

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Richland County  
Court of Common Pleas

RECEIVED

The Honorable Doyet A. Early, III, Circuit Judge MAR 24 2017

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SC Court of Appeals

Appellate Case No. 2016-001727

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Adele J. Pope..... Appellant,

v.

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

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RECORD ON APPEAL  
Volume I of II (pp. 1 - 261)

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FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF RICHLAND  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-40-0350

Adele J. Pope

Alan Wilson, as Attorney General for South  
 Carolina, and James Brown Legacy Trust

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: .	Attorney for : <input type="checkbox"/> Plaintiff or <input type="checkbox"/> 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: Based on the written motion by the Plaintiff, the Motion to Alter, Amend and/or Vacate the June 14, 2016 Order granting the James Brown Legacy Trusts' Motion to Dismiss is hereby DENIED.

ORDER INFORMATION

This order  ends  does not end the case.  
 Additional Information for the Clerk : \_\_\_\_\_

**RECEIVED**  
 AUG 19 2016  
 SC Court of Appeals

INFORMATION FOR THE JUDGMENT 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.

**SCANNED**

000001

*M. E. ...*

Circuit Court Judge

0136

Judge Code

7-26-16

Date

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 *Aug*, 20*16* to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

*Jeanette W. ...*

Court Reporter:

SCANNED

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STATE OF SOUTH CAROLINA  
 COUNTY OF RICHLAND  
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

**RECEIVED**

CASE NO. 2012 CP-40-0350 AUG 19 2016

SC Court of Appeals

Adele J. Pope

Alan Wilson, as Attorney General for South Carolina, and James Brown Legacy Trust

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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

RICHLAND COUNTY  
 FILED  
 2016 AUG 10 AM 10:10  
 JEANETTE W. MORRIS  
 C. P. & S. S.

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: Based on the written motion by the Plaintiff, the Motion to Alter, Amend and/or Vacate the June 14, 2016 Order granting the Attorney General's Motion to Dismiss is hereby DENIED.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT 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 should be computed when the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstracts and research should refer to the official court order for judgment details.

*W. B. Early*

0136

7-22-16

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 01 day of August, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 01 day of August, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
*Jeanette J. ...*  
ATTORNEY(S) FOR THE DEFENDANT(S)  
\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**  
\_\_\_\_\_

**SCANNED**

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RECEIVED

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS AUG 19 2016  
FOR THE FIFTH JUDICIAL CIRCUIT

SC Court of Appeals

Adele J. Pope, )  
Plaintiff, )

Case No. 12-CP-40-350

v. )

ORDER GRANTING JAMES  
BROWN LEGACY TRUST'S  
MOTION TO DISMISS

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

Defendants. )

2016 JUN 20 PM 2:13  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter comes before the Court on the motion of Defendant James Brown Legacy Trust ("the Legacy Trust") for an order dismissing Plaintiff's complaint. The Plaintiff's complaint sought a declaratory judgment that Legacy Trust was a public body that was required to disclose certain documents under the Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. Having carefully considered all of the parties' arguments, the Court hereby GRANTS the Legacy Trust's Motion to Dismiss.

The Legacy Trust moves for an order dismissing this case pursuant to South Carolina Rule of Civil Procedure 12(b)(6) for failure to state facts sufficient to constitute a cause of action. The Legacy Trust asserts three grounds in support of its motion to dismiss: (1) the Legacy Trust is not subject to the Freedom of Information Act ("FOIA"); (2) the Legacy Trust no longer exists following *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and (3) the controversy is moot because Plaintiff is in possession of the documents requested by FOIA from the Legacy Trust.

As to its first ground, the Legacy Trust argues that it is not subject to the FOIA because it was created as a private trust and it is not a public body within the meaning of the act. In order

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for an entity to be subject to the FOIA, it must fall within the definition of "public body." *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 400, 401 S.E.2d 161, 163 (1991). The FOIA's definition of "public body" does not explicitly cover a private trust. The definition does, however, extend to "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds." S.C. Code Ann. § 30-4-20(a) (2007). The Plaintiff argues that the Legacy Trust is subject to FOIA under this exception. *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991).

However, our Supreme Court has ruled that "the application of the FOIA beyond traditional governmental entities is limited to statutorily defined public bodies, which are only those entities supported by public funds." *Disabato v. S.C. Ass'n of School Adm'rs*, 404 S.C. 433, 454-55, 746 S.E.2d 329, 340 (2013) (citing *Weston*, 303 S.C. at 403, 401 S.E.2d at 164). As the Supreme Court has held, a private entity is only subject to the FOIA where it "receive[s] government funds *en masse*" or it is "generally supported by public funds." *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341 (emphasis added).

Here, Plaintiff claims that some level of public funding has gone toward the creation of the Legacy Trust because of the Attorney General's involvement in the settlement agreement creating the Legacy Trust. Plaintiff has failed to allege facts necessary to quantify this alleged support and has failed to allege any facts showing how the Legacy Trust was generally supported by public funds, created to expend public funds, or has received government funds *en masse*. Absent these factual allegations, Plaintiff's complaint is insufficient to hold the Legacy Trust subject to FOIA, and dismissal on this first ground is warranted.

Second, the Legacy Trust argues that it no longer exists following the South Carolina Supreme Court's holding in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), and, as such,

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it cannot be subject to the FOIA. The Court agrees. The operation of the Legacy Trust and the entire compromise agreement creating the Legacy Trust were stayed pending the Supreme Court's review of the compromise agreement. In *Wilson v. Dallas*, the Supreme Court invalidated the compromise agreement that created the Legacy Trust. *Id.* at 450, 743 S.E.2d at 767-78. This Court finds that the Supreme Court's ruling that the compromise agreement could not replace James Brown's existing trusts by creating new trusts explicitly invalidated the existence of the Legacy Trust. *Wilson v. Dallas*, 403 S.C. at 446, 743 S.E.2d at 765. As such, the Legacy Trust does not exist and cannot be subject to FOIA.

Finally, the Legacy Trust argues that the controversy is moot because Plaintiff is in possession of the documents requested from the Legacy Trust. When the documents subject to FOIA are produced, no justiciable controversy remains. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Attorney General has stated in documents submitted to this Court that he has provided the only two documents that would be responsive to Plaintiff's FOIA request. Plaintiff does not contend otherwise. As such, the Court finds that no justiciable controversy remains and, accordingly, this case should be dismissed as moot.

The Court's dismissal of this action rests independently on each of Legacy Trust's three grounds for dismissal. Each ground is sufficient standing alone to grant Legacy Trust's motion to dismiss.

**IT IS SO ORDERED.**

  
DOYET A. EARLY, III  
Circuit Judge, Second Judicial Circuit

Aiken, South Carolina  
June ~~1~~ 2016.

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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 and )  
James Brown Legacy Trust, by )  
Russell L. Bauknight, its Trustee, )

Defendants. )  

---

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

ORDER

RECEIVED

AUG 19 2016

SC Court of Appeals

This matter has come before this Court pursuant to various motions of the parties including motions to dismiss and for judgment on the pleadings of the Defendant Attorney General and a motion for summary judgment of the Plaintiff. After carefully reviewing the filings of the parties and considering the arguments of counsel concerning the motions in Aiken on May 17, 2016, this Court grants the Attorney General's Motion to Dismiss.

The Plaintiff has brought this action under the Freedom of Information Act, S.C. Code Ann. §30-4-10, et seq. seeking the following:

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.

*ME*  
*del*

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These documents are potentially discoverable documents under pending litigation in Richland /Aiken counties and will be governed by the South Carolina Rules of Civil Procedure. FOIA is not a tool that may be used to bypass civil discovery in a pending case. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lomlnack v. Myers*, 2002-CP-32-1890, October 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." (copy on file in this case). Although the FOIA at issue in Judge Westbrook's case related to a post conviction case, the reasoning applies to civil cases such as the pending litigation in Richland and Aiken.

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 limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). The Supreme Court has also 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, 153 (1989)<sup>1</sup>; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 409 S.E.2d at 409. Although *Robinson* involved criminal proceedings, our Supreme Court's recitation of the federal

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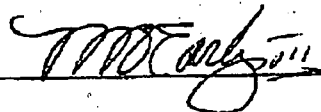
<sup>1</sup> "[A] court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108." *Id.*

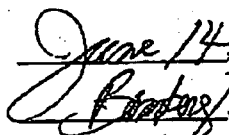
rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40(4) for "[m]atters specifically exempted from disclosure by statute or law." (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are "law." *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)<sup>2</sup>; *United States v. Hvass*, 355 U.S. 570, 575 (1958)<sup>3</sup>; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).<sup>4</sup>

Because the above documents may be sought through discovery in the pending litigation and for the reasons set forth above, IT IS ORDERED that this case be dismissed.

AND IT IS SO ORDERED.

  
DOYET A. EARLY, III  
PRESIDING JUDGE

  
June 14, 2016  
South Carolina

<sup>2</sup> "[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights . . .," *Id.*

<sup>3</sup> "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base . . ." *Id.*

<sup>4</sup> "[E]xception [under Ohio discovery statute] for other 'state law' may include procedural court rules, and does include [Ohio] Crim.R. 6(E)." *Id.*

# The Supreme Court of South Carolina

Russell Bauknight, et al.

v.

Plaintiffs,

Adele J. Pope, et al.,

Defendants.

Richland County  
2010-CP-40-04900

Adele J. Pope,

v.

Plaintiff,

Alan Wilson, et al.,

Defendants.

Richland County  
2012-CP-40-00350

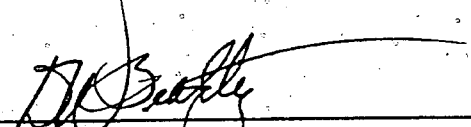
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## ORDER

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IT IS ORDERED that the Honorable Doyet A. Early, III be vested with exclusive jurisdiction to hear and dispose of the above cases. Judge Early shall decide all matters pertaining to these cases, and pursuant to this assignment shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the Fifth Judicial Circuit while presiding over these cases.

  
\_\_\_\_\_  
Donald W. Beatty  
Acting Chief Justice

March 24, 2016  
Columbia, South Carolina

000012

STATE OF SOUTH CAROLINA  
 COUNTY OF NEWBERRY  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2011CP3600364

Adele J Pope Attorney General Of South Carolina  SCANNED	Alan Attorney General Wilson Russell L. Trustee Bauknight James Brown Legacy Trust Attorney General Of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: \_\_\_\_\_ Attorney for:  Plaintiff  Defendant  
 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.

FILED  
 NEWBERRY COUNTY  
 JAN 11 P 4:39  
 JONIE S. BOWERS  
 CLERK OF COURT

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:

*Venue transferred to Richland County.*

**RECEIVED**

AUG 19 2016

SC Court of Appeals

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk:

000013



STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

Adele J. Pope,

Plaintiff,

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 THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36- 364

SUMMONS


JACKIE S. BOWERS  
CLERK OF COURT

2011 AUG -3 P 5:07

FILED  
NEWBERRY COUNTY

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

  
Adam T. Silvernall  
Law Office of Adam T. Silvernall, LLC  
1218 Taylor Street  
Post Office Box 1898  
Columbia, South Carolina 29202-1898  
Tel: (803) 779-1770  
Fax: (803) 403-8092  
[adam@silvernalllawfirm.com](mailto:adam@silvernalllawfirm.com)

August 3, 2011

Attorney for Plaintiff Adele J. Pope

1

000015

STATE OF SOUTH CAROLINA  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS  
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 L. Bauknight,  
its Trustee  
Defendants.

COMPLAINT

JACKIE S. BOWERS  
CLERK OF COURT

2011 AUG -3 P 5:07

FILED  
NEWBERRY COUNTY

Plaintiff would respectfully show unto the Court:

**FOR A FIRST CAUSE OF ACTION  
(Disclosure of Documents Under FOIA)**

**Parties and Jurisdiction**

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant Alan Wilson is the Attorney General of South Carolina ("AG Wilson"), and is successor in office to Henry D. McMaster ("AG McMaster").
3. Defendant James Brown Legacy Trust ("Legacy Trust") is, on information and belief, a public body under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. ("FOIA"), with Russell L. Bauknight as its current trustee. The Legacy Trust is under the continuing and direct control of AG Wilson through the AG's unfettered right at any time and from time to time to remove and replace the trustee of the Legacy Trust with such person as AG Wilson shall select, with all trustees to serve at the AG's pleasure.

4. Contrary to the suggestion in its name, the Legacy Trust was not created by James Brown, and was never part of his estate plan. The Legacy Trust was created in late 2008 or early 2009 by AG McMaster, in his official capacity, and others, to receive funds AG McMaster redirected from Brown's estate plan to the new trust he created. Thus AG Wilson anticipates receiving about \$85 Million (if Plaintiff's valuation is correct) or about \$4.7 Million (if Bauknight is correct) – and any recoveries the State receives from Plaintiff in Case 4900, which the Legacy Trust will then manage and distribute both to a charitable trust created by AG McMaster and to private citizens. See Order of the Honorable Doyet A. Early, III, dtd. 5/26/09, Case 2008-CP-02-1647, on appeal to the S.C. Supreme Court.

5. Defendants are subject to the jurisdiction and venue of this Court pursuant to S.C. Code Ann. §30-4-20(a) and §30-4-100, and may be served with summons, process and copy of this Complaint at their respective addresses listed on Exhibits A and B attached hereto.

#### **Facts and FOIA Request**

6. On October 2, 2009 AG McMaster issued an announcement related to the use by his office and the State of private, contingency-fee attorneys known as "special counsel." A copy of that statement, with notes, is attached to this Complaint as Exhibit C.

7. On May 19, 2010 private, contingency-fee counsel Kenneth B. Wingate of Sweeney, Wingate & Barrow, PC (the "Wingate Firm"), as sole counsel for AG McMaster, the Legacy Trust and more than 10 private plaintiffs, filed suit against Plaintiff and Robert L. Buchanan, Jr. in Civil Action No. 2010-CP-40-4900 ("Case

4900").

8. The Case 4900 complaint, naming AG McMaster as a beneficiary, includes the following plaintiffs:

- a. Russell L. Bauknight as trustee of the James Brown Legacy Trust;
- b. Bauknight on behalf of McMaster in his capacity as Attorney General of the State of South Carolina; and
- c. McMaster in his capacity as AG of the State of South Carolina.

9. AG McMaster and Bauknight did not attach or provide a signed copy of the Legacy Trust, although AG and Bauknight as his agent in Case 4900 assert Plaintiff caused tens of millions of dollars of damage to the Legacy Trust.

10. AG McMaster and the Legacy Trust, among other false allegations, assert that Plaintiff's and Buchanan's approximately \$85 Million [\$100 Million less the debt to TIAA-CREF] valuation of James Brown's assets was incorrect and improper. They asserted Plaintiff intentionally overstated Brown's assets on the estate tax return for the improper purpose of obtaining a large commission.

11. As described in Exhibit D, an affidavit of Plaintiff on file in Case 4900, AG McMaster also seeks money damages because Plaintiff declined to sign a document agreeing not to criticize McMaster for destroying James Brown's estate plan by creating the Legacy Trust.

12. If true, AG McMaster's false allegations against Plaintiff could subject Plaintiff to both civil and criminal penalties and destroy her career as an attorney.

13. On or about January 12, 2011 AG Wilson replaced AG McMaster, gaining by virtue of his office control over the Legacy Trust, including the right to remove and

replace the trustee at will.

14. On May 4, 2011, Bauknight filed sworn documents asserting Brown's worldwide music empire was worth less than \$4.7 Million when he died on December 25, 2006, making it virtually impossible for Plaintiff and Buchanan to have done tens of millions of dollars of damage to Brown's empire between November 2007 and May 2009.

15. Bauknight's purported \$4.7 Million valuation sharply conflicts with a securities prospectus issued by Bauknight's Case 4900 Co-Plaintiff (through Pinnacle) to raise \$200 Million to acquire the James Brown worldwide music empire at the same time – about 40 times Bauknight's purported valuation. The prospectus is part of Exhibit D.

16. Since May 4, 2011, AG Wilson, through an assistant AG, and Bauknight offered Bauknight's \$4.7 Million valuation of Brown's worldwide music empire as a supplement to the record in a pending James Brown case appeal. The motion to supplement was denied.

17. On information and belief, the actions of both AGs and AG Wilson's assistant described above were taken under color of State law and in an official capacity, and were or should have been consistent with the public interest and ordinary customs and procedures of the AG's office. Likewise, the actions of Bauknight speaking on behalf of the AGs since May 19, 2010 should have met the same standard.

18. On June 30, 2011, Plaintiff sent to AG Wilson and the Legacy Trust separate requests under FOIA for public records related to the Legacy Trust. True

copies of her requests are attached hereto as Exhibits A and B. Plaintiff requested copies of:

The Final and all drafts, signed and unsigned,  
of the James Brown Legacy Trust

19. The request to AG Wilson, in addition, sought:

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 the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

20. A copy of both requests was also delivered to the Wingate Firm which, on information and belief, as counsel for both the AG and the Legacy Trust, has a duty to comply with FOIA. See AG's standard Retention Agreement for Special Counsel.

21. Substantially more than fifteen days, excluding Saturdays, Sundays and holidays have elapsed and Plaintiff has received no response on behalf of AG Wilson.

22. As described in Exhibit D, the Wingate Firm has refused to release the requested documents and thousands of other already-public documents for nearly 10 months. AG McMaster's Retention Agreement for other Special Counsel – Wingate has refused to disclose his Retention Agreement – requires special counsel to comply with FOIA.

23. On July 16, 2011 Plaintiff received from attorney J. David Black, Esquire, a response, a copy of which is attached hereto as Exhibit E, denying the request for a copy of the Legacy Trust and threatening Plaintiff as follows:

In the event that you continue to file unnecessary. . . FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process and sanctions.

24. On information and belief, Plaintiff is entitled to review requested documents both in the hands of the AG Wilson and in the hands of the Legacy Trust in accordance with reasonable rules concerning the time and place of access, and no requested record is specifically excluded from disclosure under FOIA.

25. Attorney Black's response is in direct contrast to AG Wilson's position in the *Public Official's Guide to Compliance with South Carolina's Freedom of Information Act* in which AG Wilson states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information.

When in doubt, release the document. (p. 1)

26. On information and belief, the actions of the Legacy Trust, through Black, wilfully violate Plaintiff's right to obtain the requested documents and are an arbitrary and wrongful anticipatory interference of a person appointed and controlled by the AG with her right, and the right of other members of the public, to obtain records from both the AG and the Legacy Trust regarding the AG's oversight of the Legacy Trust which must be made available for inspection and copying.

27. Pursuant to FOIA, S.C. Code Ann. §30-4-10 et seq., any person has a right to inspect and copy any public record of a public body.

28. On information and belief, the AG's right of absolute control of the Legacy Trust, along with the support it is provided by the AG's office and the funds the AG's office and Legacy Trust expects to receive and control, including from the State's suit against Plaintiff in Case 4900, make it a public body under §30-4-20. See, for example, Opinions of Henry McMaster, AG, dtd. May 19, 2006 (in response to Merrill/Rutherford)

and December 28, 2006 (in response to McConnell)

29. Plaintiff, a South Carolina citizen faced with threats on behalf of the Legacy Trust and no response of AG Wilson has no adequate remedy at law, and requires an injunction to prevent interference with her rights, and those of other citizens, to these public records.

30. On information and belief, it was willful and reckless for the AG's appointee to assert that attorney-client privilege or work product privilege protects the AG or the Legacy Trust from allowing Plaintiff to inspect and copy the requested documents which create the vehicle used by AG McMaster and Bauknight to pursue collection of tens of millions of dollars from Plaintiff and which documents have been used as an authorization for Bauknight to act on behalf of the State.

31. Based upon the facts set forth above, this Court should enter an order declaring that the requested records are public records and should be made available to the public and Defendant by both AG Wilson and the Legacy Trust, as well as by all special counsel, for inspection and copying as provided for by FOIA.

**FOR A SECOND CAUSE OF ACTION  
(Declaratory Judgment that Legacy Trust is a Public Body under FOIA )**

32. The allegations of paragraphs 1 through 31 are incorporated by reference as if fully and specifically set forth herein.

33. In addition, based on the facts set forth above, and other factors set out in the Opinion of AG McMaster dtd. May 19, 2006, including but not limited to its creation and control by the AG and its being supported in whole or in part by public funds, on

information and belief, the Court should declare the Legacy Trust a Public Body as defined in S.C. Code Ann. § 30-4-20(a), with all obligations under FOIA as set out therein.

**FOR A THIRD CAUSE OF ACTION  
(Attorneys' Fees Under S.C. Code Ann. § 30-4-100(b))**

34. The allegations of paragraphs 1 through 33 are incorporated by reference as if fully and specifically set forth herein.

35. Plaintiff is informed and believes that if she prevails in this case, in whole or in part, she should be entitled to reasonable legal fees and costs of litigation pursuant to S. C. Code Ann. § 30-4-100(b).

36. On information and belief, the Court should enter an order awarding Plaintiff her legal fees and other litigation expenses incurred in this case pursuant to S. C. Code Ann. § 30-4-100(b).

37. Based upon the facts set out above, this Court should consider punitive measures to stop the threats of the AG's appointee, which are intended to chill and impair the public's right to public information.

WHEREFORE, Plaintiff respectfully prays to this Court for the following:

- a. That this Court issue an order declaring that the above-described documents are public records under South Carolina law and that such records should be made available for inspection and copying to the Plaintiff by both Defendants as provided by law;
- b. That, in addition, this Court should declare that The James Brown Legacy Trust is a public body subject to all of the obligations of a public body under FOIA;
- c. That this Court should compel Defendant AG Wilson to perform his official duty and the Legacy Trust to comply with FOIA by permitting Plaintiff to inspect and copy the above-described public records as provided by law,

and enjoining them from interfering with such inspection and copying;

- d. That this Court order Defendants to pay the Plaintiff her reasonable attorney's fees and other litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. § 30-4-100.
- e. That the AG should direct the Wingate Firm and all special counsel to comply with their FOIA duties with respect to the Legacy Trust.
- f. That this Court set at the earliest possible time a hearing on the matters set forth herein.
- g. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,



Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
Post Office Box 1898  
1218 Taylor Street  
Columbia, South Carolina 29202-1898  
Tel: 803/779-1770  
Fax: 803/403-8092  
Email: [adam@silvernaillawfirm.com](mailto:adam@silvernaillawfirm.com)

August 3, 2011

Attorney for Plaintiff

FILED  
NEWBERRY COUNTY  
2011 AUG -3 P 5:07  
JACKIE S. BOWERS  
CLERK OF COURT

# EXHIBIT - A

000025

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  
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 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.

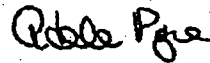
I would like to receive copies of the following documents:

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.

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

000026

FILED  
NEWBERRY COUNTY

2011 AUG -3 P 5:08

JACKIE S. BOWERS  
CLERK OF COURT

# EXHIBIT - B

000027

1228 Walnut Street  
Newberry, South Carolina 29108

June 30, 2011

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

FILED  
NEWBERRY COUNTY  
2011 AUG - 31 P 5: 08  
JACKIE S. BOWERS  
CLERK OF COURT

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

000028

FILED  
NEWBERRY COUNTY

2011 AUG -3 P 5:08

JACKIE S. BOWERS  
CLERK OF COURT

# EXHIBIT - C

000029

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

**STATEMENT FROM ATTORNEY GENERAL HENRY McMASTER  
ON CAMPAIGN CONTRIBUTIONS BY SPECIAL COUNSEL**

October 2, 2009

**FACTUAL NOTE:**

In a major fraud case against drug giant Eli Lilly, the company recently made an effort in court to disqualify the attorneys Attorney General Henry McMaster appointed to serve as special counsel to the State of South Carolina, assisting his own attorneys. In a motion to the court, Eli Lilly's attorneys claimed it was illegal for the lawyers chosen to serve as special counsel to have subsequently made contributions to the attorney general's campaigns and therefore should be disqualified from representing the State.

The judge rejected the motion and ruled that the contributions were legal and proper. In fact, attorneys on both sides of the case had contributed to the attorney general's campaigns. Further, no public funds whatsoever were or will be used to compensate the attorneys.

**During Attorney General McMaster's two terms in office, he has brought many lawsuits for the State. In several, due to their size, complexity and state government's budget constraints, he has appointed outside attorneys to serve as "special counsel" and to work with his attorneys. These were all contingency cases, meaning the special counsel involved receive no compensation unless they win the case. If special counsel loses, they are paid nothing. If they win, the corporate defendant pays their fees and expenses. Win or lose, no tax funds are used to pay them. This is a wise economic strategy for the State, which is able to recover its damages from the defendant at no cost to the taxpayers in a meritorious case it could not otherwise have been able to bring. Since January 2003, the attorney general has appointed twenty-one (21) special counsel in six cases, one of which (Natural Resource Damage) was terminated in 2008 without any action taken.**

**Of these 21 special counsel appointments over the past seven years, only five (5), including their firms, subsequently made donations to General McMaster's campaigns, totaling \$32,500.**

A statement from General McMaster follows:

"As the judge in the Eli Lilly case confirmed in a ruling last week, the contributions my two campaigns for attorney general received from attorneys who serve as special counsel to the State are legal and proper.

However, these perfectly legal donations should not be allowed to create a distraction from the critically important issues our State faces now or in the future. I believe the best interests of the State will be served by eliminating the issue altogether. Otherwise, other defendants may be tempted to repeat these baseless allegations as a delaying

tactic in future cases involving special counsel. Further, when it comes to the issue of ethics in government, appearances matter as much as the law. It is important to avoid even the slightest possible appearance of any impropriety.

For all those reasons, I am today returning the \$32,500 in donations special counsel attorneys, or their firms, have made to my campaigns for attorney general. And I will decline future contributions from my office's special counsel attorneys."

**A LIST OF SPECIAL COUNSEL DONORS AND AMOUNTS TO BE RETURNED IS BELOW:**

J. Preston Strom, Jr. - \$3,500 - 9-30-08  
Strom Law Firm - \$3,500 - 9-30-08  
Columbia SC  
(Appointment signed 11-22-05)

J. Stephen Schmutz - 9-30-07 - \$3500  
Schmutz and Schmutz - 9-30-07 - \$3500  
Charleston SC  
(Appointment signed 11-28-05)

William E. Hopkins Jr. - 12-31-08 - \$1,500  
Hopkins and Campbell LLP - 8-11-08 - \$3,500  
Columbia SC  
(Appointment signed 1-22-08)

John Belton White, Jr. - 3-31-09 - \$1,500, 11-13-07 - \$2,000  
Harrison, White, Smith and Coggins 7-5-07 - \$3,500  
Spartanburg SC  
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

John S. Simmons - 9-30-08 - \$3,000  
Law Offices of John S Simmons - 6-30-07 - \$3,500  
Columbia SC  
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

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000031

FILED  
NEWBERRY COUNTY

2011 AUG -3 P 5:08

JACKIE S. BOWERS  
CLERK OF COURT

# EXHIBIT - D

000032

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

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

Plaintiffs.

and

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

v.

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

) IN THE CIRCUIT COURT

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

) Affidavit of Adele J. Pope  
) Supporting Production of Legacy Trust,  
) Fee Contract with State/AG  
) and Related Documents prior  
) Hearing on Motion for  
) Injunctions

JACKIE S. BOWERS  
CLERK OF COURT

2011 AUG -3 P 5:08

NEWBERRY COUNTY  
FILED

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

2011 AUG -2 PM 1:03

RICHLAND COUNTY  
FILED

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly  
sworn deposes and says:

1. On May 19, 2010 Kenneth B. Wingate and his firm (collectively "Wingate")  
filed this suit against Robert L. Buchanan, Jr. ("Bob") and me seeking tens of millions of  
dollars in tort damages for then-Attorney General Henry D. McMaster ("AG McMaster"  
or the "State") and about 15 private individuals ("Private Plaintiffs").

2. I ask the Court to require Wingate and Plaintiffs, before the hearing on my  
motion to enjoin them from acting for the AG/State, to produce signed copies of the  
originals and any amendments to the following documents:

- a. Wingate's Retention Agreement(s) with the AG/Plaintiffs;

<sup>1</sup> The Firm name is Sweeney, Wingate and Barrow, P.C.

- b. The James Brown Legacy Trust ("Legacy Trust")<sup>2</sup>;
- c. The AG's authorization for Bauknight to assert he speaks on behalf of the AG.

3. Serving simultaneously as sole counsel for Private Plaintiffs<sup>3</sup> and the AG, Wingate named in the caption of the Complaint as parties:

- a. RUSSELL L. BAUKNIGHT... on behalf of [AG McMaster];
- b. BAUKNIGHT.. as Trustee of the James Brown Legacy Trust; and
- c. AG McMaster.

4. For 9 months Wingate and Bauknight have refused to produce the requested documents either through discovery or, more recently, under the S. C. Freedom of Information Act ("FOIA")

5. I first learned of Wingate's involvement in April 2010 when Plaintiff Tommie Rae Brown's agent advised that if Bob and I did not drop a pending James Brown appeal AG Sonny Jones<sup>4</sup> would to sue us through contingency-fee counsel Wingate.<sup>5</sup>

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<sup>2</sup> The Legacy Trust, although bearing Brown's name, was not created by James Brown or part of his estate plan. It was created by AG McMaster and Bauknight in either late 2008 or 2009.

<sup>3</sup> Private Plaintiffs include:

- a. 5 of the 7 grandchildren/beneficiaries of a \$285,000 education fund
- b. 6 adults Brown gave personal effects under the Will but specifically excluded from his \$85 Million worldwide music empire;and
- c. 3 other persons Brown specifically excluded from both the Will and 2000 Trust.

<sup>4</sup> While we were PR/Trustees C Havird ("Sonny") Jones, acting for AG McMaster, tried to force Bob and me to use AG McMaster's Litigation Retention Agreement in hiring attorneys AG McMaster selected. By Order dated Jan.8, 2008, the Court declined his request.[See Tr., Hg. 12/21/07, Case 122 ]

<sup>5</sup> The appeal is in Case 2008-CP-02-1647 ("Case 1647"). In that appeal, Bob and I oppose a settlement which will take \$50 Million from Brown's 2000 Trust, dedicated to educate 7 grandchildren and needy and deserving students, and give it to 6 of Brown's more than a dozen claimed heirs, all of whom Brown disinherited from his worldwide music empire.

6. I am informed and believe that a copy of the AG's Retention Agreement will help explain Tommie Rae's threat, and may shed light on whether a \$1,000 contribution to AG McMaster's political campaign by a Wingate firm principal, Scott Barrow just after this suit was filed was improper.

7. Recently the Augusta Chronicle reported about a Litigation Retention Agreement AG Wilson approved which was made public, and discussed a \$1,052 political contribution made long before the engagement – not immediately after, as here. [See "SC Treasurer's Friend Gets up to \$3 million in State Work", 7/24/11]

8. I am informed and believe the Retention Agreement will show whether AG McMaster, who acted under color of state law and in his official capacity, and whose actions should have been consistent with the public interest, was in fact acting to punish Bob and me for conducting a proper appeal; not hiring lawyers he tried to force us to hire; and/or not signing a document preventing us from criticizing AG McMaster's destruction of James Brown's estate plan.<sup>6</sup>

9. The State/AG McMaster sued me for tens of millions of dollars – many times my personal net worth. AG McMaster, through Wingate, has made false allegations against me which, if true, would destroy my career as an attorney and expose me to both civil and criminal charges, including those of the IRS and SCDOR with whom I

---

<sup>6</sup> As an attorney advising creators of private foundations, I have a duty to caution clients in S.C., or intending to transfer a private foundation here, that AG Master claims the authority to take over any estate or private foundation involved in a formal testacy case; rewrite the Settlor's estate plan to McMaster's liking; and replace the Settlor's properly-serving trustees with AG McMaster's appointees. What AG McMaster and his staff did to destroy James Brown's estate plan is described in "Private Foundation, Copyright Heirs and Musical Millionaires: Why The James Brown 'I Feel Good' Trust doesn't...", filed in this case [Smith & Pope, Dr., Apr.2011] I believe AG-McMaster's suit violates my First Amendment rights.

have worked for more than 30 years on behalf of clients.

10. The requested documents will demonstrate how the AG proposes to share funds he hopes to collect from me and who will pay if Bob and I are successful in the counterclaims (on which Plaintiffs are now in default).

11. The requested documents should also answer the following questions:

- a. Did either the Legacy Trust or a separate document give Bauknight legal authority to assert he speaks for AG McMaster?
- b. If not, is Bauknight's assertion that he speaks on behalf of the AG improper?
- c. If so, is either the State or McMaster liable for Bauknight's actions, including the default and any counterclaim judgment?
- d. Can Bauknight continue to speak on behalf of the AG/State after filing sworn documents with the Court and IRS asserting Brown's worldwide music empire was worth less than \$4.7 Million<sup>7</sup> at the same time he knew Brown's Royalties for 2010 were about \$5.4 Million and Brown earned \$4 - \$6 Million each year from 2003 - 2006?

12. I am informed and believe that the requested documents and facts revealed since the filing of the complaint will demonstrate that Wingate's and Bauknight's commitment to Private Plaintiffs prevents them from serving the AG/State in this suit.

13. I am informed and believe that the Retention Agreement should provide what happens when – as here – it becomes clear that Defendants are not at fault and

---

<sup>7</sup> Bauknight revealed on May 4, 2011 - 4 years and 4 months after Brown died -- that he had used a valuation of \$4.7 Million for Brown's worldwide music empire and \$12 Million claim against former PR/Trustees Dallas and Cannon to obtain an IRS closing letter. Two months earlier, on February 11, 2011 Bauknight reported in a sworn accounting that Brown's Royalty receipts for 2010 were approximately \$5.4 Million. [Acctg. Aiken Cty, 2/11/11]

Brown's \$4-\$6 million annual earnings for 2003 -2006 from his worldwide music empire are fully documented in exhibits and filings in Cases 122 and 322.

the AG's Private Co-Plaintiffs do not represent the public interest and/or are, or may become, subjects of investigations by the AG or other Federal or State Agencies.

14. Just a few of the facts now known are:

- a. 8 or more Private Plaintiffs are not residents of South Carolina.
- b. Plaintiff (Georgia resident) Venisha was jailed in South Carolina on felony charges during the relevant period.
- c. There is substantial evidence that some or all of Private Plaintiffs Bauknight<sup>8</sup>, Yamma<sup>9</sup>, Terry<sup>10</sup> and Tommie Rae<sup>11</sup>, and their agents, are actively involved in the manipulation of the value of James Brown's securities and other assets for improper purposes.
- d. Private Plaintiff (Yamma) has valued James Brown's assets at 30 times (\$200 Million) Private Plaintiff Bauknight's \$6.5 Million value.
- e. Plaintiff Bauknight represented to the IRS that Brown's worldwide music empire and \$12+ Million claim against former PR/Trustees Dallas and Cannon was worth less than \$4.7 Million at his death.
- f. 1 minor Plaintiff is a possible witness (not a suspect) in an

---

<sup>8</sup> Bauknight said in January 2009 he didn't know the value, but had heard Brown's assets were worth \$80 Million.

<sup>9</sup> After being part of a prospectus to raise \$200 Million to acquire the James Brown assets, Yamma apparently now joins Bauknight in asserting those same assets were worth only \$6.5 Million. [See Prospectus, Exhibit A] 3 witnesses on Wingate's Witness List [Exhibit B] are also named in the \$200 Million Prospectus (Joel Katz and Alvin & Calvin Waters)

<sup>10</sup> Plaintiff Terry was part of 2 \$90 Million - \$102 Million offers to buy Brown's assets. His son Forlando is a 39% owner of the purchase entity. Terry now apparently claims a right to buy Brown's worldwide music empire at Bauknight's new \$4.7 Million.

<sup>11</sup> In February 2007 Tommie Rae, through an attorney, asserted Brown's "book of music" (Royalties), had a value as high as \$100 Million. [Tr. 2/9/07, Case 122] Royalties are about 1/2 of Brown's worldwide music empire, the other half being his image and persona ("Publicity Rights"). In 2009 Tommie Rae, Terry and Bauknight stopped a 2-year Publicity Rights contract with GreenLight (May 2009 - May 2011) which has earned tens of millions annually for Einstein, Steve McQueen and others. The interference now appears to have been part of a devaluation scheme culminating in Bauknight's May 4 disclosure of the music empire at \$4.7 Million.

unfortunate shooting death and ongoing murder investigation (adult charged) which took place at his 16<sup>th</sup> birthday party this year.

- g. Plaintiff Terry was part of a scheme to sell the James Brown assets for \$100 Million; create an IPO; and pay options or a "kickback" to former PR/Trustees Cannon and Dallas.
- h. Wingate's Witness List names as a witness for AG McMaster Cannon, indicted in 2010 for felonies against Brown for every year from 1999 - 2006 and a 2008 forgery, now awaiting trial.
- i. Wingate's Witness List names as a witness for AG McMaster Albert Dallas, found by the Court to have committed fraud under Probate Code §62-1-106 in James Brown cases, and who is being sued by the Estate/2000 Trust for secretly misappropriating more than \$12 Million from James Brown.
- j. Wingate – 14 months after filing suit has apparently failed to pay disclosed experts Hobbs and Provence. See AG's standard Retention Agreement.
- k. Wingate - lacking experience in the James Brown cases – has made misrepresentations to this Court, including about the status of other cases in a proposed order which the Court in this case signed.<sup>12</sup>

15. I am informed and believe that, like other Retention Agreements, the Wingate Agreement is a public record.

16. In my more than 30 years as an attorney for litigants in trust and estate matters, I have never known an AG to be a co-Plaintiff using joint private counsel in a tort suit for money damages against a South Carolina citizen.

17. Although I have been involved in a number of matters in which the AG was involved, I do not recall any time when – as here – the AG is party to a case but the AG (or an associate) is not counsel of record for the AG only.

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<sup>12</sup> See Order Denying Motion to Dismiss, proposed by Wingate, in which the Court found that four Aiken County cases were no longer pending when all were active.

18. I do not recall in 30 years seeing any private citizen -- as Bauknight does here -- assert in a case that he acts "on behalf of the Attorney General of the State of South Carolina."

19. I am informed and believe that AG McMaster's contingency-fee Litigation Agreement with Wingate as Special Counsel should contain significant provisions, as found in other AG Contracts, to allow the AG to end a case without merit and to protect Bob and me from the use of the State's power to support abusive acts of private counsel and Private Plaintiffs. [See AstraZeneca agreement AG McMaster signed on October 20, 2006 ("AZ"), which did not involve Private Co-Plaintiffs.]

20. Portions of the AZ agreement, with emphasis supplied, are:

#### RECITALS

WHEREAS, the Attorney General has concluded it is in the best interest of the State ...to retain Special Counsel specifically for this litigation matter

...  
WHEREAS, Special counsel specifically represents that he has the skill, experience and competence necessary for the meaningful prosecution of this matter.

#### Article II. SERVICES

...  
2. ... Special counsel shall provide legal services to the Attorney General... for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation...

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

#### 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, . . . shall be considered the exclusive property of . . . South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4010 et seq.,... This agreement shall be considered a public document.

...

#### Article IV. COMPENSATION

... Special Counsel shall receive no compensation unless the State of South Carolina receives a settlement or damage award. . .

... the Attorney General shall retain 10% of Special Counsel's fees. . .

C. ... Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

#### Article V. EXPENSES AND COSTS

##### A. Advancement of Expenses and Costs

Special Counsel shall advance all costs ... including expert witness fees . . . Special Counsel's agreement to advance ... costs has been taken into consideration in establishing the fee schedule..

...

#### Article VI. TERMINATION

##### A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty or explanation.

21. My FOIA request for the Legacy Trust was met with a threat on behalf of Bauknight to file an abuse of process suit against me. <sup>13</sup>

22. Particularly troublesome in light of Private Plaintiffs' devaluation scheme is

---

<sup>13</sup> See Exhibit C. The FOIA response came from one of Bauknight's 10 (according to Bauknight) attorneys at Nexsen Pruet (NP). NP serves as counsel to Plaintiff AstraZeneca Pharmaceuticals, LP in the Spartanburg County, S.C. case entitled AstraZeneca, LP, Plaintiff v. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Civil Action No. 2011-CP-42-1213 which is referenced herein.

the AG's false allegation, through Wingate, and Bauknight, purportedly speaking on behalf of the AG, that Bob and I overvalued Brown's assets to the IRS under oath by nearly \$80 Million for the improper purpose of getting a big commission.<sup>14</sup>

23. I am informed and believe that when such false accusations are made on behalf of the State's chief law enforcement officer, who also enforces tax and fraud laws, they are clearly intended to threaten and intimidate Bob and me, and we are entitled to know if AG McMaster authorized them and AG Wilson condoned them.

24. On July 21, 2011, defending the AG's use of private counsel in a filing in the AZ case, AG Wilson stated:

On occasion, the Attorney General, in carrying out his responsibility, has found that it is necessary to hire outside counsel on a contingency-fee basis. These attorneys. . . take on substantial risks, litigating these matters against multi-billion dollar entities, which employ scores of national law firms. <sup>15</sup> [Footnote 1 in text] ... Private counsel undertake this representation under the direction and control of the Attorney General. ... [Reply, p.3] [Emphasis supplied.]

25. In support of his AZ Retention Agreement, AG Wilson stated:

Because the Attorney General is in control of the litigation, and possesses final authority over the case, there is no risk of bias or improper enforcement.

26. AG Wilson – deploring the imbalance of power when a financial giant is

---

<sup>14</sup> In an Order dated January 8, 2008 in Case No. 122, Judge Early awarded us \$317,000 and unpaid costs for our service as Special Administrators of Brown's Estate from March 7, 2007 - November 20, 2007. Acknowledging our increased commitment as PR/Trustees, the Court also awarded Bob and me ongoing "time plus costs" payments, with interest at the legal rate on unpaid amounts. Neither AG McMaster nor any Interested Person objected to the January 8 Order. As of September 1, 2009, as reflected in the Aiken County records, Bob and I were entitled to approximately \$2.1 Million, plus future interest. [See Order dtd. 1/8/08, Case 122.]

<sup>15</sup> For example, in contrast to the figures cited by Defendants... Astra Zeneca reported in mid-2009. . . that it had already spent \$593 million defending Seroquel matters.

pitted against the AG's office with its \$7 Million annual budget – stated:

**AstraZeneca seeks to ensure that itself, or any other major corporation engaging in widespread unfair and deceptive conduct, maintains such a massive advantage in resources that this [AG Wilson's] Attorney General's Office – and others around the country – are simply without resources to effectively enforce their state statutes.**

**27. I attended a hearing in July 2011 on the AG's motion to dismiss AZ's case challenging private counsel and heard AG Jones speak of the unfairness of giant entities such as AZ attempting to intimidate relatively small ones like the AG's office.**

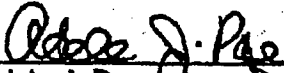
**28. In this case against Bob and me, AG McMaster's office is the giant.**

**29. I am informed and believe that if the Court requires the Wingate Retention Agreement(s) and other requested documents to be delivered before the injunction hearing, it will help the parties and Court address the following essential questions related to the injunction request:**

- 1. Is Bauknight's assertion that he speaks on behalf of AG McMaster legal?**
- 2. Did all Private Plaintiffs sign the Retention Agreement (as is required for a contingent fee), and did they cede control to the AG so that the State would not trample on our Constitutional rights as citizens?**
- 2. Is any public policy articulated for the State/AG joining Private Plaintiffs in this tort suit for money damages against us?**
- 3. Is any Public Policy violated or served by AG McMaster's sharing a single private law firm and attorney-client privilege with Private Plaintiffs?**
- 4. Did AG McMaster violate his own policy and/or the Retention Agreement by not maintaining control over the litigation and signing the complaint?**
- 5. What does the Retention Agreement provide if Private Plaintiffs/Bauknight become targets of securities, tax or fraud investigations and their witnesses are under indictment or investigation in South Carolina?**
- 6. How are the funds recovered from Bob and me, if any, shared?**

7. How is our judgment against Plaintiffs, if any, to be paid?
8. May Wingate properly assert the State's privileges and immunities to attempt to relieve Private Plaintiffs from default?
9. Did AG McMaster approve seeking money damages against us for not signing an agreement not to criticize AG McMaster ?
10. Does the Retention Agreement designate Bauknight to speak on behalf of, or bind, the AG and State?
11. What action, if any, has AG Wilson taken to amend the Retention Agreement or Bauknight authorization to act on behalf of the AG?

FURTHER DEPONENT SAYETH NOT.

  
Adele J. Pope

SWORN TO BEFORE ME this  
1<sup>st</sup> day of August, 2011


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

EXHIBIT A

JACKIE S. BOWERS  
CLERK OF COURT

2011 AUG -3. P 5: 08

FILED  
NEWBERRY COUNTY

13. 2007 6:33PM Levenson & Assoc 494-659-1355 No. 0427

Innacie Media & Entertainment, LLC  
Amount Requested: \$200,000,000

Executive Summary

**Contact Information**  
 Pinnacle Media & Entertainment, LLC  
 Anthony "Chip" Lumar, Chairman/CEO  
 Yanna Brown Lumar, President  
 23 Peachtree Center Ave  
 Suite 500  
 Atlanta, GA 30308  
 Tel: 404-343-0044  
 Fax: 404-234-2826  
[www.pinnaclemediaent.com](http://www.pinnaclemediaent.com)  
[pinnaclemedinfo@pinnacleip.com](mailto:pinnaclemedinfo@pinnacleip.com)

**Management Team**  
 Anthony "Chip" Lumar, Chairman/CEO  
 Dr. Yanna Brown Lumar, President  
 Dr. Terry E. Cox, Chairman Windsor Group  
 Leveyd Carter, Esq.  
 Alvin Wams, The Machine Group  
 Calvin Watan, The Machine Group  
 Fred McKnight, Undiscovered Live  
 Michelle Graves, Special Advisor to Mr. Lumar

**Industry**  
 Content provider to the entertainment industry  
 (Studio/Label/Cable)

**Company Resources**  
 Intellectual Property Rights

**Type of Financing Sought**  
 Acquisition financing for the James Brown Estate

**Total Internal Capital Invested**  
 \$1,100,000 has been pledged by the Owners for start up of Pinnacle Communications Inc., and Pinnacle Media & Entertainment for print rights acquisition, radio show sponsorship, production and marketing.

**Professionals**  
 (Accounting Firm)  
 Greg C. Takosian  
 Takosian & Company, LLC  
 116 Interstate 84  
 Suite B1  
 Orlin, NH 03249  
 Tel: 603-230-0812

**(Bank)**  
 Wachovia Bank  
 Clark Liddard  
 Dixie Ninecenter  
 Marietta, GA 30066  
 Tel: 770-420-0224  
 Fax: 770-420-0454

**Pinnacle Communications, Inc. c/o Chip Lumar**  
 404-343-0044  
[www.pinnaclemediaent.com](http://www.pinnaclemediaent.com)  
[pinnaclemedinfo@pinnacleip.com](mailto:pinnaclemedinfo@pinnacleip.com)

**Business Description**  
 Pinnacle Media & Entertainment, LLC "PME" is an independent film production and distribution company. The company specializes in commercial grade theatrical films, documentaries, video and content for the major motion picture/television/cable industries. The company presently has the film option rights to several properties that can be acquired through its sister company, Pinnacle Communications, Inc;

**Philosophy**  
 There is an inherent marriage between music entertainment and the film/television industries. Both require massive amounts of content to satisfy the needs of their clients/customers, and this company intends to exploit this fact by appointing the daughter of a true living "Legend" - James Brown, to be its leader. Pinnacle Communications Inc is currently reviewing over fifty titles for our film and distribution companies. Upon successful completion of funding, PME will launch the national television and cable networks with Atlanta as its national base of operations.

**James Brown Estate Acquisition**  
 On December 25, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Dean Martin, in yearly revenues generated, licensing rights, sampling rights, feature films, documentaries, tributes, and future recordings. We believe the estate of the late James Brown can and will generate over 100 million per year. Under the right management structure and capitalized property, there will be no end in sight. With the right investment partner, Pinnacle Media & Entertainment will become the premier entertainment/management company in the world. Currently the estate is under the protection of Greenberg Truig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience."

**Management**  
 Our President is a distinguished graduate of Mercer University (1995) where she received her Doctorate in Pharmacy. Being the daughter of a star of music and film, Dr. Lumar has had intimate knowledge of both industries. Another advantage Dr. Lumar gives is her access to the Hollywood elite. Among some of the more notable Hollywood are Academy Award Winner Jamie Foxx, and Dan Aykroyd, other celebrities' friends include actor Eddie Murphy, and playwright Tyler Perry. The company will have only one paid employee initially as all other work not performed by the President is outsourced to contract professionals, i.e. directors, scriptwriters, cast and crew professionals on a per-project basis.

000044

33 2007 6:33PM... Levenson & Assoc 404-659-1355

No. 6497 P. 31

**Pinnacle Media & Entertainment, LLC**  
**Amount Requested \$200,000,000**

**Executive Summary**

arrangement never before realized. The potential for profits from both companies is incalculable, and the returns on investment will be far greater than anyone can imagine.

Pinnacle Communications, Inc c/o Chip Lumar  
404-404-343-0041  
[www.pinnaclemedia.com](http://www.pinnaclemedia.com)  
[pinnaclemedia@pinnacleip.com](mailto:pinnaclemedia@pinnacleip.com)

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**EXHIBIT B**

**Witness List**  
11/12/2010

JACKIE S. BOWERS  
CLERK OF COURT

2011 AUG -3 P 5:08

FILED  
NEWBERRY COUNTY

Full Name	Address
Jeff Allen	145 West 57 Street 15th Floor New York NY 10019
Russell L. Bauknight	1517 Gervais St. P.O. Box 1330 Columbia, SC 29202
Jim Blackwell	3455 Peachtree Road NE, Suite 1700 Atlanta, GA 30328
Charles Bobbitt	3280 Golf-Linx Drive Snellville, GA 30039
Daryl J. Brown	1120 Court Drive, Apt. R Duluth, GA 30098
Foriando J. Brown	158 Liberty Hill Road Eastanofee, GA 30538
Larry Brown	110 Dresden Drive Martinez, GA 30907
Terry Brown	158 Liberty Hill Road Eastanofee, GA 30538
Tonya Brown	2417 Castlewood Dr. Augusta, GA 30904
Vanisha Brown	P.O. Box 652 Clearwater, SC 29822
Yamma N. Brown	305 Legran Bend Atlanta, GA 30328
Deanna J. Brown-Thomas	P.O. Box 652 Clearwater, SC 29822
Robert L. Buchanan	212 Newberry St., NW P.O. Box 483 Aiken, SC 29802-0483
David G. Cannon	8459 Marlboro Ave Barnwell, SC 29812-1982
Frank Copsidas	601 West 26th Street Suite 1080 New York, NY 10001
Albert H. Dallas	304 Black Street Thomson, GA 30824-2919
William F. Hammond	P.O. Box 1584 Augusta, GA 30903-1584
Tommla Ray Hynie-Brown	Los Angeles, CA
Joel A. Katz	3290 Northside Parkway, Ste 400 Atlanta, GA 30328
Adela J. Pope	1228 Walnut ST Newberry, SC 29180
Al Sharpton	108 West 145th Street New York, NY 10039
William H. Tucker	111 Park Ave, SW Aiken, SC 29801
Alvin Waters	Atlanta, GA
Calvin Waters	Atlanta, GA
Andre White	5122 Hunters Luck Stone Mountain, GA 30088

Witness List  
11/12/2010

Full Name	Address
Andre White	75 Piedmont Ave NE Atlanta, GA 30303

**EXHIBIT C**

**NEXSEN|PRUET**

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

J. David Black  
Member  
Admitted in SC

July 15, 2011

VIA US MAIL

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

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

Dear Ms. Pope,

I am writing you in reference to your June 30, 2011 South Carolina Freedom of Information Act (FOIA) request for "The final and all drafts, signed and unsigned, of the James Brown Legacy Trust" (James Brown Trust).

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

As you are aware, for FOIA purposes, the James Brown Trust is not a public body as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 33-40-20(a). Accordingly, your request for public records is improper.

Furthermore, even in the event that such request were proper, the documents that you have requested are exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(7) as the FOIA request calls for the production of Attorney Work Product and Attorney Client Privileged Materials related to ongoing litigation.

Please be advised that FOIA is not intended as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers*, 2002-CP32-1890 (Order of Judge Westbrook, 11th Jud. Cir., 2002) (citing *NLRB v. Seurs Roebuck & Co.*, 421 U.S. 132, 144 n.10 (1975); *U.S. v. Murdock*, 548 F.2d 599, 602 (5th Cir. 1977); *Fruehauf Corp. v. Thornton*, 507 F.2d 1253, 1255 (6th Cir. 1974)).

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 other choice than to file an action against you for abuse of process and sanctions.

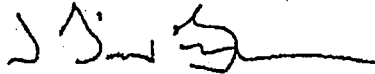
1230 Main Street  
Suite 700 (2B201)  
PO Drawer 2426  
Columbia, SC 29202  
www.nexsenpruet.com

T 803.540.2072  
F 803.727.1408  
E DBlack@nexsenpruet.com  
Nexsen Pruet, LLC  
Attorneys and Counselors at Law

000048

Adele J. Pope, Esquire  
July 15, 2011  
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. David Black', with a long horizontal flourish extending to the right.

J. David Black

JDB/JGH

cc: James B. Richardson, Jr., Esquire  
Russell L. Bauknight

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FILED  
HEMBERRY COUNTY

2011 AUG -3 P 5:08

JACKIE S. BOWERS  
CLERK OF COURT

# EXHIBIT - E

000050.

NEXSEN|PRUET

FILED  
NEWBERRY COUNTY  
2011 AUG -3 P 5:08  
JACKIE S. BOWERS  
CLERK OF COURT  
J. David Black  
Member  
Admitted in SC

July 15, 2011

VIA US MAIL

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1230 Main Street  
Suite 700 (29201)  
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www.nexsenpruet.com

T 803.540.2072  
F 803.727.1408  
E DBlack@nexsenpruet.com  
Nexsen Pruet, LLC  
Attorneys and Counselors at Law

000051

Adele J. Pope, Esquire  
July 15, 2011  
Page 2

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. David Black', with a long horizontal flourish extending to the right.

J. David Black

JDB/JGH

cc: James B. Richardson, Jr., Esquire  
Russell L. Bauknight

000052

STATE OF SOUTH CAROLINA )

COUNTY OF NEWBERRY )

Adele J. Pope, )

Plaintiff, )

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 THE COURT OF COMMON PLEAS

Case No. 11-CP-36-364

MOTION OF ATTORNEY GENERAL  
TO DISMISS AND  
ALTERNATIVE MOTION TO STRIKE

Without waiving any jurisdictional or other defenses to this complaint, the Defendant Alan Wilson, Attorney General moves for the dismissal of the Complaint herein pursuant to Rules 12(b)(3) and (8), SCRPC, in that, for reasons set forth below, venue is improper and another action is pending between the same parties for the same claim:

1. 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). Further, even if, *arguendo*, the Bauknight 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. Venue should be in Richland where the other suit is pending.

2. 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 (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion). 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).

Subject to the Motion to Dismiss, the Attorney General moves to strike the Affidavit of Plaintiff attached as Exhibit D to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and / or that are irrelevant.

Respectfully submitted,

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

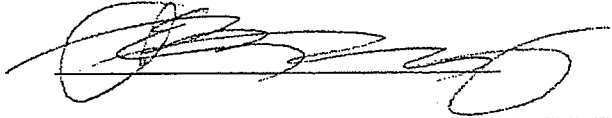
BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

September 2, 2011

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose and consultation as to the Motion to Dismiss is not required.



September 2, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

# EXHIBIT A

In Support of Rule 12(b)(3) Motion

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

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

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY  
FILED  
2010 NOV -9 AM 9:21  
JEANETTE W. MORRIS  
C.C.P. & C.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

000057

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.

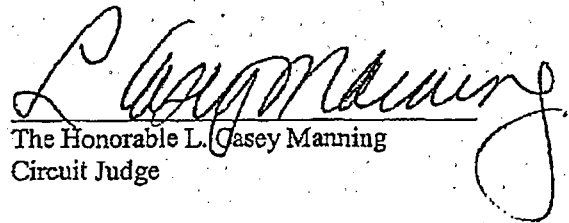
Defendants argue that the matters raised in the complaint relate to an action previously filed in Aiken County. This Court disagrees. The complaint alleges causes of action which are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of 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.

# EXHIBIT B

In Support of Rule 12(b)(8) Motion

000063

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

and

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

Plaintiffs.

v.

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

MOTION TO COMPEL  
DISCOVERY

(Requests for Production of Documents)

TO: PLAINTIFFS 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 FOR THE STATE OF SOUTH CAROLINA; DARYL J. BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRPC, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.<sup>1</sup>
2. On October 11, 2010, Defendant Pope served Plaintiffs 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 for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

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<sup>1</sup> Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

hereto as Exhibits A-H.

3. Among the documents requested were "[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."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisal in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately \$4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisal and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

December 2010. Said Plaintiffs asserted that these documents proved that James Brown's assets at death and those of the 2000 Irrevocable Trust were worth only about \$6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

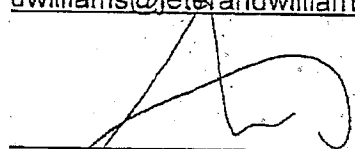
13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

14. Defendant Adele J. Pope is informed and believes that she is entitled to an Order compelling the above-named Plaintiffs to comply with Rule 34, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 34 and 37, applicable case and statutory law, the entire record herein, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams  
Jeter & Williams, P.A.  
1204 Main Street, Suite 200  
Post Office Box 7425  
Columbia, South Carolina 29202  
Telephone: (803) 765-0600  
Facsimile: (803) 765-0619  
[dwilliams@jeterandwilliams.com](mailto:dwilliams@jeterandwilliams.com)



---

Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
1218 Taylor Street  
Post Office Box 1898  
Columbia, South Carolina 29202-1898  
Telephone: (803) 779-1770  
Facsimile: (803) 403-8092  
[adam@silvernaillawfirm.com](mailto:adam@silvernaillawfirm.com)

June 7, 2011

Attorneys for Defendant Adele J. Pope

# EXHIBIT C

In Support of Rule 12(b)(8) Motion

000069

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-00490

2011 JUL -5 AM 11:27  
JENNIFER W. McBRIDE  
Clerk, P. & G.S.

RICHLAND COUNTY  
FILED

PLAINTIFFS' MOTION FOR  
PROTECTIVE ORDER CONCERNING  
VARIOUS DOCUMENTS REQUESTED  
BY DEFENDANT ADELE J. POPE

TO: DEFENDANTS AND THEIR ATTORNEYS:

000070

**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 Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

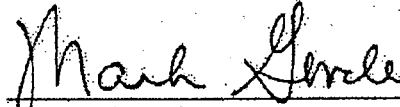
Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17, 2011 reply, including the proposed Confidentiality Order (Exhibit E).

(Signature Page Immediately Following)

Wingate, Kenneth B.

Respectfully submitted,

**SWEENEY, 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

July 1, 2011

# EXHIBIT D

000073

June 15, 2011

By U.S. Mail:

Mark V. Gende, Esquire  
Sweeny Wingate & Barrow P.A.  
1515 Lady Street (29201)  
Post Office Box 12129  
Columbia, South Carolina 29211  
[mvg@swblaw.com](mailto:mvg@swblaw.com)

JUN 18 2011

4077-7389

Re: Bauknight and others vs. Pope and others  
Richland County Case No. 2010-CP-40-4900

Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
6. The file of Zumwalt, Almon & Hayes, PLLC;
7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322; and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,

  
Adam T. Silvernailcc: Daryl L. Williams, Esquire  
J. Calhoun Watson, Esquire  
Robin A. Braithwaite, Esquire  
Adele J. Pope, Esquire

EXHIBIT E

000075

S.W.B.

E-MAIL S.W.B.

E-MAILED  
07/11

MINICATLOR BARROW P.A.

SWEENEY WINGATE & BARROW P.A.

June 17, 2011

Reply to: Main Office

Mark V. Gende  
(803) 256-2233 x 121  
mvg@swblaw.com

VIA ELECTRONIC MAIL AND U.S. MAIL

Adam T. Silvermail, Esquire  
1218 Taylor Street  
P.O. Box 1898  
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.  
Civil Action No.: 2010-CP-40-4900  
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

MUNICIPALITY OF BARROW, ALASKA  
P.O. BOX 1898 COLUMBIA, SC 29202-1898

000076

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

5. All information and documents related to claims for and against Al Bradley and/or his estate.

These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zumwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

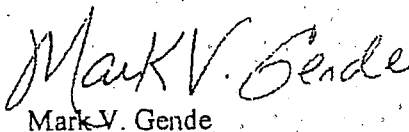
These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

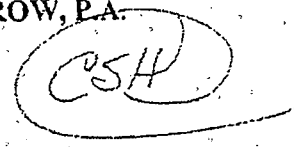
In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENEY, WINGATE & BARROW, P.A.

  
Mark V. Gende



MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail  
Daryl L. Williams, Esquire, via e-mail  
Robin A. Braithwaite, Esquire, via e-mail

000078

IN THE COUNTY OF NEWBERRY )  
STATE OF SOUTH CAROLINA )  
FOR THE EIGHTH JUDICIAL CIRCUIT )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS  
FOR THE EIGHTH JUDICIAL CIRCUIT

Adele J. Pope, )

C/A No. 11-CP-36-364

Plaintiff, )

vs. )

MOTION TO DISMISS UNDER RULE 12(b)  
BY DEFENDANT JAMES BROWN LEGACY  
TRUST; BY RUSSELL L. BAUKNIGHT, ITS  
TRUSTEE

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

Defendant. )

TO: ADAM T. SILVERNAIL, ESQ., ATTORNEY FOR PLAINTIFF:

The Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, by and through its undersigned attorney; gives notice and does hereby move under Rule 12 of the S. C. Rules of Civil Procedure for dismissal of the above-captioned action.

The grounds for such motion are as follows:

1. Dismissal under Rule 12(b)(3) should be granted, as 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. Venue should be in Richland County.
2. Dismissal is also requested under Rule 12(b)(6).
3. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8).

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Subject to the Motion to Dismiss, this Defendant moves to strike the Affidavit of Plaintiff attached as Exhibit D to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and/or that are irrelevant.

IT IS SO MOVED.

A. Camden Lewis  
LEWIS & BABCOCK, LLP  
P.O. Box 11208  
Columbia, South Carolina 29211

By: 

A. Camden Lewis

Attorneys for Defendant James Brown Legacy  
Trust, by Russell L. Bauknight, its Trustee

Columbia, South Carolina

September \_\_\_\_, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

RICHLAND COUNTY  
FILED

IN THE COURT OF COMMON PLEAS

2012 JAN 17 PM 4:35

CIVIL ACTION No. 2011-CP-36-00364

JEANNETTE W. FICKNER  
C.C.P. & G.S.

Adele J. Pope,

Plaintiff,

v.

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

Defendants.

PLAINTIFF'S RETURN TO MOTION OF  
DEFENDANT JAMES BROWN LEGACY  
TRUST TO DISMISS

SCANNED

CLARICE S. POWERS  
CLERK OF COURT

2011 SEP 12 P 12:33

FILED  
NEWBERRY COUNTY

**TO: DEFENDANT JAMES BROWN LEGACY TRUST AND/OR ITS COUNSEL**

Plaintiff opposes the Motion of Defendant James Brown Legacy Trust ("Legacy Trust"), to Dismiss motion to dismiss for the reasons set out below:

**Venue is Proper in Newberry County**

1. As alleged in the Complaint herein, Plaintiff lives and works in Newberry County. Her requests for documents under the South Carolina Freedom of Information Act ("FOIA") were made from Newberry, and the responses of Defendants were sent to Plaintiff in Newberry.

2. Legacy Trust's argument that the filings, orders or claims in Richland County Case No. 2010-CP-40-4900 ("Case 4900") have any effect on the venue for this action is unfounded. Although that action involves some of the same parties and facts, it does not involve any claim for relief under FOIA, and private attorney Kenneth Wingate, sole plaintiffs' counsel in that case, represents at least 12 private clients who have no

interest in this matter.

3. Neither the venue for Case 4900 nor any of the more than 20 James Brown cases brought in Aiken County has any bearing on the proper venue for this action.

**No Basis Exists for Dismissal Under Rule 12(b)(6), SCRPC**

4. The Legacy Trust does not set forth any logic for dismissal under Rule 12(b)(6). Nor could it; the complaint clearly alleges that the James Brown Legacy Trust is a public body and has refused to produce public documents.

5. S.C. Code Ann. §30-4-100 provides that "any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief." Plaintiff has done precisely that, and there is no basis for dismissal under Rule 12(b)(6).

**No Basis Exists for Dismissal Under Rule 12(b)(8), SCRPC**

6. The Legacy Trust's assertion that the claims herein are "the same or substantially the same" as those pending in another action is incorrect. No claim or counterclaim in Case 4900 or any Aiken County case related to the Estate of James Brown or the 2000 Irrevocable Trust (the "Aiken County Cases") involves FOIA. Many of the Aiken County Cases, along with Case 4900, have been commenced in the Probate Court, which, pursuant to S.C. Code Ann. §30-4-100, has no jurisdiction over FOIA actions.

7. The documents sought herein are just a few of the documents which, because they are public documents held by public bodies, are available under FOIA.

8. Plaintiff has never exercised her rights under FOIA to obtain documents sought in the Aiken County Cases or Case 4900, since Plaintiff's rights under FOIA are

entirely distinct from her right to receive documents requested through discovery.

Likewise, issues which have arisen in discovery in the James Brown cases have no bearing on Plaintiff's right under FOIA to view and copy public documents held by public bodies.

9. The Freedom of Information Act has no provision which could be construed to curtail a person who has been sued by the State from obtaining public documents held by public bodies.

10. Defendant Attorney General has unfettered control over the Legacy Trust through his right to remove and replace its Trustee at any time. On information and belief, Defendant Attorney General has participated in the retaining of counsel for the Legacy Trust and the preparation of this baseless motion to dismiss for the improper purpose of delaying the hearing on the merits in this action and thereby denying Plaintiff her rights under FOIA.

11. On information and belief, Defendants seek to conceal public documents which would show improper acts by members of the Attorney General's office, the previous Attorney General and/or the Trustee of the Legacy Trust, who purports to act as an agent of the State.

#### **Motion to Strike Should Be Denied**

12. The Legacy Trust fails to set out any specific basis for striking any portion of the Affidavit of Plaintiff (Exhibit D to the Complaint herein). All statements in the Affidavit are based on personal knowledge and are relevant and admissible. No part of any Affidavit of Plaintiff filed herein should be stricken.

This return is based on the Affidavit of Plaintiff filed herewith; Plaintiff's

Complaint, prior affidavits and other filings herein; the *South Carolina Rules of Civil Procedure*; the South Carolina Freedom of Information Act; other applicable statutory and case law; and such additional documents as Plaintiff shall file herein prior to the hearing.

Respectfully Submitted,



---

Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
Post Office Box 1898  
1218 Taylor Street  
Columbia, South Carolina 29202-1898  
Tel: 803/779-1770  
Fax: 803/403-8092  
Email: [adam@silvernailfirm.com](mailto:adam@silvernailfirm.com)

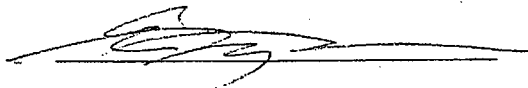
September 12, 2011

Attorney for Plaintiff



Rule 11, SCRCP, statement:

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

September 14, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF COMMON PLEAS  
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Adele J. Pope,

Case No. 11-CP-36-364

Plaintiff,

v.

MOTION OF ATTORNEY GENERAL  
TO STRIKE

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

Defendants.

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Supplemental Affidavit of Adele Pope dated September 16, 2011 in that the affidavit contains statements that are not based upon personal knowledge, that are hearsay and that are irrelevant. The Defendant Wilson also asks that this Supplemental Affidavit be struck as to himself as a Defendant because it references an intent to correct errors in an affidavit incorrectly dated September 12, 2008, which was filed only against the Defendant Trust.

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: 

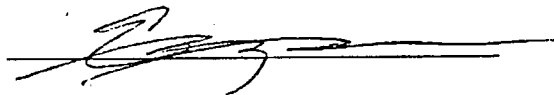
September 27, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

000087

Rule 11, SCRPC, statement:

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

A handwritten signature in black ink, consisting of a stylized, cursive name, positioned above a horizontal line.

September 27, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

RICHLAND COUNTY  
FILED

2011 JAN 17 PM 4:37  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.  
Case No. 11-CP-36-364

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )  
 )  
Adele J. Pope, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Alan Wilson, in his capacity as )  
Attorney General of South Carolina and )  
James Brown Legacy Trust, by )  
Russell L. Bauknight, its Trustee, )  
 )  
Defendants. )

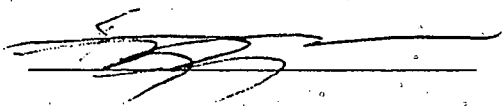
MOTION OF ATTORNEY GENERAL  
TO STRIKE OR EXCLUDE POPE  
AFFIDAVIT DATED 10/06/11

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Affidavit of Adele Pope dated October 6, 2011, and filed in this case in that it contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant.

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: 

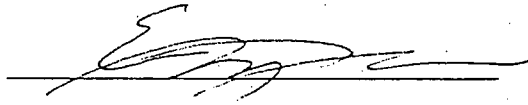
ATTORNEYS FOR THE ATTORNEY GENERAL

October 13, 2011

FILED  
NEWBERRY COUNTY  
2011 OCT 14 A 10:16  
JACKIE S. BOWERS  
CLERK OF COURT

Rule 11, SCRCP, statement:

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

A handwritten signature in black ink, appearing to be "J. M. [unclear]", written over a horizontal line.

October 13, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF COMMON PLEAS  
COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as  
Attorney General of South, et al,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-36-364

MOTION OF ATTORNEY GENERAL  
TO STRIKE AFFIDAVIT AND EXHIBITS  
ATTACHED TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the affidavit with attachments and other exhibits attached to Plaintiff's Motion for Summary Judgment. The affidavit of Adele Pope "In Support of Summary Judgment" contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant. The exhibits attached to the affidavit should also be struck. The newspaper articles attached as Exhibits A and B are not affidavits, are hearsay and contain irrelevant material.

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: 

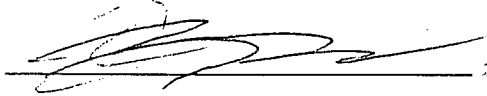
October 14, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

000091

Rule 11, SCRCP, statement:

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

A handwritten signature in black ink, appearing to be "J. P. ...", written over a horizontal line.

October 14, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA )  
IN THE COURT OF COMMON PLEAS )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Adele J. Pope, )

Case No. 11-CP-36-364

Plaintiff, )

v. )

MOTION OF ATTORNEY GENERAL  
TO STRIKE OR EXCLUDE  
AFFIDAVIT OF JEFFREY SMITH

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

Defendants. )  
\_\_\_\_\_ )

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

Respectfully submitted,

ALAN WILSON  
Attorney General

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

BY: 

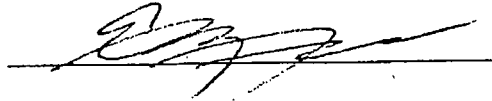
ATTORNEYS FOR THE ATTORNEY GENERAL

December 22, 2011

000093

Rule 11, SCRCP, statement:

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



December 22, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA )  
IN THE COURT OF COMMON PLEAS )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS

Adele J. Pope, )  
Plaintiff, )

Case No. 11-CP-36-364

v. )

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

MOTION OF ATTORNEY GENERAL  
TO STRIKE OR EXCLUDE  
ADDITIONAL AFFIDAVITS

Defendants. )

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the following seven affidavits in addition to the numerous other affidavits submitted by Plaintiff in this case which are already subject to motions to strike:

1. Affidavit of Adele Pope dated January 3, 2012 and attached affidavit of Vic MacDonald dated December 9, 2011
2. Affidavit of Jeffrey Smith dated January 3, 2012
3. Affidavit of Steven Farrar dated January 4, 2011
4. Affidavit of Sue Summer, January 5, 2012
5. Affidavit of Adele Pope dated January 6, 2012 and attachments
6. Affidavit of Daryl Williams dated January 6

All of the affidavits and attachments are irrelevant to the legal issues before this Court in the instant case. The affidavits referenced at items 1 -5, *supra*, also contain statements that are not based

000095

upon personal knowledge, that are speculative, or that are hearsay.

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 9, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

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

January 9, 2012

  
ATTORNEY FOR THE ATTORNEY GENERAL

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. )

BRIEF AND RETURN  
IN OPPOSITION TO MOTIONS  
TO STRIKE AND/OR DISMISSAL  
AND  
SUPPORTING SUMMARY JUDGMENT

Plaintiff Adele J. Pope submits this brief in support of her motion for summary judgment and in opposition to all motions of Defendants AG Alan Wilson and the James Brown Legacy Trust to dismiss this case and to strike affidavits which support immediate *in camera* review of all requested documents and summary judgment as to all issues. Plaintiff respectfully submits that at the hearing on January 11, 2012 — six months after defendants refused Plaintiff's proper requests under the S. C. Freedom of Information Act ("FOIA"), this Court should take the following immediate action:

- a. Deny all motions to strike affidavits and filings.
- b. Deny the motion to dismiss in accordance with the reasoning of the Order of the Honorable Frank R. Addy dated November 23, 2011 in Newberry County Case No. 2011-CP-36-364.
- c. Require immediate delivery to the Court of all documents responsive to Plaintiff's FOIA request which are the subject of this action.
- d. Immediately upon receipt of the FOIA documents and answers of Defendants, grant summary judgment as to all issues, including attorneys' fees.

Plaintiff respectfully submits that the damage to her, to the media and to the general public will be mitigated by this Court's expedited grant of the relief set out above. A discussion of each step follows.

**All motions to strike should be denied.**

As part of their effort to prevent release of the public documents requested by Plaintiff, Defendants, in addition to the threat of sanctions by Defendant Legacy Trust, have taken aggressive action to delay and prevent disclosure of documents requested under FOIA. Among the tactics is a wholesale assault on the widely representative affidavits, all based on personal knowledge, which show:

1. The Defendants, which are public bodies, should have complied with FOIA in July.
2. The media, writers and members of the general public believe that FOIA is important to our free society.
3. There is great public interest in James Brown matters.
4. Attorney's fees and costs are appropriate under the facts of this case.

Where, as here, public bodies have vigorously resisted compliance with FOIA, it is appropriate for Plaintiff and others to explain to the Court, through affidavits and documents, what has happened and what effect the delays caused by Defendants have had on both Plaintiff and the general public.

The affidavits and attachments are relevant to this matter. In any case, it is the Court's prerogative to weigh the evidence. Striking Plaintiff's affidavits in their entirety would be extreme and unwarranted, even if the Court should find that some portion of an affidavit is not relevant to its consideration of this matter.

Further, Defendants fail, generally to point out with specificity why the affidavits and attachments do not constitute admissible evidence.

FOIA neither prohibits nor specifically contemplates traditional discovery, but its purpose can be served only if public documents are release promptly with minimal costs. Thus affidavits constitute an appropriate and desirable path to the prompt resolution of FOIA suits. They are not only appropriate, but -- where justice is served -- preferable to live testimony because they expedite the process.

Defendants' numerous motions to strike are without merit. They are a transparent attempt to further delay and deny Plaintiff the public documents which should have been sent to her without fanfare by July 2011. No affidavit or attachment should be stricken.

**The Case should not be dismissed.**

The Court should mirror in this FOIA case its findings and ruling as to dismissal in Case No.2011-CP-036-364, which are incorporated herein by reference, and deny Defendants' motions to dismiss.

Venue is Proper in Newberry County

As alleged in the Complaint herein, Plaintiff lives and works in Newberry County. Her requests for documents under the South Carolina Freedom of Information Act ("FOIA") were made from Newberry, and the responses of Defendants were sent to Plaintiff in Newberry. Venue is thus proper under S.C. Code Ann. § 15-77-50 (1976), because Newberry is within the "circuit in which the question, action or controversy arose."

Defendants' argument that the filings, orders or claims in Richland County Case No. 2010-CP-40-4900 ("Case 4900") have any effect on the venue for this action is unfounded. Although that action – like others – involves some of the same parties and facts, it does not involve any claim for relief under FOIA. The venue for Case 4900 has no bearing on the proper venue for this action.

There is No Basis for Dismissal Under Rule 12(b)(8), SCRPC

Defendants' assertion that the claims herein are "the same or substantially the same" as those pending in Case 4900 is simply incorrect. No claim or counterclaim in that action involves FOIA. The attachments to Defendant Attorney General's motion to dismiss are correspondence and motions related to efforts to obtain discovery documents from the the Wingate Firm's public and private clients, as well as the State, in case 4900. To date, the Case 4900 Plaintiffs have produced no documents apart from a 2-page witness list.

The documents sought herein are just a few documents which, because they are public documents held by public bodies, are available under FOIA.

Plaintiff has never asserted her rights under FOIA as grounds for the documents sought in Case 4900 discovery to be produced. Such an assertion would be misplaced, since Plaintiff's rights under FOIA are entirely distinct from her right to receive documents requested through Case 4900 discovery. Likewise, issues which have arisen in Case 4900 discovery have no bearing on Plaintiff's right under FOIA to view and copy public documents held by public bodies.

Although the documents sought in this action are among the many sought in Case 4900 discovery, the Freedom of Information Act has no provision which could be

construed to curtail a person who has been sued by the State from obtaining public documents held by public bodies. To do so would deny her right to due process.

Defendants have, on information and belief, filed their baseless motions to dismiss for the improper purpose of delaying the hearing on the merits in this action and thereby denying Plaintiff her rights under FOIA.

#### **Immediate delivery of all FOIA documents to Court**

Both to protect the originals and in accordance with accepted FOIA procedure, the Court should required immediate delivery of the documents requested by Plaintiff under FOIA, then deliver either the originals or certified copies, as appropriate, pursuant to an order for summary judgment as set out below.

#### **Summary Judgment as to all issues**

There are no facts to support the delay by these public bodies of the public documents Plaintiff requested six months ago under FOIA. Summary judgment should be granted on all issues, including attorney's fees and costs. Failure to do so promptly will send a message to public bodies that it is acceptable to use the power of the State to delay and deny citizens' rights under FOIA.

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *American Heart Association v. County of Greenville*, 331 S.C. 498, 489 S.E.2d 921, 922, (1997).

#### **Facts of this Case**

The material facts which support Summary Judgment as to all issues in this FOIA case are not in dispute, as set out in the Motion for Summary Judgment dated

September 22, 2011, and summary judgment should be granted.

**Conclusion**

For the reasons set out above, Defendants' motions to strike and dismiss should be denied, and Plaintiff's motion for summary judgment should be granted.

Respectfully submitted,



---

Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
1218 Taylor Street  
Post Office Box 1898  
Columbia, South Carolina 29202-1898  
Telephone: (803) 779-1770  
Facsimile: (803) 403-8092  
[adam@silvernailfirm.com](mailto:adam@silvernailfirm.com)

January 10, 2012

Attorney for Plaintiff

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Adele J. Pope, )

Plaintiff, )

v. )

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. 2012-CP-40-350  
[formerly Newberry Co. Case No.  
2011-CP-36-364]

MOTION OF ATTORNEY GENERAL  
TO CONSOLIDATE CASES

Russell L. Bauknight, etc., Henry Dargan )  
McMaster, in his capacity as Attorney )  
General, etc, et al, )

Plaintiffs, )

v. )

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

Defendants. )

Case No. 2010-CP-40-4900

Pursuant to Rule 42<sup>1</sup>, Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to consolidate *Pope v. Wilson and Bauknight* case 2012-CP-40-350 with *Bauknight and McMaster v. Pope*, case 2010-CP-40-4900. Pursuant to an Order of the Honorable Frank Addy dated January 11, 2012, venue of case 2012-CP-40-350, *supra*, was transferred from Newberry County where it formerly was given the number 2011-CP-36-364. Attached Exhibit A-1.

<sup>1</sup> A Court may order consolidation when "a common question of law or fact are pending before the court . . . ." Rule 42.

Although the claims in the complaints of the two cases are not identical, case 4900 is the subject of a number of allegations in and a lengthy exhibit to the Complaint in case 350. *See, eg.* Complaint in 350 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 at issue in case 350 are also the subject of pending discovery related motions in case 4900. *See*, Exhibit D to case 350 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 case 350 the same discovery issues that are pending before the Court in Case 4900. Therefore common questions of law or fact are present in the two cases. Rule 42.

Another FOIA case brought by Adele Pope in Newberry County (*Pope v. Wilson*, Case No. 2011-CP-36-379) is to be transferred to Richland County and consolidated with case 4900 pursuant to the Order of Judge Addy dated November 22, 2011. Exhibit A-2, attached. Consolidating case 350 with cases 4900 and 379 would permit all FOIA and discovery issues to be determined in one proceeding.

Therefore, the Attorney General respectfully requests that case 350 be consolidated with case 4900.

[Signature block on next page]

Respectfully submitted,

ALAN WILSON  
Attorney General

J. EMORY SMITH, JR.  
Assistant Deputy Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3680  
[SC Bar No. 5262]

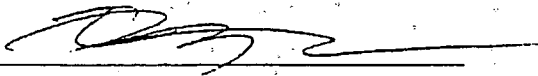
BY: 

February 1, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRPC, statement:

Undersigned counsel affirms that he does not believe that consultation with counsel for Plaintiff as to the foregoing Motion to Consolidate would serve any useful purpose.



February 1, 2012

ATTORNEY FOR THE ATTORNEY GENERAL

**EXHIBIT A-1**

000106

<b>Adele J Pope</b> Attorney General South Carolina	<b>Attorney General Of South Carolina</b> Attorney General Of South Carolina <b>SCANNED</b>	<b>Alan Attorney General Wilson</b> <b>Russell L. Trustee Bauknight</b>	<b>James Brown Legacy Trust</b> <b>Attorney General Of South Carolina</b>
<b>PLAINTIFF(S)</b>		<b>DEFENDANT(S)</b>	

<b>Submitted by:</b>	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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 43(k), SCRCP (Settled);
  - Rule 12(b), SCRCP;
  - Rule 41(a), SCRCP (Vol. Nonsuit);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Rule 40(j) SCRCP;
  - Bankruptcy;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

FILED  
 NEWBERRY COUNTY  
 2017 JAN 11 P 4:39  
 JACQUE S. BOWERS  
 CLERK OF COURT

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:

*Venue transferred to Richland County.*

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk:

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000107

Check appropriate box to 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 Judge Code Date 1-11-12

**For Clerk of Court Office Use Only**

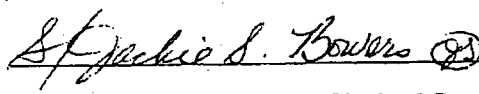
This judgment was entered on January 11, 2012, and a copy mailed first class or placed in the appropriate attorney's box on January 12, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Adam T Silvernail Po Box 1898 Columbia, SC 29202

J. Emory Smith Jr S.C. Attorney General's Office P.O. Box  
 11549 Columbia, SC 29211  
 A. Camden Lewis Lewis & Babcock, LLP P.O. Box 11208  
 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

  
 Jackie S Bowers - Clerk of Court

Court Reporter

**EXHIBIT A-2**

000109

Adele Pope

Alan Wilson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:  Attorney for Plaintiff  Defendant  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:

FILED  
 NEW BERRY COUNTY  
 CLERK OF COURT  
 JACQUE S. ROWERS  
 2011 MAR 30 P 2:13

**Order Information**

This order  ends  does not end the case.

Additional Information for the Clerk :

JUDGMENT AGAINST PLAINTIFF		JUDGMENT AGAINST DEFENDANT	
Judgment Amount	\$	Judgment Amount	\$
Taxable Costs	\$	Taxable Costs	\$
Attorney's Fees	\$	Attorney's Fees	\$
Interest	\$	Interest	\$
Other	\$	Other	\$
<b>Total Amount to be Enrolled:</b>	<b>\$</b>	<b>Total Amount to be Enrolled:</b>	<b>\$</b>

*(Note: The above table content is crossed out with a large diagonal line in the original document.)*

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 interests or 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.

**For Clerk of Court Office Use Only**

This judgment was entered on the 31<sup>st</sup> day of December, 2011 and a copy mailed first class this 31<sup>st</sup> day of December, 2011 to attorneys of record or to parties (when appearing pro se) as follows:  
**Adam Silvernail, Esq.**  
**The Hon. Emory Smith (Assistant Attorney General) and Mark Gende, Esq. (Courtesy Copy)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**  
*Charles A. Lewis*  
**CLERK OF COURT**



Honorable Casey L. Manning.<sup>2</sup> At the time of the stay, the parties to the fiduciary litigation (hereinafter "McMaster parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.


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<sup>2</sup> At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]

The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

<sup>2</sup>   
000113

## II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWitt v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938)), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRPC. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*<sup>3</sup> and *Richardson, Plowden, Grier & Howser v. Pyle*.<sup>4</sup> These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,<sup>5</sup> the

<sup>3</sup> 264 S.C. 172, 213 S.E.2d 588 (1975).

<sup>4</sup> 322 S.C. 371, 472 S.E.2d 232 (1996).

<sup>5</sup> This Rule states, in pertinent part, that

Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of \$50,000 or more; or (2) disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.

27A

Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

[t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

*Id.* (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker* and *Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. See *McDonald*, 276 S.C. at 575 (“Here, actions involving the same parties, substantially the same issue (the parties’ respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction.”). This judicial principle a great resemblance to the Rule 12(b)(8) standard announced by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that “[i]n South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim.” *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant’s *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. See *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2d 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

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Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they "must be *precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." *Capital City*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. "Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of *mandamus* cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case." *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff's worker's compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court's dismissal improper, the Court of Appeals concluded that

[h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

*Id.* at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. See *Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to “any person.” S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. *See* Rule 26(a), SCRCP (“Parties may obtain discovery by one or more of the following methods. . .”). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only be appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.<sup>6</sup>

### III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.<sup>7</sup> Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules “shall be construed to secure the just, speedy, and inexpensive determination of every action.” Rule 1, SCRCP. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. *See* Rule 42(a), SCRCP (“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action.”); *Creighton v. Coligny Plaza Limited*

<sup>6</sup> Given this analysis, Defendant’s motion to dismiss pursuant to Rule 12(b)(8) is also denied.

<sup>7</sup> In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

6 

000117

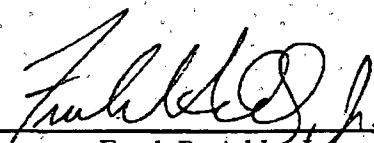
Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) ("Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.")

#### IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff's complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim to attorney's fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Frank R. Addy, Jr.  
Eighth Judicial Circuit

November 22, 2011  
Greenwood, South Carolina

# EXHIBIT B

000119

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

and

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

Plaintiffs.

v.

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

Defendants.

MOTION TO COMPEL  
 DISCOVERY  
 (Requests for Production of Documents)

TO: PLAINTIFFS 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

LARRY BROWN; TOMMIE BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRPC, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.<sup>1</sup>
2. On October 11, 2010, Defendant Pope served Plaintiffs 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 for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

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<sup>1</sup> Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

support any position you may have as to the value of the James Brown assets as of December 25, 2006."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisal in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately \$4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisal and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

of the 2000 Irrevocable Trust assets at death and those of the 2000 Irrevocable Trust were worth only about \$6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

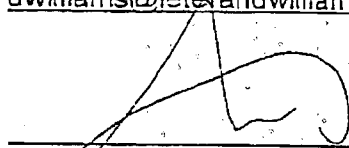
13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

Order compelling the above-named Plaintiffs to comply with Rule 34, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 34 and 37, applicable case and statutory law, the entire record herein, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams  
Jeter & Williams, P.A.  
1204 Main Street, Suite 200  
Post Office Box 7425  
Columbia, South Carolina 29202  
Telephone: (803) 765-0600  
Facsimile: (803) 765-0619  
[dwilliams@jeterandwilliams.com](mailto:dwilliams@jeterandwilliams.com)



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Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
1218 Taylor Street  
Post Office Box 1898  
Columbia, South Carolina 29202-1898  
Telephone: (803) 779-1770  
Facsimile: (803) 403-8092  
[adam@silvernaillawfirm.com](mailto:adam@silvernaillawfirm.com)

June 7, 2011

Attorneys for Defendant Adele J. Pope

# EXHIBIT C

000125

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 MCMMASTER, 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-0490

2011 JUL -5 AM 11:27  
JENNIFER W. McBRIDE  
Clerk of Court  
S.C. Code of Civil Procedure § 15.1

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING VARIOUS DOCUMENTS REQUESTED BY DEFENDANT ADELE J. POPE

TO: DEFENDANTS AND THEIR ATTORNEYS:

000126

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 Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17, 2011 reply, including the proposed Confidentiality Order (Exhibit E).

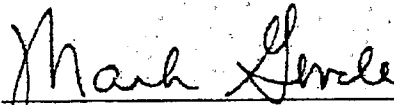
(Signature Page Immediately Following)

Respectfully submitted,

SWEENEY, WINGATE & BARROW

Respectfully submitted,

SWEENEY, 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

July 1, 2011

EXHIBIT D

000129

June 15, 2011

By U.S. Mail:

Mark V. Gende, Esquire  
Sweeny Wingate & Barrow P.A.  
1515 Lady Street (29201)  
Post Office Box 12129  
Columbia, South Carolina 29211  
[mvg@swblaw.com](mailto:mvg@swblaw.com)

4077-7389

Re: Bauknight and others vs. Pope and others  
Richland County Case No. 2010-CP-40-4900


Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
6. The file of Zumwalt, Almon & Hayes, PLLC;
7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322; and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,

  
Adam T. Silvernail

cc: Daryl L. Williams, Esquire  
J. Calhoun Watson, Esquire  
Robin A. Braithwaite, Esquire  
Adele J. Pope, Esquire

000130

EXHIBITE

000131

WINGATE & BARROW P.A. SWEENEY WINGATE & BARROW P.A.

June 17, 2011

Reply to: Main Office

Mark V. Gende  
(803) 256-2233 x 121  
mvg@swblaw.com

VIA ELECTRONIC MAIL AND U.S. MAIL

Adam T. Silvermail, Esquire  
1218 Taylor Street  
P.O. Box 1898  
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.  
Civil Action No.: 2010-CP-40-4900  
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

000132

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

5. All information and documents related to claims for and against Al Bradley and/or his estate.

These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zurnwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

000133

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENEY, WINGATE & BARROW, P.A.

*Mark V. Gende*

Mark V. Gende

*(CSH)*

MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail  
Daryl L. Williams, Esquire, via e-mail  
Robin A. Braithwaite, Esquire, via e-mail

000134

STATE OF SOUTH CAROLINA )  
IN THE COURT OF COMMON PLEAS )  
COUNTY OF RICHLAND )  
Adele J. Pope, )  
 )  
Plaintiff, )  
 )  
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 THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

MOTION OF ATTORNEY GENERAL  
TO AMEND MOTION TO DISMISS

The Defendant Alan Wilson, Attorney General moves to amend his currently pending motion to dismiss to assert lack of subject matter jurisdiction of this action under Rule 12(b)(1), SCRCP and to drop the existing ground of improper venue under Rule 12(b)(3) because venue has been transferred. The Attorney General maintains the existing motion to strike included in the original motion to dismiss and does not seek to amend it. Attached is the proposed motion to dismiss.

Amendment is appropriate because, under Rule 12(h)(3), lack of subject matter jurisdiction may be raised at any time. These grounds are also asserted by this Defendant in opposition to Plaintiff's Motion for Summary Judgment which has not been heard. The grounds are meritorious because Plaintiff has failed to serve her FOIA request on the Defendant by mail or delivery so as to trigger application of that statute, and because the items demanded in the FOIA request at issue in this proceeding are subject to the rules regarding discovery in the Rules of Civil Procedure applicable in Bauknight v. Pope, 2010-CP-40-4900, and exempt from disclosure under FOIA §30-4-40(a)(4) for that reason.

000135

The dropping of the venue objection is, essentially, a housekeeping matter. Although the original request for dismissal on the basis of improper venue was meritorious, the Court has now transferred venue from Newberry to Richland which, in effect, moots that ground.

The remaining Rule 12(b)(8) ground for dismissal and the alternative motion to strike have not been heard and remain the same.

For the foregoing reasons, the Defendant Wilson respectfully requests that this Court grant this amendment and hear the amended motion to dismiss at the same time as it hears the other currently pending motions in this case.

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: 

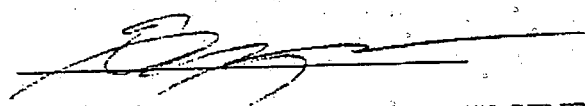
ATTORNEYS FOR THE ATTORNEY GENERAL

December 20, 2012

Rule 11, SCRCP, statement:

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

December 20, 2012

  
ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

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 THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

AMENDED  
MOTION OF ATTORNEY GENERAL  
TO DISMISS AND  
ALTERNATIVE MOTION TO STRIKE

Without waiving any jurisdictional or other defenses to this complaint, the Defendant Alan Wilson, Attorney General, moves for the dismissal of the Complaint herein pursuant to Rules 12(b)(1) and (8), SCRPC, in that, for reasons set forth below, the Court lacks subject matter jurisdiction of this matter and another action is pending between the same parties for the same claim:

1. The Court lacks subject matter jurisdiction of this action because the Plaintiff failed to mail or deliver her Freedom of Information Act request at issue to the Office of the Attorney General as required by S.C. Code Ann. 30-4-30 (c). This ground is supported by the attached affidavit of Tracy Meyers (Exhibit A), the original of which is already on file in this case.
2. The Court lacks subject matter jurisdiction of this action because the Complaint and attachments make clear that Plaintiff seeks the documents for the purposes of the Bauknight Pope, 2010-CP-40-4900, litigation pending now which is governed by the Rules of Civil Procedure regarding civil discovery in *Bauknight*. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery. The items demanded in the FOIA request at issue in

000137

under FOIA, this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

3. 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 (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion). 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).

Subject to the Motion to Dismiss, the Attorney General moves to strike the Affidavit of Plaintiff attached as Exhibit D to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and / or that are irrelevant.

Respectfully submitted,

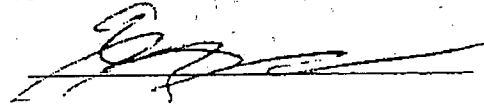
ALAN WILSON  
Attorney General

[Signature block continued next page]

J. EMORY SMITH, JR.  
Assistant Deputy Attorney General

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

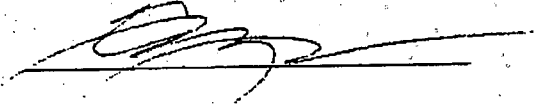
BY:



ATTORNEYS FOR THE ATTORNEY GENERAL

December 20, 2012  
Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose and consultation as to the Motion to Dismiss is not required.



December 20, 2012

ATTORNEY FOR THE ATTORNEY GENERAL

# EXHIBIT A

IN SUPPORT OF RULE 12(b)(1) Motion

000140

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

)  
)  
)

AFFIDAVIT

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

000141

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 20<sup>th</sup>

day of October, 2011

Shirechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10/2/18

000142

# EXHIBIT B

In Support of Rule 12(b)(8) Motion

000143

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

and

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

Plaintiffs.

v.

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

Defendants.

MOTION TO COMPEL  
DISCOVERY

(Requests for Production of Documents)

TO: PLAINTIFFS 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

TERRY BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRPC, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.<sup>1</sup>
2. On October 11, 2010, Defendant Pope served Plaintiffs 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 for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

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<sup>1</sup> Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

3. Among the documents requested were "[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."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisal in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately \$4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisal and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

Plaintiff's assets at death and those of the 2000 Irrevocable Trust were worth only about \$6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

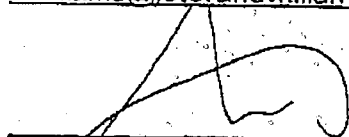
13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

Plaintiffs to comply with Rule 34, as well as all  
costs associated with this motion, including attorneys' fees, as provided for in Rule  
37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially  
Rules 34 and 37, applicable case and statutory law, the entire record herein, and such  
additional documentation as shall come before the Court prior to the hearing on this  
matter.

Respectfully submitted,

Daryl L. Williams  
Jeter & Williams, P.A.  
1204 Main Street, Suite 200  
Post Office Box 7425  
Columbia, South Carolina 29202  
Telephone: (803) 765-0600  
Facsimile: (803) 765-0619  
[dwilliams@jeterandwilliams.com](mailto:dwilliams@jeterandwilliams.com)



---

Adam T. Silvermail  
Law Office of Adam T. Silvermail, LLC  
1218 Taylor Street  
Post Office Box 1898  
Columbia, South Carolina 29202-1898  
Telephone: (803) 779-1770  
Facsimile: (803) 403-8092  
[adam@silvermaillawfirm.com](mailto:adam@silvermaillawfirm.com)

June 7, 2011

Attorneys for Defendant Adele J. Pope

# EXHIBIT C

In Support of Rule 12(b)(8) Motion

000149

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-0490

2011 JUL -5 AM 11:27  
JENNIFER W. MERRIDE  
Clerk of Court  
S.C. P. & G.S.

RICHLAND COUNTY  
CLERK OF COURT

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING VARIOUS DOCUMENTS REQUESTED BY DEFENDANT ADELE J. POPE

TO: DEFENDANTS AND THEIR ATTORNEYS:

000150

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 Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17, 2011 reply, including the proposed Confidentiality Order (Exhibit E).


(Signature Page Immediately Following)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

Respectfully submitted,

SWEENEY, 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

July 1, 2011

EXHIBIT D

000153

June 15, 2011

By U.S. Mail:

Mark V. Gende, Esquire  
Sweeny Wingate & Barrow P.A.  
1515 Lady Street (29201)  
Post Office Box 12129  
Columbia, South Carolina 29211  
[mvg@swblaw.com](mailto:mvg@swblaw.com)

4077-7389

Re: Bauknight and others vs. Pope and others  
Richland County Case No. 2010-CP-40-4900

Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
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7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322; and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,

  
Adam T. Silvermail

cc: Daryl L. Williams, Esquire  
J. Calhoun Watson, Esquire  
Robin A. Braithwaite, Esquire  
Adele J. Pope, Esquire

EXHIBIT E

000155

SWEENEY WINGATE & BARROW P.A.

June 17, 2011

Reply to: Main Office

Mark V. Gende  
(803) 256-2233 x 121  
mvg@svblaw.com

VIA ELECTRONIC MAIL AND U.S. MAIL

Adam T. Silvermail, Esquire  
1218 Taylor Street  
P.O. Box 1898  
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.  
Civil Action No.: 2010-CP-40-4900  
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

000156

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

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These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zumwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENEY, WINGATE & BARROW, P.A.

*Mark V. Gende*  
Mark V. Gende

*(CSH)*

MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail  
Daryl L. Williams, Esquire, via e-mail  
Robin A. Braithwaite, Esquire, via e-mail

000158

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Adele J. Pope, )

Plaintiff, )

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 THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

ANSWER OF ATTORNEY GENERAL

The Defendant Attorney General, answering the Complaint herein subject to, and without waiving his Motions in this case including his Motion to Dismiss and Motions to Strike and his Motion to Amend Motion to Dismiss, alleges the following including, subject to all of his motions and defenses, that he has no documents that could be considered responsive to the Freedom of Information Act request at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, Op. No. 27227 (S. C. Sup. Ct., filed February 27, 2013)<sup>1</sup>, a case in which Plaintiff was a party:

**FOR A FIRST DEFENSE**

1. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. The Defendant admits Paragraphs 1 and 2 of the Complaint.

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<sup>1</sup> Because most of the allegations of Plaintiff in the instant Complaint regarding the Legacy Trust are irrelevant to that Complaint, this Answer is not intended to address how the Opinion in *Wilson, etc. et al v. Dallas, et al*, may apply, if at all, to the allegations in the instant complaint.

3: The Defendant Attorney General does not admit the first sentence of Paragraph 3 in that it is directed to the Defendant Legacy Trust rather than the Defendant Attorney General and the Trust is to determine what response should be made except that the Defendant admits that Russell Bauknight is the current trustee. As to the remainder of that paragraph, the Defendant craves reference to the pleadings or other documents he has filed in *Bauknight v. Pope*, 2010-CP-40-4900 (case 4900), and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

4. As to paragraph 4 of the Complaint, the Defendant craves reference to the pleadings or other documents he has filed in case 4900, and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

5. As to paragraph 5, the Defendant admits only that he has been served. He denies that this Court has jurisdiction of this matter and denies that venue was proper in Newberry County where this suit was originally brought. Venue was transferred in this case to Richland County pursuant to the Order of the Newberry Court of Common Pleas.

6. As to paragraph 6, the Defendant craves reference to Exhibit C to the Complaint and denies any allegations in the instant complaint which are inconsistent therewith.

7. As to Paragraph 7, the Defendant craves reference to the complaint in case 4900 and denies any allegations in the instant complaint which are inconsistent therewith.

8. As to paragraph 8, the Defendant craves reference to the case-4900) complaint and denies any allegations in the instant complaint which are inconsistent therewith.

9. As to paragraph 9, the Defendant craves reference to the Complaint in case 4900 and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

10. As to paragraph 10, the Defendant craves reference to the Complaint in case 4900, denies that the allegations in the 4900 Complaint are false, and denies any allegations in the instant Complaint which are inconsistent with the 4900 Complaint. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

11. As to paragraph 11, the Defendant craves reference to the Complaint in case 4900 and denies any allegations in the instant complaint inconsistent with the 4900 Complaint. As to the Exhibit D, referenced by Plaintiff, the Defendant admits only that Plaintiff filed the Affidavit but denies the allegation regarding the reason for seeking damages and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

12. As to Paragraph 12, the Defendant denies any allegations in the instant complaint that are inconsistent with the Complaint in case 4900, denies that allegations in the case 4900 complaint are false and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

13. As to paragraph 13, the Defendant admits that he succeeded Henry McMaster as Attorney General, but he denies any allegations inconsistent with the Complaint in case 4900 and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

14. As to paragraphs 14, 15, 16 and 17, the defendant denies any allegations that are inconsistent with the Complaint in case 4900 and any filings by him in that suit. As to paragraph 16, he also denies any allegations inconsistent with any of his filings regarding the referenced motion. The Defendant Wilson denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

15. As to paragraph 18, the Defendant Wilson denies that Plaintiff properly mailed or delivered her Freedom of Information Act request at issue directly to the Office of the Attorney General(OAG) as required by S.C. Code Ann. 30-4-30 (c). See, attached affidavit of Tracy Meyers and letter to Ms. Pope of 8.5.11, Exs. pp. 1 & 3, *infra*. He is without sufficient knowledge or information to admit or deny whether she properly mailed or delivered her FOIA request to the Legacy Trust. As to the description of the requests, he craves reference to the alleged letters for their contents.

16. The Defendant admits paragraph 19 but craves reference to the FOIA request for its exact contents.

17. As to Paragraph 20, the Defendant admits only that the document was sent to the Wingate firm, but denies that sending a copy there would trigger the running of time for the response to the FOIA from the OAG under §30-4-30(c). The Defendant craves reference to the Retention Agreement for its contents related to FOIA.

18. As to Paragraph 21, the Defendant admits that his Office did not respond to the referenced FOIA, but denies that the Office was required to do so under that law in that Plaintiff failed to mail or deliver her request to the Office of the Attorney General, even upon inquiry from Ms. Meyers, and therefore, did not trigger the running of time for the response to the FOIA from the Attorney General under §30-4-30(c). See, Exs. pp. 1 & 3, *infra*.

19. The Defendant denies Paragraph 22 in that he has moved to strike Exhibit D and is not required to respond to it. As a further response to this paragraph, he craves reference to paragraph 19 of this Answer, *supra*, and craves reference to the Retention Agreement.

20. As to paragraph 23, the Defendant craves reference to the letter for a complete description of its contents.

21. The Defendant denies paragraph 24 as to the OAG in that the request was not properly mailed or delivered to the OAG so as to trigger application of FOIA. Exs. pp. 1 & 3, *infra*. Further, without waiving this defense or any other defense raised as to this complaint including all grounds for lack of subject matter jurisdiction, the exhibits from *Summer v. Wilson*, 2012-CP-36-688 attached hereto demonstrate that the OAG does not have the documents responsive to the FOIA at issue in the instant case except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas, supra*. See, *exs., infra*, pp. 5, 7, 8 and 9. The Defendant Attorney General does not admit the allegations of paragraph 24 which are directed to the Defendant Legacy Trust rather than the OAG as such matters are for the Trust to determine what response should be made.

22. The allegations in paragraph 25 regarding the Black letter do not apply to the Defendant Attorney General or the FOIA directed to the OAG. Further, the Defendant craves reference to the Guide for a complete description of its contents.

23. The allegations in paragraph 26 regarding the Legacy Trust do not apply to the Defendant Attorney General or the FOIA directed to the OAG. Such matters are for the Trust to determine what response should be made. The OAG was not properly served with the FOIA at issue so as to trigger a requirement to respond thereto.

24. As to paragraph 27, the Defendant craves reference to the FOIA statute (S.C. Code Ann. §30-4-10, *et seq.*) and denies any allegations in the instant complaint which are inconsistent therewith.

25. The Defendant Attorney General does not admit the allegations of paragraph 28 because they are directed to the Defendant Legacy Trust rather than the OAG and the Trust is to determine what response should be made.

26. The Defendant Attorney General denies the allegations of paragraph 29 which are directed to him and does not admit those allegations as they are directed to the Defendant Legacy Trust in that the Trust is to determine what response should be made.

27. The Defendant Wilson does not admit the allegations of paragraph 30 as they are directed to the Defendant Legacy Trust, and the Trust is to determine what response should be made. To the extent that this paragraph refers to case 4900, the Defendant Wilson craves reference to the Complaint in that case and denies allegations in paragraph 30 that are inconsistent therewith. To the extent that this paragraph refers to the FOIA as to the OAG, the Defendant craves reference to the above paragraphs of this Answer, The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

28. To the extent that the allegations of paragraph 31 are directed to him, the Defendant Wilson denies them for the reasons set forth above including Answer paragraph 21, *supra*. The Defendant Wilson does not admit the allegations of paragraph 31 to the extent they are directed to the Defendant Legacy Trust in that the Trust is to determine what response should be made.

29. Paragraph 32 is a cumulative Paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and Paragraphs of the Complaint and reasserts them.

30. The Defendant Wilson does not admit the allegations of paragraph 33 as they are directed to the Defendant Legacy Trust, and the Trust is to determine what response should be made.

31. Paragraph 34 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and paragraphs of the Complaint and reasserts them.

32. The Defendant denies paragraphs 35, 36, and 37.

33. The Defendant denies the requests in the Prayer for Relief to the extent they are directed to him except that he agrees to the current hearing date of March 18, 2013, and subject to his pending motions and all defenses, he is serving and filing his Answer now, although not required, in an effort to bring all matters before the Court so that they may be determined at the hearing on the 18<sup>th</sup>. To the extent that the requests in the Prayer for Relief are directed to the Defendant Legacy Trust, the Defendant Wilson does not admit them as the Trust is to determine what response should be made.

#### FOR A SECOND DEFENSE

34. The Court lacks subject matter jurisdiction of this action because the Complaint and attachments make clear that Plaintiff seeks the documents for the purposes of the *Bauknight v. Pope*, 2010-CP-40-4900, litigation pending now which is governed by the Rules of Civil Procedure regarding civil discovery in *Bauknight*. FOIA is an important statute, but it cannot be

used to bypass the rules regarding discovery. The items demanded in the FOIA request at issue in this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

#### FOR A THIRD DEFENSE

34. The Court lacks subject matter jurisdiction of this action because the Plaintiff failed to accomplish mailing or delivery of her Freedom of Information Act request at issue so as to be received by the Office of the Attorney General as required by S.C. Code Ann. 30-4-30 (c). This ground is supported by the attached affidavit of Tracy Meyers (Exs. p. 1, *infra*) the original of which is already on file in this case.

#### FOR A FOURTH DEFENSE

35. 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.

#### FOR A FIFTH DEFENSE

36. Subject to and without waiving any defenses raised as to this Complaint by this Answer or by Motion, including all grounds for lack of subject matter jurisdiction, the Attorney General responds herein that the Freedom of Information Act is very important to his Office and that his Office has no documents that could be considered responsive to the FOIA at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas, supra*, at Exs., *infra*, pp. 8 & 9.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays as follows:

That judgment for the Defendant be entered as to the Complaint and that the relief sought by the Plaintiff be denied.

2. For such further relief as the Court deems just and proper.

ALAN WILSON  
Attorney General

J. EMORY SMITH, JR.  
Assistant Deputy Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3680  
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR DEFENDANT ATTORNEY  
GENERAL

March 7, 2013



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 20<sup>th</sup>

day of October, 2011

Sherechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4/2/18



ALAN WILSON  
SECURITIES COMMISSIONER

August 5, 2011

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

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.

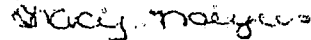
Responding to your letters dated July 19, 2011 and July 20, 2011 is difficult, as I have been informed there are several pending motions filed in Case No. 2010-CP-40-4900 in the Richland County Circuit Court and that several of the pending motions relate to the documents you are currently seeking to 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.

Adele J. Pope  
August 5, 2011  
Page 2

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 A. Meyers  
Senior Assistant Attorney General

TAM/tpn

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"

Exs. 5  
000172

the spousal claim of Tommie Rae Hynie—evidence that the AG's office might have used to save about one-quarter of the music empire for the charity McMaster claimed to be protecting. I also request any electronic or written communication regarding the AG's office's recent support for Hynie in her effort to maintain the gag orders through her attorney Robert Rosen. (It is in the public interest to bring into the light and discuss the following scenario: The AG's office says the diaries cannot be released because of a gag order, then the AG's office files documents with the court to maintain the gag order. Why would that happen, when the diaries may include important evidence that affects the future of the James Brown "I Feel Good" Trust?).

4. I request any documents related to the \$4.7 million at-death valuation of James Brown's music empire. According to pleadings I have read, the SC Probate Code requires the documentation/appraisal to be filed with the Probate Court, a duty of the current trustee Russell Bauknight who serves at the AG's pleasure. I am most interested to see the documentation for why the AG's office would approve this figure. (If the AG's office has no documentation of the valuation, surely the AG's office would not have signed off on a \$4.7 million filing with the IRS when the AG's office has the duty of enforcing laws, including tax laws.)
5. I request all electronic or other written communication regarding why the AG's office sought no restitution from David Cannon, even though he has a million-dollar home in Honduras.

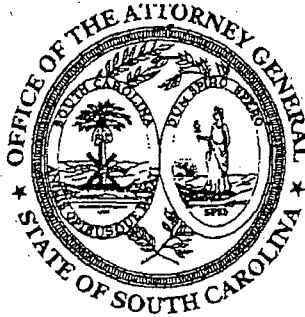
Thank you for your prompt attention to these requests, and I request any fees to be waived in the public interest. After all, there are perhaps thousands of young people for whom the James Brown "I Feel Good" Trust might open educational opportunities—and that alone makes these questions of great public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

Sincerely,

Sue Summer

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AG Wilson Continues Battle To Conceal James Brown Documents and Deny FOIA Requests



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

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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RECORD ON APPEAL  
Volume II  
(Pages 462-922)

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Exs. 8

000175

STATE OF SOUTH CAROLINA     )  
  )  
  )  
  )  
  )  
  )  
COUNTY OF AIKEN             )

THE JAMES BROWN LEGACY TRUST

THE JAMES BROWN LEGACY TRUST

This Trust Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2008, and is executed by (i) the Attorney General of South Carolina, (ii) Tommie Rae Brown; and (iii) the Brown Family LLC, as Settlers, and \_\_\_\_\_, as the Trustee. This Trust shall be known as The James Brown Legacy Trust.

ARTICLE 1)

Establishment of Trust

The Settlers have irrevocably paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement do hereby irrevocably pay over, assign, grant, convey, transfer and deliver unto the Trustees the property described in Schedule A, annexed hereto and made a part hereof. This property and any other property that may be transferred to the Trustees in the future and any property that may be received or which has been received by the Trustees hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustees as hereinafter set forth.

ARTICLE 1.

Acceptance by Trustees

The Trustees herein above named have agreed to accept said Trusteeship and all interests in property which may come to them by reason of this Agreement for the benefit and use of the beneficiaries, all in accordance with the provisions hereinafter set forth, and hereby acknowledge receipt of certain assets which are or shall be described on the receipt to be delivered by the Trustees to the Settlers, which receipt is attached to this Agreement. In keeping therewith, the Trustees are hereby vested with all right, title, and interest in and to such assets as are listed on the receipt which is attached hereto as Schedule A and are authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that go with such assets.

ARTICLE 2.

Further Assignments and Additional Contributions

3.1 **Additional Instruments and Assignments.** The Settlers covenant and agree to make, execute and deliver to the Trustees such other and further assignments, covenants or instruments as the Trustees may deem necessary or appropriate to effectuate the purposes of this Agreement.

3.2 **Additional Contributions.** The Settlers, and any other person with the Trustees' consent, shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during his or her lifetime, to contribute cash, securities and/or other property to the Trust created under this Agreement and pursuant to the Private Agreement of August 10, 2008 and any Addenda Agreements thereto.

ARTICLE 3.

Statement of Intent

This Trust Agreement and the Trust it creates are irrevocable and such Trust is intended to comply with the Private Agreement of August 10, 2008 (a copy of which is attached hereto as Exhibit A) the Contribution Agreement dated \_\_\_\_\_, 2008 (a copy of which is attached hereto as Exhibit B) and any addenda thereto executed by the Settlers or their agents.

ARTICLE 4.

Payments of Expenses and Distributions of Property

5.1 **Trust Beneficiaries and Distributional Interests.** The Trustee shall hold all assets contributed to this Trust under the terms of the said Contribution Agreement or otherwise and shall distribute the net income of the Trust (the "distributional interests") to the Trust Beneficiaries listed below as follows:

5.1.1 Fifty percent (50%) to the Trustee(s) of the trust provided for under Article V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "I Feel Good" Trust);

5.1.2 Twenty-five percent (25%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

5.1.3 Twenty-five percent (25%) to The Brown Family LLC;

Such distributions shall be net of estate administrative expenses, taxes and legal expenses necessary to enable the estate to properly determine the respective interests of the parties,

provided that netting such legal expenses shall not reduce the distributional share of the I Feel Good Trust below fifty percent (50%).

**5.2 Income in Respect of a Decedent.** Income of this trust which is income in respect of a decedent for federal or state estate and income tax purposes shall be distributed first to the Trustee of the I Feel Good Trust as all or a portion of such Trust's share hereunder to the extent that such order of distribution does not cause the shares of the Brown Family LLC or of Tommie Rae Brown to be funded with an amount less than the amount with which such shares would be funded if it were not for the provisions of this Article 5.2.3.

(A formula as to the manner of such distributions as provided herein above is set forth in Schedule B, attached hereto.)

**5.3 Sale of Assets.** Upon the sale of all or substantially all of the assets of the Trust, the Trustee shall distribute the Trust assets to the Beneficiaries according to Section 5.1 and the Trust shall terminate. To the extent that estate or inheritance taxes should be due with respect upon the death of Tommie Rae Brown or any owner of the Brown Family, LLC with respect to any distributional interest in this Trust, the Trustees and Beneficiaries agree that they shall make a good faith effort to consider mechanisms to provide liquidity for such taxes.

#### ARTICLE 5.

##### Limitations on Powers of Trustees: Voting

**6.1 Actions of Trustees Requiring Approval of Beneficiaries.** The Trustees shall have all of the powers described in Article 9, below; provided, however, the Trustees shall require approval of a majority of the Beneficiaries in order to:

**6.1.1** Sell all or substantially all of the assets of the Trust;

**6.1.2** Terminate the Trust.

Any such vote shall be made by each Beneficiary (as defined in §7.2, below) having a vote equal to such Beneficiary's distributional interest as provided in Section 5.1, above, by or through its acting fiduciary in the case of entities or by or through the individual, agent under power of attorney or Personal Representative or other acting fiduciary in the case of Tommie Rae Brown.

**6.2 Notice of Vote.** Any Beneficiary may at any time request a vote of the beneficiaries as to any such matter as may call for a vote under this instrument by giving notice and a request to the other Beneficiaries for a vote pursuant to the terms of Sections 8.4 and 8.5, below. If a noticed party does not

respond with its vote on the applicable matter in writing within 30 days of such time as the notice is deemed to have been given, such Beneficiary shall no longer have the right to vote on such matter and the decision to be voted on shall be determined by the majority vote of those voting.

#### ARTICLE 6.

##### Resignation, Removal, Appointment and Succession of Fiduciaries

**7.1 Resignation and Appointment Procedure.** Any person or organization at any time serving as a fiduciary hereunder, whether as Trustee or in any other capacity (a "Fiduciary") may resign at any time by providing written notice to another then acting Co-Fiduciary (if there is one), or, if none, to the then beneficiary or one of the then beneficiaries of the affected Trust, setting forth the effective time and date of such resignation on or before such effective time. Notwithstanding the previous sentence, the resignation of a Fiduciary acting alone shall only be effective upon the appointment and qualification of a successor Fiduciary.

All Fiduciary appointments and removals permitted hereunder shall be made by an acknowledged instrument delivered to the Fiduciary(ies) then acting, if any, and, when applicable, to the appointee, and shall become effective on the date or upon the happening of the event specified in the instrument and may be revoked in the same manner at any time before the successor qualifies.

**7.2 Right of Beneficiaries to Remove and Replace.** The Beneficiaries (being the James Brown "I Feel Good" Trust, Tommie Rae Brown and the Brown Family LLC) acting by majority vote may at any time remove any then acting Trustee or Trustees and appoint a successor Trustee or Trustees. Any such vote shall be made by each beneficiary in accordance with their distributional interests.

**7.3 Disability of a Fiduciary.** The determination that a Fiduciary is a disabled person shall be made by a court of competent jurisdiction.

**7.4 Termination of Fiduciary Powers.** An outgoing Fiduciary, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Fiduciary ceases for any reason to be a Fiduciary hereunder, there shall be delivered to such Fiduciary's successor or to another then acting Fiduciary hereunder all of the assets (Trust or otherwise) which were in the possession of such Fiduciary and there shall be made available to each successor Fiduciary a complete financial record and inventory of assets affected thereby. With respect to any properties thus transferred by the outgoing Fiduciary or by such Fiduciary's representative, such Fiduciary shall stand and be discharged of all further duties and obligations.

**7.5 Successor Fiduciary Powers and Authority.** Each successor Fiduciary, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Fiduciary. Title to the entire property (of the Trust or otherwise) shall automatically vest in

any successor Fiduciary without the necessity of any conveyance. The assumption of authority by a successor Fiduciary shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Fiduciary or to such Fiduciary's legal representative). Any corporation into which any corporate Fiduciary acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Fiduciary hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this instrument.

**7.6 Exoneration from Liability for Acts of Prior Fiduciaries.** Each successor Fiduciary shall be exempt from any liability in any way related to the prior actions or omissions of the previous Fiduciaries, and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Fiduciary.

**7.7 Trustee Settlements.** The "Beneficiary" or the "Primary Beneficiary" of any Trust created hereunder or, if none, any individual who is at the time (a) a beneficiary entitled to receive current distributions from any Trust created hereunder, and (b) not then serving as a Trustee, may at any time or from time to time settle any Trustee's or former Trustee's accounts and to the extent permissible by law each settlement shall be binding and conclusive upon all persons who may be interested in the Trust, whether directly or contingent, born or unborn, infant or adult. If the person herein designated with the power to consent to settlements is a disabled person, such power shall only be exercised by his or her guardian or other legal representative:

#### ARTICLE 7.

##### Fiduciary Provisions

**8.1 Delegation of Ministerial Acts.** Each Fiduciary hereunder is authorized, by written instrument filed with such Fiduciary's Co-Fiduciary or Co-Fiduciaries, to delegate to such other Co-Fiduciary or Co-Fiduciaries, or any one of them, such Fiduciary's duties with respect to general ministerial acts, specifically including the signing of checks, the execution of tax returns and the execution of instruments of contract, sale or conveyance with respect to a particular Trust's assets, including the opening of checking, brokerage or similar accounts. Upon written assurance by any Fiduciary that such Fiduciary has been delegated such ministerial duties, any third parties shall accept the signature of such Fiduciary as binding upon the affected Trust, shall not require further authorization of any other Fiduciary, and shall be indemnified and held harmless to the extent of such Trust's assets on account of any loss, liability or expense arising out of the acceptance of the signature of any Fiduciary as the basis of any transfer, withdrawal or other transaction.

**8.2 Trustee Compensation.** For their services as Trustees, the Trustees are entitled to receive an amount which is reasonable for the services rendered at the time services are rendered. At any time there are multiple Trustees serving, the Trustees, collectively, shall share such fee. If there shall be a corporate Trustee serving as Trustee, the corporate Trustee shall be entitled to reasonable compensation for the services rendered, but in no event shall such compensation be more than an amount which is competitively determined to be reasonable for the services rendered among organizations providing similar such services. For the purpose of determining Trustees' fees payable hereunder, all Trusts hereunder shall be treated as one Trust.

**8.3 Inventory; Appraisals; Bond.** Except as otherwise required by law, the Trustees shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but, upon request, shall make available a statement of receipts and disbursements and an investment review of the assets of any Trust created hereunder at least annually to each person then eligible to receive distributions from such Trust, and each then present beneficiary thereof.

**8.4 Notice.** Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

Instruments shall be considered delivered: (i) if sent by mail or express service, on the third day following the date of its receipt by the postal service (or such express service), as evidenced by a dated postal (or express) service receipt showing the addressee's name and proper address (as described above); (ii) if sent by facsimile, upon receipt by the sender of a confirmation of receipt from the addressee's facsimile machine indicating (a) the correct telephone number of the addressee's facsimile machine, and (b) receipt of the correct number of pages sent as properly received; or (iii) if sent by e-mail, upon receipt by the sender of a confirmation from the addressee's e-mail address indicating that the addressee has opened the e-mail.

In all other cases, the date of actual physical delivery shall be the effective date of delivery and, except as such instrument may specifically provide for a later effective date, it shall be effective for all purposes from such date.

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Copies of all instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of trustee resignation, removal, appointment, and/or acceptance, the original of which shall be kept with the Trust records, shall, upon request, be promptly delivered or sent by mail by the Trustee receiving or initiating the same to each other then interested party (i.e., the other then Trustee or Trustees, if any, of the affected Trust or Trusts, and each then beneficiary of the affected Trust or Trusts).

8.5 **Notice to Disabled Parties.** If a person who is a disabled person is a party to any legal proceeding relating in any manner to any Trust created hereunder, service of process upon the disabled person shall not be required if another individual, who is not a disabled person, is a party to the proceeding and has the same interest as the disabled person.

8.6 **Right to Retain Assets.** The Trustees are specifically granted the authority to accept and retain liquid and/or illiquid and/or non-income producing assets as Trust investments, specifically being those assets which may have passed to the Settlor's hereof on account of the death of James Brown. The purpose contemplated in the establishment of the Trust is that it engage in the management and holding of liquid and/or illiquid assets received by the Beneficiaries and contributed to this Trust on account of the death of James Brown, including, but not limited to, real estate, limited liability and other closely held companies, partnerships, and corporations, as well as various sorts of intangible property, including copyrights, termination and transfer rights, as well as the right to exploit the name and image of James Brown, all of which are to be managed, invested and/or sold for the benefit of the Trust and its Beneficiaries. It is contemplated that the Trustees shall have the right to buy, sell, lease, license, incorporate and in all other manner modify or exploit for profits for the benefit of the Trust all of such assets and property (tangible, intangible, intellectual or other). In establishing this Trust, the Settlers contemplate that the Trustees will engage in complex transactions and that the Trustees will expend (and are authorized to expend) trust funds on attorneys, accountants, advisors, agents and the appropriate experts in the fulfillment of their duties as Trustees.

#### ARTICLE 8.

##### Fiduciary Powers

In the administration of any Trust created hereunder, the Trustees shall have all of the powers granted by law, including but not limited to the powers granted to Trustees by the South Carolina Trust Code (S.C. Code Section 62-7-101, et. seq.), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. In addition to the powers granted under said statute, the Trustees shall have the powers granted above to receive, hold, manage and dispose of the aforesaid property contributed by the Beneficiaries which any one or more of them may have received on account of the death of James Brown.

Without limiting the foregoing, the Trustees shall also have the following powers:

- 9.1 **Determinations.** To determine what property is covered by general descriptions in this instrument.
- 9.2 **Investments and Reinvestments.** Subject to Article 6, to invest or reinvest in and to sell and/or to sell short such securities or other property, real or personal (whether within or without the United States) as they shall determine; to lease all or part of the real or personal property of the estate or trust, even for a term longer than the probable duration of any trust, to grant options for the renewal of leases; and to retain any property received by them for such periods as they determine (including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust), even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments and shall have the right to convert any or all assets of any Trust held hereunder into any other form of asset, diversified or undiversified as they shall determine. The Settlers request that the Trustees honor the wishes of the Trust beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustees determine that such wishes are clearly in contradiction to the purposes and terms of any such Trust.
- 9.3 **Conveyance of Assets.** To convey an absolute fee in possession of any land, and full ownership of any personalty comprising a part of any Trust created hereunder and to sell, exchange, mortgage, partition, pledge, improve or otherwise alter any real or personal property comprising a part of any Trust created hereunder, at public or private sale, at such price and upon such terms as the Trustees shall deem proper and to lease the same for a term extending beyond the life of any Trust created hereunder without prior application to any court for permission to do so.
- 9.4 **Non-Traditional Investments.** In addition to the powers granted under this Article, the Trustees (other than any beneficiary) are expressly authorized to acquire and retain investments not regarded as traditional for Trusts. The Trustees may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership and may sell or write options on assets of the Trust.
- 9.5 **Management and Holding of Assets.** To invest and reinvest all or part of the assets of any trust created hereunder in interests formed principally for the commingling of assets for investment, such as partnerships, limited liability companies, and common trust funds, including any common trust fund of any corporate Fiduciary, including registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such funds; to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee; to employ banks, trust companies, securities brokerage firms and/or independent investment advisors or managers (collectively, "Agents or Advisors"), including affiliates

of any Trustee, located anywhere within or without the United States (including themselves), at the discretion of the Trustees, but at the expense of the Trust, as custodian or agent; and to designate and employ such persons to give investment advice and to hold and manage discretionary investment or trading accounts; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such agent, bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Fiduciary(ies) may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Fiduciary(ies) shall be under no obligation to inspect or verify such stock or securities nor shall the Fiduciary(ies) be responsible for any loss by such bank, trust company, or securities brokerage firm. The Fiduciary(ies) shall not be responsible for the act, default or omission of any such Agent or Advisor except to the extent that the Fiduciary(ies) have been negligent or exhibited willful misconduct in the selection of such Agent or Advisor. The Fiduciaries shall not be liable for relying absolutely on any apparently valid documents or the opinions of counsel and advisors to the Trust.

- 9.6 **Consolidation and Division of Assets.** To hold and administer the assets of the Trusts created hereby in one or more consolidated funds, in whole or in part, in which any separate Trusts shall have undivided interests. Generally, and subject only to the provisions of this instrument, the Fiduciary(ies) shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.
- 9.7 **Borrowing.** To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of such Trust, and to secure any such loan by mortgage or pledge. To maintain margin account(s) and to make such pledges of and other undertakings with respect to assets as the Fiduciary(ies) deem(s) advisable in connection with the establishment and maintenance of such account or accounts. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable for sums borrowed, and each such loan shall be payable only out of assets of the Trust.
- 9.8 **Lending.** To lend all or any portion of the funds of any Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustees may in their discretion impose.
- 9.9 **Receipts, Disbursements and Allocations.** To allocate receipts and disbursements between income and principal in such manner as the Trustees (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply to permit any allocation of administration expenses to income that would require a reduction in the estate tax marital deduction (pursuant to IRC §2056(b)(4)) or charitable deduction (pursuant to Treas. Reg. §20.2055-3(b)), as the case may be. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of

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property qualifying for the marital deduction, in which case such allocation shall follow state law, and (ii) in the discretion of the Trustees (other than any beneficiary).

- 9.10 Distributions.** Without the consent of any beneficiary, the Trustees (other than any beneficiary) may make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property allocated to any beneficiary (including any Trust) and without making pro-rata distributions of specific assets. In addition, the Trustees are authorized to select specific assets in funding fractional share distributions and are not required to select a percentage of each specific asset.
- 9.11 Occupancy and Use.** Except as may be otherwise specified elsewhere in this instrument as to any specific property, the Trustee shall have the power to permit any person having an interest in the income of any trust created hereunder to occupy real property or to use personal property held by any such trust upon such terms as the Trustee deems proper, whether rent-free or for the payment of taxes, insurance maintenance and ordinary repairs or other expenses, or upon such other terms and conditions as the Trustee determines.
- 9.12 Related Party Transactions.** To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any Trust the Settlers may have established and to retain such property so long as the Trustees hereunder may deem advisable, whether or not such property is of the class in which Trustees are authorized by law or any rule of court to invest; and to make loans to, or borrow from, any such Trust or Trusts upon such terms and conditions as the Trustees deem advisable.
- 9.13 Management of Closely Held Businesses.** In connection with (a) the continuation or operation of any business or investment interests which become a part of any Trust under this instrument (whether on initial funding, by purchase by the Trustees, by bequest or otherwise), or (b) the establishment of any new business or investment, the Trustees are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by them in respect of the operation of the business) without regard to their being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which any Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which an outright owner of such business could have exercised.
- 9.14 Division or Combination of Trusts.** In the event that the Trustees determine that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for tax (including a desire to enable any such trust to qualify as an eligible shareholder of an S corporation), administrative, liability, environmental, or other reasons), the Trustees shall have the power to divide any

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such Trust into further trusts or shares. The Trustees shall also have the power to combine any such Trust created hereunder with any other Trust, whether created by the Settlers or another person, if the terms of the trusts are substantially the same and the Trustees are the same.

**9.15 Power to Deal With Environmental Hazards.** To use and expend any Trust income and principal: (i) to conduct environmental assessments, audits, and site monitoring; (ii) to take all appropriate remedial action to contain, cleanup or remove any environmental hazard; (iii) to institute legal proceedings concerning environmental hazards or contest or settle legal proceedings; (iv) to comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) to employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. The Fiduciaries shall also have the power: (a) to require, as a prerequisite to accepting as an addition to any Trust hereunder any property, real or personal, from any person, that the transferring party provide evidence satisfactory to the Trustees that the property is not subject to such environmental hazards as the Trustees may specify; (b) to decline to serve as a Fiduciary or to resign if the potential individual liability relating to environmental problems conflicts with fiduciary duties; (c) to set aside as a separate Trust, to be held and administered upon the same governing terms as any other Trust or Trusts for any one or more of the beneficiaries hereunder which the Settlers may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law; and (d) to disclaim any power which, in the sole discretion of such Fiduciary, will or may cause any such Fiduciary to be considered an "owner" or "operator" of property, or which shall otherwise cause any Fiduciary to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The Fiduciaries shall not be personally liable to any beneficiary of any Trust created hereunder, or to any other party interested in any Trust created hereunder, for any claim against any Trust for the diminution in value of trust property arising from the compliance by the Fiduciaries with any federal, state, or local law, rule, or regulation. Any expenses incurred by the Trustees under this paragraph may be charged against income or principal as the Trustees (other than a beneficiary) shall determine.

**9.17 Uneconomical Trusts.** If at any time any Trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date hereof), as determined by the Trustees, of Fifty Thousand (\$50,000) Dollars or less, the Trustees (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Beneficiary or Primary Beneficiary, or if none, to the person or persons then entitled to receive or have the benefit of the income therefrom, or to the legal representative of such person. If there is more than one current beneficiary, the Trustees shall make such distribution to such current beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated, to such beneficiaries, per stirpes.

**9.18 Limitations.** Notwithstanding the foregoing, nothing in this instrument shall be construed as permitting a beneficiary who may also be a Trustee of any Trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this instrument upon the exercise of such powers (such

as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

## ARTICLE 9.

### Definitions

10.1 **Trustee, Fiduciary, Personal Representative.** The words "Trustee", "Fiduciary", and/or "Personal Representative", or any modifying or substituted pronouns therefor shall include singular and plural, as well as the masculine, feminine and neuter genders thereof, and shall apply equally to the personal representative, fiduciary, or trustee named herein and to any successor or substitute fiduciary, trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon the fiduciary, trustee and/or personal representative originally named herein.

## ARTICLE 10.

### Power in Trust Protector to Amend

11.1 **Appointment of the Trust Protector.** Should a need arise for a Trust Protector and should a Trust Protector not then be serving, or should there arise circumstances under which it is apparent to the Trustee or to a majority of the then beneficiaries of any Trust created hereunder that the parties' intentions in creating any Trust created under this Agreement may be better served by a modification of any such Trust, then a Trust Protector shall be chosen to consider whether the Trust should be amended. The Trust Protector shall be chosen by a majority vote of the Beneficiaries as provided in Article 6, above.

11.2 **Extraordinary Authority.** Because the parties recognize that it may not be able to anticipate developments and changes which may occur during the term of Trusts created under this Agreement, it wishes to give the Trust Protector extraordinary power and authority over the modification of the Trusts created herein and the distribution of the Trust assets at a time prior to, or later than, that which the parties have otherwise provided herein. These broad powers are granted for the purpose of permitting the Trust Protector to effect the parties' set forth in this Trust Agreement.

11.2.1 **Authority to Amend.** The Trust Protector shall have the power, by an instrument filed with the Trust records, to amend the administrative provisions of this Agreement (including the provisions relating to the Trustee); provided, (i) no power of amendment shall be effective to extend the period for the vesting of any property under the Trust beyond the period for vesting defined elsewhere in this Agreement, (ii) that any such amendment shall be for the sole purpose of effecting the parties' objectives expressed herein.

11.3 **Appointment and Removal of Trustees.** Upon the prior consent of a majority vote of the Beneficiaries, the Trust Protector may remove any Trustee at any time, with or without cause, and

may appoint a successor Trustee to fill any vacancy in the office of Trustee, however caused. The Trust Protector may only serve as Trustee after having resigned as the Trust Protector.

**11.4 Liability.** No personal liability shall attach to the Trust Protector except for gross negligence or willful wrongdoing. The Trust Protector for any Trust shall be treated for all purposes as a "special trustee" whose powers, duties, and responsibilities are thus limited to those specifically vested in such position (and none, such as responsibility for administration, investments, etc., that result generically to a trustee).

**11.5 Written Requirements.** No exercise of any power, designation of successor, resignation, or other action of the Trust Protector provided for in this Article shall be effective until such action shall be manifested by an instrument or instruments in writing signed by the person or persons authorized to take such action and delivered to the Trustees or, in the case of the exercise of the power to appoint a Trustee for any Trust for which there is no then serving Trustee, to the person designated as Trustee.

**11.6 Successor Trust Protectors.** All provisions of this Agreement relating to the Trust Protector shall apply to the original Trust Protector to all subsequent Trust Protectors.

#### ARTICLE 11.

##### Termination of Trusts

Notwithstanding anything to the contrary, the trusts created hereunder shall terminate one day prior to the maximum time allowed under the South Carolina Uniform Rule against Perpetuities. At that time, the Trustee shall distribute the trust assets to the beneficiaries of the current income thereof. To the extent that the laws of any jurisdiction under which any Trust created hereunder is being administered lengthen or abolish any, or have no, otherwise applicable rule against perpetuities, then the laws of such jurisdiction shall be applied to determine any mandatory termination of such Trust. Furthermore, to the extent determined by the Trustees (other than any beneficiary), the dispositions made hereunder may be modified such that such distributions are made to newly created (or amended) Trusts having the same provisions as those referred to above, except that such newly created (or amended) Trusts may extend beyond the period referred to in the first sentence of this paragraph if permitted under the then laws of such Trust's jurisdiction. To the extent that any provision of this paragraph would cause any Trust established under this instrument to fail, such provision shall be inapplicable.

#### ARTICLE 12.

##### Jurisdiction and Governing Law

All questions pertaining to the construction, validity and effect of this instrument and any Trusts created hereunder shall be determined in accordance with the laws of the State of South Carolina.

ARTICLE 13.

Protection of Charitable Status

The Settlers intend to preserve and protect the charitable tax-exempt status of the "I Feel Good" Trust. Accordingly, this Trust at all times shall be interpreted, managed, invested, administered and in all respects governed consistent with such intent. The Trustee shall administer the Trust in a manner that ensures that the "I Feel Good" Trust qualifies and continues to qualify as a charitable trust. The Settlers agree to modify the terms herein to the extent necessary to preserve the charitable tax-exempt status of the "I Feel Good" Trust to the extent allowed by law.

ARTICLE 14.

Headings

The article and section headings used in this instrument are for convenience only and are not to be considered as part of this instrument.

ARTICLE 15.

Spendthrift Provisions

No beneficiary of any Trust created herein shall have the right, power, or authority to sell, assign, pledge, mortgage, anticipate, or in any manner encumber, alienate, or impair all or any part of his or her interest in such Trust or in the principal or income of such Trust. The beneficial and legal interest in, and the principal and income of, any such Trust and every part thereof shall be free from the interference or control of any creditor or spouse of any beneficiary of this Trust and shall not be subject to the claims of any such creditor or spouse nor liable to attachment, execution, bankruptcy, or any other process of law. This paragraph is intended to cause any Trust created under this instrument to be a "spendthrift trust" as that phrase may be interpreted under the applicable laws of the Trust's jurisdiction.

EXECUTION

IN WITNESS WHEREOF, the Settlers have set their hands and affixed their seals, and the Trustees, in acceptance of this Trust, have set their hands and affixed their seals.

\_\_\_\_\_  
Attorney General of South Carolina for the  
James Brown "I Feel Good" Trust

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STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named \_\_\_\_\_, Trustee, sign, seal and as his/her act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS \_\_\_\_\_  
day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

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Exs. 24

SCHEDULE A

ASSETS CONTRIBUTED TO THE JAMES BROWN LEGACY TRUST

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SCHEDULE B

ALLOCATION AND DISTRIBUTION OF NET INCOME

Distributions of Net Income shall be made to the beneficiaries based on the following formula:

After determination of distributions of Net Income to the Beneficiaries based on the above formula, any component of Net Income that is ordinary income shall first be distributed to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. Next, the Trustees shall distribute any component of Net Income that is capital gain to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. After allocation of ordinary income and capital gain to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income, the Trustees shall distribute remaining Net Income to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. After fully satisfying the share of Net Income allocated to the Trustees of the James Brown "I Feel Good" Trust, the Trustees shall allocate the remaining Net Income pro rata among Tommie Rae Brown and the Brown Family LLC.

STATE OF SOUTH CAROLINA )  
)  
)  
COUNTY OF AIKEN )

THE JAMES BROWN LEGACY TRUST

THE JAMES BROWN LEGACY TRUST

This Trust Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2009, and is executed by the Settlor (collectively hereinafter known as the 'Settlor') (i) the Attorney General of South Carolina, (ii) Tommie Rae Brown, and (iii) Larry Brown, Venisha Brown, Deanna J. Brown Thomas, Yamma N. Brown Lamar, Daryl Brown and Terry Brown, (the "Brown Adult Children") and \_\_\_\_\_, as the Trustee. This trust shall be known as The James Brown Legacy Trust (the "Trust").

**ARTICLE I  
ESTABLISHMENT OF TRUST**

Pursuant to the Contribution Agreement of even date herewith, the Settlor have irrevocably paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement do hereby irrevocably pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A (also referred to herein as the "James Brown Assets"), annexed hereto and made a part hereof. This property and any other property that may be transferred to the Trustee in the future and any property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

**ARTICLE II  
ACCEPTANCE BY TRUSTEE**

The Trustee herein above named has agreed to accept said Trusteeship and all interests in property which may come to the Trustee by reason of this Agreement for the benefit and use of the Beneficiaries (as defined in Section 11.2 below), all in accordance with the provisions hereinafter set forth. In keeping therewith, the Trustee is hereby vested with all right, title, and interest in and to such assets as are listed on Schedule A and is authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that go with such assets.

**ARTICLE III  
STATEMENT OF INTENT**

This Trust Agreement and the Trust it creates are irrevocable and this Trust is intended to comply with the Private Agreement of August 10, 2008 ("Original Agreement") as amended by the Addendum dated \_\_\_\_\_, 2009 to the Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (as amended, the "Agreement") (a copy of which is attached hereto as Exhibit A) ("Private Agreement"), and the Contribution Agreement dated \_\_\_\_\_, 2009 (a copy of which is

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attached hereto as Exhibit B) ("Contribution Agreement"), as the same may be amended or modified by any addenda thereto executed by the Settlers or their duly authorized agents. Any capitalized term not defined herein shall have the meaning ascribed to it in the Agreement.

#### ARTICLE IV PURPOSE

The Trustee is specifically granted the authority to accept and retain liquid and/or illiquid and/or non-income producing assets as Trust investments, specifically being those assets which may have passed to the Settlers' hereof on account of the death of James Brown. The purpose contemplated in the establishment of the Trust is that it engage in the management and holding of liquid and/or illiquid assets received by the Beneficiaries on account of the death of James Brown and contributed to this Trust, including, but not limited to, real estate, limited liability and other closely held companies, partnerships, and corporations, as well as various sorts of intangible property, including copyrights, termination and transfer rights, as well as the right to exploit the name and image of James Brown, all of which are to be managed, invested and/or sold for the benefit of the Trust and its Beneficiaries. It is contemplated that the Trustee shall have the right to buy, sell, lease, license, incorporate and in all other manner modify or exploit for profits for the benefit of the Trust all of such assets and property (tangible, intangible, intellectual or other). In establishing this Trust, the Settlers contemplate that the Trustee will engage in complex transactions and that the Trustee will expend (and are authorized to expend) trust funds on attorneys, accountants, advisors, agents and the appropriate experts in the fulfillment of its duties as Trustee.

#### ARTICLE V PAYMENTS OF EXPENSES AND DISTRIBUTIONS OF PROPERTY

5.1 Beneficiaries and Distributional Interests. The Trustee shall hold all assets contributed to this Trust and shall distribute the net income and the principal of the Trust to the Beneficiaries in accordance with their beneficial ownership interests in the Trust assets (the "Distributional Interests").

The Beneficiaries recognize that the result of the Original Agreement was to give the "I Feel Good" Trust (as hereinafter defined) a 50% interest in the James Brown Assets and the Settlement Entity (as defined in the Agreement), subject to the funding of educational trust described below and a pro-rata share of expenses and income (except, as expressly provided below with respect to legal expenses). Treating the addition of Terry Brown to the settlement arrangement set out in the Agreement as an expense results, after accounting for such expense, in the following Beneficiaries and their respective Distributional Interests:

(a) Forty-seven and one-half percent (47.5%) to the Trustee(s) of the trusts provided for under Articles V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "James Brown Trust") (such trusts being the "I Feel Good" Trust or the "Charitable Trust" further described in Article VII of the James Brown Trust and the "Brown Family Education Trust" further described in Article VI of the James Brown Trust); provided, however that the first \$2,000,000 payable pursuant to this Distributional Interest shall be payable solely to the Trustee(s) of the Brown Family Education Trust

and the balance solely to the Trustee(s) of the Charitable Trust (the Charitable Trust and the Brown Family Education Trust are referred to herein as the "Brown Trusts");

(b) Twenty-three and three-fourths percent (23.75%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

(c) Four and seventy-nine hundredths percent (4.79%) to each of the Brown Adult Children, each of which interests shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina.

Any distributions of principal to the Trust Beneficiaries shall be in accordance with the same percentage interests.

All distributions shall be net of estate administrative expenses, taxes and legal expenses necessary to enable the estate to properly determine the respective interests of the parties, provided that netting such legal expenses shall not reduce the distributional share of the Brown Trusts below forty-seven and one-half percent (47.5%).

5.2 Income in Respect of a Decedent. Income of this trust which is income in respect of a decedent for federal or state estate and income tax purposes shall be distributed first to the trustee of the Charitable Trust (assuming the Brown Family Education Trust has been fully funded) as to all or a portion of such trust's share hereunder to the extent that such order of distribution does not cause the shares of the Brown Adult Children or Tommie Rae Brown to be funded with an amount less than the amount with which such shares would be funded if it were not for the provisions of this Article 5.2.

5.3 Sale of Assets. Upon the sale of all or substantially all of the assets of the Trust, the Trustee shall distribute the Trust assets to the Beneficiaries according to Section 5.1 and the Trust shall terminate. In addition, upon the partial liquidation of the assets of the Trust, the Trustee shall distribute the proceeds of the liquidation to the Beneficiaries according to the Distributional Interest, such that the Beneficiaries may receive, from time to time, distributions of principal as well as net income. To the extent that estate or inheritance taxes should be due as a result of the death of Tommie Rae Brown or any Brown Adult Children, or any other beneficiaries with respect to any Distributional Interest in this Trust, the Trustee and Beneficiaries agree that they shall make a good faith effort to consider mechanisms to provide liquidity for such taxes.

## ARTICLE VI

### LIMITATIONS ON POWERS OF TRUSTEE; VOTING

6.1 Actions of Trustee Requiring Approval of Beneficiaries. The Trustee shall have all of the powers described in Article 9, below; provided, however, the Trustee shall require approval of a two-thirds majority of the voting interests held by all the Beneficiaries in order to:

- (a) sell all or substantially all of the assets of the Trust; and
- (b) except as provided in section 5.3, terminate the Trust.

For purposes of voting by the Beneficiaries hereunder, the Charitable Trust shall have a 50% voting interest, Tommie Rae Brown, a 25% voting interest, and the Brown Adult Children, a 25% voting interest in the aggregate, which shall be divided equally among the six of them, and may be voted separately by each individual. Any such vote shall be made by each Beneficiary by or through its acting fiduciary in the case of entities having a fiduciary, or by or through the individual, agent under power of attorney or personal representative or other acting fiduciary in the cases of Tommie Rae Brown and the Brown Adult Children.

6.2 Notice of Vote. The Trustee or any Beneficiary may at any time request a vote of the Beneficiaries as to any such matter as may require a vote under this Agreement by giving notice and a request to all the Beneficiaries for a vote pursuant to the terms of Sections 8.3 and 8.4, below. If a noticed Beneficiary does not respond with its vote on the applicable matter in writing within 30 days after such time as the notice is deemed to have been given, such Beneficiary shall no longer have the right to vote on such matter.

## ARTICLE VII RESIGNATION, REMOVAL, APPOINTMENT AND SUCCESSION OF TRUSTEE

7.1 Resignation and Appointment Procedure. Any person or organization at any time serving as Trustee hereunder may resign at any time by providing written notice to all the Beneficiaries (or to the parents, guardians of the person, or persons having custody of a Beneficiary who is a minor or otherwise not sui juris) currently entitled to income or principal, setting forth the effective time and date of such resignation on or before such effective time, subject to and only effective upon the appointment and qualification of a successor Trustee; provided, however, that a successor trustee has been duly appointed and has accepted such appointment.

All Trustee appointments and removals permitted hereunder shall be made by an acknowledged instrument delivered to the Trustee then acting, if any, and, when applicable, to the appointee, and shall become effective on the date or upon the happening of the event specified in the instrument and may be revoked in the same manner at any time before the successor qualifies.

7.2 Right to Remove and Replace. The Trustee of the Trust shall be chosen and appointed by the South Carolina Attorney General, who has the power and right to remove and replace the Trustee.

7.3 Disability of a Trustee. The determination that a Trustee is a disabled person shall be made by a court of competent jurisdiction.

7.4 Termination of Trustee Powers. An outgoing Trustee, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Trustee ceases for any reason to be a Trustee hereunder, there shall be delivered to such Trustee's successor hereunder all of the assets (Trust or otherwise) which were in the possession of such Trustee and there shall be made available to each successor Trustee a complete financial record and inventory of assets affected thereby. With respect to any

properties thus transferred by the outgoing Trustee or by such Trustee's representative, such Trustee shall be discharged of all further duties and obligations.

7.5 Successor Trustee Powers and Authority. Each successor Trustee, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Trustee. Title to the entire property (of the Trust or otherwise) shall automatically vest in any successor Trustee without the necessity of any conveyance. The assumption of authority by a successor Trustee shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Trustee or to such Trustee's legal representative). Any corporation into which any corporate Trustee acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Trustee hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this instrument.

7.6 Exoneration from Liability for Acts of Prior Trustees. Each successor Trustee shall be exempt from any liability in any way related to the prior actions or omissions of the previous Trustees, and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Trustee.

## ARTICLE VIII TRUSTEE PROVISIONS

8.1 Trustee Compensation. For services as a Trustee, the Trustee is entitled to receive an amount which is reasonable for the services rendered at the time services are rendered, as agreed upon by the Trustee and a majority of the Beneficiaries, voting as provided for in Article VI herein. If for any reason, there are multiple Trustees serving, the Trustees, collectively, shall share such fee. If there is a corporate Trustee serving as Trustee, the corporate Trustee shall be entitled to reasonable compensation for the services rendered, but in no event shall such compensation be more than an amount which is competitively determined to be reasonable for the services rendered among organizations providing similar such services. For the purpose of determining Trustee's fees payable hereunder, any and all Trusts hereunder shall be treated as one Trust.

8.2 Inventory; Appraisals; Bond. Except as otherwise required by law, the Trustee shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but, upon request, shall make available a statement of receipts and disbursements and an investment review of the assets of any Trust created hereunder at least annually to each person then eligible to receive distributions from such Trust, and each then present beneficiary thereof.

8.3 Notice. Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be

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physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). The address for all notices to Beneficiaries shall be as set forth opposite their signatures below; provided that any Beneficiary may change such address by written notice to all parties hereto in accordance with this Section 8.3. Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

Instruments shall be considered delivered: (i) if sent by mail or express service, on the third day following the date of its receipt by the postal service (or such express service), as evidenced by a dated postal (or express) service receipt showing the addressee's name and proper address (as described above); (ii) if sent by facsimile, upon receipt by the sender of a confirmation of receipt from the addressee's facsimile machine indicating (a) the correct telephone number of the addressee's facsimile machine and (b) receipt of the correct number of pages sent as properly received; or (iii) if sent by e-mail, upon receipt by the sender of a confirmation from the addressee's e-mail address indicating that the addressee has opened the e-mail.

In all other cases, the date of actual physical delivery shall be the effective date of delivery and, except as such instrument may specifically provide for a later effective date, it shall be effective for all purposes from such date.

Copies of all instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of trustee resignation, removal, appointment, and/or acceptance, the original of which shall be kept with the Trust records, shall, upon request, be promptly delivered or sent by mail by the Trustee receiving or initiating the same to each other then interested party (i.e., the other then Trustee or Trustees, if any, of the affected Trust or Trusts, and each then beneficiary of the affected Trust or Trusts).

8.4 Notice to Disabled Parties. If a person who is a disabled person (who is not otherwise represented by a personal representative or guardian or not otherwise entitled to notice by a procedure provided for in this Agreement) is a party to any legal proceeding relating in any manner to any trust created hereunder, service of process upon the disabled person shall not be required if another individual, who is not a disabled person, is a party to the proceeding and has the same interest as the disabled person.

#### ARTICLE IX TRUSTEE POWERS

In the administration of the Trust, the Trustee shall have all of the powers granted by law, including but not limited to the powers granted to trustees by the South Carolina Trust Code (S.C. Code Section 62-7-101, et. seq.), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. Without limiting the foregoing,

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the Trustee shall also have the following powers (which shall apply equally to any other trust created pursuant to this Agreement):

9.1 Right to Retain Assets. The Trustee is specifically granted the authority to accept and retain the James Brown Assets, whether these are liquid and/or illiquid and/or non-income producing assets, as Trust investments, subject however to the purpose contemplated in the establishment of the Trust as set out in Article IV.

9.2 Investments and Reinvestments. Subject to Articles IV and VI, to invest or reinvest in and to sell and/or to sell short such securities or other property, real or personal (whether within or without the United States) as the Trustee shall determine; to lease all or part of the real or personal property of the estate or trust, even for a term longer than the probable duration of any trust, to grant options for the renewal of leases; and to retain any property received by them for such periods as they determine (including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust), even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments and shall have the right to convert any or all assets of any Trust held hereunder into any other form of asset, diversified or undiversified as they shall determine. The Settlers request that the Trustee honor the wishes of the Beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustee determines that such wishes are clearly in contradiction to the purposes and terms of any the Trusts.

9.3 Conveyance of Assets. To convey an absolute fee in possession of any land, and full ownership of any personalty comprising a part of the Trust and to sell, exchange, mortgage, partition, pledge, improve or otherwise alter any real or personal property comprising a part of the Trust, at public or private sale, at such price and upon such terms as the Trustee shall deem proper and to lease the same for a term extending beyond the life of the Trust without prior application to any court for permission to do so.

9.4 Non-Traditional Investments. In addition to the powers granted under this Article, the Trustee (other than any beneficiary) is expressly authorized to acquire and retain investments not regarded as traditional for trusts. The Trustee may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership and may sell or write options on assets of the Trust.

9.5 Management and Holding of Assets. To invest and reinvest all or part of the assets of the Trust created hereunder in interests formed principally for the commingling of assets for investment, such as partnerships, limited liability companies, and common trust funds, including any common trust fund of any corporate Trustee, including registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such funds; to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee; to employ banks, trust companies,

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securities brokerage firms and/or independent investment advisors or managers (collectively, "Agents or Advisors"), including affiliates of any Trustee, located anywhere within or without the United States (including themselves), at the discretion of the Trustee, but at the expense of the Trust, as custodian or agent; and to designate and employ such persons to give investment advice and to hold and manage discretionary investment or trading accounts; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such agent, bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Trustee may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Trustee shall be under no obligation to inspect or verify such stock or securities nor shall the Trustee be responsible for any loss by such bank, trust company, or securities brokerage firm. The Trustee shall not be responsible for the act, default or omission of any such Agent or Advisor except to the extent that the Trustee has been negligent or exhibited willful misconduct in the selection of such Agent or Advisor. The Trustee shall not be liable for relying absolutely on any apparently valid documents or the opinions of counsel and advisors to the Trust.

9.6 Consolidation and Division of Assets. To hold and administer the assets of the Trust created hereby in one or more consolidated funds, in whole or in part, in which any separate trusts shall have undivided interests. Generally, and subject only to the provisions of this instrument, the Trustee shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.

9.7 Borrowing. To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of the Trust, and to secure any such loan by mortgage or pledge. To maintain margin account(s) and to make such pledges of and other undertakings with respect to assets as the Trustee deems advisable in connection with the establishment and maintenance of such account or accounts. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable for sums borrowed, and each such loan shall be payable only out of assets of the Trust.

9.8 Lending. To lend all or any portion of the funds of the Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustee may in Trustee's discretion impose.

9.9 Receipts, Disbursements and Allocations. To allocate receipts and disbursements between income and principal in such manner as the Trustee (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply to permit any allocation of administration expenses to income that would require a reduction in the estate tax marital deduction (pursuant to IRC § 2056(b)(4)) or charitable deduction (pursuant to Treas. Reg. § 20.2055-3(b)), as the case may be. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of property qualifying for the marital deduction, in which case such

allocation shall follow state law, and (ii) in the discretion of the Trustee (other than any Beneficiary).

9.10 Distributions. Without the consent of any Beneficiary, the Trustee (other than any beneficiary) may make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without making pro-rata distributions of specific assets. In addition, the Trustee is authorized to select specific assets in funding fractional share distributions and is not required to select a percentage of each specific asset. The Trustee shall, however, when making distributions, take into account any appreciation and depreciation of the assets and use reasonable efforts to fairly allocate gains and losses among the Beneficiaries.

9.11 Occupancy and Use. Except as may be otherwise specified elsewhere in this instrument as to any specific property, the Trustee shall have the power to permit any person having an interest in the income of any trust created hereunder to occupy real property or to use personal property held by any such trust upon such terms as the Trustee deems proper, whether rent-free or for the payment of taxes, insurance maintenance and ordinary repairs or other expenses, or upon such other terms and conditions as the Trustee determines.

9.12 Related Party Transactions. To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any trust the Settlers may have established and to retain such property so long as the Trustee hereunder may deem advisable, whether or not such property is of the class in which Trustee are authorized by law or any rule of court to invest; and to make loans to, or borrow from, the Trust upon such terms and conditions as the Trustee deems advisable.

9.13 Management of Closely Held Businesses. In connection with (a) the continuation or operation of any business or investment interests which become a part of the Trust under this instrument (whether on initial funding, by purchase by the Trustee, by bequest or otherwise), or (b) the establishment of any new business or investment, the Trustee are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by them in respect of the operation of the business) without regard to their being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which the Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which an outright owner of such business could have exercised.

9.14 Division or Combination of Trusts. In the event that the Trustee determines that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for tax (including a desire to enable any such trust to qualify as an eligible shareholder of an S corporation), administrative, liability, environmental, or other

reasons), the Trustee shall have the power to divide the Trust into further trusts or shares. The Trustee shall also have the power to combine any such trust created hereunder with any other trust, whether created by the Settlers or another person, if the terms of the trusts are substantially the same and the Trustee are the same.

9.15 Power to Deal With Environmental Hazards. To use and expend any Trust income and principal: (i) to conduct environmental assessments, audits, and site monitoring; (ii) to take all appropriate remedial action to contain, cleanup or remove any environmental hazard; (iii) to institute legal proceedings concerning environmental hazards or contest or settle legal proceedings; (iv) to comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) to employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. The Trustee shall also have the power: (a) to require, as a prerequisite to accepting as an addition to any Trust hereunder any property, real or personal, from any person, that the transferring party provide evidence satisfactory to the Trustee that the property is not subject to such environmental hazards as the Trustee may specify; (b) to decline to serve as a fiduciary or to resign if the potential individual liability relating to environmental problems conflicts with fiduciary duties; (c) to set aside as a separate trust, to be held and administered upon the same governing terms as any other trust or trusts for any one or more of the beneficiaries hereunder which the Settlers may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law; and (d) to disclaim any power which, in the sole discretion of such Trustee, will or may cause any such Trustee to be considered an "owner" or "operator" of property, or which shall otherwise cause such Trustee to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The Trustees shall not be personally liable to any beneficiary of the Trust created hereunder, or to any other party interested in the Trust created hereunder, for any claim against any trust for the diminution in value of trust property arising from the compliance by the Trustee with any federal, state, or local law, rule, or regulation. Any expenses incurred by the Trustee under this paragraph may be charged against income or principal as the Trustee (other than a beneficiary) shall determine.

9.16 Uneconomical Trusts. If at any time any trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date hereof), as determined by the Trustee, of Fifty Thousand (\$50,000) Dollars or less, the Trustee (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Beneficiaries in proportion to their Distributional Interests in the Trust.

9.17 Determinations. To determine what property is covered by general descriptions in this instrument.

9.18 Limitations. Notwithstanding the foregoing, nothing in this instrument shall be construed as permitting a beneficiary who may also be a Trustee of any trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this instrument upon the exercise of such powers (such as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

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**ARTICLE X**  
**ADDITIONAL ASSIGNMENTS AND CONTRIBUTIONS**

10.1 Further Assurances. The Settlers covenant and agree to make, execute and deliver to the Trustee such other and further assignments, and instruments as the Trustee may reasonably deem necessary or appropriate to effectuate the purposes of this Agreement.

10.2 Additional Contributions. The Settlers, and any other person with the Trustee's consent, shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during his or her lifetime, to contribute cash, securities and/or other property to the Trust created under this Agreement.

**ARTICLE XI**  
**DEFINITIONS**

11.1 Trustee, Fiduciary, Personal Representative. The words "Trustee", "fiduciary", and/or "personal representative", or any modifying or substituted pronouns therefor shall include singular and plural, as well as the masculine, feminine and neuter genders thereof, and shall apply equally to the personal representative, fiduciary, or trustee named herein and to any successor or substitute fiduciary, trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon the fiduciary, trustee and/or personal representative originally named herein.

11.2 Beneficiaries. The term "Beneficiary" shall mean the Beneficiaries named or described in Section 5.1 hereof and, where applicable, their heirs, devisees, and successors.

**ARTICLE XII**  
**TERMINATION OF TRUSTS**

Notwithstanding anything to the contrary which would cause an earlier termination of the Trust or any other trusts created hereunder, the Trust and any other trusts created hereunder shall terminate one day prior to the maximum time allowed under the South Carolina Uniform Rule against Perpetuities. At that time, the Trustee shall distribute the Trust assets to the Beneficiaries of the current income and principal thereof. To the extent that the laws of any jurisdiction under which any Trust created hereunder is being administered lengthen or abolish any, or have no, otherwise applicable rule against perpetuities, then the laws of such jurisdiction shall be applied to determine any mandatory termination of such trust. Furthermore, to the extent determined by the Trustee (other than any beneficiary), the dispositions made hereunder may be modified such that such distributions are made to newly created (or amended) trusts having the same provisions as those referred to above, except that such newly created (or amended) trusts may extend beyond the period referred to in the first sentence of this paragraph if permitted under the then laws of such trust's jurisdiction. To the extent that any provision of this paragraph would cause any trust established under this instrument to fail, such provision shall be inapplicable.

**ARTICLE XIII  
JURISDICTION AND GOVERNING LAW**

All questions pertaining to the construction, validity and effect of this instrument and any trusts created hereunder shall be determined in accordance with the laws of the State of South Carolina.

**ARTICLE XIV  
PROTECTION OF CHARITABLE STATUS**

The Settlers intend to preserve and protect the charitable tax-exempt status of the "I Feel Good" Trust. Accordingly, this Trust at all times shall be interpreted, managed, invested, administered and in all respects governed consistent with such intent. The Trustee shall administer the Trust in a manner that does not adversely affect the current qualification and continued qualification of the "I Feel Good" Trust as a charitable trust. If necessary or desirable, the Settlers agree to modify the terms of this Agreement to the extent necessary to preserve the charitable tax-exempt status of the I Feel Good Trust to the extent allowed by law.

**ARTICLE XV  
HEADINGS**

The article and section headings used in this instrument are for convenience only and are not to be considered as part of this instrument.

**ARTICLE XVI  
SPENDTHRIFT PROVISIONS**

No beneficiary of any trust created herein shall have the right, power, or authority to sell, assign, pledge, mortgage, anticipate, or in any manner encumber, alienate, or impair all or any part of his or her interest in such trust or in the principal or income of such trust. The beneficial and legal interest in, and the principal and income of, any such trust and every part thereof shall be free from the interference or control of any creditor or spouse of any beneficiary of such trust and shall not be subject to the claims of any such creditor or spouse nor liable to attachment, execution, bankruptcy, or any other process of law. This paragraph is intended to cause any trust created under this instrument to be a "spendthrift trust" as that phrase may be interpreted under the applicable laws of the trust's jurisdiction.

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\_\_\_\_\_  
Terry Brown, as Settlor and Beneficiary

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\_\_\_\_\_, as Trustee

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named Settlor, sign, seal and as their act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Trustee, James Brown Legacy Trust

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named \_\_\_\_\_, Trustee, sign, seal and as his/her act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS \_\_\_\_\_  
day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

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SCHEDULE A

ASSETS CONTRIBUTED TO THE JAMES BROWN LEGACY TRUST

All of Settlor's rights and interest in any assets or proceeds whatsoever to be received or payable to any of the Settlor's, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to persona, image, likeness, royalties etc. (collectively, the "James Brown Assets").

2408

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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 and )  
 James Brown Legacy Trust, by )  
 Russell L. Bauknight, its Trustee, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

MOTION OF ATTORNEY GENERAL  
 FOR JUDGMENT ON THE PLEADINGS

FILED  
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 C.C.P. & G.S.

Subject to and without waiving his Motion to Dismiss and Motion to Amend his Motion to Dismiss, the Defendant Alan Wilson, Attorney General moves for judgment on the pleadings pursuant to Rule 12 (c), SCRCP, in that the moving party is entitled to judgment as a matter of law in this case:

1. Subject to all of his motions and defenses in this case including lack of subject matter jurisdiction, the FOIA request of Plaintiff Summer attached to her complaint as exhibit C in Summer v. Wilson, 2012-CP-36-688 and the response filed by the Defendant Attorney General as an attachment to his answer in Summer, demonstrate that the OAG has no documents that could be considered responsive to the Freedom of Information Act request at issue except for a draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, Op. No. 27227 (S. C. Sup. Ct., filed February 27, 2013), a case in which Plaintiff was a party. See, exhibits attached to Answer of Attorney General in the instant case at pp. 5-9.

2. The Court lacks subject matter jurisdiction of this action because the Plaintiff failed to mail or deliver her Freedom of Information Act request at issue to the Office of the

Attorney General as required by S.C. Code Ann. 30-4-30 (c). This ground is supported by the attached affidavit of Tracy Meyers (Exhibit A), the original of which is already on file in this case.

3. The Court lacks subject matter jurisdiction of this action because the Complaint and attachments make clear that Plaintiff seeks the documents for the purposes of the *Bauknight v. Pope*, 2010-CP-40-4900, litigation pending now which is governed by the Rules of Civil Procedure regarding civil discovery in *Bauknight*. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery. The items demanded in the FOIA request at issue in this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

4. 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 (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion). 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).<sup>1</sup>

For the foregoing reasons, the Defendant Wilson respectfully requests that he be granted judgment in this action.

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: 

ATTORNEYS FOR THE ATTORNEY GENERAL

March 7, 2013

Rule 11; SCRC, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion for Judgment on the Pleadings would serve no useful purpose.

March 7, 2013

  
ATTORNEY FOR THE ATTORNEY GENERAL

<sup>1</sup> The Newberry County Court of Common Pleas has already ruled against a similar ground, and a related subject matter jurisdiction defense in its Order dated November 22, 2011 in another Pope FOIA suit, *Pope v. Wilson* (former Newberry case 2011-CP-36-379, now consolidated with *Bauknight v. Pope*, 2010-CP-40-4900). That Order would not be binding on the instant suit, and the Defendant asserts these grounds in this Answer to preserve them. The subject matter ruling did not address the exemption or §30-4-30 (c) arguments set forth, *supra*.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Adele J. Pope, )  
 )  
Plaintiff, )

C/A No. 12- CP-40-350

vs. )

JAMES BROWN LEGACY TRUST's  
MOTION TO STAY

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

Defendant James Brown Legacy Trust, through its trustee Russell L. Bauknight, moves this Court to stay the above-captioned action pending resolution of certain issues in *Wilson, et al. v. Dallas, et al.*, Opinion No. 27227 (filed February 27, 2013).

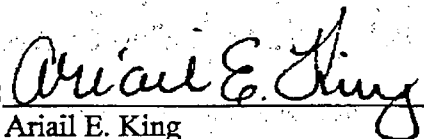
The South Carolina Supreme Court recently issued an opinion in the case of *Wilson, et al. v. Dallas*. In that opinion, the Court considered a "compromise agreement," approved by the Circuit Court, which had created the James Brown Legacy Trust ("the Legacy Trust"). The Supreme Court held that the compromise agreement was not just and reasonable and reversed the lower court's approval of the compromise. The opinion states that the settlement could not replace James Brown's estate plan and trusts by creating new trusts.

The Legacy Trust was to be funded with a future interest. Due to Judge Early's Order prohibiting distributions during the appeals process, it was never funded and no distributions have been made. If the status of the Legacy Trust continues as presently determined by the South

Carolina Supreme Court, the Legacy Trust will not exist after remittitur.<sup>1</sup>

Trial courts have the authority and discretion to stay an action. *See, e.g. Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 328 S.E.2d 621 (1985)(holding that trial court abused discretion in denying stay). Stays have been employed in a variety of circumstances in South Carolina, including situations where resolution of a controlling issue is pending in another proceeding. *See, e.g., 4 S.C. Jur. Actions § 40* (citing *Piedmont Press Ass'n v., Record Pub. Co.*, 1256 S.C. 43, 152 S.E. 721 (1930)). Since there is a significant question as to whether the Legacy Trust exists, which will be resolved at the time of the remittitur, Defendant Bauknight respectfully requests that the motions as to the Legacy Trust be stayed.

A. Camden Lewis  
Keith M. Babcock  
Ariail E. King  
LEWIS, BABCOCK & GRIFFIN, LLP  
P.O. Box 11208  
Columbia, South Carolina 29211

By:   
Ariail E. King

Attorneys for Defendant James Brown  
Legacy Trust, by Russell L. Bauknight, its  
Trustee

Columbia, South Carolina

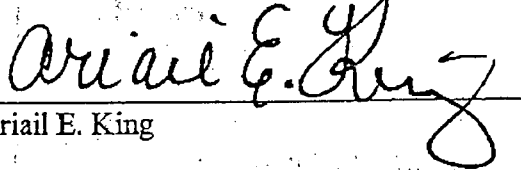
March 15, 2013

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<sup>1</sup>There has been no remittitur yet as on March 14, 2013, four Petitions for rehearing were filed: one on behalf of the Attorney General, one on behalf of Mr. Bauknight, one on behalf of James B., and one on behalf of Mrs. Pope. None of the petitions challenge the Supreme Court's holding as to the Legacy Trust.

Rule 11 Statement

Pursuant to Rule 11(a), SCRCPP, the undersigned counsel certifies that she attempted to has not consulted with opposing counsel regarding this motion in that, as apparent from earlier correspondence, such consultation would not serve a useful purpose.



Ariail E. King

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Adele J. Pope, )

Plaintiff, )

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 THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-350

PLAINTIFF'S STATUS REPORT AND  
MEMORANDUM OF LAW

By direction of the Honorable L. Casey Manning on March 18, 2013 Plaintiff Adele J.

Pope submits this report of the Status of this case in light of S. C. Supreme Court decision

No. 27227, issued February 27, 2013 and subsequent events.

**Summary of Status and Relief Requested**

The following summarizes the status of this case ["Case 350"]:

1. This case, brought under the South Carolina Freedom of Information Act ("FOIA"), has been pending for nearly 18 months and is ready to be heard and finally decided at the Court's earliest convenience.
2. Pursuant to the Supreme Court's suggestion (in footnote 29 of the opinion), the FOIA cases "should be considered by the circuit court in the first instance."
3. The Defendant James Brown Legacy Trust (the "Legacy Trust")'s argument that it will not exist if the Supreme Court's opinion stands is baseless, and the Legacy Trust is unquestionably a public body created by the South Carolina Attorney General.
4. All documents held by the Legacy Trust and/or its counsel are under the control of the Attorney General and subject to the provisions of FOIA.
5. The motion to consolidate this case with Case 4900 is now moot in light of the AG's indication that he will seek to withdraw from Case 4900.

These matters are discussed in detail below.

## History of Case

Pope made proper requests under the FOIA for the public documents sought herein in June 2011. Those documents include:

The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust (requested from both Defendants) and

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 (requested from Defendant AG only)

Counsel for the Legacy Trust refused to release any documents and threatened to seek sanctions or other relief against Pope if she made further requests to the Legacy Trust under the FOIA. (See Ex. C to Ex. D of the Complaint herein.) The Attorney General failed to timely respond to Pope's FOIA request.

This case was filed on August 3, 2011 in Newberry County. Pursuant to the FOIA, Plaintiff sought a declaration that the requested documents are public; an Order directing their production; and her attorneys' fees incurred in prosecuting this matter. All such relief is provided for by statute. (See S. C. Code Ann. § 30-4-10, et seq.)

At the request of Defendant AG, this case was transferred to Richland County and given its current case number. Subsequently, both Defendants moved separately to consolidate this case with Case No. 2010-CP-40-4900 ("Case 4900"), which is a complex tort case.

Despite continuing requests by Plaintiff for a hearing, no motions have been decided since the case was transferred to Richland County more than a year ago.

On March 15, 2013, the Legacy Trust moved for a stay, based on its assertion that it no longer exists as a result of the Supreme Court's February 27 decision in another case.

Plaintiff opposes this request as set out below and asks again that this matter be heard at the Court's earliest convenience.

**The Legacy Trust has Existed for Years, and No Stay Should be Granted.**

The Legacy Trust was created by then-Attorney General Henry McMaster prior to May of 2010. Since its creation, the Legacy Trust has prosecuted a Richland County tort action against Pope for more than 2 years; engaged counsel and defended this action for nearly 18 months; sought, for more than a year, to intervene in another FOIA action brought by Pope; and been actively managed by Russell L. Bauknight for more than 3 years (See Affidavit of Bauknight, dtd. 1/10/12). Not once prior to March 15, 2012 had the Legacy Trust questioned its continued existence, despite being directly and continuously involved in litigation.

As is clear from the Supreme Court's opinion, the Court did not declare the Legacy Trust void. Instead, the Court reversed the approval of a *settlement agreement*. Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests that the Supreme Court eradicated the Legacy Trust *ab initio*.

Furthermore, The Legacy Trust's argument that it has no assets is incorrect. Since May 19, 2010 the Legacy Trust has pursued a multimillion-dollar claim against Plaintiff for alleged breaches of fiduciary duty and trust. Indeed, the Legacy Trust is still one of the lead Plaintiffs in Case 4900, wherein it has indicated no doubt as to its existence.

Its 18-month participation in this case also shows that the Legacy Trust has been funded in some manner. It has been and continues to be represented by a well-respected firm which, ostensibly, has been or expects to be paid for its work.

In short, the Legacy Trust exists, despite any current question of the manner or

amount of its funding.

### **The Legacy Trust is a Public Body and Must Produce the Requested Documents**

The Legacy Trust was created by former Attorney General Henry D. McMaster in his official capacity, as is demonstrated by both known drafts of the document. These drafts show "the Attorney General of South Carolina" as one of the Settlers of the Trust. It is absurd to suggest that an entity created by the Attorney General of South Carolina could be considered anything other than a public body.

Our Supreme Court held in *Weston v. Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), that indirect public support of an organization could cause that organization to be treated as a public body. In *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (2003), the Kansas Court held that an organization's use of state employees (who were not paid outside their state salaries) meant that it was a public body for FOIA purposes. This is particularly instructive, since many attorneys within the AG's office have, in their capacities as state employees, expended considerable time in defending the Legacy Trust's existence and pursuing its continued funding under the August 2008 settlement agreement.

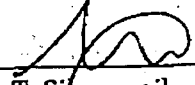
In 2006, Attorney General McMaster - citing both of the above cases - opined that "'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke FOIA." (See Opinion dtd. 5/19/06) Following the case law and the Attorney General's own opinion, the vast state resources dedicated to the Legacy Trust give rise to its status as a public body.

Further, in January 2011, Attorney General McMaster - without the Trustee of the Legacy Trust - signed an amendment indicating that the settlement "created an entity (the 'Settlement Entity') to hold all of the assets related to James Brown . . . ." See Exhibit A,

attached. This "Confirmation and Amendment" confirms by its own language that the Legacy Trust (which is the "Settlement Entity") had been in existence since the settlement was executed.

The Legacy Trust asks this Court to find that the Attorney General can create an entity which does not have to produce its own public documents if the Supreme Court later finds the Attorney General's actions were improper. The Court should decline to do so and set a hearing on this matter at its earliest convenience.

Respectfully submitted,

  
\_\_\_\_\_  
Adam T. Silvernail  
Law Office of Adam T. Silvernail, LLC  
1901 Hampton Street  
Post Office Box 1898  
Columbia, South Carolina 29202-1898  
Telephone: (803) 779-1770 m  
Facsimile: (803) 403-8092  
[adam@silvernailfirm](mailto:adam@silvernailfirm)

March 27, 2013

Attorney for Plaintiff

# 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 Bankright 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

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  
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*For the South Carolina Attorney General*

---

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S. Alan Medlin  
David L. Michel  
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*Attorneys for Robert R. Brown*

---

Louis Levenson  
Levenson & Associates  
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Atlanta, Georgia 30303

*Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha  
B., Lindsey Deloras Brown, Vanisha Brown, Deanna J.  
Brown Thomas, Jason Brown Lewis, Yanna N. Brown-  
Lumar, 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

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Assistant Attorney General

Mary Frances Jowers  
Assistant Attorney General

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*For the South Carolina Attorney General*

---

Henry D. McMaster  
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*Attorneys for Tommie Rae Brown*

---

Louis Levenson  
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*Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha  
B., Lindsey Delores Brown, Vanisha Brown, Deanna J.  
Brown Thomas, Jason Brown Lewis, Yantina N. Brown-  
Lumar, Sydney L., Carrington L., and Tanya Brown*

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*Terry Brown*  
Terry Brown

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STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Adele J. Pope, )

Plaintiff, )

v. )

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. 2012-CP-40-350  
[formerly Newberry Co. Case No.  
2011-CP-36-364]

MOTION TO STRIKE  
ADDITIONAL AFFIDAVITS<sup>1</sup>

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the following two affidavits in addition to the numerous other affidavits submitted by Plaintiff in this case which are already subject to motions to strike:

1. Affidavit of Adele Pope dated February 22, 2012 and attachments [This affidavit is attached to Return to Motion to Consolidate]
2. Affidavit of Adele Pope dated January 9, 2012 in support of Attorney's fees.

The affidavits and attachments contain material irrelevant to the legal issues before this Court in the instant case. The affidavits also contain statements that are not based upon personal knowledge, that are speculative, or that are hearsay.

[Signature block on next page]

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<sup>1</sup> The Defendant's Motion to Consolidate this case with *Bauknight v. Pope*, case no. 2012-CP-40-4900, is currently pending.

Respectfully submitted,

ALAN WILSON  
Attorney General

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

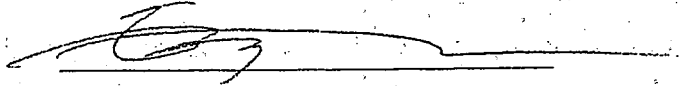
BY: 

March 28, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

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



March 28, 2012

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS

Adele J. Pope, )

Plaintiff, )

v. )

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. 2012-CP-40-350  
[formerly Newberry Co. Case No.  
2011-CP-36-364]

MOTION TO STRIKE  
ADDITIONAL AFFIDAVITS<sup>1</sup>  
DATED MARCH 26 AND 27

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the following two affidavits in addition to the numerous other affidavits submitted by Plaintiff in this case which are already subject to motions to strike including an extraordinary number of affidavits executed by Plaintiff, herself:

1. "Supplemental Affidavit" of Adele Pope dated March 27, 2012.
2. Affidavit of Sue Summer dated March 26, 2012 and attachments.

The affidavits and attachments contain material irrelevant to the legal issues before this Court in the instant case. The affidavits and attached news articles also contain statements that are not based upon personal knowledge, that are speculative, or that are hearsay.

[Signature block on next page]

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<sup>1</sup> The Defendant 's Motion to Consolidate this case with *Bauknight v. Pope*, case no. 2012-CP-40-4900, is currently pending.

Respectfully submitted,

ALAN WILSON  
Attorney General

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

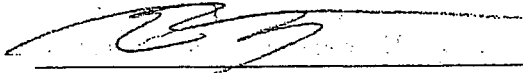
BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

March 29, 2012

Rule 11, SCRPC, statement:

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



March 29, 2012

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Adele J. Pope, )

Plaintiff, )

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 THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

MEMORANDUM OF  
ATTORNEY GENERAL  
IN SUPPORT OF:

MOTION TO AMEND  
MOTION TO DISMISS, MTD,  
MOTION FOR JUDGMENT ON  
PLEADINGS

MOTIONS TO STRIKE  
AND IN OPPOSITION TO  
SUMMARY JUDGEMENT

Updated May 2, 2016

### 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, the Office of the Attorney General (OAG) has responded to the FOIA at issue in this case by providing copies of the only documents that could be considered responsive to that request which are unsigned drafts of the Legacy Trust which have long been of public record in *Wilson v. Dallas*, Op. No. 27227 (S. C. Sup. Ct., filed February 27, 2013),<sup>1</sup> a case in which Plaintiff was a party. See exhibits attached to Answer. The other exhibits to the Answer, which are of record in another suit, make clear that the OAG does not have documents responsive to the other documents at issue.

Although the OAG has responded to the FOIA, this case must be dismissed for other

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<sup>1</sup> Because most of the allegations of Plaintiff in the instant Complaint regarding the Legacy Trust are irrelevant to that Complaint, this Answer is not intended to address how the Opinion in *Wilson, et al v. Dallas, et al*, may apply, if at all, to the allegations in the instant complaint.

reasons that deprive this Court of subject matter jurisdiction. FOIA must be applied in accordance with the law, and that law, as explained below, exempts matters that are governed by the Rules of Civil Procedure, as here and because Plaintiff's FOIA relates to pending judicial proceedings in, *Bauknight v. Pope*, 2010-CP-40-4900, and are subject to the discovery process in that case. Under FOIA and the Rules of Civil Procedure, Plaintiff cannot use FOIA in this case to make an end-run around discovery procedure in other ongoing litigation.

#### **Response to FOIA Provided Subject to Defenses**

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 unsigned Legacy Trust drafts attached to the Answer (Exs. pp. 8-26 and 27 -42 (submitted 3.13.13)) are the only documents that could be responsive to Request No. 1; *supra*, and they are of record in the *Wilson v. Dallas* case to which Plaintiff was a party. As to Request 2, the Order of January 16, 2015, in the *Summer v. Wilson* FOIA case in Newberry County, copy attached (*see* p. 7), concluded that the OAG did not have to produce the appraisal because it did not have it. [See also Answer Exs. p 6, item 4 requesting "any documents related to the \$4.7 million at-death valuation of James Brown's music empire" and Exs. p. 7 stating that "[t]here are no documents responsive" to that request]. Plaintiff would have access to the filings in the

*Summer* case because they are accessible through the Court, and Plaintiff Summer executed affidavits which Plaintiff filed in the instant case. 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 is confidential pursuant to a Court order involving Plaintiff Pope, but she would have access to it through that proceeding. *Brown v. Pope*, 3:08-cv-14-WOB, November 15, 2013 (the Honorable J. Gregory Wehrman, Magistrate Judge).

#### **Procedural Background and Summary**

The Court of Common Pleas for Newberry County, transferred venue in this case from Newberry, where the suit was originally brought, to Richland. Order, January 11, 2012. The Court of Common Pleas did not rule on the other motions pending including the Defendant Wilson's Motion to Dismiss and Motions to Strike and the Plaintiff's Motion for Summary Judgment.

The Defendant Wilson has filed a Motion to Consolidate case 350 with case 4900. The Defendant reserves his rights under this motion, but respectfully requests that the Court proceed to decide all other motions referenced herein.

For reasons discussed below, the Defendant Wilson's Motion to Amend Motion to Dismiss and Amended MTD should be granted on lack of subject matter jurisdiction, including Plaintiff's failure to serve her FOIA request on the Defendant by mail or delivery so as to trigger application of that statute. These motions will moot all other issues as will his Motion for Judgment on the Pleadings which sets forth the same defenses. Further, the first ground of the MJP, subject to all other defenses and motions, is that the Defendant has responded to the FOIA request by providing the only documents that could be considered responsive. The Defendant's

Motions to Strike should be granted to remove the multiple affidavits of Plaintiff that are riddled with hearsay, speculation and completely irrelevant material. Plaintiff's Motion for Summary Judgment should be denied for all of these reasons.

The relationship of the instant action to *Bauknight* case 4900 is set forth in Plaintiff's complaint. Instant Plaintiff Pope acknowledges that she is the Defendant in that Richland County suit brought by the former Attorney General McMaster and the current trustee of the James Brown Legacy Trust. 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. The FOIA was not received by the OAG directly from Plaintiff by mail or delivery. See Meyers affidavit attached to MTD, and Meyers letter of August 5, 2011<sup>2</sup>.

The documents requested in the Freedom of Information Act request of the Attorney

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<sup>2</sup> Ms. Meyers' letter stated in part: "I have also been notified by attorneys in the Civil Division of the [OAG] 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 . . . business days, I will expedite the response to it."

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[signed copy of James Brown Trust]; MTD Exhibit F [Motion to Compel, including "the James Brown Legacy Trust under which Bauknight asserts status in the complaint"]; MTD Exhibit B, 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).

The issues warranting dismissal or judgment for the Attorney General and denial of Plaintiff's Motion for Summary Judgment are discussed below preceded by the reasons for granting the Motion to Amend the MTD.

## I

### **THE MOTION TO AMEND THE MTD SHOULD BE GRANTED**

This Motion should be granted because it merely would amend the Attorney General's currently pending motion to dismiss to assert lack of subject matter jurisdiction of this action under Rule 12(b)(1), SCRCF and to drop the existing ground of improper venue under Rule 12(b)(3) because venue has been transferred. Amendment is appropriate because, under Rule 12(h)(3), lack of subject matter jurisdiction may be raised at any time. These grounds are also asserted by this Defendant in opposition to Plaintiff's Motion for Summary Judgment which has not been heard and in the Answer and Motion for Subject Matter Jurisdiction. Although these issues are raised in the MJP and Answer, they should be permitted in the MTD because that

motion ends this case without the need to consider the other motions.

## II

### PLAINTIFF CANNOT USE FOIA TO BYPASS JUDICIAL PROCEEDINGS OR TO AVOID THE RULES OF CIVIL PROCEDURE

Nothing in FOIA, the Rules of Civil Procedure or the Court system of this State would permit Plaintiff to make and enforce a FOIA request outside a pending judicial proceeding involving discovery related to many of the same documents. See exhibits referenced, *supra*. 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 and she seeks some of the same documents. She cannot avoid the Rules of Civil Procedure regarding discovery by this process, and the Court lacks subject matter of this action

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. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 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." (copy attached). 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 limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). Moreover, our Supreme Court has also 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, 153 (1989)<sup>3</sup>; *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.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40 which states, in part, that “(a) [a] public body may but is not required to exempt from disclosure the following information: . . . (4) [m]atters specifically exempted from disclosure by statute or law.” (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are “law.” *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)<sup>4</sup>; *United States v. Hvas*, 355 U.S. 570, 575 (1958)<sup>5</sup>; *State ex rel. Beacon Journal Publ'g Co. v. Waters*,

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3 “[A] court must be mindful of this Court’s observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108.” *Id.*

4 “[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights . . .,” *Id.*

5 “The phrase ‘a law of the United States,’ as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base . . .” *Id.*

67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).<sup>6</sup> These rules include limitations on the scope of discovery in Rule 26(b) to “matter, not privileged, which is relevant to the subject matter involved in the pending action . . . .”

To allow a FOIA request to bypass the Rules of Civil Procedure would be contrary to §30-4-40(a)(4) and Rule 26(c), SCRCP, which provide for judicial involvement in the discovery process through protective orders and discovery conferences. “It is well-settled that ‘the scope and conduct of discovery are within the sound discretion of the trial court . . . .’” *Palmetto Alliance, Inc. v. S. Carolina Pub. Serv. Comm’n*, 282 S.C. 430, 436, 319 S.E.2d 695, 698 (1984). “Our judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law.” *In re Anonymous Member of S. Carolina Bar*, 346 S.C. 177, 194, 552 S.E.2d 10, 18 (2001). To allow a FOIA request to escape this authority would tie the hands of the Court from controlling the discovery process including permitting a party to bypass scheduling orders and motions hearings. FOIA was not intended to work this way nor were our Rules of Civil Procedure intended to be so limited.

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<sup>6</sup> “[E]xception [under Ohio discovery statute] for other “state law” may include procedural court rules, and does include [Ohio] Crim.R. 6(E).” *Id.*

### III

#### 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:

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.

Also, as noted *supra*, note 2, when she heard reports about the FOIA request, Ms. Meyers invited Plaintiff to forward the request, but Plaintiff did not do so.

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 or other indirect receipt, 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, and this Court lacks subject matter jurisdiction of this suit.

#### IV

##### **ANOTHER ACTION IS PENDING AMONG THE SAME PARTIES**

The Defendant Attorney General recognizes that the Newberry County Court of Common Pleas has ruled against him on this ground in the similar *Pope* case 2011-CP-36-379 (Order filed November 30, 2011), now consolidated with case 4900. He maintains the arguments below to preserve them and because they merit consideration in the Richland County Court of Common Pleas.

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, as set forth above. 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).

#### V

##### **THE ATTORNEY GENERAL'S MOTIONS TO STRIKE SHOULD BE GRANTED**

The Attorney General has 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. At least 6 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

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), SCRPC (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<sup>7</sup> 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.

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<sup>7</sup> *Trustees of Erskine Coll. v. Cent. Mut. Ins. Co.*, 241 S.E.2d 160, 162-63 (1978).

VI

**THE DEFENDANT IS ENTITLED TO DISMISSAL OF THIS SUIT AND  
JUDGMENT ON THE PLEADINGS  
PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT**

For all the reasons set forth above, including the Defendant's provision of documents subject to the FOIA request, the Defendant is entitled to Dismissal of this suit as the issues therein, and Judgment on the Pleadings as to all issues. Plaintiff is not entitled to summary judgment.

**CONCLUSION**

The Freedom of Information Act is a very important law, but it does not permit Plaintiff to bypass other judicial proceedings and the Rules of Civil Procedure controlling discovery. For the foregoing reasons, this Court should grant the State's Motion to Dismiss, Motion to Amend Motion to Dismiss and Motion for Judgment on the Pleadings, grant its Motions to Strike and deny Plaintiff's Motion for Summary Judgment. Moreover, subject to all of these defenses, the OAG has responded to Plaintiff's FOIA request with documents that could be considered responsive to that request, and Plaintiff has had access to the same documents prior to this response. Therefore, the case should be ended for the jurisdictional and other defenses discussed above, but Plaintiff has, subject to these defenses, a response to her FOIA request.

Respectfully submitted,

ALAN WILSON  
Attorney General

[Signature block continues next page]

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BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

May 2, 2016

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

Alan Wilson, Attorney General of SC

PLAINTIFF(S)

DEPENDANT(S)

Submitted by: Plaintiff	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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

FILED  
 NEWBERRY COUNTY  
 2015 JAN 16 PM 2  
 JAMES W. ...  
 CLERK

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.

*[Signature]*  
Circuit Court Judge

2154  
Judge Code

01/16/2015

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 JUN 16 PM 2:02  
JACQUE S. HORTON  
CLERK C. C. J.

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.

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

<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

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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

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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."

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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 are referred 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<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.

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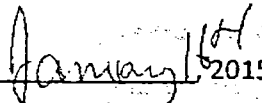
This Court finds and concludes that the plaintiff is entitled to attorneys' fees and costs under the statute, and this Court will hold in abeyance its ruling on the specific monetary amount of such fees and costs until all appeals relative to this case are concluded.

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.

  
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Eugene C. Griffith, Jr.  
Circuit Court Judge

  
January 14, 2015

Newberry, SC

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STATE OF SOUTH CAROLINA )

COUNTY OF LEXINGTON )

Robert E. Lominack, )

Plaintiff. )

-vs- )

Donald V. Myers, Solicitor,  
Eleventh Judicial Circuit, )

Defendant. )

IN THE COURT OF COMMON PLEAS

2002-CP-32-1890

ORDER

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THOMAS H. COLBERT, CLERK OF COURT  
LEXINGTON SC

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 these 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, 544 F.2d 599 (5<sup>th</sup> Cir. 1976);

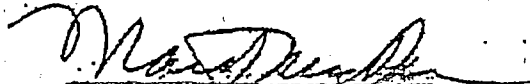
Frushan Corp v. Thornton, 507 F.2d 1253 (6<sup>th</sup> Cir. 1974); N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132 (1975).

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.

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Marc H. Westbrook  
Resident Judge  
Eleventh Judicial Circuit

October 25<sup>th</sup>, 2002.