

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

RIGHTHAVEN LLC)	Civil Action No: 2:10-cv-03075-RMG-JDA
Plaintiff)	
)	
Vs.)	
)	
DANA EISER)	
Defendant)	

PLAINTIFF’S MOTION TO
EXTEND TIME TO RESPOND TO
ORDER TO SHOW CAUSE

Plaintiff, Righthaven LLC (Righthaven) hereby moves pursuant to Local Rule 6.01 for an extension of time to respond to the Order to Show Cause entered on October 20, 2011 (Doc. # 81) as to why the complaint should not be dismissed for lack of standing. The following information is provided in connection with this motion. The current deadline for the filing of a response is October 28th; the deadline has not previously been extended; Righthaven requests an additional 3 days in which to file its response, and the new date for the reply would be October 31, 2011; the extension would not affect other deadlines. The basis for this extension is set forth below.

Prior History of this litigation

In response to a single count complaint for copyright infringement, Doc. # 1, defendant filed an answer, Doc. # 7, and then an Amended Answer with six Counterclaims. Doc. # 22. Righthaven moved to dismiss the counterclaims. Doc. # 23. The court deferred action on that motion until Eiser responded to Righthaven’s Amended Complaint. Doc. # 35. Eiser then moved to dismiss the Amended Complaint. Doc. # 37 . Pursuant to the Second Amended Scheduling Order, Doc. # 27, Eiser filed a Second Amended Answer and twenty three Counterclaims. Doc. # 53. Eiser filed a

subsequent motion to dismiss on different grounds, Doc. # 60, and filed an Amended Response to Righthaven's motion to dismiss. Doc. # 62. Righthaven subsequently moved for dismissal of the Second Amended Answer and Counterclaims. Doc.# 78. Plaintiff's motion to dismiss or alternatively strike defendant's counterclaims, defendant's motion to motion to dismiss for failure to state a claim (Doc.# 3) and motion to dismiss for lack of jurisdiction (Doc. # 60) and plaintiff's motion to dismiss defendant's Second Amended Answer and Counterclaims (Doc.#78)are presently pending before the court. This court stayed discovery pending resolution of the pending motion.

Subject of the Order to Show Cause

The Order to Show Cause references matters outside of the record in this case. These include decisions in actions in the Districts of Nevada and Colorado which defendant asserted in her previous motion to dismiss support her position in this action that Righthaven is not the owner of the copyright which is the subject of this action. Righthaven's current counsel has previously indicated that he has no prior knowledge of any of these actions or the other matters which defendant seeks to interject into this case and how they affect the complaint filed in this case and that such matters would have to be addressed by Shawn Mangano, Esq., Righthaven's outside counsel. See Bertele Declaration Para. 4, appended to plaintiff's motion for extension of time to respond. Doc. #70. After receiving notice of the Order to Show Cause, counsel advised Mr. Mangano, Esq. about the return date of the Order to Show Cause. Mr. Mangano has been directly involved in these other actions and will prepare the response addressing the issues raised by the Order to Show Cause. Mr. Mangano has advised that he is engaged in preparation for trial but will be able to provide a response by October 31. Therefore, Righthaven requests an additional three days extension of the deadline which is now October 28th.

Consent has been sought but defendant's position is unknown

Righthaven's counsel made an electronic request of opposing counsel that he consent to this extension but as of the filing of this motion no reply has been received.

Effect on discovery and other scheduling

The court entered an Order dated August 24, 2011, Doc.# 73, staying all discovery pending a decision of the pending motions.

The extensions requested should be granted

Righthaven urges the court to grant this short extension. The Order to Show Cause could result in the complaint being dismissed and it serves the interest of justice for the court to allow Righthaven the opportunity to address the issues raised by the Court by allowing a brief extension.

Respectfully submitted,

s/ Edward A. Bertele/

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