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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 U.S. EQUAL EMPLOYMENT OPPORTUNITY
11 COMMISSION,

Plaintiff,

12 v.

13 MAURIZIO'S TRATTORIA ITALIANA, LLC
14 AND DOES 1-10,

15 Defendant.
16
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Case No.: 18cv338-MMA(BLM)

**ORDER REGARDING DEFENDANT'S
FAILURE TO COMPLY WITH THE
COURT'S AUGUST 9, 2019 ORDER- ECF
NO. 27**

18 On August 7, 2019, Defendant notified the Court that its counsel had passed away and
19 requested a stay to allow it time to find and retain a new attorney. ECF No. 24. The Court
20 granted Defendant's request, ordered Defendant to retain new counsel by September 5, 2019,
21 and stayed the case until October 7, 2019. ECF No. 27. Defendant has failed to comply with
22 the Court's order and has not obtained new counsel. See Docket.

23 Civil Local Rule 83.3(j) states that

24 Only natural persons representing their individual interests in propria persona may
25 appear in court without representation by an attorney permitted to practice
26 pursuant to Civil Local Rule 83.3. All other parties, including corporations,
27 partnerships and other legal entities, may appear in court only through an attorney
28 permitted to practice pursuant to Civil Local Rule 83.3(j).

1 Because Defendant is not represented by counsel, Defendant will not be able to participate in
2 discovery or any other aspect of litigation after the stay lifts. Securities and Exchange
3 Commission v. SW Argyll Investments, LLC, 2012 WL 12885225, at *1 (S.D. Cal., June 11, 2012)
4 (“[I]t is well established that a corporation, unincorporated association, partnership or other
5 such entity may appear only through counsel.”) (citing Rowland v. Cal. Men's Colony, 506 U.S.
6 194, 201-02 (1993) (“It has been the law for the better part of two centuries ... that a
7 corporation may appear in the federal courts only through licensed counsel,” citing Osborn v.
8 Bank of United States, 22 U.S. 738 (1824)).

9 Here, Plaintiff had noticed six depositions of Defendant’s owner and employees for
10 September 6, 13, and 27, 2019. ECF No. 23 at 2. Those depositions were stayed but they likely
11 will be re-noticed as soon as the stay is lifted. If Defendant has not retained counsel, Defendant
12 will not be able to participate in the discovery process or any other aspect of this litigation. If
13 Defendant does not retain counsel and does not participate in the discovery process and
14 litigation, Defendant’s answer may be stricken and default judgment entered against it. See
15 Osgood v. Main Street Marketing, LLC, 2017 WL 3194460, at *2 (S.D. Cal., July 27, 2017) (“when
16 a corporation fails to retain counsel to represent it in an action, its answer may be stricken and
17 a default judgment entered against it”) (citing Emp. Painters’ Trust v. Ethan Enters., Inc., 480
18 F.3d 993, 998 (9th Cir. 2007)); see also United Pacific Energy Operations and Consulting, Inc.
19 v. Gas and Oil Technologies, Inc., 2012 WL 12953446, at *3 (C.D. Cal., Mar. 30, 2012) (“If the
20 corporation fails to appear through counsel within a reasonable time, the action may be
21 dismissed or a default judgment entered.”); Oracle America, Inc. v. Serv. Key, LLC, 2013 WL
22 1195620, at *2-3 (N.D. Cal. Mar. 22, 2013) (ordering that if substitute counsel is not found, the
23 court will strike answer and direct entry of default, and then plaintiff may file a motion for default
24 judgment).

25 Defendant was provided approximately sixty days to obtain new counsel and failed to do
26 so. Despite this failure, the Court is providing Defendant with one last opportunity to obtain
27 counsel. The Court continues the stay until **November 8, 2019**. Defendant is ordered to
28 obtain new counsel and the new lawyer must file a Notice of Appearance on or before

1 **November 8, 2019.** If Defendant fails to comply with the Court's order for a second time, the
2 stay will lift on November 8, 2019 and Plaintiff will be able to proceed forward with discovery
3 and to seek any appropriate remedies. If Defendant is not represented by counsel, it will not
4 be able to participate in discovery or litigation and if it fails to participate in discovery and
5 litigation, its answer may be stricken and a default judgment may be entered against it.

6 **IT IS SO ORDERED.**

7 Dated: 10/7/2019

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9 Hon. Barbara L. Major
10 United States Magistrate Judge
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