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 15 DEMOCRATIC UNDERGROUND, LLC, and
 Defendant DAVID ALLEN

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

18 RIGHTHAVEN LLC, a Nevada limited liability company,
 19 Plaintiff,

20 v.

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

Case No. 10-01356-RLH (GWF)

**REPLY DECLARATION OF
 KURT OPSAHL IN SUPPORT
 OF DEFENDANTS' CROSS
 MOTION FOR SUMMARY
 JUDGMENT**

1 1. I am an attorney licensed to practice law in the State of California and am a Senior
2 Staff Attorney at the Electronic Frontier Foundation, attorneys for Defendants in the above-
3 captioned matter.

4 2. I have knowledge of the facts set forth herein, and would testify to the same if
5 called upon to do so. I make this Declaration to respond to certain assertions made in
6 Righthaven's Opposition to Defendants' Cross Motion for Summary Judgment.

7 3. On December 15, 2010, Righthaven submitted its Initial Disclosures to
8 Defendants, pursuant to Federal Rule of Civil Procedure 26(a)(1)(A). In those Disclosures, the
9 only natural person named by Righthaven as "likely to have discoverable information" was
10 Defendant David Allen. Righthaven did not identify a single individual at Righthaven or
11 Stephens Media likely to have discoverable information, instead only identifying "person[s] most
12 knowledgeable" regarding certain topics. Attached hereto as **Exhibit A** is a true and correct copy
13 of Righthaven's Initial Disclosures.

14 4. Later on December 15, counsel for Defendants, Cliff Webb communicated with
15 Shawn Mangano, counsel for Plaintiff, regarding the deficient disclosures, explaining that a
16 disclosure that an unnamed person had information, but failing to identify that person, was
17 improper.

18 5. In response, on December 17, Righthaven served supplemental disclosures adding
19 the names of both myself, Kurt Opsahl, and an employee of Defendant Democratic Underground,
20 Brian Leitner. Righthaven did not identify a single individual at Righthaven or Stephens Media
21 likely to have discoverable information. Attached hereto as **Exhibit B** is a true and correct copy
22 of Righthaven's Supplemental Disclosures.

23 6. On December 20, counsel for Defendants notified Mr. Mangano, via email that the
24 parties needed to meet and confer regarding the continuing failure of Righthaven's disclosures to
25 identify its individual witnesses. Mr. Mangano responded on December 22, stating that "I will
26 supplement them if I deem that supplementation is necessary" and that he would "look into his
27 availability" to meet and confer during the week of December 27, requesting specifically that
28 local counsel participate in any such conference.

1 7. That same day, counsel for Defendants replied, asking to schedule a time for a call
2 on December 27 and stating its position that it was not necessary for local counsel for Defendants
3 to be on the call. Despite his proposal to meet the week of December 27, Mr. Mangano never
4 responded.

5 8. On January 4, 2011, having heard nothing from Mr. Mangano, counsel for
6 Defendants sent Mr. Mangano an email requesting a meeting for January 5 or 6.

7 9. On January 5, Mr. Mangano replied stating that he had been out of town, and
8 asking if local counsel for Defendants would be participating in a meet and confer call. Between
9 December 27 and January 5, Mr. Mangano had filed four new lawsuits in this District on behalf
10 of Righthaven and participated in a hearing in *Righthaven v. Center for Intercultural Organizing*,
11 Case No. 2:10-CV-01322. Defense counsel replied, asking when Mr. Mangano was available for
12 a call the next day, and stating that local counsel was not obligated to participate in the call.

13 10. On January 6, Mr. Mangano replied, expressing his position that local counsel
14 needed to participate in the call.

15 11. Defendants' local counsel, Chad Bowers replied, "I rather vehemently disagree but
16 in the interests of moving forward please provide me the time and call-in information and I will
17 make sure that I am on the call. Please do not use my attendance as a basis to delay this
18 conference call another minute."

19 12. Defense counsel again asked Mr. Mangano to provide a time that he was available
20 for a call.

21 13. At 2:38 pm, Mr. Mangano replied via email, "I've got an opening at 2:45 today."

22 14. Myself, Cliff Webb and Jennifer Johnson, counsel for Defendants, joined the call.
23 When we did, Mr. Mangano expressed a desire for Mr. Bowers to dial in before proceeding with
24 our meet and confer. The call was brief. Mr. Mangano agreed to provide the identity of
25 witnesses we had been requesting since December 15, and he ultimately provided them in a
26 further supplementation on January 10, 2011.

27 15. After filing their Motions to Dismiss, Righthaven and Stephens Media joined with
28 Defendants to submit a joint proposed discovery schedule which was adopted by the Court.

1 Righthaven has never requested that Defendants agree to postpone or stay that schedule, nor has it
2 sought a stay from the Court. Because of the discovery deadlines, Defendants served discovery
3 requests on December 17, 2010.

4 16. In response to Defendants' Requests for Admissions, Righthaven admitted or
5 denied only 4 of 82 requests, objecting and refusing to answer all of the rest. In response to
6 Defendants' Interrogatories, Righthaven provided only objections, no answers. In response to
7 Defendants' Request for Production of Documents, Righthaven has produced no documents.

8 17. On January 12, 2011, counsel for Defendants delivered to Mr. Mangano, and
9 Stephens Media's counsel, Colby Williams, a copy of a proposed protective order containing
10 Defendants' proposed edits and revisions to Plaintiff's draft. Despite multiple requests to
11 complete the entry of that order, counsel for Defendants has not received any further
12 communications pertaining to the protective order.

13 18. I attach as **Exhibit C** a true and correct copy of excerpts of Counterdefendant
14 Stephens Media, LLC's Responses to Defendant and Counterclaimant Democratic Underground,
15 LLC's First Set of Requests for Admissions.

16 I declare under penalty of perjury under the laws of the United States that the foregoing is
17 true and correct. Executed this 28th day of January, 2010, in San Francisco, California.

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/s/ Kurt Opsahl
20 KURT OPSAHL

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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/ Laurence Pulgram

Laurence Pulgram