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Wayne Hoehn

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RIGHTHAVEN, LLC, a Nevada limited liability
company,

Plaintiff,

vs.

WAYNE HOEHN, an individual,

Defendant.

Case No. 2:11-cv-00050

**DECLARATION OF J. MALCOLM
DEVOY IN SUPPORT OF MOTION
FOR WRIT OF BODY
ATTACHMENT**

**DECLARATION OF J. MALCOLM DEVOY IN SUPPORT OF MOTION FOR WRIT
OF BODY ATTACHMENT**

I, J. MALCOLM DEVOY, having personal knowledge of the matters set forth herein, declare as follows:

1. I am a duly licensed attorney in Nevada and a member of the Nevada bar in good standing, attorney for the Randazza Legal Group law firm (alternatively, the “Firm”), and served as counsel of record with Marc J. Randazza for Wayne Hoehn (“Hoehn”) in this matter.

2. On December 12, this Court granted Hoehn’s motion for the appointment of a receiver and compelled transfer of Righthaven’s intellectual property (Doc. # 66).

3. Per the terms of that underlying Motion, Righthaven was to complete the assignments and notice the Court of them within 7 days of an order granting the motion (Doc. # 62 at 9).

1 4. Since December 12, I have received no communication from opposing counsel.

2 5. On December 16, 2011, The Tenth Circuit Court of Appeals had scheduled a
3 mediation conference call in *Righthaven v. Wolf*, Case No. 11-1469, a case in which Randazza
4 Legal Group is also counsel of record for the defendant, and Attorney Mangano is counsel of
5 record for Righthaven. Attorney Mangano did not attend that conference call.

6 6. Attorney Mangano has not replied to any of my faxed correspondence – a manner of
7 communication he had previously requested that I use in lieu of e-mail and telephonic
8 communication – since this Court’s December 12 Order granting the receivership motion (Doc.
9 66).

10 7. Even if my communications were returned, it is strongly unlikely that they would
11 have yielded fruitful negotiations. As described in Document 60-1, from paragraphs 19-22, I
12 attempted to contact Righthaven’s counsel regarding the scheduling of a debtors exam on
13 Hoehn’s behalf.

14 8. Shortly after the motion seeking a debtors exam was filed on November 6, 2011
15 (Doc. # 60), Righthaven’s counsel e-mailed me to provide notification that his client did not
16 consent to an examination.

17 9. As of the time of the instant motion’s filing, I have not received any notice of appeal,
18 notice of a motion seeking a stay or extension, notice of a motion before the Ninth Circuit Court
19 of Appeals, notice of a bankruptcy petition, or other correspondence from either Righthaven or
20 the Court regarding its failure to comply with the December 12 order.

21 10. I have furthermore waited until after the traditional close of business in this district
22 (5:00 p.m. Pacific Time) before bringing this Motion so as to ensure Righthaven had a
23 reasonable time to file a notice with this Court that it has effected the assignment of its
24 intellectual property as required by the December 12 Order (Doc. # 66).

25 11. Finally, Righthaven did not oppose the underlying motion (Doc. # 62).

26 12. I believe that Righthaven’s current failure to file a notice with this Court that it has
27 complied with the Court’s order – and probable failure to assign its intellectual property to the

1 receiver – is intentional.

2 13. Given the nature of the relief sought by this motion, Hoehn, through counsel,
3 stipulates to withdraw the instant motion – and not seek additional sanctions relating to this
4 failing – if Righthaven assigns its intellectual property to the receiver using the forms supplied
5 with its Motion (Doc. 62-5, 62-6, 62-7, 62-8) and provides notice to the Court that these
6 assignments have been completed pursuant to the December 12 Order (Doc. # 66) before
7 responding to this motion for a writ of body attachment.

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9 I declare under penalty of perjury that the foregoing is true and correct to the best of my
10 knowledge.

11 Dated: December 19, 2011 in Las Vegas, Nevada

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By: /s/ J. Malcolm DeVoy IV

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J. Malcolm DeVoy IV

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