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5 *Attorney for Plaintiff Righthaven LLC*

6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 RIGHTHAVEN LLC, a Nevada limited-
liability company,

11
12 Plaintiff,

13 v.

14 KEVIN KELLEHER, an individual;

15 Defendant.
16

Case No.: 2:10-cv-01184-KDJ-RJJ

**RIGHTHAVEN LLC’S NOTICE OF
ADVERSE DECISIONS CONCERNING
SUBJECT MATTER JURISDICTION**

17
18 Righthaven LLC (“Righthaven”) hereby advises the Court that decisions in the following
19 cases have determined the company lacks subject matter jurisdiction to maintain certain
20 copyright infringement actions based upon the operative version of an assignment of ownership
21 from Stephens Media LLC (“Stephens Media”) together with the terms of the Strategic Alliance
22 Agreement (the “SAA”) between the company and Stephens Media:

- 23 1. *Righthaven LLC v. Mostoft*, No. 2:10-cv-01066-KJD-GWF (Doc. # 34 at 7, limited to
24 original SAA terms);
25 2. *Righthaven LLC v. Democratic Underground, LLC*, 2011 WL 2378186, at *6 (Doc. #
26 116 at 8 n.1, limited to original SAA and assignment);
27 3. *Righthaven LLC v. DiBiase*, No. 2:10-cv-01343-RLH-PAL (Doc. # 72 at 2-3,
28 applying *Democratic Underground’s* analysis);

- 1 4. *Righthaven LLC v. Barham*, No. 2:10-cv-02150-RLH-RJJ (Doc. # 20 at 2-3, applying
2 *Democratic Underground's* analysis);
- 3 5. *Righthaven LLC v. Pahrump Life*, No. 2:10-cv-01575-JCM-PAL (Doc. # 67 at 4-6,
4 tentatively dismissing case based on original SAA);
- 5 6. *Righthaven LLC v. Hoehn*, Case No. 2:11-cv-00050-PMP-RJJ (Doc. # 28)
6 (dismissing case based on the assignment, original version of SAA and Clarification
7 to SAA); and
- 8 7. *Righthaven LLC v. Newman*, Case No. 2:10-cv-01762-JCM-PAL (Doc. # 25)
9 (dismissing amended complaint with prejudice despite having previously dismissed
10 original complaint).

11 The foregoing cases, with the exception of the decision in *Newman*, were dismissals
12 without prejudice. Moreover, the foregoing cases, with the exception of the proceedings in the
13 *Pahrump Life* matter, were decisions based upon a subject matter analysis performed under
14 Federal Rule of Civil Procedure 12(b)(1). Righthaven asserts the above decisions erroneously
15 determined that subject matter was lacking. Consistently, Righthaven maintains this Court has
16 subject matter jurisdiction to adjudicate the copyright infringement claims at issue in the case at
17 bar.

18 Righthaven has appealed the lack of subject matter determinations entered in to the
19 *DiBiase* and *Hohen* cases to the United States Court of Appeals for the Ninth Circuit.
20 Righthaven intends to appeal the lack of subject matter determination entered in *Democratic*
21 *Underground* once a final order has been entered. The company may also do so in the *Pahrump*
22 *Life* matter once a final, appealable order is entered by the district court. Righthaven is
23 additionally in the process of appealing the *Newman* decision.

24 Based on the foregoing, and pursuant to its duty of candor to this Court, Righthaven
25 respectfully advises of the adverse subject matter decisions entered against it in this Judicial
26 District. Given these decisions, the Court may wish to issue an Order to Show Cause so that it
27 may rule on the presence of subject matter jurisdiction prior to conducting trial in this matter.
28 Righthaven has not formally moved for adjudication of this issue pursuant to Federal Rule of

1 Civil Procedure 12(b)(1) because it maintains that subject matter jurisdiction is present over this
2 dispute. Nevertheless, Righthaven, and its counsel, wish to bring this matter to the Court's
3 attention so that it may take appropriate action, if any, in view of the disclosed adverse decisions
4 set forth herein. Defendant Kevin Kelleher has refused to seek adjudication of the subject matter
5 jurisdiction issue described herein through a request for dismissal pursuant to Federal Rule of
6 Civil Procedure 12(b)(1).

7 Dated this 24th day of October, 2011.

8 SHAWN A. MANGANO, LTD.

9 By: /s/ Shawn A. Mangano, Esq. _____
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on this 24th day of October, 2011, I caused a copy of the foregoing document be served by the Court's CM/ECF system.

By: /s/ Shawn A. Mangano
Shawn A. Mangano, Esq.
SHAWN A. MANGANO, LTD.