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8 Attorney for Plaintiff,
9 LIBERTY MEDIA HOLDINGS, LLC

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

11	LIBERTY MEDIA HOLDINGS,)	Case No. 12-cv-3428-RGK-FMO
12	LLC)	
13)	NOTICE OF DEFENDANT’S NON-
14	Plaintiff,)	OPPOSITION TO PLAINTIFF’S
15	vs.)	MOTION TO STRIKE
16)	AFFIRMATIVE DEFENSES
17	JOHN DOE and KYAW AUNG,)	
18	Defendants)	
19)	
20)	

21 Plaintiff Liberty Media Holdings, LLC files this Notice with respect to its
22 pending Motion to Strike Affirmative Defenses, filed on July 20, 2012. ECF 17.
23 To date, Defendant Aung has not filed an opposition or written statement that
24 Aung will not oppose the motion (as required by L.R. 7-9).
25

26 At present, Aung has offered no opposition to Plaintiff’s Motion. Defendant
27 received the Plaintiff’s filings through the CM/ECF system on July 20, 2012 and,
28

1 as such, the opposition was due on July 30, 2012. L.R. 7-9. On the chance that
2 this delay was inadvertent, the Plaintiff refrained from filing this motion by nearly
3 three days. Nonetheless, Defendant has not opposed it within the period allowed.
4

5 Local Rule 7-9 allows 10 days for the filing of a responsive brief and
6 requires that the opposing brief be filed at least twenty-one (21) days before the
7 hearing. Even if the Defendant were to file today, the Plaintiff would suffer
8 prejudice due to the delay. The Plaintiff's reply to any filed opposition is due
9 fourteen (14) days prior to the hearing, on August 6, 2012. If the Defendant filed
10 an opposition today, the Plaintiff would suffer prejudice in losing nearly half of the
11 reply brief timeline. L.R. 7-9. Given the Plaintiff and Plaintiff's counsel's
12 extremely packed litigation calendar, this would cause extreme hardship, to both
13 client and counsel.¹
14
15
16

17 Under the Local Rules and 9th Circuit law, a party's failure to timely oppose
18 a motion constitutes the non-moving party's consent to granting of the motion.
19 *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979); *Righthaven LLC v. Newman*,
20 Case No. 2:10-cv-01762, 2011 U.S. Dist. LEXIS 80518 (D. Nev. July 22, 2011)
21 (granting motion to dismiss due to plaintiff's failure, by a matter of mere hours, to
22 timely respond), *aff'd on mtn. to reconsider*, 2011 U.S. Dist. LEXIS 109327 (D.
23
24

25
26 ¹ Plaintiff has a Motion for Preliminary Injunction hearing on August 9, 2012 in D.
27 Nev. with briefing due on August 7. Plaintiff also has a response to a Motion to
28 Dismiss due on August 17, 2012. Plaintiff's counsel also has travel plans and
other litigation plans based around the calendar as it is currently set.

1 Nev. Sept. 23, 2011); under Local Rule 7-12, this failure to oppose Plaintiff's
2 Motion means that Aung "may be deemed to consent to the granting ... of the
3 motion."
4

5 For the above reasons, as well as those set forth in the Motion to Strike
6 Affirmative Defenses (ECF 17), Plaintiff respectfully requests that this Court
7
8 consider the Motion to be consented to and grant it.
9

10 Date: August 2, 2012

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing documents were filed in this Court's CM/ECF system on August 2, 2012, thereby providing service to the Defendant Kyaw Aung's counsel. As the John Doe Defendant has yet to be identified, he cannot yet be served.

Date: August 2, 2012

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