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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,

Plaintiff,

vs.

BACKSTAGE BAR AND GRILL, et  
al.,

Defendants.

) Case No.: CV11-08305 ODW (PLAx)  
)  
) **SUPPLEMENTAL DECLARATION**  
) **OF CRAIG MCLAUGHLIN, ESQ.**  
) **IN SUPPORT OF MOTION BY**  
) **DEFENDANTS KELLY C.**  
) **SUGANO AND TAKA-O FOR**  
) **ATTORNEYS' FEES AND**  
) **SANCTIONS**  
)  
) Hearing Date: Jan. 7, 2013 (Vacated)  
) Time: 1:30 p.m.  
) Courtroom: 11  
)  
) Complaint Filed : Oct. 6, 2011  
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**SUPPLEMENTAL 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. **Exhibit 1** hereto is a true and correct copy of Plaintiff’s Motion To Reconsider Orders Granting Defendants’ Motions To Dismiss And To Enlarge Time For Filing Responses To Motions in *Slep-Tone Entertainment Corporation v. Ellis Island Brewery, et al.*, Case No. 2:12-cv-00239-KJD-RJJ (Dkt. No. 85) (D.C. Nev., as filed on June 26, 2012).

3. Opposing Slep-tone’s *Ex Parte* Application For An Extension of Time to Oppose the instant motion for fees and sanctions, required 2.5 hours of my time to prepare the opposition at my rate of \$350 per hour.

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

/s/ Craig McLaughlin, Esq.  
Craig McLaughlin, Esq.

# **EXHIBIT NO. 1**

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16 *Attorneys for Plaintiff*  
17 SLEP-TONE ENTERTAINMENT CORPORATION

18 UNITED STATES DISTRICT COURT  
19 DISTRICT OF NEVADA

20 SLEP-TONE ENTERTAINMENT  
21 CORPORATION,

22 Plaintiff,

23 v.

24 ELLIS ISLAND CASINO &  
25 BREWERY, et al.,

26 Defendants.

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

**PLAINTIFF'S MOTION TO  
RECONSIDER ORDERS GRANTING  
DEFENDANTS' MOTIONS TO  
DISMISS AND TO ENLARGE TIME  
FOR FILING RESPONSES TO  
MOTIONS**

27 The Plaintiff, Slep-Tone Entertainment Corporation, by its undersigned  
28 counsel, hereby moves the Court pursuant to Fed. R. Civ. P. 54(b) to reconsider and  
vacate its Orders (Docs. 55, 73) granting the motions (Docs. 21, 35, 38) of various  
of the Defendants to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(6) for an  
asserted failure to state a claim upon which relief may be granted. The Plaintiff  
further moves to enlarge the time for filing responses to those motions, to a date  
that is at least 14 days following the entry of an order granting the instant motion.  
In support of the motion, the Plaintiff states as follows:

1           1.       Slep-Tone was formerly represented in this matter by Donna Boris,  
2 Esq., as lead counsel, who maintained principal responsibility for preparing and  
3 filing appropriate substantive and procedural documents on behalf of Slep-Tone.

4           2.       On March 16, 2012, a group of defendants referred to as the PT'S  
5 Defendants moved (Doc. 13) to dismiss the action against them under Fed. R. Civ.  
6 P. 12(b)(6). A response to that motion was due not later than April 2, 2012.

7           3.       On April 3, 2012, Kurt Slep, the owner of Slep-Tone, discovered that  
8 no response had been filed to the motion. Mr. Slep sought immediately to contact  
9 Ms. Boris to determine why no response had been filed, and failing that, he  
10 contacted the local counsel, Kerry Faughnan, to determine whether some  
11 arrangement had been made for late filing. Later that day, Ms. Boris contacted Mr.  
12 Slep and informed him that arrangements were being made for an extension of time  
13 and that a proper response would be filed. Mr. Slep reviewed the docket with Ms.  
14 Boris—a docket that included three other motions, by the Caesars Defendants (Doc.  
15 21) on March 21, 2012, by Gilley's Las Vegas and Treasure Island, LLC, (Doc. 35)  
16 on March 30, 2012, and by the NP Defendants (Doc. 38) on April 2, 2012. Ms.  
17 Boris assured Mr. Slep that proper responses would be filed on time.

18           4.       On April 9, 2012, the deadline for responding to the Caesars  
19 Defendants' motion ran without a response.

20           5.       On April 10, 2012, Ms. Boris and Mr. Faughnan filed a response (Doc.  
21 43) to the motion by the PT'S Defendants.

22           6.       On May 4, 2012, the Court entered an order dismissing the Caesars  
23 Defendants from this action.

24           7.       On May 9, 2012, the deadline for responding to the Gilley's and NP  
25 Defendants' motions—having been twice extended by stipulation and order—ran  
26 without a response.

27           8.       On May 21, 2012, some 12 days after the twice-extended deadline, and  
28 without a further extension of time, Ms. Boris filed responses (Docs. 69, 71) to the

1 Gilley's and NP Defendants' motions. However, the same day, the Court entered  
2 an order granting those motions, noting a lack of timely opposition, and dismissing  
3 the Gilley's and NP Defendants from this action.

4 9. During the periods identified above, Ms. Boris repeatedly assured Mr.  
5 Slep that the case was being managed appropriately and that arrangements were  
6 being made to file appropriate responses or obtain extensions of time.

7 10. When Mr. Slep discovered that numerous defendants had been  
8 dismissed, however, he telephoned and emailed Ms. Boris repeatedly to demand  
9 information. Ms. Boris failed and refused for more than a week to return his calls.  
10 Finally, on June 6, 2012, not having received any communications from Ms. Boris,  
11 Mr. Slep terminated her as counsel and instructed her to file a motion for leave to  
12 withdraw from the case. Ms. Boris failed to do so and continued to act as counsel  
13 for approximately two weeks thereafter, despite having been informed of her  
14 termination.

15  
16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 Slep-Tone never intended to default on its obligation to respond to the  
18 various motions to dismiss. To the contrary, it specifically instructed its attorney,  
19 Donna Boris, to file proper substantive responses, and it received assurances that  
20 she was doing so. As a result of what can only be described as gross neglect by  
21 Slep-Tone's attorney, several defendants have been released from this litigation  
22 despite the existence in the Complaint of a claim for relief against them. It is unfair  
23 and unjust to penalize Slep-Tone—which by law must be represented by counsel—  
24 for the malfeasance of its attorney so early in this litigation.

25 Rule 54(b) provides, in pertinent part:

26 [A]ny order or other decision, however designation, that adjudicates  
27 fewer than all the claims or the rights and liabilities of fewer than all  
28 the parties does not end the action as to any of the claims or parties  
and may be revised at any time before the entry of a judgment  
adjudicating all the claims and all the parties' rights and liabilities.

1  
2 Fed. R. Civ. P. 54(b). This language has been interpreted as granting the Court the  
3 authority to modify or revoke prior nonfinal orders. *See WPP Lux. Gamma Three*  
4 *Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1059 (9th Cir. 2011); *United States v.*  
5 *Martin*, 226 F.3d 1042, 1048-49 (9th Cir. 2000) (stating that until final judgment is  
6 entered that a district court has the “inherent jurisdiction to modify, alter, or  
7 revoke” interlocutory decisions); *accord Am. Canoe Ass’n v. Murphy Farms, Inc.*,  
8 326 F.3d 505, 514-15 (4th Cir. 2003).

9 Of course, that the Court *has* the authority to vacate its prior orders of  
10 dismissal does not automatically mean that the Court *should* do so. As the Court  
11 has noted in each of the orders of dismissal, District of Nevada Local Rule 7-2(d)  
12 states that “[t]he failure of an opposing party to file points and authorities in  
13 response to any motion shall constitute a consent to the granting of the motion.” D.  
14 Nev. L.R. 7-2(d).

15 Notwithstanding Local Rule 7-2(d), however, the equities of this matter  
16 justify the setting aside of the prior orders of dismissal because, as will be shown  
17 below, the neglect that led to the dismissals was excusable as to Slep-Tone, if not  
18 its attorney.

19 Although this is not a motion under Rule 60(b)(1), the posture of this case is  
20 akin to the situation in which a defendant has been subjected to a default judgment,  
21 but with the roles reversed. Excusable neglect is an appropriate basis for vacating a  
22 default judgment. *See* Fed. R. Civ. P. 60(b)(1). The determination of whether  
23 neglect is excusable is an equitable one that depends on several factors, including:  
24 1) prejudice to the opposing party; 2) the length of the delay and its potential impact  
25 on the proceedings; 3) the reason for the delay; and 4) the movant’s good faith. *See*  
26 *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997) (citing  
27 *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993)).  
28 Where a movant’s culpable conduct led to default, no meritorious defense exists, or

1 prejudice to the opposing party will occur, the Court may decline to vacate the  
2 default. *See Brandt v. Am. Bankers Ins. Co. of Fl.*, 653 F.3d 1108, 1111 (9th Cir.  
3 2011); *TCI Group Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001).  
4 However, cases should be decided on their merits if possible. *See TCI Group*, 244  
5 F.3d at 696; *In re Roxford Foods, Inc.*, 12 F.3d 875, 879 (9th Cir. 1993).

6 Here, there can be no prejudice to the opposing parties, who will be in no  
7 worse position than they would have been had timely responses been filed (since  
8 their motion will merely be decided on its merits), and who cannot have incurred  
9 significant costs or fees attributable to the delay, since no further conduct on their  
10 part was required to obtain the order. Likewise, the length of the delay is too short  
11 to be of significance, because there is at least one similar motion (Doc. 13), filed  
12 prior in time to the earliest granted motion, that has not yet been decided by the  
13 Court. Slep-Tone has filed substantive responses to those similar motions that have  
14 not yet been granted, and it has taken a nontrivial, supported, and therefore  
15 meritorious position with respect to those motions.

16 As shown in the Declaration of Kurt Slep, attached hereto as Exhibit A, Slep-  
17 Tone's failure to file the appropriate points and authorities in response to the  
18 various motions was attributable not to a lack of substantive response, nor to its  
19 failure to provide appropriate information to counsel to enable her to prepare a  
20 response, nor to any other act on its part beyond the hiring of counsel who was  
21 apparently constitutionally incapable of filing timely responses. Ms. Boris was first  
22 licensed to practice law in California in 1991 and has no public record of discipline.  
23 (*See Exh. B.*) Slep-Tone was reasonable in relying on her, given her assurances  
24 that this matter was being handled with due care. When it became clear that the  
25 matter was not being handled correctly, Slep-Tone took prompt action to remove  
26 her as counsel and to hire other counsel.

27 Slep-Tone always intended that responses be filed to these motions, and  
28 Slep-Tone instructed its attorney to file responses. There must be some credit given





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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing paper is being filed using the Clerk’s CM/ECF system, which will send a Notice of Electronic Filing to counsel of record as follows:

- Frank A Ellis - fellis@lvbusinesslaw.com
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CM/ECF non-participants are being served on the date indicated below by depositing a copy of this paper as First Class Mail, postage prepaid, addressed as follows:

Tara King  
1904 Chavez Ct.  
N. Las Vegas, NV 89031

Date: June 26, 2012

/s/  
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James M. Harrington

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**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 December 21, 2012, I served the **SUPPLEMENTAL DECLARATION OF CRAIG MCLAUGHLIN, ESQ. IN SUPPORT OF MOTION BY DEFENDANTS KELLY C. SUGANO AND TAKA-O FOR ATTORNEYS' FEES AND SANCTIONS and EXHIBIT NO. 1 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 December 21, 2012, at Los Angeles County, California.

/s/Craig McLaughlin  
Craig McLaughlin

**Service List**

1 2 3 4 5 6 7	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 Caffe Brass Monkey reggielaw@earthlink.net
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