

EXHIBIT 2

1 LAURENCE F. PULGRAM (CA State Bar No. 115163) (*pro hac vice*)
2 lpulgram@fenwick.com
3 CLIFFORD C. WEBB (CA State Bar No. 260885) (*pro hac vice*)
4 cwebb@fenwick.com
5 FENWICK & WEST LLP
6 555 California Street, 12th Floor
7 San Francisco, California 94104
8 Telephone: (415) 875-2300
9 Facsimile: (415) 281-1350

6 KURT OPSAHL (CA State Bar No. 191303) (*pro hac vice*)
7 kurt@eff.org
8 CORYNNE MCSHERRY (CA State Bar No. 221504) (*pro hac vice*)
9 corynne@eff.org
10 ELECTRONIC FRONTIER FOUNDATION
11 454 Shotwell Street
12 San Francisco, California 94110
13 Telephone: (415) 436-9333
14 Facsimile: (415) 436-9993

11 CHAD BOWERS (NV State Bar No. 7283)
12 bowers@lawyer.com
13 CHAD A. BOWERS, LTD
14 3202 West Charleston Boulevard
15 Las Vegas, Nevada 89102
16 Telephone: (702) 457-1001
17 Attorneys for Defendant and Counterclaimant
18 DEMOCRATIC UNDERGROUND, LLC, and
19 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.

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

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

26 v.

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

28

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.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

EXHIBIT A
Filed Under Seal