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8 Attorneys for Defendant Excalibur Sires, Inc.

9 UNITED STATES DISTRICT COURT
 10 EASTERN DISTRICT OF CALIFORNIA

11 JLG ENTERPRISES, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 EXCALIBUR SIRES, INC, a Minnesota
 16 corporation, and DOES 1 through 25
 17 inclusive,

18 Defendants.

CASE NO. 1:10-cv-02138-AWI-SKO

STIPULATION RE: FIRST AMENDED
ANSWER AND COUNTER CLAIM

19 **IT IS HEREBY STIPULATED** by the parties through their attorneys of record and
 20 approved by the Court as follows:

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1 The Defendant and Cross Claimant, Excalibur Sires, Inc will file and proceed under the
2 defenses and allegations of its First Amended Answer and Counter Claim a copy of which is
3 attached hereto as **Exhibit "A."**
4

5 DATED: April 1, 2011

By: /s/ Gregory L. Myers
GREGORY L. MYERS
Attorney for Excalibur Sires, Inc.

6
7
8 DATED: April 1, 2011

By: /s/ Eric J. Sousa
ERIC J. SOUSA
Attorney for JLG Enterprises, Inc.

9
10
11 IT IS SO ORDERED.

12
13 Dated: April 4, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

GREGORY L. MYERS (SBN 95743)
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Inc.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JLG ENTERPRISES, INC., a California
corporation,

Plaintiff,

v.

EXCALIBUR SIRES, INC, a
Minnesota corporation, and DOES 1
through 25 inclusive,

Defendants.

CASE NO. 1:10-cv-02138-AWI-SKO

**FIRST AMENDED ANSWER AND
COUNTER CLAIM**

Defendant Excalibur Sires, Inc. (“Excalibur”) hereby answers Plaintiff JLG Enterprises, Inc.’s
 (“JLG”) Complaint as follows:

GENERAL ALLEGATIONS

1. On information and belief, Excalibur admits that JLG is a corporation duly
organized and existing under the laws of the State of California with its principal place of
business located at 11116 Sierra Road, Oakdale, Stanislaus County, California. Excalibur is
without sufficient knowledge or information to admit or deny that JLG is, and at all times herein
mentioned was, engaged in the business of providing, for a fee, boarding, feeding, veterinary and
general health services (hereafter “Livestock Services”) to bulls boarded at its facility, and on

1 those grounds denies the same.

2 2. Excalibur admits that it is a corporation duly organized and existing under the
3 laws of the State of Minnesota with its principal place of business located at 1202 ½ 7th Street,
4 NW #211, Rochester, Minnesota. Excalibur denies the remaining allegations in Paragraph 2 of
5 the Complaint.

6 3. Excalibur denies the allegations in Paragraph 3 of the Complaint. To the extent
7 Paragraph 3 of the Complaint purports to state legal conclusions, no answer is necessary. To the
8 extent that any further response is deemed to be required, Excalibur denies the remaining
9 allegations in Paragraph 3 of Plaintiff's Complaint.

10 4. Excalibur denies the allegations in Paragraph 4 of the Complaint. To the extent
11 Paragraph 4 of the Complaint purports to state legal conclusions, no answer is necessary. To the
12 extent that any further response is deemed to be required, Excalibur denies the remaining
13 allegations in Paragraph 4 of Plaintiff's Complaint.

14 5. Excalibur denies the allegations in Paragraph 5 of the Complaint. To the extent
15 Paragraph 5 of the Complaint purports to state legal conclusions, no answer is necessary. To the
16 extent that any further response is deemed to be required, Excalibur denies the remaining
17 allegations in Paragraph 5 of Plaintiff's Complaint.

18 6. Excalibur is without sufficient knowledge or information to admit or deny the
19 allegations in Paragraph 6 of the Complaint and on those grounds denies the same. To the extent
20 that any further response is deemed to be required, Excalibur denies the remaining allegations in
21 Paragraph 6 of Plaintiff's Complaint.

22 **FIRST CAUSE OF ACTION**

23 **(Breach of Contract to Provide Livestock Services)**

24 7. Excalibur denies the allegations in Paragraph 7 of the Complaint.

25 8. Paragraph 8 of Plaintiff's Complaint asserts legal conclusions and other
26 characterizations to which no response is required. Excalibur admits that on or about January 26,
27 1994, Plaintiff and Excalibur entered into an oral agreement. To the extent that any further
28 response is deemed to be required, Excalibur denies the remaining allegations in Paragraph 8 of

1 Plaintiff's Complaint.

2 9. Excalibur denies the allegations of Paragraph 9 of Plaintiff's Complaint.

3 10. Paragraph 10 of Plaintiff's Complaint asserts legal conclusions and other
4 characterizations to which no response is required. To the extent that a response is deemed to be
5 required, Excalibur denies the allegations of Paragraph 10 of Plaintiff's Complaint.

6 11. Paragraph 11 of Plaintiff's Complaint asserts legal conclusions and other
7 characterizations to which no response is required. To the extent that a response is deemed to be
8 required, Excalibur denies the allegations of Paragraph 11 of Plaintiff's Complaint.

9 12. Paragraph 12 of Plaintiff's Complaint asserts legal conclusions and other
10 characterizations to which no response is required. To the extent that a response is deemed to be
11 required, Excalibur denies the allegations of Paragraph 12 of Plaintiff's Complaint.

12 **SECOND CAUSE OF ACTION**

13 **(Unjust Enrichment)**

14 13. Excalibur denies the allegations in Paragraph 13 of the Complaint.

15 14. Paragraph 14 of Plaintiff's Complaint asserts legal conclusions and other
16 characterizations to which no response is required. Excalibur admits that on or about January 26,
17 1994, Plaintiff and Excalibur entered into an oral agreement. To the extent that any further
18 response is deemed to be required, Excalibur denies the remaining allegations in Paragraph 14 of
19 Plaintiff's Complaint.

20 15. Excalibur denies the allegations in Paragraph 15 of the Complaint.

21 16. Excalibur denies the allegations in Paragraph 16 of the Complaint.

22 17. Paragraph 17 of Plaintiff's Complaint asserts legal conclusions and other
23 characterizations to which no response is required. To the extent that any further response is
24 deemed to be required, Excalibur denies the remaining allegations in Paragraph 17 of Plaintiff's
25 Complaint.

26 **THIRD CAUSE OF ACTION**

27 **(Common Count – Account Stated)**

28 18. Excalibur denies the allegations in Paragraph 18 of the Complaint.

1 Plaintiff's claims are barred, in whole or in part, by Plaintiff's breach of the contract between
2 Plaintiff and Excalibur.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 **(Offset)**

5 4. As a separate and affirmative defense to the Complaint, Excalibur alleges the
6 right to offset any amounts owed to Plaintiff by amounts owed to Excalibur by Plaintiff.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 **(Unconscionability)**

9 5. As a separate and affirmative defense to the Complaint, Excalibur alleges that
10 Plaintiff's claims are barred, in whole or in part, because it would be unconscionable for Plaintiff
11 to obtain damages for the alleged breach of contract, because of its having fraudulently induced
12 Excalibur into entering into the agreement and because of its own breaches of the agreement.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 **(Unjust Enrichment)**

15 6. As a separate and affirmative defense to the Complaint, Excalibur alleges that
16 Plaintiff's claims are barred because any recovery in favor of Plaintiff would result in Plaintiff's
17 unjust enrichment.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **(Comparative Fault)**

20 7. As a separate and affirmative defense to the Complaint, Excalibur alleges that to
21 the extent that Plaintiff has suffered any injury or damage, which Excalibur denies, such injury
22 or damage was caused or contributed to by the negligence, fault, breach of contract, and/or other
23 wrongful or tortious conduct of persons or entities other than Excalibur, including, without
24 limitation, Plaintiff, or others, and said acts or omissions comparatively reduce the percentage of
negligence, fault and/or liability, if any, of Excalibur.

25 **EIGHTH AFFIRMATIVE DEFENSE**

26 **(Mutual Mistake)**

27 8. As a separate and affirmative defense to the Complaint, Excalibur alleges that
28

1 Plaintiff's claims are barred because of the parties' reliance on mutually mistaken understanding
2 of material facts.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **(Unilateral Mistake)**

5 9. As a separate and affirmative defense to the Complaint, Excalibur alleges that
6 Plaintiff's claims are barred because of Excalibur's reliance on a mistaken understanding of
7 material facts based on Plaintiff's intentional or unintentional concealment and/or
8 misrepresentation.

9 **TENTH AFFIRMATIVE DEFENSE**

10 **(Estoppel)**

11 10. As a separate and affirmative defense to the Complaint, Excalibur alleges that the
12 Complaint and each purported cause of action therein is barred, in whole or in part, because by
13 its conduct, representations, and omissions, Plaintiff is equitably estopped from asserting any
14 claim for relief against this Excalibur respecting the matters which are the subject of the
15 Complaint.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 **(Waiver)**

18 11. As a separate and affirmative defense to the Complaint, Excalibur alleges that the
19 Complaint and each purported cause of action therein is barred, in whole or in part, because by
20 its conduct, representations, and omissions, Plaintiff has voluntarily waived, relinquished, and/or
21 abandoned all claims for relief against Excalibur respecting its rights under the subject contract.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 **(Acquiescence)**

24 12. The claims asserted in the Complaint are barred, in whole or in part, by the
25 doctrine of acquiescence.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 **(Laches)**

28 13. The claims asserted in the Complaint are barred, in whole or in part, by the

1 doctrine of laches.

2
3 **FURTEENTH AFFIRMATIVE DEFENSE**

4 **(Failure to Mitigate)**

5 14. As a separate and affirmative defense to the Complaint, Excalibur alleges that
6 Plaintiff's claims are barred by virtue of its failure to mitigate his damages.

7
8 **COUNTERCLAIMS**

9 3. Defendant and Counter-Claimant Excalibur Sires, Inc. is, and at all times
10 mentioned herein was, a Minnesota corporation with its principal place of business located at
11 1202 ½ 7th Street, NW #211, Rochester, Minnesota.

12 4. Plaintiff and Counter-Defendant JLG Enterprises, Inc. ("JLG") is, and at all times
13 mentioned herein was, a corporation duly organized and existing under the laws of the State of
14 California with its principal place of business located at 11116 Sierra Road, Oakdale, Stanislaus
15 County, California.

16 **JURISDICTION**

17 5. This Court has jurisdiction over the subject matter of this counterclaim under 28
18 U.S.C. § 1332 because Plaintiff and Defendant are citizens of different states, and the amount in
19 controversy exceeds \$75,000.

20 6. Additionally, pursuant to 28 U.S.C. § 1367(a), this Court has supplemental
21 jurisdiction over this counterclaim because the counterclaims arise out the same transactions or
22 occurrences that is the subject matter of JLG's claims against Excalibur, and does not require
23 adding another party over whom this Court cannot acquire jurisdiction.

24 **STATEMENT OF CASE**

25 7. Excalibur does not have legal title to all of the bulls it uses in its business. Instead,
26 most of the bulls are leased by Excalibur from dairy cattle producers ("Breeders") around the
27 country. Unlike a traditional land or chattel lease wherein monthly or annual payments are made
28 by the lessee to the lessor, the bull lease agreements provide for the payment of royalties from

1 the sale of the straws of semen produced by the bull.

2 8. The proceeds from the sale of the straws of semen results in income to Excalibur.

3 9. Excalibur has sole control and possession of the bulls as part of these lease
4 agreements and has the right to direct the semen collection.

5 10. Counter-Defendant JLG operates a boarding facility in California.

6 11. For the past 17 years, based upon oral agreement entered into on or around
7 January 26, 1994, Excalibur has boarded most of bulls it owns or has leased at JLG's boarding
8 facility. In addition to boarding the bulls, JLG arranges for the extraction of semen. Once semen
9 is collected from a particular bull, the semen is placed in "straws," which are frozen and stored at
10 JLG's facilities. Dairy farmers then place orders—either through Excalibur, or by contacting
11 JLG directly—for straws of semen from a specific bull. JLG then ships the straws containing the
12 semen to the dairy farmers.

13 **JLG Tortiously Interferes with Excalibur's Business**

14 12. Beginning in or around August 2010, JLG began refusing to ship orders from
15 third parties requesting semen from Excalibur's bulls. On information and belief, there are
16 currently approximately 100,000 straws of semen held at JLG's facility.

17 13. Excalibur has and continues to receive orders from dairy farmers and other
18 customers ordering semen. Moreover, many additional dairy farmers and customers have
19 informed Excalibur that they stand ready to order more semen as soon as it becomes available.

20 14. Historically, the fourth quarter of the year yields the highest number of sales.
21 Because JLG has refused to ship semen since August 2010.

22 15. As JLG's refusal to fulfill semen orders extends, Excalibur has lost and continues
23 to lose customers.

24 16. By refusing to fulfill its contractual obligations, JLG is destroying Excalibur's
25 business.

26 17. On information and belief, this is exactly what JLG seeks to accomplish.
27
28

1 **FIRST CLAIM FOR RELIEF**

2 **(Negligence)**

3 18. Excalibur herein incorporates by reference the allegations set forth in paragraphs
4 1 through 17 of the Counter-Claim.

5 19. In the early part of August 2010, JLG notified Excalibur that the bull, Colton, had
6 died. At no time prior to Colton's death did JLG notify Excalibur that Colton was sick; nor, did
7 JLG provide any veterinary or health services to Colton.

8 20. At all times relevant hereto, JLG had a duty to exercise reasonable care in the
9 boarding, feeding, and provision of veterinary and health services to Excalibur's bulls that are
10 and were housed at its facilities in Oakdale, California.

11 21. JLG failed to exercise ordinary care by failing provide veterinary and other health
12 services to Colton and other bulls leased by Excalibur.

13 22. JLG's failure to provide veterinary and health services to Colton was the direct
14 and proximate cause of the death of Colton.

15 23. The death of Colton caused damages to Excalibur including, but not limited to,
16 lost profits amounting to approximately \$1.5 million.

17 **SECOND CLAIM FOR RELIEF**

18 **(Conversion of the Straws)**

19 24. Excalibur herein incorporates by reference the allegations set forth in paragraphs
20 1 through 23 of the Counter-Claim.

21 25. At all times herein mentioned, Excalibur was, and still is, the owner of all the
22 straws containing bull semen produced by bulls leased by Excalibur and housed at JLG's facility
23 in Oakdale, California.

24 26. At all times herein mentioned, the personal property described above has been in
25 the possession of JLG with whom Excalibur had left for safekeeping and storage.

26 27. Starting on or about August 2010, JLG began refusing to send orders for straws to
27 third parties, or otherwise permit Excalibur to arrange to have the straws shipped to third party
28 purchasers, and thereby converted it and its potential proceeds to its own use.

1 28. JLG's acts alleged above were willful, wanton, malicious and oppressive and
2 justify the awarding of exemplary and punitive damages.

3 **THIRD CLAIM FOR RELIEF**

4 **(Conversion of Bulls)**

5 29. Excalibur herein incorporates by reference the allegations set forth in paragraphs
6 1 through 28 of the Counter-Claim.

7 30. At all times herein mentioned, Excalibur was, and still is, the leaseholder and is
8 entitled to profits from the sale of the following bulls as well as the semen they produce:

- 9 a. Hurtgen-Vue **REALITY – RED**: Registration No. 134690997;
- 10 b. Timlynn SM Amory: Registration No. 134229357;
- 11 c. Our-Favorite **MARSH – ET**: Registration No. 135705197;
- 12 d. A-L-H Titanic **ENZO**: Registration No. 61898112;
- 13 e. Regancrest Titanic **DAREL-ET**: Registration No. 61898118;
- 14 f. Eskdale **MOMENTOUS**: Registration No. 1367077811;
- 15 g. Scientific CBA **DRAMA – ET**: Registration No. 136903767;
- 16 h. JZM Champion **CHALLENGER – TW**: Registration No. 62216719;
- 17 i. Premier - S **CYCLONE -RED-ET**: Registration No. 61655861;
- 18 j. Regancrestdl S **RYKER – ET**: Registration No. 61898421;
- 19 k. Krull Mr Sam **EDISON – ET**: Registration No. 62702439;
- 20 l. Budjon-JK MR **ELIJAH – ET**: Registration No. 137218273;
- 21 m. Windy-Knoll-View **PACIFIC-ET**: Registration No. 137198261;
- 22 n. Scientific **LIGHTNING-RED – ET**: Registration No. 137643471;
- 23 o. E-Evans-A Allen **RASCAL – ET**: Registration No. 62613542;
- 24 p. Regancrest Mac **CADE-ET**: Registration No. 62744605;
- 25 q. Hnkes-Wessel **ENFORCER-TW**: Registration No. 63445911;
- 26 r. Sandy-Valley Mr **COMET-ET**: Registration No. 63563713.

27 31. At all times herein mentioned, the bulls described above have been in the
28 possession of JLG with whom Excalibur had contracted with for boarding and other services.

1 Defendant JLG, as follows:

- 2 1. For judgment in favor of Excalibur and against JLG on each count of these
3 Counterclaims;
- 4 2. For compensatory and actual damages according to proof at trial;
- 5 3. For punitive and/or exemplary damages in an amount determined by the trier of
6 fact.
- 7 4. For a complete and accurate accounting of each of the following:
- 8 a. If any bulls have been sold, transferred or moved from JLG's facility, an
9 accounting of all details relating to that transfer.
- 10 b. The number of straws of bull semen owned by Excalibur, and the name
11 and identification number of the bull that produced each straw, which JLG
12 currently has in its possession, custody or control.
- 13 c. The number of straws of bull semen owned by Excalibur, and the name
14 and identification number of the bull that produced each straw, which JLG
15 has had in its possession custody or control over the past two years.
- 16 5. For attorneys' fees, costs and expenses incurred herein; and
- 17 6. For such further relief as the court deems just and appropriate.

18
19 DATED: APRIL 1, 2011

20
21 By: /s/ Gregory L. Myers
22 GREGORY L. MYERS,
23 Attorney for Excalibur Sires, Inc.
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