Tentative Rulings for August 13, 2024
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.

21CECG00250 ***Agustin Perez Cruz v. Ashton Castillo***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(20)

Tentative Ruling

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

Hearing Date: August 13, 2024 (Dept. 502)

Motion: By Bayer Cropscience LP, Albaugh, LLC, and Rotam North America, Inc., for Leave to File Cross-Complaint

Tentative Ruling:

To grant. Moving parties shall file the proposed cross-complaints within 10 days of service of the order by the clerk.

Explanation:

In the context of six different coordinated actions[1], defendants Bayer Cropscience LP, Albaugh, LLC, and Rotam North America, Inc. seek leave to file cross-complaints seeking equitable indemnification against Horizon Nut, LLC, Horizon Growers Cooperative, Inc., and Joel Perkins.

A defendant may file a cross-complaint against third parties if the claims asserted against it and the claims it asserts against the third parties arise out of the same transaction. (Code Civ. Proc., § 428.10, subd. (b)(1).) A defendant must obtain leave of court to file a cross-complaint after the trial date is set. (Code Civ. Proc., § 428.50, subd. (c).) "Leave may be granted in the interest of justice at any time during the course of the action." (*Id*., subd. (c).)

"…[D]efendants may cross-complaint against any person from whom they seek equitable indemnity. Defendants need only allege that the harm for which they are being sued is attributable, at least in part, to the cross-defendant." (Weil & Brown, *Cal. Practice Guide: Civ. Proc. Before Trial* (TRG 2022) ¶ 6:529.) "Cross-complaints for comparative equitable indemnity would appear virtually always transactionally related to the main action." (*Time for Living, Inc. v. Guy Hatfield* (1991) 230 Cal.App.3d 30, 38.)

Here the claims asserted in the proposed cross-complaints arise out of the same transaction as the claims asserted against them in the relevant plaintiffs'[2] complaints. There is no opposition to the motion. Accordingly, the court intends to grant the motion.

---

[1] *Coleman Land Co. LLC, et al. v. Bayer CropScience L.P., et al.*, County of Fresno Superior Court Case No. 22CECG00379; *AMA Pistachio Development, Inc v. Albaugh, Inc., et al*., County of Tulare Superior Court Case No. 290352; *Don Headrick Pistachios v. Albaugh, Inc*., Kings County Superior Court Case No. 22C-0035; *Kenneth Puryear, et al. v. Albaugh Inc., et al*., County of Tulare Superior Court Case No. 290347; *Pioneer Nursery, Inc. v. Albaugh, Inc., et al*., County of Kern Superior Court Case No. BCV-22-100; and *Little Creek, Inc. v. Rotam North America, Inc.*, County of Kern Superior Court Case No. BCV-22-100311.

[2] Adams Ranch; AMA Pistachio Development, Inc.; B&D Walker Farms/Heidi Walker; BC Farms; Calico Farms; Coit Farms; Coleman Land Co., LLC; Don Headrick Pistachios; Double G Farms;

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 08/09/24 .
(Judge's initials) (Date)

Double J Farms; Gowens Ranch; Hillman Ranches, Inc.; Jackson Hole Farm; Kenneth Puryear; Little Creek, Inc.; Michael Gragnani Farms; Pioneer Nursery, Inc; and Schmiederer Family Farms.

(03)

Tentative Ruling

Re: ***Jorgensen & Sons, Inc. v. VL Management, Inc.***
Superior Court Case No. 23CECG02950

Hearing Date: August 13, 2024 (Dept. 502)

Motion: Defendant's Motion to Set Aside Default

Tentative Ruling:

To deny defendant's motion to set aside the default.

Explanation:

Defendant moves for relief from the default under Code of Civil Procedure section 473, subdivision (b). Section 473(b) provides for discretionary relief from a default or default judgment that has been entered due to mistake, surprise, inadvertence, or excusable neglect. (Code Civ. Proc. § 473, subd. (b).) The party seeking relief must bring his or her motion within a reasonable time, not to exceed six months from the date of entry of the default or default judgment. (*Ibid*.)

"Where the mistake is excusable and the party seeking relief has been diligent, courts have often granted relief pursuant to the discretionary relief provision of section 473 if no prejudice to the opposing party will ensue. In such cases, the law 'looks with [particular] disfavor on a party who, regardless of the merits of his cause, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary.'" (*Ibid*, internal citations omitted.)

"'[T]he provisions of section 473 of the Code of Civil Procedure are to be liberally construed and sound policy favors the determination of actions on their merits.' [Citation.]" (*Zamora v. Clayborn Contracting Group, Inc*. (2002) 28 Cal.4th 249, 256.) "[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston v. City of Turlock* (1985) 38 Cal.3d 227, 233.)

In determining whether the default was entered against the defendant as a result of his or her reasonable mistake, inadvertence, surprise or excusable neglect, the court must look at whether the mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276.) However, the court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62.)

Also, the moving party must show that they were diligent in seeking relief from the default, and that they sought relief within a reasonable time after they learned of the default. "This court has held that what a 'reasonable time' is in any case depends primarily on the facts and circumstances of each individual case, but definitively requires a showing of diligence in making the motion after the discovery of the default. In other

words, the moving party must not only make a sufficient showing of 'mistake, inadvertence, surprise, or neglect' in order to excuse the original default, but must also show diligence in filing its application under section 473 after learning about the default. If there is a delay in filing for relief under section 473, the reason for the delay must be substantial and must justify or excuse the delay." (*Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1181, citations omitted.)

Failure to explain a substantial delay in seeking relief warrants denial of the motion to set aside. (*Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1144-1145.) While the trial court has discretion as to whether to grant or deny relief, there must be some explanation for the delay in order to support an order granting relief. (*Id*. at p. 1145 [holding that trial court abused its discretion in granting relief from dismissal where moving party failed to explain seven-week delay between when he learned of the dismissal and when he sought relief].)

"While six months—the longest time allowable—represents the outside limit 'of the court's jurisdiction to grant relief in any event, the "reasonable time" test stands as an independent consideration and in any given situation, its determination, within the maximum six-month period, "depends upon the circumstances of that particular case."' For that reason, 'there must be some showing - some evidence -' of the relevant circumstances." (*Huh v. Wang* (2007) 158 Cal.App.4th 1406, 1422, citations omitted [affirming trial court's denial of motion to set aside judgment where there was an unexplained delay of more than three months between entry of judgment and filing of motion to set aside].)

In the present case, defendant was served with the summons and complaint personally through its agent for service of process, Andrew Lowe, on September 23, 2023. When defendant failed to answer within thirty days, plaintiff took its default on November 29, 2023. Defendant then waited until May 29, 2024, exactly six months after the default was entered, to file a motion to set aside the default. The motion is supported by a single declaration from Andrew Lowe, the defendant's Chief Operating Officer and agent for service of process. Mr. Lowe is the same person who was served with the summons and complaint at the outset of the case.

Mr. Lowe does not explain why the defendant waited a full six months until the last possible day allowed under section 473(b) before bringing its motion to set aside the default. In fact, he does not even mention the substantial delay in seeking relief from the default. It is obvious that Mr. Lowe knew about the pending case, as he was the one who was served with the summons and complaint in September of 2023. In fact, Mr. Lowe admits that he knew about the case, but assumed that plaintiff's claims would be dealt with in the impending bankruptcy proceedings. (Lowe decl., ¶¶ 6-10.) He claims that his bankruptcy attorney, Mr. Sutter of Rounds & Sutter, LLP, told him that he was preparing paperwork to begin bankruptcy proceedings. (*Id*. at ¶ 8.) Thus, defendant was under the belief that the plaintiff's claim would be adjudicated as part of the bankruptcy case and that it did not need to respond to the plaintiff's complaint. (*Id*. at ¶¶ 9, 10.) Lowe claims that he was surprised when plaintiff entered defendant's default on November 29, 2023. (*Id*. at ¶ 11.) Prior to entry of the default, neither he nor Mr. Sutter had been contacted by plaintiff about a possible default. (*Id*. at ¶ 12.)

However, regardless of whether defendant believed that plaintiff's claims would be dealt with in a possible bankruptcy proceeding, defendant's COO, Mr. Lowe, clearly

knew about the fact that a default had been entered against defendant on or about November 29, 2023. Therefore, defendant has the burden of presenting an explanation for the substantial six-month delay in seeking relief from the default. There is nothing in defendant's moving papers that makes any attempt to explain the lengthy delay between the entry of the default and the filing of the motion for relief from the default. It appears that defendant simply waited until the last possible moment under the statute before filing a motion to set aside. Yet section 473(b) requires that a motion to set aside the default must be filed within a *reasonable time*, not to exceed six months. Defendant has made no effort to show how it was reasonable here to wait six months to file its motion for relief from the default. Therefore, the court intends to find that the motion was not filed in a timely manner, which is a sufficient ground to deny relief without reaching the merits of the motion.

In addition, the motion is procedurally defective, as defendant has not submitted a copy of its proposed answer with the motion. Section 473(b) states that "application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application *shall not be granted*…" (Italics added.) Here, defendant has not filed a copy of its proposed answer with the motion, nor has it made any attempt to show that it has any valid affirmative defenses to plaintiff's claims. Therefore, the motion is procedurally defective and must be denied.

Furthermore, defendant has not shown that the entry of default against it was the result of mistake, surprise, inadvertence, or excusable neglect. As discussed above, the moving party must show that the claimed mistake or neglect was the type of error that a reasonably prudent person under similar circumstances might have made. (*Bettencourt v. Los Rios Community College Dist.*, *supra*, 42 Cal.3d at p. 276.) The court will not grant relief if the defendant's default was taken as a result of mere carelessness or other inexcusable neglect. (*Luz v. Lopes*, *supra*, 55 Cal.2d at p. 62.)

Here, defendant claims that it reasonably believed that it did not have to answer plaintiff's complaint because it believed that the plaintiff's claims would be handled in the bankruptcy case it planned to file. Yet there is no evidence that defendant ever actually filed bankruptcy or attempted to have plaintiff's claims dealt with in bankruptcy court. Defendant has not presented a declaration from Mr. Sutton or any other attorney stating that they were preparing to file bankruptcy and that they told defendant that it was not necessary to file an answer to plaintiff's complaint because the plaintiff's claims would be handled in the bankruptcy action.

There is also evidence that contradicts defendant's claim that Rounds & Sutter was in the process of filing a bankruptcy case and that it represented defendant with regard to a planned bankruptcy filing. In fact, plaintiff's counsel claims that, while Mr. Thornburg of Rounds & Sutter told him in June of 2023 that defendant was in financial difficulty and might have to file bankruptcy, Mr. Thornburg later told him in August of 2023 that Rounds & Sutter was not representing defendant and would not accept service of the summons and complaint on behalf of defendant. (McGee decl., ¶¶ 4-7.) Even after defendant was served with the summons and complaint by personal delivery on Mr. Lowe, and even after the default was entered, plaintiff's counsel never heard from Mr. Thornburg or anyone else at his firm about the case. (*Id*. at ¶¶ 8-10.) Plaintiff's counsel has no knowledge of any bankruptcy case being filed by defendant, despite the fact

that he would have received notice of any such filing and would have taken steps to secure his client's claim in the bankruptcy court. (*Id*. at ¶ 12.)

Thus, defendant has failed to show that it acted reasonably in failing to answer the complaint here. Defendant apparently never actually filed a bankruptcy case. No attorney from the firm of Rounds & Sutton has submitted any declarations stating that they prepared paperwork for a bankruptcy, or that they advised defendant not to file an answer because of the impending bankruptcy. Indeed, according to plaintiff's counsel, Rounds & Sutton did not even represent defendant at the time that the complaint was served. Therefore, defendant could not have reasonably assumed that plaintiff's claim would be resolved in the bankruptcy when no bankruptcy case was ever filed, and it did not even have counsel working on filing a bankruptcy when it was served with the complaint.

Finally, to the extent that defendant claims that plaintiff failed to notify defendant or its counsel of its intent to seek entry of default, the claim is misplaced. First, it is not mandatory to inform a defendant before seeking entry of default. While it might be professionally courteous for plaintiff's counsel to give some advance warning to defense counsel before taking defendant's default, there is nothing in the law that requires such a warning. (*Belim v. Bellia* (1984) 150 Cal.App.3d 1036, 1038.) The failure to give a warning does not require the court to grant relief. (*Ibid*.)

In any event, here plaintiff's counsel was told by Mr. Thornburg in August of 2023 that Rounds & Sutter was not representing defendant in the matter and that it would not accept service of the summons and complaint on behalf of defendant. (McGee decl., ¶ 7.) Plaintiff's counsel heard nothing from Rounds & Sutter or anyone else representing defendant after the complaint was served on Mr. Lowe on September 23, 2023. (*Id*. at ¶ 9.) Therefore, plaintiff's counsel had no reason to believe that defendant was being represented by counsel at the time it was considering entering defendant's default. (*Id*. at ¶ 16.) Since defendant was apparently not represented by counsel at the time, plaintiff's counsel had no ethical or moral obligation to notify defense counsel that it was about to enter default. As a result, the alleged lack of advance notice of the intent to enter defendant's default does not justify granting relief here. Consequently, the court intends to deny the motion to set aside the default.

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 08/09/24.
(Judge's initials) (Date)