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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,

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

12
 13 Plaintiff,

**DEFENDANTS' REPLY IN SUPPORT
 OF THEIR MOTION TO STAY RULE
 26(f) CONFERENCE**

14 vs.

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

17 Defendant.

18 Defendants Vote For The Worst, LLC, Nathan E. Palmer, and David J. Della Terza, by and
 19 through their counsel, hereby submit their reply in support of their motion to stay the Rule 26(f)
 20 conference.

21 Righthaven improperly contends that orders entered in other Righthaven lawsuits
 22 prosecuted in this District dictate the outcome of this case. Indeed, to embark on such a course as
 23 Righthaven proposes is contrary to established Ninth Circuit law.

24 First, the orders entered in *Righthaven v. Dr. Shezad Malik Law Firm P.C.* (Case No: 2:10-
 25 cv-0636-RLH-RJJ) and *Righthaven v. Industrial Wind Action Corp. et al.* (Case No: 2:10-cv-
 26 0601-RLH-PAL) are not dispositive of any factual or legal issue currently before this Court.
 27 Judge Hunt's orders in *Malik* and *Industrial Wind Action* have no binding precedent on cases
 28 pending before any other judges in the District of Nevada. *See In Re Silverman*, No. 08-56508,

1 2010 WL 3169415, at *3 (9th Cir. Aug. 12, 2010) (citing *Starbuck v. City and County of San*
2 *Francisco*, 556 F.2d 450, 457 n. 13 (9th Cir. 1977)) (“[t]he doctrine of stare decisis does not
3 compel one district court judge to follow the decision of another.”).

4 Moreover, the orders entered in *Malik* and *Industrial Wind Action* are necessarily limited
5 to the facts of those cases. The determination of whether a defendant is subject to personal
6 jurisdiction in a particular forum ultimately rests on the specific facts present in each individual
7 case. The Ninth Circuit has stated that “the personal jurisdiction inquiry cannot be answered
8 through the application of a mechanical test but instead must focus on the relationship among the
9 defendant, the forum, and the litigation within the particular factual context of each case.” *Core-*
10 *Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1487 (9th Cir. 1993).

11 The facts in this case are as different as can be from those in *Malik* and *Industrial Wind*
12 *Action*. In both *Malik* and *Industrial Wind Action*, the defendants themselves were alleged to have
13 posted the infringing article. In this case, Defendants have established that a third-party, not the
14 Defendants, posted the allegedly infringing article to the Vote for the Worst website. The
15 Defendants, in this case, are not accused of taking any volitional act with respect to the publication
16 of the Plaintiff’s works, but rather are accused of simply failing to remove works posted by a third
17 party. The acts of that third party *might* be considered to be volitional acts targeting the forum
18 state, but these defendants’ alleged *inaction* can not be seriously considered to meet the express
19 targeting requirement under *Calder v. Jones*.

20 Moreover, even though the Defendants are before this court due to alleged inaction, they
21 nevertheless removed the allegedly infringing article from their website before Plaintiff filed the
22 instant lawsuit. These facts are entirely different from those presented in *Malik* or *Industrial Wind*
23 *Action*; therefore, the orders entered in that case are inapposite to the instant case.

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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 14th day of October, 2010.

Respectfully submitted,
LEWIS AND ROCA LLP

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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 14th day of October, 2010, I caused documents entitled:

- 4 • DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY RULE
5 26(f) CONFERENCE

6 to be served as follows:

7 [] by depositing same for mailing in the United States Mail, in a sealed envelope
8 addressed to Steven A. Gibson, Esq., Righthaven, LLC, 9960 West Cheyenne
9 Avenue, Suite 210, Las Vegas, Nevada, 89129-7701, upon which first class postage
10 was fully prepaid; and/or

11 [] Pursuant to Fed. R. Civ. P. 5(b)(2)(D), to be sent via facsimile as indicated; and/or

12 [] to be hand-delivered;

13 [X] by the Court's CM/ECF system.

14 /s/ Jennifer Bryan

15 Jennifer Bryan

16 An employee of Lewis and Roca LLP