2 3 4 5 6 7 IN THE UNITED STATES DISTRICT COURT 8 FOR THE EASTERN DISTRICT OF CALIFORNIA 9 10 MOISES MERCADO; MARCO A. RAMIREZ,) 2:08-cv-02648-GEB-EFB 11 Plaintiffs,) STATUS (PRETRIAL 12 v.) 13 SANDOVAL, INC., a California (Corporation; MARCHINI LAND CO., a)) 14 California General Partnership;) BRUNO P. MARCHINI, individually and d/b/a) 14 Marchini Land Co.; RICHARD P.)) 15 d/b/a Marchini Land Co.; RICHARD P.)) 16 Marchini Land Co.; ROSETTA (Marchini Land	1	
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<pre>BRUNO P. MARCHINI, individually and) d/b/a Marchini Land Co.; RICHARD B.) MARCHINI, individually and d/b/a Marchini Land Co.; VINCENT M. MARCHINI, individually and d/b/a Marchini Land Co.; ROSETTA MARCHINI, individually and d/b/a Marchini Land Co., Defendants.¹ Defendants.¹ Defendants.¹ The status (pretrial scheduling) conference scheduled for February 2, 2009, is vacated since the parties' Joint Status Report ("JSR") indicates the following Order should issue. Plaintiffs state in the JSR that they intend to file a motion for conditional certification of this action as a collective </pre>		Corporation; MARCHINI LAND CO., a)
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<pre>25 motion for conditional certification of this action as a collective 26</pre>	23	("JSR") indicates the following Order should issue.
26	24	Plaintiffs state in the JSR that they intend to file a
	25	motion for conditional certification of this action as a collective
27	26	
28 ¹ The caption has been amended according to the <u>Dismissal of I</u> <u>Defendants</u> portion of this Order.	28	¹ The caption has been amended according to the <u>Dismissal of Doe</u> <u>Defendants</u> portion of this Order.

1 action under the Fair Labor Standards Act. This motion shall be 2 notified for hearing on or before April 6, 2009.

DOE DEFENDANTS

The parties do not make a practicable proposal in the JSR as 4 5 to when the identities of Doe Defendants will be disclosed. It is unclear why this was not done. Since this action was commenced in 6 7 state court early in 2008, the parties appear to have had ample time 8 to proposed a practicable and comprehensive schedule for this action. 9 Since they did not, the Doe Defendants are dismissed. See Order 10 Setting Status (Pretrial Scheduling) Conference filed October 28, 11 2008, at 2 n.2 ("Failure to set forth specific information regarding 12 the time Plaintiff(s) needs to identify any 'Doe' Defendants will be deemed an abandonment of any claims against such Defendants, and a 13 dismissal order will follow."). 14

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SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

16 No further service, joinder of parties or amendments to 17 pleadings is permitted, except with leave of Court, good cause having 18 been shown.

DISCOVERY

All discovery shall be completed by March 17, 2010. In this context, "completed" means that all discovery shall have been conducted so that all depositions have been taken and any disputes relative to discovery shall have been resolved by appropriate orders, if necessary, and, where discovery has been ordered, the order has been complied with or, alternatively, the time allowed for such compliance shall have expired.²

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The parties are advised that the Magistrate Judges in the (continued...)

1	MOTION HEARING SCHEDULE
2	The last hearing date for motions shall be May 17, 2010, at
3	9:00 a.m. ³
4	Motions shall be filed in accordance with Local Rule 78-
5	230(b). Opposition papers shall be filed in accordance with Local
6	Rule 78-230(c). Failure to comply with this local rule may be deemed
7	consent to the motion and the Court may dispose of the motion
8	<u>summarily</u> . <u>Brydges v. Lewis</u> , 18 F.3d 651, 652-53 (9th Cir. 1994).
9	Further, failure to timely oppose a summary judgment motion may result
10	in the granting of that motion if the movant shifts the burden to the
11	nonmovant to demonstrate a genuine issue of material fact remains for
12	trial. <u>Cf.</u> <u>Marshall v. Gates</u> , 44 F.3d 722 (9th Cir. 1995).
13	Absent highly unusual circumstances, reconsideration of a
14	motion is appropriate only where:
15	(1) The Court is presented with newly discovered evidence
16	that could not reasonably have been discovered prior to the filing of
17	the party's motion or opposition papers;
18	(2) The Court committed clear error or the initial decision
19	was manifestly unjust; or
20	(3) There is an intervening change in controlling law.
21	
22	
23	² (continued)
24	Eastern District are responsible for resolving discovery disputes. <u>See</u> Local Rule 72-302(c)(1). Accordingly, counsel shall direct all
25	discovery-related matters to the Magistrate Judge assigned to this case. A party conducting discovery near the discovery "completion" date runs
26	the risk of losing the opportunity to have a judge resolve discovery motions pursuant to the Local Rules.
27	³ This time deadline does not apply to motions for continuances,

 ²⁸ temporary restraining orders, emergency applications, or motions under Rule 16(e) of the Federal Rules of Civil Procedure.

A motion for reconsideration based on newly discovered evidence shall set forth, in detail, the reason why said evidence could not reasonably have been discovered prior to the filing of the party's motion or opposition papers. Motions for reconsideration shall comply with Local Rule 78-230(k) in all other respects.

6 The parties are cautioned that an untimely motion 7 characterized as a motion in limine may be summarily denied. A motion 8 in limine addresses the admissibility of evidence.

9

FINAL PRETRIAL CONFERENCE

10 The final pretrial conference is set for July 26, 2010, at 11 1:30 p.m. The parties are cautioned that the lead attorney who WILL 12 TRY THE CASE for each party shall attend the final pretrial 13 conference. In addition, all persons representing themselves and 14 appearing <u>in propria persona</u> must attend the pretrial conference.

The parties are warned that <u>non-trial worthy issues could be</u> <u>eliminated sua sponte</u> "[i]f the pretrial conference discloses that no material facts are in dispute and that the undisputed facts entitle one of the parties to judgment as a matter of law." <u>Portsmouth Square</u> <u>v. S'holders Protective Comm.</u>, 770 F.2d 866, 869 (9th Cir. 1985).

20 The parties shall file a <u>JOINT</u> pretrial statement no later 21 than seven (7) calendar days prior to the final pretrial conference.⁴ 22 The joint pretrial statement shall specify the issues for trial and

- 23 24
- 25 ⁴ The failure of one or more of the parties to participate in 26 the preparation of any joint document required to be filed in this case does not excuse the other parties from their obligation to timely file 27 the document in accordance with this Order. In the event a party fails to participate as ordered, the party or parties timely submitting the 28 document shall include a declaration explaining why they were unable to

obtain the cooperation of the other party.

shall estimate the length of the trial.⁵ The Court uses the parties' 1 2 joint pretrial statement to prepare its final pretrial order and could issue the final pretrial order without holding the scheduled final 3 pretrial conference. See Mizwicki v. Helwig, 196 F.3d 828, 833 (7th 4 5 Cir. 1999) ("There is no requirement that the court hold a pretrial 6 conference."). The final pretrial order supersedes the pleadings and 7 controls the facts and issues which may be presented at trial. Issues 8 asserted in pleadings which are not preserved for trial in the final 9 pretrial order cannot be raised at trial. Hotel Emp., et al. Health 10 Tr. v. Elks Lodge 1450, 827 F.2d 1324, 1329 (9th Cir. 1987) ("Issues 11 not preserved in the pretrial order are eliminated from the action."); Valley Ranch Dev. Co. v. F.D.I.C., 960 F.2d 550, 554 (5th Cir. 1992) 12 (indicating that an issue omitted from the pretrial order is waived, 13 even if it appeared in the pleading); cf. Raney v. Dist. of Columbia, 14 15 892 F. Supp. 283 (D.D.C. 1995) (refusing to modify the pretrial order to allow assertion of a previously-pled statute of limitations 16 defense); Olympia Co. v. Celotex Corp., 597 F. Supp. 285, 289 (E.D. 17 La. 1984) (indicating that "[a]ny factual contention, legal 18 19 contention, any claim for relief or defense in whole or in part, or 20 affirmative matter not set forth in [the pretrial statement] shall be 21 deemed . . . withdrawn, notwithstanding the contentions of any 22 pleadings or other papers previously filed [in the action]"). 23 If possible, at the time of filing the joint pretrial

24 <u>statement counsel shall also email it in a format compatible with</u> 25 <u>WordPerfect to: geborders@caed.uscourts.gov</u>.

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The joint pretrial statement shall also state how much time each party desires for voir dire, opening statements, and closing arguments.

1	TRIAL SETTING
2	Trial is set for October 26, 2010, commencing at 9:00 a.m.
3	MISCELLANEOUS
4	The parties are reminded that pursuant to Federal Rule of
5	Civil Procedure 16(b), the Status (Pretrial Scheduling) Order shall
6	not be modified except by leave of Court upon a showing of good cause.
7	Counsel are cautioned that a mere stipulation by itself to change
8	dates does not constitute good cause.
9	IT IS SO ORDERED.
10	Dated: February 2, 2009
11	ANSD MI
12	GARLAND E. BURREIL, JR.
13	United States District Judge
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