ORDR

DISTRICT COURT

CLARK COUNTY, NEVADA

[redacted], Plaintiff,	)	
v.	)	CASE NO. D-21-[redacted]-D
	)	DEPT NO. Q
[redacted], Defendant.	)	Date of Hearing: May 27, 2025
	)	Time of Hearing: 9:00 a.m.

ORDER RE: CONTEMPT

This matter came before the Court on May 27, 2025, on Defendant's Motion for an Order to Enforce and/or for an Order to Show Cause Regarding Contempt (Apr. 14, 2025) (hereinafter Defendant's "Motion"), and Plaintiff's Opposition to Defendant's Motion Filed April 14, 2025 (Apr. 28, 2025) (hereinafter Plaintiff's "Opposition").[1] Plaintiff appeared at the hearing in person and with her counsel, Shannon R. Wilson, Esq. Defendant appeared at the hearing in person. The Court has reviewed and considered the papers on file, as well as the testimony offered by the parties at the hearing.

[1]The Court also received and reviewed Defendant's Reply to Plaintiff's Opposition to Motion Filed April 14, 2025, and Defendant's Opposition to Plaintiff's Motion to Close Hearing and for Attorney's Fees (May 4, 2025). At the beginning of the hearing, the Court ruled orally that the discussions on the record regarding the minor children's medical care and treatment should not be recorded (apart from the Court's official recording) or publicly disseminated.

Preliminarily, the Court concludes that contempt proceedings in civil-domestic matters *generally* are civil in nature where the goal is to procure compliance with court orders. *See Rodriguez v. Eighth Judicial Dist. Court ex rel. County of Clark*, 120 Nev. 798, 102 P.3d 41 (2004) (whether "classified as criminal or civil in nature depends on whether it is directed to punish the contemnor or, instead, coerce his compliance with a court directive"). In this regard, the salutary purpose of civil contempt is to compel obedience to court orders — not for punitive purposes.[2] Thus, the remedy is coercive in nature and intended to compel future compliance with court orders. In *Warner v. Second Judicial Dist. Court In and For County of Washoe*, 111 Nev. 1379, 906 P.2d 707 (1995), the Supreme Court of Nevada provided the following guidance:

> Whether a contempt charge constitutes a criminal prosecution depends on whether the contempt charge is civil or criminal in nature. [Citation omitted] The distinction between civil and criminal contempt is usefully defined in *Marcisz v. Marcisz*, 65 Ill.2d 206, 2 Ill.Dec. 310, 312, 357 N.E.2d 477, 479 (1976):
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> > Contempt proceedings, while usually called civil or criminal, are, strictly speaking, neither. They may best be characterized as *sui generis*, and may partake of the characteristics of both. [Citations omitted.] Proceedings in the nature of criminal contempt have been

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[2]In contrast with civil contempt, the sanctions in criminal contempt are punitive, "intended as punishment for past disobedience," and "unconditional or determinate," with the contemnor's "future compliance having no effect on the duration of the sentence imposed." *Rodriguez*, 120 Nev. at 805, 102 P.3d 46. Criminal contempt proceedings entitle the contemnor to many of the procedural safeguards associated with a criminal trial, including the right to counsel and the beyond-a-reasonable-doubt standard of proof. *See Yasol v. Greenhill,* 137 Nev. 980, 480 P.3d 881 (Nev. Crt. App. 2021), unpublished. The Supreme Court of Nevada has consistently held that the right to counsel in criminal contempt proceedings is protected under the Sixth Amendment. *See Lewis v. Lewis,* 132 Nev. 453, 373 P.3d 878 (2016). In summary, a litigant is entitled to the appointment of counsel in criminal contempt proceedings due to the punitive nature of such proceedings and the protections afforded by the Sixth Amendment. However, in civil contempt proceedings, the appointment of counsel is discretionary and determined on a case-by-case basis by the trial court.

> defined as those directed to preservation of the dignity and authority of the court, while it has been said that civil contempts are those prosecuted to enforce the rights of private parties and to compel obedience to orders or decrees for the benefit of opposing parties. [Citations omitted.] These principles, while seemingly plain and adequate, are most difficult to apply. The line of demarcation in many instances is indistinct and even imperceptible. [Citations omitted.] A further guide may be found in the purpose of the punishment. Imprisonment for criminal contempt is inflicted as a punishment for that which has been done, whereas imprisonment for civil contempt is usually coercive and, as was said in the case of *In re Nevitt*, (8th Cir.) 117 F. 488 [448], 461, "he [the contemnor] carries the key of his prison in his own pocket."
>
> The United States Supreme Court has further clarified the distinction between civil and criminal contempt, explaining that since a civil contempt sanction is designed to coerce the contemnor into complying with a court order, it must be conditional or indeterminate—that is, it must end if the contemnor complies. [Citation omitted] In contrast, a criminal contempt sanction is intended to punish the contemnor for disobeying a court order and, thus, must be determinate or unconditional. Such a sanction is not affected by any future action by the contemnor.

Warner, 111 Nev. at 1382–83, 906 P.2d at 709.

The Court finds that the issue of contempt in this matter is civil in nature. In this regard, the purpose of these proceedings necessarily is coercive in nature and intended to procure compliance with the court's orders. Moreover, the Court concludes that this matter involves indirect civil contempt pursuant to NRS 22.030.[3]

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[3]NRS 22.030 provides as follows:

> 1. If a contempt is committed in the immediate view and presence of the court or judge at chambers, the contempt may be punished summarily. If the court or judge summarily punishes a person for a contempt pursuant to this subsection, the court or judge shall enter an order that:
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> (a) Recites the facts constituting the contempt in the immediate view and presence of the court or judge;
>
> (b) Finds the person guilty of the contempt; and
>
> (c) Prescribes the punishment for the contempt.

A request for contempt must be based on: (1) an order or judgment that is clear and unambiguous; (2) the order "must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him;" and (3) the violation must be intentional. *Cunningham v. District Court*, 102 Nev. 551, 559-60, 729 P.2d 1328, 1333-34 (1986). By way of his Motion, Defendant alleges six "counts" of contempt committed by Plaintiff, and seeks findings and orders related to the same. In support of his request, Defendant argues that Plaintiff violated the following specific orders:

> IT IS FURTHER ORDERED that either party may enroll the children in an extracurricular activity on their residential time at their own expense (or shared if agreed in writing) so long as it does not interfere with the other parent's residential time. If either party desires to enroll the children in an extracurricular activity that would interfere with the other party's residential time, then they shall first provide the other parent, in writing, with information pertaining to the activity, including the schedule, location, and cost; and the party wishing to enroll the child shall obtain, in writing the other party's written permission to enroll the child. Whether the cost will be shared, shall also be agreed in writing. A

> 2. If a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the masters or arbitrators.
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> 3. Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person. The provisions of this subsection do not apply in:
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> (a) Any case where a final judgment or decree of the court is drawn in question and such judgment or decree was entered in such court by a predecessor judge thereof 10 years or more preceding the bringing of contempt proceedings for the violation of the judgment or decree.
>
> (b) Any proceeding described in subsection 1 of NRS 3.223, whether or not a family court has been established in the judicial district.

writing may include a mutually acknowledged email or text message exchange.

Decree of Divorce (Jul. 21, 2022) at p. 10.

> The Parents shall consult with their pediatrician, rather than Google, for health-related matters. If one of the parents cannot attend an appointment, then the attending parent shall request permission to video the doctor's recommendation so that the parent's can have the same information in real time.

Order from October 4, 2023 Hearing (Oct. 17, 2023) at p. 3.

The Court finds as follows with respect to the six "counts" for which Defendant seeks findings and orders of contempt:

> "Count 1 (April 2024): XXXX misrepresented that XXXX's Learn to Skate season was ending, placing the child in a loyalty bind and pressuring XXXXXX to facilitate final classes, despite his prior objection." Motion at 19.

> "Count 2 (March 2025): XXXXX again enrolled XXXX in a new session, supplied her with hockey gear, and created anticipation of joining a competitive league — again without seeking agreement — forcing XXXX to disappoint the child or rearrange his parenting time." Motion at 20.

The relevant order language governing the parties' conduct includes the following:

> IT IS FURTHER ORDERED that either party may enroll the children in an extracurricular activity on their residential time at their own expense (or shared if agreed in writing) so long as it does not interfere with the other parent's residential time. If either party desires to enroll the children in an extracurricular activity that would interfere with the other party's residential time, then they shall first provide the other parent, in writing, with information pertaining to the activity, including the schedule, location, and cost; and the party wishing to enroll the child shall obtain, in writing the other party's written permission to enroll the child. Whether the cost will be shared, shall also be agreed in writing. A writing may include a mutually acknowledged email or text message exchange.

Decree of Divorce (Jul. 21, 2022) at p. 10.

Defendant's Motion focuses on the "restrictive" portion of this provision that restricts a parent's ability "to enroll the children in an extracurricular activity that would interfere with the other party's residential time" without the "other party's written permission to enroll the child." Defendant's request for contempt against Plaintiff relates to XXXXX's ongoing participation in a "Learn to Skate" program and hockey.

The record established by the parties reveals that XXX's participation in a "Learn to Skate" program began in 2022. On July 22, 2022, the parties exchanged the following text communications:

> Plaintiff: "Also there is a learn to skate program starting in November when XXX turns three and I will be signing her up for that. Can you pay half?"
>
> Defendant: "Liked . . . Also there is a learn to skate program starting in November when XXXX turns three and I will be signing her up for that. Can you pay half?" the message.

Exhibit A, PLTF005092.

On the same day, and in response to Plaintiff's request to enroll XXX in soccer, Defendant messaged Plaintiff that he was unsure about facilitating "all of the events for all of my kids. . . . Soccer probably but skate probably not." Exhibit A, PLTF005093. Plaintiff then volunteered to pay for the learn to skate program, stating: "I will facilitate transportation and I will pay for it. I ask you if learn to skate lands on your day that you either facilitate her to it or you allow me to facilitate her to it because if she misses more than two classes they will take her out of the program." *Id.* Defendant acknowledged that he initially "did not object" to XXXX's participation in the learn to . . .

skate program, but "the demands of the program became unworkable." Motion at p. 5, ll. 9-10.

On January 24, 2024, Plaintiff asked Defendant: "Can you please take XXXX to hockey at 4:30?," to which Defendant responded, "She's in hockey?" Exhibit E, PLTF003976. Defendant expressed his confusion about her participation in the class and reiterated his scheduling concerns. He offered: "let me see and get back to you." *See id.* at PLTF003977. After clarifying that the classes related to a "learn to skate" program, Plaintiff stated: "No worries if you can't take her or don't want me taking her on your custody day. Just thought I'd ask to include you, I know XXXX likes when we both take part in her sports." *Id*.

On April 2, 2024, Plaintiff inquired about whether Defendant "[w]ould be willing to take her" on two of the "learn to skate" days that fell on Defendant's custody schedule. *See* Exhibit F, PLTF002081. Defendant responded: "We have plans on most days XXXX." Id. On the same day (after celebratory communications regarding XX's accomplishments in gymnastics), Plaintiff reported that XXX "got moved up in hockey too. It's her last learn to skate class." *Id*. at PLTF002082.[4] On April 16, 2024, Plaintiff inquired about either Defendant or Plaintiff taking XXXX "to her hockey tomorrow." *Id.* at PLTF002085. Defendant responded: "Sorry we have plans. Please refer to previous texts regarding signing the kids up for activities that occur during their residential time here. I will be signing them up for activities as well, but I will make

[4]The level of communication between the parties (sometimes referred to as "transfer notes") regarding details of the children's daily activities is remarkable in relative comparison to other parents who appear before the Court.

sure there is flexibility so as to not interfere with plans during their residential time at your house." *Id*.

Throughout their communications, Defendant frequently reminded Plaintiff of the above-quoted provision in the Decree of Divorce (Jul. 21, 2022). Moreover, Defendant proposed at ti mes that Plai ntiff involve XXX in " drop in" public skating sessions *in lieu* of a "rigid" learn to skate program. Nevertheless, Defendant acknowledged that, since December 2023, he had not taken XXX to a learn to skate or hockey program during his residential time. Neither had he contributed financially to her participation in the same. There were occasions, however, when he agreed to alter the custody schedule to accommodate XXXXX's participation in the program.

In response to Defendant's pursuit of contempt, Plaintiff alleged that Defendant engaged in similar conduct with regards to XXXX's participation in jiujitsu, wherein he announced her participation in an activity without consulting Plaintiff. She offered the following message from August 28, 2024 from Defendant: "FYI XXX has begun jiujitsu. Schedule and location if you ever want to take her (not mandatory in any way): Tues (Gi) and Thursdays (No Gi) 4-5pm." Exhibit 1, PLTF005846. Even the non-permissive language of the provision at issue suggests that Defendant enrolled the child in an activity that was scheduled to take place on Plaintiff's custodial days.[5] At the May 27, 2025 hearing, Plaintiff acknowledged that she has not taken XXX to a jiujitsu class during her custodial time. Nor does it appear from the text communications

[5]To be clear, the Decree of Divorce (Jul. 21, 2022) does not distinguish between "flexible" or "drop-in" versus rigid activities.

reviewed by the Court that Defendant sought any rescheduling of custodial time to facilitate attendance in jiujitsu.

Plaintiff also argued that XXX has participated in a learn to skate program since she was three years old. She added that she is "not requesting XXXX's involvement in hockey activities, nor am I asking for any financial support. I am simply informing him of what I am doing during my custodial time and offering the opportunity to participate, if he wishes just as he did in his August 28th text message regarding jiu-jitsu." Opposition at 4-5. She further noted that the last time Defendant took XXXX to a learn to skate program was December 6, 2023. Thus, she argued, she has not interfered with his residential time.

As a matter of contempt, the requisite determination of the court is whether: (1) the Decree is sufficiently "clear and unambiguous" to invoke the court's contempt powers; (2) the Decree sufficiently "spell[s] out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed;" and (3) Plaintiff's violation is intentional. The record is clear that both parties have enr olled XXXX in activities without the prior ap proval or consent of the other party (simply announcing XXX's enrollment as a means of notice). For example, Plaintiff announced XXXX's participation in learn to skate and Defendant announced XXX's participation in jiujitsu. It further is beyond reasonable dispute that both activities include regularly scheduled participation on dates that fall during the other parent's regular custodial time (with an invitation to the other parent to participate if he/she would like to do so). It also appears from the voluminous text

messages between the parties that they previously have communicated and cooperated to coordinate their schedules to allow for XXXX's participation in a learn to skate program. This can be challenging for parents who have separated or divorced (*and even for intact relationships*). This challenge is compounded further by the parties' rotating custody schedule (whereby their custodial days change regularly), which complicates the planning of a child's participation in *any* regular activity. With multiple children, this task becomes nearly impossible even for high-functioning co-parents. (From purely a practical standpoint *and* a review of the parties' inability to co-parent effectively, it appears highly unlikely that either XXX or XXX will compete in any highly competitive team activities.)

Defendant distinguishes his enrollment of XXXX in jiujitsu from a learn to skate program as one of rigidity, with participation being permissive rather than mandatory. (With respect to both activities, the parties' communication is noticeably similar: announcing the schedule and inviting the other party to participate – or not to participate.) Defendant cites to policies of a learn to skate program that detail the consequences of missed sessions.[6] At the hearing, Plaintiff offered that she has been able to "workaround" the learn-to-skate policy strictures and that XXX has continued to advance despite missing repeated classes. The Court also learned at the hearing that

[6] As an alternative, Defendant proposed to Plaintiff that XX participate in "open skate" sessions that are offered regularly at most ice skating facilities. Although such a "drop in" activity is an option, it becomes a matter of ascertaining the ultimate goal of a child's participation in a particular activity – which is, in large part, beyond the court's prerogative. Both parties acknowledged in their communications that – even at five years of age – XXXX is a naturally gifted athlete. The Court certainly is impressed that she already has been exposed to skating (including hockey), jiujitsu, soccer and gymnastics.

both activities (skating and jiujitsu) involve some level of advancement based on performance (or achievement) versus strict participation (i.e., advancement is not dependent on attending a prescribed number of sessions in either activity).[7]

As noted previously, Defendant has not taken XXX to a learn to skate or hockey program since December 2023. Although there have been occasions in which he willingly modified the custody schedule to accommodate XX's participation, there also have been occasions when he has denied Plaintiff's request to modify the schedule (as an interference to his "residential time"). Thus, beyond *stipulated* schedule accommodations (which the Court concludes should not be construed as contempt), XXXX's participation has not actual ly "interfere[d] with the other pa rty's residential time." In this regard, it does not appear that either party has obligated the other party to accommodate such enrollment and participation. Thus, there has been no actual interference in the other parent's custodial time that rises to the level of contempt.

The larger issue of import to Defendant's Motion relates to the impact of the children's enrollment in such "rigid" programs on their relationships — *which is not identified specifically by the Decree as a basis for the provision*. Defendant points to the report of Dr. Kathleen Bergquist and the concerns raised therein about the loyalty bind created by a child's participation in activities that require their attendance and the

[7] A similar issue that may be appropriate for the scheduled evidentiary hearing is whether additional limitations are warranted and/or whether a "parallel" parenting arrangement is in the children's best interest. In this regard, the issues that have arisen regarding XXXXX's participation in extracurricular activities (including the pending request for contempt and incarceration of a party), cause the Court to question whether the parties should be discouraged from notifying the other parent of any activities that do not fall within their residential time.

disappointment (and concomitant relationship damage) caused by not accommodating such participation. Whether XXX experiences disappointment when she is unable to participate in learn to skate/hockey or jiujitsu is unknown to the Court at this point of the these proceedings. Although not an issue of contempt, whether the court should refine and/or clarify this provision remains before the Court as part of the scheduled evidentiary proceedings.

As noted, both parties have enrolled XXXXX in an activity that includes participation dates that fall outside of their custodial time. The act of enrolling the child in an activity that includes participation on dates that fall outside of a parent's residential timeshare with a child is not sufficient to invoke the Court's contempt powers. The Decree permissively allows either party to "enroll the children in an extracurricular activity on their residential time at their own expense (or shared if agreed in writing) so long as it does not *interfere with the other parent's residential time*." (Emphasis added). The Decree does not distinguish between "drop-in" activities versus rigid programs. Rather, the Decree identifies "interference" with custodial time and cost or expense as the proscriptions to such enrollment. Thus, there is not a sufficient factual or legal basis to issue an order to show cause under the requirements of *Cunningham, supra*.

> "Count 3: (August 28, 2024): XXXXX refused to FaceTime XXXX during an ER visit for XXX involving sensitive medical concerns, resulting in invasive STI testing of the child without XXXX's knowledge or input." Motion at 20.

. . .

. . .

"Count 4 (March 23, 2025): XXX again violated the video-call requirement during another ER v isit for ZMG. XXXX had to shu t do wn his firehouse and take emergency leave, resulting in disruption to his employment and emotional distress to ZMG, who believed he was being taken away from his mother." Motion at 20.

As cited earlier, if a parent is unable to "attend an appointment, then the attending parent shall request permission to video the doctor's recommendation so that the parent's can have the same information in real time." Order from October 4, 2023 Hearing (Oct. 17, 2023) at p. 3. Defendant alleges two violations by Plaintiff of this specific provision, both of which related to emergency room visits. The express language of the Order from October 4, 2023 Hearing (Oct. 17, 2023) requires the "attending parent" to request permission to "video the doctor's recommendation."

Preliminarily, there is nothing in the record to suggest that either instance involved a scheduled "appointment." Rather, both incidents involved emergency room visits. Assuming *arguendo* that an emergency room visit is loosely considered an "appointment" under this provision, the only instance in which a "doctor's recommendation" may not have been transmitted by video appears to relate to Count 3. With respect to this incident, Plaintiff offered that Defendant arrived at the doctor's office approximately ten minutes after her arrival – thus obviating the need to record the doctor's recommendations. Nevertheless, the Emergency Provider Report dated August 28, 2024 from MountainView Hospital includes the following:

. . .

. . .

. . .

> I advised UA and wet prep and good hygiene. If workup normal, advised close follow-up with primary care. Patient's mom in agreement with plan. . . . I discussed workup and results with patient's mom.

Notice of Filing of Supplemental Exhibit Pursuant to Leave of Court Granted During May 27, 2025 Hearing (Jun. 1, 2025) at p. 11.

The Emergency Provider Report suggests that only Plaintiff was present at the time a recommendation was offered (*presumably* by a physician). As such, the Court finds that Defendant has made a prima facie basis for the Court to receive additional testimony as to whether findings of contempt are appropriate as to this incident. The Court necessarily must determine whether: (1) an emergency room visit is "clearly and unambiguously" an "appointment" pursuant to the Order from October 4, 2023 Hearing (Oct. 17, 2023); and (2) Plaintiff failed to request permission to "video the doctor's recommendation" referenced above.

With respect to the March 25, 2025 incident, it appears that both Plaintiff and Defendant were present when the doctor shared the recommendations. Accordingly, there is not a sufficient legal or factual basis to issue an order to show cause as to Count 4.

> "Count 5 (July 2022 – Present): Engaging in a pattern of conduct that places the children in loyalty binds, manipulates their expectations, and obstructs XXX's parenting role, in violation of Paragraph 1.11 of the Decree (p. 7:12) and contrary to the guidance of the Child Custody Evaluation (CCE, p. 65)." Motion at 20.

Preliminarily, the "Child Custody Evaluation" is not a court order and is not a basis for the court to schedule contempt proceedings. The provision of the Decree of Divorce (Jul. 21, 2022) cited by Defendant provides as follow: "Neither party shall

disparage the other parent to the child. Each party shall instruct their own family and friends to not disparage the other parent to the child." Decree of Divorce (Jul. 21, 2022) at 7. With respect to the conduct alleged by Defendant, the Decree of Divorce (Jul. 21, 2022) is not clear and unambiguous and does not sufficiently "spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed." Accordingly, the Court does not find a sufficient basis to issue an order to show cause as to "Count 5."

> "Count 6 (March 30, 2025): XXXXXX willfully wit hheld the chil dren for approximately 4.5 hours during XXXX's scheduled custodial time, citing a pre-planned playdate she claimed couldn't be rescheduled and alleging XXX failed to inform her of a change in his part-time Army schedule—neither of which justified violating the parenting plan." Motion at 20.

Since the entry of the Decree of Divorce (Jul. 21, 2022), Defendant routinely has provided Plaintiff with a calendar in advance of his military training dates. Although these training dates are subject to change, Defendant acknowledged that, until March 2025, he has participated in his "annual" training each year since the entry of the Decree of Divorce (Jul. 21, 2022). With respect to this incident, Defendant offered that this "date also marked the first day of XXX's annual military training (AT), which has historically been a topic of advance coordination between the parties." Motion at 17:4-7. He further acknowledged that he "was excused from training a few days prior *and did **not** immediately notify* XXXXX*, in a co-parenting dynamic grounded in good faith,* this should not have been a single point of failure." Motion at 17:11-14 (emphasis added). (Plaintiff alleges that Defendant "never informed me of a change in his Army . . .

schedule." Opposition at 16:13-14. Rather, she submits, she was abiding by his "annual drill schedule" that he supplied for the year.)

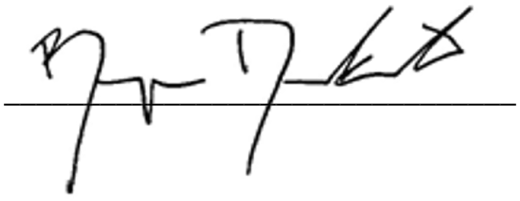
Defendant seeks to have Plaintiff incarcerated for, at best, miscommunication between the parties – while acknowledging that he failed to communicate this change in plans. Specifically, Defendant asks the Court to make findings of contempt against Plaintiff because *she* failed to confirm that his military training schedule (that he previously supplied to Plaintiff) was still in place. The argument essentially suggests that the communication shortfall is solely Plaintiff's responsibility. There is an insufficient factual basis for the Court to issue an order to show case as to "Count 6."

Based on the foregoing, and good cause appearing therefor,

It is hereby ORDERED that Plaintiff appear at the evidentiary hearing scheduled for September 4, 2025 and show cause why the Court should not issue findings and orders regarding contempt for violating the Order from October 4, 2023 Hearing (Oct. 17, 2023), by failing to request permission to video the doctor's recommendations on August 28, 2024.

It is further ORDERED that, in all other respects, the Motion is DENIED.

Dated this 17th day of June, 2025



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Bryce C. Duckworth
District Court Judge