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FIRST TIME VIDEOS LLC and  
8 ROBERT H. SIMYAR

9 **UNITED STATES DISTRICT COURT**  
10 **DISTRICT OF NEVADA**

11 FIRST TIME VIDEOS LLC, a Nevada limited  
12 liability company and ROBERT H. SIMYAR,

13 Plaintiffs,

14 v.

15 SUPERSTAR MEDIA LABS, LLP, an Arizona  
16 limited liability partnership, and REGAN  
SCOTT FRANKS II, an individual,

17 Defendants.  
18

Case No. 2:11-cv-00992-KJD-LRL

**PLAINTIFFS' MOTION FOR ENTRY  
OF DEFAULT AGAINST DEFENDANTS  
SUPERSTAR MEDIA LABS, LLP AND  
REGAN SCOTT FRANKS II**

19 Pursuant to Federal Rule of Civil Procedure 55(a), Plaintiffs First Time Videos LLC and  
20 Robert Simyar (together "Plaintiffs") respectfully move the Court to enter the default of  
21 Defendants Superstar Media Labs, LLP ("Superstar") and Regan Scott Franks II ("Franks"). This  
22 motion is supported by the following memorandum of points and authorities, by the  
23 accompanying Declaration Of Jonathan W. Fountain In Support Of Plaintiffs' Motion For Entry  
24 Of Default Against Defendants Superstar Media Labs, LLP And Regan Scott Franks II, (the  
25 "Fountain Decl."), by the papers and pleadings on file in this action, and by any oral argument the  
26 Court may allow.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 Rule 55 of the Federal Rules of Civil Procedure governs the entry of defaults and default

1 judgments. With respect to the entry of defaults, it states the following: “When a party against  
2 whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that  
3 failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ.  
4 P. 55(a).

5 In this case, the Clerk of the Court should enter the default of Franks and Superstar  
6 because they have each been properly served with the Summons and Complaint and because they  
7 have each failed to plead or otherwise defend within the time provided for by the Federal Rules of  
8 Civil Procedure.

9 First, copies of the Summons and Complaint were properly served upon Franks and  
10 Superstar. With respect to Franks, under the Federal Rules of Civil Procedure, an individual  
11 located in the United States may be served by “delivering a copy of the summons and of the  
12 complaint to the individual personally.” Fed. R. Civ. P. 4(e)(1). Copies of the Summons directed  
13 to Superstar, the Summons directed to Franks, and the Complaint were hand delivered to Franks  
14 on June 20, 2011. (*See* Docket No. 13 at p. 1, ll. 20-21.) Because Franks is an individual located  
15 in the United States and because a copy of the summons and complaint was personally delivered  
16 to him, he has been properly served. With respect to Superstar, under the Federal Rules of Civil  
17 Procedure, a corporation, partnership, or association may be served by “delivering a copy of the  
18 summons and of the complaint to an officer, a managing or general agent, or any other agent  
19 authorized by appointment or by law to receive service of process . . . .” Fed. R. Civ. P.  
20 4(h)(1)(B). Superstar is an Arizona limited liability partnership. (*See* Fountain Decl. ¶ 4 & Ex.  
21 A.) Franks is both its general partner and its registered agent for service of process. (*Id.*)  
22 Because Franks is the general partner of Superstar, and because a copy of the Summons and  
23 Complaint was personally delivered to Franks, Superstar has also been properly served.

24 Second, the time for Franks and Superstar to answer or otherwise respond to the  
25 Complaint has long since expired. Under Rule 12 of the Federal Rules of Civil Procedure, an  
26 answer or other response to the Complaint is due 21 days after service of the summons and  
27 complaint. *See* Fed. R. Civ. P. 12(a)(1)(A)(i) (“Unless another time is specified by this rule or a  
28 federal statute, the time for serving a responsive pleading is as follows: (A) A defendant must

1 serve an answer: (i) within 21 days after being served with the summons and complaint.”). As set  
2 forth above, copies of the Summons and Complaint were served upon Franks and Superstar via  
3 hand delivery on June 20, 2011. Accordingly, the deadline for Franks and Superstar to file and  
4 serve an answer or other response to the Complaint was 21 days after that date, or July 11, 2011.

5 Although the parties have been engaged in settlement discussions, at no time has Franks or  
6 Superstar requested, Plaintiffs granted, or the Court ordered, any extension of the time for Franks  
7 or Superstar to answer or otherwise respond to the Complaint. (See Fountain Decl. ¶ 5.)  
8 Settlement discussions have broken down due to Franks’ and Superstar’s failure to timely provide  
9 financial information as requested by Plaintiffs. (Id.) Accordingly, on Monday, August 8, 2011,  
10 Plaintiffs’ counsel notified Franks and Superstar that Plaintiffs would file a motion for entry of  
11 default if Franks and Superstar did not file an answer or other response to the Complaint by  
12 Wednesday, August 10, 2011. (Id. & Ex. B.)

13 To date, however, neither Franks nor Superstar has filed an answer or otherwise responded  
14 to the Complaint. (Id. ¶ 6.)

15 **CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request that the Clerk of the Court enter  
17 the default of Defendants Superstar and Franks.

18 Dated: this 12th day of August, 2011

19 Respectfully submitted,

20 LEWIS AND ROCA LLP

21 By:           /s/Jonathan W. Fountain            
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Attorneys for Plaintiffs  
FIRST TIME VIDEOS LLC and  
ROBERT H. SIMYAR

1 **CERTIFICATE OF SERVICE**

2 I, Jonathan W. Fountain, hereby certify that on August 12, 2011, I filed a copy of the  
3 foregoing document entitled PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AGAINST  
4 DEFENDANTS SUPERSTAR MEDIA LABS, LLP AND REGAN SCOTT FRANKS II, via the  
5 Court's CM/ECF system, which will send electronic notice to the following counsel of record:

6 Michael J. McCue, Esq. MMcCue@LRLaw.com LEWIS AND ROCA LLP 3993 Howard Hughes Parkway Suite 600 Las Vegas, NV 89169	Jonathan W. Fountain, Esq. JFountain@LRLaw.com LEWIS AND ROCA LLP 3993 Howard Hughes Parkway Suite 600 Las Vegas, NV 89169
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10 I hereby further certify that on August 12, 2011, I served a copy of the foregoing  
11 document, entitled PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AGAINST  
12 DEFENDANTS SUPERSTAR MEDIA LABS, LLP AND REGAN SCOTT FRANKS II, via  
13 first-class, United States mail, upon the following non-CM/ECF users:

14 Regan Scott Franks II 454 E. 52nd Street Long Beach, CA 90805	Superstar Media Labs, LLP 454 E. 52nd Street Long Beach, CA 90805
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16 Dated: this 12th day of August, 2011

17 /s/Jonathan W. Fountain  
18 An employee of Lewis and Roca LLP