

1 Gary K. Salomons, Esq., #3150
2 Elliot S. Blut, Esq., # 6570
3 ECOFF, BLUT & SALOMONS, LLP
4 300 South Fourth Street, Suite 701
5 Las Vegas, Nevada 89101
6 Telephone: (702)384-1050
7 Facsimile: (702)384-8565

8 Attorneys for Defendant
9 ANDREW STODDARD,
10 an individual

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 RIGHTHAVEN, LLC, a Nevada Limited
14 Liability Company,

15 Plaintiff,

16 v.

17 HUSH-HUSH ENTERTAINMENT, INC.,
18 a suspended California Corporation; PN
19 MEDIA, INC., a California Company;
20 ANDREW STODDARD, an individual,

21 Defendants.

22 CASE NO. 2:10-cv-01404-LRH-LRL
23 **DEFENDANT ANDREW
24 STODDARD’S REPLY IN SUPPORT
25 OF MOTION TO DISMISS
26 PLAINTIFF’S FIRST AMENDED
27 COMPLAINT; MEMORANDUM OF
28 POINTS AND AUTHORITIES**

29 Defendant ANDREW STODDARD (“Defendant” or “Stoddard”) by and through his
30 counsel of record, Ecoff, Blut & Salomons, LLP, hereby submits his Reply in Support of his
31 Motion to Dismiss Plaintiff’s Complaint pursuant to Rules 12(b)(1), 12(b)(2) and 12(b)(6) of the
32 *Federal Rules of Civil Procedure*.

33 DATED: April 18, 2011

34 ECOFF, BLUT & SALOMONS, LLP

35 By: _____ //s//

36 ELLIOT S. BLUT, ESQ.
37 Attorneys For Defendant
38 ANDREW STODDARD

1 denying Defendant the relief he has requested.” (Response to Motion to Dismiss (hereinafter the
2 “Opposition”), p. 3, ll. 1-2.) This argument is simplistic and illogical. The District Court’s
3 decisions in other cases, involving different parties and different facts (which are not described
4 for the Court) offer no precedential authority to this Court. A court may take judicial notice of
5 another court’s order only for the limited purpose of recognizing a judicial act that an order
6 represents, or the subject matter of litigation. *U.S. v. Jones*, 29 F.3d 1549 (11th Cir. 1994).
7 Although a court may take judicial notice of other federal District Court decisions, such decisions
8 have no binding authority; binding authority applies only to appellate decisions, not to trial court
9 decisions. *Peviani v. Hostess Brands, Inc.*, 2010 WL 4553510 (C.D. Cal. 2010). In other words,
10 merely because a different Court found that it had subject matter and personal jurisdiction in
11 another case involving the Plaintiff before this Court, does not mean that substantive
12 jurisdictional requirements have been met in this case.

13 Indeed, Plaintiff has not even properly requested that the Court take judicial notice of
14 other rulings, which still would not support denial of this Motion, in *this* case. Judicial notice is
15 limited to those facts no subject to reasonable dispute and either “generally known” in the
16 community, or “capable of accurate and ready determination” by reference to sources whose
17 accuracy cannot be reasonably questioned. *Federal Rule of Evidence* 201; *see, Lee v. City of Los*
18 *Angeles*, 250 F. 3d 668, 688, 690 (9th Cir. 2001). With respect to judicial notice of court
19 proceedings and files, a court may take judicial notice of a ruling in another case, but not of
20 another court’s findings of fact. *See, MVM Inc. v. Rodriguez*, 568 F. Supp. 2d 158 (D.C. Puerto
21 Rico 2008); *A.I. Trade Finance, Inc. v. Centro Internationale Handelsbank AG*, 926 F.Supp.
22 378 (S.D.N.Y.1996). Thus, again, it is improper for the Plaintiff to request that this Court take
23 judicial notice of decisions in other lawsuits, which offer no precedential authority. *See, Peviani*
24 *v. Hostess Brands, Inc., supra*, 2010 WL 4553510.

25 Plaintiff’s assertions regarding the findings of other judicial officers in other cases in this
26 jurisdiction are therefore inadmissible, irrelevant hearsay. *See, Federal Rules of Evidence*, Rules
27 401, 402, 801, 802. In sum, the rulings of other judges in other cases in this jurisdiction,
28 involving different parties and different facts, are not binding authority on this Court, and indeed,

1 offer no guidance. Plaintiff's references to other District Court decisions in this jurisdiction
2 therefore should be stricken, and disregarded in their entirety. They do not offer any basis to
3 deny this Motion to Dismiss, which should be granted as prayed.

4 **B. THIS COURT HAS NO PERSONAL JURISDICTION OVER**
5 **DEFENDANT STODDARD, WHOSE DECLARATION IN SUPPORT OF**
6 **THIS MOTION IS NOT REBUTTED**

7 Plaintiff bases its claim of personal jurisdiction over individual defendant Stoddard on the
8 argument that it would "defy logic to conclude that such a prominent member of the adult
9 entertainment industry would not routinely attend" events in Las Vegas. (Opposition, p. 12, ll.
10 21-26.) Of course, there is no authority to support Plaintiff's simplistic belief that merely
11 because Defendant Stoddard is involved in the adult entertainment industry, he must have
12 personally availed himself of general jurisdiction in the State of Nevada. On the contrary,
13 Stoddard has submitted a sworn Declaration to this Court demonstrating that:

- 14 1. Stoddard is a resident of the State of California, who has never maintained a
15 residence, office, or telephone listing in Nevada. (Declaration of Andrew
16 Stoddard (hereinafter "Stoddard Decl."), ¶ 2.)
- 17 2. Stoddard owns no assets, real property, bank accounts or other tangible personal
18 property in the State of Nevada. (Stoddard Decl., ¶ 3.)
- 19 3. Stoddard has no employees in the State of Nevada. (Stoddard Decl., ¶ 4.)
- 20 4. Stoddard is the President of PN Media, Inc., a California corporation, which
21 maintains its only office at 2313 San Fernando Blvd., Burbank, California 91504.
22 PN Media, Inc. has no branch offices or comparable facilities in the State of
23 Nevada, and has no telephone listings or mailing address in the State of Nevada.
24 (Stoddard Decl., ¶ 5.)
- 25 5. PN Media, Inc. is not incorporated under the laws of the State of Nevada, nor has
26 it qualified to transact business in Nevada. Stoddard is not the officer, director,
27 shareholder or employee of any business entity that maintains its offices within
28 the State of Nevada. (Stoddard Decl., ¶ 6.)

1 6. Neither PN Media, Inc. nor Stoddard directs any advertising in any publications
2 toward Nevada residents, nor do they advertise in any publications that are
3 directed primarily toward Nevada residents. (Stoddard Decl., ¶ 7.)

4 7. The acts complained of by Plaintiff in the First Amended Complaint all occurred
5 outside the State of Nevada. (Stoddard Decl., ¶ 8.)

6 Plaintiff's Opposition to this Motion presents absolutely *no evidence or argument*
7 *whatsoever* to contradict the foregoing facts. Rather, Plaintiff again presents inadmissible
8 hearsay to support its (noncontroversial) claim that Mr. Stoddard is involved in the adult
9 entertainment industry, from such unreliable sources as *Wikipedia*. (Declaration of Shawn A.
10 Mangano, Esq. in Support of Response to Motion to Dismiss ("Mangano Decl."), ¶ 4, Exhibit
11 "1.") Such hearsay is inadmissible, as set forth in Defendant's Evidentiary Objections to
12 opposing counsel's Declaration filed concurrently herewith. *Federal Rules of Evidence*, Rules
13 801, 802. Indeed, Plaintiff's counsel's unreliable hearsay statements regarding Defendant
14 Stoddard's activities in the industry, even if accepted as true, still do not establish personal
15 jurisdiction over him in the Court's of Nevada.

16 Plaintiff's "evidence" in opposition to this Motion, consists, *in toto*, of the following:

17 1) "Hush Hush Entertainment" is a "pornographic film company" (Mangano Decl., Exhibit "1,"
18 *Wikipedia* entry); 2) Mr. Stoddard attended an adult industry magazine conference *in Los*
19 *Angeles*, in 2008 (Mangano Decl., Exhibit "2," *P2P Blog* entry); 3) Mr. Stoddard attended the
20 same conference referred to in Exhibit "2" (Mangano Decl., Exhibit "3," *PAK Group* website
21 entry). *None* of the foregoing "evidence" provides any basis whatsoever to assert general or
22 specific personal jurisdiction over Defendant Stoddard in this case. The articles are inadmissible
23 hearsay for which there is no exception, and Plaintiff's counsel has no personal knowledge of the
24 facts asserted, for which there is no proper evidentiary foundation. *Federal Rules of Evidence*,
25 Rules 602, 801, 802, 901. Furthermore, even if true, the facts that Mr. Stoddard is involved in
26 the adult entertainment industry, and attended a conference in Los Angeles in 2008, do not
27 provide any basis for the assertion of personal jurisdiction over Mr. Stoddard in the State of
28 Nevada. The Motion to Dismiss on the basis of lack of personal jurisdiction therefore should be

1 granted.¹

2 **1. This Court Does Not Have General or Specific Personal Jurisdiction Over**
 3 **Defendant Stoddard**

4 Plaintiff concedes that it “does not have sufficient evidence to establish general
 5 jurisdiction over the Defendant.” (Opposition, p. 12, ll. 18-19.) It nevertheless contends that “If
 6 discovery were permitted ... Righthaven believes that it could make such a showing ..” (*Id.* at ll.
 7 19-20.) Plaintiff’s “belief” notwithstanding, no amount of discovery will alter the facts set forth
 8 above, that Defendant Stoddard has no significant business relationships within Nevada, which
 9 could form the basis of general personal jurisdiction over him. (Stoddard Decl., ¶¶ 2-5.) *See,*
 10 *e.g., Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990); (the nature of the commercial activity
 11 must be of a substantial enough nature that it "approximate[s] physical presence." *Bancroft &*
 12 *Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir.2000). (citing *Gates Learjet v.*
 13 *Jensen*, 743 F.2d 1325, 331 (9th Cir. 1984)).

14 Plaintiff’s claim of specific personal jurisdiction over Defendant Stoddard is similarly
 15 unavailing. Plaintiff contends that willful copyright infringers who reproduce content from a
 16 source known to exist in a forum purposefully avail themselves of jurisdiction within the forum,
 17 citing to *Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.*, 106
 18 F.3d284, 289 (9th Cir. 1997) rev'd on other grounds *Felner v. Columbia Pictures Television, Inc.*,
 19 523 U.S. 340 (1998). While Defendant also cited to *Columbia Pictures*, Plaintiff ignores the
 20 Ninth Circuit’s holding in *Brayton Purcell LLP v. Recordon & Recordon*, 575 F.3d 981, 986 (9th
 21 Cir. 2009), which provides that the Court "construe[s] 'intent' as referring to an intent to perform
 22 an actual, physical act in the real world, rather than an intent to accomplish a result or

23
 24 ¹ Plaintiff makes much of the fact that Defendant cited to *Federal Rule of Civil Procedure*
 25 12(b)(6) as the basis for dismissal of the action against Stoddard for lack of personal jurisdiction,
 26 rather than Rule 12(b)(2). Defendant submits that this is a distinction without a difference. If
 27 there is no personal jurisdiction over Defendant Stoddard, he should be dismissed from the action
 28 on the basis of the appropriate *Federal Rule of Civil Procedure*, whether 12(b)(2) or 12(b)(6).
 Under either of the foregoing Rules, dismissal is appropriate if it appears beyond a doubt that the
 plaintiff can prove no set of facts in support of a claim. *See, Abramson v. Brownstein*, 897 F.2d
 389, 391 (9th Cir. 1990).

1 consequence of that act."

2 Here, as set forth in the underlying Motion to Dismiss, PN Media's website activities
3 must be specifically directed at Nevada residents for personal jurisdiction to be proper. *See,*
4 *Millennium Enterprises, Inc. v. Millennium Music, LP*, 33 F.Supp.2d 907, 921 (D.Or. 1999)
5 (declining to exercise jurisdiction where "plaintiff offers no evidence that defendants targeted
6 Oregon residents with the intent or knowledge that plaintiff could be harmed through their Web
7 site," notwithstanding that forum residents could make purchases on defendant's website).

8 Exercise of specific personal jurisdiction over Defendant Stoddard also would not be
9 reasonable in this case. Stoddard has not purposefully interjected himself into the State of
10 Nevada, where hauling Stoddard into the Nevada District Court will constitute hardship to him in
11 terms of cost and asymmetries of information, and where evidence and witnesses are located
12 within California, thus promoting judicial efficiency. *See, Rio Props., Inc. v. Rio Int '1 Interlink*,
13 284 F.3d 1007, 1021 (9th Cir. 2002).

14 Given the allegations of the First Amended Complaint, as well as the indisputable facts
15 set forth in Defendant Stoddard's Declaration in support of this Motion, it is apparent that this
16 Court has neither general nor specific personal jurisdiction over Mr. Stoddard individually, who
17 does nothing more than manage a passive website from within the State of California. Therefore,
18 this Motion to dismiss should be granted for lack of personal jurisdiction pursuant to *Federal*
19 *Rule of Civil Procedure* 12(b)(2).

20 **C. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED PURSUANT TO**
21 **FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1) FOR LACK OF**
22 **SUBJECT MATTER JURISDICTION**

23 As set forth in Defendant's Motion to Dismiss, "the legal and beneficial owner of an
24 exclusive right under copyright is entitled to bring actions for infringements of that right
25 occurring during the period of its ownership. *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 944
26 F.2d 971, 980 (9th Cir. 1991).

27 Here, Plaintiff cannot dispute that its Complaint establishes that the author of the work in
28 question is non-party Stephens Media, LLC. (First Amended Complaint, Exhibit "4.") Thus,

1 Plaintiff has failed to allege an “ownership” of the registered Work *at the time of the alleged*
2 *infringement* such that it may now bring an infringement claim. The owner of an exclusive right
3 under copyright is entitled to bring actions for infringement occurring during the period of its
4 ownership. *ABKCO Music, Inc., supra*, 944 F.2d at 980. Thus, only the proprietor of statutory
5 copyright at the time of the acts of infringement is entitled to damages under 17 U.S.C. § 101.
6 *Pye v. Mitchell*, 574 F.2d 476, 479 (9th Cir. 1978).

7 Plaintiff disregards the foregoing authorities, and instead concedes that it has not properly
8 pled any assignment of the copyright in question to it, which would provide it standing to
9 prosecute this claim. (“Righthaven is certainly willing to formally submit its assignment of the
10 work ...” (Opposition, p. 11, l. 21.)) Notwithstanding the foregoing admission, Plaintiff
11 nonsensically insists that such a showing is “not required to establish ownership in a copyright
12 infringement action.” (*Id.* at ll. 23-24.)

13 Simply put, Plaintiff has not alleged either that it is the creator of the work (which it is
14 not) or the assignee of the copyright registration in question. Without such allegations, Plaintiff
15 lacks standing to bring and maintain this action as the holder (or assignee) of the copyright at
16 issue. *Silvers v. Sony Pictures Entertainment*, 402 F.3d 881, 885 (9th Cir. 2005) For these
17 reasons, the First Amended Complaint should be dismissed for lack of subject matter
18 jurisdiction, pursuant to *Federal Rule of Civil Procedure* 12(b)(1).

19 **D. IN THE ALTERNATIVE, PLAINTIFF SHOULD BE ORDERED TO FILE**
20 **A MORE DEFINITE STATEMENT PURSUANT TO FEDERAL RULES**
21 **OF CIVIL PROCEDURE, RULE 12(e)**

22 Without sufficient allegations to state a *prima facie* claim of personal jurisdiction over the
23 individual Defendant in this case, and without proper allegations of Plaintiff’s copyright, the First
24 Amended Complaint is inadequately plead. There are insufficient allegations to support
25 Plaintiff’s claims, and therefore Plaintiff’s claims should be dismissed. In the alternative, a more
26 definite statement should be required under *Federal Rules of Civil Procedure* §12(e).

27 //

28 //

