

1 Michael J. McCue (NV Bar No. 6055)
Jonathan W. Fountain (NV Bar No. 10351)
2 Nikkya G. Williams (NV Bar No. 11484)
LEWIS AND ROCA LLP
3 3993 Howard Hughes Pkwy., Suite 600
Las Vegas, Nevada 89169
4 Telephone: (702) 949-8200
Facsimile: (702) 949-8298

5
6 Attorneys for Defendant
Christopher J. Malley d/b/a EMTCity.com

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

10 RIGHTHAVEN, LLC, a Nevada limited
11 liability company,
12 Plaintiff,
13 vs.
14 EMTCity.com, an entity of unknown origin and
nature; and Christopher J. Malley, an
15 individual,
16 Defendants.

Case No. 2:10-cv-00854-HDM-PAL
**DEFENDANT’S OPPOSITION TO
PLAINTIFF’S MOTION FOR ENTRY
OF CLERK’S DEFAULT**

17 Defendant Christopher J. Malley d/b/a EMTCity.com (“Mr. Malley”) hereby opposes
18 Plaintiff Righthaven LLC’s (“Righthaven’s”) motion for entry of clerk’s default.

19 Righthaven’s motion was filed and served by Righthaven’s counsel shortly before noon on
20 Friday, March 11, 2011 without first contacting Defendant’s counsel to inquire about Defendant’s
21 intent to proceed in violation of Rule 3.5A of the Nevada Rules of Professional Conduct.

22 Rule 3.5A of the Nevada Rules of Professional Conduct states the following:

23 Relations With Opposing Counsel. When a lawyer knows or reasonably should
24 know the identity of a lawyer representing an opposing party, he or she should not
25 take advantage of the lawyer by causing any default or dismissal to be entered
without first inquiring about the opposing lawyer’s intention to proceed.

26 The undersigned have been counsel of record in this matter since day one and well known
27 to Righthaven and its counsel. There is no excuse for Righthaven’s filing of the present motion
28 without first contacting Defendant’s counsel. Righthaven’s disregard of the Nevada Rules of

1 Professional Conduct and its surprise “gotcha” motion flies squarely in the face of Rule 3.5A, this
2 Court’s Local Rule 10-7(a), and local practice. This type of sharp practice should neither be
3 rewarded with an entry of default nor tolerated by the Court.

4 Accordingly, Defendant respectfully requests that the Clerk of the Court allow Defendant
5 and Defendant’s counsel three days’ time to confer (*i.e.*, until Wednesday, March 16, 2011) prior
6 to entering Defendant’s default.

7 Dated: this 11th day of March, 2011.

8 Respectfully submitted,
9 LEWIS AND ROCA LLP
10 By: _____s/Jonathan W. Fountain_____
11 Michael J. McCue (NV Bar No. 6055)
12 Jonathan W. Fountain (NV Bar No. 10351)
13 Nikkya G. Williams (NV Bar No. 11484)
14 3993 Howard Hughes Parkway, Suite 600
15 Las Vegas, NV 89169
16 (702) 949-8200 (Tel.)
17 (702) 949-8398 (Fax)
18
19 Attorneys for Defendant
20 Christopher J. Malley d/b/a EMTCity.com
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I hereby certify that I am an employee of Lewis and Roca LLP and that on this 11th day of March, 2011, I caused documents entitled:

- **DEFENDANT’S OPPOSITION TO PLAINTIFF’S MOTION FOR ENTRY OF CLERK’S DEFAULT,**

to be served as follows:

- by depositing same for mailing in the United States Mail, in a sealed envelope addressed to Steven A. Gibson, Esq., Righthaven, LLC, 9960 West Cheyenne Avenue, Suite 210, Las Vegas, Nevada, 89129-7701, upon which first class postage was fully prepaid; and/or
- Pursuant to Fed. R. Civ. P. 5(b)(2)(D), to be sent via facsimile as indicated; and/or
- to be hand-delivered;
- by the Court’s CM/ECF system.

s/Jonathan W. Fountain
An employee of Lewis and Roca LLP