

Exhibit 4

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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 individual,

21 Defendants.

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

25 Counterclaimant,

26 v.

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

Counterdefendants.

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

**COUNTERDEFENDANT STEPHENS
MEDIA, LLC'S RESPONSES TO
DEFENDANT AND
COUNTERCLAIMANT DEMOCRATIC
UNDERGROUND, LLC'S FIRST SET OF
ADMISSIONS**



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1 TO: COUNTERCLAIMANT and ITS COUNSEL OF RECORD

2 Stephens Media, LLC ("Stephens Media"), by and through its undersigned counsel,
3 hereby responds and objects to the First Set of Requests for Admissions (the "Admissions")
4 propounded by Counterclaimant Democratic Underground, LLC ("DU") as follows:
5

6 **PRELIMINARY STATEMENT**

7 Stephens Media's responses to the Admissions have been prepared pursuant to a
8 reasonable inquiry for information properly requested. To the extent the Admissions purport to
9 require more, Stephens Media objects on the ground that they seek to compel Stephens Media to
10 conduct a search beyond the scope of discovery contemplated by the Federal Rules of Civil
11 Procedure, and responding to such requests would impose an undue burden and expense on
12 Stephens Media, particularly given its status solely as a Counterdefendant in the above action.

13 The following responses and objections are without prejudice to Stephens Media's right to
14 produce evidence of any subsequently discovered facts. Stephens Media also reserves the right to
15 assert additional privileges if warranted by new documents or evidence discovered at a later date.
16

17 **GENERAL OBJECTIONS**

18 1. Stephens Media objects to the Admissions, including the Definitions and
19 Instructions contained therein, to the extent they purport to impose on Stephens Media obligations
20 greater than those imposed by the Federal Rules of Civil Procedure and the Local Civil Rules of
21 this Court. In particular, Stephens Media objects to DU's definition of "You" and "Your" as it
22 refers to an entity other than Stephens Media and, thus, makes all of the Admissions
23 unintelligible. Notwithstanding the foregoing defect contained in DU's Admissions, Stephens
24 Media has endeavored to answer them to the best of its ability.
25

26 2. Stephens Media objects to the Admissions to the extent they seek information
27 protected from discovery by the attorney-client privilege, the attorney work-product doctrine,
28



1 created in anticipation of litigation, or protected by any other applicable privilege or immunity.
2 The inadvertent production of any such document or information shall not constitute a waiver of
3 any such privilege or immunity, and Stephens Media and its counsel reserve their right to demand
4 the return of any inadvertently produced documents or information.
5

6 3. Stephens Media objects to the Admissions to the extent they purport to require
7 disclosure of confidential business or commercially sensitive information.

8 4. Stephens Media objects to the Admissions to the extent they purport to require
9 Stephens Media to provide information which is neither relevant nor reasonably calculated to lead
10 to the discovery of admissible evidence. Nothing contained in any response herein (including the
11 production of any information or documents) shall be deemed to be an admission, concession, or
12 waiver by Stephens Media to the relevance, materiality or admissibility of any information or
13 document.
14

15 5. Stephens Media objects to the Admissions to the extent they purport to require
16 Stephens Media to provide information beyond what may be obtained through a reasonably
17 diligent search of its records.

18 6. Stephens Media objects to the Admissions on the grounds they are vague,
19 overbroad, oppressive, unduly burdensome, not relevant to the subject of the litigation, and/or are
20 not calculated to lead to the discovery of admissible evidence in this action.
21

22 7. Stephens Media objects to the Admissions for failing to define an applicable time
23 period, which renders them overly broad, oppressive, unduly burdensome and unlikely to lead to
24 the discovery of admissible evidence.

25 8. Stephens Media objects to the Admissions to the extent they seek information
26 already in the possession, custody or control of DU or already in the public domain and,
27 therefore, equally accessible to DU.
28



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1 9. Nothing contained in any response shall be deemed to be a concession or waiver
2 by Stephens Media to the validity of any claim asserted by DU.

3 10. Stephens Media responds to the Admissions to the best of its knowledge and on
4 the basis of the information provided to its counsel as of this date. Stephens Media reserves the
5 right to alter, amend, supplement, augment or otherwise change its responses as appropriate and
6 to object to the admissibility or relevancy of evidence of any portion of the documents, or the
7 information contained therein, produced in response to a particular request. No response or lack
8 of response herein is intended to, or shall be understood to, limit the legal theories, factual
9 contentions, or evidence to be employed, relied upon, or presented during any proceeding in this
10 case.
11

12 RESPONSES

13 REQUEST FOR ADMISSION NO. 1:

14 Admit that Defendant Democratic Underground undertook no volitional acts in the
15 reproduction or distribution of the NEWS ARTICLE that would give rise to direct liability for
16 copyright infringement.
17

18 RESPONSE NO. 1:

19 Objection. This Request improperly seeks an admission on a legal issue. See
20 *Sommerfield v. City of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“[r]equests to admit may
21 not be used to establish legal conclusions”). See also, *State of California v. The Steamship Jules*
22 *Freiburg*, 19 F.R.D. 432, 435 (N.D. Cal. 1955) (noting that “Admissions and requests for
23 admissions have certain requirements in common, such as that the matters called for must be
24 matters of fact rather than legal opinions and conclusions[.]”).
25

26 Without waiving the foregoing objection, Stephens Media has conducted a reasonable
27 inquiry into the subject matter of this Request but is unable to admit or deny at this time based on
28



1 requests for admissions have certain requirements in common, such as that the matters called for
2 must be matters of fact rather than legal opinions and conclusions[.]”). Without waiving the
3 foregoing objection, *see* Response to Request for Admission No. 19.
4

5 **REQUEST FOR ADMISSION NO. 21:**

6 Admit that the entire NEWS ARTICLE was publicly available for free on the LVRJ
7 WEBSITE beginning May 13, 2010.

8 **RESPONSE NO. 21:**

9 Admit

10 **REQUEST FOR ADMISSION NO. 22:**

11 Admit that the entire NEWS ARTICLE remains publicly available for free on the LVRJ
12 WEBSITE as of December 17, 2010.

13 **RESPONSE NO. 22:**

14 Objection. The Request seeks information as of a particular date one month in the past for
15 which Stephens Media cannot truthfully admit or deny. Stephens Media denies the Request to the
16 extent the New Article was placed in the LVRJ website’s archive where it would have been (and
17 is presently) available for a fee. Stephens Media admits the Request to the extent a user may be
18 able to access the News Article for free through a third-party search engine such as Google.
19 Stephens Media denies the remainder of the Request to the extent it is inconsistent with the
20 foregoing Responses.
21

22 **REQUEST FOR ADMISSION NO. 23:**

23 Admit that the copyright notice on the NEWS ARTICLE on the LVRJ WEBSITE is
24 credited to the LVRJ.
25

26 **RESPONSE NO. 23:**

27 Admit
28



1 this Request to the extent it is inconsistent with the foregoing Response.

2 **REQUEST FOR ADMISSION NO. 28:**

3 Admit that Stephens Media has received monetary payments from Righthaven as a result of
4 settlements Righthaven has reached in Righthaven's copyright infringement suits.

5 **RESPONSE NO. 28:**

6 *See* Response to Request for Admission No. 27.

7 **REQUEST FOR ADMISSION NO. 29:**

8 Admit that the LVRJ WEBSITE encourages users to share articles on at least 18 different
9 third-party Internet resources at no cost.

10 **RESPONSE NO. 29:**

11 Deny. The Las Vegas *Review-Journal* website encourages users to share links to articles
12 hosted on the LVRJ website.

13 **REQUEST FOR ADMISSION NO. 30:**

14 Admit that the LVRJ encourages users to email, save, or print the article at no cost.

15 **RESPONSE NO. 30:**

16 Stephens Media denies that the LVRJ encourages users to email the article at no cost; the
17 Las Vegas *Review-Journal* website encourages users to e-mail links to articles hosted on the
18 LVRJ website. Stephens Media admits the Request to the extent the Las Vegas *Review-Journal*
19 allows users to save and print articles for personal use. Stephens Media denies the remainder of
20 the Request to the extent it is inconsistent with the foregoing Responses.

21 **REQUEST FOR ADMISSION NO. 31:**

22 Admit that visitors to the LVRJ WEBSITE have been granted an implied license to share
23 the NEWS ARTICLE.

24



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RESPONSE NO. 37:

Deny. *See* Response to Request for Admission No. 36.

REQUEST FOR ADMISSION NO. 38:

Admit that the EXCERPT does not contain the poll numbers from the actual NEWS ARTICLE.

RESPONSE NO. 38:

Stephens Media admits the Request to the extent that the first five (5) sentences of the News Article taken by DU do not contain poll numbers. Stephens Media denies the remainder of the Request to the extent it is inconsistent with the foregoing Response. *See also*, Response to Request for Admission No. 36.

REQUEST FOR ADMISSION NO. 39:

Admit that the EXCERPT excludes information found in the original NEWS ARTICLE.

RESPONSE NO. 39:

Admit

REQUEST FOR ADMISSION NO. 40:

Admit that the EXCERPT was accompanied by a link to the page on the LVRJ WEBSITE which displayed the entire NEWS ARTICLE.

RESPONSE NO. 40:

Admit

REQUEST FOR ADMISSION NO. 41:

Admit that persons clicked on the link accompanying the EXCERPT on the DU WEBSITE.

RESPONSE NO. 41:

Objection. This Request requires Stephens Media to attempt to provide information beyond what may be obtained through a reasonably diligent search of its records and contains no



1 **RESPONSE NO. 53:**

2 Stephens Media admits the Request to the extent the quoted language appears in Sherman
3 Frederick's post to the Las Vegas *Review-Journal* website on September 1, 2010. Stephens
4 Media denies the remainder of the Request to the extent it is inconsistent with the foregoing
5 Response.
6

7 **REQUEST FOR ADMISSION NO. 54:**

8 Admit that on or before September 29, 2010, while acting as General Counsel for
9 Stephens Media, Mark Hinueber stated: "Righthaven's made the decision that based on their
10 agreement with us, they're not going to send [cease and desist] notices," or words to that effect, as
11 subsequently quoted in the KUAR FM 89.1 news article, Arkansas Newspapers Get Serious
12 About Copyright Infringement. *See* Opsahl Decl. Ex. J.
13

14 **RESPONSE NO. 54:**

15 Stephens Media admits the Request to the extent the quoted language appears in the
16 KUAR FM 89.1 news article from September 29, 2010.
17

18 **REQUEST FOR ADMISSION NO. 55:**

19 Admit that on or before August 16, 2010, while acting as General Counsel for Stephens
20 Media, Mark Hinueber acknowledged that, at that time, Stephens Media owned a small stake in
21 Righthaven, as reported in the Law.com news article, Is This the Birth of a Copyright Troll. *See*
22 Opsahl Decl. Ex. H.

23 **RESPONSE NO. 55:**

24 Deny. Stephens Media does not own any interest in Righthaven. *See also*, Response to
25 Request for Admission No. 33.
26

27 **REQUEST FOR ADMISSION NO. 56:**

28 Admit that in May of 2010, Sherman Frederick was the Chief Executive Officer of



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1 Stephens Media.

2 **RESPONSE NO. 56:**

3 Admit

4 **REQUEST FOR ADMISSION NO. 57:**

5 Admit that in September of 2010, Sherman Frederick was the Chief Executive Officer of
6 Stephens Media.

7 **RESPONSE NO. 57:**

8 Admit

9 **REQUEST FOR ADMISSION NO. 58:**

10 Admit that in May of 2010, Mark Hinueber was General Counsel for Stephens Media.

11 **RESPONSE NO. 58:**

12 Admit

13 **REQUEST FOR ADMISSION NO. 59:**

14 Admit that in August of 2010, Mark Hinueber was General Counsel for Stephens Media.

15 **RESPONSE NO. 59:**

16 Admit

17 **REQUEST FOR ADMISSION NO. 60:**

18 Admit that in September of 2010, Mark Hinueber was General Counsel for Stephens Media.

19 **RESPONSE NO. 60:**

20 Admit

21 **REQUEST FOR ADMISSION NO. 61:**

22 Admit that Stephens Media can control whether Righthaven files copyright infringement
23 suits regarding LVRJ content.

24

