IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

LATASHA ROUSE, ET AL.,	*	
Plaintiffs,	*	
v.	*	No. JKB-22-00129
WES MOORE, ET AL.,	*	
Defendants.	*	

* * * * * * * * * * * *

DEFENDANTS' COMBINED MEMORANDUM IN REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND OPPOSITION TO PLAINTIFFS' CROSS MOTION FOR SUMMARY JUDGMENT[1]

Defendants, Wes Moore, sued solely in his official capacity as the Governor of the State of Maryland (the "Governor"), and the Honorable Matthew Fader, the Honorable Steven B. Gould, the Honorable Byrnja M. Booth, the Honorable Shirley M. Watts, the Honorable Michele D. Hotten, the Honorable Jonathan Biran, and the Honorable Angela M. Eaves, sued solely in their official capacities as Justices of the Supreme Court of Maryland (the "Justices"), (collectively hereinafter the "State"), reply to and oppose Plaintiffs' combined opposition to defendants' motion to dismiss and cross motion for summary judgment ("Plaintiffs' Opposition") and provide the following authorities in support of entry of dismissal of Plaintiffs' amended complaint and/or denial of Plaintiffs' request for judgment.

[1] Defendants' motion to dismiss and memorandum in support (ECF Nos. 46 and 46-1) are incorporated herein by reference in opposition to Plaintiffs' motion for summary judgment pursuant to Federal Rule of Civil Procedure 10(c).

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INTRODUCTION

Plaintiffs believe it is axiomatic that the State—through the action or supposed "inaction" of the Governor and Justices in their official capacities relating to their enforcement, legislative, and judicial duties—somehow violated the SCRA when the District Court of Maryland permitted former Co-Defendant George LeMay ("LeMay") to register and collect on foreign judgments in Maryland without requiring an affidavit of military service and assignment of counsel to servicemember plaintiffs. According to Plaintiffs' theory of liability, the Governor and the Justices are liable for money damages to Plaintiffs for the alleged non-SCRA compliance in the District Court. However, Plaintiffs' real claim against Defendants is that they simply do not like how Maryland (and apparently all other states) do not apply the affidavit and appointment of counsel provisions of 50 U.S.C.A. § 3931(b) to enforcement of judgments. Because Plaintiffs do not like the law, they have sued the Governor and the Justices for not conforming the law and Rules to their liking.

Plaintiffs' insistence on their sole and unsupported interpretation of the SCRA and ad hominem attacks on the State are misplaced. They wholly disregard 50 U.S.C. § 3934, which clearly applies once a judgment has been entered, and willfully ignore the plain language of 50 U.S.C. §§ 3931, 4042, and the SCRA as a whole. Further, while Plaintiffs bring this claim under 50 U.S.C. § 4042, they assert due process and constitutionality arguments which, if considered by the Court, are erroneous.

The State enjoys immunities to Plaintiffs' claims, many of which Plaintiffs did not address in their Opposition. The State also enjoys Eleventh Amendment immunity for Plaintiffs' claim, despite Plaintiffs' overextension and misapplication of alleged waiver in *Torres*. Plaintiffs fail to recognize that Defendants are improper parties and fail to state a claim

against them. Rather, Plaintiffs concentrate on LeMay's alleged bad acts in filing "fake" judgments in Maryland—for which they have been fully compensated in their settlement with LeMay— and the perceived unfairness to the Plaintiffs in LeMay's use of Maryland to collect the judgments against them and urge this Court to grant judgment in their favor and award them damages, including attorneys' fees and costs. As argued in Defendants' motion to dismiss, Plaintiffs no longer have any active interest in the courts in Maryland, and their claim is moot.

While Plaintiffs make hyperbolic statements claiming that the State is making a "sky will fall" defense if Plaintiffs' claim is permitted to proceed, it should not be lost on the Court that Plaintiffs are attempting to overturn a nationwide practice and process in the enforcement of judgments. Plaintiffs' claims of unconstitutionality in enforcement actions have been rejected by the courts and their novel interpretation of the SCRA has not been accepted by any known court or espoused in any known public document or filing by the United States Department of Justice Civil Rights Division in relation to the Servicemembers and Veterans Initiative, https://www.justice.gov/servicemembers (last visited May 18, 2023) (the division of the Department of Justice that enforces the SCRA).

When stripped of the emotional pleading in Plaintiffs' Opposition, there are simply two legal issues to be decided by this Court. First, does the affidavit and appointment of counsel requirements of the SCRA apply to post-judgment activities, including registering foreign judgments and collecting on foreign judgments through writs of garnishment and subpoenas in aid of execution. Second, can the Governor and Justices be held liable under 50 U.S.C. § 4042 for alleged violations of the District Court of 50 U.S.C. § 3931(b) of the SCRA. The Court's answer to both of the above questions should be in the negative and this matter should

either be dismissed or judgment entered in favor of Defendants.

I. THE AFFIDAVIT AND APPOINTMENT OF COUNSEL PROVISIONS OF SECTION 3931 OF THE SCRA DO NOT APPLY TO POST-JUDGMENT ACTIVITIES, INCLUDING FOREIGN JUDGMENTS.

A. Section 3931 Only Applies to Prevent Entry of Default Judgments Against Servicemembers Without Notice.

Plaintiffs claim that Section 3931 applies to the registration of foreign judgments and all other orders or judgments involving a servicemember because of the broad definition of the word "judgment" in Section 3911(9) of the SCRA. However, Plaintiffs' interpretation ignores the section and statute which should be construed as a whole. *See Sibert v. Wells Fargo Bank, N.A.*, 184 F. Supp. 3d 296, 302 (E.D. Va. 2016), aff'd, 863 F.3d 331 (4th Cir. 2017); s*ee also*, *United Savings Ass'n v. Timbers of Inwood Forest Associates*, 484 U.S. 365, 371 (1988) (citations omitted) ("Statutory construction ... is a holistic endeavor. A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme—because the same terminology is used elsewhere in a context that makes its meaning clear, or because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.") As indicated in the legislative history and repeatedly interpreted by courts, Section 3931 solely applies to default judgments where the service member did not receive notice.

1. The Legislative History of Section 3931 Confirms that it Only Applies to Default Judgments.

In 2003, the Soldiers' and Sailors' Civil Relief Act of 1940 was amended to restate, clarify and revise the protections provided to service members and bring it in line with current court practices and modern life. 149 CONG. REC. H12868-02, H12868 (2003); 149 CONG. REC. H3688-03, H3697 (2003). What is now Section 3931 was revised to "clarify that the

protections under this section are intended to apply when a service member does not receive notice of an action or proceeding." H.R. REP. 108-81, 37, 2004 U.S.C.C.A.N. 2367, 2381. "[Section 3931 was amended] by restating the provisions regarding protections of service members against default judgments for clarity." H.R. REP. 108-81, 45, 2004 U.S.C.C.A.N. 2367, 2388 (emphasis added). There is no evidence that Section 3931 was rewritten to expand its scope of application beyond default judgments as claimed by Plaintiffs. In fact, the uncontroverted evidence is to the contrary.

2. Section 3931 Only Applies to Default Judgments.

As pointed out in the State's motion, Section 3931 is titled "Protection of service members against default judgments" and on its face is meant to apply to matters between a plaintiff and defendant wherein the defendant is a service member before a default judgment is entered against the service member. Section 3931 has been consistently interpreted by the courts to apply *only* to default judgments. *See In re Baltimore & O.R. Co.*, 63 F. Supp. 542, 569 (D. Md. 1945) (in rem proceeding to which the Act did not apply); *McLaughlin v. McLaughlin*, 186 Md. 165, 170–71 (1946) (probate of a will is not a judgment, action or proceeding against any person and the service members were not parties to the probate proceedings); *Lightner v. Boone*, 45 S.E. 2d 261 (N.C. 1947) (finding general relief is expressly limited to default judgments); *Borough of E. Rutherford v. Sisselman*, 97 A.2d 431, 435 (N.J. Super, 1953) (in rem action where interested persons were not parties defendant); *Case v. Case*, 124 N.E.2d 856, 861 (Ohio Prob. 1955) (presentation of a will for probate is not an adversary action); *United States v. Kaufman,* 453 F.2d 306, 308–09 (2nd Cir. 1971) (the purpose of the act is to "prevent default judgments from being entered against members of the armed services in circumstances where they might be unable to appear and defend

themselves."); *Smith v. Davis*, 364 S.E.2d 156, 158 (N.C. App. 1988) ("The purpose of section 520 [now 3931] in particular is to protect persons in the military from having default judgments entered against them without their knowledge and without an opportunity to defend their interests." (citation omitted); *Fifth Third Bank v. Schoessler's Supply Room, L.L.C.*, 940 N.E. 2d 608, 614–15 (Ohio 2010) (relying on *Kaufman*, 453 F.2d at 308-09, and finding that the Act does not apply to a cognovit judgment).; *Merrill v. Beard,* No. 05–768, 2007 WL 461469, *3 (N.D.Ohio Feb. 7, 2007); *Smith v. Lafrinere*, No. CIV.A. 03-3432-MLB, 2011 WL 4575143, at *1–2 (D. Kan. Sept. 30, 2011).

A default judgment is not defined by the SCRA but "generally means 'a judgment entered by the Court as a penalty against a party for failure to appear or otherwise to perform a procedurally required act.'" *D.A. Realestate Inv., LLC v. City of Norfolk*, No. 2:21CV653, 2023 WL 2637382, at *8 (E.D. Va. Mar. 23, 2023) (quoting *Fodge v. Trustmark Nat'l Bank*, 945 F.3d 880, 883 n.1 (5th Cir. 2019) (quoting *Anchorage Assocs. v. V.I. Bd. of Tax Review*, 922 F.2d 168, 174 n.3 (3d Cir. 1990)). The filing or registration of a foreign judgment is not a judgment entered as a penalty against a non-appearing party. *See City of Norfolk*, 2023 WL 263738 at *8.

Plaintiffs cite only two cases in their motion, from over 80 years of court interpretation, which they claim support their interpretation of application of Section 3931 to matters other than default judgments: (1) *In Re Templehoff*, 339 B.R. 49 (S.D. N.Y. 2005); and (2) *Sprinkle v. SB&C, Ltd*., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). Neither is dispositive of the issues before this Court.

Initially, *Templehoff* only involved a creditor seeking an order of default on a lift stay motion to repossess a debtor's vehicle in a bankruptcy matter. 339 B.R. 49 (S.D. N.Y. 2005).

Under the court's local rules, the creditor was obligated to file an affidavit identifying whether the debtor was a service member. *Id.* at 53. Without even looking at the bankruptcy petition, which confirmed that the debtor was a service member, the creditor filed an affidavit stating that the debtor was not a service member. *Id.* at 54. The creditor's failure to properly investigate the debtor's service member status or contact the debtor for consent on the motion resulted in a show cause order and a hearing on the matter. *Id.* The court *sua sponte* entered an order finding that the "Affidavit of Default" filed by the creditor was deficient in that it did not fully comply with the SCRA. *Id.* at 50-51, 53-54. The court held that the SCRA applied to the lift stay motion as an order granting the motion would be an order in default against the debtor. *Id.* at 53-54. *Templehoff* is, therefore, wholly inapplicable to the facts of this case.

In *Sprinkle*, the district court held that, when certain conditions are met, a judgment creditor must comply with the SCRA affidavit requirement when collecting on a judgment. 472 F. Supp. 2d 1235 (W.D. Wash. 2006). Significantly, *Sprinkle* did not involve a foreign judgment but was rather a suit by a judgment debtor against a collection agency that garnished the wages of the judgment debtor while he was on active duty in the military. The federal judge for the United States District Court Western District of Washington held that the defendant debt collection agency violated the SCRA by garnishing the service member's wages when it failed to file an affidavit before obtaining a judgment on the garnishment as against both the garnishee and the service member. *Id.* at 1244-1245. Significantly, the court held that the judgment on the garnishment was a judgment against the service member by the same judgment and order as against the garnishee and relied solely on the fact that the collection agency/judgment creditor collected an additional amount of "court costs" for the garnishment against the service member. *Id.*

The collection agency/judgment creditor argued in *Sprinkle* that an affidavit was not required because the garnishee was a financial institution rather than the service member and, therefore, the SCRA was inapplicable. *Id.* at 1244. The court rejected this argument for two reasons. First, according to the *Sprinkle* court, the SCRA requires an affidavit to be filed "before entering judgment for the plaintiff"—here, the judgment creditor—and not before entering judgment against a defendant, the judgment debtor. *Id.* at 1244-45. Because there was no dispute that the county court entered a judgment on the garnishment in favor of the judgment creditor, the plaintiff in the original action on which the judgment came, the court believed that the SCRA affidavit requirement was triggered as a matter of law. *Id.* at 1245. Second, as stated above, the judgment on the garnishment was a judgment against the service member by the same judgment and order as against the garnishee because it collected "court costs" for the garnishment against the service member. *Id.* In sum, the court concluded that because the county court entered judgment both for the creditor, as plaintiff in the garnishment proceeding, and took judgment directly against the service member, as a state court defendant, an SCRA affidavit was required. *Id.* at 1244-45.

Despite the Plaintiffs' desire to broadly extend the 17 year old *Sprinkle* opinion (that predated Section 4042 of the SCRA) to all matters of enforcement of judgments, the *Sprinkle* court only found that a judgment on a garnishment wherein the judgment debtor had not appeared and did not have notice required submission of an affidavit of military service before entry of the judgment. *Id.* at 1244-45. The court made no finding that an affidavit of service or assignment of counsel was required at the time the writ of garnishment was issued. Further, the court noted specifically that "no SCRA § 521(b)(1) affidavit was ever filed by defendants SB & C and Mr. Cammock." *Id.* at 1245 (emphasis added). Presumably, an affidavit of

service should have been filed before the underlying state default judgment had been entered. *See id.* at 1237 (noting that at all times relevant to the proceeding plaintiff was in the military). If the underlying judgment had included an award of court costs against the judgment debtor service member, then a judgment on the garnishment assessing costs for the garnishment would likely not have been considered a judgment against the judgment debtor for the SCRA to apply.[2]

Nonetheless, *Sprinkle* was not a suit against a court, clerk, Governor or Justices of the Supreme Court of a state. Its extension of the SCRA did not include registration of foreign judgments, subpoenas in aid of execution or issuance of a writ of garnishment. Moreover, no known case in the almost 17 years since *Sprinkle* has followed that court's interpretation of the SCRA to apply to collection activities such as garnishments or subpoenas, much less the registration of foreign judgments.

B. There is No Support for the Application of the SCRA to the UEFJA and Ancillary Collection Efforts.

It is worth repeating that the Parties are unaware of any other state that applies the affidavit and appointment of counsel provisions of the SCRA to the registration of foreign judgments or in collection activities, such as garnishments, subpoenas in aid of enforcement, *etc*. (*See* Defs.' Mem., ECF No. 46-1 at 18.) Plaintiffs provided no response to Defendants'

[2] The underlying judgment in *Sprinkle* did not include on-going courts costs. *See* Exhibit 10 (numbered consecutively with ECF Nos. 46-2 through 46-10). Contrasted with the face of the foreign judgment registered in Maryland against Plaintiffs Davines and on which "all costs of Court" were awarded (*see* Pls.' Exh. 7(a), ECF 49-2 at 49), it is clear that an order on a garnishment (*see* Pls.' Exh. 7(c), (d), ECF 49-2 at 51-53) including court costs would not be a new judgment in favor of LeMay or against the Davines as described in *Sprinkle*.

assertion and have not offered any indication that *any* state interprets or applies Section 3931 as urged so vehemently by Plaintiffs' counsel in the instant matter.

A review of the 48 states that have adopted the UEFJA confirms that none reference the SCRA or include a requirement of filing of a military service affidavit at the time of registering a foreign judgment. *See* Ala. Code § 6-9-233; Alaska Stat. Ann. § 09.30.210; Ariz. Rev. Stat. Ann. § 12-1703; Ark. Code Ann. § 16-66-603; Colo. Rev. Stat. Ann. § 13-53-104; Conn. Gen. Stat. Ann. § 52-605; Del. Code Ann. tit. 10, § 4783; D.C. Code Ann. § 15-353; Fla. Stat. Ann. § 55.505; Ga. Code Ann. § 9-12-133; Haw. Rev. Stat. Ann. § 636C-4; Idaho Code Ann. § 10-1303; 735 Ill. Comp. Stat. Ann. 5/12-653; Ind. Code Ann. § 34-54-11-2; Iowa Code Ann. § 626A.3; Kan. Stat. Ann. § 60-3003; Ky. Rev. Stat. Ann. § 426.960; La. Stat. Ann. § 13:4243; Me. Rev. Stat. tit. 14, § 8004; Mass. Gen. Laws Ann. ch. 218, § 4A; Mich. Comp. Laws Ann. § 691.1174; Minn. Stat. Ann. § 548.28; Miss. Code. Ann. § 11-7-305; Mo. Sup. Ct. R. 74.14; Mont. Code Ann. § 25-9-504; Neb. Rev. Stat. Ann. § 25-1587.04; Nev. Rev. Stat. Ann. § 17.360; N.H. Rev. Stat. Ann. § 524-A:3; N.J. Stat. Ann. § 2A:49A-28; N.M. Stat. Ann. § 39-4A-4; N.Y. C.P.L.R. 5402; N.C. Gen. Stat. Ann. § 1C-1703; N.D. Cent. Code Ann. § 28-20.1-03; Ohio Rev. Code Ann. § 2329.023; Okla. Stat. Ann. tit. 12, § 722; Or. Rev. Stat. Ann. § 24.125; 42 Pa. Stat. and Cons. Stat. Ann. § 4306; 9 R.I. Gen. Laws Ann. § 9-32-3; S.C. Code Ann. § 15-35-920; S.D. Codified Laws 15-16A-4; Tenn. Code Ann. § 26-6-105; Tex. Civ. Prac. & Rem. Code Ann. § 35.004; Utah Code Ann. § 78B-5-303; Va. Code Ann. § 8.01-465.3; Wash. Rev. Code Ann. § 6.36.035; W. Va. Code Ann. § 55-14-3; Wis. Stat. Ann. § 806.24; Wyo. Stat. Ann. § 1-17-704.

Further, undersigned counsel conducted a sampling of the standardized forms and/or instructions published by courts throughout the United States with respect to registering

foreign judgments. While not exhaustive, importantly, not a single jurisdiction reviewed requires the filing of a military service affidavit to register a foreign judgment. *See* Exhibit 11 (collecting standardized forms and/or filing instructions published by courts in the following 24 states: Alabama, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Idaho, Illinois, Kansas, Kentucky, Maine, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, South Carolina, Virginia, and Wisconsin).[3]

With Plaintiffs' premature filing for summary judgment, this is their '"put up or shut up' moment . . . [when they] must show what evidence [they have] that would convince the trier-of-fact to accept [their] version of events" and of the law. *Mohammad v. Toyota Motor Sales, U.S.A., Inc*., 179 Md. App. 693, 703 (2008) (quoting *Schacht v. Wisconsin Department of Corrections*, 175 F.3d 497, 504 (7th Cir. 1999), disapproved on other grounds, *Higgins v. Mississippi*, 217 F.3d 951 (7th Cir. 2000); *68th St. Site Work Grp. v. Airgas, Inc*., No. CV SAG-20-3385, 2021 WL 4255030, at *16 (D. Md. Sept. 16, 2021) ("Summary judgment is often referred to as the 'put up or shut up' moment in litigation."). Plaintiffs fail to identify to this Court even just one state that applies Section 3931 of the SCRA to registration of foreign judgments, as they claim is so obvious from the plain language of the statute. Essentially, either the whole country is doing it correctly or Plaintiffs are wrong.

C. The Registration of a Foreign Judgment—A Post Judgment Activity—is Not An Entry of a Default Judgment Contemplated by Section 3931.

As discussed in the State's motion to dismiss, the procedure for registering a foreign

[3] Maryland's form is available here: *https://www.courts.state.md.us/sites/default/files/court-forms/district/forms/civil/dccv015.pdf/dccv015.pdf.*

judgment in Maryland is set forth in the UEFJA and Maryland Rules 2-623 and 3-623. Under the statute and Rules, a judgment creditor files an authenticated copy of a judgment entered by a federal or state court along with an affidavit providing the last known address information of both the judgment creditor and judgment debtor. Md. Code Ann., Cts. & Jud. Proc. §§ 11-801 through 803(a). The presentation of the authenticated judgment and affidavit of the judgment creditor is prima facie evidence of the judgment's entitlement to full, faith and credit. *See* Md. Code Ann., Cts. & Jud. Proc. §§ 11-801 through 803(a); Md. Rule 2-623; 3-623. When filing the foreign judgments against Plaintiffs, LeMay attested to the truth and accuracy of the judgments entered against each of the judgment debtors/plaintiffs herein. (*See* Pls.' Exh. 7,(a), 8(a), 9(a), ECF No. 49-2, at 45, 57, 70.)

The clerk of the court in which the foreign judgment is filed is required to then send a notice of the filing of the foreign judgment to the judgment debtor. Md. Code Ann., Cts. & Jud. Proc. § 11-803 (b); Md. Rules 2-623(a)(2), 3-623(b). The clerk records and indexes the judgment in the same manner as a judgment entered by a Maryland state court. Md. Rules 2-623(a)(1), (2), 3-623(a). Per the aforementioned Maryland law and Rules, and case law,[4] the clerk's task is ministerial and does not entail a review of the underlying court action or judgment to insure that it was properly obtained by the judgment creditor. The court clerk's

[4] *See e.g., Berman v. Cnty. Clerk of New York Cnty.*, 387 N.Y.S.2d 519, 520 (Sup. Ct. 1976) (cited by Plaintiffs) (the UEFJA eliminated the need for judicial determination of the existence of a foreign judgment and substituted the purely ministerial or clerical task of recording and entering document as presented and authenticated); *id.* (clerical function is not to exercise discretion in applying laws of foreign states but is to perform only those ministerial acts mandated by law and a court clerk is not authorized under the UEFJA to resolve ambiguities contained in foreign judgments); *Morrissey v. Morrissey*, 713 A.2d 614, 619 (Pa. 1998) (registration is a ministerial act).

action is one solely of recordation and docketing/indexing and they neither have the power to nor do they enter judgment against the judgment debtors. *See supra* at n. 4; *see* also Md. Rules 2-623(a)(1), 3-623(a). As no judgment was in fact entered in favor of LeMay or against the Plaintiffs in Maryland (much less a default judgment), 50 U.S.C. § 3931 is inapplicable.

As set forth in the UEFJA, the judgment debtor has the right to challenge the registered judgment. Md. Code Ann., Cts & Jud. Proc. § 11-802(b); *see also Stevenson v. Edgefield Holdings, LLC*, 244 Md. App. 604, 616 (2020). If a judgment creditor has defrauded the court (and the plaintiffs, as alleged by the Plaintiffs here), the remedy is to vacate the judgment which is what occurred in the instant matters. *See* Md. Code Ann., Cts. & Jud. Proc. § 11-802(b), Md. Rules 2-535 (b), 3-535(b); (Defs.' Exh. 1 - 3, ECF Nos. 46-2, 46-3, 46-5.)

D. Relevant Legal Authority Does Not Support Plaintiffs Claims of Lack of Due Process.

Plaintiffs do little more than baldly assert that their rights have been violated by LeMay's actions in registering authenticated foreign judgments in Maryland and collecting on the judgments. Overall, they fail to point to any dispositive law in support of their position.

First, Plaintiffs take issue with Defendants' assertion that Maryland courts are required under the Full Faith and Credit Clause of the Constitution to recognize judgments of other states. (Pls.' Opp., ECF No. 49 at 19.) They claim that the three specific judgments registered by LeMay are not entitled to full faith and credit and that the UEFJA generally violates Plaintiffs' due process rights. (Pls.' Opp., ECF No. 49 at 21-22.). In "support," Plaintiffs cite several cases that they contend buttress their claim that "fake" judgments are not entitled to full, faith and credit. (Pls.' Opp., ECF No. 49 at 22). *Underwriters Nat. Assur. Co. v. N. Carolina Life & Acc. & Health Ins. Guar. Ass'n*, 455 U.S. 691 (1982); *Rooker v. Fid. Tr. Co.*,

263 U.S. 413 (1923); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299 (1980); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 419 (1957); *Riverside & Dan River Cotton Mills v. Menefee*, 237 U.S. 189, 190 (1915). Yet, none of the cases discuss "fake" judgments.[5]

Plaintiffs then jump to the conclusion that because LeMay registered the "fake" judgments against Plaintiffs, their due process rights were violated. Again, the cases cited by Plaintiffs are inapplicable to this matter. In *Manley v. Manley*, 591 P.2d 1042 (Colo. App. 1978), the judgment creditor failed to file a copy of the foreign judgment with the court; accordingly, the court refused to recognize a judgment on the judgment creditor's word alone and in the absence of the certified copy of the judgment required by Colorado law. In *Kohlbusch v. Eberwein*, 642 S.W.2d 683 (Mo. Ct. App. 1982), the judgment creditor violated Missouri's registration of foreign judgments act [which predated its Uniform Enforcement of Foreign Judgments Law, Mo. Sup. Ct. R. 74.14] and did not make a general holding about due process. In *Berman*, 387 N.Y.S.2d at 520, the court refused to enforce a purported foreign judgment because the document provided in support of the purported $5,000,000 judgment by the *pro se* petitioner did not, "on its face award the petitioner a money judgment." The words "due process" are nowhere to be found in the brief opinion. Finally, in *Beck v. Smith*, 296 N.W.2d 886, 893 (N.D. 1980), the court held that enforcement of a foreign custody decree

[5] Defendants do not take the position that invalid foreign judgments are entitled to enforcement in Maryland. Rather, the procedures set forth in the UEFJA, as adopted by Maryland and almost all other states, allow for the courts to rely on the authenticated judgments and affidavits filed therein and provide full faith and credit to them on the assumption that the original state court from whence the judgment came had the authority to enter that judgment until proven otherwise. *See*, *Legum v. Brown*, 395 Md. 135, 145 (2006). Plaintiffs have provided no authority to the contrary.

required compliance with both North Dakota's Uniform Child Custody Jurisdiction Act and Uniform Enforcement of Foreign Judgments Act.

None of these cases cited by Plaintiffs stand for the proposition that the courts at issue could not have enforced a foreign judgment presented to it in compliance with the state's laws because such enforcement would violate due process. Plaintiffs confuse the presumption of validity of foreign judgments presented to Maryland state courts in compliance with Maryland laws and whether LeMay's judgments were entitled to be enforced. While Plaintiffs suggest some baseless duty of the District Court clerks to investigate the "fake" judgments at issue, they have provided no support for their claim.

Plaintiffs further claim that LeMay's ability to file "fake" judgments under the UEFJA is a violation of the Due Process clause. (Pls' Opp, ECF No. 49 at 21). As noted in Defendants' motion to dismiss, there has been no direct challenge to the constitutionality of Maryland's UEFJA. (Defs.' Mem., ECF No. 46-1 at 21). However, the states that have addressed the issue as to their own UEFJA have all held that the UEFJA does not violate the due process clause. *See Gedeon v. Gedeon*, 630 P.2d 579, 582–83 (Colo. 1981); *Holley v. Holley*, 568 S.W.2d 487, 489 (Ark. 1978); *Doctor's Associates, Inc. v. Duree*, 745 N.E.2d 1270 (Ill. App. 2001); *Bittner v. Butts*, 514 S.W.2d 556 (Mo. 1974); *Sullivan v. Sullivan*, 97 N.W.2d 348 (Neb. 1959), *Glotzer v. Glotzer* 447 NYS2d 603 (1982); *Hehr v. Tucker,* 472 P.2d 797 (Ore. 1970); *Nix v. Cassidy*, 899 So.2d 998 (Ala. App. 2004); *Douglas N. Higgins, Inc. v. Songer*, 827 P.2d 469 (Ariz. 1991); *Wells Fargo Equip. Fin., Inc. v. Retterath*, 928 N.W.2d 1 (Iowa 2019); *Flangas v. Perfekt Mktg., LLC*, 507 P.3d 574 (Nev. 2022); *Enron (Thrace) Expl. & Prod. BV v. Clapp*, 874 A.2d 561 (N.J. App. 2005); *Jones v. Jones*, 14 Wash. App. 2d 1038 (2020); *Arbor Farms, LLC v. GeoStar Corp.*, 853 N.W.2d 421 (Mich. App. 2014); *Harbison-Fischer*

Mfg. Co., Inc. v. Mohawk Data, 823 S.W.2d 679 (Tex. App. 1992).

Furthermore, federal courts have similarly held that a judgment debtor need not have minimum contacts with the state being asked to enforce a foreign judgment. *See*, *e.g.*, *Shaffer v. Heitner*, 433 U.S. 186, 210 n.36, (1977). "In an action to execute on a judgment, due process concerns are satisfied, assuming proper notice, by the previous rendering of a judgment by a court of competent jurisdiction." *Office Depot Inc. v. Zuccarini*, 596 F.3d 696, 700 (9th Cir. 2010); *see Smith-Barney, Inc. v. Ekinci*, 116 F.3d 464, 1997 WL 351630, *1 (1st Cir. 1997) (per curiam) (affirming *Smith Barney, Inc. v. Ekinci*, 937 F.Supp. 59, 61 (D. Me. 1996); *Smith v. Lorillard, Inc.*, 945 F.2d 745, 746 (4th Cir. 1991).

While Plaintiffs perceive the UEFJA to be unfair, they have not provided any actual authority to support their claim of its lack of constitutionality. Furthermore, Plaintiffs provide no response to Defendants' argument that *this* Court has determined that the parallel federal statute, 18 U.S.C. § 1963, does not violate the due process clause by not requiring personal jurisdiction over the judgment debtor. *USCC Distribution Co., LLC v. G&S Wireless, LLC*, No. CV RDB-21-0329, 2021 WL 2315456 at *2 (D. Md. June 7, 2021) (citing *Fidelity National Financial, Inc. v. Friedman*, 935 F.3d 696 (9th Cir. 2019)). In sum, a properly authenticated foreign judgment filed in Maryland in compliance with the UEFJA is entitled to full, faith and credit unless challenged by the party resisting enforcement. *See Legum v. Brown*, 395 Md. 135, 145 (2006). Plaintiffs feeling or belief that the process violates their due process rights does not support any claim that the process is unconstitutional.[6]

[6] It is noteworthy that Plaintiffs raise no constitutional argument with respect to 50 U.S.C. § 3931(g), which imposes an obligation on a service member defendant to seek a

E. Section 3934 of the SCRA Applies to Post Judgment Activities.

Plaintiffs' motion completely ignores the existence of 50 U.S.C. § 3934 which, on its face, applies *after* a judgment is entered. As set forth in the State's motion to dismiss, Section 3934 allows the court "to stay the execution of any judgment or order[7] entered against the servicemember" and to "vacate or stay an attachment or garnishment" of the service member's property. 50 U.S.C. § 3934. The statute applies in "an action or proceeding commenced in a court against a servicemember . . . ." 50 U.S.C. § 3934(b).

The mere existence of Section 3934 guts Plaintiffs' interpretation of 50 U.S.C. § 3931. If Section 3931(b) were to apply to post judgment activities such as registration of a foreign judgment, garnishments and subpoenas for financial information in execution of a judgment, then Section 3934 would be unnecessary or superfluous because both sections allow for vacation and stays of orders or judgments.

II. PLAINTIFFS FAIL TO STATE A CLAIM BECAUSE THE GOVERNOR AND JUSTICES ARE IMPROPER PARTIES AND SHOULD NOT BE HELD LIABLE FOR ENTRY OF JUDGMENT IN THE ABSENCE OF AN AFFIDAVIT OF MILITARY SERVICE OR APPOINTMENT OF COUNSEL.

A. There Is No Support for Plaintiffs' Claim That the State Can Be Liable for Violations of Section 3931 of the SCRA by *These* Defendants.

Plaintiffs urge this Court to accept that the State, namely the Governor and Justices, should be held liable for an alleged violation of Section 3931(b) which prohibits "the court"—not the Governor or the Justices—from entering judgment in favor of a plaintiff before

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vacation of a judgment entered in the absence of compliance with the affidavit and appointment of counsel requirements in 50 U.S.C. § 3931(b).

[7] If judgment has the broad definition urged by Plaintiffs, then including the word "order" in this section seems unnecessary and redundant.

requiring a plaintiff to file an affidavit as to the defendant's military service and appointment of counsel to the servicemember defendant. 50 USCA § 3931(a), (b).

In the instant matter, "the court" did not enter judgment in favor of the judgment creditor, LeMay, when accepting, recording, and indexing the foreign judgments. As described in the Maryland Rules, the court clerk simply registers and indexes foreign judgments. Md. Rule 2-623(a)(1), 3-623(a). Further, it is the court clerk who issues a writ of garnishment or a subpoena in aid of execution.[8] Md. Rules 2-645(b), 3-645(b), 2-510(b), 3-510(b). While "the court" enters a judgment on a garnishment, Plaintiffs have not filed suit against the District Court or any of its judges.

Whether the clerks, judges, courts, Governor or Justices of the Supreme Court of Maryland are defendants, there is no evidence that Congress intended to allow aggrieved service members to hold any of them liable for alleged violations of affidavit and appointment of counsel requirements of the SCRA. In fact, undersigned counsel is unaware of any litigation enacted by Congress in which it seeks to hold the State or its employees liable for judicial activities such as those "prohibited" by the SCRA. Likewise, Plaintiffs have not directed the Court to any.

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[8] *See Ortman v. Thomas,* 894 F. Supp. 1104, 1110-111 (E.D. Mich. 1995), *aff'd*, 99 F.3d 807 (6th Cir. 1996) (defendant was immune from § 1983 suit based upon his conduct as county circuit court clerk in executing garnishments against plaintiff); *Brown v. Liberty Loan Corp. of Duval*, 539 F.2d 1355 (5th Cir. 1976), *certiorari denied*, 430 U.S. 949 (1977) (due process does not require notice and opportunity for a hearing of entitlement to head of family exemption before wages are garnished relating to postjudgment garnishment, even though garnishment is issued by clerk of court and not by a judicial officer); *see also Butz v. Economou*, 438 U.S. 478, 512-13 (1978) (nonjudicial officers whose official duties have an integral relationship with the judicial process are entitled to absolute immunity for their quasi-judicial conduct).

The legislative history for the enactment of a private cause of action under section 4042 provides some guidance. According to a report submitted with H.R. 3949, which was incorporated into H.R. 3219 and enacted as P.L. 111-275, the Veterans' Benefits Act of 2010, a private cause of action was added to the SCRA due to a split among the U.S. district courts as to its existence. H.R. REP. NO. 111-324, at 6-7 (2009); H.R. 3219, 111th Cong. (2009); see 111 CONG. REC. S7657 (daily ed. Sept. 28, 2010) (explanatory statement). The report acknowledges, that "[v]arious sections of the SCRA include provisions providing for penalties for violations of the afforded protections. The Act does not specifically state who may bring an application for relief, nor does it specifically exclude private individuals from filing a cause of action." H.R. Rep. No. 111-324, at 7 (2009).

When enacted, the Veterans' Benefits Act of 2010, amended sections of the SCRA to conform to the newly recognized right of enforcement by the attorney general or aggrieved persons under section 303 [now 50 U.S.C. § 4041, et seq.], including removal of language which previously indicated a right of action as well as adding penalties/fines. See 156 CONG. REC. H7321-01, H7324-25 (daily ed. Sept. 29, 2010). No amendments were made to what is now Section 3931.

Section 3931 as a whole does not lend itself to a civil cause of action against the State, courts, or clerks for an alleged violation. Only subsection (c) refers to actionable violations. Specifically, Section 3931(c) provides as follows:

> A person who makes or uses an affidavit permitted under subsection (b) (or a statement, declaration, verification, or certificate as authorized under subsection (b)(4)) knowing it to be false, shall be fined as provided in Title 18, or imprisoned for not more than one year, or both.

Significantly, in *Alvarado v. Collect Access, LLC*, the district court examined Section

3931 to determine if there was an "intent on the part of the legislature to provide a private right of action for damages arising from a violation of the statute" and found none. 2017 WL 1520003, at *5 (S.D. Cal. Apr. 26, 2017). The court noted that the "intent of § 3931(b) is to protect servicemembers against default judgments when they fail to make an appearance due to their active duty military status. The language of § 3931(b) 'focuses exclusively on the court requiring a plaintiff to file an affidavit informing it of a defendant's military status.'" *Id.* (quoting *Davis v. Hunt Leibert Jacobson P.C.*, No. 3:12CV1102 (JBA), 2016 WL 2963418, at *9 (D. Conn. May 20, 2016)) (emphasis added). While the court's analysis was in the context of a private cause of action prior to the enactment of section 4042 of the SCRA, it is instructive.

The court further stated that "Section 3931(b) is phrased as a directive to the courts to require the plaintiff to file an affidavit before entering judgment for the plaintiff. As a result, the focus of § 3931(b) is 'twice removed from the individuals who will ultimately benefit from' it." *Id.* at *6 (quoting *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001)); *California v. Sierra Club*, 451 U.S. 287, 294 (1981) ("statutes that focus on the person regulated rather than the individuals protected create 'no implication of an intent to confer rights on a particular class of persons.')."

While the *Alvarado* court failed to find a private cause of action for filing a false affidavit in light of the penalties provided in section 3931(c) and in the absence of retroactive effect of section 4042, courts have since recognized that a private cause of action does exist under Section 3931(c) against parties filing false affidavits. *See Simmons v. Villages Cmty. Ass'n*, No. EDCV 20-1831-KK, 2020 WL 8365262 (C.D. Cal. Dec. 17, 2020); *Maxwell v. St. Francis Health Ctr.*, No. 17-4014-SAC-KGS, 2017 WL 4037732, at *4 (D. Kan. Sept. 13, 2017). No court, however, has found that Section 4042 creates a private cause of action against

judges (or governors or state supreme court justices) for a violation of Section 3931(b). *See also Davis v. Hunt Leibert Jacobson P.C.*, No. 3:12CV1102 (JBA), 2016 WL 2963418, at *9 (D. Conn. May 20, 2016) ("This statutory language does not constitute an indication that Congress intended § 3931(b) to contain a private right of action for damages for failure to follow such procedures.") (emphasis added).

Further, it is not insignificant that under subsection (g), judgments entered without compliance with the affidavit and appointment of counsel requirements of subsection (b), are voidable and not void *ab initio*. *See Thompson v. Lowman*, 155 N.E.2d 258, 261 (Ohio App. 1958) (citing *Wilterdink v. Wilterdink*, 184 P.2d 527, 531, 532 (Cal. App. 1947)); *Hynds v. City of Ada ex rel. Mitchell*, 158 P.2d 907 (Okla. 1945); *Lyle v. Haskings*, 168 P.2d 797 (Wash. 1946); *Bell v. Niven,* 35 S.E.2d 182 (N.C. 1945); *Morris Plan Bank of Georgia v. Hadsall*, 41 S.E.2d 881 (Ga. 1947); *Lightner v. Boone*, 45 S.E.2d 261 (N.C. 1947). Section 3931(g) authorizes a court to vacate or set aside a "default judgment" where it is found that the service member was unable to appear due to his military service and has a meritorious defense to the action. The failure to file an affidavit does not affect the judgment, and is only an irregularity. *Snapp v. Scott*, 167 P.2d 870 (Okla. 1946) quoting *State ex rel. Smith v. District Court*, 179 P. 831, 834 (Mont. 1919).

The fact that a judgment entered in the absence of an affidavit and assignment of counsel is only an irregularity and not void supports a finding that it is not a violation of the statute if a judgment is entered in the absence of compliance. Accordingly, the states, courts, and clerks cannot be held liable for violations of the section 3931 and, therefore, governors and justices of the States' highest courts cannot be held liable under Sections 3931(b) and 4042 for the action or "inaction" of the clerks and courts.

B. The Holding of *Torres*—that States Waived Eleventh Amendment Immunity for Suits *Expressly* Authorized by USERRA—Has No Application to the SCRA, and Even if *Torres* Applies to the SCRA, Plaintiffs' Claim is not Saved Because Only Foreign Judgments are at Issue.

Plaintiffs' urging of the application of *Torres*, 142 S. Ct. 2455 (2022) to the State's claim of Eleventh Amendment immunity is not supported by the broad interpretation of Section 4042 of the SCRA urged by Plaintiffs, especially in comparison to the specific language clearly indicating Congress' intention to waive a state's immunity for claims under the USERRA.

As noted by Plaintiffs, the *Torres* Court considered whether Congress had the authority to enact legislation requiring states, as employers, to reemploy returning veterans and authorize suit against them if they refused. 142 S. Ct. at 2460, 2461. The Court worked from the initial premise that the Constitution gives Congress its war powers. *Id.* at 2460, 2463-466. And, upon entering the Union, the States agreed that their sovereignty would yield to congressional authorized suits. *Id.* at 2460. Finally, under its war powers, the Court held that Congress *expressly* authorized suits against the States under USERRA. *Id.* at 2459, 2466-467. Undoubtedly, however, *Torres* did not hold that the States waived their Eleventh Amendment immunity with respect to the claim asserted by Plaintiffs' in their amended complaint, ECF No. 42 at ¶¶ 162-87, against these Defendants—the Maryland Governor and Justices—and likewise did not hold that Congress abrogated Eleventh Amendment immunity under Section 4042 of the SCRA.

Plaintiffs utterly fail to recognize and address that in enacting USERRA Congress drafted the statute to *unequivocally* state that USERRA '"supersedes any State law . . . that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter,

including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit,'" *id.* at 2459 (quoting 38 U.S.C. § 4302(b)), whereas Section 4042 of the SCRA contains no similar language.[9] (Defs.' Mem., ECF No. 46-1 at 23-24.) This was critical to the Court in *Torres*, 142 S. Ct. at 2466, and the Court's determination that the States do not enjoy Eleventh Amendment immunity. Yet, Plaintiffs conveniently ignore it.

As discussed in Defendants' motion to dismiss, the Court in *Torres* held that there was a private cause of action against the States as employers pursuant to a statute that specifically described how to proceed with civil actions against the States as an employer. *See Torres*, 142 S. Ct. at 2466; 38 U.S.C. § 4323. There is no such equal provision of the SCRA. Plaintiffs draw false equivalency between the USERRA and the SCRA. While the SCRA generically allows for the filing of a civil action by "any aggrieved person" for a violation of the statute, USERRA specifically references a "State" employer and outlines a procedure for suits against a state as an employer. 38 U.S.C. § 4323; compare 50 U.S.C. § 4042. Unlike in USERRA, the SCRA contains no reference or instructions on filing suit against judges and courts, let alone persons not involved in the alleged violations of the Act, *i.e.*, governors and justices. Without an unequivocal expression of Congress's intent to abrogate Eleventh Amendment immunity as to the SCRA, such abrogation may not be read into the SCRA. *Sossamon v. Texas*, 563 U.S. 277, 284 (2011) ("[O]ur test for determining whether a State has waived its

[9] Section 4042 was enacted in 2010. The Parties have not cited any post-2010 cases addressing Eleventh Amendment immunity as applied to the SCRA except *Webb v. California*, No. CV 17-8499-DMG (KSX), 2018 WL 6184776, at *4-5 (C.D. Cal. Mar. 15, 2018) and *Hofelich v. Hawaii*, No. CV 11-00034-DAE-BMK, 2011 WL 2117013, at *9-10 (D. Haw. May 25, 2011). Both held that Eleventh Amendment immunity bars claims against the States under the SCRA.

immunity from federal-court jurisdiction is a stringent one. . . . A State's consent to suit must be unequivocally expressed in the text of the relevant statute. . . . Only by requiring this clear declaration by the State can we be certain that the State in fact consents to suit. . . . Waiver may not be implied.") (internal quotation marks and citations omitted); *Green v. Mansour*, 474 U.S. 64, 68 (1985) (same); *Edelman v. Jordan*, 415 U.S. 651, 673 (1974) (same).

Here, the express language of Section 4042 of the SCRA (as compared to USERRA) certainly does not authorize private causes of action against the States for alleged violations of Section 3931(b), and, at minimum, clearly cannot authorize suits against the governor and justices of the highest court of a state for the purported failure of lower courts and their clerks to comply with the SCRA. Under the clear terms of Section 4042 (enacted in 2010), Congress explicitly and intentionally did not abrogate Eleventh Amendment immunity,[10] whereas with USERRA's express private cause of action against the States as employers, 38 U.S.C. § 4323 (enacted in 1994), Congress's intent was plain and unambiguous. If abrogation under Section 4042 in 2010 is what Congress desired, then it certainly knew how to do it based on abrogation in USERRA in 1994.

Because the language of Section 4042, particularly when viewed in the context of the

[10] This remains true even assuming the States waived Eleventh Amendment immunity for private damages suits under Section 4042 of the SCRA pursuant to the "Article I military powers" as Plaintiffs claim (and Defendants' dispute) without offering any direct authority under *Torres*. The analysis in *Torres* pertaining to the States waiving Eleventh Amendment immunity under the war powers of Congress in relation to private damages suits under USERRA is far different than any such analysis here because not applying the SCRA to Defendants in *this* case "would [not] permit States to thwart national military readiness," 142 S. Ct. at 2468, and there would not be a "debilitating effect on national security," *id.* at 2469, because judgments were already entered against Plaintiffs in foreign states, and they had an opportunity to defend those claims. The facts of *this* case are not as dire as Plaintiffs allege and attempt to analogize to *Torres*.

SCRA as a whole, leaves no ambiguity in its omission of private cause of action against States, there is no need to examine the legislative history. Plaintiffs' attempt at imposition of a private cause of action against the States under Sections 4042 and 3931(b) "is not a construction of a statute, but, in effect, an enlargement of it . . . so that what was omitted . . . may be included within its scope." *Iselin v. United States*, 270 U.S. 245, 251 (1926). "To supply omissions," however, "transcends the judicial function." *Id.*

Plaintiffs also cite several cases regarding the breadth of the remedies available under Section 4042 as somehow supporting the application of *Torres* to the State here. (Pls.' Opp., ECF No. 49 at 35. However, none of the cases involved judgments against a court, a state actor or the governor or justices of the highest court of a state, nor do they involve liability for a violation of 50 U.S.C. § 3931(b). They are, therefore, wholly inapplicable.

Finally, Plaintiffs cite to *Dameron v. Brodhead*, 345 U.S. 322 (1953), and make an incorrect analogy between the respondents' defense in *Dameron*, that the SCRA (formerly the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C.App. §§ 501, 514, 574) and the State's assertion of Eleventh Amendment immunity in the instant matter. (Pls.' Opp., ECF No. 49 at 27.) In *Dameron*, as a municipal (as opposed to a state) employee, Eleventh Amendment immunity was unavailable. 345 U.S. at 721; *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70 ("States are protected by the Eleventh Amendment while municipalities are not."); *Monell v. Department of Social Servs.*, 436 U.S. 658, 690 n. 54, (1978) (same); *Gray v. Laws*, 51 F.3d 426, 431 (4th Cir. 1995) (same). Accordingly, *Dameron* does nothing to further Plaintiffs' cause.

C. The *Ex Parte Young* Exception to Eleventh Amendment Immunity Does Not Apply Because Plaintiffs' Claim Is Retrospective And the Defendants Do Not Have Any Special Relation to Plaintiffs' Closed Foreign Judgment Matters.

Properly applying Eleventh Amendment immunity, Plaintiffs respond that they seek "prospective injunctive relief to correct an ongoing violation of law," and, therefore, an exception to Eleventh Amendment immunity applies under the *Ex parte Young* doctrine. (Pls.' Opp., ECF No. 49 at 41.) Plaintiffs state that they seek prospective relief in the form of the enjoinment of "the State of Maryland from failing to ensure that going forward no other [hypothetical] active-duty service member (including the Plaintiffs and their 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 . . . ." (ECF No. 49, Opp. at 41-42.)[11]

In *Ex parte Young*, the Supreme Court recognized a narrow exception to Eleventh Amendment immunity grounded in traditional equity practice—one that allows certain private parties to seek judicial orders in federal court preventing state executive officials from enforcing state laws that are contrary to federal law. 209 U.S. 123, 159–160 (1908); *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc*., 506 U.S. 139, 146 (1993) (the *Ex parte Young* exception to Eleventh Amendment immunity is narrow). "But as *Ex parte Young* explained, this traditional exception does not normally permit federal courts to issue injunctions against state-court judges or clerks. Usually, those individuals do not enforce state

[11] Interestingly, Plaintiffs state, "Plaintiffs claim for prospective injunctive relief should be allowed to go forward if the Court finds grounds for barring Plaintiffs [*sic*] *other* claims," ECF No. 49, Opp. at 42 (emphasis added), yet Plaintiffs only have a singular claim/cause of action, which is filed under the SCRA, ECF No. 46-1, Memo. 9-10, 19 n.10.

laws as executive officials might; instead, they work to resolve disputes between parties." *Whole Woman's Health v. Jackson*, 142 S. Ct. 522, 532 (2021).

While the Supreme Court has consistently acknowledged the important role *Ex parte Young* plays in "promot[ing] the vindication of federal rights," the Court has been cautious not to give that decision "an expansive interpretation." *Pennhurst State School and Hospital v. Halderman*, 465 U.S. 89, 105, 102 (1984). Indeed, this narrow exception is "narrowly construed." *Id.* at 114, n.25. *See Edelman*, 415 U.S. at 678 (declining to extend the doctrine to plaintiffs seeking retroactive as opposed to prospective relief);[12] *Pennhurst*, 465 U.S. at 106 (declining to extend the doctrine to claims for violations of state law); *Mansour*, 474 U.S. at 71 (declining to extend the doctrine where the alleged federal violation occurred entirely in the past and is no longer "ongoing"); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 74 (1996) (declining to extend the doctrine where Congress has prescribed a detailed remedial scheme for the enforcement against a State of the claimed federal right); and *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 281 (1997) (declining to extend the doctrine where "special sovereignty interests" are implicated).

Further, to qualify under the narrow exception, plaintiffs must also demonstrate a "special relation" between the state officers sued and the alleged unconstitutional act or statute. *McBurney v. Cuccinelli*, 616 F.3d 393, 399 (4th Cir. 2010) (citing *Ex parte Young*, 209 U.S. at 157); *Falwell v. City of Lynchburg, Va.*, 198 F. Supp. 2d 765, 782-83 (W.D. Va. 2002). The

[12] *See Friends of Lubavitch v. Baltimore County, Maryland*, GLR-18-3943, 2021 WL 2260287, at *3 (D. Md. June 3, 2021) ("courts across the country have found that plaintiffs seeking relief from previous judicial decisions do not fall within the *Ex parte Young* exception.") (citing cases).

suit must name as a defendant a state officer who has a duty to enforce the challenged law. *Ex parte Young*, 209 U.S. at 155-57. The "requirement of 'proximity to and responsibility for the challenged state action,' is not met when an official merely possesses '[g]eneral authority to enforce the laws of the state[.]'" *McBurney*, 616 F.3d at 399.

Ex parte Young does not apply under the facts of this case. First, Plaintiffs solely seek retrospective relief. (*See* ECF No. 46-1, Memo. 10-12, 29-30.) Plaintiffs fundamentally seek relief from actions Defendants have purportedly already taken—failing to act in their official capacities by not requiring judgment creditors who register foreign judgments in Maryland to file a service member affidavit or when attempting to collect on domesticated judgments in Maryland, and for not appointing counsel if a debtor is an active-duty service member. Defendants are not causing an *ongoing* violation of Plaintiffs' SCRA rights.

Second, and relatedly, the relief Plaintiffs seek is fundamentally a request for this Court to mandate that Defendants—none of whom have the legal authority or jurisdiction—*somehow* amend or alter Plaintiffs' underlying and *closed* foreign judgment actions in the District Court. But, "'[f]ederal courts do not have the authority to order state courts to alter a judgment.'" *Scott v. Morrison*, 995 F.2d 1064, 1993 WL 212730, at *1 (4th Cir. 1993). Federal district courts "'do not have jurisdiction . . . over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional.'" *Friends of Lubavitch*, 2021 WL 2260287, at *3 (quoting *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 486 (1983)). As *Ex parte Young* put it, "an injunction against a state court" or its "machinery" "would be a violation of the whole scheme of our Government." 209 U.S. at 163. Instead, a plaintiff's "'proper avenue of relief is in the state judicial system.'" *Scott*, 1993 WL 212730, at *1.

Third, even if the Court were to construe Plaintiffs' claim as seeking prospective relief against Defendants, Plaintiffs would not be entitled to relief under *Ex parte Young* because Defendants lack a "special relationship" to the purportedly unlawful state action. *Falwell*, 198 F. Supp. 2d at 782–83. Federal courts thus may enjoin state officers where those officers are "clothed with some duty in regard to the enforcement of the laws of the state, and who threaten and are about to commence proceedings, either of a civil or criminal nature, to enforce against parties affected an unconstitutional act." *Id*. at 782 (quoting *Ex parte Young*, 209 U.S. at 156–57). Moreover, as the Supreme Court has explained, "[t]he fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact[.]" *Ex parte Young*, 209 U.S. at 157. But "Plaintiffs' allegations that [Defendant] has a general obligation to enforce the laws are not sufficient to make him a proper party to litigation challenging" those laws. *Falwell*, 198 F. Supp. 2d at 784; *Waste Mgmt. Holdings, Inc. v. Gilmore*, 252 F.3d 316, 331 (4th Cir. 2001) (same).

Plaintiffs overlook that the enforcement connection requirement of *Ex parte Young* "limits plaintiffs to suing only those officers with the [actual] legal ability to remedy the alleged constitutional violation." *Sonda v. J.*, 5:22-CV-124, 2022 WL 16707251, at *4 (N.D.W. Va. Sept. 7, 2022). Here, although Governor Moore is under a general duty to enforce the laws of Maryland "by virtue of his position as the top official of the state's executive branch, he lacks a specific duty to enforce the challenged statutes." *Gilmore*, 252 F.3d at 331. "The purpose of allowing suit against state officials to enjoin their enforcement of an unconstitutional statute is not aided by enjoining the actions of a state official not directly involved in enforcing the subject statute." *Id.*

Applying the above "special relation" requirement to a state judge, the *Falwell* Court similarly found that state judges are "not clothed with any ability or duty to enforce the challenged statutes against the Plaintiffs; [their] role is to adjudicate cases brought before [them] . . . ." 198 F. Supp. 2d at 785. The same logic applies to the Justices here. At its core, Plaintiffs seek to challenge the framework of the registration/enrollment and ancillary collection efforts of foreign judgments under the UEFJA and the Maryland Rules as they interact with the SCRA.

Accordingly, *Ex parte Young* does not apply and Plaintiffs' claim against Defendants in their official capacities is barred by Eleventh Amendment immunity.

D. The Recent Amendments to the Maryland Rules Are Immaterial to this Matter.

Plaintiffs assert that the Supreme Court of Maryland's Rules Order dated April 21, 2023, on the 214th report submitted by the Court's Standing Committee on Rules of Practice and Procedure ("Rules Order") is an admission that it would not be burdensome to implement the affidavit and appointment of counsel provisions of the SCRA as Plaintiffs assert is required. While the recent Rules changes neither the application nor the applicability of the SCRA to the UEFJA, they are not relevant to this Court's consideration of the discrete and narrow issues presently before this Court.

Under the recent Rules Order (effective July 1, 2023), the Maryland Rules were merely revised to conform with the legislative changes to the SCRA, namely the renumbering of the SCRA from 50 U.S.C. App. §§ 501, *et seq*. to 50 U.S.C. §§ 3901, *et seq*., and to address the possibility of "stale" SCRA affidavits relating to default judgment actions. Rules Order, April 21, 2023, https://www.mdcourts.gov/sites/default/files/rules/order/ro214.pdf; (*and see* 214th

Report, Pls.' Exh. 11, ECF 49-2 at 87-104.) The affected Maryland Rules as to renumbering were Rules 2-501, 2-613, 14-207, 14-209, none of which pertain to the filing of foreign judgments or executions on judgments. In addition, references to the military service affidavit of the SCRA were added to Rule 3-306, titled "Judgment on Affidavit," (*i.e.*, a default judgment) and Rule 3-113, with the latter addition requiring that an updated affidavit or statement regarding a defendant's military status be filed at the time a request for renewal of summons is requested seeking judgment by affidavit/default judgment.

The amendments to the Maryland Rules only support the general understanding of the application of the affidavit requirement of Section 3931 of the SCRA to solely apply prior to the entry of default judgments and should not be interpreted in any other matter. Plaintiffs' self-serving attempt at a contrary interpretation of the Rules amendments or reading something into the Rules amendments that is not there is simply wishful thinking and incorrect.

E. Plaintiffs Concede the State's Defenses of Judicial and Quasi-Judicial Immunity, Mootness and Standing, Lack of Jurisdiction Under the *Rooker-Feldman* Doctrine and Failure to State a Claim for Declaratory Relief and Otherwise Fail to Show How the State's Legislative Immunity Yields to Plaintiffs' Claims.

Plaintiffs' fail to address several key defenses raised by the State. Specifically, they make no argument that their amended complaint should not be dismissed because of the State's judicial and quasi-judicial immunity, mootness and standing, lack of jurisdiction under the *Rooker-Feldman* doctrine, and failure to state a claim for declaratory relief. (*See* Def.'s Mem., ECF No. 46-1 at 27-35.) Plaintiffs completely fail to address the arguments, *see* Pls.' Opp., ECF No. 49; therefore, they concede the State's arguments and defenses. *See Slavin v. Imperial Parking (U.S.), LLC*, No. PWG-16-2511, 2019 WL 1384214, at *13 (D. Md. Mar. 27, 2019) ("[W]hen a [party] files an opposition to a dispositive motion and only addresses

certain arguments raised by the [moving party], a court may treat those arguments that the plaintiff failed to address as conceded.") (internal quotation marks and citation omitted); *Ali v. D.C. Court Servs*., 538 F. Supp. 2d 157, 161 (D. D.C. 2008) ("If a plaintiff . . . files an opposition to a motion to dismiss addressing only certain arguments raised by the defendant, a court may treat those arguments that the plaintiff failed to address as conceded."). It is now undisputed that the State is entitled to dismissal.[13]

Plaintiffs' defense to the State's asserted legislative immunity is essentially that imunity is not without limits and the Governor and Justices owe duties to Plaintiffs by virtue of their roles. (*See* Pls' Opp., ECF 49 at 43-45.) Plaintiffs do not provide any authority as to how the State's immunity does not apply or yields to Plaintiffs' right of action pursuant to 50 U.S.C.A. § 4042 or from where they have a private right of action against the Governor and Justices for alleged violations of duties owed generally under the Maryland Constitution. Accordingly, they are unworthy of further consideration by this court and should be deemed conceded.

III. PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE DISMISSAL IS WARRANTED OR TO ALLOW FOR DISCOVERY.

Plaintiffs seek summary judgment on the liability of the State for violations of 50 U.S.C. § 3931(b), and although their amended complaint (ECF No. 42), asserts a claim

[13] While it should go without stating, in an abundance of caution, the State, to the extent Defendants have not challenged any of the underlying facts set forth in the amended complaint, reserves the right to do so in the future. Plaintiffs make an odd statement that "Defendants do [not] appear to challenge Plaintiffs' well pled and detailed facts related to their claimed damages in the motion to dismiss except to argue that they should not be responsible for denying the Plaintiffs rights and protections under the SCRA . . . ." (Pls' Facts, ECF No. 49-1 at 6.) To the extent that Plaintiffs assert that the State has not challenged Plaintiffs' damages claim, this is incorrect. Surely, Plaintiffs are aware that, *solely for purposes of weighing a motion to dismiss*, a court may assume the facts as alleged in the complaint to be true. *See Slavin*, 2019 WL 1384214, at *13; *Ali*, 538 F. Supp. 2d at 161.

pursuant to 50 U.S.C. § 4042, they argue in their motion an amorphous duty owed to the Plaintiffs to have prevented LeMay from utilizing the State courts to enforce foreign judgments allegedly in violation of the SCRA and the constitutional protection of due process. (ECF No. 49 at 1-4.) In "support" of their motion, Plaintiffs filed an annotated statement of "undisputed" facts. (ECF No. 49-1.) To the extent that the Court deems any of the facts not admitted herein to be material, the State requests that the Court defer considering Plaintiffs' motion to allow for discovery or deny Plaintiffs' motion pursuant to Fed. R. Civ. Pro. 56(d).

Summary judgment is only appropriate where the moving party establishes that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56(a). The State has demonstrated why Plaintiffs are not entitled to judgment. Plaintiffs are also not entitled to summary judgment because they have not set forth "material" facts in support of their motion. While Plaintiffs' claim that 50 U.S.C. § 3931(b) was violated, they have not asserted any facts that either these Defendants violated the affidavit and appointment of counsel provisions of the SCRA.

A fact is material if it "might affect the outcome of the suit under the governing law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). At this stage of the proceedings, the court should not make credibility determinations or weigh the evidence. *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 150 (2000). If the evidence presented on a dispositive issue is subject to conflicting interpretations or reasonable persons might differ as to its significance, summary judgment is improper. *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 450 (1976).

The facts set forth by Plaintiffs are not material to determine whether the Governor and Justices violated 50 U.S.C. § 3931(b). Plaintiffs make no statement of fact that either the

Governor or Justices accepted any foreign judgment registered by LeMay, issued any subpoena or writ of garnishment or entered any judgment or order in favor of LeMay or against Plaintiffs.

Nonetheless, the State responds to Plaintiffs' alleged "material" facts as follows:

Plaintiffs' statement of material facts is interspersed with misstatements of the law and erroneous descriptions of the filings in the District Court. The filings in the District Court attached to Plaintiffs' Addendum as Exhibits 7, 8, and 9, ECF No. 49-2 at 44-75, speak for themselves. See also, Exhibit 12 (including all three judgments against Plaintiffs).

In paragraphs MF.[14] 1, 8 and 17, Plaintiffs incorrectly describe the actions of LeMay and the court clerk. *See* Md. Rule 3-623. No "purported judgment" was filed. Authenticated copies of judgments were received in the District Court. *See* Exh. 12. Furthermore, an affidavit of LeMay in compliance with Maryland Rule 3-623(b) attesting to the judgments was filed. (*See* Pl's Exhs. 7(a), 8(a), 9(a), ECF No. 49-2 at 45, 57, 70); Md. Rule 3-623(b), Md. Code Ann., Cts & Jud. Proc. § 11-803(a). A notice of filing foreign judgment was then mailed to Plaintiffs in accordance with Maryland Rule 3-623(b) and § 11-803(b) of the Courts and Judicial Proceedings Article. (*See* Pl's Exh. 7(b), 8(b), 9(b), ECF No. 49-2 at 50, 58, 73.) The judgments were recorded and indexed in compliance with Maryland Rule 3-623.

In paragraph MF. 2, 5, 10, 14, 19, 23 and MF. 7, 16, 23(2),[15] Plaintiffs' assert that LeMay "was never required" by the District Court to present an affidavit of the Plaintiffs' military service or appoint counsel to Plaintiffs. Whether an affidavit or assignment of counsel

[14] All references to "MF." followed by a number are references to Plaintiffs' self-described "material facts" and their corresponding number as contained in ECF 49-1.

[15] Plaintiffs' numbered MF paragraphs at page 6 are repeats of numbered paragraphs on page 5 of ECF No. 49-1. The duplicate numbers on page 6 will be referred to herein with a "(2)."

is required under the SCRA in the registration and enforcement of foreign judgments is the very legal issue before this court.

The State cannot respond to paragraphs MF. 3, 4, 6, 7, 11, 15, 16, 20, 22(2), 23(2). Each of the paragraphs describe the Plaintiffs' military service status, residence, contacts or business with/in Maryland or actions taken with respect to LeMay. The State has no knowledge of any of the information contained therein and it is not readily available to the State.[16] While the State contests the materiality of these "facts" to the issues to be decided by this Court (*i.e.*, whether a private cause of action exists against the Governor and/or Justices for the filing of a registration of foreign judgment, issuance of writ of garnishment, subpoena in aid of execution or judgment on garnishment without a military service affidavit or appointment of counsel and the Governor and/or Justices are liable for same), to the extent the Court believes these facts are necessary to be decided in ruling on the State's motion to dismiss or Plaintiffs' motion, the State would require discovery, including an opportunity to depose each of the Plaintiffs before it can respond thereto. *See* Declaration, Exhibit 13.

Further, Plaintiffs make statements regarding the validity of the authenticated judgments filed and attested to by LeMay in paragraphs MF. 9, 18, 24(2) and in their Opposition at ECF No. 49, pp. 20-21.[17] Aside from the impropriety of Plaintiffs' post hoc

[16] The State does not dispute that three of the Plaintiffs were active duty military at the time the foreign judgments were registered in Maryland; however, the State does not have knowledge of any deployment or location of any of the Plaintiffs as alleged in their affidavits.

[17] Plaintiffs argue that the judgment against the Rouse Plaintiffs was void because the issuing court did not have jurisdiction over the Plaintiffs, the contract violated Hawaii's door to door sales act and had been cancelled. (Plaintiffs' Mot., ECF No. 49 at 21.) Their statement of facts (ECF No. 49-1) and appendix of exhibits (ECF No. 49-2) does not provide any evidence in support of these assertions other than Plaintiffs' affidavits.

attack on the validity of the judgments in this Court, Plaintiffs did not include any of the pleadings, docket entries, orders, or other documents from the original actions in Texas and Nevada nor have Plaintiffs put before the Court the contracts between any of the Plaintiffs and LeMay or any documents evidencing cancellation of the contracts. (*See* Apx., ECF No. 49-2). The sole evidence of Plaintiffs' attacks on the underlying judgments are the affidavits of the Plaintiffs. (*See* Apx., ECF No. 49-2 at 4-43). While the State contests the materiality of any of these "facts" to the issues to be decided by this Court as set forth in the preceding paragraph and herein, to the extent the Court believes these facts are necessary to be decided in ruling on the State's motion to dismiss or Plaintiffs' motion, the State would require discovery, including an opportunity to obtain the court files of the original matters in Texas and Nevada and depose each of the Plaintiffs and LeMay before it can respond thereto. (*See* Decl., Exh. 13).

Finally, in their statement of facts, paragraphs MF. 4, 12, 13, 21, 22 (ECF No. 49-1), Plaintiffs make statements regarding the issuance of writs of garnishment, subpoenas in aid of execution and orders on the garnishment. The filings in the District Court attached to Plaintiffs' Addendum as Exhibits 7, 8, and 9 (Apx., ECF No. 49-2 at 44-75) speak for themselves. As indicated on each document, the Plaintiffs herein were not the garnishees and none of the documents were issued against the Plaintiffs. (*See* Apx., ECF No. 49-2 at Apx. 51-55, 59-68, 74-75.)

For all the reasons set forth herein, Plaintiffs' motion should be denied.

CONCLUSION

The motion to dismiss should be granted and/or judgment entered in favor of Defendants.

Respectfully submitted,

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