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10 Attorneys for Counterdefendant
 11 Stephens Media, LLC

12 UNITED STATES DISTRICT COURT
 13 DISTRICT OF NEVADA

14 RIGHTHAVEN LLC, a Nevada limited-
 15 liability company,

16 Plaintiff,

17 v.

18 DEMOCRATIC UNDERGROUND, LLC, a
 19 District of Columbia limited-liability
 20 company; and DAVID ALLEN, an
 21 individual,

22 Defendants.

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

**DECLARATION OF MARK HINUEBER
 IN SUPPORT OF COUNTER-
 DEFENDANT STEPHENS MEDIA
 LLC'S (i) NOTICE OF WITHDRAWAL
 OF ITS MOTION FOR
 RECONSIDERATION OF THE
 COURT'S JUNE 14, 2011 ORDER [DKT
 126], AND (ii) LIMITED REPLY TO
 DEMOCRATIC UNDERGROUND,
 LLC'S COMBINED OPPOSITION [DKT
 140]**

23 DEMOCRATIC UNDERGROUND, LLC, a
 24 District of Columbia limited-liability
 25 company,

26 Counterclaimant,

27 v.

28 RIGHTHAVEN LLC, a Nevada limited-
 liability company; and STEPHENS MEDIA
 LLC, a Nevada limited-liability company,

Counterdefendants.



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1 I, MARK A. HINUEBER, declare under penalty of perjury as follows:

2 1. I am a resident in the State of Nevada. I am the Vice President and General
3 Counsel of Stephens Media LLC which publishes a variety of daily and weekly newspapers
4 across the country, including the *Las Vegas Review-Journal*.

5 2. I have personal knowledge of the facts stated herein, unless stated upon
6 information and belief, and to those facts I believe them to be true. I am competent to testify to
7 the matters stated herein.

8 3. I offer this Declaration in Support of Stephen Media, LLC's (i) Notice of
9 Withdrawal of its Motion for Reconsideration of the Court's June 14, 2011 Order [Dkt. 126], and
10 (ii) Limited Reply to Democratic Underground LLC's Combined Opposition [Dkt. 140].

11 4. Stephens Media is a party to several agreements with non-parties to the instant
12 action that involve the potential use of *Las Vegas Review-Journal* articles. The other parties to
13 these contracts include ProQuest Information and Learning Company, Burrelle's Information
14 Services, LLC, and Lexis Nexis (the "Non-Party Contracts").

15 5. The characterization by Democratic Underground, LLC ("DU") of the alleged
16 conflicts between the Non-Party Contracts and the Amended and Restated SAA is off-base. First
17 of all, only a small subset of *Review-Journal* articles has been assigned to Righthaven, thereby
18 leaving the vast majority of *Review-Journal* content subject only to the Non-Party Contracts and
19 unaffected by the Amended and Restated SAA.

20 6. Next, content appearing in the *Review-Journal* is uploaded to or otherwise made
21 available to Stephens Media's other contracting parties at or about the same time the material
22 appears in the printed newspaper. Because Stephens Media is the owner of the copyright in an
23 article at the time it is published and, by definition, any assignment of that article to Righthaven
24 will not occur until some undetermined time in the future (e.g., when infringing activity has been
25
26
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1 detected), Stephens Media has every right to authorize the limited use of the article at the time of
2 publication.

3 7. With respect to those limited articles that are subsequently assigned to Righthaven,
4 and thereafter licensed back to Stephens Media on a non-exclusive basis, Stephens Media has
5 previously disclosed to Righthaven the existence of its Non-Party Contracts.
6

7 8. All of the Non-Party Contracts pre-date the filing of this litigation, and none of
8 them are the subject of the dispute at issue herein.

9 9. Stephens Media treats the Non-Party Contracts as confidential commercial
10 information, and certain of those agreements expressly recognize that the parties thereto will be
11 sharing trade secrets and that said information is to be treated as confidential (*see, e.g.*, Dkt 140-4
12 at ¶ 18 (Burrelle's); 140-6 at ¶ 8 (Lexis Nexis)).
13

14 10. The Non-Party Contracts contain sensitive pricing information that is not generally
15 known to members of the public which would, if disclosed, cause the parties thereto competitive
16 disadvantage.

17 11. The Non-Party Contracts are drafted predominantly, if not entirely, by the other
18 parties to the agreements, not Stephens Media. Accordingly, those non-parties have a proprietary
19 interest in the form of the respective contracts and the terms contained therein which should not
20 be publicly disclosed without first giving the non-parties notice and an opportunity to address the
21 Court on this issue.
22

23 12. I declare under the penalty of perjury under the laws of the United States of
24 America that the foregoing is true and correct.

25 Executed this 5th day of August, 2011 in Las Vegas, Nevada.

26
27 /s/ Mark A. Hinueber
MARK A. HINUEBER



28
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