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UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

J & J SPORTS PRODUCTIONS, INC.,

Plaintiff,

vs.

ULISES CONSTANTINO NAPURI,  
individually and d/b/a INCAS GRILL,

Defendant.

Case No: C 10-04171 SBA

**ORDER**

Docket 23.

On October 18, 2011, Plaintiff filed a motion for partial summary judgment under Rule 56 of the Federal Rules of Civil Procedure. Dkt. 23. Defendant's opposition was due on November 1, 2011. To date, Defendant has not filed an opposition to the motion for partial summary judgment. Nor has Defendant sought an extension of time to file an opposition. As such, the Court orders Defendant to file an opposition to Plaintiff's motion for partial summary judgment, or a statement of non-opposition as required under Civil Local Rule 7-3(b), by no later than twenty-one (21) days from the date of this Order.

"A district court may not grant a motion for summary judgment simply because the nonmoving party does not file opposing material, even if the failure to oppose violates a local rule." Brydges v. Lewis, 18 F.3d 651, 652 (9th Cir. 1994). However, where a local rule "does not require, but merely permits the court to grant a motion for summary judgment, the district court has discretion to determine whether noncompliance should be deemed consent to the motion." Id. This Court's Standing Orders provides: "The failure of the opposing party to file a memorandum of points and authorities in opposition to any motion shall constitute consent to the granting of the motion." Civil Standing Order at 5.

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Accordingly, Defendant is cautioned that failure to file a timely written opposition to Plaintiff's motion for partial summary judgment shall be construed by the Court as consent to the granting of the motion.

IT IS SO ORDERED.

Dated: 3/6/12

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SAUNDRA BROWN ARMSTRONG  
United States District Judge