

Tentative Rulings for November 29, 2023
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.

22CECG03450	<i>Table Mountain Rancheria v. Yamaha Golf-Car Company et al.</i> is continued to Wednesday, December 20, 2023, at 3:30 p.m. in Department 502
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Tentative Rulings for Department 502

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(20)

Tentative Ruling

Re: **Valerie Valero v. Juan Zaragoza**
Superior Court Case No. 22CECG02465

Hearing Date: November 29, 2023 (Dept. 502)

Motion: Plaintiff Valerie Valero's Motion for Terminating Sanctions
Against Juan Zaragoza; and for Monetary Sanctions

****If timely requested; oral argument will be heard on Wednesday, December 6, 2023 at 3:30pm in Department 502****

Tentative Ruling:

To deny terminating sanctions, but to impose \$982.50 in sanctions against defendant Juan Zaragoza and Martinez, Dieterich & Zorcone Legal Group (formerly known as Chavez Legal Group), jointly and severally, payable within 20 days of service of the minute order by the clerk.

Explanation:

On April 13, 2023 the court granted plaintiff's motions to compel responses to Form Interrogatories and Requests for Production. On July 13, 2023, plaintiff filed the instant motion for terminating sanctions on the ground that the discovery responses had not been provided.

Based on the Request for Pretrial Discovery Conference filed by plaintiff on September 25, 2023, responses to the discovery have been served, though deemed deficient by plaintiff's counsel in certain respects. At the October 27, 2023 Pretrial Discovery Conference, the parties agreed to an order resolving the discovery dispute. Accordingly, the grounds for granting terminating sanctions no longer exist. The court will, however, grant reasonable sanctions in the sum of \$982.50 (\$250.00 penalty under Code of Civil Procedure section 2023.050, subdivision (a)(1), \$72.50 CourtCall fee, and \$600 for preparation of the motion. (Code Civ. Proc., §§ 2023.030, subd. (a), 2023.090, 2031.300, subd. (c).) Sanctions are warranted as the responses were only served after filing of the motion for terminating sanctions, and months after the court ordered defendant to provide responses.

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 11/27/23
(Judge's initials) (Date)

(20)

Tentative Ruling

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

Hearing Date: November 29, 2023 (Dept. 502)

Motion: Eriksson, LLC's Petition to Coordinate Add-on Case
Nutrien Ag Solution, Inc.'s Petition for Coordination of Add-On Case

****If timely requested; oral argument will be heard on Wednesday, December 6, 2023 at 3:30pm in Department 502****

Tentative Ruling:

To grant both petitions.

Explanation:

In September of 2022 a petition for coordination of seven different actions was granted. The plaintiffs in the coordinated actions are owners and operators of pistachio orchards in the Central Valley. They allege that in the spring or summer of 2020 they applied to their pistachios the insecticide imidacloprid, manufactured by defendants Bayer, Albaugh, Rotan, Nutrien Ag Solutions, Inc., and Loveland Products, Inc. Plaintiffs thereafter delivered their 2020 pistachio crops to Horizon Nut Company, who informed plaintiffs that the pistachios tested positive for imidacloprid residue in excess of the maximum residue limits allowed by law. Horizon rejected the loads and would not pay plaintiffs for them, resulting in loss of the crops. The causes of action sound mainly in strict products liability, with one action brought by Hillman Ranches alleging products liability against the manufacturer, Loveland Products, as well as negligence against Nutrien and a Pest Control Advisor ("PCA") employed by petitioner Nutrien Ag Solutions, Inc., who applied a slightly excessive amount of Wrangler on Hillman's ranch.

Eriksson, LLC, seeks to add *Eriksson, LLC v. Loveland Products, Inc.*, Fresno County Superior Court Case No. 20CECG00766, to the coordinated proceedings. There is no opposition to this petition. Accordingly, the court intends to grant the petition pursuant to Cal. Rules of Court, rule 3.544(d).

Nutrien Ag Solution renews its petition to coordinate an add-on case currently pending in Tulare County – *M.C. Watte Ranches v. Nutrien Ag Solutions, Inc., et al.*, Case No. VCU288780. The operative pleading in *Watte* is the amended complaint filed April 25, 2022. Defendant Brian Watte dba Brian Watte Farms filed a cross-complaint filed July 14, 2022.

A request to coordinate an add-on case is brought before the coordination trial judge under Code of Civil Procedure section 404.4. (Cal. Rules of Court, Rule 3.544(a).) The motion must meet the standards set forth in section 404.1. Coordination is proper if it will "promote the ends of justice," taking into account the following criteria:

1. Whether the “common question” of fact or law is predominating and significant to the litigation;
2. The convenience of parties, witnesses and counsel;
3. The relative development of the actions and the work product of counsel;
4. The efficient utilization of judicial facilities and manpower;
5. The calendar of the respective courts;
6. The disadvantages of duplicative and inconsistent rulings, orders or judgments; and
7. The likelihood of settlement of the actions without further litigation should coordination be denied.

(Code Civ. Proc., § 404.1.)

“In the context of a request for coordination of add-on cases, the statutes and rules do not contemplate a further determination of whether the add-on actions themselves are complex. The only criteria to be applied are the coordination standards specified in section 404.1.” (*Ford Motor Warranty Cases* (2017) 11 Cal. App. 5th 626, 640.)

Looking solely at the affirmative claims brought by M.C. Watte Ranches and the cross-complaint filed by Brian Watte, the court previously determined that adding the case is not warranted because: (a) *Watte* does not allege any product liability causes of action, but just negligence due to off-label application of the pesticide; (b) trial in *Watte* was just a few months away and it appeared the case was likely to go to trial, with non-expert discovery nearly complete¹; (c) the *Watte* plaintiff and cross-complaint would be burdened in having to participate in complex discovery in Fresno County, whereas *Watte* is venued in Tulare County, which is where the incident occurred and where the ranches are located; (d) there was no risk of inconsistent rulings given the factual dissimilarity of the claims with the coordinated proceedings; (e) settlement would be more likely if the petition were denied due to the approaching trial date; and (f) all 19 of the plaintiffs in the coordinated actions opposed adding-on *Watte* because of the dissimilarities of the case.

The court finds that at this stage that these factors no longer favor denying the petition.

Circumstances have changed since the previous petition was denied.

- (a) The third party pistachio processor has filed a new action against defendants in the coordination proceeding, seeking damages for the losses claimed by the individual growers, including M.C. Watte and Brian Watte. (See *Horizon Nut LLC v. Bayer Cropscience L.P. et al.*, Case No. 23CECG03129, RJN Exh. I.) Horizon Nut, LLC has indicated its intent to join its action to the coordinated proceedings. In *Watte Nutrien* has filed a cross-complaint against Horizon Nut and the agricultural cooperative Horizon Growers Cooperative, Inc., in which it seeks indemnification for losses alleged by the Wattes against Nutrien. Nutrien contends that Horizon Growers and Horizon Nut deprived member growers of

¹ “[T]he imminence of a trial in any action otherwise appropriate for coordination may be a ground for summary denial of a petition for coordination, in whole or in part.” (Cal. Rules of Court, Rule 3.521(d).)

