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7
 8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10
 11 RIGHTHAVEN LLC, a Nevada limited-
 liability company,

12 Plaintiff,

13 v.

14
 15 MICHAEL LEON, an individual; DENISE
 16 NICHOLS, an individual; and MEDBILLZ,
 INC., a corporation of unknown origin,

17 Defendants.
 18

Case No.: 2:10-cv-01672-GMN-LRL

**PLAINTIFF RIGHTHAVEN LLC'S
 APPLICATION FOR TEMPORARY
 STAY OF JUDGMENT AND ORDER
 GRANTING DEFENDANT MICHEAL
 LEON'S COUNSEL'S MOTION FOR
 ATTORNEY'S FEES AND COSTS**

19
 20 Righthaven LLC ("Righthaven") hereby applies for a temporary stay of the judgment (the
 21 "Judgment," Doc. # 53) related to the Court's July 5, 2011 Order (the "July 5th Order", Doc. #
 22 52) granting Defendant Michael Leon's counsel's ("Opposing Counsel") Motion for Attorney's
 23 Fees and Costs (the "Motion", Doc. # 42.). Righthaven requests the Court temporarily stay any
 24 enforcement proceedings related to the Judgment so that it can properly evaluate any potential
 25 appealable issues contained in the July 5th Order and, if so, provide the company with sufficient
 26 time to obtain any security required to be posted on appeal.

27 Additionally, while Opposing Counsel is apparently not amenable to discussing a
 28 resolution of Judgment that does not entail immediate payment as set forth in their Motion for

1 Preliminary Injunction (Doc. # 54), cooler heads may prevail during a brief stay that could result
2 in an agreeable resolution to this matter without the need for additional specious filings.

3 Opposing Counsel's Motion for Preliminary Injunction is just such an unnecessary and
4 unwarranted filing, which has now been set for hearing on July 26, 2011, for numerous reasons.

5 First, well-established precedent prohibits the Court from issuing preliminary injunctive
6 relief to ensure collectability of a judgment absent a lien or other security interest. *See Grupo*
7 *Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 319-20 (1999); *see also*
8 *Dateline Exports, Inc. v. Basic Const., Inc.*, 306 F.3d 912, 914 (9th Cir. 2002); *United States ex.*
9 *rel. Rahman v. Oncology Assocs., P.C.*, 198 F.3d 489, 496 (4th Cir. 1999). Second, injunctive
10 relief is also an inappropriate remedy to compel payment of a debt. *See Great-West Life &*
11 *Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210-211 (2002). Third, contrary to Opposing
12 Counsel's bluster, there is simply no competent evidence supporting the conclusion that
13 Righthaven is insolvent, engaging in frustrating collection of the Judgment or otherwise
14 dissipating assets.

15 Most amazingly, however, is Opposing Counsel's apparent reliance on the prevailing
16 party provision under the Copyright Act to justify entry of the requested injunctive relief.
17 Opposing Counsel is most certainly aware that an independent basis for subject matter
18 jurisdiction must exist beyond reliance on Federal Rule of Civil Procedure 65 in order to obtain
19 injunctive relief. *See United States v. Cohen*, 152 F.3d 321, 325 (4th Cir. 1998); *Enterprise Int'l,*
20 *Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 470 (5th Cir. 1985). As a
21 result, Opposing Counsel has attempted to bootstrap their request by couching the Court's fee
22 award under 17 U.S.C. § 504 (Doc. # 54 at 3-4) despite the July 5th Order containing absolutely
23 no finding that the award was made under this statutory provision. (Doc. # 52.) Moreover,
24 Opposing Counsel's reliance on the Copyright Act as a subject matter jurisdictional basis for
25 entering the requested relief is completely contrary to this same firm having made, and prevailed
26 on, the argument Righthaven lacks standing to assert copyright infringement claims. *See, e.g.,*
27 *Righthaven LLC v. Hoehn*, 2011 WL 2441020, at *6 (D. Nev. June 20, 2011). While Righthaven
28 asserts that it has standing to maintain its copyright infringement claims despite the finding in

1 *Hoehn*, it certainly accepts Opposing Counsel’s apparent concession that subject matter
2 jurisdiction exists under the Copyright Act in this matter. In fact, Righthaven maintains that
3 such a concession should be equally applied to all other matters in which Opposing Counsel has
4 contested or is contesting Righthaven’s standing to pursue infringement claims under the
5 Copyright Action. In this regard, Opposing Counsel appears to have not only assisted
6 Righthaven’s efforts “to rearrange the deck chairs on the Titanic,” but their arguments also serve
7 to provide life boats for each and every passenger on their figuratively referenced ocean liner.

8 As the Court is certainly aware, Righthaven’s counsel dismissed the action against Leon
9 without prejudice based on the belief that any resulting fee award would be made to a non-profit
10 legal organization. Counsel certainly did not believe this “non-profit legal organization” would
11 be Opposing Counsel’s law firm. Had this fact been made clear, Righthaven would have
12 unquestionably dismissed its claims against Leon with prejudice. Further complicating counsel’s
13 decision was the fact that Leon had only retained counsel to appear at the hearing. Leon wanted
14 a decision before counsel’s engagement ended and Righthaven’s counsel relied upon the Court’s
15 statements during oral argument about the nature of any resulting fee award. Righthaven’s
16 counsel requires a brief stay of the Judgment entered in this action, which would preclude more
17 unnecessary and harassing filings by Opposing Counsel, while potential appealable issues related
18 to the July 5th Order are properly evaluated and, if sufficient grounds exist, allow of adequate
19 time to post any security required for appeal.

20 Based on the foregoing, Righthaven respectfully requests the Court temporarily stay the
21 Judgment resulting from its July 5th Order for a period of thirty days.

22 Dated this 12th day of July, 2011.

23 SHAWN A. MANGANO, LTD.

24 By: /s/ Shawn A. Mangano, Esq.
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on this 12th day of July, 2011, I caused the foregoing document to be to be served by the Court's CM/ECF system, as well as deposited in a sealed envelope, a copy of in the United States Mail, with first-class postage affixed thereto, to the following persons:

Michael Alan Leon
5767 Monticello Way
Fitchburg, WI 53719
Pro Se Defendant
Michael Leon

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