

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ALLENDALE)
)
 ARTHUR BADGER, individually and as)
 Second Successor Personal Representative)
 of the ESTATE OF DONNA BADGER,)
)
 Plaintiff,)
)
 v.)
)
 RUSSELL LUCIUS LAFFITTE,)
 PALMETTO STATE BANK, and)
 RICHARD ALEXANDER MURDAUGH,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO. 2022-CP-03-_____

**AFFIDAVIT OF
 MICHAEL VIRZI**

NOW COMES Michael J. Virzi, and states, under oath, the following:

1. I am providing this affidavit, pursuant to S.C. Code Ann. § 15-36-100(B), as an expert witness on behalf of the above-named Plaintiff in support of his claims against Defendant Richard Alexander Murdaugh in the above-captioned case.

2. My qualifications to give expert testimony include the following:
- A. I am a lawyer licensed to practice law in South Carolina, and my practice focuses exclusively on matters of legal malpractice, ethics, and lawyer discipline;
 - B. I am a former Assistant Disciplinary Counsel to the South Carolina Supreme Court, I serve on the South Carolina Bar’s Ethics Advisory and Professional Responsibility Committees, and I have served three terms as Chair of the former and two terms as Chair of the latter, as well as four terms as Ethics Chair on the Board of Directors of the South Carolina Association for Justice.
 - C. I have authored six published articles, numerous Ethics Advisory Opinions, and a book chapter on matters involving lawyer ethics and malpractice, I

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have taught Professional Responsibility at the University of South Carolina School of Law for ten years, I am a frequent CLE speaker and law school guest lecturer and have given more than 100 presentations on the topics of lawyer malpractice, ethics, and discipline, and I have been an instructor in the South Carolina Bar and Supreme Court's ongoing Legal Ethics and Practice Program since its inception in 2009;

- D. I am a member of the South Carolina Association of Ethics Counsel, the Association of Professional Responsibility Lawyers, the ABA Center for Professional Responsibility, the South Carolina Association for Justice, the South Carolina House of Delegates; and
- E. I have provided expert testimony on matters involving the standard of care for lawyers on more than 100 occasions either in court, in deposition, or by affidavit, I have been qualified in federal and state courts in South Carolina as an expert in matters of lawyer ethics and malpractice, including two matters in the original jurisdiction of the South Carolina Supreme Court, and I am familiar with the standard of care and duties applicable to lawyers in the circumstances involved in this case.

3. My opinion is based on review of the Complaint in the above-captioned case and the following additional documents:

- A. Relating to the Allendale County Common Pleas matter captioned "Russell Laffitte, as Personal Representative of the Estate of Donna Badger, Plaintiff, vs. United Parcel Service and Matthew C. Fields, Defendants," Case No. 2011-CP-03-00039:
 - i. Release and Settlement Agreement dated November 5, 2012, signed by all parties and Defendant Murdaugh;
 - ii. Petition for Approval of Settlement by Russell Laffitte, filed November 19, 2012, with form cover sheet by G. Troy Thames and Verification by Russell Laffitte and R. Alexander Murdaugh;
 - iii. Order dated October 31, 2012, and filed November 19, 2012;
 - iv. Two-page Disbursement Sheet dated May 3, 2013, signed by R. Alexander Murdaugh and Russell Laffitte as "PR for the Estate of Donna Badger"; and
 - v. Two-page Disbursement Sheet dated January 27, 2014, signed by Defendant Murdaugh, Arthur Badger, Tejawanna Hay, and Arthur Badger on behalf of Antonio Badger, Arthur Badger, III, Fantasia Badger, Shawdonna Badger, and Shanteria Badger;

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- B. Relating to the Allendale County Probate Court matter captioned "Donna Hay Badger," 2011-ES-03-00011:
- i. Petition for Settlement by Russell Laffitte, dated December 20, 2012;
 - ii. Accounting by Russell Laffitte, dated December 20, 2012;
 - iii. Proposal for Distribution by Russell Laffitte dated December 20, 2012;
 - iv. Notice of Right to Demand Hearing by Russell Laffitte, undated;
 - v. Seven (7) Receipt and Release forms dated December 20, 2012, by Tejawanna Hay, and Arthur Badger individually and on behalf of Arthur Badger, III, Antonio Badger, Shawdonna Badger, Shanteria Badger, and Fantasia Badger; and
 - vi. Certificate of Discharge by Judge Bennett, dated February 8, 2013;
- C. Relating to the Allendale County Common Pleas matter captioned "Charles E. Harley, Sr., as PR of the Estate of Charles E. Harley, Jr., vs. Plaintiff, v. United Parcel Service, Inc., and Matthew Fields, Defendants," Case No. 2011-CP-03-38:
- i. Two-page Settlement Statement signed by all parties and Defendant Murdaugh on various dates from November 1, 2012, through February 11, 2013,
 - ii. Four-page Release and Settlement Agreement dated November 1, 2012, without signatures;
 - iii. Two-page Disbursement Sheet, dated November 19, 2012, signed by R. Alexander Murdaugh and Charles E. Harley, Sr., PR for Charles E Harley, Jr., with handwritten changes; and
 - iv. Disbursement Sheet dated January 15, 2013, signed by R. Alexander Murdaugh, Charles E. Harley, Sr., and Dorothy Bouncil;
- D. Two-page Disbursement Sheet captioned "Arthur Badger, Plaintiff, v. United Parcel Service, Inc., and Matthew Fields, Defendants," Case No. 2011-CP-03-43, dated November 19, 2012, and signed by R. Alexander Murdaugh and Arthur Badger;
- E. September 13, 2012, letter from Defendant Murdaugh to Troy Thames regarding "Estate of E. Harley, Jr. vs. United Parcel Service Inc.," and five other related cases;
- F. September 18, 2012, email from Troy Thames to Defendant Murdaugh regarding "Estates of Harley and Badger- Death Settlement Form";
- G. September 18, 2012, letter from Defendant Murdaugh to Troy Thames regarding "Estate of Charles E. Harley, Jr. v. United Parcel Service and

Matthew C. Fields” and “Estate of Donna Badger v. United Parcel Service and Matthew C. Fields”;

- H. November 1, 2012, letter from Troy Thames to Defendant Murdaugh regarding “Estate of E. Harley, Jr. vs. United Parcel Service Inc.,” and five other related cases, with Defendant Murdaugh’s signature of agreement;
- I. February 8, 2013, emails between Defendant Murdaugh and Defendant Laffitte regarding “check” and “Check #43162”;
- J. September 10, 2013, stop payment order to Defendant Palmetto State Bank (hereinafter “PSB”) regarding Account No. 69359272 and Check No. 43739;
- K. Three-page accounting ledger regarding Account No. 10110-01 and Matter ID 009033-010663, dated February 22, 2022, with 24 pages of supporting check, wire, and money order images;
- L. One-page accounting ledger regarding Account No. 10110-01 and Matter ID 009034-010664, dated October 29, 2021, with four pages of supporting check images; and
- M. Two-page “WIP Report” regarding Matter ID 009033-010665, dated October 31, 2021, and two-page accounting ledger regarding Account No. 10110-01 and Matter ID 009033-010665, dated October 19, 2021, with 17 pages of supporting check images.

4. Based on my experience, education, training, and knowledge of the standard of care for lawyers, and on my review of the above-listed documents, it is my professional opinion that Defendant Murdaugh owed professional fiduciary duties to Plaintiff and that his conduct fell below the degree of care, skill, knowledge, and judgment usually possessed and exercised by members of the legal profession in South Carolina, as set forth in more detail hereinbelow.

5. It appears that Defendant Murdaugh represented Plaintiff in several cases related to an automobile accident that injured Plaintiff and claimed the life of Plaintiff’s wife and another passenger. In my professional opinion, Defendant Murdaugh’s misconduct in his representation of Plaintiff, including theft of funds belonging to Plaintiff, was a clear and egregious violation of his

duties to Plaintiff. In particular, it appears Defendant Murdaugh breached professional duties of honesty, competence, diligence, communication, safekeeping, supervision, deference, and loyalty owed by him to Plaintiff and almost certainly committed one or more crimes against his own client.

6. Lawyers are obligated, as a minimum standard of care, to exercise independent professional judgment in the best interest of a client, not their own interest, to defer to and abide by a client's informed decisions regarding making or accepting a settlement of the client's claims, and to be truthful about the work they perform for a client. It appears Defendant Murdaugh failed to do this, instead settling all of Plaintiff's claims (his individual personal injury claim, his wrongful death claim, and his claim as beneficiary of his deceased wife's estate) without truthfully consulting him and instead conspiring with Defendants Laffitte and PSB to conceal from Plaintiff the amounts obtained in settlement of Plaintiff's claims and—to the extent some amounts were divulged to Plaintiff—conceal the ultimate recipients of those funds. The Complaint alleges and it appears that Defendant Murdaugh knowingly acted in his own personal interest and that of his accomplice, Defendant Laffitte, and not in Plaintiff's interest, causing Plaintiff significant financial harm.

7. Lawyers are also obligated, as a minimum standard of care, to promptly inform anyone—clients or non-clients—when the lawyer comes into possession of funds belonging to them and to promptly deliver such funds to them. It appears Defendant Murdaugh failed to do either of these upon receiving Plaintiff's funds in three cases: Plaintiff's own personal injury claim, Plaintiff's wrongful death claim, and Plaintiff's claim as a beneficiary of the estate of his deceased wife, Donna Badger, (hereinafter "the Estate"). It appears that Defendant Murdaugh instead converted Plaintiffs' funds to Defendant Murdaugh's own use and that of his accomplice,

Defendant Laffitte, thereby falling below the standard of care and violating duties of honesty, communication, and safekeeping owed by him to Plaintiff, causing Plaintiff significant financial harm.

8. In derogation of the above-stated duties, it appears that Defendant Murdaugh engaged in a coordinated effort with Defendants Laffitte and PSB to actively hide Plaintiff's settlement from him and, instead of paying to Plaintiff his portion of the settlement funds, directed those funds to themselves through the use of several fraudulent schemes.

9. It appears Defendant Murdaugh actively worked in cooperation with Defendants Laffitte and PSB to benefit themselves first by seeking and obtaining court approval to substitute Defendant Laffitte as Personal Representative (hereinafter "PR") for both the Estate and for the late Mrs. Badger's heirs (which include Plaintiff). It appears Defendants conspired to do so despite that Plaintiff is an adult who had previously served competently as PR in the case for a year and a half until settlement appeared imminent. It appears Defendants did this for the primary purpose of hiding Plaintiff's settlement funds from Plaintiff in order to enrich themselves. Even if Defendant Murdaugh had believed that a substitute PR were in Plaintiff's best interest—which it appears he did not—he would nevertheless have been obligated to thoroughly consult with Plaintiff about such an appointment and to select a PR that could be expected to be loyal only to the Estate and the heirs and act in their best interest. It appears Defendant Murdaugh failed to do so, instead not informing Plaintiff that settlement was imminent, not informing Plaintiff of his statutory right to serve as PR, and choosing for a PR someone he could expect to be entirely loyal to Defendants and not to Plaintiff.

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10. It further appears Defendant Murdaugh arranged to pay Defendant Laffitte \$35,000.00 as the PR fee for a \$500.00 settlement of the Estate's survival action (for which he would have been statutorily entitled to no more than \$25.00) and an additional \$35,000.00 fee as PR in Plaintiff's individual personal injury case in which Defendant Laffitte never served as PR. It further appears that Defendants then sought court approval of the wrongful death settlement based, at least in part, on an affidavit from Defendant Laffitte that falsely stated that Plaintiff had renounced his rights as a statutory beneficiary of the wrongful death claim, thus fraudulently depriving Plaintiff of his share of the wrongful death settlement.

11. It further appears that Defendant Murdaugh fraudulently induced Plaintiff to sign a Disbursement Sheet purportedly stating the amount of the settlement of his personal injury claim as \$3,100,000.00 and showing the purported disbursement of those proceeds. However, it is alleged and appears that Defendant Murdaugh never told Plaintiff the true amount of the settlement of his claim nor of the true recipients of those funds, instead telling him that his personal injury case settled for a substantially smaller amount. The Disbursement Sheet contains specific dollar amounts only on page one and Plaintiff's signature only on page two, and it is alleged and appears that Defendant Murdaugh showed Plaintiff a different page one that indicated a substantially smaller settlement amount. It appears that Defendant Murdaugh later replaced page one in his records to create the false impression that Plaintiff was shown the a page one stating the true settlement amount of \$3,100,000.00. Furthermore, the disbursement amounts shown on page one appear to contain false statements of costs and expenses, including a PR fee to Defendant Laffitte that should not have been applicable to Plaintiff's individual personal injury claim, and the purported creation of a \$1,325,000.00 structured settlement managed by Defendant PSB "per client

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request” that Plaintiff apparently had no knowledge of and did not request. Contrary to the amounts shown on the Disbursement Sheet, it appears that Defendants diverted most of Plaintiff’s \$3,100,000.00 in settlement funds to the personal benefit and use of Defendants Murdaugh and Laffitte without Plaintiff’s knowledge or consent.

12. Therefore, it appears that Defendants conspired to and did steal Plaintiff’s money, partly under the guise of a non-existent structured settlement, partly under the guise of fraudulent fees and costs, partly through excessive PR fees paid to Defendant Laffitte, partly by lying to Plaintiff about the amount of funds received in settlement of his personal injury claim, and partly by making the false statement to the court that Plaintiff had renounced his rights in the wrongful death settlement. Therefore, in my professional opinion, Defendant Murdaugh’s conduct fell below the standard of care and breached duties of honesty, competence, diligence, communication, loyalty, and safekeeping owed by him to Plaintiff, causing Plaintiffs significant financial harm.

13. Additionally, it appears that Defendant Murdaugh obtained Plaintiff’s signature on a Release and Receipt form relating to Plaintiff’s share of his deceased wife’s estate. It is my understanding from conversations with Plaintiff’s counsel that one or more Defendants are asserting that this document releases Defendants from Plaintiff’s claims in this case. To the extent the Release and Receipt was intended to release any of Plaintiff’s claims against Defendant Murdaugh, such a release would be ethically impermissible and unenforceable. Lawyers are prohibited from settling claims and potential claims for malpractice without first advising the client in writing of the desirability of seeking the advice of independent legal counsel in connection with such a release and then giving the client a reasonable opportunity to seek counsel. It does not appear that Defendant Murdaugh did so prior to obtaining Plaintiff’s signature on the Receipt and

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Release and thus would be prohibited from asserting that document as a release of his liability in this case.

14. The opinions in this affidavit are given to a reasonable degree of certainty and are specifically based on the materials and information listed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented.

Further affiant sayeth naught.

Michael Virzi
Michael Virzi

State of South Carolina
County of Richland

Sworn and subscribed before me
This 1st day of June, 2022

Natacha Brenchar
Notary Public

My Commission Expires : October 18, 2026