

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ZANE HARDIN,)
)
 Plaintiff,)
)
 v.)
)
 WAL-MART STORES, INC.; and DOES)
 1-100,)
)
 Defendants.)
 _____)

CIV-F-08-0617 AWI GSA

**ORDER RESETTING HEARING
DATE TO SEPTEMBER 20, 2010
AND VACATING SEPTEMBER 9,
2010 PRETRIAL CONFERENCE**

Defendant Wal-Mart filed a motion for summary judgment on July 16, 2010, with a hearing set for August 23, 2010. Defendant filed a brief, a statement of undisputed material facts, and evidentiary exhibits. Docs. 62, 63, and 64. The filings did not include a formal notice. Local Rule 230(b) states in relevant part “The moving party shall file a notice of motion, motion, accompanying briefs, affidavits, if appropriate, and copies of all documentary evidence that the moving party intends to submit in support of the motion.” When notified of the oversight, Defendant filed a notice on August 3, 2010, resetting the hearing for September 7, 2010. Doc. 67. The dispositive motion deadline in this case was July 16, 2010. Doc. 43. Plaintiff has filed an opposition to the summary judgment, arguing that the motion is “not timely, and must be summarily denied.” Doc. 71.

Defendant’s filings on July 16, 2010 included all substantive material necessary to support a summary judgment motion. The lack of formal notice was a minor defect. The

1 operative scheduling order requires that “All Dispositive Pre-Trial Motions shall be filed no later
2 than July 16, 2010...In scheduling such motions, the parties shall comply with Local Rules 78-
3 230 [now Local Rule 230] and 56-260 [now Local Rule 260].” Doc. 43, at 4:19-22. Local Rule
4 230(b) states in part, “Motions defectively noticed shall be filed, but not set for hearing.” Thus,
5 the summary judgment motion should be considered filed on July 16, 2010. Defendants have not
6 violated the scheduling order. Even if there was a violation, it was de minimis and did not
7 prejudice Plaintiff in any way.

8 The hearing on the summary judgment motion is rescheduled to 1:30 PM on September
9 20, 2010, to allow Plaintiff to file a substantive opposition in compliance with Local Rules 230
10 and 260 . The pretrial conference scheduled for September 9, 2010, is vacated and will be reset
11 at a later date.

12
13 IT IS SO ORDERED.

14 Dated: August 25, 2010


15 _____
16 CHIEF UNITED STATES DISTRICT JUDGE
17
18
19
20
21
22
23
24
25
26
27
28