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11 THOMAS A. DIBIASE

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

15 RIGHTHAVEN LLC, a Nevada limited-
16 liability company,)
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-
26 liability company,)
27 Counter-defendant.)
28 _____)

CASE NO.: 2:10-cv-01343-RLH-PAL
**REDACTED VERSION OF
DECLARATION OF BART E.
VOLKMER IN SUPPORT OF
DEFENDANT THOMAS A. DIBIASE'S
MOTION TO DISMISS FOR LACK OF
SUBJECT-MATTER JURISDICTION**

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

2 1. I am counsel for Defendant Thomas A. DiBiase. I submit this declaration in
3 support of his motion to dismiss for lack of subject-matter jurisdiction pursuant to Fed. R. Civ. P.
4 12(h)(3). I have personal knowledge of the facts set forth herein and, if called as a witness, I
5 could and would testify competently to them.

6 2. The parties in this case exchanged initial disclosures on January 7, 2011. On
7 April 8, 2011, Righthaven served on counsel for Mr. DiBiase a document entitled "Plaintiff's
8 First Supplemental Initial Disclosures Pursuant to Rule 26(a)(1)(A) of the Federal Rules of Civil
9 Procedure." That pleading attached a Strategic Alliance Agreement between Righthaven and
10 Stephens Media LLC.

11 3. A true and correct copy of the Strategic Alliance Agreement between Righthaven
12 and Stephens Media LLC is attached hereto as **Exhibit A**. While marked "Confidential,"
13 counsel for Righthaven agreed to remove that confidentiality designation on May 2, 2011 in light
14 of this Court's April 14, 2011 Order in *Righthaven v. Democratic Underground*, Case No. 10-
15 1356.

16 4. A true and correct copy of [REDACTED] is attached hereto
17 as **Exhibit B**. That document has been designated "Confidential" by Righthaven and therefore
18 will be filed under seal conditionally upon the Court's approval.

19 5. On April 29, 2011, I requested that counsel for Righthaven agree to de-designate
20 the document attached as Exhibit B. I expressed willingness to agree that Righthaven may
21 redact sensitive information from Exhibit B in any publicly filed version of the document. To
22 date, Righthaven has not responded to my de-designation request.

23 I declare under penalty of perjury under the laws of the United States of America that the
24 foregoing is true and correct. Executed this 4th day of May 2011, at Palo Alto, California.

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26
27
28

/s/ Bart E. Volkmer
Bart E. Volkmer