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7  
8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
10

11 RIGHTHAVEN LLC, a Nevada limited-  
liability company,

12  
13 Plaintiff,

14 v.

15 DR. SHEZAD MALIK LAW FIRM P.C., a  
16 Texas domestic professional corporation,

17  
18 Defendant.  
19

Case No.: 2:10-cv-0636- RLH-RJJ

**PLAINTIFF’S OPPOSITION TO  
DEFENDANT’S MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER  
JURISDICTION AND LACK OF  
PERSONAL JURISDICTION**

20  
21 Righthaven LLC (“Righthaven”) hereby opposes Defendant Dr. Shezad Malik Law Firm  
22 P.C.’s (the “Malik Firm”) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Lack  
23 of Personal Jurisdiction (Docket No. 6; “Motion to Dismiss”). Righthaven bases this Opposition  
24 to the Malik Firm’s Motion to Dismiss (the “Opposition”) on the pleadings and papers on file in  
25 this action, on oral argument of counsel made at the time of this Court’s hearing of the Motion to  
26 Dismiss, and on any other matter of which this Court takes notice.  
27  
28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 **A. Standing**

4 The Malik Firm's standing argument is illegitimate for the following five independent  
5 reasons:

- 6 (1) The Malik Firm's standing argument is not ripe for consideration. The Malik Firm  
7 relies upon a hypothetical, erroneous assumption as a basis for its standing argument,  
8 which is both inappropriate and a waste of this Court's time. The Malik Firm has not  
9 seen the copyright assignment entered into by Righthaven and assignor Stephens  
10 Media LLC (the "Righthaven Assignment"), attached hereto at Exhibit 1.
- 11 (2) The pleading requirement associated with standing has been far exceeded by  
12 Righthaven.
- 13 (3) Righthaven is entitled to a presumption of copyright ownership. The United States  
14 Copyright Office (the "USCO") has already examined Righthaven's claim of  
15 copyright ownership and has granted Righthaven registrant status. The Malik Firm's  
16 standing argument is merely an attempt to diminish the USCO's evaluation of  
17 ownership and the presumption arising therefrom.
- 18 (4) Assuming, *arguendo*, that this Court believes that Righthaven's presumption of  
19 ownership does not effectively end the standing analysis, the Righthaven Assignment,  
20 presented herewith, unequivocally substantiates Righthaven's standing.
- 21 (5) To the extent that this Court finds the Righthaven Assignment to be in any way  
22 unclear as to the transfer of accrued causes of action, this gives rise to a genuine issue  
23 of material fact.

24 Therefore, Righthaven contends that if Righthaven is correct on any of the above five  
25 arguments, the Malik Firm's standing argument must fail.

1                   **B. Personal Jurisdiction**

2                   Stunningly, the Malik Firm has also failed to present to this Court a very clear Ninth  
3 Circuit holding: willful copyright infringers who reproduce content from a source known to  
4 exist in the forum purposefully avail themselves of said forum. *Columbia Pictures Television v.*  
5 *Krypton Broadcasting of Birmingham, Inc.*, 106 F.3d 289 (9th Cir. 1997) *rev'd* on other grounds  
6 *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340 (1998). The Malik Firm's tangential  
7 allusions to not having "expressly aimed" activities toward Nevada vis-à-vis the Malik Firm's  
8 website is a red-herring discussion: the Malik Firm's unauthorized reproduction of Righthaven-  
9 owned copyrighted works is the fact most pertinent for jurisdictional purposes. Independently,  
10 the Malik Firm's conduct, as pled in the Complaint (Docket No. 1), and the argument presented  
11 in this Opposition, clearly establishes sufficient ties with Nevada to further substantiate both  
12 specific and generally-based personal jurisdiction.

13  
14                   **II. FACTS**

15                   Righthaven is the owner of the copyright in the literary work entitled "Florida woman  
16 suing over Monte Carlo fire" (the "Work"; Complaint Ex. 4). Righthaven acquired ownership of  
17 the Work on or about March 31, 2010, whereupon Righthaven entered into the Righthaven  
18 Assignment with Stephens Media LLC ("Stephens"). In addition to assigning Righthaven  
19 exclusive ownership of the Work, the Righthaven Assignment transferred to Righthaven the right  
20 to seek redress for all accrued causes of actions, including, without limitation, infringements of  
21 the Work occurring prior to the effective date of the Righthaven Assignment. The Work was  
22 originally published on January 19, 2010. Complaint ¶ 23. On April 12, 2010, the USCO  
23 granted Righthaven the registration to the Work, copyright registration number TX0007125673.  
24 Complaint ¶ 25, Complaint Ex. 5.

25                   The Malik Firm is the owner and registrant of the Internet domain name  
26 <dallasfortworthinjurylawyer.com>. Declaration of Shezad Malik ¶ 5. Dr. Shezad Malik posted  
27 at least three (3) Righthaven-owned literary works on the Malik Firm website. Complaint Ex. 1-3  
28

1 On or about January 20, 2010, the Malik Firm willfully reproduced an unauthorized copy  
2 of the Work (the “Infringement”) and publicly displayed said unauthorized copy on the Malik  
3 Firm website. Complaint Ex. 1. Dr. Shezad Malik willfully changed the original title of the Work  
4 to a new title: “Florida Resident Files Lawsuit Related to Las Vegas Fire.” Complaint Ex. 1. The  
5 Work depicts the Las Vegas *Review-Journal* as the original source publication. Complaint Ex. 4.  
6 On or about July 10, 2009, the Malik Firm willfully reproduced an unauthorized copy of the  
7 Righthaven-owned literary work entitled “LV Family, resort settle avalanche death suit” (the  
8 “Avalanche Article”) and publically displayed said unauthorized copy on the Malik Firm  
9 website. Complaint Ex. 2. Dr. Shezad Malik willfully changed the original title of the Avalanche  
10 Article to a new title: “Las Vegas Family and Resort Settle Avalanche Death Lawsuit.”  
11 Complaint Ex. 2. On or about October 31, 2009, the Malik Firm willfully reproduced an  
12 unauthorized copy of the Righthaven-owned literary work entitled “Wynn employee, tired of  
13 dealing with smoke, sues” (the “Smoke Article”) and publicly displayed said unauthorized copy  
14 on the Malik Firm website. Complaint Ex. 3. Dr. Shezad Malik willfully changed the original  
15 title of the Smoke Article to a new title: “Employee sues Wynn Las Vegas over secondhand  
16 smoke.” Complaint Ex. 3. The Malik Firm knew each and every copyright infringement came  
17 from a Nevada-based source. Complaint ¶¶ 6-9, 12, 15.

### 18 19 **III. ARGUMENT**

#### 20 **A. Righthaven’s Standing to Sue is Clear and Unequivocal**

##### 21 **1. The Motion to Dismiss is not Ripe for Consideration**

22 The Malik Firm’s standing argument is not ripe for consideration because the Malik Firm  
23 has not seen the Righthaven Assignment. Rather than review the Righthaven Assignment prior  
24 to presenting its standing argument, the Malik Firm is instead relying upon the erroneous,  
25 inappropriate, hypothetical assumption that Righthaven may not be the assignee of both  
26 copyright ownership and all past, present, and future causes of action. Accordingly, the Malik  
27 Firm’s argument is not fit for judicial decision and is effectively wasting this Court’s time.

1 The Malik Firm's failure to review the Righthaven Assignment precludes the Malik  
2 Firm from asserting a ripe, well-founded standing argument. A determination of ripeness  
3 requires a two prong test: "(1) the fitness of the issues for judicial decision; and (2) the hardship  
4 to the parties of withholding court consideration." *Manufactured Home Communities, Inc. v. City*  
5 *of San Jose*, 420 F.3d 1022, 1033 (9th Cir. 2005) (internal quotation marks omitted). The Malik  
6 Firm's failure to review the Righthaven Assignment is dispositive to this analysis. The entirety  
7 of the Malik Firm's position on standing is based upon the incorrect assumption that the  
8 Righthaven Assignment may not have transferred to Righthaven ownership of both the copyright  
9 and all accrued causes of action. In other words, the Malik Firm is presenting the Court with an  
10 argument entirely founded upon sheer speculation as to the nature and dimension of  
11 Righthaven's copyright ownership. As such, the Malik Firm simply cannot present a ripe,  
12 substantiated standing argument prior to examining the Righthaven Assignment.

13 Rather than waste the Court's time by filing a grossly premature motion, the Malik Firm  
14 should have requested the Righthaven Assignment in the normal course of discovery. Upon  
15 receipt of the Righthaven Assignment, the Malik Firm could have prudently assessed the  
16 adequacy of the assignment terms, thereby achieving a full understanding of the sufficiency of  
17 the copyright transfer. At that point, if the Malik Firm was still inclined to challenge  
18 Righthaven's standing, such an argument may be ripe for consideration. In *Baldain v. American*  
19 *Home Mortgage Servicing, Inc.*, No. 09-0931, 2010 WL 56143, at \*5 (E.D. Cal. Jan. 5, 2010),  
20 the court assessed a Rule 12(b)(6) motion wherein the plaintiffs did not specifically plead the  
21 date of the offense. In its analysis, the court noted the overall sufficiency of the plaintiffs'  
22 allegations and further noted that the date of violation "is exactly the sort of information which  
23 should be obtained through the discovery process." *Id.* (internal quotation marks omitted).  
24 Similar logic should be applied here. As detailed below, Righthaven was not required to plead or  
25 exhibit the Righthaven Assignment. However, said document certainly could have been  
26 obtained through the normal course of discovery. The Malik Firm neglected to do so, thus  
27 rendering its standing argument unripe for consideration and altogether unmeritorious.

1 The Malik Firm's failure to consider the Righthaven Assignment prior to asserting its  
2 standing argument is highly disconcerting. The Malik Firm's decision to put this argument  
3 before the Court and effectively waste the Court's time may well warrant the exercise of the  
4 Court's inherent power to impose sanctions. This inherent power is deeply-rooted in the  
5 judiciary, and "extends to a full range of litigation abuses." *Fink v. Gomez*, 239 F.3d 989, 991  
6 (9th Cir. 2001). This includes the power to impose sanctions "on counsel who willfully abuse  
7 the judicial processes." *U.S. v. Blodgett*, 709 F.2d 608, 610 (9th Cir. 1983) (internal quotation  
8 marks omitted). Here, the Malik Firm's assertion of a grossly premature, highly erroneous  
9 standing argument rises to the level of abuse of judicial process.

## 10 11 **2. Righthaven has far Exceeded the Pleading Requirements**

12 Righthaven has clearly met the pleading requirements associated with both standing and  
13 the copyright claim. Copyright actions operate under basic notice pleading requirements, rather  
14 than the heightened pleading standard imposed under Fed. R. Civ. P. 9. As demonstrated in the  
15 Complaint, Righthaven's allegations as pled easily satisfy the notice pleading requirements.  
16 Consequently, the Malik Firm's unsupported assertion that Righthaven somehow lacks standing  
17 because the pleadings fail to demonstrate the timeframe of copyright ownership is highly  
18 erroneous.

19 Copyright actions are not held to a heightened pleading requirement. The Federal Rules  
20 provide that heightened pleading standards are only applied in cases governed by Rule 9(b).  
21 *Empress LLC v. City and County of San Francisco*, 419 F.3d 1052, 1055 (9th Cir. 2005); citing  
22 *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168-  
23 69 (1993). The Malik Firm has not presented any authority to suggest that the instant claim is  
24 subject to a heightened pleading requirement. This failure to cite legal authority is not  
25 surprising, as non-fraud allegations, such as the instant copyright claim, are *not* subject to Rule 9  
26 heightened pleading requirements as this "would impose a burden on plaintiffs not contemplated  
27 by the notice pleadings requirements of Rule 8(a)." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d  
28

1 1097, 1104 (9th Cir. 2003). As such, the heightened pleading standard imposed by Rule 9 is  
2 entirely inapplicable at present.

3 Accordingly, Righthaven's copyright claim is therefore governed by basic notice  
4 pleading requirements. Righthaven has clearly met this notice pleading burden. It is well-  
5 established that to prove copyright infringement, the plaintiff must demonstrate: "(1) ownership  
6 of the allegedly infringed work and (2) copying of the protected elements of the work by the  
7 defendant." *Pasillas v. McDonald's Corp.*, 927 F.2d 440, 442 (9th Cir. 1991); *citing Narell v.*  
8 *Freeman*, 872 F.2d 907, 910 (9th Cir. 1989). Thus, a plaintiff in a properly pled copyright claim  
9 must satisfy these elements through the factual allegations in the pleadings. In the instant matter,  
10 the elements of a copyright claim are expressly pled in the Complaint, wherein Righthaven  
11 alleges copyright ownership of the Work and also alleges the Malik Firm's Infringement of the  
12 Work. Complaint ¶ 9, 22. Furthermore, Righthaven presents evidence in support of these  
13 allegations by exhibiting both the copyright registration granted by the USCO and a printout of  
14 the Infringement. Complaint Ex. 1, 5. A copyright claimant "satisfies Rule 8 if the 'complaint  
15 and the incorporated documents are sufficient to allege' that the Defendants copied the work in  
16 question." *Home Design Services, Inc. v. B & B Custom Homes, LLC*, No. 06-00249, 2006 WL  
17 3328140, at \*4 (D. Colo. Nov. 15, 2006); *quoting Jacobsen v. Deseret Book Co.*, 287 F.3d 936,  
18 942 (10th Cir. 2002). Summarily, because copyright claims are subject to bare notice pleading  
19 requirements under Rule 8(a), the allegations as pled unequivocally satisfy Righthaven's  
20 pleading burden associated with both standing and the copyright claim.

21 The Malik Firm's unfounded attempt to impose a pleading standard beyond that  
22 enumerated by Rule 8(a) should not be entertained by this Court. The Malik Firm attempts to  
23 impose a heightened standard by contending that Righthaven lacks standing because Righthaven:  
24 (1) "has not provided the Court or [the Malik Firm] with a copy of the assignment agreement,"  
25 and (2) has failed "to show that it was the owner of the copyright in the Articles when the alleged  
26 infringement occurred." Motion to Dismiss at 2, 5.<sup>1</sup> However, pursuant to Rule 8(a),  
27 ***Righthaven was not required to plead or exhibit the Righthaven Assignment, nor was***

28 <sup>1</sup> The Malik Firm's Motion to Dismiss does not contain line numbers. Thus, Righthaven is limited to merely noting the applicable page number when referencing the Motion to Dismiss.

1 ***Righthaven required to specifically plead the timeframe of its copyright ownership.*** The Malik  
2 Firm offers no legal authority to support the proposition that Righthaven was required to plead  
3 the details and dimensions of the Righthaven Assignment. In fact, given the pedestrian nature of  
4 the Malik Firm's argument, the only authority Righthaven can identify that specifies additional  
5 elements required of a copyright plaintiff to achieve Rule 8(a) compliance derives from the  
6 Eastern District of New York. In *Home & Nature Inc. v. Sherman Specialty Company, Inc.*, 322  
7 F. Supp. 2d 260, 265 (E.D.N.Y. 2004), the court held that a complaint alleging copyright  
8 infringement sufficiently complies with Rule 8(a) so long as the plaintiff asserts: "(1) which  
9 specific original works form the subject of the copyright claim; (2) that the plaintiff owns the  
10 copyrights in those works; (3) that the copyrights have been registered in accordance with the  
11 statute; and (4) by what acts [and] during what time the defendant infringed the copyright."  
12 Here, Righthaven irrefutably satisfies each of these elements. Righthaven's Complaint: (1)  
13 identifies and exhibits the Work, (2) alleges Righthaven's ownership of the Work, (3) alleges and  
14 exhibits the copyright registration, and (4) identifies and exhibits the Infringement. Complaint ¶  
15 9, 22, 25, Complaint Ex. 1, 4-5. Importantly, it must be noted that the Rule 8(a) pleading  
16 elements outlined in *Home & Nature* do not require the plaintiff to allege copyright ownership at  
17 the time of the infringement. There is no legal basis upon which such a requirement should be  
18 imposed here. Righthaven's allegations are more than sufficient to satisfy the basic pleading  
19 requirements imposed by Rule 8(a). The adequacy of Righthaven's well-pled Complaint is not  
20 diminished simply because Righthaven did not plead the additional facts unfoundedly raised by  
21 the Malik Firm in its Motion to Dismiss.

### 22 23 **3. *The Malik Firm has Ignored Righthaven's Presumption of Ownership***

24 Not only did Righthaven meet the pleading requirement, but standing in this matter has  
25 been dispositively resolved by Righthaven's presumption of copyright ownership. As  
26 Righthaven is the copyright registrant, the Copyright Act clearly mandates that Righthaven is  
27 afforded an evidentiary presumption as the exclusive owner of the copyright. 17 U.S.C. § 410(c).  
28 Specifically, section 410(c) provides, in pertinent part, that "[i]n any judicial proceedings the

1 certificate of a registration made before or within five years after first publication of the work  
 2 shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the  
 3 certificate.” *See also Harper House, Inc. v. Thomas Nelson, Inc.*, 889 F.2d 197, 201 (9th Cir.  
 4 1989); *Marquis Models, Inc. v. Green Valley Ranch Gaming, LLC*, No. 05-01400, 2007 WL  
 5 2904172, at \*3 (D. Nev. Sept. 30, 2007). Therefore, to challenge Righthaven’s status as the  
 6 rightful litigant in this lawsuit, it is the Malik Firm’s burden to provide evidence that rebuts  
 7 Righthaven’s presumption of ownership. *See May v. Morganelli-Heumann & Associates*, 618  
 8 F.2d 1363, 1369 (9th Cir. 1980) (presumption of copyright ownership is rebuttable through  
 9 extrinsic evidence). The Malik Firm has not provided a single item of rebuttal evidence.  
 10 Instead, the Malik Firm attempts to undermine Righthaven’s standing by merely hypothesizing –  
 11 without any substantiation – as to why Righthaven’s copyright registration is somehow invalid  
 12 for the purposes of standing. The Malik Firm futilely notes that the “evidence shows that  
 13 Righthaven is not the original owner, but is at best an assignee of that copyright.” Motion to  
 14 Dismiss at 5. This inconclusive statement is irrelevant to the instant analysis and does nothing to  
 15 contest Righthaven’s presumption of copyright ownership. Absent any showing of evidence to  
 16 rebut this presumption, this Court need not entertain the Malik Firm’s efforts to diminish the  
 17 USCO’s evaluation of Righthaven’s copyright claim and the presumption of ownership arising  
 18 therefrom.

19  
 20 **4. The Righthaven Assignment Unequivocally Substantiates Righthaven’s**  
 21 **Standing to Sue**

22 **a. The Righthaven Assignment Expressly Assigns Exclusive Copyright**  
 23 **Ownership and Accrued Causes of Action**

24 The Righthaven Assignment assigns to Righthaven all exclusive ownership rights in and  
 25 to the Work, and is expressly inclusive of all accrued causes of action. Specifically, the  
 26 Righthaven Assignment provides:

27 Assignor hereby transfers, vests and assigns [the Work]...to Righthaven...all  
 28 copyrights requisite to have Righthaven recognized as the copyright owner of the  
 Work for purposes of Righthaven being able to claim ownership as well as the

1 right to seek redress for *past, present and future infringements* of the copyright  
in and to the Work.

2 (Exhibit 1) (emphasis added).

3 Such unambiguous language is not subject to alternative interpretation.<sup>2</sup> The Righthaven  
4 Assignment effects an assignment of the right to sue for any possible infringements of the Work,  
5 whether accrued or unaccrued. This axiom is exemplified by the Fifth Circuit’s analysis of this  
6 issue:

7 Almost completely overlooked by all counsel is the effectiveness of an  
8 assignment of accrued causes of action for copyright infringement. ***All that is***  
9 ***required is that the contract cover in no uncertain terms choses in action for***  
10 ***past, prior, accrued damages***... Here, the parties to the agreement were clearly  
11 careful to be clear and are clearly correct. By express language the assignments  
cover the accrued causes of action for prior infringement. ***As an assignee of the***  
***causes of action for infringement damages, past, present and future, [the***  
***plaintiff] has the right to maintain the action.***

12 *Prather v. Neva Paperbacks, Inc.*, 410 F.2d 698, 700 (5th Cir. 1969) (emphasis added).

13 Addressing *Prather*, the Ninth Circuit in *Silvers v. Sony Pictures Entertainment, Inc.*, 402 F.3d  
14 881, 889 (9th Cir. 2005) does not dispute the Fifth Circuit’s analysis, acknowledging that the  
15 facts in *Prather* involved an assignment of all “accrued causes of action.”<sup>3</sup> Accordingly, in the  
16 instant matter, Righthaven acquired ownership of all accrued causes of action because the  
17 Righthaven Assignment specifically transfers the “right to seek redress for past, present and  
18 future infringements.” By no means do the terms of the Righthaven Assignment impose any  
19 form of limitation upon Righthaven with respect to Righthaven’s standing to sue for  
20 infringement of the Work. In fact, a cursory review of the Righthaven Assignment demonstrates  
21 that the language contained therein was expressly incorporated for the purpose of transferring  
22 exclusive ownership rights in their entirety, including all accrued causes of action. Assignments  
23

24 <sup>2</sup> To the extent that the Righthaven Assignment is deemed by the Court to somehow be subject to alternative  
25 interpretation, this gives rise to a general issue of material fact as discussed on pages 15-17, *infra*.

26 <sup>3</sup> In *Silvers*, the court notes that *Prather* was decided prior to the enactment of the 1976 Copyright Act and was  
27 therefore an “unhelpful authority” for the purposes of the Ninth Circuit’s discussion in *Silvers*. *Silvers*, 402 F.3d at  
28 889. However, the Ninth Circuit’s issue with *Prather* was not whether the Fifth Circuit properly equated the  
definition of “accrued” claims with the definition of “past” claims in the context of copyright assignments. In fact,  
the *Silvers* decision apparently recognized and approved of this analysis. *Id.* The Ninth Circuit’s issue instead arose  
from the *Prather* decision’s lack of a 17 U.S.C. § 501(b) analysis, which had not yet been enacted at the time the  
*Prather* decision was rendered. *Id.*

1 of this nature are expressly permitted by 17 U.S.C. § 201(d)(1), which provides that copyright  
2 ownership “may be transferred in whole or in part,” and such assignments are recognized as  
3 valid by the courts. *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 944 F.2d 971, 980 (2d Cir.  
4 1991). Here, the Righthaven Assignment vests Righthaven with the unequivocal right to pursue  
5 legal recourse for all infringements of the Work, including those accrued prior to the Righthaven  
6 Assignment.

7  
8 **b. Righthaven has Standing to Prosecute Past Infringements because the**  
9 **Righthaven Assignment Expressly Includes Accrued Causes of Action**

10 An assignment expressly inclusive of accrued causes of action enables the assignee to  
11 bring suit for all infringements of the assigned work, irrespective of the date of infringement.  
12 *ABKCO*, 944 F.2d at 980-81. Amazingly, the Malik Firm relies on the Second Circuit’s holding  
13 in *ABKCO* to actually strengthen its standing argument. Motion to Dismiss at 4. Specifically, the  
14 Malik Firm cites the *ABKCO* court’s recitation of § 501(b) of the Copyright Act: “the legal or  
15 beneficial owner of an exclusive right under a copyright is entitled to bring actions for  
16 infringements of that right occurring during the period of ownership.” *ABKCO*, 944 F.2d at 980.  
17 However, the Malik Firm conspicuously fails to inform this Court of the *very next sentence* of  
18 the *ABKCO* decision, wherein the Second Circuit applies § 501(b) to a set of facts involving an  
19 assignment of both copyright ownership and accrued causes of action: “[t]hus, a copyright owner  
20 can assign its copyright but, if the accrued causes of action are not expressly included in the  
21 assignment, the assignee will not be able to prosecute them.” *ABKCO*, 944 F.2d at 980; *see also*  
22 Nimmer on Copyright § 12.02[B] (a copyright assignment is generally construed not to assign  
23 existing causes of action *unless such claims are expressly included in the grant*) (emphasis  
24 added). In other words, an assignee of a copyright has standing to sue for any past infringements  
25 of the assigned work so long as all accrued causes of action are expressly incorporated into the  
26 assignment. This is exactly the case at present. The Righthaven Assignment, in addition to  
27 vesting Righthaven with exclusive ownership rights in and to the Work, specifically includes the  
28 assignment of all accrued causes of action. Thus, it is entirely irrelevant whether the

1 Infringement occurred before, during, or after the time of the Righthaven Assignment. By  
2 stating that Righthaven has failed “to show that it was owner of the copyright in the Articles  
3 when the alleged infringement occurred,” the Malik Firm is simultaneously ignoring: (1) that the  
4 plaintiff need only plead copyright ownership, not the specific timeframe of such ownership, and  
5 (2) that ownership at the time of infringement is *not* required so long as the plaintiff is an  
6 assignee of both the copyright and all accrued claims.

7 The Malik Firm’s reliance upon the Ninth Circuit’s decision in *Silvers* is similarly  
8 erroneous. Motion to Dismiss at 4. First, it must be noted that the Malik Firm, while purportedly  
9 paraphrasing the *Silvers* holding, *blatantly misstates the Ninth Circuit’s analysis*. Citing  
10 *Silvers*, the Motion to Dismiss inexplicably states that “[a] plaintiff who fails to show ownership  
11 of a valid copyright at the time of infringement lacks standing to sue for any infringement that  
12 occurred prior to assignment of the copyright.” Motion to Dismiss at 4. Nowhere in the *Silvers*  
13 decision does the Ninth Circuit state that a copyright claimant must “show” or otherwise  
14 demonstrate ownership at the time of the infringement in order to establish standing to sue. The  
15 Malik Firm’s reliance on *Silvers* is further disconcerting given the clarity of the Ninth Circuit’s  
16 decision: an assignee has standing to sue for past infringements so long as the assignment  
17 includes both exclusive ownership and accrued causes of action. *Silvers*, 402 F.3d at 890; citing  
18 *ABKCO*, 944 F.2d at 980-81. In this regard, it is shocking that the Malik Firm fails to realize  
19 that its reliance upon *ABKCO* is rendered entirely inappropriate by the Ninth Circuit’s decision  
20 in *Silvers*. In *Silvers*, the court was faced “with a situation in which the owner of all the  
21 exclusive rights and the owner of the accrued causes of action [were] *two different people*.”  
22 *Silvers*, 402 F.3d at 889 (emphasis added). As a result, the Ninth Circuit held that the plaintiff’s  
23 “bare assignment of an accrued cause of action” was insufficient to establish standing. *Id.* at 890.  
24 The facts in *Silvers* are blatantly distinguishable from those at present, and it is revealing that the  
25 Malik Firm fails to acknowledge this distinction in the Motion to Dismiss. To reiterate, the  
26 Righthaven Assignment transferred, vested, and assigned to Righthaven (1) “all copyrights  
27 requisite to have Righthaven recognized as the copyright owner of the Work for purposes of  
28 Righthaven being able to claim ownership” *and* (2) “the right to seek redress for past, present

1 and future infringements” of the Work. Exhibit 1. Here, there is no division of copyright  
2 ownership as was the case in *Silvers*; Righthaven is the owner of both the exclusive rights in and  
3 to the Work and all accrued causes of action. In fact, it appears that had the Ninth Circuit been  
4 dealing with the all-inclusive terms of the Righthaven Assignment rather than the limited  
5 assignment at issue in *Silvers*, there would have been no question as to the sufficiency of the  
6 plaintiff’s standing to sue.

7         Consequently, the Ninth Circuit’s holding in *Silvers* grossly diminishes the Malik Firm’s  
8 standing argument. Specifically, the *Silvers* decision squarely undermines the Malik Firm’s  
9 apparent position that an assignee of accrued claims is barred from seeking redress for past  
10 infringements. While a bare assignment of accrued claims was deemed insufficient by the Ninth  
11 Circuit, an assignment of accrued claims coupled with a transfer of copyright ownership would  
12 suffice an adequate basis for standing. *Id. citing ABKCO*, 944 F.2d at 980-81. Critically, the  
13 Malik Firm should have represented to the Court that the Ninth Circuit has clearly recognized  
14 that assignees of accrued causes of action may in fact have standing to sue for past  
15 infringements. Moreover, the Malik Firm’s presentment of *Silvers* as an example of why  
16 Righthaven might not have standing to sue demonstrates that the Malik Firm is erroneously  
17 hypothesizing as to the nature of the Righthaven Assignment.

18         Preceding authority unequivocally establishes that an assignee may pursue all existing  
19 causes of action so long as such causes of action are expressly included in the assignment. In  
20 2007, this Court considered whether a plaintiff had standing to sue for past copyright  
21 infringements following a transfer of copyright ownership “that in effect backdated a purchase of  
22 the copyrights.” *Marquis Models*, 2007 WL 2904172, at \*4. In its analysis, this Court noted that  
23 “[s]uch a transfer does not violate the Copyright Act and could potentially give [the plaintiff]  
24 standing.” *Id.* Relying exclusively on *ABKCO* and *Silvers*, this Court held that “such a  
25 transaction requires simultaneous conveyance of both the copyright and accrued claims.  
26 Furthermore, such a transfer requires the accrued causes of action to be expressly included in the  
27 assignment.” *Marquis Models*, 2007 WL 2904172, at \*4; *citing ABKCO*, 944 F.2d at 980;  
28 *Silvers*, 402 F.3d at 889-90 (internal quotation marks omitted). The Court should not deviate

1 from its prior analysis. Here, Righthaven’s acquisition of exclusive ownership rights in and to  
2 the Work – along with its acquisition of all accrued causes of action – should accordingly be  
3 recognized as an adequate basis for standing.

4 This Court is not alone in having held consistently with the *ABKCO* and *Silvers*  
5 decisions. In 2007, the United States District Court for the Central District of California held  
6 that a plaintiff lacked standing to sue for past infringements because the assignment at issue  
7 merely “assign[ed], transfer[red] and set over unto [the plaintiff] all right, title and interest in and  
8 to said trade dresses and copyrights.” *Lanard Toys Limited v. Novelty Inc.*, 511 F. Supp. 2d 1020,  
9 1033 (C.D. Cal. 2007). Distinguishing the facts in *Lanard* from those at present, the court’s  
10 decision in *Lanard* was based entirely on the fact that the assignment did not “expressly convey  
11 [the assignor’s] existing claims for infringement.” *Id.* Similarly, the United States District Court  
12 for the District of Arizona has held that “[c]opyright assignments do not include accrued causes  
13 of action unless they are expressly included in the assignment.” *Giddings v. Vision House*  
14 *Production, Inc.*, 584 F. Supp. 2d 1222, 1229 (D. Ariz. 2008); *citing ABKCO*, 944 F.2d at 980;  
15 *see also Fairview Development Corp. v. Aztex Custom Homebuilders, LLC*, No. 07-0337, 2009  
16 WL 529899, at \*9 (D. Ariz. Mar. 3, 2009). Moreover, the Second Circuit, in addition to its  
17 decision in *ABKCO*, has held that an assignment transferring all rights to a work, including “all  
18 existing or potential causes of action,” sufficiently vested a transferee with right to pursue claims  
19 for past infringements. *Two Pepper Music v. Rhino Records, Inc.*, 173 F.3d 846, No. 98-9242 (2d  
20 Cir. Apr. 23, 1999); *see also Davis v. Blige*, 505 F.3d 90, 99 (2d Cir. 2007) (“An owner may also  
21 convey his interest in prosecuting accrued causes of action for infringement.”). It should be  
22 noted that beyond *ABKCO* and *Silvers*, the Malik Firm fails to cite any legal authority – Ninth  
23 Circuit or otherwise – to support the Malik Firm’s proposition that the Righthaven Assignment is  
24 invalid for the purposes of standing. Such authority does not exist, and now the Malik Firm is  
25 futilely attempting to avoid liability by asking this Court to ignore its own precedent and the  
26 precedent of courts across the country. The case law on this topic is clear and unequivocal: an  
27 assignment of copyright ownership that specifically includes the transfer of past, present, and  
28 future causes of action entitles the assignee to sue for all accrued infringements.

1                                    **c. The Malik Firm's Argument is Illogical and, if Accepted, would**  
2                                    **Effectively Dissuade Corporate Acquisitions and Assignments**

3                    In addition to defying the firmly established legal authority on this topic, the Malik  
4 Firm's standing challenge also directly defies all notions of logic and practicality. If this Court  
5 were to accept the Malik Firm's argument, the rights of any business engaging in a corporate  
6 acquisition wherein an assignment of rights occurs would be severely diminished. In *SAPC, Inc.*  
7 *v. Lotus Development Corp.*, 921 F.2d 360 (1st Cir. 1990), the First Circuit sided with the  
8 plaintiff corporation, holding that it had acquired the entirety of the assignor's intellectual  
9 property rights due to the unambiguous language of the asset purchase. *Id.* at 363. This included  
10 the plaintiff's acquisition of all "existing claims for infringement." *Id.* at 364. Applying the  
11 Malik Firm's logic to this scenario, the corporate assignee would be precluded from bringing a  
12 claim for any infringement that occurred prior to the acquisition of assets – regardless of the all-  
13 inclusive terms of the transfer – merely because the company's ownership did not manifest until  
14 after the date of the infringement. Furthermore, any infringements accrued prior to the  
15 assignment of rights would be effectively immunized from liability as the exclusive owner of  
16 these accrued causes of action would be precluded from filing suit. Despite the Malik Firm's  
17 self-serving efforts to achieve such immunization from liability, the practical effect of the Malik  
18 Firm's argument is simply inconceivable and should not be entertained by this Court. A plaintiff  
19 assignee should not be denied recourse to pursue accrued causes of action when such rights are  
20 specifically and unambiguously included in the assignment of rights. Similarly, the Malik  
21 Firm's willful copyright infringement should not be exempted from liability simply because the  
22 infringing activity occurred prior to the Righthaven Assignment.

23  
24                                    **5. Any Uncertainty as to the Intent of the Righthaven Assignment Gives Rise**  
25                                    **to a Genuine Issue of Material Fact**

26                    To the extent that this Court finds the Righthaven Assignment to be factually unclear in  
27 any manner, this gives rise to a genuine issue of material fact. Therefore, should this Court  
28 choose to treat the Malik Firm's Motion to Dismiss as a motion for summary judgment as

1 expressly permitted by Rule 12(d), the Malik Firm's motion must be denied. "When ruling on a  
2 Rule 12(b)(6) motion to dismiss, if a district court considers evidence outside the pleadings, it  
3 must normally convert the 12(b)(6) motion into a Rule 56 motion for summary judgment." *U.S.*  
4 *v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). However, a district court may consider materials  
5 attached to the complaint, materials incorporated by reference in the complaint, or matters of  
6 judicial notice "without converting the motion to dismiss into a motion for summary judgment."  
7 *Id.* at 908. Thus, while the Malik Firm's efforts to dismiss for lack of standing are clearly  
8 unfounded in light of the preceding arguments, the Malik Firm would also fail on a motion for  
9 summary judgment because any remaining uncertainty about the Righthaven Assignment  
10 constitutes a genuine issue of material fact.

11 The Malik Firm's motion falls woefully short of reaching the threshold for summary  
12 judgment. Under Rule 56, summary judgment is only proper if the "pleadings, depositions,  
13 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that  
14 there is no genuine issue as to any material fact and that the moving party is entitled to a  
15 judgment as a matter of law." *Shaw v. Lindheim*, 919 F.2d 1353, 1359 (9th Cir. 1990); *citing*  
16 *Celotex Corporation v. Catrett*, 477 U.S. 317, 322 (1986). Furthermore, the test for summary  
17 judgment in a copyright case is the same as the standard applied to all civil actions. *Shaw*, 919  
18 F.2d at 1358-59. Here, as the moving party, the Malik Firm has the initial burden of "presenting  
19 evidence which, if uncontroverted, would entitle the movant to a directed verdict at trial." *Rowell*  
20 *v. Powerscreen Intern., Ltd.*, 808 F. Supp. 1459, 1462 (D. Nev. 1992). By no means do the  
21 Malik Firm's bare, unsupported arguments even remotely approach this initial threshold. The  
22 Malik Firm has not presented any evidence, nor has it put forth any compelling argument to  
23 suggest that the Malik Firm is entitled to judgment as a matter of law. Similarly, the Malik Firm  
24 has offered nothing to rebut the allegations and supporting evidence put forth by Righthaven, all  
25 of which implicates the Malik Firm's culpability. Regardless, even assuming, *arguendo*, that the  
26 Malik Firm did meet its initial burden, the Malik Firm would nevertheless fail to achieve  
27 summary judgment. Pursuant to Rule 56, once the movant has met the first burden, "the burden  
28 then shifts to the respondent to set forth specific facts demonstrating that there is a genuine issue

1 for trial.” *Rowell*, 808 F. Supp. at 1462. Righthaven, by way of the Complaint and evidence  
2 attached in support thereof, has clearly presented such facts demonstrating a genuine issue for  
3 trial. Righthaven has pled copyright ownership, pled the nature of the Infringement, and has  
4 exhibited evidence to substantiate these allegations. Complaint ¶ 9, 22, Complaint Ex. 1, 4.  
5 Furthermore, any uncertainty this Court might have about the intent of the Righthaven  
6 Assignment and transfer of rights occurring therein unquestionably gives rise to a genuine issue  
7 of material fact, thereby mandating a denial of summary judgment.

8         The purpose of the Righthaven Assignment, and the intent of the parties to the  
9 Righthaven Assignment, must be construed as questions of fact. This basis, standing alone, is  
10 sufficient to defeat summary judgment. *Gifford v. Atchison, Topeka and Santa Fe Ry. Co.*, 685  
11 F.2d 1149, 1156 (9th Cir. 1982) (“Summary judgment is generally not proper when the intent of  
12 a party is placed in issue.”). Though Righthaven maintains that the terms of the Righthaven  
13 Assignment are unambiguous, the Ninth Circuit has firmly established that “ambiguity in a  
14 contract raises a ***question of intent, which is a question of fact precluding summary judgment.***”  
15 *National Union Fire Ins. Co. of Pittsburgh, Pa. v. Argonaut Ins. Co.*, 701 F.2d 95, 97 (9th Cir.  
16 1983) (emphasis added). In addition, the Ninth Circuit has extended this philosophy to the  
17 interpretation of assignments. *Orion Tire Corp. v. Goodyear Tire & Rubber Co., Inc.*, 268 F.3d  
18 1133, 1138 (9th Cir. 2001). Adopting California law, the Ninth Circuit in *Orion Tire* held that  
19 “the interpretation of an assignment clause, like the interpretation of contract terms generally, is  
20 a ***question of the intent of the parties and is typically a question of fact for the jury.***” *Id.*  
21 (emphasis added). Though Righthaven adamantly maintains that the terms of the Righthaven  
22 Assignment unambiguously transfer the right to bring suit for any past, present, or future  
23 infringements, any uncertainty this Court may have as to the underlying intentions of the parties  
24 to the Righthaven Assignment must be construed as questions of fact. Consequently, this matter  
25 cannot be dismissed as a matter of law.  
26  
27  
28

1                   **B. The Malik Firm has Subjected Itself to Forum Jurisdiction**

2                   **1. A Willful, Knowing Copyright Infringer is Subject to Forum Jurisdiction**

3                   The Ninth Circuit has made unequivocally clear that a willful, knowing copyright  
4                   infringer is subject to forum jurisdiction. The Ninth Circuit has held that the *jurisdictional*  
5                   *inquiry ends* in a copyright infringement case when “Columbia alleged, and the district court  
6                   found, that Feltner willfully infringed copyrights owned by Columbia, which, as Feltner knew  
7                   had its principal place of business in the Central District.” *Columbia*, 106 F.3d at 289 (emphasis  
8                   added). Indeed, the Ninth Circuit went on to hold that “[t]his fact alone is sufficient to satisfy the  
9                   ‘purposeful availment’ requirement.” *Id.* In other words, no further elemental or factored  
10                  analysis is required. As such, in this copyright infringement case, the jurisdictional analysis  
11                  need go no further. Amazingly, the Malik Firm never mentioned this holding to the Court.

12  
13                  **2. The Malik Firm was a Willful, Knowing Copyright Infringer Vis-à-vis**

14                  **Nevada**

15                  The Malik Firm knew each and every copyright infringement came from a Nevada-based  
16                  source. Complaint ¶¶ 6-9, 12, 15. The Malik Firm focuses its attention on general jurisdictional  
17                  elements and almost entirely discounts venerable law concerning specific jurisdiction for  
18                  copyright infringement. As an example, the Malik Firm refers extensively to the “express  
19                  aiming” test not being satisfied in this case. *Calder v. Jones*, 465 U.S. 783 (1983). However, the  
20                  Malik Firm is a copyright infringer of the Nevada-based Work. Complaint ¶¶ 9-11. The Malik  
21                  Firm reproduced and displayed a complete, verbatim, unauthorized reproduction of the Work  
22                  that gave the appearance that the Malik Firm was the original producer or author of the Work.  
23                  Complaint ¶¶ 9-11. The Work was originally published in a Nevada-based daily periodical and  
24                  disseminated almost exclusively to Nevada-based readers. The Work depicts the Las Vegas  
25                  *Review-Journal* as the original source publication. Complaint Ex. 4. The subject matter, at least  
26                  in part, of both the Work and the Infringement, is the first lawsuit associated with the hotel fire at  
27                  the Monte Carlo Hotel and Casino located in Las Vegas, Nevada on January 25, 2008. The  
28                  Malik Firm cannot logically claim that the Malik Firm did not know the Work was targeted and

1 intended for Nevada-based readers or that the Work did not emanate from a Nevada-based  
2 source. The Ninth Circuit holds that “individual targeting of a known forum resident, which  
3 allegedly created *competition for the plaintiff and confusion as to authorship of the text*,  
4 amount[s] to express aiming.” *Brayton Purcell LLP v. Recordon & Recordon*, 575 F.3d 981, 987  
5 (9th Cir. 2009) (emphasis added). Consequently, the Malik Firm’s Infringement created  
6 competition for potential viewers, confused authorship and amounted to express aiming at  
7 Nevada residents. The Malik Firm reproduced an article emanating from Nevada that influenced  
8 Nevada residents; therefore, the Malik Firm must have known the Infringement would target  
9 Nevada residents.

10  
11 **3. The Malik Firm’s Chief Executive Officer Posted the Infringing Material**

12 Personal jurisdiction requirements for the Malik Firm in Nevada are further satisfied  
13 because the person who posted the infringing material is the Chief Executive Officer of the  
14 Malik Firm. The Supreme Court has held that a defendant’s liability may be determined by the  
15 material participation of the defendant’s employees in the infringement. *Sony Corp. of America*  
16 *v. Universal City Studios, Inc.*, 464 U.S. 417, 438 (1984). In *Sony*, the Supreme Court held that  
17 the defendant was not liable for the infringement solely because no employee of defendant had  
18 “direct involvement with the allegedly infringing activity.” *Id* at 438. The Malik Firm facts  
19 provide the exact inverse to the *Sony* holding, where liability is derived when an employee or  
20 agent is directly involved in the infringing activity. Here, the available facts on Dr. Shezad  
21 Malik, the individual who apparently posted the infringing material, confirm that Dr. Shezad  
22 Malik is the Chief Executive Officer of the Malik Firm. Declaration of Shezad Malik ¶ 2.  
23 Additionally, the Texas Secretary of State displays “Shezad A. Malik” as the registered agent of  
24 the Malik Firm. Exhibit 2. Dr. Shezad Malik posted at least three (3) unauthorized copies of  
25 Righthaven-owned literary works on the Malik Firm website. Complaint Ex. 1-3. Summarily,  
26 the Malik Firm is a willful, knowing copyright infringer of Righthaven-owned works, in part,  
27 because Dr. Shezad Malik, the registered agent and Chief Executive Officer of the Malik Firm,  
28 posted at least three (3) Righthaven-owned copyright works on the Malik Firm website.

1  
2 **4. The Malik Firm is Subject to Personal Jurisdiction on a General**  
3 **Jurisdictional Basis**

4 It is abundantly clear that the Malik Firm's activities and contacts with Nevada give rise  
5 to not only specific jurisdiction, as discussed above, but also general jurisdiction. The Ninth  
6 Circuit has held that "the exercise of personal jurisdiction must comport with fair play and  
7 substantial justice." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 800, 802 (9th  
8 Cir.2004). Here, the Malik Firm has extended itself through continuous and systematic contacts  
9 with Nevada by: (1) publishing content emanating from Nevada that is of specific interest to  
10 Nevada residents, and (2) failing to present a compelling case that the exercise of jurisdiction  
11 would not be reasonable in Nevada.

12  
13 **a. The Malik Firm Continuously Publishes Content Emanating from**  
14 **Nevada that is of Specific Interest to Nevada Residents**

15 The Malik Firm, via the Malik Firm's website, provides links to Nevada-based  
16 publications and, with specific respect to this lawsuit, has reproduced three (3) literary works, in  
17 their entirety, in the "blog" section of the Malik Firm website. Complaint Ex. 1-3. The Ninth  
18 Circuit has held that willful copyright infringers who reproduce content from a source known to  
19 exist in the forum purposefully avail themselves of said forum. *Columbia*, 106 F.3d at 289. Here,  
20 the Malik Firm demonstrates a continuous and systematic approach to copying content from  
21 Nevada-based publications, specifically the Las Vegas *Review-Journal*, and reproduces that  
22 content without authority or license to do so. In addition, the Malik Firm provides, on the Malik  
23 Firm's website, a "blog" section wherein the title, an excerpt of the literary work, and the date of  
24 publication of relevant news publications are listed. Exhibit 3. Said listings are excerpts and  
25 hyper-links to the original source material, but nevertheless demonstrate the Malik Firm's  
26 interjection into the Nevada jurisdiction by acting as an aggregator of personal injury and tort  
27 news. This aggregation of news is of specific interest to Nevada residents because Nevada, and  
28 specifically Las Vegas, Nevada, is the source location for many stories posted on the "blog."

1 Therefore, the Malik Firm’s deliberate acts of providing excerpts, links and reproducing content  
2 that is of specific interest to Nevada residents justifies the exercise of personal jurisdiction over  
3 the Malik Firm in Nevada.

4  
5 **b. The Malik Firm Qualifies for Personal Jurisdiction Under the Ninth**  
6 **Circuit’s Seven Factor Test**

7 Even if this Court decides not to follow the specific jurisdictional analysis in favor of  
8 Righthaven, exercising jurisdiction over the Malik Firm under the seven factors outlined in *Core-*  
9 *Vent Corporation v. Nobel Industries*, 11 F.3d 1482, 1487-88 (9th Cir. 1993) would not violate  
10 substantial justice. These factors include:

- 11 (1) the extent of the defendant’s purposeful interjection into the forum state's affairs;  
12 (2) the burden on the defendant of defending in the forum;  
13 (3) the extent of conflict with the sovereignty of the defendants' state;  
14 (4) the forum state’s interest in adjudicating the dispute;  
15 (5) the most efficient judicial resolution of the controversy;  
16 (6) the importance of the forum to the plaintiff's interest in convenient and effective  
17 relief; and  
18 (7) the existence of an alternative forum.

19 *Id.*

20 None of the above factors are dispositive standing alone; instead, the Court must balance  
21 all seven. *Id.* Here, the Malik Firm points to the “sliding scale” test articulated in *Zippo*  
22 *Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D. Pa. 1997), but fails to  
23 provide any legal analysis as to where the Malik Firm's website would be placed within the  
24 *Zippo* sliding scale. The Malik Firm may have wanted to convey that the Malik Firm's website is  
25 entirely passive in nature. However, the Malik Firm, regardless of the Courts *Zippo* analysis,  
26 cannot escape the fact that its actions give rise to personal jurisdiction in Nevada because  
27 jurisdiction is presumed to be reasonable once the first two prongs of the specific jurisdiction test  
28 have been met. *Schwarzenegger*, 374 F.3d at 802. Righthaven has met the burden of satisfying  
the first two prongs of the specific jurisdiction test by demonstrating that: (1) the Malik Firm  
“express[ly] aim[ed]” activities at Nevada residents when Dr. Shezad Malik posted the  
Infringement, which Dr. Shezad Malik knew emanated from Nevada, and (2) Righthaven's

1 copyright infringement claim arose out of the Malik Firm's actions in regard to copyright  
2 infringement of the Work. In this situation, where the plaintiff has satisfied the first two prongs  
3 of the specific jurisdiction test, the Ninth Circuit has held that the burden shifts to the defendant  
4 to “present a compelling case” that the exercise of jurisdiction would not be reasonable. *Core-*  
5 *Vent*, 11 F.3d at 1487. For the following reasons, the Malik Firm cannot make a compelling that  
6 jurisdiction in Nevada would not be reasonable:

- 7 1. The degree of the Malik Firm's interjection into Nevada is more than minimal in  
8 this case. The Righthaven allegations in the Complaint and the arguments in this  
9 Opposition illustrate the Malik Firm's continuous and systematic contacts in  
10 Nevada and limit the Malik Firm's argument that the exercise of jurisdiction  
11 offends the traditional notions of fair play and substantial justice.
- 12 2. The Malik Firm's burden for defending this action in Nevada is not de minimus  
13 but the Malik Firm's substantial contacts with Nevada, as argued in the Complaint  
14 and this Opposition, warrant the exercise of personal jurisdiction in the District of  
15 Nevada.
- 16 3. There is no risk to the sovereignty of the Malik Firm's principle place of business,  
17 the State of Texas, because Righthaven's claim is a federal one.
- 18 4. The District of Nevada would be interested in determining the rights of its  
19 citizens, specifically Righthaven in this case.
- 20 5. The District of Nevada is an efficient forum to hear a federal copyright  
21 infringement action because it is the place of business for Righthaven, the Work  
22 emanated from a Nevada source, and because a substantial part of the events  
23 giving rise to the case are situated in Nevada.
- 24 6. Nevada is Righthaven's principle place of business and would be the most  
25 convenient and efficient forum to effect relief for the Infringement.
- 26 7. Copyright infringement is a federal question required to be brought before a  
27 federal district court. The existence of alternative forums should not preclude  
28 Righthaven from filing Righthaven's complaint in the District of Nevada.

1 As reflected above, the Malik Firm fails to put forward a compelling case for unjust  
2 personal jurisdiction in Nevada. The Malik Firm's contacts are not minimal, they are systematic  
3 and continuous, as discussed above. Ultimately, the Malik Firm has not met the defendant's  
4 burden and presented a compelling case to justify that the exercise of jurisdiction in the District  
5 of Nevada would be unreasonable.

6  
7 **IV. CONCLUSION**

8 For the reasons set forth above, Righthaven respectfully requests that this Court deny the  
9 Malik Firm's Motion to Dismiss (Docket No. 6).

10 Dated this twenty-first day of June, 2010.

11  
12 RIGHTHAVEN LLC

13  
14 By: /s/ J. Charles Coons

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28

**CERTIFICATE OF SERVICE**

1 Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee  
2 of Righthaven LLC and that on this 21st day of June, 2010, I caused the **PLAINTIFF'S**  
3 **OPPOSITION TO DEFENDANT'S MOTION TO DISMISS** to be served by the Court's  
4 CM/ECF system.  
5

6 By: /s/ J. Charles Coons  
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