

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

5 Attorney for Defendant,  
 6 *Michael "Rick" Allec*

7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

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

12 Plaintiff,

13 v.

14 RICK ALLEC, an individual; and RX  
 15 ADVERTISING INC., LLC, a limited-liability  
 company of unknown origin,

16 Defendants.

Case No. 2:11-cv-00532

**DEFENDANT'S  
 MOTION TO DISMISS UNDER  
 RULES 12(b)(1) and (6)**

17 **DEFENDANT'S MOTION TO DISMISS**  
 18 **UNDER RULES 12(b)(1) and (6)**

19 Defendant Michael Richard (a/k/a "Rick") Allec (hereinafter, "Allec," or the  
 20 "Defendant"), by and through his counsel, Randazza Legal Group, hereby moves to dismiss  
 21 Plaintiff Righthaven LLC's (hereinafter "Righthaven[']s," or the "Plaintiff[']s") Complaint (Doc.  
 22 # 1) for failure to state a claim upon which relief can be granted. Specifically, Allec is not the  
 23 proper party in this action, having been misidentified as a defendant, and is not liable for the  
 24 infringements Righthaven alleges. Righthaven is thus unable to rightfully seek relief from Allec,  
 25 as this Court is deprived of subject matter jurisdiction, and Righthaven has not stated a claim for  
 26 which Allec can provide relief.

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1 **I. Introduction**

2 On April 8, 2011, Righthaven filed suit against the above-named defendants, seeking  
3 \$7,500,000 in statutory damages (Doc. # 1 ¶¶ 130-603, Prayer for Relief at 62-63). The RX  
4 Forum, a well-known and highly trafficked website, features information about sports odds – the  
5 likelihood of a team winning or losing a particular game – to be used in various forms of  
6 gambling, from office football pools to the sportsbooks of Las Vegas and Macau. Based on  
7 WHOIS information obtained in anticipation of litigation, Righthaven identified Allec as the  
8 registrar of the domain name <therxforum.com> (hereinafter, the “Domain Name”) (Doc. # 1 ¶¶  
9 5-7). The Domain Name is used to display content for the RX Forum, which includes a message  
10 board where Righthaven alleges the infringements of its copyrights occurred. The user-  
11 accessible contents of the website residing at the Domain Name, including its message boards,  
12 shall be referred to collectively as the “Forum.”

13 Allec, a web developer by trade, had a contractual relationship with the Forum’s owners  
14 from June 1, 2006, to June 1, 2007. (Allec Aff., referred to hereafter as Exhibit A, ¶ 4; Exh B.)  
15 During this time, Allec was retained to develop many of the features used by the Forum. (Exh.  
16 A. ¶¶ 4, 7.) In fulfilling these duties, Allec became the nominated registrant for the Domain  
17 Name, as well as <therx.com>, making his name publicly available on the WHOIS registry<sup>1</sup>.  
18 (Exh. A ¶¶ 6.) When his contract ended on June 1, 2007, though, Allec surrendered all WHOIS  
19 login information to the Forum’s owners, and never again accessed the domain name. (Exhs. A  
20 ¶¶ 6-7, 11-14; B; Allec Supp. Aff., referred to hereafter as Exhibit C, ¶¶ 5, 7, 9-10.) Since that  
21 time, Allec has had no legal or financial interest, or control over, in the Domain Name or Forum.  
22 (Exhs. A ¶¶ 8-16; C ¶¶ 5, 7, 9-10.)

23 After Righthaven filed this lawsuit, the Domain Name was transferred out of Allec’s  
24 name. (Exh. C ¶¶ 3-4.) Allec did not authorize, direct or otherwise control this transfer, or know  
25 of it before being informed by his attorney. (*Id.* ¶¶ 6-8.) While Allec’s name apparently

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26 <sup>1</sup> The WHOIS registry is a public registry of domain name registrants maintained by the Internet Corporation for  
27 Assigned Names and Numbers; domain name registrars – services used by individual registrants to register domain  
28 names – are required to submit a registrant’s personal contact information to the WHOIS database. Network  
Solutions, What Is WHOIS? (2011), <http://www.networksolutions.com/whois/index.jsp> (*last accessed* June 19,  
2011).

1 persisted as the nominated registrant in WHOIS for several years after turning the login  
2 information for Domain Name and <therx.com> over to the Forum's owners, he did not have any  
3 control, ownership, or financial or legal interests in the domain name. (Exhs. A ¶¶ 11-14; C ¶¶ 6-  
4 11.) As such, this was not an attempt by Allec to cover his tracks, but a transfer that occurred  
5 without his control, or even his knowledge. (Exh. C ¶¶ 6-11.)

6 After June 1, 2007, Allec ceased having a legal relationship with the Forum. (Exhs. A ¶¶  
7 9-10; B; C ¶¶ 13, 23.) Separate from the Forum, Allec was developing RXOdds, a sports odds  
8 service that would eventually be affiliated with the Forum once completed – drawing on the  
9 “RX” brand for marketing purposes – but was developed by Allec. (Exh. C ¶¶ 19-23.) Allec's  
10 role developing RXOdds did not involve him with the Forum's administration or ownership.  
11 (*Id.*) In June 2008, Allec announced that he was no longer developing RXOdds with the “RX”  
12 branding, and would not be working with the site at the project's conclusion, but would be  
13 running the final operation as Las Vegas Data Services LLC, d/b/a SportsOptions (hereinafter  
14 “SportsOptions”). (*Id.* ¶¶ 18-20.)

15 Thus, while Allec's contractual relationship with the Forum ended on June 1, 2007,  
16 anything that could be construed as a relationship between the two entities – Allec's  
17 development of SportsOptions, then known as RXOdds, in particular – ended in June of 2008.  
18 (Exhs. A ¶¶ 8-14; B at 1; C ¶¶ 18-20.) Allec's current business, SportsOptions, does not have  
19 any financial or other legal interest in the Forum. (Exh. C ¶¶ 19, 21-24.) Similarly, the Forum  
20 does not have any financial, ownership or other legal interest in SportsOptions. (*Id.*)

21 Allec's lack of involvement in the Forum apparently has not deterred Righthaven in  
22 bringing its action against him. In its Complaint, Righthaven claims to have obtained the rights  
23 to 25 copyrights, which the defendants allegedly infringed upon (Doc. # 1 ¶¶ 21-115). The  
24 oldest of these works were created in November 2010, and the newest in February 2011, with  
25 alleged infringements occurring during and around this time period (*id.*) – more than two years  
26 after Allec ended all involvement with the Forum and began SportsOptions. (Exh. C ¶¶ 7, 13, 18-  
27 23.)

1 Being unsuccessful thus far in being dismissed from this litigation based on the facts  
2 stated above, Allec now moves this Court to dismiss the action pending against him. As Allec  
3 has been sued in error, Righthaven has neither standing nor entitlement to any relief, let alone in  
4 the order of 7.5 million dollars, from Allec.

## 5 **II. Legal Standards**

6 Under Federal Rule of Civil Procedure 12(b)(6), courts must dismiss causes of action  
7 when a plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6);  
8 *N. Star Int'l v. Arizona Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). In evaluating a motion  
9 to dismiss under Rule 12(b)(6), courts accept the Complaint's allegations as true, and construe  
10 them in a light most favorable to the Plaintiff. *N. Star Int'l*, 720 F.2d at 580; *Lodge 1380,*  
11 *Brotherhood of Railway, Airline and Steamship Clerks v. Dennis*, 625 F.2d 819, 825 (9th Cir.  
12 1980). Courts are not required to accept as true, however, allegations that are merely conclusory,  
13 unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden State*  
14 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

15 While only notice pleading is required under Rule 8(a), a plaintiff must plead facts  
16 showing that a violation of law is plausible, rather than merely possible. A formulaic recitation  
17 of a cause of action with conclusory allegations is not sufficient; a plaintiff must plead facts  
18 showing that a violation is plausible, not just possible. *Ashcroft v. Iqbal*, 556 U.S. \_\_\_, 129 S. Ct.  
19 1937, 1949 (2009) (citing *Twombly v. Bell Atl. Corp.*, 550 U.S. 544, 555 (2007)). A court's  
20 dismissal of an action pursuant to Rule 12(b)(6) is a ruling of law. *N. Star Int'l*, 720 F.2d at 580;  
21 *Yuba Consolidated Gold Fields v. Kilkeary*, 206 F.2d 884, 889 (9th Cir. 1953).

22 Subject matter jurisdiction is an essential element to every lawsuit and must be  
23 demonstrated "at the successive stages of the litigation." *Chapman v. Pier 1 Imports (U.S.), Inc.*,  
24 631 F.3d 939, 954 (9th Cir. 2011) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561  
25 (1992)). The existence of subject matter jurisdiction is an ongoing inquiry that a court must  
26 conduct *sua sponte* in order to continue the case. *Chapman*, 631 F.3d at 954; *Bernhardt v.*  
27 *County of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2002). Where subject matter jurisdiction is  
28 absent, a court has no discretion and must dismiss the case. *Chapman*, 631 F.3d at 954.

1 A central component to subject matter jurisdiction is the question of standing, which  
2 requires that the party experience actual or imminent harm. *Lujan*, 504 U.S. at 561 (citing  
3 *Whitmore v. Ark.*, 495 U.S. 149, 155 (1990)). This harm must be traceable to the defendant's  
4 unlawful conduct, and likely redressed by the desired relief, for standing to exist. *Allen v. Wright*,  
5 468 U.S. 737, 751 (U.S. 1984). A party's standing to bring a case is not subject to waiver, and  
6 can be used to dismiss the instant action at any time. Fed. R. Civ. P. 12(h)(3); *U.S. v. Hays*, 515  
7 U.S. 737, 742 (1995); *Chapman*, 631 F.3d at 954.

### 8 **III. Argument**

9 Righthaven's suit against Allec for copyright infringement is in error. Allec did not own  
10 or have any control over the Forum on which the infringing content appeared, at the time of  
11 infringement (exhs. A ¶¶ 8-16; C ¶¶ 5-7). Yet, because of a previous contractual relationship  
12 with the Forum, which has been clarified and explained in sworn statements, Righthaven seeks to  
13 hold Allec liable for copyright infringement occurring years after that contract ended. (*See*  
14 *generally* Doc. # 1.) This faulty reasoning is a clear example of an unwarranted deduction and  
15 improper inference under *Sprewell*, 266 F.3d 979, 988, as Righthaven's theory of liability – that  
16 because Allec once had a relationship with the Forum, he is liable for recent infringement – is  
17 utterly belied by Allec's sworn statements. Allec therefore cannot be liable for primary or  
18 vicarious infringement occurring on the Forum, and Righthaven's fifty causes of action against  
19 him must fail.

20 Moreover, to the extent Righthaven has suffered a harm from the copyright infringement  
21 alleged in its Complaint (Doc. # 1), it cannot be asserted against Allec. Where the defendant is  
22 improperly named and has not caused harm to the plaintiff, the plaintiff necessarily does not  
23 have an injury that can be raised against defendant. *Allen*, 468 U.S. at 751 (holding that a  
24 "plaintiff must allege personal injury fairly *traceable to the defendant's allegedly unlawful*  
25 *conduct*" to have standing) (emphasis added); *see Clark v. U.S.*, 105 A.F.T.R. (RIA) 2014 (E.D.  
26 Cal. 2010) (finding that plaintiff lacked subject matter jurisdiction over the IRS and its agent,  
27 both of which were improper defendants in the action, unable to accord relief to the defendant,

1 and dismissing the case). Because Allec did not cause Righthaven's harm, and cannot rightly  
2 provide the relief Righthaven seeks, this Court lacks subject matter jurisdiction over the dispute.

3 **A. Righthaven Fails to Allege a Cognizable Claim for Direct Copyright**  
4 **Infringement upon which Allec can Grant Righthaven Relief.**

5 Righthaven alleges 25 counts of direct copyright infringement under 17 U.S.C. § 501  
6 against Allec in its Complaint (Doc. # 1 ¶¶ 130-453). To prevail on its claims for direct  
7 copyright infringement, Righthaven must show: 1) its ownership of a valid copyright; and 2)  
8 Allec's copying of constituent elements of the original work. 17 U.S.C. § 501; *Feist Publ'ns, Inc.*  
9 *v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *Benay v. Warner Bros. Entm't, Inc.*, 607 F.3d  
10 620, 624 (9th Cir. 2010); *Funky Films, Inc. v. Time Warner Entm't Co., L.P.*, 462 F.3d 1072,  
11 1076 (9th Cir. 2006). As these elements are conjunctive, both must be satisfied for Righthaven  
12 to show direct infringement. 17 U.S.C. § 501.

13 The second element, requiring Allec to copy Righthaven's copyrighted content, cannot be  
14 fulfilled in this case. Allec does not have any ownership, legal interest or control over the  
15 Domain Name or Forum. (Exhs. A ¶¶ 8-14; C ¶¶ 2, 7, 10, 18.) In addition to lacking any current  
16 control over the Domain Name or Forum, Allec did not have control over them at the time of  
17 infringement, or at any time since June 1, 2007. (Exhs. A ¶¶ 9-15; B; C ¶¶ 2, 8-10, 18.) As it is  
18 the Forum that displays the allegedly infringing work (*see generally* Doc. # 1), it is impossible,  
19 in light of the clear absence of a relationship between Allec and the Forum, for Righthaven to  
20 claim Allec has infringed its copyrights. Failing to meet this essential element of its twenty-five  
21 direct infringement claims, Righthaven's causes of action for direct infringement must fail  
22 against Allec. Moreover, as Allec did not cause the claimed harm, Righthaven cannot lawfully  
23 pursue its claims against him and lacks standing to bring these causes of action.

24 **B. Righthaven's Complaint Additionally Fails to Allege a Cognizable Claim for**  
25 **Vicarious Copyright Infringement upon which Allec can Grant Righthaven Relief.**

26 In addition to 25 claims for direct copyright infringement, Righthaven alleges 25 separate  
27 claims for vicarious copyright infringement against Allec as well. Vicarious copyright  
28 infringement is a court-created claim with no statutory definition; as such, the elements for

1 liability found in precedent are as follows: 1) the right and ability to control the infringer's  
2 conduct; and 2) the receipt of financial gain as a result of infringement. *MGM Studios Inc. v.*  
3 *Grokster, Ltd.*, 545 U.S. 913, 930 n. 9 (2005); *Shapiro, Bernstein & Co. v. H. L. Green Co.*, 316  
4 F.2d 304, 308 (2d Cir. 1963) (holding that a store owner who let a third party sell pirated copies  
5 of records was liable for vicarious copyright infringement because the store had the ability and  
6 right to control infringement, yet profited from it); *Dreamland Ball Room, Inc. v. Shapiro,*  
7 *Bernstein & Co.*, 36 F.2d 354, 355 (7th Cir. 1929) (finding vicarious liability where a live music  
8 venue had the ability and right to control performers who engaged in unauthorized live  
9 reproduction of copyrighted music, and profited from such unauthorized performance).

10 Righthaven's vicarious copyright infringement claims against Allec fail on both prongs.  
11 First, Allec did not have any ownership in, or control over, the Forum or Domain Name where  
12 the infringement appeared at the time of the infringement or thereafter. (Exhs. A ¶¶ 8-15; C ¶¶ 2,  
13 7-10, 18.) Allec's contractual relationship with the Forum – the only time at which he would  
14 even have the technical ability, let alone the right, to exercise control over copyright  
15 infringement – ended on June 1, 2007 (Exhs. A ¶¶ 8-15; B at 1; C ¶¶ 2, 7-10, 18), roughly 3.5  
16 years before the first instance of infringement alleged in Righthaven's Complaint. (Doc. # 1 ¶¶  
17 21-119.) No set of facts or circumstances, in light of Allec's sworn statements (Exhs. A and C),  
18 can be construed to show Allec had the ability or right to control infringing content on the  
19 Forum, as he unequivocally did not. In addition, because Allec did not inflict the claimed injury  
20 on Righthaven, the Court lacks subject matter jurisdiction over Righthaven's claims.

21 Beyond lacking the ability or right to control infringing content on the Forum, Allec did  
22 not receive any financial benefit from the alleged infringement. The only compensation Allec  
23 received from the Forum came from his consulting agreement from June 1, 2006 to June 1, 2007.  
24 (Exhs. A ¶¶ 5-17; B at 1; C ¶¶ 1, 7-16.) As the infringements were found on the Forum  
25 beginning in late 2010 (Doc. # 1 ¶¶ 21-119), approximately 3.5 years after this contract ended, it  
26 is logically impossible for Allec to have received any financial gain or profit from the alleged  
27 infringements. Allec did not receive any money from the Forum or its owners as a result of the  
28 infringing content found on it in late 2010. (See Exhs. A ¶¶ 4, 9, 11, 14; B at 1; C ¶¶ 13-15, 18,

1 24-26.) Without this fundamental element vicarious infringement, Righthaven has failed to  
2 properly state any of its 25 causes of action for vicarious copyright infringement against Allec.

3 Righthaven fails to properly allege both elements required by this cause of action. Not  
4 only did Allec lack the right and ability to control copyright infringements complained of by  
5 Righthaven, he never received any compensation arising from their occurrence. Because Allec  
6 lacked the ability and right to control the infringements, he is not culpable for Righthaven's  
7 harm, depriving the Court of subject matter jurisdiction over such claims. Consequently, all 25  
8 causes of action for vicarious copyright infringement must be dismissed against Allec.

9 **C. Much Like the Hundreds of Lawsuits Based on Stephens Media LLC's**  
10 **Copyrights, Righthaven Likely Does Not Have Standing to Sue in this Case, Either.**

11 This Motion to Dismiss' arguments gloss over the crucial question as to whether  
12 Righthaven even has standing to sue for copyright infringement. Ownership of a copyright, or  
13 exclusive right therein, is a prerequisite to bringing an infringement action. *Silvers v. Sony*  
14 *Pictures Entm't, Inc.*, 402 F.3d 881, 885 (9th Cir. 2005); *see Sybersound Records v. UAV Corp.*,  
15 517 F.3d 1137, 1144 (holding that only owners and "exclusive licensees" may enforce a  
16 copyright or license). Recent developments establish that Righthaven acquired neither  
17 ownership nor exclusive rights in the copyrights it sued upon in more than 200 lawsuits relating  
18 to content owned by Stephens Media LLC.<sup>2</sup> *Righthaven LLC v. Democratic Underground LLC*,  
19 Case No. 2:10-cv-01356 (Doc. # 116) (D. Nev. June 14, 2011).

20 The document that revealed Righthaven's lack of rights in *Democratic Underground*, its  
21 "Strategic Alliance Agreement" with Stephens Media, has not yet been discovered in this case,  
22 nor has its equivalent thereof. Allec – as a defendant sued in haste and error – should not have to

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23  
24 <sup>2</sup> This issue has been raised repeatedly in this District and with respect to its copyrights obtained by Stephens Media  
25 LLC. *See Righthaven LLC v. Vote for the Worst LLC*, Case No. 2:10-cv-01045; *Righthaven LLC v. Pahrump Life*,  
26 Case No. 2:10-cv-01575; *Righthaven LLC v. Hyatt*, Case No. 2:10-cv-01736; *Righthaven LLC v. Hoehn*, Case No.  
27 2:11-cv-00050; *Righthaven LLC v. Gray et al.*, Case No. 2:11-cv-00720. The equivalent to the documents that  
28 failed to confer Righthaven with standing in *Democratic Underground* (Doc. # 116) are being sought with respect to  
Righthaven's relationship with MediaNews Group, owner of the Denver Post, in *Righthaven LLC v. Wolf et al.*,  
Case No. 1:11-cv-00830 (D. Colo.), as they are also anticipated to be insufficient to confer Righthaven with standing  
to bring its infringement actions. To that end, it is unlikely in the extreme that Righthaven has properly acquired  
ownership of the copyrights at issue in this case from Servo Design, Inc., as it claims in its numerous copyright  
assignments attached as exhibits to the Complaint (Doc. # 1).



1 bear the responsibility of uncovering this document. Allec and his counsel believe, and therefore  
2 argue, that Righthaven’s ostensible “acquisition” of copyrights in this case is just as defective  
3 and deceptive as its acquisition of copyrights from Stephens Media LLC. The party invoking the  
4 jurisdiction of federal courts – Righthaven, in this case – bears the burden of showing that  
5 jurisdiction is proper. *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1019 (9th Cir. 2007)  
6 (holding that the party asserting jurisdiction bears the burden of showing it is proper); *Lew v.*  
7 *Moss*, 797 F.2d 747, 749 (9th Cir. 1986) (stating that the plaintiff always has the burden of  
8 establishing subject matter jurisdiction).

9 Righthaven’s assertion of copyright rights in this case most likely entails the same issues  
10 of misrepresentations to not only this Court regarding the interested parties in this case as found  
11 in *Democratic Underground*, Case No. 2:10-cv-01356 (Doc. # 116 at 15), but to the Copyright  
12 office as well. These latter misrepresentations take the form of what may be fraudulent  
13 copyright registrations, since “Righthaven actually left the transaction [with Stephens Media  
14 LLC, in which copyrights were allegedly transferred] with nothing more than a fabrication since  
15 a copyright owner cannot assign a bare right to sue after *Silvers*.” *Id.* at 6:14-15. Such a finding  
16 stands in stark contrast with the copyright registration obtained by Righthaven in that case, and  
17 casts serious doubt over the numerous registration applications attached as exhibits to the  
18 Complaint in this case (Doc. # 1). Though Righthaven has produced copyright registration  
19 applications as a predicate for standing in this case, this District has found that, in similar  
20 actions, Righthaven lacked sufficient rights to have standing – despite furnishing similar  
21 copyright registration applications. *See Democratic Underground* (Doc. #116); *Hoehn*, Case No.  
22 2;11-cv-00050 (Doc. # 28). Because of the inherent unreliability of these documents in  
23 Righthaven’s cases, they should not be accepted at face value as conferring subject matter  
24 jurisdiction upon the Court.

25 Additional information is needed to determine what copyright rights Righthaven actually  
26 possesses, despite its copyright registration applications. In particular, the document governing  
27 Righthaven’s agreement with Servo Design, Inc. (hereinafter, “Servo”), is needed so that it may  
28 be analyzed regarding Righthaven’s standing in this case, fulfilling its burden of doing so under

1 *Serrano*, 478 F.3d at 1019 and *Lew v. Moss*, 797 F.2d at 749, as Righthaven may very well not  
2 possess sufficient rights to bring this action – or any rights at all – in the copyrights it asserts.  
3 Lacking the rights needed to sustain these lawsuits has not stopped Righthaven from bringing  
4 hundreds of them in this District, nor has it prevented Righthaven from misrepresenting to the  
5 courts that it is the “owner” of the copyrights in question. *See Democratic Underground*, Case  
6 No. 2:10-cv-01356 (Doc. # 116 at 6, 15.) For Righthaven to actually own the rights it purports to  
7 have in this case would be an exception to the rule in its operations thus far. In light of this  
8 deeply troubling pattern, Righthaven must provide information beyond its bare assertion of  
9 copyright rights to assure the Court of its subject matter jurisdiction over this dispute.

10 **Conclusion**

11 Despite alleging 50 causes of action against Allec, all of them must be dismissed against  
12 him. In its haste to recover 7.5 million dollars, Righthaven named the wrong party as a  
13 defendant. Because Allec cannot accord Righthaven its desired relief, Righthaven has failed to  
14 state a claim against him for which relief can be granted. In addition, Righthaven lacks standing  
15 to sue Allec in this case because he did not cause the injuries for Righthaven seeks redress.  
16 Regardless, recent developments shed light on the patent unlikelihood that Righthaven even  
17 owns the copyrights on which it predicates this case, further impairing Righthaven’s standing to  
18 sue Allec. While this case can be disposed of against Allec without analyzing Servo’s  
19 assignment of copyrights to Righthaven, any review of this relationship likely would deprive  
20 Righthaven of the ability to sue on any copyrights it claims to have obtained from Servo.

21 Dated: June 20, 2011

22 Respectfully Submitted,

23 RANDAZZA LEGAL GROUP

24   
25 \_\_\_\_\_  
26 J. Malcolm DeVoy IV

27 Attorney for Defendant,  
28 *Michael “Rick” Allec*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am a  
3 representative of Randazza Legal Group and that on this 20th day of June, 2011, I caused the  
4 document(s) titled:

5 **DEFENDANT’S MOTION TO DISMISS UNDER RULES 12(b)(1) and (6)**

6 to be served as follows:

7  
8  by depositing same for mailing in the United States Mail, in a sealed envelope  
9 addressed to Steven A. Gibson, Esq., Righthaven, LLC, 9960 West Cheyenne  
10 Avenue, Suite 210, Las Vegas, Nevada, 89129-7701, upon which first class  
postage was fully prepaid; and/or

11  Pursuant to Fed. R. Civ. P. 5(b)(2)(D), to be sent via facsimile as indicated; and/or

12  
13  to be hand-delivered;

14  
15  by the Court’s CM/ECF system.

16  
17 /s/ J. Malcolm DeVoy\_\_\_\_\_

18 J. Malcolm DeVoy