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DISTRICT OF COLORADO
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October 12, 2011

SEE NOTICE OF ELECTRONIC FILING

RE: Righthaven LLC v. Wolf, et al

District Court Case No. 11-cv-00830-JLK
Notice of Appeal Filed by Righthaven LLC on October 11, 2011
Fee Status: Fees Not Paid
Other Pending Appeals: none

Attached are the following documents for the parties in connection with the notice of appeal: Copy of the notice of appeal and a copy of the docket sheet. The appellant only is directed to the U.S. Court of Appeals for the 10th Circuit website (http://www.ca10.uscourts.gov) to obtain the Notice of Transcript Order form, Docketing Statement form and Docketing Statement Instructions.

The appellant must carefully read the directions provided with the Notice of Transcript Order form. If a transcript is being ordered, the appellant and the court reporter must complete the Notice of Transcript Order. The appellant must complete a separate form for each court reporter and/or reporting service, indicating only the dates of the proceedings that reporter is being requested to transcribe. Please contact the reporter or reporting services directly to obtain information and make arrangements for the preparation of the necessary transcripts. Instructions and the names, addresses and telephone numbers for most of the court reporters and reporting services can be found on the attached list.

File one copy of the Notice of Transcript Order with the U.S. District Court on CM/ECF, one copy with the U.S. Court of Appeals on the Appellate CM/ECF and serve all parties pursuant to Fed. R. App. P. 10. If no transcript is being ordered, or all necessary transcripts are presently on file, the appellant must complete the Notice of Transcript Order, including Section A and file it as indicated above. If the entire transcript is not ordered by the appellant, the appellee should refer to Fed. R. App. P. 10.

If you have any difficulty accessing the necessary appeal documents please contact the appeals clerk at the U.S. District Court for the District of Colorado (303) 844-3433.

Sincerely,
GREGORY C. LANGHAM, Clerk

by s/ B. Reed Deputy Clerk

cc: Clerk, U.S. Court of Appeals (with copy of docket sheet, copy of notice of appeal and the preliminary record)

FURTHER INSTRUCTIONS FOR ORDERING TRANSCRIPTS:

Please review the enclosed docket sheet and locate the docket entry for the minutes of the proceedings you wish to have transcribed. In the entry will be either:
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If the proceeding was held before a Magistrate Judge and was either tape recorded (E.C.R) or digitally recorded (FTR) please contact Avery Woods Reporting Service. Their address and phone number is on the attached list.

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FTR Operator - (FTR-RPM)
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303-335-2095

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APPEAL, TERMED

U.S. District Court
District of Colorado (Denver)
CIVIL DOCKET FOR CASE #: 1:11-cv-00830-JLK

Righthaven LLC v. Wolf et al
Assigned to: Judge John L. Kane
Cause: 17:501 Copyright Infringement

Date Filed: 03/31/2011
Date Terminated: 09/30/2011
Jury Demand: Plaintiff
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

Righthaven LLC
a Nevada limited-liability company

represented by **Shawn Anthony Mangano**
Shawn A. Mangano, LTD
9960 West Cheyenne Avenue
#170
Las Vegas, NV 89129-7701
702-304-0432
Fax: 702-922-3851
Email: shawn@manganolaw.com
ATTORNEY TO BE NOTICED

Steven George Ganim
Steven G. Ganim, Attorney at Law
P.O. Box 230812
Las Vegas, NV 89105
702-324-5347
Email: sgganim@gmail.com
TERMINATED: 08/22/2011

V.

Defendant

Leland Wolf
an individual

represented by **Andrew John Contiguglia**
Contiguglia & Fazzone, P.C.
44 Cook Street
#100
Denver, CO 80206
303-780-7333
Fax: 303-780-7337
Email: ajc@ajcpc.com
ATTORNEY TO BE NOTICED

James Malcolm DeVoy , IV
Randazza Legal Group-Las Vegas
7001 West Charleston Boulevard
#1043

Las Vegas, NV 89117
888-667-1113
Fax: 305-437-7662
Email: jmd@randazza.com
ATTORNEY TO BE NOTICED

Marc John Randazza
Randazza Legal Group-Las Vegas
7001 West Charleston Boulevard
#1043
Las Vegas, NV 89117
888-667-1113
Fax: 305-437-7662
Email: MJR@randazza.com
ATTORNEY TO BE NOTICED

Defendant

It Makes Sense Blog *an entity of unknown origin and nature* *TERMINATED: 09/27/2011*	represented by	**Andrew John Contiguglia** (See above for address) *ATTORNEY TO BE NOTICED* **James Malcolm DeVoy , IV** (See above for address) *ATTORNEY TO BE NOTICED* **Marc John Randazza** (See above for address) *ATTORNEY TO BE NOTICED*

Amicus

Citizens Against Litigation Abuse, Inc.	represented by	**James John Todd Kincannon** Kincannon Firm, The P.O. Box 7901 Columbia, SC 29202 877-992-6878 Fax: 888-704-2010 Email: todd@thekincannonfirm.com *ATTORNEY TO BE NOTICED*

Amicus

Electronic Frontier Foundation	represented by	**Kurt Bradford Opsahl** Electronic Frontier Foundation 454 Shotwell Street San Francisco, CA 94110-1914 415-436-9333 Fax: 415-436-9993 Email: kurt@eff.org *ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
03/31/2011	1	COMPLAINT and Demand for Jury Trial against It Makes Sense Blog and Leland Wolf (Filing fee $ 350, Receipt Number 36510) Summons Issued, filed by Righthaven LLC. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Civil Cover Sheet, # 6 Receipt)(lyg,) (Entered: 03/31/2011)
03/31/2011	2	REPORT on the filing of an action mailed to Register of Copyrights. (lyg,) (Entered: 03/31/2011)
03/31/2011	3	MEMORANDUM re Assignment of Righthaven LLC Copyright Infringement Cases by Clerk. (lyg,) (Entered: 03/31/2011)
04/05/2011	4	CORPORATE DISCLOSURE STATEMENT by Plaintiff Righthaven LLC.. (Ganim, Steven) (Entered: 04/05/2011)
05/09/2011	5	First MOTION for Extension of Time to File Answer or Otherwise Respond *to Complaint* by Defendants It Makes Sense Blog, Leland Wolf. (DeVoy, James) (Entered: 05/09/2011)
05/10/2011	6	ORDER denying 5 Defendants' Motion for Enlargement of Time to File Responsive Pleading, by Judge John L. Kane on 05/10/2011.(wjc,) (Entered: 05/10/2011)
05/10/2011	7	Second MOTION for Extension of Time to File Answer or Otherwise Respond to 1 Complaint, Unopposed by Defendants It Makes Sense Blog, Leland Wolf. (DeVoy, James) Modified on 5/11/2011 to create linkage (wjc,). (Entered: 05/10/2011)
05/10/2011	8	ORDER granting 7 Defendants' Unopposed Motion for Enlargement of Time to File Responsive Pleading. It Makes Sense Blog answer due 5/17/2011; Leland Wolf answer due 5/17/2011, by Judge John L. Kane on 05/10/2011. (wjc,) (Entered: 05/10/2011)
05/10/2011	9	SUMMONS Returned Executed by Righthaven LLC. Leland Wolf served on 4/19/2011, answer due 5/17/2011. (Ganim, Steven) (Entered: 05/10/2011)
05/10/2011	10	SUMMONS Returned Executed by Righthaven LLC. It Makes Sense Blog served on 4/19/2011, answer due 5/17/2011. (Ganim, Steven) (Entered: 05/10/2011)
05/17/2011	11	MOTION to Dismiss for Lack of Jurisdiction by Defendants It Makes Sense Blog, Leland Wolf. (DeVoy, James) (Entered: 05/17/2011)
05/17/2011	12	BRIEF in Support of 11 MOTION to Dismiss for Lack of Jurisdiction filed by Defendants It Makes Sense Blog, Leland Wolf. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(DeVoy, James) (Entered: 05/17/2011)
05/17/2011	13	MOTION for Leave to *Conduct Jurisdictional Discovery or, in the alternative, Motion for Order to Show Cause* by Defendants It Makes Sense Blog, Leland Wolf. (DeVoy, James) (Entered: 05/17/2011)
05/17/2011	14	BRIEF in Support of 13 MOTION for Leave to Conduct Jurisdictional Discovery or, in the alternative, Motion for Order to Show Cause filed by

		Defendant Leland Wolf. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(DeVoy, James) Modified on 5/18/2011 to remove filer It Makes Sense Blog (wjc,). (Entered: 05/17/2011)
05/18/2011	15	Docket Annotation re: 14 Brief in Support of Motion. Modified on 5/18/2011 to remove filer It Makes Sense Blog. TEXT ONLY ENTRY - NO DOCUMENT ATTACHED. (wjc,) (Entered: 05/18/2011)
06/03/2011	16	STIPULATION re 13 MOTION for Leave to *Conduct Jurisdictional Discovery or, in the alternative, Motion for Order to Show Cause*, 11 MOTION to Dismiss for Lack of Jurisdiction by Defendants It Makes Sense Blog, Leland Wolf. (DeVoy, James) (Entered: 06/03/2011)
06/06/2011	17	ORDER denying as moot 13 Defendants' Motion for Leave to Conduct Jurisdictional Discovery, by Judge John L. Kane on 06/06/2011.(wjc,) (Entered: 06/06/2011)
06/23/2011	18	CORPORATE DISCLOSURE STATEMENT Amended 4 by Plaintiff Righthaven LLC. (Ganim, Steven) Modified on 6/24/2011 to create linkage and delete duplicate text (wjc,). (Entered: 06/23/2011)
06/28/2011	19	NOTICE of Change of Address by Steven George Ganim (Ganim, Steven) (Entered: 06/28/2011)
07/08/2011	20	BRIEF in Support of 11 MOTION to Dismiss for Lack of Jurisdiction filed by Defendants It Makes Sense Blog, Leland Wolf. (Attachments: # 1 Declaration of J. Malcolm DeVoy, # 2 Exhibit A, # 3 Exhibit B)(DeVoy, James) (Entered: 07/08/2011)
07/19/2011	21	MOTION to File Amicus Brief by Interested Party Citizens Against Litigation Abuse, Inc.. (Attachments: # 1 Exhibit 1 - Consultation Emails, # 2 Exhibit 2 - CALA Amicus Brief, # 3 Exhibit A - Order Unsealing SAA, # 4 Exhibit B - Democratic Underground Dismissal, # 5 Exhibit C - Righthaven Intervention, # 6 Exhibit D - Hoehn Dismissal, # 7 Exhibit E - Jama Summary Judgment, # 8 Exhibit F - Righthaven's Response to Amici, # 9 Exhibit G - Arkansas Democrat-Gazette Story, # 10 Exhibit H - New York Times Story, # 11 Exhibit I - Wired.com Story, # 12 Exhibit J - SAA, # 13 Exhibit K - SAA Clarification, # 14 Exhibit L - Righthaven Website, # 15 Exhibit M - Sherman Frederick Comment, # 16 Exhibit 3 - Minutes of Proceedings re Show Cause Hearing in Democratic Underground) (Kincannon, James) (Entered: 07/19/2011)
07/29/2011	22	STIPULATION *for Briefing Schedule for Amicus Curiae Brief by EFF In Support of Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction* by Interested Party Electronic Frontier Foundation. (Opsahl, Kurt) (Entered: 07/29/2011)
07/29/2011	23	BRIEF in Opposition to 11 MOTION to Dismiss for Lack of Jurisdiction filed by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 07/29/2011)
07/30/2011	24	DECLARATION of *Shawn A. Mangano, Esq.* regarding Brief in Opposition to Motion 23 by Plaintiff Righthaven LLC. (Attachments: # 1 Exhibit Exhibit 1)(Mangano, Shawn) (Entered: 07/30/2011)

08/02/2011	25	Unopposed MOTION for Leave to *Appear as Amicus Curiae* by Interested Party Electronic Frontier Foundation. (Attachments: # 1 Proposed Document Brief of Amicus Curiae Electronic Frontier Foundation)(Opsahl, Kurt) (Entered: 08/02/2011)
08/03/2011	26	ORDER. The 21 Motion to File Amicus Brief by Citizens Against Litigation Abuse, Inc. and 25 Unopposed Motion for Leave to Appear as Amicus Curiae by Electronic Frontier Foundation are granted. The 22 Stipulation for Briefing Schedule for these Amicus Curiae Briefs is adopted. Plaintiff Righthaven shall file its response to these amicus briefs no later than 8/23/2011, and the Electronic Frontier Foundation and Citizens Against Litigation Abuse may file replies to Righthaven's response no later than 9/6/2011. By Judge John L. Kane on 8/3/11.(mnf,) Modified on 8/4/2011 to correct spacing (mnfsl,). (Entered: 08/03/2011)
08/03/2011	35	BRIEF in Support of Defendant's 11 MOTION to Dismiss for Lack of Subject Matter Jurisdiction filed by Amicus Electronic Frontier Foundation. (mnf,) (Entered: 08/25/2011)
08/03/2011	36	Amicus Curiae BRIEF by Amicus Citizens Against Litigation Abuse, Inc. (Attachments: # 1 Exhibit A - Order Unsealing SAA, # 2 Exhibit B - Democratic Underground Dismissal, # 3 Exhibit C - Righthaven Intervention, # 4 Exhibit D - Hoehn Dismissal, # 5 Exhibit E - Jama Summary Judgment, # 6 Exhibit F - Righthaven Response to Amici, # 7 Exhibit G - Arkansas Democrat - Gazette Story, # 8 Exhibit H - New York Times Story, # 9 Exhibit I - Wired.com Story, # 10 Exhibit J - SAA, # 11 Exhibit K - SAA Clarification, # 12 Exhibit L - Righthaven Website, # 13 Exhibit M - Sherman Frederick Comment)(mnf,) (Entered: 08/25/2011)
08/05/2011	27	MOTION to Supplement 11 MOTION to Dismiss for Lack of Jurisdiction by Defendant Leland Wolf. (Attachments: # 1 Declaration of J. Malcolm DeVoy, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C)(DeVoy, James) Modified on 8/8/2011 to correct filer (mnf,). (Entered: 08/05/2011)
08/08/2011	28	Docket Annotation re: 27 MOTION to Supplement 11 MOTION to Dismiss for Lack of Jurisdiction. Modified on 8/8/2011 to correct filer. TEXT ONLY ENTRY - NO DOCUMENT ATTACHED (mnf,) (Entered: 08/08/2011)
08/08/2011	29	ORDER granting 27 Defendant Leland Wolf's Motion to Supplement Record Regarding Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction. The record shall be supplemented with the Order issued by Judge Roger L. Hunt of the District of Nevada in the matter of Righthaven v. Democratic Underground, LLC, et al., Case No. 2:10-cv-01356-RLH-GWF, attached as Exhibit A to the pending motion (doc 27 -2). By Judge John L. Kane on 8/8/11.(mnfsl,) (Entered: 08/08/2011)
08/10/2011	30	REPLY to Response to 11 MOTION to Dismiss for Lack of Jurisdiction filed by Defendants It Makes Sense Blog, Leland Wolf. (DeVoy, James) (Entered: 08/10/2011)
08/21/2011	31	NOTICE of Change of Address by Steven George Ganim (Ganim, Steven) (Entered: 08/21/2011)

08/21/2011	32	MOTION to Withdraw as Attorney by Plaintiff Righthaven LLC. (Attachments: # 1 Exhibit #1 - Notice of Witdrawal of Appearance, # 2 Proposed Order (PDF Only))(Ganim, Steven) (Entered: 08/21/2011)
08/22/2011	33	ORDER granting 32 Unopposed Motion to Withdraw as Counsel. Attorney Steven George Ganim terminated. By Judge John L. Kane on 8/22/11. (mnfsl,) (Entered: 08/22/2011)
08/24/2011	34	RESPONSE to 35 , 36 Amici Briefs by Plaintiff Righthaven LLC. (Mangano, Shawn) Modified on 8/25/2011 to correct linkage (mnf,). (Entered: 08/24/2011)
09/01/2011	37	NOTICE of Change of Address by Andrew John Contiguglia (Contiguglia, Andrew) (Entered: 09/01/2011)
09/06/2011	38	REPLY to 34 Response re: 35 , 36 Briefs by Amicus Electronic Frontier Foundation. (Opsahl, Kurt) Modified on 9/7/2011 to add linkage (mnfsl,). (Entered: 09/06/2011)
09/09/2011	39	MOTION for Preliminary Injunction by Defendants It Makes Sense Blog, Leland Wolf. (Attachments: # 1 Declaration of J. Malcolm DeVoy, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D)(DeVoy, James) (Entered: 09/09/2011)
09/09/2011	40	MINUTE ORDER Setting Hearing on 39 Defendants' MOTION for Preliminary Injunction: Motion Hearing set for 9/15/2011 at 08:00 AM in Courtroom A 802 before Judge John L. Kane. By Judge John L. Kane on 9/9/11. (mnfsl,) (Entered: 09/09/2011)
09/14/2011	41	OBJECTIONS to 40 Order Setting Hearing on Motion, 39 MOTION for Preliminary Injunction *for Defendant's Counsel's Violation of Local Rule 7.1A* by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 09/14/2011)
09/14/2011	42	DECLARATION of *Shawn A. Mangano, Esq. in Support of Objection to Motion For Preliminary Injunction Filed in Violation of Local Rule 7.1A* regarding Objections 41 by Plaintiff Righthaven LLC. (Attachments: # 1 Exhibit Exhibits 1-2, # 2 Exhibit Exhibits 3-4)(Mangano, Shawn) (Entered: 09/14/2011)
09/14/2011	43	RESPONSE to 41 Objections by Defendant Leland Wolf. (Contiguglia, Andrew) Modified on 9/15/2011 to add linkage (mnf,). (Entered: 09/14/2011)
09/14/2011	44	MINUTE ORDER. The hearing on Defendants' Motion for Preliminary Injunction set for 9/14/2011, at 8:00 AM will proceed as scheduled. By Judge John L. Kane on 9/14/11. (mnf,) (Entered: 09/14/2011)
09/14/2011	45	MINUTE ORDER. In my previous 44 Minute Order, I erroneously listed the date for the hearing on Defendants' Motion for Preliminary Injunction as 9/14/2011. The hearing is actually set for 9/15/2011, at 8:00 AM. By Judge John L. Kane on 9/14/11. (mnf,) Modified on 9/15/2011 to correct spelling (mnf,). (Entered: 09/14/2011)
09/14/2011	46	MINUTE ORDER Setting Hearing on 11 Defendants' MOTION to Dismiss:

		Motion Hearing set for 9/20/2011 at 09:00 AM before Judge John L. Kane. By Judge John L. Kane on 9/14/11. (mnf,) (Entered: 09/14/2011)
09/15/2011	47	BRIEF in Opposition to 39 MOTION for Preliminary Injunction filed by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 09/15/2011)
09/15/2011	51	MINUTE ENTRY for Preliminary Injunction Hearing proceedings held before Judge John L. Kane on 9/15/2011. Taking under advisement 39 Motion for Preliminary Injunction. ORDERED: The Oral Stipulated TRO is GRANTED as to Righthaven agreeing not to dispose of its intellectual property assets, other than money to pay operating expenses, until September 27, 2011. (Court Reporter: Tracy Weir)(babia) Modified on 10/3/2011 to correct name of hearing (mnfsl,). (Entered: 09/30/2011)
09/20/2011	48	MINUTE ENTRY for Motion Hearing proceedings held before Judge John L. Kane on 9/20/2011. Taking under advisement 11 Motion to Dismiss for Lack of Jurisdiction. (Court Reporter: Tracy Weir)(babia) (Entered: 09/20/2011)
09/27/2011	49	MEMORANDUM OPINION AND ORDER. The Court converts 11 Mr. Wolf's Rule 12(b)(1) motion to a Rule 56 motion and GRANTs him SUMMARY JUDGMENT. Under Section 505 of the Copyright Act and ORDER that Righthaven shall reimburse Mr. Wolf's full costs in defending this action, including reasonable attorney fees, by Judge John L. Kane on 09/27/2011.(wjc,) Modified on 9/28/2011 to create linkage (wjc,). (Entered: 09/27/2011)
09/30/2011	50	FINAL JUDGMENT by Clerk, re: 49 Order. By Clerk on 9/30/11. (mnfsl,) (Entered: 09/30/2011)
10/03/2011	52	Docket Annotation re: 51 Motion Hearing. Modified on 10/3/2011 to correct name of hearing. TEXT ONLY ENTRY - NO DOCUMENT ATTACHED (mnfsl,) (Entered: 10/03/2011)
10/03/2011	53	MINUTE ORDER. Mr. Wolf shall file an affidavit of counsel itemizing the amounts requested in the various categories, in addition to an affidavit from a disinterested expert attesting to the reasonableness of the costs and attorney fees requested as well as the necessity of their expenditure for the recovery attained no later than 10/14/2011. Righthaven's response, with rebuttal affidavit(s), is due on or before 10/28/2011. By Judge John L. Kane on 10/3/11. (mnfsl,) Modified on 10/4/2011 to add minute before order and add complete sentence regarding what should be contained in affidavit (mnfsl,). (Entered: 10/03/2011)
10/04/2011	54	Docket Annotation re: 53 Order. Modified on 10/4/2011 to add minute before order and add complete sentence regarding what should be contained in affidavit. TEXT ONLY ENTRY - NO DOCUMENT ATTACHED (mnfsl,) (Entered: 10/04/2011)
10/05/2011	55	REPORT on the determination of an action mailed to Register of Copyrights. (lygsl,) (Entered: 10/05/2011)
10/11/2011	56	NOTICE OF APPEAL as to 49 Order on Motion to Dismiss/Lack of

		Jurisdiction, 50 Clerk's Judgment *to the United States Court of Appeals for the Tenth Circuit* by Plaintiff Righthaven LLC (Mangano, Shawn) (Entered: 10/11/2011)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. **1:11-cv-00830-JLK**

RIGHTHAVEN LLC, a Nevada Limited Liability Company,
Plaintiff,
v.

LELAND WOLF, an individual, and
IT MAKES SENSE BLOG, an entity of unknown origin and nature,
Defendants.

MEMORANDUM OPINION AND ORDER

Kane, J.

The issue presented in this case, whether a party with a bare right to sue has standing to institute an action for infringement under federal copyright law, is one of first impression in the Tenth Circuit. After considering the parties' written and oral arguments and analyzing the constitutional underpinnings of federal copyright law, the legislative history of the 1909 and 1976 Copyright Acts, and the meager precedent available from analogous situations in other Circuits, I hold that the answer to that question is a forceful, yet qualified, "no" and GRANT summary judgment to Defendant Leland Wolf. Furthermore, pursuant to 17 U.S.C. § 505, Righthaven shall reimburse Mr. Wolf's full costs in defending this action, including reasonable attorney fees.

FACTUAL BACKGROUND

On November 18, 2010, *the Denver Post* published a photograph of a Transportation Security Administration Agent performing an enhanced pat-down search at Denver International Airport (the "Work"). Although the copyright in this photograph was originally held by MediaNews

Group, Inc., *the Denver Post*'s parent company, at some point following its original publication the copyright was purportedly transferred to Plaintiff Righthaven LLC, which registered the Work with the federal Copyright Office on December 10, 2010. *See* Copyright Registration (doc. 1-4). Shortly thereafter, Righthaven filed fifty-seven lawsuits in this district, each alleging copyright infringement in violation of the anti-infringement provisions of federal copyright law. *See* 17 U.S.C. § 501.

Defendant Leland Wolf was among those caught up in Righthaven's enforcement dragnet.[1] As alleged in Righthaven's complaint, on or about November 29, 2010 and February 5, 2011, Mr. Wolf displayed the Work on his website, itmakessenseblog.com, without seeking or receiving permission to do so from Righthaven. Based on these alleged facts, Righthaven filed suit against Mr. Wolf. On May 17, 2011, Mr. Wolf filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction (doc. 11).

ANALYSIS

Nature of Review

As a threshold matter, it is necessary to determine the proper framework for resolving Mr. Wolf's motion. Ordinarily, motions to dismiss for lack of subject matter jurisdiction are premised upon Federal Rule of Civil Procedure 12(b)(1) and take one of two forms: either a facial or factual attack. *See Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995). In a facial attack on the sufficiency of the complaint, a reviewing court must accept the allegations of the complaint as true.

[1] As evidenced by the caption, Righthaven also named It Makes Sense Blog as a party to this action. It Makes Sense Blog is not a person or organized legal entity, but the domain name of a website owned and operated by Mr. Wolf. It is not, therefore, capable of being sued and it is dismissed as a party to this lawsuit. *See, e.g.*, *Aston v. Cunningham*, 216 F.3d 1086 n.3 (10th Cir. 2000) (dismissing Salt Lake County jail as a defendant because a detention facility is not a person or legally created entity capable of being sued).

Id. When a party relies on evidence outside of the complaint in mounting a factual attack, however, a reviewing court may not presume the truthfulness of the complaint's allegations. *Id.* at 1003. In such instances, the reviewing court has "wide discretion to allow affidavits, other documents, and a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1)." *Id.* (citing *Wheeler v. Hurdman*, 825 F.2d 257, 259 n.5 (10th Cir. 1987)).

Ordinarily, the consideration of evidence outside the pleadings does not convert a Rule 12(b)(1) motion to dismiss into a Rule 56 motion. *Id.* There is, however, one important exception to this rule: when the resolution of jurisdictional issues is intertwined with the merits of the case, "a court is required to convert a Rule 12(b)(1) motion to dismiss into a Rule 12(b)(6) motion or a Rule 56 summary judgment motion . . . ." *Id.* The resolution of jurisdictional issues is said to be intertwined with the merits of the case "when subject matter jurisdiction is dependent upon the same statute which provides the substantive claim in the case . . . ." *Id.* (citing *Wheeler*, 825 F.2d at 259); *see also Tilton v. Richardson*, 6 F.3d 683, 685 (10th Cir. 1993). The parties must, however, be given notice before a Rule 12(b)(1) motion is converted to a Rule 56 motion. *Wheeler*, 825 F.2d at 259. Such notice need not be formal or explicit; "when a party submits material beyond the pleadings in support of or opposing a motion to dismiss, the prior action on the part of the parties puts them on notice that the judge may treat the motion as a Rule 56 motion." *Id.* at 260.

Because my jurisdiction in this case is dependent upon federal copyright law, which also provides the basis for Righthaven's claim of infringement, the jurisdictional issues raised in Mr. Wolf's Motion to Dismiss are intertwined with the merits of the case. Accordingly, I will convert his Rule 12(b)(1) motion to dismiss into a Rule 56 motion for summary judgment. Furthermore, because both parties submitted materials in support of their respective arguments on Mr. Wolf's

motion to dismiss and incorporated those materials into their arguments, they have received ample notice that Mr. Wolf's motion was subject to treatment as a Rule 56 motion.

Accordingly, in resolving Mr. Wolf's motion, I apply the familiar standards governing motions for summary judgment. As the Federal Rules of Civil Procedure state, I may grant his motion "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that [Mr. Wolf] is entitled to judgment as a matter of law." Fed R. Civ. P. 56(c)(2); *Adamson v. Multi. Cmty. Diversified Servs., Inc.*, 514 F.3d 1136, 1145 (10th Cir. 2008). A fact is material if it could affect the outcome of the suit under governing law; a dispute of fact is genuine if a rational jury could find for the non-moving party, Righthaven, on the evidence presented. *Adamson*, 514 F.3d at 1145. In weighing these standards, I draw all reasonable inferences in favor of the non-moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

Mr. Wolf bears the initial burden of identifying the basis for his motion and the supporting evidence he believes demonstrates a lack of genuine issue as to any material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Adamson*, 514 F.3d at 1145. Because he does not bear the ultimate burden of persuasion at trial, he "may satisfy this burden by identifying 'a lack of evidence for [Righthaven]on an essential element of [its] claim.'" *Adamson*, 514 F.3d at 1145 (quoting *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th cir. 1998)).

Once Mr. Wolf has met his initial burden, the burden shifts to Righthaven, and it must demonstrate more than "some metaphysical doubt" as to the material facts in order to survive summary judgment. *Matsushita Elec. Indus. Co.*, 475 U.S. at 586. Neither unsupported conclusory allegations nor a mere scintilla of evidence, however, are sufficient to create a genuine dispute of

material fact on summary judgment. *See Mackenzie v. City & County of Denver*, 414 F.3d 1266, 1273 (10th Cir. 2005). With these standards in mind, I turn to the merits of Mr. Wolf's motion.

Copyright Law

The thrust of Mr. Wolf's argument focuses upon the nature of the Assignment and the Copyright Assignment Agreement entered into by Righthaven and MediaNews Group, Inc. Specifically, Mr. Wolf argues that Righthaven has no right to institute a claim of infringement under the Copyright Act because MediaNews Group, Inc. did not assign Righthaven any cognizable copyright interest in the work at issue.

Righthaven counters, arguing that the Copyright Assignment Agreement has no impact upon the plain text of the Assignment, which states that MediaNews Group transferred "all copyrights requisite to have Righthaven recognized as the copyright owner of the Work for purposes of Righthaven being able to claim ownership as well as the right to seek redress for past, present and future infringements of the copyright . . . ." Assignment (doc. 24-1). In the alternative, Righthaven argues that the Copyright Assignment Agreement does not diminish the ownership interest transferred by the Assignment, because the "license back" provision contained therein only vitiates claims for present or future infringement. It avers that the copyright interest transferred in the assignment is sufficient for purposes of instituting an action for past infringement under the Copyright Act.

Both parties' arguments assume the underlying legal premise that a party who holds an accrued claim for copyright infringement, but who has no beneficial or legal interest in the copyright itself, may not institute an action for infringement. Although this issue has been decided in the Ninth Circuit, it is one of first impression in the Tenth Circuit, and the parties' reliance on the Ninth

Circuit's resolution of this issue in *Silvers v. Sony Pictures Entm't*, 402 F.3d 881 (9th Cir. 2005), is misplaced. Although that decision, and those of other circuits, are persuasive authority, they are not controlling. Accordingly, I must first determine the relevant law in light of Tenth Circuit precedent and traditional tools of statutory interpretation.

I begin my analysis by looking to the text of the Copyright Act. *See NISH v. Rumsfeld*, 348 F.3d 1263, 1268 (10th Cir. 2003) (noting that "analysis of statutory construction 'must begin with the language of the statute itself'"). Righthaven's claim for infringement is based on 17 U.S.C. § 501, which provides that "the 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." 17 U.S.C. § 501(b). Although this language is straightforward, it does not expressly limit the right to sue for infringement to a legal or beneficial owner of an exclusive right. *See Silvers*, 402 F.3d at 885. Because the statute is silent on this issue, I must determine Congress' intent in enacting this provision. I begin by analyzing the constitutional origins of copyright law before examining the legislative history of the 1909 and 1976 Copyright Acts. *See N.M. Cattle Growers Ass'n v. U.S. Fish & Wildlife Serv.*, 248 F.3d 1277, 1282 (10th Cir. 2001) ("if the statutory language is ambiguous, a court can then resort to legislative history as an aid to interpretation").

The precepts of copyright law are rooted in the Constitution itself, which expressly grants Congress the power "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries . . . ." U.S. Const. art. I, § 8, cl. 8. The primary goal of copyright law is to "secure the general benefits derived by the public from the labors of authors." *See* 1 Melville B. Nimmer & David

Nimmer, *Nimmer on Copyright* § 1.03[A]. This goal is achieved by creating a limited monopoly in copyright, which provides an economic benefit to the authors and creators of creative works. As explained by the Supreme Court, the creation of this limited monopoly is justified by "the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors and inventors . . . ." *Mazer v. Stein*, 347 U.S. 201, 219 (1954); *see also Eldred v. Ashcroft*, 537 U.S. 186, 219 ("By establishing a marketable right to the use of one's expression, copyright supplies the economic incentive to create and disseminate ideas") (quoting *Harper & Row, Publrs v. Nation Enters.*, 471 U.S. 539, 558 (1985)).

Thus, copyright law necessarily balances the derivative goal of rewarding the creative labor of authors of original works with the primary goal of promoting further creativity by allowing public access to copyrighted works. *See Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984), *partially superseded by statute*, Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860. This delicate balance underlies each successive iteration of the copyright regime, as Congress attempts to account for changing methods of communicating and disseminating ideas and expressions while maintaining the constitutionally mandated equilibrium. With these principles in mind, I turn to an examination of the relevant legislative history.

Under the Copyright Act of 1909, standing to sue for copyright infringement was strictly limited to the "proprieter" of a copyright. *See* 3 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* § 10.01[A]; 17 U.S.C. § 101 (1909). Furthermore, the 1909 Act prohibited the assignment of anything less than the entire copyright. *Id.* When paired with the restriction on the right to sue for infringement, this limitation on assignment, termed the doctrine of "indivisibility," promoted the public interest in the sharing of works by "protect[ing] alleged infringers from the

harassment of successive law suits." *Id.*

In the years following the passage of the 1909 Act, technological developments, such as the invention of the motion picture, the television, and the phonograph, altered the fundamental nature of copyright; "as a matter of commercial reality, copyright [became] a label for a collection of diverse property rights each of which is separately marketable." *Id.* In light of these changing circumstances, courts fashioned remedies designed to circumvent the strictures of the doctrine of indivisibility. Most of these exceptions involved so-called "beneficial owners" of copyright – parties who lacked a legal interest in the copyright, but who still stood to gain financially from the legal dissemination of the copyrighted material. As explained by the Seventh Circuit:

> [C]ourts applying the 1909 Act invoked common law trust principles to hold that when a copyright owner assigned title in exchange for the right to receive royalties from the copyright's exploitation, a fiduciary relationship arose between the parties, and the assignor became a 'beneficial owner' of the copyright with standing to sue infringers should the assignee fail to do so.

Moran v. London Records, Ltd., 827 F.2d 180, 183 (7th Cir. 1987) (citations omitted); *but see Prather v. Neva Paperbacks, Inc.*, 410 F.2d 698 (5th Cir. 1969) (basing an author's, and past copyright owner's, right to sue not on trust principles but on "the effectiveness of an assignment of accrued causes of action for copyright infringement"). This principle, that a former owner of a copyright who has assigned his copyright interest in exchange for the right to receive royalties from the copyright's exploitation has the right to sue for infringement, is consistent with the guiding principles of copyright law. The former copyright owner, often the original author or creator, continues to derive an economic benefit from legal public access to the copyrighted material. The public interest in access to copyrighted materials is served, and the former copyright owner is rewarded for his efforts and encouraged to engage in further creative efforts.

In contrast, the free assignment of the right to sue for infringement, as permitted by the Fifth Circuit in *Prather* and advocated by Judge Bea in his dissent in *Silvers*, skews the delicate balance which underlies federal copyright law. *See Prather*, 410 F.2d at 700; *Silvers*, 402 F.3d at 895 (Bea, J., dissenting). A third-party who has been assigned the bare right to sue for infringement has no interest in the legal dissemination of the copyrighted material. On the contrary, that party derives its sole economic benefit by instituting claims of infringement, a course of action which necessarily limits public access to the copyrighted work.[2] This prioritizes economic benefit over public access, in direct contradiction to the constitutionally mandated equilibrium upon which copyright law is based. The legislative history relating to the Copyright Act of 1976 supports this interpretation.

The Copyright Act of 1976 abandons the doctrine of indivisibility, expressly allowing for the assignment of numerous "exclusive rights" that, taken together, comprised the copyright. 17 U.S.C. § 201(d), *see also* 17 U.S.C. § 106 (enumerating the legally recognized copyright interests). As the drafters of the 1976 Act noted in discussing the import of §§ 201 and 501, "The principle of

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[2] Although the institution of some third-party infringement suits may protect the interest of a copyright owner, not all infringement suits are meritorious or worthwhile. Divorcing the economically beneficial interest in copyright from the right to sue for infringement eliminates the exercise of "prosecutorial" discretion by the copyright owner. The party whose only interest is in the proceeds from an action for infringement has no incentive to refrain from filing suit.

Furthermore, in light of the severe statutory damages for copyright infringement and the burdensome costs of litigation, a party sued for infringement, even a party with a meritorious defense, will often agree to settlement. Thus, a party with a bare right to sue may file numerous infringement actions of questionable merit with the intention of extorting settlement agreements from innocent users. This possibility becomes even more likely when the financial viability of the entity filing suit depends upon the proceeds from settlement agreements and infringement suits. Even though copyright law expressly provides for an award of costs and reasonable attorney fees to a party prevailing in its defense of a meritless infringement action, the economic realities of securing counsel and paying in advance the costs of litigation turns this remedy into a Potemkin Village. Both fundamentally and practically, the reality is at odds with the constitutional prioritization of public access to copyrighted works.

divisibility of copyright ownership, established by section 201(d), carries with it the need in infringement actions to safeguard the rights of all copyright owners and to avoid a multiplicity of suits." H.R. Rep. No. 94-1476 at 158. To achieve this result, the Act expands the right to sue for infringement to all *legal* owners of an exclusive right. 17 U.S.C. § 501(b).

The 1976 Act also expands the right to sue for infringement to *beneficial* owners of an exclusive right. According to the drafters, "A 'beneficial owner' for this purpose would include, for example, an author who had parted with legal title to the copyright in exchange for percentage royalties based on sales or license fees." *See* H.R. Rep. No. 94-1476 at 159. This directly parallels the above-noted judicially created exception to the 1909 Act's strict limitation of the right to sue for infringement.

In light of the guiding principles of copyright law and the foregoing analysis of the legislative history of the 1909 and 1976 Copyright Acts, it is apparent that the 1976 Act expands standing to sue for copyright infringement to account for the divisibility of copyright ownership and to incorporate the judicially-recognized exception allowing for the assignment of the right to sue to a beneficial owner of a copyright interest. An expansive view of the right to sue for infringement, as advocated by the Fifth Circuit in *Prather* and Judge Bea in his dissent in *Silvers*, is inconsistent with these constitutional principles.[3] Accordingly, I hold that only parties with a legally recognized

[3] Both the Fifth Circuit and Judge Bea based their expansive views on the belief that "the assignment of an accrued cause of action for copyright infringement to an assignee is nothing more than 'simple assignment of a chose in action.'" *Silvers*, 402 F.3d at 902 (Bea, J., dissenting) (quoting *Prather*, 410 F.2d at 699-700). Although the historical common law rule prohibiting the assignment of a chose in action has largely disappeared in the context of contracts, Restatement (Second) of Contracts § 317 cmt. c (1981), the prohibition is much more robust in the context of torts. *See, e.g. U.S. Fax Law Ctr., Inc. v. iHire, Inc.*, 362 F. Supp. 2d 1248, 1251-53 (D. Colo. 2005). The nature of a copyright injury is enigmatic. In my view, where the copyright owner is also the author or creator of the copyrighted work, the offense of

interest in copyright as delineated in §106 ("legal owners"), and parties who stand to benefit from the legal dissemination of copyrighted material ("beneficial owners") have the right to sue for infringement under § 501(b) of the Copyright Act.[4] *See Hyperquest, Inc. v. N'Site Solutions, Inc.*, 632 F.3d 377, 381 (7th Cir. 2011); *Silvers*, 402 F.3d at 885; *Silvers*, 402 F.3d at 891 (Berzon, J., dissenting) (arguing that "a complete stranger to the creative process" should not be able to institute an action for infringement).[5] Having determined the relevant law, I now turn to the facts of this case.

As an initial matter, it is necessary to determine the factual scope of my review. As noted above, the parties contest whether the Copyright Assignment Agreement is relevant to my determination of whether Righthaven has a sufficient interest to institute an action for infringement.[6] Although the Assignment represents the culmination of the agreement between MediaNews Group

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infringement is arguably more analogous to a personal tort than any contract right. This issue is, however, not essential to my ruling in this case, and I decline to definitively address it.

[4] One might ask, what of the author of a work-for-hire, who has exchanged his creative energies for a sum certain? The answer lies in the question. The author of a work-for-hire has freely bargained away his creative interest in the copyrighted work; he has no creative interest for federal copyright law to protect.

[5] The Second Circuit has taken an even more restrictive view of standing to sue for copyright infringement. *See Eden Toys, Inc. v. Florelee Undergarment Co.*, 697 F.2d 27, 32 (stating that §501(b) "authorizes only two types of claimants to sue for copyright infringement: (1) owners of copyrights, and (2) persons who have been granted exclusive licenses by owners of copyrights"). This holding ignores the plain language and legislative history of the 1976 Act, which expressly provide that beneficial owners have the right to sue for infringement.

[6] The parties do not dispute that the only evidence potentially relevant to my determination of this issue is the Copyright Assignment Agreement and the Assignment. Because these are contractual agreements, my interpretation of them is a question of law. *See Union Rural Elec. Ass'n, Inc. v. Pub. Util. Comm'n*, 661 P.2d 247, 251 (Colo. 1983) ("Interpretation of contract language is generally a question of law"). There are no other disputed issues, and the parties' dispute over the nature of the rights transferred from MediaNews Group, Inc. to Righthaven is one properly resolved at summary judgment.

and Righthaven to transfer some interest in the Work, "a contract . . . [must] be appraised in view of the surrounding circumstances known to the parties at the time of its execution . . . ." *Evensen v. Pubco Petroleum Corp.*, 274 F.2d 866 (10th Cir. 1960) (citing Restatement (First) of Contracts § 230 (1932)).

The blank form of the Assignment agreement, which required MediaNews Group, Inc. to supply only the date of the transfer and an authorizing signature to give it effect, was attached to the Copyright Assignment Agreement. *See* Copyright Assignment Agreement, Schedule 5 – Copyright Assignment (doc. 20-2) at 21. The Assignment at issue in this case was undeniably contemplated at the time the parties entered into the Copyright Assignment Agreement. The Assignment reflected the circumstances bargained for and agreed to by MediaNews Group, Inc. and Righthaven in the Copyright Assignment Agreement and it must be appraised accordingly.

The Assignment purports to transfer "all rights requisite to have Righthaven recognized as the copyright owner of the Work . . . ." As evidenced by the parties' arguments in this case, the transfer of a copyright interest is an issue of utmost importance in determining whether a party has standing to institute an action for infringement. A party asserting the transfer of such a right, and the concomitant standing to sue, bears the burden of establishing such a transfer. A clause purporting to transfer "all rights requisite" merely begs the question. Accordingly, I turn to the language of the Copyright Assignment Agreement to determine the nature of the "rights requisite" transferred from MediaNews Group, Inc. to Righthaven. As the Copyright Assignment Agreement states:

> Despite any Copyright Assignment, [Media News Group] shall retain (and is hereby granted by Righthaven) an exclusive license to Exploit the Publisher Assigned Copyrights for any lawful purpose whatsoever and Righthaven shall have no right or license to Exploit or participate in the receipt of royalties from the Exploitation

> of the Publisher Assigned Copyrights other than the right to proceeds in association with a Recovery. To the extent that Righthaven's maintenance of rights to pursue infringers of the Publisher Assigned Copyrights in any manner would be deemed to diminish Publisher's right to Exploit the Publisher Assigned Copyrights, Righthaven hereby grants an exclusive license to Publisher to the greatest extent permitted by law so that Publisher shall have unfettered and exclusive ability to Exploit the Publisher Assigned Copyrights. Righthaven shall have no obligation to protect or enforce any Work of Publisher that is not Publisher Assigned Copyrights.

Copyright Assignment Agreement (Doc. 20-2), Schedule 1, Paragraph 6 (emphasis added). This document indicates that the purported assignment of "rights requisite" is meaningless. Media News Group retained all rights to exploit the Work; no legal interest ever changed hands. The usage of the term "exclusive license" does not change this analysis. As noted by the Seventh Circuit, "It is the substance of the agreement, not the labels that it uses, that controls [my] analysis." *Hyperquest, Inc.*, 632 F.3d at 383.

Righthaven's only interest in the Work is "the right to proceeds in association with a Recovery." The Copyright Assignment Agreement defines "Recovery" as "any and all sums . . . arising from an Infringement Action." Thus, when read together, the Assignment and the Copyright Assignment Agreement reveal that MediaNews Group has assigned to Righthaven the bare right to sue for infringement – no more, no less. Although the assignment of the bare right to sue is permissible, it is ineffectual. Standing alone, "[t]he right to sue for an accrued claim for infringement is not an exclusive right under § 106." *Silvers*, 402 F.3d at 884. Furthermore, neither the Assignment nor the Copyright Assignment Agreement provide Righthaven any beneficial interest in the dissemination of the Work. Accordingly, Righthaven is neither a "legal owner" or a "beneficial owner" for purposes of § 501(b), and it lacks standing to institute an action for copyright infringement.

CONCLUSION

It is apparent from the terms of the Assignment and the Copyright Assignment Agreement that Righthaven lacks standing to institute an action for copyright infringement. Because the jurisdictional issues raised in the Motion to Dismiss are intertwined with the merits of the case, I convert Mr. Wolf's Rule 12(b)(1) motion to a Rule 56 motion and GRANT him SUMMARY JUDGMENT. Furthermore, in light of the need to discourage the abuse of the statutory remedies for copyright infringement, I exercise my discretion under Section 505 of the Copyright Act and ORDER that Righthaven shall reimburse Mr. Wolf's full costs in defending this action, including reasonable attorney fees.

Dated: September 27, 2011

BY THE COURT:

/s/ John L. Kane
Senior U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.: 11-cv-00830-JLK

RIGHTHAVEN LLC, a Nevada Limited Liability Company,

Plaintiff,

v.

LELAND WOLF, an individual, and
IT MAKES SENSE BLOG, an entity of unknown origin and nature,

Defendants.

FINAL JUDGMENT

Pursuant to and in accordance with Fed. R. Civ. P. 58(a) and the Memorandum Opinion and Order [Docket No. 49] entered by Judge John L. Kane on September 29, 2011, incorporated herein by reference, it is

ORDERED that the Motion to Dismiss For Lack Of Subject Matter Jurisdiction (Filed 5/17/11; Doc. No. 11) is GRANTED. It is

FURTHER ORDERED that final judgment is hereby entered in favor of the Defendant LELAND WOLF[1] and against the Plaintiff RIGHTHAVEN, LLC. It is

FURTHER ORDERED that the Defendant Wolf shall have his full costs in defending this action, to be taxed by the clerk pursuant to the provisions of Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1; and that the Defendant Wolf shall have his reasonable attorney fees.

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[1] Defendant It Makes Sense Blog was dismissed by the Court in the Memorandum Opinion and Order [Docket No. 49], p.2, n.1, as it is not a person or organized legal entity.

DATED at Denver, Colorado, this 30th day of September, 2011.

FOR THE COURT:

Gregory C. Langham, Clerk

By: s/Edward P. Butler
Edward P. Butler
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No.: 1:11-cv-00830-JLK

RIGHTHAVEN LLC, a Nevada limited-liability company,

Plaintiff,

v.

LELAND WOLF, an individual, and
IT MAKES SENSE BLOG, an entity of unknown
origin and nature

Defendants.

RIGHTHAVEN LLC'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT WITH CERTIFICATE OF SERVICE

NOTICE is hereby given that Plaintiff Righthaven LLC ("Righthaven"), hereby appeals the Clerks Judgment entered in this action on September 30, 2011 (the "Judgment", Doc. # 50) to the United States Court of Appeals for the Tenth Circuit. The Judgment entered in favor of Defendants Leland Wolf and the It Makes Sense Blog (collectively the "Defendants") was based on, and Righthaven's appeal in this action includes, the Court's September 27, 2011 Order (Doc. # 49), the Judgment (Doc. # 50), the associated briefing by the parties any by *amici* in connection with Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. ## 11-12, 20, 23-24, 27, 29-30, 34-36, and 38 and 40), and the transcript of the proceedings held in connection with Defendants' motion (Doc. # 48), all of which will properly be designated by Righthaven as part of the record on appeal to the extent required.

Dated this 11th day of October, 2011.

SHAWN A. MANGANO, LTD.

By: /s/ Shawn A. Mangano
SHAWN A. MANGANO, ESQ.
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Attorney for Plaintiff Righthaven LLC

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on this 11th day of October, 2011, I caused a copy of the **RIGHTHAVEN LLC'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT WITH CERTIFICATE OF SERVICE** to be to be served by the Court's CM/ECF system.

By: /s/ Shawn A. Mangano
SHAWN A. MANGANO, ESQ.