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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

<p>SLEP-TONE ENTERTAINMENT CORPORATION,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="padding-left: 100px;">vs.</p> <p>BACKSTAGE BAR AND GRILL, et al.,</p> <p style="padding-left: 100px;">Defendants.</p>	<p>) Case No.: CV11-08305 ODW (PLAx)</p> <p>) Hon. Otis D. Wright, II</p> <p>)</p> <p>) NOTICE OF MOTION AND</p> <p>) MOTION BY DEFENDANTS</p> <p>) KELLY C. SUGANO AND TAKA-O</p> <p>) FOR CONTEMPT AND</p> <p>) SANCTIONS</p> <p>)</p> <p>) Hearing Date: March 25, 2013</p> <p>) Time: 1:30 p.m.</p> <p>) Courtroom: 11</p> <p>)</p> <p>) Complaint Filed : Oct. 6, 2011</p> <p>)</p>
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TO PLAINTIFF AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT at 1:30 p.m. on Monday, March 25th, 2013, or as soon thereafter as counsel may be heard in the above entitled Court, pursuant to 18 U.S.C. § 401 and this Court’s inherent power, Defendants

1 KELLY SUGANO and TAKA-O will seek to move this Court for an order
2 requiring Plaintiff SLEP-TONE ENTERTAINMENT CORPORATION to be held
3 in contempt of this Court's order entered on January 15, 2013, by failing to pay to
4 said Defendants the amount of \$18,105. This motion also requests additional
5 attorney's fees in the amount of \$3,850 and further sanctions deemed appropriate
6 by the Court.

7 This motion is made following the conference of counsel pursuant to L.R. 7-
8 3 between Defendants' counsel and Plaintiff's counsel on February 8, 2013. It is
9 unknown whether Plaintiff will oppose.

10 This motion is based upon this notice of motion, the accompanying
11 memorandum of points and authorities, the Declaration of Craig McLaughlin, Esq.
12 with Exhibits 1-3 thereto, other records and papers on file in this action, such
13 further papers and records as may be submitted to the Court at or before the
14 hearing on this motion and the oral argument of counsel at the hearing.

15
16 Law Office of Craig McLaughlin

17 Dated: February 22, 2013

18 By: /s/ Craig McLaughlin
19 Craig McLaughlin, Esq.
20 Attorney for Defendants
21 Kelly C. Sugano and Taka-O
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SLEP-TONE ENTERTAINMENT
CORPORATION,

Plaintiff,

vs.

BACKSTAGE BAR AND GRILL, et
al.,

Defendants.

) Case No.: CV11-08305 ODW (PLAx)
)
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION BY DEFENDANTS**
) **KELLY C. SUGANO AND TAKA-O**
) **FOR CONTEMPT AND**
) **SANCTIONS**
)
) Hearing Date: March 25, 2013
) Time: 1:30 p.m.
) Courtroom: 11
)
) Complaint Filed : Oct. 6, 2011
)

1 **I. INTRODUCTION**

2 On January 15, 2013, this Court entered an order (“Order”) granting the
3 motion of Defendants Kelly C. Sugano and Taka-O (“Defendants”) for attorneys’
4 fees against Slep-tone Entertainment Corporation (“Slep-tone”). Slep-tone has not
5 paid the fees and thus has failed to obey the Order. Defendants seek a finding of
6 contempt and an order requiring Slep-tone to pay at least \$18,105 previously
7 ordered, another \$3,850 in attorneys’ fees in connection with the preparation of
8 this motion, and whatever coercive measures and additional sanctions the Court
9 deems appropriate.

10
11 **II. FACTS**

12 In the Order, the Court found that the underlying lawsuit filed by Slep-tone
13 “was nothing more than a shakedown suit” and that Slep-tone “takes trolling to the
14 next level.” [McLaughlin Decl., Ex. 1.] The Court also found “that Slep-tone’s
15 conduct was both vexatious and in bad faith and awards Defendants reasonable
16 attorney’s fees in the amount of \$18,105.” *Id.* The Court declined “to additionally
17 sanction Slep-tone at this time.” *Id.*

18 Having not received any contact from Slep-tone or its counsel since then, on
19 January 30, 2013, counsel for Defendants e-mailed a demand to Slep-tone through
20 its counsel for payment of the ordered amount by no later than February 8, 2013.
21 [McLaughlin Decl., Ex. 2] The demand also included notice that should such
22 payment not be made by then, that counsel for Slep-tone was to select two optional
23 dates from which to meet and confer over a possible motion for contempt.

24 On February 8, 2013, Defendants’ counsel received a telephone call from
25 Ms. Donna Boris, counsel for Slep-tone, during which said counsels met and
26 conferred over Slep-tone’s failure to comply with the Order and Defendants’
27 demand. During the conversation, Defendants’ counsel asked whether Slep-tone
28 intended to comply with the Order. Ms. Boris indicated that while she was aware

1 of the Order, she did not know whether Slep-tone would comply. [McLaughlin
2 Decl., ¶ 5.] To date, Slep-tone has not paid the amount set forth in the Order, nor
3 any part thereof, thus necessitating the instant motion. [McLaughlin Decl., ¶ 6.]
4

5 **III. LEGAL STANDARDS**

6 This Court has both inherent and statutory power to punish for contempt and
7 to coerce compliance with its orders. *Chambers v. NASCO, Inc.* (1991) 501 U.S.
8 32, 44, 111 S.Ct. 2123, 2132. “A court of the United States shall have power to
9 punish by fine or imprisonment, at its discretion, such contempt of its authority ...
10 as ... disobedience or resistance to its lawful writ, process, order, rule, decree, or
11 command.” 18 U.S.C. § 401.

12 Criminal contempt is established where there is a clear and definite court
13 order, the contemnor knows of the Order, and he or she willfully disobeys it.
14 *United States v. Powers*, 629 F2d 619, 627 (9th Cir. 1980). The same elements
15 apply in civil contempt proceedings, except that the failure to comply with the
16 court’s order need not be willful. *NLRB v. Blevins Popcorn Co.*, 659 F2d 1173,
17 1184-85 (DC Cir. 1981).

18 An order directed to a corporation binds those who are legally responsible
19 for the conduct of its affairs, and *de facto* as well as *de jure* officers are responsible
20 for corporate compliance with orders directed to it. *United States v. Laurins*, 857
21 F2d 529, 535 (9th Cir. 1988); *Tranzact Technologies, Inc. v. ISource Worldslide*,
22 406 F3d 851, 856 (7th Cir. 2005).

23 **IV. ARGUMENT**

24 **A. Slep-tone Should be Held in Contempt and Additionally** 25 **Sanctioned** 26

27 For a finding of contempt, Defendants must establish “(1) that [Slep-tone]
28 violated the court Order, (2) beyond substantial compliance, (3) not based on a

1 good faith and reasonable interpretation of the order, and (4) by clear and
2 convincing evidence.” *In re Dual-Deck Video Cassette RecOrder Antitrust Litig.*,
3 10 F.3d 693, 695 (9th Cir.1993). There is little need to engage in vigorous
4 argument over what is obvious here, namely the clear and convincing evidence
5 showing that Slep-tone has violated the Order by its failure to pay. [McLaughlin
6 Decl., ¶ 6.] Furthermore, Slep-tone’s failure to pay anything is not substantial
7 compliance with the Order which is clear and not subject to a good faith and
8 reasonable misinterpretation thereof. The Order is simple, straightforward and
9 direct ordering Slep-tone to pay Defendants \$18,105. Slep-tone has had ample
10 opportunity to comply, has flatly ignored it and Defendants’ subsequent demand to
11 comply, and thus should be held in contempt.

12 The Court should award sanctions in the amount it finds would “compensate
13 the contemnor's adversary for the injuries which result from the noncompliance.”
14 *Falstaff Brewing Corp. v. Miller Brewing Co.*, 702 F.2d 770, 778 (9th Cir.1983).
15 Here, to draft the papers associated with this motion required 6.0 hours of work by
16 Defendants’ counsel at \$350 per hour. [McLaughlin Decl., ¶ 8.] An additional 3.0
17 hours is anticipated to prepare a reply and another 2.0 hours to appear at the
18 hearing. [Id.] Accordingly, an amount of \$3,850 should be ordered awarded to
19 Defendants in additional sanctions.

20 A court may punish civil contempt by both a fine and imprisonment.
21 *Campbell v. Keystone Aerial Surveys, Inc.*, 138 F3d 996, 1005, fn. 11 (5th Cir.
22 1998). Slep-tone’s president is Kurt J. Slep. [McLaughlin Decl., Ex. 3.] Mr. Slep
23 is responsible for Slep-tone’s compliance with the Order. *Laurins*, 857 F2d at 535
24 (9th Cir. 1988). Mr. Slep should be ordered to appear before this Court and explain
25 why the Order has been flouted.

26 ///

27 ///

28 ///

**B. The Court Should Condition Further Sanctions Should Slep-
tone’s Continue to Fail to Comply**

The Court should provide opportunity for Slep-tone and Mr. Slep to comply with a subsequent order to pay the amount of the Order plus Defendants’ attorneys’ fees before imposing additional coercive measures. *Koninklijke Philips Electronics, N.V. v. KXD Technology, Inc.*, 539 F3d 1039, 1042-43 (9th Cir. 2008) (civil contempt sanction must contain a purge condition).

The Court’s subsequent order should impose a fine of \$1,000 per day upon Slep-tone for each day of non-compliance which would be waived if the \$18,105 and additional attorneys’ fees is fully paid within 14 calendar days thereof. *Laurins*, 857 F2d at 534 (9th Cir. 1988). The Court’s subsequent order should additionally require Slep-tone and Mr. Slep to produce an accounting and documents and to submit to a debtor’s examination along the lines set forth in the proposed order lodged by Defendants.

V. CONCLUSION

For all the reasons set forth above, Defendants’ motion should be granted and Slep-tone should be held in contempt and ordered to promptly pay Defendants \$18,105 plus additional attorneys’ fees in the amount of \$3,850 and to comply with any additional sanctions and coercive measures the Court deems appropriate.

Respectfully submitted,

Law Office of Craig McLaughlin

Dated: February 22, 2013

By: /s/Craig McLaughlin
Craig McLaughlin, Esq.
Attorney for Defendants
Kelly C. Sugano and Taka-O