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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 AND
COUNTERCLAIMANT THOMAS A.
DIBIASE'S ANSWER AND
COUNTERCLAIM**
JURY DEMAND

ANSWER

1
2 Defendant Thomas A. DiBiase (“Mr. DiBiase”) responds to Plaintiff Righthaven LLC’s
3 (“Righthaven”) Complaint as follows:

4 1. Mr. DiBiase admits that Righthaven brings this action pursuant to the Copyright
5 Act of 1976. Mr. DiBiase denies that he has committed copyright infringement.

6 2. Mr. DiBiase lacks knowledge or information sufficient to form a belief about the
7 truth of the allegations contained in paragraph 2 of the Complaint and therefore denies them.

8 3. Mr. DiBiase lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations contained in paragraph 3 of the Complaint and therefore denies them.

10 4. Mr. DiBiase denies that he is or has been identified as the “owner” of the domain
11 name “nobodycases.com” through the content of that website or by Exhibit 1 of the Complaint.
12 Mr. DiBiase admits that a message from Mr. DiBiase on the website “nobodycases.com” states:
13 “Welcome to my website!”

14 5. Mr. DiBiase admits that the Court has subject-matter jurisdiction over this action.

15 6. Mr. DiBiase lacks knowledge or information sufficient to form a belief about the
16 truth of the allegations contained in paragraph 6 of the Complaint and therefore denies them.

17 7. Mr. DiBiase lacks knowledge or information sufficient to form a belief about the
18 truth of the allegations contained in paragraph 7 of the Complaint and therefore denies them.

19 8. Mr. DiBiase denies that he willfully copied, on an unauthorized basis, the article
20 appearing at Exhibit 2 of the Complaint. Mr. DiBiase lacks knowledge or information sufficient
21 to form a belief about the truth of the allegations concerning the source of the article appearing at
22 Exhibit 2 of the Complaint and therefore denies them.

23 9. Mr. DiBiase denies the allegations contained in paragraph 9 of the Complaint.

24 10. Mr. DiBiase denies that he has committed copyright infringement. Mr. DiBiase
25 lacks knowledge or information sufficient to form a belief about the truth of the remaining
26 allegations contained in paragraph 10 of the Complaint and therefore denies them.

27 11. Mr. DiBiase admits that the subject matter, at least in part, of the article appearing
28 at Exhibit 2 of the Complaint concerns a death-penalty sentence that a jury returned after

1 convicting a man of murdering his wife. Mr. DiBiase denies the remaining allegations contained
2 in paragraph 11 of the Complaint.

3 12. Mr. DiBiase denies the allegations contained in paragraph 12 of the Complaint.

4 13. Mr. DiBiase denies the allegations contained in paragraph 13 of the Complaint.

5 14. Mr. DiBiase denies the allegations contained in paragraph 14 of the Complaint.

6 15. Mr. DiBiase denies the allegations contained in paragraph 15 of the Complaint.

7 16. Mr. DiBiase denies the allegations contained in paragraph 16 of the Complaint.

8 17. Mr. DiBiase lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations contained in paragraph 17 of the Complaint and therefore denies them.

10 18. Mr. DiBiase lacks knowledge or information sufficient to form a belief about the
11 truth of the allegations contained in paragraph 18 of the Complaint and therefore denies them.

12 19. Mr. DiBiase lacks knowledge or information sufficient to form a belief about the
13 truth of the allegations contained in paragraph 19 of the Complaint and therefore denies them.

14 20. Mr. DiBiase admits that on July 27, 2010, the United States Copyright Office
15 issued copyright registration number TX0007182385, which lists Righthaven LLC as the
16 copyright claimant for a work entitled "Man who killed wife sought ultimate sentence." Mr.
17 DiBiase lacks knowledge or information sufficient to form a belief about the truth of the
18 remaining allegations contained in paragraph 20 of the Complaint and therefore denies them.

19 21. Mr. DiBiase denies the allegations contained in paragraph 21 of the Complaint.

20 22. Mr. DiBiase admits that he did not expressly seek permission to use the article
21 appearing at Exhibit 2 of the Complaint. Mr. DiBiase denies that such permission was not given
22 impliedly. Mr. DiBiase further denies any implication that such permission was necessary.

23 23. Mr. DiBiase denies the allegations contained in paragraph 23 of the Complaint.

24 **CLAIM FOR RELIEF: COPYRIGHT INFRINGEMENT**

25 24. Mr. DiBiase incorporates by reference paragraphs 1-23 above.

26 25. Mr. DiBiase denies the allegations contained in paragraph 25 of the Complaint.

27 26. Mr. DiBiase denies the allegations contained in paragraph 26 of the Complaint.

28 27. Mr. DiBiase denies the allegations contained in paragraph 27 of the Complaint.

- 1 28. Mr. DiBiase denies the allegations contained in paragraph 28 of the Complaint.
2 29. Mr. DiBiase denies the allegations contained in paragraph 29 of the Complaint.
3 30. Mr. DiBiase denies the allegations contained in paragraph 30 of the Complaint.
4 31. Mr. DiBiase denies the allegations contained in paragraph 31 of the Complaint.
5 32. Mr. DiBiase denies the allegations contained in paragraph 32 of the Complaint.
6 33. Mr. DiBiase denies the allegations contained in paragraph 33 of the Complaint.
7 34. Mr. DiBiase denies the allegations contained in paragraph 34 of the Complaint.
8 35. Mr. DiBiase denies the allegations contained in paragraph 35 of the Complaint.

9 **DEFENSES**

10 **FIRST DEFENSE (LICENSE)**

11 Righthaven's claims are barred in whole or in part by licenses, express and implied,
12 granted or authorized to be granted by Righthaven and/or the predecessor(s)-in-interest of the
13 work-in-suit.

14 **SECOND DEFENSE (FAIR USE)**

15 Righthaven's claims are barred in whole or in part by the doctrine of fair use.

16 **THIRD DEFENSE (FAILURE TO MITIGATE)**

17 Righthaven's claims are barred in whole or in part because Righthaven and/or the
18 predecessor(s)-in-interest of the work-in-suit have failed to mitigate their damages, if any.

19 **FOURTH DEFENSE (FAILURE TO STATE A CLAIM)**

20 Righthaven's prayer for relief asking the Court to order the registrar of the domain
21 "nobodycases.com" to lock that domain and transfer control of it to Righthaven fails to state a
22 claim on which relief can be granted. Righthaven's prayer for relief asking the Court to award it
23 attorney's fees fails to state a claim on which relief can be granted.

24 **FIFTH DEFENSE (INNOCENT INTENT)**

25 Righthaven's damages, if any, are limited by Mr. DiBiase's innocent intent.

26 **SIXTH DEFENSE (COPYRIGHT MISUSE)**

27 Righthaven's claims are barred in whole or in part by the doctrine of copyright misuse.
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SEVENTH DEFENSE (ILLEGALITY)

Righthaven’s claims are barred in whole or in part by the doctrine of illegality.

EIGHTH DEFENSE (ESTOPPEL)

Righthaven’s claims are barred in whole or in part by the doctrine of estoppel.

NINTH DEFENSE (WAIVER)

Righthaven’s claims are barred in whole or in part by the doctrine of waiver.

TENTH DEFENSE (UNCLEAN HANDS)

Righthaven’s claims are barred in whole or in part by the doctrine of unclean hands.

ELEVENTH DEFENSE (LACHES)

Righthaven’s claims are barred in whole or in part by the doctrine of laches.

TWELFTH DEFENSE (BARRATRY AND CHAMPERTY)

Righthaven’s claims are barred in whole or in part because Righthaven is engaged in barratry, champerty, and maintenance.

COUNTERCLAIM

Defendant DiBiase brings this Counterclaim against Plaintiff and Counterdefendant Righthaven LLC (“Righthaven”).

JURISDICTION

1. The Court has jurisdiction over this Counterclaim pursuant to 28 U.S.C. §§ 1331, 1338, and 2201.

INTRODUCTION

2. This case is part of series of abusive lawsuits filed by Righthaven in furtherance of its business model of purchasing copyrights to news articles, and then filing copyright lawsuits against individuals and small entities, using the threats of statutory damages, domain name seizures and attorneys fees to force settlements, even when, as in this case, the defendant has not infringed the copyright.

PARTIES

3. Righthaven claims a copyright, by assignment from Stephens Media LLC (“Stephens Media”), in the news article dated June 11, 2010 that bore the title “Retired teacher

1 gets death penalty for wife's murder," and the byline of Doug McMurdo, a copy of which is
2 Exhibit 2 to the Complaint (the "News Article"). Righthaven asserts that Stephens Media, the
3 publisher of the *Las Vegas Review-Journal* ("LVRJ"), was the "author" of the News Article as a
4 work made for hire.

5 4. Steven Gibson formed Righthaven in March 2010 for the express purpose of filing
6 lawsuits for copyright infringement.

7 5. Mr. DiBiase believes and therefore alleges that, as of the filing of this Answer and
8 Counterclaim, Righthaven has not engaged in the business of licensing copyright rights other than
9 in the context of litigation.

10 6. Mr. DiBiase believes and therefore alleges that Righthaven does not have a regular
11 business model of deriving revenue from licensing copyright rights with respect to any
12 information or content other than in connection with litigation, if at all.

13 7. Mr. DiBiase believes and therefore alleges that Righthaven's sole revenue is
14 settlements from the copyright infringement cases it has filed.

15 8. Mr. DiBiase believes and therefore alleges that, as of the filing of this Answer and
16 Counterclaim, Righthaven has filed at least 150 lawsuits to enforce copyrights it has acquired.

17 9. Mr. DiBiase believes and therefore alleges that Righthaven has not published any
18 works with a copyright notice identifying itself as copyright owner of the published work.

19 10. For over 12 years Mr. DiBiase was an Assistant United States Attorney in the
20 District of Columbia and prosecuted homicide cases for most of those years.

21 11. In January of 2006, Mr. DiBiase prosecuted the second "no body" murder case
22 tried in D.C. and has been interested in "no body" cases ever since.

23 12. A "no body" murder case is a homicide prosecution where the victim is missing
24 and presumed dead, but no body is found.

25 13. Mr. DiBiase has consulted with law enforcement agencies throughout the United
26 States and Canada on "no body" murder prosecutions.

27 14. Mr. DiBiase publishes a website located at <http://www.nobodymurdercases.com/>
28 (the "No Body Website").

