

TENTATIVE RULING(S) FOR JANUARY 23, 2025

Department V11 – Judge Winston Keh

This court follows California Rules of Court, rule 3.1308(b) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings for each law & motion will be posted on the internet (<https://www.sb-court.org>) by 3:00 p.m. on the court day immediately before the hearing.

You may appear in person at the hearing although remote appearance by CourtCall is preferred during the Pandemic. (See www.sb-court.org/general-information/remote-access).

If you do not have Internet access or if you experience difficulty with the posted tentative ruling, you may obtain the tentative ruling by calling the department (V-11) at (760)269-4664 or the Administrative Assistant (760)269-4869, who prepared the ruling.

If you (or both parties) wish to submit on the Tentative, notify the other party and call the department by 4:00 pm the day before and your appearance may be excused unless the Court orders you to appear.

You must appear at the hearing if you are so directed by the court in the tentative ruling. Be prepared to address those issues set forth by the court in its ruling.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.

CIVVS2400277

BLAZY v. ALBERT, ET AL.

Motion: Motion to Strike Affirmative Defenses

Movant: Plaintiff Burton R. Blazy

Respondents: Defendants Adelanto Elementary School District, John Albert, and Jonathan Wilson

Plaintiff Blazy moved to strike all 34 affirmative defenses asserted by Defendants. Blazy contends the affirmative defenses are either false, erroneous, frivolous, asserted in bad faith, or redundant of each other.

A motion to strike any pleading must be filed within the time allowed to respond to the pleading, e.g., 30 days after service of the complaint or cross-complaint unless extended by court order. (Code Civ. Proc. § 435(b).) The court may, upon a motion made pursuant to Code Civ. Proc. § 435, or at any time in its discretion, and upon terms it deems proper, strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. (Code Civ. Proc. § 436.) Motions to strike are disfavored, and the policy is to construe the pleadings liberally, with a view to substantial justice. (Code Civ. Proc. § 452.)

Under Code Civ. Proc. § 435.5, before filing a motion to strike, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion to strike. Under Code Civ. Proc. § 435.5(a)(2), the meet and confer shall occur at least five days before the date the motion to strike must be filed. A meet and confer declaration shall be filed and served with the motion to strike. (Code Civ. Proc. § 435.5(a)(3).)

Blazy did not make any attempt to meet and confer in violation of Code Civ. Proc. § 435.5, et seq. On this basis alone, the Motion should be denied.

As Defendants point out, challenges to an answer must be raised through a demurrer. Under Code of Civil Procedure §430.20, “A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds: (a) The answer does not state facts sufficient to constitute a defense. (b) The answer is uncertain. As used in this subdivision, “uncertain” includes ambiguous and unintelligible. (c) Where the answer pleads a contract, it cannot be ascertained from the answer whether the contract is written or oral.”

A pro per litigant is held to the same standard of conduct in litigation as any other party. (*Midwife v. Bernal* (1988) 203 Cal.App.3d 57, 65.) Here, Blazy filed the wrong motion and he made no attempt to meet and confer.

Also, Defendants are entitled to raise any affirmative defenses. Defendants are correct that a “defendant may plead as many inconsistent defenses in an answer as he or she may desire.” (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 240.) Given the disjointed nature of Blazy’s complaint and FAC, Defendants should be able to plead as many affirmative defenses as they wish. Thus, the Court **DENIES** Plaintiff Blazy’s motion to strike.