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CENTER FOR INTERCULTURAL ORGANIZING  
9

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA

13 RIGHTHAVEN, LLC, a Nevada limited liability company )  
14 ) CASE NO. 2:10-cv-01322-RCJ-LRL  
15 Plaintiff, )  
16 vs. )  
17 KAYSE JAMA, an individual, and ) **MOTION TO DISMISS**  
CENTER FOR INTERCULTURAL )  
18 ORGANIZING, a Non-Profit Organization, )  
19 Defendant. )

20  
21 COME NOW, Defendants KAYSE JAMA, an individual, and CENTER FOR  
22 INTERCULTURAL ORGANIZING, by and through their attorneys of record, OLSON, CANNON,  
23 GORMLEY & DESRUISSEAUX, hereby move the Court to dismiss this action for lack of subject  
24 matter jurisdiction, lack of personal jurisdiction and failure to state a claim upon relief can be  
25 granted.

26 This Motion is made and based upon the attached points and authorities, the papers and

27 ...

28 ...

1 pleadings on file herein and such oral argument as the Court may entertain at the hearing on the  
2 motion.

3 **POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION**

6 The Defendant CENTER FOR INTERCULTURAL ORGANIZING (“the CIO”) is a non-  
7 profit organization dedicated to the education of immigrants, refugees and allies on local, national  
8 and global social justice issues affecting immigrants and refugees. Through the CIO, new members  
9 of the United States are introduced and encouraged to participate in the democratic process. To  
10 facilitate its purpose, the CIO offers various educational programs that focus on civic engagement,  
11 leadership development and mobilization. Although the CIO educates its members on national  
12 issues, its members are limited to those residing in the Portland, Oregon metropolitan area. All  
13 activities carried out by the CIO are confined within the state of Oregon. Likewise, CIO’s Executive  
14 Director, Kayse Jama (“Jama” with CIO, collectively “Defendants”), lives in Oregon and does not  
15 conduct any business outside of Oregon.

16 Plaintiff’s Complaint alleges that the CIO improperly reproduced an article originally  
17 published by Las Vegas Review-Journal on the CIO website on July 8, 2010. Although the Plaintiff  
18 is not the original publisher of this article, it maintains it purchased the rights to publication. As this  
19 Court is likely aware, the Plaintiffs have filed numerous lawsuits arising out of similar facts and  
20 circumstances against numerous Defendants. Much like those other cases, the Defendants here are  
21 neither residents of the State of Nevada, nor conduct any business in the State of Nevada. In its  
22 Complaint, Plaintiff makes several conclusory statements that this Court has personal jurisdiction  
23 because “The Defendants’ display of the Infringement was and is purposefully directed at Nevada  
24 residents.”<sup>1</sup> The Complaint fails to provide any underlying support, other than to meagerly aver that  
25 the “...infringement was and is of specific interest to Nevada residents.”<sup>2</sup> Additionally, there is no  
26 allegation that Defendants conduct or solicit business in Nevada, maintain an office in Nevada, or

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27 <sup>1</sup> See Plaintiff’s Complaint at ¶16.

28 <sup>2</sup> See Plaintiff’s Complaint at ¶15.

1 communicate with anyone in Nevada.

2 Given the forgoing, the Complaint should be dismissed for two reasons. First, Plaintiff has  
3 not plead that it was the holder of the “work” at issue at the time of the alleged infringement.  
4 Plaintiff only took an assignment of the “work” after it was allegedly discovered that CIO placed a  
5 copy of Review-Journal article on its website. Therefore, Plaintiff does not have standing to sue  
6 because it did not own a copyright in the material until after the alleged infringement occurred.  
7 Finally, Plaintiff’s allegations fail to state a case for the exercise of personal jurisdiction, general or  
8 specific, over a non-profit Oregon entity or its executive director. Therefore, the Complaint should  
9 be dismissed in its entirety.

## 10 II.

### 11 LEGAL STANDARD

12 When ruling on a motion to dismiss, it is well established that the Court need only accept as  
13 true uncontroverted allegations of facts. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-50, 173. Ed.  
14 2d 868 (2009); *Bell Atlantic Corp. Twombly*, 550 U.S. 544, 555-57, 127 S. Ct. 1955, 167 L. Ed. 2d  
15 929 (2007). Thus, courts considering a motion to dismiss should “begin by identifying pleadings  
16 that, because they are no more than conclusions, are not entitled to the assumption of truth[;] [w]hile  
17 legal conclusions can provide the framework of a complaint, they must be supported by factual  
18 allegations.” *Iqbal*, 129 S. Ct. at 1940. These pleading standards govern jurisdictional allegations  
19 as well. *See, e.g. Watkins v. Kajima Int’l*, No. 3:08-0426, 2009 WL 3053856, at 6 (M.D. Tenn. Sept,  
20 18, 2009) (conclusory pleading of personal jurisdiction was deficient under *Twombly*). Thus, on a  
21 motion to dismiss for lack of personal jurisdiction, the plaintiff must make a *prima facie* showing  
22 of facts, through its pleadings and affidavits, that demonstrate it would be *plausible* for the court to  
23 constitutionally exercise jurisdiction over the defendant. *See id.: Meyers v. Bennett Law Offices*, 238  
24 F.3d 1068, 1071 (9<sup>th</sup> Cir. 2001). In ruling on the motion, only uncontroverted allegations must be  
25 accepted as true. *See AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9<sup>th</sup> Cir. 1996).  
26 Thus, the court need not assume the truth of allegations contradicted by affidavit. *Data Disc, Inc.*  
27 *v. Systems Tech. Assocs., Inc.* 557 F.2d 1280, 1284 (9<sup>th</sup> Cir. 1977). However, in the absence of an  
28 evidentiary hearing, conflicts in the parties’ affidavits are resolved in the plaintiff’s favor. *AT&T*,

1 94 F.3d at 588-89.

2 **III.**

3 **A. PLAINTIFF’S COMPLAINT SHOULD BE DISMISSED BECAUSE IT DOES**  
4 **NOT HAVE STANDING TO SUE.**

5 Righthaven fails to aver that it owned the copyright at the time of the alleged infringement.  
6 While “the legal or beneficial owner of an exclusive right occurring during the period of its  
7 ownership,” *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 944 F.2d 971 (2d Cir. 1991), a plaintiff  
8 who fails to show ownership of a valid copyright at the time of infringement lacks standing to sue  
9 for any infringement that occurred prior to its ownership of those rights. *Silvers v. Sony Pictures*  
10 *Entm’t, Inc.*, 402 F.3d 881 (9<sup>th</sup> Cir. 2005). In this case, the Court lacks subject matter jurisdiction  
11 because Plaintiff did not allege that it was the owner of the copyrights at the time of Defendants’  
12 alleged infringement.

13 Plaintiff only states that it is the current owner of the copyrights in “POLICE ARRESTS:  
14 Misdemeanor violations leading to deportations.”<sup>3</sup> There are no allegations that Plaintiff was the  
15 holder of the copyright at the time of the alleged infringement. The Complaint merely states that  
16 Defendants allegedly displayed an unauthorized reproduction of the article on July 8, 2010 without  
17 providing verification that it was the holder on that date.<sup>4</sup> Because Plaintiff was not the owner of  
18 the copyright in the article on the date of the alleged infringement, July 8, 2010, Plaintiff does not  
19 have standing to sue. Accordingly, the Court lacks subject matter jurisdiction, and the Complaint  
20 must be dismissed.

21 **IV.**

22 **PERSONAL JURISDICTION**

23 **A. Plaintiff’s Complaint Should Be Dismissed for Failure to Allege That this Court**  
24 **Has Personal Jurisdiction over the Defendants.**

25 Plaintiff has the burden of establishing personal jurisdiction by demonstrating jurisdiction  
26 is (1) permitted under the applicable state’s long-arm statute and (2) “that the exercise of jurisdiction

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<sup>3</sup> See Plaintiff’s Complaint at ¶8.

28 <sup>4</sup> See Plaintiff’s Complaint at ¶11.

1 does not violate federal due process.” *Zeigler v. Indian River Country*, 64 F.3d 470, 473 (9<sup>th</sup> Cir.  
2 1995). The personal jurisdiction of a federal court is limited to the breadth of the state court’s  
3 personal jurisdiction in the state in which the federal court sits. *Omni Capital Int’l v. Rudolph Wolff*  
4 *& Co., Ltd.* 484 U.S. 97, 104-05, 108 S. Ct. 404 (1987). Under N.R.S. § 14.065, Nevada state courts  
5 have personal jurisdiction limited only by the Nevada and United States Constitutions. *Graziose v.*  
6 *American Home Prod. Corp.*, 161 F.Supp.2d 342, 345 (D.Nev. 2001) (jurisdiction may be exercised  
7 to the extent “not inconsistent with the Constitution of this state or the Constitution of the United  
8 States”).

9 Personal jurisdiction has been limited under the Constitution to defendants that have “certain  
10 minimum contacts with [a state] such that the maintenance of a suit does not offend ‘traditional  
11 motions of fair play and substantial justice.’” *Core-Vent Corp. v. Nobel Indus.*, 11 F.3d 1482, 1485  
12 (9<sup>th</sup> Cir. 1993) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Sufficient  
13 minimum contacts may be shown through specific jurisdiction, wherein the specific interaction with  
14 the forum relating to the cause of action gives rise to the contacts, or through general jurisdiction,  
15 wherein the contacts with the forum are systematic and continuous, warranting the exercise of  
16 personal jurisdiction. If such contacts are established, a court must still determine that exercising  
17 personal jurisdiction would not offend the “traditional notions of fair play and justice.” *Int’l Shoe*  
18 *Co.*, 326 U.S. at 316.

19 **B. Plaintiff’s Complaint Fails to Allege a *Prima Facie* Case for the Exercise of**  
20 **General Personal Jurisdiction Over Defendants.**

21 The standard for exercising general personal jurisdiction is an exacting one. It is “fairly  
22 high.” *Brand v. Menlove Dodge*, 796 F.2d 1070, 1073 (9<sup>th</sup> Cir. 1986). This is so “because a finding  
23 of general jurisdiction permits a defendant to be haled into court in the forum state to answer for *any*  
24 of its activities [occurring] anywhere in the world.” *Schwarzenegger*, 374 FG.3d at 801. (Emphasis  
25 added.) In determining whether to exercise general personal jurisdiction, courts in the Ninth Circuit  
26 consider the following factors: “whether the defendant makes sales, solicits or engages in business  
27 in the state, serves the states markets, designates an agent for service of process, holds a license, or  
28 is incorporated there.” citing *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086

1 (9<sup>th</sup> Cir. 2000).

2 The first *Bancroft* factor analyzes whether the defendant makes sales or solicits or engages  
3 in business in the state. The second factor focuses on whether the defendant “serves the state’s  
4 markets.” *Bancroft*, 223 F.3d at 1086. In this case, the Defendants’ activities do not qualify as  
5 meeting the standard under either factor. They have not ran any television or radio advertisements  
6 within the Nevada market.<sup>5</sup> Additionally, they have not sent any marketing materials, such as  
7 email ads or direct-mail ads into Nevada.<sup>6</sup> Defendants have never conducted any business activity  
8 within the State of Nevada.<sup>7</sup> The purpose of their non-profit activities and corresponding website  
9 is for educational and informational purposes only. The CIO’s purpose is to raise awareness among  
10 Portland, Oregon area immigrants and allies about local, national and global social justice issues.  
11 As a non-profit organization, it works in tandem with the city of Portland to engage the thousands  
12 of foreign refugees and immigrants relocating to the Portland region. The over-arching goal is to  
13 assist immigrants and refugees in integrating into civic and institutional structures. These activities  
14 hardly serve the Nevada area, let alone provide any kind of good or service to or from a location  
15 within the State of Nevada. The CIO has never marketed its activities towards Nevada residents nor  
16 ran any advertisements in any Nevada publications. Therefore, neither the first nor the second  
17 *Bancroft* factors are satisfied because the Plaintiffs have failed to demonstrate that Defendants  
18 engage in business in the state or “serve the states markets.” *Bancroft*, 223, F.3d at 1086.

19 The third *Bancroft* factor considers whether the defendant has appointed a registered agent  
20 to receive service of process in the forum. *Bancroft*, 223, F.3d at 1086. CIO has never sought or  
21 received authorization to conduct business in the State of Nevada, nor have they ever appointed  
22 registered agent to accept service of process in the State of Nevada.<sup>8</sup>

23 The fourth *Bancroft* factor considers whether the defendant holds a license in the forum.  
24

25 <sup>5</sup> See Affidavit of Kayse Jama ¶ 7.

26 <sup>6</sup> See Affidavit of Kayse Jama ¶ 8.

27 <sup>7</sup> See Affidavit of Kayse Jama ¶ 4.

28 <sup>8</sup> See Affidavit of Kayse Jama ¶ 9.

1 *Bancroft*, 223, F.3d at 1086. Again, the Defendants have never owned or possessed any license  
2 issued by the State of Nevada or by any political subdivision of the State of Nevada, including, but  
3 not limited to, any business license, trademark, fictitious firm name or any other license required by  
4 the state or a municipality.<sup>9</sup>

5 Finally, the fifth *Bancroft* factor considers whether the defendant is incorporated in the forum  
6 state. *Bancroft*, 223, F.3d at 1086. Defendants are neither resident aliens or a Nevada entity formed  
7 under Nevada law.<sup>10</sup> Accordingly, none of the *Bancroft* factors are satisfied. CIO is a non-profit  
8 corporation organized for the public benefit under Oregon law. See Oregon Secretary of State  
9 Business Registry, attached hereto as Exhibit A.

10 Additionally, Defendants have not engaged in “continuous and systematic” contacts with  
11 Nevada. Defendants have never maintained any physical presence in Nevada. None of the CIO  
12 directors, officers, or employees are located in Nevada. It does not maintain any bank accounts in  
13 Nevada.<sup>11</sup> None of its officers and employees travel to Nevada to conduct business.<sup>12</sup> CIO does  
14 not own, lease, or possess any personal property in Nevada.<sup>13</sup>

15 Plaintiff claims that Defendants’ display of the alleged infringement was specifically targeted  
16 at Nevada residents. Defendants deny this allegation in its entirety. Obviously, Plaintiff did not take  
17 any time to review CIO’s website prior to filing its Complaint. While the article at issue may address  
18 immigration issues concerning Nevada, its placement on the non-profit website would have been  
19 solely directed at CIO members for educational purposes. CIO’s mission is designed to ease the  
20 transition for immigrants and refugees into the Oregon area. Providing access to information  
21 regarding local, regional and national immigration issues is of the utmost importance to its  
22 philanthropic mission. Even assuming that the article was placed on the CIO website, it is quite

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24 <sup>9</sup> See Affidavit of Kayse Jama ¶ 11.

25 <sup>10</sup> See Affidavit of Kayse Jama ¶ 10.

26 <sup>11</sup> See Affidavit of Kayse Jama ¶ 16.

27 <sup>12</sup> See Affidavit of Kayse Jama ¶ 13.

28 <sup>13</sup> See Affidavit of Kayse Jama ¶ 15.

1 reasonable to conclude that issues impacting immigrants in other regions of the United States may  
2 potentially impact immigrants and refugees in Oregon. Merely placing an article that has already  
3 entered the public domain on its website hardly equates to availing the website owner of the general  
4 jurisdiction of the state in which the article originated.

5 Even assuming the truth of the allegations asserted in Plaintiff's Complaint, the alleged  
6 conduct contained therein does not rise to the level required for the Court to exercise general  
7 personal jurisdiction over Defendants. Therefore, there exists no basis for the Court to  
8 constitutionally exercise general personal jurisdiction.

9  
10 **C. Plaintiff's Complaint Fails to Allege a *Prima Facie* Case for the Exercise of  
Specific Personal Jurisdiction Over Defendants.**

11 The Ninth Circuit applies the following three-part test to determine if the exercise of specific  
12 jurisdiction is proper over a defendant:

- 13 1) The nonresident defendant must purposefully direct his activities or  
14 consummate some transaction with the forum or residents thereof; or perform  
15 some act by which he purposefully avails himself of the privilege of  
conducting activities in the forum, thereby invoking the benefits and  
protections of its laws;
- 16 2) The claim must be one which arises out of or relates to the defendant's  
forum-related activities; and
- 17 3) The exercise of jurisdiction must comport with fair play and substantial  
18 justice, *i.e.*, it must be reasonable.

19 *Lake v. Lake*, 817 F.2d 1416, 1421 (9<sup>th</sup> Cir. 1987) (citation omitted). A plaintiff need only satisfy  
20 the first two prongs of the test. *Schwarzenegger*, 374 F.3d at 802 (citation omitted). "If the plaintiff  
21 fails to satisfy either of these prongs, personal jurisdiction is not established in the forum state." *Id.*  
22 If "the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the  
23 defendant to 'present a compelling case' that the exercise of jurisdiction would not be reasonable."  
24 *Schwarzenegger*, 374 F.3d at 802 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. at 476-78, 105  
25 S. Ct. At 2184-85, 85 L. Ed. 2d at 544)).

26 In sum, the common thread, well stated by the district court in Zippo, is that "the likelihood  
27 that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and  
28 quality of commercial activity that an entity conducts over the Internet." *Cybersell, Inc. v. Cybersell*,



1 130 F.3d 414 (9<sup>th</sup> Cir. 1997); *Zippo Manufacturing Co. v. Zippo Dot Com., Inc.*, 952 F.Supp. 1119  
2 (W.D.Pa. 1997). “The likelihood that personal jurisdiction can be constitutionally exercised is  
3 directly proportionate to the nature and quality of the commercial activity that an entity conducts  
4 over the Internet.” *Zippo* at 1124. Here, the CIO is a public benefit, non-profit organization that  
5 conducts no commercial activity whatsoever, let alone through its website. The purpose of the CIO’s  
6 website is to raise awareness of the organization’s educational programs, rather than maximize  
7 profits by offering goods or services as a for profit organization generally does.

8 **1. Defendants Have Not “Purposefully Directed” an Intentional Tort at**  
9 **Plaintiff or Nevada Residents.**

10 Under the first prong of the test, Plaintiff must establish that Defendants either purposefully  
11 availed itself of the privilege of conducting activities in Nevada, or purposefully directed its  
12 activities toward Nevada. “This focus upon the affirmative conduct of the defendant is designed to  
13 ensure that the defendant is not haled into court as the result of random, fortuitous or attenuated  
14 contacts, or on account of the unilateral activities of third parties.” *Shute v. Carnival Cruise Lines*,  
15 897 F.2d 377, 381 (9<sup>th</sup> Cir. 1990); *Pebble Beach Co. v. Caddy*, 453 F. 3d 1151, 1155 (9<sup>th</sup> Cir.  
16 2006). “A purposeful availment analysis is most often used in suits sounding in contract. A  
17 purposeful direction analysis, on the other hand, is most often used in suits sounding in tort.”  
18 *Schwarzenegger*, 374 F.3d at 802 (citations omitted). Plaintiff is alleging copyright infringement  
19 – a claim sounding in tort. *See Zuffa, LLC. v. Showtime Networks, Inc.*, No. 2:07-cv-00369-RLH-  
20 PAL, 2007 U.S. Dist. LEXIS 60711 (D. Nev. Aug. 15, 2007) (“Plaintiff’s claim for copyright  
21 infringement sounds in tort, therefore a purposeful direction analysis is appropriate”). Accordingly,  
22 Defendants’ alleged conduct must be evaluated under the purposeful direction standard.

23 To evaluate purposeful direction, the Ninth Circuit applies the three-part “*Calder*-effects  
24 test,” articulated by the United States Supreme Court in *Calder v. Jones*, 465 U.S. 783, 104. S. CT.  
25 1482, 79 L. Ed. 2d 804 (1984); *Schwarzenegger*, 374 F.3d at 803. Under the effects test, “the  
26 defendant allegedly must have (a) committed an intentional act; (b) expressly aimed at the forum  
27 state; and (c) causing harm that the defendant knows is likely to be suffered in the forum state.”  
28 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9<sup>th</sup> Cir. 2006)  
(intentional quotes omitted).

1 a. *The Complaint Does Not Allege Facts that Show the Alleged*  
2 *Infringement was Intentional.*

3 To satisfy the first prong of the minimum contacts test, the alleged conduct must be shown  
4 to be intentional. Plaintiff's Complaint only offers up conclusory statements that Defendants "  
5 without any factual support.<sup>14</sup> This allegation is unsupported and cannot be accepted as true. *See*  
6 *Iqbal*, 129 S.Ct. at 1940. There is no explanation of how the alleged posting arose to intentional  
7 conduct. Because the first element is not satisfied, Plaintiff cannot satisfy the *Calder* effects test.

8 b. *The Complaint Does Not Allege Facts to Support that the Defendants*  
9 *Targeted or Expressly Aimed Their Actions Towards Nevada or*  
10 *Nevada Residents.*

11 The express aiming test of *Calder* is only met when the "defendant is alleged to have engaged  
12 in wrongful conduct targeted at the plaintiff whom the defendant knows to be a resident of the forum  
13 state." *Bancroft & Masters*, 223 F.3d at 1087. In this case, operation of a non-profit website falls  
14 well short of establishing personal jurisdiction over Defendants. Through its activities, CIO only  
15 directs its activities toward Oregon residents. Although there is one allegation that Defendants'  
16 activities were "...purposefully directed at Nevada residents", it is conclusory and only appears in  
17 the Complaint for pleading purposes.<sup>15</sup> The Complaint fails to state how the alleged posting of  
18 articles by an Oregon non-profit entity onto its website constitutes conduct directed toward Nevada  
19 residents. Express aiming requires something more than the commission of an intentional tort and  
20 foreseeable harm to the plaintiff. *Schwarzenegger*, 374 F.3d 805. Moreover, "where the sole basis  
21 for finding express aiming is a non-interactive passive website....the fact that the defendants' website  
22 is not directed at the forum is controlling." *Pebble Beach v. Caddy*, 453 F.3d 1151 (2006).  
23 Additionally, knowledge or awareness of the Plaintiff in Nevada does not transform acts into acts  
24 expressly aimed at Nevada or Nevada residents. *Id.* at 1153. In Plaintiff's Complaint there are no  
25 are no supportable allegations that CIO directs any activities by posting a single article that discusses  
26 immigration issues in Nevada.

27 Additionally, it has been held that posting information on a website, visible from anywhere,

28 <sup>14</sup> See Plaintiff's Complaint ¶ 10.

<sup>15</sup> See Plaintiff's Complaint at ¶ 16.

1 is insufficient to establish express aiming at the forum state. *Parmastem Therapeutics, Inc., v. Cord*  
2 *Blood Registry Inc.*, No. C 04-03072 JSW, 2005 U.S. Dist. Lexis 39456, at 11 (N.D. Cal. Jan. 14,  
3 2005) (citing *Cybersell, Inc. v. Cybersell, Inc.* 130 F.3d 414, 420 (9<sup>th</sup> Cir. 1997)); *see also Pavlovich*  
4 *v. Superior Court*, 29 Cal. 4<sup>th</sup> 262 (2002). In *Cybersell, Inc.*, the Court held that a defendant's  
5 infringing website was not intentionally aimed at Arizona residents knowing that any potential harm  
6 would likely be caused there to the Arizona plaintiff. Here, there is no showing that CIO's website  
7 was "aimed intentionally" at Nevada. It is the conduct of the defendants, rather than the medium  
8 utilized by them, to which the parameters of specific jurisdiction apply. *Millenium Music v.*  
9 *Millenium Music*, 33 F.Supp.2d 907, 1999 U.S. Dist. LEXIS 3709 (1999) (holding that simply  
10 registering another's trademark as a domain name and posting a website on the Internet is not  
11 insufficient to subject a party domiciled in one state to the jurisdiction in another state). Therefore,  
12 in the absence of further information to support that the posting was directed toward the Nevada  
13 market, this requirement is not met.

14 *c. The Complaint Fails to Allege that CIO Knew About Plaintiff or that*  
15 *the Effects of the Alleged Infringement Would Impact Nevada.*

16 Finally, with respect to the *Calder* effects test, the Complaint fails to allege that Defendants  
17 knew the identity of Plaintiff or that the alleged infringement would result in harm occurring to  
18 Plaintiff in Nevada. Defendants, prior to receiving a copy of the Complaint, had never heard of  
19 Righthaven, nor that it even existed in Nevada. Because the Complaint fails to allege Defendants'  
20 knowledge of foreseeable harm occurring to Plaintiff in Nevada, Plaintiff cannot satisfy the third  
21 element of the *Calder* effects test.

22 Plaintiff failed to allege facts demonstrating the commission of an intentional tort, thereby  
23 failing to satisfy the first element of the *Calder* effects test. Second, Plaintiff also failed to allege  
24 facts demonstrating that Defendants' conduct was expressly aimed at Nevada or its residents,  
25 therefore Plaintiff cannot satisfy the second element. Finally, because the Complaint fails to allege  
26 that Defendants knew of the Plaintiff or that its conduct would impact Plaintiff in Nevada, Plaintiff  
27 also failed to satisfy the third element. Because none of the elements of the *Calder* test were  
28

1 satisfied, Defendants have not purposefully directed their activities into Nevada. Accordingly, the  
2 first element of the three-part test for specific personal jurisdiction is not satisfied.

3  
4 **2. Plaintiff Fails in its Complaint to Establish the Second Prong of the  
Ninth Circuits Three-Part Test.**

5 To satisfy the second prong of the three-part test for specific personal jurisdiction, Plaintiffs'  
6 claims must arise from the defendants' forum-related activities. *Panavision Int'l, L.P. v. Toebben*,  
7 141 F.3d 1316, 1322 (9<sup>th</sup> Cir. 1998). This requirement is satisfied if the plaintiff would not have  
8 been injured "but for" the defendant's forum related conduct. *Myers v. Bennet Law Offices*, 238  
9 F.3d 1068, 1075 (9<sup>th</sup> Cir. 2000). In this case, the claimed infringement is not grounded in any contact  
10 by Defendants with the State of Nevada. The allegations in the Complaint do not state where  
11 Defendants were located when they allegedly obtained the article. Assuming the article was obtained  
12 from the Internet, it likely did so from Oregon, the only state in which it maintains a physical  
13 presence. The Complaint also fails to allege Defendants posted the article from a location within  
14 Nevada. Therefore, Plaintiff's alleged harm does not satisfy the "but for" test. Because Plaintiff's  
15 infringement claim does not arise out of any contact Defendants had with Nevada, Plaintiff cannot  
16 satisfy the second prong of the three-part test for specific personal jurisdiction.

17  
18 **3. Plaintiff's Failure to Satisfy the First Two Prongs of the Specific  
Jurisdiction Test, Therefore the Burden of Demonstrating  
19 Unreasonableness of Exercising Personal Jurisdiction Has Not Shifted  
20 to the Defendants.**

21 Because Plaintiff failed to satisfy either prong of the specific jurisdiction test, the burden of  
22 has not shifted to Defendants to demonstrate the unreasonableness of such exercise. Generally, a  
23 defendant may still defeat specific jurisdiction by establishing that other factors that result in the  
24 exercise of jurisdiction so unreasonable as to violate constitutional notions of "fair play and  
25 substantial justice." *Burger King Corp. v. Rudzewicz*, 471 U.S. 476, 105 S.Ct. 2184 (1985). For  
26 the sake of argument, Plaintiff failed to meets its burden of demonstrating Defendants have  
27 sufficient minimum contacts with the State of Nevada. Defendants have submitted the supporting  
28 ...

1 Affidavit of Kayse Jama, therefore, Plaintiff is obligated to come forward with facts, supporting  
2 jurisdiction. *Ambar Mktg. Sys., Inc. v. Jobar Int'l*, F.2d 784, (9<sup>th</sup> Cir. 1987).

3 **CONCLUSION**

4 For the foregoing reasons, the Court should dismiss the Complaint for lack of personal  
5 jurisdiction.

6 DATED this 30 day of August, 2010.

7 OLSON, CANNON,  
8 GORMLEY & DESRUISSEAUX

9 By: 

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