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 16 DEMOCRATIC UNDERGROUND, LLC, and
 Defendant DAVID ALLEN

17 **UNITED STATES DISTRICT COURT**
 18 **FOR THE DISTRICT OF NEVADA**

19 RIGHTHAVEN LLC, a Nevada limited liability company,
 20 Plaintiff,
 v.
 21 DEMOCRATIC UNDERGROUND, LLC, a District of
 Columbia limited-liability company; and DAVID ALLEN,
 22 an individual,
 23 Defendants.

24 DEMOCRATIC UNDERGROUND, LLC, a District of
 Columbia limited-liability company,
 25 Counterclaimant,
 v.
 26 RIGHTHAVEN LLC, a Nevada limited liability company,
 27 and STEPHENS MEDIA LLC, a Nevada limited-liability
 company,
 28 Counterdefendants.

Case No. 2:10-cv-01356-RLH (GWF)

**DECLARATION OF J.
 MALCOLM DEVOY IV IN
 SUPPORT OF DEFENDANT
 DEMOCRATIC
 UNDERGROUND'S RESPONSE
 TO RIGHTHAVEN'S
 APPLICATION FOR EXTENSION
 OF TIME TO COMPLY WITH
 JULY 14, 2011 ORDER AND FOR
 CLARIFICATION OF SAME
 [DKT 143]**

DEVOY DEC ISO DEF. DU'S RESPONSE
TO APP. FOR EXTENSION OF TIME

CASE NO. 2:10-cv-01356-RLH (GWF)

1 I, J. MALCOLM DEVOY IV, hereby declare as follows:

2 1. I am a duly licensed attorney in Nevada and a member of the Nevada bar in good
3 standing, and attorney for the Randazza Legal Group law firm.

4 2. Marc Randazza (admitted *pro hac vice*) and I are counsel of record for
5 Wayne Hoehn, the defendant in Righthaven LLC v. Hoehn, Case Number 2:11-cv-00050
6 (D. Nev.).

7 3. On June 20, 2011, the Hoehn court issued an Order dismissing Righthaven's
8 Complaint for lack of standing, further finding that the defendant's use of the work at issue would
9 have been a non-infringing fair use under 17 U.S.C. § 107, and the court clerk entered judgment
10 in that case. Hoehn, Case No. 2:11-cv-00050 (Dkt. 28, 30) (D. Nev. June 20, 2011).

11 4. On July 14, 2011, I attended this Court's hearing on its June 14 Order to Show
12 Cause (Dkt. 116) regarding numerous misrepresentations the Court believed had been made by
13 Righthaven over the course of litigation.

14 5. I am aware of, and have reviewed, this Court's July 18, 2011 minute order
15 memorializing the sanctions imposed on Righthaven (Dkt. 138).

16 6. From July 20 to 21, Marc Randazza and I engaged in an e-mail exchange with
17 Righthaven's counsel, Shawn Mangano, regarding the applicability of the July 18 order in the
18 Hoehn case. A true and correct copy of this e-mail exchanged is attached hereto as Exhibit 1,
19 irrelevant portions of which are redacted. Subsequent to the exchange seen in Exhibit 1,
20 Righthaven has declined to file the documents specified in the July 18 minute order in Hoehn or
21 any other case I am aware of, or counsel of record.

22 7. As seen in Exhibit 1, this straightforward inquiry turned into a flurry of e-mails
23 that, to date, have not resulted in Righthaven filing any of the documents specified in this Court's
24 July 18 order (Dkt. 138) being filed in the Hoehn case.

25 8. These exchanges – numerous e-mails and phone calls, where Righthaven asks for
26 clarification, explanation, and an iron-clad requirement for it to act – have been typical of
27 Righthaven's conduct in litigation, necessitating extensive litigation to obtain attorney's fees in
28 Righthaven LLC v. Leon et al., Case Number 2:10-cv-01672 (Dkt. 52, 53) (D. Nev. July 5, 2011),

1 and even more litigation to collect that award of \$3,815. Leon, Case No. 2:10-cv-01672 (Dkt. 54,
2 56, 57) (D. Nev. July 12, 2011). Righthaven did pay the \$3,815 judgment, but only after claiming
3 to be considering an appeal of the award, and being ordered by the court to make such a payment.
4 Leon, Case No. 2:10-cv-01672 (Dkt. 56, 59) (D. Nev. July 12, 2011).

5 9. Prior to moving for fees in the Hoehn case, a similar exchange occurred, where
6 Marc Randazza and I sought to resolve the issue without litigation – but Hoehn was required to
7 resolve the question of attorney’s fees with the court. Hoehn, Case No. 2:11-cv-00050 (Dkt. 32-2
8 ¶¶ 14-18) (D. Nev. July 5, 2011).

9 10. While judgment had been entered in Hoehn at that point, there was, and still exists,
10 a pending motion for attorneys’ fees, filed on July 5, 2011. Hoehn, Case No. 2:11-cv-00050 (Dkt.
11 32) (D. Nev. July 5, 2011).

12 11. Additionally, Righthaven has filed a notice of appeal in Hoehn. Case No. 2:11-
13 cv-00050 (Dkt. 33) (D. Nev. July 5, 2011).

14 12. It is my understanding of this Court’s order, based on attendance at the July 14,
15 2011 hearing, review of the transcript from that hearing, and the Court’s minute order (Dkt. 138),
16 that the Court’s order would apply to cases pending appeal, even after being dismissed by their
17 respective courts.

18 13. Based on the e-mail exchange Marc Randazza and I had with Righthaven’s
19 attorney, Shawn Mangano, as of July 20, 2011, Righthaven stated that it had “not [yet]
20 considered” whether the Court’s order requires it to file the July 14 transcript hearing, June 14
21 order (Dkt. 116) and Strategic Alliance Agreement in Hoehn. (*See* Exh. 1.) As of the time of this
22 declaration, Righthaven has declined to file any of these documents in Hoehn.

23 I declare the foregoing under penalty of perjury under the laws of the United States and that
24 the foregoing is true and correct. Executed this 1st day of August, 2011, in Las Vegas, Nevada.

25
26 /s/ J. Malcolm DeVoy IV
J. Malcolm DeVoy IV

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ATTORNEY ATTESTATION

In accordance with the Court’s Special Order No. 109, dated September 30, 2005, I hereby attest that concurrence in the filing of this document has been obtained from the signatories indicated by a “conformed” signature (/s/) within this e-filed document:

/s/ Laurence Pulgram
Laurence Pulgram

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO