

**Judge Mosbarger – Law & Motion – Wednesday, December 17, 2025 @ 9:00 AM**  
**TENTATIVE RULINGS**

**1. 21CV02396 SHANE, KAREN V. LAW OFFICE OF LEVERENZ, FERRIS AND SELBY ET AL**

*EVENT: Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues*

Request for Judicial Notice

Defendants' Request for Judicial Notice is granted.

Objections to Evidence

The Court rules as follows on the Plaintiff's Objections to Evidence:

The objections to the entirety of the deposition testimony submitted of Karen Shane (Nos. 1-2), Emery Shane (Nos. 18-19), Gary Rumiano (Nos. 24-25), and Elton R. Garner, Jr. (Nos. 37-38), are overruled.

As to the specific testimony to which Plaintiff objects, the Court rules as follows:

Sustained: 14 [Hearsay], 15 [Hearsay; Lacks Foundation], 16 [Hearsay; Lacks Foundation], 17 [Hearsay; Lacks Foundation; Lacks Personal Knowledge], 20 [Lacks Foundation; Lacks Personal Knowledge], and 35 [Hearsay].

Overruled: 4, 7, 8, 9, 11, 12, 21, 22, 23, 30, and 36.

Finally, the Court declines to rule on the remaining objections (Nos. 3, 5, 6, 10, 13, 26, 27, 28, 29, 31, 32, 33, 34, 39, and 40) as they are immaterial to the Court's decision in relation to the instant Motion. See, *Code of Civil Procedure* §437c(q) ["In granting or denying a motion for summary judgment or summary adjudication, the court need rule only on those objections to evidence that it deems material to its disposition of the motion. Objections to evidence that are not ruled on for purposes of the motion shall be preserved for appellate review."]

In regard to Defendants' Objections to Evidence, the Court rules as follows:

Sustained: 6 [Document Speaks for Itself; Argument].

Overruled: 1, 2, 3, 4, 5, 7, 8.

Merits

Turning to the merits of the Motion, the Court finds that as to Plaintiff's First Cause of Action for Professional Negligence, there are triable issues of material fact as to breach of duty, proximate causation, and damages [See Undisputed Material Fact ("UMF") Nos. 1-43; and Plaintiff's Additional Undisputed Material Fact ("AUMF") Nos. 12-13]. Further, as to Plaintiff's Second Cause of Action for Breach of Fiduciary Duty the Court likewise finds triable issues of material fact as to breach of duty, proximate causation and or damages [See UMF Nos. 44-87; and AUMF Nos. 26-27]. Defendants' Motion for Summary Judgment or, in the Alternative, Summary Adjudication of Issues is denied in its entirety. Counsel for the Plaintiff shall prepare and submit a form of order consistent with this ruling within two weeks.

**2-3. 23CV01130 NEHER, WYATT J V. ALAWAYS, GREG D ET AL**

*EVENTS: (1) Motion by Greg D. Alaways for Summary Judgment on the Cross Complaint  
(2) Case Management Conference \*Special Set*

Cross-Complainant Greg D. Alaways' ("Cross-Complainant" herein) Request for Judicial Notice is granted. The Court finds that Cross-Complainant has met his burden under *Code of Civil Procedure* §437c by showing there is no triable issue of material fact as to each of the causes of action based upon the following:

Breach of Contract: Separate Statement of Undisputed Material Facts ("UMF") Nos. 1-8; Deemed admitted Requests for Admissions ("RFA") Nos. 1-8, 10-20; Declaration of Greg D. Alaways ("Alaways Decl.") ¶¶2-6 and Exhibits 3-6 thereto.

Fraud: UMF Nos. 9-13; RFA Nos. 8, 10-11, 15, 21-22; and Alaways Decl. ¶¶3-7.

Negligence: UMF Nos. 14-16; RFA Nos. 12, 17-20; and Alaways Decl. ¶¶6-7.

Violation of the Consumer Legal Remedies Act: UMF Nos. 17-19; RFA Nos. 7, 12, 17-19, 21-22; and Alaways Decl. ¶¶2-7 and Exhibits 3-6 thereto.

Cross-Complainant is therefore entitled to judgment as a matter of law and the Motion by Greg D. Alaways for Summary Judgment on the Cross Complaint is granted. The Court will sign the form of order submitted by counsel. Additionally, the Case Management Conference is vacated, and the matter is set for a Status Hearing on February 4, 2026 at 10:30 a.m. for status of judgment.

**4. 24CV01807 REXEL USA, INC V. SIERRA RANGE ELECTRIC ET AL**

*EVENT: United Building Contractors' and Liberty Mutual Insurance Company's Motion for Summary Judgment or, in the Alternative, Summary Adjudication*

Defendants United Building Contractors and Liberty Mutual Insurance Company's (collectively "Defendants" herein) Request for Judicial Notice is granted pursuant to *Evidence Code* §452(d). In regard to Plaintiff Rexel USA, Inc., a Delaware corporation dba Platt Electric Supply's ("Plaintiff" herein) Request for Judicial Notice, the Court sustains Defendants' Objections [Nos. 1-4] thereto, finding that the documents the Court was requested to judicially notice (specifically e-mail communications) do not fall under the purview of *Evidence Code* §452(d), nor do they meet any other criteria for judicial notice. Plaintiff's Request for Judicial Notice is denied. Defendants' remaining Objections to Evidence [Nos. 5-16] are overruled.

The Court finds that Defendants have satisfied their burden to show no triable issue of material fact exists as to the defense of waiver. United Building Contractors' and Liberty Mutual Insurance Company's Motion for Summary Judgment or, in the Alternative, Summary Adjudication is granted. Additionally, the Court awards reasonable attorneys' fees pursuant to *Civil Code* §9564(c) in the amount of \$42,000.

The Court will sign the form of order submitted by Defendants.

**5-6. 24CV03076 ROSE, SYMBA V. WORK TRAINING CENTER FOR THE HANDICAPPED, INC**

*EVENTS: (1) Unopposed Motion for Preliminary Approval of Class and PAGA Settlement  
(2) Case Management Conference \*Special Set*

Plaintiff's Unopposed Motion for Preliminary Approval of Class and PAGA Settlement is granted. The Case Management Conference on December 17, 2025 is vacated, and the matter is set for a hearing for final settlement approval on April 8, 2026 at 9:00 a.m. The Court will sign the form of Order provided by counsel.

**7. 25CV00744 FISHER, JEFF V. FISHER, JENNIFER**

*EVENT: Order to Show Cause as to Jeff Fisher*

The Court will hear from Plaintiff Jeff Fisher in regard to the Order to Show Cause issued on November 5, 2025. In preparation for the hearing, the Court has reviewed the documents submitted by Plaintiff in response to the Order to Show Cause and makes the following findings:

Affirmative Defense No. 1 - Impossibility of Performance. The cases cited by Plaintiff in regard to the affirmative defense of impossibility of compliance, *Conservatorship of Rand* (1963) 216 Cal.App.2d 81, 92 and *In re Feiock* (1989) 215 Cal.App.3d 141,150 either do not exist (*Rand*), or were subsequently overturned (*Feiock*). As such, Plaintiff has failed to present any authority for this affirmative defense. However, based on the Court's own research, while impossibility of compliance is a recognized defense to a contempt charge, it is not absolute. The contemnor, here Plaintiff, must prove his inability to comply, and the defense is unavailable if the inability is self-induced or the result of willful conduct. Here, Plaintiff has submitted no evidence to support either that he lacks the ability to comply, or that his alleged inability to comply was not self-induced.

Affirmative Defense No. 2 - Federal Preemption – Social Security Benefits. The case cited by Plaintiff - *Philpott V. Essex County Welfare Board* (1973) 409 U.S. 413 – has been overruled by Congress. However, the quoted portion of 42 U.S.C. §407(a) is accurate and the Court finds and confirms that Plaintiff's Social Security Benefits are not "subject to execution, levy, attachment, garnishment, or other legal process".

Affirmative Defense No. 3 – Federal Preemption - Veterans Disability Rights. Plaintiff's citation to and reliance on 38 U.S.C. §5301(a)(1) is correct and the Court finds and confirms that Plaintiff's Veterans' Disability Benefits are "exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever".

Affirmative Defense No. 4 – California Statutory Exemption – Public Entity Benefits. Plaintiff's citations to *Code of Civil Procedure* §704.120 [unemployment benefits], *Code of Civil Procedure* §704.111 [alimony, support, and separate maintenance payments], and *Code of Civil Procedure* §703.140(b) [relative to cases "under Title 11

of the United States Code”, which relates to bankruptcy], involve matters not at issue here. Thus, the cited *Code of Civil Procedure* Sections are irrelevant and inapplicable here and Plaintiff has failed to provide any authority in support of this alleged exemption.

Affirmative Defense No. 5 – Lack of Willful Disobedience. Again, the case cited by Plaintiff - *In re Marriage of Czaplyski* (2000) 83 Cal.App.4th 1380, 1385 – does not exist as cited. However, the proposition on which Plaintiff alleges that the case stands is correct. See, e.g., *Koshak v. Malek* (2011) 200 Cal.App.4th 1540, 1549; *Board of Supervisors v. Superior Court* (1995) 33 Cal.App.4th 1724, 1736 [“The facts essential to jurisdiction for a contempt proceeding are (1) the making of the order; (2) knowledge of the order; (3) ability of the respondent to render compliance; and (4) willful disobedience of the order.”]. The willfulness of the disobedience must be demonstrated as intentional and inexcusable. A mere preponderance of evidence is insufficient; substantial evidence is required to prove that the contemnor knowingly and willfully violated the court order. *Little v. Superior Court of Los Angeles County* (1968) 260 Cal.App.2d 311, 317. The burden is on the Defendant here, and the Court finds that there has been an insufficient showing by the preponderance of the evidence to establish that Plaintiff’s failure to comply was willful.

Affirmative Defense No. 6 – Constitutional Due Process. The hearing on calendar on the Order to Show Cause ensures that Plaintiff is given the opportunity to be heard and present his evidence and argument prior to the issuance of sanctions. As such, there is no constitutional due process violation.

Affirmative Defense No. 7 – No Present Ability to Pay. While the case cited by Plaintiff – *In re Marriage of Campi* (2013) 212 Cal.App.4th 1565 does exist, the specific page cite by Plaintiff – 1573 – discusses whether the trial court properly valued a residence pursuant to the parties’ stipulation and is wholly irrelevant here. As discussed above in relation to Affirmative Defense No. 1, it is Plaintiff’s burden to prove his inability to pay. Again, Plaintiff has submitted no evidence to support either that he lacks the ability to comply.

Affirmative Defense No. 8 – Good Faith Assertion of Legal Rights. Plaintiff has provided no authority to support the position that a “good faith assertion of legal rights” is a valid affirmative defense to a contempt charge. Based on the Court’s research, Plaintiff is incorrect. The California Supreme Court in *Vernon v. Superior Court of Los Angeles County* (1952) 38 Cal.2d 509, explicitly held that disobedience of a court order cannot be excused on the grounds of good faith or a mistaken belief as to the law. The court stated that “one cannot justify disobedience of an order of the court upon the ground that it was based upon the advice of counsel; neither can such disobedience be excused by the fact that it was in good faith and under a mistake as to the law.” *Id* at 518.

Affirmative Defense No. 9 – Prior Notice and Good Faith Attempt to Resolve. The Court finds that the argument presented here goes to the issue of whether Plaintiff’s failure to comply with the Court’s Order was willful. See, Affirmative Defense No. 5, above. The willfulness of the disobedience must be demonstrated as intentional and

inexcusable. A mere preponderance of evidence is insufficient; substantial evidence is required to prove that the contemnor knowingly and willfully violated the court order. *Little v. Superior Court of Los Angeles County* (1968) 260 Cal.App.2d 311, 317. The burden is again on the Defendant here, and the Court finds that there has been an insufficient showing by the preponderance of the evidence to establish that Plaintiff's failure to comply was willful.

The Court will conduct a hearing, and the parties and counsel are ordered to appear.

**8-9. 25CV00778 VANDYKE, DESIREE DANIELLE V. TOP2BOTTOM CLEANING SERVICE LLC**

*EVENTS: (1) Motion to be Relieved as Counsel*

*(2) Case Management Conference \*Special Set*

The Motion to Be Relieved as Counsel filed by Daniel Ginzburg, Manny Starr, and Frontier Law Center is granted, and Daniel Ginzburg, Manny Starr, and Frontier Law Center are relieved as counsel for Plaintiff Desiree Danielle Vandyke, effective upon the filing of the proof of service of the signed order upon the client. The Case Management Conference is continued to March 11, 2026 at 10:30 a.m. The Court will sign the form of order submitted by counsel with modification to Paragraph 7 to indicate the next scheduled hearing is the Case Management Conference on March 11, 2026 at 10:30 a.m.