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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SCOTT N. JOHNSON,

Plaintiff,

No. 2:10-cv-02001 KJM KJN

v.

WASHOE MOTEL, LLC, Individually
and d/b/a Washoe Motel; PINE CONE
ACRE MOTEL, LLC, Individually and
d/b/a Pine Cone Acre Motel,

Defendants.

ORDER

On February 7, 2011, the undersigned entered proposed findings and recommendations in this case, which recommended that: (1) plaintiff’s motion for default be granted, and that (2) plaintiff be awarded \$8,000 in statutory damages and injunctive relief. (Findings & Recommendations, Feb. 7, 2011, Dkt. No. 13.) Because of defendants’ complete failure to appear in this action or respond to plaintiff’s lawsuit in any respect despite having actual knowledge of the lawsuit, the undersigned had submitted plaintiff’s motion for default judgment on the briefs and record in this case and vacated the February 10, 2011 hearing on plaintiff’s motion.

On February 10, 2011, Robert M. Twomey, the agent for service of process for defendants, and Daniel Freemon, listed as an “LLC member,” filed a one-page, handwritten

1 document with the court. (Dkt. No. 14.) Based on that filing, it appears that Messrs. Twomey
2 and Freemon showed up to the undersigned's courtroom with the intent of participating in the
3 already-vacated hearing on plaintiff's motion. According to the filed note, these gentlemen were
4 informed by court staff that the hearing was vacated. The note also references the findings and
5 recommendations entered on February 7, 2011. Messers. Twomey and Freemon "would like to
6 have the default vacated and reschedule [*sic*] a hearing so that [they] can plead [their] case." The
7 note also states that "the Washoe Motel was taken back by the lender on 1/19/11."

8 The undersigned does not vacate the proposed findings and recommendations
9 through this order. As an initial matter, the undersigned notes that the defendants in this case are
10 limited liability companies that cannot appear in federal court without an attorney. Pursuant to
11 this court's local rules, "[a] corporation or other entity may appear only by an attorney." E. Dist.
12 Local Rule 183(a). Case law within and outside of the Ninth Circuit is in accord. It is well-
13 settled that "[a] corporation may appear in federal court only through licensed counsel." United
14 States v. High Country Broad. Co., 3 F.3d 1244, 1245 (9th Cir. 1993) (per curiam); see also, e.g.,
15 D-Beam Ltd. P'ship v. Roller Derby Skates, Inc., 366 F.3d 972, 973-74 (9th Cir. 2004) (applying
16 rule to partnerships); Church of the New Testament v. United States, 783 F.2d 771, 773-74 (9th
17 Cir. 1986) (applying rule to unincorporated associations). The Seventh Circuit Court of Appeals
18 has specifically and persuasively held that a limited liability company, which is essentially a
19 hybrid between a partnership and a corporation, must appear in federal court through licensed
20 counsel and may not appear through a member. See Lattanzio v. COMTA, 481 F.3d 137, 140
21 (7th Cir. 2007) (per curiam); accord United States v. Hagerman, 545 F.3d 579, 581-82 (7th Cir.
22 2008); Q1, LLC v. County of Sacramento, No. 2:08-cv-1564 JAM KJNPS, 2010 WL 682534, at
23 *1-2 (E.D. Cal. Feb. 23, 2010) (unpublished); see also U.S. ex rel. Mergent Servs. v. Flaherty,
24 540 F.3d 89, 92 (2d Cir. 2008). Thus, even if the undersigned vacated the proposed findings and
25 recommendations and allowed defendants to file an answer or motion to set aside the entry of

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1 default, Messrs. Twomey and Freemon could not appear on behalf of defendants without an
2 attorney.

3 Additionally, before vacating the proposed findings and recommendations, if at
4 all, the undersigned would like to hear plaintiff's views regarding defendants' attempted late
5 appearance in this action. If plaintiff is agreeable to permitting defendants to appear through
6 counsel in this action, then the undersigned would be more inclined to vacate the proposed
7 findings and recommendations and permit defendants a limited amount of time to find counsel.

8 Accordingly, IT IS HEREBY ORDERED that on or before February 17, 2011,
9 plaintiff shall file a brief writing expressing his views in regards to defendants' representative's
10 request to vacate the proposed findings and recommendations, which, if granted, would also
11 entail permitting defendants to obtain counsel in order to appear in this court.

12 IT IS SO ORDERED.

13 DATED: February 11, 2011

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15 
16 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

17 KJN:nkd