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4 Attorney for Defendant
MICHAEL WEINER, aka MICHAEL SAVAGE

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7 SAN FRANCISCO DIVISION

9 BRAVE NEW FILMS 501(c)(4),

10 Plaintiff,

11 vs.

12 MICHAEL WEINER aka MICHAEL
13 SAVAGE and ORIGINAL TALK RADIO
NETWORK, INC.,

14 Defendants

) Case No.: CV 08-4703 SI

) **DECLARATION OF BENJAMIN AARON**
) **SHAPIRO IN SUPPORT OF**
) **DEFENDANT MICHAEL WEINER, aka**
) **MICHAEL SAVAGE’S MOTION FOR**
) **SUMMARY JUDGMENT**

) Date: April 3rd, 2009
) Time: 9:00 a.m.
) Location: Courtroom 10

15
16 _____ Honorable Susan Illston

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18 I, BENJAMIN AARON SHAPIRO, hereby declare that:

19 1. I am an attorney at law duly licensed to practice before all courts of the State of
20 California, and before the Northern District of California.

21 2. I am one of the California attorneys for defendant THE ORIGINAL TALK
22 RADIO NETWORK, INC. (“OTRN” or “**Defendant**”), and I am an attorney of record for
23 OTRN in the above-captioned action (this “**Action**”).

24 3. I am also the attorney of record for defendant MICHAEL WEINER, aka
25 MICHAEL SAVAGE (“**Savage**”) in this Action as a result of OTRN’s defense of Savage in
26 this Action once Savage was named as a defendant in this Action as a result of actions taken by
27 OTRN.
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1 4. I have personal knowledge of all matters addressed in this declaration, and could
2 testify competently thereto if called upon to do so.

3 5. On or before September 29, 2008, on behalf of OTRN, I reviewed several
4 hundred videos posted on YouTube concerning The Michael Savage Show (the “**Show**”) and/or
5 MICHAEL WEINER, aka MICHAEL SAVAGE (“**Savage**”) for possible copyright
6 infringement, with respect to OTRN’s copyright claims with respect to the Show and material
7 taken from the Show.

8 6. In reviewing the videos, I did not pursue videos which did not involve use of
9 content from the Show, as to which OTRN claims the copyright.

10 7. I also reviewed those videos which involved use of content from the Show to
11 evaluate whether, in my opinion, they involved legitimate fair use of OTRN’s content from the
12 Show, under the applicable fair use statutory provisions and precedents, as I understand them.
13 Although the number of videos was voluminous and the task was time consuming, I did review
14 each video, and did not pursue any demand as to those videos which, in my good faith opinion,
15 constituted legitimate fair use of OTRN content from the Show.

16 8. I then drafted a proposed letter to YouTube demanding removal of content from
17 the Show which I believed was posted on YouTube in violation of OTRN’s copyright claim to
18 the Show (the “**09/29/08 Letter**”) and prepared an attachment which listed the 259 videos
19 which I had personally reviewed and concluded constituted copyright violations which did not
20 involve legitimate fair use of content taken from the Show (the “**Attachment**”).

21 9. The letter attached as “**Exhibit B**” to the accompanying Memorandum of Points
22 and Authorities in Support of Savage’s Motion for Summary Judgment in this Action is a
23 revised version of the text of the 09/29/08 Letter, with a true and correct copy of the Addendum,
24 as drafted by me, attached.

25 10. At the time I caused the 09/29/08 Letter to be issued, I had no knowledge of
26 either: (i) the case of *Savage v. CAIR* previously pending in the above-captioned court (the
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1 “CAIR Case”); or (ii) an assignment by OTRN of the copyright of the October 29, 2007
2 broadcast of “The Michael Savage Show” to Savage (the “Assignment”).

3 11. I did not learn of either the CAIR Case or the Assignment until after the
4 complaint and related initial documents with respect to this Action were served/delivered to the
5 defendants in this Action through the offices of Severaid & Glahn.

6 12. I drafted the 09/29/08 Letter on behalf of OTRN alone. I did not speak or
7 otherwise communicate in any way with Savage, or any representative of Savage, concerning
8 the 09/29/08 Letter, prior to the commencement of this Action.

9 13. The document attached as “Exhibit A” to the accompanying motion for
10 Summary Judgment on behalf of Savage in this Action is a true and correct copy of the website
11 posting which I printed from Plaintiff’s website concerning Savage.

12 14. At no time prior to the commencement of this Action did I have any
13 understanding or belief that I or OTRN was acting as an agent for Savage with respect to the
14 09/29/08 Letter or the subject matter thereof.

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16 I declare under penalty of perjury that the foregoing is true and correct and that this
17 declaration is executed on the 8th day of May, 2009, at Los Angeles, California.

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20
21 /s/ Benjamin A. Shapiro
22 BENJAMIN AARON SHAPIRO
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