

STATE OF SOUTH CAROLINA

COUNTY OF HAMPTON

Michael “Tony” Satterfield and Brian Harriott,

Plaintiffs,

vs.

Richard Alexander “Alex” Murdaugh, Chad Westendorf, Palmetto State Bank, Corey Fleming, and Moss, Kuhn & Fleming, P.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

C/A No. 2021-CP-25-00298

**DEFENDANT MURDAUGH’S RULE
60(b) MOTION FOR RELIEF FROM
JUDGMENT**

Defendant Richard Alexander “Alex” Murdaugh, through undersigned counsel, pursuant to Rules 60(b)(3) and 60(b)(4) of the South Carolina Rules of Civil Procedure, hereby moves for an order vacating the judgment confessed by Mr. Murdaugh in favor of Plaintiffs on May 31, 2022.

I. Introduction

Defendant Richard Alex Murdaugh was a lawyer and formerly a partner at the law firm Peters, Murdaugh, Parker, Eltzroth, and Detrick, P.A. (PMPED). Following the murder of his wife Maggie and son Paul on June 7, 2021, Mr. Murdaugh’s opioid addiction spiraled out of control. Also during that time, PMPED began to investigate missing fees from Mr. Murdaugh’s cases. On September 3, 2021, PMPED confronted Mr. Murdaugh about the missing fees. Mr. Murdaugh admitted to misconduct and resigned from PMPED. The following day, Mr. Murdaugh was shot in the head by Curtis Eddie Smith, his drug dealer, in a failed assisted suicide attempt.

Mr. Murdaugh thereafter began in-patient drug rehabilitation. On September 15, 2021, warrants were issued in Hampton County for his arrest on charges of insurance fraud, conspiracy to commit insurance fraud, and making a false police report, all arising from his failed suicide

attempt. Also on September 15, 2021, this action was filed. Plaintiffs allege Defendants conspired to steal proceeds from the settlement of claims arising from the death of Mr. Murdaugh's longtime housekeeper, Gloria Satterfield, at Mr. Murdaugh's Colleton County residence. The original causes of action asserted against Mr. Murdaugh were equitable accounting, civil conspiracy, and conversion. The original complaint did not allege Mr. Murdaugh's dogs caused Ms. Satterfield's fall or that Mr. Murdaugh told anyone his dogs caused her fall. The operative second amended complaint asserts causes of action against Mr. Murdaugh for equitable accounting, civil conspiracy, and legal malpractice/breach of fiduciary duty. It alleges, "[a]ccording to the Murdaughs and as reported to Gloria's family and others, Gloria's fall down the exterior stairs of the Murdaughs' Moselle, South Carolina home in Colleton County, South Carolina was caused accidentally by the Murdaughs' dogs." 2d Am. Compl. ¶ 14.

Mr. Murdaugh confessed judgment to Plaintiffs on May 31, 2022. Defendant now moves to vacate that confessed judgment under Rule 60(b)(3) of the South Carolina Rules of Civil Procedure because of "other misconduct" by Plaintiffs' counsel in respect to this matter, and Rule 60(b)(4) because the confession is void under South Carolina law. As discussed in more detail below, and for further and additional reasons that will be presented at the hearing on this motion, the judgment should be vacated because it fails to comport with the requirements of South Carolina law, because it was based on inaccurate facts, and because the judgment does not serve, and was not obtained for, any legitimate purpose. Mr. Murdaugh makes this motion to correct these errors and to set the record straight about the events underlying this action.

II. Background

Given the complicated nature of the underlying facts of this case, and their relevance to this motion, Defendant provides the following timeline of relevant events in this case:

February 2, 2018: Gloria Satterfield faints and falls down steps at Moselle in Colleton County. On information and belief, based on the subsequent investigation of her death by Mr. Murdaugh’s insurer, Ms. Satterfield’s medical conditions and the side effects of medications taken for those medical conditions caused her to faint and fall down the stairs. Mr. Murdaugh is not at Moselle when she falls, but he arrives on the scene before emergency medical services (EMS).

February 26, 2018: Ms. Satterfield dies in a hospital in Hampton County. She is survived by her sons Tony Satterfield and Brian Harriott.

March 18, 2018: Mr. Murdaugh informs a Nautilus adjuster that he seeks coverage under his umbrella policy for Ms. Satterfield’s death. Around this time, Attorney John Grantland is retained by Nautilus to defend the claim.

March 22, 2018: In a conversation with the insurance adjuster, Mr. Murdaugh says that Ms. Satterfield briefly regained consciousness before EMS arrived on February 2, 2018 and told him, but no one else, that Mr. Murdaugh’s dogs caused her fall, thereby implicating over \$5.5 million in insurance coverage—that is, primary coverage of \$505,000 under a Lloyd’s of London policy, and umbrella coverage of \$5,000,000 under a Nautilus Insurance Company policy. South Carolina law imposes strict liability on dog owners when their dogs knock someone down, even playfully. *See* S.C. Code § 47-3-110 (providing strict liability for persons “otherwise attacked by a dog while the person is . . . lawfully in a private place”); *Elmore v. Ramos*, 327 S.C. 507, 511–12, 489 S.E.2d 663 (Ct. App. 1997) (construing “otherwise attacked” to include playful jumping or pouncing).

March 2018: Cory Fleming begins representing the Satterfield estate for wrongful death and survival claims against Mr. Murdaugh. Mr. Fleming is a lawyer and friend of Mr. Murdaugh

who was retained by the Satterfield estate to assert claims against Mr. Murdaugh. The Satterfield family retained Mr. Fleming because Mr. Murdaugh recommended him.

March 28, 2018: Mr. Satterfield is appointed personal representative of Ms. Satterfield's estate.

March 29, 2018: Mr. Murdaugh provides a recorded statement to insurance investigators. He says he spoke with Ms. Satterfield after her fall and that she "indicated that the dogs had caused her to fall" before EMS transported her.

October 31, 2018: At Mr. Murdaugh's request, Mr. Harriott renounces his right to be personal representative of the estate at Mr. Murdaugh's law office.

November 6, 2018: Lloyd's of London counsel Scott Wallinger provides a "second comprehensive report" regarding the Satterfield fall to insurance adjusters. The report states:

No one witnessed Satterfield's fall. Mrs. Murdaugh was inside the house, heard a great commotion on the front porch, came out the front door, and found Satterfield lying on the steps, bleeding from an open wound to her head. Satterfield told Mr. Murdaugh, who arrived soon after, that the dogs had "tripped her up." Satterfield made no other statement to an [*sic*] witness about involvement of dogs. Satterfield told medical staff at a hospital later that she did not know how or why she fell.

The report further states that "Maggie said that Satterfield's relatives told Maggie that 'the dogs tripped Gloria up'" while she was in the hospital. Ms. Satterfield's relatives, of course, did not witness the fall (no one did), and so that information was simply repeated from Mr. Murdaugh.

The report also states, "[t]he admitting emergency doctor's note state [*sic*]: '*She does not know why she fell*'" (italics in original). Mr. Wallinger concludes:

While there were no eyewitnesses to Satterfield's actual fall at the Murdaugh's home, circumstantial evidence available, together with Satterfield's post-incident statement to Murdaugh and to relatives, suggest the insured's dog or dogs were loose, were near Satterfield, and could have caused Satterfield to trip and fall down the steps and sustain her head and bodily injuries, which were a cause of her later death. I would characterize liability based on what is known at this point as probable but not clear and convincing.

November 16, 2018: At Mr. Murdaugh's request, Tony Satterfield renounces his right to be personal representative of the estate at Mr. Murdaugh's law office.

December 4, 2018: Lloyd's of London issues a settlement check for \$505,000, the full policy limits for the primary coverage.

December 6, 2018: Mr. Fleming receives the settlement check.

December 18, 2018: Chad Westendorf replaces Mr. Satterfield as personal representative for the estate. Mr. Westendorf is a vice president at Palmetto State Bank with no previous experience acting as an estate personal representative.

December 19, 2018: A petition for court approval of the pre-suit wrongful death settlement for \$505,000 with Lloyd's of London is filed in the Hampton County Court of Common Pleas. The petition is never approved and there is never an approval hearing. There is an undated draft approval order for Judge Carmen Mullen's signature stating it was heard on December 19, 2018.

January 7, 2019: Mr. Fleming disburses \$403,500 payable to "Forge," ostensibly meaning Forge Consulting, LLC, a legitimate company, which Mr. Murdaugh deposits in a personal account denoted as "doing business as" Forge.

February 15, 2019: Mr. Grantland schedules mediator Jon Austen for a mediation to be held on March 22, 2019.

March 14, 2019: Mr. Grantland's mediation statement (to the mediator, Jon Austen) states in part (emphasis added):

Plaintiff [Ms. Satterfield] reported to neurosurgeon Dr. D'Agostino that she fell down several stairs, and she "did not know why she fell." We know the Plaintiff had diabetic neuropathy and had complained of tingling in her feet. We also know that Plaintiff was on several medications, including amlodipine, and hydrochlorothiazide, which have side effects including dizziness. In fact, amlodipine states severe dizziness is one of the more serious side effects. There

are multiple reasons why Plaintiff fell. In addition to the medications and her diabetes, Ms. Satterfield could have simply lost her balance.

However, Alec [Murdaugh] has maintained that when he first got to the Plaintiff, she reported that one of his dogs tripped her up or somehow caused her to fall. *Alec's testimony is the only evidence that his dogs had anything to do with the Plaintiff's fall*, and he personally feels very guilty about it. Again, the EMS workers did not see any dogs and no one said anything to them about a dog being involved in the incident.

After the Plaintiff's accident, and while she was hospitalized, it is our understanding that Alec referred the Satterfield family to his former roommate and friend, Cory Fleming. Cory now represents the Estate.

For purposes of mediation, I do not intend to argue liability. I do not see a benefit to Alec to argue that the Plaintiff may have simply lost her balance when he says his dogs knocked her down. However, despite the Plaintiff's young age, I do not believe the fall was the sole cause of her death. Her underlying health conditions also contributed to her death.

However, Mr. Grantland goes on to assert: "Moreover, if we have to try the case, I will do my best to show that Alec's dogs had nothing to do with her fall. That being said, we want to resolve the case. We recognize the very liberal nature of the venue, the notoriety of our client, and his contrary opinion regarding the cause of Plaintiff's fall."

March 22, 2019: At mediation, Nautilus agrees to pay \$3,800,000 of the \$5,000,000 limit—far more than Nautilus expected or intended to pay. Nautilus's adjuster blames Defendant and is angry with him for causing Nautilus to pay far more than it expected.

At Defendant's behest, neither Mr. Satterfield nor Mr. Harriott were present at the mediation.

March 28, 2019: The Nautilus settlement agreement is signed.

April 11, 2019: Mr. Westendorf signs a release of claims against Mr. Murdaugh as personal representative the estate, acknowledging receipt of the \$505,000 settlement payment from Lloyd's of London and the \$3,800,000 from Nautilus.

May 13, 2019: Judge Mullen approves a new settlement petition prepared by Mr. Fleming, which is not filed and is styled “In RE: Gloria Satterfield.”

May 15, 2019: Mr. Fleming disburses the Nautilus net proceeds of \$2,765,000 to Mr. Murdaugh’s fake Forge account.

October 5, 2020: Mr. Fleming files a stipulation of dismissal signed by Mr. Murdaugh.

October 20, 2020: FITSNews reports the \$505,000 settlement with Lloyd’s of London.

April 12, 2021: Mr. Murdaugh texts Mr. Satterfield: “Hey man- just checking in. Been working on case and made me think about you. Hope all is good. Call me anytime I can help[.]” Mr. Satterfield responds by saying, “Hey man. I’m doing good. Btw how is the case going, just curious. But how are you[?]” Mr. Murdaugh replies: “Finally getting some movement. Still a ways to go. Doing good. Was just thinking bout you and thought I’d check in. Hope to see u soon.” Mr. Satterfield replies: “Cool. Thanks.”

June 7, 2021: Paul and Maggie Murdaugh are murdered.

June 10, 2021: FITSNews again reports the \$505,000 settlement with Lloyd’s of London.

September 4, 2021: Curtis Eddie Smith shoots Mr. Murdaugh in an attempted suicide.

September 6, 2021: Mr. Murdaugh resigns from his law firm and enters a drug rehabilitation program. His firm releases a statement that Mr. Murdaugh was stealing money from clients.

Early September 2021: Attorney Mark Tinsley refers Mr. Satterfield to attorney Eric Bland regarding a possible claim against Mr. Murdaugh.

September 15, 2021: Mr. Bland files the present lawsuit on behalf of Plaintiffs regarding the \$505,000 settlement with Lloyd’s of London. The initial complaint does not allege anything about dogs, instead stating that the details of the fall are unknown to Plaintiffs. Compl. ¶ 16.

There are no allegations regarding the Nautilus settlement. FITSNews, however, reports rumors of a larger settlement amount.

September 16, 2021: Mr. Murdaugh is released on bond for the roadside shooting incident.

September 27, 2021: Plaintiffs file a motion for civil arrest of Murdaugh, which is their first filing mentioning the Nautilus settlement.

October 12, 2021: Plaintiffs dismiss Mr. Westendorf without prejudice.

October 13, 2021: Judge Clifton Newman issues arrest warrants for Mr. Murdaugh for obtaining property by false pretenses. The charge arises from law enforcement's investigation into Plaintiffs' allegations in this case that Mr. Murdaugh misappropriated settlement funds. The affidavit supporting warrant K-235570 concerning Mr. Murdaugh's theft of the Nautilus settlement and sworn to by South Carolina Law Enforcement Division (SLED) special agent Phillip Turner states:

On February 2, 2018, Gloria Ann Satterfield fell and hit her head at Richard Alexander Murdaugh's residence at 4147 Moselle Road in Islandton, SC. Ms. Satterfield later had a stroke, went into cardiac arrest, and died on February 26, 2018.

Mr. Murdaugh coordinated with Ms. Satterfield's family to sue himself in order to seek an insurance settlement with the stated intent to give the proceeds to the Satterfield family to pay for funeral expenses and monetary compensation for Satterfield's children. Mr. Murdaugh recommended the Satterfield family hire Cory Fleming of the Moss, Kuhn, and Fleming law firm to represent them.

Mr. Fleming brokered insurance settlements in the amount of approximately \$4,305,000. A settlement agreement stipulated that \$2,765,000 was designated for the Satterfield family. The Satterfield family were never notified of the settlements nor received any of the proceeds from them, and the settlement agreement was not properly filed in the court record.

The affidavit goes on to describe how Mr. Murdaugh stole the funds by having the settlement checks made payable to "Forge," which he then deposited in a personal account opened under his

own name “doing business as” Forge. A second warrant concerns the \$505,000 settlement Mr. Murdaugh stole from Lloyd’s of London.

October 14, 2021: Mr. Murdaugh is arrested as he leaves a drug rehabilitation center in Florida. He has been incarcerated ever since. The warrants became public then or shortly after.

October 15, 2021: Mr. Bland begins a campaign of extrajudicial statements to news media deriding the character and credibility of Mr. Murdaugh. Mr. Bland tells the news media, “it’s a stark reality that this is a really bad person. Alex Murdaugh is a really, really, really bad person. That’s the bottom line. That’s the tough pill to swallow There’s no bottom to him.” See Mandy Matney, *‘There’s No Bottom To Him’: Unpacking Alex Murdaugh’s Latest Charges*, FITSNEWS (Oct. 15, 2021).

October 17, 2021: Mr. Bland continues his campaign of extrajudicial statements, this time criticizing SLED in an email to CNN. Mr. Bland says SLED’s affidavits:

are all not factually correct on a number of fronts First, these were legitimate claims that were brought in connection with Gloria Satterfield’s death The death was apparently caused by the Murdaughs’ four dogs tripping Gloria on the exterior steps of the Moselle home. As a result an appropriate negligence claim was asserted by her estate against Alex Murdaugh. The claim was not fabricated and Alex appropriately referred them to an attorney.

See Raja Razek, *Alex Murdaugh coordinated with former housekeeper’s family to sue himself for insurance money and then took \$3 million, affidavits say*, CNN (Oct. 18, 2021); Will Folks, *Murdaugh Murders Saga: Satterfield Family Attorney Eric Bland Questions SLED Over Latest Charges*, FITSNEWS (Oct. 17, 2021). The warrant affidavits, however, are entirely accurate. Everything SLED told Judge Newman in those sworn statements is true and Mr. Bland knows this when he publicly castigates SLED for purported inaccuracies. The affidavits only state that Mr. Murdaugh had coordinated with the Satterfield family—which Mr. Bland admits when he amends the complaint in this action six weeks later to allege breach of fiduciary duty against Mr.

Murdaugh—but that Mr. Murdaugh never informed the Satterfield family about the settlements, instead stealing the money using a fake “Forge” bank account.

Mr. Bland’s statement that Ms. Satterfield’s death was caused by dogs and that the claim was not “fabricated” is curious in that the warrant affidavit never suggested anything about the cause of Ms. Satterfield’s fall, dogs or otherwise, nor was there any suggestion the claim was “fabricated.” Reporting on Mr. Bland’s statement, Will Folks of FITSNews wrote, “[a]n attorney following the case closely told me Bland was ‘*worried about his clients having to (cough back up) the money to the insurance companies—which they would have to do if the claim was fabricated from the start.*’” Will Folks, *Satterfield Family Attorney Eric Bland Questions SLED Over Latest Charges*, FITSNEWS (emphasis added).

October 18, 2021: Palmetto State Bank files crossclaims against Mr. Murdaugh.

October 19, 2021: Judge Newman holds a bond hearing on the two warrants regarding the Satterfield settlement. Mr. Bland gives a passionate speech against bond for Mr. Murdaugh:

This is a sad day, Your Honor. It’s a [sad] day for lawyers, that we look upon another lawyer who stole money from clients. Alex Murdaugh stained our profession; he also put a black eye on this state.

...

He is a clear and present danger to the citizens of this state and to my family. This is a man that used a gun on Labor Day weekend. This is a man that used a pen to steal \$3.3 million with another \$118,000 that’s potentially going to be charged. It’s no different than somebody walking into a bank and using a gun. We need to make sure that when somebody steals with a pen, it[’]s the same as if they’re stealing with a gun.

...

No. I, I want him not to have a bond. I would love it if this man was locked up and he couldn’t harm anybody else. But there is a presumption that somebody is going to get bond, and if you’re going to put bond, put those serious conditions on him that will restrain him. Our position is he does not deserve bond; he forfeited that right. He stole. He’s a liar and a cheat.

Bond Hr'g Tr. 17:17–20, 18:1–8; 19:15–21.

Judge Newman denies bond pending a psychiatric evaluation of Mr. Murdaugh.

October 22, 2021: Plaintiffs move for the appointment of co-receivers under South Carolina Code § 15-65-10(1). That motion was simultaneously made in other civil actions against Mr. Murdaugh and was granted on November 4, 2021 by Judge Daniel D. Hall in the case *Renee S. Beach, et al. v. Gregory M. Parker, Inc., et al.*, Case No. 2019-CP-25-00111 (Hampton Cnty. Ct. Common Pleas). John T. Lay and Peter M. McCoy were subsequently appointed co-receivers and all assets held by Mr. Murdaugh have been placed under the co-receivers' authority.

November 4, 2021: Mr. Bland continues his campaign of extrajudicial statements: “‘Alex and his family continue to confirm that they have and always will game the system,’ Bland said. ‘They don’t think decency and the rules apply to them.’” Mandy Matney, *Sham Lawsuit? Alex Murdaugh Confesses Judgment Soon After Brother Sued Him For \$90K Debt*, FITSNEWS (Nov. 4, 2021).

November 10, 2021: Mr. Bland continues his campaign of extrajudicial statements, this time regarding Mr. Murdaugh’s habeas petition to the South Carolina Supreme Court seeking bond:

“Since the original bond hearing Alex Murdaugh has taken financial actions which clearly show that he has no respect for the judicial process, legitimate creditors and victims of his criminal activities and that the ordinary rules do not apply to him,” Bland said. “These financial transactions and how they were manipulated by Alex Murdaugh and those close to him show that in addition he is a flight risk.”

Will Folks, *Murdaugh Murders Saga: Alex Murdaugh Staying Behind Bars As Judge Denies Bond A Second Time*, FITSNEWS (Nov. 10, 2021). “‘It’s a desperate act by a desperate man,’ Bland said.” Mandy Matney, *‘A Desperate Act By A Desperate Man’: Attorneys Petition To Get Alex Murdaugh Out Of Jail*, FITSNEWS (Nov. 10, 2021).

November 15, 2021: Mr. Bland continues his campaign of extrajudicial statements, this time to argue against a motion filed in this case:

Eric Bland, an attorney who with Ronnie Richter represents the Satterfield heirs, said Wednesday he was astonished that Murdaugh now claims settlements by other parties in the case let him off the hook. “You mean Alex Murdaugh gets to keep stolen money because the heirs were so dogged in making other people pay?”

Bland added, “This motion says, ‘Yes my guy may have stolen the money, but I’m declaring the Satterfields are paid in full because somebody else paid the obligation, and therefore my guy (Murdaugh) gets to keep the stolen funds. Think about how tone deaf and arrogant that is.’”

Kacen Bayless & John Monk, *Alex Murdaugh says he doesn’t owe money to Satterfield heirs, court filing shows*, THE ISLAND PACKET (Nov. 17, 2021).

Eric Bland, who serves as co-council [*sic*] for the Satterfield Estate, called the move repugnant. Bland said that Murdaugh’s argument that he can keep the money he stole because other parties paid the Satterfield family back is beyond offensive.

“I never expected [it]. Just because you can make an argument doesn’t mean you should make it. It’s an act of a desperate man to say ‘well, I stole the money and the Satterfields did such a great job in forcing other people to pay, that I shouldn’t have to pay... I just get to go home and keep the money I stole.’”

Chase Laudenslager, *Murdaugh attorneys move to dismiss Satterfield lawsuit because others paid back funds Murdaugh allegedly stole*, WJBF NEWS CHANNEL 6 (Nov. 17, 2021).

Of course, as Mr. Bland knows, Mr. Murdaugh is incarcerated, and all his assets are in the receivership that Mr. Bland requested the Court impose. Mr. Murdaugh cannot “keep” any money, stolen or otherwise. If a claim for damages against Mr. Murdaugh were dismissed because it had been fully compensated from other sources, it would simply mean more money would be available in the receivership estate for restitution to Mr. Murdaugh’s many other victims.

November 18, 2021: Mr. Murdaugh is indicted by the State Grand Jury on 27 counts of financial crimes including 9 counts related to this matter. He has been indicted repeatedly since then for additional financial crimes, and now faces over 100 counts.

November 21, 2021: Mr. Bland continues his campaign of extrajudicial statements:

Listen, like I said it to you a couple weeks ago. There's no bottom to him. He's you know morally decrepit and proves it again today. He stole money from a policeman. He's a solicitor stealing money from a client that that's not bad enough let's just go a little deeper and steal from a policeman who does who make a lot of money to begin with. He's gonna go you know everybody talks about Larry Gene Bell and all these other people Pee Wee Gaskins and and they're killers there's no question about it, and there is a difference right now, but he is as morally bankrupt as they are.

Mandy Matney, *Murdaugh Murders Podcast*, Ep. 19 (Nov. 21, 2021) (transcription of statements by Eric Bland).

November 22, 2021: Mr. Murdaugh moves for a gag order prohibiting Mr. Bland from making further statements to the media concerning Mr. Murdaugh while this action remains pending, pursuant to Rule 3.6 of the Rules of Professional Conduct.

December 6, 2021: Plaintiffs amend the complaint, adding allegations about the Nautilus settlement, adding Bank of America and Curtis Eddie Smith as defendants, and alleging detail about the scheme. Mr. Murdaugh's dogs are mentioned in passing for the first time in tentative, equivocal language. Am. Compl. ¶ 13 ("According to the Murdaughs and as reported to Gloria's family and others, Gloria's fall down the exterior stairs of the Murdaughs' Moselle, South Carolina home in Colleton County, South Carolina was caused accidentally by the Murdaughs' dogs."); ¶ 17 ("After Gloria's death, Murdaugh told Tony and Brian's uncle and aunt that he was going to take the boys to see an attorney he 'knew' who would represent them in making claims against Murdaugh because it was his dogs that caused his mother's death and he was therefore legally responsible for Gloria's death.").

This same day, Mr. Bland reaches out to counsel for Mr. Murdaugh to propose a confession of judgment. Among Mr. Bland's motivations for seeking the confession of judgment is, upon information and belief, to eliminate the motion for a gag order, which would be made moot by the resolution of Mr. Bland's clients' claims against Mr. Murdaugh. Of course, a confession of judgment from Mr. Murdaugh would also impede any attempts by the insurance companies to recover the insurance proceeds they erroneously paid out for Ms. Satterfield's death, which Mr. Bland has reportedly already said is a concern that he has.

December 7, 2021: Mr. Bland provides a draft confession of judgment for \$5 million. Mr. Bland states in an email to counsel that he wants the entry of the confession to be delayed because:

We would like to keep Alex in the Bank of America action for about six to nine months and we will agree to the stay against him in part. We don't want them [Bank of America] to remove it to federal court immediately. We can discuss. We have some legitimate reasons for doing this not just to defeat diversity.

Mr. Murdaugh's counsel responds by proposing to change the amount of the confession to \$4,191,200, which is the \$4,305,000 settlement less \$113,800, which was still in Mr. Fleming's law firm's IOLTA account when this action was filed. Mr. Bland responds:

Jim symbolically it's got to be for \$4,305,000. Are back at all from 5 million but I have to have this. ***It's monopoly money***. Also Alex is going to have to write just a very brief apology to the family saying that he is sorry for what happened and what he did to the boys and Gloria and then he takes financial responsibility.

(Emphasis added). Mr. Bland refers to the amount of the confession as "monopoly money" because the amount of the confession is subject to setoffs for amounts previously paid by other defendants, which at this time was already more than the amount of the confessed judgment. Thus, the confession would not actually require Mr. Murdaugh to pay one penny, nor would it give one more penny to Plaintiffs.

To entice Mr. Murdaugh into making this cost-free confession, Mr. Bland offers not to oppose Mr. Murdaugh's request for bond at the upcoming bond hearing before Judge Alison Lee.

This offer of course was appealing to Mr. Murdaugh who, within the six months prior to Mr. Bland's proposed confession of judgment, suffered the murder of his wife and son, had his financial misdeeds exposed, his drug addiction bottomed out, he attempted suicide, he went through drug rehabilitation, and he was arrested and incarcerated possibly for the rest of his life.

December 8, 2021: Mr. Murdaugh agrees to the proposed confession of judgment.

December 9, 2021: Palmetto State Bank settles with Plaintiffs and is dismissed. Palmetto State Bank also dismisses its crossclaims against Mr. Murdaugh without prejudice.

December 13, 2021: Judge Allison Lee holds a bond hearing for Mr. Murdaugh. Judge Lee was the presiding judge for the State Grand Jury and so was the appropriate judicial officer to set Mr. Murdaugh's bond. Further, for the charges then pending against Mr. Murdaugh, bond in some amount was required under the South Carolina Constitution.

Mr. Bland addresses the court on behalf of the Satterfield family. Mr. Bland states he has recovered about \$7.5 million to date for the Satterfield family. Mr. Bland says he has received satisfactory answers as to what happened to Gloria Satterfield, accountability with Mr. Murdaugh's agreement to confess judgment, and an apology from Mr. Murdaugh. Mr. Bland says he supports whatever decision Judge Lee may make on bond. Mr. Bland's law partner, Ronnie Richter, says the Satterfield family is praying for God's grace to be able to offer forgiveness to Alex Murdaugh. Mr. Bland and Mr. Richter's statement notes the Satterfield family "is pleased that Mr. Murdaugh has finally expressed his apologies and has taken a positive step toward resolution by agreeing to confess judgment to Gloria's sons," and that "[a]s devout Christians, the Satterfield family is guided by their belief that in order for them to be forgiven by their heavenly Father, they in turn must forgive others who have sinned against them."

Judge Lee sets Defendant's bond at \$7 million.

January 13, 2022: In response to inquiries from Nautilus about a request from the U.S. Attorney’s Office, Mr. Murdaugh declines to waive any privilege he may have pertaining to Nautilus’s claim file.

March 1, 2022: Bank of America settles with Plaintiffs and is dismissed with prejudice. The amount is not publicly known, but it is in addition to the \$7.5 million Mr. Bland claimed in December 2021 that he had already recovered.

March 24, 2022: The co-receivers for Mr. Murdaugh’s assets file a proposed confession of judgment to Plaintiffs. The proposed confession is filed in the *Beach* case. The proposed confession admits liability in the amount of the \$505,000 and \$3,800,000 settlements “for the claims asserted against him in their complaint” in this action, subject to setoffs for amounts recovered from other defendants. Confession ¶ 5(b) (“The amount of the Judgment is subject to set-off and shall be reduced by credits for all amounts that have been previously paid by or for the benefit of any defendant who is or was a party to this litigation at any time”). Those setoffs already exceed \$4,305,000, meaning the confession did not create an obligation to pay any money. The confession states no facts whatsoever constituting the confessed liability nor does it show that the sum confessed does not exceed the liability.

April 5, 2022: Mr. Fleming and his firm settle and are dismissed with prejudice in this case. The amount is not publicly known, but it is in addition to the \$7.5 million Mr. Bland claimed in December 2021 that he had already recovered and is also in addition to the amount recovered from Bank of America.

April 22, 2022: Nautilus files a complaint in federal court seeking declaratory relief to adjudicate Mr. Murdaugh’s privilege assertions regarding its claim file in the Satterfield matter, which had been subpoenaed by a federal grand jury.

May 11, 2022: Nautilus files an amended complaint alleging Mr. Murdaugh invented the story about dogs causing Ms. Satterfield's fall and asserting causes of action to recover the funds it paid. Possibly, the review of the claims file prompted by the grand jury subpoena alerted Nautilus to this claim against Mr. Murdaugh.

May 12, 2022: Nautilus's original claim for declaratory relief regarding the privilege claim for the claims file is dismissed without prejudice as procedurally improper. Subsequently, a separate sealed action is filed under Rule 17(c) of the Federal Rules of Criminal Procedure regarding the privilege claim. The federal court ultimately rules against the privilege claim.

May 27, 2022: Mr. Murdaugh executes the confession of judgment to Plaintiffs.

May 31, 2022: The confession of judgment is filed.

July 14, 2022: Mr. Murdaugh is indicted for the murder of his wife Maggie and son Paul.

January 13, 2023: The federal court stays the Nautilus action pending completion of Mr. Murdaugh's murder trial.

January 23, 2023: Mr. Murdaugh's murder trial begins. At some point during the trial, it becomes apparent to counsel that Mr. Murdaugh in fact invented the story about dogs causing Ms. Satterfield's fall.

March 2, 2023: Mr. Murdaugh is convicted of murdering his wife and son.

March 3, 2023: Mr. Murdaugh is sentenced to two consecutive life sentences for the murder of his wife and son.

May 1, 2023: Mr. Murdaugh files an answer in the Nautilus Action. In his answer, Mr. Murdaugh admits that he invented the story about dogs knocking Ms. Satterfield down the stairs at Moselle for the purpose of causing Lloyd's of London and Nautilus Insurance Company to pay to settle a false insurance claim, and that he stole the settlement proceeds by persuading others to

disburse funds as checks payable to “Forge,” meaning Forge Consulting, which he then caused to be deposited in a personal account named “Forge,” which he controlled. He denies that any other person was aware of his intent to steal all the settlement proceeds or that he invented the story about dogs knocking Ms. Satterfield down the stairs at Moselle. He asserts an affirmative defense that Nautilus has failed to join Plaintiffs, who are necessary parties under Rule 19(a)(1) of the Federal Rules of Civil Procedure because they “claim[] an interest relating to the subject of this action.”

III. Legal Standard

Rule 60(b) of the South Carolina Rules of Civil Procedure provides:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

...

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

...

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken.

“Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge” and is reviewed only for an abuse of discretion. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006).

“The definition of ‘void’ under [Rule 60(b)] only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.” *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996).

South Carolina appellate cases do not define “other misconduct” in Rule 60(b)(3), but other state courts and federal courts construing identical language in their respective procedural rules construe “‘other misconduct of an adverse party’ is a catch-all provision” to include discovery abuses, witness tampering, duress, undue influence, among other forms of misconduct. *See Cvitanovich-Dubie v. Dubie*, 254 P.3d 439, 458 (Haw. 2011); *see also, e.g., Summers v. Howard Univ.*, 374 F.3d 1188, 1192 (D.C. Cir. 2004) (Garland, J.) (holding that “other misconduct of an adverse party” is a ground for relief under Rule 60(b)(3) separate from fraud or affirmative misrepresentation that includes failure to meet discovery obligations); *Rothschild v. Devos*, 757 N.E.2d 219, 224 n.9 (Ind. Ct. App. 2001) (“Duress and undue influence could presumably be grounds for relief from judgment under [Indiana Rule of Trial Procedure] 60(B)(3) as ‘other misconduct of an adverse party.’” (citation omitted)); *Coppley v. Coppley*, 128 N.C. App. 658, 496 S.E.2d 611, 616–18 (1998) (considering allegations of “duress and/or undue influence” as “other misconduct of an adverse party” under North Carolina Rule of Civil Procedure 60(b)(3)). Generally, “other misconduct” includes anything causing a judgment to be obtained inequitably or unfairly, as Rule 60(b)(3) “is aimed at judgments which were unfairly obtained, not at those which are factually incorrect.” *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 641 (5th Cir. 2005). To obtain relief under Rule 60(b)(3), misconduct must be proven by clear and convincing evidence. *Gainey v. Gainey*, 382 S.C. 414, 427, 675 S.E.2d 792, 799 (Ct. App. 2009).

IV. Argument

A. The confessed judgment should be set aside under Rule 60(b)(4) because it is void.

South Carolina Code § 15-35-360 provides:

Before a judgment by confession shall be entered a statement in writing must be made and signed by the defendant and verified by his oath to the following effect:

...

(3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability and must show that the sum confessed therefor does not exceed the liability.

The outcome of a pending lawsuit is a contingent liability. *See* Liability, BLACK’S LAW DICTIONARY (11th ed. 2019). The statute therefore requires a confession of judgment in a pending lawsuit to state “the facts constituting the liability” and to show the “sum confessed . . . does not exceed the liability” before the Court enters judgment on the confession. S.C. Code Ann. § 15-35-360(3).

Here, the confession at issue states no facts whatsoever regarding the basis for Mr. Murdaugh’s liability. It merely states, “Debtor admits liability to the Judgment Creditors for the claims asserted against him in their Complaint.” Confession ¶ 2. Nor did it show that the sum confessed did not exceed that liability. In fact, it did exceed the liability by \$113,800—the remainder of the \$4,305,000 settlement that was recovered because it left Mr. Fleming’s law firm’s trust account. Mr. Bland was not concerned about this because, in his words, “it’s monopoly money.” The amount of the confessed judgment was, in Mr. Bland’s words, merely “symbolic.”

The reason the Legislature enacted a statute regulating confessions of judgment in pending lawsuits is to avoid exactly this situation, where a “symbolic,” fact-free confession of judgment obstructs the adjudication of claims involving multiple claimants by favoring one victim over others. Further, that statute, South Carolina Code § 15-35-360, is the sole authority for judgment by a party’s confession, as opposed to judgment entered upon adjudication by the Court. It is, essentially, the statute providing parties “jurisdiction” to enter judgments by confession, just as other statutes and constitutional provisions provide courts jurisdiction to enter judgments by adjudication. For example, in *Linda Mc Co. v. Shore*, judgment was confessed for a non-contingent liability “in the amount of \$110,000.00.” 390 S.C. 543, 548, 703 S.E.2d 499, 501

(2010), *overruled on other grounds by Gordon v. Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018). The confession provided “[Petitioners] agree that [Respondent] may immediately, by affidavit through its attorneys, set forth the correct amount of this Judgment by adjusting the amount stated above for any credits previously applied by [Respondent].” *Id.* at 548–49, 703 S.E.2d at 501. The affidavit was not filed, and the judgment was challenged under Rule 60(b)(4) on grounds the failure to file it rendered the judgment void. The Supreme Court held “the language pertaining to the affidavit in the judgment is permissive and not mandatory” and, “[h]ence ***because the judgment satisfies section 15-35-360*** and the submission of an affidavit was permissive and not mandatory, the court of appeals correctly held the judgment was not invalid for lack of an affidavit.” *Id.* at 552, 703 S.E.2d at 504 (emphasis added).

The confession in this case, however, fails to satisfy S.C. Code § 15-35-360. The parties admittedly acted *ultra vires* when they purported to enter a confessed judgment that did not comport with the statute controlling confessed judgments, and so the confessed judgment is void *ab initio*. See, e.g., *U. S. Rubber Prod. v. Town of Batesburg*, 183 S.C. 49, 190 S.E. 120, 127 (1937) (noting that if municipal “bonds as issued fail substantially to comply with the enabling act, then the bonds are void” (internal quotation marks omitted)); *Howard & Foster Co. v. Citizens’ Nat. Bank of Union*, 133 S.C. 202, 130 S.E. 758, 760 (1925) (holding bank guarantee extended in violation of the National Banking Act “is ultra vires and void for all purposes”); see also, e.g., *S. Tacoma Way, LLC v. Washington*, 233 P.3d 871, 874 (Wash. 2010) (“Ultra vires acts are those performed with no legal authority and are characterized as void on the basis that no power to act existed, even where proper procedural requirements are followed. *Ultra vires* acts cannot be validated by later ratification or events.”); *Adams & Westlake Co. v. Deyette*, 65 N.W. 471, 474 (S.D. 1895) (“These promissory notes upon which the Deyette and Lewis judgments

were confessed, being ultra vires because the corporation was, under the circumstances, powerless to make them, it follows, of course, that the judgments were void . . .”).

“A void judgment is one that, from its inception, is a complete nullity and is without legal effect.” *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). That aptly describes the confessed judgment here, which purports to affect the rights of third parties, yet is the result of a private agreement in violation of the law rather than a public adjudication conducted in accordance with the law. Mr. Murdaugh never had to pay a penny under the confessed judgment and never will. It has no value to Plaintiffs at all and acts only to obstruct the recovery of other victims of Mr. Murdaugh’s financial crimes, which is a plain due process violation.

B. The confessed judgment should be set aside under Rule 60(b)(3) because it arises from “other misconduct” by the adverse party, by and through counsel, and this motion is made within one year of the entry of the confessed judgment.

As noted above, the confessed judgment imposed no cost on Mr. Murdaugh nor provided any financial benefit to the Satterfield family. Its only apparent purposes were to avoid imposition of a gag order and to obstruct defrauded insurance companies from seeking restitution. That Mr. Murdaugh lied about the dogs is undeniably obvious from the record now available, made even more apparent by Mr. Murdaugh’s lengthy testimony at his recent criminal trial wherein he admitted an unfortunate years-long pattern of drug-induced theft and dishonesty. Put simply, the fact that Mr. Murdaugh lied about his own liability for Ms. Satterfield’s death to fraudulently obtain insurance proceeds to perpetuate his severe opioid drug habit, while highly disconcerting, is hardly unbelievable given Mr. Murdaugh’s admitted actions and financial dealings during this time. It is another chapter in a bleak and dispiriting story of a man brought to his knees by a crippling drug addiction, who also had the means and knowledge to effect great financial harm upon others to feed that addiction. Mr. Murdaugh stole money from people much closer to him

than Lloyd's of London and Nautilus, and it will not shock a casual observer of this case that he could have committed such an act during this time. It certainly will not surprise Mr. Bland, if it ever did.

When the confession of judgment was agreed to, Mr. Murdaugh's counsel knew that he had stolen the settlement money. They were unaware, however, of the details of the claim underlying the settlement, and in the run-up to Mr. Murdaugh's murder trial, they had no reason to delve into that issue. They had bigger fish to fry. At the time, Mr. Bland's desire for a worthless confession of judgment seemed odd, but Mr. Murdaugh's counsel saw no reason to resist. To say the least, Mr. Murdaugh was in a precarious position with his criminal proceedings, and the absence of Mr. Bland's vocal criticism at his bond hearing might provide some much-needed respite. In the weeks that followed, Mr. Murdaugh was indicted for murder and counsel were entirely consumed with preparing for and conducting his murder trial. During the six-week murder trial, counsel did positively learn that there were no dogs around Ms. Satterfield at the time of her fall. Counsel filed Mr. Murdaugh's answer as soon as possible after the trial, delayed for some time by Mr. Murdaugh's altered post-trial conditions of confinement.

Mr. Murdaugh and his counsel do not challenge the confessed judgment in this case because it somehow harms Mr. Murdaugh. The confession harms Mr. Murdaugh not at all. It does not require him to pay any money and all his money is in the custody of receivers appointed by this Court. If ten insurance companies sued Mr. Murdaugh for this same \$4.3 million and all prevailed, Mr. Murdaugh's life would not change in any way.

The confessed judgment only harms Mr. Murdaugh's other victims. The Satterfield family alleges Mr. Murdaugh stole approximately \$4.3 million from them. The truth is that he stole it from Lloyd's of London and Nautilus. But Plaintiffs and Plaintiffs' counsel nonetheless recovered

approximately \$7.5 million in this case *before* Bank of America settled and *before* Mr. Fleming and his law firm settled. Plaintiffs’ counsel has recently taken to social media to express outrage that Mr. Murdaugh would dare tell tale of his theft from Nautilus for the harm it might cause to his clients. But what Mr. Bland really advocates for is the detriment of Mr. Murdaugh’s other victims, who were defrauded of funds for legitimate claims. If the confessed judgment remains in place, those victims will have their restitution substantially reduced when insurance companies present claims for over \$4 million of stolen money against the limited receivership estate—which they are sure to do—while the two-fold or more recovery for that theft sits outside the receivership that Plaintiffs’ counsel himself requested, and substantially in the hands of Plaintiffs’ counsel himself.

To achieve that inequitable result, Mr. Bland has engaged in a concerted campaign of prejudicial and extrajudicial statements, as well as inflammatory rhetoric in the courtroom when Mr. Murdaugh sought bail, and then offered to stop when Mr. Murdaugh again sought bail if he would simply confess judgment for a “symbolic” amount of “monopoly money.” Mr. Bland’s response to the wording of SLED’s warrant affidavits in October 2021 shows that he understood the Satterfield claim was unlikely to be valid well before he suggested Mr. Murdaugh provide a worthless confession of judgment of that dubious claim. Mr. Murdaugh submits this conduct, detailed in the timeline set forth above, fairly falls in the catch-all provision of “other misconduct.” *See* Rule 60(b)(3), SCRCP. Admittedly, the situation is unique and may be a question of first impression. But to the extent the question may be uncertain, the law favors adjudication on the merits and discovery of the truth. *Smith v. Ozmint*, No. CV 04-1819-PMD, 2005 WL 8161933, at *2 (D.S.C. Oct. 31, 2005) (“Clearly the policy of the law favors adjudication on the merits”); *see also Johnston v. Harris Cnty. Flood Control Dist.*, 869 F.2d

1565, 1578 (5th Cir. 1989) (“The goal of grand jury proceedings, of criminal trials, and of civil trials is to resolve a dispute by gathering the facts and arriving at the truth . . .”).

Banks and others paid restitution for the money Mr. Murdaugh stole because they realized they might share some liability with Mr. Murdaugh for his thefts. They paid the restitution to the Satterfield family and their lawyers not as a gift or expression of sympathy, but because they thought Mr. Murdaugh stole their money. Had they known the money was stolen from someone else, they would have paid that someone else. For example, it is unlikely Bank of America would have paid a substantial amount to the Satterfield family had it known the Satterfield family was not entitled to the money deposited into Mr. Murdaugh’s fake Forge account in the first place.

Thus, Nautilus (and Lloyd’s of London) have equitable restitution claims to funds paid by banks and others as restitution for a theft from Nautilus (or Lloyd’s of London). *See* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 6 (“Payment by mistake gives the payor a claim in restitution against the recipient to the extent payment was not due.”); § 47 (“If a third person makes a payment to the defendant in respect of an asset belonging to the claimant, the claimant is entitled to restitution from the defendant as necessary to prevent unjust enrichment.”); § 48 (“If a third person makes a payment to the defendant to which (as between claimant and defendant) the claimant has a better legal or equitable right, the claimant is entitled to restitution from the defendant as necessary to prevent unjust enrichment.”).

The Restatement expresses the common-sense principle that if restitution for stolen money is given to the wrong party, the actual victim has a claim on that restitution even if the source of the restitution is a third-party paying on behalf of, or because of perceived joint liability with, the thief. That common sense is also the law, under which Nautilus has a compelling case for restitution (as would Lloyd’s of London). The present judgment thus has the effect not of

compensating the victims of Mr. Murdaugh's financial crimes, but rather of forcing the actual victims of those crimes to seek recompense from a limited pool of money available to Mr. Murdaugh's other victims.

* * *

This is not to say Plaintiffs have no valid claims against Mr. Murdaugh or that he did not injure them. They do, and he did. Mr. Murdaugh deceived Tony Satterfield and used Mr. Satterfield's trust as a device to steal millions of dollars from insurance companies while Plaintiffs grieved for their mother, all in a desperate and insensitive effort to feed his own drug addiction. Mr. Murdaugh is deeply ashamed of what he did, so much so that it led him to attempt suicide, as he testified at his murder trial: "I thought it would be better for me not to be here anymore." But it in no way follows from Mr. Murdaugh's illegal and immoral actions that Plaintiffs were ever legally entitled to the proceeds of his insurance fraud or that the measure of their damages from his abuse is how much Mr. Murdaugh was able to steal from the insurance companies.

Plaintiffs' counsel has publicly asserted that Mr. Murdaugh should not be allowed to keep the money he stole just because Plaintiffs recovered restitution from third parties. He makes that argument on social media rather than in a courtroom because he knows it is nonsense. Mr. Murdaugh keeps nothing. This civil litigation will not affect his quality of life in any way. Mr. Murdaugh is in prison, perhaps for the rest of his life, in protective custody because he may be killed if he is released into the prison's general population. Every asset Mr. Murdaugh has is in the custody of the receivers Mr. Bland asked the Court to appoint. If Nautilus obtains a judgment against Mr. Murdaugh for \$3.8 million, with no offsets for the third-party recoveries Mr. Bland has obtained, the only effect will be to reduce funds available to Mr. Murdaugh's many other victims. The Satterfield family is, unfortunately, not the only victim of Mr. Murdaugh's actions.

Mr. Murdaugh makes this motion to correct the record in this matter, which he is obligated to do, and so that those victims might receive restitution according to their rightful share.

V. Conclusion

For the foregoing reasons, the Court should grant this motion and vacate the judgment entered in favor of Plaintiff against Mr. Murdaugh dated May 31, 2022. This motion is based upon the pleadings, the South Carolina Rules of Civil Procedure, a memorandum or memoranda of law to be submitted at or before the hearing on this motion, and any other matters this Court may permit to be presented at the hearing on this matter.

Respectfully submitted,

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