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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY Court of

Common Pleas

The Honorable Clifton B. Newman, Circuit Judge

Appellate Case No.: 2021-000518

Adele J. Pope.....Appellant,

v.

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

Record on Appeal
Volume II (Pages 475-880)

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770

Attorney for Appellant

Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Telephone (803) 734-3596

Attorneys for Respondent
Attorney General of South Carolina

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ALAN WILSON
SECURITIES COMMISSIONER

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10:25
JACKIE S. BOWERS
CLERK OF COURT

August 5, 2011

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

Re: Request for documents under the South Carolina Freedom of Information Act

Dear Ms. Pope:

I am in receipt of one letter from you dated July 19, 2011, and five letters from you dated July 20, 2011, requesting certain documents pursuant to the South Carolina Freedom of Information Act ("FOIA"). I have also been notified by attorneys in the Civil Division of the South Carolina Office of the Attorney General ("SCAG") that you refer to a request dated June 30, 2011 in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

Responding to your letters dated July 19, 2011 and July 20, 2011 is difficult, as I have been informed there are several pending motions filed in Case No. 2010-CP-40-4900 in the Richland County Circuit Court and that several of the pending motions relate to the documents you are currently seeking to obtain through the FOIA requests. I have been informed there are at least three related motions that relate to the FOIA request: (1) a "Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope" filed July 5, 2011, filed by the Plaintiffs; (2) a "Motion to Compel Discovery" dated June 7, 2011, filed by your counsel; and (3) a "Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction", dated July 26, 2011, filed by your counsel.

While there exists an ongoing case in which I have been informed both a "Motion for Protective Order" and a "Motion to Compel Discovery" are outstanding, it seems premature for me to release the requested documents. I am not involved in the civil case in any way and believe the wisest thing to do is to let the presiding judge make the decision on which items, if any, are to be produced and which, if any, are not.

The FOIA was designed to give the public and the press access to the workings of their government. FOIA is not designed to supplement the rules of civil or criminal discovery. For these reasons, I propose to put your requests on hold pending the outcome of your current litigation. Once litigation is complete, I would then provide you with all of the information you have requested that is available (i.e. not exempt) pursuant to the Act. In the meantime, I will also forward copies of all six letters to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate.

Sincerely yours,

Tracy Meyers

Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn

Aug 7 2011

EXHIBIT 2

1228 Walnut Street
Newberry, South Carolina 29108

August 7, 2011

BY FAX AND FIRST CLASS MAIL

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10:20
JACKIE S. BOWERS
CLERK OF COURT

Tracy A. Meyers, Esquire
Senior Assistant Attorney General
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Facsimile 803-734-3677

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Ms. Meyers:

I received today your letter of August 5, 2011(copy enclosed), and respond as follows:

1. I do not address your comments about my June 30, 2011 FOIA request to Attorney General Wilson, with copies provided to AG Wilson's counsel in Case 2010-CP-40-4900 ("Case 4900"). This matter is the subject of pending litigation.

2. With respect to your comments regarding my FOIA requests of July 19 & 20, 2011, which you have denied:

a. The difficulty you state you have in complying with my FOIA requests pales in comparison to the difficulty, as here, of a private citizen seeking the truth as found in public documents when she has been falsely accused by the State of South Carolina, through its Attorney General, of civil and criminal impropriety in a tort suit brought by a private, contingency-fee law firm seeking tens of millions of dollars in alleged actual and punitive damages.

b. You assert that my not obtaining these public documents through FOIA is "the wisest thing to do." I respectfully submit one does not have to be wise to exercise his rights under FOIA.

c. I know of no FOIA provision authorizing you to "put [my] requests on hold pending the outcome of your litigation."

d. I know of no FOIA provision which allows the Attorney General to refuse compliance with FOIA until "litigation is complete."

e. I know of no FOIA provision which allows the Attorney General to refer FOIA requests "to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate."

f. It is my understanding that from 2003 - 2011 former AG McMaster brought only about 7 lawsuits using outside private counsel ("Special Counsel"), all of whom were engaged on a contingency-fee basis, and required to execute Retention Agreements which had some standard provisions.

g. It is my understanding that all such Retention Agreements require compliance with FOIA.

h. It is my understanding that Case 4900 is the first and only time AG McMaster retained Special Counsel to sue S. C. citizens rather than multi-national corporations.

i. It is my understanding that AG McMaster's Retention Agreements with Special Counsel specifically assert that they are public documents.

j. It is my understanding that all Retention Agreements – other than possibly the Retention Agreement with Sweeney, Wingate and Barrow to sue Robert L. Buchanan, Jr. and me – provide that Special Counsel may not receive compensation from any source other than a portion of the State's recovery.

k. It is my understanding that AG McMaster's announced policy [October 2, 2009] with respect to campaign contributions from Special Counsel was that he would not accept them, but that he accepted a $1,000 contribution from a principal of the Sweeney, Wingate & Barrow Firm shortly after they were engaged to – and did – sue me.

l. It is my understanding that all other Retention Agreements of AG McMaster require the Attorney General or an assistant sign all pleadings.

m. It is my understanding that before engaging the Wingate Firm to sue Robert Buchanan and me, AG McMaster's announced policy was to use Special Counsel only where the size and complexity of the litigation and government budget restraints made him unable to handle the case himself.

n. It is my understanding that AG McMaster's delegation to Russell Bauknight of the authority to sue Robert Buchanan and me "on behalf of" Henry Dargan McMaster in his Capacity as Attorney General of South Carolina is without precedent both in this State and the Nation.

I respectfully request that you immediately reverse your denial of my FOIA request for these public documents and notify me by phone at (803) 413-0753 when I may pick them up.

Kindly inform me by noon Tuesday, August 9, 2011 if you will reverse your position and comply with my FOIA requests. If not, it is my intention to take appropriate measures to secure the requested documents.

Sincerely,

Adele J. Pope

AJP/ja
Enclosure: Ltr. of Tracy A. Meyers
Sr. Assistant Attorney General dtd. 8/5/2011

1228 Walnut Street
Newberry, South Carolina 29108

FILED
NEWBERRY COUNTY
2011 AUG -3 P 5:08
JACKIE S. BOWERS
CLERK OF COURT

June 30, 2011

Custodian of Records
The James Brown Legacy Trust
Post Office Box 1330
Columbia, South Carolina 29202

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Madam or Sir:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act.

I would like to receive copies of the following documents:

– The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,

Adele Pope

Adele J. Pope

000023

RICHLAND COUNTY
FILED
2012 JAN 17 PM 12:39
JEANNETTE W. McBRIDE
C.C.P. & G.S.

As STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	Civil Action No. 2011-CP-36-364
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee Defendants.	AFFIDAVIT OF ADELE J POPE OPPOSING MOTION OF McMASTER'S LEGACY TRUST TO DISMISS

SCANNED

FILED
NEWBERRY COUNTY
2012 JAN 12 P 12:34
JANICE S. GOWERS
CLERK OF COURT

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

1. This affidavit is based on my personal knowledge and belief.

2. I incorporate by reference my Affidavits dated August 1, 2011 and September 6, 2011 on file herein, both of which were based on my personal knowledge and beliefs.

3. I reaffirm my belief that McMaster's Legacy Trust is a Public Body as defined in the South Carolina Freedom of Information Act ("FOIA"), and that no suit, so far as I know, is pending in any Court to declare McMaster's Legacy Trust a Public Body under FOIA.

4. I reaffirm that, so far as I know, in the more than 20 James Brown cases filed in Aiken County, the 1 in Richland County, the 3 or 4 Federal District Court Cases, the 1 New York case, and others, nobody has asked for relief under FOIA.

5. The vast majority of the James Brown cases, many still pending, were commenced in the Aiken County Probate Court where, in my 35 years as a Trust and

Estate lawyer, I do not recall anyone asserting a FOIA Suit could be commenced.

6. My FOIA request is for the State/AG to produce communications with Russell Bauknight, the PR of Brown's Aiken County Estate, related to Bauknight's outrageous assertion in a sworn Inventory & Appraisement ("I&A") filed in the Aiken County Probate Court in May 2011 that Brown's worldwide music empire was worth less than $4.7 Million when he died.

7. On May 6, 2006 AG Wilson's Office asked our S. C. Supreme Court to supplement the record on appeal ("ROA") in an Aiken County appeal with Bauknight's $4.7 Million, and said it was the correct value of Brown's music empire. I want to know what basis the State had for this representation to our highest Court.

8. I believe the public and I have a right to know why the Attorney General of South Carolina, who, as the State's chief law enforcement officer, enforces the tax laws, securities fraud, and criminal actions against violators of FOIA, would tell our Supreme Court that Brown's assets are worth less than 1/15 what every fiduciary other than Bauknight who has served James Brown has asserted under oath was their value – about $100 Million ($85 Million after Brown's debt to the New York Teachers)

9. I believe the public and I have a right to see the LegacyTrust created by AG McMaster in his official capacity, and to know whether that Trust, now under the direct control of AG Wilson, is a public body under FOIA.

10. I believe I have a right to obtain these and other public documents I have requested since June 30, 2011, which may support my belief that there has been wrongdoing within the Office of AG McMaster, and now AG Wilson's office.

11. I am informed and believe that the valuation documents I request will show

that AG Wilson's office was incorrect and had an improper purpose when it asked our Supreme Court to accept Bauknight's $4.7 Million value, instead of the true $100 Million ($85 Million after TIAA) value of Brown's worldwide music empire.

12. Some documents which support my belief are:

a. I & A of Alfred Bradley and Albert Dallas, two of Brown's three original Personal Representatives (Prs) filed in Aiken County on November 15, 2007 showing value of about $100 Million ($85 Million after the TIAA Debt);

b. Sworn Estate Tax Return of Robert L. Buchanan, Jr. and me filed with the IRS on September 25, 2009, showing value of James Brown's worldwide music empire at about $85 Million;

c. Sworn I & A filed by Bauknight in Aiken in May 2011. Asserts value of Brown's worldwide music empire is about $4.7 Million;

d. Return of Appellants [Bob Buchanan and me] to motion of AG Wilson/Bauknight to Supplement ROA with $4.7 Million purported value, appeal from Aiken County Case 2008-CP-02-1647 ("Case 1647");

g. July 2011 Order of S.C. Supreme Court declining to supplement ROA; and

h. The April 2011 draft article Jeff Smith and I wrote: "Private Foundations, Copyright Heirs and Musical Millionaires – Why The James Brown "I Feel Good" Trust doesn't.." describing Bauknight's intentional devaluation of Brown's assets to benefit Terry Brown.

13. I am informed and believe that when McMaster put James Brown's name on the Legacy Trust he created in late 2008 or early 2009 to destroy James Brown's real Estate Plan, he intended for people to believe James Brown had created it. Brown did not.

14. McMaster's Legacy Trust was never a part of James Brown's real Estate Plan. It was created by McMaster and Bauknight as the vehicle for funneling about $50 Million away from the needy and deserving students Brown's real Estate Plan

intended to help, and giving it to relatives and claimed heirs Brown intentionally disinherited from his worldwide music empire.

15. Brown's real Estate Plan consists of his Will and the James Brown 2000 Irrevocable Trust – both dated (and the Trust funded) August 1, 2000 which all of Brown's fiduciaries other than Bauknight have vigorously defended.

16. Brown's real Estate Plan left his entire $100 Million worldwide music empire ($85 Million after the TIAA debt) to education, principally for scholarships for needy and deserving students through The James Brown "I Feel Good" private foundation.

17. Under Brown's real Estate Plan the $80 Million "I Feel Good" Trust was slated to be South Carolina's largest private foundation dedicated solely to provide education benefits for needy and deserving students.

18. Although Brown's original fiduciaries, Dallas, Bradley and Cannon (the "Dallas Group"), fully supported the Estate Plan, Cannon and Dallas' personal wrongdoing overshadowed their support of the Estate Plan.

19. As Lewis & Babcock (the "Lewis Firm") learned of the respective wrongful acts of their fiduciary clients in the Dallas Group, they took appropriate action, and were relieved as counsel.

20. By contrast, as Cannon and Dallas' bad acts were revealed, AG McMaster's Office ordered a SLED investigation but then continued for years to have secret meetings and communications with Cannon, Dallas and their advisors.

21. And McMaster continued to accept large political contributions from Powell Goldstein, LLP, Atlanta lawyers for Cannon, Dallas, Brown's son Terry and Brown's grandson Forlando (William) – as well as the Cox Group Investors (with Terry and

Forlando as members). All advanced a plan to sell/buy the James Brown assets for $90 Million - $102 Million; create and IPO; and pay the options or "kickback" demanded by Cannon and Dallas.

22. A quick review of some of the matters in which Bob Buchanan and I were involved with Dallas, Cannon, the Lewis Firm and others follows:

a. In July 2007, Bob Buchanan and I, with an attorney from the Lewis Firm, discovered that Cannon had taken $900,000.00 from the 2000 Trust in 2006

b. In July Powell Goldstein, Cannon and Dallas, without our knowledge or the knowledge of the Lewis Firm, tried to secretly move the 2000 Trust, including The James Brown "I Feel Good" private foundation, to Georgia to escape S. C. Court scrutiny.

c. In August 2007 Cannon resigned and Jg. Early released the Lewis Firm from its obligations to him, while it continued to represent Dallas and Bradley.

d. In September and October Dallas and Cannon, without the assistance of the Lewis Firm, filed $10+ Million in commissions claims against the Estate and developed a secret relationship with McMaster's Sr. Assistant.

e. By November 2007 Cannon's secret cash purchase of a Million Dollar retirement home in Honduras was discovered, and it was known that more than $7 Million had been misappropriated from Brown and the 2000 Trust since 1999 while Dallas and Cannon served as his fiduciaries.

f. At hearings from November 15 -20 Cannon took the 5th; Jg. Early and the Lewis Firm recommended that Dallas & Bradley resign, which they did; and Bob and I were appointed Brown's PR/Trustee, with all duty and authority as if appointed by Brown.

g. From November 2007- April 2008 AG McMaster, working with Dallas, Forlando and their advisors, tried to help undo Dallas' resignation.

23. In February 2008 the Brown's Estate/2000Trust, through court-appointed counsel Kendall Few and James Gilreath, sued Dallas and Cannon, with others, seeking !2+ Million misappropriated from Brown, the Trust and Brown Entities since

1999.

24. Although McMaster's Sr. Assistant told the Court in November he was seeking a SLED investigation of Cannon, and McMaster knew of the $12+ Million misappropriation, McMaster's Office retained close ties with them while McMaster received and/or solicited big campaign contributions from the 40+ lawyers involved in the James Brown matters.

25. In February 2008, McMaster and Forlando appeared on WIS TV. McMaster said: "What the State is saying is that money should go to the needy children through the trust for education."

26. The WIS article said:

> ...[Brown's] assets contain his 60-acre Beech Island home and even more importantly, right to James Brown's image and music. All together the estimated worth is more than $100 million. "So the children", McMaster says, "the needy children stand to gain a lot."

27. When asked if he was concerned that litigation filed in December 2007 by some of Brown's claimed heirs, would dissipate Brown's assets, McMaster said:

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

28. Between October 2007 and March 2008 the Terry/Forlando/Cox Group, now all represented by Powell Goldstein, officially formed "TJBL, LLC" because Bob and I said it was not authorized to use "The James Brown Legacy. " TJBL made three separate $90 Million to $102 Million proposals to purchase the Brown assets.

29. On March 31, 2008 Powell Goldstein, LLP made a $1,000 contribution to McMaster's campaign.

30. On April 8, 2008, after a full hearing, Jg. Early dismissed AG McMaster's Office's and Dallas' attempts to get rid of Bob and me, and found that all of Bob's and my service as both SA s and PR/Trustees to that date had been both ethical and appropriate.

31. On July 30, 2008 AG McMaster wrote Bob and me confirming he supported us as 2 or Brown's 3 permanent trustees – provided we were properly appointed under Brown's real Estate Plan, which we were.

32. Eleven days later, on August 10, 2008 McMaster secretly contracted with some of Brown's claimed heirs, all disinherited from Brown's music empire, to:

a. Get rid of Bob and me;

b. Take more than 50% of The James Brown "I Feel Good" Trust from needy and deserving students; ignore Brown two valid Estate Plans; and give about $50 Million to some of Brown's disinherited relatives and claimed relatives.

c. Create the "Settlement Entity", now McMaster's Legacy Trust, and place Brown's assets under the direct control of AG McMaster - now AG Wilson.

33. In late 2008 or early 2009 McMaster and Bauknight created the Legacy Trust.

34. On or about January 17, 2009 McMaster filed an unsigned, incomplete copy of the Legacy Trust in Aiken County.

35. In February 2009 Bradley and Dallas sought to remove Bauknight for cause for recommending what McMaster did to the Aiken Court. A copy of that complaint is attached as Exhibit A.

36. On March 26, 2009, a second, modified, incomplete, unsigned copy of the Legacy Trust was filed in Aiken County.

37. On April 6, 2009 AG McMaster's Senior Assistant told the Aiken Court:

> THE ATTORNEY GENERAL IS GOING TO ...MAKE SURE IT IS TAKEN CARE OF AND WE HAVE CONTROL OVER THE CHARITABLE TRUST AND SETTLEMENT ENTITY, SO WE'LL MAKE SURE THIS CHARITABLE TRUST AS SET UP PER THIS SETTLEMENT WILL BE CARRIED FORTH PROPERLY...

38. In May 2011 AG Wilson's Office asked our S. C. Supreme Court to accept Bauknight's $4.7 Million valuation of Brown's $100 Million music empire as correct. Why?

39. AG Wilson has refused to comply with 7 clear, proper FOIA requests since June 30, 2011. Why?

40. I am informed and believe that the threat made by David Black, Esquire, attorney for Bauknight as trustee of McMaster's Legacy Trust to sue me if I exercised my FOIA rights, was inappropriate.

41. My FOIA request for a copy of McMaster's Legacy Trust – now controlled by AG Wilson – seeks important information to which I believe I am entitled regardless of the progress or outcome of the Aiken appeal, the Richland Case, the pending Aiken Cases, or any other matters that are pending.

42. As recently as July 2011 Dallas – like all fiduciaries who have served James Brown except Bauknight – has confirmed in the public media that what McMaster's office did to Brown's Estate $100 Million music empire was outrageous.

43. I am informed and believe the engagement by Bauknight/the State of one of the State's most distinguished and powerful litigation firms, Lewis & Babcock, LLP, to prevent Wilson's compliance with my FOIA requests signals AG Wilson's resolve to cover up wrongdoing within his office.

44. In my 35 years as an attorney advising estates, trust and fiduciaries, I am unaware of any suggestion that a FOIA suit should - or could legally – be brought in any Probate Court.

45. I am informed and believe that it diminishes our free society for Attorney General Wilson – who instructs State Agencies on FOIA compliance AND prosecutes those who violate FOIA – to refuse to comply with proper FOIA requests for public documents, and assist or support an entity he controls in violating FOIA.

46. I am informed and believe that the I&A filed by Dallas and Bradley on November 15, 2007 accurately values the James Brown's more than 800 published songs and Publicity Rights at about $85 Million (after the TIAA debt), and the documents I seek under FOIA will support that fact.

47. From August 10 - November 20, 2007, the Lewis Firm and its clients Dallas and Bradley, maintained control over the 80+ boxes of public documents Judge Early ordered placed at a central location in his August 10, 2008 Order, so that all Interested Persons could inspect and copy them. AG Wilson is now trying to conceal even these public documents from public view.

48. This affidavit is based on my personal knowledge, including knowledge from seven months of direct dealings with the Lewis Firm and their clients Cannon, Dallas and Bradley, as court-appointed Special Administrator, with Bob Buchanan, of the Estate of James Brown; the review of tens of thousands of public James Brown records of which Bob Buchanan and I were custodians from November 20, 2007 until May 26, 2009; and my review of other public records.

FURTHER DEPONENT SAYETH NOT.

ADELE J. POPE

SWORN TO before me this
12th day of September, 2008

_____ (L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/2016

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF AIKEN	)	Case Number _____
	)	
Albert H. Dallas and Alfred A. Bradley,	)	
	)	
Petitioners,	)	
	)	**PETITION TO REMOVE RUSSELL L. BAUKNIGHT AS SPECIAL TRUSTEE OF THE IRREVOCABLE TRUST AGREEMENT OF JAMES BROWN**
vs.	)	
	)	
Russell L. Bauknight,	)	
	)	
Respondent.	)	
	)	

FILED
NEWBERRY COUNTY
2019 12 P 12:35
CLERK OF COURT

Petitioners Albert H. Dallas ("Dallas") and Alfred A. Bradley ("Bradley"), complaining of Respondent Russell L. Bauknight, would allege and show unto the Court as follows:

JURISDICTION AND VENUE

1. Petitioner Dallas is a citizen and resident of the State of Georgia. Petitioner Dallas was duly appointed by James Brown to serve as Trustee of the Irrevocable Trust of James Brown, and Petitioner Dallas has continuously served as such since the creation of the Irrevocable Trust on August 1, 2000.

2. Petitioner Bradley is a citizen and resident of the State of South Carolina, County of Aiken. Petitioner Bradley was duly appointed by James Brown to serve as Trustee of the Irrevocable Trust of James Brown, and Petitioner Bradley has continuously served as such since the creation of the Irrevocable Trust on August 1, 2000.

3. Upon information and belief, Respondent Bauknight is a citizen and resident of the County of Richland. Respondent Bauknight has purportedly been appointed Special Trustee of the Irrevocable Trust of James Brown, which has its principal place of administration in Richland County, South Carolina.

4. This Court has *exclusive* subject matter jurisdiction over the cause of action alleged herein pursuant to S.C. Code Ann. § 62-7-201(a)(4) (2007).

5. Venue is proper in this Court pursuant to S.C. Code Ann. § 62-7-204(c) and (d) (2007).

FACTUAL ALLEGATIONS

6. On or about January 7, 2009, Respondent Bauknight was purportedly appointed by the Court of Common Pleas for Aiken County to serve as Special Trustee of the Irrevocable Trust Agreement of James Brown.

7. In the order of appointment, Respondent Bauknight was granted only the limited power to review and provide input and recommendations to the Court as to the proposed Settlement Agreement reached among the Petitioners in the case styled as Henry Dargan McMaster et al. v. Albert H. Dallas et al., Civil Action number 2008-CP-02-1647.

8. Merely twenty three (23) days after his purported appointment, on January 30, 2009, Respondent Bauknight appeared before Judge Doyet A. Early, III at a hearing held in Aiken, South Carolina and expressed his satisfaction and approval of the proposed settlement agreement.

9. During the hearing, Respondent Bauknight testified that he had not reviewed any documents related to the Irrevocable Trust, including the file of Attorney Herring, who was responsible for drafting the Last Will and Testament and the Irrevocable Trust of James Brown.

10. Respondent Bauknight has admitted that he conducted no independent inquiry into the facts and circumstances surrounding James Brown's execution of his Last Will and the Irrevocable Trust and generally conducted no due diligence whatsoever before making his recommendation to the Court.

FOR A FIRST CAUSE OF ACTION
(Removal as Special Trustee)

11. Petitioners incorporate the allegations contained in Paragraphs 1 through 10 as if repeated verbatim herein.

12. On January 7, 2009, Respondent Bauknight was purportedly appointed to serve as Special Trustee of the Irrevocable Trust of James Brown, and Respondent Bauknight accepted the purported appointment and agreed to serve.

13. As Special Trustee of the Irrevocable Trust, Respondent Bauknight would be a fiduciary and would have a duty to administer the Irrevocable Trust in good faith, in accordance with its terms. Respondent Bauknight also owes a duties of trust, loyalty, good faith, and due care.

14. During his brief service as the purported Special Trustee, Respondent Bauknight breached his fiduciary duties in each of the following specifics:

a. Failing to conduct due diligence before making a recommendation regarding the propriety of the proposed settlement agreement;

b. Failing to review any documents related to the Irrevocable Trust before making a recommendation regarding the appropriateness of the proposed settlement;

c. Failing to conduct an independent investigation of the facts and circumstances surrounding the proposed settlement;

d. Failing to consider the tax implications of the proposed settlement on the assets of the Irrevocable Trust;

e. Failing to take into account the explicit terms of the Irrevocable Trust and the expressed intentions of James Brown;

f. Failing to give adequate consideration to the concerns and reservations of Adele J. Pope and Robert L. Buchanan, Jr., the putative Trustees, and Petitioners Dallas and Bradley, the actual Trustees, regarding the proposed settlement; and

g. Accepting the representations of the settling parties (most of which are not even beneficiaries of the Irrevocable Trust) as true without verifying the veracity of their allegations or independently evaluating the allegations.

15. The conduct of Respondent Bauknight is wrongful, willful and detrimental to the Irrevocable Trust and its beneficiaries and constitutes a serious breach of trust, justifying Respondent Bauknight's immediate removal as Special Trustee, if his appointment had any legal efficacy, pursuant to S.C. Code Ann. § 62-7-706(b)(1) (2007).

PRAYER FOR RELIEF

WHEREFORE, Petitioners Albert H. Dallas and Alfred A. Bradley pray of this Court as follows:

A. That the Court immediately remove Respondent Russell L. Bauknight from his purported position as Special Trustee of the Irrevocable Trust Agreement of James Brown; and

B. And for such other and further relief as this Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

R. Wayne Byrd (S.C. Bar # 1068)
WByrd@TurnerPadget.com
Audra M. Byrd (S.C. Bar # 76719)
AByrd@TurnerPadget.com
2411 North Oak Street, Suite 301
P.O. Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

ATTORNEYS FOR PETITIONERS
ALBERT H. DALLAS AND ALFRED A. BRADLEY

February 5, 2009

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF AIKEN	)	Case Number _____
	)	
Albert H. Dallas and Alfred A. Bradley,	)	
	)	
Petitioners,	)	
	)	
vs.	)	**SUMMONS**
	)	
Russell L. Bauknight,	)	
	)	
Respondent.	)	
	)	

TO: THE RESPONDENT RUSSELL L. BAUKNIGHT AND HIS ATTORNEY, FRED L. KINGSMORE, JR.

YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Petition upon his subscribers at Turner Padget Graham & Laney, P.A., Post Office Box 2116, Myrtle Beach South Carolina, 29578 within thirty (30) days after the service hereof, exclusive of the day of such service. If you fail to answer the Petition within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Petition.

TURNER PADGET GRAHAM & LANEY P.A.

By: Audra M. Byrd

R. Wayne Byrd (S.C. Bar # 1068)
WByrd@TurnerPadget.com
Audra M. Byrd (S.C. Bar # 76719)
AByrd@TurnerPadget.com
2411 North Oak Street, Suite 301
P.O. Box 2116
Myrtle Beach, South Carolina 29578
Telephone: (843) 213-5500
Facsimile: (843) 213-5555

February 5, 2009

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF NEWBERRY	)	Civil Action No. 2011-CP-36-364
	)	
Adele J. Pope,	)	AFFIDAVIT OF ADELE J. POPE
Plaintiff,	)	IN FURTHER SUPPORT OF ALL RELIEF
	)	REQUESTED IN COMPLAINT, EXPEDITED
v.	)	HEARING AND *IN CAMERA* REVIEW
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee	)	
Defendants.	)	

SCANNED

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:40
JACKIE S. BOWERS
CLERK OF COURT

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

1. This affidavit is based on my personal knowledge and belief.

2. I am informed and believe that information I obtained this week (beginning October 4, 2011) further supports my position that Attorney General Alan Wilson, acting through C. H. "Sonny" Jones, is vigorously covering up important public documents, including those sought in this FOIA Suit, which will help the public decide:

   a. Did AG/Candidate McMaster authorize the State's first contingency-fee tort suit against S. C. Citizens Buchanan and Pope, using only private lawyers to falsely accuse them of crimes, for the improper purpose of silencing their criticism of his takeover of James Brown's assets?

   b. Did AG McMaster improperly authorize Russell Bauknight to "speak on behalf of" the Attorney General of South Carolina in making the false accusation that Buchanan and Pope caused "tens of millions of dollars" damage to Brown's worldwide music empire while simultaneously supporting Bauknight's "appraisal" of those same assets at less than $4.7 Million?

RICHLAND COUNTY
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2012 JAN 17 PM 4:37
JEANNETTE W. McBRIDE
C.C.P. & G.S.

c. How involved was the Office of AG McMaster/Wilson in creating and/or presenting the purported $4.7 Million value of Brown's music empire the to IRS and Courts and in falsely accusing Buchanan and Pope of criminally overstating Brown's assets at about $85 Million?

3. Yesterday I printed from the Website of Attorney General Wilson, the 10 Litigation Retention Agreement AG Wilson asserts are:

> all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. [Emphasis supplied. See Exhibit A]

4. AG Wilson's Website does not assert – as AG Wilson's Assistant Sonny Jones asserted in September – that a stay prohibits the dissemination of the McMaster/Wingate Contract to sue Buchanan/Pope.

5. The McMaster/Wingate Contract to sue Buchanan/Pope is "under review by a court" for only one reason: Wingate, on behalf of two AGs, has refused for a year to produce it, and on August 9, 2011 – more than a month after my FOIA request and several days after this suit was filed – sought a protective order asserting it is a private document — a direct violation of the language of all known Litigation Retention Agreements.

6. Wingate and Bauknight - both purporting to speak for the State/AG through Wingate – asserted:

> Fee agreements are the epitome of privileged communication. Plaintiffs0 [sic] therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement. [See Exhibit B]

7. As relates to the purported less-than $4.7 Million value of Brown's music empire, on September 9, 2011 I requested, among other documents, the following

information from AG Wilson under FOIA:

> 1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 **[in bold]** statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:
>
> 6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million ($85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million ($100,000,000.00) Dollars in affidavits, pleadings, and testimony...
>
> Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. **By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although the expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust will not exceed Twelve Million ($12,000,000.00) Dollars.**
>
> AND
>
> ...
> 4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about $6.5 Million and his worldwide music empire less than $4.7 Million on that date.

8. In response to those two requests, on October 3, 2011, AG Wilson, through Sr. Assistant AG Tracy Meyers, said:

> Responding to your request (numbers 1 and 4)...<u>this office does not possess any such documents, and therefore, is unable to provide this information to you.</u> [Emphasis supplied.]

9. A copy of my October 5, 2011 response to Ms. Meyers' letter of October 3 is attached hereto as Exhibit C.

10. Based on the documents received this week, as of October 6, 2011, I am informed and believe that AG Wilson's continued refusal to comply with FOIA shows:

a. Attorney General Wilson's Office does not have a single document to support the assertion made by two Attorneys' General, in two separate years (2010-11), to our S. C. Supreme Court – that James Richardson, the *pro bono* counsel in the Aiken County Appeal of Case 2008-CP-02-1647, Bob Buchanan and I were not truthful with the Court when we asserted that the damage McMaster did to The James Brown "I Feel Good" Trust has the the potential to divert "tens of millions of dollars" from the Trust which James Brown intended for needy and deserving students.

b. Attorney General Wilson is actively concealing his office's authorization of, and/or participation in false representations made by AG Wilson's agent Russell Bauknight, "on behalf of the Attorney General of South Carolina" that Bob Buchanan and I criminally overstated Brown's assets by $79 Million in sworn IRS documents (at about $85 Million)

c. Attorney General Wilson is concealing his Office's participation in and/or support of the false representation by Bauknight to the IRS and two Courts that James Brown's worldwide music empire at his death was worth less than $4.7 Million.

11. A chronology of some of the actions of the Attorney General's Office follows:

April 2010	Agent for Tommie Rae threatens that AG Sonny Jones has hired Wingate to sue Bob and me if we do not drop Aiken Cty. Appeal – which would require us to sign agreement not to criticize McMaster for destroying The James Brown "I Feel Good" Fdn.
May 19, 2010	Wingate sues Bob and me. Seeks "ten of millions of dollars." for alleged damage to Brown's worldwide music empire.
August 2010	AG Sonny Jones tell Supreme Court our assertion that McMaster's actions have potential to divert "tens of million of dollars" from "I Feel Good" Trust is untrue – appraisal will show James Brown assets less than $12 Million.
September 2010	Bob and I counterclaim against Wingate's clients.

October 2010	Bob asks for copy of Wingate Litigation Retention Agreement. [I ask shortly thereafter.]
November 2010	Wingate clients default on counterclaim.
November 2010-October 2011	Wingate/AG McMaster/Bauknight/AG Wilson refuse copy of McMaster/Wingate Agreement to sue Buchanan/Pope
December, 2010	Bauknight presents secret $4.7 Million "appraisal" of Brown's music empire to IRS and secretly asserts Bob and I overstated Brown's assets at $85 Million to get a big fee – a crime.
January 2011	IRS issues closing letter after Bauknight's false allegations.
May 3, 2011	Bauknight files sworn I&A in Aiken, asserting $4.7 Million value.
May 6, 2011	Bauknight/AG Jones ask the Supreme Court to supplement Aiken County appeal record with Bauknight's purported $4.7 Million value.
May 2011	J. Richardson asks Supreme Court not to supplement Record with Bauknight's purported $4.7 Million value for music empire.
June 30 - July 2011	I ask, under FOIA, for Litigation Agreement and Valuation Info. Goes to Wingate and Wilson.
July 2011	Supreme Court declines to supplement record.
July 15, 2011	Bauknight threatens me with lawsuit if I exercise FOIA rights.
August 2011	Bob and I continue to seek Litigation Retention Agreement. Wingate and Bauknight – both purported agents for the State - continue to refuse to produce agreement. Assert on behalf of the Attorney General it is private.
September 2011	Jg. Manning continues hearing schedule for motion to disqualify/enjoin Wingate as counsel for State and 12 private plaintiffs and Bauknight as State's purported agent. No stay sought or granted.
September 2011	AG Sonny Jones asserts Jg. Manning granted a stay, preventing release of Wingate/McMaster Agreement to sue Buchanan/Pope.
September 28, 2011	Jg. Manning's 1-word order confirms hearing continued. No stay. [Exhibit D]

October 2011 — AG Wilson's Office notifies press that it must stick with AG Jones' story that there is a stay order despite Order of Jg. Manning.

October 5, 2011 — AG Wilson's Office posts all Contingency Fee Litigation Agreements except McMaster/Wingate Agreement to sue Buchanan/Pope on Website. Does not assert stay, instead says:

CONTINGENCY FEE LITIGATION
RETENTION AGREEMENTS

Below are all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases the Attorney General's Office itself would otherwise be unable to pursue.

Affinion/Trilegiant (marketing and billing) ...

AstraZeneca (Seroquel)...

Cephalon (Provigil, Gabitril, Actiq)...

GSK (Avandia)...

Janssen (Risperdal)...

McKesson (Average Wholesale Price)...

Merck (Vioxx)..

Multiple pharmaceutical companies (Average Wholesale Price)..

Multiple technology companies (liquid Crystal displays)...

Multiple oil companies (underground storage tanks)

October 6, 2011 — AG Wilson still refuses to post or comply with FOIA requests for McMaster/Wingate Agreement to sue Buchanan/Pope.

12. I am informed and believe that the AG McMaster/Wingate Litigation

Retention Agreement and other FOIA documents will show that the Wingate suit did not "require specialized expertise or involve an extensive commitment of financial resources and personnel" on the part of the State, but was intended to ruin Bob's and my careers and force us to drop the appeal of McMaster's destruction of James Brown's Estate Plan.

13. I am informed and believe that the date of the contract – expected to be April or early May 2010 – and other FOIA documents will confirm that Wingate, although a certified specialist, conducted no due diligence before using the power of the State, with Bauknight as the State's purported agent, to falsely accuse us – on behalf of the State – of crimes.

14. I am informed and believe that the Wingate contract will show that Wingate, Bauknight as the State's purported agent, and AG Wilson's Office have consistently violated the following requirement, among others, of the Litigation Retention Agreement:

> **Article III. CASE MANAGEMENT...**
>
> **F. Public Records**
>
> Any material, data, files, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina Freedom of Information Act, South Carolina Code of Laws, §30-4-10 *et seq.*, and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying documents. This Agreement shall be

considered a public document. [Emphasis supplied.]

15. I am also informed and believe that the McMaster/Wingate contract to sue Buchanan/Pope will show that either it does not contain, or Wingate has violated, the constitutionally required provision contained in all other Litigation Retention Agreements:

> All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designated assistant.

16. Although I have requested a copy of the McMaster/Wingate contract to sue Buchanan/Pope, I believe that the document – authorizing Wingate to use the power of the State to seek to destroy my career and Bob's for the benefit of private individuals – is void as against public policy, as a violation of my Due Process rights and/or for other reasons.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
6th day of October, 2011

_____ (L.S.)
Notary Public for South Carolina
My Commission expires: 7/11/2016

Exhibit A

CONTINGENCY FEE LITIGATION RETENTION AGREEMENTS

Below are all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases that the Attorney General's Office itself would otherwise be unable to pursue.

Affinion/Trilegiant (marketing and billing) – litigation retention agreement

AstraZeneca (Seroquel) – litigation retention agreement

Cephalon (Provigil, Gabitril, Actiq) – litigation retention agreement

GSK (Avandia) – litigation retention agreement

Janssen (Risperdal) – litigation retention agreement

McKesson (Average Wholesale Price) – litigation retention agreement

Merck (Vioxx) – litigation retention agreement

Multiple pharmaceutical companies (Average Wholesale Price) – litigation retention agreement

Multiple technology companies (liquid crystal displays) – litigation retention agreement

Multiple oil companies (underground storage tanks) – litigation retention agreement

LATEST NEWS VIEW ALL

Silent Witness Ceremony Honored 2010 Victims of Fatal Domestic Violence

Oct 4, 2011

Attorney General Alan Wilson led participants through the annual Silent Witness Domestic Violence ceremony that was held today on the south steps of the State House in Columbia. The ceremony marked the first week of National Domestic Violence Awareness Month. During the solemn ceremony, Attorney General Wilson called the names of thirty-four (34) women and ten (10) men from across the state who lost their lives as the result of domestic violence in the previous year. Victims' family members, friends, or volunteers carried a life-sized silhouette representing the victim to the State House steps as a bell was rung for...

+ LEARN MORE

Anderson Police Arrest Starr Man In Child Pornography Case

Sep 27, 2011

Attorney General Alan Wilson announced today that the City of Anderson Police Department arrested Kenneth Ray Barnett, 41, of 1642 Mountain Creek Church Road, Starr, South Carolina, on September 22, 2011, on one (1) count of Sexual Exploitation of a Minor.

+ LEARN MORE

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Law Enforcement Symbols

JACKIE S. BOWERS
CLERK OF COURT

2011 OCT -6 P 3:40

NEWBERRY COUNTY
FILED

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

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 and Carrington Lumar; 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 and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

Defendants

Civil Action No. 2010-CP-40-4900

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING FEE AGREEMENT AND/OR MOTION TO STRIKE DEFENDANT POPE'S MOTION TO COMPEL PLAINTIFFS' FEE AGREEMENT

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:40
JACKIE S. BOWERS
CLERK OF COURT

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order prohibiting the production of Plaintiffs' Fee Agreement in the above-referenced action.

On July 26, 2011, Defendant Adele Pope through counsel filed a Motion to Compel production of Plaintiffs' Fee Agreement. Fee Agreements are the epitome of privileged communication. Plaintiffs0 therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement.

Also, or in the alternative, Plaintiffs move the court to strike Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement because the motions seeks to contravene a prior decision of the court concerning the order for hearing motions filed in this complex case.

This Motion relies on all applicable statutory and case law and may be supplemented with a memorandum of law, exhibits, affidavits, or other documents.

The Plaintiffs also request costs and fees for the expense in bringing this Motion.

(Signature page to follow)

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:40
JACKIE S. BOWERS
CLERK OF COURT

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

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

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 9, 2011

Exhibit C

1228 Walnut Street
Newberry, South Carolina 29108

October 5, 2011

BY FAX AND FIRST CLASS MAIL
Fax No. 803-734-3677
[Fx. Copy amended to correct Fax #]

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:40
JACKIE S. BOWERS
CLERK OF COURT

Tracy A. Meyers, Esquire
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Ms. Meyers and Records Custodian:

I received yesterday, and thank you for, the letter of Ms. Meyers dated October 3, 2011. With the mailed copy of this letter I am enclosing a deposit of $300, and ask that I be able to come to your office at the earliest convenience on the first of the following dates you have available:

This Friday, October 7	9:30 - closing
Tuesday, October 11	1 p.m. until closing
Thursday, October 13	9:30 until closing
Monday, October 17	9:30 until closing

My cell phone number is 803-413-0753. Since I am a little over 40 miles away, I would appreciate your letting me know as soon as possible which dates suit.

Please do not let your answers to the questions below delay scheduling my appointment to review whatever documents you have.

I am prepared, each day, to pay the estimated amount - in addition to the enclosed $300 – of what the additional work we will need to do will take.

I expect my FOIA inquiries to last a long time, as — in order to receive specific documents – I made my initial inquiries as specific as possible. Since I will be examining records which you apparently do not keep in the form I requested, I want my search to be as efficient as possible. I hope your answers to the following questions will help:

a. <u>The Charges you pose</u>. It is my understanding that FOIA requires you to charge the smallest amount necessary to provide the records. You say $18.90

per hour is the charge for locating and copying. Is it not possible for me to review the records myself – either computer or hard copy – making notes, and then make specific requests?'

For example: The point of my requests 2, 3 and 5 on September 9, 2009 was to determine what information the State has about how much State money has been devoted to James Brown matters since August 2007, and how much to James Brown/James Brown Legacy Trust matters since 2008.

If the State has not compiled this information, as you indicate, I still want to compile my own estimates from the data requested in 2,3 and 5 of my letter of September 9. I have detailed information about hearings, appearances, meeting, etc., which – together with your data – would help put that together.

Will someone at $18.90 an hour do this with me? Or may I do it myself on a computer at your office – and perhaps bring a more computer-oriented person to assist me? Can it be a combination of the two?

b. Your Response to Requests 2 and 4 Regarding the $85 Million vs. $12 Million vs. $4.7 Million values placed on James Brown's music empire, assets

My request of September 9, 2011 was for:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 **[In bold]** statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million ($85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million ($100,000,000.00) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. **By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although the expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust**

will not exceed Twelve Million ($12,000,000.00) Dollars.

AND

4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about $6.5 Million and his worldwide music empire less than $4.7 Million on that date.

Ms. Meyer's response was:

Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you.

I respectfully suggest that this answer is not correct.

In August 2010 the Office of Attorney General McMaster represented to our Supreme Court what the contents of a draft appraisal contained.

In May 2011, the Office of Attorney General Wilson provided our S. C. Supreme Court with copies of portions of an Estate Tax Closing Letter and related IRS documents from January 2011 directly related to this request, showing that – at least by May 6, 2011 – the AG's Office had this information in that form. Those documents – if no others exist – would be responsive to my request if May 6, 2011 is the first day the AG learned that Russell Bauknight asserted James Brown's worldwide music empire was worth less than $4.7 Million when Brown died.

If the AG's Office learned this information before May 6, 2011, that is the subject of my request #4 of September 9.

As to Request #1, it is reasonable to assume that the AG looked at something when he represented to the South Carolina Supreme Court on August 23, 2010 that an expected appraisal – already in draft form – showed that James Brown's assets – repeatedly reported by the AG's Office and others to be worth $100 Million ($85 Million after the TIAA Debt)– would soon be found to be worth less than $12 Million, a figure, the AG represented, was already found in a draft proposal.

Because of the importance of understanding the State's involvement, if any, in the representation by the AG's appointee, Mr. Bauknight, to the IRS that Bob Buchanan and I committed a criminal overstatement of James Brown's assets on a sworn Estate Tax Return, I ask that you carefully check to confirm that the AG's Office – as you state – has no documents to support its August 2010 assertion of the less-than-$12 Million value and no record of when it first learned (before May 6) of the less-than $4.7 Million for the worldwide music empire it reported to the Court on May 6.

c. My other FOIA Requests Which Are Not the Subject of Pending Litigation.

I hope that your response to my September 9, 2011 FOIA request means that the AG's Office has reconsidered the 5 Requests I made on July 20, 2011, which you did not challenge, but failed to fill, including those briefly described below, which I may now review and copy:

1. July 20, 2011 - **11-Page Memorandum** from "tax experts" referenced by CH Jones in April 6, 2009 Hearing, Case 122.

2. July 20, 2011 Communications, Meetings, etc., with **Toby Byron** of New York. [He is the man who asserted in December 2007 that Albert H. "Buddy" Dallas had offered him 5% of a sale of the James Brown assets, then later recanted that representation. He wrote several letters to various people 2007 - 2009, with copies to the SC AG. He had a number of telephone meetings with Sr. Assistant AG CH "Sonny" Jones as indicated in the email of Sonny Jones to RL Buchanan, Jr. and me dated December 6, 2007 re: $100 Million initial offer for James Brown assets.]

3. July 20, 2011 Communications, Meetings, Etc. With **Dr. Terry Bradford Cox** . Mr. Cox, also mentioned by Sonny Jones in his December 6, 2007 email related to the $100 Million initial offer for the James Brown assets, also met at least one additional time – on or about July 31, 2008 – with Sonny Jones, another AG and an agent for Tommie Rae Hynie. Like Mr. Byron, Dr. Cox corresponded with various people and copied that correspondence to the AG's Office.

4. July 20, 2011 Communications, Meetings, etc., with Albert H. **"Buddy" Dallas** and/or **Forlando Brown.** Mr. Dallas had numerous documented – and as yet undocumented – meetings with the Office of AG McMaster, and his joint venturer, Forlando Brown, also had various communications, including the joint February 7, 2008 TV appearance with AG McMaster.

5. July 20, 2011 PG documents.

Please confirm if this is true, so that I may avoid another FOIA suit.

As stated above, please do not let your answers to any of these questions delay scheduling a time for me to come review the documents responsive to my September 9, 2011 request, as I want to do that as soon as possible.

I look forward to coming to the Office; obtaining what you have; and spending a day, or more as needed, gathering the information I have already requested; and learning how to make subsequent requests more efficient so that I may acquire the needed public information as efficiently as possible.

Thank you in advance for an immediate response to my cell phone 803-413-0753 or email to allow me to come to begin obtaining this important public information.

Sincerely,

Adele J. Pope

AJP/ja
Enclosure in mailed copy: Check for $300.00

Form 4 Exhibit D

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:48
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP4004900

Russell Bauknight

Plaintiff

vs.

Henry Dargan McMaster

Defendant

RICHLAND COUNTY FILED
2011 SEP 30 PM 10:18
JEANETTE W. McBRIDE
C.C.P. & G.S.

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. continued

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT *(CHECK APPLICABLE BOX)*:**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

continued

Dated at Columbia, South Carolina, this 28th day of September, 2011

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 3 day of Oct, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth B. Wingate
Everett Augustus Kendall II
Mark V. Gende

ATTORNEY(S) FOR THE PLAINTIFF(S)

Daryl L. Williams
J Calhoun Watson
Robin A. Braithwaite
Adam T. Silvernail

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. McBride
Clerk of Court

SCRCP APP-24/FORM 4

SCANNED

ALAN WILSON
ATTORNEY GENERAL

FILED
NEWBERRY COUNTY
2011 OCT 24 A 11:00
JACKIE S. BOWERS
CLERK OF COURT

October 21, 2011

The Honorable Jackie S. Bowers
Clerk of Court, Newberry County
PO Drawer 10
Newberry, SC 29108-0010

Re: Pope v. Alan Wilson, Attorney General 2011-CP-36-364

Dear Ms. Bowers:

Enclosed for filing with your Office in opposition to Plaintiff's Motion for Summary Judgment in this case are the original affidavit of Tracy Meyers, the September 14, 2011 transcript of proceedings before the Honorable Casey Manning in *Bauknight v. Pope* (2010-CP-40-4900) and the Order of the late, Honorable Marc Westbrook, in *Lominack v. Myers* (2002-CP-32-1890, October 25, 2002). In filing these documents, I do not waive the right to have the Defendant Attorney General's Motion to Dismiss and Motions to Strike heard first and any defenses that he may have including, but not limited to, that the Motion for Summary Judgment is premature. I have also enclosed a certificate of service.

I would appreciate your confirming filing by stamping the enclosed copy of this letter and returning it in the enclosed envelope. Thank you for your assistance.

Yours very truly,

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Counsel for Defendant Attorney General

Enclosures

cc: Adam T. Silvernail, Esquire
A. Camden Lewis, Esquire

Copy of letter mailed 10/24/11

RICHLAND COUNTY
FILED
2011-CP-36-01364
2012 JAN 17 PM 4:35
JEANNETTE W. WALKER
C.C.P. & G.S.

FILED
RICHLAND COUNTY
2011 OCT 24 A 11:00
JEANETTE W. WALKER
CLERK OF COURT

SCANNED

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Tracy A. Meyers, who being duly sworn, attests to the following:

1. She is a Senior Assistant Attorney General with the Office of the Attorney General.

2. Among her assigned duties, she is to review Freedom of Information Act requests made of the Office of the Attorney General. Incoming FOIA requests are sent to her.

3. She has reviewed the letter of June 30, 2011 addressed to the Custodian of Records of the Office of the Attorney General and attached as Exhibit A to the Complaint in Pope v. Wilson, et al (2011-CP-36-364. She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA.

4. Attachment of the June 30, 2011 letter to the complaint in the above suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.

6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request to the Office of the Attorney General by Ms. Pope or her attorney, a response to the

FOIA request will be made then if permitted by any Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that request.

Tracy A. Meyers

TRACY A. MEYERS

SWORN TO before me this 20th

day of October, 2011

Shurechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10/2/18

JL

ORIGINAL

FILED
DEC 30 A 9:36
THOMAS H. CROSSWORD
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON
Robert E. Lominack, Plaintiff. -vs- Donald V. Myers, Solicitor, Eleventh Judicial Circuit, Defendant.	2002-CP-32-1890 ORDER

This matter came before the Court following the Plaintiff's filing of a complaint seeking declaratory and injunctive relief pursuant to the South Carolina Freedom of Information Act ("FOIA"). Prior to the filing of the complaint, the Plaintiff had sent a letter to the Defendant Donald Myers, Solicitor, Eleventh Judicial Circuit, requesting, pursuant to the FOIA, all materials in the possession of the Solicitor's Office relating to a criminal case where the Plaintiff is representing the Defendant in a post conviction relief action against the Defendant's prior legal counsel. By letter dated May 23, 2002, Defendant Myers denied Plaintiff's FOIA request, indicating that Section 17-27-150(B) provides the procedure for discovery in a capital post-conviction relief case, and that the Plaintiff should use that process rather than trying to circumvent the statute by filing a request for those documents under the FOIA. The Plaintiff then filed this Complaint. The issue before the Court is whether to compel compliance with Plaintiff's FOIA request.

I find that Section 17-27-150 of the South Carolina Code details the method of discovery in post-conviction relief proceedings. Further, it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants. U.S. v. Murdock, 544F.2d 599 (5th Cir. 1976);

Fruehauf Corp v. Thornton, 507 F.2d 1253 (6th Cir. 1974); N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132 (1975).

Therefore, the information sought in this case cannot be obtained under the State Freedom of Information Act and can only be obtained by utilizing the discovery procedure set out by Statute. Plaintiff's request for declaratory and injunctive relief is denied.

AND IT IS SO ORDERED.

Marc H. Westbrook
Resident Judge
Eleventh Judicial Circuit

October 2nd 2002.

SCANNED

FILED
NEWBERRY COUNTY
2011 DEC 14 A 9:57
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA) **IN THE COURT OF COMMON PLEAS**

COUNTY OF NEWBERRY) Civil Action No. 2011-CP-36-364

Adele J. Pope,
Plaintiff,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee

Defendants.

AFFIDAVIT OF W. JEFFREY SMITH SUPPORTING RELEASE OF ALL PUBLIC DOCUMENTS REQUESTED UNDER THE S. C. FREEDOM OF INFORMATION ACT BY ATTORNEY GENERAL ALAN WILSON AND BY THE JAMES BROWN LEGACY TRUST

PERSONALLY APPEARED BEFORE ME, W. Jeffrey Smith, who being duly sworn deposes and says:

RICHLAND COUNTY
FILED
2012 JAN 17 PM 4:35
JEANNETTE W. McBRIDE
C.C.P. & G.S.

1. I am over eighteen years old.

2. I have been a resident of Newberry County for more than twenty years.

3. This affidavit is based on my personal knowledge and belief.

4. I received a JD degree from Georgetown Law Center and formerly served as a patent examiner with the U. S. Patent Office.

5. I am not a party to any James Brown lawsuit, but have a personal interest in James Brown's musical career and am writing an article with Plaintiff Adele Pope about James Brown's "I Feel Good" private foundation.

6. A copy of the April 2011 draft of our article, *Private Foundations, Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good" Trust doesn't...*, is attached to this affidavit as Exhibit A.

7. In April 2011 *Private Foundations* was circulated for comment to entertainment and private foundation professionals, and we hope to complete and publish it in 2012.

8. I am informed and believe that the general public, and especially those involved in estate planning and intellectual property issues, have a right to learn whether by taking over James Brown's private assets and creating the Legacy Trust former Attorney General Henry McMaster – who was acting in his official capacity – was serving the public interest, or promoting his campaign to be governor.

9. I have read with interest the articles of Newberry journalist Sue Summer about what McMaster did and about what appears to her – and to me – to be a coverup by Attorney General Wilson of what McMaster did.

10. I am informed and believe that the Legacy Trust, not created by James Brown, but by McMaster as AG, is a public body – as is AG Wilson – under the S. C. Freedom of Information Act, and both should comply with FOIA.

11. My writing about James Brown has three areas of emphasis:

a. The manipulation of the value of Brown's securities and other assets, especially the fabricated $4.7 million valuation of Brown's worldwide music empire, including any participation the AG's office may have had in that manipulation.

b. The false representations made about who are James Brown's heirs under the Federal Copyright Act, and whether an AG should participate in or condone false statements to courts about Brown's heirs.

c. The Public Policy implications of allowing Attorneys General – as McMaster attempted to do – to take over private foundations, which are private property.

12. I believe that it is wrong for Attorney General Alan Wilson and the Legacy Trust McMaster created in his official capacity to refuse to deliver properly requested public documents related to these issues.

13. I have read, and attach hereto, copies of affidavits filed in another Newberry County FOIA Case which, I am informed and believe, also apply to this case:

Exhibit B	Affidavit of Thomas R. Young, Jr.
Exhibit C	Affidavit of Deborah W. Spence
Exhibit D	Affidavit of Thomas H. Pope III
Exhibit E	Affidavit of Sue Summer

14. I am informed and believe that these people properly assert that prompt compliance with FOIA is important — especially where, as here, there is great public interest in why a public official chose to take over and give away James Brown's private property.

15. I especially endorse Mr. Young's reference to the intent of FOIA, which is to provide members of the general public with prompt access to public documents **"at a minimum cost or delay."**

16. I am informed and believe that AG Wilson's intentional stonewalling, along with the Legacy Trust, of the FOIA requests of Mrs. Pope and journalist

Sue Summer is wrong.

FURTHER DEPONENT SAYETH NOT.

W. Jeffrey Smith

W. JEFFREY SMITH

SWORN TO BEFORE ME this 9th Day
of December, 2011

(L.S.)

Notary Public for South Carolina
My Commission expires: 12/11/13

Draft (11) for Editing only - Do not copy

Private Foundations, Copyright Heirs and Musical Millionaires: or Why The James Brown "I Feel Good" Trust doesn't...

By Adele J. Pope and W. Jeffrey Smith[1]

© [2]
2011

God has Smiled on Me [3]

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his $100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity–and years of litigation with publishers, family and others–he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a $285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

Anticipating trouble from relatives who knew about Brown's estate plan but did

---

[1] Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

[2] While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

[3] The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately $80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody [4]

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The $80 million " I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust. [5]

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest." [6]

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to $2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

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[4] The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

[5] AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

[6] WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Wil; claims of Brown's companion; and other claims. [See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.

2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up) Turn it Aloose [7]

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back *some* of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs--in limited instances--may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves. [8]

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

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[7] (Give it up) Turn it Aloose was published in 1969.

[8] The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors[9] must take at least take the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.

2. Promptly and properly identify the "heirs-at-death"[10] to create a baseline.

3. Where appropriate and available, rely on DNA testing for disputed heirs.

4. Acknowledge heirs only if they are legally established or DNA tested.

5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.

5. Update the baseline heirs data until all copyrights expire.

6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.

7. As and when helpful, "split heirs"[11] to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

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[9] Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

[10] The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

[11] The heirs must act by majority. This allows foundations to "split heirs" – finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.[12]

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.[13]

The known facts included:

1. Brown's royalties continued to earn about least $3 million per year, as they had for years.

2. Brown's publicity rights – about $50 million of his music empire – were not subject to any claimed termination rights of heirs.

3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.

4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]

5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.

6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.

7. Only 15% or fewer of Brown's many copyright interests faced possible termination before 2016 -- ten years after Brown's death. [See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

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[12] Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the *Real* Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.

9. Brown holds an interest in some of his publishers.

10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:

    a. Nearly 40 songs from 1968.

    b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."

    c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.

    d. "Hot pants", "Soul power" and others from 1971.

    e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights]

11. In the 1990s Brown and his company JBE, Inc,. reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.

12. Documents related to Brown's 1999 $26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full – 5 or more years after Brown's death.

13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.

14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one

of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.[14]

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay $300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.[15]

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Mernickle (3).

Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

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[14] Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree.Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

[15] Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);[16]

b. A minor ordered to take official DNA testing, but who had refused (10);

c. An incarcerated adult whom Brown supported under court order during minority (11);

d. Brown's companion who:
   1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
   2 Then had a marriage ceremony with Brown although she was already married;
   3. Separated from Brown in 2003 when he discovered she was married;
   4. Obtained an annulment of her previous marriage in March 2004;
   5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);

e. Two other claimed-but-not-presumed children (13), and (14);

f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets [17] and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

That changed on August 10, 2008.

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[16] On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

[17] Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than $12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a $6 million claim he asserts against Brown's Estate and the 2000 Trust.

"No, no, no,no (don't leave me this way)"[18]

On August 10, 2008 the AG's staff and some of the claimed heirs[19] met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."

2. The AG proposed to give more than half of Brown's assets to these persons, *all of whom had been specifically disinherited by Brown from his copyrights.*

3. The AG agreed to prevent DNA testing of the parties to his agreement.

4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.

5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.[20]

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 2/39/09 and 2/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

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[18] "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

[19] The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

[20] According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

On January 30, 2009, three weeks after his appointment--with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal--the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee – already trustee for Brown's companion and the disinherited settling relatives – to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation — the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"[21]

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status–a gift not from Brown but from the AG--that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them – not all properly-determined heirs over the duration of the copyrights – were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

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[21] This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.[22] The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"[23]

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the $100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for $90-$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than $12 million.

A sale to son at $12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from $80 million to $2 million or less.[24]

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[22] In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

[23] The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

[24] Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as $12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for $90 - $102 million. [Brown's original PR/Trustees sought about $5 million each from the proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07,Case 122]. In early 2007 Terry's son and some family members issued a prospectus in early 2007 to raise $200 million for the purchase of the James Brown assets.

James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about $9 million each year.[25]

Think (about it)[26]

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations these private individuals.

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[25] In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight . Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than $60 million in 2010.

[26] The copyright to "Think (about it)" was issued in 1973.

COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

Date of Publication/ Copyright	Description of Works	Earliest Possible Termination
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

Exhibit B

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	Civil Action No. 2011-CP-36-379
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	**AFFIDAVIT SUPPORTING IMMEDIATE RELEASE OF McMASTER/WINGATE CONTRACT TO SUE BUCHANAN AND POPE**

Personally appeared before me, Thomas R. Young, Jr., who being duly sworn, deposes and says:

1. I am a resident of Aiken County.

2. I am over 18 years of age.

3. I make this affidavit based on my personal knowledge and belief.

4. I am a member in good standing of the South Carolina Bar with Bar number 11643.

5. Currently, I am attorney of record for Robert L. Buchanan, Jr. and Robert L. Buchanan Law Office, P.A. in the declaratory judgment action filed against Buchanan by Cincinnati Insurance Company in federal court.[1] That action involves the malpractice coverage which is in place to defend and to indemnify Buchanan in the lawsuit filed in Richland County against Buchanan by the Attorney General of South Carolina ("Richland County lawsuit").

[1] Cincinnati Specialty Underwriters Ins. Co. v. Buchanan Law Office, PA, et al. 3:10-cv-02986-WOB.

TY

6. The litigation retention agreement signed by former Attorney General Henry McMaster to authorize attorney Kenneth Wingate to sue Robert L. Buchanan, Jr. of Aiken is a document relevant to some of the issues in the declaratory judgment action filed by Cincinnati Insurance Company against Buchanan.

7. My understanding is that Buchanan attempted to obtain a copy of that contract in the Richland County lawsuit. The contract has not been produced in that action.

8. My understanding also is that litigation retention agreements entered into by the Attorney General of South Carolina are public documents.

9. I also understand that the Freedom of Information Act is intended to provide members of the general public with prompt access to public documents "**at a minimum cost or delay**." See S.C. Code Sec. 30-4-15 (emphasis added).

10. While I have the ability to issue a federal court subpoena upon the Attorney General of South Carolina to obtain the contract, it will save my client both time and money by having this Court rule that the contract should be released pursuant to the Freedom of Information Act.

FURTHER THE DEPONENT SAYETH NOT.

Thomas R. Young, Jr.

SWORN TO before me this
day of December, 2011

(L.S.)
Notary Public for South Carolina
My Commission expires: 3/3/18

Exhibit C

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF NEWBERRY)	CIVIL ACTION NO. 2011-CP-36-379
)	
)	
ADELE J. POPE,)	AFFIDAVIT OF DEBORAH W. SPENCE
PLAINTIFF,)	ASKING FOR RELEASE UNDER
)	FREEDOM OF INFORMATION ACT OF
V.)	AG HENRY MCMASTER'S 2010 CONTRACT
)	WITH ATTY. KENNETH B. WINGATE TO
ALAN WILSON, IN HIS CAPACITY AS)	SUE ADELE POPE AND ROBERT
ATTORNEY GENERAL OF SOUTH)	BUCHANAN FOR APPEALING ORDER
CAROLINA,)	IN JAMES BROWN AIKEN CASE
)	
DEFENDANT.)	
)	

PERSONALLY APPEARED BEFORE ME, DEBORAH W. SPENCE, WHO BEING DULY SWORN, DEPOSES AND SAYS:

1. I AM A RESIDENT OF LEXINGTON COUNTY AND OVER 18 YEARS OLD.

2. THIS AFFIDAVIT IS BASED ON MY PERSONAL KNOWLEDGE AND BELIEF.

3. I AM THE WIDOW OF FLOYD D. SPENCE

4. THROUGH THE YEARS I HAVE KNOWN ATTORNEY GENERAL ALAN WILSON AND HIS FAMILY, AND HAVE BEEN REPRESENTED BY A MEMBER OF FORMER AG HENRY MCMASTER'S FAMILY

5. KENNETH B. WINGATE HAS SERVED BOTH AS MY LAWYER AND ATTORNEY FOR MY HUSBAND'S ESTATE.

6. MRS. POPE BECAME MY LAWYER IN 2002, RECOMMENDED BY AG MCMASTER'S BROTHER WHO HAD WORKED FOR MY HUSBAND.

7. I LOVE MUSIC AND HAVE BEEN A FAN OF JAMES BROWN FOR DECADES.

8. IN 2007 MRS. POPE BECAME TRUSTEE OF JAMES BROWN'S TRUST, WHICH INCLUDED THE JAMES BROWN "I FEEL GOOD" PRIVATE FOUNDATION. I LEARNED THEN THAT BROWN HAD GIVEN HIS ENTIRE MUSIC EMPIRE TO PROVIDE

SCHOLARSHIPS FOR NEEDY AND DESERVING STUDENTS.

9. SINCE LEARNING THAT HENRY MCMASTER – OVER THE OBJECTION OF BROWN'S TRUSTEES – GAVE MORE THAN HALF OF THE "I FEEL GOOD" FOUNDATION TO DISINHERITED CLAIMED RELATIVES, I HAVE FOLLOWED THE AIKEN CASE FAIRLY CLOSELY.

10. I WAS DISTURBED IN THE SPRING OF 2010 WHEN I LEARNED THAT HENRY MCMASTER HAD SUED MRS. POPE USING KENNETH WINGATE, A PRIVATE ATTORNEY WHO ALSO REPRESENTED SOME OF BROWN'S DISINHERITED RELATIVES.

11. I WAS TROUBLED AND INCREDULOUS THAT THE AG WOULD ALLOW MR. WINGATE AND MR. BAUKNIGHT TO FIGHT THE PEOPLE WHO WERE TRYING TO SAVE THE "I FEEL GOOD" FOUNDATION AND GET MONEY FOR PEOPLE BROWN LEFT OUT OF HIS ESTATE PLAN, AND I STILL DON'T UNDERSTAND HOW HE COULD DO THAT.

12. IN AUGUST OF 2011 WHEN I READ THAT MRS. POPE HAD FILED A FREEDOM OF INFORMATION ACT SUIT TO GET THE CONTRACT MCMASTER SIGNED WITH KEN WINGATE I THOUGHT IT MIGHT ANSWER SOME OF MY QUESTIONS.

13. I KNOW THAT AG WILSON HAS STATED THAT ALL OF HIS LITIGATION RETENTION AGREEMENTS WITH OUTSIDE COUNSEL ARE PUBLIC DOCUMENTS, AND BELIEVE THAT THEY SHOULD BE.

14. I THINK THAT THE MCMASTER'S CONTRACT WITH KEN WINGATE SHOULD BE DELIVERED RIGHT AWAY BECAUSE THE PUBLIC HAS A RIGHT TO KNOW WHETHER WHAT AG MCMASTER AND WINGATE AGREED TO WAS APPROPRIATE.

15. I AM CONCERNED THAT AG WILSON'S REFUSAL FOR MORE THAN FOUR MONTHS TO RELEASE A PUBLIC DOCUMENT MAKES IT APPEAR THAT HE IS COVERING UP AN INAPPROPRIATE OR QUESTIONABLE AGREEMENT.

16. ON OCTOBER 31, 2011 ATTORNEY DAVID BLACK OF NEXSEN PRUET,

speaking for Russell Bauknight, made vicious statements about Mrs. Pope and Mr. Buchanan that were repeated in hundreds of media outlets.

16. The next day, I heard another Nexsen Pruet lawyer and Mr. Jones from AG Wilson's office trying to justify to our Supreme Court why Henry McMaster gave away what was correctly described as Brown's "noble estate plan."

16. Since then, AG Wilson's refusal to release the McMaster contract with Wingate has focused my attention on other troublesome things McMaster did – or is said to have done – in connection with James Brown's estate and trust, and I believe the public has a right to learn what really happened..

17. I recently read that James Brown made a tape discussing his intentions in his will and Trust which McMaster apparently did not consider when he gave away half of the "I Feel Good" Trust.

17. This morning I read that Brown's grandson Forlando, who appeared on television in 2008 with McMaster to criticize Mrs. Pope and Mr. Buchanan, now confirms that they properly defended Brown's estate plan.

18. Most troublesome, however, is an article by Sue Summer dated December 7, 2011 in which Forlando describes a visit he and his father Terry had to AG McMaster's office before Terry Brown abandoned his support of Brown's noble estate plan which states:

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

19. I AM INFORMED AND BELIEVE THAT AG WILSON SHOULD IMMEDIATELY RELEASE THE WINGATE CONTRACT.

FURTHER DEPONENT SAYETH NOT.

DEBORAH W. SPENCE

SWORN TO BEFORE ME THIS
8TH DAY OF DECEMBER, 2011

_____ (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 7/17/2016

Exhibit D

STATE OF SOUTH CAROLINA **COUNTY OF NEWBERRY** Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	**IN THE COURT OF COMMON PLEAS** Civil Action No. 2011-CP-36-379 AFFIDAVIT SUPPORTING IMMEDIATE RELEASE OF McMASTER/WINGATE CONTRACT TO SUE BUCHANAN AND POPE

Personally appeared before me, Thomas H. Pope III, who being duly sworn, deposes and says:

1. I am a resident of Newberry County and a practicing attorney.

2. I am over 18 years of age.

3. Since the death of James Brown, I have read news reports about the various James Brown cases.

4. I understand that a request under the S.C. Freedom of Information Act has been made by at least one newspaper reporter for a copy of the public litigation retention agreement signed by former Attorney General Henry McMaster to authorize attorney Kenneth Wingate to sue Robert Buchanan of Aiken and Adele Pope of Newberry because they appealed an Aiken County settlement related to James Brown.

5. The Freedom of Information Act is intended to provide all members of the public with easy and prompt access to public documents. As far as I know, it contains no provisions that tie its application to any pending action in the same or any other county.

6. To deny prompt relief under the F.O.I.A serves only to encourage secrecy in government.

7. As I understand, all litigation-retention contracts between the Attorney General and private attorneys are public documents, and the documents sought in this suit are the only ones of this type that the Attorney General's office has ever refused to produce.

8. While I am the husband of plaintiff, I affirm that this does not affect my view of the legitimacy of the F.O.I.A. suit to produce what even the Attorney General's office has not denied are public documents.

9. I was not asked to write this affidavit by anyone. I do so voluntarily.

10. The public interest in James Brown, legendary musician and philanthropist (per his Will), could not be greater. The public interest in the former Attorney General's decision to hire private attorneys under a cloak of secrecy is equally great.

11. As a former legislative sponsor of the Whistleblower statute, I have always been a proponent of openness in government.

12. I believe that any citizen or journalist who asks for this public document should get it without delay.

FURTHER DEPONENT SAYETH NOT.

Marion H. Brown

SWORN TO before me this
8th day of December, 2011

Lynn O. Hunt (L.S.)
Notary Public for South Carolina
My Commission expires: 8-12-2020

Exhibit E

STATE OF SOUTH CAROLINA **COUNTY OF NEWBERRY** Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	**IN THE COURT OF COMMON PLEAS** Civil Action No. 2011-CP-36-379 AFFIDAVIT OF SUE SUMMER SUPPORTING IMMEDIATE RELEASE OF THE McMASTER/WINGATE CONTRACT TO SUE BUCHANAN AND POPE

Personally appeared before me, Sue Summer, who being duly sworn, deposes and says:

1. I am a resident of Newberry County; over 18 years of age; and make this affidavit based on my personal knowledge and belief.

2. I am a journalist and contribute to the *Newberry Observer*.

3. During the last few months, I have written several articles for the *Observer* on the various James Brown court cases. In writing these articles, I have done extensive factual research, including the review of many documents and interviews with several people.

4. I have requested that the Attorney General's office provide me with a copy of the Litigation Retention Agreement between former Attorney General McMaster and attorney Kenneth Wingate, which is one of the documents Plaintiff Adele Pope seeks in this action, no fewer than 6 times.

5. I have reviewed a recent letter of Senior Assistant Attorney General C. Havird

Jones confirming that this is a public document, but have not to date been provided a copy of this document.

6. I have reviewed other Litigation Retention Agreements which the Attorney General has posted on his website, and am informed and believe that each of them states that it is a public document.

7. As both a journalist and a citizen, I have an interest in seeing the Litigation Retention Agreement, which I understand Attorney General McMaster signed in his official capacity.

8. I believe that the spirit of the Freedom of Information Act is violated if journalists and members of the general public are denied both easy and prompt access to public documents.

9. I do not believe my FOIA rights or the rights of the general public should be tied to a Richland County lawsuit.

FURTHER DEPONENT SAYETH NOT.

Sue Summer
SUE SUMMER

SWORN TO before me this
day of December, 2011

Nina Elizabeth Brooks (L.S.)
Notary Public for South Carolina
My Commission expires: 2/17/2015

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY) Civil Action No. 2011-CP-36-364

Adele J. Pope,
Plaintiff,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee

Defendants.

AFFIDAVIT OF ADELE J POPE OPPOSING STRIKING OR DISREGARDING AFFIDAVIT AND ARTICLE OF JEFF SMITH AND OTHER AFFIDAVITS; OPPOSING DISMISSAL AND SUPPORTING IN CAMERA REVIEW AND SUMMARY JUDGMENT

FILED NEWBERRY COUNTY 2012 JAN -3 P 12:40 JACKIE S. BOWERS CLERK OF COURT

SCANNED

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

1. I am informed and believe that the Court should not strike or disregard any, and should consider all, of the following:

a. Affidavit of W. Jeffrey Smith dated December 9, 2011

b. Draft (4/11) article: ***Private Foundations, Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good" Trust doesn't.***

c. Affidavit of Thomas R. Young, Jr.

d. Affidavit of Deborah W. Spence

e. Affidavit Sue Summer

f. Affidavit of Thomas H. Pope III

FILED RICHLAND COUNTY 2012 JAN 17 PM 4:34 JEANETTE W. MCBRIDE C.C.P. & G.S.

2. I am also informed and believe that the Court, in addition to considering the above, should consider the affidavit of Vic MacDonald filed in Case 2011-CP-36-379, a copy of which is attached hereto as Exhibit A.

3. I am informed and believe that all are based on personal knowledge and belief; are not hearsay, or come under an applicable exception; are relevant; and support one or more of the material facts in this case, namely:

a. I, along with the general public, have been damaged by the AG/Legacy Trust's failure to promptly deliver the public information I requested under FOIA.

b. The role, if any, of the AG's office in Bauknight/Terry Brown's manipulation of the value of Brown's music empire which the AG took over is of great public interest.

c. FOIA compliance relates only to the delivery of public documents.

d. Essential to the right of individuals and the public under FOIA is that the public documents be delivered at a minimum of cost and delay, without regard to any use to be made of the documents.

e. At least in the civil context, the claims, defenses, lawsuits, publications, articles, critique of public officials and all other uses which are or could result from the release of public documents under FOIA is unrelated to the FOIA request/claim itself, which is a separate and distinct claim.

f. The McMaster Legacy Trust, having been created by a public official acting in his official capacity; holding an expectancy in private property taken over by a public official; and run by a trustee who serves at the pleasure of the AG, is a public body under FOIA.

g. My legal fees and costs to date of approximately $7,525, and future costs as described below, are reasonable because AG Wilson refuses to produce the public documents I requested under FOIA and the Legacy Trust has both refused them and threatened me with sanctions.

h. Where the State/Legacy Trust is represented by a seasoned Assistant Deputy AG and has authorized the Legacy Trust to engage a Superlawyer whose hourly rate in 2007 was $500 to fight release of public documents, my attorney's fees of $100 per hour (with a maximum of $1,500 per month for this case), and costs are reasonable to seek Court direction for FOIA compliance, and McMaster's Legacy Trust and the AG/State should be directed, jointly and severally, to pay such attorney's fees and costs until each complies with my FOIA request.

i. If AG Wilson and McMaster's Legacy Trust are not charged with my cost of securing their FOIA compliance which should have been made 6 months ago,

while the awesome power and resources of the State are used, and thousands of dollars of State-approved costs are being incurred for Mr. Lewis to fight FOIA compliance, FOIA will be rendered meaningless – damaging both the general public and me.

j. The Legacy Trust's threat to sanction me for exercising my FOIA rights was made in bad faith.

k. The affidavit of Tom Young, Esq., and presence of the firm of Camden Lewis, Esq., former counsel to Brown fiduciaries David Cannon and Albert Dallas demonstrate that my FOIA claims in this suit for compliance, are not the same or similar to Richland County Case 4900 or any other James Brown case.

3. I am informed and believe that the affidavits of Mr. Smith, Mr. MacDonald and Ms. Summer constitute expert opinions by writers and/or journalists of the importance to the press and the public of swift and inexpensive compliance with FOIA.

4. I am informed and believe that the affidavits of Mr. Young and Mr. Pope constitute expert opinions as to FOIA's role in open government and the public's right to prompt access to public documents under FOIA at a minimum cost or delay.

5. Mr. Lewis' former fiduciary clients have taken positions directly opposed to the Wingate Firm, sole counsel in Case 4900 to Brown's companion, the Legacy Trust and other persons Brown intentionally disinherited, as follows:

a. The Lewis Firm and their clients vigorously assert that Tommie Rae was not married to Brown and is entitled to none of Brown's assets, while Wingate/Bauknight assert she is his wife, and should get 23 ½ % of Brown's assets.

b. The Lewis Firm knew nothing of Powell Goldstein's attempt to move Brown's 2000 Trust to Georgia, or Cannon and Dallas' attempts to obtain options or a "kickback" in the IPO to be created on a sale of Brown's assets, while the Bauknight and the Legacy Trust have worked directly with Powell Goldstein to secure for Terry Brown, a joint venturer with Cannon and Dallas, the right to buy Brown's assets.

c. The Lewis Firm's clients valued Brown's worldwide music empire at death at about $85 Million, based in large part on a $90 - $100 Million offer in October

2007. The Legacy Trust/Bauknight assert there was no offer and the value of the music empire is $4.7 Million

d. The Lewis Firm's clients collected, and agreed to make public, the diary of Brown's companions and other records confirming she was not Brown's wife and had waived any claim to be his spouse or enjoy his property.

e. The Lewis Firm's clients established a proper DNA protocol to determine heirs-at-death under the Federal Copyright Act. The Legacy Trust made an incorrect determination, omitting proven heirs and including those who are not.

6. I am familiar with the Lewis Firm's legal services to the Estate/2000 Trust for 9 months in 2007 because Bob Buchanan and I were SA's at the time, and later – as PR/Trustees -- reached a stipulation with the Lewis Firm describing in detail the nature, extent and limitations of their services.

7. The stipulation was made in connection with the Lewis Firm's approximately $595,000 claim for legal services to the Estate/Trust in 2007, which claim is still pending.

8. The Lewis Firm, like attorney Rodney Peeples, represented Dallas and Cannon as fiduciaries only, refusing to help them file $10+ Million in commission claims.

9. The Lewis Firm knew about the $100 Million offer and was present when it was dicussed with the Court on November 20, 2007, but did not know Dallas and Cannon were secretly seeking option or a "kickback" from the purchasers.

10. While represented by the Lewis Firm, Dallas and Bradley filed a sworn Inventory valuing Brown's music empire at about $85 Million – based, at least in part, on the $100 Million offer (LESS the TIAA debt).

11. The Lewis Firm and its fiduciary clients took the following steps to protect Brown's Estate Plan:

a. gathered and made public Brown's companion's personal diaries, contracts and lawsuits, to demonstrate she knew she was not married to Brown when he died;

b. established, with attorney Peeples, a proper DNA protocol, which identified Pettit, Parris and Mitchell as Brown's children and heirs;

c. obtained Brown's vasectomy records, sworn testimony and other documents showing companion's son was not likely Brown's son;

d. Sought DNA testing of all who claimed to be Brown's heirs.

11. When the Lewis Firm became aware that Cannon and Dallas were involved in more than $12 Million of misappropriations from Brown, including the $5 Million "Check to Nobody" Cannon cashed and kept in 1999, they advised Dallas and Bradley to resign[1].

12. Since the resignations of Cannon and Dallas, the Lewis Firm has remained loyal to its representation of them as fiduciaries, although Mr. Babcock, along with Bradley, was called to testify in 2008 that – contrary to what his former client Dallas said – Mr. Lewis did not help or advise Dallas and Cannon to fabricate a second, post-death Schedule B to the 2000 Trust.[2]

13. I am informed and believe that Lewis' representation of the Legacy Trust in this FOIA case is unrelated to the primary claims, counterclaims, and main thrust of

---

[1] Cannon had already resigned in August 2007 after which the Lewis Firm obtained court approval NOT to represent him in answering discovery requests.

[2]Dallas had testified that Mr. Lewis, hired in February 2007, helped him fabricate the post-death Schedule B. Testimony of Mr. Babcock and Bradley confirmed not only had the Lewis Firm had no part in the fabrication, but that it was done after Brown's death and BEFORE January 3, when it was presented to Bradley as part of the 2000 Trust. The Lewis Firm, without knowledge of the fabrication, had distributed copies of the fabricated post-death Schedule B as part of the 2000 Trust.

Case 4900 for the past 18 months, namely:

a. Should Tommie Rae and Mr. Wingate's other private plaintiffs, be required to appear at depositions, which they have refused to attend for almost a year ?

b. Should Mr. Wingate's private clients be released from default as to the counterclaims Bob Buchanan and I have against them?

c. Was it illegal or improper for Mr. Wingate to bring a tort suit on behalf of AG McMaster to benefit Tommie Rae and Wingate's other private clients where the AG's office did not sign pleadings or appear as counsel for the AG/State?

d. Was it illegal or improper for Russell Bauknight to assert that he speaks on behalf of former AG McMaster?

e. Was the tens of millions of dollars damage to Brown's Estate Plan done by Bob Buchanan and me, or by Bauknight, Tommie Rae and Terry by:

1. Thwarting the collection of $12+ Million taken from Brown by Cannon and others and the $1.2 Million owed by Cannon for costs of Aiken Case 122?

2. Fabricating Brown's heirs under the Federal Copyright Act?

3. Manipulating the value of Brown's music empire so Terry can buy it?

4. Telling the Supreme Court that Brown's Estate/2000 Trust has no corpus to speak of?

5. Misrepresenting the impact of the Federal Copyright Act on Brown's assets?

6. Representing to the Court and/or others that Brown's Estate/2000 Trust, even if properly managed, will have no value at some time between 2015 (Deanna) and 2023 (Bauknight).

7. Destroying The James Brown "I Feel Good" Trust by the above actions?

8. Protecting the interests of Tommie Rae and Terry over Brown's Estate/Trust?

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
3rd day of January, 2012

_____ (L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/2011

Exhibit A

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF NEWBERRY	)	Case #2011-CP-36-379

Adele J. Pope, Plaintiff,	)	
v.	)	**AFFIDAVIT SUPPORTING IMMEDIATE RELEASE OF F.O.I.A. DOCUMENTS**
Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	)	

Personally appeared before me, Vic MacDonald, who being duly sworn, deposes and says as follows:

1. I am a resident of Newberry County, and I am a reporter for the *Manning Times*, which is a newspaper in Manning, SC.

2. I have been a journalist for over 35 years, and I have followed the articles in the *Newberry Observer* on the various James Brown court cases.

3. I am the recipient of numerous South Carolina Press Association Awards. I was a former editor for the *Newberry Observer*, the *Greenwood Index Journal*, and the Florence Morning News.

4. During my time as an editor of the *Newberry Observer*, the newspaper successfully sued to obtain a State Law Enforcement Division file in a matter concerning the Clinton–Newberry Natural Gas Authority, and the newspaper was the recipient of the SCPA's Reid Montgomery F.O.I.A. Award.

5. I understand that an F.O.I.A. request has been made to the SC Attorney General's office to get a copy of the "litigation retention agreement" between former Attorney General McMaster and his private attorneys.

6. It is my understanding that the Attorney General's office has not denied that the document is "public," but it has failed and refused to produce copies of this agreement.

7. As a journalist, I have attended numerous local and state governmental meetings, and I have followed the workings of local and state governments at various levels. I have made F.O.I.A. requests..

8. As a journalist, I believe that the letter and the spirit of the Freedom of Information Act is that public officials should give access to public documents promptly and completely. The spirit of that Act is violated if journalists and members of the general public are not allowed easy and quick access to public documents.

9. Although I am not a lawyer, I do not believe there are any exceptions to the production of documents requested under the Freedom of Information Act unless those documents are not considered "public."

10. I am aware that the Attorney General's office has posted on his website other private attorney agreements, as they are public documents.

11. I cannot imagine the reason why the documents requested in this suit should not be produced promptly, particularly considering the public importance of the late James Brown, his estate, and his philanthropy. I believe that the F.O.I.A. is intended to require prompt access to public documents and that there is great public interest in James Brown, his estate, and any challenges to his will or his estate intentions.

SWORN to before me this 9th)
day of December, 2011)
)
)
Cynthia H. Taylor (L.S.)
Notary Public for SC
My Commission expires: Mar 28 2020

Vic MacDonald
Vic MacDonald

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF STEVEN E. FARRAR

FILED
GREENVILLE COUNTY
2012 JAN -9 A 10:20
JACKIE S. POWERS
CLERK OF COURT

PERSONALLY APPEARED before me, Steven E. Farrar, who being duly sworn deposes and says as follows:

1. I am a resident of Greenville County and over eighteen years of age.

2. I make this affidavit based upon my personal knowledge and belief.

3. I am member in good standing of the South Carolina Bar with Bar No. 1960.

4. I am currently the attorney of record for The Cincinnati Specialty Underwriters Insurance Company ("Cincinnati") in two lawsuits pending in the United States District Court for the District of South Carolina, Richland Division captioned as follows:

(a) The Cincinnati Specialty Underwriters Insurance Company, Plaintiff versus Buchanan Law Office, P.A., and Robert L. Buchanan, Defendants, 3:10-cv-02986 WOB; and,

(b) The Cincinnati Specialty Underwriters Insurance Company, Plaintiff versus Adele J. Pope, Defendant, 3:10-cv-02987 WOB (collectively these two actions will be referred to hereafter as the "Coverage Actions").

The Coverage Actions seek the court's declaration as to the rights and obligations of Cincinnati as they relate to a lawsuit filed May 19, 2010, in the Richland County Probate Court captioned Russell L. Bauknight etc. *et al.* v. Adele J. Pope and Robert L. Buchanan, Jr.; 2010-GC-4000073.

5. Discovery is on-going in the Coverage Actions. There are numerous documents which are relevant to the Coverage Actions which should be produced by various parties. Among those documents which could be relevant for coverage analysis are the final as well as all drafts, signed and unsigned, of the James Brown Legacy Trust as well as various correspondence, email and other communications between members of the office of the South Carolina Attorney

General and Russell L. Bauknight related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

6. My understanding is that Pope has attempted to obtain a copy of the foregoing documents pursuant to the South Carolina Freedom of Information Act by Pope on June 30, 2011. I further understand they have not been produced.

7. My belief is that certain, if not all, of these documents are, and should be, public documents available for inspection or that a full and complete disclosure should be made as to why they are not properly available for public inspection.

8. I understand the Freedom of Information Act is intended to provide members of the general public with prompt access to public documents at minimal costs or delay.

9. While I have the ability to issue federal court subpoenas upon the Attorney General of South Carolina in the Coverage Actions to obtain the aforementioned documents, I believe it will save my client time and money by having this Court rule that the documents should be released pursuant to the Freedom of Information Act request from Ms. Pope.

Steven E. Farrar

SWORN TO BEFORE ME this 4th day of January, 2012.

Gayle W McCall

Notary Public for South Carolina

My Commission Expires: 3/25/2015.

1/9/17

ORIGINAL AFFIDAVIT OF STEPHEN FARRAR – OMITTED FROM FILING PACKAGE SENT LAST WEEK.

Per phone call – THANK YOU
Will ask Mr. Silvernail to scan this & send with Case # 2:11-cv-2-364
ADAM SILVERNAIL (803) 779/1770

2012-38

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	Civil Action No. 2011-CP-36-364
Adele J. Pope, Plaintiff,	AFFIDAVIT OF DARYL L. WILLIAMS
v.	
Alan Wilson, in his capacity as Attorney General of South Carolina, and the James Brown Legacy Trust, by Russell Bauknight, its Trustee	
Defendant.	

SCANNED

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10:19
VICKIE S. BOWERS
CLERK OF COURT

Personally appeared before me, Daryl L. Williams, who being duly sworn, deposes and says:

1. Attached is a true and correct copy of the letter I sent to Ms. Tracy Meyers today.

2. Neither Attorney General Wilson nor any member of his staff is attorney of record in Case No. 2010-CP-40-4900, and none attended the status conference.

FURTHER DEPONENT SAYETH NOT.

DARYL L. WILLIAMS

SWORN TO before me this
6th day of January, 2012

_____ (L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/2016

RICHLAND COUNTY
FILED
2012 JAN 17 PM 4:34
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Jeter & Williams, P.A.
ATTORNEYS AND COUNSELORS AT LAW

Edwin Russell Jeter
Daryl L. Williams

1204 Main Street, Suite 200 (29201)
Post Office Box 7425
Columbia, South Carolina 29202

Tel. 803/765-0600
Fax 803/765-0619

January 6, 2012

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10:19
JACKIE S. BOWERS
CLERK OF COURT

Hon. Tracy Meyers
Senior Assistant Attorney General
Office of the South Carolina Attorney General
PO Box 11549
Columbia, SC 29211-1549

Re: Letter of January 5, 2012 to Ms. Sue Summer

Dear Tracy:

I am in receipt of your letter of January 5, 2012 to Ms. Sue Summer. As you know, I am one of the attorneys representing Adele J. Pope in the Richland County civil case (No. 4900) you mention in that letter, as well as a suit pending in the United States District Court.

Your description of the events at the December 12, 2011status conference held in No. 4900, at which neither you nor any attorney on the AG's staff were present, reflects a misunderstanding of what occurred. No counsel for Mrs. Pope stopped or attempted to stop the production of any document to the Court or to anyone else.

With best personal regards.

Very truly yours,

Daryl L. Williams

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	Civil Action No. 2011-CP-36-364
Adele J. Pope, SCANNED Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee, Defendants.	AFFIDAVIT OF ADELE J. POPE SUPPORTING IN CAMERA REVIEW AND IMMEDIATE RELEASE OF DOCUMENTS REQUESTED UNDER S.C. FREEDOM OF INFORMATION ACT ("FOIA") AND EXPEDITED RULING

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10: 18
JACKIE S. BOWERS
CLERK OF COURT

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

1. Based on the facts contained in all earlier filing in this Case and the Letter of Tracy A. Meyers to Sue Summer dated January 5, 2012 [Exhibit A], and my other correspondence with the Office of AG Wilson since July 19, 2011, some of which is attached as Exhibit B, I am informed and believe that since April 2010 Kenneth Wingate and Russell Bauknight, working for Tommie Rae Hynie and Terry Brown, and aided by AG Sonny Jones and advisors to Tommie Rae and Terry, have worked to:

RICHLAND COUNTY
FILED
2012 JAN 17 PM 4: 33
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

a. Secrete all documents which the Supreme Court might be asked to consider confirming the $100 Million value of Brown's music empire.

b. Prevent release of public documents[1] related to the less-than $4.7

[1] Many of the documents Bauknight and Wingate are trying to secrete to protect Tommie Rae and Terry from disclosure of the true value, approximately $100 Million value, of Brown's music empire and the fact that Brown was not married to Tommie Rae when he died were made public with the consent of Brown's fiduciaries, then represented by Lewis & Babcock, and pursuant to Order of the Honorable Doyet A. Early, III dated August 10, 2007 in Aiken County Case 2007-CP-02-0122.

value of Brown's assets asserted by Bauknight, Terry and Tommie Rae..

c. Prevent release of all document which we might present to the Supreme Court in either the Cannon Appeal or the Case 1647 appeal to correct misstatements made by Bauknight, AG Jones and Wingate to the Courts.

d. Prevent the Supreme Court from knowing of the McMaster/Jones and/or Bauknight/Wingate alliance with Cannon;his joint venturer Terry Brown; and their advisors.

e. Prevent the Supreme Court from knowing about Jones' alliance with Tommie Rae and her advisors.

2. I ask the Court to protect me under FOIA by taking immediate control of the original McMaster/Wingate contract to sue Buchanan/Pope referenced in the Summer letter, which the AG's office now admits is subject to disclosure; release a certified copy; and issue a final ruling in all FOIA matters.

3. The following is a chronology of the facts related to my request:

1999 - 2006	Cannon takes $17 Million from Brown, including $5 Million "check to nobody".
2007	Sonny Jones AG's contact person for criminal investigation of Cannon
2008	Terry's Group offers $100 Million for Brown's assets.
November 2008	Cannon utters forged "compensation agreement"
2007 - 2011	AG McMaster/Jones do not join suit to recover $13+ Million taken by Cannon.
2008 - 2009	Terry/Cannon's lawyers make big campaign contributions to AG McMaster.
By Jan. 2009	McMaster forms Legacy Trust. McMaster gives Terry/Tommie Rae about 28% and Terry a right to buy Brown's assets at "fair market value."
February 2010	Cannon indicted for taking $12 Million, but not for $5 Million "check to nobody"
2010	Tommie Rae (lawyer) threatens suit by Jones if Buchanan/Pope do not drop appeal.
May 2010	Wingate/Bauknight/Tommie Rae, Terry, etc. sue Buchanan/Pope alleging tens of million of dollars to Brown's worldwide music empire.
September 2010	Buchanan/Pope counterclaim, asserting millions of loss caused by Bauknight, McMaster/Jones, Tommie Rae, Terry, etc.

November 2010	Wingate defaults on counterclaim against Terry, Bauknight, Tommie Rae, etc.
November 2010	Wingate names Cannon as witness for State.
January 2011	Bauknight secretly tells IRS that we overstated Brown's assets by $79 Million. Does not report this to us or to the Courts.
January 12, 2011	McMaster leaves office. Cannon never tried.
January 31, 2011	McMaster, after leaving office, or (perhaps) AG Wilson and 4 State/AG attorneys ask for sanctions against Buchanan/Pope for filing brief to seek costs from Cannon. [See Mot. dtd. 1/31/11, pp1, 10-12, Exhibit C.]
By May 2011	Bauknight takes control of, and secretes, files of Entertainment attorneys which support $100 Million value.
May 2011	Bauknight/AG Jones ask Supreme Court to supplement record with $4.7 Million.
July 2011	Pope begins making FOIA requests. Receives virtually nothing.
July 2011	Bauknight, through D. Black, threatens Pope with sanctions for exercising FOIA rights.
July 2011	S. C. Supreme Court denies supplementing record with $4.7 Million.
August 2011	Pope files 2 FOIA suits, seeking, principally: 1. Public McMaster/Wingate contract to sue Buchanan/Pope 2. Purported authorization of Bauknight to to speak for AG/State 3. Legacy Trust 4. Info about alleged $4.7 Million value
August 2011 - January 2012	AG stonewalls FOIA requests.
September 22, 2011	AG Jones confirms McMaster/Wingate Contract is Public
October 2011	AG refuses to produce information about how much state money spent to support Legacy Trust; appraisal info.;
October 17, 2011	Pope requests info about Cannon agreements, etc.
October 26, 2011	Wingate moves to intervene in FOIA Case to prevent disclosure of McMaster/Wingate Contract.
October 27, 2011	Pope learns from Cannon of his plea hearing the following day.
October 28, 2011	6:12 a.m. and about 8. Pope emails AG McNair and asks that she, or he speak for victims at Cannon sentencing.. Does not happen. No victim's statement. No restitution sought.

December 6, 2011	Journalist (Summer) makes formal FOIA request for McMaster/Wingate Contract
January 5, 2011	AG's Office again admits McMaster/Wingate contract is subject to Disclosure pursuant to a FOIA request, but refuses disclosure.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope

ADELE J. POPE

SWORN TO before me this
6th day of January, 2012

_____ (L.S.)
Notary Public for South Carolina
My Commission expires: 7/12/2016

C:\DOCS - COLUMBIA\BROWN ADMINISTRATION\Affidavit.AJP.wpd

Exhibit A

ALAN WILSON
ATTORNEY GENERAL

January 5, 2012

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10:18
JACKIE S. BOWERS
CLERK OF COURT

VIA E-MAIL TO SUESUMMER@COMCAST.NET AND U. S. MAIL

Ms. Sue Summer
1903 Main Street
Newberry, South Carolina 29108

Dear Ms. Summer:

I am in receipt of a letter from you dated December 6, 2011 (received in this office December 9, 2011) in which you ask multiple questions (items numbered 1-5) and request one document (item 6). As you titled the request one pursuant to the Freedom of Information Act ("FOIA"), it has been referred to me for reply. Pursuant to the Act, public bodies are to provide persons the right to inspect and/or copy public records in accordance with reasonable rules concerning time and place of access, unless such records are or involve matters exempt from disclosure. While there is no provision in the Act for the asking or answering of questions such as those listed in items 1 through 5 of your letter, please be advised that all of the Attorney General's contingency-fee litigation retention agreements are currently posted on the Attorney General's website at http://www.scag.gov/litigation-retention-agreements with the exception of the "contract" that is at issue in the Richland County Circuit Court case referenced below. Additionally, the response to item 6 referenced below may be of assistance to you as to your inquiries addressed in items 1-5.

Regarding the document you request (item 6), which you refer to as the "McMaster/Wingate contract," there is a pending motion filed in Case No. 2010-CP-40-4900, hereinafter referenced as the "civil case," in the Richland County Circuit Court that seeks a Protective Order concerning, among other items, any such "contract." The document that this Office has in its possession that could be considered as responsive to your request and subject to the subject Protective Order consists of sixteen pages: A one-page letter from Attorney General McMaster to Russell Bauknight, three pages of a "draft" "private" "AGREEMENT FOR LEGAL SERVICES" and an eleven-page unexecuted copy of the standard Attorney General "Litigation Retention Agreement For Special Counsel Appointed by the South Carolina Attorney General" that has been designated as EXHIBIT A.

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-734-3677

This Office does not object to providing the public portions of that item and, in fact, previously attempted at a status conference in the civil case to have turned over documents which would be subject to your request in item 6 but were stopped by Ms. Pope's counsel from doing so because they wanted the entire "contract." Based upon Ms. Pope's counsel's position, the court in the civil case is in the process of scheduling a review of the private portion of the fee contract in order to determine if it is confidential.

While this Office takes no position with respect to the disclosure of the contract involving private attorneys, those attorneys vigorously dispute the disclosure of the private portion of the fee contract and, therefore, it would only be prudent to allow the court to make a determination as to such disclosure.

In summary, at the very least, the public portion of the "contract" is subject to disclosure pursuant to a FOIA request. Such a position does not appear to be contested by any of the parties in the litigation. However, in that this "contract" is an issue in the civil case, I believe the wisest thing to do concerning public documents responsive to your request in item 6 is to put all parties on notice today that, unless I am notified by Friday, January 20, 2012, that a court of competent jurisdiction has placed such documents under seal or otherwise acted in a way that instructs me not to provide this information, I will provide it to you on that date.

Please note that I have copied the Honorable L. Casey Manning and the counsel of record in the civil case as to this correspondence.

Sincerely yours,

Tracy Meyers

Tracy A. Meyers
Senior Assistant Attorney General

cc: The Honorable L. Casey Manning
C. Havird Jones, Jr., Esq.
Mark V. Gende, Esq.
Adam T. Silvernail, Esq.
Daryl L. Williams, Esq.
J. Calhoun Watson, Esq.
Robin A. Braithwaite, Esq.
Kenneth B. Wingate, Esq.

Exhibit B

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10:18
JACKIE S. BOWERS
CLERK OF COURT

ALAN WILSON
SECURITIES COMMISSIONER

October 3, 2011

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

Re: Request for documents under the South Carolina Freedom of Information Act

Dear Ms. Pope:

I am in receipt of your request dated September 9, 2011, requesting certain documents pursuant to the South Carolina Freedom of Information Act ("FOIA").

Responding to your request (numbers 1 and 4), for appraisals and other documents supporting the position of the Office of the Attorney General and/or Russell Bauknight's position on the valuation of the Estate, this Office does not possess any such documents, and therefore, is unable to provide this information to you.

With respect to your request for the title and salary, if over $50,000, (number 2) for the years 2007 – 2010, for Clyde (Sonny) Jones, Robert D. Cook, Julius (JC) Nicholson, Sandra Matthews, Henry McMaster and Mary Frances Jowers, enclosed please find a printout detailing that information.

With respect to your request for public records which would indicate the amount of time/percentage of work each of the above named individuals spent on matters related to James Brown/James Brown Legacy Trust for the years 2007 – 2010, (number 3) Office staff are not required to track time spent on individual cases. Therefore, when we conducted a search of office records, no documents were located.

Lastly, regarding documents showing a total of State funds, including salaries, travel, mediation costs, and all other costs for the years 2007 – 2010, (number 5) we are happy to make available to you all records regarding travel and other costs for the employees of this Office. Because employees of this Office are not required to track information by individual case numbers or individual case names, the information made available will be that for all employees in the Office. Please contact me by letter so we can arrange an appropriate time for us to make this information available to you.

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-734-3677

Pursuant to Section 30-4-30(b) of the South Carolina Code, agencies are permitted to charge reasonable fees not to exceed their actual costs to provide records, and this Office has elected to charge the fees as a way to offset the costs of responding to requests. This Office charges $18.90 per hour of staff time for locating and copying records responsive to requests and $.20 for each page copied. These costs are directly related to the cost to the Office for staff to search for and copy responsive records. Once we determine the estimated amount of staff time to locate and copy the records responsive to your request, I will contact you to obtain an appropriate deposit.

Sincerely yours,

Tracy Meyers

Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn

Enclosure

Exhibit 15 (cont'd)

1228 Walnut Street
Newberry, South Carolina 29108

October 5, 2011

BY FAX AND FIRST CLASS MAIL
Fax No. 803-734-3667

Tracy A. Meyers, Esquire
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Ms. Meyers and Records Custodian:

I received yesterday, and thank you for, the letter of Ms. Meyers dated October 3, 2011. With the mailed copy of this letter I am enclosing a deposit of $300, and ask that I be able to come to your office at the earliest convenience on the first of the following dates you have available:

This Friday, October 7	9:30 - closing
Tuesday, October 11	1 p.m. until closing
Thursday, October 13	9:30 until closing
Monday, October 17	9:30 until closing

My cell phone number is 803-413-0753. Since I am a little over 40 miles away, I would appreciate your letting me know as soon as possible which dates suit.

Please do not let your answers to the questions below delay scheduling my appointment to review whatever documents you have.

I am prepared, each day, to pay the estimated amount - in addition to the enclosed $300 – of what the additional work we will need to do will take.

I expect my FOIA inquiries to last a long time, as — in order to receive specific documents – I made my initial inquiries as specific as possible. Since I will be examining records which you apparently do not keep in the form I requested, I want my search to be as efficient as possible. I hope your answers to the following questions will help:

a. The Charges you pose. It is my understanding that FOIA requires you to charge the smallest amount necessary to provide the records. You say $18.90

per hour is the charge for locating and copying. Is it not possible for me to review the records myself – either computer or hard copy – making notes, and then make specific requests?'

For example: The point of my requests 2, 3 and 5 on September 9, 2009 was to determine what information the State has about how much State money has been devoted to James Brown matters since August 2007, and how much to James Brown/James Brown Legacy Trust matters since 2008.

If the State has not compiled this information, as you indicate, I still want to compile my own estimates from the data requested in 2,3 and 5 of my letter of September 9. I have detailed information about hearings, appearances, meeting, etc., which – together with your data – would help put that together.

Will someone at $18.90 an hour do this with me? Or may I do it myself on a computer at your office – and perhaps bring a more computer-oriented person to assist me? Can it be a combination of the two?

b. Your Response to Requests 2 and 4 Regarding the $85 Million vs. $12 Million vs. $4.7 Million values placed on James Brown's music empire, assets

My request of September 9, 2011 was for:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 **[in bold]** statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million ($85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million ($100,000,000.00) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. **By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although the expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust**

will not exceed Twelve Million ($12,000,000.00) Dollars.

AND

4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about $6.5 Million and his worldwide music empire less than $4.7 Million on that date.

Ms. Meyer's response was:

> Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you.

I respectfully suggest that this answer is not correct.

In August 2010 the Office of Attorney General McMaster represented to our Supreme Court what the contents of a draft appraisal contained.

In May 2011, the Office of Attorney General Wilson provided our S. C. Supreme Court with copies of portions of an Estate Tax Closing Letter and related IRS documents from January 2011 directly related to this request, showing that – at least by May 6, 2011 – the AG's Office had this information in that form. Those documents – if no others exist – would be responsive to my request if May 6, 2011 is the first day the AG learned that Russell Bauknight asserted James Brown's worldwide music empire was worth less than $4.7 Million when Brown died.

If the AG's Office learned this information before May 6, 2011, that is the subject of my request #4 of September 9.

As to Request #1, it is reasonable to assume that the AG looked at something when he represented to the South Carolina Supreme Court on August 23, 2010 that an expected appraisal – already in draft form – showed that James Brown's assets – repeatedly reported by the AG's Office and others to be worth $100 Million ($85 Million after the TIAA Debt)– would soon be found to be worth less than $12 Million, a figure, the AG represented, was already found in a draft proposal.

Because of the importance of understanding the State's involvement, if any, in the representation by the AG's appointee, Mr. Bauknight, to the IRS that Bob Buchanan and I committed a criminal overstatement of James Brown's assets on a sworn Estate Tax Return, I ask that you carefully check to confirm that the AG's Office – as you state – has no documents to support its August 2010 assertion of the less-than-$12 Million value and no record of when it first learned (before May 6) of the less-than $4.7 Million for the worldwide music empire it reported to the Court on May 6, 2011. Thank you.

c. My other FOIA Requests Which Are Not the Subject of Pending Litigation.

I hope that your response to my September 9, 2011 FOIA request means that the AG's Office has reconsidered the 5 Requests I made on July 20, 2011, which you did not challenge, but failed to fill, including those briefly described below, which I may now review and copy:

1. July 20, 2011 - **11-Page Memorandum** from "tax experts" referenced by CH Jones in April 6, 2009 Hearing, Case 122.

2. July 20, 2011 Communications, Meetings, etc., with **Toby Byron** of New York. [He is the man who asserted in December 2007 that Albert H. "Buddy" Dallas had offered him 5% of a sale of the James Brown assets, then later recanted that representation. He wrote several letters to various people 2007 - 2009, with copies to the SC AG. He had a number of telephone meetings with Sr. Assistant AG CH "Sonny" Jones as indicated in the email of Sonny Jones to RL Buchanan, Jr. and me dated December 6, 2007 re: $100 Million initial offer for James Brown assets.]

3. July 20, 2011 Communications, Meetings, Etc. With **Dr. Terry Bradford Cox** . Mr. Cox, also mentioned by Sonny Jones in his December 6, 2007 email related to the $100 Million initial offer for the James Brown assets, also met at least one additional time – on or about July 31, 2008 – with Sonny Jones, another AG and an agent for Tommie Rae Hynie. Like Mr. Byron, Dr. Cox corresponded with various people and copied that correspondence to the AG's Office.

4. July 20, 2011 Communications, Meetings, etc., with Albert H. **"Buddy" Dallas** and/or **Forlando Brown.** Mr. Dallas had numerous documented – and as yet undocumented – meetings with the Office of AG McMaster, and his joint venturer, Forlando Brown, also had various communications, including the joint February 7, 2008 TV appearance with AG McMaster.

5. July 20, 2011 PG documents.

Please confirm if this is true, so that I may avoid another FOIA suit.

As stated above, please do not let your answers to any of these questions delay scheduling a time for me to come review the documents responsive to my September 9, 2011 request, as I want to do that as soon as possible.

I look forward to coming to the Office; obtaining what you have; and spending a day, or more as needed, gathering the information I have already requested; and learning how to make subsequent requests more efficient so that I may acquire the needed public information as efficiently as possible.

Thank you in advance for an immediate response to my cell phone 803-413-0753 or email to allow me to come to begin obtaining this important public information.

Sincerely,

Adele J. Pope

AJP/ja
Enclosure in mailed copy: Check for $300.00

1228 Walnut Street
Newberry, South Carolina 29108

October 17, 2011

Certified Mail - Return Receipt Requested

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Request for Documents under the South Carolina Freedom of Information Act - David G. Cannon

Dear Records Custodian:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act ("FOIA").

I would like to receive copies of the following documents/CDs:

1. The CD sent to counsel for David G. Cannon in 2010 containing the information on which his 2010 Barnwell County Indictments were based.

2. All orders, directives, records or protocol which explain why the Office of the S. C. Attorney General, rather than a Circuit Solicitor, is handling the 2010 indictments of David G. Cannon.

3. Any directives or protocol which describe the policy of the Office of the Attorney General as relates to its dealings with David G. Cannon in Civil Actions related to James Brown and criminal indictments related to James Brown.

4. Any information about any plea agreement offered and/or reached between the State and David G. Cannon as to any indictment.

5. Information about the scheduling of any plea agreement or trial scheduled for David G. Cannon.

6. Any statement of victims of the alleged crimes of David G. Cannon.

7. Any and all statements, correspondence or other documents received from David G. Cannon on which the State of South Carolina, acting through Kenneth B. Wingate, based its decision to named David G. Cannon as a witness for Plaintiff AG McMaster in November 2010 in Civil Action No. 2010-CP-40-4900.

8. All policies of the Office of the Attorney General with respect to acceptance of political contributions from indicted persons and/or their counsel.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,

Adele J. Pope

AJP/ja

Re: EMAIL FROM DAVID CANNON, SHERRI LYDON -REQUEST REGARDING PLEA

Re-send Forward Delete Download Message Display Headers Translate Printer Friendly

From: Adele Pope Date: 10/27/2011 8:17:09 AM
To: rmcnair@scag.gov
Cc: rmcnair@scag.gov,rlbuchananjr@bellsouth.net,dwilliams@jeterandwilliams.com,adam@silvernaillawfirm.com,mplowden@scag.gov

Dear Mr. McNair:

The following is my earlier letter, with a few typos, etc. corrected. My email to you this morning was hastily put together to get you the information as fast as possible.

Also, although Mr. Cannon and Ms. Lydon's emails were sent during the day yesterday, I did not receive them until last evening.

Thank you,

Adele Pope
8:16 a.m., October 26, 2011

<-----Original Message----->
From: Adele Pope [adele@popelawfirm.com]
Sent: 10/27/2011 6:12:36 AM
To: rmcnair@scag.gov
Cc: rlbuchananjr@bellsouth.net,dwilliams@jeterandwilliams.com,adam@silvernaillawfirm.com;mplowden@scag.gov
Subject: EMAIL FROM DAVID CANNON, SHERRI LYDON -REQUEST REGARDING PLEA

Robert E. McNair III, Esquire
Assistant Attorney General
Office of the Honorable Alan Wilson

Re: Proposed Plea of David G. Cannon - James Brown matters -- Indictments: Felony Breach of Trust 1999,2000, 2001, 2002, 2003, 2004, 2005, 2006 and Forgery 2008

Dear Mr. McNair:

On October 17, 2011, having heard that David Cannon might be entering a plea in relation to the James Brown matters set out above, I sent a FOIA request for certain information about the plea.

The 15 business days since my request are not up, but last night I received the attached emails from Mr. Cannon and Sherri Lydon, Esquire, indicating that Mr. Cannon's plea may be today. According to personnel in Barnwell County, the Office of AG Wilson, through you, is in charge of this matter.

Could you kindly confirm for me this morning if I am correct that the plea will be before Judge James in Aiken today at 4. If that is not correct, please advise of the day, time and place. My cell number is 803-413-0753. Thank you in advance.

As explained below, I consider myself an intended victim of David Cannon's November 2008 forgery. I was also personally involved in uncovering the first approximately $7 Million taken by Mr. Cannon between 1999 and 2002 and the $900,000 he took in 2006. I watched and studied as Kendall Few and others uncovered and documented the remainder of the takings -- totaling more than $12 Million.

I know you have all of the financial information, but I believe that I have special information about the extremely devious methods by which David Cannon covered up his takings and tried to make others appear to be the

wrongdoers. I would appreciate it if you would allow me to share these with the Court through a statement -- or if you would present the facts to the Court.

Statement of Interest: Intended victim of David G Cannon's November 2008 forgery, designed to cover up David Cannon's $900,000 takings
from James Brown in 2006 and the fabricated Judgment filed in Aiken County in early 2007.

Served with Robert L. Buchanan, Jr. as Special Administrator of the Estate of James Brown from March 7, 2007until November 20, 2007, working personally with David G. Cannon until August 10, 2007, and with remaining Personal Representatives during period.
[During this period approximately $7 Million of David Cannon's takings were discovered.]

Actively served with Mr. Buchanan as Personal Representative of the (Aiken County) Estate of James Brown during period from November 20, 2007 through 2008, and later
[During this period the remainder of the $12+ Million takings were uncovered and Mr. Cannon uttered the November 2008 forgery.]

The specific observations I have, in addition to details of the above takings and forgery which you, I am sure, already have, are:

The Fabricated Judgment: Mr. Cannon was extremely calculating and devious in covering up his activities. So far as I know, Mr. Brown had no knowledge of Mr. Cannon's massive misappropriations prior to his death in December 2006. Before Bob Buchanan and I met Mr. Cannon on March 26, 2007, he had already filed a fabricated judgment against James Brown in Aiken County just after Brown's death. The purpose of the judgment appears to have been either to cover up $900,000 or earlier takings, provide a method for taking an additional $900,000, or both.

After we questioned Mr. Cannon about the Judgment, he simply marked it satisfied, and sought other means to cover up what he had done.

In August 2007 Mr. Cannon was secretly involved in the aborted attempt to transfer the James Brown 2000 Trust to Georgia to avoid discovery of his deeds.

In August 2007 when Mr. Cannon resigned as PR/Trustee, he delivered his James Brown Historical files to a space behind my office. Although the documents were controlled by the remaining PR/Trustees Al Bradley and Buddy Dallas, and their counsel Cam Lewis/Keith Babcock and others, I observed the documents and transactions as SA.

I was present when Mr. Bradley and others discovered what became known as the "$5 Million check t nobody" which Mr. Cannon had cashed from Brown's money in 1999.

I was present in November 2007 when Mr. Cannon told the Court, under oath, he had never hired Powell Goldstein to remove Brown's Trust to Georgia, even though he had just received a $48,225 bill from them (9/15/07).

I was present at a James Brown hearing in Aiken County in November 2008 when David Cannon was asserting Judge Early was unethical and should be recused, and James Brown's assets had declined by $60 Million since his death two years earlier, at virtually the same time Mr. Cannon, himself was uttering a forged "compensation agreement" for the dual purpose of covering up his wrongdoing and making it appear that Bob Buchanan and I had falsely accused him of the $900,000 taking in 2006.

Should you need more details, I will be glad to provide them. But, in short, Mr. Cannon is very apt financially, very smart, and very calculating. While I was only an intended victim, the real victims are the needy and deserving students seeking education in Georgia and South Carolina who should have received the benefit of the $12+ Million Mr. Cannon misappropriated.

I am copying this email to my 2 attorneys and Bob Buchanan. Since the David Cannon and Sherri Lydon emails did not come [were not read] until last night and I have not had a chance to speak with them.

Thank you in advance for an opportunity to speak as a victim and/or have you express my concerns on behalf of the victims. Thank you, also, in advance for confirming the exact time, date, place of the plea.

Sincerely,

Adele J. Pope
6:09 Thursday, October 27, 2011
[Typos,etc. corrected 8:14a.m.]

P.S. I also look forward to receiving the information requested under FOIA on October 17, 2011 related to David G. Cannon's activities, plea, etc., but understand that may be handled by another part of the Office of Attorney General Wilson

<-----Original Message----->
From: Sherri Lydon [Sherri@LydonLawFirm.com]
Sent: 10/26/2011 11:54:52 AM
To: David Cannon
Cc: Danny Black,adele@popelawfirm.com
Subject: RE: Speaker

Ms. Pope, this was inadvertently sent to you. We apologize for any inconvenience, but it requires no response from you.
Sherri

From: David Cannon [mailto:dgcannon2001@gmail.com]
Sent: Wednesday, October 26, 2011 11:17 AM
To: Sherri Lydon
Cc: Danny Black; adele@popelawfirm.com
Subject: Speaker

One of our friends, Danny Black, will speak for me tomorrow. You will like him.

If you would like to talk to him, his office number is 803-541-0023 Cell 541-1588.

Thanks

David

Exhibit C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10: 18
JACKIE BOWERS
CLERK OF COURT

Appeal from the Circuit Court of Aiken County, South Carolina

Doyet A. Early, III, Circuit Court Judge

Docket No.: 2007-CP-02-0122

Ex Parte: David G. Cannon,.....**Appellant,**

v.

Ex Parte: Georgia Attorney General's Office; South Carolina Attorney General's Office; Terry Brown; Romunzo Brown; Forlando Brown; Darren Lumar; M&T Bank; Tommie Rae Hynie Brown; Stephen L. Slotchiver, the GAL of James Brown, II; Larry Brown; Daryl Brown (Individually and on behalf of his minor children Lindsey Delores Brown and Janise Vanisha Brown); Vanisha Brown; Deanna J. Brown Thomas (Individually and on behalf of her minor child Jackson Brown-Lewis); Yamma N. Brown Lumar (Individually and on behalf of her minor children Sydney Lumar and Carrington Lumar); Tonya Brown; Robert L. Buchanan Jr. and Adele J. Pope, as Special Administrators; Albert Dallas and Alfred A. Bradley, as Personal Representatives of the Estate of James Brown a/k/a
James Joseph Brown,.....**Respondents,**

In Re: The Estate of James Brown, a/k/a James Joseph Brown.....**Respondent.**

MOTION TO STRIKE POPE AND BUCHANAN'S BRIEF

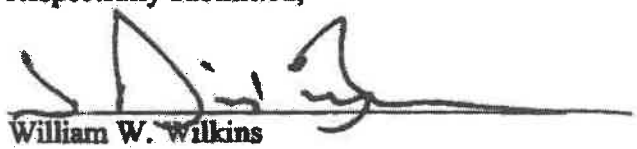
Respondents respectfully move this Court for an Order (1) striking Pope and Buchanan's brief for they are not parties to this appeal, have not sought to intervene, and regardless have no standing to involve themselves in this appeal, and (2) sanctioning Pope and Buchanan pursuant to Rule 269 by levying costs and attorney fees against them, as their act of filing this brief is both frivolous and in direct contravention to previous Orders of this Court and the circuit court.

and Buchanan do not have a personal stake in the subject matter of this litigation, they do not have standing to file a brief.

Rule 269: Sanctions

Pope and Buchanan's frivolous conduct has forced the Respondents to expend valuable time and resources to reply to their brief. Under Rule 269, SCACR, when this Court receives a frivolous filing, it may "impose upon [the] offending attorneys . . . such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." As discussed above, Pope and Buchanan have a long, tortured history with this Court and its rulings that relate to their involvement in the Estate and Trust litigation. From that history, it is untenable to conclude that Pope and Buchanan have acted in good faith by filing their brief in this Court. Moreover, Pope and Buchanan have injected themselves into this appeal without any authority, and are requesting this Court to provide relief both unrelated to the *Cannon* remand instructions and rejected by the circuit court. Accordingly, Respondents respectfully request that this Court sanction Pope and Buchanan by requiring them to pay for the costs and attorney fees expended to respond to their frivolous brief.

Respectfully submitted,



William W. Wilkins
J. David Black
Fred L. Kingsmore, Jr.
NEXSEN PRUET, LLC
55 East Camperdown Way, (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
(864) 370-2211
Attorneys for Respondent Russell L. Bauknight, as the Court Appointed Trustee

of the James Brown 2000 Irrevocable Trust and Personal Representative for the Estate of James Brown and as the Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust

Henry D. McMaster
C. Havird Jones, Jr.
Robert D. Cook
J.C. Nicholson, III
Mary Francis Jowers
OFFICE OF THE ATTORNEY GENERAL
STATE OF SOUTH CAROLINA
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

Louis D. Levenson
LEVENSON & ASSOCIATES
125 Broad Street, SW
Atlanta, Georgia 30303
(404) 659-5000
Attorneys for James Brown Children and Grandchildren Daryl J. Brown, Individually and on Behalf of his minor children, Lindsey Delores Brown and Janise Vanisha Brown; Deanna J. Brown Thomas, individually and on behalf of her minor child, Jason Brown Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar, Carrington Lumar, and Tonya Brown; Vanisha Brown; Larry Brown

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
(843) 377-1700
Attorneys for Tommie Rae Hynie Brown

Matt Bodman
MATT BODMAN P.A.
1500 Calhoun Street
Columbia, South Carolina 29201
(803) 806-8605
Attorney for Terry Brown

Albert P. Shahid, Jr.
Shahid Law Office, LLC
89 Broad Street
Charleston, South Carolina 29401
(843) 853-4500
Attorney for Stephen M. Slotchiver, Guardian ad Litem for James Brown II

January 31, 2011

Columbia, South Carolina

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS
Adele J. Pope, Plaintiff, vs. Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Defendants.	Case No. 2011-CP-36-00364 **AFFIDAVIT OF RUSSELL L. BAUKNIGHT**

FILED
NEWBERRY COUNTY
2012 JAN 11 P 12:59
JACKIE S. BOWERS
CLERK OF COURT
FILED
RICHLAND COUNTY
2012 JAN 17 P 4:02
JEANNETTE W. WALKER
C.C.P. & S.

PERSONALLY APPEARED BEFORE ME, the affiant, Russell L. Bauknight, who, being sworn, deposes and states the following:

1. I am a resident of Richland County, South Carolina;
2. The principal place of administration and usual place of business for the below mentioned Estate and Trusts is located at 1517 Gervais Street, City of Columbia, Richland County, South Carolina 29201;
3. For nearly three years I have served as the court-appointed Personal Representative and Trustee of the James Brown Estate and August 1, 2000, Irrevocable Trust Agreement (Trust);
4. For nearly three years I have also served as the Trustee for the James Brown Legacy Trust. The Legacy Trust was created pursuant to a settlement agreement that ended years of litigation surrounding the validity of James Brown's Will and Trust.
5. As its Trustee, I manage, control, and oversee the Legacy Trust. While the South Carolina Attorney General has a right to remove and replace me, the beneficiaries of the Legacy Trust—the James Brown Children, for example—also have the right to remove me pursuant to the Trust Code.
6. Ms. Adele Pope appealed the settlement agreement and that appeal is pending at

the South Carolina Supreme Court; both briefing and oral argument have already occurred in that appeal and the parties are awaiting the Court's opinion;

7. At the briefing stage of the appeal, Ms. Adele Pope affirmatively stated that "[p]rivate foundations such as the 'I Feel Good' foundation/trust are not public charities." (Appellants' Brief, p. 5) (attached as **Exhibit A**)). Her position that the Trust is private can be found throughout her briefs. (*E.g., id.* at pp. 3,4,5,6,7; Appellants' Reply Brief, pp. 2,5);

8. The Trust was to be funded with the private property of James Brown. Consequently, Ms. Adele Pope correctly referred to the Trust in her brief as "private";

9. Similarly, the Legacy Trust will be funded with the private property of James Brown pursuant to the terms of the settlement agreement. The Legacy Trust is designed to carry out the same private charitable goals as the Trust. Consequently, the Legacy Trust is also private;

10. I understand a Freedom of Information Act (FOIA) request has been filed seeking documents establishing the Legacy Trust;

11. It is my understanding that FOIA exists to allow a citizen to request documents and information related to public bodies and public documents. Accordingly, I do not believe that the Legacy Trust—a private trust—is the proper object for a FOIA request;

12. The Legacy Trust is not a public body as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 30-40-20(a) (Attached as **Exhibit B**);

13. Because the Legacy Trust is not a public body, it does not possess public records as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 30-40-20(c);

14. The Legacy Trust is not supported in whole or in part by public funds, nor does the Legacy Trust expend public funds. Accordingly, it is my understanding that the Legacy Trust documents are private trust documents;

15. Pursuant to the South Carolina Trust Code, Circuit Judge Casey Manning previously ruled that actions involving the James Brown Trusts, including the Legacy Trust, are subject to venue in Richland County. (See Judge Manning's

November 8, 2010 Order on Trust Venue Attached as **Exhibit C**);

16. In the event that this action is not dismissed, it should be transferred to Richland County or consolidated with the action pending there.

FURTHER AFFIANT SAYETH NAUGHT,

Russell L. Bauknight

SWORN and subscribed to before me

This 10th day of January, 2012

(L.S.)

Notary Public for South Carolina

My commission expires: 2-19-2019

EXHIBIT A

FILED
NEWBERRY COUNTY
2012 JAN 11 P 12:59
JACKIE S. BOWERS
CLERK OF COURT

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. and Carrington L.; Tonya Brown; 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, Defendants,

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 the ..... 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 Administrator 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.

FINAL REPLY BRIEF OF APPELLANTS

James B. Richardson, Jr.
1229 Lincoln Street
Columbia, South Carolina 29201
(803) 799-9412

Tressa T. H. Hayes
Post Office Box 7346
Asheville, North Carolina 28802
(803) 603-8583

Attorneys for Appellants.

642 S.E.2d 740 (2007). Standing is assessed under all the facts and circumstances of the particular case, and this case is unprecedented.

The Court has identified the sources of standing, as follows:

> Standing may be acquired: (1) by statute; (2) through the rubric of "constitutional standing;" or (3) under the "public importance" exception.

ATC South, Inc. v. Charleston County, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008).

The appellants possess standing in all three ways.

A. The appellants have standing and authority under the 2000 Trust and the default trust code provisions.

The first place to look for an authoritative answer to the question of standing is the Code of Laws. *See, e.g., Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) (FOIA confers standing upon citizens).

The applicable code — the South Carolina Trust Code — is primarily a "default statute." The terms of a trust prevail over any trust code provision, with eleven exceptions. These exceptions do not include the authority to settle claims against the trust, or to represent or act for the trust in the defense or settlement of a will contest. S.C. Code Ann. § 62–7–105(b). Thus, the Trust Code confers upon a settlor the authority to appoint those who may defend the trust against attack and to appoint those who may settle claims in its behalf. The Court must therefore look to the terms of the 2000 Trust before looking to the statute, in order to determine who has authority to defend the trust, to settle claims against it, and to act for it in the settlement of a will contest.

1. The 2000 Trust confers upon the trustees the authority to defend the trust.

The private, partially charitable 2000 Trust expressly gives authority and fiduciary discretion to its trustee 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." [2000 Trust, Art. X(19), R. p. 2088.] James Brown's will and 2000 Trust provide that any challenges to the estate plan "shall be considered an affront

C. This is a case of public importance.

The "public importance" exception to traditional rules of standing is now firmly seated in the jurisprudence of this state. *See, e.g., Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005); *Sloan v. Hardee*, 371 S.C. 495, 640 S.E.2d 457 (2007); *Sloan v. Greenville Hosp. System*, 388 S.C. 152, 694 S.E.2d 532 (2010) (demonstrating that the public importance exception is so well-established at this point that Sloan's standing is no longer even challenged); *Sloan v. School Distr. of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000); *Sloan v. Greenville County*, 356 S.C.531, 590 S.E.2d 338 (Ct. App. 2003).

The case at bar is of public significance on two levels.

First is the impact of the order of May 26, 2009 on the private foundation which Mr. Brown created for the education of students at South Carolina and Georgia schools. This case raises the question of whether potentially thousands of college students in the decades ahead will be deprived of the scholarship benefits intended for them by the testator. Given the importance of education in our pantheon of values, it is scarcely debatable that this is a matter of substantial public importance.

On a second level of public importance is the question of whether the Attorney General has the legal authority to take over the administration of an estate and the operation of a private trust, settling a will contest and claims against the estate as he sees fit and preempting fiduciaries without cause. Private foundations such as the "I Feel Good" foundation/trust are not public charities. They are an expression of private philanthropy sanctioned by this State and by the Internal Revenue Code. The benefactor is granted certain tax benefits in exchange for dedicating assets to charitable, educational or scientific purposes selected by the settlor. Persons considering the creation of private foundations, and counsel advising them, should know whether the Attorney General has the authority claimed by him in this case. Private philanthropy in South Carolina would be chilled if a

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
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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 Administrator 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.

FINAL BRIEF OF APPELLANTS

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Asheville, North Carolina 28802
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Attorneys for Appellants.

and was consolidated with the appellants' appeal of subsequent orders appointing and reappointing Mr. Bauknight in various fiduciary capacities.[2]

The consolidated appeals were transferred from the Court of Appeals to the Supreme Court, and this appeal followed.

STATEMENT OF FACTS

Throughout his lifetime, entertainment legend James Brown advocated the value of education. He determined to leave the great bulk of his estate to that cause. Ten years before he died, he engaged counsel and began planning The James Brown "I Feel Good" private foundation. By early 1999, the components of a complete estate plan — including a will, a revocable trust and a durable power of attorney — were ready for Brown's signature. These were executed on June 15, 1999, four days after Brown completed a $26 million financing transaction for himself and his wholly-owned company, James Brown Enterprises, Inc. ("JBE, Inc.") in New York (the "TIAA debt").

The will of 1999 gave Brown's entire residuary estate to the trust, which at Brown's death was to be divided as follows: one-half for the education of the seven grandchildren, with a cap of $2 million;[3] and one-half for the "I Feel Good" private foundation, providing scholarships for students at Voorhees, U.S.C. Aiken, and U.S.C. Salkehatchie. [1999 Will, Item II, R. p. 415; 1999 Trust, Article V, R. p. 422.]

Brown specifically excluded all past and future spouses and all children and other claimed heirs from inheriting his music empire. *In terrorem* forfeiture clauses required his fiduciaries to vigorously defend any challenge to Brown's estate plan as an affront to his

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[2] On August 3 and 6, 2009, the Attorney General and some respondents sought and obtained *ex parte* orders appointing Mr. Bauknight as special PR and special trustee. Requests to reconsider and vacate these orders were consolidated as Case 2009-CP-02-1810 ("Case 1810"), and denied.

[3] The cap was tied to the Generation Skipping Tax exemption available at Brown's death. [1999 Trust, Article III, R. p. 420–21.] Subject to the *in terrorem* forfeiture clauses and the spendthrift clause, each of the seven grandchildren had an education fund of about $285,000.00 by virtue of the 1999 will and revocable trust.

wishes. [1999 Will, Item X, R. p. 418; 1999 Trust, Article XIX, R. p. 431.] A spendthrift clause confirmed that all funds would be used solely for education. [1999Trust, Article XVII, R. p. 431.]

Under the 1999 estate plan, Brown named as his fiduciaries: daughter Deanna; attorney Dallas; accountant Cannon; road manager Bradley; friends Willie Glenn and Ella Overton; and office assistant Freida Carter. NationsBank of South Carolina was named backup PR and trustee. [1999 Will, Item II, R. p. 415; 1999 Trust, Intro and Article VI, R. pp. 420, 423.]

The following year, on August 1, 2000, Brown made minor modifications to his estate plan. [2000 Trust, Article VII, R. p. 2083.] He expanded the scholarships to include needy and deserving students attending schools in South Carolina and Georgia. He made the Trust irrevocable and funded it with a deed to his 60-acre home estate at Beech Island, in Aiken County, and with his stock in JBE, Inc., which held about two-thirds of the royalties to Brown's more than 800 published songs.[4] Like the 1999 estate plan, the 2000 will and 2000 Trust contained *in terrorem* forfeiture clauses, and the Trust included a spendthrift clause.

Mr. Brown died at age 73 on December 25, 2006. The part of his music empire that was not already in the 2000 Trust was devised to it. It appeared that Brown had created possibly South Carolina's largest individual private foundation dedicated solely to educating

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[4] As a result of Dallas' conflicting statements to the courts, the question of who owns JBE, Inc. — the estate or the 2000 Trust — was uncertain for some time. Cannon confirmed that JBE, Inc., has been owned by the Trust since its inception. In September 2007 Dallas filed a knowingly false stipulation asserting that JBE, Inc., had never been transferred to the Trust. Dallas told AG Jones that he was forced to agree to the false stipulation. He later testified he authorized the false stipulation in order not to be removed. [R. pp. 106–07.] In their appeal brief in the Court of Appeals, Dallas and Bradley finally confirmed, as Cannon had always asserted, that Brown transferred, and the trustees accepted, JBE, Inc., into the Trust in 2000. [R. p. 1018.]

the needy.[5]

Like the 1999 will, the 2000 will contained a "savings clause," incorporating the trust so that both the grandchildren's education trust and the "I Feel Good" Trust would be created even if the 2000 Trust were not in existence when Brown died. The practical effect of these savings clauses was that four separate documents directed that Brown's music empire go to the Brown Family Education trust and the "I Feel Good" private foundation — the two subtrusts of, first, the 1999 (revocable) trust, and second, the 2000 (irrevocable) trust.

Like the 1999 estate plan, Brown's final estate plan acknowledged as his heirs four of his five legitimate children, as well as two of his more than six claimed children not presumed to be heirs. Among those excluded were three heirs who have qualified as children under the estate's DNA protocol, established by original counsel after Brown's death.[6] [1999 Will, Intro, R. p. 414; 1999 Trust, R. p. 420; Will, Intro, R. p. 2071; Trust, Art. XXII, R. p. 2094.]

For the next seven years the 2000 Trust, of record in two states, operated Brown's home estate at Beech Island. The 2000 Trust also bought and sold a bank building in Augusta [R. p. 1104] and paid education benefits for four of the seven grandchildren.

By 2007 Dallas and Cannon had ransacked at least $13 million of Brown's assets. [R. p. 1230–71.] It appears that neither Brown nor Deanna and Bradley, co-fiduciaries with

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5

The Estate/Trust's original tax counsel valued James Brown's assets at $80–$120 million with at least $20 million already in the 2000 Trust. [R. pp. 2172, 2173.] On June 15, 2008 Atlanta investor and branding executive Dr. Terry Cox estimated the total value of the assets at about $100 million, with $40–50 million assigned to publicity rights (image/likeness) and $36–45 million to royalties for Brown's more than 800 published and unpublished songs. [R. pp. 462–70.]

6

Those claimed and presumed heirs specifically excluded by the language of both the 1999 and 2000 estate plans are Deon (incarcerated); Lisa (born of first marriage); Jeanette (DNA protocol); LaRhonda; (DNA protocol); Cinnamon (DNA protocol); James II (orally directed to take, but refused, a prepaid DNA protocol through GAL); Tonya (claimed grandchild, but no DNA and her counsel filed a statement omitting her as an heir). [R. pp. 184; 904–09.]

Dallas and Cannon for seven years, knew of the massive pre-death misappropriations as they were taking place.[7]

In December 2007, immediately after their appointment on November 20, appellants filed the long-overdue application for IRS recognition of the "I Feel Good" Trust, making small technical amendments to the Irrevocable Trust, as allowed by the Trust, to assure IRS approval.[8] By March 2008 they had assembled an Advisory Board for the 2000 Trust, including some of the distinguished leaders Dallas and Cannon had named but never called to serve.[9]

In the final ten days of December 2007, the will and the 2000 Trust were challenged by some of the children and by Tommie Rae Hynie Brown on the ground of undue influence. In March 2008, an amended complaint of some of the children was filed, but it failed to allege any facts to support the claim that Brown's 2000 Trust or the will were the product of undue influence. [R. p. 1156–65.][10]

No discovery took place, and pending dispositive motions were never heard. Having been impleaded in an earlier action, the Attorney General took over as spokesman for the

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7 Brown never used the funds he had intended for retirement not only because they were misappropriated, but also because he continued to be "the hardest working man in show business" until just before his death at 73. Brown grossed about $6 million per year in road appearances the last three years of his life. Most of Brown's approximately $3 million per year in royalties was pledged to bring down the TIAA royalty-backed debt. The TIAA debt had been reduced from about $17 million the summer before Brown's death to about $11 million when appellants' service was terminated on May 26, 2009.

8 Like most private foundations, the "I Feel Good" Trust, although irrevocable, gave the Trustees the authority to amend the Trust solely to assure IRS compliance.

9 Appointed were: Dr. Leonard McIntyre, Interim President of S. C. State University; Ms. Inez Tenenbaum, former S. C. Superintendent of Education; Ret. Judge Walter Williams; and Ms. Ann Carmichael of U. S. C. Salkehatchie. Ms. Tenenbaum resigned to accept a federal post. [*See* R. pp. 1005-06.]

10 By administrative directive Case 872, which was originally filed with Case 122, was segregated by the Clerk about May 14, 2008. Earlier documents bear the civil action number of Case 122.

2000 Trust and settled the undue influence claim and the omitted spousal claim of Tommie Rae in a mediation to which the appellants, as trustees of the 2000 Trust, were not invited to attend. The Attorney General took over for the 2000 Trust and agreed for it to relinquish roughly half its devise in settlement of these claims. Instead of about 98% of assets after expenses, with no estate taxes, the 2000 Trust would receive 47.5% percent after estate taxes, but then further reduced by $2 million — the amount required to fund the grandchildren's education trust.[11] The only expert testimony offered at the hearings below on the subject of taxation was to the effect that the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest, and moreover that the "Legacy Trust", created by the settlement, would likely cause the "I Feel Good" Trust to be disqualified as a Section 501(c)(3) private foundation, resulting in income taxation problems in addition to the estate tax generated. [R. pp. 1900-03.]

The proponents of the settlement offered no witnesses to support the contention that the claim of undue influence, allegedly voiding the will and the 2000 Trust, was supported by any evidence. The circuit court did not purport to find merit in the claim of undue influence, but found that the claim was brought in good faith. The court found that the Attorney General was entitled to control and speak for the 2000 Trust, not the trustees, and that the Attorney General was empowered to settle the will contest and omitted spousal claim in its behalf. The settlement negotiated by the Attorney General was found to be just and reasonable.

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[11] *See* the charts used at trial and reproduced in the Addendum to this brief for a depiction of the effect of the settlement.

EXHIBIT B

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NEWBERRY COUNTY
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JACKIE S. BOWERS
CLERK OF COURT

CHAPTER 4.

FREEDOM OF INFORMATION ACT

SECTION 30-4-20. Definitions.

(a) "Public body" means any department of the State, a majority of directors or their representatives of departments within the executive branch of state government as outlined in Section 1-30-10, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions, including, without limitation, bodies such as the South Carolina Public Service Authority and the South Carolina State Ports Authority. Committees of health care facilities, which are subject to this chapter, for medical staff disciplinary proceedings, quality assurance, peer review, including the medical staff credentialing process, specific medical case review, and self-evaluation, are not public bodies for the purpose of this chapter.

(b) "Person" includes any individual, corporation, partnership, firm, organization or association.

(c) "Public record" includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics prepared, owned, used, in the possession of, or retained by a public body. Records such as income tax returns, medical records, hospital medical staff reports, scholastic records, adoption records, records related to registration, and circulation of library materials which contain names or other personally identifying details regarding the users of public, private, school, college, technical college, university, and state institutional libraries and library systems, supported in whole or in part by public funds or expending public funds, or records which reveal the identity of the library patron checking out or requesting an item from the library or using other library services, except nonidentifying administrative and statistical reports of registration and circulation, and other records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of this act; nothing herein authorizes or requires the disclosure of those records where the public body, prior to January 20, 1987, by a favorable vote of three-fourths of the membership, taken after receipt of a written request, concluded that the public interest was best served by not disclosing them. Nothing herein authorizes or requires the disclosure of records of the Board of Financial Institutions pertaining to applications and surveys for charters and branches of banks and savings and loan associations or surveys and examinations of the institutions required to be made by law. Information relating to security plans and devices proposed, adopted, installed, or utilized by a public body, other than amounts expended for adoption, implementation, or installation of these plans and devices, is required to be closed to the public and is not considered to be made open to the public under the provisions of this act.

(d) "Meeting" means the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power.

(e) "Quorum" unless otherwise defined by applicable law means a simple majority of the constituent membership of a public body.

EXHIBIT C

FILED
NEWBERRY COUNTY
2012 JAN 11 P 12:59
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE 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 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

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 and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,
Plaintiffs

v.

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

RICHLAND COUNTY
FILED
2010 NOV -9 AM 9:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

ORDER DENYING DEFENDANTS' MOTION TO CHANGE VENUE

This matter came before the Court on August 30, 2010 for hearing on Defendants' Motion to Change Venue from Richland County to Aiken County. Counsel for all parties were

SCANNED

present. Other motions in this case were also heard on August 30 and separate Orders will issue with regard to those motions.

PROCEDURAL POSTURE

This is a judicial proceeding involving an irrevocable trust of James Brown dated August 1, 2000, as modified by a court-approved settlement agreement, whose sole, professional trustee administers the trust in Richland County, South Carolina. This irrevocable trust is distinguishable from the Estate of James Brown, the administration of which is in the Aiken County Probate Court.

The complaint alleges causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRCP, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County.

FACTS

The original estate plan of James Brown included a Last Will and Testament which "poured over" the bulk of his estate to a separate, irrevocable trust known as the James Brown Irrevocable Trust that was created and funded on August 1, 2000. The James Brown Irrevocable Trust, by its terms, was to be divided into the Brown Family Educational Trust and the James Brown "I feel Good" Trust after his death.

After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is

attached to the complaint as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached to the complaint as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was revised to create a "Settlement Entity" in which are vested all assets, including all royalties, tangible and intangible property of James Brown. The order provides 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." The order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

Plaintiffs are all of the beneficiaries of the settlement trust, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. This office is located in Richland County, South Carolina.

ANALYSIS

"The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is 'the power to hear and

determine cases of the general class to which the proceedings in question belong.' On the other hand, venue is the place or geographical location of trial." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. See Order for Removal of July 19, 2010. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

> 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.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust's "principal place of administration":

> Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is **the trustee's usual place of business where the records pertaining to the trust are kept**, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). The statute designates the trustee's place of business, that is, the place where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is necessary for the courts in the place where the trust records are kept and the trust assets are held to deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Bauknight. Mr. Bauknight's usual place of business is at his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if this Court were to determine that venue might be proper in either Richland or Aiken Counties, which it does not, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). This Court notes that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County, as the August 10, 2007, order of Judge Early directed the trust records to be delivered to 1218 Taylor Street in Columbia, which was Pope's office.

Defendants argue that the matters raised in the complaint relate to an action previously filed in Aiken County. This Court disagrees. The complaint alleges causes of action which are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code

provides that "[a] proceeding under this section does not result in continuing supervisory proceedings." This trust litigation against the former trustees is unrelated to the prior litigation involving James Brown's estate or trust.

CONCLUSION

Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken County, the initial commencement of this action in Richland County requires that venue remain in Richland County.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Change Venue is DENIED.

The Honorable L. Casey Manning
Circuit Judge

Signed this 8 day of Nov, 2010
at Columbia, South Carolina.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
Adele J. Pope,	)	Case No. 11-CP-36-364
	)	
Plaintiff,	)	
	)	MEMORANDUM OF
v.	)	ATTORNEY GENERAL
	)	IN SUPPORT OF:
Alan Wilson, in his capacity as	)	MOTION TO DISMISS AND
Attorney General of South Carolina and	)	MOTIONS TO STRIKE
James Brown Legacy Trust, by	)	
Russell L. Bauknight, its Trustee,	)	AND IN OPPOSITION TO
	)	SUMMARY JUDGEMENT
Defendants.	)	
	)	

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JACQUELINE C. SMITH
CLERK OF COURT

INTRODUCTION AND BACKGROUND

The Office of the Attorney General has a long history of advocating the importance of the Freedom of Information Act, but whether the documents Plaintiffs seeks are subject to disclosure under FOIA is not the real issue in this case. Despite the numerous motions pending in this case and seemingly countless affidavits submitted by Plaintiff, the suit presents very simple issues of deference to ongoing judicial proceedings and court rulings in another county that deprive this Court of subject matter jurisdiction in this case. These issues are all directed to whether Plaintiff can bring a separate Freedom of Information Act action in Newberry County to sidestep or make an end-run around pending judicial proceedings in Richland County involving the same documents that are at issue in civil discovery in Richland. The November 30, 2011, Order of this Court in the related FOIA action, 2011-CP-36-379 (copy attached), consolidated that case with Richland case *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, and encouraged the parties to the instant case to consent to consolidation with case 4900, but Plaintiff has shown no interest in doing so. Order at p. 6, note

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JEANETTE W. WALCOTT

7. She has, instead, moved for reconsideration of the Order in Case 379 and continued to file numerous affidavits in the instant case.

For reasons discussed below, the Defendant Wilson's Motion to Dismiss should be granted which will moot all other issues. Alternatively, his Motions to Strike should be granted to strike the multiple affidavits of Plaintiff that are riddled with hearsay, speculation and completely irrelevant material. Plaintiff's Motion for Summary Judgment should be denied because of the pending Richland motions, because the Defendant Attorney General has not answered the Complaint and should be given an opportunity to address the FOIA substantively if, *arguendo,* this case is not dismissed and for the other reasons discussed below including the failure of Plaintiff to mail or deliver the FOIA request to the Attorney General's Office.

The relationship of the instant action to Richland proceedings is set forth in Plaintiff's complaint. Instant Plaintiff Pope acknowledges that she is the Defendant in a Richland County suit brought by the former Attorney General McMaster and the current trustee of the James Brown Legacy Trust. (2010-CP-40-4900). She contends that the Richland suit alleges that she caused millions of dollars in damage to the Legacy Trust and that her and her co-defendant's valuation of the trust was incorrect and improper. The Court issued a ruling in case 4900 that stated that venue of that case was proper in Richland County because it was the principal place of administration of the trusts at issue in that case. Order, The Honorable L. Casey Manning, November 8, 2010, Exhibit A to Attorney General's Motion to Dismiss.

Despite the pendency of the Richland action, Plaintiff alleges that she personally sent the Attorney General a FOIA request from her Newberry Office, dated June 30, 2011, for records she alleges are related to the Trust. Complaint, p. 4, ¶18. Plaintiff asked for the following

documents in a letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned , of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900 as Plaintiff acknowledges; Plaintiff's Return to MTD, p. 2, ¶6; *See, also,* Exhibit D to Complaint, ¶2b; MTD ExhibitB, Motion to Compel, p. 3, ¶ 3, June 7, 2011 ["[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006."](attachments to Motion omitted); MTD Exhibit C, Motion for Protective Order and including Exhibits D [appraisals] & E [objections to appraisals] thereto (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion).

I

THE DEFENDANT ATTORNEY GENERAL'S MOTION TO DISMISS

Lack of Subject Matter Jurisdiction

Both grounds for this motion are affected by the exclusive jurisdiction of the Richland County Court of Common Pleas as to the documents at issue and its rulings in this case. Because of those proceedings, the Court lacks subject matter jurisdiction in the instant case as

discussed above and below. Rule 12(b)(3).

A

Improper Venue

Venue is improper in that, in related litigation, the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, November 8, 2010 (copy attached as Exhibit A only in support of 12(b)(3) motion). Plaintiff cannot evade that order by bringing a separate FOIA action in another county not connected to case 4900. One Circuit Judge cannot overrule another Circuit Judge. *Cook v. Taylor*, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979); *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 603, 340 S.E.2d 546, 547 (1986); *Department of Social Services v. Laura D.* 386 S.C. 382, 688 S.E.2d 130 (Ct. App., 2009). Although this authority appears to arise in the context of different circuit judges within the same case, Plaintiff cannot attempt to split off a document issue pending before the Courts in Richland County, put a FOIA label on it, and get a Court in a different County to step in and rule on a matter pending in Richland. Our Courts were not set up this way.

Further, even if, *arguendo*, the Richland venue Order were not controlling, under S.C. Code Ann. § 15-77-50 (1976), suits against officials of the State in their official capacities must be brought in the circuit where such question, action or controversy shall arise, and the Complaint does not allege a basis for venue in Newberry County. Plaintiff claims that her office is in Newberry, but she is using that office as an attempt to avoid raising this issue in Richland

where she and the other parties are already represented by counsel. She cannot splinter the Richland action this way and set up one Court in Newberry against another in Richland County. She characterizes the FOIA action as different, but it is a different theory involving the same documents. Venue should be in Richland where the other suit is pending.

B

Another Action is Pending Among the Same Parties

The Defendant Attorney General recognizes that this Court has ruled against him on this ground in the similar Pope case 2011-CP-36-379 (Order filed November 30, 2011), he maintains the arguments below to preserve them. That Order provided for the consolidation of case 379 with case 4900, *supra,* in Richland County and also encouraged the parties to the instant case to consent to consolidation of this case with case 4900. Order at p. 6, note 7. That Order is now the subject of Plaintiff's Motion for Reconsideration. Subject to his defenses in his Motion to Dismiss herein, he believes that the instant case should be consolidated with case 4900 in Richland County.

Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc.,et al, supra.* Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See,* Exhibit D to Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion

for Protective Order and including Exhibits D & E thereto. Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the Court in Case 4900. Therefore, this case is subject to dismissal under Rule 12(b)(8).

This defense is closely related to one of concurrent jurisdiction under which the first court to exercise jurisdiction controls the case. The rule is well settled that "where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction." *Richardson, Plowden, Grier & Howser v. Pyle*, 472 S.E.2d 232, 233 (1996)(fee dispute matter). Although, as follows, *Tucker v. Tucker*, 264 S.C. 172, 177-78, 213 S.E.2d 588, 590 (1975) discussed the rule in the context of administration of an estate, its reasoning and holding apply to the instant case, as well:

> While it is true that the circuit court has general jurisdiction in civil matters, once the forum for the administration of an estate has been chosen, the forum or court so assuming jurisdiction has control of the administration of the estate and parties interested in estate matters should apply to the judge of the court. Administration of an estate cannot be in two courts simultaneously. Counsel for the appellant argues, and counsel for the respondent admits in his brief, that the Probate Court of Chesterfield County has jurisdiction to hear an action for the removal of an executor.
>
> A discussion of the question involved is to be found in 20 Am.Jur.2d Courts §128.
>
> 'C. Priority Principle as Controlling Exercise of Concurrent Jurisdiction
>
> 's 128. Generally. As a rule the exercise of concurrent jurisdiction is controlled by the principle of priority. According to this principle the court of concurrent jurisdiction that first exercises it thereby acquires exclusive jurisdiction to further proceed in the case. In other words, once a court of concurrent jurisdiction has begun to exercise its jurisdiction over a case its authority to deal with the action is, subject to appellate review, exclusive until it is completely disposed of, and no other court of concurrent jurisdiction may interfere with the proceedings thus pending. . . .
>
> 'In several opinions 'comity' has been indicated as a motive of the courts to abide by the priority principle, but it appears that it is a legal duty of a court to abide by it, and that the rationale of the rule is to reduce the possibility of the

> conflicting exercise of concurrent jurisdiction, especially to reduce the undesirable possibility that a case involving the same subject matter and the same parties be simultaneously proceeded upon in more than one court. Several cases have pointed out that the applicability of the priority rule does not depend on whether one of the two courts of concurrent jurisdiction is superior in rank to the other such court. . . .'

See also, Jordan v. Moses, 10 S.C. 431, 433 (1879) ("no proposition is better settled than that where two tribunals have concurrent jurisdiction, the one which first obtains possession of the subject must adjudicate, and neither party can be forced into another jurisdiction.") *State v. Howell*, 220 S.C. 178, 66 S.E.2d 701 (1951)(criminal proceedings); *see also Sparrow v. Nerzig*, 228 S.C. 277, 89 S.E.2d 718 (1955). Similarly, issues regarding the same documents cannot be in two courts, one in Richland and the other in Newberry. When the Richland Court has exercised jurisdiction first, it now has exclusive jurisdiction over the matter and this Court lacks subject matter jurisdiction of this case.[1] Rule 12(b)(1), SCRCP.

II

THE ATTORNEY GENERAL'S MOTION TO STRIKE SHOULD BE GRANTED

The Attorney General has moved to strike at least 14 affidavits filed by Plaintiff in this case[2] some of which are attachments to other affidavits, and some related exhibits of Plaintiff.

---

1 "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3), SCRCP.

2 Plaintiff has also filed on Monday of this week a fifteenth affidavit which is her seventh in this case. This affidavit addresses attorneys fees and costs which are premature at this stage of this case. The Defendant reserves the right to move to strike this affidavit also.

At least 6 of these affidavits were executed by Plaintiff, herself, and many of her affidavits are filled with vitriole and baseless speculation. All of the affidavits should be struck because they are irrelevant and also because many of them are not based upon personal knowledge, contain hearsay, and are speculative. Examples abound of these violations by Plaintiff of the basic rules for affidavits some of which are set forth below:

1. Affidavit attached to Complaint

p.2, ¶ 5 "agent [of party not involved in instant proceeding] advised that if Bob and I did not drop a pending James Brown appeal AG . . . [note omitted] would to[sic] sue us . . . ." [hearsay, irrelevant]

p. 3, ¶ 7 Augusta Chronicle cite [hearsay]

p. 3, ¶8, " I believe the Retention Agreement will show whether AG McMaster . . . was in fact acting to punish Bob and me . . . . ;" [lack of personal knowledge; speculation]

2. Affidavit Opposing MTD, September 6, 2008 [sic]

p. 1, ¶2 "public documents, which, I believe, will tell the scandalous story" [lack of personal knowledge, irrelevant, speculative]

p. 4, ¶28, "I still wonder, and believe the public documents AG . . . is withholding will tell me" [lack of personal knowledge, irrelevant, speculative, hearsay]

p. 4, ¶30, "I believe the public documents will show . . . . " [lack of personal knowledge; speculative]

p. 3, ¶16 On April 30, 2010, . . . attorney for Brown's companion . . . threatened

that . . . had already hired contingency-fee lawyer" [hearsay, irrelevant]

3. Supplemental Affidavit, September 16, 2011

Directed to earlier affidavit applying to other Defendant

p. 3, ¶5 quotations from *The Enquirer* which she acknowledges in paragraph 6 is not entirely accurate [lack of personal knowledge, hearsay, irrelevant]

4. Affidavit in Further Support, October 6, 2011

p. 4, ¶10, speculation about what requested documents will show [speculative, lack of personal knowledge, irrelevant]

p. 4, ¶11, chronology including some hearsay such as April 10 statement of agent for person not involved in instant litigation[hearsay, irrelevant]

p. 8, ¶¶15 and 16 speculation about what requested documents will show.

5. Affidavit and exhibits attached to Motion for Summary Judgment

p. 3, ¶¶ 7-9 speculation about documents and other matters [lack of personal knowledge, speculative, irrelevant]

Exhibit F to MSJ, p. 15 quotations from persons not involved in the instant suit [hearsay, irrelevant]

6. Affidavit of Summer, December 8, 2011, attached to Smith affidavit, December 9, 2011

¶¶ 16 – 18 references to what others have said in readings or elsewhere [hearsay, lack of personal knowledge]

7. Affidavit of Summer, January 5, 2012

¶25 "Dallas informed me" (hearsay)

¶28 "Brown told me" (hearsay)

8. Affidavit of Smith, December 9, 2011

¶6, attachment of draft article [hearsay]

9. Affidavit of Pope, January 6

p. 3 "Bauknight secretly tells IRS" [hearsay]

"The rule governing summary judgment provides that '[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.'" Rule 56(e), SCRCP (emphasis added). *Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003). Because all of the affidavits appear to be directed to summary judgment, they must meet this standard of Rule 56(e) rather than Rule 11(c) which provides that affidavits and verifications may include matters stated on information and belief.

In numerous respects, the affidavits clearly fail to meet standards of being based upon personal knowledge and containing admissible evidence. They contain inadmissible hearsay and refer to news articles[3] which are not admissible. In particular, all of the affidavits are irrelevant. Many of them contain Plaintiff's account of litigation related to the James Brown estate and the Legacy Trust and allegations about why she needs the documents, but all of those statements are irrelevant to whether she is entitled to the documents under FOIA. As set forth above, Plaintiff is not permitted to bypass proceedings in Richland County pertaining to the trust, but even if, *arguendo,* she could bring this separate FOIA action in Newberry County, all that is relevant to

3 *Trustees of Erskine Coll. v. Cent. Mut. Ins. Co.*, 241 S.E.2d 160, 162-63 (1978).

her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need. S.C. Code Ann. §§30-4 through 30-30-4-50, *et seq.* Plaintiff's lack of entitlement to the documents is discussed *infra* regarding her motion for summary judgment, but those grounds have nothing to do with the alleged need for or importance of the documents.

III

PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT

A

Plaintiff Cannot Use FOIA To Bypass Judicial Proceedings In Richland

Nothing in FOIA, the Rules of Civil Procedure or the Court system of this State would permit Plaintiff to make a FOIA request outside a pending judicial proceeding involving discovery motions pertaining to many of the same documents. *See* exhibits submitted with MSJ. She cannot avoid the Richland proceeding through this process.

Even if discovery motions were not pending in Richland, legal authority suggests that Plaintiff would not be permitted to use FOIA as a discovery tool regarding those proceedings. Clearly she is attempting to use FOIA as a discovery tool because her affidavits contain lengthy accounts regarding the pending Richland litigation from her perspective. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers,*2002-CP-32-1890, Ocober 25, 2002 stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." Although our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass

discovery in criminal proceedings. *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005).[4] Moreover, our Supreme Court has recognized that "[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146 (1989); *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991). Although *Robinson* involved criminal proceedings, the State Supreme Court's recitation of the federal rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did; however, this issue need not be reached because judicial proceedings are already pending in Richland regarding the same documents, and this Court should not allow Plaintiff to bypass those proceedings nor issue a ruling contrary to the stay order in Richland.

B

The Defendant Attorney General Has Not Answered the Complaint

The Attorney General has filed a Motion to Dismiss the Complaint which should be granted. Even if, *arguendo,* the Motion were not granted, he should be given the opportunity to Answer. Although Rule 56 allows a summary judgment motion to be made before an answer is filed, the standards for granting the motion are much stricter. As stated in *Gutterman-Musicant-Kreitzman, Inc. v. I.G. Realty Co.,* 426 So. 2d 1216, 1217-18 (Fla. Dist. Ct.

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4 As stated in *Robinson,* "the Court of Appeals misapprehended that *Robinson* merely reflects the widely accepted principle that FOIA is not to be used by those under criminal charges to circumvent the limitations of discovery. *See, e.g., State ex rel. Wyant v. Brotherton*, 589 S.E.2d 812, 816-17 (W.Va.2003); *Henderson v. State*, 745 So.2d 319 (Fla.1999). That principle is not implicated here, because the 911 tape was available through both criminal and civil discovery."

App. 1983):

> Although a plaintiff may move for summary judgment before the defendant has answered, the motion should not be granted unless it is clear that an issue of material fact cannot be presented. At such point in the pleading when the plaintiff moved for summary judgment, the plaintiff had the burden of showing the absence of any genuine issue as to all the material facts which, under applicable principles of substantive law, entitled it to judgment as a matter of law. This burden is upon the movant irrespective of whether he or his opponent would at trial have the burden of proof on the issue concerned, and it rests on the movant whether he is by it required to show the existence or non-existence of facts.... In such an instance, the burden is upon the plaintiff to make it appear to a certainty that no answer which the defendant might properly serve could present a genuine issue of fact.

Certainly, Plaintiff cannot demonstrate that an issue of material fact cannot be presented or that "no answer which the defendant might properly serve could present a genuine issue of fact." *Id.* As set forth in the affidavit of Tracy Meyers, Senior Assistant Attorney General, the Office of the Attorney General was not properly served with the FOIA request at issue.

C

Plaintiff's Apparent Failure to Mail or Deliver the FOIA request to the Office of the Attorney General Defeats Any Alleged Entitlement of her to Relief

As stated in Ms. Meyers Affidavit:

> She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA..
>
> 4. Attachment of the June 30, 2011 letter to the complaint in the [instant] suit does not constitute a request under FOIA to which the Office of the Attorney

General must respond.

This affidavit is consistent with the terms of FOIA, itself. Section 30-4-30 (c) states that "[e]ach public body, upon written request for records made under this chapter shall within fifteen days . . . of the receipt of any such request notify the person making such request of its determination . . . " Therefore, the public body must receive a written request from the person making the request. According to Ms. Meyer's affidavit, she did not receive the request in this manner. Attachment of the FOIA request to the Complaint in this suit alleging a failure to comply, does not constitute a mailing or delivery of the request to the Office of the Attorney General. Accordingly, Plaintiff cannot obtain judicial relief under FOIA when she has not complied with the terms of that statute.

D

Even if This Court Were to Rule that the Defendant Must Respond Substantively to the FOIA Request, Exempt Matters May Be Withheld

Even if, *arguendo,* this Court were to find a failure to respond to the FOIA, the Defendant Attorney General is still entitled to determine if any requested matters are exempt from disclosure. *Litchfield Plantation Co., Inc. v. Georgetown County Water & Sewer Dist.*, 443 S.E.2d 574, 575 (1994) ("We decline to hold these exemptions can be waived by the public body's failure to respond within fifteen days.")

CONCLUSION

The Freedom of Information Act is a very important law, but it does not permit Plaintiff to bypass other judicial proceedings or, in effect, ask one judge to overrule another. For the

foregoing reasons, this Court should grant the State's Motion to Dismiss, alternatively grant its Motions to Strike and deny Plaintiff's Motion for Summary Judgment. Alternatively, and subject to these defenses, the Defendant Attorney General consents to consolidation of this case with case 4900 in Richland.

Respectfully submitted,

ALAN WILSON
Attorney General

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

BY: 

January 11, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-350
	)	(formerly Newberry Cty. Case No. 2011-CP-36-364)
	)	
Adele J. Pope,	)	**AFFIDAVIT OF ADELE J. POPE**
Plaintiff,	)	**OPPOSING CONSOLIDATION**
	)	**and**
v.	)	**SUPPORTING EXPEDITED RELEASE**
	)	**OF DOCUMENTS REQUESTED**
Alan Wilson, in his capacity as	)	**under**
Attorney General of South Carolina,	)	**S.C. FREEDOM OF INFORMATION ACT**
and James Brown Legacy Trust, by	)	**("FOIA")**
Russell Bauknight, its Trustee	)	
	)	
Defendants.	)	

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

1. I am informed and believe that Attorney General Wilson, who has already delayed my valid FOIA request for nearly 8 months, filed a motion to consolidate this FOIA case with Case No. 2010-CP-40-4900 ("Case 4900") for the improper purpose of covering up wrongdoing within the Office of the AG and by Russell Bauknight, who serves at the pleasure of the AG, by delaying my FOIA rights for years, effectively denying them.

The AG/State is not even a proper party to Case 4900

2. I am informed and believe, the State/AG is not even a legal party to Case 4900.

3. In Case 4900 Kenneth Wingate, Esq. and his firm Sweeney, Wingate & Barrow (collectively "Wingate") purport to be the sole attorney for both AG McMaster

and a dozen private clients.

4. No AG or assistant has ever appeared as counsel or signed a pleading in Case 4900 since its filing 21 months ago. All have been signed and filed by Wingate.

5. During this period Wingate has, I believe improperly, purported to represent, and be the sole attorney in Case 4900 for, two AGs.

6. Having followed *AstraZeneca Pharmaceuticals, LP vs. Alan Wilson*, Spartanburg County Case No. 2011-CP-42-1213, wherein AstraZeneca seeks a declaratory judgment that the AG's contingency fee agreement with outside counsel in litigation against AstraZeneca is void and/or violates AstraZeneca's constitutional rights, I note that the AG asserts that Due Process is met when special counsel participates with the AG in a case IF:

a. The AG signs all pleadings;

b. The AG controls the litigation;

c. The AG actively participates in the case;

d. The AG, by such control, assures that special counsel acts properly.

7. None of that is the case in Case 4900.

8. I am informed and believe that AG Wilson, by seeking consolidation with Wingate's Case 4900, has added to the coverup of McMaster and Bauknight's actions, and attempting to mask Wingate's improper assertion in Case 4900 that he speaks for the State.

Consolidation will compromise the Lewis Firm's support of Brown's true estate plan and The James Brown "I Feel Good" Trust

9. Distinguished attorney Camden Lewis, Esq. and his firm

(collectively "Lewis") were engaged by Bauknight to represent the McMaster-created Legacy Trust, never a part of Brown's true estate plan.

10. The Legacy Trust was McMaster's vehicle for taking over and destroying Brown's true estate plan, reducing The James Brown "I Feel Good" private foundation from about $80 Million to almost nothing.

11. Consolidating this simple FOIA case with a case in which Lewis must defend – or appear to defend – actions which destroy the very estate plan he vigorously sought to uphold presents troublesome issues.

12. I am informed and believe that AG Wilson and Bauknight, with knowledge of the problem, engaged Lewis and sought consolidation to help Wingate cover his improper bringing of Case 4900; to lend Lewis' credibility to Bauknight's outrageous $4.7 Million valuation of the music empire; and to mire my simple FOIA request in years of controversy.

13. In 2007 Lewis served as litigation counsel to James Brown's true estate plan, representing David Cannon, Albert Dallas and Al Bradley (the "Cannon Group") only as fiduciaries.

14. Lewis vigorously defended Brown's estate plan, including The James Brown "I Feel Good" Trust, to which Brown gave his entire $85 Million music empire. [Ex. A]

15. Lewis resigned as counsel to Cannon on August 10, 2007 and the remaining fiduciaries on November 20, 2007 as it became known that:

a. Affidavits of three Brown children asserting the Cannon Group knows the location of hidden assets, possibly including money buried at Brown's Home Estate, are reliable.

b. Of the $79 Million Cannon got for Brown between 1999 and 2006,

Cannon took $17 Million; never filed proper tax returns for Brown, as he committed to do; and failed to report or pay taxes on most of what he took. [Ex. B]

c. Cannon took $900,000 from Brown in 2006.

d. In June 2007 the Cannon Group proposed to sell the music empire for $100 Million; get $15 Million of commissions; and also get secret options or a "kickback" from the purchasers.

e. In July 2007 Atlanta law firm Powell Goldstein ("PG") helped the Cannon Group with a secret attempt to move Brown's Trust to Georgia, just as Cannon's takings were about to be discovered[1].

f. Cannon/Dallas fabricated a post-death Schedule B to Brown's Trust and passed it off as part of the 2000 Trust.

g. In 2007 Cannon sent $1 Million to Honduras for a home.

h. In the fall of 2007 Cannon and Dallas lied to the AGs of 2 states about Robert Buchanan, Jr. and me to cover up their wrongdoing.

4. Lewis and their fiduciary clients, who still vigorously assert the validity of

---

[1] The discovery by Bob Buchanan, Jr. ("Bob"), members of the Lewis Firm and me on July 17, 2007 of the $900,000 Cannon took in 2006 is described on Sch. B, a stipulation we prepared with the Lewis Firm in November 2008 (with my current annotation). Of the $900,000 Cannon used only $180,000 for legitimate expenses. The Lewis Firm's clients were present in the fall of 2007 when the $5 Million "check to nobody" which Cannon took in 1999 was discovered. Cannon's $5 Million taking in 1999 was consistent with his deposition testimony that he was "paid" $4.9 Million in 1999 when Brown closed the TIAA deal. It also conforms to Trust Counsel Wm. Hammond's statements that there were $6 Million of "expenses" from 1999 that accountant Phil Farr could not account for.

Cannon and Dallas, on the day Cannon resigned, agreed to release of the PG file, but later PG, Cannon and Dallas refused to deliver the file in accordance with Jg. Early's August 10, 2007 Order directing Dallas do so. After terminating the Lewis Firm, Cannon and Dallas both told the Court that they had never engaged PG, even though PG had billed the Estate $48,225 on September 15, 2007. When PG's $48,225 re-bill arrived in April 2008 Dallas' then-attorney Wayne Byrd, Esq., informed the Court that his statement to the Court for Dallas that PG had never been hired was incorrect.

Brown's estate plan, gathered information which confirms:

a. Brown's companion Tommie Rae was not his spouse and, before her fraudulent marriage ceremony, waived all rights to his property;

b. Tommie Rae and 2 of Brown's children were present when his valid Estate Plan was executed; witnessed the Advisory Board document; and know he was competent and free from any undue influence;

c. The Cannon Group properly valued Brown's worldwide music empire at death at $85 Million - $100 Million.

d. Tommie Rae's diaries – currently held by the Clerk of Court of Aiken County – will support that she was not the wife.

e. James II, not born of any Brown marriage, is the only person claiming to be a child born after Brown's vasectomy and refused official DNA testing sought by the Lewis Firm.

f. The DNA protocol established by Rodney Peeples, Esq. with the Lewis Firm identified 3 biological heirs of Brown: La Rhonda Pettit; Jeanette Mitchell; and Cinnamon Parris.

g. The DNA protocol would have produced a proper determination of Brown's heirs, including the 3, not the fabricated "heirs" for whom Bauknight serves as trustee.

h. The Lewis Firm and the Cannon Group agreed to the August 10, 2007 Order of Jg. Early which made 80 boxes of documents Bauknight and Wingate now seek to secrete available for inspection and copying by any Interested Person.

16. Unlike Lewis, who never condoned or participated in any wrongdoing by the Cannon Group, AG McMaster's staff and Bauknight have maintained a strong relationship with the Cannon Group and their advisors, particularly with PG – which represented the Cannon Group in secret transactions unknown to Lewis. [See Ex. B, with my notations.]

17. Keith Babcock, Esq. has already had to testify in Aiken to debunk Dallas'

false statement that Lewis directed him to create the fabricated Schedule B.

18. I am informed and believe that consolidation of Case 4900 and this FOIA action will result in enormous unnecessary delay while Lewis sorts out its duty to Brown's true Estate Plan and its former fiduciaries.

19. Also, if this FOIA case is consolidated with Case 4900 the following may occur:

a. It will appear that the AG has been in Case 4900 since the beginning, covering up Wingate's improper bringing of Case 4900; and

b. It may appear that Lewis supports Bauknight's $4.7 Million valuation of the music empire;

The Parties and Claims in this Freedom of Information Act Case

20. Parties to this FOIA case are AG Wilson; the Legacy Trust and me.

24. The claim in this FOIA Case is for a copy of the Legacy Trust and documents showing the AG's offices communications about Bauknight's fabricated $4.7 Million valuation of Brown's music empire.[2]

22. Counsel in the FOIA case, an assistant AG, has advised the Court that he knows little of the facts or procedure of Case 4900.

The Parties to Case 4900

23. I am informed and believe that Wingate's numerous private clients in Case 4900 either have no connection to FOIA or are actively seeking to deny my FOIA rights

---

[2] Terry Brown, a joint venturer of felon David Cannon, has a 10-year right to buy Brown's music empire from Bauknight, who serves as Terry's trustee under McMaster's Legacy Trust. Terry and his group offered $90 - $100 Million for the music empire in 2008 and planned to pay options of a "Kickback" to Cannon from the IPO they were to create. Terry and Bauknight have now told the Supreme Court there never was an offer and that the music empire is worth only $4.7 Million. Bauknight told the IRS Bob and I lied when we valued Brown's music empire (Publicity Right and rights to more than 800 published and unpublished songs) and Brown's $13+ Million claim against felon Cannon and others at about $85 Million.

to cover up their part in the destruction of the "I Feel Good" Trust by taking the music empire from which all were excluded for themselves: They include:

a. **Terry Brown** - Part of a 2007 prospectus to raise $200 Million to buy music empire; then part of $100 offer to buy music empire; create IPO; and give options or a "kickback" to Cannon. Now asserts music empire, which he claims a right to buy, is worth $4.7 Million.

b. **Deanna Thomas** - Deanna filed affidavits and reported to Jg. Early in 2007 that Cannon and others were secreting assets, including cash buried on Brown's home estate.

c. **Daryl Brown** - apart of Brown's band which grossed $18 Million between 2003 - 2006. Now asserts music empire was worth less than $4.7 Million when Brown died on Christmas Day 2006.

d. **Jason Lewis** - Sued Buchanan/Pope in Case 4900 for not accepting a 2007 $100 million offer to buy music empire. Now asserts there was no offer and the music empire is worth less than $4.7 Million.

e. **Lindsey Brown** - A minor when McMaster agreed to destroy her $285,000 education trust on August 10, 2008. Apparently now condones his action.

f. **Larry Brown** - Disinherited from Brown's music empire. Now claims 4.79%, "given" to him by McMaster.

g. **Tommie Rae** - Brown's companion who held bigamous ceremony with Brown in 2001 after waiving all rights to property. After discovery, settled Brown's claim to void marriage and DNA test her son – born before the bigamous ceremony – by promising never to claim to be common law spouse. In addition, failed to comply with requirement for filing Elective Share claim, which was filed in the wrong court (circuit) and did not contain the required summons.

h. **Venisha Brown** - incarcerated during critical periods. POA used to signify her agreement to destroy the "I Feel Good" Trust appears invalid, but Venisha refuses deposition.

i. **Various minors without GALs** - Wingate and Bauknight purport to speak for 3 minors, all residents of Georgia who do not have GALs.

j. **Bauknight** - Since May 26, 2009 Bauknight has engaged nearly 15 attorneys to help cover up his foibles, including the outrageous less-than $4.7 million "appraisal" of the music empire and the documents he gave the "appraisers"who

came up with the Appraisal.[3] He is now working with Cannon's former attorneys, who now advise Terry and the purchase group which proposed options or a "kickback" for Cannon.[4]

---

[3] Lawyers hired by Bauknight since 2009 to help "protect" what he asserts is a music empire worth less than $4.7 when Brown died on December 25, 2006 are: Nexsen Pruet lawyers:(1) Wm. Newsome, Esq.;(2) Freddie Kingsmore, Esq.; (3) Rick Reames, Esq. (4) Wm. Klett, Esq.; (5) David Black, Esq.; (6)Julio Mendoza, Esq.; (7) Wm. Wilkins, Esq.; (8) George Scott, Esq.; (9) Todd Boudreaux, Esq.; and others; (10) Kenneth Wingate, Esq. (11) Rett Kendall, Esq.; (12) Mark Gende, Esq.; (13) Camden Lewis, Esq.; (14) Ariail King, Esq.

This is in addition to the Attorneys – also NOW asserting Brown's music empire was worth less than $4.7 Million – working since 2007 to take the "I Feel Good" Trust assets for their clients: (15) Louis Levenson, Esq.; (16) David Yount, Esq. (18) Lori Crisman, Esq. (19) Robert Rosen, Esq.; (20) Heyward Carter, Esq. (21) Alan Medlin, Esq.;(22) Jean Lee, Esq.; (24) Peter Shahid, Esq.; (25) Steven Slotchiver, Esq.; (26) David Bell, Esq.; Powell Goldstein Attorneys: (27) Wm. Shearer; (28) Wm. Custer; (29) Jennifer Dempsey, Esq.; and (30); David Bell, Esq.

And State-paid Attorneys from the Attorney General's Office who entered the James Brown Case 122 in 2007 to help enforce the "I Feel Good" foundation, given Brown's entire music empire; and NOW assert it was worth less than $4.7 Million and the "I Feel Good" Trust, of that $4.7 Million should get only 47 1/2% LESS $2 Million:

(32) former AG Henry McMaster; (33) Asst. AG Sonny Jones, Esq.; (34) Asst. AG Mary Frances Jowers; (35) Asst. AG J.C. Nicholson, Esq.; (36) Asst. AG Robert Cook, Esq.; (37) Asst. AG Emory Smith, Esq.; (38) AG Alan Wilson; and (39) Asst. AG Tracy Meyers, Esq.

These 39 lawyers are supporting Wingate's attempts not to release documents requested under FOIA which demonstrate: Wingate and Bauknight brought Case 4900 on behalf of the State of South Carolina and AG McMaster without proper authorization; the dealings and relationship of the AG's office with felon Cannon, his joint venturers and advisors; and the dealings and relationship of the AG's office with Tommie Rae's advisors.

[4] Between $10 Million and $15 Million of the funds taken by Cannon from Brown between 1999 and 2007 was never reported on Cannon's tax returns or the tax returns of any of the many entities he formed with his wife, nephew and others, and has not yet surfaced. 2007 affidavits of Daryl, Yama and Deanna and testimony of their attorney Levenson give credible evidence that at least some of it is buried on Brown's 60-acre home estate. More than $1 Million of the money Cannon took is already known to be invested in Honduras, and more is believed to be there. In 2 ½ years Bauknight has taken no steps to recover the hidden assets.

The claims in Case 4900

24. While the FOIA claims relate solely to acquiring public documents, Wingate's claims are for:

1. Breach of Fiduciary Duty;

2. Breach of Trust.

25. Bob's and my counterclaims are for:

1. Abuse of process

2. Civil Conspiracy

3. Intentional Interference with contract

4. Violation of § 62-1-106 (fraud under the probate code)

26. In addition, Case 4900 is complicated by numerous issues of first impression.

27. Most complicated in Case 4900 is that Wingate is the first known private attorney in the history of the State, so far as I know, to bring a suit in which he asserts that the State/AG is a plaintiff but no AG has signed the pleadings or appeared of record.

28. A further problem is that although he has no contract to assert that he may speak for the State, Wingate defaulted as to the counterclaims. This raises a host of problems about whether the State – which we assert is not legally in Case 4900 – is bound by Wingate's default.

29. If Wingate escaped default, and Bob and I were successful in our assertion that tens of million of dollars of damage did, in fact, occur, but it did so as the act of Plaintiffs and the AG, a host of additional problems exist about recovery from the State

– not Wingate's private plaintiffs.

30. I believe Bauknight's position is best described by words of former AG McMaster, who said in February 2008 that representing both the family and the "poor kids" "goes far past the stop sign of conflict of interest."

31. I am informed and believe that this motion to consolidate is just another tactic to prevent me, through exercise of legal and appropriate means, from getting to the bottom of the troublesome relationships of the AG's office with Cannon, Dallas, Terry and Tommie Rae.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope

Adele J. Pope

SWORN TO before me this
22nd day of February, 2012

_____ (L.S.)
Notary Public for South Carolina
My commission expires: 7/13/2016

Exhibit A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Case Number 2008-CP-02-1551
COUNTY OF AIKEN)	
)	
Lewis & Babcock, LLP,)	
)	
Plaintiff,)	
)	STIPULATION OF FACTS
vs.)	AND ADMISSIBILITY OF EXHIBITS
)	
Adele J. Pope and Robert L.)	
Buchanan, Jr. as Personal)	
Representatives of the Estate)	
of James Brown and Trustees of the)	
Brown Family Education Trust, and)	
the I Feel Good Trust,)	
)	
Defendants.)	
)	

The undersigned stipulate for purposes of this case and all other cases related to the Estate of James Brown, the Brown Family Educational Trust and the James Brown "I Feel Good" Trust that the documents referenced herein, to be made Exhibits in this case, are true and correct copies of the originals thereof. They further stipulate to the following facts:

1. Lewis and Babcock, LLC ("L & B") has timely filed a claim for payment for services rendered for the benefit of the Estate of James Brown, and timely commenced an action for payment for service rendered to the Estate, the James Brown "I Feel Good" Trust and the Brown Family Education Trust (hereinafter, collectively "the Trust").

2. In February 2007 David G. Cannon ("Cannon"), Albert H. 'Buddy' Dallas ("Dallas") and Alfred A. Bradley ("Bradley") were serving as Personal Representatives of the Brown Estate and, upon information and belief, Trustees of the 2000 James Brown Irrevocable Trust, and were expected to serve as the Trustees for the James Brown "I Feel Good" Trust and the Brown Family Education Trust.

3. L&B, along with retired Judge Rodney A. Peeples, was engaged by Cannon, Dallas and Bradley as PR/Trustees, to represent the Estate and the Trusts in accordance with the Agreements attached hereto as Joint Exhibits #1 and #2.

4. Attached to Joint Exhibit #3 hereto are the billing statements for all services performed and costs advanced by L&B through its attorneys and agents between February 7, 2007 and November 20, 2007 when L&B was relieved by Court approval in open court.

5. L&B was retained to act as litigation counsel to the Estate and Trust. L&B did not undertake to perform legal services related to Estate/Trust administration, Estate/Trust taxation or royalty, image and persona preservation or enhancement, which services were to be performed by other counsel.

6. The Attorneys and legal assistants who performed services during the period, and their respective hourly charges during the period, are:

Cam Lewis	$500
Keith Babcock	$300
Ariail King	$225
Jonathan Harling	$200
Peter Protopapas	$250
Patricia McCright	$ 80
V. Marian Nettles	$ 80
John Gregory	$ 70
Sara Parrish	$ 70

7. The services rendered to the Estate and the Trusts were overlapping and closely related. For that reason, it would be extremely difficult for L&B to allocate between services performed for the Estate and the Trusts.

8. No attorney or employee of L&B had a personal or business relationship with Cannon, Dallas or Bradley prior to the February 2007 engagement.

9. L&B did not perform any services for Cannon, Dallas or Bradley individually during the period from February 2007 through the termination of their employment, or since.

10. At the time of L&B's engagement in February, 2007, Tommie Rae Hynie Brown had filed a Demand for Omitted Spouse's Share and it was expected that James [redacted] would file a claim as a pretermitted child. L&B reasonably believed, that the children and grandchildren were attempting to conduct discovery without contesting Mr. Brown's August 1, 2000 Will and the Trusts, thereby exposing themselves to possible forfeiture (as provided in Mrs. Brown's Will and Trust documents).

11. Shortly after the appointment of Robert L. Buchanan, Jr. ("Buchanan") and Adele J. Pope ("Pope") as Special Administrators ("SAs") on March 7, 2007, Ariail King of L&B wrote the SAs the letter dated March 14, 2007 and provided them the documents, which are Joint Exhibit 4, attached hereto.

12. Schedule B to the 2000 James Brown Irrevocable Trust (Bates No. 00028) was provided to L&B in March 2007 and L&B understood it to be a part of the James Brown 2000 Irrevocable Trust, even though Schedule B was a separate page. L&B provided Schedule B to the SAs in the same form that L&B received it. (1)

13. After Buchanan and Pope were appointed as SAs, on March 7, 2007, Buchanan and Pope sent a memo to Cannon, Dallas and Bradley as PR/Trustees and other Interested Persons inviting anyone interested to meet with them on March 19, 2007. Buchanan and Pope advised them they wanted to:

a. Identify the assets of the Estate (including assets which might reasonably be claimed to be part of the Estate).

(1) Schedule B was fabricated by Cannon + Dallas after James Brown died and submitted to L+B and others as a part of the 2000 Trust.

b. Review and attempt to understand the controlling documents.

c. Understand the Personal Representatives' general plan for tax, Probate Court and regulatory compliance.

d. Understand areas of concern to Interested Parties as they relate to the identification and preservation of Estate assets.

14. On March 19, 2007 Keith Babcock met with the SAs as part of the process by which the SAs asked all persons to help them understand what was going on with the administration of the Estate and related entities.

15. Between March 7, 2007 and June, 2007, members of L&B attempted to facilitate the provision of documents requested by the SA s which would help them obtain knowledge about the Estate and Trusts.

16. In March of 2007, the issue of whether Greenberg Traurig (GT) should continue as counsel for the Estate of James Brown, James Brown Enterprises, Inc. and James Brown, LLC (Plaintiffs) in litigation pending in New York State known as the Pullman litigation arose.

17. The PR/Trustees, through L&B, opposed the SAs' position that GT should be replaced as counsel in the Pullman Litigation. This position was supported by the position of both the PR/Trustees and GT that there was no conflict of interest in GT's continuation as counsel in the Pullman Litigation. L&B had only limited familiarity with the Pullman litigation..

18. Between their appointment and June, 2007 the SAs tried to obtain information from the PR/Trustees about the Estate and related entities, and L&B attempted to facilitate the transfer of this information to the SAs.

19. With the PR/Trustees, Keith Babcock attended a hearing in Aiken on April 25, 2007. No testimony was taken, but the SAs did raise concerns about lack of access to documents. L&B

attempted to facilitate providing the requested information.

20. In early June, the SAs filed two motions, as follows:

a. To require the termination of GT and engagement of new counsel in the Pullman (New York) Litigation; and

b. To require PRs to produce documents of the Estate, the 2000 Trust and Numerous Brown Entities;

21. Keith Babcock of L&B attended a hearing in Aiken on June 13, 2007. On behalf of the PR/Trustees, he opposed the termination of GT as counsel in the Pullman Litigation.

22. L&B's interaction with GT was limited, as shown in the timesheets, pleadings and other filings, to two issues. One issue arose when the Special Administrators questioned the potential conflict GT had in its representation of the Estate and James Brown, LLC, in litigation pending in New York state known as the Pullman Litigation. The other issue involved Greenberg Traurig's efforts, through attorney Joel Katz, to find a buyer or lender in connection with James Brown's revenues from song copyrights and artist royalties. The Court was advised of Katz's efforts by Mr. Babcock on June 13, 2007. Other than its communications with GT during this period, which resulted in the Order dated June 22, 2007, terminating GT's representation of the Estate and James Brown, LLC, contacts between L&B and GT were minimal. (2)

23. On June 22, 2007 the Circuit Court in Case No. 2007-02-CP-0122 issued an Order confirming that the SAs were to be given immediate and continuing access to all books and records of the Estate, the Trust and Brown Entities, as defined in the Order. [Joint Exhibit #13]

24. L&B did not participate in any review and/or due diligence related to a proposed sale of the writer's share of the royalties of James Brown. The letter of Keith Babcock to the Special

(2) Cannon did not tell L+B they planned to sell the assets for $100 million; take $15+ million in commissions in the open; and be paid options or a "kickback" from the IPO to be created by the purchaser

Administrators dated June 15, 2007, attached as Joint Exhibit 5, addressed the continuation of GT as counsel. In expressing his opinion, Mr. Babcock relied on information provided by GT, one or more of the PRs/Trustees, and/or attorney William Hammond.

25. On June 26, 2007, Jonathan Harling and a legal assistant, Pat McCright, were at a meeting in Barnwell, South Carolina with some of the PRs and Mrs. Pope. At that meeting, David Cannon allowed Mrs. Pope to review some documents but not others that she wanted to review. There was a disagreement between Cannon and Mrs. Pope regarding documents and Mrs. Pope left. Mrs. Pope was asked to return to Cannon's office, which she did, and was then invited to return to Barnwell after July 4, 2007.

26. In conjunction with providing answers to discovery, on July 5, 2007, L&B first learned that Cannon had received approximately $300,000 from the James Brown 2000 Irrevocable Trust in December 2006. Subsequently, as reflected on Cannon's July 10, 2007 Answers to Petitioner's Second Continuing Interrogatories and Requests for Production, L&B learned that Cannon contended that he was paid $350,000 from the 2000 James Brown Irrevocable Trust in 2006. Cannon advised L&B that the funds were in consideration for obtaining Wachovia's judgment against the Irrevocable Trust as a result of the foreclosure of 985 Broad Street in Augusta, Georgia, and to partially satisfy James Brown's obligation to Cannon pursuant to their written compensation agreement. Joint Exhibit 6 (Cannon's discovery responses).

27. No lawyer at L&B participated in, or was aware of, any action to remove the situs of the 2000 James Brown Irrevocable Trust to Georgia during the period between July 10, 2007 and August 10, 2007. (3) No lawyer recalls any meeting or communication with Powell Goldstein law

(3) without advising the Lewis Firm, Cannon + Dallas worked with Powell Goldstein lawyers to move the situs of Brown's[6] 2000 Trust to Georgia just before we discovered his $900,000 taking in 2006. The attempted secret move was unsuccessful.

firm.

28. No member of L&B had any contact, direct or indirect, with the law firm of Powell Goldstein, LLP, in connection with the representation of either the Estate of James Brown or the 2000 James Brown Irrevocable Trust or any other Trust at any time between February 7, 2007 and November 2007.

29. No member of L&B reviewed Joint Exhibit 14, letter dated July 10, 2007 and attachments, or any draft thereof, at any time prior to November 2008. (4)

30. No member of L&B has knowledge of what services, if any, were performed for the Estate of James Brown and/or the 2000 James Brown Irrevocable Trust or its fiduciaries by Powell Goldstein. (5)

31. On July 17, 2007, there was a meeting involving Pope, Buchanan, Jonathan Harling, Pat McCright, and the three PRs/Trustees. At that meeting a 2006 deposit of $900,000 of M&T Bank funds into a James Brown related account was discovered. It was also discovered at that time that approximately $720,000 had been withdrawn from that account between August and December of 2006. No member of L&B knew of these transactions prior to the meeting other than the payment of Cannon referenced in Paragraph 26 above.

32. On or about July 26, 2007, a member of L&B received Joint Exhibit 7, attached hereto, from Alfred Bradley.

33. L&B attorneys did not represent Mr. Bradley, Mr. Cannon or Mr. Dallas individually and did not advise Mr. Bradley, Mr. Cannon or Mr. Dallas related to claims they filed as individuals against the Estate in September, 2007. (6) [(5) "15+ million."]

34. Neither L&B nor any member of the firm participated in the preparation and/or filing

(4) Powell Goldstein's letter transmitting documents for the secret move[7] to Georgia.

(5) Cannon denied hiring Powell Goldstein until their $48,225.00 bill arrived. Wayne Byrd denied on [illegible] to correct with the Court.

of the August 31, 2007 Motion to Declare James Brown Enterprises, Inc., an Asset of the Estate of James Brown, a copy of which motion is attached hereto as Joint Exhibit 15.

35. No member of L&B participated in, or advised, Mr. Dallas and Mr. Bradley regarding the stipulation submitted to the Court on September 24, 2007, a copy of which is attached as Joint Exhibit 16. (7)

36. On November 20, 2007, Bradley and Dallas resigned as PRs/Trustees. (8) Following their resignations, L&B was relieved by the Court of further representation of the Estate and/or Trusts.

(7) Dallas' False stipulation, with Tommie Rae, Terry + others, that JBE, Inc. was never transferred to the 2000 Trust. It was.

(8) L+B recommended that they resign after . . . the discovery of missing millions taken by Cannon which, at a minimum, they did not prevent.

LEWIS AND BABCOCK, LLP

By:_____

Keith M. Babcock, Esquire
Lewis & Babcock, LLP
1513 Hampton Street
P.O. Box 11208
Columbia, SC 29211
803/771-8000

Attorney for Plaintiff

LAW OFFICE OF JAMES D. BAILEY, PC

By:_____

James D. Bailey, Esquire
Law Office of James D. Bailey, PC
100 Park Avenue SW
PO Box 2376
Aiken, South Carolina 29802
803/648-9529

Attorney for Defendants

November 24, 2008

EXHIBITS TO BE SUBMITTED WITH STIPULATION AND ENTERED INTO EVIDENCE AT TRIAL ON NOVEMBER 25, 2008

Lewis & Babcock, LLP, Plaintiff,

v.

Adele J. Pope and Robert L. Buchanan, Jr. as Personal Representatives of the Estate of James Brown and Trustees of the Brown Family Education Trust, and the I Feel Good Trust,
Aiken County Case Number 2008-CP-02-1551

J1 Fee Agreement between L&B and Rodney A. Peeples and Cannon, Dallas and Bradley as Trustees of the James Brown 2000 Irrevocable Trust

J2 Fee Agreement between L&B and Rodney A. Peeples and Cannon, Dallas and Bradley as Personal Representatives of the Estate of James Brown

J3 Description of the services performed and costs advanced by L&B through its attorneys and agents between March 7, 2007 and November 20, 2007

J4 Letter from Ariail King to the SAs dated March 14, 2007 with documents

J5 Ltr of Keith Babcock to the Special Administrators dated June 15, 2007, addressed the continuation of GT as counsel.

J6 Cannon's July 10, 2007 Answers to Petitioner's Second Continuing Interrogatories and Requests for Production

J7 Ltr received by L&B on or about July 26, 2007 from Bradley

J8 RESERVED

J9 RESERVED

J10 RESERVED

J11 RESERVED

J12 RESERVED

J13 Order dated June 22, 2007 confirming that the SAs access

J14 Ltr dated July 10, 2007 and attachments, re: situs of trust

J15 August 31, 2007 Motion to Declare James Brown Enterprises, Inc., an Asset of the Estate of James Brown

J16 Stipulation dated September 24, 2007

STATE'S EXHIBIT 4

SC v Cannon
Payments to David G. Cannon
1999 to 2006

Year	(A) "James Brown" Sources of Funds (1)	(B) Payments to "Cannon" (2)	(B) / (A) As a %	(A) x 5% = (C) Cannon At 5%	(B) - (C) = (D) Amounts to Cannon in Excess of 5%
1999	$ 13,783,155	$ 1,896,573 *	13.8%	$ 689,158	$ 1,207,415
2000	$ 10,874,227	$ 1,681,522	15.5%	$ 543,711	$ 1,137,811
2001	$ 9,436,106	$ 2,284,687	24.2%	$ 471,805	$ 1,812,882
2002	$ 5,187,246	$ 946,060	18.2%	$ 259,362	$ 686,698
2003	$ 12,919,616	$ 2,655,717	20.6%	$ 645,981	$ 2,009,736
2004	$ 10,362,448	$ 415,255	4.0%	$ 518,122	$ (102,867)
2005	$ 8,298,450	$ 708,895	8.5%	$ 414,923	$ 293,973
2006	$ 9,022,123	$ 1,183,152	13.1%	$ 451,106	$ 732,046
Total	**$ 79,883,371**	**$ 11,771,861**	**14.7%**	**$ 3,994,169**	**$ 7,777,692**

(1) "James Brown" Sources of Funds consisits of the following: 1) James Brown Enterprises, Inc. Gross Receipts from the US Corporate Income Tax Return (Form 1120 / 1120X), or (2) Royalties reported by M&T Bank, or (3) Seventh Decade Productions, Inc. Gross Receipts from the US Return of Partnership Income (Form 1065), or (4) Pullman Bond funds disbursed by year, or (5) other documents.

(2) Payments to "Cannon" are evidenced by the following: 1) Checks payable to David Cannon or DGC Associates, or 2) Bank statements of James Brown Enterprises, Inc., DGC Associates, and Seventh Decade Productions, Inc., or 3) Books and records of James Brown Enterprisies, Inc. DGC Associates, and Seventh Decade Productions, Inc., or 4) Exhibit 23 marked on November 15, 2007 in the Probate Hearing for the Estate of James Brown, or 5) Email from David Cannon to Phil Farr, CPA dated November 11, 2007 with the Subject Line "Response to Stan Jackson's Lists of Transactions", or 6) David G. & Maragret A. Cannon US Individual Income Tax Returns (Form 1040), or 7) other documents.

* SLED was apparently not informed about the $5 Million "Check to nobody" which he cashed in the summer of 2007 + kept; admitted in a later deposition; and failed to report on any tax return.

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-350
	)	
Adele J. Pope,	)	
Plaintiff,	)	AFFIDAVIT OF SUE SUMMER
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2012 MAR 29 AM 9:22
JEANNETTE W. McBRIDE
C.C.P. & G.S.

1. This affidavit is based on my personal knowledge.

2. I am a resident of Newberry County, a writer and a journalist.

3. I contribute to the *Newberry Observer*, the *Newberry* magazine and WKDK Radio. I have been honored for my work by the S.C. Press Association, was selected as one of the first community columnists in the The State newspaper, and serve as an artist-in-residence (literary arts/storytelling) for the S.C. Arts Commission.

4. As public relations director at Newberry College, I was advisor for the student newspaper and instructed students about the S.C. Freedom of Information Act (the "FOIA").

5. I became interested in the FOIA before its passage, and I believe that the transparency and accountability of public officials it provides --when it functions properly--is essential to our democratic form of government.

6. It is my opinion to a reasonable degree of professional certainty as a journalist that:

a. Questions related to music legend James Brown are of general public importance and of

particular interest in Newberry County, including:

(1) Why did former AG Henry McMaster take $50 million from James Brown's ''I Feel Good'' Trust, intended for scholarships to needy students, and give these millions to Brown's companion Tommie Rae Hynie Brown, his son Terry Brown and others?

(2) Why did McMaster give Terry a right to buy Brown's assets?

(3) Does AG Sonny Jones have improper relationships with advisors to Tommie Rae, Terry and felon David Cannon?

(4) Why did AG Wilson allow Russell Bauknight, who serves at his pleasure, to claim that Brown's $100 million music empire is worth only $4.7 million?

(5) Why did AG Wilson's office not seek any jail time or restitution from Cannon, who took $12 million from Brown and the ''I Feel Good'' Trust?

(6) Why did Bauknight hire Cannon's $600-an-hour former lawyer to fight the FOIA--then pay him more than $300,000?

(7) Is copyright expert Jeff Smith correct in his article which asserts McMaster, Bauknight and Terry destroyed Brown's royalties and the ''I Feel Good'' Trust by a settlement which:

(a) made an intentionally incorrect determination of Brown's heirs under the Federal Copyright Act, followed by

(b) Bauknight/Terry's intentional devaluation of Brown's empire?

(8) Will Tommie Rae's diary confirm she knew she was not Brown's wife?

(9) Is private philanthropy in South Carolina at risk because wealthy retirees--fearing a takeover by the AG--will not set up foundations here?

b. My requests under the FOIA for the *Newberry Observer* for the following public documents to help answer the above questions have been denied, delayed or ignored by AG Wilson:

1. A copy of the McMaster-created Legacy Trust;

2. A copy of Tommie Rae's diary;

3. A copy of AG McMaster's contract with attorney Kenneth Wingate to sue former Brown trustees for appealing his settlement deal;

4. Information about Bauknight's $4.7 million valuation;

c. AG Wilson, by dodging compliance with the FOIA in the Newberry suits through motions to dismiss, change venue, allow Tommie Rae and Terry to intervene- -and now to consolidate -- has created a roadmap for other state officials to follow in avoiding FOIA compliance.

d. The media and public trust are further undermined because AG Wilson is the State's chief prosecutor of those who violate the FOIA.

e. The media and public trust are undermined because AG Wilson's actions appear to cover up wrongdoing within the AG's office, and only prompt compliance with the FOIA will reveal the truth.

f. Consolidation of this FOIA case will delay FOIA compliance which should have been made in July 2011, damaging the media, my readers in Newberry County, and public trust in the office of the AG.

g. The FOIA will be undermined if any FOIA suit is allowed to be combined with a tort suit brought by private individuals. To consolidate this case with another in which Ken Wingate's firm is the sole representative for both the AG and many private individuals would place a burden on the Plaintiff far greater than is contemplated in the FOIA's simple procedure for obtaining documents—in fact, a burden far greater than many news outlets would be able to undertake.

7. I am informed and believe that all citizens, including myself, have a right to search for answers to the above questions without having to participate in a lawsuit in another county.

8. I became interested in the James Brown issues in April 2011 when I read a draft of Jeff Smith and Adele Pope's article then entitled "*Attorneys General, Copyright Heirs and Musical Millionaires: Why the James Brown 'I Feel Good' Trust doesn't...*"

9. That article asserts that McMaster, inattentive and occupied with his attempt to become the

State's next governor, failed to oversee Senior Assistant AG Sonny Jones, allowing Jones to reach a settlement which set up the "I Feel Good" Trust for destruction by individuals Mr. Brown's trust did not provide for, including Terry and Tommie Rae.

10. The article suggests that Jones failed to understand even the basics of the Federal Copyright Act related to Brown's 800+ published songs, allowing himself to be led by Cannon and Terry's and Tommie Rae's advisors to:

a. stop the proper DNA testing protocol and other steps that would have correctly determined Brown's heirs under the Copyright Act;

b. intentionally designate incorrect persons as Brown's heirs; and then

c. allow Bauknight to devalue Brown's $100 million music empire and sell it to Terry, essentially destroying the "I Feel Good" foundation.

11. I am still trying to obtain public documents which will tell me whether this is correct, but the AG's office has made no response to my last FOIA request, sent by certified letter.

12. When the two FOIA suits were filed in August 2011, I began reporting on them for the *Newberry Observer* and WKDK radio station. They are of local interest because several of the people involved are current or former residents of Newberry County: Mr. Jeff Smith; local attorney and former Brown trustee Adele Pope; and David Cannon's attorney, Max Pickelsimer.

13. I have attended hearings in the FOIA cases; reviewed thousands of pages of filings and documents; and interviewed former trustee Albert Dallas, James Brown's grandson Forlando Brown, attorney David Black, Jacque Hollander and others.

14. I remain especially interested in the public documents related to AG Wilson's review of

the $4.7 million valuation by Bauknight and the actions of Sonny Jones because:

a. Dallas, Forlando and the filings by former trustees Robert Buchanan and Pope—as well as internet sources--all place the value of the music empire at about $100 Million.

b. AG Wilson's office will not provide any public documents about this important issue.

c. Attorney David Black, whose firm filed the $4.7 million value with the IRS, refuses to give me the name of the appraiser who supposedly valued the assets.

d. Jacque Hollander, who has 17 crates with thousands of documents supporting James Brown's desire to establish the ''I Feel Good'' foundation, asserts the music empire is worth more than $100 million.

e. Forlando, Terry's son, asserts Terry does not even know about Wingate's filings in the FOIA cases.

f. According to Dallas, an offer to buy the assets for $100 million was left with Jg. Early in 2007, but Terry and Bauknight have more recently told the Supreme Court there was no offer and the assets are worth $4.7 million.

14. I believe that Chief Justice Toal's questions (raised during oral argument on November 1, 2011) about why the Attorney General decided to give one-quarter of Brown's music empire to Tommie Rae, who may not even be his wife, remain unanswered.

15. I wish to continue investigating Ms. Hollander's claims that Sonny Jones was not truthful when he told Jg. Early he had made a thorough investigation before giving Tommie Rae, Terry and some of Brown's disinherited claimed heirs $50 million that should have gone to the ''I Feel Good'' foundation.

16. I believe the public documents sought in this suit will answer some important questions and should be promptly released as required under the FOIA.

17. While I have attached only two of my articles, I ask the Court to consider my other James Brown articles published in the *Newberry Observer*, some of which are also found on the national blog, *estateofdenial.com*.

18. Attached, with emphasis added by me, are letters to the AG's office dated Dec. 6, 2011 (Exhibit A); Jan. 8, 2012 (Exhibit B); Jan. 20, 2012 (Exhibit C); Jan. 29, 2012 (Exhibit D); and March 1, 2012 (Exhibit E). Also attached my articles dated Jan. 24, 2012 (Exhibit F) and March 26, 2012 (Exhibit G).

FURTHER DEPONENT SAYETH NOT.

Sue Summer

SUE SUMMER

SWORN TO before me this
26th day of March, 2012

_____ (L.S.)
Notary Public for South Carolina
My Commission expires: 7/19/2015

Exhibit A

Sue Summer
1903 Main St.
Newberry, SC 29108
December 6, 2011

Attorney General Alan Wilson & Keeper of Records
Office of the S.C. Attorney General
PO Box 11549
Columbia, SC 29211

Re: FOIA Request (information previously requested six times by email and telephone calls with spokesperson Mark Plowden, including Sept. 20, Oct. 12, Oct. 13, Oct. 18, Oct. 20)

Under the Freedom of Information Act, I ask that I be provided the following information (including any emails that may be relevant) and documents related thereto:

1) The Sept. 22, 2011, letter to Judge Manning about the McMaster/Wingate contract to sue Pope/Buchanan was written by C.H. Jones Jr. Is he the attorney of record in this matter., and if not, why was he writing this letter?

2) The wording on the AG's website related to the release of contingency fee contracts, "except matters in which disclosure is currently under review by a court," raises a second question. The letter by C.H. Jones Jr. on behalf of AG Wilson was directed to Judge Manning and said that the AG's office is "ready and more than willing" to release the contract. Judge Manning did not issue a stay order, but it occurred to me: Has a stay order been issued regarding the contract in another court? If so, at whose request?

3) I am not an attorney, but I have read an affidavit filed Oct. 6 in Newberry, in which there is a mention that Ken Wingate requested the contract not be released. Since he is representing the AG's office and private plaintiffs in the James Brown lawsuit, was this request made at the AG's insistence or by the private plaintiffs? And if the AG's office wants to release the contract, would this not be a conflict of interest between the private plaintiffs and the State?

4) When other contracts were pulled for posting on the website, it must have been necessary to identify those "under review by a court" to withhold them. Therefore, the answer to the 4th question must be readily available, and I would appreciate a prompt response. Is the McMaster/Wingate contingency fee contract to sue Pope/Buchanan the only contract not released on the AG's website? If any others were withheld, please let know what contracts and in what court are they " under review."

5) I would appreciate being sent a copy of the McMaster/Wingate contact, now that Judge Manning has been assigned the case. (See transcript, discussion was about a stay **until** the case was assigned—not that I believe one was issued. In any case, the case has been assigned and the stay would be lifted.)

Because this information is in the public interest, I ask that any fees be waived.
Thank you for your prompt response,

Sue Summer

Exhibit B

Sue Summer
1903 Main St.
Newberry, SC 29108
8 January 2012

Ms. Tracy Meyers
Senior Assistant Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549

Dear Ms. Meyers:

Thank you for responding to my FOIA request, although it was received later than the 15 days allowed by law. That portion of the law, you failed to mention in your instructive first paragraph in which you so kindly explained that the law allows for requests of documents.

Perhaps you failed to notice, but my FOIA request did ask for documents, including emails, related to the questions. Are there no such documents? Your letter fails to reveal any, but please know I would be happy to cull through documents and emails during the relevant periods to determine which ones are related to the questions and "contract." I would appreciate it if you would set up a time and place where I may view all such documents at the earliest possible date. I am available on Thursday at 11 a.m.

I hasten to add that even had I requested no documents related to the questions, there is more to the FOIA than the letter of the law. The spirit of the law is government transparency—a principle which our governor strongly encourages, as does Attorney General Alan Wilson. In his introductory letter to "Public Official's Guide to Compliance With the FOIA ," published on the S.C. Press Association website, AG Wilson does not say to release documents: he advises public officials to release "information."

Some public officials might have considered my questions to be requests for information, and if inclined to be helpful and cooperative with the press, might have answered them. Sadly, I have not found the AG's office to be so inclined. For months, I asked for information related to the James Brown case from the AG's office, but in the end the agency spokesperson did not respond to my emails and did not return telephone calls.

Forgive my vain hope that someone in the AG's office would eventually follow his directive to other public officials: "(W)e have an obligation not only to adhere to the letter of this law, but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction ... The Attorney General's Office uses and recommends the following FOIA guidelines: When in doubt, disclose requested information...When fulfilling a request, remember a vigilant press corps is a requisite for good government. As public officials, we have an added obligation to aid members of the media with their quest to properly inform the public."

Evidently, my trust in this promise was misplaced. Regarding the document I seek, I am fully aware of the Richland County civil case: I attended a hearing and filed a story on it. I am neither a plaintiff nor a defendant in this action, nor do I live or work in Richland County. That case has no bearing whatsoever on my FOIA request for a document that the AG's office has already declared to be a public document.

The FOIA deals with public officials, not private parties, and I have not requested anything of the private parties involved in the civil case in Richland County. In my opinion, it would be a full-frontal assault on the FOIA for private parties to become involved in any way–under any circumstances—with FOIA requests made of elected public officials. The law is intended to shed light on the functioning of government, and any involvement of private parties would lead to public documents being hidden under privacy laws. That is not the intent of the letter—or the spirit—of the FOIA, in my opinion.

The FOIA, in the words of AG Alan Wilson, is "essential to the survival of our representative democracy." I am alarmed that the AG's office—the highest legal office in the State of South Carolina—would even consider asking permission of private attorneys for the release of a public document. When diluted by private interests, as you are suggesting in this case, the FOIA would be rendered useless.

Too, your assertion that there are private portions of a public document is not acceptable. A document created by an elected public officials while on the State payroll is a public document in its entirety. I do not believe that attorneys in the AG's office were working pro bono as private counsel when they were making decisions about how to handle the James Brown estate and trust, and therefore this document should have been released months ago.

My FOIA request was made not of private attorneys for private plaintiffs in a civil suit. My request for information and documents under the FOIA was made of an elected public official, and no civil suit has any bearing on that request. To ask permission from private attorneys for the release of public documents is insulting to every legislator, every member of the press, and every citizen—most of whom support not only the letter of the FOIA law, but also the spirit. Above all, it is insulting to AG Wilson, who is charged with enforcing the FOIA, that his own office has violated his own policy , "When in doubt, release the document."

I do not accept the notion that we must wait for permission from private attorneys, nor do I accept the claim that there is any private portion of a public document. My first request for this document, not under the FOIA but in good faith, was in September. I have already waited months, and your office has already violated the directive that public documents are be provided "at a minimum cost or delay." The delay thus far cannot be remedied except by releasing the document immediately—in its entirety.

In your letter you say that the document (not contract) is 16 pages: a one-page letter from AG McMaster to Russell Bauknight; three pages of a "draft" agreement for legal services (I do not accept that this is a "private" agreement because the State was obviously involved in its development); and an 11-page unexecuted copy of the standard litigation retention agreement for special counsel. One plus three plus 11 equals 15: what is the 16th page of the document?

Your use of quotation marks around "contract," your mention of "unexecuted" litigation retention agreement and "draft" agreement for legal services, as well as your assertion that this a document, not a contract....lead me to suspicions that only the release of the full document can eliminate—or confirm.

A brief Google search brought me to the Judicial Department Rules of Professional Conduct regarding fees, which state: "A contingent fee agreement shall be in writing signed by the client..."

Please, do not weaken the FOIA in a vain attempt to shield someone from being held accountable for what may or may not be professional misconduct.

It seems to me your concern for the "wisest course" is misplaced. Perhaps, you should follow instead the wise counsel of AG Wilson, "When in doubt, disclose the requested information."

As AG Wilson said, our good government depends upon the strength of the FOIA.

Thank you for your prompt response to this long-denied request for the release of the document in question, and we both know what that response should be: the immediate release of the document.

In other words, I ask for immediate compliance with the law your office is charged to enforce.

Thank you,

Sue Summer

Exhibit C

Sue Summer
1903 Main St.
Newberry, SC 29108
20 January 2012

Ms. Tracy Meyers
Senior Assistant Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549

Dear Ms. Meyers:

Pursuant to my letter of Jan. 8, 2012, I am disappointed that the AG's office has chosen to withhold public documents.

The 3-page "draft" of a litigation agreement that you claim is "private" was sent to trustee Russell Bauknight by an elected official of the State, being paid with taxpayer dollars. The section of the FOIA you mention, 30-4-40(a)(2), addresses "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy."

I do not believe members of the AG's staff received a copy of the 3-page "draft" as private citizens.

In "Public Official's Guide to Compliance with South Carolina's Freedom of Information Act," the S.C. Press Association comments on 30-4-40(a)(2),: "This is an often-abused area within the FOIA because it's made into an overly broad blanket to cover things that don't need covering. The personal privacy spoken of here involves the privacy of Joe Citizen, who deserves such protection. Public officials, in whom trust is an important factor, are held to higher standards..."

I am not an attorney, but it seems to me that the letter sent to Bauknight on May 18, 2010, was signed not by "Joe Citizen," but by AG Henry McMaster. The letter and accompanying documents were sent to Bauknight not as "Joe Citizen," but as a trustee appointed by Henry McMaster in his official capacity as AG—as a trustee who serves at the AG's pleasure. Therefore, this letter and accompanying documents would carry the weight of the Attorney General's office and must invoke the FOIA.

In support of my position, consider the opinion of then-AG Henry McMaster, written May 19, 2006: "Our Supreme Court, in the Weston case, as well as decisions in other jurisdictions, and our own opinions, have recognized that 'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke the FOIA."

Unless you are making the claim that the State of South Carolina has NO contract with Russell Bauknight or Kenneth Wingate to sue Robert Buchanan and Adele Pope on behalf of the State, I

cannot be convinced that you have complied with my FOIA request for a copy of the McMaster/Wingate contract.

Even the standard litigation agreement, which you released Friday, supports my position that – if there is a contract—it is a public document.

In regard to the documents you did release, I request clarification:

1) IF the State does have a contract, I do not believe any portion is private because the contingency fee contract states to the contrary (III-F, Public Records): "Any material, data, file, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act...This Agreement shall be considered a public document."
2) IF there is a contract, I also see under Article II-A-3 that all "pleadings, motions, briefs, formal documents, and agreements" must bear the signature of the AG or his designated assistant. Even though the AG is listed as a plaintiff in filings, I do not find signatures for the AG or his staff on any documents previously filed in this case. Please explain.
3) The statement "this agreement is between private parties" leads me to wonder how Mr. Bauknight can purport to speak for the State. Is there a separate authorization agreement between the AG's office and Bauknight? If so, I hereby request a copy of that document under the FOIA.
4) Since my request was for a copy of a contract, if the State now claims there is NO contract, would not the "wisest" response to my request have been simply to state that there is none?
5) In short, please confirm whether there is or is not a valid contract between the State and the Wingate firm that authorizes Bauknight to sue on behalf of the State.

Your prompt attention to this already delayed request would be most appreciated and most in line with the guidance offered by AG Wilson in his letter to public officials regarding the FOIA.

Sincerely,

Sue Summer

Exhibit D

Sue Summer
1903 Main St.
Newberry, SC 29108
29 January 2012

Ms. Tracy Meyers
Senior Assistant Attorney General
Rembert C. Dennis Building
PO Box 11549
Columbia, SC 29211-1549

Dear Ms. Meyers:

Pursuant to my letter of Jan. 8, 2012, I am disappointed that the AG's office has chosen to withhold public documents.

The 3-page "draft" of a litigation agreement that you claim is "private" was sent to Russell Bauknight by an elected official of the State, being paid with taxpayer dollars. The section of the FOIA you mention, 30-4-40(a)(2), addresses "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy."

In "Public Official's Guide to Compliance with South Carolina's Freedom of Information Act," the S.C. Press Association comments on 30-4-40(a)(2),: "This is an often-abused area within the FOIA because it's made into an overly broad blanket to cover things that don't need covering. The personal privacy spoken of here involves the privacy of Joe Citizen, who deserves such protection. Public officials, in whom trust is an important factor, are held to higher standards..."

I do not believe members of the AG's staff received a copy of the 3-page "draft" as private citizens. I am not an attorney, but it seems to me that the letter sent to Bauknight on May 18, 2010, was signed not by "Joe Citizen," but by AG Henry McMaster. The letter and accompanying documents were sent to Bauknight not as "Joe Citizen," but as a trustee appointed by Henry McMaster in his official capacity as AG—as a trustee who serves at the AG's pleasure. Therefore, this letter and accompanying documents would carry the weight of the Attorney General's office and must invoke the FOIA.

In support of my position, consider the opinion of then-AG Henry McMaster, written May 19, 2006: "Our Supreme Court, in the Weston case, as well as decisions in other jurisdictions, and our own opinions, have recognized that 'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke the FOIA."

Unless you are making the claim that the State of South Carolina has NO contract with Russell Bauknight or Kenneth Wingate to sue Robert Buchanan and Adele Pope on behalf of the State, I cannot be convinced that you have complied with my FOIA request for a copy of the McMaster/Wingate contract. Even the standard litigation agreement, which you released, supports my position that the contract is a public document and falls under the FOIA.

You also failed to release, as requested, emails or other communications related to the McMaster/Wingate contract. I am therefore requesting a reconsideration of my request for the McMaster/Wingate document, as well as related documents and emails.

I also request clarification in regard to the documents you did release:

1) IF the State does have a contract, I do not believe any portion is private because the contingency fee contract states to the contrary (III-F, Public Records): "Any material, data, file, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act...This Agreement shall be considered a public document."
2) IF there is a contract, I also see under Article II-A-3 that all "pleadings, motions, briefs, formal documents, and agreements" must bear the signature of the AG or his designated assistant. Even though the AG is listed as a plaintiff in filings, I do not find signatures for the AG or his staff on any documents previously filed in this case. Please explain.
3) The statement "this agreement is between private parties" leads me to wonder how Mr. Bauknight can purport to speak for the State. Is there a separate authorization agreement between the AG's office and Bauknight? If so, I hereby request a copy of that document under the FOIA.
4) Since my request was for a copy of a contract, if the State now claims there is NO contract, would not the "wisest" response to my request have been simply to state that there is none?
5) In short, please confirm whether there is or is not a valid contract between the State and the Wingate firm that authorizes Bauknight to sue on behalf of the State.

I also request under the FOIA a copy of the Legacy Trust and the McMaster settlement deal, as well as documents, including emails and electronic communications, related to:

1) The AG's decision not to seek restitution from David Cannon.
2) The AG's decision to delay the dismissal of David Cannon's $6 million claim against the James Brown estate.
3) The $4.7 million at-death valuation of the James Brown music empire.

Your prompt attention to this already delayed request would be most appreciated and aligned with the guidance offered by AG Wilson in his letter to public officials regarding the FOIA. Since the release of these documents is in the public interest, I ask any fees be waived. If need be, I would be happy to come in and review the documents. Please call 803-276-6197 to schedule a date.

Sincerely,

Sue Summer

Exhibit E

Sue Summer
1903 Main St.
Newberry, SC 29108
1 March 2012

Attorney General Alan Wilson & Keeper of Records
Office of the S.C. Attorney General
PO Box 11549
Columbia, SC 29211

Dear Sir:

Under the Freedom of Information Act, I ask that I be provided a copy of Tomi Rae Hynie's diary.

Surely, this document was reviewed by the office of the Attorney General, under the McMaster administration, during its investigation of whether to give away 25 percent of the music empire James Brown left for the education of needy children in South Carolina to a woman who was married to someone else at the time she exchanged vows with Brown.

According to reliable sources, the diary of Tomi Rae Hynie provides convincing evidence that she did not believe herself to be Brown's wife. My sources say she wrote repeatedly about how very much she wanted him to marry her.

I would appreciate it if you would respond promptly to this request. My last request has still not received a response, 20 business days after it was received by your office. The law allows only 15.

Respectfully,

Sue Summer

Exhibit F

Wilson's dodge of FOIA suggests: Wingate sued James Brown trustees without valid contracts (SC)

January 24, 2012



In September senior assistant Attorney General (AG) C.H. Jones wrote to a Richland County court that the AG's office was "ready and more than willing" to release a copy of the contract under which Columbia attorney Kenneth Wingate is suing former James Brown trustees, Robert Buchanan of Aiken and Adele Pope of Newberry.

It now appears that there may be no contract.

On Dec. 6, a Freedom of Information Act (FOIA) request for the contract was filed on behalf of the Newberry Observer. In Friday's response, senior assistant AG Tracy Meyers released an "unexecuted copy" of the AG's standard "Litigation Retention Agreement" and a May 18, 2010, letter from AG Henry McMaster to current Brown trustee, Russell Bauknight of Columbia.

Missing from the documents was what Meyers described on Jan. 5 as a 3-page "draft" "Agreement for Legal Services," which she claimed as "private" under 30-4-40(a)(2) of the FOIA.

The description of the agreement as a "draft" suggests it is not a valid contract. In any case, despite Meyers' assertion, the document is arguably public under the FOIA because McMaster wrote the letter in his official capacity as AG, and Bauknight received the letter in his official capacity as trustee. Bauknight was appointed by McMaster and now serves at the pleasure of AG Alan Wilson.

In the May 18, 2010, letter to Bauknight, McMaster references a conversation with attorneys in the Wingate firm about filing a lawsuit against Buchanan Pope: "I have met with Ken Wingate and Everett Kendall of Sweeny Wingate and Barrow … regarding the action to be filed against Adele J. Pope and Robert L. Buchanan… I am writing to confirm our understanding that you will be retaining Mr. Wingate and Mr. Kendall to file this action on behalf of the beneficiaries of the James Brown Estate and Trust…"

The letter is clear that Bauknight, not the AG's office, is filing the lawsuit.

Only one day after McMaster wrote the letter, Wingate filed a Richland County lawsuit in which Bauknight asserted he was acting "on behalf of Henry Dargan McMaster in his capacity as Attorney General of South Carolina." In addition to Bauknight's assertion, McMaster is a named Plaintiff in the Wingate suit, "in his capacity as attorney general of the State of South Carolina."

Wingate and members of his firm are the only attorneys of record in the lawsuit, which they brought on behalf of a dozen private plaintiffs, as well as purportedly AG McMaster and his agent, Bauknight.

In the letter, McMaster confirms that Bauknight has agreed to use the "terms and conditions" outlined in an attached "Agreement for Legal Services," which "references and incorporates the AG's standard Litigation Retention Agreement."

The standard retention agreement for outside counsel includes the provision: "All pleadings, motions, briefs, formal documents and agreements must bear the signature of the AG or his designated assistant."

No attorney general or assistant attorney general has signed or been named on any of the pleadings or motions in the case.

The AG's standard retention agreement also requires compliance with the FOIA: "Special Counsel agrees to adhere to South Carolina's Freedom of Information Act…This Agreement shall be considered a public document."

In refusing to release the 3-page retention agreement, Meyers cited a provision of the FOIA that addresses "information of a personal nature where the public disclosure thereof would constitute unreasonable invasion of personal privacy."

In "Public Official's Guide to Compliance with South Carolina's Freedom of Information Act," the S.C. Press Association comments: "This is an often-abused area within the FOIA because it's made into an overly broad blanket to cover things that don't need covering. The personal privacy spoken of here involves the privacy of Joe Citizen, who deserves such protection. Public officials, in whom trust is an important factor, are held to higher standards…"

In an emailed response to Meyers, sent Saturday, was a request for further clarification of the documents released: "Please confirm whether there is or is not a valid contract between the State and the Wingate firm that authorizes Bauknight to sue on behalf of the State."

James Brown's estate plan left his personal and household effects to six named children, and he intended his music empire to be used for the education of needy and deserving students in South Carolina and Georgia. Buchanan and Pope were appointed personal representatives of James Brown estate, and as directed by the will and trust, vigorously defended the estate plan by appealing a McMaster settlement deal that gave away over half of Brown's music empire to those who challenged his Brown's estate plan, described in a Supreme Court hearing as "noble."

Documents related to the FOIA request and response, as well as to filings in the lawsuit, are posted on the Facebook page: James Brown "I Feel Good" Trust (FOIA Concerns).

Attribution:

Wilson's Dodge of FOIA Suggests: Wingate Sued James Brown Trustees Without Valid Contract
Sue Summer
January 21, 2012
The Newberry Observer

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Exhibit G

print

Wilson denies FOIA requests in James Brown suit

by Sue Summer
For The Observer
03.26.12 - 12:01 am

The Freedom of Information Act (FOIA) requires every public official to release public documents within 15 business days of an FOIA request. The government official is required by law to comply, whether the request is made by the press or by the public. The office of the Attorney General (AG) has the responsibility of enforcing the law.

Ironically, it is that very office which has fought for eight months to dodge and delay every FOIA request submitted by Newberry resident and former James Brown trustee Adele Pope.

Among the FOIA requests Pope filed last summer with the AG's office:

1) Pope asked for a copy of the Legacy Trust. This is the trust created by former S.C. Attorney General Henry McMaster when he took over Brown's $100 million music empire in the 2009 settlement deal with six of Brown's alleged children and his companion, Tomi Rae Hynie.

2) Pope requested documents related to why the Legacy Trust trustee, who was appointed by McMaster and serves at Wilson's pleasure, valued the music empire of legend James Brown at less than $4.7 million upon his death on Dec. 25, 2006. (For several years, Brown had earned royalties of $4-5 million a year.)

When Pope's requests were denied by the AG's office, in August she filed FOIA lawsuits in Newberry County over these and other requests.

In the filings and pleadings that followed, AG Wilson's legal posturing has taken many forms —and along the way, many troubling questions about the strength of the FOIA in South Carolina have surfaced.

To avoid release of the James Brown documents:

· The AG claimed Newberry was not an appropriate place for Pope to bring suit, even though the AG is a state-wide elected official.

· The AG claimed that documents created by former AG Henry McMaster and his staff are "private," even though all were being paid with taxpayer dollars while writing them.

· The AG claimed he wanted to release certain documents, but he could not because a judge had issued a stay. When the judge's written order was issued with no mention of the alleged "stay," Wilson still refused to release the documents.

· The AG claimed that because Pope was involved in litigation, she should gain access to documents using discovery, not the FOIA—suggesting that when people are sued, they lose their FOIA rights.

· The AG claimed that private plaintiffs in other litigation should be allowed to join Pope's FOIA lawsuit as defendants, even though the FOIA deals with only public officials and public documents.

· In a January court hearing, Columbia attorney Mark Gende of the Wingate firm asked that his private clients be allowed to join the FOIA lawsuit, even though none of them is a public official and nothing had been requested of them. Gende's clients include Brown's companion Tomi Rae Hynie and his son Terry, who was given the right to purchase Brown's music empire by AG McMaster.

· The AG filed a motion in February that Pope's FOIA lawsuit should be consolidated with Gende's Richland County lawsuit in which the AG's office and private plaintiffs are suing Pope and Buchanan for tens of millions of dollars. If the consolidation proceeds, it would then become possible for Wilson to withhold the documents, arguing private parties are not bound by the FOIA.

The consolidation of a private tort suit with an FOIA case is unprecedented, and on March 14 Pope's attorney, Adam Silvernail of Columbia, filed a brief in opposition.

"Because the sole purpose of the FOIA is allowing the media and public at large to have immediate access to documents, the process of consolidation itself would serve to delay and defeat the purpose of the FOIA," said the brief.

According to the brief, "This case…seeks a small number of significant public documents from Defendants, as well as confirmation that Defendant Legacy Trust is a public body."

The AG's office has argued that the Legacy Trust is not a public document, even though it was created by former AG McMaster and his staff, all of whom were being paid by taxpayers.

Gende's case in Richland County is complex, and after two years, no plaintiff has agreed to be deposed. According to the Silvernail brief, the case may not be heard for another two years.

The lawsuit involves the service of Pope and Aiken attorney Robert Buchanan, trustees from late 2007 to 2009. They vigorously defended Brown's estate plan, which left his music empire to the "I Feel Good Trust" for the charitable purpose of educating needy children, and they have appealed the settlement deal that gives away over half of Brown's music empire to those he specifically excluded from inheriting.

The FOIA lawsuit, on the other hand, deals with questions that can be decided immediately and without a jury:

1) Must the organizational document of an entity created by the AG be released?

2) Must the AG's office produce public documents related to the $4.7 million at-death valuation of Brown's music empire, as represented to the S.C. Supreme Court?

The FOIA case is ready for a final hearing, according to the brief, but Case 4900 is "mired" in discovery and other issues. Consolidation would only serve to delay further the release of the documents.

The brief argued that the AG's attempt to consolidate the cases raises important questions:

1) Would the AG support other South Carolina officials if they were to intervene as individuals in FOIA litigation, thereby limiting public access to documents that may prove personally or professionally embarrassing?

2) Will journalists who request public documents related to ongoing litigation be forced into tort actions to fight privateparties, many of whom have no obligations under the FOIA?

The AG's office has stonewalled not only Pope's requests for documents, but also requests filed under the FOIA by the Newberry Observer.

A December request for a copy of the McMaster/Wingate contract, under which Pope and Buchanan are being sued in Richland County, was denied by Tracy Meyers of the AG's office.

A Feb. 3 request for a copy of the Legacy Trust has received no reply, even though the 15 business days allowed by FOIA have long since passed. Repeated reminder emails to the AG's spokesperson, Mark Plowden, have likewise received no reply.

A March 1 request for a copy of Tomi Rae Hynie's diary has not received a reply, due March 23.

Hynie's diary is also the subject of an Aiken lawsuit and is said to be "explosive" by a long-time friend of James Brown. The diary is purported to contain passages in which Hynie recounts that she begged Brown to marry her. If so, the diary could provide important evidence that she was not his wife, she knew she was not his wife—and she should not be part of the settlement deal.

According to the South Carolina Press Association "Citizen's Guide to S.C.'s FOIA," openness in government is important "because it allows the public to learn about the performance of public officials and the expenditure of public funds."

A report on "corruption risk" by the Center for Public Integrity and Global Integrity, a nonpartisan good-government group, recently ranked South Carolina

fifth in the nation.

According to the state newspaper, the report said, "There is no agency that enforces the Freedom of Information law or monitors the state government's compliance with it. There is also no appeal process, relegating to the courts any problem a member of the public or press experiences in obtaining public information."

Still, not even the courts can fulfill FOIA's promise of prompt access to documents...when the agency responsible for enforcing the law is very agency dodging the law.

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ALAN WILSON
ATTORNEY GENERAL

March 7, 2013

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

Re: Pope v. Wilson, Attorney General and Bauknight 2012-CP-40-350 (Pope FOIA I)
Pope v. Wilson 2010-CP-40-4900 (Pope FOIA II consolidated with *Bauknight*)

Dear Judge Manning:

I am hopeful that these cases can be resolved as a result of the hearing set for March 18, 2013.

As you know the Attorney General, strongly supports the Freedom of Information Act as have his predecessors. Without waiving our existing jurisdictional and other defenses to this litigation including all motions, we believe that our Answer and attachments in the Pope I suit that I am filing by mail today and proposed Amended Answer and attachments in Pope II, respond to the FOIA's at issue. These filings in Pope I make clear that we have no documents that could be considered responsive to that FOIA except for a draft of the Legacy Trust attached to our Answer herein. These filings in Pope II provide all the documents that we have that could be considered responsive to that FOIA except for a three page private part of the alleged attorneys fee contract which we have no objection to disclosing if your Honor rules that it may be released. We respectfully request a ruling from the Court regarding the production of this document in the main action in case 4900. We will be prepared to submit this document to the Court and Plaintiff at the hearing on the 18th if the Court rules that it may be produced.

A number of motions are scheduled for the hearing and two new ones are designed to get the above responses before the Court. Although we do not waive these motions, we believe that they may be heard in a relatively summary manner because we have responded to the FOIAs at issue. I am enclosing copies of the additional filings for your reference and an updated motions list reflecting the two additional motions which has not been reviewed by Plaintiff's counsel.

Thank you for your consideration of these matters. If you have questions, please let me know.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc: Adam T. Silvernail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
J. Calhoun Watson, Esquire
The Honorable Jeanette W. McBride
Daryl L Williams, Esquire
Robin A. Braithwaite, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire

POPE v. WILSON & BAUKNIGHT
Case 2012-40-CP-350

Pending motions

1. **MOTION TO CONSOLIDATE with case 2010-40-CP-4900**

2. **A. MOTION TO DISMISS and ALTERNATIVE MOTION TO STRIKE Affidavit attached to Complaint by Defendant Wilson**

   B. And MOTION TO AMEND this Motion with AMENDED MOTION TO DISMISS attached

3 **MOTION TO DISMISS by Defendant Bauknight**

4. **MOTIONS TO STRIKE by Defendant Wilson**

   MTD and alternative MTS (9-2-11), *supra*

   MTS 9-14-11

   MTS 9-27-11

      Affidavit Adele Pope (9-16-11)

      Affidavit Adele Pope (9-6-08)

   MTS 10-14-11

      Affidavit Adele Pope (10-6-11)

   MTS 1-9-12

      Affidavit Jeffery Smith (1-3-12)

      Affidavit Steven Farrar (1-4-11),

      Affidavit Sue Summer (1-5-12)

      Affidavit and attachments Adele Pope (1-6-12),

      Affidavit Daryl Williams (1-6-12)

      Affidavit Adele Pope (1-3-12),

      Affidavit Vic MacDonald (1-9-11)

MTS 3-29-12

Affidavit of Sue Summer (3-26-12), Affidavit Adele Pope (3-27-12)

MTS 3-28-12

Affidavit Adele Pope (2-22-12), Affidavit Adele Pope (1-9-12)

5. **MOTIONS TO STRIKE by Defendant Bauknight**

MTD Affidavits of in support of Summary Judgment;

Amended MTS:

Affidavits of Adele Pope (10-6-11, 1-3-12, 1-9-12 and all attachments)

Affidavits of Jeffrey Smith (1.9.11 (and attachments) and

1.3.12)

Affidavit of Steven Farrar (1.4.12)

Affidavit of Sue Summer (1.5.12)

Affidavit of Daryl Williams (1.6.12)

6. **MOTION FOR SUMMARY JUDGMENT by Plaintiff Pope**

7. **MOTION FOR JUDGMENT ON THE PLEADINGS** [ADDED MARCH, 2013]

ALAN WILSON
ATTORNEY GENERAL

March 13, 2013

2013 FEB 15 AM 10:42

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
P.O. Box 2766
Columbia, SC 29202

Re: Pope v. Alan Wilson, Attorney General 2012-CP-40-350

Dear Ms. McBride:

Subject to and without waiving any defense motions and defenses in this case, enclosed for filing with your Office for the Defendant Attorney General are exhibit pages 27-42 filed as an additional exhibit to the Answer in this case. This exhibit is another draft of the Legacy Trust and is included in the Record on Appeal in Wilson v. Dallas in addition to the other draft filed last week. I have also enclosed a certificate of service, and I am sending a copy of this additional exhibit to Judge Manning.

Please confirm filing by initialing or stamping the enclosed copy of this letter and returning it in the enclosed envelope. Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Counsel for Defendant Attorney General

cc: Adam T. Silvernail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
The Honorable L. Casey Manning

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ALAN WILSON
ATTORNEY GENERAL

March 28, 2013

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

Re: Pope v. Wilson, Attorney General and Bauknight 2012-CP-40-350 (Pope FOIA I)
Pope v. Wilson 2010-CP-40-4900 (Pope FOIA II consolidated with *Bauknight*)

Dear Judge Manning:

Enclosed for your information is a copy of the Reply of the Defendant to the Return to his Motion for Judgment on the Pleadings in Pope case II (Case 4900), *supra.* I also enclose, for your convenience, a copy of my letter to you of March 7, 2013 which provides a brief summary of our position in these cases including that, subject to all defenses and defense motions as to this litigation, we believe that we have responded to the FOIA's at issue.

The Defendant Wilson is prepared to argue pending motions in these cases when scheduled by this Court. Respectfully, I request protection from scheduling on the following dates over the next six weeks: April 8, 11, 12 , 19, 23, 26, May 3, May 13, May 14, and May 17. I will be available on all other dates during that period. We take no position as to the Legacy Trust's Motion for Stay but believe that hearing of motions involving the Attorney General should not be stayed and should be heard.

Thank you for your consideration of these matters. If you have questions, please let me know.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc: Adam T. Silvernail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
J. Calhoun Watson, Esquire
The Honorable Jeanette W. McBride
Daryl L Williams, Esquire
Robin A. Braithwaite, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire

Emory Smith

From: Emory Smith
Sent: Wednesday, May 8, 2013 10:40 AM
To: 'Adam Silvernail'; 'Manning, L. Casey Law Clerk (Joy E. Middleton)'; 'cmanningj@sccourts.org'
Cc: 'Mark V. Gende'; 'Ken B. Wingate'; 'Aaron J. Hayes'; 'Daryl Williams'; 'kmb@lbglegal.com'; 'Ariail E. King'; John McIntosh; Bob Cook; Sonny Jones
Subject: RE: Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

Your Honor, I am prepared and available for a hearing in the FOIA cases at most any time, but note the following conflicts through the end of June and would appreciate protection as to them:

May 13 and 14 – oral argument in Richmond
May 16 – motion hearing in Chas. I should be back by 3 pm
May 22 am – Dr's appt.
June 6 am – oral argument, Sup. Ct.
June 11 – Trial, Chas. Co.
June 24-28 - family travel

Respectfully,

Emory Smith
Counsel for Defendant Wilson

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Phone: 803-734-3680

From: Adam Silvernail [mailto:adam@silvernaillawfirm.com]
Sent: Wednesday, May 08, 2013 10:28 AM
To: Manning, L. Casey Law Clerk (Joy E. Middleton); cmanningj@sccourts.org
Cc: Emory Smith; Mark V. Gende; Ken B. Wingate; Aaron J. Hayes; John McIntosh; Bob Cook; Sonny Jones; Daryl Williams; kmb@lbglegal.com; Ariail E. King
Subject: Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

Dear Judge Manning:

We have this morning received notice of the Supreme Court's denial of all Petitions for Rehearing of the Court's February 27th opinion in Aiken County Case No. 2008-CP-02-1647.

We understood from your law clerk that you were awaiting a decision on these petitions to set hearings in these matters. Because of the importance of speedy disposition of FOIA matters and the fact that my client's 2 FOIA

cases have now been pending for more than 20 months, we would appreciate your scheduling the FOIA matters for hearing at the Court's earliest convenience.

At the same time, we request that you hear all motions which are delaying the appearance by 5 of the Plaintiffs in Case 4900 at depositions noticed for several months ago. Thank you for your consideration.

Sincerely,
Adam Silvernail
--
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1901 Hampton Street
Columbia, South Carolina 29202-1898
tel: 803/779-1770
fax: 803/403-8092

Emory Smith

From: Emory Smith
Sent: Wednesday, May 7, 2014 4:26 PM
To: 'Adam Silvernail'; 'cmanningj@sccourts.org'; 'Manning, L. Casey Law Clerk (Joy E. Middleton)'
Cc: 'Ariail E. King'; 'kmb@lbglegal.com'; 'Adele Pope'
Subject: RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350

Your Honor, I am responding to Mr. Silvernail's emailed letter today in which he requested a hearing as to the FOIA matters pending in this case. We have no objection to a hearing at your Honor's convenience although, as stated in previous correspondence and filings, we believe that Plaintiff has all documents that could be considered responsive to her FOIA request at issue in this proceeding. We reserve our positions in filings with this Court.

I do plan to file a response to his supplemental memorandum and Ms. Pope's affidavit.

Respectfully,

Emory Smith
Counsel for the Attorney General

From: Adam Silvernail [mailto:adam@silvernaillawfirm.com]
Sent: Wednesday, May 07, 2014 4:08 PM
To: cmanningj@sccourts.org; Manning, L. Casey Law Clerk (Joy E. Middleton)
Cc: Emory Smith; Ariail E. King; kmb@lbglegal.com; Adele Pope
Subject: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350

Dear Judge Manning:

Please see attached letter and enclosures. Thank you for your consideration.

Sincerely,
Adam Silvernail

--
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1901 Hampton Street
Columbia, South Carolina 29202-1898
tel: 803/779-1770
fax: 803/403-8092

Emory Smith

From: Emory Smith
Sent: Thursday, November 13, 2014 6:14 PM
To: 'Adam T. Silvernail'; 'cmanninglc@sccourts.org'; 'cmanningj@sccourts.org'
Cc: 'Ken B. Wingate'; 'Mark V. Gende'; 'Ariail E. King'; 'Keith Babcock'
Subject: RE: Pope vs. Wilson, Case 2012-CP-40-0350 and Pope vs. Wilson, Case 2010-CP-40-4900

Your Honor, I will be generally unavailable next week due to other important meetings scheduled and other deadlines. I am the attorney in this Office who has handled the FOIA cases and I need to be present for any hearing in this matter.

Therefore, I respectfully request that you not schedule a hearing before November 24. I am generally available on that date and afterward except for the pm of 11/26 and a few dates in Dec. when I have Court or other appointments. I have noted my availability on earlier dates so this request is not made for purposes of delay.

Thank you for your consideration of this request.

Respectfully,

Emory Smith

J. Emory Smith, Jr.
Deputy Solicitor General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3642 Direct

-----Original Message-----
From: Adam T. Silvernail [mailto:asilvernail@mkb-law.com]
Sent: Thursday, November 13, 2014 5:53 PM
To: 'cmanninglc@sccourts.org'; 'cmanningj@sccourts.org'
Cc: Emory Smith; Ken B. Wingate; Mark V. Gende; 'Ariail E. King'; 'Keith Babcock'
Subject: Pope vs. Wilson, Case 2012-CP-40-0350 and Pope vs. Wilson, Case 2010-CP-40-4900

Please see attached correspondence, which is also being mailed to Judge Manning today.

Sincerely,
Adam Silvernail

Adam T. Silvernail
Moses & Brackett, PC
1333 Main St., Suite 260
Post Office Box 100261
Columbia, SC 29202-3261
803-461-2328 (direct dial)
803-461-2309 (fax)

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-----Original Message-----
From: ricoh@mkb-law.com [mailto:ricoh@mkb-law.com]
Sent: Thursday, November 13, 2014 4:56 PM
To: Adam T. Silvernail
Subject:

This E-mail was sent from "RNP00AB77" (Aficio MP C5000).

Scan Date: 11.13.2014 16:56:28 (-0500)
Queries to: ricoh@mkb-law.com

Emory Smith

From: Emory Smith
Sent: Thursday, January 29, 2015 2:55 PM
To: 'cmanninglc@sccourts.org'
Cc: 'Mark V. Gende'; 'cmanningj@sccourts.org'; 'Adele Pope (adele@popelawfirm.com)'; 'Adam T. Silvernail'
Subject: RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350 and Pope vs. Wilson, Case No. 2010-CP-40-4900

We have no objection to either a status conference or a hearing on any of these days except that I do have conflicts 1:30-3:30 on the 11th and possibly the morning of the 12th; however, I do not see the value of a conference on the same date as the hearing. If the Court prefers to have a conference before the hearing, I suggest that it be scheduled at least a few days before the hearing.

Thank you.

Emory Smith

From: Adam T. Silvernail [mailto:asilvernail@mkb-law.com]
Sent: Thursday, January 29, 2015 1:55 PM
To: 'cmanninglc@sccourts.org'
Cc: Mark V. Gende; Emory Smith; cmanningj@sccourts.org; Adele Pope (adele@popelawfirm.com)
Subject: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350 and Pope vs. Wilson, Case No. 2010-CP-40-4900

Dear Ms. Goodstein:

I am available anytime on February 4, 5, 10, 11 or 12th, and it appears that Emory is available on those dates (with the exception of the afternoon of the 11th and the morning of the 12th). My January 22, 2015 letter requested a hearing, rather than a status conference, and I ask that we proceed with hearing these cases immediately after the status conference. The pending motions are all now over a year old and many are over three years old. I would thus suggest that the status conference and motions hearing be set together on one of these dates when the Court has time to hear arguments on the motions.

Best,
Adam Silvernail

Adam T. Silvernail
Moses & Brackett, PC
1333 Main St., Suite 260
Post Office Box 100261
Columbia, SC 29202-3261
803-461-2328 (direct dial)
803-461-2309 (fax)

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From: Emory Smith [mailto:ESmith@scag.gov]
Sent: Tuesday, January 27, 2015 10:30 AM
To: Mark V. Gende; Adam T. Silvernail; 'cmanninglc@sccourts.org'
Cc: cmanningj@sccourts.org
Subject: RE: Case 4900 Issues (re-send to corrected email addresses)

I am available for a status conference any day through Feb. 12 except for early pm on the 11th and possibly the am of the 12th.

Emory Smith
Counsel for the Attorney General

From: Mark V. Gende [mailto:MVG@swblaw.com]
Sent: Tuesday, January 27, 2015 9:46 AM
To: asilvernail@mkb-law.com; Emory Smith; 'cmanninglc@sccourts.org'
Cc: cmanningj@sccourts.org
Subject: Case 4900 Issues (re-send to corrected email addresses)

Dear Adam, Emory, and Eve:

To follow up my telephone conversation with Adam and Emory, Judge Manning has asked: (1) that we work together to schedule a status conference on the FOIA matters referenced in Adam's January 22, 2015 letter and (2) that Adam and I submit proposed orders on plaintiffs' motion to set aside any default heard December 17, 2012. Adam and I agreed that these proposed orders be submitted within 7 days from today.

I am copying Judge Manning's clerk on this string in order to facilitate scheduling the status conference. I am available Thursday and Friday of this week for the status conference.

Eve, would you please let us know if Judge Manning has any preferred dates and times for the status conference.

Mark Gende

S·W·B

Mark V. Gende | *Member*
Sweeny, Wingate & Barrow, P.A.

1515 Lady St. (29201)
PO Box 12129
Columbia, SC 29211

T ▪ 803-256-2233
F ▪ 803-256-9177

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STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-350
	)	
	)	
Adele J. Pope,	)	
Plaintiff,	)	PLAINTIFF'S REPLY TO MEMORANDA OF DEFENDANTS
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee	)	
Defendants.	)	

In this FOIA case, Plaintiff Adele J. Pope ("Plaintiff") submits this brief in reply to the Memorandum of Alan Wilson, in his capacity as Attorney General of South Carolina ("AG") in support of his pending motions to amend, dismiss, for judgment on the pleadings and to strike and in reply to the James Brown Legacy Trust's Supplemental Memorandum in Support of its Motion to Dismiss and in Opposition to Plaintiff's Motion for Summary Judgment.

I. As to the AG's Memorandum

In his Memorandum, the AG argues that he is entitled to prevail in this case because: he claims not to have received Plaintiff's June 30, 2011 request until he was served with the Summons and Complaint herein (to which a copy is attached); he claims not to possess the $4.7 million appraisal of James Brown's music empire and related documents; and he asserts this case should be dismissed under Rule 12(b)(8), because the same or similar claims are pending between the parties in another action.

In March 2013, the AG moved to amend his answer herein and produced certain

public documents responsive to Plaintiff's June 30, 2011 request which had not previously been released to her by the AG.

By presenting public documents in this action, approximately a year and a half after its inception, the AG has acknowledged that it did indeed possess responsive public documents. In *Sloan v. SC Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014), our Supreme Court found that a FOIA plaintiff was entitled to declaratory relief and attorneys' fees even where the public body had produced the requested documents three weeks after the plaintiff therein filed suit. Likewise, the AG's delayed production of documents herein moots nothing.

The AG further asserts that the Newberry County Court in a FOIA case to which Plaintiff is not a party has found that the AG does not possess the $4.7 million appraisal of James Brown's music empire. First, Plaintiff is not bound by a finding in a case to which she has never been a party. Second, a public body need not possess a document to make it responsive and subject to production under the FOIA. Instead, the FOIA requires a public body to release all responsive public documents "prepared, owned, used, in the possession of, or retained by a public body." S.C. Code Ann. §30-4-20(c). The statute itself makes clear that possession of a document is not a prerequisite to release under the FOIA. As set out in Plaintiff's May 2, 2016 Memorandum, the AG moved the Supreme Court to accept the $4.7 million valuation in 2011 (see Exhibit A), and he also sued Plaintiff and Robert L. Buchanan, Jr., in 2010 for, among other things, presenting an inflated valuation of James Brown's assets for the purpose of securing a $5 million commission. If true, this claim by the AG would constitute a Federal felony. In his Motion to Supplement the Record in *Wilson v. Dallas*, the AG discusses in detail the basis for the valuation [see, e.g., footnote 3 on p. 6 of

Exhibit A]. The Motion to Supplement is signed by Sr. Asst. AG C. Havird Jones, and makes clear that the AG has "used" the appraisal.

The AG suggests that he need not produce documents which were later filed in *Summer v. Wilson*, since those are available from the Court's files. The AG points to no exception to the FOIA, and Plaintiff is aware of none, which would exempt documents from release because they are available elsewhere.

The AG takes the position that Plaintiff's case must be dismissed for lack of subject matter jurisdiction, where he claims that he did not receive her initial June 30, 2011 FOIA request. This argument is disingenuous where the AG was served with the Summons and Complaint herein nearly five (5) years ago, and has still never made a proper FOIA response to Plaintiff. S.C. Code Ann. §30-4-30, which sets out the procedure for making a request for release of public documents under the FOIA, prescribes no particular form or method for making a request, and Plaintiff's June 30, 2011 request was attached to the Complaint herein, which was served on the AG in August 2011.

In his Memorandum, the AG argues that he has produced all documents responsive to Plaintiff's request for "the final and all drafts, signed and unsigned, of the James Brown Legacy Trust." Plaintiff notes that, even if the draft documents produced by the AG were in fact all responsive documents, the AG did not produce those until approximately eighteen (18) months after this lawsuit was filed. His initial response to this action was to move for dismissal, asserting that Plaintiff could not seek documents from him under the FOIA in light of then-pending discovery motions in Richland County Case No. 2010-CP-40-4900 ("Case 4900"). He continues to take that position in his May 2, 2016 Memorandum.

II. As to the James Brown Legacy Trust's Memorandum

The James Brown Legacy Trust, created by former AG Henry D. McMaster (the

"McMaster Legacy Trust") argues that it should be dismissed because the McMaster Legacy Trust "as challenged by Plaintiff no longer exists." This argument completely overlooks the fact that the McMaster Legacy Trust was created by the Attorney General. Plaintiff is unable to find a published case, and the McMaster Legacy Trust points to none, in which the question of whether a partially-charitable trust created by a public official, acting in his official capacity on behalf of the State, could ever be considered anything other than a public body. Instead, the cases cited by Plaintiff in her May 2, 2016 Memorandum show that even modest in-kind support of an entity can justify a finding that it is a public body for the purposes of FOIA.

Additionally, the McMaster Legacy Trust now appears to take the position that it does exist and has existed, but is retroactively exempted from FOIA because the Supreme Court invalidated the settlement which would have further funded it. A review of the South Carolina Trust Code makes clear that a trust is created, even where its source of funding is revocable and uncertain. The Reporter's Comments to S.C. Code Ann. § 62-7-401 (2016) make clear that "the property interest necessary to fund and create a trust need not be substantial. A revocable designation of the trustee as beneficiary of a life insurance policy or employee benefit plan has long been understood to be a property interest sufficient to create a trust." (See S.C. Code Ann. § 62-7-103(11) (2016), where property is defined.) Likewise, the funding of the McMaster Legacy Trust, even if affected by *Wilson v. Dallas*, was complete and the Trust created upon the signing of the settlement agreement in 2009. The McMaster Legacy Trust may not now avoid the effect of the AG's involvement just because it did not turn out as he expected.

Further, the AG's own public filings indicate that the McMaster Legacy Trust was substantially funded prior to the *Wilson v. Dallas* decision. In their December 22, 2010

Brief, Respondents asserted:

> The Settlement Agreement created an entity containing all of Brown's probate and non-probate assets (Settlement Entity) Additionally, the family members increased the Settlement Entity's worth by contributing valuable assets, including federal copyright termination rights....

The McMaster Legacy Trust goes on to argue that its creation by the AG is insufficient to support a finding that it is a public body without a showing of public funds passing to or through it. This is simply out of line with applicable case law (as cited by Plaintiff in her previous filings), which makes clear that in-kind contributions are sufficient to justify a finding that an entity is a public body.

The document attached as Exhibit A is one of a multitude filed in Aiken County and appellate proceedings in which the AG's office defends the existence and funding of the McMaster Legacy Trust.

As to the McMaster Legacy Trust's argument that Plaintiff is not entitled to her FOIA rights as a result of the State, the McMaster Legacy Trust and others having sued her in Case 4900, none of the authorities the McMaster Legacy Trust cites support the proposition that any citizen is deprived of her FOIA rights as a result of her involvement in litigation with the State.

Conclusion

For the reasons set forth above and in Plaintiff's other filings herein, Plaintiff asks that grant her summary judgment herein and deny the motions of the AG and the McMaster Legacy Trust.

Respectfully submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm

Attorney for Plaintiff

May 16, 2016

ELECTRONICALLY FILED - 2020 Oct 27 2:02 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-0350
	)	
Adele J. Pope,	)	
Plaintiff,	)	PLAINTIFF'S BRIEF REGARDING ISSUES FOR 11/2/20 HEARING
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	

Plaintiff Adele J. Pope ("Plaintiff") submits this brief setting out her position on the issues before this Court on remand from the Court of Appeals' decision in *Pope v. Wilson, et al*, 2019-UP-219 (June 19, 2019).

This action was brought under the South Carolina Freedom of Information Act ("FOIA") on August 3, 2011, after the South Carolina Attorney General ("AG") failed to respond to Plaintiff's request for public documents under FOIA. After the response period passed, Plaintiff brought this FOIA action in Newberry County. The AG appeared and moved for dismissal based, in part, on its position that certain of the documents sought under FOIA were also the subject of discovery requests and motions in *Bauknight, et al, and Wilson, et al v. Pope*, Case No. 2010-CP-40-4900 ("Richland 4900"), the AG also sought dismissal on the basis that it alleged it never received the FOIA request.[1]

Before his motion to dismiss was fully decided, in March 2013, the AG filed his answer, which contains attachments responsive to certain of Plaintiff's FOIA requests. It further asserts that the AG is not in possession of documents responsive to Plaintiff's request for the

[1] Plaintiff notes that the request was attached to the Complaint herein, which was undisputedly served on the AG, which has to date never issued a proper FOIA response.

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$4.7 million valuation of James Brown's assets and correspondence related thereto.

In 2016, the AG secured an Order of the Circuit Court dismissing this case as moot, which Order was reversed on appeal. The Court of Appeals found that there remained a controversy over whether the AG had responded fully to Plaintiff's FOIA request and, further, that the AG's blanket suggestion that discovery in Richland 4900 barred Plaintiff from exercising her FOIA rights was incorrect.

In October 2020, the AG released several documents in response to a FOIA request by a Newberry journalist's FOIA request which had never been presented or acknowledged in this case, despite bearing directly on issues which have been presented herein. These documents are attached to and described in the Affidavit of Adele J. Pope, filed herewith.[2]

Among these startling just-released documents is a letter dated January 5, 2011, from Everett A. Kendall, Esquire, to Russell L. Bauknight (and copied to members of the Office of the AG and several counsel for others), which is entirely redacted, other than the words "he is" in between redactions on page 3. It appears exceedingly likely that this correspondence touches on the valuation (and is thus responsive to Plaintiff's FOIA request), as it was sent nearly contemporaneous with the review of the $4.7 million valuation by the IRS.

This letter is further less than a month removed from an email of William W. Wilkins, Esquire, strategizing with counsel for other parties regarding the timing and disclosure of the $4.7 million valuation. (See Email of Wilkins, dtd. 12/17/10, attached as Exhibit A) Although sent to members of the Office of the AG and related to the valuation, this email was also not produced in response to Plaintiff's 2011 FOIA request and was first received well after the filing of this case.

[2] Plaintiff notes that the affidavit contains two typographical errors: 1) Paragraph 19 should say "the AG never hired SWB," and 2) Paragraph 35 should say "is necessary," rather than "in necessary."

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The 2010 email and just-disclosed redacted 2011 letter make clear that the AG has not yet attempted to make a full FOIA response which, pursuant to S.C. Code Ann. §30-4-30(c), must make a final determination and disclosure of what documents the public body will make available under FOIA; what documents it considers exempt from disclosure; and the specific exemption claimed for any documents possessed by the public body. Nothing of the sort has happened in this case, and the continued discovery of documents which were responsive in 2011 shows that the AG's failure to properly respond has been against the letter and spirit of the FOIA. The AG should be directed to make a complete and proper response to the 2011 FOIA request, including an unredacted copy of the January 5, 2011 letter and all other responsive documents.

The email noted above makes clear that the AG was involved in communications about the introduction of the appraisal into the then-pending *Wilson v. Dallas* appeal. A "public record," subject to disclosure under the FOIA includes documents "prepared, owned, used, in the possession of, or retained by a public body." The AG at least used the valuation, as demonstrated by the above-described email.

Additionally, Plaintiff requested copies of all draft and final Legacy Trust documents, including any amendments. The AG attached two drafts from the pubic record to its 2013 answer herein, but has still never provided a copy of a 2010 amendment which was signed by then-AG Henry D. McMaster. (See Exhibit B, which Plaintiff received from a third party) Once again, this demonstrates that the AG has never made a full proper FOIA response herein and must be directed to do so.

Because documents have surfaced piecemeal in the intervening 9 years, the AG must be directed to fully respond pursuant to the FOIA and through the present time with all

responsive documents.

Plaintiff is Entitled to an Award of Attorney's Fees and Costs

The other remaining issue on remand is Plaintiff's cause of action for attorney's fees and costs incurred in this action, pursuant to S.C. Code Ann. §30-4-100(b). Plaintiff notes that pursuant to the Supreme Court's holding in *Sloan, supra,* she is entitled to all fees and costs incurred until this case is finally determined. Upon its direction that the AG make a full and proper FOIA response, this Court should also find that Plaintiff is entitled to recover her reasonable attorneys' fees and costs against the AG, as set out in an affidavit of her counsel to be submitted.

Conclusion

For the reasons set forth above, Plaintiff asks that this Court order the AG to immediately and fully respond to her 2011 FOIA request and to pay the reasonable attorneys' fees and costs incurred in bringing and maintaining this action to enforce Plaintiff's FOIA rights.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

October 27, 2020

Attorney for Plaintiff

ELECTRONICALLY FILED - 2020 Oct 27 2:02 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

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EXHIBIT A

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Marcie Greene

From: Black, David <DBlack@nexsenpruet.com>
Sent: Friday, December 17, 2010 9:10 PM
To: Sonny Jones; Mary Frances Jowers; 'smedlin@sc.rr.com'
Cc: Fred L. Kingsmore
Subject: FW: Appraisal Footnote
Attachments: np.png; links_l.png; links_s.png

Please see attached. I have also reached the conclusion that this is the best strategy. We do not want to lose credibility with the Court through an unnecessary motion to strike proceeding.

J. David Black
Member

Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
PO Drawer 2426 (29202)
T: 803.540.2072, F: 8037271409
DBlack@nexsenpruet.com

www.nexsenpruet.com

NEXSEN|PRUET

From: Wilkins, William W.
Sent: Friday, December 17, 2010 3:04 PM
To: Black, David; Kingsmore, Fred L.
Subject: Appraisal Footnote

Gentleman,

After much discussion with many of you, I propose the following language for the footnote regarding the appraisal:

"In contrast, one of Russell Bauknight's first official acts as personal representative of Mr. Brown's estate was to engage an investment banking firm to conduct an appraisal of the estate's value."

I understand that this language is less descriptive than many of you would like and have proposed. However, the appraisal and the proceedings in which it is involved are not part of the record in this case. The language I propose is as detailed as we should be *at this time*.

Nonetheless, I understand the importance of the appraisal and the significance of the value it places on Mr. Brown's estate. Futher, I belive it is critical to our appeal. Thus, I propose that after the appraisal is accepted by the IRS for tax purposes (which I understand is very likely to occur), we file an amended appr[illegible]rment with the probate court attaching to it the appraisal as an exhibit. After that time, we will petition the Supreme Court to take judicial notice of the IRS's acceptance of the appraisal and the amended appraisement to which it is an exhibit.

I believe this is the proper course of action for two reasons 1) it is consistent with the rules and 2) it will highlight this important issue for the court at a time of our choosing after Pope and Buchanan have filed their reply brief. If we insert a

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detailed footnote in our initial brief it will give Pope and Buchanan the ability to argue that we played fast and loose with the rules, move to strike it from our brief, etc.

I believe this is the best course of action both legally and strategically. We are much better off filing our petition after the IRS has accepted the appraisal and we have filed an amended appraisement with the probate court.

Billy

**PLEASE NOTE*
*NEW STREET ADDRESS**

William W. Wilkins
Member
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400
Post Office Drawer 10648 (29603)
Greenville, SC 29601
T: 864.282.1189, F: 864.477.2699
BWilkins@nexsenpruet.com
www.nexsenpruet.com

NEXSEN|PRUET

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EXHIBIT B

EXHIBIT A

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement) The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions

2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Bauknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.

3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

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to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

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Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

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Henry D. McMaster
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C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Tommie Rae Brown

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha B., Lindsey Delores Brown, Vanitha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown-Lamar, Sydney L., Carrington L., and Tonya Brown

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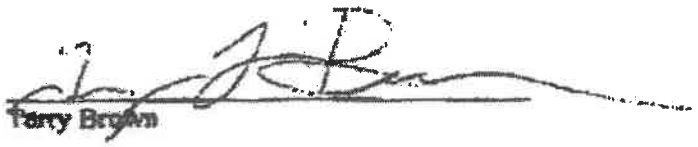
Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Petitioner Joe Arpaio

1/4/11

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha B., Lindrey Deloras Brown, Vantsha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown-Lumar, Sydney L., Carrington L., and Tonya Brown



Terry Brown

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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	**IN THE COURT OF COMMON PLEAS** **Case No. 2012-CP-40-0350** **Affidavit of Adele J. Pope Opposing AG's Motion to Strike Affidavits, Supporting Release Under FOIA of $4.7 Million Valuation and Legacy Trust Documents; Supporting Attorney's Fees and Costs for AG's FOIA Noncompliance Since 2011**

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND** Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	**IN THE COURT OF COMMON PLEAS** **Case No. 2010-CP-40- 4900** **Affidavit of Adele J. Pope In Support of Order Directing Attorney General to Immediately Release Wingate Litigation Retention Agreement and all Documents under 2011 FOIA Request and for Related Relief**

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who, being duly sworn, deposes and says:

1. I am over eighteen (18) years of age, and this affidavit is made on my personal knowledge.

2. I am informed and believe that the record in this case; the public record of which I ask the Court to take judicial notice; and documents released by the Attorney General of South Carolina (AG) under FOIA for the first time in October 2020 support an order of the Honorable Clifton Newman as follows:

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a. Denying the Motion of the Attorney General of South Carolina ("AG") to strike public affidavits urging him to comply with FOIA;

b. Directing that the AG fully comply with my 2011 FOIA requests, and subsequent FOIA requests for the same documents;

c. Finding that all documents held by the law firm of Sweeny, Wingate & Barrow, PA, ["SWB"] and/or used by the AG are subject to FOIA.

d. Finding that an award to my counsel of $47,500 for each case ($5,000 per year of the AG's FOIA noncompliance) and all costs of each action is reasonable and necessary to assure that the AG complies with FOIA in the future and requires other public bodies to do so.

3. In August 2011, I filed the 2 FOIA cases captioned above against the AG.

4. The FOIA suit now pending as Case No. 2012-CP-40-0350 seeks the 2010 at-death "appraisal" of entertainer James Brown's worldwide music empire (the "Afterman $4.7 Million Value"); copies of the Legacy Trust and its amendments; and all correspondence between the AG and Russell L. Bauknight regarding the valuation between August 1, 2010 and May 4, 2011. The second FOIA suit which was, over my objection, consolidated with Case No. 2010-CP-40-4900 ("Richland 4900") includes my FOIA request for the AG's contract with SWB and related documents.

5. In May 2010, SWB had filed, on behalf of the AG, Tommie Rae Hynie and the Legacy Trust, the case known as Richland 4900 against Robert L. Buchanan, Jr. and me, which accused us, in part, of having overvalued James Brown's assets.

6. October 2020 FOIA disclosures by the AG to a South Carolina journalist include a completely redacted letter and attachment, dated January 5, 2011, from SWB attorney Everett A. Kendall, Esq., to Bauknight, which was copied to two members of the Office of the AG. [Exhibit A]. Prior to October 2020, this letter had never been produced to me or

noted as a responsive document over which the AG claimed any sort of protection.

7. In a letter dated January 30, 2012, attached as Exhibit B, SWB attorney Mark Gende, Esq. urged the AG not to comply with his FOIA duty to release the "Wingate Contract" to bring Richland 4900. Gende stated:

> First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA action. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.
>
> Second, your decision will jeopardize the rights of your co-litigants…

8. This letter has never been produced to me pursuant to my FOIA requests between 2011 and 2015.

9. In late 2011 Forlando Brown ("Forlando") released an amendment to the Legacy Trust to a journalist, who published it.[1] Although AG McMaster had signed the document before my FOIA request, it was not produced to me in response to my FOIA request and has not been produced to me by the AG during this FOIA litigation.

10. Other public documents released by the AG for the first time in October 2020 have finally clarified facts about the AG's FOIA noncompliance between 2013 and 2016.

11. On February 27, 2013 the Supreme Court stated in the first, later substituted opinion in *Wilson v. Dallas* that my FOIA cases should be considered "in the first instance."

---

[1] The terms "Legacy Trust" and "Settlement Entity" are used interchangeably by the AG, SWB and others.

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12. In his *Wilson v. Dallas* petition for rehearing the AG advised the Court that he would shortly move to have the Attorney General removed as a party to Richland 4900. The AG also advised that he had no objection to the release of the Wingate Contract, and that the hoped "to have resolution of the matter in the near future." [Order. Jg. Griffith, 9/19/14,p. 3, Exhibit C]

13. As shown in a letter of SWB attorney Everett Kendall, Esq., by March 25, 2013, Wingate had made several requests for a meeting with AG Wilson and his staff. [Exhibit D]

14. By letter dated April 12, 2013 (never released under FOIA to my knowledge before October 2020), after a meeting on March 27, 2013, SWB (Kendall) presented a TERMINATION OF LEGAL REPRESENTATION to the AG. [Exhibits E and F]

15. On April 16, 2013 Bauknight, through SWB, moved to intervene in a journalist's FOIA suit, Newberry County Case 2012-CP-36-00688, asserting that the journalist's FOIA suit was an extension of the parties and issues involved in Richland 4900, and an improper attempt to gain through FOIA matter which is subject to discovery motions in Richland 4900. [Ord. Jg. Griffith, *Summer v. Wilson*, 7/8/14, p. 2, Exhibit G]

16. By letter dated April 23, 2013 (never released under FOIA to my knowledge before October 2020), attached as Exhibit H, Kendall acknowledged that the AG had "drawn a line in the sand with respect to our attorney fees and expenses."

17. By letter dated April 24, 2013 to SWB (Kendall) (never released under FOIA to my knowledge before October 2020), Chief Deputy AG McIntosh stated in part:

> Your letter is entitled "Privileged Attorney-Client

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> Communication". Please be advised that the Office of the Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.
>
> ...As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event there is no liability on this Office for legal fees. [Exhibit I]

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

19. On September 19, 2014, not having been advised either by the Office of the AG, SWB or Bauknight that SWB had never hired Wingate, Judge Griffith ruled in the *Summer v. Wilson* FOIA case in part:

> 1. The motion of Bauknight to intervene is hereby denied.
>
> 2. Defendant [AG] shall, within 30 days produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this order) which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.
>
> . . .
>
> 5. Documents in the Wingate firm's possession that were prepared, owned, used, possessed or retained in whole or in part for the Attorney General are subject to this order and must be produced. . .
>
> 6. Plaintiff's counsel shall, within thirty days, submit a statement of fees and costs requested by Plaintiff pursuant to S.C. Code Ann. §30-4-100(b).... [Exhibit C]

20. In 2015 the circuit court awarded counsel approximately $39,000 in fees and costs in the *Summer v. Wilson* FOIA, which lasted only about 3 years. [Exhibit J]

21. In January 2020, at a FOIA hearing before the Honorable Clifton Newman, the AG asserted that it could not produce the Wingate Contract because of pending 2011 discovery motions in Richland 4900. Judge Newman set the discovery motions for

hearing a few days later.

22. SWB appeared at the discovery hearing and, without disclosing that SWB had known since 2013 that it had never been counsel for the AG in Richland 4900, continued to oppose release of the Wingate Contract.

23. After Judge Newman ruled on May 12, 2020, that the Richland 4900 Plaintiffs must produce the Wingate Contract in response to my discovery requests in that case, the AG for the first time produced to me a copy of what the AG alleges to be a portion of the Wingate Contract, but still noting that the document was "not [produced] due to [my] FOIA request or this litigation." [Exhibit K]. The document produced by the AG differs from the document produced by SWB in Richland 4900.

24. As of today, the AG has not complied with FOIA requests in either of these cases, and I believe the AG should produce a copy of the entire Wingate Contract.

25. The documents released by the AG in October 2020 make clear that SWB had known since April 24, 2013 that it had never been engaged by the State/AG. Yet it has spent seven years concealing this fact, and using the prestige and power of the Office of the AG, the State's highest legal officer, to conceal documents; disrupt FOIA; and file multiple sanctions requests, motions to strike, and requests for confidentiality orders to advance the Richland 4900 positions of Tommie Rae Hynie and those Plaintiffs aligned with Hynie in Richland 4900.

26. The Court of Appeals' decision reversing Judge Early's dismissal of this case, as I understand it, requires the AG to identify an exception, if there is one, to the release of responsive documents under FOIA.

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27. Based in part on the just-released documents confirming that there is no privilege between the AG and SWB, Hynie or any of SWB's other private clients, I am informed and believe there is no exception under FOIA to production of any documents I requested in 2011. The AG should produce all responsive documents which were available when the FOIA request was made and all which have come under the AG's possession or control, or which the AG has since used, including those held by SWB.

28. I am informed and believe that no documents shared with SWB, Hynie, the Levenson clients, the Legacy Trust and/or their attorneys, advisors, or fiduciaries is entitled to any privilege or exception, because SWB and those SWB represents agreed that all documents in Richland 4900 would be subject to FOIA. Further, the AG, unbeknownst to me or this Court, clearly took the position in 2013 that SWB was not its counsel and that their communications were not privileged. [Exhibit I]

29. I am informed that the AG should produce, in the manner required by Judge Griffith 6 years ago, the Afterman $4.7 Million Value and all related documents.

30. I believe all Legacy Trust documents, including the signed and unsigned documents which I requested in 2011 are owned by the Attorney General and must be produced under FOIA and preserved by the AG as required by S.C. law.

31. The AG's October 2020 documents make clear that the AG is producing under FOIA for other citizens documents he should have produced to me under FOIA in 2011 and in response to subsequent FOIA requests I made between 2011 and 2015, but he has still not produced them to me.

32. Exhibit A, part of the AG's October 2020 FOIA documents also shows that the

AG is still withholding and/or overly redacting documents he has shared for more than 7 years with Hynie, the Levenson Will/Trust contestants, and attorneys for Forlando.

33. I am informed and believe that a legal fee of $47,500 in each of these FOIA cases and all costs for more than 9 years of the AG's intentional FOIA noncompliance is both reasonable and necessary to deter the AG from his continuing FOIA noncompliance in James Brown estate and other matters.

34. I am informed and believe that the award of $47,500 plus costs in each of these FOIA cases to my attorney is especially appropriate because at least 7 attorneys paid for by the S.C. taxpayers have fought FOIA compliance for 9 years, in addition to SWB attorneys, and this may deter the AG from taking similar actions in the future.

35. I am informed and believe that this fee and cost award in necessary because the AG is the State official charged with the protection of charities.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope

Adele J. Pope

SWORN TO BEFORE ME this 21st Day of October, 2020

(LS)

Notary Public for South Carolina
My commission expires: 6/27/24

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EXHIBIT A

B

S·W·B

SWEENY WINGATE & BARROW P.A.

January 5, 2011

Reply to: Main Office

Everett A. Kendall, II
(803) 256-2233 x 130
ek@swblaw.com

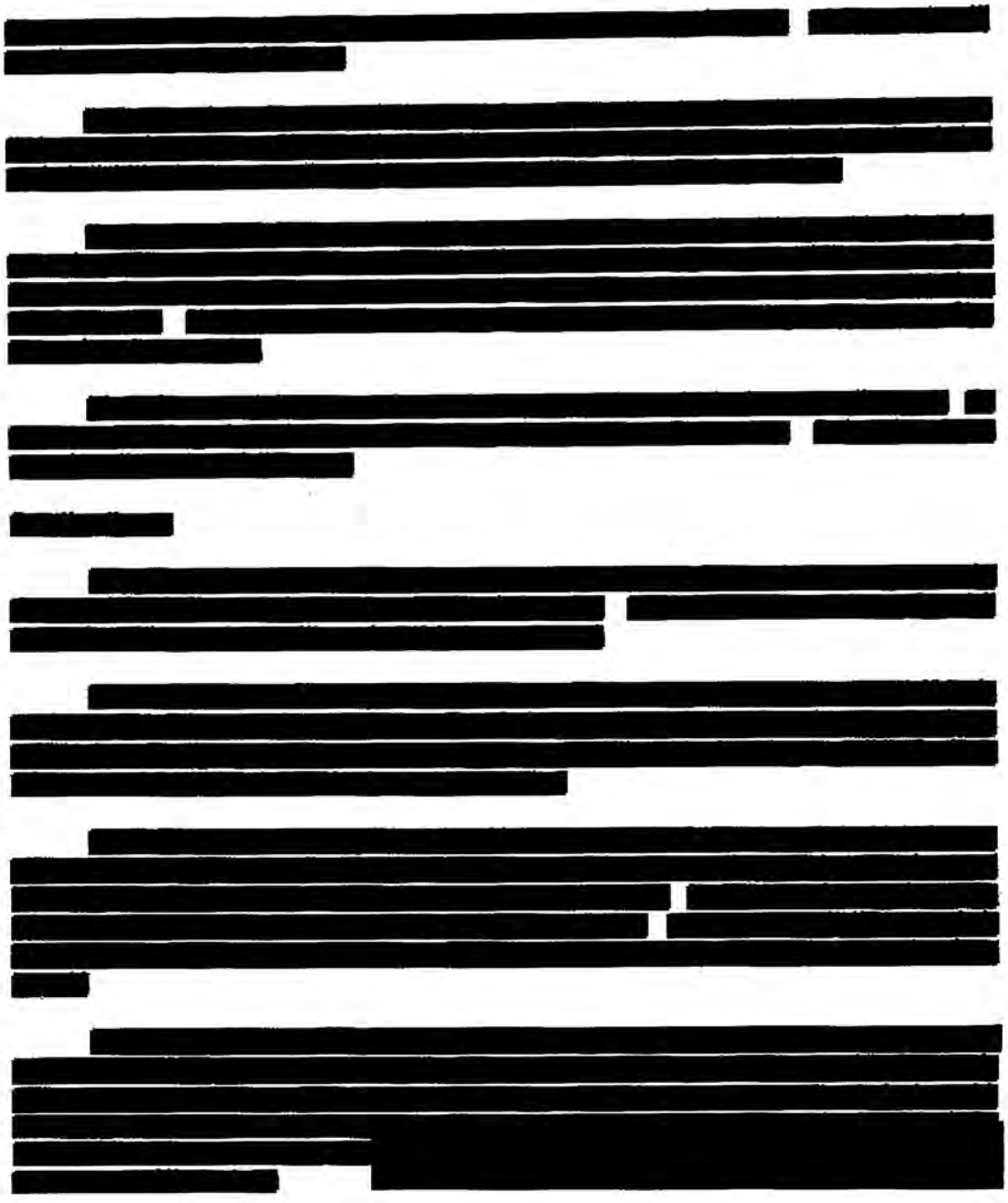
Via Email
Russell L. Bauknight, CPA
Bauknight, Pietras & Stormer, P.A.
Post Office Box 1330
1517 Gervais Street
Columbia, SC 29201

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-GC-40-00073
Claim No.:
Our File: 4077-7389

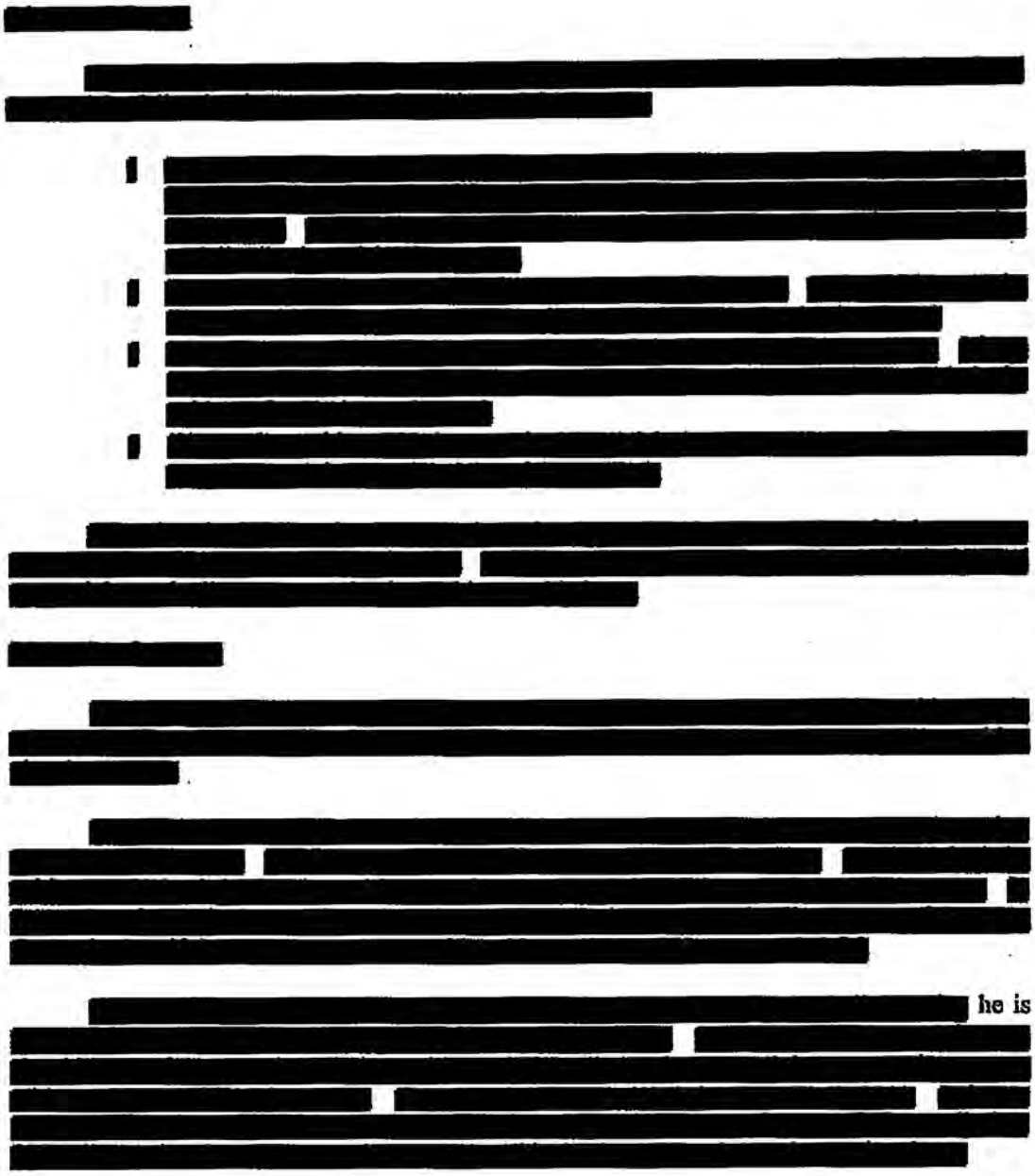
Dear Russell:

[redacted]

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ELECTRONICALLY FILED - 2020 Oct 27 2:17 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350



he is

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[redacted]

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Everett A. Kendall, II

cc: David B. Bell, Esquire
J. David Black, Esquire, Nexsen Pruet, LLC
C. Havird Jones, Jr., Esquire, Office of the Attorney General
Lori J. Christman, Levenson & Associates
Mary Frances Jowers, Esquire, Office of the Attorney General
Matt D. Bodman, Esquire, Matt Bodman, P.A.
Fred L. Kingsmore, Jr., Esquire, Nexsen Pruet, LLC
S. Alan Medlin, Esquire

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Discovery Tracking Chart
Bankright v. Pope and Buchanan

[redacted]

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EXHIBIT B

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RECEIVED
JAN 20 2012
Referred to Victoria Cook, Tre Intosh, Jones, Towers, T. Meyer
Answered
DS

S·W·B

SWEENY WINGATE & BARROW P.A.

S.C. Attorney General's Office
Civil Section
JAN 23 2012
Received by
Reviewed by/Date
Referred to/Date
Notes:

January 20, 2012

Reply to: Main Office
Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

URGENT – PRIVILEGED ATTORNEY/CLIENT COMMUNICATION

VIA HAND DELIVERY
Alan Wilson
South Carolina Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. Attorney General:

It is my understanding that you have decided to release what you deem the public portion of the fee agreement in the above-referenced matter. As your attorney in this matter, I am writing to advise you against releasing any portion of the agreement until the Court rules on this matter.

Releasing these documents at this time will have the following detrimental impact on this litigation.

First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed the public portions, the Defendants will certainly argue that your actions waive your co-litigants claim to privilege for the remainder of the agreement.

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. You are complying with

both the spirit and letter of FOIA if you decline to produce the requested documents until the Court has determined whether any of the fee agreement is privileged.

I trust that you will reconsider your decision. I am available throughout the day to discuss this matter.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Mark V. Gende

MVG/smt

cc: C. Havird Jones, Jr., Esquire – via electronic mail
Mary Frances Jowers, Esquire – via electronic mail
Tracy Meyers, Esquire – via electronic mail
Russell Bauknight – via electronic mail

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EXHIBIT C

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
Susan D. Summer,	)	Case No. 2012-CP-36-688
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendant.	)	

2014 SEP 19 P1 12 58
JACQUIE B. ... CLERK ...
FILED

This Court previously issued an order on July 8, 2014 directing the Defendant to produce documents referenced therein and denying the Motion to Intervene of Russell L. Bauknight, as personal representative of the Estate of James Brown and trustee of the James Brown 2000 Trust. Both the Attorney General and Bauknight filed motions to alter or amend that order. After carefully considering memoranda and letter briefs regarding those motions and arguments at a hearing on July 23, this Court denies the motions except that it rules that the Tommie Rae Hynie Brown diaries are not public records, allows 30 days for production, makes modifications in the process for considering documents alleged to be exempt and makes a few other modifications consistent with this ruling. The contents of the July 8 Order are set forth below with these changes, and this Order shall be substituted for the July 8 Order.

BACKGROUND

Plaintiff, a citizen of South Carolina residing in Newberry County, initiated the with-in captioned action on December 18, 2012, pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§30-4-10 et seq. (Rev. 2007, Supp. 2013), hereinafter (FOIA), seeking

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declaratory and injunctive relief. Defendant Alan Wilson is sued in his official capacity as Attorney General of South Carolina.

In her Complaint, plaintiff alleged that defendant had withheld public records to which plaintiff had requested access under FOIA in violation of the FOIA. Plaintiff alleged requests under the FOIA on January 29,2012, March 1, 2012, June 10, 2012 and September 6, 2012.

On February 13, 2013, defendant moved to dismiss the Complaint or change venue.

On February 15, subject to the above motions, defendant answered denying that he had violated the FOIA. He asserted plaintiff cannot obtain under FOIA documents as to which disclosure or release is under the review or order of a court pending in another legal proceeding, including but not limited to Bauknight v. Pope, Case No. 2010-40-CP-4900 ("Case 4900").

The Answer asserts that defendant has responded to all requests and has supplied any document it has except that it asserts that the Tommie Ray Hynie diaries and Wingate Contract are barred from release by pending motions or court order.

Attached to the Answer were certain documents, including what defendant described as the public portion of the Wingate Contract. Article III F. of the Wingate Agreement states in relevant part:

> Any material, data, files, discs, or documents created, produced or gathered by the Special Counsel, or in special counsel's possession in furtherance of this litigation...shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §§30-40-10, et. seq....

On February 27, 2013, plaintiff moved for summary judgment.

That same day, the South Carolina Supreme Court issued its first decision in Wilson v. Dallas, 2013WL697042, February 27, 2013 (No. 27227). Footnote 29 directed that case 4900 and certain FOIA cases should be "considered by the circuit court in the first instance."

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In March 2013, defendant filed a Petition for Rehearing with the Supreme Court addressing footnote 29. He advised the Court that he would shortly move to have the Attorney General removed as a party to Case 4900. He also advised that he had no objection to the release of the Wingate Contract and hoped "to have resolution of this matter in the near future."

On April 16, 2013, Russell L. Bauknight, etc., moved to intervene. Bauknight asserted that this case is an extension of the parties and issues involved in Case 4900, and an improper attempt to gain through FOIA matter which is subject to discovery motions in that case. Bauknight asserted that plaintiff's FOIA requests should be denied and the case consolidated with Case 4900.[1]

At the hearing on April 26, 2013, this Court orally denied the Attorney General's requests to transfer this case to Richland County. Without ruling on Bauknight's motion to intervene, the Court allowed his counsel to participate in the hearing.

At a status conference held on May 7, 2014, this Court invited the parties to make submissions. In subsequent filings, the Court was asked to take judicial notice that the FOIA matters transferred to Richland County, one of which was consolidated with Case 4900, had not been concluded. Discovery motions filed in 2010 related to some of the FOIA requests had also not been heard, and Bauknight is currently seeking a delay of both Case 4900 and the related FOIA suits until all James Brown matters are concluded in Aiken County.

At the heart of this dispute is whether the Attorney General should delay or deny FOIA compliance where the public documents sought are the subject of a pending discovery motion in

[1] On November 14, 2013, United States Magistrate Judge J. Gregory Wehrman ruled in a federal case captioned Brown v.. Pope (Case No. 3:08-cv-14-WOB) that the retention agreement between Brown trustee Bauknight and the Attorney General "is a public document due to the involvement of the South Carolina Attorney General." This agreement is one of the public records sought by plaintiff in this case. It should be produced to plaintiff by the Attorney General although Plaintiff has had the document since shortly after the November 14 ruling.

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Case 4900;'or a discovery order in that (Case 4900) or any other case. Related to that is whether the James Brown Estate and Trust may intervene in FOIA suits to prevent release under FOIA of public documents they are seeking to protect in discovery in a civil suit in which this plaintiff is not a party.

DISCUSSION

In adopting the FOIA, the General Assembly found "that it is vital in a democratic society that public business be performed in an open manner." S.C. Code Ann. §30-4-15 (Rev. 2007). The General Assembly also adopted definitions to be applied in interpreting the FOIA.

For purposes of this litigation, the definitions of "public body" and "public record" are most relevant. As a constitutional officer, the Attorney General and his office are "Public Bodies," and this status subjects both to the full reach of the FOIA. S.C. Code Ann. §30-4-15 (Rev. 2007); Burton v. York Sheriff s Dept., 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). Since plaintiff s requests were for access to public records, the statutory definition of "public record" in S.C. Code §30-4-20 includes all "books, papers, maps, photographs, cards, tapes, records or other documentary materials...prepared, owned, used, or in the possession of the public body" as public records. It is clear that defendant has prepared, used or been in possession of all documents requested by plaintiff. It is further clear from the Attorney General's own standard litigation retention agreement that the documents in Wingate's possession belong to the State, are public records, and are subject to the FOIA.

Defendants claim that FOIA requests must be delayed or denied if there is a pending discovery motion in an unrelated case is inconsistent with both the letter and spirit of the FOIA. As the U.S. Circuit Court for the D.C. Circuit has held with respect to federal FOIA matters in

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North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989), the FOIA and discovery are parallel courses.[2] Each must be considered separately.

The fact that Bauknight's discovery motion has not been resolved since 2010 makes it clear that the FOIA would be crippled if a public body could refuse to release documents based on discovery disputes or orders in other cases. The purpose of the FOIA is set out as follows in §30-4-15: "...it is vital in a democratic society that...it is possible for citizens...at a minimum cost or delay [get]...access to public documents...."

The facts are clear: plaintiff is a South Carolina citizen. She is a journalist. She made proper FOIA requests to the Attorney General, who is subject to the FOIA. Intervention by plaintiffs in Case 4900, or any other suit where the same documents are at issue, is not authorized by the FOIA. To allow such intervention would defeat the purpose of FOIA. The motion to intervene is denied. The defendant's motion for judgment on the pleadings is denied, and plaintiff's motion for summary judgment is granted. The documents should be forthwith produced by defendant for inspection and copying except for the Tommie Rae Hynie Brown diaries because they are barred from disclosure by the Orders of the Honorable Doyet A. Early, In re: The Estate of James Brown, Aiken County, 2007-ES-02-0056 / 2007-CP-02-0122).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

1. The motion of Bauknight to intervene is hereby denied.

2. Defendant shall, within 30 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order)

[2] Then Circuit Judge Ruth Bader Ginsburg wrote this decision in which the Court found that Oliver North was entitled to public documents under the FOIA, even if those documents were not discoverable in non-FOIA litigation. Id. at 1099.

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which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.

3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned, or used, the document shall be marked as exempt and be produced to this Court under seal for review. The sealed documents shall be accompanied by a list of the documents containing a description consistent with the description of privileged documents under Rule 26(B)(5)A), SCRCP and the reasons why Defendant believes they are exempt.

4. The list of exempt documents shall be provided to Counsel for the Plaintiff and Bauknight and shall be the subject of a hearing to be held within thirty days of the production of the list.

5. Documents in the Wingate firm's possession that were prepared, owned used, possessed or retained in whole or in part for the Attorney General are subject to this Order and must be produced. Any documents that the Defendant contends are exempt shall be treated in the same manner as other exempt documents under paragraphs numbered 3 and 4 above.

6. Plaintiff s counsel shall, within thirty days, submit a statement of fees and costs requested by plaintiff pursuant to S.C. Code Ann. §30-4- 100(b) (Rev. 2007). At the same time as the hearing to consider exempt documents, this Court shall also issue a ruling as to whether Plaintiff is entitled to attorney's fees and costs for any documents produced which were not previously supplied to her.

6 SEAL 6th

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7. This Court shall issue a final judgment after consideration of the above matters.

AND IT IS SO ORDERED.

Sept 19, 2014

EUGENE C. GRIFFITH, JR.
JUDGE, EIGHTH JUDICIAL CIRCUIT

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EXHIBIT D

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G

S·W·B

SWEENY WINGATE & BARROW P.A.

March 25, 2013

Reply to: Main Office

Everett A. Kendall, II
(803) 217-3447
eak@swblaw.com

Via Hand-Delivery
Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
Robert D. Cook, Deputy Attorney General
C. Havird Jones, Jr., Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

S.C. Attorney General's Office
Civil Section
MAR 25 2013
Received by
Reviewed by/Date
Referred to/Date
Notes:

RE: **URGENT MEETING REQUEST:**
Our File: 4077-7389

Dear Attorney General:

On several occasions over the last week, Ken Wingate has made a verbal request for a meeting with you and other attorneys in your office. To date, we have only gotten verbal assurances that such a meeting will occur, but with no specific date and time provided.

This is a formal request for a meeting with you and the other attorneys in your office. The purpose of the meeting is to discuss the termination of our representation of the Office of the Attorney General. Given the recent statements of your office contained in filings with the South Carolina Supreme Court and the Circuit Court for Richland County, as well as statements made to the press and in our conversations, this meeting is of the utmost importance and urgency.

Please confirm a time when we can meet on Tuesday, March 26, 2013 or Wednesday, March 27, 2013.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Everett A. Kendall, II

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EXHIBIT E

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SWEENY WINGATE & BARROW P.A.

April 12, 2013

Reply to: Main Office

Everett A. Kendall, II
(803) 217-3447
eak@swblaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
Robert D. Cook, Deputy Attorney General
C. Havird Jones, Jr., Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

RE: Proposed Termination of Representation Agreement
Our File: 4077-7389

Dear Attorney General:

In follow up to our meeting of March 27, 2013, I have drafted the enclosed Termination Agreement to end Sweeny, Wingate and Barrow, P.A.'s representation of the Attorney General in all matters. We would be happy to have further discussions about the particulars, but this draft covers the main issues of concern.

Also, we left with you a Consent Order relieving our firm as counsel in the 4900 case. I would like to submit that to Judge Manning as soon as possible to avoid any confusion in upcoming proceedings, especially in light of your having filed a Motion to be dropped from the lawsuit.

If further discussion is needed, please do not hesitate to call.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Everett A. Kendall, II

RECEIVED
APR 15 2013
Referred to McIntosh ldm
Answered CC: Bob J. Cook

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • MARION, SC 29571

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EXHIBIT F

F

TERMINATION OF LEGAL REPRESENTATION

This Agreement as to the termination of legal representation (hereinafter "Termination Agreement") by the law firm of Sweeny, Wingate & Barrow, P.A. (hereinafter "the Firm") and the Attorney General for the State of South Carolina (hereinafter "the Attorney General") is entered this _____ of April, 2013 and is effective retroactively to March 25, 2013.

Whereas, the Firm and Russell L. Bauknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee") entered into an Agreement for Legal Services (hereinafter "Engagement") on or about May 18, 2010; and

Whereas, the Attorney General ratified and accepted the terms of the Engagement on about May 18, 2010, thereby creating a direct attorney-client relationship; and

Whereas, since that time, the Firm has provided valuable legal services to and on behalf of the Attorney General; and

Whereas, the Attorney General does now wish to terminate its engagement with the Firm, without cause;

IT IS THEREFORE AGREED AS FOLLOWS:

The Engagement of the Firm in all matters relating to the Estate of James Brown, is hereby terminated, without cause. Specifically, but without limitation, the Firm is relieved of all obligations arising from the Engagement. To the extent that the Firm has provided legal services and/or representation beyond that which is specifically described in the Engagement, representation on those issues is also hereby terminated without cause. Effective retro-actively to March 25, 2013, Sweeny, Wingate & Barrow, P.A. shall have no obligation to the Attorney General in any legal matter.

It is the understanding of the Firm that the Attorney General wishes to withdraw as a party-plaintiff from Bauknight, et al. v. Pope, Case No. 2010-CP-40-4900 (hereinafter "Case 4900"). The Office of the Attorney General will handle all matters necessary to effect that objective. The Firm shall have no responsibility to assist the Attorney General in this process.

The Attorney General further acknowledges that the Firm has provided valuable services to the Office of the Attorney General since May 18, 2010. For these services, the Attorney General agrees to pay the expenses and legal fees incurred on a *quantum meruit* basis, totaling _____. Payment shall be made within 30 days of this agreement. The payment of these fees shall be credited to the remaining parties to the Agreement.

The Attorney General and the Firm warrant that all communications between them, as well as those among other parties to the Engagement are, and shall remain, confidential and protected by the Attorney-Client Privilege. Neither the Firm nor the Office of the Attorney

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General shall disclose such communications to any person not party to the Agreement without the written consent of every party or an order of the Court. This document is included among the confidential communications.

The Office of the Attorney General shall refrain from making any disparaging remarks regarding Sweeny, Wingate & Barrow, P.A. Any reference to the termination of this relationship shall simply be described as arising out of the decision of the Attorney General to withdraw from Case 4900 and that the Firm's legal services are no longer required.

IN WITNESS WHEREOF, we have hereunto set our hand and seal at the County of Richland, State of South Carolina, this ____ day of _____, 2013.

_____
Alan Wilson, Attorney General
State of South Carolina

_____
Kenneth B. Wingate, Esquire
Sweeny, Wingate & Barrow, P.A.

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EXHIBIT G

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
Case No. 2012 CP 36-00688

Susan D. Summer,)
)
Plaintiff,)

v.)

Alan Wilson, Attorney General of South Carolina,)
)
Defendant.)

ORDER REQUIRING PRODUCTION OF PUBLIC RECORDS

FILED
NEWBERRY COUNTY
2014 JUL 8 PM 2 47
CRAIG S. ROGERS
CLERK OF COURT

BACKGROUND

Plaintiff, a citizen of South Carolina residing in Newberry County, initiated the within-captioned action on December 18, 2012, pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§30-4-10 *et seq.* (Rev. 2007, Supp. 2013), hereinafter (FOIA), seeking declaratory and injunctive relief. Defendant Alan Wilson is sued in his official capacity as Attorney General of South Carolina.

In her Complaint, plaintiff alleged that defendant had withheld public records to which plaintiff had requested access under FOIA in violation of the FOIA. Plaintiff alleged requests under the FOIA on January 29, 2012, March 1, 2012, June 10, 2012 and September 6, 2012.

On February 13, 2013, defendant moved to dismiss the Complaint or change venue.

On February 15, subject to the above motions, defendant answered denying that he had violated the FOIA. He asserted plaintiff cannot obtain under FOIA documents as to which disclosure or release is under the review or order of a court pending in another legal proceeding, including but not limited to Bauknight v. Pope, Case No. 2010-40-CP-4900 ("Case 4900").

1 SEDH 1/5

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The Answer asserts that defendant has responded to all requests and has supplied any document it has except that it asserts that the Tommie Ray Hynie diaries and Wingate Contract are barred from release by pending motions or court order.

Attached to the Answer were certain documents, including what defendant described as the public portion of the Wingate Contract. Article III F. of the Wingate Agreement states in relevant part:

> Any material, data, files, discs, or documents created, produced or gathered by the Special Counsel, or in special counsel's possession in furtherance of this litigation...shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §§30-40-10, et. seq....

On February 27, 2013, plaintiff moved for summary judgment.

That same day, the South Carolina Supreme Court issued its first decision in Wilson v. Dallas, 2013WL697042, February 27, 2013 (No. 27227). Footnote 29 directed that case 4900 and certain FOIA cases should be "considered by the circuit court in the first instance."

In March 2013, defendant filed a Petition for Rehearing with the Supreme Court addressing footnote 29. He advised the Court that he would shortly move to have the Attorney General removed as a party to Case 4900. He also advised that he had no objection to the release of the Wingate Contract and hoped "to have resolution of this matter in the near future."

On April 16, 2013, Russell L. Bauknight, as personal representative of the Estate of James Brown and trustee of the James Brown 2000 Trust, moved to intervene. Bauknight asserted that this case is an extension of the parties and issues involved in Case 4900, and an improper attempt to gain through FOIA matter which is subject to discovery motions in that case.

2 SCR 2/5

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Bauknight asserted that plaintiff's FOIA requests should be denied and the case consolidated with Case 4900[1].

At the hearing on April 26, 2013, this Court orally denied the Attorney General's requests to transfer this case to Richland County. Without ruling on Bauknight's motion to intervene, the Court allowed his counsel to participate in the hearing.

At a status conference held on May 7, 2014, this Court invited the parties to make submissions. In subsequent filings, the Court was asked to take judicial notice that the FOIA matters transferred to Richland County, one of which was consolidated with Case 4900, had not been concluded. Discovery motions filed in 2010 related to some of the FOIA requests had also not been heard, and Bauknight is currently seeking a delay of both Case 4900 and the related FOIA suits until all James Brown matters are concluded in Aiken County.

At the heart of this dispute is whether the Attorney General should delay or deny FOIA compliance where the public documents sought are the subject of a pending discovery motion in Case 4900, or a discovery order in that (Case 4900) or any other case. Related to that is whether the James Brown Estate and Trust may intervene in FOIA suits to prevent release under FOIA of public documents they are seeking to protect in discovery in a civil suit in which this plaintiff is not a party.

DISCUSSION

In adopting the FOIA, the General Assembly found "that it is vital in a democratic society that public business be performed in an open manner." S.C. Code Ann. §30-4-15 (Rev. 2007). The General Assembly also adopted definitions to be applied in interpreting the FOIA.

[1] On November 14, 2013, United States Magistrate Judge J. Gregory Wehrman ruled in a federal case captioned Brown v. Pope (Case No. 3:08-cv-14-WOB)that the retention agreement between Brown trustee Bauknight and the Attorney General "is a public document due to the involvement of the South Carolina Attorney General." This agreement is one of the public records sought by plaintiff in this case. It should be produced to plaintiff by the Attorney General.

[3] SCAD 3/5

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For purposes of this litigation, the definitions of "public body" and "public record" are most relevant. As a constitutional office, the Attorney General and his office are "Public Bodies," and this status subjects both to the full reach of the FOIA. S.C. Code Ann. §30-4-15 (Rev. 2007); Burton v. York Sheriff's Dept., 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). Since plaintiff's requests were for access to public records, the statutory definition of "public record" in S.C. Code §30-4-20 includes all "books, papers, maps, photographs, cards, tapes, records or other documentary materials...prepared, owned, used, or in the possession of the public body" as public records. It is clear that defendant has prepared, used or been in possession of all documents requested by plaintiff. It is further clear from the Attorney General's own standard litigation retention agreement that the documents in Wingate's possession belong to the State, are public records, and are subject to the FOIA.

Defendants claim that FOIA requests must be delayed or denied if there is a pending discovery motion in an unrelated case is inconsistent with both the letter and spirit of the FOIA. As the U.S. Circuit Court for the D.C. Circuit has held with respect to federal FOIA matters in North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989), the FOIA and discovery are parallel courses.[2] Each must be considered separately.

The fact that Bauknight's discovery motion has not been resolved since 2010 makes it clear that the FOIA would be crippled if a public body could refuse to release documents based on discovery disputes or orders in other cases. The purpose of the FOIA is set out as follows in §30-4-15: "...it is vital in a democratic society that...it is possible for citizens...at a minimum cost or delay [get]...access to public documents...."

[2] Then Circuit Judge Ruth Bader Ginsburg wrote this decision in which the Court found that Oliver North was entitled to public documents under the FOIA, even if those documents were not discoverable in non-FOIA litigation. Id. at 1099.

4 SCD 4/5

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The facts are clear: plaintiff is a South Carolina citizen. She is a journalist. She made proper FOIA requests to the Attorney General, who is subject to the FOIA. Intervention by plaintiffs in Case 4900, or any other suit where the same documents are at issue, is not authorized by the FOIA. To allow such intervention would defeat the purpose of FOIA. The motion to intervene is denied. The defendant's motion for judgment on the pleadings is denied, and plaintiff's motion for summary judgment is granted. The documents should be forthwith produced by defendant for inspection and copying.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

1. The motion of Bauknight to intervene is hereby denied.

2. Defendant shall, within 15 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order) which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.

3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned, or used, the document shall be marked confidential and accompanied by a sworn certification by the Attorney General or his designee that it is his opinion, as the State's highest legal officer, such document cannot be legally produced under the FOIA. He shall state with specificity the facts and law on which he bases his opinion with respect to each document.

4. Any certification and document shall be provided to the Court and to plaintiff's counsel as "confidential" and shall be the subject of a hearing to be held within thirty days of this Order.

5. Plaintiff's counsel shall, within thirty days, submit a statement of fees and costs requested by plaintiff as the prevailing party pursuant to S.C. Code Ann. §30-4-100(b) (Rev. 2007).

6. This Court shall retain jurisdiction to insure compliance with the FOIA as set out herein and determine fees and costs to plaintiff.

Eugene C. Griffith, Jr., Circuit Judge

Newberry, SC
~~May~~ July 8, 2014

5 SCAT 5/5

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EXHIBIT H

H

S·W·B

SWEENY WINGATE & BARROW P.A.

April 23, 2013

Reply to: Main Office
Everett A. Kendall, II
(803) 256-2233 x 130
eak@swblaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

RECEIVED
APR 24 2013
Referred to McIntosh/S.Jones
Answered Cook

John W. McIntosh
Chief Deputy Attorney General
Office of the Attorney General
P.O. Box 111549
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. McIntosh:

I am in receipt of your letter of April 18, 2013, wherein you purport to respond to my letter of April 12, 2013. However, my letter did not request that the Attorney General withdraw from the 4900 case. That motion was made by the Attorney General's office on its own accord. I have made no recommendation on that subject. Rather, the purpose of my letter was to request that you sign a Termination of Legal Representation Agreement, and execute a Consent Order allowing us to withdraw as counsel for the Attorney General in the 4900 case.

I understand that you have now drawn a line in the sand with respect to our attorney fees and expenses. We will act accordingly.

I would appreciate a response from you with either signatures on the documents I have provided, an invitation to further discuss those documents, or an explicit statement that you will neither sign them nor discuss them further.

I remain,

Yours truly,

SWEENY, WINGATE & BARROW, P.A.

Everett A. Kendall, II

EAK/bcr

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EXHIBIT I

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ALAN WILSON
ATTORNEY GENERAL

April 24, 2013

Everett A. Kendall, II, Esq.
Sweeny Wingate & Barrow, PA
P. O. Box 12129
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Your File: 4077-7389

Dear Mr. Kendall:

This is to advise that the Attorney General's Office has no responsibility for legal fees to Sweeny, Wingate & Barrow, as this Office did not employ the firm's services.

Your letter is entitled "Privileged Attorney-Client Communication". Please be advised that the Office of Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

My letter of April 18, 2013, was a response to your letter of April 12, 2013. However, we are not signing any documents and are always willing to discuss matters. As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event, there is no liability on this Office for legal fees.

Yours very truly,

John W. McIntosh
Chief Deputy Attorney General

CC: Kenneth Wingate, Esq.

JWM/ds

SCANNED

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

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EXHIBIT J

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STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-36-00688

Susan D. Summer)
)
Plaintiff,)
)
v.)
)
Alan Wilson, Attorney General of South Carolina,)
)
Defendant.)

ORDER GRANTING PLAINTIFF AWARD OF ATTORNEY'S FEES AND COSTS

This matter came before the Court upon Plaintiff's application for attorney's fees and costs under section 30-4-100(b) of the South Carolina Code. Having fully considered the motions of both parties, I conclude Plaintiff is entitled to attorney's fees in the amount of $37,530, and costs of $1,839.98, for a total award of $39,369.98, in accordance with section 30-4-100(b) of the South Carolina Code and the factors set forth in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). *See* S.C. Code Ann. § 30-4-100(b) ("If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof."); *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 ("[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.").

My consideration of this matter included reviewing the affidavit of Plaintiff's counsel, Thomas H. Pope III, regarding his fees through August 11, 2015, as well as the attached exhibit

documenting his electronic time records. In arriving at the above-stated amount of attorney's fees, I concluded Plaintiff is not entitled to fees for time spent on matters involving action in the Aiken County Court of Common Pleas or in the South Carolina Supreme Court. Furthermore, Plaintiff is not entitled to fees for time spent pertaining to issues regarding Russell L. Bauknight (former personal representative of Estate of James Brown and former trustee of "James Brown 2000 trust"), who filed a petition to intervene in this action, or issues regarding the Tommie Rae Hynie Brown diaries, which were declared non-public documents in another action as well as this action. This award of attorney's fees is calculated after considering the time spent by attorney for Plaintiff in pursuing this action and disregarding time spent on non-relevant issues. No request was made by Plaintiff for time expended by co-counsel Jay Bender, Esquire, and therefore the court does not award fees for his time.

Based upon the foregoing, I award Plaintiff attorney's fees in the amount of $37,530, and costs of $1,839.98, for a total award of $39,369.98.

IT IS SO ORDERED.

Eugene C. Griffith, Jr
Circuit Court Judge

Newberry, South Carolina
August 19th, 2015

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EXHIBIT K

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ALAN WILSON
ATTORNEY GENERAL

May 20, 2020

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail
P.O. Box 7995
Columbia, South Carolina 29202-7995

Re: Pope v. Wilson - Common Pleas Docket No. 2010CP4004900

Dear Mr. Silvernail:

Because Judge Newman has now ruled on the discovery motions long pending in case 4900 and directed that the Plaintiffs produce the "Wingate Agreement" within 10 days (Order, May 12, 2020), the Office of the Attorney General will now produce to you the document referenced in our Second Supplemental Memorandum in Support of our Motion for Judgment on the Pleadings, filed February 24, 2020, subject to all conditions and caveats therein. This unsigned document is not responsive to Plaintiff's original FOIA request for a copy of the "contract," and it is not subject to production under FOIA for the reasons set forth in that Memorandum. Our production of this document is voluntary, solely discretionary and not due to Plaintiff's FOIA request or this litigation. I waive no claims or defenses of the Attorney General in this case. Other than documents previously produced, we have no documents that could be considered responsive to the FOIA request at issue in this case.

Sincerely,

J. Emory Smith, Jr.
Deputy Solicitor General

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AGREEMENT FOR LEGAL SERVICES

This Agreement this __ of May, 2010 between Sweeny, Wingate & Barrow, P.A. ("Firm") and Russell L. Bauknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee"). This agreement shall remain in effect until such time as it is terminated, in writing, by either of the parties.

The Trustee hereby retains the Firm to represent its interest and pursue claims on its behalf against Robert Buchanan and Adele Pope. The Firm hereby agrees to accept such representation.

The parties hereto specifically acknowledge that the following persons, parties, and entities are third-party beneficiaries to this Agreement: Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommy Rae Brown, individually and on behalf of her minor child, James Brown II; Larry Brown, individually and on behalf of his minor children, Lindsey Delores Brown and Janise Vanisha Brown; Vanisha Brown; Deanna J. Brown Thomas, individually and on behalf of her minor child, Jason Brown-Lewis; Yamma N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar; Daryl J. Brown; and Tonya Brown (hereinafter collectively "Third-Party Beneficiaries").

The Third-Party Beneficiaries are signators to a Settlement Agreement dated August 10, 2008 with Addendum dated March 25, 2009. This Settlement Agreement was approved by the Circuit Court of South Carolina by Order dated May 26, 2009. In the event that this Order should be overturned, vacated or in any manner set aside, this Agreement shall continue with the Third-Party Beneficiaries becoming the principal parties.

ATTORNEY FEES

The Firm will be compensated on a contingency fee basis. The fee for professional services will be based upon the gross proceeds of any money collected as result of actions initiated or pursued by the Firm, in the following percentages.

a. Pursuant to the Settlement Agreement dated August 10, 2008, as amended by Addendum dated March 25, 2009, 47.5% of the gross proceeds will be attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for fee calculation purposes only. The Litigation Retention Agreement which is attached hereto as Exhibit A and which is incorporated herein shall govern the terms of representation and the payment of fees to the Firm with respect to the 47.5% of the gross proceeds attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust. For example, fees will be paid to the Firm from these proceeds based on the following schedule:

Amount of net proceeds of judgment or settlement (not including exemplary or punitive damages) (in millions)	Contingent percentage
First $0 to $5	23%
Excess over $5 up to $10	19%
Excess over $10 up to $25	15%
Excess over $25 up to $50	11%
Excess over $50 up to $100	7%
Excess over $100	4%

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First $0 to $10	10%
Excess over $10 to $100	5%
Excess over $100	3%

b. The remaining proceeds collected will be attributed to the non-charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for fee calculation purposes only. A fee of 40% will be paid to the Firm from these proceeds.

c. In the event the parties reach an agreement that results in a settlement expressed in non-monetary consideration, the Firm shall be compensated pursuant to Article VI(B) of the Litigation Retention Agreement with respect to the 47.5% attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocably Trust, and/or the James Brown Legacy Trust and based on the cash-equivalent of such consideration or an hourly fee, whichever is greater, for the balance. The hourly fees shall be calculated as follows:

(a) Partners	$300.00
(b) Associates	$225.00
(c) Paralegal	$125.00

d. In the event that no value is recovered by the Firm on behalf of the Trustee, no fee will be paid to the Firm.

EXPENSE REIMBURSEMENT

Trustee shall reimburse all expenses incurred by the Firm as a result of this representation in accordance with Article V(B) of the Litigation Retention Agreement. Firm will submit invoices to the Trustee on a monthly basis. These expenses will be reimbursed as soon as practicable given the available funds held by the Trust.

It is understood and agreed that the Estate is reimbursing expenses for the benefit of the Estate, the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust. It is

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understood that the Estate will be reimbursed 47.5% of these expenses by the Trust upon the distribution of the proceeds from any recovery.

SWEENY, WINGATE & BARROW, P.A.

By: _____

ESTATE OF JAMES BROWN

By: _____
Its: Personal Representative

JAMES BROWN 2000 IRREVOCABLE TRUST

By: _____
Its: Trustee

JAMES BROWN LEGACY TRUST

By: _____
Its: Trustee

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	
v.	)	**MEMORANDUM OF ATTORNEY GENERAL FOR 11-2-20 HEARING**
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendants.	)	
	)	

INTRODUCTION AND BACKGROUND

The Defendant Attorney General strongly supports the Freedom of Information Act, and his Office and his predecessors have a long history of advocating the importance of that law. Subject to all of our pending motions and defenses (Motion to Amend Motion to Dismiss, Motion for Judgment on the Pleadings, Motions to Strike), the Office of the Attorney General (OAG) has responded to the FOIA at issue in this case by providing all documents responsive to the request.

BRIEF HISTORY OF PROCEEDINGS

Plaintiff brought this action by a Complaint filed in Newberry County on August 3, 2011. The Complaint requested, in part, that the Court declare public documents that she sought by a June 30, 2011, Freedom of Information Act request and that they be made available for inspection and copying.

Following the denial of his earlier motion to dismiss and the transfer of venue to Richland County, Defendant Attorney General filed an Answer to the Complaint that included the defenses asserted in the Motion to Dismiss and Motion to Amend Motion to Dismiss, and

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added the defense of lack of subject matter jurisdiction because Plaintiff failed to accomplish mailing or delivery of her FOIA request as required by §30-4-30(c) and because the items requested were exempt from disclosure under FOIA because they are subject to the rules regarding discovery in the Rules of Civil Procedure for which Plaintiff was seeking the documents. The Answer also included the defense that the Office of the Attorney General had no documents that could be considered responsive to the FOIA request except for a draft of the Legacy Trust attached thereto and included in the Record on Appeal in *Wilson v. Dallas*, 403 S.C. 411743 S.E.2d 746 (2013). The Respondent AG also filed a Motion for Judgment on the Pleadings on March 7, 2013.

Judge Early heard pending motions in this case on May 17, 2016. He issued an Order dated June 14 dismissing this case. He found that the documents at issues are potentially discoverable in pending litigation in Richland / Aiken counties and would be governed by the Rules of Civil Procedure. He found that the documents were exempt from disclosure under FOIA for this reason and that FOIA could not be used to bypass civil discovery. The Court denied Plaintiff's Motion to Alter or Amend (by Form 4 Order dated August 11, 2011. Plaintiff appealed the above 2016 Orders.

The Court of Appeals reversed the circuit court's order dismissing Complaint and remanded for further proceedings on the basis of its conclusion in its Opinion in *Pope v. Wilson*, 427 S.C. 377, 389, 831 S.E.2d 442, 448, (Ct. App., 2019) which included the statement that "[i]f the government invokes the exemption in section 30-4-40(a)(4), '[m]atters *specifically* exempted from disclosure by statute or law,'[footnote omitted; emphasis as added by Court of Appeals] to seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record." The Court of Appeals found

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that the case was not moot because Plaintiff challenged the claim that the Attorney General had given her all the documents responsive to her request. The Court did not address the Attorney General's additional sustaining ground that the Court lacks subject matter jurisdiction because Plaintiff failed to accomplish mailing or delivery of her FOIA request as required by §30-4-30(c) and also the ground that the Court should strike Pope's 14 affidavits because they are irrelevant and also because many of them are not based upon personal knowledge, contain hearsay, and are speculative.

ISSUES / ARGUMENT

A

Plaintiff Has No Claim Under FOIA Because Her Request Was Not Received By Mail Or Delivery

Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, that the Office had not received that request, which Plaintiff had referenced in a motion in another case, and that if she would forward the request a response would be expedited. Exs., attached, p. 3. According to Ms. Meyers' affidavit of October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Exs. p. 1.[1] Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were

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[1] As stated in Ms. Meyers' Affidavit (Ex. p. 1):

> 3. . . . She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA."
>
> 4. Attachment of the June 30, 2011 letter to the complaint in the [instant] suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.

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never triggered.

Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor." As recounted above in the Statement of Facts, the Office of the Attorney General never received the FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

The authority to sue under FOIA is limited to actions "to enforce the provisions of this chapter in appropriate cases . . . ." §30-4-100. Therefore, no basis exists for enforcement when no "receipt of written request" has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).[2]

B

THE ATTORNEY GENERAL HAS SUPPLIED ALL DOCUMENTS RESPONSIVE TO PLAINTIFF'S FOIA REQUEST

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

---

[2] "In order to maintain a judicial action under FOIA, a plaintiff must first request documents from an administrative agency and if his request for documents is refused must exhaust his administrative remedies before filing a court action . . . . Where a plaintiff has not complied with these procedures, district courts lack jurisdiction over the claim under the exhaustion doctrine and will dismiss the claim for lack of subject matter jurisdiction." *Gasparutt, supra.*

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> 2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

We respond separately to each request below.

1

Legacy Trust

Although the OAG never received the FOIA request and the matters sought therein were subject to case 4900 motions, Respondent AG's Answer to the Complaint reserved its defenses and attached the only document that could be responsive to Plaintiff's Request No. 1, *supra,* the unsigned Legacy Trust draft. Plaintiff attaches and refers to another document as an amendment to the Trust, but it is an amendment to the August 10, 2008, settlement agreement, not to the Trust. The Office of the Attorney General reported this position and attached the document to its filing in *Summer v. Wilson*, 2012CP3600688, a case in which Plaintiff's husband represented journalist Sue Summer. Exs. p. E13. (Reply to Memorandum in Opposition, pp. 1, 2, 8 and settlement amendment, July 24, 2014). The Office of the Attorney General has nothing further to provide. The Legacy Trust has been dismissed as a party to this case.

2

The Valuation

As to Request 2, the Attorney General had nothing responsive. The Order of January 16, 2015, in the *Summer v. Wilson* FOIA case in Newberry County, concluded that the OAG did not have to produce the appraisal because it did not have it. Order at p. 8 (attached to Attorney General's May 5, 2016, Memorandum; *See also*, Answer Exs. pp. 5 & 6, item 4 (Ms. Summer's June 10, 2012, request for "any documents related to the $4.7 million at-death valuation of James

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Brown's music empire") and Answer Exs. p. 7(July 10, 2012, response stating that "[t]here are no documents responsive" to that request). Plaintiff would have access to the filings in the *Summer* case through the Court, and subject to Respondent's Motion to Strike, Ms. Summer executed an affidavit about the same matter which Plaintiff filed in the instant case. (Aff. of Summer, January 5, 2012, Motion to Strike dated January 9, 2012). In other words, Plaintiff already had access to the same information provided by the referenced attachments to the Answer before receiving the Answer. Finally, the appraisal Plaintiff seeks herein is confidential pursuant to a Court order in a Federal case involving her, but she would have access to it through that proceeding. *Brown v. Pope*, 3:08-cv-14-WOB (D.S.C., November 15, 2013, the Honorable J. Gregory Wehrman, Magistrate Judge).

Plaintiff contends that the Attorney General has not been responsive to the request for the valuation because of two documents released in response to a journalist's FOIA. One is a redacted letter from Everett Kendall to his client Russell Bauknight dated January 5, 2011 showing only the words "he is." Nothing on the face of the letter indicates that it relates to the valuation so Plaintiff only speculates. The Office of the Attorney General represents that the letter does not relate to the valuation and that it is attorney client privileged, but will be glad to produce it to this Court for in camera review. The other document, an email proposes a footnote stating that Respondent Bauknight engaged a firm to conduct an appraisal and notes that the appraisal is "not part of the record in this case." It does not attach the appraisal. Therefore, the email is "not related to the value of the assets" and is not responsive to Pope's FOIA request.

Sweeny, Wingate and Barrow Documents

Plaintiff is not entitled to SWB documents because her FOIA request is directed solely to the "Custodian or Records" at the Office of the Attorney General. Therefore, her Complaint's

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request that "the AG should direct the Wingate firm and all special counsel to comply with their FOIA duties with respect to the Legacy Trust" is not supported by her FOIA request. Her brief does not request that documents at Sweeny, Wingate and Barrow be produced. Therefore, her affidavit's request that the Office of the Attorney General produce documents held by SWB is not properly before this Court. Moreover, any documents held by SWB would be subject to any applicable attorney client or work product privileges of the Attorney General or other parties represented by SWB.

Contrary to Plaintiff's suggestion that she was not aware prior to October, 2020, "that [SWB] had never been engaged by the State/ AG," Plaintiff was informed of that matter years ago. In a Return she filed in the case *Bauknight v. Pope*, 2010CP4004900, and contained in the Record on Appeal in that case, she said that the Attorney General had informed SWB that the firm did not represent the AG's Office. Exs. pp. E6-E8, *infra* (R. VII, cover, and pp. 794 & 795). She attaches to her affidavit a letter from former Chief Deputy Attorney General John McIntosh about the representation, but that letter was about whether a retainer agreement had been signed.

Regardless of whether a retainer agreement existed, the Attorney General clearly benefited from representation of SWB of the common interest of the charitable beneficiaries and therefore attorney client privilege would apply. As stated by Senior Assistant Deputy Attorney General Sonny Jones on the Record in a motion argument made on August 29, 2016, in case 4900 which Plaintiff attended:

> so there's no question at this juncture when this case came out that Mr. Bauknight was hiring the Wingate firm. You have to keep in mind also, Your Honor, from what I just said about the law, is we only have one reason to be in this case, and that is to protect the charitable beneficiaries and to protect the charitable trust. Under 62-7-405, the probate code allows the attorney general, a trustee, or a party with a special

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> interest to protect the charitable trust. so when Mr. Bauknight was appointed back in the earlier case by you, we're satisfied with Mr. Bauknight, we're stepping back. In this case when Mr. Bauknight brought the action, Mr. Wingate's firm, they were representing our interest. They, in effect, were our lawyers. . . . [Exs. pp. E9 -11 (Record case 4900, V. III (cover), pp. 1177 (Transcript Cover) and 1222- 1223, (Tr. pp. 1 & 102, l. 17 – p. 103, l. 8)]
>
> our job is done, Mr. Bauknight is still there, the courts appointed him, got a great firm with Mr. Wingate, he's representing Wingate firm to Mr. Bauknight, our interest,.and the charity . so they're our lawyers in effect because they are representing our interest. [Exs. p. 12, (R., V. III, p. 1224 (Tr. p. 104, ll. 12- 18))]

Plaintiff attended that hearing and was well informed. Because the Attorney General benefited from the representation of SWB of the common interest of the charitable beneficiaries, privileges apply, and the production of the firm's file cannot be required. S.C. Code Ann. §30-4-40(7); *Cf* Tobaccoville *USA, Inc. v. McMaster*, 387 S.C. 287, 692 S.E.2d 526 (2010)(Common interest doctrine).

THE MOTIONS TO STRIKE PLAINTIFF'S AFFIDAVITS SHOULD BE GRANTED

AG moved to strike at least 14 affidavits filed by Plaintiff in this case, one of which is attached to the Complaint, and some of which are attached to other affidavits, and some related exhibits of Plaintiff. If the Court would like, these affidavits and motions will be submitted by a separate filing. At least six of these affidavits were executed by Plaintiff, herself, and many of her affidavits contain vitriolic and baseless speculation. All of the affidavits should be struck because they are irrelevant and also because many of them are not based upon personal knowledge, contain hearsay, and are speculative. Examples abound of these violations by Plaintiff of the basic rules for affidavits some of which are set forth below:

1. Affidavit attached to Complaint

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p.2, ¶ 5 "agent [of party not involved in instant proceeding] advised that if Bob and I did not drop a pending James Brown appeal AG . . . [note omitted] would to[sic] sue us . . . ." [hearsay, irrelevant]

p. 3, ¶ 7 Augusta Chronicle cite [hearsay]

p. 3, ¶8, " I believe the Retention Agreement will show whether AG McMaster . . . was in fact acting to punish Bob and me . . . . ;" [lack of personal knowledge; speculation]

2. Affidavit Opposing MTD, September 6, 2008 [sic]

p. 1, ¶2 "public documents, which, I believe, will tell the scandalous story" [lack of personal knowledge, irrelevant, speculative]

p. 4, ¶28, "I still wonder, and believe the public documents AG . . . is withholding will tell me" [lack of personal knowledge, irrelevant, speculative, hearsay]

p. 4, ¶30, "I believe the public documents will show . . . . " [lack of personal knowledge; speculative]

p. 3, ¶16 On April 30, 2010, . . . attorney for Brown's companion . . . threatened that . . . had already hired contingency-fee lawyer" [hearsay, irrelevant]

3. Supplemental Affidavit, September 16, 2011

Directed to earlier affidavit applying to other Defendant

p. 3, ¶5 quotations from *The Enquirer* which she acknowledges in paragraph 6 is not entirely accurate [lack of personal knowledge, hearsay, irrelevant]

4. Affidavit in Further Support, October 6, 2011

p. 4, ¶10, speculation about what requested documents will show [speculative,

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lack of personal knowledge, irrelevant]

p. 4, ¶11, chronology including some hearsay such as April 10 statement of agent for person not involved in instant litigation[hearsay, irrelevant]

p. 8, ¶¶15 and 16 speculation about what requested documents will show.

5. Affidavit and exhibits attached to Motion for Summary Judgment

p. 3, ¶¶ 7-9 speculation about documents and other matters [lack of personal knowledge, speculative, irrelevant]

Exhibit F to MSJ, p. 15 quotations from persons not involved in the instant suit [hearsay, irrelevant]

6. Affidavit of Summer, December 8, 2011, attached to Smith affidavit, December 9, 2011

¶¶ 16 – 18 references to what others have said in readings or elsewhere [hearsay, lack of personal knowledge]

7. Affidavit of Summer, January 5, 2012

¶25 "Dallas informed me" (hearsay)

¶28 "Brown told me" (hearsay)

8. Affidavit of Smith, December 9, 2011

¶6, attachment of draft article [hearsay]

9. Affidavit of Pope, January 6

p. 3 "Bauknight secretly tells IRS" [hearsay]

"The rule governing summary judgment provides that '[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.'" Rule 56(e), SCRCP (emphasis added). *Dawkins v. Fields*, 354 S.C. 58, 64, 580

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S.E.2d 433, 436 (2003). Because all of the affidavits appear to be directed to summary judgment, they must meet this standard of Rule 56(e) rather than Rule 11(c) which provides that affidavits and verifications may include matters stated on information and belief.

In numerous respects, the affidavits clearly fail to meet standards of being based upon personal knowledge and containing admissible evidence. They contain inadmissible hearsay and refer to news articles[3] which are not admissible. In particular, all of the affidavits are irrelevant. Many of them contain Plaintiff's account of litigation related to the James Brown estate and the Legacy Trust and allegations about why she needs the documents, but all of those statements are irrelevant to whether she is entitled to the documents under FOIA. All that is relevant to her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need. S.C. Code Ann. §§30-4-30 through 30-30-4-50, *et seq.* Plaintiff's lack of entitlement to the documents is discussed *infra* regarding her motion for summary judgment, but those grounds have nothing to do with the alleged need for or importance of the documents.

ATTORNEYS FEES

Plaintiff is not entitled to attorney's fees because she is not entitled to prevail on the merits of this suit. She also has not yet produced a statement of supporting her fee claim. Therefore, her request should be denied.

CONCLUSION

Judgement should be granted to the Defendant because Plaintiff never mailed or delivered her FOIA request to the Office of the Attorney General as well as the other reasons set

3 *Trustees of Erskine Coll. v. Cent. Mut. Ins. Co.*, 241 S.E.2d 160, 162-63 (1978).

forth above. Even if she had mailed or delivered her request, the Office of the Attorney General has supplied her with the only responsive documents.

Respectfully submitted,

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: 803.734.3680; Fax: 803.734.3677
Email: esmith@scag.gov

November 2, 2020

ATTORNEYS FOR THE ATTORNEY GENERAL

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012-CP-40-350
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**EXHIBITS TO BRIEF OF**
Alan Wilson, in his capacity as	)	**ATTORNEY GENERAL**
Attorney General of South Carolina and	)	
James Brown Legacy Trust, by	)	
Russell L. Bauknight, its Trustee,	)	
	)	
Defendants.	)	
	)	

Tracy Meyers, AAG, affidavit	E1
Meyers to Pope letter	E3
Return of Pope to Motion for Stay	E6
Transcript excerpt, Hearing, August 29, 2020	E9
Reply Memo of AG, Summer v. Wilson, pp, 1-2 & 8 with attached amendment	E13
Letter, Summer to Wilson, June 10, 2012	E22
Letter, Meyer to Summer, July 10, 2012	E24

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STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Tracy A. Meyers, who being duly sworn, attests to the following:

1. She is a Senior Assistant Attorney General with the Office of the Attorney General.

2. Among her assigned duties, she is to review Freedom of Information Act requests made of the Office of the Attorney General. Incoming FOIA requests are sent to her.

3. She has reviewed the letter of June 30, 2011 addressed to the Custodian of Records of the Office of the Attorney General and attached as Exhibit A to the Complaint in Pope v. Wilson, et al (2011-CP-36-364. She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA.

4. Attachment of the June 30, 2011 letter to the complaint in the above suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.

6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request to the Office of the Attorney General by Ms. Pope or her attorney, a response to the

FOIA request will be made then if permitted by any Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that request.

Tracy A. Meyers

TRACY A. MEYERS

SWORN TO before me this 20th day of October, 2011

Shunechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10/2/18

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FILED
NEWBERRY COUNTY
2011 AUG 10 A 10: 25
JACKIE S. BOWERS
CLERK OF COURT

ALAN WILSON
SECURITIES COMMISSIONER

August 5, 2011

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

Re: Request for documents under the South Carolina Freedom of Information Act

Dear Ms. Pope:

I am in receipt of one letter from you dated July 19, 2011, and five letters from you dated July 20, 2011, requesting certain documents pursuant to the South Carolina Freedom of Information Act ("FOIA"). I have also been notified by attorneys in the Civil Division of the South Carolina Office of the Attorney General ("SCAG") that you refer to a request dated June 30, 2011 in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

Responding to your letters dated July 19, 2011 and July 20, 2011 is difficult, as I have been informed there are several pending motions filed in Case No. 2010-CP-40-4900 in the Richland County Circuit Court and that several of the pending motions relate to the documents you are currently seeking to obtain through the FOIA requests. I have been informed there are at least three related motions that relate to the FOIA request: (1) a "Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope" filed July 5, 2011, filed by the Plaintiffs; (2) a "Motion to Compel Discovery" dated June 7, 2011, filed by your counsel; and (3) a "Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction", dated July 26, 2011, filed by your counsel.

While there exists an ongoing case in which I have been informed both a "Motion for Protective Order" and a "Motion to Compel Discovery" are outstanding, it seems premature for me to release the requested documents. I am not involved in the civil case in any way and believe the wisest thing to do is to let the presiding judge make the decision on which items, if any, are to be produced and which, if any, are not.

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549

The FOIA was designed to give the public and the press access to the workings of their government. FOIA is not designed to supplement the rules of civil or criminal discovery. For these reasons, I propose to put your requests on hold pending the outcome of your current litigation. Once litigation is complete, I would then provide you with all of the information you have requested that is available (i.e. not exempt) pursuant to the Act. In the meantime, I will also forward copies of all six letters to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate.

Sincerely yours,

Tracy Meyers

Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-001899

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.

S.C. Attorney General's Office
Consumer Protection and Antitrust

SEP 17 2018

Received by BF
Reviewed by/Date
Referred to/Date
Notes:

RECORD ON APPEAL

VOLUME II OF V

ELECTRONICALLY FILED - 2020 Nov 02 8:27 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
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.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown individually and on behalf of her minor children Sydney L., Carrington L., 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 B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L. and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN, Plaintiffs. v. Adele J. Pope, Defendant.	Case No.: 2010-CP-40-4900 RETURN AND OPPOSITION TO REQUEST FOR STAY AND REQUEST FOR EXPEDITED HEARING, SCHEDULING ORDER AND RELATED RELIEF

2013 APR -1 PM 3:33

Defendant Adele J. Pope responds to the letter motion of Sweeney, Wingate & Barrow, P.A. ("Wingate") , dated March 27, 2013, a copy of which is attached hereto as Exhibit A (the "Letter Motion"), as follows:

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1. The motion fails to comply with the Rules of Civil Procedure, and seeks extraordinary relief available only by proper application and support.

2 Wingate has no authority to make the Letter Motion on behalf of at least 11 of the Plaintiffs because either: they have terminated Wingate; they never engaged Wingate; or Wingate is otherwise prohibited from speaking for them, including:

a. (1) Alan Wilson as Attorney General of South Carolina, who notified Wingate *in writing and prior to the service of the Letter Motion* that Wingate does not represent the AG's Office;

b. (2) Plaintiff Russell L. Bauknight as purported Agent for the AG;

c. (3) Plaintiff Trustee of the James Brown Legacy Trust, because Wingate is estopped to take in the Letter Motion a position fundamentally different from the position taken by the Legacy Trust *at this time* through its attorneys Lewis & Babcock in a FOIA case;

d. Minor Plaintiffs (4) Sydney L., (5) Carrington L. and (6) Janise B. because Wingate is acting contrary to their interests by trying to dismantle the $285,000 education trusts James Brown created for them and has refused repeated requests over 3 years to secure a GAL for them;

e. Minor Plaintiff (7) James B. because Wingate has refused for three years, despite repeated requests, to make James B's GAL part of this case;

f. Plaintiff (8) Terry Brown because Terry's entire interest in James Brown's Estate was assigned to his son Forlando on January 3, 2011; Wingate concealed the Assignment despite valid discovery requests for almost 2 years; Wingate has repeatedly refused to allow Terry to be deposed; Terry's counsel David Bell, Esq. for himself and counsel Matt Bodman, Esq. has confirmed in writing since the February 27 that he supports the February 27 decision; and it has been confirmed that Terry did not even know Wingate filed Case 4900 in Terry's name or sought to intervene for Terry in a FOIA or seek sanctions against Pope;

g. Plaintiff (9) Daryl Brown confirmed at his deposition that he did not even know Wingate filed this Case 4900 or the motion to intervene in the FOIA case for him; and he and Plaintiff (10) Lindsey Delores Brown signed a document, filed with the deposition saying Louis Levenson, Esq. is their only lawyer.

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2017-001899

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.

S.C. Attorney General's Office
Consumer Protection and Antitrust

SEP 17 2018

Received by BY
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Notes:

RECORD ON APPEAL

VOLUME III OF V

ELECTRONICALLY FILED - 2020 Nov 02 8:27 AM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

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

2

first part, you got Mr. Bauknight representing everybody. And we're included in the complaint as the beneficiary.

And in the second part, you don't see Mr. Bauknight. And that would be from a strategy point of view. If the case was overturned and Ms. Pope and Mr. Buchanan was still in there and Mr. Bauknight was out, there's a statute of limitations of one year, she'd be suing herself. So the fault would be, the strategy part was to keep us in -- all these in the suit, if it would work that way.

So when the case came out -- so there's no question at this juncture when this case came out that Mr. Bauknight was hiring the Wingate firm. You have to keep in mind also, Your Honor, from what I just said about the law, is we only have one reason to be in this case, and that is to protect the charitable beneficiaries and to protect the charitable trust.

Under 62-7-405, the probate code allows the

attorney general, a trustee, or a party with a special interest to protect the charitable trust. So when Mr. Bauknight was appointed back in the earlier case by you, we're satisfied with Mr. Bauknight, we're stepping back.

In this case when Mr. Bauknight brought the action, Mr. Wingate's firm, they were representing

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our interest. They, in effect, were our lawyers. No different than if Mr. Few and Gilreath were here today, I'd be sitting back there and I'd say good job because you're our lawyers for the charitable interest.

Now, that may be a communication, that may be bad words, I would say, but when I deal with fee contracts -- and I've dealt in our office, for ten years, probably 20. I'm probably the sole person outside of maybe two of them. It's pretty rigorous. We've been to the Supreme Court twice, been attacked two or three times about fee contracts. All that we intended in this one and all that was included was the fee part, not anything else on control or anything else.

So Mr. Bauknight hired Mr. -- the Wingate firm. And right now, when we responded with consideration with the Supreme Court, said, we want to make sure

you understand our position, we aren't going to argue with you about what you did, but let you know we aren't trying to control everything, but with you saying a new trustee is going to be appointed, we're going to step back. That's what we told the Supreme Court in our reconsideration, which we filed with you. That's the same position we took when we went down to, I think it was, Barnwell and you assigned Mr. Bauknight; let us step back to a monitoring role, we don't need to be there.

So what we're picking up today is a motion that

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we filed back in 2013, I think, to be dropped. Our job is done, Mr. Bauknight is still there, the courts appointed him, got a great firm with Mr. Wingate, he's representing Wingate firm to Mr. Bauknight, our interest, and the charity. So they're our lawyers in effect because they are representing our interest. And I wouldn't be able to stand up and say anything with Mr. Gilreath and Few, so there's no reason for us not to be dropped in the case today.

Now, I did make a notice of special appearance. I hope Your Honor will give us that. We've been talking here for a little while. But it's necessary to argue that motion.

Now, the issue could come up on the counterclaim. Now, the counterclaim has not been resolved, that's why I wanted it to be argued before we argued our case so I wouldn't have to go into much detail. Our position, one, would be that any counterclaim, if it was found to be against the parties, at that time would be for the interests that were in the case.

And what is that interest? To protect the charitable beneficiaries. So anything that goes -- if it's meritorious in the counterclaim, if you don't drop them today, would be against the charitable beneficiaries. That's why we're in the case, not the AG's office.

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
Susan D. Summer,	)	Case No. 2012-CP-36-688
	)	
Plaintiff,	)	
	)	REPLY TO MEMORANDUM IN
v.	)	OPPOSITION TO AMENDED
	)	MOTION TO ALTER OR AMEND
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	

The Defendant submits this Reply to Plaintiff's Memorandum in Opposition.

I

GENUINE ISSUES OF MATERIAL FACT BAR SUMMARY JUDGMENT

Plaintiff's arguments fail for the fundamental reason that genuine issues of material fact exist that bar granting summary judgment. She contends that the Defendant has not identified any such issues, but he has, and they are evident from Plaintiff's own filings and arguments and include at least the following major disputes:

1. **Whether a signed Legacy Trust exists**. A sharp and material fact issue exists as to the Trust. The Trust is a purported document that Plaintiff has sought under a FOIA request. She contends that it exists. (Plaintiff's Supplemental Memorandum at p. 5). The OAG contends that, to the best of its knowledge, a signed Legacy Trust does not exist. *See,* undersigned counsel's letters to this Court of June 10, 2014.

   Plaintiff's memorandum refers to her having a purported amendment to the Trust which she produced to undersigned counsel and this Court following the Rule 59

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hearing on July 23. That assertion comes too late for the purposes of her Motion for Summary Judgment and the pending Rule 59 Motion. As has been stated regarding the similar Federal rule, "[t]he Rule 59(e) motion may not be used to . . . present evidence that could have been raised prior to the entry of judgment." § 2810.1 Grounds for Amendment or Alteration of Judgment, 11 Fed. Prac. & Proc. Civ. § 2810.1 (3d ed.); *United States v. Metro. St. Louis Sewer Dist.*, 440 F.3d 930, 934 (8th Cir. 2006); *Obriecht v. Raemisch*, 517 F.3d 489, 494 (7th Cir. 2008).

Both the document and her assertion should be disregarded; however, without waiving this objection, the Office of the Attorney General submits the document herewith in the event that this Court considers Plaintiff's argument that a settlement agreement exists. That attached document is an amendment to the August 10, 2008 settlement agreement, not to the Trust. Therefore, Plaintiff has not refuted the Defendant's position that a signed Legacy Trust does not exist.

Plaintiff's continuing to allege the existence of documents and submit documents to the Court creates fact issues regarding her own Motion. Those material issues of fact show that Plaintiff is not entitled to the judgment that she received.

2. **Whether documents deemed by the Office of the Attorney General to be exempt from disclosure under FOIA are confidential.** In responses to Plaintiff's FOIA requests, the OAG stated that records were provided except for those that were exempt from disclosure under S.C. Code Ann. §30-4-40. *See, eg,* Answer Exhibits, p. 18, 21, 25and 26. Plaintiff disputes the exemption. Her Supplemental Memorandum

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with that Act. §30-4-20(c) ("[e]ach public body, upon written request for records . . . shall . . . notify the person making such request of its determination and the reasons therefor. Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record . . . .") The Defendant's Answer includes his responses to the FOIAs. Nothing on their face demonstrates a violation of FOIA, and the position of the Attorney General is that his Office has complied with that law. Plaintiff's speculation, news articles and belated, irrelevant documents do not show a failure to comply with FOIA. Therefore, based upon the pleadings, the Defendant is entitled to judgment.

CONCLUSION

For the foregoing reasons and for those set forth in the Defendant's Amended Motion to Alter or Amend, this Court should grant that motion, deny judgment to Plaintiff and grant the Defendant's Motion for Judgment on the Pleadings.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar. No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
esmith@scag.gov
S.C. Bar No. 5262

BY:
ATTORNEYS FOR THE ATTORNEY GENERAL

July 28, 2014

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Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement) The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions

2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Bauknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.

3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

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to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.



Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

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Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Tommie Rae Brown

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha B., Lindsey Delores Brown, Vanisha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown-Lumar, Sydney L., Carrington L., and Tonya Brown

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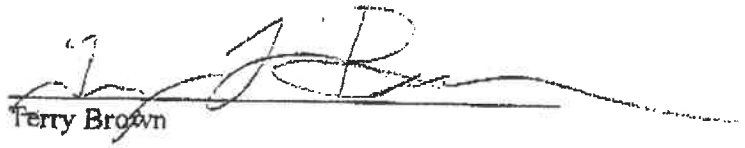
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Attorneys for Tommie Rae Brown

1/4/11

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha B., Lindsey Delores Brown, Vanisha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown-Lumar, Sydney L., Carrington L., and Tonya Brown



Terry Brown

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Sue Summer
1903 Main St.
Newberry, SC 29108
10 June 2012

FILED
NEWBERRY COUNTY
2012 DEC 18 P 2:09
JACKIE S. BOWERS
CLERK OF COURT

Attorney General Alan Wilson & Keeper of Records
Office of the S.C. Attorney General
PO Box 11549
Columbia, SC 29211

By email and registered mail

Dear sir or madam:

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

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

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

3. My request for the Hynie diaries was also previously refused, citing a gag order from Judge Early. A May 22 hearing was held on the gag orders, which were first violated by Ms. Hynie herself in a TV interview six months after the orders were issued. If Judge Early lifts the orders, I want to make sure that my FOIA request for a copy is in place so that a copy may be forwarded to me immediately—and if a copy cannot be sent, please release to me all communications related thereto. It is my understanding that the diaries hold a critical piece of evidence regarding

"Exhibit C"

the spousal claim of Tommie Rae Hynie—evidence that the AG's office might have used to save about one-quarter of the music empire for the charity McMaster claimed to be protecting. I also request any electronic or written communication regarding the AG's office's recent support for Hynie in her effort to maintain the gag orders through her attorney Robert Rosen. (It is in the public interest to bring into the light and discuss the following scenario: The AG's office says the diaries cannot be released because of a gag order, then the AG's office files documents with the court to maintain the gag order. Why would that happen, when the diaries may include important evidence that affects the future of the James Brown "I Feel Good" Trust?).

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

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

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

Sincerely,

Sue Summer

AG Wilson Continues Battle To Conceal James Brown Documents and Deny FOIA Requests

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ALAN WILSON
SECURITIES COMMISSIONER

July 10, 2012

Ms. Sue Summer
1903 Main Street
Newberry, SC 29108

Re: Your Freedom of Information Act ("FOIA") request dated June 10, 2012

Dear Ms. Summer:

Thank you for your phone message today requesting that this Office reissue its letter to you dated July 3, 2012 with a corrected salutation. Per your request, we are today responding again to your FOIA request dated June 10, 2012, a copy of which is enclosed for reference.

I am writing in response to your South Carolina Freedom of Information Act request dated June 10, 2012, and received by the Office on June 12, 2012.

In response to request 1, as the Office has previously advised you, the records of the Attorney General's Office have previously been searched for such information and copies of all documents responsive to the request that are not attorney work product, privileged, or otherwise except pursuant to section 30-4-40 of the Act have previously been provided to you.

In response to request 3, pursuant to the attached Order, signed by the Honorable Doyet A. Early, III, these diaries cannot be disseminated. Accordingly, this matter is "specifically exempted from disclosure by statute or law." In addition, the diaries are the subject of pending motions before the Circuit Court, including the Motion to Vacate or Declare Void/Moot Orders related to Diaries of Tommie Ray Hynie Brown. In further response to request 3, there are no other documents responsive to this request that are not attorney work product, privileged, or otherwise exempt from the Act.

There are no documents responsive to requests 2, 4, and 5.

Yours very truly,

Tracy A. Meyers
Assistant Deputy Attorney General

TAM/tpn

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-734-3677

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ELECTRONICALLY FILED - 2020 Dec 18 5:57 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-0350
	)	
Adele J. Pope,	)	
Plaintiff,	)	PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF RELIEF UNDER THE S.C. FREEDOM OF INFORMATION ACT AND IN OPPOSITIONS TO MOTIONS OF THE ATTORNEY GENERAL
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	

Plaintiff Adele J. Pope ("Plaintiff") submits this supplemental memorandum supporting the relief sought in her complaint herein and in opposition to motions of the Attorney General to dismiss, to strike and for judgment on the pleadings in the form of the proposed Order attached hereto.

Plaintiff bases this memorandum on the entire record herein, including the Affidavit of Adele J. Pope filed herewith.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

Attorney for Plaintiff

December 18, 2020

ELECTRONICALLY FILED - 2020 Dec 18 5:57 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-0350
	)	
Adele J. Pope,	)	
Plaintiff,	)	**ORDER REQUIRING PRODUCTION OF PUBLIC RECORDS**
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	

THIS MATTER COMES BEFORE THE COURT for a hearing on the merits of Plaintiff's claims under the South Carolina Freedom of Information Act.[1] A hearing was held on November 19, 2020.[2] Present were Adam T. Silvernail, attorney for Plaintiff Adele J. Pope ("Plaintiff") and J. Emory Smith, Jr., attorney for Defendant Alan Wilson, as Attorney General of South Carolina ("Defendant" or "AG"). The Court also heard Defendant's motion to dismiss and motions to strike. For the reasons discussed below, the Court **DENIES** Defendant's motions to dismiss, for judgment on the pleadings, and to strike and **GRANTS** the relief sought in Plaintiff's complaint herein.

BACKGROUND

Plaintiff, a South Carolina citizen residing in Newberry County, commenced this action in Newberry County on August 3, 2011, pursuant to the South Carolina Freedom of

[1] Plaintiff moved for summary judgment in 2011, which motion remains pending. At the November 19, 2020 hearing, however, the parties argued all substantive matters related to this action, and the Court therefore proceeds with determining the merits of the case.

[2] The Court acknowledges that this case, filed more than nine (9) years ago, has had an extraordinarily long life for a FOIA case. The undersigned, however, was first involved with this case upon its remand in 2020. Because the FOIA is explicitly intended to provide the public access to public documents "at a minimum cost or delay," this Court has endeavored to hear and dispose of this case as efficiently as possible after remand.

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Information Act, S.C. Code Ann. §§30-4-10 *et seq.* (the "FOIA"). Alan Wilson, in his official capacity as Attorney General of South Carolina, is the Defendant.[3]

In her complaint, Plaintiff alleges that on June 30, 2011, she made a proper FOIA request to the AG for the following documents:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

2. All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

Plaintiff's complaint further alleges that she received no timely response to her FOIA request, and she filed this action after the expiration of the statutory response time. She seeks a declaration that the documents she has requested are public; injunctive relief directing the AG to turn over all responsive public documents; and attorneys' fees and costs pursuant to S.C. Code Ann. §30-4-100(b).

The AG responded to the complaint with a motion to dismiss, filed September 7, 2011, asserting that the case should be dismissed under Rule 12(b)(3), due to improper venue, and Rule 12(b)(8), because "[a]nother action is pending among the same parties as to the same or substantially the same claim." The AG asserted that Plaintiff's FOIA claims were subordinate to discovery motions pending in Richland County Case No. 2010-CP-40-4900[4]

---

[3] Plaintiff made her FOIA request to and named as Defendants herein both the AG and The James Brown Legacy Trust ("Legacy Trust"). At the time, *Wilson v. Dallas,* 403 S.C. 411, 743 S.E.2d 746 (2013) was pending. The *Wilson* decision held that the AG had effective control over the Estate and Trust of James Brown during the period from 2009 until the decision in 2013. Both James Brown's Estate/Trust and the Legacy Trust are named Plaintiffs in Richland 4900. In 2016, Judge Early determined that the Legacy Trust did not exist, and that ruling is the law of the case. The Legacy Trust was dismissed by Judge Early's Order.

[4] Richland 4900 is a tort suit brought by the AG and a number of private Plaintiffs on May 19, 2010, in which all plaintiffs, including the AG, were represented by private law firm Sweeny, Wingate & Barrow, P.A. ("SWB").

("Richland 4900"). Notably, the motion makes no mention of the AG not having received the June 30, 2011 FOIA request which is attached to the complaint herein.

Beginning at the filing of its motion to dismiss, the AG has also filed several motions to strike affidavits filed by Plaintiff herein.

On September 30, 2011, Plaintiff moved for summary judgment on all of her causes of action.

On October 24, 2011, Defendant filed an Affidavit of Tracy Meyers, which for the first time alleged that the AG had not received the June 30, 2011 FOIA request.

On January 11, 2012, the Honorable Frank R. Addy, Jr., issued a Form 4 Order, transferring this case to Richland County.

On March 8, 2013, Defendant AG filed an amendment to its motion to dismiss, along with a motion for judgment on the pleadings. These filings asserted for the first time that the AG's nonreceipt of the FOIA request at issue deprive this Court of subject matter jurisdiction.

Also on March 8, 2013, Defendant AG filed an answer, subject to its motion to dismiss, which attached certain documents, which the AG asserted were responsive to Plaintiff's FOIA request.

On May 17, 2016, the Honorable Doyet A. Early, III, heard pending motions in this matter. Among the arguments presented at that hearing was the AG's assertion that this Court lacked subject matter jurisdiction as a result of the AG's alleging that it did not receive the FOIA request at issue.

On June 14, 2016, Judge Early issued an Order granting the AG's motion to dismiss. By separate Order of the same date, Judge Early dismissed the Legacy Trust, finding that it "does not exist and cannot be subject to FOIA" as well as on other grounds. The Order related

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to the AG discusses only the Richland 4900 discovery motions as a basis for dismissal.

Plaintiff appealed, and the Court of Appeals reversed the dismissal of the action, holding that the AG must identify "specific language of a discovery rule that expressly prohibits disclosure of a particular type of record."

The Court of Appeals remanded the case to this Court, and all issues in this case are ripe for disposition.

DISCUSSION

In adopting the FOIA, the General Assembly found "that it is vital in a democratic society that public business be performed in an open manner." S.C. Code Ann. §30-4-15. Plaintiff has requested certain public records from the AG, which is undisputedly a "public body," as defined in the FOIA. Because Plaintiff's complaint includes allegations which would entitle her to declaratory and injunctive relief, as well as an award of attorneys' fees and costs, the Court first disposes of the AG's pending motions.

Motions to Strike

The AG argues, as an initial matter, that more than a dozen affidavits filed by Plaintiff should be stricken from the record herein, including affidavits of journalists, a State Senator, members of the public and Plaintiff.[5] The basis alleged for striking these affidavits is that they are irrelevant and contain inadmissible hearsay. The AG argues, "[a]ll that is relevant to her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need."

[5] Although the AG's motions seek to strike hundreds of pages of affidavit testimony and exhibits from the record, the Court notes that these motions identify only a handful of statements to which the AG objects and did not submit affidavits or other evidence to support its contentions regarding Plaintiff's filings. Further, the affidavits the AG seeks to strike were contained in the Record on Appeal on file in the previous appeal herein.

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While the FOIA does not consider importance of the documents or whether the requestor has any particular need therefor, the AG has based its defenses herein on Plaintiff's identity as a litigant in Richland 4900, as well as its allegations that she was already in possession of documents the AG declined to release to her under FOIA. Plaintiff argues that the affidavits were, at least in part, offered to show both that this case should not be subordinated to Richland 4900 discovery (as requested by the AG) and that journalists and other members of the public were also interested in the FOIA disclosures sought by Plaintiff.

Because the AG raised issues herein related to Plaintiff's identity, as well as her motivation and need to obtain the document, the Court finds that the affidavits are offered for a proper purpose. Further, this Court is able to weigh the relevance of the affidavits to the issues being considered. The AG's motions to strike are therefore **DENIED**.

Subject Matter Jurisdiction

South Carolina Circuit Courts have general jurisdiction over actions for declaratory and injunctive relief the FOIA, as sought by Plaintiff herein. S.C. Code Ann. §30-4-100(a). The AG argues that this Court lacks subject matter jurisdiction over this matter, because it did not receive Plaintiff's June 30, 2011 FOIA request. The AG bases its argument on *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998), a case in which a Federal District Court in California found that it did not have subject matter jurisdiction over a Federal FOIA case in which the plaintiff had not alleged that he submitted a proper FOIA request to the Internal Revenue Service ("IRS") under the IRS's regulations regarding FOIA requests. The District Court dismissed that case because it found the plaintiff had failed to exhaust his administrative remedies prior to filing suit. This Court finds that case distinguishable.[6]

[6] The Court notes that Federal appellate caselaw does not appear to support the AG's

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The AG has filed an affidavit of Tracy Meyers, an employee of the Office of the AG (the "OAG"), which states that the OAG did not have a record of receiving Plaintiff's June 30, 2011 FOIA request. However, the record also contains a letter from Ms. Meyers, dated August 5, 2011, in which Ms. Meyers acknowledges that the Civil Division of the OAG was aware of the June 30, 2011 request. Additionally, Plaintiff has submitted a June 30, 2011 letter from her counsel to SWB (which was counsel of record for the AG in Richland 4900) providing a copy of Plaintiff's June 30, 2011 FOIA request. The AG acknowledges that the letter was sent to SWB. (See Answer of AG, ¶17) Further, Plaintiff argues that the AG undisputedly received her FOIA request as an attachment to the complaint herein, which was served upon the AG in August 2011. The AG's initial motion to dismiss, filed September 2, 2011, makes no mention of the AG's not having received the FOIA request.

The Court therefore finds that Plaintiff properly alleged that she had submitted a FOIA request to the AG on June 30, 2011; that her request was transmitted to counsel for the AG on that date; and that the OAG directly received the FOIA request, at latest, upon its receipt of the complaint herein. As further discussed below, the AG's initial response to the complaint asserts that the AG was not required to produce **any** documents to Plaintiff under the FOIA that the AG considered "subject to pending [discovery] motions" in Richland 4900. The AG did not, as discussed more fully below, make a timely and proper FOIA response upon

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contention that receipt of the FOIA request is a precedent to this Court's subject matter jurisdiction over the matter. "[E]xhaustion is a prudential consideration rather than a jurisdictional prerequisite, [and] the district court was not precluded . . . from deciding the merits of Wilbur's FOIA claim notwithstanding his failure to comply with the CIA's FOIA appeal deadline." *Wilbur v. C.I.A.*, 355 F.3d 675 (D.C. Cir. 2004). Because this Court finds, as discussed below, that this case would fall into the "futility" exception to the exhaustion of remedies doctrine, even if applicable, further analysis of this issue is unnecessary.

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receipt of Plaintiff's June 30, 2011 FOIA request.

The Court further notes that, even under the analysis of the Federal FOIA used in *Gasparutti, supra,* this Court has subject matter jurisdiction to hear and decide the FOIA issues before it. As noted above, *Gasparutti* involves a dismissal under the exhaustion of remedies doctrine because the plaintiff in that case failed to *plead* that he had submitted a proper FOIA request to the IRS, which complied with the IRS's FOIA regulations. As an initial matter, this Court notes that the Federal FOIA requires that requestors comply with regulations put in place by Federal entities in making FOIA requests. The South Carolina FOIA, however, simply requires that public bodies respond "upon written request." S.C. Code Ann. §30-4-30(c). No particular form is prescribed for the substance or delivery of the request. The AG has not alleged that the statute allows for the agency to make more restrictive regulations, nor that the AG has any regulations which would require a particular form or method of delivery for FOIA requests. In fact, the AG's stated guidance, as stated in the *Public Official's Guide to the FOIA,* is "[w]hen in doubt, disclose the public record." As set out above, it is undisputed that the AG received the June 30, 2011 FOIA request more than nine (9) years ago.

Because the AG's response to the complaint herein was a blanket refusal to provide documents to Plaintiff, the Court finds that Plaintiff's FOIA claims are properly before it and ripe for disposition. To the extent the Federal case cited by the AG is applicable, this Court's analysis reconciles readily with Federal FOIA caselaw.[7]

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[7] As a general rule, a Federal FOIA requester must exhaust his administrative remedies. *Oglesby v. Dep't of the Army*, 920 F.2d 57, 65 (D.C.Cir.1990). The court need not dismiss a claim for failure to exhaust if it determines that the "purposes and policies underlying the exhaustion requirement" would not be undermined by reaching the merits. *Wilbur v. CIA*, 355 F.3d 675, 677 (D.C.Cir.2004); *see also Hidalgo v. FBI*, 344 F.3d 1256, 1258-59 (D.C.Cir.2003)

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The AG Must Fully Respond to Plaintiff's FOIA Request

The AG argues that it has provided all responsive documents to Plaintiff's June 30, 2011 FOIA request, and Plaintiff is therefore entitled to no relief in this action. This Court disagrees. S.C. Code Ann. §30-4-30(c) provides that a public body must "notify the person making the request of its determination [of the public records it will release under FOIA] and the reasons therefor." The AG's belated, piecemeal production of certain documents and justifications for not releasing others, which appear to be based solely on the AG's **possession** (as discussed below) of documents, does not satisfy the AG's FOIA responsibility under the statute.

First, the AG alleges that it provided two draft copies of the James Brown Legacy Trust to Plaintiff as attachments to its answer herein. While the documents are attached to the answer, the Court notes that the answer and attachments were not filed and served until March 8, 2013, more than 18 months after the commencement of this case, and that the AG's answer purports to provide those documents subject to its position that Plaintiff is not entitled to them. The S.C. Supreme Court has held that a FOIA action for declaratory and injunctive relief is mooted *upon the public body's production of the requested document*, but that further causes of action for attorneys' fees and costs are not mooted by a delayed response. *See Sloan v. SCDOR*, 409 S.C. 551, 762 S.E.2d 687 (2014).

Further, the AG asserted in its answer that it "does not have" documents responsive

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(while exhaustion is not jurisdictional, "as a jurisprudential doctrine, failure to exhaust precludes judicial review" if a merits determination would undermine the purpose of permitting an agency to review its determinations in the first instance). Even in Federal FOIA cases where, as here, the public body has taken the clear position that Plaintiff would not have received a different response to her FOIA request, the Court is justified in proceeding to address the merits of the important FOIA issues presented.

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to Plaintiff's request for:

> All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

This statement does not constitute an adequate FOIA response. Under S.C. Code Ann. §30-4-20(c), public records include those "prepared, owned, used, in the possession of, **or** retained by a public body" (emphasis supplied). Possession by a public body is therefore not required in order for a document to be a public record responsive to a FOIA request, and so the AG's filings indicating that it "does not have" further documents responsive to Plaintiff's FOIA request is inadequate.

Plaintiff's complaint makes reference to the Litigation Retention Agreement between the AG and SWB, which provides:

> Any material, data, files, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfils and obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act . . . and maintain all public records in accordance with State law . . . ."

The AG's answer makes reference to the Litigation Retention Agreement for its terms and does not assert that the Litigation Retention Agreement is inapplicable to the FOIA request at issue herein. (See Answer of AG, ¶¶17, 19)

The AG has nonetheless taken the position herein that it need not produce any documents held by SWB or the former Defendant Legacy Trust in response to Plaintiff's FOIA request. The Court finds that, pursuant to both the terms of the Litigation Retention Agreement and §30-4-20(c), responsive documents held by SWB are "owned" by the AG, and in order to make a full and proper FOIA response to Plaintiff, the AG must include documents

held by SWB in its response to Plaintiff's FOIA request.[8]

Richland 4900 Discovery Proceedings do not Exempt any Requested Document from Production under the FOIA

At the hearing on this matter, the AG continued to argue that any response to Plaintiff's FOIA request was barred by discovery motions in Richland 4900 which were pending at the time Plaintiff's FOIA request was made. In the appeal in this case, the Court of Appeals found[9] that in order to claim a FOIA exemption under S.C. Code Ann. §30-4-40(a)(4) as a result of pending discovery in another case, a public body "must point to the **specific** language of a discovery rule that **expressly** prohibits disclosure of a particular type of record"[10] (emphasis supplied). The AG has not identified any rule expressly prohibiting it from disclosing the documents sought in Plaintiff's FOIA request, and this Court finds that pending motions regarding civil discovery in another case do not, under the applicable Rules of Civil Procedure, expressly prohibit a public body from releasing public records under the FOIA.

Plaintiff is the Prevailing Party and is Entitled to Attorneys' Fees and Costs

Pursuant to S.C. Code Ann. §30-4-100(b), the Court may award the reasonable attorneys' fees and costs to a Plaintiff who has prevailed in an action to secure a public body's compliance with the FOIA. In this case, although the AG has provided Plaintiff with certain

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[8] A member of SWB appeared at the final hearing in this matter, although SWB is neither a party to this case nor counsel of record herein, requesting that SWB be given the opportunity to be heard if this Court considers any relief against SWB. Because this order directs the AG's full FOIA response, including documents it has owned or used, input from SWB or any person or entity over which the AG had control at the time of the FOIA request is not necessary or appropriate. *See Wilson*.

[9] The Court of Appeals, in its unpublished opinion in this case, made reference to its decision in *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (Ct.App. 2019), for analysis of this issue.

[10] *Pope* at 389, 831 S.E.2d 442 at 448 (Ct.App. 2019).

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documents (over 18 months after she filed this case), the AG's initial response to Plaintiff's FOIA request was inadequate. Plaintiff is the prevailing party in this case, as set out in this Order, and the Court finds that she is entitled to an award of reasonable attorneys' fees and costs incurred herein. *See Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) ("When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed." (internal citations omitted).

CONCLUSION

Based on the foregoing, the Court finds that Plaintiff made a proper request for public records under the FOIA to the AG, which is a public body. None of the grounds the AG has identified in its Motion to Dismiss, Motion for Judgment on the Pleadings and/or Answer support the AG's failure to fully respond to Plaintiff's FOIA request made more than nine (9) years ago, and Plaintiff's prosecution of this case, including her successful appeal, was necessitated by the AG's refusal to make a full and proper response to Plaintiff's June 30, 2011 FOIA request. Further, the Court finds no basis for striking any affidavit filed by Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Defendant's motions to strike are **DENIED**;

2. Defendant's motions to dismiss and for judgment on the pleadings are **DENIED**;

3. Defendant shall, within 15 days, produce to Plaintiff all documents responsive to her June 30, 2011 FOIA request (from the date of the FOIA request to the date of this Order) which are under the custody or control of the AG, or which the AG has prepared, owned or used;

4. To the extent the AG claims any FOIA exemption for any document which his office

has prepared, owned, or used, the document shall be marked confidential and accompanied by a sworn certification by the Attorney General or his designee that it is his opinion, as the State's highest legal officer, such document cannot be legally produced under the FOIA. He shall state with specificity the facts and law on which he bases his opinion with respect to each document;

5. Any certification and document shall be provided the Court and to Plaintiff's counsel as "confidential" and shall be the subject of a hearing to be held within thirty days of this Order;

6. Plaintiff is the prevailing party in this matter and is therefore entitled to an award of reasonable attorneys' fees and costs incurred in this action, pursuant to S.C. Code Ann. §30-4-100(b). Plaintiff's counsel shall, within thirty (30) days, submit a detailed affidavit of fees and costs requested for consideration by this Court; and

7. This Court shall retain jurisdiction to insure compliance with the FOIA as set out herein and determine the fees and costs to be awarded to Plaintiff.

AND IT IS SO ORDERED.

Clifton B. Newman, Presiding Judge

, South Carolina
December , 2020

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant	IN THE COURT OF COMMON PLEAS Case No. 2010-CP-40-4900 Affidavit Opposing Participation of SWB Law Firm in this FOIA Case and in Support of Exemplary Legal Fees Based on Defendant's Release of of "October 2020 Documents"
STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant	IN THE COURT OF COMMON PLEAS Case No. 2012-CP-02- Affidavit Opposing Participation of SWB Law Firm in this FOIA Case and in Support of Exemplary Legal Fees Based on Defendants' Release of "October 2020 Documents"

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who, being duly sworn, deposes and says:

1. I am over eighteen (18) years of age.

2. This affidavit is based on the "October 2020 Documents" released by Defendant ("Attorney General") under FOIA; the subsequent appearance of the private Sweeny, Wingate & Barrow, PA ("SWB") law firm at a hearing in these FOIA cases seeking certain Court consideration; the depositions I have personally taken of SWB attorneys Kenneth Wingate, Esq. ("Wingate") and Everett Kendall, Esq.; Governor

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Henry McMaster, Attorney General Alan Wilson, former Chief Deputy AG John McIntosh, Solicitor General Robert Cook and other AG staff; the AG's termination rights expert Robert Miller; Russell Bauknight ("Bauknight"); the Supreme Court's *Wilson v. Dallas* decision; the open records policy of the Estate/2000 Trust of James Brown from November 2007 until May 2009 while Robert Buchanan, Jr. and I served as PR/Trustees, including hearings, stated positions of the parties and Circuit Court rulings related to our nonconfidentiality policy during this period; facts and Court rulings related to the public so-called "Hynie diary;" facts, stated positions of the parties and Court rulings related to claimed confidentiality of the public "Wingate Contract"; facts, stated positions of the parties and Court rulings related to the "Afterman $4.7 million Value" with which I am personally familiar; the public record and admissions of Tommie Rae Hynie Brown ("Tommie Rae"), Peter Afterman ("Afterman") and others; and my personal knowledge, including from more than 40 depositions I have taken or attended since I made my FOIA requests in related to these cases in June 2011.

3. Based on SWB's and the State/Attorney General's 9 ½ year violation of my FOIA, Due Process, First Amendment and Equal Protection rights in these two FOIA cases, I request that the Court reject efforts of SWB to participate in my FOIA cases; direct the Attorney General to comply with my June 2010 FOIA requests by enforcing the FOIA obligations to which SWB and its private clients, including the now-defunct Legacy Trust and its trustee, agreed in the Wingate Contract in 2010; award exemplary damages to my counsel for the State/AG's intentional violation of my FOIA and constitutional rights for private benefit; and direct the AG to comply with FOIA by an

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order substantially in accordance with the 2014 FOIA Order of the Honorable Eugene C. Griffith, Jr., but addressing the following:

a. All motions of SWB and its clients to participate in these FOIA cases are denied, but SWB, the Legacy Trust and other SWB clients shall remain bound by their FOIA obligations under the public Wingate Contract as consented to by SWB, the Legacy Trust and all other SWB clients in 2010 in the public Wingate Contract.

b. The Attorney General shall produce to Pope every document responsive to her June 2011 FOIA requests from the date of such requests to the date of full compliance, including documents of the Attorney General, SWB, the Legacy Trust, its successors and/or any other SWB clients as agreed to in the in the Wingate Contract, and every document requested under FOIA shall be deemed a public document unless the specific document is identified; filed under seal; and certified by the Attorney General and, if applicable, the party seeking exemption under FOIA, in the manner set out herein.

c. Because she has been determined by the Supreme Court not to have any interest or right in the Estate/2000 Trust of James Brown and Brown's James Brown "I Feel Good" charity which the Attorney General has a public duty to protect, in addition to the AG's duties under FOIA, no claim to privilege or exemption under FOIA may be asserted as to any document used, possessed, or shared with Tommie Rae and/or her counsel and/or advisors.

d. Every document responsive to Pope's FOIA requests not specifically designated as Confidential on the date of Plaintiff's original FOIA requests shall be deemed public and delivered to Pope.

e. If the Attorney General claims that any document responsive to Pope's FOIA request and held by the AG, SWB and/or any clients of SWB, the Attorney General shall deliver the specific document under seal to the Court and to Plaintiff's counsel, and shall present a sworn certification of the Attorney General as follows:

1. The AG has reviewed the August 10,2007 and March 2010 orders of the Honorable Doyet A. Early, III; the 72-page Custody Receipt signed by Russell Bauknight in June 2007; considered the open administration policy of Buchanan and Pope as PR/Trustees from November 2007 until May 2009; the 145 boxes of public James Brown documents delivered to the Legacy Trust trustee in 2009; the 120

boxes of nonconfidential documents held by Pope and reviewed by SWB for 5 days in May 2013; the 50+ CDs of public documents delivered to SWB by Pope; and the public records in the James Brown appeals and, to the best of the knowledge and belief of the AG a copy of the document for which exemption is sought is not contained within those public documents.

2. To the best of the AG's knowledge and belief, the document claimed not to be public and subject to release under FOIA has not been shared with Tommie Rae or her counsel or advisors.

3. To the best of the AG's knowledge and belief, the documents claimed not to be public and subject to release under FOIA, has been treated by the person asserting confidentiality as confidential and not shared with any other party or counsel.

4. To the extent a claim of confidentiality is asserted pursuant to a Court order or directive, the Attorney General has reviewed the order or directive; asserts that it is the AG's opinion the order or directive is enforceable under S.C. law; and the party relying on the confidentiality order has complied with the confidentiality order, including by maintaining records of those reviewing the document claimed to be confidential.

4. Based on the 9 ½ year history of my June 2011 FOIA requests, I believe that the public record shows that SWB and its private clients have unclean hands in my FOIA cases; have no right to participate in my FOIA cases; have agreed that every document used in Richland 4900 belongs to S.C. and is public; have waived any claim of confidentiality by sharing documents with Tommie Rae, her advisors, and others; are bound under the Wingate Contract to allow the AG to produce all documents used in Richland 4900 because they belong to the State of South Carolina; and, through the Attorney General, must deliver to the AG the documents to comply with my 2011 FOIA requests for each and all of the following reasons:

a. Since May 2010 SWB has violated my Due Process rights since May 2010 by concealing the public Wingate Contract while taking unconstitutional,

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unauthorized State action against me for the benefit of Tommie Rae and SWB's private clients aligned with Tommie Rae.

b. In addition, since June 2011 SWB has violated its FOIA obligations under the Wingate Contract and my FOIA rights, and induced the Legacy Trust to do so, at great cost to me and to James Brown's charity.

c. In addition, since June 2011 SWB has directly violated my FOIA rights and those of others by not immediately producing the public Wingate Contract and all documents used in Richland 4900 which, under the Wingate Contract, are the property of the State S.C. and subject to FOIA.

d. In addition, since January 2012 SWB has advised the Attorney General, the State official charged with the enforcement of FOIA, not to comply with his duties under FOIA, and aided and abetted the AG in the violation of his public duties under FOIA and the violation of my constitutional rights.

e. In addition, since 2012 SWB has both acted for the State/AG and induced the Attorney General to retaliate against and violate the First Amendment rights of persons making valid FOIA requests, including by seeking sources and notes of a journalist on behalf of the AG [Exhibit A]; secreting the known-public so-called "Hynie-diary" on behalf of the AG; and securing an unconstitutional 2017 order to silence me in a case SWB was seeking to consolidate.

f. In addition, SWB has combined 10 years of extraordinary discovery abuse with 9 ½ years FOIA noncompliance, withholding without justification the public Wingate Contract to conceal SWB's lack of legal authority to act for the State/AG.

g. In addition, SWB withheld the Legacy Trust documents which should have been produced under the Wingate Contract pursuant to my June 2011 FOIA request from 2011 until 2013; induced the Legacy Trust to violate my FOIA requests; then, from 2013, claimed in FOIA cases that the Legacy Trust does not exist, while simultaneously seeking and securing substantial benefits for Tommie Rae and other Legacy Trust owner/successors in Richland 4900.

h. In addition, SWB has supported the false and misleading statements made by Tommie Rae, Peter Afterman, and those aligned with them to multiple courts for more than a decade, used FOIA disruption and noncompliance, including reliance on unconstitutional, inapplicable, ill-gotten or waived confidentiality claims, to deny FOIA compliance and counsel the Attorney General to deny his obligations under FOIA.

5. I crave reference, and ask the Court to consider under Rule 201 SCRE my

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earlier filings and affidavits, of those and other citizens, as well as the 100 media and public posts filed by SWB in Richland 4900 in 2012 in connection with their motion for guidance as to pretrial publicity, for an understanding of the origins of the extraordinary role Tommie Rae, her counsel, those aligned with her and Peter Afterman have played in the denial of my FOIA, Due Process, First Amendment and Due Process rights.

6. Tommie Rae was a major client of SWB from 2010 until 2013 as a 23.75% owner-beneficiary of Richland 4900 Plaintiff Legacy Trust, but since April 24, 2013, when the Attorney General made clear he would have no part in paying SWB, and the Legacy Trust disappeared, Tommie Rae, with a 46% stake in Richland 4900, is the principal client of SWB and principal stakeholder in Richland 4900.

7. Further, Tommie Rae is the only disclosed SWB client currently supporting all of the allegations in the never-amended Richland 4900 complaint, which asserts that Tommie Rae is the spouse of James Brown and entitled to a quarter of his worldwide music empire in exchange for half of her non-existent termination rights and those of her son James.

8. Terry Brown ("Brown") and Daryl Brown ("Daryl") have both repudiated the Richland 4900 complaint in filings in the Circuit Court and Court of Appeals, supporting James Brown's estate plan; claiming that the Will/2000 Trust challenges made by clients of Louis Levenson, Esq., were frivolous; and even claiming that Bauknight should have imposed the *In Terrorem* clauses of Brown's estate plan against the Levenson clients for challenging the estate plan.

9. SWB's relationship to Forlando Brown ("Forlando"), who became a 4.79%

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Legacy Trust owner-beneficiary in January 2011; planted the false Grammy© claim with Kilpatrick Stockton (KS) that month; but has never been disclosed to the Court as the client of SWB, including in the March 2017 depositions of two SWB attorneys directed by the Honorable Jean Toal, Acting Circuit Judge, to answer questions regarding their authorization to commence and continue Richland 4900.

10. SWB's FOIA noncompliance under the Wingate Contract, and SWB's use of the power and prestige of the State/AG for Tommie Rae since April 24, 2013, when it clearly had no legal authority to do so, have exponentially increased the damage of the denial of my FOIA rights and the FOIA rights of other citizens who are entitled to public information about the role of the State/Attorney General in James Brown's "I Feel Good" charity.

11. The "I Feel Good" Trust should today be South Carolina's largest-ever private foundation for the education of needy students in South Carolina and Georgia.

SWB Breaches Its FOIA Obligations Under the Wingate Contract for 9 ½ Years

12. In June 2011 when I made my FOIA requests SWB was already breaching its obligations under the Wingate Contract by NOT delivering me a copy of the Wingate Contract in discovery in Richland 4900.

13. Whether or not the AG is bound by the Wingate Contract Governor McMaster did not sign should not be the concern of any S.C. citizen making FOIA requests because SWB and all of its private Richland 4900 Plaintiffs/Clients agreed to the unequivocal terms of the Wingate Contract they signed on May 18, 2010.

14. The Wingate Contract states on page 1:

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The Litigation Retention Agreement which is attached hereto as Exhibit A and which is incorporated herein shall govern the terms of representation and the payment of fees to the Firm with respect to the 47.5% of the gross proceeds attributable to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust. [Exhibit 1, p. 1]

15. Exhibit A states in part:

F. Any material, data, files discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-40-10 *et seq.*, and to maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document. [p.5, Emphasis supp.]

16. I believe the problem of SWB's not having the Attorney General and most Richland 4900 Plaintiffs[1] sign the Wingate Contract should not be the problem of citizens seeking FOIA compliance by SWB.

17. When I filed my FOIA request for the Wingate Contract with the Attorney General in June 2011, there should have been NO resistance by SWB.

18. Instead, over the next 9 ½ years, SWB moved to intervene in three FOIA

[1] In 2020, when compelled to produce the Wingate Contract in discovery, SWB produced a copy that contained one material difference from the copy of the Wingate Contract produced by Bauknight under Federal Court order in 2013.

cases; sought to transfer three FOIA cases to Richland County and consolidate them with Richland 4900; gave the Attorney General legal advice in January 2012 NOT to comply with his statutory duties under FOIA; continued State action for the benefit of Tommie Rae and private clients after the AG's April 24, 2013 confirmation that SWB had no authority to act for the State/AG.

SWB Creates AG's FOIA Claim that Wingate Contract is "Under Court Review"

19. In September 2011 the Attorney General's Office wrote the Honorable L. Casey Manning saying the AG was ready and more than willing to produce to me its copy of the Wingate Contract, but understood it was under review by the Court.

20. With SWB's clear direction on the face of the Wingate Contract that it was a public document, SWB filed a baseless motion for protective order to keep the Wingate Contract from being release in discovery.

21. For the next 9 years SWB and the Attorney General used the baseless claim that the public Wingate Contract was "under Court review" to evade release under FOIA not only of the Wingate Contract but of every document used by SWB in Richland 4900.

22. In the fall of 2011 the AG posted his public Special Counsel Litigation Retention Agreement contracts with outside counsel, but not the Wingate Contract. His website said the AG was not posting contracts under court review.

23. On January 20, 2012, SWB hand delivered a letter to the Attorney General, first released in 2020, urging the AG not to release the public Wingate Contract under FOIA , and setting out "the following detrimental impact" on Richland 4900:

> First, you will certainly incur the sanction of costs and attorneys

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> fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement.
>
> Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed to be the public portions, defendants will certainly argue that your actions waive your co-litigants' claim to privilege for the remainder of the Agreement.

24. SWB advised the AG:

> Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. . . [Ltr. SWB to AG Wilson, 1/20/20]

25 Today the Attorney General has still not released the Wingate Contract to me under FOIA.

26. The copy of the Wingate Contract SWB produced in discovery in Richland 4900 was materially different from the copy produced by Russell Bauknight in 2013.

27. The AG's copy of the public Wingate Contract will show whether it was signed by David Bell, Esq. for Terry Brown ("Terry") or by Terry himself, as the copy produced by SWB in 2020 shows.

AG's Claim that FOIA Request Sent to AG, SWB and Legacy Trust Not Received

28. I sent my June 2011 FOIA request for the "Afterman $4.7 million Value" and the Legacy Trust documents to the Attorney General, the Legacy Trust, and to SWB. I also attached a copy of my FOIA request to my FOIA complaint.

29. Under FOIA and the Wingate Contract, SWB had an obligation to consult with the AG, then comply with my FOIA request within the 15-day period, as did the Legacy Trust and the Attorney General.

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30. On July 15, 2011 Legacy Trust attorney David Black, Esq., one of the $375 - $500-an-hour attorneys engaged by Bauknight as revealed in the October 2020 Documents, responded to my FOIA request.

31. Bauknight's FOIA response, claiming the Legacy Trust , SWB's primary client, was the "Trust and Estate," stated in part:

> In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no choice other than to file an action against you for abuse of process and sanctions. [Ltr., Black, 7/15/11]

32. Black, and 4 other Legacy Trust lawyers, at least four SWB lawyers, Tommie Rae and Levenson, who signed the Wingate Contract for 11 Plaintiffs, would make good on the Legacy Trust's FOIA promise.

33. By the end of 2011 Tommie Rae, the Legacy Trust and all of the Levenson clients had moved to intervene in the Wingate Contract FOIA case; move it to Richland County; and obtain sanctions against me.

34. By 2012 the AG and Legacy Trust, through SWB, began violating the First Amendment rights of anyone who dared to discuss the contents of the long-public "Hynie diary", not a diary but Tommie Rae's handwritten, discarded notes owned by Brown's 2000 Trust in which Tommie Rae admitted her marriage ceremony with Brown was bigamous, and that she discussed it with Brown it before he did.

35. By December 18, 2020 the AG had not complied with any of my FOIA requests from 2011 and SWB attorneys, Black, and his partners, and Levenson had filed more than a dozen requests for sanctions against me, and, in addition had filed

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more than two dozen motions to strike affidavits and filings in my FOIA cases, Richland 4900, and Aiken County Case 2013-CP-02-1337 ("Aiken 1337"). In Aiken 1337 Bauknight, through Black,[2] is refusing to pay the $47,972 of my 2007 SA fee, with

[2] On May 29, 2013, the day Tommie Rae and Levenson announced to the Honorable Doyet A. Early, III, in open court their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which made Tommie Rae the spouse and gave her a quarter of Brown's music empire, Nexsen Pruet ("NP") $375- $500-an-hour attorney William Newsome, Esq., identified by Bauknight as his "probate claims expert" disallowed my portion of the joint protective claim Robert Buchanan, Jr. and I had filed in 2009, including for my unpaid $47,972 SA fee from 2007 and our partial PR/Trustee commissions earned through May 26, 2009 under our contract with Brown's Estate/2000 Trust to be paid on an hourly basis as approved by Judge Early in his first "Payment Order" of March 8, 2008. Our hourly rate was lower than any Legacy Trust attorney as shown on the recently-released public 2008 fee schedule for NP attorneys. The payment order provided for interest at the legal rate on any unpaid amount.
Newsome/Buchanan paid Robert Buchanan's full unpaid partial PR/Trustee commission in 2012, and Buchanan waived interest and the remainder of his claim.
Newsome did not allow or disallow my claim until 2013, after substantial interest had accrued. Then he served me with a "Disallowance" alluding to the false felony claim and forcing me to file Aiken 1337 within 30 days or be "forever barred" from being paid a penny for my PR/Trustee service or the costs I personally paid for the *Wilson v. Dallas* appeal.
In 2017 and 2019, Judge Early again directed that the Estate/2000 Trust pay my $47,972, with interest at 8 ¾% since March 2008, but Bauknight/Newsome/Burl Williams, Esq. filed 2 motions to pay the $47,972 into the Court. The second motion to pay into the court was granted by the Honorable Clifton Newman based on Bauknight's incorrect claim that Richland 4900 – for the benefit of Tommie Rae and SWB's private clients – was a "companion case" to Aiken 1337, and on Black's claim that I had consented in 2015 to have my $47,972 withheld until the conclusion of Richland 4900.
The matter is now the subject of S.C. Court of Appeals Case No. 2020-000962. As of December 18, 2020 Bauknight/Black had secured dismissal of the appeal as Interlocutory; I had asked for reconsideration; and the Court has asked Bauknight/Black to respond.
Judge Early "double approved" Robert Buchanan's payments in 2013 and praised Buchanan's service, all of which was joint with mine, based on Judge Early's personal memory.
In 2019, however, Judge Early, in an order which overlooked the testimony of the Governor, the Attorney General, the Chief Deputy AG, the Solicitor General, Sr. Asst. AG Havird Jones, James Hardin III, Esq.; Wallace Lightsey, Esq.; Judge (Ret'd) Walter Williams; and Graham Foundation Trustee Stephen Lambert, Judge Early held that Buchanan (who had been paid) and I (who have not been paid for any work since November 2007 or the costs of the *Wilson v. Dallas* appeal which I paid) had breached our fiduciary duty by appealing the AG's 2008 settlement

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interest at the legal rate from March from March 8, 2008. .

36. In the Court of Appeals, and in 2020 to the Circuit Court, the Attorney General is claiming that an AG staffer has no record or receiving the FOIA request I sent to the AG, the AG's lawyer, and the Legacy Trust the AG controlled.

37. The AG asserts in 2020 that this is a justification for 9 ½ years of FOIA noncompliance.

38. The AG's position in 2020 is troublesome in light of a communication from a member of the AG's staff in the fall of 2011.

39. They AG said:

> Responding to your request (number 1 and 4) for appraisals and other documents supporting the position of the Office of the Attorney General and/or Russell Bauknight's position on the valuation of the Estate, this office does not possess any such documents, and therefore, is unable to provide this information to you. [Ltr. AG Meyers, 10/3/11 p. 1]

SWB Seeks to Intervene and AG Violates FOIA Order in Summer FOIA Suit

40. By 2012 a local journalist interested in FOIA and covering the AG's FOIA noncompliance in my suits, began making FOIA requests of her own, and receiving the

---

which dismembered James Brown's estate plan and were not entitled to any payment for our 5 ½ years of service to James Brown's Estate/2000 Trust or the costs we paid out of pocket for four years for the *Wilson v. Dallas* appeal.
In Aiken 1337 Newsome and Williams claimed, incorrectly, that I had demanded a fee of $19 million, when I had actually proposed, both before and during the Aiken 1337 trial, to settle for $2.1 million for ALL of my 5 ½ years service; the costs of the *Wilson v. Dallas* appeal; and the costs of the unnecessary Aiken 1337 in which Bauknight testified that he had spent a million dollars to defend my *pro se* fee claim. Robert Buchanan's fee claim was resolved in a 15-minute hearing in 2013.

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resistance SWB was counseling the Attorney General to raise.

41. SWB counseled the Attorney General NOT to comply with his FOIA obligations, and the AG has not done so as of December 18, 2020.

42. In December 2012 journalist Summer filed her own FOIA suit, seeking everything I had sought, plus the so-called "Hynie diary" and other documents.

43. That year the AG, through SWB, had already subpoenaed Summer's notes and sources trying to stop her from writing about the so-called "Hynie diary," which was public from 2007 until 2008; the subject of an unconstitutional *ex parte* gag order from 2008 until 2015; and is now public again.

44. On January 7, 2013 *Lawyer's Weekly* published an article entitled *Records Request Ignored so Reporter Sues State AG.".*

45. Exhibit A is a copy of the Attorney General's response to the article.

46. The AG's response and the 100 media articles and public posts filed by SWB in Richland 4900 in 2012 make clear that the AG was defying FOIA and violating First Amendment rights to benefit Tommie Rae.

47. Ignoring the AG's direct control over both Bauknight and the Legacy Trust and ownership of SWB documents, the AG stated:

> a. "We received at least six FOIA requests from this reporter and responded to every one."
>
> b. "In some instances, a court order prohibited release of certain documents and in other instances the documents either were not in our possession or they simply did not exist."

48. *All* documents I requested and all that Summer requested were, under the

Wingate Contract and FOIA, public and subject to being released at the time.

49. The Legacy Trust documents, including the amendment signed by Governor McMaster just before leaving office, did exist. The Afterman $4.7 million valuation and documents to show it was both inaccurate and fabricated also existed, as did the Wingate Contract.

50. The ex parte gag order was patently unconstitutional and no basis for denying FOIA, and there was no other court order prohibiting release of any document.

51. Judge Griffith's July 2014 Order in the Summer FOIA Suits directs, in relevant part:

> 1. The motion of Bauknight [SWB's client] to intervene is denied.
>
> 2. Defendant [AG] shall within 15 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order) which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.:
>
> 3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned or used, the document shall be marked confidential and accompanied by a sworn certificate by the Attorney General or his designee that in his opinion as the State's highest legal officer, such document cannot be legally produced under FOIA.
>
> 4. Any certification and document shall be provided to the Court and to Plaintiff's counsel as "confidential" and shall be subject to a hearing within 30 days of this order.
>
> . . .
>
> 6. This Court shall retain jurisdiction to insure compliance with the FOIA as set out herein and determine fees and costs to plaintiff. [Emphasis supplied]

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52. Instead of complying with Judge Griffith's Order, and sending the documents to comply with FOIA, the AG played a game of "Gotcha" with the reporter, delivering the Wingate Contract at the last moment, then claiming the AG did not possess the public documents he used to accuse us of federal felony; and even claiming that the unconstitutional 2008 gag order prevented the AG from releasing his copy of the so-called "Hynie diary."

53. A quarter of James Brown's charity and the integrity of FOIA rested on Tommie Rae's handwritten admissions, but AG allowed Bauknight and Legacy Trust lawyers to waste what by 2018 was tens of millions of dollars of Brown's charity to conceal it.

SWB Asks the Circuit Court to Ignore the FOIA Mandate of Wilson v. Dallas

54. On February 27, 2013 the Supreme Court, in the first, later amended, *Wilson v. Dallas* decision, at footnote 29, stated in part:

> Although Brown's music rights have been widely reported as being worth up to $100 million or more at his death, Bauknight filed documents with the Internal Revenue Service indicating the value of Brown's music empire was only a net of $4.7 million. The $4.7 million valuation has been questioned . . .
>
> Further, the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel Kenneth Wingate, for Wingate to sue Appellant Pope on behalf of the State, Bauknight and others while also representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, controlling the charitable trust through the appointment of Bauknight, who

serves at the AG's pleasure. [Emphasis supplied]

55. On March 6 , 2013 I personally discussed with the AG, Chief Deputy AG and Solicitor General the damage the fabricated Afterman $4.7 million Value and Bauknight IRS filings claiming Tommie Rae was James Brown's spouse had done, and threatened to do, to Brown's " "I Feel Good" charity.

56. Using the Afterman $4.7 million Value, under the "fractional share" clause of Brown's 2000 Trust, Bauknight had shifted about $1 million of income a year and nearly 1/3 (31%) of Brown's "I Feel Good" Trust out of James Brown's charity and over to a taxable trust for Forlando Brown ("Forlando") and 5 clients of Louis Levenson, Esq., all SWB's Richland 4900 clients.

57. Bauknight's shift of funds out of Brown's charity using the Afterman $4.7 million Value would last for 20 years or more and unnecessarily and substantially increase income taxes.

58. My attorney Adam Silvernail, Esq., and I met a few days later with the Solicitor General and Chief Deputy to discuss the same concerns I had raised a few days earlier.[3]

59. By 2013 Afterman was working for Tommie Rae's attorneys [Ex.B.C] and in March Tommie Rae's minor son James provided details of the Afterman $4.7 million

[3] The damage caused by the Afterman $4.7 million Value was fully aired at the trial in Aiken County Case 2013-CP-02-1337 ("Aiken 1337"), but the Circuit Court which supported the reinstatement of the AG's 2008 settlement which dismembered James Brown's estate plan and charity disregarded my testimony and that of expert Steven Johnson, Esq.,about this damage. .

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claimed Value in rehearing filings in *Wilson v. Dallas*, making clear that confidentiality had not been maintained.

60. In March and April 2013 SWB communicated with the AG and sent the AG a proposed agreement to terminate SWB's representation which required the AG treat its dealings with SWB's private clients since 2010 as confidential despite the mandate of the Wingate Contract.

61. As shown by the October 2020 Documents and public record, by April 23, 2013 all of the documents sought under FOIA by me or in the Summer FOIA suit were not only public under the Wingate Contract but had been shared with Powell Goldstein; Brayan Cave ("PG/BC") which, in James Brown matters, had represented TJBL, an investment group which made 3 letters of intent to buy the music empire for about $100 million; Forlando Brown ("Forlando") who was seeking to reinstate felon David Cannon, who took $17 million from Brown, and Albert Dallas; Cannon and Dallas in their effort to move the situs of the 2000 Trust from South Carolina to Georgia as Cannon's takings were being discovered; Terry Brown ("Brown") in tax matters related to his rights of first refusal under the AG's 2008 settlement.[4] There was no basis to withhold them.

[4] In 2007 BC, then Powell Goldstein, represented felon David Cannon, who had stolen $17 million from funds James Brown devised to his charity; and Cannon's co-trustee Albert Dallas in an effort to move Brown's 2000 Trust to Georgia as the funds Cannon had taken were being discovered. On January 2, 2008 BC, still Powell Goldstein, and Bell, who signed the Wingate Contract for Terry, filed U.S. Dist. Ct. Case 3:08-cv-00014-WOB (the "Forlando Federal Suit") seeking to enjoin Brown's 2000 Trust from taking any action until Cannon and Dallas were reinstated as Brown's trustee. BC then began representing TJBL, the investment group which issued 3 letters of intent to buy the James Brown music empire for about $100 million in 2007 and 2008, and two letter of Terry to buy the tangible personal property at $2 million.

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SWB Disregards April Letter and *Wilson*, Disrupting FOIA for 7 ½ More Years

62. On April 24, 2013 the Attorney General made clear that SWB had no legal authority to act for the State/AG.

63. The April 24, 2013 letter, first released under FOIA by the AG in 2020, makes clear that from that date Tommie Rae was SWB's primary client, now holding an approximately 46% stake in Richland 4900.

64. SWB's undisclosed client, Forlando, held a 4.79% stake in Richland 4900 before *Wilson v. Dallas*, and now holds approximately 9%.

65. SWB's relationship with Levenson, who signed the 40% Wingate Contract for 11 Richland 4900 Plaintiffs, some of whom never knew they were named as parties, and the 11 Richland 4900 Plaintiffs SWB claims to represent, has become increasingly problematic as all denounced Tommie Rae's spousal claims..

66. On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas*. The Supreme Court voided the AG's 2008 settlement and voided Bauknight's PR/Trustee appointment, making clear that the $375 - $500-an-hour lawyers working to enforce the AG's 2008 settlement were working for the Legacy Trust.

67. For the next 7 ½ years SWB used FOIA and the power and prestige of the AG's Office to benefit Tommie Rae and blame on Robert Buchanan and me the tax problems and millions of dollars of damage caused by Tommie Rae and the AG's 2008 settlement.

68. The final Wilson v. Dallas decision was issued on May 8, 2013.

69. Within two days SWB asked the Richland 4900 Court to stay my FOIA cases

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and Richland 4900.

70. SWB told the Circuit Court that the Supreme Court's omission of footnote 29 from the final *Wilson v. Dallas* decision indicated that the Supreme Court placed no importance on the prompt conclusion of Richland 4900 or the FOIA cases. [Ltr. SWB, 5/13]

71. On May 29, 2013 I was present when SWB's client Tommie Rae's, through her personal counsel (Medlin), and Levenson announced to Judge Early in open court their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which had just been voided by the Supreme Court.

72. From 2013 until 2016 no hearing was held in my FOIA cases despite numerous requests by my counsel. Within months after the stay was lifted, the Circuit Court dismissed both cases.

73. My FOIA cases were remanded by the Court of Appeals in 2019, and today SWB is still trying to evade its obligations under the Wingate Contract, and the agreement and waiver of all of its private clients.

74. Since 2013, concealing the AG's April 24, 2013 letter, SWB has used the power and prestige of the Office of the AGI for the benefit of Tommie Rae.

75. SWB's claims about applicable court orders which the AG claims prevent FOIA compliance are not correct.

The Claimed Confidentiality Order Related to the Afterman $4.7 Million Value is Inapplicable and was Secured by Misrepresented Facts

76. Robert Buchanan and I were the ones who sought the original 2008

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confidentiality order on which the AG claims he cannot produce the Afterman $4.7 million Value, and the 2013 order, issued two years after my FOIA request, was based on misrepresentations to the Court in an affidavit filed by Bauknight.

77. Bauknight has presented several problematic affidavits, including a 2012 affidavit that says he had managed the Legacy Trust in Richland County for 3 years and a 2016 affidavit stating that the Legacy Trust never existed.

78. Bauknight also supported the AG's 2008 settlement in a deposition given in August 2013 in which he called me dishonest and claimed that I (and presumably Robert Buchanan) had "raped" James Brown's estate.

79. Bauknight, as shown in the media articles filed by SWB has claimed since 2010 that the Afterman $4.7 million Value is "under lock and key," but it was created by Afterman, who worked for the Legacy Trust from 2009 until 2013, and has worked for Tommie Rae from 2013 until 2020.[Exhibit B]

80. The public record, including Supreme Court filings by Tommie Rae's son, show that Bauknight has shared the Afterman $4.7 million Value with numerous others, and that all SWB clients used it to falsely accuse us of a federal felony.

SWB's FOIA Disruption Conceals the Tommie Rae/Afterman Devaluation Scheme

81. The plan to devalue Brown's music empire to $24 million or less to discredit "Bobadele" was the 2009 idea of Tommie Rae's attorney, carried out by Afterman.

82. Relying on the Tennessee Case released in 2009 which dealt, in part, with the IRS proceeding related to the valuation of royalties of songwriter Harlan Howard, who died in 2002, Tommie Rae's attorney stated to AG Jones and others:

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> Attached find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter...It is a treasure trove of information for us, including (1) the method of valuation for songwriter royalties...Based on the information in the opinion Bobadele has [sic] grossly overvalued the estate for 706 purposes. The opinion deals only with royalties and not image and likeness, which apparently was inapplicable to the decedent songwriter. Of course, among ourselves, we are not sure we have the right to image and likeness under SC law, so any separate valuation of that should be discounted accordingly [Medlin email of 8/30/09].

83. Tommie Rae's devaluation proposal was not consistent with what Legacy Trust attorney Wilkins told the Circuit Court the same month:

> THIS ESTATE SHOULD BE AND COULD BE TODAY MAKING A LOT OF MONEY OR BRING ITSELF UP TO MAKE A LOT OF MONEY JUST LIKE THE ESTATE OF MICHAEL JACKSON IS MAKING A LOT OF MONEY TODAY... THIS STAY SHOULD BE LIFTED ...TO ENTER INTO VARIOUS BUSINESS VENTURES FOR THE ESTATE; FOR EXAMPLE, MARKETING JAMES BROWN'S MUSIC, MARKETING HIS IMAGE, HIS PERSONA, DEVELOPING VIDEO GAMES WITH JAMES BROWN AS THE CENTRAL CHARACTER, PRODUCING A DIGITAL REBIRTH OF JAMES BROWN JUST LIKE THE BEATLES ARE DOING TODAY AND NEGOTIATING A MOVIE DEAL. WE'VE HAD NUMEROUS OPPORTUNITIES TO ENTER INTO A DOCUMENTARY SERIES...AND ALL THESE THINGS ARE JUST SITTING THERE READY TO DO.

84. The Afterman $4.7 million Value is incorrect, and while generated to damage Robert Buchanan and me, it also seriously damaged Brown's charity. It is less than what we brought in per year as PR/Trustees despite constant disruption, $7.83 million in 18 months.

85. The Afterman $4.7 million Value was never confidential under the Wingate Contract or FOIA. It was created to help Tommie Rae and the Legacy Trust dismember James Brown's estate plan.

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86. James described its contents in 2013 to the Supreme Court, and Forlando testified under oath that it is "bogus."

87. Bauknight has taken no steps to keep it confidential, waiving any claim of confidentiality even if the order for confidentiality had not violated Rule 11.

Legacy Trust and Bauknight Use FOIA Noncompliance for Retaliation

88. In 2010 a Legacy Trust $375- $500-an-hour attorney, speaking primarily for Tommie Rae and those taking 52 ½% of Brown's charity, told the Circuit Court of the *Wilson v. Dallas* appeal:

> THEY HAVE NO STANDING...VIRTUALLY NO CHANCE OF SUCCESS ON THEIR APPEAL. THEY WILL NEVER BE ABLE TO OBTAIN RESINSTATMENT AS PERSONAL REPRESENTATIVES. THE BENEFICIARIES DON'T WANT [THEM]..

89. Tommie Rae's lawyer also made clear the AG/Legacy Trust's plan to retaliate against Robert Buchanan and me:

> WE'RE UNANIMOUS AS MR. WILKINS POINTED OUT ON THIS ISSUE, WE DO NOT WANT THEM TO BE FIDUCIARIES AND IF THEY PREVAIL — IF THEY WIN ON APPEAL AND THEN WE GO BACK AND TRY THOSE WILL AND TRUST CONTESTS AND THEY WIN...AND WE TRY THE OMITTED SPOUSE AND....AND THEY WIN THOSE, THEN EVERYTHING GOES TO CHARITY WHICH YOU BELIEVE ACCORDING TO YOUR ORDER AND WE BELIEVE ACCORDING TO THE LAW THAT'S EXISTED SINCE THE BEGINNING OF COMMON LAW IN MY ESTIMATION THAT THE ATTORNEY GENERAL HAS THE AUTHORITY TO REPRESENT THE CHARITIES IN THAT CASE. THE ATTORNEY GENERAL DOESN'T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT, THE ATTORNEY GENERAL WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL'S OFFICE DOES NOT WANT THEM AS FIDUCIARIES. [Tr. 9/09, Case 1647, P. 33]

90. And an Assistant to AG Jones stated:

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...SO, LIKE I SAID, I DON'T WANT TO PLOW THE SAME GROUND THAT MR. WILKINS AND MR. MEDLIN DID, BUT WE DO INCORPORATE THEIR ARGUMENTS.

91. I believe that the October 2020 Documents make clear that SWB's FOIA disruption and the AG's FOIA noncompliance have been essential to the retaliation by the AG, Tommie Rae and those aligned with here in Richland 4900.

The Solicitor General Confirms that Richland 4900 is Extraordinary

92. Like me, the Solicitor General finds Richland 4900 to be unique. In his 2017 deposition, the following took place::

Q. Do you know of any lawsuit ever where a person appears as a plaintiff and is not a plaintiff --
MR. SMITH: Object to form and scope.
Q. -- other than the Wingate lawsuit?
[Objections]
A. I would say this: That was a very unique case in terms of the charitable beneficiaries. I know -- I know of no other where that has been done.
Q. So let me be clear. In your 40 years of practice, you've never seen a case where a person or entity
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is named as a plaintiff, but claims not to be a plaintiff?
[Objections]
A. In my 40 years, I have never known of a case like that...
and the settling parties were named as in the caption of the complaint at the twelfth hour. I know of no other like that. I -- I do not.

93. I believe that SWB's attempt to be involved in my FOIA cases for the benefit of Tommie Rae make Richland 4900 more unique and more troublesome.

94. Mr. Bauknight, however, did not agree in a deposition I took that the FOIA

disruption by SWB was inappropriate:

Q. Was the purpose of trying to intervene in FOIA suits to prevent release of the Wingate contract, the $4.7 million appraisal and the so-called Hynie diary?
A. Well, documents that belong to the estate and trust are not subject to FOIA. And no one associated with the Attorney General. . . has any of those documents. And the estate and trust is not subject to FOIA.

The False Felony Claim Alone Merits Release of the Afterman $4.7 Million Value

95. Russell Bauknight, a CPA, when questioned about the false felony claim in his deposition which I took, denied it, after the following exchange took place:

Q. . . . You have accused me both outloud and in pleadings on Page 9 of artificially inflating the reported value of the estate without any substantiation and without any consistency for the purpose of justifying their claim -- that would be Mr. Buchanan and me -- for approximately $5 million. If we overstated the value of James Brown's assets by $79 million, for the purpose of securing a five million-dollar fee, would that constitute a felony under the federal law?
MR. BLACK: Object to form.
Q. If you know?
A. Number one, Ms. Pope, I'm not a lawyer. Number two, commissions earned in South Carolina don't fall under federal law and I believe if you're saying I've accused you of a federal felony, you're making that up pure and simple.

96. Unlike Bauknight, the Governor, a former U.S. Attorney, agreed to the seriousness of the false felony claim, which was discussed in his deposition:

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Q. Okay, right. Now, I'm just going to show you
Exhibit 12 and that's just to -- I know you're an
old prosecutor and I'm not, but it is a crime to
make a false statement on a Federal Estate Tax
return to receive a benefit. You'd agree with me
on that, wouldn't you?
A. Yes, it's a crime to file a false tax return
period. Right.
Q. Period. Good.
A. Whether you're getting a benefit or not, I
presume.
Q. Right. So if someone were to accuse a lawyer who
-- whose livelihood rest on fair dealings with the
IRS of overstating James Brown's assets by
$79 million for the purpose of receiving a
$5 million commission, that would be a very
serious charge wouldn't it?
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[Objections]
A. The question again, please.
Q. If someone were to accuse a lawyer whose practice
relied on fair dealings with the IRS of having
intentionally overstated James Brown's assets on
the Estate Tax Return, by $79 million for the
purpose of achieving a $5 million commission, that
would be a very serious allegation wouldn't it?
[Objections]
A. Well, there are lots of parts to that question,
but accusing a lawyer of filing any sort of false
return is -- is serious.
Q. Very serious, isn't it?
A. Well, serious or very serious or maybe very, very
serious. It's serious.

Tommie Rae's Son Reveals Details of the Afterman $4.7 Million Value

97. Bauknight told the federal court that he had kept the Afterman $4.7 million Value confidential, but five months earlier James told the Supreme Court:

> Effectively, the appraisal...which is for the date of death value,

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shows the royalty stream belonging to the estate worth approximately $4.7 million, which is the fair market value of the royalty stream, less outstanding associated debt of approximately $19 million arising from bonds secured by the royalty stream. Thus, without the bond debt, the date of death value of the royalty stream would be approximately $24 million, a valuation derived from taking the royalty stream up to the termination dates and discounted back for the present value purpose. Seen in this light, the $4.7 million date of death valuation for the royalty stream. . . does not seem as counter-intuitive as it might otherwise to a layman guessing what the value of the estate might be.

98. The AG's 2017 deposition, which I took, shows:

Q. Have you investigated that Mr. Medlin, Mr. Bauknight, and the AG's staff and Nexsen Pruet were working on the devaluation of Brown's music empire to $4.7 million at the same time Mr. Medlin and your senior assistant, Sonny Jones, were working with the law firm of Ken Wingate to sue Adele Pope and Bob Buchanan for not accepting a hundred million dollar offer for James Brown's assets?
A. I'm going to reread the question because it --
Q. Please. It's question forty-three.
A. Yeah, you've asked me if I've done an investigation in a very long sentence or two, and I'm just not aware of the --
Q. Certainly. Is an important. Take your time. Forty-three.
A. I will restate, I have no personal knowledge that I can recall.

My Personal Knowledge of the Nonconfidential Documents as of May 26, 2009

99. When 80 Boxes of Brown Historical Documents became available by Order of Judge Early on August 10, 2007, but with our rights as SAs to declare certain documents confidential, we favored some confidentiality.

100. After becoming PR/Trustees we determined that uncovering of fraud, including the $17 million Cannon had taken, and keeping the AG abreast of our actions, was more important than confidentiality, and we conducted an open administration policy until May 26, 2009, allowing everyone access to copy virtually everything except the so-called "Hynie diary," which was under what we thought was a brief gag order.

111. We turned over 145 boxes of NONCONFIDENTIAL documents to Bauknight immediately after he took over as trustee of the Legacy Trust (his PR/Trustee appointment was declared void by the Supreme Court).

112. Bauknight agreed to keep these documents available to use, but did not.

113. Beginning in 2011 the AG and Legacy Trust $375- $500-an-hour lawyers began declaring documents that had been public for years as confidential if they showed that Tommie Rae was not Brown's spouse or that the AG's 2008 settlement was a bad idea.

114. That practice continues today both in civil suits and under FOIA.

115. SWB was allowed five days in May 2017 to review more than 120 boxes of public documents I have gathered in my defense in Richland 4900, as well as more than 50 CDs of public documents I have had to gather.

116. I do not believe the AG or any SWB lawyer has knowledge of the claimed confidentiality orders on which SWB has counseled the AG to rely.

117. I am informed and believe that exemplary legal fees consistent the hourly rate the State/Attorney General allowed Legacy Trust attorneys to charge to disrupt

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FOIA, not produced until October 2020, would be appropriate in my FOIA cases to help prevent the Attorney General from violating his own FOIA policies and FOIA in the future.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope

SWORN TO BEFORE ME THIS
18th Day of December, 2020
(L.S.)
Notary Public for South Carolina
My commission expires: 2/27/2027

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Exhibit A



James Brown performs for a movie in 2002.

Attorney general responds to article on open-records lawsuit

There are two significant inaccuracies in the article about the James Brown estate and trust entitled *"Record Request Ignored, So Reporter Sues State AG"* which appeared in the January 7, 2013, edition of South Carolina Lawyers Weekly. Because I strongly support the Freedom of Information Act, it is important to set the record straight.

The James Brown estate and trust is a complex and complicated case. A freelance reporter has filed a lawsuit against the South Carolina Attorney General's Office, seeking documents related to this matter.

We received at least six FOIA requests from this reporter and responded to every one. In some instances, a court order prohibited the release of certain documents and in other instances the documents either were not in our possession or they simply did not exist. Even when we were unable to provide documents, my staff wrote to the reporter explaining why they could not be provided. It is simply inaccurate to say the requests were ignored.



Alan Wilson

Another inaccuracy in the story concerned the issuance of a subpoena. Let me explain what actually transpired.

Almost four years ago, a court-appointed Russell Burknight of the accounting firm of Burknight, Pistorus, & Skinner, P.A., to be personal representative and trustee of the James Brown estate and trust. The law firm of Sweeny Wingate & Barrow, representing Mr. Burknight as personal representative and trustee, as well as other beneficiaries of the James Brown estate and trust, including the charitable interests, filed an action.

The subpoena was issued by that private law firm, not the Attorney General's Office. My office did not even know about the subpoena until after it had been issued. Once we learned that a subpoena had been issued to a journalist, we took the appropriate steps. Since we did not issue the subpoena, neither my staff nor I could withdraw it. However, we contacted the attorney who issued the subpoena, and he withdrew it. Just as I am an advocate of the open records law, I recognize and respect the First Amendment rights of journalists.

Let me conclude with this: this office has always been fully responsive to every FOIA request we have received, and we will continue to do so.

Alan Wilson
South Carolina Attorney General

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Exhibit B

EXHIBIT F

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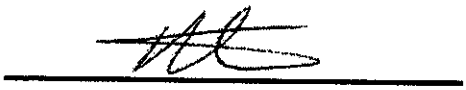
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

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 PETIT, 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 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, Defendants.	Civil Action No. 1:18-cv-02191-JMC **DECLARATION OF PETER AFTERMAN**

I, Peter Afterman, declare as follows:

1. I have personal knowledge of the facts herein and if called as a witness would so testify.
2. As of 2013, I have assisted Tommie Rae Brown and her counsel with advice as to music rights matters, including copyright matters and termination right matters. My assistance as an agent involved helping her counsel provide her with their legal advice about music, copyright, and termination matters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this Declaration on this 2nd day of September, 2020, at Los Angeles, California.



Peter Afterman

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Exhibit C

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THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850

Appellate Case No. 2015-002417 (Court of Appeals)

Appellate Case No. 2018-001990 (Supreme Court)

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown ..... Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee;
Deanna Brown-Thomas; Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown, and Daryl Brown ..... Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, and

Venisha Brown are the ..... Appellants.

Affidavit of Peter Afterman

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PERSONALLY APPEARED BEFORE ME, PETER AFTERMAN, who being duly sworn, deposes and says:

1. My name is Peter Afterman. I am a resident of Los Angeles, California. I have been the music manager for the James Brown Estate since 2009. I am a multi Grammy and Peabody Award winning music manager. I am an expert in music copyright law. I have worked in the music business for over 40 years.

2. If Tommie Rae Brown is not James Brown's surviving spouse, the Charitable Trust will substantially lose its funding within the next six years because the ownership of James Brown's songs will revert to the heirs per U.S. Copyright Law. Copyright law provides that 50% of termination rights, and control, passes to the surviving spouse, and the rest passes to the children (or children of a deceased child). If Mrs. Brown is not the surviving spouse, all of the termination rights will pass to the children.

3. The primary asset of the Estate and Charitable Trust is the income stream the Charitable Trust currently receives from the exploitation of James Brown's songs, whose copyrights he assigned to music publishers, as is typical in the industry. Other than these copyright royalties, the Estate does not own significant other assets. As I understand it, it is this copyright income stream that would serve as the primary source for the funding of any scholarships.

4. Federal law allows, after a certain time, for the owners of copyright termination rights (the intestate heirs) to claw back the copyright assignments *from* publishers. The song termination rights are not part of the Estate or Trust, nor can they be, according to federal law. Federal law requires that these termination rights are owned by the writer's intestate heirs, regardless of the writer's intent.

5. The only way the Charitable Trust can benefit from these termination rights is for an intestate heir to contribute the proceeds from her termination rights to the Charitable Trust. Mrs. Brown has agreed (in accordance with the Settlement Agreement attached to the Limited Special Administrator's Notice of Withdrawal in the Court of Appeals) to contribute 65% of her proceeds from the song terminations to the Charitable Trust. Because Mrs. Brown as the surviving spouse would be entitled to a 50%, and controlling share, of the termination rights, the Charitable Trust will receive 32.5% of the total song termination proceeds, but only if she is the surviving spouse. If Tommie Rae Brown is not the surviving spouse, 100% of the song termination proceeds will go to the children. While Mrs. Brown has agreed to contribute 65% of her share of the termination rights proceeds to the Charitable Trust, the children have not agreed to contribute anything. If Mrs. Brown is not the surviving spouse, the Charitable Trust will receive nothing.

6. I agree with the projection in the Settlement Agreement that the termination rights for James Brown are worth tens of millions of dollars. The proceeds from these terminated copyrights will arise when the heirs sell (re-assign) these rights to a publisher, with the

primary valuable sales opportunities arising over the next six years. If Mrs. Brown is not the surviving spouse, the Charitable Trust will lose out on receiving 32.5 percent of the expected tens of millions of dollars.

7. With that basic background about termination rights, here is why the Charitable Trust will substantially lose its funding over the next six years if Mrs. Brown is not the surviving spouse:
   a. As noted above, the Charitable Trust will never receive any proceeds from the valuable termination rights.
   b. Also, as the copyrights are terminated, the royalty income stream to the Charitable Trust will substantially terminate as well.
   c. Thus, if Mrs. Brown is not the surviving spouse, the Charitable Trust will suffer a two-fold financial blow: the Charitable Trust will not receive a penny of termination proceeds and the Charitable Trust income stream will lose a substantial portion of its income as the termination rights are exercised.

8. I am over the age of twenty-one (21) years and am competent to testify to the matters stated herein. I have read the foregoing paragraphs, and all matters stated therein are correct and true and based on my personal knowledge and belief, except as to those matters stated on information and belief and as to those matters I believe them to be true.

FURTHER AFFIANT SAYETH NOT.

10/27/19

Peter Afterman

Sworn to before me this
27 day of October, 2019.

(L.S.)

Notary Public for California

My commission expires: Dec 18, 2021

Max Sayah (Notary Public)

The certificate Attached

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	**RESPONSE TO POPE'S PROPOSED ORDER, SUPPLEMENTAL MEMORANDUM AND AFFIDAVIT**
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendants.	)	
	)	

Plaintiff's Proposed Order should be rejected as it provides no valid response to the Attorney General's Proposed Order, and her Supplemental Memorandum and Affidavit should be rejected as irrelevant and untimely.

SUPPLEMENTAL MEMORANDUM AND AFFIDAVIT SHOULD BE REJECTED

The Attorney General objects to Plaintiff's Supplemental Memorandum and 29 page affidavit with 11 pages of exhibits filed after this case was heard and the Court directed the parties to submit proposed orders. Without authorization or a request for leave to file, she submitted these documents after the record was closed in this case and the parties were directed to submit proposed orders. Moreover, the documents add nothing to this case. Much of the affidavit is an irrelevant rehash of Plaintiff's version of history that she has recounted in her numerous affidavits that are already subject to motions to strike. Nothing in the affidavit is new information that became available to Plaintiff after the hearing in this case. Plaintiff requests relief that goes beyond the scope of her own proposed order, her Complaint as well as FOIA in asking for a sworn detailed certificate of the Attorney General regarding withheld documents and the imposition of "exemplary damages." The affidavit and memorandum should be rejected as

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untimely and irrelevant to the disposition of this case. Should the Court want a more detailed response, the Attorney General's Office will be glad to submit one upon request.

PLAINTIFFS PROPOSED ORDER SHOULD BE REJECTED.

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney never received this letter.

Plaintiff says that the Attorney General's Office was aware of the request, but awareness is not the same as receipt. Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, that the Office had not received that request, which Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to Ms. Meyers' affidavit of October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor." (emphasis added). The Office of the Attorney General never received the

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FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

Plaintiff says that the Attorney General admitted that a copy of the letter was mailed to Sweeny Wingate and Barrow, but his Answer denied that doing so was compliant with the statute which requires that the agency receive the letter. The letter was addressed to the "Custodian of Records" at the Office of the Attorney General not to SWB, and does not show on it that the firm was being copied. Moreover, SWB was not authorized to receive and respond to FOIA requests for the Attorney General.

Plaintiff notes that the Attorney General did not raise this defense in his Motion to Dismiss. He did not do so because that Motion was based upon the limited grounds of improper venue and the pendency of another action between the parties under Rules 12(b)(3) and (8). The Attorney General raised the defense in opposition to Plaintiff's Motion for Summary Judgment and in a Motion to Amend Motion to Dismiss due to lack of subject matter jurisdiction. He also raised the defense in his answer.

The authority to sue under FOIA is limited to actions "to enforce the provisions of this chapter in appropriate cases . . . ." §30-4-100. Therefore, no basis exists for enforcement when no "receipt" of "written request" has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).[1] Plaintiff tries to

[1] "In order to maintain a judicial action under FOIA, a plaintiff must first request documents from an administrative agency and if his request for documents is refused must exhaust his administrative remedies before filing a court action . . . . Where a plaintiff has not complied with these procedures, district courts lack jurisdiction over the claim under the exhaustion doctrine and will dismiss the claim for lack of subject matter jurisdiction." *Gasparutt, supra.* Although this California District Court decision is not binding on this Court, it is consistent with this Court's conclusion that Plaintiff cannot enforce FOIA in this action when she has not complied with that statute, herself.

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distinguish *Gasparatti* as an exhaustion case, but the requirement for exhaustion recognized by that Court came after the initial requests for documents. 22 F. Supp. 2d 1114, 1116 ("In order to maintain a judicial action under FOIA, a plaintiff must first request documents from an administrative agency and if his request for documents is refused must exhaust his administrative remedies before filing a court action."). Plaintiff never first requested the documents at issue and instead proceeded to sue.

Because of the proposed ruling that the Court lacks subject matter jurisdiction and Plaintiff has failed to state a cause of action in that the Attorney General did not receive the FOIA request by mail or delivery, we do not address Plaintiff's other arguments including those regarding the motions to strike herein. Should the Court want to consider those arguments, we respectfully request the opportunity to respond to them.

The Attorney General respectfully requests that this Court consider signing his proposed order.

Respectfully submitted,
/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: 803.734.3680; Fax: 803.734.3677
Email: esmith@scag.gov

January 19, 2021

ATTORNEYS FOR THE ATTORNEY GENERAL

ELECTRONICALLY FILED - 2021 Jan 29 10:21 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	Civil Action No. 2012-CP-40-0350
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	PLAINTIFF'S RESPONSE TO ATTORNEY GENERAL'S RESPONSE TO PROPOSED ORDER, SUPPLEMENTAL MEMORANDUM AND AFFIDAVIT

Plaintiff Adele J. Pope ("Plaintiff") submits this return to the response of Alan Wilson, in his capacity as Attorney General for South Carolina (the "AG"). Plaintiff submits that her filings are appropriate and that her proposed Order fully and correctly addresses the issues before the Court herein.

As to the AG's assertion that the record in this matter is "closed," Plaintiff notes that the AG has not cited any law, rule or case in support of his allegation. Further, Plaintiff submits that the record remains open until this Court issues its decision on the merits of this case. *See Brailsford v. Brailsford*, 380 S.C. 443, 669 S.E.2d 342 (Ct.App. 2008) (Holding that the trial court's ruling is not made until a written order is entered).

In regard to the AG's assertions that the AG's alleged non-receipt of the initial 2011 FOIA request herein deprive this Court of subject matter jurisdiction, Plaintiff incorporates the content of her proposed order as submitted, which would fully and appropriately dispose of this issue.

Finally, Plaintiff brings to the attention of the Court a case decided by the South Carolina Court of Appeals which may bear on certain issues addressed in this case. That case, decided after the hearing and filing of proposed Orders herein, is *Ballard v. Newberry County*

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(Op. No. 5787, S.C. Ct.App., January 13, 2021), which holds in pertinent part:

> There is no denying [the Public Records act and FOIA] are related to each other. The Public Records Act imports from FOIA the definition of "public record." § 30-1-10(A). Public records are a large part of how FOIA furthers its announced purpose: to ensure "that public business be performed in an open and public manner[.]" S.C. Code. Ann. § 30-4-15 (2007). To that end, FOIA grants citizens the right to inspect public records, copy public records, or receive public records electronically. S.C. Code Ann. § 30-4-30(A)(1) (Supp. 2019). Certain records are exempt from disclosure, but that does not diminish the point. There is little value in the right to inspect public records if there are no public records for citizens to inspect.

Because the AG has never made a full and proper FOIA response to Plaintiff, instead litigating for nearly a decade about, among other things, whether his office directly received a FOIA request of which it was undisputedly aware, Plaintiff submits that her proposed order grants the necessary and proper relief herein and sets out an organized and efficient procedure therefor. Plaintiff has suggested the same procedure used by the Newberry Court of Common Pleas in disposing of a 2012 FOIA suit against the AG regarding some of the same documents at issue herein (which suit, Plaintiff notes, was concluded in 2015). *See* Exhibit 1 (Order of the Honorable Eugene C. Griffith, Jr., dated September 19, 2014) and, as Exhibit 2 (Order of the Honorable Eugene C. Griffith, Jr., dated January 14, 2015).

Plaintiff bases this return on the entire record herein, including the Memorandum and Affidavit of Adele J. Pope filed in December 2020.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770

adam@silvernaillawfirm.com

Attorney for Plaintiff

January 29, 2020

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EXHIBIT 1

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP 36-00688

Susan D. Summer

PLAINTIFF(S)

Alan Wilson, Attorney General of SC

DEFENDANT(S)

Submitted by: Defendant	Attorney for : ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2154
Judge Code

09/19/2014
Date

SCRCP Form 4C (10/2011)

Page 1 of 2

ELECTRONICALLY FILED - 2021 Jan 29 10:21 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

For Clerk of Court Office Use Only

This judgment was entered on the 19th day of Sept, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 19th day of Sept, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas H. Pope, III
P.O. Box 190
Newberry, SC 29108
ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Emory Smith, Jr. Mark V. Bender
P.O. Box 11549 PO Box 12129
Columbia, SC 92911 Columbia, SC 29211
ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie Bowers (mum)
CLERK OF COURT

Court Reporter:

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
Susan D. Summer,	)	Case No. 2012-CP-36-688
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	

FILED
NEWBERRY, S.C.
2014 SEP 19 P 12:5
JACQUIE S. [illegible]
CLERK OF COURT

This Court previously issued an order on July 8, 2014 directing the Defendant to produce documents referenced therein and denying the Motion to Intervene of Russell L. Bauknight, as personal representative of the Estate of James Brown and trustee of the James Brown 2000 Trust. Both the Attorney General and Bauknight filed motions to alter or amend that order. After carefully considering memoranda and letter briefs regarding those motions and arguments at a hearing on July 23, this Court denies the motions except that it rules that the Tommie Rae Hynie Brown diaries are not public records, allows 30 days for production, makes modifications in the process for considering documents alleged to be exempt and makes a few other modifications consistent with this ruling. The contents of the July 8 Order are set forth below with these changes, and this Order shall be substituted for the July 8 Order.

BACKGROUND

Plaintiff, a citizen of South Carolina residing in Newberry County, initiated the with-in captioned action on December 18, 2012, pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§30-4-10 et seq. (Rev. 2007, Supp. 2013), hereinafter (FOIA), seeking

1/7

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declaratory and injunctive relief. Defendant Alan Wilson is sued in his official capacity as Attorney General of South Carolina.

In her Complaint, plaintiff alleged that defendant had withheld public records to which plaintiff had requested access under FOIA in violation of the FOIA. Plaintiff alleged requests under the FOIA on January 29,2012, March 1, 2012, June 10, 2012 and September 6, 2012.

On February 13, 2013, defendant moved to dismiss the Complaint or change venue.

On February 15, subject to the above motions, defendant answered denying that he had violated the FOIA. He asserted plaintiff cannot obtain under FOIA documents as to which disclosure or release is under the review or order of a court pending in another legal proceeding, including but not limited to Bauknight v. Pope, Case No. 2010-40-CP-4900 ("Case 4900").

The Answer asserts that defendant has responded to all requests and has supplied any document it has except that it asserts that the Tommie Ray Hynie diaries and Wingate Contract are barred from release by pending motions or court order.

Attached to the Answer were certain documents, including what defendant described as the public portion of the Wingate Contract. Article III F. of the Wingate Agreement states in relevant part:

> Any material, data, files, discs, or documents created, produced or gathered by the Special Counsel, or in special counsel's possession in furtherance of this litigation...shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §§30-40-10, et. seq....

On February 27, 2013, plaintiff moved for summary judgment.

That same day, the South Carolina Supreme Court issued its first decision in Wilson v. Dallas, 2013WL697042, February 27, 2013 (No. 27227). Footnote 29 directed that case 4900 and certain FOIA cases should be "considered by the circuit court in the first instance."

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In March 2013, defendant filed a Petition for Rehearing with the Supreme Court addressing footnote 29. He advised the Court that he would shortly move to have the Attorney General removed as a party to Case 4900. He also advised that he had no objection to the release of the Wingate Contract and hoped "to have resolution of this matter in the near future."

On April 16, 2013, Russell L. Bauknight, etc., moved to intervene. Bauknight asserted that this case is an extension of the parties and issues involved in Case 4900, and an improper attempt to gain through FOIA matter which is subject to discovery motions in that case. Bauknight asserted that plaintiff's FOIA requests should be denied and the case consolidated with Case 4900.[1]

At the hearing on April 26, 2013, this Court orally denied the Attorney General's requests to transfer this case to Richland County. Without ruling on Bauknight's motion to intervene, the Court allowed his counsel to participate in the hearing.

At a status conference held on May 7, 2014, this Court invited the parties to make submissions. In subsequent filings, the Court was asked to take judicial notice that the FOIA matters transferred to Richland County, one of which was consolidated with Case 4900, had not been concluded. Discovery motions filed in 2010 related to some of the FOIA requests had also not been heard, and Bauknight is currently seeking a delay of both Case 4900 and the related FOIA suits until all James Brown matters are concluded in Aiken County.

At the heart of this dispute is whether the Attorney General should delay or deny FOIA compliance where the public documents sought are the subject of a pending discovery motion in

[1] On November 14, 2013, United States Magistrate Judge J. Gregory Wehrman ruled in a federal case captioned Brown v.. Pope (Case No. 3:08-cv-14-WOB) that the retention agreement between Brown trustee Bauknight and the Attorney General "is a public document due to the involvement of the South Carolina Attorney General." This agreement is one of the public records sought by plaintiff in this case. It should be produced to plaintiff by the Attorney General although Plaintiff has had the document since shortly after the November 14 ruling.

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Case 4900;'or a discovery order in that (Case 4900) or any other case. Related to that is whether the James Brown Estate and Trust may intervene in FOIA suits to prevent release under FOIA of public documents they are seeking to protect in discovery in a civil suit in which this plaintiff is not a party.

DISCUSSION

In adopting the FOIA, the General Assembly found "that it is vital in a democratic society that public business be performed in an open manner." S.C. Code Ann. §30-4-15 (Rev. 2007). The General Assembly also adopted definitions to be applied in interpreting the FOIA.

For purposes of this litigation, the definitions of "public body" and "public record" are most relevant. As a constitutional officer, the Attorney General and his office are "Public Bodies," and this status subjects both to the full reach of the FOIA. S.C. Code Ann. §30-4-15 (Rev. 2007); Burton v. York Sheriff s Dept., 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). Since plaintiff s requests were for access to public records, the statutory definition of "public record" in S.C. Code §30-4-20 includes all "books, papers, maps, photographs, cards, tapes, records or other documentary materials...prepared, owned, used, or in the possession of the public body" as public records. It is clear that defendant has prepared, used or been in possession of all documents requested by plaintiff. It is further clear from the Attorney General's own standard litigation retention agreement that the documents in Wingate's possession belong to the State, are public records, and are subject to the FOIA.

Defendants claim that FOIA requests must be delayed or denied if there is a pending discovery motion in an unrelated case is inconsistent with both the letter and spirit of the FOIA. As the U.S. Circuit Court for the D.C. Circuit has held with respect to federal FOIA matters in

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North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989), the FOIA and discovery are parallel courses.[2] Each must be considered separately.

The fact that Bauknight's discovery motion has not been resolved since 2010 makes it clear that the FOIA would be crippled if a public body could refuse to release documents based on discovery disputes or orders in other cases. The purpose of the FOIA is set out as follows in §30-4-15: "...it is vital in a democratic society that...it is possible for citizens...at a minimum cost or delay [get]...access to public documents...."

The facts are clear: plaintiff is a South Carolina citizen. She is a journalist. She made proper FOIA requests to the Attorney General, who is subject to the FOIA. Intervention by plaintiffs in Case 4900, or any other suit where the same documents are at issue, is not authorized by the FOIA. To allow such intervention would defeat the purpose of FOIA. The motion to intervene is denied. The defendant's motion for judgment on the pleadings is denied, and plaintiff's motion for summary judgment is granted. The documents should be forthwith produced by defendant for inspection and copying except for the Tommie Rae Hynie Brown diaries because they are barred from disclosure by the Orders of the Honorable Doyet A. Early, In re: The Estate of James Brown, Aiken County, 2007-ES-02-0056 / 2007-CP-02-0122).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

1. The motion of Bauknight to intervene is hereby denied.

2. Defendant shall, within 30 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order)

[2] Then Circuit Judge Ruth Bader Ginsburg wrote this decision in which the Court found that Oliver North was entitled to public documents under the FOIA, even if those documents were not discoverable in non-FOIA litigation. Id. at 1099.

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which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.

3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned, or used, the document shall be marked as exempt and be produced to this Court under seal for review. The sealed documents shall be accompanied by a list of the documents containing a description consistent with the description of privileged documents under Rule 26(B)(5)A), SCRCP and the reasons why Defendant believes they are exempt.

4. The list of exempt documents shall be provided to Counsel for the Plaintiff and Bauknight and shall be the subject of a hearing to be held within thirty days of the production of the list.

5. Documents in the Wingate firm's possession that were prepared, owned used, possessed or retained in whole or in part for the Attorney General are subject to this Order and must be produced. Any documents that the Defendant contends are exempt shall be treated in the same manner as other exempt documents under paragraphs numbered 3 and 4 above.

6. Plaintiff s counsel shall, within thirty days, submit a statement of fees and costs requested by plaintiff pursuant to S.C. Code Ann. §30-4- 100(b) (Rev. 2007). At the same time as the hearing to consider exempt documents, this Court shall also issue a ruling as to whether Plaintiff is entitled to attorney's fees and costs for any documents produced which were not previously supplied to her.

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7. This Court shall issue a final judgment after consideration of the above matters.

AND IT IS SO ORDERED.

Sept 19, 2014

EUGENE C. GRIFFITH, JR.
JUDGE, EIGHTH JUDICIAL CIRCUIT

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EXHIBIT 2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP 36-00688

Susan D. Summer

PLAINTIFF(S)

Alan Wilson, Attorney General of SC

DEFENDANT(S)

Submitted by: Plaintiff

Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
2015 JAN 16 PM 2
JANICE S. CELL
NEWBERRY

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

2154
Judge Code

01/16/2015
Date

SCRCP Form 4C (10/2011)

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For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Thomas H. Pope, III
P.O. Box 190
Newberry, SC 29108
ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Emory Smith, Jr.
P.O. Box 11549
Columbia, SC 92911
ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie Bowers
CLERK OF COURT

Court Reporter:

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STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-002222

FILED
NEWBERRY, SC
2015 JAN 16 PM 2 08
JACKIE S. [illegible]
CLERK [illegible]

Applicant for Intervention Russell L. Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust... Appellant.

In Re: Susan D. Summer.....Plaintiff,

of whom Susan D. Summer is.....Respondent,

v.

Alan Wilson, in his capacity as Attorney General for South Carolina.....Defendant.

AND

Susan D. Summer.....Respondent

v.

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

and Applicant for Intervention Russell L. Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust.Cross-Appellant.

ORDER DIRECTING THE RELEASE OF DOCUMENTS UNDER FOIA

This matter, now the subject of appeal[1], came before the Court for a hearing on December 4, 2014. Present at the hearing were counsel for plaintiff and defendant, as well as counsel for Russell Bauknight, as Personal Representative of the Estate of James Brown and

[1] The proposed intervenor filed a Notice of Appeal dated 9-29-2014, and the Attorney general filed his Notice of Appeal dated 10-16-2014 in the SC Court of Appeals. On 12/17/2014, the Supreme Court issued an Order granting plaintiff's motion to certify, and the Supreme Court, which now has jurisdiction over the appeals used the above caption. For this reason, both captions are utilized in this Order.

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Trustee of the James Brown 2000 Irrevocable Trust ("Bauknight"). The Court was presented with three issues to be resolved.

First, on November 21, 2014, the plaintiff filed in this Court a petition to lift any stay pursuant to Rules 205 and 241, SCACR. Secondly, there were two additional issues to be resolved pursuant to this Court's Order of September 19, 2014. In that Order, this Court compelled Defendant Attorney General to produce documents responsive to plaintiff's FOIA requests. The Order further directed that the defendant provide a list of any documents that it considered to be "exempt" from FOIA on a privilege log and to produce said alleged exempt documents under seal. Finally, the Order provided that this Court would consider the issue of attorneys' fees pursuant to SC Code §30-4-100.

For the reasons set forth herein, the Court grants the motion to lift the stay, if any exists, as to both proposed intervenor's and the Attorney General's Notices of Appeal; it orders all documents on the Attorney General's privilege logs to be produced to plaintiff; and it rules that plaintiff is the prevailing party and, thus, entitled to an award under §30-4-100 for fees and costs. The amount of same will be deferred until the conclusion of the appeals.

LIFTING OF STAY

The issue of lifting the stay arises by virtue of the fact that on September 29, 2014, Bauknight filed a Notice of Appeal which he asserts stays the Attorney General's compliance under FOIA. In addition, on October 16, 2014, Defendant Attorney General filed his Notice of Appeal. After the first Notice of Appeal was filed, the Court of Appeals issued an Order on October 13, 2014, remanding this case for this Court to proceed with the hearing that it had

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originally scheduled for October 30 to consider plaintiff's list of exempt documents and to consider the issue of attorneys' fees.

This Court believes that it may not be legally necessary to do so, but because the proposed intervenor asserted at the December 4, 2014 hearing that he took the position that the appeals "stayed everything," this Court will grant the motion to lift the stay. It may be redundant to do so, but plaintiff's counsel is correct that motions to lift stays originate, pursuant to Rule 241, SCACR, with the lower court; thus, there is authority for this motion to be granted. Any stay by virtue of the two Notices of Appeal should be lifted to proceed with FOIA compliance.

"EXEMPT" DOCUMENTS

This Court has reviewed the documents presented under seal in Attachment G and Attachment I. The Court did not find it necessary to consider the affidavits of Susan D. Summer in its findings and its order herein. The Attorney General's privilege logs show that all of the documents produced under seal in both attachments are listed as being emails among attorneys representing diverse parties in the James Brown litigation. The basis asserted by Attorney General for his position that the documents on the two privilege logs are exempt from FOIA is that they are "work product." It was argued at the hearing by the Attorney General that because the emails on both privilege logs are among attorneys involved in the James Brown cases, they are protected because of the "common defense" doctrine. The Attorney General relies on Tobaccoville USA, Inc. v. McMaster, 387 S.C. 287, 692 S.E.2d 526 (2010) to support his argument on the common interest doctrine. The Supreme Court recognized the doctrine only in that case's "narrow factual scenario". The facts of that case, where the

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attorneys general of several states had an agreement to work together in a joint effort, are a far cry from the instant case where lawyers for antagonistic parties are communicating about public issues with the Attorney General. This Court believes that the common defense doctrine as applied to work product is only available when a plaintiff is suing multiple defendants, and the defendants' attorneys are communicating about how to defeat the plaintiff's claims – *i.e.*, they have a common purpose. In the instant case the emails are among (a) lawyers who are supposed to protect the estate plan (Russell Bauknight as Personal Representative and Trustee); (b) attorneys who sought to orchestrate a settlement (the Attorney General); (c) attorneys for those challenging the will (Louis Levenson, et al.); (d) attorneys for a claimed spouse (Robert Rosen and Alan Medlin); and, (e) attorneys for one of the heirs who claims a right to purchase the assets Brown gave to his charitable foundation (Matt Bodman). This Court finds that there is no "common" defense privilege available in this instance.

The applicable law, S.C. Code §30-4-40(a)(7), is that portion of FOIA which defines exempt documents to include:

> "(7) Correspondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships."

For the reasons set forth herein, none of these documents qualify as "work product" or as "any other material that would violate attorney-client relationships[2];" therefore, they should be produced as public, non-exempt documents.

[2] To the extent the Attorney General contends that the emails on the privilege logs are protected by the attorney-client privilege, this privilege is a rule of evidence applicable to confidential communications within the representation of a client. The sharing of information with adverse parties, as is the case here, abrogates the claim of confidentiality and privilege.

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(a) Privilege Log Designated As Attachment G

This privilege log is identified by the Attorney General as emails relating to the McMaster-Wingate Retention Agreement. It consists of a series of emails in the time period May 14, 2010 through May 17, 2010 (plus two draft letters of the Attorney General to Russell Bauknight). The emails are by and among persons who are attorneys for various parties in the James Brown litigation.[3]

The McMaster-Wingate Retention Agreement was sought by Summer in her FOIA requests (and in this suit). The contract on its face confirms that it is a public document and subject to FOIA. The Office of the Attorney General released it only after a federal judge summarily declared it to be a public document in a one paragraph order, acknowledging that it was public because of the Attorney General's involvement. The Wingate Agreement authorized and approved a suit to be brought by private counsel for the Attorney General representing the Attorney General and the Legacy Trust created by the Attorney General. This suit was commenced on May 19, 2010.

Plaintiff asserts that the emails in Attachment G, dated immediately before the suit was commenced, are public.

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[3] (a) David Black and Freddie Kingsmore - attorneys for Russell Bauknight, the trustee and the PR of the James Brown Estate, who has a duty to uphold the estate plan and enforce Brown's "I Feel Good" Trust;
(b) Alan Medlin, Robert Rosen and Chris Paton – attorneys for a woman named Tommie Rae Hynie who claims to be James Brown's wife and therefore entitled to an outright share of the estate;
(c) Rett Kendall and Kenneth Wingate – attorneys with the Wingate firm who represent the Attorney General, the Legacy Trust, Russell Bauknight and others in a law suit against the James Brown Estate's former trustees;
(d) Louis Levenson and Lori Christman – attorneys for children who are contesting the James Brown will;
(e) Matt Bodman and David Bell – attorneys for Tery Brown and Forlando Brown who assert ownership rights to assets in the Brown Estate;
(f) Sonny Jones, Mary Frances Jowers and Bob Cook – attorneys in the Office of the Attorney General

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In his production response of October 15, 2014, the Office of the Attorney General asserted that "no such contract [in case 4900) exists." This is belied by the Retention Agreement and the Complaint in case 4900. Because of the Attorney General's involvement, it is clear that emails among the Attorney General and the other lawyers with adverse interests to the "I Feel Good" Trust, are public documents. Further, FOIA requires that for a document to be exempt, it must "violate attorney-client relationships." This is not the case here.

In this Court's Order of July 9, 2014, it was specifically ordered that

> "[d]ocuments in the Wingate firm's possession that were prepared, owned, used, possessed or retained in whole or in part for the Attorney General was subject to this Order and must be produced." (emphasis added).

Since the Wingate firm brought the suit in case 4900 on behalf of the Attorney General and the Legacy Trust (as well as for Russell Bauknight), and since the Attorney General contends that he has never seen the agreement, these emails are particularly important as a matter of public interest. See Wilson v. Dallas, 743 S.E.2d 746 (2013) (where the Supreme Court rebuked the actions of the Attorney General for his role in orchestrating an improper settlement which torpedoed the wishes of testator James Brown and was critical of the Attorney General's role in creating the Legacy Trust to do so).

Accordingly, this Court finds and concludes that the documents listed on the privilege log in Attachment G, which include 14 emails and 2 draft letters, are public and should be produced to the plaintiff.

(b) Privilege Log Designated As Attachment I

The documents listed on this privilege log by the Attorney General are identified as being a series of emails relating to "gag orders" on the Tommie Rae Hynie diary. These

documents are also a series of emails among persons who are attorneys for various adverse parties in the James Brown litigation which were exchanged during the time period June 3, 2012 through June 6, 2012.

This Court initially ruled in its Order dated September 19, 2014, that the document referenced as the Hynie "diary" was not to be produced under FOIA, based on the Attorney General's position that there was a 2008 gag order which prevented its release under FOIA. At the time of this Court's Order, it was not known that the Attorney General had the emails listed on Attachment I.

Based on these facts, including that the gag orders have been largely ignored for five years and based on the public interest in these diaries as evidenced by numerous recent national articles, including articles in the *New York Times*[4] and the *Columbia Journalism Review*, this Court finds that the emails surrounding said diaries are public and should be produced.

Once the additional context and contents of the emails in Attachment I are produced under this Order, this Court will entertain a motion, if made by the plaintiff, to assert whether, based on these emails and other facts, the diaries should be produced as public. If necessary, this Court will conduct another hearing regarding the issue of whether the Attorney General should produce his copy of the Hynie diaries under FOIA.

[4] See www.nytimes.com/2014/12/14/us/downbeat - legacy - for – James – Brown – godfather · of soul – a – will – in – deep – dispute. In that article, reporter Larry Rohter wrote that Hynie married Brown in 2001, that Brown filed for an annulment in 2004 when he learned Hynie was already married to another man, and that later she signed a document that she was "not the common law wife." Rohter reported that she also signed a prenuptial agreement that she was renouncing her interest in Brown's estate. Given this public article about this public matter, which involves the Attorney General, her "diary" may be relevant on the issue of her current claim to be his wife. As a journalist, Summer and the general public have "a right to know."

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DOCUMENTS NOT PRODUCED PURSUANT TO SEPTEMBER 19 ORDER

The Attorney General did not produce two categories of documents which were requested by Summer and which appear to be public. These documents have been used and arereferred to by the Attorney General in various court proceedings. These documents include: the $4.7 million appraisal and the document creating the Legacy Trust and its amendments. In its production filed with the Court on October 15, 2014, the Attorney General asserts that his office never reviewed the $4.7 million appraisal and that there are no Legacy Trust documents. This Court takes judicial notice of the fact that in the case Bauknight v. Pope and Buchanan (case 4900) which was filed on May 19, 2010, Bauknight brought the suit both as trustee, on behalf of the Legacy Trust and Attorney General Henry Dargan McMaster. Even though the Attorney General (through Bauknight) is a named plaintiff in that suit, the Attorney General asserts that no member of the Attorney General's staff has seen the $4.7 million appraisal or the Legacy Trust documents and that it has no documents to produce. It appears to this Court that the appraisal has been referred to in court filings. It, and Legacy Trust documents, were requested by plaintiff but not produced. The Order of September 19, 2014 required their production, but they were not produced. Because the Attorney General claims that he does not have them, there is nothing further this Court can do on the state of this record. If, on remand, the Supreme Court issues any directives on this issue, this Court will make whatever rulings are needed at that time.

ATTORNEYS' FEES AND COSTS UNDER §30-4-100

Pursuant to this Court's Order of September 19, 2014, counsel for plaintiff filed his Affidavit in Support of Application for Attorneys' Fees under S.C. Code §30-4-100(b), said

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affidavit being dated October 20, 2014. The defendant has not filed any opposition to that affidavit. Plaintiff's counsel has advised the Court that, in view of the pending Notice of Appeal by the Attorney General that it may be premature to issue a final award of fees and costs.

This Court finds and concludes that the plaintiff is the prevailing party in this action and is entitled to an award of attorneys' fees and costs under the statute. In the case of Sloan v. SC Department of Revenue, 409 S.C. 551, 762 S.E.2d 687 (2014), the Supreme Court recently ruled that the plaintiff was entitled to attorneys' fees where the DOR was late in providing the documents requested. In that case, the DOR did not render a final opinion within the 15-day determination period of S.C. Code §30-4-30(c). Even though the DOR did ultimately respond by producing the documents requested, Sloan was found by the Supreme Court to be the prevailing party and entitled to reasonable attorneys' fees and costs. In that case, even though Sloan's request for declaratory judgment was mooted by the production of documents by DOR, Sloan was still entitled to recover attorneys' fees and costs. The Court finds that Sloan is compelling in this case where (a) some documents were produced 11 months after this FOIA suit was commenced[5] in another proceeding by an out-of-state judge who found the documents to be "public" and ordered them produced, and (b) after this Court ordered the production of documents in its September 19, 2014 Order, the defendant did produce additional documents pursuant to that Order.

[5] Summer's case was filed in December 2012. On November 14, 2013, United States Magistrate Judge J. Gregory Wehrman ruled in a federal case captioned Brown v. Pope (Case No. 3:08-cv-14-WOB) that the retention agreement between Brown trustee Bauknight aud the Attorney General "is a public document due to the involvement of the South Carolina Attorney General." This agreement is one of the public records sought by plaintiff in this case, and it should have been produced pursuant to plaintiff's letter request many months before her suit was brought.

This Court finds and concludes that the plaintiff is entitled to attorneys' fees and costs under the statute, and this Court will hold in abeyance its ruling on the specific monetary amount of such fees and costs until all appeals relative to this case are concluded.

THEREFORE IT IS ORDERED as follows:

1. The plaintiff's petition to lift stay is granted.

2. The documents listed on the Attorney General's privilege log, Attachment G, (14 emails and 2 draft letters) shall be produced to plaintiff within 10 days of this Order.

3. The documents listed on the Attorney General's privilege log, Attachment I, 12 emails) shall be produced to plaintiff within 10 days of this Order.

4. After plaintiff has reviewed the documents produced, she shall have 10 days after receipt of ı to request the production of any additional documents sought in her Complaint, based on her review of the documents produced.

5. Plaintiff is the prevailing party in this action under FOIA and is entitled to an award of attorneys' fees and costs; the Court will determine the amount of fees and costs after all FOIA appeals are concluded.

AND IT IS SO ORDERED.

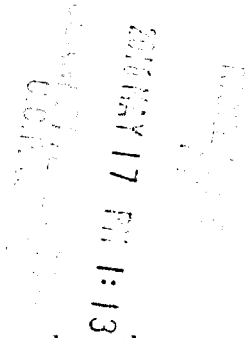
Eugene C. Griffith, Jr.
Circuit Court Judge

January 16th, 2015
Newberry, SC

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	
COUNTY OF RICHLAND)	Civil Action No. 2012-CP-40-350
)	
)	
Adele J. Pope,)	
Plaintiff,)	PLAINTIFF'S REPLY TO MEMORANDA
)	OF DEFENDANTS
v.)	
)	
Alan Wilson, in his capacity as)	
Attorney General of South)	
Carolina and James Brown)	
Legacy Trust, by Russell L. Bauknight,)	
its Trustee)	
Defendants.)	
)	



In this FOIA case, Plaintiff Adele J. Pope ("Plaintiff") submits this brief in reply to the Memorandum of Alan Wilson, in his capacity as Attorney General of South Carolina ("AG") in support of his pending motions to amend, dismiss, for judgment on the pleadings and to strike and in reply to the James Brown Legacy Trust's Supplemental Memorandum in Support of its Motion to Dismiss and in Opposition to Plaintiff's Motion for Summary Judgment.

I. As to the AG's Memorandum

In his Memorandum, the AG argues that he is entitled to prevail in this case because: he claims not to have received Plaintiff's June 30, 2011 request until he was served with the Summons and Complaint herein (to which a copy is attached); he claims not to possess the $4.7 million appraisal of James Brown's music empire and related documents; and he asserts this case should be dismissed under Rule 12(b)(8), because the same or similar claims are pending between the parties in another action.

In March 2013, the AG moved to amend his answer herein and produced certain

public documents responsive to Plaintiff's June 30, 2011 request which had not previously been released to her by the AG.

By presenting public documents in this action, approximately a year and a half after its inception, the AG has acknowledged that it did indeed possess responsive public documents. In *Sloan v. SC Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014), our Supreme Court found that a FOIA plaintiff was entitled to declaratory relief and attorneys' fees even where the public body had produced the requested documents three weeks after the plaintiff therein filed suit. Likewise, the AG's delayed production of documents herein moots nothing.

The AG further asserts that the Newberry County Court in a FOIA case to which Plaintiff is not a party has found that the AG does not possess the $4.7 million appraisal of James Brown's music empire. First, Plaintiff is not bound by a finding in a case to which she has never been a party. Second, a public body need not possess a document to make it responsive and subject to production under the FOIA. Instead, the FOIA requires a public body to release all responsive public documents "prepared, owned, used, in the possession of, or retained by a public body." S.C. Code Ann. §30-4-20(c). The statute itself makes clear that possession of a document is not a prerequisite to release under the FOIA. As set out in Plaintiff's May 2, 2016 Memorandum, the AG moved the Supreme Court to accept the $4.7 million valuation in 2011 (see Exhibit A), and he also sued Plaintiff and Robert L. Buchanan, Jr., in 2010 for, among other things, presenting an inflated valuation of James Brown's assets for the purpose of securing a $5 million commission. If true, this claim by the AG would constitute a Federal felony. In his Motion to Supplement the Record in *Wilson v. Dallas*, the AG discusses in detail the basis for the valuation [see, e.g., footnote 3 on p. 6 of

Exhibit A]. The Motion to Supplement is signed by Sr. Asst. AG C. Havird Jones, and makes clear that the AG has "used" the appraisal.

The AG suggests that he need not produce documents which were later filed in *Summer v. Wilson*, since those are available from the Court's files. The AG points to no exception to the FOIA, and Plaintiff is aware of none, which would exempt documents from release because they are available elsewhere.

The AG takes the position that Plaintiff's case must be dismissed for lack of subject matter jurisdiction, where he claims that he did not receive her initial June 30, 2011 FOIA request. This argument is disingenuous where the AG was served with the Summons and Complaint herein nearly five (5) years ago, and has still never made a proper FOIA response to Plaintiff. S.C. Code Ann. §30-4-30, which sets out the procedure for making a request for release of public documents under the FOIA, prescribes no particular form or method for making a request, and Plaintiff's June 30, 2011 request was attached to the Complaint herein, which was served on the AG in August 2011.

In his Memorandum, the AG argues that he has produced all documents responsive to Plaintiff's request for "the final and all drafts, signed and unsigned, of the James Brown Legacy Trust." Plaintiff notes that, even if the draft documents produced by the AG were in fact all responsive documents, the AG did not produce those until approximately eighteen (18) months after this lawsuit was filed. His initial response to this action was to move for dismissal, asserting that Plaintiff could not seek documents from him under the FOIA in light of then-pending discovery motions in Richland County Case No. 2010-CP-40-4900 ("Case 4900"). He continues to take that position in his May 2, 2016 Memorandum.

II. As to the James Brown Legacy Trust's Memorandum

The James Brown Legacy Trust, created by former AG Henry D. McMaster (the

"McMaster Legacy Trust") argues that it should be dismissed because the McMaster Legacy Trust "as challenged by Plaintiff no longer exists." This argument completely overlooks the fact that the McMaster Legacy Trust was created by the Attorney General. Plaintiff is unable to find a published case, and the McMaster Legacy Trust points to none, in which the question of whether a partially-charitable trust created by a public official, acting in his official capacity on behalf of the State, could ever be considered anything other than a public body. Instead, the cases cited by Plaintiff in her May 2, 2016 Memorandum show that even modest in-kind support of an entity can justify a finding that it is a public body for the purposes of FOIA.

Additionally, the McMaster Legacy Trust now appears to take the position that it does exist and has existed, but is retroactively exempted from FOIA because the Supreme Court invalidated the settlement which would have further funded it. A review of the South Carolina Trust Code makes clear that a trust is created, even where its source of funding is revocable and uncertain. The Reporter's Comments to S.C. Code Ann. § 62-7-401 (2016) make clear that "the property interest necessary to fund and create a trust need not be substantial. A revocable designation of the trustee as beneficiary of a life insurance policy or employee benefit plan has long been understood to be a property interest sufficient to create a trust." (See S.C. Code Ann. § 62-7-103(11) (2016), where property is defined.) Likewise, the funding of the McMaster Legacy Trust, even if affected by *Wilson v. Dallas*, was complete and the Trust created upon the signing of the settlement agreement in 2009. The McMaster Legacy Trust may not now avoid the effect of the AG's involvement just because it did not turn out as he expected.

Further, the AG's own public filings indicate that the McMaster Legacy Trust was substantially funded prior to the *Wilson v. Dallas* decision. In their December 22, 2010

Brief, Respondents asserted:

> The Settlement Agreement created an entity containing all of Brown's probate and non-probate assets (Settlement Entity) Additionally, the family members increased the Settlement Entity's worth by contributing valuable assets, including federal copyright termination rights....

The McMaster Legacy Trust goes on to argue that its creation by the AG is insufficient to support a finding that it is a public body without a showing of public funds passing to or through it. This is simply out of line with applicable case law (as cited by Plaintiff in her previous filings), which makes clear that in-kind contributions are sufficient to justify a finding that an entity is a public body.

The document attached as Exhibit A is one of a multitude filed in Aiken County and appellate proceedings in which the AG's office defends the existence and funding of the McMaster Legacy Trust.

As to the McMaster Legacy Trust's argument that Plaintiff is not entitled to her FOIA rights as a result of the State, the McMaster Legacy Trust and others having sued her in Case 4900, none of the authorities the McMaster Legacy Trust cites support the proposition that any citizen is deprived of her FOIA rights as a result of her involvement in litigation with the State.

Conclusion

For the reasons set forth above and in Plaintiff's other filings herein, Plaintiff asks that grant her summary judgment herein and deny the motions of the AG and the McMaster Legacy Trust.

Respectfully submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm

Attorney for Plaintiff

May 16, 2016

EXHIBIT A

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

Alan Wilson, 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 Administrator 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.

MOTION TO SUPPLEMENT THE RECORD PURSUANT TO RULE 212(b), SCACR, OR IN THE ALTERNATIVE, TO TAKE JUDICIAL NOTICE OF RECORDS FILED IN A RELATED PROCEEDING

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT:

Respondents respectfully request that this Court supplement the record of this appeal to include (1) Internal Revenue Service ("IRS") Federal Estate tax records that were received by Respondents after filing their initial brief on December 22, 2010, and that are related to the date of death valuation of the estate and the tax consequences of the settlement agreement and (2) the Supplemental Inventory and Appraisal of the James Brown Estate ("Estate") related to the date of death valuation and appraisal of assets for the Estate. In the alternative, this Court may take judicial notice of these documents as they were filed in the probate court or issued by the IRS in related proceedings.

FACTUAL BACKGROUND

This appeal presents a unique situation: it concerns an ongoing estate and trust that are continuing to be administered in the normal course of estate and trust administration, and matters relating to their ongoing administration are relevant to this appeal. Although the documents that Respondents seek to include in the record had not been prepared and were thus not available when the circuit court issued its May 26, 2009 Order approving the Settlement Agreement, the Supplemental Inventory and Appraisal should properly be considered in this appeal as it was filed as required by the South Carolina Probate Code in the ongoing probate proceeding, and the IRS tax records should properly be considered because they were created as a result of an independent IRS audit of the Estate.

The Supplemental Inventory and Appraisal and IRS tax records refute factual assertions that the Appellants make to support their legal positions before this Court. Because these documents provide *support* to the circuit court's decision to approve the settlement agreement, their inclusion in the record would neither undercut the circuit court's decision, nor hamper appellate review of it. *Cf. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*,

368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the Court] with a platform for meaningful appellate review.").

ANALYSIS

In their brief, Appellants argue: (1) that the settlement will cause serious tax problems for the James Brown Estate and Trust (the "Estate and Trust"); and (2) without the aid of a professional appraisal, Appellants contend that the combined Estate and Trust are worth roughly $100 Million. Specifically, Appellants make the following misleading representations to this Court:

Tax Consequences:

- On page seven (7) of their brief, Appellants state that "the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest."
- On pages thirty-eight to thirty-nine (38–39), Appellants devote a section of their brief to argue that the settlement will cause serious tax problems. They note that the "settling parties offered no evidence to refute the evidence of a likely tax disaster. Instead, their counsel reassured the court that they were 'dedicated' to preventing it." *Id.* at 39.

Valuation:

- On page five (5), footnote five (5), of their brief, despite never having obtained a professional appraisal, Appellants state that the late James Brown's assets have been valued at roughly $80–120 Million.
- On page thirty-two (32) of their brief, Appellants note that the trust could be funded with $100 Million.

See Final Brief of Appellants at pp. 5, 7, 32, 38-39.

Following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, Russell L. Bauknight ("Mr. Bauknight") engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust. This is the first

professional valuation and appraisal of the James Brown music assets since James Brown passed away on Christmas Day 2006. The valuation and appraisal work is now complete. As required by S.C. Code Ann. § 62-3-706, Mr. Bauknight filed the Supplemental Inventory and Appraisal at the Aiken County Probate Court (Supplemental Inventory and Appraisal, Appendix R. pp. 1-6). To protect the Estate and Trust, Mr. Bauknight filed the Supplemental Inventory and Appraisal under seal.

Furthermore, following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, the IRS continued to conduct an independent audit involving the valuation of the James Brown Estate and Trust. The IRS Auditors reviewed all estate tax issues surrounding the James Brown Estate and Trust, including the tax consequences of the subject Settlement Agreement. The Respondents received the IRS Proposed Estate Audit Examination Report ("IRS Audit") on December 27, 2010. (IRS Proposed Estate Audit Examination Report, Appendix R. pp. 7-11). Respondents and the IRS agreed to all adjustments concerning the IRS Audit, and the Respondents received the Final IRS Estate Closing Letter ("Closing Letter") on January 31, 2011.[1] (Final IRS Estate Closing Letter, Appendix R. pp. 12-15). As noted above, the Respondents received each of these documents *after* filing their initial brief on December 22, 2010.

As noted in the IRS Audit, after reviewing the settlement agreement, the IRS specifically concluded that, pursuant to the Internal Revenue Code, the charitable deduction applied and that "[t]he charitable deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 11). Further, the IRS

[1] Because Appellants filed the initial tax return that was subject to the audit, the IRS as a matter of course separately notified the prior fiduciaries that the incorrect estate valuation had been corrected and that the audited return had been accepted. (Appendix R. pp. 13-14). Appellants have since informed Respondents that they disagree with the IRS Final Closing Letter.

Audit found that the marital deduction applied: "[t]he marital deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 10). Respondents argued in their brief that this deduction would apply and that it favored a finding that the Settlement Agreement was *just and reasonable*. Final Brief of Respondents, at 35-36. (The tax return previously filed by Appellants did not seek the marital deduction.) Finally, as noted in the Closing Letter, the Settlement Agreement resulted in zero tax liability to the Estate. (Appendix R. pp. 13-14).

The IRS Audit and Closing Letter show that the IRS rejected Appellants' contention that the settlement agreement will cause additional tax liability, but instead, that the Estate is owed a $10,000 federal tax refund due to Appellants' overpayment. (R.p. 2760 (Estate Accounting filed by Appellants, first entry on the page: "US Treasury – payment towards Estate Taxes . . . $10,000"); (Appendix R. p. 7 ("The report, though not final, shows that the estate is entitled to a refund."); (Appendix R. pp. 12-15 (adopting audit, accepting return, and making final determination that no estate taxes are owed: "0.00.")). Additionally, these documents further underscore Respondents position that the Appellants are not professional fiduciaries and are ill-equipped to manage the Estate and Trust.

The Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter reveal that on the date of death, the James Brown Estate and Trust were actually valued at roughly $6.5 Million.[2] Referring to the intellectual property—royalty interests, reversions rights, etc.—the IRS Audit revealed that, "[v]aluation of these interests was corrected to fair market value based

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[2] The Supplemental Inventory and Appraisal accounts for only probate assets; it does not include the home of the late James Brown that is valued at roughly $1.2 Million. That is the case because at the date of his death, the Trust owned the home and trust assets are not considered probate assets. (The Trust still owns the home.) The date of death, gross estate value reported to the IRS included the home, as both probate and non-probate assets must be reported for tax return purposes. Accordingly, the Estate and Trust were valued at roughly $6.5 Million. (Appendix R. p. 10).

upon expert opinion and financial analysis"—that is, the independent professional appraisal authorized by Mr. Bauknight, as audited and accepted by the IRS. (Appendix R. p. 9). Consequently, the IRS rejected Appellants' prior inexpert notion that James Brown's royalty interests and reversion rights were worth approximately $84 Million dollars. Accordingly, the date of death valuation of these taxable interests was corrected from $84 Million to $4.697 Million.[3] (Appendix R. p. 9). This IRS finding, based upon its own independent review and valuation, directly and incontrovertibly refutes Appellants' contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth $80-120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record.

Although these documents were not presented (could not be presented) to the circuit court because they did not exist at that time, this Court should consider the evidence. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000) (noting "the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice"); *see also In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) ("Normally, of course, [courts] are not required to consider evidence presented for the first time on appeal . . . [but] [i]t is within the discretion of the court . . . , however, to make limited exceptions to this

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[3] While this figure may appear low, it is the date-of-death value that controls for purposes of the Federal estate tax return and the probate inventory and appraisal. Furthermore, this final figure accurately accounts for the debts of James Brown including the outstanding bond executed by Mr. Brown during his lifetime whereby he exchanged the rights to his royalty stream for a lump sum payment of $26 Million. Once the bond debt is retired, the royalty stream will flow to the Settlement Entity where it will be apportioned among the settling parties—which includes the charitable trust that will fund scholarships to needy children attending schools in South Carolina and Georgia.

rule when 'injustice might otherwise result.'" (citing and quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Here it would appear unjust for this Court to rely on Appellants' assertion that the Settlement Agreement will cause additional tax liability to the Estate when the IRS has clearly rejected that contention. Accordingly, these documents are relevant to the current appeal, as they are official records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief.

CONCLUSION

As the IRS has independently concluded, the Settlement Agreement does not create additional tax liability to the James Brown Estate. In fact, the Settlement Agreement has reduced the tax liability to the James Brown Estate. Due to the nature of the underlying proceedings, the ongoing probate record on which Appellants' base their appeal must be considered. Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a $5 Million dollar commission[4] based upon their prior unsubstantiated position that the Estate was worth $80-120 Million.

Alternatively, Respondents would respectfully request that this Court take judicial notice of these records for they were filed in a lower court or issued by the IRS in a related proceeding. *See Ins. Comm'n of S.C. v. New S. Life Ins. Co.*, 270 S.C. 612, 635–36, 244 S.E.2d 289, 301 (1978). Furthermore, pursuant to Rule 208(b)(7), SCACR, because the IRS Audit and Closing Letter were received after Respondents filed their initial brief, it would appear appropriate for this Court to recognize the IRS records as supplemental authority to Respondents' brief.

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[4] Appellants are presently pursuing a $5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately $80-120 Million. (R. pp. 2879-80).

Respectfully submitted,

Alan Wilson
Attorney General, State of South Carolina
C. Havird Jones, Jr.
Senior Assistant Attorney General
Robert D. Cook
Assistant Deputy Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Office of the Attorney General
State of South Carolina 29211-1549
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970

William W. Wilkins
J. David Black
Fred L. Kingsmore, Jr.
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
(864) 370-2211
Attorneys for Respondent Russell L. Bauknight, as the Court-Appointed Trustee of the James Brown 2000 Irrevocable Trust and Personal Representative for the Estate of James Brown and as the Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust

Louis D. Levenson
LEVENSON & ASSOCIATES
125 Broad Street
Atlanta, Georgia 30303
(404) 659-5000
Attorneys for James Brown Children and Grandchildren Daryl J. Brown, Individually and on Behalf of His Minor Children, Lindsey Delores Brown and Janise Vanisha Brrown; Deanna J. Brown Thomas, Individually and on Behalf of her Minor Child, Jason Brown Lewis; Yamma N. Brown, Individually and on Behalf of Her Minor Children, Sydney Lumar, Carrington Lumar, and Tonya Brown; Vanisha Brown; Larry Brown

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
(843) 377-1700
Attorneys for Tommie Rae Hynie Brown

Matt Bodman
MATT BODMAN P.A.
1500 Calhoun Street
Columbia, South Carolina 29201
(803) 806-8605
Attorney for Terry Brown

Albert P. Shahid, Jr.
SHAHID LAW OFFICE, LLC
89 Broad Street
Charleston, South Carolina 29401
(843) 853-4500
Attorney for Stephen M. Slotchiver, Guardian ad Litem for James Brown II

May 6, 2011

Columbia, South Carolina

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CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies that the foregoing Record on Appeal contains all matter designated by any party and no other material.

s/Adam T. Silvernail
Adam T. Silvernail
Counsel for Appellant

September 12, 2022