

1 J. Malcolm DeVoy IV (Nevada Bar No. 11950)
 2 RANDAZZA LEGAL GROUP
 3 jmd@Randazza.com
 4 7001 W. Charleston Boulevard, # 1043
 5 Las Vegas, NV 89117
 Telephone: 888-667-1113
 Facsimile: 305-437-7662
 www.Randazza.com

6 Appearance Attorney for Defendant,
 7 *Michael Leon*

8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

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

12 Plaintiff,

13 vs.

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

16 Defendants.

Case No. 2:10-cv-01672

**DECLARATION OF J. MALCOLM
 DEVOY IV IN SUPPORT OF
 OPPOSITION TO PLAINTIFF'S
 APPLICATION FOR TEMPORARY
 STAY**

17 **DECLARATION OF J. MALCOLM DEVOY IV IN SUPPORT OF OPPOSITION TO
 18 PLAINTIFF'S APPLICATION FOR TEMPORARY STAY**

I, J. MALCOLM DEVOY IV, hereby declare as follows:

19 1. I am a duly licensed attorney in Nevada and a member of the Nevada bar in good
 20 standing, attorney for the Randazza Legal Group law firm (alternatively, the "Firm"), and served
 21 as counsel of record for Michael Leon in the April 20, 2011 hearing in this matter. This also
 22 serves to correct the factually true but inaccurate statement that I, with Marc Randazza, were
 23 counsel of record for Wayne Hoehn, in this matter -- Marc Randazza and I represent Hoehn, but
 24 in a different case pending in this District. (*See* Doc. # 42-1.)

25 2. On July 9, 2011, I moved the Court to enter a preliminary injunction against
 26 Righthaven LLC ("Righthaven") in the above-captioned case (Doc. # 54).

27 3. On July 9, I sent a letter to Attorney Mangano, on behalf of Righthaven, stating the
 28 circumstances upon which the Firm felt comfortable settling this matter, based on our prior

1 dealings with Righthaven and the delay, fruitlessness and misdirection entailed within them.

2 4. On July 11, I again e-mailed Attorney Mangano regarding the status of Randazza
3 Legal Group's judgment against Righthaven, as a hearing had been scheduled on the Firm's
4 Motion for Preliminary Injunction (Doc. # 54).

5 5. Attorney Mangano did not respond to either of these correspondences, and responded
6 by filing the instant Application for Stay (Doc. # 56).

7 6. To date, Righthaven has not provided any written assurances that it will satisfy the
8 Firm's judgment against it, or a proposed schedule for doing so.

9 7. The experience of writing to Attorney Mangano and seeking to resolve the issue of
10 this Firm's judgment (Doc. # 53) without the intervention of this Court is extraordinarily similar
11 to the experience of "negotiating" the initial attorney's fee award with Righthaven – which
12 resulted in protracted motion practice (Doc. # 42).

13 8. During that process, I would call and e-mail Attorney Mangano to discuss various
14 proposals the Firm would make, yet Righthaven never made firm offers to the Firm, in writing,
15 which could be used for good faith negotiations. At that time, the value of the fee award was
16 factors lower than the Firm's current judgment of \$3,815.00.

17 9. I, and the Firm, was open to Righthaven donating the Court's award of attorney's
18 fees to a non-profit organization. As this would have necessitated Righthaven acknowledging
19 the Firm's overtures in an effort to resolve that issue without motion practice (*See id.*).

20 10. Because of the fruitlessness of those negotiations, and the track similar talks were
21 taking with Attorney Mangano regarding Righthaven's payment of the Firm's judgment, the
22 Firm's Motion for Preliminary Injunction (Doc. # 54) seemed like the sole prudent and effective
23 manner to make Righthaven take the Firm's collection efforts seriously.

24 11. To that end, it seems to have captured Attorney Mangano's attention – the Motion
25 (*id.*) was filed shortly after 12:20 a.m. on July 9, 2011, and Attorney Mangano called me around
26 12:30 a.m. to discuss the issue for approximately one hour and fifteen minutes. At that time, no
27 resolution was reached, and no written assurances of payment have been issued to the firm

28

1 arising from that conversation.

2 12. As Righthaven has stopped filing lawsuits against defendants it accuses of copyright
3 infringement, and all cases but one pending in the District of Colorado have been stayed, I have
4 serious doubts as to what, if any, revenue Righthaven is receiving at this point in time.

5 I declare under penalty of perjury that the foregoing is true and correct.

6 Dated: July 12, 2011

7

8

By: /s/ J. Malcolm DeVoy IV

9

J. Malcolm DeVoy IV

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28