MOTION TO FILE AMICUS CURIAE BRIEF

Non-party Professor Jason Schultz ("Amicus") hereby moves for leave to file the accompanying amicus curiae brief in the above-captioned case concerning Righthaven's response to this Court's November 15, 2010 Order To Show Cause ("OSC") why this case should not be dismissed on fair-use grounds. Amicus takes no position on whether Righthaven's case should be dismissed at this juncture, but seeks leave to file a brief to address the legal issues presented in Righthaven's OSC submission. Defendants have consented to the filing of this brief. Plaintiff does not consent to the filing of this brief.

Amicus is an Assistant Clinical Professor of Law and the co-director of the Samuelson Law, Technology & Public Policy Clinic at the University of California's Boalt Hall School of Law. Amicus has no personal stake in the outcome of this case. Instead, he has an interest in ensuring that copyright laws are interpreted in a manner that advances the purposes of the Copyright Act: to foster artistic creation while permitting beneficial public use of copyrighted works. In support of that interest, Amicus seeks leave to file the attached amicus curiae brief. The proposed brief focuses on two issues: (1) the fair-use doctrine involves equitable balancing of four statutory factors and rejects formulaic, bright-line tests; and (2) properly weighed, the four statutory factors strongly support a finding of fair use in this action.

Although more common on appeal, district courts routinely consider *amicus* briefs. *See Elektra Enter. Group v. Barker*, 551 F. Supp. 2d 234, 237 (S.D.N.Y. 2008) (accepting brief of *amici curiae*); *U.S. v. Perelman*, Case No. 09-CR-00443-KJD-LRL, 2010 WL 3312627 (D. Nev. Aug. 19, 2010) (considering *amicus* brief from the ACLU); *PEST Committee v. Miller*, 648 F. Supp. 2d 1202, 1214 (D. Nev. 2009) (denying motion to intervene, but treating the submissions of proposed intervenors as *amici* briefs). *Amicus* respectfully submits that the attached brief will be useful to the Court in ruling on the OSC.

¹ Professor Schultz submits this brief on his own behalf, not on behalf of the Samuelson Law Clinic or the Boalt Hall School of Law. His counsel represents defendants in two other actions pending in this court that have been filed by Righthaven. *See* Case Nos. 10-cv-01343, 10-cv-01356.

1	For the foregoing reasons, <i>Amicus</i> respectfully requests that the Court grant the motion	
2	for leave to file the accompanying amicus curiae brief.	
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4	Dated: December 14, 2010	Respectfully submitted,
5		CHAD A. BOWERS, LTD.
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