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16 UNITED STATES DISTRICT COURT  
17 FOR THE DISTRICT OF NEVADA

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO

18 RIGHTHAVEN LLC, a Nevada limited liability  
19 company,

20 Plaintiff,

21 v.

22 PAHRUMP LIFE, an entity of unknown origin  
23 and nature; MAREN SCACCIA, an individual;  
24 and MICHAEL SCACCIA, an individual,

25 Defendants.

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

**[PROPOSED] ORDER DISMISSING  
RIGHTHAVEN'S COMPLAINT AND  
DENYING PLAINTIFF'S MOTION TO  
AMEND ITS COMPLAINT**

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1 Presently before the Court is the Order to Show Cause why the Court should not dismiss  
2 the instant action for lack of standing (Dkt. 21) and Plaintiff Righthaven's motion for leave to  
3 amend its complaint (Dkt. 45).

4 Righthaven filed a response to the Order to Show Cause (Dkt. 25), an omnibus reply brief  
5 to various amicus briefs (Dkt. 44), the abovementioned motion for leave to amend (Dkt. 45), a  
6 supplemental brief to its motion to amend (Dkt. 57) and a supplemental reply memorandum (Dkt.  
7 62). Defendant Michael Scaccia filed a response to the order to show cause. (Dkt. 30). *Amicus*  
8 Democratic Underground filed a reply to Righthaven's response (Dkt. 32) and a response to the  
9 motion to amend (Dkt.57). *Amicus* Jason Schultz filed an amicus brief and reply brief. (Dkt. 36  
10 and 46). *Amicus* Citizens Against Litigation Abuse, Inc. filed an amicus brief. (Dkt. 48). *Amici*  
11 Democratic Underground, Professor Schultz, and Citizens Against Lawsuit Abuse filed an  
12 omnibus reply to Righthaven's supplemental brief. (Dkt. 58). *Amicus* Media Bloggers  
13 Association did not file a brief but argued at the July 27, 2011 hearing. Having considered all of  
14 those filings and the arguments of counsel, the court makes the following findings and order:

#### 15 **FACTUAL BACKGROUND**

16 Righthaven asserts that Stephens Media LLC ("Stephens Media"), publisher of the *Las*  
17 *Vegas Review-Journal*, assigned it the copyright to an August 14, 2010 article entitled "Warden,  
18 other employees resign from prison in escape fallout." The Assignment purportedly transfers "all  
19 copyrights requisite to have Righthaven recognized as the copyright owner of the Work for  
20 purposes of Righthaven being able to claim ownership as well as the right to seek redress for past,  
21 present and future infringements of the copyright." (Dkt. 26, Ex. 1).

22 Stephens Media and Righthaven also entered into a Strategic Alliance Agreement (SAA),  
23 which governed the relationship between these parties. ("SAA," Dkt. 26, Ex. 2).

24 On April 29, 2011, this Court issued an Order to Show Cause why it should not dismiss  
25 this case for lack of standing based on the limitations on Righthaven's copyright ownership under  
26 the SAA. On May 9, 2011, Righthaven and Stephens Media executed the "Clarification and  
27 Amendment to Strategic Alliance Agreement." ("Clarification," Dkt. 26, Ex. 3).

1 On June 23, 2011, Righthaven moved to amend its complaint pursuant to Rule 15(a),  
2 seeking to add allegations regarding its standing under the May 9th Clarification. (Dkt.45). On  
3 July 7, 2011, Righthaven and Stephens Media executed the “Amended and Restated Strategic  
4 Alliance Agreement” (the “Restated SAA,” Dkt. 57, Ex. 1). On July 11, 2011 Righthaven filed a  
5 supplemental brief seeking leave to file a revised amended complaint that included allegations  
6 regarding its standing under the Restated SAA. (Dkt. 57).

7 **DISCUSSION**

8 To show standing, Righthaven must plead an injury in fact at the time of the complaint.  
9 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *see also Newman-Green, Inc. v.*  
10 *Alfonzo-Larrain*, 490 U.S. 826, 830 (1989)) (standing is based upon the facts when the complaint  
11 is filed). The Court elects to follow the other decisions from this District and find that  
12 Righthaven lacks standing to maintain this action because it lacked ownership of the copyright  
13 under the SAA, which was in force when the complaint was filed. In so finding, the Court  
14 declines to consider Righthaven’s standing under the Clarification or the Restated SAA, which  
15 the company sought to place at issue through its motion to amend, because these agreements were  
16 not part of the jurisdictional facts in existence at the time this case was filed. *Lujan*, 504 U.S. at  
17 560; *see also Newman-Green, Inc.*, 490 U.S. at 830 (standing is based upon the facts when the  
18 complaint is filed). Accordingly, the Court denies Righthaven’s motion to amend.

19 **CONCLUSION**

20 IT IS THEREFORE ORDERED that Plaintiff’s Motion to Amend the Complaint is  
21 DENIED and Plaintiff’s Complaint is hereby DISMISSED without prejudice.

22  
23 Dated: \_\_\_\_\_

By: \_\_\_\_\_  
The Hon. James C. Mahan  
United States District Court Judge

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