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12 *University, Inc.*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Audrey Davis, an individual,
Plaintiff,

v.

Rhondie Voorhees, in her personal capacity
and as Dean of Embry-Riddle Aeronautical
University; and Embry-Riddle Aeronautical
University,
Defendants,

Rhondie Voorhees, an individual,
Counterclaimant,

v.

Audrey Davis, an individual,
Counterdefendant.

No. 3:21-cv-08249-DLR

**EMBRY-RIDDLE
AERONAUTICAL UNIVERSITY,
INC.’S ANSWER TO FIRST
AMENDED VERIFIED
COMPLAINT**

Defendant Embry-Riddle Aeronautical University, Inc. (“ERAU”), for its Answer to Plaintiff Audrey Davis’s (“Plaintiff”) First Amended Verified Complaint for Violations of Title IX and the Servicemembers Civil Relief Act [Doc. 49], hereby admits, denies, and alleges as follows:

1 ERAU admits that Plaintiff brings her First Amended Verified Complaint against
2 ERAU and Defendant Rhondie Voorhees seeking injunctive relief, compensatory damages,
3 and punitive damages, but denies any allegations of wrongful or unlawful conduct on its
4 part, and further denies that Plaintiff is entitled to any of the relief she seeks. ERAU
5 affirmatively states that the named defendant, Embry-Riddle Aeronautical University, is an
6 improperly named entity.

7 **INTRODUCTION**

8 ERAU denies that ERAU treated Plaintiff with deliberate indifference, that ERAU
9 retaliated against Plaintiff, or that ERAU fraudulently sought default against Plaintiff.
10 ERAU further denies that it has tried to bully, intimidate, and sue Plaintiff into silence. As
11 to the remaining allegations in this Introduction section, ERAU denies any allegations of
12 wrongful or unlawful conduct on its part.

13 **VENUE, JURISDICTION, AND PARTIES**

14 1. Admits that this action is brought pursuant to Title IX, but denies any
15 allegations of wrongful or unlawful conduct on ERAU’s part.

16 2. Admits.

17 3. Admits, but denies that Plaintiff was covered by the Servicemembers Civil
18 Relief Act (“SCRA”) at all relevant times.

19 4. Admits, but denies any allegations of wrongful or unlawful conduct on
20 ERAU’s part.

21 5. Admits, but denies any allegations of wrongful or unlawful conduct on
22 ERAU’s part.

23 6. Denies any allegations of wrongful or unlawful conduct on ERAU’s part,
24 further denies that ERAU is “ultimately liable for the action and inaction of its agents and/or
25 employees and students” in all circumstances, but admits the remaining allegations.

26 7. Admits, but denies that Plaintiff is entitled to any of the relief she seeks.
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FACTUAL ALLEGATIONS

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8. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same, but affirmatively alleges that the Title IX Investigator who investigated the incidents that allegedly occurred on November 11, 2019 was unable to verify whether non-consensual sexual contact occurred between Plaintiff and the fellow ERAU student.

9. Upon information and belief, admits.

10. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, denies the same.

11. Denies that Paragraph 11 accurately describes Title IX.

12. Lacks knowledge or information sufficient to form a belief as to what Plaintiff was seeking and, therefore, denies the same. Denies the remaining allegations.

13. Denies.

14. Denies.

15. Denies.

16. Denies.

17. Upon information and belief, denies.

18. Paragraph 18 calls for a legal conclusion and, therefore, a response is not necessary. But, to the extent that a response is required, denies.

19. Denies.

20. Admits that ERAU did not require Plaintiff to wear a scarlet letter while she attended class and denies the remaining allegations.

21. Admits that Plaintiff spoke with Dean of Students Rhondie Voorhees (“Dean Voorhees”), but denies the remaining allegations.

22. Denies.

23. Lacks knowledge or information sufficient to form a belief as to the truth of the allegations asserted and, therefore, denies the same.

1 24. Lacks knowledge or information sufficient to form a belief as to the truth of
2 the allegations asserted and, therefore, denies the same.

3 25. Lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations and, therefore, denies the same.

5 26. Denies.

6 27. Denies.

7 28. Lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations asserted and, therefore, denies the same.

9 29. Denies.

10 30. Denies, and affirmatively alleges that the Title IX Investigator who
11 investigated the incidents that allegedly occurred on November 11, 2019 was unable to
12 verify whether non-consensual sexual contact occurred between Plaintiff and the alleged
13 assaulter.

14 31. Denies.

15 32. Admits that Plaintiff drafted a petition, but denies any allegations of wrongful
16 or unlawful conduct on ERAU's part.

17 33. Denies any allegations of wrongful or unlawful conduct on ERAU's part,
18 further denies that Plaintiff had a First Amendment or Title IX right to draft and circulate
19 the petition or that the First Amendment applies to a private university. Further, to the extent
20 that Paragraph 33 calls for a legal conclusion, a response is not necessary. But, to the extent
21 that a response is required, denies the remaining allegations.

22 34. Denies, further denies that Jason Langston is the Director of Residence and
23 Housing, and affirmatively alleges that Mr. Langston's title is Director of Housing and
24 Residence Life.

25 35. Admits that Jason Langston met with Plaintiff, and admits that he asked why
26 she posted the petition that called for Dean Voorhees's resignation. Lacks knowledge or
27 information sufficient to form a belief as to the truth of the remaining allegations asserted
28 and, therefore, denies the same.

1 36. Denies that Mr. Langston intimidated Plaintiff and further denies that ERAU
2 dragged its feet in handling Plaintiff's Title IX complaint. Admits the remaining allegations.

3 37. Denies that Plaintiff's petition was an exercise protected under the First
4 Amendment or that the First Amendment applies to a private university. Additionally,
5 Paragraph 37 calls for a legal conclusion and, therefore, a response is not necessary. But, to
6 the extent that a response is required, denies.

7 38. Denies.

8 39. Admits, but denies any allegations of wrongful or unlawful conduct on
9 ERAU's part.

10 40. Denies.

11 41. Denies.

12 42. Denies.

13 43. Denies.

14 44. Lacks knowledge or information sufficient to form a belief as to the truth of
15 the allegations and, therefore, denies the same.

16 45. Lacks knowledge or information sufficient to form a belief as to the truth of
17 the allegations and, therefore, denies the same.

18 46. Lacks knowledge or information sufficient to form a belief as to the truth of
19 the allegations and, therefore, denies the same, and further denies any allegations of
20 wrongful or unlawful conduct on ERAU's part.

21 47. Upon information and belief, admits.

22 48. Lacks knowledge or information sufficient to form a belief as to the truth of
23 the allegations and, therefore, denies the same, and further denies any allegations of
24 wrongful or unlawful conduct on ERAU's part.

25 49. Denies.

26 50. Lacks knowledge or information sufficient to form a belief as to the truth of
27 the allegations and, therefore, denies the same, and further denies any allegations of
28 wrongful or unlawful conduct on ERAU's part.

1 51. Lacks knowledge or information sufficient to form a belief as to the truth of
2 the allegations and, therefore, denies the same, and further denies any allegations of
3 wrongful or unlawful conduct on ERAU's part.

4 52. Lacks knowledge or information sufficient to form a belief as to the truth of
5 the allegations and, therefore, denies the same, and further denies any allegations of
6 wrongful or unlawful conduct on ERAU's part.

7 53. Lacks knowledge or information sufficient to form a belief as to the truth of
8 the allegations and, therefore, denies the same, and further denies any allegations of
9 wrongful or unlawful conduct on ERAU's part.

10 **COUNT I**

11 **TITLE IX VIOLATIONS by ERAU**

12 **GENDER/SEX DISCRIMINATION, HOSTILE ENVIRONMENT**

13 54. ERAU realleges and incorporates by reference its previous responses as
14 though fully set forth herein.

15 55. Denies that 20 U.S.C. § 1681(a) is quoted accurately in Paragraph 55.

16 56. Admits.

17 57. Admits that ERAU receives federal funding and that Title IX applies to it.

18 58. Lacks knowledge or information sufficient to form a belief as to the truth of
19 the allegations asserted and, therefore, denies the same, but affirmatively alleges that the
20 Title IX Investigator who investigated the incidents that allegedly occurred on November
21 11, 2019 was unable to verify whether non-consensual sexual contact occurred between
22 Plaintiff and the other ERAU student.

23 59. Lacks knowledge or information sufficient to form a belief as to the truth of
24 the allegations asserted and, therefore, denies the same, affirmatively alleges that the Title
25 IX Investigator who investigated the incidents that allegedly occurred on November 11,
26 2019 was unable to verify whether non-consensual sexual contact occurred between
27 Plaintiff and the other ERAU student, and further denies that Plaintiff's access to an
28 educational opportunity or benefit was barred.

1 verify whether non-consensual sexual contact occurred between Plaintiff and the other
2 ERAU student.

3 71. Lacks knowledge or information sufficient to form a belief as to the truth of
4 the allegations asserted and, therefore, denies the same.

5 72. Denies.

6 73. Denies.

7 74. Denies.

8 75. Denies.

9 76. Denies.

10 **COUNT III**

11 **VIOLATION OF THE SCRA BY DEAN RHONDIE VOORHEES**

12 Paragraphs 77-91 are not alleged against ERAU, and ERAU lacks knowledge or
13 information sufficient to form a belief as to the truth of the allegations asserted therein
14 against Dean Voorhees and, therefore, denies the same, but affirmatively alleges that
15 Plaintiff, at all relevant times, was not covered by the SCRA.

16 **COUNT IV**

17 **RESPONDEAT SUPERIOR – SCRA**

18 92. ERAU realleges and incorporates by reference its previous responses as
19 though fully set forth herein.

20 93. Denies.

21 94. Denies that Plaintiff is entitled to any of the relief she seeks and further denies
22 any allegations of wrongful or unlawful conduct on ERAU’s part.

23 **COUNT V**

24 **RESPONDEAT SUPERIOR**

25 95. ERAU realleges and incorporates by reference its previous responses as
26 though fully set forth herein.

27 96. Denies.

28

1 97. Denies that Plaintiff is entitled to any of the relief she seeks and further denies
2 any allegations of wrongful or unlawful conduct on ERAU’s part.

3 **PRAYER FOR RELIEF**

4 Denies that Plaintiff is entitled to any of the relief she seeks.

5 **JURY DEMAND**

6 Admits that Plaintiff demands a jury trial.

7 **GENERAL DENIAL**

8 ERAU denies any allegation of the First Amended Verified Complaint [Doc. 49] not
9 expressly admitted herein.

10 **DEMAND FOR TRIAL BY JURY**

11 ERAU demands a trial by jury.

12 **DEFENSES**

13 By way of further response, ERAU sets forth the following defenses, some of which
14 are affirmative defenses. In asserting these defenses, ERAU does not assume the burden to
15 establish any fact or proposition where that burden is properly imposed upon Plaintiff,
16 unless they are, in fact, affirmative defenses.

17 1. Plaintiff’s claims, in whole or in part, fail to state a claim upon which relief
18 can be granted.

19 2. Plaintiff has failed to mitigate her alleged damages.

20 3. Plaintiff’s claims, in whole or in part, are barred by the applicable statute(s)
21 of limitations.

22 4. To the extent Plaintiff has alleged any adverse action(s), these action(s) were
23 based on legitimate, non-discriminatory, and non-retaliatory reasons and would have been
24 taken regardless of any alleged discriminatory or retaliatory motive.

25 5. Plaintiff has not shown that discrimination was the cause of her alleged harms.

26 6. ERAU’s actions were in all respects in good faith and for legitimate, non-
27 discriminatory, and non-retaliatory reasons.
28

1 7. ERAU did not knowingly or recklessly act or permit others to act in a way
2 that violated Title IX or the SCRA.

3 8. Plaintiff's claims are barred, in whole or in part, because ERAU's conduct as
4 alleged in the First Amended Verified Complaint [Doc. 49] was not knowing, willful, or
5 intentional.

6 9. ERAU's acts or omissions were in good faith, including, but not limited to,
7 its efforts to comply with Title IX and the SCRA, and neither ERAU nor its agents had
8 reasonable grounds to believe that their actions or omissions violated Title IX or the SCRA.

9 10. Any unlawful or wrongful acts, if any, taken by any of the officers, directors,
10 supervisors, or employees of ERAU were outside the scope of his or her authority, and such
11 acts, if any, were not authorized, ratified, or condoned by ERAU, nor did ERAU know, nor
12 should it have known, of such conduct. Thus, any such actions cannot be attributed or
13 imputed to ERAU.

14 11. Any improper, illegal, or discriminatory or retaliatory actions by any of
15 ERAU's employees were independent, intervening, and unforeseeable acts that were not
16 ratified, confirmed, or approved by ERAU and, thus, cannot be attributed or imputed to
17 ERAU.

18 12. ERAU has instituted and enforces proper and effective anti-discrimination
19 and non-retaliation policies and, upon notice of the allegations in Plaintiff's First Amended
20 Verified Complaint [Doc. 49], took prompt and effective action to respond.

21 13. Assuming, without admitting, discrimination or retaliation occurred, ERAU
22 took immediate and appropriate corrective action to stop and to prevent any such alleged
23 discrimination or retaliation.

24 14. ERAU exercised reasonable care to prevent and promptly correct any alleged
25 discriminatory behavior.

26 15. Plaintiff's damages may be too remote and speculative to be awarded.

27 16. Plaintiff and other non-parties caused or contributed to Plaintiff's alleged
28 damages, if any, thereby reducing or eliminating any damages allegedly owed to Plaintiff.

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17. To the extent that Plaintiff seeks an award of punitive damages, such an award is improper, as ERAU’s acts and omissions were in good faith, and such an award may violate the due process standards under the U.S. Constitution.

18. ERAU reserves the right to plead and to prove such other affirmative defenses as discovery shows are warranted on the facts of this case, including, without limitation, the defenses set forth in Fed. R. Civ. P. 8(c)(1).

WHEREFORE, having fully answered Plaintiff’s First Amended Verified Complaint [Doc. 49], ERAU asks that the Court enter judgment as follows:

That Plaintiff’s First Amended Verified Complaint [Doc. 49] be dismissed with prejudice and that Plaintiff take nothing thereby; and

For such other and further relief as the Court deems just and appropriate, including an award of attorneys’ fees and costs to the extent permitted by law.

DATED this 10th day of May, 2022.

SNELL & WILMER L.L.P.

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