UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MARYLAND
(Northern Division)

LATASHA ROUSE, et al. *Plaintiffs* *v.* **GOVERNOR WES MOORE, *et al.*** *(in their official capacities on behalf of the State of Maryland)* *Defendants*	**Case No. 1:22-cv-00129-JKB**

COMBINED OPPOSITION TO THE DEFENDANTS' MOTION TO DISMISS THE AMENDED COMPLAINT (Doc. 46)
AND
PLAINTIFFS' CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT

Respectfully Submitted,

/s/Phillip R. Robinson
Phillip R. Robinson
Bar No. 27824
CONSUMER LAW CENTER LLC
10125 Colesville Road, Suite 378
Silver Spring, MD 20901
Phone: (301) 448-1304
Email: phillip@marylandconsumer.com

Attorneys for the Plaintiffs

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Plaintiffs Latasha and Exabia Rouse, Daniel and Jessica Riley, and Oscar and Sherryl Devines ("Plaintiffs"), by their undersigned counsel, do hereby file this Combined Memorandum of Law in Opposition to the State of Maryland's Motion to Dismiss (ECF. 46) ("MTD") and also in support of Plaintiffs' Cross Motion for Partial Summary Judgment and say as follows:

I. INTRODUCTION OF PLAINTIFFS' CLAIMS BEFORE THE COURT

The core question before the Court in this action is whether the State of Maryland (acting through Governor Moore, Justice Fader, Justice Gould, Justice Booth, Justice Watts, Justice Hotten, Justice Biran, and Justice Eaves (each in their official capacities)) owes any duty to protect active duty servicemembers who have no contacts within the State. In addition to the Constitutional protection of basic due process, Congress enacted the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C.A. § 3901, *et seq.* and established certain mandatory responsibilities on the State of Maryland.

First, when a "defendant is in military service, [a] court may not enter a judgment until after the court appoints an attorney to represent the defendant." 50 U.S.C.A. § 3931(b)(2).[1] Further, so a court knows whether the defendant is a protected servicemember, it is also required

> before entering judgment for the plaintiff [to] require the plaintiff to file with the court an affidavit--(A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C.A. § 3931(b)(1).

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[1] To understand the evolution and expanded remedial purpose of the SCRA in the modern era, a comparison of the former statute is illustrative. Under the predecessor statute to the SCRA, a court was granted discretion to stay proceedings while a servicemember was on active-duty status. *Martin v. Wagner*, 25 So. 2d 409, 411 (Ala. 1946). However, the SCRA now "expressly provides for a mandatory stay of proceedings." *In re Marriage of Bradley*, 137 P.3d 1030, 1033 (2006).

These affirmative duties imposed by Congress on the State of Maryland under 50 U.S.C.A. § 3931(b) "appl[y] to **any civil action or proceeding**…in which the defendant does not make an appearance." 50 U.S.C.A. § 3931(a)(emphasis added). To avoid any doubt, Congress also ensured the statute expressly "applies to…each of the States…[in] any judicial or administrative proceeding commenced in any court or agency." 50 U.S.C.A. § 3912(a)(b). *See also* 50 U.S.C.A. § 3911(6). Congress also broadly defined the term "judgment" to mean "any judgment, decree, order, or ruling, final or temporary." 50 U.S.C.A. § 3911(9).

The legislative history also confirms the plain language of these statutory protections as well since they were "need[ed] to be fair to all parties involved by imposing on the courts the obligation to determine whether the military service of the individual had a material effect on his/her ability to protect the rights or to meet financial obligations." 149 Cong. Rec. H3688-03, 149 Cong. Rec. H3688-03, H3700, 2003 WL 21025298, 39 (statement of Rep. Buyer). In addition, "countless authors have been quick to remind us that the act is intended to give a temporary reprieve to a servicemember and that it reflects the need to be fair to all parties by relying upon the courts to determine whether the servicemember's ability to protect his or her rights or to meet obligations has been materially affected by military service." 149 Cong. Rec. H3688-03, 149 Cong. Rec. H3688-03, H3697, 2003 WL 21025298, 30 (statement of Rep. Smith).

Plaintiffs initiated this action after former Defendant George LeMay ("LeMay") was permitted to utilize the state courts of Maryland in violation of the SCRA and the constitutional protection of Due Process. AC[2] at ¶¶ 1-14. Before the State of Maryland permitted LeMay to utilize its courts against them as described *infra*, the Plaintiffs had no contacts within the State of

[2] All references herein to "AC" are intended to be the well pled paragraphs in the Plaintiffs' Amended Complaint (ECF. 42) for Damages and Declaratory and Injunctive Relief.

Maryland for any purpose—i.e., they owned no property in Maryland, they were not residents of Maryland, they had no business in Maryland, and they did not regularly visit Maryland. **MF[3] 6, 15, 22.** Instead, Plaintiffs Latasha Rouse, Daniel Riley, and Oscar Davines were serving in the armed services of the United States and were on active-duty (during all relevant times). **MF 3, 11, 20**. As a result of their active-duty status, all the Plaintiffs (and their spouses)[4] were entitled to two core rights and protections under the SCRA placed upon the State of Maryland. 50 U.S.C.A. § 3931(b)(1)(2).

Even though the plain language of the mandatory duties imposed by Congress in the SCRA on the State of Maryland applies broadly, the State moves to dismiss Plaintiffs' claims asking the Court to ignore plain language and remedial purpose of the statute, to establish judicial exceptions to the SCRA, and to allow active duty servicemembers who serve all Americans to be subjected to state court proceedings in Maryland with no representation and where they have no connection.[5] At bottom, Maryland claims it owes no duties to these Plaintiffs, against whom it allowed Lemay to enroll void or fake judgments and thereafter pursue monies and property without (i) requiring LeMay to present the mandatory 50 U.S.C.A. § 3931(b)(1) affidavits and (ii) without appointing an attorney to represent the Plaintiffs as required by 50 U.S.C.A. § 3931(b)(2) before the judgments were entered. Instead, Governor Moore, Justice Fader, Justice Gould, Justice Booth, Justice Watts, Justice Hotten, Justice Biran, and Justice Eaves (each in their official capacities)(collectively "State of Maryland" or "State") argue that Maryland's courthouse doors are open for business for

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[3] "MF" is show for the summary of material, undisputed facts summarized on Plaintiffs' Annotated Statement of Well Pled and/or Undisputed material Facts in Support of their Opposition to the Defendant State of Maryland's Motion to Dismiss and Plaintiffs' Cross Motion for Partial Summary Judgment.

[4] 50 U.S.C.A. § 3959.

[5] Alternatively, the State of Maryland argues it has no duty under the Constitution to protect the Due Process rights of non-residents who have no connection or contacts with Maryland.

Lemay and others like him who wish to wrongly pursue servicemembers and disregard the protections Congress intended for the State to provide.

Democracy cannot survive if state officials decide to abdicate their responsibilities. Here, had the State of Maryland followed its mandatory duties and required LeMay to present the required § 3931(b)(1) affidavits it would have known the Plaintiffs were entitled to protections Congress intended under the SCRA including (ii) the appointment of counsel by the State before any judgment was enforced by LeMay as required by § 3931(b)(2). Instead, because the State ignored its mandatory duties owed to the Plaintiffs, they sustained damages which could have been otherwise avoided. Any attorney appointed to represent the Plaintiffs would have understood LeMay's purported judgments were fake, invalid, and void and of no effect and Maryland had no right to give them life. However, Maryland's laws and procedures, carried out by the Defendants, failed to honor its mandatory SCRA responsibilities and instead shifted its responsibilities under the SCRA onto the Plaintiffs. Stunningly, in their motion to dismiss the Defendants wash their hands of any duties owed to the Plaintiffs who were victims of the policies, practices, and rules the Defendants are responsible for carrying out in Maryland.

As a direct and proximate result of the State's failure to follow its mandatory duties under the SCRA, the Plaintiffs have sustained damages and losses. AC at ¶¶ 74-75, 126-127, 159-160; Ex. 1 at ¶ 17; Ex. 2 at ¶¶ 5, 7, 10; Ex. 3 at ¶ 18; Ex. 4 at ¶¶ 5, 7, 9; Ex. 5 at ¶ 21; Ex. 6 at ¶¶ 3-5. Congress specifically authorized Plaintiffs, who are "person[s] aggrieved by a violation of [the SCRA]" to seek and "(1) obtain any appropriate equitable or declaratory relief with respect to the violation; [and] (2) recover all other appropriate relief, including monetary damages." 50 U.S.C.A. § 4042(a).

Since there are no dispute of the material facts necessary to establish the State's liability to the Plaintiffs, Plaintiffs are entitled to a judgment of lability in their favor and against the State of Maryland on their SCRA claims which would leave a trial for the award of damages and appropriate injunctive and declaratory relief. Plaintiffs bring their cross motion now since the facts necessary to establish the State of Maryland's liability are all available from the public records and freely admitted to by the State of Maryland's motion and will narrow the issues actually remaining in dispute in this litigation.

II. SUMMARY OF THE MATERIAL FACTS NOT IN DISPUTE AND REMAINING WELL PLED FACTS

Plaintiffs incorporate their Annotated Statement of Material Facts attached hereto.[6]

III. PROCEDURAL HISTORY

Plaintiffs commenced this action against Mr. Lemay and the State of Maryland on January 18, 2022. ECF. 1. Even through the State was properly served (ECF. 14), it failed to timely appear. Instead, the State belatedly appeared by its counsel in this case on April 6, 2022 and sought a further extension of time to respond to Plaintiffs' claims (even though the State's deadline to do so had already passed). ECF. 15-16. Notwithstanding the tardiness of the State's appearance and request for an extension, Plaintiffs consented. ECF. 16. The Plaintiffs consented to further requests for extension by the State on May 20, 2022 and again on May 27, 2022. ECF. 19, 21. Thereafter the State finally responded to Plaintiffs' original Complaint on June 3, 2022. ECF. 23. But the core of the arguments advanced by the State disregarded longstanding precedent expressly

[6] Referenced in the Annotated Statement are exhibits presented in Plaintiffs' Combined Appendix of Exhibits also filed contemporaneously with this paper. Exhibits 3(a), 7-11 (and certain of their subparts) of that Combined Appendix are public records and the Plaintiffs request the Court that judicial notice of pursuant to Fed. R. Evid. 201. In addition, Exhibits 7-9 (including their subparts) are documents specifically referenced in the AC and part of the Plaintiffs' claims before the Court.

authorizing the type of then declaratory and injunctive relief sought by the Plaintiffs' origional complaint.

Following the State's initial motion, the Supreme Court also issued its opinion in *Torres v. Texas Dep't of Pub. Safety*, 142 S. Ct. 2455 (2022) discussed *infra*. On July 13, 2022 Plaintiffs requested whether in light of *Torres* the State wished to withdraw its arguments to dismiss and/or obtain summary judgments but the State declined to do so. As a result Plaintiffs were forced to respond to the State's initial motion and address the *Torres* decision which was dispositive of the State's original arguments (and largely those it continues to advance as discussed *infra*). ECF. 28.

The State and the Plaintiffs engage in informal discussions to try to reach a resolution on August 16, 2022 which included former Attorney General Frosh. Thereafter, the attorneys for the State of Maryland from the Courts and Judicial Affairs Division formally requested the matter be stayed pending a settlement conference before a Magistrate Judge. ECF. 30. In a communication dated 9/28/2022, the State's counsel represented "we will be working on resolving before the settlement conference and are in the process of communicating with the courts and the AG regarding same. We'll keep you advised of our progress." No further communications from anyone on behalf of the State was conveyed to the Plaintiffs until January 9, 2023 despite the prior assurances to the contrary.

Pursuant to the Judge Maddox's Settlement Conference Order (ECF. 33), Plaintiffs submitted a settlement demand to the State of Maryland on December 13, 2022. By that same Order the State of Maryland was required to respond within a week but it did not do so until January 10, 2023. The Parties appeared for the scheduled mediation session with Judge Maddox on January 24, 2023. The representatives of the State of Maryland who appeared at the conference

were excused after a short time and did not participate in the conference the State itself had requested (ECF. 30).

Following the Settlement Conference, the State and the Plaintiffs presented a Joint Status Report to the Court. ECF. 37. The Court approved the proposed briefing schedule in the Joint Status Report. ECF. 39. The Plaintiffs thereafter filed their Amended Complaint on March 3, 2023 (ECF. 42) and the State of Maryland moved to dismiss Plaintiffs' amended claims on April 7, 2023. ECF. 46.

IV. STANDARDS OF REVIEW

a. Motion to Dismiss Pursuant to FED. R. CIV. P. 12(b)(1)

When a defendant asserts that the complaint fails to allege sufficient facts to support subject matter jurisdiction, the court applies a standard patterned on Fed. R. Civ. P 12(b)(6) and assumes the truthfulness of the facts alleged. *Kerns v. United States*, 585 F.3d 187, 193 (4th Cir. 2009). Much like a 12(b)(6) motion, the court "must presume that all factual allegations in the complaint are true and make all reasonable inferences in the plaintiff's favor in ruling on a motion to dismiss for lack of subject matter jurisdiction." *Khoury v. Meserve*, 268 F.Supp 2d. 600, 606 (D. Md. 2003). However, unlike a 12(b)(6) motion, when considering a motion to dismiss under 12(b)(1), a court may consider evidence outside the four corners of the complaint and allow for discovery and resolve factual disputes. *Napper v. United States*, 374 F. Supp. 3d. 583, 586-87 (S.D.W. Va. 2019).

"A dismissal for lack of standing—or any other defect in subject matter jurisdiction—must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits." *Southern Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2019).

b. Motion to Dismiss Pursuant to FED. R. CIV. P. 12(b)(6)

The Fourth Circuit has explained, "[t]o survive a Rule 12(b)(6) motion to dismiss, the facts alleged 'must be enough to raise a right to relief above the speculative level' and must provide 'enough facts to state a claim to relief that is plausible on its face.'" *Robinson v. American Honda Motor Co., Inc.*, 551 F.3d 218, 222 (4th Cir. 2009) (quoting *Bell Atl. Corp. v. Twombly,* 550 U.S. 544 (2007)). In *Twombly* the Court considered whether the plaintiff stated "enough facts to state a claim to relief that is plausible on its face," *Twombly, 550 U.S.* at 570, observing that "plaintiff's obligation to provide grounds for his entitlement to relief requires more than labels and conclusions, and formalistic recitation of the elements of a cause of action will not do." *Id.* at 545. However, "[o]nce a claim has been stated adequately, it may be supported by showing any set of facts consistent with the allegations in the complaint." *Id.* at 546. "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A court must also view the factual allegations of the complaint "in the light most favorable to plaintiff." *Battlefield Builders, Inc. v. Swango,* 743 F.2d 1060, 1062 (4th Cir. 1984).

c. Motion for Summary Judgment (Partial) Pursuant to FED. R. CIV. P. 56

Fed. R. Civ. P 56(a) requires the Court to "grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." A dispute as to a material fact "is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *J.E. Dunn Const. Co. v. S.R.P. Dev. Ltd.*

P'ship, 115 F. Supp. 3d 593, 600 (D. Md. 2015) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)).

While early summary judgment might be inappropriate in matters involving "complex factual questions" (*Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 247 (4th Cir. 2002)), matters involving questions of law are appropriate for summary judgment. *Intel Corp. v. Future Link Sys., LLC*, No. CV 14-377-LPS, 2015 WL 4652782, at *2 (D. Del. Aug. 5, 2015); *Leerar v. WOW Air EHF*, No. 16-CV-06011-EDL, 2017 WL 11493651, at *3 (N.D. Cal. Sept. 5, 2017). This Court "may [also] resolve the legal questions between the parties as a matter of law and enter judgment accordingly." *Thompson Everett, Inc. v. Nat'l Cable Advert., L.P.*, 57 F.3d 1317, 1323 (4th Cir. 1995). *See also Union Pac. Land Res. Corp. v. Moench Inv. Co.*, 696 F.2d 88, 93 (10th Cir. 1982).

V. ARGUMENT

a. The State of Maryland's Temporal View of the SCRA and Due Process Issues Presented in this Action are Wrong and Inconsistent with the Well Pled and Undisputed Material Facts Before the Court and with the Judicially Noticed Fact of the Maryland Justices' Recent Rules Change, and Should be Rejected

At bottom, the State argues that the Plaintiffs' claims fail on the theory that (i) the registration and enrollment of purported judgments in Maryland and (ii) the subsequent enforcement of those purported judgments, are not entitled to the remedial protections and duties placed upon the State of Maryland by Congress in the SCRA at 50 U.S.C.A. § 3931(b)(1)(2). The State's position is that the SCRA does not protect active duty servicemembers throughout the lifespan of a civil collection case, but only at the beginning of the action. In other words, the State seems to suggest it owes no duty to ensure the status of servicemembers after the commencement of civil proceedings has changed to "active duty" or to appoint counsel to protect active duty service members who have not appeared in the civil proceedings before any further judgments are

entered against them. Respectfully, the State's desired outcome is misguided and wholly inconsistent with: (i) the undisputed, well pled facts of this case involving Mr. Lemay's presentation and enforcement of fake and void judgments, with the approval of the State of Maryland, before the Plaintiffs appeared in any of the underlying Maryland court proceedings; (ii) the plain language and purpose of the SCRA; and (iii) the Maryland Supreme Court's recent rules change which recognized that over time in any proceedings the need to know the status of a servicemember might change to trigger the required SCRA protections, including the mandatory appointment of counsel before a judgment is entered, since any prior representations might have become stale.

i. The State's Full Faith and Credit Arguments Have No Application to these Plaintiffs and their SCRA and Due Process Claims Against the State of Maryland

To shirk its mandatory requirements under the SCRA owed to the Plaintiffs and others like them, the State of Maryland argues that that the full faith and credit clause of the United States Constitution requires Maryland to recognize a judgment from another state. Motion at 11-12. This argument is not relevant and material to the Plaintiffs' actual claims before this Court since no state is required to give full faith and credit to invalid, fake and void judgments like those utilized by LeMay with the assistance of the State of Maryland's laws and procedures. *Compare Underwriters Nat. Assurance Co. v. North Carolina Life & Accident & Health Ins. Guar. Assn.*, 455 U.S. 691, 704-705 (1982) ("'[A] judgment of a court ... is conclusive upon the merits ... only if the court ... had power to pass on the merits.' " (quoting *Durfee v. Duke*, 375 U.S. 106, 110 (1963)); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). *See also World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)("A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere");

Vanderbilt v. Vanderbilt, 354 U.S. 416, 419 (1957)(same); *Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189, 197(1915)(same). To accept the State's argument would mean that any purported judgment from one state, even if vacated or entered by a court without personal jurisdiction, would become valid without any review when presented for enforcement in another jurisdiction, as happened here. While the State may wish to change hundreds of years of precedents, including those of the Supreme Court discussed herein, it simply does not have such authority under our constitutional structure. Plaintiffs ask the Court to reject Maryland's argument designed to abdicate any Due Process protections owed to non-residents of Maryland to be hauled into Maryland courts for fake and unenforceable judgments presented to it.

There is in this matter no dispute of material fact that the judgments presented to the State of Maryland by Mr. LeMay and allowed to be enrolled in the Riley Proceeding and the Davines Proceeding were invalid judgments which had been vacated and therefore had no legal effect under Texas law from where they came. **MF. 9; MF. 18**; AC at ¶¶ 77-83, 129-134. In both Texas proceedings involving Mr. & Mrs. Riley and Mr. & Davines, Mr. LeMay's purported judgments had been vacated and later his actions had been dismissed "with prejudice to refiling." **MF. 9; MF. 18**; AC at ¶¶ 81, 131-33. Mr. LeMay did not appeal either dismissal against his purported claims. **MF. 9; 18**. AC at ¶¶ 83, 134. Instead he presented to the state court in the Riley Proceeding and also in the Davines Proceeding invalid, fake judgments which were of no legal effect. **MF. 8-9**, 17-18; AC at ¶¶ 42, 77-83, 86, 129-134, 137-139. *See In re Conner*, 458 S.W.3d 532, 534 (Tex. 2015) ("A plaintiff has a duty to 'prosecute its suit to a conclusion with reasonable diligence,' failing which a trial court may dismiss for want of prosecution.") (quoting Callahan v. Staples, 139 Tex. 8, 161 S.W.2d 489, 491 (1942)); *Dueitt v. Arrowhead Lakes Prop. Owners, Inc.*, 180 S.W.3d 733, 738 (Tex. App.--Waco 2005, pet. denied); *Villarreal v. San Antonio Truck & Equip.*, 994

S.W.2d 628, 630 (Tex. 1999); *Klingenschmitt v. Weinstein*, 342 S.W.3d 131, 134 (Tex. App. 2011); *Mossler v. Shields*, 818 S.W.2d 752, 754 (Tex. 1991).

There is also no dispute of material fact that the judgment presented to the State of Maryland by Mr. LeMay and allowed to be enrolled in the Rouse Proceeding was a judgment obtained in Nevada which never had jurisdiction over Mr. & Mrs. Rouse, who had no contacts with that State. **MF. 1**; AC at ¶¶ 53-59. In *Vanderbilt*, the court found a Nevada judgment "void" since "[i]t has long been the constitutional rule that a court cannot adjudicate a personal claim or obligation unless it has jurisdiction over the person of the defendant." *Vanderbilt*, 354 U.S. at 418. In addition, the Nevada court also lacked jurisdiction to even enforce Mr. Lemay's purported contract with Mr. & Mrs. Rouse since the contract violated Hawaii's door to door sales act and the transaction had been canceled by Mr. & Mrs. Rouse. AC at ¶¶ 53, 54, 57; Ex. 5 at ¶ 16; Ex. 6 at ¶ 3. And because Mr. & Mrs. Rouse's purported contract underlying the Nevada Judgment was canceled and violated the Hawaii Door to Door Sales Act it was unenforceable even by any court Nevada or elsewhere. Haw. Rev. Stat. Ann. § 481C-4(b).

Since no valid judgments were actually presented by Mr. LeMay, Maryland's acceptance of the fake, invalid, and void judgments for registration violated the Plaintiff's Due Process rights. The UEFJA limits its scope only to foreign judgments which include "a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this State." CTS. & JUD. PROC. § 11-801. *See also* CTS. & JUD. PROC. § 11-802 ("A filed foreign judgment has the same effect…as a judgment of the court in which it is filed").[7] Fake, invalid,

[7] In Texas, vacated judgments like the ones Mr. LeMay presented to State of Maryland in the Riley Proceeding and the Davines Proceeding have zero effect and are nullities. *Owens-Corning Fiberglas Corp. v. Wasiak*, 883 S.W.2d 402, 410 (Tex. App. 1994). In Nevada, a judgment entered by a court lacking personal jurisdiction over non-residents or based upon an unenforceable contract, just like that presented by Mr. Lemay in the Rouse Proceeding, also has

and void judgments are not entitled to full faith and credit. *Underwriters Nat. Assurance*, 455 U.S. at 704-705; *Rooker,* 263 U.S. at 415-16; *Volkswagen Corp.,* 444 U.S. at 291; *Vanderbilt,* 354 U.S. at 419; *Riverside,* 237 U.S. at 197. Therefore none of the purported judgments before the Court qualify as "foreign judgments" subject to the UEFJA.

As a result, Plaintiffs were denied proper Due Process by being hauled into Maryland court proceedings when they had no contacts with the State. While there does not appear to be any Maryland cases on point, other jurisdictions have applied similar facts and come to same conclusion as the Plaintiffs here. *See e.g.*, *Manley v. Manley*, 591 P.2d 1042, 1042 (Colo. App. 1978) (finding no right to register a purported foreign judgment without a copy of a valid, enforceable judgment); *Kohlbusch v. Eberwein*, 642 S.W.2d 683, 685 (Mo. Ct. App. 1982)(holding foreign judgment could only be "registered in courts having both subject matter jurisdiction and jurisdiction over the person of the defendant"); *Berman v. Cnty. Clerk of New York Cnty.*, 387 N.Y.S.2d 519, 520 (Sup. Ct. 1976)(affirming the rejection of a purported judgment and explaining the petitioner should obtain "[r]elief in the first instance [ftom]…the courts of Washington" where the judgment claimed to come from); *Beck v. Smith*, 296 N.W.2d 886, 893 (N.D. 1980)(requiring a stay upon registration of a foreign judgment before it may be enforced).

The State claims applying basic Due Process to it will cause the entire UEFJA to collapse. Mot. at 11-16. There simply is no evidence to support that argument and it should be rejected.

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no effect. *See e.g.*, *Emeterio v. Clint Hurt & Assocs., Inc.*, 967 P.2d 432, 435 (Nev. 1998). Nevada's "substantial relationship test" stated in *Williams v. United Servs. Auto. Ass'n*, 849 P.2d 265, 266 (Nev. 1993) also requires Hawaii law to apply to Mr. LeMay's purported contract which violated the Hawaii Door to Door Sales Act and thus was unenforceable. Haw. Rev. Stat. Ann. § 481C-4(b).

No full faith and credit is due to fake, invalid, and void judgments, and to grant full faith and credit to such judgments is a *per se* denial of Due Process—exactly what occurred here in the proceedings related to each of the Plaintiffs. The Plaintiffs request the Court find that Plaintiffs' Due Process Rights were denied to them by Maryland's application of the fake and void judgments presented by Mr. Lemay and accepted without any investigation by the state courts. In sum, while the State of Maryland may wish to argue facts not even before the Court to avoid its own practices, procedures, statutes, and customs employed against the Plaintiffs, its full faith and credit arguments simply have no application to these Plaintiffs and their SCRA and Due Process claims.

ii. The Plaintiff Language of the SCRA Applies to the Conduct and Facts at Issue in this Action

The State of Maryland seeks to avoid the scope of the SCRA by claiming that the (i) enrollment of a purported foreign judgment in Maryland, (ii) issuing any writ of garnishment or subpoena in Maryland, or (iii) entering a judgment in favor of judgment creditor are not actually 'judgments' covered by the SCRA. Motion at 12-15. Rather, the State argues that the heading of 50 U.S.C.A. § 3931 which utilizes the term "default judgments" should control when applied by the State's preferred definition. Motion at 15-16. In arguing this, however, the State overlooks Congress' actual definition of the term "judgment" in the SCRA and also the uncontested material facts that before the Plaintiffs appeared in their subject state court proceedings, the State's rules, practices, and procedures permitted judgments to be entered against each of the Plaintiffs and also for those judgments to be enforced. **MF. 1-5, 8-14, 18-23**. As discussed *supra*, Maryland owed mandatory obligations to each of the Plaintiffs under the SCRA (*see e.g.*, 50 U.S.C.A. § 3931(b)(1)(2)) and failed to honor those obligations.

The State of Maryland fails to disclose to the Court the actual definition used by Congress in the SCRA for judgment which cannot be reconciled with the State's narrow view of the remedial

statute: "The term 'judgment' means **any** judgment, decree, order, or ruling, final or temporary." 50 U.S.C.A. § 3911(9) (emphasis added). The use of the term "any" in § 3911(9) is broad. The Fourth Circuit has explained before:

> "[t]he word 'any' is a term of great breadth. Read naturally, [it] has an expansive meaning...." *Mapoy v. Carroll,* 185 F.3d 224, 229 (4th Cir. 1999)(internal quotations and citations omitted). Given Congress's repeated use of the word "any" immediately preceding its list of what may be searched, we find it unreasonable to construe the list restrictively.

United States v. Ickes, 393 F.3d 501, 504 (4th Cir. 2005).

As a result of the use of "any" by Congress in § 3911(9), the definition of judgment under the SCRA should be read "in an expansive manner." *Id.* at 505. The Fourth Circuit more recently explained further:

> As the Supreme Court has indicated, "[r]ead naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.' " *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 219, 128 S.Ct. 831, 169 L.Ed.2d 680 (2008) (quoting *United States v. Gonzales*, 520 U.S. 1, 5, 117 S.Ct. 1032, 137 L.Ed.2d 132 (1997)). And "including" is "not [a term] of all-embracing definition, but connotes simply an illustrative application of the general principle." *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100, 62 S.Ct. 1, 86 L.Ed. 65 (1941); *see also United States v. Hawley*, 919 F.3d 252, 256 (4th Cir. 2019) (explaining that including "is an introductory term for an *incomplete* list of examples"); *Include, Black's Law Dictionary* (10th ed. 2014) ("The participle *including* typically indicates a partial list.").

Alexander v. Carrington Mortg. Servs., LLC, 23 F. 4th 370, 376 (4th Cir. 2022).

The State's statutory analysis here is similar to the mortgage company's argument in *Alexander* that was rejected. Specifically, the mortgage company tried to narrow the statutory language before the court in *Alexander* to claim the statute did not relate to "any amount" covered by the statute, but only those sums it believed were "incidental" to a mortgage subject to the statute. *Id.* To illustrate why the effort to narrow the scope of the actual legislative text, like the State of Maryland's argument here, was wrong, the Fourth Circuit explained:

> To see why [the mortgage company's statutory construction] is misguided, imagine a statute that prohibits gambling on "any sporting event (including any game, race, or match broadcast on television)." While such a statute gives helpful examples illustrating what "any sporting event" means, this is no exhaustive list. No one would think that the legislature intended for people to bet with impunity on college football games airing exclusively online—or on high-school sports not broadcast anywhere. Yet [the mortgage company's] approach would have us narrowly focus on one specified category (games broadcast on television) at the expense of the overarching prohibition (any sporting event).
>
> The FDCPA's far-reaching language straightforwardly applies to the collection of "any amount." While convenience fees are not explicitly enumerated, Congress certainly did not want debt collectors to skirt statutory prohibitions through linguistic sophistry.

Id. at 377.

Here of course, the State of Maryland permitted LeMay to enroll three fake, invalid, or void judgments (**MF 1, 8, 17**) to become live judgments of a Maryland court pursuant to the UEFJA, CTS. & JUD. PROC. § 11-801, *et seq.* and MD. RULE 3-623 ("Foreign Judgments Act"). It did so without requiring LeMay to comply with 50 U.S.C.A. § 3931(b)(1). **MF 2, 10, 19**. A "foreign judgment" subject to the Foreign Judgments Act "means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this State." CTS. & JUD. PROC. § 11-801(a). Based on the broad interpretation of the term 'judgment' under 50 U.S.C.A. § 3911(9), the enrollment of the purported 'foreign judgment' subject to the Foreign Judgments Act, constitutes a judgment under § 3911(9) which applies to "any judgment, decree, order, or ruling, final or temporary." Plaintiffs' statutory construction and application to the Foreign Judgments Act is the correct conclusion based on the plain and expansive text of § 3911(9). *Ickes*, 393 F.3d at 504; *Alexander,* 23 F.4th at 376. Plaintiffs' conclusion is also correct based upon the plain text of the Foreign Judgments Act which requires the state court to "treat the foreign judgment in the same manner as a judgment of the court in which the foreign judgment is filed." CTS. & JUD. PROC. § 11-802(a)(2).

After permitting LeMay to enroll the three fake, invalid, or void judgments, the State next permitted LeMay by statute and its rules to obtain writs of garnishments, once again without complying with 50 U.S.C.A. § 3931(b)(1). **MF 12-14, MF 21, MF23**. CTS. & JUD. PROC. § 3-305; MD. RULE 3-645; MD. RULE 3-645.1; MD. RULE 3-646 ("Garnishment Proceedings"). Based again on the broad interpretation of the term 'judgment' under 50 U.S.C.A. § 3911(9), the Garnishment Proceedings permitted by the State (issuance of writs of garnishment and thereafter judgments of garnishment), qualify as a judgment under § 3911(9). As such, Maryland was required to ensure the Garnishment Proceedings complied with 50 U.S.C.A. § 3931(b)(1) but it did not do so. The State's failure to do so is in conflict with the plain and expansive text of § 3911(9). *Ickes*, 393 F.3d at 504; *Alexander,* 23 F.4th at 376.

Other courts have applied the SCRA broadly like Plaintiffs do here to serve its remedial purpose. *See e.g.*, *Sprinkle v. SB&C Ltd.*, 472 F. Supp. 2d 1235, 1245 (W.D. Wash. 2006)(concluding as a matter of summary judgment that defendants violated the SCRA related to garnishment proceedings); *In re Templehoff*, 339 B.R. 49, 53 (Bankr. S.D.N.Y. 2005)(applying the SCRA to a lift stay motion filed after the commencement of a bankruptcy proceeding and recognizing the term plaintiff includes debtor in the context of bankruptcy proceedings). There is simply no just basis to accept the State' position that it cannot be troubled to comply with the mandatory requirements under the SCRA.

The State also permitted LeMay to obtain subpoenas (in violation of FIN. INST. § 1-304(b)'s certification requirement) to acquire Mr. & Mrs. Riley's confidential, financial information without requiring compliance again with 50 U.S.C.A. § 3931(b)(1). FIN. INST. § 1-304(a). AC at ¶¶ 107, 109-112, 115, 123-125; **MF 22-23**. Those subpoenas are defined under state law to mean "a subpoena, summons, warrant, or court order that appears on its face to have been issued on

lawful authority." FIN. INST. § 1-304(a). Based once again on the broad interpretation of the term 'judgment' under 50 U.S.C.A. § 3911(9), the subpoenas permitted by the State pursuant to FIN. INST. § 1-304 and MD. RULE 3-510, qualify as judgments under § 3911(9). *Ickes*, 393 F.3d at 504; *Alexander,* 23 F.4th at 376.

Finally, there is no dispute that before the Plaintiffs appeared in each of the state court proceedings, they each were on active-duty status as servicemembers in the United States Army and pursuant to its custom, statutes, rules, practices, and procedures, the State of Maryland did not appoint counsel to represent their interests before allowing any of the judgments (as defined by § 3911(9)) to be entered and enforced. **MF 3, MF 5, MF 11, MF 14, MF 20, MF 23**. Mr. & Mrs. Riley and Mr. & Mrs. Rouse did voluntarily appear in their proceedings and notified the state courts of their protected status, but the state courts in each instance still took no action to appoint counsel to act on their behalf. **MF 7, 23**. Only later, when each of the Plaintiffs, as non-residents of Maryland, were able to retain counsel on their own initiative to protect their rights, were they able to stop the collection activities which should never had occurred if the State had appointed counsel to act on behalf of the Plaintiffs before allowing the judgments to be entered and then enforced. **MF 7, 16, 23**. Based once again on the broad interpretation of the term 'judgment' under 50 U.S.C.A. § 3911(9), Maryland was barred from "enter[ing] a judgment until after the court appoints an attorney to represent the defendant." 50 U.S.C.A. § 3931(b)(2). But Maryland failed to do so. **MF. 1-5, 8-14, 18-23**. To the extent it argues that it had the discretion to ignore the SCRA in these circumstances, that argument simply cannot be reconciled with the plain language of the SCRA and also its legislative history which shows Congress intended to remove such discretion which exited with previous versions of the SCRA. *See* FN 1 *supra. See also* 149 Cong. Rec. H3688-03, 2003 WL 21025298, 30, 39 (statements of Rep. Smith & Rep. Buyer).

The State of Maryland's effort to limit the scope of the SCRA is simply unjustified and an error of the plain statutory text as applied to 50 U.S.C.A. § 3911(9). Accepting the State's viewpoint would create exceptions to the SCRA never intended by Congress.[8] The Supreme Court has explained in *Andrus v. Glover Const. Co.*, 446 U.S. 608, 616–17 (1980) the following:

> Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent.

Id. See also Hillman v. Maretta, 569 U.S. 483, 496 (2013).

In the context of this case and the issues before the Court, the *Sprinkle* court explained the application of the SCRA best:

> Congress substantially amended the SCRA in 2003. Section § 521(b)(1) was amended to *require* filing of a SCRA Affidavit **before a judgment of any kind could be entered for that party**, and § 521(b)(2) was amended to *require* the court to appoint counsel for any debtor that "appears [to be] in military service." *See* 50 U.S.C. app. § 521(b). *Compare* 50 U.S.C. app. § 521(b) (2006), *with* 50 U.S.C. app. § 520(1) (2002) (obviating the SCRA Affidavit if debtor could "secur[e] an order of court directing [the entry of judgment]," and allowing court, *"on application"* by a party, to make an appointment of counsel for the debtor) (emphasis added).
>
> Mr. Sprinkle was a member of the military on active duty in the Mideast at all times pertinent, and is exactly the person Congress meant to protect. Mr. Sprinkle heard of the garnishment only after it occurred while he was on duty in Saudi Arabia…

Sprinkle, 472 F. Supp. 2d at 1247 (bold emphasis added).

It should also be noted that the SCRA is intended as remedial legislation. 50 U.S.C.A. § 3902. *See also Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948)("the Act must be read with an eye friendly to those who dropped their affairs to answer their country's call. *Boone v. Lightner*, 319 U.S. 561, 575, 63 S.Ct. 1223, 1231, 87 L.Ed. 1587"). *See also Servicemembers Civil Relief Act*,

[8] The SCRA's scope was exempted from applying to "criminal proceedings." 50 U.S.C.A. § 3912(b).

U.S. COURTS, https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/servicemembers-civil-relief-act-scra (last visited April 16, 2023). Congress expressly intended for the SCRA to apply to the State of Maryland. 50 U.S.C.A. § 3912(a)(2). So, adopting the State's desired open-door policy to LeMay and others like him without requiring compliance with 50 U.S.C.A. § 3931(b)(1)(2) by (i) enrolling a foreign judgment, (ii) allowing Garnishment Proceedings, (iii) issuing subpoenas for confidential financial information, and (iv) failing to appoint counsel to represent servicemembers before any judgment is entered, would improperly restrict the purpose of the SCRA. Respectfully, the State's argument should be rejected as it cannot justify its desired open-door policy to allow actors like LeMay to prey upon active-duty service members in Maryland when those servicemembers have zero connection with Maryland.[9]

Based upon the foregoing, the SCRA's scope of the definition of judgment in § 3911(9) is broad and applies to the practices, procedures, statutes, customs and rules challenged in this action by the Plaintiffs based upon their own experiences. While the State may wish to open its courthouse doors to LeMay, that desire must comply with the mandatory requirements of the SCRA, including § 3931(b)(1)(2), which Maryland cannot simply disregard. The SCRA is the supreme law of the land, and active-duty servicemembers from other states should not be hauled into Maryland court proceedings which disregard their rights under the SCRA—especially when those service members, like the Plaintiffs here, have zero connection with Maryland. The State of

[9] It should be further noted that the Maryland General Assembly stated the actual policy position of Maryland when it recently amended the Maryland Consumer Protection Act. COM. LAW § 13-301(14)(xxxiv)(added by the FINANCIAL CONSUMER PROTECTION ACT OF 2018, 2018 Md. Laws Ch. 731 (H.B. 1634)). There, the General Assembly made a violation of the SCRA a *per se* violation of the MCPA which is itself is remedial legislation. *Id.*

Maryland's efforts to obtain a judicial exception to the SCRA should be rejected and Plaintiffs' claims should proceed in the normal course to protect them and to protect others like them.

Finally, the State's effort to limit the scope of its mandatory duties under SCRA in § 3931(b)(1)(2) to situations involving just 'default judgments' is wrong for three reasons. Mot. at *passim*. First, the undisputed facts in this action show that the State allowed multiple judgments to be entered and thereafter enforced before the non-resident Plaintiffs ever made any appearance in the actions. **MF 1, 8, 17**. These are therefore *per se* default judgments. Second, the entered judgments were void, invalid, or fake (**MF 1, 8-9, 17-18**; AC at ¶¶ 53, 54, 57; Ex. 5 at ¶ 16; Ex. 6 at ¶ 3) and therefore the Maryland proceedings were new and the entered judgments as described herein were done so without Due Process or compliance with the SCRA and also qualify as default proceedings. Third, statutory headings are not tools that may be used to rewrite the plain language of a statute. *Bhd. of R. R. Trainmen v. Baltimore & O. R. Co.*, 331 U.S. 519, 528–29 (1947) ("…the title of a statute and the heading of a section cannot limit the plain meaning of the text").

In sum, the plain language of the SCRA Applies to the conduct and facts at Issue in this action and Plaintiffs are entitled to a judgment of liability in their favor against the State of Maryland on their SCRA claims.

iii. The Supreme Court of Maryland has Recently Enacted a Rules Change Which is Implicitly Rejects the Justices Arguments to this Court

Since the Plaintiffs are challenging Maryland's statutes, rules, procedures, and customs used to haul them into Maryland state courts as non-resident, active duty servicemembers, they were required to name the Defendants (in their official capacities) as nominal plaintiffs on behalf of the State of Maryland. *Ex parte Young*, 209 U.S. 123, 157 (1908). More specifically, the Defendants here each have some connection to enforcement of the state laws, procedures, rules, and customs at issue: (i) the enrollment and enforcement of foreign judgments in Maryland courts

against non-resident servicemembers and (ii) the appointment and payment to counsel to protect the rights of active duty servicemembers before such judgments are entered and enforced in Maryland state court proceedings. *Id.*

While this action has proceeded for more than year, the Supreme Court of Maryland recently recognized and agreed to the core problem presented by Plaintiffs' claims before the Court—i.e. that over the course of litigation the status of a servicemember may change and some prior SCRA affidavit may become stale and need to be updated. Specifically, on March 23, 2023 the Maryland Supreme Court sat, considered, and approved a proposed rules change to MD. RULE 3-306. *See* Ex. 11, at Pages 203-215.[10] The purpose of the rules change considered was to ensure the ripeness of a SCRA affidavit before entry of a MD. RULE 3-306 judgment. As explained by the Reporter's Note to the proposal there were differing opinions about when a § 3931(b)(1) affidavit might become stale and need to be updated. To address concerns conveyed to the Rules Committee by Chief Judge Morrissey (Ex. 10(c), Feb. 7, 2022 Email to Judge Wilner), the 214th Report recommended amending MD. RULE 3-306 and related rules to require updated § 3931(b)(1) affidavits to be presented at later stages of certain proceedings. Relevant to the State's arguments in this case, the Reporter's Note also stated that filing subsequent § 3931(b)(1) affidavits in a proceedings was "feasible" and manageable without any undue burden. *See* 214th Report's Reporter's Note at 215.

The rules change approved by the Supreme Court does not address the issues presented by the Plaintiffs here and concerns different time periods of judicial proceedings related to the same general SCRA rights. So, at first blush it would appear to be irrelevant to the arguments made

[10] The Supreme Court approved this recommended change by the Rules Committee at a public hearing on March 23, 2023 but a Rules Order has not yet been published.

herein. However, Plaintiffs present these public records pursuant to Fed. R. Evid. 201 to show the 'sky will fall' defense advanced by the State to Plaintiffs' claims if the Court applies the SCRA protections at issue in this case simply cannot be reconciled with the conclusions and representations that requiring § 3931(b)(1) affidavits be presented at later stages of proceedings is easily "feasible" and not burdensome.

The point of requiring the presentation of a § 3931(b)(1) affidavit before entry of any § 3911(9) judgment is to protect servicemembers and allow the state court to know it must fulfill its mandatory duty under § 3931(b)(2) to appoint counsel to qualified persons. The State cannot simply avoid its duty by sticking its head in the sand and blinding itself to the information which would trigger its own legal duties and picking and choosing what judgments it will apply its own legal duties under the SCRA. The requirements of § 3931(b)(1)(2) at issue in this action apply to "any judgments" as defined by § 3911(9).

b. The Impact of the Supreme Court's Ruling in *Torres v. Texas Dep't of Pub. Safety*, 142 S. Ct. 2455 Upon Plaintiffs' Claims and is Dispositive of the State of Maryland's Arguments

The Supreme Court's decision in *Torres* forecloses the State of Maryland's primary arguments and application of the SCRA to its conduct and omissions at issue in this action and various defenses. Specifically, in *Torres* the Court had to consider whether or not Congress had the authority to

> Enact[] a federal law that gives returning veterans the right to reclaim their prior jobs with state employers and authorizes suit if those employers refuse to accommodate them. See Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. § 4301 *et seq*. This case asks whether States may invoke sovereign immunity as a legal defense to block such suits.

Id. at 2460. *See also Id.* at 2461 ("The question before us is whether the Constitution allows Congress to enforce these federal reemployment protections by authorizing private litigation

against noncompliant state employers that do not wish to consent to suit").

Before addressing the specific holdings in *Torres* relevant to this case, a general comparison of the USERRA and SCRA is important. In the USERRA, Congress specifically authorized the protected class of military personnel to seek injunctive relief (i.e., compliance with the protections afforded to them to reenter the workforce after service) and various damages against a state who violates its provisions. 38 U.S.C.A. § 4323. In comparison to the protections authorized by the SCRA for other military personnel, Congress also authorized the same general relief for "[a]ny person aggrieved by a violation of the [SCRA]" (50 U.S.C.A. § 4042), including violations by any state, who violates its duties and responsibilities under the SCRA.

The Court answered the question presented in *Torres* in the affirmative. In so doing, the Court reasoned that "Congress has 'broad and sweeping' power 'to raise and support armies.' *United States v. O'Brien*, 391 U.S. 367, 88 S. Ct. 1673, 20 L.Ed.2d 672, 677 (1968). It has long exercised that power to encourage service in the Armed Forces in a variety of ways." *Torres,*142 S. Ct. at 2460. Further, the structure of the Constitution supports the conclusion that "'when the States entered the federal system, they renounced their right' to interfere with national policy." *Id.* at 2463 (quoting *PennEast Pipeline Co., LLC v. New Jersey*, 141 S. Ct. 2244, 2259 (2021)). *Torres* specifically recognized that the Constitution divests States of the power to engage in war (unless invaded) and States' only have limited rights related to militias. *Id.* at 2463-64. After reviewing other precedents, the Court held "Under our constitutional order, States **may not** place any "'limitations inconsistent' " with Congress' power….[and] **as part of the plan of the Convention, the States waived their immunity under Congress' Article I power '[t]o raise and support Armies' and 'provide and maintain a Navy.' § 8, cls. 12–13."** *Id. at* 2466 (bold emphasis added)(cleaned up). *See also Id.* at 2469 ("Text, history, and precedent show that the

States, in coming together to form a Union, agreed to sacrifice their sovereign immunity for the good of the common defense"); *PennEast Pipeline Co., LLC v. New Jersey*, 141 S. Ct. 2244, 2259 (2021)("States can also be sued if they have consented to suit in the plan of the Convention. And where the States 'agreed in the plan of the Convention not to assert any sovereign immunity defense,' "no congressional abrogation [is] needed.' *Allen*, 589 U. S., at ——, 140 S.Ct., at 1003").

Notwithstanding these broad holdings, the State asks the Court to ignore the precedent established by *Torres* to claim *Torres* only applies to the USERRA and cannot possibly apply to the SCRA even though there is no such limitation stated in *Torres*. MTD at 22-25. Specifically, without apparently reviewing the complete text of the SCRA or its legislative history, the State argues that Congress never contemplated or allowed any review against states. MTD at 24. To advance its argument, the State looks solely to 50 U.S.C.A. § 4042 and claims "silence" in the provision allows it to ignore its mandatory duties under 50 U.S.C.A. § 3931(b). As the Supreme Court stated in *Dameron v. Brodhead*, 345 U.S. 322, 325 (1953), Maryland's "theory here also has no merit." This is self-evident by the other provisions of the SCRA Maryland fails to even acknowledge, the legislative history, the precedents of the Supreme Court and Fourth Circuit and other persuasive authorities discussed herein, and also the Supreme Court of Maryland's appreciation that the status of servicemember may change over the passage of time and any prior representations made in proceedings may have become stale and need to be reconfirmed later.

The State's "silence" argument is simply a misreading of the sole provision it cites for the proposition. The provision states, "Any person aggrieved by a violation of [the SCRA]," including the Plaintiffs in this action, may "(1) obtain any appropriate equitable or declaratory relief with respect to the violation[s] [of the SCRA]; [and] (2) recover all other appropriate relief, including monetary damages." 50 U.S.C.A. § 4042. This Court and the ultimate fact finder have tremendous

discretion under the SCRA to award a range of different types of "appropriate relief" under the SCRA. *See Gordon v. Pete's Auto Serv. of Denbigh, Inc.*, 637 F.3d 454, 460 (4th Cir. 2011)(recognizing that the SCRA would permit the recovery of punitive damages for willful violations but not if it would allow a double recovery of a different legal theory for the same injury); *United States v. Williams*, No. 1:12-CV-551, 2013 WL 596473, at *5 (E.D. Va. Feb. 14, 2013)(awarding summary judgment in favor of servicemember against management agent who wrongfully withheld security deposit and wrongfully "imposed additional rent that was not actually due and owing"); *Hurley v. Deutsche Bank Tr. Co. Americas*, No. 1:08-CV-361, 2011 WL 13196176, at *2 (W.D. Mich. Feb. 23, 2011)(permitting plaintiffs to recover losses under the SCRA based upon "impaired credit to the extent that it relates to their claim for mental or emotional distress injuries if that is a basis for their non-economic damages…including mental anguish and emotional distress, are also recoverable for a violation of the SCRA. Moreover, to prove such damages…Plaintiffs' own testimony may suffice, so long as it sufficiently explains the injury and consists of more than mere conclusory statements"). Second, the State disregards the fact that Congress specifically placed mandatory duties on the State in the SCRA. 50 U.S.C.A. § 3931(b).

Here, exercising its broad, structural authority, Congress enacted the SCRA for the express purpose:

> **(1)** to provide for, strengthen, and expedite the national defense through protection extended by this chapter to servicemembers of the United States to enable such persons to devote their entire energy to the defense needs of the Nation; and
>
> **(2)** to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

50 U.S.C.A. § 3902.

In *Dameron,* 345 U.S. at 324, Colorado, like Maryland here, argued that the SCRA's predecessor statute "[did] not apply" to its conduct which violated servicemember's protections at issue in that action. Specifically, Colorado suggested that 'silence' in the statute did not bar its effort to tax the servicemember stationed in Colorado but who was a resident of another state (i.e. double taxation). *Id.* Yet, that argument was rejected by the Supreme Court out-of-hand since the condition (i.e. silence) sought by Colorado's effort to tax the non-resident servicemember was not in the statute itself. "Since the language of the section does not establish a condition to its application, we would not be justified in doing so. For we are shown nothing that indicates that a straightforward application of the language as written would violate or affect the clear purpose of the enactment." *Id.* at 326.

The State's arguments here that the broad language of 50 U.S.C.A. § 4042 must also expressly authorize suit against it, is like Colorado's argument in *Dameron*--an effort to add a condition which disregard the remedial purpose of the SCRA which allows all "appropriate relief" for any person "aggrieved by a violation of [the SCRA]." Congress did establish certain exceptions and conditions in the SCRA when it desired to do so. *See e.g.* 50 U.S.C.A. § 3912(b). Nowhere in the SCRA did Congress exempt States including Maryland. Rather, Congress specifically established requirements for Maryland to protect Plaintiffs and others like them. 50 U.S.C.A. § 3931(b). This conclusion is also confirmed by the SCRA's legislative history. *See* FN 1 *supra*; 149 Cong. Rec. H3688-03, 2003 WL 21025298, 30, 39 (statements of Rep. Smith & Rep. Buyer).

While Maryland may wish for the Court to establish exceptions to the SCRA for it to open its courthouse doors to those who prey upon active-duty, non-resident servicemembers, nowhere in the SCRA did Congress create such an exemption and the Court should decline the State's effort to create one. *Andrus,* 446 U.S. at 616–17; *Hillman,* 569 U.S. at 496. Put another way, *Torres*

reconfirmed the absolute surrender of sovereignty by the states over all federal authority concerning legislation passed pursuant to Congress' military powers. *Torres*, 142 S. Ct. at 2460. There, the Court reasoned that the very sovereign authority of the state over all matters pertaining to national defense and the armed forces was surrendered by the state in its agreement to join the federal system. "Upon entering the Union, the States implicitly agreed that their sovereignty would yield to federal policy to build and keep a national military." *Id.* The Court went on to hold that in the realm of federal legislation governing military affairs, "the federal power is **complete in itself**, and the States consented to the exercise of that power - in its entirety - in the plan of the Convention" and "when the States entered the federal system, they renounced their right to interfere with national policy in this area." *Id.* (cleaned up)(bold emphasis added). "The States ultimately ratified the Constitution knowing that their sovereignty would give way to national military policy." *Id.* at 2464.

Consistent with long lines of preemption cases. Congress' authority in this realm, carries with it "inherently the power to remedy state efforts to frustrate national aims; objections sounding in ordinary federalism principles were untenable." *Id.* at 2465. While the holdings in *Torres* were examining claims under USERRA, it stands as a complement to the Court's application of federal preemption under the Supremacy Clause concerning Congress's exercise of the same enumerated Article I Military Powers as against state efforts to thwart Congress' objectives and goals in passing legislation thereunder. *Id.* at 2460, 2463-64; citing Article I, § 8, cls. 1, 11-14. This is no surprise. The concepts of state sovereignty and freedom to legislate or adjudicate in those areas not specifically reserved, i.e., enumerated, in Article I, are two sides of the same coin. Where Congress has exercised its Article I Military Powers, inherent structural waiver prevents the state from asserting sovereign immunity or exemptions because Congress has provided a

mechanism for the objectives of legislation passed pursuant to its enumerated powers to be realized by pursuit of a statutory civil action against the state. In *Torres*, we are instructed that the state cannot assert sovereign immunity where a returning servicemember seeks to vindicate his pre-deployment employment rights and status as against his employer (the state of Texas) under the USERRA, an act passed pursuant to Congress' Article I Military Powers to benefit returning servicemembers. On the flip side, Article VI, clause 2 (1789), the Supremacy Clause, prohibits, i.e., preempts, the State from passing and enforcing laws that equally frustrate the same national interests underlying Congress's plenary powers in the premises.

Hence, Maryland is prevented from avoiding those federal benefits that Congress has provided, again under its Article I military powers, to incentivize, maintain, and support national service—including the requirements that before any judgment is entered against a non-resident servicemember the State require the presentation of a § 3931(b)(1) affidavit before entry of any § 3911(9) judgments to protect servicemembers and also allow the state court to know it must fulfill its mandatory duty under § 3931(b)(2) to appoint counsel to qualified persons. To suggest otherwise, as argued by the State, would be to disregard that "[u]nder Supremacy Clause principles, [state] courts may not enforce contrary state laws to block" claims Congress established with its Article I powers. *Torres*, 142 S. Ct. at 2466.

In sum, the State's effort to narrow the SCRA and disregard the holdings in *Torres* which also bar all of its state law based defenses should be made to Congress and not this Court. The plain language of 50 U.S.C.A. §§ 3931, 3912(a)(b), and § 3911(6)(9) applies to Maryland and it is not entitled to be exempt from its responsibility to protect the Plaintiffs and others like them unless Congress says so.

c. <u>The State's Hodgepodge of Other Arguments are Without Merit or justification based upon the Undisputed Material Facts Before the Court</u>

As argued above, the SCRA is supreme over Maryland state laws, rules, procedures, and customs. *Torres* is dispositive of much of the State's arguments given Maryland waived its purported defenses to Plaintiffs' SCRA claims when it ratified the United States Constitution. Alternatively, the exceptions to the plain statutory text sought by the State are not allowed since Congress did not articulate them itself in the SCRA. *Andrus,* 446 U.S. at 616–17; *Hillman,* 569 U.S. at 496.

Yet, notwithstanding the plain language of the SCRA and the binding precedents governing the Parties, Maryland seeks to escape responsibility for fostering a system which allowed the enrollment and enforcement of fake, invalid, and void judgments in Maryland state courts without requiring compliance with the mandatory requirement of § 3931(b)(1)(2).

There is no dispute that the Maryland law[11] and procedures[12] at issue in this action do not ensure the protections the Plaintiffs are intended to have under the SCRA before persons like LeMay seek to enroll purported foreign judgments, garnish their property, and acquire their confidential financial information. Nor did the State of Maryland appoint counsel to represent the Plaintiffs that it was required to do so before (i) enrolling any purported foreign judgment, (ii) issuing any writ of garnishment or subpoena, or (iii) entering a judgment in favor of garnishment as required by 50 U.S.C.A. § 3931(b)(2).

As a result of LeMay's conduct that exploited the State of Maryland's statutory and procedural loopholes in violation of the SCRA and the Constitutional protections that the Plaintiffs were entitled to have but were denied by the State, the Plaintiffs have sustained damages and

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[11] Uniform Enforcement of Foreign Judgments Act, CTS. & JUD. PROC. § 11-801, *et seq.* ("Foreign Judgments Act"); CTS. & JUD. PROC. § 3-305, and FIN. INST. § 1-304.

[12] MD. RULE 3-623, MD. RULE 3-632, MD. RULE 3-645; MD. RULE 3-645.1; MD. RULE 3-646; MD. RULE 2-645; MD. RULE 2-645.1; MD. RULE 2-646; MD. RULE 3-510; and MD. RULE 2-510.

losses. AC at ¶¶ 74-75, 126, 127, 159-160. The Plaintiffs are also entitled to broad, "appropriate" declaratory and injunctive relief authorized under the SCRA. AC at ¶¶ 177-186.[13]

d. The State of Maryland Waived any Immunity Arguments Related to Plaintiffs Claims by its Adoption of Articles 2 and 19 in its Own Constitution

It should be noted that the State of Maryland's immunity arguments are barred by not only *Torres* but also by the State's own Constitutional protections which insures "[t]hat every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land." MD. CONST., DECL. OF RTS. art. 19. *See also Doe v. Doe*, 747 A.2d 617, 624 (Md. 2000).

As the State would have it, even if the Plaintiffs are correct and Maryland law and procedural rules violate the SCRA in relation to conduct against them in Maryland state courts, the Plaintiffs cannot obtain any remedy from the State whatsoever for its breach of its legal duties under Federal law. However, Maryland has expressly stated and bound itself to the supremacy of the U.S. Constitution in MD. CONST. DECL. OF RTS. art. 2. Thus, Maryland acquiesced and conceded that certain powers of the Federal government and the laws created pursuant to them—including the SCRA—cannot be abrogated or ignored by the State or its officials, recognizing precisely what the Supreme Court recently held in *Torres*. The SCRA is part of the law of land, and Maryland is not immune from being held accountable for its part in permitting LeMay to use

[13] The State's argument that Plaintiffs' claims are barred by the Rooker Feldman Doctrine are equally without merit. Mot. at 31-33. The injuries and relief sought by Plaintiffs arise from the SCRA and the State cannot escape liability for failing to police its practices to ensure compliance. "Thus, the injury claimed [by the Plaintiffs]…was not caused by the judgments themselves but by [the State of Maryland's] allegedly illegal actions" in violation of the SCRA. *Murray v. Midland Funding, LLC*, No. CIV. JKB-15-0532, 2015 WL 3874635, at *4 (D. Md. June 23, 2015). *See also* Argument § V(b) *supra*.

its courts to cause injury to the Plaintiffs. They are entitled to seek redress for those wrongs and that is what they are doing in this action. MD. CONST. DECL. OF RTS. art. 19; *Doe,* 747 A.2d at 624.

Part of that redress is seeking prospective injunctive and declaratory relief to stop Maryland's desired loopholes that permit parties to access Maryland courts in violation of the SCRA. There is no just reason for the State of Maryland's desire to force active-duty service members, with no connections whatsoever with Maryland, to be hauled into Maryland court proceedings when they are on active duty service the United States of America—especially when Maryland knows the SCRA is a supreme law of the land and it governs and controls the activities subject to this action. In this context the State of Maryland has also waived any immunity arguments in its adoption of Articles 2 and 19 in the Maryland Constitution.

e. Under Longstanding Precedent, Plaintiffs are Entitled to Prospective Injunctive Relief Against the State of Maryland to Require it to Ensure is Laws and Rules of Procedure Comply with the Remedial SCRA and the Constitution

Under long standing precedent known as the *Ex Parte Young*[14] doctrine or exception to the immunity granted by the Eleventh Amendment, Plaintiffs are entitled to seek prospective declaratory relief from this Court. *Antrica v Odom*, 290 F.3d 178, 184 (4th Cir. 2002)(citing *Ex Parte Young*, 209 U.S. at 159)(cleaned up). The State continues to simply overlook this precedent in advancing arguments it knows are not justified.

Sovereign immunity does not extend to a request for prospective injunctive relief to correct an ongoing violation of law as is occurring here. *Ensor v Jenkins*, 2021 WL 1139760 at *21(D. Md. 2021). Here, Plaintiffs seek prospective relief to enjoin the State of Maryland from failing to ensure that going forward no other active-duty servicemember (including the Plaintiffs and their

[14] *Ex Parte Young*, 209 U.S. 123.

protected spouses) is hauled into a Maryland court again in violation of the remedial protections intended by Congress in the SCRA and when they have absolutely no connections with the State (i.e., they do not reside in the State, they do not own a business in the State, and there is no basis for the State of Maryland to assume jurisdiction over them). **MF 6, 15, 22**. This is precisely the type of relief that is authorized by the *Ex Parte Young* doctrine and Plaintiffs claim for prospective injunctive relief should be allowed to go forward if the Court finds grounds for barring Plaintiffs other claims. *See Wicomico Nursing Home v. Padilla,* 910 F. 3d 739, 748 (4th Cir. 2018) (*dismissed on other grounds*) (holding that injunctive relief requiring a change in future contact to comply with the Fourteenth Amendment is prospective).

f. The State's Other Immunity Arguments Also Fail

Perhaps realizing its sovereign immunity arguments fail based on any plain reading of *Torres* and the SCRA and simply continuing to overlook the *Ex Parte Young* doctrine's application to the relief sought by the Plaintiffs, the State alternatively argues it is exempt under various other state recognized immunity doctrines for any responsibilities under the SCRA to the Plaintiffs or others like them. Mot. at 25-29. The only result of this argument means that Maryland wishes for its courthouse doors to remain open for business for Mr. LeMay and others to prey upon servicemembers without any compliance to the State's mandatory duties under 50 U.S.C.A. § 3931(b).

With respect to the Defendants,[15] they each took an oath of office to "support the Constitution of the United States" (MD. CONST. ART. I, § 9) which includes respecting the Article I powers granted by Maryland to Congress when it ratified the Constitution to have sole say in

[15] There is no serious dispute that the State is subject to the SCRA and each of the Defendants are the key officials with a relationship to the Plaintiffs' claims under Maryland's constitutional scheme. 50 U.S.C.A. § 3912. *See e.g. Tankersley v. Almand*, 837 F.3d 390, 406 (4th Cir. 2016).

exercising policies to protect servicemembers. *See* Argument § V(b) *supra*. Further, the Supremacy Clause necessarily requires the application of federal preemption concerning the Defendants' various state law immunity defenses. *See e.g. Martinez v. State of Cal.*, 444 U.S. 277, 284 at FN 8, (1980); *Advanced Bldg. & Fabrication, Inc. v. California Highway Patrol,* 781 F. App'x 608, 611 (9th Cir. 2019).

None of the various authorities presented by the State held a state based immunity allowed the State to escape liability for violation of a Federal statute enacted under Congress' Article I powers. For example *Tenney v. Brandhove*, 341 U.S. 367, 372 (1951) related to the "privilege of legislators to be free from arrest or civil process for what they do or say in legislative proceedings." Even the State's own authority recognized privileges should be "strictly limited" and viewed expansively like the State argues. *United States v. Mandel*, 415 F. Supp. 1025, 1029 (D. Md. 1976). Another of the State's own authorities also recognizes "immunity[ies] [do] not shield the Virginia Court and its chief justice from suit" in a § 1983 case. *Supreme Ct. of Virginia v. Consumers Union of U. S., Inc.*, 446 U.S. 719, 737 (1980).

All of the Defendants are sued by the Plaintiffs in their official capacities only which also have some connection with the Plaintiffs' claims. For example, "[t]he executive power of the State shall be vested in a Governor." MD. CONST. ART. II, § 1. This includes, among other duties, that the Governor has the responsibility to serve as "the Commander in Chief of the land and naval forces of the State" (MD. CONST. ART. II, § 8), the duty to take care that the Laws [including the SCRA] are "faithfully executed" (MD. CONST. ART. II, § 9), to present a budget bill to the General Assembly, and with the advice and consent of the General Assembly, amend or supplement the proposed budget (MD. CONST. ART. III, § 52), and "may approve or disapprove items in the Budget Bill (MD. CONST. ART. II, § 17(f)(1) such has sums to pay for counsel appointed under the SCRA

to protect the rights of servicemembers on active duty before a judgment is entered. Further, the "[t]he Judicial power of [the] State is vested in a Supreme Court of Maryland" (MD. CONST. ART. IV, § 1) which is "composed of seven justices" (MD. CONST. ART. IV, § 14). Also, "[t]he Supreme Court of Maryland" is also empowered "from time to time [to] adopt rules and regulations concerning the practice and procedure in and the administration of the appellate courts and in the other courts of this State, which shall have the force of law until rescinded, changed or modified by the Supreme Court of Maryland or otherwise by law." MD. CONST. ART. IV, § 18(a). Finally, "the Chief Justice of the Supreme Court of Maryland shall be the administrative head of the Judicial system of the State." MD. CONST. ART. IV, § 18(b)(1).

From these broad constitutional powers each the Defendants have some connection to Plaintiffs' core claims. The Defendants are charged under Maryland's constitution, to protect the rights at issue here on behalf for the State which owed mandatory responsibilities to the Plaintiffs under the SCRA but breached them instead.

VI. CONCLUSION

As shown herein, Plaintiffs "dropped their affairs to answer their country's call." *Le Maistre*, 333 U.S. at 6. The State of Maryland was required to comply with the SCRA's requirements but failed to do so. The State's Motion should be denied and Plaintiffs are entitled to a judgment of liability in their favor.

Respectfully Submitted,
/s/Phillip R. Robinson
Phillip R. Robinson
Bar No. 27824
CONSUMER LAW CENTER LLC
10125 Colesville Road, Suite 378
Silver Spring, MD 20901
Phone: (301) 448-1304
Email: phillip@marylandconsumer.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was served on Defendants' counsel when filed through the CM/ECF system. A paper copy of the foregoing and all related papers filed will also be delivered to the Court in care of the Honorable Clerk of the Court within 48 hours of filing.

/s/Phillip R. Robinson
Phillip R. Robinson