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12
13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

16 RIGHTHAVEN LLC, a Nevada limited-
liability company,

17
18 Plaintiff,

19 v.

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

23 Defendants.

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

26 Counterclaimant,

27 v.
28

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

**JOINT DISCOVERY PLAN AND
SCHEDULING ORDER**

**SPECIAL SCHEDULING REVIEW
REQUESTED**

1 RIGHTHAVEN LLC, a Nevada limited-
2 liability company; and STEPHENS MEDIA
3 LLC, a Nevada limited-liability company,

4 Counter defendants.

5 Plaintiff/Counter-defendant, Righthaven LLC (“Righthaven”), and Defendant David
6 Allen, and Defendant/Counter-claimant Democratic Underground, LLC (“Democratic
7 Underground”), and Counter-defendant Stephens Media LLC (“Stephens Media”) all collectively
8 known herein as the “Parties” by and through their respective counsel, pursuant to Rule 26(f)(2)
9 of the Federal Rules of Civil Procedure, hereby submit their proposed Joint Discovery Plan and
10 Scheduling Order (“Discovery Order”).

11 A. **Fed.R.Civ.P. 26(f) Conference.** On December 1, 2010, the Parties conducted the
12 discovery conference as required under Fed. R. Civ. P. 26(f). In attendance on behalf of
13 Righthaven was Shawn A. Mangano and J. Charles Coons; in attendance on behalf of
14 Democratic Underground was Laurence Pulgram and Corynne McSherry; and in
15 attendance on behalf of Stephens Media, LLC was Wade Rabenhorst.

16 Due to the delay in organizing and completing a compliant Rule 26(f) conference,
17 the Parties request this Court consider a special scheduling request. The Parties request
18 the requisite 180-day discovery plan from the date of the Rule 26(f) conference, rather
19 than the date of first appearance by the Defendants. This special scheduling request is a
20 minor deviation from the date structure provided in LR 26-1(e) and is sought in good
21 faith to accommodate the delay in organizing the Rule 26(f) conference and providing the
22 court a Discovery Order. Consequently, allowing for a standard 180-day discovery
23 period from the date of the Rule 26(f) conference will provide the Parties the time
24 required to develop and litigate this copyright infringement action without the prejudice
25 of lapsed deadlines that currently exist under a 180-day discovery plan from the date of
26 the Defendants’ first appearance.
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1 1. Fed. R. Civ. P. 26(a) Changes: The Parties shall submit their initial
2 disclosures no later than **December 15, 2010**, fourteen (14) days from the date
3 of the Early Case Conference (the “Discovery Conference”), as required by
4 Fed. R. Civ. P. 26(a).

5
6 2. Fed. R. Civ. P. 26(f)(3)(A) Scope of Discovery: The Parties believe that
7 discovery should extend to the full extent allowed by the Federal Rules of
8 Civil Procedure and should not be limited to any particular issues. The
9 subjects as to which discovery will be allowed include all factual issues raised
10 in and/or relevant to the claims or defenses in the Complaint, Answer
11 (including affirmative defenses) and Counterclaim.

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13 3. Fed. R. Civ. P. 26(f)(3)(B) Timing of Discovery:

14 a. The Parties propose the following timetable for discovery, based
15 on a six-month schedule:

16 i. Discovery Cut-Off Date: The cut-off date for discovery shall
17 be **May 30, 2011**, 180 days from the date of the Discovery
18 Conference.

19 ii. Amending the Pleadings and Adding Parties: All motions
20 to amend the pleadings or to add parties shall be filed not later
21 than the **March 1, 2011**, 90 days prior to the scheduled close of
22 discovery.

23 iii. Fed. R. Civ. P. 26(a)(2) Disclosures (Experts): Disclosures
24 concerning experts shall be made no later than the **March 30,**
25 **2011**, 62 days before the discovery cut-off date. Disclosures
26 concerning rebuttal experts shall be made no later than the
27 **April 29, 2011**, 30 days after the initial disclosure of experts.
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1 iv. **Dispositive Motions**: The date for filing dispositive motions
2 shall not be later than the **June 29, 2011**, 30 days after the
3 discovery cut-off date. In the event that the discovery period is
4 extended from the discovery cut-off date set forth in this
5 Discovery Order, the date for filing dispositive motions shall
6 be extended to be not later than 30 days from the subsequent
7 discovery cut-off date.

8 v. **Pretrial Order**: The date for filing the joint pretrial order
9 shall not be later than the **July 29, 2011**, 30 days after the cut-
10 off date for filing dispositive motions. In the event that
11 dispositive motions are filed, the date for filing the joint
12 pretrial order shall be suspended until 30 days after decision on
13 the dispositive motions or until further order of the court. In
14 the further event that the discovery period is extended from the
15 discovery cut-off date set forth in this Discovery Order, the
16 date for filing the joint pretrial order shall be extended in
17 accordance with the time periods set forth in this paragraph.

18 vi. **Extensions or Modifications of the Discovery Plan and**
19 **Scheduling Order**: Any stipulation or motion must be made
20 not later than the **May 10, 2011**, 20 days before the discovery
21 cut-off date.

22 vii. **Interim Status Report**: The Parties shall file the interim
23 status report, if required, by the **March 31, 2011**, 60 days
24 before the discovery cut-off date.
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1 4. Fed.R.Civ.P. 26(f)(3)(C) Discovery of Electronically Stored Information: The
2 Parties agree to preserve all potentially discoverable documents, including
3 electronically-stored information. The disclosure or discovery of
4 electronically stored information shall be handled as follows:

5 a. As used in this section 3(a), the following terms shall be defined as
6 follows:

7 i. "Alter" shall mean alter, change, modify, revise, corrupt, delete
8 and/or destroy, but, in accordance with Fed. R.Civ. P. 37(e)
9 shall not include alteration as a result of the routine, good-faith
10 operation of an electronic information system.

11 ii. "Information" shall mean all discoverable material,
12 information, matter, and data, in any form or format of storage,
13 subject to the Federal Rules of Civil Procedure.

14 iii. "Custodial Persons" shall mean any of the Parties' or their
15 subsidiaries' (including, without limitation, the *Las Vegas*
16 *Review Journal* which is owned by Stephens Media)
17 employees, off-site employees, contractors, agents,
18 representatives or other Persons under the control of or acting
19 in concert with a Party, in possession of Electronic Data that is
20 potentially discoverable in this case, including, without
21 limitation, those Persons that owe any Party a contractual or
22 other fiduciary duty to maintain, preserve, keep confidential or
23 otherwise protect its Electronic Data.

24 iv. "Party" shall mean Righthaven LLC, David Allen, Democratic
25 Underground LLC, and Stephens Media LLC.
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1 v. "Person" shall mean any individual, corporation, partnership,
2 general partner, limited partnership, limited-liability
3 partnership, limited-liability company, member, trust,
4 association, organization or any form of entity whatsoever.

5 b. Each Party shall preserve and not Alter all Information, including
6 electronically-stored information, in that Party's possession,
7 custody or control that is potentially discoverable in this case in
8 their existing format regardless of any pre-existing retention
9 policies.

10 c. Each Party shall instruct all Custodial Persons to preserve and not
11 Alter all Information potentially discoverable in this case in their
12 existing format, regardless of any pre-existing retention policies.

13 d. Each Party shall produce electronically-stored data in multi-page
14 OCR .tif format, with Concordance load files with specifications as
15 agreed upon by the parties (for compatibility with the most
16 common litigation document review system), with the exception of
17 Excel or similar spreadsheets which shall be produced in native
18 format. If a party receiving such production contends that a native
19 or other non-.tif format is necessary to ascertain discoverable
20 information, it may request a party to produce in native format.
21 Any dispute as to the necessity of production in native format shall
22 be resolved by the Magistrate Judge.

23 e. A Party desiring not to produce metadata associated with any
24 Information created prior to the commencement of this action shall
25 be required to seek a protective order protecting against such
26 production and shall have the burden of proof of establishing the
27 impropriety of production of any such metadata. As to information
28 created after commencement of this action, metadata need not be

1 produced if a party asserts that such metadata contains privileged
2 information, provided that the party must list the existence of any
3 such data in its privilege log and, if the parties cannot agree
4 thereafter regarding its production, a motion to compel its
5 production will be presented to the Magistrate Judge.
6

7 5. Fed.R.Civ.P. 26(f)(3)(D) Claims of Privilege or Protection as Trial-
8 Preparation Material: A party claiming that any item within the scope of
9 discovery is protected as either privileged or as trial-preparation material,
10 pursuant to Fed.R.Civ.P. 26(b)(5), shall submit a detailed privilege log
11 detailing the nature of the privilege or the basis for the item's or items'
12 protection as trial preparation material. Such a privilege log shall be limited
13 to communications prior to the commencement of this action, and shall be
14 produced within (21) days following the date that the documents
15 memorialized in the privilege log were to be produced by the party from
16 whom discovery is being sought. If a party becomes aware of a privileged
17 document having been produced the parties shall comply with Fed. R. Civ. P.
18 26(b)(5)(B).
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20 6. Fed.R.Civ.P. 26(f)(3)(E) Changes: None at this time.
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22 7. Fed.R.Civ.P. 26(f)(3)(F) Orders: None at this time.
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1 **B. Later-Appearing Parties:** A copy of this Discovery Order shall be served on
2 any person who is hereafter added as a party to this action within five days of that later-
3 appearing Party's first appearance. This Discovery Order shall apply to such later-
4 appearing party or parties, unless: (1) a stipulation of the Parties is approved by this
5 Court, or (2) this Court, on motion for good cause shown, orders otherwise.

6 Dated this 3rd day of December, 2010.

7 RIGHTHAVEN LLC

8
9 By: /s/ Shawn A. Mangano

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14 *Counterclaimant DEMOCRATIC*
15 *UNDERGROUND, LLC, and Defendant*
DAVID ALLEN

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17 **IT IS SO ORDERED:**

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20 _____
UNITED STATES MAGISTRATE JUDGE

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22 **DATED:** _____
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