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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
7

8 **TREVOR WEEKS,**

9 **Plaintiff**

10 **v.**

11 **UNION PACIFIC RAILROAD CO.,**

12 **Defendant**

CASE NO. 1:13-CV-1641 AWI JLT

**ORDER REGARDING DEFENDANT'S
REPLY IN SUPPORT OF SECOND
SUMMARY JUDGMENT MOTION**

(Doc. No. 60)

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15 On January 11, 2016, Defendant filed a second summary judgment motion. Hearing on the
16 motion is set for February 29, 2016. On February 1, 2016, Plaintiff filed a motion to continue or
17 deny Defendants' motion under Rule 56(d). See Doc. No. 59.¹ Also on February 1, 2016,
18 Defendant filed a reply. The reply notes that Plaintiff's opposition is untimely pursuant to a
19 scheduling order that had previously been issued by the Court. See Doc. No. 60. The reply also
20 cites Local Rule 230(c), which provides that "[n]o party will be entitled to be heard in opposition
21 to a motion at oral arguments if opposition has not been timely filed by that party." Defendant
22 then argues that Plaintiff has failed to oppose the summary judgment motion and that summary
23 judgment should be granted. See id.

24 The Court takes Defendant's reply essentially to be that because Plaintiff did not file a
25 timely opposition, Local Rule 230(c) dictates that he is not entitled to oppose the motion in any
26 way and that summary judgment should be granted. Many litigants attempt to read Local Rule
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28 ¹ On February 3, 2016, Plaintiff refiled his motion to continue or deny, but entitled the filing an opposition to summary judgment. See Doc. No. 61.

1 230(c) in this manner. However, the plain language of Rule 230(c) shows that the prohibition
2 against “being heard in opposition” refers to being heard “at oral arguments.” See Local Rule
3 230(c). The prohibition does not mean that a late filed written opposition will automatically be
4 disregarded.

5 With this understanding of Local Rule 230(c), the Court will not grant summary judgment
6 due to a failure to timely respond. Instead, the Court would like Defendant to file a substantive
7 reply that addresses the arguments made in Plaintiff’s opposition/motion (Doc. Nos. 59, 61).

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9 **ORDER**

10 Accordingly, IT IS HEREBY ORDERED that Defendant shall file a reply to Plaintiff’s
11 motion/opposition as soon as possible, but no later than 10:00 a.m. on February 12, 2016.

12 IT IS SO ORDERED.

13 Dated: February 4, 2016

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16 SENIOR DISTRICT JUDGE