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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
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
LEAVE TO FILE AN AMENDED
COMPLAINT**

20
21 On June 23, 2011, Righthaven LLC (“Righthaven”) moved the Court for leave to file an
22 amended complaint alleging recent facts related to its ownership of the copyright at issue. (Dkt. 45.)
23 Prior to filing its motion to amend, Righthaven submitted an omnibus response to the amicus curiae
24 briefs filed by Democratic Underground and Professor Jason Schultz (the “Omnibus Response”). In
25 that brief, Righthaven addressed the basis for its standing to sue for copyright infringement under the
26 Clarification and Amendment to Strategic License Agreement (“Amendment”). (See Dkt. 44,
27 Righthaven’s Omnibus Response to the *Amicus Curiae* Briefs of Democratic Underground and
28 Professor Jason Schultz.) As set forth in its Omnibus Response, Righthaven and Stephens Media

1 were considering further amending the Strategic Alliance Agreement in light of the recent decision
2 in *Righthaven LLC v. Hoehn*, where the Court in that case found that Righthaven lacked standing to
3 sue, even under the Amendment. Doc. # 28, Case. No. 2:11-CV-00050-PMP-RJJ (D. Nev.) (Pro, J.).
4 (Dkt. 44 at n. 1.)

5 Although Righthaven continues to believe that the Amendment was sufficient to confer
6 standing to sue, Righthaven and Stephens Media wish to put the standing issue to rest. Therefore,
7 these parties have further amended the Strategic Alliance Agreement in order to address the concerns
8 raised by the Court in *Hoehn* as well as those stated by the *amici*. The Amended and Restated
9 Strategic Alliance Agreement (“Restated and Amended SAA”) was executed on July 7, 2011, and is
10 attached hereto as Exhibit 1. The Restated and Amended SAA gives Righthaven the sole discretion
11 to determine whether or not to bring an infringement action based on an assigned copyright. Further,
12 as in the first Amendment, Righthaven is the sole owner of each assigned copyright, and Stephens
13 Media holds only a non-exclusive license. Stephens Media may not encumber Righthaven’s rights
14 in any assigned copyright, and Stephens Media’s option to re-purchase any assigned copyright does
15 not accrue until five years after the copyright is assigned. In short, there can be no question that
16 Righthaven is the only true owner of any assigned copyright and thus, has standing to sue for
17 infringement.

18 Shortly after the Restated and Amended SAA was executed, Righthaven’s counsel informed
19 the defendant and *amici* of the existence of the new agreement, sent them a copy of the agreement,
20 and informed them of Righthaven’s intention to inform the Court of this recent development.
21 Righthaven communicated to the defendant and *amici* that it was amenable to requesting an
22 additional briefing schedule from the Court in the event that the defendant or *amici* wished to
23 address the issue of standing under the Restated and Amended SAA. Although not everyone has
24 responded, counsel for *amicus* Democratic Underground has indicated that they would like the
25 opportunity to address the Restated and Amended SAA.

26 Given these recent developments, Righthaven has submitted along with this supplemental
27 memorandum a revised proposed amended complaint, which alleges facts relating to standing under
28 the Restated and Amended SAA. *See* Exhibit 2. Righthaven respectfully requests that if the Court

1 deems additional briefing on the standing issue necessary, that it afford both the defendant and *amici*
2 the opportunity to address the issue of standing under the Restated and Amended SAA and give
3 Righthaven the opportunity to respond to any arguments presented.¹

4 Finally, in an effort to avoid burdening the Court with excess paper, Righthaven submits this
5 supplemental memorandum in lieu of its reply in support of its motion to amend.

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8 Dated this 11th day of July, 2011.

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28 ¹ The parties are currently meeting and conferring regarding an agreed briefing schedule to propose to the Court and anticipate filing a stipulation shortly. In addition, the Court has vacated the July 13th hearing on Righthaven's motion for leave to amend in light of the recent death in the family of Righthaven's counsel. The Court has indicated that it will provide alternative hearing dates on July 12th so that an appropriate stipulation and order setting a new hearing can be submitted by the parties.

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I on this 11th day of July, 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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