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CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

1 Gregory Stocks
 2 640-D North Calvert St.
 3 Baltimore, Md. 21202
 4 (410) 913-4337
 5 admin@lawmedconsultant.com

UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

7 Righthaven, LLC

8 Plaintiff,

9 vs.

10 Law Med Consulting, LLC, The Law Med
 11 Blog, and Greg Stocks

12 Defendants

Case No.: 2:11-cv-00717-ECR -PAL

**DEFENDANT'S MOTION TO DISMISS
 WITH PREJUDICE FOR FAILURE TO
 SERVE THE COMPLAINT, WILLFUL
 DECEPTION, AND FAILURE TO
 COMPLY WITH A JUDICIAL ORDER**

**DEFENDANT'S MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO
 SERVE THE COMPLAINT, WILLFUL DECEPTION, AND FAILURE TO COMPLY
 WITH A JUDICIAL ORDER**

16 Gregory Stocks, pro se and sole Defendant in the above entitled action, files this motion
 17 to dismiss the complaint with prejudice and in support alleges:

18 **I. There is only one defendant in this case.**

19 Law Med Consulting LLC is a forfeited Maryland Limited Liability Company, as the
 20 Plaintiff itself notes in their complaint, which was owned entirely by Gregory Stocks. The Law
 21 Med Blog is not a legal entity. It is the name of the blog located at <http://lawmedconsultant.com>
 22 whose use of content Righthaven alleges violated a copyright. Gregory Stocks is the sole owner
 23 and operator of this domain name.

24 **II. Plaintiff has failed to serve the complaint.**

25 Federal Rule of Civil Procedure 4 (m) *Time Limit for Service* provides: "If a defendant is
 26 not served within 120 days after the complaint is filed, the court — on motion or on its own after
 27 notice to the plaintiff — must dismiss the action without prejudice".
 28

1 The complaint was filed on May 5, 2011. (Dkt #1) Service was required by September 2,
2 2011. Plaintiff filed a summons for each named defendant with the Clerk of the Court at the time
3 the complaint was filed and each contained the correct address of Gregory Stocks and
4 Righthaven recognized Stocks to be the individual who should accept service for each. Plaintiff
5 has made no effort to serve the complaint on any of the named Defendants. The Plaintiff has no
6 good cause for not serving the complaint. The Court must dismiss this action.

7 **III. Righthaven should be sanctioned to include a dismissal with prejudice.**

8 Righthaven has made multiple, willful and material misrepresentations to the Federal
9 District Court of Nevada. When previously sanctioned for doing so and ordered to undertake
10 remedial actions Righthaven elected to again deceive the Court and intentionally failed to
11 comply with the Court's Sanction Order. Defendant asks this honorable Court to exercise its
12 discretion and authority to further sanction Righthaven in the manner which the Court deems
13 appropriate, and would ask such sanctions include dismissal of this action with prejudice.

14 **A. Righthaven has willfully deceived the court again and again.**

15 We need look no farther than the findings of Judge Roger L. Hunt in *Righthaven LLC v.*
16 *Democratic Underground LLC*, Case No. 2:10-cv-1356 in this District to expose the initial
17 multitude of misrepresentations made by Righthaven to the Court. Stocks is an Interested Party
18 in that case. In his June 14, 2011 Order to Show Cause why Righthaven should not be sanctioned
19 in that case (*Democratic Underground* Dkt #116), Judge Hunt wrote:

20 As shown in the preceding pages, **the Court believes that Righthaven has made**
21 **multiple inaccurate and likely dishonest statements to the Court.** Here
22 however, the Court will only focus on the most factually brazen: Righthaven's
23 failure to disclose Stephens Media as an interested party in Righthaven's
24 Certificate of Interested Parties. (Dkt. #5.) Rule 7.1-1 of the Local Rules of
25 Practice for the District of Nevada requires parties to disclose "all persons,
26 associations of persons, firms, partnerships or corporations (including parent
27 corporations) which have a direct, pecuniary interest in the outcome of the case."
28 This Local Rule requires greater disclosure than Federal Rule 7.1, which only
requires non-governmental corporate parties to disclose parent corporations or
corporations owning more than 10% of the party's stock. Frankly, if receiving
50% of litigation proceeds minus costs (Dkt. #79, SAA Section 5) does not create
a pecuniary interest under Local Rule 7.1-1, the Court isn't sure what would.

1 **Making this failure more egregious, not only did Righthaven fail to identify**
2 **Stephens Media as an interested party in this suit, the Court believes that**
3 **Righthaven failed to disclose Stephens Media as an interested party in any of**
4 **its approximately 200 cases filed in this District. Accordingly, the Court**
5 **orders Righthaven to show cause, in writing, no later than two (2) weeks**
6 **from the date of this order, why it should not be sanctioned for this flagrant**
7 **misrepresentation to the Court.**

8 Emphasis added. During the subsequent Show Cause hearing in that case on July 14,
9 Judge Hunt commented as follows (Exhibit A, Transcript, Show Cause Hearing pp. 16-17):

10 The Court has the right to accept the representations made by a party through
11 counsel. **And when it finds that those representations are not true and,**
12 **having looked at all this evidence, finds that they are intentionally untrue,**
13 **the Court feels that there is a necessity of and finds that there is an obligation**
14 **on the Court to sanction Stephens Media. I've given a lot of thought as to what**
15 **kind of sanction is required. I appreciate the fact that counsel has attempted to**
16 **rectify the problem that has existed. It does not change or affect the Court's**
17 **opinion as to whether or not it was an accident or a misunderstanding as**
18 **opposed to being an intentional -- I'll call it failure to disclose, for want of a**
19 **stronger term, although I think a stronger term is justified. But as part of the**
20 **sanction, the Court is going to order that every case Righthaven has in any**
21 **jurisdiction in this country must be provided with a copy of this Court's**
22 **decision about the agreement, the one on standing, and that the agreement be**
23 **disclosed to parties that Righthaven has sued.**

24 The Court is also going to order a monetary sanction against Righthaven, itself, in
25 the amount of \$5,000 and order that Local Rule 7.1-1 will be properly complied
26 with, either retrospectively or prospectively, in all cases that are filed by
27 Righthaven with respect to this agreement.

28 Emphasis added. On July 29th, the date which Judge Hunt had set for compliance with his
Order for Sanctions, Righthaven filed a Motion for Extension of Time to comply and for a
clarification of the Order citing confusion, overwork, and being too busy. A multitude of issues
confused them apparently but we mention only one. Specifically Righthaven asked the court to
clarify the following:

6. As of now, counsel still is investigating how to provide non-served parties with
the materials required under the Order. Counsel requests clarification as to
whether ECF filing of the required materials will constitute compliance with the
Court's Order in this pending matters. (*Democratic Underground* Dkt #143 p.4)

1 A clearly frustrated Judge Hunt responds in his Order on August 2nd (*Democratic*
2 *Underground* Dkt #148):

3 In this motion, Righthaven requests that the Court clarify its sanctions order and
4 extend the time for Righthaven to comply with the sanctions. The Court has
5 already granted an extension and will now address the requested clarifications.
6 **Righthaven desires to know: (1) whether simply filing the required
documents in a case where the defendant has not yet been served would be
sufficient,....**

7 First, as Righthaven points out in its motion, when the Court issued the sanctions
8 the Court and counsel referred to "parties," not merely cases. Accordingly, it is
9 insufficient to merely file the required documents; Righthaven must produce the
10 documents to the parties in those cases as the Court clearly stated. **The reason for
this is simple: the Court is fully aware of Righthaven's practice of filing suit
11 against a party and then entering settlement negotiations (and frequently
settling) without ever serving the party. The Court concludes that depriving
12 those parties of the benefit of the Court's order would be unjust.**

13 Emphasis added. This Defendant fell into the category of pro se not yet served. Judge
14 Hunt was quite clear that such a defendant was to be provided with the specific documents he
15 identified.

16 Righthaven intentionally failed to comply with the Order as it pertains to the Defendants
17 in this case and made no effort whatsoever to provide the documents to your Defendants. Despite
18 this intentional lack of compliance, on August 8 Righthaven filed with the Court a Notice of
19 Compliance in which Righthaven stated:

20 "Righthaven has complied with the July 14th Order as follows: ... (2) it has sent
21 copies of the Court's dismissal for lack of standing, the SAA [the "agreement"]
22 and the July 14, 2011 OSC hearing transcript **to all addresses on file for all pro
se parties appearing in all currently pending actions involving Stephens
Media content**".

23
24 Righthaven has not provided copies of the Court's dismissal for lack of standing,
25 the SAA and the July 14, 2011 OSC hearing transcript to those parties that are
26 named defendants in pending actions, but for which service of process of the
27 operative version of the complaint has not been effectuated. **Righthaven,
however, has not deliberately failed to serve or failed to attempt to serve any
28 defendant in any pending action. Unfortunately, some named defendants
have managed to evade service of process or simply cannot be located so that
service can be made upon them.** Should Righthaven effectuate service on any

1 defendant in any pending action that it been able to effectuate to date, it will
2 provide those parties with copies of the SAA and the July 14, 2011 OSC hearing
transcript pursuant to the July 14th Order. (*Democratic Underground Dkt #154*)

3 Emphasis added. This representation to the court by Righthaven was knowingly false and
4 intentionally misleading. Along with the Notice of Compliance Righthaven filed an Exhibit 1
5 "July 14, 2011 Order Compliance Table" listing the parties in question and the address
6 Righthaven alleges to have on file for each. (*Democratic Underground Dkt #154*) Your
7 Defendants can be found listed as item 74, with the following notation as the address represented
8 as being on file for each of them: "No address. Unable to serve complaint to date" Righthaven
9 lied to the Court claiming they had no address for the named Defendants, and had be "unable" to
10 serve the complaint to date, when in fact the addresses in question were clearly found on the very
11 summons Righthaven provided to the Clerk for each Defendant back in May, and Righthaven
12 had never made any attempt to serve the complaint on the Defendants. Yet Righthaven went out
13 of their way to state "**Righthaven, however, has not deliberately failed to serve or failed to**
14 **attempt to serve any defendant in any pending action**". This statement is false on its face.

15 Since July 20th of this year alone, seven Righthaven lawsuits have been dismissed for
16 failure to serve the complaint. At least five others filed this past May are now ripe for such a
17 dismissal. Yet ALL have a summons on file with the Clerk for each named defendant, address
18 included. Righthaven is flagrantly and intentionally lying to the Court. No other reasonable
19 conclusion can be drawn. They decided to forego compliance and replace it with a blatant
20 collection of lies, regarding numerous defendant addresses in numerous cases, to the Court.

21 The motive for this collection of utter fabrications was a self serving litigation advantage.
22 Righthaven was confident that no pro se defendant who had not been served would be aware of
23 the Order issued by Judge Hunt and thus would not be aware of their non-compliance, so no one
24 would expose their deceit. They also believed that no one else would access the docketed
25 summons, complete with correct and full defendant addresses, in cases where they claimed not to
26 have an address. Since the documents Judge Hunt ordered be provided contained material and
27 damaging probative content to their lawsuits, current and future, Righthaven had a vested interest
28 in not supplying it to non-served defendants whose cases, though dismissed eventually for failure

1 to timely serve, might be resurrected under new complaints in the future. Indeed other
2 defendants in 5 additional cases whose service must be completed on the 2nd or 3rd of September
3 were also claimed as having no address on file, when in fact they also contain a summons with
4 an address for each and every defendant named. (see Dkt #8 in this case). Righthaven is
5 intentionally not serving ANY case not yet served since their lack of standing to bring all of
6 these suits has now been determined by the Court. That they can represent otherwise to the Court
7 is unconscionable and offensive, both to the judicial system and one's intelligence.

8 When your Defendant filed his Affidavit (Dkt #8) with this Court on August 16, he also
9 served a copy on Righthaven. Despite this direct notice of their failure to comply, Righthaven
10 continues to not have complied, electing instead to ignore notice that defendants in this case were
11 not provided with Sanction Ordered documents even with confirmation of addresses staring them
12 in the face.

13 **B. Failure to comply with a court order is grounds for dismissal with prejudice.**

14 Federal Rule of Civil Procedure 41(b) provides "if the plaintiff fails to prosecute or to
15 comply with these rules **or a court order**, a defendant may move to dismiss the action or any
16 claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision
17 (b) and any dismissal not under this rule — except one for lack of jurisdiction, improper venue,
18 or failure to join a party under Rule 19 — **operates as an adjudication on the merits**".
19 Emphasis added. Righthaven not only failed to comply with the Order of the Court, but did so
20 knowingly, willfully and with clear intent, even after having caused the Court to clarify with
21 great specificity the requirements of that Order. The Supreme Court has recognized that
22 dismissal "must be available to the district court in appropriate cases, not merely to penalize
23 those whose conduct may be deemed to warrant such a sanction, but to deter those who might be
24 tempted to such conduct in the absence of such a deterrent." *Nat'l Hockey League v. Metro.*
25 *Hockey Club, Inc.*, 427 U.S. 639, 643 (1976) (per curiam). And so has the 9th Circuit. See *Allen*
26 *v. Exxon Corp.* (In re the EXXON VALDEZ), 102 F.3d 429, 433 (9th Cir. 1996).

27 **C. Dismissal with prejudice is appropriate for willful deceit.**

28 This Court has the inherent power to dismiss an action when a party has "willfully

1 deceived" the Court and "engaged in conduct utterly inconsistent with the orderly administration
2 of justice." *Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983); *Phoceene Sous-*
3 *Marine, S.A. v. U.S. Phosmarine, Inc.*, 682 F.2d 802, 806 (9th Cir. 1982). Such conduct is an
4 intentional obstruction to the proper and equitable use of not only this Court's resources, but the
5 justice system as a whole. Arguably Righthaven's conduct in this case, and others similarly
6 situated, is a Fraud Upon the Court and serves to cause "the judicial machinery [to] not perform
7 in the usual manner its impartial task of adjudging cases that are presented for adjudication."
8 *Gumport v. China Int'l Trust & Inv. Corp. (In re Intermagnetics Am., Inc.)*, 926 F.2d 912, 916
9 (9th Cir. 1991) (defining "fraud upon the court") Based on this behavior alone, the Court has
10 cause, authority and discretion to dismiss this case with prejudice.

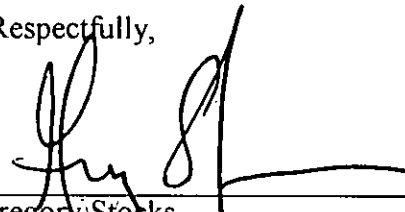
11 Because Righthaven has been found to lack standing by virtue of their flawed copyright
12 ownership agreements with Stephens Media, and because their subsequent attempts to revise
13 those agreements in order to create standing midstream in their lawsuits has been rejected, (see
14 *Democratic Underground*) it is foreseeable, and borne out by the current trend of a lack of
15 service in cases filed earlier this year, that they plan to allow a significant number of current
16 actions to be dismissed without having served the complaints in order to re-file with new
17 agreements in hopes of curing standing issues. In doing so it is in their interest not to have
18 provided these once and future defendants with the documents the Court ordered them to
19 provide. It is an end run around the Court and should not be rewarded. It is yet another flagrant
20 deception of the court and defendants.

22 CONCLUSION

23 For all of the reasons stated herein, this Court should dismiss this case and should do so
24 while imposing sanctions to include dismissal with prejudice. Therefore, Defendant moves this
25 honorable Court to dismiss this case with prejudice.

1 Dated September 2nd, 2011

2 Respectfully,

3
4
5 

6 Gregory Stocks
7 Defendant pro se
8 640-D North Calvert St.
9 Baltimore, MD 21202
10 (410) 913-4337
11 admin@lawmedconsultant.com

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that on this 2nd day of September, 2011, I caused documents entitled:

DEFENDANT’S MOTION TO DISMISS WITH PREJUDICE FOR FAILURE TO SERVE THE COMPLAINT, WILLFUL DECEPTION, AND FAILURE TO COMPLY WITH A JUDICIAL ORDER

to be served by depositing them for mailing in the United States Mail, in a sealed envelope addressed to Shawn A. Mangano Esq, 9960 West Cheyenne Avenue, Suite 170, Las Vegas, Nevada 89129-7701, upon which first class postage was fully prepaid. A copy of this motion has also been mailed in the same manner to Judge Roger L Hunt as a point of information.



Gregory Stocks
Defendant pro se
640-D North Calvert St.
Baltimore, MD 21202
(410) 913-4337
admin@lawmedconsultant.com

Exhibit A

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE ROGER L. HUNT, U.S. DISTRICT JUDGE

RIGHTHAVEN, LLC, a
Nevada limited-liability
company,

Plaintiff,

vs.

DEMOCRATIC UNDERGROUND,
LLC, a District of
Columbia limited-
liability company; and
DAVID ALLEN, an
individual,

Defendants.

No. 2:10-cv-01356-RLH-GWF

July 14, 2011

Las Vegas, Nevada

DEMOCRATIC UNDERGROUND,
LLC, a District of
Columbia limited-
liability company,

Counterclaimant,

vs.

RIGHTHAVEN, LLC, a
Nevada limited-liability
company; and STEPHENS
MEDIA, LLC, a Nevada
limited-liability
company,

Counterdefendants.

TRANSCRIPT OF ORDER TO SHOW CAUSE [116]

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APPEARANCES:

For the Plaintiffs: SHAWN MANGANO
COLBY WILLIAMS
DONALD CAMPBELL
Attorneys at Law

For the Defendants: LAURENCE F. PULGRAM
KURT OPSAHL
Attorneys at Law

FTR No. RLH/20110714

(Transcript produced from digital voice recording;
transcriber not present at proceedings)

Transcribed by: Donna Davidson, RDR, CRR, CCR 318
Certified Realtime Reporter
400 South Virginia Street
Reno, Nevada 89501
(775) 329-0132

1 LAS VEGAS, NEVADA, JULY 14, 2011, 9:04 A.M.

2 --o0o--

3 P R O C E E D I N G S

4

5 THE COURT: Be seated.

6 THE CLERK: Righthaven, LLC, versus Democratic
7 Underground, LLC, et al, 2:10-cv-1356-RLH-GWF.

8 This is the time set on order for a show cause
9 hearing and also for the motion to reconsider.

10 Counsel, please note your appearances for the
11 record.

12 MR. MANGANO: Shawn Mangano on behalf of
13 plaintiff Righthaven, LLC.

14 MR. WILLIAMS: Good morning, Your Honor, Colby
15 Williams on behalf of Stephens Media.

16 MR. CAMPBELL: Donald Drew Campbell on behalf
17 of Stephens Media.

18 MR. PULGRAM: Laurence Pulgram on behalf of
19 Democratic Underground.

20 MR. OPSAHL: Kurt Opsahl, the Electronic
21 Frontier Foundation, on behalf of Democratic
22 Underground.

23 THE COURT: Thank you.

24 MR. WILLIAMS: Excuse me, Your Honor. I heard
25 your clerk say this was also set for a motion for

1 there's anything about what Mr. Mangano just said that
2 suggests to the Court that I need to hear from
3 Democratic Underground.

4 MR. OPSAHL: Thank you, Your Honor.

5 THE COURT: Let me make it clear that the
6 Court is also not here to find fault with Mr. Coons or
7 Mr. Chu.

8 I do find it significant, however, that in all of
9 this -- and I -- I've read and reread this sentence from
10 the statement in the response, and I quote from the
11 second page: It is certainly understandable how Local
12 Rule 7-1.1 could have arguably been reasonably construed
13 to not require the disclosure of Stephens Media's
14 interest in any recovery.

15 I was impressed that you were able to get three
16 hedge words or qualifiers within the space of four words
17 in that sentence and wondered if maybe you ran out of
18 them.

19 That significant, I guess, to me is is that we
20 don't have any affidavit from Mr. Chu or Mr. Coons:
21 One, that they made a mistake; two, that they didn't
22 understand it; three, that they didn't understand Local
23 Rule 7.1-1. But, more importantly, I don't have any
24 evidence that they even knew about the relationship;
25 that they were familiar with the terms and circumstances

1 of the strategic agreement.

2 An argument that they arguably could have
3 reasonably construed to not require that, in the Court's
4 opinion, is, frankly, ludicrous.

5 Rule 7.1-1, the purpose of it, the primary
6 purpose of it, is to make sure that the Court becomes
7 aware, as soon as possible, of any need to recuse itself
8 because of any conflict of interest. But it's the
9 violation of the rule, in addition to all of the other
10 things that took place in this case and any other cases
11 that the Court has in front of it -- and I think there
12 are -- I think there are or were 34 cases that were
13 assigned to me by Righthaven in this case. I do not
14 understand the argument that an agreement whereby
15 Stephens Media got half of any recovery or settlement
16 could any -- in any way be construed as not having a
17 direct pecuniary interest.

18 And, again, I'm not here to sanction Mr. Coons or
19 Mr. Chu. And I will tell you now that I do not think
20 that the Court's sanction power is limited to sanction
21 Mr. Chu or Mr. Coons. The Court does have the right to
22 sanction an attorney when he violates it.

23 I don't have any evidence that they intentionally
24 kept this from the Court. But I have a lot of evidence
25 that Righthaven intentionally kept it. This is not an

1 issue of negligence, in the Court's view. It goes to
2 the evidence of an intentional avoidance of disclosing
3 information and specific direct statements contrary to
4 that.

5 I think I have sufficient inherent power to
6 sanction. And I think Rule 11 gives me even additional
7 power to sanction for violation of this rule under these
8 circumstances.

9 Counsel that was representing Righthaven,
10 Mr. Coons and Mr. Chu, were both in-house counsel, if
11 you will.

12 Mr. Gibson, who took over and I think was counsel
13 at the time that the SAA was disclosed is the CEO of
14 Righthaven. So I think for purposes of the language of
15 7.1-1, in this instance, Righthaven qualifies as a party
16 acting pro se. Because it's their in-house people doing
17 it, it's not outside counsel as they have now.

18 In the Court's view, the arrangement between
19 Righthaven and Stephens Media is nothing more nor less
20 than a law firm, which, incidentally, I don't think is
21 licensed to practice law in this state, but a law firm
22 with a contingent fee agreement masquerading as a
23 company that's a party.

24 There was a clear pecuniary interest, in the
25 Court's view, by Stephens Media. Mr. Gibson negotiated

1 the agreement. He signed the agreement. He certainly
2 knew the agreement and its contents. He has a
3 significant amount of experience. At least that is
4 represented to me. I think this has been part of a
5 concerted effort to hide Stephens Media's role in this
6 litigation.

7 Plaintiff claimed that it had various exclusive
8 rights when it knew that the ability to exercise those
9 rights were retained exclusively by Stephens Media. It
10 constantly and consistently refused to produce the
11 agreement. And it wasn't until after the Court ordered
12 that it be disclosed and then unsealed that they started
13 admitting their reasons.

14 There was, in fact, in the -- in Stephens Media's
15 reply to their motion -- in support of their motion to
16 dismiss, that they state, and I quote, "Stephens Media
17 has never been identified or disclosed as a party who
18 has a direct pecuniary interest in the outcome of any
19 Righthaven case, and for good reason," close quote.

20 The representations about the relationship and
21 the rights of Righthaven were misrepresentations. They
22 were misleading. And that -- the failure to disclose
23 them -- and you can speak and argue that there's no case
24 law or there are no -- there's no definition in the rule
25 that lays out what a direct pecuniary interest is. I

1 don't know how more direct you can get. The fact that
2 it has to go to Righthaven first and then go to Stephens
3 Media, in the Court's view, does not remove it from
4 being a direct pecuniary interest. It was there. They
5 had the right to have -- they had the right, actually,
6 to settle claims on their own.

7 And the Court finds it troubling, quite frankly,
8 in all of the cases that I'm aware of filed in this
9 district, and I've lost count as to how many there were,
10 that not only were the terms of the agreement disclosed,
11 but that there was a consistent, repeated failure to
12 identify Stephens Media as having any interest in this
13 lawsuit.

14 And it isn't enough to say, well, the Court
15 should have been on notice of it. The Court has the
16 right to accept the representations made by a party
17 through counsel. And when it finds that those
18 representations are not true and, having looked at all
19 this evidence, finds that they are intentionally untrue,
20 the Court feels that there is a necessity of and finds
21 that there is an obligation on the Court to sanction
22 Stephens Media.

23 I've given a lot of thought as to what kind of
24 sanction is required. I appreciate the fact that
25 counsel has attempted to rectify the problem that has

1 existed. It does not change or affect the Court's
2 opinion as to whether or not it was an accident or a
3 misunderstanding as opposed to being an intentional --
4 I'll call it failure to disclose, for want of a stronger
5 term, although I think a stronger term is justified.
6 But as part of the sanction, the Court is going to order
7 that every case Righthaven has in any jurisdiction in
8 this country must be provided with a copy of this
9 Court's decision about the agreement, the one on
10 standing, and that the agreement be disclosed to parties
11 that Righthaven has sued.

12 The Court is also going to order a monetary
13 sanction against Righthaven, itself, in the amount of
14 \$5,000 and order that Local Rule 7.1-1 will be properly
15 complied with, either retrospectively or prospectively,
16 in all cases that are filed by Righthaven with respect
17 to this agreement.

18 Is there anything -- yes, counsel?

19 Incidentally, that monetary sanction will be paid
20 within two weeks to the clerk of court.

21 MR. MANGANO: Your Honor, just a couple points
22 of clarification. And I understand that you will be
23 issuing a written opinion based upon what we -- based
24 upon this hearing, I assume?

25 THE COURT: I'm not sure I will, counsel.

1 I'll give that some consideration.

2 MR. MANGANO: Okay. Well, in view of that
3 uncertainty, I'd just --

4 THE COURT: If I do issue a written opinion,
5 counsel, I'm also going to direct that it be provided,
6 filed in every other case that Righthaven has against
7 anybody on this --

8 MR. MANGANO: Okay.

9 THE COURT: Along these issues.

10 MR. MANGANO: Okay. Your Honor, just for
11 point of clarification, you've mentioned a couple bases
12 for your sanction power; and it's not to challenge your
13 sanction powers, but to clarify the record.

14 You've mentioned Rule 11, you've mentioned the
15 inherent power, and you've mentioned the local rule.
16 These sanctions that you just enumerated, do those fall
17 under, one, all or -- one specific sanction power or
18 under all your inherent power --

19 THE COURT: I'm invoking all of them, counsel.

20 MR. MANGANO: Okay. Thank you, Your Honor.

21 And a second point of clarification is that you
22 said that parties -- all parties who are sued to be
23 provided with a copy of the agreement, the strategic
24 alliance agreement.

25 THE COURT: That will not apply to those cases

1 that have been dismissed, unless there's going to be an
2 appeal in those cases.

3 MR. MANGANO: Okay. So all -- essentially all
4 pending matters, would that be --

5 THE COURT: Yes.

6 MR. MANGANO: Okay. And would your order
7 include -- since as the Court, I'm sure, is aware, we
8 have a clarification and we have what's now a restated
9 version of the SAA, restated and amended version, would
10 you like those provided as well?

11 THE COURT: No.

12 MR. MANGANO: Just the SAA?

13 THE COURT: And no -- any revisions,
14 amendments after the fact, in the Court's view, is
15 irrelevant to this issue.

16 MR. MANGANO: Okay. Thank you, Your Honor.

17 THE COURT: Thank you.

18 Any questions from other defendant?

19 MR. OPSAHL: It may also be useful for some of
20 those cases to have a copy of Righthaven's operating
21 agreement.

22 THE COURT: I beg your pardon?

23 MR. OPSAHL: It may also be useful to -- for
24 the defendants in those cases to have a copy of
25 Righthaven's operating agreement along with the

1 strategic alliance.

2 THE COURT: I think that was part of my order,
3 counsel, is that the operating -- well, are you talking
4 about the strategic alliance agreement?

5 MR. OPSAHL: There's a strategic alliance
6 agreement as between Stephens Media and Righthaven; then
7 there's also the Righthaven operating agreement, which
8 is the organizational document for Righthaven.

9 MR. MANGANO: Your Honor, that's -- the issue
10 here is the failure to disclose Stephens Media, which is
11 a party to the --

12 THE COURT: Yes. I will not include that,
13 counsel. I don't think it's relevant to this.

14 MR. OPSAHL: Okay. Thank you, Your Honor.

15 MR. MANGANO: And, Your Honor, there are cases
16 pending, such as in the District of Colorado, which
17 involve -- do not involve Stephens Media, but they
18 involve MediaNews Group as the holder of the work that's
19 been assigned.

20 Would your order require a production of the SAA
21 or the production of the operative agreement, which I
22 believe has been publicly filed already in the lead case
23 that's resulted in a stay of some 34 actions?

24 THE COURT: In Colorado, you're talking about?

25 MR. MANGANO: Yes. All the Colorado

1 actions -- all the Colorado actions, to my knowledge, do
2 not involve Stephens Media content.

3 I just want to make sure that when you say
4 produced in all jurisdictions, it's not all -- not all
5 jurisdictions involve Stephens Media content. So --

6 THE COURT: Are the agreements, the strategic
7 agreements the same?

8 MR. MANGANO: No. They are in a different
9 form. The content is significantly -- it looks
10 different. It's very -- the document that controls
11 those agreements has been produced and has not been
12 sealed.

13 THE COURT: All right.

14 MR. MANGANO: So the only other jurisdiction
15 would be there's a pending action in South Carolina, and
16 there are the pending actions in this jurisdiction that
17 involve Stephens Media.

18 THE COURT: You are obligated to the one in
19 South Carolina, but you're also obligated to advise the
20 Colorado court of this decision.

21 MR. MANGANO: Thank you, Your Honor.

22 MR. PULGRAM: And, finally, Your Honor,
23 Laurence Pulgram. You stated that if you issued a
24 ruling in writing on this matter today, on this OSC,
25 that you would ask that it be provided to the other

1 courts.

2 In the absence of that written ruling, would it
3 make sense for the transcript of your ruling, up to the
4 colloquy here, to be provided to other courts in lieu of
5 a written order, to save Your Honor from having to write
6 the written order?

7 MR. MANGANO: I think that's the
8 understanding. If there's no order, I'm to produce the
9 transcript, correct?

10 THE COURT: Yes. I think that's a good
11 suggestion. And that will be the order if it wasn't
12 clear otherwise.

13 Anything else?

14 MR. MANGANO: No, Your Honor.

15 MR. OPSAHL: No, Your Honor.

16 THE COURT: We'll be in recess.

17 (The proceedings were concluded at
18 9:35 a.m.)

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Donna Davidson

7/14/11

Donna Davidson, RDR, CRR, CCR #318
Official Reporter

Date