

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-02762-PAB-MJW

GENTLE GIANT MOVING CO., INC.,

Plaintiff,

v.

GENTLE GIANT MOVING AND STORAGE INC.,
JOSE M. ESQUIVEL,
ITAMAR FRIEDMAN, SR., and
EMPIER MOVING AND STORAGE SERVICES CO.,

Defendants.

**RECOMMENDATION REGARDING
ORDER TO SHOW CAUSE (Docket No. 34)**

MICHAEL J. WATANABE
United States Magistrate Judge

This case is before the Court pursuant to an Order Referring Case to United States Magistrate Judge entered by Judge Philip A. Brimmer on January 20, 2018 (Docket No. 14), the Court's March 1, 2018 Minute Order (Docket No. 29), and the Court's April 16, 2018 Order to Show Cause (Docket No. 34). In the March 1, 2018 Minute Order, the Court granted a motion to withdraw as counsel filed by the attorneys who were representing Defendants. The result was that the two individually named Defendants were left to proceed pro se and the two entity Defendants were ordered to retain counsel because, as the Minute Order explained, entities cannot proceed without counsel. Specifically, the Court noted:

Defendants Gentle Giant Moving and Storage Inc. and Empier Moving and Storage Services Co. cannot proceed without attorney representation.

Harrison v. Wahatoyas, L.L.C., 253 F.3d 552, 556 (“As a general matter, a corporation or other business entity can only appear in court through an attorney and not through a nonattorney corporate officer appearing pro se.”)(10th Cir. 2001); see also *Tal v. Hogan*, 453 F.3d 1244, 1254 (10th Cir. 2006) (collecting cases). Accordingly, it is hereby ORDERED that Defendants Gentle Giant Moving and Storage Inc. and Empier Moving and Storage Services Co. shall retain counsel who must file a notice of entry of appearance on the docket on or before **March 30, 2018, or be subject to sanctions including, but not limited to, entry of default judgment.**

(Docket No. 29 at 1-2) (emphasis in original). In the April 16, 2018 Order to Show Cause (Docket No. 34), the Court noted:

Since issuance of the March 1, 2018 Minute Order, no attorney has entered an appearance for Defendant Gentle Giant Moving and Storage Inc. or Defendant Empier Moving and Storage Services Co. Plaintiff’s claims against Defendants Gentle Giant Moving and Storage Inc. and Empier Moving and Storage Services Co. cannot be litigated if they are not represented by counsel.

(Docket No. 34 at 2).

After explaining the applicable rules, the Court

ORDERED that on **May 1, 2018 at 10:30 a.m.** in Courtroom A-502, Fifth Floor, Alfred A. Arraj U.S. Courthouse, 901 19th Street, Denver, Colorado, a Show Cause Hearing will be held during which Defendants Gentle Giant Moving and Storage Inc. and Empier Moving and Storage Services Co. **shall show cause why default judgment should not be entered against them pursuant to Fed. R. Civ. P. 16(f).** In addition to a recommendation that default judgment be entered against them, other sanctions may be imposed, including but not limited to, Plaintiff’s attorney fees and costs and a finding and order of contempt.

(Docket No. 34 at 3) (emphasis in original).

Defendants Gentle Giant Moving and Storage Inc. and Empier Moving and Storage Services Co. failed to appear at the May 1, 2018 Show Cause Hearing as ordered and counsel has not filed an entry of appearance on behalf of either of these Defendants to date. As explained in the April 16, 2018 Order to Show Cause (Docket

No. 34), Defendants Gentle Giant Moving and Storage Inc. and Empier Moving and Storage Services Co. are subject to sanctions under Fed. R. Civ. P. 16(f), including entry of default judgment and a finding of contempt of court. Accordingly, the Court RECOMMENDS that Judge Brimmer enter default against Defendants Gentle Giant Moving and Storage Inc. and Empier Moving and Storage Services Co. and allow Plaintiff to file a motion for default judgment against these two Defendants.

Dated: May 1, 2018
Denver, Colorado

s/ Michael J. Watanabe
Michael J. Watanabe
United States Magistrate Judge