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Attorneys for Plaintiff and Cross-Defendant Seed Services, Inc.

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

SEED SERVICES, INC., a California corporation,

Plaintiff,

vs.

WINSOR GRAIN, INC., a Minnesota corporation, WILLIAM L. COOK, an individual, and DOES 1 through 35, Inclusive.

Defendants.

Case No. 1:10-cv-02185-AWI-GSA

**ORDER RE: STIPULATION TO:**

- 1. **WITHDRAW RESCISSION CLAIM,**
- 2. **CONTINUE TRIAL DATE,**
- 3. **ATTEND SETTLEMENT CONFERENCE,**

WILLIAM L. COOK, an individual, and WINSOR GRAIN, INC., a Minnesota corporation,

Counterclaimants,

vs.

SEED SERVICES, INC., a California corporation,

Counterdefendant.

Plaintiff and cross-defendant SEED SERVICES, INC., by and through its attorneys, Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball, LLP, and defendants and cross-complainants WINSOR GRAIN, INC. AND WILLIAM COOK, by through their attorneys,

1 Gilmore Wood Vinnard & Magness, hereby stipulate and agree to the terms of this Stipulation  
2 and Order, and the Court hereby approves this Stipulation and enters the Order thereon.

3 **Recitals**

4 1. In or around August 2010, Seed Services, Inc. (“Seed Services”) and Winsor  
5 Grain, Inc. (“Winsor Grain”) entered into a written contract (“the August 2010 Contract.”)

6 2. Seed Services filed this action against Winsor Grain and its principal, William  
7 L. Cook, for breach of the August 2010 Contract, among other things. In its complaint, Seed  
8 Services included a claim for rescission of the August 2010 Contract.

9 **Dismissal of Seed Services’ rescission claim**

10 3. Seed Services no longer desires to pursue the claim for rescission of the August  
11 2010 Contract, and wishes to dismiss that claim without prejudice.

12 **The filing of the First Supplemental Complaint**

13 4. In December 2011, Seed Services sought leave to file a First Supplemental  
14 Complaint against Mr. Cook and Winsor Grain for acts that occurred in November, 2011. The  
15 court granted Seed Services leave to file the First Supplemental Complaint by order dated  
16 January 13, 2012.

17 5. Mr. Cook and Winsor Grain filed an Answer to the First Supplemental  
18 Complaint on January 31, 2012.

19 6. The parties desire to conduct limited discovery on the claims and defenses  
20 raised by the First Supplemental Complaint and Answer thereto.

21 7. The parties desire to continue the trial date in this matter by approximately three  
22 months to allow them to conduct this limited discovery.

23 **Settlement Conference**

24 8. The parties have not attended a settlement conference in this case, and desire to  
25 do so. The parties desire that the settlement conference be held before Magistrate Judge  
26 Austin, notwithstanding Local Rule 270(b).

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1 **Stipulation**

2 IT IS HEREBY STIPULATED AND AGREED by and between the parties that:

3 **Dismissal of Seed Services' rescission claim**

4 1. Seed Services agrees that it will not pursue its claim for rescission of the August  
5 2010 Contract.

6 2. Seed Services' Complaint filed November 22, 2010, is amended as follows:  
7 Count Four, for Rescission of Contract, comprising paragraphs 37 through 42, is dismissed  
8 without prejudice. The Prayer for Relief as to Count Four is stricken.

9 3. With regards to the rescission claim, all parties will bear their own fees and  
10 costs.

11 **Three months of limited discovery; trial date to be continued**

12 4. The allegations in the Supplemental Complaint relate to matters that arose  
13 following the close of discovery on the Complaint. Therefore, the parties will have ninety (90)  
14 days from the date of entry of an order approving this stipulation, to conduct any additional  
15 discovery regarding the claims and defenses raised by the First Supplemental Complaint and  
16 Answer thereto.

17 5. The parties request and the court hereby orders, the current trial date of May 15,  
18 2012, be vacated, and that the pretrial conference set for March 15, 2012, will be treated as a  
19 further status conference and a continued trial date will be set at that time.

20 **Settlement conference**

21 6. The parties request, and the court hereby orders, that they will attend a  
22 settlement conference before Magistrate Judge Gary S. Austin in March or April 2012, or as  
23 soon thereafter as practicable. Pursuant to Local Rule 270(b), the parties waive any claim of  
24 disqualification regarding Judge Austin on the basis that he held the settlement conference.  
25 All parties are agree to and are ordered to attend the settlement conference in person.

26 IT IS SO STIPULATED.

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Dated: 2/24/12

GILMORE WOOD VINNARD & MAGNESS

By: /s/ Scott L. Jones

DAVID MALCOLM GILMORE  
SCOTT L. JONES

Dated: 2/24/12

KLEIN, DeNATALE, GOLDNER,  
COOPER, ROSENLIEB & KIMBALL, LLP

By: /S/ T. Scott Belden

T. SCOTT BELDEN  
PAUL C. FRANCO  
KALEB L. JUDY

ORDER

The parties' stipulation is adopted. The Pretrial Conference set for March 15, 2012, and the Trial set for May 15, 2012 are hereby VACATED. A Settlement Conference is set for April 10, 2012, at 10:30 a.m. before Magistrate Judge Austin in Courtroom 10. A separate order shall issue regarding Judge Austin's settlement conference procedures.

IT IS SO ORDERED.

Dated: February 28, 2012

  
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CHIEF UNITED STATES DISTRICT JUDGE