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★ **AUG 12 2015** ★

BROOKLYN OFFICE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

----- X
KATARZYNA STYKA, :
: :
Plaintiff, :
: :
-against- :
: :
MY MERCHANTS SERVICES, LLC and :
JOSE VALERIO, :
: :
Defendants. :
: :
----- X

MEMORANDUM & ORDER

1:14-CV-6198 (ENV)(VMS)

VITALIANO, D.J.

On October 21, 2014, plaintiff Katarzyna Styka initiated this action against My Merchant Services, LLC (“MMS”) and Jose Valerio, alleging that she was harassed and discriminated against based on her gender and was subjected to sexual harassment, battery, retaliation, and unlawful termination, in violation of Title VII of the Civil Rights Act of 1964 and with accompanying state law claims.

Styka represents that she served MMS with the summons and complaint through the New York State Secretary of State on November 3, 2014, and that she served Valerio with the summons and complaint, on November 12, 2014, by personal delivery to his co-worker, a person of suitable

age and discretion, at Valerio's place of business. (Aff. of Serv., ECF No. 16-2). On May 8, 2015, Valerio appeared *pro se*. (See Def.'s Letter, ECF No. 7). But, neither Valerio nor MMS has filed an answer to Styka's complaint. Magistrate Judge Vera M. Scanlon ordered Valerio and MMS to answer the complaint by May 22, 2015, which neither did. On May 28, 2015, Styka requested a Certificate of Default, which the Clerk of Court entered on June 1, 2015 (Certificate of Default, ECF No. 15). On June 2, 2015, Styka filed the instant motion for default judgment. (Pl.'s Mot., ECF No. 16).

After the motion for default judgment was filed, Magistrate Judge Scanlon attempted to bring the parties together to settle the case. On June 8, 2015, Judge Scanlon sought to conduct a telephone conference, but no parties appeared. (Sched. Order, June 8, 2015). An in-person conference was then held on June 22, 2015, and, although plaintiff attended, neither Valerio nor counsel for MMS was present. (Min. Entry, June 22, 2015). That day, Judge Scanlon issued a Status Report Order in which she directed the parties to submit a joint status letter, by July 6, 2015, but also, in anticipating that Valerio and MMS had no intention of defending against the complaint, directed Styka to "submit written documentation" of her costs and claimed damages, in support of her default judgment motion. (Order, June 22, 2015,

ECF No. 17). Plaintiff filed a letter by July 6, 2015. (Pl.'s Letter, ECF No. 18). Defendants filed nothing in defiance of Judge Scanlon's order.

Although Magistrate Judge Scanlon has observed that this matter may be ripe for default judgment, plaintiff's motion papers are not. First, although plaintiff's counsel has affirmed that defendants have been notified that they "were in default for failure to answer," on May 18, 2015, (Luke Aff., ECF No. 16-1, at ¶ 10), plaintiff has neither certified nor submitted proof that her default judgment motion, and all of its accompanying papers, were simultaneously mailed to defendants' last known addresses, which, of course, is required by Local Civil Rule 55.2(c). Also, in violation of this Court's Individual Rules, plaintiff failed to explain why service of process for MMS was on the Secretary of State when plaintiff was aware of MMS's office address and could have served it at that location.

Conclusion

Consequently, plaintiff's motion for default judgment is denied without prejudice and with leave to renew, but only in a manner that complies with the Court's Local Civil Rules, as well as its individual rules, and provided that she does so within 30 days of the entry of this Order on the docket. Plaintiff

remains on notice that the procedural rules of the Court will be strictly construed and enforced, and her scrupulous attention to detail is invited.

So Ordered.

Dated: Brooklyn, New York
July 31, 2015

s/ENV


ERIC N. VITALIANO
United States District Judge