

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PATRICIA KENNEDY, individually

Plaintiff,

v.

Case No: 2:16-cv-742-FtM-38MRM

BONITA DINER, LLC,

Defendant.

ORDER¹

This matter comes before the Court on Plaintiff's Stipulation for Dismissal of Case with Prejudice ([Doc. 17](#)) filed on March 31, 2017. Plaintiff requests that the Court dismiss this action with prejudice but retain jurisdiction to enforce the terms of an undisclosed Settlement Agreement and determine the amount of attorney's fees, costs, expert fees, and litigation expenses to which Plaintiff is entitled. Plaintiff also states that the effectiveness of their stipulated dismissal is contingent upon the Court retaining jurisdiction as so requested.

A Clerk's Entry of Default ([Doc. 14](#)) was issued against Bonita Diner, LLC on January 30, 2017. Therefore, Defendant has not appeared in this case and thus is not

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yet a party.² Plaintiff seeks the entry of a final judgment in its favor based on a stipulation between Plaintiff and Bonita Diner, LLC.

The request will be denied at this time. Defendant remains in default and no formal appearance has been entered subjecting it to the Court's jurisdiction. If Plaintiff desires the entry of a default judgment in its favor, including attorney's fees and costs, a motion seeking such relief pursuant to [Fed. R. Civ. P. 55\(b\)](#) should be filed. The Court is not otherwise inclined to deem Plaintiff as prevailing, or entertain a motion for fees and costs, without Defendant formally appearing in the case³ and agreeing to the "stipulation," or without the entry of a default judgment in Plaintiff's favor.

As Defendant is in default, the only other option besides moving for the entry of default judgment is a voluntary dismissal pursuant to [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(i\)](#). The Court will allow Plaintiff a period of time to inform the Court how it wishes to proceed. Failure to respond will result in this Court dismissing this case for failure to prosecute.

Accordingly, it is now

ORDERED:


(1) Plaintiff's Stipulation for Dismissal of Case with Prejudice ([Doc. 17](#)) is **DENIED without prejudice.**

(2) Plaintiff shall have up to and including **April 24, 2017** to move for default judgment or voluntarily dismiss this case.

² Although Defendant filed a "response" to the request for clerk's default ([Doc. 13](#)), it was stricken by the Magistrate Judge as untimely and improper. ([Doc. 15](#)).

³ The Eleventh Circuit has held that a corporation cannot proceed *pro se* and must be represented by counsel. [Palazzo v. Gulf Oil Corp.](#), 764 F.2d 1381, 1385 (11th Cir. 1985). Additionally, Local Rule 2.03(e) indicates that a corporation "may appear and be heard only through counsel admitted to practice in the Court"

DONE and **ORDERED** in Fort Myers, Florida this 10th day of April, 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record