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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 Righthaven LLC, a Nevada limited-
16 liability company,

17 Plaintiff,

18 v.

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

23 Defendants.

24 Case No.: 2:10-cv-01356-RLH-RJJ

25 **COUNTER-DEFENDANT STEPHENS
26 MEDIA LLC'S JOINDER IN MOTION
TO RECONSIDER ORDER (#78), IN
THE ALTERNATIVE, MOTION FOR
LEAVE TO FILE RESPONSE TO
COUNTERCLAIMANT DEMOCRATIC
UNDERGROUND, LLC'S
SUPPLEMENTAL MEMORANDUM
AND SUPPORTING DECLARATION
OF LAURENCE PULGRAM (#72)**

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

29 Counterclaimant,

30 v.

31 Righthaven LLC, a Nevada limited-
32 liability company; and STEPHENS MEDIA
33 LLC, a Nevada limited-liability company,

34 Counterdefendants.

1 Counter-Defendant Stephens Media LLC (“Stephens Media”) hereby submits the instant
2 Joinder in Motion to Reconsider Order (#78), in the Alternative, Motion for Leave to File a
3 Response to Counterclaimant Democratic Underground, LLC’s Supplemental Memorandum
4 and Supporting Declaration of Laurence Pulgram (#72). This Motion is based upon the
5 pleadings and papers on file in this action, any oral argument this Court may allow, and any
6 other matter of which this Court takes notice.
7

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **I. BACKGROUND**

10 On March 4, 2011, Defendant/Counterclaimant Democratic Underground, LLC (“DU”)
11 filed its Motion for Leave to File Supplemental Memorandum and Supporting Declaration of
12 Laurence Pulgram (#72). DU alleged that Stephens Media produced new evidence in the course
13 of discovery which is “highly relevant” to the pending dispositive motions in this matter (#36,
14 38, 45). DU also submitted its Supplemental Memorandum and Supporting Declaration of
15 Laurence Pulgram which presented the so-called “new evidence” for the Court’s consideration
16 in addition to extensive legal argument. On March 9, 2011, the Court granted DU’s Motion for
17 Leave to File Supplemental Memorandum and Supporting Declaration of Laurence Pulgram
18 (#76). Defendant Righthaven, LLC filed a Motion to Reconsider the foregoing Order later the
19 same day (#78).

20 **II. DISCUSSION**

21 Stephens Media hereby joins in the Motion to Reconsider filed by Righthaven. In the
22 event the Court denies the Motion to Reconsider, Stephens Media alternatively seeks leave to
23 submit its own supplemental brief in response to that filed by DU. As the moving party on the
24 underlying Motion to Dismiss, Stephens Media would ordinarily be the party entitled to close
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1 the briefing with a reply. Because DU has now been granted leave to file a Supplemental
2 Memorandum that relies on “new evidence” and sets forth new legal argument, Stephens Media
3 respectfully submits that it should be provided the opportunity to respond thereto. *See United*
4 *States v. One Parcel of Real Prop. Described as Lot 41, Berryhill Farm Estates*, 128 F.3d 1386,
5 1395 fn. 6 (10th Cir. 1997) (granting motion for leave to respond to supplemental authority).
6 *Cf. Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996) (a party may not submit “new”
7 evidence in a reply without affording the opposing party an opportunity to respond because
8 “[s]uch a result would be unfair”); *Am. Civil Liberties Union of Nevada v. City of Las Vegas*, 13
9 F.Supp.2d 1064, 1071 (D. Nev. 1998) (“[w]hen new evidence is submitted with a reply brief,
10 the court should not consider the new evidence without giving the non-moving party an
11 opportunity to respond”).
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13

14 **III. CONCLUSION**

15 Stephens Media joins in Righthaven’s Motion to Reconsider. Should the Court deny
16 said Motion, Stephens Media respectfully seeks leave to file a supplemental brief that responds
17 to the new evidence and arguments presented in DU’s Supplemental Memorandum.
18

19 Dated this 9th day of March, 2011.

20 Respectfully submitted,

21 CAMPBELL & WILLIAMS

22 By /s/ J. Colby Williams

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that service of the foregoing was served on the 9th day of March, 2011 via the Court's CM/ECF electronic filing system addressed to all parties on the e-service list.

/s/ J. Colby Williams
An employee of Campbell & Williams