

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RANCHO AGRICOLA SANTA MONICA, S. de R.L. de C.V.,  vs.  WESTAR SEEDS INTERNATIONAL, INC.,  Plaintiff,  Defendant.
--

CASE NO. 08cv1998 JM(JMA)  
  
ORDER DENYING MOTION TO  
CONSOLIDATE WITHOUT  
PREJUDICE

Defendant Westar Seeds International, Inc. (“Westar”) moves to consolidate this action with a related action, Martin Acosta v. Westar Seeds International, Inc., Case No. 09cv0706 JM(JMA) (the “Acosta action”). Plaintiff Rancho Agricola Santa Monica, S. de R.L. de C.V. (“Agricola”) opposes the motion. Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument. For the reasons set forth below, the motion to consolidate is denied without prejudice.

**BACKGROUND**

On October 28, 2008 Agricola commenced this diversity action alleging claims arising from its purchase of onion seeds from Westar. On April 8, 2009, Agricola’s counsel, representing another plaintiff, Martin Acosta, filed another diversity action alleging claims arising from the purchase of onion seeds from Westar.

On May 18, 2009 the court low numbered the Acosta action to the present action.

1 Following a case management conference on May 7, 2009, Magistrate Judge Adler  
2 issued coordinated case management schedules in both cases with the same pretrial  
3 conference and trial dates. The parties continue to conduct coordinated discovery in  
4 both actions.

5 The following briefly describes the nature of the two actions.

6 The Present Action, No. 08cv1998

7 Plaintiff Agricola alleges that in March 2008 it purchased 300 pounds of  
8 “Ringmaster” variety onion seeds from Westar for planting at Agricola’s farm in  
9 Mexico. (Compl. ¶5). Agricola planted 130 acres with the Westar seeds and, before  
10 harvest, discovered that the seeds were not the “Ringmaster” variety but “seeds from  
11 a non-bulbing variety of onion mixed in with seeds of another, unknown variety of  
12 bulbing onion.” (Compl. ¶8, 9). Agricola later discovered that “none of the onions that  
13 grew from the seed purchased from Defendant were ‘Ringmaster’ onions.” (Compl.  
14 ¶11). Agricola alleges damages of about \$4,000,000.

15 Based upon the above generally described conduct, Plaintiff alleges eight claims  
16 for (1) breach of contract, (2) breach of express warranty, (3) breach of implied  
17 warranty of merchantability, (4) breach of implied warranty of fitness for a particular  
18 purpose, (5) products liability, (6) negligence, (7) negligent misrepresentation, and (8)  
19 fraud.

20 The Related Action, 09cv0706

21 Plaintiff Acosta alleges that in March 2008 he purchased 150 pounds of  
22 “Ringmaster” variety onion seeds from Westar for planting at his farm in Mexico.  
23 (Compl. ¶5). Acosta planted 62 acres with the Westar seeds and, before harvest,  
24 discovered that the seeds were not the “Ringmaster” variety but “seeds from a non-  
25 bulbing variety of onion mixed in with seeds of another, unknown variety of bulbing  
26 onion.” (Compl. ¶¶8, 9). Acosta alleges that it was later determined that “onions that  
27 grew from the onion plants purchased from Defendant were not ‘Ringmaster’ onions,  
28 and that the seeds were defective.” (Compl. ¶10).




1 in one case will be used in the other, and both actions are subject to the same case  
2 management and scheduling order. Under the low number rule, substantial efficiencies  
3 and coordination have already occurred.

4 The second procedure provides for consolidation of two actions as if they were  
5 the same case. Where two related actions present the same factual and legal issues,  
6 consolidation provides that the two cases proceed under a single case number. Here,  
7 at the present time, the court declines to consolidate the two actions for a single trial as  
8 requested by Westar. Agricola identifies significant differences between the two  
9 actions. Agricola represents that discovery has revealed that the onion seeds purchased  
10 from Westar and sold to it and plaintiff Acosta originated from different batches or lots.  
11 (Ayers Decl. ¶¶2-4). Agricola also identifies that the damages arising from the batches  
12 of onion seed sold to it and plaintiff Acosta are different and could potentially confuse  
13 the jury. The potentially significant legal and factual differences between the two  
14 actions caution against the premature consolidation of the two actions.

15 In sum, the court denies the motion to consolidate the two actions for trial  
16 without prejudice. As the parties complete discovery and move towards trial,  
17 calendared for October 25, 2010, additional discovery may reveal that trial efficiencies  
18 warrant consolidation for trial. In the event discovery reveals that significant  
19 efficiencies will be obtained through consolidation of the two actions, Westar may  
20 renew its motion to consolidate the two actions for trial.

21 **IT IS SO ORDERED.**

22 DATED: September 29, 2009

23   
24 Hon. Jeffrey T. Miller  
United States District Judge

25 cc: All parties

26

27

28