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KURT OPSAHL (*pro hac vice*)
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ELECTRONIC FRONTIER FOUNDATION
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15 Attorneys for Defendant & Counterclaimant
16 THOMAS A. DIBIASE

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE DISTRICT OF NEVADA**

19 RIGHTHAVEN LLC, a Nevada limited-liability)
20 company,)

21 Plaintiff,)

22 v.)

23 THOMAS A. DIBIASE, an individual,)

24 Defendant.)

25 _____)
26 THOMAS A. DIBIASE, an individual,)

27 Counterclaimant,)

28 v.)

RIGHTHAVEN LLC, a Nevada Limited-)
Liability Company,)

Counter-defendant.)
_____)

CASE NO.: 2:10-cv-1343 RLH PAL

DECLARATION OF KURT OPSAHL

Declaration of Kurt Opsahl

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1. I am an attorney of record for the Defendant, Counter-claimant and Judgment Creditor, Thomas A. DiBiase, in this matter and a member in good standing of the State Bar of California, and am admitted to practice before this Court *pro hac vice*. I have personal knowledge of the matters stated in this declaration. If called upon to do so, I am competent to testify to all matters set forth herein.

2. On Tuesday, January 24, 2012, a hearing was held before Magistrate Judge Peggy A. Leen on Mr. DiBiase's Motion for a Judgment Debtor's Examination. Following the discussions of counsel, the Court ordered the parties to "jointly submit a Proposed Stipulation summarizing their agreement concerning the previous Judgment Debtor Examination Transcript and Protective Order, as discussed in open court, by the end of this week." Minutes of Proceeding (Dkt. 101). After the hearing, I discussed the details with Righthaven's counsel, Shawn Mangano, agreeing that the transcript and documents previously produced in *Righthaven v. Hoehn*, D. Nev. Case No. 2:11-cv-00050-PMP-RJJ, would be provided by February 7, 2012 and the remaining documents would be produced by February 14, 2012.

3. I prepared a draft stipulation to reflect the parties' in court agreement, and sent it to Mr. Mangano on Wednesday, January 25, 2012. Mr. Mangano responded that day, adding a new paragraph contending that it might be unable to produce some of the responsive documents by February 14. That night, I provided a revision to the draft, allowing that Righthaven might be late with the documents, but requiring a declaration detailing its good faith efforts to comply. Righthaven failed to respond.

4. I wrote to counsel to Mr. Mangano again on Thursday, January 26, seeking Righthaven's agreement and/or comments. Righthaven failed to respond.

5. I wrote again on Friday, January 27, reminding Mr. Mangano of the Court's requirement to get the stipulation on file by the end of the week. Righthaven failed to respond.

6. I wrote to Mr. Mangano on February 8, asking about the late documents. In response, Righthaven provided a redacted copy of some of its Bank of Nevada statements, but

1 failed to provide the transcript of the prior debtors' examination.

2 7. Righthaven failed to show up at the February 9 status conference.

3 8. I wrote again on February 15, reminding Mr. Mangano that Righthaven's
4 production was overdue and requesting immediate compliance.

5 9. Mr. Mangano promised a response "as soon as possible. If I can do so today, I
6 will." A true and correct copy of the email from Mr. Managano is attached as Exhibit A. This was
7 the last communication from Righthaven.

8 10. I wrote three more times to Mr. Mangano, on February 16, 21 and 23. A true and
9 correct copy of this email chain with Mr. Managano is attached as Exhibit B.

10 11. Righthaven has not yet complied with the February 7 Order.

11 12. I have spent over 6.5 hours researching, drafting and filing this motion and
12 accompanying documents.

13 13. My current hourly rate is \$625. Nevertheless, we are only seeking the \$525 hourly
14 rate previously approved by this Court in granting our attorneys fees. The total is \$3,412.50.

15 14. I have reviewed Righthaven's bank statements for three accounts with the Bank of
16 Nevada during the period from Righthaven's creation through the most recently available data
17 (November 2011). This review included both the redacted copies produced by Righthaven and
18 unredacted copies produced by the Bank of Nevada pursuant to a subpoena.

19 15. The statements do not show a payment of the \$5,000 sanctions ordered in
20 *Righthaven v. Democratic Underground*, Case No. 2:10-cv-01356-RLH –GWF, Dkt. 138 (D. Nev.
21 July 14, 2011).

22 16. I am informed and believe that Righthaven has not paid the \$5,000 sanctions
23 through other means.

24 17. The statements show that there were several substantial deposits from Steven A.
25 Gibson's account into the Righthaven account in the months following July 14, 2011. Generally,
26 these deposits were immediately prior to a payment from the Righthaven account, allowing
27 Righthaven to pay certain bills while keeping the balance low.
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18. Righthaven has not paid any portion of the judgment due to Mr. DiBiase.

19. Attached as Exhibit C is a true and correct copy of an excerpt of the redacted statement produced by Righthaven. It shows that Righthaven had a balance of \$9,705.90 on August 18, 2011, which is more than enough to have paid the sanction due the prior month.

20. Exhibit C shows a wire transfer to Stephens Investments Holding in the amount of \$4,475 on August 25, 2011.

21. I am informed and believe that Stephens Investments Holding is a company affiliated with the family of Warren Stephens, who are also investors in SI Content Monitor LLC. SI Content Monitor LLC is 50% owner of Righthaven LLC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of February, 2012, at San Francisco, California.

/s/ Kurt Opsahl
KURT OPSAHL

* * *

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b) and as provided for under the applicable Local Rules of Civil Practice, I certify that on this 27th day of February, 2012, I caused a true and correct copy of the DECLARATION OF KURT OPSAHL to be served on all counsel properly registered and appearing in this action as listed in the Court’s ECF system.

Dated: February 27, 2012 _____
/s/ Kurt Opsahl
KURT OPSAHL

Exhibit A

Exhibit A

From: <shawn@manganolaw.com>
Subject: RE: Righthaven production overdue
Date: February 15, 2012 1:16:39 PM PST
To: "Kurt Opsahl" <kurt@eff.org>

Kurt:

As stated in my previous e-mail, I have not received a copy of the debtor's examination transcript. It was requested at the examination and the court reporter has my contact information. I will ask Jay DeVoy for the court reporter's contact information.

With regard to the declaration, I will put it together and get it to you as soon as possible. If I can do so today, I will.

Regards,

S

Shawn A. Mangano, Esq.
[Shawn A. Mangano, Ltd.](#)
8367 West Flamingo Road, Suite 100
Las Vegas, Nevada 89147
(702) 304-0432 - telephone
(702) 922-3851 - facsimile
Licensed in California, Nevada and Illinois

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

Subject: Righthaven production overdue
From: Kurt Opsahl <kurt@eff.org>
Date: Wed, February 15, 2012 1:13 pm
To: Shawn Mangano <shawn@manganolaw.com>

Shawn --

As you know, the stipulated court order required Righthaven to produce documents by yesterday, February 14. We have received no documents. Nor have you provided a sworn declaration detailing your good faith efforts to comply, as required in the event that Righthaven was not able to complete the entire document production by February 14, 2012.

In addition, Righthaven has failed to provide a copy of the transcript of the debtors' examination in Hoehn, due February 7. We were also disappointed that you failed to appear at the status conference on February 9.

Please produce this information immediately.

best regards,

Kurt

Kurt Opsahl, kurt@eff.org
Senior Staff Attorney, Electronic Frontier Foundation <http://www.eff.org/>

ph: 415.436.9333 x 106 \\ fx: 415.436.9993

Exhibit B

Exhibit B

From: Kurt Opsahl <kurt@eff.org>
Subject: Re: Righthaven production overdue
Date: February 16, 2012 12:56:07 PM PST
To: <shawn@manganolaw.com>



Shawn,

I look forward to your declaration, providing a detailed description of your good faith efforts to comply with the stipulated court order and explaining why none of the requested documents were produced. Please understand that the declaration does not discharge Righthaven's obligations under the court order. I also look forward to learning when Righthaven believes it can comply.

Thank you for following up with the court reporter. In my experience, court reporters can provide transcripts quite quickly, and it is quite unusual that it is simply unavailable more than a month later. I'm sure once you get in touch with the reporter, Righthaven can quickly comply with the stipulated court order.

best regards,

Kurt

On Feb 15, 2012, at 1:16 PM, <shawn@manganolaw.com> wrote:

Kurt:

As stated in my previous e-mail, I have not received a copy of the debtor's examination transcript. It was requested at the examination and the court reporter has my contact information. I will ask Jay DeVoy for the court reporter's contact information.

With regard to the declaration, I will put it together and get it to you as soon as possible. If I can do so today, I will.

Regards,

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Please produce this information immediately.

best regards,

Kurt

Kurt Opsahl, kurt@eff.org
Senior Staff Attorney, Electronic Frontier Foundation <http://www.eff.org/>
ph: 415.436.9333 x 106 \ fax: 415.436.9993

From: Kurt Opsahl <kurt@eff.org>
Subject: Re: Righthaven production overdue
Date: February 23, 2012 12:12:53 PM PST
To: Shawn Mangano <shawn@manganolaw.com>



Shawn --

Hope you are well.

You have not responded to our emails and still have not complied with the court's order. If you do not comply, we will have no choice but to seek sanctions and an order finding contempt of court.

best regards,

Kurt

On Feb 21, 2012, at 12:35 PM, Kurt Opsahl wrote:

Shawn --

It has been a week since Righthaven's production was due pursuant to the stipulated court order. We still have not received the additional documents, the transcript or your declaration.

Please comply with the stipulated court order by the end of the day.

best regards,

Kurt

On Feb 15, 2012, at 1:16 PM, <shawn@manganolaw.com> <shawn@manganolaw.com> wrote:

Kurt:

As stated in my previous e-mail, I have not received a copy of the debtor's examination transcript. It was requested at the examination and the court reporter has my contact information. I will ask Jay DeVoy for the court reporter's contact information.

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Regards,

S

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To: Shawn Mangano <shawn@manganolaw.com>

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In addition, Righthaven has failed to provide a copy of the transcript of the debtors' examination in Hoehn, due February 7. We were also disappointed that you failed to appear at the status conference on February 9.

Please produce this information immediately.

best regards,

Kurt

Kurt Opsahl, kurt@eff.org
Senior Staff Attorney, Electronic Frontier Foundation <http://www.eff.org/>
ph: 415.436.9333 x 106 \ fax: 415.436.9993

Exhibit C

Exhibit C



003 00003 01 PAGE: 1
 ACCOUNT: 7501426651 08/31/2011
 DOCUMENTS: 5

RIGHTHAVEN LLC
 GENERAL ACCOUNT 30
 4475 S PECOS RD 2
 LAS VEGAS NV 89121-5029 3

BANK OF NEVADA

Effective 3/28/11, our funds availability policy has changed. Our policy to make funds from deposits available to you generally on the first business day after the date we receive your deposit has not changed. However, if we must postpone availability of funds you deposit by check, we have increased the amount that may be made available to you on the first business day after your deposit date from \$100 to \$200.

CHARTER BUSINESS CHECKING ACCOUNT 7501426651

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			07/29/11	2,288.76
MERCHANT SERVICE MERCH FEE 8018763378				
	20.00		08/02/11	2,268.76
AETNA877-2564476 CIPPREMIUM 84014610				
	42.00		08/02/11	2,226.76
CHECK # 1140			08/03/11	2,950.36
CNA ACH PREM-PYMT 3015983514	1,126.89		08/04/11	1,823.47
Purchase ALPINE WATER SYSTEMS 702-798-7220 NV 6144				
	27.12		08/08/11	2,011.35
Purchase VZWRLLS*APOCC VISW 800-922-0204 NJ 6144				
	338.67		08/08/11	1,672.68
700009493 Online Transfer to 7501432201 on 8/09/11 at 8:35			08/09/11	5,123.74
CHECK # 1141			08/10/11	9,480.90

*** CONTINUED ***

RH 12



003 00003 01 PAGE: 2
 ACCOUNT: 7501426651 08/31/2011
 DOCUMENTS: 5

RIGHTHAVEN LLC

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CHARTER BUSINESS CHECKING ACCOUNT 7501426651

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DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
[REDACTED]			[REDACTED]	[REDACTED]
WIRE FEE-201123000082;OUTBD DD-10 WIRE FEE-DOM BR-03	25.00		08/18/11	9,705.90
WIRE/OUT-201123000082;BNF SHAWN A. MANGANO, LTD.	2,475.00		08/18/11	7,230.90
CHECK # 1144	800.00		08/18/11	6,430.90
WIRE FEE-201123700228;OUTBD DD-10 WIRE FEE-DOM BR-03	25.00		08/25/11	6,405.90
WIRE/OUT-201123700228;BNF STEPHENS INC;OBI TFC: STEPHE NS INVESTMENTS HOLDIN	4,475.00		08/25/11	1,930.90
[REDACTED]				[REDACTED]
[REDACTED]				[REDACTED]
WIRE FEE-201124300632;OUTBD DD-10 WIRE FEE-DOM BR-03	25.00		08/31/11	2,905.90
WIRE/OUT-201124300632;BNF SHAWN A MANGANO LTD	2,475.00		08/31/11	430.90
700000334 Online Transfer to 7501432201 on 8/30/11 at 23:09	297.35		08/31/11	133.55
BALANCE THIS STATEMENT			08/31/11	133.55
[REDACTED]				[REDACTED]
TOTAL CREDITS	(17)			11,230.90
TOTAL DEBITS	(18)			13,380.21

=====

YOUR CHECKS SEQUENCED

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DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT	DATE...CHECK #.....AMOUNT
08/03 1140 26.40	08/10 1141* 142.84	08/18 1144 800.00

(*) INDICATES A GAP IN CHECK NUMBER SEQUENCE

* * * C O N T I N U E D * * *

RH13



003 00003 01 PAGE: 3
ACCOUNT: 7501426651 08/31/2011
DOCUMENTS: 5

RIGHTHAVEN LLC

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CHARTER BUSINESS CHECKING ACCOUNT 7501426651

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- - - ITEMIZATION OF OVERDRAFT AND RETURNED ITEM FEES - - -

*		TOTAL FOR	TOTAL	*
*		THIS PERIOD	YEAR TO DATE	*

*	TOTAL OVERDRAFT FEES:	.00	.00	*
*	TOTAL RETURNED ITEM FEES:	.00	.00	*

RH14