

STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2018-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is Appellant.

RECORD ON APPEAL (AMENDED)
Volume II of IV
(Pages 477 – 940)

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STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina

Plaintiff.

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-36-00379

MOTION FOR SANCTIONS

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, the Proposed Intervenor¹ move before the Court for an Order granting sanctions against Plaintiff Pope and her attorney, Adam Silvernail. The facts and law in support of this Motion are more fully set forth below.

FACTS BEARING UPON THE MOTION

The fee agreement between Proposed Intervenor¹ and their counsel is the subject of a pending discovery motion before the Court in Richland County Case No. 2010-CP-40-4900 (this case is referred to as "Case No. 4900"). (See Defendant's Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction; Plaintiff's Motion for Protective Order Concerning Fee Agreement and/or Motion to Strike

¹ The Proposed Intervenor¹ are as follows: RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL I. BROWN, individually and on behalf of his minor child, JAMISE R.; LINDSEY DELORES BROWN; DEANNA J. BROWN; THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARBIMOTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN. The Proposed Intervenor¹ are the non-governmental Plaintiffs in Case No. 4900.

0477

Ex: 32

Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement; previously provided to the Court by the parties.) During the pendency of these Motions, Plaintiff Pope served a Freedom of Information Act request on the Office of the Attorney General, seeking a copy of the fee agreement. The Attorney General responded but did not produce the agreement, due in part to the pending Motions. Plaintiff Pope then filed this lawsuit in Newberry County to enforce the FOIA request (the instant case is referred to as "Case No. 379"). In order to protect their interests, the non-governmental Plaintiffs in Case No. 4900 made a Motion to Intervene as Proposed Intervenor in this case. Plaintiff Pope opposed this Motion to Intervene. (See Pope's Return and Opposition to Motion to Intervene, attached hereto as Exhibit A; see also Affidavit of Adelle J. Pope Opposing Motion to Intervene, attached hereto as Exhibit B.) By Order dated November 22, 2011, this Court consolidated Case No. 379 with Case No. 4900.² (See Order of Judge Addy, attached hereto as Exhibit C.) Plaintiff Pope filed a Motion to Alter/Amend Judge Addy's Order. (See Motion to Partially Alter or Amend and/or Reconsider and Vacate Order Dated November 22, 2011, attached hereto as Exhibit D.) The statements contained in Plaintiff Pope's Motion to Alter/Amend, as well as statements made in the Affidavit opposing the Motion to Intervene, are the subject of this Rule 11 Motion.

STANDARD OF REVIEW

An attorney's signature on a motion certifies that, "to the best of his knowledge, information and belief there is good ground to support [the motion]." Rule 11, SCRPC. Under

² Specifically, Judge Addy ruled that Defendant Wilson must answer the FOIA action, and that the cases would be consolidated when the pleadings were complete. (Order of Judge Addy, p. 7.) Judge Addy also held that "any motions and issues heretofore outstanding," including the Motion to Intervene, will be taken up by the Richland County Court in Case No. 4900. (Id.) Out of an abundance of caution, Proposed Intervenor have filed this Motion in the Newberry Court because the improper filing by Plaintiff Pope and Adam Silverman was made in Newberry. Proposed Intervenor reserve the right to re-file this Motion in Richland County if the Newberry Court dismisses and/or deems improper the filing of the Motion in the Newberry Court.

Rule 11, "a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it." *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (citing *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996)). Further, "[t]he sanction may include an order to pay the reasonable costs and attorney fees incurred by the party . . . defending against the frivolous action." *Id.* (citing *Runyon*).

ARGUMENT

PLAINTIFF POPE, AND THE COUNSEL WHO SIGNED THE PLEADING AND FILED THE AFFIDAVIT, HAVE KNOWINGLY THREATENED CRIMINAL PROSECUTION IN ORDER TO OBTAIN AN ADVANTAGE IN A CIVIL MATTER. THIS CONDUCT IS IN VIOLATION OF RULE 11, SCRCP AND RULE 4.5 OF THE SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT.

According to Rule 4.5 of the *South Carolina Rules of Professional Conduct*, "[a] lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter." Rule 4.5, *South Carolina Rules of Professional Conduct*, Rule 407, SCACR. The rule is clear: a party to a civil suit cannot use the threat of criminal prosecution for the sole purpose of obtaining leverage in a civil case. In spite of this rule, Plaintiff Pope, by and through her attorney Adam Silvermail, have accused Proposed Intervenor of criminal acts and have asked the Newberry Court to so rule. In light of the bright-line rule against such conduct, Plaintiff Pope's (and Adam Silvermail's) decision to put forth this Motion cannot be in good faith and the Motion is frivolous within the meaning of Rule 11.

In Plaintiff Pope's Motion to Alter/Amend, she requests that the Newberry Court make several additional findings that Judge Adley originally declined to make. In paragraph 18, she

states that "[t]he Court failed to consider and/or find that the AG's consent to the proposed intervention of the private intervenors aids and abets their improper and/or criminal actions under S.C. Code Ann. § 30-4-110" (all citations to the Motion to Alter/Amend are found at Exhibit D). Section 30-4-110 is an expressly criminal statute:

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offenses.

S.C. Code Ann. § 30-4-110 (1976). On its face, the statute provides for both fines and imprisonment. In Paragraph 30, Plaintiff Pope requests that the Court find that Proposed Intervenor are in violation of the statute: "[t]he Court failed to find and/or consider that the proposed intervenors have violated S.C. Code Ann. § 30-4-110 . . ." Plaintiff Pope makes no mention of any of the protections afforded to criminal defendants by our constitutional system, but rather asks the Court to indict, try, and convict Proposed Intervenor of criminal activity. In paragraph 31 of her Motion to Alter/Amend, Plaintiff Pope expressly mentions her desire that criminal punishment be imposed upon Proposed Intervenor: "[t]he Court failed to find and/or consider that neither their parents nor the Wingate firm may take illegal action on behalf of minors, and that the minors should be exempt from any punishment which should be applied to the adult proposed intervenors" (emphasis added). Proposed Intervenor submit that such an absurd request, made by an attorney-client through her attorney of record, cannot be in good faith.

Plaintiff Pope's Motion to Alter/Amend does not stop at improperly accusing parties of criminal activity. In paragraph 32, Plaintiff Pope accuses Proposed Intervenor's counsel of

criminal activity, and requests that the Newberry Court so find: "[t]he Court failed to find and/or consider that the Wingate Firm is aiding and abetting the adult proposed intervenors in denying (Plaintiff Pope's) FOIA rights and the FOIA rights of other citizens." Proposed intervenors assert that these inappropriate, unfounded attacks on Proposed intervenors and their counsel, in a pleading signed by an officer of the Court and submitted to that Court, are the epitome of frivolous pleadings, are contrary to the *Rules of Professional Conduct*, and are in violation of Rule 11, SCRCP.

Plaintiff Pope also makes improper criminal allegations in her Affidavit submitted in opposition to Proposed intervenors' Motion to Intervene in Case No. 379 (all citations to Pope's Affidavit are found at Exhibit B). In paragraph three of the Affidavit, Plaintiff Pope states that she is "informed and believe[s] that the wilful [sic] violation of FOIA by certain of the proposed intervenors violates § 30-4-110" In paragraph four, Pope further opines that she is "informed and believe[s] that the attempt to intervene is brought by the above-named persons in bad faith to wilfully [sic] violate the provisions of FOIA" and that "liability for violation of FOIA is not limited to Public Bodies" It is clear that Plaintiff Pope, in both her affidavit and through a signed motion, is bringing criminal allegations against Proposed intervenors in an effort to gain an advantage in a civil matter, which is expressly unethical.

CONCLUSION AND REQUESTED RELIEF

Plaintiff Pope's and Adams Silvermail's threat of criminal prosecution in a civil matter cannot have been made in good faith, and is therefore a ~~per se~~ violation of Rule 11. Proposed intervenors request that the Court strike Plaintiff Pope's 59(e) Motion in its entirety as it relates to the Proposed intervenors, strike any Affidavit of Plaintiff Pope that makes any allegation of criminal conduct on the part of the Proposed intervenors, award Proposed intervenors their

attorneys fees and costs associated with dealing with this Motion, and award Proposed Intervenor any other relief the Court deems just and reasonable. Proposed Intervenor reserve the right to supplement this Motion with further briefing (or any other materials) that supports Proposed Intervenor's position on this Motion.

Respectfully submitted,

SWANNY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gendo
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Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR PROPOSED
INTERVENORS

Columbia, South Carolina
December 9, 2011

Pursuant to Rule 11, SCRPC, I hereby certify that conferring with Plaintiff Pope's counsel on this matter would serve no useful purpose.



Mark V. Gendo, Attorney for Proposed Intervenor

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina and others

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; and others,

Plaintiffs.

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-40-4900

) DEFENDANT POPE'S RETURN
) AND MEMORANDUM
) OPPOSING RELIEF FROM DEFAULT

JEANETTE M. BRIDE
CLERK
S.C.

2012 APR 12 AM 9:10

RICHLAND COUNTY
FILED

Defendant/Counterclaimant Adele J. Pope respectfully submits that almost two years after filing this suit, none of the clients of Kenneth B. Wingate, Esquire and Sweeney, Wingate & Barrow, PC (collectively "Wingate") should be released from default on the counterclaims for the following reasons:

1. The default was inexcusable.
2. The Plaintiffs have presented no plausible defense to the counterclaims, and have none.
3. Many of the Plaintiffs have committed fraud upon this Court.
4. Plaintiff Tommie Rae, Bauknight and Wingate have actively stonewalled all discovery to prevent disclosing that she was never the spouse of James Brown.
5. Plaintiff Terry Brown, a joint venturer with felon David Cannon; Bauknight;

and Wingate have worked to conceal documents which show that their less-than \$4.7 Million valuation of Brown's worldwide music empire and the Estate/2000 Trust's claim against felon Cannon for the \$13+ Million he took was fabricated.

6. Relief from default will cause great hardship to Buchanan and Pope, as has the filing of this frivolous suit and the 4-year-old frivolous suit of Terry's son Forlando.

7. Terry, his joint venturers and other Plaintiffs have committed fraud upon the Court by advancing conflicting material misrepresentations to the Court by separate counsel and lying to the Court and parties.

This Defendant/Counterclaimant, however, submits that the State of South Carolina and its Attorney General are not in default and Wingate has no authority to seek relief from default on behalf of the State/AG because neither Wingate nor Bauknight had authority to bring this action on behalf of the State AG; the State was never a party to the action; and Wingate has no authority to argue for relief from default on behalf of the State or bind the General Assembly to pay if his purported representation of the State fails.

This return is supported by the Affidavit of Adele J. Pope filed herewith; all other affidavits of Defendants Pope and Buchanan filed herein; and other returns and motions, including the following:

- a. Motion to Dismiss of Buchanan and Pope, dtd. 6/22/10
- b. Affidavit of Adele J. Pope, dtd. 7/23/10, with Exhibits A-L
- c. Affidavit of Default, dtd. 11/10/10
- d. Affidavit of Adele J. Pope, dtd. 4/14/11
- e. Affidavit of Adele J. Pope Supporting Disqualification, dtd. 5/18/11, with Exhibits A, B and C (Exhibit A: Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good" Trust Doesn't. . . (Draft))
- f. Affidavit of Adele J. Pope in Support of Motion to Compel Tommie Rae to Appear at Deposition, dtd. 6/2/11
- g. Affidavit of Buchanan and Pope, dtd. 9/21/10 with Exhibits 1-42
- h. Affidavit of Adele J. Pope in Support of Motion to Compel Deposition of Terry Brown, dtd. 6/2/11

- i. Motion to Compel Discovery, dtd. 6/7/11 with Exhibits.
- j. Return and Opposition to Plaintiffs' Motion for Protective Order, dtd. 7/12/11

Respectfully submitted,



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April 10, 2012

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James Brown II; Daryl J. Brown, individually
and on behalf of his minor child Janise
Vanisha Brown; Lindsey Delores Brown;
Deanna J. Brown Thomas; Jason Brown-
Lewis; Yamma N. Brown, individually and
on behalf of her minor children, Sydney
Lumar, Carrington Lumar, and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

2012 MAY 21 PM 5:00
CLERK OF COURT
C.C.P. & C.V.
RETURN AND OBJECTION
TO MOTION TO ENFORCE
PURPORTED SETTLEMENT
AGREEMENT

TO: THE PLAINTIFFS, DEFENDANT ROBERT L. BUCHANAN, JR. AND/OR THEIR
COUNSEL.

Defendant Adele J. Pope makes this return and objection to the Motion to Enforce Settlement dated May 18, 2012, purportedly made on behalf of the Plaintiffs, and asserts the following:

A. Buchanan should be paid an immediate \$500,000 hardship distribution, part of the award to him by Jg. Early in the January 8, 2008 Order.

1. An immediate hardship distribution should be made to Robert L. Buchanan, Jr. of Five Hundred Thousand (\$500,000) Dollars from the Estate of James Brown, to alleviate the personal damage he is experiencing because of the outrageous behavior of Russell Bauknight described herein.

2. The distribution, which is less than Buchanan was awarded by Order of the Honorable Doyet A. Early, III dated January 8, 2008 in Aiken County Case No. 2007-CP-02-0122 ("Case 122"), should be approved and directed by Judge Early at the hearing requested by the moving parties and already scheduled in Case 122 for 1:30 p.m. on May 22, 2012.

3. By May 19, 2010 Bauknight had wholly abandoned any pretense of service to the Estate/2000 Trust and was participating in and/or directly supporting the fraud of Terry, Forlando, Tommie Rae and felon David Cannon – including taking all possible action to destroy the reputations and careers of Buchanan and Pope.

4. Some of the unconscionable acts of Terry/Tommie Rae/Bauknight to destroy Buchanan, which also damaged the Estate/2000 Trust, are:

a. Direct refusal to pay any portion of the more-than \$500,000 Buchanan was owed under the January 8 Order for the purpose of destroying his ability to rebuild and practice his career.

b. Naming felon David Cannon as their witness against Buchanan, even though he had stolen \$17 Million from James Brown.

- c. On information and belief, engaging and agreeing to pay Forlando's attorneys, Powell Goldstein (now Bryan Cave).
- d. Falsely accusing Buchanan to the IRS of the crime of overstating the value of Brown's music empire by approximately \$79 Million.
- e. Falsely asserting to the IRS and S.C. Supreme Court that Brown's music empire was worth less than \$4.7 Million when he died, and that Buchanan overstated it at \$85 Million just to get a big commission.
- f. Hiding, in violation of the Probate Code, a purported appraisal.
- g. Asserting that certain persons were Brown's heirs, with actual knowledge that such assertion was false, material and damaged the Estate/2000 Trust.
- h. Concealing numerous documents – including Tommie Rae's diaries – which show that the \$4.7 Million purported value is outrageous and that their heirs statement is wrong.
- i. Supporting Terry's effort to buy the music empire at a fraudulently low value.
- j. Making other false statements about Buchanan and Pope to the Courts with the intention of destroying their careers and reputations.

5. By December 2011 the Estate was in a position to make substantial payments to Bob Buchanan and Pope, to alleviate the hardship caused them, and such payments – which would have stopped the running of 8 3/4% interest – would have been in the best interest of the Estate.

6. Instead, Bauknight – directed by Terry and Tommie Rae – refused.

7. From December 2011 until May 2012 Terry, Tommie Rae and Bauknight were successful in their efforts to prevent Judge Early from considering partial payments to Buchanan which are now 4 years overdue.

8. By late April 2012 Buchanan, unable to continue under the intense financial pressure, advised Pope he would be negotiating with certain people.

9. Pope, having been denied the opportunity to conduct virtually any discovery in this case for 2 years, was not in a position to consider any settlement negotiations related to this case. Nonetheless, understanding Buchanan's hardship, she did not interfere in his negotiations.

10. Pope was out of the United States from May 1 - May 10, 2012.

11. On the morning of May 21, 2012, Pope received the attached Motion to enforce Settlement.

12. Pope is informed and believes that Jg. Early should direct immediate payment to Buchanan – based on hardship – under the January 8 Order, and should reject the Settlement, which is both unconscionable and void.

13. On information and belief, in no event should the fraudulent acts of Terry, Tommie Rae, Forlando and/or Cannon be allowed to delay the payment which Buchanan badly needs.

14. Pope has observed firsthand the extraordinary hardship inflicted on Bob Buchanan by Terry, Forlando, Hynie and Bauknight solely because he and she have done the duty which Judge Early appointed them to do: to vigorously defend the Estate Plan of James Brown as required by his documents.

B. The Motion to Enforce Should be Denied Because the Purported Agreement is void and/or illegal and Movants have unclean hands.

15. The purported mediation agreement should be declared void, and the purported settlement not enforced because it is void and/or unconscionable and/or illegal

and/or the proponents have unclean hands and are not entitled to have it enforced.

16. The purported Settlement is void because it is not signed by the parties and does not even identify who the purported parties to the settlement are.

17. Kenneth Wingate, Esq. and Mark Gende, Esq. have no authority whatsoever to enter into an agreement and bind the State of South Carolina to pay \$500,000.

18. The Agreement is void because it is against public policy and outrageous for the Trustee of the James Brown 2000 Irrevocable Trust to ask anyone to commit to abandon the Trust.

19. The Agreement is void because it is a minor settlement which – on its face – requires minors to pay up to \$500,000 and no guardians *ad litem* have been appointed or other requirements met.

20. The Agreement is void because Buchanan received no consideration by the agreement to pay him what he was already owed.

21. The Agreement is void because the legal parties to Case 4900 did not sign or ratify it within the time required.

22. The Agreement is void because Buchanan could not have met the contingency of agreeing to the terms of Paragraph 11 and it was unconscionable to ask that he do so.

23. The Agreement is void because Buchanan was not asked to resign as PR/Trustee; did not resign as PR/Trustee; and therefore cannot abandon his vigorous defense of the Estate Plan of James Brown.

24. The Agreement is void for vagueness.

25. The Agreement should not be enforced by this Court, but declared VOID by Jg.

Early in the appropriate proceeding.

26. Plaintiffs are estopped to enforce any agreement related to Aiken County matters since they represented to this Court that all Aiken County matters are over.

27. Plaintiffs Tommie Rae, Terry and others have committed numerous fraudulent acts which appear in the record of this Case, and, because of their unclean hands, are not entitled to any equitable relief.

28. The mediation agreement should be declared void because it is unconscionable and was only achieved because Bauknight improperly withheld for three years the more-than \$500,000 to which Buchanan was entitled under an unappealed final order.

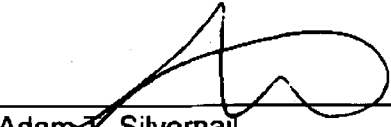
29. The Agreement is void and unenforceable for every other reason presented to this Court before the hearing on this motion.

This return is based on the affidavits of Adele J. Pope on file herein; the Counterclaim of Robert L. Buchanan, Jr. filed in the Forlando suit; and such other information as shall come before this Court before the hearing on this matter.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]

Respectfully submitted,

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May 21, 2012

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)
)
)

Case No.: 2010-CP-40-4900

RUSSELL L. Bauknight, as Trustee,
and others

and

) Offer of Judgment of Adele J. Pope
) to the Estate of James Brown
)
)
)

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

RECEIVED
C.C.P. & G.S.

2012 AUG -3 AM 10:24

TO: PLAINTIFF ESTATE BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS OF RECORD:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant ESTATE of James Brown, whose current Personal Representative ("PR") is Russell L. Bauknight ("ESTATE") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant is less than the above proffer, ADELE shall seek from ESTATE all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

RECITALS

1. In 2008 Russell Bauknight's lawyer, Freddie Kingsmore of Nexsen Pruet, a

SETTLEMENT

ADELE proposes:

1. The above Recitals will not be a part of the Settlement unless approved by the Personal Representative of the ESTATE.
2. A Final Order in substantially the following form will dismiss the ESTATE as a party to this Case:

The parties having resolved their differences in this Case ("Case 4900"), it is

ORDERED, ADJUDGED AND DECREED:

- a. The claims by the ESTATE against ADELE in this Case are hereby dismissed with prejudice and forever ended;
- b. ADELE assents that she is willing to assert her claims, briefly described below, against the ESTATE, in Aiken County and/or elsewhere, where many are now pending:
 1. To set aside the McMaster Settlement and all Bauknight fiduciary appointments related to the Estate/2000 Trust.
 2. To be paid under the January 3, 2008 in Aiken County Case 2007-CP-02-0122.
 3. For a commission as filed in the Aiken County Probate Court.
 4. For the costs of Case 122 and the Orlando Case, including fees for those she and Robert Buchanan engaged.

As a result it is appropriate, and this Court hereby dismisses the ESTATE as as party to this action and directs that its name be removed from the caption.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
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Post Office Box 7425
Columbia, South Carolina 29202
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Adam@silvermaillawfirm.com

Attorneys for Defendant Adele J. Pope

August 2, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

) Case No.: 2010-CP-40-4900

) Offer of Judgment
) of Adele J. Pope to Tonya Brown

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 AUG -3 AM 10:25

FILED

TO: PLAINTIFF TONYA BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HER ATTORNEYS :

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Tonya Brown ("TONYA") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from TONYA all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, as well as interest as provided by Rule 68.

RECITALS

1. TONYA asserts that she is the only child of Teddy, deceased oldest son of entertainment icon James Brown who died on December 25, 2006.

2. ADELE served as a personal representative under the Will of James Brown and Trustee of the 2000 Irrevocable Trust until replaced by Russell L. Bauknight on May 26, 2009 under an Order now on appeal to the S.C. Supreme Court in Case 2008-CP-02-1647 ("Case 1647").

5. On May 19, 2010 TONYA, through Sweeney Wingate & Barrow, PA ("Wingate") filed this suit against ADELE.

6. On November 30, 2010 TONYA, through Wingate, defaulted as to ADELE's counterclaims for attorneys' fees under the S.C. Trust Code and:

- a. Abuse of Process;
- b. Interference with Contract - Pope's entitlement to \$1.5 Million, plus interest at the legal rate from 2009, awarded in a 1/3/08 Order which TONYA approved and did not appeal.
- c. Civil Conspiracy; and
- d. Fraud under § 62-1-106 of the S.C. Code.

7. ADELE makes the Offer set out herein.

Terms of Settlement

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Subject to the terms of this Settlement Order, TONYA and ADELE have resolved their differences in this action, and TONYA is hereby dismissed as a party.
2. TONYA dismisses with prejudice all claims against ADELE as set out in the Complaint.
3. As to the Counterclaims, TONYA agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan,

Jr. and forcing them to abandon their appeal in Case 1647.

4. TONYA agrees that ADELE is entitled to see any contract TONYA has with WINGATE to bring this suit, and directs WINGATE to produce it.

5. TONYA withdraws all requests to intervene in the FOIA suit, and withdraws her request for sanctions against ADELE.

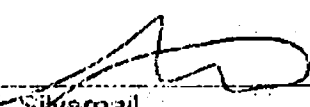
6. TONYA agrees that she is not a beneficiary of the Will or 2000 Trust.

6. TONYA agrees that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
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1204 Main Street, Suite 200
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July 26, 2012

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

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PLAINTIFFS' MOTION TO STRIKE
DEFENDANT POPE'S OFFERS OF
JUDGMENT

**TO: ADAM SILVERNAIL, ESQUIRE, AND DARYL WILLIAMS, ESQUIRE,
ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-
NAMED:**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs intend to move, and do hereby so move, for an Order from the Court striking the following "Offers of Judgment" filed by Defendant Pope in this matter:

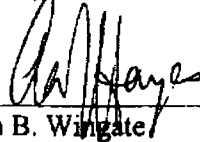
1. Defendant Pope's Offer of Judgment to Lindsey Delores Brown and Janise B. (attached hereto as Exhibit A).
2. Defendant Pope's Offer of Judgment to the South Carolina Attorney General and Russell Bauknight as Agent for the South Carolina Attorney General (attached hereto as Exhibit B).
3. Defendant Pope's Corrected Offer of Judgment to Lindsey Delores Brown and Janise B. (attached hereto as Exhibit C).
4. Defendant Pope's Offer of Judgment to Tonya Brown (attached hereto as Exhibit D).
5. Defendant Pope's Offer of Judgment to Daryl Brown (attached hereto as Exhibit E).
6. Defendant Pope's Offer of Judgment to Russell Bauknight (attached hereto as Exhibit F)
7. Defendant Pope's Offer of Judgment to Terry Brown (attached hereto as Exhibit G).
8. Defendant Pope's Offer of Judgment to Jason Brown-Lewis (attached hereto as Exhibit H).
9. Defendant Pope's Offer of Judgment to Tommie Rae Hynie Brown (attached hereto as Exhibit I).
10. Defendant Pope's Offer of Judgment to Venisha Brown (attached hereto as Exhibit J), and
11. Defendant Pope's Offer of Judgment to Carrington L. (attached hereto as Exhibit K).
12. Defendant Pope's Offer of Judgment to Sydney L. (attached hereto as Exhibit L).

13. Defendant Pope's Offer of Judgment to Deanna Brown Thomas (attached hereto as Exhibit M).
14. Defendant Pope's Offer of Judgment to the Estate of James Brown (attached hereto as Exhibit N).
15. Any other offers that have been served - or may soon be served - on any Plaintiff in this matter.

This Motion is made pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, and is based upon the fact that these offers contain material that is "redundant, immaterial, impertinent or scandalous". These offers are also improper and do not comport with the requirements of Rule 68 of the South Carolina Rules of Civil Procedure. Plaintiffs requests that the Court strike these offers from the record in this matter, and that the Court award Plaintiffs the fees and costs associated with responding to these offers and making this Motion, as well as any other relief the Court deems just and proper. Plaintiffs reserve the right to supplement with Memorandum of Law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 13, 2012

EXHIBIT A

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

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their grandfather, entertainment icon James Brown on August 1, 2000 (the "2000 Trust").

2. James Brown died on December 25, 2006.

3. The 2000 Trust created a separate \$285,000 education fund for each of Lindsey and Janise.

4. On January 24, 2007, when Lindsey was 16 and Janise was 11, their father Daryl J. Brown ("Daryl"), filed Aiken County Case 2007-CP-02-0122 ("Case 122") on their behalf.

5. When Brown's original trustees resigned, at the request of Lindsey and Janise, Adele and Robert Buchanan, Jr. ("Bob") were appointed by the Court as trustees of the 2000 Trust, with all authority and duty as if originally appointed by James Brown.

6. On December 26, 2007, Daryl filed suit to challenge the 2000 Trust, placing in jeopardy Lindsey's and Janise's education funds.

7. On August 10, 2008 Daryl, with others, agreed to substantially reduce, and commingle Lindsey's and Janise's education funds.

8. In an Order dated May 26, 2009 in Case 2008-CP-02-1647 ("Case 1647") the dismantling was approved, and Russell Bauknight became Trustee.

9. Bob and Adele appealed the Case 1647 Order, which is now before the S.C. Supreme Court.

10. On May 19, 2010 Lindsey and Janise (by Daryl) sued Bob and Adele in this Case 2010-CP-40-4900 ("Case 4900"), asserting, among other things, that their appeal in Case 1647 was improper.

11. Janise does not have a guardian *ad Litem* and, on information and belief,

Lindsey has not been informed of the conflict of interest she has with Daryl, her father and Co-Plaintiff.

12. Adele counterclaimed for abuse of process and other causes of action, including attorneys' fees.

13. Adele, Lindsey and Janise, through her parent(s), all now want to resolve their respective claims; confirm the validity of the 2000 Trust; and dismiss Lindsey and Janise as parties to Case 4900.

CONTENTS OF ORDER

The above statements will be included in the Order Granting Final Judgment only if approved by Lindsey and Janise.

The Order Granting Final Judgment shall be in the following form:

This Order Granting Final Judgment resolves all disputes between Lindsey Delores Brown ("Lindsey") and Janise B., a minor, against Adele J. Pope ("Adele") in this Case 2007-CP-40-4900 ("Case 4900"), and Adele's counterclaims against them.

Adele, Lindsey and Janise agree that James Brown believed education was important and provided a \$285,000 education fund for each of Lindsey and Janise under the James Brown 2000 Irrevocable Trust.

The claims of Lindsey and Janise against Adele in this action, and hers against them, are dismissed with prejudice and forever ended.

Adele, Lindsey and Janise agree that no attorneys' fees should be paid from Lindsey's or Janise's education funds.

Adele will take immediate and continuing steps to support Lindsey and Janise in

securing Court approval and immediate payment and/or reimbursement from the Estate/2000 Trust for all reasonable education expenses of Lindsey and Janise from and after the death of James Brown, up to \$285,000.00 each.

Because Lindsey and Janise have ratified the 2000 Trust and Brown's worldwide music empire earned almost \$10 Million last year, Lindsey, Janise and Adele stipulate such payments will not impair the rights of creditors.

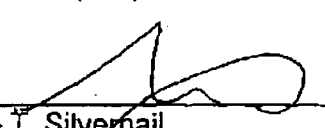
Adele will not at any time, regardless of the outcome of the Case 1647 appeal, seek to enforce the *In Terrorem* clause of the 2000 Trust against Lindsey or Janise.

A Certified Copy of this Judgment may be filed in any Court as evidence of the positions of Lindsey, Janise and Adele.

AND IT IS SO ORDERED.

Respectfully submitted,

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July 16, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT B

) IN THE COURT OF COMMON PLEAS

**RUSSELL L. Bauknight, as Trustee,
and others**

Case No.: 2010-CP-40-4900

and

HENRY DARGAN McMASTER and
others

) ADELE J. POPE'S
) OFFER OF JUDGMENT TO
) THE SOUTH CAROLINA ATTORNEY
) GENERAL AND RUSSELL L. BAUKNIGHT
) AS AGENT FOR THE SOUTH CAROLINA
) ATTORNEY GENERAL¹

Plaintiffs,

v.

Adele J. Pope,

Defendant

TO: PLAINTIFFS ATTORNEY GENERAL OF SOUTH CAROLINA ("AG") AND
RUSSELL L. BAUKNIGHT AS PURPORTED AGENT OF THE ATTORNEY
GENERAL OF SOUTH CAROLINA ("Bauknight") AND SWEENEY, WINGATE
AND BARROW, P.A. ("WINGATE") THEIR PURPORTED ATTORNEYS:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendants shall seek from Plaintiffs all expenses and costs under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, along with interest as provided under Rule 68(b).

EXHIBIT

B

¹ Pope does not waive her continuing objections to the Attorney General's participation in this suit, Bauknight's purported agency, or Wingate's purported representation of the AG.

RECITALS

1. On or about May 19, 2010 Wingate commenced this action naming as two of the Plaintiffs former AG Henry McMaster and Bauknight as agent for AG McMaster.

2. Pope has repeatedly and consistently asserted, and asked the Court to rule, that Wingate has no authority to serve as sole counsel for the AG while serving the interest of private Co-Plaintiffs in this Case, and that Bauknight has no authority to serve as Agent for the AG.

3. In January 2011 AG Alan Wilson succeeded AG McMaster as Attorney General of South Carolina.

4. Since then Wingate and Bauknight have asserted that Wingate serves as sole counsel to, and Bauknight agent for, AG Wilson, to which Pope has objected.

5. Pope's request to enjoin Wingate from serving as sole counsel to the AG while serving the interests of private non-residents of SC, and to enjoin Bauknight from asserting he is the AG's agent, has been denied by Order dated July 5, 2012 (received on July 17, 2012).

6. By Order dated November 22, 2011, at the request of AG Wilson, a Newberry Case in which Pope sought documents under the S.C. Freedom of Information Act ("FOIA") was consolidated but not merged with this Case by direction of The Hon. Frank R. Addy, stating, in part:

1. The Defendant (AG Wilson) . . . will answer Plaintiff's complaint.
2. At the conclusion of the pleadings phase. . . this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions. . . including an oral motion to intervene by an arguably

interested party, will be taken up by Richland County.

4. Any claim to attorney's fees, as permitted under the [FOIA], will be preserved for resolution by the Richland County Court.

7. The oral motion referenced by Jg. Addy was Wingate, for Tommie Rae Hynie and certain others to intervene in the FOIA Case and prevent release of the McMaster/Wingate contingency fee contract for Wingate to sue Pope in this Case.

8. Since November 2011 various issues and potential issues have arisen which make the action sought herein prudent.

Terms of Settlement

Attorney General Alan Wilson and Russell L. Bauknight in his capacity as agent for Attorney General Wilson and former Attorney General Henry McMaster, with Adele J. Pope, shall submit a Consent Order of Dismissal of Parties which states the following, or any similar language requested by Attorney General Wilson and approved by Pope.

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Case #2011-CP-36-379 in which Pope seeks documents under the South Carolina Freedom of Information Act ("FOIA"), which was consolidated but not merged with this case, is hereby severed.
2. The Dismissal herein shall not apply to the FOIA Case.
3. The Attorney General of South Carolina is hereby dismissed, without prejudice, as a party to this Case.
4. Russell L. Bauknight as agent for the Attorney General of South Carolina, is hereby dismissed, with prejudice, as a party to this Case.
5. The caption of this Case is hereby amended to delete dismissed parties as shown above. [Caption in the Order will remove McMaster, Wilson and all

references to the AG or Bauknight as his agent.]

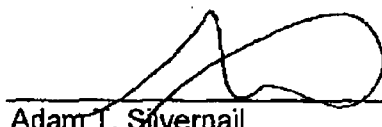
6. The parties are directed to use the above caption in all future filings in this Case.

7. This Order shall not be construed to impair or limit the right of The Honorable Alan Wilson to protect The James Brown "I Feel Good" Trust, including but not limited to seeking to intervene in this Case.

AND IT IS SO ORDERED.

Respectfully submitted,

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Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
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adam@silvermailawfirm.com

July 18, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-40-4900

) ADELE J. POPE'S
) CORRECTED OFFER OF JUDGMENT
) TO LINDSEY DELORES BROWN
) AND JANISE B., A MINOR

TO: PLAINTIFFS LINDSEY DELORES BROWN ("LINDSEY") AND JANISE B. AND
THEIR ATTORNEYS, SWEENEY, WINGATE AND BARROW, PA.
("WINGATE"):

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina
Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope
("Adele") proffers an Offer of Judgment in the above-referenced matter as set out
below:

If pursuant to said rule and law, the Offer is not timely accepted and the
judgment against said Defendant Pope is less than the above proffer, said Defendants
shall seek from Plaintiffs all expenses and costs, including attorneys' fees, under South
Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the
South Carolina Trust Code, and all other applicable law, as well as interest as provided
by Rule 68(b).

RECITALS

1. Lindsey and Janise are beneficiaries of the Irrevocable Trust established by



STATE OF SOUTH CAROLINA.

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2010-CP-40-4900

Offer of Judgment
of Adele J. Pope to Tonya Brown

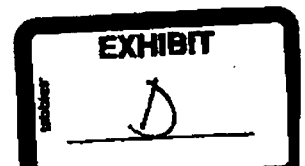
TO: PLAINTIFF TONYA BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HER ATTORNEYS:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Tonya Brown ("TONYA") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from TONYA all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, as well as interest as provided by Rule 68.

RECITALS

1. TONYA asserts that she is the only child of Teddy, deceased oldest son of entertainment icon James Brown who died on December 25, 2006.



2. ADELE served as a personal representative under the Will of James Brown and Trustee of the 2000 Irrevocable Trust until replaced by Russell L. Bauknight on May 26, 2009 under an Order now on appeal to the S.C. Supreme Court in Case 2008-CP-02-1647 ("Case 1647").

5. On May 19, 2010 TONYA, through Sweeney Wingate & Barrow, PA ("Wingate") filed this suit against ADELE.

6. On November 30, 2010 TONYA, through Wingate, defaulted as to ADELE's counterclaims for attorneys' fees under the S.C. Trust Code and:

a. Abuse of Process;

b. Interference with Contract - Pope's entitlement to \$1.5 Million, plus interest at the legal rate from 2009, awarded in a 1/8/08 Order which TONYA approved and did not appeal.

c. Civil Conspiracy; and

d. Fraud under § 62-1-106 of the S.C. Code.

7. ADELE makes the Offer set out herein.

Terms of Settlement

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Subject to the terms of this Settlement Order, TONYA and ADELE have resolved their differences in this action, and TONYA is hereby dismissed as a party.

2. TONYA dismisses with prejudice all claims against ADELE as set out in the Complaint.

3. As to the Counterclaims, TONYA agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan,

Jr. and forcing them to abandon their appeal in Case 1647.

4. TONYA agrees that ADELE is entitled to see any contract TONYA has with WINGATE to bring this suit, and directs WINGATE to produce it.

5. TONYA withdraws all requests to intervene in the FOIA suit, and withdraws her request for sanctions against ADELE.

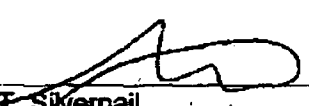
6. TONYA agrees that she is not a beneficiary of the Will or 2000 Trust.

6. TONYA agrees that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

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Jeter & Williams, P.A.
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adam@silvermaillawfirm.com

July 26, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT E

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Case No.: 2010-CP-40-4900

Offer of Judgment
of Adele J. Pope to Daryl Brown

TO: PLAINTIFF DARYL BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS :

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Daryl Brown ("DARYL") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from DARYL all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

RECITALS

1. DARYL is a son of entertainment icon James Brown who died on December 25, 2006, leaving his entire music empire to the 2000 Trust for the education of seven designated grandchildren, and - through The James Brown "I Feel Good" private

foundation - to provide scholarships for needy and deserving students.

2. On May 19, 2010 DARYL and others, through Wingate, brought this suit for the improper purpose of damaging the careers of ADELE and Robert Buchanan, Jr., so severely that they would be required to abandon their vigorous defense of Brown's Estate Plan and the "I Feel Good" Trust.

3. DARYL has recently notified Attorney General Alan Wilson of his support for the Estate Plan of his father which he previously sought to destroy.

4. It is the position of ADELE that those who have damaged and sought to destroy the "I Feel Good" Trust - or allowed others to do so - must help restore it or be charged with the costs.

5. In that spirit ADELE makes the Offer set out herein.

SETTLEMENT

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Subject to the terms of this Settlement Order, DARYL and ADELE have resolved their differences in this action, and DARYL is hereby dismissed as a party.

2. DARYL dismisses with prejudice all claims against ADELE as set out in the Complaint.

3. As to the Counterclaims, DARYL agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan, Jr. and forcing them to abandon their appeal in Case 1647.

4. DARYL also agrees ADELE is entitled to the full amount awarded her under the January 8, 2008 Order in Case 122, with interest until paid, and that Plaintiffs intentionally

interfered with this entitlement.

5. DARYL agrees that ADELE is entitled to see any contract DARYL has with WINGATE to bring this suit, and directs WINGATE to produce it.

6. DARYL withdraws all requests to intervene in the FOIA suit, and withdraws his request for sanctions against ADELE.

7. DARYL agrees that he and the other five named children in the valid last Will of James Brown, along with Cinnamon Parris, LaRhonda Pettit and Jeanette Mitchell are the only heirs determined to date, and that Brown died without a surviving spouse.

8. DARYL asserts that Russell L. Bauknight's support of Tommie Rae creates an irreconcilable conflict, making him unable to serve the Estate and Trust of James Brown.

9. DARYL agrees that those fiduciaries, attorneys and advisors who have opposed the Estate Plan of James Brown or declared Tommie Rae to be Brown's spouse should not be paid from the Estate/2000 Trust.

10. DARYL agrees that it would be appropriate for the Estate/2000 Trust to pay up to seven acknowledged heirs of James Brown one (1%) of the annual income of the "I Feel Good" Trust for life to secure their relinquishment or vote in favor of the "I Feel Good" Trust of all rights under the Federal Copyright Act, including Termination Rights.

11. DARYL agrees that except for the 6 acknowledged children and their children, the only method of determination of an heir should be the official DNA testing set up by the Estate in 2007.

12. In consideration of ADELE's agreement if reinstated not to enforce the *In Terrorem* clause for his acts prior to today, DARYL has agreed that he will immediately notify the S. C. Supreme Court of South Carolina of his support of James Brown's Estate

Plan, and desire that it be followed.

13. DARYL will continue his requests to AG Wilson to reverse the actions of his predecessor which, if not reversed, will destroy the "I Feel Good" Trust.

13. DARYL agrees that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

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July 26, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT F

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

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RECITALS

1. The LEGACY TRUST was created in late 2008 by former Attorney General Henry D. McMaster ("McMaster") and others as Settlers and Bauknight as its Trustee.
2. Although the LEGACY TRUST bears the name of entertainment icon James Brown, who died on December 25, 2006, it was not created by Brown, but is, instead, the vehicle by which the Attorney General McMaster, under color of his office, took over the private property of James Brown, attempting to give more than half to some of Brown's disinherited claimed relatives selected by McMaster.
3. All James Brown fiduciaries objected to the McMaster/State takeover and Bauknight's appointment.
4. Adele served as a PR under the Will of James Brown and trustee of Brown's 2000 Irrevocable Trust when McMaster asserted his right to take over and control Brown's private property.
5. On January 30, 2009 Bauknight, without revealing to the Court that he was already Trustee of McMaster's LEGACY TRUST, recommended that James Brown's worldwide music be placed in the LEGACY TRUST.
6. Bauknight, recommend the approval of McMaster's takeover of Brown's and placing Brown's assets in the McMaster-controlled LEGACY TRUST even though:
 - a. He knew nothing about James Brown's Estate Plan or wishes;
 - b. He knew nothing about the Federal Copyright Act; and
 - c. He considered tax matters beyond the scope of his inquiry.
7. Without disclosing he was their Trustee, Bauknight also recommended giving more than half of Brown's assets to Brown's companion Tommie Rae and others

intentionally excluded from his music empire.

8. Adele has asserted that if McMaster's takeover succeeds, \$40 - \$80 Million will be taken from James Brown's "I Feel Good" private foundation to educate needy and deserving students, with the loss primarily caused by:

a. McMaster (now AG Wilson) - for turning Brown's private property into a personal political patronage fund, controlling Brown's \$85 Million so that grateful attorneys, investment advisors and others his trustee hires will make political contributors to the AG's campaigns (and Wilson for not acknowledging and correcting McMaster's error.)

b. Bauknight - for breaches of fiduciary duty, including the less-than \$4.7 Million value of Brown's music empire.

b. Tommie Rae - Brown's disinherited companion - about \$40 Million

c. Terry - Brown's son. About \$4.5 Million at the creation, and tens of millions by manipulation of the value of the music empire and exercise of the right McMaster gave Terry to buy the music empire.

d. David Cannon - whose \$17 Million takings from Brown were known by early 2008, and from whom neither Wilson nor Bauknight sought restitution for the needy students.

e. The 35+ attorneys Bauknight and the LEGACY TRUST propose to pay between \$10 and \$20 million for helping destroy the "I Feel Good" Trust.

9. Adele asserts that those who have damaged and destroyed the "I Feel Good" Trust and the Education Trusts Brown created for 7 selected grandchildren must help rebuild them or pay the costs.

10. On information and belief, the assets of the LEGACY TRUST are now:

a. A piece of property Yamma received from James Brown at death;

b. A claim to Brown's Tangible Personal Property ("TPP") or proceeds, valued by Bauknight at less than \$1 Million.

c. Termination Rights of Brown's 6 acknowledged children, fewer than 1/2 of Brown's claimed heirs under the Federal Copyright Act; and

d. Similar Copyright claims of Tommie Rae, of no value because she is not an heir under the Act.

11. On May 19, 2010 the LEGACY TRUST and others, through WINGATE, sued Adele in this Case 4900, claiming she had caused tens of millions of dollars loss to Brown's Estate/2000 Trust.

12. In November 2010 the LEGACY TRUST defaulted as to Adele's counterclaims for actual and punitive damages and attorneys' fees for (1) abuse of process; (2) Civil Conspiracy; (3) Fraud under § 62-1-106; and (4) Intentional interference with a contract/Order of January 8, 2008, by which she is currently owed approximately \$2 Million.

13. After filing this Case 4900, Bauknight told the IRS and S.C. Supreme Court that Brown's TPP was worth less than \$1 Million, and the music empire less than \$4.7 Million at his death.

14. After filing this Case 4900, Bauknight told the S.C. Supreme Court that Tommie Rae's baseless elective share claim was a "slam dunk."

15. After filing this Case 4900, Bauknight and the LEGACY TRUST threatened, then moved for, sanctions against Adele for exercising her rights under the S.C. Freedom of Information Act ("FOIA").

16. After filing this Case 4900 Bauknight, on information and belief to protect Tommie Rae, made false representations to the Supreme Court about the Federal Copyright Act as it relates to Brown's assets.

17. After filing this Case 4900 Bauknight violated his duty under the Probate Code to file the less-than \$4.7 Million appraisal of the music empire.

18. After filing this Case 4900 Bauknight, to protect the LEGACY TRUST and Tommie Rae, has fought to secrete more than a million pages of public documents, including the "diary" of Hynie.

19. Since creating the LEGACY TRUST, Bauknight, McMaster - and now AG Wilson - have paid or propose to pay from assets Brown gave to needy and deserving students \$10 - \$20 Million to 35+ attorneys who are helping and have helped destroy the "I Feel Good" Trust.

20. The 35+ attorneys the LEGACY TRUST wants to pay for their help in destroying Brown's Estate Plan and the "I Feel Good" Trust include substantial contributors to the political campaigns of McMaster, AG Wilson and Wilson's opponent in the AG campaign.

21. Since late 2011 two or more descendants of James Brown have agreed that Adele's vigorous defense of Brown's "I Feel Good" Trust is appropriate; that Adele's appeal of McMaster's takeover of Brown's private property was appropriate; that no probable cause existed to challenged Brown's Estate Plan; that Tommie Rae was not Brown's wife; and that the LEGACY TRUST should not receive Brown's assets.

20. On information and belief, Bauknight and the LEGACY TRUST, rather than taking advantage of this chance to restore the "I Feel Good" Trust, are trying to quash these truthful statements, lending further support to McMaster's egregious error.

21. On information and belief, Bauknight's acts since May 26, 2009 have added millions of dollars of damage to the already-millions he caused by recommending the settlement on January 30, 2009.

22. Bauknight naming of felon David Cannon as a witness, and failure to collect

restitution from him have resulted in several millions of dollars loss to the Estate/2000 Trust.

23. In order to mitigate the damage to the "I Feel Good" foundation, Adele proposes this Offer of Compromise to the LEGACY TRUST.

CONTENTS OF ORDER

The above statements will not be included in the Order Granting Final Judgment.

The Order granting Final Judgment as to the LEGACY TRUST and Bauknight as its trustee, shall have substantially the form and content set out below.

This Order Granting Final Judgment resolves the disputes between Plaintiff/Counterclaim Defendant James Brown Legacy Trust ("Legacy Trust") and Defendant/Counterclaim Plaintiff Adele J. Pope ("Adele") in this Case 2010-CP-40-4900 ("Case 4900") as follows:

1. Legacy Trust's claims against Adele are hereby dismissed with prejudice and forever ended.
2. Legacy Trust's motion to intervene and obtain sanctions against Adele in what was formerly Newberry County Case No. 2011-CP-36-0379 (the "FOIA Case") are hereby withdrawn.
3. Legacy Trust shall, within 10 days, pay to Adam Silvernail \$2,500, representing the portion of Adele's attorneys' fees and costs in the FOIA Case attributable to the Legacy Trust's attempt to intervene and obtain sanctions.
4. Adele is hereby granted judgment against the LEGACY TRUST as set out below:
 - a. The relief granted Adele against Legacy Trust herein, and for which Legacy Trust accepts responsibility hereunder, constitutes only a portion of Adele's losses as described in her Counterclaims, and Legacy Trust and WINGATE agree that this Settlement and Order do not relieve any other Plaintiff of its liability to Adele; nor may this Settlement and Order be used in any manner to

offset or limit the liability of any Plaintiff or other person or entity to Adele.

b. If not fully paid by the Estate/2000 Trust within 150 days of this Order the Legacy Trust will be jointly and severally liable for \$1,970,000.00 of the amount due Adele under the Order of the Honorable Doyet A. Early, III, with interest at the judgment rate from January 1, 2012.

c. The Legacy Trust, for itself and its beneficiaries, agrees not to oppose Adele's request for a full PR/Trustee commission, now pending before the Aiken County Probate and/or Circuit Court.

d. The Legacy Trust, for itself and its beneficiaries, will actively support the immediate Court approval and payment by the Estate/2000 Trust of the following amounts:

1. Jeter & Williams	\$325,000.00
2. Tressa T. H. Hayes, Esq.	\$ 65,000.00
3. James D. Bailey, Esq.	\$110,000.00
4. Adam Silvermail, Esq.	\$165,000.00
5. Adele Pope (costs)	\$ 37,000.00

e. The Legacy Trust, for itself and its beneficiaries, acknowledges its joint and several liability with the Estate/2000 Trust and/or others for all of the amounts described under paragraph d, with interest at the legal rate,

f. Unless this Case 4900 is fully resolved within 210 days of this Order as to all parties and Bauknight has resigned as PR under the Will and Trustee of the 2000 Trust in favor of Adele, the Legacy Trust shall pay Adele \$300,000, representing a portion of her lost wages caused by this Case 4900.

g. The Legacy Trust acknowledges that it is responsible for all taxes and penalties resulting from the less-than \$4.7 Million value of Brown's music empire represented to the IRS.

h. The Legacy Trust and its trustee agree not to make any additional false statements about Adele or Robert Buchanan, Jr., and acknowledge that Adele and Robert Buchanan, Jr. did not overstate the value of James Brown's music empire to the IRS.

i. The Legacy Trust authorizes all payments it has agreed to make hereunder to be paid directly from the Estate and/or 2000 Trust prior to any the transfer of assets of James Brown to the Legacy Trust.

j. The Legacy Trust shall make no distributions to non-charities without Adele's written consent until all of its payments and obligations hereunder are met, with

applicable interest.

I. This Settlement does not diminish or affect Adele's rights in any matter pending in any other Court or Case, or as to any other party in this Case 4900.

AND IT IS SO ORDERED.

Respectfully submitted,

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July 27, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
	)	Case No.: 2010-CP-40-4900
RUSSELL L. Bauknight, as Trustee,	)	
and others	)	
	)	Offer of Judgment
and	)	of Adele J. Pope to Terry Brown
	)	
HENRY DARGAN McMASTER and	)	
others	)	
	)	
	)	Plaintiffs,
v.	)	
	)	
Adele J. Pope,	)	
	)	Defendant
	)	

TO: PLAINTIFF TERRY BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS OF RECORD:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Terry Brown ("TERRY") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant is less than the above proffer, ADELE shall seek from TERRY all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, as well as interest under Rule 68.

RECITALS

1. On or about July 24, 2012 Daryl Brown asked the Attorney General Alan Wilson to prevent the destruction of James Brown's dream.



) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Case No.: 2010-CP-40-4900

**Offer of Judgment of
Adele J. Pope to Venisha Brown**

Plaintiffs,

Adele J. Pope,

Defendant

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from VENISHA all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

1. **VENISHA** has often honored her famous father James Brown with public



statements and performances, but disgraced him by making a deal with former Attorney General Henry McMaster to take for herself about \$5 Million Brown gave to needy and deserving children through The James Brown "I Feel Good" Trust, Brown's private foundation.

2. McMaster, to accomplish the takeover of Brown's private property for his personal/political use, also appointed VENISHA as an advisor to the "Legacy Trust" McMaster created – using James Brown's name while destroying his dream.

3. On May 19, 2010 Robert Buchanan, Jr. and ADELE were the only two people still vigorously defending James Brown's dream, as directed in his valid Estate Plan, in the S. C. Courts.

4. WINGATE brought this suit so that VENISHA could keep \$5 Million her father did not want her to have and McMaster, through Russell Bauknight who served at his pleasure, could keep control of a \$100 Million music empire James Brown did not want McMaster to have.

5. In November, 2010 VENISHA, through WINGATE defaulted on ADELE's counterclaims for attorneys' fees under the S.C. Trust Code and:

a. Abuse of Process;

b. Interference with Contract – Pope's entitlement to \$1.5 Million, plus interest at the legal rate from 2009, awarded in a 1/8/08 Order which VENISHA approved and did not appeal.

c. Civil Conspiracy; and

d. Fraud under § 62-1-106 of the S.C. Code.

6. Because many acts taken in VENISHA's name have been through an invalid springing Power of Attorney held by VENISHA's sister, Deanna Brown Thomas;

VENISHA has been incarcerated during critical periods of the James Brown proceedings; and WINGATE has refused to allow VENISHA or any other Plaintiff/Counterclaim Defendant to be deposed, ADELE does not know how much VENISHA actually participated, if at all, in the following and other actions taken on her behalf by WINGATE, Bauknight and/or Louis Levenson, Esq.:

- a. The August 10, 2008 deal with Henry McMaster to put McMaster in control of James Brown's \$100 Million private fortune and pay VENISHA about \$5 Million – rather than the 1/6 personal effects Brown gave her.
- b. The May 2011 false representation to the S.C. Supreme Court that James Brown's worldwide music empire was worth less than \$4.7 Million when James Brown died.
- c. The failure to seek recovery in Case 322 or restitution in the criminal proceeding against felon David Cannon.

8. ADELE makes the Offer set out herein to VENISHA.

Terms of Settlement

- a. The above recitals will not be made part of the settlement unless agreed by VENISHA
- b. VENISHA and ADELE agree that the Court should enter an Order dismissing VENISHA as a party in substantially the following form:

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Subject to the terms of this Settlement Order, VENISHA and ADELE have resolved their differences in this action, and VENISHA is hereby dismissed as a party.
2. VENISHA dismisses with prejudice all claims against ADELE as set out in the

Complaint.

3. As to the Counterclaims, VENISHA agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan, Jr. and forcing them to abandon their appeal in Case 1647.

4. VENISHA agrees that Russell Bauknight has breached his fiduciary duty to the Estate of James Brown and the James Brown 2000 Irrevocable Trust in at least the following ways:

- a. By falsely asserting the Tommie Rae Hynie was the wife of Brown;
- b. By valuing James Brown's worldwide music empire at less than \$4.7 Million at his death;
- c. By failing to seek restitution for the \$12+ Million taken by David Cannon.
- d. By failing in 3 years to recover anything from David Cannon in Case 322.
- e. By engaging WINGATE to bring this suit for the improper purpose of stopping ADELE's and Robert Buchanan's appeal of the destruction of James Brown's dream – the "I Feel Good" Foundation.
- f. By asserting to the S.C. Supreme Court that there were no offers to purchase Brown's assets while suing ADELE for not accepting a \$100 Million offer to buy his music empire.
- g. By misrepresenting to the S.C. Supreme Court and others the heirs of James Brown under the Federal Copyright Act Termination Provisions and their rights.

5. VENISHA acknowledges she did not authorize WINGATE to intervene in her behalf or seek sanctions against ADELE in a FOIA suit.

6. If the McMaster Settlement is overturned and ADELE returned as PR/Trustee, VENISHA, in full settlement and dismissal of all claims and suits against

the Estate of James Brown and the James Brown 2000 Irrevocable Trust will accept \$230,000.00, being the approximate net value of her 1/6 of the personal and household effects.

7. If the McMaster Settlement is overturned and ADELE returned as PR/Trustee, VENISHA offers to allow, by proper assignment and/or other documentation, the "I Feel Good" Trust to receive all benefits, if any, VENISHA has as an heir of James Brown under the Federal Copyright Act, including Termination Provisions, and ADELE agrees that it is appropriate for the Estate/2000 Trust to pay VENISHA an amount, at least annually, equal to 1% of the net income of Estate/2000 Trust for VENISHA's life, to be calculated and established in a fair manner by VENISHA and ADELE, and paid by Estate/2000 Trust beginning upon ADELE's reinstatement.

8. VENISHA and ADELE agree that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

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Attorneys for Defendant Adele J. Pope

August 3, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
	)	Case No.: 2010-CP-40-4900
RUSSELL L. Bauknight, as Trustee,	)	
and others	)	
	)	Offer of Judgment of
and	)	Adele J. Pope to Sydney L., a minor
	)	
HENRY DARGAN McMASTER and	)	
others	)	
	)	
	)	Plaintiffs,
v.	)	
	)	
Adele J. Pope,	)	
	)	
	)	Defendant
	)	

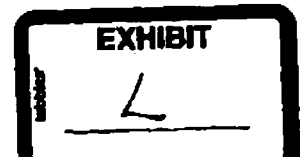
TO: PLAINTIFF SYDNEY BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HER ATTORNEYS:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff and Counterclaim Defendant SYDNEY L. ("SYDNEY"), a minor, in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from SYDNEY all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

Recitals

On June 15, 1999 SYDNEY's famous grandfather James Brown created the first



fiduciary duty to SYDNEY by appealing the dismantling of SYDNEY's \$285,000.00 Education Trust.

Terms of Judgment

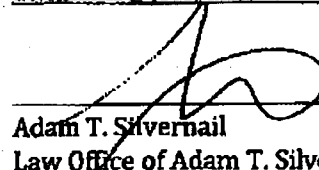
The Court shall issue its order substantially as follows:

1. As to all claims of SYDNEY against ADELE, SYDNEY is entitled to nothing.
2. As to the counterclaims of ADELE against SYDNEY, ADELE, is entitled to judgment against SYDNEY on all causes of action in the aggregate amount of \$1.00.

AND IT IS SO ORDERED.

Respectfully submitted,

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Attorneys for Defendant Adele J. Pope

August 7, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

RUSSELL L. Bauknight, as Trustee,
and others

Case No.: 2010-CP-40-4900

and

) Offer of Judgment of Adele J. Pope
) to the Estate of James Brown

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

TO: PLAINTIFF ESTATE BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS OF RECORD:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant ESTATE of James Brown, whose current Personal Representative ("PR") is Russell L. Bauknight ("ESTATE") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant is less than the above proffer, ADELE shall seek from ESTATE all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

RECITALS

1. In 2008 Russell Bauknight's lawyer, Freddie Kingsmore of Nexsen Pruet, a



SETTLEMENT

ADELE proposes:

1. The above Recitals will not be a part of the Settlement unless approved by the Personal Representative of the ESTATE.

2. A Final Order in substantially the following form will dismiss the ESTATE as a party to this Case:

The parties having resolved their differences in this Case ("Case 4900"), it is

ORDERED, ADJUDGED AND DECREED:

a. The claims by the ESTATE against ADELE in this Case are hereby dismissed with prejudice and forever ended;

b. ADELE asserts that she is willing to assert her claims, briefly described below, against the ESTATE, in Aiken County and/or elsewhere, where many are now pending:

1. To set aside the McMaster Settlement and all Bauknight fiduciary appointments related to the Estate/2000 Trust.

2. To be paid under the January 8, 2008 in Aiken County Case 2007-CP-02-0122.

3. For a commission as filed in the Aiken County Probate Court.

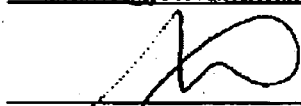
4. For the costs of Case 122 and the Forlando Case, including fees for those she and Robert Buchanan engaged.

As a result it is appropriate, and this Court hereby dismisses the ESTATE as as party to this action and directs that its name be removed from the caption

AND IT IS SO ORDERED.

Respectfully submitted,

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Attorneys for Defendant Adele J. Pope

August 2, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

PLAINTIFFS' MOTION FOR
DIRECTION FROM THE COURT
CONCERNING POTENTIAL
PREJUDICIAL TRIAL PUBLICITY

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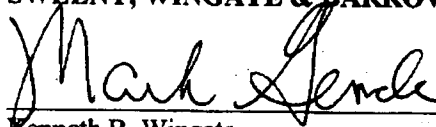
RICHLAND COUNTY

TO: ADAM SILVERNAIL, ESQUIRE, DARYL WILLIAMS, ESQUIRE, ATTORNEYS
FOR DEFENDANT POPE, AND TO DEFENDANT POPE ABOVE-NAMED:

Plaintiffs hereby request that the Court provide Plaintiffs with guidance on how to proceed in this matter in light of the potentially prejudicial trial publicity that has occurred. For the Court's reference, Plaintiffs have accumulated and indexed a portion of the pretrial publicity that this case has generated (see Binder of Articles, attached hereto as Exhibit A). Upon information and belief, Defendant Pope, her counsel, and/or persons acting on behalf of Defendant Pope may be responsible for many of the statements contained at Exhibit A¹. Plaintiffs are concerned that these statements may be doing continuing harm to the Estate of James Brown and may prejudice this adjudicative proceeding.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 23, 2012

¹ For example, the July 11, 2012 letter of Adam Silvernail to Judge Manning in case 4900 has appeared on *Newberry Observer* reporter Sue Summer's Facebook page (See screenshot from Facebook page, attached hereto as Exhibit B). Upon information and belief, neither counsel for Plaintiffs nor Judge Manning's office disclosed this letter to Sue Summer.

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Plaintiffs do hereby certify that I have served a copy of the foregoing Plaintiffs' Motion For Direction From The Court Concerning Potential Prejudicial Trial Publicity in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

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Linda D. Anderson

Columbia, South Carolina

August 23, 2012

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C.C.P. & G.S.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

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Plaintiffs

v.

Adele J. Pope

Defendant

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT**

Civil Action No. 2010-CP-40-4900

EXHIBIT A

**TO PLAINTIFFS' MOTION FOR
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CONCERNING POTENTIAL
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High SC court to take up James Brown settlement



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Story Created: Nov 1, 2011 at 6:00 AM EDT

(Story Updated: Nov 1, 2011 at 6:30 AM EDT)

COLUMBIA, S.C. (AP) — South Carolina's highest court is the latest setting for a showdown between trustees who say they were unjustly removed from James Brown's charitable organization and state attorneys who brokered a complex settlement.

The state Supreme Court on Tuesday is hearing arguments from the trustees who have sued over the settlement, arguing that then-South Carolina Attorney General Henry McMaster didn't have the authority to push it through and that they were removed because of their opposition.

McMaster's deal gave about half of Brown's assets to a trust, a quarter to Brown's widow and young son, and the rest to his adult children.

The plan ended years of fighting among Brown's heirs that started almost immediately after the Godfather of Soul died of heart failure on Christmas Day 2006.

Reach Kinnard at <http://www.twitter.com/MegKinnardAP>

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Ex: ①

SC Supreme Court hears James Brown estate feud

By Sarita Chourey

Morris News Service

Tuesday, Nov. 1, 2011 9:53 AM

COLUMBIA -- Today the South Carolina Supreme Court will take a swing at the charitable legacy of James Brown.

Former state-appointed trustees Robert Buchanan Jr. and Adele Pope are appealing they say thwarts Brown's intentions as laid out in legal documents from 1999 against the artist's children and his wife Tomi Rae Brown.

More than a dozen attorneys representing an even larger volume of heirs and dispute are expected to pack the high courtroom.

The central dispute is whether to throw out a settlement that Judge Jack Early approved on May 26, 2009, which replaced the charitable trust with "The Legacy" South Carolina attorney general, and shuffled trustees.

The 2009 agreement gave half of the legendary entertainer's assets to a James Brown quarter to Tomi Rae Brown and a quarter to the six adult children named in James

"My clients are very desirous of the Supreme Court approving Judge Early's settlement and his approval of the settlement," said Atlanta-based attorney, Levenson Brown's children and spouse.

"I'm hoping the Supreme Court will recognize the importance of the family and Tomi Rae, bringing peace to what was a contentious estate."

Levenson added: "The appellants don't -- according to law in South Carolina -- It's not their right to disagree (with what was agreed upon)."

But a final brief from the appellants say the settlement takes away more than James Brown's private foundation for needy students and instead shifts it to his adult children

The side consisting of appellants Pope, Buchanan, and former trustees David C. Bradley and others also suggests the circuit court was wrong to to discard trust the settlement agreement negotiated by the Attorney General."

Ex: 5

Brown died at age 73 on Christmas Day of 2006. He left his personal and household items, a maximum of \$2 million for a family educational fund, and the Jam Brown Foundation to benefit poor students in Georgia and South Carolina schools, according to the will.

Brown's family members challenged the plan, alleging that he had suffered from dementia. The South Carolina attorney general intervened, said spokesman Mark Plowden. The state law with protecting all charitable trusts.

The trust/estate's original tax counsel had valued Brown's assets at \$80 million already in the 2000 Trust, according to the appellants' final brief. In 2006, the trust was valued at \$100 million with \$40 million to \$50 million assigned to publicity rights for his likeness and \$45 million to royalties for his more than 800 published and unpublished works.

The most recent development in the strife over the soul singer's legacy came last week.

A circuit court judge sentenced Cannon to three years of home confinement and a fine of \$100,000 for embezzling money from James Brown. Cannon did not admit guilt but acknowledged that she had taken the money.

Wed Nov. 2 8:51 am

News



Tuesday, Nov. 1, 2011 8:17 PM

Updated Wednesday, Nov. 2, 2011 4:38 AM

Arguments begin in James Brown settlement case

By **Sarita Chourey**
Morris News Service

Login to post a comment

COLUMBIA — James Brown's mental competence at the time he signed his will and created a trust 10 years ago is being debated in the fight over a settlement of the soul singer's estate.

During arguments Tuesday at the South Carolina Supreme Court, Chief Justice Jean Toal probed the state attorney general's office, which was given control of the 2000 trust and negotiated the settlement, for proof that Brown had indeed been manipulated.

Brown's widow, Tomi Rae Hynie Brown, and some of the entertainer's children challenged his will and the trust a year after his death in 2006, saying that he was under "undue influence" of his trustees David Cannon, Buddy Dallas and Alfred Bradley.

Toal and Justice John Kittredge repeatedly tried to determine why the attorney general's office did not ask two witnesses to Brown's trust whether Brown was signing it under the influence of his trustees.

"It appears to me that when your side is asked what is the evidence of 'undue influence,' you point to the post-death badness of Cannon, Bradley and Dallas (which) retroactively overlays the execution and circumstances surrounding the will and trust to constitute undue influence," Kittredge said.

William Wilkins, an attorney defending the settlement, which is being challenged by Brown's former estate representatives Robert Buchanan Jr. and Adele Pope, said the trust itself provided proof. He said the trustees were given an "unprecedented" management fee and that Cannon had boasted that he could have taken more of the estate.

<http://m.chronicle.augusta.com/latest-news/2011-11-01/arguments-begin-james-brown-sett...> 11/2/2011

0556

Ex: 16

But Jim Richardson, representing the former trustees in seeking a reversal of the settlement that Judge Jack Early of the 2nd Judicial Circuit Court approved in 2009, said James Brown had been in complete control.

"All that Cannon, Dallas and Bradley ever did was to breach trust behind his back," said Richardson. "Everybody in this courtroom knows that you could not have misled this man in front of his eyes. He would have fired them in a minute if he had known what they were doing."

Richardson pointed to an affidavit that says Brown, in 2000, the year he signed his will and trust, was "managing multimillion-dollar transactions all over the place ... (he) was in total command of his own situation, but he trusted these people, Dallas, Bradley and Cannon, and they did him wrong, wrong, wrong."

Brown lived in Beech Island and died at age 73 on Christmas Day 2006. He left his personal and household effects to named adult children, up to \$2 million for a family educational fund, and the James Brown I Feel Good Trust to help needy students in Georgia and South Carolina schools, according to the appellants.

The settlement negotiated by the attorney general's office shifted considerable assets to his family members. It gave half to a James Brown Scholarship Fund, a quarter to spouse Tomi Rae, and a quarter to the six adult children named in Brown's will.

In 2008, Brown's assets were estimated to be \$100 million, with \$40 million to \$50 million assigned to publicity rights for his image and likeness, and \$36 million to \$45 million to royalties for his more than 800 published and unpublished songs.

Toal also repeatedly questioned whether family members should receive more of Brown's money than the entertainer had intended in his original will.

"I see a bunch of people who could all be found to have absolutely no valid claim, making an agreement among themselves to divide up what might turn out to be \$100 million," the chief justice said.

Both Toal and Kittredge suggested Brown's widow might have only a tenuous claim on his assets. The chief justice listed a host of instances and circumstances, such as Tomi Rae's Hynie Brown waiving of spousal rights, a prenuptial agreement, and controversial past marriage status.

"If it's decided and she loses ... then you could still reach a settlement with all these other people, children and whoever else is involved, and you'd at least knock out someone who now is entitled to 25 percent of everything and has maybe no claim at all," Toal said.

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AG asked to turn over James Brown documents (SC)

August 11, 2011

A complaint filed in a Newberry court last week against South Carolina Attorney General Alan Wilson asks a judge to order the Attorney General's office to release documents it claims are related to the value of the Godfather of Soul James Brown's assets.

Columbia attorney and former trustee Adele Pope filed a complaint against Wilson and Russell Bauknight, the current trustee of the James Brown Legacy Trust.

The trust, according to the complaint, was never a part of Brown's estate plans but was created by former South Carolina Attorney General Henry McMaster.

Pope claims that on May 4 Bauknight filed documents that valued Brown's "worldwide music empire" at \$4.7 million upon Brown's Christmas Day 2006 death – much less than the \$85 million Pope claims it is worth, after the payment of debts.

In the complaint, Pope states that records for which her Freedom of Information Act requests have been repeatedly denied would prove that the assets are valued at \$85 million – not less than \$4.7 million.

After Brown died in 2006, his trust was ordered to be used to pay for the education of his six children and then to help provide an education for underprivileged children.

Controversy ensued involving the trustees of the estate, and the initial trustees were removed and replaced with Pope and Robert Buchanan.

McMaster and Bauknight filed a lawsuit against Pope and Buchanan in 2010, claiming that the two overvalued the assets at \$85 million.

Over the past 10 months, Pope stated in the complaint, her requests for the records that both Wilson and the legacy trust possess were denied, and, further, she claims that she received a threatening letter from attorneys representing the trust.

• **Featured Posts**

- **AG Wilson attempts to exclude affidavit of local copyright expert in James Brown FOIA lawsuit (SC)**



January 6, 2012

As the new year appeared, so did more filings in the Newberry Freedom of Information Act (FOIA) lawsuit related to the James Brown estate, filed in August. On Dec. 22, Attorney General (AG) Alan Wilson moved to strike an affidavit from local copyright expert W. Jeffrey Smith in support of releasing documents that reveal how **Keep Reading...**

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- **Michigan Supreme Court orders Rosa Parks estate returned to longtime friend, institute**



January 4, 2012

The Michigan Supreme Court has ordered a judge to return the estate of civil rights icon Rosa Parks to her longtime friend Elaine Steele and the institute the two women founded in 1987 to carry on Parks' legacy. In a tersely worded order Thursday, the high court said Wayne County Probate Judge Freddie Burton Jr. **Keep Reading...**

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- **Judge hears arguments in lawsuit against former public administrator (MO)**



January 3, 2012

JOPLIN, Mo. — An attorney for Rita Hunter argued Wednesday that a lawsuit against the former Jasper County public administrator should be dismissed. Kenneth Hall, a

TV NEWS CHANNEL CLIPPING: Rev. J. 'Still Hurdin' Over Whitney's Death (Video) - Bobbi Kristina Brown Plans on Changing Her Name - Whitney's Sister-in-Law

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James Brown's Charitable Trust Fate Marinating in Confusion

March 11, 2012 | [Comment](#)



The trust of legendary singer and icon James Brown has been battered by greed and confusion since his death.

According to an exclusive EUR source, Sue Summer, a South Carolina journalist, high officials have been attempting to cover up money swindling and trust theft. Now the fate of Brown's charitable trust sits in the hands of the South Carolina Supreme Court.

Summer explained that the media is vilifying the wrong parties. Original trustee of Brown's trust, David Cannon appears to have been stealing money all along, while Robert Buchanan and Adele Pope have been fighting the court to uphold the singer's original wishes to donate his trust funds to poor children's education.

"In an interview with WKDK, you can hear in his own voice, James Brown says he was led by a Bible verse to use his music empire to fund education opportunities," she explained. "He grew up very hard, so he had a lot of sympathy for poor kids... he said not everyone can have his talent, but education can get them an opportunity."

But family members and other interests, who knew of Brown's decision long before his death to give his wealth to needy children, challenged Brown's decisions after his death in the court.

Thus Buchanan and Pope have been targeted. However, they've been attempting to keep with Brown's original plan and Brown's grandson,

Summer also suggested that former Att. General Henry McMaster may have had a hand in the brutal breakdown of Brown's trust and could be financially benefiting from the confusion.

Brown's grandson, Forlando Brown filed a lawsuit in 2008 in an attempt the interests of his grandfather. He alleged that Pope and Buchanan were illegally appointed as the trustees and would not "protect Brown's estate plan from disinherited relatives."

However, shortly after appearing to the media with McMaster in 2008, McMaster entered into a s
Brown's Irrevocable Trust.



Ex: 20

Brown's will and trust directed his trustees to vigorously defend his estate plan, and anyone who challenged the estate plan would receive nothing. According to original trustee Dallas and his successors, Bob Buchanan of Aiken and Adele Pope of Newberry, there was no basis for the settlement deal—and it should be overturned.

Estate records show that Brown's trustees Pope and Buchanan obtained court approval to make education distributions to grandchildren before the settlement deal was reached.

The AG's office approached the Brown family about a settlement deal, Daryl said. "I admit, I was very vulnerable then... We were told if we didn't sign on this agreement, the judge would make a decision against us."

The 2008 mediation lasted from 10 a.m. to 10 p.m., and Daryl had misgivings even during the discussions, especially about Brown's companion. The agreement required the children to acknowledge Hynie as their father's wife and to give her one-quarter of his music empire. "I knew that would bite us in the a—," Daryl said.

"Sonny" Jones of the AG's office attended the mediation. Daryl said, "The AG's office was supposed to protect the charity, by law. Everything we did, we went by our lawyer's advice and advice from the AG's office."

In the beginning, he and the family made mistakes, Daryl said. "But after the mistakes were made, who's running the show now? That's the AG and Bauknight. He talks to us terribly, a very nasty attitude. When we call, they say 'we'll get to you whenever.' Something is not right here."

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When questions are asked about the estate, Daryl said, the family is stonewalled. "We're told, 'Don't say anything. You don't want Adele Pope to get back in here.' That's just throwing up a smokescreen."

Things would have been better if his father's last will and testament had been honored, he said. "Things never would have been this way if we'd left it alone."

Buchanan and Pope defended James Brown's estate plan with an appeal to the S.C. Supreme Court, and arguments were heard Nov. 1. After the appeal was filed, Buchanan and Pope were sued by Daryl and others, current trustee Russell Bauknight, and the AG for allegedly causing "millions of dollars" in damages to the estate.

The lawsuit is being handled by the Wingate firm of Columbia, but the AG's office refuses to release a complete copy of the contingency-fee contract authorizing the lawsuit.

"Things were done without me knowing. Just like, I didn't know I was suing Adele Pope until I went over to Columbia with Deanna," Daryl said.

Daryl claims he did not sign a contract with the Wingate firm, and he knew nothing about an October motion by Mark Gende of the Wingate firm to add him as a defendant in a Freedom of Information Act (FOIA) lawsuit filed by Pope for the release of the contract.

"No, I don't know anything about all that. They'll put my name on it, but I'm telling you, I didn't know anything about that," he said.

IN THE MATTER OF:

THE ESTATE OF JAMES BROWN a/k/a JAMES JOSEPH BROWN

DEPOSITION OF DEANNA BROWN THOMAS

TAKEN ON OCTOBER 31, 2007

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James Brown "I Feel Good" Trust (FOIA Concerns)'s Profile

**James Brown "I Feel Good" Trust (FOIA Concerns)**

James Brown Grandson Ordered To Attend Status Conference After Firing Legal Team

By Sue Summer

For The Newberry Observer Dec. 7, 2011

In an order issued Dec. 5 by U.S. District Judge William Bertelsman, the grandson of music icon James Brown was ordered to appear on Dec. 15 for a status conference related to his lawsuit against Newberry resident Adele Pope.

In 2008 Forlando Brown sought to enjoin Pope and Aiken attorney Robert Buchanan from acting as trustees of James Brown's Irrevocable Trust, alleging they were illegally appointed on Nov. 20, 2007, and would not protect Brown's estate plan from disinherited relatives.

Two weeks ago Forlando fired his entire legal team because he felt they were not working hard enough to defend his grandfather's estate plan, which directed his entire music empire to be used for educating needy students in South Carolina and Georgia.

Even though Forlando's lawsuit alleges Buchanan and Pope would not defend the estate plan, since that time they have "vigorously" defended the Will and Trust against challenges from disinherited, claimed relatives. On Nov. 1, the S.C. Supreme Court heard arguments in the Buchanan/Pope appeal of a settlement deal between former Attorney General (AG) Henry McMaster and people Brown specifically disinherited—a deal that gave them over half of the assets Brown intended to benefit needy students. Essentially, the deal cut by McMaster dismantled James Brown's estate plan.

Before settling with parties that Forlando characterized in a recent telephone interview as "greedy family members who want something they are not entitled to," the AG's office did not conduct an investigation as to the strength of their claim that Brown had been "unduly influenced" in writing his Will and Trust, according to an admission to the Supreme Court by assistant AG Sonny Jones.

The AG's office also failed to determine whether claimants were in fact family members by failing to require that they participate in the DNA protocol. The AG's office further failed to protect the estate plan by not enforcing its In Terrorem clauses, which means those who contest the Will inherit nothing.

Forlando now agrees that Buchanan and Pope are working to uphold his grandfather's estate plan, and he has stated that he would like to settle the lawsuit against them. He is looking for new legal counsel, and in a last week's telephone interview, he said he was being guided in this process by John Sparks in Atlanta.

"He is helping me find the right counsel because he understands what is at stake," Forlando said.

Exactly how much is at stake remains in controversy. Forlando believes the music empire was worth about \$100 million at his grandfather's death because in 2007 an offer was made to purchase the assets for that amount. Current trustee Russell Boultonight, however, has filed documents with the Internal Revenue Service that allege the value is less than \$4.7 million.

Under the McMaster deal, Forlando's father Terry was given the right to purchase the music assets, but Forlando emphasized: his father did not contest the will.

"After my father refused to join the fight (to contest the will and trust), they called us to South Carolina, to the Attorney General's office. They said they could settle without us, and they'd make sure we got nothing. We were given an ultimatum," Forlando said.

His father's interest was to move the estate to capable management by someone who understands the music business, Forlando said.

The two of them are working on a biography of James Brown that reveals his childhood hardships. "We want to tell the story, to encourage needy children: they can succeed, too. He left them that opportunity."

The status conference in the Brown v. Pope lawsuit will be held in Charleston before U.S. District Judge William O. Bertelsman of Kentucky on Dec. 15.

###

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Revised Version

James Brown "I Feel Good" Trust (FOIA Concerns)'s Profile



James Brown "I Feel Good" Trust (FOIA Concerns)

Goliaths Roar in James Brown FOIA Lawsuit; David Asks, "What Is AG Alan Wilson Hiding?"
(Revision based on telephone interview with Forlano Brown on Saturday afternoon)

By Sue Summer

For the Newberry Observer Dec. 11, 2011

In a July 15 letter, Columbia attorney David Black of the mega-firm Nexsen/Pruett issued a threat to Newberry resident Adele Pope. If she continued to file requests for documents and information under the Freedom of Information Act (FOIA), he would file an action to have her sanctioned.

On Friday afternoon, Black followed up on that threat through one of his clients, the current trustee of the James Brown trust, Columbia C.P.A. Russell Bauknight.

Mark Gende of the large Columbia law firm Sweeny, Wingate and Barrow filed the motion in the Newberry Courthouse, asking for sanctions against Pope and "other relief the Court deems just and reasonable."

In this action, Gende is representing Bauknight, as well as other private parties that he requested be added as defendants in Pope's FOIA lawsuit against Attorney General (AG) Alan Wilson, which seeks the release of the contingency fee contract between former AG Henry McMaster and the Wingate firm.

Under the contract, the State of South Carolina, Bauknight, and 13 disinherited, claimed relatives of James Brown are suing Pope and Aiken attorney Robert Buchanan, asserting that they caused tens of millions of dollars in damages to Brown's assets while serving as trustees from Nov. 2007 to May 2009.

Ironically, the AG's office has since agreed to filings by Bauknight to the Internal Revenue Service that the entire Brown music empire was worth a mere \$4.7 million at his death in 2006, even though it was bringing in about \$4-5 million in royalties every year.

The legal Goliaths of Nexsen/Pruett and Sweeny, Wingate and Barrow filed the motion for sanctions in their continuing effort to block the release of the contingency fee contract under which McMaster engaged the Wingate law firm to sue Pope and Buchanan for their "vigorous" defense of James Brown's estate plan. As part of that defense, Pope and Buchanan appealed to the S.C. Supreme Court a settlement deal cut by McMaster that essentially dismantles Brown's estate plan. The McMaster deal gives away over half of what Brown intended to be used for the education of poor children to claimed relatives that Brown intentionally disinherited.

After months of having her FOIA requests for the contract dodged by Wilson's office, Pope filed an FOIA lawsuit in August. The suit names only Wilson as a defendant, but at a hearing in November, Gende asked that his private clients—including Bauknight and the claimed relatives—be added as defendants.

The FOIA is intended to grant every citizen access to public documents and government business; and as a public official, Wilson would be subject to the FOIA law. None of Wingate's individual clients are public bodies, however, and Pope had not requested documents or information from them.

All of the AG's contingency fee contracts contain language that confirms they are public documents. AG Wilson has released other contracts on his website, and through his assistant Sonny Jones, Wilson has confirmed that the McMaster/Wingate contract is also a public document. The AG's office has not responded to the emailed question: is the McMaster/Wingate contract the only contract not released by Wilson?

Judge Frank Addy declined to rule on whether the private parties should be added as defendants in Pope's FOIA lawsuit against AG Wilson, but he ordered the FOIA lawsuit to be consolidated with the McMaster/Wingate lawsuit against Buchanan/Pope in Richland County.

In Pope's answer, she claimed Gende's motion to add private plaintiffs to a lawsuit involving public documents was intended to delay the release of the contract and to deny her the exercise of her FOIA rights. The FOIA includes criminal penalties for violation of the law, a fine of no more \$100 for first offense. Gende's motion for sanctions and penalties asserts Pope has accused his private clients of criminal activity by advising the court that they are intentionally interfering with her FOIA rights.

In essence, Gende did exactly what Black threatened in July: he is attempting to have Pope sanctioned and penalized for attempting to exercise her rights under the FOIA.

Several affidavits of private citizens and journalists from Aiken, Newberry, and Lexington counties have been filed by Pope with a motion for Judge Addy to reconsider the consolidation of the FOIA and civil cases.

All affidavits emphasized the importance of protecting the public interest and keeping the FOIA strong.

Ex: 31

http://www.facebook.com/permalink.php?story_fbid=325311520831251&id=284635341... 12/12/2011

Several, including one filed by Debra Spence, widow of former Congressman Floyd Spence, asked the question: what is AG Wilson hiding. "I am concerned that AG Wilson's refusal for more than four months to release a public document makes it appear that he is covering up an inappropriate or questionable agreement."

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Spence also asked the court to consider: Black, speaking for Bauknight, made "vicious statements about Mrs. Pope and Mr. Buchanan that were repeated in hundreds of media outlets." At the Supreme Court hearing on Nov. 1, she said, "I heard another Nexsen Pruet lawyer and Mr. Jones from the AG's office trying to justify to our Supreme Court why Henry McMaster gave away what was correctly described as Mr. Brown's 'noble estate plan.' Since then, AG Wilson's refusal to release the McMaster contract has focused my attention on other troublesome things McMaster did -- or is said to have done -- in connection with Brown's estate and trust, and I believe the public has a right to learn what really happened."

Other affidavits in support of the FOIA, not all of them filed, include those from: journalist Vic MacDonald, whose pursuit of documents while editor of the Newberry Observer led to a Reid Montgomery press award for protecting the FOIA; copyright expert Jeff Smith, who has written an article for publication on the copyright issues related to the James Brown estate; and this reporter, who has requested the McMaster/Wingate contract at least six times by telephone, email, and as of last week, by certified mail. The FOIA requires a response in 15 working days.

In Pope's affidavit, she states there is no basis under the law for any of Gende's private clients to enter a FOIA lawsuit against a public official, and that Gende's motion was intended to cause "delay and denial" of her rights. She said the contract should be released because it is a public document that could determine: a) whether any public purpose is being served; b) whether the AG has proposed an illegal fee-sharing arrangement with individuals; c) whether the following provision, found in other contingency fee contracts, is appropriate: "(t)he AG shall retain 10 percent of Special Counsel's fees awarded under this suit."

In a telephone interview Saturday afternoon (Dec. 10), Brown's grandson Forlando—whose father Terry Brown is named as a plaintiff in Gende's motion to sanction Pope—said neither he nor his father knew about the motion until he received a draft of this story by email and was asked to comment. "I did not know my father was a party, and my father didn't know it, either. There is something going on in South Carolina that people need to know about."

Forlando said the attorneys involved in the Brown estate have been working to increase their fees, not to represent him: they would not even return his calls. Two weeks ago Forlando fired his entire legal team and will have new attorneys representing him at a Dec. 15 status conference before U.S. District Judge William O. Bertelsman of Kentucky. The conference relates to a 2008 lawsuit filed by Forlando against Pope and Buchanan that asserts they were illegally appointed and would not defend his grandfather's estate plan.

Forlando reiterated that no one had discussed the motion for sanctions with his father. "My Dad didn't know, and I didn't know until I read your story."

With the filing of the motion on Friday afternoon, the Goliath law firms have made good on the threat of July 15. They are asking for sanctions and penalties against a private citizen for exercising her rights under the FOIA.

The longer AG Wilson allows the Goliaths to pound David, the more it appears that he is hiding something. How big and how bad, or how small and innocuous, no one will know—until the document is released.

###

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Randy Yates Moolenaar likes this.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Adele J. Pope,	)	Civil Action No.: 2011-CP-36-00379
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR SANCTIONS
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina	)	
	)	
Plaintiff.	)	

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, the Proposed Intervenor¹ move before the Court for an Order granting sanctions against Plaintiff Pope and her attorney, Adam Silvernail. The facts and law in support of this Motion are more fully set forth below.

FACTS BEARING UPON THE MOTION

The fee agreement between Proposed Intervenor¹ and their counsel is the subject of a pending discovery motion before the Court in Richland County Case No. 2010-CP-40-4900 (this case is referred to as "Case No. 4900"). (See Defendant's Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction; Plaintiff's Motion for Protective Order Concerning Fee Agreement and/or Motion to Strike

¹ The Proposed Intervenor¹ are as follows: RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Inevitable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child, JANIS R.; LINDSEY DELORES BROWN; DEANNA J. BROWN; THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENSASHA BROWN; LARRY BROWN; and TERRY BROWN. The Proposed Intervenor¹ are the non-governmental Plaintiffs in Case No. 4900.

Ex: 32

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-38-00379

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina,

Defendant.

PLAINTIFF'S RETURN AND OPPOSITION
TO MOTION TO INTERVENE

TO: DEFENDANT AND PURPORTED INTERVENORS, NAMELY ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA; RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN; TOMMIE RAE BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JAMES B.; DARYL J. BROWN, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILD, JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, SYDNEY L. AND CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; AND TERRY BROWN AND/OR THEIR COUNSEL.

Plaintiff opposes the Motion to Intervene for the reasons set out below:

1. Intervention is unwarranted and improper as to all purported intervenors

as follows:

- a. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, is already a party to this action and is properly represented by a member of his office herein.¹ The sole Defendant

¹ Plaintiff has vigorously objected to the purported representation of the Attorney General by contingency-fee counsel which simultaneously represents private individuals. Plaintiff reserves the right to raise her objections herein if the Court grants



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	Civil Action No. 2011-CP-36-379
Adele J. Pope,	)	AFFIDAVIT OF ADELE J. POPE
Plaintiff,	)	OPPOSING MOTION TO INTERVENE
	)	AND IN FURTHER SUPPORT OF
v.	)	EXPEDITED IN CAMERA REVIEW
	)	AND SUMMARY JUDGMENT
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
Defendant.	)	

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes and says:

1. This affidavit is made of my personal information and belief.
2. I am informed and believe that the extraordinary facts of this case; resistance of Attorney General Alan Wilson to deliver documents he has declared public and asserted he is "more than willing" to produce; and the direct interference of certain individuals with knowledge that they are obstructing the compliance by a Public Body of The S. C. Freedom of Information Act ("FOIA") call into question whether there has been a violation of S. C. Code § 30-4-110, which states in part:

Any person or group of persons who willfully violates the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars...

3. I am informed and believe that the wilful violation of FOIA by certain of the proposed intervenors violates § 30-4-110 and should be addressed by the Court as follows:

- a. Summary Judgment and direction to the Defendant to immediately release

1



jeopardy the right of the public and the press to examine the McMaster/Wingate contract to sue Buchanan/Pope to determine:

- a. whether any public purpose is articulated or fulfilled;
- b. whether the AG proposes an illegal fee-sharing agreement with individuals;
- c. Whether the following provision, found in other Litigation Retention Agreements, is appropriate:

.... Provided, however, the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 3.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
7th day of November, 2011

[Signature]
Notary Public for South Carolina
My Commission expires: 3/12/2016

(L.S.)

C:\Users\Adam\Downloads\FOIA.2. AFFIDAVIT EXPEDITE (1).wpd

**LAW OFFICE OF
ADAM T. SILVERNAIL, LLC**

December 9, 2011

POST OFFICE BOX 1886
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COLUMBIA, SOUTH CAROLINA 29202

By E-mail and U.S. Mail:
J. Emory Smith, Jr., Esquire
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Pope vs. Wilson
Newberry County Case No. 2011-CP-36-00379

Dear Emory:

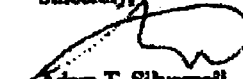
Your letter of this afternoon states that you "stand ready to have these issues resolved in Richland as quickly as possible." If that is the case, why doesn't your office resolve the issues today by sending the requested documents to me and to the press? This would leave only the claim for my fees and costs, now approximately \$6,300, to be resolved by agreement or Order in Newberry County.

As you know, Judge Addy's Order raises issues of public importance. The 5 affidavits filed to date suggest that this case is a blemish Attorney General Wilson's otherwise distinguished service to the State in FOIA compliance. In particular, I bring your attention to the affidavit of Tom Young, which highlights provision in the Freedom of Information Act's preamble that FOIA requests should be honored "*at a minimum cost or delay.*" Attempting to transfer this matter to Richland County will surely force both the State and my client to incur unnecessary additional costs and will delay compliance indefinitely.

Attorney General Wilson, by simply releasing this public document to my client and to the media, can reduce this matter from a public policy debate to a simple discussion over whether any fee should be paid pursuant to S.C. Code Ann. § 30-4-100(b).

By copy of this letter to Sue Summer, who has also sought one or more of the documents requested in this action, I am informing her of this proposal.

Sincerely,



Adam T. Silvernail

cc: (w/ copy of your letter)
Adele J. Pope, Esquire
Mrs. Sue Summer
Thomas R. Young, Jr., Esquire

TEL: 803/779-1770

FAX: 803/403-8032

EMAIL: ADAMSILVERNAILLAWFIRM.COM

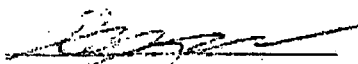
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
Adele J. Pope,	)	Case No. 11-CP-36-364
Plaintiff,	)	
v.	)	
Alan Wilson, in his capacity as	)	MOTION OF ATTORNEY GENERAL
Attorney General of South Carolina and	)	TO STRIKE OR EXCLUDE
James Brown Legacy Trust, by	)	AFFIDAVIT OF JEFFREY SMITH
Russell L. Hauknight, its Trustee,	)	
Defendants.	)	

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Affidavit of Jeffrey Smith dated December 9, 2011, and attachments thereto in that the Affidavit contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant. The attachments are all irrelevant and the Pope and Spence affidavits and draft article contain hearsay and speculation.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

December 22, 2011

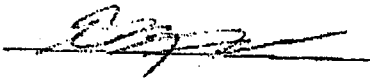
ATTORNEYS FOR THE ATTORNEY GENERAL

Ex: 33

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.

December 22, 2011


ATTORNEY FOR THE ATTORNEY GENERAL

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James Brown "I Feel Good" Trust (FOIA Concerns)

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Entertainer

In his estate plan, music icon James Brown established the "I Feel Good" Trust to provide scholarships to needy and deserving children in SC and GA. Will his final wish be granted? FOIA lawsuits in Newberry, SC may help to decide the answer.

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James Brown "I Feel Good" Trust (FOIA Concerns)

Friday

Former James Brown Trustee Fights "Career-Threatening" Allegations of Lying To Court

For The Newberry Observer

By Sue Summer June 17, 2012

In motions filed June 8 and June 14, attorneys for James Brown's companion Tommie Rae Hynie and current Brown trustee Russell Baulnigh accused former trustee and Newberry resident Adele Pope of Court filings that are "works of fiction" and "statements that are false."

On June 15 Pope responded by asking for an expedited hearing "to determine if Hynie recklessly or intentionally made ... false, career-threatening ... allegations."

The Hynie/Baulnigh motions also ask the Court to strike Pope's filings because she is not a party to the Brown estate case, and they ask the Court to continue a four-year-old gag order which prohibits Pope and others from discussing Hynie's diaries.

According to a longtime friend of James Brown, the Hynie diaries offer evidence that Hynie was not Brown's wife and should not have been given one-quarter of his music empire in 2009 settlement deal forged by former Attorney General (AG) Henry McMaster.

Hynie's handwritten diaries were discovered in Brown's home after his death. The original trustees had them transcribed, and copies were distributed or discussed with 50-100 people. In 2008 Judge Doyet Early issued a series of gag orders that: required copies of the diaries to be taken up, and; prohibited discussion of the diaries' contents until a hearing was held. The hearing never occurred.

AG Alan Wilson has recently joined in the request to keep Judge Early's gag orders in place, preventing any public scrutiny of whether Hynie's spousal claim was fully investigated by the AG's office before awarding her as much as \$20 million.

Pope requested that there be no delay in lifting the gag orders and that Hynie be compelled to attend the expedited hearing. Pope argued the public should be free to discuss whether the orders had been used to "silence the truth; perpetrate fraud on any court; or allow Hynie to keep \$20 million or more that James Brown gave for scholarships to needy and deserving students through the 'I Feel Good' Trust."

Pope asked for a hearing to "stop the fraud on this and other



James Brown "I Feel Good" Trust (FOIA Concerns)

Saturday

This facebook page was removed in March and down for three weeks, with no warning and no explanation. Comments that may result in having the page removed again have to be removed (i.e., profanity, allegations, etc.). Since I was given no reason before, I am probably being overly-cautious. My apologies.

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Gwen Morbin likes this.

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Carmela DeLeon A copyright law can actually destroy a foundation/trust?

I'm not sure I understand ... because that could be very debatable... what kind of phrase or intent or catch all concept was used to create it that can be eliminated after a certain ... See More

16 hours ago · Like



Carmela DeLeon Michael Jackson came back to the U.S for the memorial of James Brown... He never wanted to come back here but he finally stayed and less than 3 years later he was dead and both knew Conrad Murray

How ironic that the same people he hung out with, so did the other and so was dear old Al Sharpton hanging from their pockets

6 hours ago · Like

Write a comment...

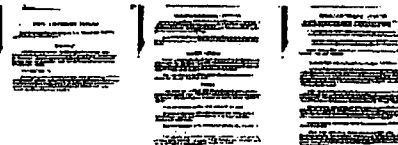


James Brown "I Feel Good" Trust (FOIA Concerns)

June 15

Review of copyright info, Pope/Smith article (12 photos)

Former James Brown trustee Adele Pope and local copyright attorney Jeff Smith wrote an article on how the McMaster settlement deal essentially destroys the "I Feel Good" Trust, Brown's education charity. Their discussion provides a basic overview of how federal copyright law comes into play in the Brown case. (The article was attached as an exhibit in earlier pleadings.)



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~~Courts," a hearing that would address several critical questions:~~

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James Brown "I Feel Good" Trust (FOIA Concerns)

[illegible]

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- 1) Is the worldwide music empire of James Brown—including copyrights to over 850 songs and rights to his image—worth \$85 million (as asserted by Pope) or \$4.7 million (as Baulknight and Hyde have claimed)?
- 2) Is Hynle's claim to be Brown's wife a "slam dunk," as Baulknight's attorney told the Supreme Court, or "without merit," as Pope claims?
- 3) About half the value of Brown's worldwide music empire is in publicity rights, which are not subject to termination under federal copyright law. Why then did Baulknight's attorney argue to the Supreme Court, "Termination rights is all this case is about"?
- 4) Are Hynle and the seven claimed children included in the McMaster settlement deal Brown's heirs under federal copyright law, or are other DNA-proven children also Brown's heirs, as Pope asserts?
- 5) Will there truly be nothing left in the "I Feel Good" Trust by 2023-2025 if the McMaster settlement deal is not approved, as asserted by Hynle/Baulknight?

In the June 15 pleadings, Pope also claims that Hynne attorney Robert Rosen—in arguing his client would be irreparably harmed if the Supreme Court discovered the diaries' contents—is in fact offering support for Pope's position that Hynne was not Brown's spouse.

"The diary should be exposed if it will help either a subsequent Attorney General or the Court discover whether an egregious error has been made and \$20 million should stay with the 'I Feel Good' Trust for scholarships..." Pope said.

The McMaster settlement deal has been appealed to the U.S. Supreme Court. Oral arguments were held Nov. 1, but no decision has been issued.

一、總論

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James Brown "I Feel Good" Trust (FOIA Concerns) shared a link.
June 18



For Father's Day, Pappa gets a brand new son! Las Vegas man claims James Brown was his father (5C) - www.foxhouston.com

His mother, now deceased, met James

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Private Foundations, Copyright News and Musical Differences:

Why The James Brown 'I Feel Good' Treat doesn't.

By John J. Pope and W. Jeffrey Brown

100

David has moved on like

Elizabeth Moore Jones Jones died on Christmas Day 2008. Although she was a generous and hard worker, the toll she took on the \$100 million estate might be the Jones Jones "Real Good" private foundation. The "Real Good" Trust was created solely to maintain scholarships for study and deserving students.

Over the long years, Elmer had secured the reputation as the best man money
made in their business. Through hard work, honesty and years of skill with
customers, largely and entirely for government and post-war business, nearly eight
in every ten U.S. corporations, organizations and big business firms

Suppl. Table 2

At age 23, seven before his death, Brown decided to create the "Feel Good" Trust as a monument to the personal philosophy "the way to escape poverty was an education and hard work. Brown's songs such as "Don't be a Dropout" underscored the belief.

After four years of such collaboration planning, Brown's type will plan and develop in 2000, a further 8 years for Brown's retirement, and in 2000, a further 8 years for Brown's retirement, and in 2000, a further 8 years for Brown's retirement.

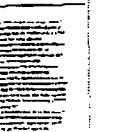
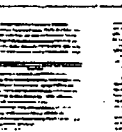
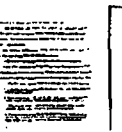
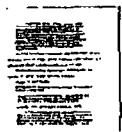
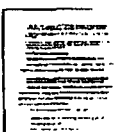
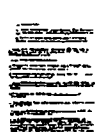
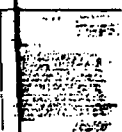
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Pone Asks For Expedited Hearing re: Hynie Diary, Valuation, Netrs (11 photos)

lope asks Court to lift gag orders related to Hynle diary and to hold an expedited hearing to deal with questions related to the \$4.7 million valuation of Brown's music empire, Hynle's claim, termination rights, back determination and other questions.



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INVESTING

James Brown's Estate and Wishes Remain in Limbo

Aug 8 2011 - 11:30 AM | 0 comments | 0 recommendations



Image via Wikipedia

The Godfather of Soul passed away on Christmas Day, 2006, and generously left his \$100 million fortune to a special trust set up to help poor and needy children. Yet, four-and-a-half years later, not one child has seen a cent. Why?

The court battle over his final wishes has dragged on ... and on ... and on, as court fights often do. While most estate fights are devastating for family members,

both emotionally and financially, this one has affected many more — those that needed help the most. How did this happen?

James Brown passed away with at least nine children, three ex-wives, and a woman who may or may not have been his widow. This woman, Tomi Rae Hynie, was technically still married to another man when she tied the knot with James Brown (although that marriage was later annulled,

50
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5x:55

reportedly). Hynie also had a child named James Brown, II, which may or may not have been fathered by Brown. To complicate the estate, Brown never updated his will or trust during his five-year marriage to Hynie, so it was unclear if he did or did not want to include Hynie or his new son.

Many feel that Brown's wishes were clear however, and those wishes did not include his family. As a recent article in *Rolling Stone Magazine* pointed out, his former attorney and a former producer who used to work with him both publicly claim that he only wanted his wealth to help needy children, not his own children. His widow and adult children feel otherwise, though, so they have been battling to receive a share of his family fortune.

The case seemed to reach a conclusion, designed to prevent a lengthy and expensive fight, back in early 2009. At that time the Attorney General's office of South Carolina and the family struck a settlement, giving the family a 50% share in the estate. Hynie was to get about one-quarter and another quarter was to pass to all of the children (including James Brown II, who was agreed to be Brown's son). Brown's charitable intent was slashed in half.

Did that resolve things? Not even close. Two of Brown's former trustees, who had been removed from administering the trust, appealed the probate judge's decision to approve the settlement, arguing that Brown's intent was clear and the estate planning documents he signed — including the trust he established for poor children — had never been found to be invalid. That appeal is now with the South Carolina Supreme Court.

And one of Brown's former producers, Jacqueline Hollander, also sued to stop the settlement. She claimed that Brown had created a partnership with her to allow her to manage the trust for needy and poor children. She alleged that he has assigned all of his assets into the trust. She says she has undeniable proof, including Brown on videotape affirming his desire to benefit poor children through this trust. Hollander permitted the *Rolling Stone* writer to review all of her evidence, and together they gave a recent radio interview and explained how Brown's wishes were clear — he wanted poor children to benefit, not his own children. In fact, they pointed out that Brown's relationship with his children had grown so distant in his final years that they had to schedule an appointment to see him.

Unfortunately for Hollander, her lawsuits haven't gone well. She first sued, twice, in Illinois where she said the partnership was created, but those cases were thrown out. She then tried federal court in California, which also dismissed the case not once but twice, because she sued in the wrong court, the judge ruled. This last dismissal happened just recently and Hollander has already appealed the decision, still fighting desperately to enforce what she believes were Brown's clear wishes.

It remains to be seen whether Hollander's efforts, or the appeal in South Carolina which also seeks to have all of Brown's money pass to charity and not his family, will be successful. But what cannot be questioned is that the legal fees, lost time, and court costs expended in these fights mean that if the poor and needy children that Brown wanted to help ever do benefit from his estate, it will be much less — and much later — than Brown ever could have imagined.

Brown's adult children believe that the estate planning documents do not reflect his true wishes, either because of mental incompetency or undue

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DANIELLE'S NEW POST Yesterday
James Brown's Estate and Wishes Remain in Limbo

DANIELLE'S NEW POST 8 days ago
Welcome to Trial & Heirs! We Use Celebrity Stories To Teach About Estate Planning

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2. Welcome to Trial & Heirs! We Use Celebrity Stories To Teach About Estate Planning	285 views	

ABOUT ME

Danielle and Andy Mayoras, co-authors of *Trial & Heirs: Famous Fortune Fights!*, husband-and-wife legacy expert attorneys, and hosts of the national TV special, *Trial & Heirs: Protect Your Family Fortune!* The charismatic duo has appeared on the Rachael Ray Show, *Forbes*, ABC's *Live Well Network*, and FOX and NBC affiliates. They've lent their expertise and analysis to hundreds of media sources, including *The Associated Press*, *Los Angeles Times*, *The Huffington Post*, *Kiplinger*, and *The Washington Post*, among many others. Danielle and Andy delight audiences nationwide with highly entertaining and informative presentations, dishing the dirt on celebrity estate battles while dispensing important legal information to help people avoid family fights among their heirs. For the latest celebrity and high-profile cases, with tips to protect yourself, your loved ones, and your clients, subscribe to *The Trial and Heirs Update* at www.TrialandHeirs.com.
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**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

May 12, 2012

The Honorable Alan Wilson
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Release of Tommie Rae Diaries; \$4.7 Million "appraisal"
of James Brown music empire; and related documents

Dear Attorney General Wilson:

Last week, strangled by fabricated lawsuits of Tommie Rae Hynie, Terry and Forlando Brown, Bob Buchanan was compelled to choose his family, career and health over continuing his defense of James Brown's estate plan.

Bob's need to be paid what Jg. Early awarded him in 2008 left unanswered:

1. Was Bob right that Tommie Rae was not James Brown's wife?
2. Did Bob defraud the IRS and Supreme Court with an \$85 Million value of Brown's worldwide music empire? Or was the less-than \$4.7 Million valuation placed on it by Terry, Tommie Rae and their trustee the fraud?
3. Wasn't Brown's really worth about \$90 Million when Bob was replaced?

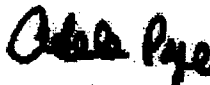
Last night at about 8:45 p.m. I was served with the enclosed subpoena, signed by counsel for Hynie, one of the more than 70 attorneys holding documents which will give answers to the above questions. Almost all seek to be paid from the music empire Terry, Tommie Rae and many now say was worth less than \$4.7 when Brown died.

The Office of the Attorney General of South Carolina holds or controls all documents necessary to tell the truth about whether Bob has committed the fraud – or whether it was others –including Terry, Forlando and their joint venturer David Cannon.

Won't you join me by releasing these documents – and agreeing that all sealed documents related to Terry's \$4.7 Million valuation and Tommie Rae's claimed status with respect to James Brown be made public so the truth will be known.

Thank you for your consideration.

Sincerely,



Adele J. Pope

Enclosures: Ltr. to AG Wilson dtd.5/11/12; Subpoena; Attorneys; emails
cc: Sue Summer, others who have made/supported FOIA requests for documents.

Lawyers Employed by Attorney General/State of South Carolina
aiding Cannon, Tommie Rae, Terry by holding/refusing to release documents showing
James Brown's Music Empire worth \$85 Million or more/ Tommie Rae not spouse
(2006 - 2012)

1. Attorney General Henry D. McMaster - term expired January 2011 - On February 10, 2008 reported in WIS-TV interview as follows:

With appeals, McMaster expects this battle [to save The James Brown "I Feel Good" private foundation] could go on for years. That means attorney fees could potentially whittle away money that could be used to educate poor kids.

McMaster says, "There is a concern some could be whittled away, but we think there is so much money involved because his name is so big and the rights to his image - really a valuable thing. We're trying to look at this long terms."

Four months later, with knowledge of the Tommie Rae's diaries, McMaster gave her 25% of Brown's music empire; took over Brown's assets; and has since concealed the diaries AND the less-than \$4.7 Million valuation.

2. Attorney General Alan Wilson - term commenced January 2011
3. Chief Deputy Attorney General John W. McIntosh
4. C. Havird "Sonny" Jones, Esq.:

On December 6, 2007 and thereafter communicated with all counsel in Case 122 about \$100 Million offer. [SEE: Aff. AJP, Case #1647, dtd 5/15/09, Exhibit A; Ltr. Buchanan/P to Atty. General McMaster, 6/27/08]

5. Mary Frances Jowers, Esq.:

See memos, filings and notes from attendance at Buchanan/Pope PR/Trustee meetings confirming facts showing Tommie Rae not married to James Brown. Believed to have read diaries before the Diary Orders. Never questioned \$85 Million value of music empire on I&A filed by original James Brown PR s on Nov. 15, 2007.

6. Robert McNair, Esq.

Failed to report to Court Adele Pope's request to appear and speak - or have State speak - on behalf of needy students at Cannon Alford Plea and sentencing. Advised Court that State's deal with Cannon provided for no recommendation as to sentence or restitution of \$12+ Million stolen from James Brown or for forgery of \$3.7 Million "contract" with Brown.

7. J.C. Nicholson, Esq.
8. Robert Cook, Esq.
9. Emory Smith, Esq.
10. Grace Lewis, Esq. of the Office of Georgia AG. Pro hac vice status terminated.
11. Emory Smith, Esq. - Fighting FOIA release of \$4.7 Million Information since 2011.

Lawyers Asserting that they speak for the Attorney General/State of South Carolina and for the trustee for Tommie Rae and Terry holding/refusing to release documents showing James Brown's Music Empire worth \$85 Million or more/ Tommie Rae not spouse

12. Kenneth Wingate, Esq. - sued Bob for tens of millions of dollars for not accepting \$100 Million offer at the same time his clients were telling BOTH the IRS and the Supreme Court of South Carolina:
 - a. Bob's \$85 Million value of the music empire in IRS filings was both a fraud to get a big fee and a crime.
 - b. Terry and Tommie Rae's value of less than \$4.7 Million is correct.
13. Mark Gende, Esq. - See Wingate: Sought sanctions for Tommie Rae/Terry against Adele Pope for exercising FOIA rights.
14. Scott Barrow, Esq. - contributor to McMaster's campaign after hiring. See Wingate.
15. David Black - reported in 441 media outlets accusing Bob of fraudulent acts the day before the Supreme Court heard the Case 1647 appeal.
17. Freddie Kingsmore, Esq. - told IRS that Brown's music empire was worth less than \$4.7 Million, then filed I&A under seal. Refuses to file \$4.7 Million appraisal required to do by Probate Code.
18. William Klett, Esq. - gathered up information from former Entertainment Counsel Ray Gonzalez which supports \$100 Million valuation of music empire, then asked Gonzalez to destroy his request for the file.
19. William Newsome, Esq. - See Kingsmore
20. Rick Reames, Esq. - See Kingsmore
21. William Wilkins, Esq. - told S.C. Supreme Court he knows value of music empire [\$4.7 million] even though his client earlier adopted the Dallas brief confirming \$85 Million value. Told S.C. Supreme Court Hyrie spousal claim was a slam dunk even though. Believed not to have reviewed the Diary Orders.
22. Camden Lewis, Esq. - obtained Tommie Rae diaries in 2007 when original Brown PR/Trustees engaged him as litigation counsel to protect Brown's Estate Plan. Charged \$600 per hour. Diaries secured by clients during this period. Hired in 2011 by Tommie Rae/Terry's Trustee to prevent release of documents under FOIA. See Babcock.
23. Ariail King, Esq. - See Camden Lewis.
24. Keith Babcock, Esq. - member of Lewis Firm, which gathered Tommie Rae Diaries. Represented 2 original trustees when \$85 Million I&A was filed.
25. Jonathan Harling, Esq. - See Babcock

Lawyers Representing one or more of Terry, Forlando and/or David Cannon
who have previously confirmed Tommie Rae is not Spouse AND
have documents or have made statements that Music Empire is \$85 Million or more.
[Some Paid or expecting to be paid from less-than \$4.7 Million Music Empire.]
(2007-2012)

26. Albert Dallas, Esq. - former Trustee. Seeking \$6 Million based on \$100 Million value. Disseminated Tommie Rae Diaries through Wayne Byrd, Esq., who vigorously asserted that Diaries not privileged and Estate/2000 Trust required to use them against Tommie Rae as part of vigorous defense of Estate Plan. Believed to have told Adele Pope of contents of diaries in 2007 before she read them. Asserts left \$100 Million offer on desk of Jg. Early in 2007.
27. William Hammond, Esq. - advised AG McMaster in 2007 that Estate/2000 Trust worth \$80 Million - \$120 Million. Aware of Diaries and other facts showing Tommie Rae not spouse.
28. William Tucker, Esq. - counsel to original trustees. Believed to have advised Bob of contents of Tommie Rae diaries in 2007. See Hammond.
29. Stanley Jackson, Esq. - Professor/Business valuation. Counsel to PR's when I&A showing \$85 Million value of music empire filed. Vigorously asserted Tommie Rae not spouse, with documentation.
30. Audra Byrd, Esq. - See Dallas. No claim for services filed against Estate to date.
31. Wayne Byrd, Esq. - See Dallas. No claim for services filed against Estate to date.
32. Strom Thurmond, Jr., Esq.
33. David Massey, Esq.
34. Rodney Peeples, Esq. - Established DNA protocol for Estate in 2007.
35. Steve Sidmans, Esq. - Worked on offers for Royalties in early 2007. Filed, but withdrew claim for services to Estate.
36. Joel Katz, Esq. - see Sidmans
37. Steve Jacobs, Esq. - see Sidmans
38. William Custer, Esq. - Asserts:
 - a. On behalf of Forlando: Music empire worth \$100+ Million. On behalf of Terry, exercising his right to purchase: music empire worth \$4.7
 - b. On behalf of Forlando: Tommie Rae not wife. On behalf of Terry: originally not wife; now she is.
39. William Shearer, Esq. - See Custer
40. Jennifer Dempsey, Esq. - See Custer
41. Eric Bland, Esq. - Counsel to Cannon
42. Larry Richter, Esq. - counsel to Cannon
43. Jan Warner, Esq. - counsel to Cannon
44. Matt Bodman, Esq.
45. David Bell, Esq.
46. Angela Kirby, Esq.
47. Thomas Lydon, Esq.
48. Max Pickelsimer, Esq.

Additional Lawyers Representing fiduciaries, former fiduciaries of James Brown, Tommie Rae and/or others in relation to James Brown Music Empire now asserted by Tommie Rae, Terry and Bauknight to be worth less than \$4.7 Million

49. Alan Medlin, Esq.
50. Jean Lee, Esq.
51. Robert Rosen, Esq.
52. Andrew Chandler, Esq.
52. Heyward Carter, Esq.
53. David Michel, Esq.
54. Stephen Slotchiver, Esq.
55. Ernest Finney, Esq.
56. Kendall Few, Esq.
57. James Gilreath, Esq.
57. Louis Levenson, Esq.
58. Lori Chrisman, Esq.
59. David Yount, Esq.
60. James Richardson, Esq. – serving Pro Bono Publico
61. Harley Ruff, Esq.
62. Ray Gonzalez, Esq.
63. Matthew Ballenger, Esq.
64. James Bailey, Esq.
65. Peter Shahid, Esq.
66. Ronald Maxwell, Esq.
67. James Overstreet, Jr., Esq.
68. George A. Scott, Esq.
69. Todd Boudreaux, Esq.
70. Julio E. Mendoza, Esq.

NOTE: This is not all of the attorneys who have worked on James Brown matters since his death on December 25, 2006.

Date: May 12, 2012

**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

May 11, 2012

The Honorable Alan Wilson
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Aiken County Case No. 2008-CP-02-1425 ("Case 1425");
Terry Brown's false \$4.7 Million value of James Brown's
worldwide music empire, and related fraud on the Courts

Dear Attorney General Wilson:

I returned yesterday from being out of the County to Mr. McIntosh's letter of May 11 refusing, on your behalf, to respond to my concerns about fraud related to the James Brown Estate and 2000 Trust by Terry Brown, the Cannon Group trustees and others.

As the article by Jeff Smith and myself which I sent you shows, the fraudulent scheme of Terry Brown to devalue to less than \$4.7 Million – then buy – James Brown's \$100 Million music empire threatens to destroy the approximately \$80 Million James Brown gave to The James Brown "I Feel Good" private foundation for scholarships for needy and deserving students.

When coupled with the knowingly false assertion by Tommie Rae Hynie that she was Brown's spouse, Terry's fraudulent valuation and purchase of the music empire at a fabricated "fair market value" will leave the "I Feel Good" foundation less than \$2 Million. As a result of Terry's fraud, 70+ of South Carolina's most experienced and expensive lawyers – and some from Atlanta – will share with their clients the \$80 Million or more taken from the needy students.

Has the Attorney General's Office changed its policy to refuse to communicate with citizens who are concerned about fraud against Charities and the taxing authorities?

In 2008 Bob Buchanan and I had lawyers, but communicated directly and frequently with Attorney General McMaster and others in your office. Our correspondence – particularly between May and July of 2008 – expressed our grave concern that AG McMaster was taking the side of the Cannon Group trustees, even though it was already known that Cannon had taken more than \$12 Million, and he and Mr. Dallas had fabricated a post-death Schedule to the 2000 Trust.

I think Mr. McIntosh may have attended a May 2008 meeting we had with Mr.

Ltr. to Attorney General Wilson
May 11, 2012
Page 2

McMaster, with no counsel, about matters related to Cannon's fraud and other things.

I do not recall the Attorney General's refusal to communicate with me because I had counsel. Nor do I believe any counsel has the authority to inhibit my ability as a citizen and a pro se lawyer to express and seek answers about:

- a. Terry Brown, his son Forlando and their joint venturer David Cannon betraying James Brown in the most despicable way – by destroying his noble gift to needy and deserving students while pretending to support it.
- b. Tommie Rae Hynle's assertion that she was Brown's spouse at death where she has knowledge – and the documents show – this is not true.
- c. Terry's fraudulent less-than-\$4.7 Million valuation of Brown's worldwide music empire and scheme to take it from The James Brown "I Feel Good" Foundation.
- d. My fear that no private foundation is safe in South Carolina if Terry's scheme works.

I speak for myself and hold Terry Brown and his joint venturers – and not the 70+ lawyers (including about 10 from your office) – responsible for their schemes. But I must wonder:

Would 70 lawyers in 5 years really work to help their clients either "save" or scuttle a \$4.7 Million music empire?

I respectfully ask that you answer my letters of March 5, March 22 and March 30/April 1. I also ask that you grant me a meeting to speak to you about my grave concerns for the future of private philanthropy in South Carolina if Terry Brown's fraudulent scheme succeeds.

I do not know you personally, but hear from friends I trust that you are trying to carry out your high office with the dignity and skill it deserves. For that reason I hope when you see the documents and know the truth you will understand how important it is to end Forlando and Terry's fraud. It could even rescue James Brown's dream of creating a perpetual fund solely for scholarships for needy and deserving students.

Thank you for your consideration.

Sincerely,



Adele J. Pope

AJP/ja - Encl. Ltr. of May 1



ALAN WILSON
ATTORNEY GENERAL

May 1, 2012

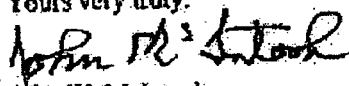
Adele J. Pope
Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108

Re: Your recent letters to the Attorney General

Dear Mrs. Pope:

I am writing in response to your most recent letters to the Attorney General, one dated March 30, 2012, and one dated April 1, 2012, and in follow-up to my previous response to your letters of March 5, 2012, and March 22, 2012. My understanding is that you are represented by counsel in connection with the matters in your letters.

Yours very truly,


John W. McIntosh
Chief Deputy Attorney General

Re: WRITTEN OBJECTION TO SUBPOENA TO ADELE J. POPE - AIKEN #2007-CP-02-0122

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From: Adele Pope

Date: 5/12/2012 6:55:54 AM

To: RKrosen@rosenlawfirm.com

TO: Robert N. Rosen, Esquire
Rosen Law Firm, LLC
18 Broad Street, Suite 201, Charleston, SC 29401

FROM: Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108

Re: Service of Subpoena, Friday Evening, May 11, 2012, 8:45 p.m.

Mr. Rosen:

Tonight I was served at about 8:45 p.m. with a subpoena which refers to a case pending in the Aiken County Probate Court as well as the above-referenced Case number ("Case 122"). The subpoena fails to show the parties to the case, and fails to contain a caption showing the parties.

Along with the subpoena, the process server handed me a check for \$75, payable to "Adele Pope and Robert N. Rosen." This clearly does not comply with the applicable rule. Kindly reissue a check to me, to be received by Tuesday.

The subpoena imposes an undue burden on me for the following reasons:

1. The written and electronic communications related to the disclosure or dissemination of the contents of, or copies of, any diary of Tommie Rae Hynie (a/k/a Brown) span a period of more than five years.
2. Written and electronic communications with reporters, bloggers, websites, or other media outlets related to any diary of Tommie Rae Brown are not under my control; their research would result in a heavy burden; and the documents can be acquired by Tommie Rae Hynie from the same source.
3. You have failed to allow a reasonable time for the completion of this request.
4. Communications prior to the 2008 Diary Orders which are the subject of the hearing, and possibly other documents, may be protected matter.
5. The subpoena requires me to produce documents which Tommie Rae Hynie's counsel is capable of obtaining from public sources and/or Russell Bauknight, her trustee.
6. I am an unretained expert on the issue of Tommie Rae Hynie's status as a non-spouse of James Brown; its impact on the James Brown Probate Proceeding; and its relationship to the heirs provisions of the Federal Copyright Act. As a result, some of the requested documents may be my intellectual property.

I will nevertheless accomplish as much of the task as possible before the hearing if, in addition to correcting the witness fee, you provide me by Tuesday with an additional check for \$750 -- the estimated reasonable cost of search and production of the documents which you have requested.

I will look forward to receiving the check or checks from you by Tuesday, May 15. This communication is intended to comply with Rule 11.

Adele Pope

Columbia, SC 29211

By email and registered mail

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Aaron Hayes Home



sir or madam

James Brown "I Feel Good"

Timeline

Now

Highlights

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Now

May

2012

Joined Facebook

I request the following documents under the Freedom of Information Act, and I would like to remind you, with all due respect, that I am not a party in litigation regarding the James Brown estate (as has so often been used by the AG as a reason in denying these documents to others). Some of these requests have been made previously, but I believe all are public documents—and in two cases the reason originally given for denying the release of the documents has been rendered moot.

1. There is no question that the McMaster/Wingate contract is a public document, and a letter from assistant AG Jones acknowledged that fact. He further said the AG's office wanted to release a copy and would do so—except for a stay issued by Judge Manning. My position then was that there was no stay (I was in court at the hearing), but the AG argued there was and refused to release the document in full. After Judge Manning issued an order with no mention of stay, the AG's office then argued his stay was oral. Your office later sent generic, partial documents and claimed that more specific portions (where signatures were to be affixed) were not public. Now that Judge Manning has affirmed that there was no stay, there is no reason why the AG's office cannot now release a full copy of the contract, and I ask to be sent a copy forthwith.

2. Knowing the specifics of how money is to enter the Legacy Trust and to whom it will be paid out is critical in understanding the tax consequences of the McMaster settlement deal—and in evaluating whether the charity was indeed protected, which was ostensibly why McMaster entered the estate proceedings and created the Legacy Trust. McMaster was paid by the State out of the public coffers for his work on this trust, as were the other attorneys from his office who participated in the settlement deal. Since then the AG's office has devoted hours upon hours in concealing the very documents paid for by taxpayer dollars. Therefore, the entirety of the Legacy Trust is a public document, and I ask to be sent a full copy.

3. My request for the Hynie diaries was also previously refused, citing a gag order from Judge Early. A May 22 hearing was held on the gag orders, which were first violated by Ms. Hynie herself in a TV interview six months after the orders were issued. If Judge Early lifts the orders, I want to make sure that my FOIA request for a copy is in place so that a copy may be forwarded to me immediately—and if a copy cannot be sent, please release to me all communications related thereto. It is my understanding that the diaries hold a critical piece of evidence regarding the spousal claim of Tommie Rae Hynie—evidence that the AG's office might have used to save about one-quarter of the music empire for the charity McMaster claimed to be protecting. I also request any electronic or written communication regarding the AG's office's recent support for Hynie in her effort to maintain the gag orders through her attorney Robert Rosen. (It is in the public interest to bring into the light and discuss the following scenario: The AG's office says the diaries cannot be released because of a gag order, then the AG's office files documents with the court to maintain the gag order. Why would that happen, when the diaries may include important evidence that affects the future of the James Brown "I Feel Good" Trust?).

4. I request any documents related to the \$4.7 million at-death valuation of James Brown's music empire. According to pleadings I have read, the SC Probate Code requires the documentation/appraisal to be filed with the Probate Court, a duty of the current trustee Russell Bauknight who serves at the AG's pleasure. I am most interested to see the documentation for why the AG's office would approve this figure. (If the AG's office has no documentation of the valuation, surely the AG's office would not have signed off on a \$4.7 million filing with the IRS when the AG's office has the duty of enforcing laws, including tax laws.)

5. I request all electronic or other written communication regarding why the AG's office sought no restitution from David Cannon, even though he has a million-dollar home in Honduras.

Thank you for your prompt attention to these requests, and I request any fees to be waived in the public interest. After all, there are perhaps thousands of young people for whom the James Brown "I Feel Good" Trust might open educational opportunities—and that alone makes these questions of great public importance.

Sincerely,

Sue Summer

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James Brown "I Feel Good" Trust (FOIA Concerns) Freedom of Information Request, asking for: McMaster/Wingate contract, Legacy Trust, Hynie diaries, supporting documents for \$4.7 million appraisal of Brown's music empire, communications related to decision not to ask for restitution from Cannon.
21 hours ago · Like

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James Brown "I Feel Good" Trust (FOIA Concerns) shared South Carolina Press Association's status.
June 4

A bill to strengthen FOIA needs support.

Rep. Bill Taylor of Alken sent this email out Friday:



James Brown "I Feel Good" Trust (FOIA Concerns) shared a link.
June 2

James Brown trustee claims son, grandson conspired with companion (SC) – Estate of Denial
www.estateofdenial.com

In documents filed in Federal Court on Friday, Alken attorney and former James Brown trustee Robert Buchanan alleged that Brown's companion

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In his estate plan, music icon James Brown established the "I Feel Good" Trust to provide scholarships to needy and deserving children in SC and GA. Will his final wish be granted? FOIA lawsuits in Newberry, SC may help to decide the answer.

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James Brown "I Feel Good" Trust (FOIA Concerns) shared a link via James Brown. Wednesday

Again I ask, how can the at death valuation of Mr. Brown's music empire be \$4.7 million, as reported to the IRS by current trustee Russell Bauknight, with the approval of AG Alan Wilson?



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James Brown "I Feel Good" Trust (FOIA Concerns)
17 hours ago

AG Wilson Asks Judge to Conceal Diaries of James Brown's Companion

For The Newberry Observer
By Sue Summer June 9, 2012

The Attorney General (AG) of South Carolina has asked an Aiken County Judge to keep sealed the diaries of Tommie Rae Hynie, companion of music legend James Brown—and to keep silent those who have read the diaries.

On June 5, AG Alan Wilson asked to "join and support" Hynie attorney Robert Rosen of Charleston in his pleadings to block the release of the Hynie diaries and to enforce a 2008 gag order by Judge Doyet Early that prevents any discussion of the contents.

According to a longtime Brown friend, the diaries provide important evidence that Hynie was not Brown's wife, and therefore she should not have been included in a 2009 settlement deal that gave her one-quarter of Brown's \$100 million music empire.

On May 22 Newberry resident and former Brown trustee, Adele Pope, argued before Judge Early that she needed to discuss the diaries in order to defend herself against a lawsuit brought by Hynie, some of Brown's alleged children, current Brown trustee Russell Bauknight, and the AG's office. The suit alleges Pope and Aiken attorney Robert Buchanan damaged the Brown estate by tens of millions of dollars during the 18 months they served as trustees.

The suit was filed after Pope and Buchanan "vigorously defended" Brown's estate plan, as directed by his will and trust, by appealing the 2009 settlement deal in which former AG Henry McMaster gave away over half of Brown's \$100 million music empire—including royalties and rights to his image—to those Brown had specifically excluded from inheriting it.

Brown's estate plan left his entire music empire to the "I Feel Good" Trust, to help needy and deserving students in South Carolina and Georgia with education costs. Brown also provided up to \$2 million in education funds for certain grandchildren.

Brown left personal and household effects to six named children.

Because of Early's gag order, the diaries could not be discussed in the Buchanan/Pope appeal to the Supreme Court, but based on Pope's June 7 pleadings, the diaries were an important factor in the decision to file the appeal.

The diaries were copied and available to all parties early in the Brown estate controversy, and they may have been read by as many as 100 people before Judge Early issued orders in February and March of 2008 that the diaries were to be taken up and not

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James Brown "I Feel Good" Trust (FOIA Concerns)
Tuesday

discussed until a further hearing in 10 days.

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That hearing never occurred.

Six months after Judge Early issued the gag order, in September of 2008, Hynie discussed the diaries with television reporter Gene Petriello, who asked, "Another big question is what did Tommie Rae write in her own diary about her relationship with Brown? Did she beg him to make her his wife?"

Hynie's response dodges the question: "James Brown didn't do anything he didn't want to do. How could I beg him to do anything? Nobody marries someone because they were begged -- they marry someone because they love them."

According to Pope's June 7 memorandum, filed in Aiken: "Continuing the Gag Orders will prevent AG Wilson from fully investigating whether it was inappropriate for a trustee...to tell our Supreme Court that Hynie's elective share claim was a 'slam dunk.'"

In March of this year the Newberry Observer requested a copy of the Hynie diaries from AG Wilson under the Freedom of Information Act (FOIA). The request was denied, citing Judge Early's 2008 order. (The AG's office did not deny having a copy, only that the diaries could not be released under the gag order.)

Pope's pleadings argue that the gag orders will encourage fraud and prevent her from defending herself against "career-threatening criminal allegations" made by the "State/AG, Hynie, and a trustee serving at the pleasure of the AG."

Pope further argues it is unprecedented that Wilson is requesting to continue a gag order that prevents him from protecting a charitable trust--and from complying with the FOIA, which he has the duty of enforcing.

"Failing to void the Gag Orders...strikes at the very heart of transparency in government," according to the memorandum.

The Wingate firm of Columbia represents the AG, Hynie, Bauknight and others in the lawsuit against Pope and Buchanan. The suit claims they caused tens of millions of dollars in damages, even though Bauknight has filed documents with the IRS that Brown's music empire was worth less than \$4.7 million at his death.

The documents with the low valuation were filed after Brown's son Terry was given the right to purchase the music empire in the McMaster settlement agreement.

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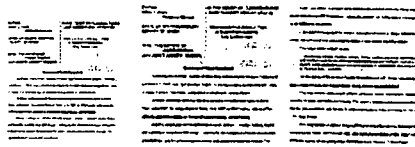
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James Brown "I Feel Good" Trust (FOIA Concerns)
Tuesday

Pope Memo re Gag Orders, 11 June 2012 (10 photos)

The gag orders re diaries of Tommie Rae Hynie "invite and encourage fraud. They will prevent Pope from defending herself against career threatening criminal allegations made against her by the State/AG, Hynie and by a trustee serving at the pleasure of the AG."



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AG's promise to release contracts may resolve Newberry James Brown FOIA case

by Sue Summer
For The Observer
09.21.11 - 08:07 am

In Newberry on Sept. 12, Attorney General (AG) Alan Wilson filed a motion to dismiss a Freedom of Information Act (FOIA) lawsuit in which he was asked to release copies of public documents related to the James Brown music empire.

Among the requested documents was a contingency-fee agreement between former AG Henry McMaster and outside counsel, Columbia attorney Ken Wingate. Wingate represents the State and about 15 private plaintiffs in a Brown suit in Richland County.

Other Brown cases are pending in the Aiken County Circuit Court, the S.C. Court of Appeals, and the S.C. Supreme Court.

The FOIA lawsuit was filed by Newberry resident Adele Pope in August. She and Aiken attorney Robert Buchanan, former Brown trustees, have repeatedly attempted to obtain the fee agreement and other documents for 10 months.

Only two days after Wilson's motion to dismiss the Newberry FOIA suit, on Sept. 14, The State newspaper reported Wilson had announced, through an agency spokesperson, that contingency agreements with outside law firms are available to members of the public who request them and that the AG's office is in the process of posting all such agreements on its website.

"We hope this announcement means that the AG will release the public documents which Pope and Buchanan have been trying to obtain for almost a year, first from McMaster and now from Wilson," said Adam Silvernail, Pope's attorney.

The unreleased contingency-fee contract between McMaster and Wingate authorized Wingate to sue Buchanan and Pope on behalf of the state while simultaneously representing about 15 private plaintiffs.

In a hearing scheduled for Richland County Sept. 14, Pope and Buchanan sought to disqualify Wingate from representing both the state and the private individuals.

In a brief filed last week, Pope also asked that current Brown trustee, Columbia CPA Russell Bauknight, be enjoined from asserting that he acts for the state or the AG. Bauknight replaced Pope and Buchanan as trustee and serves at the AG's pleasure.

Bauknight and AG Wilson have both refused to produce the contingency-fee contract and other documents requested by Pope's two FOIA lawsuits, including documents related to the value of Brown's assets and a copy of McMaster's "Legacy" trust.

Ex: 62

In 2008 McMaster forged an agreement with some of Brown's claimed heirs, all of whom were disinherited from his worldwide music empire, and gave them more than half of Brown's assets.

In late 2008 or early 2009, McMaster set up the "Legacy" trust with Bauknight as trustee. To date, no signed complete copy of the Legacy trust has been produced, but at least two incomplete drafts are on file in Aiken County.

Before the McMaster agreement, Brown's estate plan gave his music empire to the "I Feel Good" trust to provide scholarships for needy and deserving students.

Brown's music empire—with royalties to about 850 songs, as well as publicity rights—was widely reported to have a value of \$100 million at his death, less a \$15 million debt. At about \$80 million, the "I Feel Good" trust would have been South Carolina's largest private foundation dedicated solely to scholarships for needy and deserving students.

In December 2010, however, Bauknight filed documents with the Internal Revenue Service placing a \$4.7 million value on Brown's worldwide music empire at his death in 2006.

According to J. David Black of the Columbia law firm Nexsen/Pruet, which represented Bauknight in the IRS filing, Bauknight's \$4.7 million value for Brown's music empire at death is based upon an independent professional appraisal, authorized by Bauknight. When reached by email, Black failed to disclose the name of the New York appraiser.

In Black's email, he claimed Brown's music empire was worth \$4.7 million "because of outstanding debt and bond issues as well as Mr. Brown's prior advisors' mismanagement of his assets." He said further that all of Brown's assets, including the music, had a value of only \$5.7 million.

In 2007 David Cannon, one of three original trustees appointed by Brown, resigned after Pope and Buchanan discovered he had taken \$900,000 from Brown's Trust the previous year. Cannon was indicted in 2010 for felony breach of trust with respect to Brown's assets between 1999 and 2006. He was also indicted for a 2008 forgery related to Brown.

Cannon has not yet been tried, but in November 2010 he was placed, along with former trustee Albert "Buddy" Dallas, on Wingate's witness list in the Richland County case.

Pope and Buchanan, who valued Brown's music assets at about \$85 million, have challenged McMaster's agreement and Bauknight's valuation.

When asked by email when the Wingate contract would be available on the AG's website, spokesperson Mark Plowden responded Tuesday morning, "I am on medical leave, but will have someone send it to you."

Judge Casey L. Manning continued the Richland County hearing to consult with Chief Administrative Judge Alison Renee Lee.

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Attorney general still refuses to release documents in two Newberry FOIA cases related to James Brown music empire

by Sue Summer
For The Observer

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Two weeks after a public statement that all contingency fee contracts would be placed on the website of the South Carolina Attorney General (AG), current AG Alan Wilson has still not released former AG Henry McMaster's contract with outside counsel Ken Wingate.

The contract, thought to have been executed in late April or early May 2010, authorized Wingate to sue former James Brown trustees Robert Buchanan of Aiken and Newberry resident Adele Pope. In addition, the contract also apparently authorized Brown's current fiduciary and trustee of the "Legacy" Trust, Columbia CPA Russell Bauknight, to speak on behalf of the attorney general.

On July 19, Pope requested a copy of the Wingate contract under the Freedom of Information Act (FOIA). Pope and Buchanan's efforts to obtain the contract under discovery for nearly a year were unsuccessful.

On Sept. 14, in a newspaper article about outside counsel in an unrelated case, Wilson, through a spokesperson, promised transparency and confirmed all contingency fee agreements with outside counsel are public documents and available on request. Five days later, at this reporter's request, spokesperson Mark Plowden agreed to send the Wingate contract.

On Sept. 22, however, deputy attorney general Bryan Stirling provided a letter by assistant deputy attorney general C.H. Jones Jr. stating the attorney general's office was willing to release the Wingate agreement but would not do so until it received further guidance from the court.

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http://newberryobserver.com/view/full_story/15791780/article-Attorney-general-still-refus... 9/29/2011

EX:63

In the Newberry FOIA case, Adam Silvernail of Columbia, Pope's counsel, continues to seek an expedited hearing and release of the documents Pope requested under FOIA more than 60 days ago. In a second FOIA case filed in Newberry in early August, Pope also seeks: to declare the trust created by former attorney general Henry McMaster, called the "James Brown Legacy Trust," a public body; to require release of a copy of the trust; and to obtain information about Bauknight's \$4.7 valuation of Brown's music empire.

Pope's affidavits on file in the FOIA suits assert Bauknight's \$4.7 million is "outrageous" and inconsistent with the \$50 million Brown earned between 1999 and 2006 from royalties and road performances. Pope asserts all of Brown's prior fiduciaries and others have valued Brown's music empire at death about \$85 million or more.

Brown's primary assets, according to Pope's affidavits and J. David Black, counsel for Bauknight as personal representative and trustee, are Brown's music royalties and publicity rights (the right to use his image and persona on products).

As evidence of the value of Brown's publicity rights at death, Pope cites a Global Gaming contract negotiated before Brown's death. The deal to use Brown's image on games has been projected to produce \$500,000 a year after a development period.

Pope's affidavit also quotes counsel for Brown's original fiduciaries who reported to the Aiken Court shortly after Brown's death that Brown had earned a million dollars a week for his annual three-week tours overseas.

Brown continued to be the "hardest working man in show business" until his death at age 73 performing in more than 100 shows in 2006.

In an email last week, Black asserted the \$4.7 valuation of Brown's music empire is low "because of outstanding debt and bond issues as well as Mr. Brown's prior advisors' mismanagement of his assets."

Pope's affidavit attaches 2010 indictments against former trustee David Cannon who is charged with breach of trust with fraudulent intent with respect to James Brown for years 1999-2006. He is also charged with forgery of an employment contract with Brown in 2008.

Cannon has been sued for the return of more than \$12 million, misappropriated between 1999 and 2006. Although indicted more than 18 months ago, he has not been tried.

Cannon's name is on the witness list submitted by Wingate in the state's lawsuit against Buchanan and Pope.

"We hope to have a hearing within the next few weeks if the attorney general does not reverse his position and give us these public documents," Silvernail said.

Buchanan and Pope are asking the South Carolina Supreme Court to reverse a 2006 Aiken County Circuit Court order authorizing McMaster to take control of James Brown's assets. Oral arguments in that case are scheduled for Nov. 1.

As of Monday afternoon, no contingency fee contracts had been posted on the attorney general's website at www.scag.gov.

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Education

Wingate firm, James Brown children, others ask to join Wilson in fighting release of public documents

by Sue Summer
For The Observer

5 days ago | 173 views | 0 | 2 | |

In the latest twist in a Newberry County Freedom of Information Act (FOIA) lawsuit, there was a request made Wednesday morning, Oct. 26, that other parties be allowed to enter the lawsuit as defendants, including some members of the family of music icon James Brown, current Brown trustee Columbia C.P.A. Russell Bauknight and others.

The Newberry FOIA lawsuit, filed Aug. 10 by Newberry resident Adele Pope, asked South Carolina Attorney General Alan Wilson to release the contingency fee litigation agreement between former AG Henry McMaster and the law firm of Kenneth Wingate, which authorized Wingate to sue former James Brown trustees, Pope of Newberry and Robert Buchanan of Aiken.

At Wednesday's hearing in Laurens County before Judge Frank Addy Jr., Mark Gende of the Wingate law firm asked the court to allow his clients from a different case in Richland County to join in the FOIA lawsuit.

Adam Silvernail, counsel for Pope, argued that Wingate's clients should not be parties because no documents have been requested from them. Wilson has been dodging the release of the documents since July when Pope mailed from Newberry an FOIA request for the McMaster/Wingate agreement to sue Buchanan.

Soon after she asked for the contract, Wingate's firm filed a document in Richland County asserting the McMaster/Wingate retention agreement was private and should not be released. After receiving no documents from the attorney general's office, on Aug. 10 Pope filed a lawsuit in Newberry County to obtain the agreement.

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Ex: 65

On Sept. 13, Wilson announced in The State newspaper all of his contingency fee litigation agreements with outside counsel were public documents and would be released on his website. Following a request for a copy of the McMaster/Wingate contract, senior assistant attorney general C.H. Jones Jr. wrote the Richland County court on Sept. 22 and claimed Wilson is "ready and more than willing" to release the McMaster/Wingate agreement but the attorney general did not want to violate a stay order allegedly issued by Judge Casey Manning on Sept. 14.

Then on Sept. 28, Richland County Judge Casey Manning issued an order that continued the Sept. 14 case but nowhere on the document is a "stay" mentioned.

On Oct. 10, Wilson posted on his website 10 contingency fee agreements with other attorneys: the Wingate contract was not among them. All 10 state plainly they are public documents. Other agreements also contain a clause that allows the attorney general to retain 10 percent of special counsel's fees.

The attorney general's website said all contracts had been released "except those matters in which disclosure is currently under review by a court." A request for other contracts "under review" received no answer from Mark Plowden, spokesperson for the attorney general's office.

At the Oct. 26 hearing, counsel for the state, Emory Smith Jr., continued to assert a stay was in place on the McMaster/Wingate contract. When Judge Addy said he planned to call Judge Manning, Smith quickly added even if no stay were in place, the FOIA case should be dismissed because of venue and jurisdictional issues.

Silvernail argued the attorney general's office has never claimed the document was not public nor has it ever been argued the attorney general's office was not a public body.

"The AG has declared that the McMaster/Wingate agreement is a public document and there is no basis for his refusal to disclose it," Silvernail said.

The Public Official's Guide to Compliance with South Carolina's Freedom of Information Act contains a letter from Wilson which reads in part: "As public officials, we have an obligation not only to adhere to the letter of this law but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction to the individual or entity seeking their right to public information."

He further advises public officials, "When in doubt, disclose the requested information. When in doubt, release the document."

Judge Addy said he hoped to have a ruling by the end of the week.

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Education

Brown grandson fires lawyers in trust lawsuit

by Sue Summer
For The Observer

1 hr 14 mins ago | 17 views | 0 | 0 | |

In a surprise move only days before a Dec. 15 federal court hearing on the 2000 Irrevocable Trust of music icon James Brown, his grandson Forlando Brown has fired his entire legal team.

Among those sacked by Forlando are former S.C. Chief Justice Ernest Finney whose wife Frances (Davenport) is from Newberry; the law firm of Finney's son, Jerry Leo Finney; several members of the 1,200-lawyer Atlanta firm, Bryan Cave LLP — formerly Powell Goldstein; and Augusta lawyer David Bell.

Last week, Bryan Cave, the Finneys and Bell filed a motion before Federal Judge William Bertelsman to withdraw as counsel in a lawsuit they filed for Forlando in January 2008 when he was a 21-year-old student. The suit has languished since then but Bell has actively represented Forlando Brown in other matters in Aiken County — always in support of his grandfather's estate plan which leaves his entire music empire to provide scholarships for designated grandchildren and for needy students attending schools in South Carolina and Georgia.

In 2008, Forlando Brown sought to enjoin Newberry resident Adele Pope and Aiken attorney Robert Buchanan from acting as Brown trustees, alleging they were illegally appointed Nov. 20, 2007, and would not protect Brown's estate plan from disinherited relatives.

In the complaint, Forlando Brown stated he was close to his grandfather especially during the last seven years of Brown's life. He said Brown "recognized the value of education and wished he had been able to obtain more of an education during his life." He said Brown's

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Ex: 70

Irrevocable Trust, which leaves his music empire to education, reflects his grandfather's wishes to provide those in need with the opportunity for an education.

Forlando Brown's complaint against Pope and Buchanan asserted the Irrevocable Trust was "believed to have a value in excess of tens of millions of dollars or more." The complaint expressed concern that Brown's "In Terrorem" clause would not be used to enforce his wishes.

A month after Forlando Brown filed the lawsuit in January 2008, he and former South Carolina Attorney General Henry McMaster made a joint appearance on WIS-TV asserting Buchanan and Pope were not working for the poor children Brown intended to benefit. Six months later, however, McMaster entered into a settlement that dismantled Brown's Irrevocable Trust, taking more than half of what Brown gave for scholarships to the needy and giving it to disinherited, claimed relatives.

McMaster also gave the right to purchase Brown's assets to Forlando Brown's father, Terry, who was represented by Powell Goldstein. In defense of Brown's estate plan, Buchanan and Pope appealed McMaster's settlement to the S.C. Supreme Court which heard oral arguments in the case Nov. 1.

In a telephone interview, Forlando Brown said he is now in the process of searching for new attorneys who will vigorously defend his grandfather's estate plan and work to nullify the McMaster deal with claimed relatives. Forlando Brown said the decision to fire previous counsel was the result of his increasing frustration with poor management of the trust.

"My grandfather had a huge estate with rights to music royalties and the use of his image," Forlando Brown said. "He left the tools to raise tons of money for needy children but, after five years, not one child has been given one penny."

Forlando Brown wants attorneys who will fight against the settlement forged by McMaster and his assistant Sonny Jones which gave away more than half of what Brown intended to benefit poor children to those Brown disinherited.

"I want just what my grandfather wanted," Forlando Brown said. "He danced the dances, he sang the songs and he should be the one to decide what happens with his money."

Forlando Brown would like the "In Terrorem" clauses of the will and trust to be enforced.

"If you contest his will, you forfeit your rights," he said. "The same aunts and uncles who are now contesting his will, they sued my grandfather for songs that he wrote. Imagine how he felt about that."

People ask why Brown would leave everything to poor children he would never meet, but Forlando Brown understands.

"My grandfather was a poor child, he had nothing," he said. "He grew up in the home of a prostitute, had to sleep under the house and steal for something to eat."

Forlando Brown said his grandfather had already provided his own children with educational opportunities — his trust provided for his grandchildren's education and, beyond that, he wanted to leave everything to children like himself who would otherwise have no chance to receive an education.

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AUDIO: Goliaths roar in Brown FOIA lawsuitby Sue Summer
For The Observer

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James Brown estate planning in his own words

download James Brown estate planning in his own words

In a July 15 letter, Columbia attorney David Black of the mega-firm Nexsen/Pruet issued a

threat to Newberry resident Adele Pope. If she continued to file requests for documents and information under the Freedom of Information Act (FOIA), he would file an action to have her sanctioned.

On Friday afternoon, Black followed up on that threat through one of his clients, the current trustee of the James Brown trust, Columbia C.P.A. Russell Bauknight.

Mark Gende of the large Columbia law firm Sweeny, Wingate and Barrow filed the motion in the Newberry County Courthouse asking for sanctions against Pope and "other relief the Court deems just and reasonable."

In this action, Gende is representing Bauknight, as well as other private parties he requested be added as defendants in Pope's FOIA lawsuit against South Carolina Attorney General Alan Wilson which seeks the release of the contingency fee contract between former South Carolina Attorney General Henry McMaster and the Wingate firm.

Under the contract, the State of South Carolina, Bauknight and 13 disinherited, claimed relatives of James Brown are suing Pope and Aiken attorney Robert Buchanan, asserting they caused tens of millions of dollars in damages to Brown's assets while serving as trustees from November 2007 to May 2009.

Ironically, the attorney general's office has since agreed to filings by Bauknight to the Internal Revenue Service that the entire Brown music empire was worth a mere \$4.7 million at his death in 2006 even though it was bringing in about \$4-5 million in royalties every year.

The legal Goliaths of Nexsen/Pruet and Sweeny, Wingate and Barrow filed the motion for sanctions in their continuing effort to block the release of the contingency fee contract under which McMaster engaged the Wingate law firm to sue Pope and Buchanan for their "vigorous" defense of James Brown's estate plan. As part of that defense, Pope and Buchanan appealed to the South Carolina Supreme Court a settlement deal cut by McMaster that essentially dismantles Brown's estate plan. The McMaster deal gives away more than half of what Brown intended to be used for the education of poor children to claimed relatives that Brown intentionally disinherited.

After months of having her FOIA requests for the contract dodged by Wilson's office, Pope filed an FOIA lawsuit in August. The suit names only Wilson as a defendant but at a hearing in November, Gende asked that his private clients — including Bauknight and the claimed relatives — be added as defendants.

The FOIA is intended to grant every citizen access to public documents and government business and, as a public official, Wilson would be subject to the FOIA law. None of Wingate's individual clients are public bodies, however, and Pope had not requested documents or information from them.

Tuesday

December 13, 2011

e-Edition

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All of the attorney general's contingency fee contracts contain language that confirms they are public documents. Wilson has released other contracts on his website and, through his assistant Sonny Jones, Wilson has confirmed that the McMaster/Wingate contract is also a public document. The attorney general's office has not responded to the emailed question: is the McMaster/Wingate contract the "only" contract not released by Wilson?

Judge Frank Addy declined to rule on whether the private parties should be added as defendants in Pope's FOIA lawsuit against Wilson but he ordered the FOIA lawsuit to be consolidated with the McMaster/Wingate lawsuit against Buchanan/Pope in Richland County.

In Pope's answer, she claimed Gende's motion to add private plaintiffs to a lawsuit involving public documents was intended to delay the release of the contract and to deny her the exercise of her FOIA rights. The FOIA includes criminal penalties for violation of the law, a fine of no more \$100 for first offense. Gende's motion for sanctions and penalties asserts Pope has accused his private clients of criminal activity by advising the court that they are intentionally interfering with her FOIA rights.

In essence, Gende did exactly what Black threatened in July: he is attempting to have Pope sanctioned and penalized for attempting to exercise her rights under the FOIA.

Several affidavits of private citizens and journalists from Aiken, Newberry and Lexington counties have been filed by Pope with a motion for Judge Addy to reconsider the consolidation of the FOIA and civil cases.

All affidavits emphasized the importance of protecting the public interest and keeping the FOIA strong. Several, including one filed by Debra Spence, widow of former Congressman Floyd Spence, asked the question: what is Wilson hiding? "I am concerned that AG Wilson's refusal for more than four months to release a public document makes it appear that he is covering up an inappropriate or questionable agreement."

Spence also asked the court to consider: Black, speaking for Bauknight, made "vicious statements about Mrs. Pope and Mr. Buchanan that were repeated in hundreds of media outlets." At the Supreme Court hearing on Nov. 1 she said, "I heard another Nexsen Pruet lawyer and Mr. Jones from the AG's office trying to justify to our Supreme Court why Henry McMaster gave away what was correctly described as Mr. Brown's 'noble estate plan.' Since then, AG Wilson's refusal to release the McMaster contract has focused my attention on other troublesome things McMaster did — or is said to have done — in connection with Brown's estate and trust and I believe the public has a right to learn what really happened."

Other affidavits in support of the FOIA, not all of them filed, include those from: journalist Vic MacDonald, whose pursuit of documents while editor of The Newberry Observer led to a Reid Montgomery press award for protecting the FOIA; copyright expert Jeff Smith, who has written an article for publication on the copyright issues related to the James Brown estate; and this reporter, who has requested the McMaster/Wingate contract at least six times by telephone, email and, as of last week, by certified mail. The FOIA requires a response in 15 working days.

In Pope's affidavit, she states there is no basis under the law for any of Gende's private clients to enter a FOIA lawsuit against a public official and that Gende's motion was intended to cause "delay and denial" of her rights. She said the contract should be released because it is a public document that could determine: a) whether any public purpose is being served; b) whether the attorney general has proposed an illegal fee-sharing arrangement with individuals; c) whether the following provision, found in other contingency fee contracts, is appropriate: "(t)he AG shall retain 10 percent of Special Counsel's fees awarded under this suit."

In a telephone interview Saturday afternoon, Dec. 10, Brown's grandson, Forlando Brown — whose father, Terry Brown, is named as a plaintiff in Gende's motion to sanction Pope — said neither he nor his father knew about the motion until he received a draft of this story by email and was asked to comment.

"I did not know my father was a party and my father didn't know it either," Forlando Brown said. "There is something going on in South Carolina that people need to know about."

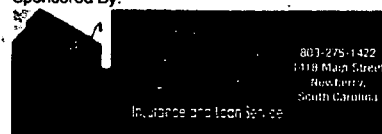
Forlando Brown said the attorneys involved in the Brown estate have been working to increase their fees, not to represent him. They would not even return his calls. Two weeks ago, Forlando Brown fired his entire legal team and will have new attorneys representing him at a Dec. 15 status conference before U.S. District Judge William O. Bertelsman of Kentucky. The conference relates to a 2008 lawsuit filed by Forlando Brown against Pope and Buchanan that asserts they were illegally appointed and would not defend his grandfather's estate plan.

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AG Wilson Attempts to Exclude Affidavit of Local Copyright Expert in James Brown FOIA Lawsuit

by Sue Summer
For The Observer

1 day 12 hrs ago | 155 views | 0 | 3 | |



As the new year appeared, so did more filings in the Newberry Freedom of Information Act (FOIA) lawsuit related to the James Brown estate, filed in August.

On Dec. 22, Attorney General (AG) Alan Wilson moved to strike an affidavit from local copyright expert W. Jeffrey Smith in support of releasing documents that reveal how the James Brown estate plan was dismantled by former Attorney General (AG) Henry McMaster in a settlement deal that gave away over half of Brown's worldwide music empire to non-heirs and disinherited family.

In Smith's affidavit and in an article he is writing, he sites one major failing of the McMaster deal was the fact that the AG's office did not properly establish James Brown's heirs for the purpose of the Federal Copyright Act. The act grants limited future rights in certain of Brown's more than 850 songs to heirs as determined under the act.

Soon after Brown's death on Christmas Day 2006, former Judge Rodney Peeples established a DNA protocol for the estate to determine who Brown's heirs-at-death are—

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and are not. McMaster ignored the DNA protocol and three properly determined heirs in deciding which parties were to be included in his settlement deal.

Among the settling parties in dispute are Brown's companion, Tommie Rae, who was married to another man at the time she exchanged vows with Brown, and her son. Tommie Rae refused to allow her son to take Peeple's DNA test.

On Jan. 3, Newberry resident and former Brown trustee Adele Pope filed documents opposing the AG's motion to strike Smith's affidavit and article, as well as affidavits from others, including Deborah Spence, widow of former Congressman Floyd Spence, and this reporter. Pope also asked the Court to consider the affidavit of former Observer editor, Vic MacDonald, who won a press award for his vigorous defense of the FOIA.

Pope states that the firm of Columbia superlawyer Camden Lewis and his clients—Brown's original trustees—"collected and agreed to make public the diary of Brown's companion and other records confirming she was not Brown's wife and had waived any claim to be his spouse or enjoy his property." The original trustees also obtained Brown's vasectomy records and sworn testimony that demonstrated Tommie Rae's son was not likely Brown's son.

The Lewis firm represented original trustees "Buddy" Dallas and David Cannon as fiduciaries only and did not assist them in filing a \$10 million claim for commissions.

Smith's affidavit included a draft of an article he is writing with Pope, "Private Foundations, Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good" Trust Doesn't...."

The article explains how the James Brown estate plan was dismantled by former AG McMaster, and it raises the question: what is the future of private philanthropy if an AG is allowed to rewrite at will an estate plan simply because it is challenged by disinherited relatives.

As a copyright expert, Smith wrote in his affidavit that the "intentional and/or reckless disregard for a proper determination of heirs-at-death was a primary factor in the destruction of what should have been the approximately \$80 million James Brown 'I Feel Good' Foundation."

He further stated "no expertise is needed to determine that Brown's music empire—which earned at least \$50 million between 1999 and Brown's death in 2006—does have substantial intellectual property assets and was worth substantially more than \$4.7 million when Brown died...."

Current trustee Russell Bauknight, who serves at the pleasure of AG Wilson, filed IRS documents that claim Brown's worldwide music empire, including both the royalties and rights to exploit Brown's image and persona, was worth less than \$4.7 million at his death.

Former AG McMaster's settlement deal gave Brown's son Terry the right to purchase Brown's music assets. Smith wrote, "The public needs to know about AG McMaster's association with Terry Brown—whom he gave a right to buy Brown's assets—and Terry's law firm, Powell Goldstein, now Bryan Cave, and joint venturers Cannon, Dallas, son Forlondo and TJBL, LLC.

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Attorneys for James Brown companion subpoena information about 'explosive' diaries

by By Sue Summer
For The Newberry Observer
05.14.12 - 12:01 pm

On Friday night former James Brown trustee, Adele Pope of Newberry, was served with a subpoena related to the diaries of Brown's former companion, Tommie Rae Hynie.

Pope is being asked to turn over all written communications related to the Hynie diaries, including any communications with this reporter, any "blogger, website or media outlet."

The Observer has requested a copy of the diaries from Attorney General (AG) Alan Wilson under the Freedom of Information Act (FOIA), but the request was refused in March.

In a telephone interview in November, 2011, a longtime friend of music icon James Brown characterized the Hynie diaries as "explosive."

After Brown's death in 2006, Hynie claimed to be Brown's wife and sued his estate for a share of his \$100 million music empire. The two had exchanged vows in 2001, but Hynie was married to another man at the time. When Brown discovered her marriage, he sued Hynie for an annulment. The Aiken County case was settled when Hynie signed an agreement that she would never claim to be Brown's common-law wife.

Brown's will and trust contain clauses that say anyone who challenges his estate plan receives nothing—but those clauses were not enforced by former Attorney General (AG) Henry McMaster. Instead, McMaster worked a settlement deal that gave away over half of Brown's music empire to those he specifically disinherited, including Hynie and about half of his alleged children.

Under Brown's estate plan, the six named children received his household and personal effects, and certain grandchildren under age 35 were given education funds of up to \$285,000 each. The bulk of Brown's music empire was to provide scholarships for needy and deserving students in South Carolina and Georgia through the "I Feel Good" Trust.

The McMaster settlement deal was appealed to the S.C. Supreme Court by Pope and co-trustee, Robert Buchanan of Aiken. During the hearing on Nov. 1, 2011, assistant AG "Sonny" Jones was questioned sharply by the court regarding the AG's investigation into Hynie's claim to be Brown's wife.

A longtime friend of Brown's, during a telephone interview, suggested that the diaries could be key in disallowing Hynie's claim and returning about \$25 million to the Brown trust for needy and deserving children.

James Brown Trustee Claims son, grandson conspired with companion [print](#)

by Sue Summer
For The Observer
05.24.12 - 12:01 pm

In documents filed in Federal Court on Friday, Aiken attorney and former James Brown trustee Robert Buchanan alleged that Brown's companion Tommie Rae Hynie joined Brown's son Terry and grandson Forlando in a conspiracy to destroy James Brown's estate plan.

The allegations were filed in a counterclaim related to a five-year-old lawsuit, originally brought by Brown's grandson Forlando against Buchanan and Newberry attorney Adele Pope.

Buchanan and Pope served as co-trustees of the Brown will and trust from November 2007 to May 2009. Only six weeks after they were court appointed, in Jan. of 2008, Forlando filed suit against them, asserting that Buchanan and Pope would not follow James Brown's noble plan to dedicate his entire music empire to education. In the suit, Forlando asked for the return of original trustees David Cannon, Albert Dallas and Al Bradley.

Bradley died in 2010. Dallas lost an appeal to the S.C. Supreme Court. Cannon entered an Alford plea in Oct. 2011 to indictments that alleged he took \$12 million from James Brown between 1999 and 2007, and that he forged a document in 2008 to cover up his takings.

Forlando's claim that Buchanan and Pope would not defend Brown's estate plan proved inaccurate. In 2009 Buchanan and Pope "vigorously" defended the estate plan with their opposition to and appeal of a settlement deal that Tommie Rae, Terry and others made with former Attorney General (AG) Henry McMaster. The McMaster deal takes away more than half of Brown's \$100 million music empire and gives it to some of Brown's disinherited, claimed relatives. McMaster also gave Brown's son Terry—Forlando's father—a right to buy the music empire at fair market value.

The Buchanan/Pope appeal was heard by the S.C. Supreme Court on Nov. 1, 2011, but no decision has been rendered.

Buchanan's amended counterclaim seeks actual and punitive damages against Forlando. Pope previously filed a counterclaim with similar allegations.

In Nov. 2011, Forlando fired his powerhouse team of attorneys, including former S.C. Chief Justice Ernest Finney and four attorneys from the Atlanta law firm of Bryan Cave.

In a Dec. 2011 interview with this reporter, Forlando characterized the challengers to his grandfather's estate plan as "greedy family members who want

Former James Brown Trustee Fights "Career-Threatening" Allegations of Lying To Court

For The Newberry Observer

By Sue Summer June 17, 2012

In motions filed June 8 and June 14, attorneys for James Brown's companion Tommie Rae Hynie and current Brown trustee Russell Bauknight accused former trustee and Newberry resident Adele Pope of Court filings that are "works of fiction" and "statements ...that are false."

On June 15 Pope responded by asking for an expedited hearing "to determine if Hynie recklessly or intentionally made ... false, career-threatening ... allegations."

The Hynie/Bauknight motions also ask the Court to strike Pope's filings because she is not a party to the Brown estate case, and they ask the Court to continue a four-year-old gag order which prohibits Pope and others from discussing Hynie's diaries.

According to a longtime friend of James Brown, the Hynie diaries offer evidence that Hynie was not Brown's wife and should not have been given one-quarter of his music empire in 2009 settlement deal forged by former Attorney General (AG) Henry McMaster.

Hynie's handwritten diaries were discovered in Brown's home after his death. The original trustees had them transcribed, and copies were distributed or discussed with 50-100 people. In 2008 Judge Doyet Early issued a series of gag orders that: required copies of the diaries to be taken up, and; prohibited discussion of the diaries' contents until a hearing was held. The hearing never occurred.

AG Alan Wilson has recently joined in the request to keep Judge Early's gag orders in place, preventing any public scrutiny of whether Hynie's spousal claim was fully investigated by the AG's office before awarding her as much as \$20 million.

Pope requested that there be no delay in lifting the gag orders and that Hynie be compelled to attend the expedited hearing. Pope argued the public should be free to discuss whether the orders had been used to "silence the truth; perpetrate fraud on any court; or allow Hynie to keep \$20 million or more that James Brown gave for scholarships to needy and deserving students through the 'I Feel Good' Trust."

Pope asked for a hearing to "stop the fraud on this and other Courts," a hearing that would address several critical questions:

1) Is the worldwide music empire of James Brown--including copyrights to over 850 songs and rights to his image--worth \$85 million (as asserted by Pope) or \$4.7 million (as Bauknight and Hynie have claimed)?

2) Is Hynie's claim to be Brown's wife a "slam dunk," as Bauknight's attorney told the Supreme Court, or "without merit," as Pope claims?

3) About half the value of Brown's worldwide music empire is in publicity rights, which are not subject to termination under federal copyright law. Why then did Bauknight's attorney argue to the Supreme Court, "Termination rights is all this case is about"?

4) Are Hynie and the seven claimed children included in the McMaster settlement deal Brown's heirs under federal copyright law, or are other DNA-proven children also Brown's heirs, as Pope asserts?

5) Will there truly be nothing left in the "I Feel Good" Trust by 2023-2025 if the McMaster settlement deal is not approved, as asserted by Hynie/Bauknight?

In the June 15 pleadings, Pope also claims that Hynie attorney Robert Rosen--in arguing his client would be irreparably harmed if the Supreme Court discovered the diaries' contents--is in fact offering support for Pope's position that Hynie was not Brown's spouse.

"The diary should be exposed if it will help either a subsequent Attorney General or the Court discover whether an egregious error has been made and \$20 million should stay with the 'I Feel Good' Trust for scholarships...." Pope said.

The McMaster settlement deal has been appealed to the S.C. Supreme Court. Oral arguments were held Nov. 1, but no decision has been issued.

[print](#)

Las Vegas man claims James Brown was his father

by Sue Summer

The Newberry Observer

06.18.12 - 11:01 am

How many children did music legend James Brown have?

As of Father's Day, perhaps 13.

James Curtis of Las Vegas has stepped forward, claiming to be Brown's son.

His mother, now deceased, met James Brown in Augusta juke joints and became pregnant with him when she was 13 years old, he said.

Brown was also a teenager at the time.

Curtis was born in 1951, which makes him—at age 61—Brown's oldest child, if his claim is proven. He has offered to take a DNA test.

Curtis's mother showed him pictures of the two of them together, and he always knew Brown was his father, he said.

At age 12, Curtis went to the Apollo Theater in New York, where Brown was performing, so that he could meet his father. "His band members and body guards pushed me aside," he said.

Now Curtis would like to receive a share of Brown's estate. "Something, anything—even a piece of jewelry. He didn't provide anything for me through the years, and I want some compensation."

Even if DNA proves that Curtis is Brown's son, he may receive nothing from the Brown estate settlement—but he could benefit as Brown's heir under Federal Copyright laws.

In Brown's will, he left six named children his personal and household effects. They and Brown's companion, Tommie Rae Hynie, challenged Brown's estate plan and were included in a 2009 settlement deal forged by former S.C. Attorney General Henry McMaster. The deal gave away over half of Brown's music empire to the six claimed children and companion.

Brown's estate plan left his entire music empire to the "I Feel Good" Trust, his education charity.

The deal has been appealed to the S.C. Supreme Court. Arguments were heard in November, but no decision has been issued. One reason for the appeal was that the McMaster deal stopped an ongoing procedure to determine who were Brown's heirs under Federal Copyright laws. McMaster's deal also exempted some claimed children from DNA testing.

0606

http://newberryobserver.com/printer_friendly/19023226

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6/19/2012

Brown's son regrets contesting will, says father's wishes should be followed

print

by Sue Summer
For The Observer
07.05.12 - 12:01 am

The son of music legend James Brown now regrets that he did not follow his father's wishes as expressed in his will—and expressed concern that his daughters will never receive the education funds their grandfather left them in a trust he established in 2000.

Daryl Brown, in a taped telephone interview on Wednesday (June 27), said, "When my oldest daughter went to school, her mother had to get loans for her because no money was there (in the trust). We asked for it and asked for it, but still no money came."

Had Brown's will been carried out at his death over five years ago, a \$285,000 education fund would have been created for each of Daryl's daughters.

The rest of Brown's music empire would have funded the "I Feel Good" charity to provide scholarships for needy and deserving students in South Carolina and Georgia.

Brown says his younger daughter and a nephew graduate next year, but they have received no assurances that their tuition will be paid, despite pleas to his attorney, Louis Levenson of Atlanta, as well as to Brown trustee Russell Bauknight of Columbia and the office of the S.C. Attorney General (AG).

"They paid off the bond deal. Why is the money for the grandchildren not being released now?" Daryl asked.

"Every time we want to hear where the money goes, we're told this person has to be paid first, that person has to be paid first. They throw up smokescreens," he said.

Brown's estate plan gave his personal and household effects to six children named in the will, including Daryl. Although Daryl did not see the estate plan before his father's death in 2006, his father had told him about the education charity and the grandchildren's education funds.

In 2007 James Brown's estate plan was contested by the children named in the will and by Brown's companion, Tommie Rae Hynie, who claimed to be his wife even though she was married to another man when she and Brown exchanged vows in 2001.

"I just went along with the family, but I admit my mistakes," Daryl said.

Although Daryl's attorney Levenson filed affidavits in 2007 that accused original

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http://newberryobserver.com/printer_friendly/19183960

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7/5/2012

print

At request of AG, judge keeps gag order on diaries

by Sue Summer
For The Observer
07.16.12 - 12:01 am

Six depositions and three public documents could resolve five years of legal battles by revealing who filed false and misleading statements in the estate hearings of music legend James Brown — but actions in two courts this week could leave documents sealed and questions unanswered for years.

At the request of Attorney General (AG) Alan Wilson and others: on Thursday an Aiken County Judge kept in place a four-year-old gag order related to the diaries of Brown's companion, Tommie Rae Hynie; and on Tuesday a Richland County Judge was asked to order a forced mediation—without completing discovery—in the lawsuit against former Brown trustee, Adele Pope of Newberry.

These rulings could leave unanswered several questions about a 2009 settlement deal forged by former AG Henry McMaster:

- Did McMaster fail to investigate fully the spousal claim of Brown's companion, Tommie Rae Hynie, before giving her one-quarter of Brown's music empire—which may be worth as much as \$20 million?
- Did the current trustee, Russell Bauknight of Columbia, intentionally undervalue Brown's music empire—including rights to Brown's image—at \$4.7 million after one of the Brown children, Terry, was the given the right of purchase? All previous trustees valued the music empire at closer to \$80 million.
- What are the terms of the McMaster-created Legacy Trust, and if money from the trust goes to private parties (i.e., Brown's children and companion), does the trust lose its tax-exempt status under the IRS code?
- What are the terms of the contingency-fee contract under which the Wingate law firm of Columbia filed suit against Pope—and is there a valid contract at all? The AG refuses to release a complete copy with signatures, even though the AG is a public official and is named as a plaintiff alongside Bauknight, some of Brown's claimed children, and Hynie. Also of interest: by what authorization does Bauknight speak for the AG in the lawsuit?

Under Brown's estate plan, his worldwide music empire was left to the "I Feel Good" Trust, an education charity for needy students in South Carolina and Georgia. Brown also provided education trusts of up to \$285,000 for some of his grandchildren.

When Hynie and some claimed children contested Brown's estate plan, McMaster stepped in, claiming it was the AG's duty to protect the charity.

Under Brown's estate plan, anyone who contested the will or trust would receive

AG Wilson and James Brown companion stop deposition, but not bombshell [print](#)

by Sue Summer
For The Observer
07.26.12 - 12:01 am

On July 19, S.C. Attorney General (AG) Alan Wilson and Tommie Rae Hynie, former companion of entertainment legend James Brown, obtained an emergency court order—issued orally—to stop a deposition from former Brown trustee Albert “Buddy” Dallas.

The order did not, however, stop James Brown’s friend and attorney of 20+ years from delivering a bombshell in sworn testimony: Hynie and James Brown were not married.

In a sworn statement taken on Friday, Dallas recounted an early-morning phone call in 2006 with Brown and Hynie, confirming that the two were not married and that Hynie was merely a guest in Brown’s home.

According to Dallas, the conversation took place in the summer of 2006, shortly before Brown and Hynie separated for the last time. Hynie returned from the West Coast only once, in October 2006 when the James Brown auditorium was named for Brown. Dallas said Hynie was in the audience with a video-camera, but not with Brown.

After Brown’s death on Christmas Day of 2006, Hynie claimed to be his wife and sued for a spousal share of his worldwide music empire. Some of Brown’s claimed children also contested his will.

Under Brown’s will, certain children received his personal and household goods, and some grandchildren were given education trusts of up to \$285,000. Brown’s music empire was left to the “I Feel Good” education charity for needy and underprivileged children to be educated at institutions in Georgia and South Carolina.

However, a 2009 proposed settlement deal forged by former AG Henry McMaster—who was charged with protecting the needy children’s trust—took over half of Brown’s music empire away from the charity and awarded it to Hynie and the Brown children who had contested his will.

The McMaster deal was appealed by former Brown trustees, Newberry resident Adele Pope and Aiken attorney Robert Buchanan, who were directed by Brown’s estate documents to “vigorously” defend his estate plan.

In 2010, after the appeal was filed, McMaster and others sued Pope and Buchanan for tens of millions of dollars, alleging they had mishandled Brown’s trust when they served as trustees from late 2007 to early 2009.

0609

Ex: 81

hurt when he learned Hynie was already married to another man at the time they held a marriage ceremony in 2001.

Dallas testified that Hynie begged James Brown to marry her after she obtained a 2004 annulment from her first husband, but he refused. Although Hynie and Brown continued to be together until their final separation in 2006, Dallas said Brown was never monogamous. He had women guests in his room, and Hynie maintained a room as Brown's guest in another part of the house.

The Hynie marriage myth was not the only grenade Dallas tossed into AG Wilson's lawsuit against Pope. Dallas confirmed there had been at least one \$100 million offer to purchase Brown's assets in 2007—the same assets current trustee Bauknight asserts were worth only \$4.7 million when Brown died.

Pope and Robert Buchanan—now dismissed as a party to the Wingate/McMaster lawsuit—have vigorously asserted that Brown's worldwide music empire was worth about \$85 million when Brown died. They also have filed several documents stating that the McMaster settlement deal destroyed Brown's "I Feel Good" foundation and that Bauknight's less-than \$4.7 million valuation is outrageous.

Dallas agreed.

Dallas resigned as Brown's trustee in November 2007 amid a swirl of allegations that he was involved in the takings of David Cannon, his co-trustee—and that the two were seeking a "kickback" on the sale of Brown's music empire.

In Dallas' sworn statement of July 20, he explained the "kickback" allegation. Dallas said his understanding of the Internal Revenue Code was that the "I Feel Good" foundation could not operate a business, and the assets had to be sold within 60 months after Brown's death. The trustees were simply following that mandate.

Dallas said the term kickback—which he admitted was unfortunate—actually described a "royalty legacy" to be paid by the purchasers to the "I Feel Good" trust, not to Dallas and Cannon.

Dallas described the royalty legacy as a five percent (5%) payment from Brown's worldwide operations that the "I Feel Good" Trust would continue to receive in perpetuity, in addition to the \$100 million purchase price.

"I was very pleased to have negotiated that, and I explained that to Judge Early and all others present Nov. 20, 2007. I have always believed that the royalty payments could amount to more than the corpus of the trust," Dallas said.

"If a 'kickback' ever had been offered, I would have reported it to the proper authorities," Dallas said. He added it is regrettable that in the context of litigation, every word is seized as some kind of leverage—and sadly, the truth is lost.

8/1/12



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James Brown son pleads 'protect the needy children'

by Sue Summer

For The Observer

5 days ago | | | |

In another bombshell twist to the James Brown estate story, Brown's son Daryl has sent an impassioned plea to Attorney General (AG) Alan Wilson, asking Wilson to protect the intended beneficiaries of his father's "I Feel Good" education charity.

"The Attorney General was supposed to protect the needy children, not give away what my father intended for them," Daryl wrote, according to a copy of his letter to AG Wilson received at The Newberry Observer on July 25.

Under James Brown's will, six named children were to be given his household and personal effects, and education trusts of up to \$285,000 were set up for certain grandchildren.

Brown's music empire was left to the "I Feel Good" education charity for needy and underprivileged students at institutions in South Carolina and Georgia.

The will was contested by the children named in the will and by Brown's companion, Tommie Rae Hynie.

The estate plan said anyone who contested the will would receive nothing, but in 2009 former AG Henry McMaster worked a settlement deal that took away over half what Brown intended for charity and gave it to the children and companion who had contested the will.

Daryl was among the children who sued, but he regrets that decision.

He wrote in the letter, "At first I just went along with my family, and this was a mistake."

Daryl wrote that his father's will in Aiken County has never been overturned, and he asks of Wilson, "What gives your office the authority to change my father's will? Is it because my father had only an 8th grade education and you think that you have the right to think for him? Is it because my father is a black American, and black Americans do not have the right to have their wills enforced...Mr. Wilson, why has your office not performed their responsibilities and protect the needy children that my father wanted to educate?"

Not one child has received one dollar in the over five years since his father's death, while lawyers have already been paid millions—with more to come. Lawyers for the Brown children and Hynie are trying to get 50 percent of any monies they receive, Daryl said.

Daryl said his father is "rolling over in his crypt" and pleaded with AG Wilson to protect the trust. "It's not too late."

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Ex: 82



Articles

The Supreme Court judges can correct what will amount to a lynching of all the dreams of a black man to make a difference in the lives of many children by giving them a way out, not a hand out," Daryl wrote.

Daryl also confirmed that Hynie was not Brown's wife and questioned whether her child was his father's. He said his father was not under undue influence when he made his estate plan, that no one told James Brown what to do.

"My youngest daughter and nephew will graduate next year. They have received no assurance that their tuition will be paid. Despite pleas to Brown trustee Bauknight of Columbia, and the South Carolina Attorney General," Daryl wrote.

In conclusion, Daryl pleaded with AG Wilson to give his father's estate plan the same respect that he would have given Brown's close friend, Sen. Strom Thurmond.

Daryl wrote, "I am concerned about my safety, but I feel I must speak out for what is right, no matter what."

Although not signed, the letter's authenticity was confirmed in a telephone call with Daryl Brown and is posted on the Facebook page, James Brown "I Feel Good" Trust (FOIA Concerns).

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0612

Court hears arguments, finger-pointing, at hearing on James Brown restitution ^{print}

by Sue Summer
For The Observer
08.04.12 - 12:01 am

At an Aiken hearing in March, Circuit Court Judge George James was asked to revisit the question of whether former James Brown trustee, David Cannon, should pay restitution on the music legend's missing millions.

The hearing also raised questions about who was responsible for not seeking restitution in the original Cannon hearing.

In October of 2011, Cannon entered an Alford plea and was sentenced to 20 months of house arrest for taking more than \$7 million from Brown.

As part of his plea bargain, Cannon was not required to pay restitution, even though he is part-owner of one of Brown's publishing companies and has bought a million-dollar mansion in Honduras.

Documents submitted to the court by assistant Attorney General (AG) Robert McNair show that Brown took in almost \$80 million between 1999 and his death in 2006, and Cannon received almost \$12 million of that amount. Cannon asserted that was what Brown intended to pay him.

In the transcript of the March hearing, Judge James recounts that he "pointedly" questioned McNair about restitution after Cannon's plea in October. McNair responded that all victims had been notified of the plea hearing, and none were present.

"I don't know whether you can detect my amazement..., but I asked Mr. McNair if the state took any position on restitution. He said no," Judge James said in the transcript.

Although McNair represented to the Court that no one had filed victim statements, pleadings show that former trustee Adele Pope of Newberry—who discovered Cannon's takings—had emailed a victim's statement to the AG's office. Her statement was not presented.

After the October hearing, some of Brown's children expressed their dissatisfaction with the failure of the Court to award restitution, and the hearing in March asked the Court to reopen the question.

The hearing turned into a finger-pointing session with the AG's office, current Brown trustee Russell Bauknight, and the attorney for some of Brown's family, Louis Levenson.

Bauknight is the sole trustee of Brown's assets under a 2009 settlement deal

0613

http://newberryobserver.com/printer_friendly/19648830

Ex: 83
8/6/2012

[print](#)

Former Brown trustee appeals gag orders

by Sue Summer
For The Observer
08.21.12 - 12:01 am

Former James Brown trustee Adele Pope of Newberry has asked the S.C. Court of Appeals to take off the muzzle so that she can speak in her defense against a multi-million dollar lawsuit.

On Aug. 13 Pope appealed a July decision by Aiken Judge Doyet Early III to keep in place the gag orders he issued in 2008, orders that prevent anyone from speaking about the diary of Brown companion, Tommie Rae Hynie.

In May Pope asked Early to lift the four-year-old orders, which Hynie herself violated in a Sept. 2008 interview with Augusta reporter Gene Petriello.

Hynie and others have sued Pope for tens of millions of dollars in Richland County, and Pope's appeal brief argues it is critical to her defense that she be allowed to discuss the diary contents related to Hynie's claim of being Brown's wife. Pope also claimed the gag orders allow Attorney General (AG) Alan Wilson to avoid compliance with the Freedom of Information Act (FOIA).

The plaintiffs in the lawsuit against Pope; Wilson, Hynie, current Brown trustee Russell Bauknight, and several claimed Brown children argued in May that the judge should keep the gag orders in place.

In July Early issued a ruling that said he did not have jurisdiction to overturn his own gag orders because of a pending appeal, but there is no appeal in the case for which the gag orders were issued.

According to a longtime Brown friend, the diary contains "explosive" evidence that Hynie was not Brown's spouse and should not have been given a share of Brown's music empire in a 2009 settlement deal forged by former Attorney General (AG) Henry McMaster.

Brown's estate plan left his worldwide music empire to the "I Feel Good" Trust, an education charity for needy children. He left personal effects to six children and set up education trusts for some grandchildren, but he left nothing to Hynie.

Under the settlement deal, McMaster took away over half of what Brown intended for needy children and gave it to Hynie and the claimed Brown children who had contested Brown's estate plan. Brown's will and trust say: 1) anyone who contests the estate plan receives nothing, and 2) his trustees must "vigorously" defend his estate plan.

In accordance with Brown's wishes, Pope and her co-trustee, Bob Buchanan of Aiken, filed an appeal of the McMaster settlement deal. Arguments were heard in the S.C. Supreme Court on Nov. 1, but no opinion has been issued.

0614

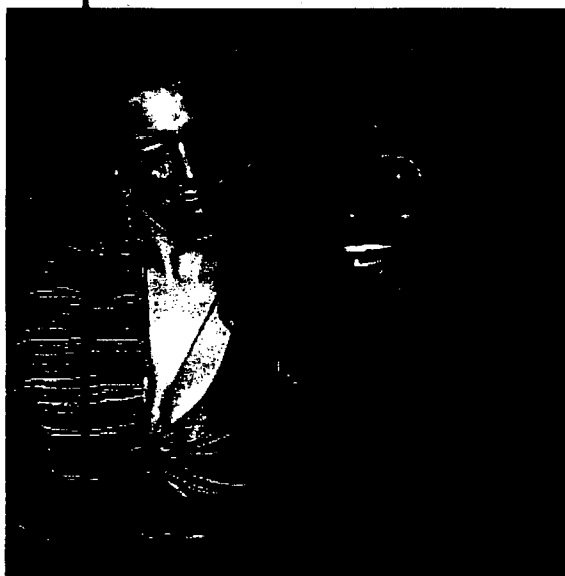
Ex: 84

Rolling Stone

Years After Death, Battle for James Brown's Estate Rages On

He left needy kids \$100 million – so why haven't they seen a penny?

by: Matt Birkbeck



James Brown with his fourth wife, Tomi Rae Hynie, in 2006
Gianfranco Calcagno

During his brilliant, troubled life, James Brown always called his own shots. So it wasn't a surprise that Brown set the terms of his legacy after his death. And the centerpiece of that vision was to give virtually his entire fortune, valued then at roughly \$100 million, to a trust to help educate underprivileged children in South Carolina and Georgia.

But nearly five years after his Christmas Day death in 2006, not one needy child has received a penny. That's because Brown's seven children and fourth wife, Tomi Rae Hynie, contested the will in a South Carolina court less than a month after he died. The litigation spiraled into a bitter battle with some two dozen attorneys representing various factions – and became so unwieldy that then-state Attorney General Henry McMaster made a deal in 2009 that affirmed Brown's will but split the estate between the

trust and his family, with the legal expenses borne by the trust.

The settlement was denounced by Brown's advocates, including his longtime attorney Buddy Dallas. "How do you argue against an irrevocable will that provides for needy children? Is that even an argument?" he says. (The attorney for Brown's children responds that the basis of his clients' claim was that the singer had received bad advice and didn't know what he was signing.)

Brown's own legendary childhood – abandoned to an aunt who ran a brothel in Augusta, Georgia, working the streets for pennies and dropping out of school in the seventh grade – contributed to a dysfunctional life replete with drug abuse, failed relationships and multiple arrests. But Brown also credited it with instilling a work ethic that he saw as the foundation for his self-made success.

The singer got the idea for the trust while visiting hospitals and playing benefits to raise money for sick children in the late 1980s. "He spent a lot of time with one girl with spina bifida," says music producer Jacque Hollander, who accompanied Brown to the hospitals. "After, he said, 'I'm going to give them everything I have and touch their lives.'"

Brown was never close to his children – by the end, they had to make an appointment to see him – and was adamant that they wouldn't benefit from his fortune when he died. That was made clear to Dallas at a 1988 business meeting to discuss the trust when he asked Brown, "What about your own children?" Both Dallas and Hollander say Brown pointed his finger in Dallas' face and screamed, "Don't you ever tell me what to do with my money! They will not ride on my back when I'm gone, Mr. Dallas! Do you hear me?"

Despite the 2009 settlement, no money has been paid to Brown's family or the children's trust, and won't be until several outstanding appeals are concluded. As those cases await resolution, Brown's estate continues to shed millions in legal fees. The current court-appointed trustee, accountant Russell Bauknight, declined to say how much money is left, citing his "fiduciary duty" to protect the estate's privacy.

In the meantime, the respect that Brown demanded in life has all but vanished in death. The battle over his fortune has spilled into another ugly dispute, this one over where the Godfather will spend his eternity. Brown wanted to be buried at his South Carolina home, which would become a Graceland-like museum; his children, who control his remains, have them in a temporary crypt on daughter Deanna's property – waiting, like his children's trust, for a final resolution.

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- [Being James Brown: Rolling Stone's 2006 Cover Story](#)
- [The Essential James Brown Playlist](#)
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This story is from the August 4, 2011 issue of Rolling Stone.

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AG Wilson wins fight to take Newberry FOIA lawsuit to Richland (SC)

On Wednesday afternoon Judge Frank Addy Jr. ruled that a Newberry Freedom of Information Act (FOIA) lawsuit should be moved to Richland County.

Former James Brown Trustee and Newberry resident Adele Pope brought the lawsuit in August after her June FOIA request for documents was denied by Attorney General (AG) Alan Wilson.

Pope's office and residence are located in Newberry—and it was from Newberry that she made her request to obtain a copy of the Legacy Trust, as well as documents related to the at-death \$4.7 million valuation of Brown's music empire submitted to the IRS by current Brown trustee Russell Bauknight, a Columbia CPA.

The low valuation is being questioned by Pope, who reported in other legal filings that the music empire was bringing in about \$4-5 million every year in royalties and the right to exploit Brown's image.

The Legacy Trust was created by former AG Henry McMaster two years after Brown's death, when he took control of the private assets of the James Brown music empire in a settlement deal with some of Brown's children and his companion Tommie Rae. Brown's will and trust included clauses that said anyone who challenged the estate plan would receive nothing, but McMaster gave away over half of the assets Brown intended for education to those who made just such a challenge.

McMaster and his staff attorneys wrote the Trust document while on the State payroll, and Bauknight, who was appointed by McMaster, now controls the trust at the pleasure of AG Wilson.

On Wednesday morning, Bauknight filed an affidavit that asserted the Legacy Trust is not a public body and a copy of the trust should not be released under the FOIA.

According to a May 16, 2006, legal opinion from then-AG McMaster: "Our Supreme Court, in the Weston case, as well as decisions in other jurisdictions, and our own opinions, have recognized that 'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke the FOIA."

Emily Smith of the AG's office argued that: 1) Newberry was not the proper venue for the hearing; 2) there was another legal action between the parties and Pope should try to obtain copies of the documents in discovery, not under the FOIA.

"The real controversy is in Richland County," Smith said.

In Richland County, the State, the Legacy Trust, Brown's companion Tommie Rae and some of his children are suing former Brown trustees, Pope and Aiken attorney Robert Buchanan, claiming they caused tens of millions of dollars in damages to the trust while serving as trustees for 18 months. The contingency fee contract under which McMaster hired Columbia attorney Kenneth Wingate to sue Buchanan/Pope was the subject of another FOIA lawsuit filed by Pope, a lawsuit that has also been moved to Richland County even though the request was filed in Newberry.

Adam Silvernail, Pope's attorney, argued on Wednesday that being a litigant in another lawsuit gives Pope no more—but no fewer—rights under the FOIA than any other member of the public. "I don't see any compelling reason to send this case to Richland County, where we have different parties and different attorneys. This case is about releasing public documents. The James Brown trust is a public body. This is a question the Richland County judge has no need to take up apart from this case."

Smith argued, "Judge (Casey) Manning is the judge for this complex case."

In ruling on the change of venue, Addy said, "I would be very surprised if another judge said you were not entitled to these documents."

He also said Pope should be given the documents sooner, not later.

The decision was not his alone, he said. He said he had consulted with other judges, who had come to a "consensus" about the ruling.

0617

Ex: 88

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November 1, 2011

James Brown's Estate Thriving, but Contests Continue



According to the Associated Press, David Black (a professional money manager) has used a canny licensing deal to wipe out more than \$20 million in debt owed by James Brown's charitable trust. The trust is now able to pay for thousands of college scholarships for needy students.

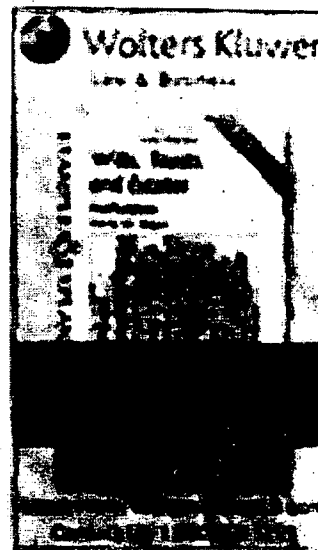
However, Adele Pope and Robert Buchanan, the two ousted trustees, have filed a brief with the Southern Carolina Supreme Court arguing that Black should not be involved with the estate because both Pope and Buchanan opposed hiring Black and because neither of them participated in the negotiations that put the estate in Black's hands.

The attorney general at the time oversaw the deal to hire Black and claims that Pope and Buchanan paid themselves hundreds of thousands of dollars from the estate, failed to appraise Brown's estate, and claimed \$5 million in fees.

Under the current deal, the trust receives half of Brown's assets, Brown's widow and young son receive a quarter, and Brown's grown children receive the rest.

See Saddled by Debt, *James Brown Estate Now Thriving, Still Contested*, The LA Times, Oct. 31, 2011.

Special thanks to Joel Dobris (Professor of Law, UC Davis School of Law) for bringing



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August 20, 2012

The Continued Dispute Over James Brown's Estate



As I have previously discussed, the state has conducted itself in a peculiar manner in resolving the dispute over the Estate of James Brown by refusing to cooperate

with a formal request based upon the Freedom of Information Act. Reports have also reported that it appears that the State of the South Carolina may have misappropriated funds from Brown's estate by declaring certain disinherited or excluded parties as heirs of the estate, contrary to the wishes of the late "Godfather of Soul." The main person who was named was Tommie Rae Hynie, who claimed to be Brown's common law after his death in 2006.

The troubling matter about this dispute is that many news sources do not seem to be concerned with the lack of government accountability in this matter, even though there could be a clear violation of estate and government abuse. What's worse is that these news sources might be intentionally distancing themselves from the story. There are a few legal blogs and reporters who are still reporting on this story, including The Newberry Observer's Sue Summer.

See *As James Brown Estate Saga Gains Spotlight, South Carolina Fights to Keep Public in Dark*, EstateofDenial, Aug. 18, 2012.

0619

Ex:98

wltx.com

Ex-Trustees Want Court to Strike James Brown Deal

1:25 PM, Nov 1, 2011 | comments

Written by
James Gilbert

FILED UNDER

WaterCooler News

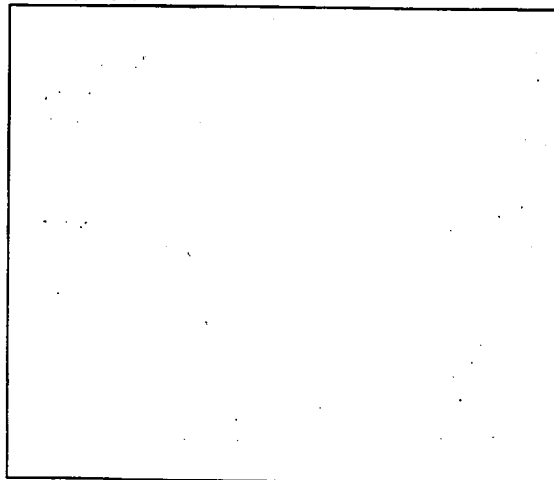
Columbia, SC (AP) -- Trustees who say they were unjustly removed from James Brown's charitable trust want South Carolina's Supreme Court to strike a settlement agreement they say shouldn't have been authorized.

Justices on Tuesday questioned trustees who have sued over the settlement that gave about half of Brown's assets to an education fund for needy children, a quarter to his widow and young son and the rest to his adult children.

The trustees say then-South Carolina Attorney General Henry McMaster didn't have the authority to push through the deal that ended years of fighting among Brown's heirs that started after the Godfather of Soul died of heart failure on Christmas Day 2006.

Brown's adult children say the plan was fair and hope the dispute is resolved so poor children can benefit from Brown's benevolence.

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Updated: 8:45 PM Mar 14, 2012

The Inside Story: Deanna Brown talks court battle, James Brown movie deals

Deanna Brown is fighting a heated court battle against her father's former trustee with one focus: payback.

Posted: 7:34 PM Mar 14, 2012

Reporter: Chris Thomas

Email Address: chris.thomas@wrwd.com

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News 12 at 6 o'clock / Wednesday, March 14, 2012

AUGUSTA, Ga. — What do you think of Eddie Murphy as the Godfather of Soul? Deanna Brown is giving us the Inside Story about a possible movie in the works about her father.

She opened up about her family's court battle in News 12's weekly radio segment on 96.3 Kiss FM with Fattz and Cher. Before giving us the scoop on the latest with the James Brown estate, she weighed in on the newly-heated race for sheriff.

"It's a man's world, but it wouldn't be nothing without a woman or a girl," said Deanna with a smile. "Maybe I need to throw my hand in there. That's what's missing ... a woman to pretty this thing up."

0621

Ex: 100

Not this woman, though. Deanna is fighting a heated court battle with one focus: payback.

"Yes. That's a good way of putting it," Deanna said. "Words of the Godfather himself."

The family has asked a judge to reconsider the house arrest sentence for Brown's former trustee. David Cannon is accused of mishandling Browns funds.

"We're talking about \$7 to \$10 million that you say was squandered?" we asked Deanna.

"Yes," she replied. "We know that we probably won't get all of that back. It's about what was done wrong to be fixed and made right."

The family is also focused on preserving their father's legacy.

"We have two or three deals on the table for a movie," Deanna said. We have not made a decision."

"We hear Eddie Murphy says he would love to play James Brown," we noted.

"And so would I," she said with a smile.

Brown said there's one problem with stars like Murphy.

"I know dad had very serious concerns about a comedian playing him," Deanna said. "Dad said, 'Nothing in my life was funny.'"

Deanna went before a judge this week to ask for that reconsideration. She expects an answer in the coming days. Deanna says her father wanted LeVar Burton to play him on the big screen.

Have information or an opinion about this story? [Click here to contact the newsroom.](#)

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Find this article at:

http://www.wrdw.com/home/headlines/The_Inside_Story_Deanna_Brown_talks_court_battle_James_Brown_movie_deals_142706425.html

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0622

<http://gray.printthis.clickability.com/pt/cpt?expire=&title=The+Inside+Story%3A+Deanna...> 3/15/2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

SUPPLEMENT TO PLAINTIFFS' MOTION TO SET ASIDE THE ENTRY OF DEFAULT

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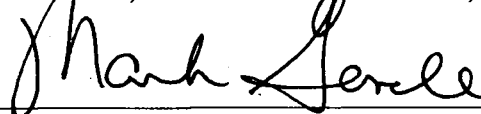
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Plaintiffs hereby submit the following supplement to Plaintiffs' Motion to Set Aside the Entry of Default stemming from Defendant Pope's counterclaims against Plaintiffs. As additional evidence of their meritorious defenses against the counterclaims, Plaintiffs submit the sworn testimony of Albert "Buddy" Dallas, Esq. (attached hereto as **Exhibit A**), wherein he finds fault with the management of the Estate of James Brown, resulting in millions of dollars of damages. Plaintiffs direct the Court's attention to pp. 35:3-21, 35:19-21, and 36:5-6. James Brown died on December 25, 2006, and Ms. Pope was appointed special administrator on March 7, 2007, less than three months after Brown's death. Therefore, Ms. Pope was actively involved in the Estate during the 12-month period—and beyond—to which Mr. Dallas attributes the millions in losses.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Aaron J. Hayes

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

December 17, 2012

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND CASE NO. 2010-CP-40-4900.

RUSSELL L. BAUKNIGHT, as Trustee of the)
James Brown 2000 Irrevocable Trust and)
the James Brown Legacy Trust, as Personal)
Representative of the Estate of James)
Brown, and on behalf of Henry Dargan)
McMaster, in his capacity as Attorney)
General of the State of South Carolina;)
Tommie Rae Brown, individually and on)
behalf of her minor child, James Brown)
II; Daryl J. Brown, individually and on)
behalf of his minor child Janise Vanisha)
Brown; Lindsey Delores Brown; Deanna J.)
Brown Thomas; Jason Brown-Lewis; Yamma N.)
Brown, individually and on behalf of her)
minor children, Sydney Lumar, Carrington)
Lumar, and Tonya Brown; Venisha Brown;)
Larry Brown; and Terry Brown)

and)

HENRY DARGAN MCMASTER, in his capacity as)
Attorney General of the State of South)
Carolina; TOMMIE RAE BROWN, individually)
and on behalf of her minor child, JAMES)
BROWN II; DARYL J. BROWN, individually)
and on behalf of his minor child JANISE)
VANISHA BROWN; LINDSEY DELORES BROWN;)
DEANNA J. BROWN THOMAS; JASON)
BROWN-LEWIS; YAMMA N. BROWN, individually)
and on behalf of her minor children,)
SYDNEY LUMAR, CARRINGTON LUMAR, and TONYA)
BROWN; VENISHA BROWN; LARRY BROWN; and)
TERRY BROWN,)

Plaintiffs,)

vs.)

Adele J. Pope and Robert L. Buchanan,)
Jr.,)

Defendants.)

SWORN STATEMENT OF

ALBERT H. DALLAS, ESQ.

EXHIBIT

A

1 SWORN STATEMENT OF

2 ALBERT H. DALLAS, ESQ.

3
4
5 July 20, 2012

6 9:55 a.m.

7
8 304 Black Street
9 Thomson, Georgia10
11 Jan Alderfer Russell, CCR-B-2438, RPR
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1 business, and his response was, "Well, that's tough."

2 As you know, Ms. Pope can be a hard taskmaster.

3 Q. Well, you mentioned Mr. Buchanan's
4 service. As to Ms. Pope's service as personal
5 representative and trustee, are you aware of anything
6 or do you have any criticism of her performance?

7 A. My observation is that we missed a lot of
8 opportunity during the first 12 months after
9 Mr. Brown's death. I think that is attributable to a
10 simple lack of understanding that the James Brown
11 operation required daily management. And to the
12 extent that Mrs. Pope was too cautious, the attorneys
13 for the children, Mr. Levenson, and for Tomi Rae,
14 Mr. Medlin and Mr. Rosen, was equally intrusive and
15 obtrusive in what was in the best interest of the
16 estate and trust. I said to Mr. Rosen and to
17 Mr. Levenson in Aiken, South Carolina at one of the
18 hearings, please don't cause us to lose the aura
19 associated with the passing of Mr. Brown, less we
20 will miss many millions of dollars that literally
21 will be like picking it up off of the street.

22 The euphoria of Mr. Brown's passing -- for
23 example, the most recent example would be Whitney
24 Houston. Her estate will generate more millions this
25 year than probably she accumulated in the prior ten

1 years. Because everybody is nostalgic and
2 sentimental and remember when a particular song was a
3 part of their life and almost out of homage or
4 respect, people buy recordings.

5 For the most part, we missed that with
6 Mr. Brown. We just missed it. And I couldn't get
7 anybody to understand it. I even said, everything
8 will be accounted for, just back off for awhile, just
9 back off. And particularly when we started dealing
10 with a potential sale for the 100 million. I don't
11 know that it would have been 100 million. There is
12 always adjustments. There's always allowances that
13 have to be made in a final negotiation, but it would
14 have been somewhere approaching that number. Of
15 course there was about 15 million owed to TIAA-CREF
16 on the bond issue. Of course after that you're still
17 talking 80, \$85 million. Maybe we were only talking
18 \$75 million. Elvis, the year prior, sold for 115
19 million. And Mr. Brown is a world artist. As much
20 as we love Elvis, he was a national artist.
21 Mr. Brown was an international artist.

22 But it requires -- it's a business that
23 requires day-to-day management and day-to-day
24 promotion. Mr. Brown never ever failed to tell me,
25 when I would caution him about getting his name in

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

[Formerly Newberry County Case No.
2011-Cp-36-379]

PLAINTIFF'S RETURN AND OPPOSITION
TO MOTION FOR JUDGMENT ON
THE PLEADINGS

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FILED
RICHLAND COUNTY
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: DEFENDANT AND PURPORTED INTERVENORS, NAMELY RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN; TOMMIE RAE BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JAMES B.; DARYL J. BROWN, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILD, JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, SYDNEY L. AND CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; AND TERRY BROWN AND/OR THEIR COUNSEL.

Plaintiff opposes the Motion for Judgment on the Pleadings (the "Motion") for the reasons set out below:

The Motion is Baseless and Filed in Bad Faith

1. This motion is a continuation of the South Carolina Attorney General's attempts to delay this case and deny Plaintiff her rights under the Freedom of Information Act, which attempts have successfully prevented this matter from being heard for more than 15 months since it was filed in August 2011.

2. The Attorney General ("AG") asks that the Court summarily dispose of Plaintiff's

suit, brought pursuant to the South Carolina Freedom of Information Act ("FOIA"). Despite seeking this drastic relief, the AG tells the Court that the documents sought herein are "exempt from disclosure under FOIA because they are subject to the rules regarding discovery in the Rules of Civil procedure." [Motion, ¶1]

3. The AG cites no law and no rule in support of this assertion, and the undersigned has been unable to find a single case which supports it. Instead, there is a wealth of Federal law which holds that FOIA and discovery are separate procedures which may proceed separately or in tandem.

4. Because it has been cited and argued *in this case*, the AG is well aware of *North v. Walsh*, 881 F.2d 1088 (D.C. Cir. 1989), which included an exhaustive and thoroughly supported evaluation of an argument similar to that which the AG attempts to advance here:

An attempt to interject FOIA "does not extend the scope of discovery under Rule 16" when done as part of criminal discovery. *DeLorean*, 717 F.2d at 480; accord *Murdock*, 548 F.2d at 602. Discovery limitations, civil or criminal, however, do not apply when FOIA requests are presented in a discrete civil action. **The plaintiff's rights in a FOIA action do not depend on his or her identity;** " '[t]he Act's sole concern is with what must be made public or not made public.' " *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, --- U.S. ---, 109 S.Ct. 1468, 1481, 103 L.Ed.2d 774 (1989) (citation omitted); see *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 n. 23, 98 S.Ct. 2311, 2327 n. 23, 57 L.Ed.2d 159 (1978) (stating that person's **rights under FOIA are neither diminished nor enhanced by his "litigation-generated need"** for agency documents); accord *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10, 95 S.Ct. 1504, 1513 n. 10, 44 L.Ed.2d 29 (1975); see also *United States v. Buckley*, 586 F.2d 498, 506 (5th Cir.1978) (stating that **"FOIA provides an**

independent basis for obtaining information potentially useful in a criminal trial"), cert. denied, 440 U.S. 982, 99 S.Ct. 1792, 60 L.Ed.2d 242 (1979); *Comstock Int'l (U.S.A.), Inc. v. Export-Import Bank of the United States*, 464 F.Supp. 804, 805 n. 2 (D.D.C.1979) (noting that FOIA plaintiff presumably sought documents for use in an arbitration proceeding, but holding that **"a party's rights under the FOIA are neither enhanced nor diminished by its status as a private litigant"**); see generally Toran, *Information Disclosure in Civil Actions: The Freedom of Information Act and the Federal Discovery Rules*, 49 GEO.WASH.L.REV. 843, 861 (1981) ("**[A] party's desire to use information obtained under the FOIA in subsequent litigation is not a basis for denying an otherwise legitimate FOIA request.** Indeed, there are situations in which FOIA will permit access to information that would not be available through discovery.") (footnote omitted); Tomlinson, *Use of the Freedom of Information Act for Discovery Purposes*, 43 MD.L.REV. 119, 121 (1984) (same).

North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989) [emphasis supplied]

5. In addition, the Court in *Hoover v. United States Dept. Of the Interior*, 611 F.2d 1132 (5th Cir. 1980), specifically held that a FOIA plaintiff's status as a defendant in civil litigation filed by the government *does not affect his rights under FOIA*:

The appellant landowner's right under the FOIA, where he is in effect asserting the rights of the public to obtain such appraisals, is inherently different than his particularized status as the landowner in the condemnation proceeding. He is entitled to vindicate his public rights in the instant FOIA suit in accordance with the requirements of the FOIA. *Id.*

The AG Seeks to Violate Plaintiff's Right to Equal Protection

6. The AG's argument seeks to deprive Plaintiff of her Constitutional right to equal protection of the laws.

7. The documents sought herein are public and are subject to disclosure to any citizen under FOIA. The State, however, asks the Court to find that FOIA bars *Plaintiff* from receiving the documents due to her status as a defendant in a tort case.

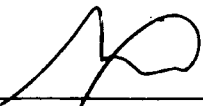
8. The AG asks the Court to find that a class of citizens (those who have been sued by the State) have no rights under FOIA. To do so would violate Plaintiff's right to equal protection under the Fourteenth Amendment to the United States Constitution.

9. Plaintiff is aware that another resident of Newberry County has recently filed suit against the AG under FOIA.¹ That individual seeks numerous documents, including the fee contract which is the subject of this action. Based on the AG's argument in the Motion, the Newberry plaintiff would be entitled to the same documents sought by Plaintiff herein. To arbitrarily treat Plaintiff differently from other individuals making similar FOIA requests is to violate her right to equal protection.

This return is based on the Complaint, prior affidavits and other filings herein; the *South Carolina Rules of Civil Procedure*; the South Carolina Freedom of Information Act; other applicable statutory and case law; and such additional documents as Plaintiff shall file herein prior to the hearing.

¹ That case is captioned *Susan D. Summer vs. Alan Wilson, in his Official Capacity as Attorney General of South Carolina*, Newberry County Case No. 2012-CP-36-688 (filed December 18, 2012).

Respectfully Submitted,



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January 11, 2013

Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) CASE NO. 2010-CP-40-4900

)

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust and
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina and others,

) MOTION OF DEFENDANT FOR
SUMMARY JUDGMENT AS TO

)

TERRY BROWN

)

AND

)

RUSSELL L. BAUKNIGHT AS AGENT
FOR TERRY BROWN

)

)

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina;

Plaintiffs.

)

)

v.

)

)

Adele J. Pope,

Defendant.

)

)

)

TO: PLAINTIFF TERRY BROWN AND RUSSELL L. BAUKNIGHT AS HIS AGENT, AND THEIR
COUNSEL, SWEENEY, WINGATE AND BARROW, P.C.:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon
thereafter as she may be heard, Defendant Adele J. Pope will move before the Honorable L.
Casey Manning for an order of Summary Judgment against Terry Brown and Russell L.
Bauknight as his Agent ("Agent") as follows:

1. Dismissing or Granting Summary Judgment as to Terry and Agent's Complaint;
2. Granting Summary Judgment to Pope against Terry and Agent on the causes of
action for fraud; abuse of process; civil conspiracy; and interference with contract;
3. Awarding actual damages against Terry and Agent, jointly and severally,
in the amount of \$4,230,000.00, with prejudgment interest as to \$2.1 Million.

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4. Awarding Attorneys' fees and costs in the amount of \$320,000.00, plus all additional attorneys' fees and costs incurred after May 19, 2013.
5. Directing that a jury be impaneled to determine punitive damages; and
6. Equitably charging any interest held by Terry or Agent related to assets of James Brown, the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust with the judgment as set out above.

The Grounds of this motion are:

1. The undisputed material facts contained in the Counterclaim, which are summarized below, with additional developments since its filing, show:

a. Entertainment icon James Brown stated his clear intention to dedicate his entire musical empire solely to the education of certain grandchildren and needy and deserving students as follows:

Except as otherwise provided. . . I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not. Such failure is intentional and not occasioned by accident or mistake. . . . It is the Grantor's intention that the trust estate be available only to the beneficiaries and not to be the Grantor's past or future spouse. The Trustee(s) are directed to enforce this provision. [Emphasis supplied.] [Will, p. 1; Tr. Art. XVIII, XXII]

b. In 2008 Terry gave sworn testimony of his knowledge and support of Brown's Estate Plan and insisted that Brown's *In Terrorem* clauses be enforced against those who interfered with the Estate Plan.

c. With such knowledge, Terry, with others, hired attorney Levenson to destroy Brown's estate plan, and agreed to pay him \$150,000.00 plus 30% of what Levenson could get for them from Brown's "I Feel Good" private foundation for needy and deserving students.

d. By 2008 Terry and his son Forlando had teamed up with felon David Cannon to become part of TJB, which made three offers to buy Brown's music empire for \$90 Million - \$100 Million.

e. On January 30, 2009 Terry further violated Brown's Estate Plan and the *In Terrorem* clauses by entering a void contract to acquire 4.79% of the "I Feel Good" Trust and a Right of First Refusal to buy Brown's \$100 Million music empire.

f. On May 18, 2010 Terry and Agent brought this case without cause for improper purposes, including forcing Robert Buchanan and Pope to abandon the appeal of the Aiken County Case 2008-CP-02-1647 Order which approved the void deal.

g. Terry had actual knowledge when he commenced this suit that Buchanan and Pope have owed him no duty since January 30, 2009 when he violated the valid Estate Plan, invoking the *In Terrorem* clauses of Brown's Will and Trust.

h. In 2012 Terry and Agent extracted from Defendant Buchanan an unconscionable "agreement," which should be declared void, purporting to limit Buchanan's ability to defend the Estate Plan of James Brown.

i. Terry and Agent participated in falsely accusing Buchanan of the Federal Crime of overstating Brown's music empire by \$79 Million for the improper purpose of obtaining a large commission, where both knew the allegation to be false, material and damaging.

j. Terry and Agent conspired with Forlando Brown and others to cause other material and special damages to Buchanan and Pope.

k. Terry and Agent have committed fraud under Section 62-1-106, damaging Defendant and Buchanan in numerous ways, including:

1. Fabricating and presenting to the IRS, the Supreme Court and the Probate Court the outrageous claim that Brown's worldwide music empire was worth less than \$4.7 Million, where Terry has actual knowledge that Brown's worldwide music empire is worth \$100 Million or more.

2. Fabricating and presenting to the S. C. Supreme Court James Brown's heirs and their alleged rights under the Federal Copyright Act, with actual knowledge that the representation was both material and false.

3. Telling the S. C. Supreme Court that there have been no offers to buy the James Brown's assets at the same time Terry and Agent alleged losses by Buchanan and Pope for failure to accept a 2007 \$100 Million offer, and Terry participated in two \$90 - \$100 Million offers.

4. Representing that Tommie Rae Hynie was Brown's surviving spouse, and asserting that Jg. Early had so declared her to be, where Terry has actual knowledge Hynie was not Brown's spouse and Jg. Early made no such finding.

5. Terry's attempting to transfer his rights in the Estate of James Brown

(in a document prepared by Agent's counsel) in violation of the Statute of Elizabeth while seeking relief from default as to the counterclaims of Buchanan and Pope.

6. Falsely accusing Buchanan of impropriety for seeking a \$2.1 Million commission for more than six years of valuable service to the Estate, 2000 Trust and Estate Plan of James Brown, and Pope a \$2.8 Million corresponding commission, while concealing their plan to pay \$20 Million or more to Levenson, Rosen and Agent's attorneys from Brown's "I Feel Good" Trust, which Brown intended for scholarships for needy students.

2. Terry and Agent have refused to participate properly in discovery and Terry has refused to present himself at noticed and/or scheduled depositions for more than two years. Terry has further concealed material documents requested in discovery.

3. The evidence shows that Terry and Agent have concealed their collusion with felon David Cannon, Terry's joint venturer, and damaged Brown's Estate and 2000 Trust by \$12 Million or more including:

- a. Agent's engaging Powell Goldstein (now "Bryan Cave"), counsel to Terry, Cannon and TJBL, to assist with Terry's Right of First Refusal ("ROFR")
- b. Terry's participation in soliciting a book about James Brown with the intention of vindicating David Cannon and vilifying Buchanan and Pope, even though Cannon took \$12+ Million from Brown and Buchanan and Pope put the Estate/2000 Trust in a position to recover substantial amounts, including Cannon's million-dollar home in Honduras.
- c. Failing for four years to recover a single dime from Cannon in Case 322.
- d. Failing to seek either jail time or restitution for Cannon, thereby rehabilitating him at the expense of Buchanan and Pope.
- e. Naming Cannon as a witness against Buchanan and Pope in this Case, instead of seeking millions from him.

f. Interfering with Pope's attempts in Aiken County to proceed with recovery of the missing millions.

g. Agent's failure to recover more than \$400,000 of damages caused by Terry's son Forlando in the frivolous Federal Suit brought by Forlando on January 2, 2008 and abandoned by him in 2012.

4. Terry and Agent, for Terry's benefit, have interfered with the valid contracts of Buchanan and Pope, including but not limited to the contracts to make all payments approved in the January 8 and February 20, 2008 Orders in Case 122; the contract with James D. Bailey, Esq.; the contract with Tressa Hayes; the defense of the fabricated Forlando Federal Suit; and other valid obligations entered into by Buchanan and Pope for the protection of the Estate, 2000 Trust and Estate Plan of James Brown.

5. The facts contained in the counterclaims against Terry, which are incorporated herein by reference, are fully supported by the record in this case and matters of which the Court is asked to take judicial notice.

6. As a result of the actions of Terry and Agent, Pope has been damaged in at least the following amounts:

a. Liquidated damages under the January 8, 2008 Order of Jg. Early of no less than \$2,100,000.00, with daily, pre-judgment interest at the legal rate.

b. Additional damages in the amount of no less than \$2,130,000.00, including loss of ability to complete her service as PR/Trustee; costs of the Forlando Suit; increased costs, and loss of professional negligence insurance; defense of the Cincinnati lawsuit, prosecution of the Case 1647 appeal; and resulting limitations to her practice as a result of failure to obtain appropriate insurance.

7. Based on the undisputed material facts, including those set out herein, there is no support for Terry's request for relief from default.

8. The actions of Terry and Agent described herein, and more fully set forth in the sworn testimony, depositions interrogatory answers and admissions on in this Case and in the Record on Appeal ("ROA") in Case 1647 and in the ROAs in Cannon and Dallas appeals from Case 122, were taken maliciously and recklessly, and with intention to destroy the careers, reputations and livelihood of Buchanan and Pope and have been effective in doing so.

9. The reckless and intentional nature of Terry's actions, and those of Agent, merit both the punitive damages and equitable relief sought against Terry and Agent herein.

10. Terry and Agent have advised the S. C. Supreme Court that Terry's Federal Copyright Act Termination Rights, which should be equitably charged with the damages to Pope hereunder, are a "valuable right" which Agent is holding in his fiduciary capacity.

11. As a result of the actions of Terry and Agent, including their intransigence in discovery matters, counsel for Pope has performed valuable and necessary services and incurred costs in this case over almost three years, which should be awarded against Terry and Agent under Section 62-7-1004 of the S.C. Trust Code in amount of \$320,000.00 for this case, plus such additional attorneys' fees as are earned and costs incurred after May 19, 2013.

This motion is supported by all Affidavits of Adele J. Pope on file in this Case; the deposition of Robert L. Buchanan, Jr. and the Affidavits of Buchanan, Pope and others made a part thereof; the testimony of Terry Brown in Case 122; the decision of the S. C. Supreme Court dated February 27, 2013 in Case 1647; the decision of the S.C. Court of Appeals dated

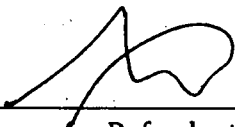
November 6, 2009 in Case 122 (Cannon appeal); the sworn testimony of Albert Dallas; the deposition of Daryl J. Brown; the deposition of Terry Brown; the deposition of Tonya Brown; and such additional affidavits, admissions and other filings which shall be properly presented to the Court prior to the hearing.

Respectfully submitted,

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March 5, 2013

By: 

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust, etc.
and others,

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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) Case No.: 2010-CP-40-4900

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) MOTION FOR SUMMARY JUDGMENT

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AS TO THE
JAMES BROWN LEGACY TRUST
AND ITS TRUSTEE,
RUSSELL L. BAUKNIGHT,
INDIVIDUALLY

2013 MAR 26 AM 11:05

TO: The James Brown Legacy Trust ("Legacy Trust") and Russell L. Bauknight, its Trustee and their Counsel Sweeney, Wingate and Barrow, P.C. ("Wingate")

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as she may be heard, Defendant Adele J. Pope will move before the Honorable L. Casey Manning at the Richland County Courthouse, for an Order granting her Summary Judgement as to the Legacy Trust and Bauknight, individually and as trustee, as follows:

1. Judgment in favor of Pope against the Legacy Trust and Bauknight as trustee, as to all claims of the Legacy Trust in the Complaint;
2. Judgment in favor of Pope against the Legacy Trust and Bauknight as to all Counterclaims;
3. Actual damages against the Legacy Trust and Bauknight, jointly and severally, in the amount of \$4 Million, with prejudgment interest on \$2.1 million liquidated damages from the date hereof.
4. Such punitive damages as shall be awarded by a jury impaneled by the Court.

5. Attorneys' fees and costs of \$375,000, and costs incurred after the date of this motion.

The grounds of the motion are:

1. This action was begun and continued for almost three years by Bauknight, acting on behalf and in the name of the Legacy Trust, for the improper purpose of destroying the careers and reputations of Pope and Robert Buchanan, Jr. to force them to abandon their appeal in Case 2008-CP-02-1647 ("Case 1647").
2. The Legacy Trust and Bauknight did so with knowledge as defined in Section 62-7-104 of the S.C. Trust Code that Buchanan and Pope never owed the Legacy Trust any duty.
3. Bauknight is personally at fault for the torts of the Legacy Trust as set out in Pope's Counterclaims, and, therefore, individually liable under S.C. Probate Code Section 62-7-1010(b) and other applicable law.

The undisputed material facts on which this Motion is based include:

1. According to his affidavit, Bauknight has administered the Legacy Trust in Richland County for more than two years.
2. This action was commenced and continued by the Legacy Trust/Bauknight with knowledge that Buchanan and Pope never owed a duty to the Legacy Trust.
3. The Legacy Trust/Bauknight, in concert with Tommie Rae Hynie, AG Havird "Sonny" Jones, and others have slandered and falsely accused Buchanan and Pope of impropriety in their service under the Will of James Brown and the James Brown 2000 Trust, with malice and with knowledge that such allegations were false.
4. Among the false allegations, was the accusation that Buchanan and Pope intentionally overvalued James Brown's assets by \$79 Million in sworn filings with the IRS for the improper purpose of obtaining a \$5 Million commission.
5. The Legacy Trust/Bauknight caused these and other false and malicious allegations to be disseminated in more than 300 media outlets throughout the nation and the world.
6. The Legacy Trust/Bauknight, in furtherance of their schemes, made false and material misstatements to the Probate Court of Aiken County and other Courts, including:
 - a. That James Brown's Estate and Trust has no corpus "to speak of" when

they actually owned valuable tangible and intangible property, including Royalties and Publicity Rights associated with Brown's worldwide music empire;

b. That the elective share claim of Tommie Rae Hynie was a "slam dunk;"

c. That certain person were Brown's heirs under the Federal Copyright Act, intentionally excluding known heirs and naming non-heirs.

d. That termination rights are "all this case is about," with knowledge that the right to exploit his image and persona are not subject to termination rights under the Federal Copyright Act and are of great value.

7. The Legacy Trust/Bauknight falsely accused Pope of improperly seeking a \$2.8 Million commission for her 6-8 years of valuable service under the Will/2000 Trust while at the same time proposing to pay:

a. Approximately \$9 Million to attorney Louis Levenson;

b. Approximately \$12 Million to Hynie's attorney Robert Rosen;

c. An estimated \$3.5 Million to his own attorneys;

d. An additional approximately \$12 Million to Hynie;

e. Approximately \$12 Million to Levenson clients or former clients.

8. The Legacy Trust/Bauknight's purpose in taking these malicious actions and making the false statements was for the Legacy Trust/Bauknight to take control of James Brown's \$100 Million worldwide music empire and deliver 52 ½ % of what Brown gave for scholarships to persons he intentionally disinherited.

9. The Legacy Trust/Bauknight damaged the Estate/2000 Trust of James Brown by failing to recover any of the \$17 Million taken by felon David Cannon between 1999 and Brown's death on December 25, 2006.

10. The Legacy Trust/Bauknight, through their attorneys, tried to prevent Daryl Brown and others who did not want to continue to dishonor the Estate Plan of James Brown from speaking out to support his noble gift.

11. The Legacy Trust/Bauknight attempted to deceive the Court by working vigorously to continue a 5-year-old gag on at least 12 witnesses who had knowledge of the contents of the so-called Hynie "diary" and had previously asserted that Hynie was not Brown's spouse.

12. The Legacy Trust/Bauknight threatened Pope and members of the media who attempted to find out what Bauknight was doing with Brown's private assets which, through use of former AG McMaster's public office had been placed in Bauknight's hands.

13. The Legacy Trust/Bauknight asserted to Jg. Early that he [Jg. Early] had declared Tommie Rae Hynie to be Brown's spouse, when he had knowledge that no such thing had occurred.

14. The Legacy Trust/Bauknight destroyed the Education Trusts of seven of Brown's grandchildren, then falsely accused Buchanan and Pope of damaging the grandchildren.

15. The Legacy Trust recklessly and intentionally sought to interfere with Pope's rights under the S.C. Freedom of Information Act ("FOIA") by attempting to intervene in one case and threatening her in another, all to prevent her from obtaining the following public documents:

a. Documents to show Wingate and Bauknight were not properly authorized to bring Case 4900 in the name of (or as agent for) the State of South Carolina through its Attorney General.

b. Documents to show there was not basis for Bauknight's less-than \$4.7 Million valuation of Brown's music empire, which Daryl knows to be false.

c. The Hynie "diary," which the AG's Office has retained in direct (and not inappropriate) disregard for the void or expired Hynie "diary" Gag Orders of 2008.

16. The Legacy Trust/Bauknight further harmed Brown's Estate/2000 Trust by using \$262,500 of Estate funds to purchase releases for Hynie and others from Buchanan's counterclaims.

17. The Legacy Trust/Bauknight refused to pay Buchanan the \$500,000 and Pope the \$1.5 Million, with interest from 2009, they were due under the January 8, 2008 Order – paying only Buchanan, and *only* when he agreed to release Hynie and others.

18. By intentionally working to prevent Buchanan and Pope from recovering attorneys' fees and costs necessarily incurred on behalf of the Estate/2000 Trust in the Forlando suit to prevent the return of felon Cannon and his Co-Trustees.

As a result of the actions of the Legacy Trust/Bauknight, including the false and malicious media publicity which they generated, Pope has been damaged in at least the following amounts:

a. Losses under the January 8, 2008 Order, \$1.9 Million, plus interest already due and payable,

b. Additional losses related to her full commission, approximately \$900,000; and

c. Failure to pay valid contracts, including attorneys' fees for valid defense of the Estate and 2000 Trust, a loss of no less than \$1.2 Million.

This motion is based on the depositions of Daryl J. Brown, Larry Brown and Robert Buchanan, Jr.; all affidavits of Adele J. Pope on file herein; the South Carolina Rules of Civil Procedure, especially Rule 56; and such additional filings as shall properly come before the Court prior to the hearing on this matter.

Respectfully submitted,

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March 22, 2013

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust, etc.
and others,

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendants.

) IN THE COURT OF COMMON PLEAS

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) Case No.: 2010-CP-40-4900

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) MOTION FOR SUMMARY JUDGMENT

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AS TO JAMES B., A MINOR, AND

RUSSELL L. BAUKNIGHT,

AS AGENT FOR JAMES B.

FILED
C.C.P. & G.S.

2013 MAR 26 AM 11:05

TO: James B., a minor, and Russell L. Bauknight, his agent ("Agent") and their Counsel Sweeney, Wingate and Barrow, P.C. ("Wingate")

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as she may be heard, Defendant Adele J. Pope will move before the Honorable L. Casey Manning at the Richland County Courthouse, for an Order granting her Summary Judgement as to James B., a minor, and Agent, as follows:

1. Judgment in favor of Pope against the James B. and Agent as to all claims of the said Plaintiffs in the Complaint;
2. Judgment in favor of Pope against the James B. and Agent as to all Counterclaims;
3. Actual damages against the James B. and Agent in the amount of \$4 Million, with prejudgment interest on \$2.1 million liquidated damages from the date hereof.
4. Attorneys' fees and costs of \$375,000, and costs incurred after the date of this motion.

The grounds of the motion are:

1. While he does not have a guardian ad litem ("GAL") in this action, wrongful and

reckless actions taken by James B. and in his name in this case and elsewhere by his GAL in Aiken County Case 2008-CP-02-1647 ("Case 1647"), Agent and his mother and natural guardian.

2. Undisputed material facts show:

- a. James B. was not born of any marriage of James Brown and has refused official DNA testing under the protocol established by Rodney Peeples, Esq. shortly after the death of entertainment icon James Brown on December 25, 2006.
- b. James B. has not established that he is an heir of James Brown under S. C. Law or an heir of James Brown under the Federal Copyright Act.
- c. James B.'s mother, in 2004, immediately settled a suit, providing nothing for her son, when James Brown sought DNA testing of James B.
- d. James B. is the only person claiming to be a child of James Brown born born after Brown's widely publicized vasectomy about 20 years before Brown's death. More than a dozen claimed children were born before it.
- e. Both Brown's mother and his GAL refused official DNA testing, even though the test was paid for by Estate of James Brown.
- f. James B. has been exposed to excruciating and unnecessary publicity by his mother, his GAL and Agent.
- g. James B. never challenged the Will of James Brown or the James Brown 2000 Irrevocable Trust, both of which specifically and intentionally omitted him.
- h. James Brown would be entitled to nothing under Brown's Estate Plan even if he were Brown's son.
- i. James B. will only be an Heir if he takes the official DNA test and passes. As such, he would share an interest in the Federal Copyright Act termination rights with some or all of the more than to a dozen other claimed heirs.
- j. Even though James B. was not Brown's son, Brown loved him and provided a fund for him which his mother received at Brown's death.
- k. James B., through his mother and GAL, abandoned any claim to Brown's assets by joining in an August 10, 2008 Settlement, as modified and approved by a circuit court on May 26, 2009 which gave James B. nothing.
- l. James Brown, through his GAL, Agent and mother, has asserted that Brown's music empire and other assets were worth about \$5 Million. Thus, even if he had been a child; had not been intentionally excluded by Brown's Estate

Plan; had not been provided for outside the Will; and had not abandoned his claims against Brown's estate his pecuniary amount under the Probate Code was never damaged by Buchanan and Pope – who, through the Estate, paid for DNA testing– and would likely be \$357,000 or less, taking into consideration other claimed and known heirs as follows:

A. Proven heirs: 1. LaRhonda; 2. Nicole; 3. Jeanette;

B. Presumed heirs: 4. Lisa; 5. Larry; 6. Terry; 7. Deanna; 8. Yamma;

C. Acknowledged by Brown in his Estate Plan but not presumed: 10. Daryl; 11. Venisha;

D. Other claimed, not-presumed heirs: 12. James B.; 13. Deon; 14. Tonya.

m. Those persons bringing and continuing this suit on behalf of James B. had knowledge, as defined in the S. C. Trust Code, of the following:

(1) Buchanan and Pope owed James B. no duty when they served as PRs under the Will of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.

(2) They have made assertions to the Courts for James B. about James Brown's Estate and 2000 Trust and their respective rights and interests which are material and incorrect, including:

(a) That James Brown's Estate and Trust has no corpus "to speak of;"

(b) That the elective share claim of Tommie Rae Hynie was a "slam dunk;"

(c) That certain persons – but not Jeanette, Nicole and LaRhonda -- were Brown's heirs under the Federal Copyright Act.

n. James B., through his mother, GAL and Agent, severely damaged Buchanan and Pope, to secure about \$12 Million for his mother and about \$12 Million in fees and costs for her attorneys.

As a result of the actions of James B., acting through GAL, Agent and his mother, and including false and malicious media publicity generated by Agent, Pope has been damaged in at least the following amounts:

a. Losses under the January 8, 2008 Order, \$1.9 Million, plus interest;

b. Additional losses related to her full commission, approximately \$900,000; and

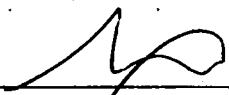
c. Failure to pay valid contracts, including attorneys' fees for valid defense

of the Estate and 2000 Trust, a loss of no less than \$1.2 Million.

This motion is based on Petition for Rehearing filed by James B. in the S. C. Supreme Court on or about March 14, 2013, the depositions of Daryl J. Brown, Larry Brown and Robert Buchanan, Jr.; all affidavits of Adele J. Pope on file herein; the South Carolina Rules of Civil Procedure, especially Rule 56; and such additional filings as shall properly come before the Court prior to the hearing on this matter.

Respectfully submitted,

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March 22, 2013

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, and others
and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State
of South Carolina and Others,

Plaintiffs.

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

) IN THE COURT OF COMMON PLEAS

)

) Civil Action No.: 2010-CP-40-4900

)

)

)

MOTION TO ADD

) WILLIAM FORLANDO JAMES BROWN

)

a/k/a FORLANDO JAMAL BROWN

)

AS A PARTY

TO: ALL PLAINTIFFS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof on her, so
thereafter as she may be heard, Defendant, through her undersigned counsel, will move
before the Honorable L. Casey Manning at the Richland County Court House, located at
1701 Main Street, Columbia, South Carolina pursuant to Rules 17 and 19, *SCRCP*, and other
applicable law, for an Order for an Order adding William Forlando James Brown, a/k/a
Forlando Jamal Brown ("William"), as a party to this action.

The grounds of this motion are:

1. William is the real party in interest as to the claims of Plaintiff Terry Brown
(Terry") against Plaintiffs in this case by virtue of:
 - a. An amendment to Plaintiff Legacy Trust dated December 31, 2010,
executed by Terry others in December 2010. [Exhibit A]
 - b. The immediate assignment by Terry to William of all of Terry's
interest in assets of the Estate of James Brown (the "Assignment").
[Exhibit B].
2. As a result, William is a necessary party under Rule 17(a) *SCRCP*.
3. Defendant made this motion promptly after she learned of the Assignment in
2013, and confirmed its breadth and import in William's April 10, 2013 deposition
in a Federal Suit William brought in 2008 against Defendant and Robert Buchanan,
Jr.

2013 APR 25 PM 4:21
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
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4. William has stated under oath in the deposition, and/or provided documents to show:

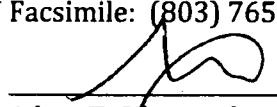
- a. He owns all claims of Terry in this matter, including the right to control this litigation for Terry; and
- b. The Assignment has been presented to the Wingate Firm and its termination as Terry's counsel confirmed in writing;
- c. Neither William nor Terry has sought a stay of this Case since the February 27, 2013 decision of the Supreme Court.
- d. William, for himself and Terry, has voiced his support for the Court's voiding of the McMaster Settlement.

5. The addition of William will not delay the litigation, and may promote settlement, as William has voluntarily withdrawn all claims against Defendant and Buchanan in the Federal Suit, and their counterclaims are proceeding expeditiously.

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 17 and 19, and statements in the deposition of William in the Federal suit, as well as such other proper documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

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April 16, 2013

Attorneys for Defendant Adele J. Pope

EXHIBIT A

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement). The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein. For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions.
2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Banknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.
3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

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to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

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Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
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For the South Carolina Attorney General

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Attorneys for Plaintiff Ray Brown

Louis Levenson
Levenson & Associates
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Atlanta, Georgia 30303

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B., Lindsey Delores Brown, Vanisha Brown, Deanna J.
Brown Thomas, Jason Brown Lewis, Yanna N. Brown-
Lamar, Sydney L., Carrington L. and Tonya Brown*



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Brown Thomas, Jason Brown Lewis, Yanna N. Brown-
Lamar, Sydney L. Carrington L., and Tanya Brown*

Terry Brown

REF ID: A66666

EXHIBIT B

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06/13/2011 04:15 7045688489

AUSTIN & SPARKS
PAGE 02/02

Georgia, Stephens County

For in consideration of the sum of \$1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011


Terry Brown


Witness


Notary of the Public.

MY COMMISSION
EXPIRES ON
JUNE 7, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2014 APR 23 AM 9:42
JEROME
CLERK

MOTION TO STAY

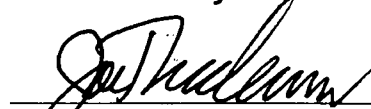
YOU WILL PLEASE TAKE NOTICE the undersigned, as attorneys for the Plaintiffs, will move before the presiding Judge of the Richland County Circuit Court, at the Richland County Courthouse on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting a stay of the case.

The grounds for the motion are that, subsequent to the South Carolina Supreme Court's decision in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013), substantial uncertainty remains with respect to the composition of the plaintiffs' group, the potential for conflicts among the group members, and the capacity in which Sweeny, Wingate & Barrow, PA will be able to continue representing the group. These issues will not be resolved until the various Aiken County will contests that were revived by Wilson v. Dallas are resolved with finality.

Plaintiffs request that the Court stay this matter until such time as the various Aiken County will contests are resolved with finality.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Joseph O. Thickens
Sweeny, Wingate, & Barrow, P.A.
Post Office Box 12129
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(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

April 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

**Plaintiff's Return and Opposition to
Motion of Sweeney, Wingate & Barrow
to Stay and Request for Expedited
Hearing on Summary Judgment**

2014 APR 29 PM 3:56

Plaintiff Adele J. Pope responds to and opposes the motion of Sweeney, Wingate & Barrow, P.A. ("Wingate"), dated April 22, 2014,¹ and requests that the Court hear her pending motion for summary judgment as to all claims at its earliest convenience, as follows:

1. Plaintiff incorporates by reference her Return and Opposition to Motion to Stay filed in *Bauknight vs. Pope* today, along with the affidavit filed therewith.
2. Plaintiff respectfully asks that this matter proceed to a hearing as soon as possible, as these claims under the FOIA have been pending for more than 30 months. The Attorney General has indicated his willingness to appear at a hearing as soon as one is scheduled, and Wingate should not be allowed to delay this action and deny Plaintiff's rights under the FOIA.
3. Although the AG sought and obtained consolidation of this action with *Bauknight vs. Pope*, he has now asked to be removed from that case. In light of his request, Plaintiff

¹ The Motion is captioned *Bauknight, et al, vs. Pope*, but this FOIA action has been consolidated with that matter at the request of the AG. Further, Wingate has sought - purportedly on behalf of over a dozen clients - to intervene in this action.

asks that this matter be immediately severed and a hearing held on her pending motion for summary judgment.

4. Further delay in this long-pending case will serve only to deny Plaintiff her FOIA rights and will cause her irreparable harm. Because the AG is the only proper defendant in this action, and he consents to a hearing, there is no reasonable basis for further delay in this matter.

Plaintiff respectfully asks that the Court deny the request for stay and set her pending motion for summary judgment for hearing at the Court's earliest convenience. This Return and Opposition is based on the Affidavit of Adele J. Pope filed herewith, the entire record in this matter, and such additional affidavits and/or memoranda as shall be filed prior to a decision on this matter.

Respectfully submitted,



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adam@silvernaillawfirm

April 29, 2014

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina and others

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; and others,
Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-40-4900

) MOTION OF ADELE J. POPE
) FOR SUMMARY JUDGMENT,
) DAMAGES AND OFFSET AS TO
) TONYA BROWN, DARYL BROWN,
) VENISHA BROWN AND RUSSELL
) L. BAUKNIGHT AS THEIR AGENT

RICHLAND COUNTY
FILED
2015 MAY 29 PM 1:01
JEANETTE W. MCGRIDE
Clerk of Court

TO: VENISHA BROWN, DARYL BROWN, and TONYA BROWN, and RUSSELL L. BAUKNIGHT,
AS AGENT for each of said PLAINTIFF/COUNTERCLAIM DEFENDANTS ("Bauknight"), and
their counsel:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon
thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Adele")
will move for an Order granting summary judgment in her favor as to all claims by and
counterclaims of VENISHA BROWN ("VENISHA"), DARYL BROWN ("DARYL"), TONYA
BROWN, a/k/a Tonya Brown Fegan ("TONYA"), and RUSSELL L. BAUKNIGHT AS THEIR
AGENT ("BAUKNIGHT"), as follows:

1. Summary Judgment in favor of ADELE as to all claims of VENISHA, TONYA and
DARYL against ADELE in the complaint, and Summary Judgment, joint and

several, against said parties on all of ADELE's counterclaims, with attorneys' fees;

2. Actual Damages in the Amount of no less than \$4.3 million, with prejudgment interest on all liquidated amounts, and interest on the judgment until paid in full;

3. Punitive Damages against BAUKNIGHT, Individually, as agent for VENISHA, TONYA and DARYL, in an amount to be determined by the jury.

4. Equitable Offset against the entire interest and/or entitlement of VENISHA, TONYA, DARYL and BAUKNIGHT in the Estate of James Brown, the James Brown 2000 Trust, the James Brown Legacy Trust ("Legacy Trust"), and/or any other James Brown Entity, to be paid from the first monies available.

5. Offset of and/or against the Federal Copyright Act Termination Rights, and proceeds and products of said Termination Rights, of VENISHA, TONYA, DARYL and/or Plaintiff Legacy Trust, and/or BAUKNIGHT as its trustee and/or successor in interest, as to *Please, Please, Please* and/or any other copyrights whose Termination Rights become subject to vesting prior to judgment.

The grounds of this motion are that under Rule 56 SCRPC considering the undisputed facts, the admissions of the parties, and the disputed facts viewed in the light most favorable to the non-moving parties, ADELE is entitled to judgment as a matter of law as to the complaint and her counterclaims against VENISHA, TONYA and DARYL for Abuse of Process, Civil Conspiracy, Fraud under S.C. Code Ann. §62-1-106, Intentional Interference with Contract and Attorneys' fees. Those admissions and facts include:

- a. James Brown died December 25, 2006 leaving a worldwide music empire.
- b. Brown owned both "Royalties," copyrights to approximately 892 songs, and "Publicity Rights," the right to exploit his image and persona.
- c. Within weeks the Honorable Doyet A. Early, III ("Jg. Early") had been advised by Tommie Rae Hynie ("Hynie") that Brown copyrights alone might be worth \$100 million. [A Royal Bank of Scotland (RBS) professional had valued them at \$42 million in 2006.]
- d. The copyrights of songwriter Harlan Howard, who died in 2002, had recently been valued by the IRS in his estate tax proceeding without an official appraisal at 8 x annual royalties. The 8 was the number of years a song was estimated

to endure.

e. Considering the \$800,000.00 of royalties taken by Brown's trustee David Cannon in 2006, Brown's royalties exceeded \$3 million dollars each year from 2000 until his death.

f. In addition Brown's road show revenues from 2003 - 2006 were approximately \$18 million. Rodney Peeples, Esq., advised the Court that Brown's annual shows in Europe grossed a million dollars a week.

g. Songwriter Howard had no publicity rights of value. By contrast, according to his trustee Albert "Buddy" Dallas, Brown's image worldwide was almost as well-known as the Pope's.

h. Brown's death certificate shows that his last spouse was Adrienne Rodriguez, who died in 1996.

i. In both his 2000 estate plan and 1999 backup estate plan, Brown left his entire music empire to The James Brown "I Feel Good" Trust, to be used exclusively for scholarships for needy students.

j. Brown left a voice tape, made prior to the execution of the 1999 will, confirming his desire to give back to support education.

k. DARYL worked with James Brown; had discussed his estate plan with him; and knew that Brown's intention to create a trust for the education of needy students was Brown's often stated and well-known desire.

l. VENISHA was present with Hynie when Brown's estate plan was executed in 2000, and she and TONYA had also spoken with Brown about his estate plan.

m. From Brown's death until August 10, 2010, VENISHA, DARYL and TONYA repeatedly confirmed that Hynie was not Brown's spouse.

n. With knowledge of the above facts, on or about January 9, 2007 VENISHA, DARYL and TONYA contracted with Louis Levenson, Esq. ("Levenson"). With others, they agreed to pay Levenson \$150,000 plus 30% of what he could get them of James Brown's assets.

o. Levenson served as agent and attorney for VENISHA and TONYA from January 2007 until at least 2014. Levenson served as attorney of record and agent for DARYL for the same period, although DARYL asserted at various times that he had terminated Levenson.

p. On January 26, 2007 VENISHA, DARYL and TONYA, with others, filed suit to restrain and remove Brown's original original trustees, Cannon, Dallas and Al Bradley. The Petition was transferred to the Aiken County Circuit Court and became Aiken Case 2007-CP-02-0122 ("Case 122")

q. On March 7, 2007, nominated by VENISHA, DARYL, TONYA, and others, ADELE, became a non-fiduciary special administrator (SA) of Brown's estate, with Robert Buchanan, Jr. ("BOB").

r. In March 2007 Tom Wells discovered Hynie's handwritten notes discarded in Brown's Beech Island home. The Hynie notes confirmed that Brown refused to marry Hynie after he learned she had concealed her marriage to another when they had a 2001 ceremony.

s. By Order of Jg. Early dated August 10, 2007 Hynie's notes and eighty boxes of other Brown Historical Documents were made public, giving all access to 30 years of Brown financial, business and personal records.

t. In the fall of 2007 it became public that in 1999 Cannon had cashed the "\$5 Million check to nobody." By February 2008, Brown's Estate and 2000 Trust had sued the Cannon trustees to recover \$13+ million missing since 1999.

u. On November 14, 2007 BOB and ADELE asked Jg. Early to approve valuing Brown's Copyrights and Publicity Rights on the Estate Tax Return as follows:

VALUE = $(12 \frac{1}{2} - 14)$ X annual royalties PLUS annual road show revenues.

v. Neither Attorney General Henry McMaster nor anyone else objected to the valuation formula.

w. In an Inventory & Appraisement (I&A) filed November 15, 2007 Brown's Personal Representatives, Dallas and Bradley valued Brown's assets at \$100 million, less a debt to the NY teachers ("TIAA") of about \$15 million.

x. The I&A valued Brown's Publicity Rights at about \$46 million, and his tangible personal property ("TPP") at \$2 million.

y. The TIAA debt was reduced to \$11 million by 2009 and paid in full in 2011.

z. By Order of Jg. Early dated November 20, 2007, BOB and ADELE were appointed PR/Trustees under Brown's Will and the 2000 Trust. All of their acts were joint.

a. On December 26, 2007 VENISHA, DARYL and TONYA filed suit to set aside

Brown's estate plan and establish an Administration in Intestacy.

aa. By Order of Jg. Early dated January 8, 2008, without objection of VENISHA, DARYL or TONYA, ADELE was awarded \$217,000 in SA fees and ongoing payments as PR/Trustee. The amounts bear interest at the legal rate if not paid within 60 days. On May 26, 2009 Adele was due \$47,972 in SA fees and \$1,473,550 toward her fees for service as PR/Trustee. Interest has accrued at 8 3/4% on that amount for six years.

ab. In the January 8 Order, and orders dated February 20, March 7, April 1, and April 8, 2008 in Case 122, Jg. Early praised the service of Buchanan and Pope, finding their actions since March 7, 2007 to be both appropriate and ethical. Those order are binding on DARYL, VENISHA and TONYA.

ac. Throughout 2008 Levenson called to the attention of the Court the improper acts of David Bell, Esq., ("Bell"), including filing six false grievances and making the false claim that the Levenson contract contained a forgery.

ad. By Order dated April 8, 2008 Cannon, Dallas and Bradley were ordered to pay the attorneys' fees and costs of Case 122.

ah. In early 2008 Christie's appraised Brown's household goods (excluding his fleet of automobiles, band uniforms and certain music items) at about \$1.4 Million. A professional appraisal appraised the Beech Island estate and other real estate at about \$1.2 Million.

ai. Under authority of the Feb. 20 Order, DARYL, TONYA and VENISHA bought Brown's father's house.

aj. In the spring of 2008 ADELE spent a day with TONYA and others to give them an opportunity to ask to hold items back from the Christie's sale of about 350 of the thousands of items owned by Brown. TONYA, DARYL and VENISHA did not timely ask that any item be withheld.

ak. On or about March 12, 2008 DARYL, VENISHA and TONYA filed documents seeking to delay or stop the Christie's sale. They did not request that the GRAMMY© or any other specific item be withheld.

al. In his Order dated April 1, 2008 Jg. Early found that DARYL, VENISHA and TONYA had interfered with the Christie's sale in violation of his February 20, 2008 Order, but that they had not yet caused any damage. He directed that BOB and ADELE sign the Chritie's contract, with the GRAMMY © listed.

ap. On July 9, 2008 Dallas and Bradley asked the S. C. Court of Appeals

to stop the Christie's sale. AG McMaster, Christies, BOB and ADELE asked that the sale proceed. The catalogue with the GRAMMY © was filed with the Court of Appeals.

aq. On July 14, 2008, the Honorable Jasper Cureton directed that the Christie's sale scheduled for July 17 go forward.

ar. The Christie's sale of about 350 items grossed over \$770,000.00.

aq. Levenson, and Yamma Brown attended the sale, and Levenson was present when BOB and ADELE decided to withdraw the GRAMMY© from the sale without penalty.

ar. Under Jg. Early's orders the GRAMMY and thousands of other items were placed in museums for safekeeping pending the outcome of the Will contests.

au. BOB and ADELE also properly packed and shipped by secure storage more than 45 boxes of music and music memorabilia to a secure sound storage facility in Nashville, Tenn.

av. On July 28, 2008 BOB and ADELE filed a motion in Case 122 to charge Dallas and others with the legal fees incurred from interference with the Christie's sale. The motion is still pending.

aw. On August 10, 2008 TONYA, DARYL and VENISHA agreed to a settlement with the AG and others which dismembered the "I Feel Good" Foundation.

ay. TONYA, DARYL and VENISHA claimed the "Settling Parties" were Brown's sole heirs; stipulated that Hynie was Brown's wife; stopped the Estate's official DNA-testing program for non-presumed heirs; and agreed to work together to defeat the interest of all hers and others who opposed the settlement.

az. DARYL, TONYA and VENISHA knew at the time:

1. Hynie was not Brown's spouse;
2. James B. had refused the Estate's official DNA protocol;
3. Jeanette Mitchell, Nicole Parris and La Rhonda Pettit were DNA-proven children of Brown, acknowledged by the Estate in 2007.
4. Michael Deon Brown, imprisoned, was seeking DNA testing.
5. Lisa Brown was acknowledged as Brown's daughter in his first divorce.

6. DARYL claims Brown has at least 3 children in Europe. They, and others, were being identified in Case 2008-CP-02-0872, commenced by TONYA, DARYL and VENISHA, with others, on December 23, 2007.

bc. On September 24, 2008 BOB and ADELE filed the Estate Tax Return, valuing the music empire at \$84 Million.

bd. On May 26, 2009, over objection of BOB and ADELE, the settlement was approved by Jg. Early. BOB and ADELE appealed.

bf. In March 2009 BOB and ADELE wrote AG McMaster raising concerns that, because Terry had been given a right of first refusal to buy the music empire (the "ROFR"), the settling parties would try to devalue the assets.

bk. In June BOB and ADELE turned over 145 boxes of public documents to RUSSELL. Their accounting claimed \$99 million of assets were delivered to RUSSELL. A protective claim showed that as of May 26, 2009 each was owed the amount set out above under the January 8, 2008 Order, and certain additional fees and costs. For their entire service, estimated to take several additional years, BOB asked for PR/Trustee commissions of approximately \$2.1 million and ADELE approximately \$2.8 million.

bm. On August 30, 2009 Hynie's attorney Alan Medlin, Esq. wrote the AG, Levenson and others and said, in part:

Attached please find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter (after Hank Williams)...[Harlan Howard]

It is a treasure trove of information for us, including (1) the method of valuation for songwriter royalties includes an average of some prior years royalty stream multiplied by a multiple (somewhere between 5 and 8 seems reasonable based on the opinion); (2) names of some experts; (3) the Service accepted the multiple of 8. Based on the info in the opinion, Bobadele has [sic] grossly overvalued the estate for 706 purposes. The opinion deals only with royalties and not image and likeness, which apparently was inapplicable to the decedent songwriter. Of course, among ourselves, we are not sure we have the right to image and likeness under SC law, so any separate valuation of that should be discounted accordingly.

bn. On March 22, 2010 Medlin told BOB's attorney Elizabeth Gray, Esq., that AG Sonny Jones had engaged Ken Wingate and would sue if BOB and ADELE did not drop the appeal. BAUKNIGHT's attorney also advised James Richardson, Esq., that a

suit would be filed if the appeal were not dropped.

bp. On May 18 and 19, 2010 Levenson, Bell, BAUKNIGHT and counsel for Hynie signed the contract with Sweeney, Wingate and Barrow, P.C. ("SWB"); authorized the complaint; and filed this suit. (Case 4900"). Sweeney, Wingate & Barrow is the sole counsel for all Plaintiff/Counterclaim Defendants.

bq. The filing of the complaint caused BOB and ADELE to lose their professional liability insurance and to be sued by their carrier. The filing and continuation of the suit have rendered ADELE virtually unable, for five years, to serve as an expert witness, counselor, or mediator, or to obtain professional liability insurance, causing a loss of no less than \$300,000 per year.

cb. On or about May 6, 2011, DARYL, VENISHA and TONYA and RUSSELL, with the AG, asked the S.C. Supreme Court to supplement the record on appeal (ROA) in what became *Wilson v. Dallas* to value Brown's TPP at \$0.5 million and the music empire at \$4.7 million. The Supreme Court declined the motion.

cc. Since 2011 DARYL, VENISHA, TONYA and RUSSELL, with knowledge of its falsity, have claimed to the Supreme Court that ADELE is seeking a \$5 million commission for service to a \$5 million estate. They have also claimed Hynie is Brown's spouse.

cd. The purposes of the South Carolina Probate Code, S.C. Code Ann. § 62-1-101, *et seq.*, include "to discover and make effective the intent of a decedent in the distribution of his property," and the false representations to the Courts made by DARYL, VENISHA, TONYA and RUSSELL as their agent have been with the intention that the Courts rely on the statements and not carry out James Brown's wishes. The Courts have relied on the statements, and ADELE and BOB have been damaged thereby.

ce. Article V of Brown's Will, which provides education trusts for seven of Brown's grandchildren, including two daughter of DARYL, provides in relevant part:

ARTICLE V

Continuance of The Brown Family Education Trust and The James Brown "I Feel Good" Trust. Upon the death of the Grantor, the Trustee shall divide the remaining Trust Estate...into Two (2) separate shares... The two shares shall be equal, subject only to the generation-skipping limitation imposed on **The Brown... Trust** by the maximum available generation-skipping transfer exemption as computed by the following formula. **The Brown ...Trust** shall be a fraction of the Trust Estate... the numerator of which shall be an amount equal to the Grantor's available generation-skipping transfer exemption as

hereafter defined and the denominator shall be an amount equal to the value of the Trust Estate. **For purposes of establishing such fraction the values as finally determined in the Grantor's federal estate tax proceedings shall be used.** The Grantor recognizes that the numerator may be zero. **The Grantor also recognizes that the numerator of such fraction may be equal to or greater than the denominator, in which case the entire Trust Estate shall be distributed to The Brown Family Education Trust.**

cf. Under the above formula, with Brown's assets at \$100 million, the trust share of each of 7 grandchildren is about \$285,000. Under the value claimed by DARYL, VENISHA, TONYA and BAUKNIGHT, the seven would be entitled to more than a third of the assets Brown gave to the 2000 Trust, depriving the "I Feel Good" Foundation of 1/3 or more of its assets for up to 20 years.

cg. Since 2010 DARYL has fired Levenson; "kissed and made up;" and fired Levenson a second time. He is now represented by David B. Bell, Esq. ("Bell") in certain matters.

cq. Before this suit was filed, DARYL did not sign the 40% contingency fee contract, and did not review the complaint. He simply went along with whatever Levenson did. The same is true of TONYA.

cs. Since 2011 DARYL, TONYA, VENISHA and BAUKNIGHT as their agent have intentionally interfered with ADELE's FOIA rights; attempted to intervene in FOIA cases; and attempted to conceal public documents, including the Wingate 40% Litigation Retention Agreement; and the \$4.7 million appraisal.

ct. DARYL, TONYA and VENISHA have made other false and misleading statements to multiple courts.

cu. On March 26, 2014 Bell appeared in certain James Brown cases as attorney for TONYA. At the same time Bell was, through representation of multiple claimed heirs, attempting to siphon off Termination Rights agreements which properly belonged to the Estate/"I Feel Good" Trust, without meaningful opposition from David Sojourner, Esq., who is appointed as Limited Special Administrator at BAUKNIGHT's request.

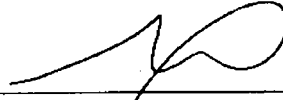
cv. Both DARYL and TONYA have withdrawn their challenges to the Will of James Brown and confirmed its validity. TONYA, however, recently attempted to withdraw her withdrawal.

cw. On May 22, 2015, TONYA admitted to the S.C. Supreme Court that, but for the appeal of BOB and ADELE, she would never have been declared an heir.

Supporting Documents

This Motion is supported by the Affidavit of Adele J. Pope filed herewith, the depositions of TONYA and DARYL and the complete record of *Wilson v. Dallas*, 743 S.E.2d 746 (2013), and pending Appellate Case Nos. 2013-001649 and 2014-000250, of which the Court is asked to take mandatory judicial notice under Rule 201 SCRE. It is also supported by such additional affidavits and documents as shall be properly provided to the Court prior to the hearing on this matter.

Respectfully submitted,



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May 28, 2015

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF ~~AIKEN~~ *Richland*

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
)
)

Case No.: 2010-CP-40-4900

) RETURN AND OPPOSITION TO MOTION
) TO EXEMPT PARTIES FROM
) COMPLIANCE WITH ORDER
) FOR MEDIATION AND
) ATTENDANCE REQUIRED BY ORDER

RICHLAND COUNTY
FILED
2015 AUG 13 PM 4:02
JENNIFER W. ROSEN
CLERK, P.C.

Defendant/Counterclaim Plaintiff (herein "Defendant/CC Plaintiff") responds to the motion of Plaintiffs, through Sweeney Wingate & Barrow, P.C. ("SWB"), to be exempt from the terms of Joint Order for Mediation filed January 20, 2015 (the "Mediation Order") in the above-reference case and in Aiken County Case No. 2013-CP-02-1337.

Plaintiff/CC Defendants' Motion should be denied for each and all of the reasons set forth below:

1. The Mediation Order (**Exhibit A**) specifically directs that "[a]ll parties and counsel of record are directed to participate in and attend the mediation in person." This direction came after SWB and Pope's counsel had fully addressed their positions on the matter in correspondence to the Court.

2. A brief chronology of correspondence leading up to the Mediation Order follows:

November 20, 2014

Judge Early's law clerk transmits the following message to all counsel in both cases:

I would respectfully request everyone to email me with suggestions on the mediation including payment of fees,

	scope of mediation, and any particular requirements that you think would insure a successful result.
November 25, 2014	Pope (in Case 1337) and her counsel (in Case 4900, Exhibit B) write the Court with suggestions, including that "[a]ll Plaintiffs in Case 4900 must attend," and setting out the reasoning for that request.
November 25, 2014	SWB responds, requesting additional time to "fully respond," but proceeding to oppose a requirement that the parties attend mediation. This opposition was based in part on Judge Manning's 2012 mediation Order.
November 26, 2014	Pope's Case 4900 counsel responds (Exhibit C) to SWB's letter with a summary of the ways in which the 2012 mediation was crippled by attendance of "personal counsel" in the place of many Case 4900 Plaintiff/CC Defendants. Pope's counsel notes that Case 4900 is now exempt from mediation, but consents to a second mediation "if the parties are ordered to attend."
December 3, 2014	SWB writes final letter to Court (Exhibit D), again requesting that the parties be exempted from attendance at mediation.
January 20, 2015	Mediation Order filed, requires attendance of all parties.
July 31, 2015	Teleconference attended by all counsel and mediator to discuss scheduling and conditions of mediation. SWB asks mediator to allow non-attendance of parties. Mediator directs that such request must be made to the appropriate Court. All parties agree to mediation date of October 22, 2015, and mediator directs that any counsel scheduled for a hearing in <i>any Court</i> notify mediator, who will request that counsel be protected for this firm mediation date.
January 20, 2015 - August 7, 2015	SWB makes no objection to Mediation Order; files no motion for reconsideration; and seeks no relief from judgment.
August 7, 2015	SWB seeks to exempt more than a dozen Plaintiff/CC

Defendants from attendance at October 22, 2015 mediation.

3. Personal attendance of the parties was extensively addressed, and the Courts Ordered such attendance. Plaintiff/CC Defendants failed to timely move for reconsideration; appeal or seek any relief from the Mediation Order for more than six (6) months, and the Order is binding on the parties. Plaintiff/CC Defendants may not now re-litigate this issue.

4. The motion of SWB is made in bad faith for the purpose of thwarting the progress of this five-year-old case brought by SWB as sole counsel for the Attorney General of South Carolina (the "AG"), Tomirae Hynie, a/k/a Tomirae Brown ("Tomirae") and more than a dozen other Plaintiff/CC Defendants on May 19, 2010.

5. SWB has an irreconcilable conflict of interest in making any request for any of the 18 Plaintiff/CC Defendants; has repeatedly acknowledged its conflict for more than two years; and has refused to resolve the conflict by simply resigning as counsel for the Plaintiffs/CC Defendants.

6. The motion makes no reference to which or how many Plaintiff/CC Defendants are unavailable, and no specific reason is given for excusing any Plaintiff/CC Defendant. There is no evidence that SWB made any inquiry as to **any** Plaintiff/CC Defendants' availability for mediation; who their personal counsel are; or any other inquiry which would advance the resolution of this case.

7. SWB's motion violates both the letter and spirit of the Mediation Order and ADR Rule 6, with which the Mediation Order directs the parties to comply.

8. On information and belief, the Motion is made in a bad-faith attempt to prevent

certain of the Plaintiff/CC Defendants from being fully informed that, by action of SWB, they are seeking relief from default for failing to timely respond to the counterclaims of Defendant/CC Plaintiff in this case.

9. On information and belief, the Motion was made for the improper purpose of continuing the interference of SWB and the Plaintiff/CC Defendants with the FOIA rights of Plaintiff and others.

10. The purpose of the Mediation Order and mediation will be thwarted, and continued lack of respect for the judicial process by SWB and the eighteen Plaintiff/CC Defendants will be furthered if the parties are not required to comply with the Mediation Order.

11. Louis Levenson, Esq., and David Bell, Esq. appeared at an unsuccessful October 2012 mediation, claiming they had full authority to speak for approximately a dozen of the 18 Plaintiffs. Mr. Levenson had been terminated prior to the mediation by *at least 3* of the persons he claimed to have authority to speak for. And Mr. Bell has since been termination by Terry Brown, whom he claimed to represent.

12. Many of the personal lawyers of Plaintiffs, including Mark Toberoff, who asserts he represents a super-majority of the heirs of James Brown, and Atlanta attorney Scott Keniley – like Mr. Bell – have not been admitted *pro hac vice* either in this case or in the FOIA case their clients had consolidated with this case.

13. The parties, including minors with proper representation by a parent, a GAL appointed by this Court, and/or both, are essential to resolution of this case, which is the purpose of mediation.

14. Presence of the parties at mediation is necessary because both SWB and some of the former personal attorneys have direct conflicts with their clients and former clients, and only the parties can address the multi-million-dollar claims pending against all parties, which revolve around the following questions:

- a. Was SWB's bringing this suit as sole attorney for the AG, Tomirae and more than a dozen additional Plaintiffs, including minors and nonresidents, illegal and/or unconstitutional?
- b. Was it reasonable for Defendants to vigorously defend the Estate Plan of James Brown against the claims of Tomirae and others?
- c. Was James Brown's worldwide music empire worth less than \$4.7 million at his death, leaving the "I Feel Good" Trust with fewer than 5 \$20,000 scholarships a year; or about \$84 million, leaving needy students with about two hundred \$20,000 scholarships per year?
- d. Was it reasonable for Defendants not to accept the \$100 million offers for Brown's assets made by Plaintiff/CC Defendant Terry Brown and others at the times they were made?
- e. Was this lawsuit brought in a bad faith to attempt to damage Defendants and thereby derail the appeal which led to the Supreme Court decision in *Wilson v. Dallas*?

MEMORANDUM IN SUPPORT OF COMPLIANCE WITH MEDIATION ORDER

SWB commenced this action against Defendant and Robert Buchanan, Jr. on May 19, 2010. In the fall of 2010, SWB began seeking relief from default after a partner in the firm failed to timely respond to the counterclaims of Defendant and Buchanan for abuse of process; civil conspiracy; intentional interference with contract; fraud; and attorneys' fees.

In 2011 the S.C. Court of Appeals dismissed without prejudice (as premature) Defendant/CC Plaintiff's and Buchanan's challenges to the lawsuit, including that it was illegal for SWB to be sole counsel for AG Wilson and seventeen private plaintiffs.

Five years after the commencement of this suit the question of the legality of the suit and the default remain at the forefront. The problem was made clearer when it was learned in 2013 that neither AG McMaster nor more than a dozen private plaintiffs had signed the Wingate Litigation Retention Agreement. A contract for these Plaintiff/CC Defendants to pay a 40% contingency to SWB had been signed by Louis Levenson, Esq., David Bell, Esq., and counsel for Tomirae. Since then, AG Wilson has reported his position that his predecessor AG, Henry McMaster, did not authorize SWB to sue Buchanan and Defendant in the name of the State/AG.

In the face of these facts SWB has taken extraordinary steps. It has acknowledged its irreconcilable conflict. But it has simply hid its head in the sand and asked the Court to stop the whole proceeding. That request was made in May 2013. It was successful until the Mediation Order.

In late 2014 attorneys for James Brown's estate reported to Judge Early that the matter of payment to Defendant under a 2009 payment order – earning interest under Judge Early' 2009 order at more than \$100,000 per year – could not be resolved until this Case ("Case 4900") was concluded. The payment order is the subject of an Aiken County case in which there had been no prior mediation.

Hearing this, Judge Early contacted Judge Manning. In time, the joint Mediation Order was issued. SWB argued with the Court prior to the Mediation Order that the parties should not be required to attend. The Mediation Order, however, directed that the parties attend. And the Mediation Order directed that the parties otherwise comply with ADR Rule 6.

Neither SWB nor any of the Plaintiffs/CC Defendants, all on notice of the SWB conflict of interest, moved to alter or amend the Mediation Order. It was not appealed by anyone.

Actions made public in cases in which Defendant is not a party make it clear that attendance of the parties at the mediation, now scheduled for October 22, is essential.

In 2012 SWB persuaded the Court to proceed to a pre-discovery mediation without GALs for the minor and incarcerated persons; and without a majority of the Plaintiff/CC Defendants present. SWB represented that Louis Levenson, Esq. and David Bell, Esq., a Georgia attorney, had full authority to bind more than half of the Plaintiff/CC Defendants. At the time Mr. Levenson had been terminated by three of the persons he claimed to represent at mediation. Mr. Bell, never admitted *pro hac vice* in this case, spoke for Terry Brown. Since 2012, the three, and others, have made clear Mr. Levenson has been terminated and does not speak for them. Terry Brown has terminated Mr. Bell.

Mr. Levenson and Mr. Bell now have the conflict that each signed a 40% contingency fee contract with SWB to sue Defendant and Buchanan for people they no longer represent. While the mere signing of the contract was a violation of requirements for contingency fee contracts, it has been exacerbated by SWB, Levenson and Bell trying to keep the actual Plaintiffs away from the mediation. The clear implication is that SWB does not want the Plaintiff/CC Defendants to come to mediation because they will be able to see the extraordinary damage caused to Defendant by both Case 4900 and the FOIA interference.

The AG's withdrawal of support for both SWB and many of the positions it took at

the 2012 mediation is significant, and must be hashed out by the parties at mediation.

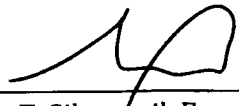
CONCLUSION

The attempt by SWB to evade the Mediation Order and prevent a successful mediation of the parties is the latest in a 2-year effort to prevent any progress in this case. SWB brought this case on behalf of the AG and 17 other Plaintiffs more than five years ago. The motion is an effort to thwart FOIA compliance which – despite SWB's efforts – has demonstrated that this suit was not properly brought either by the State/AG or many of the parties. But the suit has been brought and continued despite the knowledge of its impropriety.

It is time for the Court to call a halt to SWB's attempts to derail this case. The untimely motion to alter the Mediation Order should be rejected, with costs to SWB. Any parties who violate the Mediation Order should be subject to appropriate sanctions under the Rules.

This return is based on the entire record herein, including the Affidavit of Adele J. Pope filed herewith, and any memoranda filed prior to the hearing on this matter.

Respectfully submitted,



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August 12, 2015

Attorneys for Defendant Adele J. Pope

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900 - *cert copy*

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust
and the James Brown Legacy Trust, as
Personal Representative of the Estate of
James Brown, and on behalf of Alan
Wilson, in his capacity as Attorney General
of the State of South Carolina; Tommie Rae
Brown, individually and on behalf of her
minor child Janise Vanisha Brown; Lindsey
Delores Brown; Deanina J. Brown Thomas;
Jason Brown-Lewis; Yamma N. Brown;
individually and on behalf of her minor
children, Sydney L., Carrington L., and
Tonya Brown; Venisha Brown; Larry
Brown; and Terry Brown

and

ALAN WILSON, in his capacity as
Attorney General of the State of South
Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor
child, JAMES B., DARYL J. BROWN,
individually and on behalf of his minor
child JANISE VANISHA BROWN;
LINDSEY DELOREST BROWN;
DEANNA J. BROWN THOMAS; JASON
BROWN-LEWIS; YAMMA N. BROWN,
individually and on behalf of her minor
children, SYDNEY L., CARRINGTON L.,
and TONYA BROWN; VENISHA
BROWN; LARRY BROWN; and TERRY
BROWN,

Plaintiffs.

v.

Adele Pope,

Defendant.

ORDER

1.20 *Jan 15*
Lij Gadsden
C.C.P. & G.S.
Anita Knoepfle *10*
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

v.

Estate of James Brown, Deceased; The
James Brown 2000 Irrevocable Trust;
Russell L., Bauknight, Individually, as
former *Executor de son tort*, and in every
current and former fiduciary status claimed
or held as to the Estate of James Brown and
the James Brown 2000 Irrevocable Trust,

Defendants.

AND:

Robert L. Buchanan, Jr.,

Interested Party.

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-02-1337 - *original*

ORDER

1.20.15
Liz Godard
CC.P.&G.S.
Anita Knoepfle 10¹⁰
Deputy Clerk

The Court after conferring with counsel, Judge Manning, and I have determined that judicial economy would be served by a joint, Court-ordered mediation of the of Aiken County Case 2013-CP-02-1337 ("Case 1337") and Richland County Case 2010-CP-40-4900 ("Case 4900").

IT IS, THEREFORE, ORDERED:

1. That Karl Folkens, Esquire, is here by appointed as the mediator and shall choose the time, place, and date of the mediation as soon as possible.
2. All parties and counsel of record are directed to participate in and attend the mediation in person.
3. Counsel must ensure full compliance with Rule 6(b), SCRADR, regarding attendance at the mediation settlement conference.
4. Counsel must certify to the mediator that each has disseminated the mediators "Frequently Asked Questions" to their respective clients within ten (10) days of the scheduled mediation settlement conference.

[Signature]
[Signature]

5. The Estate shall advance the cost and expenses of the mediation but will be allowed to deduct said advancements once a distribution is made.

6. Regarding the allocation of the costs of the mediation, the mediator shall have authority to group parties with common interests as one.

7. Within twenty (20) days, counsel shall participate in a pre-mediation telephone conference with the mediator for the purpose of scheduling the mediation and addressing location, timing, and procedure of the mediation settlement conference.

8. The parties shall provide the mediator with a memorandum setting forth their respective positions regarding the issues that need to be resolved within twenty-five (25) days of the date of this order.

AND IT IS SO ORDERED.


The Honorable Doyet A. Early, III
Resident Judge
Second Judicial Circuit

January 17, 2015
Arden, South Carolina


The Honorable L. Casey Manning
Resident Judge
Fifth Judicial Circuit

January 6, 2015
Columbia, South Carolina

EXHIBIT B

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

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Columbia, South Carolina 29202-3261

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Adam T. Silvernail
Direct Dial: (803) 461-2328
Email: asilvernail@mkb-law.com

November 25, 2014

By hand-delivery:

The Honorable L. Casey Manning
Post Office Box 192
1701 Main Street, Room 214
Columbia, South Carolina 29202-0192

Re: *Bauknight, et al vs. Pope*
Richland County Case No. 2010-CP-40-4900

Dear Judge Manning:

We have been informed by Judge Early that you and he will be directing a joint mediation of this case and Aiken County Case No. 2013-CP-02-1337. So that the organization of this mediation can proceed quickly, I am providing you with the enclosed proposed Order Directing Joint Mediation. We believe the terms set out are essential to a productive mediation.

Also enclosed is a copy of my clients correspondence and proposed Order sent to Judge Early today in the Aiken County matter, where she is *pro se*.

By copy of this letter, I am providing the proposed Order to counsel of record, with courtesy copies to others. If your Honor executes the Order, I will be glad to arrange for service on the parties.

I thank you for your consideration, and I wish you and other counsel a happy Thanksgiving.

Very truly yours,



Adam T. Silvernail

cc: Adele J. Pope, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
J. Emory Smith, Esquire (courtesy copy)
John W. McIntosh, Esquire (courtesy copy)
C. Havird Jones, Esquire (courtesy copy)

0686

EXHIBIT C

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

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November 26, 2014

By e-mail and hand-delivery:

The Honorable L. Casey Manning
Post Office Box 192
1701 Main Street, Room 214
Columbia, South Carolina 29202-0192

Re: *Bauknight, et al vs. Pope*
Richland County Case No. 2010-CP-40-4900

Dear Judge Manning:

I have received Mark Gende's letter to you, which was sent late yesterday. I take issue with many of his requests, as his representation issues are not my client's problem. Nor should they be the Court's.

He further suggests that the mediation should include the FOIA matters. These are not subject to mediation, and I believe it would be error for the Court to allow further delay of these ancient cases by subjecting them to mediation. I ask that Mr. Smith, who represents the Attorney General in the FOIA suits, confirm that the AG does not seek mediation of these cases.

Mr. Gende is correct that your Honor previously excused the parties from attending mediation. The non-attendance of the parties was the primary reason the mediation was unproductive. Several parties were represented by attorneys or others whose authority to speak for certain parties was, at best, murky. Mrs. Pope's letter to Judge Early of yesterday made reference to the conflicts and representation issues present if the parties' counsel of record and/or "personal" counsel are allowed to attend in their stead. Her summary of these issues was an understatement. For the Court's reference, I bring the following points to your attention:

1. No counsel or GAL attended the October 2012 mediation on behalf of minor James B. Because Mr. Bauknight is shown in the caption of Case 4900 as the agent for James B. and all other Plaintiffs, he and his counsel were James B.'s only representatives at that mediation.
2. Louis Levenson, Esquire, attended the mediation, purportedly on behalf of several individual Plaintiffs. Within a couple of days after the mediation, my client received a letter from Levenson's alleged client Daryl Brown indicating that Levenson did not represent him.
3. David Bell, Esquire, attended the mediation as counsel for Plaintiff Terry Brown during a time when Mr. Bell also represented Terry's son Forlando in a Federal case. The positions taken by Terry in this case and by Forlando in the Federal

case were absolutely irreconcilable, and we later learned that Forlando had been assigned all of Terry's interest in the Estate of James Brown in 2011.

4. All Plaintiffs were represented by Sweeny, Wingate & Barrow at the mediation, as Mr. Gende apparently seeks to do a second time. In late 2013, we received via a Federal Court Order, the fee agreement between Plaintiffs and Mr. Gende's firm. Although the document purports to be a contingency-fee agreement, it is not signed by a single Plaintiff other than Mr. Bauknight. Mr. Levenson, Mr. Bell and Alan Medlin, Esquire, signed the fee agreement on behalf of all individual Plaintiffs. Although declared public by the Federal Court and produced by Mr. Bauknight in that case, the fee agreement has still never been produced by the AG in the FOIA action which has been pending for more-than 3 years.

Mr. Gende's request for a status conference seeks to burden Mrs. Pope and the Court with somehow assisting in resolving Mr. Gende's firm's conflicts of interest. This is not the Court's problem, nor is it Mrs. Pope's. If Mr. Gende cannot resolve his conflicts with his clients, his firm should remove itself from this litigation. Instead, it continues to punish Mrs. Pope for its own lack of foresight.

Respectfully, I believe the only way to ensure that conflicts and representation problems do not hinder any further mediation is to direct that **the parties must attend personally**. Doing so will resolve all issues and questions about who may speak for any particular party without the delay and expense involved in a status conference.

Mr. Gende's request to repeat the 2012 mediation and hope for better results is quixotic. We are eager to utilize the ADR process toward its intended end, but we are not eager to waste time in scheduling and attending an unproductive mediation.

Under Rule 3(b)(9) of the ADR Rules, this case is now exempt from mediation. We will not object, however, to another mediation if the parties are ordered to attend and the other conditions of the mediation are reasonable. We believe that there is a substantial chance of success at mediation if the parties are not again exempted from the ADR Rule requiring attendance, and we ask that the Court give both my client and the Plaintiffs the opportunity to resolve this matter by agreement.

Very truly yours,



Adam T. Silvernail

cc: Adele J. Pope, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
J. Emory Smith, Esquire (courtesy copy)
John W. McIntosh, Esquire (courtesy copy)
C. Havird Jones, Esquire (courtesy copy)

EXHIBIT D



SWEENEY WINGATE & BARROW P.A.

December 3, 2014

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x7121
mvg@swblaw.com

Via electronic mail and U.S. mail

The Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, SC 29003

Via electronic mail and U.S. mail

Honorable L. Casey Manning
Chief Administrative Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Judge Early and Judge Manning:

On behalf of the case 4900 plaintiffs' group, thank you for the additional time to respond to the November 20, 2014 email requesting, "suggestions on the mediation including payment of fees, scope of mediation, and any particular requirements that you think would ensure a successful result."

1. Without prejudice to any future position, the plaintiffs have agreed internally to waive any conflicts created by the *Wilson v. Dallas* decision and the Aiken will contest cases for the purpose of complying with the court's order to mediate.

2. The plaintiffs should bear one half of the mediation costs, divided pursuant to their own agreement, and Mrs. Pope should bear one half of the mediation costs. This is essentially the breakdown proposed by Mr. Billy Newsome.

3. The scope of the mediation should be global, including all matters involving Mrs. Pope, the Estate and Trust and all other named plaintiffs.

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

0691

4. A status conference is necessary to ensure a successful result so that the parties may be charged by the court as to the court's objective for the mediation. Such a charge is necessary because Mrs. Pope continues to raise conditions that appear calculated to undermine the likelihood of a successful mediation.

Below, I briefly review our objections to Mrs. Pope's mediation conditions and then outline what the plaintiffs believe is Mrs. Pope's objective for mediation.

Mrs. Pope seeks to compel all parties to attend mediation in person and force guardians to be appointed for all represented minors. These issues were raised before Judge Manning and ruled upon by him prior to the last mediation. Judge Manning found all minors' interests were properly represented by their parents and all adults were properly represented by counsel.

Mrs. Pope seeks to exclude FOIA matters that have been associated with case 4900. We believe that all matters must be mediated.

Mrs. Pope seeks the Court's Order that certain documents be produced at mediation. All of the documents that she seeks are subject to discovery disputes, and none are necessary to mediate, as the settlement with Mr. Bob Buchanan demonstrated.

Mrs. Pope demands that only counsel of record for Case 4900 be allowed to attend mediation. This is a remarkable request that case 4900 plaintiffs be denied the benefit of personal counsel at mediation.

The plaintiffs believe Mrs. Pope may not intend to make any effort at a global resolution of the matters the court has directed us to mediate. Her mediation conditions and her many prior statements appear to reveal a tactic she has long been attempting to accomplish. Specifically, we believe Mrs. Pope seeks to settle with a single James Brown family member in return for assigning to her some estate interest, no matter its size or viability, in order to use that interest as a pretext to insert herself into all estate litigation and reassert control over the James Brown Estate and Trust.

If this is Mrs. Pope's intention, it is contrary to the South Carolina Supreme Court's statement in *Wilson v. Dallas* that since she has been rightly removed as a fiduciary. Mrs. Pope has nothing left to do with the Estate. This intention is also contrary to what the plaintiffs understand to be the direction of the court in ordering this third case 4900 mediation.

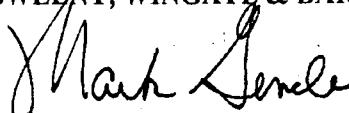
At a status conference, the court should clearly address its objective in ordering mediation to clarify what the plaintiffs believe to be the court's intent that the parties seek a global resolution of all issues with all parties.

December 3, 2014
Page 3 of 4

Thank you for your consideration of these items. Should the Court have any questions concerning this correspondence, I am ready to respond at the Court's convenience.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/ljm

cc: Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
J. Emory Smith, Jr., Esquire
C. Havird Jones, Jr., Esquire

) IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900

DEFENDANT ADELE J. POPE'S MOTION
TO ALTER, AMEND AND/OR VACATE
ORDER GRANTING PLAINTIFFS'
MOTION TO SET ASIDE DEFAULT

[illegible]

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moves the Court for an Order altering, amending and/or vacating this Court's October 12, 2015 Order Granting Plaintiffs' Motion to Set Aside Default. The grounds of this motion are set forth below.

BACKGROUND

1. This action was commenced by the filing of a Summons and Complaint in the Richland County Probate Court on May 19, 2010 and subsequent service on Defendants Robert L. Buchanan, Jr. and Adele J. Pope. This matter was subsequently removed to the Circuit Court.
2. Defendants filed and served their Answer and Counterclaim on September 30, 2010.
3. Plaintiffs did not file a response to the counterclaims, and Defendants filed an Affidavit of Default on November 10, 2010.
4. Thereafter, Plaintiffs filed a Motion for Relief from Default on November 16, 2010, with an attached Affidavit of Kenneth B. Wingate, Esquire, and a proposed Reply to Counterclaims.
5. Plaintiffs' counsel acknowledged having received the Answer and Counterclaim, but explained that he "did not recognize it as a counterclaim." (Affidavit of Kenneth B. Wingate)
6. Defendants opposed Plaintiffs' motion to be relieved from default and filed memoranda asserting that Plaintiffs had failed to show "good cause" for relief as required by Rule 55(c).
7. After the December 17, 2012 hearing on the motion, certain Plaintiffs announced their termination of Wingate as their counsel herein, and Wingate moved to be relieved as counsel for the South Carolina Attorney General.¹

ARGUMENT

- I. **Wingate Lacks Authority to Seek Relief from Default for Certain Plaintiffs**
8. As an initial matter, the Court erred in failing to consider and/or find that Wingate lacks authority to speak for certain Plaintiffs herein. Specifically, Wingate has moved to be relieved as counsel for the AG on the basis that the AG has terminated

¹ The AG has also asserted in other litigation that he is not a party to this action, although he has filed a "motion to be dropped as a party" herein. Defendant Pope opposes this motion, and it has not been heard or decided.

Wingate's services. No other counsel has yet filed a notice of appearance for the AG, however, and Wingate's motion to be relieved as counsel has not been heard.

9. Further, Plaintiff Daryl Brown has announced his termination of Wingate as his counsel, although no other counsel has made an appearance on his behalf in this case. Terry Brown, through an assignee, has also announced his termination of Wingate.
10. Plaintiff James Brown Legacy Trust has announced through its counsel Lewis, Babcock & Griffin, LLP, in other litigation its position that it no longer exists. The AG has also taken the position that the Legacy Trust does not exist "at this time." Neither Wingate nor other counsel for the Legacy Trust has sought to remove it from this case, and the Legacy Trust remains subject to Pope's counterclaims herein. What is clear is that Wingate lacks authority to seek relief for the Legacy Trust at this time.

II. No "Good Cause" has Been Shown which would Entitle any Plaintiff to Relief from Default.

11. In addition, the Court erred in failing to consider and/or find that relief from default is not justified under the applicable law, because Plaintiffs have failed to show "good cause."
12. Pursuant to Rule 55(c), SCRCP, the Court may, for good cause shown, set aside an entry of default. In the case of Wham v. Shearson Lehman Bros., Inc., 298 SC 462, 381 S.E. 2d 499 (Ct. App. 1989), the Court held that in determining whether one should be relieved from the entry of default, a court shall consider the following factors: (1) the timing of the Motion for Relief; (2) whether one has a meritorious defense; and (3) the degree of prejudice to the non-moving party if the relief is granted. The law in this regard remained essentially unchanged until the South Carolina Supreme Court ruled in the case of Sundown v. Intedge Industries, 382 SC 601, 681 SE 2d 885 (2009). In that case, the Court found that a "satisfactory explanation" must be given for the default before the above analysis would occur.
13. The Court erred in finding "good cause" where the only explanation put forth by Plaintiffs for the default was the Affidavit of Kenneth B. Wingate, which sets forth two paragraphs which appear intended to support Plaintiffs' a good cause for failing to timely respond to the Counterclaim after being properly served.
14. The Court erred in failing to consider and/or find that the document which Wingate failed to recognize as a counterclaim, in fact, bears the title "**ANSWER AND COUNTERCLAIM OF ROBERT L. BUCHANAN, JR. AND ADELE J. POPE**" in boldface, capital letters. There is no deficiency in the presentation of the counterclaim which could justify Wingate's oversight, and he does not allege any such deficiency.

15. The Court erred in failing to consider and/or find that errors on the part of an attorney will not be the basis for finding good cause to set aside an entry of default. Mr. Wingate states in his affidavit that he had received the counterclaim and marked it for placement in his files on this action.

III. The AG can be held in default; he has not shown "good cause" for relief; and Wingate lacks authority to speak for him.

16. The Court erred failing to consider and/or find that the AG can be held in default and, further, that he has not demonstrated "good cause" to be relieved from default. Plaintiffs have argued that the AG cannot be held in default at all, and they base this argument on Rule 55(e), SCRPC. This argument is misplaced, as is shown by a plain reading of the Rule. Rule 55(e) states:

(e) Judgment Against the State and Certain Other Parties. No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court. [emphasis supplied]

17. This Rule does not, as Plaintiffs assert, preliminarily absolve the AG of default. Rather, it requires presentation of evidence in support of the claim against the State prior to a default judgment being entered. At this stage, where only the entry of default is at issue, Rule 55(e) does not absolve the AG of default herein. Indeed, the identical Federal Rule has been interpreted to allow for the entry of default and a default judgment, where plaintiff could show a meritorious claim. See Bostic v. Harris, 484 F.Supp. 686 (S.D.W.Va. 1979).
18. In any event, Wingate's clear lack of authority to seek this relief on behalf of the state should have precluded the Court's allowing the AG to be relieved from default.

CONCLUSION

For the reasons set forth above, Plaintiff asks this Court to alter, amend or vacate its October 12, 2015 Order Granting Plaintiffs' Motion to Set Aside Default. This motion is based on applicable statutes and caselaw, as well as the entire record herein and any memoranda filed prior to the hearing on this motion.

Respectfully submitted,



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Post Office Box 100261
Columbia, South Carolina 29202
803/461-2328
asilvernail@mkb-law.com

Attorney for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, In
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
indiydually and on behalf of her minor child,
James Brown II; Daryl J. Brown; individually
and on behalf of his minor child, Janise Vanisha
Brown; Lindsey Delores Brown; Deanna J.
Brown Thomas; Jason Brown- Lewis; Yamma N.
Brown, individually and on behalf of her minor
children Sydney Lumar and Carrington Lumar;
Tonya Brown; Venisha Brown; Larry Brown; and
Terry Brown
and

ALAN WILSON, in his capacity as Attorney
General of the State of South Carolina; TOMMIE
RAE BROWN, individually and on behalf of her
minor child, JAMES BROWN, II; DARYL J.
BROWN, individually and on behalf of his minor
child JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN-LEWIS; YAMMA
N. BROWN. individually and on behalf of her
minor children SYDNEY LUMAR and
CARRINGTON LUMAR; TONYA BROWN;
VENISHA BROWN; LARRY BROWN; and
TERRY BROWN,

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Case No.: 2010-CP-40-4900

**DEFENDANT/COUNTER-
CLAIMANT ADELE POPE'S RULE
11 AND RULE 37, SCRPC MOTION
AND MEMORANDUM IN SUPPORT
OF THE MOTION AND IN
OPPOSITION OF THE
PLAINTIFFS' MOTION FOR A
PROTECTIVE ORDER**

RICHLAND COUNTY
FILED
2016 MAR -1 AM 11:43
JEANNETTE W. MCBRIDE
CLERK & C.S.

Defendant/Counterclaim Plaintiff Adele Pope (hereinafter sometimes referred to as "Pope") hereby moves for sanctions pursuant to Rule 11, SCRPC and Rule 37, SCRPC arising out of the Plaintiffs filing of a motion on February 18, 2016 for a protective Order and/or to quash the notice of deposition of James B. Richardson, Jr., Esquire noticed for March 3, 2016.

The present motion should be granted and the Plaintiffs' motion should be denied for each and all of the reasons set forth below:

1. The Summons and Complaint herein were filed on May 19, 2010 by the Attorney General of South Carolina, with others, who now seek to stop the deposition of a material witness to relevant actions of the parties between July 2008 and May 2013.
2. Counsel for Pope was not consulted prior to the filing of the Plaintiffs' Motion to Quash (nor was any certification included in the Motion that such consultation would serve no useful purpose) as is required by Rule 11, SCRPC. For this reason alone, the motion "shall be stricken." Rule 11(a), SCRPC.
3. Though Plaintiffs did not consult with counsel for Pope, the cover letter and motion itself base their attempt to prevent the deposition of Richardson in part on their pending 2014 motion to stay this case indefinitely and an email from the Honorable L. Casey Manning's law clerk related to certain pending motions. The Plaintiffs, in their cover letter, even go so far as to allege that counsel for Defendant Pope is acting in "disregard of the Court's recent instructions."
4. There is simply no Order, correspondence or other direction from the Court that has indicated that discovery in this case is stayed. Counsel is not acting in disregard of

anything. In fact, counsel is obligated to continue to try and defend their client and prosecute her case in an action that is approaching its sixth year.

5. Plaintiffs state that they “fail to see” how the deposition of James B. Richardson is relevant to this case or what non-privileged information may serve as the subject of the deposition. Whether or not the Plaintiffs “fail to see” the significance of the testimony of the deponent is simply not a valid ground to move for a protective order.
6. Rule 26, SCRCP states, in pertinent part, that a protective order may issue when it is required to “protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense...” In the present case, the Plaintiffs do not attempt to even allege any of the foregoing in their motion.
7. Instead, the Plaintiffs make allegations that, in addition to being irrelevant to a motion for protective order, have no basis in fact, law or rule of civil procedure. Rule 30, SCRCP, clearly allows for the properly noticed deposition to occur. As stated in the Affidavit of Adele Pope, filed contemporaneously and attached as Exhibit A hereto, the substance of the testimony sought to be elicited at the deposition squarely falls within the scope of permissible discovery as outlined in Rule 26, SCRCP.
8. Plaintiffs’ motion to stay this case was filed in April 2014, following their informal request for a stay (via letter) in May 2013. Continuing their efforts to evade and stifle discovery, Plaintiffs have since 2013 used their request for this matter to be stayed indefinitely as a basis to refuse to participate in any discovery. This is impermissible and it is in direct conflict with Rule 11 and Rule 37, SCRCP (Rule 11, SCRCP, states

that no motion shall be interposed for delay and Rule 37 SCRPC states that is a party is subject to sanctions for failure to cooperate in discovery).

9. Plaintiffs complain that the deposition was noticed unilaterally and without any consultation with Plaintiff's counsel. This argument is without any actual basis in rule of civil procedure as Rule 30, SCRPC, specifically allows any party to notice the deposition of a witness. Plaintiffs do not even assert that their counsel is unavailable on March 3, 2016, the date set for the deposition.
10. Simply put, the passage of time continues to erode the likelihood that witnesses to the facts of this case will be available and able to adequately recall the facts of which they currently have personal knowledge, resulting in a denial of Pope's right to defend herself against the claims of the Attorney General and others.
11. Mr. Richardson worked *pro bono publico* for four years on the appeal which resulted in the decision in *Wilson v. Dallas*, 743 S.E.2d 746 (2013). *Wilson* is the subject of a portion of Plaintiff's complaint herein. Mr. Richardson also has critical facts relevant to Pope's abuse of process counterclaim and other counterclaims.
12. Richardson is over seventy (70) years old, and is currently in his 46th year of practicing law. There is absolutely no reason his deposition cannot or should not go forward. Any opposition to the deposition can only be levied for the purpose of delay. Such a delay will materially hurt the ability of Pope to defend herself in this action.
13. As a result of the Plaintiffs' continued tactics of delay and unfounded allegations in the most recent motion and cover letter, Defendant Pope hereby moves for sanctions,

including but not limited to attorney's fees and costs for the filing of this motion and return, pursuant to Rule 11, SCRPC and Rule 37, SCRPC.

14. In compliance with Rule 11, SCRPC, counsel for Defendant Pope sent a letter to counsel for the Plaintiffs on Friday, February 19, 2016, and requested Plaintiffs immediately withdraw their motion and withdraw their allegations made in the cover letter. The withdrawal would have resolved the matter contained in this motion. Counsel for Defendant Pope received no response.

CONCLUSION

This motion and return is based on the South Carolina Rules of Civil Procedure, applicable statutory and case law, the entire record herein, including the Affidavit of Adele J. Pope filed and served herewith, and such additional affidavits and/or memoranda as shall be presented prior to the hearing on this matter. For the reasons set forth above, Defendant respectfully asks this Court to grant Pope's Motion for Sanctions and deny Plaintiffs' motion for protective Order and to quash the Notice of Deposition of James B. Richardson, Jr., Esquire.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,


W.H. Bundy, Jr.
H. Brent McDonald
Smith, Bundy, Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd., Suite 100
Post Office Box 1542
Mount Pleasant, South Carolina 29465
Telephone: (843) 881-881-1623
Facsimile: (843) 881-4406
whbesq@s3blaw.com

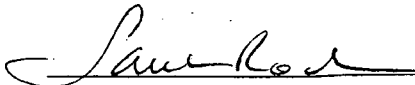
Adam T. Silvermail
Moses & Brackett
1333 Main Street, Suite 260
Columbia, South Carolina 29201
Telephone: (803) 461-2328
Facsimile: (803) 461-2309
asilvermail@mkb-law.com
Attorneys for Defendant Adele J. Pope

Mt. Pleasant, South Carolina
February 22, 2016

CERTIFICATE OF SERVICE

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that true and correct copies of the DEFENDANT/COUNTER-CLAIMANT ADELE POPE'S RULE 11 AND RULE 37, SCRCP MOTION AND MEMORANDUM IN SUPPORT OF THE MOTION AND IN OPPOSITION OF THE PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER were served on all parties via U. S. Mail and/or E-Mail, postage paid, this 22nd day February, 2016, as follows:

Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
1515 Lady Street (29201)
Columbia, SC 29211
Attorneys for Plaintiffs


Sarah Foster Rock

RICH AND COURT
FILED
2016 MAR -1 AM 11:43
JANETTE W. MCBRIDE
C.C.P. & G.S.

EXHIBIT A

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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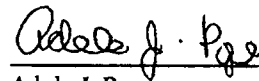
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- b. Whether James Brown's music empire was worth almost \$100 million (less the TIAA debt) on the date of James Brown's death, or approximately \$4.7 million.
- c. Whether Mr. Buchanan and I properly and efficiently defended the estate plan of James Brown from August 10, 2008 until May 8, 2013 against the united efforts of the Attorney General, Tommie Rae Hynie and others to destroy it.
- d. Whether the Christie's sale, including the proposal to sell the GRAMMY, was properly conducted as directed in multiple Orders of the Circuit Court and Court of Appeals.

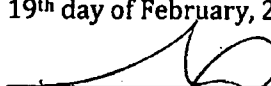
5. I am informed and believe that Mr. Richardson is either 72 or 73 years old and that his practice is less active than it has been for most of the last 45 years.

6. Because Plaintiffs are attempting to delay the trial in this case for what may be many years, and the trial in Aiken County Case 2013-CP-02-1337 (which involves some of the same issues) will not take place until at least July 1, 2017, I am fearful that if Mr. Richardson's testimony is not immediately preserved for both cases, valuable evidence which cannot be duplicated will be lost and justice in both cases will be impaired.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this
19th day of February, 2016


Notary Public for South Carolina
My Commission Expires: 7/12/2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in his capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capacity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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) Case No.: 2010-CP-40-4900

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MOTION BY CASE 1337 PLAINTIFF
TO STRIKE AND FOR COSTS
AND ATTORNEY FEES FROM
THE ATTORNEY GENERAL AND
CERTAIN OTHER PLAINTIFFS

RICHLAND COUNTY
FILED
2016 MAY 27 PM 3:50
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

And

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ADELE J. POPE,

Plaintiff,

-v-

ALAN WILSON, in his Capacity as Attorney
General of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS

) SECOND JUDICIAL CIRCUIT

)

) Case No.: 2010 - CP-40-4900

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IN RE:

Proposal of Alan Wilson, in his Capacity as Attorney
General of South Carolina, and others, to consolidate

discovery in this action with the following case:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Case No. 2013-CP-02-1337
	)	
Adele J. Pope,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
The Estate of James Brown and the James	)	
Brown 2000 Irrevocable Trust,	)	
	)	
Defendants.	)	

TO: PLAINTIFFS TOMIRAE BROWN; ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL OF SOUTH CAROLINA; RUSSELL L. BAUKNIGHT IN HIS CAPACITY AS TRUSTEE OF THE JAMES BROWN LEGACY TRUST; RUSSELL L. BAUKNIGHT, IN HIS CAPACITY AS AGENT ON BEHALF OF TOMIRAE BROWN AND JAMES B. (A MINOR); RUSSELL L. BAUKNIGHT AS PURPORTED AGENT ACTING ON BEHALF OF ATTORNEY GENERAL ALAN WILSON; AND OTHER PLAINTIFFS IN CASE 2010-CP-40-4900, AND THEIR COUNSEL:

YOU WILL PLEASE NOTICE THAT at the hearing to be held before The Honorable Doyet A. Early, III, on June 7, 2016, or as soon thereafter as she may be heard, Adele J. Pope, in her capacity as *pro se* Plaintiff in Aiken County Case 2010-CP-02-1337 (Case 1337), will move for an Order as follows:

1. Striking the Motion of Alan Wilson, Attorney General of South Carolina; Russell L. Bauknight, as purported agent for Attorney General Wilson; and other Plaintiffs in Case 2010-CP-40-4900 ("Case 4900");
2. Charging Attorney General Alan Wilson, and Russell L. Bauknight as agent for Tomirae Brown, James B. (a Minor), and as purported agent for Alan Wilson in his capacity as Attorney General of South Carolina, with legal fees and costs of Adele Pope for the defense of this action.

The grounds of this motion are:

1. Plaintiffs' counsel Sweeney, Wingate and Barrow, P.C. ("Wingate"), has no legal authority to act on behalf Case 4900 Plaintiff Alan Wilson, in his capacity as Attorney General of South Carolina, in the filing of the Motion to Consolidate.

2. Russell L. Bauknight (Bauknight) has no legal authority to act in Case 4900 or any other case as agent on behalf of Attorney General Wilson.

3. The Court in Case 4900 lacks jurisdiction to take the requested action.

4. Judge Manning has denied a request for change of venue.

5. The Consolidation Motion, on its face, continues the 3-year violation by AG Wilson of his commitment made to the Supreme Court of South Carolina in his Petition for Rehearing in *Wilson v. Dallas* filed March 14, 2013.

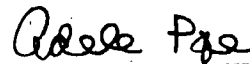
6. The Consolidation Motion violates Public Policy and the duty of the Attorney General of South Carolina to protect The James Brown "I Feel Good" Charity because AG Wilson, by the Consolidation Motion, attempts to place funds James Brown left to his "I Feel Good" Charity to pay legal fees of his Co-Plaintiffs Tomirae, James B., and others who are seeking to dismember James Brown's Charity.

7. On the face of the pleadings, there are fifteen Plaintiff/Counterclaim Defendants in Richland Case 4900 who are not parties to Case 1337.

8. The Consolidation was not properly served on Aiken 1337 Plaintiff, and was not filed in that case.

This Motion to Strike is based on the Complaints, Answers and Counterclaims in each of the five cases (including three FOIA cases) AG Alan Wilson has sought to consolidate with Case 4900 since 2011; the affidavit of Adele J. Pope filed herewith; the Constitution of the United States and South Carolina; the statutory duties of the Attorney General ; the limitations placed on the engagement of outside counsel; and the positions of AG Alan Wilson as stated in the public record and depositions of Assistant AG Mary Frances Jowers and Sr. Assistant AG Havird "Sonny" Jones in Aiken Case 1337, concluded on May 19, 2016. It will further be based on a Memorandum or Memoranda, and any other documents properly filed by movant before the hearing on the Motion.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: (803) 413-0753
adele@popelawfirm.com
Plaintiff, *pro se*

May 20, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in is capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capcity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No.: 2010-CP-40-4900

) RETURN AND MEMORANDUM
) OF AIKEN CASE 1337 PLAINTIFF
) OPPOSING MOTION OF
) ATTORNEY GENERAL & OTHERS
) TO CONSOLIDATE
) FOR PURPOSES OF DISCOVERY

RICHLAND COUNTY
FILED
2016 MAY 27 PM 3:21
JEANETTE W. HENDERSON
C.C.P. & G.S.

And

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ADELE J. POPE,

Plaintiff,

-v-

ALAN WILSON, in his Capacity as Attorney
General of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Case No.: 2010 - CP-40-4900

) RETURN AND MEMORANDUM OF
) AIKEN CASE 1337 PLAINTIFF
) OPPOSING MOTION OF
) ATTORNEY GENERAL & OTHERS
) TO CONSOLIDATE CASES
) FOR DISCOVERY

Reserving all rights under, and incorporating herein, her May 21, 2016, Motion
to Strike the Motion of Attorney General Alan Wilson, Tomirae Brown and others to

consolidate the above cases ("Richland 4900" and "FOIA #2") with Aiken County Case No. 2013-CP-02-1337 ("Aiken 1337"), Aiken 1337 Plaintiff, *pro se*, Adele J. Pope, responds to, and opposes, the Motion to Consolidate.

The grounds of Pope's objections to the Consolidation Motion are all those stated in the Motion to Strike, and the following:

1. Aiken 1337 is not "before the Court" as contemplated by Rule 42 SCRPC.
2. Aiken 1337, Richland 4900 and FOIA #2 do not share common questions of fact.
3. Aiken 1337, Richland 4900 and FOIA #2 do not share common questions of law.
4. Consolidating Aiken 1337 With Richland 4900, with 40 party- and non-party witnesses, does not further expedition or economy, and will cause delay and prejudice.
5. Consolidation will result in prejudice and confusion by infusing Nexsen Pruet lawyer/witnesses and Pope, a lawyer/Party into Richland 4900.
6. Consolidation where the Attorney General remains aligned with Tomirae and James B. in Richland 4900 will cause prejudice and confusion in Aiken 1337.
7. Consolidation where the Attorney General remains aligned with Tomirae and James B. will cause confusion about Buchanan & Pope's protection of the "I Feel Good" Charity's 900 Copyrights in Aiken 1337.
8. Consolidation where the Attorney General remains aligned with Bauknight in multiple roles, including Trustee of the McMaster Legacy Trust, will prejudice Pope in Aiken 1337.
9. Consolidation where the Attorney General remains aligned with Tomirae but the Brown's Estate, through LSA Sojourner, claims she is not Brown's spouse, will prejudice Pope.
10. Where Judge Early has awarded James B. \$700,000 in legal and GAL fees in a case from which Pope was excluded, consolidation will result in prejudice.

The objection of Aiken 1337 Plaintiff is based on her Motion to Strike; the Affidavit of Adele J. Pope dated May 21, 2016 filed herein; the Depositions of Mary Frances Jowers, Havird "Sonny" Jones, and James B. Richardson, Jr., in Aiken 1337; and the pleadings in all three cases.

MEMORANDUM OF LAW OPPOSING CONSOLIDATION FOR DISCOVERY

Rule 42(a) SCRPC provides for actions "before the court" to be consolidated where they "involve a common question of law or fact." Rule 42 (b) further provides for separate trials and other separation of consolidated matters "in furtherance of convenience or to avoid prejudice." If the parties consent to consolidation, they may be held to that decision, even if it later turns out not to have been favorable. See *Ellis v. Oliver*, 307 S.C. 365, 415 S.E. 2d 400 (1992).

The Consolidation Motion involves two Richland County cases and an Aiken County case. These three cases are not "before the court" as contemplated by Rule 42.

Where a party opposes consolidation, as Aiken 1337 Plaintiff Pope does, the Court must determine that consolidation will further convenience, avoid prejudice, and be conducive to expedition and economy. Further, the Court must be mindful of "always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State." See 42(b) SCACR.

Consolidation of Richland 4900, Aiken 1337 and FOIA #2 for discovery violates all of the consolidation principles of Rule 42. At the heart of the problem is the continuing alliance of Attorney General Alan Wilson with his Richland 4900 Co-

Plaintiff/CC Defendants Tomirae and her son James B., and also the multiple roles held by Russell Bauknight in Richland 4900. Some of these issue are discussed in more detail below.

Consolidation of Richland 4900, FOIA #2 and Aiken 1337 is not "before the Court" as contemplated by Rule 42 SCRCP.

Consolidation under Rule 42 (a) of cases "before the court" contemplates that they are in the same court in the same county. It does not sanction a change of court or a change of venue. The fact that a complex Richland County tort case, involving claims and counterclaims of \$50 million or more, and a straightforward Aiken County commissions claim case are both assigned to the same judge does not put them "before the court" for purposes of Rule 42(a). Nor may the Attorney General's Consolidation Motion be used to, in effect, to obtain a change of venue in Richland 4900.

In 2010 the Attorney General and others sued Robert Buchanan and Adele Pope in Richland County, where neither lived or worked. A change of venue to Aiken, Buchanan's home, was appropriate. It was denied, however, based – at least in part – on sworn statements by Bauknight that he has managed the James Brown Legacy Trust (the "McMaster Legacy Trust") in Richland County since 2009. The Court denied the request of Buchanan and Pope to change venue.

In 2011 Pope brought FOIA #2, along with another FOIA case, in her home, Newberry County, where her FOIA requests had been made. At the urging of Attorney General Wilson, with Bauknight and others, venue of the two FOIA cases was transferred to Richland County. One has been consolidated, but not merged, with

Richland 4900. Attorney General Wilson is seeking to consolidate the second one, and to subordinate it to discovery in Richland 4900.

This changing of venue has resulted in prejudice to the letter and spirit of FOIA.

A Newberry FOIA Case, already transferred once; a complex Richland County tort case; and an Aiken County claims case removed from Probate Court are not properly "before the court" for consolidation under Rule 42(a).

**Aiken 1337, Richland 4900 and FOIA #2 Do Not Share
Common Questions of Fact.**

The death of music icon James Brown has spawned more than twenty lawsuits, including Richland 4900. It was filed more than six years ago by one South Carolina Attorney General, and has been pursued for the last three years by another. More than 100 lawyers have become involved in James Brown matters. At least eight of them are being paid by the taxpayers of South Carolina.

All of these many cases share a common fact. They have something to do with James Brown. Few have qualified for any consolidation.

Richland 4900, Aiken 1337 and FOIA #2 do not share common questions of fact necessary to make them appropriate for consolidation under Rule 42(a). Their differences are discussed below.

a. Richland 4900 Facts Relate to the McMaster Settlement Deal

On August 10, 2008 Attorney General Henry McMaster contracted with Tomirae and Atlanta attorney Louis Levenson to dismember James Brown's estate plan. Part of that contract was to treat Tomirae as Brown's spouse and for Tomirae and the Attorney

General to work together to defeat the claims of any person who was not part of the McMaster Settlement.

On September 9, 2009 Alan Medlin, Esq., speaking of Buchanan and Pope, told Judge Early:

... WE'RE UNANIMOUS AS MR. WILKINS POINTED OUT ON THIS ISSUE. WE DO NOT WANT THEM TO BE FIDUCIARIES AND IF THEY PREVAIL -- IF THEY WIN ON APPEAL AND THEN WE GO BACK AND TRY THOSE WILL AND TRUST CONTESTS AND THEY WIN THOSE AND WE TRY THE OMITTED SPOUSE AND THE ELECTIVE SHARE AND THE PRETERMITTED CHILD CONTEST AND THEY WIN THOSE, THEN EVERYTHING GOES TO THE CHARITY...

THE ATTORNEY GENERAL DOESN'T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT, THE ATTORNEY GENERAL WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL'S OFFICE DOES NOT WANT THEM AS FIDUCIARIES.
[Tr. P. 29, *Emphasis supplied.*]

Present at the hearing was Assistant Attorney General J.C. Nicholson, III. Nicholson told Judge Early he supported the arguments of Wilkins and Medlin.

By September 9, 2009 Medlin, Tomirae's tax lawyers, Nexsen Pruet attorney Freddie Kingsmore and others were secretly working on attacking the \$100 million value placed on James Brown's assets by five PR/Trustees.

In early 2010 Medlin advised Buchanan's lawyer that Sr. Assistant AG Sonny Jones had hired the law firm of Kenneth Wingate ("Wingate") and would sue if Buchanan and Pope did not drop the appeal which led to the *Wilson v. Dallas* decision.

On May 18, 2010 Levenson, Medlin, Bauknight and David Bell, Esq., secretly signed the contract to bring Richland 4900.

Among the Richland 4900 allegations against Buchanan and Pope was that they should have accepted a \$100 million offer for Brown's music empire made in 2007. Just three months later, however, Jones told the Appellate Court in *Wilson* that the settling parties were expecting an appraisal within a few weeks that would show Brown's Estate and 2000 Trust assets were worth less than \$12 Million when he died.

The day before oral argument in *Wilson* in 2011, Bauknight's lawyer was quoted in hundreds of media outlets making vitriolic claims about Buchanan and Pope.

At oral argument in *Wilson*, Bauknight's lawyer told the Supreme Court that Tomirae's elective share claim was a "slam dunk," that Brown's Trust has no corpus to speak of; and that Tomirae controlled the Federal Copyright Act Termination Rights to the approximately 900 Copyrights James Brown gave his "I Feel Good" Charity.

Three years after the Supreme Court's final decision in *Wilson*, the alliance of the Attorney General, Tomirae and Bauknight continues unabated in Richland 4900.

Most Richland 4900 facts developed after the McMaster Settlement was reached.

b. FOIA #2 Facts Relate Solely to the Attorney General's Failure to Comply.

In 2010 Buchanan and Pope took the position in Richland 4900 that it was improper for Attorney General McMaster, Tomirae and other non-residents of South Carolina to share a single, private law firm - Wingate.

The Attorney General's Litigation Retention Agreements with outside special counsel are public documents. In 2011 Pope made a FOIA request for the Wingate Agreement.

The questions of fact in FOIA #2 can be boiled into one: Why did Attorney

General Wilson refuse for 4 ½ years to produce the Wingate Contract under FOIA?

c. Aiken 1337 Facts Relate to the Buchanan/Pope Service and Appeal.

In connection with Buchanan's and Pope's commission claims, it does not matter whether Tomirae is ultimately determined to be Brown's spouse, or James B. Brown's child. The fact issues of Aiken 1337 include:

- a. Was it appropriate for Buchanan and Pope as PR/Trustees to defend Brown's estate plan against Tomirae's spousal claims ?
- b. Was it appropriate for Buchanan and Pope to defend against claims of James B. where he was not a presumed child and refused DNA tests?
- c. Was it appropriate for Buchanan and Pope to defend against Cannon and Dallas ?
- d. Was it appropriate for Buchanan and Pope to protect Brown's 900 Copyrights against unwarranted and avoidable Terminations?
- e. Was it appropriate for Buchanan and Pope to pursue the *Wilson* appeal ?

But for the propriety of the *Wilson* appeal, which has already been confirmed by the *Wilson* decision and the deposition of James Richardson, Jr., the questions of fact in Aiken 1337 relate principally to actions *before* May 26, 2009.

Consolidation is not appropriate because the cases do not share common questions of fact.

Aiken 1337, Richland 4900 and FOIA #2 Do Not Share Common Questions of Law.

A review of just some of the questions of law involved in Richland 4900, FOIA #2 and Aiken 1337 shows that they do not share common questions of law.

a. Questions of Law in Richland 4900

Richland 4900 involves serious and complex legal questions of constitutional

proportions. They arise out of the seven-year relationship of the Attorney General with Tomirae, James B., the McMaster Legacy Trust, Levenson and Bell. Those issues include:

1. Did Attorney General McMaster, Tomirae, Levenson and Bell commit an abuse of process by bringing Richland 4900 to stop the *Wilson* appeal?
2. Did the Attorney General and Bauknight violate SCPC 62-1-106 by claiming to the Court that Brown's estate was worth only \$5 million when suing Buchanan and Pope for not accepting a \$100 million offer?
3. Did the Attorney General and other Richland 4900 Plaintiffs conspire with Forlando, Cannon and/or others to further damage Buchanan and Pope?
4. Did the Attorney General and other Richland 4900 Plaintiffs interfere with the proper contracts of Buchanan and Pope as PR/Trustees?

b. Questions of Law in FOIA #2

The FOIA #2 questions of law relate solely to the Attorney General's failure to honor Pope's 2011 FOIA. No discovery is needed to reach the questions.

c. Questions of Law in Aiken 1337

The principal legal question in Aiken 1337 is: Should James Brown's Estate/2000 Trust pay Pope, as it has paid Buchanan, in accordance with Judge Early's Order of January 8, 2008?

There are simply no significant common questions of law in the three cases. If the Attorney General is successful in consolidating a second FOIA matter, as he is attempting to do, the lack of common legal issues will be even greater. In the second FOIA matter there are additional legal questions, which have nothing to do with Aiken 1337. They include:

1. Is the McMaster Legacy Trust a public body under FOIA?

2. Should the Attorney General be required to release under FOIA the \$4.7 Million appraisal he, Bauknight and James B., with others, used in Supreme Court filings?

**Placing 40 Plaintiffs and Other Witnesses in Aiken 1337
Will Causes Delay and Prejudice**

There are only three parties to Aiken 1337: Pope, Brown's Estate and Brown's 2000 Trust. The Estate/2000 Trust has named only three witnesses: Pope, Buchanan and Bauknight. Discovery over the last few months has been efficient. The parties will be well prepared for trial in July 2017.

Aiken 1337 Plaintiff has no current plans to depose at least sixteen of the Richland 4900 Plaintiff/CC Defendants in Aiken 1337. Nor does she plan to depose most of the 40 or more Richland 4900 witnesses in Aiken 1337.

To inject these parties and witnesses into discovery in Pope's commission claim case would cause extraordinary delay. This unnecessary delay of the Aiken 1337 trial would be both costly and prejudicial to Pope. As a small example: Pope's unpaid 2007 SA fee, \$47,000, with legal interest since March 2008, has been due and accruing interest under Judge Early's January 8, 2008 Order for 8 years.

Under Rule 42 consolidation must further expedition or economy. It should not cause delay and prejudice.

Consolidation Will Infuse Nexsen Pruet lawyer/witnesses and Pope, a lawyer/Party, into Richland 4900, Causing Confusion and Prejudice.

On May 29, 2013, Bauknight served Pope with a Notice of Disallowance of the Joint Commissions Claim filed by Buchanan and Pope in July 2009. As a result, she was forced to file Aiken 1337 to preserve claims which had already been allowed by the

Estate and 2000 Trust, the majority of which, in addition, had been approved by Judge Early in his January 8, 2008 Order.

On October 8, 2013, Judge Early "double approved" payments made to Buchanan under the January 8, 2008 Order.

Thus, despite Judge Early's approval of Buchanan's commissions for their joint service, Pope was forced to pursue her commission claim in Aiken 1337. She elected to do so *pro se*. In Richland 4900 Pope elected to have attorneys to pursue her counterclaims against the many persons who sued her in 2010. Her right both to represent herself in Aiken 1337 and to be represented by the lawyers of her choice in Aiken 4900 is a substantial right. The same is true of her right to trial by jury in Aiken 4900. Rule 42 is clear that any consolidation which tampers with, or threatens, that substantial right should be avoided.

Nexsen Pruet attorneys represent Bauknight individually; as Trustee of the McMaster Legacy Trust; and in other capacities.

At least three Nexsen Pruet lawyers, speaking for Bauknight, made vitriolic, inaccurate claims to the media and the courts about Buchanan and Pope. Two others actively worked on the claimed \$4.7 million valuation of Brown's music empire which was presented to the IRS and Supreme Court. As such, these lawyers have made themselves likely witnesses in Richland 4900.

If Richland 4900 and Aiken 1337 were consolidated for discovery, Pope, in addition to her Richland 4900 lawyers, would need participate in discovery to protect her commission claim in Aiken 1337. Likewise, Nexsen Pruet lawyers who are likely witnesses in Richland 4900 would be allowed to step forward as *lawyers* to protect

Bauknight , individually, and in all of the following capacities:

1. Bauknight as agent for Tomirae in Richland 4900;
2. Bauknight as claimed agent acting for Attorney General Wilson in 4900;
3. Bauknight as agent for James B., with no GAL, in 4900;
4. Bauknight as Trustee of the McMaster Legacy Trust;
5. Bauknight as agent for the original Levenson clients in Richland 4900, even those who have terminated Levenson;
6. Bauknight as agent for Terry Brown, whose interest in Richland 4900 has been transferred to Forlando Brown;

It would cause extraordinary confusion and prejudice to inject half a dozen lawyers, including Pope, into Richland 4900 when they are also witnesses in Case 4900. It would also waste charitable funds.

When Attorney General McMaster, Tomirae, Levenson and Bell hired Wingate to represent them in Richland 4900 six years ago, Wingate agreed not to be paid unless it recovered from Buchanan or Pope. No taxpayer dollars would be spent. No dollars from James Brown's "I Feel Good" Charity would be spent.

If Nexsen Pruet, which has been paid millions from Brown's charity, becomes involved in Richland 4900, Brown's charitable funds will be placed at the service of Tomirae and others seeking to dismember it.

Attorney General Wilson's Continuing Alliance With Tomirae, James B. and Others Will Cause Prejudice and Confusion if Consolidation is Allowed.

On March 14, 2013 Attorney General Wilson told the Supreme Court he intended to be dropped as a party to Richland 4900. Three years later he not only remains a party, but remains aligned with Tomirae and James B. This troublesome alliance

persists even though Limited Special Administrator Dave Sojourner and several Richland 4900 Plaintiff/CC Defendants have filed briefs in the South Carolina Court of Appeals asserting that Tomirae was not Brown's spouse.

While this conflict must necessarily be sorted out in Richland 4900, it has no place in Aiken 1337. Buchanan and Pope never had any duty to Tomirae. To consolidate discovery while the Attorney General – charged with the protections of charities – sides with Tomirae and allows her lawyers to be paid from James Brown's charity will cause confusion and prejudice to Pope in Aiken 1337.

Consolidation where the Attorney General and Bauknight Remain Aligned With Tomirae and James B. Will Cause Confusion About "I Feel Good" Charity's 900 Copyrights in Aiken 1337.

On November 1, 2011 Bauknight's attorney Wilkins told the South Carolina Supreme Court that Copyright Terminations is "all this case is about." Case 4900 Plaintiff/CC Defendants Deanna and Yamma claimed that if the McMaster Settlement were not approved, there would be nothing in the "I Feel Good" Charity by 2023.

All Richland 4900 Plaintiff, including the Attorney General, chose to ignore the HALF of James Brown's real Statutory Heirs under the Copyright Act with whom the "I Feel Good" Trust could have made agreements to delay and/or diminish any loss to the "I Feel Good" Trust from Termination Rights.

The record in Aiken 1337 is clear that Buchanan and Pope took all reasonable steps to implement a DNA & Dignity Program to protect the copyrights from unnecessary and avoidable exercise of Copyright Act Termination Rights. Judge Early's unappealed March 8, 2008 Order to determine heirs, sought by them, confirms it.

On August 28, 2013, just months after *Wilson*, Tomirae and James B. filed Termination Notices with the Federal Copyright Office. Their goal: to take the royalties from 90 of the 900 copyrights James Brown gave the "I Feel Good" Charity over the next then years.

Copyright Attorney Marc Toberoff denounced the Tomirae attempted terminations. Attorney General Wilson and Bauknight did not.

In October 2013, David Sojourner was appointed to defend the estate plan of James Brown. The appointment, according to Sojourner, did not include the right to protect James Brown's 900 copyrights. Bauknight retained that right.

In less than three years Sojourner has spent more than \$1.3 Million in legal fees, but lacks the mandate to protect the "I Feel Good" Trust's copyrights. Meanwhile, the Attorney General and Bauknight, both with a duty to protect the copyrights, are aligned with Tomirae and her son..

These conflicts are the necessarily the subject of Richland 4900. It would be manifestly unjust and prejudicial to Pope to inject them into Aiken 1337, where Buchanan and Pope never owed a duty to Tomirae.

**Consolidation, with Bauknight's Multiple Roles,
Will Result in Confusion and Prejudice**

The multiple roles Bauknight continues to hold – and the Attorney General continues to condone despite *Wilson* – are the necessary subject of Richland 4900. As with many of the Richland 4900 issues, they have no place in Aiken 1337. They will simply cause confusion, delay and prejudice to Pope.

James B's \$700,00.00 Legal and GAL Award Will Prejudice Pope

On June 10, 2013 Judge Early, at the request of Tomirae, Levenson and Bauknight, ruled in administrative orders that Buchanan and Pope would not be allowed to participate in any James Brown Aiken cases except their own claims cases.

In 2015 Judge Early awarded James B. what is expected to be \$700,000.00 or more in legal and GAL fees in one of the cases from which Buchanan and Pope were excluded.

In another case from which Buchanan and Pope were excluded from participation, Judge Early has found that Tomirae was Brown's spouse. He did so without benefit of her own handwritten notes to the contrary.

LSA Sojourner is seeking to overturn these two rulings. Attorney General Wilson and Bauknight are not. To allow James B., who has not been determined to be entitled to a penny of James Brown's assets, into Aiken 1337 discovery with a \$700,000.00 war chest would cause extreme prejudice to Pope.

Buchanan and Pope never owed James B. any duty. He was not a presumed child, and he refused paid-for DNA testing. James B. has no role in Pope's Aiken 1337 commission claims case.

The Consolidation Motion Should be Stricken

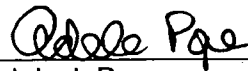
Aiken 1337 Plaintiff incorporates her Motion to Strike the Consolidation Motion served in Richland 4900. She also incorporates her Return and Supplemental Return in Aiken 1337 to the attempt of Attorney General Wilson to quash deposition subpoenas of Sonny Jones and Mary Frances Jowers. For the reasons stated in both,

the Consolidation Motion should be stricken.

Conclusion

For all of the reasons stated above, and in the incorporated documents, consolidation of Richland 4900 and Aiken 1337 for any purpose should be denied. The cases do not have common facts or law. Consolidation would only serve to delay Aiken 1337. It would make Case 1337 vastly more costly. And, because of the Attorney General's and Bauknight's continued alliance with Tomirae and James B., and Bauknight's multiple roles, consolidation would be both confusing and prejudicial to Pope.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com

Plaintiff *pro se*, Aiken 1337

May 26, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH CIRCUIT
) CASE NO.: 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, et. al.,

and

ALAN WILSON, et. al.

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

**NOTICE OF MOTION AND
MOTION FOR PROTECTIVE
ORDER**

RICHLAND COUNTY
FILED
2016 JUN 15 PM 3:42
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**TO: WILLIAM H. BUNDY, ESQUIRE, M. BRENT MCDONALD, ESQUIRE, ADAM
T. SILVERNAIL, ESQUIRE, KENNETH B. WINGATE, ESQUIRE, MARK V.
GENDE, ESQUIRE and ALL COUNSEL OF RECORD**

YOU WILL PLEASE TAKE NOTICE that Tommie Rae Brown, by and through her undersigned attorneys, will move before the presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit, at the Richland County Courthouse, Columbia, South Carolina, at a time approved by the Court, for a protective order pursuant to Rule 26 and other rules of the South Carolina Rules of Civil Procedure limiting questions asked by counsel in the deposition of Tommie Rae Brown to the issues related to this case and for an order restraining any counsel from questioning Ms. Brown regarding her marriage to Javed Ahmed and/or James Brown as these issues are *res judicata* per the Orders of the Honorable Doyet A. Early, III, dated January 13, 2015 (attached hereto as **Exhibit "A"**) and October 26, 2015 (attached hereto as **Exhibit "B"**), and not relevant nor likely to lead to evidence or information relevant to this matter.

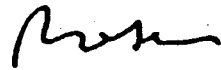
The basis for this Motion is that counsel for Adele Pope has provided a copy of the Prenuptial Agreement between Mr. and Mrs. Brown as well as other documents regarding their

marriage which indicates that they intend to question her regarding these documents during her deposition. The issue of the validity of the marriage between Mr. and Mrs. Brown was resolved and therefore *res judicata*.

Further, Adele Pope is restrained and enjoined from involving herself in any issue related to the Estate and Trust of James Brown. See **Exhibit "C"** attached hereto.

Ms. Brown reserves the right to supplement this Motion with additional grounds as may be appropriate. This Motion is further based on South Carolina Rules of Civil Procedure, the Common and Statutory Laws in the State of South Carolina, and other controlling laws, and may be supported by memoranda, affidavits, and/or other appropriate documentation.

ROSEN LAW FIRM, LLC

By:  
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Post Office Box 1840
Charleston, SC 29402
(843) 377-1700
ATTORNEY FOR TOMMIE RAE BROWN

Charleston, South Carolina
June 15, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
)
)
IN RE THE ESTATE OF)
JAMES BROWN A/K/A)
JAMES JOSEPH BROWN)
_____)

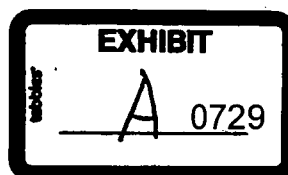
IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case Nos.: ~~2013-CP-02-02849-0134~~
2013-CP-02-02850 cert. copy

**ORDER RE PETITIONER TOMMIE RAE
BROWN'S MOTION FOR SUMMARY
JUDGMENT AND THE LIMITED
SPECIAL ADMINISTRATOR'S MOTION
FOR SUMMARY JUDGMENT**

This matter came before the court on November 24, 2014 on Petitioner Tommie Rae Brown's Motions for Summary Judgment filed October 30, 2007, November 26, 2007, and April 28, 2014, and the Limited Special Administrator's (LSA's) Motion for Summary Judgment dated May 29, 2014. Each of these Motions requests summary judgment determining whether Mrs. Brown is the surviving spouse of James Joseph Brown. All parties have submitted detailed memoranda in support of their respective positions as well as responsive memoranda, and all parties have consented to a Joint Stipulation of Facts filed September 5, 2014.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, M. Jean Lee, David L. Michel, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach, counsel for the LSA David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II; (5) David B. Bell and Matthew D. Bodman, counsel for Daryl Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) Louis Levenson, counsel for Deanna Brown Thomas, Yamma N. Brown, Venisha Brown, and Larry Brown; and (8) William Barr and Vera Gilford, counsel for amicus curiae Jeanette Mitchell.



Liz Hodard
C.C.P. & G.S.
WRC *Channon J. S. Barr*
Deputy Clerk
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I. SUMMARY JUDGMENT STANDARD.

The standard for granting summary judgment is clear:

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181-82 (2013).

II. HISTORY OF THE CASE AND STATEMENT OF FACTS.

A. These Proceedings.

Mrs. Brown filed a petition for Elective Share or Omitted Spouse's share on February 1, 2007, asserting she is the surviving spouse of Mr. Brown. She filed a Motion for Summary Judgment on October 30, 2007 on the issue of her ceremonial marriage to Mr. Brown and the legality of said marriage. Mrs. Brown filed the same motion along with the Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment on November 26, 2007.

On December 20, 2007, Mrs. Brown filed Petitions to Set Aside the Will and Trust. Similarly, on December 26, 2007, five of the six Devisees from the 2000 will filed Petitions to Set Aside the Will and Trust. Before these Petitions were heard, Mrs. Brown and other parties to the estate litigation participated in mediation which resulted in a private settlement agreement. In the settlement agreement, Mrs. Brown was recognized by all parties thereto as the surviving spouse of Mr. Brown. The settlement agreement provided that it was a binding private agreement, regardless of court approval, and provided that it bound personal representatives and trustees, as allowed by law. The settlement agreement expressly provided that the provision

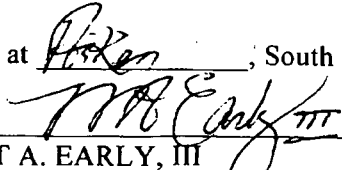
Mr. Brown knew he could pursue an annulment from Mrs. Brown as he initiated such an action himself. If he wanted to annul his marriage, he could have proceeded with the action he commenced. But he decided not to proceed with it. As he never obtained an annulment during his lifetime, his marriage was never annulled and he was married to Mrs. Brown at the time of his death, certainly for the purposes of surviving spouse pursuant to S.C. Code Ann. § 62-2-802, which required him to take action. Further, in this case, Mr. Brown affirmatively sought to benefit specifically from the Findings of Fact in the annulment order. These are the very Findings of Fact the LSA now wants this Court to ignore. He alleged in his own short-lived annulment action that the "Findings of Facts of the Charleston Family Courts" were binding.³⁵

Therefore, it is hereby ORDERED, DECREED and ADJUDGED that Tommie Rae Brown is the surviving spouse of James Joseph Brown. The Family Court's April 15, 2004 Final Order is binding on James Joseph Brown and his heirs and must be respected by this Court.

It is further ORDERED, DECREED and ADJUDGED that the Petitioner Tommie Rae Brown's Motion for Summary Judgment on her status as James Joseph Brown's wife and surviving spouse is granted, and the Limited Special Administrator's Motion for Summary Judgment is denied.

It is further ORDERED, DECREED and ADJUDGED that all other issues, including the validity of the prenuptial agreement between Tommie Rae Brown and James Joseph Brown are reserved for a future determination.

This 13 day of January 2015, at Rock, South Carolina.


DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

³⁵ Joint Stipulation of Facts at 000070, ¶ 10 (Mr. Brown's Amended Complaint for Annulment).

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

FILED 10.26.15
L. H. H. H.
J. H. H. H. 1230
J. H. H. H. 1230

IN RE THE ESTATE OF
JAMES BROWN A/K/A
JAMES JOSEPH BROWN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case Nos.: 2013-CP-02-02849 - orig
2013-CP-02-02850 - orig copy

**ORDER RE RESPONDENT'S AND
AMICI CURIAE'S MOTIONS TO ALTER,
AMEND OR RECONSIDER ORDER RE
PETITIONER'S MOTION FOR
SUMMARY JUDGMENT AND THE
LIMITED SPECIAL ADMINISTRATOR'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on June 30, 2015 on the following motions: the Limited Special Administrator's Motion to Alter, Amend and Reconsider filed January 26, 2015; Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown's Motion to Alter or Amend Judgment and/or for Reconsideration dated January 26, 2015; Jeanette Mitchell, Sarah LaTonya Brown Fegan, Ciara Petitt, Cheriarius Williams and LaRhonda Petitt's Motion to Reconsider Alter Amend January 13, 2015 Order; Daryl Brown's Motion to Alter, Amend and Reconsider filed January 28, 2015; Michael Deon Brown's Motion to Alter, Amend and Reconsider dated February 2, 2015; and Terry Brown's Motion to Alter, Amend and Reconsider filed February 2, 2015. Petitioner filed a Return in Opposition to Respondents' Motions to Alter, Amend or Reconsider on July 6, 2015.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, Arnold S. Goodstein, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach and Lyndey Zwing, counsel for the Limited Special Administrator David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II; (5) Matthew D. Bodman, counsel for



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Daryl Brown and Michael Deon Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) William Barr and Ittriss J. Jenkins, counsel for Jeanette Mitchell and Amici Curiae LaRhonda Petitt, Ciara Petitt, Cheriquarius Williams, and Sarah LaTonya Brown Fegan; and (8) J. David Black; counsel for Russell Bauknight, Personal Representative of the James Brown Estate and Trustee of the James Brown 2000 Irrevocable Trust Agreement.

I. ISSUES BEFORE THE COURT.

This Court had an extensive hearing on the Respondent's respective Motions on June 30, 2015. All points raised in these Motions have already been considered and denied in this Court's Order filed January 13, 2015 granting Petitioner's Motion for Summary Judgment. In granting Petitioner's Motion for Summary Judgment, this Court relied only upon the applicable law as well as the stipulated facts and took judicial notice of the pleadings and other documents in this case.¹ The only real issue in controversy at the June 30, 2015 hearing was the interpretation of *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd*, 379 S.C. 589, 666 S.E.2d 906 (2008). This Court reiterates that it relied only upon the applicable law and facts as agreed upon in the Joint Stipulation of Facts in granting Petitioner's Motion for Summary Judgment.

At the hearing on Respondents' Motions to Alter, Amend or Reconsider held on June 30, 2015, Respondents argued that *Lukich* was dispositive of this matter and agreed that this Court's determination of the impact of *Lukich* on this case would be determinative. Consequently, this Order focuses specifically on the impact of *Lukich*. Respondents contend that *Lukich* changes prior law by holding that a bigamous marriage is voidable, and Petitioner contends that *Lukich* is

¹ See Joint Stipulation of Facts filed September 5, 2014 at p. 5, ¶ 10 which states:

The parties could not reach an agreement as to other facts but agree this Court can take judicial notice, as it deems appropriate, of the files, pleadings, transcripts of hearings, briefs and oral arguments in this Court, the Court of Appeals and the Supreme Court along with the Record on Appeal from the Court of Appeals and Supreme Court, in all cases concerning or related to Petitioner's elective share and omitted spouse claims.

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and that first marriage is therefore void ab initio, meaning that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Despite the contention of the LSA, *Hallums* is in accord with the bigamy statute, *Lukich*, and all other case precedent in treating bigamous marriages as void ab initio. Unlike Mrs. Brown's first marriage, which was *found to be bigamous and void*, the first marriage in *Hallums* was *found not to be bigamous and was therefore valid*. However, if the first marriage in *Hallums* had been found to be bigamous and void, the opinion indicates that the second marriage would have consequently been valid because the wife would have had no impediment to her second marriage and thus could inherit. That is exactly Mrs. Brown's case: her first marriage has been found to be bigamous and void, so that she had no impediment to her marriage to Mr. Brown: their marriage is valid and she is his surviving spouse.

II. CONCLUSION.

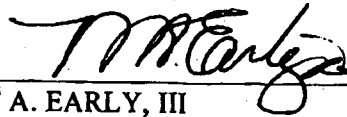
Respondents would have this Court become the first court ever in the history of South Carolina to hold that any form of validity attaches to a bigamous marriage. The Court declines that invitation. Regardless of whether it is annulled sooner, annulled later, or even not annulled at all, a bigamous marriage is not a marriage for any purpose known to the law. The holding in *Lukich*, which also held that a voidable marriage based on intoxication is valid between the date of marriage and the date of annulment, confirms the statutory and case precedent rule that all bigamous marriages are void and never a marriage.

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Therefore, it is hereby ORDERED, DECREED and ADJUDGED that the Respondents' and Amici Curiae's Motions to Alter, Amend and Reconsider are denied.

AND IT IS SO ORDERED.

This 20 day of Oct, 2015, at Bay, South Carolina.



DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James B.; Daryl J. Brown, individually
and on behalf of his minor child Janise
Vanisha Brown; Lindsey Delores Brown;
Deanna J. Brown Thomas; Jason Brown-
Lewis; Yamma N. Brown, individually and
on behalf of her minor children, Sydney
L., Carrington L., and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

ALAN WILSON, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

RICHLAND COUNTY
FILED
2016 AUG 26 PM 3:46
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

DEFENDANT/COUNTERCLAIMANT
ADELE J. POPE'S
RETURN TO MOTION OF
PLAINTIFF FOR PARTIAL
SUMMARY JUDGMENT

TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS AND/OR THEIR COUNSEL.

Defendant/Counterclaimant Adele J. Pope (hereinafter sometimes referred to as "Pope")

opposes the motion of Plaintiffs for partial summary judgment on Pope's counterclaims for the reasons set forth below:

PRELIMINARY STATEMENT

It is the Plaintiffs themselves who articulated nearly six (6) years ago to the day in this very action why this motion for partial summary judgment must be denied. In their return to the Defendants' motion to dismiss this action, the Plaintiffs stated:

"However, not one of the lawsuits brought in relation to this [Brown] Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate."

Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss dated August 27, 2010, p. 5. Indeed, the Plaintiffs convinced Judge Manning of their position and Judge Manning, in denying Pope's motion to dismiss this action, ruled as follows:

"A review of this Order [the May 26, 2009 Settlement Order] indicates that these cases are not similar in any significant respect to the case at bar. Not one of the lawsuits brought in relation to this Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate. Third, to the extent other claims were made, they were brought against Defendants in their representative capacity as P.R. or Trustee, while the claims in this case were brought against the Defendants individually."

Order denying Motion to Dismiss filed November 9, 2010.

The Plaintiffs now wish to reverse their position, upon which they were previously successful, and seek a ruling from this Court in this very same case that "Pope's counterclaims are barred by the doctrine of collateral estoppel because the Supreme Court's opinion in Wilson v. Dallas [the appeal arising out of the May 26, 2009 Settlement Order] conclusively establishes the validity of Plaintiffs' claims in this action." Plaintiffs' Brief in Support of Motion for Partial Summary Judgment dated May 17, 2016, p. 2.

As will be shown in this Memorandum in Opposition to the Plaintiffs' Motion for Partial Summary Judgment, the Plaintiffs' position is wholly inconsistent with the law of South Carolina

as well as their own previous positions for which they received the benefit of an Order adopting those positions and allowing them to proceed with this action in the first instance. The Motion for Partial Summary Judgment should be denied.

ARGUMENT

I. Summary Judgment Standard

Summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of disputed factual issues. See *Baughman v. American Tel. and Tel. Company*, 306 S.C. 101, 112 410 S.E.2d. 537, 543, (1991). In determining whether to grant summary judgment, pleadings and documents on file must be liberally construed in favor of non-moving party who must be given benefit of all favorable inferences that might be reasonably drawn from the record. See *Bates v. City of Columbia*, 301 S.C. 320, 391 S.E. 2d 733 (Ct. App. 1990). If triable issues exist, those issues must go to the jury. *Rothrock v. Coplan*, 305 S.C. 402, 409, S.E. 2d. 366 (1991). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d. 187 (1997); *Baugus v. Wessinger*, 303 S.C. 412, 401, S.E. 2d. 169 (1991). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Tupper, Supra*; *Koester v. Carolina Rental Ctr. Inc.*, 313 S.C. 490, 443 S.E.2d. 392 (1994); *Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d. 577 (1990). See also, *Hamilton v. Miller*, 301 S.C. 45, 389, S.E.2d. 652 (1990) (Trial court should deny summary judgment if there is a genuine issues as to conclusions or inferences to be drawn from undisputed evidentiary facts).

II. Summary Judgment is Premature

This action was commenced on May 19, 2010 by the filing and service of the Summons and Complaint herein.

Pope and Robert L. Buchanan, Jr. ("Buchanan"), who was also named as a Defendant herein, timely answered and asserted counterclaims against all Plaintiffs for:

1. Abuse of Process;
2. Civil Conspiracy;
3. Fraud Under S.C. Code Ann. Section 62-1-106;
4. Attorneys' Fees; and
5. Intentional Interference with Contract.

Plaintiffs defaulted on the counterclaims, but were relieved from their default by Order of the Honorable L. Casey Manning, dated October 12, 2015.

Pope noticed the depositions of several Plaintiffs beginning in Spring 2011, but Plaintiffs refused to appear, instead moving for protective Orders on all deposition notices issued by Pope or Buchanan. The first Plaintiff's deposition was taken in December 2012, and another was deposed in January 2013. Beginning in March 2013, Plaintiffs sought a stay of this action related to the alleged "judicially created conflict" of Sweeney, Wingate and Barrow, P.C., which has been sole counsel of record for all Plaintiffs since the commencement of this case. As a result of their counsel's alleged conflict, Plaintiffs again refused to appear at depositions until the stay request was lifted on April 8, 2016.¹ Plaintiff Tommie Rae Brown was deposed on June 16 and 17, 2016. Lt. Gov. Henry McMaster, in his individual capacity, was deposed on August 18,

¹ Defendant's Motion to Alter, Amend and/or Vacate Judge Manning's Order granting a stay and Affidavit of Adele J. Pope supporting that motion are incorporated herein by reference.

2016. Other Plaintiffs have refused to show up for properly noticed depositions and many others have yet to be scheduled and taken. Indeed, discovery in this action was begun anew by Order of this Court on April 8, 2016. Each deposition that has been taken by counsel for Pope since the lifting of the stay was/is incredibly difficult to schedule and is subject to motions for protective orders that have not yet been heard by the Court thereby preventing Pope from even taking those depositions in full.

Pope has identified dozens of potential witnesses in her interrogatory answers, and Plaintiffs previously provided a witness list naming more than a dozen witnesses.² Pope expects a number of non-party witness depositions, following the completion of the long-delayed party depositions. Written discovery is also not yet complete—including outstanding discovery asking the Plaintiffs to fully identify the damages they are claiming in this action. The Scheduling Order entered by the Court does not even require the Plaintiffs to name their expert witness until November 30, 2016.

Because Pope has not had a full and fair opportunity to undertake discovery, particularly the depositions of Plaintiffs, their experts and other key witnesses, summary judgment should be denied. “[S]ummary judgment should not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. American Tel. and Tel. Company*, 306 S.C. 101, 112 410 S.E.2d. 537, 543, (1991).

Pope is entitled to a full and fair opportunity to complete all appropriate discovery prior to the Court’s considering Plaintiffs’ motion.

III. Collateral Estoppel Does Not Bar any of Pope’s Counterclaims

² The Plaintiffs have failed to verify the limited interrogatories they have responded to in this action as required by Rule 33, SCRCP. This is the subject of an outstanding motion to compel. However, it also highlights both the fact that discovery in an early stage and the fact that the limited discovery that has been answered by the Plaintiffs fails to be complete and comply with the Rules of Civil Procedure.

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). “The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” *Id.* “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue.” *Id.* (quoting *Snively v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008)). “The doctrine of collateral estoppel should not be rigidly or mechanically applied.” *Id.* at 555, 684 S.E.2d at 782.

a. *Wilson v. Dallas*

Plaintiffs argue that South Carolina Supreme Court’s affirmance of Buchanan and Pope’s removal as PR/Trustees in *Wilson v. Dallas*, 743 S.E.2d 746 (2013), collaterally estops her from pursuing her counterclaims herein. This argument completely overlooks that Pope’s counterclaims are based on the Plaintiffs’ conduct—not Pope’s conduct. The Supreme Court simply did not decide in *Wilson v. Dallas*—nor any other case for that matter—whether or not the Plaintiffs’ in this action are liable for abuse of process, civil conspiracy, intentional interference with contract, violation of S.C. Code Ann. Section 62-1-106, or an award of attorneys’ fees in this case pursuant to S.C. Code Section 62-7-1004. Indeed, the record in *Wilson* closed in 2009. The filing of this action took place months later. Plaintiff could thus not have had a “full and fair opportunity to litigate” the issues put forth in her counterclaims during

the prosecution of the *Wilson* appeal because it both had nothing to do with the present counterclaims and the record was closed.

Plaintiffs' again quote the single paragraph in the *Wilson* opinion which acknowledges certain complaints not ruled upon in the lower Court. The quoted paragraph is dicta, at best, and the Supreme Court never made any finding that Pope or Buchanan breached any duty to any Plaintiff.

Instead, the issues decided in *Wilson* were:

1. Will the Circuit Court's approval of the McMaster settlement which dismembered James Brown's estate plan be reversed? [The Supreme Court answered this in the affirmative.]
2. Will the Circuit Court's decision to replace Pope and Buchanan as PR/Trustees prior to a hearing on their removal be reversed?³ [The Supreme Court declined to do so.]

The Supreme Court never addressed Pope's counterclaims in this action in *Wilson*. Perhaps even more fundamental to the fallacy of Plaintiffs' current position is that it misapprehends the relevant facts and the nature of the law giving rise to the counterclaims. The main thrust of the Plaintiffs' argument is that *Wilson v. Dallas* conclusively established that the Plaintiffs had numerous legitimate reasons for bringing this action. This, of course, is inconsistent with their previous position in this action. It is also not, in fact, true. And, finally, without conceding its truth, it would not matter under the law for a counterclaim of abuse of process or any other counterclaim made herein. "To cause process to issue without justification is an essential element of malicious prosecution, but not of abuse of process. In the latter, the issuance of the process may itself be justified; it is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 695

³ The lower Court's Order Approving Settlement Agreement specifically noted that the "court ha[d] not heard the [removal action] pending the settlement approval." (May 26, 2009 Order at 9).

(1967); see also *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (Ct.App. 2008)(cert. den'd June 24, 2009). Moreover, whether or not Plaintiffs had legitimate reasons for bring this lawsuit (an allegation which we deny) has nothing to do with whether or not there could ever be facts giving rise to the other counterclaims.

None of the issues in the instant case were “directly determined by” the Supreme Court in *Wilson*. Further, Buchanan and Pope were precluded from participation in James Brown issues after May 8, 2013. Pope is therefore not collaterally estopped from pursuing the counterclaims which are based on issues not “directly determined by” the *Wilson* Court.

a. The Forlando Federal Case

Plaintiffs further argue that the findings of the Honorable William O. Bertelsman in *Brown v. Pope and Buchanan*, 3:08-cv-00014-WOB (the “Forlando Federal Case”) collaterally estop Pope from pursuing her counterclaim for civil conspiracy. As an initial matter, Pope notes that none of the Plaintiffs were parties to the Forlando Federal Case other than the James Brown 2000 Irrevocable Trust. Although common parties are no longer required to establish collateral estoppel, the vast difference in the parties to the two actions should be taken into consideration in this Court’s analysis.⁴

Regardless of whether the Forlando Federal Suit could bring about collateral estoppel as to any issue in this case, it does not. The conspiracy presented in that case related to the 2008 filing of a Federal case. Although Forlando is identified as a part of the civil conspiracy at issue in Case 4900, Pope alleges herein that all Plaintiffs conspired to cause damage to Pope by threats and filing and prosecuting this action and taking other actions to force Pope and Buchanan to drop their appeal of the McMaster settlement.

⁴ Any comparison to the Forlando case is further complicated by the fact that Forlando dropped all of his claims against the 2000 Trust, Buchanan and Pope in 2012, then made the false claim to the Court that he had no assets and no expectation of assets in the James Brown litigation unless his father died.

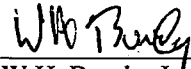
Plaintiffs identify only causes of action set out in the Forlando Federal suit and this case. They do not attempt to identify what issues they assert are precluded by the decision in the Federal case. Because the issues in the two cases differ, the Federal Court did not directly determine any issue common to Case 4900.

Conclusion

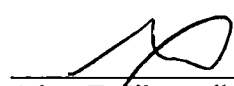
Summary judgment in this matter is premature, and the Plaintiffs' motion must be denied in light of ongoing and incomplete discovery, which has been delayed for years despite Pope's continuous efforts to proceed with depositions and other discovery. In the event the Court proceeds to the merits of Plaintiffs' motion, it must still be denied. As set out above, Plaintiffs' argument that Pope is collaterally estopped as a result of *Wilson* or the Forlando Federal Case is incorrect. Summary judgment should therefore be denied; discovery should be concluded; and this matter should proceed to trial.

This return is based on the Affidavit of Adele J. Pope filed herewith; the depositions of C. Havird "Sonny" Jones and Mary Frances Jowers taken in Aiken County Case No. 2013-CP-02-1337; the documents listed on Schedule A of the Affidavit of Pope, of which the Court is asked to take mandatory judicial notice under Rule 201, SCRE; the August 18, 2016 deposition of Henry D. McMaster; and such additional documents as shall be presented by Pope prior to or at the hearing on this matter.

Respectfully submitted,

 *W.H. Bundy, Jr. w/permission*

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August 26, 2016

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document on Plaintiff/Counterclaim Defendants on August 26, 2016, by depositing a copy of the same into the United States Mail, First-class postage prepaid, addressed as follows:

Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Joseph O. Thickens, Esquire
Sweeny, Wingate & Barrow, P.C.
PO Box 12129
Columbia, South Carolina 29211

RICHLAND COUNTY
FILED
2016 AUG 26 PM 3:46
JENNETTE W. MCBRIDE
C.C.P. & G.S.


Adam T. Silvernail

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in is capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capcity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

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) Case No.: 2010-CP-40-4900

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MOTION OF DEFENDANT TO
DISMISS ALL CLAIMS OF
PLAINTIFF VENISHA BROWN
UNDER RULE 41(B)

RICHLAND COURT
FILED
2016 SEP 19 AM 8:44
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: VENISHA BROWN AND RUSSELL L. BAUKNIGHT ON BEHALF OF VENISHA BROWN, and
Sweeny, Wingate and Barrow, P.C. ("Wingate"), their counsel.

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon
thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope")
will move before the Honorable Doyet A. Early, III for an Order Involuntarily Dismissing the
Complaint of Venisha Brown ("Venisha") and Russell L. Bauknight ("Bauknight") as agent
for Venisha Brown in this action under Rule 41 SCRPC, especially Rule 41(b).

The Grounds of this Motion are that involuntary dismissal under Rule 41 is
appropriate and just because Venisha has failed to prosecute her claims and failed to
comply with the South Carolina Rules of Civil Procedure.

The history of Venisha's failure to prosecute this action is set out in part below.

On May 19, 2010 Venisha filed the Complaint in this action ("Richland 4900"). The Complaint contained vitriolic and false claims against Buchanan and Pope.

On or about July 18, 2012, the Estate of James Brown paid or advanced funds for Buchanan to release his Counterclaims against Venisha herein.

On or about August 3, 2012, Pope served Venisha with an Offer of Judgment herein. Thereafter counsel for Venisha filed the Offer of Judgment and moved to strike it.

On or about March 26, 2016 Judge Early was assigned to Richland 4900.

On June 23, 2016, Defendant noticed Venisha's deposition, but Venisha's counsel filed a Motion for Protective Order on her behalf.

After a hearing held on August 29, 2016, Judge Early ordered Venisha to appear at her deposition which was scheduled for September 22, 2016.

On September 12, 2014, Venisha's counsel notified Judge Early that he was unable to locate Venisha and requested a telephone conference pursuant to Judge Early's Order setting Venisha's deposition.

A telephone hearing related to Venisha's anticipated failure to comply with the Order to appear at deposition was held before Judge Early on September 14, 2016. Present in addition to Jg. Early were: Joseph O. Thickens, Esq., counsel of record for Venisha and Bauknight as her agent; Walter H. Bundy, Jr., Esq., and Adam Silvernail, Esq. Counsel provided no acceptable reason for Venisha's anticipatory violation of Jg. Early's Order for her to appear at deposition. Nor is there any excuse or for Venisha's multiple breaches of the SCRCF over the last six years.

As a result of Venisha's failure to prosecute her claims, Pope asks that Venisha's

Complaint, and that of Bauknight as her Agent be dismissed with prejudice pursuant to Rule 41(b) and Pope's Counterclaims and all relief sought against Venisha proceed.

This motion is based on the Complaint herein; the Motion of Venisha to Intervene in the FOIA suit consolidated herewith, now on appeal; the Offer of Judgment of Adele J. Pope to Venisha filed herein on or about August 3, 2012; and the Affidavits of Adele J. Pope and Robert L. Buchanan, Jr. ("Buchanan") on file herein; the Notices of Deposition to Venisha served herein; the Order of the Honorable Doyet A. Early, III, directing Venisha to appear at deposition; and the September 14, 2016 statement of Venisha's counsel that Venisha will not appear at her Court-ordered deposition scheduled for September 22, 2016.

Respectfully submitted,

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September 14, 2016

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Case No.: 2010-CP-40-4900

)
) RUSSELL L. Bauknight, as Trustee,
) and others

) and

) ALAN WILSON and others,

) Plaintiffs,

) v.

) Adele J. Pope,

) Defendant

) Opinion/Affidavit of William Jeffrey Smith

FILED
2010 JUL 14 PM 2:01
JANETTE W. MCBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, WILLIAM JEFFREY SMITH, who
being duly sworn, deposes and says:

1. I am over twenty one years of age, and give the opinions stated herein based on personal information, and, within my area of expertise, to a reasonable degree of professional certainty.

2. I am a graduate of Georgetown University Law Center and a former patent examiner with the United States Patent and Trademark Office.

3. I was engaged in June 2008 by the Estate of James Brown and the James Brown 2000 Irrevocable Trust to explore issues related to the protection of James Brown's "I Feel Good" Charity from the premature and/or improper exercise by heirs and claimed heirs of Federal Copyright Act Termination Rights, which would begin to come into play in 2012.

4. Shortly after I was engaged Attorney General Henry McMaster brokered a

settlement deal which stopped the Estate's official DNA testing program; declared Tomirae, Brown's companion, would be stipulated to be his spouse; and declared that fewer than half of Brown's claimed children, along with Tomirae's son, would be Brown's heirs.

5. I did not continue to work after August 12, 2008, the day the McMaster settlement was announced, but I have remained interested in Brown's music and copyright issues related to his estate.

6. I was engaged by Defendant as an expert in this case and in Aiken County Case 2013-CP-02-1337 in 2016.

7. I have not been deposed in this case, but have been deposed in the Aiken Case, and incorporate herein in its entirety my opinions as stated in my deposition.

8. In addition, I have review the non confidential parts of many depositions of experts in this case, as well as the Aiken case, and attach parts of a number of those depositions to this Affidavit.

9. My review of these depositions, especially the depositions of Plaintiffs' Termination Rights experts Roger Miller and Jonas Herbsman, and the depositions of Russell Bauknight, provide further support for my opinion that the Attorney General's in action taking over James Brown's assets; terminating the heirs proceeding that Robert Buchanan, Jr. and Adele Pope were conducting for James Brown's estate; and then devaluating Brown's music empire to damage Mr. Buchanan and Mrs. Pope caused James Brown's "I Feel Good" Charity great damage, as it did Mr. Buchanan and Mrs. Pope.

10. I am informed and believe that the incorrect representation made to the

Supreme Court by the Attorney General and Tomirae to support their efforts to take over the assets. James Brown gave his "I Feel Good" Charity damaged Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Trust and its 900 copyrights for needy students. They said in part:

This IRS finding music empire], based upon its own independent review and valuation, directly and incontrovertible refutes Appellants' contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80 - \$120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record...

CONCLUSION ...Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission.

...
F4 Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80 - \$120 Million. (Rpp.2879-80)

11. I am informed and believe that Attorney General's and Tomirae's inaccurate claims a few weeks later continued to damage Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Charity and its copyrights. They said:

In fact, the IRS tax records reveal that the Settlement Agreement benefitted the Estate in that it no longer owes any federal estate taxes. Moreover, the IRS records show that the Estate/s charitable deduction was not impacted by the Settlement Agreement and further, that the Estate was able to favorably utilize the marital deduction because of the Settlement Agreement. All of this reveals that Appellants' assertions in their brief regarding the alleged negative tax consequences that would flow from the Settlement Agreement are patently incorrect. These official IRS documents are relevant to the current appeal, as they are records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief. [Emphasis supplied.]

...Appellants intimate the appraisal is not legitimate. . . the IRS has accepted the date of death valuation of the assets; it has the final word in this matter.

The Court should supplement the record on appeal to include the IRS tax records, and the Supplemental Inventory and Appraisement...

... Not once did the circuit court order approving the Settlement Agreement address asset valuation... Appellants' myopic focus on asset valuation can only be explained, then, by one fact: their nearly \$5 Million personal representative fee petition. R. Pp.3879-80) If the valuation of the assets asserted by the Appellants falls, then their fee petition and credibility falls with it. As explained below, the valuation asserted by the Appellants is based on pure speculation and unsupported by their own citations...

No One Ever Made an Offer

The [willing buyer/willing seller] argument is inapplicable here, however, because no one ever made an offer...Every valuation Appellants rely upon is nothing more than speculation.

Appellants have misrepresented to this Court the 'offers' were made to the Estate and Trust to buy its assets:

... At the date of James Brown's death, the intellectual property assets of his estate were worth roughly \$4.7 Million...

Appellants' opposition to the supplement is simply an attempt to appear credible regarding their fee petition. The basis for their valuation argument has been shown to be groundless....

12. After the *Wilson v. Dallas* decision the Attorney General continued his alliance with Tomirae and support of Mr. Bauknight and Mr. Bauknight continued to attack Mr. Buchanan and Mrs. Pope despite public documents which showed Mr. Bauknight had valued Brown's Right of Publicity at zero, and overstate Brown's deductions in the IRS estate tax proceed by \$5 Million. In a deposition given August 20, 2013 deposition in Case 3:08-cv-00014-WOB, Mr Bauknight, talking about the PBW \$4.7 Million "appraisal" said:

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2 Q: What information did you provide to Philpott

3 Ball for use in this evaluation?

4 A: Information I obtained from Ms. Pope and Mr.

5 Buchanan.

6 Q: Numbers?

7 A: Excuse me?

8 Q: That would be basically numbers?

9 A: That would be approximately 180 boxes of stuff

10 that I obtained from Pope and Buchanan....

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1 A: I don't know what a Bates stamp is, so ---

2 Q: The second paragraph on that page is a general

3 introduction to a list of what are called

4 general assumptions. The second sentence of

5 that paragraph reads, these general assumptions

6 have been made based on conversations with

7 persons familiar with the estate and the music

8 industry and a commonsense view of business and

9 popular culture. Do you see that sentence?

10 A: Yes.

11 Q: Who would the persons familiar with the estate

12 have been, to your knowledge?

13 A: At this point I can only assume me, possibly

14 Peter Afterman. I don't know who else. I

15 don't recall. It's been several years.

16 Q: I understand, but you're the only person I have

17 to ask.

18 A: I hear you.

19 Q: Do you know who the persons familiar with the

20 music industry would have been?

21 A: I don't know who they spoke with other than the

22 person I've just mentioned here.

23 Q: And the commonsense view of business and

24 popular culture would have been anyone other

25 than theirs, to your knowledge?

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1 A: No. These are the valuation experts. These

2 are actually the same experts Adele Pope has

3 used in the past. They're nationally known
4 experts. How they -- you know, I'm not a
5 valuation expert. I went out and hired the
6 best I could find to do this valuation. But
7 how they did their job I -- you know, I don't
8 know. I'm not a valuation expert. The people
9 they spoke with, I'm sure they, as part of
10 their business, know who to talk to about
11 different industries that they're valuing. But
12 I don't know who they spoke with. I would just
13 tell you I went out and hired competent highly
14 respected professionals to do what Adele Pope
15 and Bob Buchanan should have done the moment
16 they were involved in this estate instead of
17 guessing. Taking somebody's letter of interest
18 and throwing \$100 million on a federal estate
19 tax return and a probate form so that they can
20 jack up their fees. They were self-serving in
21 the number they chose. Had no basis
22 whatsoever, in fact. And they didn't even
23 bother to hire somebody to do a valuation. I
24 went out and hired competent respected
25 professionals. I would further say that my

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1 competent respected professionals then had to
2 sit down with the highly respected well known
3 valuation team from the Internal Revenue
4 Service out of, I believe, Kansas City. People
5 who value assets like this. Royalty streams.
6 They brought their royalty stream experts in.
7 Those people sat down with my experts and
8 agreed. We put the right value on the 706, and
9 Adele Pope's value was disregarded. So other
10 than that, I don't know how else they did their
11 job.

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17 Q: Have you ever seen any court documents from
18 Aiken County regarding a formula to value the
19 royalties of James Brown's works?

20 A: A formula?

21 Q: A formula approved by the court for --

22 A: Approved by the court.

23 Q: Yes, sir.

24 A: I've heard discussion of people -- I want to

25 say Adele Pope had some kind of testimony

Page 63

1 somewhere, but I don't know where I've seen it,

2 where people were talking with -- talking about

3 some kind of formula for valuing royalties.

4 But approved by the court, I'm not familiar

5 with that. And frankly, that wouldn't matter

6 to the IRS anyway. The IRS is going to use the

7 values that they choose and can substantiate as

8 appropriate for their purposes.

Page 65

2 Q: Any other areas of criticism?

3 A: I couldn't begin to get into all of them...

8 ... They failed to even review the 706

9 that they filed, because they had testified in

10 court -- I believe Adele Pope testified in

11 court it contained some unknown person's

12 schedule of assets in the 706 that they filed

13 with the IRS and they didn't even know it. You

14 know, it seems to me if you file a tax return

15 and sign it, you ought to know what's in there...

Page 68-70

14 Q: Yes.

15 A: Well, let me just clearly say, the Terry Cox

16 letter of interest -- I have spoken with Terry

17 Cox about that supposed letter of interest.

18 Yes, I've seen that letter of interest. Terry

19 Cox laughs at that letter of interest and said

20 it was never intended to be an offer. Maybe

21 you all should follow up with Terry Cox on

22 this, because your client has made some just

23 fantasy statements by way of Sue Summer in the

24 Newberry paper about this \$100 million value...

Page 69

4 ... Well, if your clients are so naive
5 and inexperienced as they are in this industry
6 and trying to do this job that they believe
7 that, they're foolish. And to this day she
8 spouts that off like it's a fact. She's
9 showing her total lack of business experience
10 in dealing with a letter of interest. It's
11 simply something designed to peak interest so
12 you can get your foot in the door to look at
13 documents to see what's really there. And
14 that's all Terry Cox ever intended. And
15 frankly, when he got in the door and he did see
16 what was here, he agreed. There's no way to
17 sell these assets. And frankly, your client
18 doesn't even understand enough to know that
19 there's no way to sell these assets...

Page 70

...
2 Q: That doesn't ring a bell to you?
3 A: No. I wasn't aware that anybody else had ever
4 offered to buy any assets, not that anybody has
5 ever offered to buy assets. But the only one
6 I've ever heard referred to by Pope is this
7 supposed offer from Terry Cox which never was
8 an offer. She put \$100 million out there so
9 she could collect a \$5 million claim which
10 she's filed. Purely self-serving. Purely self-
11 serving. Selling assets of the estate to take
12 money for herself and leave it insolvent.
13 Purely self-serving. I'm sorry. I get carried
14 away. I get passionate about something I'm
15 working on when I see such wrong doing.

13. Mr. Bauknight and the Attorney General have continued to claim that James
Brown's copyrights were worth only \$4.7 Million, and his Right of Publicity zero, when
he died despite strong evidence to the contrary. In his January 31, 2013 ^{WJ} deposition

Mr. Bauknight again attacked Mr. Buchanan and Mrs. Pope for what we know was a very conservative value of \$84 Million. Mr. Bauknight said:

10 RESUMING EXAMINATION

11 BY MS. POPE:

**12 Q. Is there any reason why you didn't designate
13 anyone at Philpott Ball as an expert in this case?**

**14 A. I designated experts based on advice of my
15 attorneys.**

**16 Q. So you don't know why someone in Philpott Ball was
17 this not designated?**

18 A. I don't know.

**19 Q. And Philpott Ball is the firm that valued James
20 Brown's music empire at less than 4.7 million as
21 of the date of his death?**

**22 A. I don't agree with your term "empire." I don't
23 know where you came up with that, but the
24 intellectual property of the estate and trust of
25 James Brown was valued by Philpott Ball and**

Page 38

1 Werner.

**2 Q. Well, actually, Mr. Bauknight, isn't the Schedule
3 F not simply the intellectual property, but the
4 entire music empire?**

**5 A. I'm not sure what you're referring to at Schedule
6 F and if you'd let me, please, before you
7 interrupt, I'd like to finish my answers. You're
8 starting to speak before I finish.**

**9 Q. Oh, I certainly want you to finish. Please let's
10 do not speak over each other. Do you believe that
11 James Brown had a music empire?**

12 A. I believe James Brown had intellectual property.

13 I don't understand what you mean by empire...

Page 57

**9 Q. Now, am I correct that you valued Mr. Brown's
10 intellectual property in filings with the IRS at
11 less than 4.7 million as of his date of death?**

12 A. It was -- well, number one, I did not value it.

13 That was the investment banking firm of Philpott
14 Ball and Werner that prepared the professional
15 valuation of the IP of James Brown. I reported
16 that value to the Internal Revenue Service. That
17 value was examined by the service at the agent
18 level, was reviewed by the agent's manager. That
19 was forwarded to the national office of the
20 Internal Revenue Service and the Internal Revenue
21 Service national office brought in the royalty
22 engineers, as they called them, which are the
23 royalty experts, who spoke directly with my
24 investment banking firm of Philpott Ball and
25 Werner, and those royalty examiners for the

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1 service agreed with the valuation done by my
2 experts. To my knowledge, that's the only
3 valuation that has been done on Mr. Brown's IP...

14. Mr. Bauknight's Termination Rights expert in this case, however, who
was disclosed last year, contradicted Mr. Bauknight and made the \$84 Million
value Mr. Buchanan and Mrs. Pope put on Brown's assets appear conservative.

Under oath at his deposition on March 16, 2017 Mr. Miller said:

Q. Right, so but buy low is still essential to the concept, right"

A. [Miller] When possible.

Q. Right.

A. But, in my experience, if you want to buy this type of high quality content, you
are often, more so than not, a price taker, not a price maker in the market.

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. Solid gold.

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And:

Q. And there is nothing second [sic.] secret about your opinion that James Brown's is
a solid gold catalog?

A. No. I think anybody would agree.

Q. Okay.

A. Who is familiar with the work.

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?

[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5... But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

15. In addition to the Attorney General's and Tomirae's own expert, many Plaintiffs have disagreed with the Attorney General and Mr. Bauknight about Mr. Bauknight's valuation; Tomirae's claim to be Brown's spouse; and other positions Tomirae, the Attorney General and Mr. Bauknight continue to take. Brown's grandson Jason Brown-Lewis has recently made statements under oath contrary to the Attorney General's and Bauknight's claims. Excerpts from his June 29, 2017 deposition in this case are set out below:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
RUSSELL L. BAUKNIGHT, et al.,)
and ALAN WILSON, et al.)

Plaintiffs,)
)
VS.) No. 2010-CP-40-4900
)
ADELE J. POPE,)
)
Defendant.)

DEPOSITION OF JASON BROWN-LEWIS
LOS ANGELES, CALIFORNIA
THURSDAY, JUNE 29, 2017
REPORTED BY:
LINDA D. WHITE
CSR NUMBER 12009

54...

14 Q. See if I can jog your memory. Do you know
15 that one of the allegations in your Complaint is that
16 Adele Pope and Bob Buchanan should have accepted
17 \$100 million offer for James Brown's assets in 2007?

...
20 THE WITNESS: I do know of that Complaint, yes.
21 BY MR. SILVERNAIL:

22 Q. Were you aware of the \$100 million offer
23 itself?

24 A. I wasn't aware of it being an offer. I was
25 aware of it being an estimate of the value of the

55

1 Estate.

2 Q. And when did you become aware that that was an
3 estimate of the value of the Estate?

4 A. About 2013, 2014. Something like that. 2012,
5 2013.

6 Q. Did you know anything about the value of the
7 Estate between Mr. Brown's passing and then?

8 A. No.

9 Q. Do you have any opinion today about what the

10 value of Mr. Brown's Estate is?

11 A. Yes.

12 Q. What you think?

13 A. My opinion is: If it's -- if somebody's

14 willing to pay \$100 million, or if it's being estimated

15 by an outside party as \$100 million, it's worth double

16 or triple that...

18 Q. Do you know who was?

19 A. No. Yes. Tommie Rae was involved selling

20 songs and her lawyers.

21 Q. Do you know who her lawyers are?

22 A. Yeah, Rose and [sic.] something. It's the guy with

23 the bow tie. Am I right?

24 MR. KENDALL: You're right.

25 MR. SILVERNAIL: That's a fair identification.

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1 MR. KENDALL: We know who that is.

2 THE WITNESS: I think Peter Afterman.

19 Q. And do you remember that the Estate had set up

20 a D.N.A. protocol to test anybody who claimed to be an

21 heir?

22 A. Yes.

14 Q. Now, there were a couple of folks that you

15 listed as children of your grandfather earlier who you

16 didn't just mention in that list of people who took

17 D.N.A. tests. If I'm hearing correctly, I did not hear

18 Larry Brown or Daryl Brown, do you know whether they

19 took D.N.A. tests at all?

20 A. I know Daryl did. I know Larry refused...

21 Q. And?

22 A. Or I believe. This is what I have an

23 understanding of.

24 Q. And do you -- have you heard anything about

25 what the results of Daryl's test were?

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1 A. That he's not my granddad's biological child.
2 Q. Okay. To your knowledge, Larry has never, to
3 date, taken a D.N.A. test?
4 A. To my knowledge, no.
5 Q. Okay. Now, some of the people who were
6 identified as biological children of your grandfather
7 were not mentioned in his Will or Trust, correct?
8 A. Right.
9 Q. But do you understand that all biological
10 children have the same rights as one another under the
11 copyright statutes?
12 A. I do.
13 Q. And do you believe that makes it important to
14 determine who the biological heirs are?
15 A. Yes.
16 Q. Do you believe that process is complete?
17 A. No.
18 Q. And included in that process would be the
19 determination of whether there was a spouse who survived
20 Mr. Brown, correct?
21 A. Yes.
22 Q. And I think I heard you say earlier that that
23 was up on appeal?
24 A. Yes.
25 Q. Do you think Tommie Rae and her son should get
68
1 more than half of your grandfather's copyright rights?
2 MR. KENDALL: Objection.
3 THE WITNESS: No.
4 BY MR. SILVERNAIL:
5 Q. Did you know that Mr. Buchanan and Ms. Pope
6 worked from 2008 until 2013 to try to avoid that result?
7 MR. KENDALL: Objection.
8 THE WITNESS: No.
9 BY MR. SILVERNAIL:
10 Q. Do you have any opinion of what the value of
11 your grandfather's Estate is generally?
12 A. Yes.

13 Q. Tell me what that is.

14 A. At this point, I'm content -- well, I have the
15 same opinion of it being \$100 million.

16 Q. You believe that is the value?

17 A. At this point, yes.

18 Q. And do you believe it's ever been less than
19 \$100 million since he passed away?

20 A. No, it's only gone up since then.

21 Q. Now, are you aware that your grandfather had a
22 Will and Trust from 1999?

23 A. Yes.

24 Q. Are you aware that they're generally similar
25 to the last Will and last Trust he had from 2000?

69

1 A. Yes.

...

15 Q. Now, after your grandfather passed away, have
16 you ever seen documents that are sometimes referred to
17 as Tommie Rae's diaries?

18 A. I have not seen them.

19 Q. Are you aware of them?

20 A. I am....

25 And I know that there was also an issue

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1 brought up about a reporter who got a hold of them and
2 they went public. However, the courts tried to shut it
3 down, but it became public again or something like that.
4 So I know there was a fiddle around with the diary.

...

13 Q. Do you have any idea what your grandfather's
14 personal property -- and personal property being
15 furniture, collectables, photos, items around the house
16 more or less, do you have any idea what his personal
17 property would be worth?

18 A. Is this my opinion or is this factual?

19 Q. I'm asking you if you have any idea
20 personally.

21 A. So you saying all the items in the house, the

22 house, the land, the things in the land?

23 Q. No, I'm not including the home itself, the

24 buildings. I'm talking about the stuff that could be

25 picked up and taken away.

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1 A. Everything that was in that house I would

2 probably estimate it, to give you my best opinion, I

3 remember the Christie's sale didn't make anything near

4 what we were expecting. But I would estimate all that

5 stuff to be \$1 million to \$1.5 million.

6 Q. Did you attend the Christie's sale?

7 A. Not at all.

8 Q. Did your mom?

9 A. I think she did. If she didn't attend it

10 physically, she attended it telephonically.

11 Q. Do you know whether any members of the family

12 purchased items at the Christie sale?

13 A. My mother purchased an item.

...

1 Q. Now, do you remember what the Christie's sale

2 brought in?

3 A. Was it \$800,000, something like that? How

4 much was it?

14 Q. And do you recall whether you or any members

15 of your family tried to stop the Christie's sale from

16 occurring?

17 A. Yes.

18 Q. And was that you?

19 A. I believe I was a part of that on paper. I

20 can't remember if I was of age then.

21 Q. It was held in July of 2008.

22 A. Then yes, I was a part of that.

23 Q. And was your mother a part of it?

24 A. Yes.

...

86

...

9 Q. Did you know that Judge Early, who was
10 presiding over the Estate proceedings, had approved the
11 Christie's sale and directed it to take place in two
12 Orders?

13 MR. KENDALL: Object to the form.

14 THE WITNESS: I didn't know it was two. I thought
15 it was just one, but I'm not surprised with two.

16 BY MR. SILVERNAIL:

17 Q. And have you ever seen the document Christie's
18 produced? It was entitled "Selection for Sale"?

19 A. Is it the booklet with all the photos in it?

20 Q. Prior to that.

21 A. No.

22 Q. So you weren't aware that the exact items
23 which Christie's would auction were presented to the
24 Court and that that selection for sale was circulated to
25 all the parties in that case?

87

1 A. No.

2 Q. And did you know that the judge had offered a
3 process for family members to ask to withhold certain
4 items?

5 A. No.

6 Q. So I can anticipate the answer, but just to be
7 clear, were you aware that none of Mr. Levenson's
8 clients made a request to withhold any item from the
9 sale?

10 A. No.

11 Q. And did you personally communicate any
12 requests to withhold any item from the sale to anybody
13 other than your lawyer?

14 A. I didn't.

...

25 Q. You don't have any idea what your
89

1 grandfather's music brings in in a year?

2 A. I have an idea.

3 Q. What's your idea?

4 A. \$2- to \$4 million a year.

5 Q. And did that change any after your
6 grandfather's passing?

7 A. It fluctuated a bit higher and then lower.

8 And then when the movie came out, higher.

9 Q. Do you have any expectation that your
10 grandfather's music will begin a general consistent
11 decline anytime in the near future?

12 A. Yes, it would, just as everything fades away
13 at some point.

14 Q. Do you think that -- do you expect that in the
15 next four or five years or are we talking over decades?

16 A. We're talking over the next 30 to 40 years,
17 maybe even longer till my grandad's music dies.

18 Q. Would you agree with me?

19 A. Actually, my granddad's music will never die.

20 He's the most sampled artist in the world. And he's
21 also Michael Jackson's biggest idol. He will never die
22 and neither will his music.

....
25 Q. And so you are aware that there's a pending
93

1 dispute between the Michael Jackson's estate and the IRS
2 about valuation of some aspects of his estate?

3 A. I'm somewhat aware, but I'm not fully
4 knowledgeable.

5 Q. Were you aware that the dispute seems to be
6 that the estate believes Michael Jackson's image and
7 likeness was worth approximately \$2,100 and the IRS
8 believes it was approximately \$430 million?

...

6 Q. Now, take a look back through. And I tell you
7 what, we're short on copies of this one. I'm going to
8 hand this back to you, turned over to Page 5. And the
9 answers to Interrogatory Number 8 there, particularly
10 8A, which I believe generally asks for identification of
11 anybody to whom Tommie Rae Hynie had been married,

12 correct?

13 A. It does state that.

14 Q. And is it correct that the response provided

15 in bold is that responding parties only know of a

16 marriage to Javed Ahmed, possible past addresses in

17 Texas; is that correct?

18 A. That's what it reads, yes.

19 Q. Okay. So as of March 4th, 2008, when this

20 document is dated on Page 6, the members of your family

21 represented by Louis Levenson were taking the position

22 that Tommie Rae's only marriage had been to Javed Ahmed,

23 correct?

24 MR. KENDALL: Object to the form.

25 THE WITNESS: Yes.

11 Q. Okay. Do you know who Ray Charles is?

12 A. Yes.

13 Q. Are you aware that he left behind a charitable

14 foundation?

15 A. Yes.

16 Q. Have you heard anything about what the value

17 of that foundation is?

18 A. No.

...

24 Were you aware that Ray Charles's foundation

25 was approximately \$50 million?

110

1 A. No. This is his foundation, not his estate?

2 Q. Yes.

3 A. Okay.

4 Q. Do you think James Brown's foundation should

5 be at least that much?

6 A. Well, to my knowledge, I don't know there

7 being a James Brown foundation.

8 Q. I'm referring to the James Brown I Feel Good

9 Trust.

10 A. It's -- I mean, not trying to sound arrogant

11 here, but James Brown did more physically and during his

12 life. I would -- I would speculate that it would be
13 worth a bit more than \$50 million, but it would be in
14 the same ballpark.

3 Q. Now, earlier today I think you -- and correct
4 me if I'm misremembering or misunderstood -- but I think
5 you told me that you thought the things in your
6 grandfather's house, exclusive of the house and the
7 property itself might be worth \$1 million to a million
8 and a half dollars?

9 A. On the low end, yes.

10 Q. Did you know Mr. Bauknight had valued that
11 property at close to or maybe zero?

12 A. No.

13 Q. I think this is obvious. But just for the
14 record, does that sound like a reasonable valuation to
15 you?

16 A. No.

16. I was designated as a witness in this case more than six months ago, but
Plaintiffs have not tried to depose me. If they did, my testimony would be similar to my
opinions stated in the article I wrote with Mrs. Pope in 2011, *Private Foundations,*
Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust
doesn't..., and my sworn testimony given in Aiken Case No. 2013-CP-02-1337 on
March 14, 2017. My opinions, given to a reasonable degree of certainty within my
areas of expertise, are set out in part below..

7 Q Okay. And then you've got a stack of
8 something underneath that notebook. I don't know
9 if I've seen that yet.

10 A Well, for instance, this is about what's
11 going on in the Prince estate. And, of course,
12 looking at the Prince estate, it's partly to see

13 the value of some of these musicians' estates when
14 they die and how much money is involved with both
15 Michael Jackson, Ray Charles, Prince, and the
16 valuations of their estates and how it can run into
17 the hundreds of millions of dollars, whether it's
18 publicity rights, copyrights or different things
19 like that, and some of the problems with
20 determining heirs and how important it is to
21 determine the heirs in these situations.
22 But, of course, but every -- each case is
23 different. Prince estate, no will, but it's still
24 very important, obviously, to find the heirs and
25 determine who the heirs are because of copyright

Page: 27

1 terminations.

2 MR. WILLIAMS: In case you didn't catch

3 it, he's saying Prince's, as in the late --

4 THE WITNESS: Yeah...

...

19 Q Let me --

20 What was the artificial devaluation of

21 Brown's assets described in paragraph 7?

22 A Well, I've seen the papers -- we've got a

23 list of -- I might have to find that piece of

24 paperwork later.

25 I guess it was basically the idea that we

Page: 84

1 all know about the -- what the royalty interests

2 were, but image and persona and the idea that --

3 I've studied -- I know about the -- what's going on

4 in the Ray Charles estate, the Prince estate,

5 Michael Jackson estate, and the amount of money

6 that's being talked about is anywhere from a

7 hundred million to 250 million or more in some of

8 those estates, and there's no reason why -- I don't

9 see any reason why the James Brown estate wouldn't

10 be in that same ballpark.

11 And it seems obvious that it was based on

12 the income at the time and all the publicity rights
13 and all the different things that going -- the idea
14 of going from, you know, 84 million to -- or in the
15 realm of a hundred million down to 4.7 million just
16 seems unbelievable. I mean, it's just -- you know,
17 it's like a factor of 10. You know, if it was a
18 small percentage ...
19 But to do something that's more than a
20 factor of 10, that's -- to me, that's an artificial
21 devaluation; I mean, that there's no -- there was
22 no basis for that.

...

Page 85

16 Q How are the other what you called music
17 empires similar to the estate of James Brown's?

18 A You say how are they similar? That's the
19 question?

20 Q How do you compare them?

21 A Well, I compare them by time period,
22 general popularity of the person, the known -- the
23 worldwide recognition of the person, the popularity
24 of their songs, the sampling, the publicity. Just
25 the career.

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1 When somebody writes and performs
2 songs -- I mean, not only just performs songs. I
3 mean, there's obviously been a lot of performers
4 over the years, but, I mean, somebody -- the people
5 who actually writes songs -- see, you're back in
6 the copyright area -- but performance and persona
7 for decades, those estates know that they have
8 ongoing values of hundreds of millions of dollars
9 sometimes.

10 I mean, Elvis died 40 years ago, and a
11 lot of people don't know anything about him but his
12 estate is generating a tremendous amount of money
13 now, and Michael Jackson and Prince are gonna be
14 probably way beyond that, probably because they

15 wrote a lot more of their songs, they're just more
16 well-known worldwide probably, and -- so that --
17 And, once again, it's not the particular
18 number as far as what you mentioned, the
19 84 million, but the idea of saying something --
20 4.7 million, given the amount of money that was
21 coming in for all kinds of different situations per
22 year, it just -- that seems very artificial to me.
23 Seems very unreasonable.

....

11 Q Your opinions that you have given include
12 the opinions stated in the article "Private
13 Foundations, Copyright Heirs and Musical
14 Millionaires"?

15 A Yes.

16 Q "Why the James Brown 'I Feel Good' Trust
17 doesn't" ...

18 Is that correct?

19 A That's correct.

20 Q I'd like you to look at that article and
21 see if there's a section in that article called
22 "Almost nothing."

23 A Yes. I see it.

24 MS. POPE: Before we begin, let's mark
25 that, please, as an exhibit.

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...

17 Q And does the article deal with a concern
18 about a devaluation of James Brown's assets as well
19 as other copyright concerns?

20 A Yes, it does.

21 Q And at that time, was the case now known
22 as Wilson versus Dallas on appeal?

23 A Yes.

24 Q It was on appeal to set the scene from
25 about May of 2009 until 2013?

Page: 125

1 A Yes. Of course, that's when the decision

2 came out, yes.

3 Q Okay. At that time, had Sonny Jones and
4 others announced that an appraisal would be
5 forthcoming that would show James Brown's assets to
6 be less than \$12 million?

7 A Yes. That's right.

17. Nothing in the sworn deposition testimony of the Attorney General's and Tomirae's experts desingnated in this case, but deposed in other cases, persuades me to change my position that the Attorney General, Tomirae and Bauknight intentionally devalued James Brown's assets by tens of millions of dollars to damage Mr. Buchanan and Mrs. Pope in the eyes of the Supreme Court, but Attorney General's alliance with Tomirae and those false devaluation and filings, through Bauknight, also severely damaged The James Brown "I Feel Good" Charity and its 900 copyrights.

18. I do not find anything in the expert, party and lay witness depositions I have reviewed which refutes my opinions or provides any support for the Attorney General's and Bauknight's devaluation of James Brown assets to less than 1/10 of their real value in order to attempt to discredit Mr. Buchanan and Mrs. Pope.

19. The deposition of the Attorney General's and Tomirae's expert Jonas Herbsman, Esq., at his deposition on March 17, 2017 in Aiken County Case 2013-CP-02-1337 does not, in my opinion, provide any support for Mr. Bauknight's devaluation of James Brown's assets or the attacks on Mr. Buchanan and Mrs. Pope related to their protection of the copyrights James Brown gave his "I Feel Good" Charity. Parts of Mr. Herbsman's testimony are set out below:

IN THE COURT OF THE COMMON PLEAS
SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

-----X

ADELE J. POPE,

PLAINTIFF, -against-

Case No.: 2013-CP--02-1337

ESTATE OF JAMES BROWN and THE JAMES BROWN

2000 IRREVOCABLE TRUST,

DEFENDANTS.

-----X

DATE: March 16, 2017

TIME: 9:25 A.M.

CONFIDENTIAL EXAMINATION BEFORE TRIAL

of the Expert Witness, JONAS HERBSMAN,

ESQ., taken by the respective parties, under the South Carolina Rules of Civil Procedure, pursuant to a Court Order, held at the offices of Shukat Arrow Hafer Weber & Herbsman, LLP, 494 Eighth Avenue, 6th Floor, New York, New York 10001, before

Cleo Shenkin, a Notary Public of the State of New York.

...

Q. Okay, do you recall who first engaged you?

A. Mark Gende.

Q. Okay. Now, let me talk just a few minutes about your qualifications.

You are a transactional lawyer; is that correct?

A. Correct.

Q. Okay. Do you do any litigation

A. No.

Q. Well, first of all, tell me, if you will, a little bit about termination rights under Section 203 and 304 of the Federal Copyright Act.

A. Okay, well, termination rights are a right for an author who when they created the work in question may not have had the negotiating power to negotiate a good deal, may have negotiated away their rights, and so the termination rights give the author an opportunity at a certain point in time to terminate the grant that was given and recapture those rights.

And depending on whether the author is still alive, you know, it's the author who exercises the rights or it's the author's widow and children who exercises the rights or it's the -- if there are no widow and children, there are next of kin provisions, all the way down to an executor, who might exercise those rights if there are no appropriate next of kin, widow, children.

And depending on which you are talking about, there is a 56-year termination right, there is a 35-year termination right. The 35 termination right, that is only available if you are -- if it was a grant that was made by the author directly, as opposed to the earlier termination right in copyright law, the 56-year termination right, which is a right that is just a general termination right, not specific to having been a grant by the author made after 1978.

Are we going further?

Q. Whatever you would like to say, I am interested.

A. I think that is good.

Q. Well, let me ask you, how do you determine heirs under the Federal Copyright Act?

A. Well, either someone has to be acknowledged by the creator of the work in their lifetime, so someone being acknowledged as a child, either their natural child, they could be adopted or they could be otherwise acknowledged as the, you know, as the heir or -- you know, as a child or as a spouse.

Q. Tell me what you mean by "otherwise acknowledged."

A. Well, if an individual during their lifetime acknowledges a child as their child and they can form the basis for the individual being acknowledged as an heir, despite the child not necessarily being officially adopted or a natural child. If an order affiliation is being issued, if someone has been recognized as the child.

Q. Are you aware of any litigation related to the determination of children under the Federal Copyright Act?

A. Yes.

Q. Okay. Tell me about those cases.

A. Well, I am not prepared to give full dissertations on the cases; that is not what I prepared for this morning.

Q. Well, I just want to know what you know sitting here today. I am not asking for a full dissertation, I just want to know your knowledge or understanding about any litigation you are aware of related to the determination of children

under the Federal Copyright Act termination rights provisions.

A. Hank Williams, there was a Hank Williams case with Hank Williams' daughter. And, again, I would have to go and do the -- you know, review again, to be able to have an appropriate conversation about it.

Q. Sure. Sure.

Do you recall whether the question was whether she was or was not the daughter?

A. I don't recall.

Q. Okay. Are you aware of any other Federal Copyright Act termination rights case involving the question of whether someone is a child that you are aware of?

A. Off the top of my head, no.

Q. Okay. Now, are you aware nationwide of any Federal Copyright Act termination rights litigation or case or article or study related to the determination of who is a spouse under the Federal Copyright Act?

A. To quote specific cases, no.

...

Q. Okay. All right, now, we will just short of go through it. You believe your first conversation was November 21, 2016 with whom?

A. Mark Gende.

Q. Okay. And is it correct that on November 21, 2016, Mark Gende wrote you and said "Jonas, attached are additional documents for your review and certain documents for your review"?

Q. Did he tell you that the personal representative had told the Internal Revenue Service that James Brown's assets were worth only about 6.5 million when he died?

A. No.

...

Q. Okay. And are you aware that the valuation of one's image and persona could be a substantial issue in the case of a celebrity?

A. Yes.

Q. Okay. Are you aware of the pending Michael Jackson litigation

A. I am.

Q. Okay. You are not a lawyer in the Michael Jackson --

A. I am not involved in the litigation.

Q. Okay, just tell me briefly what is going on with Michael Jackson.

A. A dispute has arisen as to the values of Michael Jackson's name and likeness on the date of his death.

Q. Okay.

A. And my understanding is that the difference in opinion is that Mr. Jackson's Estate tax return indicated a value of approximately \$6,000 and the IRS believes it is approximately \$1.3 billion.

Q. Well, have they reduced that to a \$150 million now?

A. I think they may have.

Q. Right. In other words, the issue of the value of a celebrity's image and persona at death is important?

A. It is.

Q. And James Brown is certainly a

personality who would fit into the category of persons whose image would be important?

A. Yes.

Q. Okay. Without divulging client secrets, would you have a way of comparing James Brown to Bob Marley?

A. From a name and likeness perspective?

Q. Yes.

A. Is that what we are talking about?

Q. For the moment.

A. Okay. Well, you would need to consider the image of each individual at the time of their death. So one would have to look at how the individual was positioned in the eye of the public at the time of their death to determine, you know, what the value would be of that name and likeness. So comparing two specific individuals is difficult because the market for each of them is generally going to be different.

Q. So sitting here today, you have no -- and I am not asking you to be an expert in an area that you are not an expert, but you have no idea of the comparable value of James Brown's image and persona at death to Bob Marley; is that correct?

A. I could not personally be the expert who would make that valuation.

Q. Well, do you just have a personal opinion, a nonexpert opinion?

A. I do.

Q. So tell me about it.

A. I think that James Brown was

one of the seminal musical figures of the 20th Century and that there would have been a substantial market for his name and likeness, if handled properly.

Q. And, again, the date-of-death value that one must put on an estate tax return must make some reasonable assumptions, correct?

A. Yes.

...

Do you know anything about the at-death value of James Brown's personal property?

A. I do not know what the value would have been of his personal property.

Q. Okay. Do you know anything about its value today?

A. I know some was auctioned via Christie's; I do not know what the ultimate total is that was recognized and I don't know what is left, so I don't know what the value would be.

...

Q. Okay. Have you seen a Barnebys [sic.] add for a pair of James Brown's shoes for \$1500 minimum?

A. I have not.

Q. Okay. Do you know what in fact was in the Christie's sale and what was left after the Christie's sale?

A. I do not.

Q. Are you aware of which of the thousands of items were placed in museums for safekeeping during the litigation?

A. No.

I just know that items were referred to in the papers I saw as having been -- potentially being place in museums.

Q. Okay. Right.

Did you see an order, in fact, dated February 20, 2008 that allowed the personal representatives to place items of tangible personal property in museums for safekeeping?

A. I did.

Q. Did you understand why that order was necessary?

A. My recollection was that items were being held in a house that had some structural issues.

Q. And did you understand that at least arguably from and after December 26th those five contesting children would have lost any special status with respect to the personal effects?

A. I only know that from what I read; I personally don't know whether that is correct or not.

Q. Okay. Have you dealt with in terrorem clauses before?

A. I have seen them, I have read them, I have not been a party to a litigation involving them.

Q. Okay. So were you aware that at the time of the order, the sixth child, who had not contested the will, was asserting that he owned all the personal and household effects?

A. I do recall reading that.

...
Q. Okay. So you don't have any knowledge that the larger body of personal tangible property had been valued at about \$2 million?

A. I recall seeing the number 2 million, but I don't know exactly what

items were specifically included with the valuation of that number.

Q. Okay. Did you know that Christie's had conducted an appraisal of the household items?

A. Yes.

Q. Okay. And did you see what value Christie's put on the items it a braced [sic.]?

A. I have not seen the Christie's appraisal.

...

Q. Do you know that Mr. Bauknight told the IRS that James Brown's image, persona, copyrights, claim against Greenberg Traurig, claim against former trustee David Cannon, claim against Morgan Stanley, claim against Phillip Farr, business tangible personal property and other assets had a value of only \$4.7 million at James Brown's death?

MR. WILLIAMS: Object to the form.

A. No.

Q. Would that surprise you?

MR. WILLIAMS: Object to the form.

A. I couldn't form an opinion on it without knowing the basis of how that value was derived.

Q. And none of your work has been related to the propriety of a proper valuation of James Brown's assets?

A. No.

Q. Okay. And none has been attempted?

A. No.

That is not my area.

...

Q. I think we were taking a break for you to secure the names of two lawyers you have spoken with about this matter since November 21, 2016; is that correct?

A. Correct.

Q. Who are they?

A. Rett Kendall.

Q. Okay.

A. And William Newsome.

Q. Okay. What do you know about Rett Kendall and William Newsome?

A. That they are attorneys representing the Estate of James Brown.

Q. Okay. Do you know who else Rett Kendall represents?

A. I do not.

Q. Do you know the name Tomi Rae Hynie?

A. I do.

...

Q. Did you do any research to determine who all the people were who were challenging Ms. Hynie's status as James Brown's spouse?

A. No.

That wasn't in the scope of what I was asked to do.

...

This is a document, Exhibit 2, Plaintiff's Exhibit 2 is a petition of respondent James B. for rehearing, received March 14, 2013 by the South Carolina Supreme Court in a case which became known as Wilson v. Dallas, case No. 2008-CP-02-1647.

Do you know anything about the Wilson versus Dallas decision?

A. No.

Q. Okay. In your preparation, did anyone talk to you about the subject of that appeal or the ruling of the court?

A. I don't recall a conversation on that.

...

Q. Right, but did you know at the time, which was more than six years after his death, whether James B. had been determined to be James Brown's child?

A. No.

Q. Do you know that, in fact, he had refused DNA testing?

A. I don't know one way or the other.

It's not relevant to what I was asked to examine.

Q. Do you know whether he was born of a marriage?

A. No.

Q. Do you know whether he was born of the marriage of Tomi Rae Hynie to Javed Ahmed?

A. No.

...

Q. Okay. Did Mr. Gende tell you that Ms. Hynie was one of his clients?

A. No.

...

Q. Okay. Do you know that in September of 2010 Mr. Bauknight and others received a document which they claim is a proper appraisal of Mr. Brown's intellectual property at less than \$4.7 million?

MR. WILLIAMS: Object to the form.

A. I haven't seen an appraisal.

Q. Okay. Did you know that that had happened in September of 2010?

A. I know that an appraisal was sought.

Q. Do you know when it was received?

A. I don't know the date it was received.

Q. If I tell you it was September 2010, do you have any information to the contrary?

A. I do not.

...

Q. Okay. Now, looking back at Plaintiff's Exhibit 2, would it be fair to say that James B. is discussing the results of that appraisal on page six and elsewhere?

A. (Witness perusing document.)

When you say James B. is discussing it, it's Peter Shahid.

Q. James B.'s lawyer?

A. James B.'s lawyer.

(Witness perusing document.)

There is a discussion of an appraisal submitted to the IRS, but I don't know if it is the appraisal that you are referring to or that Mr. Bauknight provided on the date that you are referring to.

Q. Okay. But on page six, Mr. Shahid refers to an appraisal, which he says "confirmed by the IRS on audit, which is for the date-of-death value, shows the royalty stream belonging to the Estate worth approximately \$4.7 million, which is the fair market value of the royalty stream less outside associated debt of

approximately \$19 million arising from bonds secured by the royalty stream"?

A. It does say that.

Q. Okay. Do you know anything about the debt he is talking about?

A. I would assume he is talking about the bonds that were held by TIAA-CREF issued by David Pullman.

Q. Yes.

Actually, everybody says TIAA-CREF, but it's really just TIAA, isn't it, the New York Teachers?

A. The Teachers Association, Association of Teachers.

Q. Right. People confuse it a lot, you see it in the documents. But what do you know about the TIAA debt?

A. That they are bonds issued and secured by publishing royalties and record royalties.

Q. Have you studied the Pullman or the TIAA bond in connection with your representation?

A. No. I have not seen it.

Q. All right. Do you know whether the date-of-death value of the TIAA bond was 19 million, as stated by James B., or actually about 16 million?

A. I have no knowledge of that.

Q. Okay. All right, do you know the difference between an IRS audit and a closing letter?

A. Yes.

...

All right, now, do you know that in early 2011, Mr. Buchanan and Mrs. Pope received notice that the value of

Mr. Brown's Schedule F assets in the Estate tax proceeding had been reduced from 84 million to 4.7 million?

A. Only to the extent that I saw reference to it in the documents I was provided.

Q. Okay. Did you know that both immediately took steps to make sure that their names weren't associated with that 79 million devaluation?

A. I am not aware of that.

Q. Okay. Did you know that later, Mr. Bauknight and others asserted that Bob Buchanan and Adele Pope had overstated the value of James Brown's assets by \$79 million for the improper purpose of obtaining a large commission?

MR. WILLIAMS: Object to the form.

A. I have seen documents that refer to that.

Q. Would that be a felony under the IRC?

MR. WILLIAMS: Object to the form.

A. I am unaware of what is or is not a felony.

Q. Okay. You wouldn't want to commit one, would you?

A. I wouldn't want to commit a felony, but I can't comment on what is or is not a felony, I am not familiar with those rules.

Q. Nor would you want to be accused of one, would you?

A. No.

Q. Okay. All right.

And do you know anything else

about the value of the James Brown assets on his date of death that you have not told me?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets on November 20, 2007, when Adele Pope and Bob Buchanan took office?

A. No, I wasn't asked to assess valuation.

Q. Okay. Well, do you know anything else that you have learned from anyone?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets when Bob Buchanan and Adele Pope surrendered those assets to Russell Bauknight on May 26, 2009?

A. No.

Q. Okay. So is it fair to say you have no information to suggest that the Estate and Trust decreased in value during that time?

A. No, I would say I was not asked to examine that issue.

Q. Okay. And you have no such knowledge?

A. No.

Q. Have you ever read an article written by Adele Pope and William Jeffrey Smith entitled, Private Foundations, Copyright Heirs and Musical Millionaires or Why the James Brown "I Feel Good" Trust Doesn't?

A. Yes.

...

Q. Was there anything in the

article that you found to be incorrect?

A. I didn't assess the article for whether it was correct or not.

Q. Okay. Why were you reading it?

A. It was provided to me with other documentation, so I read through it.

Q. Okay. Do you agree with the premise of Mr. Smith and Ms. Pope that the determination of heirs is critical to a charity for the protection of its copyrights?

A. I am not sure of the question -- I am not sure I am following the question.

Q. Well, I'm sorry, let's see if we can make a context here.

A. Sure.

Q. Are you aware that James Brown left the bulk of his assets to charity?

A. Yes.

Q. Okay. To the James Brown "I Feel Good" private foundation?

A. Yes.

Q. Okay. And you and I both know that a private foundation bears the name private, but is a charity in many respects?

A. Yes.

Q. Okay. And James Brown's will actually provided that the residue of his estate, except for \$2 million, went to the "I Feel Good" private foundation, correct?

A. That is what the will said, yes.

Q. Okay. And that the "I Feel Good" foundation was dedicated solely to the education of needy and deserving students in Georgia and South Carolina?

A. I have also read someplace else

that it was for students from anyplace, so I can't -- I haven't read the foundation documents, so I can't confirm or -- I know it's for the benefit of education for underprivileged, yes.

Q. Okay, right.

Did you know that he had done two estate plans a year apart, both leaving his residuary assets for the education of needy students?

A. I did read that in the documents.

Q. Okay, good.

All right, so would it be fair to say that the "I Feel Good" charity and any other charity holding copyrights would have a duty to protect those copyrights?

A. If a charity validly holds a copyright, they should protect it.

...

Q. Right, okay. Now, then, would it be fair to say that the "I Feel Good" Trust, if he owned those copyrights, like any other charity in America, would have a duty to protect the copyrights for the benefit of the charity?

A. I think that would depend on the specific state law applying to charities within the state, so I can't opine as to whether South Carolina law requires, you know, a charity to do or not do something.

Q. Okay. Well, I am not talking about maximize or such as that, I am just talking about a general fiduciary duty to protect your assets, trustees have that duty, don't they?

A. Yes.

Q. Okay. So if a trustee has a duty to protect its assets, then one method of protecting those assets is to protect it against incorrect or premature exercise by heirs of terminations rights; would you agree?

A. I would think that a charity should do what is most prudent to generate the best value from the assets which they have.

...

Q. Okay. So in your representation of the James Brown matter, your expertise, you never attempted to look at the issue of the likelihood that Ms. Hynie would have been determined to the spouse?

A. I have accepted that Ms. Hynie would be determined to be the spouse.

...

Q. Okay. Do you know in fact that Ms. Hynie admitted in handwritten notes that she was married, living in Texas and thought she might be pregnant when she took up with James Brown, concealed her marriage and then later, in 2001, had a ceremony with Mr. Brown?

A. I am familiar with those statements, but I haven't seen the notes.

...

Q. Were you aware that despite the appeal by both the Estate and at least three of her co-plaintiffs in the Wingate suit, Ms. Hynie received \$1 million in 2015 or early 2016 in relation to a sale or transfer of "Please, Please, Please" and two other songs?

A. I am not aware of that.

Q. Okay. Were you aware that Ms. Hynie claimed in court filings that Brown's music empire, including all his Schedule F residuary assets, were worth only \$4.7 million when he died and that the total of all James Brown assets was only 6.5 million?

A. Only to the extent that I have read it in the documents that I have been provided.

Q. Were you aware that it was Tomi Rae's lawyer who proposed in 2009 to value Brown's copyrights like those of Harlan Howard and value Brown's publicity rights at zero?

A. No.

Q. Do you know who Harlan Howard is?

A. No.

Q. Okay.

A. A performer, I assume.

Q. Would you compare Harlan Howard in any way to James Brown?

A. I don't know who Harlan Howard was.

...

Q. Okay. Did you know that twice in the year 2016 Henry McMaster, who is now the governor South Carolina, has stated under oath that he did not authorize the Wingate suit to be filed in the name of the attorney general?

A. I don't think I am aware of that.

Q. Okay. Are you aware that Mr. McMaster, now Governor McMaster, said under oath in this case, just shortly before you were hired, that he never

authorized Mr. Bauknight to act on behalf of the attorney general in the Wingate suit?

A. I haven't seen any documents related to that.

Q. If it turned out that the Wingate suit was either unconstitutional or illegal or both, would that affect your opinion?

A. No.

Q. Okay. Do you know who Dr. Yamma Noyola Brown is?

A. I believe also a child of James Brown.

Q. Right. Do you know that she and Deanna and others are currently represented by Marc Toberoff?

A. No.

Q. Do you know who Marc Toberoff is?

A. Yes.

Q. If Marc Toberoff were trying to take away a charity's copyrights, the charity might want to protect itself, mightn't it?

A. I don't know that Marc Toberoff is trying to take away a charity's copyrights.

Q. Do you know anything about Marc Toberoff's actions in connection with James Brown?

A. No.

Q. Okay. Do you know anything about Marc Toberoff's actions with respect to heirs and other charities?

A. I know that Marc Toberoff represents individuals seeking to reclaim rights via termination filings.

Q. Okay. Are you aware of the Ray Charles litigation?

A. Yes.

Q. Okay. Is it fair to say that the heirs of Ray Charles are adverse to Ray Charles's charity?

A. I wouldn't know one way or the other; I am just aware of the fact that there is litigation with the heirs regarding terminations.

Q. Well, the litigation, wasn't the litigation the heirs trying to terminate the copyrights and saying that the charity had no business being there and the charity saying our royalties are affected, we have a right to be here?

A. I can't comment on that; I know that the litigation exists, but I haven't been involved in it and I haven't read any of the documentation.

Q. Okay. All right. Do you know anything about Larry Brown?

A. No.

Q. Okay. Have you ever seen the circumstance related to termination rights where a child is born of a marriage, acknowledged in a will, but may not be the DNA proven child; do you know anything about that?

A. No, I don't think that specific circumstance.

Q. All right. And then if you added, in addition, then challenged the will in which he was acknowledged, but still, that would be a complicated fact, wouldn't it?

A. Yes.

Q. And when you are dealing with termination rights, you have really got to look at the facts, don't you?

A. Yes.

Q. You wouldn't want to make any quick decisions without having an understanding of who the heirs were, right?

A. Correct.

19. Mr. Herbsman's testimony confirms my opinion that since the *Wilson v. Dallas* decision the alliance of the Attorney General, Tomirae and Bauknight has continued to damage Mrs. Pope and, where needed, Mr. Buchanan, and the millions of dollars the Attorney General has allowed Mr. Bauknight to spend from Brown's Charity for this purpose is unprecedented for a Constitutional Officer charged with the protection of a charity such as the James Brown "I Feel Good" Trust.

20. Portions of the deposition of Plaintiffs' CPA expert Ellison Thomas taken April 14, 2017 are set out below:

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 AIKEN COUNTY
4
5 DEPOSITION OF WILLIAM ELLISON THOMAS
6
7 ADELE J. POPE,
8 Plaintiff,
9 vs. CASE NO. 2013-CP-02-1337
10 ESTATE OF JAMES BROWN AND THE JAMES BROWN 2000
11 IRREVOCABLE TRUST,
12 Defendants.

11

12

13 DEPONENT: WILLIAM ELLISON THOMAS

14 DATE: April 14, 2017

15 TIME: 1:15 p.m. - 3:52 p.m.

16 LOCATION: Nexsen Pruet, LLC

205 King Street, Suite 400

17 Charleston, South Carolina, 29401

18

REPORTED BY: SARAH GACIOCH

...

18 Q. Well, I want you to recall all of the
19 discussions that you can recall with Mr. Gende
20 and/or Mr. Newsome or Mr. Bauknight about these two
21 cases, okay? Because they are about the service of
22 Bob Buchanan and Adele Pope. So I want you to
23 recall anything that anybody has told you that I'm
24 not going to find on this disc about the service of
25 Bob Buchanan and Adele Pope.

1 A. And I'll answer you very generally, I'm not
2 going to sit here and tell you that I can recall the
3 details of conversations that I've had weeks ago,
4 months ago.

5 Q. Okay.

6 A. I can tell you generally that we have talked
7 about the facts in this case.

8 Q. Tell me what you mean by that.

9 A. We've talked about the probate accountings.
10 We've talked about the documents that support the,
11 you know, the notice of the creditor's claim or the
12 allowance of the claim or we've talked about the
13 706. We have talked about the documents in this
14 case.

15 Q. When you have talked about the 706, did you
16 also talk about the modifications to the estate tax
17 proceeding by Mr. Bauknight?

18 A. No. We have talked about this 706.

19 Q. So you've made no attempt to look into how

20 Mr. Bauknight valued James Brown's Schedule F assets
21 at \$4.7 million?

22 A. I have not looked at anything, other than
23 this 706.

24 Q. Okay. Well, that was -- this is the 706 that
25 was in that proceeding, isn't it?

1 A. The 706 that I have was the one that was
2 filed by you and Mr. Buchanan.

3 Q. Well, it's the only one that's been filed,
4 isn't it?

5 A. That I don't know.

6 Q. Okay. So you were not asked to look to how,
7 for example, the Schedule F2 assets changed from 84
8 million to 4.7 million?

9 A. I have not been asked to do that.

10 Q. Have you given any thought to that?

11 A. I have given no thought to how they changed.

...

14 Q. Okay.

15 A. But the issue I'm tracking here is whether
16 there was a tax liability.

17 Q. Uh-huh. Okay. And did you reach a
18 conclusion about that?

19 A. On whether there was a tax liability?

20 Q. An estate tax liability?

21 A. I reached a conclusion on the issue with the
22 Christie's money, and I followed it through to the
23 tax return that was filed. So the first thing I
24 looked at is what I just told you.

25 Q. Uh-huh.

1 A. The next thing is a cover letter from March
2 24, 2008 from Sellers and Durant, and it is a -- it
3 is a hardship request for an application for an
4 extension of Form 4768. In Mr. Sellers' cover
5 letter he says, attached is a letter prepared by the
6 Estate Personal Representatives detailing the status
7 of the estate and related entities.

8 Q. And did you give the date of that extension

9 and letter so we'll have it on the record, please?

10 **A. It's March 24, 2008.**

11 **Q. Okay.**

12 **A. And, of course, any of these are signed under**
13 **penalty of perjury.**

14 **Q. And while you're looking at that extension**
15 **request, what's the gross estate that's stated on**
16 **that extension request on March 24, 2008?**

17 **A. I don't see an amount.**

18 **Q. I'm sorry, we'll just share that for a**
19 **moment, if you don't mind.**

20 **A. Sorry, just so we're clear, I don't see that**
21 **amount on the Form 4768. Attached there is a**
22 **Schedule -- a letter on page 4 that makes reference**
23 **to a total net worth of \$62 million.**

24 **Q. How about the gross?**

25 **A. The gross value -- I'm sorry, that's the**
1 **question, sorry -- was \$91,600,000.00.**

2 **Q. Right.**

3 **A. And then one of the last paragraphs on page 5**
4 **of this letter says, the PR/Trustees intend to make**
5 **a substantial deposit towards the estate taxes when**
6 **the net proceeds of the Christie's sale are**
7 **received. This is estimated to be in September or**
8 **October of the Christie's sale proceeds according to**
9 **the Court Order -- according to the Court Order**
10 **schedule.**

...

16 **Q. Now, would you agree that but for the \$2**
17 **million and the tangible personal property, all**
18 **money in James Brown's Estate under his estate plan**
19 **was -- would have been considered, from a tax**
20 **standpoint, as paid or permanently set aside to**
21 **charity?**

22 **A. I'm sorry, what was that?**

23 **Q. Except for his personal and household effects**
24 **and the \$2 million for education for the certain**
25 **grandchildren, was all the rest of James Brown's**

1 Empire paid or permanently set aside to a charity?

2 **A. Well, that's what the will and the trust say.**

3 Q. Right. Right.

4 **A. Yes.**

5 Q. Right. So when you're thinking about estate
6 taxes, whether you get a charitable deduction or not
7 is pretty huge, right?

8 **A. Well, yeah.**

25 Q. Do you know of any significant event between
1 March 24, 2008 and the fall of 2008, when the
2 Christie's money comes in?

3 **A. I mean, if you ask me about a specific event,**
4 **I'll tell you if I know about it or not.**

5 Q. Do you know that the Attorney General of
6 South Carolina had asserted he had the right to take
7 over the operation of the James Brown assets, stop
8 the action of the fiduciaries under James Brown's
9 documents, designate the people he wanted to
10 designate as heirs, and remove the Trustees and
11 replace them with Trustees he selected; did you know
12 all that?

13 **A. The way you asked the question I think would**
14 **require a legal conclusion.**

15 Q. Okay.

16 **A. And I'm not a lawyer.**

17 Q. Sure. Sure.

18 **A. So if all that happened, that would be**
19 **something that would be a legal issue.**

20 Q. Okay. Well, but let me ask you this. If
21 among the things that happened on August 10, 2008 --

22 **A. Yes.**

23 Q. -- was that the Attorney General said, I'm
24 giving half of this charity to private individuals,
25 and I'm declaring Tommie Rae Hynie the wife, that
1 makes it an accounting problem, doesn't it?

2 **A. No. I think you've again asked me something**
3 **that would require a legal conclusion.**

4 Q. Well, let's just you and I assume that on
5 August 10, 2008 the Attorney General said, I'm
6 stipulating Tommie Rae Hynie is the wife, and I'm
7 giving half of these assets to noncharities, just
8 take my word that, that is what happened.

9 A. Well, first of all, I think that the parties
10 would -- I think that in a situation like this all
11 the parties would have to agree. You said the
12 Attorney General did something, and again, that's a
13 legal question. So from the standpoint of what I
14 know about settling estate matters, I think the
15 parties have to agree.

16 Q. I wish you had been there by my side, Mr.
17 Thomas, in 2008, because that is what Mr. Buchanan
18 and Ms. Pope thought, too. Nevertheless, that
19 wasn't what happened. On August 10, 2008 the
20 Attorney General stipulated that a person, not a
21 charity, would get 25 percent of James Brown's
22 assets, and that some other people would get another
23 25 percent, and the Trustees did not agree that he
24 had the authority to do that.

25 So would you agree that in terms of preparing
1 an estate tax return, if you have an estate of a
2 certain size, and you have somebody saying it goes
3 to charity, and somebody saying it goes to private
4 individuals, you have yourself a dilemma; would you
5 agree with that?

6 A. That would be a legal dilemma.

7 Q. Yeah, but it would be an accounting dilemma
8 also; wouldn't it be?

9 A. It would be an accounting dilemma for someone
10 that was charged with some accounting role in it,
11 but the settlement would be -- would be a legal --
12 would be decided by the parties and whatever --
13 whatever legal, you know...

14 Q. Let me just add this fact, if the Attorney
15 General asserted on August 10, 2008 and James
16 Brown's fiduciaries didn't agree with him, and the

17 Court did not determine until May 26, 2009 the
18 answer to that, would that create a dilemma for
19 people preparing an estate tax return, anybody,
20 accountant, lawyer, anyone?

21 A. I'm not sure "dilemma" is the right word. I
22 mean, it would -- it would require, you know -- it
23 would -- it would require something being done that
24 I don't do on a daily basis, so I'm not the person
25 that can tell you --

1 Q. Right.

2 A. -- what the -- what the issue would be there.

3 Q. Well, it's a little bit of a hard issue,
4 isn't it? If you go a whole year with a big estate
5 with the fiduciary saying it all goes to charity and
6 somebody else saying, no, it doesn't, half of it
7 goes to private individuals, it's just a problem,
8 wouldn't you say?

9 A. Well, you keep framing questions where I'm --
10 I'm getting lost, because on the one end you're
11 saying the fiduciary does something, and those are
12 all legal issues.

13 Q. Right. Right.

14 A. Those are not accounting issues.

15 Q. Okay. So you don't have any opinions then
16 about whether Bob Buchanan and Adele Pope or Bill
17 Sellers, the accountant, faced a dilemma when that
18 happened on August 10, 2008?

19 A. When you say -- you'd have to ask me a
20 specific dilemma that they faced.

21 Q. All right. Well, I will. Okay. On August
22 10, 2008, the Attorney General of South Carolina
23 asserted the right to settle the James Brown Estate
24 matter without James Brown's fiduciaries to declare
25 that Tommie Rae Hynie would be treated as the spouse
1 for all purposes, to give her 25 percent of the
2 assets of the estate, and to give five claimed
3 children of James Brown another 25 percent. The
4 fiduciaries of James Brown's Estate did not agree

5 with the Attorney General's assertion that he had
6 that authority.

7 **A. Okay.**

8 **Q. Did that create a dilemma from August 10,**
9 **2008 until May 26, 2009, when the Circuit Court**
10 **agreed with the Attorney General?**

11 **A. And, again, what you have described to me is**
12 **that there was a -- August the 10th, for lack of,**
13 **I'll use the word, agreement, that wasn't blessed**
14 **until sometime in May 2009 by the Court.**

15 **Q. Yes.**

16 **A. So I would -- I would say that, yes, that's**
17 **true. There was a period where if the Attorney**
18 **General did that, then that's what happened, and**
19 **then it wasn't blessed by the Court the way that I**
20 **would think that the probate matter would flow, but,**
21 **again, I'm an accountant who does work in estate**
22 **matters -- does forensic accounting in estate**
23 **matters.**

24 **Q. Right.**

25 **A. But would not be the person to say that**
1 **there's a dilemma.**

2 **Q. What about -- let me just take you all the**
3 **way through the dilemma, and I know it feels**
4 **confusing, because you're not the first person who's**
5 **felt confused by it, but suppose then the Circuit**
6 **Court agrees with the Attorney General on May 26,**
7 **2009, and the Supreme Court on May 8th, 2013 doesn't**
8 **agree with the Attorney General --**

9 **A. Correct.**

10 **Q. -- so don't you really have a dilemma that's**
11 **lasted from August 10, 2008 until May 8th, 2013?**

12 **A. But when you say "a dilemma," I'm not sure --**

13 **Q. Well --**

14 **A. What dilemma?**

15 **Q. Can you take a marital deduction for someone**
16 **who's not a wife?**

17 **A. Well, the answer to that from the code would**

18 probably be, no, that you can't take a deduction,
19 but if the -- if the -- I'll give you an example,
20 okay, because I don't -- I'm not going to get
21 wrapped around the axle on legal matters, okay? I
22 was involved in a dispute recently that was an A, B
23 Will. There was Will A, there was Will B. The
24 settlement was a mixed bag.

25 Q. Sure...

19 Q. I don't want to cut you off. No. No. I
20 agree with you.

21 A. But I'm sitting here as an accountant who
22 works in these matters that says, I have seen things
23 resolved that don't follow the documents. So if you
24 asked me -- which your question was, can you take a
25 marital deduction if you don't have a spouse? I

1 would probably have to say, no, the code is pretty
2 clear that you can't take a marital deduction if you
3 don't have a spouse, but if you file an estate or a
4 706 or whatever filings you filed and there was an
5 agreement that there was one, does that become an
6 invalid, false filing? I don't know. I wouldn't
7 think so.

8 Q. I completely agree with everything you've
9 said about all the other cases. Cases can and
10 should be settled, we agree on that, when there is a
11 reasonable settlement that everybody can live with,
12 whether they like it or not; we agree on that, don't
13 we? That's customary, isn't it?

14 A. Yes.

15 Q. But if you have an instance where the
16 Attorney General has said, I get to say the way it
17 is --

18 A. And Ms. Pope, at that point I'm an
19 accountant.

20 Q. Okay, good.

21 A. The Attorney General is a lawyer. He's the
22 chief law enforcement officer of South Carolina. So

23 I can't -- I can't --

24 Q. So you really can't speak to the dilemma, if
25 there was one, of fiduciaries defending an estate
1 plan that they don't believe the Attorney General
2 has the right to dismember?

3 A. That would be a legal issue. That would not
4 be --

5 Q. Right.

6 A. -- in my opinion, an accounting issue.

...

1 Q. Okay. What, if anything, do you know about
2 the claimed overinflated, self-serving, valuation of
3 James Brown's assets?

4 A. I have looked at the probate -- I mean, I
5 have looked at the 706, and I have looked at the
6 valuation process, the road map to valuation, so to
7 speak, for estate issues.

8 Q. Have you read the opinion -- have you read
9 the deposition of Roger Millot [SIC.], the Defendant's
10 expert in this case?

11 A. I don't recall if I have.

12 Q. Do you recall -- do you recall being told his
13 opinion that 15 to 20 times royalties would not be
14 at all surprising for a gold-standard copyright
15 package, such as James Brown's?

16 A. Well, I may or may not have read that.

17 Q. Okay. Do you know what the annual revenues
18 for James Brown's copyrights were for the decade
19 before his death?

20 A. Roughly, yes.

21 Q. What?

22 A. Well, you said "the decade," I would look
23 more at, like, 5 to 6 years; in round numbers is
24 about \$3 million.

25 Q. And though it was actually a little more
1 coming in from sources that didn't make it to TIAA,
2 didn't they?

3 A. There were some, yes.

4 Q. And what's 20 times \$3 million?
5 A. I'm not here to do math.
6 Q. You don't know what 20 times \$3 million is?
7 A. I think it's 60 million. I hate to do math
8 on a high wire.
9 Q. Right.
10 A. I have everything to lose and nothing to
11 gain.
12 Q. Well, let's keep going. What's 15 times 3
13 million? You're doing very well. 45 to 60 million
14 would be what Mr. Miller would say would have been
15 within the range reasonable for the copyrights
16 alone. Do you know what else made up the Schedule
17 F2 assets of James Brown's Estate?
18 A. When you say the "Schedule F2," which --
19 Q. Well, was the music empire, the publicity
20 rights, the 900 copyrights, the claim against Farr,
21 the claim against Cannon, the claim against GT, the
22 sampling revenue claims, the claim against Morgan
23 Stanley, the business tangible personal property,
24 that was the Schedule F2, and certain other assets
25 was with the Schedule F2 residuary assets, 84
1 million.
2 A. You're talking about the 706 that you signed?
3 Q. Yes.
4 A. And what's the question, again?
5 Q. Have you looked at the values of all of those
6 components of the Schedule F2 music empire and
7 residuary assets?
8 A. I haven't done a valuation.
...
2 Q. What if you had put 4.7 million and used that
3 same description, do you think -- may I finish? Do
4 you think it should have gotten past the IRS
5 process?
6 A. And, again, this is not about what the number
7 is. This is about what you have to do to get to the
8 number to put it on the 706, to take the documents

9 and file the 706 with the IRS.
10 Q. Okay. Let's talk about that a little bit.
11 Do you know anything about the Estate of Herlen [sic.]
12 Howard?
13 A. I remember reading something.
14 Q. Was it the conclusion -- or, actually, a
15 fact, not a conclusion, in the Estate of Herlen
16 Howard that an accountant familiar with Herlen
17 Howard's copyrights was an appropriate person to
18 value his copyrights, even though he wasn't an
19 appraiser, and didn't have traditional expertise; do
20 you recall that?
21 A. No, if you're telling me he was an accountant
22 who valued the copyrights on an estate return.
23 Q. Yes.
24 A. Okay.
25 Q. So do you agree that copyrights and publicity
1 rights are unique assets and arguably hard to value?
2 A. Are they unique assets and hard to value?
3 Q. Yes.
4 A. Which one? Copyrights and what else?
5 Q. Publicity rights.
6 A. Well, I don't know. When you say "unique,"
7 they would be unique to the person, but they
8 wouldn't be unique like one of a kind.

21. I am informed and believe that the sworn Deposition of Mrs. Pope's Intellectual Property Litigation expert Wallace Lightsey, Jr., taken on April 10, 2017, portions of which are printed below, lends support to my opinion that the attacks by the Attorney General, Bauknight and the Wingate Firm on Mr. Buchanan and Mrs. Pope, were baseless because, as a team, they were wisely and appropriately protecting the "I Feel Good" Trust and its 900 copyrights generally, and specifically

protecting the copyrights from improper and/or premature Termination Rights elections

by claimed heirs:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

Defendants. :

DEPOSITION OF WALLACE K. LIGHTSEY, ESQUIRE

DATE TAKEN: April 10, 2017

TIME BEGAN: 10:00 a.m.

TIME ADJOURNED: 10:50 a.m

LOCATION: Nexsen Pruet

55 E. Camperdown Way

Greenville, South Carolina

REPORTED BY: Tami I. Watters, RPR, CRR

EveryWord, Inc.

P.O. Box 1459

Columbia, South Carolina 29202

(803) 212-0012

....

14 Q Okay. The second sentence: "At that

15 time -- of the second paragraph -- Termination

16 Rights were described as a 'coming storm,' with the

17 first substantial impact expected in 2013."

18 What is that -- does that refer -- how --

19 Explain that to me, I should say.
20 A Well, and that's not my phrase, the
21 "coming storm," but I think it's a good description
22 of the sense, again, among the sort of general IP
23 lawyer community.

24 Again, there was an awareness of
25 termination rights; that there was a provision for
Page: 12

1 it in the '76 Act, and to my awareness and what I
2 was seeing from the groups that I belonged to,
3 there was a growing sense that this was an issue
4 that was gonna start coming up with more frequency.
5 And for post-'78 grants, the 35-year window for
6 termination would go into effect -- or would start
7 in 2013, and then for the works from the late
8 fifties through the sixties, which would be kind of
9 the heyday, really, of the recording industry, the
10 56-year window for those works would start coming
11 up again around that same time.

12 Q Okay.

13 A And this was -- too, this was about when
14 you started to see some significant case law
15 developing on termination rights, particularly in
16 the kind of situation that this case presents.

17 Q Okay. Is it your opinion that the
18 absence of case law is somehow an excuse for not
19 knowing about the operations of termination rights?

20 A I wouldn't call it an excuse. But,
21 again, what I'm -- what I understand I'm being
22 asked to talk about is the general awareness among
23 the IP community.

24 Q So does the absence of case law, in your
25 opinion, account for --

Page: 13

1 What does case law -- or there being no
2 case law, where does that fit in your mind?

3 A Well, I mean, that's how lawyers become
4 aware of issues. You know, unless you are a

5 Hollywood entertainment lawyer and you're being
6 asked to deal with these issues on a day-to-day
7 basis, for somebody like me, how I would become
8 aware of this would be through hearing about a
9 case, like the Winnie the Pooh case or something
10 like that, which is the first one I remember.

11 Q Okay. The next sentence says -- well,
12 paragraph 3, sentence 1: "There are ways for
13 charities to limit losses from the exercise by
14 heirs of Termination Rights."
15 Where does that fit inside of your
16 opinion? What does that sentence have to do with
17 general awareness?

18 A Well, in connection with this matter,
19 I've attempted to educate myself a little more on
20 termination rights, so I have done some reading and
21 some research on it to learn how these things work.
22 And like I said, I remember hearing about
23 the Winnie the Pooh case. I remember hearing a
24 little bit about the Marvel cases and the Superman
25 case. So I had a vague notion that that -- those
Page: 14

1 issues being out there.

2 When Adele asked me to get involved with
3 this, I tried to learn a little bit more about it.
4 And, in the course of doing that, I feel very
5 strongly that what that sentence says is correct.

6 Q Okay.

7 A But that's been a process of
8 self-education for this case.

9 Q Okay. Do you know whether Mrs. Pope made
10 any inquiry into how to find ways for charities to
11 limit losses from the exercise by heirs of
12 termination rights during her fiduciary service?

13 A I've read the article that she drafted
14 with Jeff -- Smith? Is that right?

15 So I've got -- I've got that
16 understanding of what she did.

17 Q Okay. Do you know whether or not that
18 article was drafted during her fiduciary service?

19 A I'm not sure.

20 Q Okay. So beyond that article, do you
21 know of any other instance in which Mrs. Pope made
22 efforts to limit losses from the exercise by heirs
23 of termination rights during her fiduciary service?

24 A Well, all my communications with Ms. Pope
25 about this have been over the last year plus.

Page: 15

1 But -- I mean, we did talk about it a little bit
2 when we first talked about the case, and we had
3 some follow-up conversations and we had some
4 e-mails that I've produced.

5 So I've gotten some understanding of the
6 facts from her perspective from those things.

7 Q Okay. Do you know that the -- the time
8 brackets for Mrs. Pope's fiduciary service?

9 A I've read it. I think she was appointed
10 in 2007. I'm not sure. And I can't remember
11 exactly when she was replaced.

12 Q Okay.

13 A My understanding is that she continued to
14 do some work during the appeal of the decision to
15 replace her.

16 Q Okay. So --

17 A I kind of got a general time frame. It
18 was either '07 or '09 through 2013.

19 Q Okay. So I think you have it in your
20 head.

21 So it's November 2007 until May 26, 2009.

22 That's when the lower court issued a settlement
23 agreement -- or order approving a settlement
24 agreement.

25 Do you know of anything that Mrs. Pope

Page: 16

1 did during that window to limit the losses from the
2 exercise by heirs of termination rights?

3 A My understanding from her article was
4 that during that time she and the other gentleman
5 were working on cataloging the works that were
6 bequeathed to the trust to get a handle on what
7 kinds of contracts had been entered into with
8 regard to those works to determine -- or at least
9 start trying to determine who the heirs were, who
10 could rightfully claim termination rights under the
11 statute, as well as whether the alleged spouse had
12 a right to claim termination rights under the
13 statute.

14 Q Okay. And so then how -- in your
15 opinion, how do you limit the losses? What do you
16 do?

17 A Well, I think -- my opinion is, A: This
18 is an incredibly complex set of legal processes;
19 and B: There have been some decisions, notably the
20 Milne case and the Steinbeck case, that have
21 further complicated and created confusion around
22 it.

23 So I think all of that together gives a
24 trust like the "I Feel Good" Trust a good bit of
25 bargaining power to work out something with the
Page: 17

1 music publishers, as well as the heirs, that would
2 get a maximum amount of future income to the trust
3 in the most efficient way possible.

4 Q Do you have any concrete examples of how
5 that would work?

6 A Just, you know, the Milne case and the
7 Steinbeck case both involved a situation like this
8 where the authors' will left the rights to the
9 works to an entity or an individual who was not the
10 same as the statutory heirs to the termination
11 rights.

12 And there, the publishers went and
13 negotiated a deal, you know, with the -- I guess
14 I'd call it legatees -- to get an increased royalty

15 rate and cut out the heirs altogether.
16 So those would be my particular examples.
17 Q Would it be reasonable or would it be
18 prudent to try and make a deal with the heirs?
19 A You know, I think -- I thought about
20 that. I think it depends on the circumstances; how
21 many there are, what kind of attitude they have
22 about respecting the wishes of the deceased author
23 as expressed in the estate documents.
24 I certainly think that would be a
25 strategy that could be used to see what --
Page: 18

1 And I think there, the objective would be
2 to see what can be worked out to get the maximum
3 amount of income for the trust in the most
4 efficient way. You don't necessarily want to end
5 up in litigation, because that can be expensive.
6 Q Uh-huh.

7 A So if something could be worked out with
8 the publishers and with the heirs, that might be
9 the best approach. But depending on the
10 personalities of the people you're dealing with,
11 that may not be the best approach.

12 Q Okay. Is it correct that if the heirs
13 exercise their termination rights, then they can
14 completely cut out the trust?

15 A For -- for works that are subject to the
16 termination rights, yeah.

17 Q Is that -- that is correct?

18 A I think so, yeah. If they go through all
19 the hoops to do that and if you get a majority
20 interest to do it.

21 Q Right.

22 A But then again, I would say, you know,
23 you've got the Milne case and the Steinbeck case
24 that kind of created a blueprint for a way for
25 publishers to go around that and do a deal with the
Page: 19

1 legatee, if that's the right word, that cuts out
2 the heirs.

3 Q Uh-huh. The next sentence you have here
4 is paragraph 3: "The Ray Charles Foundation case
5 makes clear that a charity owning copyrights has a
6 right to be part of the Termination Rights process
7 because its royalty stream is at stake."

8 Is that just a -- what are you trying to
9 communicate with that sentence?

10 A Well, just that the Ninth Circuit in that
11 case held that the foundation had standing to
12 contest a notice of termination by the heirs.

13 Q Okay. Do you intend to offer any
14 opinions besides what's written right here?

15 A I haven't been asked to, so ...

16 Q Okay. Can you generally tell me your
17 opinion of what role your opinion has, if I can ask
18 that question?

19 A I really don't know.

20 Q Okay.

21 A I'm not sure exactly how this fits into
22 the whole broader issues in the case.

23 Q Okay. Do you have any -- do you know how
24 much Mrs. Pope is asking the estate to pay for her
25 work?

Page: 20

1 A I've seen a figure of 1.4 million.

2 Q Okay.

3 A I don't know if that -- I'm thinking
4 there may be something more.

5 Q Yes. Okay. So you generally would come
6 to Aiken County and you would testify that
7 termination rights were a new thing and IP
8 lawyers -- even IP lawyers weren't fully familiar
9 with the workings of it?

10 A Well, again, I'd -- you know, I can't say
11 exactly what I'll be asked to testify to or what
12 the judge might consider me an expert on or not an

13 expert. That's up to the court to decide.

14 Q Sure.

15 A As I've said, I do believe, within the
16 general community of lawyers who practice
17 intellectual property, which I do believe I'm
18 representative of -- a good representative of, that
19 there was only a vague awareness of termination
20 rights up until, you know, starting maybe in the
21 mid-2000s; 2006 and later --

22 Q Okay.

23 A -- when some of these cases started
24 coming down and we started hearing more about this.

25 Q Okay. Would you agree that a fiduciary

Page: 21

1 should seek entertainment counsel in trying to
2 learn about these rights?

3 A I wouldn't have an opinion on that.

4 Q Okay. Those are all the questions I

5 have. I may want to make some copies of your file.

6 A Sure. Sure.

7 ---

8 EXAMINATION

9 ---

10 BY MS. POPE:

11 Q Mr. Lightsey, can you describe for me how
12 thick your file is?

13 A It's, I guess, about 2 or 3 inches.

14 Q All right. So would you say there are at
15 least a couple of hundred pages in there?

16 A Probably.

17 Q And is it fair to say you've done a good
18 bit of thinking about this issue since we first
19 talked?

20 A Yes.

21 Q Okay. You were asked about the knowledge
22 of entertainment lawyers with respect to
23 termination rights back in 2008 and today.

24 Do you know of any entertainment lawyers

25 within the state of South Carolina?

Page: 22

1 A No.

2 Q Okay. In researching termination rights,
3 have you thought about whether, in certain
4 instances, a knowledge of state probate law is as
5 important as a knowledge of the copyright law?

6 A Yes. I think -- my understanding is
7 that when there are questions about who is a child
8 or who is a spouse for purposes of the termination
9 rights, that that's determined by state law.

10 Q Certainly the spouse, if not the
11 children?

12 A Uh-huh.

13 Q Is that correct?

14 A Yes.

15 Q So does that mean that if a foundation
16 such as the "I Feel Good" Charity wanted to protect
17 itself in the termination rights area, job one
18 would be not to create a spouse if there isn't one?

19 A I think -- if there's a question about
20 whether somebody who claims to be a spouse really
21 is or really qualifies, I think that's an essential
22 question, just because of this whole negotiation
23 process I've touched on.

24 Under the termination provisions of the
25 Copyright Act, if the person is -- does qualify as
Page: 23

1 a spouse, they get -- and there are children, the
2 spouse has a 50 percent vote on whether to
3 terminate. And since a majority is required, if
4 there is a spouse and children, then the spouse has
5 to be part of that majority or you won't be able to
6 get the necessary percentage to terminate.

7 So, yeah, I think that would be
8 absolutely essential.

9 Q And in connection with the determination
10 of heirs under the federal Copyright Act, is it

11 fair to say that even today there has been very
12 little litigation over the issue of how to
13 determine who are children?

14 A Yeah. I'm not aware of any, other than
15 this litigation.

16 Q And if, for example, James Brown had a
17 child who was acknowledged in his divorce but not a
18 biological child, to date, do we have any guidance
19 about whether that child would be considered an
20 heir under the federal Copyright Act?

21 A None that I know of.

22 Q Okay. What if, for example, James Brown
23 had a child who was not born of a marriage and
24 acknowledged only in a will, which the child
25 contested? Do we have any guidance that you're
Page: 24

1 aware of under the federal Copyright Act about that
2 child's entitlement to termination rights?

3 A No.

4 Q What if James Brown, in his documents,
5 intentionally disinherited any child who claimed --
6 who challenged his estate plan? Do we have any
7 court guidance on whether -- the impact of such a
8 provision in the will might affect termination
9 rights?

10 A None that I know of.

11 Q Okay. Now, at least during those early
12 years after the death of a person who owns as many
13 as 900 copyrights, could the probate process be
14 even more important than the entertainment law
15 process?

16 A You'll have to explain that one.

17 Q Well, during the early years after
18 James Brown's death -- let's just use him as the
19 example -- could the proper determination of heirs
20 have been as important to termination rights
21 protection as anything else?

22 A Yeah. I think that would be an essential

23 early step.

24 Q So if Mrs. Pope was replaced in 2009,
25 would there be any reason to stop that process?

Page: 25

1 A No. I mean, I think -- I think anybody
2 who was trying to maximize the income for the trust
3 would have to get to a firm conclusion as to who
4 the people are who are entitled to exercise the
5 termination rights so that you can then decide on
6 the best strategy for dealing with that.

7 Q And so if on August 10, 2008 the attorney
8 general agreed to stipulate that a claimed spouse
9 would be treated as a spouse, despite overwhelming
10 evidence to the contrary, would that be a wise
11 method of protecting the copyrights?

12 A Based just on what you've said, I would
13 say no.

14 I would acknowledge, I think you have to
15 look at all the circumstances in the case,
16 including, as I said, the personalities of the
17 people involved.

18 Q Okay.

19 A You know, if -- for example, if the
20 spouse were very supportive of the trust position
21 and wanted to give full effect to the desires of
22 Mr. Brown, in that circumstance, it might move the
23 trust to try to work something out quickly with
24 her. But I think it just depends on the whole
25 situation.

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1 Q Well, that reminds me. Did the Smith and
2 Pope article suggest a mechanism called splitting
3 heirs?

4 A Yeah.

5 Q Can you explain how what you've just said
6 relates to the term "splitting heirs"?

7 A Well, because the -- a termination has to
8 be done by people who have a majority of the rights

9 to terminate.

10 If there are multiple heirs and the --

11 again, I'm not sure if I'm using the right word.

12 I'm not a probate lawyer. The legatee or devisee

13 or whoever -- the recipient under the will has the

14 opportunity to negotiate and try to get the best

15 deal it can for the trust. So if there are

16 multiple heirs, it's possible to split them up.

17 Some may be more cooperative, some may be less.

18 And if you can split them and get a majority and

19 work out a deal that's good for the trust, that's a

20 good strategy.

21 Q And -- back to the attorney general. If

22 on August 10, 2008 the attorney general stopped the

23 DNA testing process which had been in place since

24 shortly after James Brown's death, would that have

25 helped the protection of the "I Feel Good" Trust

Page: 27

1 termination rights?

2 A I don't see how it could. Again, I

3 think -- I think a good strategy for the trust is

4 to try to work out something with the music

5 publishers initially and, if possible, with the

6 heirs.

7 But whatever -- whatever is done, I don't

8 think you'd want to have it subject to a later

9 attack on the grounds that somebody who was part of

10 that didn't really have a termination right.

11 Q You were asked what you knew about

12 Mr. Buchanan and Ms. Pope's service, and I will

13 tell you: It was from November 2007 until May 26,

14 2009 that they served as personal representatives.

15 Have you heard of or were you aware of

16 something known as the Peebles' DNA protocol?

17 A Yes.

18 Q Did you understand that it had been begun

19 by the original -- counsel for the original

20 personal representatives and continued by

21 Mr. Buchanan and Ms. Pope?

22 A I don't know the details of it.

23 Q Okay. Did you understand that it had

24 been stopped on August 10, 2008 by the attorney

25 general?

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1 A I understood that it was stopped.

2 Q Did you understand that when he did so,

3 he declared that five -- I'm sorry -- six claimed

4 children would be determined to be James Brown's

5 heirs?

6 A Yeah. I'm sorry. I don't really

7 remember the details.

8 Q Okay. You don't remember that it was

9 fewer than -- half or fewer than the potential

10 heirs?

11 A Yes. I knew it was not the whole group.

12 Q Okay. And did you know that at least

13 three of those were not presumed heirs even under

14 South Carolina law?

15 A I don't remember.

16 Q Okay. All right. Now, tell me just a

17 little bit about the Ray Charles case.

18 A It was a similar situation with a great

19 songwriter and recording artist. Ray Charles

20 bequeathed his -- I guess the residuary of his

21 estate to a foundation, a charitable foundation,

22 like Mr. Brown did here, and then the statutory

23 heirs under the termination provisions sent

24 termination notices to the publishing companies,

25 and the foundation brought a suit to declare those

Page: 29

1 termination notices ineffective.

2 District court held that the foundation

3 did not have standing to challenge the termination,

4 and the Ninth Circuit reversed and held that it did

5 have standing because of its interest in the

6 royalty stream.

7 Q And that case was begun in about 2012?

8 A That sounds right.

9 Q And approximately when was it concluded?

10 A I think the Ninth Circuit decision was in
11 2015.

12 Q Okay. Do you know what's happened since
13 2015?

14 A No. I did check the district court
15 docket on PACER, I don't know, a month or two ago,
16 and I could not see anything that happened since
17 the remand.

18 Q Do you know who represented the heirs in
19 that matter?

20 A No.

21 Q I'm gonna hand you a document -- well,
22 before that, let me ask you this: I would like, if
23 we could, to mark your file as an exhibit, and then
24 if Mr. Williams and I can agree to a CD of the file
25 or something that would be smaller --

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1 A That's fine.

2 Q -- may I do that?

3 A Sure.

4 Q We'll mark that, then, as Plaintiff's
5 Exhibit 1, your entire file.

6 ---

7 (File marked Plaintiff's Exhibit
8 Number 1, for identification.)

9 ---

10 MS. POPE: I'd like to hand you
11 Plaintiff's Exhibit 2.

12 ---

13 (Value of Tomirae Federal Copyright Act
14 Termination Rights at Death of James Brown
15 marked Plaintiff's Exhibit Number 2, for
16 identification.)

17 ---

18 BY MS. POPE:

19 Q I'm gonna give you a moment to look at
20 it, because I think we'll agree, you haven't seen
21 it before today; is that correct?

22 A That's correct.

23 Q If you'll take a moment to glance at it.

24 And I'll represent that it is my work.

25 A Okay.

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1 Q When you're ready to chat about it, let
2 me know.

3 A Okay. I'm ready.

4 Q I have attempted in this document to
5 recreate the position of James Brown's estate and
6 trust as it was on November 20th, 2007.

7 If the -- and I have concluded that the
8 value of Tomi Rae's federal Copyright Act
9 termination rights at the death of James Brown was
10 negligible based on the facts that were available
11 between the period 2007 and May 26, 2009.

12 If these facts existed and there was fair
13 proof of them on the part of the estate and trust,
14 should they have taken advantage of those facts to
15 protect the copyrights?

16 A I think certainly, in this type of
17 situation, the trust should challenge -- what's
18 Tomi Rae's last name?

19 Q Hynie-Brown.

20 A I would certainly think the trust would
21 challenge her claim.

22 I don't know -- I don't claim to have any
23 expertise on how you decide if someone was a spouse
24 under state law. I know that the -- or it's my
25 understanding the Copyright Act doesn't speak to

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1 that, but I certainly do think it would be
2 appropriate to challenge the claim.

3 Q And before one would settle with or try
4 to split Tomi Rae off from the other heirs to

5 protect the charity, would the estate and trust not
6 need to evaluate the strength of her claim as a
7 spouse?

8 A Say that again.

9 Q Okay. If the -- if the charity is
10 looking to protect itself before it makes a deal
11 with Tomi Rae, should it not evaluate the strength
12 of her ability to be demonstrated to be the spouse?

13 A Yes. Absolutely.

14 Q Okay. Now, even if Tomi Ray had been
15 determined absolutely to be the spouse on the date
16 of James Brown's death, would there still have been
17 impediments to her taking the royalties from the "I
18 Feel Good" Charity?

19 A Well, at the most basic level, she still
20 would have to get at least one of the other heirs
21 to join with her.

22 Q Okay.

23 A And then, as I've said, I think the Milne
24 and Steinbeck cases create a mechanism for someone
25 in the position of the trust to do a deal with the
Page: 33

1 music publishers to cut her off.

2 Q And isn't it fair to say that when

3 James Brown died, if his first famous work was in
4 1956, there were about six years for the estate and
5 trust to be planning to protect the "I Feel Good"
6 Charity?

7 A Yes, if the copyright was secured in
8 1956.

9 Q And, of course, anyone -- when the
10 majority of heirs seeks to make an election, a
11 majority is in fact needed; is that correct?

12 A Majority interest, right.

13 Q Or the spouse plus one.

14 A Right.

15 Q And only half of the heirs are needed to
16 stop an election; is that correct?

17 A If they have 50 percent, correct.

18 Q And there's certain technical and complex
19 election requirements, are there not?

20 A It's very complex.

21 Q And there must be at least a two-year
22 period when the election is made before the
23 termination can be effective; is that correct?

24 A That's right. The notice of termination
25 has to be served at least two years before the
Page: 34

1 effective date of termination.

2 Q And in the case of Tomi Rae, there might
3 have been, to challenge any attempt at termination,
4 a dozen or more children, the charity, and the
5 charity itself; would that be -- would that fairly
6 state the situation back in 2007?

7 A Yes.

8 Q Okay. And does everybody now kind of
9 understand that termination elections apply only to
10 American copyrights?

11 A Yes.

12 Q And James Brown, of course, had worldwide
13 copyrights?

14 A That's right.

15 Q And they do not apply to derivative
16 works?

17 A There's a derivative work exception for
18 derivative works made before the termination.

19 Q Okay.

20 A So if you make a derivative work on the
21 basis of an existing grant and then a termination
22 comes in, you can continue to exploit that
23 derivative work.

24 Q So if there's a derivative work of
25 James Brown and American copyright is terminated,
Page: 35

1 the foundation, his devisee, would continue to
2 enjoy the royalties from the derivative work unless

3 and until it was terminated?

4 A That's correct.

5 Q Okay. Now, is it fair to say -- I don't

6 want to spring too much on you -- but both

7 samplings and joint ownerships create further

8 complexity, do they not?

9 A Yes. That's true.

10 Q And is it fair to say that the

11 sampling -- a sampling could actually be a small

12 part of a subsequent copyright?

13 A Yes.

14 Q And so that that copyright might have a

15 35-year life of its own?

16 A Yes.

17 Q And in that case, in a sampling of a

18 James Brown work, the James Brown rift, let's say,

19 might be a small part of that work?

20 A Correct.

21 Q So if James Brown had, for example, 210

22 copyrights of which he had only a sampling part,

23 would the "I Feel Good" Charity likely be able to

24 have a major part in the termination rights of

25 those works?

Page: 36

1 A Yes.

2 Q And then -- but those works might be --

3 the termination rights issue could be delayed for

4 many years; is that fair to say?

5 A Yes.

6 Q Okay.

7 A Depending on when the work was created.

8 Q Thank you. I'm gonna ask you to take a

9 quick look at Plaintiff's --

10 MS. POPE: Just to be sure, the value of

11 the termination rights was Exhibit 3?

12 THE WITNESS: I think it was

13 Plaintiff's 2.

14 - - -

15 (Value of Levenson 5 Clients' Federal
16 Copyright Act Termination Rights at Death of
17 James Brown marked Plaintiff's Exhibit
18 Number 3 for identification.)

19 - - -

20 THE WITNESS: And before you move on,
21 too, another thing I would say that's
22 interesting, and another level of complexity
23 with music in particular, is that sound
24 recordings made before February of 1972 are
25 not covered by federal copyright. They would
Page: 37

1 be subject to common law-copyright. So they
2 are not subject to the termination rights.

3 BY MS. POPE:

4 Q Okay. Well, let's talk a minute about
5 sound recordings between '72 and '78.

6 If James Brown had a number of sound
7 recordings during that time, those sound recordings
8 are protected for 56 years, if he's properly
9 renewed them; is that correct?

10 A I think it's -- well, it would be the --

11 I think it would be the life of the author plus 70
12 years.

13 Q But -- but my question was -- I'm sorry.

14 I didn't say it correctly.

15 They would not be subject --

16 A Oh, to termination.

17 Q -- to termination --

18 A That's correct.

19 Q -- for more than 56 years.

20 And so it's fair to say that all the
21 works between -- of the sound recordings between
22 '72 and '78 could experience a 56-year life before
23 termination?

24 A That's correct.

25 Q And do you know whether '72 to '78 was a
Page: 38

1 period during which James Brown had an important
2 part in the musical genre?

3 A I can't say specifically, but I would
4 think that's true.

5 Q He actually did for decades, didn't he?

6 A Yes.

7 Q Now, just looking at Plaintiff's 3.

8 Again, this is my work, and it is my evaluation
9 that the termination rights of the five Levenson
10 clients who reached the deal with the attorney
11 general on August 10, 2008 had a value of less than
12 5 percent of the value of James Brown's copyrights
13 on that -- at that time, at James Brown's death.

14 And, again, my reasons that I have set
15 out, you have no specific knowledge about that?

16 A Correct.

17 Q But those reasons were certainly within
18 the purview of a probate lawyer, even if she wasn't
19 an entertainment lawyer; would that be fair to say?

20 A I would think that anybody who is a
21 trustee would want to consider these things.

22 Q Okay. And then again, even if all five
23 of the Levenson clients had been determined to be
24 heirs of James Brown, they would still face many of
25 the same impediments that Tomi Rae would face; is
Page: 39

1 that fair to say?

2 A In general terms?

3 Q Yes.

4 A Yes, as I've talked about.

5 Q And so they would have to meet the
6 election requirements.

7 A Right.

8 Q And have the two-year delay.

9 A Right.

10 Q Even if they were a majority.

11 A Correct.

12 Q And if they weren't a majority, of course

13 they would have to find somebody to work with.
14 A Correct

22. In connection with the forming of my opinions, I have gleaned from the affidavit of Elizabeth Alexander that a story was placed on the Kilpatrick Stockton law firm website in which Robert Potter, Esq., was attributed with stopping the sale of the Grammy at the James Brown Christie's sale, but that Mr. Potter did not halt the sale, and was unaware of the post. I understand from other documents that the Grammy story was placed on the firm's website in January 2011, by David Bell, Esq., one of the lawyers who signed the contract to hire the Wingate law firm in this suit.

23. I have reviewed public documents which show that, while the Academy seeks to prevent Grammy sales, their legal position is questionable; Johnny Cash, Stevie Wonder and others have sold Grammys; and Toni Braxton's Grammy has been the subject of a possible sale by a Federal Bankruptcy Court..

24. In forming my opinions I have attended and read transcripts of a number of hearings since 2011, including those related to James Brown's Freedom of Information Act cases, where the Attorney General, the Wingate Firm and Mr. Bauknight joined Tomirae in harsh attacks on Mrs. Pope and a local journalist in an effort to prevent release of documents, including Tomirae's handwritten admissions that she was married when she had a ceremony with Brown; the documents to show how Mr. Bauknight could have valued James Brown's Right of Publicity and iconic personal property almost no value; and amendments to the Legacy Trust which is controlled by

the Attorney General, but Mr. Bauknight and the Attorney General claim is not subject to public disclosure. It have also reviewed many of the 100 James Brown articles the Wingate Firm filed in this case when they were seeking guidance as to pre-trial publicity.

25. I have also reviewed the deposition of R. B. Alexander, Defendant's valuation expert, with particular emphasis on his Right of Publicity experience. Portion of his deposition, taken March 27, 2017, are set out below:

**STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN**

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

: ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

: Defendants. :

DEPOSITION OF RICHARD BOATWRIGHT ALEXANDER

DATE TAKEN: March 27, 2017

TIME BEGAN: 10:40 a.m.

TIME ADJOURNED: 2:10 p.m.

...

page 23-33

**20 Q Fair enough. Have you ever conducted a
21 valuation analysis of copyrights?**

22 A Yes. A little bit different context than
23 this. We've evaluated copyrights for people who
24 owned brand names that are copyrighted. We've --
25 That's been primarily what we've

Page: 24

1 evaluated; what is a brand name worth, what is --
2 and some of that, of course, is intangible.

3 Q Who all have you provided that valuation
4 opinion to?

5 A Brown Shoe Company, the Brown Group,
6 St. Louis. They've now changed their name.
7 Nations Bank, at that time we were
8 working with them, Pick N Pay stores, which was 13,
9 1400 stores that declared bankruptcy. Nations Bank
10 had the debt. We were working with them, what's
11 the value of the name Pick N Pay, along with all
12 their other real estate holdings and so forth.

13 Q Okay.

14 A So what's the name worth is really what
15 it amounts to. In today's jargon, what's the brand
16 worth.

17 Q Well, in analyzing the name, what -- what
18 do you do to go about arriving at a value for it?

19 A Well, you go through a process. I look
20 at -- in James Brown's case, this case we're
21 talking about, you have his publicity rights, his
22 persona, what are they worth.

23 So you can get a lot of that information
24 or some broad outlines of information public
25 knowledge. In other words, if you look at Forbes
Page: 25

1 or you look at the Internet, you then talk to
2 people who market those rights, who sell those
3 rights, who lease those rights. That can be
4 attorneys, but usually it's what I'm gonna call
5 entertainment companies that do that. So that's
6 what I would --

7 I would also talk to people in that

8 business, which I also did, and what are they -- in
9 other words, what do they think it's worth or what
10 does -- what interest do they have.

11 And James Brown was number 11, I think,
12 on the dead celebrity's list at Forbes. He was
13 making pretty good money. Of course, he wasn't
14 there to spend it either, but he was making pretty
15 good money after he died, so ...

16 Q I think some of that's covered in here.

17 A Right.

18 Q We can go through it.

19 A One of the big things you look at is what
20 is the estate or what are they throwing off; in
21 other words, what is their cash flow.

22 Q Okay.

23 A Then you can use a cap rate; you know, a
24 multiple on the cash flow is one method you could
25 use.

Page: 26

1 Q Okay.

2 A Or should use.

3 Q You mentioned methods. What other
4 methodology should you use in doing valuations?

5 A Well, cash, what does it throw off, is
6 the main thing. Then what are the opportunities
7 for the persona.

8 Advertising -- ads are a good source of
9 revenue, you might say; unpublished songs. I mean,
10 a person of James Brown's stature with 8 to 900
11 copyrights, those have a tremendous value -- or
12 could have a tremendous value for a person of
13 Brown's stature.

14 There are other rights, termination
15 rights, that could flow to the estate and what are
16 they worth.

17 There are a lot of different avenues.

18 And if you, you know, look at the others that --
19 you know, Bob Marley, Ray Charles, Elvis Presley.

20 There are many others.

21 Q Have you ever valued the estate of
22 another entertainer?

23 A No.

24 Q Do you believe that you have valued this
25 estate?

Page: 27

1 A Yes.

2 Q Okay. Tell me generally -- or even
3 specifically -- what experience in life and work
4 and education you have to value an entertainer's
5 estate.

6 What qualifies you to provide that
7 valuation?

8 A Just experience in having done other
9 things. But I have never done an entertainer.

...

17 Q Okay.

18 A But, having said that, Mr. Williams, also
19 in this situation, I talked to other people. One,
20 Charlotte, a friend of mine, is Reggie Smith. He's
21 Arthur Smith's son. James Brown recorded at Arthur
22 Smith Studios. He also did the soundtrack to
23 Deliverance, Dueling Banjos.

24 So Reggie took me through all the rights
25 of those songs and what that was actually worth to

Page: 28

1 the family.

2 So I was talking to people who had
3 experience with that that I knew on a -- and talked
4 with. So you're starting, you know, to get some --
5 while certainly not an expert to value or say I've
6 done 20 entertainers or 10 entertainers or 3
7 entertainers, you're starting to get a feel by
8 people you know of what they do or what is entailed
9 with that....

Page: 29

2 Q Okay. What documents did you look at --

3 e. references documents related to royalties,

4 publicity rights, assets, liabilities.

5 What documents specifically are you

6 referring to?

7 A I have looked at so many documents that

8 Ms. Pope and Mr. Buchanan had, as well as through

9 what was available to the -- generally.

10 To tell you which ones I looked at, it

11 would almost be which ones I didn't look at.

12 Q Okay. What documents do you recall that

13 relate to publicity rights?

14 A We looked at several. One was -- was a

15 gaming company. I think the one was \$400,000 a

16 year. There was an offer on the table that they

17 wanted to use a -- basically a slot machine

18 company.

19 Q Okay.

20 A And they wanted the rights basically when

21 somebody hit the number to say, oh, "I Feel Good,"

22 and put it on the video screen.

23 So that was an example, I mean, of -- we

24 looked at an offer for that. That was pretty good

25 money.

Page: 30

1 Q Do you recall who made the offer and

2 when?

3 A I think it was Global Gaming, but I

4 don't -- but I could be wrong.

...

10 Q Any other publicity rights documents?

11 A Looked at several -- when you're going

12 through other stars, Bob Marley who, I would say,

13 you know, is a lesser-known star than James Brown,

14 and the different publicity rights that they

15 engaged in, which is public record, what are they

16 doing in that persona.

17 Of course, the biggest star of all is

18 Elvis, Elvis Presley, and they use his persona. I

19 mean, they even have shows where they use him
20 on-screen.

21 So there are a lot of personas -- of
22 publicity rights in the use of the persona that the
23 estate or the trust would own that generates
24 income.

25 Q Did you undertake any inquiry to find out
Page: 31

1 how much income that would be?

2 A Looking at the records that you have in
3 Fortune Magazine, Forbes Magazine and different
4 trade magazines, you assume they know a little bit
5 about what they're talking about, but I didn't go
6 back and say: Okay. Forbes Magazine said Elvis
7 made 7 million in a quarter from these rights. Is
8 that an accurate number or not?

9 Q Okay.

10 A But if you check with three or four
11 different sources and the number is 6.9 million to
12 7.3 million, you assume 7.3 from trade magazines,
13 trade reporters, people in the -- would be an
14 accurate number.

15 Q Okay.

16 A And they're also looking at tax returns,
17 they're looking at financial statements, etc.

18 Q Okay. How do you extrapolate what, say,
19 Elvis makes in a given year and turn that into a
20 potential number for what Mr. Brown could make in a
21 given year, persona and image?

22 A At that point you're basically using as
23 much logic and as much as you can.

24 If you talk to the people in the
25 industry, you say: What's the potential for

Page: 32

1 this -- this star?

2 Elvis, of course, died in '77 and he's
3 making more money today than he ever made when he
4 was alive. Of course, you've got inflation and

5 everything else doing that.
6 While James Brown may not be Elvis, he's
7 bigger in Asia, bigger in Africa, and he was a
8 writer and a --
9 Elvis was an entertainer. James Brown
10 was an entertainer, a writer, a dancer. He was in
11 more areas music-wise than Elvis was.
12 Elvis never had the copyrights that
13 James Brown has. He wasn't an author. He wasn't a
14 writer.
15 Q So how do you bridge what Elvis brings in
16 to what James Brown could bring in? How do you --
17 A I'm not sure you bridge it. You use all
18 the stars, Ray Charles, all of them, as a potential
19 guide, and then you try to evaluate each section of
20 what they can do.
21 So I'm not sure you can take one law firm
22 and bridge it into what another law firm could do.
23 You just say: We're in the same line of work. You
24 know, the potential is here, so ...
25 Q Okay. Tell me what -- so you -- tell me
Page: 33
1 what your total valuation is. What's your opinion?
2 A Mine was -- when I got through, I thought
3 Ms. Pope and Mr. Buchanan were about right. I
4 thought at the time it was probably about
5 90 million.
6 Q Okay. And --
7 A So I thought 85 was okay.
8 Q And at the time, what do you -- as in as
9 of the date of his death? What are we saying?
10 A Yes, at the date of his death.
11 Q So it's your professional opinion that at
12 the date of his death, Mr. Brown's estate was worth
13 90 million?
14 A Thereabouts.

Page -93

12 Q Okay. Do you ever value publicity
13 rights?

14 A Have I ever valued them?

15 Q Yes.

16 A A little bit. We used to make shoes for
17 NASCAR. We made them for Dale Earnhardt, Jr. with
18 his logos and things on them.

19 So we were aware of royalty rights that
20 went to Dale Earnhardt, Sr. as opposed to other
21 drivers who got lesser, so -- and for publicity
22 rights that Dale Earnhardt, Sr. --

23 So we worked in that venue. Also, we
24 made products for schools; tennis shoes and novelty
25 items for schools. So let's just say UCLA
Page: 88

1 basketball, shoes drew a lot more money, so a lot
2 bigger royalties going to the UCLA. University of
3 South Carolina basketball in early nineties.

4 Q Okay. But have you ever independently
5 undertaken a valuation of publicity rights to
6 determine what they're worth?

7 A In connection with this and connection
8 with others, yes, we were -- what the publicity
9 rights were; and, again, some subjectiveness to
10 that.

11 Q What were the publicity rights that you
12 valued?

13 A Dale Earnhardt, Sr., NASCAR driver.

14 Q And who hired you to do that?

15 A NASCAR.

16 Q Okay. They hired your firm?

17 A Yes.

18 Q Said: We want you to value the publicity
19 rights of Dale Earnhardt, Sr.?

20 A When he died, there was the firm that
21 made his seatbelts and all the safety equipment
22 that he used, and Carousel Capital in Charlotte
23 owned that company and wanted to know what the

24 publicity rights were -- what they thought the
25 publicity rights were for Dale Earnhardt, Sr., and
Page: 89

1 we helped evaluate that along with several other
2 people who did it, in-house people.

3 Q Who are the other people?

4 A Carousel Capital in-house people.

5 Q Let me ask this: What role did you have
6 in the valuation?

7 A They called me, knew of Carousel Capital
8 and asked me to take a look at the -- just do what
9 Ms. Pope asked us to do in 2013 to see if we
10 couldn't help with the value there. We looked at
11 the publicity rights, which were big.

12 Q I mean, what did that look like? What's
13 the analysis?

14 A How much money would a firm pay for the
15 rights to use Dale Earnhardt's -- Sr.'s persona for
16 a period of time.

17 Q Okay. What did you conclude?

18 A I concluded that was probably worth about
19 \$25 million. I was a little low.

20 Q Okay. Do you -- any other publicity
21 rights that you've valued?

22 A Probably been entailed in some of the
23 stuff we do. But, no, not that I distinctly --

24 Q So the Dale Earnhardt one, you did this
25 in conjunction with Carousel Capital?

Page: 90

1 A They owned it. They owned Simpson Racing
2 which made all the safety equipment.

3 When he died in the wreck in Daytona, it
4 was safety equipment issues.

5 Q Right.

6 A And so the company that made all of Dale
7 Earnhardt's safety equipment for his cars, suits,
8 his helmets, everything, and sold them to tons of
9 other drivers as well, were concerned about

10 exposure with the safety equipment company that
11 they owned. Carousel Capital owned Simpson Racing.

12 Q So help me understand how that fits into
13 the valuation of publicity rights.

14 A Let's just say that Simpson Racing had
15 had a failure of their equipment that caused
16 Mr. Earnhardt's death. His family or his heirs, or
17 whoever had control of his estate, owned his
18 estate -- in this case, Teresa Earnhardt and Dale
19 Earnhardt, Jr. and a few others -- might come back
20 and say: Okay, what are the -- we're entitled to
21 compensation on the publicity rights that we would
22 have had.

23 Q From?

24 A Dale Earnhardt, Sr., had he not succumbed
25 to his injuries caused by your equipment. That was
Page: 91

1 the factor at the time.

2 Q I'm not sure I follow.

3 A If -- if Dale Earnhardt had been earning
4 \$25 million a year -- well, let's say a dollar a
5 year to make the numbers work right -- earning a
6 dollar a year from publicity rights prior to his
7 death as a major star on the NASCAR circuit and he
8 died because Simpson Racing furnished faulty
9 equipment to him, one of the claims by the estate
10 might be: We would have made \$12 over the next 12
11 years from publicity rights of Mr. Earnhardt.

12 Because of your failed equipment, we're not able to
13 earn those. We have a claim against you for \$12
14 or --

15 Q Okay.

16 A -- some number.

17 Q Okay.

18 A So Carousel Capital, which owned the firm
19 that made all the safety equipment and which we had
20 done some work for prior to looking at the shoes
21 that they made that were fire retardant, we were

22 one of the ones asked to come in and help see what
23 the exposure might be; what Dale Earnhardt, Sr.'s
24 persona might be worth that his estate might come
25 after them for.

Page: 92

1 Q Okay. And that was the only time you've
2 done a publicity rights analysis?

3 A Uh-huh -- well, probably been involved in
4 several others, but that specific one, yes.

5 Q Okay. In doing that analysis, did you
6 look at -- did you look at contracts? Did you look
7 at a history of earnings? What did you do?

8 A Where are we now?

9 Q The publicity rights analysis for Dale
10 Earnhardt.

11 A Yeah. You looked at what he -- yeah, but
12 the current deals he had.

13 Q What else?

14 A The potential deals he could do. That
15 almost changed yearly as things would happen in his
16 sport.

...

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...

22 Q Have you seen -- I believe you testified
23 previously that you've never seen the valuation
24 that was used --

25 A I have not seen Mr. Bauknight or his

Page: 95

1 advisors' appraisal.

...

7 (Initial Designation of Experts and
8 Disclosure of Opinions marked Defense Exhibit
9 Number 2, for identification.)

10 - - -

11 BY MR. WILLIAMS:

12 Q Can you read that first paragraph?

13 A "Alexander is not aware of any facts

14 which could support a willing buyer and a willing
15 seller, each with knowledge of the relevant facts
16 and circumstances, placing a less-than \$4.7 million
17 value on James Brown's music empire at his death."

18 Q Yes, sir. Is that your opinion?

19 A Yes.

...

7 Q Okay. Did you look at any financial
8 documents related to your valuation in preparation
9 for your work on this case?

10 A I looked at the financial documents that
11 were available that Bradley, Dallas, and Cannon had
12 done back at the time.

13 Q And that was -- and in looking at those,
14 that's how you arrived at Defense 1? Defense 1 is
15 the affidavit.

16 A In part. Put it this way: I looked at
17 everything that Ms. Pope and Mr. Buchanan furnished
18 me. So I'm not sure, in retrospect, those were the
19 only financial documents, but they were certainly
20 documents I looked at.

21 Q Okay. Did you look at any financial
22 documents in preparation for coming to this
23 deposition?

24 A Yes. I looked at financial -- some
25 financial documents -- well, key is financial
Page: 97

1 documents.

2 I'm looking at -- when you ask that
3 question, I'm looking at financial statements. I
4 looked at reports, summations, but not what I would
5 call a financial statement.

6 So, yeah, I looked at some documents that
7 became finances. How about that?

8 Q Okay. How many times have you served as
9 an expert witness in a case?

10 A Expert witness?

...

12 THE WITNESS: Let's see. You asked
13 earlier about depositions. Expert witness, I
14 think this would be the fourth or fifth time.

15 Let's see. Eastern District of
16 North Carolina, then there was Bill Belk is
17 one, two, three -- four or -- this being the
18 fourth or fifth.

19 BY MR. WILLIAMS:

20 Q Okay. Have you ever testified at trial
21 as an expert witness?

22 A Yes.

23 Q Okay. Which ones are those?

24 A All the ones I mentioned.

25 Q So those all were --

Page: 98

1 A Trials.

2 Q Okay.

3 A Landcraft Properties, Western District of
4 North Carolina, Piedmont Venture Capital, Eastern
5 District of North Carolina, Bill Belk and family,
6 appropriate investment trial.

7 Q What was the Belk trial?

8 A Bill Belk had invested money out of his
9 children's trusts in certain things which his wife,
10 who they were going through a divorce, felt like he
11 should put back in; they were not appropriate
12 investments, so ...

13 Q Okay. Where was that?

14 A Charlotte.

15 Q What was your testimony or what was
16 your --

17 A That since the money he'd invested from
18 his children were less than 5 percent of their
19 trust in an investment I considered risky, that I
20 thought it was probably appropriate given the
21 amount of money in the trust.

22 Q Okay. What was your -- what was the
23 expert analysis or what was the area of expertise

24 you were qualified by the judge in?

25 A Was the -- was the amount of money that

Page: 99

1 Mr. Belk had invested on behalf of his children's

2 trusts appropriate -- an appropriate investment.

3 Q Okay.

4 A Asked to value his investment expertise

5 or his investment choices.

....

26. In connection with my opinion that the joint action of the Attorney General, Mr. Bauknight and Tomirae, both before and since the decision in Wilson v. Dallas, has deprived The James Brown "I Feel Good" Charity of a strong, expert witness to what is necessary to protect the "I Feel Good" Charity, I have reviewed the testimony of a number of experts, including Thomas Pope. Mr. Pope, with Jay Bender, represented journalist Sue Summer in a James Brown Freedom of Information Act case. Some of his April 11, 2017 deposition testimony is set out below:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:

ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:

Defendants. :

DEPOSITION OF THOMAS H. POPE, III, ESQUIRE

DATE TAKEN: April 11, 2017

...

13 EXAMINATION

14 - - -

15 BY MR. WILLIAMS:

16 Q Good morning, Mr. Pope.

17 A Good morning.

18 Q My name is Burl Williams. I'm a lawyer

19 in Greenville, Nexsen Pruet firm, and I represent

20 the estate and trust in a lawsuit that Mrs. Pope

21 brought against it for fiduciary fees.

22 A Right.

23 Q That is the case that we're appearing in

24 this morning.

25 A Correct.

18 A Right. Well, I say where I fit -- of

19 course, it's not my decision to say, but I would --

20 you're asking me so I'll tell you.

21 I fit because I had -- I've seen all the

22 work that Adele has done, but also I have

23 represented a journalist in a FOIA case and I see

24 how much difficulty is added by the attorney

25 general being hardnose, unreasonable, aggressive.

Page 6

1 And so I think in this case, not only has

2 she done lots of work for which she should be

3 paid -- lots of very good work --

4 And I -- I've read her claim and all the

5 documents with it and associated with it, and I've

6 also read Steve Johnson's deposition, and I've been

7 involved in a good bit of probate and fiduciary

8 litigation. I don't do taxes and I don't hold

9 myself out as an expert in estates, but I have seen

10 fights between people over fiduciary duties and the

11 like.

12 And so you ask where I fit. I'd say that

13 Adele and Bob discharged their duties beautifully
14 at great cost, financial and otherwise.

15 The AG made that way more difficult than
16 it had to be. The AG -- particularly Sonny Jones,
17 but the whole thing.

18 You got the attorney general bringing a
19 suit, signing a fee contract that had no party
20 signing it, bringing suit on their behalf without
21 their consent, in league with the estate, your
22 client, and others taking unreasonable positions.

23 The attorney general has already had his
24 hand slapped -- and that would be a light way of
25 putting it -- for trying to orchestrate a

Page 7

1 settlement that completely dismembered
2 James Brown's estate.

3 So I've read a lot of documents, but I
4 think that's where I fit in. The AG made this even
5 more difficult, and Adele and Bob served nobly and
6 well at great cost.

21 Q Well, let's do fact first.

22 A Okay.

23 Q As a fact witness with personal knowledge
24 of the rigors of doing the fiduciary work while
25 being challenged by the AG --

Page 8

1 A Well --

2 Q Let's kind of reboot and you tell me kind
3 of your fact witness position or fact witness
4 thoughts.

5 A It's more expert. But as far as facts
6 go, I'm aware of the work because I see it
7 firsthand; the fact that there are over 120 boxes
8 of documents, I think, and the fact that the
9 difficulty --

10 Because I'm not a probate expert but I
11 have done probate litigation, I am familiar with
12 claims being filed, and there were numerous claims.

13 There was mishandling by the initial appointed PRs
14 and trustees who acted horribly, and the estate
15 files were in a mess.

16 And so I know that Adele and Bob
17 straightened that out and got stability, as
18 Steve Johnson said.

19 But I really rely on the facts as related
20 by Steve Johnson more than what I've seen, but I
21 have seen facts that support everything he says.

22 Q Okay. So then tell me what you would
23 testify to as a fact witness.

24 A Well, it would depend on what the
25 questions were. But I would say that I know
Page 9

1 personally that Adele and Bob worked extremely
2 hard --

3 Q Okay.

4 A -- and that they were castigated at every
5 turn by opposing counsel and claimants' counsel and
6 everybody else.

7 And, you know, you've got one of the
8 children of James Brown had a guardian ad litem who
9 got \$700,000, and that's just a fraction of the
10 participants in the case; not even a principal
11 player and he got \$700,000. So I think her claim
12 is reasonable.

13 Q Did he get 700,000 or did he make a claim
14 for 700,000?

15 A The court approved it, as I understand
16 it.

20 Is that what you think you will testify
21 to as an expert in this case?

22 A And the fact that her job was made more
23 difficult by the AG's office.

24 Q Okay. Tell me -- let's start with expert
25 testimony.

Page 10

1 A Uh-huh.

2 Q Have you ever testified as an expert
3 before?

4 A I have.

5 Q Okay. Will you tell us about that?

6 A I testified one time for Harold Jacobs
7 with your firm on attorney's fees.

8 Q Okay.

9 A I testified in this class action case --
10 this is a long time ago. It was about 2000 -- but
11 Speights & Runyan. They had a plaintiffs' case
12 that was -- as I recall, it was a hearing on the
13 attorney's fees; the reasonableness of the
14 settlement and the attorney's fees.
15 I think I testified for him twice. I'm
16 not sure. I'm not a hundred percent sure.
17 Q Okay.

18 A I gave an affidavit one time for Pope
19 Johnson in connection -- it wasn't really
20 attorney's fees but it was related to attorney's
21 fees. Went to the workers' comp statute, if you
22 settle a workers' comp claim for X dollars and then
23 you bring a third-party action after that and you
24 settle the third-party action for really a fraction
25 of what it really was worth but there wasn't enough
Page: 11

1 insurance or whatever, then you reduce the lien of
2 the comp carrier which creates more for the client
3 and more for the attorney. So sort of collaterally
4 related.

5 Q Okay.

6 A I've given an affidavit to a lawyer one
7 time as an expert on his attorney's fees in a
8 family court case.

9 I don't think there'd be any others. I
10 think that's it.

11 Q Okay. I counted about six. Does that
12 sound right?

13 A Five or six, yeah.

14 Q Okay. Have you ever testified in court
15 as an expert?

16 A Yeah. I did federal court for
17 Mr. Jacobs.

18 Q Okay. That's the only time?

19 A I testified in court as a party once.

...
5 Q Okay.

6 A I've handled a good number of fiduciary
7 cases, but I've never testified about the fees.

8 Q Okay. You were gonna also tell me about
9 the difficulties of litigating when the attorney
10 general opposes you.

11 A Uh-huh.

12 Q Okay.

13 A Well, is that -- yes.

14 Q Okay. Is that an expertise or --

15 A No. That's a fact-based scenario. I

16 don't say the attorney general is always impossible
17 to deal with, but I've known of another case prior
18 to this. But this is certainly a primo example.

19 And the supreme court basically approved
20 that notion. They said the attorney general was
21 way out of his -- out of line when they overturned
22 the settlement in favor of Bob and Adele.

23 And as I understand it, Sonny Jones was
24 defending the agreement, and a chief justice at the
25 oral argument said: "Who did you talk to to

Page: 14

1 determine that these people making undue influence
2 claims had any basis in fact for the claims?"

3 He said he talked to the lawyers for one
4 of the claimants.

5 Q Okay.

6 A Never talked to anybody that helped
7 prepare the will or watched -- or witnessed the
8 will being signed or anything along those lines.

9 And as I recall, the chief justice said

10 to Sonny Jones: "Well, you must not practice in
11 this area much."

12 Q Okay.

13 A So the -- as I understand it, when --

14 You know, Adele and Bob didn't ask for

15 this job. They were asked by the court on a

16 nomination by some of the parties -- I don't

17 remember which one -- to do it because of her

18 expertise and because of Bob's standing also as a

19 fine lawyer with fine reputations.

20 And they undertook this without seeking

21 it. And everybody wanted them, but, for some

22 reason, the attorney general didn't.

23 Q Okay.

24 A And he has fought them every step of the

25 way.

Page: 15

1 Q Okay.

2 A And I don't say it's Alan Wilson and

3 Henry McMaster. I think it's more Sonny Jones.

4 He's given too much power.

5 I'm aware of another estate he handled

6 back in the 1990s that my father and brother

7 handled where Sonny Jones was so difficult. The

8 trust was gonna provide money -- it was a vague

9 trust with three trustees. They had the discretion

10 to decide who to give it to. They knew that the

11 decedent, Buck Brown of Anderson County, loved

12 Clemson. That wasn't the only school he loved, but

13 he loved Clemson.

14 And Sonny was so difficult, that they

15 made the decision to move the trust to Georgia and

16 give the money to the University of Georgia.

17 That's -- my father, his eyes turned

18 green or blue and black every time he thought of

19 Sonny Jones --

...

3 Q Okay.

4 A I've seen the work. I've seen the order
5 of January 2008 where the judge said they were to
6 be paid hourly going forward. And nobody appealed
7 that order on the other side.

8 Q Okay.

9 A It was just a mammoth amount of work. I
10 made some notes going through it.
11 The first is this \$4.7 million estate.
12 When the year he died, the Royal Bank of Scotland
13 valued the royalties only at \$42 million.
14 Cannon offered Yamma and Deanna
15 \$5 million if he could get 5 percent of the estate.
16 Judge Peebles said that James Brown made a million
17 dollars a week when he toured Europe.
18 Terry Cox had a letter of intent of
19 \$100 million for the estate. Corbis GreenLight was
20 a contract that Bob and Adele negotiated right
21 before they were dismissed whereby they would pay
22 \$2 million for publicity rights for two years only;
23 in other words, that was a cash infusion for two
24 years while this appeal went on.
25 And, of course, the PR didn't agree with

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1 that so it didn't happen.

2 Bill Sellars, a CPA, helped her prepare
3 the return, and they put a value of \$84 million.
4 Richard Alexander said it was worth more than that,
5 but it was a rumor that Forlando -- I don't know
6 where he was gonna come up with it -- wanted to pay
7 \$150 million for the estate.

8 And then we see recently Toberoff, the
9 leading publicity rights lawyer and copyright
10 lawyer in the entertainment world in the whole
11 country practically, one of the top five, is now in
12 this case filing briefs in the supreme court for a
13 couple of children talking about the proceeds from
14 the copyright termination rights being a very
15 valuable asset.

16 So she was fighting for the estate plan
17 for a reason. She wanted a lot of money to go into
18 the trust, the "I Feel Good" Trust, and Bob did,
19 too.

20 And Bob had to get out because it was
21 ruining his life. He was behind in his home
22 payments. He was a sole practitioner. His wife
23 didn't work. But Adele is not gonna do that, as
24 you probably well know by now.

25 Q Well, I hear you on these -- these

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1 instances where you believe somebody has assigned a
2 value to it.

3 A Uh-huh.

4 Q But what's that got to do with being
5 convinced that the fiduciary fee is proper?

6 A Because she did lots of things -- she had
7 to defeat claims, she had to -- Cannon and Dallas
8 filed enormous claims, like 16 million. They stole
9 money that she found out about. The judge praised
10 her in his order of January 2008.

11 She got certification, whatever the word
12 is, for the "I Feel Good" Trust, which hadn't
13 happened -- it should have happened years before
14 but it didn't -- to preserve the integrity of his
15 charitable status.

16 She was the only person -- she and Bob
17 were the only people that were looking at the
18 estate plan and wanted to fulfill it to its
19 maximum.

20 Q Right.

21 A Now if somebody can prove an undue
22 influence claim, let them prove it. Don't get in
23 league with them and try to defeat the estate plan.

24 If somebody can prove they're the wife,
25 which is now on appeal -- and it should be on

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1 appeal, even though nobody deposed this woman,

2 which is surprising. I don't expect you to, but I
3 don't know why the limited special administrator
4 didn't.

5 She has fought to preserve this estate
6 plan, and she's done thousands of hours of work. I
7 don't know how many hours. I would say over
8 10,000, 15,000.

...
17 Q Okay.

18 A She also continued to work during the
19 appeal after May 2009 until the supreme court
20 affirmed her position. And she hired a lawyer
21 who -- what was she gonna do? Say: "Here are 120
22 boxes of documents. Go figure out what the appeal
23 is about"? She worked with him.

24 Q Okay.

25 A And she didn't know until after a year
Page: 20

1 after Jim Richardson took the case that he was
2 gonna do it pro bono.

3 And, of course, David Black of your firm
4 challenged his integrity in court and said he
5 wasn't working pro bono, which was just -- make
6 anybody's blood boil. Jim Richardson is
7 Mr. Integrity.

8 And he won the case. And he did what
9 great lawyers do: He synthesized it down to the
10 important issues and he won. All caps, underlined,
11 he won. And Adele won, and Bob won. So she'd been
12 vindicated up to that point.

13 Now, after that -- after 2013 she hasn't
14 done anything. I don't think she's seeking
15 anything beyond that. But she was working during
16 2009 to 2013 to preserve the estate plan by helping
17 her lawyer on appeal.

...
4 Q Okay. You mentioned she got an IRS
5 certification for the "I Feel Good" Trust. You

6 mentioned the January 2008 order.
7 Is there anything else that stands out in
8 your mind of things done that convince you the
9 fiduciary fee is reasonable?
10 A Well, she -- I mean, she hired
11 Ray Gonzalez. She had to go to that house over
12 there. It was -- it was -- the James Brown house.
13 She had to preserve the security of it and found
14 out there was a leak. She had to hire somebody to
15 come take all these boxes full of recordings and
16 take them to Nashville, Tennessee for safekeeping.
17 She was faced with a totally mismanaged
18 trust. So it wasn't like she was starting -- it
19 wasn't like a banker died and had all his documents
20 in neat order and you could go through it and work
21 hard but still figure it out.
22 With James Brown she had to -- she
23 couldn't even get cooperation from James Brown's
24 accountant, let alone the former PRs who were
25 fighting her tooth and nail and stealing money.

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1 And she caught them.
2 Q Uh-huh.
3 A And she was praised for catching them,
4 and Cannon got prosecuted for it, although the AG
5 surprisingly didn't bother to come to the
6 sentencing hearing and ask for restitution. That
7 seems bizarre to me. But that's another indication
8 of strangeness.
9 So she did lots of things. The security
10 of the house was a big thing; dealing with
11 claimants. There was suits pending in three states
12 when she took over. She had to hire counsel in
13 other places to deal with them.
14 I mean, there's umpteen boxes of
15 documents that support what she did, and it's set
16 out in her claim.
17 I mean, I could get the document and

18 revive my memory, but her claim and her suit
19 provide plenty of information sufficient to justify
20 the amount she's seeking.

21 Q Okay. Let's look at what I'm gonna mark
22 as Defense 1. And this is an expert witness
23 disclosure.

24 A Okay.

3 Q Okay. Second paragraph talks about a
4 public official taking control of assets.

5 Does that have anything to do with your
6 opinion in this case?

7 A Yeah. He doesn't -- the attorney general
8 doesn't have the authority to take control over the
9 James Brown "I Feel Good" Foundation, but that's
10 what he did.

11 He has authority to supervise it and make
12 sure that the terms of the foundation are carried
13 out. He doesn't have authority to control it. So,
14 yeah, it does.

15 If he hadn't been in here -- the attorney
16 general is the leading law enforcement official in
17 the state. He has a status that is quite high in
18 the eyes of the public.

19 And, honestly, I think that the people
20 that colluded together on the settlement thought
21 that that -- and maybe they were right for a
22 while -- but having him put his imprimatur on this
23 settlement was just gonna grease the wheels and
24 make it slide on through.

25 So she was fighting the chief law

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1 enforcement of the state and he did take control,
2 and that's not appropriate. So I think the
3 paragraph is correct.

4 Q Okay. So your opinion all ties into the
5 presence of the attorney general in this
6 litigation?

7 A That one does, yeah.

8 Q Okay. What does Case 4900 or Journalist
9 Sue Summer have to do with this case?

10 A Well, my experience in the Sue Summer
11 case was -- like, I met the same stone walls that
12 Adele has. That's really basically it. Because we
13 were requesting documents.

14 She's a journalist and, on her behalf, we
15 made -- with Jay Bender's, co-counsel, help, we
16 sought out the documents that were very important
17 to the James Brown case and to the public, and
18 those would be the fee agreement Sweeny Wingate had
19 with the attorney general and all the parties,
20 which we got.

21 It was actually produced in the federal
22 case while our FOIA request was pending, but we got
23 that. We asked for the Hynie diaries. They were
24 produced by an unknown, anonymous third party while
25 this was pending.

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1 But we prevailed and the judge awarded
2 her attorney's fees in that. We did not get the
3 \$4.7 million appraisal documents because the AG's
4 office said they did not have that.

5 I mean, I'm not denying they did not have
6 those documents, but after the final order was
7 issued, we asked the judge to reconsider
8 whether they -- if they had used those documents
9 under FOIA, then they should still be protected and
10 they should go get those documents from whoever had
11 them and present them to us. And the judge
12 declined to rule on that because the case was over,
13 as he saw it, and he did not rule.

14 But we were successful in large part, and
15 we got Ms. Summer's attorney's fees paid. So
16 that's the relation.

17 I mean, it doesn't -- what it is, it is.
18 We got documents that related to 4900, but that
19 wasn't the only purpose of it.

20 Q Okay. You mentioned the 4.7 million
21 appraisal. Why did you want to see that?
22 A Because it seems preposterous. I mean,
23 she thought it did, I think it does. Anybody in
24 the world thinks it does. You ask a guy on the
25 street that ...

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1 Q Do you know -- have you ever seen it?

2 A No, I've never seen it.

3 Q You have never signed a confidentiality
4 order and looked at it?

5 A I've never seen it, any part of it.

6 Q Okay.

7 A I mean, there are farmers in
8 Newberry County that are worth more than that; I
9 mean, honestly. It's ludicrous.

10 He had a \$3 million-plus stream of income
11 every year before he died.

12 Q So you've never looked at it, but you
13 just assume it's incorrect?

14 A I would bet my life on it being
15 incorrect.

5 Q Okay.

6 A I'd say that James Brown is probably --
7 in terms of his cultural popularity, he's probably
8 right there with Elvis. He might be a step behind
9 him, but not much.

10 Q How much in publicity rights did
11 Mrs. Pope and Mr. Buchanan generate during their
12 fiduciary service?

13 A I don't know. They tried to do one with
14 Corbis.

15 Q Do you know the terms of that deal?

16 A I don't.

17 Q Okay. Beyond Corbis, do you know if they
18 generated any other publicity rights?

19 A I don't know.

20 Q How about the prior fiduciaries?

21 A How about what?

22 Q The prior fiduciaries. Were they able to
23 do it?

24 A No. I think they were so busy stealing,
25 they never got around to it.

4 Q If you could just generally look through
5 the -- page 20 of Defense 1.

6 A Right. Uh-huh.

7 Q I read most of this -- it leads with a
8 number of paragraphs saying: "Journalists and
9 citizens have a right to know" ...

10 Is most of this really focused towards
11 something beyond the claims case? I mean, do
12 you --

13 A A lot of this is focused on my attempts
14 to -- under FOIA to get documents and information
15 from the attorney general.

16 Q Okay. I mean, do you think that it would
17 be proper to come down to the trial of this case
18 and discuss all these matters?

19 I mean, do you think they're relevant to
20 the claims case?

21 A I may not discuss them in exactly these
22 words. I think it's relevant to know what the
23 attorney general's bad influence was on this entire
24 estate.

25 He put his imprimatur on things and took
Page: 30

1 positions that were not related to fulfilling the
2 estate plan of James Brown.

3 And to me -- and that's what a trustee
4 and a PR's duty is, is to be single-mindedly
5 focused on implementing the wishes of the decedent.
6 Whether it's James Brown or Joe Smith, that's what
7 you're supposed to do.

8 And the fact that a bunch of heirs want
9 to change that or allege spouses want to change
10 that, it's contrary to what role the PR and the

11 trustee should be playing.

12 Q Okay.

13 A So you would think the AG would want to
14 implement the estate plan, but he was siding with
15 contestants of the will; people who had been left
16 out, omitted children, people who were not spouses.
17 It's astounding, really.

10 Q Yes, sir. Tell me why this Toberoff --
11 you brought this Toberoff printout.

12 Tell me why it's important to you. Why
13 did you bring it here today?

14 A Well, on valuation, I mean, Toberoff is
15 on a filing in the supreme -- in the court of
16 appeals as of counsel on behalf of -- let's see --
17 Deanna Brown, Yamma, and Venisha alleging how
18 important -- that the proposed settlement may
19 violate federal copyright laws and that the
20 proposed settlement would create a conflict of
21 interest for the PRs of the estate who may stand to
22 recover significant fees from the recovery of
23 proceeds from copyright termination rights.

24 I don't know whether that's true or not,
25 but I just mean a guy from Malibu, California is
Page: 34

1 weighing in on a \$4.7 million case on behalf of two
2 heirs or three heirs out of 15 and saying it's
3 significant?

4 So, I mean, it goes to valuation. If the
5 biggest hotshot in publicity rights in America
6 weighs in on behalf of two somewhat minor claimants
7 in this whole estate, then he must think it's worth
8 a lot of money.

...

9 Q Okay.

10 A I know it relates only to 4900, but -- I
11 mean, of course, she didn't have clients because
12 she hadn't got any malpractice insurance because of
13 these oppressive lawsuits against her; like

14 Forlando's and the one that Bauknight is -- 4900
15 that he brought. And it was brought to run her
16 off, to squash her like a bug to get her not to
17 appeal, and that wasn't -- that was like pouring
18 gasoline on a fire.

19 Q Have you ever seen a document that
20 supports that sentence you just made, that the
21 lawsuit was brought in order to run her off?

22 A They told her to -- if she appealed,
23 they'd sue her.

...
11 Q Okay.

12 A I know she turned away clients to handle
13 James Brown.

14 Q Okay.

15 A It was very busy. I mean, she was
16 dealing with misappropriating funds from PRs, she
17 was dealing with an incredible mess of documents
18 that made no sense, which took just a -- just to
19 get them together and put them in -- inventory them
20 and get them in the right form, talking to a CPA
21 that wasn't giving them information and hadn't
22 filed tax returns.

23 I mean, at every turn, it was a difficult
24 task. And when she got appointed as the PR, the
25 task wasn't over. She kind of stopped the
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1 misappropriations and caught it and duly handled
2 it, but she and Bob continued then to reconstruct
3 what was there. Hired Bill Sellars and whatnot and
4 consulted with Ray Gonzalez later, and --
5 Very, very busy.

6 Q Okay.

7 A I can't give you each year -- what
8 happened each year, but I know she was very, very
9 busy.

...
14 Q Okay. To state the obvious, you're

15 married to Mrs. Pope?

16 A Correct.

17 Q You may have some -- a little bit of a
18 bias?

19 A I would say, as a husband, I would have a
20 bias, but I wouldn't testify if I didn't believe
21 it.

11 Q Of course, if you come down to Aiken, we
12 try this case, it's fair game to ask you: You do
13 stand to benefit from recovery --

14 A We keep separate bank accounts --

15 Q Okay. Well, let's --

16 A -- so you could draw your own
17 conclusions.

18 I don't stand to benefit. I think her
19 intentions are to give a lot of this money to
20 charity, whatever she gets, but that's her
21 business.

22 Q Well, I never asked that question during
23 the deposition, so perhaps you can amplify on it.

24 Do you know what the intention is if a
25 full fee recovery were provided?

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1 A Well, A: I'd say that's nobody's
2 business; but, B: She has said she intends to give
3 a good bit of it to charity, and we are very
4 charitable oriented.

5 That's one influence she's had over me.

6 I give as much as I can give to the charities that
7 interest me, which are most of the Newberry Opera
8 House, the Newberry YMCA, and my college.

22 BY MS. POPE:

23 Q I have just two questions: Could you
24 briefly describe the documents that you brought and
25 that you looked at in preparation for this

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1 deposition?

2 A I looked at Steve Johnson's deposition, I

3 looked at the claim you filed, plus all the

4 supporting documents, which is about 4 inches

5 thick -- yeah, 3, 4 inches thick.

6 I looked at your deposition, Alan

7 Wilson's, the Forlando suit, bunches of court

8 orders, the report of Jim Hardin. Complaint in

9 4900 I did not look at, but I'm aware of the fact

10 there are 130-plus boxes of documents that you

11 dealt with.

12 But your supplemental affidavit in

13 support of the claim furnishes a large portion of

14 those documents.

15 Q Did you also look at your own files?

16 A Oh, yeah. I had my FOIA files for

17 Sue Summer against the AG, which are four pleadings

18 notebooks probably 4 or 5 inches high. Looked at

19 those.

20 But -- of course, I was familiar with

21 them, but I did glance at them.

27. I have reviewed documents which show that since the Wilson decision Mr.

Sojourner was paid about \$1.5 Million; Mr. Bauknight's lawyers have been paid several

millions; Tomirae's son's guardian ad litem and lawyer have been awarded about

\$700,000; and other funds have been spent to help Tomirae and to continue to

discredit Mr. Buchanan and Mrs. Pope.

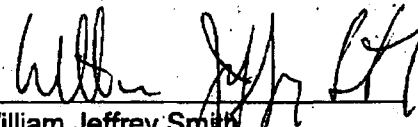
28. The Attorney General and Mr. Bauknight have allowed Tomirae to be paid

\$1 Million from 3 James Brown songs and, so far as I can see, have done nothing to

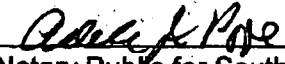
challenge the termination rights Tomirae is attempting to exercise to take a portion of

the "I Feel Good" Charity's royalties to 90 or so of its 900 copyrights between now and 2023.

FURTHER DEPONENT SAYETH NOT.


William Jeffrey Smith

SWORN TO BEFORE ME this 14th
Day of July, 2017

 (L.S.)
Notary Public for South Carolina
My commission expires: 9/27/2023

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James B.; Daryl J. Brown, individually
and on behalf of his minor child Janise
Vanisha Brown; Lindsey Delores Brown;
Deanna J. Brown Thomas; Jason Brown-
Lewis; Yamma N. Brown, individually and
on behalf of her minor children, Sydney
L., Carrington L., and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

ALAN WILSON, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION TO ALTER, AMEND
VACATE AND/OR RECONSIDER
ORDER GRANTING ATTORNEY
GENERAL'S MOTION TO BE
DROPPED AS A PARTY

2017 JUL 19 AM 10:51
JEANNETTE W. MCCLAM
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS AND/OR THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as

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soon thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope") will move pursuant to Rules 52 and 59(e), SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order vacating altering or amending the Order Granting Attorney General's Motion to be Dropped as a Party of the Honorable Doyet A. Early, III ("Jg. Early"), dated May 31, 2017 and filed June 12, 2017, a copy of which is attached hereto as Exhibit A (the "Order"). Notice of entry of the signed order was received on July 10, 2017.

Summary of Relief Requested

For one, more or all of the following reasons, and based on the Answer and Counterclaim of Pope and Robert L. Buchanan, Jr. ("Buchanan"), this Court should alter, amend, vacate and/or reconsider its May 31, 2017 Order:

- a. The Attorney General has, with knowledge that it was illegal and without merit, pursued this action to damage and discredit Buchanan and Defendant by making them appear incompetent, greedy and hostile, so that the Attorney General and Tomirae could personally benefit from funds James Brown gave for scholarships for needy students through his James Brown "I Feel Good" Charity.
- b. The Attorney General has carried out the scheme to damage and discredit Buchanan and Defendant through taxpayer-paid staff; the James Brown Legacy Trust ("McMaster Legacy Trust"), over which the Attorney General and Tomirae hold 75% voting control; and Russell Bauknight ("Bauknight"), acting "on behalf of the Attorney General of the State of South Carolina.
- c. In carrying out the scheme to discredit and damage Buchanan and Defendant, the Attorney General, with Tomirae and Bauknight intentionally undervalued James Brown's Right of Publicity and iconic personal property at zero, or near zero in Brown's Internal Revenue Service proceeding ("IRS"); overstated Brown's debts by \$5 Million to the IRS; obtained an ill-gotten "refund" from the IRS, then used that ill-gotten IRS "refund" to claim Buchanan and Pope had committed a federal felony by properly valuing Brown's music empire at \$84 Million.
- d. In carrying out the scheme to discredit Buchanan and Defendant, the Attorney General, with knowledge of his alliance with felon David Cannon and history of Dirty tricks, condoned and/or joined David Bell, Esq. ("Bell") in planting the false

Grammy © post related to Robert Potter, Esq., which was noted by the Supreme Court in *Wilson v. Dallas*.

- e. The Attorney General has, since telling the Supreme Court in 2013 he was seeking to be dropped as a party to this action, pursued it more vigorously; condoned Bauknight's waste of millions of dollars of Brown's "I Feel Good" Charity to try to discredit Defendant; evaded and consolidated James Brown Freedom of Information Act ("FOIA") requests with this case; taken no action to make Bauknight correct the false IRS filings, which damage the "I Feel Good" Charity; condoned a payment of \$700,000.00 in legal and GAL fees for Tomirae's son from Brown's Charity; and continued to take other actions prejudicial to the administration of justice which violate his Constitutional and Statutory duties.

For the above reasons, and each reason stated in Defendant's Motion to Alter, Amend or Vacate the Partial Summary Judgement Order of Judge Early granted to the Attorney General and others, the entirety of which Motion is incorporated herein, the Order should be vacated and this 7-year-old case, including Defendant's counterclaims (and Buchanan's if his settlement is found to be void), should proceed to trial.

The Attorney General's Staff Had Knowledge the Wingate Suit was Illegal

1. The Court overlooked or misapprehended that this action, commenced on May 19, 2010, by the filing by private attorneys Sweeny, Wingate & Barrow, P.C. ("Wingate Firm"), on behalf of then-Attorney General, now Governor, Henry D. McMaster ("Governor McMaster") and Bauknight "on behalf of" the Attorney General and others, was unconstitutional and illegal when filed because a private law firm was sole counsel both to Tomirae and other nonresidents, including minors, and the Attorney General.
2. The Court overlooked or misapprehended that, based on his sworn deposition testimony in 2016, Governor McMaster did not authorize the Wingate Firm to bring this suit in the name of the State/Attorney General, and did not authorize Bauknight to sue Buchanan and Defendant on behalf of the State/Attorney General.
3. The Court overlooked or misapprehended that the deposition given by Governor

McMaster, on October 19, 2016, demonstrates how Defendant has been deprived of a level playing field by the Attorney General in this suit, including not having been paid \$47,000 (ordered to be paid with interest in 2008) for her 2007 SA service to James Brown's estate, and nothing for the six years between November 20, 2007 and May 8, 2013 while she worked protect James Brown's noble estate plan and "I Feel Good" Charity:

4. **Q. Right. I want you to refresh your recollection**
5. **8 for as long as it takes because I want to talk to**
6. **9 you about whether my -- the opposition of Bob**
7. **10 Buchanan and Adele Pope to the settlement was**
8. **11 reasonable. Because my commission --**
9. **12 A. Well, I'll tell you -- I'll tell you that now. I**
10. **13 would say no because that's --**
11. **14 Q. Well, I need to know why.**
12. **15 A. Well, ma'am, that's going to -- if you're wanting**
13. **16 me to read this and be able to engage in that kind**
14. **17 of discussion, --**
15. **18 Q. I do.**
16. **19 A. -- you're going to miss your plane.**
17. **20 Q. That's all right. I can miss it.**
18. **21 A. And, by the way, that is not my signature.**
19. **22 That's -- someone apparently signed it for me.**
20. **23 Q. Well, if someone signs your signature and is not**
21. **24 authorized to do it, you have means to fix that,**
22. **25 don't you?**
23. **Page 50**
24. **1 A. Mrs. Pope, they would have been authorized to do**
25. **2 it. I'm not asserting that any of these documents**
26. **3 are fraudulent.**
27. **4 Q. Well, Mr. McMaster, you sued me six years ago, --**
28. **5 A. Ma'am, I did not sue you.**
29. **6 Q. -- and I have -- please let me finish the**
30. **7 statement and the question. And I have not been**
31. **8 --**
32. **9 A. That's a statement.**
33. **10 Q. -- paid for my work since 2007 as a result of the**
34. **11 suit you brought against me, so I'm here today to**
35. **12 find out whether there was any basis for bringing**
36. **13 that suit. Judge Early has been told that I**
37. **14 cannot be paid until Richland 4900 is concluded,**
38. **15 and so I need to know what your basis for suing me**
39. **16 for conducting an appeal of 4900 was, whether it**

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40. 17 was reasonable?

41. 18 A. Ma'am, I did not sue you, --

42. The Court overlooked or misapprehended that Sr. Assistant Attorney General Sonny Jones ("AG Jones"), however, worked with Tomirae, Bauknight and the Wingate Firm for approximately two months before the suit was filed, including intense work between May 12 and May 18, 2010, finalizing the complaint; deciding who would sign the complaint; and approving the complaint itself.

43. The Court overlooked or misapprehended that even though Governor McMaster had no knowledge that the Attorney General was a named Plaintiff; that Bauknight was named as a Plaintiff acting on behalf of the Attorney General; or that he (through AG Jones) and Tomirae were controlling the Wingate litigation through their 75% ownership of the McMaster Legacy Trust he had created, Governor McMaster had a duty to see that the staff on which he relied did not bring a frivolous lawsuit which was patently illegal under the *Santa Clara* case and the ruling of Judge Crouch in the *Eli Lilly* case issued in 2009, both of which set out in detail the control by the Attorney General and other terms necessary to prevent the use by the Attorney General of Special Counsel legal from violating Due Process rights of Defendants.

44. The Court overlooked or misapprehended that, in addition to Governor McMaster, former Chief Deputy John McIntosh ("AG McIntosh") and Solicitor General Robert Cook ("AG Cook") were aware of pressure to file suit against Buchanan and Pope by AG Jones and Tomirae's lawyer Alan Medlin ("Medlin"); and each has stated under oath that he did not, and could not, authorize the Wingate Suit to be filed in the name of the State/Attorney General or authorize Bauknight to act as a Plaintiff "on behalf of" the Attorney General.

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[Depos., McIntosh, 2/8/17 ; Depos., Cook, 2/8/17.]

45. The Court overlooked or misapprehended that AG Jones was an expert on the operation of the Attorney General's Special Counsel Litigation Retention Agreements, and knew that both the Wingate Agreement and the Complaint violated constitutional requirements and the Due Process Rights of Buchanan and Pope because. [Depos., Jones, 5/4, 5/16.]

46. The Court overlooked or misapprehended that AG Jones, like Bauknight, Louis Levenson, Esq. ("Levenson") and Tomirae's lawyers knew that all of the claims of wrongdoing they were making were false, and intended to cover up false allegations the Attorney General, Tomirae, Levenson and Bell had made to Judge Early, and would continue to make to the Appellate Courts.

47. The Court overlooked or misapprehended that, under oath, neither AG Jones or nor Assistant Attorney General Mary Frances Jowers ("AG Jowers"), who, according to Wingate Attorney Everett Kendall, Esq. , worked on every aspect of the Wingate Suit from its planning until Kendall was no longer involved in it for personal reasons more than a year after the suit was filed[See Depos. E. Kendall, 3/6 / 17 Aiken Case No. 2013-CP-02-1337], either claimed to lack memory of these events; claimed protection as to communications with Medlin, Levenson, Bell and Bauknight under the "Common Interest" doctrine; or declined to answer for other reasons. [Depos. Jones, Jowers]

48. The Court overlooked or misapprehended that the terms of the Wingate Litigation Agreement put the Attorney General and Tomirae in effective control of the Wingate suit, and with increased control after the *Wilson v. Dallas* decision, but there is no known document authorizing Bauknight to sue on behalf of the State/Attorney General.

49. The Court overlooked or misapprehended that the Wingate Agreement was signed by Bauknight and attorneys who would reap about \$10 Million in contingency legal fees if they could stop the *Wilson v. Dallas* appeal, but not by most Plaintiffs.

50. The Court overlooked or misapprehended that, even though the Wingate Agreement, on its face, declares that it is a public document and subject to the Freedom of Information Act ("FOIA"), the Attorney General, Bauknight and Wingate – for 7 years – have wasted both State and James Brown's "I Feel Good" Charity's funds trying to keep the Wingate Agreement secret.

51. The Court overlooked or misapprehended that AG Jowers and AG Jones have not spoken candidly about the false claims of the Wingate Suit both because both seem to have little memory and because the Attorney General is claiming that the "common interest" they have shared with Bauknight (since 2008), with Wingate (since 2011), and with Tomirae's and James B's attorneys (from 2008 until May 8, 2013) shields their wrongful communications with Medlin, Levenson, Peter Shahid, Esq. ("Shahid") and others.

52. The Court overlooked or misapprehended that, despite multiple efforts (as described below) to obtain the Wingate Agreement, the Attorney General, Bauknight and Wingate Firm were able to conceal this public document until September 2013, four months after the *Wilson v. Dallas* decision (May 8, 2013), and three months after Judge Early banned Buchanan and Defendant from being witnesses or otherwise participating in the James Brown Aiken County cases (June 13, 2013).

53. The Court overlooked or misapprehended that when the Wingate Suit was filed, Governor McMaster had actual knowledge from Philanthropist John Rainey and others that AG Jones had been waging a personal vendetta against Buchanan and Defendant since

November 2007, when they declined to agree to let Governor McMaster control the litigation against felon David Cannon; use McMaster's Special Counsel Agreement which gave his office 10% of the fee earned by the attorneys; and allow AG Jones to select a political supporter of McMaster as counsel, rather than attorneys Few & Gilreath, who had been selected by Buchanan and Pope.

54. The Court overlooked or misapprehended that two months before filing suit, in March 2010, Tomirae's lawyer and Bauknight's lawyer had both threatened to sue Buchanan and Pope if they did not drop the appeal which became *Wilson v. Dallas*.

55. The Court overlooked or misapprehended that, in response, Buchanan and Pope presented the Attorney General with a complete Agreement by which they would have resigned and allowed the McMaster settlement deal to be implemented, subject only to two conditions: 1. the Appellate Court approve the Agreement, which stated that the Attorney General could -- and had -- substituted his judgment for that of Buchanan and Defendant; and 2. The Agreement needed to be signed by GALs for the minors (whose education trusts had been damaged by their own parents' agreeing to the McMaster settlement).

56. The Court overlooked or misapprehended that the Attorney General and settling parties would not respond, despite repeated requests, to the proposal.

57. The Court overlooked or misapprehended that at the time this suit was filed, the Attorney General, Bauknight and all other Plaintiffs had knowledge, as defined in the S. C Trust Code, that:

- a. Tomirae, by her own handwritten admissions, was married, living in Texas with her husband, and thought she might be pregnant before meeting James Brown and, later concealing her marriage and conducting a bigamous ceremony with Brown.
- b. Buchanan's and Defendant's \$84 Million [\$99 Million less \$15 Million TIAA

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Debt] value of Brown's Music Empire on Schedule F of the sworn Estate Tax Return was correct and conservative.

- c. The McMaster settlement deal generated millions of dollars in estate, excise and income taxes.
- d. Governor McMaster's settlement threatened the "I Feel Good" Charity's plan to minimize the impact of Federal Copyright Act Termination Rights on the "I Feel Good" Charity because McMaster stopped the Estate's DNA testing protocol; declared fewer than half of Brown's claimed heirs to be James Brown's heirs; and "stipulated" that Tomirae would be considered to be Brown's spouse despite overwhelming evidence to the contrary.

58. The Court overlooked or misapprehended that since August 2009, Tomirae, AG Jones and Bauknight had been working on a scheme to discredit Buchanan and Defendant by devaluing Brown's 900 copyrights to \$24 Million or less; valuing Brown's Right of Publicity at zero; and then claiming Buchanan and Pope had overvalued the assets to get a big commission. [See Email, Medlin 8/30/09]

59. The Court overlooked or misapprehended that Buchanan and Defendant moved to dismiss the complaint, in part because it was illegal and violated their Due Process rights.

60. The Court overlooked or misapprehended that a week after the Wingate Suit was filed, a principal in the Wingate Firm made a \$1,000 contribution to McMaster's campaign.

61. The Court overlooked or misapprehended that Buchanan and Defendant, subject to the Motion to Dismiss, served an Answer and Counterclaim the entirety of which is incorporated herein.

62. The Court overlooked or misapprehended that, when served, a member of the Wingate Firm marked the Answer and Counterclaim "file;" failed to timely respond; then, on November 17, 2010, moved for relief from default.

63. The Court overlooked or misapprehended that on August 30, 2010, the motion to dismiss and other matters were heard by the Honorable L. Casey Manning ("Judge

Manning”), and AG Jones attended and was introduced by Wingate as one of Wingate’s many clients.

64. The Court overlooked or misapprehended that, after discussing the issue with AG Jones over a lunch during the hearing, Wingate assured Judge Manning that AG Jones was familiar with the *Santa Clara* case and Judge Couch’s Order; that the Wingate Suit was legal; and that Judge Early had already ruled on the issue. [Tr., Hg. 8/30/10]

65. The Court overlooked or misapprehended that Governor McMaster answered interrogatories before leaving office on January 11, 2011, but they were verified by his successor in office, Attorney General Alan M. Wilson (“Attorney General Wilson”).

66. The Court overlooked or misapprehended that in December 2010 the Attorney General, Bauknight and others filed their initial brief in *Wilson*, making the false claim that Tomirae and others had valuable Federal Copyright Act Termination Rights, but that the value of the Termination Rights could not be determined because Buchanan and Defendant had not secured an appraisal.

67. The Court overlooked or misapprehended that the Attorney General and Bauknight had received the Philpott, Ball, Werner (“PBW”) appraisal three months earlier, in September 2010, but decided not to disclose it to the Supreme Court for eight months.

Attorney General Wilson Authorizes the Continuation of the Wingate Suit

68. The Court overlooked or misapprehended that, upon taking office in January 2010, Attorney General Wilson authorized the Wingate Suit to continue.

69. The Court overlooked or misapprehended that in January 2011 the false Grammy © claim which would later be cited by the Supreme Court, was placed on a law firm website by Bell and his clients, with the apparent knowledge and consent of the Attorney General.

70. The Court overlooked or misapprehended that at the time the Attorney General had actual knowledge of dirty tricks played by Bell, who was aligned with felon David Cannon, including the filing of multiple false grievances against Levenson in two states, even accusing Levenson of forging his fee contract with a grandchild of James Brown.

71. The Court overlooked or misapprehended that several years later, after the *Wilson* decision referenced the false Grammy © claim, Robert Potter, Esq., who was attributed with halting the Grammy © sale, responded to Pope's inquiry saying we was not aware of the post. [See Aff. E. Alexander.].

72. The Court overlooked or misapprehended that on February 16, 2011, Defendant filed a Petition for Writ of Prohibition in the Court of Appeals, seeking to prevent the Attorney General from continuing the Wingate suit and/or from sharing private contingency-fee counsel with the private Plaintiffs, and the Attorney General, through Wingate, opposed the petition.

73. The Court overlooked or misapprehended that in April 2011 Termination Rights expert Wm. Jeffrey Smith and Defendant circulated a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* for review by professionals.

74. The Court overlooked or misapprehended that *Private Foundations* explains how the Attorney General's incorrect determination of heirs; misunderstanding of the Federal Copyright Act Termination Rights; refusal to properly conclude the Estate's DNA testing protocol; and devaluation of Brown's assets after giving Bell's client a right of first refusal to buy James Brown Music Empire, would leave Brown's "I Feel Good" Trust with almost nothing.

75. The Court overlooked or misapprehended that on or about May 5, 2011 the Attorney General and Bauknight made the known false claim to the Supreme Court that the Internal Revenue Service had determined that the assets on Schedule F of James Brown's Estate Tax Return, referred to by Buchanan and Defendant as the "Music Empire", had a value of less than \$4.7 Million; that no estate tax was payable by Brown's estate under the McMaster settlement deal; and that Bauknight had even obtained a refund.

76. The Court overlooked or misapprehended that the \$4.7 Million claim and the ill-gotten "refund" were the result of material, false statements made to the IRS by Bauknight, the full extent of which would not be understood by Defendant and Buchanan until after the first *Wilson v. Dallas*, as described in more detail herein.

77. The Court overlooked or misapprehended that from mid-2011 until today (as later explored in detail) the Attorney General, Bauknight and Bauknight's advisors have repeated to the Supreme Court and other courts, based on the ill-gotten "refund," the known false claim that McMaster settlement deal saved estate taxes; that Buchanan and Defendant misled the Courts about the tax consequences of the McMaster settlement; and that Buchanan and Defendant intentionally overstated Brown's music empire by \$79 Million to get a \$5 Million commission.

78. The Court overlooked or misapprehended that the Attorney General fully understood that, as the State's highest legal officer, and charged with the protection of charities, The Attorney General's false accusation that Buchanan and Pope had overstated James Brown's Music Empire by \$79 Million to the IRS to get a \$5 Million commission, a federal felony, would make them appear both incompetent and greedy.

79. The Court overlooked or misapprehended that on August 1, 2011 the Supreme

Court declined to supplement the record on appeal ("ROA") with the \$4.7 Million claimed value, but would later cite the Attorney General's accusations based on the false the \$4.7 Million claim, and the false planted Grammy © claim, as reasons not to disturb Judge Early's decision to replace Buchanan and Defendant.

80. The Court overlooked or misapprehended (as more fully set out below) that in August 2011 the Attorney General began to evade FOIA requests while Bauknight, working with the Attorney General, began trying to intervene in James Brown FOIA cases; move them to Richland County; consolidate them with the Wingate Suit; and prevent release of public documents which would show the \$4.7 Million claimed value was fabricated; Tomirae was not Brown's spouse; and that the Wingate Suit was illegal.

81. The Court overlooked or misapprehended that in September 2011 the Attorney General told Judge Manning he was ready and "more than willing" to release the Wingate Agreement, but his Wingate Firm lawyer simultaneously argued it was private and could not be released.

82. The Court overlooked or misapprehended that in October 2011, while suing Buchanan and Defendant for tens of millions of dollars and falsely accusing them of a felony, the Attorney General allowed former trustee David Cannon - who had taken \$17 Million of funds James Brown gave his "I Feel Good" Charity --- to enter an *Alford* plea, and the Attorney General neither sought jail time nor restitution.

83. The Court overlooked or misapprehended that Tomirae's lawyers helped prepare Bauknight's lawyers for the *Wilson* Supreme Court oral arguments held November 1, 2011.

84. The Court overlooked or misapprehended that on the day before the Supreme Court oral argument in *Wilson*, which was attended both by Attorney General Wilson and

former Attorney General McMaster, Bauknight's lawyer was quoted in more than 330 media outlets making vicious statements attacking Buchanan and Pope, even saying that the Court's reinstating them would be like "throwing a hand grenade into the James Brown estate."

85. The Court overlooked or misapprehended that at the Wilson oral argument Bauknight, through counsel, made known false and/or misleading statements to the Supreme Court about the value of Brown's assets; Brown's heirs; the Federal Copyright Act Termination Rights provisions; and Tomirae's marital status, most or all of which the Attorney General and Bauknight knew to be false.

86. The Court overlooked or misapprehended that Bauknight's counsel told the Supreme Court Tomirae's elective share claim was a "slam dunk;" James Brown's estate and 2000 Trust had no corpus to speak of; Tomirae and her son controlled the Federal Copyright Act Termination Rights; and that the *Please, Please, Please* royalties would automatically be lost by the "I Feel Good" Charity in 2012 if the McMaster settlement deal were not upheld.

87. The Court overlooked or misapprehended that Bauknight, with others, claimed incorrectly that because of Termination Rights there would be nothing left in the "I Feel Good" Charity in 2023 if the McMaster Settlement were not upheld.

88. The Court overlooked or misapprehended that the Attorney General and Bauknight had actual knowledge that Brown's valuable Right of Publicity was not subject to Termination Rights, nor were Brown's non-American copyrights, his personal property, or his multi-million-dollar claims against Cannon, Greenberg Traurig and others.

89. The Court overlooked or misapprehended that Peter Afterman had identified more

than 200 songs of other artists which sampled James Brown's songs, and royalties from many of the samplings, as well as Brown's own copyrights from the late 1990s and later, would not be threatened by Termination Rights election attempts until 2030 or later.

90. The Court overlooked or misapprehended that in April 2012 Federal Judge William O. Bertelsman, at the request of Forlando Brown, dropped Forlando's frivolous Complaint to enjoin the James Brown 2000 Trust until felon David Cannon and Albert Dallas were reinstated, along with claims against Buchanan and Defendant he had made in amendments to the Complaint.

91. The Court overlooked or misapprehended that Bauknight, with secret knowledge that Terry Brown's interest in James Brown's estate had been transferred to Forlando a year earlier, allowed Forlando to lie to Judge Bertelsman, telling the Court that he had no assets and had no expectation of assets from the James Brown litigation unless Terry Brown died.

92. The Court overlooked or misapprehended that Judge Bertelsman stated that his father had told him you could not squeeze "blood out of a stone," the attitude Judge Bertelsman would adopt with respect to Forlando; which both Bell and Bauknight knew to be false; and which neither corrected.

93. The Court overlooked or misapprehended that in the spring of 2012 Buchanan, who had not been paid for James Brown work since 2008, was experiencing serious financial hardship and was forced to settle with the Attorney General.

94. The Court overlooked or misapprehended that, before allowing Buchanan to be paid, the Attorney General and settling parties extracted a commitment that Buchanan do nothing to help Defendant try to save James Brown's "I Feel Good" Charity, and that

Buchanan not file a Petition for Rehearing when the *Wilson* decision was rendered.

95. The Court overlooked or misapprehended that the Attorney General did not tell the Appellate Court in *Wilson* of this unconscionable requirement; tried to make it appear to the Court that Buchanan was at odds with Defendant; and that a Motion to Void the unconscionable requirement is still pending.

96. The Court overlooked or misapprehended that in 2012 the Attorney General allowed Brown's "I Feel Good" Charity to pay Buchanan \$500,000.00 to secure releases for himself, Bauknight, and Tomirae and from Buchanan's counterclaims in this lawsuit, and neither Tomirae nor anyone else has repaid Brown's "I Feel Good" Charity.

97. The Court overlooked or misapprehended that in August 2012 the Attorney General and others obtained an "emergency" oral order from Judge Manning stopping the deposition of their own witness, Albert "Buddy" Dallas, when it became clear that Dallas was going to testify that Tomirae was not Brown's spouse, but Dallas gave a sworn statement confirming Tomirae's handwritten admissions that she was not Brown's spouse, as well as a 2006 three-way conversation he, Tomirae and Brown had confirming that they were not married.

98. The Court overlooked or misapprehended that after the *Wilson* oral argument, the attacks on Defendant and others related to the attempt of the Attorney General and Bauknight to conceal evidence that Tomirae was not Brown's spouse; the Wingate Suit was not legal; and the \$4.7 Million value was fabricated became more vitriolic.

99. The Court overlooked or misapprehended that in 2012, in an effort to prevent release of Tomirae's already public handwritten admissions that she was not Brown's spouse from Judge Early's *ex parte* unconstitutional gag orders issued in 2008,

Bauknight's counsel told Judge Early he had already found Tomirae to be Brown's spouse; the Attorney General and Bauknight called Pope's court filings "works of fiction"; and both made claims that the Attorney General and "family" were tired of Defendant's meddling.

100. The Court overlooked or misapprehended that, as a result of the joint efforts of the Attorney General, Tomirae and Bauknight, Judge Early declined to void the 2008 gag orders, thereby preventing discussion of the already-public handwritten admissions, which Tomirae's lawyer incorrectly tried to characterize as a "diary" until after Judge Early had ruled in 2015 that Tomirae was Brown's spouse.

101. The Court overlooked or misapprehended that since 2011 journalists, public officials (now Sen. Tom Young) and other citizens have provided affidavits urging the Attorney General to release public James Brown information, but he has refused.

102. The Court overlooked or misapprehended that in 2012 the Attorney General filed a Motion for Guidance Related to Pre-Trial Publicity, and filed more than 100 articles, including those by journalist Sue Summer, in this case.

103. The Court overlooked or misapprehended that the articles filed by the Attorney General, including those in the *New York Times*, as well as local and Augusta articles, help demonstrate the Attorney General's and Bauknight's efforts to discredit Buchanan and Defendant and praise Bauknight for fighting for the McMaster Settlement [Mot. PreTr. Publ.]

104. The Court overlooked or misapprehended that in July 2012 the Attorney General and others secured an Order for mediation in this suit, even though there had been very little discovery.

The October 12, 2012 Wingate Suit Mediation

105. The Court overlooked or misapprehended that after securing an Order for Mediation on July 30, 2012, the Attorney General and others began to seek exemption for the parties from attending the mediation, while at the same time forcing Defendant to have her carrier there to waste Defendant's fast-depleting professional negligence fund.

106. The Court overlooked or misapprehended that the Attorney General had actual knowledge that Defendant's and Buchanan's carriers had provided attorneys to defend the 2000 Trust in Forlando's injunction suit from 2008 until May 2009, including in a 2-day temporary injunction hearing in Beaufort, S.C. in the fall of 2008; participate in extensive discovery; and attend several additional telephone hearings.

107. The Court overlooked or misapprehended that both Buchanan and Pope had experienced a large increase in their premiums as a result of Forlando's frivolous suit; and that the 2000 Trust was seeking to have those legal fees and costs reimbursed out of Forlando's \$285,000 trust share.

108. The Court overlooked or misapprehended that Buchanan and Defendant had found alternate insurance with Cincinnati, but that, upon the filing of the Wingate Suit, Cincinnati had sent notice of cancellation of the insurance of both, and had sued Buchanan and Pope.

109. The Court overlooked that the Attorney General had knowledge that if he could deplete Pope's fund with her carrier, it would be even more difficult for her to try to save the "I Feel Good" Trust.

110. The Court overlooked or misapprehended that, after requiring that Pope's carrier attend the mediation, the Attorney General sought an exemption from attendance

for Tomirae and many of the Levenson clients, and fought Defendant's efforts to have the minors, and Venisha, who was incarcerated, and who were pursuing the Wingate Suit as Plaintiffs without GALs, represented by GALs at the mediation.

111. The Court overlooked or misapprehended that Defendant sent Offers of Compromise to the minors and the Attorney General prior to the mediation, but, instead of seeing them as an opportunity to save the "I Feel Good" Charity, the Attorney General and others, through Wingate, filed the Offers of Compromise and asked that they be stricken.

112. The Court overlooked or misapprehended that the Attorney General claimed that that Defendant was trying to divide the Plaintiffs, which was true: Defendant wanted to be aligned with the half (or half + 1) of James Brown's heirs who wanted to be fairly – but not overly – compensated for Federal Copyright Act Termination Rights cooperation with James Brown's "I Feel Good" Charity.

113. The Court overlooked or misapprehended that by 2012 the Ray Charles litigation over Termination Rights was demonstrating how important it is for an Estate which owns significant copyrights which feed into a charity to maneuver the complex relationship between the Federal Copyright Act Termination Rights provisions; State Probate law; and the need for independent trial counsel protecting the Estate/Charity who have no legal obligation to family, or claimed family.

114. The Court overlooked or misapprehended that, with Judge Manning's consent, only a handful of Plaintiffs attended the mediation, and, instead, Levenson, Bell, and counsel for Tomirae attended with AG McIntosh, AG Jones and AG Jowers.

115. The Court overlooked or misapprehended that Wingate assured Judge Manning that Levenson had the authority to speak for, and bind, about a dozen Plaintiffs,

when actually Daryl Brown had terminated Levenson, as had Daryl's daughters.

116. The Court overlooked or misapprehended that Tomirae and James B. did not attend, and neither did James B's GAL in the Aiken cases. Instead, James B. was represented by Medlin and Bauknight.

117. The Court overlooked or misapprehended that Tomirae issued a public post on the day of the mediation suggesting that Defendant had stolen from the family and was "the last of the rats."

118. The Court overlooked or misapprehended that in 2017 Bauknight would claim under oath that Pope would not settle for \$40 Million, when the truth was that Pope said in October 2012 that if dropping the *Wilson v. Dallas* appeal to try to save the "I Feel Good" Charity before the decision was a condition of being paid, she would not accept payment, no matter what was offered.

119. The Court overlooked or misapprehended that the public charts and records, including those prepared by Defendant in 2012, make clear that AG McIntosh, AG Jones and AG Jowers all had personal knowledge by 2012 of Bauknight's material misstatements, by millions of dollars, to the IRS; the ill-gotten "refund"; and the improper use of the false filings by the Attorney General, Bauknight, and others to commit fraud on the courts and improperly accuse Buchanan and Pope of a federal felony.

120. The Court overlooked or misapprehended that those public October 2012 Charts include: 1. What Levenson Wants; 2. What Adele Wants; 3. What Daryl wants; 4. What Tommie Rae Wants; 5. Bauknight/Legacy Trust Fraud; and 6. What Nexsen Pruet Wants, and each is incorporated herein by reference.

1St *Wilson v. Dallas* Decision; Pope Meeting; & Attorney General's Actual Knowledge of Bauknight's False Claims to IRS; Ill-Gotten "Refund"; & False Statements to Court (March 6, 2013)

121. The Court overlooked or misapprehended that in December 2012 Defendant's daughter, who had two young children, suffered an event requiring a brain tumor to be removed; and Defendant to work on James Brown matters in another town while she recovered.

122. The Court overlooked or misapprehended that almost immediately after the event the Attorney General and other Plaintiffs moved for a scheduling order and trial of this case in the summer of 2013.

123. The Court overlooked or misapprehended that the first *Wilson v. Dallas* decision which was rendered on February 27, 2013, cited almost identical facts to the false Grammy © claim planted by Bell, but the Court did not have full knowledge that Christie's legal counsel had urged the Grammy © sale to proceed, calling the Academy's tactics strongarm and without legal basis; Johnny Cash and Stevie Wonder had sold Grammys ©; both Judge Early and the Court of Appeals had specifically approved the Grammy © sale; the Grammy © was properly withdrawn without penalty to prevent the legal costs of defense of its sale in New York; Bauknight had subsequently valued the Grammy at \$20,000, higher than its original value, on return; but then Bauknight had told the IRS that the Grammy© and thousands of other items stored in four museums had a value of zero, or near zero.

124. The Court overlooked that the Supreme Court, having been told (falsely) that James Brown's total assets were worth about \$6.5 Million and his Estate only \$5 Million, cited what it believed to be Buchanan's and Pope's \$5 Million fee claim for working

18 months on a \$5 Million Estate.

125. The Court overlooked or misapprehended that Buchanan and Pope, seeking only to protect the "I Feel Good" Charity and uphold Brown's estate plan, as was their duty, were surprised to learn that the Supreme Court's decision had been so deeply impacted by false accusations made by the Attorney General, Bauknight as the Attorney General's agent, and Bell, including those fabricated after the McMaster deal was approved by Judge Early on May 26, 2009.

126. The Court overlooked or misapprehended that the Supreme Court, based on misleading statements, apparently also believed that Buchanan agreed with the position of the Attorney General.

127. The Court overlooked or misapprehended that the Supreme Court did admonish the Attorney General to conclude the FOIA suits and the Wingate Suit "in the first instance."

128. The Court overlooked or misapprehended that Pope has never sought any commission other than her approximately \$47,000 unpaid 2007 SA fee; approximately \$1.4 Million for the 18 months between November 20, 2007 and May 26, 2009 in accordance with her Court-approved contract with the Estate/2000 Trust, timely paid or with interest as ordered by Judge Early in 2008; and up to an additional \$1.4 million, in the discretion of the Court, for the entire period she served the James Brown Will and 2000 Trust, from November 20, 2007 until (what became) May 8, 2013.

129. The Court overlooked or misapprehended that, with the *pro bono publico* service of lead appellate counsel; the efficient work of Tressa Hayes, Esq.; and much work by Buchanan and Pope, the legal fees of the *Wilson v. Dallas* appeal would be less than

David Sojourner, Esq., would charge for his first two months as Limited Special Administrator/Trustee ("LSA/LST") to defend the estate plan, but disclaiming any duty to protect the "I Feel Good" Charity's 900 copyrights.

130. The Court overlooked or misapprehended that on March 6, 2013, knowing only of the \$2 Million overstatement of James Brown's Charitable Deduction (taking a \$2.8 Million deduction with only \$.8 Million going to Charity, and \$2 Million going to grandchildren), but not yet knowing about Bauknight's \$3 Million overstatement of Brown's TIAA debt, Pope met with Attorney General Wilson, AG McIntosh and AG Cook.

131. The Court overlooked or misapprehended that Pope explained to Attorney General Wilson, AG McIntosh and AG Cook how Bauknight's intentional devaluation of Brown's assets and overstated deductions, with Bauknight's assertion to the IRS that Tomirae was Brown's spouse, if not corrected, could aid Tomirae in her claim to be Brown's spouse, and – more importantly – if not corrected could reduce the annual required payout for scholarships to needy students from more than \$3 Million to about \$50,000 a year.

132. The Court overlooked or misapprehended that Attorney General Wilson, AG McIntosh and AG Cook all said they were hearing this for the first time, and seemed surprised.

133. The Court overlooked or misapprehended that Attorney General Wilson excused himself early to have lunch with a Nexsen Pruet attorney, but said he would not be talking about the James Brown issue, and he now claims protection for his Nexsen Pruet communications between February 27 and May 8, 2013, under the "Common Interest" doctrine.

134. The Court overlooked or misapprehended that Pope, AG McIntosh and Pope's attorney Adam Silvernail met a second time with AG Cook and AG McIntosh, reviewing the same false representations that had been made by Bauknight to the IRS, and the Court after Bauknight secured the ill-gotten "refund."

135. The Court overlooked or misapprehended that four years later AG Cook testified under oath at his deposition that he never thought Pope was incompetent or greedy, and always thought she expressed genuine concern for protecting Brown's "I Feel Good" Charity, but that the false and vitriolic attacks by the Attorney General and Bauknight as the Attorney General's claimed agent are inconsistent with AG Cook's beliefs.

136. The Court overlooked or misapprehended that Attorney General Wilson called Pope before March 14, 2013, to say he was moving to get out of the Wingate Suit; told the Supreme Court the same, and that he hoped to conclude the FOIA matters soon; then went on to do exactly the opposite.

Tomirae's Son Reveals Details of Devaluation Scheme to Damage Buchanan & Pope in Petition for Rehearing in Supreme Court

137. The Court overlooked that under a claim that they shared a "Common Interest" with Tomirae and her lawyers, James B., Bauknight, Bell and Levenson, between the two *Wilson v. Dallas* decisions, the Attorney General and Bauknight refuse to release communications during this time, but the Petition for Rehearing and Reply of James B. in *Wilson* reveal the continuing scheme to denigrate Buchanan and Defendant, as well as details of what, since March 14, 2013, has been known to be an additional false \$3 Million overstatement to the IRS and Courts of James Brown's deductions by Bauknight.

138. The Court overlooked or misapprehended that in his Petition for Rehearing and Reply James B. issued a vitriolic attack on Buchanan and Pope, again making the

known-false claim that the Attorney General and settling parties did not have the appraisal to value Tomirae's and the settling parties' Termination Rights when they filed their initial brief in December 2010.

139. The Court overlooked or misapprehended that James B.'s Petition and Reply also reveal the details of the claimed "appraisal" of the Music Empire (Schedule F, Estate Tax Return) by PBW. From James B.'s Petition, it became apparent:

- a. Bauknight had claimed \$5 Million of deductions to which James Brown's estate was not entitled in Brown's estate tax proceeding.
- b. \$3 Million of the \$5 Million overstatement was hidden from the IRS within the PBW "appraisal", which valued Brown's TIAA debt at \$19 Million – rather than the correct value of less than \$16 Million.
- c. Bauknight had valued Brown's Right of Publicity at zero, although Michael Jackson's was known to be valued by the IRS at more than \$150 Million, and Whitney Houston's at \$11 Million.
- d. Bauknight had valued all of Brown's thousands of items of Tangible Personal Property ("TPP"), including the household goods valued by Christie's at more than a million; the items sold at the Christie's sale; items in four museums for safekeeping; the Rolls Royce and fleet of vehicles; and 45+ boxes of music items placed by Buchanan and Pope in a music storage facility in Nashville, Tenn., at zero, or near zero, while all other Fiduciaries had valued these items at about \$2 Million.

140. The Court overlooked or misapprehended that, with this knowledge, the Attorney General, Tomirae and Bauknight continued their scheme to defraud the Court to discredit Buchanan and Pope and hold onto control of "I Feel Good" Charity's assets for their own personal benefit.

141. The Court overlooked or misapprehended that that Attorney General's plan did not change when, on May 8, 2013, the Supreme Court voided Bauknight's appointment and confirmed its earlier decision.

**The Attorney General, Bauknight and Wingate Ignore *Wilson v. Dallas*;
Tomirae and Levenson Publicly Announce Intention to Reinstate McMaster Deal
(May 29, 2013)**

142. The Court overlooked or misapprehended that within a day of the *Wilson* decision Tomirae, the Attorney General and Bauknight's lawyers were working to have Bauknight reinstated.

143. The Court overlooked or misapprehended that by May 10, 2013 the Attorney General had secured Bauknight's re-appointment.

144. The Court overlooked or misapprehended that by May 10, 2013 the Attorney General, Bauknight and Tomirae, through Wingate, had told Judge Manning that the deletion by the Supreme Court of Footnote 29 From the final *Wilson* decision meant that the Supreme Court placed no importance on concluding the Wingate Suit or the FOIA matters, and asked Judge Manning stay the Wingate and FOIA suits until Judge Early concluded the James Brown litigation in Aiken County.

145. The Court overlooked or misapprehended that on May 29, 2013 Bauknight served Pope with a Notice of Disallowance with impending bar, asserting Pope was not entitled to any payment; claiming Pope might be subject to disgorgement of her partial SA fee for her service in 2007; and repeating the false claim that Buchanan and Pope had inflated the value of Brown's assets to get a big commission.

146. The Court overlooked or misapprehended that on May 29, 2013 Judge Early held a status conference in Barnwell, and Levenson and Tomirae's lawyer announced in open court their intention to reinstate the McMaster settlement deal, then Levenson, Tomirae and Bauknight urged Judge Early to ban Buchanan and Pope from participation in James Brown cases.

147. The Court overlooked or misapprehended that Attorney General Wilson, with direct knowledge of both Bauknight's IRS fraud and his fraud on the Supreme Court, expressed to Judge Early his satisfaction with Bauknight, and the Attorney General's intention to withdraw as a party and "monitor" the Aiken James Brown cases now that Bauknight had been reappointed.

148. The Court overlooked or misapprehended that while he did follow through on withdrawing from the Aiken Cases, the Attorney General, Bauknight on behalf of the Attorney General, the McMaster Legacy Trust and Tomirae have vigorously pursued the Wingate Suit for the entire period since May 8, 2013.

**At Request of Tomirae, Levenson & Bauknight, Buchanan & Pope
Banned from Hearings (June 13, 2013)**

149. The Court overlooked or misapprehended that on June 13, 2013, without a hearing, Judge Early issued Administrative Orders which excluded Buchanan, Defendant and all former PR/Trustees under Brown's Will and 2000 Trust from participating in Judge Early's James Brown hearings.

150. The Court overlooked or misapprehended that Pope, when not reinstated on May 8, 2013, decided to work *pro bono publico* as a private citizen to try to save James Brown's "I Feel Good" Charity, and did so diligently until June 10, 2013.

151. The Court overlooked or misapprehended that in May 2013, Pope and Buchanan, along with Harley Ruff, Esq., Wm. Jeffrey Smith, W. Steven Johnson, Esq., and James Hardin III, Esq., provided immediate and inexpensive expertise to demonstrate how -- based on the *Wilson* ruling -- the damage Bauknight had caused with his IRS filings could be corrected; the representations about the Copyright Act Termination Rights made by the Attorney General and Bauknight had been incorrect, but could be corrected; and that

there were multiple strategies, as the Ray Charles Foundation was using, to protect the "I Feel Good" Charity's 900 copyright royalties from any substantial dissipation, including dissipation by improper or premature attempts by claimed heirs to exercise Termination Rights elections.

152. The Attorney General had knowledge that Pope, even though she was unable to secure professional negligence coverage because of the Forlando and Wingate Suits, had been engaged by the \$50 Million Graham Foundation to assist with a multi-year self study as it moved into its third generation as a family foundation, and, in addition, had estate planning, Termination Rights and probate litigation expertise.

153. The Court overlooked or misapprehended that the Attorney General, Bauknight, Tomirae, Levenson and Bell, however, did not want *pro bono publico* help to save what should now be South Carolina's largest-ever private foundation dedicated solely to the education of needy students; the lawyers wanted \$10 million; and the Attorney General wanted the benefits to be reaped from personal control over a \$100 Million foundation.

**Forlando Suit Reveals Bell/Bauknight Aligned in Wingate Suit
(August 20, 2013)**

154. The Court overlooked or misapprehended that, after Judge Early excluded Buchanan and Pope from participation in the James Brown Aiken hearings on June 13, 2013, Bauknight, the Attorney General and Tomirae began to reinstate the McMaster settlement deal which dismembered Brown's "I Feel Good" Charity and threatened its copyrights.

155. The Court overlooked or misapprehended that Bauknight was so effective in dismembering the "I Feel Good" Charity a second time that in 2015 Tomirae's lawyer

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suggested to Judge Early that Bauknight should be knighted.

156. The Court overlooked or misapprehended that at the time of his deposition in Case 3:08-cv-00014-WOB (the "Forlando Suit") on August 20, 2013, Bauknight was still concealing his alliance with Bell on the Wingate contract; the PBW \$4.7 Million "appraisal"; and the Dec 2010/January 2011 McMaster Legacy Trust amendment and Assignment which showed Terry had secretly transferred his interest in Brown's Estate to his son Forlando.

157. The Court overlooked or misapprehended that Bauknight's August 20, 2013 deposition made clear that Bauknight and Bell would help each other continue the false attacks on Buchanan and Pope, and that Bauknight even claimed that Forlando had done nothing wrong in his 4-year effort to enjoin the James Brown 2000 Trust from taking any action until felon David Cannon and Albert "Buddy" Dallas were reinstated as James Brown's Trustees.

158. The Court overlooked or misapprehended that at his 2013 deposition in the Forlando Suit, Bauknight concealed Bell's signing of the Wingate Agreement, and Terry Brown's 2011 transfer of his interest in Brown's Estate to Forlando, and, in addition, sought to conceal both the \$4.7 Million PBW appraisal and the Wingate Agreement.

159. The Court overlooked or misapprehended that Bauknight said Buchanan's and Defendant's efforts for the 2000 Trust to recover some of the costs of Forlando's 4-year suit to enjoin the 2000 Trust until felon David Cannon and Albert Dallas were reinstated as a trustees was "frivolous and meritless." Asked about Forlando's suit, he said:

12 Q: Do you believe that Forlando Brown was ever

13 asserting claims against the trust?

14 A: I don't have a view on it.

15 Q: So you don't have a view one way or the other?
16 A: I don't have an opinion.
17 Q: Do you know when Forlando Brown dropped the
18 claims, the affirmative claims contained in the
19 complaint and the amendments of the complaint?
20 A: I believe it was sometime around May of 2012.
21 That's when I wrote to the court dropping the
22 counterclaim on behalf of the trust because I
23 felt it was meritless.

160. The Court overlooked or misapprehended that when questioned about the
Supreme Court's voiding his PR/Trustee appointment in *Wilson Bauknight* said:

Q: I am correct, am I not, that the May 2013
23 second Supreme Court opinion voided your
24 initial appointment under the May 2009
25 settlement order, correct?

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1 A: It had language in there -- I'm not sure quite
2 how to take the language in there. I don't
3 know at what point it would have voided it,
4 because I don't know if they were aware that I
5 was also SAST. And obviously if they -- if I
6 had not been SAST, you couldn't go back and
7 void the appointment and have no PR trustee or
8 no fiduciary for the estate trust. So it was
9 very unclear as to what point it was for. But
10 that said, it made no difference because I was
11 SAST.

12 Q: The opinion did use the word void though? Do
13 you recall that?

14 A: I don't know that it did or not.

15 Q: You don't recall that?

16 A: I haven't reviewed that.

17 Q: Okay. And the opinion you just gave about you
18 can't go back and void an appointment ---

19 A: I didn't say they couldn't. I just said I was
20 unclear as to what they did.

21 Q: Okay. I'm sorry.

22 A: But in the end it made no difference because I
23 was SAST at that same period.

Bauknight, Levenson, Tomirae, Bell Use June 13, 2013 Orders to Continue Fraud on Court and False Claims Against Defendant

161. The Court overlooked or misapprehended that Judge Early's June 13, 2013 Orders issued at the request of Levenson, Bell and Bauknight, by preventing Buchanan and Pope from any participating in any James Brown Aiken case for three years, even as witnesses, gave Bauknight (still the Attorney Generals' agent), Levenson, Bell and Tomirae three years of direct access to Judge Early with no opportunity for Buchanan and Pope to refute the false \$4.7 Million value claim and other false statements being made to continue the damage to them.

162. The Court overlooked or misapprehended that by July 8, 2013 Bauknight had delivered an *ex parte* "ethics" opinion of Nathan Crystal, Esq., to Judge Early which, according to Judge Early, gave him comfort that it was appropriate for Bauknight to defend the estate plan he had been viciously attacking for four years,

163. The Court overlooked or misapprehended that because the Crystal opinion was *ex parte*, and has not been released, it is not known whether Crystal disclosed to Judge Early, or addressed, that Bauknight was continuing to act in the Wingate Suit on behalf of Tomirae, James B. and the Levenson Will/Trust contestants.

164. The Court overlooked or misapprehend that by 2015 the Attorney General, Tomirae and Bauknight had achieved their goal of having Tomirae declared the spouse of James Brown in a summary judgment proceeding in which Buchanan and Pope were not allowed to be witnesses; and from which heirs other than Tomirae and her son who were not represented by Levenson or Bell were excluded.

165. The Court overlooked or misapprehended that on October 12, 2013, Judge

Early held a hearing related to Buchanan's service, all of which was joint with Pope.

166. The Court overlooked or misapprehended that Judge Early, based on personal knowledge, approved Buchanan's retention of his 2007 SA fee, and all amounts paid Buchanan for his service through May 26, 2009, in accordance with Buchanan's and Pope's court-approved "time + costs" contract with the Estate/2000 Trust, and confirmed that under *Wilson* there was no basis for Buchanan to disgorge any of these amounts.

167. The Court overlooked or misapprehended that Judge Early, based on his personal knowledge, praised Buchanan and "double approved" his payments, even leaving open the possibility of Buchanan's receiving addition compensation if the Motion to Void his Wingate Suit settlement with the Attorney General and others was successful.

168. The Court overlooked or misapprehended that Judge Early directed Bauknight's lawyer to prepare an order reflecting his ruling regarding the Buchanan service and approval of payments, but no order was ever delivered or entered.

169. The Court overlooked or misapprehended that in 2014 Judge Early denied Defendant's motion for partial summary judgment for her SA fee and PR/Trustee commission for the same periods, but, based on the Attorney General's and Bauknight's false allegations in the Wingate Suit and Bauknight's false claim about the Grammy ©, partial summary judgment was denied.

170. The Court overlooked or misapprehended that Tomirae and Bauknight have bragged to Judge Early about Bauknight's accomplishments for four years (since 2013), as Bauknight has continued to serve Tomirae and the Attorney General in the Wingate Suit, and have continued the false claims related to the fabricated \$4.7 Million value, the ill-gotten "refund", the false Grammy© story planted by Bell, and the false claim that it was

Buchanan and Pope who had made improper IRS filings – not Bauknight.

171. The Court overlooked or misapprehended that in 2015 Judge Early delivered a Status Report to the Supreme Court which contained various inaccuracies resulting from Bauknight's and Tomirae's false statements; praised the fine service of Bauknight; asserted, despite the public May 29, 2013, announcement by Tomirae and Levenson of their intention to reinstate the McMaster settlement deal, that he was unaware of any settlement discussions; stated (incorrectly) that he believed Pope might be seeking a \$5 Million commission; and stated (incorrectly) that the James Brown heirs proceeding had been properly completed.

172. The Court overlooked or misapprehended that the Supreme Court's Orders issued on June 10, 2015 in response to Judge Early's Status Report are being used by Tomirae, Bauknight and the Attorney General to continue their damage the reputations and careers of Buchanan and Defendant.

The Wingate Suit is Illegal and Violates the Rules of Professional Conduct

173. The Court overlooked or misapprehended that Governor Henry McMaster has now confirmed under oath the he did not authorize the Wingate Firm to name the Attorney General as a Plaintiff in this action, and did not authorize Bauknight to be a Plaintiff "on behalf of" the Attorney General.

174. The Court overlooked or misapprehended that the Wingate Agreement violates both State law as to contracts with the State and the Rules of Professional responsibility.

175. The Court overlooked or misapprehended that the jurisdiction to bring an illegal suit in the name of the State/Attorney General can, and should be raised, and

corrected by the Court now, denying the Attorney General, Bauknight as his agent, and the McMaster Legacy Trust any relief under their complaint.

176. The Court overlooked or misapprehended that Attorney General Wilson's approving the illegal Wingate Suit did not make it legal.

The Attorney General's Use of the Cannon Criminal Matter to Damage Buchanan and Pope, With the False Felony Claim, Constitute Violations of Section 17-1-20

177. The Court overlooked that the Attorney General, Bauknight as the Attorney General's agent, and Wingate have used the Cannon criminal proceeding and allegations that Buchanan and Defendant committed a federal felony improperly for the purpose of damaging Buchanan and Pope in the Wingate Suit and achieving a civil benefit for themselves in violation of Section 17-1-20 of the South Carolina Code and *In the Matter of Jolly*, 239 S.E.2d 490, 269 S.C. 668 (1977).

178. The Court overlooked or misapprehended that David Cannon contacted AG Jones shortly after August 10, 2007, just after Buchanan and Pope had discovered some of the \$17 Million Cannon had taken from funds James Brown left for needy students in his "I Feel Good" Trust.

179. The Court overlooked or misapprehended that within months lawyers who had represented Cannon and Albert Dallas began making political contributions to former Attorney General McMaster, and Attorney General McMaster spoke on WIS-TV of the vast value of James Brown's name, image and assets. [Depos. Jones, Jowers, Ex. WIS-TV Interview, 2/2008.]

180. The Court overlooked or misapprehend that on November 21, 2007, the day after they were appointed as PR/Trustees, AG Jones asked Buchanan and Pope to resign and tried to persuade Judge Early to allow the Attorney General to control the civil suit

against Cannon by selecting counsel and using the Attorney General's Litigation Retention Agreement which would give the Attorney General's Office 10% of Special Counsel's fee.

181. The Court overlooked or misapprehended that in November 2007 the Attorney General ordered a SLED investigation; AG Jones was designated as the contact; and the Attorney General's office -- not the local solicitor -- has handled the Cannon criminal matter since.

182. The Court overlooked or misapprehended that in 2010 Cannon was indicted for about \$12 Million of the \$17 Million he took from funds Brown gave the "I Feel Good" Charity between 1999 and 2007, and for a 2008 forgery to cover up some of the taking, but the Attorney General never reported the forgery in the civil proceeding.

183. The Court overlooked or misapprehended that the Attorney General sued Buchanan and Defendant in the Wingate Suit, and by October 2010 had named David Cannon as one of the Attorney General's witnesses against Buchanan and Pope, even though he had been indicted.

184. The Court overlooked or misapprehended that at the same time the Attorney General and Bauknight (claiming to be the Attorney General's agent) had in hand a fabricated \$4.7 Million "appraisal" which they would present to the IRS, and later to the Courts, as the basis for claiming Buchanan and Pope had committed a federal felony by (according to the false claim) valuing Brown's music empire at \$84 Million, instead of \$4.7 Million, to try to obtain a \$5 Million commission on a \$5 Million estate.

185. The Court overlooked that for the entire time since, Cannon has continued to be designated as the Attorney General's witness for the benefit of the Attorney General, Bauknight, and those the Attorney General has chosen to benefit.

186. The Court overlooked that Bauknight, in addition to claiming to be the Attorney General's agent in the Wingate Suit, is a part-time law enforcement officer.

187. The Court overlooked or misapprehended that the Attorney General engaged Ellison Thomas, CPA in the Cannon criminal investigation, and also engaged him to testify in this case about alleged errors of Buchanan and Pope (but failed to tell him about the \$4.7 Million devaluation).

188. The Court overlooked or misapprehended that Thomas was also engaged in other James Brown matters to assist Bauknight; found only \$7 Million of the \$17 Million Cannon took; and refuses to disclose his findings in the matter of Albert Dallas, Cannon's co-trustee.

189. The Court overlooked that, especially in light of the false felony claim which has been lodged against Buchanan and Pope for six years, the Cannon criminal and civil matters have become improperly intertwined with this case, and the Cannon criminal proceeding is being used to advance the Attorney General's and Bauknight's personal interest.

190. The Court overlooked or misapprehended that one of the first acts of Attorney General Wilson after taking office in January 2011 was to file a motion for sanctions against Buchanan and Pope for filing a brief which supported recovery of about \$1.2 Million in court-ordered costs from Cannon in relation to the 2007 action for his removal. [Sanctions were not granted.]

191. The Court overlooked or misapprehended that AG Jones met with the prosecutors in October 2011, the day Cannon was allowed to enter an *Alford* plea to a small number of the takings; that following the meeting no restitution or jail sentence was

recommended; and that the Court was not told about Pope's Victim's Statement in which she asked the Attorney General's office to notify the Court about the damage to needy student beneficiaries of James Brown's "I Feel Good" Trust from the millions of dollars Cannon had taken.

192. The Court overlooked or misapprehended that Section 17-1-20 provides that no prosecuting officer shall receive any fee or reward from or in behalf of a prosecutor for services in any prosecution or business to which it is his official business to attend, nor be concerned as counsel or attorney for either party in a civil action depending upon the same facts, and that Cannon is being improperly used in this suit to provide a benefit to the Attorney General; Bauknight acting "on behalf of" the Attorney General; and Tomirae and those the Attorney General elects to favor.

193. The Court overlooked or misapprehended that the Attorney General's use of Cannon to support false felony claims against Buchanan and Pope while seeking neither restitution nor jail time for his taking \$17 Million, based on the same facts is unfair and prejudicial to the administration of justice.

The Attorney General's and Bauknight's FOIA Abuse to Damage Buchanan and Pope

194. The Court overlooked or misapprehended that, while seeking to prevent hearings in the Wingate Case since May 10, 2013, the Attorney General and Bauknight have actively worked in three FOIA cases to have James Brown FOIA matters transferred from other counties; consolidated with discovery in the Wingate Suit; and then buried in discovery and not heard.

195. The Court overlooked or misapprehended that a journalist was successful in 2015 in obtaining some of the public documents the Attorney General, Bauknight and

Wingate have concealed, but the Attorney General told the Honorable Eugene C. Griffith, Jr., that the Attorney General did not have a copy of the PBW \$4.7 Million "appraisal" which both Bauknight and the Attorney General have used to make false representations to the Supreme Court about the ill-gotten "refund."

196. The Court overlooked or misapprehended that Judge Early's Orders dismissing Defendant's FOIA suit seeking public documents from the Attorney General and the McMaster Legacy Trust, and the records now pending in the South Carolina Court of Appeals, which are incorporated herein by reference, show that it would be manifestly unjust for the Attorney General to transfer FOIA cases to Richland County; subordinate FOIA requests to discovery in this case; and then be dropped as a party so that there will be no relief under FOIA, making the Wingate Suit a James Brown FOIA graveyard.

**The Attorney General Has Aided Tomirae in Siphoning Off Royalties
From James Brown's "I Feel Good" Charity**

197. The Court overlooked or misapprehend that the records pending in the South Carolina Court of Appeals related to both the Tomirae spousal claim and the Will/Trust contests, which are incorporated herein by reference, show that the Attorney General, through Bauknight, has aided Tomirae in siphoning off \$1 Million from James Brown's "I Feel Good" Charity in 2015 in order to damage Defendant in this case.

198. The Court overlooked or misapprehended that when David Sojourner was named SA/ST in October 2013 Defendant promptly sent Sojourner a copy of *Private Foundations, Copyright Heirs...* and offered, *pro bono publico* whatever assistance she could give to Sojourner or his counsel to help them understand the complexities and interrelationship between the Federal Copyright Act, State Court spousal proceedings and Federal Copyright Act Termination Rights.

199. The Court overlooked or misapprehended that Sojourner never agreed to speak to Pope, but charged \$1.4 Million in SA/ST and legal fees between October 2013 and April 2015; took a single deposition (the supported the estate plan); and claimed he had no duty or responsibility to protect Brown's 900 copyrights.

200. The Court overlooked or misapprehended that none of the Attorney General, Bauknight or Sojourner, during the two-year window they had to set aside the defective 2013 Tomirae Terminations, took a single step to challenge the Tomirae terminations or protect the "I Feel Good" Charity's copyrights, although they were warned by copyright litigation expert Marc Toberoff, representing some claimed children, that the Tomirae Terminations were improper and should be challenged.

201. The Court overlooked or misapprehended that it was reckless and malicious for Bauknight to be so concerned with preventing Buchanan and Pope from confirming that the McMaster settlement was terrible that he failed to engage someone to protect Brown's "I Feel Good" Charity's 900 copyrights while those seeking to siphon off royalties were represented by Toberoff.

202. The Court overlooked or misapprehended that the result was an entirely unnecessary payment to Tomirae in 2015 of about \$1 Million, related to 3 of Brown's 900 songs; and another approximately \$70,000 payment to James B., as well as payments to others, for the same transaction.

203. The Court overlooked or misapprehended that in his deposition in January 2017 in Pope's claim case, Bauknight claimed (incorrectly) that he did not even know about the Tomirae terminations (in the public record for 2 years) until the money changed hands in 2015, saying:

**Q. When Tommie Rae Hynie filed termination elections
15 in August of 2013, did you have a duty as the
16 person charged with protecting the James Brown "I
17 Feel Good" Trust to challenge those termination
18 elections?**

19 A. Ms. Pope, that shows how little you know about
20 termination rights. Maybe you're just simply
21 unaware of the fact that nobody had to tell me
22 that they were even filing those termination
23 rights notices, Ms. Pope. I did not even know of
24 that issue until cash had changed hands. But
25 because of you, I've been totally out of the loop.
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1 I had no idea and legally no one had an obligation
2 to tell me that those termination rights had been
3 filed. You've got a look on your face right now
4 of total disbelief and that just leads me to
5 totally believe you have no clue how these
6 termination rights work.

**7 Q. Mr. Bauknight, have you not previously testified
8 that Peter Afterman came to you and asked you if
9 he could help Tommie Rae Hynie file termination
10 elections?**

11 A. I'm not aware of having testified to that at all.

12 Q. Did that happen?

13 A. I don't know.

**14 Q. You don't recall Peter Afterman coming to you and
15 asking you if he could help Ms. Hynie with
16 termination elections?**

17 A. I do not recall that.

204. The Court overlooked or misapprehended that after paying what he describes as "millions and millions" of dollars to his lawyers to try to silence Defendant, and at least \$1.4 Million for Sojourner, by 2017 Bauknight, Sojourner, Tomirae and the Levenson clients had hatched new deals rewarding Tomirae and others for 9 years of frivolous litigation against James Brown' noble estate plan, and assuring that Bauknight, Sojourner and theirs lawyers could keep the millions they have reaped from attacking

Buchanan and Pope while not protecting the "I Feel Good" Charity and seeking to reinstate the McMaster settlement.

205. The Court overlooked or misapprehended that it is asked to take judicial notice of the entire record on appeal in both the Tomirae spousal proceeding and the Will/Trust challenges appeal, which confirm that Bauknight's and the Attorney General's successful efforts to exclude Buchanan and Pope, as interested citizens with expertise about James Brown, litigation, and Termination Rights issues, have severely damaged Buchanan and Pope, and also Brown's "I Feel Good" Charity.

**The Attorney General Condones Bauknight's Continued
False Claims about the Tax "Refund" and False \$4.7 Million Value Claim**

206. The Court overlooked or misapprehended that the Attorney General and Bauknight, as well as Levenson and Bell, have had actual knowledge since at least 2008 that both under the Brown's Will and the McMaster Settlement deal, estate tax would be due because the \$2 Million payable to the grandchildren's education Trust (estate-tax free) used up the full \$2 Million exemption available to James Brown's estate on the Estate Tax Return.

207. The Court overlooked or misapprehended that at the McMaster settlement hearings both Harley Ruff and Pope testified under oath that the McMaster deal would cause numerous estate tax, and other tax problems.

208. The Court overlooked or misapprehended that Ruff's uncontroverted testimony given on April 6, 2009 before Judge Early shows:

8 Q REFERRING TO THAT ESTATE TAX RETURN PORTION OF WHICH
9 IS IN FRONT OF YOU, CAN YOU EXPLAIN THE CALCULATIONS FOR
10 THE CHARITABLE DEDUCTION THAT ARE CLAIMED BY THE ESTATE OF
11 JAMES BROWN?

12 A YES. THIS ESTATE TAX DEDUCTION FOLLOWS THE TERMS OF

0900

13 THE WILL AND THE 2000 IRREVOCABLE TRUST WHICH STATE THAT
14 AN AMOUNT EQUAL TO THE GENERATION-SKIPPING TRANSFER
15 EXEMPTION AS I RECALL \$2 MILLION HERE IS TO PASS TO A
16 SPECIAL EDUCATIONAL TRUST, THE VARIOUS PERSONAL EFFECTS
17 WERE TO BE TRANSFERRED TO FAMILY MEMBERS, AND EVERYTHING
18 ELSE WAS TO PASS TO A WHOLLY-CHARITABLE TRUST, AND,
19 THEREFORE -- THEREFORE, THE DEDUCTION LISTED IN SCHEDULE O
20 OF THE ESTATE TAX RETURN IS THE LION'S SHARE, OVER
21 95 PERCENT, OF THE VALUE OF THE ESTATE IS REPORTED.

32

3 Q WHAT DOES THE TRUST CONSIST OF? IS IT MORE THAN ONE
4 TRUST?

5 A IT'S ONE IRREVOCABLE TRUST DOCUMENT, BUT I BELIEVE IT
6 SPLITS INTO TWO SUB-TRUSTS AT THE TIME OF HIS DEATH.

7 Q ALL RIGHT. AND DO YOU -- CAN YOU TELL THE COURT HOW
8 -- WHAT THE TWO TRUSTS ARE?

9 A THE ONE TRUST IS THE -- WHAT I AM CALLING THE
10 EDUCATIONAL TRUST WHICH IS A TRUST THAT WAS CREATED FOR
11 THE BENEFIT OF CERTAIN DECENDANTS TO PAY THEIR EDUCATIONAL
12 COSTS AND IT WAS CAPPED AT THE AMOUNT EQUAL TO WHAT WAS
13 THEN THE GENERATION-SKIPPING TRANSFER TAX EXEMPTION WHICH
14 WAS THEN \$2 MILLION. THE "I FEEL GOOD TRUST" IS A
15 WHOLLY-CHARITABLE TRUST THAT WAS TO RECEIVE THE BALANCE.

...
23 MR. BAILEY: I MEANT MR. BUCHANAN AND MRS. POPE, YOUR
24 HONOR.

25 THE WITNESS: MR. BROWN'S TRUST DID ALLOW FOR -- HE
1 ALLOWED IN THE ORIGINAL TRUST FOR THE FUTURE AMENDMENT
2 INCLUDING AN AMENDMENT AFTER HIS DEATH IF SO NEEDED TO
3 QUALIFY FOR THE CHARITABLE DEDUCTION.

4 Q AND WOULD THAT BE CUSTOMARY FOR CHARITABLE TRUSTS?

5 A YES.

...
10 Q NOW, IF A SETTLEMENT IS TO BE REACHED IN THE CASE
11 WHAT WOULD THE PARTIES NEED TO DO TO PRESERVE THE
12 CHARITABLE DEDUCTION?

13 A WELL, THEY WOULD NEED TO ENSURE THAT THE PIECE OF THE
14 ESTATE THAT ULTIMATELY WILL PASS TO CHARITY WILL QUALIFY
15 FOR A CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055. I
16 AM HIGHLY CONCERNED AND CONVINCED, IN FACT, THAT THE
17 SETTLEMENT AS PRESENTLY SET UP DOES NOT SO QUALIFY FOR ANY
18 CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055.

19 Q AND CAN YOU --

20 THE COURT: WHY'S THAT? HOLD ON. WHY IS THAT?

21 THE WITNESS: BECAUSE IT'S CODE SECTION --

0901

22 THE COURT: LET ME MAKE SURE I UNDERSTAND YOUR
23 OPINION. AS TO THE SETTLEMENT AGREEMENT THAT'S BEING
24 PROPOSED TO THE COURT YOU ARE OF THE OPINION THAT THE
25 PORTION GOING FOR THE NEEDY CHILDREN, I.E., THAT TRUST,

35

1 WOULD NOT QUALIFY?

2 THE WITNESS: YES, SIR. I AM OF THAT OPINION.

16 THE COURT: WHAT IS THE NAME OF THAT CASE?

17 THE WITNESS: GALLOWAY; G-A-L-L-O-W-A-Y. IT IS A
18 THIRD CIRCUIT CASE FROM JUNE OF 2007. I DO HAVE A COPY OF
19 IT HERE WHERE THE FACTS ARE VERY CLOSE IF NOT ON POINT
20 WITH THE FACTS IN PLACE HERE. THE THIRD CIRCUIT RULED
21 THAT UNDER THOSE FACTS THAT THE CHARITABLE DEDUCTION WAS
22 DISALLOWED UNDER 2055(E)(2) COMPLETELY.

36

25 THE COURT: LET ME ASK IT LIKE THIS. UNDER THE

37

1 SETTLEMENT AGREEMENT THE PORTION GOING TO, FOR LACK OF
2 BETTER TERM, THE AG TO BE ADMINISTERED UNDER THE TRUST FOR
3 THE NEEDY CHILDREN YOU ARE OF THE OPINION THAT IT DOES NOT
4 QUALIFY FOR THE CHARITABLE DEDUCTION?

5 THE WITNESS: YES, YOUR HONOR.

6 THE COURT: AND, OBVIOUSLY, THAT WOULD CREATE
7 ADDITIONAL TAXES TO THE ESTATE?

8 THE WITNESS: YES, YOUR HONOR, TREMENDOUS ADDITIONAL
9 TAXES.

10 Q ARE THERE ANY OTHER PROBLEMS WITH THE FORM OF THE
11 LEGACY TRUST OR THE RIGHT OF FIRST REFUSAL THAT IT
12 CONTAINS OR THAT IS CONTAINED WITH THE DOCUMENTS?

13 A THE RIGHT OF FIRST REFUSAL IN MY VIEW IF EXERCISED
14 UPON WOULD CONSTITUTE SELF-DEALING UNDER INTERNAL REVENUE
15 CODE SECTION 4941. ..

38

1 I HAVE GRAVE CONCERNS ABOUT THE ABILITY OF THE CHARITABLE
2 TRUST TO QUALIFY FOR EXEMPT STATUS IN THE FIRST PLACE.
3 EVEN IF IT WERE TO SO QUALIFY, AN ACT OF SELF-DEALING
4 WOULD SUBJECT EITHER THE CHARITABLE TRUST OR THE JAMES
5 BROWN LEGACY TRUST TO SELF-DEALING TAXES UNDER CODE
6 SECTION 4941 AND OR 4947.

... And as to the "stipulation" that Tomirae was Brown's spouse]

5 THE COURT: WELL, IF IT'S NOT BINDING ON THE IRS,
6 WHAT DOES THE IRS LOOK TO TO DETERMINE WHETHER OR NOT SHE
7 IS OR THERE IS AN ISSUE AS TO WHETHER OR NOT SHE'S THE

0902

8 WIFE?

9 THE WITNESS: THERE ARE FOUR FACTORS THAT HAVE TO
10 BE -- FOUR HURDLES, IF YOU WILL, THAT HAVE TO BE OVERCOME
11 TO OBTAIN THE MARITAL DEDUCTION UNDER CIRCUMSTANCES LIKE
12 THIS... FIRST, THERE HAS TO BE A CONTROVERSY.

13 THE COURT: HOLD ON. A CONTROVERSY?

14 THE WITNESS: YES, SIR.

15 THE COURT: WHAT ELSE?

16 THE WITNESS: SECOND, IN THE CASE OF A SETTLEMENT,
17 THE SETTLEMENT HAS TO BE IN GOOD FAITH.

18 THE COURT: GOOD FAITH SETTLEMENT.

24 Q HAVE YOU SEEN ANY DOCUMENTS OR HAS ANYONE PRESENTED
25 YOU ANY DOCUMENTS THAT WOULD LEAD YOU TO BELIEVE THAT
(HARLEY RUFF-DIRECT BY BAILEY)

41

1 THESE TAX QUESTIONS HAVE BEEN PRESENTED TO THE IRS FOR --
2 ON INQUIRY AS TO WHAT THE IRS'S POSITION MIGHT BE?

3 A NO, SIR.

4 Q IS THERE A WAY TO DO THAT?

5 A YES. ONE COULD REQUEST WHAT'S CALLED A PRIVATE
6 LETTER RULING.

13 Q WOULD YOU RECOMMEND A PRIVATE LETTER RULING ON ANY OF
14 THE ISSUES IN THIS CASE?

15 A ABSOLUTELY AND IN ALL OF THEM. BOTH OF THEM, I
16 SHOULD SAY.

...

21 Q MR. RUFF, WHEN YOU LOOKED AT THE ESTATE TAX RETURN
22 YOU ASSUMED THE VALUATION WAS ACCURATE; IS THAT CORRECT?
23 A I DID AND I DIDN'T DEEM THE VALUATION IMPORTANT FOR
24 PURPOSES OF MY ANALYSIS.

209. The Court overlooked or misapprehended that, as shown in the Ruff Affidavit filed herewith, the South Carolina Supreme Court's decision in *Wilson v. Dallas*, by restoring James Brown's plan to leave the bulk of his assets to The James Brown "I Feel Good" Charity, alleviated the excise tax issues caused by the McMaster settlement deal, and much of the estate tax problem, but it did not remove the multiple problems caused by the \$4.7 Million value claim and incorrect reduction of the Charitable Deduction from about \$83 Million to \$2.8 Million (actually \$.8 Million), which reduces the required annual scholarship payout for needy students from more than \$3 Million a year to as little as

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\$50,000.

210. The Court overlooked or misapprehended that the Attorney General, with knowledge of the damage to the "I Feel Good" Trust of Bauknight's false IRS, Probate Court and Supreme Court filings, has refused to direct Bauknight to correct them.

The Attorney General's Continuing Damage to Defendant by Endorsing Bauknight's \$3+ Million Overstatement of Brown's TIAA Debt in IRS and Court Filings

211. The Court overlooked or misapprehended that the material overstatement of James Brown's debt to the New York Teachers (TIAA) -- claiming the approximately \$15 Million TIAA Debt was \$19 Million -- was central to the scheme of Bauknight, the Attorney General and Tomirae to discredit Buchanan and Pope by devaluing James Brown's assets to make Buchanan and Pope appear incompetent and greedy.

212. The Court overlooked that the improper \$3+ Million overstatement of the TIAA debt was hidden by Bauknight within the PBW "appraisal" so that it could not be detected by the IRS or Court.

213. The Court overlooked or misapprehended that the hidden \$3+ Million unwarranted deduction was used to obtain the ill-gotten "refund", which, in turn, was used by the Attorney General and Bauknight in Supreme Court filings which claimed (incorrectly) the McMaster settlement deal resulted in no estate tax on Brown's estate.

214. The Court overlooked or misapprehended that neither the IRS nor the Supreme Court could have detected the false \$3+ Million TIAA overstatement until it was discussed by James B. in his Petition for Rehearing and Reply filed in March 2013, because it was imbedded within the PBW appraisal.

215. The Court overlooked or misapprehended that if the PBW appraisal were not being concealed, the Court might be able to tell whether PBW knew the approximately \$15

Million TIAA debt was being overstated to \$19 Million, or whether the false \$19 Million number was provided to PBW by Bauknight.

216. The Court overlooked or misapprehended that Bauknight claims to have no memory of this issue, or of the \$2 Million overstatement of the charitable deduction, even though he is a CPA; the Attorney General and Bauknight continue to conceal the PBW appraisal in discovery and FOIA; the Attorney General and Court continue to praise Bauknight, including for his successful IRS "audit"; and the Attorney General asserts nobody in his office even reviewed the appraisal, which makes up \$3+ Million of Bauknight's \$5 Million overstatement of Brown's debts to the IRS on what Bauknight and the Attorney General claim is a \$6.5 Million gross estate.

217. The Court overlooked or misapprehended that the Attorney General and Bauknight as the claimed agent for the Attorney General have unclean hands related to the false felony claim against Buchanan and Pope in this matter, which is grounded in Bauknight's overstatements of Brown's deductions.

James Brown's Right of Publicity Was Improperly Valued at Zero

218. The Court overlooked or misapprehended that the Attorney General has had knowledge (as defined in the S. C. Trust Code) since 2011, when he began to make the claim that Buchanan and Pope had overstated Brown's assets by \$79 Million to get a \$5 Million fee, that a value of zero for James Brown's Right of Publicity was improper.

219. The Court overlooked or misapprehended that the Attorney General participated in or condoned Bauknight's scheme to reject the 2009 Corbis GreenLight 2-year Publicity Rights contract which Buchanan and Pope had secured, and which was projected to bring in \$1 - \$2 Million per year – in order to devalue Brown's Right of

Publicity and discredit Buchanan and Defendant.

James Brown's Tangible Personal Property Was Improperly Valued at Zero or Near Zero

220. The Court overlooked or misapprehended that the Attorney General, continues to claim, with Bauknight, that James Brown's tangible personal property has a value near zero when both have actual knowledge that the Christie's sale, which the Attorney General approved, generated hundreds of thousands of dollars for only about 350 items; thousands of items were placed by Buchanan and Pope in museums for safekeeping; and more than 45 boxes of music items were packaged and shipped by Buchanan and Pope to a sound storage facility in Nashville.

221. The Court overlooked or misapprehended that the Attorney General has taken no action to require that these material misstatements by Bauknight to the IRS and Courts be corrected.

222. The Court overlooked or misapprehended that the refusal of the Attorney General to require Bauknight to correct material misstatements to the IRS and Courts about the values and taxes the McMaster settlement would have generated, suggests that the Attorney General supports the Levenson/ Tomirae plan announced in May 2013 to reinstate the McMaster settlement deal, and justify it – again – with false claims.

Rule 21 Provides No Basis for the AG to be Removed from this Action

223. The Court overlooked or misapprehended that Rule 21, SCRCP, does not allow for the dismissal of counterclaims against a party who has actively participated in the litigation for more than seven (7) years. Rule 21 provides that “[p]arties may be dropped or added by order of the court on motion of any party . . . on such terms as are just.”

224. The Court overlooked or misapprehended that it would be manifestly unjust to allow the AG, whose continuing participation in this matter since 2010 has both caused and increased the irreparable damage done to Pope and to Buchanan by this illegal and meritless lawsuit, to now be excused.

225. The Court overlooked or misapprehended that, in addition to participation as a Plaintiff in this case, the AG has successfully had one FOIA case against him moved from another county and consolidated with this case. He has tried to have two other FOIA cases transferred to Richland County and consolidated with this case. He asserts these FOIA cases are subordinate to discovery in this case, and this Court has in fact dismissed two FOIA cases on that basis.

226. The Court overlooked or misapprehended that Rule 21 is entitled "Misjoinder and Non-joinder of Parties." This rule operates where the wrong entity or person is named in a lawsuit. Defendant has been able to find no reported case in which a *plaintiff* has alleged that he should be "dropped" as the result of misjoinder.

227. The Court overlooked or misapprehended that the AG has participated extensively in this case since its May 2010 commencement.

228. The Court overlooked or misapprehended that, as stated by the Court in *Ex Parte Condon*, 583 S.E.2d 430, 354 S.C. 634 (2003), "this Court has never held that the Attorney General's authority . . . [to protect the public interest] is unlimited or somehow uniquely exempts him from acting in accordance with the Rules of Civil Procedure" [citing *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115 (1978)].

229. The Court overlooked or misapprehended that allowing the AG to be "dropped" as a party would deprive Defendant/CC Plaintiff of the substantial right to

pursue her long-pending counterclaims against the AG. It could also impair her counterclaims against Bauknight, who has acted as the Attorney General's agent for these seven years, and is serving at the pleasure of the Attorney General as Trustee of Counterclaim Defendant James Brown Legacy Trust.¹

230. The Court overlooked or misapprehended that our Supreme Court has held that by removing a defendant as a party, the lower Court had deprived the plaintiff therein of "its substantial right to name its defendant." *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012). It would thus be inappropriate to force the discontinuation of Defendant/Counterclaim Plaintiff's counterclaims against the Attorney General by granting his Rule 21 motion.

231. The Court overlooked or misapprehended that Rule 21 is a procedural rule, not one of substantial law. It cannot be applied to allow the State/Attorney General to end his claims against Defendant/Counterclaim Plaintiff. In the event the Attorney General, after appearing properly as counsel, wishes to dismiss his claims against Pope, he may seek a voluntary dismissal under Rule 41(a)(2). This rule allows a plaintiff to voluntarily dismiss a claim, but allows the Court to impose appropriate conditions (such as assessment of attorneys' fees, costs or other relief to the defendant). *Ralston Purina Co. v. Odell*, 248 S.C. 37, 148 S.E.2d 736 (1966). Rule 41(a)(2), like Rule 21, could not be used to obtain a dismissal of the counterclaims against the Attorney General, Bauknight as his agent, or the Attorney General's McMaster Legacy Trust.

¹ The Legacy Trust was created by AG Henry McMaster and others in 2009. In January 2011 AG Wilson succeeded to McMaster's position, including 75% control with Tomirae, and the right to remove and replace Bauknight at will.

The Attorney General is not Entitled to any Type of Immunity in this Action.

232. The Court overlooked or misapprehended that the Attorney General is not entitled to immunity from Pope's counterclaims herein.

233. The Court overlooked or misapprehended that any immunity which may have applied to claims against the Attorney General was waived by his bringing this civil lawsuit against two private South Carolina citizens; by his doing so as a co-Plaintiff with more than a dozen private resident and non-resident individuals and entities; by his use of a private attorney with those non-residents; and/or by his failure, through his selected private attorney, to assert any immunity defense by motion or answer for more than six (6) years after the Attorney General and others commenced this action.

234. The Court overlooked or misapprehended that the Attorney General cannot be entitled to prosecutorial immunity in this civil action, especially where he has denied (incorrectly) for the pendency of this case that he accused Pope of committing a crime.

235. The Court overlooked or misapprehended that both the Complaint and the Attorney General's fee agreement with the Wingate firm make clear that this case was not brought to enforce a charity, but rather to seek money damages (and a portion of the legal fees) for the Attorney General and funds for private parties from two private South Carolina citizens who had already been replaced as Trustees of the James Brown "I Feel Good" Charity at the time this lawsuit was commenced.

236. The Court overlooked or misapprehended that the Attorney General's fee agreement with the Wingate firm provides for the AG to receive 10% of any contingency fee payable on a recovery herein.

237.

The Attorney General's Expert In This Case Has Confirmed Buchanan and Pope's \$84 Million was Correct and Conservative and Bauknight's \$4.7 Million Wrong

238. The Court overlooked or misapprehended that the Attorney General, Bauknight and Tomirae, in defiance of the *Wilson* mandate, have not only continued to vigorously pursue the Wingate Suit to retake for the McMaster Legacy Trust the assets of Brown's "I Feel Good" Charity, but moved to consolidate discovery in this suit with the Defendant's 2013 claims case so that James Brown's "I Feel Good" Charity will pay for Tomirae's and the Attorney General's experts in this case.

239. The Court overlooked or misapprehended that, when the motion to consolidate was denied, to further damage Defendant, the Attorney General and Bauknight interrupted every relevant deposition in Defendant's commission suit; named the same experts in the two suits; then allowed James Brown's charity to pay for experts in both cases.

240. The Court overlooked or misapprehended that the Attorney General, Tomirae and Bauknight have not told their own experts about the \$4.7 Million value claim and the ill-gotten "refund," but Bauknight has nevertheless tried to use his "successful" IRS proceeding, the ill-gotten "refund" and *Wilson* to justify not paying Defendant for work, even as SA in 2007.

241. The Court overlooked or misapprehended that the Attorney General's own Termination Rights experts, deposed in New York, made clear that Buchanan's and Pope's \$84 Million value for the Music Empire on Schedule F of the Estate Tax Return (\$99 Million less \$15 Million TIAA Debt) was correct and conservative, and that Buchanan's \$4.7 Million (\$23.5 Million less TIAA debt inflated to \$19 Million) was outrageous.

242. The Court overlooked or misapprehended that Miller made clear that

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Brown's 900 copyrights alone (without the Right of Publicity and other assets included in the \$84 Million) had a value of \$45 Million to \$60 Million when he died:

Q. Right, so but buy low is still essential to the concept, right?

A. [Miller] When possible.

Q. Right.

A. But, in my experience, if you want to buy this type of high quality content, you are often, more so than not, a price taker, not a price maker in the market.

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. Solid gold.

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And later:

Q. And there is nothing second [sic.] secret about your opinion that James Brown's is a solid gold catalog?

A. No.

I think anybody would agree.

Q. Okay.

A. Who is familiar with the work.

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No.

Q. Nor would it have been when he died?

[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5. My firm originated in 2006 and we were the only ones who remained, everybody else was later consolidated. But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

The Attorney General's Condoning of the False Grammy® Claim Was Improper

243. The Court overlooked or misapprehended that when the Attorney General and Bauknight committed to bring the Wingate Suit (secretly) with Bell, both had actual knowledge that Bell had filed at least five false grievances against Levenson in Georgia and

South Carolina, including making the false claim that Levenson forged his fee agreement with Terry Brown's son; Bell had filed false affidavits in federal court; Bell had participated in about ten James Brown cases without proper *pro hac vice* status; and, generally, Bell was closely associate with David Cannon, then under indictment, and Cannon's co-trustee Albert Dallas.

244. The Court overlooked that both AG Jones and Bell had dealings in January 2011 with the Atlanta law firm that posted the false Grammy © claim about Robert Potter, Esq., and knew - at least when Defendant learned *after Wilson* - that Bell had planted the false Grammy© claim, with knowledge of its falsity.

245. The Court overlooked that the Attorney General and all Wingate Suit Plaintiffs have actual knowledge that the Attorney General himself had approved the Christie's sale, including the specifically-listed Grammy © in the South Carolina Court of Appeals when Dallas tried to stop the sale in 2008; that Levenson was at the sale and present when the Grammy © was properly withdrawn, without penalty; and that that Christie's counsel had urged Buchanan and Pope to leave it in the sale, calling the Academy's tactics strongarm, but Buchanan and Pope made the proper business decision for Brown's Estate and 2000 Trust not to spend legal fees to defend the sale of this item.

Buchanan and Pope Did Not Engage In the Extreme Discord

246. The Court overlooked or misapprehended that Buchanan and Pope were always respectful with the Court; honored Court orders, including the 2008 unconstitutional Hynie gag orders; and that Pope worked *pro bono public* as an interested private citizen for two years after *Wilson* to try to help save Brown's "I Feel Good" Charity from a second dismembering - not hinder, as Bauknight, Sojourner and

the Attorney General have claimed.

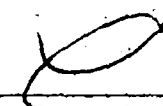
247. The Court overlooked or misapprehended that Pope's good faith is confirmed by the sworn 2017 deposition testimony of Solicitor General Robert Cook, even though the Attorney General's actions have been inconsistent with Cook's testimony.

Conclusion

For the reasons set forth above, Pope asks that this Court alter, amend, vacate and/or reconsider its May 31, 2017 Order Granting the Attorney General's Motion to be Dropped as a Party. This motion is based on the entire record herein; the South Carolina Rules of Civil Procedure, especially Rules 52 and 59(e); applicable statutory and case law; the affidavit of Harley Ruff, Esq., filed herewith; and any additional affidavits and/or memoranda presented prior to the hearing on this matter.

Respectfully submitted,

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July 19, 2017

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James B.; Daryl J. Brown, individually
and on behalf of his minor child Janise
Vanisha Brown; Lindsey Delores Brown;
Deanna J. Brown Thomas; Jason Brown-
Lewis; Yamma N. Brown, individually and
on behalf of her minor children, Sydney
L., Carrington L., and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

ALAN WILSON, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4908

2011 JUL 14 PM 2:00
JANNETTE W. MCBRIDE
C.C.P. & G.S.

FILED

DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION TO ALTER, AMEND,
RECONSIDER AND/OR VACATE
ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AS TO COUNTERCLAIMS

TO: PLAINTIFFS AND THEIR COUNSEL, SWEENEY, WINGATE AND BARROW, P.C.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope") will move pursuant to Rules 52 and 59(e), SCRPC, and all applicable South Carolina Rules of Civil Procedure, for an order vacating altering or amending the ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS of the Honorable Doyet A. Early, III ("Jg. Early"), dated June 23, 2017 and filed July 8, 2017, a copy of which is attached hereto as Exhibit A (the "Summary Judgment Order"). Notice of entry of the signed order was received on July 10, 2017.

SUMMARY OF RELIEF REQUESTED

For the reasons set forth in the Answer and Counterclaim of Defendant and Robert L. Buchanan, Jr. ("Buchanan") herein, and based on the Affidavit of Wm. Jeffrey Smith; the depositions on file in this Case; the depositions, affidavits and admissions of Buchanan, Plaintiffs and Defendants in other James Brown Cases, and of Plaintiffs' and Defendant's designated experts in this case taken in other James Brown cases, of which the Court is requested to take mandatory judicial notice under Rule 201 SCRE, Defendant respectfully requests that the Court void, alter and/or amend its Order dated January 7, 2014 by directing the following:

1. Voiding the Summary Judgment Order as violating Rule 56 SCRPC, the U. S. and South Carolina Constitutions; and other applicable case and statutory law.
2. Ruling that the Wingate Suit is illegal and that, through the Wingate Suit, the State/Attorney General, the James Brown Legacy Trust ("McMaster Legacy Trust") and Russell L. Bauknight ("Bauknight") acting "on behalf of the Attorney General of

South Carolina," through the Summary Judgment Order, the Rule 21 Dismissal Order, and other others procured by the State/AG and its agents, have, with intent to damage Robert Buchanan, Jr. ("Buchanan") and Defendant, continuously violated the Due Process, First Amendment and FOIA Rights of Buchanan and Defendant; their statutory FOIA rights; and their right to be paid under their valid, court-approved contract with Plaintiff Estate/2000 Trust of James Brown.

3. Ruling that neither the Attorney General nor any other Plaintiff is entitled to Summary Judgment as to any Counterclaim because, when viewed under the Rule 56 standard, the facts, admissions and reasonable inferences therefrom show that Defendant is entitled to judgment and damages, including special damages, against each Plaintiff as to abuse of process; civil conspiracy; intentional interference with contract; fraud under Section 62-1-106; and attorneys' fees.

4. Ruling that, under the Rule 56 standard, the 2012 "settlement" with Buchanan is void because the Attorney General violated his statutory duty, through Bauknight, by using James Brown's charitable funds to pay \$500,000 to Buchanan to settle Buchanan's valid counterclaims against Tomirae, Terry Brown and the Levenson Will/2000 Trust contestants.

5. Ruling that, in addition, the Buchanan "settlement" is void because it was unconscionable, and a violation of his duty to The James Brown "I Feel Good" Charity for the Attorney General to secretly force Buchanan NOT to file a petition for Rehearing in *Wilson v. Dallas*; fail to advise the Supreme Court of his unconscionable and improper requirement; then try to make it appear to the Supreme Court that Buchanan did no support Defendant's effort to save The James Brown "I Feel Good" Charity.

6. Ruling that Defendant (and Buchanan) are not estopped to recover damages from all Plaintiffs by *Wilson v. Dallas*, and the Honorable Doyet A. Early, III, has so ruled as to Buchanan after *Wilson* on October 12, 2013.

7. Ruling that because former Attorney General Henry McMaster, now Governor of South Carolina ("Governor McMaster") has confirmed under oath in this case (the "Wingate Suit") that he did not authorize Wingate Firm to name the Attorney General as a Wingate Suit Plaintiff; did not authorize Bauknight to act on behalf of the Attorney General in the Wingate Suit; and did not know this had happened until he left office in January 2011, the Wingate Suit has been illegal for the entire seven years it has been viciously pursued to damage Buchanan and Pope's careers and reputations for the private benefit of the Attorney General and Tomirae.

8. Ruling that Attorney General Alan Wilson's January 2011 authorization to continue the Wingate Suit did not make the illegal Wingate Suit legitimate because

the State/Attorney General did not sign the Wingate Special Counsel Litigation Retention Agreement; there has never been a written authorization for the Wingate Firm or Bauknight to act on behalf of the State/Attorney General; and such authorization, if it existed, would violate Due Process and the Separation of Powers Clause by allowing the private Wingate Firm to serve the interests of non-resident Tomirae while serving the State; and by paying 10% of the legal fee to the Attorney General where he had improperly delegated control of the Wingate Suit to a private law firm.

6. Finding that, under Rule 56, the Attorney General is responsible, with Tomirae and James B, for the 7-year malicious, false assault on Buchanan's and Defendant's reputations and careers because the Attorney General and Tomirae, through their 75% voting control of the James Brown Legacy Trust ("McMaster Legacy Trust") have had individual control of the Wingate Suit for 7 years, and the Attorney General, at all times, has had the right to remove and replace Bauknight as Trustee of the McMaster Legacy Trust.

7. Finding that the McMaster Legacy Trust, the primary vehicle to carry out the Attorney General's and Tomirae's plan to secure James Brown's assets and allow Tomirae to siphon off copyright royalties belonging to James Brown's "I Feel Good" Charity, cannot escape liability or obtain Summary Judgment by claiming it does not exist.

8. Finding that Attorney General McMaster, Tomirae and Bauknight, if the McMaster Legacy Trust has dissolved, have dissolved it improperly and are liable as the real parties in interest.

9. Finding, under Rule 56 analysis, that the Levenson Will/Trust contestants are liable as to all counterclaims because they joined the Attorney General, Bauknight and Tomirae in their scheme to damage Buchanan and Defendant with actual knowledge that Buchanan and Defendant has carefully and effectively protected James Brown's noble estate plan, which was valid, and its 900 copyrights; that Tomirae was not Brown's spouse, and had no rights under the Federal Copyright Act Termination Rights provisions; that James Brown's assets were worth \$100 Million or more when he died; and that the McMaster settlement deal, if Bauknight had not improperly devalued assets and overstated deductions by \$5 Million in IRS filings, would have generated millions of dollars in estate, excise and income taxes if it had not been voided by the Supreme Court.

10. Finding under Rule 56 analysis that continuation of the Wingate Suit from and after March 2013, when Attorney General Wilson, Solicitor General Robert Cook, and former Chief Deputy John McIntosh obtained actual and unmistakable correct evidence of Bauknight's false IRS filings; ill-gotten estate tax "refund"; and

the use by the Attorney General of the fabricated \$4.7 Million "appraisal" and ill-gotten refund to damage Buchanan and Defendant in Supreme Court filings, has caused Defendant extraordinary injury as contemplated in §62-1-106 and provided millions of dollars of undeserved benefits to Plaintiffs and their attorneys.

11. Finding that the State's highest legal officer has, since 2011, publicly and falsely accused Buchanan and Defendant of the federal felony of overstating James Brown's assets by \$79 Million in order to secure a \$5 Million commission on a \$5 Million estate, with knowledge of the falsity of the claim, and has recklessly allowed Bauknight to make the same known false claim on behalf of the Attorney General.

12. Finding under Rule 56 that the Attorney General has had knowledge since 2011 that David Bell, Esq. and his clients posted the false GRAMMY withdrawal claim noted by the Supreme Court; that Levenson was present when the GRAMMY was properly withdrawn without penalty; but the Attorney General has knowingly endorsed the known false claim to damage Buchanan and Defendant.

13. Finding under Rule 56 analysis that Defendant is not estopped to pursue her claim by Wilson v. Dallas, 743 S.E.2d 746 (2013); the Status Report of Judge Early or the June 10, 2015 Orders, and that all demonstrate how the 7+-year fraud on the IRS and the Courts under §62-1-106 by Plaintiffs has injured Defendant and benefitted Plaintiffs.

14. Finding that the Attorney General, in defiance of Wilson v. Dallas, has continued, with Tomirae and the McMaster Legacy Trust, through Bauknight, to damage Defendant while praising Bauknight, who has wasted millions of dollars while allowing Tomirae to siphon off \$1 Million and attempt to take part of the American royalties from 90 of The James Brown "I Feel Good" Charity's 900 between 2015 and 2023.

15. Finding that concealing the 2010 Wingate Litigation Agreement, which was not signed by most Wingate Suit Plaintiffs, but by Bauknight and lawyers seeking \$10 Million in legal fees if they could stop the Wilson appeal by making Buchanan and Defendant appear to be incompetent, malicious and greedy, is clear evidence under Rule 56 that Summary Judgment as to Defendant's counterclaims should be denied.

16. Finding that all Plaintiffs admit they had knowledge on May 19, 2010 that James Brown, by his extraordinary talent and hard work, had amassed millions of dollars he intended for scholarships for needy students through his "I Feel Good" Charity; generous additional gifts for certain claimed children and grandchildren; and decades of additional benefits for all of his children and grandchildren from Termination Rights to some of his American copyright royalties under the Federal

Copyright Act, but that, despite this knowledge, Plaintiffs brought this suit to damage and discredit fiduciaries protecting Brown's estate plan from being dismembered by the alliance of the Attorney General and Tomirae for their personal gain.

17. Finding that, under Rule 56 analysis, the Attorney General, Levenson clients, and Terry, knew before filing the Wingate Suit that Tomirae's and Bauknight's proposal to value Brown's Right of Publicity at zero; devalue his Tangible Personal Property to less than \$500,000; and overstate his deductions in IRS filings by \$5 Million; then discredit Buchanan and Pope in known false court filings using an ill-gotten IRS "refund" was improper, but nevertheless joined in the conspiracy for their own gain.

18. Finding that under the Rule 56 analysis, the Attorney General's, Legacy Trust's and Tomirae's 6-year evasion of both FOIA and discovery, including by false statements to the FOIA courts, to prevent release of public documents showing Bauknight's fabricated \$4.7 Million devaluation and that before Tomirae met James Brown she was married, living in Texas with her husband; and though she might be pregnant; and further showing that after James Brown discovered his ceremony with Tomirae was bigamous, she begged him to marry her, demonstrate that all have unclean hands and are not entitled to any equitable relief by way of summary judgment.

19. Finding under rule 56 that Terry and the Levenson clients knew, and know, that Tomirae's Federal Copyright Act Termination Rights claims were baseless, but conspired with her, and joined in known false statements to the Court, to damage Buchanan and Defendant.

20. Finding that Plaintiff is not estopped by Wilson v. Dallas to assert her counterclaims herein; that the issues in the Wingate Suit were not ruled on by the Supreme Court; but that the dicta is the result of Plaintiffs' - especially the Attorney General's - known false, public denunciations of Buchanan and Pope based on their own improper filings with the IRS and Courts.

21. Finding that the footnote related to 3:08-cv-00014-WOB is both incorrect and misleading; that in 2012 Forlando, at his own request, dropped his fabricated lawsuit to enjoin James Brown's 2000 Trust until felon David Cannon and Albert Dallas were reinstated as Trustees; that Judge Early found in 2008 that the Forlando suit impaired Brown's 2000 Trust; and the Court praised Buchanan's and Pope's service.

22. Finding that neither the 2000 Trust nor Buchanan and Pope recovered against Forlando for the high cost of Forlando's frivolous suit to reinstate Cannon

and Dallas because, with knowledge of its falsity, Bell and Forlando told the Court Forlando had no assets and no expectation of assets from the James Brown litigation unless his father died; and Bauknight -- for the 2000 Trust -- claimed under oath in 2013 that Forlando had done nothing wrong in trying to reinstate Cannon and Dallas.

23. Finding under Rule 56 that the Attorney General is not entitled to be dismissed as a party to this action, and for each and every reason stated herein, no Plaintiff is entitled to Summary Judgment as to any counterclaim of Defendant.

Whether Wingate Suit Illegal Should Be Decided Before Summary Judgment.

1. The Court overlooked or misapprehended that former Attorney General, now Governor, Henry McMaster ("Governor McMaster"), has stated under oath in 2016 that he did not authorize the Wingate Firm to bring the Wingate Suit in the name of the State/AG; did not authorize Bauknight to bring the Wingate Suit on behalf of the Attorney General; and did not know that as Attorney General he was named as a Plaintiff in the Wingate Suit until after leaving office in January 2011.

2. The Court overlooked or misapprehended that, under oath, both Solicitor General Robert Cook and former Chief Deputy John McIntosh have stated they lacked legal authority to authorize the Wingate Suit to be filed naming the State/Attorney General as a Plaintiff, and did not authorize it.

3. The Court overlooked or misapprehended that by 2013 Attorney General Alan Wilson was claiming in James Brown FOIA suits that the Attorney General did not have a contract, while the Attorney General's sole lawyers in the Wingate Suit, the Wingate Firm, claimed that the contract was confidential.

4. The Court overlooked or misapprehended that 23 - 40% Wingate

Contingency Agreement, when released after *Wilson v. Dallas* in 2013 revealed that it was not signed by the State/Attorney General or by most Plaintiffs, but by Bauknight and attorneys seeking about \$10 Million in legal fees if they could stop the appeal which became *Wilson v. Dallas*.

The Attorney General's Role in the Wingate Suit is Unique & Unconstitutional

5. The Court overlooked and misapprehended that the Wingate Suit is unique in the nation because it is the only known tort suit brought by an Attorney General against his own citizens for the benefit of nonresidents (Tomirae and others); without the Attorney General participating as an attorney; and in which the Attorney General shares a single, private lawfirm with out-of-state residents, including minors without a GAL.

6. The Court overlooked or misapprehended that the Attorney General in alliance with Tomirae, has, for seven years violated Defendant's Due Process rights under the U.S. and State Constitutions, and the S.C. Constitution Separation of Powers clause by placing the mighty power of the State/Attorney General in the hands of a private attorney to damage a citizen of South Carolina for the benefit of Tomirae and the Attorney General.

7. The Court overlooked or misapprehended that the Attorney General Alan Wilson has testified under oath in 2017 that he authorized the Wingate Suit, even though he knows nothing personally about James Brown, the "I Feel Good" Charity or the James Brown Legacy Trust ("McMaster Legacy Trust") over which he and Tomirae have had 75% voting control since 2011.

8. The Court overlooked or misapprehended that for four years after he told the South Carolina Supreme Court that he was seeking to get out of the Wingate Suit the AG, Tomirae, the McMaster Legacy Trust and Bauknight and his agent vigorously pursued the Wingate Suit, continuing the damage to Pope, including the known false claim that Pope and Bauknight committed the federal felony of overstating Brown's assets by \$79 Million to obtain a \$5 Million commission on a \$5 Million estate.

9. The Court overlooked or misapprehended that not only did the Attorney General and Bauknight as his agent vigorously pursue the Wingate Suit, but sought to evade compliance with FOIA by transferring all James Brown FOIA cases to Richland County; consolidating them with discovery in the Wingate Suit; and leaving them mired in stagnant discovery in this multi-million-dollar tort suit.

10. The Court overlooked or misapprehended that the purpose of the Attorney General's FOIA actions, like the scheme he is carrying out with Tomirae in the Wingate Suit, is to damage Buchanan and Pope so they appear greedy and unreliable, and to hide documents, which show: Bauknight's \$4.7 Million value was fabricated to damage Buchanan and Pope; Tomirae has admitted she was not Brown's spouse, and begged him to marry her; David Bell was part of the Wingate Suit when he planted the false Grammy claim; and the State/Attorney General and most clients did not sign the Improper Wingate Agreement.

11. The Court overlooked or misapprehended that since March 2013 the Attorney General and Bauknight have spent millions of dollars James Brown gave his "I

Feel Good" Charity to continue the conspiracy to demean, damage and discredit Buchanan and Pope; prevent proper discovery; and allow Tomirae to siphon off royalties from copyrights James Brown gave his "I Feel Good" charity.

12. The Court overlooked or misapprehended that since March 6, 2013 when he met with Pope, the Attorney General has had actual knowledge of the damage the Wingate Suit is doing to her, while also damaging the "I Feel Good" Charity, by concealing documents which show Bauknight's \$5 Million overstatement of James Brown's debts in IRS estate tax filings, and use by the Attorney General of Bauknight's IRS "refund" resulting from the overstatement to damage Defendant; pay \$700,000 to the lawyer and GAL for Tomirae's son; and pay millions of dollars to Bauknight's attorneys who are not protecting James Brown's copyrights.

13. The Court overlooked or misapprehended that this Case, the Wingate Suit, is the only suit of its kind within the State of South Carolina, and perhaps the nation where a State Attorney General has sued a private citizen of his State in a tort suit; sharing with non-residents of the State (Tomirae, Terry Brown and the Levenson clients) a single, private law firm (the "Wingate Firm"); the law firm works for the benefit of the non-residents and the Attorney General; there is no written contract with the State/Attorney General; the Attorney General is not a lawyer in the case, and claims he does not control the litigation.

14. The Court overlooked or misapprehended that this Court lacks jurisdiction, and it would be manifestly unjust, to grant any relief to the State/Attorney General where the Attorney General who commenced the litigation with Tomirae and others did not sign

a valid Litigation Retention Agreement with the Wingate Firm and has asserted under oath that he did not authorize the Wingate Firm to bring the Wingate Suit with the Attorney General as a Plaintiff; did not authorize Bauknight to sue Buchanan and Pope on behalf of the State/Attorney General; and did not know he , as Attorney General, was named as a Plaintiff until after leaving office in January 2011.

15. The Court overlooked or misapprehended that that the current Attorney General ("Attorney General Wilson") could not make the illegal and unconstitutional Wingate Suit legal in 2011 by authorizing its continuation where the question of the legality of the lawsuit was before the Court of Appeals at the time and Attorney General obtained dismissal of the question as premature.

16. The Court overlooked or misapprehended that the issue of the legality of The Wingate Suit is squarely before the Circuit Court at this time; is ripe; and should be addressed before any relief is granted to the Attorney General, Bauknight as the Attorney General's claimed agent, or the McMaster Legacy Trust.

The McMaster Legacy Trust's Claim Not to Exist Precludes Summary Judgment

17. The Court overlooked or misapprehended that the James Brown Legacy Trust ("McMaster Legacy Trust") was created by Governor McMaster, Tomirae and others by January 2009, and that Tomirae and the Attorney General have had voting control over the McMaster Legacy Trust for more than seven years.

18. The Court overlooked or misapprehended that, in addition, the Attorney General exercises further control over the McMaster Legacy Trust with an absolute right

to remove and replace Bauknight, its trustee.

19. The Court overlooked or misapprehended that while vigorously pursuing the Wingate Suit and evading FOIA compliance since the *Wilson v. Dallas* decision in 2013, the McMaster Legacy Trust had claimed it does not exist.

20. The Court overlooked or misapprehended that Tomirae's agents have vigorously claimed that the McMaster Legacy Trust does exist and that Bauknight should be knighted.

21. The Court overlooked or misapprehended that Judge Early has ruled, however, that the McMaster Legacy Trust does not exist, which ruling is on appeal.

22. The Court overlooked or misapprehended that, having granted the McMaster Legacy Trust a favorable (albeit appealed) ruling that it does not exist, and is not subject to FOIA, it would be manifestly unjust for the Court to allow the McMaster Legacy Trust to pursue, for the 75% personal benefit of Tomirae and the Attorney General, summary judgment where Buchanan and Pope owed no duty to Tomirae ever and she and the McMaster Legacy Trust brought this suit to damage them.

The Undisputed Evidence Before the Court is that Buchanan and Pope Properly Valued James Brown's Music Empire at \$99 Million Less the \$15 Million TIAA Debt, and that the McMaster settlement deal, if properly reported and not voided by the Supreme Court, would have generated millions of dollars in estate, excise and income tax payable by James Brown's estate.

23. The Court overlooked or misapprehended the on August 10, 2008 the Attorney General brokered the settlement deal which would put the Attorney General and Tomirae, through Bauknight, in 75% control of James Brown's assets until May 8, 2013.

24. The court overlooked that the following month Buchanan and Pope filed James Brown's Estate Tax Return, properly reporting Brown's the Schedule F assets, Brown's 900 Copyrights, Royalties, Business Claims, Tangible Personal Property (except jewelry); 45 boxes of unpublished work and other music memorabilia; and other miscellaneous assets (the "Music Empire") at \$84 Million.

25. The Court overlooked that the \$84 Million was based, in part, on a formula presented to Judge Early to which the Attorney General and others made no objection, and before and since has been shown by expert and lay testimony to be reasonable.

26. The Court overlooked or misapprehended that the Attorney General's and other Plaintiffs' expert testified in 2017 that \$45 Million to \$60 Million was not inappropriate for the value of the 900 copyrights alone, at Brown's death. Termination Rights expert Roger Miller said in his deposition this year:

Q. Right, so but buy low is still essential to the concept, right?

A. [Miller] When possible.

Q. Right.

A. But, in my experience, if you want to buy this type of high quality content, you are often, more so than not, a price taker, not a price maker in the market.

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. Solid gold.

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And later:

Q. And there is nothing second [sic] secret about your opinion that James

Brown's is a solid gold catalog?

A. No. I think anybody would agree.

Q. Okay.

A. Who is familiar with the work.

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?
[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5. My firm originated in 2006 and we were the only ones who remained, everybody else was later consolidated. But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

27. The Court overlooked or misapprehended that in the McMaster settlement hearings Bauknight said he did not know the value of the James Brown assets, but had heard \$80 Million.

28. The Court overlooked or misapprehended that both Pope and expert Harley Ruff, Esq. testified that the McMaster Deal would result in millions of dollars of estate, excise and income taxes, and the Attorney General's only response was to give Judge Early the resume of about five tax experts, none of whom would testify.

29. The Court overlooked or misapprehended that two months after Judge Early approved the McMaster deal, in August 2009, Tomirae's lawyer proposed to the Attorney General and Bauknight to devalue Brown's copyrights to about 8 times multiples (\$24 Million) and to value Brown's Right of Publicity at zero in order to discredit Buchanan and Pope.

30. The Court overlooked or misapprehended that in August 2010 the Attorney General told the Appellate Court an appraisal to arrive in a few weeks would show Brown's assets at less than \$12 Million.

31. The Court overlooked that the PBW "appraisal" did arrive in September 2010, but was kept secret from the Supreme Court until May, 2011, eight months later, after the record was closed.

32. The Court overlooked or misapprehended that, with the PBW appraisal in hand, in December 2010 the Attorney General and others told the Court in their Initial Brief that Tomirae's Termination Rights were valuable but they did not have the means available to determine the value.

33. The Court overlooked or misapprehended that at the same time, Bauknight, with the blessing of the Attorney General, told the IRS that Brown's 900 Copyrights were worth \$23.7 Million; Brown's Publicity Rights were worth zero; Brown's

Tangible Personal Property was worth zero; Brown's claims against Cannon and others for the \$17 Million Cannon took from funds Brown gave his "I Feel Good" Charity was worth zero; and that other miscellaneous assets were worth zero.

34. The Court overlooked that by the above devaluation, including a \$3 Million hidden overstatement of Brown's TIAA debt to \$19 Million and an overstatement of Brown's charitable deduction from \$.8 Million to \$2.8 Million, Bauknight obtained an ill-gotten "refund" from the IRS.

35. The Court overlooked or misapprehended that the following month, David Bell, planted a false Grammy story on the website of lawyer Robert Potter, Esq., without Potter's knowledge.

36. In May 2011, after the record was closed, the Attorney General, Levenson and Bell – despite repeated public statements of their own clients to the contrary – moved to supplement the *Wilson* record with the claim that the IRS has "agreed" that Brown's music empire was worth \$4.7 Million when he died, and that Buchanan and Pope had intentionally overstated the value of James Brown's assets by \$79 Million in sworn IRS filings to obtain a \$5 Million commission on a \$5 Million estate.

37. The false GRAMMY claim and the ill-gotten "refund" would be central to the false claim by the Attorney General and Bauknight, as the Attorney General's agent, for the next six years that Buchanan and Pope had committed the federal felony of overstating Brown's asset by \$79 Million to obtain a \$5 Million commission.

38. With knowledge from their own experts of its falsity, the Attorney General and Bauknight claimed to multiple courts that there was no market for the James Brown assets. In 2013 Bauknight said in his deposition in the Forlando Suit:

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17 Q: Have you ever seen any court documents from
18 Aiken County regarding a formula to value the
19 royalties of James Brown's works?

20 A: A formula?

21 Q: A formula approved by the court for ---

22 A: Approved by the court.

23 Q: Yes, sir.

24 A: I've heard discussion of people -- I want to

25 say Adele Pope had some kind of testimony

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1 somewhere, but I don't know where I've seen it,
2 where people were talking with -- talking about
3 some kind of formula for valuing royalties.
4 But approved by the court, I'm not familiar
5 with that. And frankly, that wouldn't matter
6 to the IRS anyway. The IRS is going to use the
7 values that they choose and can substantiate as
8 appropriate for their purposes.

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22 Q: What about the Terry Brown letter of interest,
23 slash, offer in the spring of 2008, prior to
24 the Christie's auction? An offer ---

25 A: You'll have to show it to me to understand what

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1 you're talking about.

2 Q: That doesn't ring a bell to you?

3 A: No. I wasn't aware that anybody else had ever
4 offered to buy any assets, not that anybody has
5 ever offered to buy assets. But the only one
6 I've ever heard referred to by Pope is this
7 supposed offer from Terry Cox which never was
8 an offer. She put \$100 million out there so
9 she could collect a \$5 million claim which
10 she's filed. Purely self-serving. Purely self-
11 serving. Selling assets of the estate to take
12 money for herself and leave it insolvent.
13 Purely self-serving. I'm sorry. I get carried
14 away. I get passionate about something I'm
15 working on when I see such wrong doing.

And in 2017, Bauknight testified at his deposition in Aiken Case No. 2013-CP-02-1337:

10 RESUMING EXAMINATION

11 BY MS. POPE:

12 Q. Is there any reason why you didn't designate

13 anyone at Philpott Ball as an expert in this case?

14 A. I designated experts based on advice of my
15 attorneys.

16 Q. So you don't know why someone in Philpott Ball was
17 this not designated?

18 A. I don't know.

19 Q. And Philpott Ball is the firm that valued James
20 Brown's music empire at less than 4.7 million as
21 of the date of his death?

22 A. I don't agree with your term "empire." I don't
23 know where you came up with that, but the
24 intellectual property of the estate and trust of
25 James Brown was valued by Philpott Ball and

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1 Werner.

2 Q. Well, actually, Mr. Bauknight, isn't the Schedule
3 F not simply the intellectual property, but the
4 entire music empire?

5 A. I'm not sure what you're referring to at Schedule
6 F and if you'd let me, please, before you

7 interrupt, I'd like to finish my answers. You're
8 starting to speak before I finish.
9 **Q. Oh, I certainly want you to finish. Please let's**
10 **do not speak over each other. Do you believe that**
11 **James Brown had a music empire?**
12 A. I believe James Brown had intellectual property.
13 I don't understand what you mean by empire.

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9 **Q. Now, am I correct that you valued Mr. Brown's**
10 **intellectual property in filings with the IRS at**
11 **less than 4.7 million as of his date of death?**
12 A. It was -- well, number one, I did not value it.
13 That was the investment banking firm of Philpott
14 Ball and Werner that prepared the professional
15 valuation of the IP of James Brown. I reported
16 that value to the Internal Revenue Service. That
17 value was examined by the service at the agent
18 level, was reviewed by the agent's manager. That
19 was forwarded to the national office of the
20 Internal Revenue Service and the Internal Revenue
21 Service national office brought in the royalty
22 engineers, as they called them, which are the
23 royalty experts, who spoke directly with my
24 investment banking firm of Philpott Ball and
25 Werner...

Summary Judgment is Premature Because Discovery is Ongoing.

39. The Court overlooked or misapprehended that the Court should not have granted summary judgment because, through no fault of Defendant, discovery is not complete.

The State/Attorney General and Others Have Abused and Delayed Discovery

40. The court overlooked and misapprehended that in the 7 years since the Attorney General filed this lawsuit for the purpose of destroying the reputations and

careers of Buchanan and Pope the mighty power of the State has been placed in service of the McMaster Legacy Trust both prior to, and since, *Wilson v. Dallas*.

41. The Court overlooked or misapprehended that, contrary to the report of this Court to the South Carolina Supreme Court in 2015, Tomirae and the Levenson clients announced in open court on May 29, 2013 their intention to reinstate the McMaster Settlement deal which dismembered James Brown's "I Feel Good" Charity and unnecessarily threatened its 900 copyrights based on false IRS documents and false claims about James Brown's heirs and the Federal Copyright Act Termination Rights provisions.

42. The Court overlooked or misapprehended that Solicitor General Robert Cook admits that in March 2013 Defendant advised the Attorney General personally of the damage his alliance with Tomirae and the false statement being made by Bauknight to the IRS were causing the "I Feel Good" Charity, the Attorney General has worked vigorously since May 9, 2013 to reinstate the McMaster settlement deal, retake control of the James Brown "I Feel Good" Charity and allow Tomirae to siphon off benefits from Brown's "I Feel Good" Charity to which she is not entitled.

43. The Court overlooked or misapprehended that the Attorney General, despite his claims to the Supreme Court, has allowed Bauknight to continue his false, vitriolic attacks to damage Buchanan and Pope, even though he knows they are based on intentional misstatements by Bauknight to the IRS and Courts, and had continued to evade discovery of the public documents which show:

1. Tomirae was not Brown's spouse, and knew it. [Handwritten admission, public since 2007.]

2. Bauknight's \$4.7 Million "appraisal" (Based on known false understatements of assets and overstatements of debts).
3. The Wingate Suit is illegal and was never properly authorized (Wingate Agreement).
4. The Legacy Trust was amended and Forlando became the real party in interest the same month Bell planted the false Grammy claim (January 2011).

44. The Court overlooked or misapprehended that, with the blessing of the Attorney General, Bauknight's false, vitriolic attacks intended to advance the McMaster settlement deal became even more vitriolic after June 10, 2013 when, at the request of Levenson, Tomirae and Bauknight, Judge Early banned Buchanan and Pope from participation in Aiken County James Brown cases while the Honorable L. Casey Manning, at the request of the Attorney General and Tomirae, stayed all discovery and FOIA hearings for three years.

45. The Court overlooked or misapprehended that Bauknight, after Buchanan and Pope were banned from participation in all Aiken cases except their own claims -- even repeated his \$3 Million overstatement of the TIAA debt, and made extraordinary, vitriolic false claims in his depositions in the Forlando Suit, Aiken 2013-CP-02-1337 and elsewhere.

46. The Court overlooked or misapprehended that the discovery abuse and Attorney General's condoning of Bauknight's and Tomirae's false claims to benefit their position in this case hit their mark in 2015 when Judge Early determined Tomirae to be

Brown's spouse without anyone proffering her handwritten admissions she was not Brown's spouse, then reported to the Supreme Court: that the heirs had been properly determined; that the Court had heard no suggestion of any settlement; and that the Court believed Pope was seeking a \$5 Million commission.

47. The Court overlooked or misapprehended that the Court's ruling that the Attorney General could not be deposed in this case gave the State/ Attorney General, Tomirae and the Legacy Trust an improper advantage over Defendant in her counterclaims, and should be reconsidered and rescinded before any hearing on the merits.

48. The Court overlooked or misapprehended that since 2011 the Attorney General, Legacy Trust and Bauknight have tried to create a FOIA graveyard of the Wingate Suit, in order to cover up the material misstatements they have made (or condoned) to the IRS and Courts, as is shown by the James Brown matters now pending in the Court of Appeals.

Collateral Estoppel Does Not Bar Defendant's Counterclaims.

49. The Court overlooked or misapprehended that collateral estoppel based on the 2013 *Wilson v. Dallas* decision is not available to Plaintiffs in their attempt to avoid liability to Defendant (and Buchanan if the motion to void his improper "settlement" is reversed) because none of the elements is met; the issue of plaintiffs' conspiracy to damage and discredit Plaintiffs as incompetent and greedy through a scheme to devalue James Brown's assets and making false statements to both the IRS and the Courts, so that

the Courts would not believe Buchanan's and Plaintiff's reasonable opposition to the McMaster deal was not "actually litigated" in Wilson v. Dallas. In fact, the Supreme Court denied the post-record attempt of some Plaintiffs to ask the Court to consider the fabricated \$4.7 Million value and the resulting, ill-gotten "refund", but the Court refused to do so on August 1, 2011. See Carolina Renewal, Inc. v. S. Carolina dep't of Transp., 385 S.C. 550, 554, 684 S.E. 2d 779, 782 (Ct. App. 2009).

50. The Court overlooked or misapprehended that the propriety of Plaintiffs' false claim that James Brown's \$84 Million Music Empire was worth only \$4.7 Million, and the ill-gotten "refund" resulting from Bauknight's \$5 Million overstatement of debts to the IRS (\$3 Million of which was concealed within the PBW "appraisal"), was neither " (1) actually litigated in the prior action"; nor " (2) directly determined by the prior action;" nor (3) "necessary to support " the judgment in Wilson v. Dallas , confirming that Estoppel is unavailable to Plaintiffs under Carolina.

51. The Court overlooked or misapprehended that that the Supreme Court's decision to support Judge Early's replacement of Pope was not a ruling on the value of their services because the only cause for their 2009 removal within the record was their failure to support and sign a settlement the Supreme Court found was void, and had dismembered James Brown's noble estate plan.

52. The Court overlooked or misapprehended that Judge Early's Order which was upheld with respect to the replacement of Buchanan and Pope specifically held that the removal was NOT for cause, and that any for-cause hearing was held in abeyance.

53. The Court overlooked or misapprehended that the dicta in Wilson v. Dallas is,

however, evidence of the success of the Attorney General, Tomirae and Bell had in making Buchanan and Pope appear greedy, vitriolic and incompetent by planting the false GRAMMY claim; making the false claim in an unsuccessful motion to supplement the record on appeal that Buchanan and Pope wanted a \$5 Million commission from Brown's \$5 Million estate; and other false statements, such as were made by Bauknight's counsel to the media the day before oral argument, in an effort to damage the careers and reputations of Buchanan and Pope with false claims both to the IRS and the Courts.

54. The Court overlooked or misapprehended that the issue of whether the Grammy sale was appropriate did not meet any of the three criteria for collateral estoppel in Wilson v. Dallas, and was, in fact, a direct result of the damage done to Buchanan and Plaintiff by Bell, a signatory on the Wingate Litigation Retention Agreement, who planted the false claim in 2011 to advance the Wingate Suit in the hope of reaping millions in legal fees by discrediting them with the false Grammy claim.

55. The Court overlooked or misapprehended that had the GRAMMY issue been litigated, the Court would know that Robert Potter, lauded for "halting" the GRAMMY sale, did not halt the GRAMMY sale; that the Attorney General had actually asked the Court to approve the sale when Albert Dallas and Forlando tried to stop it; that Judge Early had specifically directed Buchanan and Pope to sign the contract listing the GRAMMY; that the sale, as confirmed by Christie's counsel in Levenson's presence, was perfectly legal; that Johnny Cash, Stevie wonder and others have sold GRAMMYs; that at least one Federal Bankruptcy Court has been involved in a GRAMMY sale issue; and that the GRAMMY was appropriately entered and appropriately withdrawn to avoid legal defense costs.

56. The Court overlooked or misapprehended that if the GRAMMY issue had been litigated, the record would have shown that the GRAMMY was valued at \$15,000 - \$20,000 by Christie's ; was valued by Bauknight at \$20,000 on its return; and that Bauknight told the IRS the year after its return that ALL of James Brown's thousands of items of Tangible Personal Property (including about 350 pieces sold for about \$800,000 at Christies) were worth less than \$200,000 when Brown died.

57. The Court overlooked or misapprehended that the Wingate Suit Plaintiffs, having agreed with and condoned Bauknight's intentional devaluation of Brown's GRAMMY to a value near zero, are estopped from claiming any loss.

58. The Court overlooked and misapprehended that the endorsement by the State's highest legal officer of false IRS filings and the use of those false filings in Supreme Court filings to damage the credibility of Buchanan and Pope so that the Attorney General and Tomirae could retain control of the James Brown assets and siphon off royalties belonging to The James Brown "I Feel Good" Charity caused, and continues to cause, great damage to Defendant and Buchanan.

59. The Court overlooked or misapprehended that the Supreme Court's decision to uphold Judge Early's decision to replace Buchanan and Pope did not in any way adjudicate the value of their services, and the issue of entitlement to fees and commissions was specifically remanded.

60. The Court overlooked or misapprehended that the State/AG and the Court violated Defendant's Due Process and Equal Protection Rights under the U.S. and State Constitutions by Judge Early's granting Plaintiffs' motion for summary judgment after his

specific findings on October 12, 2013 that all of Buchanan's service was proper; no disgorgement under Wilson was appropriate; that Buchanan may retain all payments under his contract with James Brown's Estate/2000 Trust; and even that Buchanan may, under certain circumstances, make a claim in the Wingate Suit. [Transcript. 10/12/13, Buchanan claim], where all of Buchanan's and Pope's service was joint.

61. The Court overlooked or misapprehended that the Estoppel is not applicable, and that the State, including in the Summary Judgment Order, continues to deprive Defendant of a full and fair opportunity to be heard; to refute the false felony claim made by the Attorney General and Bauknight as the Attorney General's agent; and level playing field, to show that she has been continuously and improperly damaged by fraudulent State Action planned in 2009 and carried out in the Wingate Suit since May 2010.

62. The Court overlooked or misapprehended that the Court's Order punishes Plaintiff for daring to try to protect James Brown's "I Feel Good" Charity from improper State Action which was, and is, prejudicial to the administration of justice.

63. The Court overlooked or misapprehended that the Conspiracy and Fraud in this case were not to remove Buchanan and Pope, who had been removed, but to damage and discredit them, ruining their careers and credibility, so that the Courts would not believe their true lay and expert testimony that the McMaster settlement deal dismembered The James Brown "I Feel Good" Charity; threatened its 900 copyrights; threatened (if not voided) millions of dollars in estate and income taxes; and could only be justified by known false representations to the IRS and Courts.

**Judicial Estoppel Is Not Applicable Because Plaintiffs' Inconsistent Statements
Were Made to Mislead Both the IRS and the Courts.**

64. The Court overlooked or misapprehended that, even without discovery, there is abundant evidence that ALL Plaintiffs made, or allowed Bauknight to make on their behalf, inconsistent statement as part of an intentional effort to mislead the Court. See Cothran v. Brown, 357 S.C. 210, 592 S.E. 2d. 629 (2004).

65. The Court overlooked or misapprehended that the Court's finding that "Plaintiff's [sic] assertions were not made in an intentional effort to mislead the Court..." is a disputed factual finding which, under Rule 56 SCRPC must be read to support Defendant – namely that the assertions WERE made in an intentional effort to mislead the Court.

66. The Court overlooked or misapprehended that, as to both estoppel assertions, the Attorney General and all Plaintiffs are bound and estopped by their representations to the Court in 2010 that the causes of action in this Wingate Suit have nothing to do with Wilson v. Dallas

67. The Court overlooked or misapprehended that, over Buchanan's and Plaintiff's objections, the Attorney General and other Plaintiffs' argued, and the Honorable L. Casey Manning agreed, that this Wingate Case is different from Wilson and the Alken County James Brown cases.

68. The Court overlooked or misapprehended that, even if the criteria for estoppel were met – and they were not -- it is Plaintiffs who, having benefitted from the claim that Wilson v. Dallas bears no relation to the Wingate Suit , would be estopped to attempt to use dicta in that 2013 decision to defeat counterclaims in this 2010 suit.