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

15 RIGHTHAVEN LLC, a Nevada limited-
liability company,)
16)
17 Plaintiff,)
18 v.)
19 THOMAS A. DIBIASE, an individual,)
20 Defendant.)
21 _____)
22 THOMAS A. DIBIASE, an individual,)
23 Counterclaimant,)
24 v.)
25 RIGHTHAVEN LLC, a Nevada limited-
liability company,)
26 Counter-defendant.)
27 _____)
28

CASE NO.: 2:10-cv-01343-RLH-PAL
**DEFENDANT/COUNTERCLAIMANT
THOMAS A. DIBIASE'S NOTICE OF
MOTION AND MOTION TO COMPEL
THE PRODUCTION OF DOCUMENTS
FROM PLAINTIFF/COUNTER-
DEFENDANT RIGHTHAVEN LLC**

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1 **NOTICE OF MOTION AND MOTION TO COMPEL**

2 Pursuant to Fed. R. Civ. P. 37(a)(1), Fed. R. Civ. P. 37(a)(3)(B)(iv), and Local Rule 26-7,
3 Defendant/counterclaimant Thomas A. DiBiase (“DiBiase”) respectfully moves to compel
4 Plaintiff/counter-defendant Righthaven LLC (“Righthaven”) to produce documents responsive to
5 DiBiase’s First Set of Requests for Production of Documents (served January 20, 2011) and to
6 provide a log for any documents that Righthaven is withholding on privilege grounds. This
7 motion is supported by the accompanying memorandum of points and authorities, the declaration
8 of Bart E. Volkmer (“Volkmer Decl.”), any arguments of counsel, and any other matters that the
9 Court deems appropriate when considering the motion.

10 **LOCAL RULE 26-7(B) CERTIFICATION**

11 Counsel for DiBiase certifies that after personal consultation with Righthaven’s counsel,
12 and sincere effort to do so, they have been unable to resolve this matter without court action. *See*
13 Volkmer Decl., ¶¶ 5, 9-10.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 Righthaven has made little attempt to comply with its document-production obligations
17 in this case, much less meet them. Righthaven initially refused to produce *any non-public*
18 *documents* in response to DiBiase’s First Set of Requests for Production of Documents. After
19 four meet-and-confer sessions, Righthaven still refuses to produce a substantial number of
20 undeniably relevant documents related to: (1) fair use; (2) damages; (3) the defenses of implied
21 license, waiver, estoppel and failure to mitigate; (4) copyright misuse; (5) barratry and
22 champerty; and (6) DiBiase’s counterclaim of non-infringement. In support of its position,
23 Righthaven offers nothing more than boilerplate objections that are both unsubstantiated and
24 evasive.

25 In addition, Righthaven has refused to produce documents in the possession of Stephens
26 Media LLC (“Stephens”), the company that allegedly assigned the copyright at issue in this case
27 to Righthaven. Documents located at Stephens are within Righthaven’s possession, custody and
28

1 control based on a Strategic Alliance Agreement (“SAA”) that gives Righthaven the legal right
2 to obtain relevant documents—even privileged documents—that are stored at Stephens.

3 Further, while Righthaven agreed to produce some documents during the parties’ meet-
4 and-confer sessions, it has not made good on those promises. Indeed, Righthaven has not
5 produced *any documents* in response to the production requests that DiBiase served in January,
6 and there is no indication that it intends to do so. DiBiase respectfully requests that the Court
7 overrule Righthaven’s objections and order it to produce responsive documents expeditiously
8 along with a log of materials being withheld on privilege grounds.

9 **II. FACTUAL BACKGROUND**

10 **A. The Parties’ Claims And Defenses**

11 On August 9, 2010, Righthaven filed this copyright infringement action against DiBiase.
12 Righthaven alleges that DiBiase, a former Assistant United States Attorney, violated one of its
13 copyrights by posting to his non-commercial criminal justice blog a June 11, 2010 *Las Vegas*
14 *Review-Journal* (“LVRJ”) article concerning a “no body” murder case that was tried in Las Vegas
15 (the “McMurdo Article”). Compl. ¶ 9. Righthaven claims ownership of the McMurdo Article
16 based on an alleged assignment from Stephens Media, the publisher of the LVRJ. Compl., Ex. 4.

17 On October 29, 2010, DiBiase answered the complaint and filed a counterclaim. *See*
18 Docket No. 19. The counterclaim alleges that this case is part of a “series of abusive lawsuits filed
19 by Righthaven” against individuals and small entities. *Id.* at ¶ 2. The counterclaim further asserts
20 that DiBiase’s use of the highly factual McMurdo Article was protected by the doctrine of fair use:
21 his website is non-commercial and it serves a public interest by “assisting prosecutors and
22 homicide investigators in bringing justice to the friends and families of ‘no body’ murder victims.”
23 *Id.* at ¶¶ 19-20. DiBiase’s answer to Righthaven’s complaint asserts various defenses, including
24 failure to mitigate, copyright misuse, estoppel, waiver, barratry and champerty. *Id.* at 4-5.

25 **B. DiBiase’s First Set Of Requests For Production And Righthaven’s Deficient** 26 **Responses**

27 On January 20, 2011, DiBiase served on Righthaven a First Set of Requests for Production.
28 *See Volkmer Decl., Ex. A.* Righthaven’s response—served on February 25, 2011—was evasive in

1 the extreme. *See id.*, Ex. B. Righthaven asserted almost identical objections to all 105 requests,
2 and refused to produce even one document that was not—in Righthaven’s view—publicly
3 available. *Id.* Righthaven’s strategy when responding to DiBiase’s straightforward production
4 requests was to object to nearly every word as being vague, overbroad and ambiguous.¹ By
5 employing this approach, Righthaven apparently hoped to grant itself a unilateral extension of time
6 to provide responses to DiBiase’s production requests.

7 On March 2, 2011, DiBiase’s counsel wrote to Righthaven, pointing out the deficiencies in
8 Righthaven’s response. *Id.*, Ex. C. The parties met and conferred on four occasions. *Id.* at ¶ 5.
9 During those conversations, DiBiase’s counsel explained the relevance of his requests, and
10 attempted to address Righthaven’s objections. *Id.* Despite its initial position that it would produce
11 no documents, Righthaven ultimately retracted many of its objections, and agreed to produce some
12 documents. *Id.*, Ex. D. Righthaven still refuses, however, to produce documents responsive to
13 nearly half of DiBiase’s document requests, including Request Nos. 30-34, 39, 45-47, 51, 53-56,
14 58, 63-74, 85-88, 91-94, 97-102, and 104-105.² *Id.* In addition, Righthaven has not made good on
15 its promise to produce responsive documents for the remaining requests. Righthaven has not
16 produced *any documents* in response to DiBiase’s requests, including the most basic evidence in
17 this case, such as the alleged assignment of the copyright in the McMurdo Article from Stephens to
18 Righthaven, communications from Righthaven to the Copyright Office, and the copyright
19 registration itself. Volkmer Decl. ¶ 6.³ Notwithstanding its rights under the SAA, Righthaven
20 also takes the position that documents residing at Stephens are not within its possession, custody or
21 control and has refused to turn over those documents. *Id.*, Ex. D at 2.

23 ¹ For example, Righthaven objected to the definition of “LVRJ.” *See* Volkmer Decl., Ex. B
24 at Response No. 2. DiBiase defined “LVRJ” as the “Las Vegas Review-Journal.” Volkmer
Decl., Ex. A at 1.

25 ² Subject to limitations with which DiBiase does not agree, Righthaven did agree to make a
26 limited production in response to Requests Nos. 45, 63, and 74. However, no production has
been forthcoming for those requests. *See* Volkmer Decl. Ex. D at 2.

27 ³ Righthaven has turned over a small number of documents pursuant to Supplemental Initial
28 Disclosures, not in response to DiBiase’s document requests. Volkmer Decl. ¶ 6.

1 **III. ARGUMENT**

2 DiBiase's document requests seek information reasonably calculated to lead to the
3 discovery of admissible evidence, and Righthaven's objections lack merit. Accordingly,
4 Righthaven should be ordered to produce responsive documents expeditiously, including
5 documents located at Stephens.

6 **A. DiBiase's Document Requests Seek Relevant Information.**

7 DiBiase is entitled to "obtain discovery regarding any nonprivileged matter this is
8 relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). "Relevant information need
9 not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery
10 of admissible evidence." *Id.* "[D]iscovery should be allowed unless the information sought has
11 no conceivable bearing on the case." *Jackson v. Montgomery Ward & Co., Inc.*, 173 F.R.D. 524,
12 528 (D. Nev. 1997). "The party opposing discovery has the burden of showing the discovery is
13 overly broad, unduly burdensome or not relevant." *Koninklijke Philips Elec. N.V. v. KXD Tech.,*
14 *Inc.*, Case No. 2:05-cv-01532-RLH-GWF, 2007 WL 778153, at *4 (D. Nev. Mar. 12, 2007)
15 (citing *Graham v. Casey's General Stores*, 206 F.R.D. 251, 253-54 (S.D. Ind. 2000)).
16 Righthaven cannot carry that burden – the discovery DiBiase seeks easily satisfies Rule 26's
17 standard.

18 **1. Righthaven Should Produce Fair-Use Documents.**

19 Many of DiBiase's requests seek documents related to his fair use defense. A fair use "is
20 not an infringement of copyright," 17 U.S.C. § 107, and provides a complete defense in a
21 copyright-infringement action. Other Righthaven cases in this district have been dismissed on
22 fair-use grounds. *See Righthaven LLC v. Jama and Center for Intercultural Organizing*, Case
23 No. 2:10-CV-1322-JCM-LRL, 2011 WL 1541613 (D. Nev. Apr. 22, 2011) (dismissing case
24 based on fair use after issuing an order to show cause); *Righthaven LLC v. Realty One Group,*
25 *Inc.*, Case No. 2:10-cv -1036-LRH-PAL, 2010 WL 4115413 (D. Nev. Oct. 19, 2010) (dismissing
26 case on the pleadings based on fair use). Accordingly, DiBiase is entitled to fulsome discovery
27 on this important topic.
28

1 The fourth fair-use factor examines “the effect of the use upon the potential market for or
2 value of the copyrighted work.” 17 U.S.C. § 107(4). DiBiase is entitled to explore in discovery
3 the contours of Righthaven’s market—if there is one—for allegedly “assigned” newspaper
4 articles. Indeed, Judge Mahan recently entered summary judgment against Righthaven, finding
5 on the fourth fair-use factor that Righthaven “has failed to allege that a ‘market’ exists for its
6 copyright at all” and that “Righthaven cannot claim the LVRJ’s market as its own and is not
7 operating as a traditional newspaper.” *Jama*, 2011 WL 1541613 at *4-*5.

8 Against this backdrop, Righthaven should be required to produce documents: (i) showing
9 whether it has actually engaged in commercial exploitation of news articles other than by filing
10 lawsuits; and (ii) providing details about its litigation-based exploitation and enforcement of
11 allegedly assigned news articles. *Cf. Campbell v. Acuff-Rose Music*, 510 U.S. 569, 590-94
12 (1994). Righthaven, however, has refused to produce documents relating to these topics. *See*
13 Request Nos. 30 (Righthaven’s commercial exploitation of news articles), 31 (Righthaven’s
14 license agreements), 32 (Righthaven’s licensing efforts), 33 (Righthaven’s settlement
15 agreements), 34 (Righthaven’s settlement negotiations), 53 (Righthaven’s revenues from news
16 articles), 54 (Righthaven’s non-litigation revenues), and 105 (Righthaven’s business model,
17 business plan and revenue stream).⁴ Because they are directly relevant to fair use, Righthaven
18 should be ordered to produce documents in response to Request Nos. 30, 31, 32, 33, 34, 53, 54
19 and 105. *See also* Request Nos. 46-47 and 51, discussed *infra* at III.A.2.⁵

20 In addition, DiBiase has served requests directed at the first fair-use factor, “the purpose
21 and character of the use, including whether such use is of a commercial nature or is for nonprofit
22 educational purposes.” 17 U.S.C. § 107(1). DiBiase asserts that the non-commercial posting of
23

24 ⁴ Request No. 105 seeks “[a]ll documents that reflect ‘Righthaven’s business model, business
25 plan, [and/or] revenue stream.’” Righthaven itself asserted in a court filing that such documents
26 are relevant to the fourth fair-use factor. *See Righthaven LLC v. Jama and Center for*
Intercultural Organizing, Case No. 2:10-cv-01322-JCM-LRL, Docket No. 24 at 23-24 (D. Nev.
2010).

27 ⁵ Pursuant to Local Rule 26-7(a) and due to the voluminous nature of the materials, DiBiase
28 sets forth the text of the discovery originally sought, the responses thereto, and the relevance
grounds for each request as an appendix at the conclusion of this memorandum.

1 freely available newspaper articles for educational purposes constitutes fair use, and he intends to
2 show that such a view is widely held. *See, e.g., Jama*, 2011 WL 1541613 at *2-*3. Righthaven
3 takes a different view. Its CEO, Steven Gibson, claims that there are “communications to my
4 company saying, ‘What can I do to change my behavior, so I’m not disrespecting someone else’s
5 copyrights?’” *See* <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202466627090>
6 *&Is_This_the_Birth_of_the_Copyright_Troll*. DiBiase doubts that such communications exist
7 and has asked for them in discovery. *See* Document Request No. 104. Righthaven should be
8 required to produce these alleged communications because they are relevant to the first fair-use
9 factor.⁶

10 2. Righthaven Should Produce Damages Documents.

11 DiBiase has served document requests related to Righthaven’s actual damages claims.
12 While Righthaven seeks only statutory damages in this case, Volkmer Decl., Ex. D at 2, that
13 does not moot DiBiase’s right to obtain information related to actual damages. Any statutory
14 damages award would need to bear a reasonable relationship with the actual damages allegedly
15 suffered to comport with due process, *Sony BMG Music Entm’t v. Tenenbaum*, 721 F. Supp. 2d
16 85, 111-115 (D. Mass. 2010), and actual-damages information would guide a fact finder when
17 making a statutory-damages assessment in the first instance. *See, e.g., Boz Scaggs Music v. KND*
18 *Corp.*, 491 F. Supp. 908, 914 (D. Conn. 1980) (considering license fees in setting a statutory
19 damages award). DiBiase is entitled to take full discovery concerning any actual damages that
20 Righthaven has allegedly suffered. *See* Request Nos. 46 (“All documents supporting any claim
21 that Righthaven suffered actual damages from the alleged infringement claimed in its Complaint
22 in this action.”), 47 (“All documents supporting any claim that Stephens Media suffered actual
23 damages from the alleged infringement claimed in Righthaven’s Complaint in this action.”), and
24 51 (“All tax returns filed by Righthaven with any governmental body.”); *see also* Request Nos.
25 30-34, 53-54, 105, discussed *supra* at III.A.1.

26
27
28 ⁶ In addition, this information is relevant to Mr. Gibson’s credibility.

1 **3. Righthaven Should Produce Documents Related To The Defenses Of**
2 **Implied License, Waiver, Estoppel And Failure to Mitigate.**

3 DiBiase has asserted a number of defenses that flow from Righthaven's decisions to
4 allow the content it claims to own to remain online when posted by third parties, including
5 implied license, waiver, estoppel, and failure to mitigate. Docket No. 19 at 4-5. Righthaven has
6 refused to produce documents related to these defenses. Specifically, DiBiase seeks documents
7 related to Righthaven's technology for finding alleged infringements online, and Righthaven's
8 enforcement efforts with respect to the McMurdo Article and other news articles. *See* Request
9 Nos. 45 ("Documents sufficient to identify the functionality of Righthaven's technological
10 measures to identify content online that it considers infringing."), 39 ("All intellectual property
11 enforcement efforts with respect to the McMurdo Article."), and 71 ("All communications
12 between Righthaven and any third party concerning alleged copyright infringement by that third
13 party."). DiBiase is entitled to documents responsive to these requests to show that Righthaven
14 and Stephens had the capability to find (or actually found) the blog post at issue in this case long
15 before giving DiBiase notice. Such a demonstration would undercut Righthaven's claims of
16 harm and give rise to the defenses referenced above. These documents are relevant and should
17 be produced. *See Viacom Int'l., Inc. v. YouTube, Inc.*, Case No. C-08-80211 MISC. JF (PVT),
18 2009 WL 102808, at *4-*5 (N.D. Cal. Jan. 14, 2009) (ordering content monitoring and
19 enforcement company to produce documents concerning content identification efforts
20 undertaken on behalf of a plaintiff in copyright-infringement lawsuit).

21 **4. Righthaven Should Produce Documents Related To Copyright Misuse**
22 **And DiBiase's Request For Attorney's Fees.**

23 Request Nos. 55 and 56 seek documents related to Righthaven's decision to request the
24 remedy of domain-name transfer in this and other actions. These requests seek information
25 supporting DiBiase's affirmative defense of copyright misuse. *See* Docket No. 19 at 4. As this
26 Court has held, copyright holders are not entitled to seek domain-name transfer under the
27 Copyright Act. *Righthaven LLC v. DiBiase*, Case No. 2:10-cv-01343-RLH-PAL, 2011 WL
28

1 1458778, at *2 (D. Nev. Apr. 15, 2011).⁷ By doing so, Righthaven has engaged in copyright
 2 misuse. *See Lasercomb Am., Inc. v. Reynolds*, 911 F.2d 970, 978 (4th Cir. 1990) (copyright
 3 misuse occurs when one uses a copyright “in a manner violative of the public policy embodied in
 4 the grant of a copyright.”). Righthaven’s motivations for seeking this remedy are also relevant to
 5 whether it asserted the domain-name transfer remedy in bad faith – a finding that would support
 6 DiBiase’s claim to attorney’s fees under the Copyright Act in the event that he prevails in this
 7 action. *See Dollar Sys., Inc. v. Avcar Leasing Sys., Inc.*, 890 F.2d 165, 175 (9th Cir. 1989).

8 **5. Righthaven Should Produce Documents Related To Barratry And**
 9 **Champerty.**

10 DiBiase alleges as an affirmative defense that Righthaven is engaged in barratry and
 11 champerty. “A champertous agreement is one in which a person without interest in another’s
 12 litigation undertakes to carry on the litigation at his own expense, in whole or in part, in
 13 consideration of receiving, in the event of success, a part of the proceeds of the litigation.”
 14 *Martin v. Morgan Drive Away, Inc.*, 665 F.2d 598, 603 (5th Cir. 1982) (quoted with approval by
 15 the Nevada Supreme Court in *Schwartz v. Eliades*, 113 Nev. 586, 588, 939 P.2d 1034 (Nev.
 16 1997)). In copyright litigation, “the successful assertion of [champerty] results in the voiding of
 17 the champertous agreement.” William Patry, 2 PATRY ON COPYRIGHT, § 5:136 at 5-293 (2009).
 18 DiBiase asserts that the purported copyright assignment from Stephens to Righthaven is a sham
 19 and that Righthaven is engaged in champerty and barratry by filing litigation on copyrights that it
 20 does not own. *See* Docket No. 47 at 10-13. Request Nos. 58, 63-74, and 97-102 seek
 21 information relevant to these defenses:

22 **Request Nos. 63-65:** Righthaven is an LLC owned by two entities: Net Sortie Systems,
 23 LLC (a shell company apparently owned by Righthaven’s principal Steven Gibson) and SI
 24

25 ⁷ Notably, Righthaven has continued to seek domain-name transfer as a remedy in cases filed
 26 after this Court held that a “request for such relief fails as a matter of law.” *See Righthaven LLC*
 27 *v. Loosle*, Case No. 2:11-cv-00627-KJD -LRL, Docket No. 1 at 15 (D. Nev. April 21, 2011)
 28 (requesting “the surrender to Righthaven of all hardware, software, electronic media and
 domains, including the Domain used to store, disseminate and display the unauthorized versions
 of any and all copyrights works”).

1 Content Monitor, LLC (a shell company that, pursuant to Section 2 of the SAA, is obligated to
2 be controlled by “common owners” with Stephens Media). DiBiase is entitled to conduct
3 discovery of Righthaven’s agreements with Stephens, Net Sortie, and SI Content Monitor to
4 disentangle the intentionally convoluted corporate structure that these parties have set up to
5 prosecute infringement actions. Request Nos. 63-65 seek those very agreements.⁸

6 **Request No 58:** This request seeks documents regarding Righthaven’s creation.
7 Responsive documents will shed light on the founding purpose and intent of the company.
8 Righthaven produced its Operating Agreement in a supplemental initial disclosure. Volkmer
9 Decl., ¶ 6. However, Righthaven has not provided any other documents concerning its creation.
10 The company obviously did not spring into existence from nothing: there must have been a
11 number of drafts of the Operating Agreement, along with founding documents, and
12 communications between Steven Gibson, Righthaven employees, Stephens employees, and
13 representatives of Righthaven owners SI Content Monitor and Net Sortie Systems, LLC. *See*
14 Volkmer Decl., Ex. J at § 19.1(a) (describing various “explanatory communications” between
15 Stephens and Net Sortie that occurred “apart from” the Operating Agreement). Righthaven
16 should produce this information so that DiBiase can evaluate, and be able to present to the fact
17 finder, the full story of Righthaven’s conception and founding.

18 **Request Nos. 66-67:** Righthaven has engaged clients other than Stephens to participate
19 in its litigation-driven business model, including WEHCO Media and MediaNews Group. *See*
20 Volkmer Decl., Exs. E and F. DiBiase seeks Righthaven’s agreements with WEHCO Media and
21 MediaNews Group to demonstrate that Righthaven has engaged in barratry: a pattern and
22 practice of entering into champertous agreements. That showing would also defeat any claim by
23 Righthaven that it was not acting with a sufficiently culpable state of mind to support a finding
24 of champerty in this case.

25
26 ⁸ Righthaven has agreed to produce documents in response to Request No. 63 (seeking
27 agreements between Righthaven and Stephens), but has refused to produce settlement
28 agreements. *See* Volkmer Decl. Ex. D at 2. That limitation is inappropriate. Settlement
agreements in which Stephens is a signatory will show that Stephens, not Righthaven, is the true
owner of copyrights that have allegedly been assigned to Righthaven.

1 **Request Nos. 68-70:** At its founding, Righthaven was a company that primarily
2 employed lawyers, including its CEO Steven Gibson, as well as Charles Coons and Joseph Chu.
3 *See* ECF Attorney Listing for Case No. 2:10-cv-01343-RLH-PA. DiBiase seeks Righthaven’s
4 agreements with these lawyer-employees to demonstrate that Righthaven is much more akin to
5 an outside counsel filing litigation on behalf of Stephens, than an independent outfit enforcing its
6 own intellectual property rights.

7 **Request No. 71:** DiBiase intends to demonstrate in this action that Righthaven does not
8 have a legitimate interest in the copyrights that it purports to enforce through litigation and
9 settlement demands. Request No. 71 seeks Righthaven’s communications with third parties
10 concerning Righthaven’s infringement allegations. Responsive documents will show Righthaven
11 behaving not as an aggrieved intellectual property owner, but as the enforcement arm and agent
12 of Stephens.

13 **Request No. 72:** This request seeks “[a]ll analyses regarding Righthaven’s anticipated
14 recovery from its copyright infringement actions.” These documents will demonstrate the extent
15 of the proceeds that Righthaven intended to receive in the event of success in its lawsuits.

16 **Request No. 73:** Request No. 73 seeks “[a]ll documents, including any opinion letters,
17 regarding the legality of Righthaven’s business model.” Documents responsive to this request
18 will show whether or not Righthaven proceeded with its litigation campaign despite knowing
19 that a court might deem it unlawful.

20 **Request No. 74:** Perhaps the best way to demonstrate that Righthaven does not have a
21 legitimate interest in the Stephens’ news articles and that it has undertaken to prosecute cases on
22 Stephens’ behalf is to evaluate the communications that have gone back and forth between
23 Righthaven and Stephens. Righthaven, however, has refused to produce the “communications
24 between Righthaven and Stephens Media” sought by Request No. 74.⁹ These communications
25

26
27 ⁹ Righthaven has only agreed to produce communications between Righthaven and Stephens
28 Media that relate to DiBiase. *See* Volkmer Decl. Ex. D at 2. That limitation is inappropriate
because it would exclude all manner of highly relevant communications related to the
Righthaven’s business model and the ownership of the works at issue in Righthaven’s lawsuits.

1 are highly relevant to DiBiase's challenge to Righthaven's claimed ownership in the McMurdo
2 Article, as well as his barratry and champerty defenses, and should be produced.

3 **Request Nos. 97-102:** Request Nos. 97-102 seek documents that constitute a subset of
4 those called for by Request No. 74. They particularly seek Righthaven's communications with
5 the following Stephens' executives: (1) Sherman Frederick (publisher of LVRJ and CEO of
6 Stephens at the time it began its affiliation with Righthaven); (2) Michael Ferguson (Frederick's
7 successor as CEO); (3) Bob Brown (Frederick's successor as publisher of the LVRJ); (3) Mark
8 Hinueber (Stephens' general counsel); (4) Jackson Farrow (counsel for Stephens' subsidiaries
9 and incorporator of SI Content Monitor); and (5) Warren Stephens (owner of Stephens Media).
10 These communications are relevant and should be produced.

11 **6. Righthaven Should Produce Documents Related To DiBiase's**
12 **Counterclaim.**

13 Request Nos. 85-88 and 91-94 seek documents that form the basis for Righthaven's
14 denials of specific factual allegations contained in DiBiase's counterclaim of non-infringement.
15 *See* Docket No. 28. These requests by definition seek relevant information. Indeed, Righthaven
16 has expressed a willingness to produce documents in response to Request No. 84, which seeks
17 "[a]ll documents supporting or refuting any allegation in Righthaven's reply to DiBiase's
18 Counterclaim." *See* Volkmer Dec. Ex. D at 1. But Righthaven inconsistently, and inexplicably,
19 refuses to produce documents to support its specific denials. Righthaven should be ordered to
20 produce documents in response to Request Nos. 85-88 and 91-94.

21 **B. Righthaven Cannot Rely On Its Boilerplate Objections In Refusing To**
22 **Respond To DiBiase's Legitimate Discovery Requests.**

23 In response to a motion to compel, Righthaven has the burden to demonstrate that its
24 objections should be sustained. *Koninklijke*, 2007 WL 778153, at *4. It cannot possibly make
25 that showing. Righthaven initially responded to DiBiase's production requests with a torrent of
26 boilerplate objections. *See* Volkmer Decl., Ex. B. These objections were not interposed in good
27 faith and demonstrate an attempt to frustrate the discovery process. For example:
28

1 • Righthaven repeatedly objects to DiBiase’s definition of “documents” as “vague,
2 ambiguous, overly broad” and not in compliance with Rule 34. *Id.* DiBiase, however, defined
3 “documents” as “electronically stored information and all other information *referenced in Rule*
4 *34(a)(1)(A).*” *Id.*, Ex. A at 1 (emphasis added).

5 • Righthaven objects to “the use of the term[] . . . Steven A. Gibson.” Response to
6 Request No. 68; Volkmer Dec., Ex. B. That objection is patently insincere; Gibson is
7 Righthaven’s CEO.

8 • Righthaven objects to the term “McMurdo Article.” *See, e.g.*, Volkmer Dec., Ex.
9 B at 2. But DiBiase’s definition of that term could not be clearer: “the work referenced in
10 Paragraph 6 in Righthaven’s Complaint in this action.” Volkmer Dec., Ex. A at 2.

11 In meet and confer sessions, Righthaven did not offer any convincing justifications for its
12 objections, and DiBiase is aware of none. Instead, the parties’ discussions revealed that
13 Righthaven is relying on boilerplate instead of substantiated claims of burden or a genuine
14 inability to understand the substance of DiBiase’s requests. That is insufficient. *See Koninklijke*
15 *Philips Elec.*, 2007 WL 778153, at *4 (“Boilerplate, generalized objections are inadequate and
16 tantamount to not making any objection at all.”); *see also Hawecker v. Sorenson*, Case No. 1:10-
17 cv-00085-OWW-JLT, 2011 WL 98598, at *2 (E.D. Cal. Jan. 12, 2011) (“Boilerplate objections
18 to a request for production are not sufficient.”); *Feldman v. Pokertek*, Case No. 2:09-cv-01598-
19 JCM-LRL, 2010 WL 4940059, at *3 (D. Nev. Nov. 30, 2010) (finding boilerplate objections,
20 without any agreement to produce documents, to be “evasive or nonresponsive”). Righthaven’s
21 objections to DiBiase’s document requests should be overruled.

22 **C. Righthaven Should Be Ordered To Produce Documents Residing With**
23 **Stephens Media.**

24 Righthaven asserts that it will not produce documents located with Stephens Media.
25 Volkmer Decl, Ex. D at 2. Those documents, however, are within Righthaven’s possession,
26 custody or control, and Righthaven should be ordered to produce them. “Federal courts have
27 consistently held that documents are deemed to be within the ‘possession, custody or control’ for
28 purposes of Rule 34 if the party has actual possession, custody or control, or has the legal right to

1 obtain the documents on demand.” 8B Wright, Miller & Marcus, Federal Practice and Procedure
2 § 2177 (2010). In this case, Righthaven has the legal right to obtain documents from Stephens
3 under a Strategic Alliance Agreement (“SAA”) between the companies. Volkmer Decl., Ex. G
4 (SAA §§ 9.6, 9.7, 9.8, and 10.2).

5 The effect of the SAA is currently being litigated by the parties. DiBiase contends that
6 the agreement effectuates a sham assignment of copyrights from Stephens to Righthaven and that
7 Righthaven does not have sufficient rights in the “assigned articles” to maintain lawsuits. *See*
8 Docket No. 47. Righthaven believes that the SAA adequately transfers ownership in copyrights.
9 *See Righthaven LLC v. Pahrump Life*, Case No. 2:10-cv-01575-JCM -PAL, Docket No. 25 (May
10 9, 2011). Regardless of the outcome of this dispute, the SAA makes abundantly clear that
11 Stephens and Righthaven are intimately connected. *See e.g.* SAA § 2 (describing how
12 Righthaven’s existence as an organization depended upon Stephens’ participation). Stephens has
13 hired Righthaven on an exclusive basis to look for alleged infringements of its news articles and
14 commence copyright litigation against certain defendants, with Stephens retaining the right to
15 decide whether and who Righthaven will sue. SAA §§ 3.1-3.4; Volkmer Decl., Ex. G. Stephens
16 splits 50% of the proceeds of Righthaven’s lawsuits, less costs. *Id.* at § 5. And Stephens retains
17 broad rights to exploit the allegedly assigned articles, SAA § 7.2, as well as the ability to
18 terminate the alleged assignment at any time. SAA § 8.¹⁰

19 Under the SAA, Righthaven has the legal right to obtain information from Stephens and
20 Stephens is obligated by contract to provide that information to Righthaven. Specifically,
21 Stephens must: (1) “cooperate fully and candidly” with respect to Righthaven’s lawsuits; (2)
22 provide any information “that may aid Righthaven in the conduct of an Infringement Action,
23 including, without limitation, privileged or confidential Content”; (3) obtain any necessary third-
24 party consents to allow it to provide materials to Righthaven; and (4) allow Righthaven to act as

25
26 ¹⁰ Recently, in other cases, Righthaven has asserted that Sections 7.2 and 8 of the SAA were
27 amended. *See e.g. Righthaven v. Democratic Underground*, 2:10-cv-01356-RLH -GWF Docket
28 No. 100. Righthaven produced this amendment on May 12, 2011 as a supplemental initial
disclosure. Under the new or old SAA, Stephens retains exclusive rights to exploit the works,
and has the ability to terminate Righthaven’s interest at any time, in its sole discretion.

1 its attorney-in-fact. SAA §§ 9.6, 9.7, 9.8, and 10.2. Based on these provisions, for purposes of
2 Rule 34, Righthaven possesses documents stored at Stephens. A contrary ruling would lead to
3 the absurd result that Righthaven would be able to tap into Stephens' document repository at will
4 when prosecuting a case (even obtaining privileged materials), but could shield damaging
5 Stephens documents from discovery under the theory that Stephens' materials are beyond its
6 reach. The Court should not countenance such discovery gamesmanship.

7 A recent decision from Magistrate Judge Johnston found that the plaintiff had possession,
8 custody, and control of documents stored at affiliated entities based on facts similar to the ones
9 presented here. In *JPMorgan Chase Bank, N.A. v. KB Home*, Case No. 2:08-cv-1711-PMP-RJJ,
10 2010 WL 1994787 (D. Nev. May 18, 2010), JP Morgan sued several real-estate developers while
11 "acting as Administrative Agent" for various third-party lenders. *Id.* at *2. The defendants then
12 served Rule 34 requests on JP Morgan seeking documents within the possession of the third-
13 party lenders, and JP Morgan refused to comply. *Id.* The court had little trouble finding that JP
14 Morgan was obligated to collect documents from the lenders given the agency relationship
15 between them. The Court agreed with a conclusion reached by the Southern District of New
16 York that it would be "both logically inconsistent and unfair to allow the right to sue to be
17 transferred to assignees free of the obligations that go with litigating the claim." *Id.* at *5
18 (quoting *JPMorgan Chase Bank v. Winnick*, 228 F.R.D. 505, 506 (S.D.N.Y. 2005)). That same
19 logic applies here. Righthaven is Stephens' agent (as well as its attorney-in-fact) and it would be
20 unfair for Stephens, which expects to recover 50% of any proceeds of Righthaven litigation, to
21 evade the discovery obligations of a party by purporting to transfer its claims to Righthaven.

22 Righthaven should be ordered to produce any documents located at Stephens—or
23 Stephens' parents, subsidiaries or affiliates—that are responsive to DiBiase's document requests.

24 **D. Righthaven Should Be Ordered To Comply With Its Production Agreements**
25 **And Produce A Privilege Log.**

26 DiBiase served his document requests on January 20, 2011. Righthaven initially refused
27 to produce any non-public documents in response to these requests. In early March, Righthaven
28 agreed to produce documents in response to Request Nos. 1-29, 35-38, 40-44, 48-50, 52, 57, 59-

1 62, 75-84, 89-90, 95-96 and 103. Volkmer Decl., Ex. D. However, Righthaven has not turned
2 over *any* documents in response to these requests, including: (1) the copyright registration for
3 the McMurdo Article and communications with the Copyright Office about that registration; (2)
4 the assignment agreement for the McMurdo Article and related communications and documents;
5 (3) email communications concerning the McMurdo Article; (4) documents concerning
6 Righthaven's planned use of the McMurdo Article; and (5) documents concerning any effect on
7 the market for the McMurdo Article resulting from the allegations in Righthaven's complaint.
8 Nor has Righthaven provided a privilege log.

9 On April 29, 2011, DiBiase's counsel wrote to Righthaven's counsel and asked about the
10 status of Righthaven's document production and requested that Righthaven produce a privilege
11 log. Volkmer Decl. Ex. H. Righthaven did not respond. DiBiase's counsel wrote again on May
12 4, 2011, but Righthaven ignored that overture as well. Volkmer Decl. Ex. I. It has become clear
13 that Righthaven does not intend to engage in a genuine document collection, review and
14 production in this action. The Court should order Righthaven to do so without delay and to
15 provide a privilege log that complies with the Federal Rules.

16 **IV. CONCLUSION**

17 For the foregoing reasons, DiBiase respectfully requests that the Court compel
18 Righthaven: (1) to produce documents in response to Document Request Nos. 30-34, 39, 45-47,
19 51, 53-56, 58, 63-74, 85-88, 91-94, 97-102, and 104-105; (2) to produce all responsive
20 documents residing at Stephens Media LLC (or its parents, subsidiaries or affiliates); (3) to
21 produce documents pursuant to its production agreements; and (4) to provide a privilege log.

22 Dated: May 18, 2011

Respectfully submitted,

23 WILSON SONSINI GOODRICH & ROSATI
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Appendix of Document Requests and Responses

Request No. 30

All documents concerning Righthaven’s commercial exploitation of any news article.

Response to Request No. 30

Righthaven objects to this request on the grounds that the definitions of “documents,” “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements outside of those authorized under Rule 34. Righthaven further objects to this request as it is compound, overly broad, vague, and ambiguous in its use of the terms and phrases “concerning” and “commercial exploitation of any news article.” Righthaven additionally objects to this request as calling for the production of irrelevant materials. Moreover, this request may invade the privacy rights of third parties. Righthaven additionally objects to this request on the grounds that it calls for the production of materials protected from discovery under the attorney work product doctrine and/or attorney client privilege. Righthaven further objects to this request on the ground that it calls for the disclosure of confidential and/or proprietary information and the parties have yet to enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has been entered by the Court under which an appropriate confidentiality designation, if any, could be applied to responsive materials to the extent such materials exist.

Relevance of material sought: Fourth fair-use factor, damages, barratry and champerty.

Request No. 31

All license agreements that Righthaven has entered into.

Response to Request No. 31

Righthaven objects to this request on the grounds that the definition of “Righthaven” is vague, ambiguous, overly broad and impose compliance requirements outside of those authorized under Rule 34. Righthaven further objects to this request as it is compound, overly broad, vague, and ambiguous in its use of the terms and phrases “all license agreements” and “entered into.” Righthaven additionally objects to this request as calling for the production of irrelevant materials. Moreover, this request may invade the privacy rights of third parties. Righthaven additionally objects to this request on the grounds that it calls for the production of materials protected from discovery under the attorney work product doctrine and/or attorney client privilege. Righthaven further objects to this request on the ground that it calls for the disclosure of confidential and/or proprietary information and the parties have yet to enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has been entered by the Court under which an appropriate confidentiality designation, if any, could be applied to responsive materials to the extent such materials exist.

Relevance of material sought: Fourth fair-use factor, damages, barratry and champerty.

Request No. 32

All documents concerning Righthaven’s licensing efforts.

Response to Request No. 32

Righthaven objects to this request on the grounds that the definition of “Righthaven” is vague, ambiguous, overly broad and impose compliance requirements outside of those authorized under Rule 34. Righthaven further objects to this request as it is compound, overly broad, vague, and ambiguous in its use of the terms and phrases “concerning” and “licensing

1 efforts.” Righthaven additionally objects to this request as calling for the production of
2 irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
3 Righthaven additionally objects to this request on the grounds that it calls for the production of
4 materials protected from discovery under the attorney work product doctrine and/or attorney
5 client privilege. Righthaven further objects to this request on the ground that it calls for the
6 disclosure of confidential and/or proprietary information and the parties have yet to enter into an
7 agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
8 by the Court under which an appropriate confidentiality designation, if any, could be applied to
9 responsive materials to the extent such materials exist.

6 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

7 **Request No. 33**

8 All settlement agreements that Righthaven has entered into.

9 **Response to Request No. 33**

10 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
11 vague, ambiguous, overly broad and impose compliance requirements outside of those
12 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
13 broad, vague, and ambiguous in its use of the terms and phrases “all settlement agreements” and
14 “entered into.” Righthaven additionally objects to this request as calling for the production of
15 irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
16 Righthaven additionally objects to this request on the grounds that it calls for the production of
17 materials protected from discovery under the attorney work product doctrine and/or attorney
18 client privilege. Righthaven further objects to this request on the ground that it calls for the
19 disclosure of confidential and/or proprietary information and the parties have yet to enter into an
20 agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
21 by the Court under which an appropriate confidentiality designation, if any, could be applied to
22 responsive materials to the extent such materials exist.

17 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

18 **Request No. 34**

19 All documents concerning Righthaven’s settlement negotiations and agreements.

20 **Response to Request No. 34**

21 Righthaven objects to this request on the grounds that the definitions of “documents” and
22 “Righthaven” are vague, ambiguous, overly broad and impose compliance requirements outside
23 of those authorized under Rule 34. Righthaven further objects to this request as it is compound,
24 overly broad, vague, and ambiguous in its use of the terms and phrases “concerning” and
25 “settlement negotiations and agreements.” Righthaven additionally objects to this request as
26 calling for the production of irrelevant materials. Moreover, this request may invade the privacy
27 rights of third parties. Righthaven additionally objects to this request on the grounds that it calls
28 for the production of materials protected from discovery under the attorney work product
29 doctrine and/or attorney client privilege. Righthaven further objects to this request on the ground
30 that it calls for the disclosure of confidential and/or proprietary information and the parties have
31 yet to enter into an agreeable Stipulated Protective Order in this case. As such, no protective
32 order has been entered by the Court under which an appropriate confidentiality designation, if
33 any, could be applied to responsive materials to the extent such materials exist.

28 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

1 **Request No. 39**

2 All intellectual property enforcement efforts with respect to the McMurdo Article.

3 **Response to Request No. 39**

4 Righthaven objects to this request on the grounds that the definition of “McMurdo
5 Article” is vague, ambiguous, overly broad and impose compliance requirements outside of those
6 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
7 broad, vague, and ambiguous in its use of the terms and phrases “All intellectual property
8 enforcement efforts.” Righthaven additionally objects to this request as calling for the
9 production of irrelevant materials. Moreover, this request may invade the privacy rights of third
10 parties. Righthaven additionally objects to this request on the grounds that it calls for the
11 production of materials protected from discovery under the attorney work product doctrine
12 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
13 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
14 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
15 been entered by the Court under which an appropriate confidentiality designation, if any, could
16 be applied to responsive materials to the extent such materials exist.

17 **Relevance of material sought:** Implied license, waiver, estoppel, failure to mitigate.

18 **Request No. 45**

19 Documents sufficient to identify the functionality of Righthaven’s technological
20 measures to identify content online that it considers infringing.

21 **Response to Request No. 45**

22 Righthaven objects to this request on the grounds that the definition of “Documents” and
23 “Righthaven’s” are vague, ambiguous, overly broad and imposes compliance requirements
24 outside of those authorized under Rule 34. Righthaven further objects to this request as
25 compound, overly broad, vague and ambiguous in its use of the terms and phrases
26 “functionality” and “technological measures to identify content online that it considers
27 infringing.” Righthaven additionally objects to this request as calling for the production of
28 irrelevant material and has been done solely for the purpose of harassment. Righthaven
additionally objects to this request on the grounds that it calls for the production of materials
protected from discovery under the attorney work product doctrine and/or attorney client
privilege. Righthaven further objects to this request on the ground that it calls for the disclosure
of confidential and/or proprietary information and the parties have yet to enter into an agreeable
Stipulated Protective Order in this case. As such, no protective order has been entered by the
Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

Relevance of material sought: Implied license, waiver, estoppel, failure to mitigate.

Request No. 46

 All documents supporting any claim that Righthaven suffered actual damages from the
alleged infringement claimed in its Complaint in this action.

Response to Request No. 46

 Righthaven objects to this request on the grounds that the definitions of “documents” and
“Righthaven” are vague, ambiguous, overly broad and impose compliance requirements outside
of those authorized under Rule 34. Righthaven further objects to this request as compound,

1 overly broad, vague and ambiguous in its use of the terms and phrases “supporting,” “suffered,”
2 “actual damages” and “alleged infringement claimed.” As such, Righthaven additionally objects
3 to this request as calling for the production of irrelevant material as a request for statutory
4 damages has been made in this case. Righthaven additionally objects to this request on the
5 grounds that it calls for the production of materials protected from discovery under the attorney
6 work product doctrine and/or attorney client privilege. Righthaven further objects to this request
7 on the ground that it calls for the disclosure of confidential and/or proprietary information and
8 the parties have yet to enter into an agreeable Stipulated Protective Order in this case. As such,
9 no protective order has been entered by the Court under which an appropriate confidentiality
10 designation, if any, could be applied to responsive materials to the extent such materials exist.

11 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

12 **Request No. 47**

13 All documents supporting any claim that Stephens Media suffered actual damages from
14 the alleged infringement claimed in Righthaven’s Complaint in this action.

15 **Response to Request No. 47**

16 Righthaven objects to this request on the grounds that the definitions of “Stephens
17 Media” and “Righthaven” are vague, ambiguous, overly broad and impose compliance
18 requirements outside of those authorized under Rule 34. Righthaven further objects to this
19 request as compound, overly broad, vague and ambiguous in its use of the terms and phrases
20 “supporting,” “suffered,” “actual damages” and “alleged infringement claimed.” As such,
21 Righthaven additionally objects to this request as calling for the production of irrelevant material
22 as a request for statutory damages has been made in this case. Righthaven additionally objects to
23 this request as Stephens Media LLC is not a party to the above captioned litigation. Righthaven
24 additionally objects to this request on the grounds that it calls for the production of materials
25 protected from discovery under the attorney work product doctrine and/or attorney client
26 privilege. Righthaven further objects to this request on the ground that it calls for the disclosure
27 of confidential and/or proprietary information and the parties have yet to enter into an agreeable
28 Stipulated Protective Order in this case. As such, no protective order has been entered by the
Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

19 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

20 **Request No. 51**

21 All tax returns filed by Righthaven with any governmental body.

22 **Response to Request No. 51**

23 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
24 vague, ambiguous, overly broad and impose compliance requirements outside of those
25 authorized under Rule 34. Righthaven further objects to this request as compound, overly broad,
26 vague and ambiguous in its use of the terms and phrases “tax returns” and “any governmental
27 body.” As such, Righthaven additionally objects to this request as calling for the production of
28 irrelevant materials. This request further invades financially related and other rights of privacy.
Righthaven additionally objects to this request on the grounds that it calls for the production of
materials protected from discovery under the attorney work product doctrine and/or attorney
client privilege. Righthaven further objects to this request on the ground that it calls for the
disclosure of confidential and/or proprietary information and the parties have yet to enter into an
agreeable Stipulated Protective Order in this case. As such, no protective order has been entered

1 by the Court under which an appropriate confidentiality designation, if any, could be applied to
2 responsive materials to the extent such materials exist.

3 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

4 **Request No. 53**

5 Documents sufficient to show all revenue that Righthaven has received from any news
6 article.

7 **Response to Request No. 53**

8 Righthaven objects to this request on the grounds that the definitions of “Righthaven”
9 and “Documents” are vague, ambiguous, overly broad and impose compliance requirements
10 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
11 compound, overly broad, vague and ambiguous in its use of the terms and phrases “revenue” and
12 “received from any news article.” Righthaven additionally objects to this request as calling for
13 the production of irrelevant materials. This request further invades financially related and other
14 rights of privacy. Righthaven additionally objects to this request on the grounds that it calls for
15 the production of materials protected from discovery under the attorney work product doctrine
16 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
17 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
18 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
19 been entered by the Court under which an appropriate confidentiality designation, if any, could
20 be applied to responsive materials to the extent such materials exist.

21 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

22 **Request No. 54**

23 Documents sufficient to show all revenue that Righthaven has received that did not result
24 from the settlement of a copyright infringement action.

25 **Response to Request No. 54**

26 Righthaven objects to this request on the grounds that the definitions of “Righthaven”
27 and “Documents” are vague, ambiguous, overly broad and impose compliance requirements
28 outside of those authorized under Rule 34. Righthaven further objects to this request, as it is
29 compound, overly broad, vague and ambiguous in its use of the terms and phrases “revenue,”
30 “did not result from the settlement,” and “copyright infringement action.” Righthaven
31 additionally objects to this request as calling for the production of irrelevant materials. This
32 request further invades financially related and other rights of privacy. Righthaven additionally
33 objects to this request on the grounds that it calls for the production of materials protected from
34 discovery under the attorney work product doctrine and/or attorney client privilege. Righthaven
35 further objects to this request on the ground that it calls for the disclosure of confidential and/or
36 proprietary information and the parties have yet to enter into an agreeable Stipulated Protective
37 Order in this case. As such, no protective order has been entered by the Court under which an
38 appropriate confidentiality designation, if any, could be applied to responsive materials to the
39 extent such materials exist.

40 **Relevance of material sought:** Fourth fair-use factor, damages, barratry and champerty.

41 **Request No. 55**

42 All documents reflecting communications with third parties regarding Righthaven’s
43 decision to assert a request for domain-name transfer in its Complaint in this action.

1 **Response to Request No. 55**

2 Righthaven objects to this request on the grounds that the definitions of “Righthaven’s”
3 and “documents” are vague, ambiguous, overly broad and impose compliance requirements
4 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
5 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “reflecting,”
6 “communications,” “decision,” “assert a request” and “domain-name transfer.” Righthaven
7 additionally objects to this request as calling for the production of irrelevant materials.
8 Righthaven additionally objects to this request on the grounds that it calls for the production of
9 materials protected from discovery under the attorney work product doctrine and/or attorney
10 client privilege. Righthaven further objects to this request on the ground that it calls for the
11 disclosure of confidential and/or proprietary information and the parties have yet to enter into an
12 agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
13 by the Court under which an appropriate confidentiality designation, if any, could be applied to
14 responsive materials to the extent such materials exist.

9 **Relevance of material sought:** Copyright misuse.

10 **Request No. 56**

11 All documents reflecting communications with third parties regarding Righthaven’s
12 decision to assert a request for domain-name transfer in its other copyright infringement actions.

13 **Response to Request No. 56**

14 Righthaven objects to this request on the grounds that the definitions of “Righthaven’s”
15 and “documents” are vague, ambiguous, overly broad and impose compliance requirements
16 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
17 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “reflecting,”
18 “communications,” “assert a request,” “domain-name transfer,” and “other copyright
19 infringement actions.” Righthaven additionally objects to this request as calling for the
20 production of irrelevant materials. Righthaven additionally objects to this request on the grounds
21 that it calls for the production of materials protected from discovery under the attorney work
22 product doctrine and/or attorney client privilege. Righthaven further objects to this request on
23 the ground that it calls for the disclosure of confidential and/or proprietary information and the
24 parties have yet to enter into an agreeable Stipulated Protective Order in this case. As such, no
25 protective order has been entered by the Court under which an appropriate confidentiality
26 designation, if any, could be applied to responsive materials to the extent such materials exist.

21 **Relevance of material sought:** Copyright misuse.

22 **Request No. 58**

23 All documents regarding Righthaven’s creation.

24 **Response to Request No. 58**

25 Righthaven objects to this request on the grounds that the definitions of “Righthaven’s”
26 and “documents” are vague, ambiguous, overly broad and impose compliance requirements
27 outside of those authorized under Rule 34. Righthaven further objects to this request as
28 compound, overly broad, vague, and ambiguous in its use of the term “creation.” Righthaven
additionally objects to this request as calling for the production of irrelevant materials.
Righthaven additionally objects to this request on the grounds that it calls for the production of
materials protected from discovery under the attorney work product doctrine and/or attorney
client privilege. Righthaven further objects to this request on the ground that it calls for the
disclosure of confidential and/or proprietary information and the parties have yet to enter into an

1 agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
2 by the Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

3 **Relevance of material sought:** Barratry and champerty.

4 **Request No. 63**

5 All agreements between Righthaven and Stephens Media.

6 **Response to Request No. 63**

7 Righthaven objects to this request on the grounds that the definitions of “Righthaven”
8 and “Stephens Media” are vague, ambiguous, overly broad and impose compliance requirements
9 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
10 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “all
11 agreements.” Righthaven additionally objects to this request as calling for the production of
12 irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
13 Righthaven additionally objects to this request on the grounds that it calls for the production of
materials protected from discovery under the attorney work product doctrine and/or attorney
client privilege. Righthaven further objects to this request on the ground that it calls for the
disclosure of confidential and/or proprietary information and the parties have yet to enter into an
agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
by the Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

14 **Relevance of material sought:** Barratry and champerty.

15 **Request No. 64**

16 All agreements between Righthaven and Net Sortie Systems, LLC.

17 **Response to Request No. 64**

18 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
19 vague, ambiguous, overly broad and impose compliance requirements outside of those
20 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
21 broad, vague, and ambiguous in its use of the terms and phrases “all agreements” and “Net Sortie
22 Systems, Inc.” Righthaven additionally objects to this request as calling for the production of
23 irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
24 Righthaven additionally objects to this request on the grounds that it calls for the production of
materials protected from discovery under the attorney work product doctrine and/or attorney
client privilege. Righthaven further objects to this request on the ground that it calls for the
disclosure of confidential and/or proprietary information and the parties have yet to enter into an
agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
by the Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

25 **Relevance of material sought:** Barratry and champerty.

26 **Request No. 65**

27 All agreements between Righthaven and SI Content Monitor, LLC.

28

1 **Response to Request No. 65**

2 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
3 vague, ambiguous, overly broad and impose compliance requirements outside of those
4 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
5 broad, vague, and ambiguous in its use of the terms and phrases “all agreements” and “SI
6 Content Monitor, LLC.” Righthaven additionally objects to this request as calling for the
7 production of irrelevant materials. Moreover, this request may invade the privacy rights of third
8 parties. Righthaven additionally objects to this request on the grounds that it calls for the
9 production of materials protected from discovery under the attorney work product doctrine
10 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
11 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
12 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
13 been entered by the Court under which an appropriate confidentiality designation, if any, could
14 be applied to responsive materials to the extent such materials exist.

9 **Relevance of material sought:** Barratry and champerty.

10 **Request No. 66**

11 All agreements between Righthaven and WEHCO Media.

12 **Response to Request No. 66**

13 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
14 vague, ambiguous, overly broad and impose compliance requirements outside of those
15 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
16 broad, vague, and ambiguous in its use of the terms and phrases “all agreements” and “WEHCO
17 Media.” Righthaven additionally objects to this request as calling for the production of
18 irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
19 Righthaven additionally objects to this request on the grounds that it calls for the production of
20 materials protected from discovery under the attorney work product doctrine and/or attorney
21 client privilege. Righthaven further objects to this request on the ground that it calls for the
22 disclosure of confidential and/or proprietary information and the parties have yet to enter into an
23 agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
24 by the Court under which an appropriate confidentiality designation, if any, could be applied to
25 responsive materials to the extent such materials exist.

20 **Relevance of material sought:** Barratry and champerty.

21 **Request No. 67**

22 All agreements between Righthaven and Media News Group.

23 **Response to Request No. 67**

24 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
25 vague, ambiguous, overly broad and impose compliance requirements outside of those
26 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
27 broad, vague, and ambiguous in its use of the terms and phrases “all agreements” and “Media
28 News Group.” Righthaven additionally objects to this request as calling for the production of
irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
Righthaven additionally objects to this request on the grounds that it calls for the production of
materials protected from discovery under the attorney work product doctrine and/or attorney
client privilege. Righthaven further objects to this request on the ground that it calls for the
disclosure of confidential and/or proprietary information and the parties have yet to enter into an

1 agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
2 by the Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

3 **Relevance of material sought:** Barratry and champerty.

4 **Request No. 68**

5 All agreements between Righthaven and Steven A. Gibson.

6 **Response to Request No. 68**

7 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
8 vague, ambiguous, overly broad and impose compliance requirements outside of those
authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
9 broad, vague, and ambiguous in its use of the terms and phrases “all agreements” and “Steven A.
Gibson.” Righthaven additionally objects to this request as calling for the production of
10 irrelevant materials. Righthaven additionally objects to this request on the grounds that it calls
for the production of materials protected from discovery under the attorney work product
11 doctrine and/or attorney client privilege. Righthaven further objects to this request on the ground
that it calls for the disclosure of confidential and/or proprietary information and the parties have
12 yet to enter into an agreeable Stipulated Protective Order in this case. As such, no protective
order has been entered by the Court under which an appropriate confidentiality designation, if
any, could be applied to responsive materials to the extent such materials exist.

13 **Relevance of material sought:** Barratry and champerty.

14 **Request No. 69**

15 All agreements between Righthaven and Charles Coons.

16 **Response to Request No. 69**

17 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
18 vague, ambiguous, overly broad and impose compliance requirements outside of those
authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
19 broad, vague, and ambiguous in its use of the terms and phrases “all agreements” and “Charles
Coons.” Righthaven additionally objects to this request as calling for the production of
20 irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
Righthaven additionally objects to this request on the grounds that it calls for the production of
21 materials protected from discovery under the attorney work product doctrine and/or attorney
client privilege. Righthaven further objects to this request on the ground that it calls for the
22 disclosure of confidential and/or proprietary information and the parties have yet to enter into an
agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
23 by the Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

24 **Relevance of material sought:** Barratry and champerty.

25 **Request No.70**

26 All agreements between Righthaven and Joseph Chu.
27
28

1 **Response to Request No. 70**

2 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
3 vague, ambiguous, overly broad and impose compliance requirements outside of those
4 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
5 broad, vague, and ambiguous in its use of the terms and phrases “all agreements” and “Joseph
6 Chu.” Righthaven additionally objects to this request as calling for the production of irrelevant
7 materials. Moreover, this request may invade the privacy rights of third parties. Righthaven
8 additionally objects to this request on the grounds that it calls for the production of materials
9 protected from discovery under the attorney work product doctrine and/or attorney client
10 privilege. Righthaven further objects to this request on the ground that it calls for the disclosure
11 of confidential and/or proprietary information and the parties have yet to enter into an agreeable
12 Stipulated Protective Order in this case. As such, no protective order has been entered by the
13 Court under which an appropriate confidentiality designation, if any, could be applied to
14 responsive materials to the extent such materials exist.

9 **Relevance of material sought:** Barratry and champerty.

10 **Request No. 71**

11 All communications between Righthaven and any third party concerning alleged
12 copyright infringement by that third party.

13 **Response to Request No. 71**

14 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
15 vague, ambiguous, overly broad and impose compliance requirements outside of those
16 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
17 broad, vague, and ambiguous in its use of the terms and phrases “all communications,” “third
18 party,” and “alleged copyright infringement.” Righthaven additionally objects to this request as
19 calling for the production of irrelevant materials. Moreover, this request may invade the privacy
20 rights of third parties. Righthaven additionally objects to this request on the grounds that it calls
21 for the production of materials protected from discovery under the attorney work product
22 doctrine and/or attorney client privilege. Righthaven further objects to this request on the ground
23 that it calls for the disclosure of confidential and/or proprietary information and the parties have
24 yet to enter into an agreeable Stipulated Protective Order in this case. As such, no protective
25 order has been entered by the Court under which an appropriate confidentiality designation, if
26 any, could be applied to responsive materials to the extent such materials exist.

21 **Relevance of material sought:** Barratry and champerty, implied license, waiver,
22 estoppel, failure to mitigate.

22 **Request No. 72**

23 All analyses regarding Righthaven’s anticipated recovery from its copyright infringement
24 actions.

25 **Response to Request No. 72**

26 Righthaven objects to this request on the grounds that the definition of “Righthaven’s” is
27 vague, ambiguous, overly broad and impose compliance requirements outside of those
28 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
broad, vague, and ambiguous in its use of the terms and phrases “all analyses,” “anticipated
recovery,” and “copyright infringement actions.” Righthaven additionally objects to this request
as calling for the production of irrelevant materials. Righthaven additionally objects to this
request on the grounds that it calls for the production of materials protected from discovery

1 under the attorney work product doctrine and/or attorney client privilege. Righthaven further
2 objects to this request on the ground that it calls for the disclosure of confidential and/or
3 proprietary information and the parties have yet to enter into an agreeable Stipulated Protective
4 Order in this case. As such, no protective order has been entered by the Court under which an
5 appropriate confidentiality designation, if any, could be applied to responsive materials to the
6 extent such materials exist.

7 **Relevance of material sought:** Barratry and champerty.

8 **Request No. 73**

9 All documents, including any opinion letters, regarding the legality of Righthaven's
10 business model.

11 **Response to Request No. 73**

12 Righthaven objects to this request on the grounds that the definitions of "documents" and
13 "Righthaven's" are vague, ambiguous, overly broad and impose compliance requirements
14 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
15 compound, overly broad, vague, and ambiguous in its use of the terms and phrases "opinion
16 letters," "regarding the legality," and "business model." Righthaven additionally objects to this
17 request as calling for the production of irrelevant materials. Righthaven additionally objects to
18 this request on the grounds that it calls for the production of materials protected from discovery
19 under the attorney work product doctrine and/or attorney client privilege. Righthaven further
20 objects to this request on the ground that it calls for the disclosure of confidential and/or
21 proprietary information and the parties have yet to enter into an agreeable Stipulated Protective
22 Order in this case. As such, no protective order has been entered by the Court under which an
23 appropriate confidentiality designation, if any, could be applied to responsive materials to the
24 extent such materials exist.

25 **Relevance of material sought:** Barratry and champerty.

26 **Request No. 74**

27 All communications between Righthaven and Stephens Media.

28 **Response to Request No. 74**

Righthaven objects to this request on the grounds that the definitions of "Righthaven"
and "Stephens Media" are vague, ambiguous, overly broad and impose compliance requirements
outside of those authorized under Rule 34. Righthaven further objects to this request as it is
compound, overly broad, vague, and ambiguous in its use of the terms and phrase "all
communications." Righthaven additionally objects to this request as calling for the production of
irrelevant materials. Moreover, this request may invade the privacy rights of third parties.
Righthaven additionally objects to this request on the grounds that it calls for the production of
materials protected from discovery under the attorney work product doctrine and/or attorney
client privilege. Righthaven further objects to this request on the ground that it calls for the
disclosure of confidential and/or proprietary information and the parties have yet to enter into an
agreeable Stipulated Protective Order in this case. As such, no protective order has been entered
by the Court under which an appropriate confidentiality designation, if any, could be applied to
responsive materials to the extent such materials exist.

Relevance of material sought: Barratry and champerty.

1 **Request No. 85**

2 All documents supporting the denial in paragraph 5 of Righthaven’s Reply to the
3 Counterclaim that “Righthaven has not engaged in the business of licensing copyright rights
4 other than in the context of litigation.

4 **Response to Request No. 85**

5 Righthaven objects to this request on the grounds that the definitions of “documents” and
6 “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements
7 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
8 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
9 the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
10 production of materials protected from discovery under the attorney work product doctrine
11 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
12 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
13 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
14 been entered by the Court under which an appropriate confidentiality designation, if any, could
15 be applied to responsive materials to the extent such materials exist.

11 **Relevance of material sought:** Counterclaim of non-infringement.

12 **Request No. 86**

13 All documents supporting the denial in paragraph 6 of Righthaven’s Reply to the
14 Counterclaim that “Righthaven does not have a regular business model of deriving revenue from
15 licensing copyright rights with respect to any information or content other than in connection
16 with litigation, if at all.”

16 **Response to Request No. 86**

17 Righthaven objects to this request on the grounds that the definitions of “documents” and
18 “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements
19 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
20 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
21 the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
22 production of materials protected from discovery under the attorney work product doctrine
23 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
24 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
25 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
26 been entered by the Court under which an appropriate confidentiality designation, if any, could
27 be applied to responsive materials to the extent such materials exist.

22 **Relevance of material sought:** Counterclaim of non-infringement.

23 **Request No. 87**

24 All documents supporting the denial in paragraph 7 of Righthaven’s Reply to the
25 Counterclaim that “Righthaven’s sole revenue is settlements from the copyright infringement
26 cases it has filed.”

27 **Response to Request No. 87**

28 Righthaven objects to this request on the grounds that the definitions of “documents” and
“Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements

1 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
2 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
3 the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
4 production of materials protected from discovery under the attorney work product doctrine
5 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
6 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
7 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
8 been entered by the Court under which an appropriate confidentiality designation, if any, could
9 be applied to responsive materials to the extent such materials exist.

6 **Relevance of material sought:** Counterclaim of non-infringement.

7 **Request No. 88**

8 All documents supporting the denial in paragraph 8 of Righthaven’s Reply to the
9 Counterclaim that “Righthaven has filed at least 150 lawsuits to enforce copyrights it has
10 acquired.”

10 **Response to Request No. 88**

11 Righthaven objects to this request on the grounds that the definitions of “documents” and
12 “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements
13 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
14 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
15 the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
16 production of materials protected from discovery under the attorney work product doctrine
17 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
18 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
19 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
20 been entered by the Court under which an appropriate confidentiality designation, if any, could
21 be applied to responsive materials to the extent such materials exist.

17 **Relevance of material sought:** Counterclaim of non-infringement.

18 **Request No. 91**

19 All documents supporting the denial in paragraph 23 of Righthaven’s Reply to the
20 Counterclaim that “Righthaven does not reproduce in copies; make derivative works of;
21 distribute copies to the public by sale or other transfer of ownership, or by rental, lease, or
22 lending; or publicly display the News Article.”

22 **Response to Request No. 91**

23 Righthaven objects to this request on the grounds that the definitions of “documents” and
24 “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements
25 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
26 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
27 the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
28 production of materials protected from discovery under the attorney work product doctrine
and/or attorney client privilege. Righthaven further objects to this request on the ground that it
calls for the disclosure of confidential and/or proprietary information and the parties have yet to
enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
been entered by the Court under which an appropriate confidentiality designation, if any, could
be applied to responsive materials to the extent such materials exist.

Relevance of material sought: Counterclaim of non-infringement.

1 **Request No. 92**

2 All documents supporting the denial in paragraph 24 of Righthaven’s Reply to the
3 Counterclaim that “Righthaven does not reproduce in copies; make derivative works of;
4 distribute copies to the public by sale or other transfer of ownership, or by rental, lease, or
5 lending; or publicly display any of the copyrighted works it owns.”

6 **Response to Request No. 92**

7 Righthaven objects to this request on the grounds that the definitions of “documents” and
8 “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements
9 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
10 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
11 the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
12 production of materials protected from discovery under the attorney work product doctrine
13 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
14 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
15 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
16 been entered by the Court under which an appropriate confidentiality designation, if any, could
17 be applied to responsive materials to the extent such materials exist.

18 **Relevance of material sought:** Counterclaim of non-infringement.

19 **Request No. 93**

20 All documents supporting the denial in paragraph 25 of Righthaven’s Reply to the
21 Counterclaim that “Righthaven has no specific plan to reproduce in copies; make derivative
22 works of distribute copies to the public by sale or other transfer of ownership, or by rental, lease,
23 or lending; or publicly display any of the copyrighted work it owns.”

24 **Response to Request No. 93**

25 Righthaven objects to this request on the grounds that the definitions of “documents” and
26 “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements
27 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
28 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
production of materials protected from discovery under the attorney work product doctrine
and/or attorney client privilege. Righthaven further objects to this request on the ground that it
calls for the disclosure of confidential and/or proprietary information and the parties have yet to
enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
been entered by the Court under which an appropriate confidentiality designation, if any, could
be applied to responsive materials to the extent such materials exist.

Relevance of material sought: Counterclaim of non-infringement.

Request No. 94

 All documents supporting the denial in paragraph 26 of Righthaven’s Reply to the
Counterclaim that “Righthaven has not attempted to sell or license copies of the News Article,”
including without limitation any communications reflecting any such attempt.

Response to Request No. 94

 Righthaven objects to this request on the grounds that the definitions of “documents” and

1 “Righthaven’s” are vague, ambiguous, overly broad and impose compliance requirements
2 outside of those authorized under Rule 34. Righthaven further objects to this request as it is
3 compound, overly broad, vague, and ambiguous in its use of the terms and phrases “supporting
4 the denial.” Righthaven additionally objects to this request on the grounds that it calls for the
5 production of materials protected from discovery under the attorney work product doctrine
6 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
7 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
8 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
9 been entered by the Court under which an appropriate confidentiality designation, if any, could
10 be applied to responsive materials to the extent such materials exist.

11 **Relevance of material sought:** Counterclaim of non-infringement.

12 **Request No. 97**

13 All communications between Righthaven and Sherman Frederick that refer or relate to
14 copyright infringement enforcement, Righthaven’s copyright infringement lawsuits, and/or
15 Righthaven’s structure or purpose.

16 **Response to Request No. 97**

17 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
18 vague, ambiguous, overly broad and impose compliance requirements outside of those
19 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
20 broad, vague, and ambiguous in its use of the terms and phrases “communications,” “Sherman
21 Frederick,” “refer or relate to,” “copyright infringement enforcement,” “copyright infringement
22 lawsuits,” and “structure or purpose.” Righthaven additionally objects to this request as calling
23 for the production of irrelevant materials. Moreover, this request may invade the privacy rights
24 of third parties. Righthaven additionally objects to this request on the grounds that it calls for the
25 production of materials protected from discovery under the attorney work product doctrine
26 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
27 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
28 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
been entered by the Court under which an appropriate confidentiality designation, if any, could
be applied to responsive materials to the extent such materials exist.

Relevance of material sought: Barratry and champerty.

Request No. 98

All communications between Righthaven and Michael Ferguson that refer or relate to
copyright infringement enforcement, Righthaven’s copyright infringement lawsuits, and/or
Righthaven’s structure or purpose.

Response to Request No. 98

Righthaven objects to this request on the grounds that the definition of “Righthaven” is
vague, ambiguous, overly broad and impose compliance requirements outside of those
authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
broad, vague, and ambiguous in its use of the terms and phrases “communications,” “Sherman
Frederick,” “refer or relate to,” “copyright infringement enforcement,” “copyright infringement
lawsuits,” and “structure or purpose.” Righthaven additionally objects to this request as calling
for the production of irrelevant materials. Moreover, this request may invade the privacy rights
of third parties. Righthaven additionally objects to this request on the grounds that it calls for the
production of materials protected from discovery under the attorney work product doctrine

1 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
2 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
3 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
4 been entered by the Court under which an appropriate confidentiality designation, if any, could
5 be applied to responsive materials to the extent such materials exist.

6 **Relevance of material sought:** Barratry and champerty.

7 **Request No. 99**

8 All communications between Righthaven and Bob Brown that refer or relate to copyright
9 infringement enforcement, Righthaven's copyright infringement lawsuits, and/or Righthaven's
10 structure or purpose.

11 **Response to Request No. 99**

12 Righthaven objects to this request on the grounds that the definition of "Righthaven" is
13 vague, ambiguous, overly broad and impose compliance requirements outside of those
14 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
15 broad, vague, and ambiguous in its use of the terms and phrases "communications," "Bob
16 Brown," "refer or relate to," "copyright infringement enforcement," "copyright infringement
17 lawsuits," and "structure or purpose." Righthaven additionally objects to this request as calling
18 for the production of irrelevant materials. Moreover, this request may invade the privacy rights
19 of third parties. Righthaven additionally objects to this request on the grounds that it calls for the
20 production of materials protected from discovery under the attorney work product doctrine
21 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
22 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
23 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
24 been entered by the Court under which an appropriate confidentiality designation, if any, could
25 be applied to responsive materials to the extent such materials exist.

26 **Relevance of material sought:** Barratry and champerty.

27 **Request No. 100**

28 All communications between Righthaven and Mark Hinueber that refer or relate to
copyright infringement enforcement, Righthaven's copyright infringement lawsuits, and/or
Righthaven's structure or purpose.

Response to Request No. 100

Righthaven objects to this request on the grounds that the definition of "Righthaven" is
vague, ambiguous, overly broad and impose compliance requirements outside of those
authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
broad, vague, and ambiguous in its use of the terms and phrases "communications," "Mark
Hinueber," "refer or relate to," "copyright infringement enforcement," "copyright infringement
lawsuits," and "structure or purpose." Righthaven additionally objects to this request as calling
for the production of irrelevant materials. Moreover, this request may invade the privacy rights
of third parties. Righthaven additionally objects to this request on the grounds that it calls for the
production of materials protected from discovery under the attorney work product doctrine
and/or attorney client privilege. Righthaven further objects to this request on the ground that it
calls for the disclosure of confidential and/or proprietary information and the parties have yet to
enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
been entered by the Court under which an appropriate confidentiality designation, if any, could
be applied to responsive materials to the extent such materials exist.

1 **Relevance of material sought:** Barratry and champerty.

2 **Request No. 101**

3 All communications between Righthaven and Jackson Farrow that refer or relate to
4 copyright infringement enforcement, Righthaven’s copyright infringement lawsuits, and/or
Righthaven’s structure or purpose.

5 **Response to Request No. 101**

6 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
7 vague, ambiguous, overly broad and impose compliance requirements outside of those
8 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
9 broad, vague, and ambiguous in its use of the terms and phrases “communications,” “Jackson
10 Farrow,” “refer or relate to,” “copyright infringement enforcement,” “copyright infringement
11 lawsuits,” and “structure or purpose.” Righthaven additionally objects to this request as calling
12 for the production of irrelevant materials. Moreover, this request may invade the privacy rights
13 of third parties. Righthaven additionally objects to this request on the grounds that it calls for the
14 production of materials protected from discovery under the attorney work product doctrine
15 and/or attorney client privilege. Righthaven further objects to this request on the ground that it
16 calls for the disclosure of confidential and/or proprietary information and the parties have yet to
17 enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
18 been entered by the Court under which an appropriate confidentiality designation, if any, could
19 be applied to responsive materials to the extent such materials exist.

20 **Relevance of material sought:** Barratry and champerty.

21 **Request No. 102**

22 All communications between Righthaven and Warren Stephens that refer or relate to
23 copyright infringement enforcement, Righthaven’s copyright infringement lawsuits, and/or
24 Righthaven’s structure or purpose.

25 **Response to Request No. 102**

26 Righthaven objects to this request on the grounds that the definition of “Righthaven” is
27 vague, ambiguous, overly broad and impose compliance requirements outside of those
28 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
broad, vague, and ambiguous in its use of the terms and phrases “communications,” “Warren
Stephens,” “refer or relate to,” “copyright infringement enforcement,” “copyright infringement
lawsuits,” and “structure or purpose.” Righthaven additionally objects to this request as calling
for the production of irrelevant materials. Moreover, this request may invade the privacy rights
of third parties. Righthaven additionally objects to this request on the grounds that it calls for the
production of materials protected from discovery under the attorney work product doctrine
and/or attorney client privilege. Righthaven further objects to this request on the ground that it
calls for the disclosure of confidential and/or proprietary information and the parties have yet to
enter into an agreeable Stipulated Protective Order in this case. As such, no protective order has
been entered by the Court under which an appropriate confidentiality designation, if any, could
be applied to responsive materials to the extent such materials exist.

Relevance of material sought: Barratry and champerty.

27
28

1 **Request No. 104**

2 The communications referenced by Steven Gibson when he said that there are
3 “communications to my company saying, ‘What can I do to change my behavior, so I’m not
4 disrespecting someone else’s copyrights?’” in the article posted at <http://www.law.com/jsp/cc/PubArticleCCsp?id=1202466627090>.

5 **Response to Request No. 104**

6 Righthaven objects to this request as compound, overly broad, vague and ambiguous in
7 its use of the phrases “communications,” “referenced” and “there are “communications to my
8 company saying, ‘What can I do to change my behavior, so I’m not disrespecting someone else’s
9 copyrights?’” Righthaven additionally objects to this request as calling for the production of
10 irrelevant material and has been done solely for the purpose of harassment. Righthaven
11 additionally objects to this request on the grounds that it calls for the production of materials
12 protected from discovery under the attorney work product doctrine and/or attorney client
13 privilege. Righthaven further objects to this request on the ground that it calls for the disclosure
14 of confidential and/or proprietary information and the parties have yet to enter into an agreeable
15 Stipulated Protective Order in this case. As such, no protective order one has been entered by
16 the Court under which an appropriate confidentiality designation, if any, could be applied to
17 responsive materials to the extent such materials exist.

18 **Relevance of material sought:** First fair-use factor.

19 **Request No. 105**

20 All documents that reflect “Righthaven’s business model, business plan, [and/or] revenue
21 stream” referenced in Docket 24 of Righthaven v. Center for Intercultural Organizing, Case No.
22 2:10-cv-01322-JCM-LRL, on page 24.

23 **Response to Request No. 105**

24 Righthaven objects to this request on the grounds that the definition of “documents” is
25 vague, ambiguous, overly broad and impose compliance requirements outside of those
26 authorized under Rule 34. Righthaven further objects to this request as it is compound, overly
27 broad, vague, and ambiguous in its use of the terms and phrases “reflect,” “Righthaven's business
28 model, business plan, [and/or] revenue stream” “Docket 24” and “page 24.” Righthaven
29 additionally objects to this request as calling for the production of irrelevant materials and has
30 been done solely for the purpose of harassment. Righthaven additionally objects to this request
31 on the grounds that it calls for the production of materials protected from discovery under the
32 attorney work product doctrine and/or attorney client privilege. Righthaven further objects to
33 this request on the ground that it calls for the disclosure of confidential and/or proprietary
34 information and the parties have yet to enter into an agreeable Stipulated Protective Order in this
35 case. As such, no protective order has been entered by the Court under which an appropriate
36 confidentiality designation, if any, could be applied to responsive materials to the extent such
37 materials exist.

38 **Relevance of material sought:** Fourth fair-use factor, damages,