iii. Regarding the Pinckney Settlement Proceeds

Fleming takes exception to the characterization of his treatment of Pinckney's money as him sending it "to Alex" as opposed to Murdaugh's law firm. (State Plea Tr. 10, ll. 20-25). The State had already described the process to the Court in greater detail as "Fleming authorizing money going from the trust account that should have gone to Pamela Pinckney and instead, sending that to PMPED which Alex Murdaugh had promptly converted." (State Plea Tr. 9, ll. 12-15). The statement characterizing the incident as Fleming sending money to Murdaugh was a summation while moving to the next point.

Fleming, however, goes one step further and avers that [illegible] not know the money would be stolen, which borders on disavowal of the fraudulent intent to which he already pled guilty. Fleming lacked any legitimate purpose to send his clients money to PMPED. The only purposes Fleming could have had to send the $[illegible].44 were fraudulent. The fact that he did not contact his client Pamela Pinckney and [illegible] differently than normal proves the point. Ultimately, as always, the money *did* go to Alex and the overwhelming weight of the evidence and common sense refute Fleming's assertion that he had no idea.

iv. Regarding Forge Consulting

Contrary to the [illegible]tions of Fleming in his Supplemental Sentencing Memorandum, the State *does not* allege that Fleming necessarily knew the specific particulars of Murdaugh's "fake Forge" account or that Murdaugh intended to steal all of the money given to him. Indeed, the State has consistently accepted that Fleming might not have expected Murdaugh to steal all of the money, but that instead the scheme as usual depended on some significant portion of that money reaching the Satterfields so as to secure their satisfaction. The arguably insolvent Murdaugh stealing all of the money undid the scheme, and no doubt Fleming may have been surprised when Lee Cope informed him that Murdaugh's frauds were unraveling—although Fleming did have sufficient wits to lie to Cope regarding his own culpability.

Fleming, rolling forward upon his misconstruction of the State's theory of the case, asserts he is simply dumb about structures, that only one e-mail ever explained it to him, and he cannot remember reading it. *See* Defense Supplemental Sentencing Memorandum at 10-11. However, it was not only one e-mail. The investigation includes some 800-odd bates labeled emails or documents that include both Forge Consulting, LLC, and Fleming as parties or CC's (many are duplicates in email chains). Fleming was specifically informed of the proper mechanism of a structure not only on or about Decmeber 20, 2017, {State's Plea Exhibit 5}, but again by Grantland during the course of the Satterfield fraud {State's Plea Exhibits 13, 14, & 15}, and still again in Forge e-mails regarding another client on or about April 30, 2020. Fleming was told before, during, and after his fraud that a check to Forge was not proper. Fleming, a brilliant man, is playing dumb by only admitting the minimum – and only after he was caught read handed by the State Grand Jury investigation.

Of special note, Fleming argues that his version of culpability—in which the Forge checks were wholly to the benefit of the Satterfield boys—is corroborated by law enforcement interviews with Richard Alexander Murdaugh, convicted family annihilator and serial fraudster on whose persistent deceptions Fleming otherwise relies as mitigation. To put it lightly, the State places no credibility in any statements given in the past or to be given in the future by Murdaugh.

v. Regarding Murdaugh's Anticipated Theft Amount

Fleming asserts he only intended to steal $231,000 from the gap of a reduced fee for the benefit of Murdaugh, and takes exception to the inferences drawn by the State that he must have intended more. Again, the State does not assert that Fleming ever intended or expected Murdaugh to steal all of the money communicated to him in the form of the Forge checks, which he knew were inoperative to his client's benefit. Rather, the facts lead to and support the equally culpable inferences of either (a) Fleming knew that Murdaugh would by means unknown to Fleming avail himself of the "fee split" portion of the "Forge" funds, and (b) willfully did not

care what Murdaugh did with the Satterfield's money. In any event, as preivously noted, the hand of one is the hand of all, and Fleming may be fairly held to account for sentencing purposes for the whole sum of the amount lost as a result of his conspiracy with Murdaugh.

III. Timeline of Investigation and Engagement with Fleming

Because Fleming's cooperation with state and federal prosecutors and law enforcement—or lack thereof—is a significant, relevant factor in determining an appropriate sentence, and because Fleming makes reference to federal involvment and judgment in his investigation in his own sentencing memorandum and supplemental sentencing memorandum, a thorough review of Fleming's engagement with *the State* over the course of the investigation is necessary.

a. Background

The South Carolina Law Enforcement Division ("SLED") was first alerted to alleged financial crimes committed by Murdaugh on September 4, 2021, by members of Murdaugh's law firm, Peters, Murdaugh, Parker, Eltzroth, & Detrick ("PMPED"). SLED assigned Senior Special Agent David Williams as lead investigator into the white-collar crimes of Murdaugh and any associates. A State Grand Jury investigation was opened into the alleged financial crimes.

Attorneys and staff with the State Grand Jury Division of the South Carolina Attorney General's Office immediately set to meticulous reivew of the financial records already obtained via search warrant as well as materials gathered by State Grand Jury subpoenas. Review of the materials promptly revealed the frauds of the Estate of Gloria Satterfield and of Pamela Pinckney, among *numerous* others. Throughout this rolling reivew, attorneys and staff worked closely with SLED SS/A Williams and other SLED agents to coordinate service of subpoenas for testimony or records before the State Grand Jury.

Murdaugh was thereafter initially indicted by the South Carolina State Grand Jury on November 18, 2021, for the fraud of the Satterfields. He was indicted again by the SGJ in December 2021. Murdaugh was indicted by the South Carolina State Grand Jury on January

20, 2022, for the fraud of the Pinckneys. Murdaugh also picked up additional SGJ charges in February 2022.

Subsequently, the State Grand Jury returned a superseding indictment on March 10, 2022, additionally charging Fleming as previously described for his role in the fraud of the Estate of Gloria Satterfield (2021-GS-47-30). The State Grand Jury returned an additional superseding indictment on April 14, 2022, additionally charging Fleming as previously described for his role in the fraud of the Pinckney family (2022-GS-47-02). Murdaugh of course continued to be indicted by the SGJ through the remainder of the spring and into the summer.

Between September 4, 2021, and April 14, 2022, state law enforcement, as well as staff and attorneys with the State Grand Jury Division, met with numerous witnesses with respect to the many frauds of Murdaugh, to include those in which Fleming was engaged. Most of interviews of significant witnesses were conducted concurrently with request from the State Grand Jury Division to serve a subpoena on the witness to testify before the South Carolina State Grand Jury.

b. Fleming did not fulfill the terms of his proffer agreement with the State after the investigation.

The State prosecuted Fleming's co-conspirator Murdaugh from January 23, 2023, to March 2, 2023, for the murder of his wife Maggie and son Paul on June 7, 2021, which occurred amid the impending revelation of his criminal conduct with Fleming and others. Some evidence of Fleming's conspiracy with Murdaugh was introduced during that trial. Murdaugh was convicted and sentenced to life in prison without the possibility of parole on March 3, 2023.

In late March of 2023, the State was informed the United States Attorney's Office was going to indict Fleming based on conduct long ago investigated and indicted by the State Grand Jury. Two proffer interviews with the SGJ Division, SLED, USAO, and FBI took place in April and May 2023. Fleming had not previously attempted to admit to his criminal culpability and indeed had maintained that he was but a victim of Murdaugh. Unsatisifed with the unduly

mitigating version at odds with common sense and the evidence, the State then exercised its right to require that Fleming provide additional information in accordance with the legal obligations he signed in the state proffer. Despite multiple requests in writing, Fleming refused and simply pled guilty in federal court while ignoring his obligations under the proffer agreement he signed with the State.

On August 23, 2023, Fleming appeared before this Court at the Williamsburg County Courthouse and pled guilty as indicted on all counts. As of that date and as of this writing, Fleming never further attempted to complete the terms of his State proffer agreement.

IV. Legal Standards

The law of South Carolina affords broad discretion to trial judges in sentencing within statutory limits. *Brooks v. State*, 325 S.C. 269, 271-72, 481 S.E.2d 712, 713 (1997) (citing *Garrett v. State*, 320 S.C. 353, 465 S.E.2d 349 (1995); *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974)). "A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant." *Id.*, 325 S.C. at 272, 481 S.E.2d at 713; *see also State v. Scates*, 212 S.C. 150, 154, 46 S.E.2d 693, 694 (1948) (Appellate courts may not "correct" a sentence within the limits prescribed by law and which "is not the result of partiality, prejudice, oppression or corrupt motive.")

Additionally, "[t]he cruel and unusual punishment clause requires that the duration of a sentence not be gerossly out of proportion with the severity of the crime." *State v. Kiser*, 288 S.C. 441, 443, 343 S.E.2d 292, 293 (1986) (citing *Solem v. Helm*, 463 U.S. 277 (1983); *State v. Gamble*, 249 S.C. 605, 155 S.E.2d 916 (1967)). To determine a sentence which comports with the Constitution, the Court may consider three objective criteria: (1) the gravity of the offense compared to the harshness of the penalty; (2) sentences imposed on other criminals in the same jurisdiction; and (3) sentences for the same crime in other jurisdictions. *Id.*; *see also State v. Follin*, 352 S.C. 235, 257-58, 573 S.E.2d 812, 824 (Ct. App. 2002) ("[W]hen the record clearly reflects an appropriate basis for a disparate sentence, the sentencing judge may impose a

different sentence on a co-defendant in a criminal trial[,]" but the decision whether to proceed with a jury trial is not an appropriate basis.). The sentencing court cannot base sentence, either in whole or in part, upon a defendant's exercise or waiver of his constitutional right to a jury trial. *State v. Hazel*, 317 S.C. 368, 453 S.E.2d 879 (1995).

No one penalogical theory prevails upon all others in guiding courts to an appropriate sentence. The Court can, and should, both jointly and separately, consider whether a sentence is sufficient to satisfy the goals of (1) retribution, (2) deterrence, (3) incapacitation, and (4) rehabilitation.

V. Arguments for Sentencing

For whatever good Fleming has done in his life, his egregious, catastrophic conduct has undermined the people's faith in the state justice system. These are state crimes, committed with abuse of state law licenses, in state court civil actions, before state court judges, and involving state court approved settlements. The state judicial system must defend itself and provide independent accountability for those who abuse it as Fleming did here. Furthermore, this is the first opportunity for actual convictions and thus actual accountability relating to Fleming's fraud on Pamela Pinckney, which reaches back all the way to 2012 and thus was outside of the federal statute of limitations.[2]

While "[e]xcessive penalties are tyrannical in the court, and abhorrent to the public . . . penalties unduly mild seriously embarrass law enforcement and encourage infractions of criminal laws." *State v. Hall*, 224 S.C. 546, 548, 80 S.E.2d 239, 240 (1954) (quoting *Hawkins v. United States*, 14 F.2d 596, 598 (7th Cir. 1926) (finding fair an intended 15 year sentence for securities fraud stretching over five years)).

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[2] Apparently it was considered somehow in the sealed PSR -- which is not made available to the State courts or the State prosecutors -- but regardless some effect on Guidelines when the federal government only charged a single 5-year offense is not the same thing as actual convictions and thus accountability for the Pinckney conduct (which is only occurring in the state system).

a. Fleming's high regard by his part of the community enabled his crime, and so his "good character" may be fairly diminished as an instrumentality of his crimes.

Fleming's character letters describe how members of his part of the community held him "in the highest regard;" trusted him wholeheartedly; loved and respected him; did not know a finer man; only knew him to be a dedicted and caring family man; served as a guiding figure; would help anyone in need; and was a man of true words. The letters describe a dedicated and zealous advocate. Perhaps the most complete and pertinent description came from the student who wrote: "Cory Fleming is the last man on Earth whom I expected to write a letter of this nature."

The Pinckneys and Satterfields felt the same. Fleming betrayed them.

Crimes of Fleming's kind cannot occur without the trust and confidence of others, long built and cultivated by a string of good deeds, which is part of why they are so heinous. Indeed, Italian poet Dante Alighieri consigned those who committed fraud and treachery to the lowest circles. When crimes of fraud and trechary are committed, their commission does more than to enrich one at the expense of another. Fleming's frauds debased his community, his profession, and this State. Fleming's frauds deprived his victims of their freedom to trust even those held in the highest regard, as he was. And finally, at a time of deep and growing distrust of every public institution, Fleming's frauds gave another reason for the public to adopt that distrust. Members of the Bar serve as Officers of the Court, and so serve not only the varying needs of individual clients, but more broadly act as learned intermediaries between a free citizenry and the government that operates with their consent. When members of the Bar breach the trust of their clients, no intermediary remains, and the people become alienated from their public institutions.

Admittedly, such high-minded concerns should not be overstated to impugn Fleming far beyond the scope of his crimes. However, the Court should recognize that every excessive mercy to those who commit white-collar crime incurs a debt to a public who aches for vindication that they might have faith in one another, and that when that faith is broken, there

are not two justice systems, but one, firm and fair to all. Conscious regard for public confidence in the system is a proper factor to consider in the penalogical interest of retribution.

b. Fleming's crimes may be compared as more severe than other recent crimes of comparable magnitude, and may be fairly compared to those other crimes classified as "serious" under South Carolina law.

As noted above, crimes of Fleming's kind cannot occur without the trust and confidence of others, long built and cultivated by a string of good deeds. A crime of the scale and impact of Fleming's can *only* be committed by a first-time offender, can *only* be committed by a professional, and can *only* be committed by those who hold a position of privilege and esteem in the community—characteristics which frequently lead courts to impose less onerous punishments than those imposed as a consequence of "blue-collar" crime. As a consequence, significant disparities have long existed between sentences imposed for "white-collar" crime and "blue-collar" crime, which in turn creates disparities in the punishments of wrongdoers of a privileged background and wrongdoers who suffered deprivation. For this reason, the State would encourage the Court to compare Fleming's conduct not only to the outcomes faced by similarly situated defendants—i.e. those who want for little—but also to those who turned to crime amid environments which incentivized them to do so.

Nonetheless, *some* white-collar cases do provide some guidance. Disbarred attorney Richard Breibart pled guilty in federal court in 2014 for extorting clients out of $1 million in order to cover his office expenses and received a sentence of 63 months (5.25 years) in prison. By comparison, the appropriate loss amount to consider in Fleming's context is almost four times that amount. It thus follows that a substantially more stringent sentence for Fleming would be justified.

More recently, former New Jersey Nets player Terrence Williams pled guilty in the Southern District of New York to defrauding the National Basketball Association's health and

welfare benefit plan out of more than $5 million. According to the U.S. Department of Justice,[3] Williams defrauded the plan by providing cooperating medical providers with false invoices to support fraudulent claims in exchange for kickback payments of at least $300,000, and an additional $346,000 through blackmail of one of the cooperating medical providers. Williams additionally texted commands to a witness to cease cooperation and a threat to spit in their face. The court sentenced Williams earlier this month on August 3, 2023, to 10 years in prison.

Former Berkeley County CFO Brantley Thomas pled guilty in 2019 to the theft of over $1.3 million of school money, and received 60 months in federal prison followed by a consecutive 11 years in state prison.

Finally, "breach of trust with fraudulent intent" of this magnitude is classified as a "serious" offense. S.C. Code Ann. § 17-25-45(C)(2)(b).[4] While the State does not seek Fleming's life incarceration, or a term of years nearly approximating as much, the Court should acknowledge the serious classification of his crimes and impose a sentence that appropriately reflects that classification, and in line with those other acts classified as "serious": drug trafficking, second degree arson and burglary, first degree domestic violence, and others.

c. Fleming expresses not remorse, but regret, and as recently as April 2023, denied culpability in verified letters.

Fleming now appears to the Court and purports to express his considerable remorse for the crimes to which he has now pled guilty. Remorse is a fair factor to consider in mitigation. Fleming's "remorse," however, is subsumed within his overly mitigated version of events that only materialized once caught red-handed.

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[3] https://www.justice.gov/usao-sdny/pr/former-nba-player-terrence-williams-sentenced-10-years-prison-defrauding-nba-players, accessible as of Aug. 21, 2023.

[4] Ostensibly, so too is insurance fraud, however the "three strikes" statute erroneously cites to a sub-section that does not exist, and inferentially only a middle-level of severity. *Compare* S.C. Code Ann. § 17-25-45(C)(2)(b) (classifying as serious § 38-55-540(3) – Insurance Fraud); S.C. Code Ann. § 38-55-540(A) (subdividing degrees of Insurance Fraud into five parts, of which (3) is a lesser felony).

As recently as April 2023, Fleming has defended his innocence and denied culpability. Of course, for the criminally culpable, acceptance of the truth of one's own wrongdoing is a process which may take time. As such, delay alone in acceptance of responsibility may not be a strong aggrivating factor, if it is one at all. However, Fleming did not merely deny culpability in April 2023, but affirmatively sought to justify his thefts of $8,000.00, $8,500.00, and $9,700.00 as considered as part of his attorney's fees, "which he had generously reduced[.]" Fleming further characterized the $105,000.00 in bunk "Prosecution Expenses" as an estimation for future costs, and estimation with no basis in reality or connection to any conceivably forseeable action as the "expenses" were withheld from the final settlement. As to the remaining balance of funds in trust for the Satterfields, Fleming asserted he had simply been waiting on instructions from Westendorf—a man with whom Fleming barely communicated, a man who had no direction as to what he was supposed to do, and a man from whom Fleming had never taken any direction.

Less than three weeks later, Fleming told a different story to State and Federal law enforcement and prosecutors, and even that was incomplete.

The State has no doubt that Fleming is awash in a sea of *regret*, rather than remorse. But he continues to deny his true culpability. The truth is important as to exactly how the state judicial system was exploited for personal gain.

d. Murdaugh's hand is the hand of all, and as he stole so too must Fleming be held to account.

While it is more often employed as a legal theory of culpability, rather than an aggravating circumstance, under the "hand of one, the hand of all" theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution fo the common design and purpose. *State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014). Thus, even if the Court adopts the inferences from the facts to be insisted upon by Fleming, to the exclusion of those inferences insisted upon by

the State, Fleming can and should be held every bit as culpable as though he personally stole every dime of funds from the Satterfield trust.

VI. Conclusion

Fleming's conspiracy with Murdaugh represents a unique abuse on the state judiciary, its legal profession, and most importantly the lives of the Pinckney and Satterfield families. Its form was born of Fleming's mind, if not its scope of implementation. They are white-collar crimes, but they require full vinidication for the for the families, for the public and for state's own sovereignty.

Consecutive state prison time to any federal time is warranted. It is warranted for the full extent of the conduct against the Satterfields as finally exposed in this State proceeding. It is warranted for Pamela Pinckney, as actual convictions for the crimes against her only came in these State proceedings. A lawyer should not get one stop shopping for a decade of theft involving more than one client. It is warranted for the State judicial system itself, which must provide its own accountability for those who abuse it, and which must resist those who thumb their nose at it and try to bypass the accountability it demands.

Respectfully submitted,

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