

1 Benjamin Aaron Shapiro (SBN 254456)
12330 Magnolia Blvd., #114
2 Valley Village, CA 91607
3 Telephone: (818) 620-0137

4 Attorney for Defendant
MICHAEL WEINER, aka MICHAEL SAVAGE

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
7
8 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
14 NETWORK, INC.,

15 Defendants

) Case No.: CV 08-4703 SI

) **DECLARATION OF BENJAMIN AARON**
) **SHAPIRO IN SUPPORT OF**
) **DEFENDANT MICHAEL WEINER, aka**
) **MICHAEL SAVAGE’S OPPOSITION TO**
) **PLAINTIFF BRAVE NEW FILMS**
) **501(c)(4)’S MOTION FOR PARTIAL**
) **SUMMARY JUDGMENT**

Date: June 12, 2009
Time: 9:00 a.m.
Location: Courtroom 10

16
17 _____ Honorable Susan Illston

18
19 I, BENJAMIN AARON SHAPIRO, hereby declare that:

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

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

25 3. I am also the attorney of record for defendant MICHAEL WEINER, aka
26 MICHAEL SAVAGE (“**Savage**”) in this Action as a result of OTRN’s defense of Savage in
27
28

1 this Action once Savage was named as a defendant in this Action as a result of actions taken by
2 OTRN.

3 4. I have personal knowledge of all matters addressed in this declaration, and could
4 testify competently thereto if called upon to do so.

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

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

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

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

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

1 **PROOF OF SERVICE BY E-MAIL**

2 I am employed in the County of Los Angeles, California. I am over the age of eighteen
3 years and not a party to the within case. My business address is 12330 Magnolia Boulevard
4 Suite 114, Los Angeles, CA, 91607. On May 22, 2009, I served the attached **DECLARATION**
5 **OF BENJAMIN AARON SHAPIRO IN SUPPORT OF DEFENDANT MICHAEL**
6 **WEINER, aka MICHAEL SAVAGE’S MOTION FOR SUMMARY JUDGMENT** on the
7 interested parties in the above captioned action by E-mail as follows:

8
9 Tony Falzone
10 falzone@stanford.edu

11 William Abrams
12 William.abrams@bingham.com

13 Ronald H. Severaid
14 rhseveraid@sbcglobal.net

15 Carter Glahn
16 cglahn@sbcglobal.net

17 I declare under penalty of perjury that the foregoing is true and correct, and that this declaration
18 was executed on May 22, 2009 at Los Angeles, California.

19 _____ /s/ Benjamin Shapiro

20 Benjamin Shapiro
21 12330 Magnolia Blvd., #114
22 Valley Village, CA 91607
23 (818) 620-0137
24 Bshapiro708@gmail.com

25 Attorney for Defendant MICHAEL
26 WEINER aka MICHAEL SAVAGE