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17 Marijuana Laws

18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

21 RIGHTHAVEN LLC, a Nevada limited liability company,) Case No. 2:10-cv-00351-LDG-PAL
22)
23 Plaintiff,) **MOTION TO STRIKE SECOND**
24) **AMENDED COMPLAINT**
25 v.)
26)
27 NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS, a)
28 District of Columbia domestic nonprofit Corporation; MEDIA ACCESS PROJECT,)
INC., a California corporation,)
Defendants.)

1 Defendant National Organization for the Reform of Marijuana Laws (“NORML”)
2 moves to strike Plaintiff Righthaven LLC’s (“Righthaven”) Second Amended Complaint
3 (Document 9) filed on April 22, 2010 for failure to comply with Fed. R. Civ. Proc. 15(a).

4 **I. Procedural Background**

5 Righthaven filed its original complaint on March 15, 2010 (Document 1) alleging a
6 single claim of copyright infringement against NORML. Thereafter, on April 5, 2010,
7 Righthaven filed a First Amended Complaint (Document 6), adding Media Access Project,
8 Inc. as a Defendant, and adding additional claims against NORML. NORML and Righthaven
9 entered into a stipulation to extend the time by which NORML had to respond to the First
10 Amended Complaint until April 23, 2010 (Document 8). On April 22, 2010, Righthaven filed
11 a Second Amended Complaint (Document 9) without consent from NORML or the Court. In
12 the Second Amended Complaint, Righthaven represents that the only change is to correct a
13 technical error in the caption of the First Amended Complaint.

14 **II. Legal Argument**

15 Fed. R. Civ. Proc. 15(a) states that “[a] party may amend its pleading *once* as a matter
16 of course In all other cases, a party may amend its pleading only with the opposing
17 party’s written consent or the court’s leave.” *Id.*

18 Righthaven failed to obtain—or even request—consent of NORML to amend the First
19 Amended Complaint. Further, Righthaven did not file a motion for leave to file a second
20 amended complaint, but instead simply filed the Second Amended Complaint without leave
21 from the Court. Thus, the Second Amended Complaint is a rogue pleading that cannot be
22 recognized by the parties or the Court. As such, the First Amended Complaint is the operative
23 pleading to which NORML responds by filing a Motion to Dismiss for Lack of Subject Matter
24 Jurisdiction and Lack of Personal Jurisdiction (Document 11), filed concurrently herewith.

25 **III. Conclusion**

26 Because Righthaven filed its Second Amended Complaint without consent of NORML
27 or leave from the Court, the Second Amended Complaint is not the operative complaint in this
28 case and must be stricken. Should the Court decide to allow the Second Amended Complaint,

1 NORML respectfully requests that the Court deem NORML's Motion to Dismiss for Lack of
2 Subject Matter Jurisdiction and Lack of Personal Jurisdiction, filed concurrently herewith, as a
3 response to the Second Amended Complaint.

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Dated: April 23, 2010

/s/ Cassandra P. Joseph
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of the Law Offices of Watson Rounds, and on this date, a true and correct copy of the foregoing document, **Motion to Strike Second Amended Complaint**, was served upon the following individuals via the Court's electronic filing system.

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Righthaven LLC
9960 West Cheyenne Avenue, Suite 210
Las Vegas, Nevada 89129-7701

Dated: April 23, 2010

/s/ Carla Ousby
Carla Ousby