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

11 RIGHTHAVEN LLC, a Nevada limited-
 liability company,
 12
 13 **Plaintiff,**
 14
 v.
 15
 16 **CENTER FOR INTERCULTURAL**
ORGANIZING, a not-for-profit Oregon entity;
 and KAYSE JAMA, an individual,
 17
 18 **Defendants.**

Case No.: 2:10-cv-01322-JCM-LRL
PLAINTIFF’S OPPOSITION TO
DEFENDANTS’ MOTION TO DISMISS

20 Righthaven LLC (“Righthaven”) hereby opposes Defendant Center for Intercultural
 21 Organizing and Defendant Kayse Jama’s (collectively with Center for Intercultural Organizing
 22 known herein as the “Defendants”) Motion to Dismiss (Docket No. 7-0). Righthaven’s
 23 Opposition is based upon the pleadings and papers on file in this action, any oral argument this
 24 Court may allow, and any other matter of which this Court takes notice.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 The instant jurisdictional dispute has been definitively resolved by the precedent of this
5 Court: a copyright defendant who infringes on a literary work which knowingly emanates from a
6 Nevada-based party is consequently subject to Nevada jurisdiction. *Righthaven LLC v. Dr.*
7 *Shezad Malik Law Firm P.C.*, No. 2:10-cv-0636-RLH-RJJ, slip op. at 2-3 (D. Nev. Sept. 2, 2010)
8 (“*Malik*”). (Ex. 1.) In light of the direct applicability of this Court’s unambiguous, recently
9 established precedent, there is simply no basis upon which the Defendants can escape
10 jurisdiction in this forum.

11 Moreover, this Court’s recent Order in *Malik*, a true and correct copy of which is attached
12 hereto as Exhibit 1, clearly follows the position of the Ninth Circuit: willful copyright infringers
13 who reproduce content from a source known to exist in the forum purposefully avail themselves
14 of said forum’s personal jurisdiction. *Columbia Pictures Television v. Krypton Broadcasting of*
15 *Birmingham, Inc.*, 106 F.3d 284, 289 (9th Cir. 1997) *rev’d* on other grounds *Feltner v. Columbia*
16 *Pictures Television, Inc.*, 523 U.S. 340, 355 (1998) (“*Columbia*”). As expressly pled in
17 Righthaven’s Complaint, the Defendants committed intentional copyright infringement of a
18 literary work which: (1) knowingly emanated from a Nevada-based daily publication, and (2) is
19 of specific concern to Nevada residents. Thus, the Defendants’ infringing conduct was expressly
20 aimed at Nevada residents, and the Defendants knew that any harm caused by such conduct
21 would likely be suffered in Nevada. Moreover, the strength of the Court’s jurisdiction in this
22 matter cannot be diminished by the Defendants’ unsubstantiated, self-serving claims or by the
23 Defendants’ misguided reliance on inapplicable case law. Ultimately, the Defendants’ trivial
24 efforts to escape jurisdiction amount to nothing more than a red-herring discussion: the
25 Defendants’ willful, unauthorized reproduction of a Righthaven-owned copyrighted work
26 emanating from Nevada is the fact most pertinent to the jurisdictional analysis. As pled in the
27 Complaint and further demonstrated herein, the Defendants’ Nevada-related infringing activities
28 definitively justify the Court’s exercise of personal jurisdiction.

1 **II. PROCEDURAL FACTS**

2 On September 15, 2010, a joint stipulation was filed with the Court (Docket No. 8-0)
3 wherein the Defendants’ subject matter jurisdiction challenge (contesting Righthaven’s standing
4 to sue) was withdrawn. As such, Righthaven does not oppose, or otherwise address, the
5 Defendants’ standing argument in the instant Opposition, as said argument is no longer before
6 the Court.

7
8 **III. FACTS**

9 Righthaven is the owner of the copyright in the literary work entitled: “Misdemeanor
10 violations leading to deportations” (the “Work”). (Compl. ¶¶ 8, 21.) (Compl. Ex. 1.)¹ On July
11 26, 2010, the United States Copyright Office granted Righthaven the registration to the Work,
12 copyright registration number TX0007181503. (Compl. ¶ 23.) (Compl. Ex. 3.) The Work was
13 originally published on June 28, 2010 in the *Las Vegas Review-Journal* (the “LVRJ”). (Compl. ¶
14 22.) Accordingly, the Work plainly identifies the LVRJ as the original source publication.
15 (Compl. ¶ 9.) (Compl. Ex. 1.) The content of the Work details the alleged targeting of criminal
16 illegal immigrants by the Las Vegas Metropolitan Police Department (Compl. ¶ 13.) (Compl. Ex.
17 1.)

18 The Defendants are the owners of the Internet domain found at
19 <interculturalorganizing.org> (the “Website”). (Compl. ¶¶ 5-6.) On or about July 8, 2010, the
20 Defendants created an unauthorized reproduction of the Work (the “Infringement”) and publicly
21 displayed said unauthorized reproduction on the Website. (Compl. ¶¶ 10-11, 24.) (Compl. Ex. 2.)
22 The Infringement constitutes a verbatim copy of the Work’s content in its entirety. (*See* Compl.
23 Ex. 1-2.) The Defendants are responsible for posting the Infringement on the Website, as
24 identified by the text found immediately beneath the Infringement: “Posted by Center for
25 Intercultural Organizing at 11:35 PM.” (Compl. Ex. 2.) The Defendants did not seek permission,
26 nor were the Defendants granted permission, in any manner, to reproduce, display, or otherwise
27 exploit the Work. (Compl. ¶¶ 25-26.)

28 ¹ Complaint and Demand for Jury Trial (Docket No. 1-0).

1 **IV. ARGUMENT**

2 **A. Precedent Established by this Court Definitively Resolves the Jurisdictional**
3 **Question in Righthaven’s Favor**

4 The exercise of the Court’s jurisdiction in the instant matter is clearly appropriate in light
5 of the precedent recently established by this Court in a copyright claim involving operative facts
6 nearly identical to those at present. In *Malik*, Righthaven brought an action for infringement
7 against a Texas-based defendant (the “Malik Firm”), alleging that the Malik Firm had infringed
8 upon three Righthaven-owned literary works originally published in the LVRJ, and further
9 alleging that the Malik Firm had publicly displayed said infringements on the Malik Firm
10 website.² In response, the Malik Firm filed a motion to dismiss, contending, in part, that this
11 Court lacked personal jurisdiction over the Malik Firm because the Malik Firm’s act of copying
12 and publicly displaying literary works emanating from Nevada did not constitute an act of
13 express aiming.³ Thereafter, Judge Hunt issued an Order denying the Malik Firm’s jurisdictional
14 challenge, explaining that “[i]t is common knowledge that the Las Vegas Review Journal
15 newspaper is published and distributed in Las Vegas, Nevada by the party which assigned the
16 copyright together with the right to seek redress for past, present and future infringements.”
17 *Malik*, No. 2:10-cv-0636-RLH-RJJ, slip op. at 2-3. (Ex. 1.) Judge Hunt supported his decision
18 by citing the Ninth Circuit’s opinion in *Columbia*, and ultimately ruled that “this Court has
19 jurisdiction over Defendant, based upon the allegations in the Complaint.” *Id.* (Ex. 1.)

20 Judge Hunt’s unambiguous holding in Righthaven’s copyright suit in *Malik* is directly
21 applicable to the present action. Like the defendant in *Malik*, the Defendants in the instant
22 matter committed willful infringement of a literary work published in the LVRJ. (Compl. ¶¶ 9-
23 11.) (Compl. Ex. 1-2.) As it is common knowledge that the LVRJ is a Las Vegas-based
24 publication, the Defendants’ willful infringement of an article emanating from the LVRJ
25 irrefutably subjects the Defendants to jurisdiction in Nevada. This conclusion comports directly
26 with the Ninth Circuit’s holding in *Columbia*, and further comports with Judge Hunt’s holding in

27 _____
28 ² See *Malik*, No. 2:10-cv-0636-RLH-RJJ; Pl.’s Compl. ¶¶ 9-16 (Docket No. 1-0).

³ See *Malik*, No. 2:10-cv-0636-RLH-RJJ; Def.’s Mot. to Dismiss 9 (Docket Nos. 6-0, 7-0).

1 *Malik*. See *Columbia*, 106 F.3d at 289. As the operative facts of the instant case are arguably
2 identical to those in *Malik*, there is no reason for the Court to deviate from its own well-founded,
3 directly applicable precedent.

4
5 **B. The Defendants are Subject to Specific Personal Jurisdiction in Nevada**

6 The Defendants are subject to personal jurisdiction in Nevada because the allegations in
7 the Complaint, and evidence attached in support thereof, clearly establish that: (1) the
8 Defendants’ willful, knowing Infringement of a Nevada-based, Nevada-specific literary work
9 constitutes the Defendants’ purposeful availment of this forum, (2) the instant lawsuit
10 unequivocally would not exist but for the Defendants’ Nevada-related infringing activities, and
11 (3) the Court’s exercise of jurisdiction would not be unreasonable. See *Boschetto v. Hansing*, 539
12 F.3d 1011, 1016 (9th Cir. 2008). Despite the Defendants’ erroneous, legally unfounded
13 assertions to the contrary, the facts and circumstances of this case, as specifically alleged in the
14 pleadings, unquestionably give rise to the exercise of the Court’s jurisdiction.

15
16 **1. Purposeful Availment is Satisfied Because the Defendants Willfully Infringed**
17 **Upon a Literary Work that Knowingly Emanated from Nevada**

18 The Ninth Circuit has expressly established that willful copyright infringers who
19 reproduce content from a source known to exist in the forum purposefully avail themselves of
20 forum jurisdiction. *Columbia*, 106 F.3d at 289. Specifically, the *Columbia* court held that the
21 ***purposeful availment inquiry ends*** in a copyright infringement case when “[the plaintiff]
22 alleged, and the district court found, that [the defendant] willfully infringed copyrights owned by
23 [the plaintiff], which, as [the defendant] knew had its principal place of business in the [forum
24 jurisdiction].” *Id.* The *Columbia* holding is dispositive to this analysis and was expressly
25 followed by Judge Hunt in *Malik*. *Malik*, No. 2:10-cv-0636-RLH-RJJ, slip op. at 2-3. However,
26 despite the precedential weight of *Columbia*, the Defendants shockingly fail to mention this
27 opinion in the Motion to Dismiss. The omission of *Columbia* from the Motion to Dismiss
28 partially explains the unfounded nature of the Defendants’ jurisdictional argument. Regardless,

1 the court's holding in *Columbia* is directly applicable at present. As expressly pled in the
2 Complaint, the Defendants willfully infringed upon a literary work that knowingly emanated
3 from the LVRJ, a Nevada-based daily publication. (Compl. ¶¶ 9-14.) This fact, standing alone,
4 sufficiently satisfies the purposeful availment requirement.

5 Though purposeful availment is effectively resolved in this matter pursuant to venerable
6 Ninth Circuit precedent, the strength of the Court's jurisdiction over the Defendants is
7 nevertheless clear upon application of the Ninth Circuit's "effects test." *Schwarzenegger v. Fred*
8 *Martin Motor Co.*, 374 F.3d 797, 804 (9th Cir. 2004). Under the effects test, as established by
9 the Supreme Court in *Calder v. Jones*, 465 U.S. 783, 789-90 (1984), a defendant purposefully
10 avails itself of a forum's jurisdiction if the defendant has (1) committed an intentional act, (2) the
11 act is expressly aimed at the forum state, and (3) the act causes harm that the defendant knows is
12 likely to be suffered in the forum state. *Schwarzenegger*, 374 F.3d at 804. Each of these
13 requirements is satisfied at present. Righthaven will address these factors in turn.

14
15 ***a. The Infringement was Willful***

16 There can be no legitimate question that there are sufficient allegations in the Complaint
17 evidencing the willfulness of the Defendants' Infringement. In fact, the intentional nature of the
18 Defendants' Infringement is so glaringly evident that it is surprising that the Defendants attempt
19 to refute this allegation in the Motion to Dismiss. Regardless, the futility of the Defendants'
20 position on willfulness is exemplified by the Defendants' trivial, five-sentence argument. (Defs.'
21 Mot. to Dismiss 10:1-6) Neither these five sentences, nor any other sentences proffered by the
22 Defendants, effectively diminish the strength of Righthaven's well-pled Complaint.

23 The determination of willfulness in this matter is clear and uncomplicated upon a brief
24 review of Righthaven's fact-based allegations and supporting evidence. First, the Infringement
25 represents ***a verbatim copy of the Work in its entirety***. (See Compl. Ex. 1-2.) In this regard, the
26 Defendants fail to explain how this form of wholesale republishing was somehow the result of an
27 unintentional act. Additionally, as the Infringement plainly states: "Posted by Center for
28 Intercultural Organization," (Compl. Ex. 2.) there can be no disputing that the Defendants are

1 directly responsible for posting the Infringement on the Website. Importantly, the Defendants do
2 not deny posting the Infringement on the Website, nor do the Defendants deny (or otherwise
3 justify) the verbatim nature of the reproduction. Moreover, in *Brayton Purcell LLP v. Recordon*
4 & *Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010), the Ninth Circuit held that a defendant’s
5 intent can be construed as “an intent to perform an actual, physical act in the real world, rather
6 than an intent to accomplish a result or consequence of that act.” Thus, even assuming,
7 *arguendo*, that the Defendants did not specifically intend to violate the Copyright Act by
8 publicly displaying a verbatim, unauthorized copy of the Work on the Website, the mere
9 occurrence of the Defendants’ physical act of posting the Infringement on the Website
10 sufficiently constitutes an intentional act in the context of purposeful availment. *See id.* at 1128.
11 Accordingly, the Defendants have failed to sufficiently refute the clear evidence of willfulness
12 set forth in the pleadings.

13 Furthermore, the Court should not be persuaded by the Defendants’ unfounded claim that
14 Righthaven’s allegations of willfulness were pled “without any factual support.” (Defs.’ Mot. to
15 Dismiss 10:4) This statement is patently untrue. First, Righthaven’s allegations of willfulness
16 (Compl. ¶¶ 10, 36-37.) are wholly substantiated by the attachment of the both the Work and the
17 Infringement. Specifically, these documents demonstrate that the Infringement is nothing more
18 than a verbatim, unmodified reproduction of the Work in its entirety; the Infringement is not the
19 product of any independent work or research performed by the Defendants. (Compl. Ex. 1-2.)
20 This wholesale form of blatant copyright infringement undoubtedly surpasses the threshold for
21 willfulness. Courts across the country have repeatedly found that willful infringement occurs
22 when the infringer acts with reckless disregard of a copyright holder’s rights. *See, e.g., N.A.S.*
23 *Import Corp. v. Chenson Enterprises*, 968 F.2d 250, 252 (2d Cir. 1992); *International Korwin*
24 *Corp. v. Kowalczyk*, 855 F.2d 375, 379-382 (7th Cir. 1988); *Lyons Partnership, L.P. v. Morris*
25 *Costumes, Inc.*, 243 F.3d 789, 799 (4th Cir. 2001). At present, the Defendants’ flagrantly
26 infringing act of copying the Work verbatim and publicly displaying said copy on the Website
27 (without seeking prior authorization to do so) exemplifies the Defendants’ reckless disregard for
28 the Work’s copyright ownership. Ultimately, Righthaven both sufficiently alleged the

1 Defendants' willfulness and corroborated said allegations by attaching clear evidence in support
2 thereof.

3
4 **b. The Infringement was Expressly Aimed at Nevada and Nevada Residents**

5 As evidenced by the pleadings, the Defendants committed blatant copyright infringement
6 of a Righthaven-owned literary work which: (1) clearly derives from a Nevada-based daily
7 publication and (2) is of specific concern to Nevada residents. As such, the Defendants
8 expressly aimed the Infringement at Nevada. In the construct of personal jurisdiction, express
9 aiming occurs if "the defendant is alleged to have engaged in wrongful conduct targeted at a
10 plaintiff whom the defendant knows to be a resident of the forum state." *Bancroft & Masters,*
11 *Inc. v. Augusta National, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000). This threshold is
12 conclusively satisfied at present.

13 Righthaven's allegations as pled and evidence attached in support thereof, viewed
14 collectively, clearly reflect the Defendants' express aiming at Nevada. As alleged in the
15 Complaint, the Work prominently depicts the LVRJ as the Work's original source publication.
16 (Compl. ¶ 9.) (Compl. Ex. 1.) The Defendants do not refute this allegation in the Motion to
17 Dismiss, nor do the Defendants contend that they were unaware that the Work originally
18 emanated from a Nevada-based publication. Additionally – and perhaps most importantly – the
19 content of the Work (and the Infringement) specifically concerns Nevada and Nevada residents.
20 (Compl. ¶ 15.) Specifically, the Work details the perceived targeting of illegal immigrants by the
21 Las Vegas Metropolitan Police Department ("LVMPD") and the volume of deportations
22 resulting therefrom. (See Compl. ¶ 13.) (Compl. Ex. 1.) The Work cites statements made by
23 Clark County Sheriff Doug Gillespie, LVMPD spokesman Jacinto Rivera, Las Vegas-based
24 attorney for ACLU Nevada Maggie McLetchie, and local immigration attorney Peter Ashman.
25 (Compl. Ex. 1.) The Work further references local deportation statistics, LVMPD policies
26 concerning illegal immigrant criminals, and the local partnership between LVMPD and U.S.
27 Immigration and Customs Enforcement. (Compl. Ex. 1.) The Work makes no specific references
28 to citizens of other states, nor does the Work appear to derive information from any source

1 outside of Nevada. (Compl. Ex. 1.) Summarily, the Work was originally published in a well-
2 known, Nevada-based daily publication and details Nevada-related issues of specific interest to
3 Nevada residents. In the Motion to Dismiss, the Defendants fail to dispute these facts yet,
4 somehow, simultaneously claim that the Defendants “only direct[] its activities toward Oregon
5 residents.”⁴ (Defs.’ Mot. to Dismiss 10:13-14) This statement is both illogical and contradicted
6 by the evidence. In reality, the Nevada-specific nature of the Work is so obvious, it is difficult to
7 imagine how anyone dealing with this content could reasonably conclude that the Work is *not*
8 specifically intended for Nevada residents. Ultimately, despite the Defendants’ self-serving,
9 unsubstantiated claims to the contrary, there is nothing in the record to suggest that the
10 Infringement was directed towards any forum other than Nevada.

11 Moreover, by targeting Nevada residents and enticing Nevada residents to visit the
12 Website, the Defendants’ conduct also satisfied the “something more” threshold acknowledged
13 by the Ninth Circuit. *See Schwarzenegger*, 374 F.3d at 805. Despite the Defendants’
14 inconclusive assertion that the Infringement was displayed on the Website “for educational
15 purposes,” (Defs.’ Mot. to Dismiss 7:19) the Nevada-specific nature of the Work’s content
16 indicates that the Infringement was posted, at least in part, as a means of encouraging Nevada
17 residents to access (and read) the Infringement on the Website. Simply stated, there are few
18 others explanations for the Defendants’ decision to reproduce and display this type of article.
19 The Defendants’ inducement of Nevada residents to the Website is squarely relevant to the
20 jurisdictional analysis. *See Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020 (9th
21 Cir. 2000) (in the context of purposeful availment, the court should consider whether the
22 defendant “encourage[d] residents of the forum state to access its site”). In sum, the evidence in
23 this matter strongly suggests that the Defendants’ display of the Infringement on the Website was
24 intended, at least in part, to encourage access by Nevada residents.

25
26 ⁴ Similarly erroneous is the Defendants’ claim that the “Complaint fails to state how the alleged posting of articles
27 by an Oregon non-profit entity onto its website constitutes conduct directed toward Nevada residents.” (Defs.’ Mot.
28 to Dismiss 10:16-18) To reiterate, Righthaven’s Complaint *specifically alleges* that the Work identifies the LVRJ as
the original source publication, that the Work’s content concerns Nevada and is of specific interest to Nevada
residents, and that the Defendants were aware of these facts at the time of the Infringement. (Compl. ¶¶ 12-15.)
Thus, it follows that the Defendants’ display of the Infringement on the Website was purposefully directed at
Nevada and Nevada residents. (Compl. ¶ 16.)

1 Additionally, the strength of the Court’s personal jurisdiction in this matter should not be
2 affected by the Defendants’ misplaced recitation of case law. For example, the Defendants rely
3 on the Ninth Circuit’s holding in *Pebble Beach Company v. Caddy*, 453 F.3d 1151 (9th Cir.
4 2006) (“*Pebble Beach*”) to support the theory that the Defendants did not expressly aim the
5 Infringement at Nevada. (Defs.’ Mot. to Dismiss 10:19-23) However, unlike the present case,
6 *Pebble Beach* is an action for trademark infringement. *Pebble Beach*, 453 F.3d at 1154.
7 Trademark actions are contextually distinctive from copyright claims: whereas copyright actions
8 generally hinge on the mere occurrence of an infringement, trademark claims must consider
9 additional factors, such as the likelihood of confusion. 15 U.S.C. § 1114(1). Naturally, this
10 contextual distinction extends to the jurisdictional analysis, thereby limiting the applicability of
11 the *Pebble Beach* holding to the instant jurisdictional analysis. For instance, if *Pebble Beach* had
12 been adjudicated in a copyright construct, the *Pebble Beach* defendant’s infringement of the
13 plaintiff’s copyright, coupled with the defendant’s knowledge of the plaintiff’s California
14 location, would – under *Columbia* – sufficiently satisfy the purposeful availment requirement in
15 the plaintiff’s favor. *See Pebble Beach*, 453 F.3d at 1153-54. However, as *Pebble Beach* is a
16 trademark case, the *Columbia* analysis is far less applicable.

17 Notwithstanding the trademark-copyright dichotomy, the operative facts in *Pebble Beach*
18 are drastically distinguishable from those at present. In *Pebble Beach*, the defendant maintained
19 a hotel “on a cliff overlooking the pebbly beaches of England’s south shore” -- thus the hotel,
20 and the hotel’s website, both used the name “Pebble Beach.” *Id.* at 1153. The plaintiff, the
21 prestigious Pebble Beach golf course, brought suit for trademark infringement in California. *Id.*
22 at 1154. After the matter was dismissed for lack of personal jurisdiction, the plaintiff appealed,
23 arguing that the defendant’s use of the Pebble Beach name, along with the defendant’s admitted
24 knowledge of the plaintiff’s California location, sufficiently gave rise to California jurisdiction.
25 *Id.* at 1156. The Ninth Circuit disagreed, specifically finding that the defendant’s knowledge of
26 the plaintiff’s location was “not an independent act that can be interpreted as being expressly
27 aimed at California.” *Id.* at 1158. In other words, the court held that to confer jurisdiction in
28 California, the defendant’s use of the plaintiff’s trademark needed to be coupled with “something

1 more” to establish the defendant’s express aiming at the forum. *Id.* at 1158-60. Ultimately, the
2 Ninth Circuit found an absence of express aiming: the *Pebble Beach* defendant had performed no
3 acts to cater his hotel services to, or otherwise target, California residents. *See id.* at 1156, 1158-
4 60. By contrast, the Defendants’ infringing activities in the present action exemplify the express
5 aiming component lacking in *Pebble Beach*. In this case, the Defendants’ copying and public
6 display of a literary work emanating from the LVRJ, the content of which is of specific interest
7 to Nevada residents, clearly reflects the Defendants’ efforts to attract Nevada residents to the
8 Website. Analogously, in *Malik*, Judge Hunt found that, pursuant to *Columbia*, the Malik Firm’s
9 infringement of articles published in the LVRJ constituted the Malik Firm’s purposeful
10 availment of Nevada, thereby resolving the jurisdictional question in Righthaven’s favor. *Malik*,
11 No. 2:10-cv-0636-RLH-RJJ, slip op. at 2-3. (Ex. 1.) Summarily, the Defendants’ intentional
12 infringement (and public display) of a Nevada-based, Nevada-specific literary work is largely
13 incomparable to the conduct of the defendant in *Pebble Beach*. Whereas the *Pebble Beach*
14 defendant’s use of the plaintiff’s trademark was unrelated to California and was not used to
15 target California residents, the Nevada-specific nature of the Infringement in the present matter
16 clearly evidences the Defendants’ express aiming at Nevada.

17 Similarly misplaced is the Defendants’ reliance on the Ninth Circuit’s holding in
18 *Cybersell, Inc. v. Cybersell, Inc.* 130 F.3d 414 (9th Cir. 1997), another action for trademark
19 infringement. In *Cybersell*, the court ruled that the Florida-based defendant’s use of the
20 plaintiff’s service mark on the defendant’s website did not subject said defendant to jurisdiction
21 in Arizona, the plaintiff’s home forum. *Id.* at 415, 420. However, the circumstances of the
22 infringement in *Cybersell* are wholly distinguishable from the Defendants’ Infringement at
23 present. For instance, at the time the *Cybersell* defendant started its business and created its
24 website, the plaintiff “had no home page on the web nor had the PTO granted [the plaintiff’s]
25 application for the service mark.” *Id.* at 415. In other words, the court’s language plainly
26 indicates that, at the time of the infringement, the *Cybersell* defendant was reasonably unaware
27 that the subject service mark had already been put to use by the plaintiff. The same cannot be
28 said for the Defendants in the instant action. Here, the Defendants knew, or reasonably should

1 have known, that they were wholesale reproducing content originally published in the LVRJ and,
2 therefore, originally emanating from Nevada. *See Malik*, No. 2:10-cv-0636-RLH-RJJ, slip op. at
3 2-3 (“It is common knowledge that the Las Vegas Review Journal newspaper is published and
4 distributed in Las Vegas, Nevada by the party which assigned the copyrights . . .”) Further
5 contrary to the *Cybersell* defendant, the present Defendants knew, or reasonably should have
6 known, that: (1) they did not author the Work, (2) they were not the original publishers of the
7 Work, (3) they did not own the copyright to the Work, and (4) they did not have a license to
8 reproduce the Work. Additionally, unlike *Cybersell*, the Defendants in this case posted the
9 Infringement, at least in part, as a means of attracting Nevada-based Internet users to the
10 Website. *See Cybersell*, 130 F.3d at 419. Ultimately, the tenuous nature of the *Cybersell*
11 defendant’s express aiming is hardly comparable to the Defendants’ blatantly infringing conduct
12 in the present action.

13 Alternatively, should there remain any uncertainty as to the nature and extent of the
14 Defendants’ express aiming at Nevada, this constitutes a factual determination and thus warrants
15 reasonable jurisdictional discovery. “[D]iscovery should be granted where pertinent facts
16 bearing on the question of jurisdiction are controverted or where a more satisfactory showing of
17 the facts is necessary.” *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n. 24
18 (9th Cir. 1977).⁵ Ultimately, it would be fundamentally unfair for the Court to dismiss this
19 action as a matter of law on the basis of the Defendants’ self-serving, thinly supported
20 representations of the jurisdictional facts. Generally, the “[c]ourts frown on a litigant’s use of
21 the motion [to dismiss] as a shotgun tactic to substitute for discovery . . . In the presence of
22 proper, although general, allegations, the motion will usually be denied on the grounds that
23 discovery is the more appropriate vehicle for obtaining the detailed information.” *Crooker v.*
24 *National Enterprise Systems*, No. 08-01322, 2008 WL 5243641, at *1 (C.D. Cal. Dec. 9, 2008).
25 The pertinent jurisdictional facts which should be subject to discovery include, without

26
27 ⁵ Jurisdictional discovery in this matter, if permitted, would also comport directly with the spirit of the Federal Rules
28 of Civil Procedure, which provide that “[p]arties may obtain discovery regarding *any* matter, not privileged, which
is relevant to the subject matter involved in the pending action.” Fed. R. Civ. P. 26(b)(1) (emphasis added).
Accordingly, discovery is not limited to the merits of a case; it may also be used to ascertain the facts bearing on
issues such as jurisdiction or venue. *See Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n. 13 (1978).

1 limitation: the nature and extent of the Defendants’ contacts with Nevada via the Website, the
2 number of Nevada-based literary works displayed on the Website, the number of literary works
3 displayed on the Website specifically concerning Nevada and Nevada residents, and the number
4 of Nevada-based Internet users accessing the Website. Thus, if this Court chooses to entertain
5 the Defendants’ unfounded jurisdictional challenge, limited jurisdictional discovery is the
6 appropriate and necessary mechanism to resolve the disputed jurisdictional facts.

7
8 **c. The Defendants Knew that the Infringement was Likely to Have Harmful**
9 **Effects in Nevada**

10 As expressly pled in the Complaint and corroborated by the evidence attached in support
11 thereof, the Defendants knew that any harm resulting from the public display of the Infringement
12 was likely to be suffered in Nevada, the Work’s original source forum. This proposition further
13 strengthens the propriety of the Court’s exercise of specific personal jurisdiction. *See Yahoo! Inc.*
14 *v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006). As set
15 forth in the pleadings and further detailed herein, the Work plainly displayed the LVRJ as the
16 original source publication and contained content of specific interest to Nevada residents.
17 (Compl. ¶¶ 12-15.) (Compl. Ex. 1.) The Defendants committed an undeniable violation of the
18 Copyright Act by publicly displaying an unauthorized copy of this Nevada-based literary work
19 on the Website. *See* 17 U.S.C. § 501(a). As the Motion to Dismiss fails to contest the allegation
20 that the Defendants knew that the Work originally emanated from the LVRJ, logic dictates that
21 the Defendants also knew that any harm caused by the Infringement would likely be suffered in
22 Nevada (the forum of the Work’s ownership). Summarily, the strength of Righthaven’s
23 pleadings is such that the Defendants cannot reasonably claim to have been unaware that Nevada
24 would bear the brunt of any harm caused by the Infringement, nor can the Defendants reasonably
25 claim that the Infringement’s harmful effects had a more substantial impact in any forum other
26 than Nevada.⁶

27
28 ⁶ Even assuming, *arguendo*, that the Defendants were able to establish that the “brunt” of the harm resulting from the Infringement occurred outside of Nevada, by no means would this diminish the propriety of the Court’s jurisdiction in this matter. In *Yahoo!*, the Ninth Circuit expressly stated that “[i]f a jurisdictionally sufficient amount

1 **2. Righthaven's Claim For Relief Arises Directly Out of the Defendants' Nevada-**
2 **Related Infringing Activities**

3 This issue is uncomplicated: Righthaven's underlying cause of action for copyright
4 infringement would not exist absent the Defendants' infringing activities. In the jurisdictional
5 analysis, the Ninth Circuit has established that, in addition to the defendant's express aiming at
6 the forum, the plaintiff's claims must arise from the defendant's forum-related activities.
7 *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998). This requirement is
8 satisfied if the plaintiff would not have been injured "but for" the defendant's forum-related
9 conduct. *Myers v. Malley Law Offices*, 238 F.3d 1068, 1075 (9th Cir. 2000). Simply stated, ***the***
10 ***instant lawsuit would not exist but for the occurrence of the Defendants' Infringement.***
11 However, in the Motion to Dismiss, the Defendants make the confusing and erroneous
12 contention that the "but-for" requirement is not satisfied because the "allegations in the
13 Complaint do not state where Defendants were located when they allegedly obtained the article."
14 (Defs.' Mot. to Dismiss 12:10-11) The Defendants further argue that the "Complaint fails to
15 allege Defendants posted the article from a location within Nevada." (Defs.' Mot. to Dismiss
16 12:13-14) Apparently, the Defendants' interpretation of the but-for test includes a requirement
17 that the plaintiff must allege the defendant's physical presence in the forum in order to properly
18 plead jurisdiction. Not surprisingly, the Defendants fail to provide any legal authority to support
19 this interpretation. The following scenario demonstrates the disconnect in the Defendants' logic:
20 an out-of-state defendant, using his home computer, infringes on the intellectual property rights
21 of Nevada resident A, commits identity theft of Nevada resident B, and hacks into the online
22 bank account of Nevada resident C. Despite the Nevada-related nature of the out-of-state
23 defendant's conduct, said defendant could not be hailed into Nevada for any of the above acts
24 because none of these acts occurred while the defendant was physically present in Nevada. The
25 absurdity of this scenario speaks for itself.

26 Notwithstanding the Defendants' flawed legal interpretation, the instant infringement
27 action arises directly out of the Defendants' forum-related activities. Revealingly, the

28 of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another
state." *Yahoo!*, 433 F.3d at 1207.

1 Defendants’ argument on this issue completely ignores the facts most pertinent to the instant
2 analysis: (1) the Defendants committed blatant copyright infringement of the Work, (2) the Work
3 knowingly emanated from a Nevada-based daily publication, (3) the Work is of specific concern
4 to Nevada residents, and (4) the Work is owned by Righthaven, a Nevada-based company, thus
5 the Infringement’s resulting harm was felt by Righthaven in Nevada. (*See* Compl. ¶¶ 8-15, 38-
6 39.) Collectively, these facts – all of which stem from the Defendants’ Infringement – constitute
7 the Defendants’ “forum-related activities.” *See Panavision*, 141 F.3d at 1322. Righthaven’s
8 cause of action for copyright infringement is predicated solely and exclusively on said Nevada-
9 related activities; absent said activities, this lawsuit simply would not exist. As such, there can
10 be no reasonable dispute that the instant lawsuit arises out of the Defendants’ Nevada-related
11 infringing acts, regardless of the Defendants’ legally erroneous arguments to the contrary.

12 13 **3. The Court’s Exercise of Jurisdiction Would Not Be Unreasonable**

14 The Court’s exercise of jurisdiction over the Defendants would not be unreasonable, and
15 the facts and circumstances bearing on the jurisdictional analysis preclude the Defendants from
16 escaping jurisdiction on this basis. As such, a denial of the Defendants’ Motion to Dismiss
17 would squarely comport with notions of fair play and substantial justice. *Schwarzenegger*, 374
18 F.3d at 802. As the Ninth Circuit explained in *Core-Vent Corporation v. Nobel Industries*, 11
19 F.3d 1482, 1487-88 (9th Cir. 1993), once minimum contacts have been established, the
20 defendant must present “a compelling case that the presence of some other considerations would
21 render jurisdiction unreasonable.” The “compelling case” requirement is such that the defendant
22 must overcome “a *presumption of reasonableness*” in the plaintiff’s favor. *Haisten v. Grass*
23 *Valley Medical Reimbursement*, 784 F.2d 1392, 1397 (9th Cir. 1986) (emphasis in original).
24 Specifically, this determination of reasonableness is based upon the following factors, as
25 enumerated by the Supreme Court in *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 476-
26 77 (1985):

- 27 (1) the burden on the defendant of defending in the forum;
28 (2) the forum state’s interest in adjudicating the dispute;
(3) the plaintiff’s interest in obtaining convenient, effective relief;

1 (4) the court's interest in obtaining the most efficient resolution of the controversy; and
2 (5) the states' shared interest of furthering fundamental substantive social policies.

3 *Id.*

4 None of the above factors is dispositive standing alone; instead, the courts are to balance
5 each factor individually. *Core-Vent Corp.*, 11 F.3d at 1488. For the following reasons, the
6 Defendants in the present matter cannot present a compelling case that jurisdiction in Nevada
7 would be unreasonable:

- 8 1. The Defendants do not address, in any capacity, the potential burden arising from
9 the Defendants having to defend this action in Nevada. However, it must be
10 acknowledged that any burden borne by the Defendants for this purpose would be
11 similarly imposed on Righthaven should Righthaven be forced to pursue this
12 action in a foreign jurisdiction. Furthermore, though a discovery plan has not yet
13 been filed, there is certainly no guarantee that the Defendants would be forced to
14 travel to Nevada for the purposes of oral deposition.
- 15 2. As set forth on pages 6-13, *supra*, this case involves the willful copyright
16 infringement of a literary work owned by a Nevada-based company and
17 (knowingly) emanating from a prominent Nevada-based publication, the content
18 of which is of specific concern to Nevada residents. Thus, it follows that the
19 District of Nevada would be interested in adjudicating this matter and determining
20 the rights of its citizens, specifically Righthaven in this case.
- 21 3. The third prong of the *Burger King* test similarly favors Righthaven. Righthaven
22 is situated in Nevada, a substantial portion of the pertinent evidence is located in
23 Nevada, and the locus of the injury occurred in Nevada. *See Design Tex Group,*
24 *Inc. v. United States Vinyl Manufacturing Corp.*, No. 04-5002, 2005 WL 357125,
25 at *1 (S.D.N.Y. Feb. 14, 2005) (“[B]ecause the plaintiffs (and their intellectual
26 property) are based in New York, the injury is felt within the state no matter
27 where the infringement takes place”). Furthermore, Righthaven should not be
28 forced to travel to an inappropriate forum of the Defendants' choosing simply

1 because the unlawful act was performed via the Internet and did not require the
2 Defendants to physically enter Nevada.

3 4. As previously discussed, this Court has a significant interest in determining the
4 rights of its citizens. Additionally, adjudication in this forum will be efficient and
5 effective because Righthaven's principal place of business is in Nevada, the Work
6 emanated from a Nevada source, and a substantial part of the events giving rise to
7 this lawsuit are situated in Nevada. *See* 28 U.S.C. § 1391(b)(2) (non-diversity
8 actions may only be brought in a forum in which a substantial part of the events
9 giving rise to the claim occurred). Moreover, the occurrence of copyright
10 infringement in this matter is clear and unequivocal, and the Defendants have
11 offered little in the way of a viable defense to Righthaven's well-supported
12 allegations. In other words, ***the Defendants' failure to effectively contest liability***
13 ***for Righthaven's underlying infringement claim means that this lawsuit will***
14 ***likely come down to a determination of damages, regardless of the forum in***
15 ***which it is adjudicated.*** Ultimately, all remaining issues can be efficiently
16 resolved by this Court.

17 5. As a matter of substantive social policy, a defendant should not be allowed to
18 commit copyright infringement of a literary work which knowingly emanates
19 from a certain forum, but then escape that forum's sound personal jurisdiction
20 simply because the infringement occurred via the Internet and physical entry into
21 the forum was not required. If copyright defendants were to prevail on this
22 counterintuitive basis, all burdens associated with the pursuit of legal recourse for
23 Internet-based infringements would be borne entirely by the copyright owners.
24 The Court should not facilitate such an unjust outcome.

25 Ultimately, the Defendants cannot meet the burden of presenting a compelling case that
26 the exercise of jurisdiction in the District of Nevada would be unreasonable. Thus, as the first
27 two factors of the specific personal jurisdiction test have been soundly established by the
28 foregoing arguments, the Defendants' jurisdictional challenge must fail.

1 **V. CONCLUSION**

2 For the reasons set forth above, Righthaven respectfully requests that this Court deny the
3 Defendants' Motion to Dismiss.

4 Dated this sixteenth day of September, 2010.

5 RIGHTHAVEN LLC

6
7 By: /s/ Joseph C. Chu

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14 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of Righthaven LLC and that on this sixteenth day of September, 2010, I caused the **PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS** to be served by the Court’s CM/ECF system.

By: /s/ J. Charles Coons
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