

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,

17 Plaintiff,

18 vs.

19 WAYNE HOEHN, an individual,

20 Defendant.

Case No. 2:11-cv-00050

**DECLARATION OF J. MALCOLM DEVOY IN SUPPORT OF
DEFENDANT’S MOTION FOR
APPOINTMENT OF RECEIVER AND
COMPELLED ASSIGNMENT OF
INTELLECTUAL PROPERTY IN
SATISFACTION OF JUDGMENT**

**DECLARATION OF J. MALCOLM DEVOY IN SUPPORT OF DEFENDANT’S
MOTION FOR APPOINTMENT OF RECEIVER AND COMPELLED ASSIGNMENT
OF INTELLECTUAL PROPERTY IN SATISFACTION OF JUDGMENT**

21 I, J. MALCOLM DEVOY IV, having personal knowledge of the matters set forth below and
22 capable of making this declaration, state as follows:

23 1. I am a duly licensed attorney in the state of Nevada, in good standing with the
24 State Bar, and an attorney for Randazza Legal Group, counsel for defendant Wayne Hoehn
25 (“Hoehn”) in this action, brought by Righthaven LLC (“Righthaven”).

26 2. I have personal knowledge of Hoehn’s efforts to seize Righthaven’s financial
27 assets through the U.S. Marshals, and have worked with the Marshals to submit the requisite
28 paperwork to satisfy Hoehn’s writ of execution (Doc. # 59).

1 3. To date, Hoehn's efforts to seize Righthaven's property through the U.S.
2 Marshals, using standard process receipt-and-return and seizure procedures on several targets
3 reasonably believed to hold Righthaven's financial assets, have not even come close to satisfying
4 Hoehn's judgment; the only monetary assets belonging to Righthaven to be identified thus far
5 consist of Righthaven's primary bank account, which contains less than \$1,000.00.

6 4. Nevertheless, this Court's recent issuance of a writ of execution in Hoehn's favor
7 has garnered considerable news coverage in *Vegas Inc.*, *Wired*, *Ars Technica*, *Techdirt*, the *ABA*
8 *Law Journal*, and the *Drudge Report*.

9 5. I have seen this coverage receive wide discussion on social networking services
10 such as Facebook and Twitter as well.

11 6. Beginning with this Court's entry of judgment in Hoehn's favor (Doc. # 43), I
12 have received numerous requests for various assets of Righthaven's from journalists, other
13 attorneys, and those interested in intellectual property enforcement.

14 7. This interest has increased dramatically since this Court entered a writ of
15 execution in Hoehn's favor.

16 8. Among the requests I have received, I have been contacted by individuals seeking
17 an opportunity to purchase or otherwise acquire Righthaven's office artwork, office supplies
18 such as staplers and lamps, and other miscellaneous items from the company.

19 9. Far and away, however, I have received the most requests for a Bluetooth headset
20 worn by Righthaven's CEO, Steven Gibson, in a photo originally published by the Las Vegas
21 Sun in the summer of 2010, which is reproduced below for immediate reference, and can be
22 accessed at the following URL:

23 http://photos.lasvegassun.com/media/img/photos/2010/08/04/stevengibson_t198.jpg?cdfb
24 [4b79ec677a25380d4d2ab25aad58f36db2ce](http://photos.lasvegassun.com/media/img/photos/2010/08/04/stevengibson_t198.jpg?cdfb)

25 //

26 //

27 //

28



(all rights reserved to the Las Vegas Sun / Greenspun Media)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10. Based on this outpouring of interest in owning a piece of a famous organization such as Righthaven, and numerous discussions that others have initiated with me about the auctioning of Righthaven's tangible and intangible assets, I strongly believe that a public auction of Righthaven's assets would materially assist Righthaven in at least partially satisfying Hoehn's judgment.

11. Given that Righthaven has not filed any lawsuits since May 2011, I believe the company exists as a conduit to pay salaries for Steven A. Gibson, its Chief Executive Officer, and his wife, Raisha Y. Gibson, a/k/a "Drizzle", its Chief Executive Officer, and legal fees to its Counsel, despite engaging in no legitimate business activity.

12. To the best of my knowledge, Righthaven laid off its last employee other than Ms. Gibson in early August, 2011.

13. My investigation reveals that Righthaven no longer regularly uses its office space at 4475 South Pecos Road, Las Vegas, Nevada.

1 14. My investigation and research further leads me to believe that Righthaven's
2 business, to the extent it still exists, is conducted primarily – if not exclusively – from the
3 Gibsons' household.

4 15. My research and investigation further reveals that even before August 2011, Ms.
5 Gisbon frequently worked from her household and telecommuted to Righthaven's offices,
6 ostensibly working from computers and other office equipment kept within the Gibson
7 household.

8 16. Based on the assertions of opposing counsel before this Court (Doc. # 52-1) and
9 the Ninth Circuit Court of Appeals in *Righthaven v. Hoehn*, Case No. 11-16995 (Docs. # 5-2, 6-
10 2) (9th Cir. 2011), Righthaven cannot satisfy Hoehn's judgment or writ of execution in this
11 matter (Docs. # 44, 59.)

12 17. Based on the Righthaven Operating Agreement, which is available in redacted
13 form in *Righthaven v. DiBiase*, Case No. 2:10-cv-01343 (Doc. # 51) (D. Nev. Apr. 17, 2011),
14 Righthaven's officers – the Gibsons – continue to draw a salary from the company, enriching
15 themselves at the expense of Hoehn's entitlement to satisfy his lawful judgment – for which
16 Righthaven has not posted a bond to stay enforcement.

17 18. A true and correct copy of the U.S. Patent and Trademark Office's registration on
18 the Righthaven service mark is attached hereto as Exhibit A.

19 19. A true and correct copy of the U.S. Copyright Office's records for works
20 registered to Righthaven LLC, which I created using the U.S. Copyright Office's website, is
21 attached hereto as Exhibit B.

22 20. A true and correct copy of the proposed assignment to be used by Righthaven in
23 assigning each of its copyrighted works to the Court-appointed Receiver in anticipation of their
24 auction is attached hereto as Exhibit C.

25 21. A true and correct copy of the proposed assignment to be used by Righthaven in
26 assigning each of its trademarks and/or servicemarks to the Court-appointed Receiver in
27 anticipation of their auction is attached hereto as Exhibit D.

