

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

| | | |
|------------------------|---|------------------------------|
| WAYNE NEWSON, |) | No. CV-F-09-663 OWW/GSA |
| |) | |
| |) | ORDER DIRECTING PLAINTIFF TO |
| Plaintiff, |) | FILE AND SERVE NOTICE OF |
| |) | MOTION RE PLAINTIFF'S MOTION |
| vs. |) | FOR PERMISSION TO FILE SIXTH |
| |) | AMENDED COMPLAINT (Doc. 34) |
| |) | |
| WAL-MART STORES, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |

By Memorandum Decision filed on June 23, 2009, the Court dismissed the Sixth Cause of Action in Plaintiff's Fifth Amended Complaint as redundant to the Fifth Cause of Action, but further ruled:

At the hearing, Plaintiff requested leave to amend to include the factual allegations supporting the Sixth Cause of Action with those supporting the Fifth Cause of Action in a single cause of action for breach of one implied contract. Plaintiff's request to so amend is GRANTED.

On November 2, 2009, Plaintiff filed a "Motion for Permission to File 6th Amended Complaint." Plaintiff's motion is

1 not noticed for hearing. Plaintiff's proposed Sixth Amended
2 Complaint was lodged on November 2, 2009. In his motion,
3 Plaintiff asserts that "has interlineated both the 5th and 6th
4 causes of action into a single cause of action for an implied
5 breach of contract." Plaintiff further asserts that he "has also
6 added an additional cause of action for Willful Misconduct."

7 Because Plaintiff proposes to add a cause of action in the
8 Sixth Amended Complaint for which leave was not previously
9 granted, Plaintiff's motion for leave to amend must be noticed
10 for hearing on the Court's civil law and motion calendar.

11 Plaintiff is ordered to file and serve within ten days a
12 notice of motion, setting the motion on the Court's next
13 available civil motion calendar in accordance with the time
14 requirements set forth in Rule, 78-230(b), Local Rules of
15 Practice. Failure to timely comply will result in the denial of
16 Plaintiff's motion.

17 IT IS SO ORDERED.

18 Dated: November 6, 2009

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE