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

15 RIGHTHAVEN LLC, a Nevada limited-)
16 liability company,)
17)
18 Plaintiff,)
19 v.)
20 THOMAS A. DIBIASE, an individual,)
21)
22 Defendant.)

CASE NO.: 2:10-CV-01343-RLH-PAL

**DEFENDANT THOMAS A. DIBIASE'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF HIS MOTION TO
DISMISS**

22 THOMAS A. DIBIASE, an individual,)
23)
24 Counterclaimant,)
25 v.)
26 RIGHTHAVEN LLC, a Nevada limited-)
27 liability company,)
28 Counter-defendant.)

1 Defendant Thomas A. Dibiase hereby requests that the Court take judicial notice,
2 pursuant to Rule 201 of the Federal Rules of Evidence, of the documents and facts referenced
3 below, which are submitted as part of the Declaration of Bart E. Volkmer in Support of
4 Defendant's Motion to Dismiss.

5 Ex. A Nevada Secretary of State's records for Righthaven LLC.

6 Ex. B Nevada Secretary of State's records for Net Sortie Systems
7 LLC.

8 Ex. C *Las Vegas Review Journal* article entitled "Retired teacher gets
9 death penalty for wife's murder," available for free at
10 [http://www.lvrj.com/news/retired-teacher-gets-death-penalty-
for-wife-s-murder-96191524.html](http://www.lvrj.com/news/retired-teacher-gets-death-penalty-for-wife-s-murder-96191524.html), referenced in the Complaint¹
at ¶ 6 as the "Work" and attached thereto as Exhibit 2.

11 ¶ 2 Describing Bart E. Volkmer's docket search that revealed that
12 Righthaven has filed over 150 copyright cases since forming in
early 2010.

13 **I. JUDICIAL NOTICE OF NEVADA SECRETARY OF STATE RECORDS IS**
14 **APPROPRIATE.**

15 Judicial notice of Exhibits A and B, which are Nevada Secretary of State records, is
16 appropriate because both of these documents are on file with the state of Nevada. Courts may
17 take judicial notice of facts that are "capable of accurate and ready determination by resort to
18 sources whose accuracy cannot reasonably be questioned." F.R.E. §201(b); *see OSO Group,*
19 *Ltd. v. Bullock & Assocs., Inc.*, No. 3:09-CV-01906, 2009 WL 2422285, at *2 n.3 (N.D. Cal.
20 Aug. 6, 2009); *Omaha Tribe of Neb. v. Miller*, 311 F. Supp. 2d 816, 819 n.3 (S.D. Iowa 2004).²
21 Consequently, facts in secretary of state records are the proper subject of judicial notice. *See*
22 *Access 4 All v. Oak Spring, Inc.*, No. 504CV75OCGRJ, 2005 WL 1212663, *2 n.16 (M.D. Fla.
23 May 20, 2005) (taking judicial notice of the records of the Florida Department of State,
24 Division of Corporations, which reflected that one plaintiff was an officer and director of a co-

25 _____
26 ¹ All references to "Complaint" refer to Plaintiff's Complaint, filed August 9, 2010.

27 ² *See also Daniel v. Am. Bd. of Emergency Med.*, 988 F. Supp. 127, 155 (W.D.N.Y. 1997);
28 *Computer Scis.*, 244 F.R.D. 580, 587 n.8 (taking judicial notice of articles of incorporation).

1 plaintiff); *Redding v. Freeman Products, Inc.*, No. 94 C 398, 1995 WL 410922, *2 (N.D. Ill.
2 July 10, 1995) (taking judicial notice of certificates of good standing issued by the Illinois
3 Secretary of State); *Banks v. Consumer Home Mortgage, Inc.*, No. 01-CV-8508 (ILG), 2003
4 WL 21251584, *6 n.7 (E.D.N.Y. March 28, 2003) (“Plaintiffs submitted a public record on file
5 with the Secretary of State for Georgia, where CHM lists Michael Ashley as the Chief
6 Financial Officer of CHM. This Court can take judicial notice of this official filing by CHM.”);
7 *In re Teledyne Defense Contracting Derivative Litigation*, 849 F. Supp. 1369, 1383 (C.D. Cal.
8 1993) (stating that “[p]laintiffs’ claim for negligent breach of fiduciary duty against the
9 Directors is barred by the Corporation’s Certificate of Incorporation (of which this Court may
10 take judicial notice). . . .”).³

11 **II. JUDICIAL NOTICE REGARDING THE CONTENTS OF THE COURT’S**
12 **DOCKET IS APPROPRIATE.**

13 Judicial notice of the facts reported in ¶ 2 of the Declaration of Bart E. Volkmer in
14 Support of Defendant’s Motion to Dismiss, which describes information contained on court
15 dockets, is also appropriate because the dockets of federal courts are publicly available and the
16 information contained therein is readily verifiable. Courts may take judicial notice of facts that
17 are “capable of accurate and ready determination by resort to sources whose accuracy cannot
18 reasonably be questioned.” F.R.E. §201(b). Consequently, facts in federal courts dockets are
19 the proper subject of judicial notice. *See Kriston v. Peroulis*, No. 2:09-CV-00708-RCJ-LRL,
20 2010 WL 1610419, at *3 (D. Nev. April 16, 2010) (taking judicial notice of the docket in a case
21 before the United States District Court for the District of Nevada because “[t]he docket and the
22 documents filed on the docket are capable of accurate and ready determination by resort to a
23 source whose accuracy cannot reasonably be questioned—the PACER system.”); *see also*
24 *Specter v. Palmer*, 3:10-CV-00485-HDM-RAM, 2010 WL 3170963, at *1 (D. Nev. August 11,

25
26 ³ *Cf. In re Silicon Graphics, Inc. Sec. Litig.*, 970 F. Supp. 746, 758 (N.D. Cal. 1997) (Courts
27 commonly “take judicial notice of the contents of relevant public disclosure documents required to
28 be filed with the SEC as facts capable of accurate and ready determination. . . .”) (quoting *Kramer*
v. Time Warner Inc., 937 F.2d 767, 774 (2d Cir. 1991)).

1 2010) (taking judicial notice of “the state court procedural history reflected in the online docket
2 records of the Eighth Judicial District Court for Clark County, State of Nevada. . . .”).

3 **III. JUDICIAL NOTICE OF FACTS REGARDING DOCUMENTS REFERENCED**
4 **IN OR FORMING THE BASIS OF THE COMPLAINT IS APPROPRIATE.**

5 Judicial notice of the fact that the article set forth in Exhibit C was and currently is
6 freely available to the public — at [http://www.lvrj.com/news/retired-teacher-gets-death-](http://www.lvrj.com/news/retired-teacher-gets-death-penalty-for-wife-s-murder-96191524.html)
7 [penalty-for-wife-s-murder-96191524.html](http://www.lvrj.com/news/retired-teacher-gets-death-penalty-for-wife-s-murder-96191524.html) — is appropriate because Righthaven repeatedly
8 references that article in its Complaint and it forms the basis of Righthaven’s claim. *See U.S.*
9 *E.E.O.C. v. Champion Chevrolet*, No. 3:07-CV-444-ECR-VPC, 2009 WL 2835101, at *3 (D.
10 Nev. Aug. 26, 2009) (Reed, J.) (judicial notice of a document is appropriate where “the
11 complaint ‘refers extensively to the document or the document forms the basis of the plaintiff’s
12 claim.’” (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003))).⁴ Consequently,
13 the fact that the article was and currently is freely available to the public is the proper subject of
14 judicial notice.

15 **CONCLUSION**

16 For the foregoing reasons, Mr. DiBiase requests that the Court consider the above-
17 referenced documents and facts in connection with his motion to dismiss.

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19 Dated: October 29, 2010

Respectfully submitted,

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21 WILSON SONSINI GOODRICH & ROSATI
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23 By: /s/ Colleen Bal
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26 ⁴ *See also OneBeacon Ins. Co. v. Probuilders Specialty Ins. Co.*, No. 3:09-CV-36, 2009 WL
27 2407705, at *2 (D. Nev. Aug. 3, 2009) (Reed, J.); *Mack v. Kuckenmeister*, No. 3:08-CV-370, 2009
28 WL 196247, at *2 (D. Nev. Jan. 23, 2009) (Reed, J.); *Autotel v. Nevada Bell Tel. Co.*, No. 2:07-cv-
1423, 2009 WL 250024, at *3 (D. Nev. Jan. 30, 2009) (Reed, J.).

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Counsel has complied with LR IA 10-2
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