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 8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF NEVADA**
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11 RIGHTHAVEN LLC, a Nevada limited-
 liability company,
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 13 Plaintiff,
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 15 v.
 16 DEMOCRATIC UNDERGROUND, LLC, a
 District of Columbia limited-liability
 company; and DAVID ALLEN, an individual,
 17
 18 Defendants.

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

**RIGHTHAVEN LLC’S RESPONSE TO
 DEFENDANT’S REQUEST TO UNSEAL
 EXHIBIT A TO PULGRAM
 DECLARATION AND RELATED
 FILINGS AND APPLICATION FOR
 ORDER TO SHOW CAUSE WHY
 DEFENDANTS SHOULD NOT BE HELD
 IN CONTEMPT FOR VIOLATION OF
 THE STIPULATED PROTECTIVE
 ORDER ENTERED BY THE COURT**

19 DEMOCRATIC UNDERGROUND, LLC, a
 20 District of Columbia limited-liability
 company,
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 22 Counterclaimant,
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 24 v.
 25 RIGHTHAVEN LLC, a Nevada limited-
 liability company; and STEPHENS MEDIA
 LLC, a Nevada limited-liability company,
 26
 27 Counterdefendants.
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1 Righthaven LLC (“Righthaven”) hereby responds to Defendant Democratic
2 Underground, LLC’s (“Democratic Underground”) and David Allen’s (“Allen” and collectively
3 referred to herein as “Defendants”) Request to Unseal Exhibit A to Pulgram Declaration and
4 Related Filings (the “Request to Unseal,” Doc. # 85). Defendants’ request to unseal should be
5 denied because they have subverted the terms of the Stipulated Protective Order (the “Protective
6 Order”) entered by this Court on February 14, 2011 (Doc. # 65) through their submission of a
7 proposed order that contradicted the agreed upon procedures for addressing confidential
8 document designation disputes. The Court, likely unaware of the specific dispute mechanisms
9 concerning confidential document designations contained in the Protective Order, entered
10 Defendants’ proposed order (Doc. # 75). Defendants now ask the Court to unseal highly
11 confidential materials designated by Stephens Media LLC (“Stephens Media”) based upon an
12 Order that was obtained without any substantive disclosure that the submitted contents were
13 directly contrary to the terms of the Protective Order. Defendants’ conduct and their failure to
14 abide by the required terms under the Protective Order additionally serve as the basis for a
15 request that the Court issue an Order to Show Cause why they should not be held in contempt.

16 The circumstances under which Defendants secured the Order upon which they now
17 request to unseal confidential materials is shocking and likely in violation of their duty of candor
18 owed to this Court. Defendants submitted a Conditional Request to Submit Documents Under
19 Seal (the “Conditional Request,” Doc. # 73) along with a proposed order (Doc. # 75) that serves
20 as the basis for their request to unseal (Doc. # 85). Defendants’ Conditional Request advised the
21 Court of the following with regard to the Protective Order:

- 22 1. That Stephens Media had produced materials that were designated as
23 “Confidential Attorneys’ Eyes Only” as permitted under the Protective Order
24 (Doc. # 75 at 1:9-12.); and
- 25 2. Documents designated as such must be submitted to the Court under seal under
26 the terms of the Protective Order (*Id.* at 1:12-14.)

27 Defendants’ Conditional Request then cites case law and makes argument concerning the
28 presumption favoring public access to materials. (*Id.* at 1:20-27.) Defendants next argue that

1 neither Stephens Media nor Righthaven could make the showing required to prohibit public
2 access to the submitted confidential materials, which were designated pursuant to terms of an
3 agreement between the parties that was entered by this Court. (Doc. # 73 at 2:1-5.) Defendants
4 then argue that Stephens Media and/or Righthaven “attempt to justify the sealing of the entirety
5 of Exhibit A in response to this Motion.” (*Id.* at 2:8-9.)

6 Nowhere in the Conditional Request did Defendants disclose that the Protective Order
7 contained specific confidentiality designation dispute resolutions procedures. These procedures
8 are contained in paragraph 19, which reads as follows:

9
10 If the Parties disagree as to whether designated material should be
11 protected as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’
12 EYES ONLY”, they are obligated to negotiate in good faith regarding the
13 designated material. Within five calendar days after receiving an
14 objection to the [the] designation of material, the Designating Party shall
15 either withdraw or modify the designation or advise that it will not be
16 consensually withdrawn or modified. If the Parties are unable to resolve
17 their differences at that time, the Party challenging the designation
18 (“Challenging Party”) may make a motion to the court seeking the
19 determination of the status of the material. The Designating Party, when
20 its designation is challenged, bears the ultimate burden of proving that the
21 designated material is entitled to protection. In the event of a motion, the
22 documents or information whose designation is objected to shall continue
23 to be treated as so designated until the motion is decided.

24 (Doc. # 65 at 9-10.) In fact, despite their reference to the Protective Order applying to the
25 materials designated by Stephens Media, Defendants failed to comply with the filing
26 requirements expressly delineated in paragraph 12 of the Protective Order. (*Id.* at 7-8.)
27 Defendants’ scheme to subvert the Protective Order is additionally evidenced by the contents of
28 the proposed order, which was entered by the Court (Doc. # 75.) The proposed order did not
reference the Protective Order or its dispute resolution procedures whatsoever. (*Id.*) The
proposed order did not set forth their compliance efforts with the dispute resolution procedures
required under the Protective Order at all. Moreover, Defendants’ submissions made to the
Court, which they now seek to unseal, failed to contain any of the designations set forth in
paragraph 12 of the Protective Order.

1 Defendants' failed to inform the Court of the dispute resolution procedures contained in
2 the Protective Order, which they did not follow, when filing their Conditional Request. They did
3 not comply with the confidential document submission provisions set forth in paragraph 12 of
4 the Protective Order. Defendants also made no meaningful attempt to meet and confer or
5 otherwise discuss modifying the confidentiality designation assigned to the materials before
6 submitting them to the Court. Rather, they redacted portions deemed confidential and asked the
7 Court to seal the filing unless Stephens Media and/or Righthaven justified why they should not
8 be made public through language contained in their proposed order that was subsequently
9 entered. (Doc. # 75.) Defendants and their counsel, who are appearing with permission on a *pro*
10 *hac vice* basis, should not be permitted to engage in such disingenuous gamesmanship in
11 contravention of the Protective Order entered by this Court. Defendants' Request to Unseal
12 should be denied. The Court should additionally issue an Order to Show Cause why the
13 Defendants should not be held in contempt for violating the Protective Order.

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15 Dated this 30th day of March, 2011.

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