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5 UNITED STATES DISTRICT COURT
6 DISTRICT OF NEVADA

7 RIGHTHAVEN LLC, a Nevada limited
8 liability company,

9 Plaintiff,

10 v.

11 TONY CARL LOOSLE, an individual;
12 and TCS, INC., a Utah corporation

13 Defendants.
14

Case No: 2:11-cv-00627-KJD-LRL

**Motion to Stay All Proceedings
Pending Ruling on Order to Show
Cause re: Righthaven's Standing
to Bring Action and in the
Alternative Motion to Dismiss**

15 Tony Carl Loosle ("Mr. Loosle"), acting *pro se*, respectfully moves this Court
16 pursuant to the Court's inherent powers to control its calender, for an Order staying all
17 proceedings (a global stay as to all Defendants) in this action pending a decision on the
18 pending Order to Show Cause issued by District Judge James C. Mahan on April 27, 2011
19 in Civil Case 2:10-CV-1575 JCM, *Righthaven LLC vs Pahrump Life et al.*

20 In the Alternative Mr. Loosle, moves the Court pursuant to Rules 12(b)(6), 12(c)
21 and/or 56, Federal Rules of Civil Procedure, for an order dismissing this action on the basis
22 that the Plaintiff lacks standing to bring this action.

23 In the event Plaintiff does not oppose the motion to stay the proceedings and the Court
24 allows such a stay, then Defendant does not wish to pursue, at this time the motion to
25 dismiss, which is made in the alternative. However if Defendant opposes the motion to stay
26 the proceedings or the Court will not approve such a stay, the Defendant desires to proceed

1 with the alternative motion to dismiss. If the Court grants the motion to dismiss, Defendant
2 would also ask the Court to consider an award of attorney fees for which Defendant incurred
3 in order to bring this motion *pro se*.

4 Mr. Loosle's motions are supported by the accompanying Memorandum of Points and
5 Authorities set forth below, the pleadings on record with this Court and in particular the
6 Strategic Alliance Agreement (Document No. 79-1) on file in Civil Case 2:10-CV-01356-
7 RLH-GWF, *Righthaven LLC vs Democratic Underground LLC*, pending before Judge Hunt.

8
9 **Memorandum of Points and Authorities**

10 **I. A. Argument Re: Stay:** All Courts are vested with inherent power to control
11 their calendars, particularly if it would preserve judicial resources or prevent a duplication
12 of judicial effort. It would seem wholly unnecessary for the Defendant to provide legal
13 authority for such a self evident legal principle. The basis for the motion to stay the
14 proceedings is that substantial judicial resources could be preserved by staying this action
15 pending a ruling as to Righthaven's standing to maintain copyright violation actions in light
16 of the limited rights Righthaven has under the Strategic Alliance Agreement, which was
17 recently unsealed by Judge Hunt in Case No.2:10-cv-01356-RLH -GWF.

18 On April 27, 2011, District Judge James C. Mahan issued an Order to Show Cause in
19 Civil Case 2:10-CV-1575 JCM, *Righthaven LLC vs Pahrump Life et al*, for Righthaven to
20 appear and "show cause, in writing, within ten (10) days why the court should not dismiss
21 the instant case for lack of standing." Judge Mahan then set the matter for a hearing on May
22 12, 2011.

23 In the Judge Mahan's Order (Doc 21, Case 2:10-CV-1575 JCM) requiring Righthaven
24 to appear and show cause, the Judge Mahan observed:
25
26

1 Righthaven's ownership of its assigned copyrights has been generally
2 contested in a case before Judge Hunt, *Righthaven LLC v. Democratic*
3 *Underground, LLC et al.* In *Democratic Underground*, the newly unsealed
4 "Strategic Alliance Agreement" (doc. #79-1 in 2:10-cv-01356-RLH -GWF),
5 governing all purported copyright assignments from Stevens Media to
6 Righthaven, appears to support defendant Scaccia's claim that Righthaven
7 does not have standing to sue for copyright infringement. (See doc. #79 in
8 2:10-cv-01356-RLH -GWF). Specifically, Stevens Media has not assigned to
9 Righthaven one of the 17 U.S.C. § 106 exclusive rights in the copyrights
Righthaven purports to own, as would be required for Righthaven to validly
allege an infringement claim on those copyrights. See *Silvers v. Sony Pictures*
Entm't, Inc., 402 F.3d 881, 884(9th Cir. 2005) ("legal or beneficial owner of
an exclusive right under a copyright is entitled, subject to the requirements of
section 411, to institute an action for any infringement of that particular right
committed while he or she is the owner of it") (quoting 17 U.S.C. § 501(b)).
(Doc 21, page 2, Lines 7-18)

10 **B. Argument Re: Motion to Dismiss:** Attached hereto as exhibit A is a copy
11 of Document 79-1 the newly unsealed "Strategic Alliance Agreement" (doc. #79-1 in
12 2:10-cv-01356-RLH -GWF), governing all purported copyright assignments from Stevens
13 Media to Righthaven . Plaintiff should not have any problem with the genuineness of the
14 document or its relevance to these proceedings. In any respect the Defendant would ask the
15 Court to take judicial notice of the same. (A copy has been attached hereto for the Court's
16 Convenience.)

17 In his treatise on copyright, William Patry states "Plaintiff must plead ownership of
18 the right sought to be vindicated." Patry on Copyright, Section 19:7. In short, you cannot sue
19 for violation of a right that is not yours to enforce. See *Silvers v. Sony Pictures Entm't, Inc.*,
20 402 F.3d 881, 884(9th Cir. 2005) ("legal or beneficial owner of an exclusive right under a
21 copyright is entitled, subject to the requirements of section 411, to institute an action for any
22 infringement of that particular right committed while he or she is the owner of it") (quoting
23 17 U.S.C. § 501(b)).¹


24
25 ¹ Defendant acknowledges that Plaintiff has pled ownership of the copyright, but in
26 view of Rule 11, Federal Rules of Civil Procedure, and the clear import of the "Strategic

1 Moreover, to allow Righthaven to do otherwise is to allow it to engage in the common
2 law sin of “champerty,” which is the sale to someone with no interest in the alleged wrong
3 being sued on of a right to sue for a percentage of the amount recovered in the suit. *See Dell*
4 *Webb Communities, Inc., v. Partington*, decision filed September 18, 2009 in Civil Case
5 2;08-cv-00571-RCJ-GWF, reported in 2009 U.S. Dist. LEXIS 85616; 2009-2 Trade Cas.
6 (CCH) P76854, *citing Schwartz v. Eliades*, 113 Nev. 586, 588, 939 P.2d 1034 (Nev. 11997).

6 II. Conclusion

7 Staying this action pending the ruling as to standing from Judge Mahan is in the
8 interest of the parties and preserves valuable judicial resources. Any ensuing delay will not
9 prejudice either party. In the alternative the Strategic Alliance Agreement is not ambiguous
10 – it does not vest Righthaven with any right, other than the right to sue. As such not only
11 does Plaintiff lack standing to file or maintain this action, it has engaged in conduct which
12 constitutes “champerty,” and this conduct under state law is unlawful and against public
13 policy.

14 Respectfully submitted this 9th day of May, 2011.

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17 Tony Loosle
18 Pro se

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24 Alliance Agreement,” Document 79-1, which was recently unsealed, Plaintiff may wish to
25 reassess their position and the allegations made with respect to ownership. Defendant
26 anticipates filing a Rule 11 motion prior to filing an answer.


1 **MAILING CERTIFICATE**

2 I hereby certify on the 9th day of May, 2011, I mailed a true and correct copy of the
3 foregoing:

4 **MOTION TO STAY ALL PROCEEDINGS PENDING RULING ON**
5 **ORDER TO SHOW CAUSE RE: RIGHTHAVEN'S STANDING TO**
6 **BRING ACTION AND IN THE ALTERNATIVE MOTION TO**
7 **DISMISS,**

8 postage prepaid in Logan, Utah, to the following:

9 Shawn A. Mangano, Esq.
10 9960 West Cheyenne Avenue, Suite 170
11 Las Vegas, Nevada 89129-7701

12 
13 _____
14 Tony Loosle
15 Pro se

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