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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 RIGHTHAVEN, LLC, a Nevada limited liability
13 company,

14 Plaintiff,

15 vs.

16 WAYNE HOEHN, an individual

17 Defendant.

Case No. 2:11-cv-00050

**DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT WITH
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

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1 **MOTION FOR SUMMARY JUDGMENT**

2 Defendant Wayne Hoehn (herein “Hoehn,” or the “Defendant”) moves the Court for
3 summary judgment on the single claim raised in Plaintiff Righthaven, LLC’s (herein
4 “Righthaven,” or the “Plaintiff”) Complaint. No genuine material fact is in dispute. The Court
5 may therefore enter judgment as a matter of law pursuant to Federal Rule of Civil Procedure 56.

6
7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **I. Facts**

9 **A. Introduction**

10 Righthaven has brought this lawsuit, like many others before this Court,¹ to wrest a quick
11 settlement from Mr. Hoehn on shaky copyright infringement grounds, based upon questionable
12 rights—rights it purchased from the author only *after* Righthaven discovered Hoehn’s post, for
13 the sole purpose of filing suit against Hoehn. Like other Righthaven targets, Hoehn is not a large
14 business or well-funded entity, but an individual who posted content from the *Las Vegas Review-*
15 *Journal* (“LVRJ”) to a website in order to foster an online discussion about the article itself.
16 (Decl. of Wayne Hoehn, attached as “Exhibit A,” ¶¶ 12-16.) This commonplace conduct
17 permeates the internet to a degree where Righthaven would have to file lawsuits in perpetuity to
18 make it halt – if the law gave it a right to make it halt. As this memorandum will show the
19 Court, Righthaven has no such right.

20 Presently, as in the past, people gather at churches and community centers, salons, barber
21 shops and taverns to discuss the issues of the day. Inevitably, someone would bring a newspaper
22 or magazine, or even just an article clipped therefrom, read an article in it to his or her friends,
23 and discussion would ensue. Someone would even re-read a relevant portion of the article out
24 loud for emphasis. Book clubs, where groups of people gather to discuss the books they have

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26 ¹ See, e.g., *Righthaven v. Drudge*, No. 2:10-cv-02135 (D. Nev. Filed Dec. 8, 2010); *Righthaven v. Angle*, No. 2:10-
27 cv-01492 (D. Nev. Filed Sept. 3, 2010); *Righthaven v. Wilcox*, No. 2:10-cv-01192 (D. Nev. Filed Jul. 19, 2010);
28 *Righthaven v. Democratic Party of Nevada*, No. 2:10-cv-001129 (D. Nev. Filed July 9, 2010); *Righthaven v. Vote*
for the Worst, LLC, No. 2:10-cv-01045 (D. Nev. Filed June 28, 2010); *Righthaven v. National Organization for the*
Reform of Marijuana Laws, 2:10-cv-00351 (D. Nev. Filed Mar. 15, 2010).

1 read and even read excerpts to the attendees, are active in most communities. This may have
2 cost the publication a handful of immediate sales and cents of profit, as those in at the bar, or
3 sitting around having their hair coiffed, had already taken in the article's context. This
4 interaction, however, is integral to functional society and community engagement – and exactly
5 the conduct Righthaven seeks to stop (or simply extort money from participants) with this
6 lawsuit.

7 The circumstances surrounding Hoehn's use of the LVRJ Article lead to an irrefutable
8 legal conclusion that his republication of the article in this discussion forum constitutes fair use
9 as a matter of law under 17 U.S.C. § 107. There are no facts that would preclude Hoehn's use of
10 the work from being immune to any damages for infringement under the fair use doctrine. Thus,
11 summary judgment is an appropriate remedy for this Court to award Hoehn in this case.

12 **B. Statement of Facts**

13 Wayne Hoehn, a Kentucky resident, enjoys discussing sports, betting and current events
14 with friends and acquaintances, including MadJackSports.com's other forum users. (Exh. A ¶ 9.)
15 A decorated veteran of the Vietnam War, Hoehn earned the Silver Star, Bronze Star Medal and
16 Purple Heart among numerous other awards, during the course of his military service. (*Id.* ¶ 3.)
17 Hoehn is also the proprietor of Mid-States Insurance Services, which has an A+ rating from the
18 Better Business Bureau. (*Id.* ¶ 2.)

19 In lieu of the internet, Hoehn may have taken his affinity for debate and discussion to the
20 local Veterans of Foreign Wars outpost and discussed newspaper articles with his friends there.
21 In prior decades, he would have had no option. As in any community or other interest group,
22 Hoehn would have discussed news articles with his friends at the VFW, listening to their
23 positions and explaining his own. To broaden this experience, Hoehn took an avenue that would
24 allow him to interact with the broadest possible cross-section of conversation partners: He
25 decided to engage in these activities on a message board. (*Id.* ¶ 4.)

26 In 1999, Hoehn was one of millions of Americans becoming more engaged with the
27 internet. In July of that year, he signed up for an account at MadJackSports. (*Id.*) This website
28

1 is located at <MadJackSports.com> (herein the “Website”), and it describes itself as “the premier
2 handicapping and sportsbook discussion site on the web.” A true and correct copy of the
3 Website’s main page is attached as Exhibit B. (*See* Decl. of J. Malcolm DeVoy, attached as
4 Exhibit E, ¶¶ 2 and 4.) The Website also provided for discussion of a broad variety of other
5 topics, including special forums for “Other Stuff” and “Politics and Religion.” A true and
6 correct copy of Hoehn’s discussion thread at the center of this litigation, “CA/Ill to bite the big
7 one,” as it appeared on January 26, 2011, is attached as Exhibit D. Hoehn registered his account
8 using the moniker “DOGS THAT BARK,” allowed him to post on the Website’s discussion
9 forums. A true and correct copy of the public profile for Hoehn’s account is attached as Exhibit
10 C. (*See also* Exh. A ¶¶ 7-8.) Never one to conceal his identity, though, Hoehn made his full
11 name and contact information available in his account profile. (Exh. A ¶ 5.)

12 From July 1999 through January 2011, Hoehn engaged in vigorous debate and discussion
13 on a multitude of topics; he made over 18,000 individual posts on the Website. (*See* Exh. C.)
14 Each time Hoehn would leave a comment in a discussion thread, whether expressing his own
15 new idea or responding to someone else, his post count increased by one. (*Id.*; *See also* Exh. A ¶
16 8.) Over more than a decade of discussion forum activity, Hoehn interacted, shared information
17 and debated with dozens, if not hundreds of other registered forum users. (Exh. A ¶¶ 10-11.)

18 On November 29, 2010, Hoehn began a discussion thread titled “CA/Ill to bite the big
19 one,” debating the fiscal strain that public pensions place on the state budgets of Illinois and
20 California. (Doc. # 1 Exh. 2; *see* Exh. D; Exh. E ¶ 3.) In order to generate conversation among
21 other forum users, Hoehn posted the November 28, 2010, LVRJ article “Public Employee
22 Pensions; We Can’t Afford Them” (the “Article”) on the Website, complete with full attribution
23 and copyright notice. (Doc. # 1 Exh. 2.) Between November 29, 2010, when Hoehn first posted
24 the Article for discussion, and December 3, 2010, 23 additional comments were posted in the
25 discussion thread Hoehn began. (Exh. D.)

26 Hoehn did not post this for profit. (Exh. A ¶ 11.) The Website and its forum did not
27 provide any mechanism by which Hoehn could even theoretically profit by posting the Article.
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1 (*Id.* ¶ 20.) Hoehn’s sole purpose in posting the article was identical to a man cutting out a
2 newspaper article and posting it on a community bulletin board – he sought to engage in debate
3 and discussion with fellow citizens on a matter of public importance and to contribute to the
4 crowd-sourced educational discussion about matters of public importance, as he had on many
5 topics over the past decade. (*Id.* ¶ 9.) Hoehn participated in the discussion, advising other
6 posters to read the article before offering their opinions. (Exh. D at 3.) Hoehn further discussed
7 his experience with the legal system, which related to a conversation subtopic about a recent
8 legal setback for those seeking Barack Obama’s birth certificate (*Id.* at 3 and 12.)

9 Righthaven filed suit against Hoehn on January 11, 2011. (Doc. # 1.) Yet, Hoehn’s
10 comment was removed from the discussion forum on January 6, 2011, meaning the Article was
11 available for merely 38 days. (Exh. A ¶¶ 12 and 21.) In its Complaint, Righthaven raised one
12 claim of copyright infringement against Hoehn, alleging statutory damages up to \$150,000.00
13 under 17 U.S.C. § 504(c). (Doc. # 1 ¶ 38-39 and at 6:3-4.) Hoehn filed an Answer to the
14 Complaint on February 4, 2011 (Doc. # 7.) A Statement of Material Facts not in Issue is filed
15 with contemporaneously with this Motion, as required by Local Rule 56-1.

16 **II. Legal Standard for Summary Judgment**

17 A party is entitled to summary judgment as a matter of law when the party can
18 demonstrate that there is no genuine issue as to any material fact. *See* Fed. R. Civ. P. 56(c); *see*
19 *also Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Anderson v. Liberty Lobby, Inc.*, 477
20 U.S. 242, 247-48 (1986) (“[T]he mere existence of some alleged factual dispute between the
21 parties will not defeat an otherwise properly supported Motion for Summary Judgment; the
22 requirement is that there be no genuine issue of material fact”). Moreover, conclusory,
23 speculative testimony in affidavits and moving papers is insufficient to raise genuine issues of
24 fact and defeat summary judgment. *Thornhill Publ’g Co., Inc. v. GTE Corp.*, 594 F.2d 730, 738
25 (9th Cir. 1979).

26 If the moving party seeks summary judgment with respect to a claim or defense upon
27 which it bears the burden of proof at trial, its burden must be satisfied by affirmative, admissible
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1 evidence. By contrast, when the non-moving party bears the burden of proving the claim or
2 defense, the moving party can meet its burden by pointing out the absence of evidence
3 supporting the claim or defense. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).
4 “Only disputes over facts that might affect the outcome of the suit under the governing law
5 will properly preclude the entry of summary judgment. Factual disputes that are irrelevant
6 or unnecessary will not be counted.” *Anderson*, 477 U.S. at 248.

7 **III. Righthaven Cannot Establish Copyright Infringement and Withstand Summary** 8 **Judgment.**

9 The republication of copyrighted material does not automatically give rise to a claim for
10 copyright infringement. A defense to copyright infringement claims, the fair use doctrine holds
11 harmless those who use copyrighted material for purposes of education, commentary, or critique.
12 17 U.S.C. § 107; *Campbell v. Acuff-Rose Music*, 510 U.S. 569, 576-77 (1994); *Mattel, Inc. v.*
13 *Walking Mt. Prods.*, 353 F.3d 792, 799 (9th Cir. 2003); *Dr. Seuss Enters., L.P. v. Penguin Books*
14 *USA, Inc.*, 109 F.3d 1394, 1399 (9th Cir. 1997). When determining the fair use of copyrighted
15 materials for purposes such as criticism, comment, news reporting, teaching, scholarship or
16 research, courts look to the following factors:

- 17 1) the purpose and character of the use, including whether such use is of a
18 commercial nature or is for nonprofit educational purposes;
- 19 2) the nature of the copyrighted work;
- 20 3) the amount and substantiality of the portion used in relation to the copyrighted
21 work as a whole; and
- 22 4) the effect of the use upon the potential market for or value of the copyrighted
23 work.

24 17 U.S.C. § 107; *Campbell*, 510 U.S. at 576-77; *Los Angeles News. Svc. v. CBS Broadcasting,*
25 *Inc.*, 305 F.3d 924, 938 (9th Cir. 2002). No one factor is dispositive, and they must be weighed
26 together. *Campbell*, 510 U.S. at 577; *Los Angeles News Svc. v. Reuters Television Int’l*, 149 F.3d
27 987, 993 (9th Cir. 1998). These factors are non-exhaustive, and this Court may look beyond
28 them in ascertaining the defendant’s fair use of copyrighted material. *Campbell*, 510 U.S. at 577;

1 *Harper & Row Publishers v. Nation Enters.*, 471 U.S. 539, 559 (1985). Indeed, courts “avoid
2 rigid application of the copyright statute when [...] it would stifle the very creativity that law is
3 designed to foster.” *Stewart v. Abend*, 495 U.S. 207, 236 (1990).

4 Hoehn’s use of the Article falls within the scope of education, comment and criticism,
5 rendering it as fair use under copyright law. When copyrighted works are used for these
6 purposes within a court’s fair use analysis, along with other factors, their use is non-infringing.
7 17 U.S.C. § 107; *See CBS Broadcasting*, 305 F.3d at 924; *Savage v. Council on Am.-Islamic*
8 *Relations, Inc.*, 46 Med. L Rptr. 2089 (N.D. Cal. 2008). In fact, this very Court has seen fit to
9 dispense with this plaintiff’s over-reaching in *Righthaven LLC v. Realty One Group, Inc.*, 38
10 Med. L. Rptr. 2441 (D. Nev. 2010) (finding fair use on a Motion to Dismiss). The undisputed
11 facts in this case show that Hoehn’s republication of the Article satisfies the factors set forth in
12 17 U.S.C. § 107 and, consistent with existing precedent, weighs in favor of this Court finding the
13 Article’s republication to be constitutionally protected fair use. Each factor is analyzed
14 individually below.

15 **A. Hoehn’s Republication of the Article was for a Transformative Purpose and**
16 **Possessed the Characteristics of an Educational, Critical and Non-Commercial Use.**

17 ***1. Hoehn’s Purpose in Republishing the Article is a Protectable Fair Use***
18 ***Interest.***

19 In republishing the Article, Hoehn sought to inform and discuss the budget crises of
20 California and Illinois with others. This republication satisfies three purposes for republication
21 that are protected by the fair use doctrine: education, comment and criticism. 17 U.S.C. § 107;
22 *Campbell*, 510 U.S. at 576-77. Hoehn’s use of the article satisfies all of these conditions as a
23 matter of law.

24 Hoehn’s very posting of the article on a discussion forum invites the inescapable
25 conclusion that he posted the article not to compete with the LVRJ, but to engage others in
26 discussion of the facts and opinions expressed therein. (Exh. D at 1.) The forum post’s title,
27 “CA/Ill to bite the big one,” was an invitation for forum readers and commentators to read the
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1 article, discover exactly why California and Illinois would “bite the big one,” and what that
2 “bite” would involve. (Doc. # 1 Exh. 2; Exh. D at 1.)

3 The other forum users’ reaction to this article fulfilled Hoehn’s purpose in posting it.
4 Within a few days, 23 additional posts were made discussing a variety of topics, largely
5 centering on the legal and political realities of America (Exh. D), a subject addressed in the
6 source material (Doc. # 1 Exh. 2). The ensuing discussion addressed topics ranging from legal
7 challenges to obtain President Barack Obama’s Birth Certificate (Exh. D at 1-2), earmarks for
8 funding (*id.* at 3), the budgetary woes faced by Illinois and California (*id.* at 2-3), issues with
9 access to justice and the legal system (*id.* at 3), and impediments that the two-party political
10 system creates to finding solutions to budgeting and other problems faced by state and federal
11 governments (*id.* at 4-5).

12 As seen in Exhibit D, commentary and criticism concerning the article, and of the topics
13 to which it related, constituted the true nature of the work’s republication. Within the 24-post
14 discussion thread, the Article was reproduced in only one post, constituting 4.2% of the total
15 exchange between forum members. (Exh. D.) Moreover, the facts set forth within the Article,
16 discussed in Section 2, presented new information to participants in the discussion, informing
17 them of Illinois and California’s pension-imposed fiscal woes and the effects that a switch to
18 statewide defined-contribution retirement benefits would have on those states. (Doc. # 1 Exh. 2.)
19 Based on the comments seen in Exhibit D, discussion participants realized Hoehn’s goal of
20 learning from the article, or at least discussing its merits and contentions.

21 ***2. Hoehn’s Use of the Article was Transformative in its Character.***

22 Hoehn’s republication of the Article in a discussion forum was a transformative use of
23 the copyrighted work in order to educate other forum users while stimulating and engaging in
24 criticism and discussion. The quantity of work copied does not determine the character and
25 purpose of its use. *See Hustler Magazine, Inc. v. Moral Majority, Inc.*, 796 F.2d 1148, 1152-53
26 (9th Cir. 1986) (holding that Moral Majority’s use of a full ad created by Hustler Magazine, even
27 in a fundraising effort, constituted fair use of Hustler’s copyrighted material). Instead, a use of
28 copyrighted material’s transformative nature is assessed based on whether the use adds

1 something new to the copyrighted work, altering the first with a new expression, meaning or
2 message; the more transformative the work, the less will be the significance of other factors
3 potentially weighing against fair use. *Campbell*, 510 U.S. at 579; *CBS Broadcasting*, 305 F.3d at
4 938.

5 In addition to the wholly republished advertisement in *Hustler Magazine*, other
6 copyrighted content has been reproduced in full, yet found to be transformative. In *Kelly v.*
7 *Arriba Soft Corporation*, the Ninth Circuit held that Arriba, a search engine that reproduced the
8 plaintiff's images during its image searches, was not liable for copyright infringement in making
9 such copies when presenting image search results to end-users. 336 F.3d 811 (9th Cir. 2003).
10 Specifically, the court held that its creation and ordering of images results into a new work – the
11 results requested by a search user – that is intended to engage and inform the user, rather than
12 merely reproduce a copyright holder's images. *Arriba*, 336 F.3d at 818. Similarly, the Ninth
13 Circuit later ruled that reproducing an exact copy of copyrighted work does not diminish a
14 transformative use like Arriba's, using copyrighted works to present a user with information, so
15 long as the copy serves a different function than the original work. *Perfect 10, Inc. v. Amazon,*
16 *Inc.*, 508 F.3d 1146, 1165 (9th Cir. 2007); *See also Hofheinz v. A&E Networks*, 146 F. Supp. 2d
17 442, 446-47 (S.D.N.Y. 2001) (finding that the inclusion of copyrighted material in a biography
18 was “transformative” because it was not recreating the original work's creative expression, but
19 informing the viewer of the subject's history).

20 Based on the criteria for assessing a republication's transformative nature set forth in
21 *Campbell*, *Arriba*, *Perfect 10* and *Hustler Magazine*, Hoehn's use of the article was
22 transformative. Hoehn did not merely republish the work and let it stand on its own without
23 comment or analysis, but converted it into an actual discussion, as one reading a newspaper
24 aloud in a coffee house might do in the course of a conversation with one's peers. The Article's
25 original purpose was to present information about defined-contribution retirement plans for
26 states (Doc. # 1 Exh. 2). Hoehn, however, used the whole article – like Arriba and Google, which
27 were protected by fair use in *Arriba* and *Perfect 10* – for a different purpose, converting it into a
28 source of discussion for others, in which it played a minor role. (*See Exh D.*)

1 Hoehn's use of the Article is identical to a conversation, but preserved in digital format.
2 Thus, perceiving Hoehn's use of the article as a bare reproduction of Righthaven's copyrighted
3 works is improper – what viewers of the discussion thread are actually viewing is a digitally
4 preserved conversation between Hoehn and others, which is the final product achieved through
5 the Article's use and transformation. This incorporates the existing work into a new work in the
6 course of an online discussion, putting it into a new context and, under *Perfect 10*, transforming
7 the Article's purpose and character. 508 F.3d at 1165. Because Hoehn's use of the Article
8 effectively transforms its purpose, there is no risk of its reproduction on the Website's forums
9 impermissibly superseding the original work. *Campbell*, 510 U.S. at 579.

10 ***3. Hoehn's Use of the Article was for a Noncommercial Purpose.***

11 Hoehn did not republish the Article for any cognizable commercial purpose.
12 Noncommercial, nonprofit use of copyrighted material is presumptively fair use. *Sony Corp. of*
13 *Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 448 (1984). The legal inquiry as to whether
14 Hoehn's use was for non-profit purposes is not limited to whether the sole motive of the Article's
15 use was monetary gain, but considers whether Hoehn stands to profit from exploiting the
16 copyrighted material without paying the traditional price for it. *Harper & Row*, 471 U.S. at 562;
17 *Hustler Magazine*, 796 F.2d at 1152. Under any metric, Hoehn's use was noncommercial.

18 Hoehn had no financial incentive to republish the article. Posting the article to the
19 Website's forums provided no financial benefit to Hoehn, as he did not receive any form of
20 compensation from, nor have any financial or ownership interest in, the Website. (Exh. A ¶ 10.)
21 Hoehn furthermore did not receive compensation, or the potential for compensation, from any
22 source, for reposting the Article. (*Id.* ¶ 20.) He simply placed the Article on the forums to create
23 and participate in a discussion, spurring the transformative process that resulted in the
24 conversation found in Exhibit D. Hoehn had no financial incentive for republishing the Article.
25 (*Id.* ¶¶ 17 and 20.) As Hoehn's profit motive – or lack thereof – is the relevant inquiry in
26 analyzing noncommercial use, this weighs heavily in favor of a finding of fair use.

27 //

28 //

1 **B. The Article is Informative in Nature, Not Creative, and Prone to Fair Use.**

2 The Article Hoehn posted to the Website's forum, which spread information and sparked
3 discussion among other forum users, was of an informative nature, rather than a creative one.
4 Where the use of copyrighted material is informative, rather than creative (e.g., a work of fiction
5 or fantasy), courts have widened the scope of fair use. *Harper & Row*, 471 U.S. at 563-64;
6 *Righthaven v. Klerks*, No. 2:10-cv-00741 2010 WL 3724897 at *3 (D. Nev. Sept. 7, 2010) (“a
7 news article may require some degree of creativity in order to appeal to the reader, [but] [...] the
8 article is primarily informational”). Use of published works, like the Article, are more likely to
9 qualify as fair use because the first appearance of the creator's expression has already occurred.
10 *Arriba*, 336 F.3d at 820.

11 In cases such as this, the nature of the work should determine the court's analysis, with
12 the predominant factor weighing the court's decision as to whether the creation is informational
13 or creative in nature. *Harper & Row*, 471 U.S. at 564; *CBS Broadcasting*, 305 F.3d at 940;
14 *Hustler Magazine*, 796 F.2d at 1154. Where informational elements predominate over creative
15 ones, the work, even if mixed, is informational in nature and subject to a broader application of
16 fair use. *Reuters*, 149 F.3d at 994; *Los Angeles News Svc. v. KCAL-TV Channel 9*, 108 F.3d
17 1119, 1122 (9th Cir. 1998); *see also Weissman v. Freeman*, 868 F.2d 1313, 1325 (2d Cir. 1989).

18 As an editorial piece, there is no dispute that the Article contains some creative elements.
19 However, the fact that the Article is an editorial piece, rather than a purely factual report, does
20 not place it outside the boundaries of fair use, or even significantly weigh against Hoehn's use of
21 it being fair. *CBS Broadcasting*, 305 F.3d at 940; *Reuters*, 149 F.3d at 994; *KCAL-TV*, 108 F.3d
22 at 1122. While the Article advocates for defined-contribution retirement plans, as opposed to
23 those with defined benefits, it does so based on publicly available facts, mitigating its value as a
24 creative, expressive work. *CBS Broadcasting*, 305 F.3d at 940; *Reuters*, 149 F.3d at 994. (Doc. #
25 1 Exh. 2 at 2-3.)

26 The Article begins by identifying the budgetary problems faced by California and
27 Illinois, and the primary culprit for them: Expensive pensions and other benefits owed to public
28 employees. (*Id.* at 2.) Going on to identify the benefits of defined-contribution plans such as

1 401(k) retirement accounts, the Article reports information on why such plans would be
2 beneficial in avoiding these crises. (*Id.*) Having identified the problem, the Article cites specific
3 figures to underscore the budgetary woes of California and Illinois (*id.*). Investigative reporting
4 then takes center stage, as the plight placed onto public coffers by a specific individual earning
5 two pensions at age 57 and a Teachers' Union in Illinois are explained, quantified, and used to
6 explain the exact budget shortfall projections of California, Illinois and Nevada. (*Id.* at 2-3.)

7 Despite the creative elements the Article contains, its content primarily is a presentation
8 of factual data, without which the editorial would be almost devoid of content. Even if
9 interpreted as a mixed work of information and creativity, the Article's heavy informational
10 emphasis supports it being, on balance, a factual presentation more prone to fair use. As such,
11 this factor weighs in favor of Hoehn's fair use.

12 **C. Hoehn's Use of the Full Article Does Not Weigh Against Finding Fair Use.**

13 Hoehn's republication of the entire Article does not preclude this Court from finding fair
14 use. Though in some contexts, using an entire work may militate against a finding of fair use, it
15 is not a dispositive factor in a fair use analysis, and not a factor that must weigh against Hoehn.
16 The Supreme Court has held that the amount of permissible copying requires a case-by-case
17 analysis varies with the purpose and character of the intended use. *Campbell*, 510 U.S. at 586-87.

18 In *Hustler Magazine*, Moral Majority's use of the entire parody advertisement created by
19 Hustler was deemed to be a use of the entire work, yet was ultimately a fair use of Hustler's
20 material under the court's analysis. 796 F.2d at 1155. There, the work was being used for
21 informative, non-profit purposes, namely to inform Moral Majority's members and supporters
22 what Hustler had famously said about Jerry Falwell. *Id.* at 1150, 1153. More recently, the *Arriba*
23 court held that Arriba's complete copying of copyrighted images for depiction within search
24 results was "reasonable," and "necessary" for pursuing its purpose in providing more
25 information about the image to the end-user. 336 F.3d at 821.

26 The Ninth Circuit reaffirmed this reasoning in *Perfect 10*. 508 F.3d at 1165. The court
27 held that Google's full copying of copyrighted images was fair use because Google's use of the
28 images were for a purpose – presentation of search information – different than the original

1 works’, which was for entertainment. *Id.* In both *Arriba*, 336 F.3d at 821, and *Perfect 10*, 508
2 F.3d at 1165, the defendants’ use of the complete copyrighted works did not weigh against them
3 in the courts’ fair use analyses.

4 This precedent is consistent with Hoehn’s use of the Article being fair use. Full
5 reproduction of the works was “reasonable” and “necessary” for Google and Arriba to achieve
6 their transformational use of the images and provide information to end users, as the image
7 search services’ purpose of presenting and identifying images to its users would be defeated
8 without showing the entire image. *Perfect 10*, 508 F.3d at 1165; *Arriba*, 336 F.3d at 821. As in
9 those cases, as well as *Hustler Magazine*, Hoehn’s use of the entire article was integral to
10 creating a discussion about it. Without its presence, participants, potential participants and future
11 readers would be without context for the discussion. In fact, if denied the text of the article
12 itself, they would almost be unable to participate, as they would lack requisite background
13 information to join the conversation.

14 Hoehn’s republication of the Article in its entirety should be of neutral weight in this
15 case’s fair use analysis. As discussed in Section III A, *supra*, Hoehn’s use of the Article was for
16 a non-commercial educational and commentary-inducing purpose, and was transformative in
17 nature, converting an article into a documented conversation about it and related issues. In order
18 to affect the goal of creating a discussion with analysis of the Article – an online, multi-party
19 critique of it – full republication of the Article was necessary.

20 As Hoehn’s republication did not supersede the Article in its original context within the
21 LVRJ, there was no risk of the original work’s market being diverted to Hoehn’s posting, and
22 thus no improper purpose for republishing the Article. The totality of circumstances established
23 in Section III A and precedent within this Circuit give rise to the conclusion that Hoehn’s use of
24 the Article is neutral, neither harming nor benefitting him in this analysis.

25 **D. Hoehn’s Use Could Not Have Had an Effect on the Article’s Potential Market.**

26 The most important factor in a fair use analysis under 17 U.S.C. § 107(4) is the use’s
27 effect on the potential market for the copyrighted work. *Harper & Row*, 471 U.S. at 566 (noting
28 that effect on the potential market is “undoubtedly the single most important element of fair

1 use”). When unauthorized use of a copyrighted work is for a noncommercial purpose, the
2 copyright holder must show, by a preponderance of evidence, that there is some meaningful
3 likelihood of future harm. *Harper & Row*, 471 U.S. at 567; *Sony*, 464 U.S. at 451. In
4 determining whether the use has diminished the work’s potential market, courts have focused on
5 whether the infringement 1) tends to diminish or prejudice the work’s potential sale; 2) tends to
6 interfere with the work’s marketability; or 3) fulfills the demand for the original work. See
7 *Hustler Magazine*, 796 F.2d at 1155-56, citing *Elsmere Music, Inc. v. Nat’l Broadcasting Co.*,
8 482 F. Supp. 741, 747 (S.D.N.Y. 1980); *Wainwright Secy’s v. Wall Street Transcript Corp.*, 558
9 F.2d 91, 96 (2d Cir. 1977); *Meeropol v. Nizer*, 560 F.2d 1061, 1070 (2d Cir. 1977).

10 Hoehn’s noncommercial use of the Article in this case is of particular relevance. To
11 negate any finding of fair use, the copyright holder must show that if the challenged use becomes
12 widespread, it would adversely affect the potential market for the copyrighted work. *Harper &*
13 *Row*, 471 U.S. at 568; *Sony*, 464 U.S. at 451. In *Sony*, the Supreme Court found that the
14 company’s Betamax video recorder not affect the aggregate market for copyrighted work,
15 despite creating copies of the work. 464 U.S. at 453 nn. 36-38. Consequently, the Supreme
16 Court found this was a permissible fair use of copyrighted content. *Id* at 455.

17 Hoehn’s republication of the Article does not, and cannot, affect its potential market.
18 Hoehn’s use of the Article is markedly dissimilar from the Article’s original purpose, described
19 in which was to inform. As the Article was only available on the Website for 38 days, Hoehn’s
20 likelihood of affecting the Article’s market was nonexistent. Hoehn’s use of the Article to
21 generate discussion and educate others is so substantially different from the copyright holder’s
22 purpose in creating the article that there is no likelihood of competition between them, as seen in
23 *Perfect 10*, 508 F.3d at 1146 (9th Cir. 2007) (holding that Google’s full reproduction of
24 expressive, copyrighted images in a commercial venture constituted fair use) and *See also Kelly*
25 *v. Arriba Soft Corporation*, 336 F.3d 811 (9th Cir. 2003). The LVRJ’s use of the Article was
26 present information about defined-contribution retirement plans for states (Doc. # 1 Exh. 2). In
27 contrast, Hoehn’s use of the article was to stimulate discussion about the Article and relate it to a
28

1 broader range of topics, integrating it into an entirely new product – the discussion thread itself, a
2 series of opinions, facts and statements presented by numerous different commentators. (Exh. D.)

3 Like Arriba and Google, Hoehn did not sell licenses of the Article, nor the article itself,
4 and neither did the Website. (Exh. A ¶ 20; See Doc # 1 Exh 2 and Exh. D, observing the lack of
5 any purchasing mechanism for the Article.) Bearing further similarity to Arriba and Google,
6 Hoehn’s use of the article was not in the same market as the copyright holders’. Google and
7 Arriba’s relevant market, even when displaying wholly copied works, is the web search and
8 specifically web image search markets, where they compete on the quality, depth and speed of
9 results they can provide to end-users.

10 In turn, Hoehn’s relevant market is not the reporting of news and opinion, but the market
11 of discussion itself. By posting the Article on the Website’s forum, Hoehn transformed the
12 Article from a reporting tool to a basis for discussion, and was the progenitor of all resulting
13 conversation between forum users in that thread. If Hoehn competed with anyone, it was with
14 other forum users and other discussion forums, as the market was no longer for the information
15 within the article, but the discussion surrounding it. This market for discussion is discrete from
16 the market for the original copyrighted works. As the market for image search results is distinct
17 from the market for the images themselves, seen in *Perfect 10* and *Arriba*; the market for
18 fundraising and information about Moral Majority is distinct from Hustler’s market, illustrated in
19 *Hustler Magazine*; and the market for video recorded via Betamax machine is distinct from that
20 for originally broadcast shows, explained in *Sony*.

21 Even if conduct like Hoehn’s were to become widespread, as prohibited in *Harper &*
22 *Row*, it would not affect the Article’s original market. Users of the Website’s forum are not
23 interested in the Article, or any article in and of itself, but the discussion and expression fostered
24 among other forum users. The users’ interest is in this ensuing discussion, and not in the Article
25 or any article by the LVRJ or other news source – a point underscored by Hoehn’s longtime
26 participation in the Website’s forums. (Exh. B.) Consequently, the republication of copyrighted
27 works for discussion and comment (if it is to be considered to be a market at all) constitutes a
28 separate market, where consumers seek the discussion itself. Widespread conduct of that nature

1 would not impede the market for people who would view the Article for its original expressive,
2 information-relaying purpose. The asymmetries between what is offered by the uses of both
3 Article’s copyright holder and Hoehn are so pronounced that they effectively preclude the two
4 from competition. Righthaven cannot demonstrate that a meaningful likelihood of future harm
5 exists, as required in *Sony*, if people are allowed to engage in this alternate activity that has a
6 separate purpose and market from that of the Article’s copyright holders.

7
8 **CONCLUSION**

9 As set forth in the examples provided in the beginning of this Motion, the use of news
10 and opinion articles is essential to a functioning society and healthy democracy. Allowing
11 individuals to share and read out loud the information they receive from a newspaper or
12 magazine fosters discussion and debate, which is one of the fair use doctrine’s core aims.
13 Moreover, it turns the article, especially in an online forum, from a source of information into a
14 part of a discussion – repurposing the article’s existence.

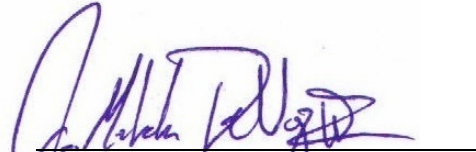
15 Hoehn, who provided exemplary service to his country, understood the vital role this
16 discourse plays in democracy. By debating important political issues with his acquaintances,
17 Hoehn refined his own views and helped others develop their own. While this discourse may
18 have given the owners of Righthaven the fantasy of a quick cash-grab from Mr. Hoehn, this
19 honorable Court must turn back this ignoble misuse of the copyright laws and protect the
20 citizenry’s right to free discourse on matters of public concern. This Circuit’s application of the
21 fair use doctrine in prior cases all but assures that Hoehn’s use of the Article was fair use, yet
22 Righthaven seeks to curtail this permissible and publicly beneficial use of copyrighted material.

23 No material facts as to Hoehn’s fair use of the Article are in dispute. As a matter of law,
24 none of the fair use factors set forth in 17 U.S.C. § 107 weigh against Hoehn. Of them, only the
25 amount of copyrighted work Hoehn used in creating a new work is neutral. The remaining
26 factors – the purpose and character of the Article’s use, the Article’s nature, and the effect on the
27 Article’s potential market – weigh in favor of finding Hoehn engaged in fair use by republishing
28

1 the Article on the Website's forum. Resolving these questions of law based on the undisputed
2 facts provided above, this Court is justified in granting Hoehn summary judgment.

3
4 Dated: February 11, 2011

5 Respectfully Submitted,
6 RANDAZZA LEGAL GROUP

7
8 
9 J. Malcolm DeVoy IV
10 Attorney for Defendant,
11 *Wayne Hoehn*

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am a representative of Randazza Legal Group and that on this 11th day of February, 2011, I caused documents entitled:

- DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

to be served as follows:

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

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

to be hand-delivered;

by the Court’s CM/ECF system.

/s/ J. Malcolm DeVoy

J. Malcolm DeVoy

EXHIBIT A

1 J. Malcolm DeVoy IV (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 *Wayne Hoehn*

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

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

11 Plaintiff,

12 vs.

13 WAYNE HOEHN, an individual

14 Defendant.

Case No. 2:11-cv-00050

**DECLARATION OF WAYNE C.
HOEHN IN SUPPORT OF
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

15 **DECLARATION OF WAYNE C. HOEHN**

16 **IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

17 I, WAYNE C. HOEHN, hereby declare as follows:
18

- 19 1. I am a resident of Kentucky and the named Defendant in this action.
- 20 2. In Bowling Green, Kentucky, I am the sole proprietor of Mid-States Insurance Services,
21 which has no other employees. As of today, business has an A+ rating from the Better
22 Business Bureau. A printout of the Better Business Bureau’s report for Mid-States
23 Insurance Services, created on February 7, 2011, is attached to this Declaration as Hoehn
24 Declaration Exhibit A.
- 25 3. I am also a veteran of the U.S. Army. During my service in Vietnam, I was awarded the
26 Silver Star award, the Bronze Star Medal (with two bronze oak leaf clusters in a “V”
27 device), the Purple Heart award, and an assortment of other commendations, including
28 the Army Commendation Medal and National Defense Service Medal. A letter from the

1 National Personnel Records Center to Wayne Hoehn, dated June 21, 2004, detailing these
2 awards, is attached to this Declaration as Hoehn Declaration Exhibit B.

- 3 4. Since July, 1999, I have been a member of <MadJackSports.com> (the “Website”) under
4 the account name “DOGS THAT BARK”. This membership allowed me to post on the
5 Website’s discussion forums under the DOGS THAT BARK moniker.
- 6 5. Despite choosing the DOGS THAT BARK moniker, my public profile had, until
7 recently, always displayed my contact e-mail address and revealed I worked for Misd-
8 States Insurance in Bowling Green, Kentucky. Despite posting under pseudonym, people
9 always had a way to contact me. I had also disclosed my true identity on the Website
10 forum in the past, and even met numerous other forum users on the four occasions I
11 attended the Website’s annual golf tournament. I believe this is how Righthaven, LLC
12 found me, and I have since removed my contact information from my public profile.
- 13 6. From July 1999 to the present day, I have made over 18,000 posts on the Website’s
14 discussion forums.
- 15 7. On February 2, 2011, I created a portable document file capture of my account’s public
16 profile. Attached to this Motion as Exhibit C, it is a true and correct version of how my
17 public profile appeared on that day.
- 18 8. Contained in this public profile is a count of forum posts I have made using my DOGS
19 THAT BARK account. For each unique post I make, whether expressing my own
20 thought or in response to another, the total count increases by one (1).
- 21 9. I have consistently used the Website’s forum for more than a decade because of the
22 engaging interaction it provides, as well as the opportunity to collaborate, share ideas
23 with others, and refine my views on debated topics.
- 24 10. During the time I have been a forum user on the Website, I have engaged in numerous
25 discussions with many dozens, possibly hundreds, of people using discrete user names
26 and accounts.
- 27
- 28

1 11. During my time using the Website and its forum, I have never received compensation
2 from it, had any ownership or financial interest in the Website, nor been an officer or
3 other employee of the Website.

4 12. My November 29, 2010 posting of the Las Vegas Review-Journal article “Public
5 Employee Pensions; We Can’t Afford Them” (the “Article”) was not compensated by
6 any source, nor did I have any promise of compensation or other financial inducement to
7 post that article to the Website’s forum.

8 13. When posting the Article, I made sure to include the Las Vegas Review-Journal’s
9 copyright notice with proper attribution to its author, Sherman Frederick, to ensure that
10 the proper creator would receive due credit for authoring the Article. I did not represent
11 that the Article was my creation.

12 14. I posted the Article in order to inform and educate other forum members about the fiscal
13 and budget issues faced in California and Illinois due to public employee unions and the
14 benefits, pensions and other costly privileges they receive.

15 15. My intent, and hope, was that posting the article would foster debate and discussion
16 within the Website’s forum, both of the broader issue of public employee pensions and
17 with the contentions of the Article itself, namely that 401(k) and defined-contribution
18 retirement plans were a feasible alternative to pensions for public employees. I
19 participated in the conversation, by posting in the discussion thread, to ensure this goal
20 was realized.

21 16. Based on my observations, a wide range of political topics were discussed, several
22 touching upon this issue. As I posted the Article seeking to start a conversation about the
23 problems facing state and local governments, this was a success. The topics brought up
24 by other forum users brought up additional political issues as well, broadening the
25 discussion’s scope.

26 17. My intention and purpose in posting the Article was not to provide an alternate channel
27 for its distribution, nor to resell it or compete with its original distribution. I sought only

28

1 to use it in initiating a debate and passing along its factual contentions to people with
2 whom I regularly discussed politics and current events.

3 18. In creating a discussion about the Article, I sought to add value and analysis to its factual
4 observations. Specifically, I wanted other forum users to attack and defend its
5 informational sections about how unions and public employees were imposing significant
6 and quantified harm on the states of California and Illinois.

7 19. Instead of presenting facts and information as the Article did in the *Las Vegas Review-*
8 *Journal*, I set out to start an informative, potentially contentious discussion that could be
9 revisited and added to at any time, by anyone.

10 20. I did not resell, license, or otherwise commercially distribute the Article, nor did I
11 attempt to do so. To the best of my knowledge, the Website has not resold, licensed or
12 otherwise commercially distributed the Article either, and lacks the mechanisms to do so.

13 21. On January 6, 2011, the Article had been removed from the discussion thread I created on
14 November 29, 2010, and deleted entirely from the Website's forum.

15


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

17

18 Dated: February 9, 2011

19

20

By: 

21

Wayne C. Hoehn

22

23

24

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28

HOEHN DECLARATION EXHIBIT A

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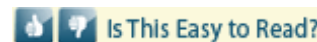
BBB Business Review Reliability Report for Mid-States Insurance Services

A **BBB Accredited** business since 7/23/2009

Rating: A+

[Ratings Explanation...](#)

BBB issues Reliability Reports on all businesses, whether or not they are BBB accredited. If a business is a BBB Accredited Business, it is stated in this report.



Business Contact & Profile
 Customer Complaint History
 BBB Copyright and Reporting Policy

BBB Rating
 Business Management

BBB Accreditation
 Government Action(s)
 Advertising Review
 Feedback to BBB

Business Contact & Profile

BBB Rating

BBB Accreditation

Business Name: [Mid-States Insurance Services](#)

Business Address: 1733 Campus Plaza Court #11
 Bowling Green, KY 42101
[See the location on a Mapquest Map](#)
[See the location on a Google Map](#)

Original Business Start Date: 7/26/1985

Type of Entity: Sole Proprietorship
 Principal: Wayne Hoehn, Owner

Customer Contact: Wayne Hoehn, Owner

Phone Number: (270) 781-3597

Fax Number: (270) 782-6974

Based on BBB files, this business has a BBB Rating of A+ on a [scale](#) from A+ to F.

Factor(s) that raised this business' rating include:

- Length of time business has been operating.
- No complaints filed with BBB.
- BBB has sufficient background information on this business.

[BBB rating is based on 16 factors. Click here for details about the factors considered.](#)

This business has been a BBB Accredited Business since July 2009. This means it supports BBB's services to the public and meets our [BBB accreditation standards](#). [BBB Standards for Trust](#), are eight principles that summarize important elements of creating and maintaining trust in business. This business has affirmed to meet and abide by BBB Standards for Trust.

Government Action(s)

BBB has no information regarding government actions at this time.

Business Management

Advertising Review

Email Address: wchoehn@yahoo.com

Mr. Wayne Hoehn , Owner

BBB has no information regarding advertising review at this time.

BBB Accreditation: This business is a BBB Accredited Business

Date Accredited by BBB: [7/23/2009](#)

Type of Business: INSURANCE SERVICES
INSURANCE - EMPLOYEE BENEFITS
INSURANCE-HEALTH
INSURANCE-LIFE

Feedback to BBB

Please take [our Quick Survey](#) about the format/readability of the BBB Business Review Reliability Report.

Website Address:

<http://www.midstatesinsurance.wisebuyingmall.com>

Customer Complaint History

BBB has processed no customer complaints on this company in its three year reporting period.

[Industry Comparison](#)

BBB Copyright and Reporting Policy

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BBB Reliability Reports are provided solely to assist you in exercising your own best judgment. Information in this BBB Reliability Report is believed reliable, but not guaranteed as to accuracy.

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If you choose to do business with this business, please let the business know that you contacted the BBB for a BBB Reliability Report.

Report as of: 2/7/2011

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HOEHN DECLARATION EXHIBIT B



National Personnel Records Center

Military Personnel Records, 9700 Page Avenue St. Louis, Missouri 63132-5100

June 21, 2004

Wayne Hoehn
P.O. Box 20030
Bowling Green, ky 42102

RE: Veteran's Name: HOEHN WAYNE
SSN/SN: 494584175
Request Number: 1-91258001

Dear Sir or Madam:

Thank you for contacting the National Personnel Records Center (NPRC). We are pleased to verify entitlement to the following awards:

SILVER STAR;
BRONZE STAR MEDAL with 2 bronze oak leaf clusters with letter "V" device;
PURPLE HEART;
AIR MEDAL with numeral 2;
ARMY COMMENDATION MEDAL;
NATIONAL DEFENSE SERVICE MEDAL;
VIETNAM SERVICE MEDAL with 2 bronze service stars;
COMBAT MEDICAL BADGE 1ST AWARD;
REPUBLIC OF VIETNAM CAMPAIGN RIBBON W/DEVICE (1960);
EXPERT BADGE with Auto Rifle Bar;
Your Awards Case Number is A4FH91234K7IF.

While NPRC verifies entitlement to awards, the Department of the Army maintains jurisdiction for issuing the actual awards. The awards will be shipped directly to you from the U.S. Army Tank Automotive and Armament Command at the address shown below. Any further correspondence concerning your request should be sent to that location. It takes approximately six to eight weeks from the date of this correspondence for the medals to be shipped.

U.S. Army Tank Automotive and Armaments Command
IMMC, Soldier System Team
PO Box 57997
Philadelphia, PA 19911-7997

The Republic of Vietnam Campaign Medal w/Device (1960) was awarded by the Republic of Vietnam. The Department of the Army does not issue this foreign award, but does provide the pertinent ribbon. You are authorized the Republic of Vietnam Gallantry Cross w/Palm Unit Citation. This foreign award is not issued by the Department of the Army, but may be purchased

EXHIBIT B



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Total users online now: 1612

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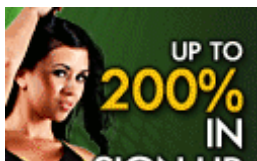


EXHIBIT C

View Profile: DOGS THAT BARK

DOGS THAT BARK

Registered User



Last Activity: Today 04:02 AM
Viewing Forum [Politics and Religion](#) @ 04:02 AM

Add DOGS THAT BARK to Your Buddy List

Add DOGS THAT BARK to Your Ignore List

Forum Info

Join Date: **07-13-1999**

[Posts](#)

Total Posts: **18,160** (4.30 posts per day)

[Find all posts by DOGS THAT BARK](#)

[Find all threads started by DOGS THAT BARK](#)

Contact Info

DOGS THAT BARK has no contact information.

Additional Information

Location:

Bowling Green Ky

Interests:

golf,horses,and so forth

Occupation:

insurance

Group Memberships

DOGS THAT BARK is not a member of any public groups

All times are GMT -6. The time now is 04:02 AM.

EXHIBIT D



Hollywood - Wager a total of \$2011 any week in January and get \$110 back!

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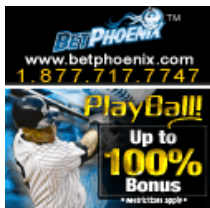
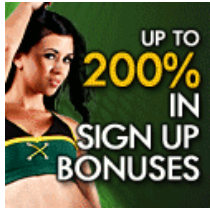
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Welcome to our community; please [register a username](#)... after all, it's free!

POSG REPLY

Thread Tools Display Modes

11-29-2010, 06:45 AM # 1

DOGS THAT BARK

Registered User
★

CA/III to bite the big one

Post removed due to my DMCA Policy

<http://www.madjacksports.com/crnotice.html>

11-29-2010, 10:40 PM # 2

THE KOD

KING OF DOGS
★

DTBlackgumby

another bad day for the birthers

sorry for your lost

Everyone has a plan, until they get hit.
/ Mike Tyson

Last edited by THE KOD : 01-18-2011 at 02:48 PM.

11-29-2010, 11:02 PM # 3

illuminati

LOKI
★

Scott,

Join Date: Aug 2002
Location: In the shadows
Posts: 14,979



really. wtf does it have to do with the 2 states taking 2 bites of a shit sandwich? No mustard !

Start a thread dude ! Don't be a pussy ! you know where to find me, I just want to pass some info

"The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government — lest it come to dominate our lives and interests-Patrick Henry

"A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Second Amendment to the U.S. Constitution

The answer to 1984 is 1776



11-30-2010, 06:22 AM

4



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

Quote:

Originally Posted by **illuminati**

really. wtf does it have to do with the 2 states taking 2 bites of a shit sandwich? No mustard !

Start a thread dude ! Don't be a pussy ! you know where to find me, I just want to pass some info

.....
No one reads DTBlackgumbys threads so its safe in here. I thought it was interesting the Court didnt back the birthers. They had no problem backing George W when he stole a election that one time.

sure wish I could talk to you and eat the shit sandwich, but all your shit is tapped out.



Everyone has a plan, until they get hit.
/ Mike Tyson



11-30-2010, 09:53 AM

5



Join Date: Aug 2002
Location: In the shadows
Posts: 14,979

Quote:

Originally Posted by **Scott-Atlanta**

.....
No one reads DTBlackgumbys threads so its safe in here. I thought it was interesting the Court didnt back the birthers. They had no problem backing George W when he stole a election that one time.

sure wish I could talk to you and eat the shit sandwich, but all your shit is tapped out.



It's not about you eating the shit sandwich, it's about the states KOD.

"The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government — lest it come to dominate our lives and interests-Patrick Henry

"A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Second Amendment to the U.S. Constitution

The answer to 1984 is 1776



11-30-2010, 08:06 PM

6



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

Everyone agrees that earmarks should be banned.

But there is too much political clout taken away from these bastids if they do away with it.

Fawk it, slip the earmarrks in there , it aint that much millions.

Same way the gambling bill got approved by that Bastid DTBlackgumby in Kentucky. At least I think it was him.

Everyone has a plan, until they get hit.
/ Mike Tyson

Last edited by THE KOD : 01-18-2011 at 02:48 PM.



12-01-2010, 06:32 AM

7

DOGS THAT BARK

Registered User



Join Date: Jul 1999
Location: Bowling Green Ky
Posts: 18,143

Scott --instead of trying to divert every topic why don't you do something resourceful.

You might want to take time off to do a little productive reading--to avert past mistakes next time-

A suggestion-- How to Outswim the Sharks

SICK & TIRED of lawyers who charge you insane fees for jobs that drag on forever and can never get a STRAIGHT ANSWER when you call their office to ask for help or get a quote...



12-01-2010, 12:29 PM

8



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704


Quote:

Originally Posted by **DOGS THAT BARK**
Scott --instead of trying to divert every topic why don't you do something resourceful.

You might want to take time off to do a little productive reading--to avert past mistakes next time-

A suggestion-- How to Outswim the Sharks

SICK & TIRED of lawyers who charge you insane fees for jobs that drag on forever and can never get a STRAIGHT ANSWER when you call their office to ask for help or get a quote...



.....

I am really not sure what you are talking about ?

If you are going to ask something why not come out and ask it ?

Everyone has a plan, until they get hit.
/ Mike Tyson



12-01-2010, 12:33 PM

#9



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

.....

Any of the rest of us that allowed this with a company car would be fired.

Power and money cannot be broken.

I can almost guarantee you that the kid set this up for a payoff for these concert tickets.

Notice they dont put a value on the tickets.

Lets say they were worth 50 bucks each. Thats
\$ 50 grand.

Kid sells them to a broker for 25 grand and sets up the car for the break in.

They really think we are this stupid.

Crooks and thugs.

The apple dont fall far from the trees.

fawking monkeys

Everyone has a plan, until they get hit.

/ Mike Tyson

Last edited by THE KOD : 01-18-2011 at 02:49 PM.

quote

12-01-2010, 05:35 PM

10



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

Quote:

Originally Posted by **DOGS THAT BARK**
Scott --instead of trying to divert every topic why don't you do something resourceful.

.....
I only post things that I think you would be interested in Dogs.



Everyone has a plan, until they get hit.

/ Mike Tyson

quote

12-01-2010, 05:39 PM

11



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

.....
They have gotten away with this for too long. We should just acknowledge we are at war with Iran.

Iran delivers bomb making material to Afghanistan and we intercept it. Why do we let that pass ?
what more of a enemy do you need to identify.

They also harbor Osama Bin Laden and his cronies.

Time to drop tactical nukes on Iran

Just step aside Israel. We will do the double dirty.

Everyone has a plan, until they get hit.

/ Mike Tyson

Last edited by THE KOD : 01-18-2011 at 02:50 PM.

quote

12-01-2010, 06:35 PM

12



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

.....

It aint working . He knows it. We know it.

Something has to be done.

This is not the way to get things moving for America with all the bickering bullchit that goes on.

All in the name of politicvs and lining their own fakwing pockets. Its sick. Its been going on way too long.

For Dodd to come out and say this should wake up America to the harm it can do if we cant somehow change this system.

This isnt democracy. This is Karzai and Afghanistan on a much bigger scale of corruption and money taking from the American people.

Everyone has a plan, until they get hit.
/ Mike Tyson

Last edited by THE KOD : 01-18-2011 at 02:50 PM.

quote

12-01-2010, 06:42 PM # 13


Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

Dodd said politics today "rewards only passion and independence, not deliberation and compromise
.....

no it don't

it rewards money grubbing, longevity tenure, and corruption at the highest levels in America.

Dodd must think America is full of stupid ass people.



Everyone has a plan, until they get hit.
/ Mike Tyson

Last edited by THE KOD : 12-01-2010 at 07:31 PM.

quote

12-01-2010, 07:29 PM # 14

Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704



DTBlackgumby - Merry Christmas

with Love

from Bo

Everyone has a plan, until they get hit.
/ Mike Tyson

Last edited by THE KOD : 12-01-2010 at 07:34 PM.



12-01-2010, 07:33 PM

15



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

Dodd, 66, who ran for president in 2008, announced earlier this year that he would not seek a sixth term. He had slipped in the polls back home after it became known that he received mortgages under a VIP program.

Fawking classic

you cant make this shit up.

it became known that he received cash

It is good to get him out but my Christ how long has he been doing the double dirty.

PS - thanks Duff for that double dirty . I like that one

Everyone has a plan, until they get hit.
/ Mike Tyson



12-01-2010, 10:39 PM

16



Join Date: Nov 2001



Location: Victory Lane
Posts: 28,704

Oh and like we are ones to be critics of Russia.

We are no better.

I can found 10 examples of what they say Russia is doing to compare what our government and Poitians do over the past 20 years.

what a sad joke

Everyone has a plan, until they get hit.

/ Mike Tyson

Last edited by THE KOD : 01-18-2011 at 02:51 PM.



12-02-2010, 12:11 AM

17



Skulnik
Registered User

Join Date: Mar 2007
Posts: 3,150

Scott, Glenn Beck says you can mess with the US and get ICE CREAM, mess with Russia or China and end up DEAD, do you agree?



For years all we heard from the loony left was how Bush and his nefarious friends had control of the world's oil. Oft mentioned was his supposed low IQ. Therefore, an idiot was intelligent enough to control the worlds oil prices, but Barak O'boob the brilliant one isn't capable of doing the same thing and thereby able to keep the prices low for all his worshipers? You libs are just freaking nuts



12-02-2010, 12:23 AM

18



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

Quote:

Originally Posted by **Skulnik**
Scott, Glenn Beck says you can mess with the US and get ICE CREAM, mess with Russia or China and end up DEAD, do you agree?



hell ya I agree with that

we are pussychops

there is no doubt about that.

We just pretend to be civil and honest.

When it gets right down to it, we are no better than them, we just are more subtle about things.

Everyone has a plan, until they get hit.

/ Mike Tyson



12-02-2010, 09:33 AM

19



[illuminati](#)

LOKI



Join Date: Aug 2002
Location: In the shadows
Posts: 14,979

Quote:

WikiLeaks cables condemn Russia as 'mafia state'Kremlin relies on criminals and rewards them with political patronage, while top officials collect bribes 'like a personal taxation system'

Why not just replace Russia with the United States in your last post Scott?

Vey ironic that Hil the Hitman is taking hot rounds and her political aspirations are going down the dumper. It's usually her team that blows up opponents, but now all of her crap has backfired.

Bank of America is next along with how many other banks?

"The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government — lest it come to dominate our lives and interests-Patrick Henry

"A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Second Amendment to the U.S. Constitution

The answer to 1984 is 1776



12-02-2010, 06:45 PM

20



[THE KOD](#)

KING OF DOGS



Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704



I swear put a budweiser in this guys hand you could visualized DTBlackgumby sitting there.

Everyone has a plan, until they get hit.
/ Mike Tyson



12-02-2010, 08:18 PM

21



[illuminati](#)

LOKI



Join Date: Aug 2002
Location: In the shadows
Posts: 14,979

Quote:

Originally Posted by [Scott-Atlanta](#)



I swear put a budweiser in this guys hand you could visualized DTBlackgumby sitting there.

Put a camera around his neck and mouse ears on him he could blend in at the Anaheim Theme Park 🤖

"The Constitution is not an instrument for the government to restrain the people, it is an instrument for the people to restrain the government — lest it come to dominate our lives and interests-Patrick Henry

"A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed."

Second Amendment to the U.S. Constitution

The answer to 1984 is 1776

quote

12-02-2010, 08:58 PM

#22



Chadman 📷
Realist

Join Date: Apr 2000
Location: A snowy, cold place much of the time.
Posts: 6,283

Quote:

Originally Posted by **DOGS THAT BARK** ➤

SICK & TIRED of lawyers who charge you insane fees for jobs that drag on forever and can never get a STRAIGHT ANSWER when you call their office to ask for help or get a quote...



Before I jump on you here, wondering what specifically you are throwing out there demeaning lawyers for the activities you are complaining about. I'm not familiar with many of those types of lawyers, personally, maybe you have some specificity to complain about?

Interesting you label the fees lawyers charge in general as being insane. I know plenty of people that rail on attorneys for what they charge, but don't give a second thought to what they pay their doctors, surgeons, or say, their insurance agents for what they actually get out of what they spend. And of course no mention of what they pay for their schooling, for double the years of most careers, and are so important to people when they REALLY need them to bail them out of a jam.

Just curious as to your present aspersion here...

Blessed are those, whose blood and judgment are so well commingled.



12-03-2010, 07:13 AM

23

DOGS THAT BARK

Registered User



Join Date: Jul 1999
Location: Bowling Green Ky
Posts: 18,143

Quote:

Originally Posted by **Chadman**

Before I jump on you here, wondering what specifically you are throwing out there demeaning lawyers for the activities you are complaining about. I'm not familiar with many of those types of lawyers, personally, maybe you have some specificity to complain about?

Interesting you label the fees lawyers charge in general as being insane. I know plenty of people that rail on attorneys for what they charge, but don't give a second thought to what they pay their doctors, surgeons, or say, their insurance agents for what they actually get out of what they spend. And of course no mention of what they pay for their schooling, for double the years of most careers, and are so important to people when they REALLY need them to bail them out of a jam.

Just curious as to your present aspersion here...

Hi Chad

Not demeaning all lawyers by any means --just some in area of of the "have you are a loved one" especially in auto accidents

If I am in an accident and fault is already established--you can bet I'm not falling for the 33% plus expenses. Plaintiff is holding all the cards and can negotiate--and fact of the matter a good paralegal could do all the "standard" forms negotiating with Ins co.

If I am foolish enough for the 33% plus expenses and case is dragged on for years I really know I've been bent over--might be exception if they took it to trial for larger settlement.

In many of these cases the plaintiff is left with much less than if they'd settled with ins company after short negotiating period with attorney. I would certainly advise any after accident to retain reputable legal council--Most of them pretty well know what the top dollar will be and if they can get close quickly will settle for benefit of client.

When you start hearing, we are going to take em to the cleaners and they are on % + expense and it drags on for years--it generally not the ins co they are referring to 😊



12-03-2010, 10:55 PM

24

Join Date: Nov 2001
Location: Victory Lane
Posts: 28,704

U ★

☺

Everyone has a plan, until they get hit.
/ Mike Tyson

Last edited by THE KOD : 01-18-2011 at 02:52 PM.

QUOTE

POST REPLY

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Politics and Religion

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EXHIBIT E

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

7 Attorney for Defendant,
8 *Wayne Hoehn*

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

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

13 Plaintiff,

14 vs.

15 WAYNE HOEHN, an individual

16 Defendant.

Case No. 2:11-cv-00050

**DECLARATION OF J. MALCOLM
DEVOY IN SUPPORT OF
DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

17 **DECLARATION OF J. MALCOLM DEVOY**

18 **IN SUPPORT OF DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

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


- 20 1. I am a duly licensed attorney in Nevada and a member of the Nevada bar in good
21 standing, attorney for the Randazza Legal Group law firm, and counsel of record for
22 Defendant Wayne Hoehn in this matter.
- 23 2. The Main Page of <MadJackSports.com>, attached to this Motion for Summary
24 Judgment as Exhibit B, is a true and correct copy of the information found on that page as
25 of February 1, 2011.
- 26 3. The MadJackSports discussion thread titled “CA/Ill to bite the big one,” attached to this
27 Motion for Summary Judgment as Exhibit D, is a true and correct copy of the information
28 found on that page as of January 26, 2011.

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4. I created these documents by printing portable document file copies of the relevant pages from MadJackSports.com. In Exhibit B, I then deleted all but the first page, which is most relevant to the Court.

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

Dated: February 3, 2011

By: 
J. Malcolm DeVoy IV