

1 Marc J. Randazza (*Admitted Pro Hac Vice*)  
2 J. Malcolm DeVoy IV (Nevada Bar No. 11950)  
3 RANDAZZA LEGAL GROUP  
4 mjr@Randazza.com  
5 jmd@Randazza.com  
6 7001 W. Charleston Boulevard, # 1043  
7 Las Vegas, NV 89117  
8 Telephone: 888-667-1113  
9 Facsimile: 305-437-7662  
10 www.Randazza.com

11 Attorneys for Defendant,  
12 *Wayne Hoehn*

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

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

Case No. 2:11-cv-00050

Plaintiff,

**DEFENDANT’S MOTION FOR  
JUDICIAL NOTICE**

vs.

WAYNE HOEHN, an individual,

Defendant.

**DEFENDANT’S MOTION FOR JUDICIAL NOTICE**

Wayne Hoehn (hereinafter, “Hoehn,” or the “Defendant”) Defendant in the above-captioned matter, by and through his counsel, Randazza Legal Group, moves this Court to take judicial notice of the following documents in its ongoing defense of litigation initiated by Righthaven LLC (hereinafter, “Righthaven”).

**I. Introduction**

Hoehn requests that the Court take judicial notice of the attached case law and documents of public record from other courts in this District, as well as other United States District Courts, relevant to the Defendant’s pending motion for attorneys’ fees and the appeal instituted by Righthaven (Docs. # 32-33). This request is made pursuant to Rule 201 of the Federal Rules of Evidence and the authorities cited in this Motion.

1 **II. Legal Standards**

2 Courts may take judicial notice of documents whose accuracy cannot reasonably be  
3 questioned. Fed. R. Evid. 201(d) (“A court shall take judicial notice if requested by a party and  
4 supplied with the necessary information”); *Wietschner v. Monterey Pasta Co.*, 294 F. Supp. 2d  
5 1117, 1109 (N.D. Cal. 2003).

6 Courts may take judicial notice of proceedings in other courts. *U.S. ex rel Robinson*  
7 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citing *St. Louis*  
8 *Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169 (10th Cir. 1979)) (“[W]e may take notice of  
9 proceedings in other courts, both within and without the federal judicial system, if those  
10 proceedings have a direct relation to matters at issue”).

11 **III. Argument**

12 Defendant moves the Court to take notice of numerous documents in cases to which  
13 Righthaven is, or has been, a party in both this District and the U.S. District Court for the District  
14 of Colorado. Several of these documents are court orders, while others are party submissions  
15 related to disputes probative of Righthaven’s bad faith in bringing the above-captioned case and  
16 hundreds of others based on specious “ownership” of copyrights – which Righthaven did not  
17 possess at all (Doc. # 28 at 2-10) – and its considerable efforts to conceal that reality. Other  
18 documents support specific contentions about the conduct of other parties, demonstrating that  
19 Righthaven, or other parties, have taken certain positions in court, and presented evidence to that  
20 end.

21 What all of these documents have in common is that they exist on the public record, and  
22 their authenticity is “not subject to reasonable dispute [and] capable of accurate and ready  
23 determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R.  
24 Evid. 201(b)(2). A court may take judicial notice of “undisputed matters of public record.” *Lee v.*  
25 *City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001). Accordingly, Defendant requests that  
26 this Court take judicial notice of the following documents, which are relevant to Righthaven’s  
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1 bad faith and conduct in initiating this litigation and of considerable importance in resolving the  
2 issue of Defendant's entitlement to attorney's fees:

- 3 • *Righthaven LLC v. MoneyReign, Inc.*, Case No. 2:10-cv-00350 (Doc. # 1)  
4 (D. Nev. Mar. 13, 2010)
- 5 • *Righthaven LLC v. Nat'l Org. for the Reform of Marijuana Laws*, Case No.  
6 2:10-cv-00351 (Docs. # 12) (D. Nev. Apr. 23, 2010)
- 7 • *Righthaven LLC v. Indus. Wind Action Corp. et al.*, Case No. 2:10-cv-00601  
8 (Docs. # 6-9) (D. Nev. Sept. 24, 2010)
- 9 • *Righthaven LLC v. Dr. Shezad Malik Law Firm P.C.*, case No. 2:10-cv-00636  
10 (Doc. # 13) (D. Nev. Aug. 18, 2010)
- 11 • *Righthaven LLC v. Democratic Underground LLC et al.*, Case No. 2:10-cv-  
12 01356 (Docs. # 38-41, 46-48, 57, 64-65, 72-94, 116, 138, 143) (D. Nev.)
- 13 • *Righthaven LLC v. Pahrump Life et al.*, Case No. 2:10-cv-01575  
14 (Docs. # 45-62) (D. Nev.)
- 15 • *Righthaven LLC v. Hill*, Case No. 1:11-cv-00211 (Doc. # 27)  
16 (D. Colo. May 19, 2011).

17 These records are obvious public records, many of which are maintained by this very  
18 District. They are revealing of Righthaven's conduct in the course of its 18-month litigation  
19 campaign and reveal a pattern of bad faith present not only in this case, but across numerous  
20 cases and districts, as a veritable litigation strategy. Defendant requests that the Court take  
21 judicial notice of these filings in order to inform its necessary ruling on the issue of attorney's  
22 fees, and the extent to which Righthaven's conduct informs this Court's award under Rule 11,  
23 the Court's inherent sanctioning powers, and analysis of the factors enunciated in *Fogerty v.*  
24 *Fantasy, Inc.*, 510 U.S. 517, 534 n. 19 (1994).

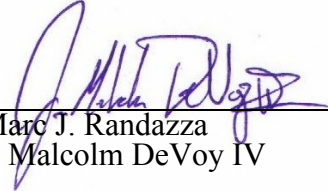
1 **Conclusion**

2 For the foregoing reasons, the above-referenced filings and orders may be properly  
3 considered by the Court in ruling on Defendant's pending motion for attorney's fees (or any  
4 other issue in this case).

5 Dated August 1, 2011

Respectfully Submitted,

RANDAZZA LEGAL GROUP

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9 \_\_\_\_\_  
Marc J. Randazza  
J. Malcolm DeVoy IV

10 Attorneys for Defendant,  
11 *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 1st day of August, 2011, I caused the document(s) entitled:

- **DEFENDANT’S MOTION FOR JUDICIAL NOTICE**

and all attachments to be served as follows:

by depositing same for mailing in the United States Mail, in a sealed envelope addressed to Steven A. Gibson, Esq., Righthaven, LLC, 9960 West Cheyenne Avenue, Suite 210, Las Vegas, Nevada, 89129-7701, upon which first class postage was fully prepaid; and/or

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

to be hand-delivered;

by the Court’s CM/ECF system.

/s/ J. Malcolm DeVoy

J. Malcolm DeVoy