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8 Attorneys for Defendants  
9 *Vote for the Worst, LLC,*  
10 *Nathan E. Palmer and David J. Della Terza*

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 RIGHTHAVEN, LLC, a Nevada limited-  
14 liability company  
15  
16 Plaintiff,  
17  
18 vs.  
19  
20 VOTE FOR THE WORST, LLC, an Utah  
21 limited-liability company; NATHAN E.  
22 PALMER, an individual; and DAVID J.  
23 DELLA TERZA, an individual  
24  
25 Defendants.

Case No.: 2:10-CV-01045-KJD-RJJ

**DECLARATION OF NATHAN E.  
PALMER IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER  
JURISDICTION AND LACK OF  
PERSONAL JURISDICTION**

26 I, Nathan E. Palmer, declare under penalty of perjury pursuant to the laws of the United  
27 States that the following are true:

28 1. I have personal knowledge of the facts set forth below, except for those statements  
made on information and belief, and I am competent to testify regarding these facts and  
statements. I declare that all statements made herein of my own knowledge are true and that all  
statements made on information and belief are believed to be true.

2. I am and have always been a resident of the State of Utah. I have never lived or  
worked in the State of Nevada.

3. I am co-owner of Vote for the Worst, LLC ("VFTW"), a Limited Liability  
Corporation (LLC), incorporated and registered in the State of Utah. VFTW has always been a

1 Utah LLC. Attached as Exhibit A is a true and correct copy of VFTW's incorporation certificate,  
2 as provided by the State of Utah. VFTW's principal place of business is also in Utah.

3 4. VFTW is essentially a non-commercial website; it has a link to Café Press where t-  
4 shirts with "Vote for the Worst" can be purchased. The yearly profit on that merchandise from  
5 Café Press from June 2009 through May 2010 was \$33.76. Prior years have resulted in similarly  
6 negligible amounts of merchandise sold from Café Press. There is no record of any merchandise  
7 being sold to persons in the State of Nevada. VFTW does not, nor ever has it, employed any  
8 persons, sold any merchandise or services, or had any affiliations with any entity or person in the  
9 State of Nevada.

10 5. VFTW does not have any physical presence in Nevada. It does not have an office  
11 or any employees in Nevada. It has not designated an agent for service of process in Nevada.  
12 VFTW has not done anything physically in Nevada. VFTW does not perform any services, does  
13 not service or maintain any equipment, is not webhosted, and does not keep any records in  
14 Nevada.

15 6. VFTW's only contact with Nevada was and is through its website, located at  
16 <http://www.votefortheworst.com/>, which only disseminates information and does not sell any  
17 goods or services. VFTW is the owner and registrant of the Internet domain names  
18 <votefortheworst.com>.

19 7. The VFTW website is non-commercial, blog-type website that was designed by a  
20 couple of friends to support entertaining, yet not necessarily talented, contestants on American  
21 Idol. It can be viewed completely free of charge to people located anywhere in the world.  
22 VFTW's website generates a small amount of revenue from advertisements from Google  
23 AdSense.

24 8. Based on my review of VFTW's website visitor statistics from Google Analytics  
25 sampled data, Nevada has some of the lowest ranking statistics of any state in the United States.  
26 For the first quarter of 2010, out of 2,129,702 visitors to VFTW's website, only 10,447 originated  
27  
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1 from Nevada, which translates to 0.49% of the total visits. (It is my understanding that a “visit” to  
2 our website occurs each time an Internet user lands on our home page. The statistic does not  
3 differentiate between how many of those “visits” actually came from a single computer/user.)

4 9. The allegedly infringing article appears to have been posted by a forum user with  
5 an IP address from India. He/she posted approximately 1/3 of a *Las Vegas Review Journal*  
6 (“LVRJ”) article on April 11, 2010, and included a link directly back to the LVRJ at the bottom of  
7 the forum post. Based on Google Analytics sampled data, zero (0) users from the State of Nevada  
8 visited the forum page where the portion of the allegedly infringing article was temporarily posted.  
9 Any revenue from advertising from the forum page where the portion of the allegedly infringing  
10 article was located amounted to, at most, \$0.01 (one penny).

11 10. Neither I nor VFTW posted the allegedly infringing portion of an article, nor did I  
12 or VFTW receive any notice that the portion of the article had been posted on page 8 of one of  
13 VFTW’s discussion forums. Neither the *Las Vegas Review Journal* nor Righthaven ever notified  
14 me or VFTW of the portion of the allegedly infringing article, nor did they ever request that the  
15 portion of the article be removed.  
16

17 11. Once the portion of the allegedly infringing article was independently noticed, it  
18 was immediately removed from VFTW’s website. It is not currently on VFTW’s website, nor will  
19 it be in the future. The portion of the allegedly infringing article was removed before  
20 Righthaven’s lawsuit was filed.

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12. Neither I nor VFTW has any contacts with Nevada, and we would suffer severe hardship in terms of cost and asymmetries of information if forced to defend a lawsuit in the District of Nevada. Outside counsel would have to be retained for representation in Nevada. More importantly, all of the evidence, including testimony, is located in the State of Utah; thus, VFTW and I would incur significant costs to produce this evidence at trial. It would be plainly unfair for VFTW and me to be called on to defend ourselves in a forum with which we have had no contacts and in which we did not anticipate causing injury.

EXECUTED this August 16, 2010



NATHAN E. PALMER