
PARTIES/ATTORNEYS

Plaintiffs	Cinthia Castro-Diaz and Francisco Robledo	Esteban L. Valenzuela, Esq.
Defendants	Eric Xiong; Cianna Marquez; Shana J. Marquez	Mark Posard Lisa Y. An Gordon Rees Scully Mansukhani, LLP

TENTATIVE RULING

For all the reasons discussed below, the court will grant the motion in part and stay this proceeding until September 1, 2025. The motion is otherwise denied.

According to the complaint, on August 5, 2024, plaintiff Cinthia Castro-Diaz was driving a 2019 Toyota Highlander when it was struck by a Tesla vehicle driven by defendant Eric Xiong with the consent of defendants Cianna Marquez and Shana J. Marquez, causing injury. Plaintiff, along with her husband Francisco Robledo, filed their complaint on February 6, 2025. On April 17, 2025, defendants filed an answer.

On April 3, 2025, plaintiff's counsel received an email from defendant Eric Xiong, which attached a letter titled "Request for Stay of Proceedings Under the Servicemembers Civil Relief Act." Defendant Xiong did not file it with the court. Instead, both parties attached a copy to their respective Case Management Statements for the June 9, 2025 conference to apprise the court of the request. The court deemed the letter to be a motion, continued the matter to August 12, 2025, and ordered opposition and reply to be filed pursuant to statutory deadlines.

In 2003, the Soldiers' and Sailors' Civil Relief Act of 1940 was amended and renamed the Servicemembers Civil Relief Act. (Pub.L. No. 108-109, § 1 (Dec. 19, 2003) 117 Stat. 2835, codified as amended at former 50 U.S.C. Appen. §§ 501-596 [now at 50 U.S.C. § 3901 et seq.].) The SCRA applies to any judicial proceeding in state court, except criminal proceedings. (50 U.S.C. § 3912(a) & (b).) Upon application, a military service member who is a party to a civil action is entitled to a stay of the proceedings for at least 90 days. (50 U.S.C. § 3932(b)(1).) The application must include:

- a letter setting forth facts that show how “current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear” and
- “[a] letter ... from the ... commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized ... at the time of the letter.”

(50 U.S.C. § 3932(b)(2)(A) & (B).)

“ ‘The court must stay the proceeding for not less than 90 days’ ” upon such an application. (*In re A.R.* (2009) 170 Cal.App.4th 733, 742.) “ ‘The stay is required whenever there is a showing of how military duty materially affects a servicemember's ability to appear in the action supported by a letter from the servicemember's commanding officer.’ ” (*Ibid.*)

The Act was intended to prevent any advantage to the civilian litigant and disadvantage to the soldier or sailor litigant growing out of the fact that one of the litigants was in the military service. It does not grant an absolute right to a stay whenever it appears that one of the parties is in the military service. (*Johnson v. Johnson* (1943) 59 Cal.App.2d 375; *Christine M. v. Superior Court* (1999) 69 Cal.App.4th 1233, 1243.) A ruling on a stay request under the Act depends on the facts and circumstances of each case and is committed to the sound discretion of the trial court. (*Christine M.*, *supra*, at 1243; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318–319.) Cases construing the act “have required a showing by the party engaged in military service that he or she is actually unavailable to participate and that his or her rights would be adversely affected by virtue of absence from trial” and that “ ‘mere contentions of unavailability’ ” are not enough to warrant relief under the act.” (*Christine M.*, *supra* [applying provision of the Soldiers' and Sailors' Civil Relief Act to find no abuse of juvenile court's discretion in denying a stay “where a ‘father failed to demonstrate he was unable to comply with [a court-ordered parenting plan] by reason of his attendance in the military and that a stay was needed to protect the father's interests or to permit him to defend the action’ ”].)

Here, the letter from Xiong states: “My ability to appear and protect my interests in this action is materially affected by reason of my military service.” It then indicates that he is expected to be underway until August 2025, with an earliest possible return from his tour of duty in Japan in January of 2026. His commanding officer states that military leave is not authorized for Eric Xiong at this time.

Notably, Xiong’s letter contains no explanation of *how* his service affects his ability to appear and protect his interests in this action, and because this letter was unaccompanied by a motion, the court is left to speculate. At best, it suggests that

Xiong is unavailable because he is on deployment. While the court can infer that Xiong may be actually unavailable while he is underway on a ship, that assignment is expected to end in August 2025,¹ when he will continue his tour of duty in Japan through January 2026. The letter does not address his availability in Japan. While his commanding officer indicates that military leave is not authorized for Xiong, leave does not seem required to address, for example, any discovery that may need responses.

Xiong has shown that he was available to retain counsel to file an answer on April 17, 2025, just two weeks after the letter requesting a stay was emailed to counsel and during the time Xiong was reportedly on active duty. As he has already shown an ability to communicate with his own counsel while on active duty the court does not find that Xiong's ability to appear and protect his interests in this action is materially affected by reason of my military service, at least not while he's not underway, especially at this early stage of the proceeding.

Accordingly, the court will stay this proceeding until September 1, 2025, at which time Xiong is expected to have completed his service at sea and be stationed in Japan.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)

¹ For security reasons, Xiong could not be more specific about when his service while underway on the ship would end. The court will assume that Xiong will be stationed in Japan starting September 1, 2025.