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10
11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF NEVADA**

13 RIGHTHAVEN LLC, a Nevada limited-
liability company,

14 Plaintiff,

15 vs.

16 PAHRUMP LIFE, an entity of unknown origin
17 and nature; MAREN SCACCIA, an individual; and
MICHAEL SCACCIA, an individual,

18 Defendants.
19

Case No.: 2:10-cv-01575-JCM-PAL

**PLAINTIFF RIGHTHAVEN LLC'S
MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT**

20
21 Righthaven LLC ("Righthaven") hereby moves this Court, pursuant to Federal Rule of Civil
22 Procedure 15(a)(2) and Local Rule 15-1, for an Order granting Righthaven leave to file an amended
23 complaint alleging recent facts related to its ownership of the copyright at issue. Righthaven's first
24 amended complaint and a proposed order are attached as exhibits to this motion. In support of its
25 motion, Righthaven submits the following memorandum of points and authorities.
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Righthaven seeks leave to amend its complaint in order to correct any defects in standing that
4 exist under the original complaint. Leave to amend is liberally granted, and as explained below,
5 courts routinely grant leave to amend in order to cure defects in standing. Further, the additional
6 allegations in the amended complaint are limited to Righthaven's ownership of the copyright at issue
7 and its standing to sue; thus, the amended complaint would relate back to the date of the original
8 filing of the complaint, mooted the standing issue. Fed. R. Civ. P. 15(c). For these reasons,
9 Righthaven's motion for leave to amend should be granted.

10 **II. SUMMARY OF RELEVANT FACTS**

11 Righthaven filed its complaint for copyright infringement against the defendants¹ on August
12 14, 2010 (Doc. # 1). Defendants answered the complaint (Doc. # 9) and moved for summary
13 judgment (Doc. # 12). In its April 28, 2011 order denying summary judgment, the Court issued an
14 order to show cause why Righthaven's complaint should not be dismissed for lack of standing.
15 (Doc. # 21 ("Order").) In the Order, the Court expressed concern that Righthaven lacked standing to
16 sue under the Strategic Alliance Agreement ("SAA") between Righthaven and Stephens Media. (*Id.*
17 at 2.) Since the Court's Order, the parties, as well as *amici*, have submitted briefing on the standing
18 issue. The hearing for the Court's Order is currently set for June 30, 2011. (Doc. # 38.)

19 Subsequent to the filing of Righthaven's complaint, and the Court's Order, Righthaven and
20 Stephens Media executed the Clarification and Amendment to Strategic License Agreement
21 ("Amendment") in order to clarify the parties' intentions regarding copyright assignments to
22 Righthaven and to eliminate Stephens Media's right of reversion and convert its right to use an
23 assigned copyright to a mere non-exclusive license. (Doc. # 26, Ex. 3.) As explained in detail in
24 Righthaven's Omnibus Response to the *Amicus Curiae* Briefs of Democratic Underground and
25 Professor Jason Schultz (Doc. # 44), there is no doubt that under the recently executed Amendment,
26 Righthaven is the assignee and current owner of the copyrighted work at issue in this case and has
27 standing to sue for infringement.

28

¹ For ease of reference, Righthaven refers to "defendants" both individually and collectively.

1 Notwithstanding Righthaven's present copyright ownership under the Amendment, another
2 court in this District has held that because Righthaven lacked standing under the original SAA, its
3 complaint must be dismissed because standing did not exist at the inception of the lawsuit.
4 *Righthaven LLC v. Democratic Underground, LLC*, Doc. # 116, Case. No. 2:10-cv-01356-RLH-
5 GWF (D. Nev.) (Hunt, J.). In light of this decision, and to resolve any lingering procedural defect in
6 Righthaven's standing under the original complaint, Righthaven has filed the instant motion for
7 leave to file an amended complaint that alleges its copyright ownership under the Amendment. In
8 accordance with Local Rule 15-1, Righthaven has attached its proposed amended complaint to this
9 motion.

10 **III. ARGUMENT**

11 A party may seek leave of the court to amend its pleadings, and “[t]he court should freely
12 give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2). Further, “the filing of a supplemental
13 pleading is an appropriate mechanism for curing numerous possible defects in a complaint.” *Franks*
14 *v. Ross*, 313 F.3d 184, 198-99 (4th Cir. 2002) (citing *Wilson v. Westinghouse Elec. Corp.*, 838 F.2d
15 286 (8th Cir. 1988) (concluding that the plaintiff's amended complaint cured ripeness defect in
16 original complaint); *Lynam v. Livingston*, 257 F. Supp. 520, 525 (D. Del. 1966) (explaining that
17 plaintiff was entitled to supplement complaint to demonstrate that she had made mandatory demand
18 upon corporation and thereby had standing to bring stockholder derivative suit); *Ridgeway v. Int'l*
19 *Bhd. of Elec. Workers*, 466 F. Supp. 595 (N.D. Ill. 1979) (allowing amendment to add party in order
20 to cure defect in Title VII claim); *Bates v. W. Elec.*, 420 F. Supp. 521 (E.D. Pa. 1976) (permitting
21 plaintiffs to file amended complaint to demonstrate that, subsequent to filing of initial complaint,
22 they complied with jurisdictional prerequisites of Title VII).

23 Courts routinely allow parties to file amended complaints in order to cure standing defects
24 existing in the original complaints. *See, e.g., Bushnell, Inc. v. Brunton Co.*, 659 F. Supp. 2d 1150,
25 1160 (D. Kan. 2009) (granting leave to amend complaint to cure standing defect existing at inception
26 of lawsuit and noting that a dismissal of the case would waste judicial resources); *Northstar Fin.*
27 *Advisors, Inc. v. Schwab Inv.*, 2011 WL 1312044, at *3-4 (N.D. Cal. Mar. 2, 2011) (finding that
28 amending complaint after patent assignment to plaintiffs cured prior standing defect and that

1 dismissal of case would elevate form over substance); *Travelers Ins. Co. v. 633 Third Assoc.*, 973
2 F.2d 82, 87-88 (2d Cir. 1992) (granting plaintiff leave to file a supplemental pleading incorporating
3 events occurring after the complaint was filed in order to establish standing); *see also Galen Med.*
4 *Assoc., Inc. v. United States*, 74 Fed. Cl. 377, 382 (Fed. Cl. 2006) (amended complaint filed by re-
5 instated corporation cured original standing defect in complaint that was filed when corporation was
6 suspended). Further, such amendments relate back to the time of filing the original complaint
7 pursuant to Fed. R. Civ. P. 15(c). *See In re Vivendi Universal, S.A. Sec. Litig.*, 605 F. Supp. 2d 570,
8 585 (S.D.N.Y. 2009) (granting plaintiffs time to acquire assignments or ratifications from real
9 parties in interest and amend complaints to cure standing defects and holding that such amendments
10 would relate back to original filing of complaints); *Haddad Bros. Inc. v. Little Things Mean A Lot,*
11 *Inc.*, 2000 WL 1099866, at *9 (S.D.N.Y. Aug. 4, 2000) (“Initial defects in standing are remediable
12 through an amended complaint. Where an amendment cures a standing defect, nothing in the nature
13 of that amendment would prohibit it from relating back to the initial complaint.”); *cf. Valmet Paper*
14 *Mach., Inc. v. Beloit Corp.*, 868 F. Supp. 1085, 1089-1090 (W.D. Wis. 1994) (“[A] decision that the
15 [post-filing] written assignment did not cure the standing defect would simply lead plaintiffs to
16 amend the complaint to add the assignor and then dismiss it as an unnecessary party, or simply to
17 reinstate the lawsuit. Either alternative would result in needless delay and needless expenditure of
18 the parties’ and the court’s resources. Thus, holding that the written assignment executed only
19 thirteen days after suit was commenced did not cure plaintiffs’ standing defect would only ‘exalt
20 form over substance.’”).

21 As explained in detail in Righthaven’s Omnibus Response to the *Amicus Curiae* Briefs of
22 Democratic Underground and Professor Jason Schultz, even if Righthaven’s standing was defective
23 under the original SAA, Righthaven now has standing pursuant to the the recently executed
24 Amendment between Righthaven and Stephens Media. Righthaven’s First Amended Complaint
25 includes factual allegations regarding the Assignment; thus, it cures any procedural standing defect
26 existing under the original complaint. In order to avoid the needless additional expenditure of time
27 and judicial resources that would result from a dismissal and re-filing of Righthaven’s lawsuit, the
28 Court should grant Righthaven leave to amend its complaint.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Righthaven LLC respectfully requests that the Court grant its
3 motion for leave to file an amended complaint.

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5 Dated this 23rd day of June, 2011.

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I on this 23rd day of June, 2011, I caused the foregoing document to be served by the Court's CM/ECF system and to be served via U.S. Mail to:

Michael Scaccia:
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