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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 NEXON AMERICA, INC., a Delaware
corporation, and NEXON KOREA
14 CORPORATION, a Korean
corporation,

15 Plaintiffs,

16 v.

17 GAMEANARCHY, LLC, a Georgia
Limited Liability Company, DAVID
18 ALLEN BAKER, a/k/a "Drunken
Cheetah," an individual, and DOES 1
19 through 10,

20 Defendants.
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Case No. CV12-02083 MWF (PLAx)

Honorable Michael W. Fitzgerald

**RESPONSE OF PLAINTIFFS TO
COUNSEL'S MOTION TO
WITHDRAW AS COUNSEL FOR
DEFENDANT GAMEANARCHY,
LLC**

Date: November 19, 2012
Time: 10:00 a.m.

1 Plaintiffs Nexon America, Inc. and NEXON Korea Corporation (collectively,
2 “Nexon”) do not oppose Defendants’ counsel’s request to be relived as counsel of
3 record for Defendant GameAnarchy, LLC (“GA LLC”). Docket No. 26. However,
4 Nexon hereby submits the following response to request that the Court consider the
5 following prior to issuing any order on GA LLC’s Motion:

6 **First**, it does not appear that GA LLC has appointed new counsel to represent
7 it in the action. To the contrary, as noted in the Motion and supporting Declaration
8 of Leah Castella, Defendant David Allen Baker (“Baker”) is the sole officer of
9 GameAnarchy, and apparently solely bears all legal fees incurred by GameAnarchy.
10 Docket No. 26, at ¶ 4. Ms. Castella further declares that Baker “does not have the
11 means to pay, and does not want to pay, legal fees incurred by Game Anarchy.” *Id.*,
12 at ¶ 5.

13 Local Rule 83-2.10.1 of the Central District of California states that “[a]
14 corporation including a limited liability corporation . . . may not appear in any
15 action or proceeding *pro se*.” Unless GameAnarchy retains different counsel, upon
16 Ms. Castella’s withdrawal, GameAnarchy will be unable to appear in or defend this
17 action. In these circumstances, the Court should enter a default judgment against
18 GameAnarchy, should it decline to retain counsel. *See Employee Painters’ Trust v.*
19 *Ethan Enters., Inc.*, 480 F.3d 993 , 998 (9th Cir. 2007) (“we have recognized default
20 as a permissible sanction for failure to comply with local rules requiring
21 representation by counsel”). It is “perfectly appropriate” to order default against a
22 corporation for failure to retain counsel, even after the corporation had previously
23 filed an answer while represented by counsel. *U.S. v. High Country Broad. Co.*, 3
24 F.3d 1244, 1245 (9th Cir. 1993).

25 Accordingly, Nexon requests that in the event new counsel is not appointed
26 for GA LLC by the date of the hearing on the Motion, the Court order that
27 GameAnarchy’s Answer be stricken from the record and default be entered. *See,*
28 *e.g., Dillard v. Victoria M. Morton Enterps., Inc.*, No. 2:08-cv-01339 FCD KJN PS,

1 2010 WL 3386459, at *3 (E.D. Cal. Aug. 26, 2010) (granting motion to strike
2 corporate defendants' answer for failure to retain counsel after original counsel
3 withdrew) (collecting cases). In the alternative, Nexon requests that the Court issue
4 an Order to Show Cause before this Court why an order should not be made and
5 entered herein entering default against GameAnarchy, or in the alternative, striking
6 the Answer of GameAnarchy.

7 **Second**, Nexon notes that this action has been pending for approximately six
8 months. During that time, Nexon has conducted discovery, performed a detailed
9 technical investigation of Defendants' software product, and diligently pursued this
10 action. Nexon is in the process of preparing a Motion for Summary Judgment,
11 which it expects to file promptly, and has conducted the required Rule 7-3 meet-
12 and-confer on that Motion with Defendants' counsel. Accordingly, Nexon requests
13 that the withdrawal of counsel not result in any delay of these proceedings.

14 **Third**, Nexon wishes to advise the Court that following the Court's
15 appointment of a mediator in this action, Nexon has engaged in several
16 communications with the Court-appointed mediator (Gregory Wood). The parties
17 were unable to finalize a mediation date, as Nexon was advised of counsel's
18 intention to withdraw before such date could be finalized. Nexon will advise the
19 mediator as to the outcome of this Motion, but requests that the Court instruct Baker
20 that he must communicate with the mediator concerning his availability for the
21 mediation.

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23 DATED: October 29, 2012

RESPECTFULLY SUBMITTED,

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MITCHELL SILBERBERG & KNUPP LLP

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By: /s/ Marc M. Mayer

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Marc E. Mayer
Attorneys for Plaintiffs Nexon America,
Inc. and Nexon Korea Corporation

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