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11 **UNITED STATES DISTRICT COURT**  
 12 **DISTRICT OF ARIZONA**

13 Audrey Davis, an individual,

14 Plaintiff,

15 v.

16 Rhondie Voorhees, personally and as  
 17 Dean of Students at Embry-Riddle Aeronautical  
 18 University; The Embry-Riddle Aeronautical  
 19 University Board Of Trustees; Embry-  
 20 Riddle Aeronautical University; and Tyler  
 21 Smith, an individual,

22 Defendants.

23 Rhondie Voorhees, an individual

24 Counterclaimant,

25 v.

26 Audrey Davis, an individual,

27 Counterdefendant.

NO. 3:21-cv-08249-DLR

**REPLY IN SUPPORT OF  
 DEFENDANT RHONDIE  
 VOORHEES’S MOTION FOR  
 JUDGMENT ON THE  
 PLEADINGS AS TO COUNT III**

28 Defendant/Counterclaimant Rhondie Voorhees (“Dr. Voorhees”), by and through undersigned counsel, submits this reply in support of her Motion For Judgment On The Pleadings As To Count III (the “Motion”) (Doc. 75). The bulk of Davis’s response in

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1 opposition to the Motion (the “Response”) (Doc. 77) is riddled with inappropriate (and  
 2 patently false) factual arguments<sup>1</sup> and vitriol. The remainder of her Response, to the extent  
 3 it doesn’t lobby the Court to take over the function of congress and rewrite  
 4 Servicemembers Civil Relief Act (“SCRA”), twists and contorts statutory definitions and  
 5 case law in an attempt to keep her clearly baseless SCRA claim alive. The Court must enter  
 6 judgment in favor of Dr. Voorhees on Davis’s SCRA claim.

7 **I. Introduction.**

8 “The purpose of the Soldiers' and Sailors' Civil Relief Act is to prevent default  
 9 judgments from being entered against members of the armed services in circumstances  
 10 where they might be unable to appear and defend themselves.” *United States v. Kaufman*,  
 11 453 F.2d 306, 308–09 (2d Cir. 1971).<sup>2</sup> “The apparent purpose of both enactments was to  
 12 protect persons in the military service from having default judgments entered against them  
 13 *without their knowledge.*” *Title Guarantee & Tr. Co. v. Duffy*, 267 A.D. 444, 446–47, 46  
 14

15  
 16  
 17  
 18 <sup>1</sup> Davis’s factual arguments pertain to matters entirely outside of the pleadings and should  
 19 be stricken by the Court or entirely disregarded. *See Lee v. City of Los Angeles*, 250 F.3d  
 20 668, 688 (9th Cir. 2001), overruled on other grounds by *Galbraith v. Cnty. of Santa Clara*,  
 21 307 F.3d 1119 (9th Cir. 2002). Davis makes numerous misrepresentations of fact in her  
 22 Response, and Dr. Voorhees will resist the invitation to transform the Motion into a motion  
 23 for summary judgment by substantively correcting them in this reply.

24 <sup>2</sup> On June 7, 2021, Davis was personally served with the Defamation Lawsuit at her home  
 25 in North Carolina. *See First Amended Complaint (“FAC”), Ex. 3, ¶ 2 (Doc. 49-3)*. She was  
 26 not doing anything for the military at the time, and she was put on notice that a lawsuit was  
 27 filed long before she was personally served. *See Response, Exhibit 2 (Doc. 77-2)* (email  
 28 correspondence sent on May 20, 2021 discussing how a complaint was filed). She had  
 plenty of time to request an extension to file an answer but purposefully waited until after  
 ROTC training started and after default was already entered. *See Response, Davis’s*  
*affidavit, Exhibit 3 at page 8 (Doc. 77-3)* (Davis states that she didn’t start any training  
 until July 2, 2021 – almost a month *after* she was served with the lawsuit). Portraying  
 Davis as someone who was a victim of a “fraudulent default” is truly a dishonest and  
 unethical lie.

1 N.Y.S.2d 441, 443 (App. Div. 1944) (emphasis added).<sup>3</sup> It has been long held that  
 2 legitimate servicemembers (unlike Davis) cannot use the SCRA as a sword against persons  
 3 with legitimate claims. *See Engstrom v. First Nat. Bank of Eagle Lake*, 47 F.3d 1459, 1462  
 4 (5th Cir. 1995) (citing *Slove v. Strohm*, 94 Ill.App.2d 129, 236 N.E.2d 326, 328 (1968)).  
 5 “Unless it is made to appear that the rights of the person in the service will be prejudiced  
 6 by a proceeding against him, the Act is inapplicable.” *Lightner v. Boone*, 222 N.C. 205, 22  
 7 S.E.2d 426, 429 (1942), *aff’d*, 319 U.S. 561, 63 S. Ct. 1223, 87 L. Ed. 1587 (1943). Davis  
 8 should not be permitted to take advantage of the SCRA under the circumstances.

9 There are two sections of the SCRA (§ 3931 and § 3932) at issue in this matter.  
 10 Whether § 3931 or § 3932 applies is determined by whether the alleged servicemember had  
 11 notice of the lawsuit. The plain language of each section speaks for itself in this regard:  
 12

13 **(a) Applicability of section**

14 This section applies to any civil action or proceeding, including any child  
 15 custody proceeding, *in which the defendant **does not make an appearance.***

\*\*\*

16 **(d) Stay of proceedings**

17 In an action covered by this section in which the defendant is in military  
 18 service, the court shall grant a stay of proceedings for a minimum period of  
 19 90 days under this subsection upon application of counsel, or on the court's  
 20 own motion, if the court determines that--

(1) there may be a defense to the action and a defense cannot be presented  
 without the presence of the defendant; or

(2) after due diligence, ***counsel has been unable to contact the defendant***  
 or otherwise determine if a meritorious defense exists.

21 **(e) Inapplicability of section 3932 procedures**

22 *A stay of proceedings under subsection (d) shall not* be controlled by  
 23 procedures or requirements ***under section 3932*** of this title.

24 **(f) Section 3932 protection**

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 26  
 27 <sup>3</sup> Davis tactically made the decision to allow default to be entered. Davis was personally  
 28 served with the summons (which warns against default) and complaint long before she  
 started her ROTC training.

1 *If a servicemember who is a defendant in an action covered by this section*  
2 *receives actual notice of the action, the servicemember may request a stay*  
3 *of proceeding **under section 3932** of this title.*

4 50 U.S.C. § 3931 (emphasis added). This section plainly states that it applies when the  
5 defendant does not appear and does not have actual notice.

6 This section did not apply to Davis. As discussed, Davis had actual notice of the  
7 Defamation Lawsuit and personally appeared in the case on July 19, 2021 -- immediately  
8 after the entry of default, and before Dr. Voorhees had an opportunity to seek a default  
9 judgment. *See* Motion to Stay/Continue, attached hereto as **Exhibit 1**, (with filing date of  
10 7/19/2021); *see also* Declaration On Default, dated July 8, 2021 (Doc. 49-3). Moreover,  
11 Davis sought a stay under § 3932,<sup>4</sup> which, in pertinent part, states as follows:

12 **(a) Applicability of section**

13 This section applies to any civil action or proceeding . . . in which the  
14 plaintiff or defendant at the time of filing an application under this section--  
15 (1) is in military service or is within 90 days after termination of or release  
16 from military service; and

17 **(2) has received notice of the action** or proceeding.

18 \* \* \*

19 **(e) Coordination with section 3931**

20 A servicemember who applies for a stay under this section and is  
21 unsuccessful **may not seek the protections afforded by section 3931** of this  
22 title.

23 50 U.S.C. § 3932 (emphasis added). This section clearly indicates that it applies when the  
24 alleged servicemember has notice of the action. However, Davis’s SCRA claim is based on  
25 § 3931 – which did not apply to her. Accordingly, as a matter of law, Davis’s SCRA claim  
26 should be dismissed with prejudice, and judgment must be entered in favor of Dr.  
27 Voorhees.

28 Additionally, independent of the Court’s legal conclusion regarding the issue above,

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<sup>4</sup> *See* Doc. 77-3.

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1 the section that allegedly applied to Davis states, “A servicemember who applies for a stay  
2 under this section and is unsuccessful may not seek the protections afforded by section  
3 3931.” 50 U.S.C. § 3932. Davis applied for a stay in the Defamation Case and was not  
4 successful at any point. *See* Minute Entries, attached hereto as **Exhibit 2**.<sup>5</sup> As a matter of  
5 law, Davis’s SCRA claim fails, and the Court must enter judgment in favor of Dr.  
6 Voorhees.

7 **II. Davis was not a “servicemember” for purposes of the SCRA.**

8 Davis fails to address the plain language of her ROTC Contract (the “Contract”) as  
9 outlined in the Motion. Again, Davis was a fulltime student who agreed to enlist in the  
10 Reserve Component of the Army and could be ordered to active duty as an enlisted soldier  
11 after graduation or being disenrolled from the ROTC program. *See* Motion, Exhibit 2 (Doc.  
12 75-3). Likewise, Davis ignores that it has long been held that an ROTC cadet who fails to  
13 commission remains a civilian. *United States v. You Lo Chen*, 170 F.2d 307, 310 (1st Cir.  
14 1948) (“[T]here can be no military or naval service to be characterized as honorable, or  
15 otherwise, until the alien, by induction or enlistment, shall have become a member of one  
16 of the armed services of the United States,” despite “two years of training in the Reserve  
17 Officers' Training Corps at the University of Illinois.”).

18  
19 Davis is attempting to have the Court legislate from the bench by reading words into  
20 the SCRA that do not exist. More specifically, Davis would like the Court to amend the  
21 SCRA to include ROTC cadets; however, it makes little sense that ROTC cadets, who were  
22 not inducted into the military, could be considered servicemembers for purposes of the  
23 SCRA when the statute specifically excludes “full-time National Guard duty.”

24 The SCRA protects active duty servicemembers of the United States military from  
25

26  
27 <sup>5</sup> A status conference on Davis’s motion to stay was held on September 20, 2021, and oral  
28 argument was set on her motion. After oral argument, an evidentiary hearing was set on  
Davis’s motion to stay.

1 certain obligations during the period in which they are engaged in fulltime active military  
2 service. *See* 50 U.S.C. § 3901, et seq.

3 The term “military service” means--

4 (A) in the case of a servicemember who is a member of the Army, Navy,  
5 Air Force, Marine Corps, or Coast Guard--

6 (i) active duty, as defined in section 101(d)(1) of Title 10, and

7 (ii) in the case of a member of the National Guard, includes service under a  
8 call to active service authorized by the President or the Secretary of  
9 Defense for a period of more than 30 consecutive days under section 502(f)  
10 of Title 32 for purposes of responding to a national emergency declared by  
11 the President and supported by Federal funds. . . .

12 50 U.S.C. § 3911(2).

13 The term “active duty” means *full-time duty in the active military service*  
14 of the United States. Such term includes full-time training duty, annual  
15 training duty, and attendance, *while in the active military service*, at a  
16 school designated as a service school by law or by the Secretary of the  
17 military department concerned. **Such term does not include full-time  
National Guard duty.**

18 10 U.S.C. § 101(d)(1) (emphasis added).

19 If congress saw fit to exclude fulltime National Guard servicemembers from the  
20 SCRA’s protections, clearly there is no “wobble room” construe the statute as being  
21 inclusive of ROTC cadets who were “Ordered to Active Duty *for Training* (ADT).”  
22 Notably, the only way National Guard members can qualify for protection under the SCRA  
23 is “under a call to active service authorized by the President or the Secretary of Defense for  
24 a period of more than 30 consecutive days under section 502(f) of Title 32 for purposes of  
25 responding to a national emergency declared by the President and supported by Federal  
26 funds.” 50 U.S.C. § 3911(2)(A)(ii). Davis’s citation to cases that pertain to the Veterans  
27 Benefits Act, the *Feres* doctrine, and The Federal Tort Claims Act offer no support for  
28 Davis’s goal to have the Court rewrite the SCRA.

1 Similarly, Davis cites to 50 U.S.C. § 3917 in the hopes of finding some support for  
2 her position. However, the SCRA protections are specifically limited by the term “military  
3 service.” 50 U.S.C. § 3917 (“A member of a reserve component who is ordered to report  
4 for *military service* . . . .”). Therefore, for the same reasons as discussed above, this section  
5 offers no help to Davis. As a matter of law, the Court must enter judgment in favor of Dr.  
6 Voorhees on Davis’s SCRA claim.

7  
8 **III. Davis offers no legal authority whatsoever to support her position that  
9 the SCRA applies to the entry of default at issue (or any other default).**

10 Davis’s argument that the definition of “judgment” under the SCRA allows the  
11 Court to expand the statute to encompass entries of default makes no sense. In fact, the  
12 definition only reinforces Dr. Voorhees’s position. The SCRA defines “judgment” to mean  
13 “any judgment, decree, order, or ruling, final or temporary.” 50 U.S.C. § 3911(9). The  
14 items listed in the definition are *decisions or rulings* made by a judge. They are not  
15 procedural events, such as an entry of default. A judge does not enter default, and no  
16 default was entered by the court or the judge in the Defamation Case. As Davis recognizes  
17 in her Response, “by operation of Arizona procedure, default was immediately entered” in  
18 the Defamation Case. Response, 3:18-19 (Doc. 77).

19 Similarly, Davis appears to cite to The Judge Advocate General’s School’s Guide to  
20 the Servicemembers Civil Relief Act, a nonauthoritative source. However, the portion  
21 quoted by Davis does not remotely support her position. Again, if anything, it supports Dr.  
22 Voorhees’s position. The applicable portion quoted specifically states that the “focus needs  
23 [to] be placed on the meaning of any *court decision*.” Response, 11:10-11 (Doc. 77). And  
24 as discussed, the court does make any type of “decision” when there is an entry of default.

25 The same is true regarding the child support case discussed in the Response. In  
26 *Murdock v. Murdock*, 526 S.E.2d. 241 (S.C. App. 1999), the court entered an actual  
27  
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1 judgment for child support against the servicemember. Again, there was an actual decision  
2 by the court in that case, unlike the Defamation Case.

3 Davis provides numerous citations while discussing the basics of statutory  
4 construction. However, Davis completely ignores the fundamental differences between §  
5 3931 and § 3932 – all which turn on the issue of notice. Under § 3931, there are more  
6 protections for servicemembers, as well as consequences for offenders, when no notice was  
7 provided to the servicemember,<sup>6</sup> whereas the servicemember with notice has less  
8 protections and more responsibilities under § 3932.<sup>7</sup>

9 “Section 521 only requires a plaintiff to file an affidavit ‘before [a court] enter[s]  
10 *judgment* for the plaintiff.’ ” *Willhoit v. Suntrust Mortg., Inc.*, No. 12-CV-8386, 2013 WL  
11 1111823, at \*4 (N.D. Ill. Mar. 18, 2013) (citation omitted) (emphasis added). “There is no  
12 requirement in this Section, or any other section of the SCRA, that requires a plaintiff to  
13 conduct any sort of investigation of a defendant's military status before commencing a suit,  
14 let alone that prevents a plaintiff from commencing suit.” *Id.* “The Court cannot extend the  
15 construction of the SCRA to create new rights.” *Id.*

16  
17 **IV. Davis’s request for certification should be denied.**

18 Davis cannot meet the three requirements for certification under 28 U.S.C. §  
19 1292(b). Firstly, there is no controlling question of law as to which there is substantial  
20 ground for difference of opinion. It has long been held that the SCRA’s affidavit  
21 requirement only applies to default judgments. *See U.S. v. Topeka Livestock Auction, Inc.*,  
22 392 F. Supp. 944, 950 (N.D. Ind. 1975) (finding that the SCRA’s affidavit requirement  
23

24  
25 <sup>6</sup> *See* § 3931 (requiring the court to scrutinize the affidavit before entering a default  
26 judgment, as well as including lenient provisions to set aside a default judgment).

27 <sup>7</sup> *See* § 3932 (requiring certain conditions to be demonstrated before the servicemember is  
28 eligible for a stay, and limiting the protections available if the servicemember fails to  
obtain a stay). It should be noted that Davis couldn’t meet these basic conditions in the  
Defamation Case, which is why she was not successful in obtaining a stay.

1 “applies only to default judgments.”). Additionally, as discussed, it has long been held that  
2 ROTC cadets do not actively serve in the military fulltime until they are commissioned or  
3 otherwise become members of the military. *See United States v. You Lo Chen*, 170 F.2d  
4 307, 310 (1st Cir. 1948) (“[T]here can be no military or naval service to be characterized as  
5 honorable, or otherwise, until the alien, by induction or enlistment, shall have become a  
6 member of one of the armed services of the United States,” despite “two years of training  
7 in the Reserve Officers' Training Corps at the University of Illinois.”).

8  
9 Secondly, an immediate appeal will not materially advance the ultimate termination  
10 of the litigation. While Dr. Voorhees’s counterclaim is not based on a federal question, it  
11 appears that diversity existed between the parties at the time the counterclaim was filed. As  
12 evidenced by the Contract, Davis was a citizen of North Carolina. While Dr. Voorhees’s  
13 alleges in her counterclaim that Davis was a resident of Arizona, the diversity jurisdiction  
14 statute, 28 U.S.C. § 1332, speaks of citizenship, not of residency. To be a citizen of a state,  
15 a natural person must first be a citizen of the United States. *Newman–Green, Inc. v.*  
16 *Alfonzo–Larrain*, 490 U.S. 826, 828, 109 S.Ct. 2218, 104 L.Ed.2d 893 (1989). “The natural  
17 person's state citizenship is then determined by her state of domicile, not her state of  
18 residence.” *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). “A person's  
19 domicile is her permanent home, where she resides with the intention to remain or to which  
20 she intends to return.” *Id.* “A person residing in a given state is not necessarily domiciled  
21 there, and thus is not necessarily a citizen of that state.” *Id.* Moreover, Dr. Voorhees is  
22 capable of alleging an amount in controversy in excess of \$75,000 and intends to seek  
23 leave to amend her counterclaim to properly plead diversity upon the Court’s dismissal of  
24 Davis’s SCRA. Accordingly, the Court should decline Davis’s request for certification.

25 **V. Conclusion.**

26 Based on the foregoing, Dr. Voorhees respectfully requests that the Court enter  
27 judgment dismissing with prejudice Davis’s SCRA claim.  
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RESPECTFULLY SUBMITTED this 28th day of February, 2023.

**RM WARNER, PLC**

By: /s/ Daniel R. Warner, Esq  
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*Attorneys for Rhondie Voorhees*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the submission date referenced above, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF. I further certify that a true and correct copy of the foregoing document is being served via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Allison Shilling  
Allison Shilling, RM Warner, PLC employee

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**DEFENDANT VOORHEES' REPLY IN SUPPORT OF MOTION FOR**  
**JUDGMENT ON THE PLEADINGS**  
**EXHIBIT INDEX**

<b>Exhibit No.</b>	<b>Description</b>
1	Yavapai County Action Motion to Continue 07/19/2021
2	Yavapai County Action Minute Entries 09/20/2021 and 10/26/2021

# **EXHIBIT 1**

Name: Audrey Davis  
Mailing Address: 1103 Overcliff Drive  
Apex, NC 27502  
Daytime Telephone No.: 608-318-1214  
Representing Self, without a Lawyer

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

RHONDIE VOORHES, an individual,  
Petitioner/Plaintiff

Case No. P 1300 CV202100396

vs

MOTION TO CONTINUE/  
MOTION TO DISMISS/  
MOTION TO Uphold the 50 U.S.C.A. § 520

DIVISION: \_\_\_\_\_

AUDREY DAVIS  
Respondent/Defendant

Oral Argument Requested

**ORDER SOUGHT:** The undersigned party moves that the Court enter the following order:  
Motion for court to appoint representation to Service Member

Stay of proceedings until representation and respondent can meet, plan, & gather evidence

Dismissal

**GROUND:** The procedural rule upon which this motion is based is 50 U.S.C. §§ 3901-, and the substantive legal and factual grounds justifying the entry of the above order are contained in

- A memorandum of legal points, statutes and authorities attached as Exhibit 3 & 4
- Affidavits attached as Exhibits \_\_\_\_\_
- Documents attached as Exhibits \_\_\_\_\_
- Other documentation as follows: \_\_\_\_\_

07/16/2021  
Date

Audrey Davis  
Signature

Copy of this pleading mailed to:

Name: RM Warner, PLC  
Address: 8283 N. Hayden Rd #229  
City, State, Zip Scottsdale, AZ 85258  
By: USPS

Date mailed: 8/18/21

## Exhibit 3

### §520. Default judgments; affidavits; bonds; attorneys for persons in service

(1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act [sections 501 to 593 of this Appendix]. Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subsection that facts be established by affidavit.

(2) Any person who shall make or use an affidavit required under this section, or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subsection (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed ,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no

attorney appointed under this Act [sections 501 to 593 of this Appendix], to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act [said sections], shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.

(Oct. 17, 1940, ch. 888, art. II, §200, 54 Stat. 1180; Pub. L. 86-721, §§1, 2, Sept. 8, 1960, 74 Stat. 820.)

## Exhibit 4

### **50 U.S.C. §§ 3901-4043**

The Civil Rights Division of the Department of Justice, created in 1957 by the enactment of the Civil Rights Act of 1957, works to uphold the civil and constitutional rights of all Americans, particularly some of the most vulnerable members of our society. See Civil Rights Division. As part of this work, the Civil Rights Division is tasked with enforcing the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043. See id. at Housing and Civil Enforcement Section.

The SCRA, enacted in 2003 and amended several times since then, revised and expanded the Soldiers’ and Sailors’ Civil Relief Act of 1940 (SSCRA), a law designed to ease financial burdens on servicemembers during periods of military service. See 50 U.S.C. §§ 3901-4043. The SCRA is a federal law that provides protections for military members as they enter active duty. See id. It covers issues such as rental agreements, security deposits, prepaid rent, evictions, installment contracts, credit card interest rates, mortgage interest rates, mortgage foreclosures, civil judicial proceedings, automobile leases, life insurance, health insurance and income tax payments. See id.

The location of the SCRA within the United States Code changed in late 2015. Previously found at (codified and cited as) 50 U.S.C. App. §§ 501-597b, there was an editorial reclassification of the SCRA by the Office of the Law Revision Counsel of the United States House of Representatives that became effective on December 1, 2015. The SCRA is now found at (codified as) 50 U.S.C. §§ 3901-4043.

### **Benefit and Protection No. 2 – Protections against default judgments. 50 U.S.C. § 3931.**

In any civil court proceeding in which the defendant servicemember does not make an appearance, a plaintiff creditor must file an affidavit with the court stating one of three things: 1) that the defendant is in military service; 2) that the defendant is not in military service; or 3) that the creditor is unable to determine whether or not the defendant is in military service after making a good faith effort to determine the defendant’s military service status. Id. at § 3931(b)(1). This comes up most frequently for the Department of Justice in the context of judicial foreclosure proceedings. [Note: Foreclosures typically proceed in one of two ways, either judicially (through a court process), or non-judicially (without a court’s involvement). The way in which the SCRA treats the two types of foreclosure proceedings is very different, see 50 U.S.C. §§ 3931, 32 & 53, and states typically specify which way foreclosures may proceed within their borders.]

To verify an individual's military service status, one may search the Department of Defense's Defense Manpower Data Center ("DMDC") database. This database may be located online at: <https://scra.dmdc.osd.mil/>.

The SCRA states that for civil court proceedings where a defendant servicemember has not made an appearance and it seems that he or she is in military service, a court may not enter a default judgment against that defendant until after it appoints an attorney to represent the interests of that defendant servicemember. 50 U.S.C. § 3931(b)(2). The court must stay a civil court proceeding for at least 90 days if that appointed attorney has been unable to contact the defendant servicemember, or if there may be a defense to the action that requires that the defendant be present. Id. at § 3931(d).



Chris Theis <ctheis6@gmail.com>

### AZ e-Filing Receipt for Submission ID 1226895

1 message

customerservice@ncourt.com <customerservice@ncourt.com>  
To: ctheis6@gmail.com

Fri, Jul 16, 2021 at 5:15 PM

YOUR RECEIPT >>

**Do not reply to this email.**

Paid To

Name: Yavapai County  
Address 1: 120 S Cortez St  
Address 2:  
City: Prescott  
State: Arizona  
Zip: 86303

Payment On Behalf Of

Name(s): AUDREY DAVIS

Description	Case Number	Application Fee	Filing Fee	Total
First Appearance - P1300CV202100396 RHONDIE VOORHEES vs AUDREY DAVIS et al.	P1300CV202100396	\$0.00	\$130.00	\$130.00
Multipurpose Motion	P1300CV202100396	\$6.50	\$0.00	\$6.50

Vendor: **eUniversa**

**Service Fee: \$4.10**

EFSP Filing ID: **1226895**

Receipt Number: 821315194880163894

**Total Amount Paid: \$140.60**

Receipt Date: 7/16/2021 2:15:00 PM

Keyword / Matter Number:

Billing Information

Organization Name  
First Name Chris  
Last Name Theis  
Email [ctheis6@gmail.com](mailto:ctheis6@gmail.com)  
Street [1103 Overcliff Drive](#)  
City Apex  
State/Territory NC  
Zip 27502

Credit / Debit Card Information

Card Type Visa  
Card Number \*\*\*\*\*2544

IMPORTANT INFORMATION >>

- You will receive a status notification (via email) once your submission has been processed by the court.



Chris Theis &lt;ctheis6@gmail.com&gt;

## AZ e-Filing Receipt for Submission ID 1227679

1 message

customerservice@ncourt.com <customerservice@ncourt.com>  
To: ctheis6@gmail.com

Sun, Jul 18, 2021 at 4:31 PM

YOUR RECEIPT &gt;&gt;

Do not reply to this email.

## Paid To

Name: Yavapai County  
Address 1: 120 S Cortez St  
Address 2:  
City: Prescott  
State: Arizona  
Zip: 86303

## Payment On Behalf Of

Name(s): AUDREY DAVIS

Description	Case Number	Application Fee	Filing Fee	Total
Multipurpose Motion	P1300CV202100396	\$6.50	\$0.00	\$6.50

Vendor: **eUniversa**Service Fee: **\$0.20**EFSP Filing ID: **1227679**

Receipt Number: 821315207459712345

Total Amount Paid: **\$6.70**

Receipt Date: 7/18/2021 1:31:03 PM

Keyword / Matter Number:

## Billing Information

Organization Name  
First Name Chris  
Last Name Theis  
Email ctheis6@gmail.com  
Street 1103 Overcliff Dr  
City Apex  
State/Territory NC  
Zip 27502

## Credit / Debit Card Information

Card Type Visa  
Card Number \*\*\*\*\*7689

IMPORTANT INFORMATION &gt;&gt;

- You will receive a status notification (via email) once your submission has been processed by the court.



Chris Theis <ctheis6@gmail.com>

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## Your Payment Refund Has Been Initiated

---

customerservice@ncourt.com <customerservice@ncourt.com>  
To: ctheis6@gmail.com

Mon, Jul 19, 2021 at 8:07 AM



A refund of \$3.90 has been initiated to the account used in the transaction below.  
Please note that it may take several business days for your financial institution to credit your account in response to this refund.  
Please call 800-701-8560 if you have any questions.

Sincerely,  
Refund Department  
nCourt LLC

Date Submitted: 7/16/2021 2:15:00 PM  
Item Number: P1300CV202100396, P1300CV202100396  
Amount Paid: \$136.50

Court Amount Submitted: \$136.50  
Court Amount Refunded: \$3.90  
Net Amount Paid to Court: \$132.60

[Quoted text hidden]

# **EXHIBIT 2**

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI

**FILED**  
Date: **September 20, 2021**  
**5 o'clock P.M.**  
**Donna McQuality, Clerk**  
By: **C. Barton**  
**Deputy**

RHONDIE VOORHEES, ) P1300CV202100396  
Plaintiff ) V1300CV  
vs ) Date September 20, 2021  
 ) Division 2  
 ) Hon. John Napper  
 ) [ ] **PRETRIAL** [Minute Entry]  
AUDREY DAVIS, et al. ) [ ] **SCHEDULING** [Minute Entry]  
Defendant ) [X] **STATUS CONFERENCE** [Minute Entry]  
 )  **Telephonic**

START TIME: 10:03 a.m. END TIME: 10:21 a.m.

[X] Plaintiff \_\_\_\_\_ appears Pro Per, with / by Counsel Daniel Warner (TEAMS)  
[X] Defendant \_\_\_\_\_ appears Pro Per, with / by Counsel Marc Randazza (TEAMS)  
[ ] Defendant \_\_\_\_\_ appears Pro Per, with / by Counsel \_\_\_\_\_  
[ ] Defendant \_\_\_\_\_ appears Pro Per, with / by Counsel \_\_\_\_\_

**STATUS** The request to appoint counsel is moot. Defense Counsel requests the Court extend the Defendant's deadline by 90 days due to her active military status. Discussion ensues regarding amending the complaint. The Court counts Defense Counsel's objection as a motion to strike. The Court **denies** the motion to strike. The motion to strike may be revisited at the oral argument. Plaintiff's Counsel may file a responsive pleading. The Court does not need a Reply from Defense Counsel.

Trial [ ] confirmed [ ] set on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m., pretrial at \_\_\_\_\_ a.m., \_\_\_\_\_ days allotted. [AE]  
The jury will be selected in accordance with the Rules of Civil Procedure.  
\_\_\_\_\_ jurors will be called to the box. Each side is allowed \_\_\_\_\_ strikes  
Eight person jury with \_\_\_\_\_ alternate(s); \_\_\_\_\_ of \_\_\_\_\_ may return a verdict or \_\_\_\_\_ of \_\_\_\_\_ may return a verdict.

**PURSUANT TO ADMINISTRATIVE ORDER 2018-05, either party may make a written request to YavapaiJuryServices@courts.az.gov for a list of prospective juror names at least five (5) days prior to trial. Any lists provided must be returned to the Jury Commissioner's office at the conclusion of jury selection.**

**IT IS ORDERED** [ ] setting [ ] continuing [ ] confirming the following deadlines or hearings:  
COMPLETION OF DISCOVERY/DISCLOSURE \_\_\_\_\_ days prior to trial  
DEADLINE FOR ALL MOTIONS *IN LIMINE* \_\_\_\_\_ days prior to trial  
DEADLINE FOR ALL DISPOSITIVE MOTIONS \_\_\_\_\_ days prior to trial  
JOINT PRETRIAL STATEMENT (including any deposition testimony issues): [ ] waived [ ] due \_\_\_\_\_ days prior to trial  
EXCHANGE EXHIBITS OR COPIES THEREOF and Furnish All Exhibits to Clerk with an Index \_\_\_\_\_ days prior to trial

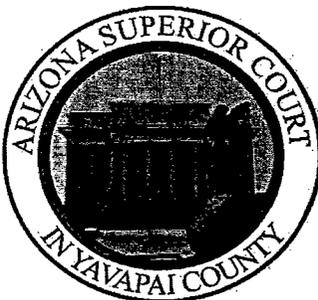
**WARNING: Failure to submit exhibits to the Clerk by the ordered deadline will result in a monetary sanction of not less than \$100 and/or preclusion of exhibits not timely submitted.**

REQUESTED JURY INSTRUCTIONS both by written and electronic format (CD) \_\_\_\_\_ judicial days prior to trial  
REQUESTED VOIR DIRE TO COURT \_\_\_\_\_ judicial days prior to trial  
ANY TRIAL MEMORANDA (OPTIONAL) \_\_\_\_\_ judicial days prior to trial  
ANY SPECIAL COURTROOM EQUIPMENT NEEDS \_\_\_\_\_ judicial days prior to trial

[ ] REFERRING this matter to Court Administration for reassignment for purposes of the settlement conference only.  
[ ] Settlement [ ] Status [ ] Scheduling Conference on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m., in Div. \_\_\_\_\_  
[X] ORAL ARGUMENT ON October 12, 2021, at 3:30 p.m. in Division 2  
[ ] PRETRIAL CONFERENCE \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ .m. [ ] shall be set by separate notice.

[X] Plntf/Atty. RM Warner, PLC (e) [ ] Def/Atty. \_\_\_\_\_ Court Clerk C. Barton  
[X] Def/Atty. Randazza Legal Group, PLLC (e) [ ] Def/Atty. \_\_\_\_\_ Court Reporter FTR Gold  
[ ] Other \_\_\_\_\_ [ ] Notice of Exhibit Deadline provided  
[X ] Div. 2 (e) [ ] Court Admin. \_\_\_\_\_ w/ file TOTAL 0

YAVAPAI COUNTY  
SUPERIOR COURT



HEALTH & SAFETY  
SCREENING  
GUIDELINES

Effective June 1, 2020 the Yavapai County Superior Court will be practicing health and safety measures for those persons coming into the courthouses. Please note the following procedures that court staff will be following until further notice.

- Masks are optional for judicial officers, court staff, jurors and the public.
  - ◊ If you have not be fully vaccinated, we strongly encourage you to wear a mask.
  - ◊ Masks are available upon request.
- You will be asked the following questions prior to entering through the magnetometer:
  - ◊ *Have you tested positive or experienced any symptoms of COVID-19 in the last 10 days?*
  - ◊ *Have you had contact with someone who has tested positive for the COVID-19 virus in the last 14 days?*

*\* If you answer "yes" to any of these questions, you may be denied entry into the courthouse and told not to return until:*

  - *10 days have passed since the onset of symptoms, 24 hours have passed since fever resolved without use of medication, and other symptoms have improved;*
  - *Fourteen days have passed after close contact with someone with COVID-19 illness with no development of symptoms. A close contact defined as being within 6 feet of an infected person for a cumulative total of 15 minutes or more within a 24-hour period starting from 2 days before the infected person's illness (symptoms) onset or, for asymptomatic persons, 2 days prior to the positive test specimen collection from the infected person;*
  - *A medical diagnosis other than COVID-19 explains a symptom;*
  - *Negative COVID-19 test results no longer indicate COVID-19 infection under the CDC guidelines.*
  - *Visitor reports full vaccination and no COVID-19 symptoms; or*
  - *Visitor reports full recovery from COVID-19 within the last three months and no current COVID-19 symptoms.*

*You may request an exception by completing a form and submitting it to Court Administration for consideration.*

**SYMPTOMS OF COVID-19**

**Fever over 100.4°F or body chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, diarrhea**

**FILED** ✓  
**DATE: 10/26/2021**  
**5 O'Clock P.M.**  
**Donna McQuality, CLERK**  
**BY: L. WILLIAMS**  
Deputy

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YAVAPAI**

**DIVISION: 2**

**DONNA McQUALITY, CLERK**

**HON. JOHN D. NAPPER**

**By: L. WILLIAMS, Deputy Clerk**

**CASE NO. P1300CV202100396**

**DATE: October 26, 2021**

**TITLE:**

RHONDIE VOORHEES, an individual,

(Plaintiff)

**COUNSEL:**

*Daniel R. Warner,*  
RM Warner, PLC (e)

(For Plaintiff)

**vs.**

AUDREY DAVIS and JOHN DOE DAVIS, husband  
and wife,

(Defendants)

*Marc J. Randazza,*  
Randazza Legal Group, PLLC  
2764 Lake Sahara Drive, Suite 109  
Las Vegas, NV 89117

(For Defendants)

**HEARING ON:**

ORAL ARGUMENT

**NATURE OF PROCEEDINGS**

**COURT REPORTER**

LISA CHANEY

**START TIME: 9:08 a.m.**

**APPEARANCES:** Daniel R. Warner, Counsel for the Plaintiff  
Marc J. Randazza, Counsel for the Defendants  
Rhondie Voorhees, Plaintiff  
Audrey Davis, Defendant

This is the date and time set for an Oral Argument.

Counsel present argument.

**IT IS ORDERED:**

- **Setting** an Evidentiary Hearing on **December 14, 2021 at 10:00 a.m.** Counsel and parties may appear by Teams. Out of state, active-duty military personnel may appear by Teams. Any testifying witness shall appear in person.
- **Continuing** Oral Argument on **December 14, 2021 at 10:00 a.m.**

**END TIME: 10:19 a.m.**

c: John D. Napper – Division 2 (e)  
Notice of Exhibit Deadline attached



# Clerk of Superior Court

Donna McQuality, Clerk  
Kelly Gregorio, Chief Deputy

Camp Verde Superior Court  
2840 N. Commonwealth Drive  
Camp Verde, Arizona 86322  
Phone (928) 567-7741  
Fax (928) 567-7720

Yavapai County Courthouse  
120 S. Cortez  
Prescott, Arizona 86303  
Phone (928) 771-3312  
Fax (928) 771-3111

Juvenile Justice Center  
1100 Prescott Lakes Parkway  
Prescott, Arizona 86301  
Phone (928) 771-3103  
Fax (928) 777-7989

## NOTICE OF EXHIBIT DEADLINE

You are hereby notified that exhibits must be received by the Clerk no later than 5:00 p.m. on the deadline indicated in the attached minute entry/order. Failure to comply with the Court ordered deadline will result in the Clerk advising the Court of the submitting party's non-compliance. Sanctions may be imposed, up to and including preclusion of the exhibits. **In the event no deadline has been set, exhibits shall be submitted to the Clerk no later than 5 working days prior to any hearing at which exhibits are to be presented.**

Exhibits shall be submitted to the Clerk's office along with a formal list of exhibits. The list shall include a brief description of each exhibit and the following criteria shall be met:

- Unless otherwise ordered by the Judge, the Clerk no longer accepts items other than paper (8.5"x11"), audio or video for the purpose of marking. **Photographs will be accepted and marked by the Clerk for any other items.**
- In the event the Judge allows larger or unwieldy items, such as large poster boards, drugs, weapons or cash, they will be accepted by the Clerk on the day of the hearing; however, a **photograph of the item shall also be submitted to be marked along with the item.** The Clerk will be requesting release of the unwieldy items at the end of the hearing but will retain the photograph for purpose of appeal.
- Exhibits will be marked consecutively, *as they are received*. If your list refers to an exhibit and that exhibit is not provided at the time of marking, the Clerk will not reserve that number and the numbers of all subsequent exhibits will be marked with the next sequential numbers. Any additional exhibits will be marked at the time they are received. In addition, it is essential that counsel confer in an effort to avoid submitting duplicate exhibits.
- Each multiple page exhibit must be **securely fastened together by staple** or other means. Paper clips, binder clips, or rubber bands **will not** be accepted. Any Acco fasteners used must be long enough to fasten securely. You may also provide an *optional* single slip of colored paper with the exhibit number on it, which will serve as an exhibit divider.

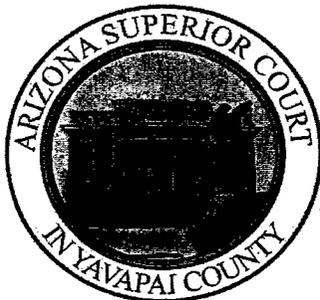
To make arrangements for equipment to be used in the Courtroom at the time of a hearing, please contact the assigned Division in advance.

Thank you for your cooperation in this matter.

Please feel free to contact the following Clerks if you have any questions:

Verde Valley Exhibit Clerk @ (928) 567-7741  
Prescott Exhibit Clerk @ (928) 771-3312  
Juvenile Justice Center Clerk @ (928) 771-3103

YAVAPAI COUNTY  
SUPERIOR COURT



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