

1 **** E-filed February 15, 2011 ****

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7 NOT FOR CITATION

8 IN THE UNITED STATES DISTRICT COURT

9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 LUIS SANDOVAL, et al.,

No. C09-04969 HRL

12 Plaintiffs,

**(1) ORDER DENYING PLAINTIFFS’
MOTION TO VACATE THE TRIAL
DATE AND (2) ORDER TO SHOW
CAUSE WHY THE CASE SHOULD
NOT BE DISMISSED OF SANCTIONS
IMPOSED FOR FAILURE TO
PROSECUTE**

13 v.

14 AB LANDSCAPING, INC., et al.,

15 Defendants.

16 **[Re: Docket No. 37]**

17 _____/

18 On February 11, 2011, Plaintiffs filed a motion to vacate the trial date in this case. Docket
19 No. 37 (“Motion”). Upon review of their motion and other documents submitted in conjunction
20 with Plaintiffs’ administrative motion to shorten time (Docket No. 39), the Court DENIES
21 Plaintiffs’ motion.¹

22 On May 4, 2010, this Court entered a case management scheduling order setting dates and
23 deadlines for this action. Docket No. 20 (“May 4 Scheduling Order”). A pretrial conference was set
24 for February 22, 2011 and trial was set to begin on February 28, 2011. *Id.* at 2. Now, a little more
25 than one week before the pretrial conference, Plaintiffs contend that they cannot prepare for trial by
26 the date set because they “never had any discovery due to Defendants’ refusal to provide discovery
27 based on an agreement to stay discovery until mediation [was] completed[,] and because the
28 settlement process is [s]till ongoing.” Motion at 1.

¹ Pursuant to Civil Local Rule 7-1(b), the Court finds the matter suitable for determination without oral argument, and the March 22, 2011 hearing is vacated.

1 But even if Plaintiffs' dubious statement is true — query how Defendants have “refused” to
2 provide discovery pursuant to an “agreement” to stay discovery — any inability to prepare for trial
3 is of Plaintiffs' own making. Plaintiffs claim that they have been “engaged” in “extensive” and
4 “ongoing” mediation, but actually it appears that Plaintiffs failed to participate at all in any such
5 process for several months, despite Early Neutral Evaluator Paul Garrison's pleas for Plaintiffs'
6 counsel to provide any response whatsoever to his communications. See Docket No. 40, Ex. A.
7 Plaintiffs are also precluded from claiming that they have been caught off guard either by the
8 upcoming trial date or Defendants' unwillingness to support its continuation. The February 28 trial
9 date was set over nine months ago, and Defendants' counsel repeatedly made clear to Plaintiffs'
10 counsel that Defendants did not wish to continue that date. See Docket No. 40, Exs. B, C.

11 In essence, Plaintiffs are asking the Court to continue the trial date because they failed to act
12 diligently in conducting discovery or engaging in settlement discussions. And instead of admitting
13 to their neglect, they have attempted to place the blame upon Defendants. This Court will not
14 reward Plaintiffs for this behavior.² Plaintiffs' motion to vacate the trial date is DENIED. In
15 addition, Plaintiffs are ordered to file their pretrial papers, which are required by this Court's
16 Standing Order re: Pretrial Preparation, immediately.

17 The Court further ORDERS Plaintiffs to show cause on February 22, 2011 at 1:30 p.m. in
18 Courtroom 2, Fifth Floor, United States District Court, 280 S. First Street, San Jose, California, why
19 the case should not be dismissed or sanctions imposed for failure to prosecute.

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21 **IT IS SO ORDERED.**

22 Dated: February 15, 2011

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24 _____
25 HOWARD R. LLOYD
26 UNITED STATES MAGISTRATE JUDGE

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28 ² The Court finds Plaintiffs' proposal to order the parties to attend a settlement conference before
Magistrate Judge Grewal to be especially disconcerting because the Court already expected the
parties to do so. The Court's May 4 Scheduling Order specifically instructed the parties to
contact the chambers of Magistrate Judge Trumbull (who, upon her retirement, was replaced by
Magistrate Judge Grewal) “well in advance of the Pretrial Conference to arrange a Settlement
Conference to take place just prior to the Pretrial Conference.” May 4 Scheduling Order at 1
(emphasis added).

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C09-04969 HRL Notice will be electronically mailed to:

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Counsel are responsible for distributing copies of this document to co-counsel who have not registered for e-filing under the court's CM/ECF program.