UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF STETSON

OVER-ARMOR, INC.,
a California corporation,

Plaintiff,

v. Case No. 14-cv-1311-EKN-EJB

COALITION AGAINST FOOTBALL CORRUPTION, INC., a Stetson corporation, and NELLIE KICKWOOD, individually,

Defendants.

DEFENDANT'S BRIEF IN SUPPORT OF DEFENDANT NELLIE KICKWOOD'S MOTION TO VACATE JUDGMENT

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QUESTIONS PRESENTED

I. Whether Plaintiff's service of process through Facebook was proper pursuant to federal and Stetson State law for service and comported with the constitutional mandates of due process.

II. Whether Defendant Kickwood's lack of consent to have a matter tried before the Magistrate Judge renders that judge's final judgment void.

STATEMENT OF JURISDICTION

The United States District Court for the Middle District of Stetson has subject matter jurisdiction over this action based on diversity jurisdiction pursuant to 28 U.S.C. § 1332. Opposing parties are citizens of different states and the amount in controversy is greater than $75,000. Venue is also proper in this court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district.

STATEMENT OF FACTS

Over-Armor, Inc. ("Plaintiff") filed suit against Nellie Kickwood ("Kickwood") and Coalition Against Football Corruption, Inc., ("CAFC") on October 6, 2014, alleging defamation per se. (*See generally* Compl.) Plaintiff's complaint alleged CAFC entered an agreement with Kickwood to author a report for CAFC that would expose corruption in the bidding process for the Federation Internationale de Football Association ("FIFA") clothing contract. (Compl. ¶ 21.) The complaint further alleged that the report was finished and posted on CAFC's Facebook wall on September 1, 2014. (Compl. ¶ 25.)

CAFC sent Plaintiff its waiver of service of summons on October 6, 2014, and filed its answer to the complaint on October 27, 2014. (CAFC's Waiver of Service of Summons.) Kickwood was unable to answer Plaintiff's complaint or appear in court for any hearings because Plaintiff failed to serve Kickwood personally. (Return of Service ¶ 2.) Plaintiff's process server alleged that the Facebook account "KickOverArmorA$$" belonged to Kickwood. (Return of Service ¶ 2.) Plaintiff's process server contacted the email address registered to the alleged Facebook account, received a reply with a signature block stating "Nellie Kickwood, 1234 N. Paring St., Beakman Town, Stetson 23434," and proceeded to visit this address on only five occasions. (Return of Service ¶ 2.) Plaintiff and its process server tried no other means of investigating Kickwood's address or any

other means of service prior to serving Kickwood on CAFC's Facebook wall and in a private message to the account "KickOverArmorA$$". (Return of Service ¶¶ 2, 3.)

Because Kickwood had never been served, Kickwood neither answered the complaint nor appeared in court. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) On December 5, 2014, Judge Noah entered an order that required the consent of all parties, sending the action to a Magistrate Judge. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) The order stated that Plaintiff and Defendant CAFC claimed Kickwood was in default. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) On June 14, 2015, the Magistrate Judge ordered that Plaintiff recover damages in the amount of $750,000,000 from Kickwood and CAFC. (Court's Order, June 14, 2014.) Because Kickwood did not receive notice, she was not present for any of these proceedings and did not consent to the case being moved to Magistrate Judge. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.)

SUMMARY OF THE ARGUMENT

Kickwood's motion to vacate judgment should be granted on two grounds: (1) Kickwood was not served process in accordance with federal or Stetson law nor did the service comport with constitutional requirements of due process and (2) Kickwood did not consent to the case being heard by the Magistrate Judge.

Service through Facebook is not a proper means of service for an individual within the United States under federal or Stetson law, nor is it reasonably calculated to provide notice of the pending action to the defendant. Service is proper when (1) the defendant is personally served or, (2) the complaint and summons is published, posted, or left at the defendant's home with someone of suitable age. Plaintiff attempted service on Kickwood at a poorly obtained address five times. The address was obtained through an alleged email address registered to a Facebook account by the name of "KickOverArmorA$$." Plaintiff did not ensure that the email address registered to that account and the address attached were in fact authentic or belonged to Kickwood. Plaintiff did not utilize any other means of service nor did it move the court for an order to serve Kickwood through Facebook. Plaintiff's failure to serve Kickwood in accordance with federal and Stetson law has deprived Kickwood of her constitutional right to due process.

Consent to the Magistrate Judge's authority is required by the plain text of U.S.C. § 636(c). Kickwood did not expressly consent to the authority of the

Magistrate Judge at any time. Further, nothing in Kickwood's actions can be taken as an implied consent to the authority of the Magistrate Judge. Although Plaintiff and Defendant CAFC allege that Kickwood was in default at the time of the referral to the Magistrate Judge, default does not waive an individual's constitutional right to have her case heard before an Article III judge. Not only is Kickwood at risk of having her constitutional right to an Article III judge infringed, but she is also potentially liable for a portion of the $750,000,000 judgment in favor of Plaintiff.

ARGUMENT AND CITATIONS OF AUTHORITY

I. THIS COURT SHOULD FIND THAT SERVICE OF PROCESS ON MS. KICKWOOD THROUGH FACEBOOK DID NOT COMPORT WITH FEDERAL OR STETSON STATE LAW NOR DID IT COMPORT WITH CONSTITUTIONAL REQUIREMENTS OF DUE PROCESS.

Plaintiff's service of process on Kickwood through Facebook did not comport with federal or Stetson State law because electronic mail is not a proper method of service under Federal or Stetson State law for an individual within a judicial district of the United States. Service of process through Facebook may only be proper and observant of due process principles if provided for by federal statute, state law, or court order. Andrews v. McCall (In re K.P.M.A.), 341 P.3d 38, 42 (Okla. 2014). For service of process to be proper, the defendant must be served in accordance with the detailed mandates of Rule 4 of the Federal Rules of

Civil Procedure ("FRCP"), which includes following the state law procedure for service. Fed. R. Civ. P. 4(e).

The discussion below will first prove that service through Facebook was not proper because it failed to comport with federal mandates of service. Second, the discussion will show that the service was improper for failing to meet state requisites of service. Finally, the discussion will show Kickwood was served by means not reasonably calculated to provide notice or an opportunity to be heard thereby failing to comport with due process requirements.

A. Plaintiff's service of process on Ms. Kickwood through Facebook was improper because it did not follow the guidelines in FRCP 4(e).

This Court should find that Plaintiff improperly served process on Kickwood because Plaintiff failed to: (1) have Kickwood personally served and, (2) have a copy of the summons and complaint left at Kickwood's home with someone of suitable age, published, or posted as mandated under federal and Stetson State law for means of service. Within a judicial district of the United States, an individual must be served process in accordance with state statute or personal delivery, either in person or to the home of the defendant. Fed. R. Civ. P. 4(e).

The federal rules do not permit any form of electronic service for a defendant unless the plaintiff has exhausted all other means of service provided for by law. Joe Hand Promotions, Inc. v. Shepard, 2013 U.S. Dist. LEXIS 113578, *7

(E.D. Mo. Aug. 12, 2013). In Joe Hand Promotions, the court denied plaintiff's motion for substituted service on the defendant through Facebook. Id. The court denied the motion for substituted service. Id. at 8. The court reasoned that the plaintiff did not utilize, or exhaust, any other means of service, aside from trying, only on a few occasions, to personally serve the defendant at his place of employment while it was closed. Id. at 6-8. The court also reasoned that the state of Missouri did not provide for electronic service on domestic defendants, thereby making any service through Facebook improper by federal and state rules. Id. at 7.

Plaintiff's service on Kickwood was improper because plaintiff utilized electronic service and did not exhaust all other means of service. Much like Joe Hand Promotions, Stetson law does not provide for electronic service and Plaintiff did not utilize means of service aside from attempted personal service at Kickwood's home to conclude that Facebook would be the most reasonable means of service. Stetson Stat. §§ 120.1, *et seq*. Plaintiff did not utilize any reliable means such as multiple search engines, a private investigator, or public records to find a proper place to personally serve Kickwood. (Return of Service ¶ 2.) To exhaust all means of service, Plaintiff could have also published the notice or posted the service conspicuously around town. Stetson Stat. §§ 120.80-120.81. Plaintiff failed to utilize any of these reliable means and thereby deprived Kickwood of notice and constitutional due process. This court should follow the reasoning in Joe Hand

Promotions and hold that service of process through Facebook is improper where the plaintiff has not utilized all other means of service and electronic service is not provided for in accordance with state law.

Service of process through Facebook is only proper when state law provides for alternate service and even then, only upon a court order after the plaintiff exhausts all means of service. Baidoo v. Blood-Dzraku, 48 Misc. 3d 309, 317 (Sup. Ct. 2015). In Baidoo, the New York County Supreme Court found service of process through Facebook to be proper when the defendant could not be found for service after several reasonable efforts. Id. at 312-17. The defendant admitted to the plaintiff he had no home or place of employment and the plaintiff's counsel hired private investigators unsuccessfully. Furthermore, New York law provides that if all other means have been exhausted, the court may be moved for alternate service, such as Facebook. Id. at 311-314. The plaintiff had to prove to the court along with the motion that the account being utilized for service did in fact belong to the defendant. Id. at 314-315. The court concluded that service through publication would not be proper since the defendant could not be found. Id. at 317. The court found further that because the Facebook account was proven to be the defendant's, service through Facebook could be utilized. Id.

Plaintiff's service of process on Kickwood was improper because Plaintiff did not exhaust all means of service. Unlike the plaintiff in Baidoo, who was

informed that the defendant had no home or employment where he could be personally served, this Plaintiff had no such reliable information to conclude that personal service on Kickwood was impossible. (Return of Service ¶ 2.) Furthermore, Plaintiff did not diligently search for Kickwood's address to serve. Id. Plaintiff failed to move the court for alternate means of service and instead chose to serve Kickwood on an account that was never confirmed to belong to Kickwood. Id. Following the reasoning in Baidoo, this Court should find the service of process improper because Plaintiff failed to exhaust other means of service and failed to move the court for alternate service.

This Court should find that Kickwood's service of process through Facebook was improper because Kickwood was not served in accordance to Rule 4 of the FRCP, which mandates service in accordance with state statute or by personal delivery. Fed. R. Civ. P. 4(e). Neither of these allows electronic service or service through Facebook. Furthermore, Plaintiff did not exhaust or even attempt any other means to deem service through Facebook reasonable.

B. Plaintiff's service on Ms. Kickwood did not comport with constitutional due process because it was not reasonably calculated to provide notice and opportunity to be heard.

This Court should find that the service on Kickwood was unconstitutional because it was not reasonably calculated to provide Kickwood with adequate notice and afford her the opportunity to be heard. "Constitutional due process

requires that service of process be reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Service through Facebook is permitted when used in addition to email and other means of traditional service have been unsuccessful. FTC v. PCCare247 Inc., 2013 U.S. Dist. LEXIS 31969, *19 (S.D.N.Y. Mar. 7, 2013). In FTC, the plaintiff wanted to serve the defendant, an Indian company, using Facebook after exhausting international means of serving the defendant through Indian authorities. Id. The court held that the service would be proper under FRCP 4(f)(3) which allows service by any means "unless prohibited by the foreign country's law" because India has no law prohibiting service through Facebook. Id. at 10. There was also proof in the record that the defendants often used their Facebook accounts to interact with customers. Id. The court reasoned that the service would be proper since the plaintiffs had exhausted every other means of service, leaving the only reasonable means of service through Facebook. Id. The court further reasoned that because of Facebook's unreliable nature, it could not be used as a means of service alone. Id. at 12-14.

Plaintiff's service of process on Kickwood through Facebook should not be permitted because it was unaccompanied by other traditional means of service.

Unlike the plaintiffs in FTC, who exhausted every means of service before settling on service through Facebook, Plaintiff only used one means of service: a few unsuccessful attempts at personal service at an unreliably obtained address. (Return of Service ¶ 2.) Furthermore, Plaintiff had no proof that the Facebook account belonged to Kickwood or that it was constantly checked to make service of process available to Kickwood once sent. Id. Plaintiff did not try to serve Kickwood through all traditional means nor did it try to couple the service of process through Facebook with other reliable methods. Id. Plaintiff did not reasonably calculate the method of service to provide Kickwood with adequate notice of the pending action. This Court should adopt the reasoning from FTC and rule the service through Facebook improper as it was not permitted under federal law nor did Plaintiff exhaust any other means of service.

Service of process through Facebook alone is insufficient to meet due process requirements because it is not likely to provide adequate notice. Andrews, 341 P.3d at 42. In Andrews, the defendant, a father, had forfeited his parental rights after failing to respond to notice provided to him through Facebook. Id. at 38. The court reinstated the father's parental rights because he was not provided adequate notice of the pending action. Id. at 41. The court reasoned that the plaintiff could have tried many other forms of traditional service before relying solely on the insufficient means of service through Facebook. Id. at 42.

Furthermore, the court found that to prevent severe mistreatment of individuals, service through Facebook alone cannot be declared as constitutional due process because it is not reasonably certain to inform those affected. Id. at 51.

Plaintiff's service of process to Kickwood was not constitutional due process because it did not afford her the opportunity to respond. Plaintiff, much like the plaintiff in Andrews, did not try to serve Kickwood through any reliable or reasonable means. Much like the defendant in Andrews, Kickwood is in danger of being negatively affected by Plaintiff's failure to follow the mandates of federal law, state statute, and constitutional due process. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge.) Without exhausting or even utilizing other methods of service, Plaintiff relied on social media, which has only been allowed after other means have been exhausted and in supplement with other forms of service. Andrews, 341 P.3d at 42. The service of process through Facebook deprived Kickwood of the constitutional right to the opportunity to be heard.

This Court should find that process of service on Kickwood through Facebook was improper as it did not comport with Rule 4(e) of the FRCP nor was it reasonably calculated to inform Kickwood of the pending action because all means of service were not exhausted. By not complying with the express requirements of Rule 4, Plaintiff has attempted to deny Kickwood of the due

process guaranteed to her by the Federal Rules of Civil Procedure.

II. IF THE COURT FINDS SERVICE PROPER, THIS COURT SHOULD FIND THE MAGISTRATE'S FINAL JUDGMENT VOID PURSUANT TO RULE 60(B)(4) DUE TO MS. KICKWOOD'S LACK OF CONSENT TO THE MAGISTRATE'S AUTHORITY.

Rule 60(b)(4) requires the court to relieve a party from a final judgment if that judgment is void. Fed. R. Civ. P. 60(b)(4). A judgment is void under Rule 60(b)(4) if the court that rendered it lacked jurisdiction of the subject matter, parties, or if it acted in a manner inconsistent with due process of law. Antoine v. Atlas Turner, Inc., 66 F.3d 105, 108 (6th Cir. 1995). Consent is the lynchpin of the constitutionality of 28 U.S.C. § 636(c). Adams v. Heckler, 794 F.2d 303, 307 (7th Cir. 1986). At least nine federal circuits have held that Section 636(c) of the Federal Magistrate Act ("the Act") is immunized from any constitutional infirmity because (1) the Act requires that all parties and the district court consent to transfer of the case to a magistrate and (2) the district court retains sufficient control over the magistrate, including the authority to vacate the reference on its own motion, to render the magistrate a mere adjunct of the district court. Gairola v. Va. Dep't of Gen. Services, 753 F.2d 1281, 1284-85 (4th Cir. 1985). As recognized by the majority of circuits, the first part of the Act's constitutionality is the consent requirement.

Here, nothing in the record suggests that Kickwood consented to the jurisdiction of the Magistrate Judge. On the contrary, Judge Noah noted that both

Plaintiff and Defendant CAFC stated that Kickwood was in default. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) While this contention by the consenting parties cannot be verified at this time, it can be inferred that the District Court Judge had no knowledge of Kickwood consenting to the Magistrate Judge's authority.

A. Ms. Kickwood did not impliedly consent to the Magistrate Judge's authority.

Historically, express consent was required for a case to be heard by a magistrate judge in accordance with U.S.C. § 636(c). Roell v. Withrow, 538 U.S. 580, 589 (2003). This changed when the Supreme Court held that implied consent could be recognized in U.S.C. § 636(c) cases when: (1) the litigant or counsel is made aware of the need for consent and the right to refuse it; and (2) the litigant still voluntarily appears to try the case before the magistrate judge. Roell, 538 U.S. at 590. This ruling still requires a knowing and voluntary consent to the magistrate's jurisdiction as required by U.S.C. § 636(c), but allows for a party's consent to be inferred based on his actions rather than words.

1. Ms. Kickwood was not made aware of the need for consent or the right to refuse.

The first prong of Roell requires that the litigant or counsel was made aware of the need for consent and the right to refuse it to ensure that implied consent is informed. Id. Roell held that notification of the right to refuse the magistrate judge

is a prerequisite to any inference of consent; thus, consent may not be inferred where the defendant was not informed of his right to refuse the magistrate judge. United States v. Underwood, 597 F.3d 661, 668 (5th Cir. 2010).

Here, like Underwood, nothing in the facts suggest that Kickwood was made aware of the need to consent or the right to refuse it. Id. According to the District Court Judge, the other parties consented to the Magistrate Judge on December 1, 2014. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) The record does not reflect whether or not Kickwood was served with notice of her right to consent to the Magistrate Judge or her right to refuse. Furthermore, there is no evidence indicating when notice was sent to the other parties and how far in advance that may have been prior to their consent on December 1, 2014. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) For these reasons, Plaintiff cannot affirmatively state that Kickwood had knowledge of her right to consent or refuse the reference of the case to the Magistrate Judge.

2. Ms. Kickwood did not waive her right to refuse based on actions rather than words.

The second prong of Roell requires that the litigant voluntarily appear to try the case before the magistrate judge. 538 U.S. at 590. The Eighth Circuit in Henry v. Tri-Services dealt with appearance before a magistrate judge in a case with multiple defendants. 33 F.3d 931, 931 (8th Cir. 1994). In Henry, one of the

defendants had not yet entered an appearance in the action when the remaining parties agreed to have final judgment determined by a magistrate judge. Id. The record contained no clear statement that the defendant ratified this agreement and, therefore, did not waive its right to have judgment entered and to have its motion to vacate heard by an Article III judge. Id. at 933. Although Henry was decided prior to Roell, the court was analyzing what ultimately became the second prong of Roell. 538 U.S. at 590.

Here, Kickwood had not entered an appearance at the time of the consent by the other parties. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) Furthermore, there is nothing in the record to suggest that Kickwood ratified or agreed to anything regarding the Magistrate Judge. Id. Kickwood therefore did not waive her right to have judgment entered by an Article III judge.

The Western District of Tennessee has dealt with implied consent in the wake of Roell. In Jack Tyler Eng'g Co. v. Colfax Corp., the plaintiff believed that service was proper, but the defendant did not receive service by the electronic means. 2011 U.S. Dist. LEXIS 10868, *4-5 (W.D. Tenn. Feb. 3, 2011). Thus, the defendant was never notified of its right to refuse consent to the magistrate judge and did not act in any affirmative manner to consent to the magistrate judge's authority through actions rather than words. Id. Therefore, the defendant could not

be deemed to have implicitly consented to the magistrate judge's jurisdiction under Roell. Id.

In this case, no facts establish that Kickwood was ever notified of her right to refuse consent to the Magistrate Judge. Furthermore, she never acted in any affirmative manner to consent to the Magistrate Judge's authority through actions rather than words. In fact, Kickwood did not take any affirmative action until after the Magistrate Judge attempted to enter a final judgment against her. Without notice of her rights and without an affirmative action, Kickwood has not waived her constitutional right to be heard by an Article III judge.

B. Public policy demands that the requirement for consent to a Magistrate's authority and the waiver of the constitutional right to an Article III judge not be ignored, even when facing default.

While there is no evidence of Kickwood being in default at the time of the transfer other than the statements of the consenting parties in the District Court Judge's order, default would not eliminate her right to consent or refuse consent to the Magistrate Judge's authority. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) As the Northern District of Florida explains about default generally, "A party in default admits the complaint's well pleaded factual allegations, but not the complaint's conclusions of law, and may appear and contest the amount of damages prior to the entry of a default judgment." White v. Bombardier Corp., 313 F. Supp. 2d 1295, 1303-04 (N.D. Fla.

2004).

The Ninth Circuit has held that despite a plaintiff's consent, a United States magistrate judge is not an Article III judge and does not have jurisdiction to enter a final judgment against a non-consenting, defaulted defendant. United States v. Jenkins, 734 F.2d 1322, 1325 n.1 (9th Cir. 1983). This is exactly the case at hand. Plaintiff and Defendant CAFC consented to the authority of the Magistrate Judge, although Kickwood did not consent and is alleged to be in default. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) The Magistrate Judge did not have jurisdiction to enter a final judgment against Kickwood because she did not consent.

The Northern District of Florida explained that in order to excuse a unanimous consent requirement, a removing defendant must allege with specificity in its petition for removal, and prove upon challenge by a timely motion to remand, that the removing defendant has unsuccessfully exhausted all reasonable efforts to locate the defaulted defendant to obtain its consent; conclusory allegations in an affidavit are insufficient. White, 313 F. Supp. 2d at 1303-04. While that court was analyzing consent required to remove a case from state court, the policy supporting this requirement mirrors consenting to the authority of a magistrate judge.

The Northern District of Alabama analyzed a similar issue and held that, because removal statutes must be construed narrowly, along with the public policy

favoring the setting aside of default judgments, the lack of consent or an explanation in the notices of removal for the lack of consent was another reason to remand the action. Grimes v. Amtec Corp., 2012 U.S. Dist. LEXIS 121973, *27-29 (N.D. Ala. July 30, 2012). Congress passed the Federal Magistrates Act to relieve the burden and caseload of federal courts. De Costa v. Columbia Broad. Sys., Inc., 383 F. Supp. 326, 328 (D.R.I. 1974). Knowing the intention of the Act, this court should construe U.S.C. § 636(c) narrowly because it could deny an individual her constitutional right to have her case decided by an Article III judge. Public policy favoring setting aside default judgments, combined with Kickwood's lack of consent and Plaintiff's failure to explain the lack of Kickwood's consent, suggest that this Court should not deny Kickwood of her right to an Article III judge.

After an extensive search, only one case was found that held that a defendant who received proper service of process and willfully defaulted did not need to consent to a magistrate judge's authority. In Baker v. Socialist People's Libyan Arab Jamahirya, the court found that the defendant was not required to consent to the magistrate judge's authority on those facts. 810 F. Supp. 2d 90, 98 (D.D.C. 2011). However, the defendant was in default for never having appeared before the court and had received proper notice for both the initial complaint and the entry of default against it. Id. The passage of eighteen months between referral and final judgment, as well as the fact that the litigation had been ongoing for eight years

were also dispositive facts. Id. Furthermore, the defendant had willingly defaulted and had defaulted in at least five separate cases before that court, adopting a wait and see approach as to its liking of the final judgment. Id. at 100.

The Baker holding should be limited to its facts. Here, Kickwood did not receive proper service for an entry of default and, in fact, there is no evidence at all that default had been in default at the time of the transfer aside from a statement made by Defendant CAFC and Plaintiff. (Notice, Consent and Reference of a Civil Action to a United States Magistrate Judge p. 2.) It is also important to note the distinct difference in time. The court in Baker was influenced by the eighteen months of time that had passed. 810 F. Supp. 2d at 98. Here, approximately six months had passed between the referral and the final judgment, only one-third the time in Baker. Further distinguishing the case at hand is that Kickwood is an individual defendant rather than a foreign nation. Additionally, the Baker court was influenced by that defendant's pattern of defaulting. Here, there is no evidence that Kickwood has a history of defaulting or has ever defaulted prior to this case.

Analyzing the plain language of U.S.C. § 636(c) also highlights the consent requirement's importance. By specifically legislating on the manner in which magistrates might conduct jury trials determinative of cause, Congress, in U.S.C. § 636(c), established that the exclusive method for exercise of such jurisdiction and power by federal magistrate is only upon the consent of the parties. Wimmer v.

Cook, 774 F.2d 68, 73 (4th Cir. 1985). An entry of default does not strip the defaulter of her rights. Therefore, Kickwood should not be denied her right to deny consent to the Magistrate Judge and should not be liable for the $750,000,000 judgment without being heard.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that this court grant Defendant's motion to vacate judgment as service was not proper in this case. Defendant did not consent to having the case heard before the Magistrate Judge as required by law and Defendant's actions did not amount to implied consent.

Respectfully Submitted,

/s/ Team 1527D

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Plaintiff,

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DEFENDANT'S BRIEF IN SUPPORT OF DEFENDANT NELLIE KICKWOOD'S MOTION TO VACATE JUDGMENT
