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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

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E. & J. GALLO WINERY, a California
17 corporation,

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Plaintiff,

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v.

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TOLEDO ENGINEERING CO., INC., an
Ohio corporation, and DOES I through XX,
21 inclusive,

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Defendant.

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Plaintiff E. & J. Gallo Winery (“Gallo”) and Defendant Toledo Engineering Co., Inc.
 (“TECO”), by and through their respective attorneys of record, hereby enter into the following
 stipulation with respect to Gallo’s Motion for Summary Adjudication of Issues:

Case No. 1:11-CV-00476-LGO-GSA

**STIPULATION RE PLAINTIFF E. & J.
GALLO WINERY’S MOTION FOR
SUMMARY ADJUDICATION; ORDER
THEREON**

[FRCP 56; Eastern District L.R., 260]

Hearing:

Date: March 21, 2013

Time: 8:30 AM

Courtroom: 4

Complaint Filed: February 14, 2011

Trial date: July 9, 2013

1 WHEREAS, Gallo has advised TECO that it intends to move for summary adjudication of
2 issues pursuant to Federal Rules of Civil Procedure, Rule 56 and Eastern District Local Rule 260,
3 seeking to adjudicate various affirmative defenses alleged by TECO in its Answer (Doc. # 7) to
4 Gallo’s Complaint, including, the first, second, fourth, eleventh, fourteenth, seventeenth and twentieth
5 affirmative defenses;

6 WHEREAS Gallo has further advised TECO that it intends to move affirmatively for summary
7 adjudication, finding that Gallo Glass Company has assigned to Gallo and Gallo holds all of Gallo
8 Glass Company’s rights, claims and causes of action, including those alleged in the complaint herein,
9 as set forth in E&J0034150;

10 WHEREAS, pursuant to the this Court’s Scheduling Order (Doc. #14, at pgs. 3-4), Gallo and
11 TECO, by and through their respective attorneys, met and conferred on February 19, 20 and 21, 2013,
12 regarding the issues raised by, and facts in support of, Gallo’s anticipated motion for summary
13 adjudication;

14 WHEREAS, as a result of the parties’ above-described meet and confer efforts, TECO and
15 Gallo agree that summary adjudication against TECO and in favor of Gallo is appropriate and should
16 be granted as to TECO’s second and twentieth affirmative defenses alleged in TECO’s Answer, and
17 that Gallo Glass Company has assigned to Gallo and Gallo holds all of Gallo Glass Company’s rights,
18 claims and causes of action, including those alleged in the complaint herein, as set forth in
19 E&J0034150;

20 WHEREAS, as a result of the parties’ above-described meet and confer efforts, TECO and
21 Gallo further agree that an order should be entered, adjudicating such affirmative defenses and issue
22 against TECO and in favor of Gallo without the necessity of the parties litigating a motion thereon:

23 Based on the forgoing, Gallo and TECO stipulate and agree to an order from this Court on
24 Gallo a motion for summary adjudication relating to the following without the need of litigating a
25 motion thereon, that:

- 26 1. GRANTS summary adjudication against TECO on TECO’s second affirmative
27 defense;
- 28 2. GRANTS summary adjudication against TECO on TECO’s twentieth affirmative

1 defense; and

2 3. GRANTS summary adjudication, finding that Gallo Glass Company has assigned to
3 Gallo and Gallo holds all of Gallo Glass Company’s rights, claims and causes of action, including
4 those alleged in the complaint herein, as set forth in E&J0034150.

5 SO STIPULATED:

6 Dated: February 21, 2013

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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By: /s/ D. Greg Durbin
D. Greg Durbin
Timothy J. Buchanan
William H. Littlewood
Attorneys for Plaintiff, E.&J. GALLO WINERY

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13 Dated: February 21, 2013

LEWIS BRISBOIS BISGAARD & SMITH LLP

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By: /s/ Melissa M. Whitehead
David S. Worthington
Melissa M. Whitehead
Talia L. Delanoy
Attorneys for Defendant TOLEDO
ENGINEERING CO., INC

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ORDER

Upon the stipulation of Plaintiff E. & J. Gallo Winery (“Gallo”) and Defendant Toledo Engineering Co., Inc. (“TECO”), and good cause appearing therefore, this Court HEREBY issues the following ORDER, without the necessity of the parties litigating a motion for summary adjudication thereon, that:

1. GRANTS summary adjudication against TECO on TECO’s second affirmative defense;
2. GRANTS summary adjudication against TECO on TECO’s twentieth affirmative defense; and
3. GRANTS summary adjudication, finding that Gallo Glass Company has assigned to Gallo and Gallo holds all of Gallo Glass Company’s rights, claims and causes of action, including those alleged in the complaint herein, as set forth in E&J0034150.

IT IS SO ORDERED.

Dated: February 22, 2013

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