

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PANAMA CITY DIVISION**

In re SLEP-TONE ENTERTAINMENT
CORP., consolidated cases.

**Civil Action No.
5:11-cv-00032-RS/CJK**

MOTION TO DISMISS DEFENDANT KEVIN SHORETTE

The Plaintiff, Slep-Tone Entertainment Corporation (“Slep-Tone”), by its counsel, hereby moves the Court pursuant to Fed. R. Civ. P. 41(a) for an order dismissing Defendant Kevin Shorette without prejudice. As grounds for the motion and order, the Plaintiff shows the Court as follows:

1. The final pretrial conference in this matter was held on June 28, 2012, and the trial of this matter was held on July 2 and 3, 2012. Despite his prior participation in this matter, including in a judicial settlement conference only weeks before, Defendant Shorette did not appear at either event.

2. The Court has invited the Plaintiff to move for a default judgment against Defendant Shorette and has ordered the Plaintiff so to move not later than today, July 24, 2012.

3. Counsel for the Plaintiff spoke by telephone on July 23, 2012, with a nonlawyer representative¹ of Defendant Shorette, who had called to inquire as to

¹ Mr. Shorette has requested that communications with him go through Mary Martini, his girlfriend.

what the next steps in this case were. The representative expressed surprise that the matter had been tried and contended that Defendant Shorette had not received notice of the trial and was therefore not prompted to appear.

4. The Plaintiff believes that the burden must be placed upon the Defendant to appear and to know or inquire as to when appearances are required. Moreover, Defendant Shorette was certainly aware of the prior scheduling of the trial for the week of June 11, yet apparently did not appear for the final pretrial conference or the trial at that time—at which time he would have been informed of the continuance to July 2.

5. Nevertheless, the rule in the courts of this circuit is that default judgments are disfavored. In any event, the necessity of preparing and filing a motion for default judgment and of opposing a presumed motion by Defendant Shorette to set aside the default would require the Plaintiff to devote substantial resources that it does not presently wish to devote to the case against Defendant Shorette.

6. Given the Defendant's financial condition, the Defendant's willingness to discuss settlement extrajudicially, and the duplicate use of the Plaintiff's and the Court's resources that would occur if this matter were to be tried separately, the Plaintiff prefers that the matter be dismissed so that the parties can discuss a settlement on a convenient timetable.

7. Dismissal without prejudice is necessary to preserve the positions of the parties in the event that a mutually agreeable settlement cannot be reached. Every effort will be made to avoid bringing this matter before the Court at a later date.

Respectfully submitted this the 24th day of July, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing paper is being filed on the date indicated below using the Clerk's CM/ECF system, which will send a Notice of Electronic Filing to counsel of record as follows:

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Service on the following CM/ECF non-participants is being made on the same date by depositing a copy of same as First Class Mail, postage prepaid, in envelopes addressed to:

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Date: July 24, 2012

s/James M. Harrington