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6  
7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
9

10 RIGHTHAVEN LLC, a Nevada limited-  
liability company,

11  
12 Plaintiff,

13 v.

14 HUSH-HUSH ENTERTAINMENT, INC., a  
15 suspended California company; PN MEDIA,  
16 INC., a California company; and ANDREW  
STODDARD, an individual,

17 Defendants.  
18

Case No.: 2:10-cv-01404-LRH-LRL

**PLAINTIFF RIGHTHAVEN LLC'S  
RESPONSE TO DEFENDANT ANDREW  
STODDARD'S MOTION TO DISMISS  
PLAINTIFF'S FIRST AMENDED  
COMPLAINT PURSUANT TO *FED. R.  
CIV. P. 12(b)(6) AND 12(e)***

19  
20 Plaintiff Righthaven LLC ("Righthaven") hereby opposes Defendant Andrew Stoddard's  
21 ("Defendant") Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to *FED R. CIV.*  
22 *P. 12(b)(6) and 12(e)* (Doc. # 17, the "Motion"). Righthaven's response to the Motion is based  
23 upon the below Memorandum of Points and Authorities, the Declaration of Shawn A. Mangano,  
24 Esq. ("Mangano Decl."), the pleadings and papers on file in this action, any oral argument this  
25 Court may allow, and any other matter of which this Court takes notice.  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 As the Court is likely aware, Righthaven has pursued numerous copyright infringement  
4 lawsuits in this judicial district. In doing so, Righthaven has been subjected to the scrutiny of  
5 various anonymous Internet bloggers and entities that may find themselves facing allegations of  
6 unauthorized posting of copyright protected content. Occasionally, a defendant surfaces in a  
7 Righthaven copyright infringement action that engenders public sympathy on the Internet and in  
8 other media sources whether or not such sympathy is justified. This is not such a case.

9 The Defendant asking the Court to dismiss Righthaven’s First Amended Complaint (the  
10 “Complaint”) is accredited with starting one of the pioneer companies in “reality style interracial  
11 videos of adult entertainment.” (Mangano Decl. Ex. 1.) Defendant’s company, who is also a  
12 party to this action and against whom default has been entered, is credited with bringing such  
13 interesting pornographic titles to market as “My Daughter’s Fucking Blackzilla.” (*Id.* Ex. 2.)

14 While the apparent content of Defendant’s pornographic endeavors may be shocking, his  
15 formation of an entity entitled PAK Inc., which is directed toward protecting copyrighted adult  
16 entertainment industry material, coupled with his arguments advanced in his request for  
17 dismissal are simply unbelievable given Righthaven’s copyright infringement allegations in this  
18 case. (*Id.* Ex. 3 at 2.) Amazingly, the Defendant has justified forming this new adult content  
19 protection company by proclaiming, “You have people who think it’s OK to steal my content  
20 and make money off of it, and that’s bullshit.” (*Id.*) Righthaven certainly concurs with  
21 Defendant’s colorful assessment of the underlying basis for imposing copyright infringement  
22 liability. In fact, Righthaven maintains that when the dust settles in this case, the Defendant will  
23 have a far greater appreciation of the ramifications for stealing someone else’s copyrighted  
24 material upon entry of a sizeable monetary judgment against him.

25 While the Defendant’s liability is not before the Court, the arguments he advances in  
26 support of dismissal are clearly at odds with several decisions from this judicial district. For  
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1 example, the following decisions from various judges in this judicial district support denying  
2 Defendant the relief he has requested:<sup>1</sup>

3 1) *Righthaven LLC v. Vote For The Worst, LLC, et al.*, Case No. 2:10-cv-01045-  
4 KJD-GWF (D. Nev. March 30, 2011): Denying defendants' challenge to subject matter  
5 jurisdiction based on the argument that Righthaven did not own the copyright at the time of  
6 infringement. (Doc. # 28 at 2-3.) The court additionally rejected Defendants' personal  
7 jurisdiction challenge, which was virtually identical to the challenge raised by the Defendant in  
8 this case. (*Id.* at 3-6.)

9 2) *Righthaven LLC v. Mostofi*, Case No. 2:10-cv-01066-KJD-GWF (D. Nev. March  
10 22, 2011): Denying the defendant's personal jurisdiction challenge. (Doc. # 19 at 2-5.)

11 3) *Righthaven LLC v. Majorwager.com, Inc.*, 2010 WL 4386499 (D. Nev. Oct. 28,  
12 2010): Denying defendant's motion to dismiss on subject matter, personal jurisdiction and failure  
13 to state a claim challenges, which were also substantially similar to those presented by the  
14 Defendant in this case.

15 4) *Righthaven LLC v. Dr. Shezad Malik Law Firm P.C.*, 2010 WL 3522372 (D. Nev.  
16 Sept. 2, 2010): Denying defendant's motion to dismiss for lack of subject matter and lack of  
17 personal jurisdiction.

18 When approached by Righthaven's counsel to reconsider the merits of the Motion before  
19 the Court in view of the numerous favorable decisions obtained by Righthaven in this judicial  
20 district, Defendant's counsel asserted that he would be unable to ascertain the applicability of  
21 such decisions to the circumstances upon which his client's relief is predicated. (Mangano Decl.  
22 ¶ 3.) Thus, Righthaven attempted in good faith resolve the Motion and thereby reduce the  
23 Court's workload without the need of this response. Despite these efforts, as argued below,  
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25 <sup>1</sup> The cited decisions are not all inclusive. Other decisions in this judicial district further  
26 support denying Defendant's Motion based on similar arguments and circumstances. *See*  
27 *Righthaven LLC v. Industrial Wind Action Group*, Case No. 2:10-cv-0601-RLH-PAL (denying  
28 motion for lack of personal jurisdiction brought by non-resident defendant); *Righthaven LLC v.*  
*EMTCity.com*, Case No. 2:10-cv-00854-HDM-PAL (denying personal jurisdiction claim by non-  
resident defendant).

1 Righthaven asks the Court to follow the well-worn path established by other decisions from this  
2 judicial district, along with cited authority, and deny the Defendant's Motion.

3 **II. FACTS**

4 Righthaven alleges that it is the owner of the copyrighted literary work, authored by  
5 Sonya Padgett, entitled "XXXChurch.com strives to demonstrate Jesus' love overcomes any  
6 stigma" (the "Work"). (Doc. # 6 ¶¶ 14, 32; Doc. # 6-1, Ex. 2.) The Work was originally  
7 published on May 30, 2010 in in the *Las Vegas Review-Journal*. (Doc. # 6 ¶¶ 14-15, 33; Doc. #  
8 6-1, Ex. 2.) The Work clearly identifies the *Las Vegas Review-Journal* as the original source  
9 publication, but this attribution was removed from the infringing version of the Work. (Doc. # 6-  
10 1, Exs. 2-3.) Substantively, the Work examines a nonprofit religious organization's outreach  
11 efforts directed toward topless dancers working in Las Vegas adult entertainment establishments  
12 such as Cheetah's and Rick's Cabaret. (*Id.*)

13 Righthaven asserts that on or about July 7, 2010 the Work was published without  
14 authorization on the Internet domain found at <pornnewz.com> (the "Website"). (Doc. # 6 at 2-  
15 3.) In fact, a review of the allegedly infringing copy of the Work illustrates that it was altered to  
16 remove reference to its original source, the *Las Vegas Review-Journal*. (Doc. # 6-1, Ex. 3.)  
17 Righthaven contends that PN Media, Inc. ("PN Media") is the registrant, administrative and  
18 technical contact for the Website. (Doc. # 6 ¶ 7.) Hush-Hush Entertainment, Inc. ("Hush-  
19 Hush") is alleged to be the purported "owner" of the Website. (*Id.* ¶ 8; Doc. # 6-1, Ex. 1.)  
20 Defendant is alleged to have maintained, and continues to maintain, managerial, editorial and  
21 administrative control of the Website. (Doc. # 6 ¶¶ 9-11.)

22 Righthaven's request for entry of default against PN Media and Hush-Hush was granted  
23 by the Clerk of the Court on November 2, 2010. (Doc. # 9.) Defendant was subsequently served  
24 with a copy of Righthaven's Complaint, which is believed to have occurred at a pornography  
25 studio. Defendant's Motion was subsequently filed on March 10, 2011. (Doc. # 17.)  
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1 **III. APPLICABLE STANDARDS**

2 Defendant's Motion is brought under Federal Rules of Civil Procedure 12(b)(2) ("Rule  
3 12(b)(1)") and 12(b)(6) ("Rule 12(b)(6)"), and 12(e) ("Rule 12(e)"). (Doc. # 17 at 5, 6, 16.)  
4 Defendant's Rule 12(b)(6) challenge is substantively a request of dismissal for lack of personal  
5 jurisdiction, which is typically sought pursuant to Federal Rule of Civil Procedure 12(b)(2)  
6 ("Rule 12(b)(2)"). (*Id.* at 6.) Despite Defendant's failure to seek such relief under Rule  
7 12(b)(2), the Motion must still be denied. In fact, the Court should deny the Defendant's Motion  
8 based upon application of the controlling standards under all basis upon which he seeks dismissal  
9 of Righthaven's Complaint.

10 **A. Rule 12(b)(1) Standards.**

11 Rule 12(b)(1) allows for the dismissal of an action for lack of subject matter jurisdiction.  
12 FED.R.CIV.P. 12(b)(1). When performing an analysis under Rule 12(b)(1), the Court must accept  
13 as true all well-pleaded facts and draw all reasonable inferences in favor of the non-moving  
14 party. *See Association of Am. Med. College v. United States*, 217 F.3d 770, 778-79 (9th Cir.  
15 2000). The party challenging subject matter jurisdiction under Rule 12(b)(1) may also proffer  
16 extrinsic evidence in support of the relief requested. *Safe Air for Everyone v. Meyer*, 373 F.3d  
17 1035, 1039 (9th Cir. 2004). District courts have original subject matter jurisdiction over claims  
18 "arising under" federal law relating to patents, copyrights, trademarks and . . . related claims of  
19 unfair competition." 28 U.S.C. § 1338(a), (b); *see also Scholastic Entertainment, Inc. v. Fox*  
20 *Entertainment Group, Inc.*, 336 F.3d 982, 986 (9th Cir. 2003). A copyright infringement  
21 plaintiff is required to allege: (1) ownership of a valid copyright; and (2) the defendant's  
22 violation of one or more of the copyright owner's exclusive rights set forth under the Copyright  
23 Act. *Ellison v. Robertson*, 357 F.3d 1072, 1077 (9th Cir. 2004); *see also Feist Publications, Inc.*  
24 *v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).

25 Defendant argues that Righthaven's Complaint should be dismissed pursuant to Rule  
26 12(b)(1) because it "fails to sufficiently allege[] an ownership interest in the Work at the time of  
27 the alleged infringement . . ." (Doc. # 17 at 5:9-11.) Arguments identical to those advanced by  
28 the Defendant have been repeatedly rejected in this judicial district. Consistent with these other

1 decisions, this Court should also reject Rule 12(b)(1) challenge before it. Surprisingly, had  
2 Defendant performed even a cursory review of the Righthaven-related decisions rendered in this  
3 judicial district, he should have never advanced the Rule12(b)(1) argument presently before this  
4 Court for disposition.

5 **B. Rule 12(b)(2) Standards.**

6 As stated above, Defendant does not ask the Court to dismiss Righthaven's Complaint for  
7 lack of personal jurisdiction pursuant to Rule 12(b)(2). Rather, Defendant's personal jurisdiction  
8 challenge is brought under Rule 12(b)(6). (Doc. #17 at 6.) Under either a Rule 12(b)(2) or under  
9 a Rule 12(b)(6) analysis, the Court is compelled to deny Defendant's Motion. That said,  
10 Righthaven nevertheless sets forth the standards applicable to the Court's analysis should it  
11 construe the Defendant's Motion as being brought under Rule 12(b)(2).

12 Defendant's request for dismissal for lack of personal jurisdiction is brought despite the  
13 fact that he is alleged to have engaged in or permitted the display of a wholesale, unauthorized  
14 replication of the Work from a source publication, the *Las Vegas Review Journal*, that is  
15 unquestionably associated with the State of Nevada. The source publication is clearly distributed  
16 to and its content is aimed principally at persons associated with, and largely residing in, the  
17 greater Las Vegas valley. Moreover, the topic of the misappropriated Work expressly concerns a  
18 nonprofit religious organization's outreach efforts toward entertainers working in such Las  
19 Vegas establishments as Cheetah's and Rick's Cabaret. (Doc. # 6-1, Ex. 2 at 2.) With these facts  
20 in mind, the Court must evaluate whether the alleged facts, if true, are sufficient to establish  
21 personal jurisdiction. *See Data Disc, Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1289  
22 (9th Cir. 1977). Where allegations in the Complaint are contested via declarations or other  
23 evidence, such evidence must be competent and admissible. *See id.* at 1289 n.5. When a  
24 defendant seeks dismissal pursuant to Rule 12(b)(2) in its initial response to the complaint, the  
25 plaintiff need only demonstrate a *prima facie* showing that personal jurisdiction exists. *Ballard*  
26 *v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). A *prima facie* showing in this regard means that  
27 plaintiff has come forth with evidence or allegations that, if believed, would be sufficient to  
28 establish the existence of personal jurisdiction. *Cross v. Kloster Cruise Lines, Ltd.*, 897 F.Supp.

1 1304, 1309-10 (D. Or. 1995). Moreover, when dismissal is sought as an initial response to the  
2 complaint, all pleadings and declarations are construed in the plaintiff's favor because the  
3 plaintiff has not been provided with an opportunity to test the veracity of evidence submitted by  
4 the defendant. *Farmers Ins. Exchange v. Portage La Prairie Mut. Ins. Co.*, 907 F.2d 911, 912  
5 (9th Cir. 1990); *Data Disc, Inc.*, 557 F.2d at 1285.

6 Once again, should the Court construe Defendant's request for dismissal under Rule  
7 12(b)(2), which he has not specifically asserted, the result should be the same as the personal  
8 jurisdictional challenges asserted by a variety of Righthaven defendants in this judicial district –  
9 the Court should exercise specific personal jurisdiction over the Defendant. Accordingly, as  
10 argued below, Defendant's request for dismissal for lack of personal jurisdiction must be denied.

11 **C. Rule 12(b)(6) Standards.**

12 While Defendant has apparently not specifically challenged personal jurisdiction under  
13 Rule 12(b)(2), he has done so under Rule 12(b)(6). (Doc. # 17 at 6-17.) Defendant's apparent  
14 ignorance of Rule 12(b)(2) aside, the Court is compelled to deny his request for relief under Rule  
15 12(b)(6) for lack of personal jurisdiction.

16 A request for dismissal pursuant to Rule 12(b)(6) "is viewed with disfavor and is rarely  
17 granted." See *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 256, 249 (9th Cir. 1997) (internal  
18 quotations marks omitted). Dismissal pursuant to Rule 12(b)(6) is only appropriate in  
19 extraordinary cases. *United States v. Redwood City*, 640 F.2d 963, 966 (9th Cir. 1981); *Cauchi*  
20 *v. Brown*, 51 F.Supp.2d 1014, 1016 (E.D. Cal. 1999); *United States v. White*, 893 F.Supp. 1423,  
21 1428 (C.D. Cal. 1995). The "court's role at the 12(b)(6) stage is not to decide winners and losers  
22 or evaluate the strength or weakness of claims . . ." *Jacobson v. Hughes Aircraft Co.*, 105 F.3d  
23 1288, 1292 (9th Cir. 1997). Thus, courts do not consider whether the plaintiff will ultimately  
24 prevail under Rule 12(b)(6), but only whether the plaintiff is entitled to offer evidence in support  
25 of the claims alleged. *Allison v. California Adult Auth.*, 419 F.2d 822, 823 (9th Cir. 1969). In  
26 fact, dismissal is only "appropriate when it is clear that no relief could be granted under any set  
27 of facts that could be proven consistent with the allegations set forth in the complaint." See  
28 *Burnett v. Twentieth Century Fox Film Corp.*, 491 F.Supp.2d 962, 966 (C.D. Cal. 2007). All

1 allegations asserted in the complaint must be construed in favor of the non-moving party and all  
2 material allegations – including any reasonable inferences drawn from same – must be accepted  
3 as true by the Court under a Rule 12(b)(6) analysis. *See id.* Where dismissal is granted, leave to  
4 amend should be granted unless doing so is futile. *In re Silicon Graphics, Inc. Sec. Litig.*, 183  
5 F.3d 970, 991 (9th Cir. 1999).

6 The Court is prohibited from considering material outside the complaint under Rule  
7 12(b)(6) unless it converts the motion into one seeking summary judgment. *See Arpin v. Santa*  
8 *Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001); *Beliveau v. Caras*, 873 F.Supp.  
9 1393, 1395 (C.D. Cal. 1995). Such a conversion is generally disfavored if “(1) the motion  
10 comes quickly after the complaint was filed, (2) discovery is in its infancy and the nonmovant is  
11 limited in obtaining and submitting evidence to counter the motion, or (3) the nonmovant does  
12 not have reasonable notice that a conversion might occur.” *Rubert-Torres v. Hospital San Pablo,*  
13 *Inc.*, 205 F.3d 472, 475 (1st Cir. 2000). Notice in this regard has been interpreted to require at  
14 least ten (10) days notice. *See In re Rothery*, 143 F.3d 546, 549 (9<sup>th</sup> Cir. 1998); *see also Mack v.*  
15 *South Bay Beer Distrib., Inc.* 798 F.2d 1279, 1282 (9th Cir. 1986).

16 Several judges in this judicial district have exercised specific personal jurisdiction in  
17 cases involving copyright infringement allegations asserted by Righthaven against non-forum  
18 based defendants. The same result is compelled in this case. The Court should exercise specific  
19 personal jurisdiction over the Defendant and deny his request for dismissal

20 **D. Rule 12(e) Standards.**

21 Defendant’s final challenge to Righthaven’s Complaint is brought under Rule 12(e).  
22 According to the Defendant, “deciphering the Plaintiff’s attempt at a complaint is difficult  
23 enough. Even trying to read between the lines and giving the Plaintiff ever[y] reasonable  
24 inference, however, the Complaint remains inadequately plead.” (Doc. # 17 at 16:6-8.)  
25 Defendant’s statements in this regard are simply ridiculous – particularly given that he could  
26 have readily ascertained the viability of such an argument upon even a cursory review of the  
27 decisions reached in a host of Righthaven cases filed in this judicial district. This observation  
28



1 aside, there is simply no basis to grant Defendant's request for a more definite statement under  
2 Rule 12(e).

3 Relief under Rule 12(e) is only appropriate under circumstances where the pleading to  
4 which a responsive pleading is allowed is "so vague or ambiguous that the party cannot  
5 reasonably prepare a response." FED.R.CIV.P. 12(e). "A Rule 12(e) motion is proper only where  
6 the complaint is so indefinite that the defendant cannot ascertain the nature of the claims being  
7 asserted." *Sagan v. Apple Computer, Inc.*, 874 F.Supp. 1072, 1077 (C.D. Cal. 1994). "Motions  
8 for more definite statement are viewed with disfavor and are rarely granted because of the  
9 minimal pleading requirements of the Federal Rules." *Id.*

10 Righthaven has clearly satisfied the pleading requirements required to assert to its  
11 copyright infringement claims against the Defendant. In fact, he obviously understands the  
12 nature of the Righthaven's copyright infringement claims based on his contention that this Court  
13 somehow lacks subject matter jurisdiction based on an erroneous interpretation of the operative  
14 events giving rise to such infringement allegations. (Doc. # 17 at 4-5.) Moreover, Defendant is  
15 apparently the founder of an adult entertainment copyright content protection company.  
16 (Mangano Decl. Ex. 3 at 2.) Thus, he must certainly have more than a rudimentary  
17 understanding of the pleading requirements necessary to assert a copyright infringement claim.  
18 These facts alone justify denying his request for a more definite statement under Rule 12(e).

#### 19 **IV. ARGUMENT**

20 While Defendant's Motion is brought under several independent grounds, the factual  
21 basis upon which his relief is predicated can be distilled down to two arguments: (1) the  
22 Complaint must be dismissed for lack of subject matter jurisdiction (pursuant to Rule 12(b)(1))  
23 or, alternatively, dismissed for failure to state a claim upon which relief can be granted (pursuant  
24 to Rule 12(b)(6)), because Righthaven has failed to allege ownership of the Work at the time of  
25 the alleged infringement (Doc. # 17 at 4-6); or (2) the Complaint must be dismissed for lack of  
26 personal jurisdiction, which is asserted under Rule 12(b)(6) but which should have been brought  
27 under Rule 12(b)(2) as noted above. Finally, Defendant claims he is unable to formulate a  
28 response to Righthaven's Complaint and, as such, ask the Court to grant his request for a more

1 definite statement under Rule 12(e). Defendant's arguments are not only without merit – they  
2 are ludicrous in view of the numerous prior decisions from this judicial district that have rejected  
3 arguments virtually identical to those presently before the Court. Defendant's ignorance of these  
4 decisions and his unwillingness to reconsider the basis for the relief sought aside, the Court is  
5 compelled to deny the Motion.

6 ***A. Defendant's Contention That Dismissal is Warranted Under Rule 12(b)(1) or Rule***  
7 ***12(b)(6) Based on Righthaven's Allegations of Ownership And Copyright***  
8 ***Registration Must be Summarily Rejected.***

9 Defendant's request for dismissal under Rule 12(b)(1) and/or Rule 12(b)(6) is predicated  
10 on the mistaken premise that Righthaven is required to allege ownership of the Work at the time  
11 of the alleged infringement. (Doc. # 17 at 4-6.) Defendant's argument is not only contrary to  
12 decisions reached by other members of this Court, but it is contrary to the very case law upon  
13 which he relies. Righthaven would certainly expect that the founding member of an adult  
14 entertainment content protection entity would possess enough rudimentary knowledge of  
15 copyright litigation so as to comprehend the illegitimacy of such an argument.

16 To establish subject matter jurisdiction and survive a Rule 12(b)(6) challenge for failure  
17 to state a claim upon which relief can be granted for copyright infringement, Righthaven must  
18 allege: (1) ownership of a valid copyright; and (2) that the defendant violated one or more of its  
19 exclusive rights under the Copyright Act. *See Ellison*, 357 F.3d at 1077; *see also Feist*  
20 *Publications, Inc.*, 499 U.S. at 361; *Majorwager.com, Inc.*, 2010 WL 4386499, at \*1-2; *accord*  
21 *Dr. Shezad Malik Law Firm P.C.*, 2010 WL 3522372, at \*2. The heightened pleading  
22 requirements of Federal Rule of Civil Procedure 9 do not apply to a copyright infringement  
23 claim. *Dr. Shezad Malik Law Firm P.C.*, 2010 WL 3522372, at \*2; *accord Empress LLC v. San*  
24 *Francisco*, 419 F.3d 1052, 1055 (9th Cir. 2005); *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097,  
25 1104 (9th Cir. 2003). The United States Court of Appeals for the Ninth Circuit (the "Ninth  
26 Circuit") has held that an assignor can transfer the ownership interest in an accrued past  
27 infringement if the assignment is accompanied by an exclusive right recognized under the  
28 Copyright Act. *Silvers v. Sony Pictures Entm't Inc.*, 402 F.3d 881, 890 (9th Cir. 2005); *accord*

1 *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 944 F.2d 971 (2d Cir. 1991). Moreover, a  
2 plaintiff is not required to attach a copyright assignment to its complaint or allege its existence  
3 and validity to assert an infringement claim because such issues can be vetted through the course  
4 of discovery. *Dr. Shezad Malik Law Firm P.C.*, 2010 WL 3522372, at \*2.

5 Here, Righthaven has unquestionably satisfied its pleading obligations to defeat  
6 Defendant's dismissal challenges under Rule 12(b)(1) and/or Rule 12(b)(6). To begin with,  
7 Righthaven has asserted that it is the owner of the copyright in and to the Work that it alleges to  
8 have been infringed. (Doc. # 6 ¶¶ 14, 32.) In this regard, Righthaven has attached evidence of  
9 registration from the United States Copyright Office to the Complaint. (Doc. # 6-1, Ex. 4.)  
10 These allegations and evidence clearly satisfy that Righthaven has more than adequately alleged  
11 that it is the owner of the copyright in and to the Work at issue in this case. Simply put,  
12 Righthaven has set forth sufficient facts to establish that dismissal is unwarranted on the grounds  
13 that it has failed to adequately assert ownership of the Work.

14 Righthaven's allegations of ownership aside, and even though it is not required to allege  
15 the basis upon which it acquired the rights in and to the Work, other members of this Court have  
16 examined the assignment upon which ownership is predicated and they have upheld their validity  
17 in view of the Ninth Circuit's requirements under the *Silvers* decision. *See Vote For The Worst,*  
18 *LLC, et al.*, Case No. 2:10-cv-01045-KJD-GWF (D. Nev. March 30, 2011)(Doc. # 28 at 2-3);  
19 *accord Majorwager.com, Inc.*, 2010 WL 4386499, at \*1-2. There is certainly nothing novel  
20 about the assignment of rights received by Righthaven in this case. This observation aside,  
21 Righthaven is certainly willing to formally submit its assignment of the Work should the Court  
22 require it to be part of the record in order to dispose the Defendant's Motion. Righthaven,  
23 however, maintains that such a showing is not required to establish ownership in a copyright  
24 infringement action, particularly in view of the registration materials attached to the Complaint.  
25 (Doc. # 6-1, Ex. 4.) Moreover, the Defendant has cited absolutely no case law that supports his  
26 assertion that Righthaven is required to assert ownership of the Work at the time of the alleged  
27 infringement. In fact, the case law cited by the Defendant in support of this proposition is  
28 wholly consistent with Righthaven's position and with other decisions reached in this judicial

1 district involving identical claims by Righthaven defendants. Accordingly, Defendant's request  
2 for relief under Rule 12(b)(1) and Rule 12(b)(6) should be denied.

3 **B. *The Defendant is Subject to Personal Jurisdiction in The State of Nevada.***

4 Defendant next asserts that dismissal is required because the Court cannot exercise  
5 personal jurisdiction over him. (Doc. # 17 at 6-17.) Defendant argues the Court lacks a basis to  
6 exercise general jurisdiction or specific jurisdiction over him, which requires dismissal of  
7 Righthaven's Complaint. (*Id.*) Righthaven is unimpressed by Defendant's personal jurisdiction  
8 arguments given that it has repeatedly defeated such challenges raised by non-resident  
9 defendants in this judicial district. *See, e.g., Vote For The Worst, LLC, et al.*, Case No. 2:10-cv-  
10 01045-KJD-GWF (Doc. # 28 at 3-6); *Mostofi*, Case No. 2:10-cv-01066-KJD-GWF (Doc. # 19 at  
11 2-5); *Majorwager.com, Inc.*, 2010 WL 4386499, at \*3-4; *accord Dr. Shezad Malik Law Firm*  
12 *P.C.*, 2010 WL 3522372, at \*1. The same conclusion is warranted in this case as reached in the  
13 cited prior decisions from this judicial district – the Court exercise personal jurisdiction over the  
14 Defendant.

15 **1. *A finding of general jurisdiction would require discovery.***

16 Defendant first maintains that he has insufficient continuous and systematic contacts with  
17 the forum state to justify the exercise of general personal jurisdiction over him. (Doc. # 17 at 8-  
18 10.) Righthaven concedes that, absent discovery, it does not have sufficient evidence to establish  
19 general jurisdiction over the Defendant. If discovery were permitted, however, Righthaven  
20 believes that it could make such a showing given that Defendant is in the adult video  
21 entertainment industry. (Mangano Decl. Exs. 1-2.) It would defy logic to conclude that such a  
22 prominent member of the adult entertainment industry would not routinely attend such events as  
23 the Adult Video News Awards or participate in industry-related conventions such as those held  
24 in connection with the event previously known as COMDEX. Attendance at such events, which  
25 are held annually in Las Vegas, would contradict any claims that Defendant has not purposefully  
26 availed himself of general jurisdiction in the State of Nevada. At this stage of the proceedings,  
27 however, Righthaven does not have the ability to explore these issues through discovery and  
28 present sufficient evidence for the Court to exercise general personal jurisdiction over the

1 Defendant. Nevertheless, Righthaven certainly maintains that specific personal jurisdiction  
2 should be exercised over the Defendant, which is consistent with the multiple decisions cited  
3 herein from this judicial district.

4 **2. The Court has specific personal jurisdiction over the Defendant.**

5 The Defendant next maintains that the Court cannot exercise specific personal  
6 jurisdiction over him in view of Righthaven's allegations. (Doc. # 17 at 10-16.) Once again,  
7 Defendant is wrong and his request for dismissal on this basis must be rejected.

8 In order to exercise specific personal jurisdiction over a non-resident defendant the Court  
9 must apply a three-part test: (1) the non-resident defendant must do some act or consummate  
10 some transaction within the forum, or perform some act which he purposefully avails himself of  
11 the privilege of conducting activities in the forum, thereby invoking its benefits and protections;  
12 (2) the claim asserted against the non-resident defendant must be one that arises out of or results  
13 from the defendant's forum-related activities; and (3) the exercise of jurisdiction must be  
14 reasonable. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir. 1997).

15 **a) The first prong of the specific jurisdictional analysis is satisfied**  
16 **based on the Defendant's willful infringement of material known**  
17 **to come from this state.**

18 Under the first, purposeful availment, prong of the specific jurisdictional analysis, the  
19 Ninth Circuit has held that the defendant must have allegedly: (1) committed an intentional  
20 action; (2) aimed at the forum state; and (3) which causes harm that the defendant knows is  
21 likely to be suffered in the forum state. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d  
22 797, 803 (9th Cir. 2004). The Ninth Circuit has expressly held that willful copyright infringers  
23 who reproduce content from a source known to exist in the forum purposefully avail themselves  
24 of jurisdiction within said forum. *Columbia Pictures Television v. Krypton Broadcasting of*  
25 *Birmingham, Inc.*, 106 F.3d 284, 289 (9th Cir. 1997). Specifically, the *Columbia* court held that  
26 the **purposeful availment inquiry ends** in copyright infringement cases where the defendant  
27 "willfully infringed copyrights owned by [the plaintiff], which, as [the defendant] knew had its  
28

1 principal place of business in the [forum jurisdiction].” *Id.* The *Columbia* holding is dispositive  
2 to this analysis and, as discussed earlier, has been repeatedly followed by this Court.

3 As argued above, the Defendant is not someone who is naïve to the concept of copyright  
4 infringement liability. (Mangano Decl. Ex. 3.) Rather, he established a company to help enforce  
5 the rights of copyright holders in the adult entertainment industry. (*Id.*) Moreover, other courts  
6 in this judicial district have found that it is common knowledge that content appearing in the *Las*  
7 *Vegas Review-Journal* is published and distributed in Las Vegas, Nevada by the party that is  
8 alleged to have assigned its rights in the Work to Righthaven. *See, e.g., Vote For The Worst,*  
9 *LLC, et al.,* Case No. 2:10-cv-01045-KJD-GWF (Doc. # 28 at 4); *Mostofi,* Case No. 2:10-cv-  
10 01066-KJD-GWF (Doc. # 19 at 3); *Majorwager.com, Inc.,* 2010 WL 4386499, at \*3; *Dr. Shezad*  
11 *Malik Law Firm P.C.,* 2010 WL 3522372, at \*1. To the extent the Defendant was somehow  
12 unaware of this fact, such knowledge is properly imputed to him. *See Majorwager.com, Inc.,*  
13 2010 WL 4386499, at \*3. Moreover, the Work’s subject matter specifically relates to activities  
14 within the forum state. (Doc. # 6-1, Ex. 2.) The foregoing facts, coupled with Righthaven’s  
15 allegations that Defendant willfully infringed its rights in and to the Work are dispositive of the  
16 first prong under the Ninth Circuit’s specific jurisdictional analysis.

17 ***b) The second prong of the specific jurisdictional analysis is satisfied***  
18 ***because Righthaven’s claims arise out of the Defendant’s forum-***  
19 ***related activity.***

20 The second prong of the Ninth Circuit’s specific jurisdictional analysis examines whether  
21 the plaintiff’s claim arises out of the defendant’s forum-related activity. *See Schwarzenegger,*  
22 374 F.3d at 803. Righthaven’s claim in this case is no different than those found to satisfy this  
23 prong of the Ninth Circuit’s analysis in other actions brought in this judicial district – the Work  
24 alleged to have been infringed by the Defendant arose from its publication in the *Las Vegas*  
25 *Review-Journal* and its related posting on the media publication’s website. (Doc. # 6 at 3.) As  
26 stated by Judge Navarro in the *Magerwager.com, Inc.* decision, the second prong of the Ninth  
27 Circuit’s analysis “is easily satisfied as Plaintiff’s claim, that Defendant allegedly infringed the  
28 copyrighted material, arose from the publication of the article in the state of Nevada . . . .”

1 *Majorwager.com, Inc.*, 2010 WL 4386499, at \*3. Defendant has raised no new facts or  
2 circumstances to deviate from this reasoning or from the reasoning of other members of this  
3 Court in examining the second prong of the Ninth Circuit’s specific jurisdictional analysis.  
4 Accordingly, this prong weighs in favor of the Court exercising personal jurisdiction over the  
5 Defendant.

6 ***c) It is reasonable to exercise personal jurisdiction over the Defendant,***  
7 ***thereby satisfying the Ninth Circuit’s third analysis prong.***

8 Finally, the exercise of specific personal jurisdiction over the Defendant in this case  
9 satisfies the third prong of the Ninth Circuit’s test in that doing so would be reasonable.  
10 *Columbia Pictures Television*, 106 F.3d at 289. “[T]here is a presumption of reasonableness  
11 upon a showing that the defendant purposefully directed his action at forum residents which the  
12 defendant bears the burden of overcoming by presenting a compelling case that jurisdiction  
13 would be unreasonable.” *Id.*; see also *Haisten v. Grass Valley Med. Reimbursement*, 784 F.2d  
14 1392, 1397 (9th Cir. 1986). Righthaven is certainly entitled to such a presumption given the  
15 facts and allegations before the Court. Accordingly, the exercise of specific personal jurisdiction  
16 over the Defendant should be deemed reasonable, as no meaningful basis to conclude otherwise  
17 has been presented to the Court.

18 Absent such a presumption, which Righthaven is certainly entitled to in this case, the  
19 Court must consider the following factors in determining whether the exercise of specific  
20 personal jurisdiction would be unreasonable: (1) the extent of the defendant’s purposeful  
21 interjection into the forum state; (2) the burden on the defendant in defending the suit in the  
22 forum state; (3) the extent of conflict with the sovereignty of the defendant’s forum state; (4) the  
23 forum state’s interest in adjudicating the dispute; (5) the most efficient and convenient forum for  
24 adjudicating the dispute; (6) the importance of the chosen forum to the plaintiff’s interest in  
25 obtaining convenient and effective relief; and (7) the existence of an alternative forum. *Amoco*  
26 *Egypt Oil Co. v. Leonis Navigation Co., Inc.*, 1 F.3d 848, 851 (9th Cir. 1993). These factors  
27 weigh in favor of the Court exercising specific jurisdiction over the Defendant.  
28

1 Turning to the first factor, the Defendant's purposeful interjection into the forum state  
2 parallels the question of minimum contacts, which Righthaven has demonstrated supports the  
3 exercise of specific jurisdiction. *See Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1199  
4 (9th Cir. 1988). While the Defendant contends otherwise, the allegations before the Court  
5 clearly demonstrate meritorious copyright infringement claims involving a literary work  
6 generated by the "forum state's largest local newspaper publisher written about . . ." a topic  
7 involving Las Vegas, Nevada. *See Majorwager.com, Inc.*, 2010 WL 4386499, at \*4.  
8 Furthermore, the infringing copy of the Work omitted reference to the *Las Vegas Review-Journal*  
9 as the source publication. (Doc. # 6-1, Ex. 3.) The Defendant is alleged to maintain managerial,  
10 administrative, and editorial control of the Website's content. (Doc. # 6 ¶¶ 9-11.) These facts  
11 clearly support a finding of reasonableness under the purposeful interjection factor. Defendant's  
12 claims to the contrary simply ignore the analysis that has been routinely applied in this judicial  
13 district.

14 The second factor, the burden on the defendant in defending the action in the forum state,  
15 also establishes reasonableness of exercising specific personal jurisdiction in this case.  
16 Defendant maintains that it would be burdensome for him to defend this action "[b]ecause  
17 virtually all of the testimonial and most of the documentary evidence in this matter is located in  
18 California . . ." (Doc. # 17 at 15:27-28.) Apparently, the Defendant "would suffer severe  
19 hardship in terms of costs and asymmetries of information if forced to defend a lawsuit in the  
20 District of Nevada." (*Id.* at 15:20-22.) Defendant's assertions are nothing short of comical.  
21 First, California is located in close proximity to the forum state. It takes approximately one hour  
22 to fly from Los Angeles, California to Las Vegas, Nevada. Depending upon the time of day, it  
23 takes approximately four hours to drive from Los Angeles to Las Vegas. Moreover, Defendant's  
24 counsel maintains an office in both California and in Las Vegas. These circumstances hardly  
25 support a finding that the Defendant would be unreasonably burdened by defending this case in  
26 the forum state. In fact, the alleged burden imposed upon the Defendant in this case falls well  
27 short of those confronted by a Canadian citizen as to this factor, which resulted in the court  
28 exercising personal jurisdiction over that defendant. *See Majorwager.com, Inc.*, 2010 WL



1 4386499, at \*4. In short, there is no credible basis upon which the Court could conclude that the  
2 Defendant would be unreasonably burdened by defending this lawsuit.

3 Defendant raises no substantive arguments with regard to the third reasonableness factor  
4 (Doc. # 17 at 15-16), which considers the extent of conflict with the sovereignty of the  
5 defendant's state. *See Amoco Egypt Oil Co.*, 1 F.3d at 851. Thus, he apparently concedes that  
6 this factor weighs supports a finding of reasonableness.

7 Likewise, Defendant presents no substantive arguments with regard to the fourth  
8 reasonableness factor (Doc. # 17 at 15-16), which considers the forum state's interest in  
9 adjudicating the dispute. *See Amoco Egypt Oil Co.*, 1 F.3d at 851. As noted by Judge Navarro,  
10 "the forum state has an interest in adjudicating an infringement upon a news article originated by  
11 the forum state's largest local newspaper publisher . . . ." *Majorwager.com, Inc.*, 2010 WL  
12 4386499, at \*4. Defendant's apparent concession aside, Judge Navarro's reasoning is equally  
13 applicable to the facts before this Court given the Work at issue was originated by the same  
14 publisher, the *Las Vegas Review-Journal*, as in the *Majorwager.com, Inc.* dispute. Accordingly,  
15 the forum state's interest in adjudicating this dispute supports a finding that exercising specific  
16 personal jurisdiction over the Defendant is reasonable.

17 The fifth reasonableness factor additionally supports the Court exercising specific  
18 personal jurisdiction over the Defendant. This factor considers the most efficient resolution of  
19 the dispute. *See Amoco Egypt Oil Co.*, 1 F.3d at 851. Defendant's arguments in support of this  
20 factor simply parrot his unpersuasive and nebulous claim that testimonial and documentary  
21 evidence is located in California, thereby somehow making this forum an inefficient place for  
22 resolving the dispute. (Doc. # 17 at 15.) Defendant's assertions, however, completely ignore the  
23 fact that this case involves the infringement of a Work originally published in this forum by a  
24 news media company located in the forum state that assigned the rights in and to the Work to  
25 Righthaven, a Nevada limited-liability company located in the forum state. Moreover, given the  
26 that a considerable number of copyright infringement actions are pending in or have been  
27 adjudicated in this judicial district, which involve or have involved defendants from numerous  
28 different states, the interstate judicial system benefits from resolving these matters in the same

1 forum. *See Majorwager.com, Inc.*, 2010 WL 4386499, at \*4. Accordingly, the fifth  
2 reasonableness factor clearly supports the Court exercising specific personal jurisdiction over the  
3 Defendant.

4 Defendant fails to raise any material arguments as to the sixth and seventh reasonableness  
5 factors in support of his requested relief. (Doc. # 17 at 15-16.) As such, Defendant has  
6 conceded that these factors support a finding of reasonableness since he bears the burden of  
7 demonstrating otherwise given his alleged conduct. *See Columbia Pictures Television*, 106 F.3d  
8 at 289. Accordingly, the Court is compelled to find that the sixth and seventh reasonableness  
9 factors support exercising specific personal jurisdiction over the Defendant.

10 In sum, each and every factor the Court is required to consider in deciding whether the  
11 exercise of specific jurisdiction over the Defendant would be reasonable supports a finding that it  
12 would be reasonable to do so. Defendant has conceded that the third, fourth, sixth and seventh  
13 factors support a finding of reasonableness through his failure to substantively articulate a basis  
14 to find otherwise. His arguments with regard to the other remaining reasonableness factors are  
15 so unpersuasive that they are readily dismissed upon proper consideration. As such, the exercise  
16 of specific personal jurisdiction over the Defendant is clearly reasonable. Given that the other  
17 specific jurisdiction factors support exercising jurisdiction over the Defendant, his Motion must  
18 be denied.

19 ***C. Defendant's Request For a More Definite Statement is Unwarranted And Must be***  
20 ***Denied.***

21 Defendant next asks the Court to order Righthaven to plead its copyright infringement  
22 claim with more specificity pursuant to Rule 12(e). (Doc. # 6 at 16.) Defendant's requested  
23 relief is completely unwarranted. As noted above, "[a] Rule 12(e) motion is proper only where  
24 the complaint is so indefinite that the defendant cannot ascertain the nature of the claims being  
25 asserted." *Sagan*, 874 F.Supp. at 1077. Here, the Defendant certainly appreciates the nature of  
26 the copyright infringement claims asserted against him as evidenced by his lack of subject matter  
27 jurisdiction arguments. Moreover, the Defendant advances this ridiculous assertion despite the  
28 fact that he founded a company that purportedly seeks to stop the unauthorized replication of

1 adult entertainment copyrighted material through litigation. (Mangano Decl. Ex. 3 at 2.) In  
2 short, the Defendant fully appreciates the nature of the claims asserted in Righthaven's  
3 Complaint. His request for relief under Rule 12(e) is completely baseless. Accordingly, it  
4 should be denied.

5 **V. CONCLUSION**

6 For the reasons set forth above, Righthaven respectfully requests that the Court deny  
7 Defendant's Motion in its entirety and grant such other relief as it deems proper.

8 Dated this 4th day of March, 2011.

9  
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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I on this 4<sup>th</sup> day of March, 2011, I attempted to serve the foregoing document via the Court's CM/ECF system, but was not successful in doing so due to Internet connectivity issues until March 5, 2011.

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