

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Richland County
Court of Common Pleas

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

Appellate Case No. 2017-001523

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

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

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

Of whom Adele J. Pope is the Appellant.

APPELLANT'S MEMORANDUM REGARDING APPEALABILITY

Appellant submits this memorandum in accordance with this Court's direction in its letter dated September 22, 2017, setting forth her position on the appealability of the Orders appealed from. Appellant respectfully submits that the Order "dropping" Alan Wilson, in his capacity as Attorney General of South Carolina, from this litigation effectively dismissed Appellant's counterclaims against the Attorney General and is thus a final, appealable Order.

BACKGROUND

This action was commenced by the Henry D. McMaster, in his capacity as Attorney General for South Carolina, along with more than fifteen private resident and non-resident Plaintiffs, including Russell L. Bauknight, on behalf of Henry D. McMaster, in his capacity as Attorney General for South Carolina, on May 19, 2010. (See Exhibit A, Complaint). The Attorney General and all other Plaintiffs were represented by Sweeny, Wingate & Barrow, P.A. Appellant and Robert L. Buchanan, Jr., answered and counterclaimed against all Plaintiffs for abuse of process, civil conspiracy, intentional interference with contract and attorneys' fees. (See Exhibit B, Answer and Counterclaim).

The Attorney General filed his motion to be dropped as a party pursuant to Rule 21, SCRCp, on March 25, 2013. (Order, dtd. 5/31/17, p. 2) The Attorney General nonetheless continued to be an active participant in the litigation. The motion was heard on August 29, 2016, and the Court issued its Order granting the Attorney General's motion to be dropped as a party on May 31, 2017. (*Id.*) Appellant moved pursuant to Rule 59(e) to alter, amend or vacate that Order, and that motion was denied by Order dated August 2, 2017. This appeal follows.

The Court, by letter dated September 22, 2017, requested memoranda regarding the appealability of the Orders appealed from, and for the reasons set forth below, Appellant submits that the Orders are immediately appealable.

ARGUMENT

The Order on appeal grants the Attorney General's motion to be "dropped as a party" pursuant to Rule 21, which states:

RULE 21

MISJOINDER AND NON-JOINDER OF PARTIES

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

The Attorney General did not argue, and the lower court did not find, that the Attorney General was misidentified or included as a party due to clerical error. Appellant's counterclaims against the Attorney General and other Plaintiffs remained pending at the time the lower court "dropped" the Attorney General as a party, and the lower court's Order observes that its effect was to end Appellant's counterclaims against the Attorney General. (Order dtd. 5/31/17, p. 5) Therein, the lower court made findings regarding the Attorney General's immunity against the counterclaims.

Despite relying on Rule 21, the lower court's Order effectively dismisses Appellant's counterclaims against the Attorney General and ends her ability to proceed against the Attorney General after seven (7) years of litigation.

Appealability of Orders is governed by S.C. Code Ann. §14-3-330, which provides in pertinent part:

SECTION 14-3-330. Appellate jurisdiction in law cases.

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

...
(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

The South Carolina Supreme Court held in *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012), that the lower court's Order directing the Plaintiff to substitute two corporate defendants in place of the originally-named individual defendant was immediately appealable. The Court held that the substitution order appealed from "effectively discontinue[d] petitioner's suit against" the original, individual defendant, and that the order was thus appealable under S.C. Code Ann. §14-3-330(2)(a).

The lower court's orders in this case likewise end Appellant's counterclaims against the Attorney General and, if not reversed, will prevent any further appealable order or judgment as to the Attorney General. Appellant submits that the lower court's Orders "dropping" the Attorney General and denying her Rule 59(e) motion are thus immediately appealable.

Appellant also appeals related Orders finding that the Attorney General could not be held in default; that Appellant was not entitled to depose the Attorney General; and denying her motion to disqualify and/or enjoin a private law firm from simultaneously representing the Attorney General and numerous private Plaintiffs under a contingency-fee agreement in a tort suit for money damages against two

South Carolina citizens.¹

These interlocutory Orders are appealed pursuant to S.C. Code Ann. §14-3-430, which provides that intermediate Orders involving the merits of a case may be reviewed along with a final, appealable Order. The Supreme Court has found that for an order to involve the merits of a case, it "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distribs., Inc.*, 310 S.C. at 334, 426 S.E.2d at 780 (quoting *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988)).

In this case, the intermediate Orders appealed from decided Appellant's constitutional and other arguments regarding the Attorney General's ability to bring this suit through shared, private contingency-fee counsel (which Appellant argues violated her constitutional rights); her right to take the Attorney General's deposition in this litigation (which Appellant argues prevents her from having adequate discovery in both the defense of the Attorney General's claims against her and her counterclaims against the Attorney General); and whether the Attorney General was entitled to be relieved from default (which directly affects the disposition of the merits of this case). Each of these Orders involves the merits of this case as to the Attorney General, and each is thus reviewable along with the final Orders ending Appellant's claims against the Attorney General.

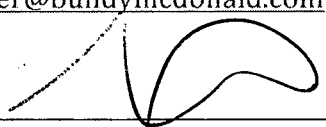
¹ The Order denying Appellant's motion to disqualify and/or enjoin would have been immediately appealable had it ever become final. Although Appellant timely filed a motion to alter or amend that Order, that motion was never heard or decided. The South Carolina Supreme Court subsequently assigned this case to a different Judge, and the Order "dropping" the Attorney General became final prior to any hearing being scheduled or any decision being rendered on the pending motion to alter or amend the Order denying Appellant's motion to enjoin and/or disqualify. For that reason, Appellant had to proceed with a timely appeal of all of these Orders.

CONCLUSION

For the foregoing reasons, Appellant submits that each Order appealed from is appealable at this time, and respectfully requests that the Court issue its Order allowing the appeal to proceed.

Respectfully Submitted,

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Counsel for Appellant

October 2, 2017

EXHIBIT A

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 PROBATE COURT

Civil Action No. 2010-GC-4000073

COMPLAINT
(Jury Trial Demanded)

PROBATE COURT
RICHLAND COUNTY, S.C.

10 MAY 19 PM 1:10

FILED

COME NOW THE PLAINTIFFS who, for their claim for relief against the Defendants, allege and will show as follows:

Complaint

PARTIES

1. Russell L. Bauknight is the court-appointed Trustee of the James Brown 2000 Irrevocable Trust and the Trustee of the James Brown Legacy Trust. Bauknight is also the court-appointed Successor Personal Representative of the Estate of James Brown, the celebrated entertainer, who died on December 25, 2006, a resident of Aiken County, South Carolina. Bauknight serves in each of these capacities pursuant to a Settlement Agreement approved by Order of the Aiken County Circuit Court dated May 26, 2009.

2. Bauknight brings this action as Trustee of the James Brown 2000 Irrevocable Trust (hereinafter "the Trust") and as Trustee of the James Brown Legacy Trust, and as Personal Representative of the Estate of James Brown (hereinafter "the Estate"), and on behalf of the beneficiaries of the Estate and the Trusts. Bauknight is hereinafter referred to as "Trustee Plaintiff."

3. The following are parties to this action by virtue of their being beneficiaries of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust and/or the James Brown Legacy Trust. These Plaintiffs will hereinafter be referred to as the "Beneficiary Plaintiffs" and include:

- a. Henry Dargan McMaster in his capacity as the Attorney General for the State of South Carolina;
- b. Tommie Rae Brown, individually and on behalf of her minor child, James Brown II;
- c. Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown;

Complaint

- d. Lindsey Delores Brown;
- e. Venisha Brown;
- f. Deanna J. Brown Thomas;
- g. Jason Brown-Lewis;
- h. Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar;
- i. Larry Brown;
- j. Tonya Brown; and
- k. Terry Brown

4. Defendants were formerly Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.

JURISDICTION AND VENUE

5. The Estate of James Brown is being probated in Aiken County, South Carolina.

6. The principal place of the administration of the Trust is Richland County, South Carolina. The Trustee maintains his usual place of business in Richland County, South Carolina. The records pertaining to the Trust are kept in Richland County, South Carolina.

7. Defendant Adele J. Pope is, upon information and belief, a resident of Newberry County. At all times pertinent to the matters alleged herein, Pope was a licensed attorney with her law office located in Richland County, South Carolina. During the time she served as a co-trustee of the James Brown 2000 Irrevocable Trust, she maintained her office and kept all documents relating to the Trust and the Estate in Richland County.

8. Defendant Robert L. Buchanan, Jr. is, upon information and belief, a citizen and resident of Aiken County, South Carolina. At all times pertinent to the matters alleged herein, he

Complaint

was a licensed attorney. During the time he served as a co-trustee and co-personal representative of the Estate, Buchanan transacted substantial business in Richland County and derived substantial income from the administration of the Estate and the Trust in Richland County and participated in the maintaining of the Trust and Estate documents in Richland County.

9. The Probate Court has exclusive jurisdiction over the matters raised herein pursuant to S.C. Code Ann. §§ 62-1-302 and -7-201.

10. Venue in this matter is proper in Richland County, South Carolina pursuant to S.C. Code Ann. §§ 62-7-108 and -204.

FACTUAL ALLEGATIONS

11. A document purporting to be Mr. Brown's Last Will and Testament ("Will"), dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. The Will nominated three individuals as Personal Representatives, namely, Albert H. Dallas, David G. Cannon, and Alfred A. Bradley, and they were appointed by the Probate Court by Order dated January 18, 2007. These same individuals were also appointed Trustees under a document purporting to create the James Brown 2000 Irrevocable Trust ("Trust").

12. Thereafter, a number of actions were filed in the Aiken County Probate Court in connection with the Will and Trust, all of which were removed to the Aiken County Circuit Court.

13. On or about September 24, 2007, the South Carolina Attorney General intervened in the Circuit Court actions to represent the interests of the charitable beneficiaries of the Trust.

14. On August 10, 2007, the Aiken County Circuit Court accepted Cannon's resignation as, *inter alia*, Personal Representative and Trustee. On November 20, 2007, the Aiken County Circuit Court accepted the resignations of Dallas and Bradley as Personal

Complaint

Representatives and Trustees and appointed the Defendants Robert L. Buchanan, Jr. and Adele J. Pope as substitute Personal Representatives and Trustees.

15. Following additional litigation in the Aiken County Circuit Court, the Beneficiary Plaintiffs entered a comprehensive settlement resolving all their disputes and ending the litigation between them, which agreement was, after an extensive hearing, approved by the Aiken County Circuit Court by an Order entered on May 26, 2009. That Order also removed the Defendants as the substituted Personal Representatives and Trustees.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

16. All allegations set forth above are incorporated herein.

17. As Personal Representatives and Trustees of the Estate of James Brown and the James Brown 2000 Irrevocable Trust, the Defendants owed fiduciary duties to the Estate, Trust and the beneficiaries of each (collectively "The Affected Parties"), including a duty of care, of impartiality, and of loyalty as well as a duty to prudently administer the probate and trust estates.

18. Upon information and belief, during their appointment as substitute Personal Representative and Trustee, the Defendants repeatedly and chronically breached their fiduciary duty to the Affected Parties in multiple ways, including but not limited to the following particulars:

- a. Failing to properly manage the estate and trust;
- b. Failing to engage necessary advisors and appropriate assistance to manage the estate and trust, causing, upon information and belief, millions of dollars of lost opportunities for the estate and trust;
- c. Failing to use due diligence in pursuing business opportunities for the estate and trust;

Complaint

- d. Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability;
- e. Mishandling an auction of personal property at great cost to the estate and trust;
- f. Failing to timely settle the debts of the estate;
- g. Failing to keep accurate accounting records for the estate and trust;
- h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;
- i. Failing to sell the assets of the estate and trust at a prudent time, for example, by failing to accept an offer to buy the estate and trust for \$100 million in November 2007, as demonstrated by their own testimony under oath, while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less;
- j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court;
- k. Failing to account to the Attorney General as required by law;
- l. Wasting time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust;
- m. Refusing to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate;

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- n. Acting in bad faith, as evidenced by such actions as
 - i. filing a lengthy motion opposing the settlement even before they were informed of the terms of the settlement ;
 - ii. providing to the Internal Revenue Service a road map of the settling parties' plan to deal with tax issues, for no apparent purpose other than to sabotage the settlement agreement;
 - iii. Taking inconsistent legal positions for their own personal interests, such as asserting their right to continue as fiduciaries pending their appeals despite having taken the contrary position when their predecessors appealed, insisting that the settling parties give notice to noninterested persons when Defendants refused to do so whenever they sought relief (such as the payment of their fees), and contesting the settling parties' contention that the estate was in an emergency situation when they themselves had asserted that position shortly before;
 - iv. Despite being judicially estopped by the South Carolina Court of Appeals, asserting they have a right to prosecute the Trust's and Estate's claims against Dallas, Cannon, and Bradley.
- o. Being unequipped and/or unwilling to conduct the administration of the estate, as they admitted by seeking the appointment of a special administrator to handle the administration because the estate was in an "emergency" situation, as further demonstrated by such breaches as:
 - i. Failing to understand the fundamentals of the operation of the music business, which constitutes the essential value of the trust and estate, and

Complaint

- failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;
- ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuation, including but not limited to tax valuation;
 - iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence."
- p. Engaging in conflicts of interest, such as
- i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;
 - ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets.
 - iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be \$5 million.
- q. By misrepresenting or presenting inaccurate statements under oath to the Court;
- r. By failing to file appropriate tax returns;
- s. By allowing statutes of limitations to run, thereby preventing opportunities for the estate and trust to receive reimbursement for music rights misappropriated by others;

Complaint

- t. By failing to comply with the requirements of the South Carolina Uniform Prudent Investor Act, including but not limited to the failure to implement an investment policy for the trust; and
- u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately \$5 Million in fees.

19. Despite the terms of the Order of May 26, 2009, removing the Defendants as Personal Representatives and Trustees, the Defendants have nevertheless continued to breach their fiduciary duties to the Affected Parties by continuing to take actions harmful to the estate and trust and the interests of the Affected Parties, including but not limited to contesting the settlement by filing multiple appeals and objecting to substitution, all to the detriment of the Affected Parties and in violation of their fiduciary duty to the Affected Parties.

20. As a result of Defendants' breach of their fiduciary duties to the Affected Parties, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A SECOND CAUSE OF ACTION
(Breach of Trust)

- 21. All allegations set forth above are incorporated herein.
- 22. The acts and omissions of the Defendants constitute a breach of trust pursuant to S.C. Code Ann. § 62-7-1001(a).
- 23. As a result of Defendants' breach of trust, Plaintiffs are entitled to an order

Complaint

- a. compelling Defendants to redress the breach of trust by paying money, restoring property, or by other means as may be required to remedy the breach;
- b. ordering the Defendants to account for all property of the Estate and Trust;
- c. denying compensation to the Defendants for all services provided by them for work on behalf of the Estate or Trust;
- d. such other relief as may be necessary to remedy the breach.

24. As a result of Defendants' breach of trust, Plaintiffs are entitled to judgment against the Defendants for damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A THIRD CAUSE OF ACTION
(Negligence)

25. All allegations set forth above are incorporated herein.

26. Defendants provided services to the Estate and Trust apart from, and in addition to the requirements for the administration of the Estate and Trust. In doing so, Defendants were obligated to provide such services in a reasonable manner, consistent with the applicable standard of care.

27. The acts or omissions of the Defendants in providing these services were careless, negligent, grossly negligent, willful, wanton, reckless, and in conscious disregard of the rights of the Affected Parties.

28. As a result of the Defendants' acts or omissions, the Affected Parties have incurred actual damages in the form of:

- (a) loss, waste, or spoliation of the assets of the Estate and Trust;
- (b) diminution in the present value and income generation of the Estate and Trust;

Complaint

(c) diminution in the future stream of profit and income from the corpus of the Estate and Trust.

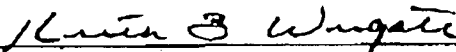
29. As a result of Defendants' negligent and grossly negligent acts and omissions, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

WHEREFORE, The Plaintiffs pray for a judgment against the Defendants for, relief as set forth above, actual and punitive damages in such sums as may be proven at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

PLAINTIFFS DEMAND A JURY TRIAL.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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Everett A. Kendall, II
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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

EXHIBIT B

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COUNTY OF RICHLAND

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(Jury Trial Demanded)

AMANDA H. BLOCH
PROBATE CLERK
RICHLAND COUNTY, S.C.

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Complaint

was a licensed attorney. During the time he served as a co-trustee and co-personal representative of the Estate, Buchanan transacted substantial business in Richland County and derived substantial income from the administration of the Estate and the Trust in Richland County and participated in the maintaining of the Trust and Estate documents in Richland County.

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- c. Failing to use due diligence in pursuing business opportunities for the estate and trust;

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- d. Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability;
- e. Mishandling an auction of personal property at great cost to the estate and trust;
- f. Failing to timely settle the debts of the estate;
- g. Failing to keep accurate accounting records for the estate and trust;
- h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;
- i. Failing to sell the assets of the estate and trust at a prudent time, for example, by failing to accept an offer to buy the estate and trust for \$100 million in November 2007, as demonstrated by their own testimony under oath, while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less;
- j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court;
- k. Failing to account to the Attorney General as required by law;
- l. Wasting time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust;
- m. Refusing to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate;

Complaint

- n. Acting in bad faith, as evidenced by such actions as
 - i. filing a lengthy motion opposing the settlement even before they were informed of the terms of the settlement ;
 - ii. providing to the Internal Revenue Service a road map of the settling parties' plan to deal with tax issues, for no apparent purpose other than to sabotage the settlement agreement;
 - iii. Taking inconsistent legal positions for their own personal interests, such as asserting their right to continue as fiduciaries pending their appeals despite having taken the contrary position when their predecessors appealed, insisting that the settling parties give notice to noninterested persons when Defendants refused to do so whenever they sought relief (such as the payment of their fees), and contesting the settling parties' contention that the estate was in an emergency situation when they themselves had asserted that position shortly before;
 - iv. Despite being judicially estopped by the South Carolina Court of Appeals, asserting they have a right to prosecute the Trust's and Estate's claims against Dallas, Cannon, and Bradley.
- o. Being unequipped and/or unwilling to conduct the administration of the estate, as they admitted by seeking the appointment of a special administrator to handle the administration because the estate was in an "emergency" situation, as further demonstrated by such breaches as:
 - i. Failing to understand the fundamentals of the operation of the music business, which constitutes the essential value of the trust and estate, and

Complaint

- failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;
- ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuation, including but not limited to tax valuation;
 - iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence."
- p. Engaging in conflicts of interest, such as
- i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;
 - ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets.
 - iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be \$5 million.
- q. By misrepresenting or presenting inaccurate statements under oath to the Court;
- r. By failing to file appropriate tax returns;
- s. By allowing statutes of limitations to run, thereby preventing opportunities for the estate and trust to receive reimbursement for music rights misappropriated by others;

Complaint

- t. By failing to comply with the requirements of the South Carolina Uniform Prudent Investor Act, including but not limited to the failure to implement an investment policy for the trust; and
- u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately \$5 Million in fees.

19. Despite the terms of the Order of May 26, 2009, removing the Defendants as Personal Representatives and Trustees, the Defendants have nevertheless continued to breach their fiduciary duties to the Affected Parties by continuing to take actions harmful to the estate and trust and the interests of the Affected Parties, including but not limited to contesting the settlement by filing multiple appeals and objecting to substitution, all to the detriment of the Affected Parties and in violation of their fiduciary duty to the Affected Parties.

20. As a result of Defendants' breach of their fiduciary duties to the Affected Parties, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A SECOND CAUSE OF ACTION
(Breach of Trust)

- 21. All allegations set forth above are incorporated herein.
- 22. The acts and omissions of the Defendants constitute a breach of trust pursuant to S.C. Code Ann. § 62-7-1001(a).
- 23. As a result of Defendants' breach of trust, Plaintiffs are entitled to an order

Complaint

- a. compelling Defendants to redress the breach of trust by paying money, restoring property, or by other means as may be required to remedy the breach;
- b. ordering the Defendants to account for all property of the Estate and Trust;
- c. denying compensation to the Defendants for all services provided by them for work on behalf of the Estate or Trust;
- d. such other relief as may be necessary to remedy the breach.

24. As a result of Defendants' breach of trust, Plaintiffs are entitled to judgment against the Defendants for damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

FOR A THIRD CAUSE OF ACTION
(Negligence)

25. All allegations set forth above are incorporated herein.

26. Defendants provided services to the Estate and Trust apart from, and in addition to the requirements for the administration of the Estate and Trust. In doing so, Defendants were obligated to provide such services in a reasonable manner, consistent with the applicable standard of care.

27. The acts or omissions of the Defendants in providing these services were careless, negligent, grossly negligent, willful, wanton, reckless, and in conscious disregard of the rights of the Affected Parties.

28. As a result of the Defendants' acts or omissions, the Affected Parties have incurred actual damages in the form of:

- (a) loss, waste, or spoliation of the assets of the Estate and Trust;
- (b) diminution in the present value and income generation of the Estate and Trust;

Complaint

(c) diminution in the future stream of profit and income from the corpus of the Estate and Trust.


29. As a result of Defendants' negligent and grossly negligent acts and omissions, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

WHEREFORE, The Plaintiffs pray for a judgment against the Defendants for, relief as set forth above, actual and punitive damages in such sums as may be proven at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

PLAINTIFFS DEMAND A JURY TRIAL.

Respectfully submitted,

SWENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-4900

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

AND

Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown,

Plaintiffs,

vs.

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

Defendants.

2010 SEP 30 PM 1:07
JEANETTE W. MERRIDGE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE

(Jury Trial Demanded)

Defendants Robert L. Buchanan, Jr. and Adele J. Pope, subject to their Motion to Dismiss and any Motion filed or to be filed for a change of venue, answer the Complaint of Plaintiffs and Counterclaim against Plaintiffs, as follows:

FOR A FIRST DEFENSE
(Qualified General Denial)
As to Parties

1. (a) The following general allegations are incorporated by reference in Defendants' responses to each and every allegation contained in the Complaint, including the prayer for relief:

(i) Henry Dargan McMaster ("McMaster"), the Attorney General of South Carolina ("AG") brings this private tort suit on behalf of persons disinherited in James Brown's carefully crafted estate plan. The Attorney General's duty is to serve the public interest, not private interests.

(ii) On August 10, 2008, McMaster and some of the Plaintiffs met to divide what Mr. Brown did not give them. As part of their plan, Plaintiffs agreed that the Defendants, who were dutifully defending Mr. Brown's estate plan, should be removed as PR/Trustees.

(iii) The plan agreed to give Tommie Rae Hynie Brown, who had been disinherited, more than \$20 million. It further provided that five of Mr. Brown's dozen or more children would receive approximately \$4 million each.

(iv) Five months later on January 30, 2009, McMaster entered into an agreement with Mr. Brown's son Terry, who did business with discredited former trustee Dallas and now-indicted former trustee Cannon, in which Terry received a 10-year right to buy all of James Brown's assets. This not only destroyed the value of Mr. Brown's assets, it threatened loss of the IRS qualification of Mr. Brown's "I Feel Good" Trust, which is part of the 2000 Trust (the "Trust").

(v) When the dealing was done, McMaster and the other Plaintiffs had stripped about 65% of Mr. Brown's \$85 million music empire from his estate plan. Upon information and believe, Plaintiffs had placed under McMaster's control not only Mr. Brown's "I Feel Good" private foundation but also Mr. Brown's estate and the Brown Grandchildren's Education Trust, which is also a part of the Trust. Furthermore, the plan gave McMaster the right to remove and replace personal representatives and trustees.

(vi) The circuit court's approval of Plaintiffs' actions is on appeal to the Supreme Court. The Supreme Court will determine if Plaintiffs can do all this. The Supreme Court will determine if after removing Defendants, the lower court, at McMaster's request, may require them, under penalty of contempt, to sign documents which they cannot sign while properly performing their duty to James Brown. The Supreme Court will determine if the lower court, at McMaster's request, will require Defendants to agree to say nothing bad about McMaster's deals or about McMaster himself.

(vii) Upon information and belief, James Brown anticipated trouble with his estate

plan, and he stated what he expected of his fiduciaries:

“... any person not provided for in this Irrevocable Trust, Grantor’s Will or other such instrument...shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of Grantor’s estate as he herewith disclaims and disinherits any such person. Any such alleged claim shall be considered an affront to the Grantor’s wishes and shall be vigorously challenged as such by his fiduciaries.” [Tr. Art. XXI; See Will Item X for similar provision. Emphasis Supplied.]

(viii) Mr. Brown’s clear intention was to dedicate his entire music empire solely to the education of certain grandchildren and needy and deserving students:

“Except as otherwise provided...I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not. Such failure is intentional and not occasioned by accident or mistake... It is the Grantor’s intention that the trust estate be available only to the beneficiaries and not to the Grantor’s past or future spouse. The Trustee(s) are directed to enforce this provision.” [Emphasis supplied.] [Will, p1; Tr. Art XVIII, XXII.]

(ix) James Brown intended to establish what may be South Carolina’s largest private foundation dedicated solely to the education of needy students. The Supreme Court will decide whether to uphold Plaintiffs’ contracts to dismantle that foundation. Whatever the Court may decide, Defendants’ record of service proves that Defendants properly managed the 2000 Trust and Mr. Brown’s estate. As directed by Mr. Brown, Defendants vigorously defended his estate plan.

(x) Upon information and belief, \$50 million loss to Mr. Brown’s estate and the 2000 Trust, as well as significant damages to Defendants have been inflicted upon them by Plaintiffs and by others acting in Plaintiffs’ behalf.

(xi) Upon information and belief, Defendants allege that Plaintiffs have combined in their efforts to establish an unrealistically low value of the assets of James Brown as much for the purpose of interfering with Defendants’ commissions, thereby causing them special harm, as for the purpose of enabling a purchasing entity, in which one or more Plaintiffs or their family members will own an interest, to acquire assets worth \$80-to-\$100 million or more for as little as \$12 million.

(b) More specifically with respect to the allegations of paragraph 1 of the Complaint, Defendants allege as follows:

(i) Defendants admit that James Brown was a celebrated entertainer who died on December 25, 2006, a resident of Aiken County, South Carolina.

(ii) Defendants admit that Bauknight serves as court-appointed Trustee of the James Brown 2000 Irrevocable Trust and as Personal Representative of the Estate of James Brown, with the qualification that his service is based only on a settlement between McMaster and some of the Plaintiffs, none beneficiaries of the 2000 Trust; Defendants further admit that the lower court appointed Bauknight and approved the settlement, with the qualification that Defendants were not removed for cause and the order is not final and is on appeal before the Supreme Court.

(iii) Defendants admit, upon information and belief, that Bauknight is the Trustee of the Legacy Trust to which Mr. Brown gave nothing, which was created solely by contract of Plaintiffs Bauknight, McMaster, Hynie Brown and the Brown Family LLC; further, the Defendants allege the Legacy Trust is not a part of Mr. Brown's estate plan, and the lower court order approving the contract and appointing Bauknight is not final and is on appeal before the Supreme Court.

(iv) Except for the qualified admissions above, the allegations of paragraph 1 of the Complaint are denied.

2. With respect to the allegations of paragraph 2 of the Complaint:

(a) Defendants deny having any duty to the Legacy Trust or its beneficiaries.

(b) Defendants admit that Bauknight brings this action as PR/Trustee of the Estate and Trust of James Brown based solely on a settlement approved by the lower court, which is now on appeal to the Supreme Court.

(c) Defendants allege that Bauknight's interests conflict with the interests of the beneficiaries of the Estate and Trust.

(d) All allegations of paragraph 2 of the Complaint that are contrary to or inconsistent with the Defendants' aforesaid allegations are denied.

3. With respect to the allegations of paragraph 3 of the Complaint, Defendants allege as follows:

(a) With respect to McMaster, Defendants deny: (i) that McMaster has standing or is authorized to bring a private tort suit against or concerning a 501(c)(3) private foundation or its agents to benefit the family at the expense of the needy and deserving children

desiring an education for the reasons hereinafter more fully alleged; (ii) that McMaster has standing or is authorized to dismantle the grandchildren's education trust, especially as some grandchildren have expressly objected to the settlement; (iii) that McMaster has standing or is authorized to take over the estate of a decedent; (iv) that McMaster has standing or is authorized to commence an action to recover money damages for private individuals; (v) that Bauknight has standing or is authorized to commence a lawsuit for McMaster under any circumstances, and especially, as here, where McMaster cannot act, and (vi) that private counsel for private parties may simultaneously represent McMaster in this action.

(b) With respect to Tommie Rae Hynie Brown and James Brown II,

(i) Defendants deny Tommie Rae has standing because she was not included in Mr. Brown's estate plan; she is limited by a pre-nuptial agreement she signed before the 2001 marriage ceremony with Mr. Brown; she was married to another man when she conducted the marriage ceremony with Mr. Brown in 2001; after a 2004 annulment of the marriage pursuant to Mr. Brown's claim to void their marriage, she contracted never to claim to be Mr. Brown's common law wife, which was incorporated into an Aiken County Family Court order; she did not marry Mr. Brown after the annulment; she is not listed as Mr. Brown's spouse on his death certificate.

(ii) Defendants deny James II has standing because he is specifically excluded from Mr. Brown's estate plan even if a child; he has refused to undergo the official Estate and Trust DNA protocol to demonstrate paternity; he is a minor and has a guardian ad litem ("GAL") in other court proceedings related to the Estate and Trust, but he has no GAL in this litigation; he cannot be represented by his mother in this case because of her conflict of interest.

(c) With respect to Daryl J. Brown and his minor child Janise:

(i) Defendants deny that Daryl has standing because he is not a beneficiary of the 2000 Trust, and, on information and belief, his 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(ii) Defendants deny that Janise has standing because, as one of the seven beneficiaries of the Brown Family Education Trust (the Grandchildren's Education Trust), she has a potential education fund of about \$285,000.00, and the appointment of a guardian ad litem ("GAL") for her is necessary because her father's settlement eviscerates this educational benefit and his attack on the estate plan as her representative may subject her to forfeiture under the *In Terrorem* clause as well.

(d) With respect to Lindsey Delores Brown: Defendants deny that Lindsey has standing because she is not a beneficiary under the Will, and they are informed and believe her interest under the Trust is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(e) With respect to Venisha Brown: Defendants deny that Venisha has standing because she is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that her 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(f) With respect to Deanna J. Brown Thomas: Defendants deny that Deanna has standing because she is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that her 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(g) As to Jason Brown-Lewis: Defendants deny that Jason has standing because he is not a beneficiary under the Will, and they are informed and believe his interest under the Trust is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(h) As to Yamma N. Brown and her minor children, Sydney L. and Carrington L.:

(i) Defendants deny that Yamma has standing because she is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that her 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of her attack on the estate plan.

(ii) Defendants deny that Sydney and Carrington have standing because, as two of the seven beneficiaries of the Brown Family Education Trust (the Grandchildren's Education Trust), each has a potential education fund of about \$285,000.00, and each needs a guardian ad litem ("GAL") because their mother's settlement eviscerates this educational benefit and her

attack on the estate plan as their representative may subject them to forfeiture under the *In Terrorem* clause.

(i) As to Larry Brown: Defendants deny that Larry has standing because he is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that his 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(j) As to Tonya Brown: Defendants deny that Tonya has standing because she is specifically excluded from the estate plan, she failed to timely commence an action to be declared an heir, and she has filed documents admitting she is not an heir.

(k) As to Terry Brown: Defendants deny that Terry has standing because he is not a beneficiary of the 2000 Trust, and Defendants are informed and believe that his 1/6 interest in personal and household effects under the Will is subject to forfeiture under its *In Terrorem* clause because of his attack on the estate plan.

(l) Defendants deny that the Legacy Trust and its beneficiaries, who to date cannot be ascertained from the filed settlement documents, have standing to bring a suit against Defendants, who owe them no duty.

(m) Defendants deny that Bauknight has standing because:

(i) Bauknight has a conflict of interest under provisions of the 2000 Trust and Mr. Brown's Will and under applicable law because Bauknight has a duty to protect the "I Feel Good" private foundation, part of the 2000 Trust, pending the outcome of the Case 1647 appeal under the November 6, 2009 Court of Appeals Order.

(ii) Bauknight has a conflict of interest in purporting to represent the minor grandchildren beneficiaries while serving Tommie Rae, Terry and other beneficiaries of his Legacy Trust, which dismantles the Grandchildren's Education Trust.

(iii) Bauknight may not serve as an agent for McMaster to achieve a private purpose.

(n) Defendants allege there are other necessary parties who are absent,

namely, grandchildren Romunzo and Forlando, because (i) they have taken the position in the Circuit Court of Aiken County that all Plaintiffs have forfeited any interest under the *in terrorem* clauses, (ii) they have objected to the settlement, and (iii) they are beneficiaries of the Grandchildren's Education Trust, which is being dismantled by the very settlement that is on appeal in the Supreme Court.

(o) All allegations of paragraph 3 that are contrary to or inconsistent with the Defendants' aforesaid allegations are denied.

4. Defendants admit the allegations of paragraph 4 of the Complaint.

As to Jurisdiction and Venue

5. Defendants admit the allegations of paragraph 5 of the Complaint.

6. With respect to paragraph 6 of the Complaint, Defendants lack information or knowledge sufficient to form an opinion or belief as to the location where Bauknight maintains his usual place of business or where he maintains records. Based on unsigned documents related to the Legacy Trust, an Aiken County Circuit Court order dated August 10, 2007, the location of James Brown's home place in Aiken County, which is owned by the trust, and the various Estate and Trust issues that are pending in or on appeal from the courts of Aiken County, the Defendants are informed and believe that Aiken County remains the principal place of the administration of the Trust, not Richland County. All allegations of paragraph 6 of the Complaint that are contrary to or inconsistent with the Defendants' aforesaid allegations are denied.

7. With respect to paragraph 7 of the Complaint, Defendants admit that Pope is a licensed attorney residing in Newberry County; Defendants admit that prior to September 30, 2009, Pope's law office was located in Richland County; that pursuant to orders of the Aiken

County Circuit Court, the Estate and Trust documents were located at relevant times in Aiken, Barnwell, Greenville and Richland Counties. All allegations of paragraph 7 of the Complaint that are contrary to or inconsistent with the aforesaid allegations are denied.

8. With respect to paragraph 8 of the Complaint, Defendants admit Buchanan is a licensed attorney residing in Aiken County; Defendants allege Buchanan has received very little, if any, income for administering the Estate and Trust, and to the extent any payments were related to his service as PR/Trustee, they were properly made from an Aiken bank pursuant to an Aiken County Circuit Court order dated January 8, 2008; Defendants allege Buchanan transacted business in the administration of the Estate and Trust during relevant times within and outside of South Carolina, and particularly in Aiken, Barnwell, Bamberg, Beaufort, Charleston, Darlington, Florence, Greenville, Kershaw, Lee, Lexington, Greenville and Richland Counties, South Carolina, but mostly in Aiken County; Defendants allege that 212 Newberry Street, NW, Aiken, S.C. 29801 was the formal address and principal location of the Estate and Trust during relevant times; that pursuant to orders of the Aiken County Circuit Court, the Estate and Trust documents were located at relevant times in Aiken, Barnwell, Greenville and Richland Counties. All allegations of paragraph 8 of the Complaint that are contrary to or inconsistent with the aforesaid allegations are denied.

9. Defendants deny the allegations of Paragraph 9 of the Complaint.

10. Buchanan and Pope deny the allegations of paragraph 10 of the Complaint, and allege that venue in Aiken County is proper.

As to Factual Allegations

11. With respect to paragraph 11 of the Complaint, Defendants admit that James Brown executed a Will on August 1, 2000, in which Mr. Brown nominated Albert H. Dallas

("Dallas"); David G. Cannon ("Cannon") and Alfred A. Bradley ("Bradley") as Personal Representatives of his Estate, and that on January 18, 2007, the Will was admitted to probate in Aiken County, and Dallas, Cannon and Bradley were appointed Personal Representatives of the Estate; Defendants further admit that James Brown executed a Trust on August 1, 2000, in which Mr. Brown appointed Dallas, Cannon and Bradley as Trustees. All allegations of paragraph 11 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

12. With respect to paragraph 12 of the Complaint, Defendants admit that approximately twenty cases were filed in various courts, with some moved to circuit court. All allegations of paragraph 12 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

13. With respect to paragraph 13, Defendants admit the Attorney General of South Carolina ("AG") appeared on or about September 24, 2007, and was allowed to intervene in Civil Action No. 2007-CP-02-0122 ("Case 122"). All other allegations of paragraph 13 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

14. Defendants admit the allegations of paragraph 14 of the Complaint and allege the Court conferred upon them all authority as if originally appointed by Mr. Brown.

15. With respect to the allegations of paragraph 15 of the Complaint, Defendants allege that on August 10, 2008, McMaster, through his agents, and some Plaintiffs executed the August 10th contract which they described as a "private binding Agreement" and valid without court approval. Upon information and belief, from August 10 through January 30, 2009, they, Terry Brown and others entered into additional contracts. On May 26, 2009, the lower court approved the contracts and removed Defendants as PRs and Trustees. The order is on appeal in

the Supreme Court. All allegations of paragraph 15 of the Complaint that are inconsistent with or contrary to Defendants' aforesaid allegations are denied.

AS TO THE FIRST CAUSE OF ACTION

16. All allegations made above are incorporated herein where relevant.

17. With respect to paragraph 17 of the Complaint:

(a) Defendants deny having a fiduciary duty to Hynie Brown, James II, Tonya, the Brown Family, LLC and Bauknight's Legacy Trust or its beneficiaries.

(b) Defendants deny having any duties related to the management and administration of the Estate and Trust from May 26, 2009 to date.

(c) Defendants deny having duties other than such duties of care, impartiality and loyalty as are required and limited by the specific terms of the 2000 Trust, the Will, the S. C. Probate Code, the S. C. Trust Code, valid final court orders and other relevant South Carolina law.

(d) Subject to the above, Defendants admit they have or have had the following fiduciary duties:

1. To administer the Estate in accordance with the terms of the Will and applicable law, including defending the Will as directed by Brown.
2. To enforce the terms of the 2000 Trust, including defending it as directed by Brown.
3. To uphold the Will, which leaves Brown's entire residuary estate to the 2000 Trust.
4. As to the Estate, subject to the In terrorem clause, to deliver to each of the named children 1/6 of Brown's personal and household effects, or the net proceeds, reduced by applicable Estate Taxes, and to deliver the remainder, after debts and expenses, to the 2000 Trust.

5. As to Terry, their fiduciary duty, on information and belief, ended on January 30, 2009 when Terry knowingly violated the *In Terrorem* clause after demanding it be enforced.
6. As to the 7 Grandchildren Beneficiaries, subject to the *In Terrorem* and Spendthrift clauses, to defend and create an education trust share of about \$285,000 each for Janise, Lindsey, Jason, Sydney, Carrington, Romunzo and Forlando, as set out in Articles V and VI of the 2000 Trust.
7. To seek court guidance where appropriate, as they have done as evidenced by numerous written Orders.

All allegations of paragraph 17 of the Complaint that are inconsistent with or contrary to the Defendants' aforesaid allegations are denied.

18. Defendants deny the allegations of paragraph 18 of the Complaint.
19. Defendants deny the allegations of paragraph 19 of the Complaint.
20. Defendants deny the allegations of Paragraph 20 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION

21. All allegations made above are incorporated herein where relevant.
22. Defendants deny the allegations of paragraph 22 of the Complaint.
23. Defendants deny the allegations of paragraph 23 of the Complaint.
24. Defendants deny the allegations of Paragraph 24 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION

25. All allegations made above are incorporated herein where relevant.
26. With respect to paragraph 26 of the Complaint, Defendants admit they properly served as court-appointed, non-fiduciary Special Administrators of the Estate ("SAs") from March 7, 2007 until November 20, 2007. The remaining allegations of paragraph 26 of the Complaint are denied.

27. Defendants deny the allegations of paragraph 27 of the Complaint.
28. Defendants deny the allegations of paragraph 28 of the Complaint.
29. Defendants deny the allegations of Paragraph 29 of the Complaint.

AS TO THE PRAYER FOR RELIEF

30. Defendants deny that Plaintiffs are entitled to any relief against Defendants alleged in their prayer for relief.

AS TO ALL ALLEGATIONS OF THE COMPLAINT

31. All allegations of the Complaint, including the allegations contained in the prayer for relief, not hereinabove admitted, qualified or explained are denied and strict proof demanded thereof.

FOR A SECOND DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Standing)

32. All allegations previously set forth herein are incorporated herein.
33. All Plaintiffs lack standing to bring this action under the Article IV of the Will, and Item XXI of the 2000 Trust, and as otherwise alleged in paragraph 3 above, and the case should be dismissed with costs taxed to Plaintiffs.

FOR A THIRD DEFENSE AS TO ALL CAUSES OF ACTION
(AG's Exceeding and Abusing Authority)

34. All allegations made above are incorporated herein where relevant.
35. Defendants are informed and believe that McMaster has a duty to defend the "I Feel Good" private foundation and its agents from private tort suits intended to dissipate Brown's scholarship funds for needy and deserving students.
36. McMaster's private contracts and acts and omissions related to the contracts and this litigation serve no public purpose; exceed and/or abuse his constitutional and statutory

authority; and violate the due process and First Amendment rights of Defendants and all other fiduciaries and beneficiaries of the 2000 Trust and Will other than Bauknight, who serves at McMaster's pleasure; and generally constitute bad faith and violate the public trust; the case should be dismissed with costs taxed to Plaintiffs.

FOR A FOURTH DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Affidavit Required by S.C. Code Ann. §15-36-100 (Supp. 2005))

37. All allegations made above are incorporated herein where relevant.

38. Plaintiffs failed to file as part of the Complaint an affidavit of an Expert Witness specifying at least one negligent act or omission claimed to exist and the factual basis therefore, as a result of which the case should be dismissed for failure to state a claim.

FOR A FIFTH DEFENSE
(Charitable Immunity for Private 501(c)(3) Foundations)

39. All allegations previously set forth herein are incorporated herein.

40. Defendants are informed and believe their actions as agents protecting the "I Feel Good" private foundation, a 501(c)(3) private foundation, have the same statutory immunity and protection from private tort suits as agents of public charities to ensure: (a) that qualified trustees, like Defendants, will accept such positions without fear of financial ruin of the very kind Plaintiffs are attempting to inflict by this lawsuit, and (b) the scholarship funds of the "I Feel Good" private foundation will not be depleted directly or indirectly in the defense of those who properly protect and serve it.

41. Defendants are informed and believe this lawsuit must be dismissed with prejudice and with costs taxed to Plaintiffs.

FOR A SIXTH DEFENSE AS TO ALL CAUSES OF ACTION
(Improper Venue, Rule 12(b)(3), SCRPC)

42. All allegations previously set forth herein are incorporated herein.

43. Pursuant to S.C. Code Ann. §§ 15-7-40, 62-1-303, 62-3-201 and 62-7-204, on information and belief, venue with respect to the within-captioned action is exclusively within the Aiken County Circuit Court, and this action should be dismissed.

FOR A SEVENTH DEFENSE AS TO ALL CAUSES OF ACTION
(Absence of Subject Matter Jurisdiction, Rule 12(b)(1), SCRCPP)

44. All allegations previously set forth herein are incorporated herein.

45. Pursuant to S.C. Code Ann. §§ 62-1-303, 62-3-201 and 62-7-204, on information and belief, subject matter jurisdiction was exclusively within the Aiken County Court, and this action should be dismissed.

FOR A EIGHTH DEFENSE TO ALL CAUSES OF ACTION
(Joinder of Persons Needed for Just Adjudication, Rule 19, SCRCPP)

46. All allegations made above are incorporated herein where relevant.

47. Defendants are informed and believe that certain parties hereinafter identified must be joined in that they are subject to service of process, their joinder will not deprive the Court of jurisdiction, in their absence complete relief cannot be accorded among those already parties, they claim an interest in the subject of the action whose absence may impede their ability to protect that interest, and/or that Defendants are subject to a substantial risk of double, multiple or inconsistent obligations by reason of their absence. The parties include:

(a) Minor Plaintiffs have no GALs, and those speaking for them are giving away their educational benefits under the Grandchildren's Education Trust;

(b) Forlando Brown and Romunzo Brown are adult grandchildren whose interests under the Grandchildren's Education Trust are eviscerated by the settlement, and they have objected to the settlement in the Aiken County Circuit Court;

(c) The Brown Family LLC is an entity with some relationship to the

settlement, and it is not a party to this action.

48. Defendants are informed and believe that in the absence of their joinder, the case should be dismissed.

FOR A NINTH DEFENSE TO ALL CAUSES OF ACTION
(Estoppel)

49. All allegations made above are incorporated herein where relevant.

50. Plaintiffs have engaged in conduct during relevant times which was calculated to convey the impression that the facts were otherwise than and inconsistent with those they now seeking to assert, including at least the following conduct:

A. AS TO AG McMASTER:

(i) On July 30, 2008, AG McMaster, personally, wrote a letter to Defendants supporting their service as PRs and Trustees.

(ii) AG McMaster has ratified the Will and Trust which Defendants seek to uphold.

B. AS TO TOMMIE RAE BROWN:

(i) Prior to her 2001 ceremonial marriage to Mr. Brown, she executed a Pre-Nuptial Agreement in which she waived all rights as a spouse to share in or make any claim against the estate of Mr. Brown; all rights as a spouse in the property of Mr. Brown; any spouse's right of election or claim as an omitted spouse against Mr. Brown's estate under the law of any state; and any right to serve as a fiduciary under Mr. Brown's estate.

(ii) During Mr. Brown's 2004 action against her to void the marriage, Tommie Rae contracted never to claim to be Mr. Brown's common law spouse.

(iii) She admits and has complained that after the 2004 annulment, Mr. Brown would not marry her again.

(iv) She claims to have been a member of the Advisory Board to the Trust that Defendants are seeking to uphold.

(v) She has otherwise ratified the Will and Trust which Defendants seek to uphold.

C. AS TO DEANNA J. BROWN THOMAS AND YAMMA BROWN:

(i) Deanna and Yamma have affirmed under oath their status as beneficiaries under the same Will Defendants are seeking to uphold.

(ii) Deanna accepted a position as Trustee of the Trust, and Yamma accepted a position as Executive Assistant to the Board of the Trust, the same Trust Defendants are seeking to uphold.

(iii) Deanna and Yamma acknowledged in the 2002 lawsuit they filed against their father, James Brown, that they were not a part of his estate plan (though actually they were devised a share of personal and household effects).

(iv) Deanna J. Brown Thomas has acknowledged that the devise of personal and household effects to the named children in the Will was what her father wanted, the same Will Defendants are seeking to uphold.

(v) Deanna and Yamma, with other Plaintiffs, have advised the Court in a Memorandum submitted in this case that James Brown is one of South Carolina's most famous and generous icons and that the establishment of a Trust intended to provide financial assistance to deserving students who seek an education in South Carolina "was the often-stated and well known desire of James Brown." (Plaintiffs' Memorandum dated and filed August 27, 2010, p. 2).

(vi) They have otherwise ratified the Will and Trust which Defendants seek to uphold.

D. AS TO DARYL BROWN:

(i) He has affirmed under oath his status as a beneficiary under the same Will the Defendants are seeking to uphold.

(ii) He has otherwise ratified the Will and Trust which Defendants are seeking to uphold.

E. AS TO TERRY BROWN:

(i) He alleged Attorney Levenson, the attorney for Daryl, Deanna and Yamma, had engaged in unethical activity by contesting Mr. Brown's Will and Trust which Defendants are seeking to uphold.

(ii) He has consistently ratified the validity of the Will and Trust which Defendants are seeking to uphold, even claiming after the announced August 10, 2008 settlement, until as late as February 2009, that he was then the devisee of all of Mr. Brown's personal effects, asserting that Daryl, Deanna and Yamma, his co-Plaintiffs, had forfeited their share under the *In Terrorem* clauses of the Will and Trust.

F. AS TO ALL PLAINTIFFS:

(i) All Plaintiffs have acquiesced in, actively supported and/or failed to challenge the material findings of the orders of, as well as the documents presented and representations made by Plaintiffs in, the Aiken County Circuit Court and/or the South Carolina Court of Appeals, approving, after review, many actions taken by Defendants that are the subject of Plaintiffs' Complaint in this case, including at least:

(a) Orders characterizing the condition of the Estate and Trust as deplorable when Defendants began serving as PRs and Trustees;

(b) Orders providing for bank accounts;

(c) Orders providing for accounting;

(d) Orders concerning the protection of Mr. Brown's estate plan;

(e) Orders approving the service of Defendants as PRs of the Estate and as Trustee of the Trust;

(f) Orders characterizing the service of Defendants as excellent;

(g) Orders with respect to the Christie's sale;

(h) Orders with respect to Estate and Trust property not sold at Christie's;

(i) Orders providing for payment of fees, commissions and costs to Defendants and for their staff;

(j) Orders concerning the Grandchildren's Education Trust;

(k) Orders with respect to taxes;

(l) Order addressing mismanagement on or after May 26, 2009;

(m) Orders, as well as the briefs and representations of Plaintiffs to the Court, related to the value of the James Brown assets;

(ii) All Plaintiffs failed to seek a global settlement of all issues by inviting Defendants and others, who were necessary parties to a settlement, to their mediation, but instead conducted a private mediation with no notice to or knowledge of Defendants. All Plaintiffs knew or should have known that Defendants would be left in the position of defending the estate plan as well as other interested parties whose rights were eviscerated as a result of the mediation.

(iii) All Plaintiffs failed to present evidence to the Court that the settlement was reduced to writing; was signed by all parties affected thereby; does not violate the provisions and purposes of the Trust; protects the heirs and devisees not made parties; does not violate the First Amendment and Due Process rights of non-parties; protects all other rights of non-settling parties; protects the beneficiaries of the 2000 Trust; protects the needy and deserving students; and protects all creditors and taxing authorities; but instead, Plaintiffs called (other than Defendants) only Bauknight -- who by their agreement now serves, *inter alia*, as PR of the Estate and as Trustee of the Trust -- and who admittedly had not investigated material issues regarding the settlement and had no opinion on them, including the tax and federal copyright implications. Plaintiffs knew or should have known that their failure to determine the heirs of James Brown; their failure to honor the desires of James Brown; their grant to Terry Brown of the 10-year right of first refusal; and their efforts to devalue the James Brown assets to the detriment of needy students and for the benefit of disinherited persons left Defendants in the position of having to appeal the order to zealously protect the estate plan and its beneficiaries as directed by the Will and Trust.

51. When Plaintiffs engaged in said conduct, they expected it would be acted upon by others, including Defendants.

52. Defendants are now informed and believe that Plaintiffs well knew they would subsequently engage in inconsistent conduct as circumstances permitted and when necessary or appropriate to advancing their own, personal agendas rather than the estate plan of Mr. Brown.

53. At the time Plaintiffs engaged in the original conduct or took the original positions, Defendants had no knowledge or means of knowing that Plaintiffs would subsequently behave inconsistently or assert inconsistent positions, and Defendants are prejudiced by Plaintiffs' inconsistent conduct and their assertion of inconsistent positions.

54. As a result, Plaintiffs' case should be dismissed with prejudice, with costs taxed to Plaintiffs.

FOR A TENTH DEFENSE TO ALL CAUSES OF ACTION
(Waiver)

55. All allegations made above are incorporated herein where relevant.

56. To the extent Defendants breached any duties in the management and administration of the Estate and Trust, which is denied, Plaintiffs have intentionally relinquished

known rights by, *inter alia*:

(a) Their interference with Defendants' management and administration in an effort to preserve and maximize opportunities for their own personal gain and to minimize or abate actions planned or taken to preserve, protect and enhance Mr. Brown's estate plan;

(b) Their failure to appeal final orders of the Aiken County Circuit Court authorizing and directing Defendants to take actions for which Plaintiffs are now suing;

(c) Their refusal to help with many matters of administration and management that required attention after they announced a settlement, notwithstanding Defendants' invitation to Plaintiffs that they assist with such matters in light of the announced settlement, about which they now complain and for which they are suing;

(d) Their attacks on the validity of Mr. Brown's Will and Trust without probable cause;

(e) Their intentional violations of the *In Terrorem* clauses of Mr. Brown's Will and Trust;

(f) In knowingly failing and refusing to comply with requirements of the South Carolina Trust and Probate Codes and other applicable law by forcing the approval of a settlement which adversely affects interested persons who were not a part of the settlement and others who were incapable of protecting themselves; and

(g) In intentionally ignoring provisions of the Trust Code applicable to a settlement, contending at the hearing to approve the settlement there was no valid Trust, yet basing this lawsuit on the Trust.

57. The Plaintiffs' case should be dismissed with prejudice, with costs taxed to Plaintiffs.

FOR AN ELEVENTH DEFENSE TO ALL CAUSE OF ACTION
(Unclean Hands)

58. All allegations made above are incorporated herein where relevant.

59. Defendants are informed and believe that in early January 2007, certain Brown family members (all Plaintiffs in this case) met with lawyers in Atlanta, GA and formulated a plan to sabotage Mr. Brown's carefully created estate plan with the objective of acquiring assets he expressly declined to give them; contemporaneously, Tommie Rae assembled a team of at least six lawyers to attempt to take up to half of Mr. Brown's assets, to which she was not entitled.

60. Defendants are further informed and believe that in early January 2007 Dallas and Cannon and others, who had their own pecuniary agenda, began manipulating evidence as to the ownership of assets in an effort to preclude or minimize the opportunities of the family and Tommie Rae.

61. Within those dynamics, the family and Tommie Rae sued in or around January 2007 to remove Dallas, Cannon and Bradley as fiduciaries, many relying on the estate plan they now seek to dismantle for their standing.

62. Defendants are further informed and believe that in approximately March of 2007, Dallas and Cannon successfully solicited Forlando Brown, a grandson of Mr. Brown who plans to own the James Brown assets and had participated in the family meeting in Atlanta in January and February, to abandon the family and join them. His brother, Romunzo Brown, and his father, Terry Brown, joined Forlando in abandoning the family and aligning themselves with Dallas and Cannon.

63. Within these dynamics, in an effort to calm all parties, the Aiken County Circuit Court appointed Defendants as non-fiduciary SAs of the Estate on March 7, 2007, with limited

authority.

64. Almost immediately, the family, Tommie Rae and Dallas and Cannon undertook to promote their own individual interests; and though adverse to one another in other respects, the family and Tommie Rae were united in their opposition to Dallas, Cannon and Bradley. As a result, Dallas and Cannon became defensive and uncooperative, and they began to resist Defendants' scrutiny.

65. Despite the resistance of Dallas and Cannon, on July 17, 2007, Defendants discovered Cannon's \$900,000 misappropriation from the Trust. Nevertheless, Cannon resigned on August 10, 2007 from all positions, fiduciary and otherwise, with the Estate, the Trust and most Brown business entities.

66. Eventually, Dallas and Cannon undertook, individually and through certain agents, to falsely convince the AG that Defendants were bad. The Office of the AG was receptive to the efforts of Dallas and Cannon.

67. As a result of continuing scrutiny and pressure, Dallas and Bradley resigned as Estate and Trust fiduciaries at a hearing on November 20, 2007, rather than defend against the case for their removal.

68. Immediately upon the resignation of all three fiduciaries and with no advance notice, the Court appointed Defendants as substitute PRs and Trustees. All Plaintiffs except for Bauknight and the AG supported and encouraged the appointment.

69. By their appointment, Defendants were charged with the legal duty of upholding Mr. Brown's Will and Trust. Brown's Will and Trust were contrary to the interests of the family and Tommie Rae.

70. By November 21, 2007, Dallas, Cannon and Bradley were experiencing second

thoughts about their resignations, and Assistant AG Jones had communicated with Pope, insisting that Defendants resign immediately as PRs and Trustees or risk removal proceedings. They, and the other Plaintiffs, thereafter engaged in the following activities:

- (a) Accusing Buchanan and Pope of impropriety in November 2007 after having just represented to the Court that Defendants' behavior was extraordinary;
- (b) Threatening Buchanan and Pope with grievances, harm and liability for not agreeing with the settlement;
- (c) Asserting Buchanan and Pope should have obtained appraisals after having reviewed and acquiesced in or adopted Defendants' proposal to value assets without an appraisal;
- (d) Sabotaging the Christies' auction in violation of court orders;
- (e) Falsely accusing Defendants of impropriety with intent to damage their professional standing.

71. Such inequitable conduct touched Defendants personally, touched the subject matter of this litigation and prejudiced or injured Defendants as hereinafter more fully alleged, as a result of which this litigation should be dismissed with prejudice, with costs taxed to Plaintiffs.

FOR A TWELFTH DEFENSE
(Comparative Negligence/Recklessness/Willfulness)

72. All allegations previously set forth herein are incorporated herein.

73. To the extent that Plaintiffs are entitled to anything, and to the extent Defendants were careless, negligent, grossly negligent, willful, wanton or reckless in any particular, which is denied, Plaintiffs were more than fifty percent (50%) negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton in the particulars hereinabove alleged, and as to certain Plaintiffs in the following additional particulars, which upon information and belief, include the

following:

(a) AS TO AG McMASTER:

- (i) In failing to determine the heirs of James Brown.
- (ii) In unreasonably attempting to agree with others as to the identity of the heirs of James Brown to the exclusion of real heirs, and with insufficient understanding or inquiry into the negative impact this incorrect finding has on the Estate and Trust's rights under the Federal Copyright Act.
- (iii) In unreasonably executing three different settlement contracts (August 10, 2008, the Legacy Trust and the January 29, 2009 contract), with insufficient understanding that they exposed an estate that would pay no estate taxes under the estate plan to between \$10 and \$40 million of estate taxes.
- (iv) In unreasonably executing the Legacy Trust with insufficient understanding that it would disqualify the "I Feel Good" private foundation under 501(c)(3) of the IRC, exposing the estate and 2000 Trust to millions of dollars of estate and income taxes.
- (v) In unreasonably failing to recover for the Estate and Trust \$12+ million from Dallas and Cannon and others, which Defendants began in Case 322 pending in Aiken County.
- (vi) In failing to timely seek dismissal of the Dallas appeal, and in failing to seek the recovery of costs of Case 122 from Dallas and Cannon.
- (vii) In joining or acquiescing in Terry Brown's and David Cannon's attempt to devalue the James Brown assets for the benefit of their joint venturers and diminishing the charitable gift.
- (viii) In failing to accept the Corbis/GreenLight proposal, causing loss and devaluation of the James Brown assets.
- (ix) In unreasonably interfering with a proposed right of first offer, thereby damaging and devaluing the James Brown assets.
- (x) In failing to properly protect the Federal Copyright Act rights of the Estate and Trust.
- (xi) In unreasonably contracting to give Tommie Rae approximately \$20 million where the overwhelming evidence demonstrated there was no basis in fact or law for such a contract.
- (xiii) In unreasonably substituting his judgment for that of properly performing fiduciaries, then unreasonably exercising such judgment.

(xiv) In unreasonably agreeing to give Dallas/Cannon joint venturer Terry Brown \$4 million and a right of first refusal, destroying Mr. Brown's estate plan and the value of his assets, causing irreparable harm and exposure to millions of additional dollars of taxes.

(xv) In unreasonably attempting to cover up their negligent acts or omissions by attacking properly serving fiduciaries who are entitled to reasonable compensation and reimbursement for the defense of this action.

(xvi) In unreasonably joining in a private tort suit to damage the "I Feel Good" private foundation and its agents for the personal benefit of private individuals.

(xvii) In unreasonably appointing and controlling Bauknight, including his reckless recommendation that the court approve the AG's actions with no due diligence, resulting in a loss to the Estate and Trust, if not overturned, of at least \$50 million.

(xviii) In unreasonably executing the August 10 contract without consulting with, and excluding, the court-appointed accountant and PR/Trustees, and without adequate knowledge of the Estate Tax impact on the Estate and Trust, or the income tax impact on Brown Entities.

(xix) In unreasonably refusing to participate with the court-appointed accountant and PR/ Trustees in preparing the Estate Tax Return, notwithstanding the PR/Trustees' invitation for the AG to participate.

(xxii) In unreasonably contracting on August 10 to defeat the interests of the beneficiaries and fiduciaries of Mr. Brown's estate plan who did not attend the secret mediation.

(b) AS TO BAUKNIGHT:

(i) In unreasonably recommending and ratifying the above actions of the AG.

(ii) In unreasonably failing to approve the GreenLight 2-year Publicity Rights contract which, but for his failure to approve the contract, could have been in place in May 2009 and would have enhanced the value of the James Brown assets.

(iii) In unreasonably making false and unsupported allegations against Defendants after testifying to the contrary.

(iv) In unreasonably failing to disclose to the Court that he had already undertaken a fiduciary duty to Tommie Rae and Terry Brown, while purporting to make an independent recommendation as to whether the settlement should be approved.

(v) In unreasonably failing to complete the claims litigation.

(vi) In unreasonably failing to ascertain, categorize and pay valid debts and claims of

the 2000 Trust and Estate, including the proper expenses for the defense of the estate plan.

(vii) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of Brown's estate plan.

(viii) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of the tax implications.

(ix) In unreasonably recommending a \$50 million transfer from Brown's assets with insufficient understanding of likely outcomes regarding allegations related to the issues related to spousal claims, capacity and/or undue influence.

(x) In unreasonably recommending the proposed determination of heirs with insufficient understanding of the federal copyright law implications.

(xi) In unreasonably recommending the proposed settlement which Defendants are informed and believe result in more than \$50 million of damage to the Estate and Trust, taking more than 65% of Brown's assets from Brown's estate plan.

(c) AS TO THE REMAINING PLAINTIFFS:

(i) In unreasonably interfering with the Christie's sale, which Defendants are informed and believe would have provided liquidity for the management and administration of the Estate and Trust, and causing financial detriment to the Estate and Trust and to the value of the James Brown assets.

(ii) In unreasonably, purposely chilling the Christie's sale by their individual acts and those of their duly authorized agents for the purpose of rendering the Estate and Trust unable to compensate Defendants, in an attempt to force Defendants to quit or abdicate their duties under the Will and Trust.

(iii) In unreasonably interfering with the Defendants' proposed GreenLight contract, which Defendants are informed and believe would have enhanced the value of all James Brown assets and would have provided liquidity for management and administration purposes.

(iv) On information and belief, in unreasonably forming alliances with Dallas and Cannon, whom they initially opposed for good reason, so they could all get paid at the expense of Mr. Brown's estate plan and at the expense of the Defendants as properly performing fiduciaries.

74. As a direct and proximate of one or more of Plaintiffs' aforesaid negligent, grossly negligent, negligent *per se*, careless, reckless, willful and wanton acts or omissions, which Defendants are informed and believe render Plaintiffs 51% or more at fault, Plaintiffs are

barred from recovery; if, however, Plaintiffs are 50% or less at fault, Defendants are entitled to a setoff against any Plaintiff's verdict, the entitlement to which Defendants deny, equal to the percentage of Plaintiffs' fault.

FOR A THIRTEENTH DEFENSE
(Intervening Acts of Others)

75. All allegations made above are incorporated herein where relevant.

76. Defendants respectfully allege that the intervening negligent, grossly negligent, negligent *per se*, careless, reckless, willful, wanton and intentional acts or omissions of third parties interfered with the management and administration of the Estate and Trust and proximately caused Plaintiffs' damages, if any (which are denied).

FOR A FOURTEENTH DEFENSE AND FIRST COUNTERCLAIM
(Abuse of Process)

77. All allegations made above are incorporated herein where relevant.

78. Defendants are informed and believe that Plaintiffs have maliciously commenced this legal action for an ulterior purpose of forcing Defendants to abandon or dismiss the appeal of the May 26, 2009 order of the Circuit Court of Aiken County approving a settlement desired by Plaintiffs.

79. Plaintiffs' commencement of this action is not a legitimate use of process in that, assuming Plaintiffs succeed in the lawsuit (their entitlement to which is denied), Plaintiffs' improper and collateral objective cannot be accomplished.

80. As a direct and proximate result of Plaintiffs' abuse of process, Defendants have sustained actual damages in such amount as they shall prove at trial, for which they are entitled to judgment against Plaintiffs.

81. Defendants are informed and believe they are entitled to judgment against

Plaintiffs for punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A FIFTEENTH DEFENSE AND SECOND COUNTERCLAIM
(Civil Conspiracy)

82. All allegations made above are incorporated herein where relevant.

83. Defendants are informed and believe that all Plaintiffs agreed and combined with each other and with third parties for the purpose of injuring Defendants, and acted in furtherance of the conspiracy, which has caused Defendants special damages as hereinafter and otherwise alleged in this Answer and Counterclaim.

84. Upon information and belief, Defendants allege that in early January 2007, various family members and/or their agents (Plaintiffs in this case) met with lawyers in Atlanta, GA and formulated a plan to sabotage Mr. Brown's carefully created estate plan with the objective of acquiring assets he expressly declined to give them. (Forlando, Romunzo and Terry Brown later switched their allegiance to Dallas and Cannon.) Relatively contemporaneously with the family's undertaking, Tommie Rae assembled a team of at least six lawyers to attempt to take up to half of Mr. Brown's assets, to which she was not entitled.

85. In furtherance of these schemes, the family and Tommie Rae separately filed lawsuits attacking the validity of the Will and Trust, and, in addition, Tommie Rae asserted she was entitled to relief as a surviving spouse.

86. Upon information and belief, Defendants allege that by not later than November 20, 2007, in light of the resignations of Dallas and Cannon and the court appointment of Defendants as PR/Trustees, Dallas, Cannon, Forlando, and Terry realized that their scheme to sell the James Brown assets at a low value to an entity owned by one or more of themselves, with a kickback to one or more of themselves, and which also included a plan to pay the fiduciary-related claims of Dallas and Cannon from the sale(s) proceeds, was in substantial jeopardy.

Accordingly, upon information and belief, they jointly agreed to undertake a course of action, individually and through certain duly authorized agents, to demean, discredit, attack and otherwise harm Defendants in order to neutralize Defendants' efforts to administer and manage the Estate and Trust and to keep their personal agenda alive at the expense of Mr. Brown's estate plan.

87. In furtherance of this agreement, in addition to the aforesaid acts, Forlando sued Defendants in federal court, in which he mostly sought to paralyze the Trust by enjoining Defendants from acting as Trustees, as well as returning Dallas and Cannon as Trustees.

88. In furtherance of this agreement, Defendants allege that the Attorney General refused to protect the Trust by intervening in or taking other action with respect to the federal lawsuit, and he used the federal lawsuit as evidence in his effort to assist Dallas in having the state court reconsider its appointment of Defendants as Trustees and also in seeking the appointment of a special Trustee.

89. Upon information and belief, by July or August of 2008, the family and Tommie Rae realized, in light of their idea of what a settlement should include and knowing of Defendants' commitment to vigorously defend Mr. Brown's estate plan or achieve a settlement consistent with it, Defendants constituted an obstacle that had to be removed.

90. As a result, Tommie Rae and the family (excluding Forlando, Romunzo and Terry Brown) and Assistant AG Jones, attended a mediation conference without notice to Defendants, after which they announced a settlement.

91. Notwithstanding the announcement, Tommie Rae, the family and the Attorney General continued to seek a settlement until late January 2009, when they joined with Terry Brown, and, on information and belief, directly or indirectly with his joint venturers, in an

agreement which provides, *inter alia*, that they would seek removal of Defendants as fiduciaries and oppose Defendants' request for any commission.

92. Defendants are informed and believe that Bauknight has joined the remaining Plaintiffs in the agreement and is acting in furtherance thereof.

93. As a direct result of Plaintiffs' improper agreement and their many acts and intentional omissions in furtherance of the agreement, Defendants have sustained special damages for which they are entitled to judgment, including, but not limited to (a) the expenditure of Defendants' personal money in fulfilling the duty of protecting, defending and enhancing Mr. Brown's estate plan, (b) the loss of business and income from Defendants' ordinary law practices, both of which are seriously crippled, while dealing with Plaintiffs' attempt to overwhelm Defendants and thereby force a resignation or the abdication of Defendants' responsibility under the Will and Trust; and (c) the further expense and time involved in collecting their claimed commission, which is fair and reasonable and customary for performing the usual and customary duties of fiduciaries in like circumstances, and insufficient for the extraordinary duties performed by Defendants under these circumstances.

94. Defendants are informed and believe they are entitled to recover punitive damages in such amount as a jury shall find to be fair, reasonable and just.

FOR A SIXTEENTH DEFENSE AND THIRD CAUSE OF ACTION
(Intentional Interference with Contract)

95. All allegations made above are incorporated herein where relevant.

96. Pursuant to their authority under the Will/2000 Trust and unappealed Order of the Court dated January 8, 2008, Buchanan and Pope were parties to an approved agreement to be paid as SAs, and for partial payment of their fiduciary commissions as approved by the Court, with interest on unpaid amounts. Plaintiffs were aware of this agreement.

97. Plaintiffs have intentionally interfered with Defendants' contract with the Estate/2000 Trust, causing it to be breached and Defendants to be damaged. As a result, Defendants are entitled to compensation for all damages resulting from Plaintiffs' interference with their contract for SA's fees, partial commissions and costs, with interest.

FOR A SEVENTEENTH DEFENSE AND FOURTH CAUSE OF ACTION
(Violation of §62-1-106)

98. All allegations made above are incorporated herein where relevant.

99. The term "heirs" has been used freely, and at times incorrectly, by Plaintiffs, but by March 28, 2008 all Plaintiffs, on information and belief, had knowledge that the heirs of James Brown should be properly determined, even though most were entitled to nothing under Brown's Estate Plan.

100. On information and belief, Plaintiffs had knowledge that an improper determination of heirs would damage the Estate/2000 Trust under the Federal Copyright Act.

101. The Attorney General's answer in Case 2008-CP-02-0872 did not specifically address the "heirs" issues, leaving to Defendants the protection of the Estate/2000 Trust under the Federal Copyright Act.

102. On August 10, 2008, however, without consulting with Defendants, the Attorney General and some of the Plaintiffs stipulated to what is, upon information and belief, an incorrect determination of heirs.

103. Thereafter, in numerous representations and filings with the Court, said Plaintiffs have been presented to the Court as the sole and correct heirs of James Brown, a determination which upon information and belief is false, material, and known by Plaintiffs to be false.

104. On information and belief, said Plaintiffs intended for this known incorrect determination to be relied on and acted on by the Court and the Court and others have relied on

such representations, proximately causing injury to the Estate, 2000 Trust and Defendants.

105. On information and belief such representations circumvented the provisions and/or purposes of the South Carolina Probate Code, including 62-1-102(b)(2), which purpose is to discover and make effective the intent of the decedent in the distribution of his property and (4) to facilitate use and enforcement of certain Trusts and have benefitted from the statements and filings; having been injured thereby, Defendants, on information and belief, are entitled to appropriate relief.

FOR AN EIGHTEENTH DEFENSE AND FIFTH CAUSE OF ACTION
(Attorneys' Fees)

106. All allegations made above are incorporated herein where relevant.

107. On information and belief, Plaintiffs are entitled to recover the costs of this action, including attorneys' fees, under South Carolina Probate Code Section 62-7-1004 and other applicable law.

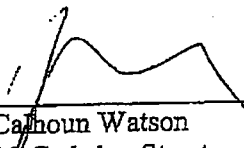
WHEREFORE, Defendants pray that the Court inquire into the matters set forth herein and (a) dismiss the Complaint in its entirety, with prejudice, and with all costs taxed to Plaintiffs; (b) award actual damages to Defendants in such amount as they shall prove to a jury; and (c) award punitive damages to Defendants in such amount as a jury shall find to be fair, reasonable and just.

DEMAND FOR JURY TRIAL

Defendants demand a jury trial as to all legal defenses and causes of action pursuant to Rule 38, SCRPC; and Defendants request the Court, of its own initiative, try any and all equitable issues by the same jury sitting as an advisory jury pursuant to Rule 39(c), SCRPC.

SOWELL GRAY STEPP & LAFFITTE, L.L.C.

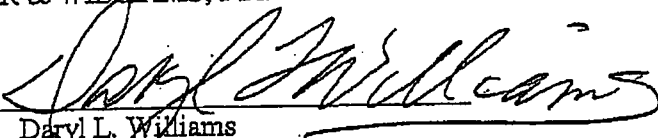
By: _____


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Attorneys for Defendant Robert L. Buchanan, Jr.

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Attorney for Defendant Adele J. Pope

Columbia, South Carolina
September 30, 2010

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same, to the following address(es):

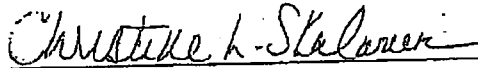
Pleadings:

ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE
(Jury Trial Demanded)

Counsel Served:

(VIA HAND DELIVERY)
Kenneth B. Wingate, Esquire
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MICHIGAN COUNTY
JEANETTE W. McBRIDE
C.C.P. & G.S.


Christine L. Skalamera

September 30, 2010

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CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

AFFIDAVIT OF DEFAULT

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November 10, 2010

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

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

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

Appellate Case No. 2017-001523

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; individually and on behalf of her minor child, JAMES B.; 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 L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Respondents,

v.

Adele J. Pope.....Appellant.

PROOF OF SERVICE


I certify that I have served the Appellant's Memorandum Regarding Appealability depositing a copy of same into the United States Mail, First-class postage prepaid, on October 2, 2017, addressed to his attorney of record as follows:

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