Effective December 1, 2015, however, an editorial reclassification eliminated the Appendix, so that the SCRA is now found in Title 50, 50 U.S.C. § 3901, *et seq.*

(A) stating whether or not the defendant is in military service and **showing necessary facts to support the affidavit**; or

(B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

(emphasis added).

Courts construing this provision uniformly find that generic, boilerplate affidavits stating that a defendant is not in military service without any supporting facts, or information regarding the plaintiff's efforts to determine a defendant's military status and the facts learned from those efforts, do not satisfy section 3931(b). *See, e.g., Barrett v. Tri-Coast Pharmacy, Inc.*, 518 F. Supp. 3d 810, 822 (D.N.J. 2021):

Plaintiff's averment that "to my best information and belief defendants are not currently in active military service" is plainly insufficient to satisfy Section 3931(b)(1)'s requirement that "facts support the affidavit." Plaintiff's affidavit contains no facts regarding Defendant's military service, his current whereabouts, fails to provide any hint as to the efforts exerted in determining Defendant's military status, and Plaintiff's counsel has not submitted proper documentation from the Department of Defense Manpower Data Center.

518 F. Supp. 3d at 822 (citations and quotations omitted).

In *Countrywide Home Loans, Inc. v. Barr*, No. 3:CV-08-08389, 2008 WL 4748202, at *1, 2008 U.S. Dist. LEXIS 78791, at *3 (M.D. Pa. July 10, 2008), the court identified two requirements imposed by the SCRA with regard to affidavits in support of default judgments.² First, the affidavit must set forth facts, not merely conclusions, relating to the military service of the defendant. Second, the affidavit must contain information regarding the efforts exerted to determine the defendant's military status. "Essentially, the affidavit must include those facts upon

² At the time this case was decided, the SCRA provision regarding default judgments was located at 50 U.S.C. app. § 521(b)(1). The entire SCRA was subsequently moved from the appendix to Title 50 into Title 50 itself, so that the provision regarding default judgments is now found at 50 U.S.C. § 3931.

which the affiant's 'information and belief' is based." *Id.* (quoting *U.S. v. Simmons*, 508 F. Supp. 552, 552 (E.D. Tenn. 1980)).

Many other courts around the country have reached the same conclusion. *See, e.g., S.E.C. v. Baker*, 3:22-CV-1415-S-BH, 2023 U.S. Dist. LEXIS 200505, at *3-4 (N.D. Tex. Oct. 5, 2023) (noting that since the SCRA requires "necessary facts to support the affidavit," an affidavit made upon information and belief is insufficient) (collecting cases). *See also Porter Family Ltd. P'ship v. ST Brands, Inc.*, No. 3:21-cv-00871, 2022 WL 2541985, at *2 (M.D. Tenn. July 7, 2022); *Broadcast Music, Inc. v. Marler*, No. 1:09-cv-193, 2009 WL 10687792, at *3 (M.D. Tenn. Sept. 29, 2009); and *In re Templehoff*, 339 B.R. 49, 53-4 (Bankr. S.D.N.Y. 2005).

Courts in this district are in accord. *See, e.g., Malibu Media, LLC v. Downs*, No. 1:14-cv-707, 2015 U.S. Dist. LEXIS 165734, * 24, n. 15 (S.D. Ohio May 26, 2015). In *Downs*, the plaintiff submitted an affidavit of counsel stating "Defendant, Austen Downs, on information and belief, is not on active duty in the U.S. Military." The court stated that the affidavit did not satisfy the SCRA because "it is entirely devoid of 'necessary facts to support the affidavit.'" (citation omitted).

The Affidavit here is entirely conclusory and does not state "necessary facts to support the affidavit," as required by the SCRA and closely resembles the affidavits rejected in the cases cited above. The Affidavit contains a bare assertion made on information and belief that the Defendant is not in the military but provides no detail about the efforts made to determine the Defendant's military status, the sources consulted, or the information obtained from those sources.³

³ A link to the Department of Defense website where information may be obtained about whether a person is in active military service or otherwise protected by the SCRA may be found in Item 7(a) of the Court's Policies and Procedures: <https://www.ohsb.uscourts.gov/judge-nami-khorrami-policies-and-procedures>.

The Motion is therefore **DENIED WITHOUT PREJUDICE** to the renewal of the Motion supported by an affidavit which satisfies 50 U.S.C. § 3931 as set forth above.

IT IS SO ORDERED.

copies to:

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