

STATE OF SOUTH CAROLINA  
In the Supreme Court

**RECEIVED**

FEB 19 2015

APPEAL FROM NEWBERRY COUNTY  
Court of Common Pleas

**S.C. Supreme Court**

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2014-002222

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.

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**RESPONDENT’S MOTION TO REMAND FOR LEAVE  
FOR CIRCUIT COURT TO CONDUCT PROCEEDINGS**

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The respondent, Susan D. Summer, moves this Court for leave for the Circuit Court of Newberry County to rule on matters remaining for consideration under its Order of January 16, 2015. The appellant Attorney General filed a notice of appeal last week as to the circuit court order of January 16, 2015. It previously filed notices of appeal from other circuit court orders in this FOIA matter.

This case was brought under the Freedom of Information Act, SC Code Ann. §30-40-10, et seq. The January 16, 2015 Order Directing the Release of Documents Under FOIA (Exhibit A hereto) specifically provided as follows:

1. It lifted the stay;
2. It provided that the Attorney General produce to plaintiff all the documents listed on the privilege log designated as “Attachment G” within ten (10) days of the Order;
3. It directed the Attorney General to produce to plaintiff all the documents listed on the Attorney General’s privilege log designated as “Attachment I” within ten (10) days of the Order;
4. It provided that the plaintiff, after reviewing the documents produced, would have ten (10) days after receipt of same to file a motion to request additional documents; and,
5. It ruled that the plaintiff was the prevailing party and entitled to an award of attorneys’ fees and cost (after the conclusion of all FOIA appeals in this matter).

After the Order of January 16 was issued, the Attorney General on or about January 26 did produce the documents required. Thereafter, on January 27, an anonymous source provided Respondent Summer with the documents referred to as the Hynie “diary,” and she published and disseminated information about the Hynie diary early on January 30, 2015. Counsel for Hynie subpoenaed respondent’s records, including journalist’s notes, records, sources and telephone records. The Circuit Court of the Second Judicial Circuit granted a temporary restraining order against respondent on January 30, 2015. Thereafter, on February 2, 2015, the respondent filed a motion to quash the subpoena in this Honorable Court; she also filed a petition for writ of prohibition and a petition for writ of supersedeas, Just before the circuit court hearing which was scheduled in Aiken for the afternoon of February 2, the Chief Justice for this Honorable Court issued an order quashing the subpoena for Ms. Summer’s journalist notes, telephone records, and sources and staying the temporary restraining order pending consideration of the petitions by the full Court. This Honorable Court currently has jurisdiction over the matters relating to the petitions for writs of prohibition and supersedeas.

The circuit court order of January 16 provided a 10-day deadline for respondent to request more documents, and respondent's counsel contacted The Honorable Eugene C. Griffith, Jr., circuit judge, and requested a 10-day extension for respondent to request additional documents. The extension was granted, and it expired on February 16.

On Friday, February 13, 2015, the respondent was served with a notice of appeal by the Attorney General of the January 16 Order directing the release of documents under FOIA.

On February 16, 2015, the respondent prepared and emailed her motion for additional information; a copy of said motion is attached as Exhibit B hereto. The motion was emailed to the Court and counsel on February 16, but it could not be filed until February 17, because the courthouse was closed on February 16.

It is respondent's belief that the circuit court, without a remand from this Court, is unlikely to want to rule on the matters just filed in this case, notwithstanding the specifics of his Order of January 16, 2015, because the appellant Attorney General has appealed that Order.

For these reasons, the respondent requests and moves that this Honorable Court remand this case to the circuit court of Newberry County for Judge Griffith to make rulings (and to conduct any proceedings necessary in connection with said rulings) on respondent's February 16 motion for additional information under FOIA.

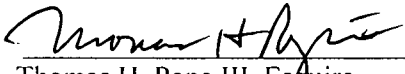
The respondent has no objection for the appeal to be stayed temporarily for Judge Griffith to make rulings on the current motion and has no objection to holding appellate deadlines in abeyance during that time period.

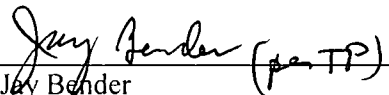
### **CONCLUSION**

For the reasons set forth herein, Judge Griffith has one final matter on which to rule in this case before his Order will be final; namely, the motion for additional information under FOIA which was timely filed on January 17, 2015, and is pending. Once Judge Griffith rules on that motion, the case can proceed on appeal.

Respondent requests that this Court remand this matter to the circuit court and grant leave for the circuit court to conduct proceedings and to make rulings on respondent's motion for the production of additional information, after which this Honorable Court will be informed of such rulings.

Respectfully submitted,

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Attorneys for Petitioner Susan D. Summer

February 19, 2015

# **EXHIBIT A**

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY  
IN THE COURT OF COMMON PLEAS  
Susan D. Summer

JUDGMENT IN A CIVIL CASE  
CASE NO. 2012 CP 36-00688  
Alan Wilson, Attorney General of SC

PLAINTIFF(S)

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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  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 :

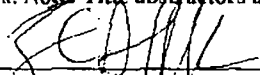
**INFORMATION FOR THE PUBLIC INDEX**

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

01/16/2015  
Date

FILED  
NEWBERRY COUNTY, SC  
2015 JAN 16 PM 2  
JAMES W. WILSON  
CLERK OF COURT

**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:**

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 COUNTY  
2015 JAN 16 PM 2:08  
JACQUE S. HORTON  
CLERK OF COURT

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<sup>1</sup>, 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

<sup>1</sup> 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.

1 SCJA

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

2 SED

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 Tobacoville 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

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<sup>2</sup>,” therefore, they should be produced as public, non-exempt documents.

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<sup>2</sup> 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.

**(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.<sup>3</sup>

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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- <sup>3</sup>
- (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

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

6 SCW

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*<sup>4</sup> 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.

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<sup>4</sup> See [www.nytimes.com/2014/12/14/us/downbeat-legacy-for-James-Brown-godfather-of-soul-a-will-in-deep-dispute](http://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."

7 SCW/jm

**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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SCAJ

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<sup>5</sup> 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.

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<sup>5</sup> 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 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, and it should have been produced pursuant to plaintiff's letter request many months before her suit was brought.

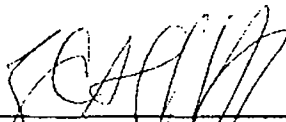
9  
rely

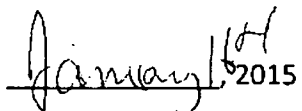
This Court finds and concludes that the plaintiff is entitled to attorneys' fees and costs under the statute, and this Court will hold in abeyance its ruling on the specific monetary amount of such fees and costs until all appeals relative to this case are concluded.

**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 same to file a motion 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 16, 2015

Newberry, SC

# **EXHIBIT B**

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 COUNTY  
2015 FEB 17 AM 11:05  
JACKIE S. BOWERS  
CLERK OF COURT

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**PLAINTIFF'S MOTION FOR ADDITIONAL INFORMATION**

**Background**

In the Order dated January 16, 2015, this Court directed the Attorney General's ("AG") office to release additional documents under the Freedom of Information Act ("FOIA"). Thereafter, the AG did produce the documents listed on the two privilege logs. One of the privilege logs contained documents relating to the gag order for "Hynie" diary. These documents were produced by the AG on January 26, 2015. Thereafter, documents were

anonymously produced to plaintiff via an unknown source on January 27, 2015, which documents appear to be and purport to be the Hynie diary.

The plaintiff, by and through her counsel, notified the Circuit Court of the Second Judicial Circuit on January 27, 2015, by email that these documents had been produced and that she would in fact publish and disseminate information about these diaries unless the Court entered an Order prohibiting her from doing so prior to Friday, January 30, 2015. No restraining order prohibiting her from doing so was issued prior to that date and, on January 30, 2015, Summer disseminated on her Facebook page portions of and comments about the Hynie diary documents she had received. Thereafter, on the same day the Circuit Court of the Second Judicial Circuit entered a Temporary Restraining Order prohibiting Mrs. Summer from publishing the diary documents and scheduled a hearing for Monday, February 2, 2015, for temporary and permanent injunctive relief against plaintiff.

Before that hearing was held, plaintiff filed with the Supreme Court on February 2, 2015, a Motion to Quash Subpoena issued against her by Hynie's attorney, as well as a Petition for Writ of Prohibition and a Petition for Writ of Supersedeas.

On February 2, 2015, Chief Justice Jean H. Toal for the Supreme Court of South Carolina issued an Order (attached hereto as Exhibit A) which quashed the subpoena issued to Mrs. Summer by Hynie's attorney and stayed the hearing on the Court's Temporary Restraining Order against Mrs. Summer subject to "consideration by the full Court." No hearing has been conducted yet on the pending writs of prohibition and supersedeas.

## **Current Motion**

### **a. Hynie diary documents**

This Court on January 16, 2015, granted leave to this plaintiff to request more information subject to what was revealed in the documents produced the AG pursuant to that Order. She has reviewed those documents and has seen the Hynie diary. This motion is to request that this Court direct the Attorney General to produce herein, under seal, the Hynie diary documents which the AG has possession of. The reason that this request is made is because references have been made in the various filings in the last three weeks to the effect that journalist Summer may have received documents which purport to be, but are not, the Hynie diaries – in other words, that they may be fakes or forgeries. Summer adamantly believes that, given the information in those diaries, this is not the case. However, because this matter is under review by the South Carolina Supreme Court, it is imperative that the Attorney General's copy of the diary be preserved to thwart and defend false claims against Summer about the authenticity of the copy she has of the Hynie diary. Further, the AG has publically stated to this Court and to the media that he has no objection to releasing the Hynie diary documents (but for the gag order which is under review by the Supreme Court).

### **b. The \$4.7 Million Appraisal And Related Valuation Documents**

The AG has asserted that his office does not have the \$4.7 Million appraisal for the James Brown Estate. The plaintiff wants a copy of same because she is, and many other journalists also are, perplexed that because Brown earned at least \$5 Million in the calendar year that he died (2006) and his stream of income from royalties was in excess of \$3 Million annually, it seems incredible that his estate could be valued so low. This is a public issue of

interest to all South Carolina, given that his will essentially left almost all of his assets to his charitable trust.

In fact the AG and Bauknight jointly filed with the Supreme Court on May 6, 2011, a motion to supplement the Record (attached as Exhibit B hereto) where he stated that "...Bauknight engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust." (Ex. B, p. 3). How could he make this statement without having "used" the appraisal? His filing indicated that he wanted to supplement the record, based on the appraisal, to show that the date of death value of the Brown music empire was only \$4.7 Million.

The provisions of FOIA require that a public body (such as the office of the AG) produce all documents which the AG has possession of or has "used". The AG asserted in Exhibit B that he had in fact relied on the \$4.7 Million Appraisal to try to supplement the record in Wilson v. Dallas, 743 S.E.2d 746 (2013), in which the Supreme Court voided the settlement. That being the case, even though the AG may not currently possess the appraisal, his agent (who is serving now as personal representative of the Estate) does have it and/or it must be inferred from Exhibit B that the AG "used" it. FOIA does not limit the production of public documents to those which the public body has possession of at the time of the FOIA request. See S.C. Code §30-4-20(a)(c) ("public record includes all...documentary materials...prepared, owned, used, in the possession of, or retained by a public body.")

Plaintiff's request is made pursuant to the statutory findings and purpose of FOIA set forth in §30-4-15 as follows:

"The General Assembly finds that... the provisions of this chapter must be construed so as to make it possible for citizens to learn and report fully the activities of their public officials at a minimum costs or delay to the person seeking access to public documents..."

Where the AG has relied on and vouched for the \$4.7 Million appraisal, he has "used" that document and it must be produced.


Plaintiff requests that this Court direct the AG to retrieve the \$4.7 Million Appraisal (and all associated back up documents) from his agent Bauknight and produce them to plaintiff within ten (10) days of Order this Court.

#### CONCLUSION

For the reasons set forth herein the plaintiff moves, as provided under this Court's Order of January 16, 2015, that this Court issue an Order directing the AG to:

- (a) produce to this Court under seal for safekeeping all documents referred to as the Hynie "diary" within ten (10) days of this Order and that this Court safekeep same until the Supreme Court has ruled on the pending writs referenced herein; and,
- (b) obtain immediately from the AG's agent Russell Bauknight the \$4.7 Million Appraisal (and related valuation documents) and then produce them to the plaintiff within ten (10) days this Order.

Respectfully submitted,

By:   
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By:   
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February 16, 2015

*Attorneys for Plaintiff Susan D. Summer*

# The Supreme Court of South Carolina

Ex Parte: Susan D. Summer, Petitioner,

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

Appellate Case No. 2015-000186

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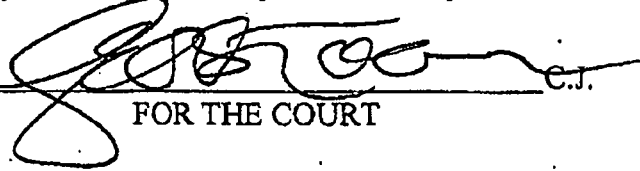
## ORDER

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On January 30, 2015, the circuit court issued a temporary restraining order prohibiting petitioner from disseminating or publishing the contents of any diary or document belonging to Tommie Rae Brown. A hearing is scheduled before the circuit court in this matter for 2:00 p.m. today, and petitioner has been served with a subpoena to produce certain documents at the hearing.

Petitioner asks this Court to quash the subpoena and for a writ of supersedeas to stay the temporary restraining order. In addition, petitioner requests a writ of prohibition to prohibit the circuit court from exercising jurisdiction over her for the purposes of restraining her publication of any portion of the diaries or documents.

The subpoena is hereby quashed as it requires petitioner to disclose information in violation of S.C. Code Ann. § 19-11-100 (2014), and the hearing is stayed pending consideration by the full Court of the petitions for writs of supersedeas and prohibition filed by petitioner. Petitioner's request for costs and attorneys' fees shall be addressed along with the requests for writs of supersedeas and prohibition.

  
C.J.  
FOR THE COURT

Columbia, South Carolina  
February 2, 2015

Exhibit A

---

cc:

Jerry Jay Bender, Esquire

Thomas H. Pope, III, Esquire

Robert N. Rosen, Esquire

**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 Pettitt; 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 Pettitt; 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.

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**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**

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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.<sup>1</sup> (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

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<sup>1</sup> 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.<sup>2</sup> Referring to the intellectual property—royalty interests, reversion rights, etc.—the IRS Audit revealed that, “[v]aluation of these interests was corrected to fair market value based

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<sup>2</sup> 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.<sup>3</sup> (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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<sup>3</sup> 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<sup>4</sup> 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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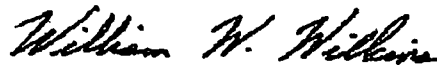
<sup>4</sup> Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80-120 Million. (R. pp. 2879-80).

Respectfully submitted,



---

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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*

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May 6, 2011

Columbia, South Carolina

**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 Pettitt; 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 Pettitt; 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.

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**PROOF OF SERVICE**

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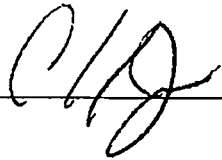
The undersigned certifies that a copy of **RESPONDENTS' MOTION TO SUPPLEMENT THE RECORD** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 6 day of May, 2011, to the address shown below.

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

Tressa T. H. Hayes, Esquire  
Post Office Box 7346  
Asheville, North Carolina 28802

May 6, 2011.

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A handwritten signature in black ink, appearing to be "C/H", is written over a horizontal line.

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

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.

**PROOF OF SERVICE**

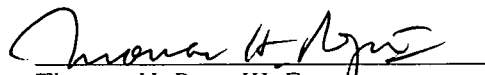
The undersigned hereby certifies he has served each of the following named individuals with a copy of the pleading indicated below via email and U.S. mail with postage in full prepaid on February 19, 2015:

**COUNSEL SERVED:**

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Mark V. Gende, Esquire  
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PO Box 12129  
Columbia, SC 29211  
Email: mvg@swblaw.com

**PLEADING SERVED:** Applicant for Intervention Russell L. Bauknight, as PR 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 SC, Defendant AND Susan D. Summer, Respondent v. Alan Wilson, in his capacity as Attorney General of SC, Appellant, and Applicant for Intervention Russell L. Bauknight, as PR of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust, Cross-Appellant - (**Appellate Case No. 2014-002222**) dated February 19, 2015.

  
Thomas H. Pope III, Esquire  
Pope & Hudgens, P.A.  
PO Box 190 – 1508 College Street  
Newberry, SC 29108

February 19, 2015