

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 6525 W. Warm Springs Road, Suite 100
7 Las Vegas, NV 89118
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

**NOTICE OF PLAINTIFF’S NON-
OPPOSITION TO DEFENDANT’S
MOTION TO APPOINT RECEIVER
AND COMPEL ASSIGNMENT OF
INTELLECTUAL PROPERTY**

**NOTICE OF PLAINTIFF RIGHTHAVEN LLC’S NON-OPPOSITION TO
DEFENDANT’S MOTION TO APPOINT RECEIVER AND COMPEL ASSIGNMENT
OF INTELLECTUAL PROPERTY**

21 Defendant Wayne Hoehn (“Hoehn”), through his attorneys, files this Notice with respect
22 to his pending Motion for Judgment Debtor Examination, filed on November 14, 2011 (Doc. #
23 62).

24 At present, Plaintiff Righthaven LLC (“Righthaven”) has not filed a memorandum of law
25 and points of authority in opposition to Hoehn’s Motion. Under Local Rule 7-2(d), this failure to
26 oppose Hoehn’s motion constitutes Righthaven’s concession to the pending Motion. It is well
27 established that a party’s failure to timely oppose a motion constitutes the non-moving party’s
28 consent to granting of the motion. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979).

Local Rule 7-2(b) allows 14 days for the filing of responsive briefing. Even allowing an
additional three days for a filing to be made under Fed. R. Civ. P. 6(d), Righthaven’s responsive

1 briefing would have been due on December 1, 2011. At the time of this filing, almost one week
2 after that deadline, Righthaven has filed no opposition in this matter. Even if such a filing were
3 to be made, its untimeliness would preclude it from consideration.

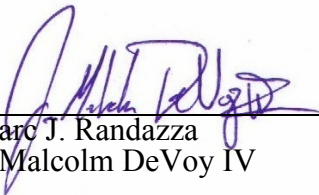
4 Though Righthaven's appeal of the fee award and judgment in this matter is pending
5 appellate review before the Ninth Circuit Court of Appeals, Righthaven is not entitled to a stay in
6 this matter, and has not posted a *supersedeas* bond for Hoehn's judgment. (Docs. # 56, 57)
7 Righthaven previously moved both this Court and the Ninth Circuit Court of Appeals for a stay
8 from the execution of Hoehn's Judgment; both courts rejected this request. (*Id.*) Moreover, on
9 November 1, 2011, this Court granted Hoehn a writ of execution against Righthaven (Doc. # 59),
10 which Hoehn has been using in an effort to freeze and seize Righthaven's assets. (*See, e.g.*, Docs.
11 # 61, 63)

12 For the foregoing reasons, Hoehn respectfully requests that this Court grant his
13 unopposed motion (Doc. 60). A Proposed Order was attached as Document number 60-10.
14 With no dispute to consider, the Court may appoint Lara Pearson as receiver of Righthaven's
15 intellectual property, and order Plaintiff to assign all of its intellectual property and other assets
16 to her so that it may be auctioned in partial satisfaction of Hoehn's judgment.

17
18 Dated December 7, 2011

Respectfully Submitted,

RANDAZZA LEGAL GROUP



Marc J. Randazza
J. Malcolm DeVoy IV

Attorneys for Defendant,
Wayne Hoehn

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

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 7th day of December, 2011, I caused the document(s) entitled:

**NOTICE OF PLAINTIFF RIGHTHAVEN LLC'S NON-OPPOSITION TO
DEFENDANT'S MOTION TO APPOINT RECEIVER AND COMPEL ASSIGNMENT
OF INTELLECTUAL PROPERTY**

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.

/s/ J. Malcolm DeVoy
J. Malcolm DeVoy