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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2013-001649

Lower Court Case Nos. 2007-CP-02-0122; 2008-CP-02-0872; 2007-CP-02-0322;
2010-CP-02-072; 2012-CP-02-1059; 2008-CP-02-1426; 2008-CP-02-1712; 2008-CP-02-
2127; 2008-CP-02-1556; 2008-CP-02-1557; 2008-CP-02-1758; 2008-CP-02-1759; 2008-
CP-02-1647; 2013-CP-02-1348

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and
others..... Plaintiffs,

v.

Albert H. Dallas and others..... Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are Respondents

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested
Persons.

In Re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d
August 1, 2000.....Respondent.

**MOTION TO STRIKE PORTIONS OF
APPELLANT'S DESIGNATION OF MATTER**

Respondent Russell Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust, moves to strike the majority of items listed in Appellant Adele Pope's Designation of Matter. As explained in detail below, Pope's Designation of Matter ignores the requirements of Rules 209 and 210, SCACR, by including, among other things, pleadings from other cases, transcripts from other cases, and several items that post-date the orders on appeal. *See* Rule 209(b), SCACR (“[T]he Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal.”); Rule 209(c), SCACR (requiring a certificate signed by the party's counsel that the designation does not contain matter which is irrelevant to the appeal); Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”).

I. Items Designated that Post-Date the Orders on Appeal

The following items should be stricken from the designation of matter because they post-date the orders on appeal. These items did not exist at the time the orders on appeal were issued (the latest of which is dated July 10, 2013), and therefore, they had not been presented to the lower court:

- Form 4 Order dated January 31, 2014 (#1 under “Orders – Case 1647” on Pope's Designation)
- Order filed January 17, 2014 (#2 under “Orders – Case 1647” on Pope's Designation)
- Order dated October 1, 2013 (#3 under “Orders – Case 1647” on Pope's Designation)
- Order dated October 25, 2013 (#4 under “Orders – Case 1647” on Pope's Designation)

- Order dated February 7, 2014 (#1 under “Orders – Other” on Pope’s Designation)
- Order dated October 10, 2013 (#2 under “Orders – Other” on Pope’s Designation)
- Motion to Alter, Amend and Vacate Orders Dismissing Heirs of James Brown and Others from Proceedings of James B. and Tommie Rae Hynie, dated February 14, 2014 (#1 under “Pleadings” on Pope’s Designation)
- Supplemental Response to Motion/Memorandum of Deana Brown Thomas and Others dated November 18, 2013 (#3 under “Pleadings” on Pope’s Designation)
- Motion to Alter or Amend and/or Reconsider and Vacate Order dated January 7, 2014 (#5 under “Pleadings” on Pope’s Designation)
- Letter of John F. Beach dated January 6, 2014 (#2 under “Affidavits and Others” on Pope’s Designation)
- Letter of Mark Toberoff to Warner Chappell Music dated September 2013 (#4 under “Affidavits and Others” on Pope’s Designation)

II. Items Designated from Other Cases

The following items should be stricken from the designation of matter because they are from other lower court cases, not the cases on appeal. Accordingly, these items were never presented to the lower court in this matter:

- Order dated November 22, 2011 in Case No. 2011-CP-36-0379 (#1 under “Orders – Other Cases” on Pope’s Designation)
- Order dated January 11, 2012 in Case No. 2011-CP-36-0364 (#2 under “Orders – Other Cases” on Pope’s Designation)
- Complaint filed in Case No. 2010-GC-40-00073 (sic) (#1 under “Pleadings – Other Cases” on Pope’s Designation)
- Memorandum in Opposition to Motion to Dismiss filed in Case No. 2010-CP-40-4900 (#2 under “Pleadings – Other Cases” on Pope’s Designation)
- Status Report in Case No. 3:08-cv-0014-WOB (#3 under “Pleadings – Other Cases” on Pope’s Designation)
- Complaint in Case No. 2011-CP-36-0364 (#4 under “Pleadings – Other Cases” on Pope’s Designation)

- Complaint in Case No. 2011-CP-36-0379 (#5 under “Pleadings – Other Cases” on Pope’s Designation)
- Return to Motion to Compel Settlement filed in Case No. 2010-CP-40-4900 (#6 under “Pleadings – Other Cases” on Pope’s Designation)
- Motion to be relieved as Counsel in 2010-CP-40-4900 (#9 under “Pleadings – Other Cases” on Pope’s Designation)
- Complaint in 2013-CP-02-1337 (#10 under “Pleadings – Other Cases” on Pope’s Designation)
- Transcript from Bauknight v. Pope, which is presumably from the -4900 or -0073 case (#2 under “Transcripts” on Pope’s Designation)
- Transcript from Brown v. Pope, which is presumably from 3:08-cv-00014-WOB (#3 under “Transcripts” on Pope’s Designation)
- Notice of Disallowance of Creditor’s Claim, which was filed in Case No. 2013-CP-02-1337 (#7 under “Affidavits and Others” on Pope’s Designation)
- Letter of Sweeney, Wingate and Barrow to Judge Manning, presumably filed in Case No. 2010-CP-40-4900 (#14 under “Affidavits and Others” on Pope’s Designation)
- Letter of Adam Silvernail to Judge Manning, presumably filed in Case No. 2010-CP-40-4900 (#16 under “Affidavits and Others” on Pope’s Designation)
- Wingate retention agreement, presumably filed in Case No. 2010-CP-40-4900 (#22 under “Affidavits and Others” on Pope’s Designation)

III. Items Designated that Are Not Part of this Appeal

The following items should be stricken from the designation of matter because they are either (1) from the previous appeal, which was remitted after the Supreme Court issued its opinion in May 2013 or (2) submitted in conjunction with other appeals filed by Pope, which deal with different orders on appeal. The briefs, motions, and transcripts

from those matters are not relevant to this appeal and were never presented to the lower court. Accordingly, the following items should be stricken from Pope's designation:

- Memorandum related to appealability dated December 17, 2013 in Appellate Case No. 2013-002582 (#4 under "Pleadings" in Pope's Designation)
- Appellant's Brief in Appellate Case No. 2009-142286 (#7 under "Pleadings - Other Cases" in Pope's Designation)
- Returns, Motions in Appellate Case No. 2009-142286 (#8 under "Pleadings - Other Cases" in Pope's Designation)
- Transcript of September 9, 2009 hearing in McMaster v. Dallas, presumably the transcript in Appellate Case No. 2009-142286 (#1 under "Transcripts" in Pope's Designation)
- Affidavit of Adele J. Pope in Support of Memo Related to Appealability in Appellate Case No. 2013-002582 (#3 under "Affidavits and Other" in Pope's Designation)
- Tape Supreme Court oral argument in Appellate Case No. 2009-142286 (#21 under "Affidavits and Other" in Pope's Designation)
- Order of Judge Early dated April 8, 2008, presumably subject of Appellate Case No. 2009-142286 (#3 under "Orders - Other" in Pope's Designation)
- Order of Judge Early dated March 8, 2008, presumably subject of Appellate Case No. 2009-142286 (#4 under "Orders - Other" in Pope's Designation)
- Order of Judge Early dated January 8, 2008, presumably subject of Appellate Case No. 2009-142286 (#5 under "Orders - Other" in Pope's Designation)

IV. Items Designated that Have Unclear Origins, Were Not Presented Below, and/or Are Irrelevant

The following items should be stricken from the designation of matter because they are not clearly identified, were not presented below, and/or are not relevant to the appeal:

- Responses to Motion to Reconsider of Bauknight, including chronology (#1 under “Affidavits and Others” in Pope’s Designation) – This designation is unclear because it contains no date. A return to Bauknight’s Motion to Reconsider *in this appeal* was filed on February 25, 2014, but no chronology was attached to it.
- Letter of Robert L. Buchanan to Judge Early dated July 2013 (#6 under “Affidavits and Others” in Pope’s Designation) – The undersigned does not believe a letter from Buchanan was filed in this matter, but believes that the letter referenced in the designation was filed in Case No. 2010-CP-40-4900
- Accounting, Estate of James Brown dated May 4, 2013(#13 under “Affidavits and Others” in Pope’s Designation) – The undersigned does not believe the accounting was presented below or that it is relevant to this appeal.
- The Aspen Institute (sup. 2013). *The artist as philanthropist. Strengthening the next generation of artist-endowed foundations* (#17 under “Affidavits and Others” in Pope’s Designation) – This was not presented below and is irrelevant to this appeal.
- Letter of James Curtis dated June 2012 (#19 under “Affidavits and Others” in Pope’s Designation) – The undersigned is not familiar with this letter, does not believe it was presented below, and does not believe it is relevant to this appeal.
- Pope, A.J. and Smith, W.J. (2011). *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown “I Feel Good” Trust doesn’t...* Unpublished Manuscript (#20 under “Affidavits and Others” in Pope’s Designation) – This self-serving, unpublished manuscript written by Pope has no place in the Record on Appeal. It was not presented below and is irrelevant to this appeal.
- Amended Inventory and Appraisal, Estate of James Brown dated May 4, 2011 (#21 under “Affidavits and Others” in Pope’s Designation) – This appraisal may have been part of the record in Appellate Case No. 2009-142286; however, it was not presented below and is irrelevant to this appeal.
- Statement of Creditors’ Claim of Robert L. Buchanan, Jr. and Adele Pope, Ex. 5, 11, 12 (#23 under “Affidavits and Others” in Pope’s Designation) – Pope provides no date for this Statement and the undersigned is unsure what documents this refers to.

- Letter from David B. Bell to Robert L. Buchanan dated March 2009 (#24 under “Affidavits and Others” in Pope’s Designation) – The undersigned is unsure about the existence of this letter. It may have been part of the record in Appellate Case No. 2009-142286; however, it was not presented below and is irrelevant to this appeal.
- Notes of Robert L. Buchanan, Jr., dated January 31, 2009 (#25 under “Affidavits and Others” in Pope’s Designation) – The undersigned is unsure about the existence of these notes. They may have been part of the record in Appellate Case No. 2009-142286; however, they were not presented below and are irrelevant to this appeal.
- Summer, Sue. “Papa’s Got a Brand New Son” (#28 under “Affidavits and Others” in Pope’s Designation) – This article was not presented below and is irrelevant to this appeal.
- Last Will and Testament of James Brown, dated June 15, 1999 (#31 under “Affidavits and Others” in Pope’s Designation) – This will pre-dates the Will being probated and has never been filed below.
- James Brown Tape dated February 24, 1999 (#32 under “Affidavits and Others” in Pope’s Designation) – This tape was not presented below and is irrelevant to this appeal.

V. Conclusion

Of the 67 items designated by Pope, the 49 items identified above should be stricken. Bauknight asks this Court to strike those 49 items and instruct Pope not to include them in the Record on Appeal.

Respectfully submitted,



William W. Wilkins, SC Bar No. 6112
J. David Black, SC Bar No. 68499
Tanya A. Gee, SC Bar No. 70191
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Attorneys for Russell L. Bauknight, the
Personal Representative of the Estate of
James Brown and the Trustee of the James
Brown August 1, 2000 Irrevocable Trust
Agreement

July 8, 2014

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2127; 2008-CP-02-1556; 2008-CP-02-1557; 2008-CP-02-1758; 2008-CP-02-1759; 2008-
CP-02-1647; 2013-CP-02-1348

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OF WHOM:

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And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
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Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested
Persons.

In Re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d
August 1, 2000.....Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Motion to Strike Appellant's Designation of Matter** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 8th day of July, 2014, to the addresses shown below.

Adele J. Pope, Esquire 1228 Walnut Street Newberry, South Carolina 29108	Matthew D. Bodman, Esquire 1500 Calhoun Street Columbia, South Carolina 29201
Robert N. Rosen, Esquire S. Alan Medlin, Esquire 18 Broad Street, Suite 201 Charleston, South Carolina 29401	David B. Bell, Esquire Law Office of David B. Bell Post Office Box 1011 Augusta, Georgia 30903-1011
David G. Cannon Post Office Box 865 Barnwell, South Carolina 29812	Mr. Albert P. Shahid, Jr., Esquire 89 Broad Street Charleston, South Carolina 29401
Eugene C. Covington, Jr., Esquire Post Office Box 2343 Greenville, South Carolina 29602	



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Columbia, South Carolina

Tanya A. Gee
Special Counsel

July 8, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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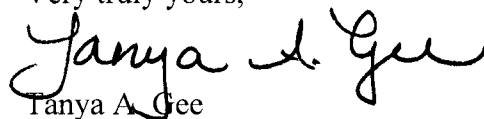
Re: Ex parte: Adele J. Pope, Appellant
In Re: The Estate of James Brown and The James Brown 2000
Irrevocable Trust u/a/d August 1, 2000, Respondents
APPELLATE CASE NO. 2013-001649

Dear Ms. Kitchings:

Please find enclosed an original and seven copies of Respondent Bauknight's Motion to Strike Appellant's Designation of Matter as well as a \$25 filing fee. Please return a received-stamped-copy to me via our courier. Also enclosed is a proof of service reflecting that counsel of record have been served with copies of the same.

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh

Very truly yours,


Tanya A. Gee

Enclosures

cc w/encl.: Adele J. Pope, Esquire
Matthew D. Bodman, Esquire
Robert N. Rosen, Esquire
David B. Bell, Esquire
David G. Cannon
Eugene C. Covington, Jr., Esquire
Albert P. Shahid, Jr., Esquire