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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

**MOTION FOR JUDGMENT DEBTOR  
EXAMINATION AND TO PRODUCE  
DOCUMENTS**

1 PLEASE TAKE NOTICE that Judgment Creditor Mr. Thomas DiBiase, by and through his  
2 attorneys, brings this motion seeking this Court, in light of the civil judgments entered by this  
3 Court on July 27, 2011 (Dkt. 73) and November 2, 2011 (Dkt. 97) against Judgment Debtor  
4 Righthaven LLC (“Righthaven”) and pursuant to Rule 69 of the Federal Rules of Civil Procedure  
5 and Nevada Revised Statutes 21.270, issue an order requiring:

6 1. That Steven Gibson, Chief Executive Officer of Righthaven, appear before a  
7 magistrate of the Court and answer upon oath or affirmation concerning Righthaven’s property at a  
8 Judgment Debtor Examination under the authority of a Magistrate Judge, pursuant to Local Rule  
9 IB 1-9(k); and

10 2. That Righthaven produce to Mr. DiBiase’s counsel, Kurt Opsahl, Electronic  
11 Frontier Foundation, 454 Shotwell Street, San Francisco, CA 94110, at least one week prior to the  
12 Judgment Debtor Examination, so that Mr. DiBiase’s counsel may effectively review and question  
13 Mr. Gibson regarding the documents, all information and documents identifying, related to, and/or  
14 comprising the following:

- 15 a. Any and all information and documentation identifying real property,  
16 computers, intellectual property, vehicles, brokerage accounts, bank deposits  
17 and all other assets that may be available for execution to satisfy the Judgment  
18 entered by the Court, including, but not limited to, information relating to  
19 financial accounts, monies owed to Righthaven by others, etc.
- 20 b. Documents sufficient to show Righthaven’s balance sheet for each month for the  
21 years 2010 through the present.
- 22 c. Documents sufficient to show Righthaven’s gross revenues for each month for  
23 the years 2010 through the present.
- 24 d. Documents sufficient to show Righthaven’s costs and expenses for each month  
25 for the years 2010 through the present.
- 26 e. All tax returns filed by Righthaven with any governmental body for the years  
27 2010 through the present, including all schedules, W-2s and 1099s.
- 28 f. All of Righthaven’s accounting records, computerized, electronic and/or in

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printed or paper format for the years 2010 through the present.

- g. All of Righthaven’s statements, cancelled checks and related banking documents for any bank, brokerage or other financial account at least partially controlled by Righthaven, or recorded in the name of Righthaven or one of its directors or officers for Righthaven’s benefit, for the years 2010 through the present.
- h. All of Righthaven’s checkbooks, checkbook stubs and checkbook entries for the years 2010 to the present.
- i. Documents sufficient to identify the “significant intangible assets” referenced on page 11 of *Righthaven LLC v. Hoehn*, Case No. 2:11-cv-00050-PMP-RJJ, Dkt. 52.
- j. Documents sufficient to identify the “significant proprietary rights in its copyright infringement search engine software” referenced on page 13 of *Righthaven LLC v. Hoehn*, Case No. 2:11-cv-00050-PMP-RJJ, Dkt. 52.
- k. Documents sufficient to identify to the “Business Method IP” referenced in Exhibit 9.1(A) of the Righthaven Operating Agreement, as produced with Righthaven’s Fifth Supplemental Initial Disclosures.
- l. Documents sufficient to show the means and source of payment of the appeal fee in the appeal of *Righthaven LLC v. Newman*, Case No. 2:10-cv-01762-JCM-PAL, on or around November 7, 2011, receipt number 0978-2175649.
- m. Documents sufficient to show the means and source of payment of any rent or other monies paid for the use of 4475 South Pecos Road, Las Vegas, Nevada.
- n. Documents sufficient to show the means and source of payment of Righthaven’s outside counsel in this matter.
- o. Any settlement agreements by which another party has agreed to pay money to Righthaven, such as, but not limited to, the settlement agreement referenced in *Righthaven LLC v. Rawlings*, Case No. 2:10-cv-01527-JCM-GWF, Dkt. 25.

3. That Righthaven produce to Mr. DiBiase’s counsel, Kurt Opsahl, Electronic Frontier Foundation, 454 Shotwell Street, San Francisco, CA 94110, at least one week prior to the

1 Judgment Debtor Examination, so that Mr. DiBiase's counsel may effectively review and question  
 2 Mr. Gibson regarding the documents, all information and documents sufficient to show the  
 3 whereabouts of the following:

- 4 a. Each of the "dedicated cellular telephone[s] for use on Company business"  
 5 referenced in Section 6 (Benefits) of the employment agreements with Steven  
 6 Gibson, Raisha Gibson, and David Brownell.
- 7 b. Each of the "dedicated laptop computer[s] for use on Company business"  
 8 referenced in Section 6 (Benefits) of the employment agreements with Steven  
 9 Gibson, Raisha Gibson, and David Brownell.
- 10 c. The "Additional Furniture/Phone" listed in Exhibit 13 (Budget) to the  
 11 Righthaven Operating Agreement, as produced in Righthaven's Fifth  
 12 Supplemental Initial Disclosures.
- 13 d. The computer equipment, cell phones, printers, furniture and other property  
 14 listed on the following excerpt from page 107 of Righthaven's Fifth  
 15 Supplemental Initial Disclosures:

	Start up
<b>Computer Equipment</b>	
Server	\$ 5,000.00
Desktops	\$ 10,000.00
Laptops	\$ 5,000.00
Cell Phones	\$ 1,500.00
Printers	\$ 1,500.00
Phone System	\$ 7,500.00
Network Switches	\$ 1,000.00
<b>Security</b>	
Email--Barracuda/Defender	\$ 1,000.00
Power--Battery Backup	\$ 500.00
Physical Intrusion--Cameras	\$ 1,000.00
Network Intrusion--Firewall	\$ 2,000.00
Software	\$ 22,500.00
Local Counsel Retainers	\$ 15,000.00
Tenant Improvements	\$ 5,000.00
Furniture	\$ 20,000.00
Section 5.10 Reimbursement	\$ 21,000.00
<b>Totals</b>	<b>\$ 119,500.00</b>

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- 27 e. Any other computers equipment, cell phones, or other similar assets that are  
 28 now, or have been since January 2010, owned by Righthaven.

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f. To the extent that any of the above referenced property is not currently owned by Righthaven or is not currently in Righthaven’s possession, custody or control, Righthaven shall provide all documents that refer or relate to any disposition, sale or other transfer of ownership, possession, custody or control of the referenced property.

This Application is made based upon the Points and Authorities, the Opsahl Declaration and any Exhibits attached hereto.

DATED: November 18, 2011

Respectfully submitted,

\_\_\_\_\_  
/s/ Kurt Opsahl  
KURT OPSAHL  
ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell Street  
San Francisco, CA 94110  
Telephone: (415) 436-9333 x108  
Facsimile: (415) 436-9993  
Attorneys for Judgment Creditor  
THOMAS A. DIBIASE

**POINTS AND AUTHORITIES**

1  
2 Rule 69 of the Federal Rules of Civil Procedure provides that “[i]n aid of the judgment or  
3 execution ... the judgment creditor ... may obtain discovery from any person-including the  
4 judgment debtor.” Fed.R.Civ.Proc. 69. As this court has noted, Rule 69 “permits discovery from  
5 the judgment debtor and/or third persons.” *Montgomery v. Etreppid Technologies, LLC*, 2009 WL  
6 465941, \*1 (D.Nev. Feb. 25, 2009) (citing *Danning v. Lavine*, 572 F.2d 1386, 1389-90 (9th  
7 Cir.1978); *1st Technology, LLC v. Rational Enterprises LTDA*, 2007 WL 5596692, \*4 (D.Nev.  
8 2007)).

9 **A. Mr. DiBiase is Entitled to a Judgment Debtor Examination**

10 Pursuant to Rule 62, proceedings to enforce a money judgment may be initiated once 14  
11 days have passed since the entry of judgment, unless the judgment debtor has obtained a stay by  
12 posting a supersedeas bond. Fed.R.Civ.Proc. 62. On July 27, 2011, costs were taxed in the amount  
13 of \$939.50 and were included in the judgment. Dkt. 73. On November 2, 2011 the Court entered  
14 another judgment against Righthaven, awarding fees in the amount of \$116,718.00 and costs in the  
15 amount of \$2,770.00. Dkt. 97. More than 14 days have passed, and Righthaven has not paid any  
16 part of the total of \$120,427.50 owed and has neither sought nor obtained a stay. Opsahl  
17 Declaration, ¶ 6.

18 Accordingly, Mr. DiBiase may proceed. *See e.g. Hulihan v. Circle K Stores*, Case No.  
19 2:09-cv-00715-JCM-PAL (D. Nev. Oct. 26, 2010), Order denying Motion Opposing Judgment  
20 Debtor Exam (Dkt. 64) (“As Plaintiff has not established that she has posted a supersedeas bond,  
21 Defendant may proceed with execution of the judgment as authorized by FRCP 69.”).

22 Rule 69(b) provides that Mr. DiBiase “may obtain discovery from any person — including  
23 the judgment debtor — as provided in these rules or by the procedure of the state where the court is  
24 located.” Fed.R.Civ.Proc. 62(a); *see also El Salto S.A. v. PSG Co.*, 444 F.2d 477, 484 n. 3 (9th  
25 Cir.), *cert. denied*, 404 U.S. 940 (1971) (“a judgment creditor proceeding under Rule 69(a) may  
26 utilize either State practice or the federal rules for taking depositions”).

27 Under Nevada procedure, Mr. DiBiase is entitled to a debtor examination. Nevada Revised  
28 Statutes 21.270 states that a judgment creditor, at any time after the judgment is entered, is

1 “entitled to an order from the judge of the court requiring the judgment debtor to appear and  
2 answer upon oath or affirmation concerning his or her property” at an examination either before: 1)  
3 the judge or master appointed by the judge; or 2) an attorney representing the judgment creditor.  
4 Nev. Rev. Stat. Ann. (“NRS”) § 21.270 (West). The statute further states that no judgment debtor  
5 may be required to appear outside the county in which the judgment debtor resides. NRS § 21.270.  
6 This requirement is met since Righthaven’s address is in Clark County, which is the same county  
7 where this Court is located:

8 Righthaven LLC  
9 4475 South Pecos Road  
Las Vegas, Nevada 89121

10 Opsahl Decl., ¶ 6. In addition, Righthaven’s CEO Steven Gibson resides in Clark County, with  
11 homes located at 7278 Silver Charm Court and 10645 Sunblower Avenue, both in Las Vegas,  
12 Nevada. Opsahl Decl., ¶ 7.

13 **B. The Debtor Examination Should Proceed Before a Magistrate**

14 A Judgment Debtor Examination is necessary to enable Mr. DiBiase to discover any and all  
15 real and personal property, vehicles, assets, accounts, etc. of Righthaven and facts relating thereto,  
16 which may assist in potential executions to satisfy the Judgment. NRS 21.270 entitles Mr. DiBiase  
17 to an examination before either the Court or an attorney. “Local Rule IB 1-9(k) authorizes this  
18 court to conduct judgment debtor examinations and to preside over proceedings to enforce civil  
19 judgments.” *Montgomery v. Etreppid, supra* at \*1. Additionally, Local Rule IB 1-9(n) gives a  
20 magistrate judge the authorization to preside over proceedings to enforce civil judgments.

21 Accordingly, Mr. DiBiase respectfully requests that the examination take place before a  
22 Magistrate Judge. The supervision of a Magistrate is necessary since Righthaven and its Chief  
23 Executive Officer, Mr. Gibson, have had a history of unreasonably and vexatiously refusing to  
24 respond to discovery in this litigation based on unreasonable objections. *See, e.g.*, Mr. DiBiase’s  
25 Motion to Compel, Dkt. 53. Indeed, Righthaven’s unreasonably litigious tactics were engaged  
26 from the very beginning of this case, when Righthaven refused to identify particular people in its  
27 Rule 26 initial disclosures. Opsahl Decl., ¶ 8. When Mr. DiBiase deposed Righthaven pursuant to  
28 Rule 30(b)(6), the company put forward Mr. Gibson. Righthaven’s counsel repeatedly instructed

1 his client not to answer questions on the basis of improper objections. *Id.* at ¶ 9.

2 This is not isolated misconduct. Other defendants in positions similar to Mr. DiBiase's  
3 have experienced unreasonable difficulty obtaining discovery from both Righthaven and Mr.  
4 Gibson. *See Righthaven v. Democratic Underground*, Case No. 2:10-cv-01356 (Dkt. 96 ¶¶ 19-29)  
5 (D. Nev. Apr. 28, 2011); *Kabins Family LLC v. Chain Consortium, Inc.*, Case No. 2:09-cv-00125  
6 (Dkt. 333 at 1-2) (D. Nev. Mar. 29, 2011) (rejecting numerous inappropriate objections proffered  
7 by Mr. Gibson as substantially unjustified and his explanation as "amazing"). The types of  
8 objections rejected in *Kabins* are exactly the types of improper objections Mr. Gibson attempted to  
9 interpose in the deposition in this case. Opsahl Decl., ¶ 10. The heightened risk that  
10 Righthaven's conduct in a private examination would parallel its past misconduct merits the need  
11 to conduct this examination before a magistrate judge.

12 **C. Righthaven Should Be Ordered to Produce Documents Necessary to Identify**  
13 **Company Assets**

14 Mr. DiBiase additionally requests an order requiring production of relevant documents to  
15 enable him to pursue execution of his judgment. "The scope of post-judgment discovery is broad,  
16 'the judgment creditor must be given the freedom to make a broad inquiry to discover hidden or  
17 concealed assets of the judgment debtor.'" *British Intern. Ins. Co., Ltd. v. Seguros La Republica*,  
18 *S.A.* 200 F.R.D. 586, 588 (W.D.Tex. 2000) (quoting *Caisson Corp. v. County West Building Corp.*,  
19 62 F.R.D. 331, 334 (E.D.Pa. 1974)).

20 In an effort to satisfy the judgment against Righthaven in *Righthaven LLC v. Hoehn*, Hoehn  
21 was only able to identify (and seize) one monetary asset, consisting of less than \$1,000 in a Bank  
22 of Nevada account. Declaration of J. Malcolm DeVoy IV, Case No. 2:11-cv-00050-PMP (Dkt 62-  
23 1 ¶ 3) (D. Nev. Nov. 14, 2011). However, the *Las Vegas Sun* reports that, after the U.S. Marshals  
24 Service seized Righthaven's account with the Bank of Nevada, "Shawn Mangano, an outside  
25 attorney for Righthaven, said the account contained less than \$1,000 and that, despite the seizure  
26 order, Righthaven was continuing to operate Thursday." Steve Green, *Marshals execute against*  
27 *Righthaven bank account*, *Las Vegas Sun*, Nov. 10, 2011 (available at  
28 <http://www.vegasinc.com/news/2011/nov/10/marshals-execute-against-righthaven-bank-account/>).



1 If Righthaven is continuing to operate (i.e. pay rent for its address at 4475 South Pecos  
2 Road,<sup>1</sup> pay its outside counsel, etc.), it must have another source of funds. Indeed, as of October 9,  
3 2011, Righthaven represented to the Ninth Circuit that “Righthaven’s operating capital is being  
4 utilized to service its monthly operating expenses.” Declaration of Shawn Mangano, *Righthaven*  
5 *LLC v. Hoehn*, 9th Cir. Case No. 11-16995 (Dkt. 6-2 ¶ 7) (9th Cir. Oct. 9, 2011).

6 Mr. Mangano went on to explain that Righthaven was “presently unable to *allocate* more  
7 than \$34,000 toward the bond required by the district court,” suggesting that it had the money but  
8 didn’t want to spend it on a bond. *Id.* (emphasis added). Presuming that Mr. Mangano was not  
9 attempting to mislead the Ninth Circuit, his declaration also shows that just a few weeks ago,  
10 Righthaven had sufficient funds to “prosecute appeals before [the Ninth Circuit], an anticipated  
11 appeal before the Tenth Circuit, and numerous district court actions pending in the District of  
12 Nevada.”<sup>2</sup> *Id.* at ¶ 8. Clearly, this is more than the \$1,000 seized from the Bank of Nevada  
13 account.

14 Mr. DiBiase is entitled to discover where Righthaven’s funds are located, and whether any  
15 transfers of those funds were fraudulent pursuant to N.R.S. 112.180. Post-judgment discovery can  
16 be used to gain information relating to, among other things, the “existence or *transfer* of the  
17 judgment debtor’s assets.” *British Intern., supra*, 200 F.R.D. at 588 (emphasis added). Mr.  
18 DiBiase is also entitled to financial statements, bank statements, investment account statements,  
19 and tax returns. *The Edward Andrews Group, Inc. v. Addressing Servs. Co., Inc.*, No. 04 Civ.  
20 6731, 2006 WL 1214984, at \*1, 2006 U.S. Dist. LEXIS 28967, at \*2 (S.D.N.Y. May 4, 2006);  
21 *Libaire v. Kaplan*, 760 F.Supp.2d 288 (E.D.N.Y. 2011); *see also e.g. Montgomery vs. Etreppid*,  
22 *supra* at \*1-2 (listing documents to be produced); Order granting Debtors Examination, *American*  
23 *Int’l Recovery v. Costa*, Case No. 2:07-cv-00123-JCM-PAL (Dkt. 60) (D. Nev. Oct. 13, 2011),  
24 (listing documents to be produced).

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26 \_\_\_\_\_  
27 <sup>1</sup> Righthaven no longer regularly uses 4475 South Pecos Road for business. DeVoy Decl. at ¶ 13.  
28 However, it presumably pays some rent or service charge for the use of the office building.

<sup>2</sup> Since October 9, Righthaven filed one more Ninth Circuit appeal (for a total of seven) and an  
appeal before the Tenth Circuit.

**D. Conclusion**

1 For the reasons stated above, pursuant to Fed.R.Civ.Proc. 69, NRS 21.270, and Local Rules  
2 IB 1-9(k, n), Mr. DiBiase respectfully requests that this Court issue its Order Scheduling a  
3 Judgment Debtor Examination to take place before a magistrate judge of this Court and order  
4 Righthaven to produce the documents list above. A proposed order is attached hereto.

5 DATED: November 18, 2011

Respectfully submitted,

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8 /s/ Kurt Opsahl  
KURT OPSAHL  
ELECTRONIC FRONTIER FOUNDATION  
454 Shotwell Street  
San Francisco, CA 94110  
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**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 18th day of November, 2011, I caused a true and correct copy of MOTION FOR JUDGMENT DEBTOR EXAMINATION AND TO PRODUCE DOCUMENTS to be served on all counsel properly registered and appearing in this action as listed in the Court's ECF system.

      /s/ Kurt Opsahl        
KURT OPSAHL

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