

Exhibit B

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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,
27 and STEPHENS MEDIA LLC, a Nevada limited-liability
company,
28 Counterdefendants.

Case No. 10-01356-RLH (GWF)

**DEFENDANTS'
SUPPLEMENTAL
MEMORANDUM
ADDRESSING RECENTLY
PRODUCED EVIDENCE
RELATING TO PENDING
MOTIONS**

1 **INTRODUCTION**

2 Defendant / Counterclaimant Democratic Underground LLC and Defendant David Allen
3 (collectively “Democratic Underground” or “Defendants”), respectfully submit this Supplemental
4 Memorandum to bring to the Court’s attention key evidence just produced in discovery that is
5 highly relevant to the three currently pending motions. Specifically, on February 28, 2011,
6 Cross-Defendant Stephens Media, LLC produced, belatedly, a copy of the Strategic Alliance
7 Agreement between itself and Righthaven, LLC.¹ See Declaration of Laurence Pulgram
8 (“Pulgram Decl.”), Exhibit A (hereafter, the “Agreement”). This Agreement, never before
9 revealed to any Court in this District, on its face purports to be the master agreement that governs
10 *all the assignments Righthaven has sued upon in this Court.*

11 The terms of the Agreement provide substantial evidence that: (1) Righthaven has been
12 conveyed no rights in the work at issue other than the right to sue for infringement, a fact that
13 renders the assignment to Righthaven invalid; (2) Stephens Media is the real party in interest,
14 engaging Righthaven as its agent to prosecute this action; (3) Stephens Media retains the right to
15 sue Democratic Underground under the Agreement, thereby giving rise to a live and genuine
16 controversy with Stephens Media; and (4) Righthaven has been granted no rights to exploit the
17 work in question, and thus, for the purpose of fair use analysis, can suffer no harm from the use of
18 the Excerpt by Democratic Underground.

19 Defendants request that the Court consider this Agreement as a further basis upon which
20 to deny the two Motions to Dismiss filed by Righthaven and Stevens Media, and to grant
21 Defendants’ Motion for Summary Judgment on the issue of fair use. Given that this material was
22 only recently and belatedly produced, Defendants could not have addressed it in any of the prior
23 briefing. See, e.g., *United States v. Maris*, 2011 WL 468554, at *5 n.5 (D. Nev. Feb. 4, 2011)
24 (granting leave to file supplemental materials even after the hearing on a motion for summary
25 judgment); *Mitchel v. Holder*, 2010 WL 816761, at *1 n.1 (N.D. Cal. Mar. 9, 2010) (granting

26 _____
27 ¹ Stephens Media’s responses to Defendants’ First Requests For Production of Documents were due on January 18,
28 2011, ten days before Defendants’ Reply in Support of their Cross-Motion. By failing to produce this evidence until
February 28, Stephens Media precluded its earlier submission. For its part, Righthaven has still not produced this, or
any other, document.

1 leave to file supplemental brief in support of motion for summary judgment addressing newly
2 discovered evidence); *Lumsden v. United States*, 2010 WL 2232946, at *1 (E.D. N.C. June 3,
3 2010) (granting leave to submit additional newly discovered evidence in support of motion for
4 summary judgment).

5 In particular, Defendants submit that the Agreement demonstrates a compelling need for
6 the Court to adjudicate the issues raised by the Counterclaim as to the sham and unenforceable
7 nature of the assignments to Righthaven, as that issue may affect and dispose of hundreds of cases
8 now improperly pending in this District.

9 THE STRATEGIC ALLIANCE AGREEMENT

10 In Support of its Motion to Dismiss, Stephens Media presented the Court with a purported
11 “Copyright Assignment,” in the same form Righthaven has repeatedly presented in this District as
12 purportedly creating its right to sue. *See* Stephens Media’s Motion to Dismiss or Strike (“Dkt.
13 38”), Exh. 1. Stephens Media relied on this Copyright Assignment as the sole evidence from
14 which it claimed that: (1) “Righthaven, not Stephens Media, holds the exclusive right to seek
15 legal redress” for infringement (Dkt. 38. at 6); (2) “Stephens Media *would be legally barred*
16 *from [suing]*” Democratic Underground, even if it wanted to (*id* at 7); and (3) there was
17 “absolutely no evidence” to support Defendant’s assertion that the assignment was a sham or that
18 Righthaven is acting as Stephens Media’s agent. *Id.*

19 In response, Defendants pointed out that the “Copyright Assignment” did not identify any
20 actual rights under the Copyright Act assigned to Righthaven. *See* Defendants’ Memorandum in
21 Opposition to Stephens Media LLC’s Motion to Dismiss and Joinder (“Dkt. 46”) at 6. Rather
22 the Assignment circularly defined the rights assigned to include “all copyrights requisite to have
23 Righthaven recognized as the copyright owner of the Work for purpose of Righthaven being able
24 to claim ownership.” Dkt. 38, Exh. 1. Defendants also noted that, by its terms, the “Copyright
25 Assignment” provided that it was subject to an undefined “right of reversion” to Stephens Media
26 and also referred to unidentified “monetary commitments and commitment to services provided”
27 which had not been disclosed to the Court. *See* Dkt. 46 at 5-6. Defendants advised the Court that
28

1 “when produced in discovery, [additional documents would] reveal the actual flow of obligations,
2 control, and funding between Righthaven and Stephens Media.” *Id.*

3 The Strategic Alliance Agreement, dated January 18, 2010, now supplies much of the
4 missing information. This Agreement provides for a 50/50 split of lawsuit recoveries between
5 Stephens Media and Righthaven (less “Costs”). *See* Agreement, Section 5.² The Agreement
6 further reveals a naked assignment to Righthaven of rights to sue for infringement, without
7 conveying any exclusive rights under Section 106 of the Copyright Act to exploit Stephens
8 Media’s work. Section 7.2 expressly *denies* Righthaven any rights other than to pursue
9 infringement actions:

10 7.2 Despite any such Copyright Assignment, Stephens Media
11 shall retain (and is hereby granted by Righthaven) an exclusive
12 license to Exploit the Stephens Media Assigned Copyrights for any
13 lawful purpose whatsoever and **Righthaven shall have no right or
14 license to Exploit or participate in the receipt of royalties from
15 the Exploitation of the Stephens Media Assigned Copyrights
16 other than the right to proceeds in association with a Recovery.**
17 To the extent that *Righthaven's* maintenance of rights to pursue
18 infringers of the Stephens Media Assigned Copyrights in any
19 manner would be deemed to diminish Stephens Media's right to
20 Exploit the Stephens Media Assigned Copyrights, *Righthaven*
21 hereby grants an exclusive license to Stephens Media to the greatest
22 extent permitted by law so that Stephens Media shall have
23 unfettered and exclusive ability to Exploit the Stephens Media
24 Assigned Copyrights.

25 Section 7.2. (bold emphasis added); *see also* Schedule 1 – Definitions (defining “Exploit”). Thus,
26 although the “Copyright Assignment” characterized itself as a transfer of “all copyrights *requisite*
27 to have Righthaven recognized as the copyright owner of the Work for purposes of Righthaven
28 being able to claim ownership as well as the right to seek redress for past, present and further
infringements of the copyright,” (Dkt. 38, Exh. 1 (emphasis added)), the Strategic Alliance
Agreement’s specific terms provide that “Righthaven shall have no right or license to Exploit ...
the Stephens Media Assigned Copyrights ” other than to share the proceeds of a Recovery in
litigation.³ Section 7.2. Indeed, the Agreement specifically says that Stephens Media “shall

27 ² All citations to “Sections” will refer to the Agreement, Pulgram Declaration Exhibit A.

28 ³ “Recovery” is defined as “any and all Sums received, transferred to, assigned, conveyed, paid or otherwise obtained
by Stephens Media and/or Righthaven relating to, arising or resulting from (whether directly or indirectly) a
DEFENDANTS.’ SUPPL. MEMO ADDRESSING RECENTLY
PRODUCED EVIDENCE RELATING TO PENDING MOTIONS

1 *retain*” these rights, showing that no rights were transferred in the first place. *Id.* (emphasis
2 added).

3 In operation, the Agreement also makes clear Righthaven’s role as Stephens Media’s
4 agent. Stephens Media may assign copyrights of its choice to Righthaven to search for
5 infringement. Sections 3.1; 3.2. Once a copyright is purportedly “assigned” to Righthaven,
6 Stephens Media “engages” Righthaven on an exclusive basis to perform searching for copyright
7 infringement and pursuit of infringement actions. Section 3.1 - 3.3. Should Righthaven
8 ultimately choose not to serve as agent to commence an infringement action on a particular
9 assignment, “then Righthaven shall reassign the Assigned Copyright to Stephens Media.”
10 Section 3.3. Should Righthaven desire to sue, however, Stephens Media still controls whether
11 suit will be brought through its right to send a “Declination Notice,” upon receipt of which
12 “Righthaven shall not take any Infringement Action with respect to the particular putative
13 infringer set forth in any Declination Notice.” Section 3.3. The bases upon which Stephens
14 Media may stop a suit – even after it has “assigned” the purported right to sue – include whenever
15 the person targeted “is a present or likely future valued business relationship of Stephens Media
16 or otherwise would . . . result in an adverse result to Stephens Media.” *Id.*

17 Even after suit is brought, Stephens Media retains an absolute right of reversion, subject
18 only to later reimbursement of Righthaven’s investment in the litigation. Section 8, entitled
19 “**Stephens Media’s Right of Reversion**” states: “Stephens Media shall have the right at any time
20 to terminate, in good faith, any Copyright Assignment (the ‘Assignment Termination’) and enjoy
21 a right to complete reversion to the ownership of any copyright that is the subject of a Copyright
22 Assignment” Section 8.

23 The right of reversion specifically contemplates that Stephens Media may, in such
24 instances, continue to prosecute any litigation itself, providing that Stephens Media must, after
25 such reversion, pay Righthaven’s costs associated with the “early termination” of the assignment
26 “[w]ithin ten (10) days of receipt of any Recovery by Stephens Media” for the alleged

27 Disposition, including, without limitation, all Sums paid by way of damages, costs and attorneys fees with respect to
28 or arising from an Infringement Action.” *See* Schedule 1 – Definitions.

1 infringement. Section 8.

2 Moreover, the Strategic Alliance Agreement also suggests that Stephens Media continues
3 to exert direct control over Righthaven’s internal operations. The Agreement recites that it is part
4 of an “integrated transaction” that requires that Righthaven proceed under a separate Operating
5 Agreement that has been requested by Defendants, though not yet produced. Section 2; Pulgram
6 Decl., ¶ 10. The Strategic Alliance Agreement recites that, under the Operating Agreement, one
7 of the owners of Righthaven must be a “Stephens Media Affiliate” called SI Content Monitor,
8 LLC, which “is presently and shall throughout the Term be Controlled by common owners [with
9 Stephens Media] with no material variation in said ownership.” Section 2(a). This further
10 suggests that Stephens Media, through the Operating Agreement can also exert direct control over
11 Righthaven – though the precise facts await further document production.

12 DISCUSSION

13 **I. THE AGREEMENT SUBSTANTIATES DEMOCRATIC UNDERGROUND’S** 14 **STANDING TO SUE STEPHENS MEDIA AS REAL PARTY IN INTEREST.**

15 Stephens Media has argued that it is an improper party because, “[c]omplete ownership of
16 the work being sued upon has been transferred to Righthaven without any ambiguity” and
17 because “Righthaven, not Stephens Media, is . . . the only party vested with the right to sue”
18 Stephens Media’s Reply in Support of Motion to Dismiss or Strike (“Dkt. 56”) at 4, 10. The
19 Strategic Alliance Agreement eviscerates this argument and exposes the plain falsity of these
20 assertions. The Agreement shows not only (1) that Stephens Media controlled the choice to
21 “assign” rights in this particular News Article (Section 3.1), and then (2) controlled whether the
22 News Article would actually be sued upon (Section 3.3), but also, (3) that Stephens Media, to this
23 day, has an absolute right to reversion, under which it may continue the lawsuit as it wishes in its
24 own name (Section 8). Indeed, Stephens Media even retains the ability to encumber the asset it
25 has purportedly assigned with a “security interest, pledge, hypothecation, lien or other
26 encumbrance” – behavior consistent only with ownership. *See* Section 9.3 and Schedule 1 -
27 Definitions.

28 Likewise, the Agreement destroys Stephens Media’s assertion that there is nothing but

1 “fantasy” behind Defendants assertion that Righthaven acts as Stephens Media’s agent. Dkt. 56
2 at 8. The Agreement describes Stephens Media’s “engagement” of Righthaven to bring suit;
3 gives Stephens Media the ability to decide, even after “assignment,” whether to sue; gives
4 Stephens Media the proceeds after Righthaven receives a 50% commission;⁴ and allows Stephens
5 Media to terminate the agency at any time by exercising its reversion rights. Sections 3.3, 7, 8.
6 And the Agreement also describes an Operating Agreement that *requires* a Stephens Media
7 Affiliate with common ownership to participate in operating Righthaven. Section 2.

8 In short, the Agreement adds substantial additional evidence to the already extensive
9 factual allegations showing a live case and controversy against Stephens Media.

10 **II. THE AGREEMENT SUBSTANTIATES THE NEED TO RESOLVE THE**
11 **COUNTERCLAIM’S ALLEGATIONS THAT THE ASSIGNMENT IS INVALID,**
12 **SHAM, AND UNENFORCEABLE.**

13 The Agreement also further undermines the arguments of both Stephens Media and
14 Righthaven that this Court need not decide the Counterclaim’s request for declaration of the
15 invalidity and unenforceability of the assignment. As Defendants have already argued, it is
16 *precisely* this sort of counterclaim, seeking resolution of the *validity* of the right assertedly
17 infringed, that the Supreme Court has held must survive a dismissal with prejudice of a claim for
18 infringement. Dkt. 46 at 13-14 (citing *Cardinal Chem. Co. v. Morton Int’l, Inc.*, 508 U.S. 83
19 (1993)). This newly-produced evidence underscores the importance of addressing that question
20 now.

21 On the question of validity, the Counterdefendants have argued that other rulings on
22 motions to dismiss Righthaven’s prior lawsuits supposedly “upheld the validity” of the form
23 “Copyright Assignment.” *See, e.g.*, Dkt. 56 at 4-5; and Righthaven’s Motion for Voluntary
24 Dismissal (“Dkt. 36”) at 20-21. But for each of those rulings (which came on motions to dismiss)
25 Righthaven had withheld from the Court the Strategic Alliance Agreement and its definition of
26 rights actually conveyed – thereby concealing that “Righthaven shall have no right or license to

27 ⁴ Defendants also note that the litigation proceeds due Stephens Media pursuant to this Agreement provide the
28 company with a direct, pecuniary interest in the outcome of this case, and therefore Stephens Media should have
been listed in Righthaven’s Certificate of Interested Parties. Dkt. 5.

1 Exploit . . . the Stephens Media Assigned Copyrights” other than to share with Stephens Media
2 the “Recovery” from litigation.⁵ Sections 5 and 7.2. As a result, this is the first case in which any
3 Court will have the information necessary to assess the validity of the assignment.

4 Rather than dismiss the Counterclaim as “unnecessary,” this Court will need to determine
5 whether the rights assigned under the Agreement comport with the settled requirement that “only
6 owners of an exclusive right in a copyright may sue” for infringement. *Silvers v. Sony Pictures*
7 *Entm’t, Inc.*, 402 F.3d 881, 884 (9th Cir. 2005). In *Silvers*, the *en banc* Ninth Circuit held that an
8 assigned “right to sue for an accrued claim for infringement is not [one of the] exclusive
9 right[s]” in copyright that can provide standing to sue. Such exclusive rights are limited to those
10 specified in Section 106 of the Copyright Act, such as the right to copy, distribute, perform, etc.
11 *See id.* at 884. Thus, in *Silvers*, the author of a work made for hire, who subsequently had been
12 granted by her employer (the copyright holder) “all right, title and interest in and to any claims
13 and causes of action against [specified infringers],” had no legal or beneficial interest in the
14 underlying copyright itself, and thus could not initiate suit, because none of the individual
15 exclusive rights under § 106 had been granted to her. *See id.* at 883. In support of its
16 Counterclaim, Democratic Underground asserts that the same rule applies here. The Agreement
17 expressly *denies* Righthaven *any* rights other than the right to sue on the copyright, with all rights
18 to exploit the copyright being retained by Stephens Media. *See* Section 7.2. Thus, Righthaven’s
19 claim has been baseless and Stephens Media has been the real party in interest from the outset.

20 The fact that the Agreement applies to *all* Righthaven assignments from Stephens Media,
21 not merely to this News Article, makes the Counterclaim all the more important. Now that the
22 Agreement’s terms are finally before the Court, this Court’s determination of the validity of
23 Righthaven’s assignment may effectively dispose of hundreds of Righthaven cases.

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25 ⁵ For example, in *Righthaven LLC v. Dr. Shezad Malik Law Firm P.C.*, (D. Nev.) 2:10-cv-0636-RLH-RJJ (cited in
26 RH’s motion (Dkt. 36) at 21), Righthaven incorrectly stated that “[i]n the present action, there is no division of
27 copyright ownership as was the case in *Silvers*; Righthaven is the owner of both the exclusive rights in and to the
28 Work and the owner of all accrued causes of action.” 2:10-cv-0636, Dkt. 11 at 13: 2-3 and Dkt. 13 at 12:24-26.
This is incorrect because Righthaven owns none of the exclusive rights specified in Section 106, all of which were
“retained” by Stephens Media.

1 **III. THE AGREEMENT SUBSTANTIATES THE OBJECTIVE**
2 **UNREASONABLENESS OF PLAINTIFF'S CLAIMS AND THE PROPRIETY OF**
3 **AN ATTORNEYS' FEE AWARD.**

4 Righthaven argued in its Motion that it should be allowed to voluntarily dismiss without
5 paying attorneys' fees because the "objective reasonableness" of its claims had purportedly been
6 validated by the courts' refusal to dismiss its prior claims for lack of standing. Dkt. 36. at 20-22.
7 As just explained, however, those prior rulings resulted from Righthaven's withholding of the
8 Agreement from the Court. With the Agreement now on record, it appears indisputable that
9 Righthaven's assignment of the cause of action is invalid under *Silvers*, rendering Righthaven's
claim objectively unreasonable.

10 **IV. THE AGREEMENT SUBSTANTIATES THE FACT THAT RIGHTHAVEN**
11 **FACES NO POSSIBLE MARKET HARM THROUGH DEFENDANTS' USE**

12 Finally, the Agreement further substantiates the impossibility of harm to Righthaven's
13 market for the work, as relevant to the fourth factor of the fair use analysis. Under the
14 Agreement, Righthaven is expressly prohibited from *any rights* to exploit the work – other than
15 the supposed right to sue for copyright infringement. Section 7.2. Thus, no use of the work
16 could have any possible impact on Righthaven (even if the use "should become widespread," *cf.*
17 *Sony Corp. of Am. v. Universal City Studios, Inc.*, 464 U.S. 417, 451 (1984)), because Righthaven
18 has no rights in the work – other than the illusory "right" to litigate the work for a share of the
19 recovery. *See generally* Defendants' Reply Memorandum in Support of Cross Motion for
20 Summary Judgment ("Dkt. 62") at 13-14 (discussing lack of market harm).

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CONCLUSION

For these reasons, Defendants respectfully request that the Court consider the Strategic Alliance Agreement in its adjudication of the three motions now pending before it.

Dated: March 4, 2011

FENWICK & WEST LLP

By: /s/ Laurence F. Pulgram
LAURENCE F. PULGRAM, ESQ

Attorneys for Defendant and Counterclaimant
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Defendant DAVID ALLEN

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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)

**DECLARATION OF
LAURENCE F. PULGRAM
IN SUPPORT OF
DEFENDANTS'
SUPPLEMENTAL
MEMORANDUM
ADDRESSING RECENTLY
PRODUCED EVIDENCE
RELATING TO PENDING
MOTIONS**

1 I, Laurence F. Pulgram, declare as follows:

2 1. I am an attorney licensed to practice law in the state of California and a partner at
3 Fenwick & West, LLP. I serve as one of the counsel for Defendant / Cross-Complainant
4 Democratic Underground, LLC and Defendant David Allen (hereinafter “Defendants”) in this
5 matter.

6 2. I have personal knowledge of the facts stated in this declaration, and if called upon
7 to do so, could and would competently testify thereto. I make this declaration in support of
8 Defendants’ Supplemental Memorandum Addressing Recently Produced Evidence Relating to
9 Pending Motions.

10 3. On December 17, 2010, Defendants served a first set of Requests for Production of
11 Documents on Plaintiff / Counterdefendant Righthaven, LLC and Counterdefendant Stephens
12 Media, LLC. Responses by both parties were due on January 18, 2011. The due date was ten
13 days before Defendants’ due date for their Reply in Support of the Motion for Summary
14 Judgment was to be filed.

15 4. Amongst the Requests for Production made to Stephens Media were the following:
16 ▪ (No. 3) “ALL DOCUMENTS concerning any assignment of rights in the News
17 Article to Righthaven”;
18 ▪ (No. 8) “ALL DOCUMENTS that refer or relate to any ‘monetary
19 commitments’ referenced in the JULY 19, 2010 ASSIGNMENT”;
20 ▪ (No. 10) “ALL DOCUMENTS that refer or relate to any ‘right of reversion’
21 referenced in the JULY 19, 2010 ASSIGNMENT”;
22 ▪ (No. 11) “ALL DOCUMENTS that refer or relate to any ‘good and valuable
23 consideration’ referenced in the JULY 19, 2010 ASSIGNMENT”;
24 ▪ (No. 56) “ALL contracts, agreements, investment DOCUMENTS, or other
25 terms between YOU and Righthaven.”

26 5. On January 18, 2011, Stephens Media responded with objections to the Requests
27 for Production. Stephens Media produced no responsive documents.

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- 1 6. Amongst the Requests for Production made to Righthaven were the following:
- 2 ▪ (No. 3) “ALL DOCUMENTS concerning any potential or actual assignment of
- 3 rights in the NEWS ARTICLE to Righthaven”;
- 4 ▪ (No. 8) “ALL DOCUMENTS that refer or RELATE TO any ‘monetary
- 5 commitments’ referenced in the JULY 19, 2010 ASSIGNMENT”;
- 6 ▪ (No. 10) “ALL DOCUMENTS that refer or RELATE TO any ‘right of
- 7 reversion’ referenced in the JULY 19, 2010 ASSIGNMENT”;
- 8 ▪ (No. 11) “ALL DOCUMENTS that refer or RELATE TO any ‘good and
- 9 valuable consideration’ referenced in the JULY 19, 2010 ASSIGNMENT”;
- 10 ▪ (No. 45) “ALL contracts, agreements, investment DOCUMENTS, or other
- 11 terms between YOU and Stephens Media.

12 7. Righthaven, for its part, failed to respond or object to any of the Requests for

13 Production by the due date of January 18, 2011. When Righthaven did ultimately respond to the

14 Requests for Production, on January 24, 2011, it produced no responsive documents and has, to

15 this date, still produced no documents.

16 8. On February 28, 2011, after an extended meet and confer process, Stephens

17 Media made its first production of documents, totaling 94 pages, including a document Bates

18 numbered SM000078 – SM000094, a true and correct copy of which is attached hereto as Exhibit

19 A.

20 9. Defendants are submitting this document to the Court immediately to ensure that

21 the Court has access to it while considering the pending motions.

22 10. Although counsel for Defendants have requested to receive the additional

23 document referred to in Paragraph 2 of Exhibit A, it has not yet been provided by either

24 Righthaven or Stephens Media.

25 11. Stephens Media produced Exhibit A designated “Confidential Attorneys Eyes

26 Only” under the Stipulated Protective Order in this action. Dkt. 65. Defendants do not believe

27 that a filing of Exhibit A, or at least the entirety of Exhibit A, is appropriately withheld from

28 public view under the Stipulated Protective Order or governing law. Accordingly, pursuant to

1 Paragraph 19 of the Stipulated Protective Order, we have requested, in writing, that Stephens
2 Media and Righthaven agree within five days that Exhibit A may be filed not under seal, in whole
3 or in part. In the event that we are able to reach agreement with Stephens Media and Righthaven,
4 it is our intention to file a stipulation as to which portions of Exhibit A, if any, are to remain
5 under seal.

6 12. I declare under penalty of perjury under the laws of the United States that the
7 foregoing is true and correct. Executed on March 4, 2011, in San Francisco, California.

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/s/ Laurence F. Pulgram
Laurence F. Pulgram
Fenwick & West, LLP

Exhibit A

STRATEGIC ALLIANCE AGREEMENT

This **STRATEGIC ALLIANCE AGREEMENT** (this "Agreement") is made and entered into this 18th day of January, 2010 ("Effective Date") by and between *Righthaven* LLC, a Nevada limited-liability company ("*Righthaven*") and Stephens Media LLC, a Nevada limited-liability company ("*Stephens Media*").

In consideration of the covenants, representations and warranties set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, *Righthaven* and Stephens Media agree as follows:

1. ***Definitions and Interpretations.***

1.1. Certain terms used herein shall have the meaning ascribed to such terms as set forth in Schedule 1.

1.2. All of the defined terms as set forth in Schedule 1, if defined in the singular or present tense, shall also retain such general meaning if used in the plural or past tense, and if used in the plural or past tense, shall retain the general meaning if used in the singular or present tense.

1.3. Section headings are used for convenience only and shall have no interpretive effect or impact whatsoever.

2. ***Integrated Transaction.***

The Parties hereby covenant that this Agreement is part of an integrated transaction with the transaction (the "*Righthaven* Transaction") represented by the formation of *Righthaven* and the corresponding Operating Agreement by and amongst Net Sortie Systems, LLC, a Nevada limited-liability company ("*Net Sortie*"), *Righthaven* and the Stephens Media's affiliated company, SI Content Monitor LLC, an Arkansas limited-liability company (said latter entity known herein as the "*Stephens Media Affiliate*" and said Operating Agreement known herein as the "*Operating Agreement*"). Stephens Media further covenants, represents and warrants that: (a) the Stephens Media Affiliate is presently and shall throughout the Term be Controlled by common owners, with no material variation in said ownership, (b) the Operating Agreement is being executed by the parties to the Operating Agreement simultaneously with the execution by the Parties of this Agreement; (c) that neither *Righthaven* nor Net Sortie would enter into the *Righthaven* Transaction if not for Stephens Media's execution of this Agreement; and (d) *Righthaven* and Net Sortie, as third party beneficiaries, are relying upon Stephens Media's continued performance of Stephens Media's duties and obligations pursuant to and arising out of this Agreement as a basis of the consideration for *Righthaven*'s and Net Sortie's respective duties and obligations pursuant to and arising out of the Operating Agreement.

3. *Exclusive Engagement.*

3.1. Stephens Media shall assign (at the times stated) to *Righthaven*, pursuant to the procedures set forth in Section 7: (a) any copyrights owned by Stephens Media that Stephens Media desires to be the subject of Searching (the "Searching Decision"), with each such respective assignment to occur within a reasonable time after Stephens Media makes each respective Searching Decision, (b) any copyrights owned by Stephens Media that Stephens Media considers (the "Material Risk Conclusion") a material risk of infringement (with each such respective assignment to occur within thirty (30) days after Stephens Media makes each respective Material Risk Conclusion, and (c) within thirty (30) days of having respective Infringement Notice, each and every Infringed Copyright that exist during the Term (the "Assigned Infringed Copyright(s)").

3.2. During the Term, *Righthaven* shall use commercially reasonable efforts to engage in Searching with respect to all Stephens Media Assigned Copyrights.

3.3. During the Term, *Righthaven* shall have the right, but not the obligation, to pursue an Infringement Action of the respective infringements that are the subject of the respective Infringed Copyrights. *Righthaven* shall have sixty (60) days after each respective assignment of each respective Assigned Infringed Copyright to Notify Stephens Media of whether *Righthaven* will pursue an Infringement Action of said respective Assigned Infringed Copyright (the "Remediation Option Notice"). If *Righthaven* chooses in the Remediation Option Notice to not pursue an Infringement Action (the "Remediation Declination"), then *Righthaven* shall reassign the Assigned Copyright to Stephens Media that is the subject of the Remediation Declination; provided, however, that Stephens Media shall have the right to reassign any such copyright pursuant to Section 2.1 upon learning new information concerning the circumstances of infringement or possible infringement associated with any copyright that is the subject of a Remediation Declination. If *Righthaven* chooses in the Remediation Option Notice to pursue an Infringement Action, then *Righthaven* shall commence Remediation within the times frames and pursuant to the procedures set forth in Section 4. Notwithstanding any other provision of this Agreement, Stephens Media shall have the right to Notify *Righthaven*, within five (5) Business Days after receipt of a respective Remediation Option Notice, that *Righthaven* should not take any Infringement Action with respect to a particular putative infringer as indicated in any respective Remediation Option Notice (the "Declination Notice") and upon receipt of a Declination Notice, *Righthaven* shall not take any Infringement Action with respect to the particular putative infringer set forth in any Declination Notice; provided, however, that Stephens Media shall only send any Declination Notice on a reasonable basis with the grounds of reasonability being that a particular putative infringer is a charitable organization, is likely without financial resources, is affiliated with Stephens Media directly or indirectly, is a present or likely future valued business relationship of Stephens Media or otherwise would be a Person that, if the subject of an Infringement Action, would result in an adverse result to Stephens Media.

3.4. While Stephens Media shall reserve the right to undertake litigation in order to pursue any infringement of any Stephens Media copyright through legal counsel duly licensed in

the jurisdiction through which such litigation would be undertaken, Stephens Media hereby engages *Righthaven* throughout the Term on an exclusive basis to undertake all activities set forth in this Section 3, including, without limitation, the engaging in Searching as well as the pursuit of Infringement Actions. Stephens Media shall not, at any time during the Term, assign to any other Person that is a Competitor any copyrights owned by Stephens Media. Stephens Media shall also never Compete with *Righthaven* at any time during the Term and for a period of five (5) years after termination of the Term.

4. ***Actions to Address Copyright Infringement.***

Righthaven shall take an Infringement Action against the Infringer in order to effect a Disposition within one (1) year of the later of (a) the procurement of a copyright registration covering the Stephens Media Assigned Copyrights or (b) if such registration already exists, within six (6) months after each respective Remediation Option Notice that gives rise to each respective requirement of an Infringement Action; provided, however, that if *Righthaven* elects to contact Infringer prior to any Infringement Action and achieves a commercially reasonable Recovery, then *Righthaven* shall not be required to take an Infringement Action (and such Recovery shall satisfy *Righthaven's* duties in this Agreement to pursue an Infringement Action); provided further, that if *Righthaven* discovers Content that provides *Righthaven* with a good-faith-based belief that the Infringer is not an infringer of the Stephens Media Assigned Copyrights, then *Righthaven* shall have no duties to take any Infringement Action or pursue a Disposition.

5. ***Recovery Distribution.***

Within one (1) week after receipt of the Recovery, *Righthaven* shall pay to Stephens Media a the percentage of the Recovery provided to *Righthaven's* most preferred customers from time to time (which is, as of the Effective Date, fifty percent (50%)) minus Costs advanced or incurred by *Righthaven* related to, with respect to or arising out of the preparation for, conduct of and ultimate resolution of the Infringement Action and/or Disposition.

6. ***Infringement Action Costs.***

Subject to Section 2, *Righthaven* shall be responsible for all Costs incurred in an Infringement Action (the "Infringement Action Costs"); provided, however, that Costs shall not include the salaries or other compensation to *Righthaven* employees associated with or arising out of work performed arising out of or in association with this Agreement.

7. ***Assignment of Copyright Content; Stephens Media License.***

7.1 Subject to the other terms and provisions of this Agreement and throughout the Term, Stephens Media shall effect the assignments to *Righthaven* of copyrights as required by this Agreement (including, without limitation, within the time periods required by this Agreement) by executing a particularized assignment with respect to each copyright and each

consistent with (and in form and substance the same as) the scope of assignment as set forth in the form of copyright assignment as embodied in Exhibit 1 (each a "Copyright Assignment"). Stephens Media shall provide Notice to *Righthaven* of each copyright (each a "Notified Copyright") that is required to be the subject of a Copyright Assignment (a "Copyright Assignment Notice") by no later than five (5) Business Days prior to the last day upon which each respective Copyright Assignment is required to be executed by Stephens Media as provided in Section 3.1. *Righthaven* shall then provide to Stephens Media a conforming Copyright Assignment for Stephens Media to execute with respect to each Notified Copyright within three (3) Business Days after receipt of the Copyright Assignment Notice.

7.2 Despite any such Copyright Assignment, Stephens Media shall retain (and is hereby granted by *Righthaven*) an exclusive license to Exploit the Stephens Media Assigned Copyrights for any lawful purpose whatsoever and *Righthaven* shall have no right or license to Exploit or participate in the receipt of royalties from the Exploitation of the Stephens Media Assigned Copyrights other than the right to proceeds in association with a Recovery. To the extent that *Righthaven*'s maintenance of rights to pursue infringers of the Stephens Media Assigned Copyrights in any manner would be deemed to diminish Stephens Media's right to Exploit the Stephens Media Assigned Copyrights, *Righthaven* hereby grants an exclusive license to Stephens Media to the greatest extent permitted by law so that Stephens Media shall have unfettered and exclusive ability to Exploit the Stephens Media Assigned Copyrights. *Righthaven* shall have no Obligation to protect or enforce any Work of Stephens Media that is not Stephens Media Assigned Copyrights.

8. *Stephens Media's Right of Reversion.*

Stephens Media shall have the right at any time to terminate, in good faith, any Copyright Assignment (the "Assignment Termination") and enjoy a right of complete reversion to the ownership of any copyright that is the subject of a Copyright Assignment; provided, however, that if *Righthaven* shall have commenced an action to prosecute an infringer of the Stephens Media Assigned Copyrights, Stephens Media shall be exclusively responsible for effecting termination of such action including, without limitation, all Losses associated with any dismissal with prejudice. In order to effect the termination of the any Copyright Assignment, Stephens Media shall be required to provide *Righthaven* with thirty (30) days prior written notice. Within thirty (30) days after receipt of termination of the any Copyright Assignment, *Righthaven* shall commence documentation to effect reassignment of the Stephens Media Assigned Copyrights to Stephens Media. Upon any Assignment Termination, Stephens Media shall pay to *Righthaven* the Infringement Action Costs that would otherwise work an unjust enrichment benefitting Stephens Media (but under no circumstances shall Infringement Action Costs be less than the costs of any application for registrations or registrations of copyrights made and/or procured by *Righthaven* for the benefit of Stephens Media), pursuant to or arising out of this Agreement. No termination of any Copyright Assignment shall impair *Righthaven*'s rights to receive sums related to, with respect to and/or arising out of any Recovery pursuant to or arising out of this Agreement (the "Early Termination Amounts"), including, without limitation, a reasonable level of compensation associated with, with respect to, and arising out of, any and all efforts exerted

by *Righthaven* to Search, find, investigate, ascertain, pursue, redress, sue or otherwise file a claim against any Person with respect to, or otherwise address any copyright infringement benefitting, whether directly or indirectly, copyright holder, pursuant to or arising out of this Agreement, as well as all other rights to quantum meruit proceeds that any court of competent jurisdiction would award under such circumstances. *Righthaven* shall provide Notice within thirty (30) days of any Assignment Termination of *Righthaven's* calculation of Early Termination Amounts. Within ten (10) days of receipt of any Recovery by Stephens Media, Stephens Media shall pay to *Righthaven* the Early Termination Amounts or provide Notice to *Righthaven* of any contest whereby Stephens Media contends that the Early Termination Amounts Notified by *Righthaven* to Stephens Media were inaccurate or unjust and to what extent (the "Contested Amount") the Early Termination Amounts were inaccurate or unjust (the "Stephens Media Contest"). Within ten (10) days after receiving the Stephens Media Contest (the "Contest Notification Date"), *Righthaven* shall have the option: (a) to elect to receive from Stephens Media within ten (10) days of the Contest Notification Date, the Early Termination Amounts minus the Contested Amount (the "Settled Amount"), or (b) to Notify Stephens Media that Stephens Media must pay to *Righthaven* the Settled Amount within ten (10) days of the Contest Notification Date, and that *Righthaven* reserves the right to make a claim that Stephens Media should pay the full Early Termination Amounts. In the event that *Righthaven* preserves *Righthaven's* right to make a Claim pursuant to Section 5(b), the Parties shall mediate the dispute associated with the Contested Amount (the "Contest Dispute") within sixty (60) days by: (x) reasonably choosing a mediator or by employing a JAMS mediator through <http://www.jamsadr.com>, (y) mediating the Contest Dispute in Las Vegas, Nevada, and (z) mediating the Contest Dispute in good faith (the "Mediation"). In the event that the Mediation is not effective in resolving the Contest Dispute within sixty (60) days of the commencement of the Mediation, *Righthaven* shall have the right to bring any and all relevant Claims for recovery of the Contested Amount, and any amounts accrued by *Righthaven* in the Mediation, in any court of competent jurisdiction, in addition to all other rights and remedies available to *Righthaven*, whether in law or equity.

9. ***Representations, Warranties and Covenants of Stephens Media.***

Stephens Media hereby represents, warrants and covenants as of the Effective Date and throughout the Term:

9.1. The execution, delivery and performance of this Agreement by Stephens Media does not and shall not violate any of Stephens Media's organizational documents, any applicable Law, or any contractual or other obligation of Stephens Media or any order to which Stephens Media is bound.

9.2. Stephens Media is the owner of all Stephens Media Assigned Copyrights. The Stephens Media Assigned Copyrights is free and clear of all liens and Encumbrances. Stephens Media further represents and warrants that it has the exclusive right to use the Stephens Media Assigned Copyrights, and has the exclusive right to exclude others from Using the Stephens Media Assigned Copyrights. Stephens Media further warrants that, as of the Effective Date,

Stephens Media has no knowledge of any third-party Claim that any aspect of Stephens Media's present or contemplated business operations infringes or will infringe any rights of any third party in Stephens Media Assigned Copyrights.

9.3. Stephens Media shall not sell, grant any Encumbrance on or in or assign, any of Stephens Media Assigned Copyrights to any third Person during the Term absent prior written approval of *Righthaven*; provided, however, that Stephens Media may maintain Encumbrances on Stephens Media Assigned Copyrights as part of an overall funding securitization whereby all or substantially all of Stephens Media's assets are Encumbered as part of said funding securitization and Stephens Media Assigned Copyrights are not singled-out as or part of a particularized group of Encumbered assets.

9.4. Stephens Media shall not reduce, adjust, settle or compromise any infringement of Stephens Media Assigned Copyrights except as approved in writing by *Righthaven*.

9.5. Stephens Media shall instruct Stephens Media's general counsel, currently Mark A. Hinueber, Esq. (the "General Counsel"), to undertake the necessary and appropriate efforts to ensure Stephens Media's functional performance of Stephens Media's obligations pursuant to and arising from this Agreement. Stephens Media shall further instruct the General Counsel to instruct, by way of internal electronic mail communications (in form and substance the same as Exhibit 9.5), to all employees of Stephens Media that have awareness of Stephens Media Content, within ten (10) Business Days after the Effective Date (the "Content Notice Date") and on every anniversary of the Content Notice Date thereafter during the Term, of the need to promptly apprise the General Counsel throughout the Term of any Content that any employee believes may reasonably be the subject of an unauthorized reproduction or publication.

9.5. Stephens Media shall promptly notify *Righthaven* of any unauthorized infringement of Stephens Media Assigned Copyrights that reasonably comes to Stephens Media's attention.

9.6. Stephens Media shall cooperate fully and candidly with *Righthaven* with respect to the Infringement Action and shall take all commercially reasonable actions necessary in order to effect the terms and provisions of this Agreement.

9.7. Stephens Media shall provide all Content in whatsoever Media known, or available, to Stephens Media that may aid *Righthaven* in the conduct of an Infringement Action, including, without limitation, privileged or confidential Content in any and all Media; provided, however, that nothing in this Section 9.7 shall require any waiver of any protections afforded by reporter shield laws, including, without limitation, as set forth pursuant to Nevada Revised Statute Section 49.275, as amended from time to time.

9.8. Stephens Media shall execute such authorizations as may be required by third Persons in order to release Content in any Media whatsoever to *Righthaven* to aid *Righthaven* in an Infringement Action.

9.9. *Righthaven* has not made any express or implied warranties or representations that the Services provided by *Righthaven* shall result in any particular amount or level of income to Stephens Media.

9.10. Stephens Media hereby receives notice that Steven A. Gibson ("Gibson") has an ownership interest in one of the entities that owns *Righthaven*, Gibson's interest in *Righthaven* is therefore a minority interest and that Gibson is also the owner of Gibson Lowry Burris LLP ("Gibson's Participation").

9.11. Stephens Media hereby waives any conflict of interest associated with and/or arising out of Gibson's Participation and that Stephens Media is represented by legal counsel in Nevada familiar with the rules of professional responsibility in Nevada concerning making an informed waiver of the conflict of interest hereby waived.

9.12. Gibson is in no manner representing Stephens Media in or with respect to the negotiation, drafting or entering into this Agreement.

10. ***Recovery Instrument.***

10.1. Any Recovery Instrument shall be written in a manner as to require the endorsement of *Righthaven* to be properly endorsed prior to any distribution.

10.2. *Righthaven* is hereby authorized to act as attorney-in-fact for Stephens Media and to endorse any Recovery Instrument in Stephens Media's name for deposit into *Righthaven's* bank account for collection and final distribution pursuant to the terms of this Agreement. Stephens Media shall deliver any Recovery Instrument received by Stephens Media to *Righthaven* for endorsement and deposit into *Righthaven's* account.

10.3. If Stephens Media uses, disburses, deposits or takes any other action with respect to any Recovery Instrument in contravention of this Agreement, the Sums with respect to such Recovery Instrument shall be deemed held in trust to be distributed pursuant to the terms of this Agreement.

10.4. If *Righthaven* uses, disburses, deposits or takes any other action with respect to any Recovery Instrument in contravention of this Agreement, the Sums with respect to such Recovery Instrument shall be deemed held in trust to be distributed pursuant to the terms of this Agreement.

11. ***Stephens Media's Potential Liability.***

Stephens Media understands and acknowledges that Stephens Media and *Righthaven* may be liable for an Infringer's attorneys' fees as required by Law in connection with an Infringement Action. Stephens Media further understands that a lawsuit brought solely to harass or to coerce a

settlement may result in liability for malicious prosecution or abuse of process. If any Claim made by an Infringer in an Infringement Action results in Losses, other than Losses described in Section 8, *Righthaven* shall be solely liable for such Losses and shall indemnify Stephens Media from and against any such Losses but only if such Losses do not arise out of a misrepresentation by Stephens Media or other breach by Stephens Media of a provision of this Agreement.

12. ***Disclaimer of all Warranties and Representations.***

RIGHTHAVEN DISCLAIMS ALL IMPLIED WARRANTIES AND/OR REPRESENTATIONS AND MAKES NO WARRANTIES OR REPRESENTATIONS AS TO ANY PARTICULAR OUTCOME OF ANY INFRINGEMENT ACTION. *Righthaven* hereby represents that *Righthaven* has no knowledge that any Intellectual Property used or owned by *Righthaven* infringes the Intellectual Property owned by any third Person.

13. ***Remedy.***

RIGHTHAVEN SHALL NOT BE HELD LIABLE TO ANY PARTY ON ACCOUNT OF OR DUE TO BREACH OF THIS AGREEMENT IN OR FOR ANY AMOUNT THAT EXCEEDS, IN THE AGGREGATE, THE LESSER OF: (A) ANY STEPHENS MEDIA SHIP FEES RECEIVED BY RIGHTHAVEN FROM STEPHENS MEDIA WITHIN THE PRIOR SIX (6) MONTHS AND (B) ONE THOUSAND DOLLARS (\$1,000) AND RIGHTHAVEN SHALL NOT BE LIABLE TO STEPHENS MEDIA (NOR TO ANY PERSON CLAIMING ANY RIGHT, TITLE OR INTEREST DERIVED FROM OR AS SUCCESSOR TO THE STEPHENS MEDIA'S RIGHT, TITLE AND INTEREST) FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND INCLUDING, WITHOUT LIMITATION, LOST REVENUES OR PROFITS, LOSS OF BUSINESS OR LOSS OF CONTENT ARISING OUT OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER THE PARTY HAS ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

14. ***Indemnification.***

Subject to Section 8, Stephens Media shall indemnify and hold *Righthaven* harmless from and against all Losses incurred by *Righthaven* with respect to or arising out of any Claim brought by any third Person against *Righthaven* based upon any act or omission (whether directly or indirectly) by Stephens Media, including, without limitation, any act or omission stemming from or arising out of this Agreement.

15. ***General Provisions.***

15.1. If any provision of this Agreement should be held to be void or unenforceable, in whole or in part, by a court of competent jurisdiction, then such court shall correct the defect in a narrowly tailored manner to approximate the manifest intent of the Parties.

15.2. Subject to Section 2, this Agreement represents the entire understanding and agreement by and between *Righthaven* and Stephens Media.

15.3. This Agreement and any Dispute shall be interpreted and enforced in accordance with the laws of the State of Nevada without regard to its conflict of law principles.

15.4. The Parties hereby submit to the non-exclusive personal jurisdiction of the state and federal courts present in Clark County, Nevada with respect to any Dispute.

15.5. The term of this Agreement (the "Term") shall commence on the Effective Date and shall end upon the termination of the Operating Agreement.

16. ***Non-Solicitation.***

During the term of this Agreement and for a period of one (1) year subsequent to the termination date of this Agreement, neither party shall make any attempt to solicit for employment any current employee of the other party without the prior written consent of such party.

17. ***Notice.***

All notices and other communications hereunder shall only be in writing and shall be given by: (a) e-mail transmission to the other party (to be followed promptly by written confirmation mailed by certified mail as provided below) and deemed delivered upon transmission when confirmed as aforesaid and provided written confirmation and receipt is obtained by the sender; (b) facsimile transmission (to be followed promptly by written confirmation mailed by certified mail as provided below) and deemed delivered upon transmission when confirmed as aforesaid and provided written confirmation and receipt is obtained by the sender; (c) overnight courier and deemed delivered one (1) day after dispatch; or (d) registered or certified mail, return receipt requested and deemed delivered on the earlier of the date of the signed receipt for same or three (3) days after posting when addressed as follows:

If to *Righthaven*:

Mr. Steven A. Gibson
Manager
Righthaven LLC
7201 West Lake Mead Boulevard, Suite 580
Las Vegas, Nevada 89128
E-mail: sgibson@righthaven.com

If to Stephens Media:


Stephens Media LLC
Attn: General Counsel
1111 West Bonanza Road
Las Vegas, Nevada 89106
E-mail: mhinueber@stephensmedia.com
Facsimile: (702) 383-0402

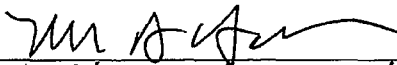
To the extent that no facsimile number is currently provided, a facsimile number will be provided within five (5) Business Days of obtaining same.

IN WITNESS WHEREOF, each of the undersigned duly execute this Agreement and represent that each has the authority to legally bind each respective entity.

Righthaven LLC

Stephens Media LLC

By: 
Name: Steven A. Gibson
Title: Manager
Date: January 18, 2010

By: 
Name: VP/General Counsel
Title: _____
Date: 1.18.2010

SCHEDULE 1 – DEFINITIONS

- “Agreement” shall mean this *Righthaven* Standard Content Protection and Stephens Mediaship Agreement.
- “Assigned Infringed Copyright(s)” shall have the meaning ascribed to such term as set forth in Section 3.1.
- “Assignment Termination” shall have the meaning ascribed to such term as set forth in Section 8.
- “Business Days” shall mean any day, Monday through Friday, excepting Saturday and Sunday and also excepting any day on which federal chartered banks situated in Clark County, Nevada are generally not open for business.
- “Claim” shall mean any demand, cause of action or claim of whatsoever nature.
- “Compete” shall mean to engage, anywhere in the known universe, in any of the business of *Righthaven* or to offer or provide any of the services or products that *Righthaven* provides as of the Effective Date, including, without limitation, those services and/or products as described in this Agreement, or to have any association, partnership or ownership interest in any Person that engages in any such conduct.
- “Competitor” shall mean any Person who engages in any activity that would be within the meaning of the word *Compete*; provided, however, no law firm shall be deemed to be any such Person.
- “Content” shall mean all material, information, documents, matter, text, data, graphics, computer-generated displays and interfaces, images, photographs and works of whatsoever nature, including, without limitation, all compilations of the foregoing and all results and/or derivations of the expression of the foregoing.
- “Content Notice Date” shall have the meaning ascribed to such term as set forth in Section 9.5.
- “Contest Notification Date” shall have the meaning ascribed to such term as set forth in Section 8.
- “Contest Dispute” shall have the meaning ascribed to such term as set forth in Section 8.
- “Contested Amount” shall have the meaning ascribed to such term as set forth in Section 8.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, or the power to veto major policy decisions of any such Person, whether through the ownership of voting securities, by contract, or otherwise.

“Copyright Assignment” shall have the meaning ascribed to such term as set forth in Section 7.1.

“Copyright Assignment Notice” shall have the meaning ascribed to such term as set forth in Section 7.1.

“Costs” shall mean any and every expenditure (at commercially reasonable rates) made on the part of *Righthaven* with respect to an Infringement Action, including, without limitation, attorneys’ fees to local counsel (not employed by *Righthaven*) prosecuting such action, court reporter fees, application and registration fees, expert consultant and witness fees, computer research fees, private investigator fees, process server fees, courier fees, copy charges, long distance telephone charges, court filing fees, mailing costs, parking fees, expenses incident to travel by *Righthaven* representatives related to the Infringement Action, including air (at coach rates) and ground transport, lodging, and meals, and other disbursements made in connection with the Infringement Action.

“Declination Notice” shall have the meaning ascribed to such term as set forth in Section 3.3.

“Develop” shall mean develop, conceive, reduce to practice, create, or otherwise arise out of efforts in any manner whatsoever and through any means whether now known or hereafter developed.

“Disposition” shall mean the final disposition of an Infringement Action through settlement, compromise, judgment and/or the execution and delivery of a Recovery Instrument by an Infringer with respect to, related to or otherwise associated with the Stephens Media Assigned Copyrights.

“Dispute” shall mean any controversy or other matter with respect to, or arising out of this Agreement.

“Early Termination Amounts” shall have the meaning ascribed to such term as set forth in Section 8.

“Effective Date” shall mean the date first entered in this Agreement.

“Encumbrance” shall mean any security interest, pledge, hypothecation, lien or other encumbrance of whatsoever nature.

“Exhibit” shall mean any document attached hereto denoted as an exhibit, which by reference made herein shall be deemed incorporated herein by such reference.

“Exploit” shall mean to use, make, sell, or otherwise exploit in any manner whatsoever (through any means now known or hereafter Developed).

“General Counsel” shall have the meaning ascribed to such term as set forth in Section 9.5.

“Gibson” shall have the meaning ascribed to such term as set forth in Section 9.10.

“Gibson’s Participation” shall have the meaning ascribed to such term as set forth in Section 9.12.

“Infringement Actions Costs” shall have the meaning ascribed to such term as set forth in Section 6.

“Intellectual Property” shall mean all foreign, federal, state and common law trademarks, service marks, patents, copyrights, trade secrets, universal resource locators, domain names, trade dress, mask works, know how, show how, proprietary information and other intangible asset, as well as all applications for registration or issuance and registrations and issuances relating thereto and arising there from.

“Infringed Copyright” shall mean any Stephens Media Content that Stephens Media either has actual notice is being infringed on a copyright basis or has a bon a fide belief is the subject of infringement on a copyright basis.

“Infringement Action” shall mean an action commenced in a United States federal district court against one or more Infringers related to, arising from, or concerning the validity, enforcement, preservation or enforcement of Stephens Media Assigned Copyrights brought by *Righthaven* regardless of whether this Agreement is terminated or any rights or licenses pursuant to or arising from this Agreement are terminated.

“Infringement Action Costs” shall have the meaning ascribed to such term as set forth in Section 3.

“Infringer” shall mean a Person presently infringing, or hereafter infringing Stephens Media Assigned Copyrights.

“Losses” shall mean any and all costs, expenses, fees (including, without limitation, attorneys’, accountants’, investigators’, witnesses’ and professionals’ fees), charges, expenditures, liabilities, damages and other losses of whatsoever nature.

“Material Risk Conclusion” shall have the meaning ascribed to such term as set forth in Section 3.1.

“Mediation” shall have the meaning ascribed to such term as set forth in Section 8.

"Net Sortie" shall mean Net Sortie Systems, LLC, a Nevada limited-liability company.

"Notice" shall mean to provide notice pursuant to Section 17.

"Notify" shall mean to give Notice.

"Notified Copyright" shall have the meaning ascribed to such term as set forth in Section 7.1.

"Operating Agreement" shall have the meaning ascribed to such term as set forth in Section 2.

"Parties" shall mean both *Righthaven* and Stephens Media.

"Party" shall mean either *Righthaven* or Stephens Media.

"Person" shall mean any natural person, corporation, limited liability company, limited partnership, partnership, trust, association, organization or other entity of whatsoever nature.

"Recovery" shall mean any and all Sums received, transferred to, assigned, conveyed, paid or otherwise obtained by Stephens Media and/or *Righthaven* relating to, arising or resulting from (whether directly or indirectly) a Disposition, including, without limitation, all Sums paid by way of damages, costs and attorneys fees with respect to or arising from an Infringement Action.

"Recovery Instrument" shall mean any instrument or any other Content in any Media which evidences a right, title or interest in and to the Sums with respect to, related to or arising out of the Recovery.

"Remediation Declination" shall have the meaning ascribed to such term as set forth in Section 3.3.

"Remediation Option Notice" shall have the meaning ascribed to such term as set forth in Section 3.3.

"*Righthaven*" shall mean *Righthaven* LLC, a Nevada limited-liability company.

"*Righthaven* Transaction" shall have the meaning ascribed to such term as set forth in Section 2.

"Schedule" shall mean an enumerated schedule all of which shall be deemed attached hereto and incorporated herein by way of the specific reference or references made in this Agreement.

"Searching" shall mean to employ the then available technology and means in *Righthaven's* possession to find the occurrence(s) of relevant copyright infringement.

“Searching Decision” shall have the meaning ascribed to such term as set forth in Section 3.1.

“Section” shall be deemed a reference to an enumerated provision of this Agreement. Section headings are used for convenience only and shall have no interpretive effect or impact whatsoever.

“Settled Amount” shall have the meaning ascribed to such term as set forth in Section 8.

“Stephens Media” shall mean Stephens Media LLC, a Nevada limited-liability company.

“Stephens Media Affiliate” shall have the meaning ascribed to such term as set forth in Section 2.

“Stephens Media Assigned Copyrights” shall mean each copyright assigned by Stephens Media to *Righthaven* pursuant to Section 7.

“Stephens Media Contest” shall have the meaning ascribed to such term as set forth in Section 8.

“Sums” shall mean all monies, sums, consideration, receivables, asset and other things (whether tangible or intangible) of value of whatsoever nature as well as all proceeds of any and/or all of the foregoing.

“Term” shall have the meaning ascribed to such term as set forth in Section 15.5.

“Work” shall have the meaning defined in the U.S. Copyright Act of 1976, as amended.

EXHIBIT 1

COPYRIGHT ASSIGNMENT

This Copyright Assignment (the "Assignment") is made effective as of _____ (the "Effective Date") by Stephens Media LLC, a Nevada limited-liability company ("Stephens Media").

In consideration of monetary commitments and commitments to services to be provided and/or already provided by *Righthaven* LLC, a Nevada limited-liability company, ("*Righthaven*") to Stephens Media and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Stephens Media hereby transfers, vests and assigns the work depicted in Exhibit A, attached hereto and incorporated herein by this reference (the "Work"), to *Righthaven*, subject to Stephens Media's rights of reversion, all copyrights requisite to have *Righthaven* recognized as the copyright owner of the Work for purposes of *Righthaven* being able to claim ownership as well as the right to pursue past, present and future infringements of the copyright in and to the Work.

IN WITNESS WHEREOF, Stephens Media hereby executes this Assignment on this ____ day of _____, 20__.

STEPHENS MEDIA LLC

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 2010.

Notary Public

My Commission Expires: _____

SEAL

EXHIBIT 9.5

DUE DILIGENCE NOTICE

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