

1 John L. Krieger (NV Bar No. 6023)
 JKrieger@LRLaw.com
 2 Nikkya G. Williams (NV Bar No. 11484)
 NWilliams@LRLaw.com
 3 LEWIS AND ROCA LLP
 3993 Howard Hughes Pkwy., Suite 600
 4 Las Vegas, Nevada 89169
 Telephone: (702) 949-8200
 5 Facsimile: (702) 949-8298

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

9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 RIGHTHAVEN, LLC, a Nevada limited liability
 company,
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 Plaintiff,
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 vs.
 14
 VOTE FOR THE WORST, LLC, an Utah
 15 limited-liability company; NATHAN E.
 PALMER, an individual; and DAVID J. DELLA
 16 TERZA, an individual,
 17 Defendant.

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

**DEFENDANT’S MOTION TO STAY
 RULE 26(f) CONFERENCE**

18 Defendants Vote For The Worst, LLC, Nathan E. Palmer, and David J. Della Terza, by and
 19 through their counsel, hereby move the Court, pursuant to Rule 26(c), to stay the Rule 26(f)
 20 conference until the Court rules on Defendants’ pending motion to dismiss. (Doc. 14.) This
 21 motion is supported by the memorandum of points and authorities below and the Declaration of
 22 Nikkya G. Williams (“Williams Decl.”) attached hereto.

23 Plaintiff Righthaven, LLC (“Righthaven”) sent a letter to Defendants’ counsel on
 24 September 28, 2010, requesting that counsel participate in a 26(f) discovery conference. (Williams
 25 Decl. ¶ 2.) Defendants’ counsel contacted Righthaven and requested that Righthaven agree to
 26 stipulate to stay the 26(f) conference pending the Court’s decision on Defendants’ Motion to
 27 Dismiss. (*Id.* ¶ 3.) Righthaven refused to agree to postpone the Rule 26(f) conference,
 28 necessitating the filing of the instant motion. (*Id.* ¶ 4.)

Lewis and Roca LLP
 3993 Howard Hughes Parkway
 Suite 600
 Las Vegas, Nevada 89169

1 On August 16, 2010, Defendants moved to dismiss this copyright infringement action --
2 one of over 140 suits filed by Plaintiff Righthaven, LLC (“Righthaven”) since March 2010 -- on
3 the grounds that the Court does not have subject matter jurisdiction or personal jurisdiction over
4 Defendants. If the Court grants Defendants’ motion to dismiss, there would be no need for the
5 parties to hold a Rule 26(f) conference and commence discovery. Thus, it is premature for the
6 parties to proceed with the Rule 26(f) conference and discovery on the merits until after the Court
7 has decided the pending motion.

8 However, notwithstanding the likelihood that the Court will soon rule on Defendants’
9 motion to dismiss, Righthaven is insisting that the parties proceed with a Rule 26(f) conference,
10 which, of course, would trigger the deadline for making initial disclosures and commencing
11 discovery. Righthaven is apparently attempting to put pressure on Defendants, a company and
12 individuals who live hundreds of miles away and have no contacts with the state of Nevada, to
13 incur potentially unnecessary and burdensome attorneys’ fees and costs in an effort to compel
14 Defendants to settle a case that was brought in an improper forum by an improper plaintiff.
15 Defendants should not be subjected to the burden and expense of discovery on the merits unless
16 and until the Court determines that it has personal jurisdiction over them and subject matter
17 jurisdiction over the claim. It is well within the Court’s discretion to order a stay of the Rule 26(f)
18 conference and, indeed, courts in the Ninth Circuit, including this Court, have done so. *See e.g.*
19 *Guerra v. Just Mortgage Inc.*, 2:10-cv-00029-KJD-RJJ, 2010 U.S. Dist. LEXIS 93077, at *3 (D.
20 Nev. Aug. 18, 2010). A pending motion to dismiss for lack of subject matter and personal
21 jurisdiction is grounds for staying discovery. *See Twin City Fire Ins. Co. v. Employers Ins. of*
22 *Wausau*, 124 F.R.D. 652, 653 (D. Nev. 1989).

23 Righthaven would not be prejudiced by a stay of the Rule 26(f) conference. The conduct
24 that is the subject of its suit is alleged copyright infringement based on the posting of a single Las
25 Vegas Review-Journal article by a third party on the VoteForTheWorst.com website. Righthaven
26 is not seeking any preliminary injunctive relief and Defendants removed the article from their
27 website prior to this lawsuit being filed. Accordingly, there is no imminent need to proceed with
28 discovery on the merits given the pending motion before the Court.

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CONCLUSION

For the foregoing reasons, the Court should enter an order staying the Rule 26(f) conference until the Court renders a decision on Defendants’ pending motion to dismiss.

Dated: this 6th day of October, 2010.

Respectfully submitted,
LEWIS AND ROCA LLP

By: /s/ Nikkya G. Williams
John L. Krieger (Nevada Bar No. 6023)
Nikkya G. Williams (Nevada Bar No. 11484)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169
(702) 949-8200 (Tel.)
(702) 949-8398 (Fax)
*Attorneys for Defendants Vote for the Worst,
LLC, NATHAN E. PALMER, and DAVID J.
DELLA TERZA*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of
3 Lewis and Roca LLP and that on this 6th day of October, 2010, I caused documents entitled:

- 4 • DEFENDANT’S MOTION TO STAY RULE 26(f) CONFERENCE

5 to be served as follows:

- 6 [X] by depositing same for mailing in the United States Mail, in a sealed envelope
7 addressed to Steven A. Gibson, Esq., Righthaven, LLC, 9960 West Cheyenne
8 Avenue, Suite 210, Las Vegas, Nevada, 89129-7701, upon which first class postage
9 [] Pursuant to Fed. R. Civ. P. 5(b)(2)(D), to be sent via facsimile as indicated; and/or
10 [] to be hand-delivered;
11 [X] by the Court’s CM/ECF system.

12
13 /s/ Diana Trujillo
14 Diana Trujillo
15 An employee of Lewis and Roca LLP
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