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

11 RIGHTHAVEN LLC, a Nevada limited-
liability company,

12
13 Plaintiff,

14 v.

15 DR. SHEZAD MALIK LAW FIRM P.C., a
16 Texas domestic professional corporation,

17
18 Defendant.
19

Case No.: 2:10-cv-0636-RLH-RJJ

**PLAINTIFF’S MOTION FOR
SANCTIONS PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 11**

20
21 Righthaven LLC (“Righthaven”) hereby moves for sanctions against Defendant Dr.
22 Shezad Malik Law Firm P.C. (“Malik Firm”) pursuant to Rule 11 of the Federal Rules of Civil
23 Procedure. Righthaven’s motion is supported by the accompanying declaration of J. Charles
24 Coons (“Coons Decl.”), and is based upon the Memorandum of Points and Authorities set forth
25 below, the pleadings on record with the Court, and any oral argument of counsel to be
26 entertained by the Court.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Malik Firm’s grossly premature and unfounded assertion that Righthaven lacks standing
4 to sue for copyright infringement, as enumerated in the Motion to Dismiss,¹ is fundamentally
5 frivolous, entirely unsupported by law or fact, and gives rise to the imposition of sanctions
6 pursuant to Rule 11 of the Federal Rules of Civil Procedure. Malik Firm’s standing argument,
7 and the erroneous citation of law purportedly in support thereof, was asserted without any
8 reasonable prefiling inquiry as required by Rule 11 and represents nothing more than a flagrant
9 and egregious attempt to mislead the Court. Ultimately, Malik Firm’s conduct constitutes an
10 abuse of the litigation process and should not be tolerated. Accordingly, the Court should
11 impose sanctions upon Malik Firm and award Righthaven reasonable attorney’s fees incurred in
12 responding to this patently frivolous, wholly unfounded argument.

13
14 **II. FACTS**

15 Righthaven is the owner of the copyright in the literary work entitled: “Florida woman
16 suing over Monte Carlo fire” (the “Work”). (Compl. Ex. 4.) Righthaven acquired ownership of
17 the Work on or about March 31, 2010, whereupon Righthaven entered into a copyright
18 assignment with assignor Stephens Media LLC (the “Righthaven Assignment”). (Opp’n to Mot.
19 to Dismiss Ex. 1.) In addition to assigning Righthaven exclusive ownership of the copyright in
20 and to the Work, the Righthaven Assignment also transferred to Righthaven the right to seek
21 redress for all accrued causes of actions, including, without limitation, infringements of the Work
22 occurring prior to the effective date of the Righthaven Assignment. (Opp’n to Mot. to Dismiss
23 Ex. 1.) On April 12, 2010, the United States Copyright Office (“USCO”) granted Righthaven

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¹ Malik Firm’s Motion to Dismiss was filed in two parts. Malik Firm first filed “Defendant’s Motion to Dismiss for
27 Lack of Subject Matter Jurisdiction and Lack of Personal Jurisdiction.” (Docket No. 6) Said document merely
28 contains a brief summary of Malik Firm’s purported grounds for dismissal. Malik Firm then separately filed a
“Memorandum of Points and Authorities in Support of Defendant’s Motion to Dismiss for Lack of Subject Matter
Jurisdiction and Lack of Personal Jurisdiction,” (Docket No. 7) which contains Malik Firm’s dismissal arguments in
full. Thus, all references to the Motion to Dismiss in the instant motion will be referring to Malik Firm’s
Memorandum of Points and Authorities. (Docket No. 7)

1 the registration to the Work, copyright registration number TX0007125673. (Compl. ¶ 25.)
2 (Compl. Ex. 5.)

3 Malik Firm is the owner and registrant of the Internet domain name
4 <dallasfortworthinjurylawyer.com> (the “Website”). (Compl. ¶ 4.) On or about January 20,
5 2010, Malik Firm willfully reproduced an unauthorized copy of the Work (the “Infringement”)
6 and publicly displayed said unauthorized copy on the Website. (Compl. ¶ 10.) (Compl. Ex. 1.)
7 Malik Firm replaced the original title of the Work with the title: “Florida Resident Files Lawsuit
8 Related to Las Vegas Fire.” (Compl. Ex. 1.) At all times relevant to this lawsuit, the Work has
9 depicted and depicts the *Las Vegas Review-Journal* as the original source publication. (Compl.
10 Ex. 4.) Malik Firm also posted at least two additional unauthorized reproductions of
11 Righthaven-owned literary works on the Website. (Compl. Ex. 2-3.)

12 Righthaven filed the Complaint in this matter on May 4, 2010, alleging that Malik Firm
13 had committed copyright infringement of the Work by publicly displaying the Infringement on
14 the Website. (See Compl. ¶¶ 22-45.) In addition to filing an Answer, Malik Firm also filed a
15 Motion to Dismiss, seeking dismissal in part due to Righthaven's purported lack of standing to
16 sue. (Mot. to Dismiss 4-5) The entirety of Malik Firm’s standing argument is centered upon the
17 premise that “Righthaven has failed, however, to show that it was the owner of the copyright in
18 the [Work] when the alleged infringement occurred.” (Mot. to Dismiss 5)² Malik Firm does not
19 offer any applicable legal authority to support the proposition that Righthaven was required to
20 exhibit or allege the specific nature of the Righthaven Assignment in the pleadings. Malik Firm
21 does cite the Second Circuit’s and Ninth Circuit’s respective recitations of 17 U.S.C. § 501(b),
22 but Malik Firm misconstrues the decisions ultimately rendered by these courts. At the time of
23 filing the Motion to Dismiss, Malik Firm had not conducted any discovery, nor had Malik Firm
24 made any requests for discovery. As such, Malik Firm filed the Motion to Dismiss without ever
25 having seen the Righthaven Assignment.

26 Righthaven filed its Opposition to Malik Firm’s Motion to Dismiss on June 21, 2010. In
27 support of said Opposition, Righthaven attached the Righthaven Assignment. (Opp’n to Mot. to

28 ² Malik Firm has not included line numbers on any of the pleadings or papers filed in this lawsuit. Thus, Righthaven can only cite the applicable page number when referring to a document filed by Malik Firm.

1 Dismiss Ex. 1.) As such, Malik Firm has had a reasonable opportunity to review the Righthaven
2 Assignment and examine the specific terms of the rights transfer between Righthaven and
3 Stephens Media LLC. Despite this opportunity, Malik Firm has not withdrawn its standing
4 argument.

5 As of the date of the instant motion, four other law firms or solo practitioners, while
6 participating in the defense of other copyright actions filed by Righthaven, have previously
7 asserted standing arguments in three separate cases before this Court that were substantively
8 identical to the standing argument asserted by Malik Firm:

- 9 1. *Righthaven LLC v. National Organization for the Reform of Marijuana Laws and*
10 *Media Awareness Project (MAP), Inc.*, 2:10-cv-0351-LDG-PAL, Docket No. 12,
11 Motion to Dismiss 6: 7-28, 7:1-12. (Ex. 1.)
- 12 2. *Righthaven LLC v. MajorWager.com, Inc.*, 2:10-cv-00484-RCJ-LRL, Docket No. 8,
13 Motion to Dismiss 3: 8-28, 4: 1-25. (Ex. 2.)
- 14 3. *Righthaven LLC v. Industrial Wind Action Corp and Jonathan S. Linowes*, 2:10-cv-
15 0601-RLH-PAL, Docket No. 9, Motion to Dismiss 6: 22-28, 7: 1-28. (Ex. 3.)

16 As evidenced by the court documents attached hereto as Exhibits 4-6, each of these
17 defendants later withdrew, or otherwise conceded their respective standing arguments upon the
18 presentment of Righthaven's opposition and assignment. (Ex. 4.) (Ex. 5 at 3 n.1.) (Ex. 6 at 5: 23-
19 28)

20 21 **III. ARGUMENT**

22 **A. Rule 11 Sanctions are Appropriate if a Motion is Frivolous, Legally Unreasonable,** 23 **or Brought for an Improper Purpose**

24 Rule 11 sanctions play an integral role in the deterrence of costly, meritless abuses of the
25 litigation process. As explained by the Advisory Committee, the language of Rule 11 “stresses
26 the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty
27 imposed by the rule.” Advisory Committee Note, 97 F.R.D. 165, 198 (1983). Rule 11 sanctions
28 are appropriate if, following the requisite prefiling inquiry, “a competent attorney could not form

1 a reasonable belief that the pleading [or other paper] is well grounded in fact and is warranted by
2 existing law . . .” *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1537 (9th
3 Cir. 1986) (alteration in original) (citation omitted). Specifically, the rule provides, in pertinent
4 part:

5 By presenting to the court a pleading, written motion, or other paper –
6 whether by signing, filing, submitting, or later advocating it – an attorney or
7 unrepresented party certifies that to the best of the person’s knowledge,
8 information, and belief, formed after an inquiry reasonable under the
9 circumstances:

- 10 (1) it is not being presented for any improper purpose, such as to
11 harass, cause unnecessary delay, or needlessly increase the cost of
12 litigation;
- 13 (2) the claims, defenses, and other legal contentions are warranted by
14 existing law or by a nonfrivolous argument for extending,
15 modifying, or reversing existing law or for establishing new law;
- 16 (3) the factual contentions have evidentiary support or, if specifically
17 so identified, will likely have evidentiary support after a reasonable
18 opportunity for further investigation or discovery; and
- 19 (4) the denials of factual contentions are warranted on the evidence
20 or, if specifically so identified, are reasonably based on belief or a
21 lack of information.

22 Fed. R. Civ. P. 11(b).

23 The current version of the rule “was intended to be a standard ‘more stringent than the original
24 good faith formula’ so ‘that a greater range of circumstances will trigger its violation.’” *Golden
25 Eagle Distributing Corp.*, 801 F.2d at 1536 (*quoting* Advisory Committee Note, 97 F.R.D. at
26 198-99). As such, in order to prevent the filing of unmeritorious, legally unfounded papers,
27 courts are given wide latitude to impose Rule 11 sanctions.

28 Crucial to the Rule 11 analysis is the party’s certification standard: to determine whether
a party has complied with the rule, the court applies a standard of “objective reasonableness
under the circumstances.” *Hudson v. Moore Business Forms, Inc.*, 836 F.2d 1156, 1159 (9th Cir.
1987). In other words, to satisfy Rule 11, the position taken by the filing party must support an
objectively reasonable belief that the position is soundly based in law and in fact. *Golden Eagle
Distributing Corp.*, 801 F.2d at 1538. Thus, the subjective good faith of a party does not provide

1 protection from the imposition of sanctions. *See G.C. and K.B. Investments, Inc. v. Wilson*, 326
2 F.3d 1096, 1109 (9th Cir. 2003).

3 This Court has specifically held that Rule 11 sanctions are appropriate when “a motion is
4 frivolous, legally unreasonable, or brought for an improper purpose.” *Smith & Green Corp. v.*
5 *Trustees of Const. Industry & Laborers Health & Welfare Trust*, 244 F. Supp. 2d 1098, 1102 (D.
6 Nev. 2003) (citations omitted). In the context of Rule 11, a paper is frivolous if it is “both
7 baseless and made without a reasonable and competent inquiry.” *Buster v. Greisen*, 104 F.3d
8 1186, 1190 (9th Cir. 1997). In sum, Rule 11 compliance occurs when a party performs a
9 pre-filing investigation of the applicable law and relevant facts and thereafter presents an
10 argument well founded in both, and the party’s actions are deemed objectively reasonable.

11
12 **B. Malik Firm’s Frivolous Standing Argument Unequivocally Fails to Comply with**
13 **Rule 11 and Warrants the Imposition of Sanctions**

14 **1. Malik Firm’s Assertion that the Pleadings are Insufficient is Objectively**
15 **Unreasonable and is Neither Well Grounded in Fact Nor Warranted by**
16 **Existing Law**

17 The allegations in the Complaint clearly establish Righthaven’s standing to sue, such that
18 Malik Firm’s efforts to dismiss on this basis are objectively unreasonable and entirely
19 unsupported by the relevant facts and applicable law. To comply with Rule 11, Malik Firm
20 cannot merely state, without any substantiation, that Righthaven has “failed to show that it was
21 the owner of the copyright in the [Work] at the time the alleged infringement of those rights
22 occurred,” (Mot. to Dismiss 4) and that, therefore, “Righthaven lacks standing to bring this
23 action.” (Mot. to Dismiss 4) Absent some relevant legal authority to support this contention,
24 Malik Firm’s self-serving argument regarding the sufficiency of the pleadings is nothing more
25 than a baseless, legally unreasonable statement, rising to the level of sanctionable conduct.

26 Righthaven has clearly met the pleading requirements associated with both standing and
27 the copyright claim. Copyright actions are governed by basic notice pleading requirements
28 pursuant to Rule 8; copyright actions are not subject to a heightened pleading standard. The

1 heightened pleading standard is only applicable to actions arising out of Rule 9(b). *Empress LLC*
2 *v. City and County of San Francisco*, 419 F.3d 1052, 1055 (9th Cir. 2005) (citing *Leatherman v.*
3 *Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168-69 (1993)).
4 Malik Firm has not presented any authority to suggest that the instant claim should operate under
5 a heightened pleading standard. This lack of legal support is not surprising: non-fraud
6 allegations, such as the instant copyright claim, are *not* subject to heightened pleading
7 requirements as this “would impose a burden on plaintiffs not contemplated by the notice
8 pleadings requirements of Rule 8(a).” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104 (9th
9 Cir. 2003). Accordingly, Righthaven’s copyright claim need only comply with basic notice
10 pleading requirements.

11 Righthaven’s allegations, as pled in the Complaint, clearly meet the notice pleading
12 burden. It is well-established that in an action for copyright infringement, the plaintiff must
13 demonstrate: “(1) ownership of the allegedly infringed work and (2) copying of the protected
14 elements of the work by the defendant.” *Pasillas v. McDonald’s Corp.*, 927 F.2d 440, 442 (9th
15 Cir. 1991) (citing *Narell v. Freeman*, 872 F.2d 907, 910 (9th Cir. 1989)). Thus, a plaintiff in a
16 properly pled copyright claim must satisfy these elements through the factual allegations in the
17 pleadings. In the instant matter, the elements of a copyright claim are expressly pled in the
18 Complaint, wherein Righthaven alleges copyright ownership of the Work and also alleges the
19 Infringement. (Compl. ¶¶ 9, 22.) Furthermore, Righthaven presents evidence to support these
20 allegations by exhibiting both the copyright registration and the Infringement. (Compl. Ex. 1, 4.)
21 A copyright plaintiff “satisfies Rule 8 if the ‘complaint and the incorporated documents are
22 sufficient to allege’ that the Defendants copied the work in question.” *Home Design Services,*
23 *Inc. v. B & B Custom Homes, LLC*, No. 06-00249, 2006 WL 3328140, at *4 (D. Colo. Nov. 15,
24 2006) (quoting *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 942 (10th Cir. 2002)). Summarily,
25 because copyright claims are subject to bare notice pleading requirements under Rule 8(a), the
26 allegations as pled in the instant matter unequivocally satisfy Righthaven’s pleading burden
27 associated with both standing *and* the copyright claim.

1 Malik Firm's contention regarding the sufficiency of the pleadings is merely an abusive
2 and wasteful attempt to impose a pleading standard beyond that enumerated by Rule 8(a) and
3 should not be tolerated by the Court. Malik Firm seeks to unilaterally impose a heightened
4 standard by arguing that Righthaven somehow lacks standing to sue because "Righthaven has
5 failed . . . to show that it was the owner of the copyright in the [Work] when the alleged
6 infringement occurred." (Mot. to Dismiss 5) However, Malik Firm offers no legal authority to
7 support the proposition that Righthaven was required to plead the specific details and dimensions
8 of its copyright ownership. As such, Malik Firm's argument completely ignores Rule 8(a), and
9 thereby completely ignores the existing, applicable legal standard. Such conduct constitutes a
10 failure to comply with Rule 11: Malik Firm's position is neither warranted by existing law, nor is
11 it objectively reasonable when viewed from the perspective of a competent attorney. *See G.C.*
12 *and K.B. Investments, Inc.*, 326 F.3d at 1109. Simply stated, a competent attorney would not
13 make the unsupported argument that a copyright plaintiff, who has already established registrant
14 status, must plead additional facts beyond the established elements of a copyright claim in order
15 to satisfy basic notice pleading requirements.

16 Pursuant to the terms of Rule 8(a), ***Righthaven was not required to plead or exhibit the***
17 ***Righthaven Assignment, nor was Righthaven required to specifically plead the timeframe of***
18 ***its copyright ownership*** to sufficiently plead the copyright claim. In fact, given the pedestrian
19 nature of Malik Firm's argument, the only authority Righthaven can identify that specifies any
20 additional elements required of a copyright plaintiff to achieve Rule 8(a) compliance derives
21 from the Eastern District of New York. In *Home & Nature Inc. v. Sherman Specialty Company,*
22 *Inc.*, 322 F. Supp. 2d 260, 265 (E.D.N.Y. 2004), the court held that a complaint alleging
23 copyright infringement sufficiently complies with Rule 8(a) so long as the plaintiff asserts: "(1)
24 which specific original works form the subject of the copyright claim; (2) that the plaintiff owns
25 the copyrights in those works; (3) that the copyrights have been registered in accordance with the
26 statute; and (4) by what acts [and] during what time the defendant infringed the copyright."
27 Here, Righthaven irrefutably satisfies each of these elements. In the instant matter, Righthaven's
28 Complaint: (1) identifies and exhibits the Work, (2) alleges Righthaven's ownership of the

1 Work, (3) alleges and exhibits the copyright registration, and (4) identifies and exhibits the
2 Infringement. (Compl. ¶¶ 9, 22, 25.) (Compl. Ex. 1, 4-5.) Importantly, the Rule 8(a) pleading
3 elements outlined in *Home & Nature* do not require the plaintiff to allege copyright ownership at
4 the time of the infringement. There is no legal basis upon which such a requirement should be
5 imposed here. Righthaven's allegations are more than sufficient to satisfy the notice pleading
6 requirements imposed by Rule 8(a). The adequacy of Righthaven's well-pled Complaint is not
7 diminished simply because Righthaven did not plead the additional facts needlessly raised by
8 Malik Firm in the Motion to Dismiss. Malik Firm apparently neglected to perform the requisite
9 prefiling inquiry of the applicable pleading standard, and as a result, has presented the Court with
10 a frivolous argument that is both objectively unreasonable and entirely unfounded in fact and in
11 law.

12
13 **2. The Standing Argument is Objectively Unreasonable because Malik Firm**
14 **Inexplicably Ignores Righthaven's Statutory Presumption of Ownership**

15 Malik Firm's failure to perform a reasonable prefiling inquiry is further demonstrated by
16 Malik Firm's inexplicable ignorance of Righthaven's presumption of copyright ownership. As
17 Righthaven is the copyright registrant, the Copyright Act clearly mandates that Righthaven is
18 afforded an evidentiary presumption as the exclusive owner of the copyright. 17 U.S.C. § 410(c).
19 Specifically, § 410(c) provides, in pertinent part, that "[i]n any judicial proceedings the
20 certificate of a registration made before or within five years after first publication of the work
21 shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the
22 certificate." *See also Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 201 (9th Cir.
23 1989); *Marquis Models, Inc. v. Green Valley Ranch Gaming, LLC*, No. 05-01400, 2007 WL
24 2904172, at *3 (D. Nev. Sept. 30, 2007). It is revealing that Malik Firm fails to acknowledge the
25 weight of Righthaven's copyright registration in the Motion to Dismiss, as the presumption of
26 ownership arising therefrom dispositively resolves the standing analysis.

27 Righthaven's Complaint specifically includes the factual contention that Righthaven was
28 granted the copyright registration to the Work by the USCO. (Compl. ¶ 25.) Moreover, the

1 Complaint attaches said registration as an exhibit. (Compl. Ex. 5.) Rule 11 expressly states that
2 an attorney must certify that “the denials of factual contentions are warranted on the evidence,
3 or, if specifically so identified, are reasonably based on belief or a lack of information.” Fed. R.
4 Civ. P. 11(b)(4). Therefore, any denial of Righthaven’s allegation of registered ownership – and
5 any challenge to Righthaven’s presumption as the rightful litigant in this lawsuit – must be
6 warranted by substantive, rebuttable evidence. *See, e.g., May v. Morganelli-Heumann &*
7 *Associates*, 618 F.2d 1363, 1369 (9th Cir. 1980) (presumption of copyright ownership is
8 rebuttable through extrinsic evidence). The Motion to Dismiss does not offer any indicia of
9 rebuttal evidence. Instead, Malik Firm attempts to undermine Righthaven’s presumption by
10 merely hypothesizing – without any legal or factual substantiation – as to why Righthaven’s
11 copyright registration is somehow invalid for the purposes of standing. Malik Firm futilely
12 asserts that “Righthaven is not the original owner, but is at best an assignee” and that
13 Righthaven’s standing to sue is not satisfied under these circumstances. (Mot. to Dismiss 5) This
14 inconclusive statement has no bearing on the instant analysis and does nothing to contest
15 Righthaven’s presumption as the rightful litigant in this lawsuit. Had Malik Firm engaged in a
16 reasonable pre-filing inquiry as required by Rule 11, Malik Firm would have learned that: (1)
17 Righthaven enjoys a presumption of copyright ownership, and (2) evidence rebutting this
18 presumption is needed in order to challenge Righthaven’s status as the rightful litigant in this
19 lawsuit. Ultimately, Malik Firm chose to ignore this requirement, instead opting to refute
20 Righthaven’s claim of ownership by making bald-faced, self-serving assertions entirely
21 unsupported by fact or by law. In doing so, Malik Firm failed to comply with Rule 11.

22
23 **3. The Standing Argument is Objectively Unreasonable Because Malik Firm**
24 **Supports the Standing Argument by Fundamentally Misstating Venerable**
25 **Legal Precedent**

26 Malik Firm’s most egregious violation of Rule 11 arguably derives from the flagrant,
27 utterly inexcusable misstatement of preceding case law. The plain language of Rule 11 mandates
28 that an attorney must certify that “the claims, defenses, and other legal contentions are warranted

1 by existing law . . .” Fed. R. Civ. P. 11(b)(2). Therefore, to comply with Rule 11, an argument
2 asserted by a party at the time of filing must be soundly based both in law and in fact. *Golden*
3 *Eagle Distributing Corp.*, 801 F.2d at 1537-38. Here, Malik Firm’s misstatement of law is so
4 blatant that Malik Firm clearly: (1) neglected its duty to perform a prefiling inquiry into the
5 relevant law, and (2) recklessly or intentionally misrepresented the relevant law to the Court in
6 an effort to support its otherwise groundless position. In this regard, Malik Firm’s conduct far
7 exceeds the Rule 11 threshold of objective unreasonableness.

8 An assignment expressly inclusive of accrued causes of action enables the assignee to file
9 suit for all infringements of the assigned work, irrespective of the date of infringement. *ABKCO*
10 *Music, Inc. v. Harrisongs Music, Ltd.*, 944 F.2d 971, 980-81 (2d Cir. 1991). Amazingly, Malik
11 Firm makes the inexplicable assertion that the Second Circuit’s holding in *ABKCO* actually
12 strengthens the standing argument set forth in the Motion to Dismiss. (Mot. to Dismiss 4) Malik
13 Firm cites the *ABKCO* court’s recitation of § 501(b) of the Copyright Act, stating that “the legal
14 or beneficial owner of an exclusive right under a copyright is entitled to bring actions for
15 infringements of that right occurring during the period of ownership.” *ABKCO*, 944 F.2d at 980.
16 However, Malik Firm conspicuously fails to inform the Court of the *very next sentence* of the
17 *ABKCO* decision, wherein the Second Circuit applies § 501(b) to a set of facts involving an
18 assignment of both copyright ownership and accrued causes of action: “[t]hus, a copyright owner
19 can assign its copyright but, if the accrued causes of action are not expressly included in the
20 assignment, the assignee will not be able to prosecute them.” *ABKCO*, 944 F.2d at 980; *see also*
21 Nimmer on Copyright § 12.02[B] (2000) (a copyright assignment is generally construed not to
22 assign existing causes of action *unless such claims are expressly included in the grant*)
23 (emphasis added). In other words, an assignee of a copyright has standing to sue for any past
24 infringements of the assigned work so long as all accrued causes of action are expressly
25 incorporated into the assignment. This is exactly the case at present. As demonstrated on pages
26 16-17, *infra*, the Righthaven Assignment unequivocally vests Righthaven with: (1) exclusive
27 ownership rights in and to the Work, and (2) the right to seek redress for all accrued causes of
28 action. (Opp’n to Mot. to Dismiss Ex. 1.) Consequently, it is entirely irrelevant whether Malik

1 Firm's Infringement occurred before, during, or after the time of the Righthaven Assignment.
2 As such, Malik Firm's suggestion that the *ABKCO* holding somehow validates the argument that
3 Righthaven lacks standing because it did not own the Work at the time of the Infringement is
4 shocking. Simply stated, Malik Firm's analysis of *ABKCO* constitutes an entirely erroneous and
5 seemingly incompetent interpretation of the Second Circuit's holding.

6 Malik Firm's reliance upon the Ninth Circuit's decision in *Silvers v. Sony Pictures*
7 *Entertainment, Inc.*, 402 F.3d 881, 885 (9th Cir. 2005) is equally inexplicable. Disturbingly, and
8 in direct violation of Rule 11, Malik Firm seemingly attempts to mislead the Court by putting
9 forth a wholly inaccurate summation of the Ninth Circuit's holding. Purportedly paraphrasing
10 *Silvers*, the Motion to Dismiss shortsightedly states that "[a] plaintiff who fails to show
11 ownership of a valid copyright at the time of infringement lacks standing to sue for any
12 infringement that occurred prior to assignment of the copyright." (Mot. to Dismiss 4) However,
13 in making this reference, Malik Firm grossly misconstrues, or perhaps simply ignores the *Silvers*
14 court's unambiguous analysis on this issue: an assignee has standing to sue for past
15 infringements so long as the assignment includes both exclusive ownership and accrued causes
16 of action. *Silvers*, 402 F.3d at 890 (*citing ABKCO*, 944 F.2d at 980-81). Moreover, it is
17 disturbing that Malik Firm fails to realize that its reliance upon *ABKCO* is rendered entirely
18 inappropriate by the Ninth Circuit's decision in *Silvers*. In *Silvers*, the court was faced "with a
19 situation in which the owner of all the exclusive rights and the owner of the accrued causes of
20 action [were] *two different people*." *Silvers*, 402 F.3d at 889 (emphasis added). As a result, the
21 Ninth Circuit held that the plaintiff's "bare assignment of an accrued cause of action" was
22 insufficient to establish standing. *Id.* at 890. The facts in *Silvers* are blatantly distinguishable
23 from those at present, and it is revealing that Malik Firm fails to acknowledge this distinction in
24 the Motion to Dismiss. In the present action, there is no division of copyright ownership as was
25 the case in *Silvers*; Righthaven is the owner of both the exclusive rights in and to the Work *and*
26 the owner of all accrued causes of action. (*See* Opp'n to Mot. to Dismiss Ex. 1.) In fact, it
27 appears that had the Ninth Circuit been dealing with the all-inclusive terms of the Righthaven
28

1 Assignment rather than the limited assignment at issue in *Silvers*, there would have been no
2 question as to the sufficiency of the plaintiff's standing to sue.

3 Consequently, the Ninth Circuit's holding in *Silvers* negates Malik Firm's standing
4 argument. Specifically, the *Silvers* decision squarely undermines Malik Firm's position that a
5 copyright assignee can only seek redress for infringements "occurring during the period of its
6 ownership." (Mot. to Dismiss 4) While a bare assignment of accrued claims, standing alone, was
7 deemed insufficient by the Ninth Circuit in *Silvers*, the court acknowledged that an assignment
8 of accrued claims coupled with a transfer of copyright ownership would constitute a sufficient
9 basis for standing. *Id.* (citing *ABKCO*, 944 F.2d at 980-81). Furthermore, neither *Silvers* nor
10 *ABKCO* – nor any other legal authority cited by Malik Firm – suggest that the nature and
11 dimension of the plaintiff's copyright assignment must be articulated in the pleadings in order to
12 establish standing. Critically, Malik Firm should have represented to this Court that the Ninth
13 Circuit has clearly recognized that assignees of accrued causes of action may in fact have
14 standing to sue for past infringements. Moreover, Malik Firm's reliance on *Silvers* as an
15 example of why Righthaven might not have standing to sue demonstrates that Malik Firm was
16 erroneously hypothesizing as to the nature of the Righthaven Assignment at the time the Motion
17 to Dismiss was filed.

18 The Ninth Circuit has held that sanctions are appropriate when a party's frivolous filing is
19 based upon a gross misconstruction of the applicable law. In *King v. Idaho Funeral Service*
20 *Association*, 862 F.2d 744, 745 (9th Cir. 1988), counsel for the plaintiff sued both the funeral
21 service association, and "some fifty individual funeral chapters which comprise the membership
22 of the Association." Plaintiff's counsel sued the individual chapters despite the Ninth Circuit's
23 holding in *Kline v. Coldwell, Banker & Company*, 508 F.2d 226, 231 (9th Cir. 1974), which
24 established that mere membership in an association is insufficient to establish liability. Despite
25 the clarity of the *Kline* decision, plaintiff's counsel in *King* erroneously contended that *Kline*
26 instead "held that the failure of association members to disassociate themselves from the
27 association was sufficient to impose liability." *King*, 862 F.2d at 748. Ultimately, the court
28 found that "[t]he plaintiffs clearly have misconstrued *Kline*," and that such misconstruction,

1 along with counsel's failure to conduct a prefiling inquiry, justified the decision that "a violation
2 of Rule 11 was the proper conclusion." *Id.* at 747-48. Similarly, in *Rodgers v. Lincoln Towing*
3 *Service, Inc.*, 771 F.2d 194, 205 (7th Cir. 1985), the Seventh Circuit imposed Rule 11 sanctions
4 after counsel "refused to recognize or to grapple with the established law of the Supreme Court
5 and of this Circuit that defeats several of the claims at issue." As such, the courts have clearly
6 recognized that a party's blatant misstatement of applicable law, or the sheer ignorance of
7 controlling precedent, may well amount to sanctionable conduct under Rule 11.

8 Accordingly, Malik Firm's misguided reliance on *ABKCO* and *Silvers*, coupled with
9 Malik Firm's blatant, indefensible misconstruction of the holdings rendered therein, plainly
10 demonstrates the need to impose sanctions in this matter. Malik Firm failed to perform a
11 reasonable investigation of the applicable law prior to filing its standing argument, as a
12 competent prefiling inquiry likely would have prevented Malik Firm from asserting such an
13 utterly erroneous legal analysis. Instead, Malik Firm ignored its Rule 11 duties and elected to
14 base the standing argument upon sheer factual hypothesis and an egregious interpretation of
15 preceding case law. In doing so, Malik Firm recklessly distorted the venerable authority directly
16 applicable to this analysis,³ and consequently presented the Court with an entirely unfounded,
17 fundamentally misleading standing argument in direct violation of Rule 11.

18
19 **4. The Standing Argument is Objectively Unreasonable because Malik Firm's**
20 **Failure to Review the Righthaven Assignment Renders the Standing**
21 **Argument Grossly Premature**

22 Rather than waste the Court's time by asserting a grossly premature standing argument,
23 Malik Firm should have examined the Righthaven Assignment prior to filing the Motion to
24 Dismiss. After reviewing the Righthaven Assignment, Malik Firm could have prudently
25 assessed the assignment's specific terms, thereby achieving a full understanding of the

26 ³ Courts in jurisdictions across the country, including this Court, have repeatedly held consistently with the *ABKCO*
27 and *Silvers* analysis. *See, e.g., Marquis Models, Inc. v. Green Valley Ranch Gaming, LLC*, No. 05-01400, 2007 WL
28 2904172, at *4 (D. Nev. Sept. 30, 2007); *Lanard Toys Limited v. Novelty Inc.*, 511 F. Supp. 2d 1020, 1033 (C.D.
Cal. 2007); *Giddings v. Vision House Production, Inc.*, 584 F. Supp. 2d 1222, 1229 (D. Ariz. 2008); *Two Pepper*
Music v. Rhino Records, Inc., 173 F.3d 846, No. 98-9242 (2d Cir. Apr. 23, 1999); *Davis v. Blige*, 505 F.3d 90, 99
(2d Cir. 2007).

1 sufficiency of the copyright transfer. At that point, if Malik Firm was still inclined to challenge
2 Righthaven's standing, such an argument may then have been ripe for consideration.

3 The failure to review the Righthaven Assignment prior to filing the Motion to Dismiss
4 precluded Malik Firm from asserting a ripe, well-founded standing argument. A determination
5 of ripeness requires a two-prong test: "(1) the fitness of the issues for judicial decision; and (2)
6 the hardship to the parties of withholding court consideration." *Manufactured Home*
7 *Communities, Inc. v. City of San Jose*, 420 F.3d 1022, 1033 (9th Cir. 2005) (internal quotation
8 marks omitted). Malik Firm's failure to review the Righthaven Assignment prior to filing is
9 dispositive to this analysis. The entirety of Malik Firm's position on standing is based upon the
10 erroneous, hypothetical assumption that Righthaven, somehow, did not take an assignment of all
11 past, present, and future causes of action. In other words, Malik Firm presented the Court with
12 an argument founded exclusively upon speculation as to the nature of Righthaven's copyright
13 ownership. However, under Rule 11, a motion filed in federal court must be based on much
14 more than sheer hypothesis: Rule 11 mandates that a document filed with the court must comply
15 with the "reasonable inquiry standard" and must be well grounded in fact and in law. *Bus.*
16 *Guides, Inc. v. Chromatic Communications Enterprises, Inc.*, 498 U.S. 533, 534, 542 (1991). By
17 failing to review the Righthaven Assignment prior to filing the Motion to Dismiss, Malik Firm
18 ignored the duty to perform a pre-filing factual inquiry and thus put forth an entirely unripe
19 argument founded neither in fact nor in law. As the standing argument is both unmeritorious and
20 unfit for judicial decision, Malik Firm is essentially wasting the Court's time and abusing the
21 litigation process.

22 Malik Firm should have obtained the Righthaven Assignment through the normal course
23 of discovery. In *Baldain v. American Home Mortgage Servicing, Inc.*, No. 09-0931, 2010 WL
24 56143, at *5 (E.D. Cal. Jan. 5, 2010), the court assessed a Rule 12(b)(6) motion wherein the
25 plaintiffs did not specifically plead the date of the offense. In its analysis, the court noted the
26 overall sufficiency of the plaintiffs' allegations and further noted that the date of violation "is
27 exactly the sort of information which should be obtained through the discovery process." *Id.*
28 (internal quotation marks omitted). The same logic is applicable here. As established on page 8,

1 *supra*, Righthaven was not required to exhibit the Righthaven Assignment, nor was Righthaven
 2 required to plead the details and specific terms contained therein. Similar to the court's
 3 reasoning in *Baldain*, the extent of the rights transfer effectuated by the Righthaven Assignment
 4 is ***precisely the type of information that Malik Firm should have obtained through discovery***.
 5 Upon obtaining the Righthaven Assignment through the normal course of discovery, Malik Firm
 6 could have assessed the assignment terms and proceeded accordingly thereafter. This approach
 7 would have satisfied the prefiling factual inquiry mandated by Rule 11. Malik Firm neglected
 8 this requirement. As a result, Malik Firm blindly put an unripe, unfounded standing argument
 9 before the Court, hoping that the argument's purported factual and legal support would somehow
 10 prove to be valid. This is precisely the type of sanctionable conduct for which Rule 11 was
 11 created.

12
 13 **5. The Standing Argument is Objectively Unreasonable because a Prefiling**
 14 **Examination of the Righthaven Assignment would have Precluded Malik**
 15 **Firm from Asserting the Standing Argument**

16 The Righthaven Assignment assigns to Righthaven all exclusive ownership rights in and
 17 to the Work, and is expressly inclusive of all accrued causes of action. Specifically, the
 18 Righthaven Assignment provides:

19 Assignor hereby transfers, vests and assigns [the Work]...to Righthaven...all
 20 copyrights requisite to have Righthaven recognized as the copyright owner of the
 21 Work for purposes of Righthaven being able to claim ownership as well as the
 22 right to seek redress for ***past, present and future infringements*** of the copyright
 23 in and to the Work.

24 (Opp'n to Mot. to Dismiss Ex. 1.) (emphasis added).

25 Such unambiguous language is not subject to alternative interpretation. The Righthaven
 26 Assignment effects an assignment of the right to sue for any possible infringements of the Work,
 27 whether accrued or unaccrued. By no means do the terms of the Righthaven Assignment impose
 28 any form of limitation upon Righthaven with respect to Righthaven's standing to sue for
 infringement. Assignments of this nature are expressly permitted by 17 U.S.C. § 201(d)(1),
 which provides that copyright ownership "may be transferred in whole or in part," and such

1 assignments are recognized as valid by the courts. *See, e.g., ABKCO*, 944 F.2d at 980. Here, the
 2 Righthaven Assignment vests Righthaven with the unequivocal right to pursue legal recourse for
 3 all infringements of the Work, including those accrued prior to the Righthaven Assignment. This
 4 fact, standing alone, squarely undermines Malik Firm’s claim that Righthaven lacks standing to
 5 sue because the facts do not demonstrate that Righthaven “was the owner of the copyright in the
 6 [Work] when the alleged infringement occurred.” (Mot. to Dismiss 5) Had Malik Firm simply
 7 reviewed the Righthaven Assignment prior to filing, Malik Firm would undoubtedly have
 8 learned of the baseless nature of its position. As a direct consequence of this failure, the entirety
 9 of Malik Firm’s standing argument is fundamentally frivolous: Malik Firm’s position is both
 10 baseless and was asserted without any reasonable and competent investigation into the relevant
 11 facts. *See Montrose Chem. Corp. of California v. Am. Motorists Ins. Co.*, 117 F.3d 1128, 1133
 12 (9th Cir. 1997). Accordingly, Malik Firm’s failure to obtain and review the Righthaven
 13 Assignment prior to filing its standing argument exemplifies Malik Firm’s noncompliance with
 14 Rule 11. Furthermore, despite having had more than three weeks to review the unambiguous
 15 terms of the Righthaven Assignment, Malik Firm has not withdrawn or conceded the standing
 16 argument.

17
 18 **6. In Lawsuits Substantively Identical to this Action, other Law Firms have**
 19 **Prudently Withdrawn this Standing Argument**

20 As of the date of this motion, four other law firms or solo practitioners, while
 21 participating in the defense of separate Righthaven copyright claims, have filed motions to
 22 dismiss containing standing arguments substantively identical to the standing argument asserted
 23 by Malik Firm. (Ex. 1-3.) These separate copyright actions⁴ have each involved an assignment
 24

25 ⁴ The past copyright claims referenced herein are:

- 26 • *Righthaven LLC v. National Organization for the Reform of Marijuana Laws and Media Awareness Project (MAP), Inc.*, 2:10-cv-0351-LDG-PAL, wherein the defendants were represented by the following law firms: Watson Rounds, Lewis and Roca LLP, and the Randazza Legal Group.
- 27 • *Righthaven LLC v. MajorWager.com, Inc.*, 2:10-cv-0484-RCJ-LRL, wherein the defendant is represented by Lewis and Roca LLP.
- 28 • *Righthaven LLC v. Industrial Wind Action Corp and Jonathan S. Linowes*, 2:10-cv-0601-RLH-PAL, wherein the defendants are represented by Allen Lichtenstein, Esq.

1 of rights nearly indistinguishable from the Righthaven Assignment presently at issue. (Ex. 7-9.)
2 However, upon presentment of Righthaven's opposition, each of these defendants thereafter
3 withdrew, or otherwise conceded their respective standing arguments. (Ex. 4-6.) As
4 Righthaven's oppositions to said standing arguments were duly supported by the applicable
5 copyright assignments, (Ex. 7-9.) counsel for defendants in each of these separate actions
6 prudently recognized that their respective positions on standing were rendered futile by the all-
7 inclusive terms of Righthaven's copyright assignments. Unfortunately, in the instant action,
8 Malik Firm has failed to follow suit.

9 Malik Firm has not withdrawn the standing argument despite having had a good faith
10 opportunity to review Righthaven's Opposition and the Righthaven Assignment attached thereto.
11 (Opp'n to Mot. to Dismiss Ex. 1.) This failure constitutes a violation of Rule 11 and warrants
12 the imposition of sanctions. In *Townsend v. Holman Consulting Corporation*, 929 F.2d 1358,
13 1361 (9th Cir. 1990), the plaintiff's attorney sued both the defendant and the defendant's
14 attorney, alleging that defense counsel had wrongfully advised the defendant's unlawful conduct
15 and improperly obstructed the plaintiff's state court action. In response, multiple affidavits were
16 filed by the defense, undisputedly establishing that the defendant's attorney "played no role in
17 the actions of [the defendant]." *Id.* Nevertheless, plaintiff's counsel filed an amended complaint
18 which "continued to name [defense counsel] and to allege that [defense counsel] was involved in
19 the conduct for which [the plaintiff] sought relief." *Id.* As a consequence of plaintiff's counsel's
20 failure to consider the defense affidavits and failure to perform a reasonable inquiry before filing
21 the amended complaint, the Ninth Circuit upheld the district court's imposition of Rule 11
22 sanctions. *Id.* at 1366. The *Townsend* analysis is directly applicable to the instant case. After
23 erroneously asserting the standing argument in the Motion to Dismiss, Malik Firm was provided
24 a copy of the Righthaven Assignment. (Opp'n to Mot. to Dismiss Ex. 1.) Malik Firm has had
25 more than three weeks to review the Righthaven Assignment and the all-inclusive terms set forth
26 therein. Said terms ***unequivocally undermine*** the entirety of Malik Firm's standing argument
27 such that there is no enduring question concerning Righthaven's standing to bring the instant
28 lawsuit. Nevertheless, despite having been presented with substantive evidence that clearly

27 In each case, the defendants moved to dismiss for lack of subject matter jurisdiction based on an absence of
28 standing. Righthaven opposed these motions, and attached a copy of the respective copyright assignment in support
thereof. (Ex. 7-9.) Soon thereafter, the defendants in each of these actions withdrew, or otherwise conceded their
respective standing arguments. (Ex. 4-6.)

1 negates its position, Malik Firm continues to assert its frivolous, unfounded standing argument,
2 replicating the sanctionable conduct of the attorney in *Townsend*. Upon reviewing the
3 Righthaven Assignment, Malik Firm should have realized that the standing argument has been
4 rendered legally implausible. As such, Malik Firm's subsequent failure to withdraw this
5 argument constitutes a direct violation of Rule 11. *See Rachel v. Banana Republic, Inc.*, 831 F.2d
6 1503, 1508 (9th Cir. 1987) (Rule 11 sanctions are warranted if claims are baseless or "lacking in
7 plausibility"). Such conduct should not be tolerated by the Court, and Malik Firm should be
8 sanctioned accordingly.

9 **IV. CONCLUSION**

10 Malik Firm's standing argument, as set forth in the Motion to Dismiss, plainly
11 exemplifies the type of frivolous, legally and factually unfounded argument for which Rule 11
12 was created. As such, for the reasons set forth above, Righthaven respectfully requests that this
13 Court impose appropriate sanctions upon Malik Firm for its flagrant violation of Rule 11. Said
14 sanctions should encompass Righthaven's reasonable attorney's fees and costs (to be further
15 demonstrated by a declaration and accounting of same) incurred in:

- 16 A. Opposing Malik Firm's standing argument set forth in the Motion to Dismiss; and
17 B. The entirety of Righthaven's efforts, including, but not limited to, briefing, filing,
18 and arguing this motion for sanctions pursuant to Fed. R. Civ. P. 11.

19 Dated this eighteenth day of August, 2010.

20
21 RIGHTHAVEN LLC

22
23 By: /s/ J. Charles Coons
24 STEVEN A. GIBSON, ESQ.
25 Nevada Bar No. 6656
26 J. CHARLES COONS, ESQ.
27 Nevada Bar No. 10553
28 JOSEPH C. CHU, ESQ.
Nevada Bar No. 11082
9960 West Cheyenne Avenue, Suite 210
Las Vegas, Nevada 89129-7701
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

1 Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee
2 of Righthaven LLC and that on this eighteenth day of August, 2010, I caused the **PLAINTIFF'S**
3 **MOTION FOR SANCTIONS PURSUANT TO FEDERAL RULE OF CIVIL**
4 **PROCEDURE 11** to be served by the Court's CM/ECF system. Said motion has also been
5 deposited for mailing in the United States mail, to be sent to defendant Dr. Shezad Malik at the
6 following address:

7
8 DR. SHEZAD MALIK
9 175 Miron Drive
10 Southlake, Texas 76092

11 By: /s/ J. Charles Coons
12 J. CHARLES COONS, ESQ.
13 Righthaven LLC
14 9960 West Cheyenne Avenue, Suite 210
15 Las Vegas, Nevada 89129-7701
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