

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

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JUN 15 2020

Court of Common Pleas

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

The Honorable L. Casey Manning, Circuit Court Judge

**SO. COURT OF APPEALS**

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Appellate Case No.: 2018-002229

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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.

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**RECORD ON APPEAL (AMENDED)**  
Volume III of IV  
(Pages 941 – 1406)

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**Under Rule 56 Analysis Defendant is Entitled to Relief as to All Counterclaims.**

**A. Abuse of Process**

69. The Court overlooked or misapprehended that as to each Plaintiff all of the elements of Abuse of Process have been met, namely (1) an ulterior purpose and (2) willful acts in the use of the process not proper to the conduct of the proceeding. *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551, 555-556 (2010).

70. The Court overlooked or misapprehended that the ulterior purpose was not to replace Buchanan and Pope, who had been replaced, but to use the mighty power of the State/Attorney General, through Bauknight and the McMaster Legacy Trust, to so damage their reputations and careers with false, fabricated accusations that they would be forced to abandon their duty to appeal a settlement which dismembered The James Brown "I Feel Good" Charity.

71. Having lost the appeal, the Attorney General, with personal knowledge that the claims are false, has continued this abusive lawsuit for more than four years for the same ulterior purpose, and with ever-increasing damages to Plaintiff.

72. The Court overlooked or misapprehended that the Court's "multiple specific examples in support of Mrs. Pope's removal" were not part of the record on appeal, but a direct and proximate result of the false statements made by the State's highest legal officer and Bauknight, acting as his agent, and do not meet the Rule 56 standard.

73. The Court overlooked or misapprehended that there was no legitimate purpose whatsoever for the State's highest legal officer, or Bauknight as his agent, to

attack, denigrate and falsely accuse Buchanan and Pope of the federal felony of overstating Brown's assets by \$79 Million where all Plaintiffs had actual knowledge that Bauknight was in the process of understating Brown's Right of Publicity by millions of dollars and overstating deductions available under the McMaster settlement by \$5 Million to make Buchanan and Pope appear greedy and incompetent.

74. The Court overlooked that the "willful" act element of Defendants' Abuse of Process claim was met by the State's highest legal officer, and the Constitutional Officer charged with the protection of charities allowing his agent Bauknight to intentionally understate the value of Brown's assets to the IRS; intentionally (and secretly) overstate Brown's deductions by \$5 Million; claims that Brown's music empire was worth only \$4.7 Million at his death; then accuse Defendant and Buchanan of the felony of overstating Brown's assets by \$79 Million to get a \$5 Million commission, all for the purpose of discrediting Buchanan and Pope so Plaintiffs could siphon off assets belonging to James Brown's "I Feel Good" Charity Buchanan and Pope were properly protecting.

75. The Court overlooked or misapprehended that the success of the Attorney General in planting a false felony claim against Buchanan and Pope, based on material misstatements to the IRS and a "refund," along with a fabricated Grammy claim against Buchanan and Pope cannot serve as "cause to demonstrate that Plaintiffs' pursuit of this action is not a willful act through which process has been misapplied or abused."

76. The Court overlooked or misapprehended that the sole, paramount or primary reason of the Attorney General and other Plaintiffs for bring the action was to discredit, demean and damage Buchanan to the extent that they could not credibly defend

against the Attorney General's and Tomirae's scheme, through Bauknight, to dismember James Brown's "I Feel Good" Charity and its 900 copyrights for personal gain.

77. The Court overlooked that what the Court characterizes as "various legitimate concerns" about Buchanan's and Pope's administration were not legitimate because all were based on the false, material IRS filings by Bauknight, and the Attorney General's and other Plaintiffs' reliance on those false filings, the ill-gotten "refund" and additional knowing false and material misstatements by the Attorney General and Bauknight to the Court about James Brown's heirs and the Federal Copyright Act.

78. The Court overlooked that in addition to the false IRS claims, Bauknight made the false representations to the Supreme Court that Tomirae was Brown's spouse; that she and her son controlled the Federal Copyright Act Rights; that Termination Rights were automatic, and the royalties to "Please, Please, Please" would go automatically 50% to Tomirae in 2012; or, if not to Tomirae, to the Levenson clients; and that Tomirae's elective share claim was a "slam dunk."

79. The Court overlooked or misapprehended that all of the Plaintiffs knew Bauknight's representations to the Supreme Court and Tomirae to be false and/or misleading; and that the only reason Tomirae received \$1 Million in payments for part of the "Please, Please, Please" royalties in 2015 was that David Sojourner, Esq. failed to protect the "I Feel Good" Trust's copyrights and Bauknight and Peter Afterman helped Tomirae siphon off royalties to which she was not entitled.

80. The Court overlooked or misapprehended that Tomirae's elective share claim, and claim to be Brown's spouse, were never a "slam dunk" until the Attorney

General arbitrarily decided to favor Tomirae and her son, and to aid them, through Bauknight, in siphoning off assets which belong to James Brown's charity.

81. The Court overlooked or misapprehended that by his own admission Bauknight has spent millions and millions of dollars to defeat Buchanan's and Pope's claims, and that Tomirae's lawyer has claimed he should be knighted.

82. The Court overlooked or misapprehended that the abuse of process continued after March 6, 2013, when Attorney General Wilson was told personally of Bauknight's tax fraud and a possible way to correct it without damaging James Brown's "I Feel Good" Charity or Bauknight.

83. The Court overlooked or misapprehended that the Attorney General and Solicitor General Robert Cook had actual knowledge on March 6, 2013, that Plaintiff was competent; not greedy; and acting to try to save the "I Feel Good" Charity, but, instead, elected to authorize Bauknight and the Wingate Firm to continue the false, malicious, vitriolic lawsuit by which the Attorney General and Tomirae seek to damage Defendant so they can retake the assets of James Brown's "I Feel Good" Charity.

**B. All Plaintiffs Were Part of the Tomirae/Attorney General/ Bauknight Civil Conspiracy.**

84. The Court overlooked or misapprehended that this actions is clearly "a combination of two or more persons joining for the purpose of causing special damage to the plaintiff." Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822 (Ct. App. 2011).

85. The Court overlooked that even without discovery, under the Rule 56 standard, Defendant has met all of the element of civil conspiracy necessary to recover.

Lyon v. Sinclair Refining Co. 189 S.C. 136, 200 S.E. 78 (1938), and the "essential consideration" that the "primary purpose or object of the combination is to injure the plaintiff." Lee v. Chesterfield General Hosp., Inc. 289 S.C. 6, 13, 344 S.E. 2d 378, 383 (Ct. App. 1986).

86. The Court overlooked or misapprehended that the dicta in Wilson v. Dallas, which was issued three years after the Wingate Suit was filed, and reflected the false, malicious felony claim the Attorney General was making against Buchanan and Pope could not establish good faith grounds for bringing the Wingate Suit in 2010.

87. The Court overlooked or misapprehended that in their depositions in Aiken County Case 2013-CP-02-1337 AG Sony Jones and AG Mary Frances Jowers can state no grounds for bringing the suit; Governor Henry McMaster has stated under oath that he did not bring the suit as Attorney General, and did not authorize Bauknight to bring it on his behalf as Attorney General; Attorney General Wilson knows nothing about the Suit; and most Plaintiffs knew nothing to support the Wingate Suit when it was filed.

88. The Court overlooked or misapprehended that the improper Wingate Litigation Agreement, signed not by the Plaintiffs but by Attorneys seeking \$10 Million in legal fees if they could stop the Wilson v. Dallas appeal, is, alone, substantial evidence that the primary purpose of the Wingate Suit was to injure Defendant and Buchanan.

89. The Court overlooked or misapprehended that there is no evidence that all of the Plaintiffs had either the same justification, or any justification, for participating in the Wingate Suit, as depositions show that many were not even advised of the filing until years after the lawsuit was filed.

90. The Court overlooked that to the extent the Plaintiffs had the same "justification" to bring the Wingate suit, it was based on their unjustified and primary purpose, to injure Buchanan and Defendant so that they could dismember James Brown's noble estate plan.

91. The Court overlooked or misapprehended that it is manifestly unjust for the Court to find that the holding in Wilson is relevant to defeat some of Plaintiff's claims, but not relevant to support a cause of action for civil conspiracy.

92. The Court overlooked or misapprehended that the Attorney General, the McMaster Legacy Trust and Bauknight as the Attorney General's and Tomirae's agent, have maliciously continued their conspiracy to damage Defendant for four years after the Attorney General told the South Carolina Supreme Court he was seeking to be dismissed as a party to the Wingate Suit.

93. The Court overlooked that in furtherance of the conspiracy, since May 8, 2013, the Attorney General has condoned the payment to counsel and GAL for James B. of approximately \$700,000.00; the payment to Sojourner of about \$1.5 Million not to protect the copyrights; and the payment to Bauknight's lawyers, while he still serves Tomirae, millions of dollars, all for the purpose of injuring Defendant.

94. The Court overlooked or misapprehended that the actions of the Attorney General since March 6, 2013, when he had direct, personal knowledge of the intentional false IRS filings by Bauknight and the use of the false IRS filings in false Supreme Court filings, has been consistently prejudicial to the administration of justice.

95. The Court overlooked or misapprehended that the January 2011 planting by

David Bell, Esq., a signatory to the Wingate Litigation Retention Agreement, of the false Grammy claim was malicious; in furtherance of the civil conspiracy to damage Defendant and Buchanan; and did, in fact, damage them.

**C. Plaintiffs Intentionally Interfered with Plaintiff's Court-Approved Contract.**

96. The Court overlooked or misapprehended that Plaintiff has a valid contract with the Estate of James Brown and James Brown 2000 Trust, which contract was approved by Order of Judge Early dated January 8, 2008, and under which Buchanan has been paid for all service through May 26, 2009.

97. The Court overlooked or misapprehended that in its answer to the Complaint in Aiken Case 2013-CP-02-1337, the Estate/2000 Trust does not deny the existence of the contract, and did not deny it with respect to Buchanan.

98. The Court overlooked or misapprehended that it is undisputed that Judge Early's payment Order provided for interest at the legal rate to be paid on all amounts not paid under the contract within 60 days.

99. The Court overlooked or misapprehended that the Estate/2000 Trust did not deny the existence of the contract in their untimely response to Buchanan's and Pope's claims.

100. The Court overlooked or misapprehended that all Plaintiffs knew of the existence of the contract, and the decision of most Plaintiffs to interfere with payments to Buchanan and Pope under the Court-approved contract.

101. The Court overlooked that no Plaintiff who was a party to Aiken County Case 207-CP-02-0122, including the Attorney General, timely objected to the Contract or the

Payment Order of Judge Early, and some praised the service of Buchanan and Pope at the hearing on December 21, 2007 for approval of the Contract.

102. The Court overlooked or misapprehended that counsel for Tomirae, specifically, praised Buchanan and Pope for using "belt and suspenders" to seek Court approval of a contract the James Brown Will and Trust allowed them to make with themselves, individually, without Court approval.

103. The Court overlooked or misapprehended that the Contract and Payment Order approving the Contract, and directing that interest be paid on unpaid amounts, was known to all Plaintiffs (except the McMaster Legacy Trust, which was not a party to Case 2007-CP-02-1337 at the time).

104. The Court overlooked or misapprehended that Defendant, like Buchanan, demonstrated each of the elements for tortious interference with contractual relations, namely: 1. The existence of a contract; 2. Knowledge of the contract; 3. Intentional procurement of its breach; 4. The absence of justification; and 5. Resulting damages. Kindard v. Crosby, 315 S.C. 237, 240, 433 S.E. 2d 835, 837 (1993).

105. The Court overlooked or misapprehended that its finding seven years after issuing an Order approving the contract, that there was no contract, is inconsistent with the law of the case in Aiken County Case 2013-CP-02-1337; the payments to Buchanan made in this case, and approved by Judge Early; and the standard of review required by Rule 56.

106. The Court overlooked that the statement that Pope's and Buchanan's appointment by the Court overlooks that they were appointed under the Will and 2000

Trust of James Brown, with all authority and duties as if originally appointed by James Brown (with the exception of the duty to appoint a third trustee), and that the contract which the Court approved stemmed from their contract with the Estate and 2000 Trust as authorized by those documents. [Apptmt. Order. 11/20/07]

107. The Court overlooked or misapprehended that the many cases cited about general rules of contract ignore the record before Judge Early as to Plaintiff's contract; Buchanan's and Pope's Petition for Approval of the Contract; the hearing on the Petition; and the Payment Order approving the contract.

**D. Defendant Has Been Injured by the Fraud of Plaintiffs Under §62 -1-106.**

108. The Court overlooked or misapprehended that the following portion of Section 62-1-106 of the South Carolina Probate Code (2009) directly applies to this action:

Whenever fraud has been perpetrated in connection with any Proceeding or an any statement filed under this Code or if fraud is used to circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not, but only to the extent of the benefit received.

109. The Court overlooked or misapprehended that the false heirs determination and others known false representations to the Courts, beginning before the commencement of this action, and continuing today, have damage Defendant.

110. The Court overlooked that the fraud on the Supreme Court, following the claimed zero value of Brown's Right of Publicity and Tangible Person Property to the IRS and the securing of an ill-gotten IRS "refund" proximately caused injury to Defendant as required by the Code.

111. The Court overlooked that Plaintiffs never raised the statute of limitations as a defense to Defendant's fraud under §62-1-106 claims, and relief to Defendant for the false and fraudulent claims is not barred because they have been ongoing since 2009.

112. The Court overlooked or misapprehended that even innocent Defendants such as James B. have benefitted from the 62-1-106 Termination Rights and Valuation Fraud on multiple courts of Tomirae, the Legacy Trust and the Attorney General.

**Multiple Plaintiffs Benefitted, and Defendant Was Injured, by the Devaluation & Other Fraud of Tomirae, the Attorney General, Bauknight & Bell ,  
Federal Case No. 3:08-cv-00014-WOB and the Fraud of David Bell, Esq.**

113. The Court overlooked or misapprehended that the footnote related to a lawsuit filed against Plaintiff Estate/2000 Trust of James Brown on January 2, 2008, bears no relation to this action, except that Georgia lawyer David Bell, Esq., represented Forlando Brown in claiming to support the James Brown 2000 Irrevocable Trust in that federal suit, while simultaneously representing Forlando's father, Terry Brown, in seeking to dismember Brown's "I Feel Good" Trust as part of the McMaster settlement deal.

114. The Court overlooked or misapprehended that Forlando's lawsuit was commenced in January 2008 seeking an injunction against Plaintiff James Brown 2000 Irrevocable Trust until David Cannon and Albert "Buddy" Dallas were reinstated as its trustees. The Complaint and Forlando, both agree that James Brown's assets were worth at least \$100 Million when Brown died and offers of \$150 Million were available in late 2008, after the Attorney General and Tomirae claimed the right to take 75% control of Brown's assets and give away more than half of the "I Feel Good" Charity.

115. The Court overlooked or misapprehended that Buchanan and Pope

successfully defended the 2000 Trust in a November 2008 Forlando Suit hearing seeking to temporarily enjoin the 2000 Trust and reinstate the Cannon Trustees.

116. The Court overlooked or misapprehended that at that hearing the Estate Tax Return, with a value of the James Brown assets at approximately \$100 Million less the \$15 Million TIAA debt was discussed in detail, and no objection was made to the value.

117. The Court overlooked or misapprehended that in December 2010 and January 2011, after the commencement of the Wingate Suit, Attorney General Henry McMaster, Terry Brown and others, amended the McMaster Legacy Trust so that Terry's right of first refusal to purchase the James Brown assets could be set in motion.

118. The Court overlooked or misapprehended that following the amendment to the McMaster Legacy Trust, Terry Brown transferred his entire interest in the James Brown estate to Forlando.

119. The Court overlooked or misapprehended that on or about January 18, 2011 AG Jones secretly distributed the Legacy Trust Amendment and Assignment to Bauknight and the settling parties, and Forlando began the period of due diligence provided in the McMaster settlement deal.

120. The Court overlooked or misapprehended that in the same month Bell and Forlando planted the false Grammy claim on the Kilpatrick Stockton (KS) website.

121. The Court overlooked or misapprehend that the claim that Robert Potter, Esq., had halted the Grammy sale was false because the Grammy had been voluntarily and appropriately withdrawn by Buchanan and Pope, with Levenson present, over the urging of Christie's counsel that it remain in the sale.

122. The Court overlooked or misapprehended that the National Academy of Recording Arts and Sciences had no contract with Brown which would prevent a sale of the Grammy; Johnny Cash and others have sold Grammys; and Christie's counsel advised the there was no basis to withdraw the Grammy.

123. The Court overlooked or misapprehended that the Grammy was withdrawn appropriately to avoid the legal cost of defending the sale, and because Dallas and others had already chilled the sale.

124. The Court overlooked or misapprehended that in late 2010 the Attorney General supported Bauknight in the false claim to the IRS that all of James Brown's thousands of items of Tangible Personal Property, including the approximately \$800,00 of items sold at Christie's in 2008, had a value of less than \$200,000.

125. The Court overlooked or misapprehended that from January 2011 until after the *Wilson* decision in 2013 Bell, Bauknight and the Attorney General kept concealed the Wingate Litigation Agreement which was not signed by the Attorney General, but was signed by Bell.

126. The Court overlooked or misapprehended that in 2011 Forlando became disgruntled with Bauknight over what he claimed was Bauknight's failure to consider a possible \$200 Million sale of the James Brown assets to Oprah Winfrey or her agents.

127. The Court overlooked or misapprehended that Forlando , who had reviewed the \$4.7 Million Bauknight/PBw appraisal denounced it as "bogus" in a sworn deposition.

128. The Court overlooked or misapprehended that in the fall of 2011 Forlando

“fired” all of his attorneys, including Bell, and asked the Court the Honorable William O. Bertelsman to drop all of his claims against the 2000 Trust, and the claims made in the amendments to his Complaint against Buchanan and Pope.

129. The Court overlooked or misapprehended that Bauknight abandoned the 2000 Trust’s counterclaims for attorneys’ fees against Forlando, and offset against Forlando’s share of the 2000 Trust, for the 4-year attempt to reinstate the Cannon Trustees.

130. The Court overlooked or misapprehended that in 2012 Bauknight, with actual (but secret) knowledge that Forlando had become the owner of Terry’s interest in the Estate, allowed Forlando to represent to the Federal Court that he had no assets and no expectation of assets from the James Brown estate litigation unless his father died.

131. The Court overlooked or misapprehended that when Buchanan became financially desperate in 2012 and reached a settlement in the Wingate Suit, his carrier was not paid for protecting the 2000 Trust against Forlando’s attempted injunction, but retained the right to seek redress for some of the loss from his service from Forlando.

132. The Court overlooked or misapprehended that Buchanan and Pope appropriately made claims against Forlando which were not the same counterclaims made in this case because Forlando knew, and stated, the value of Brown’s music empire was \$100 Million or more; knew, and stated, that Tomirae was not Brown’s spouse, and her handwritten admissions showed that she begged Brown to marry her after he discovered she had been married during their bigamous ceremony. Further the false claims of the Attorney General, Bauknight and Tomirae to the Courts about heirs and the Federal

Copyright Act Termination Rights were not a part of the Forlando Suit because all parties, despite Forlando's bad acts and desire to reinstate Cannon and Dallas, agreed that Brown's noble estate plan should be upheld and that The James Brown "I Feel Good" Charity and its 900 copyrights protected.

133. The causes of action in the Forlando Suit related to the attempt to enjoin the 2000 Trust and reinstate the Cannon trustees even though Cannon had taken \$17 Million from funds Brown gave the "I Feel Good" Charity to educate needy students.

134. The Court overlooked or misapprehended that in July 2012 the Attorney General and other Plaintiffs reached a settlement in the Wingate Suit with Buchanan, who had become financially desperate, and that he was paid the amount under his Contract with the Estate/2000 Trust through May 26, 2009, plus some interest.

135. The Court overlooked or misapprehended that in the 2012 settlement Buchanan retained his right to seek redress against Forlando, but his carrier was not paid.

136. The Court overlooked or misapprehended that both before and after the Wilson v. Dallas decision, Bauknight, instead of supporting the two fiduciaries who had protected James Brown's estate from Cannon, claimed in a 2013 deposition in the Forlando Suit that Forlando had done nothing wrong and that Buchanan and Pope were the wrongdoers.

137. The Court overlooked or misapprehended that in 2013 Bell reappeared in the Forlando case, claiming to the federal court that he was not being paid for his work.

138. The Court overlooked or misapprehended that Bell, with knowledge of its falsity, continued the claim that Forlando had no assets. Further, he assured the Court

that the issue of attorneys' fees was being litigated in the State Court.

139. The Court overlooked or misapprehended that Bell, a Georgia lawyer, has a long history of false statements in the James Brown matters, including the filing, with Forlando and family, of multiple grievances against Louis Levenson, Esq., in Georgia and South Carolina, even accusing Levenson of forging his fee contract with Forlando's brother.

140. Bauknight's vitriolic deposition given in the Forlando Suit in September 2013, which is incorporated herein in its entirety, demonstrates the level of vitriol Bauknight spewed, and the Attorney General praised, as part of the conspiracy to damage and discredit Buchanan and Pope, who, by then, had actual evidence of the \$5 Million intentional overstatement of Brown's debts to the IRS, including a claim that Brown was giving \$2.8 Million to charity, when he was giving only \$.8 Million.

141. The Court overlooked or misapprehended that, assured (incorrectly) that Forlando had no assets; that Defendant 2000 Trust Buchanan and Pope had defended no longer sought repayment for the cost of Forlando's 4-year effort to reinstate Cannon and Dallas; and assured that the matters were being handled in State Court, Judge Bertelsman, who had previously dismissed all of Forlando's claims against the 2000 Trust, Buchanan and Pope 2012, praised the work of Buchanan and Pope, but declined to grant judgment against the claimed impoverished Forlando. Judge Bertelsman's Order was not reversed on appeal.

142. Consistent with the continuing scheme to try to damage Buchanan and Pope from in any way possible, after *Wilson* Bauknight hired Wingate - Tomirae's lawyer -

- to try to prevent Defendant's carrier from being reimbursed for his work to save James Brown's "I Feel Good" Trust from Cannon and Dallas, including a 2-day hearing in November 2008 where Forlando asked that the 2000 Trust be paralyzed until Cannon, who was known to have taken \$17 Million from funds Brown gave his "I Feel Good" Charity, was reinstated as trustee.

143. As a result of the false (abandoned) Forlando Suit in which Defendant's carrier protected the 2000 Trust from 2008 through May 26, 2009, and the fabricated, false claims in the Wingate Suit, both Buchanan and Defendant lost their professional insurance and were sued by their carrier, and Defendant is still unable to obtain professional negligence insurance as a result of the pending Wingate Suit.

**The Tomirae/ Legacy Trust/Attorney General \$4.7 Million Devaluation Scheme to Damage Defendants; Ill-Gotten IRS "Refund"; and False Supreme Court Filings, Including False Copyright Claims, Support all Counterclaims.**

144. The Court overlooked and misapprehended that Plaintiff's Termination Rights Expert in this case, Expert Roger Miller, has stated under oath that James Brown's music catalog is "sold gold" and that anyone in the business would of purchasing music catalogs would know that.

145. The Court overlooked that in his deposition in Aiken 2013-CP-02-1337, which is incorporated herein by reference, Miller is of the opinion that Brown's music catalog at his death was easily worth \$45- \$60 Million, and is still worth that much.

146. The Court overlooked or misapprehended that of Brown's 900 copyrights only the American copyrights, and only a portion of the America copyrights, may be subject to Termination Rights, and that James Brown's catalogue is worldwide.

147. The Court overlooked or misapprehended that by 2011, when Bauknight, the Attorney General and Tomirae made numerous false statements to the South Carolina Supreme Court about Termination Rights, the value of James Brown's assets; and James Brown's heirs under the Federal Copyright Act, and vitriolic claims that Buchanan and Pope were incompetent and greedy, all knew the claims to be false.

148. The Court overlooked or misapprehended that none of Plaintiff's experts, in the seven years this suit has been pending, has formed an opinion as to the value of James Brown's Right of Publicity at death.

149. The Court overlooked or misapprehended that Defendant's expert R.B. Alexander, who worked with Right of Publicity values related to the Estate of Dale Earnhart, Jr., has confirmed under oath that Buchanan's and Pope's \$84 Million value for James Brown's 900 copyrights and Right of Publicity, with other music empire assets, including a fleet of vehicles and about 50 boxes of music memorabilia, on the Estate Tax Return, is appropriate, but that his personal opinion is that the value (after the \$15 Million TIAA debt) is about \$90 Million.

150. The Court overlooked or misapprehended that by 2009 Michael Jackson had died, and that the IRS values Jackson's Right of Publicity at more than \$150 Million.

151. The Court overlooked or misapprehended that by the end of 2009, as a result of the Gignilliat v. Savage decision, it was clear that Brown's Right of Publicity, which is not subject to Termination Rights, would pass under his will to The James Brown "I Feel Good" Charity to be used solely for the education of needy student.

152. The Court overlooked or misapprehended that with knowledge of all of the

above, in August 2009 -- three months after she and now-Governor Henry McMaster took effective control of the James Brown assets -- Tomirae proposed to Bauknight and the Attorney General to devalue James Brown's 900 copyrights to \$24 Million or less and value his Right of Publicity at zero as a way to discredit Buchanan and Pope.

153. The Court overlooked or misapprehended that in the next month, September 2009 Bauknight hired Peter Afterman, who would claim on his website to have been hired by the State of South Carolina, as a musicologist.

154. The Court overlooked or misapprehended that Afterman was Bauknight's "expert" to work simultaneously with the appraisers at Philpott, Ball, Werner (PBW) on the \$4.7 Million "appraisal" and on a report claiming that Greenberg Traurig ("GT") had failed to collect as much as \$15 million of James Brown's pre-death sampling revenues.

155. The Court overlooked or misapprehended that in March 2010 both Bauknight lawyer and Tomirae's lawyer separately threatened to sue Buchanan and Pope if they did not drop the appeal of the McMaster Settlement deal.

156. The Court overlooked or misapprehended that in 2010 Buchanan and Pope offered for the Attorney General and Settling Parties to have everything they had agreed to get, with Buchanan and Pope to walk away if the Court of Appeals would agree that the Attorney General's judgment could be substituted for their judgment in approving the McMaster deal, and GALs approved the settlement for the minors whose trusts had been reduced.

157. The Court overlooked or misapprehended that under the proposal, Buchanan and Pope would resign as soon as the Court approved the settlement, and Judge

Early would have been asked to determine their commissions and fees.

158. The Court overlooked or misapprehended that the Attorney General and Settling parties declined to respond.

186. The Court overlooked or misapprehended that between May 12 and May 18, 2010, Sr. Assistant AG Sonny Jones, counsel for Tomirae, the Wingate Firm, and counsel for Bauknight, with others worked on the Wingate Suit complaint.

159. The Court overlooked or misapprehended that Tomirae, Bauknight and the Attorney General had all reviewed the Final Accounting of Buchanan and Pope which showed that on May 26, 2009 they had delivered \$99 Million of Gross Assets to Bauknight on their replacement, and that the TIAA Debt had been reduced to \$11 Million.

160. The Court overlooked or misapprehended that Jones was an expert on Special Counsel Litigation Retention Agreements; knew the Due Process requirements under the Santa Clara decision and a recent order in the Eli Lilly case; and knew that McMaster had been criticized for what the Wall Street Journal called "pay to play" in which no-bid Special Counsel attorneys and their families made large contributions to McMaster's campaigns and McMaster's office (not the State's general fund) retained 10% of their legal fees.

161. The Court overlooked or misapprehended that McMaster, who was running for Governor, had said he would not accept further contributions from Special Counsel, although he believed them to be legal.

162. The Court overlooked or misapprehended that prior to the filing of the Wingate Suit Complaint, Governor McMaster signed a letter that does not disclose that the

State/Attorney General is going to be a party to the Wingate Suit or that Bauknight had any right as a Plaintiff to sue Buchanan and Pope on behalf of the Attorney General.

163. The Court overlooked or misapprehended that on or before May 19, 2010 the Wingate Agreement was signed by Bauknight, Tomirae's lawyer, and Levenson and Bell. If they could damage Buchanan and Pope enough to stop the appeal which would become *Wilson v. Dallas*, the lawyers would reap about \$10Million; their clients another \$30 Million or so; all from James Brown's "I Feel Good" Charity; all based on the known false "stipulation" that Tomirae was Brown's spouse and false claims made to Judge Early about heirs; federal estate taxes; and Federal Copyright Act Termination Rights.

164. The Court overlooked or misapprehended that the Wingate Complaint was approved by the office of Governor McMaster, Bauknight and lawyers for more than a dozen Plaintiffs, and contained scurrilous, false allegations about Copyright Termination Rights, Taxes, Valuation, the Christie's sale, and other alleged improper actions which the staff of Governor McMaster, Louis Levenson, Esq., ("Levenson"), David Bell, Esq., ("Bell"), Bauknight and Tomirae's counsel ("Medlin" and "Rosen") and the GAL and lawyer for Tomirae's son all knew to be false, barred by statutes of limitations, or both.

165. The Court overlooked that in violation of ethical rules, most of the fifteen Plaintiffs did not sign the \$40% Wingate Contingency Free Agreement (for individuals), and many of the Plaintiffs were unaware of the existence of the Wingate Suit until years after it was filed.

166. The Court overlooked or misapprehended that in the Wingate Suit the mighty power of the State was placed in the Wingate Firm's hands to be used against

Buchanan and Pope for the benefit of Tomirae, the Attorney General and the Attorney General's "Legacy Trust" he had created to hold the James Brown assets taken over in the McMaster Settlement through 3 Plaintiffs: the Attorney General; the McMaster Legacy Trust; and Bauknight "on behalf of the Attorney General of South Carolina."

167. The Court overlooked or misapprehended that since May 26, 2009, Tomirae and the Attorney General had effective control of James Brown's charitable and non-charitable assets through the McMaster Legacy Trust. In addition the Attorney General could remove and replace Bauknight his trustee, at Will.

168. The Court overlooked or misapprehended that among the known false and scurrilous claims in the Wingate Suit Complaint were two conflicting ones: 1. The false claim that Buchanan and Pope should have accepted a 2007 \$100 Million offer for Brown's assets; and the false claim that they had intentionally overvalued Brown's assets to gain a large commission.

169. The Court overlooked and misapprehended that a week after the Wingate Suit was filed, a principal in the Wingate Firm contributed \$1,000 to the McMaster campaign, which was not returned.

170. The Court overlooked or misapprehended that in August 2010 the Attorney General, Tomirae and others told the Appellate Court in *Wilson* that an appraisal of James Brown's assets was expected in a few weeks which would show that Brown's assets were worth less than \$12 Million when he died.

171. The Court overlooked or misapprehended that at the first hearing, despite not having told Governor McMaster he was a Plaintiff in the Wingate Suit, and Bauknight

was the Attorney General's claimed agent, AG Jones appeared with Wingate Firm members; and was introduced as one of the Wingate Firm's clients.

172. The Court overlooked or misapprehended that Wingate Firm members assured the Court, based on representations of AG Jones, that it was perfectly legal for the Attorney General to be using a private lawyer to sue Buchanan and Pope; that Sonny Jones was involved in both the Crouch Order in the Lilly case and Stanta Clara decision; and that Judge Early had already ruled that it was appropriate.

173. The Court overlooked or misapprehended that, at the same time, the Attorney General, through AG Jones, claimed that an attempt to dismiss the suit or change venue was inappropriate because the Wingate Suit was unrelated to the *Wilson* appeal.

174. The Court overlooked or misapprehended that the PBW "appraisal" arrived as expected, but the Attorney General, Bauknight, Tomirae and others agreed to withhold it from the Supreme Court in *Wilson* for 8 months, until the record on appeal ("ROA") and last brief were filed.

175. The Court overlooked or misapprehended that, although it was not known until after the first *Wilson* decision, the PBW \$4.7 "appraisal" which arrived in September 2010 was a mere reflection of Tomirae's devaluation scheme, with the 900 copyrights at \$23.7 Million, reduced by the the TIAA debt, overstated by more than \$3 Million, at \$19 Million.

176. The Court overlooked or misapprehended that in October 2010, the Wingate Firm moved for relief from default because Wingate had received the Answer and

Counterclaims; marked "file" on them; and not timely responded.

177. The Court overlooked or misapprehended that in October 2010 the Attorney General, the Legacy Trust and Bauknight named David Cannon, who had taken \$17 Million from funds Brown gave the "I Feel Good" Charity, and Albert "Buddy" Dallas, as Plaintiffs' witnesses against Buchanan and Pope in the Wingate Suit.

178. The Court overlooked or misapprehended that, with the blessing of the Attorney General, in late 2010 Bauknight told the IRS that Brown's Copyrights were worth \$23.7 Million; Brown's Rolls Royce and fleet of automobile and thousands of items of Tangible Personal Property in museums and at home, including the \$800 of items sold by Christie's were worth about \$120,000; that Brown's Right of Publicity was worth zero; that Brown's millions of dollars of uncollected sampling claims owed at his death were worth zero; and that his claim against GT, the accountant who had understated Brown's income by \$3 million a year; and Cannon, who took \$17 Million were worth zero.

179. The Court overlooked or misapprehended that Bauknight, with the blessing of the Attorney General also overstated the Estate Tax Charitable Deduction to which Brown's Estate was entitled under the McMaster settlement deal by \$2 Million, taking a \$2.8 Million charitable claim where only \$.8 was going to charity, and the \$2 Million was going to Brown's grandchildren.

180. The Court overlooked that all of Tomirae's advisors; some of the dozen Attorney General attorneys; and at least three of Bauknight's attorneys, had actual knowledge that an estate tax refund was impossible under the McMaster settlement deal because every dollar going to James B. or the Levenson clients generated 40 cents or more

of estate taxes.

181. The Court overlooked or misapprehended that both the \$2 overstatement of Brown's Charitable deduction and the \$3 Million overstatement of the TIAA debt were concealed (one within the PBW appraisal), and might not have been noted by the IRS.

182. The Court overlooked or misapprehended that, based on these material misrepresentations, and with the blessing of the Attorney General, Bauknight obtained an IRS closing letter.

183. The Court overlooked or misapprehended that everyone with any IRS experience knows that a closing letter is not an endorsement by the IRS of Bauknight and Tomirae's devaluation to \$4.7 Million, and can be withdrawn for fraud, mistake and other reasons.

184. The Court overlooked or misapprehended that in December 2010 the Attorney General, Tomirae and Bauknight filed their initial brief in the Supreme Court and made the knowing false claim that, because of the failure of Buchanan and Pope to secure an appraisal, they were unable to value the Settling Parties' "valuable" termination rights—under the Federal Copyright Act.

185. The Court overlooked or misapprehended that at Brown's death and prior to the Attorney General's "stipulation" that Tomirae was to be considered Brown's spouse for all purposes, the value of Tomirae's termination rights was near zero, and the value of the 5 Levenson claimed children's termination rights was above zero, but small.

186. The Court overlooked or misapprehended that in December 2010 Bauknight's lawyers prepared an amendment to the McMaster Legacy Trust which

allowed Terry Brown to begin Due Diligence on a possible sale of the James Brown assets, and which was secretly signed by Governor McMaster shortly before he left office.

187. The Court overlooked or misapprehended that A few days later Terry. Secretly assigned his right of first refusal (ROFR) to buy the James Brown assets to Forlando.

188. The Court overlooked or misapprehended that in the same month, month, Bell and/or his clients, who were dealing with Kilpatrick Stockton("KS") lawyers, planted the false GRAMMY claim on the obscure KS website that would be noted by the Supreme Court in its *Wilson* decision.

189. The Court overlooked or misapprehended that upon taking office in January 2011 Attorney General Alan Wilson authorized the Wingate Suit to continue.

190. The Court overlooked or misapprehended that in January 2011 the Attorney General, Tomirae and others sought sanctions against Buchanan and Pope for filing a brief trying to collect some of the \$1.2 Million cost of his removal as ordered by Judge Early.

[Sanctions against Buchanan and Defendant were not granted.]

191. The Court overlooked or misapprehended that in April 2011 Copyright expert Wm. Jeffrey Smith, who had been hired by Buchanan and Pope in June 2008 to help with Termination Rights issues, with Pope, circulated to professionals a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....*, which describes how the McMaster settlement, including the Attorney General's decision to "stipulate" that Tomirae was Brown's spouse; stop the ongoing Peeples DNA protocol which was properly determining heirs; and declare that

fewer than half of Brown's claimed children were his descendant/ heirs, with the devaluation to \$12 Million announced by the Attorney General, left the "I Feel Good" Charity with almost nothing.

192. The Court overlooked or misapprehended that expert Smith and Wallace Lightsey, Jr., Defendant's experts in this case, like Pope, have confirmed that multiple strategies exist, such as those employed by the Ray Charles Foundation, for charities owning copyrights to protect themselves from premature or improper exercise of Termination Rights by claimed heirs, and diminish the negative impact on the charity of Termination Rights.

193. The Court overlooked or misapprehended that after the last brief was filed in Wilson in early May 2011, Bauknight filed an amended Inventory & Appraisalment ("I & A") and a motion to supplement the record on appeal ("ROA") in Wilson claiming Brown's assets were worth about \$6.5 Million, with Brown's music empire having a value of less than \$4.7 Million.

194. The Court overlooked or misapprehended that thereafter, the Attorney General, Tomirae and Bauknight began claiming that nobody had ever made an offer for the James Brown assets and that Buchanan and Pope had intentionally overstated the value of Brown's assets in sworn IRS filings in order to secure a \$5 Million commission from a \$5 Million estate, a federal felony.

195. The Court overlooked or misapprehended that, as was intended, the Court was naturally concerned that the constitutional officer in charge of protecting charities was accusing fiduciaries of seeking a \$5 million commission which was 100% of the at-

death value of an estate dedicated mostly to charity.

196. The Court overlooked or misapprehended that in 2011 when the Wingate Firm refused to release the fabricated \$4.7 Million appraisal or a copy of the public Wingate Litigation Retention Agreement, Defendant filed a FOIA suit for the \$4.7 Million appraisal and related documents.

197. The Court overlooked or misapprehended that since 2011 the Attorney General, the Legacy Trust and Bauknight have vigorously evaded all James Brown FOIA requests for long-public documents that shown Tomirae was not Brown's spouse (Hynie handwritten notes), the fabricated PBW \$4.7 Million appraisal; the McMaster Legacy Trust; and the Wingate Litigation Retention Agreement.

198. The Court overlooked or misapprehended that in the fall of 2011, Wingate – on behalf of ALL Plaintiffs – moved to intervene in a FOIA suit seeking a copy of the public Wingate Litigation Retention Agreement.

199. The Court overlooked or misapprehended that in September 2011 the Attorney General announced that he was "ready and more than willing" to produce the Wingate Litigation Agreement under FOIA, but, instead, joined Wingate in a vicious fight to consolidate the FOIA suit with the Wingate Suit; subordinate the FOIA request to discovery in the Wingate Suit; and bury it with a confidentiality Order.

200. The Court overlooked that between 2011 and 2016 the Attorney General, Wingate and Bauknight took similar action to prevent release under FOIA of the long-public handwritten notes in which Tomirae admitted she was married; living with her husband in Texas; and though she might be pregnant before she met James Brown, and

begged Brown to marry her after he learned that their 2001 ceremony was bigamous.

201. The Attorney General and his staff admitted in Supreme Court filings that the Attorney General had reviewed Tomirae's handwritten admissions before his decision to "stipulate" that Tomirae was Brown's wife, as had scores of others, including Buchanan and Pope.

202. The Court overlooked or misapprehended that in October 2011 the Attorney General, who was handling both the Cannon criminal matter and the Cannon civil matter, allowed Cannon to enter an *Alford* plea and sought no restitution.

203. The Court overlooked or misapprehended that on October 31, 2011, in furtherance of the conspiracy to discredit Buchanan and Pope, the day before the Wilson oral argument, Bauknight's lawyer gave an interview to the Associated Press in which he claimed that returning Buchanan and Pope would be like throwing a hand grenade into the James Brown estate.

204. The Court overlooked or misapprehended that emails produced in other cases, but withheld by the Attorney General and Tomirae in this case, show that Tomirae's lawyer and a tax lawyer for Bauknight coached the Legacy Trust's counsel on how to present the fabricated \$4.7 Million value claim to the Supreme Court and other aspects of the *Wilson* Supreme Court argument, even though both had actual knowledge of the secret devaluation of Brown's assets and intentional overstatement of Brown's deductions by \$5 Million in the IRS proceeding.

204. The Court overlooked of misapprehended that at the Supreme Court oral argument Bauknight, supported by both McMaster and Attorney General Wilson who

were present, made a number of knowing false statements to the Supreme Court.

205. The Court overlooked that, with knowledge that it was false, the Attorney General supported Bauknight's claim that Tomirae's elective share claim was a "slam dunk;" that Copyright Act Termination Rights were automatic, and that all the royalties to "Please, Please, Please" would be lost to Tomirae and her son, or to the Levenson and Bell clients, in 2012; that he "knew" the value of Brown's assets; and that Termination Rights are "all this estate is about;" that Brown's estate and trust had no corpus to speak of; that that nobody was trying to buy it."

206. The Court overlooked or misapprehended that Bauknight's counsel's statements to the Supreme Court misstated the Copyright Act and were in direct conflict with Plaintiffs' expert Roger Miller, who has confirmed that anyone in the business would have known that Brown's music catalog alone was "gold standard" and worth 15 - 20 times revenues (\$45 - \$60 Million) at his death and later.

207. The Attorney General, through AG Jones, who acknowledged he knew almost nothing about Termination Rights, supported the false Bauknight claims, including the claim that, but for the Master settlement deal, there would be nothing in James Brown's "I Feel Good" Charity in 2023.

208. In 2012, upon learning that their own witness, Albert Dallas, was prepared to testify in detail of his knowledge that Tomirae was not Brown's spouse, the Attorney General and other Wingate Suit Plaintiffs obtained an oral order from Judge Manning stopping the deposition.

209. In 2012 Tomirae, Bauknight and the Attorney General furiously tried to

prevent release of the long-public handwritten admission by Tomirae that she was married, living with her husband, and thought she might be pregnant before she met and conducted a ceremony with Brown.

210. The Court overlooked or misapprehended that in May 2012 Judge Early considered Pope's request to lift two *ex parte* gag orders he had issued in 2008 which concealed the long-public admissions which, in addition, showed Tomirae begged Brown to marry her after he discovered she was married, but he Brown refused.

211. The Court overlooked or misapprehend that in August 2012 Judge Early declined to rule on lifting the unconstitutional gag orders, finding he lacked jurisdiction because of the pending Wilson appeal.

212. The Court overlooked or misapprehended that after the *Wilson* ruling, Judge Early, without a hearing, banned Buchanan and Pope from participation in any Aiken County James Brown case except their own, depriving Pope of the opportunity to seek to set aside the unconstitutional gag order.

213. The Court overlooked or misapprehended that in 2012 a reporter following the Pope FOIA cases made certain FOIA requests of her own, including a request for Tomirae's handwritten admissions which Pope had not sought under FOIA.

213. The Court overlooked or misapprehended that the Attorney General and Bauknight, with Tomirae, began a vicious attack on the journalist, even seeking her sources and notes, claiming that she was an agent of Pope.

214. The Court overlooked or misapprehended that by 2015 Jay Bender, Esq. and Thomas Pope III, counsel for the journalist, had secured orders under FOIA requiring the

Attorney General to release many of the documents he has still refused to release in this case.

215. The Court overlooked or misapprehended that instead of releasing the \$4.7 Million appraisal and related documents, as directed by Judge Eugene C. Griffith, Jr., the Attorney General asserted to Judge Griffith that neither the Attorney General nor his staff had seen the \$4.7 appraisal on which Bauknight and the Attorney General have, since 2011, been basing the false claim that Buchanan and Pope committed the federal felony of overstating Brown's assets by \$79 Million to obtain a \$5 Million commission.

217. The Court overlooked or misapprehended that, in lieu of a deposition in this case, Dallas gave sworn testimony, which is incorporated herein by reference, that Brown and Tomirae were not married; that she begged Brown to marry her; but Brown was hurt by Tomirae's concealing her marriage, and refused.

218. The Court overlooked or misapprehended that Dallas testified under oath that he, Tomirae and James Brown had a 3-way phone conversation in the summer of 2006 - before Brown and Tomirae separated for the last time - confirming that they were not married, and that she was a mere guest at Brown's Beech Island mansion.

218. The Court overlooked or misapprehended that Buchanan became financially desperate in 2012 and advised Pope he needed to settle. He told Pope he needed \$500,000.00 then more than he would need the \$2.1 Million reasonable fee he was requesting for all of his years of service.

219. In order for Bauknight to pay Buchanan the \$500,000 he had earned under the Buchanan/Pope contract with the Estate/2000 Trust through May 26, 2009, the

Attorney General extracted from Buchanan a commitment that he would do nothing to help Pope, and the improper commitment that Buchanan would not file a Petition for Rehearing when the Wilson decision was rendered.

220. The Court overlooked or misapprehended that the Attorney General failed to notify the Supreme Court of his improper requirement that Bauknight NOT protect the "I Feel Good" Trust, at rehearing, and, instead, tried to make it appear to the Supreme Court that Buchanan no longer opposed the McMaster settlement deal.

221. The Court overlooked or misapprehended that in 2012, even though they had not complied with discovery request, Plaintiffs asked Judge Manning to direct a mediation in the Wingate Suit, which he did.

222. The Court overlooked or misapprehended that most Wingate Suit Plaintiffs did not attend the mediation, but Levenson and Bell attended, claiming they had authority to speak for nearly a dozen Plaintiffs – including some who had terminated them.

223. The Court overlooked or misapprehended that prior to the mediation Pope offered to let the minors and Attorney General out of the Wingate Suit if they would help save the "I Feel Good" Charity which, all knew, was dismembered by the McMaster settlement deal.

224. The Court overlooked or misapprehended that instead of responding to her offers of judgment, the Attorney General and others filed the offers with the Court, and asked Judge Manning to strike them.

225. The Court overlooked or misapprehended that Chief Deputy John McIntosh, AG Jones and AG Mary Frances Jowers, attended the October 2012 Wingate Suit mediation.

226. The Court overlooked or misapprehended that Tomirae did not attend the mediation, but issued a public post that day claiming the mediation was being held to get rid of Pope, whom she said had taken things from the family and was the "last of the rats."

227. The Court overlooked or misapprehended that in 2017 Bauknight would claim that Pope would not even accept \$40 million in 2012.

228. The Court overlooked or misapprehended that a correct statement was that Pope said in 2012 that no matter what she was offered at that time, she would not accept it if a condition of being paid was that Pope abandon the appeal which should have saved The James Brown "I Feel Good" Charity from being dismembered.

229. The Court overlooked or misapprehended that in December 2012 Pope's daughter, who had two small children, suffered a brain tumor event.

230. The Court overlooked that almost immediately after the event the Attorney General and other Wingate Suit Plaintiffs asked for a scheduling order and trial of the Wingate Suit in the summer of 2013.

**The Attorney General and Tomirae Continue their Alliance, FOIA Evasion and the Wingate Suit, Defying Wilson v. Dallas (2013 - 2017)**

231. The Court overlooked or misapprehended that in the first *Wilson* decision, issued February 27, 2013, the Supreme Court admonished the Attorney General to conclude the FOIA matters and the Wingate Suit "in the first instance."

232. The Court overlooked or misapprehended that on March 6, 2013 Pope met with Attorney General Wilson, McIntosh and Solicitor General Robert Cook, and discussed with them the damage to the "I Feel good" Charity that would result if the false IRS filings

were not corrected. She suggested that they could be easily corrected, because the *Wilson* decision corrected most of the tax problems. The claimed \$5 Million value and other misstatements, however, posed problems for the "I Feel Good" Charity, reducing its required annual payout in scholarships for needy students from \$3+ Million to as little as \$50,000.

233. The Court overlooked or misapprehended that Cook, with an extensive file of James Brown, stated under oath that he believed Pope sincerely worked to try to save the "I Feel Good" Charity; was competent and never appeared to him to be greedy.

234. The Court overlooked or misapprehended that the Attorney General's and Bauknight's statements to the Court, however, have been exactly the opposite.

235. The Court overlooked or misapprehended that In March 2013 the Attorney General told the Supreme Court and Pope he was going to get out of the Wingate Suit, but he did the opposite.

236. The Court overlooked or misapprehended that on May 8, 2013 the second *Wilson* decision was rendered, voiding Bauknight's appointment.

237. The Court overlooked or misapprehended that by May 9, 2013 the Attorney General and Tomirae were working to have Bauknight reinstated.

238. The Court overlooked or misapprehended that on May 10, 2013, the Attorney General asked Judge Manning to stay all proceedings in the Wingate Suit and FOIA cases until Judge Early concluded the James Brown matters in Aiken County, telling Judge Manning that the Supreme Court's dropping the footnote related to concluding the FOIA and Wingate Suits meant the Court had no interest in having those matter proceed

promptly.

239. The Court overlooked or misapprehended that on May 29, 2013, within a day of the Wilson v. Dallas remittitur, Tomirae's counsel and Levenson asked Judge Early in open Court to go *in camera* and hear why the McMaster settlement deal should be immediately reinstated.

240. The Court overlooked or misapprehended that same day, May 29, 2013, Bauknight, Levenson and Tomirae all asked that Buchanan and Pope, along with their own witness Dallas, be banned from participation in James Brown hearings in Aiken.

241. The Court overlooked or misapprehended that the only things Buchanan and Pope had in common with Dallas was that all knew Brown's assets were worth \$100 million when he died; all knew that there was no credible evidence to support Tomirae's spousal claim; and all knew that the McMaster deal was an even greater threat to the "I Feel Good" Charity than the \$15 Million commission Dallas and his co-fiduciaries had sought.

242. The Court overlooked or misapprehended that on June 10, 2013 Judge Early granted Tomirae's and Levenson's request, banning Pope, Buchanan and other former trustees from participating in any James Brown case except their own cases.

243. The Court overlooked or misapprehended that in August 2013, Tomirae and James B., with the aid of Peter Afterman, filed defective documents in the Federal Copyright Office attempting to exercise Termination Rights as to about 90 of Brown's 900 copyrights between 2015 and 2023.

244. The Court overlooked or misapprehended that from 2013 until 2016, when

this lawsuit was assigned by the Supreme Court to Judge Early, Tomirae, Bauknight and Levenson continued to make false claims about the value; did not correct the false IRS filings; and continued to make vicious statement about Pope, and Buchanan when needed, with no forum for Buchanan and Pope to correct the false statements.

245. The Court overlooked or misapprehended that Pope worked *pro bono publico* from May 8, 2013 until June 10, 2015, to try to convince the Attorney General and the Court not to reinstate the McMaster settlement deal; not to undervalue Brown's "I Feel Good" Charity and to take reasonable steps to protect the "I Feel Good" Charity's annual \$3 Million plus royalty stream from inappropriate attempts by Tomirae and others to take away a portion of the royalties.

246. The Court overlooked or misapprehended that David C. Sojourner, Esq., appointed to protect the estate plan in the Tomirae proceeding and James B. proceedings, declined to meet with Pope; charged about \$1.4 Million for himself and lawyer between October 2013 and May 2016; took one deposition; and asserted under oath that he had no responsibility to protect Brown's copyrights.

247. The Court overlooked or misapprehended that Bauknight paid counsel, in his words, "millions and millions" of dollars, but continued to serve as Tomirae's Trustee in the Legacy Trust and did nothing for the two years between 2013 and 2015 to stop Tomirae from being paid \$1 Million in 2015.

248. The Court overlooked or misapprehended that Bauknight made no protest when Judge Early awarded a \$700,000.00 fee to James B's GAL and lawyer, even though the fee could have been avoided if James B. had simply taken the Peoples DNA Protocol the

Estate/2000 Trust paid \$300 for him to take in 2008.

249. The Court overlooked that, according to their claim that Brown's estate was worth \$5 Million at death, and James B's claim is only 1/20 if he is 100% successful, Bauknight's payment of a \$700,000 legal/GAL fee where the minor's lawyer, in addition, has a contingency fee arrangement with Tomirae, is unreasonable in comparison to the \$2.8 Million sought by Pope for six years of nearly-full-time service to the Estate/2000 Trust of James Brown.

250. The Court overlooked or misapprehended that the vigorous pursuit of the Wingate Suit, including attempting to consolidate discovery with Pope's claim case so that Brown's "I Feel Good" Charity's funds could pay for Tomirae's and the Legacy Trust's experts, all to damage Pope so that he could retake control over the James Brown assets and allow Tomirae to siphon off royalties to which she is not entitled, was a direct violation by the Attorney General of his statutory duties, and further evidence that his acts have been prejudicial to the administration of justice.

**Terry and Daryl are Liable for Fraud and Wrongdoing of Bell.**

251. The Court overlooked or misapprehended that when he approved the Complaint in this case, although he did not notify Terry, Bell had actual knowledge that the claims were false.

252. The Court overlooked or misapprehended that when he joined in the false \$4.7 Million claim with the Attorney General and Bauknight, Bell had actual knowledge from Forlando and other sources that Brown's assets were worth \$100 Million or more, but joined in the false filings to damage Pope and Buchanan.

253. The Court overlooked or misapprehended that even though Terry has now terminated Bell, he is bound by the material, false filings he allowed Bell to authorize Wingate to make on Terry's behalf, and is liable to Defendant (and possibly Buchanan).

254. The Court overlooked or misapprehended that Buchanan and Pope owed neither Daryl nor Terry any duty after they filed suit to set aside the Will and 2000 Trust.

255. The Court overlooked or misapprehended that Daryl has publicly admitted that James Brown's estate plan is valid, and should be upheld, while allowing Levenson, Bell and Wingate to make knowing false, contrary statements in this case.

256. The Court overlooked or misapprehend that neither Terry nor Daryl has produced a scintilla of evidence of any wrongdoing by Buchanan and Pope.

257. The Court overlooked or misapprehended that the deposition admissions of Terry and Daryl, and the knowing false statements made on their behalf by Bell, along with the malicious false GRAMMY plant, confirm that they are liable, under the Rule 56 analysis, to Pope on all Counterclaims.

258. The court further overlooked and misapprehended that Terry and Daryl's attempted intervention in FOIA suits exacerbates the wrongdoing and malice of their actions.

259. The Court overlooked or misapprehended that neither Terry, nor Daryl, nor any Plaintiff should have been released from default, and the Order of Judge Manning granting such relief should be set aside.

**A Dozen Plaintiffs, Including Minors, are Liable to Defendant  
for Levenson's Fraud and Wrongdoing in this Suit**

260. The Court overlooked or misapprehended that most of Deanna, Yamma Larry, Daryl, Venisha, Terry, Tonya, Janise, Lindsey and Sydney and Carrington did not even on May 19, 2010 know the Wingate Suit was being filed by Wingate, through authorization by Levenson, for the purpose of damaging and discrediting Buchanan and Pope.

261. The Court overlooked or misapprehended, however, that all have failed to repudiate the statements and actions they know to be false and malicious which Wingate, through Levenson, has taken on their behalf.

262. The Court overlooked or misapprehended that under the Rule 56 analysis Levenson's sole motivation, for himself and a dozen Plaintiffs, in joining the conspiracy with the Attorney General, Tomirae and Bauknight to damage Buchanan and Pope was to secure about \$9 Million for himself and about \$11 Million for his clients to which all knew they were not entitled.

263. The Court overlooked or misapprehended that their public admissions in Yamma's autobiography and in the South Carolina Court of Appeals make clear that at the time of the McMaster settlement, at the time of the filing of the Wingate Suit, and at all times since, the dozen Levenson clients/Wingate Suit Plaintiffs knew Brown's Will and Trust were valid, and what he wanted; knew Tomirae was not Brown's spouse; knew Buchanan and Pope had properly and professionally defended Brown's Estate Plan and 900 copyrights; knew that the allegations of the Wingate Complaint were false; yet joined

in the Tomirae/Attorney General/ Bauknight conspiracy to damage Buchanan and Pope for their own benefit.

**Bauknight is Liable to Defendant for Illegal Acts "On Behalf of" the State/AG**

264. The Court overlooked or misapprehended that Bauknight is liable as to each counterclaim for wrongful acts he took as the claimed and apparent agent of the Attorney General of South Carolina.

265. The Court overlooked that Bauknight's malicious acts to damage Buchanan and Pope using the power of the State/Attorney General, and the Attorney General's condoning and praising such actions, are prejudicial to the administration of justice and violate Buchanan's and Pope's Due Process rights.

**Granting the Attorney General & Others Relief from Default Was Improper**

266. The Court overlooked or misapprehended that the Order of Judge Manning granting the Attorney General and other Plaintiffs relief from default was improper, and that this case should have been ended in 2011 with a damage hearing for Buchanan and Pope.

**The Attorney General and Bauknight Are Liable as Successors in Interest For Damages Caused by the McMaster Legacy Trust.**

267. The Court overlooked or misapprehended that the McMaster Legacy Trust is the vehicle used by the Attorney General and Tomirae to damage Buchanan and Pope, and to seek personal, improper benefits from Brown's charity.

268. The Court overlooked or misapprehended that it would be inappropriate to

grant any relief to the McMaster Legacy Trust while it claims it does not exist, and Defendant is entitled to judgment against the Attorney General and Bauknight as its successors in interest under all causes of action if it does not, in fact, exist.

**No Plaintiff Is Entitled to Any Relief Because All Have Unclean Hands.**

269. The Court overlooked or misapprehended that because of their participation in or support of known material false statements to the IRS in an amount as large as their claimed value of the Estate, and in using the false IRS filings to damage Buchanan and Defendants all Plaintiffs have unclean hands.

270. The Court overlooked or misapprehended that because of their unclean hands neither the Attorney General nor any other Plaintiff is entitled to equitable relief hereunder.

**Buchanan and Pope Never Owed Any Duty to Tomirae or the McMaster Legacy Trust**

271. The Court overlooked or misapprehended that because Buchanan and Pope never owed any fiduciary duty to Tomirae, her son, or the McMaster Legacy Trust, and the Attorney General, Bauknight and Tomirae knew that, their fabricated action for damage for breach of a fiduciary duty to them Buchanan and Pope never had, for the purpose of damaging Buchanan and Pope, was, on its face, evidence of intentional wrongdoing.

272. The Court overlooked or misapprehended that because James Brown's documents specifically withdraw standing from any person challenging the estate plan, the same result applies to all Levenson clients after December 26, 2007 and to Terry Brown after he joined the McMaster settlement deal in January 2009.

**Most Plaintiff and Defendant Experts With Opinions, and Many Plaintiffs, Support Buchanan/Pope's \$84 Million Value and Admit Defense of Tomirae/Attorney General's/Bauknight's False Heir and Copyright Claims Appropriate.**

273. The Court overlooked or misapprehended that in seven years Plaintiffs have not produced a single expert in this case to support the Attorney General/Bauknight/Tomirae claim that Brown's Schedule F assets ("Music Empire") had a value of \$23.7 Million, reduced by a \$19 Million TIAA debt, which devaluation is at the center of the scheme to discredit and damage Buchanan and Pope; and Bauknight himself has confirmed under oath that he had no expertise to do so.

274. The Court overlooked or misapprehended that the fiduciary charged with defending the estate plan and protecting it against Tomirae has admitted under oath Court filings that he knows nothing about Federal Copyright Act Termination Rights; and in 2013 he refused Pope's offer of free help to bring him up to speed on Termination Rights.

275. The Court overlooked or misapprehended that Roger Miller, Plaintiffs' Termination Rights expert, has agreed \$45 - \$60 million could even be low for the at-death value of Brown's copyrights.

276. The Court overlooked or misapprehended that experts who have given testimony that support Buchanan's and Pope's valuation of about \$99 Million less the TIAA Debt of approximately \$15 Million, and/or the propriety and trustworthiness of Buchanan and Pope in forming a proper value include R.B. Alexander (valuation expert), Wallace Lightsey, Jr. (IP Attorney); Charles Carpenter, Jr, Esq., (*pro bono publico* U.S. Cert. Petition to try to save "I Feel Good" Charity from Tomirae); Wm Jeffrey Smith (Copyright

Termination Rights expert, hired by Buchanan/Pope informed of Attorney General's settlement and takeover on Aug. 10, 2008); Harley Ruff, Esq. (see testimony before Judge Early, 4/3/09); William Sellars, CPA (would not have signed Estate Tax Return if \$84 Million not reasonable).; Pope; Thomas Pope, Esq., (worked with Jay Bender, Esq. to secure \$4.7 Million valuation documents from Attorney General under FOIA); James C. Hardin, III, Esq.; and Steven Johnson, Esq., (IRS agent who approved \$4.7 Million must not have known what he was doing).

277. The Court overlooked or misapprehended that, in addition Jason Lewis, Yamma Brown and others have made public statements which fully support the positions taken by Buchanan and Pope as to value and Termination Rights, and the validity of Brown's estate plan, despite supporting the known false and misleading statements made by Levenson on their behalf in the Complaint and elsewhere.

**Defendant Is Entitled to Attorney's Fees at the Conclusion of This Matter.**

278. The Court overlooked or misapprehended that Plaintiff is entitled to attorneys' fees in this matter both under the statute related to Trusts and because they were awarded in her contract and Judge Early's Payment Order which approved it.

**CONCLUSION**

For the foregoing reasons, Pope submits that this Court should alter, amend, vacate and/or reconsider the Summary Judgment Order and direct that the parties continue with discovery and trial on the counterclaims herein. This motion is based on the Affidavit of Wm. Jeffrey Smith, filed herewith, as well as the entire record in this matter; applicable

statutory and case law; and the South Carolina Rules of Civil Procedure, especially Rule

59(e).

Respectfully submitted,

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July 13, 2017

*Attorneys for Defendant/Counterclaim  
Plaintiff Adele J. Pope*

# EXHIBIT A

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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-40,490

FILED  
JUL 8 PM 5:20  
CLERK OF COURT  
SOUTH CAROLINA

ORDER GRANTING PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT  
AS TO DEFENDANT'S  
COUNTERCLAIMS

*[Handwritten signature]*  
#1

**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**Appeal from Richland County  
Court of Common Pleas**

**The Honorable Doyet A. Early, III, Circuit Judge  
The Honorable L. Casey Manning, Circuit Judge**

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**Appellate Case No. 2017-001899**

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**RICHLAND COUNTY  
FILED  
2017 OCT 24 AM 11:50  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.**

**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. II; 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 the Appellant.**

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**MOTION TO LIFT STAY**

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**TO: ALL RESPONDENTS NAMED ABOVE, AND THEIR COUNSEL, SWEENEY, WINGATE AND BARROW, P.C. ("WINGATE").**

**YOU WILL PLEASE TAKE NOTICE that at the hearing to be held before the Honorable Doyet A. Early, III, at the Aiken County Courthouse, at 1 p.m. on Tuesday, October 31, 2017, or as soon thereafter as Appellant may be heard, Appellant will move before the Honorable Doyet A. Early, III ("Judge Early"), for an expedited hearing and expedited Order Lifting the stay in this appeal.**

**An expedited hearing and Order Lifting Stay will serve justice and judicial economy and should be granted for one, more or all of the following reasons:**

- a. Respondents have waived any stay in this 7 1/2 -year-old case; proceeded with a request for partial summary judgment after two appeals were filed; and no stay was asserted by Respondents or acknowledged by Judge Early until fact witnesses and experts, including Respondents' own experts, showed:**
  - 1. In 2016 the Governor of South Carolina testified twice under oath that he did not authorize this lawsuit to be brought in the name of the State/Attorney General. He testified he did not authorize Russell Bauknight to sue "on behalf of the Attorney General of South Carolina" (the "AG"). In 2017, however, the AG's attorney Kenneth Wingate, Esq., testified that the Governor did authorize him to file this suit as sole counsel for the State/AG and other Plaintiffs.<sup>1</sup>**
  - 2. The AG, although not counsel of record in this case, will get 10% of the Wingate firm's legal fee under the Wingate contract.<sup>2</sup>**
  - 3. The AG and Tomirae still have 75% control of Plaintiff James Brown Legacy Trust they created in 2009.<sup>3</sup> The millions of dollars sought from Buchanan and Appellant in the complaint is for the Legacy Trust.**

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<sup>1</sup> McMaster testified by deposition to the same effect in this suit, and later in Aiken Case 2013-CP-02-1337 ("Aiken 1337"). Wingate testified by deposition in Aiken 1337.

<sup>2</sup> Wingate, Bauknight and the AG were successful in secreting the Wingate contract from 2010 until 2013, although it says on its face it is subject to the S.C. Freedom of Information Act ("FOIA"). It was released in 2013 by a federal judge in 3:08-cv-00014-WOB.

<sup>3</sup> The remaining 25% vote is held by 5 former clients of Louis Levenson, Esq., and a former client of David Bell, Esq. The AG has the right to remove and replace Bauknight at will.

4. Since May 29, 2013, when Levenson and counsel for Tomirae announced to Judge Early their intention to reinstate the 2008 McMaster settlement, the AG, Tomirae and Levenson have used this suit to continue their attack on Buchanan and Appellant.
5. Many representations made by the AG and Bauknight to the Supreme Court and other courts about Termination Rights under Sections 203 and 304 of the Federal Copyright Act have been misleading, incomplete or false.<sup>4</sup>
6. A G Wilson, after being dismissed as a party to this case, obtained an order for partial summary judgment, and continues to control the litigation through Plaintiff Legacy Trust and Bauknight as his agent.
7. The AG has endorsed and supported Bauknight's intentional \$79 million devaluation of James Brown's assets in IRS filings; Bauknight's overstatement of Brown's deductions by \$5 Million; and his ill-gotten IRS "refund" with actual knowledge (at least since March 6, 2013) that the representations were incorrect; damaged the "I Feel Good" Trust in favor of his "private" Legacy Trust; and needed to be corrected.
8. Since 2011 the AG, Bauknight and Tomirae have used the ill-gotten IRS "refund" to damage Robert Buchanan, Jr. and Appellant and make the known incorrect claim that the McMaster settlement saved taxes.
9. The false Grammy © claim which appeared on the Kilpatrick Stockton ("KS") website in January 2011, and was noted by the Supreme Court in *Wilson*, was planted by Bell, a party to the Wingate contract.<sup>5</sup>

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<sup>4</sup> See Opinion/Affidavit of Wm. Jeffrey Smith, co-author of *Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't*; Aiken 1337 deposition and exhibits of IP expert Wallace Lightsey, Esq.; and Aiken 1337 deposition testimony of Respondents' experts in this case, Roger Miller and Jonas Herbsman, Esq. Also see Grinblat, *Nine Ways to Avoid Copyright Terminations*, Part I and Part II, and the 9<sup>th</sup> Circuit decision related to the Ray Charles Foundation.

<sup>5</sup> Even Robert Potter, Esq., the KS attorney attributed with "halting" the Grammy © sale, did not know of the incorrect post. The Grammy© was actually properly entered into the 2008 Christie's sale and properly withdrawn, over advice of Christie's counsel, and with Levenson present. Buchanan and Appellant elected not to pay an estimated \$5,000 legal fee to defend a sale estimated to bring in about \$20,000. A motion to charge former trustee Albert Dallas with interference with the Christie's sale was filed July 27, 2008, and is still pending. Dallas and fellow-trustee felon David Cannon have been named by the Attorney General and other Respondents as witnesses in this case.

10. The false Grammy® plant continued Bell's years-long history of dirty tricks in James Brown matters.<sup>6</sup>

11. Respondents' claimed \$4.7 million "appraisal" of James Brown's music empire is actually a devaluation of Brown's 900 copyright to \$23.7 million proposed by Tomirae; a claimed zero value for Brown's Rights of Publicity and other valuable assets; and a \$3 million overstatement Brown's debt to TIAA secreted within the "appraisal".<sup>7</sup>

b. A stay would allow Plaintiffs Tomirae, James B. and others to continue to siphon off assets in violation of the Statute of Elizabeth.<sup>8</sup>

c. A stay would allow the Attorney General and Tomirae to spend additional millions of dollars, in addition legal and SA fees of about \$5 million already paid by Bauknight, to retake personal control of the James Brown assets for their private Legacy Trust.

d. A stay would allow the Attorney General to continue to represent to the Court of Appeals his Legacy Trust does not exist while it seeks millions of dollars from Appellant in this case, and Tomirae's lawyers assert that it does exist and Bauknight should be "knighted" for his actions.

e. A stay is manifestly unjust to Buchanan and Appellant, whose careers and reputations have been ruined for 7 ½ years in an illegal lawsuit brought by the AG, Tomirae, Levenson and Bell to stop the *Wilson v. Dallas* appeal.

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<sup>6</sup> In 2008 Bell and clients filed 6 grievances against Levenson in two states, even claiming Levenson's 30% + \$150,000 contingency fee was forged.

<sup>7</sup> The full details of how the AG and settling parties arrived at the impossible claim that the McMaster settlement saved taxes, and even produced an IRS "refund," were not known until the Petition for Rehearing of Tomirae's son was filed in *Wilson v. Dallas* in March 2013. See Affidavit of Harley Ruff, Esq., showing how the *Wilson* decision which voided the AG's deal rendered many - but not all - of the AG's claims moot -- unless the settlement deal is reinstated, as proposed to Judge Early in May 2013.

<sup>8</sup> Tomirae, who lives in England, was paid \$1 million in 2015 for a "sale" of 3 James Brown songs. Two years earlier Peter Afterman helped Tomirae file defective termination elections trying to take a portion of the royalties from 90 of Brown's 900 copyrights between 2015 and 2023. Ignoring steps such as those taken by the Ray Charles Foundation, Bauknight and the Attorney General did nothing in the 2-year window to contest the Tomirae filings.

Until at least 2014 Afterman's website claimed he was hired by the State of South Carolina to manage the James Brown assets.

- f. A stay could allow Bauknight to disburse another \$500,000.00 for expert costs for the Attorney General and Tomirae, as he did in 2012. [Funds returned without interest a year later.]
- g. A stay would reward the Respondents for an illegal 7 ½-year-old lawsuit improvidently brought and prolonged by the State of South Carolina through two AGs and a private law firm.
- h. A stay could further damage Appellant and Brown's "I Feel Good" Charity by allowing Levenson to collect an undisclosed amount from the "common fund" he claims to have helped create with the McMaster settlement deal.<sup>9</sup>

This motion is based on the entire record in this case and the briefs and records on appeal ("ROAs") in the five James Brown cases now on appeal,<sup>10</sup> of which the Court is asked to take mandatory judicial notice under Rule 201 SCRE.

It is also based on additional facts from the public record, as set out in the following Memorandum and as will be presented to the Court at the hearing.

#### **MEMORANDUM IN SUPPORT OF EXPEDITED LIFTING OF STAY**

On August 10, 2008 Attorney General Henry McMaster asserted the right to take control of the James Brown assets through a "Legacy Trust" he created with Tomirae and five will contestants represented by Levenson.

On May 8, 2013 the S. C. Supreme Court voided the deal and the appointment of Bauknight.

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<sup>9</sup> In a complaint filed in 2017 Levenson seeks an unspecified amount for the "common fund" he helped create with the 2008 McMaster settlement deal.

<sup>10</sup> See S. C. Ct. of Appeals ("Ct. Appeals") Case No. 2016-0001708 (Pope v. Wilson); the briefs and ROA in Ct. Appeals Case No. 2016-001727 (Pope v. Wilson and James Brown Legacy Trust; the depositions of Respondents' and Appellant's expert witnesses and current and former staff of the Attorney General taken in this case and in Aiken County Case 2013-CP-02-01337 ("Aiken 1337"); the Opinion/Affidavit of William Jeffrey Smith, herein; the Tomirae spousal proceeding in circuit court and the Ct. Appeals; and the Complaint of Louis Levenson, Esq. in 2017-CP-02-00592,

On May 29, 2013 Levenson and a lawyer for Tomirae announced in open court to Judge Early their intention to ignore *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

To retain the 75% control he and Tomirae had over James Brown's assets through the "Legacy Trust" they created in 2009, the AG and Tomirae (with Levenson) needed to do several things. They needed to make sure facts presented about the Federal Copyright Act remained distorted, as they had been since 2011. They needed to continue the myth that James Brown's assets were worth only \$4.7 million when he died, and that the deal did not generate millions of dollars in taxes. They needed to keep facts about Tomirae's marriage secret. And they needed to cover up Bauknight's failures to account and intentional misstatements.

The AG, the Legacy Trust and Tomirae also needed to continue to attack and denigrate Buchanan and Appellant through the Wingate Suit --- even though the AG had told both the Supreme Court and Appellant he was getting out.

For 4 ½ years the AG and Bauknight have continued to suppress public documents both in Wingate suit discovery and FOIA. The Wingate suit remains the FOIA graveyard it had been since 2011.<sup>11</sup>

By 2017 Levenson was so confident of reinstating the deal that he filed a complaint

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<sup>11</sup> The four documents the Attorney General, Tomirae and Bauknight most needed to hide were: 1. The Wingate contract; 2. An amendment to the Legacy Trust and related assignment which put grandson Forlando Brown in line to exercise the rights of first refusal the Attorney General had given his father; 3. The claimed \$4.7 Million "appraisal" which Plaintiffs used in Supreme Court filings to assert that Buchanan and Appellant were not only incompetent but greedy and deceitful; and 4. Tomirae's long-public handwritten admissions that she was married, living in Texas, and possibly pregnant before falsifying a marriage license application and conducting a ceremony with Brown.

seeking an undisclosed amount from the "common fund" he had helped create with the 2008 McMaster settlement. Tomirae and the Levenson clients had been paid \$2 million for a totally avoidable "sale" of three of James Brown's 900 copyrights. Tomirae's son had been awarded \$700,000.00 in GAL and legal fees. And the AG was simultaneously seeking partial summary judgment and dismissal as a party to this suit.

James Brown's "I Feel Good" charity is funding the second takeover, and the necessary attack on Buchanan and Appellant. By Bauknight's own sworn statements, he has spent millions of dollars to prove them wrong.

Bell, Levenson and Tomirae continue to appear at odds in appellate proceedings. They are, in fact, untied in the Wingate suit in an effort to re-take 52 ½% of Brown's assets with baseless will contests; weak spousal claims; and misrepresentations about the size of Brown's assets and Termination Rights.

By 2016, the AG and his Legacy Trust began to have problems. Governor McMaster stated twice under oath that he did not authorize the Wingate firm to bring suit in the name of the State/AG. He said he didn't know he was a Plaintiff until after he left office. His lawyer, however, claimed that McMaster had, in fact, authorized him to name the State/AG as a party.

AG Wilson secured an order not to be deposed in this case, in which he is a Plaintiff.<sup>12</sup> He was, however, deposed in another James Brown case. In that case, AG Wilson stated that in 2011 he authorized this lawsuit to continue, thinking he was simply maintaining the *status quo*.

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<sup>12</sup> See Order dtd. 9/21/16, in which the Court states that Wilson "was not the Attorney General when this suit was initiated, and, therefore, lacks personal knowledge of most of the matters at issue in this suit."

The AG has continued his vigorous pursuit of this suit and support of Bauknight after March 2013, when he was personally advised of Bauknight's \$2 million overstatement of Brown's charitable deduction; his misstatements about Termination Rights; and other problems.<sup>13</sup>

Nearly five years after the first *Wilson v. Dallas* decision, two James Brown FOIA cases and three others are pending in appellate courts. In every one of them, at least one of The AG, Wingate and Bauknight is actively working against the James Brown's "I Feel Good" Charity, and in aid of the Legacy Trust the AG now claims is private. In three of the five, the three continue their baseless, 7 ½ year attack on Appellant and Buchanan.

#### Conclusion

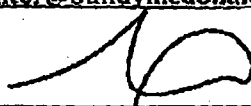
The Court should grant an expedited hearing and lift the stay related to this appeal. Failing to do so would continue the irreparable damage to Appellant; be unjust; and would not promote judicial economy.

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<sup>13</sup> Bauknight claimed a \$2.8 Million charitable deduction, even though only \$.8 million was going to charity, and \$2 million was going to grandchildren. It was this overstatement which resulted in the ill-gotten "refund" Bauknight and the Attorney General claim demonstrates that the McMaster settlement deal actually saved taxes. See Affid. Of Harley Ruff, Esq., related to the tax problems actually caused by the McMaster settlement.]

Respectfully Submitted,

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*Counsel for Appellant*

October 24, 2017

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has served a copy of the foregoing document on counsel for Movant and Plaintiff/CC Defendants on October 24, 2017, by hand-delivering a copy of the same, addressed as follows:

J. Emory Smith, Jr., Esquire  
Rembert Dennis Building  
1000 Assembly Street  
Columbia, SC 29201.

Kenneth B. Wingate, Esquire  
Everett A. Kendall, Esquire  
Mark V. Gende, Esquire  
1515 Lady Street  
Columbia, SC 29201

FILED  
RICHLAND COUNTY  
OCT 24 AM 11:50  
KINETE W. MCBRIDE  
C.C.P. & G.S.



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Adam T. Silvernail

**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas**

**The Honorable Doyet A. Early, III Circuit Court Judge  
The Honorable L. Casey Manning**

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**Appellate Case No. 2017-001899**

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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

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**SUPPLEMENTAL MOTION FOR ORDER FOR LIMITED LIFTING OF STAY**

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TO: THE HONORABLE DOYET A. EARLY, III, CIRCUIT JUDGE

Based on the 2018 death of Plaintiff Venisha Brown, and other filings by most of the 17

Plaintiff/Counterclaim Defendant/Respondents (herein "Plaintiffs") to this Appeal, including filings by 7 Plaintiffs in U.S. District Court Case No. 1:18-cv-02191-JMC [ *Brown v. Hynie* ], <sup>1</sup> Appellant respectfully moves this Honorable Court for an Order pursuant to Rule 241(c) and (d) lifting the automatic stay for the limited purposes set out below. Lifting of the stay is necessary to preserve the Court's jurisdiction during this pre-trial appeal and to prevent contested matters from becoming moot.

The limited actions which this Court is asked to take to preserve the broad jurisdiction it has had over the 17 Plaintiffs and the assets of deceased entertainer James Brown, including about 900 copyrights and related rights, for 7 ½ years, and to prevent the contested issues from becoming moot are:

1. To substitute the Estate of Venisha Brown, by its duly appointed PR, for Venisha Brown as a Plaintiff/Counterclaim Defendant/Respondent.
2. If no duly appointed SC PR presents within (30) days, appoint a receiver to marshal and secure all assets of Venisha, and all assets in which Venisha has, or has claimed, an interest since May 19, 2010 over which this Court has jurisdiction, including vested "Termination Rights" discussed below.
3. To enjoin the transfer of any assets of Venisha Brown, her Estate and each Non-resident Plaintiff listed herein, and all assets in which any one of them has, or has claimed an interest, either legal or equitable, since May 19, 2010 over which this Court has jurisdiction, including but not limited to Tangible Personal Property (TPP) formerly owned by James Brown; all assets of Plaintiff Estate of James Brown, Plaintiff James Brown 2000 Irrevocable Trust (2000 Trust) and Plaintiff James Brown Legacy Trust (Legacy Trust), and/or their successors in interest, including James Brown's 900 Copyrights and any termination interests under Sections 304 and 203 of the U.S. Copyright Act, 17 U.S.C. §§304 and 203 (Termination Rights), and all

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<sup>1</sup> *Brown v. Hynie* was formerly U.S. District Court, Central District of California, Western Division, Case No. 2:18-cv-00307-SVW-JPR, filed January 12, 2018. The Complaint is attached as Exhibit A.

proceeds and products of the Termination Rights; any interest in the approximately \$37,5000 settlement (per person) now pending in the S.C. Court of Appeals; and any other interests, legal or equitable, subject to the jurisdiction of this Court, until the conclusion of this appeal.

4. To enjoin the transfer of, and secure, all assets of Plaintiff Tommie Rae Brown based on her residence to London, UK and the participation of Peter Afterman, music manager of Plaintiff Estate of James Brown, in transfers of \$1 million or more to her in 2015, before she left the Country. These transactions are described in Exhibit A, Complaint filed in U.S. District Court, Central Dist. of California Case No. 2:18-CV-00307 [ *Brown v. Hynie* ], filed January 12, 2018; the Declaration of Tommie Rae Brown filed in that case dated February 28, 2018. [Exhibit B]; and said Plaintiff's deposition in this case.
5. To appoint an independent guardian *ad litem* (GAL) and receiver for minor Plaintiff James B., to secure and preserve his assets based on his 2016 relocation to London, UK after being awarded a \$700,000.00 legal and GAL fee in Aiken County, which fee is of a lower priority than some or all of Appellant's claims against Plaintiff Estate of James Brown, including approximately \$100,000 due on her twice-court-approved, unpaid 2007SA fee of under \$48,000 Plaintiff Estate/2000 Trust has refused to pay; and failure of Plaintiffs' counsel to appoint a GAL for James B for over 7 years.
6. To enjoin the transfer of any assets over which this Court has jurisdiction to or for the benefit of James B., other than what is necessary for his current support until age 18.
7. To enjoin the transfer of all assets under the jurisdiction of this Court of Tonya, a/k/a Sarah LaTonya Fegan, in the same manner as set out for Venisha Brown, and to take the same action as to all non- South Carolina resident Beneficiaries during the pendency of this appeal.
8. To add Forlando J. Brown, a/k/a William James Brown and William Forlando Brown<sup>2</sup> as a party to this action, as the real-party-in- interest to Plaintiff Counterclaim Defendant Terry Brown since January 3, 2011, pursuant to Assignment, as more fully described in Return to Motion and Memorandum

<sup>2</sup> In January 2011 Plaintiff Terry transferred to Forlando, also known as William, his entire interest in James Brown's estate, including a right of first refusal (ROFR) to purchase Brown's music empire. (R.,p.) That month, Forlando and David Bell, Esq., planted the false Grammy © claim noted in 2013 by the Supreme Court in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746, FN 30 (2013). (R., p. ),

related to Terry and Forlando filed October 29, 2018, which is incorporated herein, and based on orders terminating their counsel.

9. To enjoin the transfer of assets of Forlando and Terry subject to the jurisdiction of this Court, as provided above for Venisha Brown.
10. To require an accounting of the PR of Plaintiff Estate of James Brown based on his failure to account since 2016 and his 2018 admission to the California Federal Court that more than ten million (\$10,000,000.00) dollars<sup>3</sup> in litigation costs have been spent since 2007 from funds devised to James Brown's "I Feel Good" Trust which he valued in IRS filings at about \$4 million.
11. To poll formerly- minor Plaintiffs Janise Brown, Sydney Lumar and Carrington Lumar to determine if they ratify action taken for them by Louis Levenson, Esq., and Plaintiffs' counsel during minority when Levenson signed the Wingate contract for them; Wingate moved for them to intervene in a FOIA suit to prevent release of the Wingate contract; the Wingate firm and Levenson prevented the appointment of a GAL for them; and Appellant issued offers which would have let them out of this Case (Richland 4900).
12. To freeze the approximately 3/10 of the Plaintiff 2000 Trust which was shifted by Bauknight, in January 2011 from James Brown's "I Feel Good" Charity to the 2000 Trust shares of Plaintiffs Jason Brown-Lewis, Lindsey Brown, Janise Brown, Sydney Lumar, Forlando Brown, and Carrington Lumar to the extent the 1/7 share of each Plaintiff grandchild is not needed for the current education benefits (to age 35) of said Plaintiff pending the outcome of the appeal and the resolution of the disputed question of whether James Brown's "I Feel Good" Trust should have been devalued from about \$80 million to About \$4 million by Peter Afterman and Russell Bauknight.

This request is based on the 2013 revelation that Peter Afterman was the "music expert" for the disputed \$4.7 million claimed value of James Brown's music empire, and the 2017 and 2018 disclosures that Mr. Afterman is working with Mr. Baunight to deprive this Court of jurisdiction over the James Brown royalties

<sup>3</sup> On p. 3 of the Estate/2000 Trust's Memorandum, Doc. 21, p. 12 of 55, Plaintiff states: "Litigation costs to the estate and ultimately to the charitable trust have now run into the tens of millions of dollars." In the same page 3 and the preceding page, he states that Plaintiffs Deanna Thomas, Yamma Brown, Tonya Brown transferred their Termination Rights to Plaintiff Legacy Trust. He states:

"The Settling Parties agreed that Mrs. Brown was the surviving spouse and assigned *proceeds* of any termination rights they may obtain to an entity which would include the probate estate and termination rights proceeds. *Thus in that agreement, those Settling Plaintiff did the very thing they say in this action cannot be done: assign the proceeds of termination rights to a third party.*

See Exhibit C attached hereto.

owned by Plaintiffs which are the source of payment for Appellant's (and possibly Buchanan's) counterclaims. Whether intentional or not, the devaluation of Brown's music empire from \$84 million to \$4.7 million, shifted about 30% of the assets and income of the "I Feel Good" Charity to these six Plaintiffs and Romunzo Brown, increasing the share of each in the 2000 Trust from about 1/300 to about 1/25 of the 2000 Trust.<sup>4</sup>

13. To determine the successors in Interest to Plaintiff/Counterclaim Defendant James Brown Legacy Trust; add them as parties to this action; and appoint a receiver to marshal and secure all assets owned, formerly owned, or claimed, by the Legacy Trust, based on its claim to the S.C. Court of Appeals that it does not exist.
14. To enjoin Plaintiff Estate from making the proposed transfer to Daryl Brown sought in his September 11, 2018, Motion and Affidavit, attached as Exhibit D.
15. To take such additional action as is necessary or appropriate to preserve the Court's jurisdiction which was conferred voluntarily by all 17 Plaintiffs on this Court on May 19, 2010, over the Plaintiffs, Defendants and all assets of James Brown and assets they acquired a result of his death, including 900 copyrights and all Termination Rights related to those copyrights.
16. To take such additional actions as shall prevent the contested issues raised in this appeal, the Complaint, the Answer and Counterclaim and motions in this case from becoming moot during the pendency of the appeal.

The grounds of this motion are that events since December 2017 confirm that some Plaintiffs are actively seeking, by multi-million dollar legal fees and transfers from Plaintiff Estate/2000 and of Termination Rights and proceeds transferred to Plaintiff Legacy Trust on or before January 2009, to deprive this Court of jurisdiction over this appeal and render moot the disputed issues in the appeal. Lifting the stay for the limited purposes set out above is necessary for the Court to preserve jurisdiction over this pre-trial appeal; prevent further violations of the

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<sup>4</sup>, based on the sworn 2018 expert testimony of Roger Miller, Esq., W. Steven Johnson, Esq., and Appellant in the trial of Aiken County Case 2013-CP-02-1337.

Statute of Elizabeth, S.C. Code §27-23-10; and prevent the disputed issues from becoming moot.

This Motion is supported by Appellant's October 24, 2017 Motion to Lift Stay; the complete file of *Brown v. Hynie*, of which the Court is asked to take judicial notice; the documents referenced herein and the memorandum which follows.

**MEMORANDUM IN SUPPORT OF LIMITED LITING OF STAY**

**a. The AG's Settlement; The Tommie Rae/Afterman Devaluation; Richland 4900 Jurisdiction; and the Forlando Grammy © Plant**

On August 10, 2009 the Attorney General (AG) asserted the right to take 75% control of the James Brown assets with Tommie Rae Brown.

By January 2009 adult Plaintiffs had placed their Termination Rights in Plaintiff Legacy Trust, with Russell Bauknight as Trustee. Without revealing this, Bauknight and the AG recommended that the Honorable Doyet A. Early, III, approve his settlement deal. To convince the Court, the AG and others asserted correct testimony of probate and tax experts Pope and Harley Ruff, Esq., about the settlement were incorrect; made incorrect representations about Brown's heirs; and made incorrect statements about Termination Rights and the Court's jurisdiction under the U.S. Copyright Act.

In April 2009 Bauknight testified that he would (using James Brown's money) work to carry out the AG's plan, which dismembered James Brown's estate plan. Bauknight testified he saw no conflict in being PR/Trustee under Brown's estate plan and Trustee of the AG's Legacy Trust.

On May 26, 2009, Judge Early approved the AG's settlement and replaced Buchanan and Appellant with Bauknight. By sworn accounting, they delivered in excess of \$99 million in assets to Bauknight, with a debt to the TIAA of \$11.3 million. (Final Acct., dtd. 6/29/08, R., p.1509).

For six years Bauknight and Beth Bauknight, CPA, the accountant he hired, did not pick up the estate and income tax file of CPA William Sellars, who had been appointed by Judge Early, but resigned after the AG's settlement was announced.

Bauknight, at the suggestion of counsel for Tommie Rae Brown, hired Peter Afterman. He testified in 2017 that he and Afterman speak almost daily about every aspect of James Brown's music copyrights.

In August 2009 Tommie Rae's counsel proposed to devalue Brown's copyrights to \$24 million or less and value Brown's right of publicity at zero to discredit "bobadele".

In March 2010 the same counsel advised Buchanan's lawyer that the AG had hired the Wingate firm, and would sue if they did not drop the appeal of the AG's settlement.

On May 18, 2010 Louis Levenson, Esq., signed the Wingate contingency fee contract for about 10 Plaintiffs, including minors. Many did not know of this until years later. Now-Governor McMaster, then AG, did not sign. He testified in 2016 that he did not authorize the Wingate firm to sue Buchanan and Pope in the name of the State/AG, and did not know the AG was a Plaintiff until after he left office in January 2011.

On May 19, 2010 the Attorney General and 16 others sued Buchanan and Pope for tens of millions of dollars. Buchanan and Pope counterclaimed for millions of dollars, based on fraud on

the court; intentional interference with their (first priority) court-awarded SA fee and partial PR/Trustee payment contract with Plaintiff Estate/2000 Trust; civil conspiracy; and other causes of action.

In September 2010 Afterman and Bauknight secured a valuation of Brown's music empire that: valued Brown's 900 copyrights at \$23.7 million, less a claimed \$19 million (undisclosed) TIAA debt, and valued Brown's right of publicity, TPP, Rolls Royce, claims against David Cannon, sampling revenues and other assets at zero, or near zero, for a total of \$4.7 million.

When Buchanan and Pope sought to dismiss Richland 4900 on the basis that jurisdiction over the parties and James Brown's assets was in Aiken County, the AG, Estate and 2000 Trust assured the Court repeatedly that all matters had been concluded in Aiken County and that Richland County was the appropriate jurisdiction. Thus, by their own action all Plaintiffs conferred jurisdiction on this Court. In their February 28, 2018 filing in California, however, Plaintiffs Estate/2000 Trust have totally reversed positions. They now claim that Aiken County – from which Buchanan and Pope have been banned from proceedings – has jurisdiction over all James Brown assets. Plaintiff Estate/2000 Trust presents 55 pages of claimed evidence that Aiken County, under the federal Probate Exception, and otherwise, has jurisdiction. He states:

In 2013 the South Carolina Supreme Court affirmed the removals but reversed the circuit court's approval of the settlement agreement, citing the need for further evidence to approve it. Thus, the will and trust and contests and spousal claims were revived.

In a single paragraph, the Estate/2000 Trust's fiduciary seeks to deprive this Court of the jurisdiction over person and subject matters so freely given, and defended, by the AG, the Estate, the 2000 Trust, and the AG's Legacy Trust in 2010 when they needed to try to stop the *Wilson v.*

*Dallas* appeal, but elected not to go to Aiken County where Buchanan lived and the matter had been litigated.

The millions of dollars distributed by the Estate/2000 Trust without accounting, and without making any provision even for Appellant's \$48,000 SA fee which has been approved and outstanding for almost 11 years, make clear the Plaintiffs' intention to deprive this Court of its jurisdiction to hear Appellant's claims and render the questions in this pre-trial appeal moot.

In late 2010 Bauknight presented the \$4.7 million value to the IRS; claimed Brown's total gross estate was about \$6.5 million and claimed \$2.8 million was going to Plaintiff James Brown Legacy Trust or the AG's (New) Charity, which owns 47 ½% of the Legacy Trust. Bauknight did not disclose that \$2 million of the \$2.8 million was going to grandchildren – not charity.

Under Brown's 2000 Trust's "Fractional Share" formula, when the IRS failed to challenge the Bauknight/Afterman value, approximately 3/10 of the 2000 Trust assets were shifted from Brown's "I Feel Good" Charity into the education trusts for Plaintiffs Jason, Lindsey, Janise, Sydney and Carrington, where they will be subject to income taxes until these grandchildren reach 35.

In January 2011, in violation of the Statute of Elizabeth, Terry Brown secretly transferred his interest in Richland 4900 and right of first refusal to buy Brown's music empire to his son, Forlando Brown. That month, Forlando planted the false Grammy © claim that would be noted by the Supreme Court in 2013.

In April 2011 Pope and Wm. Jeffrey Smith circulated to professionals, and gave to the AG, *Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown "I Feel*

*Good” Trust doesn’t...* The article explains how the AG’s failure to protect James Brown’s copyrights, combined with a devaluation, would leave the charity with almost nothing.

In 2011 Plaintiffs told the Supreme Court that Brown’s music empire was worth \$4.7 million, and that a proposal to give over half of the assets to individual Plaintiffs saved taxes. The devaluation actually saved no estate taxes<sup>5</sup>; shifted about 3/10 of Brown’s assets from Brown’s “I Feel Good” Charity to the trusts for 6 grandchildren Plaintiffs until age 35; and caused serious income tax problems. The AG’s Trustee told the Supreme Court Plaintiff Tommie Rae Brown’s elective share claim was a “slamdunk” He also said that Plaintiff Estate/2000 Trust had no corpus to speak of; that nobody was trying to buy the assets; that Termination Rights were “all this estate is about;” and that, but for the AG’s 2008 settlement, there would be nothing left in the 2000 Trust in 2023.

At the same time, the AG and Mr. Bauknight were not revealing under FOIA Ms. Brown’s handwritten admissions that she was married, living with her husband, and possibly pregnant when she conducted a ceremony with Brown.

On February 27, 2013 the Supreme Court, in the first (now replaced) *Wilson v. Dallas* decision, instructed the Attorney General to conclude Richland 4900 and the FOIA cases “in the first instance”.

On March 6, 2013 Appellant met with Attorney General Wilson, then-Chief Deputy AG

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<sup>5</sup> Brown’s estate plan allocates the \$2 million estate tax exemption available to James Brown in 2006, the year of his death, to the Grandchildren’s Education Trust, thus requiring the 6 children who were given TPP to pay the only estate taxes due, approximately \$200,000 on the personal and household effects devised to them. The AG had known this since 2007, and Bauknight since 2009. Yet both, with knowledge that it was incorrect, claimed to the Supreme Court that the ill-gotten “refund” Bauknight got in January 2011, which caused millions of dollars in income tax problems, was proof that Buchanan and Pope were greedy and incompetent.

John McIntosh, and Solicitor General Robert Cook to discuss the damage done to the "I Feel Good" Charity by Bauknight's devaluation and IRS filings. Within a few days, Appellant and counsel Adam Silvernail met with AG Cook and AG McIntosh for the same purpose.

Solicitor General Robert Cook, according to his deposition testimony entered in Aiken 1337 in 2018, believed Pope was competent, concerned about the "I Feel Good" Trust, and not greedy. Yet the AG, Bauknight and Plaintiff have continued their attack on Appellant and Buchanan for five years.

In his Petition for Rehearing the Attorney General assured the Supreme Court he was getting out of Richland 4900, and hoped to end the James Brown FOIA cases soon. He also called Appellant to say he was getting out of Richland 4900. He did not.

On May 8, 2013, the Supreme Court issued its final *Wilson v. Dallas* decision.

The Court voided the AG's settlement deal; voided Bauknight's PR/Trustee appointments; and noted the AG's representation that he would be getting out of Richland 4900. The Supreme Court did not address the Plaintiff's Legacy Trust, which had been in operation since 2009.

By May 12, 2013 the AG and counsel for beneficiaries of the AG's Legacy Trust were working to overturn the result in *Wilson v. Dallas*. To do so, they would need to continue to attack and discredit Buchanan and Appellant – and prevent the Court from hearing their defenses and counterclaims. They also had to prevent by discovery and FOIA non-compliance Tommie Rae Brown's admissions about her bigamous ceremony with Brown; the \$4.7 million claimed valuation; and the tax problems the settlement caused. In addition, they would have to continue to make incorrect statements about the U.S. Copyright Act. (For example, they never disclosed that

Termination Rights apply only to U.S. Copyright, about half of Brown's royalties.).

The AG and others, through Wingate, told the Richland 4900 Court that the Supreme Court's final *Wilson v. Dallas* decision confirmed that it placed no importance on concluding either the James Brown FOIA matters or Richland 4900. They asked to stay all Richland County and FOIA matters.

On May 29, 2013 Approximately 13 Plaintiffs, including 8 who are now parties to *Brown v. Hynie*, announced to the Honorable Doyet A. Early, III, in open court, their intention to reinstate the 2008 settlement which put the AG in effective control of James Brown's fortune; gave 47 ½ % to the AG's (New) Charity; and gave 52 ½% to Will contestants.

On June 13, 2013, Judge Early excluded Buchanan and Pope from all of his James Brown cases except their own claims cases.<sup>6</sup> This left Bauknight and the 12 Plaintiffs who wanted to disregard *Wilson v. Dallas* free to repeat their same, incorrect claims about Buchanan and Pope, taxes, heirs and the Copyright Act they were making in Richland 4900, but without Buchanan's and Pope's input, thus rendering moot the issues in Richland 4900.

In August 2013, Peter Afterman, the music manager for Plaintiff Estate helped Plaintiffs Tommie Rae Brown and James B. file defective, public, Termination Rights claims in the U.S. Copyright Office. The Estate's agent helped Tommie Rae and James B. try to take U.S. Royalties from more than 90 of the 'I Feel Good' Charity's copyrights between 2015 and 2023. Neither Mr.

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<sup>6</sup> At the time, and until late 2014, when he and the Honorable L. Casey Manning issued a *sua sponte* Order for a joint mediation in Richland 4900 and Aiken 1337, Judge Early had no involvement in Richland 4900. Richland 4900 and Pope's two FOIA cases, both now pending in the Court of Appeals, were assigned to Judge Early by the Supreme Court in 2016.

Bauknight, nor Plaintiff Estate/2000 Trust's SA/ST took any action, as had The Ray Charles Foundation, to challenge the defective public filings during the 2-year window they had to challenge them. This resulted in a transfer of more than \$2 million to six or more Plaintiffs in 2015 or 2016, even though all had previously transferred their Termination Rights to Plaintiff James Brown Legacy Trust in 2009.

In August 2013, Bauknight, claiming Forlando had done nothing wrong in his 4-year suit against Plaintiff 2000 Trust, hired Wingate to prevent payment to Appellant's counsel for their successful stopping of Forlando's injunction suit seeking to reinstate Cannon and Dallas as trustees of the 2000 Trust.<sup>7</sup> Bauknight also claimed in a deposition that Appellant had "raped" Brown's estate, and that the settlement he had recommended in 2009 was a good one.

In September 2013, as was testified to by Mr. Levenson in December 2017, Mr. Afterman also met with additional heirs of James Brown, and solicited the business of those persons, and Plaintiffs Deanna, Yamma, and Tonya Brown, to take copyrights from Brown's "I Feel Good" Charity, and away from the jurisdiction of this Court as to Appellant's counterclaims. Despite this, and with the announced intention to join with Tommie Rae to disregard *Wilson v. Dallas*; dismember the "I Feel Good" Charity; and continue the destruction of Plaintiff's career and reputation, the Levenson Will/Trust contestants supported Mr. Bauknight as PR/Trustee.

In October 2013 Judge Early "double approved" Mr. Buchanan's service; praised his work, all of which was joint with Appellant; said he did not have to return the \$500,000 paid to him in

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<sup>7</sup> Bauknight had dropped the 2000 Trust's request for Forlando to pay the attorneys' fees for his 4-year attempt to reinstate Cannon and Dallas from his interest in the 2000 Trust several years earlier, losing legal fees which could have been charged to Forlando.

2012; and left open his possible re-entry into Richland 4900 if the Court finds that it was a violation of the AG's statutory duty to prevent Mr. Buchanan from filing a Petition for Rehearing in *Wilson v. Dallas* without telling the Supreme Court.

From 2013 until 2018 Terry told the circuit court and S.C. Court of Appeals that he supported James Brown's estate plan, when he was actually aligned in this suit to damage Appellant with those he said had frivolously contested Brown's estate plan.

In 2015 Tommie Rae Brown was declared Brown's spouse without the Estate, through David Sojourner, Esq, even proffering the Plaintiff Tommie Rae's handwritten admissions that the ceremony with Brown was bigamous. This was after Mr. Sojourner had attempted to exclude all heirs from the proceeding who were not a part of the Attorney General's 2008 settlement.

In 2015 the Supreme Court asked Judge Early to give a status report after he declared Tommie Rae Brown to be Brown's spouse.

In May 2015 Judge Early delivered a Status Report to the Supreme Court. Failing to recall the May 29, 2013 announcement by Levenson and Tommie Rae's counsel in open court, Judge Early advised the Supreme Court that he was unaware of any settlement talks.<sup>8</sup>

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<sup>8</sup> Several persons filed responses setting out errors in Judge Early's Status Report. Appellant and Buchanan, not parties to the proceeding below, were not asked to respond to the Status Report, and did not. As a result, the Supreme Court was unaware of the 2013 publicly announced intention of Deanna, Yamma, Venisha, Tommie Rae, Larry Daryl and others to continue their alliance; continue to evade a correct heir proceeding; and take 52 ½% of the "I Feel Good" Charity for themselves. It was also left with the impression that Appellant, alone, was seeking a \$5 million commission for 18 months' service to a \$5 million estate. The language of the Status Report also suggested that Buchanan had settled the case against him, rather than been paid to release his counterclaims against Plaintiffs. A stern Order of the Supreme Court following the Status Report abruptly ended Appellant's 2-year *pro bono publico* effort (May 2018 – June 10, 2015) to try to persuade Attorney General Wilson and Sojourner to take appropriate steps to protect the "I Feel Good" Trust's copyrights from dissipation by Termination Rights, as The Ray Charles Foundation was doing.

In 2016 Several Will/Trust contestants were awarded \$37,500, including Tonya Brown, who had no interest under the Will or 2000 Trust. Terry Brown has challenged this payment, but his lawyer recently claimed that he had been terminated by Forlando, Romunzo and Terry, who are *pro se*.

In 2018 Mr. Sojourner's 2016 deposition was filed in Aiken 1337. His deposition and filings by Plaintiff Terry Brown in the Court of Appeals reveal that Mr. Sojourner and his lawyer charged about \$1.4 million to "defend" James Brown's estate plan against the claims of Tommie Rae Brown, James B. and the Will/Trust contests. But he claimed he had no duty to protect the copyrights.

In 2016 Plaintiff James B. was awarded approximately \$700,000.00 in legal and GAL fees, even though he had claimed in a strong Petition for Rehearing with the Supreme Court that Brown's music empire was worth only \$4.7 million when he died, and the entire estate only about \$5 million. James B's maximum claim is 1/20.

In December 2017 Plaintiff Estate/2000 Trust called Mr. Levenson as a witness against Appellant in Aiken 1337. The thrust of his "fact" testimony was that Buchanan and Pope had no duty to defend James Brown's estate plan. Mr. Levenson, over objection of Terry Brown, also testified as to why he believed the Will/Trust contestants had probable cause to challenge the Estate Plan. In short, the lawyer for the Will/Trust contestants is being used by Mr. Bauknight to carry into effect the announced intention to ignore *Wilson v. Dallas* and continue to denigrate Buchanan and Pope.

In 2017 AG Wilson was deposed in Aiken 1337. He testified that shortly after taking office

he authorized Richland 4900 to continue to “maintain the status quo.” Yet AG Wilson knew nothing about the litigation, Brown’s estate, the 2000 Trust, the Legacy Trust he had effectively controlled since 2011, or the \$4.7 million claimed value of Brown’s music empire. AG Wilson did not recall what happened at his March 2013 meeting with Appellant, but did not challenge her recollection of the meeting.

In 2017 Pope was awarded, for the second time, her \$47,972 SA fee previously awarded, with interest, in January 2008. The order provided for interest from March 2008. Although disbursing tens of millions of dollars, Plaintiff Estate/2000 Trust had not paid this amount more than a year later.

By 2017 Mr. Levenson had filed a claim for pay from the “common fund” he asserts he created, even though he has consistently sought to set aside James Brown’s estate plan since January 2007.

In January 2018 *Brown v. Hynie* revealed that Bauknight and Sojourner, with Peter Afterman, had spent “tens of millions” of dollars to try to reinstate the AG’s settlement. They have paid millions to attack Appellant; to evade FOIA compliance; and to assure that the contested issues raised in Buchanan’s and Appellant’s 2010 Answer and Counterclaim be rendered moot.

Bauknight told the Federal Court that the Estate and 2000 Trust were unaware of Peter Afterman’s assisting Tommie Rae Brown and James B. to try to take royalties from more than 90 copyrights.

In September 2018 Venisha Brown died, leaving behind an estate which includes 1/6 of Brown’s PHE and the proceeds from at least 5 copyright Terminations filed by Tommie Rae with

the aid of Peter Afterman. She may have additional vested termination rights, including those owned by the Legacy Trust, in which she has almost a 5% interest. In addition, she had been awarded \$37,500 in a settlement.

In September 2018 an order was issued declaring James B. to be Brown's child because nobody presented evidence refuting the same.

In September 2018 Daryl Brown applied to get his Estate distribution. [See Exhibit D]. By then, however, a number of the Plaintiffs were claiming that neither Daryl nor Larry Brown was an heir under the Copyright Act or had any Termination Rights.

In short, Plaintiffs, including the AG, have worked since (and even before) their May 29, 2013 announcement to attack and damage Buchanan and Appellant in order to carry out their publicly announced plan to disregard the Supreme Court's decision in *Wilson v. Dallas*; put all of James Brown's assets into the AG's Legacy Trust; and discredit Buchanan and Pope as greedy, incompetent felons. Only this case, Richland 4900, provides an opportunity for Appellant, and possibly Buchanan, to address the false claims; restore their reputations; be compensated for the interference with their contract for payment from Plaintiff Estate/2000 Trust; and be compensated for years of damage to their careers from Plaintiffs.

Richland 4900 is unique in that the Court has jurisdiction over the AG, all beneficiaries under Brown's Will; all current beneficiaries under Brown's 2000 Trust; all beneficiaries under the AG's Legacy Trust; and all living PR/Trustees who have served under Brown's Will and 2000 Trust except Albert Dallas; all assets formerly owned by James Brown; and the Termination Rights under Section 203 and 304 of the Copyright Act of what is claimed to be a "supermajority" of

James Brown's heirs. The Court has clear jurisdiction over the following important contested issues, and others:

1. Should the James Brown Legacy Trust be relieved of default where Buchanan and Pope never owed it a duty, and it now claims not to exist?
2. Should the AG have been relieved from default where Governor McMaster has stated under oath that he did not authorize the suit to be filed in the name of the State/AG and his successor AG worked for years to prevent the Wingate contract from being released under FOIA?
3. Should Plaintiffs Tommie Rae Brown, Tonya Brown, James B., and the Legacy Trust, to whom Buchanan and Pope never owed a duty, be relieved from default?
4. Did Plaintiffs Deanna Thomas, Yamma Brown, Terry Brown, Larry Brown, Daryl Brown, and Venisha Brown commit fraud on the Courts which damaged Pope when they agreed to "stipulate" that Tommie Rae was Brown's spouse and consented to Tommie Rae's 2009 proposal and Bauknight devaluation of Brown's \$84 million music empire to \$4.7 million with knowledge of its falsity?
5. Should Appellant (and possibly Buchanan), be allowed to offset a portion of the nearly 1/25 (rather than 1/300) of Brown's 2000 Trust now held in each of the Trusts for Plaintiffs Lindsey Brown, Janise Brown, Sydney Lumar, Carrington Lumar, and Jason Brown-Lewis if they are relieved from default?
6. Should Terry Brown be relieved from default where he and Forlando Brown, his- real-party- in- interest since January 2011, have repeatedly defrauded the courts to damage Buchanan and Pope while claiming to defend James Brown's estate plan?
7. Should any Plaintiff be relieved from default where all 17 Plaintiffs have intentionally interfered with Pope contract with Plaintiff Estate/2000 Trust and the approximately \$1.47 million due under the contract on May 26, 2009 for the 18 months she and her large staff worked to protect James Brown's estate plan including from the AG's and Settling Parties attempts to dismember it?
8. Which Plaintiffs participated in the attempt to devalue the James Brown assets to damage "bobadele," and should they be relieved from default?
9. Was James Brown's music empire worth \$99 Million less a TIAA debt of about \$15 million when he died, or \$23.7 million less a \$19 million TIAA debt?

10. Should the AG be deposed in Richland 4900 where he has voluntarily submitted to a deposition in Aiken 1337 and provided valuable information?
11. Can the Wingate firm continue to represent the AG and other Plaintiffs where most have publicly announced their intention on May 29, 2013 to dismember Brown's "I Feel Good" Charity by disregarding *Wilson v. Dallas*?
12. Can Bauknight speak for the AG in Richland 4900 where he has paid music advisor Peter Afterman \$1 million while Afterman helps Plaintiffs Tommie Rae and James B. siphon off royalties from the "I Feel Good" Charity?
13. Should the AG be relieved from default where he has taken effective control of the James Brown assets, then done nothing to protect them?

When this case was filed, and Buchanan and Pope urged that it should be dismissed or transferred to Aiken, all Plaintiffs successfully argued that this Court was the only Court to have jurisdiction over the parties and subject of this action because both the 2000 Trust and Legacy Trust had their situs in Richland County. The Plaintiffs are now actively working both to deprive this Court of jurisdiction over the parties and the 900 copyrights. They are asking for, and receiving, millions of dollars in distributions from funds that may be needed to fund Appellant's counterclaims. Lifting the stay will preserve the Court's jurisdiction and prevent the important contested issued in this case from becoming moot.

Since 2013 – but especially in 2018 – Plaintiffs have been seeking to render moot issues related to their liability and offset against their share of the Estate, 2000 Trust, Legacy Trust and Termination Rights. They seek to deprive the Court of jurisdiction over their persons and over the millions of dollars of distributions and payments which are lower priority than Appellant's counterclaims against them.

**Conclusion**

Rule 241(c) and (d) SCACR provide that in deciding to lift the stay the Court should consider whether lifting the stay is necessary to preserve the Court's jurisdiction or to prevent contested issues from becoming moot. The facts show that lifting the stay for the limited purposes stated herein is essential as to both. Appellant's motion to lift the stay should be granted.

Respectfully submitted,

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October 30, 2018

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Venisha Brown, Michael D. Brown, Nicole C. Brown, Jeanette Mitchell  
Bellinger, Sarah LaTonya Fegan, Ciara Pettit and Cherquarius Williams

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DEANNA BROWN-THOMAS, an individual; YAMMA BROWN, an individual; VENISHA BROWN, an individual; MICHAEL D. BROWN, an individual; NICOLE C. BROWN, an individual; JEANETTE MITCHELL BELLINGER, an individual; SARAH LATONYA FEGAN, an individual; CIARA PETTIT, an individual; and CHERQUARIUS WILLIAMS, an individual,

Plaintiffs,

vs.

TOMMIE RAE HYNIE a.k.a. TOMMIE RAE BROWN, an individual; JAMES J. BROWN II, an individual; RUSSELL L. BAUKNIGHT, as the Personal Representative of the Estate of James Brown and Trustee of The James Brown "I Feel Good" Trust; DAVID C. SOJOURNER, JR., as the Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of The James Brown "I Feel Good" Trust; and DOES 1 through 10, inclusive,

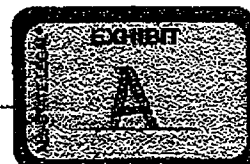
Defendants.

Case No.: 2:18-CV-00307

COMPLAINT FOR:

- [1] DECLARATORY RELIEF (28 U.S.C. § 2201);
- [2] ACCOUNTING;
- [3] CONVERSION;
- [4] UNJUST ENRICHMENT;
- [5] INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- [6] NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE;
- [7] VIOLATION OF CALIFORNIA BUS. AND PROF. CODE §§ 17200 ET SEQ. and §§ 17500 ET SEQ; and CALIFORNIA COMMON LAW UNFAIR COMPETITION

DEMAND FOR JURY TRIAL



COMPLAINT

1 Plaintiffs Deanna Brown-Thomas, Yamma Brown, Venisha Brown,  
2 Michael D. Brown, Nicole C. Brown, Jeanette Mitchell Bellinger, Sarah  
3 LaTonya Fegan, Ciara Pettit and Cherquarius Williams (hereinafter, the  
4 "Plaintiffs"), by and through their attorneys of record, hereby allege as follows:

5 **JURISDICTION AND VENUE**

6 1. This is a civil action for declaratory and injunctive relief under the  
7 United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* (hereinafter, "the  
8 Copyright Act"), for declaratory relief under the Declaratory Judgment Act, 28  
9 U.S.C. § 2201, and for related state-law claims.

10 2. This Court has original subject matter jurisdiction over the claims  
11 set forth in this complaint pursuant to the Copyright Act, 17 U.S.C. § 101 *et*  
12 *seq.*, 28 U.S.C. §§ 1331, 1332, and 1338(a) and (b), and the Declaratory  
13 Judgment Act, 28 U.S.C. § 2201.

14 3. This Court has supplemental jurisdiction over the related state  
15 claims herein pursuant to 28 U.S.C. § 1367(a) in that these claims form part of  
16 the same case and controversy as the federal claims herein.

17 4. This Court has personal jurisdiction over the defendants in that  
18 defendants are regularly doing business in the State of California and in this  
19 district, and because a substantial portion of the relevant acts complained of  
20 herein occurred in the State of California and in this District.

21 5. Venue is proper in the United States District Court for the Central  
22 District of California pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(a) because  
23 a substantial part of the events and the wrongful conduct giving rise to this  
24 action occurred in this district, upon information and belief Defendants  
25 TOMMIE RAE HYNIE and her son JAMES BROWN II maintain residences in  
26 this district, and all Defendants are otherwise subject to this Court's personal  
27 jurisdiction with respect to this action.

28 6. The federal termination rights and interests under the Copyright

1 Act, 17 U.S.C. §§ 304 (c) and 203(a), and the proceeds therefrom, at issue in this  
2 action are not the subject of the probate and other proceedings in South Carolina  
3 regarding Brown's will and trust, or of any other past or pending proceeding.

4 **NATURE OF THE ACTION**

5 7. The legendary singer-songwriter James Joseph Brown a.k.a. James  
6 Brown (hereinafter "Brown") died on Christmas Day, December 25, 2006.  
7 Defendant TOMMIE RAE HYNIE (hereinafter, "HYNIE"), his estranged  
8 purported wife, from a notoriously bigamous marriage, was not named as a  
9 beneficiary in Brown's will, to no one's surprise. Nor was her son, whom she  
10 conspicuously named JAMES JOSEPH BROWN II (hereinafter "JAMES II").  
11 HYNIE therefore embarked on a series of duplicitous business machinations  
12 calculated to (i) deprive Brown's children of their rightful interests in Brown's  
13 music under the Copyright Act and (ii) divert the financial proceeds from such  
14 interests to herself, in violation of the Copyright Act and state common law.  
15 Each of these wrongful acts by Defendants threatens irreparable harm to  
16 Brown's family, and must be swiftly brought to an end.

17 8. Plaintiffs are Brown's biological children, and as to two deceased  
18 children, grandchildren, and, as such, qualify as Brown's statutory heirs under  
19 the Copyright Act.

20 9. Defendant HYNIE claims to be Brown's surviving spouse, despite  
21 having concealed from Brown that she was, in fact, married to another man  
22 when she married Brown. Nonetheless, HYNIE, in an unrelated South Carolina  
23 probate action challenging Brown's will and trust, somehow obtained a spousal  
24 ruling in her favor. In that action, JAMES II was also perfunctorily declared to  
25 be Brown's biological child, despite widespread skepticism.

26 10. For purposes of this copyright action, however, Plaintiffs assume  
27 and in no way seek to re-litigate HYNIE's and JAMES II's purported status as  
28 Brown's surviving spouse and child, respectively, though this is unsupported by

1 the facts or law, and Plaintiffs otherwise reserve all rights, defenses and  
2 remedies as to these issues.

3 11. As Brown's alleged widow and child, HYNIE and JAMES II  
4 purport to constitute a majority of Brown's statutory heirs under the U.S.  
5 Copyright Act, and, as such, to allegedly control Brown's "termination rights"  
6 under Sections 304(c)(1) and 203(a) of the Copyright Act, regarding the  
7 copyrights to hundreds of valuable musical compositions authored or co-  
8 authored by Brown (hereinafter, the "Composition(s)").

9 12. The termination interest is without doubt *the* most important  
10 interest under the Copyright Act, after copyright itself. Pursuant to the Act, the  
11 termination interest belongs to the author, and upon the author's death to his  
12 statutorily defined heirs, principally his surviving spouse, children, and, in the  
13 case of any deceased child, grandchildren. 17 U.S.C. §§ 304 and 203. Thus,  
14 notwithstanding HYNIE's alleged spousal status, Brown's children and his  
15 grandchildren (in the case of two deceased children), most of whom constitute  
16 Plaintiffs, are entitled to an undivided *50% of the copyright termination interests*  
17 *in the Compositions*, 17 U.S.C. §§ 304(c)(2)(B), 203(a)(2)(B). In turn, HYNIE  
18 and JAMES II have an absolute concomitant duty under state common law to  
19 account to these co-owners for *50% of all proceeds from Brown's termination*  
20 *interests*.

21 13. In violation of the Copyright Act and their common-law duties,  
22 HYNIE and JAMES II have conspired with the other Defendants (the personal  
23 representative and trustee and the limited special administrator and special  
24 trustee of Brown's estate and trust, respectively) to usurp Plaintiffs' rights and  
25 interests in Brown's Compositions, and to divert for Defendants' sole benefit the  
26 financial proceeds they are obligated to share with Plaintiffs. Plaintiffs are  
27 informed and believe and based thereon allege that, among other brazen  
28 conduct, Defendants have concealed illegal back-room agreements deliberately

1 designed to destroy, circumvent and/or dilute Plaintiffs' interests. Defendants'  
2 illicit trafficking in the termination interests violates the Copyright Act and the  
3 strong legislative policies behind its termination provisions. Decisive Court  
4 intervention is needed to prevent Defendants from destroying Plaintiffs'  
5 valuable copyright interests in the Compositions, and their state common-law  
6 rights to an allocate share of the proceeds derived therefrom.

7 **PARTIES**

8 14. Plaintiff DEANNA BROWN THOMAS is the biological daughter  
9 of James Brown, and is an individual and citizen of, and resides in, the State of  
10 South Carolina, in the County of Aiken, and is and at all times has been a citizen  
11 of the United States.

12 15. Plaintiff YAMMA BROWN is the biological daughter of James  
13 Brown, and is an individual and citizen of, and resides in, the State of Georgia,  
14 in the County of Cobb, and is and at all times has been a citizen of the United  
15 States.

16 16. Plaintiff VENISHA BROWN is the biological daughter of James  
17 Brown, and is an individual and citizen of, and resides in, the State of South  
18 Carolina, in the County of Aiken, and is and at all times has been a citizen of the  
19 United States.

20 17. Plaintiff MICHAEL D. BROWN is the biological son of James  
21 Brown, and is an individual and citizen of, and resides in, the State of California,  
22 in the County of Sacramento, and is and at all times has been a citizen of the  
23 United States.

24 18. Plaintiff NICOLE C. BROWN is the biological daughter of James  
25 Brown, and is an individual and citizen of, and resides in, Vancouver, British  
26 Columbia and is and at all times has been a citizen of Canada.

27 19. Plaintiff JEANETTE MITCHELL BELLINGER is the biological  
28 daughter of James Brown, and is an individual and citizen of, and resides in, the

1 State of Georgia in the County of Richmond, and is and at all times has been a  
2 citizen of the United States.

3 20. Plaintiff SARAH LATONYA FEGAN is the biological  
4 granddaughter of James Brown, and is an individual and citizen of, and resides  
5 in, the State of Georgia in the County of Richmond, and is and at all times has  
6 been a citizen of the United States.

7 21. Plaintiff CIARA PETTIT is the biological granddaughter of James  
8 Brown, and is an individual and citizen of, and resides in, the State of Texas, in  
9 the County of Harris, and is and at all times has been a citizen of the United  
10 States.

11 22. Plaintiff CHERQUARIUS WILLIAMS is the biological  
12 granddaughter of James Brown, is an individual and citizen of, and resides in,  
13 the State of Texas, in the County of Harris, and is and at all times has been a  
14 citizen of the United States.

15 23. Plaintiffs are informed and believe and based thereon allege that  
16 Defendant HYNIE is an individual and citizen of, and resides or until recently  
17 resided in, the State of California, in the County of Los Angeles, and is and at all  
18 times has been a citizen of the United States.

19 24. Plaintiffs are informed and believe and based thereon allege that  
20 Defendant JAMES J. BROWN II is HYNIE's son (currently, age 16), and is an  
21 individual and citizen of, and resides or until recently resided in, the State of  
22 California, in the County of Los Angeles, and is and at all times has been a  
23 citizen of the United States.

24 25. Plaintiffs are informed and believe and based thereon allege that  
25 Defendant RUSSELL L. BAUKNIGHT is the Personal Representative of the  
26 Estate of James Brown a.k.a. James Joseph Brown (hereinafter, the Estate"), and  
27 the Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000  
28 (hereinafter, the "Trust") (hereinafter, Mr. Bauknight is referred to in both

1 capacities as the "Personal Representative").

2 26. Plaintiffs are informed and believe and based thereon allege that  
3 Defendant DAVID C. SOJOURNER, JR. is the Limited Special Administrator  
4 of the Estate, and the Limited Special Trustee of the Trust (hereinafter Mr.  
5 Sojourner is referred to in both capacities as the "LSA"), appointed in October,  
6 2013 to defend the Estate and Trust against numerous claims by *HYNIE*. (The  
7 LSA and the Personal Representative are hereinafter collectively referred to as  
8 the "Estate and Trust Fiduciaries.")

9 27. Plaintiffs are informed and believe and based thereon allege that the  
10 fictitiously named Defendants captioned hereinabove as Does 1 through 10,  
11 inclusive, and each of them (hereinafter "DOE(S)") were in some manner  
12 responsible or legally liable for the actions, damages, events, transactions, and  
13 circumstances alleged herein. The true names and capacities of such fictitiously  
14 named defendants, whether individual, corporate, associate, or otherwise, are  
15 presently unknown to Plaintiffs, and Plaintiffs will amend this Complaint to  
16 assert the true names and capacities of such fictitiously named Defendants when  
17 the same have been ascertained. For convenience, each reference herein to a  
18 named Defendant or to Defendants shall also refer to the Doe Defendants and  
19 each of them.

20 28. Plaintiffs are informed and believe and based thereon allege that  
21 each of the Defendants was the agent, partner, servant, employee, or employer of  
22 each of the other Defendants herein, and that at all times herein mentioned, each  
23 of the Defendants was acting within the course and scope of such employment,  
24 partnership and/or agency and that each of the Defendants is jointly and  
25 severally responsible for the damages hereinafter alleged.

26 //

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28 //



1           32. Congress carefully limited the class of persons who can exercise  
2 termination rights. If living, the author alone can exercise termination rights. If  
3 the author is deceased, the termination rights are shared by the author's  
4 surviving spouse, children, and, in the case of any deceased child, grandchildren.  
5 *Id.* §§ 304(c)(1)-(2), 203(a)(1)-(2). Importantly, an author's testamentary intent  
6 and will are irrelevant to the operation of the Copyright Act's termination  
7 provisions and to the rights and interests of the author's *statutory heirs* as  
8 designated by the Act.

9           33. If an author is survived by a spouse and children, the surviving  
10 spouse is deemed to own 50% of the termination interest, and the author's  
11 surviving children, and the grandchild(ren) of any deceased child, own  
12 collectively the other 50% of the termination interest on a *per stirpes* basis. *Id.*  
13 §§ 304(c)(2)(A)-(C), 203(a)(2)(A)-(C). Notably, the termination right can only  
14 be exercised by those persons that collectively own more than one-half of the  
15 termination interest. *Id.* §§ 304(c)(1), 203(a).

16           34. The copyright interests in a work recaptured via statutory  
17 termination are *co-owned* by the statutory heirs in the same proportion as their  
18 share of the termination interests set forth above, *id.* §§ 304(c)(6), 203(b), and  
19 such co-ownership interest vests upon the *service* of the applicable notice of  
20 termination. *Id.* §§ 304(c)(6)(B) and 203(b)(2).

21           35. Congress was very protective of the termination interest and, to that  
22 end, enacted a number of provisions to prevent any waiver, encumbrance and/or  
23 interference with the termination interest.

24           36. First, "[t]ermination of the [prior copyright] grant may be effected  
25 notwithstanding *any* agreement to the contrary, including an agreement to make  
26 a will or to make a future grant." *Id.* §§ 304(c)(5), 203(a)(5)(emphasis added).

27           37. Second, "[a] further grant, or agreement to make a further grant, of  
28 any right covered by a terminated grant is valid only if made after the effective

1 date of the termination[.]” except that such a grant or agreement may be made  
2 “after the notice or termination has been served” with “the original grantee or  
3 such grantee’s successor in title.” *Id.* §§ 304(c)(6)(D), 203(b)(4).

4 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

5 38. HYNIE worked as a Janis Joplin impersonator in Las Vegas,  
6 Nevada and as a back-up singer in the James Brown Revue. Much controversy  
7 surrounded HYNIE’S purported marriage to Brown in December, 2001 because  
8 at the time HYNIE was married to another man (Javed Ahmed), a fact she  
9 intentionally concealed from Brown. Although HYNIE’S 1997 marriage to  
10 Ahmed was eventually annulled in 2004, this was long after her purported  
11 marriage to Brown, and Brown and Hynie *never* remarried.

12 39. In fact, in 2004 when Brown found out about HYNIE’S secret 1997  
13 marriage to another man, he commenced legal action in South Carolina to annul  
14 his bigamous marriage to HYNIE, while HYNIE counterclaimed for a divorce.  
15 The two eventually settled that action in an August 16, 2004 consent order,  
16 wherein HYNIE even agreed to “forever waive any claim to a *common-law*  
17 marriage to [Brown]” (emphasis added). Plaintiffs are informed and believe and  
18 thereon allege that not long after Brown’s death, HYNIE and her son JAMES II,  
19 who is a minor, moved in with a new man previously unknown to Brown’s  
20 family.

21 40. HYNIE’S claim that JAMES II was Brown’s biological child has  
22 likewise been engulfed in controversy. Plaintiffs are informed and believe and  
23 on that basis allege that Brown had a vasectomy in the 1980s to specifically  
24 avoid paternity suits, and that JAMES II is the only child born in the over-  
25 twenty-year period between Brown’s vasectomy and his death to claim Brown  
26 was his biological father.

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1 and profits Defendants wrongfully or unlawfully derived or shall derive from  
2 any rights or interests in the Compositions.

3 ON THE FIFTH CLAIM FOR RELIEF

4 11. For an award of damages in an amount to be adjudicated at trial,  
5 plus prejudgment interest;

6 12. For punitive or exemplary damages; and

7 13. For an order preliminarily during the pendency of this action and  
8 thereafter permanently enjoining Defendants, and all persons acting in concert  
9 with them, from engaging in any conduct that interferes with or disadvantages  
10 Plaintiffs' negotiations or business dealings with any potential licensee and/or  
11 grantee of any rights in the Compositions, including WCM.

12 ON THE SIXTH CLAIM FOR RELIEF

13 14. For an award of damages in an amount to be adjudicated at trial,  
14 plus prejudgment interest; and

15 15. For an order preliminarily during the pendency of this action and  
16 thereafter permanently enjoining Defendants, and all persons acting in concert  
17 with them, from engaging in any conduct that interferes with or disadvantages  
18 Plaintiffs' negotiations or business dealings with any potential licensee and/or  
19 grantee, including WCM, of any rights in the Compositions.

20 ON THE SEVENTH CLAIM FOR RELIEF

21 16. For an order requiring that Defendants provide a complete  
22 accounting to Plaintiffs of all monies, gains, profits, and advantages Defendants  
23 have derived from any rights or interests in the Compositions;

24 17. For an order requiring that Defendants provide a complete  
25 restitution to Plaintiffs of all monies, gains, profits, and advantages, derived  
26 from any rights or interests in the Compositions, and owed to Plaintiffs;

27 18. For an order imposing a constructive trust over all monies, gains,  
28 profits, and advantages that Defendants wrongfully or unlawfully derived or

1 shall derive from any rights or interests in the Compositions;

2 19. For an order preliminarily during the pendency of this action and  
3 thereafter permanently enjoining Defendants, and all persons acting in concert  
4 with them, from engaging in such further unfair, fraudulent, and/or unlawful  
5 business practices and unfair competition under California Business and  
6 Professions Code §§ 17200 *et seq.* and/or §§ 17500 *et seq.*, as alleged  
7 hereinabove; and

8 20. For such other and further relief and remedies available under  
9 California Business and Professions Code §§ 17200 *et seq.* and/or §§ 17500 *et*  
10 *seq.*, which the Court may deem just and proper.

11 ON ALL CLAIMS FOR RELIEF

12 21. For Plaintiffs' costs of suit;

13 22. For interest at the highest lawful rate on all sums awarded Plaintiffs  
14 other than punitive damages;

15 23. For reasonable attorneys' fees; and

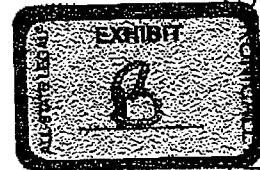
16 24. For such other and further relief as the Court deems just and  
17 appropriate.

18  
19 Dated: January 12, 2018

TOBEROFF & ASSOCIATES, P.C.

20  
21 By: /s/ Marc Toberoff  
22 Marc Toberoff

23 Attorneys for Plaintiffs Deanna Brown-Thomas,  
24 Yamma Brown, Venisha Brown, Michael D.  
25 Brown, Nicole C. Brown, Jeanette Mitchell  
26 Bellinger, Sarah LaTonya Fegan, Ciara Pettit  
27 and Cherquarius Williams  
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**DECLARATION OF TOMMIE RAE BROWN**

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I, Tommie Rae Brown, declare as follows:

1. I have personal knowledge of the facts set forth below, which are known to me to be true and correct, and if called upon to testify, I could testify competently thereto.

2. I and my minor son, James Brown, II ("JB II"), have been involved since 2007 in connection with matters arising out of the death of my husband Joseph James Brown a/k/a James Brown in 2006, including in regard to various probate and related litigation matters in South Carolina courts involving *inter alia* disputes with other purported heirs, including certain Plaintiffs herein.

3. I and/or my attorneys have interacted numerous times in connection with the above Estate matters with Russell L. Bauknight, the Personal Representative of the Estate of James Brown ("Estate") and Trustee of the James Brown "I Feel Good" Trust ("Trust"), and David C. Sojourner, Jr., the Limited Special Administrator of the Estate and Trust.

4. Mr. Bauknight and Mr. Sojourner reside in South Carolina and have resided here at all times since 2013 to the best of my personal knowledge.

5. My husband James Brown died in 2006 and purportedly left a will and an irrevocable inter vivos charitable trust contemporaneously executed in 2000.

6. In 2007, administration of my husband's estate commenced in Aiken County, South Carolina, resulting in litigation over the 2000 will and trust, including *inter alia* that certain Plaintiffs in this action contested the 2000 will and trust, and so did I, by contesting the will and trust in a separate action as well as claiming my statutory spousal rights. Our son, JB II, asserted his state statutory pretermitted child share. Extensive litigation ensued in the South Carolina state court probate administration of the estate.

7. In 2008, I and *inter alia* certain Plaintiffs in this action entered a settlement agreement that resolved the will and trust litigation as well as the spousal

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1 litigation. After lengthy and extensive hearings, the South Carolina circuit court in  
2 2009 approved the settlement agreement. Certain other parties appealed. In 2013  
3 the South Carolina Supreme Court reversed the circuit court's approval of the  
4 settlement agreement, and the will and trust contests and the spousal claims were  
5 revived.

6 8. In 2015, the South Carolina trial court ruled that that I was the  
7 surviving spouse of James Brown. Certain Plaintiffs in this action appealed that  
8 ruling in the South Carolina state appellate courts, which appeal is pending. My  
9 status as surviving spouse has not been finally determined by the South Carolina  
10 courts. My status as surviving spouse is fundamental to the issue of who owns the  
11 termination rights in the copyrights to myriad James Brown compositions.

12 9. In March 2017, I entered into a settlement agreement with the Estate  
13 and Trust that resolved my probate litigation cases. In June 2017, certain Plaintiffs  
14 herein filed in the South Carolina state court probate administration a motion to  
15 compel disclosure of any other settlement negotiations involving the Estate and  
16 Trust and me. The trial court denied their motion, as well as their motion to alter or  
17 amend, which trial court ruling those certain Plaintiffs herein are currently appealing  
18 in the South Carolina appellate courts. Those alleged settlement negotiations at  
19 issue in the appeal are alleged and referred to in Paragraph 46 of Plaintiffs'  
20 Complaint in this action as the "Concealed Terms."

21 10. The Estate and Trust have incurred millions of dollars in legal fees and  
22 costs in the above litigation, which has been contentious and has continued for over  
23 a decade.

24 11. Plaintiffs: (a) allege herein that I am the surviving spouse "for purposes  
25 of this action" reserving all rights, defenses, and remedies (Doc. 1, ¶ 10), and  
26 simultaneously appeal the ruling in South Carolina affirming that I am the surviving  
27 spouse; and (b) allege and purport to put at issue in the Complaint herein the alleged  
28 Concealed Terms (Doc. 1, ¶ 46) that Plaintiffs were barred from obtaining in South

1 Carolina by a state court opinion denying their motion to compel disclosure on  
2 grounds that such disclosure is contrary to South Carolina law.

3 12. True and correct copies of the above-referenced opinions affirming that  
4 I am the surviving spouse and denying the motion for disclosure are attached hereto,  
5 respectively, as Exhibits A and B.

6 13. True and correct copies of notices of appeal from the above rulings  
7 filed by certain of the Plaintiffs in this action are attached hereto, respectively, as  
8 Exhibits C and D. These appeals are currently pending in the South Carolina state  
9 appellate court.

10 14. JB II and I currently reside in London, England, where we have resided  
11 continuously since December 2016.

12 15. I intend that JB II and I will reside in the United Kingdom for the  
13 foreseeable future, and at least until he finishes attending school here.

14 16. I have applied for and am awaiting receipt of a United Kingdom  
15 residency permit.

16 17. I have a United Kingdom national health card and general practitioner.

17 18. I moved from Nevada to California in May 2015. I moved from  
18 California to London in December 2016. I have not otherwise lived in California.

19 19. I do not own and have never owned real property in California. I lived  
20 in premises that I rented during the period that I lived in California.

21 20. I do not currently conduct any business in California.

22 21. I have been in litigation in the South Carolina courts with regard to my  
23 status and rights as James Brown's surviving spouse since 2007, including litigation  
24 involving a number of the Plaintiffs in this action. My lawyers in South Carolina  
25 have handled all communications with the Plaintiffs through their counsel regarding  
26 the litigation or any copyright termination rights, including during the time I lived in  
27 California.

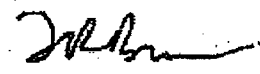
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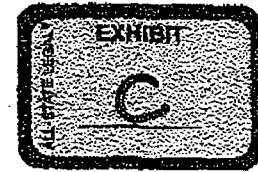
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 28, 2018, at London, U.K.



Tommie Rae Brown



ELECTRONICALLY FILED - 2018 Oct 30 3:47 PM - RICHLAND - COMMON PLEAS - CASE#2010CP4004900

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16 Attorneys for Defendants  
17 RUSSELL L. BAUKNIGHT, as the  
18 Personal Representative of the Estate of  
19 James Brown and Trustee of The James  
20 Brown "I Feel Good" Trust

21 UNITED STATES DISTRICT COURT  
22 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

23 DEANNA BROWN-THOMAS, an  
24 individual; YAMMA BROWN, an  
25 individual; VENISHA BROWN, an  
26 individual; MIDHAEL D. BROWN,  
27 an individual; NICOLE C. BROWN,  
28 an individual; JEANETTE  
MITCHELL BELLINGER, an  
individual; SARAH LATONYA  
FEGAN, an individual; CIARA  
PETTIT, an individual; and  
CHERQUARIUS WILLIAMS, an  
individual,

Plaintiffs,  
v.

TOMMIE RAE HYNIE a.k.a.  
TOMMIE RAE BROWN, an  
individual; JAMES J. BROWN II, an  
individual; RUSSELL L.  
BAUKNIGHT, as the Personal  
Representative of the Estate of James

CASE NO. 2:18-CV-00307-SVW-JPR  
[Hon. Stephen V. Wilson]

**DEFENDANT ESTATE AND  
TRUST'S NOTICE OF MOTION  
AND MOTION TO DISMISS  
COMPLAINT PURSUANT TO FED.  
R. CIV. P. 12(b)(1), (2), (3), AND (6),  
OR, IN THE ALTERNATIVE TO  
TRANSFER VENUE TO THE  
DISTRICT OF SOUTH CAROLINA  
PURSUANT TO 28 U.S.C. § 1404,  
1406; AFFIDAVIT OF RUSSELL L.  
BAUKNIGHT IN SUPPORT  
THEREOF**

[Proposed] Order lodged concurrently  
herewith]

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO  
FED. R. CIV. P. 12(b)(1), (2), (3), AND (6), OR, IN THE ALTERNATIVE TO  
TRANSFER VENUE TO THE DISTRICT OF SOUTH CAROLINA PURSUANT TO  
28 U.S.C. § 1404, 1406

ELECTRONICALLY FILED - 2018 Oct 30 3:47 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4004900

Brown and Trustee of The James Brown "I Feel Good" Trust; DAVID C. SOJOURNER, JR., as the Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of The James Brown and Limited Special Trustee of The James Brown "I Feel Good" Trust; and DOES 1 through 10, inclusive,

Date: April 16, 2018  
Time: 1:30 p.m.  
Courtroom: 10A

Action Filed: January 12, 2018

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on April 16, 2018, at 1:30 p.m., in Courtroom 10A of the First Street Courthouse before the Honorable Stephen V. Wilson, located at 350 West 1<sup>st</sup> Street, Los Angeles, CA 90012, defendant Mr. Russell L. Bauknight makes this limited appearance as the court-appointed Personal Representative of the James Brown Estate and Trustee of the James Brown Irrevocable Trust Agreement (the Estate and Trust) to file this motion to dismiss the complaint pursuant to Rules 12(b)(1), (2), (3), and (6) of the Federal Rules of Civil Procedure. The grounds for the Motion are as follows:

1. A Declaratory Judgment action is an improper basis for Federal Jurisdiction;
2. The plaintiffs' own pleadings, affidavits, and exhibits fail to state a valid Copyright claim or other claim that is ripe or plausible against the Estate and Trust;
3. The Estate and Trust are all located in South Carolina;
4. The South Carolina Probate Court and Appellate Courts have prior *in rem* jurisdiction over the matters asserted in the Plaintiffs' own pleadings, affidavits, and exhibits;
5. The Probate Exception to Federal Jurisdiction prevents this Court from asserting jurisdiction over the Plaintiffs' own pleadings, affidavits, and exhibits;
6. The plaintiffs' own pleadings, affidavits, and exhibits fail to state a connection between the claims sought in their lawsuit and California;
7. The plaintiffs' own pleadings, affidavits, and exhibits show that the factual

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1), (2), (3), AND (6), OR, IN THE ALTERNATIVE TO TRANSFER VENUE TO THE DISTRICT OF SOUTH CAROLINA PURSUANT TO

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NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1), (2), (3), AND (6), OR, IN THE ALTERNATIVE TO TRANSFER VENUE TO THE DISTRICT OF SOUTH CAROLINA PURSUANT TO

1 Defendants Russell L. Bauknight as Personal Representative of the James Brown  
2 Estate and Trustee of the James Brown Irrevocable Trust Agreement (incorrectly  
3 named as the James Brown I feel Good Trust<sup>1</sup>) (collectively the "Estate and Trust")  
4 submits this memorandum of law in support of their motion to dismiss pursuant to  
5 Rules 12(b)(1), (2), (3), and (6) of the Federal Rules of Civil Procedure ("Fed. R. Civ.  
6 P."), or, in the alternative to transfer venue from the Central District of California to the  
7 District of South Carolina pursuant to 28 U.S.C. § 1404(a).

8 **I. INTRODUCTION**

9  
10 This action was improperly filed in the USDC, for the Central District of  
11 California. The complaint asserts seven claims for relief, and only the first purports to  
12 raise a claim arising under the federal copyright laws. The other six claims are  
13 supplemental South Carolina state law claims.

14 As set forth in greater detail below, litigation over The James Brown Estate has  
15 been ongoing in South Carolina since 2007. The probate case is ongoing, and the  
16 plaintiffs in this action continue to participate in the Estate litigation and continue to  
17 appeal decisions by the South Carolina Court of the Common Pleas for Aiken County.

18 Having failed to achieve their goals in South Carolina's state courts, plaintiffs have  
19 filed this complaint sounding in tort and breach of fiduciary duty, but masquerading as a  
20 claim arising under the Copyright Act. In essence, the complaint is nothing but a veiled  
21 attack on prior decisions of the South Carolina Probate Court.

22 What plaintiffs failed to achieve in South Carolina they cannot accomplish here  
23 because settled Supreme Court and Ninth Circuit authority mandate dismissal for lack of  
24 subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency  
25 of service of process and failure to state a claim on which relief can be granted.

26  
27 <sup>1</sup> The James Brown Estate remains in Probate, as such the Irrevocable Trust has yet to be  
28 funded.

1 proceeds. Thus, in that agreement, those Settling Plaintiffs did the very thing they say  
2 in this action cannot be done: assign the proceeds of termination rights to a third party.

3 The 2008 settlement was divided approximately as follows: 50% to the charitable  
4 trust, 25% to the Settling Plaintiffs, and 25% to Mrs. Brown and JB II. After extensive  
5 hearings, the South Carolina circuit court in 2009 approved the settlement agreement  
6 and, according to its terms, appointed defendant Russell L. Bauknight as personal  
7 representative and trustee, and removed the two successor personal representatives and  
8 trustees. The removed personal representatives and trustees appealed. In 2013, the  
9 South Carolina Supreme Court affirmed the removals, but reversed the circuit court's  
10 approval of the settlement agreement, citing the need for further evidence to approve it.  
11 Thus, the will and trust contests and the spousal claims were revived. To avoid any  
12 appearance of a conflict of interest, the circuit court appointed defendant Sojourner as  
13 Limited Special Administrator to handle the litigation. Litigation costs to the estate and  
14 ultimately to the charitable trust have now run into the tens of millions of dollars.  
15 Although the charitable trust purportedly was to provide scholarships to needy children,  
16 to date not one penny has been available for those scholarships because the probate  
17 litigation has continued.

18 Also in 2013, unbeknownst to the Estate and Trust, Mrs. Brown and JB II filed  
19 copyright termination notices for certain songs written by Mr. Brown. (Compl. ¶¶  
20 50-51.) Counsel for many of the plaintiffs in this action sent a letter to the publisher  
21 contending that Mrs. Brown and JB II did not have the authority to file termination  
22 notices and, upon information and belief, those plaintiffs filed their own termination  
23 notices. In 2015, Mrs. Brown and JB II sold the publisher's share of five terminated  
24 songs. (*Id.* at ¶ 52.) In the sales agreement, the publisher/purchaser required that all  
25 children's proceeds—including JB II—be held in escrow until all the heirs of Mr.  
26 Brown were finally determined. (*Id.* at ¶ 53.) Plaintiffs intervened in the agreement  
27 and convinced the publisher/purchaser to agree to amend the agreement to allow the  
28

1 immediate distribution of the sale proceeds to plaintiffs, who, inter alia, released  
2 Mrs. Brown and her agents for matters related to that agreement. (*Id.*)

3 Plaintiffs presumably obtained DNA proof of paternity in accordance with the  
4 South Carolina probate estate administration protocol and insisted that JB II, who had  
5 already submitted to and passed a DNA test, do so again in accordance with the probate  
6 estate administration protocol, which he again passed. However, several of the non-  
7 plaintiff putative children have failed to submit to the probate DNA protocol, so their  
8 status as children entitled to termination rights remains unsettled in the probate court.

9 Mrs. Brown sought partial summary judgment in the South Carolina probate  
10 administration that she was the surviving spouse of Mr. Brown. After extensive  
11 briefing and argument, the trial court issued an order in 2015 ruling that Mrs. Brown  
12 was the surviving spouse. Deanna Brown-Thomas, Yamma Brown, Venisha Brown,  
13 and Michael D. Brown (Appealing Plaintiffs) and others filed a motion to alter and  
14 amend. After extensive additional briefing and argument, the circuit court denied the  
15 motion to alter and amend and in 2015 again issued an order holding that Mrs. Brown  
16 was the surviving spouse of Mr. Brown. The plaintiffs to this action are the same  
17 plaintiffs currently in the South Carolina state appellate courts. Thus, of particular  
18 importance to this action, because of Appealing Plaintiffs' appeal, the status of Mrs.  
19 Brown as surviving spouse has not been finally determined. Consequently, her right to  
20 any termination rights has not been finally determined and until such time the Estate  
21 and Trust is unaware of which parties will have an ultimate seat at the table.

22 In 2016, Mrs. Brown entered into a settlement agreement with Mr. Sojourner and  
23 Mr. Bauknight in their representative capacities. (Compl. ¶ 44.) In that agreement,  
24 Mrs. Brown agreed to contribute to the charitable trust 65% of any proceeds she might  
25 receive from termination rights and to dismiss all other claims against the estate. (*Id.*)  
26 In return, the estate agreed to withdraw its appeal of the circuit court ruling that Mrs.  
27 Brown is the surviving spouse, which withdrawal the South Carolina appellate court

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1 proceeds. Thus, in that agreement, those Settling Plaintiffs did the very thing they say  
2 in this action cannot be done: assign the proceeds of termination rights to a third party.

3 The 2008 settlement was divided approximately as follows: 50% to the charitable  
4 trust, 25% to the Settling Plaintiffs, and 25% to Mrs. Brown and JB II. After extensive  
5 hearings, the South Carolina circuit court in 2009 approved the settlement agreement  
6 and, according to its terms, appointed defendant Russell L. Bauknight as personal  
7 representative and trustee, and removed the two successor personal representatives and  
8 trustees. The removed personal representatives and trustees appealed. In 2013, the  
9 South Carolina Supreme Court affirmed the removals, but reversed the circuit court's  
10 approval of the settlement agreement, citing the need for further evidence to approve it.  
11 Thus, the will and trust contests and the spousal claims were revived. To avoid any  
12 appearance of a conflict of interest, the circuit court appointed defendant Sojourner as  
13 Limited Special Administrator to handle the litigation. Litigation costs to the estate and  
14 ultimately to the charitable trust have now run into the tens of millions of dollars.  
15 Although the charitable trust purportedly was to provide scholarships to needy children,  
16 to date not one penny has been available for those scholarships because the probate  
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20 50-51.) Counsel for many of the plaintiffs in this action sent a letter to the publisher  
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24 songs. (*Id.* at ¶ 52.) In the sales agreement, the publisher/purchaser required that all  
25 children's proceeds—including JB II—be held in escrow until all the heirs of Mr.  
26 Brown were finally determined. (*Id.* at ¶ 53.) Plaintiffs intervened in the agreement  
27 and convinced the publisher/purchaser to agree to amend the agreement to allow the

28

MOTION TO DISMISS COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1),  
(2), (3), AND (6), OR, IN THE ALTERNATIVE TO TRANSFER VENUE TO THE  
DISTRICT OF SOUTH CAROLINA PURSUANT TO 28 U.S.C. § 1404, 1406

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1 state law claims in the complaint.<sup>15</sup> Plaintiffs' choice of forum seems to be principally  
2 motivated by the location of plaintiffs' copyright counsel.

3 The Central District of California is undoubtedly a substantially more expensive  
4 district in which to litigate this case than would be the District of South Carolina.  
5 Moreover, California federal judges and jurors should not have to spend their valuable  
6 time on a matter centered in South Carolina, the venue of probate, administration, and  
7 all other litigation pertaining to the James Brown Estate and Trusts.

8 Under the *GNC* factors, South Carolina is not only a proper forum for this  
9 lawsuit, but a far more convenient one for parties and witnesses.

10 Pursuant to 28 U.S.C. § 1404 and *GNC*, this lawsuit should be transferred to the  
11 United States District Court for the District of South Carolina, if not dismissed.

12 **IX. CONCLUSION**

13 For the above reasons, this Court should dismiss, or in the alternative, transfer  
14 this case.

15 Respectfully submitted,

16  
17 Dated: February 28, 2018

18 By: /s/ Edward M. Anderson  
Edward M. Anderson  
ANDERSON YEH PC

19 J. David Black  
20 NEXSEN PRUET, LLC

21 Attorneys for Defendant Russell L.  
22 Bauknight as Court Appointed Personal  
23 Representative of the James Brown  
24 Estate and Trustee of The James Brown  
25 Irrevocable Trust Agreement

26  
27 <sup>15</sup> Only the seventh claim under California law may be more familiar to a California-based  
28 federal Judge.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) 2010-CP-40-4900

Russell Bauknight, et al., )  
 )  
Plaintiffs, )  
 )  
vs. ) TRANSCRIPT OF RECORD  
 )  
Henry Dargan McMaster, et al., )  
 )  
Defendants. )  

---

August 30, 2010  
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:

KENNETH B. WINGATE, ESQUIRE  
EVERETT A. KENDALL, II, ESQUIRE  
Attorneys for Plaintiffs

DARYL L. WILLIAMS, ESQUIRE  
J. CALHOUN WATSON, ESQUIRE  
Attorneys for the Defendants

Crystal Holmes

Official Court Reporter

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u> <u>EVD.</u>
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(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE HEARING.)

I N D E X

<u>WITNESS</u>	<u>DIRECT</u> <u>CROSS</u> <u>REDIRECT</u> <u>RECROSS</u>
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(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE HEARING.)

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THE COURT: All right. You want to do the Motion to Transfer Venue first I think, so.

5

6

7

MR. WINGATE: If I may ---

THE COURT: It doesn't matter, however y'all want to handle it.

8

9

MR. WINGATE: There's also a Motion to Strike

10

11

THE COURT: Okay.

12

13

14

MR. WINGATE: --- the Motion for a Transfer of Venue. And if I may suggest, Your Honor, that may be the appropriate one to take up first just in logical sequence.

15

16

17

18

THE COURT: It doesn't matter to me.

MR. WILLIAMS: It was the last one filed if that makes a difference.

19

20

21

THE COURT: Beg your pardon?

MR. WILLIAMS: It's the last motion filed, if that makes a difference, as far as ---

22

23

THE COURT: Well, whatever's y'all's pleasure. Whatever y'all want to hear first?

24

25

MR. WILLIAMS: We would like to proceed with the Motion to Dismiss which does incorporate the Venue

1 issue.

2 THE COURT: Okay.

3 MR. WINGATE: I respectfully, submit, Your  
4 Honor, that ---

5 THE COURT: If y'all can't agree on which  
6 motion, what we'll hear first, we've got problems.

7 MR. WINGATE: Let him proceed. As it  
8 relates to the Motion to Dismiss, unless and until  
9 Your Honor decides on where ---

10 THE COURT: On venue.

11 MR. WINGATE: --- venue lies ---

12 THE COURT: You say it dovetails -- help me  
13 out.

14 MR. WILLIAMS: It dovetails because this case  
15 involves the Estate and Trust of James Brown which  
16 have been administered ---

17 THE COURT: Why isn't Doyet Early hearing  
18 this case? Why am I hearing it? Go ahead.

19 MR. WILLIAMS: That is my question exactly.

20 THE COURT: Well, go ahead.

21 MR. WILLIAMS: Because it involves probate

22 ---

23 THE COURT: I thought Judge Early had been  
24 assigned that case.  
25

1 MR. WINGATE: This is a different case, Your  
2 Honor.

3 MR. WILLIAMS: Well ---

4 THE COURT: Well, y'all disagree on that,  
5 okay. It's a good start.

6 MR. WILLIAMS: It clearly relates to just  
7 about everything Judge Early has been hearing.

8 THE COURT: Beg your pardon?

9 MR. WILLIAMS: I clearly relates to just  
10 about everything Judge Early has been hearing.

11 THE COURT: All right.

12 MR. WILLIAMS: This case -- this civil action  
13 number was initiated by a filing in Richland County  
14 Probate Court. And our motion of the Defendant's --  
15 my name is Daryl Williams, by the way. I represent  
16 the Defendant Adele Pope. Mr. Cal Watson represents  
17 ---

18  
19 THE COURT: This is the day for suing lawyers  
20 or something? What going on?

21 MR. WILLIAMS: I'm not suing any today.

22 THE COURT: Okay.

23 MR. WILLIAMS: Ms. Pope and Mr. Buchanan  
24 were, as of March 2007, appointed by Judge Early to be  
25 the Special Administrators ---

1 THE COURT: All right.

2 MR. WILLIAMS: --- of the Estate of James  
3 Brown which had been submitted to probate in Aiken  
4 County and which was the subject of a lawsuit, another  
5 proceeding in addition to the probate proceeding filed  
6 just a couple of weeks after the Will was admitted to  
7 probate. It was under the auspices of that case, the  
8 first contested case proceeding, if you will, down  
9 there, case number 122. I'll refer to a few cases by  
10 number for shortening purposes. They were appointed  
11 SA's with no fiduciary duties.

12  
13 By -- on November the 20th, 2007, the last  
14 two of the three original personal representatives of  
15 the Estate of James Brown and Trustees, the same  
16 people, of the 2000 Irrevocable Trust of Mr. Brown,  
17 resigned under some pressure. On that day in open  
18 court, with the consent and support of all parties  
19 involved other than the Attorneys General of the  
20 States of South Carolina and Georgia, and Georgia was  
21 later dismissed from the -- from future proceedings,  
22 Ms. Pope and Mr. Buchanan were appointed by Judge  
23 Early, court appointed, successor PR's and Trustees.

24 THE COURT: All right.

25 MR. WILLIAMS: There were clearer proceedings

1 in Aiken County beginning in mid-January with the  
2 informal probate of a Will with case 122 involving the  
3 Estate and Trust.

4           The Probate Code provides in 62-3-201 that if  
5 you've got an initial proceeding in one county, that  
6 county is the venue for all subsequent proceedings and  
7 has the exclusive jurisdiction of future proceedings  
8 ---

9           THE COURT: So it should stay in Aiken County  
10 is what ---

11           MR. WILLIAMS: It should say in ---

12           THE COURT: All right.

13           MR. WILLIAMS: Actually, what it should --  
14 what should happen is it should be dismissed here and  
15 the Plaintiffs be required to refile in Aiken County  
16 or apply to Aiken County, under that same statute, for  
17 permission to transfer venue.  
18

19           THE COURT: All right.

20           MR. WILLIAMS: In other words, this Court's  
21 jurisdiction is really limited to dismissing the case  
22 and at most, allowing them to seek ---

23           THE COURT: Dismiss without prejudice, go  
24 back to see Judge Early or go back to Aiken County?

25           MR. WILLIAMS: Yes ---

1 THE COURT: That's your position?

2 MR. WILLIAMS: That's our position. That's  
3 the first reason this should be dismissed.

4 And the Plaintiffs here have agreed, there's  
5 an action called case 1647. 1647 was filed in Probate  
6 Court in Aiken County and subsequently removed to  
7 Common Pleas for Judge Early. 1647 is the case number  
8 under which the hearings were held that ultimately led  
9 to the entry of the Order on May 26th, 2009, which  
10 removed Ms. Pope and Mr. Buchanan and substituted Mr.  
11 Bauknight as the successor PR/Trustee pursuant to an  
12 agreement among the Plaintiffs in this -- in this  
13 action.

14  
15 When that case -- the amended petition in  
16 that case was filed in November of 2008, in which  
17 everybody was a party, filed by the AG as I recall,  
18 alleges the principal place of administration of the  
19 Estate and Trust is Aiken County, South Carolina. So  
20 the Plaintiffs have already admitted that's where the  
21 administration has been and should be.

22 The Estate is clearly under probate, it is  
23 not closed there. That, Your Honor, is where this  
24 case ought to be and ought to get there by virtue of  
25 this Court's dismissal without prejudice.

1 THE COURT: All right.

2 MR. WILLIAMS: Now, that argument -- and we  
3 submitted an Order to that effect.

4 To go further with the grounds for dismissal  
5 of the case though, should the Court go beyond and  
6 want to hear other things -- and this -- this is not a  
7 transfer of venue under the traditional transfer of  
8 venue the way lawyers and judges think about in Common  
9 Pleas. This is a Probate -- a mandatory Probate Code  
10 direction. So I'm not even arguing change of venue as  
11 we traditionally think about it.

12 This case should be dismissed because the  
13 Plaintiffs have failed to provide the required  
14 affidavit under 15-36-100 to file a negligence action  
15 against a lawyer. Now, they have filed a responsive  
16 memorandum which they said, we're not suing them  
17 because they're lawyers. That's not what the  
18 Complaint says. The Complaint specifically points out  
19 that they are lawyers, and they both are, and alleges  
20 in paragraph 26 in the third cause of action for  
21 negligence, the Defendants provided services to the  
22 Estate and Trust apart from and in addition to the  
23 requirements for the administration of the Estate and  
24 Trust.  
25

1           It goes on to allege that having done so,  
2 they're obligated to do that in a reasonable manner  
3 consistent with the applicable standard of care.

4           Your Honor, that is, to me at least, clearly  
5 an allegation that they acted as lawyers, not as --  
6 not as merely PR's and Trustees but as something  
7 beyond that, as lawyers. Having done that, the  
8 Plaintiffs are required to file the affidavit under  
9 15-36-100. They have not done so. 15-36-100  
10 mandates, mandates dismissal of a case for failure to  
11 file the affidavit.

12           So that's the second ground, Your Honor, for  
13 dismissal of the case.

14           THE COURT: All right.

15           MR. WILLIAMS: Because so much has gone on in  
16 Aiken County, Your Honor, all or virtually all of the  
17 allegations of misconduct have been addressed at some  
18 point or the other by Judge Early; or, are subject to  
19 proceedings that are still pending; and/or, may be  
20 involved on appeal to the South Carolina Supreme Court  
21 which fairly recently has pulled all of the Brown  
22 appeals out of the Court of Appeals and taken  
23 jurisdiction over them.

24           By way of example, just to go through this:  
25

1 kind of quickly, Your Honor, if I can, paragraph 18(a)  
2 of the Complaint alleges generally, I guess, what the  
3 main beef here is, a failure to properly manage the  
4 Estate and Trust. That question has been addressed  
5 before.

6 August 8, 2008, Judge Early entered an Order  
7 specifically denying a Motion to Reconsider the  
8 appointment of Ms. Pope and Mr. Buchanan made by one  
9 or more parties, including the Attorney General. And  
10 this is what that Order says.

11 After review of the entire record, first,  
12 those motions are denied. Second, a finding by Judge  
13 Early, Buchanan and Pope have served properly to date  
14 in their capacity of SA's, what we talked about, and  
15 later PR/Trustees. They should continue as PR's and  
16 Trustees. And it's important to note, and Trustees.  
17 They're wearing both hats and there has been some  
18 complaint that that's improper, although Mr. Bauknight  
19 is doing it as well. Subject to the right, their  
20 right, the Court's rights, or any interested person,  
21 including these Plaintiffs, to seek the appointment of  
22 a Special Administrator if that were to be appropriate  
23 for any particular question.

24 So Judge Early has been presented, and  
25

1 presented in the context with a motion to remove them.  
2 And also in the context of their own motion to say,  
3 Judge, tell us we've been doing this right. If not,  
4 then let us know and we'll get on our horse and ride  
5 into the sunset and you can let somebody else do this.

6           So generically, the big beef has been looked  
7 at by Judge Early before.

8           Some other particular allegations that I  
9 would like to draw this Court's attention to,  
10 paragraph 18(e) of the Complaint, the allegation is  
11 that Pope and Buchanan mishandled an auction of  
12

1 certain items. The Circuit Court issued an Order on  
2 February 20th allowing them to do that.

3           Entered another Order April 1st, allowing  
4 them to sign the contract setting the terms of the  
5 sale. The Attorney General intervened in this  
6 proceeding to encourage the Court of Appeals to allow  
7 this auction. They allowed the Attorney General to  
8 intervene so they considered his brief. And their  
9 resolution was, the auction may take place as  
10 scheduled, which in fact it did.

11           So, that allegation, the auction was  
12 mishandled, has been the subject of hearings and  
13 orders at two different levels of the court system in  
14 the State of South Carolina.

15           I am not going to do every one of these, Your  
16 Honor, just bear with me, I'm going to give just a few  
17 examples.

18           Paragraph 18(i), Pope and Buchanan are  
19 alleged to have failed to sell the assets of the  
20 Estate and Trust in a prudent time. Specific example,  
21 a hundred million dollar offer in November of 2007.  
22 Remember, they were appointed November 20th, 2007.  
23 This offer was subject to live testimony on the day  
24 the last two PR/Trustees resigned. The attorneys for  
25

1 the children of James -- five of the children of James  
2 Brown who were Plaintiffs in this case, the attorney  
3 for those five of these Plaintiffs ---

4 THE COURT: Including James Brown, Jr., the  
5 seven year old?

6 MR. WILLIAMS: Not including him.

7 THE COURT: Not include James Brown, Jr.?

8 MR. WILLIAMS: He was a party -- he was a  
9 party to the hearing but what I'm getting ready to  
10 tell you is, an attorney for the five of the adult  
11 children -- five of the six adult children who were  
12 named in his will, cross-examined the gentleman who  
13 came down to convey this offer at the request of one  
14 of the presiding PR/Trustees and clearly inferred that  
15 the whole deal was designed to generate kickbacks to  
16 the -- to the PR/Trustees who have just resigned. So  
17 there was -- this is not a clear offer. It was  
18 suspicious when made. No one demanded it be accepted  
19 that day.  
20

21 One or two others real quickly and I'll move  
22 on.

23 The Settlement Order entered on May 26, 2009,  
24 directed Mr. Pope -- I mean, Ms. Pope and Mr. Buchanan  
25 -- first of all, it removed them. And then in the

1 next paragraph it directed them to sign the Settlement  
2 Agreement. They refused to sign it, to execute the  
3 Settlement Agreement, so it is subject to an appeal  
4 from the South Carolina Supreme Court. And there are  
5 other allegations in the Complaint alleging that the  
6 appeal itself is taken in bad faith and is injuring  
7 the Estate and Trust and the settlement parties.

8           What I'm suggesting, very quickly, is this is  
9 in front of the South Carolina Supreme Court. Whether  
10 they are man -- whether they are required to sign  
11 that, whether their appeal has any validity to it,  
12 which we submit it certainly does. And this is a  
13 collateral attack on the rights of Pope and Buchanan  
14 to seek relief from appellate courts of this state.  
15 And we think that's totally improper and certainly the  
16 issues are pending other places.

17           Finally, one last matter I would like to  
18 point out, in the -- in the Complaint they ask -- they  
19 ask in this Complaint which they would like to have  
20 heard by this Court on the merits, to deny  
21 compensation to them for their services and the work  
22 done on behalf of the Estate or Trust when they were  
23 serving as Judge Early's appointed PR's and Trustees.

24           The problem with this, Your Honor, their  
25

1 compensation is in front of the -- front of the Court  
2 in Aiken County, it's in front of Judge Early. They  
3 have a motion pending in front of Judge Early, also  
4 filed a claim of their orders entered that addressed  
5 their compensation as SA's and future compensation as  
6 PR/Trustees. They sought, they -- and seek in this  
7 motion for Judge Early to direct payment of their --  
8 the unpaid portion of their SA fees and to settle the  
9 additional commissions that are due them for their  
10 services as PR and Trustee. These Plaintiffs ask this  
11 Court to step in, intervene, take something off of  
12 Judge Early's plate which is already pending in front  
13 of him.

14  
15 Your Honor, there are -- there are cases that  
16 the allegations are substantially similar -- the  
17 parties are not exactly the same but they are in some  
18 cases, substantially similar in Aiken County, in front  
19 of the Supreme Court.

20 This seeks to find, for whatever reason,  
21 another forum to rehash these issues. And we think  
22 that requires dismissal of the Complaint.

23 In addition, you can see the -- if you recall  
24 the allegation about not accepting the offer in  
25 November of 2007, just by way of a quick example.

1 Obviously, if there's something wrong with that, then  
2 all the Plaintiffs were on inquiry notice as of  
3 November 2007 of what they now allege was wrongdoing  
4 by Pope and Buchanan.

5           There's a one year statute of limitations for  
6 certain steps of fiduciary under the Probate Trust  
7 Code. Two years if fraud is involved. Although it's  
8 really not alleged in this Complaint, we think the  
9 statute of limitation is invoked by pleading, four  
10 parts of the document itself. And estoppel, judicial  
11 estoppel by these Plaintiffs from what we've seen --  
12 just seen on some of the issues that -- that they  
13 raised.

14  
15           Now, Mr. Watson who is smarter than I, is  
16 going to address some further grounds for the Motion  
17 to Dismiss, Your Honor.

18           THE COURT: Y'all want to dissect it, you  
19 want to go down it, Mr. Wingate, or wait until they're  
20 finished? All right.

21           MR. WINGATE: Well, let them ---

22           THE COURT: Okay. Yes, sir, into the record  
23 so we get ---

24           MR. WATSON: Yes, sir, Your Honor. Cal  
25 Watson ---

1 THE COURT: Yes, sir.

2 MR. WATSON: --- Defendant Buchanan. May it  
3 please the Court.

4 Your Honor, I'd like to begin by just  
5 adopting Mr. Williams' arguments on behalf of Mr.  
6 Buchanan and reiterating the fact that this Court  
7 doesn't have jurisdiction because of the probate  
8 argument he made with respect to the venue issue.

9 THE COURT: Yes, sir.

10 MR. WATSON: So, Your Honor, just for the  
11 record I want to officially adopt all his arguments  
12 and reiterate that one.

13 In addition, Your Honor, we have briefed all  
14 these issues very extensively and we received the  
15 brief late Friday from the Plaintiffs as well. So  
16 these issues that we're talking about are in the  
17 briefs. We've attached a number of documents to  
18 illustrate what we -- what we indicate. So what I'd  
19 like to do is just hit the highlights and ---  
20

21 THE COURT: Yes, sir.

22 MR. WATSON: --- direct you back to our  
23 briefs because otherwise I would be restating our  
24 briefs.

25 Your Honor, even though I am coming or

1 arguing second, the arguments I'm making really are  
2 primary arguments because they deal with serious  
3 constitutional and statutory issues.

4           What we have here, Your Honor, is a suit  
5 against two private individuals to collect private  
6 damages. The Attorney General is involved and the  
7 Attorney General's claims are jumbled in with the  
8 private Plaintiffs' and that's really a problem here  
9 because the Attorney -- the Attorney General really  
10 doesn't have the authority to file private suit  
11 against these private individuals. And there are a  
12 couple of reasons why participation by the Attorney  
13 General in this suit as Plaintiff is wrong and  
14 warrants dismissal of the case in addition to  
15 everything Mr. Williams said.  
16

17           First, there's really no legislative  
18 authority that allows the Attorney General to  
19 participate in this suit. And, Your Honor, if you  
20 look at the Complaint, no legislative authority is  
21 alleged. We -- this is simply not how power of the  
22 State should be used in seeking private damages  
23 against private individuals.

24           We cited a case in our brief, Your Honor, by  
25 the name of California versus Infineon Technologies

1 AG, it's cited in our brief. The cite is 531 F.2d  
2 1124. It's a 2007 federal case in California that's  
3 very instructive. There in that case various Attorney  
4 Generals, I think about 40 of them, sought money  
5 damages on behalf of their states and individuals and  
6 businesses in their states. It was a price fixing  
7 kind of case.

8           And the Court discussed there in very great  
9 detail the ability of these Attorney Generals to sue  
10 for money damages. And they found in that case  
11 specifically, because the South Carolina Attorney  
12 General was participating in that suit, that the South  
13 Carolina Attorney General needed specific legislative  
14 authorization to sue for money damages. And that --  
15 in that case he was seeking or asserting claims under  
16 the Unfair Trade Practices Act and there was no  
17 legislative authorization.

18           In addition, the Court found that the common  
19 law parens patriae authority extended only to actions  
20 for injunctive relief. And here, as I said, we have  
21 no statutory authority and no allegations for  
22 injunctive relief.

23           What we have as far as any legislative  
24 authority that relates to the Attorney General and  
25

1 trusts are two Code provisions. They're cited in our  
2 brief. South Carolina Code Annotated 1-7-130,  
3 provides that, quote, the Attorney General shall force  
4 the due applications of funds given to public  
5 charities within the state, prevent trusts, breaches  
6 of trust and the administration thereof -- and then  
7 the rest is irrelevant.

8 Also South Carolina Code Annotated 67-7-  
9 405(c) provides that the Attorney General and others,  
10 quote, may maintain a proceeding to enforce a  
11 charitable trust.

12 Your Honor, these statutes don't apply for  
13 two reasons. One is, the Brown Estate didn't create a  
14 public charity. The 2000 Trust is a private  
15 irrevocable trust which divided into a 501(c)3  
16 foundation for education and a non-charitable trust  
17 for certain -- education benefits for certain of  
18 Brown's grandchildren. While the 501(c)3 foundation  
19 is accorded some of the same protections of a charity  
20 and can serve a public purpose, it is not a public  
21 charity.

22 So if you -- if you -- the statute simply  
23 doesn't apply because it doesn't -- we're not dealing  
24 with a public charity within the scope of that  
25

1 statute.

2           And even if Your Honor disagrees with that,  
3 these -- the allegations of the Complaint simply don't  
4 fall within these statutes. This is not an action to  
5 enforce trust. The Plaintiffs aren't seeking any  
6 injunctive relief. There's no request for enforcement  
7 of any of the terms of any trust. And the Plaintiffs  
8 can't ask the Court to prevent a breach of trust  
9 because all of the alleged wrongful actions have  
10 already taken place. So the portion that talked about  
11 preventing breaches of trust by definition can't --  
12 can't take place. There's no mention of anything of  
13 in these Complaints other than the Court -- other than  
14 the Plaintiffs asking the Court for money damages or  
15 return of property and then -- it is simply  
16 inappropriate for the Attorney General to participate  
17 along with private parties and sue these private  
18 individuals for private damages.  
19

20           The second reason that the Attorney General  
21 can't participate is that the Attorney General must  
22 have a separate interest or unique interest of the  
23 State under this *parens patrie* authority.

24           We cited case number in our brief called  
25 Alfred L. Snapp and Son Inc. versus Puerto Rico. It's

1 458 United States 592. It's a 1982 United States  
2 Supreme Court Case. And there the Court held that in  
3 order to maintain a parens patrie suit, the State must  
4 articulate an interest apart from the interest of the  
5 private parties and this simply hasn't happened.  
6 There's no allegation in here where the Attorney  
7 General is doing that. The relief that is being  
8 sought, if it's proper at all, we vehemently deny that  
9 it is, could be sought just as effectively by the  
10 Trust itself. And there's simply just no unique  
11 interest for the State of South Carolina in this  
12 private suit against private individuals.

13  
14 For all those reasons, the -- the  
15 participation by the Attorney General is inappropriate  
16 in the case and must be dismissed on that ground.

17 Also, Your Honor, the hiring of or the use of  
18 contingency fee counsel by the Attorney General, we  
19 believe violates the due process rights of the  
20 Defendants. The -- and -- the Attorney General cannot  
21 hire contingency fee counsel to pursue both the  
22 interest of the State and the interest of the private  
23 parties at the same time. The conflict between  
24 counsel's presumed motivations, on the one hand to  
25 seek the highest return for his client, the private

1 Plaintiffs, as opposed to seeking just return result  
2 from the State as required by the Supreme Court, can't  
3 be reconciled and that's another reason that the case  
4 should be dismissed.

5         Also, Your Honor, the South Carolina Code  
6 Annotated 33-56-180, again cited in our brief,  
7 mandates that this case be dismissed because the  
8 Defendants at all times were acting within their scope  
9 of authority as agents as defined by this statute to  
10 the I Feel Good Trust which is the trust -- one of the  
11 trusts we're talking about. As a private foundation,  
12 the I Feel Good Trust and its agents are given the  
13 protections of charitable organizations under this  
14 statute. And for this reason, Your Honor, this is the  
15 fatal flaw that also justifies dismissal.  
16

17         The statute of limitations has expired. Mr.  
18 Williams briefly mentioned that. But the record,  
19 which you don't have before you that's in Aiken, is  
20 replete with examples of Defendants fully disclosing  
21 what they're doing, being reviewed by the Plaintiffs  
22 in detail. They testified under oath at least seven  
23 times and there was an opportunity to cross-examine  
24 throughout the course of this proceeding or these  
25 proceedings.

1           And, Your Honor, for this reason the statute  
 2 of limitation has expired because, as Mr. Williams  
 3 said, it's a one year statute. This is outlined in  
 4 much greater detail in our brief. I won't rehash the  
 5 specific issues now.

6           THE COURT: All right. That's fine.

7           MR. WATSON: And, Your Honor, there are --  
 8 many of these parties are improper. There is an  
 9 allegation of a Legacy Trust as Plaintiff. And I  
 10 don't think anyone disputes that these Defendants  
 11 never served as Trustees of a Legacy Trust. And as  
 12 such, they do not and cannot have a fiduciary duty or  
 13 obligation to the Legacy Trust or any of its  
 14 beneficiaries. There's no case law in South Carolina  
 15 or anywhere else that I've ever seen that poses a  
 16 fiduciary duty on persons who aren't fiduciaries. It  
 17 just -- there's just no case law cited by the  
 18 Plaintiffs in their brief and I'm not aware of any.

19           A number of the alleged beneficiaries who are  
 20 Plaintiffs in this case violated the in terrorem  
 21 (phonetic) clause which would eliminate their claim to  
 22 be a beneficiary, and therefore if they aren't a  
 23 beneficiary of the Trust, they can't participate in  
 24 this suit. That is also outlined in much greater  
 25

1 detail in our brief.

2           And two of the parties, we believe should be  
3 here that aren't -- or they are necessary parties. We  
4 don't believe any party should be here. But these we  
5 believe are necessary and that's Forlando (phonetic)  
6 and Romaunzo (phonetic) Brown who were two of the  
7 seven designated potential qualified beneficiaries for  
8 the Brown Family Education Trust. They asserted in  
9 other actions that as a result in terrorum clause,  
10 they are the only beneficiaries of the Education Trust  
11 yet they aren't Plaintiffs.

12           So, Your Honor, for all of those reasons,  
13 which as I say are further outlined in much much  
14 greater detail in our brief and -- and responded to in  
15 Plaintiffs' brief, we would ask that the Court dismiss  
16 this action, first primarily because of Mr. Williams'  
17 initial argument but in the alternative, for these  
18 argument.

19  
20           THE COURT: All right. Thank you, sir.

21           Mr. Wingate. I Feel Good Trust, is that the  
22 name of it?

23           MR. WINGATE: I Feel Good.

24           THE COURT: You know, he also had a big hit  
25 called Bewildered. Go ahead, Mr. Wingate.

1 MR. WINGATE: May it please the Court, Your  
2 Honor. Ken Wingate along with my partner, Rhett  
3 Kendall.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And we are before you today in  
6 connection with the Irrevocable Charitable Trust  
7 established by the entertainer James Brown.

8 As Your Honor is aware from the pleadings,  
9 our firm represents the 15 or so Plaintiffs listed on  
10 the caption of the case which include globally all of  
11 the beneficiaries of this Irrevocable Trust, both the  
12 charitable and private individuals.

13 I would ask that Your Honor -- well, first,  
14 let me introduce -- we're here representing, as you're  
15 aware from the caption, an array of folks. I believe  
16 Your Honor knows Sonny Jones ---

17 THE COURT: Yes.

18 MR. WINGATE: --- an attorney with the South  
19 Carolina Attorney General's office, one of our  
20 clients. Also we represent Russell Bauknight who is  
21 very critically, Your Honor, the professional Trustee  
22 of this Trust. I'll just come back and address that  
23 in a moment. His counsel, Freddie Kingsmore is here  
24 with us today. And then one of the family members,  
25

1 Deanna Brown Thomas, daughter of James Brown, with her  
2 husband ---

3 THE COURT: Let help me you all out. It  
4 might be logistical. We all work, we come to work  
5 early, we stay late sometimes. But we all eat in the  
6 middle of the day. And about 1:00 I'm going to eat.  
7 So this is the problem, it's a real one. You want to  
8 stop now and come back after lunch?

9 MR. WINGATE: Let's stop now and come back ---

10 THE COURT: Okay. Well, you know, I just --  
11 it's just practical. It's a practical problem.

12 MR. WINGATE: Sure.

13 THE COURT: I'm going to eat, y'all need to  
14 eat regardless of this case or anything else. Let's  
15 stop now. I start back at 2 anyway, so.

16 MR. WINGATE: Perfect.

17 THE COURT: I've got other things scheduled  
18 but we'll pick up with you guys at 2. That will be  
19 the best way to do it, in my opinion. We'll break for  
20 lunch, come back at 2.

21 All right, thank you all.

22 MR. WINGATE: Thank you, Your Honor.

23 (The Court was in recess.)

24 THE COURT: All right, Mr. Wingate.

1 MR. WINGATE: Thank you, Your Honor, please  
2 the Court. I'll just sort of briefly start over. My  
3 name is Ken Wingate. I'm here with my partner, Rhett  
4 Kendall. And together we represent the 15 or so  
5 Plaintiffs, Your Honor, in this Charitable Irrevocable  
6 Trust action.

7 THE COURT: Yes, sir.

8 MR. WINGATE: I was starting to say before  
9 the lunch break that some of the clients are here. Of  
10 course Russell Bauknight, the Trustee, is the  
11 principal Plaintiff. His separate counsel, Freddie  
12 Kingsmore is with us today. I believe Your Honor  
13 knows Sonny Jones with the South Carolina Attorney  
14 General's office.

15 THE COURT: Clemson class of '70? Was it  
16 '70?

17 MR. JONES: 70, yes, sir.

18 MR. WINGATE: That's why he's behind ---

19 THE COURT: I understand.

20 MR. WINGATE: --- Your Honor. And also  
21 Deanna Brown Thomas, the daughter of James Brown is  
22 with us with her husband ---

23 THE COURT: I noticed she smiled when I said  
24 Bewildered, The Apollo 1963 Live. Go ahead.  
25

1 MR. WINGATE: Well noted. Your Honor, we knew  
2 that exactly what did happen right before the lunch  
3 break would nappen.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And that is there'd be a whole  
6 big bowl of spaghetti, all these lawsuits that have  
7 been filed, whip them up, stir them up, mix them up,  
8 throw out a quote, throw out a pleading, throw out a  
9 caption and try to confuse the matter and say only  
10 Jack Early could possibly sort through this mess.

11 This is real simple, Your Honor. There are  
12 two different things. There is the Last Will and  
13 Testament of James Brown. This is in Aiken County in  
14 the Probate Court -- well actually it's in Circuit  
15 Court in Jack Early's hands.

16 This, Your Honor, is the 2000 Irrevocable  
17 Charitable Trust of James Brown which was created as a  
18 separate entity prior to his death which was 2000, he  
19 died December of '06. Was funded prior to his death  
20 and is an entirely separate entity. And what we're  
21 here for, Your Honor, we're going to sort of split  
22 things. As you heard before lunch, counsel has been  
23 arguing both on their Motion to Dismiss the  
24 Plaintiffs' Complaint ---  
25

1 THE COURT: And venue, right.

2 MR. WINGATE: --- and the transfer of venue  
3 and have said that they all sort of tie together.  
4 Well, that's again part of this stirring up a bowl of  
5 spaghetti, just trying to make it all sound too  
6 complex. It really is a pretty straightforward  
7 analysis.

8 We submitted, Your Honor, on Friday, a brief  
9 -- and I would just point out that at the bottom of  
10 page 2 and at the bottom of page 3 are two different  
11 diagrams of the estate plan of James Brown. And it  
12 really helps to show the flow of things.

13 THE COURT: I don't know whether it's made it  
14 to the file, let me double check. Do you have an extra  
15 copy?  
16

17 MR. WINGATE: I don't -- I have one that's  
18 got a highlight on it if you don't mind that.

19 THE COURT: If they don't mind. Y'all have a  
20 copy of this, don't you?

21 MR. WATSON: Yes, Your Honor.

22 THE COURT: And at the bottom of page 2, Your  
23 Honor, is the estate plan which shows the Will, the  
24 document I showed you just a second ago, that's over  
25 there in Aiken, which pours over or gives the assets

1 upon James Browns' death to his Irrevocable Trust.  
2 And then that Irrevocable Trust splits into two parts,  
3 fifty percent of it was the I Feel Good Trust, a  
4 Charitable Trust for the education of students in  
5 South Carolina and Georgia, and then the other fifty  
6 percent for his family.

7           During the course of the last several years  
8 of litigation which has gotten so much attention,  
9 there was a settlement that was achieved, Your Honor,  
10 and this global settlement that brought all 15 of  
11 these people together on this caption into one group,  
12 rewrote the estate plan, rewrote the terms of the  
13 Trust. And the revised Trust is what Your Honor sees  
14 on page 3, the second diagram that's at the top of  
15 that chart.

16  
17           THE COURT: All right.

18           MR. WINGATE: And again, Your Honor, you see  
19 that Will just sits over there in Aiken. The Estate  
20 administration is over in Aiken. But the Settlement  
21 Trust, the Charitable Trust that receives the  
22 royalties, the intangible assets, the intellectual  
23 property of James Brown, is then administered in  
24 Richland County, South Carolina by Russell Bauknight,  
25 the Trustee, for the purpose of, as you see on that

1 chart, a Charitable Trust that remains for education  
2 purposes, why the South Carolina Attorney General is  
3 in this case as one of our client Plaintiffs, and is  
4 about ---

5 THE COURT: The AG, they came in by agreement  
6 by everybody, the AG ---

7 MR. WINGATE: That is correct, Your Honor.

8 THE COURT: As it says here, sole authority  
9 to remove and replace Trustees, is that fair enough?  
10

11 MR. WINGATE: (Affirmative response.)

12 THE COURT: Everybody?

13 MR. WILLIAMS: That is, as I ---

14 THE COURT: That's what it says.

15 MR. WILLIAMS: As I understand it, that is  
16 what the -- what is provided in the Settlement  
17 Agreement. That is not what was provided in the  
18 original estate plan ---

19 THE COURT: Okay...

20 MR. WILLIAMS: -- of Mr. Brown.

21 THE COURT: That's good enough. That's good  
22 enough.

23 MR. WILLIAMS: Just so you know.

24 THE COURT: Okay.

25 MR. WILLIAMS: It's not completely accurate.

1 THE COURT: Go ahead, Mr. Wingate.

2 MR. WINGATE: So, with all of these  
3 beneficiaries in this global settlement, having  
4 created this Charitable Trust that's administered  
5 right here by Russell Bauknight who is a CPA and is  
6 the sole Trustee, all we have to do, Your Honor, is a  
7 very simple statutory analysis.

8 This is not a probate case. Counsel was  
9 arguing 62-3 -- I'm sorry, 62-1-302. That's in the  
10 probate section of the Probate Code. And as Your  
11 Honor, knows, the first half of Title 62 deals with  
12 estates and the back half deals with trusts. We're  
13 not in the Estate Code. We're not in the Probate Code.  
14 We're not in Aiken County. We're dealing with an  
15 Irrevocable Trust which is in the back of Title 62 and  
16 is administered in South -- Richland County, South  
17 Carolina.

18  
19 And the statutory analysis, Your Honor, is  
20 just super simple. I've cited in the brief Section  
21 62-7-204 which is the venue statute for an Irrevocable  
22 Trust of this nature. And it simply says, venue for a  
23 judicial proceeding involving a Trust is in the county  
24 of this state in which the Trust's principal place of  
25 administration is or will be located.

1           Current tense, where is it today? Where is  
2 the principal place of administration? And then the  
3 Code simply cites, this is the Trust Code over 62-7-  
4 108, which is again the brief, which defines, quote,  
5 principal place of administration. It's not where the  
6 beneficiaries live. It's not where the settlor lived.  
7 It is purely and simply, quote from 62-108, the  
8 principal administration of a trust is the Trustee's  
9 usual place of business. And it gives an explanation  
10 as to why. Because that is where the records  
11 pertaining to the Trust are kept.

12           In this case, Your Honor, we are dealing as  
13 is pointed out in the brief, literally with hundreds  
14 and hundreds of boxes worth of records which have  
15 always been in Richland County. In fact, counsel  
16 didn't go so far as to say but even when Ms. Pope and  
17 Mr. Buchanan were the Trustees of this Trust -- now  
18 they were wearing two hats. They were the SA's, the  
19 Special Administrators of the Estate. They were also  
20 Trustees of this Trust. Buried among those Orders is  
21 an Order of Judge Early that said, and all of the  
22 Trust records are going to be kept at Ms. Pope's  
23 office at 1218 Taylor Street in Columbia, South  
24 Carolina.  
25

1           So even just as a point of history in this  
2 case, this Irrevocable Charitable Trust, distinct from  
3 the Estate, has always been administered in Richland  
4 County.

5           THE COURT: If she's no longer a Trustee or  
6 SA, why would that still apply, her business address  
7 here in Richland County, if she's been taken out of  
8 the picture?

9           MR. WINGATE: You're right, it does no longer  
10 apply.

11          THE COURT: All right.

12          MR. WINGATE: But when she gave up the hat of  
13 Trustee, along with Mr. Buchanan, and it was  
14 transferred to Russell Bauknight ---

15          THE COURT: That's where he is?

16          MR. WINGATE: That's where he is.

17          THE COURT: Okay.

18          MR. WINGATE: His address is on Gervais  
19 Street.

20          THE COURT: All right.

21          MR. WINGATE: In Richland County, the only  
22 place he's done business for decades.

23          And so clearly, jurisdiction and venue both  
24 lie squarely within this Court.  
25

1           Your Honor, they also make a distinction  
2 between the continuity of all of these proceedings and  
3 a big train wreck of lawsuits that has taken place and  
4 how this one is just one more caboose on the end of  
5 the train and it needs to follow along with all of the  
6 other ones.

7           The Trust Code is also very distinct in  
8 saying statutorily that every trust proceeding is a  
9 unique judicial proceeding. This is the first time  
10 that this suit over these issues has been brought in  
11 any court in order to rectify problems with the James  
12 Brown Irrevocable 2000 Trust. And that's cited, Your  
13 Honor, in Section 62-7-201.

14           So without belaboring the point as far as  
15 venue, I think my point is well made, venue under the  
16 separate statute lies solely in Richland County.

17           I would make one more point, Your Honor, then  
18 I will defer to Mr. Kendall to deal with some of the  
19 Motion to Dismiss elements. And that goes to the  
20 subject matter jurisdiction.

21           Again, counsel has stirred things up to  
22 confuse a Probate Estate under the Probate Code from a  
23 Trust Estate under the Trust Code as to subject matter  
24 jurisdiction. Those same sections which I cited for  
25

1 Your Honor in the brief, clearly say that exclusive  
2 subject matter jurisdiction of trust matters lies in  
3 the Probate Courts in South Carolina. And as you  
4 asked earlier this morning at 9:00, is this an appeal  
5 or what is this? This is probate, isn't it?

6 This was filed by Russell Bauknight and the  
7 Attorney General and all of the family members  
8 globally in the Richland County Probate Court as a  
9 Trust lawsuit

10 THE COURT: All right.

11 MR. WINGATE: And then it was moved to Your  
12 Honor to the Circuit Court. So subject matter  
13 jurisdiction unquestionably has been properly  
14 satisfied. This suit was initiated in the Probate  
15 Court. All we're arguing about is venue and we would  
16 show Your Honor that respectfully and simply, it's  
17 right here in Richland County. There's nowhere else it  
18 could be.

19 THE COURT: All right. Thank you, sir.

20 MR. KENDALL: Thank you, Your Honor, and I  
21 will -- I will also be brief because I know we have  
22 lots of counsel waiting.

23 Unfortunately, the issue has been confused in  
24 part because so many issues were thrown out in the  
25

1 brief and in the motion as being reasons to dispose of  
2 this case. In fact, I liked the way they were grouped  
3 together here and I will deal with them as well.

4 First of all, the issue of failure to file an  
5 affidavit in support of what they -- they have  
6 characterized as a legal malpractice action. A  
7 reading of the Complaint -- a plain reading of the  
8 Complaint, we -- at not time do we allege that the  
9 Pope and Buchanan served as attorneys for the Estate  
10 or the Trust, simply that they were attorneys, period.

11 And the reason for that is it -- it matters  
12 later on when you establish the duties of -- that are  
13 down in the other parts.

14 But in terms of whether we have sued for  
15 professional malpractice, which would require an  
16 affidavit pursuant to 15-36-100, we have not. We just  
17 sued for negligence.

18 The second issue or category that they put  
19 out as being reasons to throw this case out is that  
20 they allege that these are issues that have already  
21 been, a) put before the Court; and, b) decided upon,  
22 finally, and that neither is correct.

23 This is the only time when the beneficiaries  
24 of these things have alleged damages arising out of  
25

1 the breach of fiduciary duties, breaches of trust and  
2 negligent acts of these two individual.

3           So there -- they can -- in fact you'll find  
4 it interesting in the record, there is not a single  
5 petition attached to any of the documents they've  
6 provided you. They haven't ever given you the  
7 Complaint that says, here's where they're trying to do  
8 the same things before. Instead what they've done is  
9 cite some dicta from various things taken out of  
10 context and incomplete in its rendering to the Court.

11           For example, the -- they contest 18(a) of the  
12 Complaint or allegation 18(a) of the Complaint which  
13 is, in fact, a very general thing, that they failed to  
14 administer the Trust properly. And they point to an  
15 Order of Feb -- of April 8th of 2008 where it says  
16 that Judge -- that they say Judge Early says that  
17 they've done everything right. Well, that's not at  
18 all what Judge Early says. And in fact, since they  
19 administered this Estate for another year or more  
20 after that Order, it wouldn't matter what he was  
21 ruling on in that regard.

22           But if you look to the record which they  
23 didn't provide you, you find out that in fact that was  
24 a procedural question about whether their appointment  
25

1 was proper. And so there was issues raised about --  
2 about the -- the procedure used and also whether they  
3 could represent both the Trust and the Wills and his  
4 statement was, they have properly served. And I  
5 believe he meant that in both equitably and procedural  
6 terms, not in substantive terms because there was no  
7 hearing on that issue. There was no time at which any  
8 of this evidence was put before the Court. And they  
9 didn't bring that evidence because it's not here.

10  
11 And, Your Honor, the mishandling of the  
12 auction. The only thing they gave you in reference to  
13 that is Orders that authorize the Christie's Auction  
14 and you'll find that there's no Order that ever says  
15 that they did it right. In other words, just because  
16 the Court has handed them the keys to the car doesn't  
17 mean the Court has authorized them to run into a brick  
18 wall.

19 THE COURT: By the way, I watched Train last  
20 night with Elmer Gantry? Who played Elmer Gantry?  
21 Help me out.

22 MR. WINGATE: I can't help you on that one.

23 THE COURT: You guys are really a big help.  
24 Go ahead. I'll think of it in a minute. Train, The  
25 Great 1944, going to steal all the artwork out of

1 Paris, take it to Germany, Berlin. Never mind.

2 MR. KENDALL: The ---

3 THE COURT: The -- it was Elmer Gantry, who  
4 played Elmer Gantry?

5 MR. WILLIAMS: I'll look for it on my  
6 Blackberry.

7 (Laughter.)

8 THE COURT: All right, go ahead.

9 MR. WILLIAMS: I won't remember.

10 THE COURT: Who? Nobody knows.

11 MR. WILLIAMS: I can't remember.

12 THE COURT: I'll think of it in a minute. Go  
13 ahead.

14 MR. KENDALL: Okay, very good. So the point  
15 is ---

16 THE COURT: He won an Oscar for Elmer Gantry  
17 in 1967. Go ahead.

18 (Laughter.)

19 THE COURT: Go ahead.

20 MR. KENDALL: Given that -- given that we --  
21 given that you were given authorization to go to the  
22 Christie's sale does not mean that -- that it's a  
23 blessing on -- they could do it as reckless ---  
24

25 THE COURT: Saying you can drive the car,

1 didn't say ---

2 MR. KENDALL: --- run into the wall and we're  
3 going to show that they did.

4 Your Honor ---

5 THE COURT: Burt Lancaster, thank you, very  
6 much. Go ahead. Burt Lancaster.

7 MR. KENDALL: Your Honor, the -- they talk  
8 about a failure to -- our allegations of their failure  
9 to accept a hundred million dollar offer. They may  
10 have lots of good reasons that they want to put to the  
11 Court for not having accepted that. We have lots of  
12 good reasons we're going to argue but that's a fact  
13 question. That issue's never been disposed of, just  
14 because we've heard about it before. The refusal to  
15 sign a consent and similar things.  
16

17 One of the things, Your Honor, that -- that  
18 we need to -- I want to bring to the Court's attention  
19 as I know you're going to have to consider this  
20 carefully, is a lot of this has been addressed. In  
21 fact, a lot of the challenges they've raised are  
22 addressed, in fact in the Settlement Agreement and the  
23 Order approving the Settlement Agreement. Not the  
24 issues that we raised as allegations of negligence in  
25 the breach of trust of fiduciary duty but rather the

1 defenses they have raised.

2           And for example, the issue of the Attorney  
3 General's constitutional and statutory authority to  
4 bring this claim. Judge Early's already ruled on  
5 that. In fact, this is just another effort to attack  
6 that issue. In fact, we've provided that Order to  
7 you. We've also provided an Order in another case  
8 where the same issues were raised. Judge Couch looked  
9 at this issue and said, yeah, you can -- the Attorney  
10 General has the constitutional authority.

11           The representations about the California  
12 case, the context of that has not been fully explained  
13 to the Court here. Sonny Jones was in California  
14 during that hearing. He knows it very well and  
15 provided it to me during lunch about some of the --  
16 the incorrect characterizations that may have  
17 occurred. And so, Your Honor, I may supplement to  
18 fully explore that issue at some time, if I may have  
19 leave of the Court to do that or include it in our  
20 proposed Order. I'll come back to that.

22           But the issues of the use of contingency fee  
23 agreement have already been raised but those are  
24 reasons to dismiss this case. That may be a basis for  
25 disqualifying me but not to dismiss the lawsuit. So

1 that's of no moment.

2           The issue of the charitable immunity, I just  
3 want to preserve for the record. We haven't addressed  
4 that in our briefs because it was raised for the first  
5 time not in the motion but rather in the memorandum as  
6 a new basis just the other day. So that's -- that's a  
7 novel issue not preserved in the motion itself.

8           The issue of the improper parties was  
9 disposed of by Judge Early. That issue -- with four  
10 days of testimony, that was one of the most dominant  
11 themes in the entire testimony preceding the approval  
12 of this Order. And Judge Early heard from it all and  
13 made a number of very specific findings that everybody  
14 who is a party to this agreement or all of the  
15 interested parties, all of the beneficiaries, and that  
16 they are properly going forward in this matter.

17           So the issue of whether all the proper  
18 parties are here, Judge Early's already disposed of  
19 that and said, this group is the proper group.

20           And if they think necessary parties aren't  
21 here, that's not our -- you don't dismiss a Complaint  
22 for that, you file a Rule 19 motion and you bring --  
23 you bring them in if you feel they're necessary.

24           Your Honor, I have gone over a lot of  
25

1 information very quickly and I apologize that I've had  
2 to do it ---

3 THE COURT: No, no, you might present it  
4 quickly but I'll think about it slowly.

5 MR. KENDALL: I know you will, and I  
6 appreciate that. And we -- if we're invited to do  
7 when we present ---

8 THE COURT: I'll give everybody a full  
9 opportunity to do the best you can, I promise you.

10 MR. KENDALL: But I also just raise this,  
11 Your Honor. The fact that -- we didn't argue yet the  
12 Motion to Strike. We also filed a Motion to Strike  
13 this whole venue motion on the grounds it was not made  
14 timely. The Motion to Dismiss was filed inside the 30  
15 days for answering the Complaint. And they filed 10  
16 bases for the dismissal, none of which were venue  
17 motions or venue bases.

18  
19 Then they in August, realizing that they had  
20 failed to raise that issue, separately filed a motion.  
21 But Rule 12(g) set -- very clearly states that you  
22 have to put it all in your first motion. You can't  
23 later go back and add additional grounds from Rule 12  
24 to -- as motions and defenses. It has to be done in  
25 the first motion. They failed to do it.

1           So, Your Honor, I would just move you can  
2 strike the Motion to Change Venue to the extent you  
3 take the motion under advisement, Your Honor, the  
4 motion. Until you decide you have venue, you  
5 shouldn't even consider -- you shouldn't consider this  
6 motion either.

7           THE COURT: All right. Mr. Williams,  
8 anything in response?

9           MR. WILLIAMS: I won't take long but I would  
10 like to point this out regarding exactly who's filing  
11 this lawsuit. Paragraph 2 of the Complaint, Mr.  
12 Bauknight brings this action as Trustee, yadadada, and  
13 as Personal Representative of the Estate of James  
14 Brown. Paragraph 18(a), Mr. Wingate references the  
15 first one I pulled out to show you, alleges that the  
16 Defendants failed to properly manage the Estate and  
17 Trust, so that the Probate Code's venue provisions are  
18 in play here and we would respectfully suggest they  
19 trump the Trust ---  
20

21           THE COURT: All right.

22           MR. WILLIAMS: Everything else, though, we  
23 would be happy to ---

24           THE COURT: I'm going to give both sides a  
25 chance. You want to add anything in response?

1 MR. WATSON: The only thing I'd add -- and,  
2 Your Honor, we will -- a lot of this is covered in the  
3 briefs and we will respond. But the claim under South  
4 Carolina Code Annotated 33-56-180 that counsel said  
5 was not included in the motion is basis number 10 in  
6 our Motion to Dismiss, just for the record, Your  
7 Honor.

8 THE COURT: All right. Anything further? If  
9 not, let me see y'all for just two minutes back here  
10 for a second.

11 ----- END OF TRANSCRIPT OF RECORD -----  
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State of South Carolina  
County of Richland

Court of Common Pleas

Russell Bauknight,  
and others,

and

Alan Wilson, in his  
capacity as Attorney  
General of the State of  
South Carolina, and  
others,

Plaintiffs,

vs.

Adele Pope,

Defendant.

Transcript of Record  
2010-CP-40-4900

August 29, 2016  
Bamberg, South Carolina

B E F O R E :

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S :

J. Emory Smith, Esquire  
Sonny Jones, Esquire  
Attorneys for Attorney General

Mark V. Gende, Esquire  
Attorney for the Plaintiffs

Walter Henry Bundy, Jr., Esquire  
Adam Silvernail, Esquire  
Brent McDonald, Esquire  
Attorneys for the Defendant

Bethanie K. Creppon  
Circuit Court Reporter

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I N D E X

WITNESS

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(No witnesses.)

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E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
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1 (The following proceedings were held August 29,  
2 2016.)

3 (Off-the-record discussions held.)

4 THE COURT: All right. Let's go ahead and put  
5 on the record what we've worked out, and then we'll  
6 go from there.

7 MR. GENDE: As far as their motion for -- to

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THE COURT: All right. Verifications.

MR. GENDE: -- as we stated before, we do agree to provide those. We're in the process of getting those. We answered those in the normal course that discovery is answered, the attorneys signed on behalf, as typically is done. They have cited a section of the rule --

THE COURT: Y'all have agreed to do it when?

MR. GENDE: Well, as soon as we can. We actually have some that we can deliver to them even right now. We have about three of them.

THE COURT: That ain't going to cut it.

MR. GENDE: I understand. And I'm willing for the Court --

THE COURT: That's not acceptable. Tell me your best guesstimate.

MR. GENDE: If in conjunction with the

5

depositions we can get all this nailed down within the next four weeks, as early-on discovery, that's plenty of time. I think that would allow us to work through this. You have seen in the filings that we have gone from, for example, Mr. Levenson being in, who is a conduit to many of our clients, to not being in, to being back in again.

So although it's my problem and I'm not trying to force that on the Court or the other side, I'm just repeating that so that you understand I do have a problem I'm working through. I assure you we are

12 working through it, we are seeking to get all the  
13 verifications. We have some already to show that  
14 we're doing that in good faith --

15 THE COURT: Hold on one second.

16 I'm sorry. Well, obviously they're entitled to  
17 have the answers verified and the rules require that  
18 you file them. I've been in your shoes before. So  
19 I'm going to order them to verify within three  
20 weeks. If you can't do that, then get me back on  
21 the phone and we'll talk.

22 MR. GENDE: Understood, Your Honor.

23 THE COURT: What you want? One week? Two  
24 weeks? Tomorrow?

25 MR. BUNDY: I want them yesterday, obviously.

6

1 THE COURT: I understand that.

2 MR. BUNDY: But the problem with -- and three  
3 weeks, if it's your ruling, I'll live with it. I'd  
4 like to have them in two weeks.

5 And the other thing is, this sort of stands on  
6 its head the notion that I get to try my case and do  
7 this discovery according to the rules, by my  
8 strategy. I do things maybe a little different. I  
9 like to ask questions, I like to get answers to  
10 interrogatories, I like to get documents  
11 authenticated, and then take depositions. That's  
12 just the way I like to do it, and I think the rules  
13 permit me to do it in any order I want to.

14 THE COURT: Well, certainly they do. All

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15 right. I want answers verified within three weeks.

16 That's the ruling of the Court.

17 MR. BUNDY: Thank you, Your Honor.

18 MR. GENDE: So that takes care of that issue.

19 That leads us into the various motions for  
20 protective order from the plaintiffs' side of 4900,  
21 and then they have some motions to compel which I  
22 think will end up getting discussed in the various  
23 motions --

24 THE COURT: All right. Let's go ahead in that  
25 order. The first one is Tommie Rae Brown. And

7

1 Rosen wants to be present, so when we set the next  
2 group of hearings, which will be shortly, Ms. Pope,  
3 I'm going to include the Tommie Rae Brown one in  
4 that.

5 MR. GENDE: And that's a different motion for  
6 protective order. She has been deposed and was  
7 directed not to answer some questions, so that deals  
8 with that direction and whether there's privilege.  
9 The rest of these protective orders deal with the  
10 depositions actually occurring.

11 THE COURT: All right. So with what we need to  
12 set, Ms. Pope -- we're off the record.

13 (Off-the record discussions held.)

14 THE COURT: All right. That brings us to  
15 Delores, Janise, Daryl, Tonya and Venisha. Can we  
16 do all those together or separately or we need to do  
17 them separately or --

18 MR. GENDE: I think they break into three  
Page 6

19 categories. With respect to two of them, Daryl and  
20 Tonya, Daryl and Tonya have already been deposed in  
21 Case 4900. And I let Mr. Bundy know that. He  
22 communicated back to me, and his belief is that  
23 based on your order lifting the stay that stated  
24 discovery should begin again anew, which is the  
25 order you made April 8th, 2016, that that was

8

1 referring not just to the written discovery, which  
2 was the context in which you gave that order because  
3 there were all kinds of outstanding motions, and you  
4 said, hey, we can resolve all this just by saying  
5 let's let discovery begin anew. And then I  
6 submitted this proposed draft. He believes that  
7 also applies to depositions that have been taken.

8 We don't believe that the intent of the order  
9 where you said discover begins anew in a case  
10 applies to depositions that have already been taken;  
11 therefore, we believe those who have had depositions  
12 taken in a case should not be subject to being  
13 re-deposed.

14 THE COURT: Mr. Silvernail?

15 MR. SILVERNAIL: Yes --

16 THE COURT: They're talking about Daryl and  
17 Tonya.

18 MR. SILVERNAIL: Yes, sir.

19 THE COURT: They've already been deposed.

20 MR. SILVERNAIL: They were deposed. Again,  
21 Your Honor's order does say discovery begins anew.

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22 In addition to that, we've brought to the

23 plaintiffs' attention that in the time since these  
24 folks were deposed, I believe one in December 2012  
25 and one in January 2013, the Supreme Court made its

9

1 decision in Wilson vs. Dallas, and both of these  
2 deponents have made multiple changes of position in  
3 the Aiken County cases.

4 As Your Honor is probably more familiar than I,  
5 it's been a bit of a musical chairs with lawyers  
6 over there in the will contest cases along the way.  
7 But both of these folks have withdrawn, one of them  
8 attempted to un-withdraw, that was Tonya Brown, I  
9 don't know that was heard; Daryl Brown withdrew his  
10 will contest. As Your Honor would recall, his  
11 attorney appeared at the hearing, Your Honor, held  
12 on the settlement of some claims in the will contest  
13 cases and opposed the settlement.

14 All of this relates back because these are two  
15 of the more than a dozen private plaintiffs that  
16 have sued Ms. Pope for unreasonably handling and  
17 opposing the settlement, which was eventually thrown  
18 out by Wilson vs. Dallas, and related to the will  
19 contests. And her positions taken in those and  
20 other cases in Aiken before Your Honor, before this  
21 case came along, and both of these folks, in sitting  
22 for their deposition, have had substantial and  
23 multiple changes of position that they've taken in  
24 Your Honor's court and in the appellate courts from  
25 the positions they were taking at the time we

Page 8

1           deposed them. And so I believe --

2           THE COURT: So you were there when Daryl and  
3           Tonya were deposed?

4           MR. SILVERNAIL: I deposed them, Your Honor.

5           THE COURT: And you want a go at them again?

6           MR. SILVERNAIL: I do. Although to be clear, I  
7           don't think -- I don't want to be too hemmed in.  
8           Obviously if I -- on some of these areas -- and  
9           those depositions were fairly long. They related a  
10          lot to document authentication. Unfortunately,  
11          we've recently gotten another round of requests to  
12          admit authenticity of documents denied.

13          THE COURT: I'm just asking you very simply:  
14          Do you want to simply re-depose those two people,  
15          Daryl and Tonya?

16          MR. SILVERNAIL: Yes, sir.

17          THE COURT: And you've already deposed them  
18          once? Let me see that order I signed dealing with  
19          discovery.

20          All right. Go ahead.

21          MR. SILVERNAIL: And as Your Honor set out in  
22          the order, discovery is beginning anew. I believe  
23          we're entitled both for that reason and totally  
24          separately because of the substantial changes in  
25          position --

1 THE COURT: But what if everybody else takes  
2 changes in position? what will we do now; re-depose  
3 everybody every time they change their position?

4 MR. SILVERNAIL: well, Your Honor, those were  
5 two of the three depositions we had had in this case  
6 before Your Honor took jurisdiction over it shortly  
7 before its sixth birthday. So that's a real limited  
8 risk here.

9 THE COURT: All right. So your motion for  
10 protective order is that they've already been  
11 deposed?

12 MR. GENDE: Yes. I'd have a couple responses  
13 to Mr. Silvernail, at which time the Court would  
14 consider --

15 THE COURT: I'm not cutting him off.

16 MR. SILVERNAIL: I think you've heard what I  
17 have to say, Your Honor.

18 THE COURT: All right.

19 MR. GENDE: Simply this: The time period issue  
20 hasn't changed. Case 4900 has a time period dealing  
21 with the administration of Ms. Pope, and these two  
22 witnesses were able to be fully questioned about  
23 that time period. Mr. Silvernail's remarks about  
24 the Aiken case is irrelevant to Case 4900. There's,  
25 of course, the judicial efficiency and cost case.

12

1 we'd all have to pay for this; these are out-of-town  
2 witnesses. As you've already indicated, there's the  
3 whole question as to why they should get a second  
4 bite at the apple. If they feel they have changed

5 their positions in a court, there's a record of that  
6 and they can use that to impeach them if they feel  
7 they should.

8 with respect to your order, you have the right  
9 to construe the order. And as I have already  
10 stated, the context of that order was when you were  
11 faced with -- there's probably 40 or more  
12 outstanding motions on written discovery. And it  
13 was, I think, all of our understandings at the  
14 time -- I can only speak for myself.

15 But our understandings at the time you signed  
16 this is that you were referring to written  
17 discovery. And it's just a slippery slope, what  
18 they're asking for. Mr. Buchanan was deposed in  
19 Case 4900. His deposition lasted several days, and  
20 it's not even done because I haven't gotten the  
21 chance to ask questions. But are they going to want  
22 to re-depose him and re-open several days on that?  
23 It's just a bad idea.

24 THE COURT: All right. I'll get y'all  
25 something this week. That takes care of Daryl and

13

1 Tonya.

2 who is next; Venisha, Janise, Lindsey?

3 MR. GENDE: I think the others can break down  
4 into two groups if counsel --

5 THE COURT: Lindsey, Janise, and Venisha?

6 MR. GENDE: Well, without mentioning the names,  
7 let's talk about them like this, if the Court agrees

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8 and the other side: There are some witnesses who

9 were minors at the time the action was commenced,  
10 and the basis for our protection order for that is  
11 they were properly represented under the probate  
12 code by their parents in the action.

13 And in the sense they're not even parties to  
14 the action, the caption clearly states that the  
15 parents brought it in their interest, and so that --  
16 they should not be deposed, regardless of whether  
17 they've reached majority or not at this time  
18 because, again, it deals with events that were --  
19 occurred when they were minors. So that's one group  
20 of people.

21 THE COURT: So which ones were or are minors?

22 MR. GENDE: The minors relate to --

23 THE COURT: You got Lindsey, Janise, Venisha.

24 MR. GENDE: Well, we have several. we have  
25 James Brown, Jr., again --

14

1 THE COURT: He's not on here.

2 MR. GENDE: Yeah. That's not on there because  
3 that hasn't been noticed. I don't think they've  
4 made an attempt to notice that one at that point.  
5 I'm just giving you a full list of how many this  
6 might apply to in the long run.

7 THE COURT: well, tell me how many it applies  
8 to.

9 MR. GENDE: James Brown, Jr. is one that it  
10 would apply to; Janise Venisha Brown is one that it  
11 would apply to, and Sydney Lumar and Carrington

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12 Lumar are ones to whom it would apply to. Again,  
13 not all of those have been deposed, but -- or have  
14 been noticed, but the ruling would be applicable to  
15 that.

16 THE COURT: Mr. Silvernail, you want to take  
17 the minors' depositions?

18 MR. SILVERNAIL: Your Honor, none -- of the  
19 three people we're here about today, which is all I  
20 want to bore you with, none of them are minors. One  
21 of them -- Janise Venisha Brown was a minor at the  
22 time of the filing of the complaint. Lindsey  
23 Dolores Brown was captioned as a minor even though  
24 she was over the age of 18 when this case was filed.  
25 Both of them are over 18 now.

15

1 THE COURT: Thank you.

2 All right. What's the motion on protective  
3 order on Lindsey Delores Brown? I'm going to do  
4 what's before me. I can't anticipate. Lindsey,  
5 what's your --

6 MR. GENDE: Yeah. Lindsey Delores Brown is not  
7 one of the minors, and I don't think she was on the  
8 list that I just read off. She's in this other  
9 category of people --

10 THE COURT: Which is what? What is your  
11 objection to the deposition of Lindsey Delores  
12 Brown?

13 MR. GENDE: We aren't really objecting to her  
14 deposition. We're receiving a protective order for

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15 these reasons: They served us with deposition

16 notices; Mr. Bundy feels he doesn't, based on the  
17 rule, have to consult with us prior to selecting  
18 dates for the depositions. He selected dates. For  
19 a lot of reasons, those dates weren't workable.

20 He gave us two weeks from the date that he  
21 selected to select a different date if that date  
22 didn't work, and if we couldn't pick something from  
23 the two weeks, it was too bad. We couldn't do that.

24 As I mentioned earlier, we're working very  
25 hard, but are not able to have direct

16

1 communication at this time with all of our clients  
2 for some of the reasons --

3 THE COURT: Well, is Lindsey Delores Brown a  
4 client of yours?

5 MR. GENDE: She is a client of ours in this  
6 case, yes. And as you know --

7 THE COURT: So it's a scheduling issue with  
8 Lindsey Delores Brown; is that correct?

9 MR. GENDE: These are all scheduling issues.

10 THE COURT: All right. Janise Venisha Brown,  
11 is that also a scheduling issue or is there more to  
12 it?

13 MR. GENDE: Janise Venisha Brown is a minor.  
14 She fits in that other category -- or she was a  
15 minor at the time of the bringing of the case, let  
16 me state it that way.

17 THE COURT: So that's your problem with that  
18 one; she was a minor?

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19 MR. GENDE: Correct.  
20 THE COURT: How about scheduling?  
21 MR. GENDE: I'm sure scheduling will be a  
22 challenge.  
23 THE COURT: All right. And the other one, I  
24 think, is Venisha. What's her situation?  
25 MR. GENDE: The situation with Venisha is a

17

1 scheduling issue. There are also other issues  
2 related to Venisha that are unique to her. I think  
3 that Your Honor might be aware of some of her  
4 struggles --  
5 THE COURT: No, sir. I've --  
6 MR. GENDE: I'm sorry. I'm assuming knowledge  
7 from the prior cases.  
8 THE COURT: I know that. But I've been dealing  
9 with this thing for so long and they all run -- I do  
10 remember you.  
11 MR. GENDE: I understand. Thank you.  
12 THE COURT: Go ahead. What's going on with  
13 Venisha?  
14 MR. GENDE: Janise -- or Venisha has been in  
15 and out of jail. She's in Georgia. We've made a  
16 number of attempts to find out where she is. Family  
17 members who we've talked to are not certain at this  
18 point whether she's in jail, out of jail; she's not  
19 had a regular home, and she has personal issues to  
20 the point that Deanna Brown Thomas is actually her  
21 power of attorney and acts on her behalf.

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So it's -- even if she were identified and I

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could speak with her about her deposition and  
seeking to schedule it, I might still have a further  
motion based on capacity.

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THE COURT: Okay.

MR. GENDE: So she's in a unique situation all  
her own.

THE COURT: Do you have any law that if someone  
was a minor when you sued them that they can't be  
deposed?

MR. GENDE: We do have some law. And I'll be  
happy to --

THE COURT: How about once they turn -- reach  
the age of majority?

MR. GENDE: I don't have a full memorandum. I  
will be happy to give you a supplement, but let me  
give you what I have on that. First of all, there  
isn't a lot of law on this in South Carolina. There  
is a Siegler vs. Southwest Railroad Company. It's  
85 S.C. 345. It's a 1910 case, so it's hot off the  
press. And it's a situation where a minor or  
someone who was a minor when the case was brought  
and had a guardian ad litem representing their  
interests was required, because of unique  
circumstances, to be substituted when they became of  
majority.

The unique circumstances are, as the case got  
to trial, they found that the appointment of the  
guardian ad litem was defective. So something had

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1 to be done to cure that defect. And so because of  
2 that, the Court initially said -- the trial court  
3 said it couldn't do anything. It went up, the  
4 Supreme Court said, yes, you could, you could put  
5 the person who had reached majority in place.

6 That case, importantly, does not establish the  
7 substitution of party once they reach the age of  
8 majority. It was a special case that dealt with a  
9 problem; there was a problem in the guardian ad  
10 litem appointment. All right. And in this case,  
11 the particular problem was a signature that wasn't  
12 gotten, so really the guardian ad litem wasn't  
13 effective all the years they thought it was.

14 There is another case -- again, so Siegler vs.  
15 Southwest Railroad Company stands for the  
16 proposition that there is no triggering event to  
17 mandate substitution unless there had been some  
18 defect when the parents were representing as -- on  
19 behalf of the minor.

20 There's Shuttleworth vs. Huey [phonetic], which  
21 is a South Carolina Court of Appeals case. Again,  
22 very old case, we're all the way back to 1853 now  
23 before the Civil War. Shows you how little juris  
24 prudence there is on this. This is a case that does  
25 not require someone who was a minor when a case was

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1 brought and as the case goes on reaches majority to  
2 be substituted in their majority.

3 The situation is there, it's certainly an  
4 option, but the person who can trigger it would be  
5 the minor who has now become majority. They would  
6 have to say, for some reason, they wanted that  
7 change. They could, by doing nothing, ratify the  
8 continuing of the case the way it is.

9 So that case which we found does not find any  
10 triggering event such as age that requires someone  
11 who is a minor when a case was brought to be  
12 substituted in their majority. We couldn't find a  
13 single case where the South Carolina Court has held  
14 to the substitution of a party who has reached the  
15 age of majority being required.

16 In our case, the operative time at issue here  
17 is the period of administration of Ms. Pope from SA  
18 up through her removal. These children were  
19 children and minors at that time, and so we do not  
20 feel that there's any necessity for them to give  
21 testimony concerning events that occurred when they  
22 were minors.

23 Finally, in the complaint it is styled that,  
24 for example, Daryl Brown brings the case  
25 individually and on behalf of his minor child Janise

21

1 Venisha Brown. It is not that Janise Venisha Brown  
2 was what we might call a full party; her father was  
3 appropriately representing her. And that  
4 appropriate representation --

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5 THE COURT: If my 14-year-old child is involved  
6 in a car wreck, I have to be the GAL to bring the  
7 lawsuit. But that doesn't preclude a defense lawyer  
8 from taking my child's deposition.

9 MR. GENDE: Here is, I think, the code section  
10 that does give us the difference to that, and that's  
11 in the 62-1-403 probate code.

12 THE COURT: Hold on one second. what's that  
13 code section say?

14 MR. GENDE: 62-1-403. We're looking at  
15 subsection 2, line 2, line 3.

16 Also there have been -- you know, it might be  
17 the law of the case that there's no need for this  
18 because there have been attempts on the  
19 defendant/cross-claim plaintiff, Ms. Pope, to have  
20 the Court appoint guardian ad litem for these minor  
21 children as we went into mediation.

22 It was argued when Judge Manning had the case.  
23 He ruled that there was no need for that, that the  
24 probate code applied, and that these minors were  
25 properly represented in this matter, their interests

22

1 were properly represented in this matter, as is  
2 pled, on behalf of this minor child by this section  
3 of the probate code.

4 If you would -- I didn't know if you were  
5 waiting for the book to come to you.

6 THE COURT: No. Go ahead.

7 MR. GENDE: Section 62-1-403, subsection 2 ii

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8 is a long section. Let me get down to the last

9 sentence, which is the pertinent part. It says: If  
10 there is no conflict of interest, no conservator or  
11 guardian has been appointed, a person may represent  
12 his minor or unborn issue.

13 Then the next section, iii, reads that a minor  
14 or unborn or unascertained person who is not  
15 otherwise represented is bound by an order to the  
16 extent his interest is adequately represented by  
17 another party having a substantially identical  
18 interest in the proceeding.

19 And that's what we would argue is the situation  
20 here. That's what we have argued it is before.  
21 Judge Manning has held that there was no need to  
22 appoint a guardian ad litem, that the minor children  
23 were properly represented. And because of that,  
24 representing the parents -- or, excuse me, deposing  
25 the parents is the appropriate opportunity to give

23

1 to Ms. Pope and her counsel to determine the  
2 thoughts and the interests of these minor children  
3 who were properly represented by their parents who  
4 filed this suit on behalf --

5 THE COURT: Has Daryl Brown's deposition been  
6 taken?

7 MR. GENDE: Daryl Brown's deposition has been  
8 taken.

9 THE COURT: All right.

10 Mr. Bundy, or one of you. All right. Lindsey  
11 is a scheduling problem; we're going to deal with  
page 20

12 that. You got one that's, perhaps, incarcerated?

13 MR. BUNDY: Your Honor, if you don't mind, I'd  
14 like to digress a minute about the scheduling  
15 problem.

16 When this started, when I got in this case, I  
17 wrote counsel a letter. I said, can we agree on  
18 scheduling protocol because, obviously, there are  
19 going to be problems. I sent him a letter. I said,  
20 here's what I'd like to do: I'll blind notice  
21 something two months out, okay, and give you two or  
22 three weeks to call me back and tell me whether or  
23 not you can find them, whether you can get a date  
24 and all of that, and we'll work something out. But  
25 I've got to have a notice, because you can wait

24

1 months and months and months without a notice, and  
2 nobody is going to do anything unless you send them  
3 notice.

4 So in this case, since they wouldn't agree to  
5 that, I sent these notices out 60 days in advance,  
6 didn't hear anything from them for a month and a  
7 half. And then all of a sudden they call me and  
8 say, well, we got a problem finding them, and we  
9 want you to put off these depositions and we'll let  
10 you know when we find them.

11 well, that's just unworkable from my  
12 standpoint. I mean, I -- we'll never take the  
13 depositions that way. And I'd like you to consider,  
14 if you would, a protocol where we at least can --

15 and I put this in our proposed scheduling order. I  
16 believe I suggested a protocol because we're simply  
17 being the can kicked down the road. And until  
18 such time --

19 THE COURT: It's getting kicked to me.

20 MR. BUNDY: Sir?

21 THE COURT: It's getting kicked to me. I don't  
22 like scheduling depositions.

23 MR. BUNDY: well --

24 THE COURT: I've got more to do than scheduling  
25 y'all's depositions.

25

1 MR. BUNDY: No, sir. It's just that if they --

2 THE COURT: I'm not fussing at you.

3 MR. BUNDY: Sir?

4 THE COURT: I'm not fussing at you.

5 MR. BUNDY: Okay. I just want to take the  
6 depositions, Judge, and I'd like to do it in a  
7 reasonable way.

8 THE COURT: Sounds like to me y'all can't work  
9 together, so I'm going to set a date for them.

10 MR. BUNDY: Thank you, sir.

11 THE COURT: All right. How about -- do you  
12 need to take this little child or is Daryl going to  
13 be enough for you?

14 MR. SILVERNAIL: Your Honor, all the --

15 Mr. Gende --

16 THE COURT: It's a simple question.

17 MR. SILVERNAIL: We need to take the child's  
18 deposition. And, again, I note she's not a child

19 today.

20 THE COURT: Thank you. That's all I ask.

21 The lady who is having issues, Venisha, if  
22 she's incarcerated, obviously you got to get a  
23 GAL -- I think the rules require a GAL for an  
24 incarcerated person -- and then you have to go  
25 through the GAL, or perhaps she has other problems

26

1 that require a GAL. I don't know.

2 MR. SILVERNAIL: And, Your Honor, I'm not  
3 trying to bore you, but I do want to state for the  
4 record we moved to appoint a GAL for Venisha a few  
5 years ago when we knew she was, in fact,  
6 incarcerated. Today we're hearing from Mr. Gende  
7 they don't know whether she's incarcerated or not --

8 THE COURT: well, I don't either.

9 MR. SILVERNAIL: -- and so we noticed -- she's  
10 represented, she's a plaintiff, and a counterclaim  
11 defendant. We noticed her deposition on June 23rd.  
12 And today, on August 29th, more than two months  
13 later, we're still not -- I mean, they don't seem to  
14 be ready to commit to a schedule. We need her to  
15 appear. And I haven't seen any evidence put before  
16 the Court that she is currently incarcerated.

17 THE COURT: Thank you. When do you want to  
18 depose Lindsey, Janise, and Venisha? Give me some  
19 dates.

20 MR. SILVERNAIL: Your Honor, I -- I think I can  
21 be very flexible in the month of September on dates

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other than the 15th, the 27th, and the 28th.

23 THE COURT: As to Lindsey, Janise, and Venisha,  
24 within five days send me by e-mail with copy to  
25 everyone, give me five dates in September, and I'm

27

1 going to arbitrarily choose three of them; 1A, 1B,  
2 1C.

3 MR. SILVERNAIL: Okay.

4 THE COURT: If Ms. Brown, Venisha, is  
5 incarcerated, we may have to jump through a couple  
6 hoops to get that one.

7 MR. SILVERNAIL: Thank you, Your Honor. And I  
8 would note, although the scheduling of these -- and  
9 you've resolved the issue about getting their  
10 deposition. We filed motions after they did not  
11 appear for their depositions on August 19th for  
12 costs related to that.

13 THE COURT: That's not before me today, I don't  
14 think. Is it?

15 MR. BUNDY: Yes, sir.

16 MR. SILVERNAIL: Your Honor, we'd ask it be  
17 heard in conjunction with the motions for protective  
18 order since they related to the same subject. They  
19 did not appear at their depositions on August 19th.  
20 So the motion, I believe, was filed the following  
21 Monday.

22 THE COURT: That's the return motion to compel  
23 as to Lindsey and Janise?

24 MR. SILVERNAIL: Yes, Your Honor.

25 THE COURT: Be glad to hear you.

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1 MR. SILVERNAIL: All right. As Mr. Bundy  
2 explained, we made extensive attempts to get these  
3 depositions scheduled. The notices were sent out on  
4 June 23rd. I believe August 10th was the first time  
5 we received a communication from the  
6 plaintiff/counterclaim defendant's lawyer indicating  
7 that they were in the process --

8 THE COURT: June 23 was notice for when?

9 MR. SILVERNAIL: It was noticed for August 19th  
10 for 10:00 and 2:00 for these two ladies'  
11 depositions.

12 THE COURT: And you didn't hear until August  
13 the 10th?

14 MR. SILVERNAIL: we didn't get any response  
15 from them until August 10th, at which point they  
16 wrote and raised the objection Your Honor has heard  
17 about the one child having been a minor and also  
18 indicated that they were in the process of looking  
19 into scheduling for Lindsey who was not a minor.

20 Your Honor, as Mr. Bundy explained, this case  
21 is six years old --

22 THE COURT: I know how old it is. What  
23 happened in connection -- what happened on the 19th?  
24 Did you show up?

25 MR. SILVERNAIL: On the 19th we showed up with

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1 a court reporter and a videographer --

2 THE COURT: And nobody is there?

3 MR. SILVERNAIL: At 10:00, no witness appeared.  
4 We made a record of that. At 2:00, we came back for  
5 the second one. No witness appeared.

6 THE COURT: All right. What kind of fees do  
7 you want?

8 MR. SILVERNAIL: Your Honor, we've asked for  
9 \$7,500 in fees to prepare for these depositions, to  
10 pay the court reporter and the videographer. And  
11 I'll be glad to present an affidavit with a  
12 breakdown, Your Honor.

13 THE COURT: well, you got to prepare for them  
14 if you're going to take them down the road. I'm not  
15 going to give you \$7,500. That's sort -- costs for  
16 the videographer, court reporter. And how many  
17 hours you think you had going over there, sitting  
18 and waiting?

19 MR. SILVERNAIL: Your Honor, they were at my  
20 office, so we -- that would make for a total of an  
21 hour and a half preparing the court reporter and  
22 everything else and being in the room.

23 THE COURT: Send me an affidavit to that effect  
24 and you can show it to Mr. Gende.

25 Yes, sir?

30

1 MR. GENDE: In response to that, several  
2 things: First of all, they are correct that they  
3 unilaterally noticed the depositions on --

4 THE COURT: what do you mean, unilaterally?  
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5 MR. GENDE: I'm just using that term to say  
6 there wasn't communication. I don't know what --  
7 the letter that Mr. Bundy is talking about, I'm sure  
8 that I'm just forgetting it as I sit here right now;  
9 however, what they're leaving out, which is  
10 important, and I have a copy here if the Court needs  
11 to see it, is my July 15. Okay. So that's June  
12 23rd. I don't know what day of the week that is.

13 But my July 15th letter to them where I deal  
14 with every one of the depositions that they  
15 noticed -- now, I inadvertently leave off Lindsey  
16 Brown. I will admit to an inadvertence leaving that  
17 name off. But everyone else, Mr. McMaster,  
18 Mr. Wilson, Daryl Brown, Tonya Brown, Janise Venisha  
19 Brown, Venisha Brown, Janise Brown, I attempt to  
20 deal with those, so I did not wait till August to  
21 communicate with them on that.

22 Secondly, on August 10th we did communicate  
23 with them again. We communicated specifically about  
24 these two. And then several days before the  
25 deposition, the week of the deposition -- and just

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1 as a sidelight, we've produced Tommie Rae during  
2 this time, we've reached an agreement to produce  
3 Henry McMaster during this time, and there's been  
4 discussion and there's still issues about producing  
5 Attorney General Wilson. So we're not sitting back  
6 doing nothing. We're getting verifications, we're  
7 taking attempts to contact these people.

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8 However, I send them the e-mail on August 10th

9 and tell them, you know, we're not going to be able  
10 to produce these people; we're trying, but we can't.  
11 I then filed a motion for protective order on August  
12 15th. Then on a couple of days before the --

13 THE COURT: For the two that were noticed on  
14 the 19th?

15 MR. GENDE: Correct. So they've gotten notice  
16 that I filed a motion for protective order on August  
17 15th. I think it's interesting he decided not to  
18 mention that.

19 Also that week, he sent me an e-mail,  
20 Mr. Silvernail, saying, hey, I haven't gotten the  
21 distance that these people are going to travel so we  
22 can have a check ready for their witness fee. Again  
23 I said, we've filed a motion for protective order,  
24 we've communicated to you about this, we think we've  
25 done everything that we need to.

32

1 There was a second e-mail either the next day  
2 or the day after about the very same issue. I said,  
3 we're not going to appear. On the 18th we produced  
4 Henry McMaster at the office being videoed. At that  
5 deposition, as a sidebar, the videographer asked  
6 Mr. Silvernail, are there going to be depositions  
7 tomorrow? Mr. Silvernail, in full knowledge that  
8 there weren't because I had communicated to him  
9 numerous times, told her, oh, yes, we're going to  
10 have depositions, be here.

11 I don't think he's entitled to any fees. This  
Page 28

12 is a scheduling issue that we're trying to work  
13 through. He had a whole lot more knowledge than he  
14 just led on in his argument that this wasn't going  
15 to happen.

16 THE COURT: Please send me a proposed order  
17 stating your position, and send me a proposed order  
18 stating your position within five days.

19 MR. GENDE: Thank you, Your Honor.

20 MR. SILVERNAIL: Thank you, Your Honor.

21 THE COURT: Now, as to the scheduling of those  
22 three, you're going to give me several dates in  
23 September, and I'll select 1A, 1B and 1C. But,  
24 Mr. Gende, y'all --

25 MR. GENDE: We're going to do everything we

33

1 can, Your Honor.

2 THE COURT: Y'all just sort of chirp in on  
3 which one of those you want to be 1A --

4 MR. GENDE: We will. And if there's an  
5 insurmountable problem, as you mentioned in the  
6 other one, we'll communicate directly to the Court  
7 and bring you in on this, even though I know and we  
8 know that you don't want to be involved in  
9 scheduling issues.

10 THE COURT: No, sir.

11 Now, to eliminate this in the future, is a  
12 deposition protocol something that we need?

13 MR. BUNDY: I believe it is.

14 THE COURT: Okay. Then you send me one and

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15 I'll send it to them; y'all make whatever changes  
16 you want in it, and I'll adopt it as an  
17 administrative order.

18 MR. GENDE: That's fine, Your Honor.

19 THE COURT: All right. That takes us down to  
20 the protective order as to Alan Wilson. Is that  
21 where we are? And then that leaves us after that,  
22 AG motion to be dropped, motion for summary  
23 judgment. Is that where we are?

24 MR. GENDE: Yes. And I think the AG would like  
25 to go last and our motion for summary judgment to go

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1 first, and I have no objection to that order.

2 THE COURT: All right. Anybody need a bathroom  
3 break? Okay. Let's do this: Let's do the  
4 deposition of Alan Wilson protective order and then  
5 we'll take about a five-minute bathroom break, come  
6 back, and finish up.

7 All right. Now I have the protective order of  
8 Alan Wilson; is that correct?

9 MR. SMITH: Yes, Your Honor. Did you get a  
10 copy of our memo? I mailed it and e-mailed it on  
11 Friday. I've got an extra copy if --

12 THE COURT: The answer is I did. And I did,  
13 over the weekend, read it. Let me find it. I got  
14 one on the revised memo for the counterclaim, I got  
15 the one on Alan Wilson. When did you send it?

16 MR. SMITH: Friday, I think around noon, Your  
17 Honor.

18 THE COURT: Got it. I did and I read it.  
Page 30

19 That's the one that you discussed the Morgan rule.

20 MR. SMITH: Yes, Your Honor.

21 THE COURT: And the Morgan case. All right.

22 I've read the whole memo. Be glad to hear from you.

23 MR. GENDE: Thank you, Your Honor. I hope I  
24 can make this brief. The motion --

25 THE COURT: You're pretty thorough in the memo.

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1 It sets out why we shouldn't depose the Attorney  
2 General unless it absolutely meets the requirements  
3 under the Morgan rule. Is that correct?

4 MR. SMITH: That's our position, Your Honor.  
5 And they don't appear to be disputing in their memo,  
6 which I just received in court today --

7 THE COURT: I have not received that.

8 MR. SMITH: -- an opposition to it. They don't  
9 appear to be opposing the Morgan rule, but instead  
10 try to claim that they fall under it. But the  
11 Morgan rule sets a very high standard, and that is  
12 that the information sought must be essential, that  
13 it's not obtainable elsewhere, and the deposition of  
14 the official would not interfere with his government  
15 responsibilities.

16 And we believe that -- and the burden is on  
17 them to show that it meets all three of those  
18 exceptions. And we believe that they cannot --

19 THE COURT: well, what information does Alan  
20 Wilson have that all the rest of the people who are  
21 involved would be essential that they can't get from

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MR. SMITH: well, we don't believe he has any information, Your Honor, and their memo doesn't show that he does. He was not attorney general when

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the --

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THE COURT: That's correct. General McMaster was.

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MR. SMITH: Right. General McMaster was attorney general when this suit was brought. The suit was brought on matters that had occurred up until that point. Alan Wilson was not in office then, therefore, he has no personal knowledge about it.

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They have -- half of the memo deals with lengthy rehashing of their version of the history of this proceeding, none of which has anything to do with the need to depose Alan Wilson. Beginning on page 18, they claim that --

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THE COURT: Page 18 of what?

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MR. SMITH: Of their memo. They talk about --

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THE COURT: I don't have it. Hold on, hold on.

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MR. SILVERNAIL: Your Honor, if I can approach,

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I'll be glad to hand up a copy.

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THE COURT: Thank you.

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MR. SILVERNAIL: I was planning to argue this one myself, but --

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THE COURT: Page 18. what?

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MR. SMITH: Yes, Your Honor. They talk about

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reasons why they believe they need to take Attorney  
Page 32

1 General Wilson's deposition. But they're all  
2 dealing with matters about the course of litigation,  
3 why things have continued in the litigation, a  
4 meeting between Adele Pope and Attorney General  
5 Wilson about the litigation. She was there, she  
6 doesn't need to depose him about why she was there.

7 All of these deal with litigation strategies.  
8 If they can take the deposition of Attorney General  
9 Wilson in this case, then they can take the  
10 deposition of opposing counsel in any case in which  
11 they're involved. It certainly does not show any  
12 need --

13 THE COURT: Wilson is not representing -- he's  
14 not acting as a lawyer in this case, is he?

15 MR. SMITH: Well, he is the attorney general,  
16 he is a party, and he's also a lawyer, Your Honor.

17 THE COURT: But he's not counsel for Plaintiff,  
18 is he?

19 MR. SMITH: No, Your Honor.

20 THE COURT: No.

21 MR. SMITH: But they're asking him about  
22 litigation decisions in this case. That's what they  
23 want to ask about in pages 18 and thereafter in  
24 their memo. They don't want to depose him about  
25 matters that occurred that are at issue in the

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1 lawsuit because he wasn't attorney general then, he  
2 didn't observe those matters, he's not a party to  
3 them. They're not entitled to take his deposition  
4 about the course of the litigation.

5 And that certainly does not fall under the  
6 category under Morgan of being essential, it does  
7 not fall under the category of not being obtainable  
8 elsewhere, it does not fall under the category of a  
9 deposition that would not interfere with his other  
10 government responsibilities.

11 For example, let me show you on page 17, she  
12 talks about her meeting with --

13 THE COURT: Hold on one second, please. His  
14 page 17?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: All right.

17 MR. SMITH: She wants to inquire about the  
18 attorney general's relationships with James  
19 Buchanan. The attorney general was not in office  
20 when James Buchanan -- when this suit was brought,  
21 Case 4900. She wants to depose him about her -- the  
22 attorney general's meeting with herself. She was  
23 there, she doesn't need to depose him about that.

24 She speaks on page 18: Years later, the  
25 vitriolic attacks have continued. Maybe she's

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1 referring to her own, Your Honor, because she's  
2 filed affidavit after affidavit in these various  
3 cases with vitriolic statements in it.

4 Again, this is all about the course of the  
Page 34

5 litigation; this is not about being a witness to the  
6 facts of the case. We believe that this case falls  
7 squarely within the Morgan rule. Morgan has been  
8 applied to public officials who are defendants in  
9 suits, public officials who have been plaintiffs in  
10 suits.

11 The Bogan case involved the deposition of the  
12 defendant mayor. The Franklin case involved the  
13 deposition of the director of the defendant office  
14 of Thrift Savings. The McCarthy case involved the  
15 deposition of the EPA administrator. In Re: U.S.  
16 involved a deposition of Attorney General Reno in a  
17 federal prosecution.

18 In Re: FDIC involved the depositions of three  
19 FDIC directors. The McNamee case involved the  
20 deposition of former chief of staff of a legislator.  
21 U.S. v. Northside Realty Associates from the  
22 District Court of Georgia involved the deposition of  
23 the attorney general and a suit initiated by him on  
24 behalf of the United States.

25 The Highland case involved the deposition of

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1 the plaintiff New Jersey Attorney General. Johnson  
2 v. Clark involved the deposition of the county  
3 executive of the county defendant. Paige v. Kennedy  
4 involved the deposition of the Secretary Tax  
5 Commissioner in a FOIA action apparently against  
6 him.

7 The State Board of Pharmacy involved the

9 regarding appropriate attorneys' fees. And it says  
10 in that case: If the head of a government agency  
11 was subject to having his deposition taken  
12 concerning any litigation affecting his agency or  
13 any litigation between private parties which may  
14 indirectly involve some activity of his agency, we  
15 would find that the heads or government department  
16 members of the president's cabinet would be spending  
17 their time giving depositions and would have no  
18 opportunity to perform their functions. It would be  
19 oppressive and vexatious to require the head of the  
20 government agency to submit to interrogation that  
21 might last for several hours, and would, of course,  
22 disturb government business.

23 One of the showings they have to make here is  
24 information is not obtainable elsewhere. They've  
25 already taken depositions of Sonny Jones and Mary

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1 Frances Jowers in Case 1337. They've asked to take  
2 the deposition of Henry McMaster in Case 4900.

3 Alan Wilson was not in office when these suits  
4 were brought; therefore, we believe they've failed  
5 to meet the Morgan rule, and that it would be an  
6 undue burden under Rule 26 of the South Carolina  
7 Rules of Civil Procedure for his deposition to be  
8 taken.

9 And I believe it's in my memo, Your Honor, but  
10 we've got written discovery requests pending too.

11 They could obtain information that way, Your Honor.

12 Thank you.

13 THE COURT: Yes, sir.

14 MR. SILVERNAIL: Your Honor, Mr. Smith ran you  
15 through a long list of the cases that he's based his  
16 argument on and the circumstances in those cases.  
17 Not one of them involves an attorney general as a  
18 co-plaintiff with a bunch of private individuals  
19 suing somebody and that attorney general now being  
20 subject to counterclaims for abuse of process, civil  
21 conspiracy, and some other matters related to the  
22 bringing of this action.

23 The maintaining of this action is also  
24 important. When Mr. Wilson was attorney general,  
25 the Supreme Court reversed Wilson vs. Dallas. He

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1 made some filings -- he, Attorney General Wilson,  
2 made some filings with the Supreme Court setting out  
3 his position and his plans for 4900. He came and  
4 filed a motion in this case in 2013, which Your  
5 Honor is going to hear later today, to be dropped as  
6 a party based on what appears to be an allegation  
7 that he was never actually a party in a case he's  
8 shown as a plaintiff in.

9 Your Honor asked a really interesting question  
10 earlier, which is, is he a lawyer in this case?  
11 He's not. This case is incredibly unusual, if not  
12 totally unique, because he's -- Mr. Wilson's office  
13 is not on the pleadings in this case. He is  
14 represented by Mr. Gende's firm. That's -- now,

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15 Mr. Jones recently filed a limited notice of

16 appearance. But for six years, Mr. Wilson is a  
17 co-plaintiff with these 15 other folks and entities.  
18 We're entitled to examine Mr. Wilson about his  
19 relationship with these folks.

20 Mr. McMaster, just last week or the week  
21 before, came to his deposition and also seemed to be  
22 surprised. He didn't believe he was a party to this  
23 case. You know, we're entitled to find out what the  
24 attorney general's position is on this. Yes, there  
25 was a change; we've deposed Mr. McMaster. He didn't

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1 shed a whole lot of light on some of this, although  
2 he did on some other parts.

3 we're entitled to know what the attorney  
4 general knows, what his relationships are with the  
5 other plaintiffs here. The damages alleged under  
6 our counterclaims are continuing, and he's now been  
7 attorney general for five of the six years this case  
8 has been pending, or thereabout.

9 And so, number one, I don't think Morgan  
10 applies here. This case is unlike any of the long  
11 laundry list of cases rattled off there. And  
12 Mr. Smith made reference to one of them in  
13 particular that talked about private party  
14 litigation indirectly involving the state office.  
15 This isn't indirect. Mr. Wilson is one of the lead  
16 plaintiffs in this case. He's been here since day  
17 one, his office was introduced as a client of  
18 Mr. Gende's firm at the very first hearing in this

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19 case.

20 we took issue with the attorney general's  
21 participation in this case. We continue to take  
22 issue with the attorney general's participation, for  
23 constitutional and other reasons, but Judge Manning  
24 denied our motion on that. I think there's a 59  
25 motion that's been pending for quite some time.

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1 The attorney general's participation in this  
2 case is material to our counterclaims, and so we're  
3 entitled to know what the attorney general, who is  
4 here now, who has been here since Wilson vs. Dallas  
5 was decided, who has taken some substantively  
6 changed positions in the record in this case, who we  
7 have not deposed before, we're entitled to  
8 understand his position.

9 THE COURT: What has he changed his position  
10 on?

11 MR. SILVERNAIL: Well, after Wilson vs. Dallas  
12 was decided, he came and said, oh, heavens, I'm not  
13 a party to this case, I should be dropped. Your  
14 Honor is going to hear that this afternoon. We  
15 oppose that motion. We'll go through that in a  
16 little bit.

17 But, you know, it was a little startling. I  
18 don't know of any case where years in, one of the  
19 plaintiffs, particularly when it's the State of  
20 South Carolina through the attorney general, came  
21 and said, oh, heavens, not a party. Mr. Bauknight

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22 was supposed to bring this suit, I think was what

23 they've alleged, and I guess we'll hear more about  
24 their position in a little while.

25 But, you know, we're entitled to learn from

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1 Attorney General Wilson what lead to that  
2 revelation. The case was filed in 2010. That  
3 motion was filed nearly three years after the case  
4 was filed. This wasn't sort of, oops, we've got the  
5 wrong plaintiffs in here and we need to fix a  
6 clerical error. We're entitled to learn from  
7 Mr. Wilson about that. We're entitled to learn from  
8 Mr. Wilson about his relationship with the  
9 co-plaintiffs.

10 Again, Your Honor, we're alleging civil  
11 conspiracy and continuing damages under several  
12 theories. And, you know, I'd note that the attorney  
13 general, in his memo, has made reference to an  
14 expectation that we'll want to know about privileged  
15 information and that he doesn't know anything  
16 relevant.

17 Your Honor, if it's all appropriately  
18 privileged, which I don't think it will be, or if he  
19 doesn't know anything relevant, it's going to be a  
20 short deposition. But we're entitled to go ask. If  
21 they want to raise objections to particular  
22 questions, then we'll go through that process. But  
23 in this event, in this case, we're entitled to take  
24 the deposition of the attorney general.

25 I don't think any of the Morgan cases and those  
Page 40

1 that -- or the Morgan case or the cases that come  
2 behind that -- I've read through those. None of  
3 those encompass a situation that really stands on  
4 all fours with this.

5 This is not a governmental agency undertaking  
6 some, you know, civil action to bring somebody into  
7 compliance; this was the attorney general suing  
8 Adele Pope for tens of millions of dollars and her  
9 counterclaims against the attorney general as  
10 alleged in the answer and counterclaim.

11 I don't think the Morgan cases control, but  
12 even if they do, I certainly think we've shown  
13 necessity to have Mr. Wilson's deposition. We have  
14 offered, of course, and will continue to work with  
15 them on scheduling it. We understand that  
16 Mr. Wilson is busy. He's the attorney general, he's  
17 got things to do, and we'll be reasonable about how  
18 we handle that.

19 But, you know, they seem to have asserted some  
20 things that I think are entirely premature before  
21 we've asked the first question in a deposition, such  
22 as privilege and relevance, and then separately,  
23 that we can't have his deposition at all. And I've  
24 gone through, at some length, why I think we're  
25 correct on that.

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THE COURT: Thank you.

Anything in reply?

MR. SMITH: Yes, sir, briefly. I believe that his argument is a proverbial distinction without a difference. Morgan applies squarely here. The fact that he's sued Adele Pope is not a distinction for other --

THE COURT: Do you know of another case where the AG has sued another individual?

MR. SMITH: Well, we cited several in here, Your Honor, in which the AG had -- was the plaintiff or the head of the agency bringing the action, including criminal cases in the New Jersey case, the U.S. vs. Northside. The attorney general was in a suit initiated by him on behalf of the United States. The New Jersey case in here, the attorney general was a plaintiff -- or deposition of plaintiff New Jersey Attorney General. So the AG has been a plaintiff in those cases.

He refers to their counterclaim against the attorney general. Your Honor, the counterclaim was filed in 2010 before Alan Wilson took office in 2011. And so it, too, just as the main lawsuit, was based upon events that occurred prior to his taking office. And so, therefore, his testimony is not

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1 necessary, relevant, and certainly doesn't meet the  
2 Morgan standards in this case.

3 They, instead, want to ask him about litigation  
4 decisions, about the course of litigation, all of

5 which is irrelevant to the facts of the suit, all of  
6 which should be privileged and, therefore, they  
7 cannot show an essential need for it, they cannot  
8 show that they cannot obtain this information  
9 elsewhere, and they cannot show that it would not be  
10 a burden on him.

11 Sonny Jones and Mary Frances' depositions took  
12 five days. The deposition of Henry McMaster took  
13 four hours. We do not believe that the attorney  
14 general, under Morgan, should have to give up that  
15 much time in a futile effort to ask questions that  
16 are irrelevant, that are privileged, and that are  
17 squarely covered by the Morgan rule.

18 THE COURT: Thank you.

19 MR. SMITH: Thank you, Your Honor. Let's take  
20 about a quick five-minute break.

21 (Short break.)

22 THE COURT: All right. Motion for summary  
23 judgment, is that next in line?

24 MR. GENDE: Yes, Your Honor. May it please the  
25 court. This is plaintiffs'/counterclaim defendants'

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1 motion for summary judgment with respect to all of  
2 Ms. Pope's counterclaims.

3 THE COURT: How is this case any different than  
4 the case in federal court where the federal judge  
5 granted summary judgment?

6 MR. GENDE: That's a very good question.  
7 First, we're making this argument based on the issue

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8 of occlusion, federal estoppel grounds. So I just

9 want to be clear from the outset that I'm not  
10 prejudicing any opportunity to make another summary  
11 judgment motion at the end of discovery on the  
12 evidence should the Court not grant this summary  
13 judgment motion.

14 We have filed a memorandum in support of our  
15 motion for summary judgment. We have importantly  
16 filed a revised memorandum and motion in support of  
17 our motion for summary judgment, and that is what we  
18 incorporate here by reference and upon which we'll  
19 be relying for our arguments today. It's a  
20 substantial argument, and I will do my very best to  
21 make it clear and concise. And if I --

22 THE COURT: Well, I'm going to grant each of  
23 you a little additional time on this one. It's a  
24 very interesting situation, and, obviously, it's a  
25 dispositive motion. So if you need a little extra

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1 time, I'll be glad to give it to you.

2 MR. GENDE: Thank you, Your Honor.

3 Ms. Pope answered our complaint and filed five  
4 counterclaims. She filed claim for abuse of  
5 process, civil conspiracy, intentional infliction of  
6 contract, violation of code 62-1-106, and attorneys'  
7 fees.

8 THE COURT: 62-1-106.

9 MR. GENDE: 62-1-106, and attorneys' fees.

10 We're moving for summary judgment on all of those  
11 counterclaims on the basis of collateral estoppel

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12 issue, issue of preclusion, presents the party from  
13 relitigating an issue that was decided in a previous  
14 action, regardless of whether the claims in the  
15 first and subsequent lawsuit are the same.

16 Our memo states -- and I won't repeat it for  
17 you, I have incorporated this -- the elements of  
18 this issue of preclusion, that an issue was actually  
19 litigated, that it was necessary to the support of  
20 the prior judgment and, importantly, the courts in  
21 South Carolina have done away with any mutuality  
22 requirement as to the parties.

23 Now, we believe that summary judgment is  
24 appropriate as to all of Pope's counterclaims  
25 because of the South Carolina Supreme Court decision

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1 in Wilson v. Dallas. I would like to quickly review  
2 what we feel are the important and relevant holdings  
3 in that, that precludes Ms. Pope's claim.

4 Before I do that, however, it's important to  
5 note that in Wilson v. Dallas, the Supreme Court was  
6 very careful to notice that Ms. Pope's -- on the  
7 issue that's important to us, her removal, that she  
8 was contesting in the appeal, that she had an  
9 opportunity to be heard, that she was, you know,  
10 provided the opportunity to answer on her behalf; as  
11 the court put it, notice and hearing were provided,  
12 and the court had cause to remove Ms. Pope as it was  
13 in the best interest of the Estate.

14 That is a holding central to Wilson v. Dallas.

15 It is one of the questions presented in the Supreme  
16 Court case; was her removal proper or not? And the  
17 Supreme Court, after noticing that Ms. Pope had  
18 notice, she had a hearing, she had everything  
19 necessary to invoke issue of preclusion, they made  
20 their decision upholding your determination that she  
21 was properly removed for cause and it was in the  
22 best interest of the Estate.

23 Now, it's also very important that the Supreme  
24 Court added some reasons for their decision  
25 supporting that. And in Wilson v. Dallas, quote:

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1 we are also aware that the appellants -- and, of  
2 course, they're referring to Mr. Buchanan and  
3 Ms. Pope, and Mr. Buchanan has settled and is gone  
4 in this matter. We're also aware that appellants  
5 have sought \$5 millions in fees for their services  
6 as fiduciaries for a relatively short interval of  
7 time.

8 In addition, Defendant Pope, I would clarify,  
9 sought and obtained permission from the circuit  
10 court to sell iconic assets from Brown's estate in  
11 order to raise funds, and a large portion of the  
12 amount raised went first to pay appellant's own  
13 attorneys' fees.

14 They continue, and I'm just leaving  
15 Mr. Buchanan out: Defendant Pope also  
16 unsuccessfully attempted to sell Brown's Grammy  
17 award at auction. The process was halted only  
18 because officials from the National Academy of

19 Recording Arts and Sciences reclaimed the award  
20 after informing appellants that it was longstanding  
21 policy that the award could not be sold by  
22 recipients or anyone acting on their behalf.

23 And then the Court concludes this section and  
24 says: These actions and the extreme discord between  
25 the parties convinces that the appellants' continued

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1 service as fiduciaries is not in the best interest  
2 of the Estate.

3 We believe that that section of Wilson v.  
4 Dallas allows us to invoke inefficient preclusion.  
5 The matter was actually litigated, it was finally  
6 determined, and it was necessary to support the  
7 Court's adjudication. So it was conclusively  
8 established as a matter of law by the highest state  
9 in South Carolina that Ms. Pope was validly removed  
10 for cause, that she had both adequate notice and  
11 hearing on the issue.

12 Now, importantly, the Supreme Court's findings  
13 supporting their position coincide with many  
14 allegations of the plaintiffs' complaint. The ones  
15 that I read are incorporated at various parts in the  
16 plaintiffs' complaint against Ms. Pope. So our suit  
17 is based in part on items that the South Carolina  
18 Supreme Court have raised as serious concerns and as  
19 part of the grounds on which they have upheld your  
20 decision of her for-cause removal. That's  
21 important. I'd like to go through each of the

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22 counterclaims that she states and explain why each  
23 counterclaim has to fall as a matter of law because  
24 of Wilson v. Dallas.

25 The first counterclaim she has is abuse of

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1 process. And in our memo, we go through the law on  
2 abuse of process. I just want to highlight a couple  
3 of things: Abuse of process has the essential  
4 purpose -- or, excuse me, the essential modus of an  
5 ulterior purpose and a willful act in using of the  
6 process not proper in the conduct of the proceeding.  
7 It's the idea that the process was misapplied or  
8 abused. It's the malicious misuse or perversion of  
9 the process for an end not lawful or warranted.

10 And we cite the Food Lion, Inc. vs. United Food  
11 and Commercial Workers Union. I'd like to  
12 supplement the memorandum with a few more quotes  
13 from that case. That's 351 S.C. 65. And here, the  
14 Court of Appeals reviews in 2002 what is still the  
15 current law on abuse of process. They point out on  
16 page 255 of the southeast second version -- the  
17 southeast second is 565 SE 2d beginning at 251.

18 They point out that Food Lion correctly  
19 observes that an abuse of process action may lie if  
20 a party prosecutes "an entire lawsuit for collateral  
21 purposes." That phrase "entire lawsuit" is very  
22 important. The Food Lion vs. United Food case also  
23 states, beginning on page 255, running into 256, the  
24 distinction between the two requirements is evident  
25 in the language of the Restatement of Torts.

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1           And here the case -- the Court relies on the  
2           Restatement of Torts: "One who uses a legal  
3           process, whether criminal or civil, against  
4           another --" and then in italics is the word  
5           primarily -- "primarily to accomplish a purpose for  
6           which it is not designed is subject to liability to  
7           the other for harm caused by the abuse of process."  
8           Then they cite the section from the Restatement.

9           Then they continue as noted in the Restatement  
10          comment: "The significance of primarily is that  
11          there is no action for abuse of process when the  
12          process is used for the purpose for which it is  
13          intended, but there is an incidental motive of spite  
14          or ulterior purpose of benefit to the defendant."  
15          Then they cite the Restatement sections.

16          Then they continue: "Accordingly, liability  
17          exists, not primarily because a party merely seeks  
18          to gain a collateral advantage by using some legal  
19          process, but because the collateral objective was  
20          its sole or paramount reason for acting."

21          And then finally, and we're still on page 256:  
22          "There is no abuse of process, however, when the  
23          process is used to accomplish the result for which  
24          it was re-created, regardless of an incidental  
25          or --" again in italics -- "concurrent motive of

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1 spite or ulterior purpose."

2 And I, unfortunately, don't have an extra copy  
3 of this, but I'll be happy to hand my copy up to the  
4 Court.

5 THE COURT: Please do.

6 MR. GENDE: The pertinent sections that I read  
7 are both marked with a yellow sticky and  
8 highlighted.

9 Based on the elements of abuse of process and  
10 the law that we have listed in our memo and that I  
11 read from the case that I just handed up, the  
12 plaintiff has to have an ulterior motive for filing  
13 this suit, an ulterior purpose.

14 Wilson v. Dallas holds conclusively as a matter  
15 of law that there are numerous legitimate reasons  
16 behind the plaintiff bringing this lawsuit.

17 Ms. Pope was removed for cause, there was extreme  
18 discord, there was the question about the fees being  
19 paid, there was the Grammy and how it was attempted  
20 to be sold. There are numerous legitimate causes to  
21 bring this lawsuit. The lawsuit was not brought for  
22 an ulterior purpose.

23 In addition to that, we didn't commit any  
24 willful act in furtherance of some abuse of process.  
25 In her counterclaim, Ms. Pope alleges that the

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1 lawsuit was brought for the purpose of coercing her  
2 to abandon her appeal of the settlement agreement.  
3 Now, that is the abuse that she's claiming.

4 Now, for purposes of -- we contest that, of  
Page 50

5 course. But for purposes of summary judgment, let's  
6 go ahead and take the facts or pleadings in the  
7 light most favorable to the non-moving party. Let's  
8 assume that that was a reason for bringing 4900, to  
9 attempt to try to bring pressure on Ms. Pope to  
10 abandon her appeal of the settlement agreement.

11 And all of the plaintiffs -- what holds all of  
12 the plaintiffs together is the settlement agreement.  
13 All signatories of either the original settlement  
14 agreement or the addendum to the settlement  
15 agreement, that's where the plaintiffs' group comes  
16 from.

17 The mere commencement of civil action for  
18 justifiable purpose can't be an abuse of process.  
19 Ms. Pope wants to allege that, well, using that to  
20 try to motivate me to abandon my appeal, that's the  
21 abuse of process. There's an interesting case that  
22 we discuss at some length in our revised memorandum,  
23 Russell v. Risher. It's a case involving some local  
24 people. It was a case where a State House member --

25 THE COURT: Ms. Sylvia Risher --

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1 MR. GENDE: That's right.

2 THE COURT: -- who lived here in Bamberg.

3 MR. GENDE: That's correct. There were many  
4 luminaries who were part of that case. And what's  
5 very interesting about that case is it's as  
6 on-all-fours as you can get with our situation.  
7 Here you have a representative and the Clerk of the

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8 House, and they're off at a congressional meeting

9 and they get into a little kerfuffle.

10 And the representative allege -- doesn't  
11 allege; threatens the clerk that if you don't, you  
12 know, withdraw this, I'm going to sue you -- or,  
13 excuse me, if you don't resign your position as  
14 being Clerk of the House, I'm going to sue you. And  
15 she threatened criminal and civil causes of action  
16 that could have been brought.

17 Well, she didn't resign her seat, as I'm sure  
18 Your Honor is well aware of the history of the case,  
19 and the lawsuit came. And then there was a decision  
20 on the lawsuit and it eventually wound up in front  
21 of the Supreme Court. And the whole question before  
22 the Supreme Court was, was it an abuse of process  
23 for this House member to have said, you resign your  
24 position, Clerk, or I'm going to bring a lawsuit  
25 against you.

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1 And the House -- excuse me. The Supreme Court  
2 held that it was not an abuse of process. They said  
3 very interestingly that the defendant argues that  
4 the plaintiff demanding something, resignation,  
5 which she was not entitled to demand -- excuse me.  
6 Let me read that again. I did a poor job.

7 The opinion states that the defendant argues  
8 that Plaintiff demanded something, resignation,  
9 which she was not entitled to demand. That's  
10 similar to this case. Ms. Pope is alleging --  
11 again, we deny it, but taking the facts most

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12 favorable to her, she's alleging that we asked  
13 something that we somehow didn't have a right to  
14 demand, her abandoning her appeal.

15 The defendant argues that Plaintiff demanded  
16 something, resignation, which she was not entitled  
17 to demand. And the opinion goes on: "It is not  
18 unusual for plaintiffs in the negotiating stage to  
19 demand more than they are entitled to receive." And  
20 it was held here that the demand that someone resign  
21 their position as the Clerk of the House was not an  
22 abuse of process when that demand was part of a  
23 threat to bring a criminal or civil action.

24 Taking the facts in the light most favorable to  
25 Ms. Pope, even if we did put pressure on her to

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1 abandon her appeal by means of bringing this suit,  
2 it would not rise to the abuse of process based on  
3 Russell vs. Risher. It also would not rise to the  
4 level of abuse of process because it's not the  
5 primary or sole reason that the suit was brought, as  
6 the Food Lion case and the other cases that we cite.

7 Wilson v. Dallas holds conclusively, so that  
8 they are precluded from arguing otherwise, that we  
9 had many -- we have many justifiable grounds on  
10 which to sue Ms. Pope for breach of fiduciary duty.  
11 Therefore, we believe that the abuse of process  
12 counterclaim should be found that it is  
13 appropriately done away with by summary judgment and  
14 dismissed.

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15 The second cause of action in the counterclaims

16 is a cause of action for civil conspiracy. Again,  
17 we discussed this at length in the brief. I would  
18 just highlight certain portions for you.

19 Civil conspiracy is a combination of two or  
20 more persons joining for the purpose of injuring or  
21 causing special damage to the plaintiff. It has to  
22 be a combination of two or more people for the  
23 purpose of injuring the plaintiff which causes  
24 special damages.

25 The primary inquiry is whether the primary

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1 purpose or object of a combination is to injure the  
2 plaintiff; in this case, to injure Ms. Pope. And  
3 that's Lee vs. Chesterfield County --

4 THE COURT: There was a case decided and I  
5 think recorded in this week's --

6 MR. GENDE: There is.

7 THE COURT: -- about special damages on  
8 conspiracy.

9 MR. GENDE: Correct. That case, pretty much  
10 they didn't want to change the pleadings standard in  
11 an old case, you know, one that had been very long,  
12 and there was a need to allege special damages. And  
13 if I was arguing this on a 12(b)(6) motion, I might  
14 take that up. But that's not going to be the focus  
15 of my issue here. And in that case the Supreme  
16 Court decided, at least at this juncture, not to  
17 change the pleadings standard, but to let that case  
18 continue on.

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19 First of all, if there's any reliance on the  
20 fact that this was an unlawful enterprise and  
21 because of that it was a civil conspiracy, we have  
22 shown, based on Wilson v. Dallas, that it was not an  
23 unlawful enterprise to file this lawsuit because the  
24 Supreme Court has now justified many of the grounds  
25 and the central ground under which the lawsuit was

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1 brought by the 4900 plaintiffs.

2 Next, even if there's no unlawful enterprise,  
3 the Supreme Court has held that civil conspiracy can  
4 exist where one party to the conspiracy has  
5 justifiable grounds for an action but the others who  
6 join in the act don't have the same justification.

7 And that's the Charles v. Texas County case.  
8 That's a 1942 case, but as we researched the issue,  
9 there's nothing more on-point, and this case has not  
10 been overturned and this holding has not been  
11 vacated in any way.

12 And I want to read this section because it's  
13 important. If you're following on our brief, this  
14 is page 10 of our brief. It's right at the top of  
15 page 10. In the right-hand corner you'll see the  
16 "see Charles v. Texas," and in parentheses it says  
17 this: The case notes that "where an act done by an  
18 individual, though harmful to another, is not  
19 actionable because justified by his rights, yet the  
20 same act becomes actionable when committed in  
21 pursuance of a combination of persons actuated by

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22 malicious motives and --" and here's the very  
23 important part -- "not having the same justification  
24 as the individual."  
25 Well, civil conspiracy might arise in a case

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1 where one person has a justifiable claim, others  
2 join in that claim, but they do not have the same  
3 justification. That's what this is saying. It's  
4 also saying the converse. If everyone, one party  
5 and those who are joining it, have the same  
6 justification, there can be no civil conspiracy.

7 And what we argue is, in this case, every one  
8 of us, all of the plaintiffs that I represent, have  
9 the same essential claim and justification for  
10 bringing the case. We're all listed on the caption  
11 together, we're all shared in the allegations that  
12 are made, there's no complaints that eliminate any  
13 one from the other. We all bring this together as a  
14 group because we're all held together by the  
15 settlement agreement. That was the claim. And you,  
16 Your Honor, had approved the settlement agreement.

17 And this case was filed before Wilson v. Dallas  
18 was decided that I agree ultimately did vacate the  
19 settlement agreement. However, at the time that  
20 they brought the claim, at the time that we brought  
21 the claim in 2010, the settlement agreement stood.  
22 And they all had the same claim, the same essential  
23 causes of action.

24 There was no civil conspiracy, there was no  
25 intention to get together, maliciously bring

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1 something against Ms. Pope to cause her some kind of  
2 special damage. We all were seeking to vindicate  
3 the same legal right because we were all joined  
4 together under that settlement agreement. Those are  
5 the people who brought the case, and they brought  
6 the case under the settlement agreement as the glue,  
7 the joint right that held them all together.

8 Interestingly -- and you mention the federal  
9 case, the Forlando case -- in her pleadings,  
10 Ms. Pope refers to Forlando as one of the people  
11 that we conspired with. Now, he's not a party in  
12 Case 4900, but that is also a matter of law that she  
13 would be issue precluded now from resorting to  
14 because Judge Bertelsman, in a motion for summary  
15 judgment after the evidence in a case involving  
16 Forlando against Ms. Pope and Mr. Buchanan at that  
17 time, found that the same counterclaims were ripe  
18 for summary judgment and, indeed, did dismiss them,  
19 including civil conspiracy.

20 So we know that in her complaint -- we couldn't  
21 have conspired with Forlando because Forlando was  
22 held as a matter of law and not to have conspired  
23 against her, because we all had the same  
24 justification for bringing the case. Everyone had  
25 the same justification for bringing the case.

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2 conspiracy as a matter of law; that Wilson v. Dallas  
3 has nailed that down because it clearly finds that  
4 we had ample legal basis to bring the case,  
5 therefore, the civil conspiracy claim should be  
6 summarily dismissed.

7 The next counterclaim of Ms. Pope is  
8 intentional interference with contract. This begins  
9 at page 12 of our brief. We point out that the  
10 elements of intentional or tortious unfairness with  
11 contract involve, number one, the existence of the  
12 contract; two, knowledge of the contract; three,  
13 intentional procurement of its breach; four, the  
14 absence of justification; five, resulting damages.

15 I want to address two of these, and I think  
16 they are dispositive as far as this motion for  
17 summary judgment.

18 THE COURT: Well, one of them there is no  
19 contract, right?

20 MR. GENDE: Right. There is no contract. No  
21 matter which way you look at it, there's no  
22 contract. Whether she's talking about us somehow  
23 interfering in her appointment by the Court  
24 initially as SA or ultimately PR and trustee, we  
25 have case law in here that says those appointments

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1 are not a contract. Or if she's saying no -- and,  
2 you know, the counterclaim has some clarity and has  
3 some areas that would need to be clarified.

4 But if she's saying, no, it's not the  
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5 appointment I'm having trouble with, it's collecting  
6 that money from the January 8th, 2008 order, that's  
7 what you're interfering with -- and, in fact, as she  
8 spoke in Case 1337 earlier, she referred to that  
9 order as a contract. My contract for payment that  
10 you ordered, she said.

11 We have case law cited in this brief that court  
12 orders are not contracts. So on the very first  
13 element, she fails and -- because there's no way  
14 that she can get around that, and that's a matter of  
15 established law. Just on that element alone, the  
16 intentional interference with contract should be  
17 summarily dismissed. However, a fourth element of  
18 intentional interference with contract is the  
19 absence of justification. And as I pointed out  
20 early on, Wilson v. Dallas shows that we had  
21 absolute justification to bring the case.

22 Does Wilson v. Dallas prove our case? Maybe  
23 not, although I'm working on a legal argument that  
24 says it might. But that's for another day. But it  
25 sure says that we had justification to bring the

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1 case and that the case is not some ruse or something  
2 malicious or something with no foundation, you know,  
3 as in some of the abuse of process cases that you  
4 see.

5 So we had legal justification to bring the  
6 case. So she can't meet two of the five elements of  
7 intentional interference with contract, and because

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8 of that, the tortious or intentional interference  
9 with contract should be summarily dismissed as well.

10 The next counterclaim is violation of Probate  
11 Code section 62-1-106. This begins on page 15 of  
12 our brief. 62-1-106 is essentially a code that  
13 allows a trustee to bring a cause of action for  
14 fraud or evasion. And there are issues that she  
15 alleges were handled fraudulently or evasively, and  
16 she invokes the right to bring this counterclaim.

17 I want to deal with this rather simply. First  
18 of all, she's got no standing. It's a cause of  
19 action that accrues to the estate of people  
20 appropriately representing the state, and they deal  
21 with a couple of things. The South Carolina Supreme  
22 Court, in Wilson v. Dallas, did allow her standing  
23 to prosecute that appeal to conclusion, the appeal  
24 of your approval of the order; huge distinction  
25 between that and the counterclaims in a breach of

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1 fiduciary duty case.

2 In the Wilson v. Dallas matter, her appealing  
3 of your order approving the settlement, at the time  
4 the settlement was entered into, she was the  
5 trustee; during the period of time that the hearings  
6 were held where you made a decision of approving or  
7 disapproving the settlement, she was the trustee,  
8 she was allowed to make arguments, she was allowed  
9 to participate. It's that on which the Supreme  
10 Court bases its conclusion that she was -- had  
11 standing to bring this case.

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12           There's no case law -- let me step back. You  
13           held that she was removed. The Supreme Court upheld  
14           you that she was removed. Her counterclaim was  
15           brought in 2010 after you removed her. There's no  
16           case that says a trustee that has been removed can  
17           still bring claims on behalf of the Trust or claims  
18           that are intended for the Trust after they've been  
19           removed. And, of course, that would be a -- a very  
20           problematic principle to be in the law.

21           So she was allowed standing to bring Wilson v.  
22           Dallas because she was involved in the whole  
23           settlement removal hearing process. She should not  
24           be allowed to bring 62-1-106 violation counterclaims  
25           because she was removed and can make no argument

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1           that she had standing.

2           In fact, we have the June 15th -- June 10th,  
3           excuse me, 2015 order of the Supreme Court denying a  
4           number of repeals in other cases and then stating  
5           these words that I take no relish in repeating, but  
6           is important to our argument.

7           They say: "Pope is hereby prohibited from  
8           filing any further motions or appeals in actions  
9           involving the estate and trust of James Brown -- "  
10          and importantly -- "such as the above actions in  
11          which she has clearly has no standing. We caution  
12          Pope the continuous attempts to involve herself in  
13          the resolution of the estate and trust may result in  
14          contempt charges." So the Supreme Court has even

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15 weighed in on whether she would have standing in  
16 anything else related to the estate and trust, and  
17 they have said no.

18 We make another argument that I won't go into  
19 in great detail, but it's clearly in here. It's a  
20 statute of limitations argument. And even if for  
21 some reason she had standing, it was not brought  
22 within the appropriate time period for the statute  
23 of limitations to bring that claim; therefore, her  
24 claim for violation of 62-1-106 should be summarily  
25 dismissed as well.

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1 Finally, Ms. Pope makes a claim for attorneys'  
2 fees, again, pursuant to the Probate Code 62-7-104.  
3 And I think -- it's not absolutely crystal clear,  
4 but I think she's referring to her fees that she has  
5 incurred probably involving the appeal and then  
6 probably involving in responding to Case 4900 and  
7 defending herself in this case.

8 Just as a matter of preliminary review, we all  
9 know that we're held to the American rule and that  
10 litigants have to bear the cost of their own  
11 expense. So there's no reason why her being sued  
12 for breach of fiduciary duty in Case 4900 she would  
13 not have to bear the cost of her own expense of her  
14 defense. We're having to bear the cost of our  
15 defense against her counterclaims, which we feel are  
16 without grounds.

17 However, 62-7-104 provides: "In a judicial  
18 proceeding involving the administration of a Trust,  
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19 the Court, as justice and equity may require, may  
20 award costs and expenses, including reasonable  
21 attorneys' fees and pardon to be paid by another  
22 party or from the Trust that is the subject of the  
23 controversy."

24 A couple of observations on that: First of  
25 all -- and this is additional argument from what is

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1 in the brief expressly, by way of illustration more  
2 than anything -- we don't think that Case 4900 is a  
3 judicial proceeding involving the administration of  
4 the Trust.

5 Case 4900 is no different than a medical  
6 malpractice case. I defend a lot of doctors in  
7 medical malpractice cases. When the plaintiff  
8 brings a medical malpractice case or when I defend  
9 that medical malpractice case, we are not involved  
10 in the practice of medicine. And thank the Lord for  
11 that, because there would be trouble. It's a  
12 separate case. It's a negligence action.

13 When we bring Case 4900 against Ms. Pope for  
14 breach of fiduciary duty, we are not involved in a  
15 case that deals with the administration of a Trust  
16 no more than a medical malpractice attorney is  
17 involved in the practice of medicine. We're dealing  
18 with a negligence case.

19 There's a difference between proof and  
20 participation. Yes, some of our proof -- in fact,  
21 all of our proof will come from how she conducted

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22 herself in the administration of that estate. But  
23 we are not participating in the administration of  
24 the estate. And 62-7-104 has a basic analysis;  
25 requires that it involve the administration of the

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1 Trust, and it doesn't meet that base-level  
2 requirement. That's a separate and distinct  
3 negligence action that is not involved in the  
4 administration of the Trust. So we believe, on that  
5 level, that the final cause of action should be  
6 summarily dismissed.

7 62-7-104 also involves justice and equity. It  
8 says if justice and equity require, there might be  
9 an award of attorneys' costs and expenses. Here  
10 again we believe that Wilson v. Dallas is important  
11 to provide issue of resclusion and collateral  
12 estoppel.

13 we have good grounds, absolutely rock solid  
14 grounds supported by the South Carolina Supreme  
15 Court, to bring that lawsuit. So we've got the  
16 right to sue her. There's nothing in the case of  
17 justice or equity that would abrogate the American  
18 rule and cause us to have to pay her fees.

19 So justice and equity can't be invoked, and  
20 it's specifically an element of 62-7-104. So it's  
21 not the administration of a trust and it is not  
22 justice and equity requiring that costs and  
23 attorneys' fees somehow be reimbursed to her.

24 Finally, she's got a case for her fee claim.  
25 That's 1337. You're intimately familiar with that.

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1 She already outlined this morning that her -- or  
2 earlier this afternoon that her fee claim case  
3 involved two elements; it involved her January 8th,  
4 2008 order, and then it involved additional time for  
5 the rest of the appeal.

6 So by her own statement in open court to you  
7 today, anything that might not be covered under the  
8 American rule she already has being contemplated in  
9 Case 1337. So --

10 THE COURT: In the federal case where summary  
11 judgment was granted, all the causes of action in  
12 her counterclaim in 4900 were presented to the  
13 federal judge; is that correct? All five?

14 MR. GENDE: That's correct.

15 THE COURT: The statutory provision, the  
16 contract situation, the --

17 MR. GENDE: We have a copy attached to that.  
18 Let me just review it so that I'm clear.

19 THE COURT: I have it. I'm looking at it now.

20 MR. GENDE: And my associate is pointing out a  
21 verbal slip I might have made referring to a  
22 statute. I apologize. Apparently in referring to  
23 62-7 I'm saying 104 at times, but it's 62-7-1004.

24 THE COURT: 1004.

25 MR. GENDE: Yes, sir. The claims dispensed of

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1 in the federal case were abuse of process --

2 THE COURT: It's all the same.

3 MR. GENDE: Yeah. Civil conspiracy, potential  
4 interference with contract, 62-1-106, 62-7-1004.  
5 Same ones.

6 Your Honor, for those reasons, the plaintiffs  
7 assert that under the apparent authority of the  
8 Court and the legal document issue of preclusion,  
9 claim of estoppel based on the Supreme Court's  
10 speaking of clarity in Wilson v. Dallas, that all of  
11 Ms. Pope's counterclaims against the plaintiffs  
12 should be summarily adjudged and dismissed.

13 THE COURT: All right. Thank you.

14 MR. MCDONALD: Judge, Brent McDonald. It's  
15 good to see you this afternoon. I know you haven't  
16 heard from me before.

17 THE COURT: Well, I'm getting ready to.

18 MR. MCDONALD: Thank you, Judge. May it please  
19 the Court.

20 THE COURT: How are you?

21 MR. MCDONALD: Very well.

22 THE COURT: Nice to have you in Bamberg.

23 MR. MCDONALD: Thank you very much.

24 I'd like to start off by stating what this  
25 motion is and what it's not, as far as I understand

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1 it. This motion was originally filed under the  
2 grounds that Wilson v. Dallas collaterally estops my  
3 client, Ms. Pope, from bringing any other  
4 counterclaims. That's it. It's a two-page letter

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5 that was written to Your Honor. Don't need to do  
6 any discovery, Judge, because Wilson v. Dallas  
7 conclusively prevents her -- to use his term, not  
8 mine -- from bringing these claims, these claims  
9 that were talked about here today.

10 what was argued here wove through the facts of  
11 what has been presented and what hasn't been  
12 presented, and something completely different from  
13 what the original argument was under Wilson v.  
14 Dallas conclusively prevents her, under the Doctrine  
15 of Collateral Estoppel, from bringing these claims.  
16 And I wanted to start off pointing that out to Your  
17 Honor.

18 I was handed a memorandum as I was sitting on  
19 that bench right there -- I note I'm not on the  
20 certificate of service, counsel of record in this  
21 case -- that changed some of the positions they  
22 brought with regard to this summary judgment. So I  
23 want to point that out to Your Honor. I think it's  
24 improper to change it on the Friday before of what  
25 the summary judgment motion is going to be, and

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1 anything that is in what they call the  
2 revised memorandum that changes the grounds --

3 THE COURT: Do you need additional time?

4 MR. MCDONALD: -- is improper.

5 well, Your Honor, I haven't even had a chance  
6 to go through it, see what the merit is. I've heard  
7 the argument --

8 THE COURT: Do you need additional time to

9 respond?

10 MR. MCDONALD: I can respond to the portions of  
11 the motion for summary judgment as it was moved and  
12 alleged based upon collateral estoppel.

13 THE COURT: Do you need additional time in  
14 regards to the revised memo?

15 MR. SILVERNAIL: Not only do I need additional  
16 time, I need to get discovery from these people. We  
17 don't have any discovery from them. We have been  
18 thwarted at every turn in this case from taking  
19 discovery. And the argument that was just made to  
20 Your Honor was, the primary purpose of my clients  
21 for bringing this case was X, Y, and Z. That's  
22 Mr. Gende on what their primary purpose is. But  
23 we're not allowed to ask them the question.

24 Mr. Wilson is a plaintiff in this case. This  
25 is not a class action. He doesn't let somebody else

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1 prove up his -- he's got to come into court and  
2 prove up his causes of action just like we do. But  
3 to suggest that at the summary judgment stage we  
4 don't get to do any discovery and Mr. Gende gets to  
5 stand up and say, well, the primary purpose of my  
6 clients for abuse of process, for civil conspiracy  
7 was this, and it wasn't that.

8 So, Your Honor, not only do I need additional  
9 time to respond to the substantive things where they  
10 say, well, there is no issue of fact here, we need  
11 to finish discovery. Now, I am prepared, of course,

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12 to respond to collateral estoppel arguments that  
13 have been brought --

14 THE COURT: I simply asked, do you need  
15 additional time?

16 MR. MCDONALD: And I do need additional time as  
17 well as to respond to the motion, but to complete  
18 discovery, as is the law. Summary judgment would  
19 not be appropriate without the plaintiff having a  
20 reasonable opportunity to --

21 THE COURT: You've done no discovery? I  
22 thought y'all have done a lot of discovery.

23 MR. MCDONALD: Your Honor, as I understand  
24 it -- and I'm obviously one of the last ones  
25 involved in this case -- these depositions of these

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1 plaintiffs in a six-year-old case have tried to be  
2 taken in 2011, 2012 --

3 THE COURT: I didn't ask you that.

4 MR. MCDONALD: -- and now once again, and we  
5 can't seem to get it done.

6 THE COURT: well, I've heard a lot of  
7 depositions have been taken. Have they not?

8 MR. SILVERNAIL: My understanding is there's  
9 been three depositions taken in this case -- four  
10 depositions taken in this case. So I'm -- and  
11 that's one of the primary purposes -- or one of the  
12 primary arguments we make, is the arguments are  
13 premature.

14 But to answer Your Honor's question directly,

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15 we need additional time to respond to new things

16 that I've just got handed on the bench over there,  
17 and two, we'd need an adequate time to complete  
18 discovery. Now, what that is as a result of  
19 Mr. Gende's inability to communicate with his  
20 clients, I don't know. But that -- that is  
21 something we're entitled to and I think we would  
22 need before we respond to any substantive summary  
23 judgment issues.

24 THE COURT: I'll let you argue it when we come  
25 back on the -- we've got three or four motions we're

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1 going to hear in about two or three weeks. I'll  
2 give you two or three weeks to respond to it.

3 MR. MCDONALD: And, Your Honor, I would -- and  
4 I understand where the Court is coming from. But  
5 with regards to the substantive allegations, I  
6 believe I would be entitled to discovery as well.

7 THE COURT: Well, I'll tell you what; since  
8 you're beating around the bush, just go ahead and  
9 argue them if you don't want any additional time.  
10 I'm trying to help you, son. Just tell me what you  
11 want.

12 MR. MCDONALD: Well, I understand Your Honor.  
13 Here's what I want: I want adequate time to  
14 complete discovery. Okay? And the way this motion  
15 was originally presented was, didn't need to do any  
16 discovery because the motion for collateral  
17 estoppel, which I completely disagree with, prepared  
18 to talk about, prevent these counterclaims. I

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19 believe it does not.

20 THE COURT: All right. Argue your position.

21 MR. MCDONALD: Okay. With regard to collateral  
22 estoppel, copy of the summary judgment from the  
23 motion that I have -- or the memo that I have,  
24 Plaintiffs now assert this motion for summary  
25 judgment on the grounds that Pope's counterclaims

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1 are barred by the Doctrine of Collateral Estoppel  
2 because the Supreme Court's opinion in Wilson v.  
3 Dallas conclusively establishes the validity of  
4 Plaintiffs' claims in this action. That's the basis  
5 for their motion.

6 Now, Your Honor, I have copies and I can  
7 certainly hand them up. This case was pending in  
8 front of Judge Manning. There were several motions,  
9 now five years ago. In a brief, Plaintiffs'  
10 memorandum in opposition to the defendants' motion  
11 to stay stated this: Defendants' pending South  
12 Carolina Supreme Court challenge to the settlement  
13 agreement reached by the attorney general and heirs  
14 and the challenge to the defendants' removal as  
15 trustees of the estate -- what came to be Wilson v.  
16 Dallas -- has no impact on the instant tort action.

17 So five years ago, the position was completely  
18 different in this very case on whether or not that  
19 case had any impact on this instant tort action.  
20 Now, why is that important? There was a motion to  
21 dismiss in this case wherein my client, Ms. Pope,

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22 moved to dismiss the plaintiffs' cause of action,  
23 taking a position she was unsuccessful at taking.  
24 But some of the cases that gave rise to Wilson v.  
25 Dallas established some of the things in this

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1 action, okay, and moved pursuant to rule 12(b)(8).

2 In opposition to that, the plaintiffs,  
3 represented by the same lawyer, stated: "Cases were  
4 resolved --" cited cases. "The cases were resolved  
5 by way of a May 26, 2009 order approving the  
6 settlement. However, not one of the lawsuits  
7 brought in relation to this estate concerns the  
8 breaches of fiduciary duty by Adele Pope and Robert  
9 Buchanan in the management of the estate."

10 They convinced Judge Manning that they were  
11 right. Judge Manning issued an order in this case.  
12 A review of this order -- referencing your  
13 settlement order -- the settlement order you  
14 approved and signed -- a review of this order  
15 indicates that these cases are not similar in any  
16 significant respect of the case involved. Not one  
17 of the lawsuits brought in relation to the Estate  
18 concerns the breaches of fiduciary duty brought by  
19 Adele Pope and Robert Buchanan in the management of  
20 the estate.

21 So why is that important, Your Honor, from our  
22 standpoint at the outset? They're judicially  
23 estopped. They won that motion. They're judicially  
24 estopped from coming in here today and taking a  
25 completely different position, which is Wilson v.

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1 Dallas and the Estate cases conclusively establish  
2 their claims in this case. They can't do it, under  
3 my reading of the law in judicial estoppel.

4 Once they're successful in taking that position  
5 in this case, they don't get to change it again if  
6 they think they've got a new argument that they can  
7 pursue. So that's the first argument that I have in  
8 regard to collateral estoppel.

9 The second argument I have with regard to  
10 collateral estoppel is, nothing in Wilson v. Dallas,  
11 nothing that was read to you, establishes  
12 the elements -- or fails to establish the elements  
13 of abuse of process, tortious interference, civil  
14 conspiracy, or the statutory causes of action, which  
15 I'll go through here in a moment.

16 There was nothing that was ruled upon in that  
17 case that has an impact on whether or not Ms. Pope  
18 can bring an abuse of process for conduct, as  
19 alleged in the complaint, or tortious interference  
20 with contractual relations, as alleged in the  
21 complaint. Nothing in there that would suggest that  
22 what the issue is, is conclusive as to one of the  
23 elements of any of the causes of action that have  
24 been brought.

25 And I'll draw your attention while we're here,

1 talk about the abuse of process. You were handed up  
2 a case -- the Food Lion case. I'd note to Your  
3 Honor that certiori was granted in that case. And  
4 apparently the case settled, because it still  
5 appears on my Westlaw as August 6th, 2003.

6 So I do have a case that postdates that called  
7 Swicegood v. Lott. Certiori was denied in that  
8 case, Your Honor. And that is 379 S.C. 346. And  
9 what happened in that case was the sheriff's office  
10 had a deputy that thought -- they thought he knew  
11 something about -- something else that another  
12 deputy was doing that was improper.

13 And what they did is they went back through his  
14 time records, because at the time, the time sheriffs  
15 would -- not moonlight, but in their off time, they  
16 would take up some private security guard type of  
17 things. And they compared his time records and  
18 there was some overlaps. Right? And they tried to  
19 say, well, you know, we -- you know, he had the  
20 right -- he had the overlap on his time records,  
21 we're good, you can't have an abuse of process case.

22 And what the Court of Appeals said in that case  
23 was: "The existence of probable cause for the  
24 double-dipping arrest warrants is not in dispute.  
25 Nonetheless, there's clearly evidence in this record

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1 that the Department initiated the investigation into  
2 Swicegood's moonlighting with the intent of coercing  
3 him into implicating Galley. The willful act of  
4 abuse of process --" and goes through the elements.

5 "The evidence before us is sufficient to create a  
6 jury question as to both ulterior purpose element  
7 and all three aspects comprising the willful act  
8 element."

9 So I'd submit to you that it's a misnomer to  
10 suggest to this Court that even if Wilson v. Dallas  
11 could be read that way, which it's obviously the  
12 complete opposite position that they were taking  
13 before this Court prior to today, it still doesn't  
14 conclusively establish anything. It's still a jury  
15 question. To use the terms that were thrown about,  
16 primary, whether it's a primary purpose, whether  
17 it's an incidental purpose, those are questions of  
18 fact.

19 So to suggest that Wilson v. Dallas could be  
20 read in such a way where it's conclusively  
21 established their claims with regard to abuse of  
22 process, I think, is completely improper.

23 The next thing they say is, well, it's moot.  
24 The abuse of process claim is moot because the  
25 Supreme Court overturned the settlement agreement.

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1 well, of course that doesn't make this action and  
2 the counterclaims that are brought in this case moot  
3 if the -- you find the money that the bank robber  
4 took, the case isn't moot, okay, it's just that that  
5 settlement agreement was thrown out. But that  
6 doesn't moot her counterclaim, so I wanted to  
7 address that. Somewhat confused.

8  
9 incidental issues related to abuse of process in the  
10 Swicegood case. The other case that's the primary  
11 Supreme Court case, the Winn-Dixie case, the -- a  
12 gentleman was in there getting some things, cooking  
13 oil, I think, and some other things, and put some  
14 sardines or some salted meat or something in his  
15 pocket. And he checked out, he didn't pay for it.

16 The manager comes up to him and basically says,  
17 I think you've been stealing in here before, okay,  
18 so you either give me \$10, even though the cost of  
19 items was only, like, a dollar, or I'm going to call  
20 the cops on you, okay, that's just the way it's  
21 going to be.

22 And what the Supreme Court in the Winn-Dixie  
23 case -- and I would encourage Your Honor, if you  
24 don't have a copy, I believe I have a copy here.  
25 But it reiterates the holding in Swicegood, which

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1 is, regardless of how the guy -- obviously we're not  
2 conceding that Ms. Pope did anything wrong. But  
3 regardless whether the guy walked out of the store  
4 with the salted meats in his -- that's not a  
5 defense, okay, to what you did.

6 And, guess what, like all of these abuse of  
7 processes cases, it was extremely factual in what  
8 they looked into; what is the extent, what -- was  
9 there the willful element of intent? And I think  
10 that makes this especially improper for summary  
11 judgment, but also this notion of conclusively

12 establishes, as a result of the Wilson v. Dallas  
13 decision, we would disagree with.

14 The same is true for civil conspiracy. The  
15 case law under the case that was read to you and  
16 cited in their memo talks about the primary purpose  
17 of bringing the --

18 THE COURT: Well, why should my analysis be  
19 different than the federal judge's analysis?

20 MR. MCDONALD: Well, the federal -- the facts  
21 with regard to the -- and if you read that opinion,  
22 Your Honor --

23 THE COURT: I did.

24 MR. MCDONALD: -- which is attached to their  
25 motion, the facts with the federal case, okay, give

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1 rise to the conduct of Forlando Brown; what did you  
2 do, sir? And this brings me back to my point  
3 earlier: This is not a class-action situation where  
4 one of these plaintiffs gets to ride on the  
5 coattails of other plaintiffs so their conduct is  
6 somehow justified by the conduct of another  
7 individual. If you read that decision, it's focused  
8 on the conduct -- and there's some history with that  
9 decision as well.

10 But it's focused on the conduct of that  
11 individual that brought that federal court case.  
12 The notion that these other -- who is not a party to  
13 the present action -- that these other defendants  
14 somehow simply could not be liable for abuse of

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15 process because of conduct related to that case, I  
16 think, is -- would be incredibly improper. That  
17 doesn't give them a pass under issue of preclusion,  
18 factual -- that there's no link to those things,  
19 would be my submission on the federal court case.

20 with regard to the tortious interference case,  
21 again -- tortious interference cause of action,  
22 again, obviously, you've heard some arguments here  
23 that are new with regard to whether or not they  
24 don't believe that there was a contract. And,  
25 obviously, I would continue -- or have my continued

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1 objection to that on the basis I just got that  
2 argument before this hearing started.

3 But with regard to the collateral estoppel  
4 element, the facts or scenario or the elements of a  
5 tortious interference case are not precluded by the  
6 ruling in Wilson v. Dallas. There's no finding in  
7 Wilson v. Dallas, even if the plaintiffs are not  
8 judicially estopped from making that -- or taking  
9 that position, which we believe they are.

10 There's no finding that either proves or  
11 forbids facts associated with those causal elements.  
12 It just doesn't line up that way, it's not that  
13 simple, and would be inappropriate for collateral  
14 estoppel at this stage in summary judgment and, we  
15 would take the position, at any stage.

16 With regard to the fraud statute, you heard  
17 some argument, Your Honor. And I believe the  
18 position was, there's not any case law, Judge, so we

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19 don't know how this statute applies. Well, what I  
20 typically do is I read the statute, because my  
21 position is that legally a statute is to be given  
22 its plain and ordinary meaning. And to the extent  
23 it's not ambiguous going down that road, well, then  
24 you don't have any case law and, quite frankly, you  
25 don't need any case law.

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1 And what that section says is: "Whenever fraud  
2 has been perpetrated in connection with any  
3 proceeding or any statement filed under this code,  
4 probate code, or if fraud is used to avoid or  
5 circumvent the provisions or purposes of this code,  
6 any person injured thereby may obtain appropriate  
7 relief --" it goes on -- "against the perpetrator of  
8 the fraud." And it specifically talks about third  
9 parties up to and including saying you can't go up  
10 against a bona fide purchaser.

11 So our position on that would be, with regard  
12 to collateral estoppel, is any person can bring it.  
13 There was no finding in the Supreme Court, Wilson v.  
14 Dallas, once again, assuming that they're not  
15 judicially estopped from taking this position, that  
16 Ms. Pope wasn't injured by a fraud, that there was a  
17 fraud, that there wasn't a fraud and, therefore,  
18 would be inappropriate for collateral estoppel.

19 with regard to the attorneys' fees, 62-7-1004,  
20 once again, the statute reads: "In a judicial  
21 proceeding involving the administration of a trust,

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22 the Court, as justice and equity may require, may  
23 award costs, expenses, including reasonable  
24 attorneys' fees to any party to be paid by another  
25 party or from the trust of the subject of the

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1 controversy.

2 Once again, as this motion was originally  
3 brought under collateral estoppel, it says: "Pope  
4 cannot show that award of attorneys' fees would be  
5 required by justice and equity, once again pointing  
6 back to Wilson v. Dallas which did not have any  
7 bearing on 4900 because it wasn't related to 4900,  
8 as was the position of the defendants when they  
9 survived the motion to dismiss."

10 So there was no determination that justice and  
11 equity would not require attorneys' fees in this  
12 case, one; two, the record in Wilson v. Dallas, if  
13 I'm not mistaken, was closed in, I believe, 2009,  
14 Your Honor. And so the notion that collateral  
15 estoppel somehow would give rise to conduct and  
16 events that occurred after the record was closed is  
17 also a misnomer to me and, I think, would be  
18 inappropriate.

19 Now, in response to a few of Mr. Gende's  
20 arguments, the primary arguments, as I heard them,  
21 as I've addressed so far, is the collateral estoppel  
22 element with regard to Wilson v. Dallas. The issue  
23 related to the application of collateral estoppel at  
24 the summary judgment stage requires the -- is still  
25 subject to that standard of viewed in the light most

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1 favorable to the plaintiff -- or to the nonmoving  
2 party. And there is not -- there is not a scintilla  
3 of evidence to suggest one way or the other, okay,  
4 in a preponderance of the evidence burden of proof.

5 That -- the representations that are made in  
6 this brief with regard to collateral estoppel are  
7 made in a light that they want it to be viewed.  
8 They want it to be read that way and read in such a  
9 way that establishes these things. I would suggest,  
10 Your Honor, that for that very reason it's  
11 inappropriate for summary judgment, notwithstanding  
12 the fact that we believe they're judicially estopped  
13 from taking the position and notwithstanding the  
14 fact that Wilson v. Dallas doesn't do that. From  
15 the standpoint of our reading, it doesn't establish  
16 any of those things, as we just went through, which  
17 is the elements of these counterclaims.

18 But I did want to point out to Your Honor that  
19 the way I heard the argument from the other side was  
20 simply, we want it to be read in a way that's most  
21 beneficial to us. And the highlight that I wanted  
22 to bring that out was the quote: "Everyone had the  
23 same justification for bringing this case." well,  
24 what does that mean? Wilson v. Dallas doesn't say  
25 what their justifications were for bringing this

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1 case, doesn't have anything to do with it. So I

2 think that for those grounds, summary judgment would  
3 be inappropriate.

4 We have a memorandum here that we filed in  
5 opposition that I can hand up to Your Honor. I'm  
6 not sure if you have a copy of it.

7 THE COURT: Please hand it up.

8 MR. MCDONALD: This is our memorandum in  
9 opposition to the motion for partial summary  
10 judgment that they filed. And I have a copy for  
11 Your Honor if you'd like. Actually, I have two.

12 THE COURT: Thank you. Anything else?

13 MR. MCDONALD: Yes, Your Honor. We'd just rely  
14 on the filings in the record, including the  
15 affidavit of Ms. Pope. I think it was filed in  
16 conjunction with both this motion and the next  
17 motion that's set to be heard. Thank you, Your  
18 Honor.

19 THE COURT: All right. Anything in reply?

20 MR. GENDE: A few things, Your Honor. I think  
21 it's interesting --

22 THE COURT: Speak up for me.

23 MR. GENDE: I think it's interesting that  
24 counsel would find some fault in us e-mailing them  
25 our revised memorandum on Friday and I get handed

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1 their memorandum in opposition now. Unless I'm  
2 missing something, I haven't gotten it before.

3 THE COURT: That's okay. Let's not --

4 MR. GENDE: No. It's just --  
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THE COURT: Go to the merits.

MR. GENDE: There's -- I think there's some of the merits in there. Let me just quickly address the items that have been raised.

THE COURT: Well, are you taking an inconsistent position now that you took with Judge Manning?

MR. GENDE: Well, let's look at that.

THE COURT: Let's do look at it.

MR. GENDE: Where is the item they handed up? Okay. They handed up a memorandum in opposition to defendants' motion to stay filed in 2011. Okay. I haven't had time to go read back through that whole thing. Counsel referred to some other cases. Now, he hasn't handed those to me and I don't know what cases he's talking about and I don't know what positions he's talking about. Maybe he's going to hand that to me now and I'll be able to see it. I guarantee you the date is prior to the determination of Wilson v. Dallas.

And to quote Amos, I'm not the profit and I'm

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not the son of a profit. No one knew what Wilson v. Dallas was going to do, no one knew what the Supreme Court was going to do. So positions that we were taking prior to the subsequent intervening, and in many ways earth-shattering event in Wilson v. Dallas cannot be used against us to indicate that we're taking an inconsistent position.

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8 New information has come down the pipe. The

9 Supreme Court spoke on things in Wilson v. Dallas.  
10 Therefore, again, I haven't had time, because they  
11 haven't given me the benefit of this either, to  
12 review all of their arguments. But I'd say we're  
13 not -- when all of the information is taken into  
14 account, Wilson v. Dallas included, we are not  
15 taking prior inconsistent positions. So that's --  
16 without addressing each one of them individually, I  
17 would say that.

18 I don't believe I weaved through facts when I  
19 presented my argument, and you can be the judge of  
20 that. The items that we raised, for example, the  
21 primary purpose, there is no need for any discovery  
22 to be on that because if there's another purpose --  
23 and Wilson v. Dallas conclusively establishes that  
24 she was removed for cause, discord among the family  
25 members, problems with the payment of attorneys'

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1 fees, problems with the sale of the Grammy, items  
2 that we allude to.

3 Since the Supreme Court has conclusively  
4 established that, the primary purpose cannot be  
5 bringing the case either for an abuse of process or  
6 for civil conspiracy. We all are bound together.  
7 It's conclusively established that we're all bound  
8 together. You know we're all bound together.

9 I'll be happy if I need to -- and just for  
10 purposes of the record, I'll hand up the settlement  
11 agreement and the addendum that you approved which

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12 shows that that's what binds my clients together.  
13 So they all have the same justification in bringing  
14 the suit. That's not going to change with  
15 discovery. The settlement agreement is what it is.

16 The fact that it was overturned doesn't vitiate  
17 that argument. At the time of our bringing the  
18 suit, the settlement agreement was, in fact, in  
19 effect. So just for the completeness of the record,  
20 if I may approach, I'll hand those to the court  
21 reporter.

22 (Defendants' Exhibit No. 1 marked for  
23 identification and received in evidence.)

24 We aren't arguing about establishing the  
25 elements of any causes of action, because I think I

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1 stated clearly. And I won't rehash every one of  
2 them. We're arguing that the holding in Wilson v.  
3 Dallas means Ms. Pope cannot sustain certain  
4 elements required by law of her causes of action.  
5 That's why the issue of preclusion is appropriate,  
6 and that's why discovery is not necessary, and  
7 that's why I did not read through the facts and, I  
8 will submit, that is, in part, why we wanted to make  
9 that very clear in the revised memorandum.

10 THE COURT: Thank you.

11 All right. Mr. Jones.

12 As to the motion for summary judgment, I want  
13 proposed orders within --

14 MR. GENDE: Whatever pleases Your Honor.



19 MR. JONES: Yes, sir. Your Honor, Sonny Jones,  
20 State Attorney General's Office. At the counsel  
21 table with me is Assistant Deputy Attorney General  
22 Mary Frances Jowers.

23 I would like to comment on the last argument.  
24 If we can go back to your ruling on the judicial  
25 estoppel issue, your ruling on the Wilson v. Dallas

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1 case, I would like to go back there, but we can't do  
2 that.

3 On the issue of the AG being dropped, I think  
4 it's helpful to kind of give a background of what  
5 Your Honor probably knows but I'd like to put in the  
6 record as far as why the AG is in charitable trust  
7 cases. There's statutory law in 1-7-130, there's  
8 common law in the cases. If you go to Epworth, you  
9 go to the McMaster case, or even the Wilson v.  
10 Dallas case, it talks about the responsibility of  
11 the Attorney General's Office and the public  
12 interest to protect charitable trust, prevent  
13 breaches in the administration of the trust, and to  
14 protect known and unknown beneficiaries.

15 With that in mind, Your Honor, back in 2007 in  
16 September we approached Your Honor. We became  
17 concerned about the current James Brown case, the  
18 actions of the trustees that were currently trustees  
19 of the case -- two of them were left at that time, I  
20 believe -- and then the subsequent appointment of  
21 Mr. Buchanan and Ms. Pope as far as, initially,

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22 conflict of interest, also about the fact that our  
23 contention was that they were not properly  
24 appointed.

25 So we had an interest to stay in that case.

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1 And we stayed in that case through the decision by  
2 the State Supreme Court in Wilson v. Dallas. And  
3 based upon our reconsideration in that case, which  
4 we've attached to our motion that we filed with you,  
5 we tried to correction some things we thought were  
6 in the record. But one thing we told the Court was  
7 that with the removal of Mr. Buchanan and Ms. Pope  
8 and the appointment of a new trustee, that our job  
9 will be done because we don't need to be in a case  
10 unless we think there's some fraud or mismanagement  
11 or -- and sometimes different interpretations by a  
12 trustee in the law.

13 So, Your Honor, when that case went back to you  
14 in 2013, we approached you in, might have been in  
15 this courtroom or it might have been the one in  
16 Barnwell, saying we understand that Mr. Bauknight's  
17 up for consideration for appointment, our office is  
18 definitely satisfied with the way he is a  
19 professional fiduciary, and that based upon -- I  
20 think you'd appointed him as an SA at the time or --  
21 and also a trustee, temporary trustee -- that we'd  
22 be satisfied and we would take -- and we asked the  
23 Court to let us take in a monitoring role, which  
24 Your Honor did an order of October of that year.

25 So the point is that when -- we have concerns  
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1 we're in cases. And we -- in fact, we are a  
2 necessary party per law, but not an indispensable  
3 party, meaning that everybody basically tells us  
4 about charitable trust cases, but we don't  
5 necessarily have to be in all the cases to get a  
6 final result.

7 THE COURT: well, but you got in the James  
8 Brown case, and then it went up on appeal, and then  
9 Attorney General McMaster engaged the services of  
10 current counsel, I assume, to bring the litigation.

11 MR. JONES: Yes, sir. I'm going to get to that  
12 in a second.

13 There's some confusion on what was the role of  
14 the AG on Mr. Bauknight retaining the wingate firm.  
15 I would go back to, Your Honor, when we had an issue  
16 with Few and Gilreath being hired by Ms. Pope early  
17 on, and we said, Your Honor, we want them to go by  
18 the fee part of the AG's contract because it's a  
19 charity, may be a big charity here, and we recognize  
20 we can't control Ms. Pope on who she hires, but we'd  
21 ask them to try to consider to lower the fee down.  
22 And you pointed to Mr. -- I think Mr. Gilreath in  
23 the crowd out here and said, you go talk to him, but  
24 I don't think you can get his fee down. I said,  
25 Your Honor, we don't have to get his fee down but

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1 find somebody just as good. That's when we went

2 through Mark Bite [phonetic] and Steve Hamm, but  
3 they were not satisfactory to Ms. Pope.

4 In January of -- and filed a motion with you  
5 outlining the different fees, how much less it would  
6 cost in charity on certain levels and we filed that  
7 with you. And you filed an order, which you did in  
8 January, recognizing that we can't control who the  
9 trustee hires. And, in fact, to Mr. Few and  
10 Gilreath's credit they did reduce their fee down for  
11 the whole thing.

12 So when the case came about the deadline for  
13 the 4900 case -- and it was a year, coming up on the  
14 date of a year -- and something having to be done,  
15 our office -- and I was concerned, again, about the  
16 fee. I would like the fee -- if Mr. Bauknight hired  
17 the wingate firm, that the fee be a lower fee for  
18 the charity part.

19 And so you see that letter is in the packet May  
20 18th, 2010. It's a letter to Mr. Bauknight saying,  
21 I understand you're going to hire Mr. Wingate. And,  
22 in fact, he did. And, in fact, to my understanding,  
23 the fee is less for the charity part.

24 we're on the caption of this case, Your Honor,  
25 the 4900 case. And if you look at that caption,

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1 there's a reason for the way it's laid out. At this  
2 time, the case was pending before the State Supreme  
3 court. We didn't know what would happen. And, in  
4 fact, the thought was, if you look at the -- that

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5 first part, you got Mr. Bauknight representing  
6 everybody. And we're included in the complaint as  
7 the beneficiary.

8 And in the second part, you don't see  
9 Mr. Bauknight. And that would be from a strategy  
10 point of view. If the case was overturned and  
11 Ms. Pope and Mr. Buchanan was still in there and  
12 Mr. Bauknight was out, there's a statute of  
13 limitations of one year, she'd be suing herself. So  
14 the fault would be, the strategy part was to keep us  
15 in -- all these in the suit, if it would work that  
16 way.

17 So when the case came out -- so there's no  
18 question at this juncture when this case came out  
19 that Mr. Bauknight was hiring the wingate firm. You  
20 have to keep in mind also, Your Honor, from what I  
21 just said about the law, is we only have one reason  
22 to be in this case, and that is to protect the  
23 charitable beneficiaries and to protect the  
24 charitable trust.

25 Under 62-7-405, the probate code allows the

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1 attorney general, a trustee, or a party with a  
2 special interest to protect the charitable trust.  
3 So when Mr. Bauknight was appointed back in the  
4 earlier case by you, we're satisfied with Mr.  
5 Bauknight, we're stepping back.

6 In this case when Mr. Bauknight brought the  
7 action, Mr. wingate's firm, they were representing

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8 our interest. They, in effect, were our lawyers.

9 No different than if Mr. Few and Gilreath were here  
10 today, I'd be sitting back there and I'd say good  
11 job because you're our lawyers for the charitable  
12 interest.

13 Now, that may be a communication, that may be  
14 bad words, I would say, but when I deal with fee  
15 contracts -- and I've dealt in our office, for ten  
16 years, probably 20. I'm probably the sole person  
17 outside of maybe two of them. It's pretty rigorous.  
18 we've been to the Supreme Court twice, been attacked  
19 two or three times about fee contracts. All that we  
20 intended in this one and all that was included was  
21 the fee part, not anything else on control or  
22 anything else.

23 So Mr. Bauknight hired Mr. -- the Wingate firm.  
24 And right now, when we responded with consideration  
25 with the Supreme Court, said, we want to make sure

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1 you understand our position, we aren't going to  
2 argue with you about what you did, but let you know  
3 we aren't trying to control everything, but with you  
4 saying a new trustee is going to be appointed, we're  
5 going to step back. That's what we told the Supreme  
6 Court in our reconsideration, which we filed with  
7 you. That's the same position we took when we went  
8 down to, I think it was, Barnwell and you assigned  
9 Mr. Bauknight; let us step back to a monitoring  
10 role, we don't need to be there.

11 So what we're picking up today is a motion that  
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12 we filed back in 2013, I think, to be dropped. Our  
13 job is done, Mr. Bauknight is still there, the  
14 courts appointed him, got a great firm with  
15 Mr. Wingate, he's representing Wingate firm to  
16 Mr. Bauknight, our interest, and the charity. So  
17 they're our lawyers in effect because they are  
18 representing our interest. And I wouldn't be able  
19 to stand up and say anything with Mr. Gilreath and  
20 Few, so there's no reason for us not to be dropped  
21 in the case today.

22 Now, I did make a notice of special appearance.  
23 I hope Your Honor will give us that. We've been  
24 talking here for a little while. But it's necessary  
25 to argue that motion.

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1 Now, the issue could come up on the  
2 counterclaim. Now, the counterclaim has not been  
3 resolved, that's why I wanted it to be argued before  
4 we argued our case so I wouldn't have to go into  
5 much detail. Our position, one, would be that any  
6 counterclaim, if it was found to be against the  
7 parties, at that time would be for the interests  
8 that were in the case.

9 And what is that interest? To protect the  
10 charitable beneficiaries. So anything that goes --  
11 if it's meritorious in the counterclaim, if you  
12 don't drop them today, would be against the  
13 charitable beneficiaries. That's why we're in the  
14 case, not the AG's office.

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15 So, first of all, we should be dropped. We

16 have asked the Supreme Court that. We're satisfied  
17 with Mr. Bauknight's professional fiduciary,  
18 satisfied with wingate firm. We don't need to be in  
19 this case. Justice Toal said outside of fraud or  
20 concern, you don't need to be in the case. And on  
21 the counterclaim, we're saying that would go against  
22 the charitable beneficiaries, not go against the AG.

23 Now, following up on that, just looking, Your  
24 Honor, at the counterclaims -- and this is kind of  
25 echoing what Mr. Gende said. There's no question on

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1 the abuse of process. They're saying you filed it  
2 to get an advantage in the Wilson v. Dallas case.  
3 Well, that case is over, and it shows it was  
4 meritorious. It shows that there were problems with  
5 Mr. Buchanan and Ms. Pope. So we think, number one,  
6 on its face, that part of the counterclaim is gone.

7 Number two, on the conspiracy, Mr. Gende  
8 addressed it. In addition to what he said, there --  
9 her claim against the AG's office in paragraph 88 is  
10 we didn't help her out in the federal case. Well,  
11 in the federal case, Forlando Brown sued her for  
12 conflict of interest. That was the same -- because  
13 initially, Your Honor, we filed a conflict of  
14 interest against Ms. Pope and Mr. Buchanan in your  
15 court, and I think they adopted our pleadings.

16 But so that was her complaint against us then,  
17 and that we gave no notice to the settlement. I  
18 would ask you to take judicial notice of the

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19 documents that we filed in support of our  
20 reconsideration. There's an issue that Mr. Buchanan  
21 and Ms. Pope did not know the very date. But you'll  
22 see it in the record under oath when Mr. Levenson  
23 and Professor Medlin questioned her; there could  
24 have been issue of the settlement, but did not know  
25 about the date. So we're saying that's not

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1 meritorious on its face.

2 And the issue that I think Mr. Gende has  
3 addressed on the counterclaim about a court order on  
4 the contract is fine. Plus, with the June 15 order,  
5 that Supreme Court said what a great job you're  
6 doing, Your Honor, and you were -- and I think  
7 you're doing a great job, and others think the same  
8 thing -- is they said, Ms. Pope, we don't want you  
9 to mess with the James Brown case anymore, you're  
10 costing a lot of time and a lot of money.

11 well, this part of her coming in under  
12 62-1-106, how can she say and complain that the  
13 proper heirs were not designated? She has no  
14 standing. So -- but that's gone per the Supreme  
15 Court order. That's, once again, some things that  
16 have happened after the letter or the motion that  
17 Mr. Gende filed early on in the 4900 case because  
18 the Wilson v. Dallas changed some things. I'm a  
19 witness to that; it changed some things.

20 And that would be -- Your Honor, in summation,  
21 we'd ask, per our request, per our statements to the

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22 Supreme Court, that we be dropped as a party in this  
23 case and the other case. We've been dropped in the  
24 other case. The reason is we got a great trustee in  
25 both spots --

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1 THE COURT: Dropped in the other case?

2 MR. JONES: In the case below. We came in and  
3 withdrew the first case and you allowed us to  
4 withdraw because of Mr. Bauknight being appointed.  
5 In this case, we've been in this case, Mr. Bauknight  
6 has hired the Wingate firm, we're satisfied with  
7 them, they're our lawyers the same as Few and  
8 Gilreath are.

9 If anybody thinks that when I -- when somebody  
10 says client and they're thinking of something else,  
11 that's my problem on communication. Because, Your  
12 Honor, for example, when you think of national  
13 championship football, you think of Carolina. You  
14 know what I think of? I think of Clemson. That's  
15 communication. It's my communication. I said that  
16 they're our lawyer. Okay?

17 But with a history of me doing all the fee  
18 contracts and doing these cases with charities, that  
19 is what it was. It was exactly that; that they're  
20 representing our interest. For those reasons, I  
21 would ask that the Attorney General's Office and the  
22 Attorney General be dropped in this case.

23 THE COURT: Thank you. Who is going to  
24 respond?

25 MR. McDONALD: I will, Your Honor.

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1 THE COURT: Mr. McDonald.

2 MR. MCDONALD: Brent McDonald once again. May  
3 it please the Court.

4 THE COURT: Yes, sir.

5 MR. MCDONALD: Mr. Jones said a lot of things.  
6 This is a Rule 21 motion that he's made to be  
7 dropped pursuant to Rule 21, which is the misjoinder  
8 rule. There's been no allegation of misjoinder  
9 under that rule at all just at the outset. So for  
10 that very reason, this motion in and of itself  
11 should be denied because Rule 21 has no bearing on  
12 what I understand they're asking the Court to do.

13 Now, there's been at least two issues in this  
14 case when it was before Judge Manning wherein my  
15 client tried to get the Attorney General out of the  
16 case. What are you doing in a private tort action  
17 with other private plaintiffs suing me, a private  
18 citizen?

19 wherein, the Attorney General, by and through  
20 their lawyers, took the position, no, we are a  
21 proper party to this case, we are a party to this  
22 case. And, in fact, they stated, to use Judge  
23 Couch's words -- because they had gone and said,  
24 well, the Lilly -- the Eli Lilly case allows us to  
25 be a party. To use Judge Couch's words from Lilly,

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1 this is a tort action, plain and simple.

2 well, how it works, Judge, and you know this --  
3 I'm hesitant to even go through it. How it works  
4 is, you bring an action against somebody, and you're  
5 subject to the rules of civil procedure. And the  
6 South Carolina courts have spoke to this. If you  
7 want to come and play in that field, well, then  
8 that's where --

9 THE COURT: well, if you wanted them out back  
10 then, why are you opposing it now?

11 MR. SILVERNAIL: Because now we're six years  
12 later. All right? And what they want -- when we  
13 get in front of a jury one day, they want to say,  
14 well, we're out -- assuming Your Honor rules with us  
15 moving forward and we go and get in front of a jury.  
16 They want to say, we're out because Judge Early said  
17 we could be out.

18 And that prejudices us at this point on the  
19 counterclaims. We're out because we got a judicial  
20 order here and all the reasons that we just heard  
21 from Mr. Jones, this is why we were doing it, and  
22 we've got an order at the end of it.

23 And we think it's inappropriate under Rule 21  
24 because it's just not what Rule 21 allows for, one,  
25 and two, the counterclaims are still pending against

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1 them, and, three, most importantly, perhaps, is  
2 they've jumped into this pool, convinced the judge  
3 on at least one occasion with regard to motion to  
4 dismiss, and another occasion with regard to a --

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5 Pope's motion to disqualify Sweeney, Wingate &  
6 Barrow and to enjoin Russell Bauknight's set  
7 depositions to amend answer, that this is just a  
8 tort action, plain and simple, and they don't get to  
9 have special rules.

10 So just to reiterate, Rule 21 has absolutely no  
11 application to this whatsoever. The motion should  
12 be denied; two, it prejudices our client just to let  
13 them come into the case with the -- we took the  
14 deposition of former attorney general now Lieutenant  
15 Governor McMaster, and he made the point on his own  
16 to say, listen, the attorney general of this state  
17 enjoys a very good reputation. It's not like some  
18 billboard lawyer bringing a case against you, it's  
19 the Attorney General of the State of South Carolina  
20 bringing this case. And that's what happened in  
21 this case, and that's where we are today. And we  
22 think it would be improper to let them be dropped  
23 under Rule 21.

24 MR. BUNDY: Your Honor, I hate to pull on -- do  
25 you mind if I say --

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1 THE COURT: Only one person can make an  
2 argument. But I'll let you do it.

3 MR. BUNDY: Thank you, Your Honor. I'll be  
4 brief.

5 If they want to be dismissed with prejudice,  
6 you know, and we leave our counterclaim, I won't  
7 oppose that. But what I would like from you, if

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8 that's the way to go -- because that's the

9 appropriate way to go. Okay?

10 They have -- to be moved to be dismissed, they  
11 have to have our permission, right, at least at this  
12 point, six years later. They don't have a right  
13 under Rule 21 to get out, but they can absolutely  
14 quit whenever they want to.

15 But if you grant the motion to dismiss, the  
16 only thing I'd like you to do is put in there that  
17 when we try -- when it comes up at trial, that they  
18 were in it and that they got dismissed with  
19 prejudice. They can't come in and give a bunch of  
20 reasons about all this other stuff. What they  
21 really ought to have to -- because they will.

22 That goes to the heart of our counterclaim. If  
23 they can come in and say, we have the judicial  
24 imprimatur, okay, that we brought a case and we  
25 dismissed it without prejudice because we didn't

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1 have any ulterior motives or none of this other  
2 stuff, then they're going to undermine our  
3 counterclaim through this kind of a tricky move.

4 So either they ought to be required to dismiss  
5 with prejudice without the ability to explain that,  
6 or they should be required to come to court, put up  
7 their evidence, and at the end of their case, I'll  
8 move to dismiss based on of lack of evidence under  
9 the hood of directed verdict. You see what I'm  
10 saying?

11 I mean, they came into this thing. They sued  
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12 Adele. She counterclaimed against them. Henry  
13 McMaster, I took his deposition, he said they were a  
14 party. We got a videotape of it. I'd love for you  
15 to see it. We've cut it. We can send it to you.

16 THE COURT: I believe what you say.

17 MR. BUNDY: Sir?

18 THE COURT: I believe what you're telling me.

19 MR. BUNDY: But I -- we went through the -- and  
20 he said -- I said, well, it's not only there,  
21 Mr. McMaster, but in the body of the complaint, you  
22 allege that you're a party. He goes, yeah, it looks  
23 like I'm a party. And we agreed that when he was a  
24 defense lawyer --

25 MR. JONES: Your Honor, I have to object

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1 because I understand that Mr. -- General McMaster  
2 has not reviewed or brought back his transcript.

3 THE COURT: Your objection is noted.

4 MR. JONES: So anything he's saying now is part  
5 and parcel and has not been reviewed in a certified  
6 transcript.

7 THE COURT: Very well.

8 MR. BUNDY: well, he said it under oath. He's  
9 going to have to explain it.

10 THE COURT: Go ahead.

11 MR. BUNDY: He testified -- okay. We went  
12 through the caption. And he testified, yes, we were  
13 a party. I went through the body of the complaint  
14 with him and he testified, yes, we were a party. I

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15 said, Mr. McMaster, you're a lawyer too. I said, if  
16 you were defending this case, would you expect and  
17 read this to say that party is a plaintiff and I  
18 better send him an answer, otherwise I'm going to be  
19 in default, or words to that effect? And he agreed  
20 with me.

21 He also testified he'd never read the will, he  
22 also testified he had not one single personal fact  
23 about one single allegation of the entire complaint,  
24 never read the will.

25 THE COURT: Thank you.

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1 MR. BUNDY: Thank you, Your Honor, for allowing  
2 me to speak.

3 MR. JONES: Short response, Your Honor?

4 THE COURT: Yes, sir.

5 MR. JONES: I think the -- and I'm looking here  
6 for the basis for our -- the drop. I think there's  
7 no injustice to the other side, I think there's no  
8 injustice in our position to be dropped.

9 As far as us being dismissed with prejudice,  
10 Your Honor, I think in any case that we're in, in a  
11 charity case that we're dropped as a party, that  
12 Your Honor has the option in the future, or his  
13 office does, of making a motion to intervene. If  
14 we're out of the case and something goes wrong with  
15 the case, no different than wrong with the case down  
16 below.

17 We have the option because we have a  
18 responsibility of the public interest to come back

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19 into the case. That's why the shoe of dismissal  
20 with prejudice would not be appropriate for the  
21 Attorney General's Office. Thank you.

22 THE COURT: Thank you.

23 All right. Let me have proposed orders within  
24 15 days from both of you.

25 -- END OF TRANSCRIPT OF RECORD --

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1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF LEXINGTON

5

6 I, the undersigned, Bethanie K. Creppon, Circuit  
7 Court Reporter for the Second Judicial Circuit of  
8 the State of South Carolina, do hereby certify that  
9 the foregoing is a true, accurate and complete  
10 transcript of record of all the proceedings had and  
11 the evidence introduced in the hearing of the  
12 captioned cause, relative to appeal in the Circuit  
13 Court for Richland County, South Carolina, on the  
14 29th of August, 2016.

15 I do further certify that I am neither of kin,  
16 counsel, nor interest to any party hereto.

17

18

September 15, 2016

19

20

s/Bethanie K. Creppon

21

Bethanie K. Creppon

22

23

24

25

**LAST WILL AND TESTAMENT  
OF  
JAMES BROWN**

**Introductory Clause.** I, *James Brown*, also known as "The Godfather of Soul", a resident of and domiciled in the Community of Beech Island, County of Aiken and State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

I have six living children: *Deanna J. Brown Thomas; Yamma N. Brown; Vanisha Brown; Daryl J. Brown; Larry Brown; and Terry Brown*. These named children and any of their legitimate issue who shall also be lineage issue of mine shall be the entire class that I acknowledge to be my heirs and issue. Except as otherwise provided in this Will and corresponding instruments, 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.

**ITEM I**

**General Bequest of Personal and Household Effects With a Mandatory Memorandum.** I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, furnishings, pictures, silverware, china, glass, books, jewelry, wearing apparel, boats, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda is found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there is no such memoranda and any subsequently discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death and for whom no effective alternate provision has been made shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memoranda, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my children surviving me in approximately equal shares; provided, however, the issue of a deceased child surviving me shall take per stirpes the share their parent would have taken had he or she survived me. If my issue do not agree to the division of the property among themselves, my Personal Representative shall make such division among

them, the decision of my Personal Representative to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representative may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representative. The cost of packing and shipping such property shall be charged against my estate as an expense of administration.

#### ITEM II

**Pour-Over Gift to Trustee of Testator's Inter Vivos Trust.** I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) under that certain Irrevocable Trust Agreement between me as Grantor and *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) executed prior to or of even date with the execution of this Will. My Trustees shall add the property bequeathed and devised by this Item to the principal of the above Trust and shall hold, administer and distribute the property in accordance with the provisions of the Irrevocable Trust Agreement including any amendments made solely by the Trustee(s), if any had to be made to carry out the terms of said Trust.

#### ITEM III

**Alternate Provision to Incorporate Trust by Reference if Pour-Over is Invalid.** In the event for any reason the bequest and devise above is ineffective and invalid, then I hereby give, devise and bequeath the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this Will, to *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) to be held, administered and distributed in accordance with the provisions of that certain Trust Agreement between me as Grantor and *Alford A. Bradley, Albert H. Dallas, David G. Cannon* as Trustee(s) executed prior to or of even date with the execution of this Will, which Irrevocable Trust Agreement is hereby incorporated by reference and made a part hereof the same as if the entire Trust Agreement were set forth herein, including any amendments thereto made solely by the Trustee(s), if any had to be made to carry out the terms of said Trust.

#### ITEM IV

**Naming the Personal Representative, Personal Representative Succession, Personal Representative's Fees and Other Matters.** The provisions for naming the Personal Representative, Personal Representative succession, Personal Representative's fees and other matters are set forth below:

(1) **Naming Individuals as Personal Representative.** I hereby nominate, constitute and appoint as Personal Representatives of this my Last Will and Testament *Alford A. Bradley, Albert H. Dallas, David G. Cannon*, and direct that they shall serve without bond.

(2) **Individual Personal Representatives Succession.** If any of the three (3) individual Personal Representative should fail to qualify as Personal Representative hereunder, dies, or for any reason should cease to act in such capacity, the remaining Personal Representative(s) shall continue to serve and shall elect and/or appoint another Representative so that at all times there are three (3) individual Personal Representative(s) serving. If the Personal Representatives are unable to come to such agreement as to a successor then they are obligated to seek the advise of the Advisory Board Members set out in that certain Advisory Board document signed and dated of even date with this Will, if there is a then recognized Board in effect. If the Advisory Board is unable to persuade the remaining Personal Representative(s) to reach an election or appointment, then, absent an agreement the court having jurisdiction over this Will shall then appoint the remaining individual Personal Representative who shall also serve without bond.

(3) **Fee Schedule for Individual Personal Representative.** For its services as Personal Representative, the individual Personal Representative shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(4) **Personal Representative Voting Rights.** If there is more than one Personal Representative serving, then the vote of the Personal Representatives for any action hereunder must be by majority action of the Personal Representatives.

#### ITEM V

**Definition of Personal Representative.** Whenever the word "Personal Representative" or any modifying or substituted pronoun therefor is used in this my Will, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

#### ITEM VI

**Powers for Personal Representative.** By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representatives generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow, buy, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, loan, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distributions or divisions in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his or her own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

#### ITEM VII

**Definition of Words Relating to the Internal Revenue Code.** As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to my estate. For purposes of this Will, my "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of my death reduced by the aggregate of (1) the amount, if any, of my exemption allocated to lifetime transfers of mine by me or by operation of law, and (2) the amount, if any, I have specifically allocated to other property of my gross estate for federal estate tax purposes. For purposes of this Will if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of my death.

**ITEM VIII**

**Statement by Testator of Intent Not to Exercise Power of Appointment.** I hereby refrain from exercising any power of appointment that I may have at the time of my death.

**ITEM IX**

**Severability and State Law to Govern.** If any part of this Will shall be invalid, illegal or inoperative for any reason, it is my intention that the remaining parts, so far as possible and reasonable, shall be effective and fully operative. Regardless of the situs of execution of this Will, it is acknowledged that it is deemed to have been executed in conformity with and shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

**ITEM X**

**Provisions as to any Contest of My Estate Plan.** Should any beneficiary under this Will or my Irrevocable Trust, and as amended, dated prior to or of even date with this Will and as referred to herein, become an adverse party in a proceeding for the probate of my Will or in any manner contest the validity of my Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased me. Furthermore, any person not provided for in this Will, my Irrevocable Trust or other such instrument, whether or not claiming to be a beneficiary or party in interest, shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of my estate, as I herewith disclaim and disinherit any such persons. Any such alleged claim shall be considered an affront to my wishes and shall be challenged as such by my fiduciaries.

**END OF PAGE  
SEE NEXT PAGE FOR EXECUTION**

Testimonium, Attestation and Self-Proving Affidavit. I, James Brown, the Testator, sign my name to this instrument this 1 day of AUGUST, 2000, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind (with the capacity to understand the nature of my act, to know my property, and to remember and recollect the natural objects of my bounty), and under no constraint or undue influence.

[Signature] (Seal)  
James Brown, Testator

We, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind (with the capacity to understand the nature of his act, to know his property, and to remember and recollect the natural objects of his bounty), and under no constraint or undue influence.

[Signature] (Seal)  
(Witness)  
[Signature] (Seal)  
(Witness)

The State of South Carolina  
GEORGIA  
County of Aiken  
RICHMOND )

Probate

Subscribed, sworn to, and acknowledged before me by James Brown, the Testator, and subscribed and sworn to before me by the above signed witnesses, this 1<sup>st</sup> day of August, 2000.

[Signature] (Seal)

Notary Public for SC

My Commission Expires: 3/17/2000

Last Will and Testament of James Brown  
e:\6010.1\last will J. Brown FNL2

**IRREVOCABLE TRUST AGREEMENT  
OF  
*JAMES BROWN***

H. Dewain Herring, Esquire  
Law Offices of H. Dewain Herring, LLC  
3612 Landmark Dr., Suite A  
Columbia, South Carolina 29204

00030

**IRREVOCABLE TRUST AGREEMENT**

**Introductory Clause**

**ARTICLE I**

**Provisions for Grantor During Lifetime**

**ARTICLE II**

**This Trust Shall Be Irrevocable**

**ARTICLE III**

**Grantor's Right to Add Property**

**ARTICLE IV**

**Trustee's Shall Hold, Manage, Invest and Reinvest the Trust Property**

**ARTICLE V**

**Continuance of *The Brown Family Education Trust* and *The James Brown "I Feel Good" Trust***

**ARTICLE VI**

***The Brown Family Education Trust* Introductory Provision  
Division Into Shares for Grandchildren  
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## IRREVOCABLE TRUST AGREEMENT

**Introductory Clause.** This Agreement made between *James Brown*, also known as "The Godfather of Soul", hereinafter referred to as the Grantor and *Alford A. Bradley, Albert H. Dallas, David G. Cannon* hereinafter referred to singularly and/or collectively as the Trustee(s). For and in consideration of the mutual covenants and promises set forth herein Grantor and Trustee(s) agree:

### ARTICLE I

Grantor transfers and delivers to Trustee(s), in trust, the property described in Schedule A, B and/or C attached and incorporated by this reference. Receipt of the property is acknowledged by Trustee(s). The property, and any other property subject to this trust, shall constitute the trust estate, and shall be held in trust for the uses and purposes expressed in this trust agreement and shall be subject to the conditions provided in this instrument.

### ARTICLE II

This trust shall be irrevocable. Grantor waives the right and the power to alter, amend, revoke, or terminate the trust or any of the terms of this trust agreement. Grantor renounces any power to determine or control, by alteration, amendment, revocation, termination, or otherwise, the beneficial enjoyment of the principal or income of the trust. Grantor renounces any interest in the income or principal of the trust estate, whether vested or contingent, including any reversionary interest or possibility of reverter.

### ARTICLE III

Grantor and any other person shall have the right at any time to add property acceptable to Trustee(s) to this trust. The property, when received and accepted by Trustee(s), shall become part of the trust estate.

### ARTICLE IV

The Trustee(s) shall hold, manage, invest and reinvest the Trust Property, shall collect and receive the income from it and, after deducting all necessary expenses incident and as allowed herein for administration of this Trust, shall dispose of the income and principal as follows:

At anytime and from time to time Trustee(s) may distribute to or for the benefit of any beneficiary so much of the principal and income of the Trust as Trustee(s) shall determine in Trustee(s)'s absolute and sole discretion. The income not so distributed shall be accumulated and added to the principal of the Trust.

Payments made to or for beneficiaries pursuant to this section need not be equal and shall be made in the Trustee(s)'s absolute and sole discretion.

Payments may be made currently and during the life of the Grantor:

- To or for the benefit of the Grantor during his life
- To or for the benefit of the Beneficiaries of the Brown Family Education Trust pursuant to its terms as set out
- To or for the benefit of the Beneficiaries of the James Brown "I Feel Good" Trust pursuant to its terms as set out.

Upon the death of the Grantor all principal and undistributed income of this Trust shall at that time be consolidated, distributed and paid over to the Trustee(s) of the Brown Family Education Trust and the Trustee(s) of The James Brown "I Feel Good" Trust and shall continue to be administered as therein set out.

#### 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 (which shall include any property which may be added from the Grantor's's general estate) into Two (2) separate shares, hereinafter designated as "*The Brown Family Education Trust*" and "*The James Brown "I Feel Good" Trust*." The two shares shall be equal, subject only to the limitation imposed on *The Brown Family Education Trust* by the maximum available generation-skipping transfer exemption as computed by the following formula. *The Brown Family Education Trust* shall be a fraction of the Trust Estate (undiminished by estate, inheritance, succession, death or similar taxes), 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 of such fraction may be zero, in which case no property shall be distributed under this paragraph to *The Brown Family Education Trust*. 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*.

*The James Brown "I Feel Good" Trust* shall be the balance of the Trust Estate.

*The Brown Family Education Trust* and *The James Brown "I Feel Good" Trust* shall be administered as hereinafter set forth.

## ARTICLE VI

***The Brown Family Education Trust*** Introductory Provision. ***The Brown Family Education Trust*** shall be held, administered and distributed as follows:

(1) **Division Into Shares:** Upon the death of the Grantor, the Trustee shall divide this Trust as then constituted into equal separate shares so as to provide one (1) share for each then living grandchild, who has not reached the age of Thirty-Five (35), of the Grantor. Each share shall be distributed or retained in trust as hereinafter provided.

(2) **Income/Discretionary Invasion of Principal.** Net income from each share so provided for above shall be paid to or applied for the benefit of such grandchild for that grandchild's education and related education expenses until complete distribution of the share as herein provided. Any income not so paid or applied shall be accumulated and added to principal for that share. In addition to income, the Trustee may pay to or apply for the benefit of such grandchild such sums from the principal of his or her share as in its sole discretion shall be necessary or desirable from time to time for his or her education, taking into consideration to the extent the Trustee deems advisable, any other income or resources of such grandchild known to the Trustee. My intent is to provide for any and all primary, secondary and post-secondary education, whether grade school, middle school, high school, vocational training, college or post-graduate education, or professional schooling, for each grandchild as can best encourage and allow each grandchild to reach his or her full potential. This directive shall include, but not necessarily be limited to, public, private, parochial, denominational and/or any government schooling and educational opportunities.

(3) **Distribution of Shares and Termination of Trust.** After division into shares for the Grantor's grandchildren, upon each grandchild of the Grantor attaining the age of Thirty-five (35) years, or death, whichever first occurs, and prior to complete distribution of his or her share, the undistributed balance of such named grandchild's share shall be added to ***The James Brown "I Feel Good" Trust*** and shall thereafter be administered and distributed according to its terms. When no grandchild is living who is under the age of Thirty-five (35) years, ***The Brown Family Education Trust*** shall terminate, and all accumulated income and principal shall be paid over and added to ***The James Brown "I Feel Good" Trust*** and shall thereafter be administered and distributed according to its terms.

## ARTICLE VII

***The James Brown "I Feel Good" Trust*** Introductory Provision. ***The James Brown "I Feel Good" Trust*** shall be held, administered and distributed as follows:

(1) **Purpose of *The James Brown "I Feel Good" Trust*.** It is my intent that the net income and such portions of principal of this Trust as determined by my Trustees in their sole and absolute discretion, shall be used solely for the tuition, educational expenses, and financial

assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions available in the States of South Carolina and Georgia. My Trustee(s) may, upon their discretion, include any of my heirs and issue herein defined for purposes of fulfilling the terms of this Trust.

My Trustee(s) shall exercise their sole and absolute discretion in making the decisions necessary to fulfill the terms and directives of this Trust. The Trustee(s) are however, directed to make payment directly to such educational entities and/or institutions. All entities and/or institutions shall qualify as bodies corporate, politic or educational under IRS Code 501 (C)(3), 115,117, et seq., status and as amended, or such other same or similar IRS Code and/or Section status as shall achieve tax free income and distribution as I desire that the maximum benefit be for education.

(2) My intent is to provide for any and all primary, secondary, and post-secondary education, whether grade school, middle school, high school, vocational training, college or post-graduate education, or professional schooling, for each of the beneficiaries as can best encourage and allow each of the beneficiaries to reach his or her full potential. This directive shall include, but not necessarily be limited to, public, private, parochial, denominational and/or any government schooling and educational opportunities.

(3) **Discretion to Sell Trust Property.** I authorize and empower my Trustee to sell any portion or all of said property at private or public sale at such price as they deem most advantageous, at such time or times as my Trustee may deem advisable in its discretion, and to execute good and sufficient deeds and other instruments necessary or proper to convey and transfer the same to the purchasers, who shall not be bound to see to the application of the purchase money. I direct that my Trustee shall convert the assets of this Trust to income producing assets within such reasonable time as in my Trustee's sole discretion, it shall determine is most advantageous to carry out my intent and the purposes of this Trust.

(4) **Trustee must not Engage in Self-dealing.** My Trustee is prohibited from engaging in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986, from retaining any excess business holding as defined in Section 4943© of the Internal Revenue Code of 1986, from making any investments which would subject the Trust to tax under Section 4944 of the Internal Revenue Code of 1986, and from making any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986. My Trustee shall make distributions at such time and in such manner as to not subject the Trust to tax under Section 4942 of the Internal Revenue Code of 1986.

(5) **Trustee must not distribute as to incur taxes upon this Trust.** All principal held and distributions made as described herein shall be for such entities, organizations, funds, as shall qualify under such provisions of the Internal Revenue Code, and as amended so that such principal and distributions are exempt from payment of taxes.

(6) **Power of Amendment.** The Trustee(s) shall have the power to amend the Trust in any manner required for the sole purpose of ensuring that the Trust qualifies and continues to qualify as an exempt entity in compliance with the Internal Revenue Code, and as amended.

## ARTICLE VIII

**Trustee Succession, Trustee's Fees and Other Matters.** The provisions for naming the Trustee, Trustee succession, Trustee's fees and other matters are set forth below:

(1) **Individual Trustees Succession.** If any of the three (3) individual Trustee should fail to qualify as Trustee hereunder, dies, or for any reason should cease to act in such capacity, the remaining Trustee(s) shall continue to serve and shall elect and/or appoint another Trustee so that at all times there are three (3) individual Trustee(s) serving. The notice and election provisions of Article XIII, Powers of Trustee(s) Succession shall be followed.

(2) No Trustee(s) or Successor Trustee(s) shall be required to give any bond or other security.

(3) **Fee Schedule for Individual Trustee.** For its services as Trustee(s), the Trustee(s) shall receive reasonable compensation for the services rendered and reimbursement for reasonable expenses.

(4) **Trustee Voting Rights.** If there is more than one Trustee serving, then the vote of the Trustees for any action hereunder must be by majority action of the Trustees.

(5) **Limitations on Trustees.** No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which has been given to the Trustee so as to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.

(6) **Advisory Board.** There shall exist an Advisory Board of three (3) initial members. This Board shall confer with and advise the Trustee(s) in such a manner as would be consistent with Grantors objectives for this Trust. The Trustee(s) may consider, but are not obligated to follow advisories as propounded by the Advisory Board. The Initial Members shall be designated in/or by a separate writing, reference thereto being craved and to be given effect as if such Advisory Board Members were set forth herein.

## ARTICLE IX

**Definition of Trustee.** Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

## ARTICLE X

**Powers for Trustee.** The Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(1) The Trustee(s) shall have the power to distribute the income or principal or both of the Trust Estate to or for the benefit of all or any one or more of the Beneficiaries as the Trustee(s) may in their sole and absolute discretion think fit, provided that no such power may be exercised to violate any applicable rule against perpetuities.

It is Grantor's intention to hereby create a discretionary trust and, except as otherwise provided herein, no Beneficiary hereunder has any ascertainable right, title, or interest to any portion of the Trust Estate, whether determined actuarially or otherwise; and the Trustee(s) have the discretion to completely withhold distributions from any one Beneficiary.

(2) The stated intent(s) of this Trust Agreement and various Trust(s) established or to be established does not prevent my Trustee(s) from making or directing an allocation of up to 50% of the gross income from this Trust for the payment of administrative and managerial expenses incurred on behalf of this Trust as in the sole discretion of my Trustee may be advisable.

(3) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or non-productivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

(4) To invest and reinvest all or any part of the Trust Estate in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee's Agents, if any, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

(5) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(6) To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

(7) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(8) To sell or exercise stock subscription or conversion rights.

(9) To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

(10) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(11) To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

(12) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(13) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

(14) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

(15) To continue and operate any business owned by the Grantor at the Grantor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

(16) To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

(17) To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

(18) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

(19) To compromise, adjust, mediate, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

(20) To employ and compensate agents, consultants, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper and successful administration and investment of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

(21) To determine what shall be fairly and equitably charged or credited to income and what to principal.

(22) To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(23) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

(24) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(25) To purchase property, real or personal, from the Grantor's general estate upon such terms and conditions as to price and terms of payment as the Grantor's personal representatives and the Trustee shall agree, to hold the property so purchased as a part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Grantor's personal representatives and the Trustee are the same shall in no way affect the validity of this provision.

(26) To lend funds to the Grantor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Grantor's personal representatives and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

(27) To receive property bequeathed, devised or donated to the Trustee by the Grantor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to Personal Representatives, donors, insurance companies and other parties adding property to the Trust Estate.

(28) To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with the Grantor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(29) To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Grantor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

(30) To divide property in any trust being held hereunder with an inclusion ratio, as defined in section 2642(a)(1) of the Internal Revenue Code of 1986, as from time to time amended or under similar future legislation, of neither one nor zero into two separate trusts representing two fractional shares of the property being divided, one to have an inclusion ratio of one and the other to have an inclusion ratio of zero, to create trusts to receive property with an inclusion ratio of either one or zero and if this cannot be done to refuse to accept property which does not have a matching inclusion ratio to the receiving trust's ratio, all as the Trustee in its sole discretion deems best.

(31) If the Trustee shall act as the Personal Representative of the Grantor's estate, to elect to allocate any portion or all the Grantor's generation-skipping transfer exemption provided for in Code section 2631 or under similar future legislation, in effect at the time of the Grantor's death, to any portion or all of any other trusts or bequests in the Grantor's Will or any other transfer which the Grantor is the transferor for purposes of the generation-skipping tax. Generally, the Grantor anticipates that the Grantor's Personal Representative will elect to allocate this exemption first to direct skips as defined in Code section 2612, then to *The Brown Family Education Trust*, unless it would be inadvisable based on all the circumstances at the time of making the allocation; and to make the special election under section 2652(a)(3) of the Code to the extent the Grantor's Personal Representative deems in the best interest of the Grantor's estate.

(32) The Trustee(s) may acquire on behalf of the beneficiaries, such public support and government funds for which the beneficiary shall qualify; and if such sources of moneys are obtained, the Trustee(s) shall maintain, spend, and account for such funds separately from other trust funds and not commingle such funds with other funds of the trust.

## ARTICLE XI

**Provision for Trustee to Act as Trustee for Beneficiary Under Age Twenty-One.** In case any share hereunder becomes distributable to a beneficiary who has not attained the age of Twenty-one (21), such share shall immediately vest in the beneficiary, but notwithstanding the provisions herein, the Trustee shall retain possession of the share in trust for the beneficiary until the beneficiary attains the age of Twenty-one (21), using so much of the net income and principal of the share as the Trustee deems necessary to provide for the education of the beneficiary, taking into consideration to the extent the Trustee deems advisable any other income or resources of the beneficiary or his or her parents known to the Trustee. Any income not so paid or applied shall

be accumulated and added to principal. The beneficiary's share shall be paid over and distributed to the beneficiary upon attaining age Twenty-one (21), or if he or she shall sooner die, to his or her personal representatives. The Trustee shall have with respect to each share so retained all the powers and discretions it had with respect to the trusts created herein generally.

## ARTICLE XII

**Trustee's Discretion in Making Payments to a Person Under Age Twenty-One, Incompetent, or Incapacitated Person.** In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of Twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of the Trustee unable properly to administer such amounts, then such amounts shall be paid out by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the beneficiary; (2) to the legally appointed guardian of the beneficiary; (3) to some relative or friend for the education of the beneficiary; (4) by the Trustee using such amounts directly for the beneficiary's care, support and education; (5) to a custodian for the beneficiary under the Uniform Gifts or Transfers to Minors Act.

## ARTICLE XIII

**Power of Trustee(s) Successions.** Any Trustee may resign this trusteeship during his lifetime by giving the then remaining Trustee(s) Thirty (30) days notice in writing delivered to the Trustee(s) in person or mailed to the Trustee(s) last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice, or the death of a Trustee(s), the Trustee(s) shall appoint a successor Trustee. Upon the failure of the Trustee(s) to appoint a successor Trustee who accepts the trust within Sixty (60) days from the time notice was delivered in person or mailed to the Trustee(s), or date of death, the Trustee's successor shall be determined by unanimous vote of the advisory board; as then in existence, if at all. Failing such of either voting requirements then the court having jurisdiction over this Trust shall select the then successor Trustee. Upon the appointment of and acceptance by the successor Trustee, the withdrawing Trustee shall pay over, deliver, assign, transfer or convey to such successor Trustee the Trust Estate and make a full and proper accounting to the Successor Trustee, whereupon his resignation shall become effective. The substitute or successor Trustee upon acceptance of this trust and the Trust Estate shall succeed to and have all the rights, powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

## ARTICLE XIV

### **Discretion in Trustee to Terminate Small Trust and Distribute to Income**

**Beneficiary.** If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand (\$50,000.00) Dollars or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons determined or then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

## ARTICLE XV

**Definition of Words Relating to the Internal Revenue Code.** As used herein, the words "gross estate," "adjusted gross estate," "taxable estate," "unified credit," "state death tax credit," "maximum marital deduction," "marital deduction," "pass," and any other word or words which from the context in which it or they are used refer to the Internal Revenue Code shall have the same meaning as such words have for the purposes of applying the Internal Revenue Code to the Grantor's estate. For purposes of this Trust Agreement, the Grantor's "available generation-skipping transfer exemption" means the generation-skipping transfer tax exemption provided in section 2631 of the Internal Revenue Code of 1986, as amended, in effect at the time of the Grantor's death reduced by the aggregate of (1) the amount, if any, of the Grantor's exemption allocated to lifetime transfers of the Grantor by the Grantor or by operation of law, and (2) the amount, if any, the Grantor has specifically allocated to other property of the Grantor's gross estate for federal estate tax purposes. For purposes of this Trust Agreement if at the time of the Grantor's death the Grantor has made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and the Grantor has not yet filed a return, it shall be deemed that the Grantor's generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax. Reference to sections of the Internal Revenue Code and to the Internal Revenue Code shall refer to the Internal Revenue Code amended to the date of the Grantor's death.

## ARTICLE XVI

### **Payment of Funeral Expenses and Expenses of Last Illness of Income Beneficiary.**

On the death of any person entitled to income or support from any Trust hereunder, the Trustee is authorized to pay the funeral expenses and the expenses of the last illness of such person from the principal of the Trust from which such person was entitled to income or support.

## ARTICLE XVII

**Personal Trust.** The beneficiary of this trust shall have the right to occupy that certain homeplace, improvements and acreage, more particularly described as 430 Douglas Drive, Beech Island, SC 29841 during his entire lifetime.

The rights described herein are personal to the beneficiary; and those rights may not be sold, pledged, assigned, or otherwise alienated by the beneficiary.

## ARTICLE XVIII

**Beneficiary's Spouse.** The Grantor is now not married. 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.

If a court having jurisdiction over this trust issues a valid, legally enforceable order requiring distribution to a past or future spouse, then Grantor requests that such distribution shall be the minimum amount necessary to provide sustenance to said spouse, it being the Grantor's intention that the trust estate not be used to provide said spouse with funds to support said spouse in the manner to which she may be accustomed.

## ARTICLE XIX

**Severability and State Law to Govern.** If any part of this Trust shall be invalid, illegal or inoperative for any reason, it is the Grantor's intention that the remaining parts, so far as possible and reasonable, shall be effective and fully operative. Regardless of the situs of execution of this Trust Agreement and the trusts created hereby, it is acknowledged that it is deemed to have been executed in conformity with and shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina.

Notwithstanding the foregoing, the Trustees shall have the power, exercisable in their sole and absolute discretion, to declare, by written instrument that this Trust and any and all trusts derived here from shall from the date of such written instrument take effect in accordance with the law of some other state or country in any part of the world which shall be the forum for the administration hereof (but subject to the power conferred by this paragraph and until any further declaration is made hereunder). In selecting a new Controlling Law the Trustee(s) are urged to give special care and attention to the tax and other laws of the applicable jurisdiction so as to most closely implement the Grantor's intentions, including, without limitation, the intention not to pay any unnecessary taxes and to preserve the Trust Estate.

If the Controlling Law of this Trust changes, then the Trustee(s) may by written instrument amend the Trustee's powers and such other provision of this Trust as the Trustees shall consider necessary or desirable to secure that so far as may be possible such trust's powers and provisions shall be as valid and effective under the applicable law

## ARTICLE XX

**Spendthrift Provision.** Except as otherwise provided herein, neither the principal of this trust (or any trust created hereunder) nor the income therefrom while in the hands of the Trustee(s) shall be subject to assignment, alienation, pledge, attachment, execution, or claims of creditors or any beneficiary or beneficiaries whomsoever through legal process, bankruptcy, operation of law, or otherwise. Any attempted sale, assignment, alienation, pledge, or attachment of the principal or income held in this trust (or any trust created hereunder) shall be null and void and shall not be recognized under any circumstances by Trustee(s).

In the event of any attempted sale, assignment, alienation, pledge, attachment, execution, or claim resulting from an act of a beneficiary or beneficiaries, voluntarily, involuntarily, by operation of law, by bankruptcy, or otherwise with respect to the principal or income of the trust, Trustee(s) are authorized to withhold from such beneficiary or beneficiaries all or part of any distribution otherwise payable hereunder to such beneficiary or beneficiaries until such attempted anticipation, voluntary or involuntary transfer, or lien is completely removed, during which time Trustee(s) may apply such distribution, or any part thereof, for the use and benefit of such beneficiary or beneficiaries in such amount or amounts and in such manner as Trustee(s), in Trustee(s)'s sole discretion, may determine.

## ARTICLE XXI

**Provisions as to any Contest of Grantor's Estate Plan.** Should any beneficiary under this Irrevocable Trust or Grantor's Will dated after or of even date with this Trust and as referred to herein, become an adverse party in a proceeding for the probate of Grantor's Will or in any manner contest the validity of Grantor's Irrevocable Trust, such beneficiary shall forfeit his or her entire interest thereunder and such interest shall pass to such other beneficiaries as would be entitled to take as if such beneficiary predeceased Grantor. Furthermore, any person not provided for in this Irrevocable Trust, Grantor's Will or other such instrument, whether or not claiming to be a beneficiary, party in interest, or otherwise shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor's wishes and shall be vigorously challenged as such by his fiduciaries.

## ARTICLE XXII

**Declaration of Children.** I have six living children: *Deanna J. Brown Thomas; Yamma N. Brown; Vanisha Brown; Daryl J. Brown; Larry Brown; and Terry Brown.* These named children and any of their legitimate issue who shall also be lineage issue of mine shall be the entire class that I acknowledge to be my heirs and issue. Except as otherwise provided in this Trust Agreement and corresponding instruments, 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.

END OF PAGE  
SEE FOLLOWING PAGE FOR EXECUTION

Trust Agreement of James Brown  
c:\6010.1\irrev trust agreement - FNL2

00047

IN WITNESS WHEREOF, The Grantor and the Trustees have executed this Trust Agreement this 1 day of AUGUST, 2000. The Grantor understands all of its provisions, including the fact that he has conveyed or transferred his interest in the property described in Schedule A, B and/or C to Trustee(s), and the fact that the Trust Agreement has provisions that will govern his interest in the property currently, in the future and on the death of the Grantor. Grantor approves the Agreement and consents that all property originally or later contributed to the Trust shall be held, administered, and distributed as provided in the Trust Agreement, and Grantor agrees to be bound by it.

WITNESSES:

[Signature]  
James Brown, Grantor (Seal)

[Signature]  
Alford A. Bradley, Trustee (Seal)

[Signature]  
Albert H. Dallas, Trustee (Seal)

[Signature]  
David G. Cannon, Trustee (Seal)

STATE OF South Carolina )  
Georgetown )  
COUNTY OF Aiken )  
Richmond )

ACKNOWLEDGMENTS

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of written Trust Agreement was this day produced to me in the above State and County by **James Brown**, Grantor, and **Alford A. Bradley, Albert H. Dallas, and David G. Cannon**, Trustee(s), all being parties hereto and was executed and acknowledged by them to be their free act and voluntary deed and all have the requisite capacity to execute this Trust Agreement.

WITNESS my signature this 1<sup>st</sup> day of August, 2000.

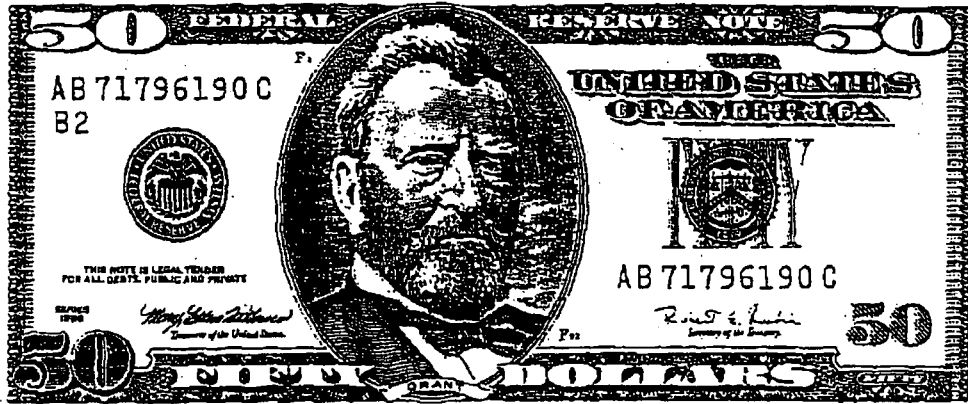
[Signature] (Seal)  
Signature of Notary Public  
HELEWEN HERRING  
Printed Name of Notary Public  
Notary Public for: SC

My Commission Expires: 3/17/2010

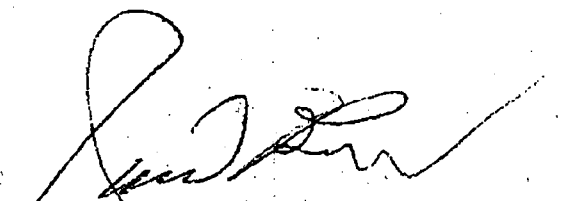
SCHEDULE "A"

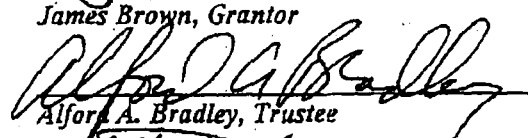
Initial Funding

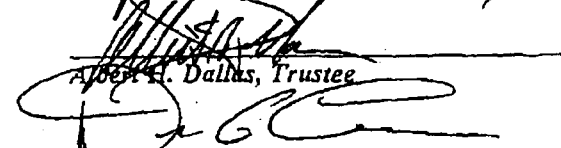
1)

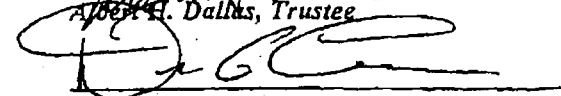


- 2) All ownership interest(s) in James Brown Enterprises, Inc.
- 3) All ownership interest(s) in my primary residence, including all land and improvements located 430 Douglas Drive, Beech Island, SC 29841 together with such other acreage and property within the vicinity. (See Attached Real Estate Description)
- 4) All ownership interest(s) in

  
James Brown, Grantor

  
Alford A. Bradley, Trustee

  
Albert H. Dallas, Trustee

  
David G. Cannon, Trustee

**SCHEDULE "B"**

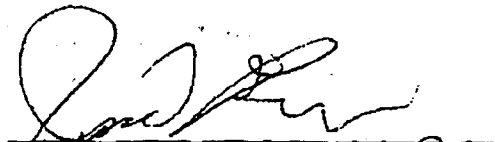
Additional Schedule of Assets

Such assets as may be added (if any)

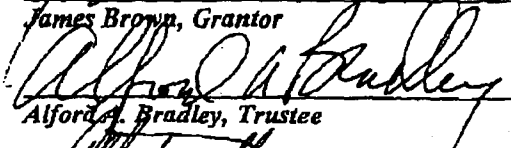
**SCHEDULE "C"**

Insurance Policies

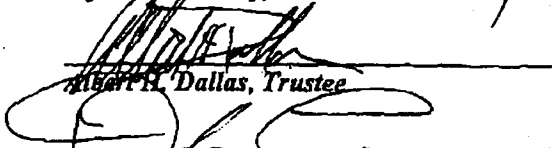
(if any)



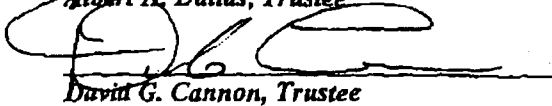
James Brown, Grantor



Alford A. Bradley, Trustee



Albert H. Dallas, Trustee



David G. Cannon, Trustee

STATE OF SOUTH CAROLINA ) AMENDMENTS AND RATIFICATION  
 ) OF AMENDMENTS AND OTHER ACTIONS,  
COUNTY OF AIKEN ) JAMES BROWN 2000 IRREVOCABLE TRUST

This is an Amendment and Ratification of Amendments and other actions, JAMES BROWN 2000 IRREVOCABLE TRUST, executed on July 28, 2008 by Robert L. Buchanan, Jr. and Adele J. Pope (described herein as the "Trustees").

RECITALS:

WHEREAS, James Brown created an irrevocable Trust dated August 1, 2000 (the "Trust") under which The James Brown "I Feel Good" Trust, a charitable educational Trust, was established at his death; and

WHEREAS, James Brown died on December 25, 2006, leaving a last Will dated August 1, 2000 which devises his residuary estate to the Trust, with the majority to pass, by formula, to the "I Feel Good" Trust; and

WHEREAS, the Will of James Brown also established a new Trust, identical to the Trust, should the devise to the Trust be invalid; and

WHEREAS, the three original Trustees of the Trust, David G. Cannon, Albert H. Dallas and Alfred A. Bradley did not at any time between August 1, 2000 and November 20, 2007 apply for recognition of exemption of the James Brown "I Feel Good" Trust under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, on or before November 20, 2007 the original Trustees resigned and the Trustees were duly appointed as Trustees of the Trust and all of its subtrusts, including The James Brown "I Feel Good" Trust, on November 20, 2007; and

WHEREAS, between November 30, 2007 and July 14, 2008 the former Trustees have challenged the authority of the Trustees to act under the Trust, and many Interested Parties have challenged the validity of the Will and the Trust; and

WHEREAS, on July 14, 2008, the Honorable Jasper M. Cureton, Judge, South Carolina Court of Appeals, confirmed the authority of the Trustees to act under the Trust and its subtrusts pending an appeal of two of the former Trustees' unsuccessful attempts to withdraw their resignations; and

WHEREAS, although the Trustees do not believe that the challenges of the former Trustees and others impaired their authority to protect the Trust, including the James Brown "I Feel Good" Trust, during the period, they now desire to take all necessary action to confirm that

the actions they have taken on behalf of the Trust, including The James Brown "I Feel Good" Trust are valid and remain in full force and effect; and

WHEREAS, Paragraph (6) of Article VII of the Trust provides that the Trustees shall have the power to amend The James Brown "I Feel Good" Trust in any manner required for the sole purpose of ensuring that the Trust qualifies and continues to qualify as an exempt entity in compliance with the Internal Revenue Code, and as amended; and

WHEREAS, prior to submission of the Application for Recognition of The James Brown "I Feel Good" Trust on December 5, 2007, the Trustees took certain actions, including the adoption of By-laws and the adoption of an Amendment to Article VII of the Trust, to insure qualification of the Trust; and

WHEREAS, after submission to the Internal Revenue Service, in order to insure qualification, additional amendments were made to the Trust as requested by the Internal Revenue Service for qualification; and

WHEREAS, The James Brown "I Feel Good" Trust had no assets on November 20, 2007 and has had no additions since that time, but does have an expectation of a substantial devise provided it qualifies under Section 501(c)(3) of the Internal Revenue Code; and

WHEREAS, to insure the proper administration, the Trustees now desire to confirm and ratify the actions taken by the Trustees between November 20, 2007 and the date hereof, including the adoption of the By-Laws and Amendments to the Trust referenced herein;

NOW, THEREFORE, IT IS RESOLVED:

FIRST

The James Brown "I Feel Good" Trust is hereby amended by adding a new paragraph 5 (a) of Article VII of the Trust, to be located after paragraph 5 and before paragraph 6, which shall read as follows:

**Article VII**

...

**(5a) The name of the organization is The James Brown "I Feel Good" Trust.**

The organization is organized exclusively for charitable, religious, educational, and/or scientific purposes under section 501(c)(3) of the Internal Revenue Code.

Upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose.

The Trustees agree that no part of the net earnings of the organization shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the organization shall be authorized to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in the purpose clause hereof. No substantial part of the activities of the organization shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the organization shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the organization shall not carry on any other activities not permitted to be carried on (a) by an organization exempt from federal income tax under section 501(c)(3) of the internal Revenue Code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code.

**Termination, Dissolution, or Winding Up.** Upon the termination, dissolution, or winding up of the Trust, the assets of the Trust remaining after payment, or provision for payment, of all its debts and liabilities shall be distributed to such organization or organizations organized and operated for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of the State of South Carolina.

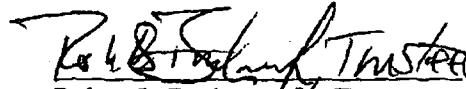
## SECOND

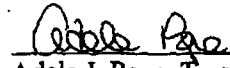
Except as modified above, the Trust shall in all respects remain in full force and effect.

FURTHER RESOLVED, that each action taken by the Trustees between their appointment on November 20, 2007 and July 28, 2008, including but not limited to all actions related to the adoption of By-Laws of The James Brown "I Feel Good" Trust; the Application for Recognition of Exemption submitted to the Internal Revenue Service on behalf of The James Brown "I Feel Good" Trust, and the adoption of the above amendments to the Trust, is hereby ratified, confirmed and/or approved; and

FURTHER RESOLVED, to the extent allowed by law, and necessary under the circumstances, these actions are approved and ratified nunc pro tunc as of the original date of the action.

IN WITNESS WHEREOF, the Trustees have set their hands and affixed their seals as of the day and year above written.

  
\_\_\_\_\_(SEAL)  
Robert L. Buchanan, Jr., Trustee

  
\_\_\_\_\_(SEAL)  
Adele J. Pope, Trustee

No. 67-61102  
Columbus 29200

CERTIFICATE AND AGREEMENT OF TRUST  
"IRREVOCABLE TRUST AGREEMENT"  
JAMES BROWN & TRUSTEES AUGUST 1, 2000"

MISCELLANEOUS  
VOL 1088 PAGE 116

The undersigned Grantor(s) and Trustee(s) of a certain trust (the "trust") represent, warrant, certify and agree as follows:

EXHIBIT 3

1. The Grantor(s) of the trust is/are: James Brown
2. The Trustee(s) of the trust is/are: Alford A. Bradley, Albert H. Dallas, David G. Cannon
3. The Successor Trustee(s) of the trust is/are: As Appointed by the original Trustee(s),  
as and if necessary
4. The Beneficiaries of the trust are: Grantor, The Brown Family Education Trust,  
The James Brown "I Feel Good" Trust
5. The trust is evidenced by written agreement dated: August 1, 2000.  
The trust provides, in general, full and unrestricted powers for the Trustees to act in the same manner and capacity as any individual can act for/in his own behalf.
6. The trust is revocable and amendable \_\_\_\_\_ irrevocable X
7. The trust is governed by the laws of the state of South Carolina
8. The trust Tax I.D. No. is: Applied For
9. Any two (2) of the Trustees, (or any one (1) acting upon the written authority, direction or consent of any one (1) of the other Trustees), shall have the authority to execute binding deeds, mortgages, notes, contracts, contracts of sale and purchase, and all other document(s) incident or otherwise pertaining to the administration of the trust pursuant to the applicable laws of the state in which the trust is transacting business.
10. The undersigned Grantor(s) and Trustee(s) jointly and severally indemnify and hold harmless third parties or entities from any liabilities and expenses that arise from reliance on this Certificate of Agreement. This indemnification and hold harmless shall survive termination or amendment of the trust.
11. Third parties or entities may rely upon this Certificate and Agreement until it receives a new Certificate and Agreement advising of any changes to the trust.
12. This Certificate and Agreement supersedes any prior certificates, documents, or information provided to Any parties regarding the trust.
13. Where there are more than one Grantor and one Trustee or where the Grantor(s) and Trustee(s) are not the same person(s), this Certificate and Agreement (and its provisions) may be executed in counterparts all of which shall together be considered as one document.
14. This Certificate and Agreement may be recorded in any jurisdiction for any purpose.

End of Page. See Next 1224 for Execution.

Book 00742 2303 Augusta - Richmond County  
2001023955 08/07/2001 11 15:55.00  
\$12.00 AGREEMENT



EXHIBIT 104

Nov 24 2003 12:01PM JAMES B HUFF LAW FIRM, PC 8034424422

P. 2

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
JAMES JOE BROWN, JR.,	)	CASE NUMBER: 04-DR-02-157
Plaintiff	)	
vs.	)	CONSENT ORDER OF DISMISSAL
TOMMIE RAE HYNE AHMED BROWN,	)	
Defendant.	)	

FILED  
AIKEN COUNTY  
AUG 16 2004  
Clerk of Court

HEARING DATE: July 22, 2004  
 PRESIDING JUDGE: Peter R. Nuessle  
 ATTORNEY FOR PLAINTIFF: James B. Huff  
 ATTORNEY FOR DEFENDANT: Robert N. Rosen  
 COURT REPORTER: Lisa Hicklin

This matter was scheduled to come before the Court for a Temporary Hearing on the above listed date. Prior to the hearing the parties informed the Court that they had reached an Agreement in this matter. The Agreement is as follows:

1. The parties hereby dismiss their respective pleadings without prejudice to either party.
2. Plaintiff will pay the sum of \$12,000.00 to Defendant for her attorney fees and costs in this matter. This will be paid within 10 days of the filing of this order.
3. Defendant agrees to and does hereby forever waive any claim of a common law marriage to the Plaintiff, both now and in the future.
4. The parties agree to seal the courts file in this matter.

Based upon the review of the court's file I make the following Findings of Fact:

1. The Agreement is fair and reasonable to both parties and should be approved by the Court.
2. The Court has considered the Court's file and I find that sealing the Courts file in this matter is proper. STATE OF SOUTH CAROLINA  
JAMES JOE BROWN, JR. vs. TOMMIE RAE HYNE AHMED BROWN  
Case No. 04-DR-02-157  
The Court has considered the Court's file and I find that sealing the Courts file in this matter is proper. Because the parties have mutually consented to having the case dismissed without being litigated. The parties have resolved their differences and

AUG 16 2004  
 \_\_\_\_\_  
 Deputy Clerk

EXHIBIT 6

MEETING OF TRUSTEES  
IRREVOCABLE TRUST AGREEMENT  
OF JAMES BROWN  
DECEMBER 27, 2006

It having come to the attention of the Trustees that ALFORD A. BRADLEY, named Trustee, Irrevocable Trust Agreement of James Brown dated August 01, 2000, has failed to qualify and accept responsibility as Trustee, by unanimous agreement of the other two named Trustees, ALBERT H. DALLAS and DAVID G. CANNON, Deanna Brown issue by appointed Trustee to serve in lieu of the named ALFORD A. BRADLEY with all rights and obligations as Trustee as if originally named by Grantor, JAMES BROWN, by signature attached below, the undersigned, Deanna Brown accepts the responsibility and duties of Trustee, Irrevocable Trust of James Brown dated August 01, 2000.

This 27<sup>th</sup> day of December, 2006.

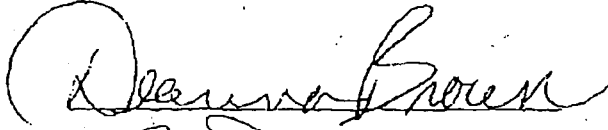
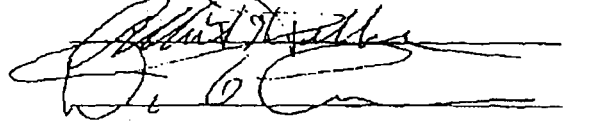
  
  


EXHIBIT 7

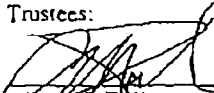
MINUTES OF TRUSTEES  
IRREVOCABLE TRUST AGREEMENT  
JAMES BROWN  
U/A DATED AUGUST 1, 2000

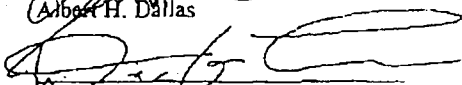
WHEREAS, the Trustees of the Irrevocable Trust Agreement of James Brown dated August 1, 2000 (the "Trust Agreement"), constituting, ALBERT H. DALLAS, DAVID G. CANNON and DEANNA BROWN did meet at the offices of Smith, Massey, Brodie, Thurmond & Gwynn, P.A. on January 3, 2007;

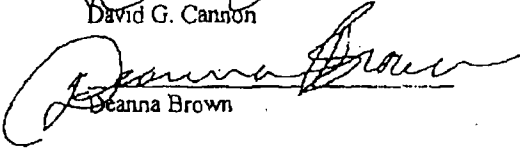
WHEREAS, the Trustees of the Trust Agreement by their signatures below do hereby resolve to hire YAMMA BROWN LUMAR, the daughter of James Brown, found to be a competent and qualified person as an executive assistant to the Trustees to assist the Trustees in carrying out the responsibilities of their office.

NOW, THEREFORE, it is hereby resolved that the Trustees will hire YAMMA BROWN LUMAR as an executive assistant to the Trustees of the Trust Agreement to work at the pleasure of the Trustees, and that no employment agreement will be entered into with YAMMA BROWN LUMAR, and that this resolution shall not be construed as an obligation to provide continued employment.

Trustees:

  
Albert H. Dallas

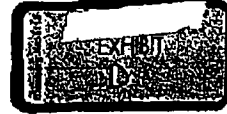
  
David G. Cannon

  
Deanna Brown

Effective Date: January 3, 2007

00053

**EXHIBIT 16**



IN THE PROBATE COURT OF AIKEN COUNTY

STATE OF SOUTH CAROLINA

IN THE MATTER OF:  
JAMES BROWN, a/k/a  
JAMES JOSEPH BROWN

)  
)  
)  
)  
)  
)

CASE/ESTATE NO. \_\_\_\_\_

**AFFIDAVIT OF DARYL J. BROWN**

Personally appeared before the undersigned officer, duly authorized under law to administer oaths, Daryl J. Brown, who, after being sworn, states as follows:

1.

I am over 21 years of age, I am competent to make this Affidavit and I have personal knowledge of the facts set forth herein.

2.

I am a resident of Richmond County, GEORGIA.

4.

I am the son of James Brown, a/k/a James Joseph Brown and specifically designated in his Will as one member of the entire class of heirs to the Estate of James Brown.

5.

The personal representatives of the Estate of James Brown have not made any accounting to me, as a beneficiary of the Estate, of the assets of certain trusts that make up the bulk of the Estate of James Brown.

6.

I believe all or some of the personal representatives of the Estate have knowledge of certain liquid assets whose location is unknown to the lawful heirs of the Estate.

7.

The personal representatives have failed to account for any assets of the Estate or for of the purported Irrevocable Trust even after demand for same.

8.

These liquid assets of the Estate are in jeopardy of being misappropriated by some or all of the appointed personal representatives.

9.

The personal representatives have attempted to take legal action and use their influence in the community, and the fact that the security guards are paid for by the personal representatives, to prevent the undersigned access to the real and personal property of the Estate or of the purported trust.

10.

On January 23, 2007 the personal representatives, along with their attorneys and certain other private individuals, came to the real property of James Brown, to wit, Douglas Road, Beech Island, SC and without knowledge of or permission of the undersigned brought investigators (See Affidavit of Joseph Lee) who, according to Lee, head of security for the James Brown Estate, insisted on coming on the property to allegedly inventory the property of the deceased's estate.

11.

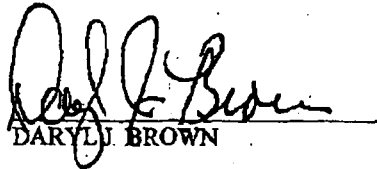
The undersigned affiant witnessed the investigators and personal representatives photographing vacant areas of land and other areas of the real property (which consists of approximately 100 acres) which actions, for reasons of personal security and property security that affiant will not discuss in this document but will present testimony to the Court "in camera" at any and all hearings, the affiant believes places assets of the estate at risk and in jeopardy and may be lost if this Court does not immediately act. Affiant does not believe, as will be shown to this Court in an "in camera" presentation of evidence, that the personal representatives are trustworthy or that they would disclose the

existence of or even the nature of the assets being described herein if, such assets were found exclusively by the personal representatives nor would such personal representatives be trusted by the affiant to account to this Court and the Estate to account for said undisclosed assets. Affiant recognizes that the language of this paragraph is vague and that language is created specifically by the affiant for the protection of the Estate and not to mislead the court because affiant recognizes that the affiant's motion and this affidavit, once filed, will become a public document and such public document will be available to anyone including the media.

12.

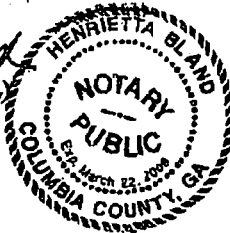
Affiant shows, through this affidavit, that all of the personal representatives of the Estate of James Brown have become incapable of discharging the duties of their office, have mismanaged the estate and/or failed to perform certain duties pertaining to the office.

FURTHER AFFIANT SAITH NOI.

  
DARYL J. BROWN

Sworn to and subscribed  
before me this 24 day  
of January, 2007

  
NOTARY PUBLIC (SEAL)



**Pinnacle Media & Entertainment, LLC**  
**Amount Requested \$200,000,000**

**Executive Summary**

**Key Information**

Pinnacle Media & Entertainment, LLC  
Anthony "Chip" Lumar, Chairman/CEO  
Yasmina Brown Lumar, President  
100 Peachtree Center Ave  
Atlanta, GA 30308  
Tel: 404-343-0048  
Fax: 404-254-2826  
www.pinnaclemedial.com  
info@pinnaclemedial.com

**Key Personnel**

Anthony "Chip" Lumar, Chairman/CEO  
Yasmina Brown Lumar, President  
Terry B. Cox, Graham Windsor Group  
David Carter, Esq.  
John Waters, The Machine Group  
John Waters, The Machine Group  
D. McKnight, Undiscovered Live  
Michelle Graves, Special Advisor to Mr. Lumar

Industry  
Premier provider to the entertainment industry  
Film/television/cable

Company Resources  
Intellectual Property Rights

Source of Financing Sought  
Acquisition financing for the James Brown Estate

Initial Internal Capital Invested  
\$200,000 has been pledged by the Owners for  
the start up of Pinnacle Communications Inc., and  
Pinnacle Media & Entertainment for print rights  
acquisition, trade show sponsorships, production  
and marketing.

Professional Services  
(Accounting firm)  
Greg C. Takasian  
Takasian & Company, LLC  
36 Intervale Rd  
Suite B1  
Milford, NH 03249  
Tel: 617-230-0832

Banking  
Yakovlev Bank  
11111 Lefford  
Lawrence, GA 30026  
Tel: 770-420-0326  
Fax: 770-420-0654

Pinnacle Communications, Inc c/o Chip Lumar  
104-404-343-0048  
www.pinnaclemedial.com  
info@pinnaclemedial.com

**Business Description**

Pinnacle Media & Entertainment, LLC "PME" is an independent film production and distribution company. The company specializes in commercial grade theatrical films, documentaries, video and content for the major motion picture/television/cable industries. The company presently has the film option rights to several properties that can be acquired through its sister company, Pinnacle Communications, Inc.

**Philosophy**

There is an inherent marriage between music entertainment and the film/television industries. Both require massive amounts of content to satisfy the needs of their clients/customers, and this company intends to exploit this fact by appointing the daughter of a true living "Legend" James Brown, to be its leader. Pinnacle Communications Inc is currently reviewing over fifty titles for our film and distribution companies. Upon successful completion of funding, PME will launch the national television and cable networks with Atlanta as its national base of operations.

**James Brown Estate Acquisition**

On December 25, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Dean Martin, in yearly revenues generated, licensing rights, sampling rights, feature films, documentaries, tributes, and future record sales. We believe the estate of the late James Brown can and will generate over 100 million per year. Under the right management structure and capitalized properly, there will be no end in sight. With the right investment partner, Pinnacle Media & Entertainment will become the premier entertainment/management company in the world.

Currently the estate is under the protection of Greenberg Truig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience"

**Management**

Our President is a distinguished graduate of Mercer University (1993) where she received her Doctorate in Pharmacy. Being the daughter of a star of music and film, Dr. Lumar has had intimate knowledge of both industries. Another advantage Dr. Lumar gives is her access to the Hollywood elite. Among some of the more notable Hollywood are Academy Award Winners Jamie Foxx, and Dan Aykroyd, other celebrities' friends includes actor Eddie Murphy, and playwright Tyler Perry. The company will have only one paid employee initially as all other work not performed by the President is outsourced to contract professionals, i.e. directors, scriptwriters, cast and crew professionals on a per-project basis.

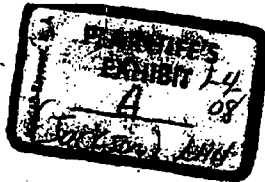


EXHIBIT 22

Deanna

We meet with the new Special Administrators on Monday in Columbia to get them to act in this area and in a number of others as well. We will file motions with the Court after that as will the Special Administrators (or at least we will encourage them to do so). More to follow as soon as we know.  
Thanks  
LL

-----Original Message-----

From: DBrown [mailto:dsweetieb@aol.com]  
Sent: Thursday, March 15, 2007 9:42 PM  
To: Louis Levenson  
Subject: Re: Email to Judge Early

What's going on w/the latest order? We need to have our own inventory person. If Judge Early is keeping to dad's wishes, these personal belongings are now ours we want our own person doing inventory and a report of what has been done so far. It is IMPORTANT THAT WE KEEP HEAT UNDER THEIR SEATS I DON'T SEE ENOUGH HEAT BEING PUT ON THEM NOW. WHERE ARE WE? Please let me know

DEANNA

-----Original Message-----

From: Louis Levenson  
To: DSWEETIEB@aol.com  
To: drylumar@yahoo.com  
Cc: david@levensonlaw.com  
Sent: Mar 7, 2007 3:49 PM  
Subject: FW: Email to Judge Early

-----Original Message-----

From: Early, Doyet A. [mailto:dearlyJ@sccourts.org]  
Sent: Wednesday, March 07, 2007 3:43 PM  
To: T Heyward Carter  
Cc: Robert Rosen; Louis Levenson; Alan Medlin; Alan Medlin; Andrew W. Chandler; M Jean Lee  
Subject: RE: Email to Judge Early

FILED  
January 24, 2008 12:30 PM  
J. J. [Signature]  
Clerk

EXHIBIT 32

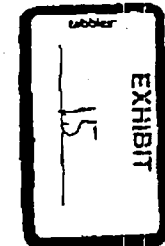
**Developing the James Brown Legacy**  
*...transforming intellectual and real property into sustainable  
high capital value*

---

Presented by:  
Terry Bradford Cox, PH.D.  
The Graham Windsor Group  
3340 Peachtree Road  
Suite 1800  
Atlanta, GA 30326

June, 2007

This report is solely for the use of client personnel. No part of it may be circulated, quoted, or reproduced for distribution outside the client organization without prior written approval from The Graham Windsor Group. This material was used by The Graham Windsor Group during an oral presentation; it is not a complete record of the discussion.



1234  
1234

EXHIBIT 15

POWELL  
GOLDSTEIN LLP

Atlanta • Washington • Dallas

Direct Dial No.  
404/572-6651  
E-Mail: fmcgaughey@pogolaw.com

July 10, 2007

Albert H. Dallas, Esq.  
Dallas Law Firm  
304 Black Street, SE  
Thomson, Georgia 30824

Re: The James Brown "I Feel Good" Trust

Dear Buddy:

Enclosed for your review and consideration is a document by which the Trustees of the above-referenced trust would change the controlling law of the trust, and amend the powers of the Trustee. Essentially, this moves the trust to Georgia. When you have had a chance to look at this and to consult with David Cannon and Judge Bradley, please let me know if there are any questions.

Best regards.

Very truly yours,

Frank S. McGaughey, III

For POWELL GOLDSTEIN LLP

FSM/jp  
Enclosure  
cc: William B. Shearer, Jr.  
ODMAUPCDOCSWTL11752531V

37 8

5:25

EXHIBIT  
Bailey  
2  
3-7-07  
AMH

**IRREVOCABLE TRUST AGREEMENT OF JAMES BROWN  
CREATING THE BROWN FAMILY EDUCATION TRUST AND  
THE JAMES BROWN "I FEEL GOOD" TRUST**

---

**DECLARATION OF TRUSTEES CHANGING CONTROLLING LAW  
AND AMENDING THE POWERS OF THE TRUSTEE**

WITNESSETH, that by Trust Agreement dated August 1, 2000 (the "Trust Agreement"), James Brown as Grantor did establish The Brown Family Education Trust and The James Brown "I Feel Good" Trust (the "Trusts") with Alford A. Bradley, Albert H. Dallas and David G. Cannon as Trustees (the "Trustees"); and

WHEREAS, Article XIX of the Trust Agreement provides that notwithstanding that the laws of the State of South Carolina are initially to govern the execution of the Trusts, the Trustees are authorized to declare by written instrument that the Trusts from the date of such instrument shall be governed by the laws of another state which shall thereafter become the Controlling Law of the Trusts; and

WHEREAS, Article XIX of the Trust Agreement further provides that if the Controlling Law of the Trusts changes, the Trustees may by written instrument amend the Trustees' powers and such other provisions of the Trust Agreement as they may consider necessary or desirable to secure that such powers and provisions shall be as valid and effective under the applicable law.

THEREFORE, the Trustees of the Trusts hereby declare that:

1. They are the sole acting Trustees of the Trusts.
2. The Controlling Law of the Trusts shall hereafter be the laws of the State of Georgia.

Exhibit A

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

AUG 24 2007

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

CIVIL ACTION NO. 2007-CP-02-0122

IN RE:

Liz Godard  
C.C.C.P. & G.A., Aiken County, S.C.  
Barbara Pope  
Deputy Clerk

SUPPLEMENTAL ORDER  
RELATED TO DISBURSEMENT OF  
ROYALTY PROCEEDS

THE ESTATE OF JAMES BROWN  
A/K/A JAMES JOSEPH BROWN

This Order is made on motion of Robert L. Buchanan, Jr. and Adele J. Pope, Special Administrators of the Estate of James Brown, with the consent of the remaining Personal Representatives/ Trustees of the Estate and Trusts of James Brown, supplements this Court's Order on August 10, 2007. In the August 10 Order, the service of David G. Cannon as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust and its subtrusts was terminated. His service as officer and/or director of various Brown Entities, including James Brown, LLC, was also terminated.

*WAC*  
*##*

At the hearing on August 10, 2007, Mr. Cannon delivered to the Estate a check in the amount of \$350,000.00. The funds represented a portion of a \$900,000.00 check (the "Universal Audit Funds") payable to the James Brown LLC Collection Account, Manufacturers and Traders Trust (M&T). The Universal Audit Funds were deposited by Mr. Cannon into Enterprise Bank account #211100029 of the James Brown Irrevocable Trust on or about August 1, 2006.

The Universal Audit Funds (less a valid payment of approximately \$180,000 to the auditor) should have been deposited into the M&T account, to be applied toward repayment of a \$26 Million 1999 Royalty-backed Note held by Teachers Insurance and Annuity Association of America ("Teachers") for which M&T Trust serves as Trustee. All parties agree that \$720,000 of the Universal Audit Funds belongs to M&T Trust as Trustee, for the benefit of Teachers.

The August 10 Order stated, in part:

4. The SAs and PRs are seeking a waiver from M&T Bank and the TIAA-CREF [sic] holders of the 1999 royalty-backed note for the \$350,000 returned by Cannon to be retained by the Estate of James Brown. No part of the funds shall be expended unless and until such authority is received.

The SAs and remaining Personal Representatives have advised the Court that Teachers has consented in writing to the use by the Estate of a portion of the \$350,000 to assist the Estate in its investigation into and return of the remainder of the Universal Audit Funds, as well as other claims the Estate, the Brown Trusts and Brown Entities may have against Cannon.

NOW, THEREFORE, to assure compliance with the requirements imposed by Teachers, and agreed to by the Estate, the Trust and the SAs, IT IS ORDERED, ADJUDGED AND DECREED:


1. The Estate may use up to One Hundred Thousand (\$100,000.00) Dollars of the Universal Audit Funds for the investigation and pursuit of claims related to actions of David G. Cannon, including:

- A. Paralegal and/or contract services (at rates from \$50 - \$125 per hr.), and costs, including internal staff of the SAs, and duplication costs from July 17, 2007.
- B. Computer/technical copying Services to copy and preserve, organize Mr. Cannon's Computer records for James Brown Enterprises, Inc; The New James Brown Enterprises, Inc [sic]; James Brown, LLC; James Brown Royalty Venture I, SPC; James Brown; Seventh Decade; and all other Brown Entities as described in the August 10 Order.
- C. Accounting Services to File 2006 extensions, as necessary, for the Estate, the Brown Trusts, and, as appropriate, Brown Entities, with full disclosure (statement to be prepared by SAs) of activities of Cannon to the extent known; prepare extension of Estate Tax Return (due Sept. 25, 2007); to file Application for Charitable Recognition of the James Brown "I Feel Good" Trust and the take such additional actions as shall benefit the investigation.
- D. Up to \$25,000 for Estate preservation.

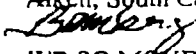
3. The \$100,000 and any additional advance funds advanced by Teachers shall be repaid from the first recoveries, with interest at the rate of the Royalty-backed Note. Since these funds, loaned for a specific purpose, do not belong to the Estate, their return with interest shall have priority over all other priority expenses of administration.

4. The remainder of the Universal Audit Funds, \$250,000, shall be immediately delivered to M&T, payable to the James Brown LLC Collection Account.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

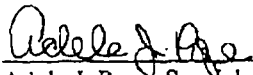
August 19, 2007  
Aiken, South Carolina

  
WE SO MOVE:

\_\_\_\_\_  
Albert H. Dallas, Personal Representative  
of the Estate of James Brown and Trustee  
of the Brown Trusts

\_\_\_\_\_  
Alfred A. Bradley, Personal Representative  
of the Estate of James Brown and Trustee  
of the Brown Trusts

\_\_\_\_\_  
Robert L. Buchanan, Jr., Special Administrator

  
\_\_\_\_\_  
Adele J. Pope, Special Administrator

08/17/2007 11:41 88364913

BUCHANAN LAW OFFICE

PAGE 05

08/16/2007 17:15 8836491392

BUCHANAN LAW OFFICE

PAGE 05

**THE UNDERSIGNED CONSENT TO THE RELIEF REQUESTED IN THE ATTACHED ORDER**

Teachers Insurance and Annuity Association of America

BY: Charles Martin

EXHIBIT 16

The James Brown Legacy, Inc.  
(name pending)  
28 East Andrews Dr.  
Suite K  
Atlanta, GA 30305

October 12, 2007

Mr. Buddy Dallas  
Judge Alford Bradley  
The Irrevocable Trusts of James Brown, dated 8-1-00  
*The Brown Family Educational Trust*  
*The James Brown "I Feel Good" Trust*

Dear Mr. Dallas and Judge Bradley:

We are pleased to present this initial presentation of a corporation to be formed, after approval, named "The James Brown Legacy, Inc." (hereinafter "JBL") and letter of intent to begin due diligence involved with the James Brown Trust Estate (Trust Estate) with the objective of a purchase of the Trust Estate in its entirety, image, songbook, etc. of James Brown. We make this presentation as an initial introduction of our intent and with the understanding that any final agreement will be subject to formal documentation and acceptance and approval by the Trust Estate and the Court.

It is our belief that the legacy of James Brown and his noble wishes as set out in the trust documents will be best served by maximizing the value of the non-performing assets of the Trust Estate and transferring the items to a group interested in not only paying a fair price but also interested in continuing the altruism of Mr. Brown. It is our belief that the Trust Estate will have peak value by keeping the items grouped together and selling them as a unit instead of breaking up the items and liquidating them piecemeal. As you surely know, merely selling the items individually will do nothing to perpetuate the good works of James Brown.

Our organization's mission will be to develop a Strategic Plan and infrastructure that will build and promote the legacy of James Brown. We intend to work and partner with government agencies and educational institutions to turn James Brown's home into an experiential setting commensurate with the stated intentions of the I Feel Good Trust. We also envision plans that would include the establishment of the James Brown Museum. The purpose of this museum will be to tell the story of how James Brown persevered against all odds: a true "Horatio Alger" story. We will also work and partner with other interested parties within the Strategic Plan to maximize the brand equity and performance of the idle assets over time. We believe that this approach, coupled with the right structured sales agreement, will provide the most value for all interested parties.

Our intent is to make a formal offer to the Estate of James Brown and the Irrevocable Trust of James Brown dated 8-1-00 and must meet several criteria and approval by certain specific parties. Our intent is to purchase the assets, in their entirety, of the trust estate to include the writer's share of the music, the songbook, all intellectual property, real estate, personal property such as costumes, etc., Mr. Brown's image and persona, individually and as an entertainer to include all indicia, stage names such as "Godfather of soul", "The hardest working man in show business", etc.

Our intent is to make a formal offer, as of the date of this letter, for the above referenced property, for a payment of \$100 million US dollars plus Five percent (5%) of the gross profits of the company to be formed, JBL, to be portioned to the "I Feel Good" Trust over a determined period of time as legacy royalties. Our formal offer shall provide earnest money in the amount of \$100,000.00 to be paid into the Estate/Trust as directed during the initial 90 day period which will begin upon approval of the formal offer by the Court. In order to maximize the value of the Trust Assets, we also anticipate the Trust granting JBL contingent, exclusive rights to maximize Trust Assets during the 90-day period, the contingency being our eventual closing on the transaction. During this period, JBL will have all of the rights and privileges to determine marketability of assets and enter into arrangements to secure cash infusions. Further, inasmuch as the closing of the purchase, if approved by the parties and the Court, will be as of the date of this letter and all income or receipts of the Trust will be part of the assets that we will be purchasing, the \$100,000.00 earnest money may be paid into the Estate/Trust from any source during that 90 day period.

We envision that, upon tentative approval of the formalized offer by the Court, we will begin a brief period of due diligence.

By the end of the first 90 days following tentative approval, if JBL's due diligence warrants proceeding further, JBL will make a payment of \$5 million to be credited toward the purchase price at the closing. That payment will begin an additional 90 day period in which the parties have to finalize and close the transaction. Provided all the conditions set forth in the formal offer are met, the closing will occur on or before the 90<sup>th</sup> day following the \$5 million dollar payment. Principals of our group have already been in contact with John H. Tiller, Esq. of Haynsworth Sinkler Boyd, P.A., who has tentatively agreed to be the closing attorney, should the Court approve our formal offer.

At the final closing, the remaining balance of the \$100 million offer shall be paid. We anticipate that the Gross Profits Agreement will be executed at that time as well.

As you will certainly understand, this letter of intent is subject to due diligence by us and our agents. We anticipate certain contingencies to be in the formal offer, including a completed inventory and appraisal of all items in the Trust, assurance of control of assets, assurance of full rights to publicity, reasonable financing if necessary, no limitations or conditions that would inhibit the implementation of the JBL Strategic Plan to develop the James Brown Legacy, and no impediments to creating performing assets over time.

We understand and appreciate that this letter of intent and any formal offer shall be subject to evaluation and approval of both the Special Administrators and the final approval of the Court.

As you understand, it is our hope and desire to maintain the legacy and good will of James Brown as so aptly set forth in the Trust agreements. We understand the limitations that the Trust may have at this juncture, however. As a small demonstration of our wish to "keep up the good works" of James Brown, we wish to provide the Trust Estate with funds necessary to continue James Brown's tradition of providing turkeys for the needy this Thanksgiving 2007. We believe that this important tradition is needed to maintain the James Brown Legacy, Mr. Brown's wishes, and are honored to assist.

We appreciate the opportunity to provide this letter of intent and believe it be truly reflective of the valuation of the estate at this time. If the Trust Estate is willing to consider entering into a formal agreement, kindly contact me or my counsel, John T. Sparks, Sr., within the next 30 days.

I look forward to discussing this matter with you further.

Sincerely,

Gray M. Campbell

cc: John T. Sparks, Sr., Esq., Austin & Sparks, P.C.  
cc: John H. Tiller, Esq., Haynsworth Sinkler Boyd, P.A.

EXHIBIT 17

1. what do you think about this?

From: David Yount (mailto:david@LevensonLaw.com)  
 Sent: Saturday, November 10, 2007 2:48 PM  
 To: adale@popelawfirm.com; rbuchananjr@bellsouth.net; d\_michel@yahoo.com; rrosen@rosen-lawfirm.com;  
 amedlin@sc.rr.com; Carter@eckb.com; Arial E. King; wjh@LewisBabcock.com; Keith M. Babcock; jacksonstanley@bellsouth.net;  
 davidbell@davidbelllawfirm.com; rmaxwell@maxwelllawfirm.com; Ericbland@blandrichter.com; ronnie@blandrichter.com;  
 jmg@jimgriffinlaw.com; AGSJONES@ag.state.sc.us; Grace Lewis; aggframpto@ag.state.sc.us; akirby@mgclaw.com;  
 weskirland@bellsouth.net; robtyoungatty@yahoo.com; cmcgowan@mcgowanhood.com; islj@jtbpa.com;  
 jfelder@mcgowanhood.com; bat@jtbpa.com; shahidlo@bellsouth.net  
 Cc: Louis Levenson  
 Subject: Brown estate - William Morris Agency document

To All:

Pursuant to subpoena and our various communications with William Morris Agency we obtained the documents attached on Friday Nov. 9.  
 My office is therefore copying these documents to you.

These documents reflect that touring revenue (each date is segregated by individual in the agency, I think) from 2003 till date of death was almost \$18,000,000, assuming that all dates were booked through the agents for Mr. Brown and not done by Mr. Brown himself or by those around him.

Our information indicates that there were dates he worked not identified to the agency (though we do not have specific information). This fact would only cause the total touring number to increase. Obviously Mr. Cannon and Mr. Mas (and possibly Mr. Bradley) who were utilizing 7<sup>th</sup> Decade for some operational purpose have failed to account to us or to anyone how this flow of revenue moves logically from one entity to another.

We urge you that you agree that the written information from William Morris can be used at the hearing on Nov. 15 and at any other hearings or for trial in lieu of a live witness to authenticate the documents. If there are any objections to the documents being used for evidence on the 15th, please advise me so we may make arrangements for a live witness from the agency.

Thank you.  
 Louis Levenson

David M. Yount, Esq.  
 Levenson & Associates  
 125 Broad Street, SW  
 Atlanta, Georgia 30303  
 (404) 659-5000 office  
 (404) 372-8935 mobile  
 (404) 659-1355 fax  
 vid@levensonlaw.com

C121

Information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the recipient, you are hereby notified that any review, dissemination, distribution or of this communication is strictly prohibited. If you are not the intended

1244

Excerpts, Return and Recommendation of Special Administrators  
dtd. November 14, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
IN RE:	)	RETURN AND RECOMMENDATION
	)	OF
	)	SPECIAL ADMINISTRATORS
THE ESTATE OF JAMES BROWN	)	
A/K/A JAMES JOSEPH BROWN	)	
_____	)	

The Special Administrators of the Estate of James Brown, Robert L. Buchanan, Jr. and Adele J. Pope, make the return to Motions and recommendations set out below:

AS TO THE TANGIBLE PERSONAL PROPERTY

1. They believe that the immediate adoption and seamless implementation of such a plan to value the TPP including Personal and Household Effects (PHE), is in the best interest of the Estate.

2. They believe that any plan must balance the rights of the beneficiaries of the Will to receive, in kind, Personal and Household Effects (PHE), with the need for appropriate security for the payment of Estate Taxes and expenses, where applicable.

3. They are informed that Tom Wells, engaged by the PRs, with others, has completed an inventory of assets owned by the Estate. They request that the Court engage Llewellyn M. Dykes at a cost of no more than Thirty Thousand (\$30,000.00) Dollars to value the TPP on or before December 25, as of December 25, 2006 (whether claimed by the Estate, the Trust, or any Brown Entity).

4. With respect to the TPP, they further recommend the following:

- a. All TPP, other than cars titled in the name of James Brown Enterprises, Inc., collectively be reported on the Inventory & Appraisal as assets of the Estate,

AS TO THE VALUATION OF THE ROYALTIES, IMAGE, NAME AND PERSONA

6. The SAs oppose the motion to engage New York Counsel because resources are available locally to perform the same task at a savings of what is estimated to be at least \$50,000.

7. Because of the crisis caused by the termination one month before the due date of the Estate Tax Return of the primary financial advisor of James Brown and the Brown Entities, the SAs request that the Court approve the following valuation procedure for the Royalties, Image, Name and Persona of James Brown:

- a. A unified valuation of the Royalties, Image, Name and Persona, which appears to be appropriate based on the scant case law and legal commentary.
- b. Use of the following formula for date-of-death valuation of the Royalties, Image, Name and Persona of James Brown, working with Williams Sellars, CPA, M&T Bank and the available records of David Cannon:
  1. 1 year royalties, based on 5 yr. M&T average
  2. PLUS 50% of Gross known Performance Contracts from 2006
  3. X - a figure recommended by accountant within range of 12.5 - 14.
  4. LESS payoff amount due M&T Bank as of date of death
  5. EQUALS date-of-death value of Royalties, Image, Name and Persona
- c. The royalties, image and personal should be returned as Estate assets, with full disclosure that they may be claimed, in whole or in part, by James Brown Enterprises, Inc., which, in turn, may be claimed, in whole or in part, by the Trust.
- d. The PRs should be directed to prepare, with the assistance of the SAs, a detailed report to accompany the above valuation when filed with the Estate Tax Returns in March, 2008, to include:
  1. A complete explanation of the structure of the \$26,000,000, 7.98% Royalty-Backed Pay-through Note, Class A No A-1 (CUSIP No. 470277 AA2) and receipts, payments and misappropriations from said fund. (This would include the structure of James Brown Royalty Venture I SPC, Inc, James Brown, L.L.C., etc.)
  2. A detailed explanation of the filing, and failure to file, tax returns with respect to the various entities.

**EXHIBIT 20**

STATE OF SOUTH CAROLINA )  
 COUNTY OF: AIKEN )  
 IN THE MATTER OF: JAMES BROWN )

IN THE PROBATE COURT  
 INVENTORY AND APPRAISEMENT

CASE NUMBER: 2007-ES-02-0058

Filed: 11-15-2007  
 Sue H. Roe  
 Judge of Probate

By: [Signature]

ORIGINAL  
 SUPPLEMENTAL #

11-15-07  
[Signature]  
 ALLEN  
[Signature]  
 Deputy Clerk

Personal Representative (s): ALBERT H. DALLAS, and ALFRED A. BRADLEY

Decedent's Social Security Number: 258-32-3801 Was there a will?  YES  NO  
 Decedent's Date of Death: December 25, 2008 Domicile at death: AIKEN SC  
(county) (state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisalment of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 15th day of  
 November 20 07  
[Signature]  
 Notary Public for South Carolina  
 My Commission Expires: \_\_\_\_\_

Signature: [Signature]  
 Name: Albert H. Dallas  
 Address: Post Office Box 1155 Post Office Box 1150  
Thomson, GA 30824  
 E-Mail: \_\_\_\_\_  
 Telephone (O): (708) 595-7170  
 (H): \_\_\_\_\_

Attorney: Stanley G. Jackson  
 Address: 321 1/2 Newberry Street SW  
Aiken, SC 29801  
 E-Mail: jacksonstanley@bellsouth.net  
 Telephone: 803.843.1003

Signature: [Signature]  
 Name: Alfred A. Bradley  
 Address: 1809 Green Pine RD  
Aiken, SC 29803  
 E-Mail: usahall@bellsouth.net  
 Telephone (O): 803.848.4201  
 (H): (803) 852-8443

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following a appointment, a copy of the inventory and appraisalment shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

**RECAPITULATION**

	Non-Probate	Probate
Schedule A - Real Estate		\$ Unknown
Schedule B - Stocks and Bonds		
Schedule C - Notes Due Decedent and Cash		205,218.88
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate		138,508.13
Part 2 - Payable to Beneficiary		NONE
Schedule E - Jointly Owned Property		NONE
Schedule F - Other Miscellaneous	320,000.00	58,687,046.00
Other Assets Payable to Estate		
Schedule G - Transfers during Decedent's life	28,332,782.00	
Schedule H - Powers of Appointment		NONE
Schedule I - Annuities and Retirement Accounts		NONE
TOTAL GROSS VALUE	\$ 85,883,562.99	
ENCUMBRANCES	( 0 )	
TOTAL NET WORTH	\$ 85,883,562.99	

# Adele J. Pope, PC

## EXHIBIT 34

ATTORNEY AT LAW

*Certified Specialist in Estate Planning and Probate Law*

1218 Taylor Street

PO Drawer 7125

Columbia, SC 29202-7125

Telephone (803) 779-1870

Telecopier (803) 779-1673

June 15, 2007

Phillip G. Farr, CPA, P.C.  
104 Cobb Street  
Thomson, Georgia 30824  
Fax: 706-595-6070

BY FAX ONLY

Re: The Estate of James Brown  
Date of Death: December 25, 2006  
Our File No. 8377

Dear Phil:

Thanks to you and Martha (and Buddy) for helping us get these tax returns organized. Here is what I understand:

1. No tax returns have been filed for the James Brown 2000 Irrevocable Trust.
2. You have the tax returns for James Brown Enterprises, Inc., 1999-2005. (You will send all except 2005, which I have, and 2006 when available.)
3. You have James Brown's individual returns for 1999-2005. (You will send all except 2005, which I have, and 2006 when available.)


4. James Brown LLC and/or James Brown Royalty Venture I SPC, Inc. Only one return filed (probably 1999). You will send that one to me.

5. You also confirmed that you have not prepared any income tax returns for Geronimo Music, Ltd.  
*JAMES BROWN LLC TRUST WAS FILED - NOT THE LLC, PER SE.*

You have indicated that you have these readily available and will copy and send them. If we can help in any way by sending someone to assist with the copying, or otherwise, please let me know.

Bob and I thank you in advance.

Sincerely,



Adele J. Pope

AJP:lwm

cc: Robert L. Buchanan, Jr., Esquire

Albert H. Dallas, Esquire

Other Personal Representatives and Counsel

BROWN, NLTR.FARR.upil

**Adele J. Pope**

**From:** Bill Hammond [whamm@bellsouth.net]  
**Sent:** Friday, June 15, 2007 1:17 PM  
**To:** Brown Est. / Robert L. Buchanan Jr.  
**Cc:** adele@popelawfirm.com; Keith M. Babcock  
**Subject:** Disbursements from Bond Deal and repudiation of Writer's Share sale

Adele and Bob: You asked about the disbursement of the bond proceeds. I sent you the list of disbursements of approximately \$15M. These are the disbursements made by Leon Friedman from a net check to him at the bond closing. All of the costs- Pullman, lawyers etc. were taken out before Leon received the net proceeds. I am obtaining from Leon the disbursements made by the closing attorneys prior to his receipt of the net. The Morgan Stanley account was in the name of JBE, Inc. and was controlled by JB. I will send the pre \$15M disbursements on the closing statement to you as soon as it is available. If litigants wish to chase rabbits I guess that is better than bothering us with relevant matters before the court.

I recall Phil stating there were some \$6M+- in closing costs which had never been accounted for by JBE or JB, amortized and deducted. You will recall that Phil and I concluded these previously undeducted costs and the NOL carry forward would largely offset the gain from the sale of the writer's share and payoff of the bond as it relates to JBE, Inc. A charitable deduction would offset some part of the gain at the estate level. Therefore, it is discouraging to hear that you object to going forward with the sale of the writer's share, especially when it appears it can be done with a limited tax consequence, provide much needed liquidity to the estate, and force any contract claims in the October letter, if any, to be proven as a claim against the estate at a later time, and without even allowing GT the opportunity to explore settlement with Pullman. I have been representing fiduciaries, both corporate and individual for over 25 years and this is not a prudent fiduciary course of action. It is likewise inconsistent with the terms of the trust, which requires a sale of all assets to immediately, and not 5-10 years from now, fund the education of grandchildren and deserving residents of GA/SC. When the GC reach age 35, they receive no benefits from the education trust, so waiting to fund it is to their detriment. If the October letter and claims there under are valid claims and contractual obligations, they will be asserted whether the Writer's share is sold or not. I have advised the PR's to obtain separate counsel for any claim they may have, if any, under the October letter, since I represent the estate and trust. So your decision to hold this revenue stream, which will decline over time and is under the control of third parties is a risky and imprudent fiduciary call. I have the estate and children's interest in mind and do not understand your objection to maximizing the estate's value, or taking the risk of its diminution over time. I have no dog in this race except the beneficiaries of the trust and make these comments sincerely. Bill

LAW OFFICES  
LEWIS & BABCOCK, L.L.P.  
POST OFFICE BOX 11208  
COLUMBIA, SOUTH CAROLINA 29211

TELEPHONE: 803/771-8000

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A. CAMDEN LEWIS  
KEITH M. BABCOCK  
MARY G. LEWIS  
ARIAJL E. KING  
PETER D. PROTOPAPAS  
BRADY R. THOMAS  
W. JONATHAN HARLING

STREET ADDRESS:  
1513 HAMPTON STREET  
COLUMBIA, SOUTH CAROLINA 29201

November 16, 2007

EMAIL AND U.S. MAIL

Albert H. Dallas, Esquire  
Dallas Law Firm  
Post Office Box 1150  
Thompson, Georgia 30824-1150

The Honorable Alfred A. Bradley  
1803 Greenpond Road  
Aiken, South Carolina 29083

Re: Estate of James Brown a/k/a James Joseph Brown, Our File No. 07-116

Dear Buddy and Judge Bradley:

I have enclosed a copy of the correspondence we received from Judge Early today regarding the November 20, 2007 hearing. Earlier today, a copy was forwarded to you by email. In his letter, Judge Early indicates that he is strongly considering your removal and requests that you consider resigning as personal representatives and trustees.

Keith and I believe you should strongly consider resigning rather than being removed by the court. Resignation would afford you the opportunity to leave on your own terms and make a public statement to that effect. If Judge Early removes you, and there is a strong indication that he will, it will be done after a public hearing where you will have to respond to various allegations of improper conduct. The hearing, and any orders issued afterward, will be the subject of media attention.

Obviously, the ultimate decision to resign or remain as Personal Representatives and Trustees is yours. We feel we would be doing you a disservice if we did not suggest that you strongly consider resignation as an option at this time. This suggestion falls outside our actual representation of you in estate litigation, but we have worked with you for many months and do not want to see your efforts on behalf of Mr. Brown, the estate, and the trust end in court ordered removal.

Exhibit 2



Adele J. Pope

**From:** Sonny Jones [AGSJONES@ag.state.sc.us]  
**Sent:** Wednesday, November 21, 2007 11:15 AM  
**To:** rbuchananjr@bellsouth.net; adele@popelawfirm.com  
**Cc:** John W. McIntosh; jacksonstanley@bellsouth.net; shahidlo@bellsouth.net; sslotch@bellsouth.net; weskirklund@bellsouth.net; ericbland@blandlaw.com; davidbell@davidbelllawfirm.com; carter@eckb.com; whtucker@hullfirm.com; jmg@jimgriffinlaw.com; isij@jtbpa.com; glewis@law.ga.gov; louis@levensonlaw.com; kmb@lewisbabcock.com; rmaxwell@maxwelllawfirm.com; cmcgowan@mcgowanhood.com; jfelder@mcgowanhood.com; akirby@mgclaw.com; tmorris@morrslawpartners.com; mrosen@rosen-lawfirm.com; ronni@richterlaw.com; amedin@sc.rr.com; dearyj@sccourts.org; d\_michel@yahoo.com; robtyoungatty@yahoo.com  
**Subject:** James Brown Matter

I am in receipt of the Order appointing you as PRs and Trustees in this case. The order is absent any reference to the fact that the court gave the GA and SC AGs 10 days to object to this appointment. We would request the order to be amended to accurately reflect the ruling of the court.

As we stated in court yesterday it is our position that it is an inherent conflict (including possible ethical conflict) for you to serve in the dual roles of PRs under the will and at the same time Trustees of an inter vivos trust. Granted that while the issue of the status of the trust is yet to be decided by the court, during that interim time, including possible appeal, this ongoing conflict exist and we are in the process of assembling a wealth of authority on this issue. This obvious conflict is further exacerbated by you stating to me and in court that the trust is NOT an inter vivos trust.

Please advise if you would like us to review any proposed language in the amended order.

Thanks.

C. Havird Jones, Jr.  
Senior Assistant Attorney General  
Office of the South Carolina Attorney General P.O. Box 11549 Columbia, SC 29211  
Phone: 803.734.3654  
Fax: 803.734.3677  
AGSJONES@ag.state.sc.us

--- Scanned by M\* Guardian Messaging Firewall ---

# Adele J. Pope, P.C.

ATTORNEY AT LAW

*Certified Specialist in Estate Planning and Probate Law*

1218 Taylor Street  
PO Drawer 7125  
Columbia, SC 29202-7125  
Telephone: (803) 779-1870  
Telecopier: (803) 779-1673  
Email: [adele@popelawfirm.com](mailto:adele@popelawfirm.com)

November 21, 2007

C. Havird Jones, Jr.  
Senior Assistant Attorney General  
Office of the South Carolina Attorney General  
P.O. Box 11549  
Columbia, South Carolina 29211  
Fax: (803) 734-3677

BY FAX OR MAIL

Re: Estate of James Brown/James Brown 2000 Irrevocable Trust

Dear Sonny:

I am in receipt of your e-mail sent at 11:15 this morning and am responding to it quickly because of the coming holidays. Bob may want to answer this separately.

I do not fully understand your position with respect to the obvious conflict, since Mr. Brown himself designated the same persons to be personal representatives and trustees, and there is incorporation by reference language in the Will. Also, whereas our obligations prior to yesterday were to oversee preservation and protection of assets, I believe, as personal representatives, we now have the obligation to support and uphold the Will and Trust, which are wholly compatible with each other and which, together, constitute Mr. Brown's known estate plan.

You asserted that "you" stated in court "that the trust is NOT an inter vivos trust". Again, Bob may want to answer this separately, but I don't recall such a statement by either of us. If it was made, it was an inadvertent error, and should be corrected on the record.

The James Brown 2000 Irrevocable Trust was clearly an inter vivos trust, into which at a very minimum, the real estate was deeded during Mr. Brown's lifetime. It has received, or by its terms will receive, what we hope will be many millions of dollars. Under the formula clause, we hope the bulk of that will go to the James Brown "I Feel Good" Trust and be dedicated to charitable purposes.

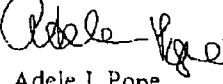
I am concerned about your assertion of a possible ethical conflict, as I take very seriously such a remark. Please let Bob and me know the basis for such an allegation, as we would want that matter fully explored in connection with any motion filed by you, and, if appropriate, ruled on by the Court.

Letter to Mr. Jones  
November 21, 2007  
Page 2

---

I look forward to working with you in connection with this project. It presents many challenges, but great educational opportunity for financially needy children, youth, and young adults (who are both qualified and deserving) who seek and have need of help to obtain and further their education.

Bob and I would very much appreciate an opportunity to meet with you and Attorney General McMaster to review what we believe to be both the challenges and the great potential rewards which Mr. Brown provided. We will be glad to come to your office to meet with you and Mr. McMaster at any time that he can schedule us.

Sincerely,  
  
Adele J. Pope

AJP:kfr  
cc: (with copy of your e-mail)  
The Honorable Henry Dargan McMaster  
Robert L. Buchanan, Jr.  
Beneficiary Review File

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

C/A No. 2007-CP-02-122

AFFIDAVIT OF  
WILLIAM F. HAMMOND

**AFFIDAVIT OF WILLIAM F. HAMMOND**

Before me, the undersigned authority on this day personally appeared  
WILLIAM F. HAMMOND, who after being duly sworn, disposes and makes this  
affidavit.

1.

I am of the age of majority, of sound mind and memory and depose this  
AFFIDAVIT is based on my personal knowledge and observations.

2.

My name is William F. Hammond, and I am a partner/owner of the law  
firm of Hull Towill Norman Barrett & Salley, P.C., 801 Broad St., SunTrust Bank  
Building, Suite 700, Augusta, Georgia 30901. I was licensed in Georgia as a  
Certified Public Accountant and practiced accounting in Augusta, Georgia  
immediately prior to attending Law School.

3.

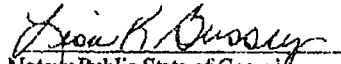
I was admitted to practice law in Georgia in 1980 after graduation from  
Mercer University, and subsequently received a Masters of Law in Taxation LLM

1

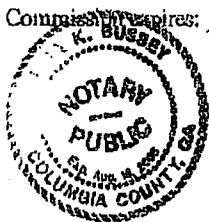
and adverse and detrimental to the intentions of James Brown and the intended beneficiaries of his Estate and the Trusts he created. I also advised the Trustees, after our first meeting with the Special Administrators, that the Special Administrators' goal was not to assist them in the administration of the Estate but, rather, to remove them as fiduciaries of the Estate and Trust and to have themselves appointed. I advised my clients that a Personal Administrator's statutory fee in South Carolina is 5% of the fair market value of an estate worth \$85,000,000 or more, and control of a private charitable foundation with assets over \$80,000,000 and the compensation therefrom, made them sitting ducks for attempted removal.

  
WILLIAM F. HAMMOND

Sworn to and subscribed  
before me this 30<sup>th</sup> day of  
November, 2007.

  
Notary Public State of Georgia

My Commission Expires: August 18, 2008



**Adele J. Pope**

---

**From:** Sonny Jones [AGSJONES@ag.state.sc.us]  
**Sent:** Thursday, December 06, 2007 4:04 PM  
**To:** rbuchananjr@bellsouth.net; adele@popelawfirm.com  
**Cc:** Bob Cook  
**Subject:** James Brown Matter

**Attachments:** James Brown Legacy initial-offer 10-12-07\_\_\_.doc



James Brown  
Legacy initial off...

I, like each of you, have been contacted by Dr. Cox and Toby Byron as to the purchase (see attached 10/12/07 letter) of the Trust Estate for \$100 million plus 5% of the gross profits from the company to be formed. I, like each of you, have very little time left to devote to the intellectual property issue. However, I do not want to be the one referenced as the one who sat on an offer of \$100 million and lost it. Therefore, please advise as to the following (and more if you have further insight):

1. Is it that we do not have time to deal w/ this now and if so do we need to consult w/ someone who has the expertise
2. I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now...your thoughts. Also, who else is out there that can make an offer if at all
3. Are there some self serving interest w/ some of the local players in this that is causing this push
4. I was given Joe Katz in Atlanta as a person to call to get a feel if these current offer will in fact decrease in the near future...your thoughts on that contact

I would appreciate your thoughts and your indulgence but I would like to discuss now rather than explain later on...

Please advise. Thanks.

PS: When can we talk about the interesting information you recently discovered in the boxes from Keith Babcock.

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	CASE NUMBER: 2007-ES-02-_____
COUNTY OF AIKEN	)	
	)	
TOMMIE RAE BROWN	)	
Petitioner,	)	
	)	
Vs.	)	PETITION TO SET ASIDE TRUST
	)	
ADELE POPE AND BOB BUCHANNAN	)	
AS TRUSTEES OF THE	)	
IRREVOCABLE TRUST OF	)	
JAMES BROWN U/A/D AUGUST 1, 2000	)	
<u>Respondents.</u>	)	

YOUR PETITIONER HEREBY RESPECTFULLY ALLEGES AS FOLLOWS:

1. That James Brown (the "Decedent"), died on December 25, 2006, a resident of Aiken County, South Carolina.
2. That Petitioner is the surviving spouse of the Decedent, having married him on December 14, 2001, and has filed claims against the Decedent's estate as the surviving spouse.
3. That the Decedent executed a purported Last Will and Testament ("Will") and a purported Irrevocable Trust ("Trust") on August 1, 2000 (collectively, "Estate Documents").
4. That the Will of the Decedent was admitted for informal probate in the Aiken County Probate.
5. That said Will of the Decedent nominated David G. Cannon ("Cannon"), Albert H. Dallas ("Dallas"), and Alford A. Bradley ("Bradley") as Co-Personal Representatives of the Estate, and said individuals were informally appointed as such Co-Personal Representatives by the Aiken County Probate Court. Each said Co-Personal Representative has since resigned.
6. That the original Trustees named in the Trust dated August 1, 2000, also were Cannon, Dallas, and Bradley. Each said Co-Trustee has since resigned.
7. That, under the provisions of the Will, six (6) named children are to receive the Decedent's personal and household effects, and the residue of the estate passes to the Trust and, ultimately, to one or more subtrusts thereunder.

**FOR A FIRST CAUSE OF ACTION  
UNDUE INFLUENCE**

8. Petitioner realleges paragraphs 1 through 7 as if fully restated herein.
9. That, upon information and belief, one or more of Cannon, Dallas and Bradley initiated the contact between the Decedent and H. Dewain Herring, attorney at law, for purposes of

- (b) That, in the alternative, the Court determine that the Decedent's purported irrevocable Trust dated August 1, 2000, is illusory for purposes of calculating Petitioner's spousal share and, to the extent assets in the Decedent's probate estate are insufficient to satisfy Petitioner's spousal share, the assets of the Trust should be made available to satisfy such spousal share; and
- (c) For such other and further relief as this Honorable Court deems just and proper.



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

T. Heyward Carter, Jr.  
Andrew W. Chandler  
M. Jean Lee  
Evans, Carter, Kunes & Bennett  
115 Church Street  
P.O. Box 369  
Charleston, SC 29402

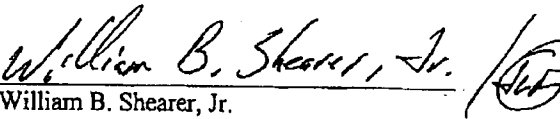
S. Alan Medlin  
1713 Phelps Street  
Columbia, SC 29205

David L. Michel  
Michel Law Firm, LLC  
15 State Street  
Charleston, SC 29401  
Attorneys for Petitioner, Tommie Rae Brown

December 19, 2007  
Charleston, SC

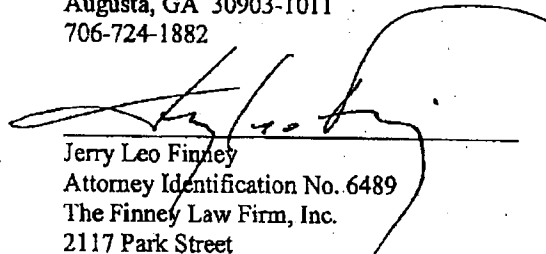


Respectfully submitted, this 2nd day of January, 2008.

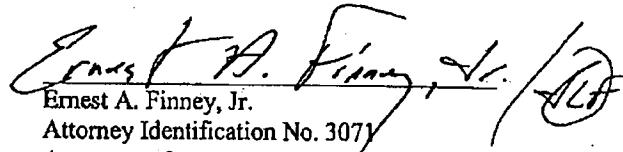


William B. Shearer, Jr.  
Attorney Identification No. 5049  
POWELL GOLDSTEIN LLP  
One Atlantic Center, 14<sup>th</sup> Floor  
1201 W. Peachtree Street, N.W.  
Atlanta, GA 30309-3488  
404-572-6600

David B. Bell, Esq.  
BELL & BELL  
P. O. Box 1011  
Augusta, GA 30903-1011  
706-724-1882



Jerry Leo Finney  
Attorney Identification No. 6489  
The Finney Law Firm, Inc.  
2117 Park Street  
Columbia, SC 29201  
803-254-7408

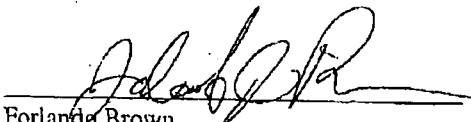


Ernest A. Finney, Jr.  
Attorney Identification No. 3071  
Attorney at Law  
2117 Park Street  
Columbia, SC 29201  
803-254-7408

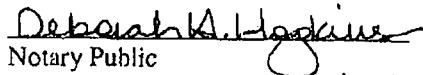
COUNSEL FOR FORLANDO J. BROWN

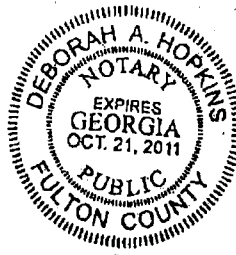
VERIFICATION

I, Forlando Brown, the Plaintiff, do hereby certify that the entire contents of this Complaint are true and accurate to the best of my belief and knowledge as of the writing of this Complaint.

  
Forlando Brown

Subscribed and sworn to before me  
this 31<sup>st</sup> day of DECEMBER, 2007.

  
Notary Public  
My commission expires: 10/21/11



#1243829

EXHIBIT 22

11. If the Court determines, after a full hearing, that Mr. Buchanan and I cannot continue to serve properly and ethically as Personal Representatives and Trustees at the same time, I ask the Court to take such measures as will balance the interest of our acting properly and ethically and doing the least damage to Mr. Brown's Estate Plan.

12. I believe that Mr. Buchanan and I have acted in utmost good faith first in our service as SAs, and as Personal Representatives and Trustees since November 20, 2008.

13. I believe the resignation of Mr. Dallas and Mr. Bradley was entirely appropriate. I believe our appointment by the Court was appropriate.

14. In the fall of 2007, Mr. Dallas and Mr. Bradley advised us, and the accountant, that there was no Advisory Committee under Mr. Brown's Trust. When we became PR/Trustees, we filed for charitable recognition of the James Brown "I Feel Good" Trust. For the Advisory Committee, we selected a former South Carolina State Superintendent of Education and the now-president of South Carolina State University. We believe they embody Mr. Brown's goals and love of education. We sought, and are still seeking, to add a child of Mr. Brown who supports the goals of the 2000 Trust.

15. I ask the Court to schedule a full hearing on the motion for reconsideration of our appointment, to determine that what Mr. Buchanan and I have done as Special Administrators, and to date as Personal Representative and Trustees, is proper.

16. I also ask the Court to declare that it is both ethical and proper under Mr. Brown's documents for us to continue to serve as both Personal Representatives and Trustees.

17. I ask that my counsel be allowed to cross examine, among others, Forlando Brown, to determine whether the lawsuit he has filed against us in Federal Court was orchestrated or

motivated by Messrs. Dallas and Cannon, since he is using the law firm that helped Mr. Cannon and Mr. Dallas in July 2007 with trying to remove Mr. Brown's Trust from the State of South Carolina.

18. Every Will or Trust which has more than one outright beneficiary has potential conflicts. Mr. Brown's Estate Plan contemplated service by the same persons as his Personal Representatives and Trustees.

19. Mr. Buchanan and I have worked steadily for 10 months to do everything we could, first to preserve the assets, and now to uphold his Estate Plan. I believe if we had not been appointed, and prevented it, Mr. Cannon, Mr. Dallas and Mr. Bradley would now have millions of dollars, and Mr. Brown's Estate and Trust would be in grave condition.

20. If, after this review, the Court finds that it is not both ethical and reasonable for Mr. Buchanan and me to serve both as Personal Representatives and Trustees, I would intend to work with Mr. Buchanan to tender my resignation in a way that would ensure that Mr. Brown's Estate and Trust not be put at risk of falling back into the hands of Mr. Cannon, Mr. Bradley and Mr. Dallas.

21. In this complex matter, which includes at least 5 separate lawsuits, special conflicts may arise. When they do, it will be entirely appropriate, and we, the Court, or any appropriate party, may seek either a Special Administrator or Special Trustee to deal with a particular situation. To avoid more duplication and confusion, however, I believe this procedure should be implemented only as and when needed.

22. Mr. Buchanan and I have served for only 6 weeks. We are trying to resolve seven years of mismanagement. I hope to continue to do that if the Court finds my service appropriate.

Mr. Brown's Estate and Trust if the same fiduciaries were not serving both as his Personal Representatives and as Trustees.

5. As shown on Exhibit A, attached hereto, Albert Bradley, prior to January 2, 2003, failed to perform his duties as Trustee for six years. After that, he has joined in, and supported, the acts of Mr. Cannon and Mr. Dallas.

6. One of our primary acts as SA s from March 7, 2007 - August 10, 2007 was preventing an imprudent sale of Mr. Brown's assets which would have immediately paid Mr. Dallas and Mr. Cannon more than \$ 2 Million.

7. Along with Mr. Buchanan, I have both a fiduciary duty and a great desire to preserve Mr. Brown's Estate Plan, as outlined in his Will and the 2000 Trust, for the education of children, including his grandchildren.

8. I believe that my fiduciary duty includes taking all reasonable measures to assure that Messrs. Cannon, Dallas and Bradley not return as fiduciaries for the Estate or Trust.

9. I do not desire, however, to be serving and vigorously defending Mr. Brown's Estate Plan, something which is expected to consume more than 70% of my available time for the next year (and perhaps longer) unless accusations made against Mr. Buchanan and me by the South Carolina Attorney General (and others) related to our service as SA s are resolved in our favor after a full evidentiary hearing.

10. I now agree that I should not have believed the representations of Mr. Dallas and Mr. Bradley, speaking through their lawyer in open Court, that James Brown Enterprises, Inc. had never been transferred to the 2000 Trust. Nor should I have believed many other representations by them. I ask to take the stand to tell the Court about these matters.

EXHIBIT 24

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	ORDER DIRECTING PAYMENT
IN RE:	)	OF FEES AND COSTS OF SPECIAL
	)	ADMINISTRATORS AND OTHER RELIEF
THE ESTATE OF JAMES BROWN	)	
A/K/A JAMES JOSEPH BROWN	)	

*WMC*

This matter comes before me on Motion of Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown; Trustees of the James Brown 2000 Irrevocable Trust; and former Special Administrators of the Estate of James Brown. They seek an order approving payment of fees of \$317,000.00 and costs for their services as Special Administrators for the period from March 7, 2007 through November 20, 2007. They also seek approval of continued payments on a "time plus costs" basis while they serve as Personal Representatives and Trustees. Their unreimbursed costs for the period are \$2,415.38. They ask that the "time plus costs" payments be a deposit towards, and without prejudice to, their right to receive full commissions as Personal Representatives and Trustees.

The motion was supported by affidavits of Robert L. Buchanan, Jr. and Adele J. Pope, with detailed attachments outlining their work as Special Administrators for the period from March 7, 2007 through November 20, 2007, and as Personal Representatives and Trustees since that time. For the 8 1/2 month period they served as Special Administrators, the two attorneys worked more than 950 hours. Their staffs and law clerks worked more than 680 hours.

Since, by limitation in this Court's <sup>STATE OF SOUTH CAROLINA</sup> ~~Order~~ <sup>Rules</sup>, the Special Administrators were not fiduciaries during the period before November 20, 2007, the Special Administrators were not bound by the guidelines for

JAN 09 2008

*L. L. Godard*  
 L. L. Godard, Clerk of Court of Common Pleas and  
 Sessions for Aiken County, South Carolina do hereby certify  
 that this is a true and correct copy of the  
 original documents which have been filed in accordance with the guidelines for

*Charm Jones*  
 Deputy Clerk

1-9 8.  
 8:30

**EXHIBIT 28**

**Adele J. Pope**

**From:** Mary Frances Jowers [MFJowers@ag.state.sc.us]  
**Sent:** Wednesday, February 13, 2008 10:22 AM  
**To:** jdbaileylaw@bellsouth.net; rlbuchananjr@bellsouth.net; adele@popelawfirm.com  
**Cc:** Sonny Jones  
**Subject:** Fwd: Clarification

Please disregard the e-mail below that I sent earlier today; I've talked to Adele and my understanding is that everyone has been aware all along that our position on the Christie's sale is that we have no position. The Attorney General also has no position on the sale of the house. To the extent there is any misunderstanding of our position on that, I wanted to let you know our position.

>>> Mary Frances Jowers 2/13/2008 9:01 AM >>>

I'm writing to clarify something from the meeting yesterday. Adele, as I understood it, you mentioned that you thought we were fully in support of the Christie's sale, and you are planning to include that fact in the Order you prepare relating to the sale. You based this on what Sonny said in Court at the hearing.

My recollection was that we are taking no position on the Christie's sale at this time, but that Sonny stated we were working on resolving the commingling issue and you had been cooperative with us in reviewing the accounts. I didn't mention anything yesterday because I wanted to check on it.

I checked with Sonny this morning, and he confirmed that we are not taking a position on the Christie's sale, and he did not state in open court (or any other time) that we are in support of it.

If I misunderstood what you said about our position, let me know - I just wanted to clarify this as soon as possible.

**Adele J. Pope**

**From:** Terry Bradford Cox, PhD [tbcox@mindspring.com]  
**Sent:** Friday, February 29, 2008 6:43 PM  
**To:** Adele Pope; Bob Buchanan  
**Cc:** Sonny Jones; Bill Shearer  
**Subject:** James Brown Legacy loi assumptions 02.08  
**Attachments:** James Brown Legacy loi assumptions 02\_\_\_\_.doc

Dear Adele and Bob

Attached is a letter of intent to purchase all of the assets of the Trust and Estate. The hard copy of this intent and letter from Powell Goldstein, LLP will be sent Monday. I appreciate your consideration.  
Sincerely,

Terry

Terry Bradford Cox, PhD  
The Graham Windsor Group  
683 Greenview Ave. NE  
Atlanta, Georgia 30305  
678.575.4180  
[tbcox@grahm-windsor.com](mailto:tbcox@grahm-windsor.com)

THE JAMES BROWN LEGACY, INC.  
683 GREENVIEW AVENUE, NE, ATLANTA, GEORGIA 30305

EXHIBIT 25

February 29, 2008

Ms. Adele J. Pope  
1218 Taylor Street  
PO Drawer 7125  
Columbia, SC 29202  
Adele @popelawfirm.com

Mr. Robert L. Buchanan, Jr.  
212 Newberry Street NW  
P.O. Box 463  
Aiken, SC 29802-0463  
rbuchananjr@bellsouth.net

Dear Ms. Pope and Mr. Buchanan:

We are pleased to submit this letter of intent on behalf of The James Brown Legacy, Inc. (hereinafter "TJBL") expressing our intent to purchase all of the assets James Brown Estate (the "Estate") and the irrevocable trust established by Mr. James Brown dated August 1, 2000 (the "Trust"), in their entirety, including, without limitation, James Brown Enterprises, Inc that is owned by the Trust. All of these assets will be collectively referred to as the "Assets."

Our intent is to purchase all of the Assets because we believe that to obtain maximum value for the Assets so that the legacy of James Brown and his noble wishes as set out in the Trust can be fulfilled, the Assets must be sold as a unit instead of breaking up the items and liquidating them piecemeal. As you surely know, merely selling the items individually will do nothing to perpetuate the good works of James Brown.

The purchase price for the Assets will be between \$90,000,000 and \$100,000,000 plus a continuing payment equal to five percent of the gross profits that we generate from licensing those Assets that can be licensed, all depending on the outcome of our due diligence described below. The purchase price assumes clear title to the Assets and that the sale will be on a debt-free and lien free basis. The purchase price will be all cash, paid at closing and financed by a private equity fund that is our partner.

Our intent, upon receiving your agreement to this letter of intent, will be to conduct an in depth due diligence of the Assets and simultaneously develop a strategic plan and infrastructure that will build and promote the legacy of James Brown. We intend to work and partner with government agencies and educational institutions to turn James Brown's home into an experiential setting commiserate with the stated intentions of the I Feel Good Trust. We also envision plans that will include the establishment of the James Brown Museum. The purpose of this museum will be to tell the story of how James Brown persevered against all odds: a true "Horatio Alger" story. We will also work and partner with other interested

parties within the strategic plan to maximize the brand equity and performance of the Assets over time. We believe that this approach, coupled with the right structured sales agreement, will provide the most value for all interested parties.

We anticipate we will need a period of 90 days for due diligence, if all required information and people who have had influence on the assets are available (the "Due Diligence Period"). Our due diligence will focus on a review of all of the Assets, including, but not limited to, a legal review of all intellectual property and rights, all contracts and agreements, all litigation and an accounting review of the financial statements of JBE for the last 3 complete fiscal years.

At the end of the Due Diligence Period, we anticipate submitting a definitive written agreement for the purchase of the Assets (the "Definitive Agreement") that will include

- a. A deposit payment of \$5 million to be credited toward the purchase price at the closing.
- b. A closing date within 30 days following the signing of the purchase agreement.
- c. A condition that all material consents required to complete the proposed acquisition shall have been obtained prior to closing.
- d. Customary representations, warranties and covenants for this type of acquisition, including, but not limited to, organization and good standing, authority and enforceability, good title, no liens and encumbrances, condition of assets, licenses and compliance with laws, absences of adverse changes, material contracts, no undisclosed liabilities and financial statements.
- e. Customary indemnification against breach of warranties and existing liabilities.
- f. An escrow fund of Five Million Dollars (\$5,000,000) from the Purchase Price will be set aside for two years to provide security for the indemnification of TJBL any breaches of the seller's representations, warranties and obligations.

To help provide resources to protect the Assets and get the Estate and/or Trust some cash sooner rather than later, we are willing to manage the Trust assets during the Due Diligence Period. If you will allow this, TJBL will need an agreement and your full support to determine marketability of assets and enter into arrangements to secure cash infusions.

This letter agreement will remain in effect for 120 days after your acceptance below, unless earlier superseded by the definitive Agreement (the Term).

In consideration of the substantial resources that TJBL will be expending in connection with pursuing this proposed acquisition, from the time of the acceptance of this letter agreement until such time as this letter agreement has terminated (the "Exclusivity Period"), the Estate and the Trust shall not and shall counsel each of their respective representatives, agents, advisors or affiliates (collectively, the "Seller Group") not to initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, any proposal or offer ("Acquisition Proposal") to acquire all or any significant part of the business or properties, capital stock or capital stock equivalents of the Estate or Trust or otherwise effect a change in control thereof, of any kind whatsoever, or provide any non-public information to any third party in connection with an Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Estate or Trust to abandon, terminate or fail to consummate the proposed acquisition, or otherwise encourage or facilitate any of the foregoing. The Estate or

Trust shall immediately notify the TJBL if any member of the Seller Group receives during the term of this letter agreement any indications of interest, requests for information or offers in respect of an Acquisition Proposal. The Estate and Trust represent and warrant that no member of the Seller Group is party to or bound by any agreement with respect to an Acquisition Proposal other than under this letter agreement.

This letter of intent shall not create any binding obligation on the part of any of the parties hereto to enter into the Definitive Agreement or to effect the proposed acquisition or any other transaction regarding the Assets, the Estate or the Trust, nor shall this letter agreement create any other binding obligation except for the Term and Exclusivity Period above and the Governing Law and the Expiration Date set forth below. Such provisions will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. A binding agreement with respect to the proposed acquisition will result only from the execution of the Definitive Agreement and will be entirely subject to the terms and conditions contained therein.

This letter agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of South Carolina without giving effect to any choice of law rules that may require the application of the laws of any other jurisdiction (the "Governing Law").

This letter of intent will expire at 5:00 p.m., Eastern Time, on March 5, 2008, unless sooner accepted below (the "Expiration Date").

Based upon our experience, we are confident in our ability to structure a mutually beneficial transaction in a professional and timely manner. If you have any questions regarding our interest, please feel free to contact me. Thank you for your consideration of our interest in this transaction.

Very truly yours,

THE JAMES BROWN LEGACY, INC.

By: \_\_\_\_\_  
Terry Bradford Cox

AGREED AND ACCEPTED  
\_\_\_\_\_, 2008

THE ESTATE OF JAMES BROWN

By: \_\_\_\_\_

THE IRREVOCABLE TRUST OF JAMES BROWN  
dated August 1, 2000

By: \_\_\_\_\_

Excerpts, Ltr. Buchanan and Pope to Attorney General McMaster dtd. March 10, 2008

**EXHIBIT 28**

**212 Newberry Street NW  
Aiken, South Carolina 29801**

March 10, 2008

The Honorable Henry Dargan MacMaster  
Attorney General for the State of South Carolina  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
Fax # 803 - 734-3677

**BY FAX ONLY**

Re: The Estate of James Brown  
The James Brown 2000 Irrevocable Trust  
Our File No. 8377

Dear Attorney General MacMaster:

We understand that Sonny Jones may be meeting with you this Wednesday, March 12<sup>th</sup>, to discuss matters related to the Estate/ Trust of James Brown. We respectfully request an opportunity to also meet with you that day (Bob by telephone from Florence) to discuss an immediate opportunity that we may lose if we cannot resolve the position you are taking with respect to our service as Personal Representatives and Trustees (PR/Trustees).

We have an opportunity for what it is hoped will be a 75<sup>th</sup> Birthday Musical Television Salute to Mr. Brown which could both provide critical funding to help the Estate/Trust survive until the Christie's sale, and help provide some of the funds necessary to vigorously defend the Elective Share, Will and Trust contests. (Mr. Brown's birthday is in early May.)

Unfortunately, after our attorney has done his best, the producers will not accept a contract without our providing both assurances that we have the full authority to enter into a license agreement with respect to the name, likeness, etc., but that we will indemnify them against any challenges to the project based on our lack of authority.

As you know, the former PR/Trustees, as the Court has found, left the Estate and Trust in such bad condition that at this point we cannot with any confidence assert whether the image and persona are owned by the Estate, by the Trust, by a Brown Entity owned by either the Estate or Trust, or in combination.

[There are no funds in the Charitable Trust at this time. Only about \$800 has ever been placed in the Charitable Trust (used to apply for Charitable Recognition). And the current challenges make further funding impermissible at this time. Under both the Will and the 2000 Irrevocable Trust, however, the majority of the value of Mr. Brown's assets are expected to go

Exhibit 21

**HARDSHIP REQUEST**

Form **4768**

**Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes**

OMB No. 1545-0101

(Rev. January 2008)  
Department of the Treasury  
Internal Revenue Service

<b>Part I Identification</b>		
Decedent's first name and middle initial <b>James</b>	Decedent's last name <b>Brown</b>	Date of death <b>12/25/2006</b>
Name of executor <b>ROBERT L. BUCHANAN, JR</b>	Name of application filer (if other than the executor)	Decedent's social security number <b>259-32-3801</b>
Address of executor <b>212 Newberry Street, NW</b>		Estate tax return due date <b>09/25/2007</b>
City, state, and ZIP code <b>Aiken, SC 29801</b>	County of decedent (county, state, and ZIP code) <b>South Carolina</b>	Daytime telephone number

**Part II Extension of Time To File Form 706, 706-A, 706-D, 706-NA, or 706-QDT (Section 8081)**  
**Automatic Extension**

If you are applying for an automatic 6-month extension of time to file:

- Form 706, check here
- Form 706-A, 706-D, 706-NA, or 706-QDT, indicate the form by checking the appropriate box below.
  - Form 706-A
  - Form 706-D
  - Form 706-NA
  - Form 706-QDT

**Additional Extension**

If you are an executor out of the country applying for an extension of time to file in excess of 6 months, check here

Also you must attach a statement explaining in detail why it is impossible or impractical to file Form 706 by the due date. See the instructions.

Enter extension date requested

**Part III Extension of Time To Pay (Section 6161)**

You must attach your written statement to explain in detail why it is impossible or impractical to pay the full amount of the estate (or GST) tax by the return due date. If the taxes cannot be determined because the size of the gross estate is unascertainable, check here  and enter "-0-" or other appropriate amount on Part IV, line 3. You must attach an explanation.

Enter extension date requested (Not more than 12 months)

- If this request is for the tax that will be or was due with the filing of Form 706, check here
- If this request is for the tax that will be due as a result of an amended or supplemental Form 706, check here
- If this request is for additional tax due as a result of an examination of your Form 706, check here
- If this request is for a section 6168 installment payment, check here

**Part IV Payment To Accompany Extension Request**

1	Amount of estate and GST taxes estimated to be due	
2	Amount of cash shortage (complete Part III)	
3	Balance due (subtract line 2 from line 1) (see instructions)	0.00

**Signature and Verification**

If filed by executor— Under penalties of perjury, I declare that I am an executor of the estate of the above-named decedent and that to the best of my knowledge and belief, the statements made herein and attached are true and correct.

*Robert L. Buchanan, Jr.* Co-*Personal Rep.* Co-*Personal Rep.* 3/24/08  
Executor's signature Title Date

If filed by someone other than the executor— Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein and attached are true and correct, that I am authorized by an executor to file this application, and that I am (check box(es) that apply(ies)):

- A member in good standing of the bar of the highest court of (specify jurisdiction) ▶
- A certified public accountant duly qualified to practice in (specify jurisdiction) ▶
- A person enrolled to practice before the Internal Revenue Service.
- A duly authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)

\_\_\_\_\_  
Filer's signature (other than the executor) Date

The above former Trustees Cannon, Dallas and Bradley were named and served as Trustees of the 2000 Trust from August 1, 2000 until the dates of their respective resignations. They were appointed PRs on January 18, 2007. PR/Trustees Dallas and Bradley have tried to withdraw their resignations. They were denied reconsideration of the Order accepting their resignation by Order of the Circuit Court dated March 7, 2008. That Order is being appealed by them.

**CASH FLOW:**

As of the date of this request, the Estate/Trust has approximately the following cash or equivalents:

Cash in banks	\$20,000
Cash in Savings	4,000
Brokerage MM Account	<u>4,000</u>
	\$ 28,000 <sup>1</sup>

When the former PR/Trustees resigned they had not prepared or filed a date-of-death Inventory & Appraisal of the Estate of James Brown or a date-of-death Statement of Assets and Liabilities of the 2000 Trust. Further, they have not accounted for their actions either as PRs or Trustees. They have been ordered to do so by the Court. Former Trustee Cannon had refused to account, asserting that he believes the delivery of approximately 30 boxes of documents constitutes an accounting.

Former Trustees Bradley and Dallas, as of the date of this request, should deliver an accounting to the Court for their services as PR and separately as Trustees, about June 10, 2008. Their appeal of the court's Order directing them to account is expected to cause further delay and hardship to the Estate in its ability to sort out what are the asset of the Estate and Trust, and their values.

When assets are described in this Request as owned by the Estate or the 2000 Trust, they may be owned by James Brown Enterprises, Inc. [JBE, Inc.]. Because of the failure of the former PR/Trustees to keep adequate records, actual ownership among these entities may not be finally determined for years.

What is known with respect to JBE, Inc. is the following:

1. It is a South Carolina Corporation, wholly owned in 1999 by Mr. Brown.
2. In 1999 JBE, Inc. was determined to own approximately 2/3s of the Artist's share of royalties to approximately 800 of Mr. Brown's songs. (Mr. Brown was designated as the owner of the other approximately 1/3.)

In 1999, prior to the creation of the 2000 Trust, JBE, Inc. and Mr. Brown entered into a complex

---

<sup>1</sup> \$20,000 of the above amount belongs to M&T Bank, Trustee of the Royalty-backed Note discussed below which TIAA, the Noteholder, has allowed the Estate to retain to pay necessary costs to assist with the recovery of about \$373,000 due from Cannon to M&T in connection with \$900,000.00 he misappropriated about August 1, 2006.

financing transaction in which certain rights related to the songs were transferred to James Brown, LLC, a Delaware Corporation. The end result was a loan of \$26 Million in exchange for which royalties from all of the approximately 800 songs were pledged to M&T Bank, as Trustee for the Noteholder of the \$26 Million Note (TIAA). That note had a value of \$18 - \$20 Million as of the death of Mr. Brown.

As of 15 months after Mr. Brown's death, the following remains unclear:

- a. What are the date-of-death assets and liabilities of JBE, Inc.?
- b. Was JBE, Inc. transferred to the 2000 Trust? If so, when?
- c. What assets and liabilities did the 2000 Trust have as of Mr. Brown's death?
- d. What assets and liabilities did Mr. Brown own outright at his death.

Mr. Brown's Estate Plan, consisting of a Will dated August 1, 2000 and the 2000 Trust, provides for the following disposition, whether assets are owned by the Estate or the 2000 Trust.

1. Personal and Household Effects to 6 named children
2. Remainder to 2000 Trust, which will be divided as follows:
  - a. Maximum available Generation Skipping (ab. \$2 Million) to a non-charitable Trust for the education of designated grandchildren.
  - b. Remainder (assuming net Trust over \$4 Million) to the James Brown "I Feel Good" Trust, a South Carolina Charitable Trust.

The following is **ROUGH ESTIMATE** of the calculation of the Estate Taxes which will be due if:

1. The Estate Plan is upheld (5 of Mr. Brown's 6 children and others have sued to invalidate both the Will and Trust);
2. The Elective Share claim of Tommie Rae Hynie, who is claiming to be the spouse of Decedent, is unsuccessful.

**Note:** This Estimate is made without regard to whether property is owned by the Estate or the Trust. Ownership by the Trust would result in placement on a different schedule (or possibly on a gift tax return), but with the same estimated total.

	DATE-OF-DEATH VALUE
Schedule A - Real Estate . . . . . (Real Estate title in Trust)	\$ 0
Schedule B - Stocks and Bonds . . . . . (JBE, Inc. and Geronimo Music, LLC)	\$ combined with royalties, etc.
Schedule C - Mortgages, Notes and Cash	\$ 200,000
Schedule D - Insurance on Decedent's Life	
Part 1 - Payable to Estate . . . . .	\$ 0
Part 2 - Payable to Beneficiary . .	\$

Excerpts, Hardship Request of Buchanan and Pope, Application for Extension of Time to File a Return and/or Pay U. S. Estate (and Generation-Skipping Transfer) Taxes, dtd. March 24, 2008

(PRs have recently learned that the person claiming to be the spouse was paid a death benefit of approx \$30,000)

Schedule E - Jointly Owned Property . .	\$
Schedule F - Other Miscellaneous . . .	\$
Royalties, image, persona, publicity rights, and all rights associated w/ unpublished songs.	\$ 80,000,000
Corbis Claim	\$ Unknown
Tangible Personal Property, as per Christie's valuation	\$ 1,400,000
Claim against Cannon, Dallas, Bradley and others for losses b/ween 1999 and 2008. MORE THAN	\$ 10,000,000
Schedule G - Transfers during Decedent's Life . . . . .	\$ See F, above
Schedule H - Powers of Appointment . .	\$
Schedule I - Annuities . . . . .	\$
<b>TOTAL GROSS VALUE . . . . .</b>	<b>\$ 91,600,000</b>
<b>ENCUMBRANCES . . . . .</b>	<b>\$</b>
\$26 Million Royalty-Backed Note	\$ (20,000,000)
Expenses of Administration	\$ ( 4,000,000)
Date-of-death value of defense of approximately \$65,000,000 in claims against the Estate/Trust filed by Pullman, former PR/ Trustees, Bobbitt, Intrigue, GT and others, including administrative claims	<u>\$ ( 5,000,000)</u>
<b>TOTAL NET WORTH . . . . .</b>	<b>\$ 62,600,000</b>

Assuming that the Estate Plan is upheld, the calculation of the Taxes will be as follows:

<b>TOTAL NET WORTH</b>	<b>\$ 62,600,000</b>
Distributed as follows:	
Personal and Household Effects (Approx \$1 Million) to children	
(Brown Family Education Trust non-charitable \$2 Million)	
James Brown "I Feel Good" Trust (charitable)	<u>\$ 59,600,000</u>
Taxable Estate	\$ 3,000,000

Federal and S.C. Estate Taxes

\$ 460,000 plus interest from September 25, 2007

The weekly maintenance cost for the protection of the assets and defense of the Estate Plan is more than \$4,000. The Estate/Trust is expected to have no cash flow in approximately 5 weeks. The Estate has more than \$350,000 in administrative costs that have been approved by the Court, but cannot be paid. There is no money to insure assets, and the Court has been so notified.

By Court Order dated February 20, 2008, a sale of a selection of pieces of Tangible Personal Property was ordered. The items are to be sold by Christie's. The Order required a selection and notification process. As of the date of this Order, the final approval process is not complete.

The PR/Trustees intend to make a substantial deposit toward the Estate Taxes when the net proceeds of the Christie's sale are received. This is estimated to be in September or October if the Christie's sale proceeds according to the Court-Ordered schedule.

There are numerous contingencies, including a claim by a putative spouse; claims by 5 of 6 children to set aside Will; suit filed in Federal Court by a grandchild to contest the appointment of the PR/Trustees and seek the return of prior PR/Trustees; objection by the Attorney General of the State of South Carolina to the appointment of these PR/Trustees in both capacities (which objection was based primarily on affidavit by former PR/Trustees); claim by former PR/Trustees Dallas and Bradley that William Hammond, former attorney for the Estate/Trust, was named a Successor Trustee on or about July 26, 2007 (This purported designation was not disclosed to any Interested Parties or the Court until March 7, 2008.); claims by former PR/Trustees Dallas and Bradley that these PR/Trustees have no authority to act; and numerous other claims and objections.

In short, this Estate does not have the funds to pay the Estate Taxes; the beneficiaries have refused to pay their apportioned portion of the Estate Taxes as shown on Exhibit A; and, because of the failure of the former PR/Trustees to maintain adequate records, the date-of-death assets of the Estate, Trust and Related entities, and their values, are not known at this time and are not expected to be known for some time. It is, therefore, not possible to prepare an accurate Estate Tax Return at this time.

Respectfully submitted,

ESTATE OF JAMES BROWN

By: 

And: 

Its Personal Representatives

**THE JAMES BROWN LEGACY, INC.**  
683 GREENVIEW AVENUE, N.E., ATLANTA, GEORGIA 30305

**EXHIBIT 27**

March 27, 2008

Ms. Adele J. Pope  
1218 Taylor Street  
PO Drawer 7125  
Columbia, SC 29202  
Adele @popelawfirm.com

Mr. Robert L. Buchanan, Jr.  
212 Newberry Street NW  
P.O. Box 463  
Aiken, SC 29802-0463  
rbuchananjr@bellsouth.net

Dear Ms. Pope and Mr. Buchanan:

We are pleased to submit this letter of intent on behalf of Terry Lee Brown, sole heir to the Estate of James Brown and The James Brown Legacy, Inc. and (hereinafter "TJBL") expressing our intent to purchase all of the assets James Brown Estate established by Mr. James Brown dated August 1, 2000 (the "Estate"), as defined by Christie's Estate Tax Appraisal of February 27, 2008. in its entirety. All of these assets will be collectively referred to as the "Assets."

Our intent is to purchase all of the Assets and keep them in providence to protect the legacy of James Brown. The Assets must be held as a unit instead of an auction strategy that breaks up the items and liquids them piecemeal. As you surely know, no matter the differences within the family, no one wants this approach as the remedy for their differences.

The purchase price for the Assets will be \$2 million. If a letter of credit is necessary, to demonstrate security of the funds, one will be provided. The purchase price assumes clear title to the Assets and that the sale will be on a debt-free and lien free basis. The purchase price will be all cash, paid at closing and financed by a private funding group that is our partner.

Our intent, upon receiving your agreement to this letter of intent, is to submit definitive written agreement for the purchase of the Assets (the "Definitive Agreement") that will include

- a. A closing date within 30 days following the signing of the purchase agreement.
- b. A letter of credit to support the offer.
- c. A condition that all material consents required to complete the proposed acquisition shall have been obtained prior to closing.
- d. Customary representations, warranties and covenants for this type of acquisition, including, but not limited to, organization and good standing.

authority and enforceability, good title, no liens and encumbrances, condition of assets, licenses and compliance with laws, absences of adverse changes, material contracts, no undisclosed liabilities and financial statements.

- e. Customary indemnification against breach of warranties and existing liabilities.
- f. An escrow fund of Two Hundred fifty Thousand Dollars (\$250,000) from the Purchase Price will be set aside for two years to provide security for the indemnification of TJBL any breaches of the seller's representations, warranties and obligations.

This letter agreement will remain in effect for 30 days after your acceptance below, unless earlier superseded by the definitive Agreement (the Term).

In consideration of the substantial resources that TJBL will be expending in connection with pursuing this proposed acquisition, from the time of the acceptance of this letter agreement until such time as this letter agreement has terminated ( the "Exclusivity Period"), the Estate shall not and shall counsel each of their respective representatives, agents, advisors or affiliates (collectively, the "Seller Group") not to initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, any proposal or offer ("Acquisition Proposal") to acquire all or any significant part of the business or properties, capital stock or capital stock equivalents of the Estate or otherwise effect a change in control thereof, of any kind whatsoever, or provide any non-public information to any third party in connection with an Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Estate to abandon, terminate or fail to consummate the proposed acquisition, or otherwise encourage or facilitate any of the foregoing. The Estate shall immediately notify the TJBL if any member of the Seller Group receives during the term of this letter agreement any indications of interest, requests for information or offers in respect of an Acquisition Proposal. The Estate represent and warrant that no member of the Seller Group is party to or bound by any agreement with respect to an Acquisition Proposal other than under this letter agreement.

This letter of intent shall not create any binding obligation on the part of any of the parties hereto to enter into the Definitive Agreement or to effect the proposed acquisition or any other transaction regarding the Assets, the Estate, nor shall this letter agreement create any other binding obligation except for the Term and Exclusivity Period above and the Governing Law and the Expiration Date set forth below. Such provisions will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. A binding agreement with respect to the proposed acquisition will result only from the execution of the Definitive Agreement and will be entirely subject to the terms and conditions contained therein.

This letter agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of South Carolina without giving effect to any choice of law rules that may require the application of the laws of any other jurisdiction (the "Governing Law").

This letter of intent will expire at 5:00 p.m., Eastern Time, on April 1, 2008, unless sooner accepted below (the "Expiration Date").

Based upon our experience, we are confident in our ability to structure a mutually beneficial transaction in a professional and timely manner. If you have any questions

regarding our interest, please feel free to contact me. Thank you for your consideration of our interest in this transaction.

Very truly yours,

TERRY LEE BROWN

\_\_\_\_\_  
THE JAMES BROWN LEGACY, INC.

By: \_\_\_\_\_  
Terry Bradford Cox

AGREED AND ACCEPTED  
\_\_\_\_\_, 2008

THE ESTATE OF JAMES BROWN

By: \_\_\_\_\_

THE IRREVOCABLE TRUST OF JAMES BROWN,  
dated August 1, 2000

By: \_\_\_\_\_

CC: David B. Bell, Esq.  
James Bailey, Esq.  
John Sparks, Esq.  
Steve A. Matthews, Esq.

**EXHIBIT 75**

From: Forlando J. Brown <forlandoj.brown@yahoo.com>  
Subject: SHAME ON YOU!  
To: adele@popelawfirm.com, rbuchanon@bellsouth.net  
Date: Thursday, April 3, 2008, 10:13 PM

To Whom It May Concern:

You are selling MY grandfather's property that you have stolen through this racist Judge Early court system of South Carolina by being put into the position of PR, of which you can never represent James Brown, and as well Trustee which I believe you have failed. I am praying for you because you certainly will need it where you all are going after you've finished stealing all you can to fill your pockets full of My grandfather's treasure. Time will catch you all...GOD...is watching.

*"The path of the righteous man is beset on all sides by the inequities of the selfish and the tyranny of evil men. Blessed is he who, in the name of charity and good will, shepherds the weak through the valley of the darkness. For he is truly his brother's keeper and the finder of lost children. And I will strike down upon thee with great vengeance and furious anger those who attempt to poison and destroy my brothers. And you will know I am the Lord when I lay my vengeance upon you."*

FB06194

EXHIBIT 103

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	(On Removal from Probate Court)
	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
IN RE:	)	ORDER DENYING MOTION TO
	)	RECONSIDER APPOINTMENT OF
	)	SUCCESSOR PERSONAL
THE ESTATE OF JAMES BROWN	)	REPRESENTATIVES AND TRUSTEES
A/K/A JAMES JOSEPH BROWN	)	AND GRANTING RELATED RELIEF
_____	)	

This matter came before me on March 7, 2008 on motion of the former PR/Trustees of the Estate of James Brown and the James Brown 2000 Trust and others for reconsideration of this Court's Order dated November 20, 2007 as it relates to the appointment of Robert L. Buchanan, Jr. and Adele J. Pope as Personal Representatives ("PRs") of the Estate of James Brown, deceased, and as Trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") and its subtrusts.

In addition to Buchanan and Pope, other parties to this proceeding present in person or represented by counsel were the original petitioners Daryl J. Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Yamma N. Brown, Terry Brown, Tonya Brown, Lindsey Delores Brown, Janise Vanisha Brown, Jason Brown Lewis, Sydney Lumar, Carrington Lumar, Romunzo Brown, Forlando Brown and Tommie Rae Brown.<sup>1</sup> Also present or represented by counsel were James Joseph Brown II, Cinnamon Nicole Mernickle Paris and LaRhonda Pettit;<sup>2</sup>

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing is a true and correct copy of the original documents which have been filed in my office this

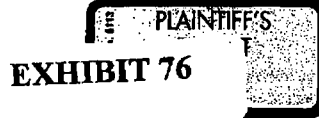
<sup>1</sup> These are all acknowledged children of Mr. Brown's claimed spouse.

<sup>2</sup> These persons claim to be children of James Brown.

APR 14 2008

*Liz Godard*  
C.C.P. & G.S., Aiken County, S.C.  
Deputy Clerk

**TURNER PADGET**  
TURNER PADGET GRAHAM & LANEY P.A.



CHARLESTON  
COLUMBIA  
FLORENCE  
GREENVILLE  
MYRTLE BEACH

**R. Wayne Byrd**

REPLY TO:

E-Mail: [WByrd@TurnerPadget.com](mailto:WByrd@TurnerPadget.com)  
Writer's Direct Dial: (843) 213-5504  
Direct Fax: (843)213-5604

May 1, 2008

VIA EMAIL ONLY ([louis@levensonlaw.com](mailto:louis@levensonlaw.com))

Louis Levenson, Esq.  
Levenson & Associates  
125 Broad Street, SE  
Atlanta, Georgia 30303

Re: Estate of James Brown, Deceased a/k/a James Joseph Brown  
Court of Common Pleas of Aiken County  
Estate No.: 2007-CP-02-0122  
Our Client/Matter No.: 09186.00101

Dear Mr. Levenson:

I am in receipt of a copy of your letter to Karen Wildau dated April 28, 2008. To the extent that you make reference to our letter of February 27, 2008, I stand corrected. It does now appear that the law firm of Powell Goldstein was engaged by Mr. Cannon on behalf of all of the Trustees for certain limited purposes. At the time of my letter of February 27, 2008, we understood the facts to be as set out in that letter. We are now informed otherwise and wish to acknowledge the correction.

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.

  
R. Wayne Byrd

RWB:bk

cc: Honorable Doyet A. Early, III

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## EXHIBIT 38

### FIRST SEMI-ANNUAL REPORT TO DEVISEES, BENEFICIARIES AND ATTORNEY GENERAL

Robert L. Buchanan, Jr. and Adele J. Pope  
PR/Trustees, Estate of James Brown, James Brown 2000 Irrevocable Trust  
(November 20, 2007 - May 20, 2008)

The undersigned present the following summary report of their activities as PR/Trustees for the first six months of their service commencing on November 20, 2007.

#### BACKGROUND

The PR/Trustees were appointed to serve under the Will of James Brown dated August 1, 2000 and the James Brown 2000 Irrevocable Trust dated August 1, 2000. These documents constitute the Estate Plan of James Brown. Pursuant to the appointment Order they have all of the authority and responsibility under the documents other than the obligation to name a third PR/Trustee.

#### A. Prior Service as Special Administrators (SAs)

The PR/Trustees served as non-fiduciary SAs from March 7, 2007 until November 20, 2007. Their charge was to oversee the actions of David Cannon, Albert Dallas and Alfred Bradley, who served as PR/Trustees until their resignations. **The primary challenges during this period were:**

1. **Obtaining critical information about the Estate, Trust and Brown Entities.**
  2. **Preventing Cannon, Dallas and Bradley from selling Estate/Trust Assets and paying themselves between \$5 Million and \$17 Million; exposing the Trust/Estate to excessive claims; and exposing the James Brown "I Feel Good" Trust to disqualification. [See Exhibit 1 - Estimated costs of proposed sales by Cannon, Dallas and Bradley.]**
  3. **Discovery of \$900,000.00 misappropriation and other secret dealings of former PR/Trustees Cannon, Dallas, Bradley, with W. Hammond, P. Farr, Powell Goldstein and others.**
  4. **Failure of Dallas, Cannon and Bradley to Inventory or account for assets of Estate/Trust, or properly administer Estate/Trust.**
  5. **Spousal/Elective Share Claims.**
- B. Primary Accomplishments of the Period from March 7, 2007 - November 20, 2007:**

With the help of many members of the family of Mr. Brown, the following things were

accomplished between Mr. Brown's death and November 20, 2007:

1. **Central location of many Estate/Trust records.**
2. **Prevention of sale of Estate/Trust Assets** with no study or analysis, and for the primary benefit of Cannon, Dallas, Bradley, Copsidas, and Greenberg Traurig ("GT") under the "October 18/20 Letter".
3. **Immediate and Permanent resignations of Cannon, Dallas & Bradley.**
4. **Return of \$350,000 of the \$900,000 taken from the 2000 Trust in 2006.**

#### **SERVICE OF PR/TRUSTEES FROM NOVEMBER 20, 2007 - MAY 20, 2008**

##### **A. Primary Challenges.**

Since our appointment as PR/Trustees on November 20, 2007 the Estate Plan of James Brown has faced new and greater challenges. **The major new challenges to the Estate/Trust are:**

1. **Defending Contest of Will and 2000 Trust by 5 of Mr. Brown's 6 acknowledged children** and others, further threatening the James Brown "I Feel Good" Trust.
2. **Federal Lawsuit filed by Forlando Brown seeking return of Dallas, Cannon and Bradley as Trustees of the 2000 Trust** and to paralyze the ability of Trustees to act.
3. **Stabilizing Estate/Trust and preventing "fire sale" of major assets.**
4. **Preventing return of Cannon, Dallas & Bradley as PR/Trustees.**
5. **Preparing to defend more than \$46 Million of claims against Estate.**
6. **Recovery of losses caused by Cannon, Dallas, Bradley and others.**

##### **B. Summary of Actions taken during first Six Months of Service:**

PR/Trustee Cannon resigned on August 10, 2007, and PR/Trustees Dallas and Bradley resigned on November 20, 2007 leaving the Estate/Trust in a deplorable financial condition and the Tangible Personal Property unprotected. These problems were exacerbated by the fact that the former PR/Trustees had no accurate records of assets, liabilities and/or income and expenses of the Estate or the 2000 Trust, and have never prepared appropriate accountings of their acts as PR/Trustees.

Six months after their resignation, **Dallas and Bradley have not yet filed an accounting** for the Estate and Trust. (By Court Order, their accountings as both PR and Trustees are due in

the Court on or about June 5, 2008.) Cannon, who resigned 10 months ago, repeatedly asserts his 5<sup>th</sup> amendment rights, refusing to answer questions about the Trust/Estate's finances.

In the face of these conditions, our primary concern has been to protect the tangible assets of the Estate/Trust and try to stabilize the Estate/Trust's financial condition enough to effectively defend the Estate Plan; begin recovery of losses caused by Cannon, Dallas and Bradley; and prevent a "fire sale" of the masters, royalties, image and persona, which are the primary assets of the Estate/Trust. Those matters are discussed in detail below.

### **C. Defense of Estate Plan**

The PR/Trustees consider the greatest challenges to Mr. Brown's Estate Plan to be:

- a. Contest of the Will and Trust by 5 children and others.
- b. The Elective Share/Spousal Claims.
- c. Attempts by Cannon, Dallas and Bradley to be reinstated as PR/Trustees.

Since November 20, 2007, we have actively sought the assistance of the Attorney General of South Carolina in the defense of the Estate Plan of Mr. Brown and prevention of the return of Cannon, Dallas and Bradley as PR/Trustees. (See letter of AJP to C. Havird Jones dtd. 11/21/07.)

Between November 20, 2007 and the filed challenges to the Will and Trust in late December 2007, the PR/Trustees, through counsel, actively encouraged family members not to contest the Estate Plan of Mr. Brown. They urged that the 2000 Will and 2000 Trust (absent Cannon, Dallas and Bradley) accurately represent Mr. Brown's lifelong stated wishes.

The PR/Trustees' informal attempts to prevent challenges to Mr. Brown's Estate Plan were unsuccessful.

Despite the actions of Cannon, Dallas and Bradley, the PR/Trustees believe that the 2000 Will and 2000 Trust accurately reflect Mr. Brown's desires with respect to the disposition of his property at both the time of their execution and at his death. The PR/Trustees continue to actively defend the Estate Plan.

### **D. Defense of Spousal/Elective Share Claim**

Based on representations of the children of Mr. Brown, his former counsel, the Brown Historical Records and the Public Records, the PR/Trustees believe that Tommie Rae Hynie Brown was not the surviving spouse of James Brown at his death. They will continue to defend against the Elective Share/Spousal claims.

The PR/Trustees have actively sought to coordinate the defense of the Estate Plan and the Elective Share/Spousal claims with the Attorney General of South Carolina.

The PR/Trustees would also like to join with Forlando Brown in the defense of Mr.

Brown's Estate Plan. His relationship with former PR/Trustees Dallas and Bradley and his attempts to return them as Trustees, however, make cooperation difficult at this time.

#### **E. Stabilizing Estate/Trust Administration**

Between November 20, 2007 and May 20, 2008 the PR/Trustees have taken a number of steps to stabilize the administration of the Estate/Trust. They include:

1. **Filing of Application for Recognition of James Brown "I Feel Good" Trust.**  
On December 6, 2007 the PR/Trustees applied for recognition of the James Brown "I Feel Good" Trust. (The former PR/Trustees had failed to take this action for more than 6 years.)
2. **Paying overdue security, insurance, appraisal, and storage fees not paid by the former PR/Trustees.**
3. **Terminating relationships with Intrigue Music Management (Frank Copsidas) and others who worked closely with former PR/Trustees Cannon and Dallas.**

#### **F. Continuing work to prevent the Return of Cannon, Dallas & Bradley as Trustees**

#### **G. Protection of Tangible Asset of Estate/Trust**

On November 20, 2007, the Tangible Personal Property (TPP) located at Mr. Brown's home estate was at great risk because of the Estate/Trust's financial condition. A sale of some items was required to raise funds to protect the Estate Plan. During the last 6 months, the following has taken place:

1. **Since January, 2008 approximately 70 Boxes of Masters, audio tapes and similar assets were shipped under secure conditions to an audio/film storage facility.**
2. **Approximately 360 lots have been placed with Christie's in New York, for sale at auction.**
3. **Pursuant to the request of the PR/Trustees, agreement of family members and Court Order, more than 3000 items have been placed with South Carolina State University's I.P. Stanback Museum and Planetarium, the South Carolina State Museum, The Lucy Craft Laney Museum of Black History and the Augusta Museum of History. These will be held for safekeeping (on loan) for up to 3 years while final disposition is being determined.**
4. **The PR/Trustees will seek Court approval on June 6, 2008 to Distribute or Sell (as their ultimate interests appear) much of the remaining TPP located at the Home Estate to Mr. Brown's 6 acknowledged children, James Brown II and Tommie Rae Hynie Brown. [The Estate Tax value of this Distribution/Sale is estimated to be less**

than \$250,000, but the property is believed to be of great personal value to his family. See proposal for details.]

5. Mr. Brown's capes and several other TPP issues remain unresolved. The PR/Trustees will continue to investigate, and seek counsel, when funds are received from the Christie's sale.

#### **H. Quitclaim of Joseph Brown Home to certain family members.**

With the consent of all acknowledged children of James Brown, and without objection of the Attorney General, the PR/Trustees are quitclaiming the Estate's interest in the home and contents of Mr. Brown's father, Joseph Brown, located in Augusta, Georgia, for \$60,000, taking 10% down and a note with Security Deed for the remainder. Sale is expected to close within 10 days.

##### **1. Home Estate, Beech Island.**

The PR/Trustees have determined that retaining the Home Estate is not consistent with the mission of the James Brown "I Feel Good" Trust. Pursuant to Court Order dated February 20, 2008, the PR/Trustees are seeking a museum purchaser for the home.

The museum purchaser may be either for-profit or not-for-profit. The PR/Trustees hope to be able to retain a portion of the acreage for ultimate use by the James Brown "I Feel Good" Trust in conjunction with a museum on the main Estate.

Certain children of Mr. Brown have offered less than \$1 Million for the property.

The PR/Trustees have ordered an appraisal of the property. After the appraisal is received, the PR/Trustees intend to actively pursue a museum-type sale of the property.

#### **J. Proceedings for the Recovery of Losses Caused by Cannon, Dallas, Bradley and others.**

1. On January 9, 2008 the Court approved the engagement by the PR/Trustees of Kendall Few, Esquire and James Gilreath, Esquire. With their assistance, the Estate/Trust now has pending the following actions for recovery of losses since 1999:

- a. Action against Cannon, Dallas, Bradley, GT, Enterprise Bank & Phil Farr pending in the Circuit Court for Aiken County, case number 2008-CP-02-322, seeking losses since 1999.
- b. Arbitration and Federal Court actions against Morgan Stanley related to the depletion of the 1999 Royalty-Backed Note proceeds.

2. In addition, the PR/Trustees, with James Bailey as counsel, are defending against the

approximately \$16 Million in claims filed by Cannon, Dallas & Bradley against the Estate. [See Exhibit 2.]

3. The PR/Trustees are defending the Forlando Brown Federal suit seeking the return of Cannon, Dallas & Bradley as Trustees (through voiding our appointment) and injunction to prevent the Trust from taking action.

4. The PRs disallowed GT's \$155,000 claim, and no suit was filed.

5. The PR/Trustees, represented by Matt Ballenger of Hogan & Hartson, were successful in dismissing the counterclaim by Pullman in the New York Litigation. [Details upon request.] An appeal may be taken by Pullman. [The PRs also intend to disallow Pullman's \$31 Million claim against the Estate.]

### **PROJECTIONS FOR NEXT SIX MONTHS**

#### **A. Receipt of Christie's Sale Proceeds:**

The PR/Trustees have been severely restrained by the lack of funds. As soon as the Christie's sale proceeds are received, they hope to do the following:

1. Complete Estate Tax Return by September 25, 2008, and pay the approximately \$500,000 of Estate Taxes and Interest due.
2. Proceed with an aggressive search for a museum purchaser of the Home Estate. (Reserving some acreage for the Trust.)
3. Disallow approximately \$33 Million of pending claims, and be prepared for active defense of Petitions for Allowance of Claims. [See Exhibit 3 for claims of former attorneys/advisors of Cannon, Dallas and Bradley.]
4. Continue active defense of the Estate Plan of James Brown.
5. Continue active defense against the Spousal/Elective Share claims.
6. Work with entertainment counsel to enhance royalties, image and persona of Mr. Brown (without paying 50% of the gross, as proposed by Dallas, Cannon & Bradley).

#### **B. Assistance with Possible Settlement.**

The PR/Trustees believe that if they are joined by the Attorney General in a vigorous defense of the Estate Plan and rejection of the Spousal/Elective Share claim, the Estate/Trust will, within 6 months, be in a posture to evaluate and perhaps enter into a full settlement.

### **C. No sale of Royalties, Image and Persona.**

Based on available information, the PR/Trustees do not believe that any sale of the royalties, image, or persona of Mr. Brown should be considered for at least 2 - 5 years. Mr. Brown's royalties from his approximately 800 published songs exceed \$3 Million annually. These Royalties have substantially reduced the TIAA debt since Mr. Brown's death.

The former PR/Trustees entered into only 1 substantial contract [James Brown - Boston project with David Leaf] between Mr. Brown's death and November 20, 2007 (ab. November 1). The current Trustees have entered into one substantial contract for a Musical Television Tribute to James Brown. [Confidential details available upon request.]

The PR/Trustees, over the next six months, will explore with entertainment counsel future enhancement of Mr. Browns' royalties, image and persona. Challenges to our authority as PR/Trustees by the Attorney General (based on erroneous information), former PR/Trustees Cannon, Dallas and Bradley and Forlando Brown have slowed, but not defeated, progress in these areas. The PR/Trustees are hopeful that these challenges will dissipate, allowing the Estate/Trust to enhance its potential. [Confidential details available upon request.]

### **REQUEST THAT ATTORNEY GENERAL AND FAMILY EXPLORE SETTLEMENT**

The PR/Trustees are currently participating in at least 9 lawsuits for the benefit of the Estate/Trust, including:

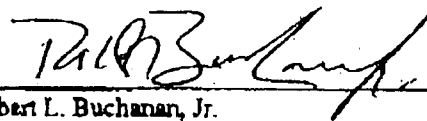
1. **Corbis (Chicago) Litigation** - brought by Mr. Brown in the name of the New James Brown Enterprises, et al, prior to his death.
2. **Pullman (New York) Litigation** - brought on behalf of James Brown Enterprises, Inc. by GT after the 2006 collapse of the Royal Bank of Scotland deal in May, 2006. Resulted in \$8 Million counterclaim by Pullman which our counsel has successfully defended as moot. [Appeal may follow.]
3. **Cannon suit against the Estate** on claim for more than \$6 Million.
4. **Dallas suit against Estate** on claim for more than \$5.5 Million.
5. **Bradley suit against Estate** on claim believed to be more than \$5 Million.
6. Estate/Trust suit/arbitration against **Morgan Stanley (2)**
7. Estate/Trust suit against **Cannon, Dallas, Bradley, Enterprise, Farr, GT**
8. Estate/Trust suit to enjoin Hammond, Dallas, Bradley & Cannon from interference.
9. Defense of Will/Trust contest (Will/Trust/Heirs proceeding)

10. Defense of Elective Share/Spousal claims.

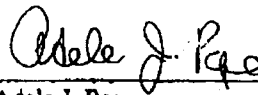
In addition, within the next few months we will also be defending a number of claims the PR/Trustees intend to disallow, including the \$31 Million Claim of Pullman and Claims of Attorneys and accountants for Dallas, Cannon and Bradley [See Exhibit 3 for List.]

While the PR/Trustees are occupied with these necessary suits and the defense of Mr. Brown's Estate Plan, they urge the Family Members and the Attorney General to work toward a reasonable resolution of the issues in dispute.

Respectfully submitted,



Robert L. Buchanan, Jr.



Adele J. Pope

May 20, 2008



EXHIBIT 2

First Semi-annual Report to Devises, Beneficiaries and Attorney General

**CLAIMS BY FORMER PR/TRUSTEES**

**A. CLAIM OF CANNON:** Five percent (5%) of all revenue generated by gross bookings, royalties and any other funds generated by James Brown Enterprises, Inc. from whatever source and two and one-half percent (2.5%) for the handling of vintage revenue... This contractual claim is an ongoing claim for all revenue earned and not paid prior to death and all revenue earned since date of death and all future revenues of James Brown Enterprises, Inc. [Emphasis supplied.]

[Claim of David Cannon filed 9/26/07]

**B. CLAIM OF BRADLEY:** Compensation as personal representative of the Estate of James Brown and Trustee plus Celebrity Duck 10% of Revenues; Doll Deal 5% of 300,000; Georgia-Lina record 6%; Godfather of Soul Publishing now Geronimo Music, L.L.C. 6% of revenues; 10% of any revenues earned due to blank tapes sold by Alliance of Artists and Recording Companies for Brown recordings; 10% of any revenues earned due to the marketing and/or exploitation of master recordings; 5% of the royalties received from the "James Brown Doll" [Emphasis supplied.]

[Claim of Al Bradley filed 9/7/07]

**C: CLAIM OF DALLAS:** Compensation as personal representative of the Estate of James Brown and trustee of the James Brown Irrevocable Trust plus \$624,876 based on purported oral contract by which Mr. Dallas would receive "5% of Mr. Brown's and his enterprises' gross revenue; 5% of revenues from Teddy Bear Productions as agent for Hakuho Advertising Agency; 25% of royalties received from the "James Brown Doll"; 10% of revenues from God Father of Soul Publishing, 5% of Global Gaming revenue, 5% of revenues from the sale of Mr. Brown's writer's share music, and 5% revenues from the 1991 pay-per-view recording. [Emphasis supplied.]

[Claim of Albert H. Dallas filed 9/7/07]

EXHIBIT 3

First Semi-annual Report to Devises, Beneficiaries and Attorney General

**PAYMENTS, BILLS AND CLAIMS PRESENTED BY ATTORNEYS AND  
ACCOUNTANTS FOR FORMER PR/TRUSTEES  
FOR SERVICES FROM DEATH – NOVEMBER 20, 2007**

ATTORNEY/ACCOUNTANT	BILL OR CLAIM AMOUNT
Powell Goldstein (bill)	\$ 48,225.00
Rodney A. Peebles (payment and claim)	\$ 137,851.66
Smith, Massey, Brodie & Thurmond (claim)	\$ 33,322.20
Phillip G. Farr, CPA (claim)	\$ 25,977.60
Hull, Towill, Norman, Barrett & Salley (bill, firm of William Hammond)	\$ 124,518.26
Suggs Johnson (claim for \$5,747.81; now \$6,069.43)	\$ 6,069.43
Greenberg Traurig*	\$ 155,602.85
Lewis & Babcock (payment, claim, bill)	\$ 348,960.43
Jackson Law Office (claim filed)	\$ 61,273.25
<b>TOTAL</b>	<b>\$ 941,800.68</b>

\* GT originally sought payments of approximately \$327,089.67. Claim filed was \$155,602.85. Withdrawn after PR/Trustees disallowed claim. (See ltr. of GT dtd. 3/10/08.)

**EXHIBIT 78**

**Estate of James Brown**  
212 Newberry Street NW  
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

June 13, 2008

The Honorable Henry Dargan McMaster  
Attorney General  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549  
FAX: 734-3677

BY FAX AND MAIL

Re: Estate Plan of James Brown

Dear Attorney General McMaster:

Thank you for your recent meeting. We deeply regret that the Attorney General, as the principal legal officer of the State of South Carolina, has not elected to join us in the pursuit of our primary, and critical, goals for the Estate Plan of James Brown. Those are:

1. **Defend the Estate Plan of James Brown against challenges;**
2. **Defend against the Elective Share Claim;**
3. **Prevent the Return of former PR/Trustees Cannon, Dallas and Bradley; and**
4. **Avoid a fire sale of Mr. Brown's valuable royalties, image and persona, the primary purpose of which is to put about \$35 Million in the hands of Cannon, Dallas, Bradley, Greenberg Traurig [All Defendants] and Frank Copsidas, and which will expose the Estate to millions of dollars of unnecessary claims.**

If we are successful in the above efforts, current available information indicates that, **within 3- 5 years, Mr. Brown, through his Estate Plan, will have provided:**

1. **Mr. Brown's personal and household effects (PHE) to certain children. (Property or its value, less \$500,000 (+/-) Estate Taxes);**
2. **Non-charitable Brown Family Education Trust, \$2 Million (+/-) to educate certain of Mr. Brown's grandchildren.**

Letter to Attorney General McMaster

June 13, 2008

Page 2

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3. The remainder, after debts, to **The James Brown "I Feel Good" Foundation.**

It became our duty on November 20, 2007 to defend Mr. Brown's Estate Plan. We look forward to that challenge. Our Six-Month Report, a copy of which was distributed last month, outlines our progress and challenges during the period. [Additional copy enclosed.]

As required by the Court, as Special Administrators appointed March 7, 2007, we worked with David Cannon, Buddy Dallas and Al Bradley for 5 months between our appointment and David Cannon's resignation as PR/Trustee on August 10, 2007. Thereafter, until November 20, 2007 when they resigned, we had substantial contact with Buddy Dallas and Al Bradley.

We can say unequivocally that it is in the best interest of Mr. Brown's Estate Plan, and its primary beneficiaries, the Brown Family Education Trust and the James Brown "I Feel Good" Trust, that none of David Cannon, Buddy Dallas or Al Bradley returns to any fiduciary position with Mr. Brown's Estate Plan.

We can also say unequivocally that Mr. Cannon and Mr. Dallas' proposed sale of Mr. Brown's valuable Royalties, Image and Persona under the terms of "October 18 GT Letter", if implemented, would be a humiliation to the State of South Carolina and would eviscerate Mr. Brown's Plan for the education of his own grandchildren and other needy and deserving children.

**Attorney General's Support of Cannon, Dallas, Bradley and Hammond**

Long after our appointment on November 20, 2007, and as recently as last week, we have become aware of how deeply the office of the Attorney General was, and continues to be, involved in actions which support or encourage the efforts of Buddy Dallas and Al Bradley to be reinstated as Trustees and bring about this Fire Sale, intended to enrich themselves and David Cannon by more than \$16 Million.

Many are, quite frankly, baffled by this. We share that view. We also have the additional concern that the Attorney General, one of whose missions is the protection of South Carolina charities, is supporting efforts to defeat the funding of The James Brown "I Feel Good" Trust through actions which erode our ability to defend Mr. Brown's Estate Plan.

**The Attorney General's Office and William Hammond**

We are extremely troubled by the strong and continued reliance of the Attorney General on affidavits and statements of Bill Hammond in the light of his extraordinary efforts to protect David Cannon, Buddy Dallas and Phil Farr. Within the last few weeks we have received copies of emails between Bill Hammond and others, including your office. They confirm our repeated assertions that it will not advance Mr. Brown's Estate Plan or the future funding of The James

Letter to Attorney General McMaster

June 13, 2008

Page 3

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Brown "I Feel Good" Trust for the Attorney General to rely on Bill Hammond.

Mr. Hammond is a supporter and apologist for David Cannon. Hammond's longtime friend Phil Farr, is a longtime friend of Buddy Dallas. Hammond asserts in a letter to you that he chose to be a Trustee with Dallas and Bradley. All have caused damage to the Estate Plan of Mr. Brown. Cannon, Dallas, Bradley and Farr are defendants in suits brought by Mr. Brown's Estate and Trust.

**Bill Hammond's Support of David Cannon**

We recently acquired the September 27, 2007 email of Bill Hammond which was sent to your office. (Copy attached) It says, in part:

**"The Hatchet job on David Cannon based solely on facts supplied by the SA's, [Buchanan and Pope] many of which are unfounded, so far has been a sight to behold."**

...

**"When he [Cannon] resigned because of a mistake and offered to pay back the amount by which he had benefitted, the other Trustees under the terms of the trust voted to replace him with me. The SA's told them they would be removed if I [Hammond] became a co-trustee."<sup>1</sup>**

**Bill Hammond's Secret "Appointment" by Cannon, Dallas and Bradley as Trustee**

After the September 27, 2007 email, Hammond communicated again with your office on November 27, 2007 to say he was looking for the papers where he was appointed Trustee. (See 11/27/07 email, attached.)

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<sup>1</sup> This is particularly troublesome since the purported appointment was concealed from the Court and us until March 7, 2008. See pronouncement of Sonny Jones and cross examination of Adele Pope, 3/7/08 Transcript pp. 17, 118-119, 121-122, enclosed.

Letter to Attorney General McMaster

June 13, 2008

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On November 15, 2007, Cannon began asserting his 5<sup>th</sup> amendment rights – which he has repeatedly asserted since. By November 20, 2007 anyone hearing the testimony, including representatives of the SC Attorney General, was aware of Cannon's problems and that it was Cannon who had done a hatchet job on the James Brown 2000 Trust.

Neither the Attorney General's Office nor Bill Hammond reported Hammond's secret appointment as Trustee to the Court or the Trust beneficiaries, even though Hammond reported to your office again on November 27, 2007 that he was looking for his appointment paper.

The secret attempted appointment of Hammond remained the secret of the SC Attorney General, the Georgia Attorney General, Dallas, Cannon, Bradley and Hammond until March 7.

Meanwhile, the SC Attorney General used affidavits of Hammond, Dallas and Bradley to assert that we were unethical.

Most troublesome is the fact that Hammond's purported appointment was concealed until March 7, 2008, when Mr. Jones raised it for the first time to help Mr. Dallas and Mr. Bradley prevent confirmation of our appointment, and be reinstated as Trustees.

The suggestion to the Court and parties on March 7, 2008 by your office was that the purported appointment of Hammond as Trustee was just discovered by Mr. Jones the night of March 6. Instead, Mr. Jones, along with Hammond, Dallas, Cannon, Bradley and Grace Lewis, had harbored this information for months until it became useful to what appears to be their joint effort to prevent anyone other than Cannon, Dallas and Bradley from being appointed.

We can see no reason why this alliance of the S.C. Attorney General in any way promotes the interest of Mr. Brown's Estate Plan and its primary beneficiary, The James Brown "I Feel Good" Trust.

**David Cannon, Buddy Dallas, William Hammond and the attempted Sale of Mr. Brown's Royalties, Image and Persona**

On March 26, 2007 David Cannon and Buddy Dallas urged us to approve a \$26 Million sale which (we now know) would have been disastrous to Mr. Brown's Estate Plan. [See our first Quarterly Report as SA s.] We were told:

1. Joel Katz was the authority on such deals.
2. If we did not authorize the deal (with absolutely no due diligence), the offer would disappear, and it would be our fault.

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At some point, the deal not to be missed became \$45 Million. By October 12, 2007 it was \$100 Million.

Without our knowing how deeply he was personally involved with David Cannon and Buddy Dallas, Bill Hammond in June 2007 gave us "independent advice" that we would breach our "fiduciary duty" if we did not approve Cannon, Dallas and Bradley's proposed deal. In particular:

1. Mr. Hammond asserted that the Estate/Trust was required to sell the Royalties.
2. Mr. Hammond asserted that it was a breach of fiduciary duty not to accept a sale which would net Mr. Brown's Estate/Trust only \$10 Million.
3. Mr. Hammond knew Dallas, Cannon and Bradley were claiming more than \$15 Million from such a sale, but was unconcerned.
4. Joel Katz was claiming about \$5 Million from such a sale.
5. The Pullman Group was claiming \$31 Million from such a sale.
6. Frank Copsidas was claiming about \$12.5 Million from such a sale.

Again, without access to any due diligence, we were told that it was improper for us to stand in the way of the sale. [See email of Bill Hammond dtd. 6/21/07, attached]

On December 6, 2007 the Office of the Attorney General, through Sonny Jones, asked appropriate questions about the proposed "\$100 Million Offer" [See Mr. Jones' email to us dated December 6, 2007, attached.] In particular, he wanted to know:

...

2. I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now. . . your thoughts. Also, who else is out there that can make an offer if at all
3. Are there some self serving interest w/ some of the local players in this that is causing this push
4. I was given Joe Katz in Atlanta as a person to call to get a feel if these current offer will in fact decrease in the near future. . . your thoughts on that contract

...

\*\*\*\*\*

We immediately responded by phone, to inform your office about the "October 18 Letter" and its implications, as set out above.

Mr. Jones did not act on this information.

With knowledge of serious credibility issues for Cannon, Dallas, Bradley and Hammond; that Dallas, Cannon and Bradley had filed \$15+ Million of claims against the Estate of James Brown on September 26, 2007; and that Cannon, Dallas and Bradley were generally known to be defendants in substantial claims by Mr. Brown's Estate and Trust, on December 10, 2007 the Attorney General relied on affidavits of Dallas, Bradley and Hammond to attack us. Those affidavits, and the Attorney General's positions since December, 2007:

1. Support the assertion that Mr. Buchanan and Mrs. Pope were unethical.
2. Ignore Cannon, Dallas and Bradley's attempts to be paid \$15+ Million from the Estate, and escape liability for missing millions.
3. Ignore Bill Hammond's close association with Cannon and Farr and serious credibility issues.
4. Are being used by Forlando (William) Brown in Federal Court to attempt to reinstate Cannon, Dallas and Bradley.
5. Bolster assertions of Cannon, Dallas and Bradley, supported by Hammond, that they have done nothing wrong and are entitled to \$15+ Million from Mr. Brown's Estate. [See Affidavits of Hammond, Dallas & Bradley, submitted by the AG of SC in November/December, 2007].

**The Attorney General's Reported Promise to Remove Buchanan and Pope**

On November 20, 2007 Dallas and Bradley resigned as PR/Trustees and officers of any James Brown Entities (except Geronimo, LLC). We were appointed.

The attempts by Cannon and Dallas to have a quick and disastrous sale of Mr. Brown's assets and pay themselves millions seemed to be brought to a close.

Then on November 26, 2007 Terry Cox gave the "JB Team" hope. He notified members of the "JB Project" team that he was assured that the **Senior Assistant Attorney General of South Carolina is preparing a motion to have (Buchanan and Pope) removed and "told me he would select a Trustee for me to work with."** [See Terry Cox email dtd. 11/26/07, attached]

Letter to Attorney General McMaster  
June 13, 2008  
Page 7

\*\*\*\*\*

Mr. Cox is working with William (Forlando) Brown, Buddy Dallas and David Cannon on "\$100 Million" project.

On November 30, 2007, Dallas and Bradley sought to return as Trustees.

On December 14, 2007 the SC Attorney General, based largely on affidavits of Hammond, Dallas and Bradley sought the same result. [See emails dtd. 12/14/07]

We believe that this does not promote Mr. Brown's Estate Plan, the future funding of The James Brown "I Feel Good" Trust, or the interest of needy and deserving children.

**The Attorney General's Support of Forlando (William) Brown's Attempts to Return Cannon, Dallas and Bradley as Trustees**

On January 2, 2008, Forlando (William) Brown, Mr. Brown's Grandson, and business partner of Terry Cox and Buddy Dallas in the "\$100 Million" deal, sued us in Federal Court asserting:

1. Judge Early's Orders related to the Trust are void. We have no authority. [The intended result: Cannon, Dallas and Bradley return, and the "Deal" goes through.]
2. Attempting to enjoin the Trustees from taking any action (Defense of Estate Plan; suits against Dallas, Cannon, Bradley & GT; etc).

In this suit, Forlando (William) Brown is represented by Mr. Cannon, Dallas and Bradley's lawyers, who have billed the Estate \$48,225 but refuse to turn over the file.

We asked the Attorney General to join in this suit to confirm that the return of Cannon, Dallas and Bradley was not appropriate. You have refused.

In early February, 2008 the Attorney General joined Mr. Dallas and Mr. Cox's partner, Forlando (William) Brown in the assault on us. He appeared on WIS Television accusing us of acting improperly. According to the associated article [we didn't watch the interview], you said that we were representing both the "poor kids' trust and the families" and that this went "far past the sign of conflict of interest." As the article and television story show, this appeared to throw the support of the Attorney General of South Carolina behind Forlando (William) Brown's attempts to return Cannon, Dallas and Bradley as Trustees. [WIS Article dtd. 2/7/08 attached]

Many family members of Mr. Brown have expressed outrage that Mr. Cannon appears to have escaped any consequences for taking \$900,000.00 which did not belong to him. It belonged to a New York Bank, payable on Mr. Brown's TIAA debt.

\*\*\*\*\*

The money Mr. Cannon misappropriated was taken directly from the account of the James Brown 2000 Trust.

We fail to see how the Attorney General's support of Forlando (William) Brown's attempts to reinstate Cannon, Dallas and Bradley as Trustees can help Mr. Brown's Estate Plan.

**Issues Raised by Challenges to the Will and Trust and the Dallas and Bradley Appeal**

Between November 30 and December 30, 2007 attempts by Dallas and Bradley to return as Trustees, with contests to the Will by Tommie Rae Hynie Brown and 5 of Mr. Brown's 6 acknowledged children, raised numerous challenges.

While the Dallas and Bradley appeal is pending, there are many things to be done to position Mr. Brown's Estate and Trust for a strong defense to these challenges. The positions of the Attorney General and the PR/Trustees should be wholly aligned. As stated above, they include:

1. **Defending the Estate Plan of James Brown against challenges;**  
[At a minimum, discovery can continue as to the validity of Mr. Brown's Will, dated August 1, 2000, the same day of the Trust.]
2. **Defending against the Elective Share Claims;**  
[There has been no suggestion that the "Heirs" determination cannot continue to trial. The determination of whether Mr. Brown had a Wife, and who are his children and other heirs, is important.]
3. **Preventing the Return of former PR/Trustees Cannon, Dallas and Bradley.**  
[This critical project has simply moved from the Circuit Court to the Court of Appeals and, to a limited extent, the Federal Court.]
4. **Avoiding a fire sale of Mr. Brown's valuable royalties, image and persona.**  
[We estimate it will take at least 2 - 3 years to defend and resolve the \$45+ Million of bills and claims against the Estate, including \$900,000+ in attorneys' and accounting fees incurred by Dallas, Cannon and Bradley. This work is critical to the implementation of Mr. Brown's Estate Plan.]

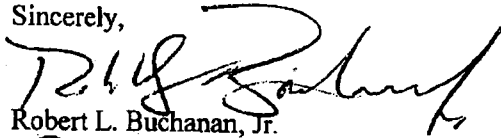
Mr. Brown's Estate account today has only about \$9,000. We are trying to hold on; defend the Estate Plan; and prevent an improvident sale of Mr. Brown's valuable royalties, image and persona. The Attorney General of South Carolina can be an important ally in our attempts to save most of Mr. Brown's assets for the James Brown "I Feel Good" Trust and \$2 Million Trust to educate certain of Mr. Brown's grandchildren.

Ltr. to Attorney General McMaster  
June 13, 2008  
Page 9

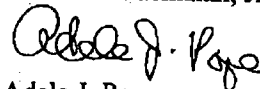
\*\*\*\*\*

For the sake of the children who will be the primary beneficiaries of Mr. Brown's Estate Plan, and for the State of South Carolina, the Attorney General of South Carolina should be taking positions that will effectively protect this valuable asset.

Sincerely,



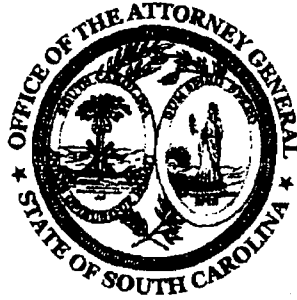
Robert L. Buchanan, Jr.



Adele J. Pope

AJP/RLB, JR:ats  
Enclosures

EXHIBIT 74



HENRY McMASTER  
ATTORNEY GENERAL

June 26, 2008

R. Wayne Byrd, Esquire  
Turner Padgett Graham & Laney, PA  
P. O. Box 2116  
Myrtle Beach, South Carolina 29578

Re: The Irrevocable Trust Agreement of James Brown,  
a/k/a James Joseph Brown  
C/A No.:

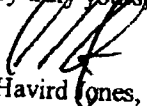
Dear Wayne:

Enclosed and served upon you please find the following:

- (1) Summons;
- (2) Emergency Petition for Appointment of Special Trustee(s);
- (3) Motion for Removal to Circuit Court.

Also enclosed is an Acceptance of Service. I appreciate your signing and returning this to me in the enclosed stamped envelope. If you are not able to accept service, please let me know.

Very truly yours,

  
C. Havird Jones, Jr.  
Senior Assistant Attorney General

CHJ,jr/shb

Enclosures

EXHIBIT 77



HENRY McMASTER  
ATTORNEY GENERAL

July 7, 2008

VIA E-MAIL

The Honorable Doyet A. Early, III  
Resident Judge, Second Judicial Circuit  
P. O. Box 90  
Bamberg, SC 29003

Re: James Brown Trust  
C/A No.: 2008-CP-02-1153

Dear Judge Early:

In connection with the Attorney General's Emergency Petition for Special Trustee(s) and your directive at the hearing last week, I requested proposals from counsel both at the hearing and in an e-mail sent last week as to their recommendations. Based upon the responses provided and his review, the Attorney General offers the following individuals to the Court for consideration as Special Trustee(s) of the James Brown Irrevocable Trust Agreement:

Russell L. Bauknight, C.P.A.  
Bauknight Pietras & Stormer, PA  
Columbia, South Carolina

Tracey C. Green, Esquire  
Willoughby & Hofer, PA  
Columbia, South Carolina

W. Steven Johnson, Esquire  
Todd & Johnson, LLP  
Columbia, South Carolina

**EXHIBIT 31**

**Estate of James Brown**  
212 Newberry Street NW  
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

June 27, 2008

The Honorable Henry Dargan McMaster  
Attorney General for the State of South Carolina  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549

BY FAX ONLY  
Fax # 803-734-3677

Re: The Estate Plan of James Brown

Dear Attorney General McMaster:

All except the first two paragraphs of this letter were completed yesterday before Mr. Jones elected to file his unfortunate Petition.

We request an opportunity to review all of your office's third-party correspondence, documents and communications, as well as time summaries of Mr. Jones, Ms. Jowers and Ms. Matthews from September 1, 2007.

We appreciate your June 16, 2008 response to our concerns related to the Estate Plan of James Brown. We look forward to working with your office in the defense of Mr. Brown's Estate Plan.

**ATTORNEY GENERAL'S EXPRESSED NEUTRALITY WITH RESPECT TO DAVID  
CANNON AND ALBERT DALLAS**

We are concerned about two assertions made in your June 16<sup>th</sup> letter. Because we believe that future protection of Mr. Brown's Estate Plan is dependent on an understanding of the secret and improper actions of the former PR/Trustees, we are concerned that the Attorney General asserts that he does not oppose Messrs. Cannon and Dallas. It is our firm position that the defense of Mr. Brown's Estate Plan requires that the Attorney General, if involved, be opposed to Mr. Cannon and Mr. Dallas.

Mr. Cannon and Mr. Dallas are using every means possible to:

1. Conduct a Fire Sale of Mr. Brown's assets for their own benefit;

Letter to the Honorable Henry Dargan McMaster  
June 27, 2008  
Page 2

2. Interfere with the administration of Mr. Brown's Estate and Trust so that will happen;
3. Avoid returning the \$13 Million they received between 1999 and 2007; and
4. Receive more than \$16.5 Million from Mr. Brown's assets.

The Cannon/Dallas plan is to get rid of us and immediately conduct the \$100 Million Fire Sale. This will damage the Estate Plan of James Brown at least as follows:

1. Prevent return of the \$13 Million
2. Pay to them at least:
  - a. Cannon \$ 6 Million
  - b. Dallas \$ 5.5 Million
  - c. Bradley \$ 5 Million
  - d. J. Katz \$ 5 Million
  - e. F. Copsidas \$15 Million
  - f. T. Byron \$ 5 Million (promised by Dallas in November 2007)
  - g. Forlando (William) Brown - as yet undisclosed

AND expose the Estate/Trust to a \$12.5 Million claim of Pullman under Paragraph 7 of the old engagement letter. (Subject of New York litigation.)

Mr. Cannon, Mr. Dallas and Mr. Bradley incurred more than \$900,000 in legal fees last year trying to accomplish this. Mr. Brown's Estate is now saddled with the defense of those claims. Mr. Cannon, Mr. Dallas and their business partner Forlando (William) Brown and his attorney David Bell, are currently represented by Wayne Byrd, Audra Byrd, at least 2 Powell Goldstein lawyers, William Toal, and others. To face this onslaught and defend the Estate Plan, we have about \$3,000 in the bank. [See First Accounting.]

In light of Mr. Cannon's behavior and Mr. Dallas' repeated false representations to the parties, to the Court, and under oath, we believe that the Attorney General should not treat either as some neutral party or source of reliable information. And their Affidavits should certainly not be used to skewer others.

You assert that the Attorney General's office cannot become involved in Forlando (William) Brown's attempts to have Dallas and Cannon reinstated as Trustees and enjoin the Trust from taking any action. You assert "we do not seek out lawsuits in which to get involved."

Excerpts, Ltr. Buchanan and Pope to Attorney General McMaster dtd. July 25, 2008

**Estate of James Brown**  
212 Newberry Street NW  
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

**EXHIBIT 32**

July 25, 2008

The Honorable Henry Dargan McMaster  
Attorney General for the State of South Carolina  
State of South Carolina  
C. Havird Jones, Jr., Esquire  
Senior Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

BY FAX OR MAIL  
Fax # 803-734-3677

Re: Estate/Trust of James Brown

Dear Attorney General McMaster and Mr. Jones:

Based on the Order of Judge Cureton dated July 14, 2008, we would hope that we can return to our discussions which were derailed by various interpretations of the May 28 Order.

In an effort to work with the Attorney General toward a succession plan that will be controlled in a manner acceptable to the Attorney General, and allow us to focus all energy on defense of the Estate Plan; being certain that Dallas, Cannon and Bradley do not return; and vigorous defense of the \$46 Million in claims, we have made contact with each of the persons suggested by the Attorney General. Here is a brief report:

1. Steve Johnson and Xavier Starkes visited the Trust property on Tuesday, July 22.
2. David Sojourner has been on vacation, and we hope to talk to him within the next week or so.
3. We have attempted to contact Russell Bouknight about visiting the Trust property, but have not heard back from him.
4. We have attempted to contact Tracey C. Green. His paralegal called back to advise that he was too busy to go to the house and too busy to schedule a telephone conference to talk with us. We requested that he call back to schedule a time when he could talk. This was about 10 days ago, and he has not called.

# EXHIBIT 16

## EXHIBIT A



HENRY McMASTER  
ATTORNEY GENERAL

July 30, 2008

Adele J. Pope, Esquire  
Robert L. Buchanan, Jr., Esquire  
212 Newberry Street NW  
Aiken, South Carolina 29801

Re: James Brown Litigation

Dear Mrs. Pope and Mr. Buchanan:

I am writing in response to your letter dated July 25, 2008. I am pleased that we may be able to work together towards our shared goals in connection with the Estate Plan of James Brown. As I mentioned in my last letter, Mr. Brown's Charitable Trust is a wonderful opportunity to further the education of needy children at institutions in South Carolina and Georgia. I hope that we will be able to work together to ensure that scholarships are funded as soon as possible.

While I have no objection to returning to our previous discussions about securing your proper appointment, I have concerns about whether this is possible given your unwillingness to consider the Special Trustee position. On several occasions you have indicated that you do not want to be appointed Special Trustee. I do not believe that you can be properly appointed permanent Trustee if you are not willing to resign and ask to be appointed Special Trustee, which I would support. Once you are appointed Special Trustee, we can ask the Advisory Board for a vote on the Trustee position, as required by Article XIII of the Trust document. If there is not a unanimous vote for you to be Trustee, then we can go to the Probate Court, have the matter removed to the Circuit Court, and have you properly appointed by the Circuit Court.

I am hopeful that as we go through this process, a third Trustee can be put in place along with both of you as required by Article VIII of the Trust. I appreciate your report in connection with my suggestions as to a suitable individual to serve as the third Trustee.

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, S.C. 29211-1549 • TELEPHONE: 803-734-3970 • FACSIMILE: 803-253-6283

If you are willing to work together, I believe we can secure your proper appointment without further litigation, which would give us all more time to devote to the charitable intentions of Mr. Brown.

Yours very truly,



Henry McMaster

HMCM/mfj

## EXHIBIT 42

Adele J. Pope

From: Alan Medlin [amedlin@sc.rr.com]  
Sent: Friday, August 01, 2008 10:45 AM  
To: Robert Rosen; adele@popelawfirm.com; Andrew Chandler; david@michellawoffice.com; Carter@eckb.com; Jean Lee  
Subject: Re: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107  
Attachments: DNA order (1).medlin edit.doc



DNA order (1)  
medlin edit.doc ...

I've tweaked Jean's a little.

We need to make similar changes to the scheduling order. Do you have your most recent version after comments?

----- Original Message -----

From: "Robert Rosen" <rnrosen@rosen-lawfirm.com>  
To: <adele@popelawfirm.com>; <amedlin@sc.rr.com>; "Andrew Chandler" <Chandler@eckb.com>; <david@michellawoffice.com>; <Carter@eckb.com>; "Jean Lee" <JLee@eckb.com>  
Sent: Friday, August 01, 2008 9:47 AM  
Subject: FW: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

Is this OK to send to judge

-----Original Message-----

From: M Jean Lee [mailto:JLee@eckb.com]  
Sent: Friday, August 01, 2008 9:43 AM  
To: Robert Rosen; amedlin@sc.rr.com; Andrew W. Chandler; david@michellawoffice.com; T Heyward Carter  
Subject: RE: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

See Attached

-----Original Message-----

From: Robert Rosen [mailto:rnrosen@rosen-lawfirm.com]  
Sent: Thursday, July 31, 2008 5:45 PM  
To: amedlin@sc.rr.com; Andrew W. Chandler; david@michellawoffice.com; T Heyward Carter; M Jean Lee  
Subject: RE: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

Can one of you revise DNA order?

-----Original Message-----

From: Alan Medlin [mailto:amedlin@sc.rr.com]  
Sent: Thursday, July 31, 2008 5:15 PM  
To: Marcia Jones; Chandler@eckb.com; david@michellawoffice.com; Carter@eckb.com; jlee@eckb.com; Robert Rosen  
Subject: Re: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

She's right about the grandchildren. I thought we were skirting that because we really didn't have standing so it suited me not to focus on the trust, but if she's for it and thinks that's how the judge ruled, then let's tweak the language per her suggestion. I had a 3.5 hour meeting this morning with AG and Terry Cox. Cox is no longer interested in buying the estate assets. He now wants to be part of a "team" to build back the brand, after which time his group might be interested in buying again. He claims the value of the estate has been significantly diminished because of Adolph. He said they were going to offer in the range of 65-70 M in November. Now he thinks we would get offers for 35-40M. Don't know what I think of him, but that part was interesting. Sonny of course was all over that so he can attack Adolph.

Terry, who clearly gets much of his info from Dallas, thinks the kids want to settle because they're afraid of DNA. He says they want to fire Louis but don't want to have to

EXHIBIT 40

This agreement made this 10<sup>th</sup> day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children Lindsey Delores Brown (age 17) and Janise Vanisha Brown (age 12), Venisha Brown (natural child of the deceased), Deanna J Brown Thomas (natural child of the deceased), individually and on behalf of her minor child Jason Brown-Lewis (age 17), Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children Sydney Lumar (age 8) and Carrington Lumar (age 6), Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child James Brown II.

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4. Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

UBT  
DorUB  
DorUB

MS  
J.B.

further support of the agreements made herein

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

- RB
- a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law
  - b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.
  - c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.
  - d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to James Brown II; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof
  - e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith
- JB
- JB  
JB  
JB
- J.B.

and with probable cause.

- FB
- f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.
  - g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.
  - h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.
  - i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of \$2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.
  - j) The parties agree that any and all will and trust contests will be dismissed
  - k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares
  - l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying
- Tom

HJB DBT JNUB  
DBT JNUB  
DBT JNUB  
1393

J B

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and James Brown II shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Feb  
Hazel E. Braden  
Henry D. Masten  
Attorney General

Joseph Braden  
Alauna Braden Thomas  
Mauna Braden Thomas for  
Venisha Braden  
Deeuner Braden Thomas for  
Yanna Braden  
Lacey Braden

tom  
Justin M. 8/10/08  
Justin Braden 8/10/08  
Tom Braden 8/10/08



Adele J. Pope

From: Sonny Jones [AGSJONES@ag.state.sc.us]  
 Sent: Tuesday, August 12, 2008 10:51 AM  
 To: dearlyj@sccourts.org  
 Cc: J. C. Nicholson; Mary Frances Jowers; Matt Bodman; jdbaileylaw@bellsouth.net; rtbuchananjr@bellsouth.net; shahidlo@bellsouth.net; weskirkland@bellsouth.net; davidbell@davidbelllawfirm.com; Carter@eckb.com; William Barr; jmg@jirngiffinlaw.com; William Toal; Lori Christman; louis@levensonlaw.com; Thomas Lydon; Steve Morrison, adele@popelawfirm.com; rrosen@rosen-lawfirm.com; amedin@sc.rr.com; Audra Byrd; WByrd@turnerpadget.com; C. Bradley Hulto; d\_miche@yahoo.com; robtyoungatty@yahoo.com; Steve Brown  
 Subject: Fwd: Re: Proposed Email to Judge Early

Dear Judge Early:

We, the Attorney General of South Carolina, and Robert Rosen and Louis Levenson along with our clients are very pleased to announce to the Court that all differences between our clients have been resolved and fully settled in a written agreement which was executed following a mediation all day on Sunday August 10, 2008 on James Brown Boulevard in Augusta, Georgia. The Mediator was Tom Wills.

We believe that most of the issues in contention in the estate and trust matters are resolved by this agreement. There are still some issues that remain outstanding involving persons or attorneys who are not parties to our settlement. As such, we respectfully request that, before the hearing scheduled for Tuesday Aug. 19, 2008 in Aiken, SC, Your Honor please devote some time to a status conference with all counsel to discuss the ramifications of the settlement and how it impacts the future administration of the Estate and the Trust. Because Louis Levenson had intended to present a proposed consolidated agenda for the hearing on August 19, 2008, and because all parties to the settlement referenced above believe that certain disputes involving non settling parties still remain and require hearings, below is an agreed upon list of issues and motions that can and hopefully will go forward on August 19, 2008:

1. The PR/Trustees' Order Separating claims of Cannon, Dallas and Bradley (Approved by Mr. Byrd).
2. Scheduling hearing on separate Accountings of Dallas and Bradley as PRs and Trustees, and Attorney's fees. Removal/Appointment/Accounting, Case No. 2007-122 (For September, before September 25th please, Estate Tax Return due that day.)
3. Louis Levenson's Motion for Supersedeas and Bond regarding the Appeal by Buddy Dallas and Al Bradley (Evidence of damages will need to be presented.)
4. Remaining evidence and argument on Motion for Contempt as to Buddy Dallas and Al Bradley, filed by Clients of Louis Levenson on March 18, 2008 regarding testimony on March 7, 2008.
5. Rule 59 Motion to Alter or Amend and/or Reconsider Order Approving and Setting Conditions of Interim Payment of Educational Benefits filed by Louis Levenson on July 31, 2008.
6. David Bell/Forlando Brown's Withdrawal of Stipulation (filed on 8-1-08); and
7. David Bell's Motion to be Admitted Pro Hac Vice filed August 7, 2008.
8. Steve Brown's motions regarding M&T Bank.

We request that you stay or defer all other matters until some date after this status conference.

We also request that you let us know in advance if this is acceptable to you.

Thank you.

C. Havird Jones, Jr.  
 Senior Assistant Attorney General  
 Office of the South Carolina Attorney General  
 P.O. Box 11549



Adele J. Pope

From: Robert Rosen [rrosen@rosen-lawfirm.com]  
Sent: Tuesday, August 12, 2008 12:20 PM  
To: adele@popelawfirm.com  
Cc: Louis Levenson; Sonny Jones; Marcia Jones; Lindsay Foreback; arnedlin@sc.rr.com; Andrew Chandler; david@michellawoffice.com; Carter@eckb.com; Jean Lee  
Subject: Discovery

In light of the fact that the case is settled, I would request that you and Bob and Jim stop all work on the estate at this time and that we be given a 30 days extension on all discovery.

**EXHIBIT 34**

**Estate/Trust of James Brown**  
212 Newberry Street NW  
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

September 2, 2008

The Honorable Henry Dargan McMaster  
Attorney General for the State of South Carolina  
C. Havird Jones, Jr., Esquire  
Senior Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211-1549

Louis Levenson, Esquire  
Levenson & Associates  
125 Broad Street, SW  
Atlanta, Georgia 30303

Robert N. Rosen, Esquire  
Post Office Box 1510  
Charleston, South Carolina 29402

Re: Estate of James Brown

Gentlemen:

We are writing you as representatives of those Alan Medlin described to us as speaking as one in connection with working toward a settlement related to the James Brown Estate Plan.

This will confirm our conversation with Alan last Friday, August 29, and raise other matters.

First, we know nothing of any confidential in-camera discussions related to Mr. Brown's Estate Plan, and have specifically instructed Mr. Bailey not to discuss them either with us or with our counsel in other matters.

Facing a Federal Court hearing on November 18 on the serious (and we believe frivolous) attempts by Forlando (William) Brown to shut down Mr. Brown's Trust and return Cannon, Dallas and Bradley as fiduciaries, as well as challenges by most remaining family members to the Estate Plan, we feel that any proposed settlement which we are asked to consider should be open for debate by us, by educators, and by others.

We have encouraged, and will continue to support, the efforts of Mr. Brown's Family and the Attorney General to reach resolution, provided that any proposed settlement:

1. Honors the desires of Mr. Brown as set forth in his Estate Plan;

2. Provides for a smooth and appropriate transition which protects Mr. Brown's Estate Plan, but acknowledges the conflict-of-interest policy which was required and adopted in connection with the application for Charitable Recognition of the "I Feel Good" Trust; sensitive estate, gift and income tax issues at stake; issues related to Mr. Brown's recapture and other rights related to his royalties under Federal and contract law; the proper administration of the ongoing litigation; and the rights and obligations of the Estate, Trust and Brown Entities with respect to federal and state taxing authorities and other creditors

In that spirit, we offered to allow the Estate Tax Returns, due September 25, to be prepared (for our review and signing) by the preparer selected by the Settling Parties. This person presumably would be the accountant you select for work for the Estate/Trust and Brown Entities when there is a change of leadership if the settlement is finalized, presented to us and others, and approved by all appropriate Courts. Alan has advised us that you have not yet selected an accountant.

On Friday we advised Alan, and asked that all be advised, that Bill Sellars' firm appreciates the confidence shown in him, but would not remain after we complete our service with the Estate and Trust. He will complete the Estate Tax Return and other matters pending final settlement as described above.

While there are many issues that would have to be addressed in any transition, there are several matters which we urge all parties who are considering a settlement to address at your earliest convenience. We discuss each below:

1. Appointment of a Representative of the "Settling Parties" to work with us on enhancement of the royalties, image and persona pending final settlement and transition. Our legal authority to enhance the royalties, image and persona was seriously challenged by the AG and former PR/Trustees from our appointment in November, 2007, until July 14, 2008. It has now been clarified by Judge Cureton's July 14 Order. But the Christie's sale is an example of the damage that can still be inflicted when Interested Persons and their agents are working against – rather than to benefit – Mr. Brown's Legacy. The effort to enhance Mr. Brown's legacy should be ongoing. The Settling Parties should support that effort now, through the settlement process, the approval process and into the new regime contemplated by any approved settlement. There is no reason for any Interested Person to interfere with the enhancement of the James Brown Legacy. The appointment of a "Royalty Representative" by the Settling Parties – the AG and most of the family – to work with enhancement of this valuable asset until a final settlement can be reached and approved would be of great value to Mr. Brown's Estate Plan. We urge you to do so immediately.

Letter to Attorney General and Other Counsel

September 2, 2008

Page 3

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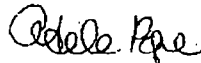
2. Selection by Settling Parties of Accountant/Tax Advisor. As we have discussed with counsel for all family members, Messrs. Dallas, Cannon and Bradley caused tremendous tax problems for Mr. Brown's Estate and Trust. How much we, or any future regime, can do to alleviate the problems remains to be seen. It is absolutely essential that there be clear communication and transition so that our efforts to deal with these critical problems will not be in vain. The first step is for the Settling Parties to designate a "Tax Representative" to speak for the Settling Parties who will understand and be ready to deal with these issues. Please do this.
  
3. Selection by Settling Parties of Liaison to Work with Estate in Defense of Claims. It would be extremely helpful to us for Settling Parties to appoint a "Litigation Representative" with authority to speak for all of the Settling Parties in connection with the approximately 20 lawsuits by creditors which the Estate is facing. These suits, in total, claim more than \$45 Million of the assets of the Estate/Trust. While it is our responsibility to handle them, we invite and encourage the Settling Parties to assign someone who can represent this important mass of Estate/Trust beneficiaries.

As we advised Alan, we are copying this letter to David Bell. At this point, it is our position that all family members are legally adverse to Mr. Brown's Estate Plan – the Levenson and Rosen clients by challenges to the Will and Trust, and David Bell's clients by attempting to return Cannon, Dallas and Bradley, and purchase assets for their personal gain. Nevertheless, we hope you will all work with the Attorney General toward a settlement that will honor, protect and preserve Mr. Brown's Estate Plan as he intended.

Sincerely,



Robert L. Buchanan, Jr.



Adele J. Pope

AJP:kfr

cc: David B. Bell, Esquire

0104

1 a third party evaluating so that you made sure you  
2 got a fair price, and at the same time provide a  
3 source of income to the Trust on a yearly basis to  
4 continue funding this Trust for forever and ever  
5 and ever and ever and ever and ever and ever and  
6 ever, and giving the Trust an interest in these  
7 royalties and things so that you can continue to  
8 educate children. And if you didn't get to  
9 \$100 million dollars, you got to eighty or ninety  
10 or whatever it was, it was a worthwhile expenditure  
11 on behalf of an investor because you're educating  
12 children.

13 Q Did this third-party appraisal ever take place, to  
14 your knowledge?

15 A No. Before they got in real detail about it, of  
16 course, Buddy was removed and I think Terry and  
17 Toby Byron had been working together to put the  
18 things together to move forward, and I think they  
19 gave a, or were trying to give a presentation in  
20 Judge Early's courtroom in Bamberg. But I-- I  
21 mean, it was all behind in judge's chambers.

0105

13 Q Now, Mr. Dallas and Mr. Bradley resigned in late  
14 November of 2007, so is your testimony that the  
15 first, I guess fruition of these negotiations would  
16 have been close to the time he resigned in late  
17 November or were there written offers before that?

18 A I don't know the exact dates. I know that I-- I  
19 think I'm-- I recall conversations getting down  
20 basically to the bare details of putting the whole  
21 thing together. I just don't remember the exact  
22 time it happened as it relates to the November date  
23 when they resigned over in Bamberg.

24 Q Okay. And did you have a role in whatever that  
25 offer was when it was made?

0106

Need 106

3 sure that everything was sound and-- And standard.  
4 And that was his involvement.

5 And Gray had brought-- I think Gray is  
6 the one-- I'm pretty sure Gray is the one who had  
7 the investors that were willing to put \$100 million  
8 dollars on the table. And so because of that and  
9 because of the relationship he had and the  
10 contribution he made in to bringing the real  
11 dollars in that Buddy was requesting, I believe  
12 that's why he was on this.

13 Q That's why he was a signatory?

14 A Uh huh.

15 Q Okay. But this was Doctor Cox's deal? The --

16 A Uh huh.

17 Q -- same deal? Okay.

18

19 MR. CUSTER: You need to-- You need to say  
20 "yes" out loud.

21 THE WITNESS: Yes. I'm sorry.

22

23 BY MR. WILLIAMS:

24 Q On the last page I see copies going to two lawyers,  
25 one of whom is John Tiller. This is a lawyer at

0109

1 Haynesworth Sinkler Boyd, who I know. Who is  
2 John Sparks? Do you know?

3 A Yes, sir.

4 Q Who is he?

5 A He is an attorney that has-- He has his own  
6 private practice. Him and Terry have had-- Have  
7 been involved in a prior-- A prior litigation  
8 before. He handled some things for Terry when  
9 it came to amounts of money and things in business,  
10 and Terry had a company called the Graham Windsor  
11 Group --

12 Q Uh huh.

13 A -- which was a former group of the Mescon Group,  
14 which handled government contracts for the Air  
15 Force and for the Pentagon Department, and John had

**United States Estate (and Generation-Skipping Transfer) Tax Return**

OMB No. 1545-0015

Estate of a citizen or resident of the United States (see separate instructions).  
 To be filed for decedents dying after December 31, 2006, and before January 1, 2007.

<b>1a</b> Decedent's first name and middle initial (and maiden name, if any) <u>James</u>	<b>1b</b> Decedent's last name <u>Brown</u>	<b>2</b> Decedent's Social Security No. <u>259-32-3801</u>
<b>3a</b> County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death <u>Aiken County SC 29801-</u>	<b>3b</b> Year domicile established <u>1933</u>	<b>4</b> Date of birth <u>05/03/1933</u>
<b>5a</b> Name of executor (see page 4 of the instructions) <u>Robert L. Buchanan, Jr.</u>		<b>5</b> Date of death <u>12/25/2006</u>
<b>6a</b> Executor's social security number (see page 4 of the instructions) <u>254-90-4348</u>		<b>6b</b> Executor's address (number and street including apartment or suite no. or rural route; city, town, or post office, state, and ZIP code) and phone no. <u>212 Newberry Street NW Aiken, SC 29801 (803) 649-2586</u>
<b>7a</b> Name and location of court where will was probated or estate administered <u>Aiken County Probate Court</u>		<b>7b</b> Case number <u>2007ES020056</u>
<b>8</b> If decedent died testate, check here <input checked="" type="checkbox"/> <b>X</b> and attach a certified copy of the will.		<b>9</b> If you extended the time to file this Form 706, check here <input checked="" type="checkbox"/> <b>X</b>
<b>10</b> If Schedule R-1 is attached, check here <input type="checkbox"/>		

<b>1</b> Total gross estate less exclusion (from Part 5 - Recapitulation, page 3, item 12)				<u>85,845,034</u>
<b>2</b> Tentative total allowable deductions (from Part 5 - Recapitulation, page 3, item 22)				<u>83,419,981</u>
<b>3a</b> Tentative taxable estate (before state death tax deduction) (subtract line 2 from line 1)				<u>2,425,053</u>
<b>b</b> State death tax deduction				<u>0</u>
<b>c</b> Taxable estate (subtract line 3b from line 3a)				<u>2,425,053</u>
<b>4</b> Adjusted taxable gifts (total taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts that are includible in decedent's gross estate (section 2001(b)))				<u>0</u>
<b>5</b> Add lines 3c and 4				<u>2,425,053</u>
<b>6</b> Tentative tax on the amount on line 5 from Table A on page 4 of the instructions				<u>976,324</u>
<b>7</b> Total gift tax paid or payable with respect to gifts made by the decedent after December 31, 1976. Includes gift taxes by the decedent's spouse for such spouse's share of split gifts (section 2513) only if the decedent was the donor of these gifts and they are includible in the decedent's gross estate (see instructions)				<u>0</u>
<b>8</b> Gross estate tax (subtract line 7 from line 6)				<u>976,324</u>
<b>9</b> Maximum unified credit (applicable credit amount) against estate tax	<b>9</b>	<u>780,800</u>		
<b>10</b> Adjustment to unified credit (applicable credit amount). (This adjustment may not exceed \$8,000. See page 6 of the instructions.)	<b>10</b>	<u>0</u>		
<b>11</b> Allowable unified credit (applicable credit amount) (subtract line 10 from line 9)				<u>780,800</u>
<b>12</b> Subtract line 11 from line 8 (but do not enter less than zero)				<u>195,524</u>
<b>13</b> Credit for foreign death taxes (from Schedule(s) P). (Attach Form(s) 706-CE.)	<b>13</b>	<u>0</u>		
<b>14</b> Credit for tax on prior transfers (from Schedule Q)	<b>14</b>	<u>0</u>		
<b>15</b> Total credits (add lines 13 and 14)				<u>0</u>
<b>16</b> Net estate tax (subtract line 15 from line 12)				<u>195,524</u>
<b>17</b> Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)				<u>0</u>
<b>18</b> Total transfer taxes (add lines 16 and 17)				<u>195,524</u>
<b>19</b> Prior payments. Explain in an attached statement				<u>0</u>
<b>20</b> Balance due (or overpayment) (subtract line 19 from line 18)				<u>195,524</u>

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than the executor) is based on all information of which preparer has any knowledge.

<u>Robert L. Buchanan, Jr.</u> Signature of executor(s)	<u>9/24/2008</u> Date
<u>Charles J. Papp</u> Signature of preparer other than executor	<u>9/24/2008</u> Date
<u>4408 Forest Drive; Third Floor Columbia SC 29206</u> Address (and ZIP code)	<u>9/24/2008</u> Date

For Privacy Act and Paperwork Reduction Act Notice, see page 25 of the separate instructions for this form. Form 706 (Rev. 10-2006)

SEE PRS STATEMENT @ ATTACHMENT #1  
 CPA 7005 1870 0004 9836 3637

Excerpts, Ltr. Of Buchanan and Pope to AG McMaster, Levenson, Medlin and Bell  
Dtd. October 20, 2008

**EXHIBIT 35**

**Estate of James Brown**  
212 Newberry Street NW  
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

October 20, 2008

The Honorable Henry Dargan McMaster  
Attorney General for the State of South Carolina  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549

Louis Levenson, Esquire  
Levenson & Associates  
125 Broad Street, SW  
Atlanta, Georgia 30303

S. Alan Medlin, Esquire  
1713 Phelps Street  
Columbia, South Carolina 29205

David B. Bell, Esquire  
Bell & Bell Associates  
Post Office Box 1011  
Augusta, Georgia 30903-1011

Re: James Brown - Royalty/Image/ Persona Issues

Gentlemen:

We are writing again to urge that the "Settling Parties" designate a Royalty/Image/Persona agent to join David, as representative of Forlando, Terry and Romunzo Brown, and us, in working together to study, explore and take advantage of opportunities to enhance Mr. Brown's royalties, image and persona.

As you know, challenges to the Will and James Brown 2000 Trust, as well as to our authority to act as both PRs and Trustees, until July 14, 2008, were a substantial impediment to our ability to enhance the royalties, image and persona of Mr. Brown. The July 14<sup>th</sup> Court of Appeals Order clarified the problem to a great extent. But it was followed almost immediately by the August 10, 2008 mediation and "stand down" request of Robert Rosen, followed by similar requests of Louis' clients. All of this makes enhancement of Mr. Brown's royalties, image and persona more challenging.

Excerpts, Ltr. Of Buchanan and Pope to AG McMaster, Levenson, Medlin and Bell  
Dtd: October 20, 2008

Letter to Attorney General and Other Counsel  
October 20, 2008  
Page 2

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Even with hard work of the parties and counsel, we believe that it will take at least 1 - 3 years to resolve the many challenges facing Mr. Brown's Estate Plan. During that time, without regard to the ultimate outcome of the pending litigation, we strongly urge that we work together to explore matters critical to the enhancement of Mr. Brown's royalties, image and persona.

If we could get together regularly with you solely for purposes of the royalty/image/persona issues, here are a few of the things we believe we could accomplish within the next year or so:

1. Financial Analysis - through engagement of a mutually-agreeable consultant - of long-range options, to include:
  - A. Whether sale of some or all of the assets is in the best interest of the Estate/Trust.
  - B. With industry-related help, development of a medium to long-range plan for management and enhancement of assets not to be sold;
  - C. Structure of tax and financial issues related to various decisions under above scenarios.
2. Study and decisions, with assistance of experts and counsel, related to copyright termination rights which will impact the Estate/Trust over the next 5 - 10 years.
3. Current enhancement of royalties, image and persona which will not disproportionately devalue remaining asset sale and/or exploitation plan. (Movie, Musical, etc.)

We urge you to obtain the authority to begin working with us now to address these important issues. Here are just a few immediate issues we are facing currently, and for which we would like your positive input:

1. Requests of Band. Mr. Brown's band has been requesting for some time to do something "positive" about their experience with Mr. Brown. We would like to work with them, but believe any project must be carefully narrowed not to interfere with future projects of the Estate/Trust. Positive input of the representative of the AG and family members would be very helpful in assessing this.

2. Various documentary requests. We have a documentary request related to a concert in Africa and another related to a high school in the South which developed a first-class band. The inclusion of Mr. Brown's material is small, and the payments offered are also small. The subject matters are, however, of interest — particularly the story of the school in the South, which is consistent with the educational goals of the Trust. Input of the family's representatives for this would be helpful.

EXHIBIT 36

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

IN THE PROBATE COURT

Case No.: 07-ES-02-0056

HENRY DARGAN MCMASTER, in his )  
capacity as Attorney General of the State )  
of South Carolina; DARYL J. BROWN, )  
on behalf of his minor children, LINDSEY )  
DELORES BROWN and JANISE )  
VANISHA BROWN; DEANNA J. )  
BROWN THOMAS, on behalf of her minor )  
children, JASON BROWN LEWIS; )  
YAMMA N. BROWN, on behalf of her )  
minor children, SYDNEY LUMAR, )  
CARRINGTON LUMAR, and TONYA )  
BROWN; VANISHA BROWN; and )  
LARRY BROWN; TOMMIE RAE )  
HYNIE BROWN; JAMES JOSEPH )  
BROWN, II, through his Guardian Ad )  
Litem )

Petitioners, )

- vs- )

ALBERT H. DALLAS, ALFRED A. )  
BRADLEY, and DAVID G. CANNON, )  
individually and as (purported) Trustees )  
of the James Brown 2000 Irrevocable Trust; )  
ADELE J. POPE and ROBERT L. )  
BUCHANAN, JR., individually and as )  
(purported) Personal Representatives of the )  
Estate of James Brown and Trustees of the )  
James Brown 2000 Irrevocable Trust; )  
TERRY BROWN; ROMUNZO BROWN; )  
FORLANDO BROWN; CINNAMON )  
N.M. PARIS; LARHONDA PETITT; and )  
JEANNETTE MITCHELL )

Respondents. )

In Re: )  
The Estate of James Brown and The James )

AMENDED PETITION FOR  
REMOVAL AND RESTRAINT  
OF TRUSTEES ALBERT H.  
DALLAS, ALFRED A. BRADLEY,  
and DAVID G. CANNON and  
REMOVAL AND RESTRAINT OF  
PERSONAL REPRESENTATIVES  
and TRUSTEES ADELE J. POPE  
and ROBERT L. BUCHANAN, JR.

Filed: 11-7-2008  
Sue H. Roe  
Judge of Probate  
By: *[Signature]*

**EXHIBIT 70**

**Robert L. Buchanan, Jr.**

**From:** Law Office of James Bailey [jdbaileylaw@bellsouth.net]  
**Sent:** Thursday, February 19, 2009 9:23 AM  
**To:** rbuchananjr@bellsouth.net; adele@popelawfirm.com; thayer@shiple-y-hayes.com  
**Subject:** FW: Email to Bob and Adele

*Shirley H. Martin*  
*Legal Administrator*  
*Law Office of James D. Bailey, PC*  
*P. O. Box 2376*  
*Aiken, SC 29802*

**From:** Alan Medlin [mailto:amedlin@sc.rr.com]  
**Sent:** Wednesday, February 18, 2009 10:40 PM  
**To:** jdbaileylaw@bellsouth.net  
**Subject:** Email to Bob and Adele

The settling parties request that you forward this to your clients Bob and Adele. I hope that finally your family is getting some relief from the spate of health problems. You deserve a break from all that.

Dear Bob and Adele - As we indicated last week, we believe we have a fundamentally different understanding about what Bob agreed to provide us with respect to the "transition" to your successor(s). We understood that the proposal from Bob was to assume that the settlement agreement was approved. Thus, your previous and continued assertion of issues that would relate merely to the merits of the settlement agreement, as apparently you see it, misses the mark as we understand the task.

Having not received from you what we were expecting, we offer this partial bullet list of "transition" issues for your consideration and comment:

1. Process of terminating your fiduciary status - i.e., resignation vs. removal - recognizing that the settlement agreement reflects the unanimous position of the settling parties that the time for the termination of your fiduciary status has arrived.
2. Process for your expeditious transfer of all property, including assets, records, files, and other information to your successor(s).
3. Process for providing an accounting of your estate and trust administration to your successor(s).
4. Process for providing support to your successor(s) - e.g., willingness to remain as paid consultants to successor(s).
5. Process (if any needed) to substitute parties in pending litigation (not related to settlement).
6. Process of negotiating any release and/or hold harmless for you with respect to the settlement itself.
7. Process of transferring relevant tax information and any legal or other opinions and appraisals with respect to tax, copyright, and other issues.

2/19/2009

1326

I would also remind you of our position that we have a binding settlement among beneficiaries under section 62-3-912, which requires you to abide by it - rather than fight it at the continuing expense of the estate or trust - while protecting creditors and taxing authorities and non-affected beneficiaries. Nothing in our settlement agreement adversely affects or impacts creditors, taxing authorities, and non-affected parties, to which we have stipulated in court. We consider your refusal to abide by this statute to be a breach of your duties. (We consider any claim that the AG is not able to represent any charitable beneficiary for purposes of the agreement as specious. If that is what you are hanging your hat on to protect yourself from claims of breach of fiduciary duty under section 62-3-912, inter alia, I would beseech you to reconsider.)

Thank you for your attention.

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 8.0.237 / Virus Database: 270.11.1/1960 - Release Date: 02/19/09 10:48:00

**EXHIBIT 66**

STATE OF SOUTH CAROLINA )  
COUTNY OF AIKEN )

IN THE PROBATE COURT  
Probate Court No.: 2007-ES-02-0056  
Civil Action No.: 2008-CP-02-1647

HENRY DARGAN McMASTER, )  
In his capacity As Attorney General )  
of the State of South Carolina )

Petition, )  
Vs. )

PETITION FOR REVIEW OF  
COMPENSATION

Albert H. Dallas, Alfred A. Bradley, and )  
David G. Cannon, et al, )  
Respondents. )

IN RE: THE JAMES BROWN )  
IRREVOCABLE U/A/D AUGUST 1, 2000 )

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

IN THE COURT OF COMMON PLEAS  
CASE NO: 2007-CP-02-0122

IN THE MATTER OF: )  
THE ESTATE OF JAMES BROWN )  
a/k/a JAMES JOSEPH BROWN )

**TO: JAMES BAILEY, TRESSA HAYES, ADELE POPE & ROBERT BUCHANAN:**

You will please take notice that, James Joseph Brown, II, by and through his Guardian ad Litem, Stephen Slotchiver, will move before the Honorable Doyet Early, Aiken County Court House, 109 Park Avenue, SE, Aiken, South Carolina during the term of Court beginning March 4, 2009 through March 6, 2009, at 10:00 am or as soon thereafter as the matter can be heard for the following:

1. For the Court to review the compensation of Adele Pope and Robert Buchanan, as the personal Representatives and Trustees, to include, but not limited to fees, expenses, attorney's fees, and other similar expenses.

The basis of this Motion is as follows:



SMALL BUSINESS/SELF-EMPLOYED DIVISION

## EXHIBIT 53

March 24, 2009

Mr. Robert L. Buchanan, Jr.  
212 Newberry Street, NW  
Aiken, SC 29801

Ms. Adele Pope  
1218 Taylor Street  
Columbia, SC 29201

Mr. William Sellars, Jr., CPA  
4408 Forest Drive, 3<sup>rd</sup> Floor  
Columbia, Sc 29206

RE: Estate of James Brown

Dear Mr. Buchanan, Ms. Pope & Mr. Sellars:

The federal estate tax return of the above estate has been selected for verification. I request that you gather the items noted below and send it to me to arrive by April 15, 2009.

1. Please provide copies of decedent's federal income tax returns for the 2006 and the two years before death. Also, please provide copies of any income tax returns filed for decedent's estate or trust since death. IRS will retain the return copies.
2. Please provide for review the decedent's banking records for the year of death, through the month after death, and the two prior years, including:
  - Checking account registers/ledgers
  - Checking account statements
  - Brokerage account money-fund records
  - Cancelled checks
3. Please furnish a completed Form 4421, Declaration (of fees, enclosed) to verify that the fees reported have been paid. The Form 4421 has a blank about one-half way down on which taxpayer is to indicate whether any of the fees shown have been or will be taken as an income tax deduction. The estate must complete this blank and respond to this question.
4. Has the estate discovered any additional assets, transfers, or deductions, which were not reported on the estate tax return? If so, please advise me, in writing, by April 5, 2009.
5. The estate has discussed multiple issues raised in Attachment # 1 which could affect the estate tax. Please bring me up to date on the resolution of these issues, including:
  - Has the Will & Trust validity litigation been resolved? If so, please show what happened.
  - Has the other litigation been resolved? If so, please show what happened.
  - Was the question of what property was placed in the Irrevocable Trust prior to death resolved? If so, please show what happened.
  - has the issue of which items of personal property went to the children been resolved? If so, please show what happened.
  - have the pretermitted spouse and elective share issues been resolved? If so, please show what happened.
  - have the fee issues with the previous PR/Trustees been resolved? If so, please show

*Internal Revenue Service Estate Tax Stop 4106JS, 5971 Cattlebridge Blvd., Sarasota, FL 34232  
Telephone: 941/378-6425, Fax: 941/378-6458*

EXHIBIT 68

**Estate/Trust of James Brown**  
212 Newberry Street NW  
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

April 10, 2009

The Honorable Henry D. McMaster  
Attorney General for the State of South Carolina  
State of South Carolina  
P.O. Box 11549  
Columbia, SC 29211-1549

BY FAX AND MAIL

Re: Estate/Trust of James Brown  
CORBIS Settlement/Contract

Dear Attorney General McMaster:

We ask again that you shorten the 30-day period to respond to the CORBIS settlement approval and join us in a consent order to permit this important exploitation of James Brown's image/persona and publicity right to go forward.

As Mr. Gold's letter to you and the affidavit confirm, the short 2-year Greenlight contract, which is part of the settlement, poses no problems and presents a valuable opportunity which, if lost, cannot be recovered.

If a consent Order is presented on April 20 when Judge Early returns, we could have a dismissal in Illinois and implementation in May.

We respectfully urge that the attempt of certain persons to confuse other matters with this beneficial settlement of the 7-year-long CORBIS litigation, which was important to Mr. Brown for protection of his publicity rights, will directly and immediately harm James Brown's Legacy.

We look forward to meeting with you to discuss in confidence the positive impact the CORBIS settlement will have on the Pullman litigation. [This week we learned that Pullman is seeking leave to appeal the recent in favor of the Estate/Trust.]

Thank you for your consideration.

Sincerely,

  
Robert L. Buchanan, Jr.

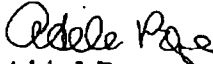
  
Adele J. Pope

EXHIBIT 69

**Robert L. Buchanan, Jr.**

**From:** Law Office of James Bailey [jdbaileylaw@bellsouth.net]  
**Sent:** Friday, May 15, 2009 9:42 AM  
**To:** adele@popelawfirm.com; rlbuchananjr@bellsouth.net  
**Subject:** FW: Motion to Intervene

*Shirley H. Martin*  
*Legal Administrator*  
*Law Office of James D. Bailey, PC*  
*P. O. Box 2376*  
*Aiken, SC 29802*

**From:** Robert Rosen [mailto:mrosen@rosen-lawfirm.com]  
**Sent:** Thursday, May 14, 2009 6:36 PM  
**To:** agsjones@ag.state.sc.us; davidbell@davidbelllawfirm.com; weskirklad@bellsouth.net; jdbaileylaw@bellsouth.net; jmg@jimgriffinlaw.com; Louis Levenson; mattbodmanlaw@aol.com; shahidlo@bellsouth.net  
**Subject:** FW: Motion to Intervene

**From:** Robert Rosen  
**Sent:** Thursday, May 14, 2009 6:34 PM  
**To:** 'thayes@shiple-hayes.com'  
**Cc:** Louis Levenson (louis@levensonlaw.com); 'Mattbodmanlaw'; 'jcnicholson@ag.state.sc.us'; 'agsjones@ag.state.us'; Alan Medlin (amedlin@sc.rr.com); Andrew Chandler; David Michel (david@michellawoffice.com); Heyward Carter Jr Esquire (Carter@eckb.com); Jean Lee  
**Subject:** Motion to Intervene

Dear Tressa:

The settling parties wish to intervene in the new case, Buchanan and Pope v. McMaster, No. 2009-2-0597. Do you object? This is a Rule 11 consultation.

Sincerely, Robert Rosen

**From:** Tressa Hayes [mailto:thayes@shiple-hayes.com]  
**Sent:** Thursday, May 14, 2009 12:07 PM  
**To:** dearlyj@sccourts.org; dearlylc@sccourts.org  
**Cc:** abyrd@turnerpadget.com; adele@popelawfirm.com; AGSJONES@ag.state.sc.us; amedlin@sc.rr.com; barrlaw@ftc-i.net; carter@eckb.com; d\_michel@yahoo.com; davidbell@davidbelllawfirm.com; dsleigh@turnerpadget.com; fkingsmore@nexsenpruet.com; jmg@jimgriffinlaw.com; jlw@janwarner.com; jdbaileylaw@bellsouth.net; lori@levensonlaw.com; louis@LevensonLaw.com; mattsteinmetz@janwarner.com; Mattbodmanlaw@aol.com; max@janwarner.com; mfjowers@ag.state.sc.us; JCNicholson@scag.gov; rlbuchananjr@bellsouth.net; Robert Rosen; shahidlo@bellsouth.net; thayes@shiple-hayes.com; tmorris@morrislawpartners.com; WByrd@TurnerPadget.com; weskirklad@bellsouth.net  
**Subject:** Beech Island/ May 27 CORBIS hearing

Please see attached letter regarding Beech Island and the May 27 agenda. Thank you.

EXHIBIT 71

212 Newberry Street, N. W.  
Aiken, South Carolina

June 22, 2009

Russell L. Bauknight, C.P.A.  
Bauknight, Pietras & Stormer, P.A.  
1517 Gervais Street  
P.O. Box 1330  
Columbia, SC 29202  
FAX: 771-8958

BY FAX OR MAIL

Re: Estate of James Brown  
James Brown 2000 Irrevocable Trust

Dear Russell:

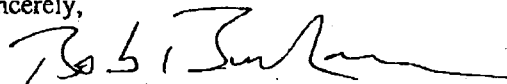
This letter and the file delivery discussed herein are without prejudice to our objection to your appointment and reservations to objections and rights contained in all matters related to the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

Enclosed please find a final detailed Custody Receipt for the boxes you have already received and the boxes waiting for you at 1218 Taylor Street. Kindly pick them up and receipt for them at your earliest convenience.

This will confirm that you have advised us that the boxes will remain available to us until a final Order is issued in the McMaster v. Dallas case. It will further confirm that the "Settling Parties" have ratified your agreement to this joint availability of the transferred documents.

We are sorry you elected not to meet this week. Many of your questions in correspondence identified on the agenda for today's meeting (copy attached) will be answered by the contents of boxes being produced, but if you have remaining questions, please do not hesitate to schedule a time to discuss them with us.

Sincerely,



Robert L. Buchanan, Jr.



Adele J. Pope

JUN 29 2009

**CUSTODY RECEIPT  
DOCUMENTS OF ESTATE OF JAMES BROWN AND  
THE JAMES BROWN 2000 IRREVOCABLE TRUST**

Without prejudice to the position of either party as to rights to ownership or custody on behalf of the Estate of James Brown and/or The James Brown 2000 Irrevocable Trust, the undersigned acknowledge the transfer of custody to Russell L. Bauknight on or before June 22, 2009, of the boxes listed below:

**BOX 1 - FORMERLY CANNON BOX 1**

This is one of many boxes delivered to 1218 Taylor Street, Columbia, pursuant to Order of the Honorable Doyet A. Early, III, dated August 10, 2007. These documents were maintained until August 2007 by David G. Cannon, who resigned as PR/Trustee on August 10. Custody and control of the boxes remained with Albert H. Dallas and Alfred A. Bradley, the remaining PR/Trustees, until their resignations on November 20, 2007. Since November 20, 2007, the boxes have been, under various Orders, reviewed by interested parties and counsel; counsel for the PR/Trustees; counsel for the former PR/Trustees; and opposing counsel in litigation. 1218 Taylor Street was considered the "Reading Room" in various confidentiality agreements in various cases.

[ If requested, we will be glad to discuss this matter at a weekly meeting.]

**BOX 2 - FORMERLY CANNON BOX 2**

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

**BOX 3 - FORMERLY CANNON BOX 3**

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

**BOX 4 - FORMERLY CANNON BOX 4**

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

**BOX 5 - FORMERLY CANNON BOX 5**

Delivered to 1218 Taylor Street by Mr. Cannon in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 1.

Filed: 6-24-2009

Sue H. Roe  
Judge of Probate

By: J. R. Ready

<sup>1</sup> Boxes 1-83 previously delivered. See Receipts dated May 27, 2009 and May 29, 2009.

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See Comments to Box 1.

**BOX 32 - FORMERLY 7<sup>TH</sup> DECADE BOX 15a**

**BOX 33 - FORMERLY 7<sup>TH</sup> DECADE BOX 15b**

**BOX 34 - FORMERLY 7<sup>TH</sup> DECADE BOX 15c**

**BOX 35 - FORMERLY LEWIS & BABCOCK BOX 1**

These documents were maintained by Lewis & Babcock law firm, attorneys for PR/Trustees Cannon, Dallas and Bradley until August 10, 2007, and for remaining PR/Trustees Dallas and Bradley until November 20, 2007. The documents were delivered to 1218 Taylor Street between August 13 and August 24, 2007, pursuant to Court Order dated August 10, 2007. They remained under the control of Dallas and Bradley until their resignations on November 20, 2007. A list of the L & B index to the boxes is attached to this receipt as Exhibit A.

**BOX 36 - FORMERLY LEWIS & BABCOCK BOX 2**

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

**BOX 37 - FORMERLY LEWIS & BABCOCK BOX 3**

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

**BOX 38 - FORMERLY LEWIS & BABCOCK BOX 4**

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

**BOX 39 - FORMERLY LEWIS & BABCOCK BOX 5**

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

**BOX 40 - FORMERLY LEWIS & BABCOCK BOX 6**

Delivered to 1218 Taylor Street by Lewis & Babcock in August, 2007 pursuant to Order dtd. August 10, 2007 in Case 122. Delivered to Mr. Bauknight on May 29, 2009. See Comments to Box 35.

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Iron Mountain  
House Maintenance  
Sellars and Cole  
Attorneys' fees paid  
Beech Island Water  
SCE & G  
AT & T  
Deposits

**BOX 83 - CLEARANCES/PROPOSAL BOX with following sub-files:**

YoHa Technology - Kenneth Chin  
Carlin International - Conlin  
Ray Gonzalez/TV Special  
Contract Authorization  
Compulsory Licenses Notice  
Slackers, Inc. Proposals  
Global Gaming  
Llewellynn M. Dykes - Master Appraiser  
Warner/Chappell-Marjorie Schecker  
Warner/Chappell- Laura Masseria  
Warner/Chappell- Brian Cherchiglia  
Jennifer Lamping/Gonzalez Agreement  
Warner/Chappell- Timothy Kane  
Warner/Chappell- Cecilia Harvey  
Warner/Chappell- Winifred Jow  
Warner/Chappell- Pat Woods  
Warner/Chappell- Deborah Keegan  
Warner/Chappell- Claudia Lyon  
Warner/Chappell- Dave Pettigrew  
Warner/Chappell- Steve Barton  
Carlin International - Rogoff  
Warner/Chappell- Paulette

✓ **BOX 84 - (formerly 14A) TANGIBLE PERSONAL PROPERTY ("TPP")**  
Christie's materials

✓ **BOX 85 - (formerly 14B) TANGIBLE PERSONAL PROPERTY ("TPP")**  
Museums. Also see CDs.

✓ **BOX 86 - (formerly 14C) TANGIBLE PERSONAL PROPERTY ("TPP")**  
TPP Notebooks - The notebooks are part of an inventory prepared by Tom Wells, Thompson, Ga. engaged by the Cannon Group after James Brown's death. A Wells notebook is part of the Inventory & Appraisalment (I&A) filed by Dallas & Bradley on

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White Notebook containin February 7, 2008 Hearing Transcript  
Black Notebook containing Hotel Receipts, etc. from 2002

**BOX 92 - FRIEDMAN FILE # 1**

Leon Friedman was Mr. Brown's attorney for many years on various litigation matters. Mr. Friedman made himself available in New York in July of 2008, and at other times by telephone for background valuable information. It was the July 17, 2007 telephone conference with Mr. Friedman, with Messrs. Dallas, Cannon, Bradley, and their Estate/Trust counsel present, which made clear that David Cannon had misappropriated the \$900,000.00. [ Prior to the telephone conference, Mr. Cannon asserted that he had deposited the funds at the direction of Mr. Friedman. Both Mr. Friedman and the records reflect that this is not the case.]

This is one of 6 boxes delivered to Buchanan and Pope for Estate after various requests. As shown on shipping labels, first 2 boxes were shipped to Estate's official address in Aiken on October 28, 2008. They became part of the Reading Room on October 31, 2009. 4 Additional boxes were shipped by Mr. Friedman in 2009.

Because of their historical importance in pending litigation, the Leon Friedman files in our possession have been carefully retained in their original order, although there is much which, for administrative purposes, could arguably have been transferred to the "Royalties" files; defense of the approximately \$16 Million of claims filed by Cannon, Dallas and Bradley, and other files.

Contains the following files:

JB - General, w/ ltr. To Jg. Al Bradley dtd. March 18, 1999;

JB- Mashantucket Pequot Tribe v. JB d/b/a/ the New JB, Inc (2000);

PolyGram Records, Inc. w- James Brown, including ltr. from PolyGram rep. Janna Lasser to LF dtd. May 3, 1999 enclosing 17 MGM & JB dtd. 1/17/55; King w JB dtd. 6/23060; Mercury Records Corporation w/ Fair Deal, Jadar, Polydor Incorporated w JB, Lin Broadcasting; JB and Top Notch, Inc.; FINISH. These contracts were part of the TIAA project which was closed on June 11, 2000. Brown, 2000;

Stallworth and Bennett v. Polygram et al (N.Y. County Index 122196/98). This case was begin on December 10, 1998 by Mr. Bennett related to PolyGram's and its predecessors' payment of royalties dating back to 1955. Matter was resolved more than a year later, but contains valuable background and contract information related to royalties. to JB which were

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Agendas and Related Docs (includes agendas from 1/23/07 - 3/3/08)

**FORT KNOX**

includes 2 groups of statements entitled 2006-1H and 2005-1H

**ROYALTIES/ UNIVERSAL MUSIC GROUP**

Including Statements to various entities dated 12/07, 6/08, 12/08, 6/07.

**CORBIS Corporation, Brown J. Proposals**

✓ **BOX 95 - BMI (formerly 17A)**

Includes 3 Red Rope folders containing quarterly royalty reports, including:

- 2002 2<sup>nd</sup> - 4<sup>th</sup> Quarters
- 2003 1<sup>st</sup> - 4<sup>th</sup> Quarters
- 2004 1<sup>st</sup> - 4<sup>th</sup> Quarters
- 2005 1<sup>st</sup> - 4<sup>th</sup> Quarters
- 2006 2<sup>nd</sup> - 3<sup>rd</sup> Quarters
- 2008 1<sup>st</sup> Quarter, but no backup documentation

Also includes correspondence from 1993 and other royalty documents  
[ If requested, we will be glad to discuss this matter at a weekly meeting.]

✓ **BOX 96 - Royalties - Warner/Chappell**

**WARNER/CHAPPELL ROYALTIES**

Materials related to W/C royalties, including:

- Statements dated:
- 9/30/02 - 6/30/04 AUDIT
- 2006 - 3<sup>rd</sup> and 4<sup>th</sup> Qtrs.
- 2007 - 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Qtrs.
- 2008 - 1<sup>st</sup> and 2<sup>nd</sup> Qtrs.
- 2008 - 3<sup>rd</sup> and 4<sup>th</sup> Qtrs.

**Jadar, Etc.** For Jan. - March 2009

Haber Corporation royalty Examination of Warner Chappell Music, Inc. On Behalf of James Brown LLC for the Periods Ended September 30, 2002 to June 30, 2004

✓ **BOX 97 - TIAA (formerly 20A)**

This box contains a copy of the closing package and Agreements of Mr. Brown, JBE, Inc., James Brown, LLC, opinions of counsel, Indenture, etc. for the June 11, 2000 \$26 Million Royalty-backed Note held by the New York Teachers' Union (TIAA), with Manufacturers' and Traders'.

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CD VIDEO OF TOMI RAE HYNIE BROWN - FEBRUARY 9, 2007  
CD LAMINATED POSTER  
CD JAMES BROWN SAFE INVENTORY, FEBRUARY 26, 2007 1 OF 2  
CD JAMES BROWN SAFE INVENTORY, FEBRUARY 26, 2007 2 OF 2  
CD SWORN STATEMENT OF DIANE STERLING, FEBRUARY 3, 2007  
CD JAMES BROWN AND BITTERSWEET  
Keys, Beech Island

OCTOBER 19, 2006 PHOTOS JAMES BROWN MAUSOLEUM SITE EXTERIOR OF  
RESIDENCE ATTORNEY ALBERT H. DALLAS  
LAURICE MONICA AND BITTERSWEET  
BROWN HOME BY TOM WELLS  
CD Sworn Statement of Diane Sterling, February 3, 2007  
2 CDs Sworn Statement of David Bernard Washington, January 29, 2007  
2 CDs Sworn Statement of Joseph Lee.Sr., January 31, 2007  
CD Sworn Statement, Jewel Libby, February 5, 2007  
2 CDs, Sworn Statement, Larry Fridie, February 2, 2007  
CD JAMES BROWN ESTATE PLANNING FEBRUARY 24, 1999  
CD JAMES BROWN ESTATE - S.C. UNIVERSITY IP STANBACK MUSEUM  
CD SWORN STATEMENT - JEWEL LIBBY FEBRUARY 5, 2007  
CD JAMES BROWN SOUL SESSION CINE VU  
AUGUSTA MUSEUM OF HISTORY - LOAN  
CD WITH NOTATION WJBF 2/5/07 11 PM, CHANGE IN SECURITY GUARD  
JAMES BROWN WEDDING DECEMBER 14, 2001 JIMMY  
CARTER/PHOTOGRAPHER  
CD JAMES BROWN TURKEY GIVE AWAY  
CD computer documents from Phil Farr, 1/24/08

PLASTIC ENVELOPE CONTAINING 33 CDS OF PHOTOS, ETC., INCLUDING

1. JAMES BROWN - SCHOOL IS IN
2. LAST XMAS PARTY - STATUE 2 PICS
3. XMAS TOYS 2004
4. VARIOUS, INCLUDING WEDDING
5. JAMES BROWN DAY 2003 - AIKEN VIDEO
6. JAMES BROWN DAY 2003
7. JB CYCLES, JB HOT, JB SHOW, PAINE COLLEGE, HONORS, JB
8. GODFATHER HOMECOMING 1<sup>ST</sup> SET
9. GODFATHER HOMECOMING 1<sup>ST</sup> SET
10. GODFATHER HOMECOMING 2D SET
11. GODFATHER PICS MISC.
12. JAMES BROWN TURKEY GIVE AWAY 2004
13. JB STATUE UNVEILING
14. JAMES BROWN X-MAY TOYS 2002

JUN 23 2009

Regions Bank I/N/O The Irrevocable Trust of James Brown, last entry 4/18/07. Checkbook, Regions Bank, The New James Brown Enterprises, Inc., with notation "acct. closed January of 2007" with receipts inside. Checkbook, Estate of James Brown, first entry February 23, 2007; last entry, 4/30/07. Note: check register of Dallas and Bradley covering period 8/28/07 - 11/17/07 was added to this box.

**BOX 116 - Box delivered to 1218 Taylor Street from Lewis and Babcock in August, 2007 pursuant to 8/19/07 Order in Case 122**

**Grammy Awards Invitation**

Note: front of file contains unofficial stack of documents copied by Audra Byrd, counsel for Messrs. Dallas and Bradley, on 2/4/2008, including:

1. Docs bearing various L&B numbers under 2100, including info re: SouthTrust judgment; TRHB prenu; and 1991 document JBE Inc and DGC filing foreign SouthTrust Judgment; Assignment of SouthTrust Judgment to Cannon; Satisfaction of Judgment; JB collection/receipts 12/29/06 - 2007; Statements of Libby, Sterling, Holmes, Rembert, D. Washington, Agreement TR Hynie and JBE dated June 19, 2000, signed and witnessed by Charles Bobbit, Johnny R. Phill IPS and Albert H. Dallas; Statement of Colonel Joseph Lee and other documents

Contains numerous automobile folders including: title insurance; 1988 Ford Pickup; 1962 Ford Thunderbird; 1983 Ford Van; Lincoln NAV; 1972 Rolls Royce; 1941 Lincoln; 2005 Chrysler 300; 1992 Mercedes; 1992 Mercedes 190E; 1990 Lincoln; Rhodes Imports 1988 Merc. 300E; 2004 bank records; Skymiles; Ford Motor Credit; German Shepherd, male; Bank of America; Associates National Bank, Delaware (from 2000); SAG Information; brown folder entitled "Deanna"; limousine; 1991 Mercedes; 1941 Lincoln Towncar; 1985 Lincoln; 1991 Ford; Chevy Roadster, 67; bus (located at Lewis Bus Lines in Augusta). Folder containing MGM correspondence to JBE, Inc, 2004. Social Security Folder. AFTRA Health and Retirement Funds envelope. Medical Insurance statements. FedEx information from AFTRA (2006). Re: coverage and billing for 2006. Citibank Credit Card. Bank records, August 2003. Bank records, Regions Bank, the New JBE, Inc., 2003, 2004 and 2005. Autos. House insurance. Leon Friedman. Regions Bank. Royalties Statements from 2004. Sizemore, Inc. Taxes. State Farm Policy. JBE Fax Coversheets from 2002 and 2003. Insurance claims pending. IAPA. Jackson Heat, A/C. Requests for Change in Case Status WAAW. James Huff. Advance Disposal. Policy file WAAW Radio. Medicare. 1999 Ford Expedition.

**BOX 117 - MISCELLANEOUS DOCUMENTS DELIVERED TO 1218 TAYLOR STREET IN AUGUST, 2007**

**Containing:**

1. Numerous Small Manila Folders
2. Notebooks

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2002 Payroll Tax Report; 2002 Quarterly Earnings report; 2002 Yearly earnings report; 2002 plain paper W-2s; 2002 Account Variance; 2002 Detailed General Ledger; 2002 Form 1120 Corporate Tax Return; 2002 Form SC-1120 Corporate Tax Return.

E. 2003:

JBE, Inc: 2003 General Ledger Trial Balance; 2003 Working Trial Balance; 2003 Detailed General Ledger; Form 1120 Corporate Tax Return; Form SC-1120 Corporate Tax Return; 2003 check Register; 2003 Chart of Accounts.

F. 2004:

JBE, Inc: 2004 General Ledger; 2004 Check Register; 2004 Vendor Ledgers; 2004 General Ledger; 2004 Account variance; 2004 Vendor Master File List; 2004 Vendor Master File List.

G. 2005:

JBE, Inc: 2005 Balance Sheet; 2005 Income Statement; 2005 General Journal; 2005 Detailed General Ledger; Form 1120 Corporate Tax Return; Form SC-1120 Corporate Tax Return; 2005 Working Trial Balance; 2005 Chart of Accounts; 2005 Check Register; 2005 Employee List-plain paper W2s; 2005 Vendor List; 2005 Customer List/Customer Ledger.

NOTE: As noted on top of box, the 2006 Report was removed and used as an exhibit at the hearing and has not been returned.

✓ **BOX 125 - ADDITIONAL CANNON DOCUMENTS**

Additional documents related to David G. Cannon, including:

- A. Original documents.
- B. Manila folder entitled "David G. Cannon" bearing various numbers between 04800 and 05000.
- C. Red Rope folder containing note of documents provided to Angela Kirby from box 31 of David Cannon, October 10, 2007, including:
  - 1. Regions Bank statements; 7<sup>th</sup> Decade 2004 Income Tax Return; 7<sup>th</sup> Decade 2003 Income Tax Return; and other docs bearing numbers 22120 to 22226.
  - 2. payment vouchers and tax records bearing numbers 22227 to 22244.
  - 3. JBE Inc Regular account 39-3300-1562 Regions Bank, 2000, including copies of various checks, bearing numbers 22245 to 22442.
  - 4. JBE Inc Regular account 39-3300-1562 Regions Bank, 2001, including copies of various checks, bearing numbers 22443 to 22605.

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16. James Brown bike Race
  17. James Brown Wedding
  18. James Brown X-Mas 2003
  19. James Brown Video 2003
  20. James Brown Video 2003
  21. James Brown Day 2003
  22. Godfather Homecoming 1<sup>st</sup> Set
  23. Godfather Homecoming 2d Set
  24. Godfather Printed JB Brochure JB Festival 2006
  25. JB Cycles; JB Hot; JB Show, etc.
  26. James Brown in Greenville
  27. James Brown & Hakim
- Plastic bag containing numerous keys  
Silver Album with Wedding Photos

NOTE: These were preserved as returned.

TRANSFERRED FROM:

*Adele J. Pope* *Robert J. Buchanan, Jr.*  
ROBERT L. BUCHANAN, JR OR  
ADELE J. POPE

RECEIVED BY

  
RUSSELL BUKKNIGHT

**212 Newberry Street NW  
Aiken, South Carolina 29801**

June 24, 2009

William Y. Klett III, Esquire  
Nexsen Pruet, LLC  
1230 Main Street  
Suite 700  
PO Drawer 2426  
Columbia, SC 29202  
FAX: 727-1452

**BY FAX ONLY**

Re: Reasons for approval of CORBIS/Greenlight settlement agreement,  
May 1, 2009.  
See Boxes 81, 94, 140

Dear Mr. Klett:

We were somewhat surprised to receive your letter dated June 22, 2009 this morning (June 24) since Russell Bauknight declined to attend a meeting the afternoon of June 22 as you were writing. We offered to speak with him (and you if you elected to accompany him) about any matters of concern.

By copy of this letter to Russell Bauknight, we offer again, and request, again, that you and others take advantage of our offer to meet weekly. When Russell has possession of the file, such as he had in our June 16 conversation (Box 81), it makes it difficult to discuss a matter.

Rather than waiting until the next offered meeting to discuss questions raised in various correspondence, we will respond quickly because we believe that the CORBIS/GreenLight Settlement Agreement is of tremendous value to the Estate/Trust.

Your letter does not correctly reflect the file or our position. Rather than addressing each point, we will try to make available for your easy reference the information which is of record, and which Russell has.

First we refer you to the pleadings index in Robert L. Buchanan, Jr. and Adele J. Pope, Plaintiffs, vs., Henry Dargan McMaster, Defendant, Aiken County Case Number 2009-CP-02-0597, which you have, especially:

1. 3/24/09 Summons and Complaint for Expedited Approval of Corbis Settlement [with contract]
3. 4/9/09 Joint Affidavit of Robert L. Buchanan, Jr., and Adele J. Pope

Supporting Summary Judgment

5. 4/27/09 Joint Supplemental Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope Supporting Approval of Contract with Greenlight with COS and Filing Letter
6. 5/4/09 Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope Related to Motion to Dismiss AG and Corbis Settlement
8. 5/5/09 Motion for Summary Judgment W/COS
13. 5/19/09 Return and Opposition to Motion to Intervene W/COS
14. 5/19/09 Memorandum in Opposition to Motion to Intervene W/COS
15. Proposed Final Order Approving Settlement of Corbis Litigation and Contract and Granting Related Relief

A review of the pleadings, which were in Russell's possession when we spoke (and), in particular, our affidavits and motion for summary judgment; the contract itself; and the other affidavits confirm why we attempted as early as March 24, 2009, to have the settlement approved so that we would not lose this valuable two-year right to exploit Mr. Brown's Publicity Rights.

We have spoken with Russell and several of his attorneys, including Freddie Kingsmore and you, about our strong feelings that this opportunity, once missed, cannot be recouped.

Among the many reasons we have discussed and will visit in more detail in a meeting, are:

1. The GreenLight contract was negotiated to be for **only 2 years** - causing no damage to the eventual outcome of the "Settling Parties", or other parties, regardless of the outcome of the reconsideration and appeal of the May 26 Order.<sup>1</sup>
2. This is a "**clean**" **Publicity Rights contract**. As we discussed, a combination of Intrigue (Copsidas); Dallas, Cannon, Bradley, Toby Byron and others have made

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<sup>1</sup> We considered this an important component of the settlement, as proposed to be implemented May 1, 2009 and terminated in 2011.

some claim to virtually every deal presented to the Estate/Trust. Further, Forlando Brown, who claims to be a 55% owner of TJBL, LLC, reports that he has been in contact with CMG. [See his September 2008 deposition.] These claims, though unfounded, and the related interference with the Estate/Trust's contracts have been substantial. The GreenLight contacts and contract have been solely through us and Mr. Gold. The fact that it is free of these claims is positive.

3. **GreenLight's confidential presentation** and discussions with Bob Buchanan and me in January 2009<sup>2</sup> establish the substantial possibilities for the James Brown brand, even during this short two-year period.
4. The contract provides that the Estate/Trust has **substantial control** over, and does not have to accept, proposals.
5. **Anecdotal comments** we have received in connection with our Royalty management, information that the American market is ready for extensive use of James Brown in advertising. [The reports were that before we were appointed the James Brown team was "too difficult to work with".]
6. Terry Cox's **income projections presented to the Attorney General in February 2008** for increased income through "Brand"[Publicity Rights] management.
7. Terry Cox's June, 2007, **valuation of the Publicity Rights** at approximately the value of the Royalties, followed by the October, 2007 \$100 Million offer based on these relative values.
8. The **Royalty earnings** (TIAA) for the first half of 2009, reflecting royalties earned in 2008, are more than \$2,215,000, suggesting that a \$1 Million annual projection for the equally-important Publicity Rights is conservative.
9. **Virtual Imagery** is now so advanced that, with proper exploitation of the Publicity Rights James Brown, by image, could be dancing with Ellen DeGeneres (and others) to the songs which these shows are already using.
10. A part of the publicity campaign, if appropriately handled, could be **publicity for the future James Brown House Museum**. [Adele had a nice image exploration initial

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<sup>2</sup> To which Russell and all "Settling Parties" were invited.

Letter to Mr. Klett  
June 24, 2009  
Page 4

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correspondence with the Tavis Smiley people about the possibility of something related to Beech Island just before the May 26 Order.]

11. GreenLight could be ready for the **Masters** next year (2010), where huge numbers of international visitors have tremendous interest in James Brown.
12. Art Gold's reduced contingency percentage of settlement approved.

Just this morning, public radio played an article on the resurgence and popularity of three-dimension in movies. As mentioned above, the ability to display Mr. Brown in 3-D is limitless, and just one aspect of his Publicity Rights waiting to be exploited.

Out of respect for our having tendered (temporarily and without prejudice) management of the Estate and Trust to Russell Bauknight pending the final outcome in the McMaster v. Dallas case, we request again that you reserve questions and inquiries for a scheduled meeting, which we are willing to have.

As we advised Russell, we will not respond to additional inquiries (or you and his other counsel) except at the meetings where the relevant documentation from the 145 boxes now in Russell's possession are brought to the meeting so that we can discuss, with documents in hand, whatever matters are of importance.

Adele will be on vacation next week, but we will be happy to speak with you about this further at a scheduled meeting as early as the second week in July. Please have Russell advise if he would like to have such a meeting.

Again, please do not consider our failure to respond to any future correspondence as agreement with your statements. Because of the complexity of issues related to Mr. Brown's Estate and Trust, and the fact that Russell is in temporary possession of the 145 boxes, more than 45 of which we referred to regularly, we simply consider those necessary to any reasonable discussion.

Sincerely,

Robert L. Buchanan, Jr.

Adele J. Pope

cc: Russell L Bauknight, CPA (Fax: 803-771-8958)

## MEMORANDUM

EXHIBIT 63

To: Russell Bauknight  
From: Adele J. Pope and Robert L. Buchanan, Jr., Esquire  
Date: July 14, 2009

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Russell:

Bob is on the road today, but has reviewed this message. We are responding to your email to us of late Friday afternoon and David Black's call to Tressa Hayes yesterday.

We look forward to seeing you at our next weekly meeting which will be at 3:00 on Wednesday, July 22 in Aiken at Bob's office. We will have our counsel available by phone or in person if necessary.

Please bring any files, pleadings, etc. you wish to ask us about. You may also want to send us a list of issues so we can be thinking about them.

We will copy this letter to David Black (through Freddie Kingsmore as per Freddie's request) and ask that you, he and your other counsel respect our request not to contact our attorneys except through us at the weekly meetings unless and until:

- a. As appropriate, we develop a joint litigation (and attorney-client/work product) strategy at our weekly meetings for a particular case; and
- b. The Estate/Trust, under your temporary management, has agreed to pay the attorney.

As you know, we want to avoid unnecessary costs, duplication and – most important – misunderstanding during the appeal period. When questions such as those asked by Mr. Black of Tressa arise, we need to look at them globally. For that reason we will ask Tressa and Jim not to respond to such inquiries, but to reserve them for the weekly meetings.

As relates to the Cannon Appeal, it has been our widely published opinion that we will take, and have encouraged all Interested Persons in the Estate/Trust to take, all actions appropriate to help prevent the return of David Cannon to any position of trust or confidence with the Estate or Trust and to make more likely the recovery of the \$12+ Million of funds missing between 1999 and 2007.

We will be glad to discuss the Cannon Appeal and other Cannon cases further at the next weekly meeting.

The weekly meeting should help us avoid emergencies. Should a matter arise, however, that you or your counsel believe cannot wait until our next weekly meeting, please direct it to us in writing so that we can determine if we want to respond – or whether one or more of our counsel should be involved. We look forward to seeing you!

cc: Tressa T.H. Hayes, Esquire, James D. Bailey, Esquire;  
Fred Kingsmore, Esquire, for Mr. Black (per request of Mr. Kingsmore dtd. 7/10/09)

EXHIBIT 105 3

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN ) SECOND JUDICIAL CIRCUIT  
) Case No.: 08-CP-02-1647 (Original)  
HENRY DARGAN McMASTER, in his ) Case No.: 07-CP-02-0122 (Copy)  
capacity as Attorney-General of the State of ) Case No.: 08-CP-02-0872 (Copy)  
South Carolina; and others )  
Petitioners, ) SUPPLEMENTAL AFFIDAVIT  
) OF ROBERT L. BUCHANAN, JR.  
ALBERT H. DALLAS and others ) AND ADELE J. POPE IN  
Respondents. ) SUPPORT OF COMMISSIONS AND  
) PAYMENT OF CERTAIN PRIORITY  
) EXPENSES OF ADMINISTRATION  
IN RE: )  
The Estate of James Brown and the James )  
Brown 2000 Irrevocable Trust w/a/d August )  
1, 2000 )

AND

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF AIKEN ) SECOND JUDICIAL CIRCUIT  
) Case Number: 2009-CP-02-1140  
) Robert L. Buchanan, Jr. and Other, )  
Plaintiffs, )  
vs. )  
) The Honorable Henry Dargan McMaster, )  
as Attorney General for the State of South )  
Carolina, )  
Defendant. )  
IN RE: The Estate of James Brown )  
and the James Brown 2000 Irrevocable )  
Trust )

AND

THE STATE OF SOUTH CAROLINA  
IN THE CIRCUIT COURT FOR THE  
SECOND JUDICIAL CIRCUIT

APPEAL FROM AIKEN COUNTY  
PROBATE COURT

needy and deserving children desiring to be educated in South Carolina and Georgia.<sup>3</sup> We believe that it is our duty to preserve the James Brown Legacy for the State of South Carolina.

3. After August 10, 2007, approximately 80 boxes of documents were delivered to 1218 Taylor Street, the back of Adele's office, by or on behalf of the predecessor PR/Trustees David G. Cannon (Cannon), Albert H. "Buddy" Dallas (Dallas) and Alfred A. Bradley (Bradley), and more than 65 additional boxes of documents, records and pleadings have been gathered since November 20, 2007, during our service as PR/Trustees.<sup>4</sup>

## II. SUMMARY OF RELIEF REQUESTED

4. Reserving all rights and objections to our removal as PR/Trustees, and orders of this Court related to the March 26 Document and appointment of Russell Bauknight as Successor PR/Trustee, we ask the Court for the following relief:

- a. Payment of a full commission of \$4,993,151, to be divided between Bob and Adele, based 1/3 on relative time and staff time spent; and 2/3 equally, based on our shared responsibility, as follows:

Bob: \$ 2,147,221  
Adele: \$ 2,845,930

- b. Payment of attorneys' fees for all counsel engaged or continued by us, as a priority expense of administration.
- c. Payment from the first available monies of \$2,153,983, plus interest from

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<sup>3</sup>According to *Philanthropy in the Sunshine State*, in 2001, the year after which James Brown created the 2000 irrevocable Trust and executed his Will, both of which would fund, in addition to the Grandchildren's Trust, The James Brown "I Feel Good" private foundation, only 19 private foundations in Florida had assets in excess of \$100 Million, the size of James Brown's Gross Estate, even though Florida housed 2 of the nation's 100 largest private foundations and 5.3% of the nation's private foundations.

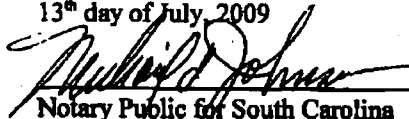
<sup>4</sup> 145 boxes have been delivered (without prejudice) to Russell Bauknight.

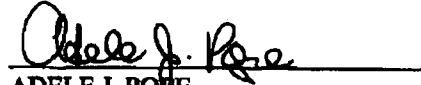
the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

FURTHER DEONENTS SAYETH NOT.

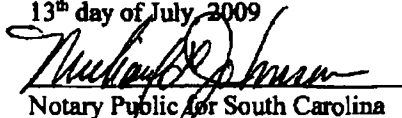
  
ROBERT L. BUCHANAN, JR.

SWORN TO before me this  
13<sup>th</sup> day of July, 2009

  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission expires: 24 FEB 14

  
ADELE J. POVE

SWORN TO before me this  
13<sup>th</sup> day of July, 2009


  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission expires: 24 FEB 14

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**From:** Alan Medlin <amedlin@sc.rr.com>  
**Sent:** Sunday, August 30, 2009 4:11 PM  
**To:** Kingsmore, Fred L; Carter@eckb.com; Chandler@eckb.com; JLee@eckb.com; rrosen@rosen-lawfirm.com; AGSJONES@scag.gov; MFJowers@scag.gov; JCNicholson@scag.gov; David Michel; louis@levensonlaw.com; lori@levensonlaw.com  
**Cc:** rbauknight@BPSCPAS.COM  
**Subject:** Tax valuation  
**Attachments:** tax valuation.rtf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Attached please find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter (after Hank Williams) who wrote what is arguable the best country song ever: Patsy Cline's "I Fall to Pieces." 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 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 a...y separate valuation of that should be discounted accordingly.

**Exhibit** 



**EXHIBIT 96**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

Case No. 2008-CP-02-01647 - *original*  
Case No. 2009-CP-02-01810 - *cert/copy*

In Re: The Estate of James Brown and  
The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

Ex Parte: Robert L. Buchanan, Jr., and Adele J. Pope,  
as Personal Representatives of the Estate of James Brown  
and Trustees of the James Brown 2000

Irrevocable Trust, ..... Appellants

Henry Dargan McMaster, in his capacity as Attorney  
General of the State of South Carolina; Daryl J. Brown,  
on behalf of his minor children, Lindsey Delores B.  
and Janise Vanisha B.; Deanna J. Brown Thomas,  
on behalf of her minor children, Jason Brown  
L.; Yamma N. Brown, on behalf of her minor children,  
Sydney L., Carrington L., and Tonya B.;  
Vanisha Brown; and Larry Brown; Tommie Rae Hynie  
Brown, .....

Respondents

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon,  
Individually and as (purported) Trustees of the James  
Brown 2000 Irrevocable Trust; Russell L. Bauknight, as  
Special Administrator and Special Trustee for the Estate of  
James Brown and the James Brown 2000 Irrevocable Trust,  
Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon  
N.M. Paris; LaRhonda Pettit; and Jeannette Mitchell, also .....

Respondents.

ORDER FOR RELEASE OF INFORMATION RELATED TO  
ATTORNEYS' FEES AND OTHER COMPENSATION

FILED 3-15 2002

*Liz Hodard*  
C.C.P. & C.S.  
*Barbara Ruggie*  
Deputy Clerk


*MAC*  
*HF*

This matter comes before me on motion of defendants/appellants Robert L. Buchanan, Jr. and Adele J. Pope asking the Circuit Court to deliver and/or direct the Clerk of Circuit Court to deliver all documents related to attorneys' fees, costs and/or compensation presented to the Circuit Court in this matter, including but not limited to, the contingency fee contract of Louis Levenson, Robert Rosen and the fees of the Guardian ad Litem for minor James B:

This Court has made no findings for necessity for confidentiality.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that this Court is filing with the Clerk of Circuit Court, and the Clerk is hereby directed, to deliver to Robert L. Buchanan, Jr., Adele J. Pope and/or their counsel, any and all documents related to attorneys' fees and/or compensation, and/or costs, and/or fees of guardians ad Litem and their counsel presented to this Court in the above cases.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early, III  
Resident Judge, Second Judicial Circuit

March 17, 2010  
Aiken, South Carolina

**EXHIBIT 93**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
DARYL J. BROWN, and others	)	CIVIL ACTION NO. 2007-CP-02-0122
Plaintiffs,	)	
v.	)	MOTION FOR JUDGMENT
	)	FOR COSTS,
DAVID G. CANNON, and others	)	INCLUDING ATTORNEYS' FEES,
Defendants	)	AGAINST DAVID G. CANNON
IN RE:	)	
ESTATE OF JAMES BROWN AND	)	
THE JAMES BROWN 2000	)	
IRREVOCABLE TRUST	)	

**TO: DAVID G. CANNON AND ALL OTHER INTERESTED PERSONS.**

YOU WILL PLEASE TAKE NOTICE that at the hearing to be held 9:00 a.m. on Thursday, May 20, 2010, at the Aiken County Courthouse located at 109 Park Avenue S.E., Aiken, South Carolina, or as soon thereafter as they may be heard, Robert L. Buchanan, Jr. and Adele J. Pope, Individually, will move before the Honorable Doyet A. Early, III for an Order granting judgment for costs, including attorneys' fees, against David G. Cannon as follows:

1. Robert L. Buchanan, Jr. and Adele J. Pope,  
Special Administrators fees and costs with interest  
as provided in Case 122 Order dated January 8, 2008 \$ 382,817.94
2. Louis Levenson fees as per Affidavit dated  
November 27, 2007 (\$102,398.75 and costs \$34,379.16  
Less \$ 3,000.00 Brown Family Children's Fdn.) \$ 133,779.91
3. Tressa T.H. Hayes, Esquire fees and costs \$ 38,680.00
4. James D. Bailey, Esquire fees (portion of total claim) \$ 100,000.00

5.	Robert L. Buchanan, Jr. and S.C. Hartford Insurance	\$ 270,567.02
6.	ALPS	<u>\$ 251,566.79</u>
	Total Judgment	\$ 1,177,411.66

together with additional reasonable amounts to Levenson, M & T Bank and/or the Estate of James Brown, as set out in timely affidavits filed by them, with the Estate to receive assignment of all judgments upon full payment, with interest.

The grounds of this motion are:

1. By Order dated April 8, 2008 the Court directed that the costs of this Case 122, including reasonable attorneys' fees, be charged against Cannon and others based on affidavits and arguments without testimony, at a hearing to be heard on May 11, 2008. Movants' requests for judgment cover both indemnification for Cannon's contempt and other costs under the April 8 Order.

2. The April 8 Order became final as to Cannon by the decision of the S. C. Court of Appeals on November 6, 2009, which remanded this matter to the Circuit Court for the determination of costs related to Cannon's contempt and confirmed the April 8 Order as to Cannon.

3. More than five months have elapsed since the November 6 Decision and judgment for costs against Cannon became ripe to be determined.

4. To promote judicial economy, Movants include with this motion affidavits describing the service of most persons who performed valuable services to the Estate/2000 Trust in Case 122, with whom they worked as SA s and/or PR/Trustees, and have requested information from others.

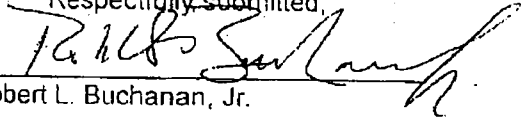
5. On information and belief the costs, including attorneys' fees requested from


Cannon are fair and reasonable and are properly chargeable against Cannon as part of Case 122. They incorporate herein by reference the affidavits served herewith.

This motion is based on the following:

1. Order of Judge Early dated April 8, 2008 in this Case 122;
2. Opinion of the South Carolina Court of Appeals dated November 6, 2009
3. The South Carolina Trust Code and South Carolina Probate Code.
4. The Affidavits listed on Schedule A attached hereto and made a part hereof.
5. Such additional affidavits as shall be timely served prior to hearing.

Respectfully submitted,

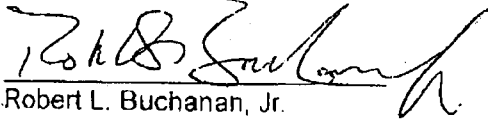
  
Robert L. Buchanan, Jr.

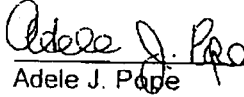
  
Adele J. Pope

May 3, 2010

#### AFFIRMATION

I certify pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that prior to filing this motion I communicated, orally or in writing, with opposing counsel, and have attempted in good faith, to resolve the matter contained in the motion, or that consultation would serve no useful purpose.

  
Robert L. Buchanan, Jr.

  
Adele J. Pope

**Schedule A**  
**Affidavits Supporting Motion for Judgment of Costs**  
**against David G. Cannon**

1. Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope, dated March 26, 2010
2. Affidavit of Robert L. Buchanan, Jr., dated December 17, 2007
3. Affidavit of Adele J. Pope, dated December 14, 2007 (with Exhibits List)
4. Affidavit of Adele J. Pope, dated November 29, 2007
5. Affidavit of Louis Levenson, Esquire dated November 28, 2007
6. Affidavit of Tressa T.H. Hayes, Esquire dated April 30, 2010
7. Affidavit of James D. Bailey, Esquire, dated April 29, 2010
8. Affidavit of Daryl L. Williams, Esquire
9. Affidavit of J. Calhoun Watson, Esquire

**EXHIBIT B**

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

) FIRST REQUESTS TO ADMIT TO  
) ALL PLAINTIFFS OF  
) DEFENDANT ADELE J. POPE

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.

TO: ALL PLAINTIFFS AND THEIR COUNSEL

Subject to and reserving all rights in the previously served and filed Motion to Dismiss and Motion for Transfer of Venue , Defendant Adele J. Pope hereby requests that all Plaintiffs admit the truth of the following matters of fact and the genuineness of documents. Each matter for which an admission or denial is requested shall be deemed admitted, pursuant to Rule 36, unless Plaintiffs respond within thirty (30) days after the service of the requests. If you fail to admit the matters set forth below and Defendants thereafter prove the truth of these matters, they may apply to the Court for the recovery of reasonable expenses (including attorneys' fees) incurred in making the proof, pursuant to SCRCP 37(c).

**REQUESTS AS TO AUTHENTICATION OF DOCUMENTS**

**REQUEST NO. 1:**

Exhibit 1 hereto is a true and correct copy of a Motion to Require Disclosure of Secret Settlement and for Related Relief dated August 18, 2008, Aiken County Case No. 2007-CP-02-0122 and Case No. 2008-CP-02-0872, with the following Exhibits:

- Exhibit A     Email from Sonny Jones to [dearyj@sccourts.org](mailto:dearyj@sccourts.org) dtd. Tuesday, August 12, 2008
- Exhibit B     Ltr. of Adele J. Pope, for Robert L. Buchanan and Myself to C. Havird Jones, Jr., Esquire, dated August 12, 2008
- Exhibit C     Email of Robert Rosen to [adele@popelawfirm.com](mailto:adele@popelawfirm.com) dated Tuesday, August 12, 2008
- Exhibit D     Email of Sonny Jones to [rbuchananjr@bellsouth.net](mailto:rbuchananjr@bellsouth.net) and others dtd. November 21, 2007; Ltr. of Adele J. Pope to C.Havird Jones, Jr. dated November 21, 2007; emails between Bill Hammond and Grace lewis, with copy to Sonny Jones dtd. November 27, 2007; email from Sonny Jones to Bill Hammond dtd 11/27/07.
- Exhibit E     Meeting of Trustees, Irrevocable Trust Agreement of James

Exhibit 102 hereto is a true and correct copy of Letter of Audra Byrd to Adele Jeffords Pope and Robert L. Buchanan, Jr. dated March 16, 2010.

**REQUEST NO. 103:**

Exhibit 103 hereto is a true and correct copy of Order Denying Motion to Reconsider Appointment of Successor Personal Representatives and Trustees and Granting Related Relief, with Exhibit A, dated April 8, 2008, filed April 14, 2008, Case No. 2007-CP-02-0122.

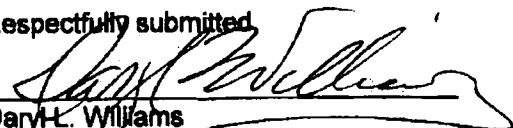
**REQUEST NO. 104:**

Exhibit 104 is a true and correct copy of a consent Order of Dismissal of the Honorable Peter R. Nuessle, Family Court Judge, In the Family Court, Second Judicial circuit, dated August 14, 2004 and filed August 16, 2004, Case No. 04-DR-02-157.

**REQUEST NO. 105:**

Exhibit 105 hereto is a true and correct copy of a supplemental Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in support of Commissions and Payment of Certain Priority Expenses of Administration, dated July 13, 2009, Case No. 08-CP-02-1647, 07-CP-02-0122, No. 08-CP-02-0872

Respectfully submitted



Daryl L. Williams  
Jeter & Williams, P.A.  
1204 Main Street, Suite 200  
Post Office Box 7425  
Columbia, South Carolina 29202  
Telephone: (803) 765-0600  
Facsimile: (803) 765-0619

August 12, 2010

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, 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.

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

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RICHLAND COUNTY  
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) MEMORANDUM IN SUPPORT OF  
) DISMISSAL OF COMPLAINT

Plaintiffs brought this action, which relates to an estate being probated in Aiken

County and a trust whose situs is Aiken County, in Richland County.<sup>1</sup> Their improvident election to do so requires dismissal of the proceeding on jurisdictional grounds because, under the South Carolina Probate Code, the courts of Richland County lack the authority to hear the proceeding, or even a motion for change of venue.

### **Background**

Ten years ago, on August 1, 2000, music legend James Brown, a resident of Aiken County, created the James Brown 2000 Irrevocable Trust (the "2000 Trust") and transferred his Aiken County home to it. Under an occupancy provision of the 2000 Trust, Brown resided in his home until his death on December 25, 2006.

In January 2007 Brown's Will, also dated August 1, 2000, was admitted to informal probate in the Aiken County Probate Court.

Shortly thereafter most Plaintiffs brought the first formal proceeding related to both the 2000 Trust and Estate in the Aiken County Probate Court. They sought removal of the original Trustees and Personal Representatives (PRs). The cases were removed to circuit court and became Case 2007-CP-02-0122 ("Case 122").<sup>2</sup>

About twenty cases followed, with Plaintiffs being parties to many. [See Aiken County Case No. 2008-CP-02-0872 and Case 2008-CP-02-1647, for example.]

Many of these cases are still pending and the Estate remains open. Defendants

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<sup>1</sup>The Summons and Petition were originally filed in Richland County Probate Court, but removed to the Court of Common Pleas on motion by the Defendants.

<sup>2</sup> Many significant orders were issued in Case 122, including those dated February 18, March 7, August 10, August 19 and November 20, 2007 and January 8, February 20, March 7, April 1, and April 8, 2008. Some of these are attached to and discussed in Defendants' Motion to Dismiss.

were appointed by Order of the Honorable Doyet A. Early, III on November 20, 2007 to serve as PR s of the Estate and Trustees of the 2000 Irrevocable Trust.

### **Argument**

#### **I. Rule 12(b)(1) requires dismissal for lack of subject matter jurisdiction because the Probate Code requires that the Petition be brought in Aiken County.**

The duty of Defendants to any Plaintiffs stems only from their service as PRs under the Will of James Brown or Trustees under the 2000 Trust.<sup>3</sup>

S. C. Probate Code Section 62-1-302(a)(1) and (3) provide that the probate court – subject to removal to circuit court as provided in §(d) – has exclusive original jurisdiction over all subject matter related to estates of decedents and trusts, including, as here, inter vivos trusts.

Sections 62-1-303 and Section 62-3-201, read together and with Section 62-1-302(a), make it clear that all proceedings related to the Will and 2000 Trust must be brought in Aiken County, and the failure to do so is jurisdictional, requiring dismissal.

Section 62-1-303 provides in part:

**§ 62-1-303. Venue; multiple proceedings<sup>4</sup>; transfer.**

(a) Subject to the provisions of § 62-3-201, where a proceeding<sup>5</sup> under this Code could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive

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<sup>3</sup> The complaint does not (and could not) allege that Defendants have ever had any fiduciary duty to the so-called James Brown Legacy Trust ("Legacy Trust"). Bauknight's Legacy Trust is a creation of the Plaintiffs and others. It is the subject of the Case 1647 appeal.

<sup>4</sup> Section 62-1-201(32) states that "Proceeding" includes action at law and suit in equity.

<sup>5</sup>Under § 62-1-201(32) "Proceeding" includes action at law and suit in equity.

right to proceed.

(b) If proceedings concerning the same estate....,or trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court. . .

(c) If a court finds that, in the interest of justice, a proceeding or a file should be located in another court of probate in South Carolina, the court making the finding may transfer the proceeding or file to the other court.

The referenced Section 62-3-201, however, provides in part:

**§ 62-3-201. Venue for first and subsequent estate proceedings; location of property.**

(a) Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is:

(1) in the county where the decedent has his domicile at the time of his death; or

(2) if the decedent was not domiciled in this State...where property was located at death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in §62-1-303 or (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent of the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to another court. [Emphasis supplied].<sup>6</sup>

This is supplemented by Section 15-7-40 which states that an executor or executrix may be sued in the county where the testator's will has been proved or admitted to probate [Aiken].

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<sup>6</sup> While not original parties, Buchanan and Pope were clearly "proponents of Case 122." [Ord. dtd. 4/8/08, p. 50]

As of May 26, 2009, when Buchanan and Pope were temporarily relieved of their fiduciary duty to beneficiaries in connection with the administration of the 2000 Trust and Estate, the principal place of Administration of the Estate and 2000 Trust, by court order, was in Aiken County.

Bauknight does not allege that he has implemented a transfer of administration of the 2000 Trust in accordance with S. C. Trust Code Section 62-7-108 ( c) or notified the Court of his intention to make the change pending the Case 1647 appeal of his appointment. Thus, by court order, situs of the 2000 Trust is in Aiken County, where it has owned James Brown's home for more than 10 years.

Section 62-7-204 of the S. C. Trust Code mirrors the estate provisions, and says in part:

**§ 62-7-204. Venue**

(a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will, and the estate is not yet closed, in the county in which the decedent's estate is being administered.

( c) If proceedings concerning the same trust could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

(d) If proceedings concerning the same trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and . if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court. . . [Emphasis supplied.]<sup>7</sup>

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<sup>7</sup> Even if James Brown had provided more lenient venue provisions in the 2000 Trust, they would not apply. Section 62-7-105 of the Trust Code states that the terms of the Trust prevail over any provision of this article [Article 7] except "... (11) the subject-

The undisputed facts as found in cases in which Plaintiffs are parties are:

1. The first proceeding related to the James Brown Estate was the informal admission to probate of Brown's will and the appointment of Dallas, Cannon and Bradley as PR s.
2. The first formal proceeding related to the 2000 Trust and Will was Case 122, brought by most Plaintiffs, and still pending.
3. The Estate is being administered in Aiken County and is not yet closed.
4. Case 1647 was brought by the Attorney General in Aiken County in 2008, and all Plaintiffs are parties. It is still pending both in Aiken and the Supreme Court.
5. All prior cases brought by Plaintiffs have been in Aiken County.

Under the S. C. Trust Code a person has knowledge of a fact if the person:

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

Having been participants in the proceedings in Aiken County, Plaintiffs filed this case in Richland County with knowledge, as defined in the Trust Code, that the statute required that it be filed in Aiken County. They did not follow the mandatory statutory procedure of filing in Aiken County and seeking a change of venue through the Aiken County court.

The Reporter's comments to Section 62-3-201 do no more than restate the

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matter jurisdiction of the court and venue for commencing a proceeding as provided in Section 62-7-201 and 2-7204.

obvious from the statutes:

If proceedings concerning the same estate are commenced in more than one court in this State, the court in which the proceeding was first commenced makes the finding of proper venue." [Emphasis supplied.]

This Case was brought in Richland County in violation of a clearly defined statutory requirement that it be brought in Aiken County. This Court lacks jurisdiction to hear the complaint, or to even decide issues of venue. The complaint should be dismissed.

**II. Rule 12(b)(8) supports the required Dismissal and is not inconsistent with the Statutory Jurisdictional and Venue Provisions of the Probate Code.**

Section 62-1-304 of the Probate Code states that unless specifically provided to the contrary in "this Code" or unless inconsistent with its provisions, the rules of civil procedure for the probate court, and, in their absence, those adopted for the circuit court, govern formal proceedings under the Code<sup>8</sup>.

Rule 12(b)(8) requires dismissal where another action is pending between the same parties for the same claim. This provision complements the statutory provisions in the James Brown cases.

In the Petition in this case and Aiken County Cases 122, 1647 and 872, including the portions on appeal to the Supreme Court, the parties and issues are the same. Even if they were not, the less stringent statutory provisions requiring the Petition to be brought in Aiken County would prevail.

The Complaint should be dismissed.

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<sup>8</sup> Formal proceedings are defined in Section 62-1-201 are those conducted before a judge with notice to interested persons.

### 3. Other Arguments for Dismissal

Defendants incorporate by reference all other arguments contained in or contemplated by their Motion to Dismiss. They respectfully submit, however, that these arguments should proceed only after the case is dismissed and refiled in Aiken County.

### Conclusion

Plaintiffs have knowingly placed this Court and Defendants in a difficult position by failing to follow the required statutory procedure. The Aiken County Court must act on questions of venue. But it cannot act because it has nothing before it. And this Court should not act.

Dismissal is the appropriate remedy.

Respectfully submitted,

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Jr.

August 10, 2010

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF RICHLAND )

FIFTH JUDICIAL CIRCUIT )

Civil Action 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 B. II; 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

**SUPPLEMENTAL MEMORANDUM**  
**SUPPORTING DISMISSAL OF**  
**COMPLAINT**

LETTE M. McBRIDE  
C.C.P. & G.S.

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FILED  
COUNTY

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 B. II; 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,

Plaintiffs,

vs.

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

Defendants.

**Summary of Relief Requested**

Defendants Robert L. Buchanan, Jr. and Adele J. Pope respectfully submit:

1. Dismissal of the complaint is required by Probate Code §62-1-303, §62-3-

201, §62-7-704 and Rule 12(b)(1) as set out in Defendants' Memorandum dated August 10, 2010 attached hereto as **Exhibit A**.

2. The numerous additional grounds for dismissal should be addressed by the Aiken County Court if Plaintiffs elect to file there but are presented below should the Court decide to reach them.

3. The Court should issue its Order of Dismissal substantially in accordance with the proposed Order submitted herewith.

### **Background**

On August 1, 2000 music icon James Brown finalized the estate plan he had developed over four years by creating and funding the James Brown 2000 Irrevocable Trust (the "2000 Trust").

Brown put his Aiken County home estate and his company, James Brown Enterprises, Inc. ("JBE, Inc.") into the 2000 Trust. JBE, Inc. collects about 2/3 of the royalties to more than 750 of Brown's songs.

Brown's Will left his entire music empire to the 2000 Trust, which is dedicated solely to education of certain of Brown's grandchildren and The James Brown "I Feel Good" private foundation. The "I Feel Good" foundation will provide scholarships for needy and deserving students to be educated in South Carolina and Georgia.

Brown intentionally disinherited his dozen or more children<sup>1</sup> and all past and future spouses from his music empire. Brown's family knew about and participated in the creation of the estate plan. In a lawsuit against their father, daughters Deanna and Yamma, acknowledged that they were excluded from the estate plan. The Brown

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<sup>1</sup>Brown's Will acknowledged legitimate children Deanna, Yamma, Terry and Larry and also out-of-wedlock children Venisha and Daryl as his only "heirs." Subject to the In Terrorem clause, the Will leaves them 1/6 each of his personal and household effects. Brown failed to acknowledge legitimate daughter Lisa, biological children LaRhonda, Cinnamon and Jeanette or

children's website, established in April 2007, confirms Brown's often-expressed desire to give the poor education as a way out, not a handout. It describes Brown as "a visionary who thought it was robbery not to give unto those who were impoverished."<sup>2</sup>

Brown's Will left his six acknowledged children only his personal effects. Consistent with Brown's beliefs, the 2000 Trust provides an education fund of about \$285,000 for seven designated grandchildren. All other heirs and claimed heirs, including past and future spouses, were intentionally omitted.

To prevent interference of wives, his companion, and litigious family, Brown placed *In Terrorem* clauses in both the 2000 Trust and his Will. (Brown had also done the same in his almost-identical 1999 Will.) Brown directed his fiduciaries to vigorously oppose all challenges to his estate plan as an affront to his wishes.

From 1999 to 2006, Brown's trustees Dallas and Cannon secretly ransacked Brown's assets both within and outside the 2000 Trust. To date there is no evidence that Brown, daughter Deanna or deceased trustee Bradley, both Brown's fiduciaries with Dallas and Cannon during the period, knew of the Dallas/Cannon misappropriations before Brown's death.

Brown died on December 25, 2006 leaving an \$85 million music empire. If fully

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claimed but unconfirmed children James II and Deon (incarcerated).

<sup>2</sup>See The Brown Family Children's Foundation website and related information. This foundation was created in Georgia in April 2007 by Deanna, Daryl, Yamma, Larry and other clients of Louis Levenson, all of whom at the time acknowledged the validity of Brown's estate plan in sworn affidavits filed in Aiken County [Aff. D. Thomas, D. Brown, Y. Lumar (2)]. At the time the foundation was limited to solicitation of funds for turkey giveaways and toy giveaways during the holiday season. These same children later filed Case 2007-CP-02-0872 ["Case 872"] asserting that Brown was unduly influenced to leave his assets to education. Buchanan and Pope, as PR/Trustees, answered and counterclaimed on March 26, 2008 seeking alternate probate of

funded as set up by Brown, the "I Feel Good" Trust may be South Carolina's largest private foundation dedicated solely to educating needy and deserving students.<sup>3</sup>

Plaintiffs Deanna and Yamma immediately accepted, then abandoned, positions with the 2000 Trust. Brown's attorney Debra Opri who represented Brown in a California lawsuit from 2000 to 2002, appeared for the family on the "Larry King Live" television show to discuss the Trust.

Brown's Will was probated in Aiken County on January 18, 2007 and the trustees named Personal Representatives ("PRs").<sup>4</sup>

On January 24, 2007 the six acknowledged children and grandchildren Forlando and Romunzo brought Case No. 2002-CP-02-0122 ("Case 122") to remove Dallas and Cannon as PR/Trustees.<sup>5</sup>

By order dated November 20, 2007, Buchanan and Pope were appointed

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Brown's 1999 Will. The AG was served with the amended complaint, but did not answer, leaving the defense of the estate plan to Buchanan and Pope.

<sup>3</sup> Brown's assets are sometimes referred to as being \$100 million. The \$85 million reflects the \$100 Million reduced by a royalty-backed debt (TIAA note) incurred by Brown and JBE, Inc. in 1999 when Brown borrowed \$26 million and secured it with future royalties. More than \$12 million of Brown's money from the TIAA loan and other sources was siphoned off between 1999 and 2007 by Dallas and Cannon. In addition to being trustees, Dallas and Cannon held Brown's power of attorney ("POA") with Deanna and Bradley. Less than \$11 million is now owed on the TIAA note, which was reduced by more than \$5 Million between November 2007 and May 2009.

<sup>4</sup> Atlanta Attorney Levenson, then representing Brown's six acknowledged children, requested that Dallas and Bradley not submit the Will for probate. Then-counsel Thurmond, Miller and Massey properly concluded that S. C. law required the Will to be delivered to the Probate Court.

<sup>5</sup> Neither Deanna nor Bradley participated in the fabrication by Dallas of a second "Fabricated Schedule B" to the 2000 Trust, making it appear that Brown's Publicity Rights, worth about \$50 million, had been placed in the 2000 Trust before Brown's death. Dallas testified that the Fabricated Schedule B was created at the direction of attorney Cam Lewis — hired months after the fabrication. Bradley's testimony, however, demonstrated Dallas' statement was false.

PR/Trustees, replacing Dallas and Cannon.<sup>6</sup>

In January 2008 Forlando, through Atlanta law firm Powell Goldstein ("PG"), filed a federal suit asserting Buchanan and Pope were illegally appointed; illegally serving; and had mismanaged and converted 2000 Trust assets for their private benefit.<sup>7</sup> He also sought the return of Dallas and Cannon as trustees.

In early 2008 Terry, Forlando and Romunzo filed six grievances against attorney Levenson in 2 states.<sup>8</sup> By this time, Terry and Forlando were allied with an investor group, Dallas and Cannon, in a proposed \$100 Million sale of Brown assets, with Terry as a purchaser and Forlando secretly having 39% of the purchase entity (The "Terry/Dallas Group").<sup>9</sup> Between January and March 2008, while simultaneously challenging the authority of Defendants to act as Trustees, the Terry/Dallas group

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<sup>6</sup> Both Dallas and Cannon, in different ways, attempted to retract their resignations as trustees – but not as PRs. Cannon's matters were resolved by the South Carolina Court of Appeals in a decision dated November 6, 2009. He has since appealed the Order granting certain attorneys' fees. Dallas' attempt to withdraw his resignation in Case 122 is pending in the South Carolina Supreme Court. Bauknight has not attempted to dismiss the Appeal despite Bradley's death and Dallas' failure to appeal Bauknight's appointment and Dallas' threatened bankruptcy.

<sup>7</sup> PG has represented the Estate, the 2000 Trust, Dallas, Terry, Cannon, Forlando and TJBL, LLC, the investor group owned 39% by Forlando which seeks to purchase the Brown assets with options or a "kickback" to Dallas and Cannon. PG billed the Estate \$48,225, but has refused to deliver the file as directed by Order dated August 10, 2007. In July 2007 PG sent secret documents to Dallas and Cannon to transfer the 2000 Trust to Georgia to escape S.C. Court scrutiny. Thereafter, Cannon told the Court they had never hired PG. Dallas asserted there was a single consultation in February 2007 and no file. But Dallas' counsel Byrd corrected Dallas' false representations after the \$48,225 PG re-bill arrived in March 2008. PG attorney Dempsey, after being terminated with Dallas' consent in the August 10 Order, worked on Dallas' motion to require recusal of Judge Early.

<sup>8</sup> Terry and Forlando, now represented by PG, became joint venturers with Dallas and Cannon who are seeking to receive options or a "kickback" on the sale. After the Court-ordered termination, PG attorney Dempsey worked with Dallas on his unsuccessful attempts to have Judge Early recuse himself. The same week Forlando's federal suit was prepared. In the Spring of 2009 Terry's Counsel threatened to file a grievance against Buchanan if he did not resign. The letter was delivered to the Court and parties.

offered<sup>10</sup> to purchase the James Brown assets (good title; free and clear of liens) for \$90 - \$102 million.<sup>11</sup> The Court was notified of the rejection of the offers.

On February 5, 2008 the Estate/Trust filed Aiken County Case 2008-CP-02-322 ("Case 322") against Dallas, Cannon and others, seeking return of more than \$12 million misappropriated since 1999. Dallas counterclaimed. Case 322 is pending.

By March 8, 2008, some Plaintiffs had filed the amended complaint in Case 2008-CP-02-872 ("Case 872")<sup>12</sup>, known as the "Will/Trust/Heirs Case."

More than 8 claims cases were filed in 2008 after Defendants disallowed certain disputed claims, and others with amounts due, but requiring court review.

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<sup>9</sup> Dallas and Cannon sought secret options or a "kickback" on the sale, as well as a commission from the Estate/Trust.

<sup>10</sup> Investors Cox, Defendants and others refer to the communications as "offers", although they were strictly Letters of Intent to conduct due diligence and make an offer.

<sup>11</sup> The Case 122, 872 and 1647 files show that all offers were disclosed to the Court and parties when made, but that offers made between October 2007 and March 27, 2008, which required certification of good title to assets free and clear of liens, could not be accepted at the time. Reasons they could not be accepted included: (1) the Deanna/Yamma group had just filed Case 872 challenging the 2000 Trust they had ratified and served under. (2) Terry, Forlando, Dallas and AG McMaster were asserting Defendants' appointment, under reconsideration until April 8, 2008, was invalid. (3) Terry and Forlando filed documents in the Probate Court to assert that all orders issued in Case 122 affecting the 2000 Trust were invalid. (4) the hearing on Forlando's requested federal injunction to prevent the 2000 Trust from taking any action was pending; (5) the \$31 million Pullman S. C. claim was unresolved; (6) the Estate Tax Return was not filed; (7) IRS recognition of the status of the "I Feel Good" Trust was pending; (8) and Dallas/Cannon/Bradley had filed \$16.5 million of frivolous claims against the estate. Many of these issues were resolved by the April 8, 2008 Order in Case 122, and more by the end of 2008. A July 14, 2008 Order of Judge Cureton cleared the way for Defendants to fully administer the 2000 Trust and Estate pending the Dallas appeal. Fewer than 30 days later, Hynie Brown's counsel - purporting to speak for the AG of South Carolina - directed Defendants to "stand down" and take no action for the Estate. After Case 1647 was filed on November 7, the January 7, 2009 order confirmed Defendants' full authority to continue to act. When Defendants entered discussions about a possible court-approved beneficial "right of first offer" Hynie Brown's counsel filed a motion - which is still pending - seeking an *ex parte* restraining order to prevent any sale. Similarly, the AG and Hynie Brown acted to prevent a beneficial 2-year Publicity Rights contract with Bill Gates company GreenLight which could have been in place May 1, 2009 - May 1, 2011.

<sup>12</sup> The order was issued while Case 872 was still part of Case 122.

By Orders dated March 7 and April 8, 2008 the Court in Case 122 reviewed the actions of Buchanan and Pope; made detailed findings; and denied all motions to reconsider their appointment. Only Dallas appealed.<sup>13</sup>

On July 14, 2008 the South Carolina Court of Appeals directed that the Christie's auction, already approved by two Case 122 orders, proceed. Motions for costs for interference with the Christie's auction sale are pending in Aiken County.

A July 23, 2008 order in Case 872 approves education benefits to certain beneficiaries of the 2000 Trust. Reconsideration is pending.

On August 10, 2008, after a secret mediation from which Defendants and others were excluded, the AG, Hynie Brown and some Plaintiffs signed a "private binding agreement among the parties hereto." The parties agreed to seek replacement of Defendants and to work to defeat the interests of Will and Trust beneficiaries. [See Aug. 10 Agmt.] The agreement stated in part:

Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to the personal representatives and trustees even if not approved by the Court.<sup>14</sup>

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<sup>13</sup> Bradley appealed but is deceased.

<sup>14</sup> The Agreement also stated:

1. All parties who sign below hereby recognize and stipulate...that Tommie Rae was the legal wife of James Brown...
3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto...
5. a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope ...  
b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable trust (hereafter the "Charitable Trust") shall be created ...  
d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets or proceeds payable to any of the parties by virtue of any rights of James Brown ...entities of James Brown,...the Estate of James Brown... the August 1, 2000 Trust ..The parties will divide ...all such assets and

On August 12, 2008 counsel for Hynie Brown directed Defendants to take no further action on behalf of the estate.

By order dated August 17, 2008 the Dallas, Cannon and Bradley claims cases became 2008-CP-02-1425, -1426 and -1427.

On October 23, 2008 Defendants conducted hearings in claims cases, resulting in orders dismissing the Pullman \$31 million S. C. claim and resolution of other cases.

On November 7, 2008 the AG and some Plaintiffs filed Case 2008-CP-02-1647 ("Case 1647"), alleging improper actions by Defendants. Defendants' motions to dismiss, for summary judgment, answer, cross-claim and counterclaims are pending and several orders from Case 1647 are now on appeal in the S. C. Supreme Court.

On November 12, 2008 Cannon tendered a forged agreement, intended to make the \$900,000.00 taking discovered by Defendants appear to be compensation. On November 18 and 19, 2008, Terry attended two days of hearings in the Forlando injunction hearing in Federal Court. PG attorneys fully examined Buchanan and Pope about all alleged improprieties.

Between January 30 and April 6, 2009 hearings took place in Case 1647. Buchanan and Pope were extensively questioned.

On February 10, 2009 Hynie Brown sought an ex parte Restraining Order against Defendants in Case 1647, asserting they were improperly trying to sell James Brown's

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or proceeds .... (1) 50% to the Charitable Trust; (2) 25% to Tommie Rae...(3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves.

k) The parties agree to use their best efforts to extinguish any other outstanding

estate.

In March 2009 James II filed a petition for review of Defendants' compensation in Case 1647 and in the Probate Court. It is pending.

Between January and April 2009 Defendants' opposition to transferring more than \$50 million from Brown's estate plan to disinherited beneficiaries was fully aired, as were the opinions of Pope and tax expert Harley Ruff about the likely negative tax consequences to the "I Feel Good" foundation of Bauknight's Legacy Trust and Terry's right of first refusal to buy James Brown's assets.

On May 22, 2009 Defendants filed a case in the Aiken County Probate Court seeking review of their service; compensation; that of others; and other relief.

Effective May 26, 2009 the Court of Appeals relieved Buchanan and Pope of further liability with respect to management of the 2000 Trust and Estate pending the Case 1647 appeal. The Court of Appeals confirmed that such liability rests with Bauknight. See Order of November 6, 2009 in the Cannon Appeal.

In June 2009 Defendants, reserving all rights under the appeal, filed a final accounting in the Aiken County Probate Court.

On August 3 and 6, 2009 the AG obtained two *ex parte* orders in Aiken County, which became Case 2009-CP-02-1810. Appeal of the Case 1810 *ex parte* orders is consolidated in the Supreme Court with the Case 1647 appeal.

On August 12, 2009 Hynie Brown served requests for production of documents and interrogatories on Defendants in Case 1647.

On February 22, 2010 Cannon was indicted for felony breach of trust for each

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interests or claims by any potential heir, devisee, or successor ... [Emphasis supplied.]

year from 1999 through 2006 and for uttering the forged "compensation agreement" on November 12, 2008.

More than 80 orders and decisions have been issued in the Aiken County James Brown cases and appeals from those cases. About 25 attorneys have represented Plaintiffs in these cases. Multiple allegations of wrongdoing by Defendants have been made and aired in more than 20 days of hearings in Aiken County – most recently in Case 1647. All Plaintiffs, by testimony, through counsel, and in sworn filings and documents, are on record as to their position about Buchanan and Pope's conduct at any given time since March 7, 2007.

The issues raised in the complaint herein have either been decided or are pending in Case 122, Case 872 and Case 1647 and other Aiken cases or their appeals.

Defendants have been under a microscope in Aiken County since March 7, 2007. Their every action was fully known to Plaintiffs days, if not minutes, after it took place.

#### **Argument**

**I. Dismissal is Required Under Probate Code Sections 62-1-303, 62-3-201 and 62-7-204, and Rule 12(b)(1). All other grounds for dismissal should be considered by the Aiken Court.**

Defendants respectfully submit that this matter should be dismissed on the statutory grounds set forth in the Memorandum dated August 10, 2010 (Exhibit A). A proposed order to that effect accompanies this memorandum.

While dismissal is also appropriate on each of the grounds stated in the Motion to Dismiss and discussed below, these should be reserved for the Aiken County Court.

**II. The Attorney General is Prohibited from Seeking Money damages for Hynie Brown and Terry in this Private Tort Suit.**

This case must be dismissed, as the AG does not have the authority to file an action seeking money damages on behalf of private individuals. In this case, the AG seeks money damages from Defendants for the benefit of various individuals disinherited by the Estate Plan of James Brown. The AG must have specific legislative authority to seek money damages on behalf of individuals or businesses via *parens patriae* actions.<sup>15</sup> There is no such authority granted to the Attorney General for the claims at issue in this case and to allow the case to proceed would violate the due process rights of Defendants. This action should be dismissed.

In *California v. Infineon Technologies AG*,<sup>16</sup> the Federal District Court for the Northern District of California considered whether AGs of various states, including South Carolina, could bring suit in a California Federal Court for money damages against technology companies.<sup>17</sup> The claims made therein were on behalf of both the states themselves and individuals and businesses within each state. That Court found that, under South Carolina law, the South Carolina AG was not only unable to bring such a

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<sup>15</sup> *California v. Infineon Technologies AG*, 531 F.Supp.2d 1124 (N.D. Cal. 2007). In that case, the plaintiff attorneys general sought money damages on behalf of their respective states, as well as individuals and businesses in their respective states. The Court undertook a thorough discussion of the ability of each state's Attorney General to sue for money damages under the various theories asserted. It found that the South Carolina Attorney General needed specific legislative authorization to sue for money damages, and that no such authorization had been made under the Unfair Trade Practices Act. Moreover, it found that the common law *parens patriae* authority extended only to actions for injunctive relief. The Court held that the South Carolina Attorney General would require specific authorization by the legislature to seek money damages on behalf of individuals or businesses.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

suit in California, but the AG was also without authority to sue for money damages in any situation not specifically authorized by the legislature.<sup>18</sup>

Here, no such authorization has been issued. The South Carolina Code has two sections pertaining to the AG's authority in respect to trusts. SC Code Ann. §1-7-130 grants limited authorization to the AG, among others, to:

. . . enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof . . . .

This statute makes no provision for the AG to participate in a private tort action seeking money damages for wrongs which have allegedly been committed in the past. This lawsuit does not seek any sort of injunctive relief which could amount to enforcement of the due application of charitable funds, nor does it seek to prevent breaches of trust.

Likewise, SC Code Ann. §62-7-405(c) limits the Attorney General's power to bring suits related to charitable trusts. That statute states, in pertinent part, “. . . the Attorney General . . . may maintain a proceeding to enforce the trust.” This statute also grants the AG only the authority to “enforce” a charitable trust. This case is wholly unrelated to enforcement of any charitable trust, as it seeks only money damages related to private tort claims.

Since SC Code Ann. §§1-7-130 and 62-7-405(c) do not grant the Attorney General authority to bring this action, which authority must be granted by the legislature under *California v. Inferion Technologies AG, supra*, this action must be dismissed.

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<sup>18</sup> *Id.* at 1170.

**III. The Attorney General may not assert private tort claims of individuals.**

The AG is acting outside the scope of his *parens patriae* authority in asserting the private tort claims of individuals in this action. The AG has asserted no separate or unique claim of the state, as distinct from the claims of the private individual plaintiffs. As such, the AG is not acting within his *parens patriae* capacity, and this suit must be dismissed.

The Supreme Court of the United States held in *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez*, 458 U.S. 592 (1982), that, in order to maintain a *parens patriae* suit, a State must articulate an interest apart from the interests of particular private parties, that is, the State must be more than a nominal party. *Id.* at 593. Here, no such interest exists.

The AG joins in claims by and for the benefit of private individuals without asserting any independent interest. All claims in this action are asserted jointly by all of the Plaintiffs, and the Complaint in this action does not assert any basis for the AG's involvement. The relief sought, if proper at all, could be sought just as effectively by the 2000 Irrevocable Trust and/or the Estate. The Attorney General does not and could not assert an independent or unique claim for the State of South Carolina.

In sum, the AG has no authority as *parens patriae* to bring or participate in this lawsuit, and the case must be dismissed.

**IV. The claims of all Plaintiffs are barred by SC Code Ann. Section 33-56-180**

All of Defendants' actions complained of occurred while they were employees, as

defined in §33-56-170(2)<sup>19</sup> of the “I Feel Good” Trust, a 501(c)(3) private foundation, described for purposes of §33-56-180 as a charitable organization.

SC Code Ann. §33-56-180(a) provides:

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. *An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant.* A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, *and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.* [Emphasis supplied]

The AG and Bauknight, now acting for the “I Feel Good” Trust, must *defend* this false claim against Defendants – not bring it.

**V. The hiring of contingency fee counsel by the Attorney General violates the Due Process rights of Defendants.**

The AG’s retention of an outside, financially interested attorney to pursue the State’s claims against Defendants violates the Due Process rights of Defendants. “Due

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<sup>19</sup> “Employee” means an agent, servant, employee, or officer of a charitable organization.

process requires the government's attorneys to be financially disinterested in the outcome of the litigation inasmuch as they are –ostensibly, at least – serving the public interest, and not their own financial interests.”<sup>20/21</sup>

In this case, the Attorney General, joined by private individuals, has hired Kenneth B. Wingate to pursue the interests of the State, *and their private interests*. His engagement has been reported to be on a contingency fee basis, giving counsel a financial interest in the outcome of the litigation. Even if Plaintiffs' counsel were not hired on a contingency basis, clients of attorneys Levenson and Rosen, counsel in Aiken, bring this action for their private interest and for their counsel to secure an estimated \$12-14 Million in *contingency* fees under the settlement. Because contingency arrangements motivate Plaintiff's counsel and counsel for the private parties to seek the highest possible financial return, rather than to seek a fair and just result, the arrangement violates the Due Process rights of Defendants. The Supreme Court of the United States has acknowledged that, “although an attorney for the government is an advocate, his client's goal is not to prevail but to establish justice.”<sup>22</sup>

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S.C. Code Ann. § 33-56-170(2).

<sup>20</sup> *Commonwealth of Pennsylvania v. Janssen Pharmaceutica, Inc.*, No. 24 EAP 2009 (Saylor Dissent) (Pa., Decided August 17, 2010) (citing *People ex. rel. Clancy v. Superior Court*, 705 P.2d 347 (Cal. 1985))

<sup>21</sup> Although several recent cases where recovery would serve the public good have approved contingency arrangements to represent State interests, these cases are readily distinguishable because the interests asserted by the State were to the benefit of the public. The interests asserted by the State in this case are those of private individuals, without any benefit to the general public of South Carolina. See, e.g., *Philip Morris Inc. v. Glendening*, 349 Md. 660, 709 A.2d 1230 (1998); *Priceline.com Inc. v. City of Anaheim*, 180 Cal.App.4th 1130 (2010).

<sup>22</sup> *Janssen, supra*, citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1197 (1963).

The joint representation by one firm of the Attorney General *and* the numerous other Plaintiffs is untenable in light of the above. Not only does Plaintiffs' counsel have a financial interest in the outcome of the case, but he also has a duty to his private individual clients to achieve the best financial result. This duty is in direct conflict with the State's duty to seek a just result in this action. This is an irreconcilable conflict of interest.

**VI. Rule 12(b)(8) requires dismissal because the same claims between the parties are pending or have been resolved in Case 122, Case 872 and Case 1647, or their appeals.**

Rule 12(b)(8) requires dismissal if the same matters are pending between the same parties in another action. That is the case. All parties to this action are parties to Cases 122, 872 and 1647. No Plaintiff has appealed any order of the more than 50 orders issued in Case 122. All are bound by the common history, the orders, and their admissions through testimony, filings and statements of counsel, in the Aiken Cases.

There are more than 300 filings in Cases 122, 872 and 1647. Every action of Defendants has been immediately disclosed and been challenged by at least one Plaintiff, often (before August 10, 2008) while other Plaintiffs vigorously defended the acts of Defendants. Every allegation raised in the complaint is or has been under scrutiny in one or more of the Aiken County cases.

In addition to Cases 122, 872 and 1647, Defendants commenced a case in Aiken County Probate Court on May 22, 2009, for a Declaration of Rights as to the allocation of responsibilities between the AG and PR/Trustees, guidance as to Succession, approval of their accounting and actions as PR/Trustees, and review of their employment and

compensation and that of others who served the Estate and 2000 Trust; for the confirmation of their appointment of a Third Trustee and Successors; for guidance related to the frivolous Forlando suit; and for guidance related to substitution of parties. The AG was served but has not answered. That case is pending.

On June 24, 2009 Defendants also moved in Case 1647 and several other cases for Payment of Commissions and Related Relief. Their request was supported by affidavits setting out in detail their service and expenses, and the priority expenses of administration of Brown's Estate. On July 20 they requested that the Court either rule on the record or hold the matter in abeyance pending the Case 1647 appeal. An affidavit of W. Steven Johnson accompanied their July 20 filing.

On August 12, 2009 Hynie Brown served Interrogatories and Requests for Production to Buchanan and Pope in Case 1647 related to their service. The entire issue of the propriety of service of Buchanan and Pope, to the extent not resolved by the orders in Case 122, is before the Aiken County court in these cases.

The following chart shows just *some* of the places where Defendants' alleged improper actions set out in Paragraphs 18 and 19 of the Petition are before the Aiken County Court, the Supreme Court, or have been resolved in the Aiken cases.

- |                    |  |
|--------------------|--|
| <u>18.a,b,c,d.</u> | Subject of Case 122. See order dtd. 4/8/08; also subject of Case 1647, see Am. Complaint dtd. 11/7/08, Ans. CC, dtd.11/21/08; Petition for Rev. Comp. of James II; Claim of James D. Bailey; Complaint, Case. Motion for Commissions, Case 1647 and other cases. |
| <u>18 e</u>        | Raised in Case 122 and Dallas appeal. and resolved by orders Dtd. 2/20/08, 4/1/08 and Ct. Appeals Order dtd. 7/14/08. See Mot. for costs pending, Case 122.  |
| <u>18f,g</u>       | See 18 a - d above; accountings on file in James Brown estate; Complaint   |

dtd. 5/22/09; claims filed Aiken County; withdrawal of GT claim; Order in Pullman claim.

- 18h See Order dtd. January 8, 2008, Case 122, directing that Defendants shall be paid \$317,000 plus costs, for service as Special Administrators ("SAs"), through November 20, 2007, to the extent not paid within 60 days, to bear interest at the legal rate; shall receive continuing payments as set out therein on a "time plus costs" basis for themselves and their staff, commencing November 21, 2007. This shall be a deposit toward, and without prejudice to, their full commissions. . . [Attached to Mot. Dismiss.] Also see above motions. See Ord. dtd. 4/8/08 approving all acts to date.
- 18i Subject of Cases 122 and 1647. See Terry's motion to declare all Case 122 orders not binding on the 2000 Trust; See challenges of S.C. and Ga. AG s and Dallas to appointment of Buchanan and Pope pending from November 30, 2007 through April 8, 2008 at which time all acts of Buchanan/Pope to date approved. See Order dtd. 2/20/08, Case 122 finding Forlando suits prevents traditional mortgage. See also discussion of Forlando suit to enjoin trust, return Cannon, Dallas, Tr. 1/9/08, p. 42, 43, Tr., 2/7/08, pp. 23- 30; Tr. March 7, 2008, pp. 171 - 177 prior to April 8 Order. Also see January 8, January 9, February 20, March 7, April 1, and April 8, 2008 Orders, Case 122. See Mot. for ex parte order of Plaintiff Hynie Brown to prevent sale; Ltr. to Court in Case 122 explaining rejection of sale; filed Ltr. of Sonny Jones dtd. December 5, 2007, related to Case 122, "I have heard for three months that the sky will fall" if \$100 million sale not accepted and responses. Order dtd. 4/8/08 approving actions.
- 18j.k.l.m.n Raised in amended complaint and hearing, Case 1647.
- 18o i - iii raised in Case 1647
- 18 p I See 18h, above
- 18 p ii Subject of Case 122 and April 8, 2008 Order.
- 18p iii Subject of Case 1647 and Petition of James II
- 18q Subject of Case 122, Case 872, Case 1647, and Forlando Case
- 18 r.s.t.u Subject of Case 1647, including appeal.
19. Subject of Case 1647 and Case 122. Also see Order of Ct. Appeals dtd. November 6, relieving Defendants of all liability in connection with

Estate/2000 Trust administration pending appeal, effective May 26, 2009.

**VII. No Cause of Action Exists as to Paragraph 18m because the matter is on appeal and Attorney General McMaster's attempt to silence criticism violates his public duty and the First Amendment and Due Process rights of Defendants.**

The AG, with a right to *enforce* the due application of monies given to *public* charities, seeks damages against Buchanan and Pope to punish them for carrying out their duty under James Brown's Will and 2000 Trust. Brown's estate does not create a *public* charity. The 2000 Trust is a private, *irrevocable* inter vivos trust which divides into a 501(c)(3) private foundation for education and a *non-charitable* education trust for the grandchildren.

The U. S. Supreme Court addressed the limits of enforcement powers of the State in the 1829 case of *Inglis v. The Trustees of the Sailor's Snug Harbor*, 28 U. S. 99.

In *Inglis* the Supreme Court allowed the New York legislature to enact a statute to establish a sailor's home on the testator's land only because *the testator had specifically requested legislative action* under certain circumstances. The Court stated:

If after such a plain and unequivocal declaration of the testator with respect to the disposition of his property, so cautiously guarding against and providing for every supposed difficulty that might arise, any technical objection shall now be imposed to defeat his purpose, it will form an exception to what we so unequivocally laid down in all our books as a cardinal rule in the construction of wills that the intention of the testator is to be sought after and carried into effect. *Id.* at 99,113.

*Inglis* found that the State could act only because it was *contemplated by the testator's will*. Even so, a concurring opinion warned "It is one thing to enforce a charitable trust, and quite another to destroy the legal rights of the parties to which it is

attached.” New York State did not, as here, take about 65% of the decedent’s assets and direct them to those he intentionally disinherited.

The Plaintiffs assert a right to “take over” all aspects of the James Brown litigation of both the estate and 2000 Trust solely because Brown created a private foundation. The AG asserts he may, at will, appoint and replace trustees. He asserts he may even convert Brown’s private foundation to a public foundation if the benevolence he has bestowed on Brown’s disinherited relatives has run afoul of the IRS regulations for private 501(c)(3) foundations. The AG asserts that Defendants’ defense of the AG’s attempts to transfer \$50 million to persons Brown expressed a clear intention to disinherit is “gambling with the Attorney General’s money.” See Hearing Transcript in Case 122 September 28, 2008, p.43.

After securing Defendants’ removal with no cause existing or found, the AG now seeks money damages against them because they will not sign, *as PRs*, an agreement, under pain of contempt, not to criticize the AG or the settlement.

The AG’s statutory authority to *enforce* and *parens patriae* authority cannot be so broad as to ignore the First Amendment and Due Process clauses. No public purpose can be served by this heavy-handed violation of Defendants’ First Amendment and Due Process rights.

**VIII. Dismissal is required because all allegations have previously been decided in favor of Defendants by Orders, filings and admissions in Aiken County cases.**

In the unusual posture of this case, the Court should take judicial notice of the orders, filings and admissions of Plaintiffs *of record in Aiken County* which demonstrate

that all allegations against Plaintiffs have been fully aired by the Aiken County Court and either specifically approved by Plaintiffs, the Court or both.

At all times since Defendants' November 20, 2007 appointment at least one Attorney General, one additional Plaintiff<sup>23</sup>, and one former PR/Trustee have opposed their every action. This has resulted in close, immediate and continuing court scrutiny of the allegations contained herein; numerous court decisions; and admissions in the record or by failure to appeal of all Plaintiffs. The Aiken County record shows that Defendants were replaced by Bauknight *without any finding of cause* solely because the AG contracted on August 10, 2008 to remove them as part of a settlement reached with no due diligence; no analysis of the impact of the Federal Copyright Act; and based on the outrageous suggestion – made by Hynie Brown and accepted by the AG – that the “Attorney General’s *only witnesses* to the validity of James Brown’s estate plan were a murderer and three bad trustees.”<sup>24</sup>

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<sup>23</sup> Sometimes Terry, sometimes Hynie Brown, and others after August 10, 2008.

<sup>24</sup> The AG did not advise any PR/Trustees of the secret mediation. Neither the AG nor Bauknight – who recommended the August 10 agreement to the Court – conducted any due diligence regarding Brown’s Estate Plan. Bauknight did not review the pleadings and admitted he knew nothing about James Brown’s wishes. He relied on disinherited family members to recommend that the court approve taking \$50 million from Brown’s estate plan and giving it to them. Had either Bauknight or the AG done any due diligence they would have found that those very persons joined by Brown’s grandchildren and a host of Brown’s independent attorneys in three states, business associates, and employees had already – under oath and in filings of record in Aiken County – confirmed the validity of Brown’s estate plan; his desire to leave his music empire for needy and deserving students; his fierce independence; his careful plan to quell any contest to his documents; his voice tape confirming his desires; and his open discussion of his desires over six years. Bauknight and the AG ignored affidavits by Daryl, Yamma and Deanna filed in Case 122 in January 2007 confirming their status under the Will. They ignored that Deanna and Yamma had allied themselves with Dallas and Cannon in December 2006, with Deanna agreeing to be a trustee of the 2000 Trust and Yamma executive assistant. They ignored Deanna’s October 31, 2007 deposition confirming that she had accepted the trustee position and that the estate plan carried out her father’s wishes. They ignored that Deanna, Yamma and others had uncontrolled access to the Trust property after Brown’s death in an agreement with Dallas

and Cannon. They ignored that Daryl had remained in business with Brown and attended business meetings with Dallas, Cannon and Brown in the fall of 2006. They ignored that Daryl, Deanna and Yamma were primary witnesses to the fact that neither they nor Brown knew of Dallas' and Cannon's misappropriations until after Brown's death. The AG and Bauknight ignored that Yamma had knowledge regarding her father's participation in the \$26 million 1999 TIAA closing, which took place on June 11, 1999, just 4 days before the 1999 Will and Trust were executed [Aff. Y. Lumar]. They ignored that Deanna has openly asserted that she became executive vice president of JBE, Inc in 1994 and "after the passing of her father in 2006, Deanna picked up the reigns of her father's good will and continued his legacy of giving..." [See: Website The Brown Family Childrens Foundation, bio. D. Brown.] They ignored that Yamma "...has been very involved in her father's estate planning since his death on December 25, 2006." [Id. Bio. Y. Brown.] They ignored that long-silent Ella Overton, Brown's friend for many years, stepped forward in 2008 to support Brown's estate plan. [She is now deceased.] Bauknight and the AG ignored that the 2000 Trust had been in open existence and a matter of public record for seven years before it was challenged, and Brown discussed it with at least four family members. The AG and Bauknight ignored overwhelming evidence that Hynie Brown was not Brown's spouse and had asked Brown's lawyer in 2004 to accept service on a multi-million dollar lawsuit she asserted she was filing against him. [Because the AG requested and received a stay of discovery in the Aiken County James Brown cases in August 2008, drafts of the suit have not been produced. To date a filed suit has not been located.] The AG and Bauknight ignored that Brown asked the Aiken County Court to void his marriage to Hynie Brown based on her marriage at the time she entered a ceremony with him and to DNA test her son. The AG and Bauknight ignored that the Aiken County case was settled with Hynie Brown's agreement never to claim to be Brown's common law spouse. The AG ignored that even if Brown's spouse, Hynie Brown was intentionally omitted by the estate plan and had signed a valid pre-nuptial agreement waiving any rights to Brown's assets. The AG ignored that Hynie Brown had knowledge, as defined in the Trust Code, when she signed the prenuptial agreement that she was intentionally omitted from the 2000 Trust and Will. The Attorney General ignored that Brown's daughters Deanna and Yamma sued Brown after the estate plan was put in place, and acknowledged in their suit and otherwise that Brown had elected to leave them out of his estate plan. The AG ignored, even though he is charged with the enforcement of the tax laws, the tax consequences of stipulating that a person presumed not to be James Brown's spouse was his spouse. The AG and Bauknight ignored that some of Brown's children created a website just 4 months after their father's death confirming that giving back was a defining tradition for Brown. The AG and Bauknight ignored the file of estate planning attorney Herring which showed that the "I Feel Good" Trust file was opened in 1996; that Brown worked on several drafts over 4 years; and that he created an almost-identical, but revocable, Trust in 1999 - solely dedicated to education. The AG ignored the 2008 request of Ella Overton to support and defend Brown's estate plan. The AG ignored that Brown's longtime friend Willie Glenn, his longtime worker Frieda Carter and daughter Deanna were all named as fiduciaries under the almost-identical 1999 estate plan, and that none ever repudiated the validity of either the 1999 or 2000 Estate Plan while Brown was alive. The AG ignored that Deanna and Cannon had picked up Brown's estate planning file, acting under the valid power of attorney Brown gave them on June 15, 1999, the day of the 1999 Will. The AG and Bauknight ignored that Brown's longtime attorney Debra Opri, who represented him in the Agbalaya suit from 2000 - 2002 - including at trial - confirmed the validity of his estate plan and also appeared to be unaware of the secret misappropriations of Dallas and Cannon.

Where the matter has been previously decided with the concurrence of Plaintiff, Rule 12(b)(6) requires dismissal because no cause of action exists.

The Court is asked to take judicial notice of the Aiken County record, only some of which is stated below:

**Case 122**

March 7, 2007	Buchanan/Pope appointed non-fiduciary SAs by Court after interview with all counsel, Case 122, and Court. Pope Nominated by Plaintiff Hynie Brown. [Orders dtd. 2/19 and 3/7/07]
August 10, 2007	Plaintiffs given complete and continuing access to Books and records of 2000 Trust/Estate.[Ord. dtd. 8/10/07]
November 20, 2008	Buchanan/Pope appointed PR/Trustees <u>"upon recommendation of all interested persons other than the Attorneys General for South Carolina and Georgia."</u> [Order dtd. 11/20/07, pp. 1, 2]
December 5, 14, 2007	AGs, based on affidavits of Dallas and others accuse Buchanan/Pope of impropriety for serving at same time as PR/Trustees, and of improper handling of assets. AG asks Court to protect "the interest of the charitable trust as set forth in the Last Will and Testament of James Brown, dated August 1, 2000 and the Irrevocable Trust Agreement dated August 1, 2000 [Ans. Of AG dtd. 12/5/07; Obj. Of AG to Appt., dtd. 12/14/07]
January 4, 2008	Buchanan/Pope ask Court for full review of their actions. Prepared to resign if their service not found both ethical and appropriate. [ Mot. dtd. 1/4/08].
January 8, 2008	Judge Early issues order granting Buchanan/Pope \$317,000, with legal interest after 60 days, and costs for their service as SAs from March 7 to November 21, 2007 which he finds fair and reasonable. Finds work has more than doubled since November 21. Grants continuing fees and costs on "time plus costs" basis to Buchanan/Pope and

staff as a deposit towards their full commission. No Plaintiffs seek reconsideration or appeal.

January 4, 9, Feb.  
7 and March 7, 2008

Hearings held. Pope is examined extensively by AG Jones about conflicts, etc.

February 20, 2008

Court finds that condition of estate when received by Buchanan/Pope was deplorable, and has worsened as a result of acts of Dallas and Cannon. Approves Christie's sale. No Plaintiffs appeal.

April 1, 2008

Court directs Buchanan/Pope to sign Christie's contract. *No Plaintiffs appeal.*

April 8, 2008

*Court finds that all actions of Buchanan and Pope to date, including serving as both PR s and Trustees at the same time, are appropriate. Refuses to reconsider appointment. No Plaintiffs appeal.*

2009

Court of Appeals issues ruling in Cannon appeal. Bauknight adopts brief of Buchanan and Pope in Dallas Appeal.

#### **History of Case 1647**

July 30, 2008

After almost a year of close scrutiny, AG McMaster approves Buchanan and Pope as 2 of 3 permanent Trustees of the 2000 Trust. [Ltr. AG, 7/30/08]

August 10, 2008

AG, Hynie Brown and some Plaintiffs – all excluded from Brown's Music empire – contract to divide Brown's assets and replace Buchanan and Pope.

November 7, 2008

AG and some Plaintiffs file Case 1647 to remove Buchanan and Pope for alleged cause. Plaintiffs seek emergency removal, claiming irreparable harm.

November 18-19

Terry attends two days of testimony in son/business partner Forlando's federal suit against Buchanan/Pope. Estate Tax Return and all alleged wrongdoing since March 7, 2007 covered. Terry's attorneys Bell and PG make no report to Court of emergency or wrongdoing.

November 21, 2008	Buchanan and Pope move to dismiss, counterclaim and crossclaim for abuse of process.
January 7, 2009	Over objection of Plaintiff Terry, Defendants and others Bauknight Appointed limited SA to consider AG's settlement. Buchanan/Pope left in charge of 2000 Trust and Estate. No Plaintiffs seek reconsideration of failure to remove. [Plaintiffs sought reconsideration, and have appealed, Bauknight's appointment.]
January, 2009	Terry, Forlando, Romunzo file opposition to AG's settlement.
January 30, 2009	Bauknight testifies about Buchanan and Pope's conduct.
February, 2009	Hynie Brown files emergency motion accusing Buchanan/Pope of secretly attempting to sell estate and seeking ex parte restraining order. No affidavit attached. No order issues.
January - March, 2009	Over continuing objections as to parties, dispositive motions, and other objections, hearing on settlement proceeds. Pope and Buchanan testify for days about issues raised in this Complaint.
May 26, 2009	Order in Case 1647 replaces Buchanan/Pope with Bauknight as part of the settlement, <i>without cause</i> . Plaintiffs do not seek reconsideration of findings. Pope and Buchanan timely sought Reconsideration of, and appealed, Case 1647 Orders.]
July, 2009	Defendants move for Commissions in Case 1647 and other Aiken Cases.
August, 2009	Hynie serves discovery on Defendants on commission issue. Pending.
November 6, 2009	Court of Appeals order confirms that Buchanan/Pope relieved of management liability as of May 26, 2009, and liability rests on Bauknight. [See Exhibit B for current status, attached hereto.]

**IX. Dismissal is Required because all Claims are barred by applicable statutes of limitation**

The record is clear from Argument VII that every act of Defendants was fully known, accounted for, and reviewed by Plaintiffs within days of when it took place. And Plaintiffs had at least 7 occasions to examine Defendants under oath.

The South Carolina Probate Code and Trust Code Section 62-7-307 bar their actions. Even if there were fraud involved, which did not exist and has not been alleged, Section 62-1-106 would set the outer limit at 2 years after discovery. Yet Plaintiffs allege acts going back to November 2007 which have been fully examined *and approved* not only by Court orders, but by them.

It is undisputed that every alleged wrongful act was known, accounted for, and fully disclosed when it happened, before April 6, 2009 when expert Harley Ruff testified to a reasonable degree of professional certainty, that the AG's plan to place assets in Bauknight's Legacy Trust and give Terry a 10-year right of first refusal would more likely than not cause the loss of Brown's \$83 million charitable deduction *and* destroy the status of The James Brown "I Feel Good" Trust as a 501(c)(3) private foundation, resulting in both Estate Tax and income tax on the assets Brown had dedicated to educate needy and deserving children.

Buchanan and Pope's opposition, their position on tax matters and all other aspects of this sad saga in which they were required to oppose the actions of the AG were fully known, fully accounted for and disclosed. No action was brought within the required period. Dismissal is required.

**X. The Complaint must be dismissed because Plaintiffs failed to include the Proper Affidavit relating to Defendants' alleged negligence.**

S. C. Code Ann. § 15-36-100 requires plaintiff to "file as part of the complaint [alleging professional negligence] an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit" [Emphasis Supplied.]

The available evidence as to the acts of Defendants includes at least 145 boxes of James Brown historical and administration documents; pleadings notebooks and documents from 20 cases; a detailed and complete daily summary of the acts of Defendants since November 20, 2007 and tens of thousands of pages of documents.

**XI. The Complaint must be dismissed because Bauknight's Legacy Trust, Hynie Brown, James II and Terry are improper parties.**

Rule 12 (b) requires dismissal if the action is brought by improper parties. That is the case here. Each is discussed below:

**A. Hynie Brown is an improper party.**

Hynie Brown cannot bring this action for all of the following reasons:

1. Defendants owed her no fiduciary duty.
2. She is not the spouse of James Brown.
3. She knowingly violated the *In Terrorem* clause after witnessing an Estate Planning document and even asserting that she is on the Advisory Board.

The facts related to Hynie Brown are of record in Case 122, Case 872 and Case 1647 and largely undisputed. Hynie married Javed Ahmed in 1996. In 1997 she began a

professional and nonexclusive personal relationship with Brown. Hynie had a child in Nevada in 2001 and James Brown's name was placed on the birth certificate, which was not signed by him. In 2001 she executed a pre-nuptial agreement waiving any rights to inherit from James Brown.

In December 2001 Hynie and Brown applied for and obtained a marriage license with Brown. Hynie asserted that the prospective marriage was her first. Hynie Brown's son receives AFTRA and Social Security benefits associated with Mr. Brown.

In 2003 Brown discovered that Hynie Brown was married to Ahmed. Brown and Hynie Brown announced in "Variety" that they were going their separate ways.

In 2004 Hynie obtained an annulment from Ahmed in Charleston County South Carolina. Ahmed was served by publication. Based on Hynie's Charleston County Order, which cited the existence of the Hynie/Ahmed Marriage, Brown sought to void his marriage to Hynie in an Aiken County Family Court proceeding. Hynie counterclaimed for separate maintenance and support for her son. Brown replied seeking DNA testing. The case settled with Hynie Brown's agreement never to claim to be the common law spouse of Brown. The agreement cited that the parties were again living together. No provision was made in the agreement or order related to her child.

Hynie Brown told Larry King that James Brown left money for her son at his death, which she obtained.

The couple did not marry after Hynie Brown's annulment, although they made plans to do so. According to former Trustee Dallas, Brown had a vasectomy in the 1980's. According to grandson Forlando, the parent was generally known, and was not

Mr. Brown. Certain of Mr. Brown's medical records are held by Mr. Levenson. Mr. Rosen has diaries of Ms. Hynie Brown.

The Will and Trust specifically exclude past and future spouses. Hynie, along with Brown's daughter Venisha, witnessed the August 1, 2000 Advisory Board document in which she was identified as Miss Rae, the future Mrs. Brown. At one point her attorney has asserted that Hynie Brown thought she was a member of the 2000 Trust's Advisory Board.

After seeking removal of Dallas and Cannon for a year, Hynie Brown challenged the 2000 Trust and Will on December 19, 2007. Motions to dismiss her petitions as well as her various claims are pending in Aiken.

All fiduciaries who have served under the Will and 2000 Trust have vigorously asserted that Hynie Brown is not the surviving spouse, as have children and grandchildren. Adrienne Rodriguez, his third wife, was listed as Brown's last spouse on Brown's death certificate.

On August 10 the AG agreed with 5 of Brown's children that:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death.

Coupled with agreeing to "use their best efforts to extinguish any other ...claims by any potential heir, devisee or successor" the AG placed himself in direct conflict with the position of all fiduciaries, the Estate and the 2000 Trust and its goals under the Federal Copyright law.

On January 30, 2009 the Attorney General and others stipulated with various

biological children and placed in the record an agreement not to use this stipulation to damage the Federal Copyright Rights of others. That should include both the Estate and 2000 Trust. They stipulated:

Court approval of the compromise shall not be used by the settling parties or any of them to effect any claim to renewal and termination rights or other claims for royalties under Copyright laws of the United States of any other county...[Tr. 1/30/09, p.96.]

As reported to the Court on March 4, 2009, the stipulation as to the civil status of Hynie Brown and others does not bind Buchanan and Pope. Hynie Brown's attorney stated:

You do understand that our request for approval is to simply settle the rights among the parties to the settlement — that we have, in fact, stated in Court that we do not expect that settlement to impact non-settling parties, certainly not taxes [sic] authorities, and certainly not creditors.  
[Tr., 3/4/09, p.187.]

Claiming that Hynie Brown is the spouse is inconsistent with the record; contrary to the position of every fiduciary who has served James Brown; and damages the Estate/Trust's interests in Federal Copyright issues. It is not binding on Defendants.

Defendants have never had any fiduciary duty to Hynie Brown. They are directed by the Trust and 2000 Will to vigorously defend the estate plan against her claims to be the spouse. They have no duty to her as a beneficiary of Bauknight's Legacy Trust.

Hynie Brown is an improper party and fails to state any cause of action against Defendants.

**B. Terry Brown is an improper party.**

Defendants' fiduciary duty to Terry ended when -- after two years of vigorously supporting under oath the Estate Plan of James Brown -- Terry not only abandoned the

Estate Plan but dismantled The James Brown "I Feel Good" foundation by his devastating right of first refusal.

Although Terry had been a joint venturer with Dallas, Cannon, Forlando and investor Terry Cox for some time, he had not taken any action to defeat the Estate Plan. On the contrary, in January, 2009 he had vigorously supported enforcement of the *In Terrorem* clause.

Terry knowingly and intentionally violated the *In Terrorem* clause after giving sworn testimony of the validity and importance of his father's will.

He has forfeited his interest under the Estate Plan. Defendants owe him no fiduciary duty because the *In Terrorem* clause directs them to oppose his claims.

**C. James II is an improper party.**

Even if a child, which he is presumed not to be, James II has no standing because, as a matter of law, he is excluded from James Brown's Will and the 2000 Trust. Buchanan and Pope have never owed James II any fiduciary duty. He is not a proper party, and the Complaint should be dismissed.

**D. Bauknight as Trustee of the Legacy Trust is an improper party.**

Defendants owe no duty to Bauknight's Legacy Trust, Bauknight as its trustee, or its beneficiaries. He is not a proper party. The complaint should be dismissed.

**XII. Dismissal is required because Romunzo and Forlando, who are seeking forfeiture of Plaintiffs' interest, are necessary parties.**

While Plaintiffs believe that Forlando Brown's claims are frivolous, they cannot be ignored for purposes of this suit. And Romunzo, to date appearing innocent although represented by counsel who is simultaneously representing those who favor the AG's

settlement and those who oppose it – and who is a Georgia lawyer who appeared in Case 1647 for its entirety without seeking *pro hac vice* admission—cannot be ignored.

In documents filed on January, 2009 in Aiken County Case 872 Forlando and Romunzo – joined at the time by Terry – asserted that the *In Terrorem* clauses must be enforced and that Plaintiffs have forfeited their rights.

**XIII. Dismissal is required because the conflict of Bauknight and Parents with Minor Beneficiaries of the 2000 Trust is Patent.**

Brown's estate plan provided that the 2000 Irrevocable Trust would be split into the large charitable trust and a smaller private education trust for seven grandchildren. The family education trust would, under Brown's estate plan, have meant approximately \$285,000 would be available for each grandchild's education.

The grandchildren were not represented by GALs in the settlement hearings nor are they so represented here. One result of the settlement was to extend the family education benefits to future generations of Brown's family, thereby both reducing and making uncertain the amount available to each grandchild for whom Brown intended to provide an education. This reduction in benefits creates a patent conflict between those grandchildren and both Bauknight and their parents who agreed to it.

**CONCLUSION**

**Including Proper procedure for any Counterclaims.**

The Complaint should be dismissed. As to any Counterclaims, hearings in Richland County should be stayed while Plaintiffs seek permission for transfer of venue to Aiken County.

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**Attorney for Defendant Adele J. Pope**

Columbia, South Carolina  
August 25, 2010

# EXHIBIT B

**THE STATE OF SOUTH CAROLINA  
IN THE Supreme COURT**

**APPEAL FROM AIKEN COUNTY  
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge  
Case No. 2008-CP-2-1647**

**Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem, ..... Respondents,**

**v.**

**Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N. M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust,**

**of whom Robert L. Buchanan, Jr., and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James**

**Brown 2000 Irrevocable Trust are , ..... Appellants,**

**and Albert H. Dallas, Alfred A. Bradley,  
and David G. Cannon, Individually  
and as (purported) Trustees of the  
James Brown 2000 Irrevocable  
Trust; Terry Brown; Romunzo Brown;  
Forlando Brown; Cinnamon N.  
M. Paris; LaRhonda Petitt;  
Jeanette Mitchell; and Russell  
L. Bauknight, as Special Adminis-  
trator and Special Trustee for The  
Estate of James Brown and The  
James Brown 2000 Irrevocable  
Trust are**

**..... Respondents.**

**In re: The Estate of James Brown and The James Brown 2000 Irrevocable  
Trust u/a/d August 1, 2000.**

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**MOTION FOR EXTENSION OF TIME**

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**TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES  
OF THE SUPREME COURT OF SOUTH CAROLINA:**

Appellants respectfully move the Court for a substantial extension of time in which to serve and file their initial brief and designation of matter. As grounds for the motion, appellants would show as follows:

1. This is an appeal from an order approving the settlement of an estate and diverting potentially tens of millions of dollars from the trust created during his lifetime by the testator for the college education of needy students of South Carolina and Georgia. The recipients of the settlement are persons whom the testator expressly intended to disinherit.

2. The appeal presents novel issues of public importance in the management of estates and in the law of trusts. Those issues are being framed at this time, as work on the appellants' initial brief progresses.

3. The record below is massive.

4. The undersigned represents the appellants *pro bono publico*. Assisting him is Tressa T. H. Hayes, Esq., who is in transition from her previous law firm to new circumstances of law practice. Ms. Hayes will contribute what she can to the work, but the bulk of it will be the responsibility of the undersigned. In comparison, arrayed on the other side of this case are the State of South Carolina and some of the finest firms in this State (and elsewhere) with, effectively, unlimited resources.

5. This appeal deserves the best effort on behalf of the appellants which it is possible to muster, the undersigned having had no more important role in forty years of practice than to represent the appellants in this appeal. Nevertheless, the usual press of other appellate and trial work, and office business, is unrelenting.

6. Next month includes a ten-day vacation out of the country which the undersigned has planned for a year and which probably could not be rescheduled with those who are joining, if it were to be cancelled. This, too, accounts for a small portion of this request.

7. The appellants respectfully ask the Court to consider a seventy-five (75) day extension, to and including November 4, 2010, for service and filing of the appellants' initial brief and designation.

Respectfully submitted,

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August 13, 2010.