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18 DEMOCRATIC UNDERGROUND, LLC, and
19 Defendant DAVID ALLEN

20 **UNITED STATES DISTRICT COURT**
21 **FOR THE DISTRICT OF NEVADA**

18 RIGHTHAVEN LLC, a Nevada limited liability company,
19 Plaintiff,
20 v.
21 DEMOCRATIC UNDERGROUND, LLC, a District of
22 Columbia limited-liability company; and DAVID ALLEN,
23 an individual,
24 Defendants.

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

Case No. 10-01356-RLH (GWF)

**DEFENDANTS' REQUEST
TO UNSEAL EXHIBIT A TO
PULGRAM DECLARATION
AND RELATED FILINGS
[DKT NOS. 74, 79]**

REQUEST TO UNSEAL

On March 8, 2011, this Court ordered that Defendants’ Supplemental Memorandum Addressing Recently Produced Evidence Relevant to Pending Motions (Dkt. 74) and accompanying documents be temporarily placed under seal, but also provided that:

within fourteen (14) days of the date of this Order, (i) the parties shall file a stipulation as to which portions of said Exhibit A and the Supplemental Memorandum shall remain under seal or, (ii) if no stipulation is reached by the parties, Counterdefendants Stephens Media, LLC and Righthaven, LLC shall file with the Court their justification for retaining Exhibit A under seal, with any Reply thereto by Defendants to be filed within seven days thereafter.

Order Granting Defendants’ Conditional Motion to File Documents Under Seal (Dkt. 75) (“March 8 Order”) at 2.

As this Court knows, the documents were placed under seal only because they were designated “Confidential Attorneys’ Eyes Only” by Stephens Media LLC (“Stephens Media”) under the Stipulated Protective Order. On March 9, 2011, Defendants asked Counterdefendants Stephens Media and Righthaven LLC (“Righthaven”) to withdraw the designation or modify it to limited portions of the document or advise that they refused to do so. *See* Declaration of Clifford Webb in Support of Defendants’ Request to Unseal (“Webb Decl.”) ¶ 3. Defendants also notified Counterdefendants’ counsel that they were willing to attempt to stipulate to redaction of any appropriately limited portion. *Id.* Later that day, counsel for Stephens Media and Righthaven refused to lift the designation on Exhibit A. *Id.* ¶ 4. Since then, neither Righthaven nor Stephens Media have proposed redactions or sought a stipulated resolution. *Id.* Accordingly, Defendants hereby notify the Court that no stipulation was reached by the parties.

Therefore, pursuant to this Court’s March 8, 2011 Order, Righthaven and Stephens Media were required to “file with the Court their justification for retaining Exhibit A under seal” within fourteen days of the March 8 Order. Dkt. 75. As of March 29, 2011, 21 days from the date of this Court’s order, the due date for Defendants’ reply, neither Stephens Media nor Righthaven have filed with the Court any justification for retaining any documents under seal.

Accordingly, by failing to oppose the unsealing, Stephens Media and Righthaven have failed to provide the specific, articulable facts necessary to meet their burden of showing

1 compelling reasons for overriding the general right to inspect and copy judicial records and
2 documents.¹ See also Local Rule 7-2(d) (“The failure of an opposing party to file points and
3 authorities in response to any motion shall constitute a consent to the granting of the motion.”).

4 **CONCLUSION**

5 For the reasons stated above, Defendants respectfully request that this Court unseal
6 (i) Defendants’ Motion for Leave to File Supplemental Memorandum Addressing Recently
7 Produced Evidence Relevant to Pending Motions (Dkt. 74); (ii) Defendants’ Supplemental
8 Memorandum Addressing Recently Produced Evidence Relevant To Pending Motions
9 (Dkts. 74 & 79); (iii) Declaration of Laurence Pulgram (Dkts. 74 & 79); and (iv) Exhibit A to
10 Declaration of Laurence Pulgram (Dkts. 74 & 79).

11 Dated: March 29, 2010

FENWICK & WEST LLP

12
13 By: /s/ Laurence F. Pulgram
14 LAURENCE F. PULGRAM, ESQ

15 Attorneys for Defendants and Counterclaimant
16 DEMOCRATIC UNDERGROUND, LLC, and
17 Defendant DAVID ALLEN
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23 ¹ There is a strong presumption of public access to court records, and “compelling reasons” are required to override
24 that presumption, particularly in the case of dispositive motions and their related attachments. *Kamakana v. City and*
25 *County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006) (citing *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d
26 1122, 1136 (9th Cir. 2003). Of course, the presumptive right to access is not absolute, but it can only be overridden
27 given “sufficiently compelling reasons” for doing so. *Foltz*, 331 F.3d at 1135. These compelling reasons must be
28 supported by “specific factual findings.” *Id.* (citing *San Jose Mercury News, Inc. v. United States District Court*, 187
F.3d 1096, 1103 (9th Cir. 1999)); see also *Kamakana*, 447 F.3d at 1182 (the court’s findings must be based on the
specific, articulable facts provided to it). There is no room here for “hypothesis or conjecture.” *Kamakana*, 447 F.3d
at 1179 (quoting *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). Conclusory or categorical statements
that might satisfy the lesser “good cause” standard will therefore not suffice. *Id.* at 1184. Moreover, as the Ninth
Circuit has explained, “the mere fact that the production of records may lead to a litigant’s embarrassment,
incrimination, or exposure to further litigation” is insufficient to support sealing. *Kamakana*, 447 F.3d at 1178
(quoting *Foltz*, 331 F.3d at 1136).

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Case No. 10-01356-RLH (GWF)

**[PROPOSED] ORDER
GRANTING REQUEST TO
UNSEAL EXHIBIT A TO
PULGRAM DECLARATION
AND RELATED FILINGS
[DKT NOS. 74, 79]**

1 On March 8, 2011, this Court granted Defendants’ Conditional Motion to File Documents
2 Under Seal (Dkt. 75) and ordered that, “within fourteen (14) days of the date of this Order, (i) the
3 parties shall file a stipulation as to which portions of said Exhibit A and the Supplemental
4 Memorandum shall remain under seal or, (ii) if no stipulation is reached by the parties,
5 Counterdefendants Stephens Media, LLC and Righthaven, LLC shall file with the Court their
6 justification for retaining Exhibit A under seal.” As no such stipulation was reached and filed
7 within the time provided by the Order, and no justification was filed by either Counterdefendants
8 Stephens Media, LLC or Righthaven, LLC,

9 **IT IS HEREBY ORDERED:**

10 That Defendants’ Motion for Leave to File Supplemental Memorandum Addressing
11 Recently Produced Evidence Relevant to Pending Motions (Dkt. 74); (ii) Defendants’
12 Supplemental Memorandum Addressing Recently Produced Evidence Relevant To Pending
13 Motions (Dkts. 74 & 79); (iii) Declaration of Laurence Pulgram (Dkts. 74 & 79); and (iv) Exhibit
14 A to Declaration of Laurence Pulgram (Dkts. 74 & 79) are hereby unsealed and shall be made
15 publicly available on this Court’s docket.

16
17 Dated: _____

The Honorable ROGER L. HUNT
United States District Judge