



1 Plaintiff's motion for an order granting his motion to compel on that basis is HEREBY  
2 DENIED, with prejudice.<sup>1</sup> Plaintiff's motion to compel will be resolved on its merits in due course.  
3 Local Rule 230(l).

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6 IT IS SO ORDERED.

7 **Dated: February 4, 2010**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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23 <sup>1</sup> The failure to file an opposition *may* be deemed a waiver of opposition to the granting of the motion.  
24 Local Rule 230(l). It rests within the discretion of the Court to determine what sanctions, if any, will result from the  
25 failure to file a response. See e.g., Martinez v. Stanford, 323 F.3d 1178, 1182-83 (9th Cir. 2003); Marshall v. Gates,  
26 44 F.3d 722, 725 (9th Cir. 1995) (district court free to assess appropriate sanctions for failure to comply with local  
27 rule, but may not grant summary judgment simply based upon violation of local rule). Further, in this instance,  
28 Plaintiff's motion was received and filed on January 19, 2010, yet contains a proof of service stating that it was  
served by mail on December 27, 2009. Given that the motion was not even received by the Court for filing prior to  
the expiration of twenty-days from the date of service, serious questions are raised regarding what opportunity  
Defendants have had to respond. Local Rule 230(l). The Court need not reach that issue at this time, however,  
because it will not grant Plaintiff's motion on the merits simply based on a lack of opposition to date. Plaintiff's  
motion to compel will be considered in due course.