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

10  
11 RIGHTHAVEN LLC, a Nevada limited-  
liability company,  
12  
13 Plaintiff,  
14  
15 v.  
16 DEMOCRATIC UNDERGROUND, LLC, a  
District of Columbia limited-liability  
company; and DAVID ALLEN, an individual,  
17  
18 Defendants.

19  
20 DEMOCRATIC UNDERGROUND, LLC, a  
District of Columbia limited-liability  
company,  
21  
22 Counterclaimant,  
23  
24 v.  
25 RIGHTHAVEN LLC, a Nevada limited-  
liability company; and STEPHENS MEDIA  
LLC, a Nevada limited-liability company,  
26  
27 Counterdefendants.  
28

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**

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.

14  
15 Dated this 30<sup>th</sup> day of March, 2011.

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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I on this 30<sup>th</sup> day of March, 2011, I caused the foregoing document to be served by the Court's CM/ECF system.

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