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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)

**CONDITIONAL MOTION TO
 FILE DOCUMENTS UNDER
 SEAL**

1 **CONDITIONAL REQUEST TO SUBMIT DOCUMENTS UNDER SEAL**

2 Defendant and Counterclaimant Democratic Underground, LLC and Defendant David
3 Allen (collectively, “Democratic Underground” or “Defendants”) hereby respectfully request that
4 the Court permit Defendants to submit portions of Defendants’ Motion for Leave, Supplemental
5 Memorandum Addressing Recently Produced Evidence Relating to Pending Motions
6 (“Supplemental Memorandum”), and Exhibit A to the Supporting Declaration of Laurence
7 Pulgram under seal, pending agreement with opposing counsel or a decision of this Court as to
8 which portions, if any, of such material should be publicly available.

9 Exhibit A to the Declaration of Laurence Pulgram is a document belatedly produced by
10 Counterdefendant Stephens Media LLC (“Stephens Media”) in this action. Exhibit A was
11 designated as “Confidential Attorneys’ Eyes Only” by Stephens Media under the Stipulated
12 Protective Order entered by the Court on February 14, 2011. Documents and information that
13 have been designated by a party as “Confidential Attorneys’ Eyes Only” can only be submitted to
14 the Court under seal. *See* Dkt. 65, ¶ 12. While Defendants do not believe that Exhibit A is
15 appropriately designated under either the terms of the Stipulated Protective Order or applicable
16 law as appropriate for restriction from public access, and do not believe Exhibit A should
17 ultimately be maintained under seal (at least in its entirety), Defendants are required at this time
18 to submit it under seal. The same is true for portions of Defendants’ Supplemental Memorandum
19 and Motion for Leave which quote from or summarize the contents of Exhibit A.

20 Generally, the Ninth Circuit recognizes a “strong presumption in favor of public access”
21 for materials produced in discovery and submitted to the court, holding further that discovery
22 documents’ “status changes” when submitted to the court with a dispositive motion. *See, e.g.,*
23 *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1137 (9th Cir. 2003). In such a case, the
24 presumption of public access requires the proponent of non-access to show ““compelling reasons
25 supported by specific factual findings’ that outweigh the general history of access and public
26 policies favoring disclosure.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-79
27 (9th Cir. 2006) (citations omitted).

1 Defendants do not believe that Stephens Media or Righthaven can meet this high standard
2 here. As such, Defendants have requested that Stephens Media and Righthaven agree to
3 dedesignate all or at least portions of Exhibit A to allow for public disclosure. See Declaration of
4 Laurence F. Pulgram in Support of Defendants' Supplemental Memorandum Addressing
5 Recently Produced Evidence Relating to Pending Motions, ¶ 11; Dkt. 65. Provided an agreement
6 can be reached with Stephens Media and Righthaven, Defendants intend to submit a stipulation
7 for filing Exhibit A, redacted as may be agreed, for public filing. If no such agreement can be
8 reached, Stephens Media and Righthaven may attempt to justify the sealing of the entirety of
9 Exhibit A in response to this Motion.

10 Accordingly, Defendants conditionally request that they be allowed to submit portions of
11 Defendants' Motion for Leave, Supplemental Memorandum, and Exhibit A to the Supporting
12 Declaration of Laurence Pulgram under seal, pending agreement of the parties that only portions
13 of Exhibit A should be sealed or a decision by the Court that the documents as a whole should be
14 available for public access. Defendants request that the Court enter the submitted proposed order
15 to provide a process for determination of the sealing of this document.

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17 Dated: March 4, 2011

FENWICK & WEST LLP

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

21 Attorneys for Defendant and Counterclaimant
22 DEMOCRATIC UNDERGROUND, LLC, and
23 Defendant DAVID ALLEN
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28 and STEPHENS MEDIA LLC, a Nevada limited-liability
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Case No. 10-01356-RLH (GWF)

**[PROPOSED] ORDER
GRANTING DEFENDANTS'
CONDITIONAL MOTION TO
FILE DOCUMENTS UNDER
SEAL**

1 The Court having considered Defendants’ Conditional Motion To File Documents Under
2 Seal, and good cause appearing therefore,

3 **IT IS HEREBY ORDERED:**

4 1) That the following documents be filed under seal at this time: (i) Defendants’
5 Motion for Leave to File Supplemental Memorandum Addressing Recently Produced Evidence
6 Relevant to Pending Motions, (ii) Defendants’ Supplemental Memorandum Addressing Recently
7 Produced Evidence Relevant To Pending Motions, (iii) Declaration of Laurence Pulgram, and (iv)
8 Exhibit A to Declaration of Laurence Pulgram.

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

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Dated: _____

The Honorable ROGER L. HUNT
United States District Judge