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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

Appeal Case No. 2017-001899

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. 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

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.

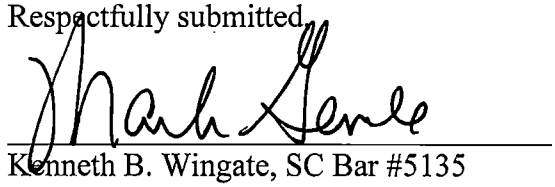
Adele J. Pope, Defendant,

Of whom Adele J. Pope is the Appellant.

MOTION TO STRIKE THE INITIAL BRIEF AND DESIGNATION OF MATTER OF APPELLANT

The Office of the Attorney General has filed a Motion of the Attorney General to Strike Initial Brief and Designation of Appellant and to Stay Briefing (Attached as Exhibit A). All other Respondents hereby join with the Attorney General's motion, as if made by them also, and incorporate by reference the Attorney General's arguments and requests.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT BAUKNIGHT

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

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

Appellate Case No.2017-001899

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise 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

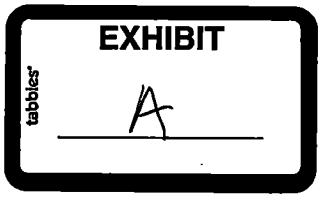
Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown,individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown - Lewis; 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
..... Respondents,

v.

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

Of whom Adele J. Pope is the Appellant . . . . . Appellant.

MOTION OF ATTORNEY GENERAL TO STRIKE INITIAL BRIEF AND DESIGNATION OF APPELLANT AND REQUEST TO STAY BRIEFING



Attorney General Wilson moves for this Court to strike Appellant Pope's brief and designation of matter for the record and require that she submit a new initial brief and designation that corrects the numerous errors in those documents as set forth below and in the attached schedules. Attachment A, Schedule Of Matters To Be Struck From Initial Brief; Schedule B, Schedule of Matters to Be Struck From Designation. Virtually every part of the brief contains statements referring to matters not before the lower court judge as to the orders under the appeal, statements referring to arguments of counsel below for purportedly factual matters, and statements that are unsupported by citations to designated matter or, in many instances, any citations whatsoever. At one point in her brief, appellant even states that "no court has been told" of the figures contained in that paragraph. Brief at page 29, first full paragraph.

The brief is so riddled with these errors that the entire brief must be corrected and resubmitted. Many parts of the designation must be struck for similar problems. Any corrections to the brief should be limited to addressing the errors in the brief and should not include any new or edited substantive arguments.

While the Court considers this Motion, the Attorney General respectfully requests that the time limits for briefing, including his Respondent's brief be stayed or tolled. He has filed on February 21, 2018, a separate request that briefing be tolled or stayed.

BACKGROUND

This suit was brought against Appellant, as a personal representative of the late singer, James Brown's Estate and as a trustee of the James Brown 200 Irrevocable Trust. The claims include breach of fiduciary duty, breach of trust, and negligence. Appellant counterclaimed against Respondents. Appellant has appealed several orders of the lower court in this case: Orders Dropping the Attorney General as a Party (May 31, 2017), denying Appellant's Rule 59

Motion as to that Order (August 2, 2017), issuing a Protective Order directing that the deposition of the Attorney General not be taken (September 21, 2017), granting Motion to Set Aside ((October 13, 2015), and denying Appellant's Motion to Disqualify the firm of Sweeney and Barrow (July 5, 2012). She steps well beyond the scope of those orders in her brief and designations.

ARGUMENT

I

Generally

Appellant has failed to follow the following authority set forth below:

Rule 208(b)(1)(D): "A party may . . . include a separate statement of facts [in the initial brief] relevant to the issues presented for review, with reference to the record on appeal . . . ."

Rule 208(b)(4) "The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged."

Rule 210(b): "[T]he Designation [of Matter for the Record] may only propose to include portions of the . . . materials which may be properly included in the Record on Appeal [see Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal."

Rule 210(c). "The Record shall not. . . include matter which was not presented to the lower court or tribunal. . . ."

As stated in former Chief Justice Toal's book, Toal, Walker, Baker, *Appellate Practice in SC*, 3d ed., p. 407: "

[T]he record must only include matters relevant to the appeal . . . [a]side from violating

> Rules, the 'kitchen sink]approach requires the reader to sort through items that have nothing to do with the appeal. . . . . When the parties honor Rule 209(b)'s requirement to limit the record to that which is absolutely essential, the . . . appellate court judges as well as their law clerks – are able to quickly ascertain the facts the parties view as critical to respective positions.
>
> Rule 210 (h) "Except as provided by Rule 212 [supplemental record] and Rule 208(b)(1)(C) and (2) [statements of the case], the appellate court will not consider any fact which does not appear in the Record on Appeal."

As more fully discussed below:

Appellant's Designation violates Rules 209 and 210 by repeatedly including matter not presented to the lower court judge in this case prior to his rulings at issue, and by including matter not relevant to the appeal. Her initial brief violates these rules and Rule 208 in almost every sentence by referring to such improperly included matter and / or by including statements referring to arguments of counsel below for purportedly factual matters, statements referring to other cases, and statements that are unsupported by citations to designated matter or, in many instances, any citations whatsoever. These problems are specifically identified in the attached schedules, but some recurring problems are addressed below.

The identification of these errors in this Motion and in the attached schedule do not intend to cover problems with arguments I and II in Appellant's Initial Brief or any other points that may be addressed by other respondents. The instant motion and schedules do not necessarily cover all problems with Appellant's brief and designation in that they are virtually everywhere in these documents. This Court should direct that Appellant correct these problems and that the corrections be limited to addressing the errors and not include new substantive arguments or authority in the briefs or designation.

II

Affidavit of Pope dated November 8, 2017, and related Motion and Memo

This affidavit was filed in the lower court after Appellant filed her Notices of Appeal and in support of Appellant's Motion to Lift Stay. It is listed at Item 25 in the Affidavits section of her Designation. The affidavit contains 26 pages of substantive statements and argument on which Appellant relies to support numerous sections of her brief although they are irrelevant. See Schedule A, Paragraphs 8b, 11, 13, 23, 35, 41, 42, 46, 48, and 68. Appellant cannot present a new affidavit to the lower court on a motion to stay and then rely on it to support her pending appeal of orders issued before the affidavit was filed. The Respondent Attorney General was no longer a party to the case below when Appellant filed it with the lower court. Because the affidavit was not presented to the lower court before it made its decision, the affidavit violates Rule 210(c)("The Record shall not. . . include matter which was not presented to the lower court or tribunal. . . .") and Rule 208(b)(4) which references this Rule. As stated in *Williamsburg Rural Water & Sewer Co., Inc. v. Williamsburg County Water & Sewer Auth.*, 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006) "[n]othing in the appellate court rules permits a party to unilaterally add after-created evidence to the record." Appellant's Memorandum in Support of Stay of November 8 should also be struck from the brief for the same reason. (Schedule A, Paragraph 72), and her Motion to Lift Stay (Schedule A, Paragraph 35) as well as the Affidavit should be struck from the Designation for this reason.

III

Opinion / Affidavit of William Smith

This 111 page document was filed after the orders under appeal were issued except for order denying the Rule 59, SCRCP, Motion to Alter or Amend the Order dropping the Attorney

General as a party. Appellant relies on it to support numerous sections of her brief (Schedule A, attached, paragraphs 9, 10, 29, 20, and 31), but she may not do so for multiple reasons; The document is not in the designation and may not be referenced in the Brief for that reason alone. Rule 210(h). Moreover, the Smith document is irrelevant and not properly before the Court as to the orders under appeal because it was filed in support of Appellant's Rule 59 Motion as to the lower court's order granting Respondents' Motion for Summary Judgment as to Appellant's counterclaim. That summary judgment order is not under appeal and not pertinent to the issues the instant appeal (Rule 210(b) and *Appellate Practice*). Furthermore, Appellant may not rely on an affidavit not presented to the Court until she filed her Rule 59 motion. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456–57, 392 S.E.2d 481, 482 (Ct. App. 1990). [1]

IV

Documents Pertaining to Other Cases

Appellant's brief contains at least 21different paragraphs or sentences citing undesignated orders or documents in other cases including Aiken County case 2013-CP-02-1337 and the v. Dallas appeal many of which were not presented to the lower court in the instant case. (see, Schedule A, paragraphs 1, 4, 5, 14, 18, 20, 20, 21, 23, 25, 29, 30, 31, 32, 36, 38, 40, 42, 49, 54,

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1 *Hickman* also cited the following authority:

> *Natural Resources Defense Council v. U.S. E.P.A.*, 705 F.Supp. 698, 701 (D.D.C.1989), vacated on other grounds, 707 F.Supp. 3 (D.D.C.1989) ("Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier."); *Smith v. Stoner*, 594 F.Supp. 1091, 1118 (N.D.Ind.1984) ("Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived."); *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D.Va.1984) ("I do not conceive of Fed.R.Civ.P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.").

57, 59, 59, 61, 62, 63, 68, 77). These paragraphs violate the above rules by containing undesignated, irrelevant documents many of which were not presented to the lower court.

V

Documents not presented to lower court

The brief references to a number of documents apparently not filed with the lower court. See, *eg.* Schedule A, paragraphs 1,12, 14, 15, 17, 18, 23, 32, 38, 39, 46, 51, 52, 54, 55, 57, 58, 59, 60, 64, and 66 and 63. Such references violate Rule 210 (c), *supra.* In one such example, the first full paragraph of page 29 of Appellant's brief states that "no court has been told" of the figures contained in that paragraph. Appellant may not tell the Court of now of such matters when the lower court was never informed. Many of these matters are irrelevant to the issues on appeal.

VI

No Citation to Designated Documents

The brief contains numerous purportedly factual statements without any citation to designated documents. See, *eg.* Schedule A, paragraphs 6, 8d, 9, 15, 16 – 19, 24, 28 – 33, 45, 54, 55 – 77. Failure to do so violates Rule 208, supra. In fact, many of these paragraphs do not refer to any documentary support which also violates Rule 208.

VII

Citation Of Statements Of Counsel In Memoranda For Factual Support

"Every trial judge knows, as every trial lawyer knows, and every appellate court judge should know, that the statements of counsel in an argument are not evidence but are merely the expression of his individual view . . . ." *Harper v. Bolton,* 239 S.C. 541, 562, 124 S.E.2d 54, 64 (1962). Appellant ignores this rule in citing her memoranda for factual support when the

references in the memoranda are, themselves, unsupported. See, *eg.* Schedule A, paragraphs 22, 26, 33, 67, 71, 72, 73, and 76 These statements violate this well recognized rule in *Harper* and should be struck.

VIII

The Designations Contain Many of the Above Problems

Schedule B, attached, identifies many of the same problems noted above of documents that were not presented to the lower court, that relate to other cases, that were not filed of record, and that are otherwise irrelevant. For some documents, a determination cannot be made as to what document is being referenced. The designations should be struck as indicated in the attached schedule.

CONCLUSION

For these reasons and the others discussed in his initial Memorandum, the Attorney General respectfully requests that Appellant's Initial Brief and Designation be Struck in their entirety and that any corrected brief or designation subsequently filed be limited to fixing these problems and not present new substantive arguments or exhibits for the record. While the Court considers this Motion, the Attorney General respectfully requests that the time limits for briefing, including his Respondent's brief be stayed.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues next page]

J. EMORY SMITH, JR.
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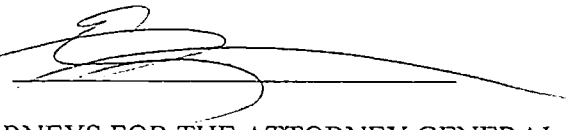
BY: 

February 22, 2018

ATTORNEYS FOR THE ATTORNEY GENERAL

SCHEDULE A MOTION TO STRIKE
As To
APPELLANT'S INITIAL BRIEF

Bauknight v. Pope

Appellate Case No.: 2017-001899

SCHEDULE OF MATTERS IN BRIEF THAT SHOULD BE STRUCK [1], [2]

In addition to the grounds listed below, many of these matters are irrelevant to the issues on appeal.

1. Judicial Notice of brief and motions in other case, *Wilson v. Dallas*, p. 4, note 7. Documents not filed in in lower court.
2. Page 5, paragraph at bottom of page continuing onto page 6. Cites are to documents regarding Motion for Partial Summary Judgment which is not the subject of this appeal.
3. Page 6, note 10. Statement and documents referring to FOIA case are not properly before this Court in this case because the FOIA case was dismissed by the lower court and is under a separate appeal to this Court.
4. Page 7, first full paragraph. Refers to other case.
5. Page 7, second full paragraph continuing onto page 8 including quote. Quote relates primarily to FOIA case. See Item 3, *supra.* Remainder of paragraph after quote relates to other case and contains no citations to record.
6. Page 8, first full paragraph. Citation to undesignated Motion not appearing in record and referenced to undesignated orders apparently filed in other cases.
7. Page 8, second full paragraph continuing onto page 9 including quote. Second sentence . and quotation portion of Bauknight deposition not designated for record. No page and line cites.
8. Page 8, paragraph at bottom of page and continuing onto page 9 including note 13.
    a. Note 13 contains no citations to record.
    b. Citation to 11/8/17 affidavit filed for purpose of motion to lift stay after orders on appeal decided and appealed. Appellant cannot attempt to bolster the record by a post notice of appeal affidavit.
    c. Memo of 8/29/16 contains statements of counsel that do not cite support in record before the Court.

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[1] All references below to "other case" are to cases referenced by Appellant other than the instant case.

[2] The Attorney General does not address any matters in Arguments I and II of Appellant's Initial Brief in that counsel for the other Respondents will address those parts.

d. Third sentence cites termination notice (also undesignated) and Toberoff letter not appearing in record.

9. Page 9, first full paragraph. No citation to record for first sentence or referenced document. Second sentence cites to Smith Op. (see above). but that opinion is not designated and was filed in support of a Motion to Alter or Amend the Order Granting Summary Judgment to Counterclaim Defendants that is not the subject of this appeal. Moreover, the Affidavit was filed after the Court granted the Orders under appeal with the exception of the Order denying the Motion to Alter or Amend the Order Granting the Motion to Be Dropped. That Motion is not designated for the Record, and this affidavit cannot be considered in support of it. *Hickman v. Hickman*, 301 S.C. 455, 456–57, 392 S.E.2d 481, 482 (Ct. App. 1990)("A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not."). *See* Motion to Strike.
10. Page 9, note 14. Citation to Smith opinion (see above) for first sentence and second sentence is unsupported.
11. Page 9, second full paragraph, beginning "In, September, 2013 . . . ." Citation to 11/8/17 affidavit not properly before this Court. See item 9, above.
12. Page 9, Paragraph beginning at bottom of page and continuing onto page 10. Cites to Toberoff letter that does not appear to be filed in lower court.
13. Page 10, first full paragraph. Citation to post notice of appeal 11/8/17 affidavit. *See* item 11, *supra.*
14. Page 10, note 15. Refers to other case and document not filed in lower court.
15. Page 10, second and third full paragraphs. Cites to Agreement not filed in lower court or designated.
16. Page 10, note 16. No citations. 2011 FOIA case is under separate appeal pending before this Court.
17. Page 10, fourth full paragraph. Cites to Bauknight report apparently not designated and filed in lower court.
18. Page 10, paragraph beginning at bottom of page and continuing onto page 11. References order in other case apparently not filed in this case or designated for record. Return cited preceded order and does not appear to be designated.
19. Page 11, note 17. Cites Return apparently not designated.
20. Page 11, first full paragraph. References order in other case not filed with lower court in this case.
21. Page 11, second full paragraph and note 18. Cites decision in other case not involving these parties. Footnote does not cite support in record.
22. Page 11, third full paragraph. Cites statement of Appellant's counsel in legal memorandum which does not cite support in record before the Court.
23. Page 11, fifth full paragraph. Refers to McMaster depositions not filed in Circuit Court including a deposition in another case. Citation to post notice of appeal 11/8/17 affidavit. See item 11, supra.

24. Page 12, note 19. Cites document apparently not filed in lower court in this case or designated for record.
25. Page 12, full sentence at top of page. Refers to other case. No citation to record.
26. Page 12, second full paragraph. Cites to undocumented statements of Appellant's counsel in legal memorandum.
27. Page 12, third full paragraph and quotation. Cites memorandum not filed in lower court until after notice of appeal filed. Rule 210 (c), Item 11 *supra.*
28. Page 12, fifth full paragraph. References order not designated.
29. Page 12, last paragraph. References other case. Relies on undesignated Smith affidavit filed in support of motion not under appeal and which may not be considered for purposes of instant appeal. Item 9, *supra.*
30. Page 13, first paragraph. References other case. Relies on undesignated Smith affidavit filed in support of motion not under appeal and which may not be considered for purposes of instant appeal. Item 9, *supra.*
31. Page 13, third and fourth full paragraphs. Reference other case. Rely on undesignated Smith affidavit filed in support of motion not under appeal and which may not be considered for purposes of instant appeal. Item 9, *supra.*
32. Page 13, fifth full paragraph and note s 20 and 21. No citation to document. Deposition apparently not filed in lower court or designated. Note 21 refers to other case and IRS document not in record.
33. Page 13, paragraph beginning at bottom of page and continuing onto page 14, including quote. Quotes from undesignated, unidentified document which appears to be a statement in a legal memorandum of Ms. Brown's counsel regarding her a motion for protective order as to her deposition and not the subject of this appeal.
34. Page 14, first full paragraph. First sentence is not supported by citation to the record. Second sentence cites the filing of an out of state Federal case after this appeal was taken.
35. Page 14, paragraph 2. Refers to post appeal motion. See item 11, supra.
36. Page 14, third full paragraph. Refers to deposition in other case. Citation to post notice of appeal 11/8/17 affidavit. See item 11, supra.
37. Page 14, fourth paragraph. Refers to post-appeal order.
38. Page 14, paragraph beginning at bottom of page and continuing onto page 15, remainder of page 15 including note 23. References other case filed in another jurisdiction after this appeal was taken and not filed with lower court.
39. Page 22, first full paragraph. Refers to McMaster deposition not filed in lower court and refers to depositions in case 1337.
40. Page 22, last full paragraph. No citations to record. Rule 208 (b)(4), SCACR. Cites unidentified FOIA case that is not the one consolidated with the instant case and under separate appeal by Appellant from its dismissal.

41. Page 22, paragraph beginning at bottom of page and continuing onto page 23. Citation to post notice of appeal 11/8/17 affidavit. See item 11, supra. No citation to record for second sentence.
42. Page 23, first full paragraph. Cites deposition in other case not filed with lower court in this case. Cites Appellant's affidavit not filed with lower court until after appeal. Rule 210, supra, item 11.
43. Page 23, second paragraph continuing onto page 24. No citations to record. Rule 208 (b)(4), SCACR.
44. Page 24, first, second and third full paragraphs. References other cases. No citations to record. Rule 208 (b)(4), SCACR.
45. Page 24, note 27. Cites to motion apparently not in designations.
46. Page 24, note 28. Cites unidentified FOIA cases not consolidated with the instant case. Citation to post notice of appeal 11/8/17 affidavit. See item 11, supra.
47. Page 25, first full paragraph. No citations to record.
48. Page 25, second full paragraph and note 29. No citations to record for first sentence and note 29. Second sentence cites to post notice of appeal 11/8/17 affidavit. See item 11, supra.
49. Page 25, third full paragraph and quote. Cites other case and no document filed with lower court in the instant case.
50. Page 25, paragraph beginning at bottom of page and continuing onto page 26 and note 30. Refers to other case. No citation to record.
51. Page 26, first full paragraph. No citation to record.
52. Page 26, fourth full paragraph. No citation to record.
53. Page 26, fifth full paragraph. Refers to other case. No citation to record.
54. Page 26, paragraph at bottom of page continuing onto page 27. First sentence cites to an incorrect page of Appellant's Motion to Alter or Amendment the lower court's order granting the counterclaim defendants' motion for summary judgment. The referenced statement is undocumented and the summary judgment ruling is not the subject of the instant appeal. The second sentence cites to a "Wilkins email" that is apparently not contained in the designation as a matter presented to the lower court.
55. Page 27 first full paragraph and note 31, cites to brief in other case not filed with lower court and designated for record.
56. Page 27, second and third full paragraphs and notes 32 and 33. No citations to record for references to IRS. IRS documents apparently not designated. No citations to record for footnote 33.
57. Page 27, paragraph beginning at the bottom of the page and continuing onto page 28 including quote and footnote 35. Refers to and quotes from brief in other case not filed with lower court and designated for record.
58. Page 28, first and second full paragraphs and note 36. Refer to article co-written by Plaintiff and apparently not filed with lower court or designated for record.

59. Page 28, paragraph beginning at bottom of page and continuing onto page 29. First sentence refers to other case and document not filed with lower court or designated for record. Second sentence cites no document filed with lower court or designated for record.
60. Page 29, first full paragraph. No citation to document filed with lower court or designated for record. In fact, the sentence includes the statement "no court has been told."
61. Page 29, second full paragraph. Refers to other cases and does not cite any documents filed with lower court and designated for record. Although one FOIA case was consolidated with the instant case, the request at issue in that case was only for the alleged contract and not the other referenced document. That FOIA case has been dismissed and is under appeal in this court.
62. Page 29, note 37. Refers to other case not consolidated with this case. Does not cite document filed with lower court or designated for appeal.
63. Page 29, first full paragraph at bottom of page and continuing onto page 30. Refers to arguments in other case. First sentence has no citation to document filed with lower court judge or designated for record. Second sentence cites to affidavit of Pope, but the affidavit does not appear to support the sentence and was purportedly for a purpose of compelling compliance with a mediation order.
64. Page 30, second full paragraph. First sentence does not cite to document in this case filed with lower court and designated for record. Second sentence cites to Motion re Publicity that contains arguments of counsel rather than statements of fact and does not appear to support this sentence. The "explosive interview" cited was apparently not filed with lower court or designated for record.
65. Page 30, footnote 39, phrase "after media criticism." Does not cite to document filed with lower court and designated for record.
66. Page 30, third full paragraph. Cited mediation report apparently not filed with lower court or designated for record.
67. Page 30, paragraph beginning at bottom of page and continuing onto page 31 and including note 40. The first sentence and note 40 contain no citation to a document filed with the lower court and designated in the record. The second sentence cites only a legal memorandum of counsel for Plaintiff.
68. Page 31, note 41. Refers to depositions in other case not designated for record . Cites post notice of appeal affidavit. See Item 11, supra.
69. Page 31, first full paragraph, first two sentences. No citation to documents filed with lower court and designated for record.
70. Page 31, second full paragraph. No citation to documents filed with lower court and designated for record.
71. Page 31, last paragraph. First sentence contains no citation to documents filed with lower court and designated for record. Second sentence cites a post appeal memorandum of

counsel executed after this appeal was taken and not before this court on appeal. See item 11, *supra.*

72. Page 32, first paragraph. Cites an undesignated memorandum of counsel executed after this appeal was taken
73. Page 32, third paragraph. No citations in first two sentences to documents filed with lower court judge and designated for record. Third sentence cites post notice of appeal memorandum of counsel.
74. Page 32, fourth paragraph, first sentence. Does not cite document designated in record.
75. Page 33, first full paragraph. No citations to record.
76. Page 33, second, third and fourth full paragraphs, and paragraph at bottom of page continuing onto page 34. Citations to memorandum are apparently not designated in record.
77. Page 34, first, second and third full paragraphs contain no citations to designated matter for record. Last sentence in paragraph three refers to FOIA generally, but only FOIA case consolidated with this one has been dismissed and under separate appeal. Other FOIA matters pertains to other case.

As noted at the outset of this schedule, many of the above matters are also irrelevant.

EXHIBIT B TO MOTION TO STRIKE
As To
APPELLANT'S DESIGNATION OF MATTER FOR RECORD

Bauknight v. Pope

Appellate Case No.: 2017-001899

SCHEDULE OF MATTERS IN DESIGNATION THAT SHOULD BE STRUCK [1], [2]

1. Orders - Item 8. Order of Frank Addy dated November 22, 2011 does not appear in the Richland County website's list of records in this case. Order consolidated FOIA case, but lower court dismissed it, and it is under separate appeal to this case. It is irrelevant to the instant case.

2. Pleadings, Motions, etc.:
    a. Item 6. Motion to Lift Stay. Filed after appeal notice of appeal filed and in support of motion to lift stay. Not before lower court for purpose of its orders under appeal.
    b. Item 8. Motion to Intervene – irrelevant. Made in FOIA case consolidated with instant case, dismissed and appealed.
    c. Item 9. Motion to Strike Jeffrey Smith affidavit. Does not appear in in the Richland County website's list of records in this case.
    d. Item 11. Brief / Opposition to Consolidate cases. Not filed in case 4900. Filed in separate FOIA action never consolidated with instant case. Not relevant to instant case.
    e. Item 13. No such motion of such date. Motion for Judgment on the Pleadings filed on December 20, 2012, in FOIA case. Item 1, *supra*. It is irrelevant to the instant case.
    f. Item 17. Motion not listed in case filings for case 4900. It does not refer to the order to which it is directed so document cannot be identified.
    g. Item 18. Return to FOIA case. Irrelevant. *See* Item 2d. *supra*
    h. Items 20 & 21. Irrelevant to issues on appeal and includes the FOIA case which is also irrelevant. *See* Item 1. *supra*
    i. Item 23. Unclear to what matter the item refers. If letter of Mark Gende of May 10, 2013, it is irrelevant to issues on appeal including its references to the FOIA case. *See* Item 2d. *supra*

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[1] All references below to "other case" are to cases referenced by Appellant other than the instant case.

[2] The Attorney General does not address any matters that may relate to Arguments I and II of Appellant's Initial Brief in that counsel for the other Respondents will address those parts.

j. Items 24 and 25. Irrelevant.
k. Items 26 and 27. Irrelevant. Relate to Order granting partial summary judgment which is not under appeal.
l. Item 28. No motion of such date in the record. Unclear to what matter the item refers.
m. Item 29. Filed in FOIA case. Irrelevant. *See* Item 2d. *supra.*
n. Item 31. No filing of that date. Item does not make clear to what it refers.
o. Item 33. No such motion of that date. Order filed that date re Tommie Rae Brown but irrelevant to issues on appeal.
p. Item 34. Motion applies to order granting summary judgment not under appeal and irrelevant.
q. Item 37. Irrelevant.

3. Trancripts - May 17, 2016 – hearing addressed FOIA motions including FOIA case not consolidated with this one. Irrelevant. *See* Item 2d. *supra.* [Undersigned counsel understands that Appellant is withdrawing the 11/21/16 transcript and does not object to her doing so.]
4. Affidavits and other:
    a. Item 4. Irrelevant.
    b. Item 5. Not shown to be filed of record. Not cited in brief. Irrelevant.
    c. Item 6. Unclear to what affidavit relates. Not shown to be filed of record. Not cited in brief. Irrelevant.
    d. Items 7, 8 and 9. Not shown to be filed of record. Not cited in brief. Irrelevant.
    e. Items 11 & 12. Letters relate to FOIA actions including one not consolidated with this case. Irrelevant. *See* Item 2d. *supra.*
    f. Item 14. Letter does not appear to be filed in lower court. Irrelevant.
    g. Item 15. Not shown to be filed of record. Not before Court.
    h. Item 16. Not shown to be filed of record. Not before Court.
    i. Item 17. Affidavit filed for purpose of mediation. Irrelevant to issues on appeal.
    j. Item 18. Affidavit filed regarding Order granting stay. Stay was lifted a little over a month after issuance, and is not under appeal or at issue in this proceeding. Irrelevant.
    k. Item 19. Affidavit regarding depositions in other case. Irrelevant.
    l. Item 20. Supplemental Affidavit relates to motion to consolidate discovery and is irrelevant to issues on appeal.
    m. Item 21. Affidavit of Bauknight does not appear to be filed in record. Not clear to what it refers. Cannot determine whether relevant.
    n. Item 22. Ruff affidavit filed in support of motion to alter or amend order dropping the Attorney General as a party. New matter cannot be introduced on a motion to alter or amend.

o. Item 23. Affidavit of Pope dated March 24, 2017, does not appear to be filed of record, and therefore not before the court. Item does not describe purpose or contents of affidavit so that relevance can be determined.
p. Item 24. Motion to Alter or Amend Order granting summary judgment. That Order is not under appeal. Therefore, this Motion is irrelevant.
q. Item 25. Affidavit filed after appeal notice of appeal filed and in support of motion to lift stay. Not before lower court for purpose of its orders under appeal.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
FEB 23 2018
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

Appeal Case No. 2017-001899

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. 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

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, Defendant,

Of whom Adele J. Pope is the Appellant.

PROOF OF SERVICE

I certify that I have served the Motion to Strike the Initial Brief and Designation of Matter of Appellant by depositing a copy of it in the United States Mail, postage prepaid, February 23, 2018 addressed to all attorneys of record.

February 23, 2018

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