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10 MICHAEL DAVIS,

11 Plaintiff,

12 v.

13 HOLLINS LAW, A PROFESSIONAL
CORPORATION,

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Defendant.

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NO. CIV. S-12-3107 LKK/GGH

O R D E R

Pending before the court in the above-captioned case is a motion for summary judgment filed by defendant Hollins Law, originally set for hearing on August 26, 2013. (ECF No. 35.) By Order dated August 7, 2013, the court continued the hearing until September 9, 2013. (ECF No. 42.) The Order specified that the dates for filing an opposition (August 12, 2013) and a reply (August 19, 2013) remained unchanged.

On August 12, 2013, plaintiff Michael Davis filed both an opposition to defendant's motion for summary judgment and a cross-motion for summary judgment. (ECF No. 43.) This would ordinarily have been proper under Local Rule 230(e) ("Any counter-motion . . .

1 that is related to the general subject matter of the original
2 motion shall be served and filed in the manner and on the date
3 prescribed for the filing of opposition.") However, as defendant
4 points out in its reply and its opposition to the cross-motion, the
5 scheduling order herein sets a strict deadline of September 5, 2013
6 for the completion of law and motion.

7 The court is of the view that, while plaintiff should have
8 filed a motion for a continuance in order to set the cross-motion
9 for hearing after September 5, some confusion may have been
10 engendered by the language of the Local Rule, coupled with the
11 court's *sua sponte* continuance of the original hearing date.
12 Moreover, it appears that issues raised by plaintiff's cross-motion
13 are potentially "susceptible to resolution without trial," and
14 therefore merit consideration at this stage of the proceedings.
15 (Scheduling Order 3:17, ECF No. 24.) Accordingly, the court is of
16 the view that plaintiff's cross-motion should be heard along with
17 defendant's motion.

18 Nevertheless, given the defendant's view that its due process
19 rights have been violated by an untimely filing, the court is
20 willing to continue the hearing on both motions until September 23,
21 2013 at 10:00 a.m., and allow defendant to file an amended
22 opposition to plaintiff's cross-motion in lieu of the already-filed
23 opposition. If defendant chooses to exercise this option, its
24 amended opposition would be due on September 9, 2013, and
25 plaintiff's reply, if any, would be due on September 16, 2013.
26 (Neither party will be permitted to amend its pleadings with

1 respect to the original motion for summary judgment.)

2 Defendant is hereby DIRECTED to file a statement with the
3 court indicating whether it wishes to continue the hearing on the
4 cross-motions for summary judgment from September 9, 2013 to
5 September 23, 2013 subject to the conditions set forth above. The
6 statement must be filed no later than 4:30 p.m. on Wednesday,
7 August 21, 2013. In the absence of such a statement, the court will
8 assume that defendant no longer has any objection to the existing
9 hearing date, and the matter will be heard on September 9 as
10 scheduled.

11 IT IS SO ORDERED.

12 DATED: August 20, 2013.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT