

Defense Matrix — RSP Holdings' 41 Affirmative Defenses

Panda Solutions, LLC v. Pro Mechanical Services Inc., et al. · Monterey Co. Super. Ct. No. 25CV001352 · Aug 2, 2026 · **Informational** — review with Fox Rothschild; not legal advice

HIGH real threat / factual battleground **MED** fact-specific, monitor **LOW** boilerplate / reserved, little behind it

#	AFFIRMATIVE DEFENSE	THREAT	PANDA'S RESPONSE / WHAT TO DO
CAUSATION & FAULT-SHIFTING — THE REAL FIGHT			
2	Contributory Negligence	HIGH	Rebut with proof PMS's defective mechanical work — not Panda's grow ops — caused the loss. Comparative fault is a jury question; keep causation expert front and center.
3	Negligence of Others	HIGH	The "empty chair." We've named the responsible parties; keep all solvent/insured defendants in. Economic damages are joint & several under Prop 51.
11	Comparative Fault	HIGH	Same battleground — apportionment among defendants. Our damages + causation proof frames the split.
25	Allocation of Fault (Prop 51)	HIGH	Non-economic damages apportioned by fault %; economic damages remain joint & several. Ensure a solvent/insured payor stays on the hook.
26	Misuse / Improper Maintenance / Alteration	HIGH	Grower-blame theory. Rebut with operations/maintenance records, environmental-control data, and expert that the defect (not Panda's conduct) drove crop loss.
9	Design Defects (built to others' plans)	MED	Causation shift to designer. Tie defects to installation/workmanship; expert on cause. Note this cuts against the other subs too.
23	Intervening / Superseding Acts	MED	Defect was a foreseeable cause; no superseding cause breaks the chain. Fact/expert driven.
37	Act of God / Act of Nature	LOW	No weather/natural event caused this; the mechanical defect did. Boilerplate.
DAMAGES DEFENSES			
12	Failure to Mitigate	HIGH	Document every mitigation step Panda took once problems appeared; damages expert to show the loss was unavoidable / properly mitigated. Central to the damages fight.
38	Economic Loss Rule	MED*	*Likely favorable to us. Crop losses = damage to <i>other</i> property, generally outside the rule. Keep damages framed as crop/product loss, not the HVAC itself.
6	Failure to Use Reasonable Diligence	MED	Overlaps mitigation. Document Panda's reasonable, timely response to the problem.
22	Unjust Enrichment	LOW	N/A — we seek damages for loss, not restitution from RSP.
40	Wear and Tear	LOW	Loss is from defect, not ordinary wear. Boilerplate.
PRIVITY / CONTRACT-BASED			
20	Lack of Privity	HIGH	Confirm the contractual basis vs. RSP. Our negligence/tort claims do not require privity; press those independent of any contract theory.
21	Contractual Privity	HIGH	Ensure the correct entity is sued in contract. Coordinate with Fox on which contract runs to which party.
41	Lack of Representation / Reliance	MED	Only bites any misrepresentation claim; negligence/breach don't require reliance.
19	Limited Warranty	MED	Depends on contract terms; latent defects & negligence claims are not limited by an express warranty clause.
14	No Notice of Breach of Warranty	MED	Show notice was given / not required for the negligence claims. Fact-specific.

30	Prior Breach of Contract	MED	Fact-specific; identify who breached first. Coordinate with contract timeline.
34	Performance Excused	MED	Grab-bag of contract excuses (failure of consideration, impossibility, etc.). No facts pleaded; monitor.
35	Full / Partial Performance	LOW	Defective performance is not discharge of duty. Boilerplate.
31	Unconscionable Contract	LOW	Claims Panda drafted the contract; fact-specific and unlikely. Boilerplate.
32	Non-Negotiated Terms	LOW	Same theme as unconscionability. Boilerplate.
33	Uncertain Terms	LOW	Ambiguities construed against drafter; fact-specific. Boilerplate.
36	Adhesion	LOW	Same as unconscionability. Boilerplate.
STATUTORY / PROCEDURAL BARS			
7	Time-Barred / Right to Repair	HIGH	Confirm accrual dates (project ~2022–23 vs. filing 3/12/2025). SB800 cites (Civ. Code 896/900/941/945.5) are residential — likely inapplicable to a commercial grow. Verify with Fox.
15	Failure to Join Necessary Parties	MED	We've named the key parties (and RSP is adding Performance/Alcazar). Challenge any specific missing-party theory.
1	Failure to State a Cause of Action	LOW	Demurrer-style placeholder; our complaint pleads each element. Watch for any actual motion.
8	Laches	LOW	Legal damages claim governed by SoL; laches rarely bars it. Boilerplate.
13	Unclean Hands	MED	Equitable defense; limited to any equitable relief. No inequitable conduct by Panda. Monitor.
39	Lack of Standing	LOW	Panda is the injured grower — has standing. Boilerplate.
24	Civil Code §2782 (anti-indemnity)	LOW	Aimed at the cross-claims' indemnity provisions, not Panda's affirmative case.
16	Fails to State Claim for Attorney's Fees	LOW	Depends on contract/statutory fee basis. Confirm our fee hook.
17	Attorney's Fees (CCP §1038)	LOW	Aimed at indemnity/contribution cross-claims — N/A to Panda's affirmative claims.
18	Business Judgment Rule (Corp. Code §7231)	LOW	That statute governs nonprofit directors — misplaced boilerplate. No bearing here.
WAIVER / ESTOPPEL / EVIDENCE			
27	Spoliation of Evidence	HIGH	Act now. Preserve dead crops, the mechanical/HVAC equipment, sensor/environmental logs, maintenance records; document chain of custody. This is the most urgent operational item.
28	Ratification	MED	Payment/acceptance of work ≠ ratification of <i>hidden/latent</i> defects. Fact-specific.
29	Accord & Satisfaction	MED	No settlement/accord reached; any partial payment is not full satisfaction. Confirm no release was signed.
10	Waiver	MED	No knowing waiver of latent-defect claims. Fact-specific.
4	Assumption of the Risk	LOW	Panda did not assume the risk of defective HVAC. Boilerplate.
5	Plaintiff's Voluntary Conduct	LOW	Restates assumption of risk. Boilerplate.

Threat ratings reflect a preliminary read of RSP's Answer only; Pro Mechanical's and Alcazar's answers are not yet in hand. Informational analysis to support the client's discussion with counsel — not legal advice. Fox Rothschild directs all strategy.