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

MOISES MERCADO; MARCO A. RAMIREZ,)	2:08-cv-02648-GEB-EFB
)	
Plaintiffs,)	<u>STATUS (PRETRIAL</u>
)	<u>SCHEDULING) ORDER</u>
v.)	
)	
SANDOVAL, INC., a California)	
Corporation; MARCHINI LAND CO., a)	
California General Partnership;)	
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)	

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

¹ The caption has been amended according to the Dismissal of Doe Defendants 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.

3 DOE DEFENDANTS

4 The parties do not make a practicable proposal in the JSR as
5 to when the identities of Doe Defendants will be disclosed. It is
6 unclear why this was not done. Since this action was commenced in
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
13 deemed an abandonment of any claims against such Defendants, and a
14 dismissal order will follow.").

15 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.

19 DISCOVERY

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

27 _____
28 ² The parties are advised that the Magistrate Judges in the
(continued...)

1 A motion for reconsideration based on newly discovered evidence shall
2 set forth, in detail, the reason why said evidence could not
3 reasonably have been discovered prior to the filing of the party's
4 motion or opposition papers. Motions for reconsideration shall comply
5 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 in propria persona must attend the pretrial conference.

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

20 The parties shall file a JOINT 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
27 does not excuse the other parties from their obligation to timely file
28 the document in accordance with this Order. In the event a party fails
to participate as ordered, the party or parties timely submitting the
document shall include a declaration explaining why they were unable to
obtain the cooperation of the other party.

1 shall estimate the length of the trial.⁵ The Court uses the parties'
2 joint pretrial statement to prepare its final pretrial order and could
3 issue the final pretrial order without holding the scheduled final
4 pretrial conference. See Mizwicki v. Helwig, 196 F.3d 828, 833 (7th
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.");
12 Valley Ranch Dev. Co. v. F.D.I.C., 960 F.2d 550, 554 (5th Cir. 1992)
13 (indicating that an issue omitted from the pretrial order is waived,
14 even if it appeared in the pleading); cf. Raney v. Dist. of Columbia,
15 892 F. Supp. 283 (D.D.C. 1995) (refusing to modify the pretrial order
16 to allow assertion of a previously-pled statute of limitations
17 defense); Olympia Co. v. Celotex Corp., 597 F. Supp. 285, 289 (E.D.
18 La. 1984) (indicating that "[a]ny factual contention, legal
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 statement counsel shall also email it in a format compatible with
25 WordPerfect to: geborders@caed.uscourts.gov.

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28 ⁵ **The joint pretrial statement shall also state how much time each party desires for voir dire, opening statements, and closing arguments.**

