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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

COUNTRY FRESH BATTER, INC.,  
  
Plaintiff,  
  
v.  
  
LION RAISINS, INC.,  
  
Defendant.

Case No. 1:17-cv-01527-DAD-BAM  
  
ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF’S  
RENEWED MOTION TO COMPEL  
FURTHER DISCOVERY RESPONSES  
  
(Doc. No. 47)

**I. Background**

Currently pending before the Court is Plaintiff Country Fresh Batter, Inc.’s Renewed Motion to Compel Further Discovery Responses and Motion to Compel Depositions of Bruce Lion and Deposition of Lion Raisins, Inc. filed on March 1, 2019. (Doc. No. 47.) On March 15, 2019, the parties filed a Joint Statement re Discovery Disagreement. (Doc. No. 52.)

On March 20, 2019, the Court held a telephonic informal discovery dispute conference on the record to address the pending motion to compel. During the conference, and as stated on the record, the parties resolved all issues raised in the motion to compel except for Plaintiff’s written discovery requests regarding Defendant Lion Raisins, Inc.’s sales of raisins following termination of the parties’ 2017 contract (“subsequent sales”).

Having considered the parties’ papers and arguments, and for the reasons discussed below, Plaintiff’s motion to compel further responses to its request for written discovery

1 regarding Defendant’s subsequent sales will be GRANTED. The remainder of Plaintiff’s motion  
2 to compel will be DENIED AS MOOT based on resolution of the issues during the informal  
3 telephonic discovery dispute conference held on March 20, 2019.

4 **II. Discussion**

5 Generally, under Federal Rule of Civil Procedure 26, a party “may obtain discovery  
6 regarding any nonprivileged matter that is relevant to any party’s claim or defense and  
7 proportional to the needs of the case, considering the importance of the issues at stake in the  
8 action, the amount in controversy, the parties’ relative access to relevant information, the parties’  
9 resources, the importance of the discovery in resolving the issues, and whether the burden or  
10 expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(1).  
11 “Information within this scope of discovery need not be admissible in evidence to be  
12 discoverable.” Id.

13 Rule 33(a) allows a party to serve on any other party written interrogatories that relate to  
14 any matter that may be inquired into under Rule 26(b). Fed. R. Civ. P. 33(a)(1), (2). Similarly,  
15 Rule 34(a) provides that a party may serve on any other party a request within the scope of Rule  
16 26(b) to produce and permit the requesting party or its representative to inspect, copy, test, or  
17 sample any designated documents or tangible things in the responding party’s possession,  
18 custody or control. Fed. R. Civ. P. 34(a)(1)(A), (B). If the responding party provides an evasive  
19 or incomplete disclosure, answer, or response, then the party seeking discovery may move for an  
20 order compelling answers or production. Fed. R. Civ. P. 37(a)(3)(A) and (a)(4).

21 As framed during the informal discovery conference, the written discovery at issue  
22 relates to information regarding Defendant’s subsequent sales, i.e., Defendant’s sale of raisins  
23 after termination of its contract with Plaintiff in September 2017. This discovery is encompassed  
24 in the following requests:

25 **Interrogatory No 7:**

26 IDENTIFY all contracts and purchase orders for the sale or supply of RAISINS that  
27 YOU performed, in whole or in part, from January 1, 2017 to the present.

28 **Request for Production No. 27:**

1 All DOCUMENTS and COMMUNICATIONS RELATED to YOUR sales of RAISINS  
2 after YOU terminated the 2017 RAISINS Contract.

3 (Doc. No. 52 at 19, 20.) Plaintiff has agreed to limit the scope of Request for Production No. 27  
4 to “[A]ll DOCUMENTS and COMMUNICATIONS RELATED to YOUR sales of RAISINS  
5 after YOU terminated the 2017 RAISINS Contract, where such sales were fulfilled with  
6 RAISINS from the 2016-2017 raisin crop or from any earlier crop that could have been used to  
7 supply RAISINS to [Plaintiff] under the 2017 Raisins Contract.” (Doc. No. 52 at 22.)

8 The crux of the parties’ dispute is whether these requests seek discovery relevant to any  
9 party’s claims or defenses as required by Federal Rule of Civil Procedure 26(b)(1). Defendant  
10 contends that information regarding contracts it performed or other contracts for the sale of  
11 raisins following termination of Plaintiff’s contract are not relevant to Plaintiff’s complaint for  
12 breach of contract, which alleges that Defendant breached the contract by failing to supply the  
13 quantity of raisins required by such contract. (Doc. No. 52 at 24, 28.) Defendant also contends  
14 that this information is not relevant to Defendant’s defenses in this action, which are based on  
15 the following provisions of the contract:

16 (1) “In the event of any...weather related damage to raisin crops subsequent to the  
17 sale date of this contract, Seller may reduce the quantities herein by [25%]  
18 without penalty; if more than [25%] of the ordered amount is not shipped by  
19 Seller, Seller shall pay damages not greater than [5%] of the contract price of the  
20 shorted amounts below [75%] of the ordered amount.”

21 (2) “Should Buyer not withdraw at least 85% of the three month average as  
22 outlined herein, Seller may dispose of the non-withdrawn amount in its sole  
23 discretion and without recourse from Buyer.”

24 (*Id.*)

25 Plaintiff counters that these requests are “relevant to whether [Defendant] acted in good  
26 faith and fair dealing in its contract with [Plaintiff], or instead whether [Defendant] unfairly and  
27 improperly terminated its contract with [Plaintiff] in order to use its current and anticipated  
28 inventory of raisins to perform other more profitable contracts, or to enter into and perform new  
contracts that were more profitable to Defendant.” (Doc. No. 52 at 21-22.) Plaintiff also argues  
that Defendant’s performance of contracts for the sale or supply of raisins is relevant to the  
affirmative defenses, which place this information at issue, particularly Defendant’s assertion

1 that it was impossible to fulfill the remainder of the contract with Plaintiff. (*Id.* at 22.)

2 “The Federal Rules of Civil Procedure broadly interpret relevancy, such that each party  
3 has the right to the discovery of “any nonprivileged matter that is relevant to any party’s claim or  
4 defense and proportional to the needs of the case[.]” *Synchronoss Techs., Inc. v. Egnyte, Inc.*, No.  
5 4:16-cv-00120-HSG (KAW), 2019 WL 288483, at \*1 (N.D. Cal. Jan. 23, 2019); Fed. R. Civ. P.  
6 26(b)(1). Relevance, not admissibility, is the touchstone of discovery. Fed. R. Civ. P. 26(b)(1);  
7 *Bonanza Beverage Co. v. MillerCoors, LLC*, No. 218CV01445JADGWF, 2019 WL 302491, at  
8 \*3 (D. Nev. Jan. 23, 2019) (noting direct statement in Rule 26(b)(1) that “[i]nformation within  
9 this scope of discovery need not be admissible to be discoverable” re-emphasizes that “relevance  
10 is the touchstone of discovery”); Fed. R. Evid. 401(a), (b) (“Evidence is relevant if: (a) it has  
11 any tendency to make a fact more or less probable than it would be without the evidence; and (b)  
12 the fact is of consequence in determining the action.”).

13 In this instance, the Court agrees with Plaintiff that information regarding subsequent  
14 sales by Defendant is relevant to the claim and defenses in this action. This is particularly true  
15 with respect to Defendant’s assertion regarding its alleged inability to fulfill the contract with  
16 Plaintiff. Accordingly, the Court will grant Plaintiff’s motion to compel further responses to  
17 Interrogatory No. 7 and Request for Production No. 27 limited to the issue of subsequent sales.  
18 Thus, in response to Interrogatory No. 7, Defendant must “identify all contracts and purchase  
19 orders for the sale or supply of raisins that it performed, in whole or in part, from September 12,  
20 2017 to December 31, 2017, where such sales were fulfilled with raisins from the 2016-2017  
21 raisin crop or from any earlier crop that could have been used to supply raisins to Plaintiff under  
22 the 2017 raisins contract.” Further, in response to Request for Production No. 27, Defendant  
23 must produce all “all documents and communications related to its sales of raisins after it  
24 terminated the 2017 RAISINS Contract, where such sales were fulfilled with raisins from the  
25 2016-2017 raisin crop or from any earlier crop that could have been used to supply raisins to  
26 Plaintiff under the 2017 raisins contract.”<sup>1</sup> As previously discussed with the parties, all customer

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27  
28 <sup>1</sup> Additionally, subsequent sales, as limited in this order, are included in the permissible scope of inquiry for Defendant’s 30(b)(6) witness provided that this topic previously was identified in the notice of deposition.

1 and/or grower names shall be treated as confidential and should be redacted from any  
2 production.

3 **III. Conclusion and Order**

4 Based on the above, IT IS HEREBY ORDERED as follows:

- 5 1. Plaintiff's renewed motion to compel is GRANTED IN PART and DENIED IN  
6 PART.
- 7 2. Within **ten (10) days** from the date of this order, Defendant shall serve written  
8 responses and production of documents without objection to the following discovery  
9 propounded by Plaintiff and as modified in this Order:

10 **Interrogatory No. 7:** Identify all contracts and purchase orders for the sale or supply  
11 of raisins that Defendant performed, in whole or in part, from September 12, 2017 to  
12 December 31, 2017.

13 **Request for Production No. 27:** All documents and communications related to  
14 Defendant's sales of raisins after it terminated the 2017 RAISINS Contract, where  
15 such sales were fulfilled with raisins from the 2016-2017 raisin crop or from any  
16 earlier crop that could have been used to supply raisins to Plaintiff under the 2017  
17 raisins contract; and

18 3. Plaintiff's renewed motion to compel as to all other discovery requests is  
19 DENIED AS MOOT based on resolution of those issues during the March 20, 2019  
20 informal discovery conference.

21  
22 IT IS SO ORDERED.

23 Dated: March 21, 2019

24 /s/ Barbara A. McAuliffe  
25 UNITED STATES MAGISTRATE JUDGE  
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