

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

William Childs,)	C/A No.: 3:23-1070-MGL-SVH
)	
Plaintiff,)	
)	
vs.)	REPORT AND
)	RECOMMENDATION
Advanced Capital Solutions, Inc.,)	
)	
Defendant.)	
)	

This matter comes before the court on the motion of William Childs (“Plaintiff”) for default judgment that was filed on June 16, 2023. [ECF No. 14]. All pretrial proceedings in this case were referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.). Because the motion for default judgment is dispositive, this report and recommendation is entered for the district judge’s consideration. For the reasons that follow, the undersigned recommends the district court deny Plaintiff’s motion for failure to properly serve Advanced Capital Solutions, Inc. (“Defendant”).

I. Factual and Procedural Background

Plaintiff originally filed this action against Defendant on March 16, 2023, asserting a claim for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”) [ECF No. 1]. On March 17, 2023, this court

issued summons as to Defendant with the address 555 Market Ave. N., Canton, OH 44702. [ECF No. 6]. On April 17, 2023, Plaintiff submitted the following:

PROOF OF SERVICE 2023 APR 17 PM 1:26
(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Ann Overash
was received by me on *(date)* 04/06/2023.

I personally served the summons on the individual at *(place)* 6650 Rivers Avenue, North Charleston, SC 29406
on *(date)* 04/06/2023 ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ 0.00 for travel and \$ 9.00 for services, for a total of \$ 9.00.

I declare under penalty of perjury that this information is true.

Date: 04/14/2023 William Child UCC 1-308
Server's signature

[ECF No. 8 at 1]. Plaintiff additionally included what appears to be a mailing form indicating documents were sent to the same South Carolina address. *See id.* at 2. Ann Overash's signature appears, indicating delivery on April 6, 2023. *See id.* Plaintiff also attached a copy of a USPS tracking code with the information on the front indicating he had sent a first-class mailing. *Id.* at 3.

Finally, Plaintiff has submitted an affidavit stating Defendant is not active-duty military, incompetent, or an infant. [ECF No. 12].

Defendant has not entered an appearance in this case, nor has it filed an answer to the complaint. On May 30, 2023, the clerk of court entered an entry of default as to Defendant. [ECF No. 13]. June 16, 2023, Plaintiff filed the instant motion for default judgment. [ECF No. 14].

II. Discussion

A. Standard of Review

After the clerk enters a defendant's default, and when the plaintiff's claim is not for a sum certain, the plaintiff must file a motion with the court to obtain default judgment. Fed. R. Civ. P. 55. "When a 'motion for default judgment is unopposed, the court must exercise sound judicial discretion to determine whether default judgement should be entered.'" *Craig v. Glob. Sol. Biz LLC*, C/A No. 2:19-00187-DCN, 2020 WL 528015, at *2 (D.S.C. Feb. 3, 2020) (citation omitted). In doing so, "the court accepts a plaintiff's well-pleaded factual allegations as true." *Broxton v. Blue Ridge in Fields*, 2019 WL 3315245, at *2 (D.S.C. July 24, 2019) (citing *DIRECTV, Inc. v. Rawlins*, 523 F.3d 318, 322 n.2 (4th Cir. 2008)). However, "a default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover." *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir.

2001) (citation omitted). As such, the court need not accept the plaintiff's legal conclusions and must determine whether the plaintiff's allegations support the relief sought. *Id.* "The party moving for default judgment must still show that the defaulted party was properly served and that the unchallenged factual allegations constitute a legitimate cause of action." *Craig*, 2020 WL 528015, at *2 (citation omitted). If the court determines that service was proper and that the allegations entitle the plaintiff to relief, then it must then determine the appropriate amount of damages. *Id.* (citation omitted).

B. Analysis

Here, because Plaintiff has not shown that service was proper as to Defendant, the undersigned recommends Plaintiff's motion for default judgment be denied.

A plaintiff must comply with the Federal Rules of Civil Procedure even if he is proceeding pro se. *See, e.g., Baldwin Cty. Welcome Ctr. v. Brown*, 466 U.S. 147, 149–52 (1984) (per curiam). The Federal Rules establish that for proper service:

(1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint

Fed. R. Civ. P. 4(c) (emphasis in original). “Thus, a plaintiff—even one proceeding pro se—may not effectuate service herself by sending a copy of the summons and complaint through certified mail.” *Ospina Baraya v. Ospina Baraya*, C/A No. 3:21-00640-FDW-DSC, 2022 WL 3129590 (W.D.N.C. Aug. 4, 2022) (citations omitted). Here, Plaintiff indicates all actions to effect service were taken by him.

Additionally, pursuant to Fed. R. Civ. P. 4(h)(1), a plaintiff may serve a corporation in a judicial district of the United States either in accordance with Rule 4(e)(1) or “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant.”

Rule 4(e)(1) provides that service must follow the state law for serving summons in the state where either the district court is located or where service is made. Although Plaintiff has indicated that Defendant is located in Ohio, South Carolina is where both the district court is located and where Plaintiff indicates service was allegedly made. South Carolina permits a corporation to be served “by registered or certified mail, return receipt requested and delivery restricted to the addressee.” SCRCP 4(d)(8); *see also Roche v. Young Bros. of*

Florence, 456 S.E.2d 897, 900 (S.C. 1995) (explaining that Rule 4(d)(8) of the South Carolina Rules of Civil Procedure “requires that the return receipt be restricted to the addressee and show acceptance by the defendant”).¹

Here, Plaintiff has not indicated that Ann Overash, in South Carolina, is the registered agent for Defendant and designated by appointment or law to accept service of process on behalf of Defendant. Documentation provided by Plaintiff also does not indicate any mail delivered was by registered or certified mail, return receipt requested, or with delivery restricted to the addressee.

Finally, Plaintiff has failed to comply with Fed. R. Civ. P. 4(l)(1) for proof of service requiring as follows: “*Affidavit Required*. Unless service is waived, proof of service must be made to the court . . . by the server’s affidavit.” Although Plaintiff filed an affidavit with the court, as stated, the process server’s affidavit must be filed confirming service.

Regarding service of process, Fed. R. Civ. P. 4(m) provides as follows:

¹ The court notes that the South Carolina Supreme Court has “never required exacting compliance with the rules to effect service of process,” *Roche*, 456 S.E.2d at 899, and rather instructs that the court inquire into whether “the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* Here, it is unknown if the court has personal jurisdiction over Defendant or that Defendant has notice of this lawsuit. *See, e.g., Scott v. Md. State Dep’t of Labor*, 673 Fed. Appx. 299, 304 (4th Cir. 2016) (“[T]he real purpose of service of process is to give notice to the defendant[.]”) (citations omitted).

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m); *see also Gelin v. Shuman*, 35 F.4th 212, 220 (4th Cir. 2022) (“[W]e hold that under Rule 4(m), a district court possesses discretion to grant the plaintiff an extension of time to serve a defendant with the complaint and summons even absent a showing of good cause by the plaintiff for failing to serve the defendant during the 90-day period provided by the Rule. And if the plaintiff is able to show good cause for the failure, then the court *must* grant the extension.”) (emphasis in the original)).

The complaint in this case was filed March 16, 2023, and over 90 days have elapsed without Defendant being properly served. Accordingly, pursuant to Rule 4(m), the district court may dismiss this action without prejudice or order that service be made within a specified time, absent a showing of good cause by Plaintiff for the failure to properly serve Defendant. To the extent that Plaintiff can provide good cause for having failed to properly serve Defendant, Rule 4(m) directs the court to extend the time for service for an appropriate period.

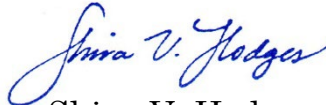
III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends the district

judge deny Plaintiff's motion for default judgment for failure to properly serve Defendant. [ECF No. 14]. The undersigned further recommends that if Plaintiff provides good cause for failure to properly serve Defendant, the district judge extend the time for service for an appropriate period.

IT IS SO RECOMMENDED.

July 18, 2023
Columbia, South Carolina



Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).