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6 UNITED STATES BANKRUPTCY COURT

7 DISTRICT OF ARIZONA

8 In re:

Case No. 4:14-bk-05311-BMW

9 VILA THAI CUISINE, LLC, aka V
10 MODERN THAI,

Chapter: 7

11 Debtor.

**MOTION TO DISMISS
BANKRUPTCY CASE**

Hearing Date:

Hearing Time:

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14 Holualoa Congress, L.L.C. (“Landlord”) moves this Court for an order pursuant to
15 11 U.S.C. §§ 301, 707(a) and 1112(b) dismissing this case because Debtor is an Arizona
16 limited liability company which may not proceed *pro se*. This motion is explained in the
17 following Memorandum.

18 **Background**

19 1. Debtor is an Arizona limited liability company according to the records of
20 the Arizona Corporation Commission. See **Exhibit 4** attached.

21 2. Landlord is the landlord of the premises generally known as One East
22 Congress, Suite 200, Tucson, Arizona 85701 (the “Premises”), pursuant to a One East
23 Congress Standard Triple Net Lease dated January 7, 2011, as amended by the First
24 Addendum to Lease entered into as of January 7, 2011 and the Second Addendum to Lease
25 entered into as of May 1, 2011 (together the “Lease”) with Vila Thai Cuisine, LLC
26 (“Debtor”) concerning the Premises. A copy of the Lease is attached and incorporated to
27 the Stipulation between Landlord and Stanley J. Kartchner, Chapter 7 Trustee (“Trustee”)
28 filed at DE 12 as **Exhibit 1**.

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1 3. Debtor is in default under the Lease by failing to pay monthly rent and other
2 payments due under the Lease, amounting to \$30,584.87, exclusive of late charges, as of
3 April 8, 2014.

4 4. On April 8, 2014, Landlord filed the First Amended Verified Complaint for
5 Forcible Detainer in the Superior Court of Arizona, Pima County, Case No. C20141861.
6 A true and correct copy of the Complaint is attached and incorporated to the Stipulation as
7 **Exhibit 2.**

8 5. The Superior Court issued the Summons on Forcible Detainer requiring
9 Debtor to appear and answer the complaint on April 14, 2014.

10 6. Prior to commencement of the forcible detainer action, Landlord terminated
11 Debtor's right of possession of the Premises by written notice on April 11, 2014 to Debtor.
12 A true and correct copy of the Notice of Termination is attached and incorporated to the
13 Stipulation as **Exhibit 3.**

14 7. Landlord sought to enforce its remedies under the Lease by terminating
15 Debtor's right of possession and locking Debtor out of the premises. However, Debtor
16 refused to vacate the premises and a representative or agent of Debtor remains on the
17 premises at all times to prevent the lockout. This continued occupation of the Premises is
18 an additional breach of the Lease.

19 8. On April 11, 2014, Debtor filed a *pro se* voluntary Chapter 7 bankruptcy
20 petition with this Court. There is no indication that Debtor is represented by counsel.
21 Debtor failed to file a master mailing list, schedules and statements, or any of the other
22 documents required in connection with a Chapter 7 filing.

23 9. Debtor has advised the Trustee that Debtor intends to convert this case to
24 chapter 11 and apparently filed the fee required for conversion of this case to Chapter 11.

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Discussion

In Arizona, an entity such as Debtor must be represented by counsel.¹ This same rule applies to limited liability companies. Accordingly, the *pro se* bankruptcy petition is illegal and the case should be dismissed.

DATED this 16th day of April, 2014.

LEWIS ROCA ROTHGERBER LLP

By: /s/ Robert M. Charles, Jr.
Robert M. Charles, Jr.
Attorneys for Holualoa Congress, L.L.C.

¹ See *In re America W. Airlines*, 40 F.3d 1058 (9th Cir. 2004) (“Corporations and other unincorporated associations must appear in court through an attorney.”); *United States v. High Country Broadcasting Co.*, 3 F.3d 1244, 1245 (1993) (“corporation may appear in federal court only through licensed counsel.”) (per curiam).

1 **CERTIFICATE OF SERVICE**

2 A copy of the foregoing was served via the Court's ECF system to registered users
3 and hand delivered or mailed as designated to those persons listed below on this 16th day
4 of April, 2014.

5 Villa Thai Cuisine, LLC
6 1 East Congress, Suite 200
7 Tucson, AZ 85701
8 *Via Certified Mail, RRR and Hand Delivery*

9 Vila Jarrell, Statutory Agent
10 Villa Thai Cuisine, LLC
11 972 East University Boulevard
12 Tucson, AZ 85719
13 *Via First Class and Certified Mail*

14 Stanley J. Kartchner, Trustee
15 7090 North Oracle Road, #178-204
16 Tucson, AZ 85704
17 *Via Email*

18 Gregory E. Good, Esq.
19 Good Law, P.C.
20 Foothills Corporate Center
21 3430 East Sunrise Drive, Suite 270
22 Tucson, AZ 85718
23 *Via Email*

24 Vila Jarrell
25 1030 W. Via San Miguel
26 Green Valley, AZ 85614
27 *Via Certified Mail, RRR*

28 */s/ Marilyn Schoenike*

Marilyn Schoenike
Certified Legal Assistant

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