

No. 11-16776

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IN THE  
**United States Court of Appeals**  
FOR THE NINTH CIRCUIT

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RIGHTHAVEN LLC,

*Plaintiff-Appellant,*

v.

THOMAS A. DIBIASE,

*Defendant-Appellee.*

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On Appeal from the United States District Court for the District of Nevada  
Case No. 2:10-CV-01343-RHL-PAL, The Honorable Roger L. Hunt, Presiding

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**APPELLEE THOMAS A. DIBIASE'S  
SUPPLEMENTAL EXCERPTS OF RECORD  
VOLUME II OF II – Pages SER 34 – SER 223**

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*Attorneys for Defendant-Appellee*  
Thomas A. DiBiase

January 13, 2012

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**TABLE OF CONTENTS**  
**FOR SUPPLEMENTAL EXCERPTS OF RECORD**

**Volume I of II – Pages SER 1 – SER 33**

<b>Docket #</b>	<b>Document</b>	<b>Supplemental Excerpts Pages (SER)</b>
28 <i>(Hoehn Docket)</i>	Order Granting Defendant’s Motion to Dismiss, <i>Righthaven LLC v. Hoehn</i> , Case No. 2:11-cv-00050, filed June 20, 2011	SER 1 — SER 17
116 <i>(Democratic Underground Docket)</i>	Order Granting Defendant’s Motion to Dismiss, <i>Righthaven LLC v. Democratic Underground</i> , Case No. 2:10-cv-01356, filed June 14, 2011	SER 18 — SER 33

**Volume II of II – Pages SER 34 – SER 223**

<b>Docket #</b>	<b>Document</b>	<b>Supplemental Excerpts Pages (SER)</b>
70-1, 70-14 <i>(Hoehn Docket)</i>	Declaration of Lara Pearson, and Exhibit 13, filed January 3, 2012	SER 34 — SER 44
137 <i>(Democratic Underground Docket)</i>	Transcript of Order to Show Cause, <i>Righthaven LLC v. Democratic Underground</i> , Case No. 2:10-cv-01356, filed July 14, 2011	SER 45 — SER 67

68	Excerpt of Righthaven LLC's Response to Defendant-Counterclaimant Thomas A. DiBiase's Motion to Compel Production of Documents, filed June 6, 2011	SER 68 — SER 69
56	Declaration of Mark A. Hinueber in Support of Righthaven LLC's Response to Defendant's Motion to Dismiss, filed May 21, 2011	SER 70 — SER 100
54	Declaration of Bart E. Volkmer in Support of Defendant/Counterclaimant Thomas A. DiBiase's Motion to Compel the Production of Documents from Plaintiff/Counter-Defendant Righthaven LLC, filed May 18, 2011	SER 101 — SER 104
51	Joint Stipulation Regarding Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject Matter Jurisdiction; Stipulation Regarding Extension of Time to File Opposition to DiBiase's Motion to Dismiss, filed May 17, 2011	SER 105 — SER 107
51-3, 51-4, 51-5, 51-6	Exhibit B to Joint Stipulation Regarding Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject Matter Jurisdiction; Stipulation Regarding Extension of Time to File Opposition to DiBiase's Motion to Dismiss, filed May 17, 2011	SER 108 — SER 178

47	Excerpt of Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed May 4, 2011	SER 179 — SER 183
94 <i>(Democratic Underground Docket)</i>	Order on Motion for Reconsideration, <i>Righthaven LLC v. Democratic Underground, LLC</i> , Case No. 2:10-cv-01356, filed April 14, 2011	SER 184 — SER 186
6	Certificate of Interested Parties, filed September 17, 2010	SER 187 — SER 188
1	Complaint and Demand for Jury Trial, filed August 9, 2010	SER 189 — SER 207
	Civil Court Docket	SER 208 — SER 223

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Receiver for Righthaven, LLC

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RIGHTHAVEN, LLC, a Nevada limited liability  
company,

Plaintiff,

vs.

WAYNE HOEHN, an individual,

Defendant.

Case No. 2:11-cv-00050

**DECLARATION OF LARA  
PEARSON**

**DECLARATION OF LARA PEARSON**

I, Lara Pearson, hereby declare as follows under the penalty of perjury:

1. My name is Lara Pearson. I am a duly licensed attorney in Nevada and a member of the Nevada bar in good standing. This Declaration is made in support of my Notice of Receiver's Report. If asked to testify, I could testify competently to the matters set forth herein.

2. On November 14, 2011 Defendant Wayne Hoehn (Hoehn) filed a Motion for Appointment of Receiver and Compelled Assignment of Intellectual Property (the Motion). (Doc. # 62.)

3. The Motion contained pro forma copyright and trademark assignments. (Doc # 62, Exh. C & D.)

1 4. On December 12, 2011, the Court granted the Motion. (Doc. # 66.)

2 5. Understanding the motion to be self-executing, I began the domain name transfer  
3 process and awaited compliance or communication from Righthaven regarding the trademark  
4 and copyright assignments.

5 6. I first heard from Righthaven's counsel, Mr. Magano on December 21, 2011. Mr.  
6 Magano's December 21, 2011 letter states in pertinent part:  
7

8 Righthaven intends to comply with the district court's Order  
9 appointing [me] receiver . . . and asks that [I] provide it with some  
10 guidance as to how to proceed given my appointment as receiver . .  
11 . and look[s] forward to my guidance as to what actions [I] expect  
the company to undertake so that it is in full compliance with the  
district court's December 12, 2011 order.

12 Attached hereto as Exhibit 1 is a true and correct copy of Mr. Magano's December 21, 2011  
13 correspondence to me.

14 7. On December 22, 2011, I responded to Mr. Magano's December 21, 2011  
15 correspondence, including a pro forma trademark assignment therewith. I also informed Mr.  
16 Magano that I soon would provide him with 278 separate copyright assignments -- one for each  
17 of the works Righthaven registered with the U.S. Copyright Office. Attached hereto as Exhibit 2  
18 is a true and correct copy of my December 22, 2011 correspondence to Mr. Magano.  
19

20 8. On December 23, 2011, I re-sent Mr. Magano my December 22, 2011  
21 Correspondence, including the trademark assignment originally included therewith and 278  
22 copyright assignments (combined into a single PDF) requiring only the signature of Righthaven's  
23 CEO, a date, and notarization. Attached hereto as Exhibit 3 is a true and correct copy of my  
24 December 22, 2011 correspondence to Mr. Magano, including a representative sampling of the  
25 copyright assignments.  
26  
27

28 9. I have tried to work with Righthaven to ensure its compliance with the Court's

1 December 12, 2011 Order.

2 10. In addition to e-mailing Mr. Magano on December 22, 2011 and December 23, 2011,  
3 I also left two voice mail messages for him at 702.304.0432. My assistant, Anthony Winbush,  
4 also left Mr. Magano two voice mail messages on December 23, 2011. Attached hereto as  
5 Exhibit 4 are true and correct copies of the December 23, 2011 correspondence from Mr.  
6 Winbush to me confirming his attempts to reach Mr. Magano by phone.  
7

8 11. On December 26, 2011, I sent Mr. Magano and Hoehn's counsel, Mr. Marc Randazza  
9 e-mail correspondence to inform them about the auction of the <righthaven.com> Domain  
10 Name. Attached hereto as Exhibit 5 is true and correct copy of my December 26, 2011 to Mr.  
11 Magano and Mr. Randazza.  
12

13 12. On December 27, 2011, I sent Mr. Magano follow-up correspondence, which  
14 included another copy of my December 23, 2011 letter to him and the form trademark and  
15 copyright assignment documents. Attached hereto as Exhibit 6 is true and correct copy of my  
16 December 26, 2011 to Mr. Magano (assignments omitted due to length – please reference Exh.  
17 3).  
18

19 13. My assistant, Anthony Winbush, also left Mr. Magano another voice mail message on  
20 December 27, 2011. Attached hereto as Exhibit 7 is a true and correct copy of the December 27,  
21 2011 correspondence from Mr. Winbush to me confirming his attempt to reach Mr. Magano by  
22 phone.  
23

24 14. Further to my December 26, 2011 correspondence to Mr. Magano and Mr.  
25 Randazza regarding the auction of <righthaven.com> Domain Name on Snapnames (See Exh 5),  
26 Ms. Van Tilborg at Snapnames offered to conduct a call with all interested parties, which was  
27 held at 9:00 a.m. PST on Tuesday, December 27, 2011. Attached hereto as Exhibit 8 is true and  
28

1 correct copy of the December 27, 2011 e-mail from Ms. Van Tilborg at Snapnames confirming  
2 the call regarding the auction. Mr. Mangano elected not to participate in this call.

3 15. My assistant, Anthony Winbush, left Mr. Magano another voice mail  
4 message on December 28, 2011. Attached hereto as Exhibit 9 is a true and correct copy of the  
5 December 28, 2011 correspondence from Mr. Winbush to me confirming his attempt to reach  
6 Mr. Magano by phone.  
7

8 16. I sent follow-up correspondence to Mr. Magano again on December 28, 2011 with  
9 additional copies of my December 22, 2011 correspondence (Exh. 2) and the assignment  
10 documents (Exh. 3). Attached hereto as Exhibit 10 is a true and correct copy of my December  
11 28, 2011 correspondence to Mr. Magano (assignments omitted due to length – please reference  
12 Exh. 3).  
13

14 17. I received Mr. Magano's response to my December 22, 2011 letter on December  
15 29, 2011. Attached hereto as Exhibit 11 is a true and correct copy of Mr. Magano's December  
16 29, 2011 correspondence to me.  
17

18 18. Mr. Magano's December 29, 2011 letter stated that under Righthaven, LLC's  
19 operating agreement, Mr. Gibson could not execute the assignment agreements absent consent  
20 from the other limited-liability company member, from whom Mr. Magano had not sought  
21 consent until now. (See Exh. 11).  
22

23 19. Mr. Magano's December 29, 2011 correspondence also stated that Mr. Gibson  
24 cannot execute copyright assignments purporting to transfer assign "any and all copyrights  
25 owned," since the district court determined that Righthaven does not own the copyrights to be  
26 assigned. (See Exh. 11).  
27  
28

1           20.     Mr. Magano's December 29, 2011 concludes that its concerns might be mitigated  
2 by "the district court's entry of an order assigning the copyrights without requiring the signature  
3 of either Mr. Gibson or anyone affiliated with Righthaven," which, "Righthaven would likely not  
4 oppose such a request."

5           21.     I responded to Mr. Magano's December 29, 2011 correspondence on December  
6 30, 2011. Attached hereto as Exhibit 12 is a true and correct copy of my December 30, 2011  
7 response to Mr. Magano's December 29, 2011 correspondence.  
8

9           22.     My December 30, 2011 response to Mr. Magano requested that he inform me who  
10 else needs to execute the copyright and trademark assignments so that I could revise the forms I  
11 sent him to include that name. (See Exh. 12.)  
12

13           23.     My December 30, 2011 response to Mr. Magano also addressed his concern about  
14 copyright ownership by informing him that the auction of the copyrights will make Righthaven's  
15 questionable ownership therein clear to all potential and actual bidders. This letter also explains  
16 that use of the term "any and all" in the assignments refers to whatever rights Righthaven may  
17 own, if any. (See Id.)  
18

19           24.     My December 30, 2011 correspondence also requested the name of the other  
20 Righthaven signatory in order to complete for the trademark assignment, along with a list of the  
21 tangible assets to be auctioned. (See Id.)  
22

23           25.     Mr. Magano responded almost immediately to my December 30, 2011  
24 correspondence. Attached hereto as Exhibit 13 is a true and correct copy of Mr. Magano's  
25 December 30, 2011 response to my correspondence of the same date.

26           26.     Mr. Magano's December 30, 2011 correspondence states that the copyrights  
27 cannot be assigned because:  
28

1 . . . the very real fact that the copyrights are not owned by  
2 Righthaven, but rather constitute property of the assignor based on  
3 the ineffective assignment of ownership. Simply put, Righthaven  
4 cannot assign copyrights that are owned by the assignor for sale to  
5 a third party through an auction.

(See Exh. 13.)

6 27. Mr. Magano also requested to see “any language that [I] propose to include as a  
7 disclaimer to potential purchasers of whatever it is [I] intend to auction,” which I since provided  
8 to him and Mr. Randazza for comment. (See Exh 14.)

9 28. As explained to Mr. Magano in my correspondence of December 30, 2011, I  
10 believe the December 12, 2011 Order requires Righthaven to transfer whatever rights it owns  
11 (even if none) to be auctioned off to pay the judgment against it. (See Exhs. 12, 14.)

12 29. Mr. Magano’s December 30, 2011 correspondence also incorrectly states that the  
13 trademark assignment (provided to him on 12/22/2011, 12/23/2011, 12/27/2011 and 12/28/2011  
14 (See Exhs. 2, 3, 6 & 10)) lacks goodwill when it expressly includes any and all commercial  
15 goodwill. (See Exh 2.)

16 30. Mr. Magano’s December 29, 2011 letter claims that Mr. Gibson cannot execute  
17 assignments containing the language, “Mr. Gibson is acting with authority to bind the company,”  
18 because both limited-liability company members must consent to effectuate such a transaction.  
19 However, the redacted version of the Operating Agreement entered into by and between  
20 Righthaven, Net Sortie Systems, LLC and SI Content Monitor LLC indicates that while such  
21 consent is required to “transfer substantially all of the assets of the Company,” upon such  
22 consent Mr. Gibson may execute the transfer. (See Exh. 15.)

23 31. Mr. Magano states that he has not yet completed the assignments because he does  
24 not have consent of Righthaven, LLC member SI Content Monitor, LLC, however he waited  
25 until December 29, 2011 to seek consent. (See Exh. 11.)

1  
2 32. Righthaven has refused to execute the assignments due to perceived deficiencies  
3 that it could have, but failed to correct and has ignored repeated requests for a trademark  
4 assignment and an inventory of physical assets without explanation.  
5

6 33. I sent Mr. Magano and Mr. Randazza copies of my Notice of Receiver's Report  
7 and this Declaration On January 2, 2011 informing them that the Notice would be filed after  
8 close of business today if the issues addressed herein were not resolved prior to that time. A true  
9 and correct copy of my January 2, 2011 correspondence is attached hereto as Exhibit 16.  
10

11 34. Mr. Magano made no attempt to contact me since I sent the copy of the Notice to  
12 him.

13 35. The sole piece of Righthaven property that has made it to auction – the  
14 <righthaven.com> Domain Name – currently has a bid of \$1,900 (bidding increment is at \$100)  
15 and the auction does not close until 3:15 EST January 6, 2012. (See Exh. 16.)  
16

17 36. My obligation as Receiver is to maximize the value of Righthaven's property.  
18 Time is of the essence in this matter; given the recent newsworthiness of this matter, the sooner  
19 the property is auctioned the greater the value it is likely to receive.  
20

21 37. Righthaven has been uncooperative in this endeavor, which is not in its best  
22 interest since the value of its property likely will decrease over time, while the judgments against  
23 will continue to grow and multiply over time.

24 38. Righthaven did not oppose the Motion, yet Mr. Mangano continues to negotiate  
25 its merits with me. (See Exh. 1, 11, 13).  
26

27 ///

28 ///

Subscribed and sworn to on the 3rd day of January, 2012 in Incline Village, Nevada.



By: \_\_\_\_\_  
Lara Pearson

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# Exhibit 13



Lara Pearson &lt;lara@rimonlaw.com&gt;

---

## Form Copyright assignments

---

shawn@manganolaw.com &lt;shawn@manganolaw.com&gt;

Fri, Dec 30, 2011 at 12:18 PM

To: Lara Pearson &lt;lara@rimonlaw.com&gt;

Cc: Anthony Winbush &lt;anthony.winbush@rimonlaw.com&gt;

Lara:

Thank you for the response.

With regard to the other member of Righthaven, that is a matter of public record with the Nevada Secretary of State. It is SI Content Monitor LLC, an Arkansas limited liability company. I have requested to consent from the entity for the transaction, but I have not received a response.

With regard to the inclusion of the "any and all" language, that certainly falls far short of addressing the issue I have raised. Incidentally, this issue was initially raised in my first letter to you. Your response did not substantively address or otherwise alleviate my concerns. Additionally, I have yet to be provided with any language that you propose to include as a disclaimer to potential purchasers of whatever it is you intend to auction.

Your response also fails to account for the very real fact that the copyrights are not owned by Righthaven, but rather constitute property of the assignor based on the ineffective assignment of ownership. Simply put, Righthaven cannot assign copyrights that are owned by the assignor for sale to a third party through an auction.

Finally, you have referenced a trademark assignment for the first time today. I would like you to explain to me how you plan to effectuate the assignment of a trademark without accompanying goodwill.

While I understand you have been granted authority to marshal and sell certain assets for the benefit of satisfying Mr. Hoehn's judgment, it is my obligation to see that such actions do not expose my client to liability. I have serious concerns that the manner in which the copyright assignments, and now the trademark assignments, are being structured. To date, I do not believe that your responses have adequately alleviated these concerns. Hopefully you can provide me some substantively assurances beyond that which I have received to date so that I can advise my client how to proceed.

Regards,

S

Shawn A. Mangano, Esq.  
Shawn A. Mangano, Ltd.  
8367 West Flamingo Road, Suite 100  
Las Vegas, Nevada 89147  
(702) 304-0432 - telephone

SER 43

(702) 922-3851 - facsimile

*Licensed in California, Nevada and Illinois*

----- Original Message -----

Subject: Re: Fwd: Form Copyright assignments  
From: Lara Pearson <[lara@rimonlaw.com](mailto:lara@rimonlaw.com)>  
Date: Fri, December 30, 2011 12:00 pm  
To: [shawn@manganolaw.com](mailto:shawn@manganolaw.com)  
Cc: Anthony Winbush <[anthony.winbush@rimonlaw.com](mailto:anthony.winbush@rimonlaw.com)>

Greetings Shawn:

Thank you again for getting back to me so quickly once you returned to the office after the holiday break.

In response to your concerns:

(1) You stated that Steve Gibson cannot execute the assignments because said assignments must be executed by "both limited liability company members." Please inform me who else needs to execute the assignments on behalf of Righthaven and I will amend the 278 copyright assignments and the service mark assignment to include that person's or entity's name as well. Moving forward, rather than informing me what is wrong with the any proposed transfer agreements, it would be helpful if you would also please provide information necessary to remedy any perceived deficiency, i.e., rather than telling me "another LLC member also needs to sign," you should provide me with the name of that person so that I can amend the assignments.

(2) You expressed concern that Righthaven's ownership of the 278 copyrights at issue are in question, of which I am aware. The auction of the copyrights will make that clear to all potential and actual bidders. My understanding is that what ever rights Righthaven has, is what we get to auction, which is why the "any and all" language was included; what those rights actually are is up to the winning bidders to determine.

It appears that the only concern with the trademark assignment is the lack of the name of the other Righthaven officer. Please provide that person's to me by close of business today, and I will send you a revised assignment immediately.

Lastly, although not addressed in your letter of yesterday, I still need a list of all tangible assets from you. Please provide that immediately.

Please let me know if you have any questions.

Thanks again for your cooperation.

Happy New Year.

Regards,

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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
BEFORE THE HONORABLE ROGER L. HUNT, U.S. DISTRICT JUDGE

RIGHTHAVEN, LLC, a  
Nevada limited-liability  
company,

Plaintiff,

vs.

DEMOCRATIC UNDERGROUND,  
LLC, a District of  
Columbia limited-  
liability company; and  
DAVID ALLEN, an  
individual,

Defendants.

No. 2:10-cv-01356-RLH-GWF

July 14, 2011

Las Vegas, Nevada

DEMOCRATIC UNDERGROUND,  
LLC, a District of  
Columbia limited-  
liability company,

Counterclaimant,

vs.

RIGHTHAVEN, LLC, a  
Nevada limited-liability  
company; and STEPHENS  
MEDIA, LLC, a Nevada  
limited-liability  
company,

Counterdefendants.

TRANSCRIPT OF ORDER TO SHOW CAUSE [116]

1 APPEARANCES:

2 For the Plaintiffs:

SHAWN MANGANO  
COLBY WILLIAMS  
DONALD CAMPBELL  
Attorneys at Law

3

4  
5 For the Defendants:

LAURENCE F. PULGRAM  
KURT OPSAHL  
Attorneys at Law

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15 FTR No. RLH/20110714

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(Transcript produced from digital voice recording;  
transcriber not present at proceedings)

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22 Transcribed by:

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23

24

25

1 LAS VEGAS, NEVADA, JULY 14, 2011, 9:04 A.M.

2 --o0o--

3 P R O C E E D I N G S

4

5 THE COURT: Be seated.

6 THE CLERK: Righthaven, LLC, versus Democratic  
7 Underground, LLC, et al, 2:10-cv-1356-RLH-GWF.

8 This is the time set on order for a show cause  
9 hearing and also for the motion to reconsider.

10 Counsel, please note your appearances for the  
11 record.

12 MR. MANGANO: Shawn Mangano on behalf of  
13 plaintiff Righthaven, LLC.

14 MR. WILLIAMS: Good morning, Your Honor, Colby  
15 Williams on behalf of Stephens Media.

16 MR. CAMPBELL: Donald Drew Campbell on behalf  
17 of Stephens Media.

18 MR. PULGRAM: Laurence Pulgram on behalf of  
19 Democratic Underground.

20 MR. OPSAHL: Kurt Opsahl, the Electronic  
21 Frontier Foundation, on behalf of Democratic  
22 Underground.

23 THE COURT: Thank you.

24 MR. WILLIAMS: Excuse me, Your Honor. I heard  
25 your clerk say this was also set for a motion for

1 reconsideration. I didn't know if I misheard that. I  
2 wasn't aware that that was also on calendar, or if it  
3 was just the order to show cause. Because the briefing  
4 isn't complete on the motion for reconsideration.

5 THE COURT: If that was said, and I didn't  
6 catch if that was said; but, no, we're not hearing the  
7 motion for reconsideration here.

8 This is the time for Righthaven to respond to the  
9 order to show cause why the Court should not issue  
10 sanctions.

11 Counsel, I'm going to give you 10 minutes to  
12 argue your position and your response. Between the  
13 response and your affidavit, obviously, the arguments  
14 were repeated, sometimes more than once. So you don't  
15 need to repeat them. But I will give you the 10  
16 minutes.

17 And you have liberty, if you wish, to respond to  
18 the Demographic Underground's reply. The Court will  
19 decide when you've finished whether or not it feels it  
20 necessary to give Democratic Underground an opportunity  
21 to reply to your comments with respect to their reply.

22 MR. MANGANO: Okay, Your Honor. So just so I  
23 understand your procedure, should I -- there's no need  
24 to reserve any time at this point to respond to  
25 Democratic Underground? I mean, because, you're

1 correct, I have set --

2 THE COURT: If I give them an opportunity to  
3 reply to your comments, I very likely will give you a  
4 short period of time, if you feel it's necessary, to  
5 respond to that without just repeating the arguments  
6 that you've made before.

7 MR. MANGANO: Yes, Your Honor. In view of  
8 that, we have set forth our position in our response to  
9 the order to show cause, while they've set forth in my  
10 declaration and they've set forth in the OSC response, I  
11 wish to highlight the fact that upon receiving this  
12 Court's order, I took all steps necessary to immediately  
13 take corrective action in view of what was set forth  
14 with regard to compliance with the Certificate of  
15 Interested Parties.

16 I had entered this case fairly late into the  
17 briefing on the motion to voluntarily withdraw the  
18 complaint. In fact, the strategic alliance agreement  
19 was not produced until late -- well, into early this  
20 year, which obviously you unsealed.

21 During that time period we were dealing with  
22 significant issues with regard to the confidentiality of  
23 that document, the confidentiality of other materials,  
24 responding to supplemental briefing which, admittedly,  
25 is -- the briefing in this case has been significant.

1           From a personal standpoint, I did not reflect on  
2 the Certificate of Interested Parties at that time as to  
3 what was contained in it and the impact of the strategic  
4 alliance agreement on it.

5           I'm not disagreeing with the Court's analysis,  
6 I'm just stating a simple fact that I didn't fully  
7 appreciate when that document came out its effect on the  
8 other -- on the earliest file in the case.

9           THE COURT: Well, if it gives you any comfort,  
10 counsel, the Court is not holding you responsible for  
11 the failure -- you, personally, responsible for the  
12 failure.

13           MR. MANGANO: Since it's more -- I will  
14 breathe a sigh of relief because I do honor my  
15 responsibilities before this Court. And that's why I  
16 have taken corrective action.

17           And despite any disagreement that may exist, Your  
18 Honor, you've issued a decision. I intend to comply  
19 with it. I intend to have my clients comply with it,  
20 not only in this case, but in all cases moving forward.

21           I also would like to point out that there has  
22 been an argument made, and I think it's somewhat  
23 misconstrued by Democratic Underground that somehow the  
24 OSC response, which I prepared, and which I submitted  
25 supporting declaration, sought to cast blame on two

1 in-house lawyers, Mr. Chu and Mr. Coons.

2           Upon joining Righthaven and working with Mr. Chu  
3 and Mr. Coons, I found them to be outstanding attorneys.  
4 They were very diligent. They had addressed  
5 significantly complex issues, personal jurisdiction  
6 issues.

7           There was a recent decision by I believe Judge  
8 Navarro, and there was another decision in Southcoast  
9 Partners case which dealt with personal jurisdiction in  
10 view of the tension between some existing Ninth Circuit  
11 case law, Brayton Purcell being one of them, and whether  
12 or not in -- personal jurisdiction is appropriate in the  
13 venue in which the copyrighted material emanated. Those  
14 are very, very difficult issues, Your Honor. And these  
15 were very skilled attorneys that addressed those issues.

16           That said, and in view of my own experience,  
17 which is quite significant compared to Mr. Chu and  
18 Mr. Coons, I honestly cannot believe that they fully  
19 appreciate their disclosure obligation.

20           It's not an aspersion upon them. I think it's  
21 more of a reflexion, a common-sense reflexion of that I  
22 don't think that -- I think they may have -- as a matter  
23 of fact, I know that it was -- it's been represented to  
24 me, that they performed some sort of analysis or case  
25 law or whatever, and that they came up with the

1 Certificate of Interested Parties, and they said okay,  
2 you know, that's what happened.

3 THE COURT: What's their status currently?

4 MR. MANGANO: Mr. Chu is not practicing law  
5 currently. It's my understanding that he suffered a  
6 fairly significant back injury.

7 THE COURT: I understand he's recovering from  
8 back injury.

9 MR. MANGANO: And I have spoken to him. He,  
10 in fact, contacted me because he was concerned over some  
11 of the representations that had been disseminated in the  
12 media based upon what were my perceived allegations  
13 against his misconduct.

14 I don't believe that he committed any misconduct,  
15 not sanctionable misconduct, given the standards that  
16 are applicable. I think that it was an honest mistake.  
17 I think that everyone, including Mr. Chu and Mr. Coons,  
18 who were responsible either for registering the  
19 copyrighted work or drafting the complaint --

20 THE COURT: So he's no longer with the  
21 company?

22 MR. MANGANO: No. And the same thing with  
23 Mr. Coons. He's out, and he's started his own firm, my  
24 understanding.

25 These two individuals who are on the Certificate

1 of Interested Parties knew it was the R-J. They  
2 reference the R-J work. They attached the R-J work.

3 In fact, this morning I pulled articles, because  
4 I know it's been widely reported in the media, and I did  
5 a search; and, I mean, there's an article by Mr. Green,  
6 who is in the -- Steve Green from the Sun is here in  
7 court today, you know, that I found that dated back to  
8 early May -- April, May of 2010, which aver to the  
9 relationship between Stephens Media's enforcement of its  
10 copyrights, the family of Warren Stephens, that the R-J  
11 is owned by Stephens Media.

12 So I understand that that might not be enough for  
13 the Court to perform a recusal analysis, because you're  
14 not expected -- and, for the most part, when you've got  
15 litigants, you're obviously not going to be out doing  
16 your independent research because --

17 THE COURT: Well, you're correct, sir, and  
18 that's because the Court's not obligated to do it, you  
19 are.

20 But, more important, the representations were  
21 that -- while these articles came from the R-J, was that  
22 Righthaven had now been assigned the exclusive right to  
23 pursue the violation of those.

24 So that does not put the Court -- even if it had  
25 done the research, doesn't put the Court on notice that

1 Stephens Media had an interest, a pecuniary interest.

2 MR. MANGANO: Your Honor, you're correct that  
3 when -- first of all, the allegations with regard to the  
4 assignment, I know that there's a lot -- and I'm hopeful  
5 that at some point we'll get an opportunity to have --  
6 we have rather esteemed counsel on both sides to address  
7 the pending motions that are before the Court. But  
8 you're correct. The assignment issue may not or does  
9 not provide the direct pecuniary interest. That's --  
10 that's -- I think that's fair.

11 That said, Stephens Media was brought into the  
12 case only 20 days after the Certificate of Interested  
13 Parties that's deemed defective was filed.

14 That should at least have triggered -- absent  
15 anything else, absent news articles, absent averments in  
16 the complaint, anything like that, that there may be an  
17 interest in Stephens Media's part. If Your Honor -- if  
18 Stephens Media was IBM and you had a more than 10  
19 percent holding in IBM, they were brought into the case,  
20 you would have to recuse yourself under Federal Civil  
21 Procedure 7.1.

22 So I -- I understand the Court's concern. I  
23 understand that given the manner in which you have  
24 interpreted the local rule requirement, we have done  
25 everything necessary to correct that mistake. And I've

1 affirmatively done that.

2 I don't want to stand here and point fingers at  
3 Mr. Chu or Mr. Coons. I really don't. These are two  
4 exceptional lawyers with -- should Mr. Chu, and I urge  
5 him to do so, come back and practice law, he is an  
6 exceptional writer. He's an exceptional attorney.

7 I would hate to have the results of their  
8 participation in this case at all reflect upon their  
9 ability or their future status as counsel in this state  
10 practicing before this court and in this jurisdiction as  
11 a whole.

12 I can say nothing more that -- I believe this was  
13 an honest mistake. This was not an intentional act to  
14 conceal Stephens Media. That's my honest belief, Your  
15 Honor. And I don't feel that it rises to the level of  
16 the standards of except for. You may feel otherwise.  
17 And reasonable minds can disagree. But I feel the  
18 circumstances demonstrate otherwise.

19 And unless you have any other questions, Your  
20 Honor, I'll yield to opposing counsel.

21 THE COURT: I don't have any questions.

22 MR. MANGANO: Thank you, Your Honor.

23 THE COURT: Given what he's said, you've  
24 responded to his written document and responded quite  
25 adequately, in the Court's view. I don't know that

1 there's anything about what Mr. Mangano just said that  
2 suggests to the Court that I need to hear from  
3 Democratic Underground.

4 MR. OPSAHL: Thank you, Your Honor.

5 THE COURT: Let me make it clear that the  
6 Court is also not here to find fault with Mr. Coons or  
7 Mr. Chu.

8 I do find it significant, however, that in all of  
9 this -- and I -- I've read and reread this sentence from  
10 the statement in the response, and I quote from the  
11 second page: It is certainly understandable how Local  
12 Rule 7-1.1 could have arguably been reasonably construed  
13 to not require the disclosure of Stephens Media's  
14 interest in any recovery.

15 I was impressed that you were able to get three  
16 hedge words or qualifiers within the space of four words  
17 in that sentence and wondered if maybe you ran out of  
18 them.

19 That significant, I guess, to me is is that we  
20 don't have any affidavit from Mr. Chu or Mr. Coons:  
21 One, that they made a mistake; two, that they didn't  
22 understand it; three, that they didn't understand Local  
23 Rule 7.1-1. But, more importantly, I don't have any  
24 evidence that they even knew about the relationship;  
25 that they were familiar with the terms and circumstances

1 of the strategic agreement.

2 An argument that they arguably could have  
3 reasonably construed to not require that, in the Court's  
4 opinion, is, frankly, ludicrous.

5 Rule 7.1-1, the purpose of it, the primary  
6 purpose of it, is to make sure that the Court becomes  
7 aware, as soon as possible, of any need to recuse itself  
8 because of any conflict of interest. But it's the  
9 violation of the rule, in addition to all of the other  
10 things that took place in this case and any other cases  
11 that the Court has in front of it -- and I think there  
12 are -- I think there are or were 34 cases that were  
13 assigned to me by Righthaven in this case. I do not  
14 understand the argument that an agreement whereby  
15 Stephens Media got half of any recovery or settlement  
16 could any -- in any way be construed as not having a  
17 direct pecuniary interest.

18 And, again, I'm not here to sanction Mr. Coons or  
19 Mr. Chu. And I will tell you now that I do not think  
20 that the Court's sanction power is limited to sanction  
21 Mr. Chu or Mr. Coons. The Court does have the right to  
22 sanction an attorney when he violates it.

23 I don't have any evidence that they intentionally  
24 kept this from the Court. But I have a lot of evidence  
25 that Righthaven intentionally kept it. This is not an

1 issue of negligence, in the Court's view. It goes to  
2 the evidence of an intentional avoidance of disclosing  
3 information and specific direct statements contrary to  
4 that.

5 I think I have sufficient inherent power to  
6 sanction. And I think Rule 11 gives me even additional  
7 power to sanction for violation of this rule under these  
8 circumstances.

9 Counsel that was representing Righthaven,  
10 Mr. Coons and Mr. Chu, were both in-house counsel, if  
11 you will.

12 Mr. Gibson, who took over and I think was counsel  
13 at the time that the SAA was disclosed is the CEO of  
14 Righthaven. So I think for purposes of the language of  
15 7.1-1, in this instance, Righthaven qualifies at a party  
16 acting pro se. Because it's their in-house people doing  
17 it, it's not outside counsel as they have now.

18 In the Court's view, the arrangement between  
19 Righthaven and Stephens Media is nothing more nor less  
20 than a law firm, which, incidentally, I don't think is  
21 licensed to practice law in this state, but a law firm  
22 with a contingent fee agreement masquerading as a  
23 company that's a party.

24 There was a clear pecuniary interest, in the  
25 Court's view, by Stephens Media. Mr. Gibson negotiated

1 the agreement. He signed the agreement. He certainly  
2 knew the agreement and its contents. He has a  
3 significant amount of experience. At least that is  
4 represented to me. I think this has been part of a  
5 concerted effort to hide Stephens Media's role in this  
6 litigation.

7 Plaintiff claimed that it had various exclusive  
8 rights when it knew that the ability to exercise those  
9 rights were retained exclusively by Stephens Media. It  
10 constantly and consistently refused to produce the  
11 agreement. And it wasn't until after the Court ordered  
12 that it be disclosed and then unsealed that they started  
13 admitting their reasons.

14 There was, in fact, in the -- in Stephens Media's  
15 reply to their motion -- in support of their motion to  
16 dismiss, that they state, and I quote, "Stephens Media  
17 has never been identified or disclosed as a party who  
18 has a direct pecuniary interest in the outcome of any  
19 Righthaven case, and for good reason," close quote.

20 The representations about the relationship and  
21 the rights of Righthaven were misrepresentations. They  
22 were misleading. And that -- the failure to disclose  
23 them -- and you can speak and argue that there's no case  
24 law or there are no -- there's no definition in the rule  
25 that lays out what a direct pecuniary interest is. I

1 don't know how more direct you can get. The fact that  
2 it has to go to Righthaven first and then go to Stephens  
3 Media, in the Court's view, does not remove it from  
4 being a direct pecuniary interest. It was there. They  
5 had the right to have -- they had the right, actually,  
6 to settle claims on their own.

7 And the Court finds it troubling, quite frankly,  
8 in all of the cases that I'm aware of filed in this  
9 district, and I've lost count as to how many there were,  
10 that not only were the terms of the agreement disclosed,  
11 but that there was a consistent, repeated failure to  
12 identify Stephens Media as having any interest in this  
13 lawsuit.

14 And it isn't enough to say, well, the Court  
15 should have been on notice of it. The Court has the  
16 right to accept the representations made by a party  
17 through counsel. And when it finds that those  
18 representations are not true and, having looked at all  
19 this evidence, finds that they are intentionally untrue,  
20 the Court feels that there is a necessity of and finds  
21 that there is an obligation on the Court to sanction  
22 Stephens Media.

23 I've given a lot of thought as to what kind of  
24 sanction is required. I appreciate the fact that  
25 counsel has attempted to rectify the problem that has

1 existed. It does not change or affect the Court's  
2 opinion as to whether or not it was an accident or a  
3 misunderstanding as opposed to being an intentional --  
4 I'll call it failure to disclose, for want of a stronger  
5 term, although I think a stronger term is justified.  
6 But as part of the sanction, the Court is going to order  
7 that every case Righthaven has in any jurisdiction in  
8 this country must be provided with a copy of this  
9 Court's decision about the agreement, the one on  
10 standing, and that the agreement be disclosed to parties  
11 that Righthaven has sued.

12 The Court is also going to order a monetary  
13 sanction against Righthaven, itself, in the amount of  
14 \$5,000 and order that Local Rule 7.1-1 will be properly  
15 complied with, either retrospectively or prospectively,  
16 in all cases that are filed by Righthaven with respect  
17 to this agreement.

18 Is there anything -- yes, counsel?

19 Incidentally, that monetary sanction will be paid  
20 within two weeks to the clerk of court.

21 MR. MANGANO: Your Honor, just a couple points  
22 of clarification. And I understand that you will be  
23 issuing a written opinion based upon what we -- based  
24 upon this hearing, I assume?

25 THE COURT: I'm not sure I will, counsel.

1 I'll give that some consideration.

2 MR. MANGANO: Okay. Well, in view of that  
3 uncertainty, I'd just --

4 THE COURT: If I do issue a written opinion,  
5 counsel, I'm also going to direct that it be provided,  
6 filed in every other case that Righthaven has against  
7 anybody on this --

8 MR. MANGANO: Okay.

9 THE COURT: Along these issues.

10 MR. MANGANO: Okay. Your Honor, just for  
11 point of clarification, you've mentioned a couple bases  
12 for your sanction power; and it's not to challenge your  
13 sanction powers, but to clarify the record.

14 You've mentioned Rule 11, you've mentioned the  
15 inherent power, and you've mentioned the local rule.  
16 These sanctions that you just enumerated, do those fall  
17 under, one, all or -- one specific sanction power or  
18 under all your inherent power --

19 THE COURT: I'm invoking all of them, counsel.

20 MR. MANGANO: Okay. Thank you, Your Honor.

21 And a second point of clarification is that you  
22 said that parties -- all parties who are sued to be  
23 provided with a copy of the agreement, the strategic  
24 alliance agreement.

25 THE COURT: That will not apply to those cases

1 that have been dismissed, unless there's going to be an  
2 appeal in those cases.

3 MR. MANGANO: Okay. So all -- essentially all  
4 pending matters, would that be --

5 THE COURT: Yes.

6 MR. MANGANO: Okay. And would your order  
7 include -- since as the Court, I'm sure, is aware, we  
8 have a clarification and we have what's now a restated  
9 version of the SAA, restated and amended version, would  
10 you like those provided as well?

11 THE COURT: No.

12 MR. MANGANO: Just the SAA?

13 THE COURT: And no -- any revisions,  
14 amendments after the fact, in the Court's view, is  
15 irrelevant to this issue.

16 MR. MANGANO: Okay. Thank you, Your Honor.

17 THE COURT: Thank you.

18 Any questions from other defendant?

19 MR. OPSAHL: It may also be useful for some of  
20 those cases to have a copy of Righthaven's operating  
21 agreement.

22 THE COURT: I beg your pardon?

23 MR. OPSAHL: It may also be useful to -- for  
24 the defendants in those cases to have a copy of  
25 Righthaven's operating agreement along with the

1 strategic alliance.

2 THE COURT: I think that was part of my order,  
3 counsel, is that the operating -- well, are you talking  
4 about the strategic alliance agreement?

5 MR. OPSAHL: There's a strategic alliance  
6 agreement as between Stephens Media and Righthaven; then  
7 there's also the Righthaven operating agreement, which  
8 is the organizational document for Righthaven.

9 MR. MANGANO: Your Honor, that's -- the issue  
10 here is the failure to disclose Stephens Media, which is  
11 a party to the --

12 THE COURT: Yes. I will not include that,  
13 counsel. I don't think it's relevant to this.

14 MR. OPSAHL: Okay. Thank you, Your Honor.

15 MR. MANGANO: And, Your Honor, there are cases  
16 pending, such as in the District of Colorado, which  
17 involve -- do not involve Stephens Media, but they  
18 involve MediaNews Group as the holder of the work that's  
19 been assigned.

20 Would your order require a production of the SAA  
21 or the production of the operative agreement, which I  
22 believe has been publicly filed already in the lead case  
23 that's resulted in a stay of some 34 actions?

24 THE COURT: In Colorado, you're talking about?

25 MR. MANGANO: Yes. All the Colorado

1 actions -- all the Colorado actions, to my knowledge, do  
2 not involve Stephens Media content.

3 I just want to make sure that when you say  
4 produced in all jurisdictions, it's not all -- not all  
5 jurisdictions involve Stephens Media content. So --

6 THE COURT: Are the agreements, the strategic  
7 agreements the same?

8 MR. MANGANO: No. They are in a different  
9 form. The content is significantly -- it looks  
10 different. It's very -- the document that controls  
11 those agreements has been produced and has not been  
12 sealed.

13 THE COURT: All right.

14 MR. MANGANO: So the only other jurisdiction  
15 would be there's a pending action in South Carolina, and  
16 there are the pending actions in this jurisdiction that  
17 involve Stephens Media.

18 THE COURT: You are obligated to the one in  
19 South Carolina, but you're also obligated to advise the  
20 Colorado court of this decision.

21 MR. MANGANO: Thank you, Your Honor.

22 MR. PULGRAM: And, finally, Your Honor,  
23 Laurence Pulgram. You stated that if you issued a  
24 ruling in writing on this matter today, on this OSC,  
25 that you would ask that it be provided to the other

1 courts.

2 In the absence of that written ruling, would it  
3 make sense for the transcript of your ruling, up to the  
4 colloquy here, to be provided to other courts in lieu of  
5 a written order, to save Your Honor from having to write  
6 the written order?

7 MR. MANGANO: I think that's the  
8 understanding. If there's no order, I'm to produce the  
9 transcript, correct?

10 THE COURT: Yes. I think that's a good  
11 suggestion. And that will be the order if it wasn't  
12 clear otherwise.

13 Anything else?

14 MR. MANGANO: No, Your Honor.

15 MR. OPSAHL: No, Your Honor.

16 THE COURT: We'll be in recess.

17 (The proceedings were concluded at  
18 9:35 a.m.)

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Donna Davidson

7/14/11

Donna Davidson, RDR, CRR, CCR #318  
Official Reporter

Date

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6

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

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

11 Plaintiff,

12 v.

13  
14 THOMAS A. DIBIASE, an individual,  
15 Defendant.

Case No.: 2:10-cv-01343-RLH-PAL

**RIGHTHAVEN LLC’S RESPONSE TO  
DEFENDANT-COUNTERCLAIMANT  
THOMAS A. DIBIASE’S MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS**

16 **AND RELATED COUNTERCLAIM**  
17

18  
19 Plaintiff and Counter-defendant Righthaven LLC (“Righthaven”) hereby responds to  
20 Defendant-Counterclaimant Thomas A. DiBiase’s (“DiBiase”) Motion to Compel Production of  
21 Documents (the “Motion”, Doc. 53.)

22 Righthaven’s submission is based on the below Memorandum of Points and Authorities,  
23 the declaration of Shawn A. Mangano, Esq. (the “Mangano Decl.”), the pleadings and papers on  
24 file in this action, any oral argument allowed by this Court, and on any other matter of which this  
25 Court takes notice.  
26  
27  
28

1           **III. ARGUMENT**

2           **A. DiBiase's Characterization That Requested Documents Are Discoverable Under**  
3           **The Auspices of Fair Use is Incorrect.**

4           DiBiase buttresses his request for documents concerning Righthaven's commercial  
5 exploitation and details about its litigation-based enforcement efforts under the guise of the  
6 fourth fair use analysis factor, which concerns market harm. (Doc. # 53 at 9.) DiBiase's request  
7 to compel such information is much ado about nothing.

8           To begin with, and as made clear during meet and confer efforts, Righthaven has not  
9 engaged in the commercial exploitation of news articles (Request No. 30). Commensurately,  
10 Righthaven has not derived revenue, beyond license fees clearly set forth in materials already  
11 produced, from news articles (Request No. 53). Accordingly, Request Nos. 30 and 53, even if  
12 relevant, will result in absolutely no materials being produced to DiBiase beyond that already  
13 disclosed by Righthaven.

14           More specifically, Righthaven has already produced all license agreements and licensing  
15 arrangements concerning the Work, as sought under Request Nos. 31 and 32, by virtue of its  
16 production of the Strategic Alliance Agreement (the "SAA") together with its associated  
17 amendment. Compelling these requests would not result in Righthaven disclosing any additional  
18 material beyond that which it has already produced unless its production obligation is expanded  
19 to encompass collateral matters not at issue in this action.

20           With regard to DiBiase's attempt to invade settlement agreements reached in other action  
21 Righthaven maintains that such information is completely outside the scope of discoverable  
22 information in view of the propounded requests. Simply put, why would DiBiase be entitled to  
23 production of all settlement agreements, the terms of which are confidential, as a means of  
24 establishing fair use? Even if such information were deemed to be tangentially related to fair  
25 use, it certainly does not overcome the asserted objections based on over breadth and undue  
26 burden asserted by Righthaven in view production requirements that would include settlement  
27 negotiations and agreements reached in approximately 200 actions to date.

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6 *Attorney for Plaintiff/Counterdefendant Righthaven LLC*

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

11 RIGHTHAVEN LLC, a Nevada limited-  
liability company,

12  
13 Plaintiff,

14 v.

15 DEMOCRATIC UNDERGROUND, LLC, a  
16 District of Columbia limited-liability  
company; and DAVID ALLEN, an individual,  
17

18 Defendants.

19 DEMOCRATIC UNDERGROUND, LLC, a  
20 District of Columbia limited-liability  
company,  
21

22 Counterclaimant,  
23

24 v.

25 RIGHTHAVEN LLC, a Nevada limited-  
liability company; and STEPHENS MEDIA  
26 LLC, a Nevada limited-liability company,  
27

27 Counterdefendants.  
28

Case No.: 2:10-cv-01356-RLH-GWF

**DECLARATION OF MARK A.  
HINUEBER IN SUPPORT OF  
RIGHTHAVEN LLC'S RESPONSE TO  
DEFENDANTS' SUPPLEMENTAL  
MEMORANDUM ADDRESSING  
RECENTLY PRODUCED EVIDENCE  
RELATING TO PENDING MOTIONS**

1 I, Mark A. Hinueber, being first duly sworn upon oath, do hereby depose and state:

2 1. I am, and at all times referenced in this declaration have been, General Counsel  
3 for Stephens Media LLC (“Stephens Media”), which is a Nevada limited-liability company. I  
4 have personal knowledge of the facts stated herein, and if called upon to testify thereto, would  
5 be competent to do so. This declaration is made in support of Plaintiff Righthaven LLC’s  
6 (“Righthaven”) Response to the Defendants Democratic Underground, LLC’s and David  
7 Allen’s (collectively the “Defendants”) Supplemental Memorandum Addressing Recently  
8 Produced Evidence Relating to Pending Motions (Doc. # 79).

9 2. Stephens Media owns the *Las Vegas Review-Journal* (the “LVRJ”), which is a  
10 media publication that disseminates material in hard copy form and in electronic form via its  
11 Internet website found at <[www.lvrj.com](http://www.lvrj.com)> (the “LVRJ Website”).

12 3. I am generally familiar with the copyrighted literary work entitled “Tea Party  
13 power fuels Angle” (the “Work”). It is my understanding that the Work was originally published  
14 by the LVRJ on or about May 13, 2010, and that, consistent with the LVRJ’s general publication  
15 practices, the Work would have been made available in hard copy format and in electronic  
16 format on the LVRJ Website. I am also generally familiar with the fact that Righthaven has sued  
17 the Defendants for posting or otherwise republishing the Work without the consent of Stephens  
18 Media or the LVRJ.

19 4. Stephens Media assigned all rights, title and interest in and to the Work, including  
20 the right to seek redress for all past, present and future infringements of the Work, to Righthaven  
21 on July 8, 2010 (the “Assignment”), a true and correct copy of which is attached hereto as  
22 Exhibit 1.

23 5. I am familiar with the contents of the Strategic Alliance Agreement (the “SAA”)   
24 entered into by Righthaven and Stephens Media. A true and correct copy of the SAA is attached  
25 hereto as Exhibit 2. I executed the SAA on behalf of Stephens Media.

26 6. The intent of the parties when entering into the SAA was to describe general,  
27 mutually agreed upon procedures under which Stephens Media could assign all rights, title and  
28 interest to certain copyrighted works to Righthaven, including the right to seek redress for past,

1 present and future infringement. Following such an assignment, the parties intended to permit  
2 Stephens Media to continue to display or otherwise use the assigned content through the grant of  
3 a license from Righthaven.

4 7. At all times, it was Stephens Media's intent through the execution of each  
5 particular assignment to grant all ownership rights to Righthaven, along with the right to sue for  
6 all past, present and future copyright infringement.

7 8. The Assignment in this case conveys all ownership of the Work to Righthaven  
8 together with the right to sue for accrued, present and future infringements of the Work.

9 9. It was not Stephens Media's intent to divest or otherwise impair Righthaven's  
10 ability to file or otherwise maintain copyright infringement actions based on content and/or other  
11 protectable material specifically assigned to Righthaven through the license-back rights  
12 described in the SAA. Rather, it was Righthaven's and Stephen's Media's intent in this regard to  
13 acknowledge Stephens Media's ability to continue to use the assigned content as licensee in the  
14 same general manner it had done prior to entering in the SAA, such as the archiving of prior  
15 published literary works on the LVRJ Website.

16 10. Righthaven and Stephens Media also expressly intended to address any  
17 potentially void or unenforceable provisions in the SAA that would fail to accomplish their  
18 mutual goals, intent and desire when they entered into the SAA. Section 15.1 of the SAA was  
19 included to vest a court with the power to correct any identified defects "in a narrowly tailored  
20 manner to approximate the manifest intent of the Parties." (Ex. 2 at § 15.1.)

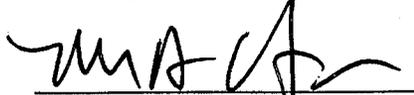
21 11. Stephens Media and Righthaven have also affirmatively attempted to clarify their  
22 mutual intent when they entered into the SAA by preparing and executing a Clarification and  
23 Amendment to the Strategic Alliance Agreement (the "Amendment"), effective as of January 18,  
24 2010, which is the same Effective Date of the SAA. A true and correct copy of the Amendment  
25 is attached hereto as Exhibit 3.

26 12. To the extent the SAA, as clarified through the Amendment, somehow fails to  
27 effectively assign and convey to Righthaven all ownership in and to particular copyright  
28 protectable content, along with standing to sue for accrued, present and future infringement,

1 while also permitting Stephens Media to still use said content in a manner consistent with its  
2 general historical use via the grant of a license to do so from Righthaven, Stephens Media asks  
3 the Court for direction, clarification or to correct the Amendment pursuant to the authority vested  
4 under Section 15.1 of the SAA.

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

6 Executed this 9<sup>th</sup> day of May, 2011.

7   
8 \_\_\_\_\_  
9 Mark A. Hinueber

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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I on this 9<sup>th</sup> day of May, 2011, I caused the foregoing document to be served by the Court's CM/ECF system.

SHAWN A. MANGANO, LTD.

By: /s/ Shawn A. Mangano  
SHAWN A. MANGANO, ESQ.  
Nevada Bar No. 6730  
shawn@manganolaw.com  
9960 West Cheyenne Avenue, Suite 170  
Las Vegas, Nevada 89129-7701  
Tel: (702) 304-0432  
Fax: (702) 922-3851

*Attorney for Righthaven LLC*

**EXHIBIT 1**

**COPYRIGHT ASSIGNMENT**

This Copyright Assignment is made effective as of July 8<sup>th</sup>, 2010 by Stephens Media LLC, a Nevada limited-liability company ("Assignor").

In consideration of monetary commitments and commitments to services to be provided and/or already provided by *Righthaven* LLC, a Nevada limited-liability company ("*Righthaven*"), to Assignor and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby transfers, vests and assigns the work described in Exhibit A, attached hereto and incorporated herein by this reference (the "*Work*"), to *Righthaven*, subject to Assignor's rights of reversion, all copyrights requisite to have *Righthaven* recognized as the copyright owner of the *Work* for purposes of *Righthaven* being able to claim ownership as well as the right to seek redress for past, present and future infringements of the copyright, both accrued and unaccrued, in and to the *Work*.

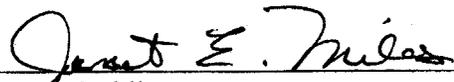
**IN WITNESS WHEREOF**, Assignor hereby executes this Assignment on this 8<sup>th</sup> day of July, 2010.

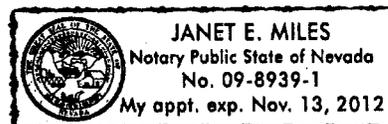
STEPHENS MEDIA LLC

By:   
Name: Mark Hinueber  
Title: Vice-President/General Counsel

STATE OF NEVADA  
COUNTY OF CLARK

Subscribed and sworn to before me by Mark Hinueber this 8<sup>th</sup> day of July, 2010.

  
Notary Public



**EXHIBIT A**

Tea Party power fuels Angle. Work made for hire by Laura Myers. Originally published May 13, 2010. Las Vegas *Review-Journal* and [www.lvrj.com](http://www.lvrj.com).

**EXHIBIT 2**

## **STRATEGIC ALLIANCE AGREEMENT**

This **STRATEGIC ALLIANCE AGREEMENT** (this "Agreement") is made and entered into this 18th day of January, 2010 ("Effective Date") by and between *Righthaven* LLC, a Nevada limited-liability company ("*Righthaven*") and Stephens Media LLC, a Nevada limited-liability company ("*Stephens Media*").

In consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, *Righthaven* and Stephens Media agree as follows:

### **1. *Definitions and Interpretations.***

1.1. Certain terms used herein shall have the meaning ascribed to such terms as set forth in Schedule 1.

1.2. All of the defined terms as set forth in Schedule 1, if defined in the singular or present tense, shall also retain such general meaning if used in the plural or past tense, and if used in the plural or past tense, shall retain the general meaning if used in the singular or present tense.

1.3. Section headings are used for convenience only and shall have no interpretive effect or impact whatsoever.

### **2. *Integrated Transaction.***

The Parties hereby covenant that this Agreement is part of an integrated transaction with the transaction (the "*Righthaven* Transaction") represented by the formation of *Righthaven* and the corresponding Operating Agreement by and amongst Net Sortie Systems, LLC, a Nevada limited-liability company ("*Net Sortie*"), *Righthaven* and the Stephens Media's affiliated company, SI Content Monitor LLC, an Arkansas limited-liability company (said latter entity known herein as the "*Stephens Media Affiliate*" and said Operating Agreement known herein as the "*Operating Agreement*"). Stephens Media further covenants, represents and warrants that: (a) the Stephens Media Affiliate is presently and shall throughout the Term be Controlled by common owners, with no material variation in said ownership, (b) the Operating Agreement is being executed by the parties to the Operating Agreement simultaneously with the execution by the Parties of this Agreement; (c) that neither *Righthaven* nor Net Sortie would enter into the *Righthaven* Transaction if not for Stephens Media's execution of this Agreement; and (d) *Righthaven* and Net Sortie, as third party beneficiaries, are relying upon Stephens Media's continued performance of Stephens Media's duties and obligations pursuant to and arising out of this Agreement as a basis of the consideration for *Righthaven*'s and Net Sortie's respective duties and obligations pursuant to and arising out of the Operating Agreement.

3. *Exclusive Engagement.*

3.1. Stephens Media shall assign (at the times stated) to *Righthaven*, pursuant to the procedures set forth in Section 7: (a) any copyrights owned by Stephens Media that Stephens Media desires to be the subject of Searching (the "Searching Decision"), with each such respective assignment to occur within a reasonable time after Stephens Media makes each respective Searching Decision, (b) any copyrights owned by Stephens Media that Stephens Media considers (the "Material Risk Conclusion") a material risk of infringement (with each such respective assignment to occur within thirty (30) days after Stephens Media makes each respective Material Risk Conclusion, and (c) within thirty (30) days of having respective Infringement Notice, each and every Infringed Copyright that exist during the Term (the "Assigned Infringed Copyright(s)").

3.2. During the Term, *Righthaven* shall use commercially reasonable efforts to engage in Searching with respect to all Stephens Media Assigned Copyrights.

3.3. During the Term, *Righthaven* shall have the right, but not the obligation, to pursue an Infringement Action of the respective infringements that are the subject of the respective Infringed Copyrights. *Righthaven* shall have sixty (60) days after each respective assignment of each respective Assigned Infringed Copyright to Notify Stephens Media of whether *Righthaven* will pursue an Infringement Action of said respective Assigned Infringed Copyright (the "Remediation Option Notice"). If *Righthaven* chooses in the Remediation Option Notice to not pursue an Infringement Action (the "Remediation Declination"), then *Righthaven* shall reassign the Assigned Copyright to Stephens Media that is the subject of the Remediation Declination; provided, however, that Stephens Media shall have the right to reassign any such copyright pursuant to Section 2.1 upon learning new information concerning the circumstances of infringement or possible infringement associated with any copyright that is the subject of a Remediation Declination. If *Righthaven* chooses in the Remediation Option Notice to pursue an Infringement Action, then *Righthaven* shall commence Remediation within the times frames and pursuant to the procedures set forth in Section 4. Notwithstanding any other provision of this Agreement, Stephens Media shall have the right to Notify *Righthaven*, within five (5) Business Days after receipt of a respective Remediation Option Notice, that *Righthaven* should not take any Infringement Action with respect to a particular putative infringer as indicated in any respective Remediation Option Notice (the "Declination Notice") and upon receipt of a Declination Notice, *Righthaven* shall not take any Infringement Action with respect to the particular putative infringer set forth in any Declination Notice; provided, however, that Stephens Media shall only send any Declination Notice on a reasonable basis with the grounds of reasonability being that a particular putative infringer is a charitable organization, is likely without financial resources, is affiliated with Stephens Media directly or indirectly, is a present or likely future valued business relationship of Stephens Media or otherwise would be a Person that, if the subject of an Infringement Action, would result in an adverse result to Stephens Media.

3.4. While Stephens Media shall reserve the right to undertake litigation in order to pursue any infringement of any Stephens Media copyright through legal counsel duly licensed in

the jurisdiction through which such litigation would be undertaken, Stephens Media hereby engages *Righthaven* throughout the Term on an exclusive basis to undertake all activities set forth in this Section 3, including, without limitation, the engaging in Searching as well as the pursuit of Infringement Actions. Stephens Media shall not, at any time during the Term, assign to any other Person that is a Competitor any copyrights owned by Stephens Media. Stephens Media shall also never Compete with *Righthaven* at any time during the Term and for a period of five (5) years after termination of the Term.

4. ***Actions to Address Copyright Infringement.***

*Righthaven* shall take an Infringement Action against the Infringer in order to effect a Disposition within one (1) year of the later of (a) the procurement of a copyright registration covering the Stephens Media Assigned Copyrights or (b) if such registration already exists, within six (6) months after each respective Remediation Option Notice that gives rise to each respective requirement of an Infringement Action; provided, however, that if *Righthaven* elects to contact Infringer prior to any Infringement Action and achieves a commercially reasonable Recovery, then *Righthaven* shall not be required to take an Infringement Action (and such Recovery shall satisfy *Righthaven*'s duties in this Agreement to pursue an Infringement Action); provided further, that if *Righthaven* discovers Content that provides *Righthaven* with a good-faith-based belief that the Infringer is not an infringer of the Stephens Media Assigned Copyrights, then *Righthaven* shall have no duties to take any Infringement Action or pursue a Disposition.

5. ***Recovery Distribution.***

Within one (1) week after receipt of the Recovery, *Righthaven* shall pay to Stephens Media a the percentage of the Recovery provided to *Righthaven*'s most preferred customers from time to time (which is, as of the Effective Date, fifty percent (50%)) minus Costs advanced or incurred by *Righthaven* related to, with respect to or arising out of the preparation for, conduct of and ultimate resolution of the Infringement Action and/or Disposition.

6. ***Infringement Action Costs.***

Subject to Section 2, *Righthaven* shall be responsible for all Costs incurred in an Infringement Action (the "Infringement Action Costs"); provided, however, that Costs shall not include the salaries or other compensation to *Righthaven* employees associated with or arising out of work performed arising out of or in association with this Agreement.

7. ***Assignment of Copyright Content; Stephens Media License.***

7.1 Subject to the other terms and provisions of this Agreement and throughout the Term, Stephens Media shall effect the assignments to *Righthaven* of copyrights as required by this Agreement (including, without limitation, within the time periods required by this Agreement) by executing a particularized assignment with respect to each copyright and each

consistent with (and in form and substance the same as) the scope of assignment as set forth in the form of copyright assignment as embodied in Exhibit 1 (each a "Copyright Assignment"). Stephens Media shall provide Notice to *Righthaven* of each copyright (each a "Notified Copyright") that is required to be the subject of a Copyright Assignment (a "Copyright Assignment Notice") by no later than five (5) Business Days prior to the last day upon which each respective Copyright Assignment is required to be executed by Stephens Media as provided in Section 3.1. *Righthaven* shall then provide to Stephens Media a conforming Copyright Assignment for Stephens Media to execute with respect to each Notified Copyright within three (3) Business Days after receipt of the Copyright Assignment Notice.

7.2 Despite any such Copyright Assignment, Stephens Media shall retain (and is hereby granted by *Righthaven*) an exclusive license to Exploit the Stephens Media Assigned Copyrights for any lawful purpose whatsoever and *Righthaven* shall have no right or license to Exploit or participate in the receipt of royalties from the Exploitation of the Stephens Media Assigned Copyrights other than the right to proceeds in association with a Recovery. To the extent that *Righthaven's* maintenance of rights to pursue infringers of the Stephens Media Assigned Copyrights in any manner would be deemed to diminish Stephens Media's right to Exploit the Stephens Media Assigned Copyrights, *Righthaven* hereby grants an exclusive license to Stephens Media to the greatest extent permitted by law so that Stephens Media shall have unfettered and exclusive ability to Exploit the Stephens Media Assigned Copyrights. *Righthaven* shall have no Obligation to protect or enforce any Work of Stephens Media that is not Stephens Media Assigned Copyrights.

8. ***Stephens Media's Right of Reversion.***

Stephens Media shall have the right at any time to terminate, in good faith, any Copyright Assignment (the "Assignment Termination") and enjoy a right of complete reversion to the ownership of any copyright that is the subject of a Copyright Assignment; provided, however, that if *Righthaven* shall have commenced an action to prosecute an infringer of the Stephens Media Assigned Copyrights, Stephens Media shall be exclusively responsible for effecting termination of such action including, without limitation, all Losses associated with any dismissal with prejudice. In order to effect the termination of the any Copyright Assignment, Stephens Media shall be required to provide *Righthaven* with thirty (30) days prior written notice. Within thirty (30) days after receipt of termination of the any Copyright Assignment, *Righthaven* shall commence documentation to effect reassignment of the Stephens Media Assigned Copyrights to Stephens Media. Upon any Assignment Termination, Stephens Media shall pay to *Righthaven* the Infringement Action Costs that would otherwise work an unjust enrichment benefitting Stephens Media (but under no circumstances shall Infringement Action Costs be less than the costs of any application for registrations or registrations of copyrights made and/or procured by *Righthaven* for the benefit of Stephens Media), pursuant to or arising out of this Agreement. No termination of any Copyright Assignment shall impair *Righthaven's* rights to receive sums related to, with respect to and/or arising out of any Recovery pursuant to or arising out of this Agreement (the "Early Termination Amounts"), including, without limitation, a reasonable level of compensation associated with, with respect to, and arising out of, any and all efforts exerted

by *Righthaven* to Search, find, investigate, ascertain, pursue, redress, sue or otherwise file a claim against any Person with respect to, or otherwise address any copyright infringement benefitting, whether directly or indirectly, copyright holder, pursuant to or arising out of this Agreement, as well as all other rights to quantum meruit proceeds that any court of competent jurisdiction would award under such circumstances. *Righthaven* shall provide Notice within thirty (30) days of any Assignment Termination of *Righthaven's* calculation of Early Termination Amounts. Within ten (10) days of receipt of any Recovery by Stephens Media, Stephens Media shall pay to *Righthaven* the Early Termination Amounts or provide Notice to *Righthaven* of any contest whereby Stephens Media contends that the Early Termination Amounts Notified by *Righthaven* to Stephens Media were inaccurate or unjust and to what extent (the "Contested Amount") the Early Termination Amounts were inaccurate or unjust (the "Stephens Media Contest"). Within ten (10) days after receiving the Stephens Media Contest (the "Contest Notification Date"), *Righthaven* shall have the option: (a) to elect to receive from Stephens Media within ten (10) days of the Contest Notification Date, the Early Termination Amounts minus the Contested Amount (the "Settled Amount"), or (b) to Notify Stephens Media that Stephens Media must pay to *Righthaven* the Settled Amount within ten (10) days of the Contest Notification Date, and that *Righthaven* reserves the right to make a claim that Stephens Media should pay the full Early Termination Amounts. In the event that *Righthaven* preserves *Righthaven's* right to make a Claim pursuant to Section 5(b), the Parties shall mediate the dispute associated with the Contested Amount (the "Contest Dispute") within sixty (60) days by: (x) reasonably choosing a mediator or by employing a JAMS mediator through <http://www.jamsadr.com>, (y) mediating the Contest Dispute in Las Vegas, Nevada, and (z) mediating the Contest Dispute in good faith (the "Mediation"). In the event that the Mediation is not effective in resolving the Contest Dispute within sixty (60) days of the commencement of the Mediation, *Righthaven* shall have the right to bring any and all relevant Claims for recovery of the Contested Amount, and any amounts accrued by *Righthaven* in the Mediation, in any court of competent jurisdiction, in addition to all other rights and remedies available to *Righthaven*, whether in law or equity.

9. ***Representations, Warranties and Covenants of Stephens Media.***

Stephens Media hereby represents, warrants and covenants as of the Effective Date and throughout the Term:

9.1. The execution, delivery and performance of this Agreement by Stephens Media does not and shall not violate any of Stephens Media's organizational documents, any applicable Law, or any contractual or other obligation of Stephens Media or any order to which Stephens Media is bound.

9.2. Stephens Media is the owner of all Stephens Media Assigned Copyrights. The Stephens Media Assigned Copyrights is free and clear of all liens and Encumbrances. Stephens Media further represents and warrants that it has the exclusive right to use the Stephens Media Assigned Copyrights, and has the exclusive right to exclude others from Using the Stephens Media Assigned Copyrights. Stephens Media further warrants that, as of the Effective Date,

Stephens Media has no knowledge of any third-party Claim that any aspect of Stephens Media's present or contemplated business operations infringes or will infringe any rights of any third party in Stephens Media Assigned Copyrights.

9.3. Stephens Media shall not sell, grant any Encumbrance on or in or assign, any of Stephens Media Assigned Copyrights to any third Person during the Term absent prior written approval of *Righthaven*; provided, however, that Stephens Media may maintain Encumbrances on Stephens Media Assigned Copyrights as part of an overall funding securitization whereby all or substantially all of Stephens Media's assets are Encumbered as part of said funding securitization and Stephens Media Assigned Copyrights are not singled-out as or part of a particularized group of Encumbered assets.

9.4. Stephens Media shall not reduce, adjust, settle or compromise any infringement of Stephens Media Assigned Copyrights except as approved in writing by *Righthaven*.

9.5. Stephens Media shall instruct Stephens Media's general counsel, currently Mark A. Hinueber, Esq. (the "General Counsel"), to undertake the necessary and appropriate efforts to ensure Stephens Media's functional performance of Stephens Media's obligations pursuant to and arising from this Agreement. Stephens Media shall further instruct the General Counsel to instruct, by way of internal electronic mail communications (in form and substance the same as Exhibit 9.5), to all employees of Stephens Media that have awareness of Stephens Media Content, within ten (10) Business Days after the Effective Date (the "Content Notice Date") and on every anniversary of the Content Notice Date thereafter during the Term, of the need to promptly apprise the General Counsel throughout the Term of any Content that any employee believes may reasonably be the subject of an unauthorized reproduction or publication.

9.5. Stephens Media shall promptly notify *Righthaven* of any unauthorized infringement of Stephens Media Assigned Copyrights that reasonably comes to Stephens Media's attention.

9.6. Stephens Media shall cooperate fully and candidly with *Righthaven* with respect to the Infringement Action and shall take all commercially reasonable actions necessary in order to effect the terms and provisions of this Agreement.

9.7. Stephens Media shall provide all Content in whatsoever Media known, or available, to Stephens Media that may aid *Righthaven* in the conduct of an Infringement Action, including, without limitation, privileged or confidential Content in any and all Media; provided, however, that nothing in this Section 9.7 shall require any waiver of any protections afforded by reporter shield laws, including, without limitation, as set forth pursuant to Nevada Revised Statute Section 49.275, as amended from time to time.

9.8. Stephens Media shall execute such authorizations as may be required by third Persons in order to release Content in any Media whatsoever to *Righthaven* to aid *Righthaven* in an Infringement Action.

9.9. *Righthaven* has not made any express or implied warranties or representations that the Services provided by *Righthaven* shall result in any particular amount or level of income to Stephens Media.

9.10. Stephens Media hereby receives notice that Steven A. Gibson ("Gibson") has an ownership interest in one of the entities that owns *Righthaven*, Gibson's interest in *Righthaven* is therefore a minority interest and that Gibson is also the owner of Gibson Lowry Burris LLP ("Gibson's Participation").

9.11. Stephens Media hereby waives any conflict of interest associated with and/or arising out of Gibson's Participation and that Stephens Media is represented by legal counsel in Nevada familiar with the rules of professional responsibility in Nevada concerning making an informed waiver of the conflict of interest hereby waived.

9.12. Gibson is in no manner representing Stephens Media in or with respect to the negotiation, drafting or entering into this Agreement.

10. ***Recovery Instrument.***

10.1. Any Recovery Instrument shall be written in a manner as to require the endorsement of *Righthaven* to be properly endorsed prior to any distribution.

10.2. *Righthaven* is hereby authorized to act as attorney-in-fact for Stephens Media and to endorse any Recovery Instrument in Stephens Media's name for deposit into *Righthaven's* bank account for collection and final distribution pursuant to the terms of this Agreement. Stephens Media shall deliver any Recovery Instrument received by Stephens Media to *Righthaven* for endorsement and deposit into *Righthaven's* account.

10.3. If Stephens Media uses, disburses, deposits or takes any other action with respect to any Recovery Instrument in contravention of this Agreement, the Sums with respect to such Recovery Instrument shall be deemed held in trust to be distributed pursuant to the terms of this Agreement.

10.4. If *Righthaven* uses, disburses, deposits or takes any other action with respect to any Recovery Instrument in contravention of this Agreement, the Sums with respect to such Recovery Instrument shall be deemed held in trust to be distributed pursuant to the terms of this Agreement.

11. ***Stephens Media's Potential Liability.***

Stephens Media understands and acknowledges that Stephens Media and *Righthaven* may be liable for an Infringer's attorneys' fees as required by Law in connection with an Infringement Action. Stephens Media further understands that a lawsuit brought solely to harass or to coerce a

settlement may result in liability for malicious prosecution or abuse of process. If any Claim made by an Infringer in an Infringement Action results in Losses, other than Losses described in Section 8, *Righthaven* shall be solely liable for such Losses and shall indemnify Stephens Media from and against any such Losses but only if such Losses do not arise out of a misrepresentation by Stephens Media or other breach by Stephens Media of a provision of this Agreement.

12. ***Disclaimer of all Warranties and Representations.***

RIGHTHAVEN DISCLAIMS ALL IMPLIED WARRANTIES AND/OR REPRESENTATIONS AND MAKES NO WARRANTIES OR REPRESENTATIONS AS TO ANY PARTICULAR OUTCOME OF ANY INFRINGEMENT ACTION. *Righthaven* hereby represents that *Righthaven* has no knowledge that any Intellectual Property used or owned by *Righthaven* infringes the Intellectual Property owned by any third Person.

13. ***Remedy.***

RIGHTHAVEN SHALL NOT BE HELD LIABLE TO ANY PARTY ON ACCOUNT OF OR DUE TO BREACH OF THIS AGREEMENT IN OR FOR ANY AMOUNT THAT EXCEEDS, IN THE AGGREGATE, THE LESSER OF: (A) ANY STEPHENS MEDIASHIP FEES RECEIVED BY RIGHTHAVEN FROM STEPHENS MEDIA WITHIN THE PRIOR SIX (6) MONTHS AND (B) ONE THOUSAND DOLLARS (\$1,000) AND RIGHTHAVEN SHALL NOT BE LIABLE TO STEPHENS MEDIA (NOR TO ANY PERSON CLAIMING ANY RIGHT, TITLE OR INTEREST DERIVED FROM OR AS SUCCESSOR TO THE STEPHENS MEDIA'S RIGHT, TITLE AND INTEREST) FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR LOSS OF CONTENT ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

14. ***Indemnification.***

Subject to Section 8, Stephens Media shall indemnify and hold *Righthaven* harmless from and against all Losses incurred by *Righthaven* with respect to or arising out of any Claim brought by any third Person against *Righthaven* based upon any act or omission (whether directly or indirectly) by Stephens Media, including, without limitation, any act or omission stemming from or arising out of this Agreement.

15. ***General Provisions.***

15.1. If any provision of this Agreement should be held to be void or unenforceable, in whole or in part, by a court of competent jurisdiction, then such court shall correct the defect in a narrowly tailored manner to approximate the manifest intent of the Parties.

15.2. Subject to Section 2, this Agreement represents the entire understanding and agreement by and between *Righthaven* and Stephens Media.

15.3. This Agreement and any Dispute shall be interpreted and enforced in accordance with the laws of the State of Nevada without regard to its conflict of law principles.

15.4. The Parties hereby submit to the non-exclusive personal jurisdiction of the state and federal courts present in Clark County, Nevada with respect to any Dispute.

15.5. The term of this Agreement (the "Term") shall commence on the Effective Date and shall end upon the termination of the Operating Agreement.

16. ***Non-Solicitation.***

During the term of this Agreement and for a period of one (1) year subsequent to the termination date of this Agreement, neither party shall make any attempt to solicit for employment any current employee of the other party without the prior written consent of such party.

17. ***Notice.***

All notices and other communications hereunder shall only be in writing and shall be given by: (a) e-mail transmission to the other party (to be followed promptly by written confirmation mailed by certified mail as provided below) and deemed delivered upon transmission when confirmed as aforesaid and provided written confirmation and receipt is obtained by the sender; (b) facsimile transmission (to be followed promptly by written confirmation mailed by certified mail as provided below) and deemed delivered upon transmission when confirmed as aforesaid and provided written confirmation and receipt is obtained by the sender; (c) overnight courier and deemed delivered one (1) day after dispatch; or (d) registered or certified mail, return receipt requested and deemed delivered on the earlier of the date of the signed receipt for same or three (3) days after posting when addressed as follows:

If to *Righthaven*:

Mr. Steven A. Gibson  
Manager  
*Righthaven* LLC  
7201 West Lake Mead Boulevard, Suite 580  
Las Vegas, Nevada 89128  
E-mail: [sgibson@righthaven.com](mailto:sgibson@righthaven.com)

If to Stephens Media:

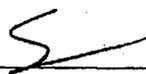
Stephens Media LLC  
Attn: General Counsel  
1111 West Bonanza Road  
Las Vegas, Nevada 89106  
E-mail: mhinueber@stephensmedia.com  
Facsimile: (702) 383-0402

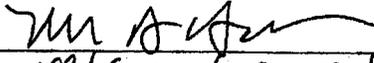
To the extent that no facsimile number is currently provided, a facsimile number will be provided within five (5) Business Days of obtaining same.

IN WITNESS WHEREOF, each of the undersigned duly execute this Agreement and represent that each has the authority to legally bind each respective entity.

Righthaven LLC

Stephens Media LLC

By:   
Name: Steven A. Gibson  
Title: Manager  
Date: January 18, 2010

By:   
Name: VP/General Counsel  
Title: \_\_\_\_\_  
Date: 1-18-2010

### SCHEDULE 1 – DEFINITIONS

“Agreement” shall mean this *Righthaven* Standard Content Protection and Stephens Mediaship Agreement.

“Assigned Infringed Copyright(s)” shall have the meaning ascribed to such term as set forth in Section 3.1.

“Assignment Termination” shall have the meaning ascribed to such term as set forth in Section 8.

“Business Days” shall mean any day, Monday through Friday, excepting Saturday and Sunday and also excepting any day on which federal chartered banks situated in Clark County, Nevada are generally not open for business.

“Claim” shall mean any demand, cause of action or claim of whatsoever nature.

“Compete” shall mean to engage, anywhere in the known universe, in any of the business of *Righthaven* or to offer or provide any of the services or products that *Righthaven* provides as of the Effective Date, including, without limitation, those services and/or products as described in this Agreement, or to have any association, partnership or ownership interest in any Person that engages in any such conduct.

“Competitor” shall mean any Person who engages in any activity that would be within the meaning of the word Compete; provided, however, no law firm shall be deemed to be any such Person.

“Content” shall mean all material, information, documents, matter, text, data, graphics, computer-generated displays and interfaces, images, photographs and works of whatsoever nature, including, without limitation, all compilations of the foregoing and all results and/or derivations of the expression of the foregoing.

“Content Notice Date” shall have the meaning ascribed to such term as set forth in Section 9.5.

“Contest Notification Date” shall have the meaning ascribed to such term as set forth in Section 8.

“Contest Dispute” shall have the meaning ascribed to such term as set forth in Section 8.

“Contested Amount” shall have the meaning ascribed to such term as set forth in Section 8.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, or the power to veto major policy decisions of any such Person, whether through the ownership of voting securities, by contract, or otherwise.

“Copyright Assignment” shall have the meaning ascribed to such term as set forth in Section 7.1.

“Copyright Assignment Notice” shall have the meaning ascribed to such term as set forth in Section 7.1.

“Costs” shall mean any and every expenditure (at commercially reasonable rates) made on the part of *Righthaven* with respect to an Infringement Action, including, without limitation, attorneys’ fees to local counsel (not employed by *Righthaven*) prosecuting such action, court reporter fees, application and registration fees, expert consultant and witness fees, computer research fees, private investigator fees, process server fees, courier fees, copy charges, long distance telephone charges, court filing fees, mailing costs, parking fees, expenses incident to travel by *Righthaven* representatives related to the Infringement Action, including air (at coach rates) and ground transport, lodging, and meals, and other disbursements made in connection with the Infringement Action.

“Declination Notice” shall have the meaning ascribed to such term as set forth in Section 3.3.

“Develop” shall mean develop, conceive, reduce to practice, create, or otherwise arise out of efforts in any manner whatsoever and through any means whether now known or hereafter developed.

“Disposition” shall mean the final disposition of an Infringement Action through settlement, compromise, judgment and/or the execution and delivery of a Recovery Instrument by an Infringer with respect to, related to or otherwise associated with the Stephens Media Assigned Copyrights.

“Dispute” shall mean any controversy or other matter with respect to, or arising out of this Agreement.

“Early Termination Amounts” shall have the meaning ascribed to such term as set forth in Section 8.

“Effective Date” shall mean the date first entered in this Agreement.

“Encumbrance” shall mean any security interest, pledge, hypothecation, lien or other encumbrance of whatsoever nature.

“Exhibit” shall mean any document attached hereto denoted as an exhibit, which by reference made herein shall be deemed incorporated herein by such reference.

"Exploit" shall mean to use, make, sell, or otherwise exploit in any manner whatsoever (through any means now known or hereafter Developed).

"General Counsel" shall have the meaning ascribed to such term as set forth in Section 9.5.

"Gibson" shall have the meaning ascribed to such term as set forth in Section 9.10.

"Gibson's Participation" shall have the meaning ascribed to such term as set forth in Section 9.12.

"Infringement Actions Costs" shall have the meaning ascribed to such term as set forth in Section 6.

"Intellectual Property" shall mean all foreign, federal, state and common law trademarks, service marks, patents, copyrights, trade secrets, universal resource locators, domain names, trade dress, mask works, know how, show how, proprietary information and other intangible asset, as well as all applications for registration or issuance and registrations and issuances relating thereto and arising there from.

"Infringed Copyright" shall mean any Stephens Media Content that Stephens Media either has actual notice is being infringed on a copyright basis or has a bon a fide belief is the subject of infringement on a copyright basis.

"Infringement Action" shall mean an action commenced in a United States federal district court against one or more Infringers related to, arising from, or concerning the validity, enforcement, preservation or enforcement of Stephens Media Assigned Copyrights brought by *Righthaven* regardless of whether this Agreement is terminated or any rights or licenses pursuant to or arising from this Agreement are terminated.

"Infringement Action Costs" shall have the meaning ascribed to such term as set forth in Section 3.

"Infringer" shall mean a Person presently infringing, or hereafter infringing Stephens Media Assigned Copyrights.

"Losses" shall mean any and all costs, expenses, fees (including, without limitation, attorneys', accountants', investigators', witnesses' and professionals' fees), charges, expenditures, liabilities, damages and other losses of whatsoever nature.

"Material Risk Conclusion" shall have the meaning ascribed to such term as set forth in Section 3.1.

"Mediation" shall have the meaning ascribed to such term as set forth in Section 8.

"Net Sortie" shall mean Net Sortie Systems, LLC, a Nevada limited-liability company.

"Notice" shall mean to provide notice pursuant to Section 17.

"Notify" shall mean to give Notice.

"Notified Copyright" shall have the meaning ascribed to such term as set forth in Section 7.1.

"Operating Agreement" shall have the meaning ascribed to such term as set forth in Section 2.

"Parties" shall mean both *Righthaven* and Stephens Media.

"Party" shall mean either *Righthaven* or Stephens Media.

"Person" shall mean any natural person, corporation, limited liability company, limited partnership, partnership, trust, association, organization or other entity of whatsoever nature.

"Recovery" shall mean any and all Sums received, transferred to, assigned, conveyed, paid or otherwise obtained by Stephens Media and/or *Righthaven* relating to, arising or resulting from (whether directly or indirectly) a Disposition, including, without limitation, all Sums paid by way of damages, costs and attorneys fees with respect to or arising from an Infringement Action.

"Recovery Instrument" shall mean any instrument or any other Content in any Media which evidences a right, title or interest in and to the Sums with respect to, related to or arising out of the Recovery.

"Remediation Declination" shall have the meaning ascribed to such term as set forth in Section 3.3.

"Remediation Option Notice" shall have the meaning ascribed to such term as set forth in Section 3.3.

"*Righthaven*" shall mean *Righthaven* LLC, a Nevada limited-liability company.

"*Righthaven* Transaction" shall have the meaning ascribed to such term as set forth in Section 2.

"Schedule" shall mean an enumerated schedule all of which shall be deemed attached hereto and incorporated herein by way of the specific reference or references made in this Agreement.

"Searching" shall mean to employ the then available technology and means in *Righthaven's* possession to find the occurrence(s) of relevant copyright infringement.

“Searching Decision” shall have the meaning ascribed to such term as set forth in Section 3.1.

“Section” shall be deemed a reference to an enumerated provision of this Agreement. Section headings are used for convenience only and shall have no interpretive effect or impact whatsoever.

“Settled Amount” shall have the meaning ascribed to such term as set forth in Section 8.

“Stephens Media” shall mean Stephens Media LLC, a Nevada limited-liability company.

“Stephens Media Affiliate” shall have the meaning ascribed to such term as set forth in Section 2.

“Stephens Media Assigned Copyrights” shall mean each copyright assigned by Stephens Media to *Righthaven* pursuant to Section 7.

“Stephens Media Contest” shall have the meaning ascribed to such term as set forth in Section 8.

“Sums” shall mean all monies, sums, consideration, receivables, asset and other things (whether tangible or intangible) of value of whatsoever nature as well as all proceeds of any and/or all of the foregoing.

“Term” shall have the meaning ascribed to such term as set forth in Section 15.5.

“Work” shall have the meaning defined in the U.S. Copyright Act of 1976, as amended.

EXHIBIT 1

COPYRIGHT ASSIGNMENT

This Copyright Assignment (the "Assignment") is made effective as of \_\_\_\_\_ (the "Effective Date") by Stephens Media LLC, a Nevada limited-liability company ("Stephens Media").

In consideration of monetary commitments and commitments to services to be provided and/or already provided by *Righthaven* LLC, a Nevada limited-liability company, ("*Righthaven*") to Stephens Media and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Stephens Media hereby transfers, vests and assigns the work depicted in Exhibit A, attached hereto and incorporated herein by this reference (the "Work"), to *Righthaven*, subject to Stephens Media's rights of reversion, all copyrights requisite to have *Righthaven* recognized as the copyright owner of the Work for purposes of *Righthaven* being able to claim ownership as well as the right to pursue past, present and future infringements of the copyright in and to the Work.

IN WITNESS WHEREOF, Stephens Media hereby executes this Assignment on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

STEPHENS MEDIA LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

SEAL

**EXHIBIT 3**

**CLARIFICATION AND AMENDMENT TO  
STRATEGIC ALLIANCE AGREEMENT**

This **CLARIFICATION AND AMENDMENT TO THE STRATEGIC LICENSE AGREEMENT** ("Amendment") is entered into by and between Righthaven LLC, a Nevada limited-liability company ("Righthaven") and Stephens Media LLC, a Nevada limited-liability company ("Stephens Media") and is made effective as of the 18<sup>th</sup> day of January, 2010 (the "Effective Date").

***RECITALS***

WHEREAS, on January 18, 2010, Righthaven and Stephens Media entered into a Strategic Alliance Agreement (the "Agreement"), which is also the Effective Date for this Amendment;

WHEREAS, all defined terms used in this Amendment shall have the same meaning assigned under Schedule 1 of the Agreement unless otherwise stated herein;

WHEREAS, it was Righthaven's and Stephens Media's intent when the parties entered into the Agreement to convey all ownership rights in and to any identified Work to Righthaven through a Copyright Assignment so that Righthaven would be the rightful owner of any identified Work and entitled to seek copyright registration of same with the United States Copyright Office;

WHEREAS, it was Righthaven's and Stephens Media's further intent when the parties entered into the Agreement to grant Stephens Media a license to Exploit the Stephens Media Assigned Copyrights for any lawful purpose whatsoever without in any way hindering the right of Righthaven to seek redress for any past, present or future infringements of such copyrights; and

WHEREAS, this Amendment amends, clarifies, corrects, ratifies or otherwise conforms the Agreement to reflect the parties' above expressed intentions when entering into the Agreement on the Effective Date.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein and other good and valuable consideration, the receipt and sufficiency of which each party expressly acknowledges, Righthaven and Stephens Media agree to this Amendment as follows:

1. Amendment of Section 7.2 of the Agreement. As of the Effective Date, Section 7.2 of the Agreement is hereby amended and replaced to read as follows:

7.2 Automatically upon execution of a Copyright Assignment, Stephens Media is granted a non-exclusive license to Exploit the Stephens Media Assigned Copyright to the greatest extent permitted by law in consideration for payment in the amount of One Dollar and Zero Cents (\$1.00) per year to Righthaven as a license or royalty for each Stephens Media Assigned Copyright as consideration

for the license granted herein (the "License Fee"). Any License Fee required under this amended and revised Section 7.2 shall be retroactive to the Effective Date. In the event that Righthaven decides to Exploit or participate in the receipt of royalties from the Exploitation of a Stephens Media Assigned Copyright other than in association with a Recovery, Righthaven shall give Stephens Media 30 days prior written notice. The parties acknowledge that failure to provide such notice would be a material breach of this Agreement and would cause Stephens Media irreparable harm, remediable through injunctive relief, which Righthaven and those asserting rights obtained from it shall have no right to oppose.

2. Amendment of Section 8 of the Agreement. As of the Effective Date, Section 8 of the Agreement is hereby amended and replaced to read as follows:

8. ***Stephens Media's Option to Re-Purchase the Stephens Media Assigned Copyright***

8.1 At any time, within its sole discretion, Stephens Media shall have the option, within 14 days of providing notice of the exercise of such option, to purchase all right and title to the Stephens Media Assigned Copyright in consideration for payment in the amount of Ten Dollars and Zero Cents (\$10.00) ("Exercised Option").

8.2 Upon an Exercised Option, Stephens Media shall pay to Righthaven the Infringement Action Costs that would otherwise work an unjust enrichment benefitting Stephens Media (but under no circumstances shall Infringement Action Costs be less than the costs of any application for registrations or registrations of copyrights made and/or procured by Righthaven for the benefit of Stephens Media), pursuant to or arising out of this Agreement. No Exercised Option shall impair Righthaven's rights to receive sums related to, with respect to and/or arising out of any Recovery pursuant to or arising out of this Agreement (the "Early Termination Amounts"), including, without limitation, a reasonable level of compensation associated with, with respect to, and arising out of, any and all efforts exerted by Righthaven to Search, find, investigate, ascertain, pursue, redress, sue or otherwise file a claim against any Person with respect to, or otherwise address any copyright infringement benefitting, whether directly or indirectly, copyright holder, pursuant to or arising out of this Agreement, as well as all other rights to quantum meruit proceeds that any court of competent jurisdiction would award under such circumstances. Righthaven shall provide Notice within thirty (30) days of an Exercised Option of Righthaven's calculation of Early Termination Amounts. Within ten (10) days of receipt of any Recovery by Stephens Media, Stephens Media shall pay to Righthaven the Early Termination Amounts or provide Notice to Righthaven of any contest whereby Stephens Media contends that the Early Termination Amounts Notified by Righthaven to Stephens Media were inaccurate or unjust and to what extent (the "Contested Amount") the Early Termination Amounts were inaccurate or unjust (the "Stephens Media Contest"). Within ten (10) days after receiving the Stephens Media Contest (the "Contest Notification Date"), Righthaven shall have

the option: (a) to elect to receive from Stephens Media within ten (10) days of the Contest Notification Date, the Early Termination Amounts minus the Contested Amount (the "Settled Amount"), or (b) to Notify Stephens Media that Stephens Media must pay to Righthaven the Settled Amount within ten (10) days of the Contest Notification Date, and that Righthaven reserves the right to make a claim that Stephens Media should pay the full Early Termination Amounts. In the event that Righthaven preserves Righthaven's right to make a Claim pursuant to Section 5(b), the Parties shall mediate the dispute associated with the Contested Amount (the "Contest Dispute") within sixty (60) days by: (x) reasonably choosing a mediator or by employing a JAMS mediator through <http://www.jamsadr.com>, (y) mediating the Contest Dispute in Las Vegas, Nevada, and (z) mediating the Contest Dispute in good faith (the "Mediation"). In the event that the Mediation is not effective in resolving the Contest Dispute within sixty (60) days of the commencement of the Mediation, Righthaven shall have the right to bring any and all relevant Claims for recovery of the Contested Amount, and any amounts accrued by Righthaven in the Mediation, in any court of competent jurisdiction, in addition to all other rights and remedies available to Righthaven, whether in law or equity.

3. Amendment of Exhibit 1 to the Agreement. As of the Effective Date, Exhibit 1 of the Agreement is hereby amended and replaced to read, and any Assignment executed subsequent to the Effective Date shall be interpreted as retroactively including the amended and replaced language set forth herein, as follows:

This Copyright Assignment (the "Assignment") is made effective as of \_\_\_\_\_ (the "Effective Date") by Stephens Media LLC, a Nevada limited-liability company ("Stephens Media").

In consideration of monetary commitments and commitments to services to be provided and/or already provided by Righthaven LLC, a Nevada limited-liability company, ("Righthaven") to Stephens Media and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Stephens Media hereby transfers, vests and assigns the work depicted in Exhibit A, attached hereto and incorporated herein by this reference (the "Work"), to Righthaven, all right, title and interest to said Work such that Righthaven shall be recognized as the copyright owner of the Work, shall have the right to register said Work with the United States Copyright Office, and shall have the right to pursue past, present and future infringements of the copyright in and to the Work.

**IN WITNESS WHEREOF**, Stephens Media hereby executes this Assignment on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

4. Incorporation of Recitals. The above Recitals are expressly incorporated into and shall be deemed to constitute terms and conditions of this Amendment.

5. Agreement Modification. Except as otherwise expressly set forth in this Amendment, all terms, conditions, representations and warranties set forth in the

Agreement shall survive and shall in no way be modified, supplanted, altered or changed as a result of this Amendment.

6. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be an original, and all of which shall collectively constitute the same document. This Amendment may also be executed by signatures provided by electronic facsimile transmission or by electronic mail transmission (also known as "Fax" or "e-mail" copies). Facsimile or e-mail signatures shall be as binding and effective as original signatures.

IN WITNESS WHEREOF, each of the undersigned duly execute this Amendment and represent that each has the authority to legally bind each respective entity.

Righthaven LLC

Stephens Media LLC

By:   
Name: Steven A. Gibson  
Title: Manager  
Date: 5-9-11

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Agreement shall survive and shall in no way be modified, supplanted, altered or changed as a result of this Amendment.

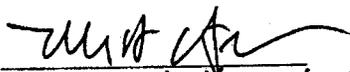
6. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be an original, and all of which shall collectively constitute the same document. This Amendment may also be executed by signatures provided by electronic facsimile transmission or by electronic mail transmission (also known as "Fax" or "e-mail" copies). Facsimile or e-mail signatures shall be as binding and effective as original signatures.

IN WITNESS WHEREOF, each of the undersigned duly execute this Amendment and represent that each has the authority to legally bind each respective entity.

Righthaven LLC

Stephens Media LLC

By: \_\_\_\_\_  
Name: Steven A. Gibson  
Title: Manager  
Date: \_\_\_\_\_

By:   
Name: Mark A. Hinneber  
Title: Vice President  
Date: 5/9/11

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10 Attorneys For Defendant & Counterclaimant  
11 THOMAS A. DIBIASE

12 UNITED STATES DISTRICT COURT  
13 DISTRICT OF NEVADA  
14

15 RIGHTHAVEN LLC, a Nevada limited-  
liability company, )  
16 )  
Plaintiff, )  
17 v. )  
18 THOMAS A. DIBIASE, an individual, )  
19 )  
Defendant. )  
20 )

CASE NO.: 2:10-cv-01343-RLH-PAL

**DECLARATION OF BART E.  
VOLKMER IN SUPPORT OF  
DEFENDANT/COUNTERCLAIMANT  
THOMAS A. DIBIASE'S MOTION TO  
COMPEL THE PRODUCTION OF  
DOCUMENTS FROM  
PLAINTIFF/COUNTER-DEFENDANT  
RIGHTHAVEN LLC**

21 THOMAS A. DIBIASE, an individual, )  
22 )  
Counterclaimant, )  
23 v. )  
24 RIGHTHAVEN LLC, a Nevada limited-  
liability company, )  
25 )  
Counter-defendant. )  
26 )  
27 )  
28 )

1 I, Bart E. Volkmer, declare as follows:

2 1. I am counsel for Defendant-counterclaimant Thomas A. DiBiase ("DiBiase"). I  
3 submit this declaration in support of his motion to compel the production of documents. I have  
4 personal knowledge of the facts set forth herein and, if called as a witness, I could and would  
5 testify competently to them.

6 2. On January 20, 2011, DiBiase served on Righthaven a First Set of Requests for  
7 Production to Righthaven LLC. A true and correct copy of those requests is attached hereto as  
8 **Exhibit A.**

9 3. February 25, 2011, Righthaven served its response to DiBiase's First Set of  
10 Requests for Production. A true and correct copy of that response is attached hereto as **Exhibit**  
11 **B.**

12 4. On March 2, 2011, I wrote a letter to Righthaven's counsel setting forth the  
13 deficiencies in Righthaven's response to DiBiase's First Set of Requests for Production to  
14 Righthaven LLC. A true and correct copy of that letter is attached hereto as **Exhibit C.**

15 5. The parties met and conferred concerning Righthaven's response to DiBiase's  
16 First Set of Requests for Production on March 9, 11, 16 and 17. During those sessions,  
17 DiBiase's counsel explained the relevance of his document requests and attempted to persuade  
18 Righthaven's counsel to withdraw Righthaven's lodged objections. Righthaven's counsel agreed  
19 to produce documents in response to certain requests, but continued to stand on objections, or  
20 only agreed to a very limited production set, with respect to Request Nos. 30-34, 39, 45-47, 51,  
21 53-56, 58, 63-74, 85-88, 91-94, 97-102, and 104-105. I sent Righthaven's counsel a letter on  
22 March 25, 2011 that memorialized the parties' meet and confer sessions. A true and correct copy  
23 of that letter is attached hereto as **Exhibit D.**

24 6. To my knowledge, Righthaven has not produced any documents in response to  
25 DiBiase's requests, including the most basic evidence in this case, such as the alleged assignment  
26 of the copyright in the McMurdo Article from Stephens to Righthaven, communications from  
27 Righthaven to the Copyright Office, and the copyright registration itself. The few documents  
28 that Righthaven has produced were provided pursuant to Supplemental Initial Disclosures on

1 April 8, 2011, May 12, 2011, and May 17, 2011, not in response to DiBiase's production  
2 requests. Those documents are: (1) an unexecuted version of Righthaven LLC's operating  
3 agreement; (2) a Strategic Alliance Agreement ("SAA") between Righthaven and Stephens  
4 Media; (3) Righthaven's Articles of Organization; (4) a May 9, 2011 amendment to the SAA;  
5 (5) a letter from Righthaven to Stephens; (6) a copy of the print version of the newspaper article  
6 at issue in this case; (7) ten pages of research concerning Mr. DiBiase; and (8) an executed  
7 version of Righthaven's operating agreement.

8 7. Attached hereto as **Exhibits E and F** are true and correct copies of online  
9 magazine articles entitled "Second Newspaper Chain Joins Copyright Trolling Operation" and  
10 "Righthaven Expands Troll Operations With Newspaper Giant" stating that WEHCO Media and  
11 MediaNews Group have signed on as Righthaven clients.

12 8. A true and correct copy of the Strategic Alliance Agreement between Righthaven  
13 and Stephens Media LLC is attached hereto as **Exhibit G**. While marked "Confidential,"  
14 counsel for Righthaven agreed to remove that confidentiality designation on May 2, 2011 in light  
15 of this Court's April 14, 2011 Order in *Righthaven v. Democratic Underground*, Case No. 2:10-  
16 cv-01356-RLH-GWF, Docket No. 93.

17 9. On April 29, 2011, I sent an email message to Righthaven's counsel inquiring  
18 about the status of Righthaven's document production and requesting that Righthaven produce a  
19 privilege log. Counsel for Righthaven never responded to my message. A true and correct copy  
20 of my April 29, 2011 email message is attached hereto as **Exhibit H**.

21 10. On May 4, 2011, I sent a follow-up email inquiring about Righthaven's document  
22 production. Counsel for Righthaven never responded to my message. A true and correct copy of  
23 my May 4, 2011 email message is attached hereto as **Exhibit I**.

24 11. Attached hereto as **Exhibit J** is a true and correct copy of Righthaven's Operating  
25 Agreement that was produced by Righthaven as a supplemental initial disclosure on April 8,  
26 2011. Certain financial information has been redacted from this agreement pursuant to an  
27 agreement of the parties.

28

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct. Executed this 18<sup>th</sup> day of May 2011, at Palo Alto, California.

3 /s/ Bart E. Volkmer  
4 Bart E. Volkmer

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10 Attorneys For Defendant & Counterclaimant  
11 THOMAS A. DIBIASE

12 UNITED STATES DISTRICT COURT  
13 DISTRICT OF NEVADA  
14

15 RIGHTHAVEN LLC, a Nevada limited-  
liability company, )  
16 )  
17 Plaintiff, )  
18 v. )  
19 THOMAS A. DIBIASE, an individual, )  
20 Defendant. )

21 THOMAS A. DIBIASE, an individual, )  
22 Counterclaimant, )  
23 v. )

24 RIGHTHAVEN LLC, a Nevada limited-  
liability company, )  
25 Counter-defendant. )  
26 )  
27 )  
28 )

CASE NO.: 2:10-cv-01343-RLH-PAL

**JOINT STIPULATION REGARDING  
DEFENDANT-COUNTERCLAIMANT  
THOMAS A. DIBIASE'S MOTION TO  
DISMISS FOR LACK OF SUBJECT-  
MATTER JURISDICTION;  
STIPULATION REGARDING  
EXTENSION OF TIME TO FILE  
OPPOSITION TO DIBIASE'S MOTION  
TO DISMISS (FIRST REQUEST)**

1 WHEREAS, on May 4, 2011, Defendant-counterclaimant Thomas A. DiBiase  
2 (“DiBiase”) filed a motion to dismiss Righthaven LLC’s (“Righthaven”) complaint for lack of  
3 subject-matter jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3) (“Motion To Dismiss”).

4 WHEREAS, the Motion To Dismiss quoted from Righthaven’s Operating Agreement  
5 (“Operating Agreement”) and the accompanying declaration of Bart E. Volkmer attached that  
6 agreement as Exhibit B. The Operating Agreement, in its entirety, had been designated by  
7 Righthaven as “Confidential” under the protective order in this action.

8 WHEREAS, DiBiase filed a redacted version of the Motion To Dismiss on the public  
9 docket and omitted Exhibit B from the Volkmer Declaration from its public filing based on  
10 Righthaven’s confidentiality designation for the Operating Agreement.

11 WHEREAS, Righthaven seeks an extension of time to file its opposition to the Motion  
12 To Dismiss from May 18, 2011 to May 20, 2011. Righthaven has not sought a prior extension of  
13 this deadline and seeks an extension based on scheduling conflicts of its counsel.

14 WHEREAS, the parties have met and conferred and agreed that:

15 (1) an unredacted version of the Motion To Dismiss may be filed on the public docket;  
16 (2) a redacted version of the Operating Agreement may be filed on the public docket;  
17 (3) redactions to the Operating Agreement shall be limited to the following: (i) salary  
18 information for Righthaven’s CEO contained in Section 6.2; (ii) salary information for  
19 Righthaven’s COO contained in Section 6.4; (iii) the identification of and salary information for  
20 Righthaven’s CAO contained in Section 6.6; and (iv) the capital contributions of Righthaven’s  
21 members contained in Section 9.2 and Exhibit 9.1; and

22 (4) Righthaven’s opposition to the Motion Dismiss shall be due on May 20, 2011.

23 IT IS HEREBY STIPULATED AND AGREED:

24 (1) The unredacted version of the Motion To Dismiss, attached hereto as Exhibit A, shall  
25 be filed on the public docket in place of Docket No. 47.

26 (2) The redacted version of the Operating Agreement, attached hereto as Exhibit B, shall  
27 be filed on the public docket in place of Exhibit B to Docket No. 48; and

28 (3) Righthaven’s opposition to the Motion To Dismiss shall be due on May 20, 2011.

1 DATED: May 17, 2011

2 WILSON SONSINI GOODRICH & ROSATI SHAWN A. MANGANO, LTD.

3

4 By: /s/ Bart E. Volkmer By: /s/ Shawn A. Mangano

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*Attorney for Plaintiff and Counter-  
Defendant Righthaven LLC*

11 CHAD A. BOWERS, LTD.  
12 Chad A. Bowers, Esq.  
3202 West Charleston Boulevard  
13 Las Vegas, Nevada 89102

14 *Attorneys for Defendant and*  
15 *Counterclaimant Thomas A. DiBiase*

16

IT IS SO ORDERED:

17

18

19

CHIEF UNITED STATES DISTRICT JUDGE

20

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DATED: \_\_\_\_\_

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**EXHIBIT B**  
**(PART 1 OF 4)**

**OPERATING AGREEMENT  
OF  
RIGHTHAVEN LLC  
A NEVADA LIMITED-LIABILITY COMPANY**

**CONFIDENTIAL**

**THE INTERESTS DESCRIBED AND REPRESENTED BY THIS OPERATING AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "SECURITIES ACT" OR ANY APPLICABLE STATE SECURITIES LAWS ("STATE ACTS")) AND ARE RESTRICTED SECURITIES AS THAT TERM IS DEFINED IN RULE 144 UNDER THE SECURITIES ACT. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR QUALIFICATION UNDER THE SECURITIES ACT AND APPLICABLE STATE ACTS OR PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT AND APPLICABLE STATE ACTS, THE AVAILABILITY OF WHICH IS TO BE ESTABLISHED TO THE SATISFACTION OF THE COMPANY.**

**CONFIDENTIAL**

**TABLE OF CONTENTS**

Article 1. DEFINITIONS AND INTERPRETATIONS ..... 1

    1.1 Terms..... 1

    1.2 Definitions..... 1

Article 2. FORMATION OF COMPANY ..... 1

    2.1 Formation. .... 1

    2.2 Name. .... 1

    2.3 Place of Business. .... 2

    2.4 Registered Office and Registered Agent..... 2

    2.5 Term. .... 2

Article 3. LEGAL AUTHORITY OF THE BUSINESS OF THE COMPANY &  
PURPOSE OF THE COMPANY ..... 2

    3.1 Scope Of Legal Authority Of The Business Of The Company..... 2

    3.2 The Company’s Focus. .... 3

Article 4. NAMES, ADDRESSES AND RESPECTIVE MEMBERSHIP  
INTERESTS OF THE MEMBERS ..... 4

    4.1 Names and Addresses. .... 4

    4.2 Membership Interests. .... 4

Article 5. RIGHTS AND DUTIES OF MANAGER ..... 5

    5.1 Management..... 5

    5.2 Certain Powers of the Manager. .... 5

    5.3 Limitations on Authority. .... 7

    5.4 Liability for Certain Acts. .... 8

    5.5 Bank Accounts. .... 9

    5.6 Indemnity of the Manager, Employees and Other Agents. .... 9

    5.7 Resignation. .... 9

    5.8 Removal..... 9

    5.9 Vacancies..... 10

    5.10 Reimbursement, Organization Expenses..... 11

    5.11 Right to Rely on the Manager. .... 11

Article 6. APPOINTMENT OF OFFICERS, AUTHORITY AND  
COMPENSATION ..... 11

    6.1 Appointment and Termination. .... 11

    6.2 CEO..... 12

    6.3 Authority of the CEO. .... 12

    6.4 COO. .... 14

6.5	Authority of the COO.....	14
6.6	CAO. ....	14
6.7	Authority of the CAO.....	15
6.8	Expenses.....	15
Article 7. RIGHTS AND OBLIGATIONS OF MEMBERS .....		15
7.1	Limitation of Liability.....	15
7.2	List of the Members. ....	15
7.3	Members Have No Agency Authority.....	16
7.4	Company Books. ....	16
7.5	Priority and Return of Capital.....	16
Article 8. MEETING OF MEMBERS .....		16
8.1	Annual Meetings.....	16
8.2	Quarterly Meetings.....	17
8.3	Special Meetings.....	17
8.4	Place of Meetings.....	17
8.5	Notice of Meetings.....	17
8.6	Meetings of all Members. ....	18
8.7	Record Date. ....	18
8.8	Quorum.....	18
8.9	Manner of Acting .....	18
8.10	Proxies.....	19
8.11	Action by Members Without a Meeting.....	19
8.12	Waiver of Notice.....	19
8.13	Manager Participation In Member Meetings.....	19
Article 9. CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS.....		20
9.1	Members' Capital Contributions.....	20
9.2	Capital Accounts.....	20
Article 10. RESERVED.....		20
Article 11. ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS.....		20
11.1	Allocations of Profits and Losses.....	20
11.2	Distributions. ....	20
11.3	Accounting Principles. ....	21
11.4	Interest on and Return of Capital Contributions. ....	21
11.5	Accounting Period.....	21
11.6	Records and Reports.....	21
11.7	Returns and other Elections. ....	22
11.8	Tax Matters Partner.....	22

Article 12. CONFIDENTIALITY AND NONCOMPETITON .....	22
Article 13. BUDGET.....	24
Article 14. RESERVED.....	24
Article 15. TRANSFERABILITY .....	24
15.1    General.....	24
15.2    Right of First Refusal.....	24
15.3    Transfers Not Recognized in Absence of Consent.....	26
15.4    Additional Conditions to Recognition of Transferee.....	27
15.5    Change of Control Forfeiture.....	28
Article 16. ISSUANCE OF MEMBERSHIP INTERESTS.....	28
Article 17. DISSOLUTION AND TERMINATION.....	28
17.1    Dissolution.....	28
17.2    Effect of Dissolution.....	29
17.3    Winding Up, Liquidation and Distribution of Assets.....	29
17.4    Filing or Recording Statements.....	30
17.5    Return of Contribution Nonrecourse to Other Members.....	30
Article 18. MISCELLANEOUS PROVISIONS .....	30
18.1    Notices.....	30
18.2    Books of Account and Records.....	30
18.3    Business Reports.....	31
18.4    Application of State Law.....	31
18.5    Waiver of Action for Partition.....	31
18.6    Amendments.....	31
18.7    Execution of Additional Instruments.....	32
18.8    Effect of Inconsistencies with the Act.....	32
18.9    Reserved.....	32
18.10   Rights and Remedies Cumulative.....	32
18.11   Severability.....	32
18.12   Heirs, Successors and Assigns.....	33
18.13   Creditors.....	33
18.14   Counterparts.....	33
18.15   Reserved.....	33
18.16   Power of Attorney.....	33
18.17   Investment Representations.....	34
18.18   Representations and Warranties.....	35
Article 19. SECURITIES MATTERS.....	37

19.1.	No Parole Reliance.....	37
19.2.	Own Account. ....	38
19.3.	Accurate Information. ....	38
19.4.	Risk Factors Disclosure.....	38
SCHEDULE 1 - DEFINITIONS.....		1
EXHIBIT 5.8	ARBITRATION	
EXHIBIT 6	EMPLOYMENT AGREEMENTS	
EXHIBIT 9.1	INITIAL CAPITAL CONTRIBUTIONS	
EXHIBIT 9.1(A)	ASSIGNMENT	
EXHIBIT 13	BUDGET	
EXHIBIT 18.1	NAME, ADDRESS AND MEMBERSHIP INTEREST	

THIS Operating Agreement (the "Agreement") is made and entered into this 18th day of January, 2010 (the "Effective Date"), by and amongst *Righthaven* LLC, a Nevada limited-liability company (the "Company"), Net Sortie Systems, LLC, a Nevada limited-liability company ("Net Sortie") and SI Content Monitor LLC, an Arkansas limited-liability company ("Stephens"). In consideration of the mutual covenants herein contained and for other good and valuable consideration, the Members and the Company hereby agree as set forth below.

**ARTICLE 1.  
DEFINITIONS AND INTERPRETATIONS**

1.1 Terms.

Certain terms used herein shall have the meanings set forth in Schedule 1.

1.2 Definitions.

All the defined terms as set forth in Schedule 1, if defined in the singular or present tense, shall also retain such general meaning if used in the plural or past tense, and if used in the plural or past tense, shall retain the general meaning if used in the singular or present tense, and the masculine gender shall include the feminine and neuter genders and vice versa.

**ARTICLE 2.  
FORMATION OF COMPANY**

2.1 Formation.

In January 2010, the Company was organized as a limited-liability company pursuant to the Act by executing and delivering articles of organization to the Nevada Secretary of State in accordance with and pursuant to the Act. The Company and the Members hereby forever discharge the organizer, and the organizer shall be indemnified by the Company and the Members from and against, any expense or liability actually incurred by the organizer by reason of having been the organizer of the Company.

2.2 Name.

The name of the Company is *Righthaven* LLC, a Nevada limited-liability company.

**2.3 Place of Business.**

The principal place of business of the Company shall be 7201 West Lake Mead Boulevard, Suite 580, Las Vegas, Nevada or at such other place that the Manager may deem appropriate from time to time (any such location shall be known herein as the "Principal Place of Business"). The Manager may create additional offices from which the Company may conduct Business as the Manager may deem appropriate from time to time (the "Additional Offices"). The Manager shall promptly provide Notice to all Members of any change in the Principal Place of Business as well as all Additional Offices.

**2.4 Registered Office and Registered Agent.**

The Company's initial registered office and the name of the registered agent at such address shall be as set forth in the Articles of Organization. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Nevada Secretary of State pursuant to the Act.

**2.5 Term.**

The Company shall continue in existence until the Company terminates in accordance with the provisions of this Agreement or the Act (with such date upon which such termination occurs, if ever, known herein as the "Termination Date").

**ARTICLE 3.**

**LEGAL AUTHORITY OF THE BUSINESS OF THE COMPANY & PURPOSE OF THE COMPANY**

**3.1 Scope Of Legal Authority Of The Business Of The Company.**

The business of the Company (the "Business") shall be to:

- (a) engage in any lawful activity, including, without limitation, any and all activities in the effectuation, furtherance and fostering of the Focus;
- (b) exercise all other powers necessary to, or reasonably connected with, the Business which may be legally exercised by limited-liability companies under the Act; and
- (c) engage in all activities necessary, customary, convenient, or incident to any of the foregoing.

**3.2 The Company's Focus.**

The Company shall be unfettered in the Company's ability to conduct the Business; provided, however, that the Company shall devote the Company's full energies to the following activities which are recognized by the Members as the focus of the Company (the "Focus"), and which shall only be changed upon an affirmative vote of the Members holding at least a Super-Majority Interest (provided, further, that nothing in this Section 3.2 shall restrict the Manager and/or the officers from conducting Business operations that are reasonable expansions of, and upon, the Focus and/or reasonably related Business operations):

- (a) provide the means to third Persons to address and remedy copyright infringements consistent with the approach set forth in this Section 3.2;
- (b) solicit from third Persons the self-identified existence of copyright infringements ("Self-Identified Infringements");
- (c) identify for third Persons copyright infringements ("Company Identified Infringements" and Self-Identified Infringements and Company Identified Infringements known herein as "Identified Infringements") to receive a limited, revocable assignment (with a license-back) of copyrights from third Persons in order to enable the Company to recover damages associated with Identified Infringements;
- (d) submit applications for copyright registrations with relevant national copyright offices in relevant nations throughout the world in order to effect copyright registrations that will serve as a basis of the recoveries of damages associated with Identified Infringements whereby those applications will identify the Company as the owner of the copyright and whereby the Company's respective customer that respectively assigned said copyrights would ultimately enjoy the copyright registration upon revocation of the assignment of said respective copyrights to the Company;
- (e) pursue through all reasonable legal means the recovery of damages (sounding in actions grounded exclusively in copyright infringement) arising out of Identified Infringements;
- (f) provide licenses for a fee to third Persons (the "Mark Licensees") of the Company's service mark (as a certification mark) to place on third Persons media indicating to the public at large that the Mark

Licenses are provided protective service by the Company to address copyright infringements;

- (g) be a means through which third Persons may repose with the Company the rights required to enable the Company to effect use-based licenses to other third Persons for a royalty whereby the Company is permitted to receive a percentage of said royalties in consideration of the Company's service in this regard; and
- (h) do all other acts, acquire all property, hire all employees, engage all subcontractors and/or service providers necessary, appropriate and/or desirable to effect, further and/or administer all of the items set forth in this Section 3.2(a) through Section 3.2(g).

**ARTICLE 4.**  
**NAMES, ADDRESSES AND RESPECTIVE MEMBERSHIP INTERESTS OF THE MEMBERS**

**4.1 Names and Addresses.**

The names and addresses (unless otherwise designated by the initial Members) of the initial Members are as follows:

<u>NAME</u>	<u>ADDRESS</u>
Net Sortie	9506 West Flamingo Road, Suite 101 Las Vegas, Nevada 89147
Stephens	111 Center Street, Suite 2500 Little Rock, Arkansas 72201

The names and addresses of all of the Members shall be maintained by the Manager as provided under Section 11.6.

**4.2 Membership Interests.**

The respective percentage of ownership by each Member of the equity interest of the Company shall be equal to the percentage listed by each Member's name on Exhibit 18.1 (such respective percentage interest of ownership shall be known herein as a "Membership Interest").

**ARTICLE 5.  
RIGHTS AND DUTIES OF MANAGER**

**5.1 Management.**

The Business and affairs of the Company shall be managed by the Company's Manager. Subject to Section 5.8, the Manager of the Company shall be Net Sortie. Except for situations in which the approval of the Members is expressly required by this Agreement or by non-waivable provisions of applicable law, the Manager shall have full and complete authority, power and discretion to manage and control the Business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts and activities customary or incident to the management of the Business. The Manager shall have the authority to act on behalf of the Company, and to legally bind the Company, and to delegate to any Officer, in writing, authority to make disbursements out of Company accounts with financial institutions. Unless authorized to do so by this Agreement or by the Manager, no Officer, employee or other agent of the Company, other than the Manager, shall have any power or authority to bind the Company in any way, to pledge the Company's credit or to render the Company liable pecuniarily for any purpose. Notwithstanding the foregoing, as provided further in Article 6, the Manager hereby delegates full power and authority to the CEO (as defined in Article 6) to implement all policies and decisions made by the Manager with respect to the day-to-day management and operation of the Business and affairs of the Company (including, without limitation, those powers set forth in Section 5.2, subject to the provisions of Section 5.3 and other provisions of this Agreement requiring approval by Members holding at least a Super-Majority Interest.

**5.2 Certain Powers of the Manager.**

Without limiting the generality of Section 5.1 but subject to the limitations of Section 5.3, the Manager shall have full power and authority, on behalf of the Company:

- (a) to acquire property from any Person as the Manager may determine;
- (b) to borrow money for the Company from banks, other lending institutions, the Manager, the Members, or Affiliates of the Manager or the Members on such terms as the Manager deems appropriate, and in connection therewith, to hypothecate, encumber and grant security interests in Company Property to secure repayment of the borrowed sums;
- (c) to purchase liability and other insurance to protect the Company Property and the Business of the Company;

- (d) to hold and own any and all Company Properties in the name of the Company;
- (e) to invest any Company funds in time deposits, short-term governmental obligations, commercial paper or other investments;
- (f) to execute on behalf of the Company all instruments and documents, including, without limitation, checks; drafts; notes and other negotiable instruments; mortgages or deeds of trust; security agreements; financing statements; documents providing for the acquisition, mortgage or disposition of Company property; assignments; bills of Transfer; leases; partnership agreements, operating (or limited-liability company) agreements of other limited-liability companies; and any other instruments or documents necessary or appropriate, as determined in the discretion of the Manager, to the conduct of the Business of the Company;
- (g) to employ accountants, legal counsel, managing agents or other experts to perform services for the Company and to compensate them from Company funds;
- (h) to enter into any and all other agreements on behalf of the Company, with any other Person for any purpose, in such forms as the Manager may approve;
- (i) to execute and file such other instruments, documents and certificates which may from time to time be required by the laws of the State of Nevada or any other jurisdiction in which the Company shall determine to do Business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the Company;
- (j) to file any and all registrations necessary or appropriate, in the sole discretion of the Manager, to protect Intellectual Property rights of the Company;
- (k) to do and perform all other acts as may be necessary or appropriate to the conduct of the Business;
- (l) to hire employees necessary and/or appropriate to conduct the Business;
- (m) to terminate employees in the Manager's sole and absolute discretion;

- (n) to appoint Officers; provided, however, that the Manager shall provide prompt Notice ("Officer Notice") to all Members of any appointment of any Officer (other than the Officers instituted by virtue of this Agreement); provided, further, that in any Officer Notice the Manager shall indicate both the name of the individual that is the subject of an Officer appointment as well as the title of such Officer; and
- (o) to terminate any Officer; provided, however, that the Manager shall provide prompt Notice to all Members of any termination of any Officer.

Nothing set forth above in this Section 5.2 shall preclude the Manager from engaging in any transaction with an Affiliate of the Manager on an arm's length basis.

### 5.3 Limitations on Authority.

Notwithstanding any other provision of this Agreement, the Manager shall not cause or commit the Company to do any of the following without the express written consent of Members holding at least a Super-Majority Interest:

- (a) mortgage, pledge, hypothecate, encumber or grant a security interest of (collectively, "Pledge") any Company Property to the extent that the secured indebtedness from such Pledge would exceed \$100,000.00;
- (b) incur or refinance any indebtedness for money borrowed by the Company, whether secured or unsecured and including any indebtedness for money borrowed from a Member if, after such financing, the aggregate indebtedness of the Company would exceed \$100,000.00;
- (c) lend money to or guaranty or become surety for the obligations of any Person, except for reasonable advances of salaries of Officers and other employees of the Company;
- (d) cause the Company to commence a voluntary case as debtor under the United States Bankruptcy Code;
- (e) any merger, consolidation, Reorganization or recapitalization involving the Company;
- (f) any Transfer of substantially all of the assets of the Company;

- (g) any dissolution, liquidation or voluntary termination of the Company;
- (h) any repurchase or redemption of any Membership Interests;
- (i) any purchase, acquisition or otherwise becoming the holder, beneficially or of record, of any interest in any Person or purchase or acquisition of any such Person by means of any transaction or series of related transactions (including, without limitation, any merger, consolidation or recapitalization, or acquisition of all or any substantial portion of the assets of any such Person);
- (j) any entry into any transaction with any Officer, employee, Member, or affiliate of the Company, or any affiliate or relative of the foregoing (other than the transactions pursuant to, acknowledged in, arising out of and/or described in this Agreement, inclusive, but not limited to, the Exhibits, as well as any other attachments incorporated herein);
- (k) any material changes in the terms of the employment, including compensation, of senior management;
- (l) any conversion of the Company to a corporation or any election to be taxable as a corporation; and
- (m) any establishment of any joint venture, partnership, limited liability company or other similar relationship between the Company and any third Person (other than the transactions pursuant to, acknowledged in, arising out of and/or described in this Agreement, inclusive of, but not limited to, the Exhibits, as well as any other attachments incorporated herein).

**5.4 Liability for Certain Acts.**

5.4.1 The Members stipulate that neither the Company nor the Manager, in any way, covenants, represents or guarantees that the operations of the Company will be profitable or that any Member will receive a return of or on any Member's Capital Contributions, at any point in time or over any period of time.

5.4.2 The Members hereby covenant that the Manager shall not be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member (or successor thereto), except to the extent, if any, that

the loss or damage shall have been the result of gross negligence, fraud, willful misconduct, or a willful material breach of this Agreement, by the Manager.

5.5 Bank Accounts.

The Manager may from time to time open bank and/or financial institution accounts in the name of the Company, and the Manager shall be the sole signatory thereon; provided, however, that the Manager may authorize by way of a signed writing, kept by the CAO in the Company's books and records, one or more Officers to have signatory authority thereon, with full disbursement authority, subject to Article 13.

5.6 Indemnity of the Manager, Employees and Other Agents.

The Company shall indemnify (including, without limitation, by way of making advances for expenses to the maximum extent permitted under the Act for the benefit of, so long as the recipient of such advances undertakes to repay such advances in the event that a court or other controlling authority determines that the Company is not liable by the terms of this Agreement to so indemnify) the Manager, Officers, employees and/or agents of the Company with respect to any Claim brought by any Person with respect to any act and/or omission committed and/or services performed within the scope of furthering the Business of the Company so long as said act, omission or provision of services was not the subject of intentional misconduct.

5.7 Resignation.

The Manager may resign at any time by giving three (3) days Notice to the Members. The resignation of the Manager shall take effect upon receipt of Notice thereof or at such later time as shall be specified in such Notice. The resignation of a Manager who is also a Member shall not affect the Manager's rights as a Member.

5.8 Removal.

At a meeting of the Members called, in writing, in accordance with Article 8, expressly for such purpose, the Manager may be removed: (a) if any of the following occur: (i) the conviction of or any plea of no contest by the Manager to a felony, (ii) the commission of an act or willful omission by the Manager involving fraud, embezzlement, or financial dishonesty, (iii) engaging in duties required of the Manager by individuals acting on behalf of the Manager under the influence of alcohol or illegal drugs, the use of illegal drug (whether or not at the workplace) or other repeated conduct causing the Company substantial public disgrace, disrepute, or economic harm, (iv) gross dereliction of duty to the Company or any of its affiliates, (v) the repeated refusal or failure by the Manager to follow the lawful and reasonable directives of the Members, or (vi) the material breach of the Manager of any of the Manager's other

obligations hereunder which continues uncured for more than thirty (30) days after the Manager receives written notice thereof from the Company, and (b) by the affirmative vote of Members holding at least a Super-Majority Interest determined without regard to any Voting Interest held by such to-be-removed Manager or any Affiliate of such to-be-removed Manager; provided, however, if the Manager is a non-natural Person and if the Manager is declared by a court of competent jurisdiction bankrupt or otherwise dissolves, then in either such event, said Manager shall be automatically removed as Manager without any further action on the part of the Members. If there is a Deadlock on the decision to remove the Manager (a "Removal Deadlock"), then any of the Member(s) who desire removal of the Manager (the "Claimant(s)") may commence arbitration proceedings regarding whether Misconduct occurred pursuant to the procedures set forth in Exhibit 5.8 (the "Misconduct Arbitration Proceedings") by providing Notice within five (5) Business Days (such fifth (5th) Business Day known herein as the "Arbitration Commencement Date") after a Removal Deadlock to all Members of the Claimant's desire to commence arbitration proceedings. During the pendency of the Misconduct Arbitration Proceedings and until a definitive arbitration decision is announced (the "Period of Arbitration"), the Manager who is the subject of the Misconduct Arbitration Proceedings (the "Suspended Manager") shall be suspended from performing the role of Manager throughout the Period of Arbitration. The Members shall designate an interim Manager (the "Interim Manager"), following the procedures set forth in Section 5.9, to act as the Manager during the Period of Arbitration. Upon an arbitration decision that there was no Misconduct, then the Suspended Manager shall immediately resume the role of Manager and the Interim Manager shall no longer perform the role of Manager at any level and in any regard. The removal *per se* of a Manager who is also a Member shall not affect the Manager's rights as a Member.

5.9 Vacancies.

Any vacancy in the office of Manager (including, without limitation, the occurrence of a Suspended Manager) shall be filled by the affirmative vote of Members holding at least a Super-Majority Interest. In the event an affirmative vote of the Members holding at least a Super-Majority Interest to fill any such vacancy cannot be obtained within fifteen (15) days of the removal of the Manager, the CEO shall call a Special Meeting of the Members. At such Special Meeting, Net Sortie and Stephens (and no other Members, or Transferees thereof) shall each produce a list of five (5) proposed candidates (the "Candidates") to fill the office of Manager (a "Managers List"), ranked according to preference with one being the indication of the highest preference and five being the indication of the lowest preference, and disclose said list and such preferences to each other. If any of the Candidates are chosen both by Stephens and by Net Sortie (a "Match") and there is only one Match, then the Match shall become the new Manager. If there is more than one Match, then the Match with the highest aggregate numerical preference rating ("the Highest Aggregate Rank")

taking into consideration both the rankings indicated by Stephens and Net Sortie shall become the New Manager. If there are Matches that share the Highest Aggregate Rank (the "High-Ranked Matches"), then the new Manager shall be designated by process of a coin toss (with Stephens flipping the coin and one Candidate designated as heads and the other designated as tails), or if necessary there shall be multiple coin tosses in the event of several High-Ranked Matches. If there are no Matches and the occurrence of the vacancy was due to a removal pursuant to Section 5.8, then Net Sortie shall have the right to choose the new Manager amongst any of the five-ranked Stephen's Candidates. If there are no Matches and the occurrence of the vacancy was not due to a removal pursuant to Section 5.8, then there shall be a coin toss (with Stephens flipping the coin and Net Sortie calling heads or tails) and the winner of the coin toss shall be entitled to choose as the new Manager from amongst the five-ranked Candidates chosen by the Member who lost the coin toss.

**5.10 Reimbursement, Organization Expenses.**

The Company, within five (5) Business Days after the Effective Date, shall reimburse the Net Sortie in the amount of twenty-one thousand dollars (\$21,000) for the expenses, in part, incurred in connection with the formation, organization and capitalization of the Company.

**5.11 Right to Rely on the Manager.**

Any Person dealing with the Company may rely (without duty of further inquiry) upon a certificate signed by the Manager as to:

- (a) the identity of the Manager or any Member;
- (b) the existence or nonexistence of any fact or facts which constitute a condition precedent to acts on behalf of the Company by the Manager or which are in any other manner germane to the affairs of the Company;
- (c) the Persons who are authorized to execute and deliver any instrument or document of the Company; or
- (d) any act or failure to act by the Company or any other matter whatsoever involving the Company or any Member.

**ARTICLE 6.**

**APPOINTMENT OF OFFICERS, AUTHORITY AND COMPENSATION**

**6.1 Appointment and Termination.**

The CEO shall have the general powers and duties of management usually vested in the office of president of a corporation, subject to Section 5.1 and Section 5.3, and shall have such other powers and duties as may be prescribed by the Manager or this Agreement. Subject to the control of the Manager and with respect to Company matters requiring approval of the Manager pursuant to and arising out of this Agreement, the CEO is the operational manager of the Company, shall have supervising authority over and may exercise general executive power concerning the supervision, direction and control of the day-to-day Business and affairs of the Company and shall carry out the decisions approved by the Manager and/or by the Members, with the authority from time to time and at any time to delegate to any other officer or executive employee of the Company such executive powers and duties as the CEO may deem advisable. Subject to the terms and provisions of this Section 6.3, the CEO shall have authority to do all things necessary to carry on the day-to-day Business and affairs of the Company and hereby is authorized to take any action of any kind and to do anything and everything that the CEO deems necessary and appropriate with respect to the day-to-day Business affairs of the Company in accordance with the terms and provisions of this Agreement and applicable Law. In addition to the general authority provided to the CEO in this Section 6.3, and without limiting the generality of the foregoing, except as otherwise directed by the Manager, in accordance with policies and decisions set forth by the Manager, the CEO shall have the authority provided to the Manager in Sections 5.1 and 5.2, subject to the limitations on the Manager's authority set forth in Section 5.3 and the other provisions of this Agreement.

6.3.1 Steven A. Gibson, an individual who is currently part owner of Net Sortie ("Gibson"), is hereby designated as the CEO of the Company, subject to the other provisions of this Agreement.

6.4 COO.

David A. Brownell, an individual who is currently ten percent (10%) part owner of Net Sortie (subject to divestment), subject to the sole discretion of the CEO, shall be the chief operating officer ("COO") of the Company. The COO shall be entitled to the following compensation:

- (a) during the Start-up Phase, and for the next succeeding six months, [REDACTED] (\$ [REDACTED]) per annum;
- (b) for the next succeeding six months, so long as such payment of salary does not diminish by any amount the Non-Executive Reserve, a salary of [REDACTED] (\$ [REDACTED]) per annum; and
- (c) for the first year thereafter, a salary of [REDACTED] (\$ [REDACTED]) per annum, (with annual increases, if any, thereafter as determined by the reasonable, good faith vote of the Members holding at least a Super-Majority Interest made in sufficient time in order for any such increase to be instituted in a timely fashion), so long as such payment of salary does not deplete the Non-Executive Reserve.

6.5 Authority of the COO.

Subject to the direction of the Manager and the CEO, the COO shall have the powers and duties for conducting and overseeing the Company's day-to-day operations usually vested in the office of chief operating officer of a corporation and shall have such other powers and duties as may be prescribed by the Manager or the CEO. Such powers shall, in no case, exceed the authority granted under the provisions of this Agreement to the Manager or the CEO.

6.6 CAO.

[REDACTED] shall be the chief administrative officer ("CAO") of the Company, subject to the reasonable discretion of the COO. The CAO shall be entitled to the compensation set forth below. Starting on the Effective Date, the CAO shall be compensated at the rate of [REDACTED] (\$ [REDACTED]) per month for the Start up Phase (pro-rated to the Effective Date) and, thereafter, at the rate of [REDACTED] (\$ [REDACTED]) per annum. In the event the CAO shall become a full-time employee of the Company, the CAO shall be compensated at the rate of [REDACTED] (\$ [REDACTED]) per annum (with annual increases, if any, thereafter as determined by the reasonable, good faith affirmative vote of the Members holding at least a Super-

**EXHIBIT B**  
**(PART 2 OF 4)**

Majority Interest made in sufficient time in order for any such increase to be instituted in a timely fashion).

**6.7 Authority of the CAO.**

Subject to the direction of the Manager, the CEO and the COO, the CAO shall have the powers and duties over day-to-day administrative matters of the Company usually vested in the office of administrative vice president of a corporation, including, without limitation, supervision of non-managerial staff, and shall have such other powers and duties as may be prescribed by the Manager, CEO or the COO. Such powers shall, in no case, exceed the authority granted under the provisions of this Agreement to the Manager, the CEO or the COO.

**6.8 Expenses.**

Upon the submission of appropriate documentation, each Member shall be reimbursed by the Company for reasonable out-of-pocket expenses incurred on behalf of, or at the request of, the Company. Officers of the Company shall be paid semi-monthly, in arrears, on the 15th and last day of each calendar month, or the preceding Business Day, in each case, if such days are not Business Days. In addition to the compensation otherwise set forth in this Article 6, the officers of the Company shall be eligible for annual bonuses, payable on December 20th (or the first Business Day thereafter) of each calendar year in such amounts reasonably proposed by the Manager to the Members and approved, if at all, by an affirmative vote of the Members holding at least a Super-Majority Interest. In addition to the provisions of this Article 6, the terms of employment of the initial officers (set forth below in this Article 6), shall be governed by the terms of the employment agreements attached hereto as Exhibit 6.

**ARTICLE 7.  
RIGHTS AND OBLIGATIONS OF MEMBERS**

**7.1 Limitation of Liability.**

Except as otherwise provided by the non-waivable provisions of the Act or by this Agreement, no Member shall be liable for an obligation of the Company solely by reason of being or acting as a Member.

**7.2 List of the Members.**

Upon written request of any Member made in good faith and for a purpose reasonably related to the Member's rights as Member under this Agreement (which reason shall be set forth in the written request), the Manager shall provide a list showing the names, addresses and Membership Interests of all of the Members, as set

forth in Exhibit 18.1. Members shall have no further rights to information under this Section 7.2.

**7.3 Members Have No Agency Authority.**

Except as expressly provided in this Agreement, the Members (in their capacity as Members) shall have no agency authority on behalf of the Company.

**7.4 Company Books.**

The Manager shall maintain and preserve, during the term of this Agreement, and for five (5) years after dissolution of the Company, all accounts, books, and other relevant Company documents. Upon reasonable request, each Member shall have the right, during ordinary business hours, to inspect and copy such Company documents at the requesting Member's expense.

**7.5 Priority and Return of Capital.**

No Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Profits, Losses or Distributions; provided, however, that this Section 7.5 shall not apply to loans (as distinguished from Capital Contributions) which a Member has made to the Company.

**ARTICLE 8.  
MEETING OF MEMBERS**

**8.1 Annual Meetings.**

The Members shall be required to hold an annual meeting in person (each such meeting an "Annual Meeting"). Each Annual Meeting shall be commenced on the seventh (7th) Business Day of December, beginning in 2010 and repeated for each year thereafter during the Term, and shall continue until all of the business of the Members required at each such Annual Meeting is reasonably concluded. At each Annual Meeting, the Members shall: (a) adopt each respective Budget for the next Fiscal Year in accordance with Article 13, (b) determine and declare Distributions in accordance with Section 11.2, and (c) address any other matters any Member reasonably believes, consistent with the provisions of this Agreement, the Members should address.

## 8.2 Quarterly Meetings

The Members shall be required to hold quarterly meetings during the Term (each a "Quarterly Meeting"). The Quarterly Meetings shall fall respectively on the second Friday (and if not a Business Day, on the next succeeding Business Day) of each respective April, July and October of each year during the Term; provided, however, that there shall be no need for a fourth Quarterly Meeting as all of the business conducted at the Annual Meeting negate the need for a fourth Quarterly Meeting. At each Quarterly Meeting, the Members shall: (a) determine whether any change is required to the Budget and shall enact such change only upon an affirmative vote of the Members holding at least a Super-Majority Interest, (b) determine and declare Distributions in accordance with Section 11.2, and (c) address any other matters any Member reasonably believes, consistent with the provisions of this Agreement, the Members should address.

## 8.3 Special Meetings

Either the Manager or any Member holding at least fifteen percent (15%) of the Voting Interests (the "Special Member Meeting Caller") shall have the right to call a meeting of the Members (each such meeting known herein as a "Special Meeting") for the purpose of addressing any matter that this Agreement provides is the proper subject of the attention of the Members.

## 8.4 Place of Meetings

Each Member Meeting shall be held at the Principal Place of Business unless the Members holding at least a Super-Majority Interest provide two weeks' Notice to all Members that such Members holding at least a Super-Majority Interest have determined that any Member Meeting shall be held at a location other than the Principal Place of Business whereby such different location shall be the location of the Member Meeting which is the subject of said Notice.

## 8.5 Notice of Meetings

With respect to any Special Meeting, except as provided in Section 8.4, the Special Member Meeting Caller shall provide Notice (stating the day and hour of the Special Meeting and the purpose or purposes for which the Special Meeting is called) to each Member entitled to vote at such Special Meeting not less than three (3) nor more than fifty (50) days before the date of the Special Meeting.

8.6 Meetings of all Members.

If all of the Members shall meet at any time and place, either within or outside of the State of Nevada, and consent, in writing, to the holding of a Special Meeting at such time and place, such Special Meeting shall be valid without call or notice, and at such Special Meeting lawful action may be taken.

8.7 Record Date.

For the purpose of determining Members entitled to Notice of or to vote at any Member Meeting, or Members entitled to receive payment of any Distribution, or in order to make a determination of Members for any other purpose, the date on which Notice of the meeting is mailed or the date on which the resolution declaring such Distribution is adopted, as the case may be, shall be the record date for such determination of Members.

8.8 Quorum.

Members holding at least a Super-Majority Interest, represented in person or by proxy, shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of the Voting Interests so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further Notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a Notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally Noticed. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Voting Interests whose absence would cause less than a quorum.

8.9 Manner of Acting.

If a quorum is present, the affirmative vote of Members holding at least a Super-Majority Interest shall be the act of the Members, unless the vote of a greater or lesser proportion or number is otherwise required by the Act, by the Articles of Organization, or by this Agreement. Unless otherwise expressly provided herein, Members who have an interest in the outcome of any particular matter upon which the Members vote or consent may vote or consent upon any such matter and their Voting Interest, vote or consent, as the case may be, shall be counted in the determination of whether the requisite matter is approved by the Members.

**8.10 Proxies.**

At all meetings of the Members, a Member who is qualified to vote may vote in person or by proxy executed in writing by the Member or by a duly authorized (written power of attorney) attorney-in-fact, accepted in writing by the Manager. Such proxy shall be filed with the Manager before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of the proxy's execution, unless otherwise provided in the proxy.

**8.11 Action by Members Without a Meeting.**

Action required or permitted to be taken at a meeting of the Members may be taken without a meeting if the action is evidenced by one or more written consents or approvals describing the action taken and signed by Members holding sufficient Voting Interests, as the case may be, to approve such action had such action been properly voted on at a duly called meeting of the Members. Action taken under this Section 8.11 is effective when Members with the requisite Voting Interests have signed the consent or approval, unless the consent specifies a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a written consent.

**8.12 Waiver of Notice.**

When any Notice is required to be given to any Member, a waiver thereof in writing signed by the Person entitled to such Notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

**8.13 Manager Participation In Member Meetings.**

The Manager shall attend all Member Meetings; provided, however, that the Manager may be temporarily excluded from attendance at the Member Meeting by the Members, through a Majority Vote, with respect to any subject matter wherein the Manager *per se* is the subject of the Member Meeting; provided, however, that the Manager shall be permitted to rejoin the Member Meeting at the immediate conclusion of the discussion and/or vote by Members regarding issues with respect to the Manager *per se*.

**ARTICLE 9.  
CONTRIBUTIONS TO THE COMPANY AND CAPITAL ACCOUNTS**

**9.1 Members' Capital Contributions.**

As of the Effective Date, each Member shall contribute such amount, in cash or in kind, as is set forth in Exhibit 9.1 hereto as the Member's share of the Initial Capital Contribution (as set forth on Exhibit 9.1).

**9.2 Capital Accounts.**

A capital account is hereby established for the Members in relation to the Members' respective attributions of capital with respect to the Company (the "Capital Account"). The Capital Account for each Member on a percentage basis shall always be evenly split, to wit: Stephens shall be accorded a fifty percent (50%) Capital Account attribution and Net Sortie shall be accorded a fifty percent (50%) Capital Account attribution. The Members covenant that, as of the Effective Date, the Capital Account shall be valued at [REDACTED] (\$ [REDACTED]) with the result being that each of the Members' respective attributions with respect to the Capital Account shall be [REDACTED] (\$ [REDACTED]) based further upon the Parties' recognition of contributions and the values associated therewith as set forth on Exhibit 9.1. The Members further covenant that if a new Member is added other than Stephens or Net Sortie, then the treatment of the Capital Account as currently set forth in this Section 9.2 shall require amendment.

**ARTICLE 10.  
RESERVED**

**ARTICLE 11.  
ALLOCATIONS, INCOME TAX, DISTRIBUTIONS, ELECTIONS AND REPORTS**

**11.1 Allocations of Profits and Losses.**

The Profits and Losses for each Fiscal Year shall be allocated to each Member on an equal basis.

**11.2 Distributions.**

11.2.1 The Manager shall distribute all Distributable Cash to the Members on a basis of each Member's Respective Distribution Entitlement by no later than fifteen (15) Business Days after each respective Distribution Meeting.

11.2.2 Each Member shall be entitled to Distributions on a pro-rata basis in accordance with each Member's respective Membership Interest (the "Respective Distribution Entitlement").

11.3 Accounting Principles.

For financial reporting purposes, the Company shall use accounting principles applied on a consistent basis using a cash basis method of accounting, unless a different method of accounting for federal income tax purposes is required, in which case that method of accounting shall be the Company's method of accounting.

11.4 Interest on and Return of Capital Contributions.

No Member shall be entitled to interest on the Member's Capital Contribution or the return of the Member's Capital Contribution, except as otherwise specifically provided for herein.

11.5 Accounting Period.

The Company's accounting period shall be the Fiscal Year.

11.6 Records and Reports.

At the expense of the Company, the Manager shall maintain records and accounts of all operations and expenditures of the Company. At a minimum, the Company shall keep at the Principal Place of Business the following records:

- (a) a current list of the full name and last known business, residence, or mailing address of each Member and Manager, both past and present;
- (b) a copy of the Articles of Organization and all amendments thereto, together with executed copies of any powers of attorney pursuant to which any amendment has been executed;
- (c) copies of the Company's federal, state, and local income tax returns and reports, if any, for the four (4) most recent Fiscal Years;
- (d) copies of the Company's currently effective written operating agreement, copies of any writings permitted or required with respect to a Member's obligation to contribute cash, property or services, and copies of any financial statements of the Company for the three (3) most recent Fiscal Years;

- (e) minutes of every Member Meeting and court-ordered meeting of the Members; and
- (f) any written consents obtained from Members for actions taken by Members without a meeting.

**11.7 Returns and other Elections.**

11.7.1 The Manager shall cause the preparation and timely filing of all tax returns required to be filed or delivered to the Members by the Company pursuant to the Code, including, without limitation, Internal Revenue Service K-1 forms, and all other tax returns deemed necessary and required in each jurisdiction in which the Company does Business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of each Fiscal Year.

11.7.2 All elections permitted to be made by the Company under federal or state laws shall be made by the Manager in his sole discretion; provided, however, that the Manager shall make any tax election requested by the Members holding at least a Super-Majority Interest.

**11.8 Tax Matters Partner.**

Unless otherwise determined by the Manager, Net Sortie is hereby designated the Tax Matters Partner ("TMP") as defined in Section 6231(a)(7) of the Code. The TMP and the other Members shall use their reasonable efforts to comply with the responsibilities outlined in Sections 6221 through 6233 of the Code (including any Regulations promulgated thereunder), and, in doing so, shall incur no liability to any other Member.

**ARTICLE 12.  
CONFIDENTIALITY AND NONCOMPETITON**

12.1 During the Term, no Member shall Disclose any Confidential Information to any Person, except as necessary in order to conduct the Business.

12.2 While in possession or control of Confidential Information, or any Media embodying same, the Members shall take all reasonable efforts to keep such Confidential Information reasonably inaccessible from Persons who are not otherwise authorized to view the Confidential Information. While in possession or control of any of Company Trade Secrets, or any Media embodying same, the Members shall use the Members' best efforts to keep all Company Trade Secrets inaccessible from Persons who are not authorized to view same. The Members shall not make, or permit or allow

to be made, copies of any Media containing, in full or in part, Confidential Information unless such copies are necessary in order to conduct the Business.

12.3 If any Member is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to Disclose any of the Confidential Information, such Member shall provide the Company with prompt written notice of such request or requirement so that the Company may seek protective orders or other appropriate remedies and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Company, any Member is nonetheless legally compelled to Disclose Confidential Information to any court or tribunal or else would stand liable for contempt or suffer other censure or penalty, such Member may, without liability herein, Disclose to such court or tribunal only that portion of the Confidential Information which the court or tribunal requires such Member to Disclose, provided that such Member exercises such Member's best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, by cooperating with the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such court or tribunal.

12.4 Notwithstanding any other provision of this Agreement, the Members hereby acknowledge that the Company owns the exclusive right, title and interest in and to the Company Intangibles embodied in, relating to, based upon or arising from Confidential Information.

12.5 The Members hereby waive any Causes of Action of infringement of any right, title or interest of any Member (whether based on any Intellectual Property right, title or interest, other proprietary interest whatsoever or applicable fiduciary theory) in, to or respecting any Company Confidential Information and agree that the Members shall never challenge nor dispute the Company's right, title and interest in and to Company Confidential Information or Company Intellectual Property.

12.6 During the Term, no Member shall, directly or indirectly, engage in a business that engages in activities within the scope of the Focus (the "Competitive Activities") and shall not, alone or in association with others, own any interest in, manage, operate, control, or be connected in any manner, directly or indirectly, with the ownership, management, operation or control of any entity engaging, in whole or in part, in a business that engages in Competitive Activities within the Restricted Territory, other than by and through the Company, including, without limitation, serving as an agent, associate, Affiliate, consultant, partner, co-venturer, independent contractor or investor of or with any entity or person engaged in the Competitive Activities within the Restricted Territory.

12.7 The provisions of this Article 12 shall apply also to any Affiliate of any Member.

**ARTICLE 13.  
BUDGET**

The initial Budget, hereby approved by the Members, is set forth in Exhibit 13 and is for the period commencing on the Effective Date and ending December 31, 2010. Thirty (30) days prior to each Distribution Meeting, the Manager shall propose the Budget for the Members with respect to each succeeding relevant period of time. Each Budget must be approved by the Members holding at least a Super-Majority Interest. In the event of a Deadlock, the Budget then in effect shall continue until a new Budget is approved by the Members holding at least a Super-Majority Interest.

**ARTICLE 14.  
RESERVED**

**ARTICLE 15.  
TRANSFERABILITY**

15.1 General.

15.1.1 Except as otherwise specifically provided herein, no Member shall have the right to Transfer the Member's Membership Interest.

15.1.2 Each Member hereby acknowledges the reasonableness of the restrictions on Transfer and Gift of Membership Interests imposed by this Agreement in view of the Company purposes and the relationship of the Members. Accordingly, the restrictions on Transfer and Gift contained herein shall be specifically enforceable.

15.1.3 No Member shall Pledge any Members' Membership Interest as security for repayment of a liability, and any such Pledge shall be void *ab initio*.

15.2 Right of First Refusal.

15.2.1 Subject to Section 15.3, any Transferring Member which desires to Transfer all or any portion of the Members' Membership Interest to a third party purchaser, including, without limitation, another Member, shall obtain from such third party purchaser ("Third Party Purchaser") a bona fide written offer to purchase such interest, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefor ("Third Party

Offer"). The Transferring Member shall give written notification ("Notice of Transfer") to the Company and the other Members who are Members (the "Remaining Members"), by certified mail, of the Transferring Members' intention to so transfer such Membership Interest (the "Offered Interest"). The Notice of Transfer shall be accompanied by a copy of the Third Party Offer. If any portion of the purchase price offered by such third party purchaser consists of consideration other than cash or a promissory note ("Non-cash Consideration"), then: (1) the Notice of Transfer also shall be accompanied by a good faith estimate by the Transferring Member of the fair market value of the Non-cash Consideration, and (2) for purposes of Section 15.2.2 and 15.2.3 the purchase price of the Offered Interest (the "Purchase Price") shall be adjusted as set forth below.

15.2.1(a) The Purchase Price shall be decreased by the Non-cash Consideration.

15.2.1(b) The Purchase Price shall be increased by an amount equal to either (aa) the Transferring Member's good faith estimate of the fair market value of the Non-cash Consideration ("Transferer's Estimate") or (bb) in the discretion of the Manager, the appraised fair market value of the Non-cash Consideration determined by an independent appraiser selected by the Manager in his sole discretion. The Manager shall have the sole discretion to choose between the amount determined pursuant to clauses (aa) and (bb) of this subsection 15.2.1(b): If the appraised fair market value of the Non-cash Consideration is not determined within twenty (20) days after the Notice of Transfer, then such fair market value shall be equal to the amount of the Transferer's Estimate.

15.2.2 The Remaining Members shall have the option ("Buy Option") to purchase all, but not less than all, of the Offered Interest, on a pro-rata basis in accordance with the respective Membership Interest of the Remaining Members exercising such option pursuant to this Section 15.2.2 or shall have the option (the "Tag-Along Option") to participate on a pro-rata basis in the terms of the Transfer (even if that Transfer is to another Member) that is the subject of the Notice of Transfer (both the Buy Option and the Tag-Along Option known herein as the "Participation Options"). Either of the Participation Options may be exercised by one or more of the Remaining Members by giving written notification (the "Participation Notice") to the Transferring Member within thirty (30) days after receiving the Notice of Transfer (the "Option Period"). Each Remaining Member which timely gives a Participation Notice electing the Buy Option ("Buying Member") shall purchase such portion of the Offered Interest, pursuant to the timeframes set forth in Section 15.2.3, which is equal to the relative Membership Interest of all of all the Buying Members. If

there are no Buying Members, the Buy Option shall terminate and at any time within ninety (90) days following the expiration of the Option Period, and, except as provided in Section 15.3, the Transferring Member shall be entitled to consummate the Transfer of the Offered Interest to the Third Party Purchaser or one or more of the Third Party Purchaser's Affiliates upon terms no less favorable than are set forth in the Third Party Offer; provided, however that each Remaining Member which timely gives a Participation Notice electing the Tag-Along Option ("Tag-Along Member") shall be entitled to and required to effect all transactions at the same time and in the same manner as the Transferring Member.

15.2.3 If there is at least one Buying Member: (a) the Buying Members shall designate the time, date and place of closing, provided that the date of closing shall be within thirty (30) days after the receipt of the Buy Notice, and (b) at the closing, the Buying Members shall purchase, and the Transferring Member shall Transfer, the Offered Interest for an amount equal to the Purchase Price (as modified in accordance with Section 15.2.1(a) and 15.2.1(b)) and in accordance with such other terms and conditions set forth in the Third Party Offer.

15.2.4 A Transfer of an Offered Interest pursuant to Section 15.2 shall be subject to Sections 15.3 and 15.4.

**15.3 Transfers Not Recognized in Absence of Consent.**

15.3.1 If the Members holding at least a Super-Majority Interest do not approve, in writing, with the Members hereby agreeing to be reasonable in such vote, the proposed Transfer of the Transferring Member's Membership Interest to a transferee, such Transfer shall be null and void *ab initio*, and the transferee shall possess no Membership Interest, Voting Interest or Economic Interest in the Company. Any Gift of a Membership Interest is void *ab initio* absent the written approval of Members holding at least a Super-Majority Interest, and the Members hereby agree to be reasonable in such vote.

15.3.2 Upon and contemporaneously with any Transfer or Gift authorized hereunder of a Member's Membership Interest, the Transferring Member shall cease to have any residual rights associated with the Membership Interest transferred to the transferee.

**15.4 Additional Conditions to Recognition of Transferee.**

**15.4.1** If a Transferring Member Transfers or Gifts a Membership Interest to any Person, authorized hereunder, as a condition to recognizing one or more of the effectiveness and binding nature of such Transfer or Gift (subject to Section 15.3 above), the remaining Members may require the Transferring Member and the proposed successor-in-interest to execute, acknowledge and deliver to the Manager such instruments of transfer, assignment and assumption and such other certificates, representations and documents, and to perform all such other acts which the Manager may deem necessary or desirable to accomplish any one or more of the following:

- (a)** constitute such successor-in-interest as a Member;
- (b)** confirm that the proposed successor-in-interest to be admitted as a Member, has accepted, assumed and agreed to be subject to and bound by all of the terms, obligations and conditions of this Agreement, as the same may have been further amended;
- (c)** preserve the Company after the completion of such Transfer, Transfer, assignment, or substitution under the laws of each jurisdiction in which the Company is qualified, organized or does Business;
- (d)** maintain the status of the Company as a "partnership" for federal income tax purposes; and
- (e)** assure compliance with any applicable state and federal laws, including securities laws and regulations.

**15.4.2** Any Transfer or Gift of a Membership Interest and admission of a Member in compliance with this Article 15 shall be deemed effective as of the last day of the calendar month in which the remaining Members' consent thereto was given, as provided in this Article 15, above. The Transferring Member hereby indemnifies the Company and the remaining Members against any and all loss, damage, or expense (including, without limitation, tax liabilities or loss of tax benefits) arising directly or indirectly as a result of any transfer or purported transfer in violation of this Article 15.

**15.5 Change of Control Forfeiture.**

If either Stephens or Net Sortie experience a Change of Control (the "Changed Member") without the prior written consent of the other Member (the "Non-Changing Member"), then the Changed Member shall automatically and immediately forfeit all the Changed Member's Membership Interests to the Non-Changing Member and have no further right, title or interest in and to the Company or pursuant to or arising out of this Agreement. Stephens covenants, represents and warrants that as of the Effective Date, Stephens is Controlled by members of the family of Warren A. Stephens and trusts for the benefit of such individuals. Net Sortie covenants, represents and warrants that as of the Effective Date, Net Sortie is Controlled by Gibson.

**ARTICLE 16.  
ISSUANCE OF MEMBERSHIP INTERESTS**

From the Effective Date, any Person acceptable to Members holding at least a Super-Majority Interest may become a Member in the Company by the issuance by the Company of Membership Interests for such consideration as the Members holding at least a Super-Majority Interest shall determine, subject to the terms and conditions of this Agreement; provided, however, that Stephens and Net Sortie hereby covenant that in the event of the addition of any new Member, this Agreement shall require amendment for at least the following purposes: accommodating appropriate attributions to the Capital Account, providing for proper treatment of Profits and Losses as well as addressing proper allocations for Distributions.

**ARTICLE 17.  
DISSOLUTION AND TERMINATION**

**17.1 Dissolution.**

17.1.1 The Company shall be dissolved only by the express, written agreement of the Members holding at least a Super-Majority Interest, and notwithstanding anything to the contrary in the Act, the Company shall not be dissolved upon the death, retirement, resignation, expulsion, bankruptcy or dissolution of a Member.

17.1.2 As soon as possible following the occurrence of an agreement specified in Section 17.1.1 effecting the dissolution of the Company, the Manager shall execute all documents required by the Act at the time of dissolution and file or record such statements with the appropriate officials.

**17.2 Effect of Dissolution.**

Upon dissolution, the Company shall cease to carry on Business, except insofar as may be necessary for the winding up of the Business, but the Company's separate existence shall continue until winding up and Distribution is completed.

**17.3 Winding Up, Liquidation and Distribution of Assets.**

**17.3.1** Upon dissolution, the Manager shall promptly proceed to effect the legal cessation of all Business in an orderly manner and in a manner to minimize the creation of any undue liability to any third Person on the part of the Company, the Manager shall promptly take the following further actions in the following order:

- (a) The Manager shall Transfer or otherwise liquidate (to the extent viable) all of the non-cash Company Property as promptly as practicable on the open market and to the extent that the Manager cannot within a reasonable period of time liquidate on the open market all of the non-cash Company Property (the "Remainder"), then the Members shall be provided an equal opportunity to bid (on an open bid basis) on the purchase of any and all of the Remainder until all of the Remainder is liquidated to the successfully bidding Member(s);
- (b) The Manager shall discharge all liabilities of the Company, other than liabilities to Members for Distributions and the return of capital, and establish a reasonable reserve of cash as may be reasonably necessary to provide for contingent liabilities of the Company; and
- (c) The Manager shall then disburse any cash which remains in the Company, after the steps undertaken pursuant to Section 17.3.1(a) and Section 17.3.1(b) are given effect, to the Members on a pro-rata basis in accordance with each Member's respective Membership Interest.

**17.3.2** Upon completion of the procedures winding up, liquidation and Distribution of the assets, the Company shall be deemed terminated.

**17.3.3** The Manager shall comply with any applicable requirements of applicable law pertaining to the winding up of the affairs of the Company and the final Distribution of the Company's assets.

**17.4 Filing or Recording Statements.**

Upon the conclusion of winding up, the appropriate representative of the Company shall execute all documents required by the Act at the time of completion of winding up and file or record such statements with the appropriate officials.

**17.5 Return of Contribution Nonrecourse to Other Members.**

Except as provided by law or as expressly provided in this Agreement, upon dissolution, each Member shall look solely to the assets of the Company for the return of the Company's Capital Contribution. If the Company Property remaining after the payment or discharge of the debts and liabilities of the Company is insufficient to return the cash contribution of one or more Members, such Members shall have no recourse against any other Member.

**ARTICLE 18.  
MISCELLANEOUS PROVISIONS**

**18.1 Notices.**

Any notice (a "Notice"), demand, or communication required or permitted to be given by any provision of this Agreement shall be deemed to have been sufficiently given or served if sent by both certified first class mail, postage prepaid, return receipt requested, and certified first class mail, and addressed or sent to the Member's and/or Company's address, as set forth in Exhibit 18.1. Any Member or the Company may change the respective Member's or Company's address by giving notice in writing to the Company and the other Members of the respective Member's or Company's new address.

**18.2 Books of Account and Records.**

Proper and complete records and books of account shall be kept or shall be caused to be kept by the COO, in which shall be entered fully and accurately, in all material respects, all transactions and other matters relating to the Business in such detail and completeness as is customary and usual for businesses of the type engaged in by the Company. The books and records shall at all times be maintained at the Principal Place of Business and shall be open to the reasonable inspection and examination by the Members, the CEO and the Manager during reasonable Business hours.

**18.3 Business Reports.**

Periodically, the COO shall develop regular business reports regarding the operations of the Company, including, without limitation: (a) the number of infringements each month in which action is recommended, (b) the number of infringements each month in which action has been taken, (c) monthly revenues, (d) monthly costs, (e) aged accounts receivable, (f) the number of active infringement cases, (g) the number of new clients in the month, (h) the number of total clients in the month, (i) the number of active copyright registrations held by the Company, (j) the number and nature of resolutions of infringements on a licensed-basis involving the payment of an ongoing royalty, and (k) resolved infringement cases in the month (the "Reports"). The COO shall provide the Reports to the CEO and the Manager on a monthly basis. The COO shall also provide the Reports, as well as any other report of general business activity routinely prepared by the COO in the normal course of business that is intended to be viewed by the Manager in order to create or change the policies or direction of the Company, by way of electronic mail (and each such Member shall advise the COO the most appropriate electronic mail address for such purpose), to each Member holding at least a twenty percent (20%) Membership Interest.

**18.4 Application of State Law.**

This Agreement, and the application and interpretation hereof, shall be governed exclusively by the Agreement's terms and by the laws of the State of Nevada; and specifically the Act.

**18.5 Waiver of Action for Partition.**

Each Member irrevocably waives during the term of the Company any right that it may have to maintain any action for partition with respect to the Company Property.

**18.6 Amendments.**

This Agreement may be amended only with the written consent of the Members holding at least a Super-Majority Interest and only if such amendment has a proportionate effect on all Members (or in the case of a redemption of Membership Interests or issuance of additional Membership Interests, an amendment which has a proportionate effect on all Members immediately after such redemption or issuance) with respect to their rights to Distributions.

**18.7 Execution of Additional Instruments.**

Each Member hereby agrees to execute such other and further statements of interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules or regulations.

**18.8 Effect of Inconsistencies with the Act.**

It is the express intention of the Members and the Company that this Agreement shall be the sole source of agreement among them, and, except to the extent that a provision of this Agreement expressly incorporates federal income tax rules by reference to sections of the Code or Regulations or is expressly prohibited or ineffective under the Act, this Agreement shall govern, even when inconsistent with, or different than, the provisions of the Act or any other law or rule. In the event that the Act is subsequently amended or interpreted in such a way to make valid any provision of this Agreement that was formerly invalid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members and the Company hereby agree that the duties and obligations imposed on the Members as such shall be those set forth in this Agreement, which is intended to govern the relationship among the Company and the Members, notwithstanding any provision of the Act or common law to the contrary.

**18.9 Reserved.**

**18.10 Rights and Remedies Cumulative.**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**18.11 Severability.**

If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law. Without limiting the generality of the foregoing sentence, to the extent that any provision of this Agreement is prohibited or ineffective under the Act or common law, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act or common law.

**EXHIBIT B**  
**(PART 3 OF 4)**

**18.12 Heirs, Successors and Assigns.**

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

**18.13 Creditors.**

None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

**18.14 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

**18.15 Reserved.**

**18.16 Power of Attorney.**

Each Member hereby irrevocably makes, constitutes and appoints the Manager, with full power of substitution, so long as the Manager is acting in such a capacity (and any successor Manager thereof so long as such Manager is acting in such capacity), the Member's true and lawful attorney, in such Member's name, place and stead (it is expressly understood and intended that the grant of such power of attorney is coupled with an interest) to make, execute, sign, acknowledge, swear and file with respect to the Company:

- (a) all amendments of this Agreement adopted in accordance with the terms hereof;
- (b) all documents which the Manager deems necessary or desirable to effect the dissolution and termination of the Company;
- (c) all such other instruments, documents and certificates which may from time to time be required by the laws of the State of Nevada or any other jurisdiction in which the Company shall determine to do Business, or any political subdivision or agency thereof, to effectuate, implement, continue and defend the valid existence of the Company; and

- (d) all instruments, documents and certificates which the Manager deems necessary or desirable in connection with a Reorganization which has been authorized in accordance with the terms of this Agreement.

This power of attorney shall not be affected by and shall survive the bankruptcy, insolvency, death, incompetency, or dissolution of a Member and shall survive the delivery of any assignment by the Member of the whole or any portion of the Member's Membership Interest. Each Member hereby releases the Manager from any liability or claim in connection with the exercise of the authority granted pursuant to this power of attorney, and in connection with any other action taken by the Manager pursuant to which the Manager purports to act as the attorney-in-fact for one or more Members, if the Manager believed in good faith that such action taken was consistent with the authority granted to it pursuant to this Section 18.16.

**18.17 Investment Representations.**

18.17.1 The Members, understand that: (1) the Membership Interests evidenced by this Agreement have not been registered under the Securities Act of 1933, the State of Nevada Securities Act or any other state securities laws (the "Applicable Securities Acts") because the Company is issuing these Membership Interests in reliance upon the exemptions from the registration requirements of the Applicable Securities Acts providing for issuance of securities not involving a public offering; (2) the Company has relied upon the fact that the Membership Interests are to be held by each Member for investment; and (3) exemption from registrations under the Applicable Securities Acts would not be available if the Membership Interests were acquired by a Member with a view to distribution.

18.17.2 Accordingly, each Member hereby confirms to the Company that such Member is acquiring the Membership Interests for such own Member's account, for investment and not with a view to the Transfer or distribution thereof. Each Member agrees not to Transfer or offer for Transfer any portion of the Membership Interests unless there is an effective registration or other qualification relating thereto under the Securities Act of 1933 and under any applicable state securities laws or unless the holder of Membership Interests delivers to the Company an opinion of counsel, satisfactory to the Company, that such registration or other qualification under such Act and applicable state securities laws is not required in connection with such Transfer or offer for Transfer. Each Member understands that the Company is under no obligation to register the Membership Interests or to assist such Member in complying with any exemption from registration under the Applicable Securities Acts if such Member should, at a later date, wish to dispose of the Membership Interest. Furthermore, each Member realizes that the Membership Interests are unlikely to qualify for disposition under Rule 144 of the Securities and Exchange

Commission unless such Member is not an "affiliate" of the Company, within the meaning of such Rule 144, and the Membership Interest has been beneficially owned and fully paid for by such Member for at least three years.

18.17.3 Each Member, prior to acquiring a Membership Interest, has made an investigation of the Company and the Business, and the Company has made available to each Member, all information with respect to the Company which such Member needs to make an informed decision to acquire the Membership Interest. Each Member considers himself, herself or itself to be a person possessing experience and sophistication as an investor, which are adequate for the evaluation of the merits and risks of such Member's investment in the Membership Interest.

**18.18 Representations and Warranties.**

18.18.1 **In General.** As of the date hereof, each of the Members hereby makes each of the representations and warranties applicable to such Member as set forth in this Section 18.18, and such warranties and representations shall survive the execution of this Agreement.

18.18.2 **Representations and Warranties.** Each Member, to the extent applicable, hereby represents and warrants that:

18.18.2(a) **Due Incorporation or Formation; Authorization of Agreement.** Such Member is a corporation duly organized or a partnership or limited-liability company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation and has the corporate, partnership or limited-liability company power and authority to own its property and carry on its business as owned and carried on at the Effective Date. Such Member is duly licensed or qualified to do business and in good standing in each of the jurisdictions in which the failure to be so licensed or qualified would have a Material Adverse Effect on its financial condition or its ability to perform its obligations hereunder. Such Member has the corporate, partnership or limited-liability company power and authority to execute and deliver this Agreement and to perform the Agreement's obligations hereunder and the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate, partnership or limited-liability company action. This Agreement constitutes the legal, valid, and binding obligation of such Member.

18.18.2(b) **No Conflict with Restrictions; No Default.** Neither the execution, delivery, and performance of this Agreement nor the

consummation by such Member of the transactions contemplated hereby: (1) will conflict with, violate, or result in a breach of any of the terms, conditions, or provisions of any law, regulation, order, writ, injunction, decree, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator, applicable to such Member or any of the Member's Affiliates; (2) will conflict with, violate, result in a breach of, or constitute a default under any of the terms, conditions, or provisions of the articles of incorporation, bylaws, partnership agreement, limited-liability company agreement or operating agreement of such Member or any of the Member's Affiliates or of any material agreement or instrument to which such Member or any of the Member's Affiliates is a party or by which such Member, or any of the Member's Affiliates is or may be bound or to which any of the Member's material properties or assets is subject; (3) will conflict with, violate, result in a breach of, constitute a default under (whether with notice or lapse of time or both), accelerate or permit the acceleration of the performance required by, give to others any material interests or rights, or require any consent, authorization, or approval under any indenture, mortgage, lease agreement, or instrument to which such Member or any of the Member's Affiliates is a party or by which such Member or any of its Affiliates is or may be bound; or (4) will result in the creation or imposition of any lien upon any of the material properties or assets of such Member or any of its Affiliates.

18.18.2(c) Government Authorizations. Any registration, declaration, or filing with, or consent, approval, license, permit, or other authorization or order by, any government or regulatory authority, domestic or foreign, that is required in connection with the valid execution, delivery, acceptance, and performance by such Member under this Agreement or the consummation by such Member of any transaction contemplated hereby has been completed, made, or obtained on or before the effective date of this Agreement.

18.18.2(d) Litigation. There are no actions, suits, proceedings, or investigations pending or, to the knowledge of such Member or any of its Affiliates, threatened against or affecting such Member or any of its Affiliates or any of their properties, assets, or businesses in any court or before or by any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation could lead to any action, suit, or proceeding, which if adversely determined could) reasonably be expected to materially impair such Member's ability to perform the Member's obligations under this Agreement or to have a

Material Adverse Effect on the consolidated financial condition of such Member; and such Member or any of the Member's Affiliates has not received any currently effective notice of any default, and such Member or any of the Member's Affiliates is not in default, under any applicable order, writ, injunction, decree, permit, determination, or award of any court, any governmental department, board, agency, or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair such Member's ability to perform the Member's obligations under this Agreement or to have a Material Adverse Effect on the consolidated financial condition of such Member.

18.18.2(e) Investment Company Act; Public Utility Holding Company Act. Neither such Member nor any of the Member's Affiliates is, nor will the Company as a result of such Member holding a Membership Interest be, an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940. Neither such Member nor any of the Member's Affiliates is, nor will the Company as a result of such Member holding a Membership Interest be, a "holding company," "an affiliate of a holding company," or a "subsidiary of a holding company," as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935.

18.18.2(f) Tax Status. The Members and the Manager agree that the Company shall be treated as a partnership, for federal income tax purposes, by default, pursuant to Regulation Section 301.7701-3(b), and they each agree not to take any action or make any election not consistent with such partnership classification.

## ARTICLE 19. SECURITIES MATTERS

### 19.1. No Parole Reliance.

Each Member covenants that: (a) with respect to such Member, such respective Member has received various documentation and has engaged in various communications whereby the Business has been discussed and described, apart from this Agreement, prior to the Effective Date (the "Explanatory Communications") by and between Stephens and Net Sortie; (b) the Explanatory Communications were merely illustrative of the Business and in no manner is a representation, warranty or guarantee of performance or profitability nor may be used as a basis for an implied representation, warranty or guarantee of performance or profitability; (c) with respect to such Member, that such Member has performed such Member's own due diligence, investigation and analysis of the viability and/or non-viability of the Business and/or the Company in

acquiring the such Member's Membership Interests pursuant to this Agreement; (d) with respect to such Member, such Member has diligently reviewed the terms of this Agreement and has only relied upon the terms and provisions of this Agreement as the communication from the Company regarding the acquisition by such Member of such Member's Membership Interests; (e) with respect to such Member, that all documents, records, and books pertaining to the Company have been made available to such Member for inspection by the Member and /or the Member's advisor(s); and (f) with respect to such Member, such Member has had a reasonable opportunity to ask questions of, and receive answers from, the Company concerning such Member's acquisition of the Member's Membership Interests pursuant to this Agreement, and all such questions have been answered to the full satisfaction of such Member. The Company hereby further makes available to the Members any and all books and records of the Company, upon reasonable notice, during reasonable business hours at the Principal Place of Business.

**19.2. Own Account.**

Each Member hereby covenants, represents and warrants that the Member's Membership Interests are being purchased by the Member solely for the Member's own account and not for the account of any other Person nor with a view to, or for Transfer in connection with, any distribution, division, assignment, or resale to others, and that no other Person has a direct or indirect beneficial interest in the Member's Membership Interests.

**19.3. Accurate Information.**

Each Member hereby covenants, represents and warrants that, with respect to such Member, all information which the Member has provided to the Company, whether by way of this Agreement or otherwise, concerning the Member's investor status, financial position, knowledge and experience in financial and business matters:

- (a) has been provided by the Member by representatives of the Member that are in a position within the Member to have adequate knowledge and experience in the Member's financial and business matters; and
- (b) is true, accurate and complete as of the Effective Date.

**19.4. Risk Factors Disclosure.**

Each Member covenants that:

- (a) the acquisition of such Member's respective Membership Interests involves highly speculative risks;
- (b) each Member, with respect to such Member, has the ability to accept highly speculative risks and is prepared to lose the entire investment in the Company;
- (c) as a start-up operation, there is a significant risk that the Company's perceived market receptivity to the proposed services will not be as substantial as in fact perceived;
- (d) the willingness of consumers to understand and agree to the assignment and license-back structure that is inherent in the Company's business structure may not be consistent or even prevalent;
- (e) as the Company becomes more successful, such success may actually reduce infringements and hence future revenue streams;
- (f) the successful pursuit of infringements can be heavily mitigated by the ability to recover funds from defendants that may not have adequate financial wherewithal to pay judgments or settlement fees;
- (g) many defendants may attempt to escape judgment and other defendants may escape civil prosecution; and
- (h) the Company is unable to preclude future, pure competitors from adopting the Company's business model and replicating the range of services offered by the Company and that these future competitors could attempt to undercut the Company's pricing structure and capture significant market share.

[SIGNATURE PAGE FOLLOWS]

WHEREFORE, the parties hereto hereby executed this Agreement and that this Agreement is hereby adopted by the Members.

Righthaven LLC,  
a Nevada limited-liability company

By: Net Sortie Systems, LLC, a Nevada  
limited-liability company, Manager

By: \_\_\_\_\_  
Steven A. Gibson, its Manager

MEMBERS:

Net Sortie Systems, LLC,  
a Nevada limited-liability company

\_\_\_\_\_  
Steven A. Gibson, Esq.,  
Manager

SI Content Monitor LLC,  
an Arkansas limited-liability company

By: \_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Its: \_\_\_\_\_

### **SCHEDULE 1 - DEFINITIONS**

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein);

“Act” shall mean Chapter 86 of the Nevada Revised Statutes.

“Additional Offices” shall have the meaning ascribed to such term in Section 2.3.

“Affiliate” shall mean, with respect to any Person, (i) any Person directly or indirectly controlling, controlled by, or under common control with such Person, (ii) any Person owning or controlling ten percent (10%) or more of the outstanding voting interests of such Person, (iii) any officer, director, or general partner of such Person, or (iv) any Person who is an officer, director, general partner, trustee, or holder of ten percent (10%) or more of the voting interests of any Person described in clauses (i) through (iii) of this sentence. For purposes of this definition, the term “controls,” “is controlled by,” or “is under common control with” shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of any such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” shall mean this Operating Agreement as originally executed and as amended from time to time.

“Annual Meeting” shall have the meaning set forth in Section 8.1.

“Applicable Securities Acts” shall have the meaning set forth in Section 18.17.

“Article” shall mean an enumerated provision of this Agreement that may contain Sections.

“Articles of Organization” shall mean the Articles of Organization of the Company as filed with the Secretary of State of Nevada as the same may be amended from time to time.

“Budget” shall mean the expenditures approved by the Members at each respective Annual Meeting for the succeeding year, as possibly modified by the Members through action taken at Quarterly Meetings.

“Business” shall have the meaning set forth in Article 3.

“Business Day” shall mean any day, Monday through Friday, excepting Saturday and Sunday and also excepting any day on which federal chartered banks situated in Clark County, Nevada are generally not open for business.

S-1

**CONFIDENTIAL**

SER 157

“Buy Notice” shall have the meaning set forth in Section 15.2.3.

“Buy Option” shall have the meaning set forth in Section 15.2.2.

“Buying Member” shall have the meaning set forth in Section 15.2.2.

“CAO” shall have the meaning set forth in Section 6.6.

“Calculation Quarter” shall mean the last full Quarter that precedes a given Distribution Meeting.

“Candidates” shall have the meaning set forth in Section 5.9.

“Capital Account” as of any given date shall mean the Capital Account of each Member as described in Section 9.2 and maintained to such date in accordance with this Agreement.

“Capital Contribution” shall mean any contribution to the capital of the Company in cash or property by a Member whenever made.

“Causes of Action” shall mean any demand, complaint, request for redress, assertion of a cause of action or other claim whatsoever.

“CEO” shall have the meaning set forth in Section 6.2.

“Change of Control” shall mean any circumstance, event or occurrence whereby Control passes from one Person (or if more than one Person maintains Control, several Persons) to one or more other Persons.

“Changed Member” shall have the meaning set forth in Section 15.5.

“Claim” shall mean any claim, demand, action, suit, institution of any legal or quasi-legal proceeding of any nature whatsoever.

“Claimant” shall have the meaning set forth in Section 5.8.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Company” shall have the meaning set forth in the initial paragraph of this Agreement.

“Company Identified Infringements” shall have the meaning set forth in Section 3.2 (c).

**“Company Intellectual Property” shall mean the Intellectual Property owned, Developed, held, used or licensed by Company.**

**“Company Property” shall mean all assets (real or personal, tangible or intangible, including cash) of the Company.**

**“Company Trade Secrets” shall mean Trade Secrets owned, Developed, held, used or licensed by Company, including, without limitation, the Methods.**

**“Competitive Activities” shall have the meaning set forth in Section 12.6.**

**“Confidential Information” shall mean all the Content that is the subject of the Assignment and all Content relating to, used in or arising out of the Business, finances or other operations and held by, owned, Developed, licensed, or otherwise possessed by the Company (whether held by, owned, Developed, licensed, possessed or otherwise existing in, on or about Company’s premises or a Member’s offices, residence(s) or facilities, including, without limitation, the Principal Place of Business, and regardless of how such Content came into being, as well as regardless of who Developed, created, generated or gathered the Content), including, without limitation, all Content contained in, embodied in (in any Media whatsoever) or relating to Company’s ideas, creations, works of authorship, works of visual art, Business documents, contracts, licenses, Business and non-Business relationships, correspondence, operations, manuals, performance manuals, operating data, projections, bulletins, supplier and customer lists and data, Transfers data, cost data, profit data, strategic planning data, financial planning data, designs, logos, motifs, proposed trademarks or service marks, test results, product or service literature, product or service concepts, manufacturing or Transfers techniques, process data, specification data, know-how, show-how, Software, databases, research and development information and data; provided, however, that “Confidential Information” shall not include information or data “generally publicly known.” The phrase in the previous sentence “generally publicly known” shall not be deemed to include the Content set forth in patents despite the fact that patents have been published by the federal government, unless such embodiment has otherwise been the subject of a publication for general public consumption (other than publication as a patent) or if that embodiment is otherwise utilized generally by Persons in the United States of America while Transferring products or services within the scope of the Maintenance, Repair or Renovation industries. All references to “Confidential Information” in this Agreement shall be deemed to also refer to “Company Trade Secrets” as well, but references to “Company Trade Secrets” shall not be deemed to automatically refer to “Confidential Information.”**

**“Content” shall mean all material, information, matter, text, data, graphics, Documents, computer-generated displays and interfaces, images, photographs and works of whatsoever nature, including without limitation all compilations of the foregoing and all**

results of the expression of the foregoing whether in a format now known or hereinafter Developed.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, or the power to veto major policy decisions of any such Person, whether through the ownership of voting securities, by contract, or otherwise.

“COO” shall have the meaning set forth in Section 6.4.

“Deadlock” shall mean the circumstance whereby a determination, by way of voting, by the Members is required by the provisions of this Agreement but said voting does not result in an ascertainable conclusion because of the non-occurrence of a simple Majority Vote to be reached or, where specifically required by this Agreement, a failure of an affirmative vote of the Members holding at least a Super-Majority Interest to be reached.

“Depreciation” shall mean, for each Fiscal Year, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Fiscal Year, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year bears to such beginning adjusted tax basis; provided, however, that if the adjusted basis for federal income tax purposes of an asset at the beginning of such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

“Develop” shall mean develop, conceive, discover, reduce to practice, create, or otherwise arise out of a Person’s efforts in any manner whatsoever and through any means whether now known or hereafter developed.

“Disclose” shall mean disclose, disseminate, transmit, publish, distribute, make available or otherwise convey.

“Distributable Cash” shall mean all cash possessed by the Company (other than cash that exists as a result of any Capital Contribution) on the last day of the Calculation Quarter with respect to a particular, respective Distribution Meeting minus both of the following: (a) the Total Reserve with respect to the Quarter succeeding said, respective Calculation Quarter, and (b) an amount equal to the account payables of the Company due and owing on the last day of the respective Calculation Quarter.

S-4

**CONFIDENTIAL**

SER 160

“Distribution” shall mean the amount of Distributable Cash determined by the Members at each respective Distribution Meeting to be disbursed to the Members in accordance with the procedure set forth in Section 11.2.

“Distribution Meeting” shall mean each and every Quarterly Meeting and each and every Annual Meeting.

“Document” shall mean any form of tangible Media containing Content capable of being reduced to electronic form and reconstituted in tangible form.

“Economic Interest” shall mean a Member’s share of one or more of the Profits, Losses and Distributions pursuant to this Agreement and the Act, but shall not include any right to participate in the management or affairs of the Company, including, the right to vote on, consent to or otherwise participate in any decision of the Members or the Manager.

“Effective Date” shall have the meaning set forth in the Introductory Clause.

“Entity” shall mean any general partnership, limited partnership, limited-liability company, corporation, joint venture, trust, business trust, cooperative or association or any foreign trust or foreign business organization.

“Explanatory Communications” shall have the meaning set forth in Section 19.1.

“Exploit” shall mean to use, make, Transfer or otherwise exploit in any manner whatsoever (through any means now known or hereafter Developed).

“Fiscal Year” shall mean the calendar year or any partial calendar year in which the Company conducts Business operations.

“Focus” shall have the meaning set forth in Section 3.2.

“Gift” shall mean a gift, bequest, or other transfer for no consideration, whether or not by operation of law, except in the case of bankruptcy.

“Gifting Member” shall mean any Member who gifts, bequeaths or otherwise transfers for no consideration (by operation of law or otherwise, except with respect to bankruptcy) all or any part of its Membership Interest.

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

- (a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset, as determined

S-5

**CONFIDENTIAL**

SER 161

by the contributing Member and the Manager, provided that the initial Gross Asset Values of the assets contributed to the Company pursuant to Section 11.13.1 hereof shall be as set forth in Exhibit 9.1, and provided further that, if the contributing Member is a Manager, the determination of the fair market value of any other contributed asset shall require the consent of the other Members holding at least a Super-Majority Interest (determined without regard to the Voting Interest of such contributing Member);

(b) The Gross Asset Values of all Company Property shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Manager as of the following times: (i) the acquisition of an additional interest by any new or existing Member in exchange for more than a *de minimis* contribution of property (including money); (ii) the Distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for a Membership Interest; and (iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that adjustments pursuant to clauses (i) and (ii) above shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) The Gross Asset Value of any Company asset Distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of Distribution as reasonably determined by the distributee and the Manager, provided that, if the distributee is a Manager, the determination of the fair market value of the Distributed asset shall require the consent of the other Members holding at least a Super-Majority Interest (determined without regard to the Voting Interest of the distributee Member); and

(d) The Gross Asset Values of Company Property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulation Section 1.704-1(b)(2)(iv)(m) and Section 9.3 and subparagraph (d) under the definition of Profits and Losses; provided, however, that Gross Asset Values shall not be adjusted pursuant to this subparagraph (d) of this definition to the extent that the Manager determines that an adjustment pursuant to subparagraph (b) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (d).

If the Gross Asset Value of an asset has been determined or adjusted pursuant to subparagraph (a), (b) or (d) of this definition, then such Gross Asset Value shall

thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

"Highest Aggregate Rank" shall have the meaning set forth in Section 5.9.

"Highest Ranked Matches" shall have the meaning set forth in Section 5.9.

"Identified Infringements" shall have the meaning set forth in Section 3.2 (c).

"Initial Capital Contribution" shall have the meaning set forth in Section 9.1.

"Intellectual Property" shall mean all foreign, federal, state and common law trademarks, service marks, domain names, Internet path names and addresses of whatsoever nature, trade dress, copyrights, know-how, show-how, patents, inventions, (whether or not patentable) mask works, Software, proprietary data, customer lists, strategic plans, financial data, Trade Secrets, all other intangible assets of whatsoever nature and all applications for registration and/or issuance with respect to all the foregoing and whether or not any of the foregoing is registerable or patentable, including, without limitation, with respect to all of the foregoing: (a) all goodwill associated with any and all of the foregoing, (b) all parents, continuations, continuations in part, divisionals, reissues and extensions, and (c) all moral rights associated with any and all of the foregoing.

"Interim Manager" shall have the meaning set forth in Section 5.8.

"Internet" shall mean the largest set of computer based networks now known, as interconnected by routers.

"Laws" shall mean all laws, statutes, rules, regulations, ordinances, and other pronouncements having the effect of law of the United States or any state, county, city, possession or other political subdivision of any Government Authority.

"Majority Vote" shall mean one or more Voting Interests of the Members, which, taken together exceed fifty percent (50%) of the aggregate of all Voting Interests.

"Manager" shall have the meaning set forth in Section 5.1.

"Managers List" shall have the meaning set forth in Section 5.9.

"Mark Licensees" shall have the meaning set forth in Section 3.2 (f).

"Match" shall have the meaning set forth in Section 5.9.

S-7

**CONFIDENTIAL**

SER 163

“Material Adverse Effect” shall mean reasonable anticipation that the net worth of the Company would be reduced by more than five percent (5%) or such net worth is, in fact, reduced by more than five percent (5%).

“Media” shall mean television, telephony, radio, satellite, cable, wire, computer-based network, network, magnetic means, electronic means, Internet, intranet, print means, optical means and any other method (now known or hereinafter devised, invented or created) for the publication of Content, including without limitation, computer software, compact and laser disc, digital video displays, video cassettes, and multi-media means.

“Member” shall mean each of the parties who executes a counterpart of this Agreement as a member (“Member”).

“Member Meeting” shall mean each, any and all Quarterly Meetings, Annual Meetings and/or Special Meetings.

“Membership Interest” shall mean a Member’s ownership interest in the Company expressed as a percentage in relation to all other Members’ ownership interest in the Company.

“Misconduct” shall have the meaning set forth in Section 5.8.

“Misconduct Arbitration Proceedings” shall have the meaning set forth in Section 5.8.

“Net Sortie” shall have the meaning set forth in the initial paragraph of this Agreement.

“Non-Cash Consideration” shall have the meaning set forth in Section 15.2.1.

“Non-Changing Member” shall have the meaning set forth in Section 15.5.

“Non-Executive Reserve” shall mean, with respect to a time period as expressed in this Agreement that also expressly references this defined term in a provision of this Agreement (each a “Non-Executive Reserve Relevant Time Period”), an amount of cash equal to the total expenditures for three (3) months as set forth on the Budget that is controlling for each such respective Non-Executive Reserve Relevant Time Period minus salaries to the CEO and the COO.

“Notice” shall have the meaning set forth in Section 18.1.

“Notice of Transfer” shall have the meaning set forth in Section 15.2.1.

“Officer” shall mean the CEO, the COO, the CAO as well as any other employee of the Company who is the subject of an Officer Notice pursuant to Section 5.2(n).

“Officer Misconduct” shall have the meaning set forth in Section 6.1.

“Officer Notice” shall have the meaning ascribed to such term in Section 5.2(n).

“Offered Interest” shall have the meaning set forth in Section 15.2.1.

“Option Period” shall have the meaning set forth in Section 15.2.2.

“Participation Notice” shall have the meaning set forth in Section 15.2.2.

“Participation Options” shall have the meaning set forth in Section 15.2.2.

“Period of Arbitration” shall have the meaning set forth in Section 5.8.

“Person” shall mean any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

“Pledge” shall have the meaning set forth in Section 5.3(a).

“Principal Place of Business” shall have the meaning ascribed to such term in Section 2.3.

“Profits” and “Losses” shall mean for each Fiscal Year, or other applicable period, of the Company an amount equal to the Company’s net taxable income or loss for such year as determined for federal income tax purposes (including separately stated items) in accordance with the accounting method and rules used by the Company, subject to the capital account maintenance rules set forth in Section 1.704-1(b)(2)(iv) of the Regulations, and in accordance with Section 703 of the Code, with and including the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses (pursuant to this definition) shall be added to such taxable income or loss;

(b) Any expenditure of the Company described in Section 705(a)(2)(B) of the Code and not otherwise taken into account in computing Profits and Losses (pursuant to this definition) shall be subtracted from such taxable income or loss;

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subparagraphs (b) or (c) of the definition of Gross Asset

Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Profits and Losses;

(d) Gain or loss resulting from any disposition of any Company asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed with reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or Section 743(b) of the Code is required pursuant to Section 1.704-1(b)(2)(iv)(m)(4) of the Regulations to be taken into account in determining Capital Accounts as a result of a Distribution other than in liquidation of a Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Profits and Losses.

“Proposed Budget” shall mean the proposed annual expenditures by the Company for the succeeding year proposed by the Manager to the Members for consideration at each respective Annual Meeting.

“Purchase Price” shall have the meaning set forth in Section 15.2.1.

“Quarterly Meeting” shall have the meaning set forth in Section 8.2.

“Regulations” shall include proposed, temporary and final regulations promulgated under the Code in effect as of the date of filing the Articles of Organization and the corresponding sections of any regulations subsequently issued that amend or supersede such regulations in their application to the Company.

“Remainder” shall have the meaning set forth in Section 17.3(a).

“Remaining Members” shall have the meaning set forth in Section 15.2.1.

“Removal Deadlock” shall have the meaning set forth in Section 5.8.

“Reorganization” shall mean the merger or conversion of the Company, or a Transfer or other disposition of assets of the Company, or Transfer or other disposition of

S-10

**CONFIDENTIAL**

**EXHIBIT B**  
**(PART 4 OF 4)**

Membership Interests, or other transaction pursuant to which a Person or Persons acquire all or substantially all of the assets of, or Membership Interests in, the Company in a single or series of related transactions, including without limitation, a merger or conversion of the Company into a corporation or other entity, whether or not such corporation or other entity has the same owners as the Company and whether or not additional capital is contributed to such corporation or other entity.

“Reports” shall have the meaning set forth in Section 18.3.

“Respective Distribution Entitlement” shall have the meaning set forth in Section 11.2.2.

“Restricted Territory” shall mean the known universe as of the Effective Date.

“Secretary of State” shall mean the secretary of state of the State of Nevada.

“Section” shall mean an enumerated part of any Article.

“Self Identified Infringements” shall have the meaning set forth in Section 3.2(b).

“Software” shall mean source code, object code, executable code, or other program or code format whatsoever, whether now known or hereinafter Developed.

“Special Meeting” shall have the meaning ascribed to such term in Section 8.3.

“Special Member Meeting Caller” shall have the meaning set forth in Section 8.3.

“Start-up Phase” shall have the meaning set forth in Section 6.2(a).

“State” shall mean the State of Nevada.

“Stephens” shall have the meaning set forth in the initial paragraph of this Agreement.

“Stephens Membership Interests” shall mean the Membership Interests acquired by Stephens pursuant to this Agreement.

“Strategic Alliance Agreement” shall have the meaning set forth in Article 20 of this Agreement.

“Super-Majority Interest” shall mean one or more Voting Interests of the Members, which, taken together exceed seventy-five percent (75%) of the aggregate of all Voting Interests.

“Suspended Manager” shall have the meaning set forth in Section 5.8.

S-11

**CONFIDENTIAL**

SER 168

**"Tag Along Member"** shall have the meaning set forth in Section 15.2.2.

**"Tag Along Option"** shall have the meaning set forth in Section 15.2.2.

**"Technology"** shall mean electronic Service request generator via Internet, electronic report generation, display, techniques employed for the creation and maintenance of the Database, transmittal and printing operations regarding the provision of Services.

**"Term"** shall mean the period commencing on the Effective Date and ending upon the Termination Date.

**"Termination Date"** have the meaning set forth in Section 2.5.

**"Third Party Offer"** shall have the meaning set forth in Section 15.2.1.

**"Third Party Purchaser"** shall have the meaning set forth in Section 15.2.1.

**"TMP"** shall have the meaning set forth in Section 11.8.

**"Total Reserve"** shall mean, with respect to a time period as expressed in this Agreement that also expressly references this defined term in a provision of this Agreement (each a **"Total Reserve Relevant Time Period"**), an amount of cash equal to the total expenditures for three (3) months as set forth on the Budget that is controlling for each such respective Total Reserve Relevant Time Period.

**"Trade Secrets"** shall mean trade secrets as such term is defined in the Uniform Trade Secrets Act, as promulgated from time to time in Nevada.

**"Transfer"** shall mean a sale, assignment, exchange, or other transfer for consideration, pledge, hypothecation, or grant of a security interest, or change in ownership by reason of the merger, conversion or other transformation in the identity or form of business organization of the owner, regardless of whether such change or transformation is characterized by state law as not changing the identity of the owner, but shall not include a Gift.

**"Transferring Member"** shall mean a Transferring Member and a Gifting Member.

**"Transferor's Estimate"** shall have the meaning set forth in Section 15.2.1(b).

**"Voting Interest"** shall mean Membership Interest that are entitled to cast votes pursuant to or arising out of this Agreement expressed with respect to any given Member but expressed by a percentage by comparing such Member's relative

**Membership Interests (that are so entitled to cast votes) in relation to the aggregate  
Membership Interest (that are also entitled to cast votes).**

S-13

**CONFIDENTIAL**

SER 170

**EXHIBIT 5.8**  
**ARBITRATION**

1.1 Certain terms used herein shall have the meanings ascribed to such terms as set forth in Section 1.10 of this Exhibit 5.8 to the extent not otherwise defined in this Agreement.

1.2 Net Sortie shall provide to Stephens and Stephens shall provide to Net Sortie, within fifteen (15) Business Days of the Arbitration Commencement Date, respective Arbitrator Lists (said fifteenth (15th) day known herein as the "Arbitration List Production Deadline"). Net Sortie and Stephens shall undertake respective reasonable efforts to determine that each individual on the respective Arbitrator List will be available during all relevant time periods to act as an Adjudicating Arbitrator. The hourly rates and other charges that each individual on the respective Arbitrator Lists will charge to be an Adjudicating Arbitrator shall be detailed by Net Sortie and Stephens.

1.3 Within ten (10) Business Days after the Arbitration List Production Deadline, Net Sortie and Stephens shall meet in person at the Principal Place of Business for the purpose of Adjudicating Arbitrator selection as follows:

- (a) If any of the Arbitrators are chosen both by Stephens and by Net Sortie (an "Arbitrator Match") and there is only one Arbitrator Match, then the Arbitrator Match shall become Arbitrator that adjudicates the Misconduct Arbitration Proceedings arising out of a particular Arbitration Commencement Date (the "Adjudicating Arbitrator");
- (b) If there is more than one Arbitrator Match, then the Arbitrator Match with the highest aggregate numerical preference rating (the "Highest Aggregate Ranked Arbitrator") taking into consideration both the rankings indicated by Stephens and Net Sortie shall become the Adjudicating Arbitrator;
- (c) If there are Arbitrator Matches that share the Highest Aggregate Rank (the "High-Ranked Arbitrator Matches"), then the Adjudicating Arbitrator shall be designated by process of a coin toss (with the Claimant flipping the coin and one of the High-Ranked Arbitrator Matches designated as heads and the other designated as tails), or, if necessary, there shall be multiple coin tosses in the event of several High-Ranked Arbitrator Matches; and

E5-1

**CONFIDENTIAL**

SER 171

- (d) If there are no Arbitrator Matches, then Net Sortie shall have the right to choose the Adjudicating Arbitrator amongst any of the Arbitrators that appear on the Arbitrator List produced by Stephens.

1.4 If, due to incapacity, unwillingness or any other reason, the chosen Adjudicating Arbitrator becomes unavailable to fulfill the Adjudicating Arbitrator's duties, then procedures set forth in Section 1.3 of this Exhibit 5.8 shall be repeated until an available and serving Adjudicating Arbitrator is found.

1.5 Net Sortie and Stephens shall have forty-five (45) Business Days from the Arbitration Commencement Date to submit respective Arbitration Briefs to each other Member and the Adjudicating Arbitrator via electronic mail and U.S. Mail.

1.6 An Arbitration Hearing shall take place within sixty (60) Business Days after the Arbitration Commencement Date at a time reasonably designated by the Adjudicating Arbitrator and at a location within Chicago, Illinois reasonably designated by the Adjudicating Arbitrator.

1.7 The Adjudicating Arbitrator shall render and report to both Net Sortie and Stephens an Arbitration Decision within fifteen (15) Business Days after the Arbitration Hearing.

1.8 ~~An Arbitration Decision shall be final and binding on the Members~~ and shall bar any suit, action or proceeding instituted by any of the Members in any court or administrative tribunal or any jurisdiction, except for a decision on enforcement proceedings.

1.9 Net Sortie and Stephens shall each bear fifty (50%) of all costs of the Misconduct Arbitration Proceedings.

#### 1.10 Definitions

"Adjudicating Arbitrator" shall have the meaning set forth in Section 1.3(a).

"Arbitration Brief" shall mean one document setting forth the respective memoranda of facts and applicable law regarding the issue of whether Misconduct occurred with a maximum page length (and a font size of Times Roman 12, with at least one inch margins) of thirty (30) pages, non-inclusive of relevant evidentiary attachments.

"Arbitration Commencement Date" shall have the meaning set forth in Section 5.8 of the Agreement.

E5-2

**CONFIDENTIAL**

SER 172

**“Arbitration Decision” shall mean a final determination of the Adjudicating Arbitrator as to whether Manager removal is or is not appropriate based upon the occurrence of Misconduct.**

**“Arbitration Hearing” shall mean a hearing occurring on a single day and lasting no more than seven (7) hours to be oriented in the reasonable discretion of the Adjudicating Arbitrator by under no circumstances whereby one Member is permitted more time to present such Members case as opposed to the other Member.**

**“Arbitration List Production Deadline” shall have the meaning set forth in Section 1.2.**

**“Arbitrator” shall mean any attorney-at-law licensed in the State of Illinois to engage in the practice of law that also has at least ten (10) years of experience at a Chicago-based law firm that employs (by way of equity partners, non-equity partners and associates) not less than one hundred (100) lawyers in the areas of corporate transactions and/or commercial litigation involving disputes involving corporate duties.**

**“Arbitrator List” shall mean a list of five (5) proposed Arbitrators, numerically ranked according to preference with the first rank signifying the highest preference and the fifth rank signifying the lowest preference.**

**“Arbitrator Match” shall have the meaning set forth in Section 1.3(a).**

**“High-Ranked Arbitrator Matches” shall have the meaning set forth in Section 1.3(c).**

**“Highest Aggregate Ranked Arbitrator” shall have the meaning set forth in Section 1.3(b).**

E5-3

**CONFIDENTIAL**

SER 173

**EXHIBIT 6**  
**EMPLOYMENT AGREEMENTS**

ATTACHED HERETO

E6-1

**CONFIDENTIAL**

SER 174

**EXHIBIT 9.1**  
**INITIAL CAPITAL CONTRIBUTIONS**

**Initial Members**

**Initial Capital Contribution**

Net Sortie Systems, LLC  
SI Content Monitor LLC

\$ [REDACTED] \*  
\$ [REDACTED]

\*Net Sortie's Capital Contribution shall not consist of cash, but rather, Net Sortie hereby assigns all of its right, title, and interest in all of Net Sortie's Intellectual Property to the Company, pursuant to the assignment attached hereto as Exhibit 9.1 (A).

E9-1

**CONFIDENTIAL**

SER 175

**EXHIBIT 9.1(A)**  
**ASSIGNMENT**

This Intellectual Property Assignment (this "Assignment") is made effective as of January 17, 2010 (the "Effective Date") by Net Sortie Systems, LLC, a Nevada limited-liability company ("Net Sortie") for the benefit of Righthaven LLC, a Nevada limited-liability company ("Assignee").

Net Sortie hereby contributes, conveys, transfers and assigns to Assignee Net Sortie's entire right, title, license and interest in, to and under the business method related to and associated with the provision of copyright infringement identification and prosecution services to others (the "Business Method IP") with said right, title, license and interest to be held and enjoyed by Assignee, for Assignee's own use and benefit and for the use and benefit of Assignee's successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by Net Sortie if this contribution, conveyance, transfer and assignment had not been made. This Assignment of Net Sortie's existing rights to the Business Method IP shall be automatically revoked and all such assigned rights shall revert to Net Sortie in the event of dissolution of the Company in accordance with the Operating Agreement.

IN WITNESS WHEREOF, Net Sortie hereby executes this Assignment on this 17th day of January, 2010.

Net Sortie Systems, LLC,  
a Nevada limited-liability company:

\_\_\_\_\_  
Steven A. Gibson, Manager

STATE OF NEVADA            )  
COUNTY OF CLARK        )

Subscribed and sworn to before me by Steven A. Gibson this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Notary Public

E9(A)-1

**CONFIDENTIAL**

**EXHIBIT 13**  
**BUDGET**

ATTACHED HERETO

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E13-1

**CONFIDENTIAL**

SER 177

**EXHIBIT 18.1**  
**NAME, ADDRESS AND MEMBERSHIP INTEREST**

<b>Name</b>	<b>Address</b>	<b>Membership Interest</b>
Net Sortie Systems, LLC, a Nevada limited-liability company	9506 West Flamingo Road, Suite 101 Las Vegas, Nevada 89147 Attn: Manager	50%
SI Content Monitor LLC, an Arkansas limited-liability company	111 Center Street Suite 2500 Little Rock, Arkansas 72201 Attn: Manager	50%

E18-1

**CONFIDENTIAL**

SER 178

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Attorneys For Defendant & Counterclaimant  
THOMAS A. DIBIASE

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

RIGHTHAVEN LLC, a Nevada limited-  
liability company,  
  
Plaintiff,  
  
v.  
  
THOMAS A. DIBIASE, an individual,  
  
Defendant.  
  
\_\_\_\_\_  
THOMAS A. DIBIASE, an individual,  
  
Counterclaimant,  
  
v.  
  
RIGHTHAVEN LLC, a Nevada limited-  
liability company,  
  
Counter-defendant.  
  
\_\_\_\_\_

CASE NO.: 2:10-cv-01343-RLH-PAL  
  
**REDACTED VERSION OF  
DEFENDANT-COUNTERCLAIMANT  
THOMAS A. DIBIASE'S MOTION TO  
DISMISS FOR LACK OF SUBJECT-  
MATTER JURISDICTION**

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**TABLE OF CONTENTS**

Page

MOTION ..... 1

MEMORANDUM OF POINTS AND AUTHORITIES ..... 1

I. INTRODUCTION..... 1

II. FACTUAL BACKGROUND ..... 2

    A. Righthaven’s Complaint & Its Ownership Allegations..... 2

    B. The Strategic Alliance Agreement Between Righthaven And Stephens ..... 2

III. ARGUMENT ..... 5

    A. Righthaven Lacks Standing To Sue Over The McMurdo Article..... 6

    B. The Assignment Fails Because The SAA Is Champertous. .... 10

        1. Righthaven Has No Legitimate Interest In This Litigation. .... 11

        2. Righthaven Undertook This Litigation At Its Own Expense. .... 11

        3. Righthaven Undertook This Litigation In Consideration Of  
            Receiving A Portion Of The Proceeds Of The Litigation. .... 12

    C. The Court Should Dismiss This Case With Prejudice, Enter Judgment In  
        Mr. DiBiase’s Favor And Consider Ordering Righthaven To Show Cause  
        Why Other Copyright Actions Pending In This District Should Not Be  
        Dismissed. .... 13

IV. CONCLUSION ..... 15

1 **MOTION TO DISMISS**

2 Pursuant to Fed. R. Civ. P. 12(h)(3), Defendant-counterclaimant Thomas A. DiBiase  
3 (“Mr. DiBiase”) respectfully moves to dismiss Righthaven’s Complaint with prejudice for lack  
4 of subject-matter jurisdiction. This motion is supported by the accompanying memorandum of  
5 points and authorities and the declaration of Bart E. Volkmer.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Defendant-counterclaimant Thomas A. DiBiase (“Mr. DiBiase”) moves to dismiss  
9 Plaintiff/counter-defendant Righthaven LLC’s (“Righthaven”) copyright-infringement claim  
10 pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject-matter jurisdiction. A recently produced  
11 Strategic Alliance Agreement (“SAA”) between Righthaven and Stephens Media (“Stephens”)  
12 shows—beyond any genuine dispute—that Righthaven does not own or have sufficient rights in  
13 the copyright at issue in this case to file a copyright-infringement lawsuit. While Righthaven  
14 bases its ownership claim on an alleged assignment from Stephens, the SAA demonstrates that  
15 Stephens has only granted Righthaven a qualified right to bring suit. The Copyright Act and an  
16 *en banc* opinion from the Ninth Circuit make clear that an assignment of a copyright cause of  
17 action is not enough to establish standing. In addition, the SAA is an illegal arrangement for  
18 champerty, violating the venerable policy that one may not establish a business to enforce the  
19 rights that others are not disposed to enforce. As a champertous agreement, the purported  
20 assignment is a nullity, and Righthaven has not lawfully acquired the copyright underlying its  
21 claim. Accordingly, the Court lacks Article III jurisdiction to adjudicate Righthaven’s copyright-  
22 infringement lawsuit and it should be dismissed with prejudice.

23 In addition, Mr. DiBiase notes that Righthaven has filed hundreds of lawsuits in this  
24 district apparently based on identical sham assignments, several of which are pending before this  
25 Court. Where the defendants in those cases lack representation and, therefore, are not well-  
26 positioned to raise the standing issue, Mr. DiBiase respectfully urges the Court to consider  
27 ordering Righthaven to show cause why those cases should not also be dismissed for lack of  
28 Article III standing.

1 “assigned” copyrights. In this case, Stephens has all of the rights to commercially exploit the  
2 McMurdo Article and Righthaven has none. That explains why the article still appears on the  
3 LVRJ website without any indicia of an “assignment” to Righthaven.<sup>2</sup>

4 ***The Illusory Nature of the Assignment:*** The purported assignment is a sham on its face,  
5 but suffers from yet another defect: it is illusory. Stephens purports to retain “the right at any time  
6 to terminate, in good faith, any Copyright Assignment . . . and enjoy a right of complete reversion  
7 to the ownership of any copyright . . . .” SAA § 8. If Stephens elects to exercise this “reversion”  
8 option with respect to any copyright that Righthaven has sued over, then Stephens becomes  
9 responsible for effectuating the termination of the litigation, is responsible for any losses  
10 associated with the dismissal, and must compensate Righthaven for the work it has put in. *Id.*  
11 This provision purports to vest with Stephens the right to have a copyright assigned back to it on  
12 demand, and to put a stop to any action that Righthaven has commenced. If Righthaven actually  
13 owned the copyright to the McMurdo article, it could not be encumbered in this way.

14 ***Stephens’ Representations in the SAA:*** The artificial nature of the alleged assignment is  
15 also borne out by the representations that Stephens makes in the SAA. Stephens represents that it  
16 will not “sell,” encumber or “assign” to any third party the very copyrights that it has purported to  
17 “assign” to Righthaven, unless it receives Righthaven’s permission first. SAA § 9.3. That  
18 provision only makes sense if Stephens has not, in fact, assigned copyrights to Righthaven at all.  
19 Indeed, Stephens retains the right to use the “assigned” copyrights as collateral when receiving  
20 funding, so long as they are not singled out in the loan documents. *Id.* Stephens also represents  
21 that it will not settle any of the cases that Righthaven has brought unless it receives Righthaven’s  
22 approval. *Id.* These representations are entirely inconsistent with a true assignment and entirely  
23 consistent with Stephens attempting to assign a naked cause of action for copyright infringement to  
24 Righthaven.

25  
26  
27 <sup>2</sup> See McMurdo Article, available at <http://www.lvrj.com/news/retired-teacher-gets-death-penalty-for-wife-s-murder-96191524.html> (“Copyright © Stephens Media LLC 1997 – 2011”).  
28

1 1093 (9th Cir. 2004) (“The court has a continuing obligation to assess its own subject-matter  
2 jurisdiction, even if the issue is neglected by the parties.”).<sup>8</sup>

3 **IV. CONCLUSION**

4 For the foregoing reasons, Mr. DiBiase respectfully requests that the Court dismiss  
5 Righthaven’s Complaint with prejudice.

6 Dated: May 4, 2011

Respectfully submitted,

7 WILSON SONSINI GOODRICH & ROSATI  
8 Professional Corporation

9 By: /s/ Bart E. Volkmer  
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10 BART E. VOLKMER (*pro hac vice*)  
650 Page Mill Road  
11 Palo Alto, California 94304

12 ELECTRONIC FRONTIER FOUNDATION

13 By: /s/ Kurt Opsahl  
Kurt Opsahl (*pro hac vice*)  
14 Corynne McSherry (*pro hac vice*)  
454 Shotwell Street  
15 San Francisco, CA 94110

16 CHAD A. BOWERS, LTD.

17 By: /s/ Chad Bowers  
18 Chad A. Bowers  
NV State Bar Number 7283  
19 3202 W. Charleston Blvd.  
20 Las Vegas, Nevada 89102

21 *Attorneys for Thomas A. DiBiase*

22 \_\_\_\_\_  
23 <sup>8</sup> Righthaven’s pending cases before the presiding judge in this action where counsel has not  
24 appeared for the defendant are: *Righthaven LLC v. Downey*, 2:10-cv-01172-RLH-RJJ; *Righthaven*  
25 *LLC v. Hippen*, 2:10-cv-01454-RLH-LRL (Shawn Mangano, counsel for Righthaven, is  
26 erroneously listed as defendant’s counsel); *Righthaven LLC v. Edmunds*, 2:10-cv-01492-RLH-  
27 RJJ; *Righthaven LLC v. Hoefling et al.*, 2:10-cv-01539-RLH-RJJ; *Righthaven LLC v. Sulimanov et*  
28 *al.*, 2:10-cv-01831-RLH-LRL; *Righthaven LLC v. Stewart*, 2:10-cv-01903-RLH-PAL; *Righthaven*  
*LLC v. Barham et al.*, 2:10-cv-02150-RLH-RJJ; *Righthaven LLC v. Peddle*, 2:10-cv-02173-RLH-  
LRL; and *Righthaven LLC v. Ashton*, 2:11-cv-00057-RLH-PAL.

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

RIGHTHAVEN LLC,  
  
Plaintiff,  
  
vs.  
  
DEMOCRATIC UNDERGROUND, LLC,  
a District of Columbia limited-liability  
company, and DAVID ALLEN, an  
individual,  
  
Defendants.

Case No. 2:10-cv-1356-RLH-GWF

**ORDER**  
(Motion for Reconsideration-#78)

DEMOCRATIC UNDERGROUND, LLC,  
a District of Columbia limited-liability  
company,  
  
Counterclaimant,  
  
vs.  
  
RIGHTHAVEN LLC, a Nevada Limited-  
liability company; and and STEPHENS  
MEDIA LLC, a Nevada limited liability  
company,  
  
Counterdefendants.

Before the Court is Righthaven LLC's Motion for Reconsideration of March 9, 2011  
Order Granting Defendants' Motion for Leave to File Supplemental Memorandum or,  
Alternatively, Application for Briefing Schedule to Address Supplemental Brief (#78, filed  
March 9, 2011), and Counter-Defendant Stephens Media LLC's Joinder to the Motion (#81, also filed  
March 9, 2011).

1           The bases for reconsideration are (1) that Plaintiff Righthaven and Counter-Defendant  
2 Stephens Media did not have an opportunity to respond to the motion, and (2) that movants are  
3 piqued that Defendant Democratic Underground refuses to let Righthaven dismiss its claims and  
4 refuses to dismiss Defendant's counterclaims. If the second reason was the basis for the opposition  
5 the parties would have presented had they been given an opportunity to oppose the motion, neither  
6 basis has merit. The Supplemental Memorandum goes to the very heart of this litigation.

7           Righthaven and Stephens Media have attempted to create a cottage industry of filing  
8 copyright claims, making large claims for damages and then settling claims for pennies on the dollar,  
9 with defendants who do not want to incur the costs of defending the lawsuits, are now offended when  
10 someone has turned the tables on them and insisting on a judgment in their favor rather than a simple  
11 dismissal of the lawsuit.

12           The Court makes the determination of what is material to the resolution of this matter,  
13 and what it will entertain. It is not obligated to take the movants' word that the contents of the  
14 supplemental memorandum does not or will not make a difference.

15           Because the information and arguments made in the Supplement Memorandum are  
16 significant, the Court will permit Righthaven and Stephens Media to respond and Democratic  
17 Underground to reply to their response.

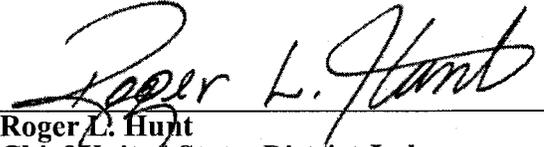
18           **IT IS THEREFORE ORDERED** that Righthaven LLC's **Motion for Reconsideration**  
19 **of March 9, 2011 Order Granting Defendants' Motion for Leave to File Supplemental Memo-**  
20 **randum or, Alternatively, Application for Briefing Schedule to Address Supplemental Brief**  
21 **(#78), together with Counter-Defendant Stephens Media LLC's Joinder to the Motion (#81) are**  
22 **DENIED.**

23           **IT IS FURTHER ORDERED** that Righthaven and Stephens Media shall file any  
24 response to the Supplemental Memorandum no later than May 8, 2011, and Democratic Underground  
25 and David Allen shall file any reply thereto no later than May 20, 2011. Any Response or Reply shall

26 ////

1 be limited to ten (10) pages, and no request for extensions of time or to exceed page limits will be  
2 entertained.

3 Dated: April 14, 2011.

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6 Roger L. Hunt  
7 Chief United States District Judge  
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8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**

11 RIGHTHAVEN LLC, a Nevada limited-  
 liability company,

13 **Plaintiff,**

14 v.

16 THOMAS A. DIBIASE, an individual,  
 17 **Defendant.**

Case No.: 2:10-cv-01343-RLH-PAL

**CERTIFICATE OF INTERESTED  
 PARTIES**

20 In accordance with Fed. R. Civ. P. 7.1 and Local Rule 7.1-1, the undersigned, counsel of  
 21 record for Righthaven LLC, certifies that the following have a direct, pecuniary interest in the  
 22 outcome of this case:

- 23 1. Righthaven LLC, a Nevada limited-liability company;
- 24 2. SI Content Monitor LLC, an Arkansas limited-liability company; and
- 25 3. Net Sortie Systems, LLC, a Nevada limited-liability company.



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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

RIGHTHAVEN LLC, a Nevada limited-liability company,

Plaintiff,

v.

THOMAS A. DIBIASE, an individual,

Defendant.

Case No.: 2:10-cv-01343

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

Righthaven LLC ("Righthaven") complains as follows against Thomas A. DiBiase ("Mr. DiBiase"), on information and belief:

**NATURE OF ACTION**

1. This is an action for copyright infringement pursuant to 17 U.S.C. § 501.

**PARTIES**

2. Righthaven is, and has been at all times relevant to this lawsuit, a Nevada limited-liability company with its principal place of business in Nevada.





**CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT**

1  
2 24. Righthaven repeats and realleges the allegations set forth in Paragraphs 1 through  
3 23 above.

4 25. Righthaven holds the exclusive right to reproduce the Work, pursuant to 17  
5 U.S.C. § 106(1).

6 26. Righthaven holds the exclusive right to prepare derivative works based upon the  
7 Work, pursuant to 17 U.S.C. § 106(2).

8 27. Righthaven holds the exclusive right to distribute copies of the Work, pursuant to  
9 17 U.S.C. § 106(3).

10 28. Righthaven holds the exclusive right to publicly display the Work, pursuant to 17  
11 U.S.C. § 106(5).

12 29. Mr. DiBiase reproduced the Work in derogation of Righthaven's exclusive rights  
13 under 17 U.S.C. § 106(1).

14 30. Mr. DiBiase created an unauthorized derivative of the Work in derogation of  
15 Righthaven's exclusive rights under 17 U.S.C. § 106(2).

16 31. Mr. DiBiase distributed, and continues to distribute, an unauthorized reproduction  
17 of the Work on the Website, in derogation of Righthaven's exclusive rights under 17 U.S.C. §  
18 106(3).

19 32. Mr. DiBiase publicly displayed, and continues to publicly display, an  
20 unauthorized reproduction of the Work on the Website, in derogation of Righthaven's exclusive  
21 rights under 17 U.S.C. § 106(5).

22 33. Mr. DiBiase has willfully engaged in the copyright infringement of the Work.

23 34. Mr. DiBiase's acts as alleged herein, and the ongoing direct results of those acts,  
24 have caused and will continue to cause irreparable harm to Righthaven in an amount Righthaven  
25 cannot ascertain, leaving Righthaven with no adequate remedy at law.

26 35. Unless Mr. DiBiase is preliminarily and permanently enjoined from further  
27 infringement of the Work, Righthaven will be irreparably harmed, and Righthaven is thus  
28

1 entitled to preliminary and permanent injunctive relief against further infringement by the  
2 Defendants of the Work, pursuant to 17 U.S.C. § 502.

3  
4 **PRAYER FOR RELIEF**

5 Righthaven requests that this Court grant Righthaven's claim for relief herein as follows:

6 1. Preliminarily and permanently enjoin and restrain Mr. DiBiase, and Mr. DiBiase's  
7 officers, agents, servants, employees, attorneys, parents, subsidiaries, related companies,  
8 partners, and all persons acting for, by, with, through, or under Mr. DiBiase, from directly or  
9 indirectly infringing the Work by reproducing the Work, preparing derivative works based on the  
10 Work, distributing the Work to the public, and/or displaying the Work, or ordering, directing,  
11 participating in, or assisting in any such activity;

12 2. Direct Mr. DiBiase to preserve, retain, and deliver to Righthaven in hard copies or  
13 electronic copies:

14 a. All evidence and documentation relating in any way to Mr. DiBiase's use  
15 of the Work, in any form, including, without limitation, all such evidence and  
16 documentation relating to the Website;

17 b. All evidence and documentation relating to the names and addresses  
18 (whether electronic mail addresses or otherwise) of any person with whom the  
19 Defendants have communicated regarding Mr. DiBiase's use of the Work; and

20 c. All financial evidence and documentation relating to the Mr. DiBiase's  
21 use of the Work;

22 3. Direct the current registrar, Heritage Web Design, LLC, and any successor  
23 domain name registrar for the Domain to lock the Domain and transfer control of the Domain to  
24 Righthaven;

25 4. Award Righthaven statutory damages for the willful infringement of the Work,  
26 pursuant to 17 U.S.C. § 504(c);

27 5. Award Righthaven costs, disbursements, and attorneys' fees incurred by  
28 Righthaven in bringing this action, pursuant to 17 U.S.C. § 505;



# EXHIBIT 1

# EXHIBIT 1

[Home](#) [No Body Blog](#) [No Body Murder Cases](#) [Tips](#) [My Book](#) [Contact](#)

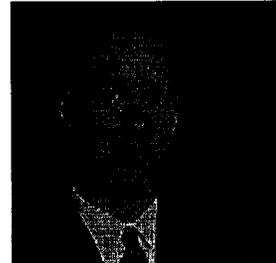
## ■ Welcome to my website!

For over 12 years I was an Assistant United States Attorney in the District of Columbia and I prosecuted homicide cases for most of those years. In January of 2006, I prosecuted the second "no body" murder case tried in D.C. and have been interested in "no body" cases ever since.

On this site I track "no body" murder cases, trials and investigations. My table of "No body" Murder Trials lists nearly 300 "no body" murder trials in the United States. I also have consulted, for free, with law enforcement agencies throughout the United States and Canada. If you know of a "no body" case, investigation, or trial, contact me and I'd be happy to add it to my table or blog about it.

All the best,

Thomas A. (Tad) DiBiase, "No Body" Guy



[Home](#) | [No Body Blog](#) | [No Body Murder Cases](#) | [Tips](#) | [My Book](#) | [Contact Us](#) |

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# EXHIBIT 2

# EXHIBIT 2

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Jun. 11, 2010  
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## Retired teacher gets death penalty for wife's murder

### Man who killed wife sought ultimate sentence

By DOUG MCMURDO  
REVIEW-JOURNAL

A man who asked the jury to give him the death penalty after it convicted him of killing his wife got his wish after less than two hours of deliberations Friday.

"He's a Muslim," said prosecutor Marc DiGiacomo of John Matthus Watson III, referring to a tenet of the faith that requires death for committing murder. "That's why he wanted the death penalty," he said about the retired teacher from Ontario, Calif.

DiGiacomo believes Watson converted to Islam during the four years he was in custody at the Clark County Detention Center. But DiGiacomo and co-prosecutor Pam Weckerly said they asked jurors to give Watson the death penalty not because he asked them to but because he deserved society's ultimate punishment.

The jury found there were two requisite aggravating circumstances in the slaying: that Evie Watson was killed during the commission of a kidnapping and that she was tortured or mutilated.

Watson, 70, lured his wife to Las Vegas in July 2006, ostensibly to celebrate her 50th birthday. In reality, he had been plotting her murder for more than a month because she was going to leave him and he didn't want to have to give her half of the family assets, prosecutors said.

"They write books about these kinds of cases," said DiGiacomo, a veteran prosecutor.

Weckerly said Watson managed to save roughly \$1 million over a 30-year career.

Her body has never been recovered, but Evie Watson's DNA was found in a shower drain at the Tuscany, in a room she was not supposed to be in as the room he rented for them was at Circus Circus.

He rented the room at the Tuscany with false identification. It was there that Watson shot his wife and then cut her up with a band saw .

In letters written from jail, Watson admitted to cooking and eating part of the body.

Weckerly described Watson as methodical, intelligent, manipulative, deceitful and dangerous, saying the murder was not typical of domestic violence murder cases.

"This is a little set apart," she said in telling jurors the killing was not a crime of passion, but one that was cold-blooded and calculated.

SER 198

Jurors, in an emotional scene, met with the Watsons' three sons, all in their 20s, after the trial.

"We owe you so much," said Michael Watson.

"You don't owe us anything," said one juror who asked not to be identified.

Jurors told the men they fretted over giving their father the death penalty because they would then be without both parents.

Getting a murder conviction in a case with no body is difficult; getting a death penalty in one is almost unheard of.

For juror Justin Crenshaw, the compelling piece of evidence that led him to find Watson guilty Thursday, and subsequently give him the death penalty, was testimony regarding police finding Evie Watson's DNA in the Tuscan shower drain.

"That did it for me," he said. "There were some holes before that and I wasn't sure, but when we (deliberated) I kept thinking about her DNA being where she wasn't supposed to be."

Watson has a history with the law.

In 1967 he was arrested in Oklahoma after telling authorities he raped and killed a hitchhiker and dumped her body. But no charges were ever filed. Police couldn't find her body after an exhaustive search.

He was also arrested by the Secret Service after threatening President Richard Nixon in the early 1970s. He was arrested but not prosecuted.

**Find this article at:**

<http://www.lvrj.com/news/retired-teacher-gets-death-penalty-for-wife-s-murder-96191524.html>

Check the box to include the list of links referenced in the article.

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# EXHIBIT 3

# EXHIBIT 3

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## • Death penalty in no body murder case

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posted by Admin on June 14th, 2010 at 8:39 PM

0 Comments added to this post

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Getting the death penalty in a no body murder case is rare.

Jun. 11, 2010

Copyright © Las Vegas Review-Journal

Retired teacher gets death penalty for wife's murder

Man who killed wife sought ultimate sentence

By DOUG MCMURDO  
REVIEW-JOURNAL

John Matthus Watson III, 70, testifies during the penalty phase of his murder trial Friday afternoon. He asked the jury that convicted him the day before to give him the death penalty. Less than two hours later, they did. Prosecutor Marc DiGiacomo believes Watson became a Muslim while in jail awaiting trial and asked for the death penalty in keeping with the tenets of the Islamic faith.

John Locher/LAS VEGAS REVIEW-JOURNAL

A man who asked the jury to give him the death penalty after it convicted him of killing his wife got his wish after less than two hours of deliberations Friday.

"He's a Muslim," said prosecutor Marc DiGiacomo of John Matthus Watson III, referring to a tenet of the faith that requires death for committing murder. "That's why he wanted the death penalty," he said about the retired teacher from Ontario, Calif.

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He was also arrested by the Secret Service after threatening President Richard Nixon in the early 1970s. He was arrested but not prosecuted.

Posted by Thomas A. (Tad) DiBiase, No Body Guy

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### • Police in Kansas City outline evidence in no body murder case

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posted by Admin on June 14th, 2010 at 8:35 PM

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Clay County authorities disclose evidence in Pernice murder case

By GLENN E. RICE

The Kansas City Star

While police and volunteers searched a wooded area for a missing Northland woman, her husband watched it on the news at a bar and said she was not in those woods.

Clay County authorities this week made that allegation, along with other previously undisclosed evidence, in arguing against a bond reduction for Shon Andrew Pernice, 37, a Kansas City, North, man accused of killing his wife.

Authorities have not found the body of Renee Pernice, who was 35 when she disappeared in January 2009, but have said there is substantial evidence that she was murdered.

At the end of a hearing on Thursday, a Clay County judge denied Pernice's request to have his \$1 million bond reduced. His attorney, Eric Vernon, said that before Pernice was arrested on the murder charge, his client had complied with electronic-monitoring requirements on unrelated criminal matters.

Vernon also said the evidence prosecutors had was circumstantial and there was nothing to support the notion that Renee Pernice had been murdered.

In general, prosecutors argued that Renee Pernice enjoyed her job, had a loving family and had no reason to leave. On the other hand, they said, Shon Pernice had a history of violating his bond and was a flight risk.

Authorities alleged the following details to bolster their case against Shon Pernice:

- Pernice did not help volunteers, police and members of Renee Pernice's family search for her in the wooded area near the couple's home.

Later that evening, Pernice went to a Northland bar to pick up a takeout order. While there, he asked the bartender to turn the television to local news. Pernice then said that searchers would not find Renee Pernice in that wooded area.

- When crime scene investigators executed a search warrant at the Pernice house last year, they discovered the garage floor had been acid-etched and a damp mop was nearby. However, the rest of the house was noticeably messy.

- Pernice did not report his wife missing until he was confronted by her family.

- Days after Renee Pernice disappeared, Shon Pernice was seen kissing a woman while gambling at a Northland casino. He also listed himself as single on dating websites.

- Renee Pernice had the ability to obtain \$50,000 in cash had she wanted to leave her family, but she never sought to acquire those funds. A review of her personal bank records found that she had not put away money.

- After the disappearance, Pernice asked a girlfriend to buy him a firearm under her name on two occasions even though he was prohibited by a judge from having one.

- Pernice purchased a switchblade while on bond on an unrelated criminal matter.

- When he found out that a family member was going to appear before a Clay County grand jury, Pernice acquired \$5,500 in cash, indicating he was a flight risk.

- Pernice dumped his wife's dog at a park and then told his son that the dog ran away. Pernice also threw away his wife's personal belongings in a trash bin at his son's school.

On Friday, Vernon said the prosecution's case was not compelling.

"As I argued to the judge, what I heard was very weak and circumstantial, that she was even deceased and certainly there was no evidence, except conjecture, that Shon Pernice was involved in her disappearance."

To reach Glenn E. Rice, call 816-234-4341 or send e-mail to [grice@kcstar.com](mailto:grice@kcstar.com).  
Posted on Fri, Jun. 04, 2010 10:40 PM

Read more: <http://www.kansascity.com/2010/06/04/1993659/clay-county-authorities-disclose.html#ixzz0qsqa2NOo>

Posted by Thomas A. (Tad) DiBiase, No Body Guy  
Read More ...

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### • Why do we let murderers use their victim's body as a bargaining chip?

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posted by Admin on June 14th, 2010 at 8:08 PM

0 Comments added to this post

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Joran Van Der Sloot is back in the news. Long suspected of murdering Natalee Holloway and now arrested for the murder of Peruvian Stephany Flores, Van Der Sloot supposedly has told police he will tell them where Miss Holloway's body is in exchange for transferring him from a Peruvian prison to one in Aruba. <http://dailycaller.com/2010/06/13/van-der-sloot-willing-to-tell-where-holloways-buried-in-exchange-for-transfer-to-aruba/> Having studied no body murder cases for several years, I've observed an increasingly disturbing trend: more and more defendants are using the body of their murdered victim as a bargaining chip. Van Der Sloot is far from the first. Hans Reiser was convicted of murdering his wife in California in 2008. She had disappeared in 2006 and Reiser denied the murder for years and fought the charge at trial. After a five month trial, an Oakland jury convicted the Linux inventor of first degree murder. After the conviction, however, in exchange for a reduced sentence, Reiser led the police to his wife's body which he had buried less than half a mile from his house. Instead of facing a sentence of 25 years to life, Reiser's charge was reduced to second degree murder which carried a term of only 15 years to life. In 2008, prosecutors in the United States Attorney's Office for the District of Columbia (my old office) permitted Michael Dickerson to plead guilty to second degree murder and in exchange he agreed to lead police to where he buried the body of his girlfriend, Shaquita Bell. Dickerson then led police and prosecutors on a futile two day search for Ms. Bell's body which has never been found. Yet he was still sentenced to just 15 years in prison. <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/11/AR2008111103085.html> Just this past May in Tennessee, Douglas Whisnant was able to plea bargain into second degree murder charges by agreeing to show police where he buried his ex-wife's body. Whisnant was sentenced to 15 years. Perhaps more galling, Whisnant is currently serving a 25 year federal firearms sentence and will get credit for his murder sentence, a state charge, will serving his federal time! Thus, he does no additional time for the murder. <http://www.knoxnews.com/news/2010/may/17/details-net-reduced-sentence/>

Now there are clearly some good reasons to let a defendant take a plea in a no body murder case: weak evidence, getting closure for the family and sometimes getting something is better than getting nothing. But letting a defendant call the shots and use his victim's body as a bargaining chip is particularly distasteful given that most of these murderers fit the classic profile of domestic abusers. It's all about control and they want to be the ones in control. Letting murderers use their victim one last time to win themselves leniency is their final act of control and prosecutors ought to be loathe to let them do it. Winning a conviction in a no body murder case is difficult and dealing with a grieving and often angry family is equally difficult. But letting a murderer run the show and determine what charges or sentence he faces is simply unacceptable.

Posted by Thomas A. (Tad) DiBiase, No Body Guy  
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• **Why do we let murderers use their victim's body as a bargaining chip?**

---

posted by Admin on June 14th, 2010 at 8:06 PM

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Posted by Thomas A. (Tad) DiBiase, No Body Guy

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• **Chinese man released from prison after victim turns up alive**

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posted by Admin on May 24th, 2010 at 7:41 PM

0 Comments added to this post

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Not a U.S. case but I never said it couldn't happen here.....

From The Times May 11, 2010

# EXHIBIT 4

# EXHIBIT 4

Type of Work: Text

Registration Number / Date:  
TX0007182385 / 2010-07-27

Application Title: Man who killed wife sought ultimate sentence.

Title: Man who killed wife sought ultimate sentence.

Description: Electronic file (eService)

Copyright Claimant:  
Righthaven LLC, Transfer: By written agreement.

Date of Creation: 2010

Date of Publication:  
2010-06-11

Nation of First Publication:  
United States

Authorship on Application:  
Stephens Media LLC, employer for hire; Domicile: United States; Citizenship: United States. Authorship: text.

Rights and Permissions:  
Chief Operating Officer, Righthaven LLC, 9960 West Cheyenne Avenue, Suite 210, Las Vegas, NV, 89129-7701, United States, (702) 527-5900, dbrownell@righthaven.com

Names: Stephens Media LLC  
Righthaven LLC

**United States District Court  
District of Nevada (Las Vegas)  
CIVIL DOCKET FOR CASE #: 2:10-cv-01343-RLH -PAL**

Righthaven LLC v. DiBiase  
Assigned to: Judge Roger L. Hunt  
Referred to: Magistrate Judge Peggy A. Leen  
Demand: \$75,000  
Case in other court: 9th Circuit Court of Appeal, 11-16776  
Cause: 17:501 Copyright Infringement

Date Filed: 08/09/2010  
Date Terminated: 06/22/2011  
Jury Demand: Both  
Nature of Suit: 820 Copyright  
Jurisdiction: Federal Question

**Plaintiff**

**Righthaven LLC**

represented by **John Charles Coons**  
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*TERMINATED: 04/19/2011*

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Fax: 702-541-7899  
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*TERMINATED: 11/24/2010*

V.

**Defendant**

**Thomas A. DiBiase**

represented by **Bart E. Volkmer**  
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Fax: (650) 565-5171  
Email: [bart@dropbox.com](mailto:bart@dropbox.com)  
*TERMINATED: 08/29/2011*  
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*ATTORNEY TO BE NOTICED*

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*LEAD ATTORNEY*  
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**Corynne McSherry**

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Email: corynne@eff.org  
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*ATTORNEY TO BE NOTICED*

**Chad A Bowers**  
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*ATTORNEY TO BE NOTICED*

**Kurt Opsahl**  
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(415) 436-9333  
Fax: (415) 436-9993  
Email: kurt@eff.org  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

**Counter Defendant**

**Righthaven LLC**  
*also known as*  
Thomas A. DiBiase

represented by **John Charles Coons**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Joseph C. Chu**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Shawn A. Mangano**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Anne Pieroni**  
(See above for address)  
*TERMINATED: 04/19/2011*

**Steven A. Gibson**  
(See above for address)  
*TERMINATED: 11/24/2010*

**Counter Claimant**

**Thomas A. DiBiase**

represented by **Bart E. Volkmer**  
(See above for address)  
*TERMINATED: 08/29/2011*  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Colleen Bal**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Corynne McSherry**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Chad A Bowers**  
(See above for address)  
*ATTORNEY TO BE NOTICED*

**Kurt Opsahl**  
(See above for address)  
*PRO HAC VICE*  
*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
08/09/2010	<u>1</u>	COMPLAINT against Thomas A. DiBiase (Filing fee \$ 350 receipt number 0978-1701436), filed by Righthaven LLC. Certificate of Interested Parties due by 8/19/2010. Proof of service due by 12/7/2010. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Civil Cover Sheet, # <u>3</u> Summons)(Coons, John) (Entered: 08/09/2010)
08/09/2010		Case assigned to Chief Judge Roger L. Hunt and Magistrate Judge Peggy A. Leen. (ASB) (Entered: 08/10/2010)

08/10/2010	<u>2</u>	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> . <b>Consent forms should NOT be electronically filed.</b> Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (no image attached) (ASB) (Entered: 08/10/2010)
08/10/2010	<u>3</u>	AO 121 - REPORT on the filing or determination of an action or appeal regarding a copyright. Mailed to the Register of Copyrights, Copyright Office. (ASB) (Entered: 08/10/2010)
08/10/2010	<u>4</u>	Summons Issued as to Thomas A. DiBiase. (ASB) (Entered: 08/10/2010)
09/14/2010	<u>5</u>	ORDER for Certificate of Interested Parties. IT IS ORDERED that counsel for Plaintiff shall have a period of 10 calendar days from the filing date of this order within which to fully comply with the provisions of Local Rule 7.1-1. Certificate of Interested Parties due by 9/24/2010. Signed by Magistrate Judge Peggy A. Leen on 9/10/10. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 09/15/2010)
09/17/2010	<u>6</u>	CERTIFICATE of Interested Parties filed by Righthaven LLC that identifies all parties that have an interest in the outcome of this case. Corporate Parent Net Sortie Systems, LLC, Corporate Parent SI Content Monitor LLC for Righthaven LLC added.. (Coons, John) (Entered: 09/17/2010)
09/27/2010	<u>7</u>	STIPULATION to Extend Time to Answer or Otherwise Respond to Complaint by Defendant Thomas A. DiBiase. (ASB) (Entered: 09/27/2010)
09/28/2010	<u>8</u>	ORDER GRANTING <u>7</u> Stipulation to Extend Deadline. Thomas A. DiBiase answer due 10/15/2010. Signed by Chief Judge Roger L. Hunt on 9/28/10. (Copies have been distributed pursuant to the NEF - ECS) (Entered: 09/28/2010)
10/15/2010	<u>9</u>	STIPULATION <i>to extend time to file responsive pleading to Plaintiff's complaint</i> by Defendant Thomas A. DiBiase. (Bowers, Chad) (Entered: 10/15/2010)
10/18/2010	<u>10</u>	ORDER ON STIPULATION Granting <u>9</u> Stipulation for Extension of Time to File Response/Answer to Complaint. Thomas A. DiBiase answer due 10/29/2010. Signed by Chief Judge Roger L. Hunt on 10/18/10. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 10/18/2010)
10/18/2010	<u>11</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Kurt Opsahl and DESIGNATION of Local Counsel Chad Bowers (Filing fee \$ 175 receipt number 0978-1768844) filed by Defendant Thomas A. DiBiase. Motion ripe 10/18/2010. (Bowers, Chad) (Entered: 10/18/2010)

10/18/2010	<u>12</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Corynne McSherry and DESIGNATION of Local Counsel Chad Bowers (Filing fee \$ 175 receipt number 0978-1768846) filed by Defendant Thomas A. DiBiase. Motion ripe 10/18/2010. (Bowers, Chad) (Entered: 10/18/2010)
10/19/2010	<u>13</u>	ORDER Granting <u>11</u> Verified Petition for Permission to Practice Pro Hac Vice for Attorney Kurt Opsahl and approving Designation of Local Counsel for Attorney Chad Bowers for Thomas A. DiBiase. Signed by Chief Judge Roger L. Hunt on 10/19/10. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - ASB) (Entered: 10/19/2010)
10/19/2010	<u>14</u>	ORDER Granting <u>12</u> Verified Petition for Permission to Practice Pro Hac Vice for Attorney Corynne McSherry and approving Designation of Local Counsel for Attorney Chad Bowers for Thomas A. DiBiase. Signed by Chief Judge Roger L. Hunt on 10/19/10. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - ASB) (Entered: 10/19/2010)
10/29/2010	<u>15</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Colleen Bal and DESIGNATION of Local Counsel Chad A. Bowers (Filing fee \$ 175 receipt number 0978-1781163) filed by Defendant Thomas A. DiBiase. Motion ripe 10/29/2010. (Opsahl, Kurt) (Entered: 10/29/2010)
10/29/2010	<u>16</u>	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Bart E. Volkmer and DESIGNATION of Local Counsel Chad A. Bowers (Filing fee \$ 175 receipt number 0978-1781197) filed by Defendant Thomas A. DiBiase. Motion ripe 10/29/2010. (Opsahl, Kurt) (Entered: 10/29/2010)
10/29/2010	<u>17</u>	MOTION to Dismiss & <i>Memorandum of Points and Authorities in Support Thereof</i> by Defendant Thomas A. DiBiase. Responses due by 11/15/2010. (Attachments: # <u>1</u> Declaration Declaration in Support of Motion to Dismiss, # <u>2</u> Exhibit Exhibit A to Declaration, # <u>3</u> Exhibit Exhibit B to Declaration, # <u>4</u> Exhibit Exhibit C to Declaration, # <u>5</u> Exhibit Exhibit D to Declaration)(Opsahl, Kurt) (Entered: 10/29/2010)
10/29/2010	<u>18</u>	REQUEST for Judicial Notice re <u>17</u> MOTION to Dismiss & <i>Memorandum of Points and Authorities in Support Thereof</i> ; by Defendant Thomas A. DiBiase. (Opsahl, Kurt) (Entered: 10/29/2010)
10/29/2010	<u>19</u>	ANSWER to <u>1</u> Complaint, with Jury Demand ( Certificate of Interested Parties due by 11/8/2010., Discovery Plan/Scheduling Order due by 12/13/2010.), COUNTERCLAIM against <b>Righthaven LLC</b> filed by Thomas A. DiBiase.

		(Attachments: # <u>1</u> Certificate of Service to Answer and Counterclaim, Motion to Dismiss, Declaration in Support of Motion to Dismiss and Exhibits, and Request for Judicial Notice)(Opsahl, Kurt) <b>Modified to reflect correct filing party on 11/1/2010 (RFJ)</b> . (Entered: 10/29/2010)
11/01/2010	<u>20</u>	ORDER Granting <u>15</u> Verified Petition for Permission to Practice Pro Hac Vice for Attorney Colleen Bal and approving Designation of Local Counsel for Chad A. Bowers for Thomas A. DiBiase. Signed by Chief Judge Roger L. Hunt on 11/1/10. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - ASB) (Entered: 11/02/2010)
11/01/2010	<u>21</u>	ORDER Granting <u>16</u> Verified Petition for Permission to Practice Pro Hac Vice for Attorney Bart E. Volkmer and approving Designation of Local Counsel for Attorney Chad A. Bowers for Thomas A. DiBiase. Signed by Chief Judge Roger L. Hunt on 11/1/10. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website <a href="http://www.nvd.uscourts.gov">www.nvd.uscourts.gov</a> (Copies have been distributed pursuant to the NEF - ASB) (Entered: 11/02/2010)
11/08/2010	<u>22</u>	CERTIFICATE of Interested Parties filed by Thomas A. DiBiase. There are no known interested parties other than those participating in the case. (Opsahl, Kurt) (Entered: 11/08/2010)
11/12/2010	<u>23</u>	STIPULATION re <u>19</u> Answer to Complaint,, Counterclaim, ; <i>STIPULATION AND ORDER TO EXTEND TIME FOR COUNTERDEFENDANT TO FILE ANSWER TO COUNTERCLAIM AND RESPONSE TO MOTION TO DISMISS</i> by Plaintiff Righthaven LLC. (Coons, John) (Entered: 11/12/2010)
11/12/2010	<u>24</u>	Submission of PROPOSED ORDER filed by Plaintiff Righthaven LLC <i>SUBSTITUTION OF COUNSEL BY STIPULATION</i> . (Mangano, Shawn) (Entered: 11/12/2010)
11/15/2010	<u>25</u>	ORDER ON STIPULATION Granting <u>23</u> Stipulation for Extension of Time to File Answer to Counterclaim and Response and Reply to <u>17</u> MOTION to Dismiss. Signed by Chief Judge Roger L. Hunt on 11/15/10. Responses due by 12/1/2010. Replies due by 12/15/2010. Righthaven LLC answer due 12/1/2010. (Copies have been distributed pursuant to the NEF - ASB) (Entered: 11/15/2010)
11/24/2010	<u>26</u>	ORDER GRANTING Substitution of Counsel. Attorney Shawn A. Mangano added. Attorney Steven A. Gibson terminated. Signed by Magistrate Judge Peggy A. Leen on 11/18/10. (Copies have been distributed pursuant to the NEF - ECS) (Entered: 11/24/2010)

12/01/2010	<u>27</u>	MOTION to Dismiss <i>Counterclaim Or, Alternatively, to Strike Pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 12(f)</i> by Counter Defendant Righthaven LLC. Responses due by 12/18/2010. (Mangano, Shawn) Modified text on 1/5/2011 (SRK). (Entered: 12/01/2010)
12/01/2010	<u>28</u>	REPLY ANSWER to <u>19</u> Answer to Complaint, Counterclaim,, filed by Righthaven LLC.(Mangano, Shawn) (Entered: 12/01/2010)
12/02/2010	<u>29</u>	RESPONSE to <u>17</u> MOTION to Dismiss & <i>Memorandum of Points and Authorities in Support Thereof</i> , filed by Plaintiff Righthaven LLC. Replies due by 12/12/2010. (Mangano, Shawn) (Entered: 12/02/2010)
12/02/2010	<u>30</u>	DECLARATION re <u>17</u> MOTION to Dismiss & <i>Memorandum of Points and Authorities in Support Thereof</i> ; filed by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 12/02/2010)
12/08/2010	<u>31</u>	STIPULATION re <u>27</u> MOTION to Dismiss <i>COUNTERCLAIM OR, ALTERNATIVELY, TO STRIKE PURSUANT TO FED. R. CIV. P. 12(B)(6) AND FED. R. CIV. P. 12(F)</i> ; <i>Stipulation and Order to Extend Time for Counterclaimant to File Response to Motion to Dismiss &amp; Counter-defendant to File a Reply in Support of its Motion to Dismiss</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) (Entered: 12/08/2010)
12/08/2010	<u>32</u>	STIPULATION re <u>27</u> MOTION to Dismiss <i>COUNTERCLAIM OR, ALTERNATIVELY, TO STRIKE PURSUANT TO FED. R. CIV. P. 12(B)(6) AND FED. R. CIV. P. 12(F)</i> ; <i>Corrected Stipulation and Order to Extend Time for Counterclaimant to File Response to Motion to Dismiss &amp; Counter-defendant to File a Reply in Support of its Motion to Dismiss</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) (Entered: 12/08/2010)
12/09/2010	<u>33</u>	ORDER ON STIPULATION Granting <u>32</u> Stipulation to Extend Time to file Response and Reply to <u>27</u> MOTION to Dismiss <i>COUNTERCLAIM OR, ALTERNATIVELY, TO STRIKE PURSUANT TO FED. R. CIV. P. 12(B)(6) AND FED. R. CIV. P. 12(F)</i> . Response due by 1/7/2011. Reply due by 1/21/2011. Signed by Chief Judge Roger L. Hunt on 12/9/10. (Copies have been distributed pursuant to the NEF - EDS) (Entered: 12/09/2010)
12/13/2010	<u>34</u>	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 12/13/2010)
12/15/2010	<u>35</u>	REPLY to Response to <u>17</u> MOTION to Dismiss & <i>Memorandum of Points and Authorities in Support Thereof</i> by Defendant Thomas A. DiBiase. (Opsahl, Kurt) Modified text on 1/5/2011 (SRK). (Entered: 12/15/2010)
12/16/2010	<u>36</u>	SCHEDULING ORDER re <u>34</u> Proposed Discovery Plan/Scheduling Order. Discovery due by 7/22/2011. Motions due by 8/21/2011. Proposed Joint Pretrial

		Order due by 9/16/2011. Signed by Magistrate Judge Peggy A. Leen on 12/16/10. (Copies have been distributed pursuant to the NEF - EDS) (Entered: 12/16/2010)
01/07/2011	<u>37</u>	RESPONSE to <u>27</u> MOTION to Dismiss <i>Counterclaim Or, Alternatively, to Strike Pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 12(f)</i> , filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. Replies due by 1/17/2011. (Bal, Colleen) (Entered: 01/07/2011)
01/07/2011	<u>38</u>	DECLARATION of Bart E. Volkmer re <u>27</u> MOTION to Dismiss <i>Counterclaim Or, Alternatively, to Strike Pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 12(f)</i> ; filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Attachments: # <u>1</u> Exhibit A to the Declaration of Bart E. Volkmer)(Volkmer, Bart) (Entered: 01/07/2011)
01/17/2011	<u>39</u>	REPLY to Response to <u>27</u> MOTION to Dismiss <i>Counterclaim Or, Alternatively, to Strike Pursuant to Fed. R. Civ. P. 12(b)(6) and Fed. R. Civ. P. 12(f)</i> ; filed by Counter Defendant Righthaven LLC. (Mangano, Shawn) (Entered: 01/17/2011)
02/21/2011	<u>40</u>	NOTICE of Appearance by attorney Anne Pieroni on behalf of Plaintiff Righthaven LLC, Counter Defendant Righthaven LLC. <i>with Certificate of Service</i> (Pieroni, Anne) (Entered: 02/21/2011)
03/29/2011	<u>41</u>	STIPULATION [ <i>Proposed</i> ] <i>Stipulated Protective Order</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) (Entered: 03/29/2011)
04/05/2011	<u>42</u>	ORDER ON STIPULATION Denying Paragraph nine on page five on <u>41</u> <i>Stipulated Protective Order</i> . Signed by Magistrate Judge Peggy A. Leen on 3/30/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 04/05/2011)
04/06/2011	<u>43</u>	MOTION to Withdraw as Attorney <i>with Certificate of Service</i> by Anne Pieroni. by Plaintiff Righthaven LLC, Counter Defendant Righthaven LLC. Motion ripe 4/6/2011. (Attachments: # <u>1</u> Proposed Order Granting Motion to Withdraw)(Pieroni, Anne) (Entered: 04/06/2011)
04/11/2011	<u>44</u>	Interim STATUS REPORT by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) (Entered: 04/11/2011)
04/15/2011	<u>45</u>	ORDER Denying <u>27</u> Motion to Dismiss and Granting in part and Denying in part <u>17</u> Motion to Dismiss. Signed by Chief Judge Roger L. Hunt on 4/15/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 04/15/2011)
04/19/2011	<u>46</u>	ORDER Granting <u>43</u> Motion to Withdraw Attorney, Anne Pieroni. Signed by Magistrate Judge Peggy A. Leen on 4/15/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 04/19/2011)

05/04/2011	<u>47</u>	Redacted MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. Responses due by 5/21/2011. (Volkmer, Bart) (Entered: 05/04/2011)
05/04/2011	<u>48</u>	DECLARATION of Bart E. Volkmer re <u>47</u> MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction</i> ; filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. <i>Redacted Version of Declaration of Bart E. Volkmer in Support of Defendant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction</i> (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Volkmer, Bart) (Entered: 05/04/2011)
05/04/2011	<u>49</u>	MOTION to Seal <i>Defendant-Counterclaimant Thomas A. DiBiase's Motion to File Under Seal</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. Motion ripe 5/4/2011. (Attachments: # <u>1</u> Proposed Order)(Volkmer, Bart) (Entered: 05/04/2011)
05/17/2011	<u>50</u>	JOINT STIPULATION FOR EXTENSION OF TIME (First Request) re: <u>36</u> Scheduling Order filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) <u>Modified to add document relationship on 5/26/2011 (RFJ).</u> (Entered: 05/17/2011)
05/17/2011	<u>51</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>47</u> Redacted MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction</i> , <u>48</u> Declaration,, ; <i>Joint Stipulation Regarding Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject Matter Jurisdiction; Stipulation Regarding Extension of Time to File Opposition to DiBiase's Motion to Dismiss (First Request)</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B [Part 1 of 4], # <u>3</u> Exhibit B [Part 2 of 4], # <u>4</u> Exhibit B [Part 3 of 4], # <u>5</u> Exhibit B [Part 4 of 4])(Volkmer, Bart) (Entered: 05/17/2011)
05/18/2011	<u>52</u>	SCHEDULING ORDER Granting <u>51</u> Stipulation Regarding Case Schedule. Discovery due by 9/28/2011. Motions due by 10/26/2011. Proposed Joint Pretrial Order due by 11/18/2011. Signed by Magistrate Judge Peggy A. Leen on 5/18/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 05/18/2011)
05/18/2011	<u>53</u>	MOTION to Compel <i>the Production of Documents from Plaintiff/Counterdefendant Righthaven LLC</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. Responses due by 6/4/2011. (Volkmer, Bart). (Entered: 05/18/2011)

05/18/2011	<u>54</u>	DECLARATION of Bart E. Volkmer re <u>53</u> MOTION to Compel <i>Defendant/Counterclaimant Thomas A. DiBiase's Notice of Motion and Motion to Compel the Production of Documents from Plaintiff/Counterdefendant Righthaven LLC</i> ; filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B [Part 1 of 3], # <u>3</u> Exhibit B [Part 2 of 3], # <u>4</u> Exhibit B [Part 3 of 3], # <u>5</u> Exhibit C, # <u>6</u> Exhibit D, # <u>7</u> Exhibit E, # <u>8</u> Exhibit F, # <u>9</u> Exhibit G, # <u>10</u> Exhibit H, # <u>11</u> Exhibit I, # <u>12</u> Exhibit J [Part 1 of 4], # <u>13</u> Exhibit J [Part 2 of 4], # <u>14</u> Exhibit J [Part 3 of 4], # <u>15</u> Exhibit J [Part 4 of 4])(Volkmer, Bart) (Entered: 05/18/2011)
05/21/2011	<u>55</u>	RESPONSE to <u>53</u> MOTION to Compel <i>Defendant/Counterclaimant Thomas A. DiBiase's Notice of Motion and Motion to Compel the Production of Documents from Plaintiff/Counterdefendant Righthaven LLC</i> , filed by Plaintiff Righthaven LLC. Replies due by 5/31/2011. (Mangano, Shawn) (Entered: 05/21/2011)
05/21/2011	<u>56</u>	DECLARATION of Mark A. Hinueber in Support of Righthaven, LLC's Response to Defendant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Previously Filed in Democratic Underground Case) re <u>49</u> MOTION to Seal <i>Defendant-Counterclaimant Thomas A. DiBiase's Motion to File Under Seal</i> ; by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 05/21/2011)
05/21/2011	<u>57</u>	DECLARATION of Steven A. Gibson in Support of Righthaven LLC's Response to Defendant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Previously Submitted in Democratic Underground Case) re <u>47</u> Redacted MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction</i> , <u>56</u> Declaration, ; by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 05/21/2011)
05/21/2011	<u>58</u>	DECLARATION of Shawn A. Mangano in Support of Righthaven LLC's Response to Motion to Dismiss for Lack of Subject Matter Jurisdiction re <u>47</u> Redacted MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction</i> , <u>57</u> Declaration, <u>56</u> Declaration, ; by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 05/21/2011)
05/21/2011	<u>59</u>	EXHIBIT(s) <i>Exhibit 1 in Support of the Declaration of Shawn A. Mangano, Esq. to <u>58</u> Declaration</i> , ; filed by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 05/21/2011)
05/25/2011	60	NOTICE of Hearing on <u>53</u> MOTION to Compel <i>Defendant/Counterclaimant Thomas A. DiBiase's Notice of Motion and Motion to Compel the Production of Documents from Plaintiff/Counterdefendant Righthaven LLC</i> : Motion Hearing set for 6/28/2011, at 10:30 AM, in LV Courtroom 3B before Magistrate Judge Peggy A. Leen. <b>(no image attached)</b> (TKH) (Entered: 05/25/2011)

05/27/2011	<u>61</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>47</u> Redacted MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction ; Joint Stipulation to Extend Deadline for Defendant-Counterclaimant Thomas A. DiBiase to File Reply Brief in Support of His Motion to Dismiss for Lack of Subject-Matter Jurisdiction (First Request)</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) (Entered: 05/27/2011)
05/28/2011	<u>62</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>61</u> Stipulation,, ; <i>CORRECTED Joint Stipulation to Extend Deadline for Defendant-Counterclaimant Thomas A. DiBiase to File Reply Brief in Support of His Motion to Dismiss for Lack of Subject-Matter Jurisdiction (First Request)</i> by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) (Entered: 05/28/2011)
05/31/2011	<u>63</u>	ORDER ON STIPULATION Granting <u>61</u> Stipulation to Extend deadline for Defendant-Counterclaimant to File Reply Brief to <u>47</u> Motion to Dismiss. Replies due by 6/3/2011. Signed by Judge Roger L. Hunt on 5/31/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 05/31/2011)
06/03/2011	<u>64</u>	REPLY to Response to <u>47</u> Redacted MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction ;</i> filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) . (Entered: 06/03/2011)
06/03/2011	<u>65</u>	DECLARATION re <u>47</u> Redacted MOTION to Dismiss for Lack of Jurisdiction <i>Redacted Version of Defendant-Counterclaimant Thomas A. DiBiase's Motion to Dismiss for Lack of Subject-Matter Jurisdiction ;</i> filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Attachments: # <u>1</u> Exhibit A)(Volkmer, Bart) (Entered: 06/03/2011)
06/06/2011	<u>66</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>53</u> MOTION to Compel <i>the Production of Documents from Plaintiff/Counterdefendant Righthaven LLC ;</i> by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 06/06/2011)
06/09/2011	<u>67</u>	ORDER ON STIPULATION Granting <u>66</u> Stipulation for Extension of Time to File Response to <u>53</u> Motion to Compel. Responses due by 6/9/2011. Signed by Magistrate Judge Peggy A. Leen on 6/9/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 06/09/2011)
06/10/2011	<u>68</u>	RESPONSE to <u>53</u> MOTION to Compel <i>the Production of Documents from Plaintiff/Counterdefendant Righthaven LLC,</i> filed by Plaintiff Righthaven LLC. Replies due by 6/20/2011. (Mangano, Shawn) (Entered: 06/10/2011)

06/10/2011	<u>69</u>	DECLARATION of Shawn A. Mangano, Esq. re <u>53</u> MOTION to Compel <i>the Production of Documents from Plaintiff/Counterdefendant Righthaven LLC</i> ; filed by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 06/10/2011)
06/17/2011	<u>70</u>	STIPULATION FOR EXTENSION OF TIME (First Request) <i>requesting the rescheduling of motion to compel hearing currently set for June 28, 2011</i> by Defendant Thomas A. DiBiase. (Opsahl, Kurt) (Entered: 06/17/2011)
06/19/2011	<u>71</u>	CERTIFICATE of Interested Parties filed by Righthaven LLC that identifies all parties that have an interest in the outcome of this case. Corporate Parent Net Sortie Systems, LLC, Corporate Parent SI Content Monitor LLC, Other Affiliate Stephens Media LLC for Righthaven LLC, Righthaven LLC added. <i>Amended Certificate of Interested Parties.</i> (Mangano, Shawn) (Entered: 06/19/2011)
06/22/2011	<u>72</u>	ORDER Granting <u>47</u> Motion to Dismiss. Clerk of Court is directed to close this case. Signed by Judge Roger L. Hunt on 6/22/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 06/22/2011)
06/22/2011	<u>73</u>	CLERK'S JUDGMENT DiBiase's counterclaim is DISMISSED. As no claims remain pending, the Clerk of the Court is directed to close this case. Signed by Clerk of Court, Lance S. Wilson on 6/22/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 06/22/2011)
06/22/2011	<u>74</u>	AO 121 - REPORT on the filing or determination of an action or appeal regarding a copyright. Mailed to the Register of Copyrights, Copyright Office. (SLR) (Entered: 06/22/2011)
06/22/2011	<u>75</u>	ORDER ON STIPULATION Granting <u>70</u> Stipulation to Reschedule Motion to Compel Hearing. Motion Hearing set for 6/30/2011 09:30 AM in LV Courtroom 3B before Magistrate Judge Peggy A. Leen. Signed by Magistrate Judge Peggy A. Leen on 6/22/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 06/23/2011)
06/27/2011	<u>76</u>	MINUTE ORDER IN CHAMBERS of the Honorable Magistrate Judge Peggy A. Leen, on 6/27/2011. RE: <u>75</u> Order on Stipulation. As this case was dismissed, the motion hearing currently scheduled for June 30, 2011, is VACATED. <b>(no image attached)</b> (Copies have been distributed pursuant to the NEF - Jones, Elizabeth) (Entered: 06/27/2011)
07/06/2011	<u>77</u>	BILL OF COSTS filed by Counter Claimant and Defendant Thomas A. DiBiase. Tax or object to Bill of Costs by 7/24/2011. (Volkmer, Bart) (Entered: 07/06/2011)
07/06/2011	<u>78</u>	MOTION for Attorney Fees filed by Counter Claimant and defendant Thomas A. DiBiase. Responses due by 7/23/2011. (Volkmer, Bart) (Entered: 07/06/2011)
07/06/2011	<u>79</u>	DECLARATION of Bart E. Volkmer re <u>78</u> MOTION for Attorney Fees filed by

		Counter Claimant and defendant Thomas A. DiBiase. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C [Part 1 of 2], # <u>4</u> Exhibit C [Part 2 of 2], # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H)(Volkmer, Bart) (Entered: 07/06/2011)
07/06/2011	<u>80</u>	DECLARATION of Kurt Opsahl re <u>78</u> MOTION for Attorney Fees filed by Counter Claimant and defendant Thomas A. DiBiase. (Attachments: # <u>1</u> Exhibit A)(Volkmer, Bart) (Entered: 07/06/2011)
07/20/2011	<u>81</u>	NOTICE OF APPEAL as to <u>72</u> Order on Motion to Dismiss/Lack of Jurisdiction, <u>73</u> Clerk's Judgment, by Plaintiff Righthaven LLC. Filing fee \$ 455, receipt number 0978-2058166. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (Mangano, Shawn) (Entered: 07/20/2011)
07/22/2011	<u>82</u>	USCA Appeal Fees received \$455 receipt number 0978-2058166 re <u>81</u> Notice of Appeal, filed by Righthaven LLC. E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. (JAG) (Entered: 07/22/2011)
07/22/2011	<u>83</u>	<p>CERTIFICATE OF RECORD on <u>81</u> Notice of Appeal.</p> <p>The record on appeal, consisting of the reporter's transcripts and the United States District Court clerk's record is ready for the purpose of the appeal.</p> <p>This file exists in electronic format and is accessible via CM/ECF - PACER. The documents comprising the United States District Court clerk's record have been numbered in conformance with Rule 11(b) of the Federal Rules of Appellate Procedure. These document numbers are reflected on the United States District Court's docket sheet and should be used for reference purposes in the briefs.</p> <p>Appeals in Habeas Corpus and 28 USC 2255 Motion to Vacate Sentence cases are treated as civil appeals in the Court of Appeals. Criminal appeals briefing schedules will be issued upon the filing of this document.</p> <p>E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. <b>(no image attached)</b> (JAG) (Entered: 07/22/2011)</p>
07/22/2011	<u>84</u>	STIPULATION FOR EXTENSION OF TIME (First Request) re <u>79</u> Declaration, <u>80</u> Declaration, <u>78</u> MOTION for Attorney Fees; filed by Plaintiff Righthaven LLC. (Mangano, Shawn) (Entered: 07/22/2011)
07/25/2011	<u>85</u>	ORDER ON STIPULATION Granting <u>84</u> Stipulation for extension of time to respond to <u>78</u> Motion for Attorneys Fees. Responses due by 7/28/2011. Replies due by 8/12/2011. Signed by Judge Roger L. Hunt on 7/25/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 07/25/2011)
07/27/2011	<u>86</u>	COSTS TAXED in the amount of \$939.50 and included in the judgment re <u>77</u>

		Bill of Costs. (MJZ) (Entered: 07/27/2011)
07/28/2011	<u>87</u>	RESPONSE to <u>78</u> MOTION for Attorney Fees, filed by Plaintiff Righthaven LLC. Replies due by 8/7/2011. (Mangano, Shawn) (Entered: 07/28/2011)
07/29/2011	<u>88</u>	ORDER for Time Schedule as to <u>81</u> Notice of Appeal, filed by Righthaven LLC. <b>USCA Case Number 11-16776.</b> (JAG) (Entered: 07/29/2011)
08/05/2011	<u>89</u>	CERTIFICATE OF SERVICE by Plaintiff Righthaven LLC, Counter Defendant Righthaven LLC. (Mangano, Shawn) (Entered: 08/05/2011)
08/12/2011	<u>90</u>	REPLY to Response to <u>78</u> MOTION for Attorney Fees ; filed by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. (Volkmer, Bart) (Entered: 08/12/2011)
08/25/2011	<u>91</u>	TRANSCRIPT DESIGNATION filed by Plaintiff Righthaven LLC re <u>81</u> Notice of Appeal,. Transcripts are <b>NOT</b> required for this appeal. (Mangano, Shawn) (Entered: 08/25/2011)
08/26/2011	<u>92</u>	<p>CERTIFICATE OF RECORD on <u>81</u> Notice of Appeal.</p> <p>The record on appeal, consisting of the reporter's transcripts and the United States District Court clerk's record is ready for the purpose of the appeal.</p> <p>This file exists in electronic format and is accessible via CM/ECF - PACER. The documents comprising the United States District Court clerk's record have been numbered in conformance with Rule 11(b) of the Federal Rules of Appellate Procedure. These document numbers are reflected on the United States District Court's docket sheet and should be used for reference purposes in the briefs.</p> <p>Appeals in Habeas Corpus and 28 USC 2255 Motion to Vacate Sentence cases are treated as civil appeals in the Court of Appeals. Criminal appeals briefing schedules will be issued upon the filing of this document.</p> <p>E-mail notice (NEF) sent to the US Court of Appeals, Ninth Circuit. <b>(no image attached)</b> (JAG) (Entered: 08/26/2011)</p>
08/26/2011	<u>93</u>	MOTION to Withdraw as Attorney filed by Bart E. Volkmer. by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase. Motion ripe 8/26/2011. (Volkmer, Bart) (Entered: 08/26/2011)
08/29/2011	<u>94</u>	ORDER Granting <u>93</u> Motion to Withdraw Attorney Bart E. Volkmer. Signed by Judge Roger L. Hunt on 8/29/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 08/29/2011)
10/05/2011	<u>95</u>	NOTICE by Counter Claimant Thomas A. DiBiase, Defendant Thomas A. DiBiase <i>Defendant/Counterclaimant Thomas A. DiBiase's Notice of Recent</i>

		<i>Decision</i> (Bal, Colleen) (Entered: 10/05/2011)
10/26/2011	<u>96</u>	ORDER Granting <u>78</u> Motion for Attorney Fees. Fees are awarded in the amount of \$116,718.00 and costs are awarded in the amount of \$2,770.00. Signed by Judge Roger L. Hunt on 10/26/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 10/26/2011)
11/02/2011	<u>97</u>	JUDGMENT on Attorney Fees in favor of Thomas A. DiBiase and against Righthaven LLC. Fees are awarded in the amount of \$116,718.00 and costs are awarded in the amount of \$2,770.00. Signed by Clerk of Court, Lance S. Wilson on 11/2/2011. (Copies have been distributed pursuant to the NEF - SLR) (Entered: 11/02/2011)
11/18/2011	<u>98</u>	MOTION for Judgment Debtor Exam <i>and to Produce Documents</i> by Defendant Thomas A. DiBiase. Motion ripe 11/18/2011. (Attachments: # <u>1</u> Declaration of Kurt Opsahl, # <u>2</u> Proposed Order)(Opsahl, Kurt) (Entered: 11/18/2011)
12/07/2011	<u>99</u>	<b>NOTICE of NON-OPPOSITION re: <u>98</u> MOTION for Judgment Debtor Exam</b> ; filed by Defendant Thomas A. DiBiase of <i>Righthaven</i> (Opsahl, Kurt) <u>Added docket entry relationship on 12/8/2011 (RFJ).</u> (Entered: 12/07/2011)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
01/11/2012 10:02:19			
<b>PACER Login:</b>	ws0093	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:10-cv-01343-RLH - PAL
<b>Billable Pages:</b>	11	<b>Cost:</b>	0.88

**CERTIFICATE OF SERVICE**

**U.S. Court of Appeals Case No.: 11-16776**

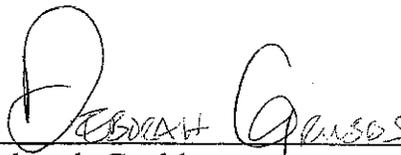
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I hereby certify that on January 13, 2012, I served copies of Appellee Thomas A. DiBiasie's Supplemental Excerpts of Record Volumes I and II on the person(s) listed below by overnight service for next day delivery, following the ordinary business practice at Wilson Sonsini Goodrich & Rosati.

Mr. Shawn A. Mangano  
SHAWN A. MANGANO, LTD  
8367 West Flamingo Road  
Suite 100  
Las Vegas, Nevada 89147

Four copies of the foregoing were also dispatched to the Clerk of the U.S. Court of Appeals for the Ninth Circuit, 95 Seventh Street, San Francisco, CA 94103 by hand delivery on this date.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed at Palo Alto, California on January 13, 2012.

  
\_\_\_\_\_  
Deborah Grubbs