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**

PLAINTIFFS' REPLY IN SUPPORT OF THEIR CROSS MOTION FOR PARTIAL SUMMARY JUDGMENT

Respectfully Submitted,

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Plaintiffs do hereby file this Reply Memorandum in Support of their Cross Motion for Summary Judgment (Doc. 49) ("Cross Motion") seeking partial summary judgment against the State of Maryland for the State's violations of the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C.A. § 3901, *et seq.* In reply in support of their Cross Motion, Plaintiffs state as follows:

I. INTRODUCTION

The arguments advanced by the Governor and the Justices of the Supreme Court of Maryland by the Attorney General of Maryland are remarkable. When Governor Moore[1] and Attorney General Brown[2] were called to active duty, the SCRA protected them just like it is intended to protect the Plaintiffs. Yet, in this action, Defendants are arguing the Plaintiffs' protections under the SCRA should be denied. At bottom, Defendants claim the plain language of the SCRA and the precedents of the Supreme Court of the United States do not apply to the State. In addition, the State welcomes through its standard practices, policies, and procedures subject to this action (carried out by the Defendants in their official capacities) to open its courthouse doors to haul active duty servicemembers with no connections to Maryland courts, just like what occurred to the Plaintiffs here, to unjust collection activities based upon invalid, fake, and void judgments. Former defendant George Lemay explained this point, at the core of the State's arguments, previously:

> In sworn testimony, under penalties of perjury before the District Court of Maryland for Anne Arundel County, Maryland on October 1, 2021 (Case No. D-07-JG-20-000173), Lemay…Explained he filed a purported foreign judgment

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[1] "In 2005, Moore deployed to Afghanistan as a captain with the 82nd Airborne Division, leading soldiers in combat." https://governor.maryland.gov/leadership/Pages/governor.aspx

[2] "A retired Colonel in the Army Reserve, [Attorney General Brown] served three decades as an aviator and Judge Advocate General. He graduated first in his flight class and received both Airborne and Air Assault qualifications. Anthony was awarded the Legion of Merit for his distinguished military service and earned the Bronze Star while deployed to Iraq in 2004 to 2005." https://www.marylandattorneygeneral.gov/Pages/About-AG.aspx

> pursuant to the Foreign Judgments Act in Maryland for the purposes of enforcing it through bank levies because the laws of Texas where the purported judgment came from are not favorable for enforcement.

AC at ¶ 32(a). *See also* Plaintiffs' Appendix of Exhibits (Vol 2) at Apx. 109 (7:15-8:3).

The Governor, Justices, and Attorney General's arguments simply seek to protect LeMay's conduct to utilize Maryland courts instead of Texas courts for his business and the damages and losses sustained by the Plaintiffs as a direct and proximate result of State's failure to comply with its own legal duties under the SCRA to protect active duty servicemembers and appoint counsel on their behalf before judgments may be carried out and enforced against them.

Just a few weeks ago, the Justices recognized that the State's compliance with the SCRA is a different aspect than what is before the Court in this action was not unduly burdensome. Apx. 73-101.[3] Even in their opposition Defendants reluctantly recognize the prior status of a servicemember may become "stale" and need to be updated so a Maryland court would know if the SCRA protections apply after the passage of time when they may not have applied previously. State's Opp. at 29-30. Yet, the State's arguments in 70 pages of memoranda advocate for unequal treatment in relation to these Plaintiffs (who are not residents of Maryland and have no connection with Maryland) and seeks to have the SCRA's protections denied to them.[4]

The State argues that no other court or state has interpreted the plain language of the SCRA as Plaintiffs do here to apply to later phases of litigation. As shown in the papers that conclusion

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[3] The day after the Servicemember Plaintiffs filed their Cross Motion, the Justices published their Order approving the changes presented in the Plaintiffs' Combined Appendix of Exhibits (ECF. 49-2). *See e.g.* https://www.mdcourts.gov/sites/default/files/rules/order/ro215.pdf.

[4] There is no logical basis for the unequal treatment and position of the Justices' recent rule change and their argument here. *Compare Legend Night Club v. Prince George's Cnty. Bd. of License Commissioners*, No. CV MJG-05-2138, 2006 WL 8457032, at *2 (D. Md. Mar. 28, 2006)(recognizing that legislation which benefits one class of persons but not others without justification presents a strong prima facie case of wrongful denial of Equal Protection of the laws).

is just not true. However, even it was true, that fact may simply be because no other state has taken the position that the Governor or the Justices do here that the SCRA does not require a state to protect active duty servicemembers with no connection to Maryland from the enrollment and enforcement of invalid, fake, and void judgments without appointing counsel to protect their interests.

In a similar case before Judge Bennett he recently explained "the integrity of [judicial] trials are interests of the highest order, but the State must achieve these objectives through means consistent with the Constitution." *Soderberg v. Carrion*, No. CV RDB-19-1559, --- F.Supp.3d ----, 2022 WL 17552556, at *23 (D. Md. Dec. 9, 2022). And relevant here to the this action, under the Constitution

> the States implicitly agreed that their sovereignty "would yield to that of the Federal Government 'so far as is necessary to the enjoyment of the powers conferred upon it by the Constitution.' "…By committing not to "thwart" or frustrate federal policy, the States accepted upon ratification that their "consent," including to suit, could "never be a condition precedent to" Congress' chosen exercise of its authority... The States simply "have no immunity left to waive or abrogate." …
>
> Congress' power to build and maintain the Armed Forces fits *PennEast*'s test. The Constitution's text, its history, and this Court's precedents show that "when the States entered the federal system, they renounced their right" to interfere with national policy in this area…

*Torres v. Texas Dep't of Pub. Safety*142 S. Ct. 2455, 2463 (2022)(cleaned up).

> The SCRA was enacted 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.

To carryout that purpose, Congress broadly explained the SCRA "applies to **any judicial or administrative proceeding commenced in any court** or agency in any jurisdiction subject to this chapter." 50 U.S.C.A. § 3912(b)(emphasis added). However, Congress choose to expressly exempt the statute's application to "criminal proceedings" and to no other type of action. *Id.*[5] In addition, Congress expressly authorized broad remedial, civil relief under the SCRA to "[a]ny person aggrieved by a violation of [the SCRA]." 50 U.S.C.A. § 4042(a). Nowhere in the SCRA or even in § 4042 was the State exempted from its scope. Rather, the State was expressly required to protect the Plaintiffs by (i) requiring the presentation of a 50 U.S.C.A. § 3931(b)(1) affidavit "before entering judgment for the plaintiff" and (ii) to appoint counsel for an active duty servicemember before entering any judgment against him/her pursuant to § 3931(b)(2).

Largely what is before the Court is the plain application of basic Due Process protections owed by the State to the Plaintiffs (which it ignored all-together) and the State's statutory duties owed to the Plaintiffs under the SCRA (which it claims it has no duty to carryout). Except as to the damages claimed by the Plaintiffs due to them under the SCRA as authorized by the *Torres* decision, there is no dispute of material fact presented by the Parties' papers. In light of the State's concessions own filings before the Court, discussed *infra*, Plaintiffs are entitled to the partial summary judgments sought in their Cross Motion.

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[5] Congress also exempted from the scope of the State's duties pursuant to 50 U.S.C.A. § 3931 those proceedings in which the defendant makes a voluntary appearance. 50 U.S.C.A. § 3931(a). However, here it is undisputed that the Maryland proceedings at issue permitted invalid judgments to be entered and enforced against each of the Plaintiffs to various degrees before they voluntarily appeared in the actions since the State did not require either the § 3931(b)(1) affidavits or appoint counsel as required by § 3931(b)(2). MF 7, 16, 23. And when the Plaintiffs retained their own counsel, the unlawful collection activity which should never have occurred in the first instance, if the State had appointed counsel as required by § 3931(b)(2) before a purported judgment was entered and executed upon, was stopped at their expense when the State was required to appoint counsel on their behalf but did not do so.

II. WISHING TO DEFEND ITS POLICY, PRACTICE, AND PROCEDURES TO OPEN MARYLAND'S COURTHOUSE DOORS TO FOR COLLECTORS TO PURSUE NON-RESIDENT SERVICEMEMBERS ON ACTIVE DUTY STATUS IN OTHER JURISDICTIONS, THE STATE IGNORES THE PLAIN LANGUAGE DEFINITIONS ADOPTED BY CONGRESS IN THE SCRA AND IMPROPERLY ASKS THIS COURT TO ESTABLISH AN EXEMPTION TO EXCUSE ITS VIOLATIONS

By and large this action and the relief sought in Plaintiffs' Cross Motion, concerns an exercise in statutory construction of the SCRA.

Justice Douglas wrote a long time ago that the SCRA's predecessor "must be read with an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948). To that end he explained, the statute should not be read 'narrowly' to 'restrict' its application because to do so would involve a court to "clos[e] [its] eyes to [the SCRA's] beneficent purpose." *Id.* at 4-6. Following these precepts, the SCRA's purposes

> by imposing limitations on judicial proceedings that could take place while a member of the armed forces is on active duty, including insurance, taxation, loans, contract enforcement, and other civil actions. 50 U.S.C. app. § 501 *et seq*. These limitations are "always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." *Boone v. Lightner,* 319 U.S. 561, 575, 63 S.Ct. 1223, 87 L.Ed. 1587 (1943).

Brewster v. Sun Tr. Mortg., Inc., 742 F.3d 876, 878 (9th Cir. 2014).

In their Cross Motion, Plaintiffs pointed to the broad language of the defined term "judgment" in 50 U.S.C.A. § 3911(9) of the SCRA to mean "any judgment, decree, order, or ruling, final or temporary." *See* Cross Mot. at 14-18. Yet, in its response, the State ignores the broad definition in § 3911(9) and argues the term means only 'default judgments' or does not include 'foreign judgments' or 'post judgment activity.' It makes these restricted arguments, not permitted by *Le Maistre*, 333 U.S. at 4-6, by largely ignoring the plain, broad text of the actual defined term

of judgment in § 3911(9).[6] In support of their plain, ambiguous view of the defined term of 'judgment' in the SCRA, Plaintiffs cited to and relied upon the binding statutory interpretation precedents neither the Parties nor the Court are permitted to ignore—i.e. *Alexander v. Carrington Mortg. Servs., LLC*, 23 F. 4th 370, 376 (4th Cir. 2022); *United States v. Ickes*, 393 F.3d 501, 504 (4th Cir. 2005). *See* Cross Mot. at 15-18. Both of those decisions cited to and relied upon various Supreme Court and other Fourth Circuit precedents explaining the expansive, unambiguous view of the term "any" in a statutory analysis. *Alexander*, 23 F. 4th at 376; *Ickes*, 393 F.3d at 504. Yet nowhere in its opposition does the State even attempt to distinguish the precedent or offer any colorable explanation that the statutorily defined term of the term "judgment" § 3911(9) of the SCRA does not actually mean broadly "**any** judgment, decree, order, or ruling, final or temporary" (emphasis added). *See generally* State's Opp. (never discussing *Alexander*, *Ickes*, or the expansive meaning of "any" in § 3911(9) or any other provision of the SCRA relevant and material to this action).

> "Under the most basic canon of statutory construction, we begin interpreting a statute by examining the literal and plain language of the statute." *Carbon Fuel Co. v. USX Corp.,* 100 F.3d 1124, 1133 (4th Cir.1996). The court's inquiry ends with the plain language as well, unless the language is ambiguous. *United States v. Pressley,* 359 F.3d 347, 349 (4th Cir.2004).

Markovski v. Gonzales, 486 F.3d 108, 110 (4th Cir. 2007). *See also Polfliet v.Cuccinelli*, 955 F.3d 377, 380–81 (4th Cir. 2020).

In addition,

> "Statutory definitions control the meaning of statutory words ... in the usual case." *Lawson v. Suwannee Fruit & S.S. Co.,* 336 U.S. 198, 201, 69 S.Ct. 503, 93 L.Ed. 611 (1949). See also *Stenberg v. Carhart,* 530 U.S. 914, 942, 120 S.Ct. 2597, 147 L.Ed.2d 743 (2000)…

[6] The State cites § 3911(9) just once in its 70 pages of legal memoranda before the Court. State's Opp. at 3.

Burgess v. United States, 553 U.S. 124, 129–30 (2008). *See also United States v. Goforth*, 546 F.3d 712, 714 (4th Cir. 2008).

By ignoring the plain reading of the statutory definition of the term 'judgment' in the SCRA in its arguments, the State invites the Court to find ambiguity to reach its desired result restricting the broad meaning Congress actually enacted in § 3911(9) and associated protections in the SCRA. There can be no doubt about the meaning of "any" in § 3911(9) given the precedents of *Alexander* and *Ickes* (and the cases they cite and rely upon). Without ambiguity, there is no reason to look to other state laws and procedures or snippets of some legislative history while ignoring other portions of the legislative history presented, as the State does in its arguments, to bootstrap an escape for the State to allow the policies, practices, and procedures of its courts[7] and fiscal practices for legal services to avoid complying with their mandatory duties in 50 U.S.C.A. § 3931(b)(1)(2) at issue in this action.[8] For example, "Legislative history is irrelevant to the interpretation of an unambiguous statute."..."Unless exceptional circumstances dictate otherwise, '[w]hen we find the

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[7] The SCRA also defines the term "court" as utilized in the SCRA, including § 3931(b)(1)(2), to broadly mean "a court or an administrative agency…of any State (including any political subdivision of a State), whether or not a court or administrative agency of record." 50 U.S.C.A. § 3911(5).

[8] Because it seeks to avoid its legal duties under § 3931(b)(1)(2) and the plain, broad definition of judgment in § 3911(9), the State points to § 3934 of the SCRA and claims the "mere existence of Section 3934 guts Plaintiffs interpretation of 50 U.S.C § 3931" and claims in a purely conclusory manner that under Plaintiffs' view, if § 3931(b)(1)(2) applied to the State in the undisputed, material facts presented by the Plaintiffs, § 3934 would be "unnecessary or superfluous." State Opp. at 16. The State's argument is without merit to facts presented in this action. Here, the State has no law or rule to even require persons like Mr. LeMay to identify adverse parties were a "servcemembers" identified in § 3934. Further, nothing in § 3934 addresses the requirement of § 3931(b)(1) affidavit or the mandatory requirement § 3931(b)(2) to appoint counsel. Simply put the State cannot avoid its duties to protect servicemembers by putting its head in the sand. It needs to require the information required by Congress to know if it must appoint counsel.

terms of a statute unambiguous, judicial inquiry is complete.'" *In re Moore*, 907 F.2d 1476, 1478–79 (4th Cir. 1990) (cleaned up).

Even if the Court wished to cross-check Plaintiff's statutory analysis and application of the undisputed material facts of this case and plain meaning of the statutorily defined term of judgment in § 3911(9) of the SCRA, other provisions of the statute support Plaintiffs' view. For example, Congress explained the SCRA "applies to any judicial or administrative proceeding" except for "criminal proceedings." 50 U.S.C.A. § 3912(b). In addition, Congress authorized broad civil relief to "[a]ny person aggrieved by a violation of [the SCRA]." 50 U.S.C.A. § 4042(a). To accept the State's restricted view of the SCRA would require the Court to conclude these and other provisions of the SCRA, including § 3911(9), "as surplusage, and violate the 'well known maxim of statutory construction that all words and provisions of statutes are intended to have meaning and are to be given effect, and words of a statute are not to be construed as surplusage.'" *W. Virginia Div. of Izaak Walton League of Am. v. Butz*, 522 F.2d 945, 948 (4th Cir. 1975)(cleaned up).

The statutory question before the Court is simply whether the statutory definitions of Federal law—i.e. the SCRA—govern the claims before the Court and as presented by Plaintiffs' Cross Motion. The State wrongly contends that its laws (and the laws of other states) control over the broad, plain language of § 3911(9). The Fourth Circuit has previously rejected such arguments in a similar context applying Federal law (for sentencing guidelines) to state court proceedings. *United States v. Medina*, 718 F.3d 364, 367 (4th Cir. 2013). Where Congress had "specifically defined a conviction to include a diversionary disposition," the court held the Federal statutory "definition of conviction" controlled and not Maryland's own view of state court diversionary

proceedings. *Id.* at 368. "To hold otherwise would be to ignore both Congress's intent" as to the statutorily defined term for conviction in Federal law and Supreme Court precedent. *Id.*

To further its misguided theory of ambiguity in the SCRA and to avoid the plain language of the statute to the Plaintiffs' claims, the State feigns that judicial proceedings in this Court and others courts will overwhelmed if the Court applies the SCRA to protect the Plaintiffs (and others like them). While it is true that a court "may ignore the plain meaning of a statute only when the literal reading 'produces an outcome ... that can truly be characterized as absurd,' such that it can't be what Congress intended…'[S]uch instances are, and should be, exceptionally rare.'" *Tetteh v. Garland*, 995 F.3d 361, 366 (4th Cir. 2021)(cleaned up). And in this action, there is no just basis for the Court to conclude any absurd result will occur from the relief sought by the Plaintiffs here since during this litigation, the Justices have amended their procedural rules to require a subsequent SCRA affidavit pursuant to § 3931(b)(1) to be presented before a judgment may be granted in a broader category of state district court actions (not even subject to this action). As presented in their Cross Motion, Chief Judge Morrissey proposed the rule change which was recognized as <u>not</u> unduly burdensome but entirely feasible. *See* Cross Mot. at 22-23; Apx. 73-101.[9]

If the State can require a subsequent, non-stale § 3931(b)(1) affidavit in one category of proceedings to know whether it must appoint counsel for the defendants pursuant to § 3931(b)(2), there simply is no justification why it cannot do so in the circumstances presented here by the

[9] In an effort to misdirect the Court's attention from the Justices' concession in the recent rules change, the Defendants' opposition to the Cross Motion claims "the Maryland rules were merely revised to conform with the legislative changes to the SCRA, namely the renumbering of the SCRA." State's Opp. at 29-30. While this may have been one reason for some of the changes enacted, it was not the basis the Plaintiffs' raised the recent rules change in their Cross Motion. Rather, the Plaintiffs arguments demonstrate the State's position is simply inconsistent and unfounded by its own recognition in the recent rules change related to but not directly on point to Plaintiffs' claims. Cross Motion at 21-23.

Plaintiffs. The State merely needs to require collectors to submit the § 3931(b)(1) affidavit and when that affidavit shows a defendant or adverse party is on active duty to appoint counsel for them pursuant to § 3931(b)(2) before allowing entry and enforcement of the judgment. No absurd result would result since the process is not burdensome to the State and is entirely feasible. *See* Cross Mot. at 22-23; Apx. 73-101. To the contrary, the State's position creates an absurd result by allowing its courthouse doors to be opened to individuals like Mr. LeMay to pursue protected servicemembers with no connection to Maryland to have their property taken seized from them under the color of law without any compliance of the State pursuant to 50 U.S.C.A. § 3931(b)(1)(2). The position of the Governor and Justices simply leads to opportunities to weaken the national defense not to strengthen it as Congress intended. 50 U.S.C.A. § 3902. The State's view of statutory construction should be rejected.

III. THE STATE IGNORES THE UNDISPUTED, MATERIAL FACTS DO NOT SIMPLY CONCERN THE MERE REGISTRATION OF INVALID JUDGMENTS IN MARYLAND COURTS BUT ALSO THE COLLECTION ACTIVITY WRONGLY PERMITTED BY ITS LAWS AND PRACTICES IN VIOLATION OF THE SCRA BEFORE THE PLAINTIFFS APPEARED IN THE ACTION AT THEIR OWN EXPENSE

Because the Governor and Justices have not sought to actually investigate the actual claims before the Court and disregard the plain language of the SCRA, they respond to Plaintiffs' Cross Motion with wild claims not founded in fact but pure speculation. For example, the Defendants claim Mr. LeMay presented to the State valid judgments based on his self-attestation even though the undisputed material facts before the Court conclude otherwise. State's Opp. at 11, 34-35. *Compare* MF 1, 3, 9, 18. The State does not even present any admissible evidence to support its claim of what it thought and believed when Mr. LeMay presented his invalid, fake, and foreign judgments. This case does not simply concern the registration of invalid judgments, it concerns

Maryland's desire to allow non-resident active duty servicemembers to be subject to Maryland court proceedings without the material protections Congress requires under the SCRA.

The Plaintiffs voluntarily gave all the information last August 2022 necessary for the State to understand its arguments advanced now are unfounded. Apx. 5 at ¶¶ 18-19, Apx. 14 at ¶ 19, and Apx 35 at ¶ 22. *See also* FN 9 *supra*. Yet, in their opposition to the Cross Motion, the Defendants seemingly argue otherwise and omit the facts they have in their possession and control all the necessary evidence and facts to know the judgments presented by Mr. LeMay and accepted by the State were invalid and unenforceable. In addition, the Governor and Justice's moved for formal discovery which they represented to the Court that they believed "additional defenses may rest in the terms of the underlying contracts between Plaintiffs and Mr. LeMay of which the State may avail itself. Specifically, on information and belief, the contracts may contain language pertaining to Plaintiffs' waiver of rights under the SCRA, which may not only apply to their creditor, Mr. LeMay, but may also be extended to the State." ECF. 47 at ¶ 3. Yet, it its opposition to Plaintiffs' Cross Motion the State notably advances no arguments that the Plaintiffs waived their claims against it by contract as previously claimed to the Court. *See generally* State's Opp. Nor did the Defendants seek any other discovery in their discovery motion. Finally, the State already claimed to the Court that this action was ripe for summary judgment and no discovery was necessary for the largely legal questions presented. ECF. 23. For all these reasons, the State has simply waived by its own omissions and voluntary choices the need to go on a fishing expedition for unspecified discovery which it voluntarily abandoned or ignored and is not going to change the answer to the undisputed, material facts and issues raised in Plaintiffs' Cross Motion for partial relief.

Instead, the State argues that the presentation of a piece of paper that claims to be certified by a court is a validly enforceable judgment and self-authentication as true by Mr. LeMay himself

to is enough to satisfy Due Process and the requirements of the SCRA even if a later order (it has in its possession and control) vacated that the piece of paper or the affiant presenting the piece of paper failed to disclose those facts.[10] Like its approach to this action, the State's position is that no person—including servicemembers with no connection to the State of Maryland—are entitled to protections from individuals seeking to enroll and later execute on purported judgments which are invalid and otherwise void or fake. Congress placed the burden on the State to comply with 50 U.S.C.A. § 3931(b)(1)(2). It did not place the burden on non-resident servicememembers with no connection to the State. The Constitution required the State to ensure basic Due Process protections. The State cannot shirk its duties under the law by simply looking the other way or delegating its responsibilities to Mr. LeMay who is not an officer or agent of the State.

While it is a clever argument to shift its own responsibilities onto those non-resident servicemembers like the Plaintiffs here, respectfully the argument is unjustified. The State simply is not permitted to defend the claims against it upon "mere speculation" *Soderberg*, 2022 WL 17552556, at *14.

There is no dispute that pursuant to Maryland law (i.e. statutes and rules of procedure), Mr. LeMay utilized the Maryland courts to subject the non-resident Servicemember Plaintiffs for his collection efforts under the color of Maryland law. MF. 1-24. Two of the purported judgments presented to the Maryland courts by Mr. Lemay were invalid and had actually been vacated in

[10] The State suggests that in its opposition that the purported Davines and Riley judgments were valid and presents them to the Court to advance its position. ECF. 55-3. What the State fails to provide are the subsequent orders from the Texas courts (*see e.g.* Apx. 114-115) which vacated the orders it presents in its opposition that were effective before Mr. LeMay ever presented the fake and invalid judgments (ECF. 55-3) readily accepted by the State. In this litigation before his dismissal, Mr. LeMay also admitted the judgments were invalid and had been vacated. *See* Lemay Answer (ECF. 12) at ¶¶ 31, 72, 118. Based upon these judicial admissions what more do the Governor and Justices actually believe they can learn from Mr. LeMay that is relevant and material to the Plaintiffs' Cross Motion?

favor of the servicemember Plaintiffs (i.e. the Riley and Davines families). MF 9, 18. The third purported judgment (against the Rouse family) was void. Cross Motion at 12-13. Finally, before the Plaintiffs voluntarily appeared in the Maryland proceedings pursue by Mr. Lemay against them, the Maryland courts permitted the invalid judgments to be enrolled and executed upon to seize the non-resident Plaintiffs' property without the State complying with 50 U.S.C.A. § 3931(b)(1)(2). MF 1-4, 8-16, 17-23.

The State claims, without any basis to do so, that Mr. LeMay paid to the Plaintiffs the damages and attorney fees proximately caused by its failure to comply with its duties under § 3931(b)(1)(2). State's Opp. at 2. It offers no evidence to support this conclusion and there is no basis to support this conclusion. *Id.* Rather, the State again presents unsubstantiated "speculation" without a basis to do so. *Soderberg*, 2022 WL 17552556, at *14. While the Plaintiffs are not seeking an award of damages as part of their Cross Motion for partial summary judgment, the Plaintiffs have identified specific damages proximately caused by the State's Due Process and SCRA violations. ECF. 49-1 at 6-7. *See also* Apx. 4-5 at ¶¶ 16-17, Apx. 8 at ¶¶ 9-10. Apx. 13-14 at ¶¶ 17-18; Apx. 28 at ¶¶ 8-9; and Apx. 34-35 at ¶¶ 19-21.[11] Nowhere does the State offer any evidence to dispute these damages caused by its acts and omissions in violation of the SCRA and basic Due Process.

In support of their Cross Motion, the Plaintiffs provided a detailed and well supported Annotated Statement of Material Facts in support of the Cross Motion. ECF. 49-1. The Defendants were required to respond to these material facts with admissible evidence. Fed. R. Civ. P. 56(c).

[11] Pursuant to the SCRA the Plaintiffs are also entitled an award of reasonable attorney fees and costs which in this case includes the time to respond to its arguments it knows are foreclosed by *Torres* and other authorities and also preparing for the mediation the State requested but choose at the last minute not to meaningfully participate. Apx. 5 at ¶ 18, Apx. 14 at ¶ 19, Apx. 35 at ¶ 22.

Alternatively, the Defendants were permitted to provide "specified" reasons why they could not "present facts essential to justify its opposition." Fed. R. Civ. P. 56(d). However, speculation is not enough for discovery even pursuant to Fed. R. Civ. P. 56(d). *See e.g. Gardner v. United States*, 184 F. Supp. 3d 175, 184 (D. Md. 2016); *Ahmed v. Salvation Army*, No. CIV. CCB 12-707, 2012 WL 6761596, at *10 (D. Md. Dec. 28, 2012), aff'd, 549 F. App'x 196 (4th Cir. 2013*); Czach v. Intercontinental Hotels Grp. Res., LLC*, No. DLB-20-125, 2020 WL 6150961, at *6 (D. Md. Oct. 20, 2020). Fed. R. Civ. P. 56 does not allow exceptions for states like Maryland in this case first claim the action can be resolved on summary judgment (ECF. 23) to change positions and claim summary judgement against it is inappropriate because it speculates it needs unspecified discovery it already has in its possession and control or otherwise has forfeited.

The State's response to the Plaintiffs' detailed statement of facts is simply two-fold. First, the State presents the argument of counsel alone with specifying material disputes (State's Opp. at 32-35). Rather, through counsel's argument alone the Governor and Justices speculate the garnishments of the Plaintiffs' assets and property are not directed at them but to another. State's Opp. at 35. That claim is simply wrong and fails to dispute the impact upon the Servicemember Plaintiffs having their accounts frozen or their monies seized while they were active duty because Maryland's laws and rules, for which the Defendants are responsible, opened the courthouse doors to permit the occurrence in the first instance. MF. 1-4, 8-16, 17-23. Second, the State also speculates that the Servicemember Plaintiffs' sworn testimony is not sufficient evidence claiming it needs unspecified documents and evidence it already has in its possession and control or was never sought before. State's Opp. at 34-35. The State sought and obtained discovery (informally and formally) in this case. ECF. 47; Apx. 5 at ¶ 18, Apx. 14 at ¶ 19, Apx. 35 at ¶ 22. *See also* FN 9. Yet, the Governor and Justices now claim after the State decided not to pursue Mr. LeMay and

after the Plaintiffs moved for partial summary judgment that the State wishes to investigate non-material information it claimed previously was unnecessary for this case (ECF. 23) based upon its pure speculation. To advance this argument, the State claims "there has been no discovery in this matter" even though it sought and received specific discovery (ECF. 47) and the Plaintiffs voluntarily provided it hundreds of pages of discovery (Apx. 5 at ¶ 18, Apx. 14 at ¶ 19, Apx. 35 at ¶ 22) it requested, Mr. LeMay's sworn testimony (FN 9), and it also has in its possession and control its own records which prove the facts verified by the Plaintiffs' Cross Motion. MF 1-4, 8-16, 17-23. *See also* Defendants Own Exhibits which reference the Public Records in its possession and control (ECF. 46-2-46-9).

"If the court does not grant all the relief requested by the [Cross Motion], it may enter an order stating any material fact--including an item of…other relief--that is not genuinely in dispute and treating the fact as established in the case." Fed. R. Civ. P. 56(g). *See also Annappareddy v. Lating*, No. 1:18-CV-03012-JFA, 2023 WL 2537534, at *5 (D. Md. Mar. 16, 2023)("Plaintiff need not seek summary judgment as to an entire claim to be granted the relief sought"). This Court recently also explained "If a party carries [its burden to show no genuine dispute of material fact], then the court will award summary judgment unless the opposing party can identify specific facts, beyond the allegations or denials in the pleadings, that show a genuine issue for trial. Fed. R. Civ. P. 56(e)." *CSAA Affinity Ins. Co. v. Scott Fetzer Co.*, No. CV JKB-21-1543, --- F.Supp.3d ----, 2023 WL 2714026, at *4 (D. Md. Mar. 30, 2023).

Quite simply the issues largely raised before the Court are legal in nature. State Opp. at 2. The Servicemember Plaintiffs believe the SCRA should be viewed broadly by the Court to accomplish its remedial purpose. Cross Motion at 1-4, 19-31. The Governor and the Justices believe the SCRA should be narrowly constructed, contrary to the precedent of *Le Maistre,* 333

U.S. at 4-6 to permit the State to avoid the consequences of policies and procedures which permitted Mr. LeMay to utilize the state courts to wrongfully collect from the non-resident Servicemember Plaintiffs. The State has not disputed any of the limited, material facts necessary for the Court to apply the law. Rather, the State merely speculates to purported facts which it choose not to investigate itself before and after this action was commenced. The State's response also confirms that the Governor and the Justices have not even reviewed their own public records which confirm the State knows (i) the purported judgments accepted by the State from Mr. LeMay without any review were vacated and thus were invalid in any court (Apx. 2 at ¶ 8; Apx. 11 at 2 at ¶ 8);[12] and (ii) Mr. & Mrs. Rouse were never residents of the State of Nevada or had any contacts there but were sued there by Mr. LeMay when they were stationed in Hawaii (ECF. 46-4).

Based upon the foregoing and the argument and record presented in their Cross Motion and now before the Court, the Servicemember Plaintiffs are entitled to judgment being entered in their favor on their SCRA claims. The Defendants have not presented a material fact to dispute the partial summary judgment claims presented in the Cross Motion and the Servicemember Plaintiffs are entitled to judgment in their favor which will narrow the remaining claims before the Court in this action.

IV. THE DEFENDANTS HAVE OFFERED NO EVIDENCE THAT THEY ARE NOT THE OFFICIALS RESPONSIBLE FOR THE STATE'S POLICY, PRACTICE, AND PROCEDURES TO OPEN MARYLAND'S COURTHOUSE DOORS IN VIOLATION OF THE RIGHTS OF THE NON-RESIDENT, SERVICEMEMBER PLAINTIFFS

[12] The attorneys representing the Governor and the Justices were even provided on August 17, 2022 a copy of the evidentiary hearing conducted in the Riley Proceeding in which all this evidence was presented, admitted to by Mr. LeMay, and the state district court judge accepted it and ruled upon it. AC at ¶ 32, 121-122. The Defendants' counsel acknowledged receipt on the same day Plaintiffs provided it them. Apx. 104-105. It is difficult to fathom why the State would claim otherwise to this Court when it has the sworn testimony and evidentiary record in its possession and control to raise an actual dispute of material fact (none exists) but the State has elected not to do so. A partial transcript of the audio file provided to the State with Mr. LeMay's testimony last August is at Apx. 107-113.

As their last material effort to avoid responsibility for consequences of the State's failure to honor its duties under the SCRA and basic Due Process, the Governor and the Justices argue they are not the correct public official responsible for the State's violations and failures to comply with 50 U.S.C.A. § 3931(b)(1)(2). *See generally* State's Opp. Rather, they ask the Court to deny the relief requested in the Servicemembers' Cross Motion because they feel other public officials are more culpable for the conduct at issue and have a greater connection to that conduct then themeselves. *Id.* Nowhere in their opposition do the Defendants deny the constitutional and statutory authorities cited to by the Plaintiffs' Cross Motion (Cross Mot. at 34-35) which draws their connection to Plaintiffs' claims. *Id.* In addition, the Defendants who are responsible for the same statutes and Maryland Rules challenged by the Servicemember Plaintiffs cite to those same authorities as to authorize Maryland's plan to avoid its duties under § 3931(b)(1)(2).

"Suits against state officials in their official capacity therefore should be treated as suits against the State." *Hafer v. Melo*, 502 U.S. 21, 25 (1991). "As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." *Kentucky v. Graham*, 473 U.S. 159, 166 (1985). In addition all that is necessary is that "that such officer must have some connection with the enforcement of the act" at issue in the litigation. *Ex parte Young*, 209 U.S. 123, 157 (1908). "The 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, and whether it arises out of the general law, or is specially created by the act itself, is not material so long as it exists." *Id.* In addition, "[a] court may look to state law to determine whether the requisite connection exists between an individual defendant and the federal statute at issue. *Lytle,* 240 F.3d at 409–10." *S.C. Wildlife Fed'n v. Limehouse*, 549 F.3d 324, 333 (4th Cir. 2008).

Here, "some connection" of the Servicemember Plaintiffs' claims against the State through each of the Justices in their official capacities, is plain on its face. "The Judicial power of this State is vested in a Supreme Court of Maryland" (MD. CONST. ART. IV, § 1) and "[t]he Supreme Court of Maryland shall be composed of seven justices" (MD. CONST. ART. IV, § 14). The Justices also are empowered 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. Some of the rules with a connection to the Plaintiffs' claims include those presented by the Justices themselves in their opposition to Plaintiffs' Cross Motion. Further, the state statute at issue in this action conflicts with the Federal state at issue is one carried out by Maryland's judicial branch to which the Justices are vested with the authority to supervise, manage, and control. MD. CONST. ART. IV, §§ 1, 14. They demonstrated that power during this litigation related to the SCRA itself. Apx. 73-101; FN 3 *supra*. Simply put, the Maryland Rules and the Maryland statutes at issue in this case to which the Justices are connected disregard the Due Process and SCRA protections owed to the Servicemember Plaintiffs. The damages and losses sought in this action and harms the Plaintiffs seek to prevent would not have occurred but for the Justices failure to ensure Maryland courts under their domain complied with the SCRA's requirements under § 3931(b)(1)(2).

In addition, the Governor also has "some connection" under Maryland's constructional structure to Plaintiffs' claims. Not only is "[t]he executive power of the State shall be vested in a Governor" (MD. CONST. ART. II, § 1), but he 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 as sums to pay for counsel appointed under the SCRA. Here, the State's position in its 70 pages of legal argument is that it has lawful jurisdiction over the non-resident Servicemember Plaintiffs who may be subjected to Maryland judicial proceedings without the requirement of the State to engage and pay for counsel on their behalf. This is not an action which concerns merely the Governor's general authority to enforce the laws. He also is the "Commander in Chief" under Maryland's Constitution which is responsible for ensuring Maryland protects servicemembers and also the SCRA is faithfully executed in all respects (MD. CONST. ART. II, §§ 8, 9), and has some connection to initiated the budget authority to pay for appointed counsel required by the SCRA (MD. CONST. ART. III, § 52).

At bottom, the Defendants' claims that they are the alleged 'wrong public officials' named in this action other public officials are more responsible than themselves for the claims asserted by the Servicemember Plaintiffs is an exercise of form over substance for several reasons. First, Maryland's ratification of the Constitution which vests the war powers to the Federal government and Congress made the State liable for its violation of the SCRA at issue (Cross Motion at 23-29). *See also Torres*. So, the Defendants here are simply nominally named on behalf of the State since as discussed herein and admitted to by the Defendants' own arguments they have "some connection" to the claims asserted by the Servicemember Plaintiffs and the State, not the Defendants, is responsible for any awards made upon the Servicemember Plaintiffs' successful claims. Second, there are no authorities which hold that officials sued in the "official capacities" must have the exclusive or sole involvement in the subject transaction and issues presented. Rather, they must have "some connection." Third, if the Defendants really believe other state

officials should be added to this action, nonjoinder or "[m]isjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21. Fourth, there is no just basis for the argument since whichever officials are named in this action in their official capacities, the State and not the officials themselves will be responsible for the outcome and the State is also represented in this action by Attorney General Brown and the assistant attorney generals from the Courts and Judicial Affairs Division in the Office of the Attorney General. Do the Defendants really believe any other public official will advance a different argument or theory in this action that they themselves have not already advanced in 70 pages of argument before the Court?

The Servicemember Plaintiffs agree that this is largely a case of first impression since Maryland appears to be the only state in the union to opened its courthouse doors to permit a collector like Mr. LeMay to pursue non-resident servicememebers in contravention of 50 U.S.C.A. § 3931(b)(1)(2). The Defendants are ultimately the public officials charged with protecting servicememebers in such a circumstance. The fact that others also may also have some level of responsibility in the eyes of the Defendants can be remedied by their joinder (if even necessary) and should not permit the State to escape its Due Process and SCRA responsibilities at issue here and a void a judgment of liability.

V. CONCLUSION

As shown in their Cross Motion and herein, the State of Maryland was required to comply with the SCRA's requirements but failed to do so. The Plaintiffs are entitled to a judgment of liability in their favor under the SCRA.

Respectfully Submitted,
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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