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

28 Counterdefendants.

Case No. 10-01356-RLH (GWF)

**MOTION FOR LEAVE TO
 FILE DEFENDANTS'
 SUPPLEMENTAL
 MEMORANDUM
 ADDRESSING RECENTLY
 PRODUCED EVIDENCE
 RELATING TO PENDING
 MOTIONS AND THE
 SUPPORTING
 DECLARATION OF
 LAURENCE PULGRAM**

MOTION FOR LEAVE

Defendant and Counterclaimant Democratic Underground, LLC and Defendant David Allen (collectively, “Democratic Underground” or “Defendants”) hereby respectfully request that the Court permit Defendants to file a Supplemental Memorandum Addressing Recently Produced Evidence Relating to Pending Motions (“Supplemental Memorandum”) and the Supporting Declaration of Laurence Pulgram (“Pulgram Decl.”), attached hereto as Exhibits 1 and 2 respectively. As fully explained by Defendants’ Supplemental Memorandum, this briefing is necessary to address belatedly produced information highly relevant to the three currently pending motions. *See* Dkt. 36 (Righthaven’s Motion to Dismiss); Dkt. 38-39 (Stephens Media’s Motion to Dismiss and Joinder); and Dkt. 45 (Democratic Underground’s Cross Motion for Summary Judgment).

Specifically, on February 28, 2011, Cross-Defendant Stephens Media, LLC (“Stephens Media”) produced a copy of [REDACTED]

[REDACTED]. *See* Declaration of Laurence Pulgram (“Pulgram Decl.”), Exhibit A [REDACTED]

[REDACTED] never before revealed to any Court in this District, on its face purports to [REDACTED]

[REDACTED] *Id.* While Righthaven has previously represented to the Court [REDACTED]

[REDACTED]

[REDACTED] it (and Stephens Media) has heretofore failed to provide [REDACTED]

[REDACTED].

[REDACTED] provide substantial evidence relevant to the pending motions, including that: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 Defendants request that the Court consider the Supplemental Memorandum and the
4 supporting Declaration of Laurence Pulgram as they address this new evidence and provide a
5 further basis upon which to deny the two Motions to Dismiss and to grant summary judgment on
6 the issue of fair use. Given that this material was only recently and belatedly produced,
7 Defendants could not have addressed it in any of the prior briefing. *See, e.g., United States v.*
8 *Maris*, 2011 WL 468554, at *5 n.5 (D. Nev. Feb. 4, 2011) (granting leave to file supplemental
9 materials even after the hearing on a motion for summary judgment); *Mitchel v. Holder*, 2010 WL
10 816761, at *1 n.1 (N.D. Cal. Mar. 9, 2010) (granting leave to file supplemental brief in support of
11 motion for summary judgment addressing newly discovered evidence); *Lumsden v. United States*,
12 2010 WL 2232946, at *1 (E.D. N.C. June 3, 2010) (granting leave to submit additional newly
13 discovered evidence in support of motion for summary judgment).
14

15 Dated: March 4, 2011

Respectfully submitted,

FENWICK & WEST LLP

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

20 Attorneys for Defendant and Counterclaimant
21 DEMOCRATIC UNDERGROUND, LLC, and
22 Defendant DAVID ALLEN
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