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10
11 **UNITED STATES DISTRICT COURT**
12
13 **DISTRICT OF NEVADA**
14

15 RIGHTHAVEN LLC, a Nevada limited-
16 liability company,

17 Plaintiff,

18 v.

19 MICHAEL LEON, an individual; DENISE
20 NICHOLS, an individual; and MEDBILLZ,
21 INC., a corporation of unknown origin,

22 Defendants.

Case No.: 2:10-cv-01672-GMN-LRL

**PLAINTIFF RIGHTHAVEN LLC'S
NOTICE OF VOLUNTARY DISMISSAL
WITH PREJUDICE AS TO DEFENDANT
DENISE NICHOLS PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 41(a)(1)(A)(i)**

23 Plaintiff Righthaven LLC (“Righthaven”) hereby files this notice of voluntary dismissal
24 with prejudice as to Defendant Denise Nichols pursuant to Federal Rule of Civil Procedure
25 41(a)(1)(A)(i) (the “Notice of Dismissal”). Nichols’ pending Motion to Dismiss (Doc. # 22) in
26 no way precludes Righthaven from filing the Notice of Dismissal. *See Swedberg v. Marotzke*,
27 339 F.3d 1139, 1143 (2003)(recognizing that courts must give effect to a voluntary dismissal as
28 long as the court has not converted a 12(b)(6) motion in a summary judgment motion).
Moreover, Righthaven’s Notice of Dismissal is effective upon filing and no subsequent order is

1 required from the Court. *See Hamilton v. Shearson-Lehman Am. Express, Inc.*, 813 F.2d 1532,
2 1534-35 (9th Cir. 1987). The notice closes the file for this case as to Nichols. *See id.*

3 Righthaven's Notice of Dismissal is filed in response to the Court's observation at the
4 April 20, 2011 hearing in this matter (Doc. # 30) that it was inclined to permit the Righthaven
5 and Nichols to attempt to reach an agreement as to whether this case could be dismiss without
6 prejudice, but with the ability for her to seek the recovery of attorneys' fees, or, alternatively,
7 dismissed with prejudice without an the ability to seek a fee award. Righthaven advised the
8 Court at the April 20, 2011 hearing that Nichols' pending Motion to Dismiss did not divest the
9 company of its ability to voluntarily dismiss this action pursuant to Federal Rule of Civil
10 Procedure 41(a)(1)(i). *See Swedberg*, 339 F.3d at 1143.

11 Since the April 20, 2011 hearing, Righthaven has diligently attempted to negotiate
12 language for inclusion in a voluntary dismissal with prejudice that accurately reflects its desire to
13 dismiss this action against Nichols in view of her extensive prior military service to the Untied
14 States of America and in view of her apparent medical condition. Righthaven has proposed
15 language to Nichols and invited her to submit suggested revisions acceptable to her. She has
16 refused to do so. Righthaven has also offered to telephonically confer with Nichols in an attempt
17 to resolve any misconceptions or ill will she may have based on the proceedings, but she has
18 steadfastly refused to do so. Righthaven was advised on May 4, 2011, by Nichols' Colorado
19 counsel that she was unwilling to engage in any meaningful discussions that could resolve the
20 impasse between the parties. Rather, Nichols apparently believes that she wishes to vent her
21 frustrations in another Court hearing and has filed numerous letters with the Court without her
22 counsel's consent. These events unfortunately evidence Nichols' unwillingness to negotiate a
23 resolution of this dispute in good faith despite her counsel's efforts to foster such negotiations. It

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1 is in view of these unfortunate circumstances that Righthaven hereby files this Notice of
2 Dismissal.

3 Dated this 5th day of May, 2011.

4 SHAWN A. MANGANO, LTD.

5 By: /s/ Shawn A. Mangano, Esq.
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on this 5th day of May, 2011, I caused the foregoing document to be to be served by the Court’s CM/ECF system, as well as deposited in a sealed envelope, a copy of in the United States Mail, with first-class postage affixed thereto, to the following persons:

Michael Alan Leon
5767 Monticello Way
Fitchburg, WI 53719
Pro Se Defendant
Michael Leon

SHAWN A. MANGANO, LTD.

By: /s/ Shawn A. Mangano, Esq.
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