

EXHIBIT G

FENWICK & WEST LLP

555 CALIFORNIA STREET, 12TH FLOOR SAN FRANCISCO, CA 94104
TEL 415.875.2300 FAX 415.281.1350 WWW.FENWICK.COM

February 10, 2011

JENNIFER J. JOHNSON

EMAIL J.JOHNSON@FENWICK.COM
DIRECT DIAL (415) 875-2391

VIA EMAIL

Shawn Mangano
shawn@manganolaw.com

Re: *Righthaven v. Democratic Underground*;
USDC, District of Nevada Case No.: 2:10 CIV 01356-RLH-GWF

Dear Mr. Mangano:

This letter is to summarize our meet and confer discussion from our call earlier today.

1. Stay of discovery and extension of discovery cutoff
 - a. We discussed your proposal to submit a stay of discovery, and we asked you to draft a proposed stay and submit it to us for our review.
 - b. We also expressed our position that we need to continue going forward with discovery until the court enters an order modifying the current schedule.
2. Finalize Protective Order
 - a. We have sent you the finalized protective order. You agreed to take a look at it today and file.
3. Deposition Dates
 - a. We asked if you had a block of 3 days in March available for the 3 depositions for which Democratic Underground (“DU”) has served notices. We told you that Stephens Media (“SM”) has agreed to try to get back to us this week regarding dates that work for SM. You agreed to do the same.
4. Discovery Requests
 - a. RFAs
 - i. Definition objections:

1. We agreed to limit the following definitions, provided Righthaven (“RH”) agrees to withdraw its objections to these definitions:
 - RIGHTHAVEN means Plaintiff and Counterdefendant Righthaven LLC, including any PERSONS acting on its behalf.
 - STEPHENS MEDIA means Counterdefendant Stephens Media LLC, including the *Las Vegas Review-Journal*, and including any PERSONS acting on its behalf.
 - LVRJ means the Las Vegas Review Journal newspaper, and any PERSONS acting on its behalf.
 - YOU and YOUR means Righthaven LLC (i.e. not those acting on its behalf)
 - PERSONS has the same definition as before without the phrase “without limitation”: PERSONS includes individuals, corporations, partnerships, limited partnerships, unincorporated associations, and all other governmental and nongovernmental entities.
- ii. Objection – calling for legal conclusion: We noted that Rule 36(a)(1)(A) expressly permits RFAs relating to the application of law to fact, and our position is that the requests to which you objected on the basis of calling for legal conclusion are actually application of law to fact. You agreed to revisit your objections provided we send you a list of the requests to which we refer. The list is as follows: RFAs 3, 4, 6, 9, 17-23, 34, 42-43, 51, 77. You agreed to serve supplemental responses in 10 days.
- iii. Relevancy objections: We noted that you made several objections based on relevancy. We noted that each of the requests objected to is relevant to DU’s affirmative defenses, as well as allegations of the existence of an agency relationship between SM and RH.
 1. You asked that we send you a list of those requests, and you agreed to reevaluate your objections to relevancy. Request numbers 30-31, 39-40, 55-56, 58, and 60-82 are relevant to the existence of an agency relationship between RH and SM and are likely to lead to

admissible evidence related to Defendants' affirmative defenses, including unclean hands; sham license; barratry, champerty, and maintenance; and copyright misuse. In addition to being relevant to the preceding, request numbers 41 and 62 are relevant to RH's failure to mitigate damages.

2. Request numbers 47, 48, 50, and 81-82 are likely to lead to admissible evidence relating to Defendants' affirmative defenses, including fair use, and lack of damages.
 3. Request number 54 is likely to lead to admissible evidence relating to Defendants' affirmative defenses, including fair use; unclean hands; and barratry, champerty, and maintenance.
 4. We note that "[u]nder the Federal Rules, the scope of discovery is broad[,] and discovery should be allowed unless the information sought has no conceivable bearing on the case." *Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528 (D. Nev. 1997). Moreover, Righthaven carries a "heavy burden" of showing why discovery should not be allowed. *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). "The party who resists discovery has the burden to show that discovery should not be allowed, and has the burden of clarifying, explaining, and supporting its objections." *DIRECT TV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002) (citing *Blankenship*). Thus, while DU is providing further detail on why these requests are relevant, (1) DU has no obligation to make an "offer of proof," and (2) our good faith efforts to resolve this dispute should not be construed as limiting RH's burden.
- iv. Vague and ambiguous phrase: We pointed out that nearly all of your requests contain an objection to at least one "vague and ambiguous" term in the request. We stated that given the volume and simplicity of some of the terms (e.g. "at no cost"), we weren't sure it would be productive to go through each and every request to which you had this objection. We agree that each word and phrase shall take its ordinary, dictionary definition. You agreed to identify why you have an issue with the phraseology in the

requests, and you will attempt to construe what the request is asking for and provide supplemental responses in 10 days.

1. We also note that using standard dictionary definitions of these words, the request are not so ambiguous that Righthaven cannot, in good faith, “frame an intelligent reply.” *Marchand v. Mercy Med. Ctr.*, 22 F.3d 933, 938 (9th Cir. 1994). To comply with its obligations under the rules, Righthaven can and should propose good faith alternative wording if it genuinely needs clarity on the meaning of the term. *Id.*; see also *Gracenote v. Musicmatch*, 2003 U.S. Dist. LEXIS 26015 (N.D. Cal Oct. 14, 2003); *S.A. Healy Co. v. United States*, 37 Fed.Cl. 204, 205-06 (1997) (“If defendant understood the term to have some other possible meaning, it should have specified that meaning and admitted or denied each request based on both meanings”).
- v. RFA 59: We pointed out that the request should state “Mark” Hinueber, not “Mike.” You agreed to answer this request in your supplemental responses.

b. Rogs

- i. DU is withdrawing Rog 13.
- ii. Compound objection:
 1. We pointed out that a single question asking for several bits of information relating to the same topic count as one interrogatory (i.e. amount of each type of revenue received). Furthermore, subparts count as one interrogatory if they are logically or factually subsumed within and necessarily related to the primary question. A question that gives numerous examples of potential answers (e.g. Rog 3) is not a compound question. The Advisory Committee notes explain that "a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication."

2. You agreed to submit supplemental responses to the Rogs in 10 days. You further agreed to take another look at the case law and reevaluate your compound objections.

c. RFPs

- i. Protective order – you agreed that for documents to which RH objected on the basis of no protective order, you would be producing responsive documents. You agreed to produce such documents 7-10 days after entry of the protective order.
 1. We noted that we still haven't received non-confidential documents. You stated that you will have non-confidential documents to us in 15 days, i.e. by Feb, 25.
- ii. Definition objections: We agreed to the same definitions as modified for the RFAs.
 1. Objection to "Documents": We asked what types of documents you are withholding because you think they are outside of the definition permitted by law. We further noted that our definition of "documents" explicitly states "to the extent permitted by law." You agree to withdraw your objection to the definition of "Documents."
- iii. Time Period Not Limited:
 1. We pointed out that RH was incorporated in early 2010, so collection of documents shouldn't be overly burdensome. We agreed to limit those requests to which RH objected to the lack of time limitation to the time period "From January 1, 2010 to the present."
- iv. We asked whether RH intends to produce additional documents where it has identified documents attached to the complaint as responsive or whether you are refusing to produce all other documents in these categories. We asked that if you were agreeing to produce additional documents, you should state so in your supplemental responses. You stated that you would address each of these requests to the extent there are

other responsive documents. You asked that we provide you a list of these requests. The list is as follows: RFPs 1, 3-5, 8-12, 31-32, 59.

- v. Relevancy objections: We noted that you made several objections based on relevancy. We noted that each of the requests objected to is relevant to DU's affirmative defenses, as well as allegations of the existence of an agency relationship between SM and RH.
1. You asked that we send you a list of those requests, and you agreed to reevaluate your objections to relevancy.
 2. Request numbers 17-18 are likely to lead to admissible evidence related to Defendants' affirmative defenses, including unclean hands; barratry, champerty, and maintenance; and copyright misuse.
 3. Request numbers 25 and 30 are likely to lead to admissible evidence related to Defendants' affirmative defenses, including fair use, and lack of damages.
 4. Request numbers 33-35, 38-46, and 58 are relevant to the existence of an agency relationship between RH and SM and are likely to lead to admissible evidence related to Defendants' affirmative defenses, including unclean hands; sham license; barratry, champerty, and maintenance; and copyright misuse. In addition to being relevant to the preceding, request number 46 is relevant to RH's failure to mitigate damages.
 5. Request numbers 36-37 and 48-55 are likely to lead to admissible evidence related to Defendants' affirmative defenses, including unclean hands; sham license; barratry, champerty, and maintenance; and copyright misuse. Additionally, request numbers 48-55 and 60 are likely to lead to admissible evidence relating to RH's failure to mitigate damages and request numbers 50-51 are likely to lead to admissible evidence relating to fair use.
 6. Request numbers 56-57 are relevant to the existence of an agency relationship between RH and SM and are likely to lead to admissible evidence related to Defendants' affirmative defenses,

including unclean hands; sham license; barratry, champerty, and maintenance; copyright misuse; failure to mitigate; and fair use. Further, these requests are likely to lead to admissible evidence showing a lack of damages.

7. Request numbers 61-62 are relevant to the existence of an agency relationship between RH and SM and are likely to lead to admissible evidence related to Defendants' affirmative defenses, including unclean hands; sham license; barratry, champerty, and maintenance; and copyright misuse. Further, these requests are likely to lead to admissible evidence showing a lack of damages to RH and fair use.
8. We refer you to the case law we provided above regarding your relevancy objections to the RFAs.

vi. Privilege objection:

1. We pointed out that RH objects on privilege grounds to a number of requests obviously outside the scope of any privilege.
 - a. RFP 20 –articles of incorporation – you agreed to withdraw your privilege objection
 - b. RFPs 29, 30 – you will reevaluate your claim of privilege
 - c. RFPs 38-44 – communications with third-parties –you stated that you are potentially claiming common interest privilege with respect to these requests. You agreed to provide any non-privileged responsive documents and provide a log of privileged documents.

- vii. We noted that the privilege log was due on 2/8 pursuant to the Joint Discovery Plan and Scheduling Order [Dkt 54]. You stated that you will put a log together for all responsive privileged documents and will have this to us in 15 days.

You agreed to send us supplemental discovery responses in 10 days, i.e. by Feb. 20 (Feb. 22 works, given the holiday). You agreed to have us a privilege log and non-confidential

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documents in 15 days, i.e. by Feb. 25. You agreed to produce confidential documents 7-10 days after entry of the protective order.

We look forward to hearing from you later this week regarding dates you are available for depositions.

Regards,

FENWICK & WEST LLP

A handwritten signature in blue ink that reads "Jennifer J. Johnson". The signature is written in a cursive style with a clear, legible font.

Jennifer J. Johnson