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Attorney for Defendants
Kelly C. Sugano and Taka-O

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SLEP-TONE ENTERTAINMENT CORPORATION,	) Case No.: CV11-08305 ODW (PLAx)
)
Plaintiff,	) DECLARATION OF CRAIG
vs.	) MCLAUGHLIN, ESQ. IN SUPPORT
	) OF MOTION BY DEFENDANTS
	) KELLY C. SUGANO AND TAKA-O
BACKSTAGE BAR AND GRILL, et	) FOR ATTORNEYS' FEES AND
al.,	) SANCTIONS
)
Defendants.	) Hearing Date: Jan. 7, 2013
	) Time: 1:30 p.m.
	) Courtroom: 11
)
	) Complaint Filed : Oct. 6, 2011
)

DECLARATION OF CRAIG MCLAUGHLIN, ESQ.

I, Craig McLaughlin, Esq. hereby declare that:

1. I am a member in good standing of the State Bar of California and have personal knowledge of the facts set forth below and if called upon to testify to them could and would competently do so.

2. I am an attorney with an office located at 650 Town Center Drive, Suite 1300, Costa Mesa, California 92626.

3. I have over 16 years of experience practicing intellectual property law in California, including litigation matters and trials. My hourly rate charged in the above entitled case was \$350 per hour. This rate is in line if not below other attorneys' rates with similar experience in the locale.

4. In August 2012, I began representing Defendants Kelly C. Sugano and Taka-O in connection with the above entitled case. I had previously represented defendant Ms. Christel Santo in this very same case.

5. On August 22, 2012, this Court granted my request to substitute into the case as attorney of record for both parties. [Dkt. Nos. 80, 81.]

6. **Exhibit 1** hereto is a true and correct copy of the court's decision denying Slep-tone's motion to dismiss in *Cavs USA, Inc., v. Slep-Tone Entertainment Corporation*, Case No. CV 11-05574 DDP (JEMx) (Dkt. No. 8) (C.D. Cal., Jan. 17, 2012).

7. **Exhibit 2** hereto is a true and correct copy of an order severing defendants in *Slep-tone Entertainment Corp. v. Robert Manville, et al.*, Case No. 3:11-cv-00122 (W.D. N.Car., Oct. 5, 2011).

8. **Exhibit 3** hereto is a true and correct copy of an order severing defendants in *Slep-tone Entertainment Corp. v. Nebraska 41 Group LLC, et al.*, Case No. 8:12-cv-157-T-30MAP (M.D. Fl., April 30, 2012).

9. **Exhibit 4** hereto is a true and correct copy of an order granting motion to dismiss (motion to sever mooted) for failure to respond after three extensions of time granted to Slep-tone represented *pro hac vice* by Donna Boris, Esq.. *Slep-Tone Entertainment Corp., v. Ellis Island Casino & Brewery, et al.*, Case No. 2:12-CV-00239-KJD-RJJ, Doc. No. 73 (D. Nev., May 21, 2012).

10. Throughout the instant litigation, Slep-tone did not produce any documents in response to any document requests propounded by Defendants Sugano, Taka-O, or by defendant Santo. Throughout the instant litigation, Slep-tone did not provide any answers in response to any interrogatories propounded by Defendants Sugano, Taka-O or by defendant Santo.

11. **Exhibit 5** hereto is a true and correct copy of Slep-tone's response to defendant Christel Santo's First Set of Interrogatories.

12. **Exhibit 6** hereto is a true and correct copy of an order finding Slep-
tone's counsel, James M. Harrington, in contempt. *In Re Slep-Tone Entertainment*
Corporation, Consolidated Cases, Case No: 5:11cv32/RS/CJK, Doc. No. 181
(N.D. Fl., June 22, 2012).

13. During the instant litigation, Slep-tone never served any discovery on Defendants Sugano, Taka-O or on defendant Santo.

14. **Exhibit 7** hereto is a true and correct copy of the settlement agreement entered into by Slep-tone and Defendants Sugano and Taka-O.

15. The settlement payment of \$5,000 was made in the form of a cashier's check and was mailed to Slep-tone's counsel (Ms. Donna Boris) on October 4, 2012. The following day the executed agreement was e-mailed to her along with Defendants' list of genuine Slep-tone discs. Defendants fulfilled all of their obligations pursuant to the agreement.

16. **Exhibit 8** hereto is a true and correct copy of an e-mail chain between Ms. Boris and me seeking cooperation from her to dismiss Defendants.

1 17. Over several weeks in October 2012, I requested Ms. Boris'
2 cooperation to timely dismiss the case against Defendants. In addition to the
3 requests set forth in the e-mail chain of Exhibit 8 referenced herein, I telephoned
4 Ms. Boris on October 19, 2012 at the noticed time of 10:00 a.m. to meet and confer
5 over Slep-tone's failure to dismiss Defendants. There was no live answer so I left
6 a voice mail message informing her of this attempt and sent her an e-mail in
7 confirmation. In addition, I telephoned Ms. Boris on October 23, 2012 and again
8 on October 26, 2012 and, without a live answer, left voice mail messages asking
9 Ms. Boris to simply e-mail her approval for me to sign the stipulation on Slep-
10 tone's counsel's behalf. The requests were ignored.

11 18. **Exhibit 9** hereto is a true and correct copy of my bill for services on
12 behalf of Defendants Sugano and Taka-O in the case from August 2012 through
13 November 9, 2012. As my billing detail shows, I spent many hours in the defense
14 of Defendants in this matter, my bill totaling \$3,780.

15 19. In addition, I expect to spend about \$4,025 of additional attorney time
16 at my rate of \$350 per hour in connection with this fee motion. I already spent 8.0
17 hours drafting and preparing the instant motion, and anticipate spending an
18 additional 3.5 hours reviewing Slep-tone's expected opposition papers, preparing a
19 reply thereto and attend and argue at the hearing, if necessary.

20 I declare under penalty of perjury that the foregoing is true and correct.
21 Executed on November 25, 2012, in Orange County, California.

22
23 /s/ Craig McLaughlin, Esq.

24 Craig McLaughlin, Esq.

EXHIBIT NO. 1

O

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CAVS USA, INC.,	)	Case No. CV 11-05574 DDP (JEMx)
)	
Plaintiff,	)	ORDER DENYING DEFENDANT'S MOTION
	)	TO DISMISS PLAINTIFF'S COMPLAINT
v.)	
)	
SLEP-TONE ENTERTAINMENT	)	[Docket No. 8]
CORPORATION d/b/a SOUND)	
CHOICE, a North Carolina)	
corporation,)	
)	
Defendants.)	
)	
)	

Presently before the court is Defendant Slep-Tone Entertainment Corporation's Motion to Dismiss Plaintiff's Complaint under FRCP 12(b)(2) ("Motion"). Having reviewed the parties' moving papers and heard oral argument, the court denies the Motion and adopts the following Order.

I. BACKGROUND

Plaintiff CAVS USA, Inc. ("CAVS") and Defendant Slep-Tone Entertainment Corporation ("Slep-Tone") are both companies in the karaoke industry. Slep-Tone is a North Carolina corporation with its principal place of business in North Carolina. Slep-Tone

1 produces and distributes karaoke products and music content. CAVS
2 is a California corporation with its principal place of business in
3 California. CAVS also sells karaoke products and content,
4 principally karaoke players. (First Am. Compl. ¶¶ 2-8.)

5 According to Slep-Tone, it is currently involved in trademark
6 infringement litigation against a third, Ohio karaoke company.
7 Slep-Tone claims that the Ohio company sells computer hard drives
8 and CAVS karaoke machines preloaded with unauthorized Slep-Tone
9 karaoke content. Therefore, in June 2011, Slep-Tone sent an email
10 to approximately one-thousand people - including at least seventy
11 California residents - who it believed were involved in the karaoke
12 industry and may have purchased such equipment. (Decl. of Kurt J.
13 Slep in Supp. of Mot. at 5-6.) In the email, Slep-Tone offered
14 amnesty from a lawsuit for the unauthorized use of Slep-Tone's
15 karaoke content "on an illegal karaoke hard drive or CAVS unit."
16 Slep-Tone also asked the email recipients to forward the email to
17 anyone else meeting the conditions set forth therein. (Id., Ex. 1;
18 see also id. ("You may be aware that [Slep-Tone] is bringing
19 lawsuits against the users of illegal karaoke CAVS and computer
20 hard drive units").)

21 In response, CAVS filed this action against Slep-Tone,
22 alleging trade libel and unfair competition. CAVS filed a First
23 Amended Complaint on July 12, 2011. On September 28, 2011, Slep-
24 Tone filed this Motion to Dismiss Plaintiff's Complaint for lack of
25 personal jurisdiction.

26 **II. LEGAL STANDARD**

27 Federal Rule of Civil Procedure 12(b)(2) provides that a court
28 may dismiss a suit for lack of personal jurisdiction. The

1 plaintiff has the burden of establishing that jurisdiction exists,
2 but need only make "a prima facie showing of jurisdictional facts
3 to withstand the motion to dismiss." Pebble Beach Co. v. Caddy,
4 453 F.3d 1151, 1154 (9th Cir. 2006). "[U]ncontroverted allegations
5 in [the plaintiff's] complaint must be taken as true, and conflicts
6 between the facts contained in the parties' affidavits must be
7 resolved in [the plaintiff's] favor." Rio Props., Inc. v. Rio
8 Int'l Interlink, 284 F.3d 1007, 1019 (9th Cir. 2002).

9 District courts have the power to exercise personal
10 jurisdiction to the extent authorized by the law of the state in
11 which they sit. Fed. R. Civ. P. 4(k)(1)(A); Panavision Int'l, L.P.
12 v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). Because
13 California's long-arm statute authorizes personal jurisdiction
14 coextensive with the Due Process Clause of the United States
15 Constitution, see Cal. Civ. Code § 410.10, this Court may exercise
16 personal jurisdiction over a nonresident defendant when that
17 defendant has "at least 'minimum contacts' with the relevant forum
18 such that the exercise of jurisdiction 'does not offend traditional
19 notions of fair play and substantial justice.'" Schwarzenegger v.
20 Fred Martin Motor Co., 374 F.3d 797, 800-01 (9th Cir. 2004) (citing
21 Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). The
22 contacts must be of such a quality and nature that the defendants
23 could reasonably expect "being haled into court there." World-Wide
24 Volkswagen v. Woodson, 444 U.S. 286, 297 (1980).

25 **III. DISCUSSION**

26 Personal jurisdiction may be asserted on the basis of either
27 general jurisdiction or specific jurisdiction. General
28 jurisdiction exists over a nonresident defendant when "the

1 defendant engages in 'continuous and systematic general business
2 contacts' that 'approximate physical presence' in the forum state."
3 Schwarzenegger, 374 F.3d at 801. Where a defendant is subject to a
4 state's general jurisdiction, he "can be haled into court in that
5 state in any action, even if the action is unrelated to those
6 contacts." Helicopteros Nacionales de Colombia, S.A. v. Hall, 466
7 U.S. 408, 415 (1984). "It is the nature and extent of the contacts
8 that determines whether they are 'substantial' or 'continuous and
9 systematic.' Longevity, continuity, volume, economic impact,
10 physical presence, and integration into the state's regulatory or
11 economic markets are among the indicia of such a presence." Tuazon
12 v. R.J. Reynolds Tobacco Co., 433 F.3d 1163, 1172 (9th Cir. 2006);
13 see also Bancroft & Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d
14 1082, 1086 (9th Cir. 2000) ("Factors to be taken into consideration
15 are whether the defendant makes sales, solicits or engages in
16 business in the state, serves the state's markets, designates an
17 agent for service of process, holds a license, or is incorporated
18 there.").

19 Because the court finds Slep-Tone subject to general
20 jurisdiction in California, it is not necessary to discuss specific
21 jurisdiction. Slep-Tone has had substantial, continuous, and
22 systematic business contacts with California for a number of years.
23 First, from 2008 to 2011, Slep-Tone's product sales to California
24 have accounted for 17 to 25 percent of their total sales each year,
25 in amounts ranging from \$120,000 to \$350,000. This amount is both
26 substantial and significantly higher than would be expected on a
27 per capita basis. Slep-Tone makes some of its product sales
28 through distributors, including its primary distributor located in

1 California. In 2007, Slep-Tone used six distributors, including
2 two in California. As of February 2010, Slep-Tone uses only two
3 distributors, including its primary distributor in California and a
4 "very small" distributor in Illinois. Slep-Tone also sells
5 products to and interacts directly with California residents
6 through a website, which incorporates online accounts, product
7 ordering, a moderated message board, and website "affiliates" -
8 including some websites located in California - who earn
9 commissions for sale referrals. (Opp'n at 2-3, 5-6.¹)

10 In addition to sales, Slep-Tone now derives the majority of
11 its profits from licensing and litigation settlements, also
12 substantially connected to California. To provide its karaoke
13 content, Slep-Tone initially obtains rights from thousands of music
14 licensors, many of whom are located in California given the state's
15 "large share of the operations of the music industry." Based on
16 these rights, Slep-Tone has targeted California for licensing and
17 litigation settlements. In particular, Slep-Tone has authorized a
18 company to act as its agent, investigating infringement in
19 California. Similarly, Slep-Tone sends its own field investigators
20 to investigate potentially infringing karaoke venues in California.
21 Slep-Tone also certifies California karaoke venues and hosts as
22 legal product users, and places advertisements in magazines
23 distributed throughout California to encourage hosts to obtain
24 proper licenses. (Id. at 1-5.)

25
26
27 ¹ Slep-Tone does not dispute any of these facts, which are
28 set forth in declarations and exhibits attached to CAVS Opposition.
As required, the court therefore takes these allegations as true
for purposes of this Motion.

1 As a result of these efforts, Slep-Tone has entered into
2 karaoke content licensing agreements with at least twenty-four
3 California companies, and recently filed a lawsuit in this
4 District. See Slep-Tone Entm't Corp. v. Backstage Bar & Grill, No.
5 CV 11-08305 (C.D. Cal. filed Oct. 6, 2011). The lawsuit names
6 approximately 70 California defendants and has so far resulted in
7 more than \$180,000 in settlement payments from these defendants.
8 Thus, Slep-Tone has not only continuously and systematically
9 availed itself of the privilege of doing private business in
10 California, but has made substantial use of this District Court to
11 engage in California-based business litigation.² (Id. at 5.)

12 On the other hand, as Slep-Tone argues, it does not meet some
13 of the more traditional, physical factors for general jurisdiction.
14 Slep-Tone does not have employees, offices, or other property in
15 California. Nor does Slep-Tone have a California business license
16 or agent for service of process, or pay state taxes. (Reply at 4-
17 5.)

18 The court finds, however, that Slep-Tone's continuous,
19 substantial, and targeted contacts with California approximate and
20 substitute for such a physical presence. As the Ninth Circuit has
21 explained, "determining whether a corporate defendant's contacts in
22 a particular case are substantial and continuous turns on the
23 'economic reality of the defendants' activities rather than a
24 mechanical checklist.'" Tuazon, 433 F.3d at 1173 (quoting Gates

26 ² Less significant but still worth noting, Slep-Tone also
27 sent the June 2011 email that is the subject of this action to at
28 least 70 California residents. Since the late 1980s, Slep-Tone has
regularly attended an annual industry trade show in California as
well. (Id.)

1 Learjet Corp. v. Jensen, 743 F.2d 1325, 1331 (9th Cir. 1984)).
2 Indeed, despite being physically located in North Carolina, Slep-
3 Tone's business model and revenues suggest that it may even conduct
4 a majority of its business in California.

5 Further, a three-judge Ninth Circuit panel has found general
6 jurisdiction on similar facts. See Gator.com Corp v. L.L. Bean,
7 Inc., 341 F.3d 1072 (9th Cir. 2003), vacated as moot on reh'g en
8 banc on basis of settlement, 398 F.3d 1125 (9th Cir. 2005).

9 Although the decision is not controlling, this court, like many
10 other district courts, finds its reasoning persuasive. There too,
11 the Defendant had "few of the factors traditionally associated with
12 physical presence, such as an official agent or incorporation."

13 Id. at 1078. But as the panel noted:

14 It is increasingly clear that modern businesses no longer
15 require an actual physical presence in a state in order to
16 engage in commercial activity there. With the advent of
17 'e-commerce,' businesses may set up shop, so to speak,
18 without ever actually setting foot in the state where they
19 intend to sell their wares. Our conceptions of
20 jurisdiction must be flexible enough to respond to the
21 realities of the modern marketplace.

22 Id. at 1081. Thus, the panel found sufficient for general
23 jurisdiction: "L.L. Bean's extensive marketing and sales in
24 California, its extensive contacts with California vendors, and the
25 fact that, as alleged by Gator, its website is clearly and
26 deliberately structured to operate as a sophisticated virtual store
27 in California." Id. at 1078.

28 The same can largely be said of Slep-Tone here. It is true
that L.L. Bean is a bigger company. As a result, L.L. Bean "sold
millions of dollars worth of products in California," id. at 1074,
and Slep-Tone's website is presumably not so elaborate. However,

1 as alleged by CAVS, Slep-Tone's website also operates as an
2 interactive virtual store, with online accounts, communication, and
3 affiliates. And Slep-Tone in fact derives a much greater portion
4 of its profits from sales to California than did L.L. Bean -
5 approximately 17 to 25 percent, versus 6 percent. Id. Likewise,
6 Slep-Tone's primary distributor, and now one of only two
7 distributors, is located in California. Also, Slep-Tone's
8 California sales are still substantial beyond their own relative
9 importance to Slep-Tone, amounting to hundreds of thousands of
10 dollars each year.

11 Moreover, in other ways, Slep-Tone's California contacts are
12 more significant and targeted than L.L. Bean's were in Gator. As
13 discussed, Step-Tone's primary business involves licensing music
14 rights, often from California parties, then pursuing licensing and
15 litigation settlements. According to CAVS, Step-Tone particularly
16 targets California for these settlements, as evidence by its: (1)
17 authorizing an agent to investigate California infringement; (2)
18 sending its own field investigators to investigate California
19 venues; (3) certifying California venues and hosts as legal product
20 users; (4) advertising in magazines distributed throughout
21 California to encourage such licensing; (5) entering into licensing
22 agreement with dozens of California companies; and, finally (6)
23 litigating in this District against numerous California defendants,
24 leading to substantial settlement payments.

25 For these reasons, the relevant facts here are similar to
26 those in Gator, and notably distinct from those in the Ninth
27 Circuit and Supreme Court decisions cited by Slep-Tone, where the
28 courts declined to find general jurisdiction. In particular,

1 although the Ninth Circuit has found occasional licensing and
2 product sales, as well as interactive websites, insufficient on
3 their own, Slep-Tone has also allegedly targeted California for
4 systematic advertising and infringement-claim investigation and
5 settlement. Cf. Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d
6 1218, 1225-27 (9th Cir. 2011) (discussing relevant Ninth Circuit
7 decisions). Also, unlike the defendant in Helicopteros, Slep-Tone
8 "has not made a single 'package' purchase from a forum vendor or
9 cashed a check on a forum bank; instead, it ships very large
10 numbers of products to California and maintains ongoing contacts
11 with [its California distributor]. Nor are any of [Slep-Tone's]
12 contacts occasional or infrequent." Gator, 341 F.3d at 1078.

13 In sum, where a corporation not only makes continuous and
14 substantial sales to a forum through its interactive website and
15 primary distributor, but also targets that forum through systematic
16 licensing and claims investigation and settlement - as well as
17 significant affirmative litigation - the corporation can fairly
18 expect to be haled into court there. The court therefore finds
19 general personal jurisdiction and denies Defendant's Motion to
20 Dismiss.

21
22 IT IS SO ORDERED.

23
24
25 Dated: January 17, 2012


DEAN D. PREGERSON
United States District Judge

EXHIBIT NO. 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:11-cv-00122**

**SLEP-TONE ENTERTAINMENT
CORPORATION**

Plaintiff,

V.

ORDER

ROBERT MAINVILLE, *et al*,
Defendants.

Defendants.

)

)

)

THE MATTER comes now before the Court upon Defendant Collin Yarbrough's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) [D.I. 20, 21], Defendant Nona Powers' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). [D.I. 24], Defendant Steven Penny's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) [D.I. 25], and upon the Court's request, made at the August 25, 2011 hearing on the Motions to Dismiss, that the parties brief the issue of whether joinder of the large group of Defendants is proper.

I. LEGAL STANDARD

A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of the plaintiff’s complaint. *See Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009). When deciding a 12(b)(6) motion to dismiss, a court must “accept as true all factual allegations” presented in the complaint. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 589 (2007). In order to survive a 12(b)(6) motion to dismiss the plaintiff’s complaint must contain more than mere legal conclusions. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). A complaint must plead facts sufficient to “raise a right to relief above the speculative level” and to demonstrate that the claim is “plausible on its face.”

Twombly, 550 U.S. 544, 570 (2007). The claim is facially plausible when the factual content of the complaint allows the court to “draw the reasonable inference that the defendant is liable for the misconduct.” *Iqbal*, 129 S. Ct. 1937, 1949 (2009). Thus, if a complaint establishes a sufficient legal and factual basis for the claims asserted the motion to dismiss will be denied.

II. FACTUAL BACKGROUND

Plaintiff Slep-Tone Entertainment Corporation (“Slep-Tone”) is a manufacturer and distributor of karaoke accompaniment tracks sold under the name “Sound Choice.” (Compl. at 2). Slep-Tone has its principal place of business in Charlotte, North Carolina. (Compl. ¶ 5). Defendant Nona Powers is an individual, engaged in the business of providing karaoke entertainment, who does business as “Cat and Bone Karaoke” and who has her principal business address in Cary, North Carolina. (Compl. ¶ 14). Defendant Collin Yarbrough is an individual, engaged in the business of providing karaoke entertainment, who does business as “DJ Collin Y” and who has his principal business address in Raleigh, North Carolina. (Compl. ¶ 25). Defendant Steven Penny is an individual, engaged in the business of providing karaoke entertainment, who does business as “Southeastern Entertainment” and who has his principal business address in Raleigh, North Carolina. (Compl. ¶ 27).

Slep-Tone is the owner of two trademarks registered with the U.S. Trademark office relating to the name “Sound Choice” and to a specific display of the name.¹ (Compl. ¶¶ 53, 54). Plaintiff has, for the entire time the Marks have been registered, provided the public with notice of its federal registrations through the consistent display of the ® symbol with its Marks. (Compl. ¶ 55).

¹Slep Tone is the owner of U.S. Trademark Registration Nos. 1,923,448 and 2,000,725. (Compl. ¶¶ 53, 54).

Slep-Tone was founded by two brothers 25 years ago and became a leading producer of karaoke backing music. (Compl. at 2). Plaintiff states that it invested more than \$18 million to re-record and replicate the authentic sound of popular music across different eras and genres of music. *Id.* A karaoke jockey (“KJ”) plays karaoke songs using compact discs written in a special encoded formats known as compact disc plus graphics (“CD+G”) or MP3 plus graphics (“MP3G”). *Id.* Karaoke CD+G and MP3G recordings contain music and accompanying lyrics which display on a screen to aid the performer. (Compl. ¶¶ 29-31). Graphics data is also used to mark the accompaniment tracks with Plaintiff’s trademarks and to cause the trademarks to be displayed upon playback. (Compl. ¶ 32).

KJs purchase equipment, purchase or license compact discs containing accompaniment tracks, and charge for karaoke services. (Compl. ¶ 35). Plaintiff states that some KJs obtain, copy, share, distribute and/or sell media-shifted copies of the accompaniment tracks via pre-loaded hard drives, USB drives, CD-R’s, or the Internet. (Compl. ¶ 36). Slep-Tone does not authorize the digitization of its songs for commercial use in producing karaoke shows, but Slep-Tone claims that it tolerates the shifting of its accompaniment tracks from the original medium to another medium provided that the KJ follows Slep-Tone’s media-shifting policy by maintaining “one-to-one correspondence.” (Compl. ¶ 37-39).

Plaintiff states that technological advances made possible widespread illegal copying and distribution of its karaoke discs among KJs. (Compl. at 2-3). Furthermore, Plaintiff claims that these practices injure its business and pressure legitimate KJs to turn to piracy to stay in business. (Compl. at 3-4).

Slep-Tone alleges that defendant Nona Powers was observed operating a karaoke system to produce a karaoke show in this State and that, in connection with the show and with

defendant's weekly karaoke shows, defendant Powers repeatedly displayed the Sound Choice Marks without right or license. (Compl. ¶¶ 78-80).

Slep-Tone also alleges that defendant Collin Yarbrough was observed operating a karaoke system to produce a karaoke show in this State where defendant Yarbrough used counterfeit goods bearing the Sound Choice Marks and repeatedly displayed the Sound Choice Marks without right or license. (Compl. ¶¶ 117, 118). Plaintiff alleges that defendant Yarbrough has advertised or otherwise indicated that he possesses a library containing more than 14,000 tracks stored on his karaoke system. (Compl. ¶ 119).

Finally, Slep-Tone alleges that defendant Steven Penny was observed operating a karaoke system to produce a karaoke show at a venue in this State where defendant Penny used counterfeit goods bearing the Sound Choice Marks and repeatedly displayed the Sound Choice marks without right or license. (Compl. ¶¶ 123, 124). Plaintiff further alleges that defendant Penny possesses a library containing more than 12,700 tracks stored on the karaoke system used to produce the aforementioned show and that defendant Penny uses at least four karaoke systems to produce karaoke shows at venues and private events in this State. (Compl. ¶¶ 125, 126).

III. ANALYSIS

A. Motions to Dismiss

Defendants Yarbrough, Powers, and Penny challenge the sufficiency of Plaintiff Slep-Tone's pleading for trademark infringement and unfair competition. Under federal law, a plaintiff alleging a cause of action under the Lanham Act for unfair competition and trademark infringement must set forth: (1) that plaintiff possesses a mark; (2) that defendant used the mark; (3) that defendant's use of the mark occurred "in commerce;" (4) that defendant used the mark "in connection with the sale, offering for sale, distribution, or advertising" or goods or services;

and (5) that the defendant used the mark in a manner likely to confuse consumers. *People for Ethical Treatment of Animals v. Doughney*, 263 F.3d 359, 364 (4th Cir. 2001) (citing 15 U.S.C. §§ 114, 1125(a)). Under North Carolina law, a plaintiff alleging a cause of action for unfair competition, in both common and statutory form under N.C. Gen. Stat. § 75-1.1, is subject to an analysis similar to the federal law in the context of trademarks and tradenames. *See Yellowbrix, Inc. v. Yellowbrick Solutions, Inc.*, 181 F. Supp. 2d 575, 583 (E.D.N.C. 2001) (denying preliminary injunction under N.C. Gen. Stat. § 75-1.1 and under North Carolina common law for the same reasons injunction denied under 15 U.S.C. § 1125(a)). *See also Polo Fashions, Inc. v. Craftex, Inc.*, 816 F.2d 145, 148 (4th Cir. 1987) (“The North Carolina common law of unfair competition in the context of trademarks and tradenames is similar to the federal law of trademark infringement.”); *Universal Furniture Int’l v. Collezione Europa USA, Inc.*, 2007 WL 2712926, at *15 (M.D.N.C. Sept. 14, 2007) (equating the federal and state statutory analyses because the state statute “prohibits the same type of activity that the Lanham Act prohibits”). Here, Plaintiff’s Complaint, when reviewed in conjunction with investigative reports filed under seal by Plaintiff [D.I. 33], satisfies the *Twombly* and *Iqbal* standards.

Plaintiff’s Complaint does plead facts sufficient to “raise a right to relief above the speculative level” and demonstrates that the claim is “plausible on its face.” *Twombly*, 550 U.S. 544, 570. The claim is plausible because the factual content of the Complaint allows the court to “draw the reasonable inference that the defendant is liable for the misconduct.” *Iqbal*, 129 S. Ct. 1937, 1949 (2009). The Complaint, when reviewed with the investigative reports, establishes a sufficient legal and factual basis to preclude dismissal of the claims asserted against each remaining Defendant.

B. Joinder

Federal Rule of Civil Procedure 20(a)(2) allows a plaintiff to join multiple defendants in one action if “(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.” To remedy improperly joined parties, the court should not dismiss the action outright, but “the court may at any time, on just terms, add or drop a party.” Fed. R. Civ. P. 21. The court may act upon motion by a party or *sua sponte*. *Id.*

The Supreme Court found that Courts generally should entertain “the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724. Joinder, however, is not a “substantive right” of the plaintiff. *Saval v. BL, Ltd.*, 710 F.2d 1027, 1030 (4th Cir. 1983). Rather, “[j]oinder is usually thought of as a procedural device by which parties with similar substantive claims might jointly enforce them.” *Id.*

The “transaction or occurrence” test of Rule 20 is generally analyzed on a “case by case basis.” *Id.* at 1031; *See Mosley v. General Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974). The test, if satisfied, “permit[s] all reasonably related claims for relief by or against different parties to be tried in a single proceeding.” *Saval* at 1031. Rule 20 “should be construed... to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple lawsuits.” *Id.* However, “merely committing the same type of violation in the same way does not link defendants together for purposes of joinder.” *LaFace Records, LLC v. Does 1-38*, 2008 WL 544992 at *2 (E.D.N.C. Feb. 27, 2008).

Here, Defendant Yarbrough argues that Plaintiffs failed to show that either Defendants' actions or Defendants' instrumentality are related. [D.I. 36]. The Court agrees. Plaintiff argues that Defendants' are properly joined because Plaintiff's investigation leads it to believe that Defendants obtained at least some portion of their infringing materials from the same person. However, Plaintiff failed to divulge, in its Complaint or under seal, any information regarding the alleged common source. The alleged source is not named in Plaintiff's Complaint and the alleged source is not identified in any of the underlying investigative materials submitted by Plaintiff to the Court. Furthermore, Plaintiff made no allegation that the Defendants acted in concert in violating the trademarks at issue. Here, as in *Saval*, where the Court found that Plaintiffs improperly joined a group of Defendants who sold allegedly defective automobiles, "the defects were similar, but there the commonality ended." 710 F.2d at 1032. Sleptone alleged that Defendants engaged in similar acts but those similar yet separately occurring acts, purportedly committed by different Defendants at different times and places, are the entire extent of the commonality.² Thus, joinder of the Defendants in this action is improper.

Plaintiff urges this Court to adopt the position taken by the Eastern District of Texas in *MyMail, Ltd. v. America Online, Inc.*, 223 F.R.D. 455 (E.D. Tex. 2004). There, the *MyMail* Court focused its joinder inquiry on a determination of whether there is a "nucleus of operative

²Also, in *Laface Records, LLC v. Does 1-38*, 2008 WL 544992 (E.D.N.C. Feb. 27, 2008), before choosing to sever the action because defendants' merely used the same ISP and P2P networks to allegedly commit copyright infringement, the Court stated at *3 that "[i]n similar cases, other courts have commonly held that where there is no assertion that multiple defendants have acted in concert, joinder is improper." See *BMG Music v. Does 1-4*, No. 3:06-cv-01579-MHP, 2006 U.S. Dist. LEXIS 53237, at *5-6 (N.D.Cal. July 31, 2006) (*sua sponte* severing multiple defendants in action where only connection between them was allegation they used same ISP to conduct copyright infringement); *Interscope Records v. Does 1-25*, No. 6:04-cv-197-Orl-22DAB, 2004 U.S. Dist. LEXIS 27782, at *19 (M.D.Fla. Apr. 1, 2004) (magistrate judge recommended *sua sponte* severance of multiple defendants in action where only connection between them was allegation they used same ISP and P2P network to conduct copyright infringement).

facts or law” common to the defendants. *Id* at 456-457. In support of its request, Plaintiff argues that the Defendants’ actions are logically related because they are predicated, without exception, upon the existence of an unbroken chain of infringement originating from a common ultimate source. The Court disagrees with this logic. Obviously, the infringement of any trademark, copyright, or patent originates from a common ultimate source, that being the trademark, copyright, or patent itself. Here, Defendants may have committed the “same type of violation in the same way,” but, again, that “does not link defendants together for purposes of joinder.” *LaFace*, 2008 WL 54492 at *2. There is no allegation that the twenty-three Defendants sued here acted in concert. Although each Defendant allegedly infringed upon the same trademark, each Defendant allegedly did so separately, in time and place, from the other Defendants with no knowledge that the other Defendants were also engaged in any alleged infringement of their own. Thus, this Court declines to follow *Mymail*, in this instance, and finds that joinder is improper.

Of particular concern to the Court is the lack of any connection between the claims against the various Defendants. It appears that these cases are really separate lawsuits combined together for no apparent reason except to avoid paying filing fees. Since there appears to be no legitimate basis for joining the Defendants together in these cases, the Court finds that the claims against all but the first-named Defendant, Keith Garner, should be SEVERED from this action upon Plaintiff’s filing of new, separate actions against each of the remaining severed Defendants within (20) days and paying the requisite filing fees. In so finding, the Court notes that the potential prejudice to the individual defendants if their cases were to be tried together, given that the proof against each of them is separate and unique, is patently obvious.³

³The Court also notes that the failure to file these cases as separate lawsuits when they are in fact separate lawsuits causes the filing statistics in this district to be inaccurate. Such

III. CONCLUSION

For the reasons set out herein, the Motions to Dismiss are DENIED. Plaintiff's claims against all Defendants except Keith Garner, are SEVERED from this action. Plaintiff shall file new, separate actions against each of the remaining severed Defendants within thirty (30) days and pay the requisite filing fees. Any such actions should be filed in the venue where the Defendant resides. Failure to comply with the filing requirements of this Order will result in the dismissal, with prejudice, of those claims not pursued against particular Defendants. Plaintiff shall report back to the Court regarding the status of its compliance with the filing requirements set forth herein.

SO ORDERED

Signed: October 5, 2011



Graham C. Mullen
United States District Judge



statistical data is extremely important as it determines the resources that are necessarily allotted to this district. Thus, the misfiling of these cases could result in less resource being allocated to the district than it is entitled to which, of course, could have negative consequences.

EXHIBIT NO. 3

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**SLEP-TONE ENTERTAINMENT
CORPORATION,**

Plaintiff,

v.

Case No. 8:12-cv-157-T-30MAP

NEBRASKA 41 GROUP LLC, et al.,

Defendants.

_____ /

ORDER

THIS CAUSE comes before the Court upon the motions to dismiss filed by Defendants Nebraska 41 Group, LLC (Dkt. 10), Salad Werks, Inc. (Dkt. 34), Two Joe's, Inc. (Dkt. 35), JRMZ Enterprises, Inc. (Dkt. 38), and IL Mio Sogno LLC (Dkt. 42) and Plaintiff's responses to same. The Court, having reviewed the motions, Plaintiff's responses, and being otherwise advised of the premises, concludes that the motions should be granted because Plaintiff's second amended complaint is an improper shotgun pleading and Defendants are inappropriately joined in this action.

BACKGROUND

This is an action by Plaintiff for trademark infringement and federal unfair competition, and for state-law unfair competition and deceptive and unfair trade practices, in which Defendants are accused of knowingly benefitting from the use of pirated,

counterfeit karaoke accompaniment tracks belonging to Plaintiff. Defendants' alleged liability arises from their hiring of karaoke operators who make use of pirated, counterfeit karaoke accompaniment tracks to produce karaoke shows at Defendants' venues, and from continuing to hire and utilize the services of those karaoke operators, having previously been informed of the infringing nature of the operators' services. Plaintiff alleges that Defendants derived a significant financial benefit from the use of this pirated material in the establishments they control.

This case is at issue upon motions to dismiss filed by Defendants Nebraska 41 Group, LLC, Salad Werks, Inc., Two Joe's, Inc., JRMZ Enterprises, Inc., and IL Mio Sogno LLC. These Defendants argue, among other things, that the second amended complaint fails to state a claim and is an inappropriate shotgun pleading.

The Court concludes that Plaintiff's second amended complaint must be dismissed because it is an inappropriate shotgun pleading. The Court also concludes that these Defendants have been improperly joined.

DISCUSSION

A "shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (*i.e.*, all but the first) contain irrelevant factual allegations and legal conclusions." *Strategic Income Fund, L.L.C. v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. 2002); *see also Johnson Enters. of Jacksonville, Inc. v. FPL Group, Inc.*, 162 F.3d 1290, 1333 (11th Cir.

1998). Shotgun pleadings make it “virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.” *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cnty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996). As a result, shotgun pleadings are routinely condemned by the Eleventh Circuit. *See, e.g., Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991) (“Anyone schooled in the law who read these [shotgun pleading] complaints ... [] would know that many of the facts alleged could not possibly be material to all of the counts. Consequently, [the opposing party] and the district court [have] to sift through the facts presented and decide for themselves which [are] material to the particular cause of action asserted, a difficult and laborious task indeed.”).

Plaintiffs’ second amended complaint (Dkt. 4) consists of roughly 107 paragraphs and each claim for relief realleges “each and every allegation set forth in the foregoing paragraphs, as though fully set forth” therein. This is the epitome of a shotgun pleading. Accordingly, Plaintiff must replead its complaint to comply with the Eleventh Circuit’s case law on shotgun pleadings.

Importantly, Plaintiff’s second amended complaint also improperly joins Defendants Nebraska 41 Group, LLC, Salad Werks, Inc., Two Joe’s, Inc., JRMZ Enterprises, Inc., and IL Mio Sogno LLC in this case. As the Court previously informed Plaintiff (*see* case no. 8:11-cv-1528-JSM-EAJ at Dkt. 68), Plaintiff shall file a separate case (and pay a filing fee) as to each Defendant, other than the first Defendant that files a response to the complaint in the same case. Notably, this was a remedy for Plaintiff’s initial mistake of filing cases

against numerous unrelated defendants. **Thus, Plaintiff is placed on notice that if it continues to file cases against numerous unrelated defendants in this district, having been told previously by this Court that Plaintiff is improperly joining these defendants, Plaintiff may be subject to sanctions, including, but not limited to, automatic dismissal of its cases without further notice.**

It is therefore ORDERED AND ADJUDGED that:

1. The motions to dismiss filed by Defendants Nebraska 41 Group, LLC (Dkt. 10), Salad Werks, Inc. (Dkt. 34), Two Joe's, Inc. (Dkt. 35), JRMZ Enterprises, Inc. (Dkt. 38), and IL Mio Sogno LLC (Dkt. 42) are GRANTED for the reasons stated herein.

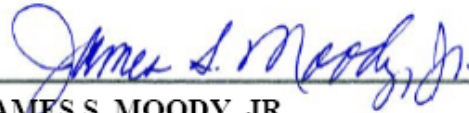
2. **Defendants Nebraska 41 Group, LLC, Salad Werks, Inc., Two Joe's, Inc., JRMZ Enterprises, Inc., and IL Mio Sogno LLC are hereby severed from this case and the Clerk shall terminate them as parties to this case.¹**

3. Plaintiff shall be free to file a new lawsuit against each of the remaining severed Defendants. Since the new complaints will be given new case numbers and randomly assigned to judges in accordance with the local rules, Plaintiff is directed to inform the clerk and newly assigned judges that a related case is pending before the undersigned and that the undersigned has indicated his assent to receive all related cases.

¹ Because Defendant Snappers Bar & Grill, Inc. ("Snappers") filed an answer to the second amended complaint (Dkt. 36), it shall remain a Defendant in this case, and the second amended complaint is not dismissed as it relates to Snappers. Also, any Defendant that received a Clerk's Default shall remain in this case.

4. The CLERK is directed to reassign this case to Magistrate Judge Elizabeth Jenkins.

DONE and **ORDERED** in Tampa, Florida on April 30, 2012.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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EXHIBIT NO. 4

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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 SLEP-TONE ENTERTAINMENT
11 CORPORATION,

12 Plaintiff,

13 v.

14 ELLIS ISLAND CASINO & BREWERY,
et al.,

15 Defendants.
16

Case No. 2:12-CV-00239-KJD-RJJ

ORDER

17 Before the Court is the Motion to Dismiss (#35) and Motion to Sever (#36) of Defendants
18 Gilley's Las Vegas and Treasure Island, LLC. No opposition has been filed. Defendants Dave Corral,
19 Mike Corral, Showtyme Karaoke & DJ, Ghost Rider's Inc. d/b/a Calico Jack's Saloon, and Mike
20 Gordon (the "Showtyme Defendants"), Defendant Johnny Valenti, and Defendant Gold Spike
21 Holdings, LLC have joined this motion (#60, #63 #64).¹

22 Also before the Court is the Motion to Dismiss (#38) and Motion to Sever (#39) of
23 Defendants NP Boulder, LLC and NP Palace, LLC. No opposition has been filed. The Showtyme
24 Defendants and Johnny Valenti have joined this motion (#61, #63).
25

26 ¹ The parties are reminded that District of Nevada Special Order 109 requires that "[a] separate document must be filed for each type of document or purpose."

1 District of Nevada Local Rule 7-2(d) states, in relevant part: “[t]he failure of an
2 opposing party to file points and authorities in response to any motion shall constitute a consent to
3 the granting of the motion.” D. Nev. L.R. 7-2(d).

4 Despite extensions granted to Plaintiff (#51, #58, #58) and despite the recent Order (#55)
5 granting another Defendants’ unopposed motion to dismiss in this case, Plaintiff has failed to timely
6 respond to the motions to dismiss and motions to sever.

7 Accordingly, **IT IS HEREBY ORDERED THAT** the Motion to Dismiss (#35) of
8 Defendants Gilley’s Las Vegas and Treasure Island, LLC is **GRANTED** and that the Motion to
9 Sever (#36) is **DENIED** as moot.

10 **IT IS FURTHER ORDERED THAT** the Motion to Dismiss (#38) of Defendants NP
11 Boulder, LLC and NP Palace, LLC is **GRANTED** and that the Motion to Sever (#39) is **DENIED** as
12 moot.

13 **IT IS FURTHER ORDERED THAT** Defendants Dave Corral, Mike Corral, Showtyme
14 Karaoke & DJ, Ghost Rider’s Inc. d/b/a Calico Jack’s Saloon, Mike Gordon, Johnny Valenti, and
15 Gold Spike Holdings, LLC are **DISMISSED**.

16 DATED this 21st day of May 2012.

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19 

20 Kent J. Dawson
21 United States District Judge
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26

EXHIBIT NO. 5

1 DONNA BORIS, ESQ. (SBN 153033)
BORIS & ASSOCIATES
2 9107 Wilshire Blvd., Suite 450
Beverly Hills, California 90210
3 Telephone (310) 492-5962

4 Attorney for Plaintiff
SLEP-TONE ENTERTAINMENT CORPORATION
5
6
7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10

11 SLEP-TONE ENTERTAINMENT
CORPORATION,

12 Plaintiff,

13
14 v.

15 BACKSTAGE BAR AND GRILL, et al.,

16 Defendants.
17

CASE NO.: CV11-08305-ODW (PLAx)

**SLEP-TONE ENTERTAINMENT
CORPORATION'S RESPONSE TO
DEFENDANT CHRISTEL SANTO'S
SPECIAL INTERROGATORIES,
SET ONE**

18
19
20 PROPOUNDING PARTY: Defendant CHRISTEL SANTO

21 RESPONDING PARTY: Plaintiff SLEP-TONE ENTERTAINMENT CORPORATION

22 SET NUMBER: ONE
23
24

25 Plaintiff SLEP-TONE ENTERTAINMENT CORPORATION ("SLEP-TONE") hereby
26 submits the following Response to Defendant CHRISTEL SANTO's First Set of Special
27 Interrogatories as follows:

28 ///

GENERAL RESPONSE

SLEP-TONE has not yet completed its investigation of the matters referred to in the complaint. All responses contained herein are based only upon such information and documents as are at present available to and specifically known to SLEP-TONE. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts, add meaning to known facts and establish entirely new factual conclusions and legal contentions, all of which may lead to substantial additions, changes and variations of the contents herein set forth.

The following responses are given without prejudice to SLEP-TONE'S right to produce evidence of any subsequently discovered fact(s) and/or facts which SLEP-TONE's officers, employees and/or agents may later recall. SLEP-TONE, accordingly, expressly reserves the right to change any and all answers contained herein as additional facts are ascertained, analyses are made, legal research is completed and contentions are made. The answers contained herein are made in a good faith effort to supply as much factual information and as many specific legal contentions as are known and as are reasonably available to SLEP-TONE, including as many specific legal contentions as are known at present, but should in no way be to the prejudice of SLEP-TONE in relation to further discovery, research and/or analysis.

SPECIAL INTERROGATORY NO. 1:

Please identify all the various products and/or services that you have authorized use of your Mark(s) in connection with and, for each such product or service, provide the date in which the Mark(s) were first used, the period(s) of time the Mark(s) were used, whether the Mark(s) have been continuously used during these periods. Please also state all facts that support such continued use and identify all persons who could testify to such continued use.

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

SLEP-TONE objects to this interrogatory to the extent that it is overbroad, unduly burdensome and expensive, not calculated to lead to the discovery of admissible evidence,

1 and seeks the production of documents or other information protected from disclosure
2 under the attorney-client privilege and/or the attorney work product doctrine, and is
3 compound and contains impermissible subparts.

4 **SPECIAL INTERROGATORY NO. 2:**

5 Identify each person you have authorized to manufacture, distribute and sell the
6 products that include your Mark(s) and for each of them describe their service role, set
7 forth the time period(s) of such authorization, what measures you communicated to each
8 of them to maintain your product quality. Please also identify all witnesses with knowledge
9 of such communication and all documents concerning such communication.

10 **RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

11 SLEP-TONE objects to this interrogatory to the extent that it is overbroad, unduly
12 burdensome and expensive, not calculated to lead to the discovery of admissible evidence,
13 and seeks the production of documents or other information protected from disclosure
14 under the attorney-client privilege and/or the attorney work product doctrine, and is
15 compound and contains impermissible subparts.

16 **SPECIAL INTERROGATORY NO. 3:**

17 Identify each of your "affiliated companies" including those referenced in Paragraph
18 No. 81 of the Complaint and, for each, set forth the relationship to you, what time period
19 they were affiliated, what rights, if any, they acquired in the Mark(s), the time periods during
20 which those rights were held. Please identify all witnesses with knowledge of such rights
21 and documents concerning the acquisition or transfer of those rights.

22 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

23 SLEP-TONE objects to this interrogatory to the extent that it seeks the production
24 of documents or other information protected from disclosure under the attorney-client
25 privilege and/or the attorney work product doctrine, and is compound and contains
26 impermissible subparts.

27 ///

28 ///

1 **SPECIAL INTERROGATORY NO. 4:**

2 Please state whether you are or ever have been a competitor of Defendant. If the
3 answer is "Yes," please describe the market(s) you are both in or have ever been in, when
4 you entered the market(s), when you left the market(s), particularly where and when you
5 have performed in the market(s), the identity of the individuals who have performed for you,
6 the identity of individuals at the performance venues who should be able to confirm those
7 performances, and identify all documents concerning your advertisements and promotional
8 material supporting such market participation.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

10 SLEP-TONE objects to this interrogatory to the extent that it is overbroad, unduly
11 burdensome and expensive, not calculated to lead to the discovery of admissible evidence,
12 and seeks the production of documents or other information protected from disclosure
13 under the attorney-client privilege and/or the attorney work product doctrine, and is
14 compound and contains impermissible subparts.

15 **SPECIAL INTERROGATORY NO. 5:**

16 In Paragraph No. 107 of the Complaint, you allege the following: "Each of the
17 Defendants used, or authorized or directly benefited from the use of, a reproduction,
18 counterfeit, or copy of the Sound Choice Marks in connection with the provision of services
19 including karaoke services, by manufacturing or acquiring the reproduction, counterfeit, or
20 copy of the Sound Choice Marks and by displaying the reproduction, counterfeit, or copy
21 of the Sound Choice Marks during the provision of those services." Regarding Defendant
22 Santo, please set forth in detail precisely which of these allegations you have factual
23 support for, and separately for each, state all facts in support including a description of
24 Defendant's conduct, identification of the products containing or showing the Mark(s) that
25 were infringed (including the identification of all supporting licenses you obtained regarding
26 the content therein), the dates of all infringements, the location of all infringements, the
27 circumstances under which they occurred, and specifically how and by what means you
28 determined that the conduct was willful and not authorized. Also, please identify those

1 persons including investigators and witnesses having knowledge of such facts and to which
2 facts they do so and identify all documents that refer, relate, support, or evidence any such
3 fact.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

5 SLEP-TONE objects to this interrogatory to the extent that it is overbroad, unduly
6 burdensome and expensive, not calculated to lead to the discovery of admissible evidence,
7 and seeks the production of documents or other information protected from disclosure
8 under the attorney-client privilege and/or the attorney work product doctrine, and is
9 compound and contains impermissible subparts. The investigation of Defendant Santo
10 was conducted under the direction of SLEP-TONE's attorneys as part of the pre-suit
11 investigation, for the purpose of gathering information necessary to the preparation of the
12 suit.

13 The information sought would additionally enable Defendant Santo to obtain lawful
14 original Sound choice media in order to appear to have been in possession thereof at the
15 time of investigation. SLEP-TONE will consider waiving its claim of attorney work product
16 privilege if a protective order is entered, permitting the information to be designated to be
17 withheld from Defendants at least prior to receiving from Defendant Santo a binding
18 declaration of her holding of Sound Choice original media.

19 **SPECIAL INTERROGATORY NO. 6:**

20 In connection with this lawsuit, do you contend that a single media shift by an owner
21 of a genuine disc to a computer hard drive of the disc owner is an infringement? If so,
22 please set forth the facts and law in detail to support your contention and set forth how you
23 could be and have been actually damaged by such an act even if the owner maintains
24 possession of the disc and the media-shifted version is never played at the same time as
25 the genuine disc and why such use would not be fair.

26 **RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

27 SLEP-TONE objects to this interrogatory to the extent that it is overbroad, unduly
28 burdensome and expensive, not calculated to lead to the discovery of admissible evidence,

1 and seeks the production of documents or other information protected from disclosure
2 under the attorney-client privilege and/or the attorney work product doctrine, and is
3 compound and contains impermissible subparts.

4 **SPECIAL INTERROGATORY NO. 7:**

5 Please list each lawsuit where you alleged infringement of the Mark(s), and for each set
6 forth the court in which the complaint was initially filed, whether and where it is currently
7 pending, the date the complaint was initially filed, and the number of defendants initially
8 named.

9 **RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

10 SLEP-TONE objects to this interrogatory to the extent that it is overbroad, unduly
11 burdensome and expensive, not calculated to lead to the discovery of admissible evidence,
12 and seeks the production of documents or other information protected from disclosure
13 under the attorney-client privilege and/or the attorney work product doctrine, and is
14 compound and contains impermissible subparts.

15
16 DATED: January 23, 2012

BORIS & ASSOCIATES

17
18
19 By 
DONNA M. BORIS

20 Attorneys for Plaintiff
21 SLEP-TONE ENTERTAINMENT CORPORATION
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1 **CERTIFICATE OF SERVICE**

2 I, DONNA BORIS, declare and certify as follows:

3 I am a member of the Bar of the U.S. District Court, Central District of California.
4 My business address is 9107 Wilshire Blvd., Suite 450, Beverly Hills, California 90210.

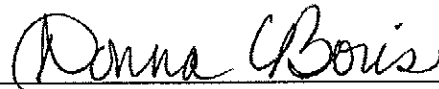
5 On January 23, 2012, I served the foregoing **SLEP-TONE ENTERTAINMENT**
6 **CORPORATION'S RESPONSE TO DEFENDANT CHRISTEL SANTO'S SPECIAL**
7 **INTERROGATORIES, SET ONE** on the interested parties in this action by depositing a
8 sealed envelope, postage prepaid, containing the document(s) with the US Postal Service
9 to the addressee(s) as indicated below:

10
11 Craig McLaughlin, Esq.
12 Law Office of Craig McLaughlin
13 650 Town Center Drive, Suite 1300
Costa Mesa, CA 92626

Attorney for Defendant
Christel Santo

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16 Executed this 23rd day of January 2012 at Beverly Hills, California.

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20 DONNA BORIS
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EXHIBIT NO. 6

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

In Re
SLEP-TONE ENTERTAINMENT
CORPORATION, CONSOLIDATED CASES Case No: 5:11cv32/RS/CJK

ORDER

Before me is a Second Motion for Sanctions (Doc. 177) filed by defendants Donovan's Reef Lounge & Package Store, Inc. and Green Glass Mall, Inc. (Donovan's Reef). Plaintiff has responded to the motion (Doc. 179). The motion is due to be granted.

I have previously entered an order requiring payment by plaintiff to Donovan's Reef, and its attorney, a fee in the amount of \$2,026.50 as a sanction for plaintiff's representative's failure to provide deposition answers at the express direction of plaintiff's counsel. Upon issuance of the attorney's fee order, plaintiff filed objections and took an appeal to the District Court, which is well within its rights. At the same time, however, rather than making payment to Donovan's Reef or seeking an appropriate stay, plaintiff attempted to deposit its check in the amount of the fee order with the clerk of this court. The clerk promptly returned the check to Mr. Harrington (Doc. 165). Upon filing of Donovan's Reef's First Motion for Sanctions (Doc. 168), it appears that plaintiff then mailed a check to Mr. Dever, but imposed a condition, "to be held in trust" upon that check (Doc. 177-1). It is apparent that Mr. Harrington, acting on behalf of the plaintiff, decided that he did not need to undergo the formalities of a court order or a stay, and could simply delay payment by placing a condition on this check.

Then, in its response to the Plaintiff's Second Motion for Sanctions, plaintiff's counsel took the position that the typed notation "to be held in trust," was just a "suggestion." (Doc. 179, p. 2). Moreover, plaintiff's attorney used the occasion of its response to engage in a screed against Donovan's Reef's lawyer, accusing that lawyer of being "discourteous, unprofessional, and outside the usual rules of decorum to which most courts expect reasonable adherence." (Doc. 179, p. 2). The screed did not stop there, however. Plaintiff's attorney went on to explain that the court was mistaken to conclude that the "extraordinary rancor" in this case had anything to do with the behavior of plaintiff's counsel. Instead, plaintiff's counsel explained that he had consistently treated Mr. Dever with courtesy, but Mr. Dever had responded only with a "sour, aggressive, accusatory tone." (Doc. 179, p. 2). Finally, counsel for plaintiff offers his appraisal that his opponent's attitude "can only be fairly described as one of seething anger and barely concealed contempt." (Doc. 179, p. 3). These matters laid out in paragraph 5 of plaintiff's response (Doc. 179), do not appear to this court to be fairly responsive to the motion, but, instead, demonstrate an attempt by plaintiff's attorney to demean his opponent in a way that could not possibly be calculated to advance this case to a fair resolution.

I note further that, upon the filing of Donovan's Reef's Second Motion for Sanctions, I entered an order (Doc. 178), which allowed plaintiff a safe harbor from the motion. I provided that plaintiff could either respond to the motion or "file a sufficient motion for stay of the sanction order on or before June 15, 2012." (Doc. 178). Plaintiff's counsel, rather than taking my suggestion, continued with his line of argument that he had fully complied with my order, despite the clear conditional language on the face of the check and opined, "no stay of the order is necessary." (Doc. 179, p. 4).

I find that the actions taken by plaintiff's counsel, following the issuance of the fee order, are unreasonable, and contemptuous of the court's authority. Far from apologizing or attempting to justify these actions, plaintiff's counsel has taken one last opportunity to insult his opponent. I wish to make it clear that I am not passing any judgment on whether these insults have any basis in fact. That question is simply not before the court. The problem with plaintiff's counsel's behavior, which is now becoming more and more consistent, is that he seems to be directing his efforts more at opposing counsel in a personal manner, than upon advancing this case to fair resolution. For these reasons, the Second Motion for Sanctions will be granted, and plaintiff's attorney will be required to pay to the defendant reasonable attorney's fees associated with filing of the two motions for sanctions.

It is therefore ORDERED:

1. The Second Motion for Sanctions (Doc. 177) is GRANTED and plaintiff Slep-Tone Entertainment Corp. shall, within forty-eight hours of entry of this order, provide unconditional payment of the amount I have previously awarded to counsel for defendants, Donovan's Reef Lounge & Package Store, Inc. and Green Glass Mall, Inc. This payment will include interest that has accrued since my order of May 2, 2012.

2. Defendants' First Motion for Sanctions (Doc. 168), is now moot and will be terminated by the clerk.

3. Donovan's Reef's request for fees and expenses is GRANTED. The parties are directed to immediately confer concerning resolution of the issue of fees and expenses without further judicial intervention. In the event such is not successful, however, upon the filing within twenty days of an affidavit of reasonable time and expenses devoted by defendants' attorney to enforcing my order, and allowing

plaintiff ten days to respond, I will enter an order granting or denying non-dispositive attorney's fees in favor of Donovan's Reef and against counsel for plaintiff as a further sanction in this matter

DONE AND ORDERED at Pensacola, Florida this 22nd day of June, 2012.

/s/ Charles J. Kahn, Jr.

CHARLES J. KAHN, JR.
UNITED STATES MAGISTRATE JUDGE

EXHIBIT NO. 7

COURT	U.S. District Court for the Central District of California
CASE NUMBER	CV11-08305 ODW(PLAX)
CAPTION	Slep-Tone Entertainment Corporation v. Backstage Bar & Grill, et al.

SLEP-TONE ENTERTAINMENT CORPORATION (DBA) SOUND CHOICE SETTLEMENT AGREEMENT

This Settlement Agreement ("AGREEMENT") is made for the purpose of resolving that part of the litigation identified above encompassing the dispute between Slep-Tone Entertainment Corporation, (DBA) Sound Choice as Plaintiff ("SLEP-TONE") and Taka-O and Kelly Sugano (hereinafter collectively referred to as "Defendants"). SLEP-TONE and Defendants are collectively referred herein as the "Parties".

SUMMARY OF AGREEMENT SLEP-TONE has sued Defendants in the above-referenced pending litigation, alleging of infringement of certain of SLEP-TONE's federally registered trademarks through the use of unauthorized copies of karaoke music produced by SLEP-TONE. The Parties have agreed to settle their dispute without intervention by the Court. The Parties, intending to be legally bound, and in consideration of their mutual promises and covenants, the sufficiency of which is acknowledged, agree as follows;

1. CASH PAYMENT; TERMS. Within three (3) business days of the execution of this Agreement by all parties, and transmission by email of the executed Agreement to counsel for Defendants, Defendants shall pay and promise to pay to SLEP-TONE a total settlement amount of Five Thousand U.S. Dollars **(\$5,000.00)** by cashier's check made payable to "Donna Boris Attorney-Client Trust," to be delivered to the offices of Donna Boris located at 9107 Wilshire Blvd., Suite 450, Beverly Hills, CA 90120.

2. ACKNOWLEDGMENT OF KARAOKE TRACKS COVERED. Defendants acknowledges that this Agreement relates to and governs all SLEP-TONE-produced karaoke songs in his/her/its possession, custody, or control, for which Defendants are not in possession of a lawfully procured original SLEP-TONE-produced CD+G disc, if any.

3. DESTRUCTION OF KARAOKE TRACKS. Defendants have represented to SLEP-TONE that Defendants currently own 56 original Sound Choice® karaoke discs, which Defendants agree to provide for inspection by a designated representative of SLEP-TONE. SLEP-TONE or its designated representative may conduct the inspection at a mutually agreed upon time within thirty (30) days after this Agreement is fully executed by all parties. Defendants agree to provide a list of all 56 original Sound Choice® karaoke discs to SLEP-TONE concurrently with the execution of this Agreement. Defendants hereby represent to SLEP-TONE, under penalty of perjury, that Defendants do not have any copies of SLEP-TONE-produced karaoke tracks within their possession, custody, or control, irrespective of form or format, and regardless of how acquired (whether by purchase, gratuitous copying, theft, or otherwise) which infringe upon SLEP-TONE's trademarks. Notwithstanding the preceding sentence, Defendants may maintain (a) any karaoke track stored on the SLEP-TONE's original Compact Disc plus Graphics medium; (b) any media-shifted karaoke track for which Defendants own and lawfully possess SLEP-TONE'S original medium, on a 1:1 correspondence basis; or (c) any karaoke track which is wholly within the public domain, as recognized by a competent court of law or by express declaration by the manufacturer or rights holder therein. For Sound Choice® karaoke discs which are maintained on a hard drive on a 1:1 correspondence basis, at any given time Defendants may play *either* the original Sound Choice® karaoke discs *or* the tracks stored on the computer, but both may not be played simultaneously. Thus, if Defendants have one set of Sound Choice® karaoke discs then only one karaoke show may be conducted at any given time. Defendants also agree in perpetuity not to use or acquire (or to aid any other person or entity in using or acquiring), by any means or method, for commercial or infringing private use, any karaoke track which infringes the trademark or copyright rights of SLEP-TONE.

4. FURTHER ACKNOWLEDGEMENTS; NO INDEMNITY. SLEP-TONE REPRESENTS:

- (a) That SLEP-TONE's trademarks are valid and subsisting and that SLEP-TONE has the power and authority to enter into this Agreement;
- (b) That the terms of this AGREEMENT extend only to the dispute between SLEP-TONE and Defendants, and that SLEP-TONE is without any authority to settle or resolve any claim on behalf of any third party.

SLEP-TONE does not, by this contract or otherwise, indemnify Defendants against any action or claims by any third party unrelated to SLEP-TONE.

5. DISMISSAL OF LITIGATION AGAINST DEFENDANTS. Within five (5) business days following receipt by SLEP-TONE of payment of the payment identified in paragraph 1 above SLEP-TONE shall cause all of its claims in the litigation against Defendants to be dismissed with prejudice. Defendants shall cooperate as necessary or helpful to effectuate such dismissal, as reasonably requested by SLEP-TONE's counsel.

6. RELEASE AND COVENANT NOT TO SUE. For the promises herein contained and other good and valuable consideration, receipt whereof is hereby acknowledged, and subject to Defendants performance of all of the obligations as set forth in paragraphs 3 & 7 hereof SLEP-TONE does hereby release and forever discharge Defendants, each of their employees, (collectively the "Releasees"), of and from any and all losses, damages, injuries, claims, debts, liabilities, demands, obligations, costs, expenses, actions and causes of action (collectively "Claims"), of every nature, character and description, suspected or unsuspected, known or unknown, matured or unmatured, which SLEP-TONE now owns or holds, or has at any time heretofore owned or held, or may at any time hereinafter own or hold, by reason of any matter, cause or thing whatsoever occurred, done, omitted or suffered to be done prior to the execution of this Agreement, including without limitation the claims set forth in the litigation.

Subject to Defendants' performance of all of the obligations as set forth in paragraphs 3 & 7 hereof, SLEP-TONE, for itself and its predecessors and successors-in-interest of whatever kind or description, covenants and agrees not to maintain any action at law or in equity for or sue Releasees, at law or in equity in the future for any claim released hereby including any acts of copyright or trademark infringement or unfair competition alleged in the litigation.

Notwithstanding California Civil Code § 1542, which states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor,"

it is the intention of the Parties that the foregoing releases shall be effective as a bar to all claims, demands, controversies, actions, causes of action, obligations, liabilities, costs, expenses, of any nature and kind, known and unknown, suspected or unsuspected, hereinabove specified as between the Parties to be so barred. Having been so apprised and advised, each of the Parties as against the other Parties hereby expressly waives any claims, rights, or other benefits arising under, flowing from or otherwise based upon Section 1542 of the Civil Code of the State of California.

7. CONFIDENTIALITY; NON-DISPARAGEMENT. The Parties hereto agree that the terms of this AGREEMENT are confidential and may not be disclosed to any third party for any reason, except that a party may disclose the terms of this AGREEMENT (a) to its attorneys, accountants, insurers and other professionals, for the purposes of obtaining advice or services therefrom; (b) in order to enforce the terms of this AGREEMENT; or (c) in response to an obligation under law or legal process, provided that the disclosing party gives reasonable notice to the other party of the obligation of disclosure and an opportunity to oppose disclosure. The fact of this AGREEMENT shall not be considered confidential; provided, however, neither party shall disparage the other when referring to the

fact of this AGREEMENT. In response to an inquiry concerning the terms of this AGREEMENT, the Parties agree to limit their response to a statement substantially in the form: "SLEP-TONE and Defendants have agreed to settle the dispute on terms they have agreed not to discuss."

8. ASSIGNMENT AND SUCCESSION. This AGREEMENT shall be binding upon and inure to the benefit of the Parties, their successors, assigns and executors, administrators, personal representatives and heirs, provided, however, that the Defendants may not without the written consent of SLEP-TONE, assign their interests under this AGREEMENT except as part of a transfer of the entire business, or portion thereof, to which this AGREEMENT relates.

9. ENTIRE AGREEMENT; NO MODIFICATION; NOTICE. This AGREEMENT constitutes the entire agreement between the Parties on the subject matter to which it relates, and this AGREEMENT may not be modified. Any part of this AGREEMENT which is found by a court of competent jurisdiction to be unenforceable shall be severed here from and the remaining terms enforced. Any notice which is required to be given under this AGREEMENT may be given to the other party at its address identified herein or such other address as the other party may designate from time to time.

10. RIGHT OF REVIEW; NO RELIANCE ON EXTRINSIC STATEMENTS. Defendants acknowledge that they have read this entire AGREEMENT and that they have been afforded the opportunity to discuss the terms and conditions herein with an attorney of their choice. Defendants further swear and represent that in executing this AGREEMENT Defendants are not relying upon any statement, promise or representation of fact by SLEP-TONE other than what is contained in this AGREEMENT, and that Defendants have the legal capacity to enter into this AGREEMENT.

11. COUNTERPARTS; FACSIMILE. This document may be executed in separate counterparts by the signatories, and the collected document and counterpart signature pages shall be treated as a single document. A facsimile of this AGREEMENT or any part thereof shall be valid as an original.

12. FAIR, ADEQUATE & REASONABLE SETTLEMENT. The Parties believe this Settlement is a fair, adequate and reasonable settlement of the litigation and have arrived at this Settlement via arms-length negotiations, taking in account all relevant factors, present and potential. This Settlement was reached after extensive negotiations.

13. COOPERATION AND DRAFTING. Each of the parties has cooperated in the drafting and preparation of this Agreement. Hence, in any construction made to this Agreement, the same shall not be construed against any of the parties.

14. INVALIDITY OF ANY PROVISION. Before declaring any provision of this Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents so as to define all provisions of this Agreement valid and enforceable. In the event any covenant or other provisions herein is held to invalid, void, or illegal, the same shall be deemed severed from the remainder of this Agreement and shall in no way affect, impair, or invalidate any other covenant, condition, or other provision herein.

15. AMENDMENT OR MODIFICATION. This Agreement may be amended or modified only by a written instrument signed by the Parties, by counsel for all Parties.

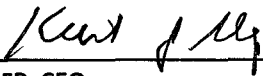
16. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement among these Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement.

17. AUTHORIZATION TO ENTER INTO SETTLEMENT AGREEMENT. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the

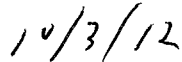
Settlement. Each person signing this Agreement represents and warrants that they are authorized to sign this Agreement on behalf of the Party they sign for.

18. DISPUTES. All claims or disputes concerning this Agreement, or any breach thereof, shall be heard in Los Angeles California.

**SLEP-TONE ENTERTAINMENT CORPORATION
(DBA) SOUND CHOICE**



KURT J. SLEP, CEO



Date

Defendants:
TAKA-O

BY: _____
Its: _____

Date

KELLY SUGANO

Date

Settlement. Each person signing this Agreement represents and warrants that they are authorized to sign this Agreement on behalf of the Party they sign for.

18. DISPUTES. All claims or disputes concerning this Agreement, or any breach thereof, shall be heard in Los Angeles California.

**SLEP-TONE ENTERTAINMENT CORPORATION
(DBA) SOUND CHOICE**

Kurt J. Slep
KURT J. SLEP, CEO

10/3/12
Date

Defendants:

TAKA-O

Kelly C Sugano
BY: Kelly C Sugano
Its: owner

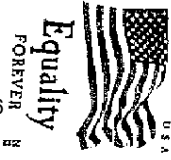
10/04/2012
Date

Kelly C Sugano
KELLY SUGANO

10/04/2012
Date

TAKA-O Japanese Restaurant
425 N. El Camino Real
San Clemente, CA 92672

*Donna Boris
Boris & Associates
9107 Wilshire Blvd # 450
Beverly Hills, CA 90210*



Decl. C. McLaughlin, Ex. 7, pg. 6 of 6

⑈115 1811812000121⑈ ⑈650012800⑈

53 of 61

VOID IF OVER US \$ 5,000.00
Richard Perry
CONTROLLER

\$5,000.00

October 02, 2012

0082100539

CASHIER'S CHECK

PAY TO THE ORDER OF ***DONNA BORIS ATTORNEY-CLIENT TRUST***
RE: KELLY SUGANO TAKA-O

Five thousand dollars and no cents

Case # CV11-08305 - ODW (PIA*)
In full satisfaction

WELLS FARGO BANK, N.A.
601 N EL CAMINO REAL
SAN CLEMENTE, CA 92672
FOR INQUIRIES CALL (480) 394-3122

0000821 11-24 1210(8)
Office AU #

Operator ID.: cu017764

EXHIBIT NO. 8

[Print](#) | [Close Window](#)

Subject: [FWD: Re: Receive Taka-O Check?]
From: "Craig McLaughlin" <cmc@smartpropertylaw.com>
Date: Fri, Oct 19, 2012 3:21 pm
To: "Donna Boris" <donna@borislaw.com>

Ms. Boris,

Today at 10:00 a.m., I telephoned you at your office and no one picked up, so I left you a voice mail informing you of my intent to meet and confer. Please recognize that the settlement agreement will be an exhibit to the motion.

Craig McLaughlin
Intellectual Property Lawyer
Law Office of Craig McLaughlin
650 Town Center Drive, Suite 1300
Costa Mesa, CA 92626
Tel. (714)545-8500
Fax (888)545-7131
cmc@smartpropertylaw.com
www.smartpropertylaw.com
<http://blog.smartpropertylaw.com>

Smart Property Law ®

----- Original Message -----

Subject: [FWD: Re: Receive Taka-O Check?]
From: "Craig McLaughlin" <cmc@smartpropertylaw.com>
Date: Wed, October 17, 2012 9:56 am
To: "Donna Boris" <donna@borislaw.com>

Ms. Boris,

On Oct. 5th, I e-mailed you the fully executed signature page of the settlement agreement and the disc list. The settlement check was mailed to you the previous day - Thursday, Oct. 4th, which I am sure you received by no later than Tuesday, Oct. 8th.

According to paragraph 5 of the settlement agreement, you were to have arranged for dismissal of the case within 5 business days after receipt of payment. Today is Wednesday, Oct. 17th and you have not done so. Accordingly, it appears that the settlement agreement has been breached.

On Oct. 8th, I had e-mailed you the proposed simple stipulation and asked for you to sign and return so that I could tend to its filing. I have made dismissal as easy as possible for you, even though the settlement agreement calls for you to arrange for dismissal. Cooperation, however, seems only to be a one way street.

Please note that this delay will not play well for you should I file a motion and request fees. You are urged to forward the signed stip. as soon as possible. Otherwise please be available for a meet and confer re: motion to enforce settlement agreement on Friday, Oct. 19 at 10 am. Let me know your course.

Craig McLaughlin

Intellectual Property Lawyer
Law Office of Craig McLaughlin
650 Town Center Drive, Suite 1300
Costa Mesa, CA 92626
Tel. (714)545-8500
Fax (888)545-7131
cmc@smartpropertylaw.com
www.smartpropertylaw.com
<http://blog.smartpropertylaw.com>

Smart Property Law ®

----- Original Message -----

Subject: Re: Receive Taka-O Check?
From: Craig McLaughlin <cmc@smartpropertylaw.com>
Date: Mon, October 15, 2012 12:30 pm
To: Donna Boris <donnaboris@gmail.com>
Cc: "cmc@smartpropertylaw.com" <cmc@smartpropertylaw.com>

When will I see the signed stip?

Craig McLaughlin
www.smartpropertylaw.com

Sent from my iPhone

On Oct 15, 2012, at 11:29 AM, Donna Boris <donnaboris@gmail.com> wrote:

yes

On Wed, Oct 10, 2012 at 3:49 PM, Craig McLaughlin
<cmc@smartpropertylaw.com> wrote:

Donna,

Did you receive the check from Taka-O?

Craig McLaughlin
Intellectual Property Lawyer
Law Office of Craig McLaughlin
650 Town Center Drive, Suite 1300
Costa Mesa, CA 92626
Tel. [\(714\)545-8500](tel:(714)545-8500)
Fax [\(888\)545-7131](tel:(888)545-7131)
cmc@smartpropertylaw.com
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EXHIBIT NO. 9

**LAW OFFICE OF
CRAIG MCLAUGHLIN
650 TOWN CENTER DRIVE, SUITE 1300
COSTA MESA, CALIFORNIA 92626**

CRAIG MCLAUGHLIN, ESQ.
cmc@smartpropertylaw.com
www.smartpropertylaw.com

SMART PROPERTY LAW®

714.545.8500 TEL
888.545.7131 FAX

FEE BILLING FOR KELLY C. SUGANO AND TAKA-O

RE: *SLEP-TONE ENT. CORP. v. BACKSTAGE BAR AND GRILL, ET AL*
Case No. CV 11-08305-ODW(PLAx)

<u>DATE</u>	<u>TASK</u>	<u>CHARGE</u>
July 5, 2012	Introductory meeting with clients and Ms. Gray to discuss facts of case and substitution.	2.0 hr.
July 7, 2012	Draft interrogatories and document requests for Taka-O and Kelly Sugano.	1.5 hr.
Aug. 13, 2012	Meet with client and Ms. Gray to examine client's karaoke system and material, receive client file.	1.0 hr.
Aug. 21, 2012	Draft and file substitution of attorney agreements – 0.4 hr.	NC
Aug. 23, 2012	Draft settlement letter to Ms. Boris.	0.7 hr.
Aug. 25 - 31, 2012	Telephone and e-mail correspondence with Ms. Boris and client regarding settlement.	0.5 hr.
Sept. 10, 2012	E-mail to client regarding counter-offer.	0.2 hr.
Sept. 11, 2012	E-mail to Ms. Boris requesting that she drop the case, e-mails to client.	0.3 hr.
Sept. 12, 2012	Telephone discussion of settlement with Ms. Boris.	0.2 hr.
Sept. 12, 2012	E-mail to Ms. Boris and to client.	0.2 hr.
Sept. 28, 2012	Phone message left with potential mediator (Mr. Ashworth), e-mail to Ms. Boris regarding settlement conference, e-mail to client.	0.5 hr.
	Sub-total	7.1 hrs. at \$350/hr. <u>\$2,485.00</u>
	Balance Due	\$2,485.00

<u>DATE</u>	<u>TASK</u>	<u>CHARGE</u>
Oct. 1, 2012	Review settlement proposal from Ms. Boris and e-mail client suggested changes. Discuss with client.	0.5 hr.
Oct. 2, 2012	Draft e-mail to Ms. Boris requesting changes to proposed agreement. Review changes made and discuss with client.	0.5 hr.
Oct. 3, 2012	Review Ms. Boris' proposed edits. Consult with client and propose 30 day inspection period.	0.5 hr.
Oct. 4, 2012	Review Ms. Boris final edit and obtain signatures and review check handling procedure with client.	0.4 hr.
Oct. 5, 2012	Draft e-mail to Ms. Boris including client's signed agreement and disc list.	NC
Oct. 8, 2012	Draft stipulation and proposed order dismissing case, and draft e-mail to Ms. Boris attaching same to expedite dismissal.	0.5 hr.
Oct. 10, 2012	Draft e-mail to client forwarding Oct. 8 e-mail to Ms. Boris.	NC
Oct. 10, 2012	Draft e-mail to Ms. Boris reminding her of dismissal pursuant to agreement.	0.2
Oct. 15, 2012	Draft e-mail to Ms. Boris reminding her of dismissal pursuant to agreement.	0.2
Oct. 17, 2012	Draft e-mail to Ms. Boris reminding her of dismissal pursuant to agreement.	NC
Oct. 19, 2012	Draft e-mail to Ms. Boris reminding her of dismissal pursuant to agreement.	0.2
Oct. 23, 2012	Left voice mail with Ms. Boris requesting dismissal and follow with confirming e-mail.	0.2
Oct. 23, 2012	Update client on status of dismissal.	0.2
Oct. 24, 2012	E-mail client about status of dismissal.	NC
Nov. 7, 2012	Draft and file notice of settlement. Discuss with court clerk.	0.3
Nov. 9, 2012	Forward court's <i>sua sponte</i> dismissal to client.	NC
	Sub-total	3.7 hrs. at \$350/hr. = <u>\$1,295</u>
	Balance Due	\$1,295
	Total Billing to Date	\$3,780

LAW OFFICE OF CRAIG MCLAUGHLIN
650 TOWN CENTER DRIVE, SUITE 1300
COSTA MESA, CALIFORNIA 92626
714.545.8500 TEL
888.545.7131 FAX

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Pg. 2 of 2

PROOF OF SERVICE

I, the undersigned, declare and certify as follows:

I am a member of the Bar of the U.S. District Court, Central District of California. My business address is Law Office of Craig McLaughlin, 650 Town Center Drive, Suite 1300, Costa Mesa, California 92626 and I make the following declaration on personal knowledge.

On November 25, 2012, I served the **DECLARATION OF CRAIG MCLAUGHLIN, ESQ. IN SUPPORT OF MOTION BY DEFENDANTS KELLY C. SUGANO AND TAKA-O FOR ATTORNEYS' FEES AND SANCTIONS and EXHIBIT NOS. 1-9 THERETO** on the following interested parties in *Slep-tone Entertainment Corp., v. Backstage Bar & Grill, et al.*, Case No.: CV11-08305 ODW (PLAx):

☒ By transmitting a true copy thereof to those addressees listed on the Service List below by electronic mail pursuant to permission of the addressee(s) or, if no permission has been granted, then by prepaid first class U.S. Mail.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 25, 2012, at Los Angeles County, California.

/s/Craig McLaughlin
Craig McLaughlin

Service List

Donna M Boris Boris & Associates 9107 Wilshire Boulevard, Suite 450 Beverly Hills, CA 90210 310-492-5962 310-388-5920 (fax) Attorneys for Slep-tone Entertainment Corporation donna@borislaw.com	Reginald Keith Brown Reginald K. Brown Law Offices 6080 Center Drive, 6th Floor Los Angeles, CA 90045 Attorneys for Caffè Brass Monkey reggielaw@earthlink.net
R.M. Anthony Cosio R.M. Anthony Cosio Law Offices 520 Redondo Avenue Long Beach, CA 90814-1572 Attorneys for Fox Belmont Corp. and The Silver Fox admin@lawrnac.com	Robert A. Levinson, Esq. Levinson Arshonsky and Kurtz LLP 15303 Ventura Boulevard, Suite 1650 Sherman Oaks, CA 91403 Attorneys for The Gaslite and Claire Ragge rlevinson@laklawyers.com
Brooks P. Marshall, Esq. Brooks P. Marshall Law Offices 1500 Rosecrans Avenue, Suite 500 Manhattan Beach, CA 90266 Attorneys for Cassidy and Razor and Cherry Sound Entertainment brooks@brooksmarshall.com	Rodney T. Lewin, Esq. Law Offices of Rodney T. Lewin, APC 8665 Wilshire Blvd., Suite 210 Beverly Hills, CA 90211 Attorneys for Barneys Beanery and Eight Ball Enterprises, Inc. rod@rtlewin.com duke@rtlewin.com
Lester Winograde Lester Winograde Law Offices 139 Hollister Ave. Suite 5 Santa Monica, CA 90405 Attorney for The Daily Pint and Phillip R. McGovern lesterwinograde@verizon.net	Donna Thomas 7569 Lee Drive Buena Park, CA 90620 cntrykaraoke@sbcglobal.net
Jen Goldstein 5045 Woodman Avenue, No. 203 Sherman Oaks, CA 91423 sowhateveh@aol.com	Fay Simmons 8412 Jumilla Avenue Winnetka, CA 91306 seizethemic@gmail.com
Melena Young 6716 Clybourn Avenue, Apt. 253 North Hollywood, CA 91606 qitup@qitup.net	Don Young 6716 Clybourn Avenue, Apt. 253 North Hollywood, CA 91606 qitup@qitup.net