

# EXHIBIT S

## Jennifer Johnson

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**From:** Colby Williams [jcw@campbellandwilliams.com]  
**Sent:** Tuesday, March 22, 2011 6:39 PM  
**To:** Jennifer Johnson  
**Cc:** Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.; shawn@manganolaw.com  
**Subject:** RE: Righthaven v. DU  
**Attachments:** Second Supp Response DU's RFPS.pdf; Righthaven Operating Agreement.pdf

Jennifer,

We obviously disagree with the positions articulated in your e-mail below. Permit me to respond to certain of your erroneous contentions.

First, all of our objections were not resolved through our meet and confer and the entry of a protective order. While the foregoing events resolved certain disputes between the parties, that does not mean we have abandoned all of the other objections contained in our responses to the voluminous discovery requests propounded by Defendants.

Next, the documents recently provided to me by Mark Hinueber have nothing to do with the "assignment of rights in the News Article to Righthaven" and, thus, are not responsive to your RFP No. 3. Nor do the documents pertain to communications relating to "assignment or reversion of rights in the News Article" and, thus, are not responsive to your RFP No. 4. In what will become a common refrain, the subject documents have nothing to do with communications "regarding the conduct of, or claims against, Defendants" and, thus, are not responsive to your RFP No. 6. Nor do the documents encompass materials "concerning any joint defense, common interest, or other agreements for cooperation in litigation or preservation of privileges between Righthaven and Stephens Media" and, thus, are not responsive to your RFP No. 7. That is not to say, however, that the subject documents would not be protected from disclosure by a common interest privilege, which is a different issue and one addressed below. Finally, the documents provided by Mr. Hinueber do not relate to any "'right of reversion' referenced in the July 19, 2010 Assignment" and, thus, are not responsive to your RFP No. 10.

With respect to your RFP 36 seeking "All documents referring or Relating to the creation of Righthaven, including, without limitation, All Communications among its founders and funders," we not only objected on grounds that the request was unduly burdensome because Righthaven is a "wholly separate entity" but also because the request is entirely "overbroad." We asserted the same overbreadth objection and additional objections to your cumulative RFPs 43-45 seeking "all communications" referring or relating to Righthaven, Net Sortie Systems, LLC, and SI Content Monitor, LLC as well as your RFPs 49-55 seeking all communications between Stephens and a myriad of individuals. We have not waived or abandoned those objections. Thus, to the extent the documents provided by Mark Hinueber fall into one or more of these sweeping RFPs, we stand on the objections asserted therein. It is our position that under FRCP 26, the Committee Notes thereto, and additional authorities, the nonprivilege grounds for objection we have asserted in the first instance excuse Stephens Media from having to undergo the burden of preparing a privilege log for the subject documents at this time. If this matter is presented to the Court and it rules that any of the subject documents are "otherwise discoverable" despite the asserted objections, we will, of course, properly describe any privileged documents in an appropriate log.

We believe that Stephens Media has bent over backwards to provide Defendants with documents responsive to your seventy (70) document requests. This is particularly true when one considers that (i) Stephens Media did not bring this lawsuit but, rather, was named in a single-count counterclaim that does no more than seek the inverse of the relief sought in the

single-count complaint, (ii) that the Plaintiff in the action (Righthaven) moved to voluntarily dismiss the case many months ago and long before Defendants served their voluminous discovery requests, (iii) that Stephens has agreed to be bound by the district court's ruling in the case regardless of the outcome, and (iv) where deposition discovery has been stayed. If you truly feel that you have grounds to file a motion to compel and seek attorney's fees based the record developed to date, that is your prerogative. We would welcome the opportunity to address this matter with Magistrate Judge Foley.

Turning to the issue of SI Content Monitor, I have previously advised that this is a separate entity from Stephens Media that is located in Little Rock, Arkansas with its own legal counsel. Notwithstanding the foregoing, we agreed to determine whether SI Content Monitor would voluntarily provide documents to us concerning the "integrated transaction" referenced in the Strategic Alliance Agreement. We did so, and SI Content Monitor provided us with the Righthaven Operating Agreement. We are producing that document herewith as part of Stephens Media's Second Supplemental Production of Documents. To the extent you are seeking documents from SI Content Monitor beyond that already produced, you will need to subpoena that company in Arkansas. The contact information for the company's inside counsel is:

Jackson Farrow, Jr.  
SI Content Monitor LLC  
111 Center Street, Suite 2500  
Little Rock, AR 72201  
Ph: 501-377-2261  
Fax:501-210-4615

Should you wish to discuss anything further regarding the foregoing, do not hesitate to contact me.

Regards,  
Colby

-----Original Message-----

From: Jennifer Johnson [mailto:jjjohnson@fenwick.com]  
Sent: Tuesday, March 22, 2011 3:51 PM  
To: Colby Williams  
Cc: Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.; shawn@manganolaw.com  
Subject: RE: Righthaven v. DU

Colby,

Your statement that these documents are not "otherwise discoverable" is baseless, as your objections have been resolved through meet and confer and entry of the protective order.

For example, with respect to Requests for Production Nos. 3, 4 and 10 regarding communications about the assignment or reversion rights in the News Article, Stephens Media only objected on grounds of confidentiality. The protective order has now been entered, solving any confidentiality objection that you previously asserted.

With respect to Request 6, concerning communications regarding conduct of or claims against Defendants, you objected on the bases of the common interest theory of the attorney client privileged. An objection based on privileged does not permit failure to log the documents claimed to be privileged in the time previously ordered by the Court. The same is true for Request No. 7, seeking documents concerning common interest agreements or agreements to cooperate in litigation (your response to which merely refers to Request 6). Now that Stephens Media has located Mr. Hinueber's documents (which should have been easily located in the first instance), their non-production is not excusable.

With respect to Request 36, seeking all documents referring or relating to the creation of Righthaven, you objected on the basis that Righthaven is a "wholly separate entity." Your indication that Hinueber is in possession of documents moots the issue of whether the documents are in possession of an entity other than Stephens Media.

There is no valid objection to discovery of documents and communications in Stephens Media's possession, as documents in Hinueber's possession are, on the topics requested and with the existence of the protective order. Accordingly, there is no basis for the delinquent production of privilege logs for those categories. Accordingly, please understand that if you require us to make a motion, we will seek our costs as well as the ruling that Stephens Media's failure to provide these documents or a log has waived the privilege.

With respect to SI Content Monitor, did the company only agree to produce the Operating Agreement? If so, we will need to serve a subpoena. Again, please provide us with the name of SI Content Monitor's counsel.

Regards,  
Jennifer

-----Original Message-----

From: Colby Williams [mailto:jcw@campbellandwilliams.com]  
Sent: Tuesday, March 22, 2011 11:49 AM  
To: Jennifer Johnson  
Cc: Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.; shawn@manganolaw.com  
Subject: RE: Righthaven v. DU

Jennifer,

We have now had the opportunity to review Mr. Hinueber's documents. We maintain our position that they are not "otherwise discoverable" based on the objections previously set forth in our responses to Defendants' discovery requests and, respectfully, do not believe we are obligated to create a privilege log for them at this time under FRCP 26(b)(5). With respect to SI Content Monitor, I received a copy of Righthaven's Operating Agreement yesterday. We are in the process of bates stamping the document and supplementing our discovery requests with the goal of producing it to you later today or tomorrow at the latest.

Regards,  
Colby

-----Original Message-----

From: Jennifer Johnson [mailto:jjjohnson@fenwick.com]  
Sent: Monday, March 21, 2011 5:28 PM  
To: Colby Williams  
Cc: Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.; shawn@manganolaw.com  
Subject: RE: Righthaven v. DU

Colby,

We did not hear from you again on Friday, as promised. Please let us know the status of Mark Hinueber's documents. Additionally, if we don't hear from you regarding SI Content Monitor's willingness to produce documents by tomorrow (3/22), we will serve a subpoena on SI Content Monitor. Please provide us promptly with the name of SI Content Monitor's counsel.

Regards,  
Jennifer

-----Original Message-----

From: Colby Williams [mailto:jcw@campbellandwilliams.com]  
Sent: Thursday, March 17, 2011 3:53 PM  
To: Jennifer Johnson  
Cc: Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.; shawn@manganolaw.com  
Subject: RE: Righthaven v. DU

Jennifer,

I have now had a chance to come up for air after the significant hearings we had in another matter on Tuesday. New developments in the same matter kept me tied up yesterday and this morning as well. In the event defendants have any question about the existence and time consuming nature of the matter about which I speak, you may read about it at the following link to an article authored by Steve Green of the Las Vegas Sun (who you are no doubt familiar with given his extensive coverage of the various Righthaven lawsuits):

<http://www.lasvegassun.com/news/2011/mar/17/fired-las-vegas-sands-executive-hits-sheldon-adels/>

Turning to our piece of litigation, Mark Hinueber has delivered a set of documents to me which appear to be his communications regarding Righthaven. I have not yet had a chance to go through them but will begin doing so today. I have not heard back from SI Content Monitor or its counsel regarding the request for documents we sent it last week. I will follow up on this as well. With respect to your inquiry about serving a subpoena on SI Content Monitor, you are, of course, free to do so. I am, however, trying to obviate the need for you to engage in this process, but need to determine the company's (i.e., SI Content Monitor's) position on the issue before I can tell you affirmatively whether we will be able to obtain any documents without the need for a subpoena.

I will follow up with you tomorrow when I have more information.

Regards,  
Colby

-----Original Message-----

From: Jennifer Johnson [mailto:jjjohnson@fenwick.com]  
Sent: Friday, March 11, 2011 1:37 PM  
To: Colby Williams  
Cc: Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.; shawn@manganolaw.com  
Subject: RE: Righthaven v. DU

Colby,

We find it surprising that Stephens Media claims it does not have possession of or any access to the Operating Agreement, given that the Operating Agreement was part of the integrated transaction that also included the Strategic Alliance Agreement. We are also perplexed by the idea that only SI Content Monitor has the communications we seek relating to the SAA, since it is Stephens Media that has the rights to approve, disapprove, decline and revert under the SAA. To the extent that SI Content Monitor performed any tasks in that regard, it would be acting as Stephens Media's agent, and it is hard to fathom that Stephens Media could not obtain those documents if it requested them.

Nevertheless, in light of your contention that SI Content Monitor LLC is a separate entity from Stephens Media, we are prepared to serve a subpoena if necessary so that the issue of whether Stephens Media has control over SI Content Monitor and its documents disappears.

Please provide us promptly with the name of SI Content Monitor's counsel so we can contact him or her directly. We hope that you are able to obtain all documents from SI Content Monitor and provide them to us without the need to enforce the subpoena, especially in light of your complaint that defense counsel is driving up litigation costs. To this end, please let us know as soon as possible if you are going to produce all of SI Content Monitor's responsive documents.

We also look forward to hearing from you mid next week regarding documents from Mr. Hinueber. Please understand, however, that while we have identified below the documents that we would assume exist, we do not know all the documents that Stephens Media has, and Mr. Hinueber and Stephens Media are obligated to search for and produce all responsive documents. Finally, given the ongoing failure timely to produce a privilege log, we reserve all rights in that regard as well.

Regards,  
Jennifer

-----Original Message-----

From: Colby Williams [mailto:jcw@campbellandwilliams.com]  
Sent: Wednesday, March 09, 2011 6:30 PM  
To: Jennifer Johnson  
Cc: Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.; shawn@manganolaw.com  
Subject: FW: Righthaven v. DU

Jennifer,

Following up on the e-mails below, I was able to discuss the items raised therein with Stephens Media's general counsel today. The additional documents you identify in your e-mail connected to the SSA are not in the possession or custody of Stephens Media. We believe they are in the possession of SI Content Monitor, LLC, an Arkansas limited liability company. SI Content Monitor is a separate company from Stephens Media with its own counsel. Notwithstanding the foregoing, and without in any way conceding that Stephens Media has control over the subject documents, our firm will submit a request to counsel for SI Content Monitor asking it to search for any potentially responsive documents it may have in its possession and whether it will provide copies to us. Depending on the response from SI Content Monitor, we will then determine whether there will be any supplemental production from Stephens Media as it relates to these items. Meanwhile, we reserve all of our prior objections and positions.

Next, Mr. Hinueber has advised that he expects to complete by Friday his search for any communications Stephens Media may have had in the timeframe and on the subject matters you identified below. That is not to say that we agree these communications, if any, are subject to production or inclusion on a privilege log given the previous objections we've asserted. I will let you know where we stand once I get the documents from Stephens. On this point, please be advised that I have two very significant motions being heard on March 15 in an unrelated matter that will require the bulk of my attention until that time. Thus, I will have limited availability to address matters in this case until mid-next week.

Finally, I wanted to clarify a point raised in your e-mail regarding the licensing agreements we produced being located in Arkansas. While it is true that I opined during our telephonic meet and confer that certain of the documents DU was requesting may be located in Arkansas, it turned out that I was in error in that regard. The licensing agreements were, in fact, located in Las Vegas.

Regards,  
Colby

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-----Original Message-----

From: Colby Williams  
Sent: Wednesday, March 02, 2011 7:32 PM  
To: 'jjjohnson@fenwick.com'  
Cc: 'kurt@eff.org'; 'LPulgram@Fenwick.com'; 'cwebb@fenwick.com'; 'bowers@lawyer.com'; 'shawn@manganolaw.com'  
Subject: Re: Righthaven v. DU

Jennifer,

Thank you for your email and your clarification on the scope of the privilege log.

As I have previously advised in connection with the depositions Defendants originally set of our client reps, I am out of town the remainder of this week. Nevertheless, I have spoken with Stephens GC about your latest communication. Without commenting on what you may have "expected to receive," I can tell you that Stephens has no documents relating to the News Article such as a Searching Decision, a Risk Conclusion, etc. The only document in this regard is the Assignment, which you have.

Similarly, and without in any way agreeing that the other documents you've identified are reasonably calculated to lead to the discovery of admissible evidence (or, in some cases, even exist), I have asked Stephens to see whether it has any responsive documents. My preliminary understanding is that these items - again, to the extent they exist - would be in the possession of the separate company, SI Content Monitor. I should know more on this by Monday. Meanwhile, of course, we reserve all of our previous objection and positions, including the application of the attorney client privilege where appropriate.

Regards,  
Colby

Sent from my Verizon Wireless BlackBerry

----- Original Message -----

From: Jennifer Johnson <jjjohnson@fenwick.com>  
To: Colby Williams  
Cc: Kurt Opsahl <kurt@eff.org>; Laurence Pulgram <LPulgram@Fenwick.com>; Clifford Webb <cwebb@fenwick.com>; Chad A. Bowers, Esq. <bowers@lawyer.com>; shawn@manganolaw.com <shawn@manganolaw.com>  
Sent: Tue Mar 01 15:33:49 2011  
Subject: RE: Righthaven v. DU

Colby,

Thank you for the supplemental responses. We are still reviewing them. As an initial matter, there are several documents that we expected to receive in this production that were not included, including for example:

- the Operating Agreement referred to in the Strategic Alliance Agreement (SAA) and the other documents reflecting the integrated transaction for creation of SI Content Monitor and operations of Righthaven
- documents relating to the formation of Righthaven beyond the ultimate SAA (emails, drafts, discussions of structure, etc.)
- documents relating to the various elections and notices required by the SAA to be made by Stephens Media or Righthaven relating to the News Article, including, e.g., the Searching Decision, the Material Risk Conclusion, The Remediation Option Notice, the Assignment (documents apart from the form already supplied)
- other documents showing the notification of search results and any communication about them that resulted in the actual decision to and act of assignment

You stated that Stephens Media intends to produce documents on a rolling basis, but based on our conversation, this was to be for the documents (e.g. license agreement with Lexis) located in Arkansas that would take longer for Stephens Media to receive and review before producing. It appears that some of the Arkansas documents were included in your production, which we appreciate. Please let us know when we can expect to receive the above categories of documents, which should be available directly from Stephens Media and produced immediately.

With respect to the privilege log, we agree that, at least at this point, the parties need not log any communications for the post-complaint time period. We understand that the communications exchanged between you and Righthaven's counsel may have primarily occurred after the filing of the complaint; however, the privilege log must contain any other privileged communications in Stephens Media's possession prior to your retention, including but not limited to any documents claimed to be privileged relating to communications about the formation of Righthaven, the News Article at issue, and any and all communications responsive to the other discovery requests. Under the Court's scheduling order, these logs were ordered to be produced by February 8, i.e. 21 days after your objections/responses and documents were due (January 18) [Dkt. 54]. If these logs are not produced immediately, you will leave us with no option but to consider the privilege waived.

Regards,

Jennifer

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From: Colby Williams [<mailto:jcw@campbellandwilliams.com>]  
Sent: Monday, February 28, 2011 5:15 PM  
To: Jennifer Johnson; [shawn@manganolaw.com](mailto:shawn@manganolaw.com)  
Cc: Kurt Opsahl; Laurence Pulgram; Clifford Webb; Chad A. Bowers, Esq.  
Subject: RE: Righthaven v. DU

Jennifer,

Per our previous discussions, attached is a copy of Stephens Media's First Supplemental Responses to DU's First Set of RFPs. A copy has also been sent by regular mail. As part of the production, we have included a non-privileged exchange of communications between Mark Hinueber and Joseph Chu at Righthaven regarding a scheduling matter that occurred shortly after DU filed its counterclaim in this action. (The e-mail is redacted to the extent Mark Hinueber forwarded it to our office in an attorney-client communication, which is reflected on the privilege log included herewith). Once we were retained as counsel after the filing of the counterclaim, there have been additional communications between Mr. Hinueber and our firm as well as between this firm and Righthaven's counsel. As I advised you, it is our position that we should not have to log those communications on a privilege log given that, among other reasons, they are continuing in nature and will impose an undue burden on the parties to continually update the privilege log every time they speak with their respective counsel in written form (or, as the case may be, exchange communications protected by the common interest privilege). You were going to check with your co-counsel to determine

whether you agreed that the parties did not need to include such communications on their privilege logs. Let me know your position on this issue at your convenience.

Regards,

Colby

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