

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:08cv552**

<b>IKON OFFICE SOLUTIONS, INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>JOHN H. MILNER; and SHARP</b>	)	
<b>BUSINESS SYSTEMS-CAROLINAS,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**THIS MATTER** is before the court on the following motions:(1) plaintiff’s Motion to Compel (#26); (2) defendant’s Motion to Compel (#29); and (3) defendants’ Motion to Seal Documents (#39). Counsel for the respective parties filed three motions for extension of time to brief the substantive motions, with plaintiff ultimately being granted until October 23, 2009, to respond to defendants’ motion and until October 26, 2009, to file its Reply. In the last Order, the court expressed that such third extension would be the final extension. See Order (#45).

While the court had such motions tickled for review and decision as of those dates, it stayed its hand to see if anything would be filed. Review of the court’s docket as of the morning of November 10, 2009, revealed, however, that neither the anticipated Reply nor Response had been filed. Local Rule 7.1(E) requires parties to inform the court “promptly” in writing if a reply is not to be filed; however, it is quite possible that the parties have settled this action and have placed this particular obligation on a back burner; however, the court continues to be obligated to promptly

dispose of these motions.

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With these thoughts in mind, the court has no choice but to summarily deny plaintiff's Motion to Compel for non-compliance with Local Civil Rule 7.1(E) and grant defendants' Motion to Compel as it has not been responded to as required by Local Civil Rule 7.1(E) within the time allowed by court Order. As provided and required by Rule 37, Federal Rules of Civil Procedure, the court will entertain any motion for costs and fees if filed and supported by counsel for defendant.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that:

- (1) plaintiff's Motion to Compel (#26) is **DENIED** for non-compliance with Local Civil Rule 7.1(E) and the previous Order of this court setting a final Reply deadline;
- (2) defendant's Motion to Compel (#29) is **SUMMARILY ALLOWED** inasmuch as plaintiff failed to file a response within the time set by court Order. The plaintiff is hereby ordered to provide all documents and other discovery material discussed in the Motion to Compel filed by the defendants on or before November 17, 2009; and
- (3) defendants' Motion to Seal Documents (#39) is **GRANTED**.

Signed: November 10, 2009

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

