

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

KANSAS WHEAT ALLIANCE INC. and
KANSAS STATE UNIVERSITY
RESEARCH FOUNDATION,

Plaintiffs,

vs.

THUNDERBIRD SEED CONDITIONING
LLC, THUNDERBIRD COMMODITIES
LLC, THUNDERBIRD LIVESTOCK &
LAND, INC., LINLY STUM, LANE
STUM, JAY STUM, MONTE STUM, and
FAITHWALK FARMS, INC.,

Defendants.

Civil Action No. 12-cv-01171-MEH

STIPULATED CONSENT JUDGMENT AND INJUNCTION

IT IS HEREBY STIPULATED AND AGREED on this 15th day of January, 2014, by and between Kansas Wheat Alliance, Inc. and Kansas State University Research Foundation (“Plaintiffs”) and Thunderbird Seed Conditioning, LLC, Thunderbird Commodities LLC, Thunderbird Livestock & Land, Inc., Jay Stum, Monte Stum, Lane Stum, Linly Stum, and Faithwalk Farms, Inc. (“Defendants”) collectively referred to as the “Parties,” that:

- A. The Parties stipulate and agree that this Court is the proper court of venue and jurisdiction for the action;
- B. The Parties have entered into a Settlement Agreement, dated January 10, 2014, resolving all claims in this matter;

- C. The Parties have read and reviewed the stipulations and terms of this *Consent Judgment and Injunction* and understand the nature, terms, and contents of this *Consent Judgment and Injunction*;
- D. The undersigned representatives certify that he or she is fully authorized to enter into the terms and conditions of this *Consent Judgment and Injunction* and to fully bind the Parties; no original signature is required - a facsimile signature is permitted;
- E. The Defendants stipulate and agree that Plaintiffs own or license valid and enforceable intellectual property rights to certain wheat seed varieties by virtue of various U.S. Plant Variety Protection Act Certificates, including those varieties known as: Fuller, Danby, Everest, Jagger, Overley, RonL, and Tiger; Defendants make no express or implied admission of liability for infringement;
- F. The Parties accept the following terms and conditions for purposes of settlement of this case and consent to the entry of a final Judgment according to such terms and conditions stated below, and the Parties agree to be subject to the continuing jurisdiction of the Colorado United States District Court to enforce the terms of this *Consent Judgment and Injunction*. Accordingly, it is agreed by the Parties that a Final Judgment should be entered in this cause adopting the following terms.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT this *Consent Judgment* shall be entered and the Defendants shall immediately inform all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with Defendants of the followings terms and conditions of this *Consent Judgment*:

2. **Prohibited Activities under the Plant Variety Protection Act.** The Defendants and all successors, assigns, officers, agents, employees, representatives, and all other entities or persons in active concert or participation with the Defendants are hereby enjoined and permanently restrained from conditioning, selling, planting, marketing, delivering, shipping, consigning, exchanging, or transferring title or possession of all varieties owned or licensed by Plaintiffs, as listed on Kansas Wheat Alliance's website at <http://www.kswheatalliance.org>, without express authorization from Plaintiffs. If any Defendants wish to condition wheat seed for others in the future, and to protect against the violation of this Order, Defendants shall implement a system of recordkeeping that requires the customer requesting seed to be conditioned to identify the wheat by variety name to confirm it is not a variety owned or licensed by Plaintiffs. Defendants are to retain such seed conditioning records for a period of three years.

3. **Dismissal with Prejudice.** Subject to compliance with the other provisions of this Order and with the terms of the Settlement Agreement dated January 10, 2014, the Parties hereby agree to entry of DISMISSAL WITH PREJUDICE as to all claims brought or which could have been brought, arising out of the instant litigation, each Party to bear its own fees and costs.

IT IS SO ORDERED.



UNITED STATES DISTRICT JUDGE

Dated this 17th day of January, 2014.

AGREED TO AND ACCEPTED:

/s/ Jennifer H. Hunt

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