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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.	Case No. 2:10-cv-01356-RLH (GWF) [PROPOSED] FINAL DECLARATORY JUDGMENT
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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.

[PROPOSED] FINAL DECLARATORY
JUDGMENT

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

BACKGROUND

1
2 On August 10, 2010, Plaintiff and Counterdefendant Righthaven LLC (“Righthaven”)
3 filed this action against Defendant and Counterclaimant Democratic Underground LLC
4 (“Democratic Underground”) and Defendant David Allen, alleging that Defendants had infringed
5 its alleged copyright in a single news article that had initially appeared on the website of the *Las*
6 *Vegas Review Journal* newspaper (“LVRJ”). The allegedly infringing conduct consisted of a
7 non-party’s posting of a five-sentence excerpt of the news story on an online political discussion
8 forum hosted by Democratic Underground. On September 27, 2010, seeking a declaration of
9 non-infringement, Democratic Underground filed its Counterclaim against Righthaven and
10 Stephens Media LLC, the parent company of the LVRJ and purported transferor of the copyright
11 that Righthaven had claimed to hold on the work. Dkt. No. 13. Counterdefendants Righthaven
12 and Stephens Media challenged the Counterclaim with motions to dismiss or strike. (Dkt. Nos.
13 36 and 39, respectively). On June 14, 2011, this Court determined that Righthaven, in actuality,
14 had never obtained any of the exclusive rights it purported to hold and accordingly dismissed
15 Righthaven for lack of standing to bring suit for copyright infringement. Dkt. No. 116. The
16 Court, however, permitted Democratic Underground to proceed with its Counterclaim as to
17 Stephens Media, finding that Stephens Media was the real party in interest as it was the owner of
18 the exclusive rights in the copyright in the work at issue, and has, at all times, been entitled under
19 its relationship with Righthaven, to a 50% interest (less costs) in any recovery for copyright
20 infringement by the Defendants.

DECLARATION AND ENTRY OF JUDGMENT

21
22 Before the Court now are two uncontested Motions: (1) Democratic Underground’s
23 October 24, 2011 Motion for Summary Judgment on its Counterclaim against Stephens Media,
24 seeking a declaration of non-infringement based on both fair use and lack of any volitional act
25 (Dkt. No. 168), and (2) Democratic Underground’s and David Allen’s October 21, 2011 Motion
26 for Entry of Judgment against Righthaven for dismissal with prejudice pursuant to Federal Rule
27 of Civil Procedure 54(b) (Dkt. No. 166). Stephens Media has submitted a limited response to the
28 Motion for Summary Judgment on the Counterclaim, in which Stephens “does not contest the

1 substantive arguments presented by [Democratic Underground] on the issues of volitional act and
2 fair use as applied to the material facts of this case.” Dkt. No. 174 at 2. Righthaven, for its part,
3 has consented to the Motion for Entry of Judgment and Dismissal with Prejudice by declining to
4 respond. *See* Local Rule of Civil Practice 7-2(d) (“The failure of an opposing party to file points
5 and authorities in response to any motion shall constitute a consent to the granting of the
6 motion.”).

7 Based on the undisputed facts of record herein and applicable law, the Court hereby
8 GRANTS the Motion for Summary Judgment on the Counterclaim, and GRANTS the Motion for
9 Dismissal with Prejudice of Righthaven’s claims, and enters final judgment in this matter.

10 **THE COURT HEREBY DECLARES AS FOLLOWS:**

11 1. That Counterclaimants Democratic Underground and David Allen have committed
12 no volitional act giving rise to a claim for direct copyright infringement. Counterclaimants neither
13 posted the excerpt nor encouraged the posting. Nor did they have any knowledge of the posting
14 until after this suit was filed. *See Religious Tech. Ctr. v. Netcom On-line Commnc’n Servs.*, 907
15 F. Supp. 1361 (N.D. Cal. 1995) (direct copyright infringement requires “some element of volition
16 or causation which is lacking where a defendant’s system is merely used to create a copy by a
17 third party”); *see also CoStar Group, Inc. v. LoopNet, Inc.*, 373 F.3d 544 (4th Cir. 2004) and
18 *Cartoon Network LP v. CSC Holdings, Inc.*, 536 F.3d 121 (2d Cir. 2008).

19 2. That the act of posting this five-sentence excerpt of a fifty sentence news article on
20 a political discussion forum is a fair use pursuant to 17 U.S.C. § 107, and that the fair use
21 doctrine provides a complete defense to the claim of copyright infringement from which this suit
22 arose. Judgment on the Counterclaim is accordingly entered in favor of Democratic Underground
23 and against Counter Defendant Stephens Media, LLC

24 3. That Judgment of dismissal with prejudice is hereby entered in favor of
25 Defendants Democratic Underground and David Allen, for the reasons set forth in the Motion for
26 Entry of Final Judgment. Dkt. 166. The Court need not certify this action under Federal Rule of
27 Civil Procedure 54(b) as this Final Judgment will now dispose of all claims and all parties.
28

ATTORNEYS' FEES

Defendant/Counterclaimants' motion for attorneys' fees shall be submitted within 14 days of the entry of this judgment, pursuant to Local Rule of Civil Practice 54-16(a) and Federal Rule 54(d)(2)(B).

IT IS SO ORDERED.

Dated: _____

By: _____
District Court Judge

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