

1 Name: _____

2 Address: _____

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4 Phone: _____

5 Fax: _____

6 Email: _____

Defendant in proper person

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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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SOUTHERN DIVISION

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SLEP-TONE ENTERTAINMENT)
CORPORATION,)

CASE NO.: 2:12-cv-0239-KJD-RJJ

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Plaintiff,)

14

v.)

**JOINDER IN CO-DEFENDANTS'
MOTIONS TO SEVER**

15

ELLIS ISLAND CASINO & BREWERY;)
et al.,)

16

Defendants.)

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COMES NOW, Defendant _____, in proper person, and

20

herein joins in the motions to sever filed by co-defendants in the following motions:

21

Motion to Sever by Defendants Caesars Entertainment Corp., Corner Investment Co., LLC, Harrah's Imperial Palace Corp., and Harrah's Las Vegas, Inc. (Doc. # 20);

22

23

Defendants Gilley's Las Vegas and Treasure Island, LLC's Motion to Dismiss Pursuant to Rule 12(b)(6) and Motion to Dismiss and/or Sever Pursuant to Rules 20 and 21 (Doc. #36); and,

24

25

Defendants NP Boulder LLC and NP Palace LLC's Motion to Dismiss Pursuant to Rule 12(b)(6) and Motion to Dismiss and/or Sever Pursuant to Rules 20 and 21 (Doc. #39).

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1 **Points and Authorities**

2 By filing this Joinder, this defendant moves that the Complaint filed by plaintiff Slep-
3 Tone Entertainment Corporation (“Slep-Tone”) against this defendant be dismissed without
4 prejudice because the remedy of severance requires Slep-Tone to file separate lawsuits against all
5 defendants beyond the first named defendant, Fame Operating Company, Inc., dba Ellis Island
6 Casino & Brewery (“Ellis Island”), and requires Slep-Tone’s Complaint be dismissed without
7 prejudice against all named defendants beyond lead defendant Ellis Island.

8 If Slep-Tone is to continue its litigation against all named defendants beyond Ellis Island,
9 then Slep-Tone should need file a separate lawsuit for each set of entities under common
10 ownership or control. For example, the five LLC’s which own the PT’s Pubs are part of Golden
11 Gaming, Inc., and might properly be named in a single lawsuit. However, Slep-Tone improperly
12 joined this defendant with the other 32 defendant venue owners and 16 individual defendant
13 karaoke jockeys in violation of Fed. Rule of Civ. Pro. 20 (a)(2)(A) and (B) because Slep-Tone’s
14 claim for relief against this defendant does not arise out of the same transaction, occurrence or
15 series of transactions or occurrences as Slep-Tone’s claims against the remaining defendants and,
16 further, because Slep-Tone’s claim for relief against this defendant does not involve facts
17 common to all defendants Slep-Tone has chosen to name in its lawsuit.

18 Although Slep-Tone has alleged that its, “right to relief...arises out of the same series of
19 transactions and occurrences” (*see*, Complaint, ¶ 235) and that its, “action raises substantial
20 questions of law and fact common to all of the defendants...” (*see*, Complaint, ¶ 236), Slep-
21 Tone’s allegations in this respect do not have to be assumed true for purposes of a motion to
22 sever.

23 By joining so many defendants, Slep-Tone’s allegations are, by necessity, generalized,
24 weakly supported and vague. Slep-Tone has failed to allege with respect to each defendant what
25 Sound Choice karaoke accompaniment tracks were played, when they were played or upon what
26 evidence Slep-Tone relies to conclude that the KJ or venue did not have possession or control
27 over the genuine, original Sound Choice karaoke accompaniment disk from which the computer
28 copies were made at the time the copies were played.

1 If Slep-Tone's Complaint survives the motions to dismiss, then Slep-Tone would still
2 need prove each of the foregoing elements with respect to each defendant, and the jury would
3 need keep track of the factual evidence which Slep-Tone offers into evidence to determine,

- 4 (a) The number of times Slep-Tone proved each defendant played a given Sound
5 Choice karaoke accompaniment track;
- 6 (b) Of the times a Sound Choice karaoke accompaniment track was played, whether
7 Slep-Tone proved the tracks were "unauthorized" copies as opposed to being
8 backed up by an original, genuine Slep-Tone karaoke accompaniment disk in the
9 KJ's possession or control;
- 10 (c) Whether during the play of the computer copy of the Sound Choice karaoke
11 accompaniment track, the copy on the KJ's computer was the only copy made
12 from the original, genuine Sound Choice karaoke accompaniment disk;
- 13 (d) Whether during the play of the computer copy of the Sound Choice karaoke
14 accompaniment track, the Sound Choice Mark was displayed;
- 15 (e) Whether the KJ's use of an unauthorized Sound Choice karaoke accompaniment
16 track was knowing and intentional; and,
- 17 (f) If the defendant is a venue which hired the KJ as an independent contractor,
18 whether the venue hired the KJ knowing that the KJ was using infringing content.

19 The jury will need answer these five to six questions with respect to each defendant, keep
20 track of the allegations made against each defendant and keep track of the proof Slep-Tone offers
21 in support of its claims against each defendant.

22 If this Court upholds Slep-Tone's improper joinder of 49 defendants, each with different
23 factual contentions being offered in proof against them, there will be unnecessary confusion and
24 a clear potential for some innocent defendants to be prejudiced by the evidence offered against
25 their co-defendants.

26 Slep-Tone's claims for relief do **not** arise out of the same series of transactions and
27 occurrences since each play of an allegedly unauthorized copy of a Sound Choice karaoke
28 accompaniment track at each defendant's karaoke show, as witnessed by Slep-Tone's
investigator, would need be compared to those tracks in each individual defendant's library of
original, genuine Sound Choice disks. If the investigator sat through a four hour karaoke show,
he could be expected to witness approximately 30 Sound Choice tracks being played. (Figuring
one singer every five minutes and taking into account the possibility that sixty percent of the

1 tracks are from Sound Choice karaoke disks.) For the alleged infringement to arise from the
2 same series of transactions and occurrences, then all plays of all copies of the Sound Choice
3 karaoke accompaniment tracks witnessed by Slep-Tone's investigator would have to be the same
4 which is highly unlikely since there are thousands of different tracks. Further, every KJ and
5 venue would have to possess in their library the exact same, original, genuine Sound Choice
6 karaoke disks, and with hundreds of different Sound Choice karaoke disks, some of which are no
7 longer being produced, the odds of every defendant possessing the exact same disks in their
8 libraries are astronomical.

9 Slep-Tone's claim against each defendant will necessarily involve a different series of
10 transactions and occurrences with different tracks being witnessed being played on different
11 nights at different locations before different audiences and with each defendant's karaoke disk
12 library containing different, original, genuine disks in support of the copies made. Further, each
13 defendant proven to have played a copy of a track which is no longer within the defendant's
14 original karaoke disk library may have different defenses, such as the copy being made from an
15 original disk which was in the defendant's possession at the time the copy was made, but the
16 original disk was thrown out after being chewed up by defendant's dog prior to the time the
17 defendant had any knowledge of Slep-Tone's "tolerance" policy which would now require the
18 defendant save the chewed up disk so long as its copy was being played in a commercial setting,
19 or Slep-Tone or may claim any copy of a damaged disk which is no longer playable is a
20 counterfeit.

21 Because there is an insufficient nexus of facts common to the infringing acts allegedly
22 committed, all of the defendants' motions to sever should be granted.

23 The joinder of all defendants in a single suit also subjects each defendant to excessive
24 costs since each defendant will need go to the trouble and expense of coordinating and notifying
25 what may be more than twenty law firms and proper person defendants, and this burden will be
26 greatest for those defendants answering in proper person who may not be able to take advantage
27 of the Court's CM/ECF electronic filing system. Further, the need to coordinate discovery
28 among multiple law firms and proper person defendants will be extremely burdensome. In order

1 to save on filing fees and reduce its own litigation costs, Slep-Tone is purposefully attempting to
2 increase the costs incurred by each, individual defendant, and so Slep-Tone is unethically
3 attempting to subject each defending party to needless expense in order to force them to settle.

4 This defendant adopts and agrees with co-defendants' arguments that in intellectual
5 property cases, allegations against unrelated defendants for acts of trademark infringement do not
6 support joinder even where all defendants allegedly infringed the same trademark, especially
7 when the defendants are in competition with one another, joinder would result in undo prejudice,
8 and there is no allegation the defendants knew of the other defendants' infringing conduct.

9 This defendant adopts and agrees with co-defendants' arguments that violation of the
10 same trademark does not link the defendants by a common transaction or occurrence as there is
11 no allegation the defendants acted in concert, and each defendant's alleged infringement must
12 necessarily differ as to time and place, and there is no showing that one defendant knew other
13 defendants were also engaged in the same alleged infringement, especially when there is no
14 allegation that Slep-Tone put any of the Clark County defendants on prior notice of any alleged
15 infringement or even the possibility of infringing activities being committed.

16 This defendant adopts and agrees with co-defendants' arguments that since joinder was
17 inappropriate under Fed. Rule of Civ. Pro. 20(a)(2), this Court should exercise its discretion
18 pursuant to Fed. Rule of Civ. Pro. 21 to dismiss all defendants without prejudice except for the
19 first defendant named in the Complaint, in this case Ellis Island, especially where, as here, it
20 appears Slep-Tone joined all defendants in a single lawsuit as a means to save on filing fees and
21 where, as here, the potential prejudice to the individual defendants if their cases were to be tried
22 together is patently obvious.

23 Finally, requiring Slep-Tone to file separate complaints against each set of defendants
24 under common ownership may result, and should result, in Slep-Tone filing a more specific
25 statement with respect to what Sound Choice karaoke accompaniment tracks were played and
26 when each track was played so each defendant can admit or deny whether the track played was
27 "authorized" under Sound Choice's "tolerance policy" based on whether the original, genuine
28

1 Sound Choice karaoke accompaniment disk was or was not under the defendant's custody or
2 control at the time the copy was played.

3 **Conclusion**

4 In conclusion, the motions to sever should be granted, all defendants with the exception
5 of Ellis Island should be dismissed without prejudice from the present suit, and Slep-Tone should
6 be given leave to refile and reserve each defendant as it sees fit.

7 **Dated** this _____ day of _____, 2011.

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9 Signature: _____
10 Name: _____
11 Address: _____
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15 Email: _____
Defendant in proper person

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27 This document was drafted as a *pro bono* service by Robert J. Kossack, Esq., KOSSACK LAW OFFICES,
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1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the _____ day of _____, 2012, I mailed a true and
3 correct copy of the foregoing JOINDER IN CO-DEFENDANTS’ MOTIONS TO SEVER via
4 first class mail, postage prepaid, in a sealed envelope, by depositing same in a receptacle marked
5 for mailing with the United States Postal Service and addressed to the following:
6

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