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15 Attorneys for Defendant and Counterclaimant
DEMOCRATIC UNDERGROUND, LLC, and
16 Defendant DAVID ALLEN

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

17 RIGHTHAVEN LLC, a Nevada limited liability company, Case No. 2:10-cv-01356-RLH (GWF)
18 Plaintiff,

19 v.

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

22 Defendants.

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

24 Counterclaimant,

25 v.

26 RIGHTHAVEN LLC, a Nevada limited liability company,
and STEPHENS MEDIA LLC, a Nevada limited-liability
27 company,

28 Counterdefendants.

**DECLARATION OF KURT
OPSAHL IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT ON
COUNTERCLAIM**

DECLARATION OF KURT B. OPSAHL, ESQ.

- 1
2 1. I am an attorney licensed to practice law in the State of California and am a Senior Staff
3 Attorney at the Electronic Frontier Foundation, attorney for Defendants and
4 Counterclaimant in the above-captioned matter.
- 5 2. I have knowledge of the facts set forth herein, and would testify to the same if called upon
6 to do so. I make this Declaration in support of Democratic Underground’s Brief in
7 Support of its Motion for Summary Judgment.
- 8 3. Attached as **Exhibit 1** is a true and correct copy of a May 20, 2010 Letter from
9 Righthaven to Mark A. Hinueber, produced in discovery by Stephens and marked with
10 Bates stamp numbers SM000166-167.
- 11 4. Attached as **Exhibit 2** is a true and correct copy of a purported Assignment dated July 8,
12 2010, produced in discovery by Stephens Media and marked with Bates stamp numbers
13 SM000162-163.
- 14 5. Attached as **Exhibit 3** is a true and correct copy of a purported Assignment dated July 19,
15 2010, produced in discovery by Stephens Media and marked with Bates stamp numbers
16 SM000164-165.
- 17 6. Attached as **Exhibit 4** is a true and correct copy of Stephens Media’s Responses to
18 Request for Admission (“RFA”) 22, 30, 39, 40, 56 and 57 and its objections.
- 19 7. I last visited the *Las Vegas Review-Journal* website on October 19, 2011, where I
20 determined that the entire story “U.S. Senate Race: Tea Party Power Fuels Angle” was
21 still publicly available, at no cost, at [http://www.lvrj.com/news/tea-party-power-fuels-](http://www.lvrj.com/news/tea-party-power-fuels-angle-93662969.html)
22 [angle-93662969.html](http://www.lvrj.com/news/tea-party-power-fuels-angle-93662969.html).
- 23 8. The page hosting the article found at [www.lvrj.com/news/tea-party-power-fuels-angle-](http://www.lvrj.com/news/tea-party-power-fuels-angle-93662969.html)
24 [93662969.html](http://www.lvrj.com/news/tea-party-power-fuels-angle-93662969.html), *supra*, encourages users to share articles on at least 18 different third-
25 party Internet resources or to email, save, or print the article at no cost.
- 26 9. When a user chooses the “Print This” option, a new window opens containing the text of
27 the full article without advertising. Attached as **Exhibit 5** is a true and correct copy of the
28 article as provided with the “Print This” button.

- 1 10. Attached as **Exhibit 6** is a printout of the article on the *Las Vegas Review Journal* web
2 site, encouraging the use of these resources, with all user comments.
- 3 11. Attached as **Exhibit 7** a true and correct copy of Sherman Frederick, *Content protection --*
4 *Night of the unthinking commentator*, Las Vegas Review-Journal (Jun 18, 2011), available
5 at 10 purchase-from-gametime-ip/.
- 11 13. Attached as **Exhibit 9** is a true and correct copy of a web traffic log produced by Stephens
12 Media and marked as confidential under the protective order, with Bates stamp numbers
13 SM000003-8.
- 14 14. Attached as **Exhibit 10** is a true and correct copy of Stephens Media's Responses to
15 Interrogatory Nos. 4 and 11 and its objections.
- 16 15. Attached as **Exhibit 11** is a true and correct copy of Stephens Media's advertising rate
17 chart for online advertising on lvrj.com, with Bates stamp numbers SM000048-49
- 18 16. Attached as **Exhibit 12** is a true and correct copy of a license agreement produced by
19 Stephens Media and marked as confidential under the protective order, with Bates stamp
20 numbers SM000050-58.
- 21 17. Attached as **Exhibit 13** is a true and correct copy of a license agreement produced by
22 Stephens Media and marked as confidential under the protective order, with Bates stamp
23 numbers SM000060-62.
- 24 18. Attached as **Exhibit 14** is a true and correct copy of a license agreement produced by
25 Stephens Media and marked as confidential under the protective order, with Bates stamp
26 numbers SM000063-64.
- 27 19. Attached as **Exhibit 15** is a true and correct copy of a license agreement produced by
28 Stephens Media and marked as confidential under the protective order, with Bates stamp

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- numbers SM000065-67.
20. Attached as **Exhibit 16** is a true and correct copy of a license agreement produced by Stephens Media and marked as confidential under the protective order, with Bates stamp numbers SM000068-72.
21. Attached as **Exhibit 17** is a true and correct copy of a license agreement produced by Stephens Media and marked as confidential under the protective order, with Bates stamp numbers SM000073-77.

I declare the foregoing under penalty of perjury under the laws of the state of California and that the foregoing is true and correct executed this 21st day of October 2011, in San Francisco, California.

/s/ Kurt Opsahl
KURT OPSAHL

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/ Jennifer J. Johnson
JENNIFER J. JOHNSON