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10 ELECTRONIC RECYCLERS OF AMERICA LLC, and Counterdefendant, ELECTRONIC
11 RECYCLERS INTERNATIONAL INC.

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

14 ELECTRONIC RECYCLERS
15 INTERNATIONAL INC., a Delaware
16 Corporation, and ELECTRONIC
17 RECYCLERS OF AMERICA LLC, a
18 California Limited Liability Company,

19 Plaintiffs,

20 v.

21 DLUBAK GLASS COMPANY, INC., a
22 Pennsylvania Corporation, DAVID A.
23 DLUBAK, an individual, and DOES 1
24 through 25, inclusive,

25 Defendants.

26 DLUBAK GLASS COMPANY, INC.,
27 a Pennsylvania Corporation,

28 Counterclaimant,

v.

ELECTRONIC RECYCLERS
INTERNATIONAL INC., a Delaware
Corporation,

Counterdefendant.

Case No. 1:10-CV-0760-LJO-GSA

**STIPULATION OF PARTIES AND ORDER
OF COURT ON MOTIONS TO COMPEL
FURTHER DISCOVERY RESPONSES**

(Documents 36, 37 & 39)

Date: June 24, 2011
Time: 10:00 a.m.
Courtroom: 10
Mag. Judge: Honorable Gary S. Austin

Trial Date: October 31, 2011

1 The parties to this action, by and through their counsel of record, hereby recite,
2 stipulate and agree as follows:

3 1. The motions of Plaintiffs/Counterdefendants ELECTRONIC
4 RECYCLERS INTERNATIONAL, INC. and ELECTRONIC RECYCLERS of AMERICA,
5 LLC (hereinafter, collectively “ERI”) and Defendants/Counterclaimants DLUBAK GLASS
6 COMPANY, INC. and DAVID DLUBAK (hereinafter, collectively “DGC”) came on regularly
7 for hearing on June 24 2011, at 10:00 a.m. in Courtroom 10, before the Honorable Gary S.
8 Austin, United States Magistrate Judge. Timothy J. Buchanan of McCormick Barstow LLP
9 appeared for DGC. Donald R. Fischbach and G. Andrew Slater of Dowling, Aaron & Keeler,
10 Inc. appeared for ERI. Principals for each party appeared in person.

11 2. At the hearing the Court ordered further meet and confer discussions
12 between counsel and the respective principals. Outside the Court’s presence, counsel and the
13 principals reached an agreement which was placed upon the Court record and which is now
14 memorialized in this Stipulation and Order.

15 3. The Court may enter as an Order of the Court the provisions set forth in
16 this Stipulation.

17 4. The motions of DGC and ERI to compel further discovery responses are
18 taken off calendar upon approval of this stipulation and order by the Court, without prejudice to
19 renewed motion in the event of non-compliance with any of its particulars.

20 **AS TO ERI’S MOTION:**

21 5. ERI’s Third Request for Production of Documents: Request No. 113.
22 DGC will hand-serve a supplemental written response and produce responsive documents,
23 verified in proper form under oath, factually and without qualification, to ERI’s Request No.
24 113 which has been narrowed and will now read: “Any and all DOCUMENTS RELATED TO
25 air monitoring results performed on YOUR employees at YOUR Yuma, Arizona facility for the
26 time period of September 15, 2006 through and including May 31, 2009.” Documents
27 responsive to the request shall be hand-delivered to ERI’s counsel no later than 5:00 p.m. on
28 July, 15, 2011.

1 6. ERI's Third Request for Production of Documents: Request No. 114.
2 DGC will hand-serve a supplemental written response and produce responsive documents,
3 verified in proper form under oath, factually and without qualification, to Request No. 114
4 which has been narrowed and will now read: "Any and all DOCUMENTS RELATED TO
5 shipments of glass from YOUR Yuma, Arizona facility to YOUR end customers for the time
6 period of September 15, 2006 through and including May 31, 2009." Documents responsive to
7 the request shall be hand-delivered to ERI's counsel no later than 5:00 p.m. on July, 15, 2011.
8 As DGC's accounting and tracking system does not provide the ability to segregate the ultimate
9 destination of ERI's glass materials from other glass suppliers, DGC will provide monthly un-
10 segregated reports showing total in/out (received/shipped) of glass materials and their ultimate
11 destination.

12 **AS TO DGC'S MOTION:**

13 7. DGC's Third Request for Production of Documents, Nos. 131 and 133.
14 In response to Nos. 131 and 133, ERI will provide DGC with a Declaration from the
15 appropriate DGC representative, having reviewed all requisite information, stating certain
16 information related to Alcoa's purchase of ERI stock. Specifically, the Declaration will state:
17 (1) the date of the transaction; (2) the percentage of stock purchased by Alcoa in relation to the
18 total issued and outstanding shares of ERI in that class stock; (3) the price paid for said stock;
19 (4) the type of stock purchased by Alcoa; (5) the date on which verbal discussion first
20 commenced between ERI and Alcoa related to the transaction; and (6) the date on which
21 written communications/documents were first exchanged between ERI and Alcoa related to the
22 transaction. The Declaration shall be hand-delivered to DGC's counsel no later than 5:00 p.m.
23 on July, 15, 2011.

24 8. DGC's Fourth Request for Production of Documents, No. 136. In
25 response to No. 136, ERI will provide DGC with usual and customary audited financial
26 statements for the years 2006, 2007, 2008, 2009, and 2010. Documents shall be hand-delivered
27 to DGC's counsel no later than 5:00 p.m. on July, 15, 2011.

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1 9. DGC’s Fourth Request for Production of Documents, No. 139. In
2 response to No. 139, DGC’s counsel has agreed to review the recently transmitted Rebuttal
3 Expert Report of ERI expert Andrew Smith related to valuation. In the event DGC’s counsel
4 does not find the rebuttal report responsive to this request, the parties agree to submit, in
5 writing, any remaining dispute related to this request to the Court for final determination.
6 Parties waive the right to a hearing as to this request only.

7 10. DGC’s Second Set of Special Interrogatories, No. 38. In response to No.
8 38, ERI shall identify any persons responsive to this request who have not already been
9 identified as shareholders, or provide a definitive statement stating all shareholders and or
10 persons to whom shares have been offered have been identified.

11 **AS TO ALL MOTIONS:**

12 11. In the event that any party produces no further documents in response to
13 one or more of the requests itemized above, the supplemental written response to that request
14 shall state, unequivocally and without qualification, verified under oath, that said party has
15 made a diligent search and inquiry for the requested documents and that no responsive
16 documents exist. In the event that the responsive documents once existed and no longer exist,
17 said party shall state how, when, and why they were discarded, deleted, or destroyed.

18 12. Except as expressly noted above, all further disputed discovery requests
19 described in the parties’ Joint Statement filed on June 17, 2011, are deemed withdrawn from
20 this motion.

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13. The parties mutually withdraw their requests for the order of costs and sanctions.

Dated: June 30, 2011 DOWLING, AARON & KEELER, INC.

By: /s/ G. Andrew Slater
DONALD R. FISCHBACH
G. ANDREW SLATER
Attorneys for Plaintiffs, ELECTRONIC RECYCLERS INTERNATIONAL INC., and ELECTRONIC RECYCLERS OF AMERICA LLC, and Counterdefendant ELECTRONIC RECYCLERS INTERNATIONAL INC.

Dated: June 30, 2011 McCORMICK, BARSTOW, SHEPPARD, WAYTE & CARRUTH, LLP

By: /s/ Timothy J. Buchanan
TIMOTHY J. BUCHANAN
MANDY L. JEFFCOACH
Attorneys for Defendant DLUBAK GLASS COMPANY, INC., a Pennsylvania Corporation, DAVID A. DLUBAK,

ORDER

The Court, having reviewed the above stipulation and finding good cause to support it, hereby enters the stipulation as an ORDER OF THE COURT. Failure to comply with this Order in any respect shall result in the imposition of sanctions in the discretion of the court including, without limitation, one or more of the sanctions listed in Rule 37(b)(2)(A) and (C) of the Federal Rules of Civil Procedure, and may be treated by the Court as a contempt of Court.

IT IS SO ORDERED.

Dated: June 30, 2011 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE



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