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1 **TARA KING**
2 DJ TARA KING PRODUCTIONS
3 1904 Chavez Court
4 North Las Vegas, Nevada 89031
5 Telephone 395-5464
6 Email tara@djaraking.com
7 *Defendant in proper person*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
10 **SOUTHERN DIVISION**

11 SLEP-TONE ENTERTAINMENT
12 CORPORATION,
13 Plaintiff,
14 v.
15 TARA KING dba DJ TARA KING
16 PRODUCTIONS,
17 Defendant.

CASE NO.: 2:13-cv-0352-APG-VCF

**DEFENDANT'S MOTION TO DISMISS
WITH PREJUDICE**

18 **COMES NOW**, Defendant, TARA KING dba DJ TARA KING PRODUCTIONS, in
19 proper person, and herein moves to dismiss the above-entitled action with prejudice.

20 This motion is made pursuant to the February 11, 2013 Order made in the case of *Slep-*
21 *Tone Entertainment Corporation v. Ellis Island Casino & Brewery*, Case No. 2:12-cv-0239-
22 KJD-NJK, attached as Exhibit 1 to the Complaint filed in the above-entitled action, Fed. R. Civ.
23 Pro. 12(b), Local Rule IA 10-2, Fed. R. Civ. Pro. 11,, the Points and Authorities attached hereto,
24 the pleadings and papers on file herein, and any oral argument given at time of hearing.

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POINTS AND AUTHORITIES

Statement of Facts

On February 15, 2012, Plaintiff, Slep-Tone Entertainment Corporation (“Slep-Tone”), filed in the District of Nevada the case of *Slep-Tone Entertainment Corporation v. Ellis Island Casino & Brewery, et al.*, Case No. 2:12-cv-0239-KJD-NJK (“*Ellis Island*”). In the prior *Ellis Island* case, Slep-Tone named as defendants 52 individuals and corporate entities, including the defendant in the present case, Tara King, and her fictitious business entity, DJ Tara King Productions (referred to collectively as “King”). As in the present case, Slep-Tone alleged in the *Ellis Island* case that the defendants, who either hosted karaoke shows as karaoke jockeys (“KJs”) or served as venues which hired KJs, had infringed Slep-Tone’s Sound Choice trademark by playing karaoke song tracks from computer copies of Sound Choice karaoke discs without Slep-Tone’s permission and without possessing original Sound Choice discs containing the karaoke song tracks which were seen being played.

In the *Ellis Island* case, Slep-Tone had improperly joined multiple, unrelated defendants which resulted in Judge Dawson entering his Order of February 11, 2013 (*see* Doc. 1, Complaint, Ex. 1), which Order states in pertinent part,

... The claims in this case do not arise from related activities and are made against separate, competing entities. Under Ninth Circuit law, this is not sufficient to establish a logical relationship which satisfies Rule 20’s “same transaction or occurrence” requirement. Accordingly, the Court finds that Defendants do not meet the requirements for permissive joinder in Rule 20(a)(2)(A). *See* Doc. 1, Complaint, Ex. 1, p. 4, l. 26 to p. 5, l. 4.

* * * *

... The elements and proof required differs for each of these theories of liability and the effect of the different relationships between the KJs and the various venues will create distinct questions of fact. Accordingly, the Court finds that Defendants do not meet the “common question of law or fact” requirements for permissive joinder under Rule 20(a)(2)(B). *See* Doc. 1, Complaint, Ex. 1, p. 5, ll. 14-17.

* * * *

In addition to the foregoing, the Court finds that joinder would not facilitate judicial economy because the allocation of judicial resources is dependent on statistics which assume that distinct and separate actions will be

1 filed separately. Further, allowing joinder could present prejudice to the
2 individual Defendants since their defenses against this action involve separate
3 proof and legal questions. Accordingly, the Court finds joinder improper. *See*
4 Doc. 1, Complaint, Ex. 1, p. 5, ll. 19-23.

5 If Plaintiff wishes to proceed against any Defendant severed from this action,
6 including Defendants that were dismissed without prejudice, it must file a new
7 and separate action on or before March 1, 2013. Each case by Plaintiff against
8 Defendants severed from this action will be assigned a new case number and
9 proceed separately before this Court. . . . Consistent with 28 U.S.C. § 1914(a),
10 Plaintiff is ordered to pay a filing fee for each newly opened case at the time it
11 files the complaint in each action. . . . *See* Doc. 1, Complaint, Ex. 1, p. 6, ll. 4-9.

12 Plaintiff is ordered to list this case and any related cases on Section VIII of
13 the Civil Cover Sheet, and to note that the newly filed case should be assigned to
14 Judge Dawson pursuant to this Order. Plaintiff is further ordered to attach a copy
15 of this Order as an exhibit to each complaint. *See* Doc. 1, Complaint, Ex. 1, p. 6,
16 ll. 13-15.

17 * * * *

18 **IT IS FURTHER ORDERED** that if Plaintiff wishes to proceed against
19 any Defendant severed from this action, including Defendants that were dismissed
20 without prejudice, it must file a new and separate action, consistent with this
21 order, on or before March 1, 2013. *See* Doc. 1, Complaint, Ex. 1, p. 7, ll. 1-3.

22 On March 1, 2013, the last day allowed by the deadline imposed by the Order issued in
23 the *Ellis Island* case, attorney James R. Harrington (“Harrington”) filed the present case of *Slep-*
24 *Tone Entertainment Corporation v. Tara King d/b/a DJ Tara King Productions*, Case No. 2:13-
25 *cv-0352-APG-VCF (“King”)*.

26 Harrington is not licensed to practice law in the State of Nevada.

27 Harrington is not admitted *pro hac vice* to practice in the District of Nevada in this
28 particular case. Harrington fraudulently claimed on the first page of the Complaint filed in the
present case that he was admitted to practice *pro hac vice*. *See* Doc. 1, Complaint, p. 1, l. 1.

Harrington is the only attorney who signed the Complaint filed in the present case. *See*
Doc. 1, Complaint, p. 12, ll. 6-9. Slep-Tone’s local counsel, Kerry P. Faughnan (“Faughnan”),
under whose name the Summons was issued in the present case, did not sign the Complaint.

See Doc. 1, Complaint p. 1, ll. 1, p. 12, ll. 6-15; Doc. 6, Summons, p. 1.

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1 On March 1, 2013, the date the Complaint was filed in the present case, this Court issued
2 a Minute Order which states,

3 NOTICE TO COUNSEL PURSUANT TO LOCAL RULE IA 10-2. Counsel
4 Kerry P. Faughnan to comply with completion and electronic filing of the
5 Designation of Local Counsel and Verified Petition. . . . Verified Petition due by
6 4/15/2013. . . See, Doc. 4, Minute Order.

7 Neither Harrington nor Faughnan have filed a verified petition for Harrington to practice
8 in this District in the present case as required by Local Rule IA 10-2 and this Court's March 1,
9 2013 Minute Order (*see* Doc. 4, Minute Order). Neither Harrington nor Faughnan have filed a
10 designation of local counsel as required by Local Rule IA 10-2 and this Court's March 1, 2013
11 Minute Order. Harrington and Faughnan have missed the April 15, 2013 deadline for filing the
12 verified petition and the designation of local counsel. To this date, neither Harrington nor
13 Faughnan have filed a verified petition for Harrington to practice and represent Slep-Tone in the
14 present case. To this date, neither Harrington nor Faughnan have filed the designation of local
15 counsel in the present case.

16 On July 1, 2013, which was 122 days after the filing of the Complaint in the present case,
17 Faughnan applied for and received a Summons which was served with the Complaint upon King
18 on that date.

19 Legal Argument

20 Summary of reasons why Slep-Tone's Complaint should be dismissed with 21 prejudice:

22 The Complaint in the present case which Slep-Tone separately filed against King in
23 conformance with this Court's February 11, 2013 Order in *Ellis Island* should be dismissed with
24 prejudice for the following reasons:

- 25 (1) The Complaint in the present case was signed and filed by Harrington who is not
26 licensed to practice in the District of Nevada in the present case, and Harrington
27 fraudulently represented to this Court on the face of the Complaint that he was
28 admitted to practice *pro hac vice*;

- 1 (2) The Complaint in the present case was not signed by an attorney licensed to
2 practice law in the State of Nevada; it was only signed by Harrington.
- 3 (3) Harrington failed to file a verified petition to practice in the present case, and
4 Harrington failed to pay the required application fee within 45 days of his filing of
5 the Complaint as ordered by this Court in its March 1, 2013 Minute Order;
- 6 (4) Harrington has neither filed a verified petition to practice in the present case nor
7 paid the required application fee more than three months after the Court ordered
8 deadline for him to do so expired;
- 9 (5) No designation of local counsel was filed in the present case within 45 days of the
10 filing of the Complaint as ordered by this Court in its March 1, 2013 Minute
11 Order;
- 12 (6) No designation of local counsel has yet been filed in the present case more than
13 three months after the Court ordered deadline to do so expired;
- 14 (7) The Court Clerk improperly issued the Summons in the present case prior to any
15 petition for Harrington to represent Slep-Tone *pro hac vice* had been granted by
16 this Court;
- 17 (8) Fed. R. Civ. P. 11(a) and Local Rule IA 10-2 (k) provide that the Complaint in the
18 above-entitled action may be stricken;
- 19 (9) Slep-Tone's Complaint in the present case should be stricken since Harrington
20 sought to deceive this Court, and neither Harrington nor Faughnan have made any
21 attempt to comply with Local Rule IA 10-2 or with this Court's March 1, 2013
22 Minute Order, and neither Harrington nor Faughnan can show excusable neglect
23 for their failure to do so; and,
- 24 (10) As previously order by this Court in *Ellis Island*, the time for Slep-Tone in the
25 present case to file its Complaint against King expired on March 1, 2013, so if
26 Slep-Tone's Complaint is stricken, then the time for Slep-Tone to refile against
27 King has expired.

28

1 **Harrington has not been admitted to practice in this federal District in the present**
2 **case.**

3 Local Rule IA 10-2(a) states in pertinent part,

4 An attorney who is not a member of the Bar of this Court, who has been retained
5 or appointed to appear **in a particular case**, may do so only with permission of
6 this Court. **(emphasis added)**

7 In addition, Local Rule IA 10-2 (j) states,

8 When all the provisions of this Rule are satisfied, the Court may enter an order
9 approving the verified petition for permission to practice in the particular case.
10 Such permission is **limited to the particular case** and no certificate shall be
11 issued by the Clerk. **(emphasis added)**

12 Slep-Tone's Complaint in the present case was filed by Harrington who described himself
13 on the face of the Complaint as appearing "*pro hac vice*." See Doc. 1, Complaint, p. 1, l. 1.
14 Harrington misrepresented his status to practice in this District in this case. Harrington has never
15 been admitted to represent Slep-Tone in the present case *pro hac vice*. Although Harrington's
16 petition to practice *pro hac vice* in the *Ellis Islandi* case was granted, Local Rules IA 10-2 (a)
17 and (j) makes clear that Harrington was admitted to practice in this District only in the *Ellis*
18 *Island* case and not in any other case. As stated in this Court's March 1, 2013 Minute Order (see
19 Doc. 4, Minute Order), Harrington needed to file a separate verified petition to practice in this
20 particular case brought by Slep-Tone against King.

21 The Order in the *Ellis Island* case (see Doc. 1, Complaint, Ex. 1) mentions nothing about
22 waiving Harrington's need to file a separate petitions to appear *pro hoc vice* in each newly filed
23 case in which he intends to represent Slep-Tone against defendants who were dismissed from the
24 *Ellis Island* case for improper joinder, including King. Harrington needed to comply with Local
25 Rule IA 10-2(a) and (b) for every case filed in this District in which represents Slep-Tone.

26 Local Rule IA 10-2 (b) states in pertinent part,

27 The verified petition required by the Rule shall be on a form furnished by the
28 Clerk. The verified petition shall be accompanied by the admission fee set by the
Court.

Pursuant to Local Rule IA 10-2 (b), Harrington's verified petition required under Local
Rule 10-2 also needed to be "accompanied by the admission fee set by the Court." In much the
same way Slep-Tone sought to avoid paying multiple filing fees by improperly joining King and

1 51 other defendants with Ellis Island Casino & Brewery in the *Ellis Island* case, Harrington now
2 seeks to avoid paying a second application fee by misleading this Court into believing that he has
3 already been admitted to practice in this District in the present case *pro hac vice*. Harrington
4 needs to file an additional petition to proceed *pro hoc vice* and pay an additional application fee
5 if he wants to be admitted *pro hac vice* in the present case. This was made clear in this Court's
6 March 1, 2013 Minute Order. Harrington's representation on the face of the Complaint filed in
7 the present case that he was already admitted to represent Slep-Tone in the present case *pro hac*
8 *vice* is deceptively false and attempts to perpetrate a fraud upon this Court.

9
10 **Harrington violated Local Rule IA 10-2 (c) by failing to state on the face of the
Complaint that he would comply with LR IA 10-2 within 45 days.**

11 Local Rule IA 10-2 (c) states,

12 An attorney whose verified petition is pending shall take no action in this
13 case beyond filing the first pleading or motion. The first pleading or motion shall
14 state that the attorney "has complied with LR IA 10-2" or "will comply with LR
IA 10-2 within ___ days." Until permission is granted, the Clerk shall not issue
summons or other writ.

15 Harrington violated Local Rule IA 10-2(c) in that the Complaint filed in the present case
16 neither states that Harrington has complied with LR IA 10-2 nor that he will comply with LR IA
17 10-2 within a given time.

18
19 **Harrington violated Local Rule IA 10-2 (d) by failing to file a completed designation
of resident counsel.**

20 Local Rule IA 10-2 (d) states,

21 Unless otherwise ordered by the Court, any attorney who is granted permission to
22 practice pursuant to this Rule shall associate a resident member of the Bar of this
23 Court as co-counsel. The attorneys shall confirm the association by filing a
completed designation of resident counsel on the form provided by the Clerk. . . .

24 Harrington violated Local Rule IA 10-2 (d) by failing to file a completed designation of
25 resident counsel on the form provided by the Court Clerk. Faughnan has not signed a
26 designation of resident counsel. There is no designation of resident counsel filed in the present
27 case.

28

1 **The Complaint in the present case is not signed by an attorney of record.**

2 Fed. R. Civ. P. 11 (a) states in pertinent part,

3 Every pleading . . . must be signed by at least one attorney of record in the
4 attorney's name —or by a party personally if the party is unrepresented. . . . The
5 court must strike an unsigned paper unless the omission is promptly corrected
6 after being called to the attorney's or party's attention

7 In the present case, the Complaint is not signed by an attorney of record since Harrington
8 is not admitted to practice in this District in the present case *pro hac vice*, and because
9 Harrington did not comply with Local Rule IA 10-2(c). Further, Faughnan is not the attorney of
10 record because he did not sign the Complaint, and Harrington has not designated Faughnan as
11 resident counsel in the present case. Slep-Tone is, in essence, acting without an attorney.
12 Harrington has not filed a designation of local counsel as required by Local Rule IA 10-2 (d), and
13 Faughnan has not signed a designation of local counsel.

14 **The Complaint in the present case should be stricken from the record, and
15 Harrington should be sanctioned.**

16 Local Rule IA 10-2 (e) states,

17 In civil cases, attorneys shall have forty-five (45) days after their first appearance
18 to comply with all the provisions of this Rule.

19 In the present case, neither Harrington nor Faughnan have complied with Local Rule IA
20 10-2 (a), (b), (c) or (d) within the time limit set forth in Local Rule IA 10-2 (e).

21 Local Rule IA 10-2 (k) states,

22 Failure to comply timely with this Rule may result in the striking of any and all
23 documents previously filed by such attorney, the imposition of other sanctions, or
24 both.

25 The Complaint filed in the present case should be struck pursuant to Fed. R. Civ. P. 11 (a)
26 and Local Rule IA 10-2 (k). Harrington should be sanctioned for misrepresenting to this Court
27 that he had already been admitted *pro hac vice* at the time he filed the Complaint in the present
28 case and for his failure to comply with Local Rule IA 10-2 in violation of this Court's
29 March 1, 2013 Minute Order.

30

1 **The Court Clerk should never have issued the Summons.**

2 Local Rule IA 10-2 (c) states,

3 An attorney whose verified petition is pending shall take no action in this case
4 beyond filing the first pleading or motion. The first pleading or motion shall state
5 that the attorney “has complied with LR IA 10-2” or “will comply with LR IA 10-
6 2 within ___ days.” **Until permission is granted, the Clerk shall not issue
7 summons or other writ. (emphasis added)**

8 In the present case, the Summons requiring King to answer or respond to Slep-Tone’s
9 Complaint should never have been issued by the Court Clerk pursuant to Local Rule IA 10-2 (c)
10 as permission for Harrington to represent Slep-Tone in the present case *pro hac vice* had not been
11 granted. Further, Faughnan has not made an appearance. Nevertheless, a Summons was issued
12 on July 1, 2013, and served upon King on that date. *See* Doc. 7, Summons.

13 **The Complaint should be dismissed as King cannot be properly served within 120 of
14 the filing of the Complaint.**

15 Fed. R. Civ. P. 4 (m) states,

16 If a defendant is not served within 120 days after the complaint is filed, the
17 court – on motion or on its own after notice to the plaintiff, must dismiss the
18 action without prejudice against the defendant or order that service be made
19 within a specified time. But if the plaintiff shows good cause for the failure, the
20 court must extend the time for service for the appropriate period. . . .

21 The *Ellis Island* Order (*see* Doc. 1, Complaint, Ex. 1) provides that the instant case
22 needed to be filed by March 1, 2013 or King’s dismissal in the *Ellis Island* case would be with
23 prejudice.

24 In the present case, Slep-Tone filed its Complaint against King on March 1, 2013. One
25 hundred twenty days after the filing of the Complaint fell on Saturday, June 29, 2013, so
26 according to Rule 6 (a) (1) (C), the last day for Slep-Tone to serve King fell on Monday, July 1,
27 2013. Slep-Tone did nothing to serve King for 121 days until it had the Summons improperly
28 issued on July 1, 2013. Slep-Tone cannot show good cause for King not being served until the
 last day under Rule 4 (m) because it did not even apply for a Summons until the 122nd day
 following the filing of the Complaint. If the Summons was issued in violation of Local Rule IA
 10-2 (c), then even if Harrington were to now file his petition to proceed *pro hac vice*, and even
 if Faughnan were to now file his designation of local counsel, and even if this Court were to

1 grant Harrington's petition to practice in this District in the present case, and even if the Court
2 Clerk were to then properly issue a Summons, Slep-Tone would be unable to serve King within
3 120 days of the filing of the Complaint as required by Rule 4 (m). Slep-Tone's case would then
4 need be dismissed. Since Slep-Tone only had until March 1, 2013, to file a separate complaint
5 against King, the time for Slep-Tone to file against King shall have expired, and Slep-Tone's
6 case against King thereby needs to be dismissed with prejudice.

7
8 **Slep-Tone's Complaint should be dismissed for numerous violations of the Local
Rules and pursuant to Fed. R. Civ. P. 4 (m), 11 and 12(b).**

9 In sum, the Complaint in the present *King* case was filed in violation of Local Rule IA
10 10-2 (a), (b), and (c). Harrington and Faughnan ignored this Court's March 1, 2013 Minute
11 Order and, instead, fraudulently tricked the Court Clerk into issuing a Summons in violation of
12 Local Rule IA 10-2 (c). Harrington and Faughnan missed the deadline imposed by Local Rule IA
13 10-2 (e) and this Court's March 1, 2013 Minute Order by failing to file within 45 days of the
14 filing of the Complaint, Harrington's petition to practice as required by Local Rule IA 10-2 (a)
15 and (b), by posting the requisite application fee as required by Local Rule IA 10-2 (b), and by
16 failing to file a designation of local counsel signed by Harrington and Faughnan as required by
17 Local Rule IA 10-2 (d). The Court Clerk was tricked into violating Local Rule IA 10-2 (c) by
18 issuing the Summons which was served upon King.

19 Fed. R. Civ. P. 12 (b) states in pertinent part,

20 Every defense to a claim for relief in any pleading must be asserted in the
21 responsive pleading if one is required. But a party may assert the following
defenses by motion:

22 (1) lack of subject-matter jurisdiction;

23 * * * *

24 (4) insufficient process;

25 * * * *

26 (6) failure to state a claim upon which relief can be granted;

27 Because the Court's Minute Order of March 1, 2013, brought to Harrington's and
28 Faughnan's attention that the Complaint needed to be signed by at least one attorney of record

1 authorized to practice in this District in the present case, and because the Complaint was filed by
2 an attorney not licensed in Nevada and not authorized to practice in this District in the present
3 case, and because Harrington failed to file an application to practice in this District in the present
4 case, and because a valid Complaint needed to be filed in the present case by March 1, 2013, and
5 thereafter served by July 1, 2013, and because the Clerk improperly issued the Summons, the
6 Complaint and the Summons in the present case should be stricken, and Slep-Tone's Complaint
7 in the present case should be dismissed with prejudice pursuant to Fed. R. Civ. P. 11 (a), Local Rule
8 IA 10-2 (k), and Fed. R. Civ. P. 4 (m).

9 Further, there is a lack of subject matter jurisdiction because Slep-Tone's Complaint
10 should be stricken for the reasons hereinbefore set forth, and Slep-Tone's Complaint should be
11 dismissed pursuant to Fed. R. Civ. P. 12 (b) (1).

12 In the present case, there is a lack of sufficient process because the Summons should be
13 stricken for the reasons hereinbefore set forth, and Slep-Tone's Complaint should be dismissed
14 pursuant to Fed. R. Civ. P. 12 (b) (4).

15 In the present case, there is a failure to state a claim upon which relief can be granted
16 because Slep-Tone's Complaint should be stricken for the reasons hereinbefore set forth, and
17 Slep-Tone's Complaint should be dismissed pursuant to Fed. R. Civ. P. 12 (b) (6).

18 Because Slep-Tone cannot cure its errors in time to serve a valid complaint by the
19 March 1, 2013 deadline as required in the Order issued in the *Ellis Island* case and timely serve it
20 upon King, Slep-Tone's Complaint in the present case should be dismissed with prejudice.

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CONCLUSION

In conclusion, Defendant's Motion to Dismiss with Prejudice should be granted in its entirety, and Harrington should be sanctioned for attempting to perpetrate a fraud upon this Court.

Dated this 18 day of July, 2013.

By Tara King
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Defendant in proper person

This document was prepared under the direction of Jan Paul Koch, Esq., Nevada Bar No. 3094 for use by the filer in proper person:

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CERTIFICATE OF MAILING

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3 I hereby certify that on the 18 day of July, 2013, I mailed a true and correct copy of
4 the foregoing DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE via first class mail,
5 postage prepaid, in a sealed envelope, by depositing same in a receptacle marked for mailing with
6 the United States Postal Service and addressed to the following:

7 Kerry P. Faughnan, Esq.
8 LAW OFFICES OF KERRY FAUGHNAN
9 P.O. Box 335361
10 North Las Vegas, Nevada 89033

11 By 
12 TARA KING
13 DJ TARA KING PRODUCTIONS
14 1904 Chavez Court
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18 *Defendant in proper person*