

1 Marc J. Randazza (Nevada Bar No. 12265)  
2 J. Malcolm DeVoy IV (Nevada Bar No. 11950)  
3 RANDAZZA LEGAL GROUP  
4 6525 W. Warm Springs Road, Suite 100  
5 Las Vegas, NV 89118  
6 Telephone: 888-667-1113  
7 Facsimile: 305-437-7662  
8 www.Randazza.com  
9 ecf@randazza.com

10 Attorneys for Defendant,  
11 *Wayne Hoehn*

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

14 RIGHTHAVEN, LLC, a Nevada limited liability  
15 company,

16 Plaintiff,

17 vs.

18 WAYNE HOEHN, an individual,

19 Defendant.

Case No. 2:11-cv-00050

**DEFENDANT’S MOTION FOR  
SUBSTITUTION OF RECEIVER AND  
CLARIFICATION OF ORDER  
APPOINTING RECEIVER (ECF 66)**

**DEFENDANT’S MOTION FOR SUBSTITUTION OF RECEIVER  
AND CLARIFICATION OF ORDER APPOINTING RECEIVER (ECF 66)**

20 Defendant Wayne Hoehn (“Hoehn”), through his attorneys, files this Motion for  
21 substitution of the receiver appointed in this case, and respectfully requests clarification of this  
22 Court’s December 12, 2011 order granting Hoehn’s motion to appoint a receiver for Plaintiff  
23 Righthaven LLC (“Righthaven,” or the “Plaintiff”).

**I. Introduction**

24 On December 12, 2011, this Court appointed Lara Pearson as receiver in this matter to  
25 marshal Righthaven’s assets for auction. As receiver, Pearson’s prime directive was to assemble  
26 Righthaven’s intellectual property assets, including its domain name, trademarks and copyrights,  
27 for assets. The receiver’s power also extended over other aspects of Righthaven’s business,  
28 including the sale of its physical assets, such as servers, computers, office equipment and other  
tangible property (though, to date, Righthaven has not surrendered these items).

1           Hoehn's motion seeking the appointment of a receiver was open-ended, and neither  
2 sought nor placed any limitations on the receiver's powers. While the peculiarities of  
3 transferring the title in Righthaven's intellectual property required special attention within  
4 Hoehn's motion, this was in no way a limitation on the receiver's capacity to control Righthaven  
5 (ECF 62 at 3-5). Indeed, Hoehn's motion contemplated broad powers for the receiver, including  
6 assuming control of Righthaven's physical assets (*id.* at 9-10).

7           Righthaven, however, has been uncooperative in working with the receiver. Rather than  
8 voluntarily assigning its intellectual property to the receiver, Righthaven forced Hoehn's counsel  
9 to effect this transfer by judicial decree (ECF 90). While the receiver attempted satisfy  
10 Righthaven's growing list of judgments against it, the company's CEO, Steven Gibson  
11 ("Gibson"), had other plans. Without the receiver's knowledge or consent, he retained new  
12 counsel to prosecute Righthaven's appeals, but with schizophrenic results. While Righthaven  
13 has retained counsel for one of its appeals against Hoehn, it defaulted in another – Case No.  
14 16995 (ECF 100, 102) – potentially subjecting the company to Hoehn's further fees for  
15 prevailing in that appeal.

16           Consequently, the receiver terminated Gibson as Righthaven's CEO on June 25, 2012,  
17 *nunc pro tunc* to January 1, 2012. Gibson objected to the receiver's legitimate exercise of her  
18 power. Under Nevada law and this Court's prior order, the receiver's actions were lawful and  
19 proper. However, for the avoidance of doubt and any further question, Hoehn seeks a  
20 clarification of the receiver's powers from the Court so that there is no question the receiver is  
21 entitled to terminate Gibson and exercise much-needed control over Righthaven's affairs.

22           Finally, as Lara Pearson has moved from Rimon Law Group to Exemplar LLC, and the  
23 intellectual property issues facing the receivership have largely been resolved, Hoehn seeks –  
24 and Pearson consents – to her substitution with Ryan Hamilton. Ryan Hamilton is a bankruptcy  
25 attorney familiar with the procedures and powers of the bankruptcy trustee – an almost perfect  
26 analogue for a receiver – and is willing to assume the mantle of receiver in this matter.

1 **II. Argument**

2 **A. The Receiver's Powers Include the Power to Terminate Gibson and Control**  
3 **Righthaven.**

4 In Hoehn's Motion for this Court to appoint the Receiver (ECF 62), Hoehn asked only  
5 that the Court appoint a receiver under NRS 32.010. Hoehn's motion contemplated the  
6 receiver's control of both Righthaven's intellectual property and physical assets (*id.* at 3-8, 10),  
7 and there was no restriction placed on the Receiver's authority in the Court's order granting the  
8 motion (ECF 66). When presented with the opportunity to object this Court's appointment of the  
9 Receiver, Righthaven declined to do so (ECF 64).

10 Under Nevada law and the precedent of this Circuit, receivers have broad and almost  
11 limitless power. Consistent with Hoehn's motion and this Court's order (Docs. # 62, 66), the  
12 receiver is entitled to use these powers to the fullest extent possible. The Nevada Revised  
13 Statutes allow the appointment of a receiver to carry a judgment into effect, something that  
14 obviously needed outside assistance in this case. NRS 32.010; 21.240; *Bowler v. Leonard*, 70  
15 Nev. 370 (Nev. 1954); *see Kraemer v. Kraemer*, 79 Nev. 287 (Nev. 1963). Unless specified by  
16 the Court, the powers afforded to the receiver are limitless. *Fullerton v. Second Jud. Dist. Ct. ex*  
17 *rel. Cty. Of Washoe*, 111 Nev. 391, 400 (Nev. 1995). There is no precatory language qualifying  
18 the extent of the receiver's powers in Hoehn's motion, nor the Court's order appointing the  
19 receiver, and thus no basis for a limitation of these powers (ECF 62, 66).

20 Neither precedent nor the record in this case limits the powers of the receiver (who was  
21 entitled to take possession of Righthaven's tangible property (ECF 62 at 9-10)) and cannot be  
22 construed to do so. Moreover, retroactively constraining the receiver's powers would run  
23 contrary to the receiver's duty to take control of the estate's property. *Frank Settlemeier & Sons,*  
24 *Inc v. Smith & Harmer, Ltd.*, 124 Nev. Adv. Op. 98 (Nev. 2008). Additionally, these full powers  
25 are necessary to fulfill the receivership's objectives of paying Rightaven's many creditors, and is  
26 the reason receivership was sought. *Fullerston*, 111 Nev. at 401. To the extent other creditors  
27 may have claims against Righthaven, the receiver has the lawful power to resolve those claims as  
28

1 well. *Jones v. Free*, 83 Nev. 31, 38 (Nev. 1967). The receiver's exercise in this case is consistent  
2 with sound public policy and judicial economy in light of the significant number of Righthaven's  
3 known creditors.

4 The receiver also has full power to reject contracts detrimental to the receivership estate.  
5 *Jones* 83 Nev. at 39. This position is hardly unique to Nevada, but affirmed nationwide on  
6 matters of receivership. In *Peabody Coal Company v. Nixon*, the United States Court of Appeals  
7 for the Eighth Circuit confirmed the notion that a receiver may renounce and terminate contracts  
8 held by the entity placed into receivership. 226 F. 20, 22-23 (8th Cir. 1915), *accord Jones*, 83  
9 Nev. at 38. "We think we may take judicial knowledge of the fate of contracts made by an  
10 insolvent railroad company which passes into the hands of a receiver and are not assumed by  
11 him. Such contracts are practically ended." *Kan. City S. R. Co. v. Lusk*, 224 F. 704, 706 (8th Cir.  
12 1915). This power is integral to the receiver's obligation to not operate a business at a  
13 continuing loss. *R.J. Reynolds v. Jones*, 54 F.2d 329 (8th Cir. 1931).

14 Finally, the receiver is entitled to retain counsel on behalf of the receivership estate and  
15 bring claims against the incapacitated company's officers and agents. *See generally Mortimer v.*  
16 *Pac. States Sav. & Loan Co.*, 62 Nev. 142 (Nev. 1943); *State ex rel. Cameron v. Second Jud.*  
17 *Dist. Ct. ex rel. Cnty. Of Washoe*, 48 Nev. 198, 202 (Nev. 1924). Indeed, Nevada's precedent  
18 recognizes the receiver's ability to take such positions to serve the receivership estate's best  
19 interests, or to prevent interference with its administration. *State ex rel. Sparks v. State Bank &*  
20 *Trust Co.*, 36 Nev. 526, 532 (Nev. 1913). This power enables the receiver to hire counsel to  
21 represent Righthaven and terminate its few remaining cases.

22 Gibson has vigorously disputed the receiver's exercise of such proper and lawful powers.  
23 To quell further debate, and ensure that the receiver's further actions are given effect without  
24 undue objection, clarification as to these points would benefit third parties such as Gibson, as  
25 well as the Court, as a clear edict as to the receiver's powers will prevent further disputes from  
26 coming before it.

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1        **B. The Receiver's Full Use of Its Powers Under Law is Necessary to Maximize**  
2        **Righthaven's Receivership Estate.**

3        The record in this case is replete with evidence demonstrating that anything short of the  
4 receiver taking full and complete control over Righthaven will be ineffective. Righthaven has  
5 ignored court appearances (ECF 71, 77, 86-87, 91), refused to turn over documents (ECF 69),<sup>1</sup>  
6 and generally refused to cooperate with the satisfaction of Hoehn's judgment (ECF 70, 86-87,  
7 91, 92). From the record assembled before the Court, it defies all reasonableness to expect  
8 Righthaven – still putatively under Gibson's control, as it has been throughout the litigation –  
9 will suddenly begin acting reasonably, adhering to court orders, and responding to the receiver in  
10 any productive way. Rather than further indulge this unproductive behavior, the more efficient  
11 solution is for the Court to exercise its jurisdiction and expressly acknowledge the receiver's  
12 power to control and manage the company.

13        Further, Gibson's objection (ECF 93 n. 5) contains a number of inaccuracies that must be  
14 addressed and can be remedied by a receiver that undoubtedly possesses the full powers entitled  
15 to it by law. First and foremost, Righthaven was ordered to *deliver* its tangible assets to the  
16 Receiver, as Righthaven's officers best knew the location of its assets (ECF 62 at 10, 66).  
17 Contrary to Gibson's representations, neither Righthaven nor its counsel have provided Hoehn or  
18 the receiver with the address or location of where these assets are maintained with enough  
19 specificity to obtain them, nor provided Hoehn or the Receiver with sufficient credentials to  
20 access them. Indeed, this is precisely why the Court required Righthaven to produce these  
21 physical assets to the receiver, rather than engage in the game of cat-and-mouse Gibson believes  
22 the receiver should, while Hoehn continues to incur legal fees collecting on his judgment (ECF  
23 62 at 10, 66).

24 \_\_\_\_\_  
25 <sup>1</sup> Although this contempt motion was denied (ECF 85), it was elucidated in this Court's March 5,  
26 2012 hearing that Righthaven's underlying contempt – its failure to produce documents needed  
27 for an effective debtors exam – had not been purged (Decl. of J. DeVoy ¶¶ 11-15). To date,  
28 Righthaven still has failed to produce these documents, including but not limited to unredacted  
copies of its operating agreement, the "Righthaven Agreement," other documents integral to its  
business plan that likely identified "company securities" as ordered by the Court (*id.*).

1 Similarly, Gibson's representation that Hoehn has captured the contents of Righthaven's  
2 bank account is false. Hoehn has not been able to obtain these assets, which were less than  
3 \$1,000.00 at the time of Hoehn's execution (Decl. of J. DeVoy ¶ 6). In fact, Gibson apparently  
4 continued to write checks from Righthaven's operating account for more than a month after  
5 Hoehn served Bank of Nevada with a notice of his writ of execution on Righthaven's bank  
6 accounts.<sup>2</sup> (Exhibit A) If Righthaven's bank account has been depleted, it the result of  
7 Righthaven's own expenditures, directed by Gibson and intended to deprive its creditors of any  
8 recovery, rather than from any collections Hoehn realized.

9 Gibson's misunderstanding of the status of the receivership estate<sup>3</sup> and its collection  
10 efforts – and Righthaven's continued failure to meet its obligations to produce assets to the estate  
11 – underscores the need for a clear edict from this Court that the receiver is entitled to take control  
12 of the company and effectively manage it in its insolvency. Where Righthaven is required to  
13 surrender assets to the receiver, it – and its officers – must be held to account when they fail to  
14 do so. While the receiver is entitled to depose Gibson from Righthaven's leadership and effect  
15 these steps on her own, a proclamation of that power by this Court will remove Gibson's  
16 justifications for not taking the actions ordered by this Court nearly one year ago.

17 **C. Ryan Hamilton's Substitution for Lara Pearson Will Serve the Interests of the**  
18 **Receivership Estate.**

19 In order to complete the receivership, Ryan Hamilton – an attorney focused on  
20 bankruptcy practice and experienced in dealing with bankruptcy trustees – should be substituted  
21 as receiver for Lara Pearson. Both Mr. Hamilton and Ms. Pearson consent to this arrangement.

22 \_\_\_\_\_  
23 <sup>2</sup> While it is unclear from the signature on the checks whether the signature belongs to Steven  
24 Gibson or Raisha Y. "Drizzle" Gibson, Righthaven's Chief Administrative Officer, Gibson had  
knowledge of and directed such transactions as the company's CEO and spouse of the CAO.

25 <sup>3</sup> As Gibson notes in his objection, he and Righthaven have had limited ability to communicate  
26 with Righthaven's counsel. Rather than make Hoehn and the court pay the price for this  
27 breakdown of communication in the form of delay, miscommunication and misapprehension of  
28 the case's status, it would be easiest for the receiver to take full control of the company and its  
assets, with penalties enforceable against its offers if they refuse to comply with the receiver's  
orders.

1 Ms. Pearson's change of employment from Rimon Law Group to Exemplar LLC, coupled with  
2 the changing nature of the receivership, has precipitated this request (Decl. of L. Pearson ¶¶ 1-8).  
3 Mr. Hamilton has volunteered to serve as the court's receiver under the same terms as Ms.  
4 Pearson (Decl. of R. Hamilton ¶¶ 1-9).

5 This substitution not only comes at a good time for Ms. Pearson, but further reflects the  
6 changing nature of the Righthaven dispute. The intellectual property issues that Ms. Pearson  
7 needed to address at the receivership's inception – namely the capture and sale of Righthaven's  
8 domain name, trademark and copyrights – have been all but resolved (Pearson Decl. ¶¶ 6-8).  
9 These rights have been sold, or consolidated within Ms. Pearson's control and await easy transfer  
10 to Mr. Hamilton, or to be held by Ms. Pearson until transferred at Mr. Hamilton's direction (*id.*).  
11 The more pressing issue, however, is the disposition and management of Righthaven itself, in  
12 order to wind up Righthaven's business and ensure it does not do any further harm to itself and  
13 further entitle other parties to financial recovery against it. (*id.* ¶¶ 9-11)

14 There should be no issue as to the suitability of this substitution among non-parties whom  
15 may be affected. In his submission to the Court, Gibson stated that he "would be delighted to  
16 work with a newly-appointed receiver." (ECF 93 at n.6) To the extent Gibson has any objection  
17 to the actions of the current receiver, the Court may wash away his disagreements with Ms.  
18 Pearson by substituting her with Mr. Hamilton. Given Mr. Hamilton's bankruptcy experience  
19 (Hamilton Decl. ¶¶ 1-4), he is equipped to handle the issues of company governance and  
20 physical asset disposition that commonly confront companies that, as Mr. Gibson acknowledges,  
21 have no money. In that respect, Mr. Hamilton is the best-qualified party to wind down the  
22 insolvent<sup>4</sup> company's affairs and ensure it ceases causing itself further harm by generating fee  
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24  
25 <sup>4</sup> In his objection, Gibson repeatedly notes that Righthaven has no money. (ECF 93) As the  
26 company has no available cash, but has outstanding financial obligations in the hundreds of  
27 thousands of dollars, there is no question that it is insolvent. The best and rational course of  
28 action, then, is not to leave it in control of the person who brought the company to this state, but  
allow an attorney experienced with bankruptcy practice to cut the business' losses and work to  
satisfy its substantial outstanding obligations.

1 liability in Hoehn's case and others before the United States Court of Appeals for the Ninth  
2 Circuit.

3 **III. Conclusion**

4 For the reasons explained herein, the Court should substitute Ryan Hamilton as receiver  
5 in place of Lara Pearson. Both Mr. Hamilton and Ms. Pearson consent to this arrangement, and  
6 it would serve the interests of this Court, Hoehn, and the receivership estate to do so. To the  
7 extent any clarification of this Court's December 2011 order is necessary for the edification of  
8 non-parties such as Gibson, the Court should note that the Receiver has the power to terminate  
9 Gibson and control Righthaven's affairs. As seen in this case, such powers are necessary to  
10 reduce Righthaven's future liability, maintain the pool of assets available to satisfy Hoehn's  
11 judgment (and the judgments of others), and bring Righthaven into compliance with Court  
12 orders. While the receiver has had such powers since this Court appointed Ms. Pearson to the  
13 position, a clearer proclamation of these powers will inhibit further disputes over the receiver's  
14 actions and powers, and ensure that more expeditious progress is made in the liquidation of  
15 Righthaven assets in fulfillment of Hoehn's judgment.

16  
17 Dated September 19, 2012

Respectfully Submitted,

RANDAZZA LEGAL GROUP

/s/ J. Malcolm DeVoy IV

Marc J. Randazza

J. Malcolm DeVoy IV

Attorneys for Defendant,

Wayne Hoehn



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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am a representative of Randazza Legal Group and that on this 19th day of September 2012, I caused the document(s) entitled

**DEFENDANT’S MOTION FOR SUBSTITUTION OF RECEIVER  
AND CLARIFICATION OF ORDER APPOINTING RECEIVER (ECF 66)**

and all attachments to be served as follows:

Pursuant to Fed. R. Civ. P. 5(b)(2)(D), to be sent via facsimile as indicated; and/or

by the Court’s CM/ECF system, as all parties and non-parties (i.e. the receiver and Steven A. Gibson) appearing in the litigation are registered to receive electronic notifications of this filing and links to the documents contained herein.

/s/ J. Malcolm DeVoy

J. Malcolm DeVoy