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

RONALD BORGES,	)	2:09-cv-01331-GEB-KJM
	)	
Plaintiff,	)	<u>STATUS (PRETRIAL</u>
	)	<u>SCHEDULING) ORDER</u>
v.	)	
	)	
SWIFT TRANSPORTATION,	)	
	)	
Defendant. <sup>1</sup>	)	
_____	)	

The status (pretrial scheduling) conference scheduled for August 10, 2009, is vacated since the parties indicate in the Joint Status Report filed on June 25, 2009, that the following Order should issue.

DISMISSAL OF DOE DEFENDANTS

Since Plaintiff has not justified Doe defendants remaining in this action, Does 1 through 25 are dismissed. See Order Setting Status (Pretrial Scheduling) Conference filed May 14, 2009, at 2 n.2 (indicating that if justification for "Doe" defendant allegations not provided Doe defendants would be dismissed).

<sup>1</sup> The caption has been amended according to the Dismissal of Doe Defendants portion of this Order.

1                    SERVICE, JOINDER OF ADDITIONAL PARTIES, AMENDMENT

2                    No further service, joinder of parties or amendments to  
3 pleadings is permitted, except with leave of Court, good cause having  
4 been shown.

5                    DISCOVERY

6                    All discovery shall be completed by February 26, 2010. In  
7 this context, "completed" means that all discovery shall have been  
8 conducted so that all depositions have been taken and any disputes  
9 relative to discovery shall have been resolved by appropriate orders,  
10 if necessary, and, where discovery has been ordered, the order has  
11 been complied with or, alternatively, the time allowed for such  
12 compliance shall have expired.<sup>2</sup>

13                    Each party shall comply with Federal Rule of Civil Procedure  
14 26(a)(2)(c)(i)'s initial expert witness disclosure requirements on or  
15 before November 25, 2009, and with any contradictory and/or rebuttal  
16 expert disclosure authorized under Rule 26(a)(2)(c)(ii) on or before  
17 December 24, 2009.

18                    MOTION HEARING SCHEDULE

19                    The last hearing date for motions shall be April 19, 2010,  
20 at 9:00 a.m.<sup>3</sup>

21                    Motions shall be filed in accordance with Local Rule 78-  
22 230(b). Opposition papers shall be filed in accordance with Local  
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24                    <sup>2</sup>        The Magistrate Judges in the Eastern District are responsible  
25 for resolving discovery disputes. See Local Rule 72-302(c)(1). A party  
26 conducting discovery near the discovery "completion" date risks losing  
27 the opportunity to have a judge resolve a discovery dispute concerning  
28 that discovery.

<sup>3</sup>        This time deadline does not apply to motions for continuances,  
temporary restraining orders, emergency applications, or motions under  
Rule 16(e) of the Federal Rules of Civil Procedure.

1 Rule 78-230(c). Failure to comply with this local rule may be deemed  
2 consent to the motion and the Court may dispose of the motion  
3 summarily. Brydges v. Lewis, 18 F.3d 651, 652-53 (9th Cir. 1994).  
4 Further, failure to timely oppose a summary judgment motion may result  
5 in the granting of that motion if the movant shifts the burden to the  
6 nonmovant to demonstrate a genuine issue of material fact remains for  
7 trial. Cf. Marshall v. Gates, 44 F.3d 722 (9th Cir. 1995).

8 Absent highly unusual circumstances, reconsideration of a  
9 motion is appropriate only where:

10 (1) The Court is presented with newly discovered evidence  
11 that could not reasonably have been discovered prior to the filing of  
12 the party's motion or opposition papers;

13 (2) The Court committed clear error or the initial decision  
14 was manifestly unjust; or

15 (3) There is an intervening change in controlling law.  
16 A motion for reconsideration based on newly discovered evidence shall  
17 set forth, in detail, the reason why said evidence could not  
18 reasonably have been discovered prior to the filing of the party's  
19 motion or opposition papers. Motions for reconsideration shall comply  
20 with Local Rule 78-230(k) in all other respects.

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

24 FINAL PRETRIAL CONFERENCE

25 The final pretrial conference is set for June 14, 2010, at  
26 11:00 a.m. The parties are cautioned that the lead attorney who WILL  
27 TRY THE CASE for each party shall attend the final pretrial

28 / / /

1 conference. In addition, all persons representing themselves and  
2 appearing in propria persona must attend the pretrial conference.

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

8 The parties shall file a JOINT pretrial statement no later  
9 than seven (7) calendar days prior to the final pretrial conference.<sup>4</sup>  
10 The joint pretrial statement shall specify the issues for trial and  
11 shall estimate the length of the trial.<sup>5</sup> The Court uses the parties'  
12 joint pretrial statement to prepare its final pretrial order and could  
13 issue the final pretrial order without holding the scheduled final  
14 pretrial conference. See Mizwicki v. Helwig, 196 F.3d 828, 833 (7th  
15 Cir. 1999) ("There is no requirement that the court hold a pretrial  
16 conference."). The final pretrial order supersedes the pleadings and  
17 controls the facts and issues which may be presented at trial. Issues  
18 asserted in pleadings which are not preserved for trial in the final  
19 pretrial order cannot be raised at trial. Hotel Emp., et al. Health  
20 Tr. v. Elks Lodge 1450, 827 F.2d 1324, 1329 (9th Cir. 1987) ("Issues  
21 not preserved in the pretrial order are eliminated from the action.");  
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23 <sup>4</sup> The failure of one or more of the parties to participate in  
24 the preparation of any joint document required to be filed in this case  
25 does not excuse the other parties from their obligation to timely file  
26 the document in accordance with this Order. In the event a party fails  
27 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.

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

1 Valley Ranch Dev. Co. v. F.D.I.C., 960 F.2d 550, 554 (5th Cir. 1992)  
2 (indicating that an issue omitted from the pretrial order is waived,  
3 even if it appeared in the pleading); cf. Raney v. Dist. of Columbia,  
4 892 F. Supp. 283 (D.D.C. 1995) (refusing to modify the pretrial order  
5 to allow assertion of a previously-pled statute of limitations  
6 defense); Olympia Co. v. Celotex Corp., 597 F. Supp. 285, 289 (E.D.  
7 La. 1984) (indicating that "[a]ny factual contention, legal  
8 contention, any claim for relief or defense in whole or in part, or  
9 affirmative matter not set forth in [the pretrial statement] shall be  
10 deemed . . . withdrawn, notwithstanding the contentions of any  
11 pleadings or other papers previously filed [in the action]").

12 If possible, at the time of filing the joint pretrial  
13 statement counsel shall also email it in a format compatible with  
14 WordPerfect to: geborders@caed.uscourts.gov.

15 TRIAL SETTING

16 Trial shall commence at 9:00 a.m. on September 14, 2010.

17 MISCELLANEOUS

18 The parties are reminded that pursuant to Federal Rule of  
19 Civil Procedure 16(b), the Status (Pretrial Scheduling) Order **shall**  
20 **not be modified except by leave of Court upon a showing of good cause.**  
21 **Counsel are cautioned that a mere stipulation by itself to change**  
22 **dates does not constitute good cause.**

23 IT IS SO ORDERED.

24 **Dated: August 5, 2009**

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26   
27 **GARLAND E. BURRELL, JR.**  
28 **United States District Judge**