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

11 RIGHTHAVEN LLC, a Nevada limited-
liability company,

12
13 Plaintiff,

14 v.

15 VOTE FOR THE WORST, LLC, a Utah
16 limited-liability company; NATHAN E.
PALMER, an individual; and DAVID J.
17 DELLA TERZA, an individual;

18 Defendants.
19

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

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTION TO STAY
RULE 26(f) CONFERENCE**

20
21 Righthaven LLC (“Righthaven”) hereby opposes Defendant Vote for the Worst, LLC,
22 Defendant Nathan E. Palmer, and Defendant David J. Della Terza’s (collectively with Vote for
23 the Worst, LLC and Nathan E. Palmer known herein as the “Defendants”) Motion to Stay Rule
24 26(f) Conference (Docket No. 12; “Motion to Stay”). Righthaven bases this Opposition to the
25 Defendants’ Motion to Stay on the pleadings and papers on file in this action, on oral argument
26 of counsel made at the time of this Court’s hearing of the Motion to Stay, and on any other
27 matter of which this Court takes notice.
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 If the Court believes the Defendants' pending Motion to Dismiss (Docket No. 8; "Motion
4 to Dismiss") will take more time on the Court's busy docket, Righthaven will respect the Court's
5 decision and will suspend efforts to schedule the Rule 26(f) early case conference for a
6 reasonable time. However, the Defendants' unwillingness to agree to participate in a Rule 26(f)
7 conference has prolonged the limited discovery required in this case and displayed a nonchalant
8 attitude, if not blatant disregard, for the Local Rules and Federal Rules of Civil Procedure.
9 Righthaven has been rebuffed and denied in its attempt to schedule an early case conference
10 mandated by both Local Rule 26-1(d) and Federal Rule of Civil Procedure 26(f). The standard
11 before this Court, regarding a Rule 26(f) conference, requires the Plaintiff to "initiate the
12 scheduling of the Fed. R. Civ. P. 26(f) meeting within thirty (30) days after the defendant
13 answers or otherwise appears." Defendants' assumptions that Righthaven's Rule 26(f) requests
14 have been unreasonable and an attempt to ratchet up attorney's fees are the exact opposite of
15 Righthaven's actual intentions.

16
17 **II. FACTS**

18 On September 28, 2010, Righthaven sent a request, via a letter, to opposing counsel for
19 the Defendants requesting participation in the Rule 26(f) conference. Righthaven advised the
20 Defendants that it was inappropriate to delay discovery, without a directive from the Court. In
21 response to the Righthaven letter, opposing counsel requested Righthaven agree to stipulate to
22 postpone discovery, specifically the Rule 26(f) conference, until the Court's pending decision on
23 the Motion to Dismiss. Righthaven did not agree to postpone discovery in this matter via the
24 proposed stipulation.

1 **III. ARGUMENT**

2 **A. Parties' responsibility to schedule a Rule 26(f) conference**

3 Both parties in this action have a responsibility to submit a proposed discovery order as
4 the result of a successful Rule 26(f) conference, pursuant to Local Rule 26-1(d). However, the
5 Defendants disregarded the duties of the parties to provide the Court notice of a discovery plan
6 and compliance with Local Rule 26-1(d). Without a successful motion to stay discovery by the
7 Defendants, the parties' duty required them to proceed with discovery on the merits. Ultimately,
8 Righthaven does not believe the Motion to Stay is appropriate under the facts of this case
9 because allowing discovery on the merits would establish clear infringement liability and bring a
10 swift and expeditious resolution on the merits which will, in reality reduce the cost of litigation
11 for all parties.

12
13 **B. Pending motions should not stay discovery process**

14 Frankly, the Court's decisions in *Righthaven v. Dr. Shezad Malik Law Firm P.C.* (Case
15 No: 2:10-cv-0636-RLH-RJJ) and *Righthaven v. Industrial Wind Action Corp. et al.* (Case No:
16 2:10-cv-0601-RLH-PAL) denying comparable motions to dismiss for lack of personal
17 jurisdiction argue in favor of no delay and simplify the positive adjudication for this Court to
18 exercise personal jurisdiction over the Defendants. Indeed, Righthaven would urge the
19 Defendants to withdraw the underlining Motion to Dismiss in light of these recent decisions by
20 this Court. While Righthaven understands the Defendants may have the viewpoint that
21 jurisdiction is decided on a case by case basis, the Defendants facts and the jurisdictional facts of
22 the two cases referenced above do not get much closer.

23 In *Righthaven v. Dr. Shezad Malik Law Firm P.C.* (Case No: 2:10-cv-0636-RLH-RJJ),
24 Judge Hunt ruled that "It is common knowledge that the Las Vegas Review Journal newspaper is
25 published and distributed in Las Vegas, Nevada by the party which assigned the copyrights
26 together with the right to seek redress for past, present and future infringements. Accordingly,
27 this Court has jurisdiction over the Defendant, based upon the allegations of the Complaint."
28 Case No: 2:10-cv-0636-RLH-RJJ Order Mot. to Dismiss – ##6, 8. In the second case,

1 *Righthaven v. Industrial Wind Action Corp. et al.* (Case No: 2:10-cv-0601-RLH-PAL), Judge
2 Hunt also denied a motion to dismiss where the defendants argued similar if not conspicuously
3 parallel jurisdictional arguments to the Defendants. In sum, Righthaven believes that the pending
4 Defendants’ Motion to Dismiss will fail because to grant the motion would be contrary to the
5 Ninth Circuit holdings¹ in this regard and not to mention very recent precedent by Judge Hunt in
6 two pending Righthaven civil actions.

7 The issues of liability and damages also appear to lend themselves to settlement by way
8 of a Rule 26(f) early case conference. If a Rule 26(f) conference was held in good faith and both
9 parties respected the intention of the Rule 26(f) conference to provide a forum for settlement
10 discussion, it would limit both attorneys’ fees and judicial resources. Additionally, Righthaven
11 would also invite a confidential settlement conference administered by the Magistrate Judge of
12 this case, as has been the recent procedure in other Righthaven cases².

13 Nevertheless, Righthaven is willing to suspend the Rule 26(f) conference if this Court
14 estimates a timely adjudication of the pending motion, specifically the Defendants’ Motion to
15 Dismiss. If the pending motion in this case is not slated for resolution in the near future, delaying
16 the discovery process would prejudice Righthaven, because it would delay the inevitable
17 judgment on the merits which Righthaven believes will clearly be in Righthaven’s favor.

18 19 **IV. CONCLUSION**

20 For the reasons set forth above, Righthaven respectfully requests that the Court deny the
21 Defendants’ Motion to Stay.

24 ¹ Applying the “effects” test of *Calder v. Jones*, 465 U.S. 783 (1984), the Ninth Circuit found that where a
25 defendant “willfully infringed copyrights owned by [the plaintiff], which, as [the defendant] knew, had its principal
26 place of business in the Central District [of California], “[t]his fact alone is sufficient to satisfy the ‘purposeful
27 availment’ requirement.” *Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.*, 106 F.3d 284, 289
(9th Cir. 1994).

27 ² *Righthaven v. Emerson Wong et al.* (Case No: 2: 10-cv-0856-LRH-RJJ); *Righthaven v. Dr. Shezad Malik Law
28 Firm P.C.* (Case No: 2:10-cv-0636-RLH-RJJ); and *Righthaven v. Tuff-N-Uff Productions, Inc., et al.* (Case No: 2:
10-cv-0794-PMP-PAL).

1 Dated this twelfth day of October, 2010.

2
3 RIGHTHAVEN LLC

4 By: /s/ J. Charles Coons
5 J. CHARLES COONS, ESQ.
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7 JOSEPH C. CHU, ESQ.
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9 9960 West Cheyenne Avenue, Suite 210
10 Las Vegas, Nevada 89129-7701
11 Attorneys for Plaintiff

12 **CERTIFICATE OF SERVICE**

13 Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee
14 of Righthaven LLC and that on this twelfth day of October, 2010, I caused the **PLAINTIFF'S**
15 **OPPOSITION TO DEFENDANTS' MOTION TO STAY RULE 26(f) CONFERENCE** to
16 be served by the Court's CM/ECF system.

17
18 By: /s/ J. Charles Coons
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