

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

**DEFENDANT’S MOTION FOR WRIT  
OF BODY ATTACHMENT**

**DEFENDANT’S MOTION FOR WRIT OF BODY ATTACHMENT**

21 Defendant Wayne Hoehn (“Hoehn”), represented by his attorneys, Randazza Legal Group, in  
22 the above-captioned matter, brings this motion seeking the Court to issue writ of body  
23 attachment for Steven A. Gibson and Raisha Y. Gibson, a/k/a “Drizzle,” officers of Plaintiff  
24 Righthaven LLC (“Righthaven”), pursuant to Plaintiff’s non-compliance with this Court’s  
25 December 12 Order granting Defendant’s Motion for the appointment of a receiver and  
26 compelled transfer of Righthaven’s intellectual property (Doc. # 66).

**I. Introduction**

27 Righthaven has failed to respect this Court’s lawful order. On December 12, this Court  
28 granted in full the Defendant’s Motion to appoint a receiver to auction Righthaven’s intellectual  
property rights, such as they are, and for Righthaven to assign them all to the receiver (Docs. #

1 62, 66). This latest round of motion practice comes on the heels of Hoehn's judgment of  
2 \$34,045.50, which Righthaven sought to stay the execution of before this court and the Ninth  
3 Circuit (Docs. # 52, 56, 57), and ultimately declined to stay by posting a supersedeas bond. This  
4 Court then issued Hoehn a writ of execution (Doc. # 59), which revealed that Righthaven has not  
5 even \$1,000 in its main operating account (Doc. # 62-1 ¶ 3). In search of any item of value that  
6 could be liquidated to even partially satisfy his writ of execution for more than \$63,000, Hoehn  
7 turned his attention to Righthaven's intellectual property (*see* Doc. # 62). This was unsurprising  
8 to Righthaven, as it contemplated this exact scenario in September (Doc. # 52-1 ¶ 9):

9  
10 Righthaven could face judgment enforcement efforts directed to its assigned  
11 copyrights. The assigned copyrights could be seized and liquidated in an attempt  
12 to satisfy the Judgment. The assigned copyrights include the copyrighted work at  
13 issue in this case, as well as works that are issue in other pending and yet to be  
14 commenced cases.

15 Righthaven declined to offer even token resistance to the Motion, and failed to respond to  
16 it altogether (*see* Docs. # 64, 66). The Defendant's Motion identified, specifically, the procedure  
17 Righthaven would use to assign its rights to the newly appointed receiver:

18 **Within seven (7) days of this Court's order, Righthaven shall effect**  
19 **assignment of all of these rights to the receiver.** Given Righthaven's  
20 demonstrated extreme penchant for delay and multiplying the proceedings in this  
21 action, swift action is necessary; Righthaven has consistently demonstrated that it  
22 will take every opportunity to delay a resolution of this matter and frustrate  
23 Hoehn's satisfaction of his judgment. **Once these assignments are effected,**  
24 **Righthaven shall file a notice with this Court certifying that it has complied**  
25 **with this Order. If this Order is not complied with within seven days of its**  
26 **issuance, the Court should issue a writ of bodily attachment for Righthaven's**  
27 **officers, Mr. Steven A. Gibson, Chief Executive Officer; and Raisha Y.**  
28 **Gibson, a/k/a "Drizzle", Chief Administrative Officer, so the U.S. Marshals**  
**may make them appear in Court so as to a) immediately effect written**  
**transfers of Righthaven's intellectual property to the receiver, or b) explain**  
**Righthaven's failure to do so, on pain of contempt.**

(Doc. # 62 at 9:3-15) (internal citations omitted; emphasis added).

As of the time of this filing, after the end of normal business hours in this District and the

1 closure of the clerk's office,<sup>1</sup> no notice of compliance with this Order has been filed with the  
2 Court (Decl. of J. DeVoy ¶¶ 4, 9-10). Righthaven has not moved the Court for additional time to  
3 comply with this order, nor has it so much as attempted contact with Defendant's counsel (*id.*).  
4 Nevertheless, Righthaven's counsel affirmed his actual knowledge of the Court's seven-day  
5 deadline to the media.<sup>2</sup> To the undersigned's knowledge, no new appeal has been filed with the  
6 Ninth Circuit Court of Appeals, no new motion practice has been initiated there, and Righthaven  
7 has not filed any petition for bankruptcy. (*Id.* ¶ 9) Righthaven has made no explanation to the  
8 Defendant – nor to the Court – for its failure to comply with the December 12 order. (*Id.* ¶¶ 4, 9-  
9 10)

10 Hoehn brings this motion solely to enforce this Court's order, and not to harass and  
11 intimidate Righthaven's officers. Indeed, Mr. and Mrs. Gibson are named because, as seen in the  
12 underlying Motion for a Receiver and previously filed Motion for debtors exam (Docs. # 60, 62),  
13 they are the two people known to have authority over Righthaven's intellectual property.  
14 Furthermore, Hoehn stipulates that if the required intellectual property assignments are effected  
15 pursuant to the Court's December 12 Order (Doc. # 66) and a notice of compliance is filed with  
16 the Court before Righthaven responds to this Motion, he will withdraw his request for a writ of  
17 body attachment and will abandon any request for additional sanctions as a result of this present  
18 failure or refusal to comply. (DeVoy Decl. ¶ 13)

## 20 II. Argument

21 All Hoehn requests of this Court is that it take the appropriate measures to render its  
22 December 12 Order meaningful. These actions were contemplated in Hoehn's motion and  
23 granted by the Court, with no opposition by Righthaven (Docs. # 62 at 9; 66). In fact, very little  
24 action is required by the Court: The apprehension and production of Righthaven's officers shall  
25 be handled by the U.S. Marshals.

26 \_\_\_\_\_  
27 <sup>1</sup> See <http://www.nvd.uscourts.gov/GeneralInformation.aspx> (*last accessed* Dec. 19, 2011).

28 <sup>2</sup> Steve Green, *Righthaven Plans Appeal to Block Auction of Copyrights*, Vegas Inc. (Dec. 16, 2011),  
<http://www.vegasc.com/news/2011/dec/16/righthaven-plans-appeal-block-auction-copyrights/> (*last accessed* Dec.  
18, 2011).

1 In order to give effect to its December 12 Order appointing a Lara Pearson as receiver of  
 2 Righthaven's property, and requiring Righthaven to assign all of its intellectual property to her,  
 3 the Court should issue a writ of body attachment against Righthaven's officers, Steven A. Gibson  
 4 and Raisha Y. Gibson, a/k/a "Drizzle." The purpose of this writ will be to bring the Plaintiff's  
 5 officers before the Court solely so that they may execute assignments of Righthaven's  
 6 intellectual property – as the Court has ordered them to do. Should Righthaven's officers fail to  
 7 effect assignments of its property to the Receiver when summoned before the Court, they should  
 8 be held in contempt, to be released only once such assignments have been completed.

9  
 10 **A. The Court Should Issue a Writ of Body Attachment as to Mr. and Mrs.  
 11 Gibson so they may Appear before the Court and Carry the December 12  
 12 Order into Effect.**

12 Hoehn's request for a writ of body attachment should come as no surprise to Righthaven,  
 13 as it was specifically requested as a condition of non-compliance in the Defendant's Motion  
 14 (Doc. # 62 at 9). Also known as a writ of civil commitment or civil arrest, a writ of body  
 15 attachment commands the U.S. Marshals to apprehend the people the Court wishes to bring  
 16 before them in civil cases.<sup>3</sup> Once executed, the U.S. Marshals will present the apprehended  
 17 parties to the Court.

18 When a party violates a court order, the court is entitled to issue a writ of bodily  
 19 attachment so as to bring the party before the Court. *NLRB v. Goodsell & Vocke, Inc.*, 645 F.2d  
 20 680, 681 (9th Cir. 1981); *Sauber v. Whetstone*, 199 F.2d 520, 522 (7th Cir. 1952). A court may  
 21 issue writs of body attachment for individuals and company officers even when the party is  
 22 corporate entity. *See Goodsell & Vocke*, 645 F.2d at 681. Such writs can be issued with  
 23 significant limitations, as the Defendant requests in this case, and seeks the Court to effect bodily  
 24 attachment on Righthaven's officers only until they "have completely purged themselves of their  
 25 contumacious conduct" *Aguayo v. South Coast Refuse Corp.*, 140 Lab. Cas. (CCH) P10,688 at \*

26  
 27  
 28 <sup>3</sup> See U.S. Marshals, Service of Process: Writ of Body Attachment, <http://www.usmarshals.gov/process/body-attachment.htm> (last accessed Dec. 18, 2011).

1 31 (C.D. Cal. Mar. 1, 2011).

2 In this case, a writ of body attachment is eminently appropriate. First, it is specifically  
3 contemplated in the Defendant's Motion, which the Court approved *en toto*. (Doc. # 66 at 9)  
4 Second, only an authorized representative of Righthaven – its CEO, Mr. Gibson, or CAO, Mrs.  
5 Gibson – can execute the assignment of rights sought in the Motion and authorized by the  
6 December 12 Order. Finally, the Defendant's Motion provided *pro forma* assignment documents  
7 for all varieties of Righthaven's intellectual property, and identified many of its registered  
8 intellectual property rights, including its copyrights and at least one service mark. (Docs. # 62-3,  
9 62-4, 62-5, 62-6, 62-7, 62-8)

10 By summoning Righthaven's officers to the Court through the U.S. Marshals, the Court's  
11 Order can be given instantaneous effect. All that is needed is for these simple forms to be  
12 executed by the appropriate officer of Righthaven. They must be notarized – a function that can  
13 be achieved by Court personnel. Because such extreme action is needed for the Court to compel  
14 Righthaven's compliance with its order, it would be within the Court's purview to impose a  
15 sanction on Righthaven using its inherent powers, so that they may bear the additional costs their  
16 non-compliance imposes upon the Court. *Chambers v. Nasco, Inc.*, 501 U.S. 32, 46 (1991).

18 **B. If Righthaven's Officers Decline to Give Effect to the Court's December 12,**  
19 **2011 Order, the Court may Hold them in Contempt.**

20 The power to punish for contempt is an inherent power of federal courts and failure to  
21 comply with a court's order is grounds for a finding of contempt. *See, e.g., United States v.*  
22 *Ayres*, 166 F.3d 991, 994-96 (9th Cir. 1999) (affirms finding of contempt where a party failed to  
23 comply with an order directing production of records). Civil contempt is a creature of the court's  
24 inherent power. *See Spallone v. United States*, 493 U.S. 265, 276 (1990) (“courts have inherent  
25 power to enforce compliance with their lawful orders through civil contempt” (internal quotation  
26 marks omitted)).

27 The movant in a civil contempt proceeding bears the burden showing that the contemnors  
28 violated the court's order. *FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1229 (9th Cir. 1999);

1 *Stone v. City and County of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir. 1992). The burden  
2 then shifts to the contemnor to explain its failure. *Id.* In this case, the violation is clear and  
3 undeniable. On December 12, 2011, the Court granted Hoehn’s Motion, which required  
4 Righthaven to assign its intellectual property to Ms. Pearson by December 19, 2011, and then  
5 notice the Court that such assignments had been completed (Docs. # 62 at 9; 66). Righthaven  
6 has not done so.

7 “Absent a stay, all orders and judgments of courts must be complied with promptly.” *In*  
8 *re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1364 (9th Cir. 1987). In this case,  
9 Righthaven has neither requested a stay, nor explained its failure to heed the Court’s order in any  
10 way. “If a person to whom a court directs an order believes that order is incorrect the remedy is  
11 to appeal, but, absent a stay, he must comply promptly with the order pending appeal.” *Maness v.*  
12 *Meyers*, 419 U.S. 449, 458, 95 S. Ct. 584, 42 L. Ed. 2d 574 (1975).

13 “When the gauntlet is thrown down to the authority of the Court and its lawful orders, the  
14 Court had no choice but to pick it up.” *American Airlines, Inc. v. Allied Pilots Ass’n*, 53 F.  
15 Supp.2d 909, 939 (N.D. Tex. 1999). If, upon appearing before the Court, Righthaven’s officers  
16 do not transfer the company’s intellectual property assets to a receiver as required by the  
17 December 12 order, they should be placed in contempt. *See Vuitton et Fils S.A. v. Carousel*  
18 *Handbags*, 592 F.2d 126, 130 (2nd Cir. 1979). *See also, FTC v. Affordable Media, LLC*, 179  
19 F.3d 1228, 1243-44. (“Given the nature of the Andersons so-called ‘asset protection’ trust,  
20 which was designed to frustrate the power of United States’ courts to enforce judgments, there  
21 may be little else that a district court judge can do besides exercise its contempt powers to coerce  
22 people like the Andersons into removing the obstacles they placed in the way of a court. Given  
23 that the Andersons’ trust is operating precisely as they intended, we are not overly sympathetic to  
24 their claims and would be hesitant to overly-restrict the district court’s discretion, and thus  
25 legitimize what the Andersons have done”).

26 //

27 //

28

1       **III. Conclusion**

2           It is indisputable that, as of the close of business on December 19, 2011, Righthaven has  
3 not complied with this Court's December 12 order requiring the assignment of its property to the  
4 court-appointed receiver. (DeVoy Decl. ¶¶ 4-10) The easiest way to remedy this failing is for  
5 the Court to issue a writ of body attachment for Righthaven's officers, Mr. and Mrs. Gibson, so  
6 the U.S. Marshals may bring them before the Court to correct this error. If they decline to do so,  
7 the Court may place them in contempt.

8           In the interest of a speedy resolution to this matter, Hoehn will withdraw this motion once  
9 Righthaven has assigned its intellectual property to the receiver and noticed the Court of this  
10 fact, but only if done before Righthaven's response to this Motion is filed. (DeVoy Decl. ¶ 13)  
11 Unless such an assignment and notice occurs, this Court should immediately execute a writ of  
12 bodily attachment for Mr. and Mrs. Gibson, and summon them to effect these transfers.

13  
14 Dated December 19, 2011

Respectfully Submitted,

RANDAZZA LEGAL GROUP

15  
16  
17   
18 \_\_\_\_\_  
19 Marc J. Randazza  
20 J. Malcolm DeVoy IV

21  
22  
23  
24  
25  
26  
27  
28 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 19th day of December, 2011, I caused the document(s) entitled:

**DEFENDANT’S MOTION FOR WRIT OF BODY ATTACHMENT**

and all attachments to be served by the Court’s CM/ECF system.

/s/ J. Malcolm DeVoy

J. Malcolm DeVoy