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7 GALLO GLASS COMPANY

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

11 LARRY BOECKEN, JR.,  
12 Plaintiff,  
13 v.  
14 GALLO GLASS COMPANY, and  
15 DOES 1 THROUGH 50,  
16 INCLUSIVE,  
17 Defendant.

CASE NO. 1:05-CV-00090 LJO BAM

**STIPULATION AND [PROPOSED] ORDER TO  
VACATE FEBRUARY 29, 2012 PRE-TRIAL  
CONFERENCE AND ALL CASE DEADLINES  
PENDING ACTION BY THE BANKRUPTCY  
TRUSTEE**

Judge: Hon. Lawrence J. O'Neill

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**BACKGROUND**

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1. This action was filed in 2004.

2. On August 21, 2008, Plaintiff Larry Boecken, Jr., filed a Voluntary Petition for bankruptcy under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, Case No. 08-15050-B-7. He did not list this lawsuit as an asset on the schedules he filed with the Bankruptcy Court. On or about December 30, 2008, the United States Bankruptcy Court granted Plaintiff a discharge under section 727 of title 11, United States Code. On May 5, 2011, new counsel for Defendant Gallo Glass Company, Nancy L. Abell, apprised Plaintiff's counsel of these facts, promptly following her discovery of them at the time she was retained as counsel. Plaintiff's counsel advises the Court that it was unaware of Plaintiff's bankruptcy proceeding until Ms. Abell brought it to counsel's attention.

3. On May 5, 2011, counsel for Defendant Gallo Glass Company, Nancy L. Abell, also apprised Plaintiff's counsel that Defendant would seek leave of this Court to file a motion for summary judgment. Defendant submits that (i) Plaintiff's claims are the property of the bankruptcy estate; (ii) Plaintiff has no standing to pursue them in this Court for any purpose, including settlement; and (iii) Plaintiff is judicially estopped from litigating this lawsuit. Plaintiff's counsel asked that Plaintiff first be given an opportunity to consult bankruptcy counsel.

4. On May 25, 2011, Plaintiff filed an application to reopen his Chapter 7 bankruptcy case, along with amended schedules listing this lawsuit as an asset omitted from his original filing.

5. On May 27, 2011, the United States Bankruptcy Court for the Eastern District of California reopened Plaintiff's Chapter 7 bankruptcy case, No. 08-15050-B-7, and ordered that the amended schedules be served on the U.S. Trustee within 30 days along with a declaration from Plaintiff Boecken explaining why the asset was omitted from the original schedules. The order further provides that the U.S. Trustee thereafter may have 30 days to appoint a Chapter 7 trustee if necessary to investigate and administer the omitted asset, namely this lawsuit.



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Dated: January 30, 2012

PAUL HASTINGS LLP

By: /s/ Nancy L. Abell  
Nancy L. Abell  
Counsel for Defendant  
Gallo Glass Company

**ORDER**

This Court ENTERS this Order based on the parties' above stipulation and FURTHER ORDERS the parties, no later than February 17, 2012, to file a status report and further status reports every 45 days thereafter.

IT IS SO ORDERED.

Dated: January 31, 2012

/s/ Lawrence J. O'Neill  
UNITED STATES DISTRICT JUDGE