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7 Slep-Tone Entertainment Corporation

8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 SLEP-TONE ENTERTAINMENT
CORPORATION,

12 Plaintiff,

13 vs.

14 BACKSTAGE BAR AND GRILL,
15 *et al.*,

16 Defendants.

Case No.: CV11-08305- ODW (PLAx)

**NOTICE OF APPLICATION AND EX
PARTE APPLICATION FOR
EXTENSION OF TIME TO FILE
OPPOSITION PAPERS**

Judge: Hon. Otis D. Wright, II
Hearing Date: Jan. 21, 2013
Time: 1:30 p.m.
Courtroom: 11
Complaint Filed : October 6, 2011

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20 PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 6(b)(1)(B) and
21 Local Rule 7-19, *et seq.*, Plaintiff, Slep-Tone Entertainment Corporation (“Slep-
22 Tone”) hereby move the Court on an *ex parte* basis for an order extending the time
23 for Slep-Tone to respond to the motion (Doc. 97) of Defendants Kelly C. Sugano
24 and Taka-O for attorney fees and sanctions, *nunc pro tunc*, from Monday,
25 December 17, 2012, to Friday, December 21, 2012.

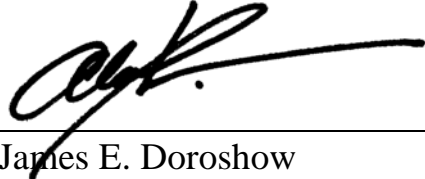
26 This motion is made following the telephone conference of counsel pursuant
27 to L.R. 7-3 on December 18, 2012, in which counsel for Defendants Sugano and
28 Taka-O refused to stipulate or otherwise consent to the extension.

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The Plaintiff submits herewith a memorandum of points and authorities in support of its motion.

Dated: December 20, 2012

FOX ROTHSCHILD LLP

BY: 

James E. Doroshow
Alan C. Chen
Attorneys for Plaintiff,
Slep-Tone Entertainment Corporation

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6 Attorneys for Plaintiff – Slep-Tone Entertainment
7 Corporation

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 SLEP-TONE ENTERTAINMENT
12 CORPORATION,

13 Plaintiff,

14 vs.

15 BACKSTAGE BAR AND GRILL,
16 *et al.*,

17 Defendants.
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Case No.: CV11-08305- ODW (PLAx)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF *EX*
PARTE APPLICATION FOR
EXTENSION OF TIME TO FILE
OPPOSITION PAPERS**

Judge: Hon. Otis D. Wright, II
Hearing Date: Jan. 21, 2013
Time: 1:30 p.m.
Courtroom: 11
Complaint Filed : October 6, 2011

21 In support of its ex parte application for extension of time to file opposition
22 papers in response to the motion of Defendants Kelly Sugano and Taka-O for
23 attorney fees and sanctions, the Plaintiff shows the Court as follows:

- 24 1. At all times prior to December 18, 2012, the Plaintiff has been
25 represented in this matter by Donna Boris, Esq., as its attorney of record.
26 2. On November 9, 2012, the Court entered a dismissal with prejudice of
27 all outstanding claims in this action, based upon the failure of the Plaintiff to
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1 prosecute the action. Notice of that order was apparently served on Ms. Boris.

2 3. On November 25, 2012, Defendants Sugano and Taka-O filed a
3 request (Docs. 91, 92), which request was stricken by order of the Court on
4 November 27, 2012, for failure to comply with the Local Rules, General Order
5 and/or the Court's Case Management Order.

6 4. On November 27, 2012, Defendants Sugano and Taka-O filed a notice
7 of motion and motion for attorney fees and sanctions. The notice of motion was
8 apparently served on Ms. Boris but not directly on the Plaintiff (as per rule).

9 5. Despite its efforts to communicate with Ms. Boris, the Plaintiff has had
10 extremely limited contact with her for the past four months. The Plaintiff's last
11 contact from Ms. Boris was on November 5, 2012, when it received an email
12 message indicating that she would be unavailable because of a death in her family.
13 The Plaintiff has regularly attempted since that date to contact Ms. Boris, to no
14 avail.

15 6. The Plaintiff has had a great degree of difficulty in obtaining
16 information about this case and about what work, if any, Ms. Boris was undertaking
17 to prosecute the matter.

18 7. As a corporate entity, the Plaintiff is required to be represented in this
19 matter by counsel admitted to practice before this Court.

20 8. The Plaintiff's financial situation has not allowed it readily to seek
21 other counsel in this matter. That financial situation has been exacerbated by Ms.
22 Boris's apparent misappropriation of at least approximately \$70,000 in settlement
23 funds directed to her by defendants in this action, which the Plaintiff has never
24 received. This figure includes the amount alleged by Defendants Sugano and Taka-
25 O to have been paid to the Plaintiff. The Plaintiff has initiated a complaint to the
26 State Bar with respect to Ms. Boris's conduct.

27 9. The Plaintiff did not receive prompt actual notice of the Defendants'
28 motion. Under difficult circumstances, it has only now been able to acquire new

1 counsel to present its defense against the motion, to bring the new counsel
2 sufficiently up to date with respect to the status of the action, and to gather and
3 transmit the facts necessary to prepare a defense to the motion.

4 10. In the courts of the Ninth Circuit, default judgments are ordinarily
5 disfavored. “Cases should be decided upon their merits whenever reasonably
6 possible.” *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

7 11. The Defendants’ motion is a serious one in which they seek almost
8 \$25,000 in compensation, and the Plaintiff has a meritorious defense to the
9 Defendants’ claims.

10 12. The Plaintiff’s failure to respond on a timely basis was due not to
11 neglect but to factors beyond its immediate control.


12 13. The Defendants will not be prejudiced if the Plaintiff is allowed to
13 respond to the motion; however, the Plaintiff is subject to significant prejudice if
14 the Court elects not to hear its defense on the basis of untimeliness.

15 In view of the foregoing, it is respectfully suggested that good cause exists
16 for an extension of time for response to the motion.

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Dated: December 20, 2012

FOX ROTHSCHILD LLP

BY: 

James E. Doroshov
Alan C. Chen
Attorneys for Plaintiff,
Slep-Tone Entertainment Corporation

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 1800 Century Park East, Suite 300, Los Angeles, California 90067-3005.

On December 20, 2012, I served the following document(s) described as:

- 1. NOTICE OF APPLICATION AND *EX PARTE* APPLICATION FOR EXTENSION OF TIME TO FILE OPPOSITION PAPERS;**
- 2. NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION PAPERS and MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NOTICE OF MOTION AND MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION PAPERS; AND**
- 3. ORDER EXTENDING TIME TO RESPOND TO MOTION**

on the interested parties in this action as follows:

VIA MAIL: I am readily familiar with the Firm’s practice of collecting and processing correspondence for mail. Under that practice, it would be deposited with the United States Postal Service on the same day with a postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that, on the motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing shown on this proof of service.

VIA ELECTRONIC MEANS. On the above date, I filed the above-mentioned document(s) by electronic means with the Court. As such, the Court electronically mailed such document(s) to all the parties represented by counsel registered via ECF.

VIA E-MAIL as follows: Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document to be sent to the person(s) at the email address(es) set forth below.

Don Yong 6716 Clybourn Avenue Apt. 253 N. Hollywood, CA 91606 Tel: 818-640-8867	Defendant – Don Young <i>In Pro Se – Via Mail</i>
Melena Young 6716 Clybourn Avenue Apt. 253 N. Hollywood, CA 91606 Tel: 818-640-8867	Defendant – Melena Young <i>In Pro Se – Via Mail</i>
Jen Goldstein	Defendant – Jen Sing

1	5045 Woodman Avenue No. 203 Sherman Oaks, CA 91423 Tel: 818-398-4201	Productions <i>In Pro Se – Via Mail</i>
2		
3	Brooks P. Marshall Brooks P. Marshall Law Offices 1500 Rosecrans Avenue, Ste. 500 Manhattan Beach, CA 90266 Tel: 310-706-4131 Fax: 310-706-4132 Email: brooks@brooksmarshall.com	Attorney for Defendant, Cassidy and Razor <i>Via E-File</i>
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8	Robert A. Levinson Levinson Arshonsky and Kurtz LLP 15303 Ventura Blvd., Ste. 1650 Sherman Oaks, CA 91403 Tel: 818-382-3434 Fax: 818-382-3433 Email: rlevinson@laklawyers.com	Attorney for Defendant, Gaslight Clarie Ragge <i>Via E-File</i>
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13	Craig McLaughlin Law Office of Craig McLaughlin 650 Town Center Drive, Suite 1300 Costa Mesa, CA 92626 Tel: 714-545-8500 Fax: 888-545-7131 Email: cmc@smarpropertylaw.com	Attorney for Defendant, Taka- O & Kelly C. Sugano <i>Via E-File</i>
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17	R M Anthony Cosio R M Anthony Cosio Law Offices 520 Redondo Avenue Long Beach, CA 90814-1572 Tel: 562-434-4491 Fax: 562-434-4492 Email: admin@lawrmac.com	Attorney for Defendant, Silver Fox <i>Via E-File</i>
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22	Reginald K. Brown Reginald K. Brow Law Offices 6080 Center Drive 6 th Floor Los Angeles, CA 90045 Tel: 310-242-6694 Fax: 310-388-3097 Email: reggielaw@earthlink.net	Attorney for Defendant, Caffe Brass Monkey <i>Via E-File</i>
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24		
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27	Lester Winograde Lester Winograde Law Offices 139 Hollister Avenue, Ste. 5 Santa Monica, CA 90405	Attorney for Defendant, Daily Pint <i>Via E-File</i>
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<p>Tel: 310-399-1659 Email: lesterwinograde@verizon.net</p>	
<p>Donna M. Boris Boris & Associates 9107 Wilshire Blvd., Suite 450 Beverly Hills, CA 90210 Tel: 310-492-5962 Fax: 310-388-5920 Email: donna@borislaw.com</p> <p>Rodney T. Lewin Rodney T. Lewin Law Offices 8665 Wilshire Blvd., Suite 210 Beverly Hills, CA 90211-2931 Tel: 310-659-6771 Fax: 310-659-6771 Email: rod@rtlewin.com</p>	<p>Attorney for Plaintiff, Slep-Tone Entertainment Corporation Via E-File</p>

I declare, under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 20 2012, under the laws of the United State of California.

/Cindy Liu/
Cindy Liu