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6
7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
9

10 RIGHTHAVEN LLC, a Nevada limited-
liability company,

11
12 Plaintiff,

13 v.

14 AZKAR CHOUDHRY, an individual; and
15 PAK.ORG, an entity of unknown origin and
16 nature,

17 Defendants.

Case No.: 2:10-cv-02155-JCM-PAL

**COUNTER-DEFENDANT RIGHTHAVEN
LLC'S REPLY TO
COUNTERCLAIMANT AZKAR
CHOUDHRY'S COUNTERCLAIM**

18 AZKAR CHOUDHRY, an individual;

19 Counterclaimaint,

20 v.

21 RIGHTHAVEN LLC, a Nevada limited-
22 liability company,

23 Counter-defendants.
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1 Counter-defendant Righthaven LLC (“Righthaven”) hereby responds to the Counterclaim
2 of Azkar Choudhry (“Choudhry”), which is contained in paragraphs 63 through 131 in his
3 answer (Doc. # 8 at 8-16), as follows:

4 63. In responding to paragraph 63 of the Counterclaim, Righthaven denies the
5 allegations contained therein.

6 64. In responding to paragraph 63 of the Counterclaim, Righthaven denies the
7 allegations contained therein.

8 65. In responding to paragraph 65 of the Counterclaim, Righthaven admits the Court
9 has subject matter jurisdiction over the copyright infringement allegations contained in the
10 Complaint based on the operative agreements in place between the company and Stephens Media
11 at least as of the time of this filing. Based on this response, Righthaven admits the Court has
12 subject matter jurisdiction over Choudhry’s Counterclaim.

13 66. In responding to paragraph 66 of the Counterclaim, Righthaven lacks sufficient
14 information and belief to formulate a response to the allegations contained therein and on that
15 basis denies such allegations.

16 67. In responding to paragraph 67 of the Counterclaim, Righthaven lacks sufficient
17 information and belief to formulate a response to the allegations contained therein and on that
18 basis denies such allegations. Righthaven additionally expressly denies Choudhry’s assertion
19 that any allegations made by him would equally apply to an entity that has not asserted any
20 allegations contained in the Counterclaim.

21 68. In responding to paragraph 68 of the Counterclaim, Righthaven lacks sufficient
22 information and belief to formulate a response to the allegations contained therein and on that
23 basis denies such allegations.

24 69. In responding to paragraph 69 of the Counterclaim, Righthaven lacks sufficient
25 information and belief to formulate a response to the allegations contained therein and on that
26 basis denies such allegations.

27 70. In responding to paragraph 70 of the Counterclaim, Righthaven lacks sufficient
28 information and belief to formulate a response to the allegations contained therein and on that

1 basis denies such allegations. Righthaven, however, admits that the allegations contained in this
2 paragraph, if true, reflect significant posts and page views for the Internet domain content (the
3 “Website”) that is alleged to have displayed a copyrighted work without authorization to do so.

4 71. In responding to paragraph 71 of the Counterclaim, Righthaven lacks sufficient
5 information and belief to formulate a response to the allegations contained therein and on that
6 basis denies such allegations.

7 72. In responding to paragraph 72 of the Counterclaim, Righthaven lacks sufficient
8 information and belief to formulate a response to the allegations contained therein and on that
9 basis denies such allegations.

10 73. In responding to paragraph 73 of the Counterclaim, Righthaven lacks sufficient
11 information and belief to formulate a response to the allegations contained therein and on that
12 basis denies such allegations. Righthaven, however, accepts Choudhry’s admission in this
13 paragraph that the Website generates revenue, whether or not this revenue ultimately results in
14 his realization of any profit or income.

15 74. In responding to paragraph 74 of the Counterclaim, Righthaven lacks sufficient
16 information and belief to formulate a response to the allegations contained therein and on that
17 basis denies such allegations.

18 75. In responding to paragraph 75 of the Counterclaim, Righthaven lacks sufficient
19 information and belief to formulate a response to the allegations contained therein and on that
20 basis denies such allegations.

21 76. In responding to paragraph 76 of the Counterclaim, Righthaven lacks sufficient
22 information and belief to formulate a response to the allegations contained therein and on that
23 basis denies such allegations.

24 77. In responding to paragraph 77 of the Counterclaim, Righthaven lacks sufficient
25 information and belief to formulate a response to the allegations contained therein and on that
26 basis denies such allegations. Righthaven, however, accepts at least Choudhry’s admission in
27 this paragraph that the RSS feed sub-forums generate revenue for the Website.
28

1 78. In responding to paragraph 78 of the Counterclaim, Righthaven lacks sufficient
2 information and belief to formulate a response to the allegations contained therein and on that
3 basis denies such allegations. Righthaven, however, accepts Choudhry's admission in this
4 paragraph that viewers of the unauthorized display of the copyrighted work at issue in this case
5 resulted in the Website receiving advertising revenue.

6 79. Righthaven admits the allegations contained in paragraph 79 of the Counterclaim.

7 80. Righthaven denies the allegations contained in paragraph 80 of the Counterclaim.

8 81. Righthaven denies the allegations contained in paragraph 81 of the Counterclaim.

9 82. In responding to paragraph 82 of the Counterclaim, Righthaven admits that one
10 aspect of its business model is to enforce the exclusive rights granted under the Copyright Act of
11 1976 (the "Copyright Act") to protected works against corporations, partnerships, associations,
12 individuals or other entities and unincorporated associations that infringe these exclusive rights.
13 Righthaven denies the allegations contained in paragraph 81 of the Counterclaim. Righthaven
14 denies all other allegations contained in paragraph 82 of the Counterclaim.

15 83. In responding to paragraph 83 of the Counterclaim, Righthaven admits that it
16 seeks the recovery of statutory damages and attorney's fees infringement actions as expressly
17 authorized under the Copyright Act. With regard to the surrender of Internet domains,
18 Righthaven's currently asserts this relief by requesting an order requiring any defendant found
19 liable for infringement turn over all hardware, software, electronic media and domains used to
20 store, disseminate and display the unauthorized versions of any and all copyrighted works as
21 provided for under 17 U.S.C. § 505(b) and/or as authorized by Federal Rule of Civil Procedure
22 64. Righthaven denies any and all remaining allegations in this paragraph.

23 84. In responding to paragraph 84 of the Counterclaim, Righthaven lacks sufficient
24 information and belief as to the nebulous quantitative values and amounts employed by
25 Choudhry to formulate a response to the allegations contained therein and on that basis denies
26 such allegations.

27 85. In responding to paragraph 85 of the Counterclaim, Righthaven lacks sufficient
28 information and belief as to the "market" Choudhry is referring to in the allegations contained

1 therein and on that basis denies such allegations. Righthaven does license copyrighted works on
2 a non-exclusive basis pursuant to its contractual relationship with Stephens Media, which does
3 constitute a “market” for such works. Righthaven denies all remaining allegations contained in
4 this paragraph.

5 86. In responding to paragraph 86 of the Counterclaim, Righthaven admits that as of
6 the filing of the Counterclaim it had filed numerous copyright infringement cases, which likely
7 exceeded 100 to 150 during the alleged timeframe. These filings reflect the degree of rampant,
8 serial acts of copyright infringement occurring on the Internet. Righthaven denies all remaining
9 allegations contained in this paragraph.

10 87. In responding to paragraph 87 of the Counterclaim, Righthaven admits that it does
11 not advise defendants of their infringing conduct before filing suit because these defendants have
12 failed to comply with the requirements for pre-suit notice under the Digital Millennium
13 Copyright Act (the “DMCA”). As such, Righthaven is not obligated to provide notice to such
14 defendants before filing claims for copyright infringement. Righthaven denies all remaining
15 allegations contained in this paragraph.

16 88. In responding to paragraph 88 of the Counterclaim, Righthaven admits that it does
17 not use, or is it obligated to comply with, the notice provisions of the DMCA because, generally
18 speaking, the defendants sued for copyright infringement have failed to comply with the
19 requirements of the DMCA. Righthaven denies all remaining allegations contained in this
20 paragraph.

21 89. In responding to paragraph 89 of the Counterclaim, Righthaven admits that one
22 method employed to locate the display of unauthorized copyright protectable content is through
23 Internet-related search means. Righthaven denies all remaining allegations contained in this
24 paragraph.

25 90. In responding to paragraph 90 of the Counterclaim, Righthaven admits that it has
26 on more than one occasion identified the display of unauthorized copyright protectable content,
27 acquired the ownership of said content along with the right to sue for past, present and future
28 infringements, obtained copyright registration of said content from the United States Copyright

1 Office, and then filed suit for infringement of the registered work. On more than one occasion,
2 such content has been obtained from Stephens Media, which owns the *Las Vegas Review-*
3 *Journal*. Righthaven denies all remaining allegations contained in this paragraph.

4 91. In responding to paragraph 91 of the Counterclaim, Righthaven admits that it
5 evaluates potential copyright infringement claims when appropriate circumstances are presented,
6 identified or it is otherwise informed of them. Righthaven denies all remaining allegations
7 contained in this paragraph.

8 92. In responding to paragraph 92 of the Counterclaim, Righthaven admits the
9 allegations of this paragraph to the extent that additional appropriate circumstances exist that
10 justify the company expanding its copyright infringement enforcement efforts to other media
11 content providers, which is not limited to newspapers. Righthaven denies all remaining
12 allegations contained in this paragraph.

13 93. Righthaven admits the allegations contained in paragraph 93 of the Counterclaim
14 to the extent they are consistent with the allegations and the exhibits attached to the Complaint
15 on file in this action.

16 94. Righthaven admits the allegations contained in paragraph 94 of the Counterclaim
17 to the extent they are consistent with the allegations and the exhibits attached to the Complaint
18 on file in this action. Righthaven denies the allegations contained in this paragraph to the extent
19 they inaccurately paraphrase the work's contents.

20 95. Righthaven admits the allegations contained in paragraph 95 of the Counterclaim
21 to the extent they are consistent with the allegations and the exhibits attached to the Complaint
22 on file in this action. Righthaven denies the allegations contained in this paragraph to the extent
23 they inaccurately paraphrase the work's contents.

24 96. Righthaven admits the allegations contained in paragraph 96 of the Counterclaim
25 to the extent they are consistent with the allegations and the exhibits attached to the Complaint
26 on file in this action. Righthaven denies the allegations contained in this paragraph to the extent
27 they inaccurately paraphrase these materials and related information.

28

1 97. Righthaven admits the allegations contained in paragraph 97 of the Counterclaim
2 to the extent they accurately paraphrase the content contained in any referenced exhibits attached
3 to the Complaint on file in this action. Righthaven denies the allegations contained in this
4 paragraph to the extent they inaccurately paraphrase these materials or the allegations contained
5 in are derived from sources other than the exhibits attached to the Complaint.

6 98. In responding to paragraph 98 of the Counterclaim, Righthaven lacks sufficient
7 information and belief to formulate a response to the allegations contained therein and on that
8 basis denies such allegations.

9 99. In responding to paragraph 99 of the Counterclaim, Righthaven lacks sufficient
10 information and belief to formulate a response to the allegations contained therein and on that
11 basis denies such allegations.

12 100. Righthaven denies the allegations contained in paragraph 100 of the
13 Counterclaim.

14 101. Righthaven denies the allegations contained in paragraph 101 of the
15 Counterclaim.

16 102. Righthaven denies the allegations contained in paragraph 102 of the
17 Counterclaim.

18 103. Righthaven denies the allegations contained in paragraph 103 of the
19 Counterclaim.

20 104. Righthaven denies the allegations contained in paragraph 104 of the
21 Counterclaim.

22 105. In responding to paragraph 105 of the Counterclaim, Righthaven asserts that a
23 formal response is not required. To the extent a formal response is required, Righthaven
24 incorporates its prior responses to each and every paragraph incorporated therein.

25 106. Righthaven admits the allegations contained in paragraph 106 of the Counterclaim
26 to the extent they accurately reflect the contents of the Complaint on file herein.

27 107. Righthaven denies the allegations contained in paragraph 107 of the
28 Counterclaim.

1 108. Righthaven denies the allegations contained in paragraph 108 of the
2 Counterclaim.

3 109. Righthaven denies the allegations contained in paragraph 109 of the
4 Counterclaim.

5 110. Righthaven denies the allegations contained in paragraph 110 of the
6 Counterclaim.

7 111. Righthaven denies the allegations contained in paragraph 111 of the
8 Counterclaim.

9 112. Righthaven denies the allegations contained in paragraph 112 of the
10 Counterclaim.

11 113. Righthaven denies the allegations contained in paragraph 113 of the
12 Counterclaim.

13 114. Righthaven denies the allegations contained in paragraph 114 of the
14 Counterclaim.

15 115. Righthaven denies the allegations contained in paragraph 115 of the
16 Counterclaim.

17 116. Righthaven denies the allegations contained in paragraph 116 of the
18 Counterclaim.

19 117. Righthaven denies the allegations contained in paragraph 117 of the
20 Counterclaim.

21 118. Righthaven denies the allegations contained in paragraph 118 of the
22 Counterclaim.

23 119. Righthaven denies the allegations contained in paragraph 119 of the
24 Counterclaim.

25 120. In responding to paragraph 120 of the Counterclaim, Righthaven asserts that a
26 formal response is not required. To the extent a formal response is required, Righthaven
27 incorporates its prior responses to each and every paragraph incorporated therein.
28

1 121. Righthaven denies the allegations contained in paragraph 121 of the
2 Counterclaim.

3 122. In responding to paragraph 122 of the Counterclaim, Righthaven admits that it
4 was properly assigned ownership of the work along with, among other things, the right to sue for
5 past infringement of the work by Stephens Media, after the work was displayed without
6 authorization on the Website. Righthaven denies all other allegations in this paragraph.

7 123. In responding to paragraph 123 of the Counterclaim, Righthaven admits the
8 unauthorized display of copyright protectable content is brought to its attention from, among
9 other sources, Internet-based searches performed by the company. This, however, is not the
10 exclusive means that potential acts of copyright infringement are brought to the company's
11 attention. Righthaven denies all other allegations in this paragraph.

12 124. In responding to paragraph 124 of the Counterclaim, Righthaven believes, but
13 cannot formally admit the allegations in this paragraph without locating and referencing
14 additional materials and on this basis denies, that it located Choudhry's unauthorized display of
15 the work at issue in this case.

16 125. In responding to paragraph 125 of the Counterclaim, Righthaven admits the
17 allegations contained therein to the extent such a response is consistent with its prior responses.
18 In so responding, Righthaven notes the allegations contained in this paragraph are duplicative
19 and repetitious of numerous other paragraphs contained in Choudhry's Counterclaim. To the
20 extent Righthaven's response is inconsistent with its prior responses set forth in this reply, it
21 denies the allegations of this paragraph.

22 126. In responding to paragraph 126 of the Counterclaim, Righthaven admits the
23 allegations contained therein to the extent such a response is consistent with its prior responses.
24 In so responding, Righthaven notes the allegations contained in this paragraph are duplicative
25 and repetitious of numerous other paragraphs contained in Choudhry's Counterclaim. To the
26 extent Righthaven's response is inconsistent with its prior responses set forth in this reply, it
27 denies the allegations of this paragraph.

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1 127. In responding to paragraph 127 of the Counterclaim, Righthaven admits the
2 allegations contained therein to the extent such a response is consistent with its prior responses.
3 In so responding, Righthaven notes the allegations contained in this paragraph are duplicative
4 and repetitious of numerous other paragraphs contained in Choudhry's Counterclaim. To the
5 extent Righthaven's response is inconsistent with its prior responses set forth in this reply, it
6 denies the allegations of this paragraph.

7 128. In responding to paragraph 128 of the Counterclaim, Righthaven admits the
8 allegations contained therein to the extent they accurately paraphrase and characterize the
9 contractual rights, responsibilities, obligations and legal implications of its Strategic Alliance
10 Agreement (the "SAA"), the Clarification and Amendment to Strategic Alliance Agreement (the
11 "Clarification") and the Amended and Restated Strategic Alliance Agreement (the "Restated
12 Amendment"), all of which have been made publicly available through filings in this judicial
13 district. Righthaven denies all remaining allegations in this paragraph.

14 129. In responding to paragraph 129 of the Counterclaim, Righthaven admits the
15 allegations contained therein to the extent they accurately paraphrase and characterize the
16 contractual rights, responsibilities, obligations and legal implications of the SAA, the
17 Clarification, and the Restated Amendment, all of which have been made publicly available
18 through filings in this judicial district. Righthaven denies all remaining allegations in this
19 paragraph.

20 130. In responding to paragraph 130 of the Counterclaim, Righthaven lacks sufficient
21 information and belief to formulate a response to the allegations contained therein and on that
22 basis denies such allegations.

23 131. In responding to paragraph 131 of the Counterclaim, Righthaven denies the
24 allegations contained therein.

25 **AFFIRMATIVE DEFENSES**

26 Righthaven asserts the following affirmative defenses against the Counterclaim:

27 1. The Counterclaim fails to state a claim for relief upon which can be granted.
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1 2. Choudhry is barred from obtaining the requested relief by the doctrine of unclean
2 hands.

3 3. Choudhry is barred from obtaining the requested relief under the doctrine of
4 laches.

5 4. Choudhry is barred from obtaining the requested relief because he has violated the
6 exclusive rights granted under the Copyright Act.

7 5. Righthaven reserves its right to assert additional affirmative defenses to the
8 Counterclaim as permitted under the Federal Rules of Civil Procedure or pursuant to other
9 applicable authority.

10 WHEREFORE, Righthaven respectfully requests that the Court deny Choudhry each and
11 every aspect of the relief requested under the Counterclaim.

12 Dated this 15th day of July, 2011.

13 SHAWN A. MANGANO, LTD.

14 By: /s/ Shawn A. Mangano
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I on this 15th day of July, 2011, I caused the foregoing document to be served by the Court's CM/ECF system.

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