Tentative Rulings for March 5, 2025
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Rulings for Department 502

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Tentative Ruling

Re: ***In Re: Imidacloprid Cases***
Superior Court Case No. 22JCCP05241

Hearing Date: March 5, 2025 (Dept. 502)

Motion: By Bayer Cropscience LP, Albaugh, LLC and Rotam North America, Inc. to Compel Further Responses to Form Interrogatories and Special Interrogatories from Horizon Nut, LLC

Tentative Ruling:

To grant both motions. Within 45 days of service of the order by the clerk, Horizon Nut LLC ("Horizon") shall serve further verified responses to Special Interrogatories (Set One), No. 6, and Form Interrogatory (Set One), Nos. 7.1, 7.3, 8.7, 8.8, and 9.1. To impose $9,807.50 in monetary sanctions in favor of defendants Bayer Cropscience LP, Albaugh, LLC and Rotam North America, Inc. ("defendants" for purposes of these motions) to be paid by Horizon to defendants' counsel within 30 days of service of the order by the clerk.

Explanation:

Horizon has alleged that in its complaints that it suffered approximately $16 million in damages, caused by defendants. Defendants propounded form and special interrogatories seeking details and facts regarding the amount of damages and how the damages are calculated. Horizon's most recent supplemental responses to the interrogatories do not provide damages figures or show how Horizon's damages are calculated. Horizon describes the damages allegedly suffered, which include, the millions of pounds of pistachios that the United States Food and Drug Administration (the "FDA") required Horizon to destroy, the remediation costs that Horizon incurred in working to bring as much of the crop in compliance with laws and regulations as possible, and the impacts the contamination had on Horizon's operations. Horizon contends that the contamination placed a significant burden on it, requiring it to split the focus of its operations between processing and marketing pistachios, its intended business, and storing, testing, and destroying pistachios under the review of the FDA for years. Thus, as Horizon points out in the oppositions, Horizon has described the *nature* of its damages, but not the specific damages figures or how they are calculated, which is what all the interrogatories at issue seek in various ways.

Horizon contends that it is shielded from providing specific information about its damages under the attorney work product doctrine. It contends that the work product doctrine applies because counsel have retained experts to value and evaluate Horizon's damages, citing *Williamson v. Superior Court* (1978) 21 Cal.3d 829, 834. However, Horizon never objected to the interrogatories pursuant to the attorney work product doctrine. Horizon waived any work product objection by not raising it in its initial responses. (Code Civ. Proc., § 2030.290, subd. (a); see *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.)

Even if Horizon had timely objected, the court would still order Horizon to provide the information requested by the interrogatories. In *Williamson*, the court held that a report prepared by an expert consultant is protected from discovery by the attorney work product doctrine. "[A]n expert opinion, developed as a result of the initiative of counsel in preparing for trial, [the expert's] report clearly constitutes the work product of … counsel." (*Williamson, supra*.) Here, there is no question of production of a report or written work product of any expert retained by Horizon. As a general matter most any discovery response includes some work product by counsel, given their role in preparing the responses. But that does not shield parties from responding to discovery under the work product doctrine. Horizon may not assert entitlement to a specific amount of damages yet refuse to disclose in discovery the factual basis for the allegation. (See Code Civ. Proc., § 2030.010, subd. (b) ["An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial"].)

The interrogatories do not seek the identification of any experts, or the production of any expert opinion. If Horizon needs the assistance of an expert to provide information about the damages it pursues in this action, then it is free to obtain that help. Horizon does not cite to any case establishing that the amounts of its claimed damages are privileged expert opinion and thus, undiscoverable. Horizon has alleged in its complaints that it sustained $16 million in damages, and has had well over one year to refine the calculations of the various components of that number. In fact, during the meet and confer process, on July 4, 2024 Horizon agreed to provide the "specific numbers" for "the value of its damages in this matter as well as the categories in which those damages fall" no later than July 31, 2024. (See Nugent Decl., ¶10, Exh. H.) It apparently changed its mind on that commitment.

An interrogatory may ask a party to state its contentions as to any matter at issue in the case, and to provide the facts on which the contentions are based. (See *Burke v. Superior Court* (1969) 71 Cal.2d 276, 281.) "An interrogatory is not objectionable because an answer... would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial." (Code Civ. Proc., § 2030.010, subd. (b).) A party "cannot plead ignorance to information which can be obtained from sources under [their] control." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 782.) This includes information known to Horizon's counsel, representatives and agents. (*Smith v. Superior Court* (1961) 189 Cal.App.2d 6, 11-12 [attorney]; *Gordon v. Superior Court* (1984) 161 Cal.App.3d 157, 167-68 [representatives and agents].)

Defendants are entitled to know how much in damages Horizon is claiming, and how it comes to those figures. If Horizon needs the help of experts, or chooses to employ experts to assist it, then it may do so. The court intends to grant the motions.

The court intends to impose sanctions in the amount requested for misuse of the discovery process and unsuccessfuly opposing a discovery motion. (Code Civ. Proc., §§ 2023.030, subd. (a), 2023.010, subd. (e), (h).) Horizon initially agreed to provide the

information requested, recognizing its discoverability, but then reneged on that agreement, demonstrating bad faith. (See (Nugent Decl., Exh. H.) Horizon has not disputed the amount of sanctions requested.

On a final note, the objections to the Stepniak Declaration are overruled.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 02/27/25 .
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Hobbs Construction Incorporated v. Department of General Services and Department of State Hospitals***
Superior Court Case No. 24CECG02066

Hearing Date: March 5, 2025 (Dept. 502)

Motion: Defendants' Demurrer to the First Amended Complaint

Tentative Ruling:

To sustain the demurrer to the First Amended Complaint. Plaintiff is granted 10 days' leave to file the Second Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether Plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

Here, Defendant's assert that Plaintiff failed to exhaust administrative remedies required by both the Public Contract Code and by the parties' written contract. Where applicable, failure to exhaust administrative remedies is jurisdictional. (*Public Employees' Retirement System v. Santa Clara Valley Transportation Authority* (2018) 23 Cal.App.5th 10140, 1046-1057.) Failure to exhaust administrative remedies "forecloses judicial review until it is satisfied" and amounts to an "absence of subject matter jurisdiction." (*Ibid*.)

Here, Plaintiff alleges that Plaintiff and Defendant entered into a public works contract. (FAC, ¶¶ 3-4.) Public Contract Code section 10240 provides that the remedy for disputes involving a public works contract is arbitration. The parties may waive the arbitration requirement mutually and in writing in order to pursue court proceedings regarding the contract. (Public Contract Code, § 10240.10.)

Plaintiff argues that Defendant expressly waived the arbitration agreement in the contract by including a narrow provision where, if the State of California issued a final statement to Plaintiff and Plaintiff filed a claim in response to the final statement, then the claim would be subject to arbitration. Article 9 of the parties' contract describes disputes and claim procedures. Section 9.1.2 provides, "If a Dispute has not been resolved at the

time of the State's final statement, the Contractor shall submit within 30 days a Claim along with detailed documentation…" (FAC, Exh. 1.) Section 9.1.3 provides,

> "Any Claim filed in compliance with Subparagraph 9.1.2 not resolved by the above procedures shall be resolved by arbitration in accordance with the provisions of Public Contract Code section 10240 et seq., and Title 1, California Code of Regulations, Section 1300 et seq., unless the State and the Contractor agree in writing to waive arbitration and proceed to litigation. Either party may initiate arbitration by filing a Complaint in Arbitration with the Office of Administrative Hearings in Sacramento, California, in compliance with the requirements of Public Contract Code Section 10240, et seq., and Title 1, California Code of Regulations, Section 1300 et seq. Arbitration shall be conducted in Sacramento, California."

In a demurrer, where facts in exhibits attached to the complaint contradict the facts in the complaint, the facts stated in the exhibits take precedence. (*Holland v. Morse Diesel Intern., Inc.* (2001) 86 Cal.App.4th 1443, 1446, superseded by statute on other grounds as stated in *White v. Cridlebaugh* (2009) 187 Cal.App.4th 506, 521.) This is one such instance as, while Plaintiff asserts that an express waiver of the arbitration requirement was made in the contract, the contract, which is attached to the First Amended Complaint, contains no such provision. The inclusion of language regarding the State issuing a final statement in Subparagraph 9.1.1 does not amount to an express, written waiver of arbitration in circumstances where a final statement was not issued. If anything, it merely clarifies procedures in the event there is a dispute following the issuance of a final statement. Additionally, this same section provides that the parties *may waive arbitration by an agreement in writing*. (FAC, Exh. 1.) If the parties intended to treat Section 9.1.3 as an express waiver of arbitration, then it would not also include details about how the parties may waive arbitration.

Plaintiff has not alleged any other express, written waivers of arbitration. The Court sustains the demurrer as to the entire First Amended Complaint, with leave to amend as to an express, written waiver of arbitration. Barring such amendment, the Court lacks subject matter jurisdiction as Plaintiff has not alleged facts consistent with exhausting administrative remedies. In light of the above, the Court need not address the demurrer to the fourth and eighth causes of action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 03/03/25.
(Judge's initials) (Date)