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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 SLEP-TONE ENTERTAINMENT
11 CORPORATION,

12 Plaintiff,

13 v.

14 TARA KING d/b/a TARA KING
15 PRODUCTIONS,

16 Defendant.

Case No. 2:13-CV-00352-KJD-VCF

ORDER

17 Presently before the Court is the Court's Order to Show Cause (#21). Plaintiff filed a
18 response (#23).

19 Originally, Plaintiff sued Defendant Tara King and approximately fifty (50) other defendants
20 in *Slep-Tone Entertainment Corp. v. Ellis Island Casino & Brewery*, Case No. 2:12-cv-0239-KJD-
21 NJK. In that case, this Court found that Slep-Tone had improperly joined multiple, unrelated
22 defendants. On February 11, 2013, the Court ordered Plaintiff to file a new and separate action
23 against severed defendants against which it wished to proceed. The Court ordered Plaintiff to do so
24 on or before March 1, 2013.

25 On March 1, 2013, Plaintiff filed the present action. Counsel for Plaintiff, James Harrington,
26 had been admitted *pro hac vice* in the *Ellis Island* action and signed the complaint in the newly filed

1 action. However, Harrington failed to file a new *pro hac vice* application in the present action,
2 believing that his admission in the *Ellis Island* action sanctioned his appearance in this newly filed
3 action. Further, due to his failure to file a new *pro hac vice* application, Harrington failed to
4 designate local counsel, previously Kerry P. Faughnan. The Clerk of the Court did issue a Minute
5 Order (#4) notifying Harrington and Faughnan of the necessity of complying with Local Rule IA 10-
6 2 which required the *pro hac vice* application and designation of local counsel to be filed within
7 forty-five (45) days. Defendant then filed a Motion to Dismiss (#10) on July 19, 2013 seeking to
8 have the complaint dismissed with prejudice for Plaintiff's failure to have the complaint signed by
9 an attorney licensed to practice law in Nevada, failing to comply with Local Rule IA 10-2, failing to
10 serve the complaint timely in accordance with Federal Rule of Civil Procedure 4(m), and failing to
11 serve a summons signed by the designated local counsel. Plaintiff's *pro hac vice* application was
12 granted (#13) on July 29, 2013.

13 Due to the Court's strong preference that cases be resolved on the merits, the Court denied
14 Defendant's motion on August 6, 2014. However, the Court found that counsel should have known,
15 at the latest by the date of the Minute Order (#4) on March 1, 2013, of his duty to file a *pro hac vice*
16 application and designation of local counsel. The Court gave counsel the benefit of the doubt
17 concluding that he was not acting in bad faith. However, the Court did conclude that Plaintiff had
18 not timely complied with Rule 10-2 and had not timely served the complaint. Further, the Court
19 deemed Plaintiff's untimely service and return of summons executed as a request for an extension of
20 time to serve the complaint and allowed the action to proceed.

21 Defendant then filed her answer on September 18, 2014. Over the next ten (10) months,
22 Plaintiff took no proceeding of record until the Court ordered it to show cause why the action should
23 not be dismissed for want of prosecution. In response, Plaintiff essentially asserts that it did not
24 comprehend that the Court really intended this to be a new action, requiring it to follow the Federal
25 and Local Rules of Civil Procedure, such as submitting a scheduling order which would have, at the
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1 least, set dates for dispositive motions and a joint pre-trial order. The Court does not accept this
2 explanation.

3 The Court's order in the *Ellis Island* action and its order (#19) denying Defendant's Motion
4 to Dismiss made it clear that it intended for Plaintiff to proceed with each action separately as a new
5 case. Despite the Court's clear preference to resolve this action on the merits, Plaintiff did nothing
6 for the next three hundred days. If Plaintiff was confused about the correct course of action, it could
7 have filed a motion at any time within those three hundred days seeking clarification of the Court's
8 order, or requested the magistrate judge to set a scheduling or briefing order. Instead, Plaintiff chose
9 to do nothing. Neither excusable neglect nor good cause for failing to act have been demonstrated by
10 Plaintiff. Therefore, in accordance with Local Rule 41-1, Plaintiff's complaint is dismissed with
11 prejudice.

12 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Complaint is **DISMISSED with**
13 **prejudice;**

14 IT IS FURTHER ORDERED that the Clerk of the Court enter **JUDGMENT** for Defendant
15 and against Plaintiff;

16 IT IS FURTHER ORDERED that all other outstanding motions are **DENIED as moot.**

17 DATED this 29th day of March 2016.

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21 Kent J. Dawson
22 United States District Judge
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