

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI**

IHOP IP, LLC et al.,)	
)	
)	
Plaintiffs,)	
)	
vs.)	
)	Case No.: 4:11-cv-00548-JTM
INTERNATIONAL HOUSE OF PRAYER)	
et al.,)	
)	
Defendants.)	

**OPPOSITION TO DEFENDANT EAST BAY'S MOTION FOR
AN EXTENSION OF TIME TO FILE AN ANSWER**

Plaintiffs IHOP IP, LLC and International House of Pancakes, LLC ("IHOP") request that the Court deny defendant International House of Prayer East Bay's ("East Bay") motion for an extension of time to file an answer because the motion was not submitted through an attorney as required by the law and was filed out of time.

I. Background Facts

IHOP and East Bay were engaged in voluntary settlement discussions from November 2010 until May 2011. During these negotiations, East Bay was represented by Keith Grady and his colleagues at Polsinelli Shughart PC. When those negotiations fell apart, IHOP filed a Complaint [Doc. 1] on May 27, 2011 and a First Amended Complaint [Doc. 3] on June 14, 2011. Mr. Grady accepted service of the First Amended Complaint on behalf of all the defendants and executed a waiver, which was filed with the Court on June 22, 2011 [Doc. 4].

IHOP was subsequently informed that Mr. Grady no longer represented East Bay and mistakenly accepted service on its behalf. Without waiving any of its rights or conceding

any mistake in service, counsel for IHOP contacted Mr. Stilwell in July and sent him an additional waiver of service request and a copy of the First Amended Complaint pursuant to Fed. R. Civ. P. 4(d). Mr. Stilwell responded on August 10, 2011 with an offer to settle. Since then, IHOP and East Bay have engaged in settlement negotiations and exchanged several draft agreements. During this time, East Bay failed to return the second waiver of service sent in July. Although it is IHOP's position that service was effected on East Bay when the first waiver was filed with the Court in June, out of an abundance of caution and in the spirit of cooperation, IHOP served East Bay with process on September 23, 2011 [Return of Service, Doc. 12]. At the time of service, IHOP explained to East Bay that its time to prepare and file an answer had begun to run. On October 12, 2011, IHOP again reminded East Bay during settlement discussions that it needed to answer the First Amended Complaint. East Bay failed to file an answer by the October 14, 2011 deadline.

II. As a 501(c)(3) Nonprofit Entity, East Bay Must Be Represented by an Attorney to Appear Before the Court.

It is a well settled rule that a business entity can only appear in court through an attorney and not through a non-attorney corporate officer appearing *pro se*. Rowland v. California Men's Colony, 506 U.S. 194, 201-02 (1993) ("It has been the law for the better part of two centuries, for example, that a corporation may appear in the federal courts only through licensed counsel."); Ackra Direct Marketing Corp. v. Fingerhut Corp., 86 F.3d 852, 857 (8th Cir. 1996) ("[T]he law does not allow a corporation to proceed *pro se*"). The Motion for an Extension of Time to File an Answer [Doc. 14] states that East Bay is "seeking counsel on this matter." (Doc No. 14, filed Oct. 21, 2011). The motion does not indicate that Jim Stilwell, who is the only individual that has signed the letter request, is an attorney licensed to appear before the Court. Accordingly, the Court should deny the motion for East Bay because it is a nonprofit entity that is not represented

by counsel.

III. East Bay Failed to Timely File an Answer or a Motion for An Extension of Time Despite Knowing About Its Obligation Since July.

East Bay has known about its obligation to file an answer to the First Amended Complaint for over three months. Although East Bay should have filed an answer after service was originally waived on its behalf, in light of the settlement talks, IHOP was amenable to an answer date of October 14, 2011, based on the second service of process on September 23, 2011. Fed. R. Civ. P. 12(a). Any request for an extension of time to file an answer was also due by that date. Fed. R. Civ. P. 6(b). East Bay failed to file an answer or a request for an extension of time before the deadline. It now asks the Court for another 30 days to find counsel and answer after it refused to waive service and ignored IHOP's warnings about the upcoming deadline, without making any claim of excusable neglect as required by Fed. R. Civ. P. 6(b). East Bay's dilatory tactics should not be rewarded.

Because East Bay is not represented by counsel as the law requires and because it has made no showing of excusable neglect for its untimely request, IHOP respectfully asks the Court to deny East Bay's motion for yet another 30 days to respond to the First Amended Complaint.

Respectfully submitted,

/s/Elizabeth A. Tassi

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

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ATTORNEYS FOR DEFENDANTS INTERNATIONAL HOUSE OF PRAYER,
FRIENDS OF THE BRIDEGROOM, INC., SHILOH MINISTRIES, INC., AND MIKE
BICKLE

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participant:

International House of Prayer East Bay
c/o Jim Stilwell, Director
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/s/Elizabeth A. Tassi
Attorney for Plaintiffs