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11 Attorneys for *Amicus Curiae*,  
12 Media Bloggers Association

13 **UNITED STATES DISTRICT COURT**  
14 **DISTRICT OF NEVADA**

15 RIGHTHAVEN, LLC, a Nevada limited liability  
16 company,

17 Plaintiff,

18 vs.

19 BILL HYATT, an individual

20 Defendant.

Case No. 2:10-cv-01736

***AMICUS CURIAE'S REPLY TO  
RIGHTHAVEN LLC'S REPOSE TO  
MEDIA BLOGGERS  
ASSOCIATION'S MOTION TO FILE  
AMICUS CURIAE BRIEF OR,  
ALTERNATIVELY, APPLICATION  
FOR BRIEFING SCHEDULE TO  
RESPOND TO PROPOSED AMICUS  
CURIAE BRIEF***

23 ***AMICUS CURIAE'S REPLY TO RIGHTHAVEN, LLC'S RESPONSE,***  
24 ***OR APPLICATION FOR BRIEFING SCHEDULE***

25 Non-party organization Media Bloggers Association (hereinafter, the "*Amicus*") hereby  
26 replies to Plaintiff Righthaven LLC's (hereinafter, "Righthaven[?]'s" or the "Plaintiff[?]'s")  
27 Response to Media Bloggers Association's Motion to File Amicus Curiae Brief or, alternatively,

1 Application for Briefing Schedule to Respond to Proposed Amicus Curiae Brief (hereinafter, the  
2 “Opposition”) (Doc. # 22).

### 3 **I. Introduction**

4 In its Opposition, Righthaven raises a number of misdirected and highly irrelevant  
5 arguments in an effort to keep *Amicus*’ research and analysis away from the Court’s eyes.  
6 Righthaven claims that *Amicus*’ proposed *amicus curiae* Brief (Doc. #19-1) (hereinafter, the  
7 “Brief”), which addressed the constitutional limit on damages that a court can award upon  
8 default, should be denied as untimely. But *Amicus*, whose members enforce their own  
9 copyrights, does not contest the entry of default judgment, and thus any earlier entry into this  
10 case would have been improper. *Amicus*’ only interest here is Righthaven’s attempt to secure  
11 unconscionable damages that have no relationship to any harm Righthaven has actually suffered  
12 or any other basis. *Amicus*’ concern is with how such a damages award would affect its  
13 members’ interests, and it therefore has spoken only at a juncture appropriate to consideration of  
14 what it has to say.

15 Contrary to the insinuation by Righthaven, there is no alliance between *Amicus* and  
16 Defendant Bill Hyatt (hereinafter “Hyatt,” or the “Defendant”). *Amicus* has made this submission  
17 to protect the interests of its own membership. Neither *Amicus* nor *Amicus*’ counsel represent  
18 Hyatt, nor have they had any communications with him. Decl. of Ronald D. Coleman ¶¶ 2-3;  
19 Decl. of J. Malcolm DeVoy ¶¶ 2-3. Moreover, *Amicus*’ motion and accompanying brief (Doc. #  
20 19, 19-1) are not a Rule 55(c) motion to set aside the default judgment; nor does *Amicus* wish to  
21 see the default set aside. In fact, *Amicus*’ interests are aligned with those of Righthaven when it  
22 comes to whether a defaulting party in a copyright infringement lawsuit should be held liable for  
23 the claims in the complaint. *Amicus*’ position is that a party that fails to answer a complaint  
24 *should* be deemed to have waived his right to contest the allegations therein. As stated above,  
25 however, *Amicus*’ sole assertion concerns the amount and nature of damages that Righthaven  
26 should be able to recover in this case. To the extent it matters, and to resolve any doubt, *Amicus*  
27 stipulates that a default judgment should be imposed against Hyatt. *Amicus*’ sole interest is in

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1 edifying the Court on factual and legal issues, so as to inform the Court’s application of its  
2 discretion to fashion an award in this case.

3 Having eliminated the “default” strawman, and acknowledging that the only issue before  
4 the Court is Righthaven’s damages for copyright infringement, it is respectfully submitted that  
5 *Amicus* has made the proper argument at the proper time: the award of damages, both in terms of  
6 the recovery to which Righthaven is entitled and the constitutional limits governing this Court’s  
7 ultimate award.

8 **II. Statement of Facts**

9 Righthaven commenced its action against Defendant on October 6, 2010 (Doc. #1).  
10 Defendant failed to appear or otherwise answer the Complaint filed against him, and the Court’s  
11 clerk entered judgment against Defendant on January 12, 2011. (Doc. #9.) Righthaven filed its  
12 Motion for Default Judgment (Doc. #12) on February 8, 2011, followed by its Amended Motion  
13 for Entry of Default Judgment (Doc. #17) on February 10, 2011. *Amicus* filed its Motion for  
14 Leave and Brief (Docs. #19, 19-1) on February 23, 2011, which Righthaven opposed on March  
15 10, 2011 (Doc. #22).

16 **III. Argument**

17 *Amicus’* Motion for Leave and accompanying Brief (Docs. #19, 19-1) are properly before  
18 this Court. Given *Amicus’* stake in this Court’s damages award, and the Defendant’s complete  
19 lack of participation in this important case, it is perfectly appropriate for *Amicus* to participate  
20 and have its Brief considered by this Court. The arguments and information set forth within the  
21 Brief are useful to the Court, and will, *Amicus* respectfully submits, inform the Court’s  
22 determination of damages. Because *Amicus’* Brief addresses the damages that Righthaven is  
23 entitled to by law and the circumstances of this case, and not the propriety of the entry of a  
24 default judgment, *Amicus’* Motion and Brief are timely before this Court, as it has not yet ruled  
25 on that issue.

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1           **A. The Court Should Grant Amicus' Leave to File the Motion.**

2                   ***1. Amicus' Participation in this Case is Appropriate Given Amicus' Nature,***  
 3                   ***Membership and Relationship to this Issues at Bar.***

4           *Amicus'* participation in this case is appropriate because of its stake in this litigation's  
 5 outcome, particularly the Court's award of damages to Righthaven. In its reliance on *Long v.*  
 6 *Coast Resorts, Incorporated*, 49 F. Supp. 2d 1177 (D. Nev. 1999), Righthaven overlooks more  
 7 recent trend in this District of allowing *amicus* briefs by parties interested in the litigation. See  
 8 *U.S. v. Perelman*, Case No. 2:09-CR-00443-KJD-LRL, 2010 WL 3312627 (D. Nev. Aug. 19,  
 9 2010) (accepting non-participant's *amicus* brief); *PEST Committee v. Miller*, 648 F. Supp. 2d  
 10 1202, 1214 (D. Nev. 2009) (treating motions to intervene as *amicus* briefs). Righthaven itself  
 11 has, in some of its many recent cases, been faced with courts allowing *amicus* briefs to be  
 12 submitted by outside parties who may be affected by the case, despite the fact that they are not  
 13 direct participants. *Righthaven LLC v. Ctr. For Intercultural Organizing*, Case No. 2:10-cv-  
 14 01322, Doc. # 19 (D. Nev., Filed Dec. 15, 2010).

15           The applicable rule is general, permissive, and commits the fundamental decision to the  
 16 Court's discretion. A party may appear and submit briefing as *amicus curiae* if, as here, "the  
 17 *amicus* has unique information or perspective that can help the court," and if the information  
 18 offered is both timely and useful. *Sonoma Falls Developers, LLC v. Nev. Gold & Casinos, Inc.*,  
 19 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003); *Long*, 49 F. Supp. 2d at 1178, (quoting *Waste Mgmt.*  
 20 *of Pennsylvania v. City of York*, 162 F.R.D. 34 (M.D. Pa. 1995)). The primary purpose of  
 21 allowing *amicus* briefs is that the *amicus curiae* offers "insights not available from the parties,"  
 22 aiding the Court in making its decision. *Citizens Against Casino Gambling v. Kempthorne*, 471  
 23 F. Supp. 2d 295, 311 (W.D.N.Y. 2007). In this case, critical issue of law and policy that ought to  
 24 inform the Court's award of damages have not been placed before the Court by the parties.  
 25 Absent the voice of *Amicus*, the only presentation of the issue before the Court would be  
 26 Righthaven's request for, and thin justification of, an unconscionable award of \$150,000.

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1 Righthaven takes the position that the *Amicus* is an improper friend of the court because  
2 it is not “neutral.” But there is no requirement that an *amicus* be impartial, and indeed the very  
3 notion of an impartial *amicus* is impossible to square with Fed. R. App. P. 29, which requires an  
4 *amicus* to have some “interest” in the case. *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128  
5 (3d Cir. 2002). If an *amicus* had no view of the issues at bar it would have no occasion to file  
6 papers in the first place.

7 As a party with an interest in the outcome of this litigation, but no direct involvement as  
8 plaintiff or defendant, *Amicus* has standing to submit an *amicus curiae* brief in this case. *Ctr. For*  
9 *Intercultural Organizing*, Case No. 2:10-cv-01322, Doc. # 19. *Amicus* has not entered this case  
10 on Defendant’s behalf, nor does it seek to overturn the Court’s entry of default judgment against  
11 Defendant under Rule 55(c). *Amicus*’ participation is limited to the submission of its Motion for  
12 Leave and attached Brief (Docs. # 19, 19-1) relating to damages. As explained below, *Amicus*’  
13 submission satisfies the requirements that all *amicus* briefs be useful and timely submitted.

## 14 ***2. Amicus’ Brief is Useful to the Court in Determining Damages***

15 For a court to properly consider an *amicus* brief, the *amicus*’ submission must be useful.  
16 The basis for meeting this test is found in the submitting party’s “unique information or  
17 perspective” found in its brief. *Sonoma Falls*, 272 F. Supp. 2d at 925. This unique viewpoint is  
18 most needed when, as here, the submission contains a perspective or information that is “not  
19 available from the parties,” and upon satisfying themselves that an *amicus* offers it, courts are  
20 likely to grant leave to file an *amicus* brief in cases, such as this one, involving matters of public  
21 interest. *Andersen v. Leavitt*, Case No. 03-cv-6115 (DRH) (ARL) 2007 U.S. Dist. LEXIS 59108  
22 at \*6-7 (E.D.N.Y. Aug. 13, 2007). Moreover, under *Ryan v. Commodity Futures Trading*  
23 *Comm.*, 125 F.3d 1062, 1063 (7th Cir. 1997) – the reasoning of which was adopted in *Long*,  
24 which Righthaven cites in its opposition (Doc. # 22 at 3:23-24) – *amicus* briefs should normally  
25 be allowed when, as here, “**a party is not represented competently or not represented at all.**”  
26 *Ryan*, 125 F.3d at 1063; *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 137 (D.D.C. 2008);  
27 *Citizens Against Casino Gaming*, 471 F. Supp. 2d at 311; *Cobell v. Norton*, 246 F. Supp. 2d 59,

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1 62 (D.D.C. 2003); *Long*, 49 F. Supp. 2d at 1178; *Nat'l Petrochemical & Refiners Ass'n v.*  
2 *Goldstene*, Case No. CV-F-10-163 2010 U.S. Dist. LEXIS 61394 at \*4-5 (E.D. Cal. June 3,  
3 2010); *Rocky Mtn. Farmers Union v. Goldstene*, Case No. CV-F-10-2234 2010 U.S. Dist LEXIS  
4 56493 at \*5-6 (E.D. Cal. May 11, 2010).

5 *Amicus'* Brief satisfies all of these requirements. *Amicus* is the first and only entity to  
6 supply this Court with briefing drawing attention to the due process limitations on Righthaven's  
7 request for damages (Doc. #19-1). Additionally, *Amicus* has supplied this Court with  
8 information about Righthaven's business model, the gossamer harms it has "suffered" as a result  
9 of Defendant's actions, and broader operating context – all of which are relevant to the question  
10 of the proper measure of damages due to Righthaven.

11 The perspective offered by *Amicus* is also relevant to its usefulness to the Court. *Amicus*  
12 represents bloggers who produce original content and base their research, at least in part, on  
13 traditional news outlets – the types of which have dubiously assigned their Copyrights to  
14 Righthaven (Doc. #19-1 at 5:18-23, Exh. 1). As a group that is familiar with Defendant's  
15 situation, while not stepping into Defendant's shoes, *Amicus* is uniquely positioned to discuss the  
16 full panoply of ramifications both in terms of this Court's mandate to do justice and for the free  
17 flow of information generally if Righthaven would be awarded the insane damages award it  
18 seeks. The constitutionally-protected expressive activities of *Amicus'* members would certainly  
19 be chilled by such an unjust result, as would their legally-protected use of excerpts from  
20 mainstream news publications fairly regarded as Fair Use under 17 U.S.C. § 107. If the penalty  
21 for guessing wrong on a Fair Use judgment call is potentially \$150,000, *Amicus'* membership  
22 would simply have to restrict its free speech far more than if an errant Fair Use judgment call  
23 comes with a potential \$750 price tag. In short, the *Amicus* not only has a vested interest in how  
24 this court calculates the damages, but it is uniquely positioned to bring the most relevant  
25 perspective possible to the arsenal of understanding the Court will use when rendering its  
26 decision.

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1 Indeed, this case, like other Righthaven cases, and like Righthaven's general manner of  
2 operations, has received significant media attention. (Doc. #19-1 at 9 n. 6.) Many articles have  
3 appeared in publications with regional and national audiences inquiring into Righthaven's  
4 litigation tactics and its business model of suing bloggers and small websites. (*Id.*) The public  
5 interest surrounding these cases weighs strongly in favor of the Court considering the *Amicus*  
6 brief.

7 Yet absent the *Amicus* brief, the only information and argument on damages is that which  
8 Righthaven has offered this Court: the half-truth that the Copyright Act allows for \$150,000 in  
9 statutory damages for willful infringement,<sup>1</sup> plus costs and attorneys' fees. (*See* Doc. #17.)

10 Where Defendant has failed to respond to the Complaint at all, *Amicus* cannot effectively  
11 pick up where his briefing left off, as Righthaven's use of *Long* suggests to argue. (Doc. #22 at  
12 4.) The information set forth by *Amicus* in its brief is helpful to this Court in determining  
13 Righthaven's damage award, and is of particular importance – and admissibility – because of  
14 Defendant's lack of representation. There is, consequently, no other source by which the  
15 arguments set forth by *Amicus* can come before the Court, which in dispensing justice deserves  
16 the opportunity to review both sides of a matter before rendering a decision – especially a  
17 decision that could send a cold wind blowing across the fields of free expression nationwide.  
18 What might once have been an unremarkable infringement case involving unremarkable  
19 copyrights has, because of the Righthaven business model and its outrageous damages request,  
20 suddenly vested this Court's damages ruling with implications of national importance. A  
21 decision with such potentially far-reaching consequences, and of constitutional scope, should not  
22 be made by a Court hearing only one side of the issue.

23 **3. *Amicus' Motion for Leave and Brief are Timely Submitted to this Court.***

24 *Amicus'* brief, which addresses solely the issue of damages to be awarded by this Court,  
25 has timely been filed. While Righthaven claims that it is too late to overturn Defendant's default  
26 judgment, *Amicus* has no interest in doing so, and Righthaven's argument is irrelevant to the  
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28 <sup>1</sup> 17 U.S.C. § 504(c).



1 contents of *Amicus*' proposed submission (Doc. #19-1). In contrast, the issue that is addressed  
2 by *Amicus*' brief, the measure of damages that the Court is to award Righthaven in this case, has  
3 not yet been decided, as the issue of damages is still pending before this Court.

4 Moreover, Righthaven's claim that *Amicus* is too late to participate in this case is not  
5 supported by case law. In *Andersen v. Leavitt*, the *amicus*-submitting party requested leave only  
6 after the parties had submitted cross-motions for summary judgment. 2007 U.S. Dist. LEXIS  
7 59108 at \*17-18. Refusing to penalize the *amicus* there, the court reasoned that because the  
8 *amicus curiae* brief and accompanying motion for leave did not delay the court in ruling on the  
9 parties' cross-motions, and because the case was theretofore not widely publicized, there was no  
10 reason for the party submitting the *amicus* brief to act sooner, and the brief was accepted. *Id.*  
11 Nor is mere "delay" a sufficient basis for deeming an *amicus* submission untimely; the proper  
12 standard is whether granting *Amicus*' motion for leave will create "unreasonable" delay. *Id.* at  
13 \*17, citing *Long*, 49 F. Supp. 2d at 1178. Here *Amicus* does not seek to stand in as defense  
14 counsel for Mr. Hyatt; *Amicus* only seeks to defend due process with respect to an issue of  
15 critical concern to its members. *Amicus* entered this case at the relevant time, and not sooner –  
16 for prior to the Plaintiff's phenomenal request for \$150,000 in damages, *Amicus* had nothing to  
17 say – and not a moment too late.

18 **B. Righthaven Should Not Be Allowed to Treat *Amicus*' Brief as an Adverse**  
19 **Motion, and a Briefing Schedule Should Not be Ordered.**

20 Righthaven's request for a briefing schedule in response to *Amicus*' Brief, if the Court  
21 grants leave for it to be filed, should be denied. Despite Righthaven's mischaracterizations,  
22 *Amicus*' brief is not a motion to set aside default judgment under Rule 55(c), nor is it brought on  
23 behalf of the defendant; it is a collection of facts and arguments presented by an interested entity  
24 that is not a defendant or plaintiff in this action, solely to inform the court on the amount of  
25 damages – an issue that is completely within the Court's discretion. As such, it should not be  
26 treated as an adverse motion that requires a briefing schedule and entitles Righthaven to an  
27 opportunity to respond. Local Rule 7-2 allows for opposition and reply briefing for motions, but

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1 an *amicus curiae* brief, such as *Amicus*' proposed submission here, is not a motion – it is simply  
2 information and argumentation submitted to the Court for its consideration with respect to a  
3 pending substantive decision already before it. Once the Court decides on *Amicus*' procedural  
4 Motion for Leave (Doc. #19), no additional briefing is needed or justified. Thus, for example, no  
5 briefing schedule was set for the *amicus curiae* brief accepted by the Court in *Ctr. For*  
6 *Intercultural Organizing*, Case No. 2:10-cv-01322, Doc. # 19.

7 Ironically, the delay Righthaven alleges *Amicus* to have imposed upon this case (Doc.  
8 #22 at 5:14-17) would be exacerbated by allowing it time to file a response brief, especially one  
9 requiring such extraordinary duration to prepare – 21 days, whereas *Amicus*' initial brief was  
10 filed a mere 13 days after Righthaven's outrageous demand for \$150,000 – and ignoring the  
11 opposition already filed by Righthaven and to which this paper is a reply.

12 Ultimately, providing Righthaven yet another opportunity for opposition briefing in  
13 response to an *amicus* brief is unsupported by precedent. Such a submission would only slow  
14 matters down even further. Righthaven's request for it, then, belies its supposed concerns for  
15 procedure and delay – and demonstrates that it is concerned only about not getting the final word  
16 in a case where it has already secured a default judgment.

## 17 **Conclusion**

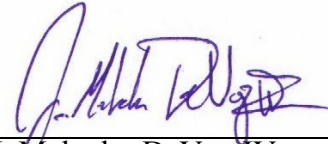
18 This Court is justified in granting *Amicus*' Motion for Leave and should do so, allowing  
19 the Media Bloggers Association's *Amicus* Brief to be part of the record in this case. As the  
20 defendant has not participated in this case, an *Amicus* brief is particularly appropriate. *Ryan*, 125  
21 F.3d at 1063. *Amicus*' brief is not a motion to set aside Defendant's default judgment -- not in  
22 any form, including "in disguise" as Righthaven argues – but is, rather, a presentation of the  
23 utmost relevance to the Court in assessing the damages Righthaven may be awarded here in light  
24 of applicable precedent and constitutional considerations. *Amicus*' submissions contain relevant  
25 information that is not available from any other party, and is unique for that reason alone, but it  
26 is of additional value because of *Amicus*' perspective as the representative of bloggers similarly  
27 situated to Defendant.

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1 As the Court has yet to rule on the damages issue, *Amicus*' Brief and Motion for Leave  
2 are timely submitted, and should be granted. Moreover, *Amicus*' Brief should not be treated as  
3 an adverse filing. Amicus is not acting for the Defendant or otherwise intervening; it is filing  
4 only an *amicus curiae* brief, to which a response is not justified. As such, Righthaven's request  
5 for a briefing schedule so it may respond to the *Amicus Brief* – despite its stated concerns  
6 regarding delay in this case – should be denied.

7  
8 Dated March 14, 2011

Respectfully Submitted,  
RANDAZZA LEGAL GROUP

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J. Malcolm DeVoy IV  
Marc J. Randazza

14 Ronald D. Coleman  
15 GOETZ FITZPATRICK LLP

16 *Attorneys for Amicus Curiae,*  
17 *Media Bloggers Association*  
18  
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**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 14th day of March, 2011, I caused documents entitled:

*AMICUS CURIAE'S REPLY TO RIGHTHAVEN LLC'S REPOSE TO MEDIA BLOGGERS ASSOCIATION'S MOTION TO FILE AMICUS CURIAE BRIEF OR, ALTERNATIVELY, APPLICATION FOR BRIEFING SCHEDULE TO RESPOND TO PROPOSED AMICUS CURIAE BRIEF*

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; and/or

by depositing same for mailing in the United States Mail, in a sealed envelope addressed to Bill Hyatt, 848 Luther Road, East Greenbush, NY, 12061; 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

1 J. Malcolm DeVoy IV (Nevada Bar No. 11950)  
2 Marc Randazza (*Application for pro hac vice admission pending*)  
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11 Attorneys for *Amicus Curiae*,  
12 Media Bloggers Association

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 RIGHTHAVEN, LLC, a Nevada limited liability  
15 company,

16 Plaintiff,

17 vs.

18 BILL HYATT, an individual

19 Defendant.

Case No. 2:10-cv-01736

**DECLARATION OF RONALD D.  
COLEMAN IN SUPPORT OF  
AMICUS CURIAE’S REPLY TO  
RIGHTHAVEN’S OPPOSITION TO  
AMICUS CURIAE’S MOTION FOR  
LEAVE**

20  
21 **DECLARATION OF RONALD D. COLEMAN IN SUPORT**

22 **OF AMICUS CURIAE BRIEF IN RIGHTHAVEN LLC v. BILL HYATT**

23 I, RONALD D. COLEMAN, hereby declare as follows:

- 24 1. I am a duly licensed attorney in New York and New Jersey and a member of the bars  
25 of those states in good standing, partner in the Goetz Fitzpatrick LLP law firm, general  
26 counsel to the Media Bloggers Association, and counsel of record for *Amicus Curiae*  
27 the Media Bloggers Association, in this matter. I intend promptly to apply for *pro hac*

1           *vice* admission to the District of Nevada in this case.

2           2. I have not, personally or as attorney for *Amicus Curiae* Media Bloggers Association,  
3 or in any other capacity, communicated with Bill Hyatt, Defendant in the above-  
4 captioned matter, nor to my knowledge has he sought my or the Media Bloggers  
5 Association's counsel, representation or assistance with respect to this matter.

6           3. Indeed, *Amicus Curiae* Media Bloggers Association has not communicated with Bill  
7 Hyatt regarding the above-captioned matter, nor am I aware of any such  
8 communication or attempted communication by Mr. Hyatt with our organization with  
9 respect to this or any other matter.

10  
11 I declare under penalty of perjury that the foregoing is true and correct.

12  
13 Dated: March 14, 2011

14 

15 Ronald D. Coleman  
16 Ronald D. Coleman

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11 Attorneys for *Amicus Curiae*,  
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12 **UNITED STATES DISTRICT COURT**  
13 **DISTRICT OF NEVADA**

14 RIGHTHAVEN, LLC, a Nevada limited liability  
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18 BILL HYATT, an individual

19 Defendant.

Case No. 2:10-cv-01736

**DECLARATION OF J. MALCOLM  
DEVOY IN SUPPORT OF AMICUS  
CURIAE’S REPLY TO  
RIGHTHAVEN’S OPPOSITION TO  
AMICUS CURIAE’S MOTION FOR  
LEAVE**

21 **DECLARATION OF J. MALCOLM DEVOY IN SUPORT**

22 **OF AMICUS CURIAE BRIEF IN RIGHTHAVEN LLC v. BILL HYATT**

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

- 24 1. I am a duly licensed attorney in Nevada and a member of the Nevada bar in good  
25 standing, attorney for the Randazza Legal Group law firm, and counsel of record for  
26 *Amicus*, Media Bloggers Association, in this matter.  
27 2. I, personally or as attorney for *Amicus*, Media Bloggers Association, have not

1           communicated with Bill Hyatt, Defendant in the above-captioned matter, nor do I or  
2           any other member of my firm represent him in any capacity, nor has he sought our  
3           counsel, nor has he communicated with us in any manner. In the interest of keeping all  
4           parties apprised of development's litigation, however, I did serve *Amicus*' Motion for  
5           Leave and Brief, with all exhibits and attachments, (Docs. # 19, 19-1) upon the  
6           Defendant via U.S. Mail.

- 7           3. To the best of my knowledge, *Amicus*, Media Bloggers Association, has not  
8           communicated with Bill Hyatt regarding the above-captioned matter.

9  
10 I declare under penalty of perjury that the foregoing is true and correct.

11  
12 Dated: March 12, 2011

13  
14 By: 

15 J. Malcolm DeVoy IV  
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