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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

G.P.P., INC., doing business as GUARDIAN
INNOVATIVE SOLUTIONS,

Case No. 1:15-cv-00321-SKO

ORDER ON MOTIONS IN LIMINE

Plaintiff,

(Docs. 447 & 448)

v.

GUARDIAN PROTECTION PRODUCTS,
INC., et al.,

Defendants.

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On November 30, 2021, the Court held a hearing via the Zoom application regarding Plaintiff G.P.P., Inc. d/b/a Guardian Innovative Solutions’ (“GIS”) Motions in Limine (“GIS’s MIL”) (Doc. 448) and Defendant Guardian Protection Products, Inc.’s (“Guardian”) motions in limine (“Guardian’s MIL”) (Doc. 447). For the reasons set forth on the record at the hearing, the rulings on the MILs are as follows:

- (1) The Court DENIES GIS’s MIL #1. (Doc. 448 at 8–13.)
- (2) The Court GRANTS GIS’s MIL #2 (Doc. 448 at 14–18), insofar as GIS requests the exclusion of evidence, testimony, or argument that contradicts the law of the case that the quota provisions in the Florida, Alabama, Tennessee, Mid-Atlantic, Cook County, Indiana, Midwest, and Pennsylvania Agreements (collectively, the

1 “Agreements”) require GIS to meet only aggregate, not per-territory, purchase
2 quotas. The Court DENIES the remainder of GIS’s MIL # 2.

3 (3) The Court GRANTS GIS’s MIL #3 (Doc. 448 at 19–25), insofar as GIS requests the
4 exclusion of evidence, testimony, or argument that contradicts the law of the case
5 that, as of June 26, 2017, Guardian failed to provide the Agreements’ contractually
6 mandated notice and opportunity to cure. The Court DENIES the remainder of GIS’s
7 MIL # 3.

8 (4) The Court GRANTS GIS’s MIL #4 (Doc. 448 at 26–28), insofar as GIS requests the
9 exclusion of evidence, testimony, or argument that contradicts the following
10 undisputed fact: “On October 23, 2013, Guardian sent notices of termination of the
11 Alabama, Florida, and Tennessee Agreements based on Guardian’s conclusion that
12 GIS failed to meet monthly, per-territory purchase quotas for the specific territories
13 covered by those three Agreements in the months of June and July of 2013.” (*See*
14 Doc. 443 at 15.) The Court DENIES the remainder of GIS’s MIL # 4.

15 (5) The Court DENIES Guardian’s MIL #1 (Doc. 447-1).¹

16 (6) The Court DENIES Guardian’s MIL #2 (Doc. 447-2).

17 (7) The Court DENIES Guardian’s MIL #3 (Doc. 447-3).

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20 ¹ For the first time at the hearing, Guardian cites to two unpublished Ninth Circuit cases, *Flagship W., LLC v. Excel*
21 *Realty Partners LP*, 337 F. App’x 679 (9th Cir. 2009), and *Patsystems (NA) LLC v. Trend Exch., Inc.*, 695 F. App’x
22 206 (9th Cir. 2017), in support of its position that contract limitations on damages are not affirmative defenses. Having
23 considered these cases, Guardian’s MIL #1 is still denied. The parties dispute whether the “elect to terminate the
24 Distributorship” provisions in the Agreements constitute “at-will” termination clauses and whether the associated
25 payment provisions are limitation-of-damages clauses. (*See* Docs. 447-1, 456 at 1–13.) These are substantive issues of
26 contract interpretation, and a motion in limine is not the proper procedural vehicle for addressing these issues. *See, e.g.,*
27 *Beck v. Metro. Prop. & Cas. Ins. Co.*, No. 3:13-CV-00879-AC, 2016 WL 4978411 (D. Or. Sept. 16, 2016) (reflecting
28 the district court’s email exchange with the parties, which stated, “Matching is a matter of contract interpretation but
[the defendant] raised the matching issue for the first time in a motion in limine, which is the wrong procedural
mechanism to seek a ruling on an issue of contract interpretation. [The defendant] should have filed a motion for
declaratory judgment or summary judgment on the matching issue during the two years the case was pending before
pretrial documents were due.”). *Accord Slip-N-Slide Recs., Inc. v. TVT Recs., LLC*, No. 05-21113-CIV, 2007 WL
9700559 (S.D. Fla. Feb. 23, 2007) (“To the extent SNS is raising an argument that as a matter of law the contracts in
question should be interpreted as a matter of law in SNS’s favor, the Court cannot do so on a motion in limine.”); *Plaza*
S. Ass’n, Inc. v. QBE Ins. Corp., No. 11-60048-CIV, 2012 WL 13005529, at *3 (S.D. Fla. Jan. 24, 2012) (declining to
decide issues of contract interpretation on a motion in limine); *McDowell Bldg., LLC v. Zurich Am. Ins. Co.*, No. CIV.A.
RDB-12-2876, 2015 WL 1778369, at *2 (D. Md. Apr. 17, 2015) (same). The parties, however, are free to argue their
respective interpretations of the Agreements to the jury.

1 (8) The Court GRANTS Guardian’s MIL #4 (Doc. 447-4), insofar as Guardian requests
2 the exclusion of evidence, testimony, or argument in support of GIS’s alleged claim
3 for restitution or unjust enrichment. The Court DENIES Guardian’s MIL #4, insofar
4 as Guardian requests the exclusion of evidence of Guardian’s post-termination sales
5 in GIS territories.

6 (9) The Court GRANTS Guardian’s MIL #5 (Doc. 447-5), insofar as Guardian requests
7 the exclusion of evidence of Guardian’s financial statements in support of GIS’s
8 alleged claim for restitution or unjust enrichment. The Court DENIES Guardian’s
9 MIL #5, insofar as Guardian requests a categorical exclusion of all evidence of its
10 “financial condition.” The Court DEFERS ruling on Guardian’s MIL #5, insofar as
11 Guardian requests exclusion of Guardian’s balance sheets, cashflow statements, and
12 income statements.

13 (10) The Court DENIES Guardian’s MIL #6. (Doc. 447-6.)

14 (11) The Court GRANTS Guardian’s MIL #7. (Doc. 447-7.) Further, the introduction at
15 trial of “statements by Guardian’s counsel during opening statements and closing
16 arguments at the first trial, in which counsel falsely declared that Guardian had no
17 intent to terminate the agreements or to destroy the rest of GIS’s business” (Doc. 456
18 at 90) and “post-trial letters between counsel after the first trial, where Guardian’s
19 counsel admits that Guardian’s sole justification for terminating the Agreements was
20 that GIS supposedly failed to meet per-territory purchase quotas” (*id.* at 91) will not
21 be permitted.

22
23 IT IS SO ORDERED.

24 Dated: December 1, 2021

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE