

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 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 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.; 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 Appellant.

RECORD ON APPEAL

VOLUME III OF V

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**INDEX
VOLUME I**

I. ORDERS

Order of the Hon. Doyet A. Early, III, dtd. 8/2/17.....	1
Order of the Hon. Doyet A. Early, III, dtd. 6/23/17.....	3
Order of the Hon. Doyet A. Early, III, dtd. 6/23/17.....	3
Order of the Hon. Doyet A. Early, III, dtd. 5/31/17.....	19
Order of the Hon. Doyet A. Early, III, dtd. 3/9/17.....	25
Order of the Hon. Doyet A. Early, III, dtd. 3/9/17.....	27
Order the Hon. L. Casey Manning, dtd. 3/7/17.....	29
Order of the Hon. Doyet A. Early, III, dtd. 2/6/17.....	31
Order of the Hon. Doyet A. Early, III, dtd. 9/21/16 (Attorney General).....	33
Order of the Hon. Doyet A. Early, III, 9/21/16 (Daryl & Tonya).....	39
Order of Jg. Early dtd. 7/25/16.....	42
Order of Jg. Early dtd. 4/8/16.....	44
Order of the Hon. Donald W. Beatty, dtd. 3/24/16.....	46
Order of the Hon. L. Casey Manning, dtd. 3/02/16.....	47
Order of the Hon. L. Casey Manning, dtd. 10/13/15.....	49
Order of the Hon. L. Casey Manning, dtd. 10/13/15.....	51
Order of the Hon. L. Casey Manning, dtd. & filed 7/19/12.....	54
Order of the Hon. L. Casey Manning, filed 7/13/12.....	57
Order of the Hon. L. Casey Manning, dtd. 7/5/12.....	59
Order of the Hon. Frank R. Addy, Jr., dtd. 11/22/11.....	61
Order of S.C. Court of Appeals, filed 6/2/11.....	70
Order of the Hon. G. Thomas Cooper, dtd. 5/12/11.....	68
Order of the Hon. G. Thomas Cooper, dtd. 4/27/11.....	72
Order of the Hon. Jasper M. Cureton, filed 3/16/11.....	74
Order of the Hon. L. Casey Manning, dtd. 1/7/11.....	77
Order of the Hon. L. Casey Manning, dtd. 11/8/10.....	79
Order of the Hon. L. Casey Manning, dtd., 11/8/10.....	87
Form 4 Order of the Hon. L. Casey Manning, dtd. 8/30/10.....	93
Order the Hon. Amy W. McCulloch, dtd. 7/19/10.....	94
Order of the Hon. Roger L. Couch, dtd. 9/22/09.....	96
Order of the Hon. Doyet A. Early, III, dtd. 5/26/09.....	134

II. PLEADINGS AND MOTIONS

Complaint filed May 19, 2010, with Summons.....	176
w/ Affidavits of Service.....	189
Motion to Remove dtd. 6/11/10.....	191
Motion to Dismiss dtd. 6/22/10, w/ Attachments.....	193
Index of Attachments to Motion to Dismiss.....	204

Attachment 1: <i>Wilson v. Dallas Ret. & Motion</i>	205
Factual Addendum.....	221
Exhibit A: Agreement dtd/ 8/10/08.....	231
Attachment 2: of the Hon. Doyet A. Early, III, dtd. 1/8/08.....	235
Attachment 3: of the Hon. Doyet A. Early, III dtd. 1/9/08.....	239
Attachment 4: of the Hon. Doyet A. Early, III, dtd. 3/7/08.....	242
Attachment 5: of the Hon. Doyet A. Early, III dtd. 4/8/08.....	262
Attachment 6: Order of the Hon. Jasper W. Cureton, dtd. 7/14/08.....	312
Attachment 7: of the Hon. Doyet A. Early, III dtd. 7/25/08.....	315
Attachment 8: Corresp. Ct. Appeals 11/6/09.....	322
Attachment 9: of the Hon. Doyet A. Early, III dtd. 11/13/08.....	324
Attachment 10: of the Hon. Doyet A. Early, III, dtd. 3/15/10.....	327
Attachment 11: Order of the Hon. Doyet A. Early, III, dtd. 4/5/10.....	329
Motion to Transfer Venue dtd. 8/2/10.....	332
Motion to Strike Motion for Transfer of Venue dtd. 8/10/10.....	335
Answer and Counterclaim dtd. 9/30/10 w/cos.....	337
Motion to Strike Defendants' Affidavit in Support of Dismissal, dtd. 10/1/10....	371
Motion to Set Aside Entry of Default, dtd. 11/16/10.....	373
Exhibit 1: Affidavit of Wingate.....	376
Exhibit A: Kendall email dtd. 11/12/10.....	379
Answer to Counterclaim, dtd. 11/16/10 w/cos.....	380
Motion to Alter or Amend Order Filed 11/19/10.....	383
Exhibit A: Initial Brief of Appellants, dtd. 10/22/10.....	391
Addendum.....	444
Exhibit B: Affidavit of Williams.....	449
Complaint, <i>Cincinnati v. Buchanan</i>	452
Complaint, <i>Cincinnati v. Pope</i>	469
Motion to Strike dtd. 12/7/10.....	471
Notice of Appeal filed 2/16/11.....	474

INDEX VOLUME II

II. PLEADINGS AND MOTIONS (Cont'd)

Motion to Disqualify and/or Enjoin and for related relief, dtd. 5/18/11.....	477
Return to Motion to Designate Complex, dtd. 5/18/11.....	481
Motion to Compel Discovery (Tommie Rae), dtd. 5/27/11.....	485
Motion for Protective Order (Tommie Rae) dtd. 5/31/11.....	493
Motion to Compel, dtd. 7/1/11.....	495
Exhibit A: Interrogatories & Requests for Production.....	498
Exhibit B: Answers to Interrogatories & Requests for Production.....	517
Motion to Compel (Fee Agreement) , dtd. 7/26/11.....	552
Exhibit A: Ltr. of Black dtd. 7/15/11.....	556

Motion for Protective Order (Fee Agreement), dtd. 8/9/11.....	558
Motion to Partially Amend Order dtd. 11/22/11, dtd. 11/29,11.....	568
Motion for Sanctions, dtd.12/9/11.....	568
Return in Response to Motion to Consolidate, dtd.2/9/12.....	575
Return and Memorandum Opposing Relief from Default, dtd. 4/10/12.....	577
Motion to Enforce Settlement Agreement, dtd. May 18, 2012.....	580
Exhibit A: Settlement Agreement, dtd. 5/4/12.....	582
Exhibit B: Settlement Agrmt. & Release.....	584
Return and Objection to Motion to Enforce, dtd. 5/21/12.....	592
Motion for Emergency Telephone Hearing, dtd. 7/18/12.....	596
Exhibit A: Motion for Protective Order (Dallas), dtd. 7/10/12	599
Corrected Offer of Judgment (Lindsey & Janise), dtd. 7/18/12.....	602
Motion to Strike Affidavit (Requesting Depositions), dtd. 7/18/12.....	606
Exhibit A: Affidavit of Pope, dtd. 7/1/12.....	608
Ltr. of Silvermail to the Hon. L. Casey Manning, dtd. 7/11/12.....	613
Motion to Vacate, Alter, Amend, etc. Order dtd. 7/5/12, dtd. 7/27/12.....	618
Exhibit A: Order of the Hon. L. Casey Manning dtd. 7/5/12.....	630
Offer of Judgment to Daryl Brown, dtd. 7/26/12.....	632
Offer of Judgment to Tonya Brown, dtd. 7/26/12.....	636
Offer of Judgment to Terry Brown, dtd. 7/30/12.....	639
Offer of Judgment to Jason Brown Lewis, dtd. 7/30/12.....	649
Offer of Judgment to the Estate of James Brown, dtd. 8/2/12.....	657
Offer of Judgment to Deanna Brown Thomas, dtd. 8/2/12.....	664
Offer of Judgment to Venisha Brown, dtd. 8/3/12.....	671
Offer of Judgment to Tommie Rae Hynie Brown dtd. 8/3/12.....	677
Offer of Judgment of Pope to Carrington L., a minor, dtd. 8/6/12.....	681
Offer of Judgment to Sydney L., a minor, dtd. 8/7/12.....	683
Motion to Strike Offers of Judgment, dtd. 8/13/12.....	687
Exhibit A: Offer of Judgment to Lindsey & Janise B., a Minor.....	690
Exhibit F: Offer of Judgment (Bauknight. T/ee, Legacy Trust)	696
Motion for Direction (Pretrial Publicity), dtd. 8/23/12.....	704
Exhibit. A: Media Binder Index of Attached Articles, etc.....	706
Exhibit 5: SC Supreme Court Hears Brown Estate Feud 11/1/11.....	712
Exhibit11: AG asked to Turn Over James Brown Docs.: 8/11/11.....	714
Exhibit 12: Wilson and trustee Double Efforts...: 1/16/12.....	716
Exhibit 13: AG Attempts to Exclude Affid.....	718
Exhibit 17: Dead or Alive-James Brown...5/22/12.....	721
Exhibit 18: Father'sDay, Pappa Gets a Brand New Son: 6/17/12	726
Exhibit 20: Brown Charitable Fate Marinating in Confusion:3/11/12.....	728
Exhibit 21 James Brown's Son Regrets Contesting Will: 7/1/12.....	730
Exhibit. 27: Images of a Group of Affidavits (Partial).....	732
Affidavit of Mary Holmes dtd. 5/18/2008.....	732
Affidavit of J.B. Ross.....	734
Affidavit of Emma Austin dtd. 8/14/08.....	736
Affidavit of Andre Moses White dtd. 6/2/08.....	739

Exhibit 32: Images of <i>Motion for Sanctions</i> and Ltrs.	741
Exhibit 58: <i>Future of Private Philanthropy. at Stake in Case</i> : 11/10/11.....	742
Exhibit 75: <i>Attorneys Subpoena Inf. Ab. "Explosive" Diaries</i> : 5/14/12.....	744
Exhibit 81: <i>AG Wilson and Companion Stop Deposition</i> : 7/26/12.....	746
Exhibit 82: <i>Brown Son Pleads "Protect the Needy Children"</i> : 8/1/12	750
Exhibit 87: <i>Years After Death, Battle for J. Brown Estate Rages</i> : 8/4/11....	752
Exhibit 93: <i>James Brown Said it Loud</i> : 3/10-11/12.....	754
Exhibit 94: <i>Legal Battles over James Brown's Estate Continue</i> : 7/26/11....	756
Exhibit 96: <i>South Carolina and the FOIA</i> : 4/24/12	758
Exhibit 98: <i>The Continued Dispute Over James Brown's Estate</i> :	760
Return to Motion (Pretrial Publicity), dtd. 8/28/12.....	762
Proof of ADR, Karl A. Folkens, Mediator, dtd. 10/19/12.....	768
Supp. Memo on Motion to Set Aside Entry of Default dtd.12/17/12.....	769
Exhibit A: Sworn Statement of Albert H. Dallas, 7/20/12.....	771
Return and Opposition to Motion (Judgment on Pleadings), dtd. 1/11/13.....	775
Motion to Compel (Document Review), dtd. 2/25/13.....	780
Motion for Protective Order (Deanna Deposition), dtd. 3/4/13.....	783
Exhibit A: Am. Notice of Deposition, dtd. 2/25/13.....	785
Motion for Summary Judgment (as to Estate/2000 Trust &AG), dtd. 3/11/13..	787
Motion to be Dropped as a Party, dtd 3/25/13.....	790
Exhibit A: Ltr. of McMaster to Bauknight, dtd.5/18/10.....	793
Return and Opposition to Stay and Request for Expedited Hearing dtd.3/29/13.....	794
Exhibit A: Ltr. of Gende to Jg. Manning, dtd. 3/27/13.....	800
Status Report, dtd. 3/25/13.....	802
Exhibit A: Proposed Scheduling Order.....	806
Motion to be Relieved as Counsel (as to The AG Only), dtd.5/10/13.....	810
Motion to Stay, dtd. 4/22/14.....	821
Motion for Summary Judgment & Offset (as to Tonya, Daryl, Venisha), dtd. 5/28/15.....	814
Motion for Exception to Physical Presence at Mediation, dtd. 8/4/15.....	824
Return and Opposition to Motion (Stay & Expedited Hearing), dtd. 4/29/14....	827
Motion to Alter, Amend and /or Vacate Order (Relief from Default), dtd.10/20/15.....	829
Proof of ADR, dtd. 10/30/15.....	834
Motion for Protective Order (Depositions), dtd. 2/18/16.....	836
Motion to Strike, dtd. 2/26/16.....	839
Motion to Alter and/or Amend Order dtd. 3/3/16.....	841
Motion to Consolidate Cases 4900 & 1337 for Purposes of Discovery, dtd. 4/11/16.....	846
Motion to Postpone Deposition (Tommie Rae), dtd. 4/25/16.....	848
Return and Opposition to Motion to Consolidate, dtd. 6/6/16	851
Notice Withdrawing Motion to be Relieved as Counsel, dtd. 6/7/16.....	854
Motion for Protective Order (Attorney General) dtd.7/18/16.....	856
Notice of Special Appearance, dtd. 8/11/16	861

Exhibit A: Order of the Hon. Doyet A. Early, III, dtd. 10/4/07	864
Exhibit B: Order of the Hon. Doyet A. Early, III, dtd. 10/30/13.....	868
Exhibit C: Motion to be Dropped as Party, dtd 3/25/13	867
Exhibit A: Ltr. of AG McMaster dtd. 5/18/10.....	873
Exhibit B: Petition for Rehearing, dtd. 3/14/13.....	874
Exhibit A: Transcript 9/28/08.....	906
Transcript 11/25/08	909
Transcript 1/30/09.....	912
Transcript 4/6/09.....	920
Complaint, Case No. 2008-CP-02-322, filed 2/5/08.....	926
Exhibit G: Calculation of Proceeds, Proposed Transaction.....	927
Interim Acctg. #1A, 11/20/07 – 5/20/09.....	928
Ltr. AG McMaster to Bauknight, dtd. 5/18/10.....	942
Motion for Protective Order (McMaster) dtd. 8/25/16.....	943
Motion to Dismiss all Claims Under Rule 41(B) (Venisha), dtd. 9/14/16.....	946
Motion to Compel Discovery, dtd. 1/11/17.....	949
Return of (1337 Pl.) to Jt. Motion to Consolidate Expert Discovery, dtd. 1/17/17.....	953
Notice of Motion and Motion Pursuant to Rule 59(E) & Rule 60(B)(2), dtd. 3/24/17.....	956
Supplemental Return to Motion to be Dropped, dtd. 4/6/17.....	961
Reply to Supplemental Return, dtd. 4/7/17	964

INDEX VOLUME III

Return to Motion Pursuant to Rule 59(e) and Rule 60(b)(2), dtd. 4/20/17.....	969
Exhibit A: Order of the Hon. Doyet A. Early, III, dtd. 5/9/17.....	973
Exhibit B: Settlement Agreement, dtd. 3/8/17.....	976
Motion to Alter, Amend, etc. Order dtd. 6/23/17, dtd. 7/13/17.....	983
Motion to Alter, Amend, Vacate &/or Reconsider Order dtd. 5/31/17 dtd. 7/19/17	1054

III. TRANSCRIPTS

Transcript of Hearing held August 30, 2010.....	1108
Transcript of Hearing held January 11, 2012.....	1140
Transcript of Hearing held December 17, 2012.....	1144
Transcript of Hearing held May 17, 2016.....	1162
Transcript of Hearing held August 29, 2016.....	1177

IV. EXHIBITS AND OTHER MATERIALS AND DOCUMENTS

Agreement for Legal Services, dtd. 5/18/10.....	1235
Exhibit A: Litigation Retention Agreement (AG/Special Counsel).....	1238

Ltr. AG McMaster to Bauknight dtd. 5/18/10.....	1250
Confirmation, Approval and Acknowledgment.....	1251
Affidavit of Service (Pope) dtd. 5/24/10	1254
Certificate of Transmittal as to Removal to Circuit Court dtd. 7/26/10.....	1255
Memorandum in Support of Dismissal of Complaint, dtd. 8/10/10.....	1256
Portion Richland County Public Index.....	1265
Supplemental Memorandum Supporting Dismissal of Complaint, dtd.8/25/10.....	1267
Exhibit A: Memorandum In Support of Dismissal, dtd. 8/10/10, see.....	1256
Exhibit B: Motion for Extension of Time, dtd. 8/13/1 w/cos.....	1300
Memorandum in Opposition to Motion to Dismiss, dtd. 8/27/10.....	1306
Acknowledgment (Principal Place of Business, 2000 Trust), dtd. 8/27/10.....	1322
Memorandum in Opposition to Motion to Change Venue, dtd. 8/27/10.....	1326
Exhibit A: Order of the Hon. Doyet A. Early, III, dtd. 5/26/09, p.1.see p.134.....	1333
Exhibit B: Order of the Hon. Roger L. Couch, dtd. 9/22/09, p.1, see p.96...	1334
Second Supp. Memorandum (Support of Dismissal of Complaint), dtd. 8/27/10.....	1335
List of Attachments to Memorandum.....	1339
Exhibit A: Return, Motion for Extension.....	1340
Exhibit B: Portion, Brief, Dallas appeal.....	1347
Exhibit C: Portion, Transcripts Jan. 2009, March 2009.....	1350
Exhibit D: Portion, Inventory & Appraisalment, dtd. 11/15/07.....	1362
Exhibit E: Portion, Graham Windsor Presentation.....	1366
Ltr. TJBL to Buchanan & Pope (TPP), dtd. 3/27/08.....	1370
Ltr., TJBL to Buchanan & Pope, dtd. 3/27/08.....	1373
Affidavit of Buchanan & Pope in Support of Dismissal, dtd 9/21/10.....	1377
Index to Exhibits.....	1390
Exhibit 1: Excerpts, Memorandum Opp. Mot. Dismiss, dtd. 8/27/10....	1393
Exhibit 2: Excerpts, Memorandum in Opposition, dtd. 8/27/10.....	1394
Exhibit 3: Certificate of Agreement of Trust.....	1395
Exhibit 4: Excerpt, James Brown POA.....	1397
Exhibit 5: Latham email to Levenson & others.....	1398
Exhibit 6: Minutes of Trustees' Meeting 12/27/06.....	1399
Exhibit 7: Minutes of Trustees' Meeting 1/3/07.....	1400
Exhibit 8: Memorandum & Representation Agreement (Levenson).....	1401
Exhibit 9: Excerpts: Motion to Require Disclosure of Settlement.....	1403
Exhibit 10: Excerpts: Deposition of Forlando Brown.....	1405
Exhibit 11: Executive Summary, Lumar, Cox, others.....	1416
Exhibit 12: Prenuptial Agreement.....	1418
Exhibit 14: Email, Hammond to Pope and Babcock.....	1425
Exhibit 15: Powell Goldstein docs to transfer 2000 Trust to Georgia, etc.....	1428
Exhibit 16: Ltr. James Brown Legacy to Dallas & Bradley, dtd. 10/12/07.....	1436

Exhibit 17: Email Yount to Counsel, dtd. 11/10/07.....	1439
Exhibit 18: Statement, James Brown LLC Royalties.....	1440
Exhibit 19: Excerpt Ret. & Recommendations of SAs dtd. 11/14/07....	1141
Exhibit 20: Excerpts, I & A, dtd. 11/15/07.....	1444
Exhibit 21 Excerpts, Transcript Hearing held 12/21/07.....	1447
Exhibit 22 Excerpts, Affidavit of Pope, dtd. 1/6/08 & 3/7/08 hearing....	1459
Exhibit 23: Excerpts, Amendment to Forlando Brown Federal	1463
Complaint	1464
Affidavit of Beth Bauknight, dtd. 10/1/10.....	

INDEX VOLUME IV

Affidavit of Beth Bauknight, dtd. 10/1/10 (Continued)	
Exhibit A: Interim Accounting #1A, dtd. 5/20/2009.....	1465
Status of Creditors' Claims.....	1499
Valid Claim/Priority Expenses, etc.....	1500
Pending, Unresolved Claims (Partial).....	1502
Exhibit B: Final Accounting, dtd. 6/24/09.....	1504
Exhibit 1 – Summary of Accountings.....	1509
Ltr. Wingate to Jg. Manning dtd. 10/1/10 (Venue)	1510
Ltr. Watson to Jg. Manning, dtd. 10/1/10.....	1511
Ltr. Scalamera to McBride, dtd. 11/10/10.....	1512
Affidavit of Default, w/cos dtd. and filed 11/10/10	1513
Exhibit A: Summons (& Complaint), filed 5/19/10, see p.176.....	1516
Exhibit B: Ans. & Counterclaim w/cos, dtd. 9/30/10, p.1, see p.337.....	1519
COS, Affidavit of Default.....	1522
Answers to First Interrogatories (McMaster),dtd. 11/12/10.....	1523
Witness List.....	1532
Affidavit of Wingate dtd. 11/16/10.....	1535
Exhibit A: Email Kendall to Counsel.....	1538
Answers to First Interrogatories (Pope) dtd. 11/16/10.....	1539
Memorandum in Support of Motion to Stay, dtd.5/12/11.....	1579
Affidavit in Support of Disqualification, dtd. 5/18/11.....	1581
Exhibit A: <i>Private Foundation, Copyright Heirs & Musical Millionaires..</i>	1589
Compilation, Copyrights.....	1601
Exhibit B: Chart 5 – Sale to Terry Brown at \$12 million.....	1602
Exhibit C: Pinnacle Media & Entertainment, LLC, Exec. Summary.....	1603
Affidavit (Silvermail), dtd. 5/27/11.....	1605
Affidavit in Support of Motion to Compel (Tommie Rae), 6/2/11.....	1610
Affidavit in Support of Legacy Trust Production, dtd.8/1/11.....	1617
Exhibit A: Pinnacle Media Summary.....	1628
Exhibit B: Witness List.....	1630
Exhibit C: Ltr. of Black to Pope dtd. 7/15/11.....	1632
Brief in Support of Injunction, dtd. 9/14/2011.....	1634

Memorandum in Support of Motion to Set Aside Default, dtd.4/11/12.....	1666
Memorandum in Opposition to Disqualification, dtd.4/11/12	1673
Exhibit A: Order of Judge Couch, p.1, see p. 96.....	1688
Affidavit (Supporting Injunction; Opposing Relief from Default), filed 4/12/12..	1689
Exhibit A: Ltr. of Pope to AG Wilson dtd. 3/5/12	1692
Order of the Hon. Doyet A. Early, III, dtd. 2/20/08.....	1696
Order (Diaries) of the Hon. Doyet A. Early, III, dtd.3/10/08...	1697
Second Order (Diaries) of the Hon. Doyet A. Early, III,.....	1698
Exhibit B: Ltr. of Pope to AG Wilson, dtd.4/1/12.....	1699
Ltr. of Pope to Cannon, Bauknight, 3/30/12.....	1703
<i>Private Foundations, Copyright Heirs & Musical Millionaires</i>	1708
Exhibit C: Status Report, dtd. 3/7/12, (Forlando Federal Suit).....	1722
Exhibit D: Memorandum in Support of Mot. (Forlando Suit), dtd.4/3/12.	1728
Exhibit E: Memorandum in Support of Motion (Forlando), dtd,3/22/12..	1737
Exhibit F: Affidavit dtd. 3/21/12 (Forlando Suit)	1742
Affidavit Requesting Deposition Prior to Injunction Hearing, dtd. 7/1/12.....	1744
Affidavit Supporting Dismissal (Daryl Brown) dtd 7/1/12.....	1749
Exhibit A: <i>Son Regrets Contesting Will</i>	1751
Affidavit of Related to Publicity Motion, dtd. 8/28/12.....	1755
Memorandum in Opposition to Motion to Alter, etc., dtd. 11/20/12.....	1765
Order. of the Hon. Marc H. Westbrook, dtd.10/25/02	1771
Exhibit A: Memorandum in Opposition to Motion to Disqualify.....	1773
Exhibit B: Motions for Sanctions.....	1775
Return to Motion to Intervene, 11/7/11.....	1781
Exhibit B: Affidavit Opp.Motion to Intervene (FOIA), dtd. 11/7/11 ...	1785
Exhibit C: Order of Jg. Addy.....	1788
Exhibit D: Motion to Partially Reconsider (FOIA), dtd.11/29/11.....	1790
Ltr. of Gende to Judge Manning, dtd. 3/27/13.....	1798
Status Report dtd. 3/25/13.....	1800
Exhibit A: Proposed Scheduling Order.....	1804
Affidavit Opp.Stay of FOIA case and Supporting Summ. Jmt., dtd. 4/29/14....	1808
Exhibit A: Ltr. of Pope to AG Wilson, Sojourner, Bauknight, 4/3.14.....	1814
Motion to Dismiss or Stay Appeal, filed Ct. App. 9/13/12.....	1818
Exhibit B: Cephalon v. State of South Carolina Slides.....	1828
Exhibit C: Memorandum (Forlando Case)	1838
Supplemental Memorandum Opposing Motion to Set Aside Default, dtd.	
02/06/15.....	1842
Exhibit A: Proposed Order.....	1844
Affidavit in Support of Damages, Offset, etc., dtd.5/28/15.....	1852
Exhibit A: Deposition, Daryl J. Brown.....	1856
Exhibit B: <i>Brown's Son Comments on Case</i>	1866
Exhibit C: Notice of Appearance (Bell for Tonya), dtd. 3/26/14.....	1869
Exhibit D: Deposition of LaTonya Brown Fegan.....	1871
Affidavit Supporting Compliance w/Mediation, dtd. 8/13/15.....	1883
Memorandum Opposing Motion to Alter, Amend, etc., dtd. 11/24/15.....	1892

INDEX **VOLUME V**

Affidavit Supporting Motion to Alter or Amend Order of 3/3/16, dtd 3/7/16.....	1897
Exhibit A: Deposition of Russell L. Bauknight (Forlando Suit), dtd. 8/20/13.	1901
Memorandum in support of Motion to Amend Answer, etc., dtd. 5/2/16.....	1911
Affidavit of Pope in Supp. of Mot.to Strike (Consolidation Motion), dtd. 5/21/16.....	1924
Memorandum in Supp. of Motion to Consolidate Cases 4900 & 1337, dtd. 6/7/16.....	1931
Affidavit of Pope Supporting Deposition (Lindsey), dtd.8/22/16.....	1939
Schedule of Documents.....	1946
Exhibit A: Email Musgrove to Levenson, others, dtd. 3/26/07.....	1947
Exhibit B: Ltr. McGaughey to Dallas dtd. 7/10/07.....	1949
Exhibit C: Email of Forlando to Cannon, 10/2/07.....	1950
Exhibit D: Email Forlando to Dallas, 12/14/07.....	1951
Exhibit E: Email Jones to Various, dtd. 11/21/07.....	1952
Exhibit F: Ltr. Pope to Jones, dtd. 11/21/07.....	1953
Exhibit G: Ret. And Rec. of SAs.....	1955
Exhibit H: Email Jowers to Various, 2/13/08.....	1959
Exhibit I: Order Re: Publication, dtd. 3/8/08.....	1960
Exhibit J: Various Emails.....	1964
Exhibit K: Email Forlando to Various, dtd. 4/3/08.....	1969
Exhibit L: Christie's Sale Summary.....	1971
Exhibit M: Ltr. Pope/Buchanan to AG McMaster, dtd.6/13/08.....	1972
Exhibit N: Portion James Brown Estate Tax Return (706).....	1975
Exhibit O: Ltr. Buchanan/Pope to AG McMaster, dtd. 3/16/09.....	1977
Exhibit P: Ltr. to Klett from Buchanan/Pope dtd. 6/24/09.....	1979
Exhibit Q: Email Medlin to Jowers, others dtd. 8/30/09.....	1983
Exhibit R: <i>James Brown's Son Regrets</i>	1984
Exhibit S: Email Pope to Levenson, others, dtd.11/5/12.....	1987
Exhibit T: Email, Forlando to Kenily, dtd. 9/27/13.....	1995
Memorandum in Support of Deposition of AG, dtd. 8/29/16.....	1996
Motion to Add William/Forlando Brown as Party, dtd. 2013.....	2039
Exhibit A: Confirmation and Amendment (Legacy Trust), dtd, 1/4/11....	2041
Assignment from Terry Brown to Forlando, dtd.1/3/11.....	2047
Ltr. of Gende to Jg. Manning, dtd. 5/10/13.....	2048
Order concerning Motion for Continuance dtd. 7/5/12.....	2051
Plaintiff AG Responses to Interrogatories dtd. 10/10/16.....	2054
Memorandum in Support of Motion For Protective Order Filed 8/26/16.....	2059
RESERVED.....	2072
Supp. Memo in Opp.to Mot. SJ & in Supp. of Other Motions, dtd. 9/23/16.....	2076
Exhibit A: Ltr. of Bundy to Jg. Early dtd. 9/23/16.....	2079

Notarized Doc. of Daryl J. Brown, Janise & Lindsey Brown, dtd 10/26/12.....	2084
Exhibit B: Post of Tomirae Brown w/ comments dtd. 9/18.....	2086
Supp. Memorandum in Support of Motion to be Dropped, dtd. 4/3/17.....	2088
Ltr. of Smith to Judge Early, dtd. 5/23/17.....	2093
Affidavit of Harley D. Ruff, dtd. 6/23/17.....	2094
Ltr. of Smith to Jg. Early, dtd. 7/26/17.....	2097
Ltr. of S.C. Court Administrations to Silvernail, dtd. 7/26/17.	2099
Opinion/Affidavit of Wm. Jeffrey Smith, dtd. 7/14/17.....	2100
Memorandum in Opposition to Motion to Alter June 23, 2017 Order, dtd.8/7/17.....	2211
Ltr. of Watson to Manning, dtd. 10/1/10.....	2213
Ltr. of Wingate to Jg. Manning, dtd. 10/1/10(Mot. Dismiss.....	2214
Ltr. of Wingate to Jg. Manning, dtd. 10/1/10 (Venue)	2215
Motion to Strike Portions of Defendants' Motion to Stay, dtd. 12/7/10.....	2216
Memorandum in Support of Motion to Set Aside Default dtd. 4/11/12.....	2219
Affidavit of Pope dated January 17, 2017 – Filed Under Seal	2227

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

RUSSELL L. BAUKNIGHT, et. al.,)

CASE NO.: 2010-CP-40-4900

and)

ALAN WILSON, et. al.)

Plaintiffs,)

v.)

ADELE J. POPE,)

Defendant.)

**TOMMIE RAE BROWN'S RETURN IN
OPPOSITION TO
DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION PURSUANT TO RULE 59(E)
AND RULE 60(B)(2), SCRCF**

Tommie Rae Brown ("Mrs. Brown"), as and for her Return to Adele J. Pope's Motion Pursuant to Rule 59(e) and Rule 60(b)(2), filed on or about March 24, 2017, seeking to alter and amend the Court's Order regarding the Motion for Protective Order as to Mrs. Brown's Deposition, which was filed March 21, 2017, respectfully shows the court as follows:

1. Mrs. Brown notes, as previously argued at the hearing on November 21, 2016 and in her memorandum of law, discovery may not be taken on issues which are resolved and such discovery is barred under res judicata, collateral estoppel, and similar preclusive doctrines. *See Matter of Wilcher*, 56 B.R. 428, 435 (Bankr. N.D. Ill. 1985); *Lawrence v. Household Bank (SB), N.A.*, 505 F. Supp. 2d 1279, 1285 (M.D. Ala. 2007); *DeSiervi v. Liverzani*, 136 A.D.2d 527, 527, 523 N.Y.S.2d 147, 148 (1988); *Davis v. Hennepin Cty.*, No. A11-1083, 2012 WL 896409, at *3 (Minn. Ct. App. Mar. 19, 2012). Mrs. Brown sought a protective order pursuant to rule 26 to limit questions asked by counsel in her deposition regarding her marriage to Javed Ahmed and/or James Brown, as the Court previously determined the validity of these marriages in the Orders dated January 12, 2015 and October 26, 2015. Those rulings expressly held that only the Family

Court has jurisdiction to question the annulment of Mrs. Brown's marriage to Ahmed and that the annulment was binding on all third parties.

2. Mrs. Brown believes this Court reviewed and considered all evidence before it with regarding to Mrs. Brown's Motion for Protective Order. The Court relied on the legal arguments and memoranda at the hearing on November 21, 2016. Following the hearing, Mrs. Brown's counsel provided the Court with a transcript of the deposition, highlighting his specific objections for which he sought a protective order. The Court took this matter under advisement and issued an Order regarding the Motion for Protective Order as to Mrs. Brown's Deposition, dated March 9, 2017 and filed March 21, 2017 (the "Order"), attached hereto as **Exhibit "A"**.

3. Defendant Adele J. Pope ("Ms. Pope") asks this court to alter or amend its Order under Rules 59(e) and 60(b)(2), SCRCP.

4. A Rule 59(e) motion to reconsider is an extraordinary remedy. South Carolina Rules of Civil Procedure Rule 59 Notes indicate that Rule 59 is "substantially the Federal Rule." Rule 59, SCRCP, Notes. "Rule 59(e) of the Federal Rules of Civil Procedure provides a mechanism for an aggrieved party to petition the Court to alter or amend a judgment under certain limited circumstances. The purpose of a Rule 59(e) motion is to allow the court to reevaluate the basis for its decision. Because the interests in finality and conservation of judicial resources, Rule 59(e) motions should be granted sparingly. Thus, Rule 59(e) motions are not at the disposal of an unsuccessful party to 'rehash' the same arguments and facts previously presented" *Rouse v. Nielson*, 851 F. Supp. 717, 734 (D.S.C. 1994) (internal quotations omitted).

5. The Fourth Circuit has similarly said of Rule 59(e) motions that, "[i]n general 'reconsideration of a judgment after its entry is an extraordinary remedy which should be used

sparingly.” *Pac. Ins. Co. v. American Nat’l Fire Assoc.*, 148 F.3d 396, 402 (4th Cir. 1998) (citations omitted). “A motion under Rule 59(e) is not authorized ‘to enable a party to complete presenting his case after the court has ruled against him.” *Id.* at 403 (citation omitted). “The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Id.* (citation omitted).

6. Rule 60(b)(2), SCRCP, enables a court to relieve a moving party from a final judgment, order, or proceeding based on “newly discovered evidence.” Ms. Pope attempts to use the settlement agreement that Mrs. Brown and the Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of the James Brown 2000 Irrevocable Trust (the “LSA”), executed on March 8, 2017, as grounds for relief from the Order. Ms. Pope incorrectly argues that the settlement agreement “completely undermines any argument that TRB is the surviving spouse[.]” Ms. Pope’s Motion, p.4. Ms. Pope’s position is exactly the opposite of the terms of the settlement agreement (attached hereto as **Exhibit “B”**), from which she selectively quotes. The essence of the settlement agreement is that the Estate and Trust are dismissing their opposition to Mrs. Brown’s status as surviving spouse. The settlement agreement states that Mrs. Brown will contribute 65 percent of the 50 percent of the termination rights proceeds that she will receive if she is determined to be the surviving spouse. The settlement agreement states that the value of these proceeds could be tens of millions of dollars. These are proceeds that the charitable trust would otherwise not receive without (1) Mrs. Brown being confirmed as the surviving spouse, *and* (2) her contribution of the proceeds to the charitable trust. Obviously, therefore, the Estate and Trust would support the confirmation of Mrs. Brown’s status as surviving spouse, as opposed to Mr. Pope’s selective and inaccurate reading of the settlement

agreement¹. Moreover, the settlement agreement requires there to be a final order, either from the appellate court or the lower court, that Mrs. Brown is or is not James Brown's surviving spouse before any action is taken.

7. Paragraph 2 of Ms. Pope's motion does correctly state that the Court failed to issue a ruling on Mrs. Brown's counsel's objection at Tr. 366:1-4. To the extent that such an omission requires the Court to issue an amended order, Mrs. Brown requests that the Court rules on that objection and does not alter or amend its previous ruling.

8. Nothing has been presented in Ms. Pope's Motion that would give rise to the Court reconsidering, altering, or amending its ruling.

9. Mrs. Brown respectfully asks this Court to deny all relief requested by Ms. Pope.

WHEREFORE, Mrs. Brown respectfully requests that this Court deny Defendant/Counterclaim Plaintiff's Motion for Reconsideration, and reaffirm its Order filed March 21, 2017.

ROSEN LAW FIRM, LLC


Robert N. Rosen
18 Broad Street, Suite 201
Post Office Box 1840 (29402)
Charleston, SC 29401
(843) 377-1700
RNRosen@rosen-lawfirm.com

ATTORNEY FOR TOMMIE RAE BROWN

Charleston, South Carolina
April 20, 2017

¹ Ms. Pope's ill-considered appeal of the 2009 settlement agreement cost the charitable trust tens of millions of dollars. In that agreement, as this Court is well-aware, Mrs. Brown and the Brown children contributed approximately 50 % of all the termination rights proceeds to the charitable trust. Because Ms. Pope succeeded in destroying that settlement agreement, the charitable trust lost the right to these tens of millions of dollars of termination rights proceeds. Because Mrs. Brown has now agreed to contribute 65% of her share of the termination rights proceeds, the charitable trust will benefit immensely. It appears, however, that the Brown children's share of the termination rights proceeds will remain irretrievably lost to the charitable trust—thanks to Ms. Pope's appeal.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, et. al.,

and

ALAN WILSON, et. al.

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

CASE NO.: 2010-CP-40-4900

ORDER REGARDING
MOTION FOR PROTECTIVE
ORDER AS TO TOMMIE RAE
BROWN'S DEPOSITION

2017 MAR 21 AM 8:49
JEANETTE L. BROWN
C.J. S.
RICHLAND COUNTY
FILED

This matter is before the Court on a motion filed by Tommie Rae Brown for a protective order regarding her deposition taken on June 16 and 17, 2016 in the above referenced matter. A hearing was held on Monday, November 21, 2016. After reviewing Tommie Rae Brown's Deposition Transcript ("Tr."),¹ it is

ORDERED that all of Tommie Rae Brown's counsel's objections noted on pages 22 through 58, as well as page 81, lines 19-20 and page 82, lines 13-14, 18-19, and 21-22, regarding Tommie Rae Brown's marriages to Javed Ahmed and/or James Brown are sustained until the motion for protective order is heard.

IT IS ORDERED that the following objections are overruled: Tr. 63:10-11, 18-19; Tr. 83:8-12; and Tr. 86:19-20.

IT IS FURTHER ORDERED that the following objections are sustained: Tr. 59:17-19; Tr. 103:14-15; Tr. 103:25-104:1; Tr. 104:11; Tr. 112:23-24; Tr. 113:11-12; Tr. 147:11-17; Tr. 159:16-21; Tr. 213:6-7, 13-19; Tr. 265:4-6, 10, and 13; Tr. 271:20-22; Tr. 285:7-9, 13; Tr.

¹ The Court did not issue an order regarding counsel's objection at Tr. 366:1-4.

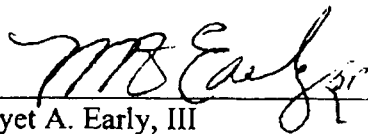
EXHIBIT

A

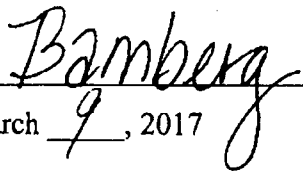
973

287:12-19; Tr. 288:4-7; Tr. 362:4-21; Tr. 364:19-21; Tr. 365:20-22; Tr. 370:22-24; and Tr. 378:
9-16.

AND IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge
Fifth Judicial Circuit


_____, South Carolina
March 9, 2017

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4004900

Russell Bauknight

Adele J Pope

James Brown 200 Irrevocable Trust
PLAINTIFF(S)

Tommie Rae Brown
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Dismissal);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 21 day of Mar, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth B. Wingate
Mark V. Gende
Robert N. Rosen

Everett Augustus Kendall II
John Andrew Donsbach Sr.
Joseph Odell Thickens

Daryl L. Williams
Adam Tremaine Silvernail
Walter Henry Bundy Jr.
Michael Brent McDonald

J. Calhoun Watson
J. Emory Smith Jr.
Adele J Pope
Adele J Pope

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McVicker

975

SETTLEMENT AGREEMENT

WHEREAS, Decedent James Brown ("Decedent") died on December 25, 2006, a resident of Aiken County, South Carolina;

WHEREAS, a Last Will and Testament dated August 1, 2000 ("2000 Will") was submitted for informal probate in the Aiken County Probate Court on January 18, 2007 and assigned Probate Case No. 2007-ES-02-0056;

WHEREAS, December 19, 2007 Tommie Rae Brown ("TRB") filed petitions to set aside the probate of 2000 Will and to set aside an Irrevocable Trust dated August 1, 2000 ("2000 Trust") based upon allegations of undue influence and fraud (the "Undue Influence Claim");

WHEREAS, after removal from the Probate Court to the Court of Common Pleas, the Undue Influence Claims, probate of the 2000 Will, and other matters were consolidated under the present Case No. 2008-CP-02-1647 and have been litigated under that case number through the present;

WHEREAS, on January 31, 2007, TRB filed a petition asserting she is Decedent's surviving spouse and claiming an omitted spouse's share of the Estate under S.C. Code Ann., Section 62-2-301 ("Omitted Spouse Claim") and a surviving spouse's elective share of the Estate under S.C. Code Ann., Section 62-2-201, et seq. ("Elective Share Claim") (collectively, TRB's "Spousal Claims");

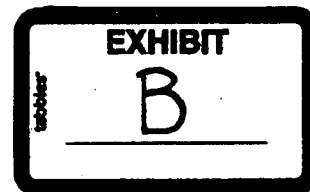
WHEREAS, through orders dated October 1, 2013 and October 10, 2013 (the "Appointment Orders"), the South Carolina Court of Common Pleas and the South Carolina Probate Court appointed Dave C. Sojourner, Jr. as Limited Special Administrator for the Estate of James Brown and as Limited Special Trustee of the James Brown 2000 Irrevocable Trust (the "LSA"), with sole, specific, and exclusive authority to defend the Estate and Trust against, among other claims, TRB's Undue Influence Claims and Spousal Claims;

WHEREAS, on December 16, 2013, the Court severed the Spousal Claims from the Undue Influence Claims, assigning to them Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850;

WHEREAS, on January 13, 2015 and October 26, 2015 the Court issued orders granting partial summary judgment to TRB and finding her to be Decedent's surviving spouse (the "Spousal Orders");

WHEREAS, on November 20, 2015 the LSA appealed the Spousal Orders. The LSA's appeal of the Spousal Orders is currently pending in the South Carolina Court of Appeals and assigned Appellate Case No. 2015-002417 (the "Surviving Spouse Appeal");

WHEREAS, on November 20, 2015 Deanna Brown-Thomas, Yamma Brown, and Venisha Brown, on November 23, 2015, Michael Deon Brown, and on November 24, 2015, Terry Brown



and Daryl Brown (collectively, the "Brown Children") also appealed the Spousal Orders, their appeals being a part of the Surviving Spouse Appeal;

WHEREAS, TRB, the LSA, and Russell L. Bauknight, as Personal Representative of the Estate (the "PR") (together, the "Settling Parties"), have agreed to settle TRB's Undue Influence Claims and Spousal Claims through the terms of this agreement (the "Settlement Agreement");

NOW THEREFORE, the Settling Parties hereby settle TRB's Undue Influence Claims and Spousal Claims as follows:

1. As more fully set forth below, TRB will withdraw her Undue Influence Claims, Case No. 2008-CP-02-1647, ending those claims with respect to the 2000 Will and 2000 Trust with prejudice. TRB's withdrawal will fully and finally terminate her challenge to the validity of the 2000 Will and 2000 Trust and, with that withdrawal, she forever relinquishes her alleged right to challenge the validity of the 2000 Will and 2000 Trust. The parties hereto recognize that the Brown Children, other than Terry Brown, have settled their separate contests of the 2000 Will and 2000 Trust, although the settlement is being appealed by Terry Brown, Appellate Case No. 2016-001373.

2. As additional consideration for the PR to join in this Settlement Agreement, the PR and TRB acknowledge the following:

Termination rights. In the event TRB is determined to be Decedent's "surviving spouse," which will entitle her to 50% of the valuable federal copyright termination rights, TRB will contribute 65% of the proceeds from her federal copyright termination rights to the charitable trust created by the 2000 Trust ("Charitable Trust"). Without contribution by TRB, these federal termination rights proceeds would never belong to the Charitable Trust because, under applicable federal law, these termination rights belong solely to Decedent's surviving spouse and children (or their issue). The Brown Children, other than Terry Brown, have settled their separate contests of the 2000 Will and 2000 Trust, although the settlement is being appealed by Terry Brown, despite his claim that he wants the 2000 Will and Trust to be upheld.¹ Consequently, the real dispute over TRB's status as Decedent's surviving spouse is over the federal termination rights rather than an interest in Decedent's Estate or Trust. The only way the Charitable Trust will receive any proceeds from the federal termination rights is through TRB's contribution thereof and TRB will receive the proceeds she will contribute only if she is Decedent's surviving spouse. The value of the federal termination rights could be worth tens of millions of dollars, a substantial portion of which will inure to the benefit of the Charitable Trust assuming TRB is the surviving spouse.

The Appointment Orders do not place a duty on the LSA with regard to federal copyright termination rights, which are outside of the probate estate and, therefore, not directly subject to TRB's Undue Influence Claims and Spousal Claims. Accordingly, the LSA has not confirmed or expended estate funds to study the information set forth in this paragraph.

¹ Terry Brown is not contesting the 2000 will or 2000 Trust, although he is appealing the settlement with the remaining Brown children that would dismiss their contests of the 2000 Will and Trust. If that settlement is affirmed, then this settlement with TRB will effectively end all litigation over the validity of the 2000 Will and Trust and ensure the existence of a charitable trust.

3. As more fully set forth below, the LSA will withdraw his appeal of the Spousal Orders and end all participation as an appellant to the Surviving Spouse Appeal.

4. TRB will take the following actions with respect to her Spousal Claims:

(a) Within ten (10) days of a final appellate court decision in the Surviving Spouse Appeal establishing that TRB is or is not Decedent's surviving spouse, TRB will withdraw and/or dismiss with prejudice her Spousal Claims and release the LSA from any and all claims she may have, as surviving spouse or otherwise.

(b) if in the Surviving Spouse Appeal, a final appellate court decision *fails to establish* TRB is or is not the Decedent's surviving spouse but, instead, remands the case to the lower court for further proceedings to determine whether TRB is the Decedent's surviving spouse, then, on remand, TRB and the LSA will join in a motion to bifurcate the issues so that the lower court first tries and/or rules upon the sole question whether TRB is the Decedent's surviving spouse. If a final lower court order, or, if appealed, a final appellate court decision, establishes TRB is the Decedent's surviving spouse, then before the lower court addresses and/or rules upon the remainder of TRB's Spousal Claims, TRB will immediately withdraw and/or dismiss with prejudice her Spousal Claims and release the LSA from any and all claims she may have, as surviving spouse or otherwise. An underlying foundation of this Settlement Agreement is that TRB will relinquish her Spousal Claims and will not pursue her Spousal Claims, regardless of how procedural matters ultimately develop in the trial or appellate court.

5. Within ten (10) days of the Settling Parties' execution of this Settlement Agreement, the Settling Parties will jointly seek a status conference with the lower court, at which the Settling Parties will announce this settlement to the Court, place the executed Settlement Agreement into the record, and submit to the lower court a proposed consent order of dismissal, dismissing the Undue Influence Claims with prejudice.

6. Within ten (10) days of a final order dismissing the Undue Influence Claims with prejudice (as described in the immediately preceding paragraph of this Settlement Agreement), the Settling Parties will jointly submit to the South Carolina Court of Appeals a Notice of Settlement and Withdrawal of LSA's Notice of Appeal, informing the Court the Settling Parties have reached a settlement, withdrawing the LSA's appeal of the Spousal Orders, and stating that the Brown Children, as the remaining appellants in the Spousal Appeal, are adequately represented and capable of asserting their appeal of the Spousal Orders in the LSA's absence as an appealing party. The Notice of Settlement and Withdrawal of Appeal will include this executed Settlement Agreement as an Exhibit.

7. Each signatory to this Settlement Agreement hereby warrants that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her client, has explained this

settlement to his or her client, and that his or her client fully understands and agrees, by the respective signature, to be bound by all terms set forth herein.

[Signature pages to follow]

By signing below, I hereby bind my client to this Settlement Agreement:

John F. Beach

John F. Beach, Bar No. 595
Lyndey Ritz Zwingelberg, Bar No. 11506
Adams and Reese LLP
1501 Main Street, 5th Floor
Columbia, South Carolina 29201
Telephone: (803) 254-4190

March 8, 2017

Attorneys for David C. Sojourner, Jr., Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of the James Brown Irrevocable Trust, w/a/d August 1, 2000

By signing below, I hereby bind my client to this Settlement Agreement:



David Black
Freddie L. Kingsmore, Jr.
Nexsen Pruet LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
Telephone: (803) 771-8900

*Attorneys for Russell L. Bauknight, Personal Representative
of the Estate of James Brown and Trustee of the
James Brown Irrevocable Trust, u/a/d August 1, 2000*

By signing below, I hereby bind my client to this Settlement Agreement:



Robert N. Rosen, Bar No. 4918
Erin C. Casey, Bar No. 101935
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston SC 29401
Telephone: (843) 377-1700

S. Alan Medlin
1713 Phelps Street
Columbia SC 29205
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T. Heyward Carter, Jr.
Andrew W. Chandler
M. Jean Lee
Evans, Carter, Kunes & Bennett
115 Church Street
Charleston, SC 29401

David L. Michel
Michel Law Firm, LLC
192 East Bay Street, Suite 202
Charleston, SC 29401

Arnold S. Goodstein
Goodstein Law Firm, LLC
P.O. Box 2350
Summerville, SC 29484-2350

Attorneys for Tommie Rae Brown

) IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4906

7-0000000000

**DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION TO ALTER, AMEND,
RECONSIDER AND/OR VACATE
ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AS TO COUNTERCLAIMS**

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TO: PLAINTIFFS AND THEIR COUNSEL, SWEENEY, WINGATE AND BARROW, P.C.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope") will move pursuant to Rules 52 and 59(e), SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order vacating altering or amending the ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS of the Honorable Doyet A. Early, III ("Jg. Early"), dated June 23, 2017 and filed July 8, 2017, a copy of which is attached hereto as Exhibit A (the "Summary Judgment Order"). Notice of entry of the signed order was received on July 10, 2017.

SUMMARY OF RELIEF REQUESTED

For the reasons set forth in the Answer and Counterclaim of Defendant and Robert L. Buchanan, Jr. ("Buchanan") herein, and based on the Affidavit of Wm. Jeffrey Smith; the depositions on file in this Case; the depositions, affidavits and admissions of Buchanan, Plaintiffs and Defendants in other James Brown Cases, and of Plaintiffs' and Defendant's designated experts in this case taken in other James Brown cases, of which the Court is requested to take mandatory judicial notice under Rule 201 SCRE, Defendant respectfully requests that the Court void, alter and/or amend its Order dated January 7, 2014 by directing the following:

1. Voiding the Summary Judgment Order as violating Rule 56 SCRCP, the U. S. and South Carolina Constitutions; and other applicable case and statutory law.
2. Ruling that the Wingate Suit is illegal and that, through the Wingate Suit, the State/Attorney General, the James Brown Legacy Trust ("McMaster Legacy Trust") and Russell L. Bauknight ("Bauknight") acting "on behalf of the Attorney General of

South Carolina," through the Summary Judgment Order, the Rule 21 Dismissal Order, and other others procured by the State/AG and its agents, have, with intent to damage Robert Buchanan, Jr. ("Buchanan") and Defendant, continuously violated the Due Process, First Amendment and FOIA Rights of Buchanan and Defendant; their statutory FOIA rights; and their right to be paid under their valid, court-approved contract with Plaintiff Estate/2000 Trust of James Brown.

3. Ruling that neither the Attorney General nor any other Plaintiff is entitled to Summary Judgment as to any Counterclaim because, when viewed under the Rule 56 standard, the facts, admissions and reasonable inferences therefrom show that Defendant is entitled to judgment and damages, including special damages, against each Plaintiff as to abuse of process; civil conspiracy; intentional interference with contract; fraud under Section 62-1-106; and attorneys' fees.

4. Ruling that, under the Rule 56 standard, the 2012 "settlement" with Buchanan is void because the Attorney General violated his statutory duty, through Bauknight, by using James Brown's charitable funds to pay \$500,000 to Buchanan to settle Buchanan's valid counterclaims against Tomirae, Terry Brown and the Levenson Will/2000 Trust contestants.

5. Ruling that, in addition, the Buchanan "settlement" is void because it was unconscionable, and a violation of his duty to The James Brown "I Feel Good" Charity for the Attorney General to secretly force Buchanan NOT to file a petition for Rehearing in *Wilson v. Dallas*; fail to advise the Supreme Court of his unconscionable and improper requirement; then try to make it appear to the Supreme Court that Buchanan did no support Defendant's effort to save The James Brown "I Feel Good" Charity.

6. Ruling that Defendant (and Buchanan) are not estopped to recover damages from all Plaintiffs by *Wilson v. Dallas*, and the Honorable Doyet A. Early, III, has so ruled as to Buchanan after *Wilson* on October 12, 2013.

7. Ruling that because former Attorney General Henry McMaster, now Governor of South Carolina ("Governor McMaster") has confirmed under oath in this case (the "Wingate Suit") that he did not authorize Wingate Firm to name the Attorney General as a Wingate Suit Plaintiff; did not authorize Bauknight to act on behalf of the Attorney General in the Wingate Suit; and did not know this had happened until he left office in January 2011, the Wingate Suit has been illegal for the entire seven years it has been viciously pursued to damage Buchanan and Pope's careers and reputations for the private benefit of the Attorney General and Tomirae.

8. Ruling that Attorney General Alan Wilson's January 2011 authorization to continue the Wingate Suit did not make the illegal Wingate Suit legitimate because

the State/Attorney General did not sign the Wingate Special Counsel Litigation Retention Agreement; there has never been a written authorization for the Wingate Firm or Bauknight to act on behalf of the State/Attorney General; and such authorization, if it existed, would violated Due Process and the Separation of Powers Clause by allowing the private Wingate Firm to serve the interests of non-resident Tomirae while serving the State; and by paying 10% of the legal fee to the Attorney General where he had improperly delegated control of the Wingate Suit to a private law firm.

6. Finding that, under Rule 56, the Attorney General is responsible, with Tomirae and James B, for the 7-year malicious, false assault on Buchanan's and Defendant's reputations and careers because the Attorney General and Tomirae, through their 75% voting control of the James Brown Legacy Trust ("McMaster Legacy Trust") have had individual control of the Wingate Suit for 7 years, and the Attorney General, at all times, has had the right to remove and replace Bauknight as Trustee of the McMaster Legacy Trust.

7. Finding that the McMaster Legacy Trust, the primary vehicle to carry out the Attorney General's and Tomirae's plan to secure James Brown's assets and allow Tomirae to siphon off copyright royalties belonging to James Brown's "I Feel Good" Charity, cannot escape liability or obtain Summary Judgment by claiming it does not exist.

8. Finding that Attorney General McMaster, Tomirae and Bauknight, if the McMaster Legacy Trust has dissolved, have dissolved it improperly and are liable as the real parties in interest.

9. Finding, under Rule 56 analysis, that the Levenson Will/Trust contestants are liable as to all counterclaims because they joined the Attorney General, Bauknight and Tomirae in their scheme to damage Buchanan and Defendant with actual knowledge that Buchanan and Defendant has carefully and effectively protected James Brown's noble estate plan, which was valid, and its 900 copyrights; that Tomirae was not Brown's spouse, and had no rights under the Federal Copyright Act Termination Rights provisions; that James Brown's assets were worth \$100 Million or more when he died; and that the McMaster settlement deal, if Bauknight had not improperly devalued assets and overstated deductions by \$5 Million in IRS filings, would have generated millions of dollars in estate, excise and income taxes if it had not been voided by the Supreme Court.

10. Finding under Rule 56 analysis that continuation of the Wingate Suit from and after March 2013, when Attorney General Wilson, Solicitor General Robert Cook, and former Chief Deputy John McIntosh obtained actual and unmistakable correct evidence of Bauknight's false IRS filings; ill-gotten estate tax "refund"; and

the use by the Attorney General of the fabricated \$4.7 Million "appraisal" and ill-gotten refund to damage Buchanan and Defendant in Supreme Court filings, has caused Defendant extraordinary injury as contemplated in §62-1-106 and provided millions of dollars of undeserved benefits to Plaintiffs and their attorneys.

11. Finding that the State's highest legal officer has, since 2011, publicly and falsely accused Buchanan and Defendant of the federal felony of overstating James Brown's assets by \$79 Million in order to secure a \$5 Million commission on a \$5 Million estate, with knowledge of the falsity of the claim, and has recklessly allowed Bauknight to make the same known false claim on behalf of the Attorney General.

12. Finding under Rule 56 that the Attorney General has had knowledge since 2011 that David Bell, Esq. and his clients posted the false GRAMMY withdrawal claim noted by the Supreme Court; that Levenson was present when the GRAMMY was properly withdrawn without penalty; but the Attorney General has knowingly endorsed the known false claim to damage Buchanan and Defendant.

13. Finding under Rule 56 analysis that Defendant is not estopped to pursue her claim by Wilson v. Dallas, 743 S.E.2d 746 (2013); the Status Report of Judge Early or the June 10, 2015 Orders, and that all demonstrate how the 7+-year fraud on the IRS and the Courts under §62-1-106 by Plaintiffs has injured Defendant and benefitted Plaintiffs.

14. Finding that the Attorney General, in defiance of Wilson v. Dallas, has continued, with Tomirae and the McMaster Legacy Trust, through Bauknight, to damage Defendant while praising Bauknight, who has wasted millions of dollars while allowing Tomirae to siphon off \$1 Million and attempt to take part of the American royalties from 90 of The James Brown "I Feel Good" Charity's 900 between 2015 and 2023.

15. Finding that concealing the 2010 Wingate Litigation Agreement, which was not signed by most Wingate Suit Plaintiffs, but by Bauknight and lawyers seeking \$10 Million in legal fees if they could stop the Wilson appeal by making Buchanan and Defendant appear to be incompetent, malicious and greedy, is clear evidence under Rule 56 that Summary Judgment as to Defendant's counterclaims should be denied.

16. Finding that all Plaintiffs admit they had knowledge on May 19, 2010 that James Brown, by his extraordinary talent and hard work, had amassed millions of dollars he intended for scholarships for needy students through his "I Feel Good" Charity; generous additional gifts for certain claimed children and grandchildren; and decades of additional benefits for all of his children and grandchildren from Termination Rights to some of his American copyright royalties under the Federal

Copyright Act, but that, despite this knowledge, Plaintiffs brought this suit to damage and discredit fiduciaries protecting Brown's estate plan from being dismembered by the alliance of the Attorney General and Tomirae for their personal gain.

17. Finding that, under Rule 56 analysis, the Attorney General, Levenson clients, and Terry, knew before filing the Wingate Suit that Tomirae's and Bauknight's proposal to value Brown's Right of Publicity at zero; devalue his Tangible Personal Property to less than \$500,000; and overstate his deductions in IRS filings by \$5 Million; then discredit Buchanan and Pope in known false court filings using an ill-gotten IRS "refund" was improper, but nevertheless joined in the conspiracy for their own gain.

18. Finding that under the Rule 56 analysis, the Attorney General's, Legacy Trust's and Tomirae's 6-year evasion of both FOIA and discovery, including by false statements to the FOIA courts, to prevent release of public documents showing Bauknight's fabricated \$4.7 Million devaluation and that before Tomirae met James Brown she was married, living in Texas with her husband; and though she might be pregnant; and further showing that after James Brown discovered his ceremony with Tomirae was bigamous, she begged him to marry her, demonstrate that all have unclean hands and are not entitled to any equitable relief by way of summary judgment.

19. Finding under rule 56 that Terry and the Levenson clients knew, and know, that Tomirae's Federal Copyright Act Termination Rights claims were baseless, but conspired with her, and joined in known false statements to the Court, to damage Buchanan and Defendant.

20. Finding that Plaintiff is not estopped by Wilson v. Dallas to assert her counterclaims herein; that the issues in the Wingate Suit were not ruled on by the Supreme Court; but that the dicta is the result of Plaintiffs' – especially the Attorney General's – known false, public denunciations of Buchanan and Pope based on their own improper filings with the IRS and Courts.

21. Finding that the footnote related to 3:08-cv-00014-WOB is both incorrect and misleading; that in 2012 Forlando, at his own request, dropped his fabricated lawsuit to enjoin James Brown's 2000 Trust until felon David Cannon and Albert Dallas were reinstated as Trustees; that Judge Early found in 2008 that the Forlando suit impaired Brown's 2000 Trust; and the Court praised Buchanan's and Pope's service.

22. Finding that neither the 2000 Trust nor Buchanan and Pope recovered against Forlando for the high cost of Forlando's frivolous suit to reinstate Cannon

and Dallas because, with knowledge of its falsity, Bell and Forlando told the Court Forlando had no assets and no expectation of assets from the James Brown litigation unless his father died; and Bauknight -- for the 2000 Trust -- claimed under oath in 2013 that Forlando had done nothing wrong in trying to reinstate Cannon and Dallas.

23. Finding under Rule 56 that the Attorney General is not entitled to be dismissed as a party to this action, and for each and every reason stated herein, no Plaintiff is entitled to Summary Judgment as to any counterclaim of Defendant.

Whether Wingate Suit Illegal Should Be Decided Before Summary Judgment.

1. The Court overlooked or misapprehended that former Attorney General, now Governor, Henry McMaster ("Governor McMaster"), has stated under oath in 2016 that he did not authorize the Wingate Firm to bring the Wingate Suit in the name of the State/AG; did not authorize Bauknight to bring the Wingate Suit on behalf of the Attorney General; and did not know that as Attorney General he was named as a Plaintiff in the Wingate Suit until after leaving office in January 2011.

2. The Court overlooked or misapprehended that, under oath, both Solicitor General Robert Cook and former Chief Deputy John McIntosh have stated they lacked legal authority to authorize the Wingate Suit to be filed naming the State/Attorney General as a Plaintiff, and did not authorize it.

3. The Court overlooked or misapprehended that by 2013 Attorney General Alan Wilson was claiming in James Brown FOIA suits that the Attorney General did not have a contract, while the Attorney General's sole lawyers in the Wingate Suit, the Wingate Firm, claimed that the contract was confidential.

4. The Court overlooked or misapprehended that 23 - 40% Wingate

Contingency Agreement, when released after *Wilson v. Dallas* in 2013 revealed that it was not signed by the State/Attorney General or by most Plaintiffs, but by Bauknight and attorneys seeking about \$10 Million in legal fees if they could stop the appeal which became *Wilson v. Dallas*.

The Attorney General's Role in the Wingate Suit is Unique & Unconstitutional

5. The Court overlooked and misapprehended that the Wingate Suit is unique in the nation because it is the only known tort suit brought by an Attorney General against his own citizens for the benefit of nonresidents (Tomirae and others); without the Attorney General participating as an attorney; and in which the Attorney General shares a single, private lawfirm with out-of-state residents, including minors without a GAL.

6. The Court overlooked or misapprehended that the Attorney General in alliance with Tomirae, has, for seven years violated Defendant's Due Process rights under the U.S. and State Constitutions, and the S.C. Constitution Separation of Powers clause by placing the mighty power of the State/Attorney General in the hands of a private attorney to damage a citizen of South Carolina for the benefit of Tomirae and the Attorney General.

7. The Court overlooked or misapprehended that the Attorney General Alan Wilson has testified under oath in 2017 that he authorized the Wingate Suit, even though he knows nothing personally about James Brown, the "I Feel Good" Charity or the James Brown Legacy Trust ("McMaster Legacy Trust") over which he and Tomirae have had 75% voting control since 2011.

8. The Court overlooked or misapprehended that for four years after he told the South Carolina Supreme Court that he was seeking to get out of the Wingate Suit the AG, Tomirae, the McMaster Legacy Trust and Bauknight and his agent vigorously pursued the Wingate Suit, continuing the damage to Pope, including the known false claim that Pope and Bauknight committed the federal felony of overstating Brown's assets by \$79 Million to obtain a \$5 Million commission on a \$5 Million estate.

9. The Court overlooked or misapprehended that not only did the Attorney General and Bauknight as his agent vigorously pursue the Wingate Suit, but sought to evade compliance with FOIA by transferring all James Brown FOIA cases to Richland County; consolidating them with discovery in the Wingate Suit; and leaving them mired in stagnant discovery in this multi-million-dollar tort suit.

10. The Court overlooked or misapprehended that the purpose of the Attorney General's FOIA actions, like the scheme he is carrying out with Tomirae in the Wingate Suit, is to damage Buchanan and Pope so they appear greedy and unreliable, and to hide documents, which show: Bauknight's \$4.7 Million value was fabricated to damage Buchanan and Pope; Tomirae has admitted she was not Brown's spouse, and begged him to marry her; David Bell was part of the Wingate Suit when he planted the false Grammy claim; and the State/Attorney General and most clients did not sign the improper Wingate Agreement.

11. The Court overlooked or misapprehended that since March 2013 the Attorney General and Bauknight have spent millions of dollars James Brown gave his "I

Feel Good" Charity to continue the conspiracy to demean, damage and discredit Buchanan and Pope; prevent proper discovery; and allow Tomirae to siphon off royalties from copyrights James Brown gave his "I Feel Good" charity.

12. The Court overlooked or misapprehended that since March 6, 2013 when he met with Pope, the Attorney General has had actual knowledge of the damage the Wingate Suit is doing to her, while also damaging the "I Feel Good" Charity, by concealing documents which show Bauknight's \$5 Million overstatement of James Brown's debts in IRS estate tax filings, and use **by the Attorney General** of Bauknight's IRS "refund" resulting from the overstatement to damage Defendant; pay \$700,000 to the lawyer and GAL for Tomirae's son; and pay millions of dollars to Bauknight's attorneys who are not protecting James Brown's copyrights.

13. The Court overlooked or misapprehended that this Case, the Wingate Suit, is the only suit of its kind within the State of South Carolina, and perhaps the nation where a State Attorney General has sued a private citizen of his State in a tort suit; sharing with non-residents of the State (Tomirae, Terry Brown and the Levenson clients) a single, private law firm (the "Wingate Firm"); the law firm works for the benefit of the non-residents and the Attorney General; there is no written contract with the State/Attorney General; the Attorney General is not a lawyer in the case, and claims he does not control the litigation.

14. The Court overlooked or misapprehended that this Court lacks jurisdiction, and it would be manifestly unjust, to grant any relief to the State/Attorney General where the Attorney General who commenced the litigation with Tomirae and others did not sign

a valid Litigation Retention Agreement with the Wingate Firm and has asserted under oath that he did not authorize the Wingate Firm to bring the Wingate Suit with the Attorney General as a Plaintiff; did not authorize Bauknight to sue Buchanan and Pope on behalf of the State/Attorney General; and did not know he , as Attorney General, was named as a Plaintiff until after leaving office in January 2011.

15. The Court overlooked or misapprehended that that the current Attorney General ("Attorney General Wilson") could not make the illegal and unconstitutional Wingate Suit legal in 2011 by authorizing its continuation where the question of the legality of the lawsuit was before the Court of Appeals at the time and Attorney General obtained dismissal of the question as premature.

16. The Court overlooked or misapprehended that the issue of the legality of The Wingate Suit is squarely before the Circuit Court at this time; is ripe; and should be addressed before any relief is granted to the Attorney General, Bauknight as the Attorney General's claimed agent, or the McMaster Legacy Trust.

The McMaster Legacy Trust's Claim Not to Exist Precludes Summary Judgment

17. The Court overlooked or misapprehended that the James Brown Legacy Trust ("McMaster Legacy Trust") was created by Governor McMaster, Tomirae and others by January 2009, and that Tomirae and the Attorney General have had voting control over the McMaster Legacy Trust for more than seven years.

18. The Court overlooked or misapprehended that, in addition, the Attorney General exercises further control over the McMaster Legacy Trust with an absolute right

to remove and replace Bauknight, its trustee.

19. The Court overlooked or misapprehended that while vigorously pursuing the Wingate Suit and evading FOIA compliance since the *Wilson v. Dallas* decision in 2013, the McMaster Legacy Trust had claimed it does not exist.

20. The Court overlooked or misapprehended that Tomirae's agents have vigorously claimed that the McMaster Legacy Trust does exist and that Bauknight should be knighted.

21. The Court overlooked or misapprehended that Judge Early has ruled, however, that the McMaster Legacy Trust does not exist, which ruling is on appeal.

22. The Court overlooked or misapprehended that, having granted the McMaster Legacy Trust a favorable (albeit appealed) ruling that it does not exist, and is not subject to FOIA, it would be manifestly unjust for the Court to allow the McMaster Legacy Trust to pursue, for the 75% personal benefit of Tomirae and the Attorney General, summary judgment where Buchanan and Pope owed no duty to Tomirae ever and she and the McMaster Legacy Trust brought this suit to damage them.

The Undisputed Evidence Before the Court is that Buchanan and Pope Properly Valued James Brown's Music Empire at \$99 Million Less the \$15 Million TIAA Debt, and that the McMaster settlement deal, if properly reported and not voided by the Supreme Court, would have generated millions of dollars in estate, excise and income tax payable by James Brown's estate.

23. The Court overlooked or misapprehended the on August 10, 2008 the Attorney General brokered the settlement deal which would put the Attorney General and Tomirae, through Bauknight, in 75% control of James Brown's assets until May 8, 2013.

24. The court overlooked that the following month Buchanan and Pope filed James Brown's Estate Tax Return, properly reporting Brown's the Schedule F assets, Brown's 900 Copyrights, Royalties, Business Claims, Tangible Personal Property (except jewelry); 45 boxes of unpublished work and other music memorabilia; and other miscellaneous assets (the "Music Empire") at \$84 Million.

25. The Court overlooked that the \$84 Million was based, in part, on a formula presented to Judge Early to which the Attorney General and others made no objection, and before and since has been shown by expert and lay testimony to be reasonable.

26. The Court overlooked or misapprehended that the Attorney General's and other Plaintiffs' expert testified in 2017 that \$45 Million to \$60 Million was not inappropriate for the value of the 900 copyrights alone, at Brown's death. Termination Rights expert Roger Miller said in his deposition this year:

Q. Right, so but buy low is still essential to the concept, right?

A. [Miller] When possible.

Q. Right.

A. But, in my experience, if you want to buy this type of high quality content, you are often, more so than not, a price taker, not a price maker in the market.

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. Solid gold.

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And later:

Q. And there is nothing second [sic.] secret about your opinion that James

Brown's is a solid gold catalog?

A. No. I think anybody would agree.

Q. Okay.

A. Who is familiar with the work.

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?
[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5. My firm originated in 2006 and we were the only ones who remained, everybody else was later consolidated. But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

27. The Court overlooked or misapprehended that in the McMaster settlement hearings Bauknight said he did not know the value of the James Brown assets, but had heard \$80 Million.

28. The Court overlooked or misapprehended that both Pope and expert Harley Ruff, Esq. testified that the McMaster Deal would result in millions of dollars of estate, excise and income taxes, and the Attorney General's only response was to give Judge Early the resume of about five tax experts, none of whom would testify.

29. The Court overlooked or misapprehended that two months after Judge Early approved the McMaster deal, in August 2009, Tomirae's lawyer proposed to the Attorney General and Bauknight to devalue Brown's copyrights to about 8 times multiples (\$24 Million) and to value Brown's Right of Publicity at zero in order to discredit Buchanan and Pope.

30. The Court overlooked or misapprehended that in August 2010 the Attorney General told the Appellate Court an appraisal to arrive in a few weeks would show Brown's assets at less than \$12 Million.

31. The Court overlooked that the PBW "appraisal" did arrive in September 2010, but was kept secret from the Supreme Court until May, 2011, eight months later, after the record was closed.

32. The Court overlooked or misapprehended that, with the PBW appraisal in hand, in December 2010 the Attorney General and others told the Court in their Initial Brief that Tomirae's Termination Rights were valuable but they did not have the means available to determine the value.

33. The Court overlooked or misapprehended that at the same time, Bauknight, with the blessing of the Attorney General, told the IRS that Brown's 900 Copyrights were worth \$23.7 Million; Brown's Publicity Rights were worth zero; Brown's

Tangible Personal Property was worth zero; Brown's claims against Cannon and others for the \$17 Million Cannon took from funds Brown gave his "I Feel Good" Charity was worth zero; and that other miscellaneous assets were worth zero.

34. The Court overlooked that by the above devaluation, including a \$3 Million hidden overstatement of Brown's TIAA debt to \$19 Million and an overstatement of Brown's charitable deduction from \$.8 Million to \$2.8 Million, Bauknight obtained an ill-gotten "refund" from the IRS.

35. The Court overlooked or misapprehended that the following month, David Bell, planted a false Grammy story on the website of lawyer Robert Potter, Esq., without Potter's knowledge.

36. In May 2011, after the record was closed, the Attorney General, Levenson and Bell - despite repeated public statements of their own clients to the contrary - moved to supplement the *Wilson* record with the claim that the IRS has "agreed" that Brown's music empire was worth \$4.7 Million when he died, and that Buchanan and Pope had intentionally overstated the value of James Brown's assets by \$79 Million in sworn IRS filings to obtain a \$5 Million commission on a \$5 Million estate.

37. The false GRAMMY claim and the ill-gotten "refund" would be central to the false claim by the Attorney General and Bauknight, as the Attorney General's agent, for the next six years that Buchanan and Pope had committed the federal felony of overstating Brown's asset by \$79 Million to obtain a \$5 Million commission.

38. With knowledge from their own experts of its falsity, the Attorney General and Bauknight claimed to multiple courts that there was no market for the James Brown assets. In 2013 Bauknight said in his deposition in the Forlando Suit:

Page 62

17 Q: Have you ever seen any court documents from
18 Aiken County regarding a formula to value the
19 royalties of James Brown's works?

20 A: A formula?

21 Q: A formula approved by the court for ---

22 A: Approved by the court.

23 Q: Yes, sir.

24 A: I've heard discussion of people -- I want to

25 say Adele Pope had some kind of testimony

Page 63

1 somewhere, but I don't know where I've seen it,
2 where people were talking with -- talking about
3 some kind of formula for valuing royalties.
4 But approved by the court, I'm not familiar
5 with that. And frankly, that wouldn't matter
6 to the IRS anyway. The IRS is going to use the
7 values that they choose and can substantiate as
8 appropriate for their purposes.

Page 69

22 Q: What about the Terry Brown letter of interest,
23 slash, offer in the spring of 2008, prior to
24 the Christie's auction? An offer ---

25 A: You'll have to show it to me to understand what

Page 70

1 you're talking about.

2 Q: That doesn't ring a bell to you?

3 A: No. I wasn't aware that anybody else had ever
4 offered to buy any assets, not that anybody has
5 ever offered to buy assets. But the only one
6 I've ever heard referred to by Pope is this
7 supposed offer from Terry Cox which never was
8 an offer. She put \$100 million out there so
9 she could collect a \$5 million claim which
10 she's filed. Purely self-serving. Purely self-
11 serving. Selling assets of the estate to take
12 money for herself and leave it insolvent.
13 Purely self-serving. I'm sorry. I get carried
14 away. I get passionate about something I'm
15 working on when I see such wrong doing.

And in 2017, Bauknight testified at his deposition in Aiken Case No. 2013-CP-02-1337:

10 RESUMING EXAMINATION

11 BY MS. POPE:

12 **Q. Is there any reason why you didn't designate**
13 **anyone at Philpott Ball as an expert in this case?**

14 A. I designated experts based on advice of my
15 attorneys.

16 **Q. So you don't know why someone in Philpott Ball was**
17 **this not designated?**

18 A. I don't know.

19 **Q. And Philpott Ball is the firm that valued James**
20 **Brown's music empire at less than 4.7 million as**
21 **of the date of his death?**

22 A. I don't agree with your term "empire." I don't
23 know where you came up with that, but the
24 intellectual property of the estate and trust of
25 James Brown was valued by Philpott Ball and

Page 38

1 Werner.

2 **Q. Well, actually, Mr. Bauknight, isn't the Schedule**
3 **F not simply the intellectual property, but the**
4 **entire music empire?**

5 A. I'm not sure what you're referring to at Schedule
6 F and if you'd let me, please, before you

7 interrupt, I'd like to finish my answers. You're
8 starting to speak before I finish.
9 **Q. Oh, I certainly want you to finish. Please let's**
10 **do not speak over each other. Do you believe that**
11 **James Brown had a music empire?**
12 A. I believe James Brown had intellectual property.
13 I don't understand what you mean by empire.

Page 58

9 **Q. Now, am I correct that you valued Mr. Brown's**
10 **intellectual property in filings with the IRS at**
11 **less than 4.7 million as of his date of death?**
12 A. It was -- well, number one, I did not value it.
13 That was the investment banking firm of Philpott
14 Ball and Werner that prepared the professional
15 valuation of the IP of James Brown. I reported
16 that value to the Internal Revenue Service. That
17 value was examined by the service at the agent
18 level, was reviewed by the agent's manager. That
19 was forwarded to the national office of the
20 Internal Revenue Service and the Internal Revenue
21 Service national office brought in the royalty
22 engineers, as they called them, which are the
23 royalty experts, who spoke directly with my
24 investment banking firm of Philpott Ball and
25 Werner...

Summary Judgment is Premature Because Discovery is Ongoing.

39. The Court overlooked or misapprehended that the Court should not have granted summary judgment because, through no fault of Defendant, discovery is not complete.

The State/Attorney General and Others Have Abused and Delayed Discovery

40. The court overlooked and misapprehended that in the 7 years since the Attorney General filed this lawsuit for the purpose of destroying the reputations and

careers of Buchanan and Pope the mighty power of the State has been placed in service of the McMaster Legacy Trust both prior to, and since, *Wilson v. Dallas*.

41. The Court overlooked or misapprehended that, contrary to the report of this Court to the South Carolina Supreme Court in 2015, Tomirae and the Levenson clients announced in open court on May 29, 2013 their intention to reinstate the McMaster Settlement deal which dismembered James Brown's "I Feel Good" Charity and unnecessarily threatened its 900 copyrights based on false IRS documents and false claims about James Brown's heirs and the Federal Copyright Act Termination Rights provisions.

42. The Court overlooked or misapprehended that Solicitor General Robert Cook admits that in March 2013 Defendant advised the Attorney General personally of the damage his alliance with Tomirae and the false statement being made by Bauknight to the IRS were causing the "I Feel Good" Charity, the Attorney General has worked vigorously since May 9, 2013 to reinstate the McMaster settlement deal, retake control of the James Brown "I Feel Good" Charity and allow Tomirae to siphon off benefits from Brown's "I Feel Good" Charity to which she is not entitled.

43. The Court overlooked or misapprehended that the Attorney General, despite his claims to the Supreme Court, has allowed Bauknight to continue his false, vitriolic attacks to damage Buchanan and Pope, even though he knows they are based on intentional misstatements by Bauknight to the IRS and Courts, and had continued to evade discovery of the public documents which show:

1. Tomirae was not Brown's spouse, and knew it. [Handwritten admission, public since 2007.]

2. Bauknight's \$4.7 Million "appraisal" (Based on known false understatements of assets and overstatements of debts).
3. The Wingate Suit is illegal and was never properly authorized (Wingate Agreement).
4. The Legacy Trust was amended and Forlando became the real party in interest the same month Bell planted the false Grammy claim (January 2011).

44. The Court overlooked or misapprehended that, with the blessing of the Attorney General, Bauknight's false, vitriolic attacks intended to advance the McMaster settlement deal became even more vitriolic after June 10, 2013 when, at the request of Levenson, Tomirae and Bauknight, Judge Early banned Buchanan and Pope from participation in Aiken County James Brown cases while the Honorable L. Casey Manning, at the request of the Attorney General and Tomirae, stayed all discovery and FOIA hearings for three years.

45. The Court overlooked or misapprehended that Bauknight, after Buchanan and Pope were banned from participation in all Aiken cases except their own claims -- even repeated his \$3 Million overstatement of the TIAA debt, and made extraordinary, vitriolic false claims in his depositions in the Forlando Suit, Aiken 2013-CP-02-1337 and elsewhere.

46. The Court overlooked or misapprehended that the discovery abuse and Attorney General's condoning of Bauknight's and Tomirae's false claims to benefit their position in this case hit their mark in 2015 when Judge Early determined Tomirae to be

Brown's spouse without anyone proffering her handwritten admissions she was not Brown's spouse, then reported to the Supreme Court: that the heirs had been properly determined; that the Court had heard no suggestion of any settlement; and that the Court believed Pope was seeking a \$5 Million commission.

47. The Court overlooked or misapprehended that the Court's ruling that the Attorney General could not be deposed in this case gave the State/ Attorney General, Tomirae and the Legacy Trust an improper advantage over Defendant in her counterclaims, and should be reconsidered and rescinded before any hearing on the merits.

48. The Court overlooked or misapprehended that since 2011 the Attorney General, Legacy Trust and Bauknight have tried to create a FOIA graveyard of the Wingate Suit, in order to cover up the material misstatements they have made (or condoned) to the IRS and Courts, as is shown by the James Brown matters now pending in the Court of Appeals.

Collateral Estoppel Does Not Bar Defendant's Counterclaims.

49. The Court overlooked or misapprehended that collateral estoppel based on the 2013 *Wilson v. Dallas* decision is not available to Plaintiffs in their attempt to avoid liability to Defendant (and Buchanan if the motion to void his improper "settlement" is reversed) because none of the elements is met; the issue of plaintiffs' conspiracy to damage and discredit Plaintiffs as incompetent and greedy through a scheme to devalue James Brown's assets and making false statements to both the IRS and the Courts, so that

the Courts would not believe Buchanan's and Plaintiff's reasonable opposition to the McMaster deal was not "actually litigated" in Wilson v. Dallas. In fact, the Supreme Court denied the post-record attempt of some Plaintiffs to ask the Court to consider the fabricated \$4.7 Million value and the resulting, ill-gotten "refund", but the Court refused to do so on August 1, 2011. See Carolina Renewal, Inc. v. S. Carolina dep't of Transp., 385 S.C. 550, 554, 684 S.E. 2d 779, 782 (Ct. App. 2009).

50. The Court overlooked or misapprehended that the propriety of Plaintiffs' false claim that James Brown's \$84 Million Music Empire was worth only \$4.7 Million, and the ill-gotten "refund" resulting from Bauknight's \$5 Million overstatement of debts to the IRS (\$3 Million of which was concealed within the PBW "appraisal"), was neither " (1) actually litigated in the prior action"; nor " (2) directly determined by the prior action;" nor (3) "necessary to support " the judgment in Wilson v. Dallas , confirming that Estoppel is unavailable to Plaintiffs under Carolina.

51. The Court overlooked or misapprehended that that the Supreme Court's decision to support Judge Early's replacement of Pope was not a ruling on the value of their services because the only cause for their 2009 removal within the record was their failure to support and sign a settlement the Supreme Court found was void, and had dismembered James Brown's noble estate plan.

52. The Court overlooked or misapprehended that Judge Early's Order which was upheld with respect to the replacement of Buchanan and Pope specifically held that the removal was NOT for cause, and that any for-cause hearing was held in abeyance.

53. The Court overlooked or misapprehended that the dicta in Wilson v. Dallas is,

however, evidence of the success of the Attorney General, Tomirae and Bell had in making Buchanan and Pope appear greedy, vitriolic and incompetent by planting the false GRAMMY claim; making the false claim in an unsuccessful motion to supplement the record on appeal that Buchanan and Pope wanted a \$5 Million commission from Brown's \$5 Million estate; and other false statements, such as were made by Bauknight's counsel to the media the day before oral argument, in an effort to damage the careers and reputations of Buchanan and Pope with false claims both to the IRS and the Courts.

54. The Court overlooked or misapprehended that the issue of whether the Grammy sale was appropriate did not meet any of the three criteria for collateral estoppel in Wilson v. Dallas, and was, in fact, a direct result of the damage done to Buchanan and Plaintiff by Bell, a signatory on the Wingate Litigation Retention Agreement, who planted the false claim in 2011 to advance the Wingate Suit in the hope of reaping millions in legal fees by discrediting them with the false Grammy claim.

55. The Court overlooked or misapprehended that had the GRAMMY issue been litigated, the Court would know that Robert Potter, lauded for "halting" the GRAMMY sale, did not halt the GRAMMY sale; that the Attorney General had actually asked the Court to approve the sale when Albert Dallas and Forlando tried to stop it; that Judge Early had specifically directed Buchanan and Pope to sign the contract listing the GRAMMY; that the sale, as confirmed by Christie's counsel in Levenson's presence, was perfectly legal; that Johnny Cash, Stevie wonder and others have sold GRAMMYS; that at least one Federal Bankruptcy Court has been involved in a GRAMMY sale issue; and that the GRAMMY was appropriately entered and appropriately withdrawn to avoid legal defense costs.

56. The Court overlooked or misapprehended that if the GRAMMY issue had been litigated, the record would have shown that the GRAMMY was valued at \$15,000 - \$20,000 by Christie's ; was valued by Bauknight at \$20,000 on its return; and that Bauknight told the IRS the year after its return that ALL of James Brown's thousands of items of Tangible Personal Property (including about 350 pieces sold for about \$800,000 at Christies) were worth less than \$200,000 when Brown died.

57. The Court overlooked or misapprehended that the Wingate Suit Plaintiffs, having agreed with and condoned Bauknight's intentional devaluation of Brown's GRAMMY to a value near zero, are estopped from claiming any loss.

58. The Court overlooked and misapprehended that the endorsement by the State's highest legal officer of false IRS filings and the use of those false filings in Supreme Court filings to damage the credibility of Buchanan and Pope so that the Attorney General and Tomirae could retain control of the James Brown assets and siphon off royalties belonging to The James Brown "I Feel Good" Charity caused, and continues to cause, great damage to Defendant and Buchanan.

59. The Court overlooked or misapprehended that the Supreme Court's decision to uphold Judge Early's decision to replace Buchanan and Pope did not in any way adjudicate the value of their services, and the issue of entitlement to fees and commissions was specifically remanded.

60. The Court overlooked or misapprehended that the State/AG and the Court violated Defendant's Due Process and Equal Protection Rights under the U.S. and State Constitutions by Judge Early's granting Plaintiffs' motion for summary judgment after his

specific findings on October 12, 2013 that all of Buchanan's service was proper; no disgorgement under Wilson was appropriate; that Buchanan may retain all payments under his contract with James Brown's Estate/2000 Trust; and even that Buchanan may, under certain circumstances, make a claim in the Wingate Suit. [Transcript. 10/12/13, Buchanan claim], where all of Buchanan's and Pope's service was joint.

61. The Court overlooked or misapprehended that the Estoppel is not applicable, and that the State, including in the Summary Judgment Order, continues to deprive Defendant of a full and fair opportunity to be heard; to refute the false felony claim made by the Attorney General and Bauknight as the Attorney General's agent; and level playing field, to show that she has been continuously and improperly damaged by fraudulent State Action planned in 2009 and carried out in the Wingate Suit since May 2010.

62. The Court overlooked or misapprehended that the Court's Order punishes Plaintiff for daring to try to protect James Brown's "I Feel Good" Charity from improper State Action which was, and is, prejudicial to the administration of justice.

63. The Court overlooked or misapprehended that the Conspiracy and Fraud in this case were not to remove Buchanan and Pope, who had been removed, but to damage and discredit them, ruining their careers and credibility, so that the Courts would not believe their true lay and expert testimony that the McMaster settlement deal dismembered The James Brown "I Feel Good" Charity; threatened its 900 copyrights; threatened (if not voided) millions of dollars in estate and income taxes; and could only be justified by known false representations to the IRS and Courts.

**Judicial Estoppel Is Not Applicable Because Plaintiffs' Inconsistent Statements
Were Made to Mislead Both the IRS and the Courts.**

64. The Court overlooked or misapprehended that, even without discovery, there is abundant evidence that ALL Plaintiffs made, or allowed Bauknight to make on their behalf, inconsistent statement as part of an intentional effort to mislead the Court. See Cothran v. Brown, 357 S.C. 210, 592 S.E. 2d. 629 (2004).

65. The Court overlooked or misapprehended that the Court's finding that "Plaintiff's [sic] assertions were not made in an intentional effort to mislead the Court..." is a disputed factual finding which, under Rule 56 SCRPC must be read to support Defendant – namely that the assertions WERE made in an intentional effort to mislead the Court.

66. The Court overlooked or misapprehended that, as to both estoppel assertions, the Attorney General and all Plaintiffs are bound and estopped by their representations to the Court in 2010 that the causes of action in this Wingate Suit have nothing to do with Wilson v. Dallas.

67. The Court overlooked or misapprehended that, over Buchanan's and Plaintiff's objections, the Attorney General and other Plaintiffs' argued, and the Honorable L. Casey Manning agreed, that this Wingate Case is different from Wilson and the Aiken County James Brown cases.

68. The Court overlooked or misapprehended that, even if the criteria for estoppel were met – and they were not -- it is Plaintiffs who, having benefitted from the claim that Wilson v. Dallas bears no relation to the Wingate Suit, would be estopped to attempt to use dicta in that 2013 decision to defeat counterclaims in this 2010 suit.

Under Rule 56 Analysis Defendant is Entitled to Relief as to All Counterclaims.

A. Abuse of Process

69. The Court overlooked or misapprehended that as to each Plaintiff all of the elements of Abuse of Process have been met, namely (1) an ulterior purpose and (2) willful acts in the use of the process not proper to the conduct of the proceeding. *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551, 555-556 (2010).

70. The Court overlooked or misapprehended that the ulterior purpose was not to replace Buchanan and Pope, who had been replaced, but to use the mighty power of the State/Attorney General, through Bauknight and the McMaster Legacy Trust, to so damage their reputations and careers with false, fabricated accusations that they would be forced to abandon their duty to appeal a settlement which dismembered The James Brown "I Feel Good" Charity.

71. Having lost the appeal, the Attorney General, with personal knowledge that the claims are false, has continued this abusive lawsuit for more than four years for the same ulterior purpose, and with ever-increasing damages to Plaintiff.

72. The Court overlooked or misapprehended that the Court's "multiple specific examples in support of Mrs. Pope's removal" were not part of the record on appeal, but a direct and proximate result of the false statements made by the State's highest legal officer and Bauknight, acting as his agent, and do not meet the Rule 56 standard.

73. The Court overlooked or misapprehended that there was no legitimate purpose whatsoever for the State's highest legal officer, or Bauknight as his agent, to

attack, denigrate and falsely accuse Buchanan and Pope of the federal felony of overstating Brown's assets by \$79 Million where all Plaintiffs had actual knowledge that Bauknight was in the process of understating Brown's Right of Publicity by millions of dollars and overstating deductions available under the McMaster settlement by \$5 Million to make Buchanan and Pope appear greedy and incompetent.

74. The Court overlooked that the "willful" act element of Defendants' Abuse of Process claim was met by the State's highest legal officer, and the Constitutional Officer charged with the protection of charities allowing his agent Bauknight to intentionally understate the value of Brown's assets to the IRS; intentionally (and secretly) overstate Brown's deductions by \$5 Million; claims that Brown's music empire was worth only \$4.7 Million at his death; then accuse Defendant and Buchanan of the felony of overstating Brown's assets by \$79 Million to get a \$5 Million commission, all for the purpose of discrediting Buchanan and Pope so Plaintiffs could siphon off assets belonging to James Brown's "I Feel Good" Charity Buchanan and Pope were properly protecting.

75. The Court overlooked or misapprehended that the success of the Attorney General in planting a false felony claim against Buchanan and Pope, based on material misstatements to the IRS and a "refund," along with a fabricated Grammy claim against Buchanan and Pope cannot serve as "cause to demonstrate that Plaintiffs' pursuit of this action is not a willful act through which process has been misapplied or abused."

76. The Court overlooked or misapprehended that the sole, paramount or primary reason of the Attorney General and other Plaintiffs for bring the action was to discredit, demean and damage Buchanan to the extent that they could not credibly defend

against the Attorney General's and Tomirae's scheme, through Bauknight, to dismember James Brown's "I Feel Good" Charity and its 900 copyrights for personal gain.

77. The Court overlooked that what the Court characterizes as "various legitimate concerns" about Buchanan's and Pope's administration were not legitimate because all were based on the false, material IRS filings by Bauknight, and the Attorney General's and other Plaintiffs' reliance on those false filings, the ill-gotten "refund" and additional knowing false and material misstatements by the Attorney General and Bauknight to the Court about James Brown's heirs and the Federal Copyright Act.

78. The Court overlooked that in addition to the false IRS claims, Bauknight made the false representations to the Supreme Court that Tomirae was Brown's spouse; that she and her son controlled the Federal Copyright Act Rights; that Termination Rights were automatic, and the royalties to "Please, Please, Please" would go automatically 50% to Tomirae in 2012; or, if not to Tomirae, to the Levenson clients; and that Tomirae's elective share claim was a "slam dunk."

79. The Court overlooked or misapprehended that all of the Plaintiffs knew Bauknight's representations to the Supreme Court and Tomirae to be false and/or misleading; and that the only reason Tomirae received \$1 Million in payments for part of the "Please, Please, Please" royalties in 2015 was that David Sojourner, Esq. failed to protect the "I Feel Good" Trust's copyrights and Bauknight and Peter Afterman helped Tomirae siphon off royalties to which she was not entitled.

80. The Court overlooked or misapprehended that Tomirae's elective share claim, and claim to be Brown's spouse, were never a "slam dunk" until the Attorney

General arbitrarily decided to favor Tomirae and her son, and to aid them, through Bauknight, in siphoning off assets which belong to James Brown's charity.

81. The Court overlooked or misapprehended that by his own admission Bauknight has spent millions and millions of dollars to defeat Buchanan's and Pope's claims, and that Tomirae's lawyer has claimed he should be knighted.

82. The Court overlooked or misapprehended that the abuse of process continued after March 6, 2013, when Attorney General Wilson was told personally of Bauknight's tax fraud and a possible way to correct it without damaging James Brown's "I Feel Good" Charity or Bauknight.

83. The Court overlooked or misapprehended that the Attorney General and Solicitor General Robert Cook had actual knowledge on March 6, 2013, that Plaintiff was competent; not greedy; and acting to try to save the "I Feel Good" Charity, but, instead, elected to authorize Bauknight and the Wingate Firm to continue the false, malicious, vitriolic lawsuit by which the Attorney General and Tomirae seek to damage Defendant so they can retake the assets of James Brown's "I Feel Good" Charity.

B. All Plaintiffs Were Part of the Tomirae/Attorney General/ Bauknight Civil Conspiracy.

84. The Court overlooked or misapprehended that this actions is clearly "a combination of two or more persons joining for the purpose of causing special damage to the plaintiff." Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822 (Ct. App. 2011).

85. The Court overlooked that even without discovery, under the Rule 56 standard, Defendant has met all of the element of civil conspiracy necessary to recover.

Lyon v. Sinclair Refining Co. 189 S.C. 136, 200 S.E. 78 (1938), and the "essential consideration" that the "primary purpose or object of the combination is to injure the plaintiff." Lee v. Chesterfield General Hosp., Inc. 289 S.C. 6, 13, 344 S.E. 2d 378, 383 (Ct. App. 1986).

86. The Court overlooked or misapprehended that the dicta in Wilson v. Dallas, which was issued three years after the Wingate Suit was filed, and reflected the false, malicious felony claim the Attorney General was making against Buchanan and Pope could not establish good faith grounds for bringing the Wingate Suit in 2010.

87. The Court overlooked or misapprehended that in their depositions in Aiken County Case 2013-CP-02-1337 AG Sony Jones and AG Mary Frances Jowers can state no grounds for bringing the suit; Governor Henry McMaster has stated under oath that he did not bring the suit as Attorney General, and did not authorize Bauknight to bring it on his behalf as Attorney General; Attorney General Wilson knows nothing about the Suit; and most Plaintiffs knew nothing to support the Wingate Suit when it was filed.

88. The Court overlooked or misapprehended that the improper Wingate Litigation Agreement, signed not by the Plaintiffs but by Attorneys seeking \$10 Million in legal fees if they could stop the Wilson v. Dallas appeal, is, alone, substantial evidence that the primary purpose of the Wingate Suit was to injure Defendant and Buchanan.

89. The Court overlooked or misapprehended that there is no evidence that all of the Plaintiffs had either the same justification, or any justification, for participating in the Wingate Suit, as depositions show that many were not even advised of the filing until years after the lawsuit was filed.

90. The Court overlooked that to the extent the Plaintiffs had the same "justification" to bring the Wingate suit, it was based on their unjustified and primary purpose, to injure Buchanan and Defendant so that they could dismember James Brown's noble estate plan.

91. The Court overlooked or misapprehended that it is manifestly unjust for the Court to find that the holding in Wilson is relevant to defeat some of Plaintiff's claims, but not relevant to support a cause of action for civil conspiracy.

92. The Court overlooked or misapprehended that the Attorney General, the McMaster Legacy Trust and Bauknight as the Attorney General's and Tomirae's agent, have maliciously continued their conspiracy to damage Defendant for four years after the Attorney General told the South Carolina Supreme Court he was seeking to be dismissed as a party to the Wingate Suit.

93. The Court overlooked that in furtherance of the conspiracy, since May 8, 2013, the Attorney General has condoned the payment to counsel and GAL for James B. of approximately \$700,000.00; the payment to Sojourner of about \$1.5 Million not to protect the copyrights; and the payment to Bauknight's lawyers, while he still serves Tomirae, millions of dollars, all for the purpose of injuring Defendant.

94. The Court overlooked or misapprehended that the actions of the Attorney General since March 6, 2013, when he had direct, personal knowledge of the intentional false IRS filings by Bauknight and the use of the false IRS filings in false Supreme Court filings, has been consistently prejudicial to the administration of justice.

95. The Court overlooked or misapprehended that the January 2011 planting by

David Bell, Esq., a signatory to the Wingate Litigation Retention Agreement, of the false Grammy claim was malicious; in furtherance of the civil conspiracy to damage Defendant and Buchanan; and did, in fact, damage them.

C. Plaintiffs Intentionally Interfered with Plaintiff's Court-Approved Contract.

96. The Court overlooked or misapprehended that Plaintiff has a valid contract with the Estate of James Brown and James Brown 2000 Trust, which contract was approved by Order of Judge Early dated January 8, 2008, and under which Buchanan has been paid for all service through May 26, 2009.

97. The Court overlooked or misapprehended that in its answer to the Complaint in Aiken Case 2013-CP-02-1337, the Estate/2000 Trust does not deny the existence of the contract, and did not deny it with respect to Buchanan.

98. The Court overlooked or misapprehended that it is undisputed that Judge Early's payment Order provided for interest at the legal rate to be paid on all amounts not paid under the contract within 60 days.

99. The Court overlooked or misapprehended that the Estate/2000 Trust did not deny the existence of the contract in their untimely response to Buchanan's and Pope's claims.

100. The Court overlooked or misapprehended that all Plaintiffs knew of the existence of the contract, and the decision of most Plaintiffs to interfere with payments to Buchanan and Pope under the Court-approved contract.

101. The Court overlooked that no Plaintiff who was a party to Aiken County Case 207-CP-02-0122, including the Attorney General, timely objected to the Contract or the

Payment Order of Judge Early, and some praised the service of Buchanan and Pope at the hearing on December 21, 2007 for approval of the Contract.

102. The Court overlooked or misapprehended that counsel for Tomirae, specifically, praised Buchanan and Pope for using "belt and suspenders" to seek Court approval of a contract the James Brown Will and Trust allowed them to make with themselves, individually, without Court approval.

103. The Court overlooked or misapprehended that the Contract and Payment Order approving the Contract, and directing that interest be paid on unpaid amounts, was known to all Plaintiffs (except the McMaster Legacy Trust, which was not a party to Case 2007-CP-02-1337 at the time).

104. The Court overlooked or misapprehended that Defendant, like Buchanan, demonstrated each of the elements for tortious interference with contractual relations, namely: 1. The existence of a contract; 2. Knowledge of the contract; 3. Intentional procurement of its breach; 4. The absence of justification; and 5. Resulting damages. Kindard v. Crosby, 315 S.C. 237, 240, 433 S.E. 2d 835, 837 (1993) .

105. The Court overlooked or misapprehended that its finding seven years after issuing an Order approving the contract, that there was no contract, is inconsistent with the law of the case in Aiken County Case 2013-CP-02-1337; the payments to Buchanan made in this case, and approved by Judge Early; and the standard of review required by Rule 56.

106. The Court overlooked that the statement that Pope's and Buchanan's appointment by the Court overlooks that they were appointed under the Will and 2000

Trust of James Brown, with all authority and duties as if originally appointed by James Brown (with the exception of the duty to appoint a third trustee), and that the contract which the Court approved stemmed from their contract with the Estate and 2000 Trust as authorized by those documents. [Apptmt. Order. 11/20/07]

107. The Court overlooked or misapprehended that the many cases cited about general rules of contract ignore the record before Judge Early as to Plaintiff's contract; Buchanan's and Pope's Petition for Approval of the Contract; the hearing on the Petition; and the Payment Order approving the contract.

D. Defendant Has Been Injured by the Fraud of Plaintiffs Under §62 -1-106.

108. The Court overlooked or misapprehended that the following portion of Section 62-1-106 of the South Carolina Probate Code (2009) directly applies to this action:

Whenever fraud has been perpetrated in connection with any Proceeding or an any statement filed under this Code or if fraud is used to circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not, but only to the extent of the benefit received.

109. The Court overlooked or misapprehended that the false heirs determination and others known false representations to the Courts, beginning before the commencement of this action, and continuing today, have damaged Defendant.

110. The Court overlooked that the fraud on the Supreme Court, following the claimed zero value of Brown's Right of Publicity and Tangible Person Property to the IRS and the securing of an ill-gotten IRS "refund" proximately caused injury to Defendant as required by the Code.

111. The Court overlooked that Plaintiffs never raised the statute of limitations as a defense to Defendant's fraud under §62-1-106 claims, and relief to Defendant for the false and fraudulent claims is not barred because they have been ongoing since 2009.

112. The Court overlooked or misapprehended that even innocent Defendants such as James B. have benefitted from the 62-1-106 Termination Rights and Valuation Fraud on multiple courts of Tomirae, the Legacy Trust and the Attorney General.

**Multiple Plaintiffs Benefitted, and Defendant Was Injured, by the Devaluation & Other Fraud of Tomirae, the Attorney General, Bauknight & Bell ,
Federal Case No. 3:08-cv-00014-WOB and the Fraud of David Bell, Esq.**

113. The Court overlooked or misapprehended that the footnote related to a lawsuit filed against Plaintiff Estate/2000 Trust of James Brown on January 2, 2008, bears no relation to this action, except that Georgia lawyer David Bell, Esq., represented Forlando Brown in claiming to support the James Brown 2000 Irrevocable Trust in that federal suit, while simultaneously representing Forlando's father, Terry Brown, in seeking to dismember Brown's "I Feel Good" Trust as part of the McMaster settlement deal.

114. The Court overlooked or misapprehended that Forlando's lawsuit was commenced in January 2008 seeking an injunction against Plaintiff James Brown 2000 Irrevocable Trust until David Cannon and Albert "Buddy" Dallas were reinstated as its trustees. The Complaint and Forlando, both agree that James Brown's assets were worth at least \$100 Million when Brown died and offers of \$150 Million were available in late 2008, after the Attorney General and Tomirae claimed the right to take 75% control of Brown's assets and give away more than half of the "I Feel Good" Charity.

115. The Court overlooked or misapprehended that Buchanan and Pope

successfully defended the 2000 Trust in a November 2008 Forlando Suit hearing seeking to temporarily enjoin the 2000 Trust and reinstate the Cannon Trustees.

116. The Court overlooked or misapprehended that at that hearing the Estate Tax Return, with a value of the James Brown assets at approximately \$100 Million less the \$15 Million TIAA debt was discussed in detail, and no objection was made to the value.

117. The Court overlooked or misapprehended that in December 2010 and January 2011, after the commencement of the Wingate Suit, Attorney General Henry McMaster, Terry Brown and others, amended the McMaster Legacy Trust so that Terry's right of first refusal to purchase the James Brown assets could be set in motion.

118. The Court overlooked or misapprehended that following the amendment to the McMaster Legacy Trust, Terry Brown transferred his entire interest in the James Brown estate to Forlando.

119. The Court overlooked or misapprehended that on or about January 18, 2011 AG Jones secretly distributed the Legacy Trust Amendment and Assignment to Bauknight and the settling parties, and Forlando began the period of due diligence provided in the McMaster settlement deal.

120. The Court overlooked or misapprehended that in the same month Bell and Forlando planted the false Grammy claim on the Kilpatrick Stockton (KS) website.

121. The Court overlooked or misapprehend that the claim that Robert Potter, Esq., had halted the Grammy sale was false because the Grammy had been voluntarily and appropriately withdrawn by Buchanan and Pope, with Levenson present, over the urging of Christie's counsel that it remain in the sale.

122. The Court overlooked or misapprehended that the National Academy of Recording Arts and Sciences had no contract with Brown which would prevent a sale of the Grammy; Johnny Cash and others have sold Grammys; and Christie's counsel advised the there was no basis to withdraw the Grammy.

123. The Court overlooked or misapprehended that the Grammy was withdrawn appropriately to avoid the legal cost of defending the sale, and because Dallas and others had already chilled the sale.

124. The Court overlooked or misapprehended that in late 2010 the Attorney General supported Bauknight in the false claim to the IRS that all of James Brown's thousands of items of Tangible Personal Property, including the approximately \$800,00 of items sold at Christie's in 2008, had a value of less than \$200,000.

125. The Court overlooked or misapprehended that from January 2011 until after the *Wilson* decision in 2013 Bell, Bauknight and the Attorney General kept concealed the Wingate Litigation Agreement which was not signed by the Attorney General, but was signed by Bell.

126. The Court overlooked or misapprehended that in 2011 Forlando became disgruntled with Bauknight over what he claimed was Bauknight's failure to consider a possible \$200 Million sale of the James Brown assets to Oprah Winfrey or her agents.

127. The Court overlooked or misapprehended that Forlando , who had reviewed the \$4.7 Million Bauknight/PBw appraisal denounced it as "bogus" in a sworn deposition.

128. The Court overlooked or misapprehended that in the fall of 2011 Forlando

"fired" all of his attorneys, including Bell, and asked the Court the Honorable William O. Bertelsman to drop all of his claims against the 2000 Trust, and the claims made in the amendments to his Complaint against Buchanan and Pope.

129. The Court overlooked or misapprehended that Bauknight abandoned the 2000 Trust's counterclaims for attorneys' fees against Forlando, and offset against Forlando's share of the 2000 Trust, for the 4-year attempt to reinstate the Cannon Trustees.

130. The Court overlooked or misapprehended that in 2012 Bauknight, with actual (but secret) knowledge that Forlando had become the owner of Terry's interest in the Estate, allowed Forlando to represent to the Federal Court that he had no assets and no expectation of assets from the James Brown estate litigation unless his father died.

131. The Court overlooked or misapprehended that when Buchanan became financially desperate in 2012 and reached a settlement in the Wingate Suit, his carrier was not paid for protecting the 2000 Trust against Forlando's attempted injunction, but retained the right to seek redress for some of the loss from his service from Forlando.

132. The Court overlooked or misapprehended that Buchanan and Pope appropriately made claims against Forlando which were not the same counterclaims made in this case because Forlando knew, and stated, the value of Brown's music empire was \$100 Million or more; knew, and stated, that Tomirae was not Brown's spouse, and her handwritten admissions showed that she begged Brown to marry her after he discovered she had been married during their bigamous ceremony. Further the false claims of the Attorney General, Bauknight and Tomirae to the Courts about heirs and the Federal

Copyright Act Termination Rights were not a part of the Forlando Suit because all parties, despite Forlando's bad acts and desire to reinstate Cannon and Dallas, agreed that Brown's noble estate plan should be upheld and that The James Brown "I Feel Good" Charity and its 900 copyrights protected.

133. The causes of action in the Forlando Suit related to the attempt to enjoin the 2000 Trust and reinstate the Cannon trustees even though Cannon had taken \$17 Million from funds Brown gave the "I Feel Good" Charity to educate needy students.

134. The Court overlooked or misapprehended that in July 2012 the Attorney General and other Plaintiffs reached a settlement in the Wingate Suit with Buchanan, who had become financially desperate, and that he was paid the amount under his Contract with the Estate/2000 Trust through May 26, 2009, plus some interest.

135. The Court overlooked or misapprehended that in the 2012 settlement Buchanan retained his right to seek redress against Forlando, but his carrier was not paid.

136. The Court overlooked or misapprehended that both before and after the Wilson v. Dallas decision, Bauknight, instead of supporting the two fiduciaries who had protected James Brown's estate from Cannon, claimed in a 2013 deposition in the Forlando Suit that Forlando had done nothing wrong and that Buchanan and Pope were the wrongdoers.

137. The Court overlooked or misapprehended that in 2013 Bell reappeared in the Forlando case, claiming to the federal court that he was not being paid for his work.

138. The Court overlooked or misapprehended that Bell, with knowledge of its falsity, continued the claim that Forlando had no assets. Further, he assured the Court

that the issue of attorneys' fees was being litigated in the State Court.

139. The Court overlooked or misapprehended that Bell, a Georgia lawyer, has a long history of false statements in the James Brown matters, including the filing, with Forlando and family, of multiple grievances against Louis Levenson, Esq., in Georgia and South Carolina, even accusing Levenson of forging his fee contract with Forlando's brother.

140. Bauknight's vitriolic deposition given in the Forlando Suit in September 2013, which is incorporated herein in its entirety, demonstrates the level of vitriol Bauknight spewed, and the Attorney General praised, as part of the conspiracy to damage and discredit Buchanan and Pope, who, by then, had actual evidence of the \$5 Million intentional overstatement of Brown's debts to the IRS, including a claim that Brown was giving \$2.8 Million to charity, when he was giving only \$.8 Million.

141. The Court overlooked or misapprehended that, assured (incorrectly) that Forlando had no assets; that Defendant 2000 Trust Buchanan and Pope had defended no longer sought repayment for the cost of Forlando's 4-year effort to reinstate Cannon and Dallas; and assured that the matters were being handled in State Court, Judge Bertelsman, who had previously dismissed all of Forlando's claims against the 2000 Trust, Buchanan and Pope 2012, praised the work of Buchanan and Pope, but declined to grant judgment against the claimed impoverished Forlando. Judge Bertelsman's Order was not reversed on appeal.

142. Consistent with the continuing scheme to try to damage Buchanan and Pope from in any way possible, after *Wilson* Bauknight hired Wingate - Tomirae's lawyer -

- to try to prevent Defendant's carrier from being reimbursed for his work to save James Brown's "I Feel Good" Trust from Cannon and Dallas, including a 2-day hearing in November 2008 where Forlando asked that the 2000 Trust be paralyzed until Cannon, who was known to have taken \$17 Million from funds Brown gave his "I Feel Good" Charity, was reinstated as trustee.

143. As a result of the false (abandoned) Forlando Suit in which Defendant's carrier protected the 2000 Trust from 2008 through May 26, 2009, and the fabricated, false claims in the Wingate Suit, both Buchanan and Defendant lost their professional insurance and were sued by their carrier, and Defendant is still unable to obtain professional negligence insurance as a result of the pending Wingate Suit.

The Tomirae/ Legacy Trust/Attorney General \$4.7 Million Devaluation Scheme to Damage Defendants; Ill-Gotten IRS "Refund"; and False Supreme Court Filings, Including False Copyright Claims, Support all Counterclaims.

144. The Court overlooked and misapprehended that Plaintiff's Termination Rights Expert in this case, Expert Roger Miller, has stated under oath that James Brown's music catalog is "sold gold" and that anyone in the business would of purchasing music catalogs would know that.

145. The Court overlooked that in his deposition in Aiken 2013-CP-02-1337, which is incorporated herein by reference, Miller is of the opinion that Brown's music catalog at his death was easily worth \$45- \$60 Million, and is still worth that much.

146. The Court overlooked or misapprehended that of Brown's 900 copyrights only the American copyrights, and only a portion of the America copyrights, may be subject to Termination Rights, and that James Brown's catalogue is worldwide.

147. The Court overlooked or misapprehended that by 2011, when Bauknight, the Attorney General and Tomirae made numerous false statements to the South Carolina Supreme Court about Termination Rights, the value of James Brown's assets; and James Brown's heirs under the Federal Copyright Act, and vitriolic claims that Buchanan and Pope were incompetent and greedy, all knew the claims to be false.

148. The Court overlooked or misapprehended that none of Plaintiff's experts, in the seven years this suit has been pending, has formed an opinion as to the value of James Brown's Right of Publicity at death.

149. The Court overlooked or misapprehended that Defendant's expert R.B. Alexander, who worked with Right of Publicity values related to the Estate of Dale Earnhart, Jr., has confirmed under oath that Buchanan's and Pope's \$84 Million value for James Brown's 900 copyrights and Right of Publicity, with other music empire assets, including a fleet of vehicles and about 50 boxes of music memorabilia, on the Estate Tax Return, is appropriate, but that his personal opinion is that the value (after the \$15 Million TIAA debt) is about \$90 Million.

150. The Court overlooked or misapprehended that by 2009 Michael Jackson had died, and that the IRS values Jackson's Right of Publicity at more than \$150 Million.

151. The Court overlooked or misapprehended that by the end of 2009, as a result of the Gignilliat v. Savage decision, it was clear that Brown's Right of Publicity, which is not subject to Termination Rights, would pass under his will to The James Brown "I Feel Good" Charity to be used solely for the education of needy student.

152. The Court overlooked or misapprehended that with knowledge of all of the

above, in August 2009 -- three months after she and now-Governor Henry McMaster took effective control of the James Brown assets -- Tomirae proposed to Bauknight and the Attorney General to devalue James Brown's 900 copyrights to \$24 Million or less and value his Right of Publicity at zero as a way to discredit Buchanan and Pope.

153. The Court overlooked or misapprehended that in the next month, September 2009 Bauknight hired Peter Afterman, who would claim on his website to have been hired by the State of South Carolina, as a musicologist.

154. The Court overlooked or misapprehended that Afterman was Bauknight's "expert" to work simultaneously with the appraisers at Philpott, Ball, Werner (PBW) on the \$4.7 Million "appraisal" and on a report claiming that Greenberg Traurig ("GT") had failed to collect as much as \$15 million of James Brown's pre-death sampling revenues.

155. The Court overlooked or misapprehended that in March 2010 both Bauknight lawyer and Tomirae's lawyer separately threatened to sue Buchanan and Pope if they did not drop the appeal of the McMaster Settlement deal.

156. The Court overlooked or misapprehended that in 2010 Buchanan and Pope offered for the Attorney General and Settling Parties to have everything they had agreed to get, with Buchanan and Pope to walk away if the Court of Appeals would agree that the Attorney General's judgment could be substituted for their judgment in approving the McMaster deal, and GALs approved the settlement for the minors whose trusts had been reduced.

157. The Court overlooked or misapprehended that under the proposal, Buchanan and Pope would resign as soon as the Court approved the settlement, and Judge

Early would have been asked to determine their commissions and fees.

158. The Court overlooked or misapprehended that the Attorney General and Settling parties declined to respond.

186. The Court overlooked or misapprehended that between May 12 and May 18, 2010, Sr. Assistant AG Sonny Jones, counsel for Tomirae, the Wingate Firm, and counsel for Bauknight, with others worked on the Wingate Suit complaint.

159. The Court overlooked or misapprehended that Tomirae, Bauknight and the Attorney General had all reviewed the Final Accounting of Buchanan and Pope which showed that on May 26, 2009 they had delivered \$99 Million of Gross Assets to Bauknight on their replacement, and that the TIAA Debt had been reduced to \$11 Million.

160. The Court overlooked or misapprehended that Jones was an expert on Special Counsel Litigation Retention Agreements; knew the Due Process requirements under the Santa Clara decision and a recent order in the Eli Lilly case; and knew that McMaster had been criticized for what the Wall Street Journal called "pay to play" in which no-bid Special Counsel attorneys and their families made large contributions to McMaster's campaigns and McMaster's office (not the State's general fund) retained 10% of their legal fees.

161. The Court overlooked or misapprehended that McMaster, who was running for Governor, had said he would not accept further contributions from Special Counsel, although he believed them to be legal.

162. The Court overlooked or misapprehended that prior to the filing of the Wingate Suit Complaint, Governor McMaster signed a letter that does not disclose that the

State/Attorney General is going to be a party to the Wingate Suit or that Bauknight had any right as a Plaintiff to sue Buchanan and Pope on behalf of the Attorney General.

163. The Court overlooked or misapprehended that on or before May 19, 2010 the Wingate Agreement was signed by Bauknight, Tomirae's lawyer, and Levenson and Bell. If they could damage Buchanan and Pope enough to stop the appeal which would become *Wilson v. Dallas*, the lawyers would reap about \$10 Million; their clients another \$30 Million or so; all from James Brown's "I Feel Good" Charity; all based on the known false "stipulation" that Tomirae was Brown's spouse and false claims made to Judge Early about heirs; federal estate taxes; and Federal Copyright Act Termination Rights.

164. The Court overlooked or misapprehended that the Wingate Complaint was approved by the office of Governor McMaster, Bauknight and lawyers for more than a dozen Plaintiffs, and contained scurrilous, false allegations about Copyright Termination Rights, Taxes, Valuation, the Christie's sale, and other alleged improper actions which the staff of Governor McMaster, Louis Levenson, Esq., ("Levenson"), David Bell, Esq., ("Bell"), Bauknight and Tomirae's counsel ("Medlin" and "Rosen") and the GAL and lawyer for Tomirae's son all knew to be false, barred by statutes of limitations, or both.

165. The Court overlooked that in violation of ethical rules, most of the fifteen Plaintiffs did not sign the \$40% Wingate Contingency Free Agreement (for individuals), and many of the Plaintiffs were unaware of the existence of the Wingate Suit until years after it was filed.

166. The Court overlooked or misapprehended that in the Wingate Suit the mighty power of the State was placed in the Wingate Firm's hands to be used against

Buchanan and Pope for the benefit of Tomirae, the Attorney General and the Attorney General's "Legacy Trust" he had created to hold the James Brown assets taken over in the McMaster Settlement through 3 Plaintiffs: the Attorney General; the McMaster Legacy Trust; and Bauknight "on behalf of the Attorney General of South Carolina."

167. The Court overlooked or misapprehended that since May 26, 2009, Tomirae and the Attorney General had effective control of James Brown's charitable and non-charitable assets through the McMaster Legacy Trust. In addition the Attorney General could remove and replace Bauknight his trustee, at Will.

168. The Court overlooked or misapprehended that among the known false and scurrilous claims in the Wingate Suit Complaint were two conflicting ones: 1. The false claim that Buchanan and Pope should have accepted a 2007 \$100 Million offer for Brown's assets; and the false claim that they had intentionally overvalued Brown's assets to gain a large commission.

169. The Court overlooked and misapprehended that a week after the Wingate Suit was filed, a principal in the Wingate Firm contributed \$1,000 to the McMaster campaign, which was not returned.

170. The Court overlooked or misapprehended that in August 2010 the Attorney General, Tomirae and others told the Appellate Court in *Wilson* that an appraisal of James Brown's assets was expected in a few weeks which would show that Brown's assets were worth less than \$12 Million when he died.

171. The Court overlooked or misapprehended that at the first hearing, despite not having told Governor McMaster he was a Plaintiff in the Wingate Suit, and Bauknight

was the Attorney General's claimed agent, AG Jones appeared with Wingate Firm members; and was introduced as one of the Wingate Firm's clients.

172. The Court overlooked or misapprehended that Wingate Firm members assured the Court, based on representations of AG Jones, that it was perfectly legal for the Attorney General to be using a private lawyer to sue Buchanan and Pope; that Sonny Jones was involved in both the Crouch Order in the Lilly case and Stanta Clara decision; and that Judge Early had already ruled that it was appropriate.

173. The Court overlooked or misapprehended that, at the same time, the Attorney General, through AG Jones, claimed that an attempt to dismiss the suit or change venue was inappropriate because the Wingate Suit was unrelated to the *Wilson* appeal.

174. The Court overlooked or misapprehended that the PBW "appraisal" arrived as expected, but the Attorney General, Bauknight, Tomirae and others agreed to withhold it from the Supreme Court in *Wilson* for 8 months, until the record on appeal ("ROA") and last brief were filed.

175. The Court overlooked or misapprehended that, although it was not known until after the first *Wilson* decision, the PBW \$4.7 "appraisal" which arrived in September 2010 was a mere reflection of Tomirae's devaluation scheme, with the 900 copyrights at \$23.7 Million, reduced by the the TIAA debt, overstated by more than \$3 Million, at \$19 Million.

176. The Court overlooked or misapprehended that in October 2010, the Wingate Firm moved for relief from default because Wingate had received the Answer and

Counterclaims; marked "file" on them; and not timely responded.

177. The Court overlooked or misapprehended that in October 2010 the Attorney General, the Legacy Trust and Bauknight named David Cannon, who had taken \$17 Million from funds Brown gave the "I Feel Good" Charity, and Albert "Buddy" Dallas, as Plaintiffs' witnesses against Buchanan and Pope in the Wingate Suit.

178. The Court overlooked or misapprehended that, with the blessing of the Attorney General, in late 2010 Bauknight told the IRS that Brown's Copyrights were worth \$23.7 Million; Brown's Rolls Royce and fleet of automobile and thousands of items of Tangible Personal Property in museums and at home, including the \$800 of items sold by Christie's were worth about \$120,000; that Brown's Right of Publicity was worth zero; that Brown's millions of dollars of uncollected sampling claims owed at his death were worth zero; and that his claim against GT, the accountant who had understated Brown's income by \$3 million a year; and Cannon, who took \$17 Million were worth zero.

179. The Court overlooked or misapprehended that Bauknight, with the blessing of the Attorney General also overstated the Estate Tax Charitable Deduction to which Brown's Estate was entitled under the McMaster settlement deal by \$2 Million, taking a \$2.8 Million charitable claim where only \$.8 was going to charity, and the \$2 Million was going to Brown's grandchildren.

180. The Court overlooked that all of Tomirae's advisors; some of the dozen Attorney General attorneys; and at least three of Bauknight's attorneys, had actual knowledge that an estate tax refund was impossible under the McMaster settlement deal because every dollar going to James B. or the Levenson clients generated 40 cents or more

of estate taxes.

181. The Court overlooked or misapprehended that both the \$2 overstatement of Brown's Charitable deduction and the \$3 Million overstatement of the TIAA debt were concealed (one within the PBW appraisal), and might not have been noted by the IRS.

182. The Court overlooked or misapprehended that, based on these material misrepresentations, and with the blessing of the Attorney General, Bauknight obtained an IRS closing letter.

183. The Court overlooked or misapprehended that everyone with any IRS experience knows that a closing letter is not an endorsement by the IRS of Bauknight and Tomirae's devaluation to \$4.7 Million, and can be withdrawn for fraud, mistake and other reasons.

184. The Court overlooked or misapprehended that in December 2010 the Attorney General, Tomirae and Bauknight filed their initial brief in the Supreme Court and made the knowing false claim that, because of the failure of Buchanan and Pope to secure an appraisal, they were unable to value the Settling Parties' "valuable" termination rights under the Federal Copyright Act.

185. The Court overlooked or misapprehended that at Brown's death and prior to the Attorney General's "stipulation" that Tomirae was to be considered Brown's spouse for all purposes, the value of Tomirae's termination rights was near zero, and the value of the 5 Levenson claimed children's termination rights was above zero, but small.

186. The Court overlooked or misapprehended that in December 2010 Bauknight's lawyers prepared an amendment to the McMaster Legacy Trust which

allowed Terry Brown to begin Due Diligence on a possible sale of the James Brown assets, and which was secretly signed by Governor McMaster shortly before he left office.

187. The Court overlooked or misapprehended that A few days later Terry. Secretly assigned his right of first refusal (ROFR) to buy the James Brown assets to Forlando.

188. The Court overlooked or misapprehended that in the same month, month, Bell and/or his clients, who were dealing with Kilpatrick Stockton("KS") lawyers, planted the false GRAMMY claim on the obscure KS website that would be noted by the Supreme Court in its *Wilson* decision.

189. The Court overlooked or misapprehended that upon taking office in January 2011 Attorney General Alan Wilson authorized the Wingate Suit to continue.

190. The Court overlooked or misapprehended that in January 2011 the Attorney General, Tomirae and others sought sanctions against Buchanan and Pope for filing a brief trying to collect some of the \$1.2 Million cost of his removal as ordered by Judge Early. [Sanctions against Buchanan and Defendant were not granted.]

191. The Court overlooked or misapprehended that in April 2011 Copyright expert Wm. Jeffrey Smith, who had been hired by Buchanan and Pope in June 2008 to help with Termination Rights issues, with Pope, circulated to professionals a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....*, which describes how the McMaster settlement, including the Attorney General's decision to "stipulate" that Tomirae was Brown's spouse; stop the ongoing Peebles DNA protocol which was properly determining heirs; and declare that

fewer than half of Brown's claimed children were his descendant/ heirs, with the devaluation to \$12 Million announced by the Attorney General, left the "I Feel Good" Charity with almost nothing.

192. The Court overlooked or misapprehended that expert Smith and Wallace Lightsey, Jr., Defendant's experts in this case, like Pope, have confirmed that multiple strategies exist, such as those employed by the Ray Charles Foundation, for charities owning copyrights to protect themselves from premature or improper exercise of Termination Rights by claimed heirs, and diminish the negative impact on the charity of Termination Rights.

193. The Court overlooked or misapprehended that after the last brief was filed in Wilson in early May 2011, Bauknight filed an amended Inventory & Appraisement ("I &A") and a motion to supplement the record on appeal ("ROA") in Wilson claiming Brown's assets were worth about \$6.5 Million, with Brown's music empire having a value of less than \$4.7 Million.

194. The Court overlooked or misapprehended that thereafter, the Attorney General, Tomirae and Bauknight began claiming that nobody had ever made an offer for the James Brown assets and that Buchanan and Pope had intentionally overstated the value of Brown's assets in sworn IRS filings in order to secure a \$5 Million commission from a \$5 Million estate, a federal felony.

195. The Court overlooked or misapprehended that, as was intended, the Court was naturally concerned that the constitutional officer in charge of protecting charities was accusing fiduciaries of seeking a \$5 million commission which was 100% of the at-

death value of an estate dedicated mostly to charity.

196. The Court overlooked or misapprehended that in 2011 when the Wingate Firm refused to release the fabricated \$4.7 Million appraisal or a copy of the public Wingate Litigation Retention Agreement, Defendant filed a FOIA suit for the \$4.7 Million appraisal and related documents.

197. The Court overlooked or misapprehended that since 2011 the Attorney General, the Legacy Trust and Bauknight have vigorously evaded all James Brown FOIA requests for long-public documents that shown Tomirae was not Brown's spouse (Hynie handwritten notes), the fabricated PBW \$4.7 Million appraisal; the McMaster Legacy Trust; and the Wingate Litigation Retention Agreement.

198. The Court overlooked or misapprehended that in the fall of 2011, Wingate – on behalf of ALL Plaintiffs – moved to intervene in a FOIA suit seeking a copy of the public Wingate Litigation Retention Agreement.

199. The Court overlooked or misapprehended that in September 2011 the Attorney General announced that he was "ready and more than willing" to produce the Wingate Litigation Agreement under FOIA, but, instead, joined Wingate in a vicious fight to consolidate the FOIA suit with the Wingate Suit; subordinate the FOIA request f to discovery in the Wingate Suit; and bury it with a confidentiality Order.

200. The Court overlooked that between 2011 and 2016 the Attorney General, Wingate and Bauknight took similar action to prevent release under FOIA of the long-public handwritten notes in which Tomirae admitted she was married; living with her husband in Texas; and though she might be pregnant before she met James Brown, and

begged Brown to marry her after he learned that their 2001 ceremony was bigamous.

201. The Attorney General and his staff admitted in Supreme Court filings that the Attorney General had reviewed Tomirae's handwritten admissions before his decision to "stipulate" that Tomirae was Brown's wife, as had scores of others, including Buchanan and Pope.

202. The Court overlooked or misapprehended that in October 2011 the Attorney General, who was handling both the Cannon criminal matter and the Cannon civil matter, allowed Cannon to enter an *Alford* plea and sought no restitution.

203. The Court overlooked or misapprehended that on October 31, 2011, in furtherance of the conspiracy to discredit Buchanan and Pope, the day before the Wilson oral argument, Bauknight's lawyer gave an interview to the Associated Press in which he claimed that returning Buchanan and Pope would be like throwing a hand grenade into the James Brown estate.

204. The Court overlooked or misapprehended that emails produced in other cases, but withheld by the Attorney General and Tomirae in this case, show that Tomirae's lawyer and a tax lawyer for Bauknight coached the Legacy Trust's counsel on how to present the fabricated \$4.7 Million value claim to the Supreme Court and other aspects of the *Wilson* Supreme Court argument, even though both had actual knowledge of the secret devaluation of Brown's assets and intentional overstatement of Brown's deductions by \$5 Million in the IRS proceeding.

204. The Court overlooked of misapprehended that at the Supreme Court oral argument Bauknight, supported by both McMaster and Attorney General Wilson who

were present, made a number of knowing false statements to the Supreme Court.

205. The Court overlooked that, with knowledge that it was false, the Attorney General supported Bauknight's claim that Tomirae's elective share claim was a "slam dunk;" that Copyright Act Termination Rights were automatic, and that all the royalties to "Please, Please, Please" would be lost to Tomirae and her son, or to the Levenson and Bell clients, in 2012; that he "knew" the value of Brown's assets; and that Termination Rights are "all this estate is about;" that Brown's estate and trust had no corpus to speak of; that that nobody was trying to buy it."

206. The Court overlooked or misapprehended that Bauknight's counsel's statements to the Supreme Court misstated the Copyright Act and were in direct conflict with Plaintiffs' expert Roger Miller, who has confirmed that anyone in the business would have known that Brown's music catalog alone was "gold standard" and worth 15 - 20 times revenues (\$45 - \$60 Million) at his death and later.

207. The Attorney General, through AG Jones, who acknowledged he knew almost nothing about Termination Rights, supported the false Bauknight claims, including the claim that, but for the Master settlement deal, there would be nothing in James Brown's "I Feel Good" Charity in 2023.

208. In 2012, upon learning that their own witness, Albert Dallas, was prepared to testify in detail of his knowledge that Tomirae was not Brown's spouse, the Attorney General and other Wingate Suit Plaintiffs obtained an oral order from Judge Manning stopping the deposition.

209. In 2012 Tomirae, Bauknight and the Attorney General furiously tried to

prevent release of the long-public handwritten admission by Tomirae that she was married, living with her husband, and thought she might be pregnant before she met and conducted a ceremony with Brown.

210. The Court overlooked or misapprehended that in May 2012 Judge Early considered Pope's request to lift two *ex parte* gag orders he had issued in 2008 which concealed the long-public admissions which, in addition, showed Tomirae begged Brown to marry her after he discovered she was married, but he Brown refused.

211. The Court overlooked or misapprehend that in August 2012 Judge Early declined to rule on lifting the unconstitutional gag orders, finding he lacked jurisdiction because of the pending Wilson appeal.

212. The Court overlooked or misapprehended that after the *Wilson* ruling, Judge Early, without a hearing, banned Buchanan and Pope from participation in any Aiken County James Brown case except their own, depriving Pope of the opportunity to seek to set aside the unconstitutional gag order.

213. The Court overlooked or misapprehended that in 2012 a reporter following the Pope FOIA cases made certain FOIA requests of her own, including a request for Tomirae's handwritten admissions which Pope had not sought under FOIA.

213. The Court overlooked or misapprehended that the Attorney General and Bauknight, with Tomirae, began a vicious attack on the journalist, even seeking her sources and notes, claiming that she was an agent of Pope.

214. The Court overlooked or misapprehended that by 2015 Jay Bender, Esq., and Thomas Pope III, counsel for the journalist, had secured orders under FOIA requiring the

Attorney General to release many of the documents he has still refused to release in this case.

215. The Court overlooked or misapprehended that instead of releasing the \$4.7 Million appraisal and related documents, as directed by Judge Eugene C. Griffith, Jr., the Attorney General asserted to Judge Griffith that neither the Attorney General nor his staff had seen the \$4.7 appraisal on which Bauknight and the Attorney General have, since 2011, been basing the false claim that Buchanan and Pope committed the federal felony of overstating Brown's assets by \$79 Million to obtain a \$5 Million commission.

217. The Court overlooked or misapprehended that, in lieu of a deposition in this case, Dallas gave sworn testimony, which is incorporated herein by reference, that Brown and Tomirae were not married; that she begged Brown to marry her; but Brown was hurt by Tomirae's concealing her marriage, and refused.

218. The Court overlooked or misapprehended that Dallas testified under oath that he, Tomirae and James Brown had a 3-way phone conversation in the summer of 2006 – before Brown and Tomirae separated for the last time – confirming that they were not married, and that she was a mere guest at Brown's Beech Island mansion.

218. The Court overlooked or misapprehended that Buchanan became financially desperate in 2012 and advised Pope he needed to settle. He told Pope he needed \$500,000.00 then more than he would need the \$2.1 Million reasonable fee he was requesting for all of his years of service.

219. In order for Bauknight to pay Buchanan the \$500,000 he had earned under the Buchanan/Pope contract with the Estate/2000 Trust through May 26, 2009, the

Attorney General extracted from Buchanan a commitment that he would do nothing to help Pope, and the improper commitment that Buchanan would not file a Petition for Rehearing when the Wilson decision was rendered.

220. The Court overlooked or misapprehended that the Attorney General failed to notify the Supreme Court of his improper requirement that Bauknight NOT protect the "I Feel Good" Trust, at rehearing, and, instead, tried to make it appear to the Supreme Court that Buchanan no longer opposed the McMaster settlement deal.

221. The Court overlooked or misapprehended that in 2012, even though they had not complied with discovery request, Plaintiffs asked Judge Manning to direct a mediation in the Wingate Suit, which he did.

222. The Court overlooked or misapprehended that most Wingate Suit Plaintiffs did not attend the mediation, but Levenson and Bell attended, claiming they had authority to speak for nearly a dozen Plaintiffs – including some who had terminated them.

223. The Court overlooked or misapprehended that prior to the mediation Pope offered to let the minors and Attorney General out of the Wingate Suit if they would help save the "I Feel Good" Charity which, all knew, was dismembered by the McMaster settlement deal.

224. The Court overlooked or misapprehended that instead of responding to her offers of judgment, the Attorney General and others filed the offers with the Court, and asked Judge Manning to strike them.

225. The Court overlooked or misapprehended that Chief Deputy John McIntosh, AG Jones and AG Mary Frances Jowers, attended the October 2012 Wingate Suit mediation.

226. The Court overlooked or misapprehended that Tomirae did not attend the mediation, but issued a public post that day claiming the mediation was being held to get rid of Pope, whom she said had taken things from the family and was the "last of the rats."

227. The Court overlooked or misapprehended that in 2017 Bauknight would claim that Pope would not even accept \$40 million in 2012.

228. The Court overlooked or misapprehended that a correct statement was that Pope said in 2012 that no matter what she was offered at that time, she would not accept it if a condition of being paid was that Pope abandon the appeal which should have saved The James Brown "I Feel Good" Charity from being dismembered.

229. The Court overlooked or misapprehended that in December 2012 Pope's daughter, who had two small children, suffered a brain tumor event.

230. The Court overlooked that almost immediately after the event the Attorney General and other Wingate Suit Plaintiffs asked for a scheduling order and trial of the Wingate Suit in the summer of 2013.

The Attorney General and Tomirae Continue their Alliance, FOIA Evasion and the Wingate Suit, Defying Wilson v. Dallas (2013 - 2017)

231. The Court overlooked or misapprehended that in the first *Wilson* decision, issued February 27, 2013, the Supreme Court admonished the Attorney General to conclude the FOIA matters and the Wingate Suit "in the first instance."

232. The Court overlooked or misapprehended that on March 6, 2013 Pope met with Attorney General Wilson, McIntosh and Solicitor General Robert Cook, and discussed with them the damage to the "I Feel good" Charity that would result if the false IRS filings

were not corrected. She suggested that they could be easily corrected, because the *Wilson* decision corrected most of the tax problems. The claimed \$5 Million value and other misstatements, however, posed problems for the "I Feel Good" Charity, reducing its required annual payout in scholarships for needy students from \$3+ Million to as little as \$50,000.

233. The Court overlooked or misapprehended that Cook, with an extensive file of James Brown, stated under oath that he believed Pope sincerely worked to try to save the "I Feel Good" Charity; was competent and never appeared to him to be greedy.

234. The Court overlooked or misapprehended that the Attorney General's and Bauknight's statements to the Court, however, have been exactly the opposite.

235. The Court overlooked or misapprehended that In March 2013 the Attorney General told the Supreme Court and Pope he was going to get out of the Wingate Suit, but he did the opposite.

236. The Court overlooked or misapprehended that on May 8, 2013 the second *Wilson* decision was rendered, voiding Bauknight's appointment.

237. The Court overlooked or misapprehended that by May 9, 2013 the Attorney General and Tomirae were working to have Bauknight reinstated.

238. The Court overlooked or misapprehended that on May 10, 2013, the Attorney General asked Judge Manning to stay all proceedings in the Wingate Suit and FOIA cases until Judge Early concluded the James Brown matters in Aiken County, telling Judge Manning that the Supreme Court's dropping the footnote related to concluding the FOIA and Wingate Suits meant the Court had no interest in having those matter proceed

promptly.

239. The Court overlooked or misapprehended that on May 29, 2013, within a day of the Wilson v. Dallas remittitur, Tomirae's counsel and Levenson asked Judge Early in open Court to go *in camera* and hear why the McMaster settlement deal should be immediately reinstated.

240. The Court overlooked or misapprehended that same day, May 29, 2013, Bauknight, Levenson and Tomirae all asked that Buchanan and Pope, along with their own witness Dallas, be banned from participation in James Brown hearings in Aiken.

241. The Court overlooked or misapprehended that the only things Buchanan and Pope had in common with Dallas was that all knew Brown's assets were worth \$100 million when he died; all knew that there was no credible evidence to support Tomirae's spousal claim; and all knew that the McMaster deal was an even greater threat to the "I Feel Good" Charity than the \$15 Million commission Dallas and his co-fiduciaries had sought.

242. The Court overlooked or misapprehended that on June 10, 2013 Judge Early granted Tomirae's and Levenson's request, banning Pope, Buchanan and other former trustees from participating in any James Brown case except their own cases.

243. The Court overlooked or misapprehended that in August 2013, Tomirae and James B., with the aid of Peter Afterman, filed defective documents in the Federal Copyright Office attempting to exercise Termination Rights as to about 90 of Brown's 900 copyrights between 2015 and 2023.

244. The Court overlooked or misapprehended that from 2013 until 2016, when

this lawsuit was assigned by the Supreme Court to Judge Early, Tomirae, Bauknight and Levenson continued to make false claims about the value; did not correct the false IRS filings; and continued to make vicious statement about Pope, and Buchanan when needed, with no forum for Buchanan and Pope to correct the false statements.

245. The Court overlooked or misapprehended that Pope worked *pro bono publico* from May 8, 2013 until June 10, 2015, to try to convince the Attorney General and the Court not to reinstate the McMaster settlement deal; not to undervalue Brown's "I Feel Good" Charity and to take reasonable steps to protect the "I Feel Good" Charity's annual \$3 Million plus royalty stream from inappropriate attempts by Tomirae and others to take away a portion of the royalties.

246. The Court overlooked or misapprehended that David C. Sojourner, Esq., appointed to protect the estate plan in the Tomirae proceeding and James B. proceedings, declined to meet with Pope; charged about \$1.4 Million for himself and lawyer between October 2013 and May 2016; took one deposition; and asserted under oath that he had no responsibility to protect Brown's copyrights.

247. The Court overlooked or misapprehended that Bauknight paid counsel, in his words, "millions and millions" of dollars, but continued to serve as Tomirae's Trustee in the Legacy Trust and did nothing for the two years between 2013 and 2015 to stop Tomirae from being paid \$1 Million in 2015.

248. The Court overlooked or misapprehended that Bauknight made no protest when Judge Early awarded a \$700,000.00 fee to James B's GAL and lawyer, even though the fee could have been avoided if James B. had simply taken the Peoples DNA Protocol the

Estate/2000 Trust paid \$300 for him to take in 2008.

249. The Court overlooked that, according to their claim that Brown's estate was worth \$5 Million at death, and James B's claim is only 1/20 if he is 100% successful, Bauknight's payment of a \$700,000 legal/GAL fee where the minor's lawyer, in addition, has a contingency fee arrangement with Tomirae, is unreasonable in comparison to the \$2.8 Million sought by Pope for six years of nearly-full-time service to the Estate/2000 Trust of James Brown.

250. The Court overlooked or misapprehended that the vigorous pursuit of the Wingate Suit, including attempting to consolidate discovery with Pope's claim case so that Brown's "I Feel Good" Charity's funds could pay for Tomirae's and the Legacy Trust's experts, all to damage Pope so that he could retake control over the James Brown assets and allow Tomirae to siphon off royalties to which she is not entitled, was a direct violation by the Attorney General of his statutory duties, and further evidence that his acts have been prejudicial to the administration of justice.

Terry and Daryl are Liable for Fraud and Wrongdoing of Bell.

251. The Court overlooked or misapprehended that when he approved the Complaint in this case, although he did not notify Terry, Bell had actual knowledge that the claims were false.

252. The Court overlooked or misapprehended that when he joined in the false \$4.7 Million claim with the Attorney General and Bauknight, Bell had actual knowledge from Forlando and other sources that Brown's assets were worth \$100 Million or more, but joined in the false filings to damage Pope and Buchanan.

253. The Court overlooked or misapprehended that even though Terry has now terminated Bell, he is bound by the material, false filings he allowed Bell to authorize Wingate to make on Terry's behalf, and is liable to Defendant (and possibly Buchanan).

254. The Court overlooked or misapprehended that Buchanan and Pope owed neither Daryl nor Terry any duty after they filed suit to set aside the Will and 2000 Trust.

255. The Court overlooked or misapprehended that Daryl has publicly admitted that James Brown's estate plan is valid, and should be upheld, while allowing Levenson, Bell and Wingate to make knowing false, contrary statements in this case.

256. The Court overlooked or misapprehend that neither Terry nor Daryl has produced a scintilla of evidence of any wrongdoing by Buchanan and Pope.

257. The Court overlooked or misapprehended that the deposition admissions of Terry and Daryl, and the knowing false statements made on their behalf by Bell, along with the malicious false GRAMMY plant, confirm that they are liable, under the Rule 56 analysis, to Pope on all Counterclaims.

258. The court further overlooked and misapprehended that Terry and Daryl's attempted intervention in FOIA suits exacerbates the wrongdoing and malice of their actions.

259. The Court overlooked or misapprehended that neither Terry, nor Daryl, nor any Plaintiff should have been released from default, and the Order of Judge Manning granting such relief should be set aside.

**A Dozen Plaintiffs, Including Minors, are Liable to Defendant
for Levenson's Fraud and Wrongdoing in this Suit**

260. The Court overlooked or misapprehended that most of Deanna, Yamma Larry, Daryl, Venisha, Terry, Tonya, Janise, Lindsey and Sydney and Carrington did not even on May 19, 2010 know the Wingate Suit was being filed by Wingate, through authorization by Levenson, for the purpose of damaging and discrediting Buchanan and Pope.

261. The Court overlooked or misapprehended, however, that all have failed to repudiate the statements and actions they know to be false and malicious which Wingate, through Levenson, has taken on their behalf.

262. The Court overlooked or misapprehended that under the Rule 56 analysis Levenson's sole motivation, for himself and a dozen Plaintiffs, in joining the conspiracy with the Attorney General, Tomirae and Bauknight to damage Buchanan and Pope was to secure about \$9 Million for himself and about \$11 Million for his clients to which all knew they were not entitled.

263. The Court overlooked or misapprehended that their public admissions in Yamma's autobiography and in the South Carolina Court of Appeals make clear that at the time of the McMaster settlement, at the time of the filing of the Wingate Suit, and at all times since, the dozen Levenson clients/Wingate Suit Plaintiffs knew Brown's Will and Trust were valid, and what he wanted; knew Tomirae was not Brown's spouse; knew Buchanan and Pope had properly and professionally defended Brown's Estate Plan and 900 copyrights; knew that the allegations of the Wingate Complaint were false; yet joined

in the Tomirae/Attorney General/ Bauknight conspiracy to damage Buchanan and Pope for their own benefit.

Bauknight is Liable to Defendant for Illegal Acts "On Behalf of" the State/AG

264. The Court overlooked or misapprehended that Bauknight is liable as to each counterclaim for wrongful acts he took as the claimed and apparent agent of the Attorney General of South Carolina.

265. The Court overlooked that Bauknight's malicious acts to damage Buchanan and Pope using the power of the State/Attorney General, and the Attorney General's condoning and praising such actions, are prejudicial to the administration of justice and violate Buchanan's and Pope's Due Process rights.

Granting the Attorney General & Others Relief from Default Was Improper

266. The Court overlooked or misapprehended that the Order of Judge Manning granting the Attorney General and other Plaintiffs relief from default was improper, and that this case should have been ended in 2011 with a damage hearing for Buchanan and Pope.

The Attorney General and Bauknight Are Liable as Successors in Interest For Damages Caused by the McMaster Legacy Trust.

267. The Court overlooked or misapprehended that the McMaster Legacy Trust is the vehicle used by the Attorney General and Tomirae to damage Buchanan and Pope, and to seek personal, improper benefits from Brown's charity.

268. The Court overlooked or misapprehended that it would be inappropriate to

grant any relief to the McMaster Legacy Trust while it claims it does not exist, and Defendant is entitled to judgment against the Attorney General and Bauknight as its successors in interest under all causes of action if it does not, in fact, exist.

No Plaintiff Is Entitled to Any Relief Because All Have Unclean Hands.

269. The Court overlooked or misapprehended that because of their participation in or support of known material false statements to the IRS in an amount as large as their claimed value of the Estate, and in using the false IRS filings to damage Buchanan and Defendants all Plaintiffs have unclear hands.

270. The Court overlooked or misapprehended that because of their unclean hands neither the Attorney General nor any other Plaintiff is entitled to equitable relief hereunder.

Buchanan and Pope Never Owed Any Duty to Tomirae or the McMaster Legacy Trust

271. The Court overlooked or misapprehended that because Buchanan and Pope never owed any fiduciary duty to Tomirae, her son, or the McMaster Legacy Trust, and the Attorney General, Bauknight and Tomirae knew that, their fabricated action for damage for breach of a fiduciary duty to them Buchanan and Pope never had, for the purpose of damaging Buchanan and Pope, was, on its face, evidence of intentional wrongdoing.

272. The Court overlooked or misapprehended that because James Brown's documents specifically withdraw standing from any person challenging the estate plan, the same result applies to all Levenson clients after December 26, 2007 and to Terry Brown after he joined the McMaster settlement deal in January 2009.

**Most Plaintiff and Defendant Experts With Opinions, and Many Plaintiffs,
Support Buchanan/Pope's \$84 Million Value and Admit Defense of
Tomirae/Attorney General's/Bauknight's False Heir and Copyright Claims
Appropriate.**

273. The Court overlooked or misapprehended that in seven years Plaintiffs have not produced a single expert in this case to support the Attorney General/Bauknight/Tomirae claim that Brown's Schedule F assets ("Music Empire") had a value of \$23.7 Million, reduced by a \$19 Million TIAA debt, which devaluation is at the center of the scheme to discredit and damage Buchanan and Pope; and Bauknight himself has confirmed under oath that he had no expertise to do so.

274. The Court overlooked or misapprehended that the fiduciary charged with defending the estate plan and protecting it against Tomirae has admitted under oath Court filings that he knows nothing about Federal Copyright Act Termination Rights; and in 2013 he refused Pope's offer of free help to bring him up to speed on Termination Rights.

275. The Court overlooked or misapprehended that Roger Miller, Plaintiffs' Termination Rights expert, has agreed \$45 - \$60 million could even be low for the at-death value of Brown's copyrights.

276. The Court overlooked or misapprehended that experts who have given testimony that support Buchanan's and Pope's valuation of about \$99 Million less the TIAA Debt of approximately \$15 Million, and/or the propriety and trustworthiness of Buchanan and Pope in forming a proper value include R.B. Alexander (valuation expert), Wallace Lightsey, Jr. (IP Attorney); Charles Carpenter, Jr, Esq., (*pro bono publico* U.S. Cert. Petition to try to save "I Feel Good" Charity from Tomirae); Wm Jeffrey Smith (Copyright

Termination Rights expert, hired by Buchanan/Pope informed of Attorney General's settlement and takeover on Aug. 10, 2008); Harley Ruff, Esq. (see testimony before Judge Early, 4/3/09); William Sellars, CPA (would not have signed Estate Tax Return if \$84 Million not reasonable).; Pope; Thomas Pope, Esq., (worked with Jay Bender, Esq. to secure \$4.7 Million valuation documents from Attorney General under FOIA); James C. Hardin, III, Esq.; and Steven Johnson, Esq., (IRS agent who approved \$4.7 Million must not have known what he was doing).

277. The Court overlooked or misapprehended that, in addition Jason Lewis, Yamma Brown and others have made public statements which fully support the positions taken by Buchanan and Pope as to value and Termination Rights, and the validity of Brown's estate plan, despite supporting the known false and misleading statements made by Levenson on their behalf in the Complaint and elsewhere.

Defendant Is Entitled to Attorney's Fees at the Conclusion of This Matter.

278. The Court overlooked or misapprehended that Plaintiff is entitled to attorneys' fees in this matter both under the statute related to Trusts and because they were awarded in her contract and Judge Early's Payment Order which approved it.

CONCLUSION

For the foregoing reasons, Pope submits that this Court should alter, amend, vacate and/or reconsider the Summary Judgment Order and direct that the parties continue with discovery and trial on the counterclaims herein. This motion is based on the Affidavit of Wm. Jeffrey Smith, filed herewith, as well as the entire record in this matter; applicable

statutory and case law; and the South Carolina Rules of Civil Procedure, especially Rule 59(e).

Respectfully submitted,

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July 13, 2017

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)
) Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of 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,
Plaintiffs.

v.

Adele J. Pope,

Defendant.

DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION TO ALTER, AMEND
VACATE AND/OR RECONSIDER
ORDER GRANTING ATTORNEY
GENERAL'S MOTION TO BE
DROPPED AS A PARTY

RICHLAND COUNTY
FILED
2017 JUL 19 AM 10:51
JEANNETTE W. MCCLIDE
C.C.P. & C.S.

TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS AND/OR THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as

1054

soon thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope") will move pursuant to Rules 52 and 59(e), SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order vacating altering or amending the Order Granting Attorney General's Motion to be Dropped as a Party of the Honorable Doyet A. Early, III ("Jg. Early"), dated May 31, 2017 and filed June 12, 2017, a copy of which is attached hereto as Exhibit A (the "Order"). Notice of entry of the signed order was received on July 10, 2017.

Summary of Relief Requested

For one, more or all of the following reasons, and based on the Answer and Counterclaim of Pope and Robert L. Buchanan, Jr. ("Buchanan"), this Court should alter, amend, vacate and/or reconsider its May 31, 2017 Order:

- a. The Attorney General has, with knowledge that it was illegal and without merit, pursued this action to damage and discredit Buchanan and Defendant by making them appear incompetent, greedy and hostile, so that the Attorney General and Tomirae could personally benefit from funds James Brown gave for scholarships for needy students through his James Brown "I Feel Good" Charity.
- b. The Attorney General has carried out the scheme to damage and discredit Buchanan and Defendant through taxpayer-paid staff; the James Brown Legacy Trust ("McMaster Legacy Trust"), over which the Attorney General and Tomirae hold 75% voting control; and Russell Bauknight ("Bauknight"), acting "on behalf of the Attorney General of the State of South Carolina.
- c. In carrying out the scheme to discredit and damage Buchanan and Defendant, the Attorney General, with Tomirae and Bauknight intentionally undervalued James Brown's Right of Publicity and iconic personal property at zero, or near zero in Brown's Internal Revenue Service proceeding ("IRS"); overstated Brown's debts by \$5 Million to the IRS; obtained an ill-gotten "refund" from the IRS, then used that ill-gotten IRS "refund" to claim Buchanan and Pope had committed a federal felony by properly valuing Brown's music empire at \$84 Million.
- d. In carrying out the scheme to discredit Buchanan and Defendant, the Attorney General, with knowledge of his alliance with felon David Cannon and history of Dirty tricks, condoned and/or joined David Bell, Esq. ("Bell") in planting the false

Grammy © post related to Robert Potter, Esq., which was noted by the Supreme Court in *Wilson v. Dallas*.

- e. The Attorney General has, since telling the Supreme Court in 2013 he was seeking to be dropped as a party to this action, pursued it more vigorously; condoned Bauknight's waste of millions of dollars of Brown's "I Feel Good" Charity to try to discredit Defendant; evaded and consolidated James Brown Freedom of Information Act ("FOIA") requests with this case; taken no action to make Bauknight correct the false IRS filings, which damage the "I Feel Good" Charity; condoned a payment of \$700,000.00 in legal and GAL fees for Tomirae's son from Brown's Charity; and continued to take other actions prejudicial to the administration of justice which violate his Constitutional and Statutory duties.

For the above reasons, and each reason stated in Defendant's Motion to Alter, Amend or Vacate the Partial Summary Judgement Order of Judge Early granted to the Attorney General and others, the entirety of which Motion is incorporated herein, the Order should be vacated and this 7-year-old case, including Defendant's counterclaims (and Buchanan's if his settlement is found to be void), should proceed to trial.

The Attorney General's Staff Had Knowledge the Wingate Suit was Illegal

1. The Court overlooked or misapprehended that this action, commenced on May 19, 2010, by the filing by private attorneys Sweeny, Wingate & Barrow, P.C. ("Wingate Firm"), on behalf of then-Attorney General, now Governor, Henry D. McMaster ("Governor McMaster") and Bauknight "on behalf of" the Attorney General and others, was unconstitutional and illegal when filed because a private law firm was sole counsel both to Tomirae and other nonresidents, including minors, and the Attorney General.

2. The Court overlooked or misapprehended that, based on his sworn deposition testimony in 2016, Governor McMaster did not authorize the Wingate Firm to bring this suit in the name of the State/Attorney General, and did not authorize Bauknight to sue Buchanan and Defendant on behalf of the State/Attorney General.

3. The Court overlooked or misapprehended that the deposition given by Governor

McMaster, on October 19, 2016, demonstrates how Defendant has been deprived of a level playing field by the Attorney General in this suit, including not having been paid \$47,000 (ordered to be paid with interest in 2008) for her 2007 SA service to James Brown's estate, and nothing for the six years between November 20, 2007 and May 8, 2013 while she worked protect James Brown's noble estate plan and "I Feel Good" Charity:

4. **Q. Right. I want you to refresh your recollection**
5. **8 for as long as it takes because I want to talk to**
6. **9 you about whether my -- the opposition of Bob**
7. **10 Buchanan and Adele Pope to the settlement was**
8. **11 reasonable. Because my commission --**
9. 12 A. Well, I'll tell you -- I'll tell you that now. I
10. 13 would say no because that's --
11. 14 **Q. Well, I need to know why.**
12. 15 A. Well, ma'am, that's going to -- if you're wanting
13. 16 me to read this and be able to engage in that kind
14. 17 of discussion, --
15. 18 **Q. I do.**
16. 19 A. -- you're going to miss your plane.
17. 20 **Q. That's all right. I can miss it.**
18. 21 A. And, by the way, that is not my signature.
19. 22 That's -- someone apparently signed it for me.
20. 23 **Q. Well, if someone signs your signature and is not**
21. 24 **authorized to do it, you have means to fix that,**
22. 25 **don't you?**
23. Page 50
24. 1 A. Mrs. Pope, they would have been authorized to do
25. 2 it. I'm not asserting that any of these documents
26. 3 are fraudulent.
27. 4 **Q. Well, Mr. McMaster, you sued me six years ago, --**
28. 5 A. Ma'am, I did not sue you.
29. 6 **Q. -- and I have -- please let me finish the**
30. 7 **statement and the question. And I have not been**
31. 8 --
32. 9 A. That's a statement.
33. 10 **Q. -- paid for my work since 2007 as a result of the**
34. 11 **suit you brought against me, so I'm here today to**
35. 12 **find out whether there was any basis for bringing**
36. 13 **that suit. Judge Early has been told that I**
37. 14 **cannot be paid until Richland 4900 is concluded,**
38. 15 **and so I need to know what your basis for suing me**
39. 16 **for conducting an appeal of 4900 was, whether it**

1057

40. 17 **was reasonable?**

41. 18 A. Ma'am, I did not sue you, --

42. The Court overlooked or misapprehended that Sr. Assistant Attorney General Sonny Jones ("AG Jones"), however, worked with Tomirae, Bauknight and the Wingate Firm for approximately two months before the suit was filed, including intense work between May 12 and May 18, 2010, finalizing the complaint; deciding who would sign the complaint; and approving the complaint itself.

43. The Court overlooked or misapprehended that even though Governor McMaster had no knowledge that the Attorney General was a named Plaintiff; that Bauknight was named as a Plaintiff acting on behalf of the Attorney General; or that he (through AG Jones) and Tomirae were controlling the Wingate litigation through their 75% ownership of the McMaster Legacy Trust he had created, Governor McMaster had a duty to see that the staff on which he relied did not bring a frivolous lawsuit which was patently illegal under the *Santa Clara* case and the ruling of Judge Crouch in the *Eli Lilly* case issued in 2009, both of which set out in detail the control by the Attorney General and other terms necessary to prevent the use by the Attorney General of Special Counsel legal from violating Due Process rights of Defendants.

44. The Court overlooked or misapprehended that, in addition to Governor McMaster, former Chief Deputy John McIntosh ("AG McIntosh") and Solicitor General Robert Cook ("AG Cook") were aware of pressure to file suit against Buchanan and Pope by AG Jones and Tomirae's lawyer Alan Medlin ("Medlin"); and each has stated under oath that he did not, and could not, authorize the Wingate Suit to be filed in the name of the State/Attorney General or authorize Bauknight to act as a Plaintiff "on behalf of" the Attorney General.

[Depos., McIntosh, 2/8/17 ; Depos., Cook, 2/8/17.]

45. The Court overlooked or misapprehended that AG Jones was an expert on the operation of the Attorney General's Special Counsel Litigation Retention Agreements, and knew that both the Wingate Agreement and the Complaint violated constitutional requirements and the Due Process Rights of Buchanan and Pope because. [Depos., Jones, 5/4, 5/16.]

46. The Court overlooked or misapprehended that AG Jones, like Bauknight, Louis Levenson, Esq. ("Levenson") and Tomirae's lawyers knew that all of the claims of wrongdoing they were making were false, and intended to cover up false allegations the Attorney General, Tomirae, Levenson and Bell had made to Judge Early, and would continue to make to the Appellate Courts.

47. The Court overlooked or misapprehended that, under oath, neither AG Jones or nor Assistant Attorney General Mary Frances Jowers ("AG Jowers"), who, according to Wingate Attorney Everett Kendall, Esq. , worked on every aspect of the Wingate Suit from its planning until Kendall was no longer involved in it for personal reasons more than a year after the suit was filed[See Depos. E. Kendall, 3/6 / 17 Aiken Case No. 2013-CP-02-1337], either claimed to lack memory of these events; claimed protection as to communications with Medlin, Levenson, Bell and Bauknight under the "Common Interest" doctrine; or declined to answer for other reasons. [Depos. Jones, Jowers]

48. The Court overlooked or misapprehended that the terms of the Wingate Litigation Agreement put the Attorney General and Tomirae in effective control of the Wingate suit, and with increased control after the *Wilson v. Dallas* decision, but there is no known document authorizing Bauknight to sue on behalf of the State/Attorney General.

49. The Court overlooked or misapprehended that the Wingate Agreement was signed by Bauknight and attorneys who would reap about \$10 Million in contingency legal fees if they could stop the *Wilson v. Dallas* appeal, but not by most Plaintiffs.

50. The Court overlooked or misapprehended that, even though the Wingate Agreement, on its face, declares that it is a public document and subject to the Freedom of Information Act ("FOIA"), the Attorney General, Bauknight and Wingate - for 7 years - have wasted both State and James Brown's "I Feel Good" Charity's funds trying to keep the Wingate Agreement secret.

51. The Court overlooked or misapprehended that AG Jowers and AG Jones have not spoken candidly about the false claims of the Wingate Suit both because both seem to have little memory and because the Attorney General is claiming that the "common interest" they have shared with Bauknight (since 2008), with Wingate (since 2011), and with Tomirae's and James B's attorneys (from 2008 until May 8, 2013) shields their wrongful communications with Medlin, Levenson, Peter Shahid, Esq. ("Shahid") and others.

52. The Court overlooked or misapprehended that, despite multiple efforts (as described below) to obtain the Wingate Agreement, the Attorney General, Bauknight and Wingate Firm were able to conceal this public document until September 2013, four months after the *Wilson v. Dallas* decision (May 8, 2013), and three months after Judge Early banned Buchanan and Defendant from being witnesses or otherwise participating in the James Brown Aiken County cases (June 13, 2013).

53. The Court overlooked or misapprehended that when the Wingate Suit was filed, Governor McMaster had actual knowledge from Philanthropist John Rainey and others that AG Jones had been waging a personal vendetta against Buchanan and Defendant since

November 2007, when they declined to agree to let Governor McMaster control the litigation against felon David Cannon; use McMaster's Special Counsel Agreement which gave his office 10% of the fee earned by the attorneys; and allow AG Jones to select a political supporter of McMaster as counsel, rather than attorneys Few & Gilreath, who had been selected by Buchanan and Pope.

54. The Court overlooked or misapprehended that two months before filing suit, in March 2010, Tomirae's lawyer and Bauknight's lawyer had both threatened to sue Buchanan and Pope if they did not drop the appeal which became *Wilson v. Dallas*.

55. The Court overlooked or misapprehended that, in response, Buchanan and Pope presented the Attorney General with a complete Agreement by which they would have resigned and allowed the McMaster settlement deal to be implemented, subject only to two conditions: 1. the Appellate Court approve the Agreement, which stated that the Attorney General could -- and had -- substituted his judgment for that of Buchanan and Defendant; and 2. The Agreement needed to be signed by GALs for the minors (whose education trusts had been damaged by their own parents' agreeing to the McMaster settlement).

56. The Court overlooked or misapprehended that the Attorney General and settling parties would not respond, despite repeated requests, to the proposal.

57. The Court overlooked or misapprehended that at the time this suit was filed, the Attorney General, Bauknight and all other Plaintiffs had knowledge, as defined in the S. C Trust Code, that:

- a. Tomirae, by her own handwritten admissions, was married, living in Texas with her husband, and thought she might be pregnant before meeting James Brown and, later concealing her marriage and conducting a bigamous ceremony with Brown.
- b. Buchanan's and Defendant's \$84 Million [\$99 Million less \$15 Million TIAA

Debt] value of Brown's Music Empire on Schedule F of the sworn Estate Tax Return was correct and conservative.

- c. The McMaster settlement deal generated millions of dollars in estate, excise and income taxes.
- d. Governor McMaster's settlement threatened the "I Feel Good" Charity's plan to minimize the impact of Federal Copyright Act Termination Rights on the "I Feel Good" Charity because McMaster stopped the Estate's DNA testing protocol; declared fewer than half of Brown's claimed heirs to be James Brown's heirs; and "stipulated" that Tomirae would be considered to be Brown's spouse despite overwhelming evidence to the contrary.

58. The Court overlooked or misapprehended that since August 2009, Tomirae, AG Jones and Bauknight had been working on a scheme to discredit Buchanan and Defendant by devaluing Brown's 900 copyrights to \$24 Million or less; valuing Brown's Right of Publicity at zero; and then claiming Buchanan and Pope had overvalued the assets to get a big commission. [See Email, Medlin 8/30/09]

59. The Court overlooked or misapprehended that Buchanan and Defendant moved to dismiss the complaint, in part because it was illegal and violated their Due Process rights.

60. The Court overlooked or misapprehended that a week after the Wingate Suit was filed, a principal in the Wingate Firm made a \$1,000 contribution to McMaster's campaign.

61. The Court overlooked or misapprehended that Buchanan and Defendant, subject to the Motion to Dismiss, served an Answer and Counterclaim the entirety of which is incorporated herein.

62. The Court overlooked or misapprehended that, when served, a member of the Wingate Firm marked the Answer and Counterclaim "file;" failed to timely respond; then, on November 17, 2010, moved for relief from default.

63. The Court overlooked or misapprehended that on August 30, 2010, the motion to dismiss and other matters were heard by the Honorable L. Casey Manning ("Judge

Manning”), and AG Jones attended and was introduced by Wingate as one of Wingate’s many clients.

64. The Court overlooked or misapprehended that, after discussing the issue with AG Jones over a lunch during the hearing, Wingate assured Judge Manning that AG Jones was familiar with the *Santa Clara* case and Judge Couch’s Order; that the Wingate Suit was legal; and that Judge Early had already ruled on the issue. [Tr., Hg. 8/30/10]

65. The Court overlooked or misapprehended that Governor McMaster answered interrogatories before leaving office on January 11, 2011, but they were verified by his successor in office, Attorney General Alan M. Wilson (“Attorney General Wilson”).

66. The Court overlooked or misapprehended that in December 2010 the Attorney General, Bauknight and others filed their initial brief in *Wilson*, making the false claim that Tomirae and others had valuable Federal Copyright Act Termination Rights, but that the value of the Termination Rights could not be determined because Buchanan and Defendant had not secured an appraisal.

67. The Court overlooked or misapprehended that the Attorney General and Bauknight had received the Philpott, Ball, Werner (“PBW”) appraisal three months earlier, in September 2010, but decided not to disclose it to the Supreme Court for eight months.

Attorney General Wilson Authorizes the Continuation of the Wingate Suit

68. The Court overlooked or misapprehended that, upon taking office in January 2010, Attorney General Wilson authorized the Wingate Suit to continue.

69. The Court overlooked or misapprehended that in January 2011 the false Grammy © claim which would later be cited by the Supreme Court, was placed on a law firm website by Bell and his clients, with the apparent knowledge and consent of the Attorney General.

70. The Court overlooked or misapprehended that at the time the Attorney General had actual knowledge of dirty tricks played by Bell, who was aligned with felon David Cannon, including the filing of multiple false grievances against Levenson in two states, even accusing Levenson of forging his fee contract with a grandchild of James Brown.

71. The Court overlooked or misapprehended that several years later, after the *Wilson* decision referenced the false Grammy © claim, Robert Potter, Esq., who was attributed with halting the Grammy © sale, responded to Pope's inquiry saying we was not aware of the post. [See Aff. E. Alexander.]

72. The Court overlooked or misapprehended that on February 16, 2011, Defendant filed a Petition for Writ of Prohibition in the Court of Appeals, seeking to prevent the Attorney General from continuing the Wingate suit and/or from sharing private contingency-fee counsel with the private Plaintiffs, and the Attorney General, through Wingate, opposed the petition.

73. The Court overlooked or misapprehended that in April 2011 Termination Rights expert Wm. Jeffrey Smith and Defendant circulated a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* for review by professionals.

74. The Court overlooked or misapprehended that *Private Foundations* explains how the Attorney General's incorrect determination of heirs; misunderstanding of the Federal Copyright Act Termination Rights; refusal to properly conclude the Estate's DNA testing protocol; and devaluation of Brown's assets after giving Bell's client a right of first refusal to buy James Brown Music Empire, would leave Brown's "I Feel Good" Trust with almost nothing.

75. The Court overlooked or misapprehended that on or about May 5, 2011 the Attorney General and Bauknight made the known false claim to the Supreme Court that the Internal Revenue Service had determined that the assets on Schedule F of James Brown's Estate Tax Return, referred to by Buchanan and Defendant as the "Music Empire", had a value of less than \$4.7 Million; that no estate tax was payable by Brown's estate under the McMaster settlement deal; and that Bauknight had even obtained a refund.

76. The Court overlooked or misapprehended that the \$4.7 Million claim and the ill-gotten "refund" were the result of material, false statements made to the IRS by Bauknight, the full extent of which would not be understood by Defendant and Buchanan until after the first *Wilson v. Dallas*, as described in more detail herein.

77. The Court overlooked or misapprehended that from mid-2011 until today (as later explored in detail) the Attorney General, Bauknight and Bauknight's advisors have repeated to the Supreme Court and other courts, based on the ill-gotten "refund," the known false claim that McMaster settlement deal saved estate taxes; that Buchanan and Defendant misled the Courts about the tax consequences of the McMaster settlement; and that Buchanan and Defendant intentionally overstated Brown's music empire by \$79 Million to get a \$5 Million commission.

78. The Court overlooked or misapprehended that the Attorney General fully understood that, as the State's highest legal officer, and charged with the protection of charities, The Attorney General's false accusation that Buchanan and Pope had overstated James Brown's Music Empire by \$79 Million to the IRS to get a \$5 Million commission, a federal felony, would make them appear both incompetent and greedy.

79. The Court overlooked or misapprehended that on August 1, 2011 the Supreme

Court declined to supplement the record on appeal ("ROA") with the \$4.7 Million claimed value, but would later cite the Attorney General's accusations based on the false the \$4.7 Million claim, and the false planted Grammy © claim, as reasons not to disturb Judge Early's decision to replace Buchanan and Defendant.

80. The Court overlooked or misapprehended (as more fully set out below) that in August 2011 the Attorney General began to evade FOIA requests while Bauknight, working with the Attorney General, began trying to intervene in James Brown FOIA cases; move them to Richland County; consolidate them with the Wingate Suit; and prevent release of public documents which would show the \$4.7 Million claimed value was fabricated; Tomirae was not Brown's spouse; and that the Wingate Suit was illegal.

81. The Court overlooked or misapprehended that in September 2011 the Attorney General told Judge Manning he was ready and "more than willing" to release the Wingate Agreement, but his Wingate Firm lawyer simultaneously argued it was private and could not be released.

82. The Court overlooked or misapprehended that in October 2011, while suing Buchanan and Defendant for tens of millions of dollars and falsely accusing them of a felony, the Attorney General allowed former trustee David Cannon -- who had taken \$17 Million of funds James Brown gave his "I Feel Good" Charity --- to enter an *Alford* plea, and the Attorney General neither sought jail time nor restitution.

83. The Court overlooked or misapprehended that Tomirae's lawyers helped prepare Bauknight's lawyers for the *Wilson* Supreme Court oral arguments held November 1, 2011.

84. The Court overlooked or misapprehended that on the day before the Supreme Court oral argument in *Wilson*, which was attended both by Attorney General Wilson and

former Attorney General McMaster, Bauknight's lawyer was quoted in more than 330 media outlets making vicious statements attacking Buchanan and Pope, even saying that the Court's reinstating them would be like "throwing a hand grenade into the James Brown estate."

85. The Court overlooked or misapprehended that at the Wilson oral argument Bauknight, through counsel, made known false and/or misleading statements to the Supreme Court about the value of Brown's assets; Brown's heirs; the Federal Copyright Act Termination Rights provisions; and Tomirae's marital status, most or all of which the Attorney General and Bauknight knew to be false.

86. The Court overlooked or misapprehended that Bauknight's counsel told the Supreme Court Tomirae's elective share claim was a "slam dunk;" James Brown's estate and 2000 Trust had no corpus to speak of; Tomirae and her son controlled the Federal Copyright Act Termination Rights; and that the *Please, Please, Please* royalties would automatically be lost by the "I Feel Good" Charity in 2012 if the McMaster settlement deal were not upheld.

87. The Court overlooked or misapprehended that Bauknight, with others, claimed incorrectly that because of Termination Rights there would be nothing left in the "I Feel Good" Charity in 2023 if the McMaster Settlement were not upheld.

88. The Court overlooked or misapprehended that the Attorney General and Bauknight had actual knowledge that Brown's valuable Right of Publicity was not subject to Termination Rights, nor were Brown's non-American copyrights, his personal property, or his multi-million-dollar claims against Cannon, Greenberg Traurig and others.

89. The Court overlooked or misapprehended that Peter Afterman had identified more

than 200 songs of other artists which sampled James Brown's songs, and royalties from many of the samplings, as well as Brown's own copyrights from the late 1990s and later, would not be threatened by Termination Rights election attempts until 2030 or later.

90. The Court overlooked or misapprehended that in April 2012 Federal Judge William O. Bertelsman, at the request of Forlando Brown, dropped Forlando's frivolous Complaint to enjoin the James Brown 2000 Trust until felon David Cannon and Albert Dallas were reinstated, along with claims against Buchanan and Defendant he had made in amendments to the Complaint.

91. The Court overlooked or misapprehended that Bauknight, with secret knowledge that Terry Brown's interest in James Brown's estate had been transferred to Forlando a year earlier, allowed Forlando to lie to Judge Bertelsman, telling the Court that he had no assets and had no expectation of assets from the James Brown litigation unless Terry Brown died.

92. The Court overlooked or misapprehended that Judge Bertelsman stated that his father had told him you could not squeeze "blood out of a stone," the attitude Judge Bertelsman would adopt with respect to Forlando; which both Bell and Bauknight knew to be false; and which neither corrected.

93. The Court overlooked or misapprehended that in the spring of 2012 Buchanan, who had not been paid for James Brown work since 2008, was experiencing serious financial hardship and was forced to settle with the Attorney General.

94. The Court overlooked or misapprehended that, before allowing Buchanan to be paid, the Attorney General and settling parties extracted a commitment that Buchanan do nothing to help Defendant try to save James Brown's "I Feel Good" Charity, and that

Buchanan not file a Petition for Rehearing when the *Wilson* decision was rendered.

95. The Court overlooked or misapprehended that the Attorney General did not tell the Appellate Court in *Wilson* of this unconscionable requirement; tried to make it appear to the Court that Buchanan was at odds with Defendant; and that a Motion to Void the unconscionable requirement is still pending.

96. The Court overlooked or misapprehended that in 2012 the Attorney General allowed Brown's "I Feel Good" Charity to pay Buchanan \$500,000.00 to secure releases for himself, Bauknight, and Tomirae and from Buchanan's counterclaims in this lawsuit, and neither Tomirae nor anyone else has repaid Brown's "I Feel Good" Charity.

97. The Court overlooked or misapprehended that in August 2012 the Attorney General and others obtained an "emergency" oral order from Judge Manning stopping the deposition of their own witness, Albert "Buddy" Dallas, when it became clear that Dallas was going to testify that Tomirae was not Brown's spouse, but Dallas gave a sworn statement confirming Tomirae's handwritten admissions that she was not Brown's spouse, as well as a 2006 three-way conversation he, Tomirae and Brown had confirming that they were not married.

98. The Court overlooked or misapprehended that after the *Wilson* oral argument, the attacks on Defendant and others related to the attempt of the Attorney General and Bauknight to conceal evidence that Tomirae was not Brown's spouse; the Wingate Suit was not legal; and the \$4.7 Million value was fabricated became more vitriolic.

99. The Court overlooked or misapprehended that in 2012, in an effort to prevent release of Tomirae's already public handwritten admissions that she was not Brown's spouse from Judge Early's *ex parte* unconstitutional gag orders issued in 2008,

Bauknight's counsel told Judge Early he had already found Tomirae to be Brown's spouse; the Attorney General and Bauknight called Pope's court filings "works of fiction"; and both made claims that the Attorney General and "family" were tired of Defendant's meddling.

100. The Court overlooked or misapprehended that, as a result of the joint efforts of the Attorney General, Tomirae and Bauknight, Judge Early declined to void the 2008 gag orders, thereby preventing discussion of the already-public handwritten admissions, which Tomirae's lawyer incorrectly tried to characterize as a "diary" until after Judge Early had ruled in 2015 that Tomirae was Brown's spouse.

101. The Court overlooked or misapprehended that since 2011 journalists, public officials (now. Sen. Tom Young) and other citizens have provided affidavits urging the Attorney General to release public James Brown information, but he has refused.

102. The Court overlooked or misapprehended that in 2012 the Attorney General filed a Motion for Guidance Related to Pre-Trial Publicity, and filed more than 100 articles, including those by journalist Sue Summer, in this case.

103. The Court overlooked or misapprehended that the articles filed by the Attorney General, including those in the *New York Times*, as well as local and Augusta articles, help demonstrate the Attorney General's and Bauknight's efforts to discredit Buchanan and Defendant and praise Bauknight for fighting for the McMaster Settlement [Mot. PreTr. Publ.]

104. The Court overlooked or misapprehended that in July 2012 the Attorney General and others secured an Order for mediation in this suit, even though there had been very little discovery.

The October 12, 2012 Wingate Suit Mediation

105. The Court overlooked or misapprehended that after securing an Order for Mediation on July 30, 2012, the Attorney General and others began to seek exemption for the parties from attending the mediation, while at the same time forcing Defendant to have her carrier there to waste Defendant's fast-depleting professional negligence fund.

106. The Court overlooked or misapprehended that the Attorney General had actual knowledge that Defendant's and Buchanan's carriers had provided attorneys to defend the 2000 Trust in Forlando's injunction suit from 2008 until May 2009, including in a 2-day temporary injunction hearing in Beaufort, S.C. in the fall of 2008; participate in extensive discovery; and attend several additional telephone hearings.

107. The Court overlooked or misapprehended that both Buchanan and Pope had experienced a large increase in their premiums as a result of Forlando's frivolous suit; and that the 2000 Trust was seeking to have those legal fees and costs reimbursed out of Forlando's \$285,000 trust share.

108. The Court overlooked or misapprehended that Buchanan and Defendant had found alternate insurance with Cincinnati, but that, upon the filing of the Wingate Suit, Cincinnati had sent notice of cancellation of the insurance of both, and had sued Buchanan and Pope.

109. The Court overlooked that the Attorney General had knowledge that if he could deplete Pope's fund with her carrier, it would be even more difficult for her to try to save the "I Feel Good" Trust.

110. The Court overlooked or misapprehended that, after requiring that Pope's carrier attend the mediation, the Attorney General sought an exemption from attendance

for Tomirae and many of the Levenson clients, and fought Defendant's efforts to have the minors, and Venisha, who was incarcerated, and who were pursuing the Wingate Suit as Plaintiffs without GALs, represented by GALs at the mediation.

111. The Court overlooked or misapprehended that Defendant sent Offers of Compromise to the minors and the Attorney General prior to the mediation, but, instead of seeing them as an opportunity to save the "I Feel Good" Charity, the Attorney General and others, through Wingate, filed the Offers of Compromise and asked that they be stricken.

112. The Court overlooked or misapprehended that the Attorney General claimed that that Defendant was trying to divide the Plaintiffs, which was true: Defendant wanted to be aligned with the half (or half + 1) of James Brown's heirs who wanted to be fairly – but not overly – compensated for Federal Copyright Act Termination Rights cooperation with James Brown's "I Feel Good" Charity.

113. The Court overlooked or misapprehended that by 2012 the Ray Charles litigation over Termination Rights was demonstrating how important it is for an Estate which owns significant copyrights which feed into a charity to maneuver the complex relationship between the Federal Copyright Act Termination Rights provisions; State Probate law; and the need for independent trial counsel protecting the Estate/Charity who have no legal obligation to family, or claimed family.

114. The Court overlooked or misapprehended that, with Judge Manning's consent, only a handful of Plaintiffs attended the mediation, and, instead, Levenson, Bell, and counsel for Tomirae attended with AG McIntosh, AG Jones and AG Jowers.

115. The Court overlooked or misapprehended that Wingate assured Judge Manning that Levenson had the authority to speak for, and bind, about a dozen Plaintiffs,

when actually Daryl Brown had terminated Levenson, as had Daryl's daughters.

116. The Court overlooked or misapprehended that Tomirae and James B. did not attend, and neither did James B's GAL in the Aiken cases. Instead, James B. was represented by Medlin and Bauknight.

117. The Court overlooked or misapprehended that Tomirae issued a public post on the day of the mediation suggesting that Defendant had stolen from the family and was "the last of the rats."

118. The Court overlooked or misapprehended that in 2017 Bauknight would claim under oath that Pope would not settle for \$40 Million, when the truth was that Pope said in October 2012 that if dropping the *Wilson v. Dallas* appeal to try to save the "I Feel Good" Charity before the decision was a condition of being paid, she would not accept payment, no matter what was offered.

119. The Court overlooked or misapprehended that the public charts and records, including those prepared by Defendant in 2012, make clear that AG McIntosh, AG Jones and AG Jowers all had personal knowledge by 2012 of Bauknight's material misstatements, by millions of dollars, to the IRS; the ill-gotten "refund"; and the improper use of the false filings by the Attorney General, Bauknight, and others to commit fraud on the courts and improperly accuse Buchanan and Pope of a federal felony.

120. The Court overlooked or misapprehended that those public October 2012 Charts include: 1. What Levenson Wants; 2. What Adele Wants; 3. What Daryl wants; 4. What Tommie Rae Wants; 5. Bauknight/Legacy Trust Fraud; and 6. What Nexsen Pruet Wants, and each is incorporated herein by reference.

1st *Wilson v. Dallas* Decision; Pope Meeting; & Attorney General's Actual Knowledge of Bauknight's False Claims to IRS; Ill-Gotten "Refund"; & False Statements to Court (March 6, 2013)

121. The Court overlooked or misapprehended that in December 2012 Defendant's daughter, who had two young children, suffered an event requiring a brain tumor to be removed, and Defendant to work on James Brown matters in another town while she recovered.

122. The Court overlooked or misapprehended that almost immediately after the event the Attorney General and other Plaintiffs moved for a scheduling order and trial of this case in the summer of 2013.

123. The Court overlooked or misapprehended that the first *Wilson v. Dallas* decision which was rendered on February 27, 2013, cited almost identical facts to the false Grammy © claim planted by Bell, but the Court did not have full knowledge that Christie's legal counsel had urged the Grammy © sale to proceed, calling the Academy's tactics strongarm and without legal basis; Johnny Cash and Stevie Wonder had sold Grammys ©; both Judge Early and the Court of Appeals had specifically approved the Grammy © sale; the Grammy © was properly withdrawn without penalty to prevent the legal costs of defense of its sale in New York; Bauknight had subsequently valued the Grammy at \$20,000, higher than its original value, on return; but then Bauknight had told the IRS that the Grammy© and thousands of other items stored in four museums had a value of zero, or near zero.

124. The Court overlooked that the Supreme Court, having been told (falsely) that James Brown's total assets were worth about \$6.5 Million and his Estate only \$5 Million, cited what it believed to be Buchanan's and Pope's \$5 Million fee claim for working

18 months on a \$5 Million Estate.

125. The Court overlooked or misapprehended that Buchanan and Pope, seeking only to protect the "I Feel Good" Charity and uphold Brown's estate plan, as was their duty, were surprised to learn that the Supreme Court's decision had been so deeply impacted by false accusations made by the Attorney General, Bauknight as the Attorney General's agent, and Bell, including those fabricated after the McMaster deal was approved by Judge Early on May 26, 2009.

126. The Court overlooked or misapprehended that the Supreme Court, based on misleading statements, apparently also believed that Buchanan agreed with the position of the Attorney General.

127. The Court overlooked or misapprehended that the Supreme Court did admonish the Attorney General to conclude the FOIA suits and the Wingate Suit "in the first instance."

128. The Court overlooked or misapprehended that Pope has never sought any commission other than her approximately \$47, 000 unpaid 2007 SA fee; approximately \$1.4 Million for the 18 months between November 20, 2007 and May 26, 2009 in accordance with her Court-approved contract with the Estate/2000 Trust, timely paid or with interest as ordered by Judge Early in 2008; and up to an additional \$1.4 million, in the discretion of the Court, for the entire period she served the James Brown Will and 2000 Trust, from November 20, 2007 until (what became) May 8, 2013.

129. The Court overlooked or misapprehended that, with the *pro bono publico* service of lead appellate counsel; the efficient work of Tressa Hayes, Esq.; and much work by Buchanan and Pope, the legal fees of the *Wilson v. Dallas* appeal would be less than

David Sojourner, Esq., would charge for his first two months as Limited Special Administrator/Trustee ("LSA/LST") to defend the estate plan, but disclaiming any duty to protect the "I Feel Good" Charity's 900 copyrights.

130. The Court overlooked or misapprehended that on March 6, 2013, knowing only of the \$2 Million overstatement of James Brown's Charitable Deduction (taking a \$2.8 Million deduction with only \$.8 Million going to Charity, and \$2 Million going to grandchildren), but not yet knowing about Bauknight's \$3 Million overstatement of Brown's TIAA debt, Pope met with Attorney General Wilson, AG McIntosh and AG Cook.

131. The Court overlooked or misapprehended that Pope explained to Attorney General Wilson, AG McIntosh and AG Cook how Bauknight's intentional devaluation of Brown's assets and overstated deductions, with Bauknight's assertion to the IRS that Tomirae was Brown's spouse, if not corrected, could aid Tomirae in her claim to be Brown's spouse, and – more importantly – if not corrected could reduce the annual required payout for scholarships to needy students from more than \$3 Million to about \$50,000 a year.

132. The Court overlooked or misapprehended that Attorney General Wilson, AG McIntosh and AG Cook all said they were hearing this for the first time, and seemed surprised.

133. The Court overlooked or misapprehended that Attorney General Wilson excused himself early to have lunch with a Nexsen Pruet attorney, but said he would not be talking about the James Brown issue, and he now claims protection for his Nexsen Pruet communications between February 27 and May 8, 2013, under the "Common Interest" doctrine.

134. The Court overlooked or misapprehended that Pope, AG McIntosh and Pope's attorney Adam Silvernail met a second time with AG Cook and AG McIntosh, reviewing the same false representations that had been made by Bauknight to the IRS, and the Court after Bauknight secured the ill-gotten "refund."

135. The Court overlooked or misapprehended that four years later AG Cook testified under oath at his deposition that he never thought Pope was incompetent or greedy, and always thought she expressed genuine concern for protecting Brown's "I Feel Good" Charity, but that the false and vitriolic attacks by the Attorney General and Bauknight as the Attorney General's claimed agent are inconsistent with AG Cook's beliefs.

136. The Court overlooked or misapprehended that Attorney General Wilson called Pope before March 14, 2013, to say he was moving to get out of the Wingate Suit; told the Supreme Court the same, and that he hoped to conclude the FOIA matters soon; then went on to do exactly the opposite.

Tomirae's Son Reveals Details of Devaluation Scheme to Damage Buchanan & Pope in Petition for Rehearing in Supreme Court

137. The Court overlooked that under a claim that they shared a "Common Interest" with Tomirae and her lawyers, James B., Bauknight, Bell and Levenson, between the two *Wilson v. Dallas* decisions, the Attorney General and Bauknight refuse to release communications during this time, but the Petition for Rehearing and Reply of James B. in *Wilson* reveal the continuing scheme to denigrate Buchanan and Defendant, as well as details of what, since March 14, 2013, has been known to be an additional false \$3 Million overstatement to the IRS and Courts of James Brown's deductions by Bauknight.

138. The Court overlooked or misapprehended that in his Petition for Rehearing and Reply James B. issued a vitriolic attack on Buchanan and Pope, again making the

known-false claim that the Attorney General and settling parties did not have the appraisal to value Tomirae's and the settling parties' Termination Rights when they filed their initial brief in December 2010.

139. The Court overlooked or misapprehended that James B.'s Petition and Reply also reveal the details of the claimed "appraisal" of the Music Empire (Schedule F, Estate Tax Return) by PBW. From James B's Petition, it became apparent:

- a. Bauknight had claimed \$5 Million of deductions to which James Brown's estate was not entitled in Brown's estate tax proceeding.
- b. \$3 Million of the \$5 Million overstatement was hidden from the IRS within the PBW "appraisal", which valued Brown's TIAA debt at \$19 Million – rather than the correct value of less than \$16 Million.
- c. Bauknight had valued Brown's Right of Publicity at zero, although Michael Jackson's was known to be valued by the IRS at more than \$150 Million, and Whitney Houston's at \$11 Million.
- d. Bauknight had valued all of Brown's thousands of items of Tangible Personal Property ("TPP"), including the household goods valued by Christie's at more than a million; the items sold at the Christie's sale; items in four museums for safekeeping; the Rolls Royce and fleet of vehicles; and 45+ boxes of music items placed by Buchanan and Pope in a music storage facility in Nashville, Tenn., at zero, or near zero, while all other Fiduciaries had valued these items at about \$2 Million.

140. The Court overlooked or misapprehended that, with this knowledge, the Attorney General, Tomirae and Bauknight continued their scheme to defraud the Court to discredit Buchanan and Pope and hold onto control of "I Feel Good" Charity's assets for their own personal benefit.

141. The Court overlooked or misapprehended that that Attorney General's plan did not change when, on May 8, 2013, the Supreme Court voided Bauknight's appointment and confirmed its earlier decision.

**The Attorney General, Bauknight and Wingate Ignore *Wilson v. Dallas*;
Tomirae and Levenson Publicly Announce Intention to Reinstate McMaster Deal
(May 29, 2013)**

142. The Court overlooked or misapprehended that within a day of the *Wilson* decision Tomirae, the Attorney General and Bauknight's lawyers were working to have Bauknight reinstated.

143. The Court overlooked or misapprehended that by May 10, 2013 the Attorney General had secured Bauknight's re-appointment.

144. The Court overlooked or misapprehended that by May 10, 2013 the Attorney General, Bauknight and Tomirae, through Wingate, had told Judge Manning that the deletion by the Supreme Court of Footnote 29 From the final *Wilson* decision meant that the Supreme Court placed no importance on concluding the Wingate Suit or the FOIA matters, and asked Judge Manning stay the Wingate and FOIA suits until Judge Early concluded the James Brown litigation in Aiken County.

145. The Court overlooked or misapprehended that on May 29, 2013 Bauknight served Pope with a Notice of Disallowance with impending bar, asserting Pope was not entitled to any payment; claiming Pope might be subject to disgorgement of her partial SA fee for her service in 2007; and repeating the false claim that Buchanan and Pope had inflated the value of Brown's assets to get a big commission.

146. The Court overlooked or misapprehended that on May 29, 2013 Judge Early held a status conference in Barnwell, and Levenson and Tomirae's lawyer announced in open court their intention to reinstate the McMaster settlement deal, then Levenson, Tomirae and Bauknight urged Judge Early to ban Buchanan and Pope from participation in James Brown cases.

147. The Court overlooked or misapprehended that Attorney General Wilson, with direct knowledge of both Bauknight's IRS fraud and his fraud on the Supreme Court, expressed to Judge Early his satisfaction with Bauknight, and the Attorney General's intention to withdraw as a party and "monitor" the Aiken James Brown cases now that Bauknight had been reappointed.

148. The Court overlooked or misapprehended that while he did follow through on withdrawing from the Aiken Cases, the Attorney General, Bauknight on behalf of the Attorney General, the McMaster Legacy Trust and Tomirae have vigorously pursued the Wingate Suit for the entire period since May 8, 2013.

**At Request of Tomirae, Levenson & Bauknight, Buchanan & Pope
Banned from Hearings (June 13, 2013)**

149. The Court overlooked or misapprehended that on June 13, 2013, without a hearing, Judge Early issued Administrative Orders which excluded Buchanan, Defendant and all former PR/Trustees under Brown's Will and 2000 Trust from participating in Judge Early's James Brown hearings.

150. The Court overlooked or misapprehended that Pope, when not reinstated on May 8, 2013, decided to work *pro bono publico* as a private citizen to try to save James Brown's "I Feel Good" Charity, and did so diligently until June 10, 2013.

151. The Court overlooked or misapprehended that in May 2013, Pope and Buchanan, along with Harley Ruff, Esq., Wm. Jeffrey Smith, W. Steven Johnson, Esq., and James Hardin III, Esq., provided immediate and inexpensive expertise to demonstrate how -- based on the *Wilson* ruling -- the damage Bauknight had caused with his IRS filings could be corrected; the representations about the Copyright Act Termination Rights made by the Attorney General and Bauknight had been incorrect, but could be corrected; and that

there were multiple strategies, as the Ray Charles Foundation was using, to protect the "I Feel Good" Charity's 900 copyright royalties from any substantial dissipation, including dissipation by improper or premature attempts by claimed heirs to exercise Termination Rights elections.

152. The Attorney General had knowledge that Pope, even though she was unable to secure professional negligence coverage because of the Forlando and Wingate Suits, had been engaged by the \$50 Million Graham Foundation to assist with a multi-year self study as it moved into its third generation as a family foundation, and, in addition, had estate planning, Termination Rights and probate litigation expertise.

153. The Court overlooked or misapprehended that the Attorney General, Bauknight, Tomirae, Levenson and Bell, however, did not want *pro bono publico* help to save what should now be South Carolina's largest-ever private foundation dedicated solely to the education of needy students; the lawyers wanted \$10 million; and the Attorney General wanted the benefits to be reaped from personal control over a \$100 Million foundation.

**Forlando Suit Reveals Bell/Bauknight Aligned in Wingate Suit
(August 20, 2013)**

154. The Court overlooked or misapprehended that, after Judge Early excluded Buchanan and Pope from participation in the James Brown Aiken hearings on June 13, 2013, Bauknight, the Attorney General and Tomirae began to reinstate the McMaster settlement deal which dismembered Brown's "I Feel Good" Charity and threatened its copyrights.

155. The Court overlooked or misapprehended that Bauknight was so effective in dismembering the "I Feel Good" Charity a second time that in 2015 Tomirae's lawyer

suggested to Judge Early that Bauknight should be knighted.

156. The Court overlooked or misapprehended that at the time of his deposition in Case 3:08-cv-00014-WOB (the "Forlando Suit") on August 20, 2013, Bauknight was still concealing his alliance with Bell on the Wingate contract; the PBW \$4.7 Million "appraisal"; and the Dec 2010/January 2011 McMaster Legacy Trust amendment and Assignment which showed Terry had secretly transferred his interest in Brown's Estate to his son Forlando.

157. The Court overlooked or misapprehended that Bauknight's August 20, 2013 deposition made clear that Bauknight and Bell would help each other continue the false attacks on Buchanan and Pope, and that Bauknight even claimed that Forlando had done nothing wrong in his 4-year effort to enjoin the James Brown 2000 Trust from taking any action until felon David Cannon and Albert "Buddy" Dallas were reinstated as James Brown's Trustees.

158. The Court overlooked or misapprehended that at his 2013 deposition in the Forlando Suit, Bauknight concealed Bell's signing of the Wingate Agreement, and Terry Brown's 2011 transfer of his interest in Brown's Estate to Forlando, and, in addition, sought to conceal both the \$4.7 Million PBW appraisal and the Wingate Agreement.

159. The Court overlooked or misapprehended that Bauknight said Buchanan's and Defendant's efforts for the 2000 Trust to recover some of the costs of Forlando's 4-year suit to enjoin the 2000 Trust until felon David Cannon and Albert Dallas were reinstated as a trustee was "frivolous and meritless." Asked about Forlando's suit, he said:

12 Q: Do you believe that Forlando Brown was ever

13 asserting claims against the trust?

14 A: I don't have a view on it.

15 Q: So you don't have a view one way or the other?
16 A: I don't have an opinion.
17 Q: Do you know when Forlando Brown dropped the
18 claims, the affirmative claims contained in the
19 complaint and the amendments of the complaint?
20 A: I believe it was sometime around May of 2012.
21 That's when I wrote to the court dropping the
22 counterclaim on behalf of the trust because I
23 felt it was meritless.

160. The Court overlooked or misapprehended that when questioned about the
Supreme Court's voiding his PR/Trustee appointment in *Wilson Bauknight* said:.

Q: I am correct, am I not, that the May 2013
23 second Supreme Court opinion voided your
24 initial appointment under the May 2009
25 settlement order, correct?

Page 42

1 A: It had language in there -- I'm not sure quite
2 how to take the language in there. I don't
3 know at what point it would have voided it,
4 because I don't know if they were aware that I
5 was also SAST. And obviously if they -- if I
6 had not been SAST, you couldn't go back and
7 void the appointment and have no PR trustee or
8 no fiduciary for the estate trust. So it was
9 very unclear as to what point it was for. But
10 that said, it made no difference because I was
11 SAST.

12 Q: The opinion did use the word void though? Do
13 you recall that?

14 A: I don't know that it did or not.

15 Q: You don't recall that?

16 A: I haven't reviewed that.

17 Q: Okay. And the opinion you just gave about you
18 can't go back and void an appointment ---

19 A: I didn't say they couldn't. I just said I was
20 unclear as to what they did.

21 Q: Okay. I'm sorry.

22 A: But in the end it made no difference because I
23 was SAST at that same period.

Bauknight, Levenson, Tomirae, Bell Use June 13, 2013 Orders to Continue Fraud on Court and False Claims Against Defendant

161. The Court overlooked or misapprehended that Judge Early's June 13, 2013 Orders issued at the request of Levenson, Bell and Bauknight, by preventing Buchanan and Pope from any participating in any James Brown Aiken case for three years, even as witnesses, gave Bauknight (still the Attorney Generals' agent), Levenson, Bell and Tomirae three years of direct access to Judge Early with no opportunity for Buchanan and Pope to refute the false \$4.7 Million value claim and other false statements being made to continue the damage to them.

162. The Court overlooked or misapprehended that by July 8, 2013 Bauknight had delivered an *ex parte* "ethics" opinion of Nathan Crystal, Esq., to Judge Early which, according to Judge Early, gave him comfort that it was appropriate for Bauknight to defend the estate plan he had been viciously attacking for four years,

163. The Court overlooked or misapprehended that because the Crystal opinion was *ex parte*, and has not been released, it is not known whether Crystal disclosed to Judge Early, or addressed, that Bauknight was continuing to act in the Wingate Suit on behalf of Tomirae, James B. and the Levenson Will/Trust contestants.

164. The Court overlooked or misapprehend that by 2015 the Attorney General, Tomirae and Bauknight had achieved their goal of having Tomirae declared the spouse of James Brown in a summary judgment proceeding in which Buchanan and Pope were not allowed to be witnesses; and from which heirs other than Tomirae and her son who were not represented by Levenson or Bell were excluded.

165. The Court overlooked or misapprehended that on October 12, 2013, Judge

Early held a hearing related to Buchanan's service, all of which was joint with Pope.

166. The Court overlooked or misapprehended that Judge Early, based on personal knowledge, approved Buchanan's retention of his 2007 SA fee, and all amounts paid Buchanan for his service through May 26, 2009, in accordance with Buchanan's and Pope's court-approved "time + costs" contract with the Estate/2000 Trust, and confirmed that under *Wilson* there was no basis for Buchanan to disgorge any of these amounts.

167. The Court overlooked or misapprehended that Judge Early, based on his personal knowledge, praised Buchanan and "double approved" his payments, even leaving open the possibility of Buchanan's receiving addition compensation if the Motion to Void his Wingate Suit settlement with the Attorney General and others was successful.

168. The Court overlooked or misapprehended that Judge Early directed Bauknight's lawyer to prepare an order reflecting his ruling regarding the Buchanan service and approval of payments, but no order was ever delivered or entered.

169. The Court overlooked or misapprehended that in 2014 Judge Early denied Defendant's motion for partial summary judgment for her SA fee and PR/Trustee commission for the same periods, but, based on the Attorney General's and Bauknight's false allegations in the Wingate Suit and Bauknight's false claim about the Grammy ©, partial summary judgment was denied.

170. The Court overlooked or misapprehended that Tomirae and Bauknight have bragged to Judge Early about Bauknight's accomplishments for four years (since 2013), as Bauknight has continued to serve Tomirae and the Attorney General in the Wingate Suit, and have continued the false claims related to the fabricated \$4.7 Million value, the ill-gotten "refund", the false Grammy© story planted by Bell, and the false claim that it was

Buchanan and Pope who had made improper IRS filings – not Bauknight.

171. The Court overlooked or misapprehended that in 2015 Judge Early delivered a Status Report to the Supreme Court which contained various inaccuracies resulting from Bauknight's and Tomirae's false statements; praised the fine service of Bauknight; asserted, despite the public May 29, 2013, announcement by Tomirae and Levenson of their intention to reinstate the McMaster settlement deal, that he was unaware of any settlement discussions; stated (incorrectly) that he believed Pope might be seeking a \$5 Million commission; and stated (incorrectly) that the James Brown heirs proceeding had been properly completed.

172. The Court overlooked or misapprehended that the Supreme Court's Orders issued on June 10, 2015 in response to Judge Early's Status Report are being used by Tomirae, Bauknight and the Attorney General to continue their damage the reputations and careers of Buchanan and Defendant.

The Wingate Suit is Illegal and Violates the Rules of Professional Conduct

173. The Court overlooked or misapprehended that Governor Henry McMaster has now confirmed under oath the he did not authorize the Wingate Firm to name the Attorney General as a Plaintiff in this action, and did not authorize Bauknight to be a Plaintiff "on behalf of" the Attorney General.

174. The Court overlooked or misapprehended that the Wingate Agreement violates both State law as to contracts with the State and the Rules of Professional responsibility.

175. The Court overlooked or misapprehended that the jurisdiction to bring an illegal suit in the name of the State/Attorney General can, and should be raised, and

corrected by the Court now, denying the Attorney General, Bauknight as his agent, and the McMaster Legacy Trust any relief under their complaint.

176. The Court overlooked or misapprehended that Attorney General Wilson's approving the illegal Wingate Suit did not make it legal.

The Attorney General's Use of the Cannon Criminal Matter to Damage Buchanan and Pope, With the False Felony Claim, Constitute Violations of Section 17-1-20

177. The Court overlooked that the Attorney General, Bauknight as the Attorney General's agent, and Wingate have used the Cannon criminal proceeding and allegations that Buchanan and Defendant committed a federal felony improperly for the purpose of damaging Buchanan and Pope in the Wingate Suit and achieving a civil benefit for themselves in violation of Section 17-1-20 of the South Carolina Code and *In the Matter of Jolly*, 239 S.E.2d 490, 269 S.C. 668 (1977).

178. The Court overlooked or misapprehended that David Cannon contacted AG Jones shortly after August 10, 2007, just after Buchanan and Pope had discovered some of the \$17 Million Cannon had taken from funds James Brown left for needy students in his "I Feel Good" Trust.

179. The Court overlooked or misapprehended that within months lawyers who had represented Cannon and Albert Dallas began making political contributions to former Attorney General McMaster, and Attorney General McMaster spoke on WIS-TV of the vast value of James Brown's name, image and assets. [Depos. Jones, Jowers, Ex. WIS-TV Interview, 2/2008.]

180. The Court overlooked or misapprehend that on November 21, 2007, the day after they were appointed as PR/Trustees, AG Jones asked Buchanan and Pope to resign and tried to persuade Judge Early to allow the Attorney General to control the civil suit

against Cannon by selecting counsel and using the Attorney General's Litigation Retention Agreement which would give the Attorney General's Office 10% of Special Counsel's fee.

181. The Court overlooked or misapprehended that in November 2007 the Attorney General ordered a SLED investigation; AG Jones was designated as the contact; and the Attorney General's office -- not the local solicitor -- has handled the Cannon criminal matter since.

182. The Court overlooked or misapprehended that in 2010 Cannon was indicted for about \$12 Million of the \$17 Million he took from funds Brown gave the "I Feel Good" Charity between 1999 and 2007, and for a 2008 forgery to cover up some of the taking, but the Attorney General never reported the forgery in the civil proceeding.

183. The Court overlooked or misapprehended that the Attorney General sued Buchanan and Defendant in the Wingate Suit, and by October 2010 had named David Cannon as one of the Attorney General's witnesses against Buchanan and Pope, even though he had been indicted.

184. The Court overlooked or misapprehended that at the same time the Attorney General and Bauknight (claiming to be the Attorney General's agent) had in hand a fabricated \$4.7 Million "appraisal" which they would present to the IRS, and later to the Courts, as the basis for claiming Buchanan and Pope had committed a federal felony by (according to the false claim) valuing Brown's music empire at \$84 Million, instead of \$4.7 Million, to try to obtain a \$5 Million commission on a \$5 Million estate.

185. The Court overlooked that for the entire time since, Cannon has continued to be designated as the Attorney General's witness for the benefit of the Attorney General, Bauknight, and those the Attorney General has chosen to benefit.

186. The Court overlooked that Bauknight, in addition to claiming to be the Attorney General's agent in the Wingate Suit, is a part-time law enforcement officer.

187. The Court overlooked or misapprehended that the Attorney General engaged Ellison Thomas, CPA in the Cannon criminal investigation, and also engaged him to testify in this case about alleged errors of Buchanan and Pope (but failed to tell him about the \$4.7 Million devaluation).

188. The Court overlooked or misapprehended that Thomas was also engaged in other James Brown matters to assist Bauknight; found only \$7 Million of the \$17 Million Cannon took; and refuses to disclose his findings in the matter of Albert Dallas, Cannon's co-trustee.

189. The Court overlooked that, especially in light of the false felony claim which has been lodged against Buchanan and Pope for six years, the Cannon criminal and civil matters have become improperly intertwined with this case, and the Cannon criminal proceeding is being used to advance the Attorney General's and Bauknight's personal interest.

190. The Court overlooked or misapprehended that one of the first acts of Attorney General Wilson after taking office in January 2011 was to file a motion for sanctions against Buchanan and Pope for filing a brief which supported recovery of about \$1.2 Million in court-ordered costs from Cannon in relation to the 2007 action for his removal. [Sanctions were not granted.]

191. The Court overlooked or misapprehended that AG Jones met with the prosecutors in October 2011, the day Cannon was allowed to enter an *Alford* plea to a small number of the takings; that following the meeting no restitution or jail sentence was

recommended; and that the Court was not told about Pope's Victim's Statement in which she asked the Attorney General's office to notify the Court about the damage to needy student beneficiaries of James Brown's "I Feel Good" Trust from the millions of dollars Cannon had taken.

192. The Court overlooked or misapprehended that Section 17-1-20 provides that no prosecuting officer shall receive any fee or reward from or in behalf of a prosecutor for services in any prosecution or business to which it is his official business to attend, nor be concerned as counsel or attorney for either party in a civil action depending upon the same facts, and that Cannon is being improperly used in this suit to provide a benefit to the Attorney General; Bauknight acting "on behalf of" the Attorney General; and Tomirae and those the Attorney General elects to favor.

193. The Court overlooked or misapprehended that the Attorney General's use of Cannon to support false felony claims against Buchanan and Pope while seeking neither restitution nor jail time for his taking \$17 Million, based on the same facts is unfair and prejudicial to the administration of justice.

The Attorney General's and Bauknight's FOIA Abuse to Damage Buchanan and Pope

194. The Court overlooked or misapprehended that, while seeking to prevent hearings in the Wingate Case since May 10, 2013, the Attorney General and Bauknight have actively worked in three FOIA cases to have James Brown FOIA matters transferred from other counties; consolidated with discovery in the Wingate Suit; and then buried in discovery and not heard.

195. The Court overlooked or misapprehended that a journalist was successful in 2015 in obtaining some of the public documents the Attorney General, Bauknight and

Wingate have concealed, but the Attorney General told the Honorable Eugene C. Griffith, Jr., that the Attorney General did not have a copy of the PBW \$4.7 Million "appraisal" which both Bauknight and the Attorney General have used to make false representations to the Supreme Court about the ill-gotten "refund."

196. The Court overlooked or misapprehended that Judge Early's Orders dismissing Defendant's FOIA suit seeking public documents from the Attorney General and the McMaster Legacy Trust, and the records now pending in the South Carolina Court of Appeals, which are incorporated herein by reference, show that it would be manifestly unjust for the Attorney General to transfer FOIA cases to Richland County; subordinate FOIA requests to discovery in this case; and then be dropped as a party so that there will be no relief under FOIA, making the Wingate Suit a James Brown FOIA graveyard.

**The Attorney General Has Aided Tomirae in Siphoning Off Royalties
From James Brown's "I Feel Good" Charity**

197. The Court overlooked or misapprehend that the records pending in the South Carolina Court of Appeals related to both the Tomirae spousal claim and the Will/Trust contests, which are incorporated herein by reference, show that the Attorney General, through Bauknight, has aided Tomirae in siphoning off \$1 Million from James Brown's "I Feel Good" Charity in 2015 in order to damage Defendant in this case.

198. The Court overlooked or misapprehended that when David Sojourner was named SA/ST in October 2013 Defendant promptly sent Sojourner a copy of *Private Foundations, Copyright Heirs...* and offered, *pro bono publico* whatever assistance she could give to Sojourner or his counsel to help them understand the complexities and interrelationship between the Federal Copyright Act, State Court spousal proceedings and Federal Copyright Act Termination Rights.

199. The Court overlooked or misapprehended that Sojourner never agreed to speak to Pope, but charged \$1.4 Million in SA/ST and legal fees between October 2013 and April 2015; took a single deposition (the supported the estate plan); and claimed he had no duty or responsibility to protect Brown's 900 copyrights.

200. The Court overlooked or misapprehended that none of the Attorney General, Bauknight or Sojourner, during the two-year window they had to set aside the defective 2013 Tomirae Terminations, took a single step to challenge the Tomirae terminations or protect the "I Feel Good" Charity's copyrights, although they were warned by copyright litigation expert Marc Toberoff, representing some claimed children, that the Tomirae Terminations were improper and should be challenged.

201. The Court overlooked or misapprehended that it was reckless and malicious for Bauknight to be so concerned with preventing Buchanan and Pope from confirming that the McMaster settlement was terrible that he failed to engage someone to protect Brown's "I Feel Good" Charity's 900 copyrights while those seeking to siphon off royalties were represented by Toberoff.

202. The Court overlooked or misapprehended that the result was an entirely unnecessary payment to Tomirae in 2015 of about \$1 Million, related to 3 of Brown's 900 songs; and another approximately \$70,000 payment to James B., as well as payments to others, for the same transaction.

203. The Court overlooked or misapprehended that in his deposition in January 2017 in Pope's claim case, Bauknight claimed (incorrectly) that he did not even know about the Tomirae terminations (in the public record for 2 years) until the money changed hands in 2015, saying:

**Q. When Tommie Rae Hynie filed termination elections
15 in August of 2013, did you have a duty as the
16 person charged with protecting the James Brown "I
17 Feel Good" Trust to challenge those termination
18 elections?**

19 A. Ms. Pope, that shows how little you know about
20 termination rights. Maybe you're just simply
21 unaware of the fact that nobody had to tell me
22 that they were even filing those termination
23 rights notices, Ms. Pope. I did not even know of
24 that issue until cash had changed hands. But
25 because of you, I've been totally out of the loop.

Page 114

1 I had no idea and legally no one had an obligation
2 to tell me that those termination rights had been
3 filed. You've got a look on your face right now
4 of total disbelief and that just leads me to
5 totally believe you have no clue how these
6 termination rights work.

**7 Q. Mr. Bauknight, have you not previously testified
8 that Peter Afterman came to you and asked you if
9 he could help Tommie Rae Hynie file termination
10 elections?**

11 A. I'm not aware of having testified to that at all.

12 Q. Did that happen?

13 A. I don't know.

**14 Q. You don't recall Peter Afterman coming to you and
15 asking you if he could help Ms. Hynie with
16 termination elections?**

17 A. I do not recall that.

204. The Court overlooked or misapprehended that after paying what he describes as "millions and millions" of dollars to his lawyers to try to silence Defendant, and at least \$1.4 Million for Sojourner, by 2017 Bauknight, Sojourner, Tomirae and the Levenson clients had hatched new deals rewarding Tomirae and others for 9 years of frivolous litigation against James Brown' noble estate plan, and assuring that Bauknight, Sojourner and theirs lawyers could keep the millions they have reaped from attacking

Buchanan and Pope while not protecting the "I Feel Good" Charity and seeking to reinstate the McMaster settlement.

205. The Court overlooked or misapprehended that it is asked to take judicial notice of the entire record on appeal in both the Tomirae spousal proceeding and the Will/Trust challenges appeal, which confirm that Bauknight's and the Attorney General's successful efforts to exclude Buchanan and Pope, as interested citizens with expertise about James Brown, litigation, and Termination Rights issues, have severely damaged Buchanan and Pope, and also Brown's "I Feel Good" Charity.

**The Attorney General Condones Bauknight's Continued
False Claims about the Tax "Refund" and False \$4.7 Million Value Claim**

206. The Court overlooked or misapprehended that the Attorney General and Bauknight, as well as Levenson and Bell, have had actual knowledge since at least 2008 that both under the Brown's Will and the McMaster Settlement deal, estate tax would be due because the \$2 Million payable to the grandchildren's education Trust (estate-tax free) used up the full \$2 Million exemption available to James Brown's estate on the Estate Tax Return.

207. The Court overlooked or misapprehended that at the McMaster settlement hearings both Harley Ruff and Pope testified under oath that the McMaster deal would cause numerous estate tax, and other tax problems.

208. The Court overlooked or misapprehended that Ruff's uncontroverted testimony given on April 6, 2009 before Judge Early shows:

8 Q REFERRING TO THAT ESTATE TAX RETURN PORTION OF WHICH
9 IS IN FRONT OF YOU, CAN YOU EXPLAIN THE CALCULATIONS FOR
10 THE CHARITABLE DEDUCTION THAT ARE CLAIMED BY THE ESTATE OF
11 JAMES BROWN?
12 A YES. THIS ESTATE TAX DEDUCTION FOLLOWS THE TERMS OF

13 THE WILL AND THE 2000 IRREVOCABLE TRUST WHICH STATE THAT
14 AN AMOUNT EQUAL TO THE GENERATION-SKIPPING TRANSFER
15 EXEMPTION AS I RECALL \$2 MILLION HERE IS TO PASS TO A
16 SPECIAL EDUCATIONAL TRUST, THE VARIOUS PERSONAL EFFECTS
17 WERE TO BE TRANSFERRED TO FAMILY MEMBERS, AND EVERYTHING
18 ELSE WAS TO PASS TO A WHOLLY-CHARITABLE TRUST, AND,
19 THEREFORE -- THEREFORE, THE DEDUCTION LISTED IN SCHEDULE O
20 OF THE ESTATE TAX RETURN IS THE LION'S SHARE, OVER
21 95 PERCENT, OF THE VALUE OF THE ESTATE IS REPORTED.

32

3 Q WHAT DOES THE TRUST CONSIST OF? IS IT MORE THAN ONE
4 TRUST?

5 A IT'S ONE IRREVOCABLE TRUST DOCUMENT, BUT I BELIEVE IT
6 SPLITS INTO TWO SUB-TRUSTS AT THE TIME OF HIS DEATH.

7 Q ALL RIGHT. AND DO YOU -- CAN YOU TELL THE COURT HOW
8 -- WHAT THE TWO TRUSTS ARE?

9 A THE ONE TRUST IS THE -- WHAT I AM CALLING THE
10 EDUCATIONAL TRUST WHICH IS A TRUST THAT WAS CREATED FOR
11 THE BENEFIT OF CERTAIN DECENDANTS TO PAY THEIR EDUCATIONAL
12 COSTS AND IT WAS CAPPED AT THE AMOUNT EQUAL TO WHAT WAS
13 THEN THE GENERATION-SKIPPING TRANSFER TAX EXEMPTION WHICH
14 WAS THEN \$2 MILLION. THE "I FEEL GOOD TRUST" IS A
15 WHOLLY-CHARITABLE TRUST THAT WAS TO RECEIVE THE BALANCE.

...
23 MR. BAILEY: I MEANT MR. BUCHANAN AND MRS. POPE, YOUR
24 HONOR.

25 THE WITNESS: MR. BROWN'S TRUST DID ALLOW FOR -- HE
1 ALLOWED IN THE ORIGINAL TRUST FOR THE FUTURE AMENDMENT
2 INCLUDING AN AMENDMENT AFTER HIS DEATH IF SO NEEDED TO
3 QUALIFY FOR THE CHARITABLE DEDUCTION.

4 Q AND WOULD THAT BE CUSTOMARY FOR CHARITABLE TRUSTS?

5 A YES.

...
10 Q NOW, IF A SETTLEMENT IS TO BE REACHED IN THE CASE
11 WHAT WOULD THE PARTIES NEED TO DO TO PRESERVE THE
12 CHARITABLE DEDUCTION?

13 A WELL, THEY WOULD NEED TO ENSURE THAT THE PIECE OF THE
14 ESTATE THAT ULTIMATELY WILL PASS TO CHARITY WILL QUALIFY
15 FOR A CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055. I
16 AM HIGHLY CONCERNED AND CONVINCED, IN FACT, THAT THE
17 SETTLEMENT AS PRESENTLY SET UP DOES NOT SO QUALIFY FOR ANY
18 CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055.

19 Q AND CAN YOU --

20 THE COURT: WHY'S THAT? HOLD ON. WHY IS THAT?

21 THE WITNESS: BECAUSE IT'S CODE SECTION --

1095

22 THE COURT: LET ME MAKE SURE I UNDERSTAND YOUR
23 OPINION. AS TO THE SETTLEMENT AGREEMENT THAT'S BEING
24 PROPOSED TO THE COURT YOU ARE OF THE OPINION THAT THE
25 PORTION GOING FOR THE NEEDY CHILDREN, I.E., THAT TRUST,

35

1 WOULD NOT QUALIFY?

2 THE WITNESS: YES, SIR. I AM OF THAT OPINION.

...

16 THE COURT: WHAT IS THE NAME OF THAT CASE?

17 THE WITNESS: GALLOWAY; G-A-L-L-O-W-A-Y. IT IS A
18 THIRD CIRCUIT CASE FROM JUNE OF 2007. I DO HAVE A COPY OF
19 IT HERE WHERE THE FACTS ARE VERY CLOSE IF NOT ON POINT
20 WITH THE FACTS IN PLACE HERE. THE THIRD CIRCUIT RULED
21 THAT UNDER THOSE FACTS THAT THE CHARITABLE DEDUCTION WAS
22 DISALLOWED UNDER 2055(E)(2) COMPLETELY.

36

25 THE COURT: LET ME ASK IT LIKE THIS. UNDER THE

37

1 SETTLEMENT AGREEMENT THE PORTION GOING TO, FOR LACK OF
2 BETTER TERM, THE AG TO BE ADMINISTERED UNDER THE TRUST FOR
3 THE NEEDY CHILDREN YOU ARE OF THE OPINION THAT IT DOES NOT
4 QUALIFY FOR THE CHARITABLE DEDUCTION?

5 THE WITNESS: YES, YOUR HONOR.

6 THE COURT: AND, OBVIOUSLY, THAT WOULD CREATE
7 ADDITIONAL TAXES TO THE ESTATE?

8 THE WITNESS: YES, YOUR HONOR, TREMENDOUS ADDITIONAL
9 TAXES.

10 Q ARE THERE ANY OTHER PROBLEMS WITH THE FORM OF THE
11 LEGACY TRUST OR THE RIGHT OF FIRST REFUSAL THAT IT
12 CONTAINS OR THAT IS CONTAINED WITH THE DOCUMENTS?
13 A THE RIGHT OF FIRST REFUSAL IN MY VIEW IF EXERCISED
14 UPON WOULD CONSTITUTE SELF-DEALING UNDER INTERNAL REVENUE
15 CODE SECTION 4941...

38

1 I HAVE GRAVE CONCERNS ABOUT THE ABILITY OF THE CHARITABLE
2 TRUST TO QUALIFY FOR EXEMPT STATUS IN THE FIRST PLACE.
3 EVEN IF IT WERE TO SO QUALIFY, AN ACT OF SELF-DEALING
4 WOULD SUBJECT EITHER THE CHARITABLE TRUST OR THE JAMES
5 BROWN LEGACY TRUST TO SELF-DEALING TAXES UNDER CODE
6 SECTION 4941 AND OR 4947.

... And as to the "stipulation" that Tomirae was Brown's spouse]

5 THE COURT: WELL, IF IT'S NOT BINDING ON THE IRS,
6 WHAT DOES THE IRS LOOK TO TO DETERMINE WHETHER OR NOT SHE
7 IS OR THERE IS AN ISSUE AS TO WHETHER OR NOT SHE'S THE

1096

8 WIFE?

9 THE WITNESS: THERE ARE FOUR FACTORS THAT HAVE TO
10 BE -- FOUR HURDLES, IF YOU WILL, THAT HAVE TO BE OVERCOME
11 TO OBTAIN THE MARITAL DEDUCTION UNDER CIRCUMSTANCES LIKE
12 THIS... FIRST, THERE HAS TO BE A CONTROVERSY.

13 THE COURT: HOLD ON. A CONTROVERSY?

14 THE WITNESS: YES, SIR.

15 THE COURT: WHAT ELSE?

16 THE WITNESS: SECOND, IN THE CASE OF A SETTLEMENT,
17 THE SETTLEMENT HAS TO BE IN GOOD FAITH.

18 THE COURT: GOOD FAITH SETTLEMENT.

24 Q HAVE YOU SEEN ANY DOCUMENTS OR HAS ANYONE PRESENTED
25 YOU ANY DOCUMENTS THAT WOULD LEAD YOU TO BELIEVE THAT
(HARLEY RUFF-DIRECT BY BAILEY)

41

1 THESE TAX QUESTIONS HAVE BEEN PRESENTED TO THE IRS FOR --
2 ON INQUIRY AS TO WHAT THE IRS'S POSITION MIGHT BE?

3 A NO, SIR.

4 Q IS THERE A WAY TO DO THAT?

5 A YES. ONE COULD REQUEST WHAT'S CALLED A PRIVATE
6 LETTER RULING.

13 Q WOULD YOU RECOMMEND A PRIVATE LETTER RULING ON ANY OF
14 THE ISSUES IN THIS CASE?

15 A ABSOLUTELY AND IN ALL OF THEM. BOTH OF THEM, I
16 SHOULD SAY.

21 Q MR. RUFF, WHEN YOU LOOKED AT THE ESTATE TAX RETURN
22 YOU ASSUMED THE VALUATION WAS ACCURATE; IS THAT CORRECT?
23 A I DID AND I DIDN'T DEEM THE VALUATION IMPORTANT FOR
24 PURPOSES OF MY ANALYSIS.

209. The Court overlooked or misapprehended that, as shown in the Ruff Affidavit filed herewith, the South Carolina Supreme Court's decision in *Wilson v. Dallas*, by restoring James Brown's plan to leave the bulk of his assets to The James Brown "I Feel Good" Charity, alleviated the excise tax issues caused by the McMaster settlement deal, and much of the estate tax problem, but it did not remove the multiple problems caused by the \$4.7 Million value claim and incorrect reduction of the Charitable Deduction from about \$83 Million to \$2.8 Million (actually \$.8 Million), which reduces the required annual scholarship payout for needy students from more than \$3 Million a year to as little as

\$50,000.

210. The Court overlooked or misapprehended that the Attorney General, with knowledge of the damage to the "I Feel Good" Trust of Bauknight's false IRS, Probate Court and Supreme Court filings, has refused to direct Bauknight to correct them.

The Attorney General's Continuing Damage to Defendant by Endorsing Bauknight's \$3+ Million Overstatement of Brown's TIAA Debt in IRS and Court Filings

211. The Court overlooked or misapprehended that the material overstatement of James Brown's debt to the New York Teachers (TIAA) -- claiming the approximately \$15 Million TIAA Debt was \$19 Million -- was central to the scheme of Bauknight, the Attorney General and Tomirae to discredit Buchanan and Pope by devaluing James Brown's assets to make Buchanan and Pope appear incompetent and greedy.

212. The Court overlooked that the improper \$3+ Million overstatement of the TIAA debt was hidden by Bauknight within the PBW "appraisal" so that it could not be detected by the IRS or Court.

213. The Court overlooked or misapprehended that the hidden \$3+ Million unwarranted deduction was used to obtain the ill-gotten "refund", which, in turn, was used by the Attorney General and Bauknight in Supreme Court filings which claimed (incorrectly) the McMaster settlement deal resulted in no estate tax on Brown's estate.

214. The Court overlooked or misapprehended that neither the IRS nor the Supreme Court could have detected the false \$3+ Million TIAA overstatement until it was discussed by James B. in his Petition for Rehearing and Reply filed in March 2013, because it was imbedded within the PBW appraisal.

215. The Court overlooked or misapprehended that if the PBW appraisal were not being concealed, the Court might be able to tell whether PBW knew the approximately \$15

Million TIAA debt was being overstated to \$19 Million, or whether the false \$19 Million number was provided to PBW by Bauknight.

216. The Court overlooked or misapprehended that Bauknight claims to have no memory of this issue, or of the \$2 Million overstatement of the charitable deduction, even though he is a CPA; the Attorney General and Bauknight continue to conceal the PBW appraisal in discovery and FOIA; the Attorney General and Court continue to praise Bauknight, including for his successful IRS "audit"; and the Attorney General asserts nobody in his office even reviewed the appraisal, which makes up \$3+ Million of Bauknight's \$5 Million overstatement of Brown's debts to the IRS on what Bauknight and the Attorney General claim is a \$6.5 Million gross estate.

217. The Court overlooked or misapprehended that the Attorney General and Bauknight as the claimed agent for the Attorney General have unclean hands related to the false felony claim against Buchanan and Pope in this matter, which is grounded in Bauknight's overstatements of Brown's deductions.

James Brown's Right of Publicity Was Improperly Valued at Zero

218. The Court overlooked or misapprehended that the Attorney General has had knowledge (as defined in the S. C. Trust Code) since 2011, when he began to make the claim that Buchanan and Pope had overstated Brown's assets by \$79 Million to get a \$5 Million fee, that a value of zero for James Brown's Right of Publicity was improper.

219. The Court overlooked or misapprehended that the Attorney General participated in or condoned Bauknight's scheme to reject the 2009 Corbis GreenLight 2-year Publicity Rights contract which Buchanan and Pope had secured, and which was projected to bring in \$1 - \$2 Million per year - in order to devalue Brown's Right of

Publicity and discredit Buchanan and Defendant.

James Brown's Tangible Personal Property Was Improperly Valued at Zero or Near Zero

220. The Court overlooked or misapprehended that the Attorney General, continues to claim, with Bauknight, that James Brown's tangible personal property has a value near zero when both have actual knowledge that the Christie's sale, which the Attorney General approved, generated hundreds of thousands of dollars for only about 350 items; thousands of items were placed by Buchanan and Pope in museums for safekeeping; and more than 45 boxes of music items were packaged and shipped by Buchanan and Pope to a sound storage facility in Nashville.

221. The Court overlooked or misapprehended that the Attorney General has taken no action to require that these material misstatements by Bauknight to the IRS and Courts be corrected.

222. The Court overlooked or misapprehended that the refusal of the Attorney General to require Bauknight to correct material misstatements to the IRS and Courts about the values and taxes the McMaster settlement would have generated, suggests that the Attorney General supports the Levenson/ Tomirae plan announced in May 2013 to reinstate the McMaster settlement deal, and justify it – again – with false claims.

Rule 21 Provides No Basis for the AG to be Removed from this Action

223. The Court overlooked or misapprehended that Rule 21, SCRCp, does not allow for the dismissal of counterclaims against a party who has actively participated in the litigation for more than seven (7) years. Rule 21 provides that “[p]arties may be dropped or added by order of the court on motion of any party . . . on such terms as are just.”

224. The Court overlooked or misapprehended that it would be manifestly unjust to allow the AG, whose continuing participation in this matter since 2010 has both caused and increased the irreparable damage done to Pope and to Buchanan by this illegal and meritless lawsuit, to now be excused.

225. The Court overlooked or misapprehended that, in addition to participation as a Plaintiff in this case, the AG has successfully had one FOIA case against him moved from another county and consolidated with this case. He has tried to have two other FOIA cases transferred to Richland County and consolidated with this case. He asserts these FOIA cases are subordinate to discovery in this case, and this Court has in fact dismissed two FOIA cases on that basis.

226. The Court overlooked or misapprehended that Rule 21 is entitled "Misjoinder and Non-joinder of Parties." This rule operates where the wrong entity or person is named in a lawsuit. Defendant has been able to find no reported case in which a *plaintiff* has alleged that he should be "dropped" as the result of misjoinder.

227. The Court overlooked or misapprehended that the AG has participated extensively in this case since its May 2010 commencement.

228. The Court overlooked or misapprehended that, as stated by the Court in *Ex Parte Condon*, 583 S.E.2d 430, 354 S.C. 634 (2003), "this Court has never held that the Attorney General's authority . . . [to protect the public interest] is unlimited or somehow uniquely exempts him from acting in accordance with the Rules of Civil Procedure" [citing *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115 (1978)].

229. The Court overlooked or misapprehended that allowing the AG to be "dropped" as a party would deprive Defendant/CC Plaintiff of the substantial right to

pursue her long-pending counterclaims against the AG. It could also impair her counterclaims against Bauknight, who has acted as the Attorney General's agent for these seven years, and is serving at the pleasure of the Attorney General as Trustee of Counterclaim Defendant James Brown Legacy Trust.¹

230. The Court overlooked or misapprehended that our Supreme Court has held that by removing a defendant as a party, the lower Court had deprived the plaintiff therein of "its substantial right to name its defendant." *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012). It would thus be inappropriate to force the discontinuation of Defendant/Counterclaim Plaintiff's counterclaims against the Attorney General by granting his Rule 21 motion.

231. The Court overlooked or misapprehended that Rule 21 is a procedural rule, not one of substantial law. It cannot be applied to allow the State/Attorney General to end his claims against Defendant/Counterclaim Plaintiff. In the event the Attorney General, after appearing properly as counsel, wishes to dismiss his claims against Pope, he may seek a voluntary dismissal under Rule 41(a)(2). This rule allows a plaintiff to voluntarily dismiss a claim, but allows the Court to impose appropriate conditions (such as assessment of attorneys' fees, costs or other relief to the defendant). *Ralston Purina Co. v. Odell*, 248 S.C. 37, 148 S.E.2d 736 (1966). Rule 41(a)(2), like Rule 21, could not be used to obtain a dismissal of the counterclaims against the Attorney General, Bauknight as his agent, or the Attorney General's McMaster Legacy Trust.

¹ The Legacy Trust was created by AG Henry McMaster and others in 2009. In January 2011 AG Wilson succeeded to McMaster's position, including 75% control with Tomirae, and the right to remove and replace Bauknight at will.

The Attorney General is not Entitled to any Type of Immunity in this Action.

232. The Court overlooked or misapprehended that the Attorney General is not entitled to immunity from Pope's counterclaims herein.

233. The Court overlooked or misapprehended that any immunity which may have applied to claims against the Attorney General was waived by his bringing this civil lawsuit against two private South Carolina citizens; by his doing so as a co-Plaintiff with more than a dozen private resident and non-resident individuals and entities; by his use of a private attorney with those non-residents; and/or by his failure, through his selected private attorney, to assert any immunity defense by motion or answer for more than six (6) years after the Attorney General and others commenced this action.

234. The Court overlooked or misapprehended that the Attorney General cannot be entitled to prosecutorial immunity in this civil action, especially where he has denied (incorrectly) for the pendency of this case that he accused Pope of committing a crime.

235. The Court overlooked or misapprehended that both the Complaint and the Attorney General's fee agreement with the Wingate firm make clear that this case was not brought to enforce a charity, but rather to seek money damages (and a portion of the legal fees) for the Attorney General and funds for private parties from two private South Carolina citizens who had already been replaced as Trustees of the James Brown "I Feel Good" Charity at the time this lawsuit was commenced.

236. The Court overlooked or misapprehended that the Attorney General's fee agreement with the Wingate firm provides for the AG to receive 10% of any contingency fee payable on a recovery herein.

237.

The Attorney General's Expert In This Case Has Confirmed Buchanan and Pope's \$84 Million was Correct and Conservative and Bauknight's \$4.7 Million Wrong

238. The Court overlooked or misapprehended that the Attorney General, Bauknight and Tomirae, in defiance of the *Wilson* mandate, have not only continued to vigorously pursue the Wingate Suit to retake for the McMaster Legacy Trust the assets of Brown's "I Feel Good" Charity, but moved to consolidate discovery in this suit with the Defendant's 2013 claims case so that James Brown's "I Feel Good" Charity will pay for Tomirae's and the Attorney General's experts in this case.

239. The Court overlooked or misapprehended that, when the motion to consolidate was denied, to further damage Defendant, the Attorney General and Bauknight interrupted every relevant deposition in Defendant's commission suit; named the same experts in the two suits; then allowed James Brown's charity to pay for experts in both cases.

240. The Court overlooked or misapprehended that the Attorney General, Tomirae and Bauknight have not told their own experts about the \$4.7 Million value claim and the ill-gotten "refund," but Bauknight has nevertheless tried to use his "successful" IRS proceeding, the ill-gotten "refund" and *Wilson* to justify not paying Defendant for work, even as SA in 2007.

241. The Court overlooked or misapprehended that the Attorney General's own Termination Rights experts, deposed in New York, made clear that Buchanan's and Pope's \$84 Million value for the Music Empire on Schedule F of the Estate Tax Return (\$99 Million less \$15 Million TIAA Debt) was correct and conservative, and that Buchanan's \$4.7 Million (\$23.5 Million less TIAA debt inflated to \$19 Million) was outrageous.

242. The Court overlooked or misapprehended that Miller made clear that

Brown's 900 copyrights alone (without the Right of Publicity and other assets included in the \$84 Million) had a value of \$45 Million to \$60 Million when he died:

Q. Right, so but buy low is still essential to the concept, right?

A. **[Miller] When possible.**

Q. Right.

A. **But, in my experience, if you want to buy this type of high quality content, you are often, more so than not, a price taker, not a price maker in the market.**

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. **Solid gold.**

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And later:

Q. And there is nothing second [sic.] secret about your opinion that James Brown's is a solid gold catalog?

A. No.

I think anybody would agree.

Q. Okay.

A. **Who is familiar with the work.**

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?

[Objection/response]

A. **When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5. My firm originated in 2006 and we were the only ones who remained, everybody else was later consolidated. But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.**

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

The Attorney General's Condoning of the False Grammy® Claim Was Improper

243. The Court overlooked or misapprehended that when the Attorney General and Bauknight committed to bring the Wingate Suit (secretly) with Bell, both had actual knowledge that Bell had filed at least five false grievances against Levenson in Georgia and

South Carolina, including making the false claim that Levenson forged his fee agreement with Terry Brown's son; Bell had filed false affidavits in federal court; Bell had participated in about ten James Brown cases without proper *pro hac vice* status; and, generally, Bell was closely associate with David Cannon, then under indictment, and Cannon's co-trustee Albert Dallas.

244. The Court overlooked that both AG Jones and Bell had dealings in January 2011 with the Atlanta law firm that posted the false Grammy © claim about Robert Potter, Esq., and knew – at least when Defendant learned *after Wilson* – that Bell had planted the false Grammy© claim, with knowledge of its falsity.

245. The Court overlooked that the Attorney General and all Wingate Suit Plaintiffs have actual knowledge that the Attorney General himself had approved the Christie's sale, including the specifically-listed Grammy © in the South Carolina Court of Appeals when Dallas tried to stop the sale in 2008; that Levenson was at the sale and present when the Grammy © was properly withdrawn, without penalty; and that that Christie's counsel had urged Buchanan and Pope to leave it in the sale, calling the Academy's tactics strongarm, but Buchanan and Pope made the proper business decision for Brown's Estate and 2000 Trust not to spend legal fees to defend the sale of this item.

Buchanan and Pope Did Not Engage In the Extreme Discord

246. The Court overlooked or misapprehended that Buchanan and Pope were always respectful with the Court; honored Court orders, including the 2008 unconstitutional Hynie gag orders; and that Pope worked *pro bono public* as an interested private citizen for two years after *Wilson* to try to help save Brown's "I Feel Good" Charity from a second dismembering – not hinder, as Bauknight, Sojourner and

the Attorney General have claimed.

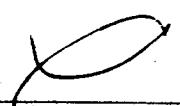
247. The Court overlooked or misapprehended that Pope's good faith is confirmed by the sworn 2017 deposition testimony of Solicitor General Robert Cook, even though the Attorney General's actions have been inconsistent with Cook's testimony.

Conclusion

For the reasons set forth above, Pope asks that this Court alter, amend, vacate and/or reconsider its May 31, 2017 Order Granting the Attorney General's Motion to be Dropped as a Party. This motion is based on the entire record herein; the South Carolina Rules of Civil Procedure, especially Rules 52 and 59(e); applicable statutory and case law; the affidavit of Harley Ruff, Esq., filed herewith; and any additional affidavits and/or memoranda presented prior to the hearing on this matter.

Respectfully submitted,

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July 19, 2017

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

1107

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-4900

Russell Bauknight, et al.,)
Plaintiffs,)
vs.) TRANSCRIPT OF RECORD
Henry Dargan McMaster, et al.,)
Defendants.)

August 30, 2010
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:

KENNETH B. WINGATE, ESQUIRE
EVERETT A. KENDALL, II, ESQUIRE
Attorneys for Plaintiffs

DARYL L. WILLIAMS, ESQUIRE
J. CALHOUN WATSON, ESQUIRE
Attorneys for the Defendants

Crystal Holmes

1 MR. WINGATE: This is a different case, Your
2 Honor.

3 MR. WILLIAMS: Well ---

4 THE COURT: Well, y'all disagree on that,
5 okay. It's a good start.

6 MR. WILLIAMS: It clearly relates to just
7 about everything Judge Early has been hearing.

8 THE COURT: Beg your pardon?

9 MR. WILLIAMS: I clearly relates to just
10 about everything Judge Early has been hearing.

11 THE COURT: All right.

12 MR. WILLIAMS: This case -- this civil action
13 number was initiated by a filing in Richland County
14 Probate Court. And our motion of the Defendant's --
15 my name is Daryl Williams, by the way. I represent
16 the Defendant Adele Pope. Mr. Cal Watson represents
17 ---

18
19 THE COURT: This is the day for suing lawyers
20 or something? What going on?

21 MR. WILLIAMS: I'm not suing any today.

22 THE COURT: Okay.

23 MR. WILLIAMS: Ms. Pope and Mr. Buchanan
24 were, as of March 2007, appointed by Judge Early to be
25 the Special Administrators ---

1 THE COURT: All right.

2 MR. WILLIAMS: --- of the Estate of James
3 Brown which had been submitted to probate in Aiken
4 County and which was the subject of a lawsuit, another
5 proceeding in addition to the probate proceeding filed
6 just a couple of weeks after the Will was admitted to
7 probate. It was under the auspices of that case, the
8 first contested case proceeding, if you will, down
9 there, case number 122. I'll refer to a few cases by
10 number for shortening purposes. They were appointed
11 SA's with no fiduciary duties.

12 By -- on November the 20th, 2007, the last
13 two of the three original personal representatives of
14 the Estate of James Brown and Trustees, the same
15 people, of the 2000 Irrevocable Trust of Mr. Brown,
16 resigned under some pressure. On that day in open
17 court, with the consent and support of all parties
18 involved other than the Attorneys General of the
19 States of South Carolina and Georgia, and Georgia was
20 later dismissed from the -- from future proceedings,
21 Ms. Pope and Mr. Buchanan were appointed by Judge
22 Early, court appointed, successor PR's and Trustees.

24 THE COURT: All right.

25 MR. WILLIAMS: There were clearer proceedings

1 in Aiken County beginning in mid-January with the
2 informal probate of a Will with case 122 involving the
3 Estate and Trust.

4 The Probate Code provides in 62-3-201 that if
5 you've got an initial proceeding in one county, that
6 county is the venue for all subsequent proceedings and
7 has the exclusive jurisdiction of future proceedings
8 ---

9 THE COURT: So it should stay in Aiken County
10 is what ---

11 MR. WILLIAMS: It should say in ---

12 THE COURT: All right.

13 MR. WILLIAMS: Actually, what it should --
14 what should happen is it should be dismissed here and
15 the Plaintiffs be required to refile in Aiken County
16 or apply to Aiken County, under that same statute, for
17 permission to transfer venue.
18

19 THE COURT: All right.

20 MR. WILLIAMS: In other words, this Court's
21 jurisdiction is really limited to dismissing the case
22 and at most, allowing them to seek ---

23 THE COURT: Dismiss without prejudice, go
24 back to see Judge Early or go back to Aiken County?

25 MR. WILLIAMS: Yes ---

1 Obviously, if there's something wrong with that, then
2 all the Plaintiffs were on inquiry notice as of
3 November 2007 of what they now allege was wrongdoing
4 by Pope and Buchanan.

5 There's a one year statute of limitations for
6 certain steps of fiduciary under the Probate Trust
7 Code. Two years if fraud is involved. Although it's
8 really not alleged in this Complaint, we think the
9 statute of limitation is invoked by pleading, four
10 parts of the document itself. And estoppel, judicial
11 estoppel by these Plaintiffs from what we've seen --
12 just seen on some of the issues that -- that they
13 raised.

14 Now, Mr. Watson who is smarter than I, is
15 going to address some further grounds for the Motion
16 to Dismiss, Your Honor.

17 THE COURT: Y'all want to dissect it, you
18 want to go down it, Mr. Wingate, or wait until they're
19 finished? All right.

20 MR. WINGATE: Well, let them ---
21

22 THE COURT: Okay. Yes, sir, into the record
23 so we get ---

24 MR. WATSON: Yes, sir, Your Honor. Cal
25 Watson ---

1 THE COURT: Yes, sir.

2 MR. WATSON: --- Defendant Buchanan. May it
3 please the Court.

4 Your Honor, I'd like to begin by just
5 adopting Mr. Williams' arguments on behalf of Mr.
6 Buchanan and reiterating the fact that this Court
7 doesn't have jurisdiction because of the probate
8 argument he made with respect to the venue issue.

9 THE COURT: Yes, sir.

10 MR. WATSON: So, Your Honor, just for the
11 record I want to officially adopt all his arguments
12 and reiterate that one.

13 In addition, Your Honor, we have briefed all
14 these issues very extensively and we received the
15 brief late Friday from the Plaintiffs as well. So
16 these issues that we're talking about are in the
17 briefs. We've attached a number of documents to
18 illustrate what we -- what we indicate. So what I'd
19 like to do is just hit the highlights and ---
20

21 THE COURT: Yes, sir.

22 MR. WATSON: --- direct you back to our
23 briefs because otherwise I would be restating our
24 briefs.

25 Your Honor, even though I am coming or

1 arguing second, the arguments I'm making really are
2 primary arguments because they deal with serious
3 constitutional and statutory issues.

4 What we have here, Your Honor, is a suit
5 against two private individuals to collect private
6 damages. The Attorney General is involved and the
7 Attorney General's claims are jumbled in with the
8 private Plaintiffs' and that's really a problem here
9 because the Attorney -- the Attorney General really
10 doesn't have the authority to file private suit
11 against these private individuals. And there are a
12 couple of reasons why participation by the Attorney
13 General in this suit as Plaintiff is wrong and
14 warrants dismissal of the case in addition to
15 everything Mr. Williams said.

16 First, there's really no legislative
17 authority that allows the Attorney General to
18 participate in this suit. And, Your Honor, if you
19 look at the Complaint, no legislative authority is
20 alleged. We -- this is simply not how power of the
21 State should be used in seeking private damages
22 against private individuals.

23 We cited a case in our brief, Your Honor, by
24 the name of California versus Infineon Technologies
25

1 AG, it's cited in our brief. The cite is 531 F.2d
2 1124. It's a 2007 federal case in California that's
3 very instructive. There in that case various Attorney
4 Generals, I think about 40 of them, sought money
5 damages on behalf of their states and individuals and
6 businesses in their states. It was a price fixing
7 kind of case.

8 And the Court discussed there in very great
9 detail the ability of these Attorney Generals to sue
10 for money damages. And they found in that case
11 specifically, because the South Carolina Attorney
12 General was participating in that suit, that the South
13 Carolina Attorney General needed specific legislative
14 authorization to sue for money damages. And that --
15 in that case he was seeking or asserting claims under
16 the Unfair Trade Practices Act and there was no
17 legislative authorization.

18 In addition, the Court found that the common
19 law parens patrie authority extended only to actions
20 for injunctive relief. And here, as I said, we have
21 no statutory authority and no allegations for
22 injunctive relief.

23 What we have as far as any legislative
24 authority that relates to the Attorney General and
25

1 trusts are two Code provisions. They're cited in our
2 brief. South Carolina Code Annotated 1-7-130,
3 provides that, quote, the Attorney General shall force
4 the due applications of funds given to public
5 charities within the state, prevent trusts, breaches
6 of trust and the administration thereof -- and then
7 the rest is irrelevant.

8 Also South Carolina Code Annotated 67-7-
9 405(c) provides that the Attorney General and others,
10 quote, may maintain a proceeding to enforce a
11 charitable trust.

12 Your Honor, these statutes don't apply for
13 two reasons. One is, the Brown Estate didn't create a
14 public charity. The 2000 Trust is a private
15 irrevocable trust which divided into a 501(c)3
16 foundation for education and a non-charitable trust
17 for certain -- education benefits for certain of
18 Brown's grandchildren. While the 501(c)3 foundation
19 is accorded some of the same protections of a charity
20 and can serve a public purpose, it is not a public
21 charity.
22

23 So if you -- if you -- the statute simply
24 doesn't apply because it doesn't -- we're not dealing
25 with a public charity within the scope of that

1 statute.

2 And even if Your Honor disagrees with that,
3 these -- the allegations of the Complaint simply don't
4 fall within these statutes. This is not an action to
5 enforce trust. The Plaintiffs aren't seeking any
6 injunctive relief. There's no request for enforcement
7 of any of the terms of any trust. And the Plaintiffs
8 can't ask the Court to prevent a breach of trust
9 because all of the alleged wrongful actions have
10 already taken place. So the portion that talked about
11 preventing breaches of trust by definition can't --
12 can't take place. There's no mention of anything of
13 in these Complaints other than the Court -- other than
14 the Plaintiffs asking the Court for money damages or
15 return of property and then -- it is simply
16 inappropriate for the Attorney General to participate
17 along with private parties and sue these private
18 individuals for private damages.

19 The second reason that the Attorney General
20 can't participate is that the Attorney General must
21 have a separate interest or unique interest of the
22 State under this parens patriae authority.

23 We cited case number in our brief called
24 Alfred L. Snapp and Son Inc. versus Puerto Rico. It's
25

1 458 United States 592. It's a 1982 United States
2 Supreme Court Case. And there the Court held that in
3 order to maintain a parens patrie suit, the State must
4 articulate an interest apart from the interest of the
5 private parties and this simply hasn't happened.
6 There's no allegation in here where the Attorney
7 General is doing that. The relief that is being
8 sought, if it's proper at all, we vehemently deny that
9 it is, could be sought just as effectively by the
10 Trust itself. And there's simply just no unique
11 interest for the State of South Carolina in this
12 private suit against private individuals.

13 For all those reasons, the -- the
14 participation by the Attorney General is inappropriate
15 in the case and must be dismissed on that ground.

16 Also, Your Honor, the hiring of or the use of
17 contingency fee counsel by the Attorney General, we
18 believe violates the due process rights of the
19 Defendants. The -- and -- the Attorney General cannot
20 hire contingency fee counsel to pursue both the
21 interest of the State and the interest of the private
22 parties at the same time. The conflict between
23 counsel's presumed motivations, on the one hand to
24 seek the highest return for his client, the private
25

1 Plaintiffs, as opposed to seeking just return result
2 from the State as required by the Supreme Court, can't
3 be reconciled and that's another reason that the case
4 should be dismissed.

5 Also, Your Honor, the South Carolina Code
6 Annotated 33-56-180, again cited in our brief,
7 mandates that this case be dismissed because the
8 Defendants at all times were acting within their scope
9 of authority as agents as defined by this statute to
10 the I Feel Good Trust which is the trust -- one of the
11 trusts we're talking about. As a private foundation,
12 the I Feel Good Trust and its agents are given the
13 protections of charitable organizations under this
14 statute. And for this reason, Your Honor, this is the
15 fatal flaw that also justifies dismissal.

16 The statute of limitations has expired. Mr.
17 Williams briefly mentioned that. But the record,
18 which you don't have before you that's in Aiken, is
19 replete with examples of Defendants fully disclosing
20 what they're doing, being reviewed by the Plaintiffs
21 in detail. They testified under oath at least seven
22 times and there was an opportunity to cross-examine
23 throughout the course of this proceeding or these
24 proceedings.
25

1 And, Your Honor, for this reason the statute
2 of limitation has expired because, as Mr. Williams
3 said, it's a one year statute. This is outlined in
4 much greater detail in our brief. I won't rehash the
5 specific issues now.

6 THE COURT: All right. That's fine.

7 MR. WATSON: And, Your Honor, there are --
8 many of these parties are improper. There is an
9 allegation of a Legacy Trust as Plaintiff. And I
10 don't think anyone disputes that these Defendants
11 never served as Trustees of a Legacy Trust. And as
12 such, they do not and cannot have a fiduciary duty or
13 obligation to the Legacy Trust or any of its
14 beneficiaries. There's no case law in South Carolina
15 or anywhere else that I've ever seen that poses a
16 fiduciary duty on persons who aren't fiduciaries. It
17 just -- there's just no case law cited by the
18 Plaintiffs in their brief and I'm not aware of any.

19 A number of the alleged beneficiaries who are
20 Plaintiffs in this case violated the in terrorem
21 (phonetic) clause which would eliminate their claim to
22 be a beneficiary, and therefore if they aren't a
23 beneficiary of the Trust, they can't participate in
24 this suit. That is also outlined in much greater
25

1 detail in our brief.

2 And two of the parties, we believe should be
3 here that aren't -- or they are necessary parties. We
4 don't believe any party should be here. But these we
5 believe are necessary and that's Forlando (phonetic)
6 and Romaunzo (phonetic) Brown who were two of the
7 seven designated potential qualified beneficiaries for
8 the Brown Family Education Trust. They asserted in
9 other actions that as a result in terrorum clause,
10 they are the only beneficiaries of the Education Trust
11 yet they aren't Plaintiffs.

12 So, Your Honor, for all of those reasons,
13 which as I say are further outlined in much much
14 greater detail in our brief and -- and responded to in
15 Plaintiffs' brief, we would ask that the Court dismiss
16 this action, first primarily because of Mr. Williams'
17 initial argument but in the alternative, for these
18 argument.

19
20 THE COURT: All right. Thank you, sir.

21 Mr. Wingate. I Feel Good Trust, is that the
22 name of it?

23 MR. WINGATE: I Feel Good.

24 THE COURT: You know, he also had a big hit
25 called Bewildered. Go ahead, Mr. Wingate.

1 MR. WINGATE: May it please the Court, Your
2 Honor. Ken Wingate along with my partner, Rhett
3 Kendall.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And we are before you today in
6 connection with the Irrevocable Charitable Trust
7 established by the entertainer James Brown.

8 As Your Honor is aware from the pleadings,
9 our firm represents the 15 or so Plaintiffs listed on
10 the caption of the case which include globally all of
11 the beneficiaries of this Irrevocable Trust, both the
12 charitable and private individuals.

13 I would ask that Your Honor -- well, first,
14 let me introduce -- we're here representing, as you're
15 aware from the caption, an array of folks. I believe
16 Your Honor knows Sonny Jones ---

17 THE COURT: Yes.

18 MR. WINGATE: --- an attorney with the South
19 Carolina Attorney General's office, one of our
20 clients. Also we represent Russell Bauknight who is
21 very critically, Your Honor, the professional Trustee
22 of this Trust. I'll just come back and address that
23 in a moment. His counsel, Freddie Kingsmore is here
24 with us today. And then one of the family members,
25

1 Deanna Brown Thomas, daughter of James Brown, with her
2 husband ---

3 THE COURT: Let help me you all out. It
4 might be logistical. We all work, we come to work
5 early, we stay late sometimes. But we all eat in the
6 middle of the day. And about 1:00 I'm going to eat.
7 So this is the problem, it's a real one. You want to
8 stop now and come back after lunch?

9 MR. WINGATE: Let's stop now and come back ---

10 THE COURT: Okay. Well, you know, I just --
11 it's just practical. It's a practical problem.

12 MR. WINGATE: Sure.

13 THE COURT: I'm going to eat, y'all need to
14 eat regardless of this case or anything else. Let's
15 stop now. I start back at 2 anyway, so.

16 MR. WINGATE: Perfect.

17 THE COURT: I've got other things scheduled
18 but we'll pick up with you guys at 2. That will be
19 the best way to do it, in my opinion. We'll break for
20 lunch, come back at 2.

21 All right, thank you all.

22 MR. WINGATE: Thank you, Your Honor.

23 (The Court was in recess.)

24 THE COURT: All right, Mr. Wingate.

1 MR. WINGATE: Thank you, Your Honor, please
2 the Court. I'll just sort of briefly start over. My
3 name is Ken Wingate. I'm here with my partner, Rhett
4 Kendall. And together we represent the 15 or so
5 Plaintiffs, Your Honor, in this Charitable Irrevocable
6 Trust action.

7 THE COURT: Yes, sir.

8 MR. WINGATE: I was starting to say before
9 the lunch break that some of the clients are here. Of
10 course Russell Bauknight, the Trustee, is the
11 principal Plaintiff. His separate counsel, Freddie
12 Kingsmore is with us today. I believe Your Honor
13 knows Sonny Jones with the South Carolina Attorney
14 General's office.

15 THE COURT: Clemson class of '70? Was it
16 '70?

17 MR. JONES: 70, yes, sir.

18 MR. WINGATE: That's why he's behind ---

19 THE COURT: I understand.

20 MR. WINGATE: --- Your Honor. And also
21 Deanna Brown Thomas, the daughter of James Brown is
22 with us with her husband ---

23 THE COURT: I noticed she smiled when I said
24 Bewildered, The Apollo 1963 Live. Go ahead.
25

1 MR. WINGATE: Well noted. Your Honor, we knew
2 that exactly what did happen right before the lunch
3 break would nappen.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And that is there'd be a whole
6 big bowl of spaghetti, all these lawsuits that have
7 been filed, whip them up, stir them up, mix them up,
8 throw out a quote, throw out a pleading, throw out a
9 caption and try to confuse the matter and say only
10 Jack Early could possibly sort through this mess.

11 This is real simple, Your Honor. There are
12 two different things. There is the Last Will and
13 Testament of James Brown. This is in Aiken County in
14 the Probate Court -- well actually it's in Circuit
15 Court in Jack Early's hands.

16 This, Your Honor, is the 2000 Irrevocable
17 Charitable Trust of James Brown which was created as a
18 separate entity prior to his death which was 2000, he
19 died December of '06. Was funded prior to his death
20 and is an entirely separate entity. And what we're
21 here for, Your Honor, we're going to sort of split
22 things. As you heard before lunch, counsel has been
23 arguing both on their Motion to Dismiss the
24 Plaintiffs' Complaint ---
25

1 THE COURT: And venue, right.

2 MR. WINGATE: --- and the transfer of venue
3 and have said that they all sort of tie together.
4 Well, that's again part of this stirring up a bowl of
5 spaghetti, just trying to make it all sound too
6 complex. It really is a pretty straightforward
7 analysis.

8 We submitted, Your Honor, on Friday, a brief
9 -- and I would just point out that at the bottom of
10 page 2 and at the bottom of page 3 are two different
11 diagrams of the estate plan of James Brown. And it
12 really helps to show the flow of things.

13 THE COURT: I don't know whether it's made it
14 to the file, let me doubt check. Do you have an extra
15 copy?

16 MR. WINGATE: I don't -- I have one that's
17 got a highlight on it if you don't mind that.

18 THE COURT: If they don't mind. Y'all have a
19 copy of this, don't you?

20 MR. WATSON: Yes, Your Honor.

21 THE COURT: And at the bottom of page 2, Your
22 Honor, is the estate plan which shows the Will, the
23 document I showed you just a second ago, that's over
24 there in Aiken, which pours over or gives the assets
25

1 upon James Browns' death to his Irrevocable Trust.
2 And then that Irrevocable Trust splits into two parts,
3 fifty percent of it was the I Feel Good Trust, a
4 Charitable Trust for the education of students in
5 South Carolina and Georgia, and then the other fifty
6 percent for his family.

7 During the course of the last several years
8 of litigation which has gotten so much attention,
9 there was a settlement that was achieved, Your Honor,
10 and this global settlement that brought all 15 of
11 these people together on this caption into one group,
12 rewrote the estate plan, rewrote the terms of the
13 Trust. And the revised Trust is what Your Honor sees
14 on page 3, the second diagram that's at the top of
15 that chart.

16 THE COURT: All right.

17 MR. WINGATE: And again, Your Honor, you see
18 that Will just sits over there in Aiken. The Estate
19 administration is over in Aiken. But the Settlement
20 Trust, the Charitable Trust that receives the
21 royalties, the intangible assets, the intellectual
22 property of James Brown, is then administered in
23 Richland County, South Carolina by Russell Bauknight,
24 the Trustee, for the purpose of, as you see on that
25

1 chart, a Charitable Trust that remains for education
2 purposes, why the South Carolina Attorney General is
3 in this case as one of our client Plaintiffs, and is
4 about ---

5 THE COURT: The AG, they came in by agreement
6 by everybody, the AG ---

7 MR. WINGATE: That is correct, Your Honor.

8 THE COURT: As it says here, sole authority
9 to remove and replace Trustees, is that fair enough?

10 MR. WINGATE: (Affirmative response.)

11 THE COURT: Everybody?

12 MR. WILLIAMS: That is, as I ---

13 THE COURT: That's what it says.

14 MR. WILLIAMS: As I understand it, that is
15 what the -- what is provided in the Settlement
16 Agreement. That is not what was provided in the
17 original estate plan ---

18 THE COURT: Okay.

19 MR. WILLIAMS: -- of Mr. Brown.

20 THE COURT: That's good enough. That's good
21 enough.

22 MR. WILLIAMS: Just so you know.

23 THE COURT: Okay.

24 MR. WILLIAMS: It's not completely accurate.
25

1 THE COURT: Go ahead, Mr. Wingate.

2 MR. WINGATE: So, with all of these
3 beneficiaries in this global settlement, having
4 created this Charitable Trust that's administered
5 right here by Russell Bauknight who is a CPA and is
6 the sole Trustee, all we have to do, Your Honor, is a
7 very simple statutory analysis.

8 This is not a probate case. Counsel was
9 arguing 62-3 -- I'm sorry, 62-1-302. That's in the
10 probate section of the Probate Code. And as Your
11 Honor, knows, the first half of Title 62 deals with
12 estates and the back half deals with trusts. We're
13 not in the Estate Code. We're not in the Probate Code.
14 We're not in Aiken County. We're dealing with an
15 Irrevocable Trust which is in the back of Title 62 and
16 is administered in South -- Richland County, South
17 Carolina.

18
19 And the statutory analysis, Your Honor, is
20 just super simple. I've cited in the brief Section
21 62-7-204 which is the venue statute for an Irrevocable
22 Trust of this nature. And it simply says, venue for a
23 judicial proceeding involving a Trust is in the county
24 of this state in which the Trust's principal place of
25 administration is or will be located.

1 Current tense, where is it today? Where is
2 the principal place of administration? And then the
3 Code simply cites, this is the Trust Code over 62-7-
4 108, which is again the brief, which defines, quote,
5 principal place of administration. It's not where the
6 beneficiaries live. It's not where the settlor lived.
7 It is purely and simply, quote from 62-108, the
8 principal administration of a trust is the Trustee's
9 usual place of business. And it gives an explanation
10 as to why. Because that is where the records
11 pertaining to the Trust are kept.

12 In this case, Your Honor, we are dealing as
13 is pointed out in the brief, literally with hundreds
14 and hundreds of boxes worth of records which have
15 always been in Richland County. In fact, counsel
16 didn't go so far as to say but even when Ms. Pope and
17 Mr. Buchanan were the Trustees of this Trust -- now
18 they were wearing two hats. They were the SA's, the
19 Special Administrators of the Estate. They were also
20 Trustees of this Trust. Buried among those Orders is
21 an Order of Judge Early that said, and all of the
22 Trust records are going to be kept at Ms. Pope's
23 office at 1218 Taylor Street in Columbia, South
24 Carolina.
25

1 So even just as a point of history in this
2 case, this Irrevocable Charitable Trust, distinct from
3 the Estate, has always been administered in Richland
4 County.

5 THE COURT: If she's no longer a Trustee or
6 SA, why would that still apply, her business address
7 here in Richland County, if she's been taken out of
8 the picture?

9 MR. WINGATE: You're right, it does no longer
10 apply.

11 THE COURT: All right.

12 MR. WINGATE: But when she gave up the hat of
13 Trustee, along with Mr. Buchanan, and it was
14 transferred to Russell Bauknight ---

15 THE COURT: That's where he is?

16 MR. WINGATE: That's where he is.

17 THE COURT: Okay.

18 MR. WINGATE: His address is on Gervais
19 Street.

20 THE COURT: All right.

21 MR. WINGATE: In Richland County, the only
22 place he's done business for decades.

23 And so clearly, jurisdiction and venue both
24 lie squarely within this Court.
25

1 Your Honor, they also make a distinction
2 between the continuity of all of these proceedings and
3 a big train wreck of lawsuits that has taken place and
4 how this one is just one more caboose on the end of
5 the train and it needs to follow along with all of the
6 other ones.

7 The Trust Code is also very distinct in
8 saying statutorily that every trust proceeding is a
9 unique judicial proceeding. This is the first time
10 that this suit over these issues has been brought in
11 any court in order to rectify problems with the James
12 Brown Irrevocable 2000 Trust. And that's cited, Your
13 Honor, in Section 62-7-201.

14 So without belaboring the point as far as
15 venue, I think my point is well made, venue under the
16 separate statute lies solely in Richland County.

17 I would make one more point, Your Honor, then
18 I will defer to Mr. Kendall to deal with some of the
19 Motion to Dismiss elements. And that goes to the
20 subject matter jurisdiction.

21 Again, counsel has stirred things up to
22 confuse a Probate Estate under the Probate Code from a
23 Trust Estate under the Trust Code as to subject matter
24 jurisdiction. Those same sections which I cited for
25

1 Your Honor in the brief, clearly say that exclusive
2 subject matter jurisdiction of trust matters lies in
3 the Probate Courts in South Carolina. And as you
4 asked earlier this morning at 9:00, is this an appeal
5 or what is this? This is probate, isn't it?

6 This was filed by Russell Bauknight and the
7 Attorney General and all of the family members
8 globally in the Richland County Probate Court as a
9 Trust lawsuit

10 THE COURT: All right.

11 MR. WINGATE: And then it was moved to Your
12 Honor to the Circuit Court. So subject matter
13 jurisdiction unquestionably has been properly
14 satisfied. This suit was initiated in the Probate
15 Court. All we're arguing about is venue and we would
16 show Your Honor that respectfully and simply, it's
17 right here in Richland County. There's nowhere else it
18 could be.

19 THE COURT: All right. Thank you, sir.

20 MR. KENDALL: Thank you, Your Honor, and I
21 will -- I will also be brief because I know we have
22 lots of counsel waiting.

23 Unfortunately, the issue has been confused in
24 part because so many issues were thrown out in the
25

1 brief and in the motion as being reasons to dispose of
2 this case. In fact, I liked the way they were grouped
3 together here and I will deal with them as well.

4 First of all, the issue of failure to file an
5 affidavit in support of what they -- they have
6 characterized as a legal malpractice action. A
7 reading of the Complaint -- a plain reading of the
8 Complaint, we -- at not time do we allege that the
9 Pope and Buchanan served as attorneys for the Estate
10 or the Trust, simply that they were attorneys, period.

11 And the reason for that is it -- it matters
12 later on when you establish the duties of -- that are
13 down in the other parts.

14 But in terms of whether we have sued for
15 professional malpractice, which would require an
16 affidavit pursuant to 15-36-100, we have not. We just
17 sued for negligence.

18 The second issue or category that they put
19 out as being reasons to throw this case out is that
20 they allege that these are issues that have already
21 been, a) put before the Court; and, b) decided upon,
22 finally, and that neither is correct.

23 This is the only time when the beneficiaries
24 of these things have alleged damages arising out of
25

1 the breach of fiduciary duties, breaches of trust and
2 negligent acts of these two individual.

3 So there -- they can -- in fact you'll find
4 it interesting in the record, there is not a single
5 petition attached to any of the documents they've
6 provided you. They haven't ever given you the
7 Compliant that says, here's where they're trying to do
8 the same things before. Instead what they've done is
9 cite some dicta from various things taken out of
10 context and incomplete in its rendering to the Court.

11 For example, the -- they contest 18(a) of the
12 Complaint or allegation 18(a) of the Complaint which
13 is, in fact, a very general thing, that they failed to
14 administer the Trust properly. And they point to an
15 Order of Feb -- of April 8th of 2008 where it says
16 that Judge -- that they say Judge Early says that
17 they've done everything right. Well, that's not at
18 all what Judge Early says. And in fact, since they
19 administered this Estate for another year or more
20 after that Order, it wouldn't matter what he was
21 ruling on in that regard.

22 But if you look to the record which they
23 didn't provide you, you find out that in fact that was
24 a procedural question about whether their appointment
25

1 didn't say ---

2 MR. KENDALL: --- run into the wall and we're
3 going to show that they did.

4 Your Honor ---

5 THE COURT: Burt Lancaster, thank you, very
6 much. Go ahead. Burt Lancaster.

7 MR. KENDALL: Your Honor, the -- they talk
8 about a failure to -- our allegations of their failure
9 to accept a hundred million dollar offer. They may
10 have lots of good reasons that they want to put to the
11 Court for not having accepted that. We have lots of
12 good reasons we're going to argue but that's a fact
13 question. That issue's never been disposed of, just
14 because we've heard about it before. The refusal to
15 sign a consent and similar things.

16
17 One of the things, Your Honor, that -- that
18 we need to -- I want to bring to the Court's attention
19 as I know you're going to have to consider this
20 carefully, is a lot of this has been addressed. In
21 fact, a lot of the challenges they've raised are
22 addressed, in fact in the Settlement Agreement and the
23 Order approving the Settlement Agreement. Not the
24 issues that we raised as allegations of negligence in
25 the breach of trust of fiduciary duty but rather the

1 defenses they have raised.

2 And for example, the issue of the Attorney
3 General's constitutional and statutory authority to
4 bring this claim. Judge Early's already ruled on
5 that. In fact, this is just another effort to attack
6 that issue. In fact, we've provided that Order to
7 you. We've also provided an Order in another case
8 where the same issues were raised. Judge Couch looked
9 at this issue and said, yeah, you can -- the Attorney
10 General has the constitutional authority.

11 The representations about the California
12 case, the context of that has not been fully explained
13 to the Court here. Sonny Jones was in California
14 during that hearing. He knows it very well and
15 provided it to me during lunch about some of the --
16 the incorrect characterizations that may have
17 occurred. And so, Your Honor, I may supplement to
18 fully explore that issue at some time, if I may have
19 leave of the Court to do that or include it in our
20 proposed Order. I'll come back to that.

21 But the issues of the use of contingency fee
22 agreement have already been raised but those are
23 reasons to dismiss this case. That may be a basis for
24 disqualifying me but not to dismiss the lawsuit. So
25

1 that's of no moment.

2 The issue of the charitable immunity, I just
3 want to preserve for the record. We haven't addressed
4 that in our briefs because it was raised for the first
5 time not in the motion but rather in the memorandum as
6 a new basis just the other day. So that's -- that's a
7 novel issue not preserved in the motion itself.

8 The issue of the improper parties was
9 disposed of by Judge Early. That issue -- with four
10 days of testimony, that was one of the most dominant
11 themes in the entire testimony preceding the approval
12 of this Order. And Judge Early heard from it all and
13 made a number of very specific findings that everybody
14 who is a party to this agreement or all of the
15 interested parties, all of the beneficiaries, and that
16 they are properly going forward in this matter.

17 So the issue of whether all the proper
18 parties are here, Judge Early's already disposed of
19 that and said, this group is the proper group.

20 And if they think necessary parties aren't
21 here, that's not our -- you don't dismiss a Complaint
22 for that, you file a Rule 19 motion and you bring --
23 you bring them in if you feel they're necessary.

24 Your Honor, I have gone over a lot of
25

1 information very quickly and I apologize that I've had
2 to do it ---

3 THE COURT: No, no, you might present it
4 quickly but I'll think about it slowly.

5 MR. KENDALL: I know you will, and I
6 appreciate that. And we -- if we're invited to do
7 when we present ---

8 THE COURT: I'll give everybody a full
9 opportunity to do the best you can, I promise you.

10 MR. KENDALL: But I also just raise this,
11 Your Honor. The fact that -- we didn't argue yet the
12 Motion to Strike. We also filed a Motion to Strike
13 this whole venue motion on the grounds it was not made
14 timely. The Motion to Dismiss was filed inside the 30
15 days for answering the Complaint. And they filed 10
16 bases for the dismissal, none of which were venue
17 motions or venue bases.

18 Then they in August, realizing that they had
19 failed to raise that issue, separately filed a motion.
20 But Rule 12(g) set -- very clearly states that you
21 have to put it all in your first motion. You can't
22 later go back and add additional grounds from Rule 12
23 to -- as motions and defenses. It has to be done in
24 the first motion. They failed to do it.
25

State of South Carolina)
County of Newberry)

In The Court of Common Pleas
Eighth Judicial Circuit
2011-CP-36-00364

Adele J. Pope,

Plaintiff,

vs.

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

Defendants

2011-CP-36-00379

Adele J. Pope,

Plaintiff,

vs.

Alan Wilson, in his capacity
as Attorney General of
South Carolina,

Defendant.

Transcript of Record

January 11, 2012
Newberry, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

000266

1140

1 And this case doesn't need to be transferred to Richland
2 County and combined with this other case that has numerous
3 additional parties and different counsel and -- and it --
4 you know, this should've been simple litigation. And we're
5 still here 5 1/2 months later.

6 MR. SMITH: Your -- Your Honor, you don't -- the --
7 the judge designated Case 4900 and Judge Manning as the
8 judge for a complex case and did that for a reason. And
9 that process should not be avoided by splintering off of
10 this issue and bringing it in a separate county.

11 And regarding the ten-days' notice for an alternative
12 motion for transfer of venue and consolidation, the Court
13 has the power to shorten the response time. They're on
14 notice. All these things that we've discussed today, we
15 discussed in Laurens two months ago. And this -- we
16 believe that this Court certainly has the authority to do
17 what it did in Case 379 and do that here.

18 MR. SILVERNAIL: I -- I -- a -- a correction: I --
19 this is not a splintering of any issue from Case 4900.
20 While the same documents may be at issue in -- among the
21 documents sought in discovery there, and while the parties
22 may be similar, there is no FOIA claim in Case 4900. This
23 issue is decided under different law, different standards,
24 and could have a different outcome.

25 And, you know, we are asking for the documents under

1 -- even with that. I think it's sort of making two steps
2 into one, where neither step might be quite right or
3 available. And, you know, we are here and talking about
4 whether there's any good reason not to do it. And there --
5 you know, my client filed the suit, followed the law in the
6 request, and -- and here we are.

7 The burden under the Freedom of Information Act is, is
8 there any good reason not to produce those documents? And
9 so far, aside from 5 1/2 months of procedural wrangling,
10 nobody's said that there is. And -- and we're still here,
11 waiting for ---

12 THE COURT: I'd be ---

13 MR. SILVERNAIL: --- a document.

14 THE COURT: --- very surprised if some other judge
15 said that you are not entitled to those documents. I'm --
16 I'm with you on that. I ---

17 MR. SILVERNAIL: Well ---

18 THE COURT: --- agree with you on that.

19 MR. SILVERNAIL: --- Your Honor, you -- you have
20 previously found that this Court properly had jurisdiction
21 over -- over the other case. We do not believe that the --
22 the following part about transferring it was proper, and
23 we've asked for reconsideration. And -- and we believe
24 that you were absolutely correct in the portions of the
25 order we did not ask you to reconsider. It ---

1 THE COURT: Okay. I'm inclined to transfer -- at the
2 very least, transfer venue to Richland County, if not
3 consolidate this with Richland County. They'll give you
4 another case number and another track that you can pursue
5 this matter on. I ordered the other case consolidated.
6 Once this matter is transferred to Richland County, in
7 terms of venue -- and that's the grounds that I'm using to
8 transfer this case -- either party may seek consolidation;
9 either party may seek an expedited hearing with the judge.
10 And I hope you get the information sooner, rather than
11 later.

12 But that's what I feel is appropriate to do under the
13 circumstances and based upon everything that has transpired
14 with the -- this case, Case 4900, and Case 379. I've
15 consulted with some other judges on this very issue, and I
16 have yet to hear one of them remark to me that they think
17 that this is a bad idea. There seems to be a consensus, so
18 that's what I'm doing.

19 Now, concerning Case 379, the last correspondence I
20 received from you, Mr. Silvernail, in your motion for
21 reconsideration, that is still pending?

22 MR. SILVERNAIL: Yes, it is.

23 THE COURT: You don't want to do that today?

24 MR. SILVERNAIL: I ---

25 THE COURT: You sure you want a hearing on it?

000273

1143

1 STATE OF SOUTH CAROLINA) IN COMMONS PLEAS COURT
2 COUNTY OF RICHLAND)

3
4 RUSSELL L. BAUKNIGHT, ET AL.)
5 PLAINTIFFS.)

6 -V-)

7 ADELE J. POPE ,) TRANSCRIPT
8 DEFENDANT.)
9 2010-CP-40-8716

10 DECEMBER 17, 2012
11 RICHLAND, SOUTH CAROLINA

12 B-E-F-O-R-E:
13 HONORABLE CAYCE L. MANNING, JUDGE;

14 A-P-P-E-A-R-A-N-C-E-S:
15 FOR THE PLAINTIFF:
16 EVERETTE KENDALL, ESQ.
17 EMORY SMITH, JR., ESQ.
18 ARIARIL KING, ESQ.

19 FOR THE DEFENDANT:
20 ADAM SILIVERNAIL, ESQ.
21 DARYL SMITH, ESQ.

22
23
24

25

1 THE COURT: All right. All right. Thank you,
2 Mr. Williams.

3 Anything further On the particular issue?

4 MR. KENDALL: Only reason they make us
5 uncomfortable is because they're largely not true.

6 Thank you.

7 THE COURT: Thank you, Mr. Kendall.

8 What's the next motion? This is a 59(e) Motion to
9 Alter and Amend. And the 59(e) goes to reconsideration as
10 to whether or not the law firm should be disqualified. Am I
11 correct so far?

12 MR. WILLIAMS: Yes, sir, you are.

13 THE COURT: That Motion is respectfully denied,
14 the 59(e) Motion. I won't some of the direct --
15 incorporating the matters that you raised here today. I
16 think I'm required to do that.

17 MR. WILLIAMS: Thank you for your courtesy, Your
18 Honor.

19 THE COURT: All right. Anything further? What's
20 next?

21 MR. KENDALL: I think the next thing that needs to
22 be heard, and we may a request of this in a letter to the
23 Court and discussed it in chambers is the Motion To Set
24 Aside the Entry of -- or the Default.

25 THE COURT: Default. Quote, according to your you

1 letter if there it is, in fact, a default.

2 MR. KENDALL: Correct.

3 THE COURT: You may proceed, sir.

4 MR. KENDALL: Thank you.

5 Your Honor, as you know, the law on a motion to
6 set aside default is rather clear. I'd like to review it
7 just briefly so that we are all thinking along the same
8 line. The Plaintiffs must give, first, an explanation of
9 good cause and we have to meet the Wham factors of
10 timeliness in filing a Answer of Meritorious Defense and the
11 lack of prejudice to the nonmoving party. Then it's in the
12 sound discretion of the Court to make a decision to set
13 aside the entry of default, and the court doesn't need to
14 make specific findings as to the factors as long as there is
15 sufficient information in the record to support those
16 findings.

17 The facts are this: The Plaintiffs filed this
18 breach of fiduciary suit. In response to that, the
19 Defendants filed a timely 12(b)(6) Motion to Dismiss. They
20 also filed a Motion to Change Venue. There was substantial
21 briefing that occurred with respect to those Motions. I
22 would say, we did substantial work defending that Motion.
23 And there were hearings, substantial hearings, around those
24 issues. The court, and you were sitting over these matters
25 at that time, then called for written orders, and the

1 parties -- I know our firm was -- was in the throes of
2 crafting significant orders to with these significant
3 issues.

4 The day before the orders were due to the Court,
5 when much work was ongoing on the Motion -- on Defendant's
6 Motion to Dismiss and the proposed order in our office, the
7 Defendant sent over one copy of an Answer addressed to
8 attorneys. And that answer contained counterclaims against
9 the Plaintiffs. We concede, as we have, and filed with an
10 affidavit that the attorney did not file a response to that
11 Answer within the 30 days. Within the office, that Answer
12 was received by one attorney, not both who were on the case.
13 It was filed with the documents that were being processed
14 for the Motion to Dismiss in the case and an Answer was not
15 filed.

16 The Court then rendered a decision on the 12(b)(6)
17 Motion and the venue motion, and you denied both of them.
18 You denied the Motion to Dismiss on behalf of Defendants.
19 At that time, it was both Buchanan and Pope. And you denied
20 their Motion to Change venue.

21 Then, from our office, one of our attorneys wrote
22 to the Defendants, and we said, Now that Judge Manning has
23 entered in his Order, we will look forward to receiving an
24 Answer from you within 15 days. And we cited the day that
25 that Answer would be due. At this point they knew. They

1 knew that we either didn't get their Answer or that for some
2 reason, we were not aware of their Answer and counterclaims.

3 Instead of calling, instead of responding to that
4 e-mail, instead of saying, Hey, you know, you already got
5 it; you need to look at it, they simply waited till the day
6 or shortly thereafter that the time expired so that they
7 could file an affidavit of default. And they filed the
8 affidavit of that default.

9 To the best of my knowledge, no follow up has been
10 had with the clerk. They had the clerk actually enter a
11 default.

12 Also, the Plaintiffs have never filed for a
13 default judgment. They have never asked for a hearing on
14 damages. Now, we believe that that default, if, in fact, it
15 exists, if it exists because the clerk has never entered it,
16 should be set aside. And I have five points that I'd like
17 to make in that respect.

18 First of all, it's important to note that Attorney
19 General is not in default and cannot be default. That's a
20 matter of statute and rule, and we're all aware of that.

21 Secondly, I don't believe that the Plaintiffs can
22 be held in default because the specific Rule of 55 -- the
23 specific wording of 55(a) is that you answer or are
24 otherwise defending. And clearly, we were otherwise
25 defending. We were not ignoring the suit. We'd already had

1 hearings defending their Motion to Dismiss, defending their
2 Motion to Change Venue. There've been substantial briefing.
3 There've been substantial oral argument, and both sides were
4 drafting substantial orders. So we were in compliance with
5 the Rule and otherwise defending.

6 The third point that I'd like to raise is that
7 Plaintiffs believe that Defendants had waived the right to
8 assert any default. We believe that because years now,
9 literally, have passed without -- with the clerk entering
10 the Order of Default, which to the best of our knowledge has
11 not been done and Defendant has not asked not asked the
12 clerk to do, or requesting a judgment of default entered by
13 the Court and a damages hearing be set.

14 In fact, in your office the other day and in some
15 of the filings, some of the multitudinous filings they have
16 where they've mentioned this, they believe that it's
17 premature at this time to hearing our request to set aside
18 the entry of default. No, they simply want that out there
19 because what they are using it for is a PR tool to bang our
20 clients over the head every chance they get in an affidavit
21 or an article or some other way they point out the
22 Plaintiffs being in default, whichever Plaintiff they choose
23 to name at that time for whatever purpose they have, to
24 embarrass the Plaintiffs, or to try manipulate the clients
25 of mine by holding over their head this threat that you're

1 in default and you're going to owe me substantial sums of
2 money. They can't just keep the hammer out there forever.
3 They've left it for two years. They've slept on any rights
4 they have, which we don't believe they had any because we
5 were otherwise defending and therefore it should be
6 considered waived.

7 Another issue is in the wording of the Answer that
8 they filed.

9 Excuse me just a minute, Your Honor. I thought I
10 had that right in front of me. I did have it in front of
11 me. Just couldn't find it. Thank you.

12 THE COURT: All right, sir.

13 MR. KENDALL: In their Answer and Counterclaim
14 that they filed with us on that day before the Orders were
15 due, there's language in the very first sentence that says,
16 Defendants, Robert L. Buchanan, Jr., and Adele J. Pope,
17 subject to their Motion to Dismiss and any Motion filed or
18 to be filed for change of Venue, answered the Plaintiffs'
19 Complaint and Counterclaim against Plaintiffs as follows.

20 And what I assert is that language subject to
21 their Motions to Dismiss can very easily, and I would assert
22 we would, take it to mean "pending" their Motion to Dismiss.
23 In other words, a Motion to Dismiss was pending. They were
24 filing the Answer pending it's outcome, subject to it's
25 outcome. And when the Court's Order denying the Motion to

1 Dismiss, then the 15-day clock would kick in for them to
2 answer and then our response to their Answer after that.

3 So I would assert that by the very language of
4 their Answer, that there is at least ambiguity there, if not
5 an express admission, that Answer did not kick in as soon as
6 they filed it to us, but it was just given subject to or
7 pending what happened with the Court's decision on the
8 Motion to Dismiss.

9 And then, finally, I would assert that we have
10 satisfied Rule 55, good cause and the Wham factors. We've
11 shown good cause for doing this, we've -- for setting aside
12 the default. We have explained under that good cause how we
13 were already defending, how we were in the midst of
14 significant drafting, how we were really just punk faked on
15 the day before the Orders were come -- came in, and how we
16 had communication with counsel that they could have clearly
17 cleared up the issue when we told them that we expected
18 their Answer in 15 days and they could have said, You
19 already have it.

20 So we shown good cause, and we have met the Wham
21 factors. We filed the Motion to Set Aside immediately the
22 next day. So there was no time that went by. The claims --
23 our claims themselves show a meritorious defense as well as
24 the defenses that we listed in response to their
25 counterclaims. In fact, if we simply get a dollar in

1 damages on our claims, one dollar in damages, all of their
2 counterclaims go away and they lack any legal support
3 because they have no damages as well. So our defenses have
4 great merit. And there's no prejudice to the other side.
5 They have been willing and more than eager to continue the
6 litigation in the current state that it is, and they don't
7 even want this default that set aside heard yet. So there's
8 absolutely no prejudice here.

9 Now, there is a case that they cite in a brief,
10 Limehouse, which is a particularly difficult case on a
11 default where a attorney failed to answer, the matter was
12 removed to federal court, it was then remanded back to state
13 court. This attorney thought that they had an additional 30
14 days to answer when it remanded to state court. That was in
15 error and they were held in default very shortly thereafter.
16 And Plaintiffs cite on their -- in their brief. I think
17 it's important for me to distinguish that case from these
18 facts.

19 First of all, that case was on direct claims.
20 We're dealing here with counterclaims.

21 Second of all, to grant the Defendant a default in
22 her counterclaims would really be to deprive the Plaintiffs
23 the right to litigate their direct claims or, at least, to
24 produce a potentially inconsistent judicial outcome in the
25 same case. Let me illustrate it like this. One of her

1 counterclaims is abuse of process. If she received a
2 default judgment on that abuse of process, and then we go
3 ahead with our claims and we prove that one dollar of
4 damage, then we have a inconsistent judicial outcome,
5 because our one dollar of damage completely mitigates her
6 claim of abuse of process. And so to leave the default
7 standing would potentially lead to an inconsistent judicial
8 outcome and really would deprive us of our right to
9 demonstrate that there was no abuse of process in that case.

10 So for those reasons, Your Honor, we believe that
11 the entry of default, which is an extreme remedy limited to
12 certain circumstances should be set aside. We're satisfied
13 good cause. We've satisfied the Wham factors.

14 Let me also say with respect to the Limehouse
15 case, that difficult case. In August, cert was granted for
16 that case back to the Supreme Court, and I, quite frankly,
17 anticipate a modification of that holding since the way it
18 reads at this point is particularly stripped, although
19 inapplicable to our particular situation. Thank you.

20 THE COURT: Okay. Thank you, Mr. Kendall.
21 Mr. Williams?

22 MR. WILLIAMS: May it please the Court?

23 THE COURT: Yes, sir.

24 MR. WILLIAMS: First of all, let the assure the
25 Court that I stand up here in recognition of the

1 particularly difficult situation before the Court. I am as
2 uncomfortable seeking default against another attorney as
3 this Court might be were it to grant or to deny this Motion
4 and allow the default. I understand that. All I can say
5 with regard --

6 THE COURT: Mr -- you're the messenger, Mr.
7 Williams. Go ahead.

8 MR. WILLIAMS: Okay. Let's go to the Wham
9 factories real quickly and talk about what we've got here.
10 In support of the Motion to Set Aside the Default affidavit,
11 counsel submitted the affidavit of Kenneth -- who, in
12 Paragraphs 7 and 8 acknowledge that he had no specific
13 recollection of having received the document itself in the
14 Answer and Counterclaims but that his handwriting was on it
15 which he took to -- to mean that it has passed through his
16 hands. Then he goes forward with the explanation of the
17 timing of the service of the Answer and Counterclaim with
18 relation to the pending Motion to Dismiss as a -- an excuse
19 for not recognizing the Answer and Counterclaim for what it
20 was. Well, let me state that if the Court will refer to the
21 document itself, that in bold it sets out what it is in the
22 caption. It does not mislead that there is no counterclaim
23 included. It says, Answer and Counterclaim, in bold, of
24 Robert L. Buchanan, Jr. and Adele J. Pope.

25 The reservation of a rights under a pending Motion

1 to Dismiss is commonplace in this state. It's not some
2 unique timing mechanism we came up with to say, If we don't
3 get the case dismissed, here's our Answer. While motions to
4 dismiss may be filed without answers being served as we did
5 here, answer can be served reserving rights under pending
6 motions, and they -- and they happen all the time. I do
7 not -- I do not put any credence in the argument that the
8 preface to the Answer in anyway misled counsel as to what it
9 was, particularly since their affidavit just would -- would
10 conflict with that argument. There's no allegation that
11 Mr. Wendy was misled by reading the document and thinking he
12 had --

13 THE COURT: Well, the real issue -- the real issue
14 would be, Mr. Williams, how is the Defendant prejudiced if I
15 set a side this default?

16 MR. WILLIAMS: Well, I think the real issue is
17 before that, the three Wham factors. That's the last factor
18 in Wham. The time for the Motion for Relief was
19 appropriate. I've got no argument with that. But all we've
20 seen or heard in the history of this case since it's been
21 filed are allegations against the Defendants set out in the
22 Complaint. There has been no -- no document produced or
23 submitted to this Court in support of this Motion, in
24 particular, that there are -- there is -- there are
25 meritorious defenses to the counterclaims.

1 All there are, look at our Complaint, Your Honor.

2 See if we prove that, we've got a meritorious defense.

3 Well, maybe, that's true and, maybe, it's not. But in point
4 of fact, the meritorious defense factor requires some
5 production of testimony or documentation that would show
6 there is a meritorious defense. Basically, everything we've
7 asked for in discovery that has been refused by the
8 Plaintiffs for the two-and-a-half year life span of this
9 lawsuit, and they have put it in front of the Court. That's
10 the reason we thought this Motion was premature, because
11 there are depositions we're hoping to take in the next 60
12 days. That may let them say, Look at this deposition
13 testimony. It shows we have a meritorious defense to this
14 allegation.

15 Now, I think the assertion that abuse of process
16 is inconsistent with them receiving a one dollar verdict
17 shows a misunderstanding of the cause of action of abuse of
18 process. The process -- even if there were a valid claim to
19 be brought, process is abused when that claim is brought for
20 a purpose other than the -- the adjudication of the claim
21 and the reward -- and the award of damages related to it.
22 It is abuse of process if it is brought to assert pressure
23 in a collateral matter which is what we have alleged the
24 pending appeal specifically.

25 So it is not inconsistent actually in this case

1 for both sides to receive some kind of an award, although we
2 don't think they've proved a dime's worth of damage that Ms.
3 Pope is responsible for. What we -- what we think we've got
4 here, Your Honor, is an attorney's negligence attributable
5 to the client. The document was there. It's --

6 THE COURT: Okay.

7 MR. WILLIAMS: -- notes written on it. It was not
8 misleading --

9 THE COURT: I think mr. Kendall said they
10 responded the very next day. Is that so?

11 MR. WILLIAMS: What we -- no. What he said was --
12 to clarify what he -- what he did, they filed this Motion --

13 THE COURT: -- the very next day.

14 MR. WILLIAMS: -- a day -- within a day or two of
15 receiving the affidavit of --

16 THE COURT: All right.

17 MR. WILLIAMS: That is true. I -- and I -- and I
18 don't -- don't separated that was untimely at all. That
19 was --

20 THE COURT: Okay.

21 MR. WILLIAMS: That was timely.

22 We think it's a simple case. And, you know,
23 it's -- it's uncomfortable set of circumstances, but, you
24 know --

25 THE COURT: That's your position.

1 MR. WILLIAMS: We think these Plaintiffs were in
2 default.

3 THE COURT: All right.

4 MR. WILLIAMS: And -- and our affidavit of default
5 should stand and we should be allowed to go ahead and pursue
6 the default.

7 THE COURT: Thank you, sir.

8 MR. WILLIAMS: Thank you.

9 THE COURT: Any response, Mr. Kendall?

10 MR. KENDALL: Yes, sir. Just a couple of brief --

11 THE COURT: Yes, sir.

12

13 MR. KENDALL: -- things, Your Honor.

14 I think it's telling that Mr. Williams, in his
15 response here to my argument that said that the language
16 subject to and at least creates the ambiguity, if not
17 specifically, says that the Answer is pending the outcome of
18 the hearing on the Motion to Dismiss, that he chose the
19 words "reserving the right." And those would have been
20 different words if they said that. But they didn't.

21 Secondly, he talks about for a meritorious defense
22 that we need to prove up our defense. He's not giving us
23 the case to back that up.

24 But they have been in possession of 150-some-odd
25 boxes of documents that relate to this case. They still

1 have certain documents in their possession, and, in fact,
2 I've been told that they don't even intend to really pursue
3 the discovery of a bunch of these documents any longer
4 because they feel they have enough and they don't want to
5 put themselves in a situation where they've got to sign a
6 confidentiality order.

7 Finally, I'd be happy to supplement my argument
8 here to the Court with a sworn statement taken by
9 Mr. Silvernail of Mr. Buddy Dallas, who they thought would
10 be a great witness for them, and I guess on some points,
11 they might think he is. But Mr. Dallas, who was a former
12 trustee, said in that sworn statement that he believes that
13 the failure of the trustees cost the estate millions of
14 dollars in damages. So I'll be happy to put that sworn
15 statement into the record if we need do that.

16 As far as their abuse of process claim, it's not
17 even right any way, because we'd have to be -- the matter
18 previous would have be adjudicated in their favor, so forth
19 and so on.

20 We believe we have satisfied good cause, all the
21 Wham factors, and even before that, we were otherwise
22 defending in this suit. And we are, therefore, not in
23 default, and the default should be set aside.

24 THE COURT: All right. Thank you, sir.

25 MR. WILLIAMS: May I cite a couple of cases for

1 you, please?

2 THE COURT: Yes, sir. Yes, sir. Were you class
3 of '77, Mr. Williams?

4 MR. WILLIAMS: I would have been but I went
5 through in two and a half years and finished in December of
6 '76.

7 THE COURT: Oh. I knew you had departed early.
8 Go ahead.

9 MR. WILLIAMS: Yes, sir.

10 Cases holding parties seeking relief from a
11 default judgment wants to present evidence of a meritorious
12 defense. Rodriguez v. Gutierrez, 391 S.C. 323, 705 S.E.2d
13 94 (Ct. App. 2011).

14 Another case in -- we -- we read the Lamb case,
15 which is 298 S.C. 462 at 465, 381 S.E.2d 499 and 502 as
16 saying that good cause for relief from entry of default
17 requires a showing of evidence. And, on the assumption that
18 the law produced in the goose and the gander we object to
19 any motion to supplement the record on their Motion at this
20 point.

21 And further, on a -- an abuse of process case, it
22 doesn't require any kind of a resolution in anybody's favor
23 in any other proceeding or abuse of process to exist. It
24 just requires a mind-set to initiate litigation or pursue
25 criminal charges for a reason that is abusive of the

1 process.

2 THE COURT: All right. Thank you, sir.

3 MR. WILLIAMS: Thank you, Your Honor.

4 THE COURT: Now, there's a third issue that needs
5 to be addressed or have we covered everything? Is one
6 outstanding? Does that cover everything?

7 MR. KENDALL: In -- in my opinion, Your Honor,
8 once we receive the response from you on the default, we
9 have covered everything we need to cover to continue going
10 forward with the depositions that have now been scheduled.

11 THE COURT: All right.

12 Mr. Silvernail, yes, sir.

13 MR. SIVERNAIL: Your Honor, Adam Silvernail here
14 on behalf of Adele Pope, specifically, as I begin speaking
15 now, on behalf of her as Plaintiff in the two Freedom of
16 Information acts our --

17 THE COURT: Oh, yes. The Foyer.

18 MR. SIVERNAIL: -- pending. It would -- we
19 would --

20 THE COURT: And Mr -- excuse me -- Smith is here
21 on this.

22 MR. SMITH: On this case, Your Honor. I'm here
23 for the Attorney General's Office on the Foyer cases.

24 THE COURT: Beg your pardon?

25 MR. SMITH: I'm -- I'm here -- I'm representing

STATE OF SOUTH CAROLINA

CIRCUIT COURT

COUNTY OF RICHLAND

ADELE POPE

2010-CP-40-04900

-vs-

ALAN WILSON, et al

-&-

ADELE POPE

-vs-

2012-CP-40-00350

ALAN WILSON and
JAMES BROWN LEGACY TRUST,
et al

TRANSCRIPT OF RECORD

Heard on May 17, 2016
Aiken, South Carolina

BEFORE:

THE HONORABLE DOYET A. EARLY, III

APPEARANCES:

Adele Pope, Esq.
Russell L. Bauknight
Ariail E. King, Esq.
Adam T. Silvernail, Esq.

J. David Black, Esq,
J. Emory Smith, Esq.
David Paavola, Esq.
Mark V. Gende, Esq.

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29804-5232

1 ON TUESDAY, MAY 17, 2016 AT 3:17 P.M.:

2 THE COURT: All right, gentlemen. Let's see
3 if we're all on the same page. I have set in 350,
4 the Attorney General's motion to amend, motion to
5 strike, motion for judgment on the pleadings,
6 motion to dismiss, Pope's motion for summary
7 judgment. Does that sound right?

8 MR. SMITH: Yes, Your Honor.

9 MR. SILVERNAIL: Yes, Your Honor.

10 THE COURT: 4900.

11 MR. PAAVOLA: We also have a motion to dismiss
12 in 350

13 THE COURT: Wait a minute now. Whoa, whoa,
14 whoa. You're in what case?

15 MS. KING: 350.

16 MR. PAAVOLA: 350.

17 THE COURT: What do y'all have in 350?

18 MR. PAAVOLA: Motion to dismiss and also --

19 THE COURT: I can't hear you.

20 MR. PAAVOLA: Motion to strike affidavits,
21 Your Honor, and motion to dismiss.

22 THE COURT: You're with the attorney
23 general?

24 THE MR. PAAVOLA: No. We represent the
25 Legacy Trust.

1 THE COURT: So I've got the Attorney
2 General's motion to amend, motion to strike, motion
3 for judgment on the pleadings, motion to dismiss;
4 is that correct?

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: And the Legacy Trust we've got a
7 motion for, what?

8 MR. PAAVOLA: Motion to dismiss and motion to
9 strike affidavits in support of the Plaintiff's
10 motion for summary judgment.

11 THE COURT: And then we've got Ms. Pope's
12 motion for summary judgment.

13 MR. SILVERNAIL: Yes, Your Honor.

14 THE COURT: Are we all on the same page?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: Who wants to go first?

17 MR. SMITH: Your Honor, I would suggest that
18 the Attorney General's motions in Pope One be heard
19 and because they are similar, then Legacy's motions
20 and then Mr. Silvernail responds and he can argue
21 his motion for summary judgment at that point. But
22 our motion to dismiss would take precedence, if
23 Your Honor granted it, over his motion for summary
24 judgment and our motions to strike the affidavits
25 would have bearing on the summary judgment motion

1 that Ms. Pope has made. And so, that's the order I
2 would suggest. And then we do the same thing for
3 Pope Two except Legacy is not a party to Pope Two
4 or 4900, the second Pope case.

5 THE COURT: All right. I'll hear your motion
6 to dismiss. This is in 350, right?

7 MR. SMITH: Yes, Your Honor.

8 I tried to organize it. This has been --
9 there's a lot of paper, obviously, in the case. In
10 fact, this box right here on the table contains our
11 files for both cases, showing the volume of paper
12 in what is really essentially two, or should be two
13 simple cases.

14 The Plaintiff requested two documents -- or
15 two sets of documents from the Attorney General.
16 The final and all drafts, signed and unsigned of
17 the James Brown Legacy Trust, and all
18 correspondence, e-mail and other communications
19 between any member of the Office of the Attorney
20 General and Russell Bauknight between August 1,
21 2010, and May 4th, 2011, relating to the value of
22 the assets of the Estate of James Brown et cetera.

23 The response to this FOIA was that it had not
24 been received by the Office of the Attorney General
25 directly from Plaintiff by mail or delivery. We

1 attached an affidavit to our motion to dismiss a
2 Tracy Meyers of our office and she also referred to
3 it in a letter of her on August 5th, 2011. The
4 Plaintiff didn't waste any time and filed suit just
5 a little over a month after she submitted her FOIA
6 request.

7 We believe we provided the documents that the
8 Plaintiff seeks, but we also believe that there are
9 legal defenses that are set forth in our motion to
10 dismiss and reiterated in our motion for judgment
11 on the pleadings. We would move to amend the
12 motion to dismiss to raise lack of subject matter
13 jurisdiction. We believe that motion should be
14 granted because subject matter jurisdiction can be
15 raised at any time including on appeal. The only
16 other change in the motion to dismiss was that, to
17 drop the change of venue ground which had already
18 been decided at that point.

19 The grounds for the motion to dismiss are
20 that the FOIA request was not mailed or delivered
21 as required by Section 30-4-30(C). Upon written
22 request for records made in this chapter, the
23 statute provides: It shall within 15 days of the
24 receipt of any such requests respond. And so it
25 refers to receiving the request. And we never

1 received the request transmitted by the Plaintiff
2 so as to obtain jurisdiction under the Freedom of
3 Information Act.

4 We -- the fact that we provided some
5 documents does not trigger relief against the
6 Respondent but I think that really goes to another
7 motion rather than the motion to dismiss.

8 THE COURT: Well, is it your position you've
9 already given them that material?

10 MR. SMITH: Well --

11 THE COURT: Or are you saying that you've
12 never received the request or given it to them?

13 MR. SMITH: Our position is that there's no
14 jurisdiction because we didn't get the request from
15 her.

16 THE COURT: Okay.

17 MR. SMITH: And because this is an attempt to
18 bypass the rules of civil discovery in the Case
19 4900 by using FOIA instead, and then this relates
20 more to the judgment on the pleadings motion. We
21 believe that we have given her what she seeks and
22 so --

23 THE COURT: When did you give it to her? How
24 did you give it to her if you didn't receive a
25 request?

1 MR. SMITH: Well, we attached the Legacy
2 Trust drafts to our answer. They're an exhibit to
3 our answer. And we also did an answer in this case
4 after moving to dismiss.

5 As to the appraisal, we don't have that. And
6 so we can't produce what we don't have which is
7 what Judge Griffith ruled in the Summer V Wilson
8 case about the request for the same document.

9 She tries to argue that we should pull in
10 Sweeny Wingate firm documents but she did not make
11 a request for documents from the Sweeny Wingate
12 firm. She made the request from our custodian of
13 records. And that is not enough to pull in lawyer
14 files. And so therefore we believe she is not
15 entitled to it.

16 And I've set forth extensive authority in our
17 memoranda as to --

18 THE COURT: But isn't the end result we are
19 going to end up in 4900 which I'm now having to
20 resolve or rule on and preside in, and discovery is
21 going to be wide open in 4900 and all of this stuff
22 is going to be discoverable; is it not? Aren't we
23 just wasting our time?

24 MR. SMITH: I believe that this case is a
25 waste of time, Your Honor, and it's inappropriate.

1 THE COURT: I don't mean a waste of time, but
2 isn't it duplicative? 4900 is going to open to
3 discovery in the James Brown case, everything
4 that's gone on. Why are we fussing about
5 jurisdiction? And why are we fussing about --

6 MR. SMITH: Because the Plaintiff continues
7 to press this FOIA case and is asking for
8 attorney's fees. That's why -- and is not willing
9 to drop it. That's why we're here.

10 We agree that the documents that she is
11 seeking, the efforts to obtain documents, should be
12 made in 4900. In fact, we believe that the,
13 essentially the same requests have been made within
14 4900 as to many of the documents she seeks in both
15 of these cases. And that's where it should be, not
16 here in an independent Freedom of Information Act
17 action.

18 THE COURT: But aside from that, though, you
19 say you've already given her everything that you
20 have and you don't have the other thing that she
21 wants?

22 MR. SMITH: Yes, Your Honor. As to Case 350.

23 THE COURT: Anything else you want to tell
24 me?

25 MR. SMITH: Well, she says we ought to get

1 them from Sweeny Wingate if they have them. Our
2 position is she did not ask for that. She asked
3 for the records from our -- the record for the FOIA
4 request is for the custodian of records. It's not
5 for anybody who might have access to a document.

6 And I've outlined extensive authority about
7 that issue in our brief. And so she can't make us
8 go get stuff from Sweeny Wingate. And I don't know
9 if they even have it. And so --

10 THE COURT: But Sweeny Wingate's the lawyers
11 in 4900, so obviously all of that stuff is
12 discoverable.

13 MR. SMITH: Your Honor, we believe that
14 the -- that this is -- anything that she wants
15 should be sought through discovery in Case 4900
16 rather than through this independent FOIA action,
17 and that the rules of civil procedure control
18 discovery and that a party cannot bypass the rules
19 of civil procedure and judicial control of the
20 discovery process by making FOIA requests and going
21 around and then seeking attorney's fees.

22 It was not set up that way. And that's not
23 what the law reads. And we set forth extensive
24 authority as to -- including responding to their
25 authority that Freedom of Information Act requests

1 cannot bypass the rules of civil discovery.

2 THE COURT: Thank you. All right. Next in
3 line.

4 MR. SMITH: And, excuse me, if I may, Your
5 Honor.

6 It's in the response to their summary
7 judgment but they've asked for attorney's fees.
8 But they're not entitled to fees if they don't get
9 relief. And they haven't documented them. There's
10 no statement as to the hourly, the billing.
11 There's no billing statement. There's no hourly
12 rate that's supported other than through argument
13 of Ms. Pope, I think, by affidavit that she filed
14 in 2012.

15 And, they have quadrupled their fee claim in
16 one of these cases, tripled it in another, over a
17 2012 affidavit of Ms. Pope in which they claimed
18 only a \$100-an-hour hourly rate and that's somehow
19 become inflated to \$250 an hour. So we believe
20 it's completely unsupported and they're not
21 entitled to fees because they should not prevail.

22 MR. SILVERNAIL: Your Honor.

23 THE COURT: Sir?

24 MR. SILVERNAIL: As to the attorney's fee
25 issue, just starting from the last. My

1 who then knew exactly what we were asking for, why
2 and how, just needed to say, gee, golly, we've had,
3 you know, a mail error, something's gone wrong, but
4 here are the documents, here are the public
5 documents.

6 That's a red herring argument in this case.
7 The argument that they have used throughout this is
8 that Mrs. Pope doesn't have any rights to ask for
9 documents from the Attorney General under the FOIA
10 because she's involved in litigation. And I
11 understand Your Honor's concerns about, you know,
12 discovery being wide open in Case 4900. But I've
13 got to point out that the FOIA in discovery, they
14 may intersect at the documents at some point but
15 they run totally separate tracts that don't
16 intersect as far as the analysis.

17 The only question under the FOIA is: Are
18 these documents public. There is no statute under
19 the FOIA that gives us different classes of
20 individuals, different people who can and can't.
21 The law is that if you are a person you are
22 entitled to make a request for public documents and
23 you're entitled to a response. And that response
24 has to be one of three things: Either, here are
25 the documents we've got that are responsive; or, we

1 don't have any documents that are responsive; or,
2 we have documents that are responsive but they fit
3 into one of the few specific exemptions under
4 FOIA. And the response has to identify those and
5 identify the exemption under which they don't
6 release it.

7 And so we've never gotten that response from
8 the Attorney General in this case. We have instead
9 gotten assertions that because discovery was
10 ongoing in Case 4900, and although I think the two
11 are unrelated I would point out that Your Honor
12 inherited all the whatever-number-of-dozens
13 discovery motions there were in 4900. That didn't
14 go anywhere too quick over the last five or six
15 years.

16 These documents were not forthcoming in
17 discovery but it really doesn't matter. If she had
18 gotten them in discovery she would be entitled to
19 ask for them under the FOIA because this law
20 doesn't set out any procedure for differentiating
21 between one person and another. The only thing
22 this laws sets out procedures for differentiating
23 are the documents: If there's a privilege that
24 applies; if there's sensitive personal information;
25 if there's an ongoing criminal probe. And as far

1 as we know they don't claim any of those
2 exemptions. We haven't seen that.

3 And, you know, it's clear the Attorney
4 General did in fact have public records that were
5 responsive to our request because he produced them
6 in his amended answer in 2013, those two drafts of
7 the Legacy Trust documents.

8 THE COURT: So you want -- I'm not sure. You
9 want me to order them to, under FOIA to produce it
10 again even though you've already gotten it?

11 MR. SILVERNAIL: We have sued here for
12 declaratory relief. We would like a declaration
13 that these are public documents and Mrs. Pope is
14 entitled to them. And under the case law including
15 very recent case law in South Carolina, the Supreme
16 Court has found that production of the documents
17 along the way after litigation begins does not moot
18 the question of declaratory relief or attorney's
19 fees.

20 And we've cited in our brief and I bring Your
21 Honor's attention to the 2014 case of Sloan versus
22 the South Carolina Department of Revenue. That was
23 a case in which the Department of Revenue had
24 responded to Mr. Sloan's FOIA request in some way
25 that seemed to defer a final answer until some

1 later date.

2 And, three weeks, I believe, after he filed
3 suit they said, okay, okay, here are your
4 documents. That went all the way to the Supreme
5 Court after the Circuit Court decided we really
6 don't have a case here. You know, you got the
7 documents. We're all finished.

8 The Supreme Court said, no, indeed you are
9 entitled to declaratory relief because you sought
10 it. You're also entitled to your attorney's fees,
11 I believe, including the fees incurred on appeal or
12 at least with the possibility of that.

13 And so, you know, at the very best we've got
14 a similar situation here if that's all the Attorney
15 General has. However, the other argument that we
16 take issue with from the Attorney General is that
17 he doesn't have to produce the valuation because he
18 does not possess it.

19 Now, number one, the Summer versus Wilson
20 case was a Newberry County FOIA proceeding. My
21 client wasn't a party to that. I don't think we're
22 bound by any of the findings in that case.
23 However, I don't know that it matters much because
24 the FOIA does not require a public body to possess
25 a document in order for it to be available under

1 the FOIA. There's a laundry list in the FOIA of
2 documents which have been, among other things,
3 possessed or used by a public body. And the end of
4 that list is an or which indicates any one of those
5 things is satisfactory.

6 Now this idea that Mrs. Pope needed to seek
7 out the Attorney General's lawyers, Sweeny, Wingate
8 and Barrow, and make a specific request to the
9 Attorney General that I would like this from their
10 files is a little bit troubling because I don't
11 know that we ever have to come to a public body,
12 especially a state agency, and identify for them
13 where they will find the documents that we want.

14 This is the Attorney General's lawyer. The
15 fee agreement that was produced, that we'll talk
16 about in a little bit in the other case, in another
17 court says that the lawyer's files are subject to
18 the FOIA. It is the Attorney General's
19 responsibility to figure out what documents are
20 where, if they have been used by him, if they're
21 possessed by him. All right. Otherwise this
22 statute would be meaningless. If it required you
23 to hold the documents then it would just say
24 possessed. It would not have this list that was
25 possessed, used, or other things.

1 And so, we believe that that's not an
2 adequate response. And as far as I can tell in the
3 record in this case the Attorney General has never
4 stated, and Mr. Smith I believe just said, that
5 they don't know whether or not Sweeny, Wingate,
6 Barrow has that. But we're entitled to a proper
7 FOIA response that says what they've got, what
8 they're producing, and if they claim any exemption
9 what that is. And we've never gotten that in what
10 now amounts to nearly five years.

11 Now, you know, this idea that we should have
12 gone and done this through discovery is just way
13 outside the law. There are cases that say FOIA
14 doesn't expand the scope of discovery, it's not a
15 supplement or a replacement. We couldn't go to
16 Judge Manning until the case was sent to him but
17 within Case 4900, you know, it claimed that we have
18 a FOIA right to this so they should give it to us
19 in discovery. Apparently does not fly.

20 Now, this was not that. This was a FOIA
21 request. It was done --

22 THE COURT: Just stop a second. If you were
23 to win, get what you want, tell me succinctly what
24 you're asking for.

25 MR. SILVERNAIL: I am asking for a

1 declaration that Mrs. Pope is entitled to all
2 public documents responsive to her request, an
3 injunctive section directing the Attorney General
4 to turn those over to us and/or give a proper
5 response identifying what would not be turned over
6 and why, and for the attorney's fees in having had
7 to pursue this action rather than getting a
8 response of some sort anywhere along the line
9 between now and 2011.

10 MR. SMITH: Your Honor, may I respond?

11 THE COURT: Sure.

12 MR. SMITH: First of all, I think it's
13 interesting that he said that the only question in
14 this case is, are the documents public --

15 THE COURT: Public.

16 MR. SMITH: -- because Ms. Pope has filed at
17 least 14 affidavits in this case about why she
18 thinks she needs these documents. And we
19 believe -- we've moved to strike all of them, and
20 if he's correct that the only question is whether
21 the documents are public, then this was a complete
22 waste of our time. And we believe it was.

23 THE COURT: Well, are they public?

24 MR. SMITH: Your Honor, we believe that we've
25 given them everything that we have. The Legacy

1 I've noticed in the briefs in the affidavit
2 of Mr. Bauknight that the Legacy Trust presented
3 shortly before this hearing, their position seems
4 to be a bit more nuanced. And that it does not
5 exist as a court-approved trust, and it does not
6 exist in the form Ms. Pope sought to get documents
7 from it.

8 If it exists it exists. If it did exist
9 there were documents. If there aren't then
10 somebody needs to respond. And mind you, the
11 Legacy Trust has produced nothing because its taken
12 the position it's not a public body. When Ms. Pope
13 made a FOIA request to it it responded by writing
14 her a letter saying if you make another FOIA
15 request to us we'll sue you or seek sanctions or
16 something along those lines.

17 And so here we are just asking the Court to
18 declare the Legacy Trust to be a public body and
19 that we're entitled to the public documents within
20 its possession. Thank you.

21 THE COURT: All right. That brings us down
22 to -- what does it bring us down to? We've done
23 the motion for summary judgment, motion to dismiss,
24 motion to strike the affidavits. Where are we now
25 with 350? Anything else left in 350?

1 Case 4900 against Mrs. Pope and claims to have a
2 claim worth tens of millions of dollars against
3 her.

4 The Legacy Trust has never notified the Court
5 in that action that it has any doubt about its
6 continued existence, and it's never sought to
7 change anything in that case as far as I'm aware.

8 And as I cited in my brief though, once a
9 trust is created which can be done the property
10 requirement for creating a trust is met even with a
11 revocable designation of a beneficiary to an
12 insurance policy. That, meaning that the trust is
13 created even if you later change the beneficiary,
14 stop paying the premiums on the policy. The trust
15 may never actually have a dollar in its coffers but
16 this expectancy that's revocable is satisfactory to
17 create a trust. I'm not aware of any proceeding
18 that's been brought to terminate the Legacy Trust
19 and it's identified none.

20 This trust was also funded, according to the
21 settlement agreement, with contributions that had
22 already been made or were being made at the time of
23 copyright termination interests by some of the
24 parties to the settlement.

25 And that really brings us to the crux of the

1 requested and we believe that moots the case as
2 well under Sloan V Friends of the Hunley, 369 SC
3 20.

4 THE COURT: Any response?

5 MR. SILVERNAIL: First, Your Honor, the fact
6 that Mrs. Pope is already in possession of a
7 document from somewhere else is irrelevant under
8 the FOIA. In fact, what we all hope for when we're
9 working under FOIA that we ask the public body for
10 documents, we find that there is no surprise
11 there. That's why the FOIA exists. They call it
12 the Sunshine Law because it lets us look in to see
13 what's going on.

14 And so the provision of documents from
15 another source just doesn't satisfy any public
16 body's FOIA obligations. If you got them you
17 produce them and then your obligations are met.

18 Now as to this about the Legacy Trust not
19 existing, it's a confusing argument to get around,
20 I feel like, because it's got some lawyers from a
21 fine law firm standing here with us today who seem
22 to have a client and it's been here since 2011
23 defending this case as well anybody can defend a
24 case. And so the Legacy Trust additionally appears
25 to have a current asset because it's a Plaintiff in

1 because Mrs. Pope received the fee agreement from
2 another source by order in another court more than
3 two years after this case was filed. And, again, I
4 would submit that the recent case of Sloan versus
5 the DOR is really on point with this.

6 THE COURT: You got an extra copy of that?

7 MR. SILVERNAIL: I certainly do, Your Honor.

8 (Document handed to the Court.)

9 MR. SILVERNAIL: Let me make sure I'm not
10 giving you one I've written on, though.

11 THE COURT: Thank you. Okay.

12 MR. SILVERNAIL: Now, in this case the
13 Department of Revenue responded to Mr. Sloan within
14 the 15 days with a response that said: Your
15 request is currently being researched and
16 reviewed. As soon as the information has been
17 compiled you will be contacted again. And it goes
18 on from there.

19 The Supreme Court labeled this evasive and
20 noted, I believe, in a footnote in this case, that
21 they understand the concern about a short 15-day
22 deadline for a response. But they don't get to
23 write to statutes. That's what the statute says
24 and this was not an adequate response.

25 And this was the case I mentioned a little

State of South Carolina
County of Richland

Court of Common Pleas

Russell Bauknight,
and others,

and

Alan Wilson, in his
capacity as Attorney
General of the State of
South Carolina, and
others,

Plaintiffs,

vs.

Adele Pope,

Defendant.)

Transcript of Record
2010-CP-40-4900

August 29, 2016
Bamberg, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

A P P E A R A N C E S:

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Sonny Jones, Esquire
Attorneys for Attorney General

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1 (The following proceedings were held August 29,
2 2016.)

3 (Off-the-record discussions held.)

4 THE COURT: All right. Let's go ahead and put
5 on the record what we've worked out, and then we'll
6 go from there.

7 MR. GENDE: As far as their motion for -- to

9 THE COURT: All right. Verifications.

10 MR. GENDE: -- as we stated before, we do agree
11 to provide those. We're in the process of getting
12 those. We answered those in the normal course that
13 discovery is answered, the attorneys signed on
14 behalf, as typically is done. They have cited a
15 section of the rule --

16 THE COURT: Y'all have agreed to do it when?

17 MR. GENDE: Well, as soon as we can. We
18 actually have some that we can deliver to them even
19 right now. We have about three of them.

20 THE COURT: That ain't going to cut it.

21 MR. GENDE: I understand. And I'm willing for
22 the Court --

23 THE COURT: That's not acceptable. Tell me
24 your best guesstimate.

25 MR. GENDE: If in conjunction with the

5

1 depositions we can get all this nailed down within
2 the next four weeks, as early-on discovery, that's
3 plenty of time. I think that would allow us to work
4 through this. You have seen in the filings that we
5 have gone from, for example, Mr. Levenson being in,
6 who is a conduit to many of our clients, to not
7 being in, to being back in again.

8 So although it's my problem and I'm not trying
9 to force that on the Court or the other side, I'm
10 just repeating that so that you understand I do have
11 a problem I'm working through. I assure you we are

12 working through it, we are seeking to get all the
13 verifications. We have some already to show that
14 we're doing that in good faith --

15 THE COURT: Hold on one second.

16 I'm sorry. Well, obviously they're entitled to
17 have the answers verified and the rules require that
18 you file them. I've been in your shoes before. So
19 I'm going to order them to verify within three
20 weeks. If you can't do that, then get me back on
21 the phone and we'll talk.

22 MR. GENDE: Understood, Your Honor.

23 THE COURT: What you want? One week? Two
24 weeks? Tomorrow?

25 MR. BUNDY: I want them yesterday, obviously.

6

1 THE COURT: I understand that.

2 MR. BUNDY: But the problem with -- and three
3 weeks, if it's your ruling, I'll live with it. I'd
4 like to have them in two weeks.

5 And the other thing is, this sort of stands on
6 its head the notion that I get to try my case and do
7 this discovery according to the rules, by my
8 strategy. I do things maybe a little different. I
9 like to ask questions, I like to get answers to
10 interrogatories, I like to get documents
11 authenticated, and then take depositions. That's
12 just the way I like to do it, and I think the rules
13 permit me to do it in any order I want to.

14 THE COURT: Well, certainly they do. All

HEARINGS.AUGUST 29 2016.8-29-16 Bauknight wilson et al v Adele Pope.txt
15 right. I want answers verified within three weeks.

16 That's the ruling of the Court.

17 MR. BUNDY: Thank you, Your Honor.

18 MR. GENDE: So that takes care of that issue.

19 That leads us into the various motions for
20 protective order from the plaintiffs' side of 4900,
21 and then they have some motions to compel which I
22 think will end up getting discussed in the various
23 motions --

24 THE COURT: All right. Let's go ahead in that
25 order. The first one is Tommie Rae Brown. And

7

1 Rosen wants to be present, so when we set the next
2 group of hearings, which will be shortly, Ms. Pope,
3 I'm going to include the Tommie Rae Brown one in
4 that.

5 MR. GENDE: And that's a different motion for
6 protective order. She has been deposed and was
7 directed not to answer some questions, so that deals
8 with that direction and whether there's privilege.
9 The rest of these protective orders deal with the
10 depositions actually occurring.

11 THE COURT: All right. So with what we need to
12 set, Ms. Pope -- we're off the record.

13 (Off-the record discussions held.)

14 THE COURT: All right. That brings us to
15 Delores, Janise, Daryl, Tonya and Venisha. Can we
16 do all those together or separately or we need to do
17 them separately or --

18 MR. GENDE: I think they break into three
Page 6.

1181

19 categories. With respect to two of them, Daryl and
20 Tonya, Daryl and Tonya have already been deposed in
21 Case 4900. And I let Mr. Bundy know that. He
22 communicated back to me, and his belief is that
23 based on your order lifting the stay that stated
24 discovery should begin again anew, which is the
25 order you made April 8th, 2016, that that was

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1 referring not just to the written discovery, which
2 was the context in which you gave that order because
3 there were all kinds of outstanding motions, and you
4 said, hey, we can resolve all this just by saying
5 let's let discovery begin anew. And then I
6 submitted this proposed draft. He believes that
7 also applies to depositions that have been taken.

8 We don't believe that the intent of the order
9 where you said discover begins anew in a case
10 applies to depositions that have already been taken;
11 therefore, we believe those who have had depositions
12 taken in a case should not be subject to being
13 re-deposed.

14 THE COURT: Mr. Silvernail?

15 MR. SILVERNAIL: Yes --

16 THE COURT: They're talking about Daryl and
17 Tonya.

18 MR. SILVERNAIL: Yes, sir.

19 THE COURT: They've already been deposed.

20 MR. SILVERNAIL: They were deposed. Again,
21 Your Honor's order does say discovery begins anew.

22 In addition to that, we've brought to the
23 plaintiffs' attention that in the time since these
24 folks were deposed, I believe one in December 2012
25 and one in January 2013, the Supreme Court made its

9

1 decision in wilson vs. Dallas, and both of these
2 deponents have made multiple changes of position in
3 the Aiken County cases.

4 As Your Honor is probably more familiar than I,
5 it's been a bit of a musical chairs with lawyers
6 over there in the will contest cases along the way.
7 But both of these folks have withdrawn, one of them
8 attempted to un-withdraw, that was Tonya Brown, I
9 don't know that was heard; Daryl Brown withdrew his
10 will contest. As Your Honor would recall, his
11 attorney appeared at the hearing, Your Honor, held
12 on the settlement of some claims in the will contest
13 cases and opposed the settlement.

14 All of this relates back because these are two
15 of the more than a dozen private plaintiffs that
16 have sued Ms. Pope for unreasonably handling and
17 opposing the settlement, which was eventually thrown
18 out by wilson vs. Dallas, and related to the will
19 contests. And her positions taken in those and
20 other cases in Aiken before Your Honor, before this
21 case came along, and both of these folks, in sitting
22 for their deposition, have had substantial and
23 multiple changes of position that they've taken in
24 Your Honor's court and in the appellate courts from
25 the positions they were taking at the time we

10

1 deposed them. And so I believe --

2 THE COURT: So you were there when Daryl and
3 Tonya were deposed?

4 MR. SILVERNAIL: I deposed them, Your Honor.

5 THE COURT: And you want a go at them again?

6 MR. SILVERNAIL: I do. Although to be clear, I
7 don't think -- I don't want to be too hemmed in.
8 Obviously if I -- on some of these areas -- and
9 those depositions were fairly long. They related a
10 lot to document authentication. Unfortunately,
11 we've recently gotten another round of requests to
12 admit authenticity of documents denied.

13 THE COURT: I'm just asking you very simply:
14 Do you want to simply re-depose those two people,
15 Daryl and Tonya?

16 MR. SILVERNAIL: Yes, sir.

17 THE COURT: And you've already deposed them
18 once? Let me see that order I signed dealing with
19 discovery.

20 All right. Go ahead.

21 MR. SILVERNAIL: And as Your Honor set out in
22 the order, discovery is beginning anew. I believe
23 we're entitled both for that reason and totally
24 separately because of the substantial changes in
25 position --

11

1 THE COURT: But what if everybody else takes
2 changes in position? What will we do now; re-depose
3 everybody every time they change their position?

4 MR. SILVERNAIL: Well, Your Honor, those were
5 two of the three depositions we had had in this case
6 before Your Honor took jurisdiction over it shortly
7 before its sixth birthday. So that's a real limited
8 risk here.

9 THE COURT: All right. So your motion for
10 protective order is that they've already been
11 deposed?

12 MR. GENDE: Yes. I'd have a couple responses
13 to Mr. Silvernail, at which time the Court would
14 consider --

15 THE COURT: I'm not cutting him off.

16 MR. SILVERNAIL: I think you've heard what I
17 have to say, Your Honor.

18 THE COURT: All right.

19 MR. GENDE: Simply this: The time period issue
20 hasn't changed. Case 4900 has a time period dealing
21 with the administration of Ms. Pope, and these two
22 witnesses were able to be fully questioned about
23 that time period. Mr. Silvernail's remarks about
24 the Aiken case is irrelevant to Case 4900. There's,
25 of course, the judicial efficiency and cost case.

12

1 we'd all have to pay for this; these are out-of-town
2 witnesses. As you've already indicated, there's the
3 whole question as to why they should get a second
4 bite at the apple. If they feel they have changed

5 their positions in a court, there's a record of that
6 and they can use that to impeach them if they feel
7 they should.

8 with respect to your order, you have the right
9 to construe the order. And as I have already
10 stated, the context of that order was when you were
11 faced with -- there's probably 40 or more
12 outstanding motions on written discovery. And it
13 was, I think, all of our understandings at the
14 time -- I can only speak for myself.

15 But our understandings at the time you signed
16 this is that you were referring to written
17 discovery. And it's just a slippery slope, what
18 they're asking for. Mr. Buchanan was deposed in
19 Case 4900. His deposition lasted several days, and
20 it's not even done because I haven't gotten the
21 chance to ask questions. But are they going to want
22 to re-depose him and re-open several days on that?
23 It's just a bad idea.

24 THE COURT: All right. I'll get y'all
25 something this week. That takes care of Daryl and

13

1 Tonya.

2 who is next; Venisha, Janise, Lindsey?

3 MR. GENDE: I think the others can break down
4 into two groups if counsel --

5 THE COURT: Lindsey, Janise, and Venisha?

6 MR. GENDE: Well, without mentioning the names,
7 let's talk about them like this, if the Court agrees

8 and the other side: There are some witnesses who
9 were minors at the time the action was commenced,
10 and the basis for our protection order for that is
11 they were properly represented under the probate
12 code by their parents in the action.

13 And in the sense they're not even parties to
14 the action, the caption clearly states that the
15 parents brought it in their interest, and so that --
16 they should not be deposed, regardless of whether
17 they've reached majority or not at this time
18 because, again, it deals with events that were --
19 occurred when they were minors. So that's one group
20 of people.

21 THE COURT: So which ones were or are minors?

22 MR. GENDE: The minors relate to --

23 THE COURT: You got Lindsey, Janise, Venisha.

24 MR. GENDE: Well, we have several. We have
25 James Brown, Jr., again --

14

1 THE COURT: He's not on here.

2 MR. GENDE: Yeah. That's not on there because
3 that hasn't been noticed. I don't think they've
4 made an attempt to notice that one at that point.
5 I'm just giving you a full list of how many this
6 might apply to in the long run.

7 THE COURT: Well, tell me how many it applies
8 to.

9 MR. GENDE: James Brown, Jr. is one that it
10 would apply to; Janise Venisha Brown is one that it
11 would apply to, and Sydney Lumar and Carrington

12 Lumar are ones to whom it would apply to. Again,
13 not all of those have been deposed, but -- or have
14 been noticed, but the ruling would be applicable to
15 that.

16 THE COURT: Mr. Silvernail, you want to take
17 the minors' depositions?

18 MR. SILVERNAIL: Your Honor, none -- of the
19 three people we're here about today, which is all I
20 want to bore you with, none of them are minors. One
21 of them -- Janise Venisha Brown was a minor at the
22 time of the filing of the complaint. Lindsey
23 Dolores Brown was captioned as a minor even though
24 she was over the age of 18 when this case was filed.
25 Both of them are over 18 now.

15

1 THE COURT: Thank you.

2 All right. What's the motion on protective
3 order on Lindsey Delores Brown? I'm going to do
4 what's before me. I can't anticipate. Lindsey,
5 what's your --

6 MR. GENDE: Yeah. Lindsey Delores Brown is not
7 one of the minors, and I don't think she was on the
8 list that I just read off. She's in this other
9 category of people --

10 THE COURT: Which is what? What is your
11 objection to the deposition of Lindsey Delores
12 Brown?

13 MR. GENDE: We aren't really objecting to her
14 deposition. We're receiving a protective order for

16 notices; Mr. Bundy feels he doesn't, based on the
17 rule, have to consult with us prior to selecting
18 dates for the depositions. He selected dates. For
19 a lot of reasons, those dates weren't workable.

20 He gave us two weeks from the date that he
21 selected to select a different date if that date
22 didn't work, and if we couldn't pick something from
23 the two weeks, it was too bad. We couldn't do that.

24 As I mentioned earlier, we're working very
25 hard, but are not able to have direct

16

1 communication at this time with all of our clients
2 for some of the reasons --

3 THE COURT: Well, is Lindsey Delores Brown a
4 client of yours?

5 MR. GENDE: She is a client of ours in this
6 case, yes. And as you know --

7 THE COURT: So it's a scheduling issue with
8 Lindsey Delores Brown; is that correct?

9 MR. GENDE: These are all scheduling issues.

10 THE COURT: All right. Janise Venisha Brown,
11 is that also a scheduling issue or is there more to
12 it?

13 MR. GENDE: Janise Venisha Brown is a minor.
14 She fits in that other category -- or she was a
15 minor at the time of the bringing of the case, let
16 me state it that way.

17 THE COURT: So that's your problem with that
18 one; she was a minor?

19 MR. GENDE: Correct.

20 THE COURT: How about scheduling?

21 MR. GENDE: I'm sure scheduling will be a
22 challenge.

23 THE COURT: All right. And the other one, I
24 think, is Venisha. What's her situation?

25 MR. GENDE: The situation with Venisha is a

17

1 scheduling issue. There are also other issues
2 related to Venisha that are unique to her. I think
3 that Your Honor might be aware of some of her
4 struggles --

5 THE COURT: No, sir. I've --

6 MR. GENDE: I'm sorry. I'm assuming knowledge
7 from the prior cases.

8 THE COURT: I know that. But I've been dealing
9 with this thing for so long and they all run -- I do
10 remember you.

11 MR. GENDE: I understand. Thank you.

12 THE COURT: Go ahead. What's going on with
13 Venisha?

14 MR. GENDE: Janise -- or Venisha has been in
15 and out of jail. She's in Georgia. We've made a
16 number of attempts to find out where she is. Family
17 members who we've talked to are not certain at this
18 point whether she's in jail, out of jail; she's not
19 had a regular home, and she has personal issues to
20 the point that Deanna Brown Thomas is actually her
21 power of attorney and acts on her behalf.

23 could speak with her about her deposition and
24 seeking to schedule it, I might still have a further
25 motion based on capacity.

18

1 THE COURT: Okay.

2 MR. GENDE: So she's in a unique situation all
3 her own.

4 THE COURT: Do you have any law that if someone
5 was a minor when you sued them that they can't be
6 deposed?

7 MR. GENDE: We do have some law. And I'll be
8 happy to --

9 THE COURT: How about once they turn -- reach
10 the age of majority?

11 MR. GENDE: I don't have a full memorandum. I
12 will be happy to give you a supplement, but let me
13 give you what I have on that. First of all, there
14 isn't a lot of law on this in South Carolina. There
15 is a Siegler vs. Southwest Railroad Company. It's
16 85 S.C. 345. It's a 1910 case, so it's hot off the
17 press. And it's a situation where a minor or
18 someone who was a minor when the case was brought
19 and had a guardian ad litem representing their
20 interests was required, because of unique
21 circumstances, to be substituted when they became of
22 majority.

23 The unique circumstances are, as the case got
24 to trial, they found that the appointment of the
25 guardian ad litem was defective. So something had

MR. GENDE

HEARINGS.AUGUST 29 2016.8-29-16 Bauknight Wilson et al v Adele Pope.txt

1 brought and as the case goes on reaches majority to
2 be substituted in their majority.

3 The situation is there, it's certainly an
4 option, but the person who can trigger it would be
5 the minor who has now become majority. They would
6 have to say, for some reason, they wanted that
7 change. They could, by doing nothing, ratify the
8 continuing of the case the way it is.

9 So that case which we found does not find any
10 triggering event such as age that requires someone
11 who is a minor when a case was brought to be
12 substituted in their majority. We couldn't find a
13 single case where the South Carolina Court has held
14 to the substitution of a party who has reached the
15 age of majority being required.

16 In our case, the operative time at issue here
17 is the period of administration of Ms. Pope from SA
18 up through her removal. These children were
19 children and minors at that time, and so we do not
20 feel that there's any necessity for them to give
21 testimony concerning events that occurred when they
22 were minors.

23 Finally, in the complaint it is styled that,
24 for example, Daryl Brown brings the case
25 individually and on behalf of his minor child Janise

21

1 Venisha Brown. It is not that Janise Venisha Brown
2 was what we might call a full party; her father was
3 appropriately representing her. And that
4 appropriate representation --

5 THE COURT: If my 14-year-old child is involved
6 in a car wreck, I have to be the GAL to bring the
7 lawsuit. But that doesn't preclude a defense lawyer
8 from taking my child's deposition.

9 MR. GENDE: Here is, I think, the code section
10 that does give us the difference to that, and that's
11 in the 62-1-403 probate code.

12 THE COURT: Hold on one second. What's that
13 code section say?

14 MR. GENDE: 62-1-403. We're looking at
15 subsection 2, line 2, line 3.

16 Also there have been -- you know, it might be
17 the law of the case that there's no need for this
18 because there have been attempts on the
19 defendant/cross-claim plaintiff, Ms. Pope, to have
20 the Court appoint guardian ad litem for these minor
21 children as we went into mediation.

22 It was argued when Judge Manning had the case.
23 He ruled that there was no need for that, that the
24 probate code applied, and that these minors were
25 properly represented in this matter, their interests

22

1 were properly represented in this matter, as is
2 pled, on behalf of this minor child by this section
3 of the probate code.

4 If you would -- I didn't know if you were
5 waiting for the book to come to you.

6 THE COURT: No. Go ahead.

7 MR. GENDE: Section 62-1-403, subsection 2 ii

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is a long section. Let me get down to the last

sentence, which is the pertinent part. It says: If there is no conflict of interest, no conservator or guardian has been appointed, a person may represent his minor or unborn issue.

Then the next section, iii, reads that a minor or unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.

And that's what we would argue is the situation here. That's what we have argued it is before. Judge Manning has held that there was no need to appoint a guardian ad litem, that the minor children were properly represented. And because of that, representing the parents -- or, excuse me, deposing the parents is the appropriate opportunity to give

23

to Ms. Pope and her counsel to determine the thoughts and the interests of these minor children who were properly represented by their parents who filed this suit on behalf --

THE COURT: Has Daryl Brown's deposition been taken?

MR. GENDE: Daryl Brown's deposition has been taken.

THE COURT: All right.

Mr. Bundy, or one of you. All right. Lindsey is a scheduling problem; we're going to deal with

Page 20

1194

THE COURT

HEARINGS.AUGUST 29 2016.8-29-16 Bauknight wilson et al v Adele Pope.txt

12 that. You got one that's, perhaps, incarcerated?

13 MR. BUNDY: Your Honor, if you don't mind, I'd
14 like to digress a minute about the scheduling
15 problem.

16 When this started, when I got in this case, I
17 wrote counsel a letter. I said, can we agree on
18 scheduling protocol because, obviously, there are
19 going to be problems. I sent him a letter. I said,
20 here's what I'd like to do: I'll blind notice
21 something two months out, okay, and give you two or
22 three weeks to call me back and tell me whether or
23 not you can find them, whether you can get a date
24 and all of that, and we'll work something out. But
25 I've got to have a notice, because you can wait

24

1 months and months and months without a notice, and
2 nobody is going to do anything unless you send them
3 notice.

4 So in this case, since they wouldn't agree to
5 that, I sent these notices out 60 days in advance,
6 didn't hear anything from them for a month and a
7 half. And then all of a sudden they call me and
8 say, well, we got a problem finding them, and we
9 want you to put off these depositions and we'll let
10 you know when we find them.

11 well, that's just unworkable from my
12 standpoint. I mean, I -- we'll never take the
13 depositions that way. And I'd like you to consider,
14 if you would, a protocol where we at least can --

15 and I put this in our proposed scheduling order. I
16 believe I suggested a protocol because we're simply
17 being the can kicked down the road. And until
18 such time --

19 THE COURT: It's getting kicked to me.

20 MR. BUNDY: Sir?

21 THE COURT: It's getting kicked to me. I don't
22 like scheduling depositions.

23 MR. BUNDY: well --

24 THE COURT: I've got more to do than scheduling
25 y'all's depositions.

25

1 MR. BUNDY: No, sir. It's just that if they --

2 THE COURT: I'm not fussing at you.

3 MR. BUNDY: Sir?

4 THE COURT: I'm not fussing at you.

5 MR. BUNDY: Okay. I just want to take the
6 depositions, Judge, and I'd like to do it in a
7 reasonable way.

8 THE COURT: Sounds like to me y'all can't work
9 together, so I'm going to set a date for them.

10 MR. BUNDY: Thank you, sir.

11 THE COURT: All right. How about -- do you
12 need to take this little child or is Daryl going to
13 be enough for you?

14 MR. SILVERNAIL: Your Honor, all the --
15 Mr. Gende --

16 THE COURT: It's a simple question.

17 MR. SILVERNAIL: We need to take the child's
18 deposition. And, again, I note she's not a child

19 today.

20 THE COURT: Thank you. That's all I ask.

21 The lady who is having issues, Venisha, if
22 she's incarcerated, obviously you got to get a
23 GAL -- I think the rules require a GAL for an
24 incarcerated person -- and then you have to go
25 through the GAL, or perhaps she has other problems

26

1 that require a GAL. I don't know.

2 MR. SILVERNAIL: And, Your Honor, I'm not
3 trying to bore you, but I do want to state for the
4 record we moved to appoint a GAL for Venisha a few
5 years ago when we knew she was, in fact,
6 incarcerated. Today we're hearing from Mr. Gende
7 they don't know whether she's incarcerated or not --

8 THE COURT: Well, I don't either.

9 MR. SILVERNAIL: -- and so we noticed -- she's
10 represented, she's a plaintiff, and a counterclaim
11 defendant. We noticed her deposition on June 23rd.
12 And today, on August 29th, more than two months
13 later, we're still not -- I mean, they don't seem to
14 be ready to commit to a schedule. We need her to
15 appear. And I haven't seen any evidence put before
16 the Court that she is currently incarcerated.

17 THE COURT: Thank you. When do you want to
18 depose Lindsey, Janise, and Venisha? Give me some
19 dates.

20 MR. SILVERNAIL: Your Honor, I -- I think I can
21 be very flexible in the month of September on dates

23 THE COURT: As to Lindsey, Janise, and Venisha,
24 within five days send me by e-mail with copy to
25 everyone, give me five dates in September, and I'm

27

1 going to arbitrarily choose three of them; 1A, 1B,
2 1C.

3 MR. SILVERNAIL: Okay.

4 THE COURT: If Ms. Brown, Venisha, is
5 incarcerated, we may have to jump through a couple
6 hoops to get that one.

7 MR. SILVERNAIL: Thank you, Your Honor. And I
8 would note, although the scheduling of these -- and
9 you've resolved the issue about getting their
10 deposition. We filed motions after they did not
11 appear for their depositions on August 19th for
12 costs related to that.

13 THE COURT: That's not before me today, I don't
14 think. Is it?

15 MR. BUNDY: Yes, sir.

16 MR. SILVERNAIL: Your Honor, we'd ask it be
17 heard in conjunction with the motions for protective
18 order since they related to the same subject. They
19 did not appear at their depositions on August 19th.
20 So the motion, I believe, was filed the following
21 Monday.

22 THE COURT: That's the return motion to compel
23 as to Lindsey and Janise?

24 MR. SILVERNAIL: Yes, Your Honor.

25 THE COURT: Be glad to hear you.

MR. GENDE

HEARINGS.AUGUST 29 2016.8-29-16 Bauknight Wilson et al v Adele Pope.txt

12 is a scheduling issue that we're trying to work
13 through. He had a whole lot more knowledge than he
14 just led on in his argument that this wasn't going
15 to happen.

16 THE COURT: Please send me a proposed order
17 stating your position, and send me a proposed order
18 stating your position within five days.

19 MR. GENDE: Thank you, Your Honor.

20 MR. SILVERNAIL: Thank you, Your Honor.

21 THE COURT: Now, as to the scheduling of those
22 three, you're going to give me several dates in
23 September, and I'll select 1A, 1B and 1C. But,
24 Mr. Gende, y'all --

25 MR. GENDE: We're going to do everything we

33

1 can, Your Honor.

2 THE COURT: Y'all just sort of chirp in on
3 which one of those you want to be 1A --

4 MR. GENDE: We will. And if there's an
5 insurmountable problem, as you mentioned in the
6 other one, we'll communicate directly to the Court
7 and bring you in on this, even though I know and we
8 know that you don't want to be involved in
9 scheduling issues.

10 THE COURT: No, sir.

11 Now, to eliminate this in the future, is a
12 deposition protocol something that we need?

13 MR. BUNDY: I believe it is.

14 THE COURT: Okay. Then you send me one and

15 I'll send it to them; y'all make whatever changes

16 you want in it, and I'll adopt it as an

17 administrative order.

18 MR. GENDE: That's fine, Your Honor.

19 THE COURT: All right. That takes us down to

20 the protective order as to Alan Wilson. Is that

21 where we are? And then that leaves us after that,

22 AG motion to be dropped, motion for summary

23 judgment. Is that where we are?

24 MR. GENDE: Yes. And I think the AG would like

25 to go last and our motion for summary judgment to go

34

1 first, and I have no objection to that order.

2 THE COURT: All right. Anybody need a bathroom

3 break? Okay. Let's do this: Let's do the

4 deposition of Alan Wilson protective order and then

5 we'll take about a five-minute bathroom break, come

6 back, and finish up.

7 All right. Now I have the protective order of

8 Alan Wilson; is that correct?

9 MR. SMITH: Yes, Your Honor. Did you get a

10 copy of our memo? I mailed it and e-mailed it on

11 Friday. I've got an extra copy if --

12 THE COURT: The answer is I did. And I did,

13 over the weekend, read it. Let me find it. I got

14 one on the revised memo for the counterclaim, I got

15 the one on Alan Wilson. When did you send it?

16 MR. SMITH: Friday, I think around noon, Your

17 Honor.

18 THE COURT: Got it. I did and I read it.

19 That's the one that you discussed the Morgan rule.

20 MR. SMITH: Yes, Your Honor.

21 THE COURT: And the Morgan case. All right.

22 I've read the whole memo. Be glad to hear from you.

23 MR. GENDE: Thank you, Your Honor. I hope I

24 can make this brief. The motion --

25 THE COURT: You're pretty thorough in the memo.

35

1 It sets out why we shouldn't depose the Attorney
2 General unless it absolutely meets the requirements
3 under the Morgan rule. Is that correct?

4 MR. SMITH: That's our position, Your Honor.
5 And they don't appear to be disputing in their memo,
6 which I just received in court today --

7 THE COURT: I have not received that.

8 MR. SMITH: -- an opposition to it. They don't
9 appear to be opposing the Morgan rule, but instead
10 try to claim that they fall under it. But the
11 Morgan rule sets a very high standard, and that is
12 that the information sought must be essential, that
13 it's not obtainable elsewhere, and the deposition of
14 the official would not interfere with his government
15 responsibilities.

16 And we believe that -- and the burden is on
17 them to show that it meets all three of those
18 exceptions. And we believe that they cannot --

19 THE COURT: Well, what information does Alan
20 Wilson have that all the rest of the people who are
21 involved would be essential that they can't get from

23 MR. SMITH: well, we don't believe he has any
24 information, Your Honor, and their memo doesn't show
25 that he does. He was not attorney general when

36

1 the --

2 THE COURT: That's correct. General McMaster
3 was.

4 MR. SMITH: Right. General McMaster was
5 attorney general when this suit was brought. The
6 suit was brought on matters that had occurred up
7 until that point. Alan Wilson was not in office
8 then, therefore, he has no personal knowledge about
9 it.

10 They have -- half of the memo deals with
11 lengthy rehashing of their version of the history of
12 this proceeding, none of which has anything to do
13 with the need to depose Alan Wilson. Beginning on
14 page 18, they claim that --

15 THE COURT: Page 18 of what?

16 MR. SMITH: Of their memo. They talk about --

17 THE COURT: I don't have it. Hold on, hold on.

18 MR. SILVERNAIL: Your Honor, if I can approach,
19 I'll be glad to hand up a copy.

20 THE COURT: Thank you.

21 MR. SILVERNAIL: I was planning to argue this
22 one myself, but --

23 THE COURT: Page 18. What?

24 MR. SMITH: Yes, Your Honor. They talk about
25 reasons why they believe they need to take Attorney

1 General Wilson's deposition. But they're all
2 dealing with matters about the course of litigation,
3 why things have continued in the litigation, a
4 meeting between Adele Pope and Attorney General
5 Wilson about the litigation. She was there, she
6 doesn't need to depose him about why she was there.

7 All of these deal with litigation strategies.
8 If they can take the deposition of Attorney General
9 Wilson in this case, then they can take the
10 deposition of opposing counsel in any case in which
11 they're involved. It certainly does not show any
12 need --

13 THE COURT: Wilson is not representing -- he's
14 not acting as a lawyer in this case, is he?

15 MR. SMITH: Well, he is the attorney general,
16 he is a party, and he's also a lawyer, Your Honor.

17 THE COURT: But he's not counsel for Plaintiff,
18 is he?

19 MR. SMITH: No, Your Honor.

20 THE COURT: No.

21 MR. SMITH: But they're asking him about
22 litigation decisions in this case. That's what they
23 want to ask about in pages 18 and thereafter in
24 their memo. They don't want to depose him about
25 matters that occurred that are at issue in the

1 lawsuit because he wasn't attorney general then, he
2 didn't observe those matters, he's not a party to
3 them. They're not entitled to take his deposition
4 about the course of the litigation.

5 And that certainly does not fall under the
6 category under Morgan of being essential, it does
7 not fall under the category of not being obtainable
8 elsewhere, it does not fall under the category of a
9 deposition that would not interfere with his other
10 government responsibilities.

11 For example, let me show you on page 17, she
12 talks about her meeting with --

13 THE COURT: Hold on one second, please. His
14 page 17?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: All right.

17 MR. SMITH: She wants to inquire about the
18 attorney general's relationships with James
19 Buchanan. The attorney general was not in office
20 when James Buchanan -- when this suit was brought,
21 Case 4900. She wants to depose him about her -- the
22 attorney general's meeting with herself. She was
23 there, she doesn't need to depose him about that.

24 She speaks on page 18: Years later, the
25 vitriolic attacks have continued. Maybe she's

39

1 referring to her own, Your Honor, because she's
2 filed affidavit after affidavit in these various
3 cases with vitriolic statements in it.

4 Again, this is all about the course of the

5 litigation; this is not about being a witness to the
6 facts of the case. We believe that this case falls
7 squarely within the Morgan rule. Morgan has been
8 applied to public officials who are defendants in
9 suits, public officials who have been plaintiffs in
10 suits.

11 The Bogan case involved the deposition of the
12 defendant mayor. The Franklin case involved the
13 deposition of the director of the defendant Office
14 of Thrift Savings. The McCarthy case involved the
15 deposition of the EPA administrator. In Re: U.S.
16 involved a deposition of Attorney General Reno in a
17 federal prosecution.

18 In Re: FDIC involved the depositions of three
19 FDIC directors. The McNamee case involved the
20 deposition of former chief of staff of a legislator.
21 U.S. v. Northside Realty Associates from the
22 District Court of Georgia involved the deposition of
23 the attorney general and a suit initiated by him on
24 behalf of the United States.

25 The Highland case involved the deposition of

40

1 the plaintiff New Jersey Attorney General. Johnson
2 v. Clark involved the deposition of the county
3 executive of the county defendant. Paige v. Kennedy
4 involved the deposition of the Secretary Tax
5 Commissioner in a FOIA action apparently against
6 him.

7 The State Board of Pharmacy involved the

9 regarding appropriate attorneys' fees. And it says
10 in that case: If the head of a government agency
11 was subject to having his deposition taken
12 concerning any litigation affecting his agency or
13 any litigation between private parties which may
14 indirectly involve some activity of his agency, we
15 would find that the heads or government department
16 members of the president's cabinet would be spending
17 their time giving depositions and would have no
18 opportunity to perform their functions. It would be
19 oppressive and vexatious to require the head of the
20 government agency to submit to interrogation that
21 might last for several hours, and would, of course,
22 disturb government business.

23 One of the showings they have to make here is
24 information is not obtainable elsewhere. They've
25 already taken depositions of Sonny Jones and Mary

41

1 Frances Jowers in Case 1337. They've asked to take
2 the deposition of Henry McMaster in Case 4900.

3 Alan Wilson was not in office when these suits
4 were brought; therefore, we believe they've failed
5 to meet the Morgan rule, and that it would be an
6 undue burden under Rule 26 of the South Carolina
7 Rules of Civil Procedure for his deposition to be
8 taken.

9 And I believe it's in my memo, Your Honor, but
10 we've got written discovery requests pending too.
11 They could obtain information that way, Your Honor.

12 Thank you.

13 THE COURT: Yes, sir.

14 MR. SILVERNAIL: Your Honor, Mr. Smith ran you
15 through a long list of the cases that he's based his
16 argument on and the circumstances in those cases.
17 Not one of them involves an attorney general as a
18 co-plaintiff with a bunch of private individuals
19 suing somebody and that attorney general now being
20 subject to counterclaims for abuse of process, civil
21 conspiracy, and some other matters related to the
22 bringing of this action.

23 The maintaining of this action is also
24 important. When Mr. Wilson was attorney general,
25 the Supreme Court reversed Wilson vs. Dallas. He

42

1 made some filings -- he, Attorney General Wilson,
2 made some filings with the Supreme Court setting out
3 his position and his plans for 4900. He came and
4 filed a motion in this case in 2013, which Your
5 Honor is going to hear later today, to be dropped as
6 a party based on what appears to be an allegation
7 that he was never actually a party in a case he's
8 shown as a plaintiff in.

9 Your Honor asked a really interesting question
10 earlier, which is, is he a lawyer in this case?
11 He's not. This case is incredibly unusual, if not
12 totally unique, because he's -- Mr. Wilson's office
13 is not on the pleadings in this case. He is
14 represented by Mr. Gende's firm. That's -- now,

15 Mr. Jones recently filed a limited notice of
16 appearance. But for six years, Mr. Wilson is a
17 co-plaintiff with these 15 other folks and entities.
18 we're entitled to examine Mr. Wilson about his
19 relationship with these folks.

20 Mr. McMaster, just last week or the week
21 before, came to his deposition and also seemed to be
22 surprised. He didn't believe he was a party to this
23 case. You know, we're entitled to find out what the
24 attorney general's position is on this. Yes, there
25 was a change; we've deposed Mr. McMaster. He didn't

43

1 shed a whole lot of light on some of this, although
2 he did on some other parts.

3 We're entitled to know what the attorney
4 general knows, what his relationships are with the
5 other plaintiffs here. The damages alleged under
6 our counterclaims are continuing, and he's now been
7 attorney general for five of the six years this case
8 has been pending, or thereabout.

9 And so, number one, I don't think Morgan
10 applies here. This case is unlike any of the long
11 laundry list of cases rattled off there. And
12 Mr. Smith made reference to one of them in
13 particular that talked about private party
14 litigation indirectly involving the state office.
15 This isn't indirect. Mr. Wilson is one of the lead
16 plaintiffs in this case. He's been here since day
17 one, his office was introduced as a client of
18 Mr. Gende's firm at the very first hearing in this

19 case.

20 We took issue with the attorney general's
21 participation in this case. We continue to take
22 issue with the attorney general's participation, for
23 constitutional and other reasons, but Judge Manning
24 denied our motion on that. I think there's a 59
25 motion that's been pending for quite some time.

44

1 The attorney general's participation in this
2 case is material to our counterclaims, and so we're
3 entitled to know what the attorney general, who is
4 here now, who has been here since Wilson vs. Dallas
5 was decided, who has taken some substantively
6 changed positions in the record in this case, who we
7 have not deposed before, we're entitled to
8 understand his position.

9 THE COURT: What has he changed his position
10 on?

11 MR. SILVERNAIL: Well, after Wilson vs. Dallas
12 was decided, he came and said, oh, heavens, I'm not
13 a party to this case, I should be dropped. Your
14 Honor is going to hear that this afternoon. We
15 oppose that motion. We'll go through that in a
16 little bit.

17 But, you know, it was a little startling. I
18 don't know of any case where years in, one of the
19 plaintiffs, particularly when it's the State of
20 South Carolina through the attorney general, came
21 and said, oh, heavens, not a party. Mr. Bauknight

22 was supposed to bring this suit, I think was what
23 they've alleged, and I guess we'll hear more about
24 their position in a little while.
25 But, you know, we're entitled to learn from

45

1 Attorney General Wilson what lead to that
2 revelation. The case was filed in 2010. That
3 motion was filed nearly three years after the case
4 was filed. This wasn't sort of, oops, we've got the
5 wrong plaintiffs in here and we need to fix a
6 clerical error. We're entitled to learn from
7 Mr. Wilson about that. We're entitled to learn from
8 Mr. Wilson about his relationship with the
9 co-plaintiffs.

10 Again, Your Honor, we're alleging civil
11 conspiracy and continuing damages under several
12 theories. And, you know, I'd note that the attorney
13 general, in his memo, has made reference to an
14 expectation that we'll want to know about privileged
15 information and that he doesn't know anything
16 relevant.

17 Your Honor, if it's all appropriately
18 privileged, which I don't think it will be, or if he
19 doesn't know anything relevant, it's going to be a
20 short deposition. But we're entitled to go ask. If
21 they want to raise objections to particular
22 questions, then we'll go through that process. But
23 in this event, in this case, we're entitled to take
24 the deposition of the attorney general.

25 I don't think any of the Morgan cases and those

1 that -- or the Morgan case or the cases that come
2 behind that -- I've read through those. None of
3 those encompass a situation that really stands on
4 all fours with this.

5 This is not a governmental agency undertaking
6 some, you know, civil action to bring somebody into
7 compliance; this was the attorney general suing
8 Adele Pope for tens of millions of dollars and her
9 counterclaims against the attorney general as
10 alleged in the answer and counterclaim.

11 I don't think the Morgan cases control, but
12 even if they do, I certainly think we've shown
13 necessity to have Mr. Wilson's deposition. We have
14 offered, of course, and will continue to work with
15 them on scheduling it. We understand that
16 Mr. Wilson is busy. He's the attorney general, he's
17 got things to do, and we'll be reasonable about how
18 we handle that.

19 But, you know, they seem to have asserted some
20 things that I think are entirely premature before
21 we've asked the first question in a deposition, such
22 as privilege and relevance, and then separately,
23 that we can't have his deposition at all. And I've
24 gone through, at some length, why I think we're
25 correct on that.

1 THE COURT: Thank you.

2 Anything in reply?

3 MR. SMITH: Yes, sir, briefly. I believe that
4 his argument is a proverbial distinction without a
5 difference. Morgan applies squarely here. The fact
6 that he's sued Adele Pope is not a distinction for
7 other --

8 THE COURT: Do you know of another case where
9 the AG has sued another individual?

10 MR. SMITH: Well, we cited several in here,
11 Your Honor, in which the AG had -- was the plaintiff
12 or the head of the agency bringing the action,
13 including criminal cases in the New Jersey case, the
14 U.S. vs. Northside. The attorney general was in a
15 suit initiated by him on behalf of the United
16 States. The New Jersey case in here, the attorney
17 general was a plaintiff -- or deposition of
18 plaintiff New Jersey Attorney General. So the AG
19 has been a plaintiff in those cases.

20 He refers to their counterclaim against the
21 attorney general. Your Honor, the counterclaim was
22 filed in 2010 before Alan wilson took office in
23 2011. And so it, too, just as the main lawsuit, was
24 based upon events that occurred prior to his taking
25 office. And so, therefore, his testimony is not

48

1 necessary, relevant, and certainly doesn't meet the
2 Morgan standards in this case.

3 They, instead, want to ask him about litigation
4 decisions, about the course of litigation, all of

5 which is irrelevant to the facts of the suit, all of
6 which should be privileged and, therefore, they
7 cannot show an essential need for it, they cannot
8 show that they cannot obtain this information
9 elsewhere, and they cannot show that it would not be
10 a burden on him.

11 Sonny Jones and Mary Frances' depositions took
12 five days. The deposition of Henry McMaster took
13 four hours. We do not believe that the attorney
14 general, under Morgan, should have to give up that
15 much time in a futile effort to ask questions that
16 are irrelevant, that are privileged, and that are
17 squarely covered by the Morgan rule.

18 THE COURT: Thank you.

19 MR. SMITH: Thank you, Your Honor. Let's take
20 about a quick five-minute break.

21 (Short break.)

22 THE COURT: All right. Motion for summary
23 judgment, is that next in line?

24 MR. GENDE: Yes, Your Honor. May it please the
25 Court. This is plaintiffs'/counterclaim defendants'

49

1 motion for summary judgment with respect to all of
2 Ms. Pope's counterclaims.

3 THE COURT: How is this case any different than
4 the case in federal court where the federal judge
5 granted summary judgment?

6 MR. GENDE: That's a very good question.
7 First, we're making this argument based on the issue

8 of occlusion, federal estoppel grounds. So I just
9 want to be clear from the outset that I'm not
10 prejudicing any opportunity to make another summary
11 judgment motion at the end of discovery on the
12 evidence should the Court not grant this summary
13 judgment motion.

14 We have filed a memorandum in support of our
15 motion for summary judgment. We have importantly
16 filed a revised memorandum and motion in support of
17 our motion for summary judgment, and that is what we
18 incorporate here by reference and upon which we'll
19 be relying for our arguments today. It's a
20 substantial argument, and I will do my very best to
21 make it clear and concise. And if I --

22 THE COURT: Well, I'm going to grant each of
23 you a little additional time on this one. It's a
24 very interesting situation, and, obviously, it's a
25 dispositive motion. So if you need a little extra

50

1 time, I'll be glad to give it to you.

2 MR. GENDE: Thank you, Your Honor.

3 Ms. Pope answered our complaint and filed five
4 counterclaims. She filed claim for abuse of
5 process, civil conspiracy, intentional infliction of
6 contract, violation of code 62-1-106, and attorneys'
7 fees.

8 THE COURT: 62-1-106.

9 MR. GENDE: 62-1-106, and attorneys' fees.
10 We're moving for summary judgment on all of those
11 counterclaims on the basis of collateral estoppel

1 favorable to the plaintiff -- or to the nonmoving
2 party. And there is not -- there is not a scintilla
3 of evidence to suggest one way or the other, okay,
4 in a preponderance of the evidence burden of proof.

5 That -- the representations that are made in
6 this brief with regard to collateral estoppel are
7 made in a light that they want it to be viewed.
8 They want it to be read that way and read in such a
9 way that establishes these things. I would suggest,
10 Your Honor, that for that very reason it's
11 inappropriate for summary judgment, notwithstanding
12 the fact that we believe they're judicially estopped
13 from taking the position and notwithstanding the
14 fact that Wilson v. Dallas doesn't do that. From
15 the standpoint of our reading, it doesn't establish
16 any of those things, as we just went through, which
17 is the elements of these counterclaims.

18 But I did want to point out to Your Honor that
19 the way I heard the argument from the other side was
20 simply, we want it to be read in a way that's most
21 beneficial to us. And the highlight that I wanted
22 to bring that out was the quote: "Everyone had the
23 same justification for bringing this case." Well,
24 what does that mean? Wilson v. Dallas doesn't say
25 what their justifications were for bringing this

2 think that for those grounds, summary judgment would
3 be inappropriate.

4 We have a memorandum here that we filed in
5 opposition that I can hand up to Your Honor. I'm
6 not sure if you have a copy of it.

7 THE COURT: Please hand it up.

8 MR. MCDONALD: This is our memorandum in
9 opposition to the motion for partial summary
10 judgment that they filed. And I have a copy for
11 Your Honor if you'd like. Actually, I have two.

12 THE COURT: Thank you. Anything else?

13 MR. MCDONALD: Yes, Your Honor. We'd just rely
14 on the filings in the record, including the
15 affidavit of Ms. Pope. I think it was filed in
16 conjunction with both this motion and the next
17 motion that's set to be heard. Thank you, Your
18 Honor.

19 THE COURT: All right. Anything in reply?

20 MR. GENDE: A few things, Your Honor. I think
21 it's interesting --

22 THE COURT: Speak up for me.

23 MR. GENDE: I think it's interesting that
24 counsel would find some fault in us e-mailing them
25 our revised memorandum on Friday and I get handed

93

1 their memorandum in opposition now. Unless I'm
2 missing something, I haven't gotten it before.

3 THE COURT: That's okay. Let's not --

4 MR. GENDE: No. It's just --

15 THE COURT: No, sir.

16 MR. GENDE: Fifteen days.

17 THE COURT: Within -- how many days you want?

18 MR. MCDONALD: Yes, sir. Just as a point of
19 clarity, I just need to know what I'm going to be
20 responding to because, obviously, I took the
21 position that the -- and I don't want to waive that
22 objection to the new items. So are the proposed
23 orders only going to relate to the collateral --

24 THE COURT: The proposed orders will be on
25 what's been argued here before me today. I gave you

97

1 an opportunity if you wanted additional time. You
2 hem-hawed all around. So I'm going to rule on
3 what's been argued here today.

4 MR. MCDONALD: And the --

5 THE COURT: Fifteen days? How long you want?

6 MR. SILVERNAIL: Just so the record -- just so
7 I -- to make the records clear, obviously we object
8 to the new stuff and needing additional time for
9 discovery. With regards to proposed orders, 15 days
10 is --

11 THE COURT: Thank you.

12 All right. Last on the list is AG's motion to
13 be dropped --

14 MR. JONES: Yes, sir.

15 THE COURT: -- to be no longer a party --

16 MR. JONES: Yes, sir.

17 THE COURT: -- whatever the correct word is.

18 Mr. Jones.

19 MR. JONES: Yes, sir. Your Honor, Sonny Jones,
20 State Attorney General's Office. At the counsel
21 table with me is Assistant Deputy Attorney General
22 Mary Frances Jowers.

23 I would like to comment on the last argument.
24 If we can go back to your ruling on the judicial
25 estoppel issue, your ruling on the Wilson v. Dallas

98

1 case, I would like to go back there, but we can't do
2 that.

3 On the issue of the AG being dropped, I think
4 it's helpful to kind of give a background of what
5 Your Honor probably knows but I'd like to put in the
6 record as far as why the AG is in charitable trust
7 cases. There's statutory law in 1-7-130, there's
8 common law in the cases. If you go to Epworth, you
9 go to the McMaster case, or even the Wilson v.
10 Dallas case, it talks about the responsibility of
11 the Attorney General's Office and the public
12 interest to protect charitable trust, prevent
13 breaches in the administration of the trust, and to
14 protect known and unknown beneficiaries.

15 With that in mind, Your Honor, back in 2007 in
16 September we approached Your Honor. We became
17 concerned about the current James Brown case, the
18 actions of the trustees that were currently trustees
19 of the case -- two of them were left at that time, I
20 believe -- and then the subsequent appointment of
21 Mr. Buchanan and Ms. Pope as far as, initially,

22 conflict of interest, also about the fact that our
23 contention was that they were not properly
24 appointed.
25 So we had an interest to stay in that case.

99

1 And we stayed in that case through the decision by
2 the State Supreme Court in Wilson v. Dallas. And
3 based upon our reconsideration in that case, which
4 we've attached to our motion that we filed with you,
5 we tried to correction some things we thought were
6 in the record. But one thing we told the Court was
7 that with the removal of Mr. Buchanan and Ms. Pope
8 and the appointment of a new trustee, that our job
9 will be done because we don't need to be in a case
10 unless we think there's some fraud or mismanagement
11 or -- and sometimes different interpretations by a
12 trustee in the law.

13 So, Your Honor, when that case went back to you
14 in 2013, we approached you in, might have been in
15 this courtroom or it might have been the one in
16 Barnwell, saying we understand that Mr. Bauknight's
17 up for consideration for appointment, our office is
18 definitely satisfied with the way he is a
19 professional fiduciary, and that based upon -- I
20 think you'd appointed him as an SA at the time or --
21 and also a trustee, temporary trustee -- that we'd
22 be satisfied and we would take -- and we asked the
23 Court to let us take in a monitoring role, which
24 Your Honor did an order of October of that year.

25 So the point is that when -- we have concerns

100

1 we're in cases. And we -- in fact, we are a
2 necessary party per law, but not an indispensable
3 party, meaning that everybody basically tells us
4 about charitable trust cases, but we don't
5 necessarily have to be in all the cases to get a
6 final result.

7 THE COURT: Well, but you got in the James
8 Brown case, and then it went up on appeal, and then
9 Attorney General McMaster engaged the services of
10 current counsel, I assume, to bring the litigation.

11 MR. JONES: Yes, sir. I'm going to get to that
12 in a second.

13 There's some confusion on what was the role of
14 the AG on Mr. Bauknight retaining the Wingate firm.
15 I would go back to, Your Honor, when we had an issue
16 with Few and Gilreath being hired by Ms. Pope early
17 on, and we said, Your Honor, we want them to go by
18 the fee part of the AG's contract because it's a
19 charity, may be a big charity here, and we recognize
20 we can't control Ms. Pope on who she hires, but we'd
21 ask them to try to consider to lower the fee down.
22 And you pointed to Mr. -- I think Mr. Gilreath in
23 the crowd out here and said, you go talk to him, but
24 I don't think you can get his fee down. I said,
25 Your Honor, we don't have to get his fee down but

101

1 find somebody just as good. That's when we went
2 through Mark Bite [phonetic] and Steve Hamm, but
3 they were not satisfactory to Ms. Pope.

4 In January of -- and filed a motion with you
5 outlining the different fees, how much less it would
6 cost in charity on certain levels and we filed that
7 with you. And you filed an order, which you did in
8 January, recognizing that we can't control who the
9 trustee hires. And, in fact, to Mr. Few and
10 Gilreath's credit they did reduce their fee down for
11 the whole thing.

12 So when the case came about the deadline for
13 the 4900 case -- and it was a year, coming up on the
14 date of a year -- and something having to be done,
15 our office -- and I was concerned, again, about the
16 fee. I would like the fee -- if Mr. Bauknight hired
17 the wingate firm, that the fee be a lower fee for
18 the charity part.

19 And so you see that letter is in the packet May
20 18th, 2010. It's a letter to Mr. Bauknight saying,
21 I understand you're going to hire Mr. Wingate. And,
22 in fact, he did. And, in fact, to my understanding,
23 the fee is less for the charity part.

24 We're on the caption of this case, Your Honor,
25 the 4900 case. And if you look at that caption,

102

1 there's a reason for the way it's laid out. At this
2 time, the case was pending before the State Supreme
3 Court. We didn't know what would happen. And, in
4 fact, the thought was, if you look at the -- that

5 first part, you got Mr. Bauknight representing
6 everybody. And we're included in the complaint as
7 the beneficiary.

8 And in the second part, you don't see
9 Mr. Bauknight. And that would be from a strategy
10 point of view. If the case was overturned and
11 Ms. Pope and Mr. Buchanan was still in there and
12 Mr. Bauknight was out, there's a statute of
13 limitations of one year, she'd be suing herself. So
14 the fault would be, the strategy part was to keep us
15 in -- all these in the suit, if it would work that
16 way.

17 So when the case came out -- so there's no
18 question at this juncture when this case came out
19 that Mr. Bauknight was hiring the wingate firm. You
20 have to keep in mind also, Your Honor, from what I
21 just said about the law, is we only have one reason
22 to be in this case, and that is to protect the
23 charitable beneficiaries and to protect the
24 charitable trust.

25 Under 62-7-405, the probate code allows the

103

1 attorney general, a trustee, or a party with a
2 special interest to protect the charitable trust.
3 So when Mr. Bauknight was appointed back in the
4 earlier case by you, we're satisfied with Mr.
5 Bauknight, we're stepping back.

6 In this case when Mr. Bauknight brought the
7 action, Mr. Wingate's firm, they were representing

9 No different than if Mr. Few and Gilreath were here
10 today, I'd be sitting back there and I'd say good
11 job because you're our lawyers for the charitable
12 interest.

13 Now, that may be a communication, that may be
14 bad words, I would say, but when I deal with fee
15 contracts -- and I've dealt in our office, for ten
16 years, probably 20. I'm probably the sole person
17 outside of maybe two of them. It's pretty rigorous.
18 We've been to the Supreme Court twice, been attacked
19 two or three times about fee contracts. All that we
20 intended in this one and all that was included was
21 the fee part, not anything else on control or
22 anything else.

23 So Mr. Bauknight hired Mr. -- the Wingate firm.
24 And right now, when we responded with consideration
25 with the Supreme Court, said, we want to make sure

104

1 you understand our position, we aren't going to
2 argue with you about what you did, but let you know
3 we aren't trying to control everything, but with you
4 saying a new trustee is going to be appointed, we're
5 going to step back. That's what we told the Supreme
6 Court in our reconsideration, which we filed with
7 you. That's the same position we took when we went
8 down to, I think it was, Barnwell and you assigned
9 Mr. Bauknight; let us step back to a monitoring
10 role, we don't need to be there.

11 So what we're picking up today is a motion that
Page 92

12 we filed back in 2013, I think, to be dropped. Our
13 job is done, Mr. Bauknight is still there, the
14 courts appointed him, got a great firm with
15 Mr. Wingate, he's representing Wingate firm to
16 Mr. Bauknight, our interest, and the charity. So
17 they're our lawyers in effect because they are
18 representing our interest. And I wouldn't be able
19 to stand up and say anything with Mr. Gilreath and
20 Few, so there's no reason for us not to be dropped
21 in the case today.

22 Now, I did make a notice of special appearance.
23 I hope Your Honor will give us that. We've been
24 talking here for a little while. But it's necessary
25 to argue that motion.

105

1 Now, the issue could come up on the
2 counterclaim. Now, the counterclaim has not been
3 resolved, that's why I wanted it to be argued before
4 we argued our case so I wouldn't have to go into
5 much detail. Our position, one, would be that any
6 counterclaim, if it was found to be against the
7 parties, at that time would be for the interests
8 that were in the case.

9 And what is that interest? To protect the
10 charitable beneficiaries. So anything that goes --
11 if it's meritorious in the counterclaim, if you
12 don't drop them today, would be against the
13 charitable beneficiaries. That's why we're in the
14 case, not the AG's office.

16 have asked the Supreme Court that. We're satisfied
17 with Mr. Bauknight's professional fiduciary,
18 satisfied with wingate firm. We don't need to be in
19 this case. Justice Toal said outside of fraud or
20 concern, you don't need to be in the case. And on
21 the counterclaim, we're saying that would go against
22 the charitable beneficiaries, not go against the AG.

23 Now, following up on that, just looking, Your
24 Honor, at the counterclaims -- and this is kind of
25 echoing what Mr. Gende said. There's no question on

106

1 the abuse of process. They're saying you filed it
2 to get an advantage in the Wilson v. Dallas case.
3 well, that case is over, and it shows it was
4 meritorious. It shows that there were problems with
5 Mr. Buchanan and Ms. Pope. So we think, number one,
6 on its face, that part of the counterclaim is gone.

7 Number two, on the conspiracy, Mr. Gende
8 addressed it. In addition to what he said, there --
9 her claim against the AG's office in paragraph 88 is
10 we didn't help her out in the federal case. well,
11 in the federal case, Forlando Brown sued her for
12 conflict of interest. That was the same -- because
13 initially, Your Honor, we filed a conflict of
14 interest against Ms. Pope and Mr. Buchanan in your
15 court, and I think they adopted our pleadings.

16 (But so that was her complaint against us then,
17 and that we gave no notice to the settlement. I
18 would ask you to take judicial notice of the

19 documents that we filed in support of our
20 reconsideration. There's an issue that Mr. Buchanan
21 and Ms. Pope did not know the very date. But you'll
22 see it in the record under oath when Mr. Levenson
23 and Professor Medlin questioned her; there could
24 have been issue of the settlement, but did not know
25 about the date. So we're saying that's not

♀

107

1 meritorious on its face.
2 And the issue that I think Mr. Gende has
3 addressed on the counterclaim about a court order on
4 the contract is fine. Plus, with the June 15 order,
5 that Supreme Court said what a great job you're
6 doing, Your Honor, and you were -- and I think
7 you're doing a great job, and others think the same
8 thing -- is they said, Ms. Pope, we don't want you
9 to mess with the James Brown case anymore, you're
10 costing a lot of time and a lot of money.

11 well, this part of her coming in under
12 62-1-106, how can she say and complain that the
13 proper heirs were not designated? She has no
14 standing. So -- but that's gone per the Supreme
15 Court order. That's, once again, some things that
16 have happened after the letter or the motion that
17 Mr. Gende filed early on in the 4900 case because
18 the Wilson v. Dallas changed some things. I'm a
19 witness to that; it changed some things.

20 And that would be -- Your Honor, in summation,
21 we'd ask, per our request, per our statements to the

22 Supreme Court, that we be dropped as a party in this
23 case and the other case. We've been dropped in the
24 other case. The reason is we got a great trustee in
25 both spots --

108

1 THE COURT: Dropped in the other case?

2 MR. JONES: In the case below. We came in and
3 withdrew the first case and you allowed us to
4 withdraw because of Mr. Bauknight being appointed.
5 In this case, we've been in this case, Mr. Bauknight
6 has hired the wingate firm, we're satisfied with
7 them, they're our lawyers the same as Few and
8 Gilreath are.

9 If anybody thinks that when I -- when somebody
10 says client and they're thinking of something else,
11 that's my problem on communication. Because, Your
12 Honor, for example, when you think of national
13 championship football, you think of Carolina. You
14 know what I think of? I think of Clemson. That's
15 communication. It's my communication. I said that
16 they're our lawyer. Okay?

17 But with a history of me doing all the fee
18 contracts and doing these cases with charities, that
19 is what it was. It was exactly that; that they're
20 representing our interest. For those reasons, I
21 would ask that the Attorney General's Office and the
22 Attorney General be dropped in this case.

23 THE COURT: Thank you. Who is going to
24 respond?

25 MR. MCDONALD: I will, Your Honor.

109

1 THE COURT: Mr. McDonald.

2 MR. MCDONALD: Brent McDonald once again. May
3 it please the Court.

4 THE COURT: Yes, sir.

5 MR. MCDONALD: Mr. Jones said a lot of things.
6 This is a Rule 21 motion that he's made to be
7 dropped pursuant to Rule 21, which is the misjoinder
8 rule. There's been no allegation of misjoinder
9 under that rule at all just at the outset. So for
10 that very reason, this motion in and of itself
11 should be denied because Rule 21 has no bearing on
12 what I understand they're asking the Court to do.

13 Now, there's been at least two issues in this
14 case when it was before Judge Manning wherein my
15 client tried to get the Attorney General out of the
16 case. What are you doing in a private tort action
17 with other private plaintiffs suing me, a private
18 citizen?

19 wherein, the Attorney General, by and through
20 their lawyers, took the position, no, we are a
21 proper party to this case, we are a party to this
22 case. And, in fact, they stated, to use Judge
23 Couch's words -- because they had gone and said,
24 well, the Lilly -- the Eli Lilly case allows us to
25 be a party. To use Judge Couch's words from Lilly,

110

2 well, how it works, Judge, and you know this --
3 I'm hesitant to even go through it. How it works
4 is, you bring an action against somebody, and you're
5 subject to the rules of civil procedure. And the
6 South Carolina courts have spoke to this. If you
7 want to come and play in that field, well, then
8 that's where --

9 THE COURT: well, if you wanted them out back
10 then, why are you opposing it now?

11 MR. SILVERNAIL: Because now we're six years
12 later. All right? And what they want -- when we
13 get in front of a jury one day, they want to say,
14 well, we're out -- assuming Your Honor rules with us
15 moving forward and we go and get in front of a jury.
16 They want to say, we're out because Judge Early said
17 we could be out.

18 And that prejudices us at this point on the
19 counterclaims. We're out because we got a judicial
20 order here and all the reasons that we just heard
21 from Mr. Jones, this is why we were doing it, and
22 we've got an order at the end of it.

23 And we think it's inappropriate under Rule 21
24 because it's just not what Rule 21 allows for, one,
25 and two, the counterclaims are still pending against

111

1 them, and, three, most importantly, perhaps, is
2 they've jumped into this pool, convinced the judge
3 on at least one occasion with regard to motion to
4 dismiss, and another occasion with regard to a --

5 Pope's motion to disqualify Sweeney, Wingate &
6 Barrow and to enjoin Russell Bauknight's set
7 depositions to amend answer, that this is just a
8 tort action, plain and simple, and they don't get to
9 have special rules.

10 So just to reiterate, Rule 21 has absolutely no
11 application to this whatsoever. The motion should
12 be denied; two, it prejudices our client just to let
13 them come into the case with the -- we took the
14 deposition of former attorney general now Lieutenant
15 Governor McMaster, and he made the point on his own
16 to say, listen, the attorney general of this state
17 enjoys a very good reputation. It's not like some
18 billboard lawyer bringing a case against you, it's
19 the Attorney General of the State of South Carolina
20 bringing this case. And that's what happened in
21 this case, and that's where we are today. And we
22 think it would be improper to let them be dropped
23 under Rule 21.

24 MR. BUNDY: Your Honor, I hate to pull on -- do
25 you mind if I say --

112

1 THE COURT: Only one person can make an
2 argument. But I'll let you do it.

3 MR. BUNDY: Thank you, Your Honor. I'll be
4 brief.

5 If they want to be dismissed with prejudice,
6 you know, and we leave our counterclaim, I won't
7 oppose that. But what I would like from you, if

8 that's the way to go -- because that's the

9 appropriate way to go. Okay?

10 They have -- to be moved to be dismissed, they
11 have to have our permission, right, at least at this
12 point, six years later. They don't have a right
13 under Rule 21 to get out, but they can absolutely
14 quit whenever they want to.

15 But if you grant the motion to dismiss, the
16 only thing I'd like you to do is put in there that
17 when we try -- when it comes up at trial, that they
18 were in it and that they got dismissed with
19 prejudice. They can't come in and give a bunch of
20 reasons about all this other stuff. What they
21 really ought to have to -- because they will.

22 That goes to the heart of our counterclaim. If
23 they can come in and say, we have the judicial
24 imprimatur, okay, that we brought a case and we
25 dismissed it without prejudice because we didn't

113

1 have any ulterior motives or none of this other
2 stuff, then they're going to undermine our
3 counterclaim through this kind of a tricky move.

4 So either they ought to be required to dismiss
5 with prejudice without the ability to explain that,
6 or they should be required to come to court, put up
7 their evidence, and at the end of their case, I'll
8 move to dismiss based on of lack of evidence under
9 the hood of directed verdict. You see what I'm
10 saying?

11 I mean, they came into this thing. They sued
Page 100

12 Adele. She counterclaimed against them. Henry
13 McMaster, I took his deposition, he said they were a
14 party. We got a videotape of it. I'd love for you
15 to see it. We've cut it. We can send it to you.

16 THE COURT: I believe what you say.

17 MR. BUNDY: Sir?

18 THE COURT: I believe what you're telling me.

19 MR. BUNDY: But I -- we went through the -- and
20 he said -- I said, well, it's not only there,
21 Mr. McMaster, but in the body of the complaint, you
22 allege that you're a party. He goes, yeah, it looks
23 like I'm a party. And we agreed that when he was a
24 defense lawyer --

25 MR. JONES: Your Honor, I have to object

114

1 because I understand that Mr. -- General McMaster
2 has not reviewed or brought back his transcript.

3 THE COURT: Your objection is noted.

4 MR. JONES: So anything he's saying now is part
5 and parcel and has not been reviewed in a certified
6 transcript.

7 THE COURT: Very well.

8 MR. BUNDY: Well, he said it under oath. He's
9 going to have to explain it.

10 THE COURT: Go ahead.

11 MR. BUNDY: He testified -- okay. We went
12 through the caption. And he testified, yes, we were
13 a party. I went through the body of the complaint
14 with him and he testified, yes, we were a party. I

16 you were defending this case, would you expect and
17 read this to say that party is a plaintiff and I
18 better send him an answer, otherwise I'm going to be
19 in default, or words to that effect? And he agreed
20 with me.

21 He also testified he'd never read the will, he
22 also testified he had not one single personal fact
23 about one single allegation of the entire complaint,
24 never read the will.

25 THE COURT: Thank you.

115

1 MR. BUNDY: Thank you, Your Honor, for allowing
2 me to speak.

3 MR. JONES: Short response, Your Honor?

4 THE COURT: Yes, sir.

5 MR. JONES: I think the -- and I'm looking here
6 for the basis for our -- the drop. I think there's
7 no injustice to the other side, I think there's no
8 injustice in our position to be dropped.

9 As far as us being dismissed with prejudice,
10 Your Honor, I think in any case that we're in, in a
11 charity case that we're dropped as a party, that
12 Your Honor has the option in the future, or his
13 office does, of making a motion to intervene. If
14 we're out of the case and something goes wrong with
15 the case, no different than wrong with the case down
16 below.

17 we have the option because we have a
18 responsibility of the public interest to come back

19 into the case. That's why the shoe of dismissal
20 with prejudice would not be appropriate for the
21 Attorney General's Office. Thank you.

22 THE COURT: Thank you.

23 All right. Let me have proposed orders within
24 15 days from both of you.

25 -- END OF TRANSCRIPT OF RECORD --

116

1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF LEXINGTON

5

6 I, the undersigned, Bethanie K. Creppon, Circuit
7 Court Reporter for the Second Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Circuit
13 Court for Richland County, South Carolina, on the
14 29th of August, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18

September 15, 2016

19

20

s/Bethanie K. Creppon

21

Bethanie K. Creppon

AGREEMENT FOR LEGAL SERVICES

This Agreement this 18th of May, 2010 between Sweeny, Wingate & Barrow, P.A. ("Firm") and Russell L. Banknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee"). This agreement shall remain in effect until such time as it is terminated, in writing, by either of the parties.

The Trustee hereby retains the Firm to represent its interest and pursue claims on its behalf against Robert Buchanan and Adela Pope. The Firm hereby agrees to accept such representation.

The parties hereto specifically acknowledge that the following persons, parties, and entities are third-party beneficiaries to this Agreement: Henry Dargun McMaster, in his capacity as Attorney General of the State of South Carolina; Tommy Ras Brown, individually and on behalf of her minor child, James Brown II; Deryl Brown, individually and on behalf of his minor child James Vanisha Brown; Lindsay Dabores Brown; Dorena J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carington Lumar; Tonya Brown; Venisha Brown; Larry Brown and Terry Brown (hereinafter collectively "Third-Party Beneficiaries").

The Third-Party Beneficiaries are signatories to a Settlement Agreement dated August 10, 2008 with Addendum dated March 25, 2009. This Settlement Agreement was approved by the Circuit Court of South Carolina by Order dated May 26, 2009. In the event that this Order should be overturned, vacated or in any manner set aside, this Agreement shall continue with the Third-Party Beneficiaries becoming the principal parties.

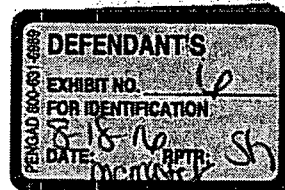
ATTORNEY FEES

The Firm will be compensated on a contingency fee basis. The fee for professional services will be based upon the gross proceeds of any money collected as result of actions initiated or pursued by the Firm, in the following percentages:

a. Pursuant to the Settlement Agreement dated August 10, 2008, as amended by Addendum dated March 25, 2009, 47.5% of the gross proceeds will be attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for fee calculation purposes only. The Litigation Retention Agreement which is attached herein as Exhibit A and which is incorporated herein shall govern the terms of representation and the payment of fees to the Firm with respect to the 47.5% of the gross proceeds attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust. For example, fees will be paid to the Firm from these proceeds based on the following schedule:

1235

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Amount of net proceeds of judgment or settlement (not including exemplary or punitive damages) (in millions)	Contingent percentage
First \$0 to \$5	25%
Excess over \$5 up to \$10	19%
Excess over \$10 up to \$25	15%
Excess over \$25 up to \$50	11%
Excess over \$50 up to \$100	7%
Excess over \$100	4%

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First \$0 to \$10	10%
Excess over \$10 to \$100	5%
Excess over \$100	3%

b. The remaining proceeds collected will be attributed to the non-charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for the calculation purposes only. A fee of 40% will be paid to the Firm from these proceeds.

c. In the event the parties reach an agreement that results in a settlement expressed in non-monetary consideration, the Firm shall be compensated pursuant to Article VII(B) of the Litigation Retention Agreement with respect to the 47.5% attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust and based on the cash equivalent of such consideration or an hourly fee, whichever is greater, for the balance. The hourly fees shall be calculated as follows:

(a) Partners	\$300.00
(b) Associates	\$225.00
(c) Paralegal	\$125.00

d. In the event that no value is recovered by the Firm on behalf of the Trustee, no fee will be paid to the Firm.

EXPENSE REIMBURSEMENT

Trustee shall reimburse all expenses incurred by the Firm as a result of this representation in accordance with Article V(B) of the Litigation Retention Agreement. Firm will submit invoices to the Trustee on a monthly basis. These expenses will be reimbursed as soon as practicable given the available funds held by the Trust.

It is understood and agreed that the Estate is reimbursing expenses for the benefit of the Estate, the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust. It is

Agreement for Legal Services
Page 3.

understood that the Estate will be reimbursed 47.5% of these expenses by the Trust upon the distribution of the proceeds from any recovery.

SWEENEY, WINGATE & BARROW, P.A.

By: Scott A. Vendall, Jr.

ESTATE OF JAMES BROWN

By: [Signature]
As: Personal Representative

JAMES BROWN 2000 IRREVOCABLE TRUST

By: [Signature]
As: Trustee

JAMES BROWN LEGACY TRUST

By: [Signature]
As: Trustee

1237

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EXHIBIT A

LITIGATION RETENTION AGREEMENT FOR SPECIAL COUNSEL APPOINTED BY THE SOUTH CAROLINA ATTORNEY GENERAL

This litigation retention agreement ("Agreement") is by and between South Carolina Attorney General Henry McMaster ("Attorney General") and the below-signed attorney(s) ("Special Counsel").

RECITALS

WHEREAS, the Attorney General has concluded that it is in the best interest of the State of South Carolina to retain Special Counsel specifically for this litigation matter; and

WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of and/or actual litigation arising from [matter]; and

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

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein, and for other valuable consideration, the Attorney General and Special Counsel hereby agree to the following terms and conditions:

Article I. TERM

This Agreement, which shall serve as the appointment of the attorneys whose signatures are affixed below as Special Counsel to the Attorney General, commences on _____, and terminates on _____, unless this work is concluded earlier or the Attorney General or Special Counsel terminates the appointment earlier pursuant to Article VI of this Agreement. If the work for which this appointment is made is not completed by the date above, then the Attorney General may re-appoint Special Counsel for an additional term or terms to be determined at that time. The Attorney General shall not be liable to compensate Special Counsel for any services rendered after termination of the Agreement.

Exhibit A

Article II. SERVICES

A. Scope of Appointment

Special Counsel shall provide legal services, advice, and consultation to the Attorney General for this litigation in a manner consistent with accepted standards of practice in the legal profession. In view of the personal nature of the services to be rendered under this appointment, the Attorney General shall be the sole judge of the adequacy of those services. The parties agree:

1. The Attorney General shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved, and ended only with the express approval and signature of the Attorney General. The Attorney General at his sole discretion has the right to appoint a designated assistant ("designated assistant") to oversee the litigation, which appointment the Attorney General may modify at will.
2. Special Counsel shall provide legal services to the Attorney General subject to the approval of the Attorney General for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation.
3. The Attorney General may provide attorneys and other staff members to assist Special Counsel with this litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the Attorney General. All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designated assistant.
4. Special Counsel shall coordinate the provision of the legal services with the Attorney General or his designated assistant, other personnel of the Office of the Attorney General, and such others as the Attorney General may appoint as Special Counsel. All pleadings, motions, briefs, and other material which may be filed with the court shall first be approved by the Attorney General and provided to his office in draft form in a reasonable and timely manner for review. Regular status meetings may be held as requested by the Attorney General.
5. Special Counsel shall communicate with state entities through the Office of the Attorney General unless otherwise authorized by the Attorney General.
6. Special Counsel shall provide sufficient resources, including attorney time, to prosecute this litigation in accordance with Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules.

B. Delegation of Work

Special Counsel may delegate work to other attorneys or paralegals within the firm with which the Special Counsel is affiliated but may not, without express approval of the Attorney General,

Exhibit A

delegate any work whatsoever to any attorney in any other firm. Special Counsel agrees to accept full responsibility and liability for the work of any delegate.

C. Attorney-Client Relationship

Special Counsel will render services pursuant to this Agreement as an independent contractor. Neither Special Counsel nor any employee of Special Counsel shall be regarded as employed by, or as an employee of, the Attorney General or the State of North Carolina.

An attorney-client relationship shall exist between the Attorney General and Special Counsel.

Article III. CASE MANAGEMENT

A. Status Reports, Time Records

The Attorney General may at any time request status reports from Special Counsel regarding any aspect of this litigation. Within twenty days after the request is received, Special Counsel shall submit such status reports to the Attorney General. Failure to timely provide such status reports may result in forfeiture of a portion of Special Counsel's compensation at the sole discretion of the Attorney General.

At a minimum, status reports must include a description of the current status of the matter, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events.

B. Notices and Correspondence

All notices, demands, requests, consents, approvals, and other instruments required to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when: (1) hand delivered; (2) sent by U.S. Registered or Certified mail, return receipt requested, postage prepaid; (3) if certified or registered mail is either refused or uncollected, then by regular U.S. Mail; (4) by overnight delivery service with receipt (Airborne, FedEx, UPS, etc.); (5) by email; or (6) by fax, followed by one of the other methods of delivery described herein. Fax delivery shall be deemed to be on the date of receipt of the fax, and the parties hereto agree that a fax with confirmation shall be adequate proof of receipt of the fax.

Both Special Counsel and the Attorney General may designate a representative to receive such instruments and correspondence as described herein. While both parties recognize this designation may be changed at any time, and without consent of the other party by giving written notice of the new designated representative, until further notice, such instruments and/or correspondence should be addressed to:

Name: Henry McMaster
Attorney General
Address: P. O. Box 11549

Exhibit A

Columbia, SC 29211
Phone: 803-734-3970
Fax: 803-253-6283

Name: C. David Jones, Jr.
Senior Assistant Attorney General
Address: P. O. Box 11549
Columbia, SC 29211
Phone: 803-734-3970
Fax: 803-734-3677
Email: ajones@scag.sc.gov

[Special Counsel's Information]

C. Communication

Special Counsel agrees to consult in advance, by telephone, fax machine, or in writing, with the Attorney General promptly on all matters that may be precedential, controversial, of particular public interest, or otherwise noteworthy or important, and to keep the Attorney General fully informed at all times.

Special Counsel shall give timely written notice to the Attorney General of any and all of the following legal events in this litigation:

1. Pleadings
2. Dispositive motions
3. Hearings
4. Rulings
5. Trials
6. Settlement negotiations
7. Appeals or Notice of Appeals
8. Briefs filed by any party or entity
9. Appellate arguments or decisions
10. Enforcement efforts

Special Counsel agrees to meet with Attorney General's Office personnel when and where requested by the Attorney General in furtherance of this litigation.

D. Settlement

The Attorney General must approve in advance all aspects of this litigation and shall be included in any settlement discussions. Special Counsel agrees that any settlement in this case must

Exhibit A

receive the Attorney General's express prior approval in writing. Special Counsel shall confer with the Attorney General as early as practicable in any settlement negotiation process.

E. Appeals

It is important that the Attorney General receives early notice of any potential appellate litigation in any way affecting the State. Therefore, Special Counsel agrees to give prompt oral and written notice to the Attorney General when receiving: (1) any dispositive decision by any appellate court affecting the litigation in any way; or (2) a Notice of Appeal from a court's decision filed by any party to this litigation.

F. Public Records

Any material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfill an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §10-4-10 et. seq., and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document.

Article IV. COMPENSATION

A. Fee Schedule

This is a contingent fee case. Special Counsel shall receive no compensation for any services rendered unless the State of South Carolina receives a settlement or damage award in connection with this litigation. If the State receives such an award, Special Counsel will be compensated for his services pursuant to this Article, as follows:

1. Special Counsel shall be reimbursed all reasonable, normal, and verified "out of pocket" costs and expenses as specified in Article V below.

These costs and expenses necessary for conducting this litigation, as defined in Article V of this Agreement, shall initially be advanced by Special Counsel and shall be deducted from the litigation's gross or total recovery, if any, before any further distribution is made.

Provided, however, that civil penalties shall not be included in calculating the gross or total recovery, and Special Counsel shall not receive any fees or costs from awards of

Exhibit A

civil penalties with such penalty payments to be made to the Office of the Attorney General for the State of South Carolina.

Provided, further, that as to any federal Medicaid portion of a settlement or award, no reimbursable cost may be deducted, and no settlement or award amount shall be included in calculating the gross or total recovery for the purposes of fees to the Special Counsel, without the additional approval by the Center for Medicaid and Medicare Services (CMS); and

2. At least 77% of the remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages, if any) shall be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General in his sole discretion; and

3. Special Counsel shall be paid the remaining 23% or less in fees of said remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages), as follows:

Amount of net proceeds of judgment or settlement (in millions)	Contingent percentage
First \$0 to \$5	23%
Excess over \$5 up to \$10	19%
Excess over \$10 up to \$25	15%
Excess over \$25 up to \$50	11%
Excess over \$50 up to \$100	7%
Excess over \$100	4%

Provided, however, that the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 3.

4. Special Counsel shall be paid 10% or less of any punitive or exemplary damage proceeds as follows, with the remaining 90% or more to be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General at his sole discretion:

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First \$0 to \$10	10%
Excess over \$10 to \$100	5%
Excess over \$100	3%

Provided, however, the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 4.

Exhibit A

5. All settlement or judgment proceeds shall be paid by or on behalf of the defendant(s) to the Attorney General's office, which shall distribute them or have them distributed.

6. It is strictly agreed and understood by Special Counsel that if the proposed or actual defendants in this matter agree to a settlement or remission prior to or upon commencement of the action or shortly thereafter, upon negotiation or consultation or upon any initial response, then Special Counsel's compensation shall be one-half of that specified in sections 3 and 4 above.

7. This distribution and compensation calculation shall be included in a final order in the case.

B. Settlement or Judgment

The above Fee Schedule applies to any settlement or judgment, whether the settlement or judgment is entirely monetary in nature or is combined with non-monetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and non-monetary relief (such as injunctive relief, non-monetary payment, the provision of goods and/or services or any other "in kind" terms, or any combination of those), the Attorney General shall determine the monetary value to the State.

C. Payment of Fees, Costs and Expenses

Neither the State of South Carolina nor the Attorney General shall be required under this Agreement, or otherwise, to compensate or reimburse Special Counsel for his work in this matter, other than as set forth in Articles IV (A), and IV(B), and V herein. Accordingly, except for the fee schedule, expenses, and costs enumerated and outlined herein, Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and costs of document production. Special Counsel's agreement to advance all litigation expenses and costs, as well as his agreement to defer fees while any and all litigation (including appeals and enforcement actions) is pending has been taken into consideration in establishing the fee schedule above.

B. Expenses and Cost Reimbursement

Special Counsel shall be reimbursed solely from the litigation's gross recovery as approved by the Attorney General for certain reasonable expenses and costs enumerated below. Proper documentation by receipts or otherwise shall be submitted with all invoices and all

Exhibit A

documentation shall be retained by Special Counsel for at least one full year following this Agreement's termination. All expenses must be itemized and no reimbursement may be applied for or requested for "miscellaneous" listings. The Attorney General in his sole discretion may decline to reimburse Special Counsel for improperly documented, unnecessary, or unreasonable costs or expenses.

1. Experts

Special Counsel shall be reimbursed for retention of experts, including fees and other reasonable costs, only when expressly authorized by the Attorney General.

2. Lodging

Receipts are required. In-state overnight lodging shall be reimbursed at actual cost up to a maximum of \$75.00 plus tax per day. Any expenses incurred due to out-of-state lodging greater than \$75.00 plus tax per day shall be approved in advance by the Attorney General. If circumstances render Special Counsel unable to obtain the prior approval of the Attorney General in this situation, as soon as thereafter practicable, Special Counsel shall notify the Attorney General of the location, the total, the daily rate, and the reasons for not obtaining prior approval. Failure to follow these procedures shall result in such lodging costs being borne by Special Counsel.

3. Meals

There is no reimbursement for meals.

4. Travel

Receipts are required. Airfare shall be reimbursed at actual cost based on coach fares.

5. Mileage

Automobile travel shall be reimbursed at the maximum state mileage rate of the State of South Carolina in effect at the time. Travel by car shall not exceed coach fares on commercial airlines. Mileage is to be itemized on the invoice as "Mileage" (number of miles @ rate per mile).

6. Photocopying

In-house photocopying (including color copies) shall be reimbursed at the Special Counsel's actual expense, not to exceed 15 cents (\$0.15) per copy and is to be itemized on the invoice as "Photocopies" (number of copies @ rate

Exhibit A

per copy). Reasonable amounts for outside photocopying shall be reimbursed at actual cost if receipts are provided.

7. Priority/Overnight Mail

Charges for priority or overnight mail services shall be reimbursed only if a justifiable basis exists for using the service. In no event shall the Special Counsel be reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail services.

8. Secretarial or Staff Overtime

There shall be no reimbursement for secretarial or staff overtime unless expressly authorized in writing by the Attorney General prior to incurring.

9. Other Expenses

Actual costs shall be reimbursed for certain routine expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized and receipts are provided. Expenses for office space, word processing, secretarial, and personal costs are not reimbursable. Travel expenses shall be reimbursed only when authorized in advance by the Attorney General.

C. One Invoice

At the conclusion of the litigation, Special Counsel agrees to submit one original invoice to the Attorney General for expenses and costs.

Article VI. TERMINATION

A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty of explanation. Special Counsel may terminate its duties and obligations under the Appointment and this Agreement upon thirty (30) days written notice to the Attorney General. Termination on the part of the Special Counsel shall not be effective if the Attorney General finds in his sole discretion that such termination prejudicial or has a material adverse effect on the State of South Carolina. Upon termination, all material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfill an obligation of this appointment shall be immediately delivered to the Attorney General as directed by him, and without encumbrance or fee or any cost or charge to the Attorney General.

B. Compensation Upon Termination

Exhibit A

to the extent this Agreement is terminated by Special Counsel, Special Counsel shall be reimbursed only from the litigation's gross recovery and only for all properly documented expenses and costs, as defined in Article V of this Agreement, rendered prior to termination; there shall be no payment of any attorneys' fees unless the Attorney General agrees in writing to the payment of fees for work performed under such terms and conditions as may be set by him in his sole reasonable discretion. In the event the Attorney General terminates this Agreement without cause, Special Counsel shall be reimbursed only from the litigation's gross recovery for all properly documented expenses and costs, as defined in Article V of this Agreement, rendered prior to termination, and Special Counsel shall be awarded appropriate attorneys' fees on a quantum meruit basis as determined by the Attorney General. If this Agreement is terminated for cause, Special Counsel will not be reimbursed for any expenses and costs or paid any fees or other compensation for any services relating to the litigation.

Article VII. OTHER TERMS AND CONDITIONS

A. Media Statements

The parties agree that neither Special Counsel nor any partner, associate, employee, or any other person assisting with the legal work contemplated by this Agreement shall speak to any representative of a television station, radio station, newspaper, magazine, or any other media outlet concerning the work outlined or contemplated by this Agreement without first obtaining approval of the Attorney General. This Agreement specifically prohibits Special Counsel from speaking on behalf of the Attorney General or the State of South Carolina to any representative of the news media.

B. Jurisdiction and Choice of Law

This Agreement shall be administered in the State of South Carolina and shall be interpreted under the laws of the State of South Carolina. Special Counsel consents to complete jurisdiction in the appropriate courts of the State of South Carolina. This Agreement and any claims arising in any way out of it shall be governed by the laws of the State of South Carolina. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought in state courts of appropriate jurisdiction in the State of South Carolina, and Special Counsel hereby irrevocably consents to such exclusive jurisdiction.

C. Code of Professional Responsibility

If, during the appointment as Special Counsel, a complaint is filed against Special Counsel or Special Counsel's firm, alleging a violation of Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, or the applicable rules governing the state bar in which Special Counsel has been admitted, or the Code of Professional Responsibility, Special Counsel shall give prompt written notice of such complaint to the Attorney General. The Attorney General retains the right, in his sole discretion, to immediately terminate this Agreement if he deems the

Exhibit A

complaint to adversely affect in any way Special Counsel's ability to perform his duties required herein, or to adversely affect this litigation, the Attorney General, or the State of South Carolina.

D. Insurance

Special Counsel agrees to carry adequate professional liability insurance and to provide proof of same to the Attorney General promptly upon request.

E. Conflict of Interest

Special Counsel represents that neither he nor his firm has any conflict of interest with the State of South Carolina, its agencies, or subdivisions at this time. Special Counsel agrees that if a conflict of interest, potential or otherwise, arises, as defined by Rule 497, Rules of Professional Conduct, South Carolina Appellate Court Rules, during the term of this litigation, then Special Counsel will give timely written notice to the Attorney General. Special Counsel must request and obtain a written authorization from the Attorney General prior to undertaking any representation against or adverse to the State of South Carolina, its offices, boards, departments, or institutions during the term of this appointment.

F. Equal Opportunity

Special Counsel hereby represents that neither he nor his law firm discriminates on the basis of race, religion, color, sex, age, national origin, or disability against any person in the employment of personnel in their offices.

G. Entire Agreement/Integration

This Agreement constitutes the entire understanding of the parties. Both parties agree that there is no other understanding or agreement other than the terms expressly stated herein.

H. Severability of Terms and Conditions

If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality, and enforceability of all other provisions of this Agreement shall not in any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.

I. Amendment or Modification

No amendment or modification of this Agreement shall be effective against either party unless such amendment or modification is set forth in writing and signed by both parties.

J. Headings

Exhibit A

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Agreement or in any other way to affect the validity, construction, interpretation, or effect of any of the provisions of this Agreement.

K. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which constitute one and the same instrument.

[Signatures follow on the next page.]

Attorney General of South Carolina

Henry McMaster

Date: _____, 2010

Special Counsel

[Special Counsel's signature(s)]



Henry McMaster
Attorney General

May 18, 2010

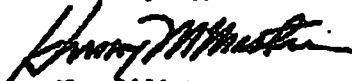
Mr. Russell Banknight
Banknight, Pietras & Stoner, P.A.
1517 Gervais Street
Post Office Box 1330
Columbia, South Carolina 29202

Re: James Brown Litigation

Dear Mr. Banknight:

I have met with Ken Wingate and Everett Kendall of Sweeney Wingate & Barrow of Columbia, South Carolina, regarding the action to be filed against Adele J. Pope and Robert L. Buchanan, Jr., in the Richland County Probate Court in connection with the James Brown Estate and Trust. I am writing to confirm our understanding that you will be retaining Mr. Wingate and Mr. Kendall to file this action on behalf of the beneficiaries of the James Brown Estate and Trust, including the charitable interests. As you know, by law this office has a duty to protect charitable trusts. Also, per your conversation with Senior Assistant Attorney General C.H. Jones, Jr., in connection with the charitable trust portion of this matter, you have agreed to use the terms and conditions as outlined in the attached "Agreement for Legal Services" which references and incorporates the Attorney General's standard Litigation Retention Agreement. Of course, this office has no authority over your agreement with Messrs. Wingate and Kendall concerning the other portions of this matter.

Yours very truly,



Henry McMaster

Enclosures

HDMcM/mfj

Executive C, Donna Roberts • Post Office Box 1154 • Columbia, S.C. 29211-1154 • Telephone (803) 341-3970 • Facsimile (803) 351-6253

1250

BAUK00141_CONFIDENTIAL

CONFIRMATION, APPROVAL AND ACKNOWLEDGMENT

The undersigned confirms and approves the retention of Sweeney, Wingate & Barrow, P.A., on its behalf by Russell Benknight, as Personal representative of the Estate of James Brown, Trustee of the James Brown 2000 Revocable Trust, and Trustee of the James Brown Legacy Trust, and hereby acknowledges that Sweeney, Wingate & Barrow, P.A. is representing the "Third-Party Beneficiaries" as defined in the attached Agreement For Legal Services dated May __, 2010 (the "Retention Letter") through Russell Benknight as fiduciary. The undersigned further confirms and approves the filing on its behalf of the lawsuit (evidenced by the attached draft complaint (the "Complaint")) by Sweeney, Wingate & Barrow, P.A. and the inclusion of the undersigned's client(s) as party(ies) to the action.

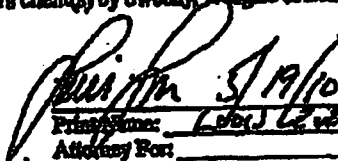
The undersigned acknowledges and confirms that the undersigned has reviewed the attached Retention Letter along with exhibits thereto, agrees to all terms contained therein, and directs Russell Benknight as fiduciary to sign the Retention Agreement on its behalf, or otherwise ratifies the Retention Agreement. The undersigned further acknowledges and confirms that the undersigned has reviewed the attached Complaint and that there is good ground to support it. The undersigned confirms the allegations contained therein, and the undersigned approves the filing of the same on behalf of the undersigned's client(s) by Sweeney, Wingate & Barrow, P.A.


 Print Name: David Bell
 Attorney For: James Brown

CONFIRMATION, APPROVAL AND ACKNOWLEDGMENT

The undersigned confirms and approves the retention of Sweeney, Wingate & Barrow, P.A. on its behalf by Russell Banknight, as Personal representative of the Estate of James Brown, Trustee of the James Brown 2000 Revocable Trust, and Trustee of the James Brown Legacy Trust, and hereby acknowledges that Sweeney, Wingate & Barrow, P.A. is representing the "Third-Party Beneficiaries" as defined in the attached Agreement For Legal Services dated May __, 2010 (the "Retention Letter") through Russell Banknight as fiduciary. The undersigned further confirms and approves the filing on its behalf of the lawsuit (evidenced by the attached draft complaint (the "Complaint")) by Sweeney, Wingate & Barrow, P.A. and the inclusion of the undersigned's client(s) as party(ies) to the action.

The undersigned acknowledges and confirms that the undersigned has reviewed the attached Retention Letter along with exhibits thereto, agrees to all terms contained therein, and directs Russell Banknight as fiduciary to sign the Retention Agreement on its behalf, or otherwise ratifies the Retention Agreement. The undersigned further acknowledges and confirms that the undersigned has reviewed the attached Complaint and that there is good ground to support it. The undersigned confirms the allegations contained therein, and the undersigned approves the filing of the same on behalf of the undersigned's client(s) by Sweeney, Wingate & Barrow, P.A.

 5/19/10
Print Name: Linda L. Jensen
Attorney For: _____

CONFIRMATION, APPROVAL AND ACKNOWLEDGMENT

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Print Name: E. Allen Mark
Attorney For: James Brown

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

Russell L. Banknight, et al)

Plaintiff (s)

(v's.)

ADELE J. POPE AND

Robert L. Buchanan, Jr.

Defendant (s)

THE UNDERSIGNED Cecil McKracken
WHO BEING DULY SWORN, SAYS THAT HE SERVED TH FORGOING:

~~SUMMONS~~
~~COMPLAINT~~
CIVIL COVER SHEET

AFFIDAVIT OF SERVICE
DOCKET NUMBER C 71

2010-GC-4000873

_____ LIS PENDENS
 _____ MECHANIC'S LIEN
 _____ RULE 20

ACTION ON
served:

ADELE J. POPE
ADELE J. POPE (AT HER RESIDENCE)

TIME SERVED 10:00 LEAVING WITH him her 1 COPY (IES) OF THE SAME AT:

1228 WALNUT ST. NEWBERRY SC 29108

ON THIS 24 DAY OF May 2010, AND THAT HE KNOW THE PERSON SO SERVED TO BE THE DEFENDANT MENTIONED AND DESCRIBED IN THE PLEADING (S) SERVED AND THAT THE DEPONENT IS NOT A PARTY TO NOR INTERESTED IN THE ACTION, THE DEFENDANT IS, OR IS NOT IN THE UNITED STATES MILITARY

Sworn to before me this 24th day of

May 2010

~~Notary republic for South Carolina~~

Commission expires 1-11-2017

(SIGNED)

THIS IS A HOUSE

THIS IS A MOBILE HOME

CERTIFICATE OF TRANSMITTAL AS TO REMOVAL

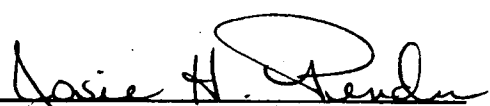
TO: JEANNETTE MCBRIDE, Richland County Clerk of Court

In accordance with Section 62-1-302, Code of Laws of South Carolina, 1976, the attached documents are hereby certified true copies of the originals of documents found in Richland County Probate Court file:

Estate of James Brown

Number: 2010 GC40 00073

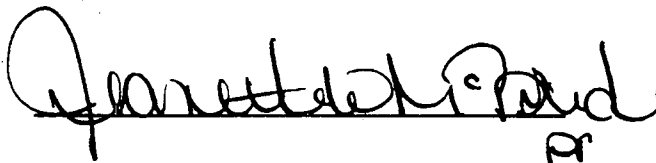
This given under my Hand and Seal of this Court, this 26th day of July, 2010.


JOSIE H. PENDER
Clerk of Probate
Richland County

Columbia, SC

2010 CP4004900

**RECEIVED BY THE RICHLAND COUNTY CLERK OF COURT'S OFFICE
THIS 26th DAY OF JULY, 2010.**


Jeannette McBride

2010 JUL 26 AM 11:46
JEANNETTE MCBRIDE
C. C. P. & G. S.

FILED

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 B[REDACTED]; 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[REDACTED], Carrington L[REDACTED], and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B[REDACTED]; 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[REDACTED], CARRINGTON L[REDACTED], and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

2010 AUG 13 AM 10:09

RICHLAND COUNTY
FILED

) MEMORANDUM IN SUPPORT OF
) DISMISSAL OF COMPLAINT

Plaintiffs brought this action, which relates to an estate being probated in Aiken

County and a trust whose situs is Aiken County, in Richland County.¹ Their improvident election to do so requires dismissal of the proceeding on jurisdictional grounds because, under the South Carolina Probate Code, the courts of Richland County lack the authority to hear the proceeding, or even a motion for change of venue.

Background

Ten years ago, on August 1, 2000, music legend James Brown, a resident of Aiken County, created the James Brown 2000 Irrevocable Trust (the "2000 Trust") and transferred his Aiken County home to it. Under an occupancy provision of the 2000 Trust, Brown resided in his home until his death on December 25, 2006.

In January 2007 Brown's Will, also dated August 1, 2000, was admitted to informal probate in the Aiken County Probate Court.

Shortly thereafter most Plaintiffs brought the first formal proceeding related to both the 2000 Trust and Estate in the Aiken County Probate Court. They sought removal of the original Trustees and Personal Representatives (PRs). The cases were removed to circuit court and became Case 2007-CP-02-0122 ("Case 122").²

About twenty cases followed, with Plaintiffs being parties to many. [See Aiken County Case No. 2008-CP-02-0872 and Case 2008-CP-02-1647, for example.]

Many of these cases are still pending and the Estate remains open. Defendants

¹The Summons and Petition were originally filed in Richland County Probate Court, but removed to the Court of Common Pleas on motion by the Defendants.

² Many significant orders were issued in Case 122, including those dated February 18, March 7, August 10, August 19 and November 20, 2007 and January 8, February 20, March 7, April 1, and April 8, 2008. Some of these are attached to and discussed in Defendants' Motion to Dismiss.

were appointed by Order of the Honorable Doyet A. Early, III on November 20, 2007 to serve as PR s of the Estate and Trustees of the 2000 Irrevocable Trust.

Argument

I. Rule 12(b)(1) requires dismissal for lack of subject matter jurisdiction because the Probate Code requires that the Petition be brought in Aiken County.

The duty of Defendants to any Plaintiffs stems only from their service as PRs under the Will of James Brown or Trustees under the 2000 Trust.³

S. C. Probate Code Section 62-1-302(a)(1) and (3) provide that the probate court – subject to removal to circuit court as provided in §(d) -- has exclusive original jurisdiction over all subject matter related to estates of decedents and trusts, including, as here, inter vivos trusts.

Sections 62-1-303 and Section 62-3-201, read together and with Section 62-1-302(a), make it clear that all proceedings related to the Will and 2000 Trust must be brought in Aiken County, and the failure to do so is jurisdictional, requiring dismissal.

Section 62-1-303 provides in part:

§ 62-1-303. Venue; multiple proceedings⁴; transfer.

(a) Subject to the provisions of § 62-3-201, where a proceeding⁵ under this Code could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive

³ The complaint does not (and could not) allege that Defendants have ever had any fiduciary duty to the so-called James Brown Legacy Trust ("Legacy Trust"). Bauknight's Legacy Trust is a creation of the Plaintiffs and others. It is the subject of the Case 1647 appeal.

⁴ Section 62-1-201(32) states that "Proceeding" includes action at law and suit in equity.

⁵ Under § 62-1-201(32) "Proceeding" includes action at law and suit in equity.

right to proceed.

(b) If proceedings concerning the same estate....,or trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court. . .

(c) If a court finds that, in the interest of justice, a proceeding or a file should be located in another court of probate in South Carolina, the court making the finding may transfer the proceeding or file to the other court.

The referenced Section 62-3-201, however, provides in part:

§ 62-3-201. Venue for first and subsequent estate proceedings; location of property.

(a) Venue for the first informal or formal testacy or appointment proceeding after a decedent's death is:

(1) in the county where the decedent has his domicile at the time of his death; or

(2) if the decedent was not domiciled in this State...where property was located at death.

(b) Venue for all subsequent proceedings within the exclusive jurisdiction of the court is in the place where the initial proceeding occurred, unless the initial proceeding has been transferred as provided in §62-1-303 or (c) of this section.

(c) If the first proceeding was informal, on application of an interested person and after notice to the proponent of the first proceeding, the court, upon finding that venue is elsewhere, may transfer the proceeding and the file to another court. [Emphasis supplied].⁶

This is supplemented by Section 15-7-40 which states that an executor or executrix may be sued in the county where the testator's will has been proved or admitted to probate [Aiken].

⁶ While not original parties, Buchanan and Pope were clearly "proponents of Case 122." [Ord. dtd. 4/8/08, p. 50]

As of May 26, 2009, when Buchanan and Pope were temporarily relieved of their fiduciary duty to beneficiaries in connection with the administration of the 2000 Trust and Estate, the principal place of Administration of the Estate and 2000 Trust, by court order, was in Aiken County.

Bauknight does not allege that he has implemented a transfer of administration of the 2000 Trust in accordance with S. C. Trust Code Section 62-7-108 (c) or notified the Court of his intention to make the change pending the Case 1647 appeal of his appointment. Thus, by court order, situs of the 2000 Trust is in Aiken County, where it has owned James Brown's home for more than 10 years.

Section 62-7-204 of the S. C. Trust Code mirrors the estate provisions, and says in part:

§ 62-7-204. Venue

(a) Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will, and the estate is not yet closed, in the county in which the decedent's estate is being administered.

...

(c) If proceedings concerning the same trust could be maintained in more than one place in South Carolina, the court in which the proceeding is first commenced has the exclusive right to proceed.

(d) If proceedings concerning the same trust are commenced in more than one court of South Carolina, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and , if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court. . .[Emphasis supplied.]⁷

⁷ Even if James Brown had provided more lenient venue provisions in the 2000 Trust, they would not apply. Section 62-7-105 of the Trust Code states that the terms of the Trust prevail over any provision of this article [Article 7] except "... (11) the subject-

The undisputed facts as found in cases in which Plaintiffs are parties are:

1. The first proceeding related to the James Brown Estate was the informal admission to probate of Brown's will and the appointment of Dallas, Cannon and Bradley as PR s.
2. The first formal proceeding related to the 2000 Trust and Will was Case 122, brought by most Plaintiffs, and still pending.
3. The Estate is being administered in Aiken County and is not yet closed.
4. Case 1647 was brought by the Attorney General in Aiken County in 2008, and all Plaintiffs are parties. It is still pending both in Aiken and the Supreme Court.
5. All prior cases brought by Plaintiffs have been in Aiken County.

Under the S. C. Trust Code a person has knowledge of a fact if the person:

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

Having been participants in the proceedings in Aiken County, Plaintiffs filed this case in Richland County with knowledge, as defined in the Trust Code, that the statute required that it be filed in Aiken County. They did not follow the mandatory statutory procedure of filing in Aiken County and seeking a change of venue through the Aiken County court.

The Reporter's comments to Section 62-3-201 do no more than restate the

matter jurisdiction of the court and venue for commencing a proceeding as provided in Section 62-7-201 and 2-7204.

obvious from the statutes:

If proceedings concerning the same estate are commenced in more than one court in this State, the court in which the proceeding was first commenced makes the finding of proper venue." [Emphasis supplied.]

This Case was brought in Richland County in violation of a clearly defined statutory requirement that it be brought in Aiken County. This Court lacks jurisdiction to hear the complaint, or to even decide issues of venue. The complaint should be dismissed.

II. Rule 12(b)(8) supports the required Dismissal and is not inconsistent with the Statutory Jurisdictional and Venue Provisions of the Probate Code.

Section 62-1-304 of the Probate Code states that unless specifically provided to the contrary in "this Code" or unless inconsistent with its provisions, the rules of civil procedure for the probate court, and, in their absence, those adopted for the circuit court, govern formal proceedings under the Code⁸.

Rule 12(b)(8) requires dismissal where another action is pending between the same parties for the same claim. This provision complements the statutory provisions in the James Brown cases..

In the Petition in this case and Aiken County Cases 122, 1647 and 872, including the portions on appeal to the Supreme Court, the parties and issues are the same. Even if they were not, the less stringent statutory provisions requiring the Petition to be brought in Aiken County would prevail.

The Complaint should be dismissed.

⁸ Formal proceedings are defined in Section 62-1-201 are those conducted before a judge with notice to interested persons.

3. Other Arguments for Dismissal

Defendants incorporate by reference all other arguments contained in or contemplated by their Motion to Dismiss. They respectfully submit , however, that these arguments should proceed only after the case is dismissed and refiled in Aiken County.

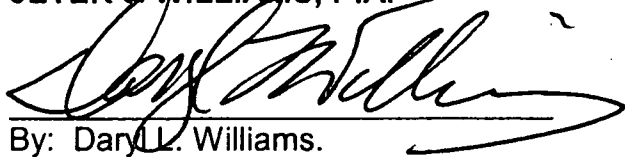
Conclusion

Plaintiffs have knowingly placed this Court and Defendants in a difficult position by failing to follow the required statutory procedure. The Aiken County Court must act on questions of venue. But it cannot act because it has nothing before it. And this Court should not act.

Dismissal is the appropriate remedy.

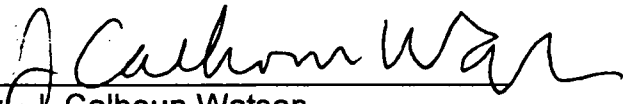
Respectfully submitted,

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Jr.

August 10, 2010



Richland County Fifth Judicial Circuit Public Index



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Switch View

Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al

Case Number:	2010CP4004900	Court Agency:	Richland County Common Pleas	Filed Date:	07/26/2010
Case Type:	Common Pleas	Case Sub Type:	Use AP Case Type 940	File Type:	Jury
Status:	Appeal	Assigned Judge:	Early, Doyet A. III		
Disposition:	Dismissed by Court - not Rule 40J	Disposition Date:	06/24/2016	Disposition Judge:	Early, Doyet A. III
Original Source Doc:		Original Case #:			
Judgment Number:		Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Bauknight, Russell	Order Denying Defendant's Motion to Lift Stay while on Appeal	Order		12/08/2017-14:37		
Pope, Adele J	Memorandum Of Law in Opposition To Motion To Lift Stay	Filing		11/13/2017-15:55		
Bauknight, Russell	Reply to Respondents Memo in Opposition to Lifting Stay	Filing		11/13/2017-11:26		
Bauknight, Russell	Notice of Appeal	Filing		11/08/2017-10:48		
Pope, Adele J	Motion To Lift Stay	Motion		10/24/2017-14:24	12/08/2017-14:24	
Bauknight, Russell	Motion/Motion Filing Fee	Filing		10/24/2017-11:51		
Bauknight, Russell	Return And Opposition To Plaintiffs' Motion To Strike Memora	Filing		10/19/2017-12:44		
Bauknight, Russell	Notice of Filing of Original Deposition Transcripts	Filing		10/19/2017-12:43		
Bauknight, Russell	Supplemental Memo in Opposition to Defendant/Counterclaim	Filing		10/10/2017-11:15		
Bauknight, Russell	SC Court of Appeals Remittitur Order	Order		09/26/2017-16:03		
Bauknight, Russell	SC Court of Appeals Order dismissing without prejudice	Order		09/26/2017-16:01		
Wingate, Kenneth B.	Plaintiffs Memo in Opposition To Defendant/Counter-claim Pla	Filing		08/09/2017-16:27		
Bauknight, Russell	Motion/Motion Filing Fee	Filing	1265	08/09/2017-11:42		
Bauknight, Russell	Motion to Strike	Motion		08/09/2017-08:55	09/26/2017-08:55	
Bauknight,	Order Denying Defendant	Order		08/07/2017-		

Bauknight, Russell	Form Order Matter Under advisement. Parties have 30 days to	Order		08/31/2010-08:48	07/13/2012-08:48	
Bauknight, Russell	Certificate of Service	Filing		08/27/2010-15:48	07/13/2012-15:48	
Bauknight, Russell	Second Supplemental Memorandum in Support of Dismissal of Co	Filing		08/27/2010-15:47	07/13/2012-15:47	
Bauknight, Russell	Certificate of Service	Filing		08/27/2010-10:37	07/13/2012-10:37	
Bauknight, Russell	Plaintiffs Memorandum in Opposition to Defendants Motion to	Filing		08/27/2010-10:36	07/13/2012-10:36	
Bauknight, Russell	Certificate of Service	Filing		08/27/2010-10:35	07/13/2012-10:35	
Bauknight, Russell	Plaintiffs' Memorandum in Opposition to Defendants Motion to	Filing		08/27/2010-10:33	07/13/2012-10:33	
Bauknight, Russell	Affidavit of Russell L. Bauknight	Filing		08/27/2010-10:32	07/13/2012-10:32	
Bauknight, Russell	Acknowledgment	Filing		08/27/2010-10:29	07/13/2012-10:29	
Bauknight, Russell	Certificate of Service	Filing		08/25/2010-15:34	07/13/2012-15:34	
Bauknight, Russell	Supplemental Memorandum Supporting Dismissal of Complamt	Filing		08/25/2010-15:12	07/13/2012-15:12	
Watson, J. Calhoun	Notice of Motions Roster Publication Sent	Action		08/13/2010-11:12	07/13/2012-11:12	
Wingate, Kenneth B.	Notice of Motions Roster Publication Sent	Action		08/13/2010-11:12	07/13/2012-11:12	
Williams, Daryl L.	Notice of Motlons Roster Publication Sent	Action		08/13/2010-11:12	07/13/2012-11:12	
Williams, Daryl L.	Notice of Motions Roster Publication Sent	Action		08/13/2010-11:10	07/13/2012-11:10	
Wingate, Kenneth B.	Notice of Motions Roster Publication Sent	Action		08/13/2010-11:10	07/13/2012-11:10	
Watson, J. Calhoun	Notice of Motions Roster Publication Sent	Action		08/13/2010-11:10	07/13/2012-11:10	
Bauknight, Russell	Memorandum in Support of Dismissal of Complaint	Filing		08/13/2010-10:09	07/13/2012-10:09	
Bauknight, Russell	Motion/Motion Filing Fee	Filing		08/11/2010-11:32	07/13/2012-11:32	
Bauknight, Russell	Certificate of Service	Filing		08/11/2010-10:43	07/13/2012-10:43	
Bauknight, Russell	Motion to Strike Defendants' Motion to Transfer Venue	Motion		08/11/2010-10:43	11/09/2010-10:43	
Bauknight, Russell	Verification/Verified	Filing		08/03/2010-13:25	07/13/2012-13:25	
Pope, Adele J	Affidavit of Adele J. Pope	Filing		08/02/2010-16:22	07/13/2012-16:22	
Pope, Adele J	Certificate of Service by mail	Filing		08/02/2010-16:22	07/13/2012-16:22	
Pope, Adele J	Motion to Transfer Venue	Motion		08/02/2010-16:15	08/31/2010-16:15	
Bauknight, Russell	Motion/Motion Filing Fee	Filing		08/02/2010-12:54	07/13/2012-12:54	
Bauknight, Russell	Order Denying Motion To Alter Amend Or Vacate Order	Filing		07/26/2010-14:50	07/13/2012-14:50	
Bauknight, Russell	Order Directing Payment Of Fees & Costs Of Special	Filing		07/26/2010-14:49	07/13/2012-14:49	
Bauknight, Russell	Motion To Dismiss Of Defendants Robert L Buchanan Jr &	Filing		07/26/2010-14:48	07/13/2012-14:48	
Bauknight, Russell	Certificate/Certificate Of Transmittal As To Removal	Filing		07/26/2010-14:47	07/13/2012-14:47	

1266

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

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. ■; 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.

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

SUPPLEMENTAL MEMORANDUM
SUPPORTING DISMISSAL OF
COMPLAINT

RECEIVED
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2010 AUG 25 PM 3:42

RICHLAND COUNTY
FILED

Summary of Relief Requested

Defendants Robert L. Buchanan, Jr. and Adele J. Pope respectfully submit:

1. Dismissal of the complaint is required by Probate Code §62-1-303, §62-3-

201, §62-7-704 and Rule 12(b)(1) as set out in Defendants' Memorandum dated August 10, 2010 attached hereto as **Exhibit A**.

2. The numerous additional grounds for dismissal should be addressed by the Aiken County Court if Plaintiffs elect to file there but are presented below should the Court decide to reach them.

3. The Court should issue its Order of Dismissal substantially in accordance with the proposed Order submitted herewith.

Background

On August 1, 2000 music icon James Brown finalized the estate plan he had developed over four years by creating and funding the James Brown 2000 Irrevocable Trust (the "2000 Trust").

Brown put his Aiken County home estate and his company, James Brown Enterprises, Inc. ("JBE, Inc.") into the 2000 Trust. JBE, Inc. collects about 2/3 of the royalties to more than 750 of Brown's songs.

Brown's Will left his entire music empire to the 2000 Trust, which is dedicated solely to education of certain of Brown's grandchildren and The James Brown "I Feel Good" private foundation. The "I Feel Good" foundation will provide scholarships for needy and deserving students to be educated in South Carolina and Georgia.

Brown intentionally disinherited his dozen or more children¹ and all past and future spouses from his music empire. Brown's family knew about and participated in the creation of the estate plan. In a lawsuit against their father, daughters Deanna and Yamma, acknowledged that they were excluded from the estate plan. The Brown

¹Brown's Will acknowledged legitimate children Deanna, Yamma, Terry and Larry and also out-of-wedlock children Venisha and Daryl as his only "heirs." Subject to the In Terrorem clause, the Will leaves them 1/6 each of his personal and household effects. Brown failed to acknowledge legitimate daughter Lisa, biological children LaRhonda, Cinnamon and Jeanette or

children's website, established in April 2007, confirms Brown's often-expressed desire to give the poor education as a way out, not a handout. It describes Brown as "a visionary who thought it was robbery not to give unto those who were impoverished."²

Brown's Will left his six acknowledged children only his personal effects. Consistent with Brown's beliefs, the 2000 Trust provides an education fund of about \$285,000 for seven designated grandchildren. All other heirs and claimed heirs, including past and future spouses, were intentionally omitted.

To prevent interference of wives, his companion, and litigious family, Brown placed *In Terrorem* clauses in both the 2000 Trust and his Will. (Brown had also done the same in his almost-identical 1999 Will.) Brown directed his fiduciaries to vigorously oppose all challenges to his estate plan as an affront to his wishes.

From 1999 to 2006, Brown's trustees Dallas and Cannon secretly ransacked Brown's assets both within and outside the 2000 Trust. To date there is no evidence that Brown, daughter Deanna or deceased trustee Bradley, both Brown's fiduciaries with Dallas and Cannon during the period, knew of the Dallas/Cannon misappropriations before Brown's death.

Brown died on December 25, 2006 leaving an \$85 million music empire. If fully

claimed but unconfirmed children James II and Deon (incarcerated).

²See The Brown Family Children's Foundation website and related information. This foundation was created in Georgia in April 2007 by Deanna, Daryl, Yamma, Larry and other clients of Louis Levenson, all of whom at the time acknowledged the validity of Brown's estate plan in sworn affidavits filed in Aiken County [Aff. D. Thomas, D. Brown, Y. Lumar (2)]. At the time the foundation was limited to solicitation of funds for turkey giveaways and toy giveaways during the holiday season. These same children later filed Case 2007-CP-02-0872 ["Case 872"] asserting that Brown was unduly influenced to leave his assets to education. Buchanan and Pope, as PR/Trustees, answered and counterclaimed on March 26, 2008 seeking alternate probate of

funded as set up by Brown, the "I Feel Good" Trust may be South Carolina's largest private foundation dedicated solely to educating needy and deserving students.³

Plaintiffs Deanna and Yamma immediately accepted, then abandoned, positions with the 2000 Trust. Brown's attorney Debra Opri who represented Brown in a California lawsuit from 2000 to 2002, appeared for the family on the "Larry King Live" television show to discuss the Trust.

Brown's Will was probated in Aiken County on January 18, 2007 and the trustees named Personal Representatives ("PRs").⁴

On January 24, 2007 the six acknowledged children and grandchildren Forlando and Romunzo brought Case No. 2002-CP-02-0122 ("Case 122") to remove Dallas and Cannon as PR/Trustees.⁵

By order dated November 20, 2007, Buchanan and Pope were appointed

Brown's 1999 Will. The AG was served with the amended complaint, but did not answer, leaving the defense of the estate plan to Buchanan and Pope.

³ Brown's assets are sometimes referred to as being \$100 million. The \$85 million reflects the \$100 Million reduced by a royalty-backed debt (TIAA note) incurred by Brown and JBE, Inc. in 1999 when Brown borrowed \$26 million and secured it with future royalties. More than \$12 million of Brown's money from the TIAA loan and other sources was siphoned off between 1999 and 2007 by Dallas and Cannon. In addition to being trustees, Dallas and Cannon held Brown's power of attorney ("POA") with Deanna and Bradley. Less than \$11 million is now owed on the TIAA note, which was reduced by more than \$5 Million between November 2007 and May 2009.

⁴ Atlanta Attorney Levenson, then representing Brown's six acknowledged children, requested that Dallas and Bradley not submit the Will for probate. Then-counsel Thurmond, Miller and Massey properly concluded that S. C. law required the Will to be delivered to the Probate Court.

⁵ Neither Deanna nor Bradley participated in the fabrication by Dallas of a second "Fabricated Schedule B" to the 2000 Trust, making it appear that Brown's Publicity Rights, worth about \$50 million, had been placed in the 2000 Trust before Brown's death. Dallas testified that the Fabricated Schedule B was created at the direction of attorney Cam Lewis — hired months after the fabrication. Bradley's testimony, however, demonstrated Dallas' statement was false.

PR/Trustees, replacing Dallas and Cannon.⁶

In January 2008 Forlando, through Atlanta law firm Powell Goldstein ("PG"), filed a federal suit asserting Buchanan and Pope were illegally appointed; illegally serving; and had mismanaged and converted 2000 Trust assets for their private benefit.⁷ He also sought the return of Dallas and Cannon as trustees.

In early 2008 Terry, Forlando and Romunzo filed six grievances against attorney Levenson in 2 states.⁸ By this time, Terry and Forlando were allied with an investor group, Dallas and Cannon, in a proposed \$100 Million sale of Brown assets, with Terry as a purchaser and Forlando secretly having 39% of the purchase entity (The "Terry/Dallas Group").⁹ Between January and March 2008, while simultaneously challenging the authority of Defendants to act as Trustees, the Terry/Dallas group

⁶ Both Dallas and Cannon, in different ways, attempted to retract their resignations as trustees – but not as PRs. Cannon's matters were resolved by the South Carolina Court of Appeals in a decision dated November 6, 2009. He has since appealed the Order granting certain attorneys' fees. Dallas' attempt to withdraw his resignation in Case 122 is pending in the South Carolina Supreme Court. Bauknight has not attempted to dismiss the Appeal despite Bradley's death and Dallas' failure to appeal Bauknight's appointment and Dallas' threatened bankruptcy.

⁷ PG has represented the Estate, the 2000 Trust, Dallas, Terry, Cannon, Forlando and TJBL, LLC, the investor group owned 39% by Forlando which seeks to purchase the Brown assets with options or a "kickback" to Dallas and Cannon. PG billed the Estate \$48,225, but has refused to deliver the file as directed by Order dated August 10, 2007. In July 2007 PG sent secret documents to Dallas and Cannon to transfer the 2000 Trust to Georgia to escape S.C. Court scrutiny. Thereafter, Cannon told the Court they had never hired PG. Dallas asserted there was a single consultation in February 2007 and no file. But Dallas' counsel Byrd corrected Dallas' false representations after the \$48,225 PG re-bill arrived in March 2008. PG attorney Dempsey, after being terminated with Dallas' consent in the August 10 Order, worked on Dallas' motion to require recusal of Judge Early.

⁸ Terry and Forlando, now represented by PG, became joint venturers with Dallas and Cannon who are seeking to receive options or a "kickback" on the sale. After the Court-ordered termination, PG attorney Dempsey worked with Dallas on his unsuccessful attempts to have Judge Early recuse himself. The same week Forlando's federal suit was prepared. In the Spring of 2009 Terry's Counsel threatened to file a grievance against Buchanan if he did not resign. The letter was delivered to the Court and parties.

offered¹⁰ to purchase the James Brown assets (good title; free and clear of liens) for \$90 - \$102 million.¹¹ The Court was notified of the rejection of the offers.

On February 5, 2008 the Estate/Trust filed Aiken County Case 2008-CP-02-322 ("Case 322") against Dallas, Cannon and others, seeking return of more than \$12 million misappropriated since 1999. Dallas counterclaimed. Case 322 is pending.

By March 8, 2008, some Plaintiffs had filed the amended complaint in Case 2008-CP-02-872 ("Case 872")¹², known as the "Will/Trust/Heirs Case."

More than 8 claims cases were filed in 2008 after Defendants disallowed certain disputed claims, and others with amounts due, but requiring court review.

⁹ Dallas and Cannon sought secret options or a "kickback" on the sale, as well as a commission from the Estate/Trust.

¹⁰ Investors Cox, Defendants and others refer to the communications as "offers", although they were strictly Letters of Intent to conduct due diligence and make an offer.

¹¹ The Case 122, 872 and 1647 files show that all offers were disclosed to the Court and parties when made, but that offers made between October 2007 and March 27, 2008, which required certification of good title to assets free and clear of liens, could not be accepted at the time. Reasons they could not be accepted included: (1) the Deanna/Yamma group had just filed Case 872 challenging the 2000 Trust they had ratified and served under. (2) Terry, Forlando, Dallas and AG McMaster were asserting Defendants' appointment, under reconsideration until April 8, 2008, was invalid. (3) Terry and Forlando filed documents in the Probate Court to assert that all orders issued in Case 122 affecting the 2000 Trust were invalid. (4) the hearing on Forlando's requested federal injunction to prevent the 2000 Trust from taking any action was pending; (5) the \$31 million Pullman S. C. claim was unresolved; (6) the Estate Tax Return was not filed; (7) IRS recognition of the status of the "I Feel Good" Trust was pending; (8) and Dallas/Cannon/Bradley had filed \$16.5 million of frivolous claims against the estate. Many of these issues were resolved by the April 8, 2008 Order in Case 122, and more by the end of 2008. A July 14, 2008 Order of Judge Cureton cleared the way for Defendants to fully administer the 2000 Trust and Estate pending the Dallas appeal. Fewer than 30 days later, Hynie Brown's counsel – purporting to speak for the AG of South Carolina – directed Defendants to "stand down" and take no action for the Estate. After Case 1647 was filed on November 7, the January 7, 2009 order confirmed Defendants' full authority to continue to act. When Defendants entered discussions about a possible court-approved beneficial "right of first offer" Hynie Brown's counsel filed a motion – which is still pending – seeking an *ex parte* restraining order to prevent any sale. Similarly, the AG and Hynie Brown acted to prevent a beneficial 2-year Publicity Rights contract with Bill Gates company GreenLight which could have been in place May 1, 2009 - May 1, 2011.

¹² The order was issued while Case 872 was still part of Case 122.

By Orders dated March 7 and April 8, 2008 the Court in Case 122 reviewed the actions of Buchanan and Pope; made detailed findings; and denied all motions to reconsider their appointment. Only Dallas appealed.¹³

On July 14, 2008 the South Carolina Court of Appeals directed that the Christie's auction, already approved by two Case 122 orders, proceed. Motions for costs for interference with the Christie's auction sale are pending in Aiken County.

A July 23, 2008 order in Case 872 approves education benefits to certain beneficiaries of the 2000 Trust. Reconsideration is pending.

On August 10, 2008, after a secret mediation from which Defendants and others were excluded, the AG, Hynie Brown and some Plaintiffs signed a "private binding agreement among the parties hereto." The parties agreed to seek replacement of Defendants and to work to defeat the interests of Will and Trust beneficiaries. [See Aug. 10 Agmt.] The agreement stated in part:

Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to the personal representatives and trustees even if not approved by the Court.¹⁴

¹³ Bradley appealed but is deceased.

¹⁴ The Agreement also stated:

1. All parties who sign below hereby recognize and stipulate...that Tommie Rae was the legal wife of James Brown...
3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto...
5. a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope ...
...
b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable trust (hereafter the "Charitable Trust") shall be created ...
...
d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets or proceeds payable to any of the parties by virtue of any rights of James Brown ...entities of James Brown,...the Estate of James Brown... the August 1, 2000 Trust ..The parties will divide ...all such assets and

On August 12, 2008 counsel for Hynie Brown directed Defendants to take no further action on behalf of the estate.

By order dated August 17, 2008 the Dallas, Cannon and Bradley claims cases became 2008-CP-02-1425, -1426 and -1427.

On October 23, 2008 Defendants conducted hearings in claims cases, resulting in orders dismissing the Pullman \$31 million S. C. claim and resolution of other cases.

On November 7, 2008 the AG and some Plaintiffs filed Case 2008-CP-02-1647 ("Case 1647"), alleging improper actions by Defendants. Defendants' motions to dismiss, for summary judgment, answer, cross-claim and counterclaims are pending and several orders from Case 1647 are now on appeal in the S. C. Supreme Court.

On November 12, 2008 Cannon tendered a forged agreement, intended to make the \$900,000.00 taking discovered by Defendants appear to be compensation. On November 18 and 19, 2008, Terry attended two days of hearings in the Forlando injunction hearing in Federal Court. PG attorneys fully examined Buchanan and Pope about all alleged improprieties.

Between January 30 and April 6, 2009 hearings took place in Case 1647. Buchanan and Pope were extensively questioned.

On February 10, 2009 Hynie Brown sought an ex parte Restraining Order against Defendants in Case 1647, asserting they were improperly trying to sell James Brown's

or proceeds (1) 50% to the Charitable Trust; (2) 25% to Tommie Rae...(3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves.

...
k) The parties agree to use their best efforts to extinguish any other outstanding

estate.

In March 2009 James II filed a petition for review of Defendants' compensation in Case 1647 and in the Probate Court. It is pending.

Between January and April 2009 Defendants' opposition to transferring more than \$50 million from Brown's estate plan to disinherited beneficiaries was fully aired, as were the opinions of Pope and tax expert Harley Ruff about the likely negative tax consequences to the "I Feel Good" foundation of Bauknight's Legacy Trust and Terry's right of first refusal to buy James Brown's assets.

On May 22, 2009 Defendants filed a case in the Aiken County Probate Court seeking review of their service; compensation; that of others; and other relief.

Effective May 26, 2009 the Court of Appeals relieved Buchanan and Pope of further liability with respect to management of the 2000 Trust and Estate pending the Case 1647 appeal. The Court of Appeals confirmed that such liability rests with Bauknight. See Order of November 6, 2009 in the Cannon Appeal.

In June 2009 Defendants, reserving all rights under the appeal, filed a final accounting in the Aiken County Probate Court.

On August 3 and 6, 2009 the AG obtained two *ex parte* orders in Aiken County, which became Case 2009-CP-02-1810. Appeal of the Case 1810 *ex parte* orders is consolidated in the Supreme Court with the Case 1647 appeal.

On August 12, 2009 Hynie Brown served requests for production of documents and interrogatories on Defendants in Case 1647.

On February 22, 2010 Cannon was indicted for felony breach of trust for each

interests or claims by any potential heir, devisee, or successor ... [Emphasis supplied.]

year from 1999 through 2006 and for uttering the forged "compensation agreement" on November 12, 2008.

More than 80 orders and decisions have been issued in the Aiken County James Brown cases and appeals from those cases. About 25 attorneys have represented Plaintiffs in these cases. Multiple allegations of wrongdoing by Defendants have been made and aired in more than 20 days of hearings in Aiken County – most recently in Case 1647. All Plaintiffs, by testimony, through counsel, and in sworn filings and documents, are on record as to their position about Buchanan and Pope's conduct at any given time since March 7, 2007.

The issues raised in the complaint herein have either been decided or are pending in Case 122, Case 872 and Case 1647 and other Aiken cases or their appeals.

Defendants have been under a microscope in Aiken County since March 7, 2007. Their every action was fully known to Plaintiffs days, if not minutes, after it took place.

Argument

- I. Dismissal is Required Under Probate Code Sections 62-1-303, 62-3-201 and 62-7-204, and Rule 12(b)(1). All other grounds for dismissal should be considered by the Aiken Court.**

Defendants respectfully submit that this matter should be dismissed on the statutory grounds set forth in the Memorandum dated August 10, 2010 (Exhibit A). A proposed order to that effect accompanies this memorandum.

While dismissal is also appropriate on each of the grounds stated in the Motion to Dismiss and discussed below, these should be reserved for the Aiken County Court.

II. The Attorney General is Prohibited from Seeking Money damages for Hynie Brown and Terry in this Private Tort Suit.

This case must be dismissed, as the AG does not have the authority to file an action seeking money damages on behalf of private individuals. In this case, the AG seeks money damages from Defendants for the benefit of various individuals disinherited by the Estate Plan of James Brown. The AG must have specific legislative authority to seek money damages on behalf of individuals or businesses via *parens patriae* actions.¹⁵ There is no such authority granted to the Attorney General for the claims at issue in this case and to allow the case to proceed would violate the due process rights of Defendants. This action should be dismissed.

In *California v. Infineon Technologies AG*,¹⁶ the Federal District Court for the Northern District of California considered whether AGs of various states, including South Carolina, could bring suit in a California Federal Court for money damages against technology companies.¹⁷ The claims made therein were on behalf of both the states themselves and individuals and businesses within each state. That Court found that, under South Carolina law, the South Carolina AG was not only unable to bring such a

¹⁵ *California v. Infineon Technologies AG*, 531 F.Supp.2d 1124 (N.D. Cal. 2007). In that case, the plaintiff attorneys general sought money damages on behalf of their respective states, as well as individuals and businesses in their respective states. The Court undertook a thorough discussion of the ability of each state's Attorney General to sue for money damages under the various theories asserted. It found that the South Carolina Attorney General needed specific legislative authorization to sue for money damages, and that no such authorization had been made under the Unfair Trade Practices Act. Moreover, it found that the common law *parens patriae* authority extended only to actions for injunctive relief. The Court held that the South Carolina Attorney General would require specific authorization by the legislature to seek money damages on behalf of individuals or businesses.

¹⁶ *Id.*

¹⁷ *Id.*

suit in California, but the AG was also without authority to sue for money damages in any situation not specifically authorized by the legislature.¹⁸

Here, no such authorization has been issued. The South Carolina Code has two sections pertaining to the AG's authority in respect to trusts. SC Code Ann. §1-7-130 grants limited authorization to the AG, among others, to:

... enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof

This statute makes no provision for the AG to participate in a private tort action seeking money damages for wrongs which have allegedly been committed in the past. This lawsuit does not seek any sort of injunctive relief which could amount to enforcement of the due application of charitable funds, nor does it seek to prevent breaches of trust.

Likewise, SC Code Ann. §62-7-405(c) limits the Attorney General's power to bring suits related to charitable trusts. That statute states, in pertinent part, "... the Attorney General ... may maintain a proceeding to enforce the trust." This statute also grants the AG only the authority to "enforce" a charitable trust. This case is wholly unrelated to enforcement of any charitable trust, as it seeks only money damages related to private tort claims.

Since SC Code Ann. §§1-7-130 and 62-7-405(c) do not grant the Attorney General authority to bring this action, which authority must be granted by the legislature under *California v. Inferion Technologies AG, supra*, this action must be dismissed.

¹⁸ *Id.* at 1170.

III. The Attorney General may not assert private tort claims of individuals.

The AG is acting outside the scope of his *parens patriae* authority in asserting the private tort claims of individuals in this action. The AG has asserted no separate or unique claim of the state, as distinct from the claims of the private individual plaintiffs. As such, the AG is not acting within his *parens patriae* capacity, and this suit must be dismissed.

The Supreme Court of the United States held in *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. rel., Barez*, 458 U.S. 592 (1982), that, in order to maintain a *parens patriae* suit, a State must articulate an interest apart from the interests of particular private parties, that is, the State must be more than a nominal party. *Id.* at 593. Here, no such interest exists.

The AG joins in claims by and for the benefit of private individuals without asserting any independent interest. All claims in this action are asserted jointly by all of the Plaintiffs, and the Complaint in this action does not assert any basis for the AG's involvement. The relief sought, if proper at all, could be sought just as effectively by the 2000 Irrevocable Trust and/or the Estate. The Attorney General does not and could not assert an independent or unique claim for the State of South Carolina.

In sum, the AG has no authority as *parens patriae* to bring or participate in this lawsuit, and the case must be dismissed.

IV. The claims of all Plaintiffs are barred by SC Code Ann. Section 33-56-180

All of Defendants' actions complained of occurred while they were employees, as

defined in §33-56-170(2)¹⁹ of the “I Feel Good” Trust, a 501(c)(3) private foundation, described for purposes of §33-56-180 as a charitable organization.

SC Code Ann. §33-56-180(a) provides:

A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. *An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant.* A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or grossly negligent manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as a party defendant the employee, *and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.* [Emphasis supplied]

The AG and Bauknight, now acting for the “I Feel Good” Trust, must *defend* this false claim against Defendants – not bring it.

V. The hiring of contingency fee counsel by the Attorney General violates the Due Process rights of Defendants.

The AG’s retention of an outside, financially interested attorney to pursue the State’s claims against Defendants violates the Due Process rights of Defendants. “Due

¹⁹ “Employee” means an agent, servant, employee, or officer of a charitable organization.

process requires the government's attorneys to be financially disinterested in the outcome of the litigation inasmuch as they are –ostensibly, at least – serving the public interest, and not their own financial interests.”^{20/21}

In this case, the Attorney General, joined by private individuals, has hired Kenneth B. Wingate to pursue the interests of the State, *and their private interests*. His engagement has been reported to be on a contingency fee basis, giving counsel a financial interest in the outcome of the litigation. Even if Plaintiffs' counsel were not hired on a contingency basis, clients of attorneys Levenson and Rosen, counsel in Aiken, bring this action for their private interest and for their counsel to secure an estimated \$12-14 Million in *contingency* fees under the settlement. Because contingency arrangements motivate Plaintiff's counsel and counsel for the private parties to seek the highest possible financial return, rather than to seek a fair and just result, the arrangement violates the Due Process rights of Defendants. The Supreme Court of the United States has acknowledged that, “although an attorney for the government is an advocate, his client's goal is not to prevail but to establish justice.”²²

S.C. Code Ann. § 33-56-170(2).

²⁰ *Commonwealth of Pennsylvania v. Janssen Pharmaceutica, Inc.*, No. 24 EAP 2009 (Saylor Dissent) (Pa., Decided August 17, 2010) (citing *People ex. rel. Clancy v. Superior Court*, 705 P.2d 347 (Cal. 1985))

²¹ Although several recent cases where recovery would serve the public good have approved contingency arrangements to represent State interests, these cases are readily distinguishable because the interests asserted by the State were to the benefit of the public. The interests asserted by the State in this case are those of private individuals, without any benefit to the general public of South Carolina. See, e.g., *Philip Morris Inc. v. Glendening*, 349 Md. 660, 709 A.2d 1230 (1998); *Priceline.com Inc. v. City of Anaheim*, 180 Cal.App.4th 1130 (2010).

²² *Janssen, supra*, citing *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 1197 (1963).

The joint representation by one firm of the Attorney General *and* the numerous other Plaintiffs is untenable in light of the above. Not only does Plaintiffs' counsel have a financial interest in the outcome of the case, but he also has a duty to his private individual clients to achieve the best financial result. This duty is in direct conflict with the State's duty to seek a just result in this action. This is an irreconcilable conflict of interest.

VI. Rule 12(b)(8) requires dismissal because the same claims between the parties are pending or have been resolved in Case 122, Case 872 and Case 1647, or their appeals.

Rule 12(b)(8) requires dismissal if the same matters are pending between the same parties in another action. That is the case. All parties to this action are parties to Cases 122, 872 and 1647. No Plaintiff has appealed any order of the more than 50 orders issued in Case 122. All are bound by the common history, the orders, and their admissions through testimony, filings and statements of counsel, in the Aiken Cases.

There are more than 300 filings in Cases 122, 872 and 1647. Every action of Defendants has been immediately disclosed and been challenged by at least one Plaintiff, often (before August 10, 2008) while other Plaintiffs vigorously defended the acts of Defendants. Every allegation raised in the complaint is or has been under scrutiny in one or more of the Aiken County cases.

In addition to Cases 122, 872 and 1647, Defendants commenced a case in Aiken County Probate Court on May 22, 2009, for a Declaration of Rights as to the allocation of responsibilities between the AG and PR/Trustees, guidance as to Succession, approval of their accounting and actions as PR/Trustees, and review of their employment and

compensation and that of others who served the Estate and 2000 Trust; for the confirmation of their appointment of a Third Trustee and Successors; for guidance related to the frivolous Forlando suit; and for guidance related to substitution of parties. The AG was served but has not answered. That case is pending.

On June 24, 2009 Defendants also moved in Case 1647 and several other cases for Payment of Commissions and Related Relief. Their request was supported by affidavits setting out in detail their service and expenses, and the priority expenses of administration of Brown's Estate. On July 20 they requested that the Court either rule on the record or hold the matter in abeyance pending the Case 1647 appeal. An affidavit of W. Steven Johnson accompanied their July 20 filing.

On August 12, 2009 Hynie Brown served Interrogatories and Requests for Production to Buchanan and Pope in Case 1647 related to their service. The entire issue of the propriety of service of Buchanan and Pope, to the extent not resolved by the orders in Case 122, is before the Aiken County court in these cases.

The following chart shows just *some* of the places where Defendants' alleged improper actions set out in Paragraphs 18 and 19 of the Petition are before the Aiken County Court, the Supreme Court, or have been resolved in the Aiken cases.

18.a,b,c,d. Subject of Case 122. See order dtd. 4/8/08; also subject of Case 1647, see Am. Complaint dtd. 11/7/08, Ans. CC, dtd. 11/21/08; Petition for Rev. Comp. of James II; Claim of James D. Bailey; Complaint, Case. Motion for Commissions, Case 1647 and other cases.

18 e Raised in Case 122 and Dallas appeal. and resolved by orders Dtd. 2/20/08, 4/1/08 and Ct. Appeals Order dtd. 7/14/08. See Mot. for costs pending, Case 122.

18f,g See 18 a - d above; accountings on file in James Brown estate; Complaint

dtd. 5/22/09; claims filed Aiken County; withdrawal of GT claim; Order in Pullman claim.

- 18h See Order dtd. January 8, 2008, Case 122, directing that Defendants shall be paid \$317,000 plus costs, for service as Special Administrators ("SAs"), through November 20, 2007, to the extent not paid within 60 days, to bear interest at the legal rate; shall receive continuing payments as set out therein on a "time plus costs" basis for themselves and their staff, commencing November 21, 2007. This shall be a deposit toward, and without prejudice to, their full commissions. . . [Attached to Mot. Dismiss.] Also see above motions. See Ord. dtd. 4/8/08 approving all acts to date.
- 18i. Subject of Cases 122 and 1647. See Terry's motion to declare all Case 122 orders not binding on the 2000 Trust; See challenges of S.C. and Ga. AG s and Dallas to appointment of Buchanan and Pope pending from November 30, 2007 through April 8, 2008 at which time all acts of Buchanan/Pope to date approved. See Order dtd. 2/20/08, Case 122 finding Forlando suits prevents traditional mortgage. See also discussion of Forlando suit to enjoin trust, return Cannon, Dallas, Tr. 1/9/08, p. 42, 43, Tr., 2/7/08, pp. 23- 30; Tr. March 7, 2008, pp. 171 - 177 prior to April 8 Order. Also see January 8, January 9, February 20, March 7, April 1, and April 8, 2008 Orders, Case 122. See Mot. for ex parte order of Plaintiff Hynie Brown to prevent sale; Ltr. to Court in Case 122 explaining rejection of sale; filed Ltr. of Sonny Jones dtd. December 5, 2007, related to Case 122, "I have heard for three months that the sky will fall" if \$100 million sale not accepted and responses. Order dtd. 4/8/08 approving actions.
- 18j,k,l,m,n Raised in amended complaint and hearing, Case 1647.
- 18o i - iii raised in Case 1647
- 18 p I See 18h, above
- 18 p ii Subject of Case 122 and April 8, 2008 Order.
- 18p iii Subject of Case 1647 and Petition of James II
- 18q Subject of Case 122, Case 872, Case 1647, and Forlando Case
- 18 r,s,t,u Subject of Case 1647, including appeal.
19. Subject of Case 1647 and Case 122. Also see Order of Ct. Appeals dtd. November 6, relieving Defendants of all liability in connection with

Estate/2000 Trust administration pending appeal, effective May 26, 2009.

VII. No Cause of Action Exists as to Paragraph 18m because the matter is on appeal and Attorney General McMaster's attempt to silence criticism violates his public duty and the First Amendment and Due Process rights of Defendants.

The AG, with a right to *enforce* the due application of monies given to *public* charities, seeks damages against Buchanan and Pope to punish them for carrying out their duty under James Brown's Will and 2000 Trust. Brown's estate does not create a *public* charity. The 2000 Trust is a private, *irrevocable* inter vivos trust which divides into a 501(c)(3) private foundation for education and a *non-charitable* education trust for the grandchildren.

The U. S. Supreme Court addressed the limits of enforcement powers of the State in the 1829 case of *Inglis v. The Trustees of the Sailor's Snug Harbor*, 28 U. S. 99.

In *Inglis* the Supreme Court allowed the New York legislature to enact a statute to establish a sailor's home on the testator's land only because *the testator had specifically requested legislative action* under certain circumstances. The Court stated:

If after such a plain and unequivocal declaration of the testator with respect to the disposition of his property, so cautiously guarding against and providing for every supposed difficulty that might arise, any technical objection shall now be imposed to defeat his purpose, it will form an exception to what we so unequivocally laid down in all our books as a cardinal rule in the construction of wills that the intention of the testator is to be sought after and carried into effect. *Id.* at 99,113.

Inglis found that the State could act only because it was *contemplated by the testator's will*. Even so, a concurring opinion warned "It is one thing to enforce a charitable trust, and quite another to destroy the legal rights of the parties to which it is

attached.” New York State did not, as here, take about 65% of the decedent’s assets and direct them to those he intentionally disinherited.

The Plaintiffs assert a right to “take over” all aspects of the James Brown litigation of both the estate and 2000 Trust solely because Brown created a private foundation. The AG asserts he may, at will, appoint and replace trustees. He asserts he may even convert Brown’s private foundation to a public foundation if the benevolence he has bestowed on Brown’s disinherited relatives has run afoul of the IRS regulations for private 501(c)(3) foundations. The AG asserts that Defendants’ defense of the AG’s attempts to transfer \$50 million to persons Brown expressed a clear intention to disinherit is “gambling with the Attorney General’s money.” See Hearing Transcript in Case 122 September 28, 2008, p.43.

After securing Defendants’ removal with no cause existing or found, the AG now seeks money damages against them because they will not sign, *as PRs*, an agreement, under pain of contempt, not to criticize the AG or the settlement.

The AG’s statutory authority to *enforce* and *parens patriae* authority cannot be so broad as to ignore the First Amendment and Due Process clauses. No public purpose can be served by this heavy-handed violation of Defendants’ First Amendment and Due Process rights.

VIII. Dismissal is required because all allegations have previously been decided in favor of Defendants by Orders, filings and admissions in Aiken County cases.

In the unusual posture of this case, the Court should take judicial notice of the orders, filings and admissions of Plaintiffs *of record in Aiken County* which demonstrate

that all allegations against Plaintiffs have been fully aired by the Aiken County Court and either specifically approved by Plaintiffs, the Court or both.

At all times since Defendants' November 20, 2007 appointment at least one Attorney General, one additional Plaintiff²³, and one former PR/Trustee have opposed their every action. This has resulted in close, immediate and continuing court scrutiny of the allegations contained herein; numerous court decisions; and admissions in the record or by failure to appeal of all Plaintiffs. The Aiken County record shows that Defendants were replaced by Bauknight *without any finding of cause* solely because the AG contracted on August 10, 2008 to remove them as part of a settlement reached with no due diligence; no analysis of the impact of the Federal Copyright Act; and based on the outrageous suggestion – made by Hynie Brown and accepted by the AG – that the “Attorney General’s *only witnesses* to the validity of James Brown’s estate plan were a murderer and three bad trustees.”²⁴

²³ Sometimes Terry, sometimes Hynie Brown, and others after August 10, 2008.

²⁴ The AG did not advise any PR/Trustees of the secret mediation. Neither the AG nor Bauknight – who recommended the August 10 agreement to the Court – conducted any due diligence regarding Brown’s Estate Plan. Bauknight did not review the pleadings and admitted he knew nothing about James Brown’s wishes. He relied on disinherited family members to recommend that the court approve taking \$50 million from Brown’s estate plan and giving it to them. Had either Bauknight or the AG done any due diligence they would have found that those very persons joined by Brown’s grandchildren and a host of Brown’s independent attorneys in three states, business associates, and employees had already – under oath and in filings of record in Aiken County – confirmed the validity of Brown’s estate plan; his desire to leave his music empire for needy and deserving students; his fierce independence; his careful plan to quell any contest to his documents; his voice tape confirming his desires; and his open discussion of his desires over six years. Bauknight and the AG ignored affidavits by Daryl, Yamma and Deanna filed in Case 122 in January 2007 confirming their status under the Will. They ignored that Deanna and Yamma had allied themselves with Dallas and Cannon in December 2006, with Deanna agreeing to be a trustee of the 2000 Trust and Yamma executive assistant. They ignored Deanna’s October 31, 2007 deposition confirming that she had accepted the trustee position and that the estate plan carried out her father’s wishes. They ignored that Deanna, Yamma and others had uncontrolled access to the Trust property after Brown’s death in an agreement with Dallas

and Cannon. They ignored that Daryl had remained in business with Brown and attended business meetings with Dallas, Cannon and Brown in the fall of 2006. They ignored that Daryl, Deanna and Yamma were primary witnesses to the fact that neither they nor Brown knew of Dallas' and Cannon's misappropriations until after Brown's death. The AG and Bauknight ignored that Yamma had knowledge regarding her father's participation in the \$26 million 1999 TIAA closing, which took place on June 11, 1999, just 4 days before the 1999 Will and Trust were executed [Aff. Y. Lumar]. They ignored that Deanna has openly asserted that she became executive vice president of JBE, Inc in 1994 and "after the passing of her father in 2006, Deanna picked up the reigns of her father's good will and continued his legacy of giving..." [See: Website The Brown Family Childrens Foundation, bio. D. Brown.] They ignored that Yamma "...has been very involved in her father's estate planning since his death on December 25, 2006." [Id. Bio. Y. Brown.] They ignored that long-silent Ella Overton, Brown's friend for many years, stepped forward in 2008 to support Brown's estate plan. [She is now deceased.] Bauknight and the AG ignored that the 2000 Trust had been in open existence and a matter of public record for seven years before it was challenged, and Brown discussed it with at least four family members. The AG and Bauknight ignored overwhelming evidence that Hynie Brown was not Brown's spouse and had asked Brown's lawyer in 2004 to accept service on a multi-million dollar lawsuit she asserted she was filing against him. [Because the AG requested and received a stay of discovery in the Aiken County James Brown cases in August 2008, drafts of the suit have not been produced. To date a filed suit has not been located.] The AG and Bauknight ignored that Brown asked the Aiken County Court to void his marriage to Hynie Brown based on her marriage at the time she entered a ceremony with him and to DNA test her son. The AG and Bauknight ignored that the Aiken County case was settled with Hynie Brown's agreement never to claim to be Brown's common law spouse. The AG ignored that even if Brown's spouse, Hynie Brown was intentionally omitted by the estate plan and had signed a valid pre-nuptial agreement waiving any rights to Brown's assets. The AG ignored that Hynie Brown had knowledge, as defined in the Trust Code, when she signed the prenuptial agreement that she was intentionally omitted from the 2000 Trust and Will. The Attorney General ignored that Brown's daughters Deanna and Yamma sued Brown after the estate plan was put in place, and acknowledged in their suit and otherwise that Brown had elected to leave them out of his estate plan. The AG ignored, even though he is charged with the enforcement of the tax laws, the tax consequences of stipulating that a person presumed not to be James Brown's spouse was his spouse. The AG and Bauknight ignored that some of Brown's children created a website just 4 months after their father's death confirming that giving back was a defining tradition for Brown. The AG and Bauknight ignored the file of estate planning attorney Herring which showed that the "I Feel Good" Trust file was opened in 1996; that Brown worked on several drafts over 4 years; and that he created an almost-identical, but revocable, Trust in 1999 – solely dedicated to education. The AG ignored the 2008 request of Ella Overton to support and defend Brown's estate plan. The AG ignored that Brown's longtime friend Willie Glenn, his longtime worker Frieda Carter and daughter Deanna were all named as fiduciaries under the almost-identical 1999 estate plan, and that none ever repudiated the validity of either the 1999 or 2000 Estate Plan while Brown was alive. The AG ignored that Deanna and Cannon had picked up Brown's estate planning file, acting under the valid power of attorney Brown gave them on June 15, 1999, the day of the 1999 Will. The AG and Bauknight ignored that Brown's longtime attorney Debra Opri, who represented him in the Agbalaya suit from 2000 - 2002 – including at trial – confirmed the validity of his estate plan and also appeared to be unaware of the secret misappropriations of Dallas and Cannon.

Where the matter has been previously decided with the concurrence of Plaintiff, Rule 12(b)(6) requires dismissal because no cause of action exists.

The Court is asked to take judicial notice of the Aiken County record, only some of which is stated below:

Case 122

March 7, 2007	Buchanan/Pope appointed non-fiduciary SAs by Court after interview with all counsel, Case 122, and Court. Pope Nominated by Plaintiff Hynie Brown. [Orders dtd. 2/19 and 3/7/07]
August 10, 2007	Plaintiffs given complete and continuing access to Books and records of 2000 Trust/Estate.[Ord. dtd. 8/10/07]
November 20, 2008	Buchanan/Pope appointed PR/Trustees <u>"upon recommendation of all interested persons other than the Attorneys General for South Carolina and Georgia."</u> [Order dtd. 11/20/07, pp. 1, 2]
December 5, 14, 2007	AGs, based on affidavits of Dallas and others accuse Buchanan/Pope of impropriety for serving at same time as PR/Trustees, and of improper handling of assets. AG asks Court to protect "the interest of the charitable trust as set forth in the Last Will and Testament of James Brown, dated August 1, 2000 and the Irrevocable Trust Agreement dated August 1, 2000 [Ans. Of AG dtd. 12/5/07; Obj. Of AG to Appt., dtd. 12/14/07]
January 4, 2008	Buchanan/Pope ask Court for full review of their actions. Prepared to resign if their service not found both ethical and appropriate. [Mot. dtd. 1/4/08].
January 8, 2008	Judge Early issues order granting Buchanan/Pope \$317,000, with legal interest after 60 days, and costs for their service as SAs from March 7 to November 21, 2007 which he finds fair and reasonable. Finds work has more than doubled since November 21. Grants continuing fees and costs on "time plus costs" basis to Buchanan/Pope and

staff as a deposit towards their full commission. No Plaintiffs seek reconsideration or appeal.

January 4, 9, Feb.
7 and March 7, 2008

Hearings held. Pope is examined extensively by AG Jones about conflicts, etc.

February 20, 2008

Court finds that condition of estate when received by Buchanan/Pope was deplorable, and has worsened as a result of acts of Dallas and Cannon. Approves Christie's sale. No Plaintiffs appeal.

April 1, 2008

Court directs Buchanan/Pope to sign Christie's contract. *No Plaintiffs appeal.*

April 8, 2008

Court finds that all actions of Buchanan and Pope to date, including serving as both PR s and Trustees at the same time, are appropriate. Refuses to reconsider appointment. No Plaintiffs appeal.

2009

Court of Appeals issues ruling in Cannon appeal. Bauknight adopts brief of Buchanan and Pope in Dallas Appeal.

History of Case 1647

July 30, 2008

After almost a year of close scrutiny, AG McMaster approves Buchanan and Pope as 2 of 3 permanent Trustees of the 2000 Trust. [Ltr. AG, 7/30/08]

August 10, 2008

AG, Hynie Brown and some Plaintiffs – all excluded from Brown's Music empire – contract to divide Brown's assets and replace Buchanan and Pope.

November 7, 2008

AG and some Plaintiffs file Case 1647 to remove Buchanan and Pope for alleged cause. Plaintiffs seek emergency removal, claiming irreparable harm.

November 18-19

Terry attends two days of testimony in son/business partner Forlando's federal suit against Buchanan/Pope. Estate Tax Return and all alleged wrongdoing since March 7, 2007 covered. Terry's attorneys Bell and PG make no report to Court of emergency or wrongdoing.

November 21, 2008	Buchanan and Pope move to dismiss, counterclaim and crossclaim for abuse of process.
January 7, 2009	Over objection of Plaintiff Terry, Defendants and others Bauknight Appointed limited SA to consider AG's settlement. Buchanan/Pope left in charge of 2000 Trust and Estate. No Plaintiffs seek reconsideration of failure to remove. [Plaintiffs sought reconsideration, and have appealed, Bauknight's appointment.]
January, 2009	Terry, Forlando, Romunzo file opposition to AG's settlement.
January 30, 2009	Bauknight testifies about Buchanan and Pope's conduct.
February, 2009	Hynie Brown files emergency motion accusing Buchanan/Pope of secretly attempting to sell estate and seeking ex parte restraining order. No affidavit attached. No order issues.
January - March, 2009	Over continuing objections as to parties, dispositive motions, and other objections, hearing on settlement proceeds. Pope and Buchanan testify for days about issues raised in this Complaint.
May 26, 2009	Order in Case 1647 replaces Buchanan/Pope with Bauknight as part of the settlement, <i>without cause</i> . Plaintiffs do not seek reconsideration of findings. Pope and Buchanan timely sought Reconsideration of, and appealed, Case 1647 Orders.]
July, 2009	Defendants move for Commissions in Case 1647 and other Aiken Cases.
August, 2009	Hynie serves discovery on Defendants on commission issue. Pending.
November 6, 2009	Court of Appeals order confirms that Buchanan/Pope relieved of management liability as of May 26, 2009, and liability rests on Bauknight. [See Exhibit B for current status, attached hereto.]

IX. Dismissal is Required because all Claims are barred by applicable statutes of limitation

The record is clear from Argument VII that every act of Defendants was fully known, accounted for, and reviewed by Plaintiffs within days of when it took place. And Plaintiffs had at least 7 occasions to examine Defendants under oath.

The South Carolina Probate Code and Trust Code Section 62-7-307 bar their actions. Even if there were fraud involved, which did not exist and has not been alleged, Section 62-1-106 would set the outer limit at 2 years after discovery. Yet Plaintiffs allege acts going back to November 2007 which have been fully examined *and approved* not only by Court orders, but by them.

It is undisputed that every alleged wrongful act was known, accounted for, and fully disclosed when it happened, before April 6, 2009 when expert Harley Ruff testified to a reasonable degree of professional certainty, that the AG's plan to place assets in Bauknight's Legacy Trust and give Terry a 10-year right of first refusal would more likely than not cause the loss of Brown's \$83 million charitable deduction *and* destroy the status of The James Brown "I Feel Good" Trust as a 501(c)(3) private foundation, resulting in both Estate Tax and income tax on the assets Brown had dedicated to educate needy and deserving children.

Buchanan and Pope's opposition, their position on tax matters and all other aspects of this sad saga in which they were required to oppose the actions of the AG were fully known, fully accounted for and disclosed. No action was brought within the required period. Dismissal is required.

X. The Complaint must be dismissed because Plaintiffs failed to include the Proper Affidavit relating to Defendants' alleged negligence.

S. C. Code Ann. § 15-36-100 requires plaintiff to "file as part of the complaint [alleging professional negligence] an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim *based on the available evidence at the time of the filing of the affidavit*" [Emphasis Supplied.]

The available evidence as to the acts of Defendants includes at least 145 boxes of James Brown historical and administration documents; pleadings notebooks and documents from 20 cases; a detailed and complete daily summary of the acts of Defendants since November 20, 2007 and tens of thousands of pages of documents.

XI. The Complaint must be dismissed because Bauknight's Legacy Trust, Hynie Brown, James ■ and Terry are improper parties.

Rule 12 (b) requires dismissal if the action is brought by improper parties. That is the case here. Each is discussed below:

A. Hynie Brown is an improper party.

Hynie Brown cannot bring this action for all of the following reasons:

1. Defendants owed her no fiduciary duty.
2. She is not the spouse of James Brown.
3. She knowingly violated the *In Terrorem* clause after witnessing an Estate Planning document and even asserting that she is on the Advisory Board.

The facts related to Hynie Brown are of record in Case 122, Case 872 and Case 1647 and largely undisputed. Hynie married Javed Ahmed in 1996. In 1997 she began a

professional and nonexclusive personal relationship with Brown. Hynie had a child in Nevada in 2001 and James Brown's name was placed on the birth certificate, which was not signed by him. In 2001 she executed a pre-nuptial agreement waiving any rights to inherit from James Brown.

In December 2001 Hynie and Brown applied for and obtained a marriage license with Brown. Hynie asserted that the prospective marriage was her first. Hynie Brown's son receives AFTRA and Social Security benefits associated with Mr. Brown.

In 2003 Brown discovered that Hynie Brown was married to Ahmed. Brown and Hynie Brown announced in "Variety" that they were going their separate ways.

In 2004 Hynie obtained an annulment from Ahmed in Charleston County South Carolina. Ahmed was served by publication. Based on Hynie's Charleston County Order, which cited the existence of the Hynie/Ahmed Marriage, Brown sought to void his marriage to Hynie in an Aiken County Family Court proceeding. Hynie counterclaimed for separate maintenance and support for her son. Brown replied seeking DNA testing. The case settled with Hynie Brown's agreement never to claim to be the common law spouse of Brown. The agreement cited that the parties were again living together. No provision was made in the agreement or order related to her child.

Hynie Brown told Larry King that James Brown left money for her son at his death, which she obtained.

The couple did not marry after Hynie Brown's annulment, although they made plans to do so. According to former Trustee Dallas, Brown had a vasectomy in the 1980's. According to grandson Forlando, the parent was generally known, and was not

Mr. Brown. Certain of Mr. Brown's medical records are held by Mr. Levenson. Mr. Rosen has diaries of Ms. Hynie Brown.

The Will and Trust specifically exclude past and future spouses. Hynie, along with Brown's daughter Venisha, witnessed the August 1, 2000 Advisory Board document in which she was identified as Miss Rae, the future Mrs. Brown. At one point her attorney has asserted that Hynie Brown thought she was a member of the 2000 Trust's Advisory Board.

After seeking removal of Dallas and Cannon for a year, Hynie Brown challenged the 2000 Trust and Will on December 19, 2007. Motions to dismiss her petitions as well as her various claims are pending in Aiken.

All fiduciaries who have served under the Will and 2000 Trust have vigorously asserted that Hynie Brown is not the surviving spouse, as have children and grandchildren. Adrienne Rodriguez, his third wife, was listed as Brown's last spouse on Brown's death certificate.

On August 10 the AG agreed with 5 of Brown's children that:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death.

Coupled with agreeing to "use their best efforts to extinguish any other ...claims by any potential heir, devisee or successor" the AG placed himself in direct conflict with the position of all fiduciaries, the Estate and the 2000 Trust and its goals under the Federal Copyright law.

On January 30, 2009 the Attorney General and others stipulated with various

biological children and placed in the record an agreement not to use this stipulation to damage the Federal Copyright Rights of others. That should include both the Estate and 2000 Trust. They stipulated:

Court approval of the compromise shall not be used by the settling parties or any of them to effect any claim to renewal and termination rights or other claims for royalties under Copyright laws of the United States of any other county...[Tr. 1/30/09, p.96.]

As reported to the Court on March 4, 2009, the stipulation as to the civil status of Hynie Brown and others does not bind Buchanan and Pope. Hynie Brown's attorney stated:

You do understand that our request for approval is to simply settle the rights among the parties to the settlement — that we have, in fact, stated in Court that we do not expect that settlement to impact non-settling parties, certainly not taxes [sic] authorities, and certainly not creditors.
[Tr., 3/4/09, p.187.]

Claiming that Hynie Brown is the spouse is inconsistent with the record; contrary to the position of every fiduciary who has served James Brown; and damages the Estate/Trust's interests in Federal Copyright issues. It is not binding on Defendants.

Defendants have never had any fiduciary duty to Hynie Brown. They are directed by the Trust and 2000 Will to vigorously defend the estate plan against her claims to be the spouse. They have no duty to her as a beneficiary of Bauknight's Legacy Trust.

Hynie Brown is an improper party and fails to state any cause of action against Defendants.

B. Terry Brown is an improper party.

Defendants' fiduciary duty to Terry ended when -- after two years of vigorously supporting under oath the Estate Plan of James Brown -- Terry not only abandoned the

Estate Plan but dismantled The James Brown "I Feel Good" foundation by his devastating right of first refusal.

Although Terry had been a joint venturer with Dallas, Cannon, Forlando and investor Terry Cox for some time, he had not taken any action to defeat the Estate Plan. On the contrary, in January, 2009 he had vigorously supported enforcement of the *In Terrorem* clause.

Terry knowingly and intentionally violated the *In Terrorem* clause after giving sworn testimony of the validity and importance of his father's will.

He has forfeited his interest under the Estate Plan. Defendants owe him no fiduciary duty because the *In Terrorem* clause directs them to oppose his claims.

C. James ■ is an improper party.

Even if a child, which he is presumed not to be, James ■ has no standing because, as a matter of law, he is excluded from James Brown's Will and the 2000 Trust. Buchanan and Pope have never owed James ■ any fiduciary duty. He is not a proper party, and the Complaint should be dismissed.

D. Bauknight as Trustee of the Legacy Trust is an improper party.

Defendants owe no duty to Bauknight's Legacy Trust, Bauknight as its trustee, or its beneficiaries. He is not a proper party. The complaint should be dismissed.

XII. Dismissal is required because Romunzo and Forlando, who are seeking forfeiture of Plaintiffs' interest, are necessary parties.

While Plaintiffs believe that Forlando Brown's claims are frivolous, they cannot be ignored for purposes of this suit. And Romunzo, to date appearing innocent although represented by counsel who is simultaneously representing those who favor the AG 's

settlement and those who oppose it – and who is a Georgia lawyer who appeared in Case 1647 for its entirety without seeking *pro hac vice* admission—cannot be ignored.

In documents filed on January, 2009 in Aiken County Case 872 Forlando and Romunzo – joined at the time by Terry – asserted that the *In Terrorem* clauses must be enforced and that Plaintiffs have forfeited their rights.

XIII. Dismissal is required because the conflict of Bauknight and Parents with Minor Beneficiaries of the 2000 Trust is Patent.

Brown's estate plan provided that the 2000 Irrevocable Trust would be split into the large charitable trust and a smaller private education trust for seven grandchildren. The family education trust would, under Brown's estate plan, have meant approximately \$285,000 would be available for each grandchild's education.

The grandchildren were not represented by GALs in the settlement hearings nor are they so represented here. One result of the settlement was to extend the family education benefits to future generations of Brown's family, thereby both reducing and making uncertain the amount available to each grandchild for whom Brown intended to provide an education. This reduction in benefits creates a patent conflict between those grandchildren and both Bauknight and their parents who agreed to it.

CONCLUSION
Including Proper procedure for any Counterclaims.

The Complaint should be dismissed. As to any Counterclaims, hearings in Richland County should be stayed while Plaintiffs seek permission for transfer of venue to Aiken County.

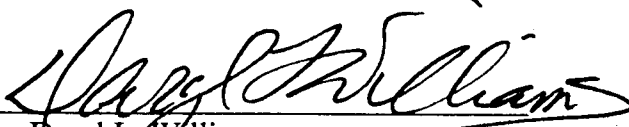
SOWELL GRAY STEPP & LAFFITTE, L.L.C.

By: 

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Attorney for Defendant Adele J. Pope

Columbia, South Carolina
August 25, 2010

EXHIBIT B

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647

Henry Dargan McMaster, in his
capacity as Attorney General of
the State of South Carolina;
Daryl J. Brown, on behalf of his
minor children, Lindsey B. and
Janise B.; Deanna J. Brown Thomas,
on behalf of her minor child, Jason
L.; Yamma N. Brown, on behalf of
her minor children, Sydney L.,
Carrington L., and Tonya B.;
Vanisha Brown; Larry Brown;
Tommie Rae Hynie Brown; and
James B., through his Guardian
ad Litem, ... Respondents,

v.

Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Adele J. Pope and Robert
L. Buchanan, Jr., Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James
Brown 2000 Irrevocable Trust;
Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Petitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust,

of whom Robert L. Buchanan, Jr.,
and Adele J. Pope, as Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James

Brown 2000 Irrevocable Trust are , ... Appellants,

and Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Petitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust are Respondents.

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

MOTION FOR EXTENSION OF TIME

**TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES
OF THE SUPREME COURT OF SOUTH CAROLINA:**

Appellants respectfully move the Court for a substantial extension of time in which to serve and file their initial brief and designation of matter. As grounds for the motion, appellants would show as follows:

1. This is an appeal from an order approving the settlement of an estate and diverting potentially tens of millions of dollars from the trust created during his lifetime by the testator for the college education of needy students of South Carolina and Georgia. The recipients of the settlement are persons whom the testator expressly intended to disinherit.

2. The appeal presents novel issues of public importance in the management of estates and in the law of trusts. Those issues are being framed at this time, as work on the appellants' initial brief progresses.

3. The record below is massive.

4. The undersigned represents the appellants *pro bono publico*. Assisting him is Tressa T. H. Hayes, Esq., who is in transition from her previous law firm to new circumstances of law practice. Ms. Hayes will contribute what she can to the work, but the bulk of it will be the responsibility of the undersigned. In comparison, arrayed on the other side of this case are the State of South Carolina and some of the finest firms in this State (and elsewhere) with, effectively, unlimited resources.

5. This appeal deserves the best effort on behalf of the appellants which it is possible to muster, the undersigned having had no more important role in forty years of practice than to represent the appellants in this appeal. Nevertheless, the usual press of other appellate and trial work, and office business, is unrelenting.

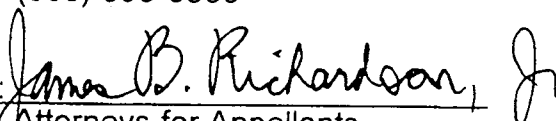
6. Next month includes a ten-day vacation out of the country which the undersigned has planned for a year and which probably could not be rescheduled with those who are joining, if it were to be cancelled. This, too, accounts for a small portion of this request.

7. The appellants respectfully ask the Court to consider a seventy-five (75) day extension, to and including November 4, 2010, for service and filing of the appellants' initial brief and designation.

Respectfully submitted,

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

Tressa T. H. Hayes
Post Office Box 5329
Columbia, South Carolina 29250
(803) 603-8583

by: 
Attorneys for Appellants.

August 13, 2010.

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647

Henry Dargan McMaster, in his
capacity as Attorney General of
the State of South Carolina;
Daryl J. Brown, on behalf of his
minor children, Lindsey B. and
Janise B.; Deanna J. Brown Thomas,
on behalf of her minor child, Jason
L.; Yamma N. Brown, on behalf of
her minor children, Sydney L.,
Carrington L., and Tonya B.;
Vanisha Brown; Larry Brown;
Tommie Rae Hynie Brown; and
James B., through his Guardian
ad Litem, ... Respondents,

v.

Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Adele J. Pope and Robert
L. Buchanan, Jr., Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James
Brown 2000 Irrevocable Trust;
Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Pettitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust,

of whom Robert L. Buchanan, Jr.,
and Adele J. Pope, as Personal Repre-
sentatives of the Estate of James
Brown and Trustees of the James

Brown 2000 Irrevocable Trust are , ... Appellants,
and Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Petitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust are Respondents.

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

CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of appellants' motion for an extension of time upon the respondents by first class mail, postage prepaid, addressed to their respective attorneys, namely:

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D. Cook
Senior Assistant Attorney General C. Havird Jones
Assistant Attorney General J. C. Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L. Kingsmore, Jr., Esq.
H. Wesley Kirkland, Jr., Esq.
James M. Griffin, Esq.
William Joseph Barr, Esq.

Louis Levenson, Esq.
Matthew Day Bodman, Esq.
Max N. Pickelsimer, Esq.
R. Wayne Byrd, Esq.
Robert N. Rosen, Esq.
T. Heyward Carter, Jr., Esq.
S. Alan Medlin, Esq.
David L. Michel, Esq.
Albert P. Shahid, Jr. Esq.

addressed to them at their respective addresses of record, on August 13, 2010.


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

August 13, 2010.

Attorney for Appellants.

1305

**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 B. [REDACTED]; 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. [REDACTED] and Carrington L. [REDACTED]; 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. [REDACTED]; 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. [REDACTED] and CARRINGTON L. [REDACTED]; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

JEANELLE W. [REDACTED]
C.C.P. & [REDACTED]
[REDACTED]

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FILED

In this lawsuit, Plaintiffs seek redress for the substantial injury done to the financial legacy of one of South Carolina's most famous and generous icons, the late James Brown. This

injury was the result of acts and omissions of the former Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Adele Pope and Robert J. Buchanan, Jr. The resulting damage—which could be in the tens of millions of dollars—threatens the fulfillment of the very legacy they were charged with protecting.

James Brown died on December 25, 2006. The initial Personal Representatives and Trustees were removed and replaced by Adele Pope and Robert Buchanan on November 20, 2007. On that date, they assumed all fiduciary responsibilities to the Estate and Trust. On May 26, 2009, Judge Doyett A. Early, III removed Pope and Buchanan as Personal Representatives and Trustees and installed Russell L. Bauknight in those positions.

Prior to May 26, 2009, a number of disputes arose among the Plaintiffs concerning the validity of the estate documents, the assertion of an elective share, and the identification of beneficiaries. By way of a negotiated agreement, the Plaintiffs have agreed to set aside their differences on these issues. This Settlement Agreement was approved in full by Judge Early on May 26, 2009 (a copy of which is attached at Exhibit A). Although specifically ordered to do so, Defendants have refused to sign the Settlement Agreement.

The most significant component of the Settlement Agreement is the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. Mr. Brown's family members and the Attorney General, through their compromise in the Settlement Agreement, seek to fulfill this objective. The acts and omissions of the Defendants have significantly compromised this dream.

In this lawsuit, the Plaintiffs seek to recover damages for multiple breaches of fiduciary duty and other acts of negligence on the part of the Defendants. Defendants seek to obfuscate

their own culpability by characterizing this action as a continuation of that which has gone before. Defendants seek to confuse matters by raising irrelevant issues that do not bear on the merits of this suit. Defendants seek to avoid responsibility by litigating issues that are not before this Court. For these reasons, and the reasons set forth below, Defendants' Motion to Dismiss should be denied.

In their Motion to Dismiss, Defendants set forth ten bases, which are addressed herein:

1. **Plaintiffs need not comply with S.C. Code Ann. § 15-36-100 because Plaintiffs have not alleged professional negligence.**

Defendants contend that Plaintiffs' suit should be dismissed because it is not accompanied by an expert witness affidavit required under S.C. Code Ann. § 15-36-100 (1976, as amended). This code section is inapplicable because Plaintiffs have not alleged professional malpractice by Defendants. Plaintiffs' claims concern Defendants' breach of duties attendant to them as personal representatives and trustees (hereinafter collectively "administrators"), not as licensed attorneys.

2. **This matter is unique and neither precisely nor substantially the same as any litigation with similar parties or similar claims.**

Defendants assert that Plaintiffs' suit should be dismissed because "the matters alleged in this action are substantially the same as matters alleged in other cases pending in the State Court or the South Carolina Court of Appeals." (Mot. Dismiss, p. 3) Defendants do not cite Rule 12(b)(8), SCRPC in their Motion to Dismiss, but we assume it to be the basis for their motion. "In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity

of parties, causes of action and relief. We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 105-106, 674 S.E.2d 524, 531-32 (Ct.App.2009) (internal citations omitted).

Defendants are unable to satisfy the requirements of Rule 12(b)(8). The case of Corbett v. City of Myrtle Beach, decided before Capital City Ins. Co. but unaffected by its ruling, focused on whether a “claim involves the same parties and is based upon the same facts and circumstances” as the case already pending. 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct.App.1999). In Corbett, a widow brought a consolidated wrongful death and survivor action. A year later, she filed a tort claim for negligent infliction of emotional distress as a bystander. The Court found the tort claim properly dismissed because the facts and circumstances giving rise to the wrongful death and survivor actions were the same as those giving rise to the tort action.

Such similarities are absent in the case *sub judice*. Defendants contend that four cases are substantially similar to this case:

McMaster v. Dallas, et al, 2009-CP-02-1647 (“Case 1647”);¹
McMaster v. Brown, et al, 2009-CP-02-1810 (“Case 1810”);
Thomas, et al v. Bradley, et al, 2007-CP-02-0122 (“Case 122”); and
Brown, et al v. Pope, et al, 2008-CP-02-0872 (“Case 872”).

These cases were resolved by way of the May 26, 2009 Order approving settlement, which is under appeal. A review of the May 26 Order indicates that these cases are inapposite to the case at bar. There are no doubt “other action[s] pending” in what can be termed the Brown Estate litigation. Indeed, there have been suits contesting the Will and Trust; the suitability of Cannon,

¹ Defendants cite “James Brown Case 2009-CP-02-1647” in their Motion to Dismiss, p. 3. We assume they mean 2008-CP-02-1647 as a 2009 case cannot be found in the Aiken County Judicial Index.

Dallas, and Bradley as fiduciaries; and the existence of elective share, omitted spousal share, and omitted child claims. However, not one of the lawsuits brought in relation to this Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate.

Although other actions are pending that at times involve the same parties and appear to involve some of the same facts, the claims of these other actions are not based upon the same facts and circumstances as those in the case at bar.

3. **The series of court orders cited by Defendants do not amount to a ratification of the acts that give rise to the causes of action in this matter.**

Defendants submit that a series of Circuit Court and Appellate orders ratify the acts of Defendants in their service as administrators. We address each in turn.

a. **Circuit Court Order dated January 8, 2008**

By way of an Order dated January 8, 2008, Circuit Judge Early granted the payment of fees and costs for Defendants work as administrators. A trial court's provision of fees does not amount to a ratification of the acts for which the fees are paid. Payment acknowledges the completion of those acts, but not the reasonableness of such acts as contemplated in this lawsuit. At least one lawyer-executor discovered that an award of administrative fees does not shield the administrator from liability as an administrator or as a member of the Bar. In the Matter of W. Richard James, 267 S.C. 474, 229 S.E.2d 594 (1976).

b. **Circuit Court Order dated April 8, 2008**

By way of an Order dated April 8, 2008, Circuit Judge Early denied the motion to reconsider Defendants' appointment as administrators. In the Order, Judge Early observes that Defendants "have properly performed" and "that their service in light of the emerging facts related to the former PR/Trustees has been outstanding." Id., p. 41, 46. We submit that Judge

Early's statements are dicta. "Judicial dicta is 'not essential to the decision.' Dicta or, as it is also known, dictum 'is a statement on a matter not necessarily involved in the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision.'" Nash v. Tindall Corp., 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct.App.2007) (internal citations omitted). Judge Early's order should be read "in light of the judge's intent as discerned from the order as a whole." White's Mill Colony Inc. v. Williams, 363 S.C. 117, 124, 609 S.E.2d 811, 815, FN 1. (Ct.App.2005) (citing Weil v. Weil, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct.App.1989) (holding that "[t]he determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety"))). The doctrine of the "law of the case" should not be applied to expressions that are not necessary to the decision of an order. Id.

The central decision of the April 8 Order was the denial of a motion to reconsider Defendants' appointment as administrators. Based on the evidence before him, Judge Early concluded that nothing had changed from the date of appointment to warrant their removal. As knowledgeable and experienced as Judge Early is with the substance of this case, he has never peered behind the curtain of the Defendants' administrative activities. A denial of a motion to reconsider and the expression of favorable opinions on estate management based on limited facts should not operate as a ratification of all of Defendants' acts.

c. Circuit Court Order dated February 20, 2008

By way of an Order dated February 20, 2008, Judge Early provided for the disposition of certain tangible personal property and real estate. Judge Early made this disposition in light of the extensive mishandling of the Estate by Defendants' predecessors, Albert Dallas, David

Cannon and Alfred Bradley. In the issuance of this order, like all others, Judge Early acted based on the facts before him. A sale of these items may have seemed a progressive step in the shadow of the deplorable administration of Dallas, Cannon and Bradley. However, the February 20 Order did not – and could not – contemplate the widespread mishandling that occurred by Defendants during the course of their administration.

d. Circuit Court Order dated April 1, 2008

On April 1, 2008, Judge Early issued an Order finding that the provisions of his earlier filed Order of February 20 had been complied with and the contract and sale contemplated therein should be executed. The reasoning regarding the February 20, 2008 Order (§3.c. *supra*) in this subsection is incorporated herein by reference.

e. Court of Appeals Order dated July 14, 2008

By way of an Order dated July 14, 2008, Judge Jasper Cureton of the Court of Appeals instructed that the Christie's Auction sale should proceed. This brief order concerned a procedural issue (i.e. whether a stay should be lifted) rather than a substantive evaluation of Defendants' acts as administrators.

f. Court of Appeals Order dated November 5, 2009

Defendants contend that an Order of the Court of Appeals dated November 5, 2009 and relieving them of fiduciary responsibility operated as an approval of their previous acts. First, we are unable to identify an order dated November 5, although there are several dated November 6, 2009. The Order we assume is referenced in Defendants' Motion to Dismiss is one dated November 6 signed by Judges Williams, Geathers and Cureton of the South Carolina Court of Appeals. Contrary to Defendants' assertion that the Order operates as a ratification of Defendants' fiduciary acts, the Order simply denotes a transfer of fiduciary duties at a particular

date in time. We can only assume that Defendants' place great stock in the Court of Appeals' language that "Bauknight should be substituted because the liability for mismanagement of the Estate or the Trust now falls on him, not [Pope and Buchanan]." Order, p. 6. Plaintiffs place great stock in this language as well. For if the Court of Appeals' Order demarcates an end to a period of liability for Defendants, it follows that a period existed for which Defendants can be held liable. Our Complaint alleges breaches of duty by Defendants during the period of their administration. It does not allege breach of duty by Defendants for mismanagement of the Estate after the Settlement was approved, because a fiduciary relationship did not then exist. The Order of November 6, 2009 is only concerned with the procedural substitution of parties necessary in the wake of Defendants' replacement with Bauknight.

4. **The Attorney General has the statutory and constitutional authority to intervene on behalf of charitable trusts.**

Defendants assert multiple grounds for dismissal in part 4 of their Motion to Dismiss, all stemming from their general contention that the Attorney General is exceeding his statutory and constitutional authority by being a plaintiff in a private tort suit. Many of these grounds attack the propriety of the Attorney General's appointment of private attorneys as special counsel, addressed in part five of our Memorandum, *infra*. In their litany of other arguments in this part of their Motion, Defendants assert that the Attorney General has no right to be a plaintiff in this private tort suit, that the Attorney General's presence in the suit violates the separation of powers, that the Attorney General has no beneficial interest in the estate plan at issue, and that there are no allegations that Plaintiff Bauknight is a proper agent of the Attorney General. Defendants also contend that campaign finance reform laws prohibit the Attorney General from participating in this lawsuit. Lastly, Defendants argue generally that the Attorney General has exceeded his statutory authority in the realm of regulating the administration of public charities.

The Attorney General is a party to this lawsuit because of the statutory scheme set up by the legislature for the enforcement and administration of charitable trusts. The Attorney General has done nothing but act according to statutorily granted authority and procedure since the beginning of this litigation. Moreover, Defendants, in their tireless effort to prevent the approval of the Settlement Agreement, pursued and lost this argument. Judge Early plainly ruled that the Attorney General has the very authority and standing that Defendants seek to deny. *See Order Approving Settlement* at pp. 20-23.

One of the primary statutes authorizing the Attorney General's presence in this case is S.C. Code Ann. § 1-7-130:

The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.

S.C. Code Ann. § 1-7-130 (1976). Defendants contend that this statute limits the Attorney General's authority vis-à-vis the enforcement of charitable trusts. The plain language of the statute reveals the opposite; this provision is a grant of authority to the Attorney General's office to protect charitable institutions. Further, the Attorney General is given specific authority over the enforcement of charitable trusts such as the one at issue in this case: "The settlor of a charitable trust, the trustee, *and the Attorney General, among others* may maintain a proceeding to enforce [a charitable trust]." S.C. Code Ann. § 62-7-405(c) (1976) (emphasis added). The Official Comment to this section of the Code indicates that the Legislature gave the Attorney General standing to sue, even when other entities with standing have brought suit: "The grant of standing to the settlor [in § 62-7-405(c)] does not negate the right of the state attorney general or persons with special interests to enforce either the trust or their interests." Official Comment, S.C. Code Ann. § 62-7-405 (1976). Additionally, the statutes make clear that the Attorney

General, at least for the purposes of the Trust Code, is a “beneficiary” of a charitable trust. See S.C. Code Ann. § 62-7-103(2)(C) (1976) (“‘Beneficiary’ means a person that . . . [i]n the case of a charitable trust, has the authority to enforce the terms of the [t]rust”); see also S.C. Code Ann. § 62-7-1001(a) (1976) (“A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust”). Without question, the statutory law of South Carolina gives the Attorney General the right to intervene to enforce a charitable trust and to sue the trustee of a charitable trust for breach of trust, because the Attorney General, as a representative of the people, is a beneficiary of such a trust.

South Carolina case law confirms the propriety of the Attorney General acting on behalf of a charitable trust. In Furman University v. McLeod, the Supreme Court explained the rule:

[The Attorney General at the time of this case], as Attorney General of South Carolina, upon whom is imposed the responsibility of protecting interests of the public in matters relating to the administration and enforcement of charitable trusts, has been named Defendant . . . Under [the predecessor to S.C. Code Ann. § 1-7-130], the Attorney General of South Carolina is charged with the duty of ‘[e]nforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof.’ It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having ‘immediate or peculiar interests.’

Furman Univ. v. McLeod, 238 S.C. 475, 482-83, 120 S.E.2d 865, 868 (1961). Not only does this case reinforce the statute granting the Attorney General the authority to enforce a charitable trust, it also speaks of the Attorney General’s duty from the “general law” to administer the trust. The Supreme Court reinforced these basic rules of law in the more recent case of Epworth Children’s Home v. Beasley, wherein the Court recognized the authority of the Attorney General to oppose an orphanage-trustee’s petition to dissolve a charitable trust, even when the trustee and the only other presently existent beneficiary consented to the dissolution. 365 S.C. 157, 163-64, 616

S.E.2d 710, 713-14 (2005) (citing S.C. Code Ann. § 1-7-130 (2005); S.C. Code Ann. § 62-7-503 (1987) (revised and incorporated into current S.C. Code Ann. § 62-7-405 (1976)); Furman Univ., 238 S.C. at 482, 120 S.E.2d at 868) (“The South Carolina Attorney General’s Office (the State), as authorized by statute, responded by opposing the [t]rustee’s petition and asking the probate court to protect the interests of the charitable trust”). South Carolina case law is clear: the Attorney General’s office has the authority to represent the interests of the people of South Carolina in matters pertaining to charitable trusts, and this authority goes so far as to allow the Attorney General to challenge the decisions of the trustee made with the consent of the beneficiaries.

The undisputed facts in this case indicate that the Attorney General’s office is doing nothing more than its statutory duty to act on behalf of charitable trusts. Mr. Brown’s will established two testamentary trusts, the Brown Family Educational Trust and the “I Feel Good” Trust. (See Order Approving Settlement, p. 3, May 26, 2009) The latter trust was created to provide scholarships to students in South Carolina and Georgia. (Order Approving Settlement, p.3.) The Attorney General intervened in the litigation in September of 2007 to protect the interests of any charitable trusts created by Mr. Brown’s will, and the Attorney General has been involved in the case since then pursuant to Judge Early’s granting the Motion to Intervene. (Order Approving Settlement, p. 5.) The litigation over the will and trusts of Mr. Brown settled in 2008, with Judge Early approving the settlement in May of 2009. (Order Approving Settlement, pp. 9-11.) Plaintiff Bauknight was appointed Special Administrator and Special Trustee for the purposes of reviewing the settlement. (Order Approving Settlement, p. 11.) As part of the settlement, another charitable trust was set up as a successor to the “I Feel Good” Trust. See 2008 Settlement Agreement, ¶ 5(b). As a result of the continuing existence of a

charitable trust, the Attorney General has remained in the litigation, actively seeking to recover funds for the trust so that its charitable purpose may be continued and expanded. Well-established South Carolina law authorizes the Attorney General to participate in this lawsuit, Defendants' myriad objections notwithstanding.

Finally, the Attorney General asserts that South Carolina's campaign finance reform laws, S.C. Code Ann. §§ 8-13-100 et seq. (2009 Supp.), and specifically § 8-13-1342, are wholly inapplicable to this complex probate litigation. The Attorney General is acting in his *parens patriae* role as the chief legal officer for the State, not as an individual candidate for elected office.

5. **It is well-established law that the Attorney General may appoint private attorneys to act as special counsel on behalf of the State.**

Defendants contend that the Attorney General is without authority to appoint private attorneys as special counsel to represent the State of South Carolina. This issue has been resolved in favor of the Attorney General by a Circuit Court applying Supreme Court precedent. In South Carolina v. Eli Lilly and Co., case no. 07-CP-42-1855, the defendant pharmaceutical company moved to disqualify the special counsel appointed by the Attorney General to prosecute the case on behalf of the State, arguing that the employment of special counsel violated the separation of powers doctrine and the due process clauses of the United States and South Carolina Constitutions. (See Order of Judge Couch Denying Motion to Disqualify Special Counsel, p. 3, Sept. 22, 2009 and attached hereto at Exhibit B (hereinafter "Order of Judge Couch").) In Eli Lilly, Judge Couch ruled that it is within the boundaries of the Attorney General's authority to hire private counsel, even counsel retained on a contingent fee basis:

[T]here is no question that the Attorney General has authority to hire legal counsel to protect the State's interests . . . the South Carolina Supreme Court has

recognized that the Attorney General, as the State's chief legal officer, possesses the authority to appoint and approve private counsel to represent the State. Courts have almost universally recognized that Attorneys General possess broad authority to appoint private attorneys as special counsel on a contingent fee basis to assist in the representation of the public interest.

(Order of Judge Couch, p. 7-8 (citing Cooley v. S.C. Tax. Comm'n, 204 S.C. 10, 28 S.E.2d 445 (1943))).) In Cooley, the Supreme Court recognized the Attorney General's authority to employ special counsel in investigating the appropriate taxable value of a decedent's estate. See Cooley, 28 S.E.2d at 445, 447-48 ("the Attorney General, pursuant to the powers vested in him as the Supreme Law Officer of [South Carolina], authorized and directed the employment of special counsel in this case to represent and protect the interests of the State"). Simply stated, Defendants' contention that the Attorney General may not employ private counsel is without merit under the well-established law of South Carolina.

6. **Plaintiffs have joined all necessary parties to the suit. Forlando and Romunzo Brown are not indispensable parties as contemplated under the Rules of Civil Procedure. Further, the appointment of Guardians ad Litem are unnecessary.**

Defendants contend that the failure to join Forlando and Romunzo Brown and the failure to secure the appointment of *guardians ad litem* (GALs) for the minor parties is fatal to this matter. We address each accusation in turn.

a. **Failure to join Forlando and Romunzo Brown as parties.**

Forlando and Romunzo Brown are not indispensable parties as contemplated under Rule 19, SCRCF. Relief can still be accorded the parties in their absence and a disposition in the case will neither impair Forlando and Romunzo to protect their interest nor leave the present parties subject to a substantial risk of incurring double or inconsistent obligations. Further, even if Forlando and Romunzo were indispensable parties, the proper relief is for the Court to *add* them under Rule 19(a), rather than *dismiss* the suit. Dismissal is triggered under Rule 19(b) when the

Court determines that the indispensable party *cannot*, for whatever reason, be made a party to the suit. If Forlando and Romunzo are indispensable, a motion must be filed by Defendants to make them parties and then the Court must add them, if appropriate, under Rule 19(a). Rule 19(b) is not reached until Rule 19(a) is resolved.

b. Failure to secure the appointment of GALs.

The appointments of GALs are unnecessary for the minors involved in this matter. The Probate Code provides that a settlement may be executed by “parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise” and that minors “represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise.” S.C. Code Ann. § 62-3-1102(1), (3) (1976, as amended). Parents are sufficient representatives of the minors in this matter.

7. This action is unaffected by a statute of limitations and the doctrine of estoppel.

The Probate Code provides that a proceeding may not be commenced “against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.” S.C. Code Ann. § 62-7-1005(a) (1976, as amended). If such a report was not sent, a three year limitations period runs from the earliest of “(1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary’s interest in the trust; or (3) the termination of the trust.” § 1005(c). The earliest of these three dates is May 26, 2009, the date on which Defendants were removed as trustees.

The earliest “a report that adequately disclosed the existence of a potential claim for breach of trust” would have come to the attention of a beneficiary or his representative would have been May 26, 2009 when Bauknight assumed control of the Estate. As the Complaint in

this case was filed May 10, 2010, Plaintiffs are within a one-year statute of limitations under Section 1005(a). The more likely circumstance is that a Section 1005(a) report was never given and the three-year period of limitations applies. Either way, this action is not barred by a statute of limitations.

Equitable Estoppel applies when a party “by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury.” State Acc. Fund v. South Carolina Second Injury Fund, 388 S.C. 67, 693 S.E.2d 441, 446 (Ct.App.2010) (citing Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct.App.2006)). Specifically, Defendants contend that Plaintiffs had knowledge “of all actions of Buchanan/Pope, and as demonstrated by the record, either approved the actions or failed to notify the Probate Court and/or the Circuit Court . . .” Mot. Dismiss, pp. 8-9. As discussed earlier in this section of our memorandum, we submit that the first notice Plaintiffs received of the maladministration by Defendants was when Bauknight was named administrator and had the opportunity to closely examine the Estate.

8. **Plaintiffs have standing because this suit is not against the Estate, but rather against its administrators.**

Defendants contend that the *in terrorem* clause bars certain Plaintiffs from bringing this suit. The *in terrorem* clause is inapplicable to this matter as this suit is brought against Defendants for maladministration and does not involve attempts by beneficiaries “to contest, claim an interest in or otherwise dispute the disposition of Grantor’s estate . . .” Mot. Dismiss, p. 9 (citing Article XXI of Irrevocable Trust).

9. **Because Defendants’ acts affected the health of the Legacy Trust, they are liable even though they never served as trustees of the Legacy Trust.**

Defendants are correct in stating that they never served as trustees of the Legacy Trust

(i.e. the settlement trust). However, Defendants acts as administrators of the charitable and family trusts directly affected the Legacy Trust as it became the successor-trust to the charitable and family trusts under Defendants' control.

10. **Section 33-56-180 is wholly inapplicable to this case.**

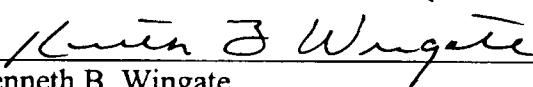
Section 33-56-180 (1976 as amended) applies only "in an action brought against the charitable organization." As the "I Feel Good Trust" is not being sued in this matter, § 180 does not apply. Section 180 is further inapplicable because Defendants were directors, not employees (agents, servants, officers) of the trust. Even if § 180 did apply, Plaintiffs could recover individually against Defendants because their conduct was "reckless, wilful [*sic*], or grossly negligent."

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that Defendants' Motion to Dismiss be DENIED.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
August 27, 2010

**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; 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. 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 BROWN; 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. and CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

FILED
2010 AUG 27 PM 4:24
JEANETTE W. MCBRIDE
C.C.P. & G.S.

ACKNOWLEDGEMENT

The undersigned acknowledge the following:

1. That, when as part of the settlement process they proposed the appointment of Russell L. Bauknight ("Bauknight") as Trustee of the 2000 Irrevocable Trust of James Brown

("Trust"), they understood that the principal place of administration of the Trust would be in Richland County, South Carolina, which is where Bauknight maintains his principal place of business and keeps the records of the Trust; they also understood that the predecessor trustees of the Trust maintained the records of the Trust in Richland County.

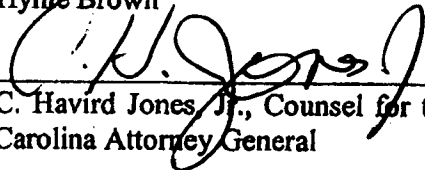
2. That they consider their settlement agreement dated August 10, 2008, and amended and restated on March 31, 2009, and the court order approving the proposed settlement and appointing Bauknight as Trustee to satisfy any and all requirements for maintaining the Trust's principal place of business in Richland County, South Carolina.

3. That, to the extent notice regarding the maintenance of the Trust's principal place of administration was necessary, the settlement process and the court order approving the settlement served as sufficient notice to them; to the extent that the settlement process and the court order approving the settlement did not serve as sufficient notice, they hereby waive any notice requirement and reaffirm their consent to the maintenance of the Trust's principal place of administration in Richland County, South Carolina.

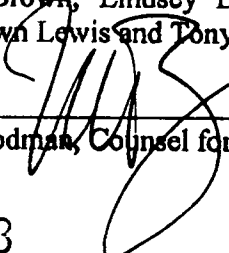
4. That, to confirm that the Trust's principal place of administration is and will be in Richland County, South Carolina, they agree that the Trust's principal place of administration is and will be in Richland County, South Carolina and consider this agreement to be a binding nonjudicial settlement agreement pursuant to S.C. Code section 62-7-111.

5. That most of the undersigned are represented by counsel with a presence in Richland County, South Carolina, and that all of the undersigned consider Richland County, South Carolina, to be the most appropriate venue for the sake of convenience to the undersigned.

S. Alan Medlin, Counsel for Tommie Rae
Hynie Brown


C. Havird Jones, Jr., Counsel for the South
Carolina Attorney General

Louis D. Levenson, Counsel for Deanna J.
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individually and on behalf of her minor
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Matt D. Bodman, Counsel for Terry Brown

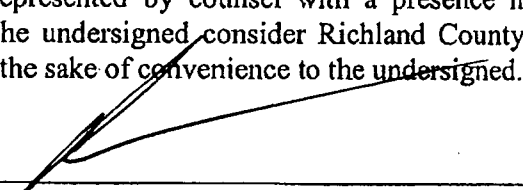
("Trust"), they understood that the principal place of administration of the Trust would be in Richland County, South Carolina, which is where Bauknight maintains his principal place of business and keeps the records of the Trust; they also understood that the predecessor trustees of the Trust maintained the records of the Trust in Richland County.

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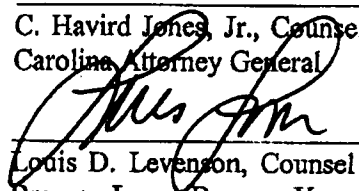
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 8/27/10
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**STATE OF SOUTH CAROLINA
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RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, 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. [REDACTED]; 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. [REDACTED] and Carrington L. [REDACTED]; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B. [REDACTED]; 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. [REDACTED] and CARRINGTON L. [REDACTED]; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,
Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM
OPPOSITION TO DEFENDANTS'
MOTION TO CHANGE VENUE**

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JEANETTE S. BRIDE
C.C.

FILED

I. NATURE OF THE CASE

This is not a judicial proceeding regarding the Estate of James Brown, the administration

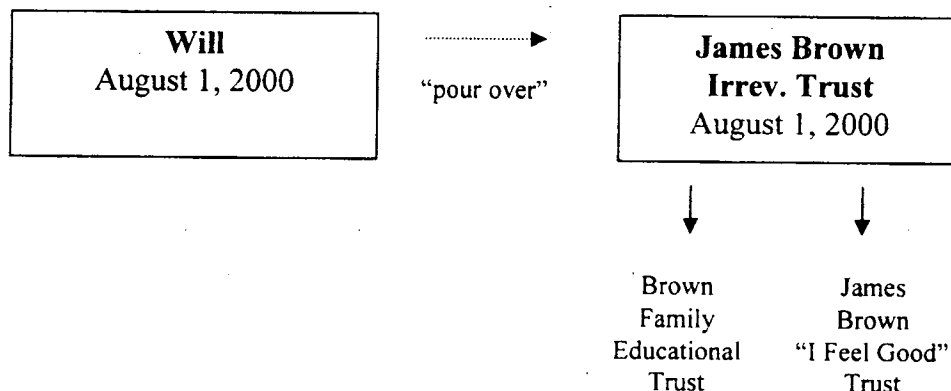
of which is in the Aiken County Probate Court. This action does not ask the Court to construe the will, enforce the will, determine the beneficiaries, or otherwise administer the Estate of James Brown in any way.

This is a judicial proceeding involving the Irrevocable Trust of James Brown dated August 1, 2000, a separate legal entity, whose sole, professional trustee administers the trust in Richland County, South Carolina.

This is a suit alleging causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRCP, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County. This memorandum sets forth the grounds for opposition to such motion.

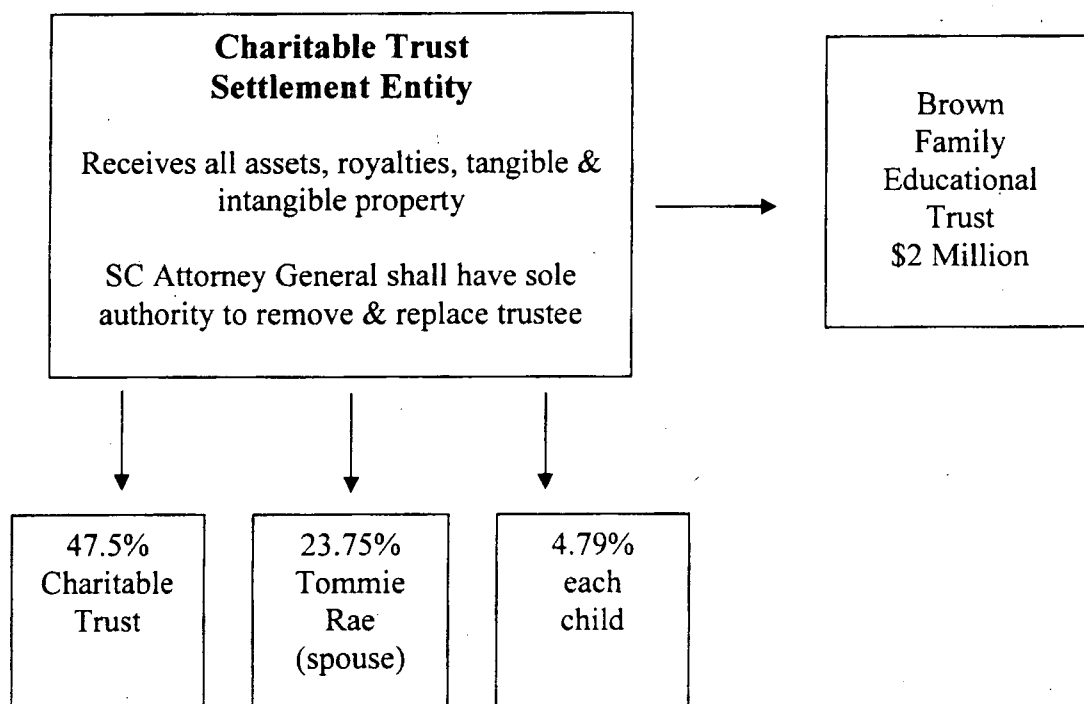
II. FACTS BEARING ON THE MOTION

The original estate plan of James Brown included a Last Will and Testament which “poured over” the bulk of his estate to a separate, irrevocable trust that was created and funded on August 1, 2000. The relationship between the estate and the Irrevocable Trust are shown as follows:



After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is attached hereto as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached hereto as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was entirely re-written to create a "Settlement Entity" which incorporates all assets, including all royalties, tangible and intangible property of James Brown. The order provides that: "A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable." The order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

The Charitable Trust is diagramed as follows:



Plaintiffs are all of the beneficiaries of such trusts established by the late entertainer James Brown, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. Such office is located in Richland County, South Carolina.

It is worth noting that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County. The Order of the Honorable Doyet A. Early, III, dated August 10, 2007, a copy of which is attached hereto as Exhibit C, specifically provides that: "This Court orders and directs the deliver to 1218 Taylor Street, Columbia, South Carolina, of all files and documents in the possession of all attorneys, accountants, and other financial advisors whose service has been terminated as set out herein, and who have rendered prior service to James Brown, the Estate of James Brown, any Brown Entity, and/or any Brown Trust." See also Exhibited D hereto, which includes a sixty (60) page list of documents maintained by the former trustees, Pope and Buchanan, at the trust's office at 1218 Taylor Street in Columbia. Defendants now seek to assert that the administration of the trust is not in Richland County, South Carolina.

III. ARGUMENT

“The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is ‘the power to hear and determine cases of the general class to which the proceedings in question belong.’ On the other hand, venue is the place or geographical location of trial.” Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the **trust’s principal place of administration** is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent’s estate is being administered.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust’s “principal place of administration”:

Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is **the trustee's usual place of business where the records pertaining to the trust are kept**, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). Note that the statute designates the trustee's place of business where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is essential that the courts in the place where the trust records are kept and the trust assets are held should deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Bauknight. Mr. Bauknight's usual place of business is at his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if the court were to determine that venue might be proper in either Richland or Aiken Counties, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). Defendants will argue that the matters raised in the complaint relate to an action previously filed in Aiken County. That is erroneous. The complaint alleges causes of action which are entirely new and are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code provides that "[a] proceeding under this section does not result in

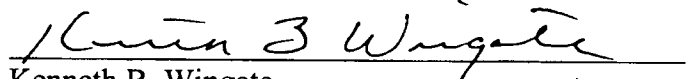
continuing supervisory proceedings.” This trust litigation against the former trustees stands on its own feet, and is unrelated to any prior litigation involving James Brown’s estate or trust.

IV. CONCLUSION

In this case, Defendants have moved to change venue from Richland County to Aiken County. Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken, the initial commencement of this action in Richland County requires that venue remain in Richland County.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
August 27, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

HENRY DARGAN MCMASTER, in his)
capacity as Attorney General of the State)
of South Carolina; DARYL J. BROWN,)
on behalf of his minor children, LINDSEY)
DELORES BROWN and JANISE)
VANISHA BROWN; DEANNA J.)
BROWN THOMAS, on behalf of her minor)
children, JASON BROWN LEWIS;)
YAMMA N. BROWN, on behalf of her)
minor children, SYDNEY L. [REDACTED],)
CARRINGTON L. [REDACTED], and TONYA)
BROWN; VANISHA BROWN; and)
LARRY BROWN; TOMMIE RAE)
HYNIE BROWN)

Petitioners,)

- vs-)

RUSSELL L. BAUKNIGHT,)
as Special Administrator and Special)
Trustee for The Estate of James Brown)
and The James Brown 2000 Irrevocable)
Trust, TERRY BROWN, ROMUNZO)
BROWN; FORLANDO BROWN;)
CINNAMON N.M. PARIS; LARHONDA)
PETITT; and JEANNETTE MITCHELL)

Respondents.)

In Re:)

The Estate of James Brown and The James)
Brown 2000 Irrevocable Trust u/a/d)
August 1, 2000)

Case No.: 08-CP-02-1647

(Case No.: 07-CP-02-0122)
(Estate of James Brown)

(Case No.: 08-CP-02-00872)
(Wills/Trust/Heirs Matter)

**ORDER APPROVING
SETTLEMENT AGREEMENT**

FILED 5-26-09
L. J. Hodges
C.C.P. & G.S.
Anita Knoepfle 945
Deputy Clerk

This matter comes before the Court on a Motion for Approval of Settlement Agreement.

The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

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EXHIBIT

A

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA
ex rel. Henry McMaster, in his capacity
as Attorney General of the State of
South Carolina,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2007-CP-42-1855

ORDER

MARC KITCHENS

2009 SEP 22 PM 2:00

FILED
CLERK OF COURT
SPARTANBURG COUNTY

THIS CAUSE is before the Court upon the Motion of Defendant Eli Lilly and Company (Lilly) to Disqualify Special Counsel filed on August 21, 2009. This matter was fully briefed by the parties, and was argued to the Court on August 31, 2009. After carefully considering all of the parties' written submissions and the oral arguments made by counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On July 19, 2006, for the purpose of pursuing litigation relating to the Lilly-manufactured drug Zyprexa, Attorney General McMaster entered into a "Litigation Retention Agreement for Special Counsel Appointed by the South Carolina Attorney General" signed by three lawyers as "Special Counsel." The three lawyers were John S. Simmons, John Belton White, Jr., and F. Kenneth Bailey, Jr. According to his Affidavit submitted in this matter, Attorney General McMaster's aim in suing was to recoup state funds and penalties related to Lilly's alleged wrongful conduct in marketing Zyprexa.

Adell
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EXHIBIT

B

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 B [REDACTED]; 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 [REDACTED], Carrington L [REDACTED], and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B [REDACTED]; 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 [REDACTED], CARRINGTON L [REDACTED], and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

2010 AUG 27 PM 1:22
JEANETTE W. McBRIDE
C.C.P. & G.S.

SECOND SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
DISMISSAL OF COMPLAINT

Defendants supplement their Memoranda Supporting dismissal of the Complaint

herein, by new information received by counsel in this case on August 25, 2010.

Defendants ask the Court to take judicial notice of Exhibit A, dated August 23, 2010, for presentation to the Supreme Court of South Carolina on behalf of Plaintiff Terry Brown and others, but not on behalf Plaintiffs Russell L. Bauknight. The far-reaching and startling consequences have not been fully analyzed.

The following, however, is known from the record of Case 122, Case 1647, and the brief in the Albert Dallas appeal from Case 122, which Bauknight Plaintiff Bauknight has adopted:

1. In Exhibit A Terry Brown and others assert for the first time in the 3 years and 9 months since the death of music icon James Brown, that Russell L. Bauknight has ordered [and already a reviewed preliminary draft of] an appraisal which will show that the assets of James Brown at his death on December 25, 2006 were worth only \$12 million.
2. To the knowledge of Defendants, neither Bauknight nor other Plaintiffs have ever notified any Court – including the Probate Court for Aiken County – of this startling revelation, which is wholly inconsistent with the approximately \$85 Million value of the James Brown assets known and discussed under oath and in filings for almost three years.
3. The figure of \$85.6 Million is stated twice in Buchanan and Pope's Dallas brief, now before the Supreme Court, which brief was adopted by Plaintiff Bauknight in 2010, as the gross value of the Brown assets (after considering the TIAA debt). [See Exhibit B, Excerpts from Amended Brief, Dallas Appeal]
4. The \$12 million which Terry Brown and some Plaintiffs now assert is the date-of-death value of the James Brown assets is less than 1/7 of that reported on the Estate Tax Return by Defendants under penalties of perjury, and repeatedly discussed in Court. [See for example Exhibit B, Partial Transcript of testimony of Adele Pope]
5. The \$12 million value is less than 1/7 the \$85,663,563 date-of-death value of Brown's assets reported by prior fiduciaries Dallas and Bradley (now deceased) to the Court, under oath on the inventory and appraisal filed in the Aiken County Court of November 15, 2007. [See Exhibit C]
6. The \$12 Million is less than 1/7 of the value which purported branding expert

Dr. Terry Cox of the Graham Windsor Group, who organized (and made Terry and his son Forlando part of) a group to purchase the James Brown assets repeatedly placed on those assets and/or supported in testimony under oath [November 15, 2007, Case 122] and offers, made with Terry Brown. [See Exhibit D]

7. The \$12 million date-of-death value of the James Brown assets is wholly inconsistent with, and less than 1/7 the date-of-death value discussed repeatedly in open court and filings by Terry's joint venturer David Cannon; and the some of the more than 20 lawyers who have represented Dallas and Cannon.

8. The \$12 million date-of-death value is less than 1/10 of the \$150 million Forlando Brown, joint venturer with Terry¹ stated in a federal court deposition on September 28, 2008 - three days after the EstateTax Return was filed.

9. Terry Brown, and Bauknight as his Trustee, now claim Terry has a right of first refusal to purchase the James Browns assets and retain any interest in the purchaser which the purchasers allow him to have. This is in addition to the 39% claimed by his son Forlando.

10. Terry – who, with family members, will be a substantial owner on both sides of the sale and purchase of the James Brown assets — now asserts that Brown's assets had a date-of-death value which is 1/10 of known value. This is not only extraordinary, but one of the most troublesome of the many "twists and turns" the Court's order dated April 8, 2008 predicted.

11. The suggestion that Pope and Buchanan, nominated by all Plaintiffs except the Attorney General on November 20, 2007 to serve as PR/Trustee would have – 10 months later – valued the James Brown assets at 7 times their real value for some nefarious reason is, at best, outrageous.

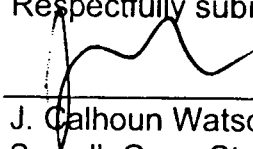
The far-reaching implications of this remarkable assertion that James Brown's music empire was not the \$100 million (about \$85 when reduced by the TIAA debt) everyone has believed for years, but a mere \$12 million, information never before revealed, cannot be analyzed in a day. Nor can it be easily analyzed by a Court which

¹ Represented by Terry's same counsel in Aiken, and represented by Dallas/Cannon counsel Powell Goldstein (now Bryan Cave) in Federal court, and a 39% owner of TJBL, LLC, the then- prospective purchaser of the James Brown assets.

does not have an understanding of the perjury and fabrication that has gone on by Terry Brown's joint venturers in Aiken County.

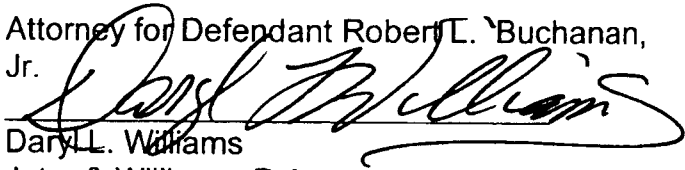
This new information only highlights why dismissal remains the appropriate remedy, with leave of counterclaimants to seek transfer from the Aiken County Court of the counterclaims to be filed herein..

Respectfully submitted,



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Jr.



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Attorney for Defendant Adele J. Pope

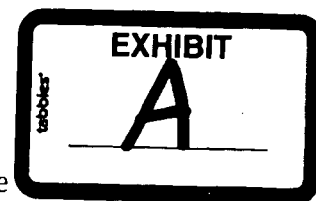
August 27, 2010

Attachments to Second Supplemental Memorandum in Support of Dismissal of Complaint

- Exhibit A Return to Appellants' Request for Extension of Time, without attachment.
- Exhibit B Portion, Respondents' Brief, Dallas Appeal, pp. 1, 15
- Exhibit C Portions, transcripts of testimony, January 30, 2009 and March 4, 2009
Hearings [Emphasis supplied]
- Exhibit D Portion, Inventory and Appraisement, dated November 15, 2007, pp.
- Exhibit E Portion, Presentation, Graham Windsor Group, and offers of TJBL, Inc.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas



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

Case No.: 2008-CP-02-1647

Henry Dargan McMaster, in his capacity as Attorney General of the
State of South Carolina; Daryl J. Brown, on behalf of his minor children,
Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor
child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L.,
Carrington L., and Tonya B.; Vanisha Brown; and Larry Brown;
Tommie Rae Hynie Brown,.....Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually
And as (purported) Trustees of the James Brown 2000 Irrevocable
Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives
Of the Estate of James Brown and Trustees of the James Brown 2000
Irrevocable Trust; Terry Brown, Romunzo Brown; Forlando Brown; Cinnamon
N.M. Paris; LaRhonda Petitt; Jeannette Mitchell; and Russell L. Bauknight,
as Special Administrator and Special Trustee for the Estate of James Brown
and The James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives
of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable
Trust are.....Appellants,

and Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually
and as (purported) Trustees of the James Brown 2000 Irrevocable Trust;
Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris;
LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special
Administrator and Special Trustee for the Estate of James Brown and
the James Brown 2000 Irrevocable Trust are.....Respondents.

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

RETURN TO APPELLANTS' REQUEST FOR EXTENSION OF TIME

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SOUTH
CAROLINA SUPREME COURT:

Respondents respectfully oppose the requested amount of time sought by the
Appellants in this matter.

1. The Respondents include all the settling parties, all beneficiaries, and
the South Carolina Attorney General. The Respondents must object to the
Appellants request for it is unneeded. Since May 26, 2009—the day the lower court
approved the settlement agreement, which ended almost all of the “James Brown
litigation”—the Appellants have tirelessly sought to prevent the settlement
agreement from coming into effect.

2. The Appellants' actions since May 26, 2009, belie any need for further
time to “frame” the issues before this Court. In their motion for reconsideration
from the order approving the settlement agreement, the Appellants identified 404
grounds for the circuit court to alter its decision to approve the settlement
agreement—the appellate issues have been thought through. See **Exhibit A**, July 10,
2009 Order Denying Motions to Alter or Amend.

3. On September 16, 2009, the circuit court granted the settling parties
Motion to Lift Stay and on October 1, 2009, the circuit court denied the Appellants'
motion for reconsideration. On October 13, 2009, the formal notice of appeal of the
May 26, 2009, order was filed. Were this Court to grant the Appellants' request for

a seventy-five day extension, it would mean that they would have been given more than one year from the time their notice of appeal was filed until their initial brief was filed. Granted, the Appellants did defend against the Respondents' motion to dismiss their appeal on the basis of standing—which the Court has requested additional briefing on—but this cannot justify the current request. Over the past year Appellants have filed over 20 motions, replies, and returns in the South Carolina Court of Appeals all related to their opposition to Russell Bauknight's substitution for them in the James Brown appeal matters. Appellants have gone to such great lengths in taking inconsistent legal positions that the Court of Appeals has applied judicial estoppel. *See Exhibit B*, February 12, 2010 Order of the Court of Appeals Granting Motion to Substitute. These litigation tactics should not now be rewarded by a seventy-five day extension of time.

4. Respondents dispute Appellants' contention that this "appeal presents novel issues of public importance in the management of estates and in the law of trusts." The crux of Appellants' appeal of the settlement agreement is their contention that they, rather than the South Carolina Attorney General, have the sole authority to represent the charitable beneficiaries of the Estate and Trust and to enter into a settlement agreement on behalf of the charitable beneficiaries.¹ This is

¹ Problematically, Appellants, who claim to have an uber-authority to represent charitable beneficiaries, are unaware of who the actual charitable beneficiaries of the Estate and Trust are. In their motion for a seventy-five day extension of time, Appellants represent that the Trust provides "for the college education of needy students of South Carolina and Georgia." Instead, the Trust would benefit students from anywhere who wish to attend any educational institution in Georgia and South Carolina, not simply limited to colleges. The Trust actually provides "tuition, educational expenses, and financial assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified

not a novel issue of law just because Appellants claim it is. The authority of the Attorney General to represent charitable beneficiaries has been recognized throughout the history of the law of wills, trusts, and estates.

5. Respondents also dispute the contention that Appellants' counsel serve *pro bono publico*. Appellants' counsel are representing two deposed fiduciaries who seek approximately Five Million (\$5,000,000.00) Dollars in commissions and fees. The South Carolina Attorney General represents the charitable beneficiaries, for the public good.

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably, this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million (\$85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million (\$100,000,000.00) Dollars in affidavits, pleadings, and testimony. Appellants' assertions about the value of the Estate and Trust have been made without any underlying appraisal. According to the federal estate tax return, Appellants based their valuation on a valuation provided by their three predecessors as Personal Representatives and Trustees, whom the Appellants themselves decry as untrustworthy, except for their valuation of the Estate and Trust. Valuation assertions by Appellants' three

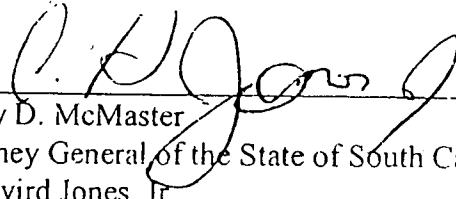
and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions in the State of South Carolina and Georgia." See May 26, 2009 Order Approving Settlement Agreement, p. 3.

predecessors were similarly made without any underlying appraisal. By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally-renowned and respected appraisal firm to value the Estate and Trust. Although the expected final completion date for that appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust will not exceed Twelve Million (\$12,000,000.00) Dollars. In light of that actual appraised value, Appellants' claim for approximately Five Million (\$5,000,000.00) Dollars for their commissions and fees totals perhaps half or more of the date-of-death value of the Estate and Trust, which further refutes any notion that their counsel are acting for the public good.

7. Respondents finally dispute Appellants' assertion that Mr. Brown "expressly intended to disinherit" the "recipients of the settlement." The settling parties include the children of Mr. Brown named in his will to receive assets, his surviving spouse whom he married after the execution of the will, and his grandchildren named in his trust to receive benefits. Even assuming arguendo that Mr. Brown intended to disinherit all of these parties, which Respondents deny, a testator cannot expressly disinherit a surviving spouse because she has elective share rights regardless of a testator's intentions. Moreover, federal law provides valuable copyright termination rights to the surviving spouse and children, which pass to them despite Mr. Brown's intentions. The settling parties contributed these termination rights, as well as all rights they have in Mr. Brown's probate and nonprobate assets, to the settlement entity.

8. In the alternative, if the Court finds that an extension is proper, the Respondents would respectfully request that the Court allow the Appellants the customary 30-day extension to file their initial brief.

Respectfully submitted,



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C. Havird Jones, Jr.

Senior Assistant Attorney General

Robert D. Cook

Assistant Deputy Attorney General

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Brown and Janise Vanisha Brown; Deanna J.
Brown Thomas, individually and on behalf of her
minor children, Jason Brown Lewis; Yamma N.
Brown, individually and on behalf of her minor
children, Sydney Lumar, Carrington Lumar, and
Tonya Brown; Vanisha Brown; Larry Brown*

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Attorney for Terry Brown

Columbia, South Carolina

August 23, 2010

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

Case No. 2007-CP-02-0122



IN RE: THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN

Albert H. Dallas and Alfred A. Bradley,
Trustees of the Irrevocable Trust Agreement
of James Brown Appellants,

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Putative Trustees of the Irrevocable Trust
Agreement of James Brown Respondents.

BRIEF OF RESPONDENTS

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Attorneys for Respondents

On December 18, 2007, Buchanan and Pope withdrew the motion of the prior PR/Trustees to declare JBE, Inc., an asset of the Estate because evidence had "rendered Mr. Bradley and Dallas' motion improvident." (Withdrawal of Mt 12/18/07 p. 2, R. p. 935)

On December 20, 2007, Appellants filed a motion asking The Honorable Doyet A. Early III, Judge of Circuit Court, to recuse himself and appoint another judge to hear the recusal motion. (Mtn Recusal, R. pp. 937-985; Mtn Appt. Jdg, Supp. R. 985A) The motion was vigorously opposed; and the alleged facts challenged. (Tr. 1/4/08 pp. 20-43, 48, R. pp. 1660-1683, 1688; Tr. 2/20/08 pp. 35-55, R. pp. 1832-1852; Affs. Carter 1/2/08, Rosen 1/08, Medlin 1/08, Freeman 12/31/07, Smoak 1/1/08., R. pp. 2371-2387) Judge Early denied the motions during hearings on January 4 and 9, 2008. At the request of new counsel for Appellants, he delayed entry of a written order. After new counsel requested that the court proceed with a written recusal order, it was issued on February 19, 2008, and filed on February 20, 2008.

In December, 2007, six of Mr. Brown's seven acknowledged children and Tommie Rae Hynie Brown challenged the validity of both the Will and 2000 Trust, claiming Mr. Brown's \$85.6 Million gross assets for themselves.²⁸

On January 4, 2008, Buchanan and Pope filed a return and opposition to all motions to vacate, alter, amend or reconsider the November 20 Order, supported by Affidavits. (Ret. Recon. 1/4/08, R. pp. 1007-1020; Aff. Buchanan 1/7/08; Aff.s Pope 1/6/08; 1/7/08, R. pp.

²⁸Dallas and Bradley have valued Mr. Brown's assets at the time of his death at a gross value of \$85,663,562.99 Million. Respondents are defending against claims in excess of \$46 Million, including approximately \$16 Million in claims asserted by Cannon, Dallas and Bradley.

Respectfully submitted,



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Attorneys for Respondent

December 30, 2008

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

2008-CF-02-1647

EXHIBIT

C

HENRY DARGAN MCMASTER, ET AL. :

:

-VS-

:

TRANSCRIPT OF RECORD

:

RUSSELL L. BAUKNIGHT, ET AL. :

JANUARY 30, 2009

AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQUIRE

LORI CHRISTMAN, ESQUIRE

ATTORNEYS FOR THE HEIRS

ROBERT N. ROSEN, ESQUIRE

DAVID L. MICHEL, ESQUIRE

T. HEYWARD CARTER, ESQUIRE

S. ALAN MEDLIN, ESQUIRE

ATTORNEYS FOR TOMMIE RAE HYNIE BROWN

ADELE J. POPE, ESQUIRE

ROBERT L. BUCHANAN, JR., ESQUIRE

SPECIAL ADMINISTRATORS

A. PETER SHAHID, JR., ESQUIRE

ATTORNEY FOR THE GUARDIAN AD LITEM

1 **MR. WARNER:** THANK YOU, YOUR HONOR. YOUR HONOR, THIS IS
2 A MOTION TO RECONSIDER.

3 **THE COURT:** GENTLEMEN, HOLD ON. LET ME SET THE GROUND
4 RULES THIS MORNING. ON THE MOTIONS AND ARGUMENTS, I'M
5 LIMITING EVERYBODY TO 10 MINUTES.

6 **MR. WARNER:** THANK YOU, YOUR HONOR. YOUR HONOR, THIS IS
7 A MOTION TO RECONSIDER YOUR ORDER. YOUR ORDER -- LET'S
8 SEE...

9 **THE COURT:** I THINK IT WAS JANUARY 7---

10 **MR. WARNER:** JANUARY THE 9TH.

11 **THE COURT:** NINTH.

12 **MR. WARNER:** ---2009. WE RECEIVED THE -- THE ONLY COPY
13 WE RECEIVED WAS AN UNSIGNED COPY. YOUR HONOR, THE FIRST
14 GROUND WAS THAT THE COURT GRANTED THE RELIEF AFTER IMPROPERLY
15 REFUSING TO HEAR THE MOTION FOR RECUSAL AS A PART OF THE STAY
16 OF DISCOVERY WHEN THE RECUSAL MOTION SHOULD HAVE BEEN HEARD
17 PRIOR TO THE ISSUANCE OF ANY FURTHER ORDERS AND RULINGS.
18 FURTHER GROUNDS ARE THAT OVER THE LAST TWO YEARS WE BELIEVE
19 THIS ESTATE HAS LOST \$60 MILLION OR MORE.

20 **THE COURT:** WHAT DO YOU BASE THAT BELIEF ON?

21 **MR. WARNER:** THAT'S INFORMATION THAT WE RECEIVED FROM
22 INDIVIDUALS THAT HAVE PROVIDED US WITH WHAT'S BEEN PROVIDED
23 TO THE SPECIAL ADMINISTRATOR.

24 **THE COURT:** WELL, DO YOU WANT TO SHARE IT WITH THE
25 COURT?

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

COURT OF COMMON PLEAS

08-CP-02-1647;

07-CP-02-122

IN RE: ALL OF THE JAMES)

BROWN LITIGATED MATTERS)

SETTLING PARTIES ARE)

ATTEMPTING TO SETTLE)

TRANSCRIPT OF RECORD

MARCH 4 - 6, 2009
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQ.
LORI CHRISTMAN, ESQ.
ATTORNEYS FOR THE THE HEIRS

ROBERT N. ROSEN, ESQ.
DAVID L. MICHEL, ESQ.
S. ALAN MEDLIN, ESQ.
ATTORNEYS FOR THE TOMI RAE HYNIE BROWN

ADELE J. POPE, ESQ.
ROBERT L. BUCHANAN, JR., ESQ. (3/6/09)
SPECIAL ADMINISTRATORS

A. PETER SHAHID, JR., ESQ.
ATTORNEY FOR THE GUARDIAN AD LITEM

1352

1 GOING TO DO IT UNTIL A COURT TELLS ME NOT TO.

2 Q AND, SO, I TAKE THAT AS A YES?

3 A YEA, THAT WOULD BE A YES.

4 Q THANK YOU. MRS. POPE, YOU HAVE STATED IN AFFIDAVITS
5 AND IN PLEADINGS THAT THE ATTORNEY GENERAL IS ESSENTIALLY
6 GIVING AWAY \$50 MILLION. HOW DID YOU COME UP WITH THAT
7 NUMBER?

8 A WELL, THE WAY I CAME UP WITH IT, MR. MEDLIN, AND
9 WE'VE PREPARED SOME CHARTS FOR THE COURT. YOU KNOW, WE
10 CAN DO THEM HERE OR WE CAN DO THEM WHEN MY LAWYER CALLS
11 ME, BUT WHAT I'VE TRIED TO MAKE THE COURT UNDERSTAND
12 BECAUSE IT'S SO IMPORTANT TO MR. BROWN IS THAT THIS
13 SETTLEMENT TAKES AWAY FROM MR. BROWN'S INTENDED
14 BENEFICIARIES IN TWO SEPARATE VALID WILLS ABOUT -- OR MORE
15 THAN 51 PERCENT OF THE PIE AND THE PIE HAS GENERALLY AND
16 ROUGHLY BEEN DESCRIBED AS 100 MILLION.

17 NOW, IF I AM WRONG ABOUT THAT, THE PIE WILL REMAIN
18 PRETTY CLOSE.

19 Q THAT'S MY QUESTION. I'M SORRY TO INTERRUPT YOU, BUT
20 THAT'S MY QUESTION.

21 A PLEASE DON'T INTERRUPT ME. IF I COULD FINISH --

22 Q WELL, SURE, BUT --

23 THE COURT: NO, SIR. NOW, PLEASE. SHE'S NOT GOING
24 TO INTERRUPT YOU AND YOU'RE NOT GOING TO INTERRUPT HER.

25 MR. MEDLIN: I APOLOGIZE.

1 THE WITNESS: THE PIE, AGAIN, WE CAN LOOK AT IT AS
2 PERCENTAGES OR OTHERWISE. THE PIE WILL REMAIN THE SAME
3 WHETHER IT'S 85 MILLION OR 200 MILLION OR 150 MILLION OR
4 50 MILLION EXCEPT FOR ONE COMPONENT AND THAT WOULD BE WHAT
5 WOULD BE NECESSARY TO PAY OFF THE TIAA DEBT. OF COURSE,
6 IT WOULD BE A LARGER PERCENTAGE OF A SMALLER PIE AND A
7 SMALLER PERCENTAGE OF A LARGER PIE.

8 Q BUT IF I AM CORRECT YOU STATED UNDER OATH THEN
9 ESSENTIALLY THAT YOU BELIEVE THE ESTATE IS WORTH ABOUT
10 \$100 MILLION IF MR. JONES ON BEHALF OF THE ATTORNEY
11 GENERAL IS GIVING AWAY \$50 MILLION?

12 A I DON'T CHARACTERIZE IT AS MR. JONES GIVING AWAY. I
13 CHARACTERIZE IT AS A MISTAKE ON THE PART OF THE ATTORNEY
14 GENERAL TO CONSENT TO THIS AGREEMENT. I DO, BUT I'M NOT
15 ATTACKING MR. JONES, AND I'M CERTAINLY NOT ATTACKING THE
16 OFFICE OF THE ATTORNEY GENERAL FOR WHICH I HAVE HIGH
17 RESPECT.

18 THE COURT: MRS. POPE, LET ME ASK YOU A QUESTION.
19 ASSUME THE ESTATE IS 100 MILLION. ASSUME THAT TOMI RAE
20 BROWN WINS HER SUIT. HOW WOULD THAT AFFECT THE CHARITABLE
21 TRUST?

22 THE WITNESS: WELL...

23 THE COURT: ASSUME THOSE TWO TO BE CORRECT.

24 THE WITNESS: LET'S SEE. IF I COULD JUST SHOW YOU
25 THE LITTLE CHART I MADE.

1 A PUBLIC COURTROOM?

2 THE COURT: MA'AM, I DON'T SEE WHY NOT.

3 THE WITNESS: OKAY. IT WAS -- I'M SORRY. I DIDN'T
4 BRING THE RETURN -- ROUGHLY 86 MILLION.

5 Q IS THE ESTATE WORTH 86 MILLION OR 100 MILLION?

6 A WELL, AS AS YOU KNOW, MR. MEDLIN, THAT IS THE DATE OF
7 DEATH VALUE AND WE -- WITH SO LITTLE INFORMATION AND NO
8 HELP FROM ANY OF YOU GUYS OR ANYBODY ELSE WE -- AND NO
9 ABILITY TO FURTHER DELAY THE FILING OF THE RETURN WE MADE
10 A BEST GUESS THAT THE NET VALUE OF THE BIG BUNDLE OF
11 ASSETS WAS THAT. IN THE BIG BUNDLE OF ASSETS WE HAD TO
12 CONSIDER A LOT OF THINGS THAT WE JUST COULDN'T KNOW THE
13 ANSWER TO, AND AS YOU KNOW WE NOT ONLY HAD TO DO IT
14 KNOWING WHAT WE KNEW WHEN WE FILED THE RETURN, BUT WE HAD
15 TO MAKE IT RELATE BACK TO THE DATE OF DEATH, AND, SO, FOR
16 EXAMPLE, WHAT'S THE VALUE OF OUR CLAIM AGAINST MR. DALLAS,
17 CANNON, AND BRADLEY? WHAT IS -- WHAT, IF ANY, IS THE
18 VALUE OF THE TERMINATION RIGHTS OF HEIRS?

19 SO, THAT -- THE TOTAL OF ABOUT 86 MILLION -- ABOUT 84
20 OF WHICH WAS A BIG BUNDLE OF RIGHTS CONSISTING OF THE NET
21 VALUE OF THESE BUNDLES OF RIGHTS, THE COPYRIGHT STUFF, THE
22 ROYALTY STUFF, THE IMAGE STUFF, THE PERSONA STUFF, AND WE
23 DID THE BEST WE COULD ON THAT, AND I THINK BASED ON THE
24 MANY, MANY THINGS THAT WERE AVAILABLE TO US WE WERE
25 PROBABLY FAIRLY -- I MEAN, WE WERE ACCURATE. WE DID IT

1 UNDER PENALTIES OF PERJURY. WE WERE ACCURATE.

2 Q WHAT INFORMATION SINCE YOU REFERRED TO THIS A COUPLE
3 OF TIMES ABOUT VALUE DID YOU THINK THAT MRS. BROWN OR THE
4 BROWN CHILDREN WOULD HAVE? DO THEY THINK THEY HAD
5 APPRAISALS?

6 A WELL, I THOUGHT ALL OF HER GENIUS LAWYERS -- THE 11
7 OF YOU OVER THERE -- MIGHT HAVE SOMETHING TO ADD.

8 THE COURT: MRS. POPE, PLEASE. YOU KNOW, I KNOW
9 EVERYBODY HAS FEELINGS IN THIS CASE, BUT LET'S BE --
10 GENIUS LAWYERS? THAT'S NOT CALLED FOR.

11 THE WITNESS: I KNEW THAT THERE WERE VERY COMPETENT
12 ESTATE PLANNING AND TAX LAWYERS ON ALL SIDES, AND I SOUGHT
13 THE HELP FROM AS MANY OF THEM AS I COULD GET -- WE COULD
14 GET -- BUT I WAS DOING MOST OF THE ESTATE TAX STUFF.

15 Q SO, TO REFINE YOUR COMMENT YOU WERE LOOKING MORE TO
16 THE LAWYERS FOR HELP, BUT YOU DIDN'T UNDERSTAND THAT THE
17 BENEFICIARIES WOULD HAVE INFORMATION ABOUT THE VALUE?

18 A OH, NO, MR. MEDLIN, EXCEPT THAT AS YOU KNOW THE FIRST
19 THING WE DID WHEN WE GOT APPOINTED AND ONE OF THE
20 ESSENTIAL THINGS THAT WE HAD TO DO WAS TO FIND OUT IF
21 THERE HAD BEEN GIFTS, AND, OF COURSE, THE PEOPLE RATHER
22 THAN THE LAWYERS HAD A BETTER FEEL FOR THAT, AND AS YOU
23 RECALL THE VARIOUS PARTIES AND THE FORMER P.R. TRUSTEES
24 WERE ASKED TO AND DID PROVIDE GIFT AFFIDAVITS. SO, IN
25 THAT SENSE THEY DID HAVE INFORMATION TO ADD.

1 Q RIGHT, BUT OTHER THAN THAT YOU DIDN'T EXPECT THEM TO
2 HAVE APPRAISALS AS TO WHAT COPYRIGHTS MIGHT BE WORTH OR
3 THE BEECH ISLAND PROPERTY MIGHT BE WORTH OR NORMAL TYPE OF
4 THINGS THAT GO INTO VALUING AN ESTATE?

5 A WELL, ACTUALLY, FORLANDO WAS PART OF -- FORLANDO
6 BROWN WAS PART OF A TEAM ATTEMPTING TO FIND A PURCHASER
7 FOR THE ASSETS OF MR. BROWN'S ESTATE. SO, IN THAT SENSE
8 HE AND THE GRAHAM WINDSOR GROUP AS YOU'VE SEEN PUT
9 TOGETHER SOME FIGURES ABOUT WHAT THE ESTATE WAS WORTH, AND
10 WE CERTAINLY DID LOOK AT THAT, AND, SO, WE GOT THAT FROM A
11 BENEFICIARY -- FORLANDO BROWN -- AND HIS BUSINESS
12 PARTNERS.

13 Q SO, THAT INFORMATION YOU DID GET?

14 A OH, YES.

15 Q SO, THERE IS NO OTHER INFORMATION THAT YOU REALLY
16 THOUGHT THAT MR. LEVENSON'S CLIENTS HAD OR THAT MY CLIENT
17 HAD THAT WOULD GO TO THE VALUE OF THE ESTATE?

18 A LET ME -- WELL, I MEAN, I CAN'T SAY NOTHING BECAUSE
19 THERE HAVE BEEN NUMEROUS INTERVIEWS WITH COUNSEL FOR THE
20 VARIOUS PARTIES TALKING ABOUT WHAT THE ESTATE IS WORTH,
21 AND, SO, BUT OTHER THAN ANECDOTAL THINGS AND THE GRAHAM
22 WINDSOR GROUP'S WORK, I CAN'T RIGHT THIS MINUTE THINK OF
23 ANYTHING. IF I DO, I'LL LET YOU KNOW.

24 Q AND ANECDOTAL WOULD NOT BE THE SORT OF EVIDENCE THAT
25 THE I.R.S. TYPICALLY SMILES UPON?

1 A WELL, MR. MEDLIN, IN THIS UNUSUAL SITUATION SOMETIMES
2 ANECDOTAL IS THE BEST YOU CAN GET, AND WE TRIED TO EXPLAIN
3 THAT TO THE I.R.S. THAT WE WERE DOING THE BEST WE COULD
4 WITH WHAT WE COULD GET AT THAT TIME.

5 Q NOW, IF THE ESTATE RETURN -- THE TAX RETURN RETURNED
6 THE VALUE WITH 84 MILLION AND NOW IT'S 100 MILLION, HAS IT
7 GONE UP IN VALUE \$16 MILLION SINCE THE DATE OF DEATH?

8 A MR. MEDLIN, WE HAVE NOT BEEN ABLE TO DO ANY DUE
9 DILIGENCE ON THAT AND IF I COULD EXPLAIN. WE RECENTLY
10 ATTEMPTED TO DO SOME DUE DILIGENCE TO DETERMINE WHAT THE
11 VALUE IS, BUT WE WERE THWARTED BY MOTIONS FILED BY YOU --
12 YOUR CLIENTS. WE ARE TRYING NOW. WE DETERMINED THAT 2009
13 SHOULD BE THE YEAR OF DUE DILIGENCE.

14 Q SO, WHAT I AM WONDERING IS IF YOU DECIDED ON
15 SEPTEMBER 25, 2008 THAT THE ESTATE WAS WORTH APPROXIMATELY
16 84 MILLION, WHY WOULD YOU PUT IN THE AFFIDAVITS THAT IT'S
17 WORTH 100 MILLION A FEW MONTHS LATER?

18 A NO, NO, NO, NO. MR. MEDLIN, WE DECIDED ON SEPTEMBER
19 25 THAT THE VALUE AS OF MR. BROWN'S DEATH WHICH WAS
20 DECEMBER 25, 2006 WAS 80 -- THE NET VALUE CONSIDERING SOME
21 REALLY QUESTIONABLE VARIABLES WHICH WERE EVEN MORE
22 QUESTIONABLE ON DECEMBER 25, 2006 WAS 86 MILLION.

23 Q OKAY. AND SO --

24 A YES.

25 Q -- DO YOU THINK THAT THE VALUE HAS INCREASED FROM

1 DATE OF DEATH TO TODAY?

2 A AGAIN, BASED ON THE GRAHAM WINDSOR ISSUES, A LETTER
3 OF INTENT WE RECEIVED IN MARCH OF '08 SAYING 90 TO
4 100 MILLION FOR THE ROYALTIES, IMAGE, AND PERSONA -- YOU
5 KNOW, I CANNOT SAY WITH CERTAINTY. I THINK IT'S A VERY
6 IMPORTANT QUESTION. I DEFINITELY WOULDN'T REACH A
7 SETTLEMENT IF I DID NOT HAVE A BETTER HANDLE ON THAT.

8 Q SO --

9 THE COURT: HOW DO WE GET A BETTER HANDLE ON IT?

10 THE WITNESS: WELL, WE'RE TRYING THIS YEAR BY GIVING
11 A RIGHT OF FIRST OFFER WHICH IS A VERY, VERY GOOD TOOL FOR
12 DOING EXACTLY THAT, YOUR HONOR. A RIGHT OF FIRST REFUSAL
13 IS A VERY DAMAGING SORT OF THING TO ASSETS SUCH AS THE
14 ROYALTIES, IMAGE, AND PERSONA BECAUSE ESSENTIALLY NOBODY
15 IS GOING TO SPEND A LOT OF MONEY DOING THE DUE DILIGENCE
16 NECESSARY TO COME TO THIS DETERMINATION THAT YOU'VE TALKED
17 ABOUT IF THEY KNOW THEY'RE DOING IT TO SET A PRICE FOR
18 SOMEBODY ELSE. SO, A RIGHT OF FIRST REFUSAL IS DAMAGING
19 AND TERRIBLE TO AN ESTATE.

20 HOWEVER, A RIGHT OF FIRST OFFER WHICH WE PROPOSED TO
21 GIVE AND HAVE ASKED THE COURT'S PERMISSION TO GIVE HAS
22 EXACTLY THE OPPOSITE EFFECT. IT ALLOWS -- IT HAS ALL THE
23 GOOD COMPONENTS OF A RIGHT OF FIRST REFUSAL AND NONE OF
24 THE BAD COMPONENTS. IT ALLOWS A SERIOUS CONTENDER FOR THE
25 PURCHASE OF THESE VERY VALUABLE ASSETS TO COME IN AND

1 CONDUCT THE NECESSARY DUE DILIGENCE TO DETERMINE WHETHER
2 TO MAKE AN OFFER. WHEN THEY MAKE THAT OFFER AND IT GIVES
3 THEM -- AND THE BENEFIT TO THEM -- AND IN THIS CASE IT
4 WOULD HAVE BEEN THE GRAHAM WINDSOR GROUP -- IT WOULD HAVE
5 GIVEN THEM A SIX MONTHS PERIOD TO CONDUCT DUE DILIGENCE,
6 AND AS WE SAID IN OUR PROPOSAL IT WOULD HAVE HAVE ALSO
7 GIVEN US AN IN TANDEM DUE DILIGENCE PERIOD.

8 WE ARE WORKING WITH OUR COUNSEL AND WITH THE VERY
9 LIMITED ASSETS OF THE ESTATE TO BEGIN TO CONDUCT THE DUE
10 DILIGENCE TO DETERMINE WHETHER A SALE IS APPROPRIATE AND,
11 IF SO, WHAT THE PRICE WOULD BE AND 2009 WAS OUR YEAR TO DO
12 THAT. WE'VE ENGAGED A LAW STUDENT INTERN WHO HAS SOME
13 EXPERIENCE IN THE ENTERTAINMENT BUSINESS WHO IS HELPING US
14 WITH THE TECHNICAL PART OF THAT, AND OUR ENTERTAINMENT
15 LAWYER RAY GONZALES WITH THE VERY LIMITED FUNDS WE HAVE
16 HAS TRIED TO HELP US DO SOME OF THE BASIC GUIDANCE TO GET
17 READY FOR THAT, AND, SO, IF WE ALLOWED THIS OUTSIDE
18 PURCHASER, THE GRAHAM WINDSOR GROUP, TO COME IN AND IN
19 TANDEM WITH US BE DOING THE SAME SORT OF DUE DILIGENCE TO
20 DETERMINE IF THEY WANTED TO MAKE AN OFFER FOR THE
21 PURCHASE, THEN THE BEAUTY OF IT IS LET'S SAY WE GIVE THEM
22 THAT SIX-MONTH PERIOD. WE HAVE NOTHING TO LOSE. WE'RE
23 NOT GOING ANYWHERE.

24 SO, LET'S SAY AT THE END OF THE SIX MONTHS PERIOD OR
25 AT ANY POINT DURING THE PERIOD THEY MAKE AN OFFER AND

1 LET'S SAY THE OFFER IS 75 MILLION, THEN WHAT DO WE HAVE TO
2 DO? WHAT IS OUR OBLIGATION? OUR ONLY OBLIGATION UNDER
3 THAT OFFER IS NOT TO ACCEPT A LOWER OFFER WITHIN SIX
4 MONTHS. PERFECT. WE KNOW WE'VE GOT A 75 MILLION-DOLLAR
5 OFFER AND WE GOT IT IN HAND. WE CAN AFFORD TO FINISH
6 WHATEVER DUE DILIGENCE WE NEED TO DO SO WE CAN SAY TO THEM
7 ONE OF THREE THINGS: NO, WE GOT A BETTER OFFER; YES,
8 WE'LL TAKE YOUR OFFER; OR WHY DON'T WE KEEP NEGOTIATING?

9 IT IS A PERFECT SITUATION. IT DOES EXACTLY WHAT
10 MR. MEDLIN IS SUGGESTING THAT WE SHOULD DO WHICH IS FIND
11 OUT THE VALUE OF THESE ASSETS. WE COULD HAVE HAD IT DONE
12 BY AUGUST OF THIS YEAR, BUT WE WERE ACCUSED OF TRYING TO
13 SELL THE ESTATE WHEN WE ASKED THIS COURT TO APPROVE SUCH A
14 PROCEDURE.

15 Q IN OTHER WORDS, MRS. POPE, WE'RE NOT SURE WHAT THE
16 ESTATE IS WORTH. IT COULD BE 100 MILLION, 86 MILLION,
17 75 MILLION BECAUSE WE DON'T HAVE ANY APPRAISALS. WE DON'T
18 HAVE ANY CERTAINTY THAT YOU'VE SAID. SO, WHAT YOU REALLY
19 MEAN TO SAY -- NOT TO PUT WORDS IN YOUR MOUTH -- WHEN YOU
20 SAY THE ATTORNEY GENERAL IS MAKING A MISTAKE OR
21 TRANSFERRING \$50 MILLION, HE IS TRANSFERRING 50 PERCENT OF
22 WHATEVER THE VALUE OF THE ESTATE IS? THAT'S WHAT YOU MEAN
23 TO SAY, I THINK?

24 A NO, NO, IT'S MORE THAN 65 PERCENT WE BELIEVE.

25 Q OKAY. 65 PERCENT?

1 A AND WE BELIEVE THERE IS A SOUND, SOUND BASIS FOR
2 THINKING IT'S AROUND 100 MILLION. THE 90 MILLION -- 90 TO
3 100 MILLION-DOLLAR LETTER OF INTENT AND OTHER INFORMATION
4 LEAD US TO BELIEVE THAT THAT IS THE RANGE.

5 Q BUT YOU DID SAY YOU WEREN'T --

6 A WE WOULDN'T REACH A SETTLEMENT. NO, NO, NO. WE
7 COULD GET IT DONE. WE WOULD DO JUST WHAT WE ASKED THE
8 COURT TO APPROVE TWO WEEKS AGO.

9 Q AND, SO, MY QUESTION IS WHATEVER THE VALUE OF THE
10 ESTATE IS IS THE STARTING NUMBER AND THEN THE ATTORNEY
11 GENERAL IS TRANSFERRING AWAY IMPROPERLY WHATEVER PERCENT
12 YOU THINK HE'S TRANSFERRING AWAY OF THAT NUMBER?

13 A MR. MEDLIN, I AM NOT GOING TO ALLOW YOU TO
14 CHARACTERIZE MY RELATIONSHIP WITH THE ATTORNEY GENERAL.
15 WE HOPE THAT THE ATTORNEY GENERAL WILL UNDERSTAND THAT
16 THIS IS NOT IN THE BEST INTEREST OF MR. BROWN'S ESTATE.
17 WE WANT TO BE ON THE ATTORNEY GENERAL'S SIDE, AND I
18 REQUEST THAT YOU NOT MISCHARACTERIZE OUR RELATIONSHIP WITH
19 THE ATTORNEY GENERAL.

20 THE COURT: WHAT IS YOUR RELATIONSHIP? HOW ABOUT
21 THAT?

22 THE WITNESS: OUR RELATIONSHIP AT THIS POINT IS THAT
23 WE DO NOT BELIEVE THE SETTLEMENT IS APPROPRIATE, AND WE DO
24 NOT BELIEVE THERE WAS ADEQUATE DUE DILIGENCE, AND WE
25 SIMPLY BELIEVE THAT IT SHOULD NOT BE APPROVED -- THAT WE

STATE OF SOUTH CAROLINA
COUNTY OF: AIKEN
IN THE MATTER OF: JAMES BROWN

IN THE PROBATE COURT
INVENTORY AND APPRAISEMENT

CASE NUMBER: 2007-ES-02-0056

Filed: 11-15-2007

Sue H. Roe
Judge of Probate

By: K. Duffin

☒ ORIGINAL

☐ SUPPLEMENTAL #

11-15-2007
L. Ford
Clerk
5.30
Deputy Clerk

Personal Representative (s): ALBERT H. DALLAS, and ALFRED A. BRADLEY

Decedent's Social Security Number: 259-32-3801

Was there a will? ☒ YES ☐ NO

Decedent's Date of Death: December 25, 2006

Domicile at death:

Aiken

(county)

SC

(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed: that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to me this 15th day of
November 20 07

Stanley G. Jackson
Notary Public for South Carolina
My Commission Expires: _____

Signature: [Signature]

Name: Albert H. Dallas

Address: Post Office Box 115 Post Office Box 1150
Thomson, GA 30824

E-Mail: _____

Telephone (O): (706) 595-7170
(H): _____

Signature: [Signature]

Name: Alfred A. Bradley

Address: 1803 Green Pond RD
Aiken, SC 29803

E-Mail: usabell@bellsouth.net

Telephone (O): 803.848.4201
(H): (803) 852-8443

Attorney: Stanley G. Jackson

Address: 321 1/2 Newberry Street SW
Aiken, SC 29801

E-Mail: jacksonstanley@bellsouth.net

Telephone: 803.843.1003

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate	\$	\$
Schedule B - Stocks and Bonds		Unknown
Schedule C - Notes Due Decedent and Cash		James Brown Enterprises, Inc. will be determined by the Court as to whether it is a probate asset
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate		205,218.86
Part 2 - Payable to Beneficiary		138,506.13
Schedule E - Jointly Owned Property		NONE
Schedule F - Other Miscellaneous		NONE
Other Assets Payable to Estate	320,000.00	58,667,048.00
Schedule G - Transfers during Decedent's life	28,332,792.00	
Schedule H - Powers of Appointment		NONE
Schedule I - Annuities and Retirement Accounts		NONE
TOTAL GROSS VALUE	\$ 85,883,582.99	
ENCUMBRANCES	(0)	
TOTAL NET WORTH	\$ 85,883,582.99	

SCHEDULE F - Miscellaneous Personal Property - (tangible personal property, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.) (if none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

[illegible]**TOTAL SCHEDULE F**

(also enter under recapitulation, page 1)

\$ 58,687,048.00

NOTE: FOR SCHEDULES G, H, AND I. LIST VALUES ONLY IF PAYABLE TO ESTATE.

SCHEDULE G - Transfers During Decedent's Life - Transfers intended to take effect at death. United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, power to revoke or other incidents of ownership retained, life insurance transfers. Lifetime transfers of real property in which decedent retains a life estate or other incidents of ownership.

Did Decedent make any transfers during lifetime as described above?

☒ YES ☐ NO

If "yes" please give date and type of transfer, and list total amount payable to estate:
(If more space is required, insert additional sheet of same size.)

Decedent created an Irrevocable Trust Agreement dated August 1, 2000 and transferred title to his personal residence and approximately 60 acres of land (estimated date of death value of \$3,000,000.00) and all of his stock interest in James Brown Enterprises, Inc., the value of which is \$23,332,792. This was calculated by allocating \$50,000,000 of the \$100,000,000 offer for all the estate's assets to the royalty rights owned by James Brown LLC, deducting the \$15,000,000

bond indebtedness secured thereby, and multiplying the sum by 66.66512% (the ownership interest of James Brown Enterprises, Inc. in James Brown LLC). The net realizable value of James Brown Enterprises, Inc. upon the sale of its assets and liquidation to the trust will necessarily be less than the value above, since it is a C corporation for federal income tax purposes and obtained no step up in the inside basis of its assets for income tax purposes. These trust assets are includable in the deceased's taxable estate under IRC Section 2036 (a). The value of the persona and other tangible and intangible rights associated with James Brown, his image and likeness, is estimated to be \$50,000,000 and the other one half of the \$100,000,000 offer and is included in Schedule F, net of items listed elsewhere herein. The Schedule F amount may be determined by the Court to be owned by James Brown Enterprises, Inc., which is 100% owned by the Irrevocable Trust of August 1, 2000, and therefore not part of the probate estate. None of this value in Schedule G is payable to the estate, but is includible in the federal gross taxable estate before deductions.

Additional offers are expected for assets owned by the estate and the trust. It is anticipated that this Inventory and appraisal will be amended when these offers are received and considered, when appraisals are obtained, and further inquiries made into the circumstances surrounding the acquisition of JTWS property in Schedule E above.

TOTAL SCHEDULE G

(also enter amounts payable to estate under recapitulation, page 1)

\$ 26,332,792.00

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment - Property, both real and personal, over which Decedent possessed a Power of Appointment whether Testamentary or otherwise.

Did Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☒ NO

If "yes", please describe and list total amount payable to estate. \$
(If more space is required, insert additional sheets of same size.)

(also enter amounts payable to estate under recapitulation, page 1)

None

SCHEDULE I - Annuities and retirement (IRA's, 401(k), Etc.)

☐ YES ☒ NO

☐ YES ☐ NO

If "yes", please describe and list total amount payable to estate. \$ _____
(If more space is required, insert additional sheets of same size.)

TOTAL SCHEDULE I

(also enter amounts payable to estate under recapitulation, page 1)

\$ _____ None

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES - (e.g., mortgages, liens, judgments, etc., but not general debts of the estate) - List specific assets encumbered.

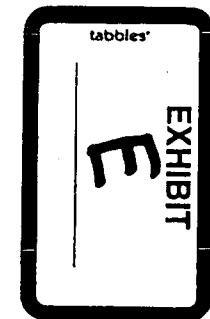
[illegible]

Developing the James Brown Legacy

*...transforming intellectual and real property into sustainable
high capital value*

Presented by:
Terry Bradford Cox, PH.D.
The Grahm Windsor Group
3340 Peachtree Road
Suite 1800
Atlanta, GA 30326

June, 2007



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James Brown Assets and Revenue ...Non-performing assets

Image/Likeness	Property	Music Catalogue
Value: \$40-50 MM (est.) To be determined At present there are no plans or infrastructure in place to produce revenues from image and music. World-wide market need to be developed. Minimal revenue	Value: 10-15 MM (est.) Intrinsic value added 7 thousand items have been catalogued, 25 thousand still to be catalogued. Items include: house, 40-60 unpublished songs, hand written notes memorabilia, costumes, body, etc No revenue.	Value: \$36-45 MM Industry is 12-15x Revenues 600 songs with little to no promotion. Present revenue pays interest and some principal on 1999 \$25MM bond deal Annual /Rev: \$3-5MM After debt. 0 revenue

Annual Revenues of Deceased Celebrities	
Kurt Cobain \$50MM	George Harrison \$7MM
Elvis Presley \$45 MM	Johnny Cash \$7MM
John Lennon \$22MM	Ray Charles \$6MM

The Need for a Creative Approach ...Unusual circumstances have created a situation that requires "outside the box" thinking to take advantage of the opportunity

"James Brown, the hardest working man in show business"

James Brown was an artist ...earnings supported his life style, not wealth creation

In 1999 bonds were sold on the catalogue for \$25MM, making it a non-performing asset

James Brown Enterprises			
Asset	Value	Activities	Revenue
JB/Image	50MM	Perform	3-5MM
Music	35-50MM	Publish, Catalogue	3-5MM
Property	3-5MM	None	0

Revenues came from performances and the royalties from the music catalogue

There was no infrastructure to promote and create revenues from image and music

Last Will

Irrevocable Trust Agreement

Personal and Household Effects to be equally divided between six children

Estate - Children			
Asset	Value	Activities	Revenue
JB/Image	0	None	0
Music	0	None	0
Property	3-5MM	None	0

Trusts - Grandchildren, IFG			
Asset	Value	Activities	Revenue
JB/Image	50MM	Minimal	500K
Music	35-50MM	Publish, Catalogue	3-5MM
Property	3-5MM	None	0

All intellectual and real property equally divided between the two trusts

Trustees have the authority to sell any or all of the property in the trusts

All Property

Cash

An agreed to percentage of profits will go to the two trusts

As part of the sales agreement, the trustees want options or a "kickback" on the IPO

The industry standard to determine value is 12-15 x revenues

Newco - A Public Company			
Asset	Value	Activities	Revenue
JB/Image	50MM	Plan	500K
Music	35-50MM	Plan	3-5MM
Property	3-5MM	Plan	0

Develop a brand strategy and infrastructure that will transforming non-performing assets

Trustees have the authority to sell any or all of the property in the trusts

Developing the James Brown Legacy ...a unique opportunity

- Invest in an opportunity to buy, in its entirety, James Brown's intellectual and real property before it goes on the market ...asking price \$100MM
- Start up a brand organization and develop a growth strategy that will transform the James Brown's image, music and property into performing assets
- Generate revenues of over \$50MM annually
- By transforming the non-performing assets into annual revenues of over \$50MM, the brand organization is now positioned for an IPO ...which provides flexible exit strategies for investors

THE JAMES BROWN LEGACY, INC.
683 GREENVIEW AVENUE, NE, ATLANTA, GEORGIA 30305

March 27, 2008

Ms. Adele J. Pope
1218 Taylor Street
PO Drawer 7125
Columbia, SC 29202
Adele @popelawfirm.com

Mr. Robert L. Buchanan, Jr.
212 Newberry Street NW
P.O. Box 463
Aiken, SC 29802-0463
rbuchananjr@bellsouth.net

Dear Ms. Pope and Mr. Buchanan:

We are pleased to submit this letter of intent on behalf of Terry Lee Brown, sole heir to the Estate of James Brown and The James Brown Legacy, Inc. and (hereinafter "TJBL") expressing our intent to purchase all of the assets James Brown Estate established by Mr. James Brown dated August 1, 2000 (the "Estate"), as defined by Christie's Estate Tax Appraisal of February 27, 2008. in its entirety. All of these assets will be collectively referred to as the "Assets."

Our intent is to purchase all of the Assets and keep them in providence to protect the legacy of James Brown. The Assets must be held as a unit instead of an auction strategy that breaks up the items and liquids them piecemeal. As you surely know, no matter the differences within the family, no one wants this approach as the remedy for their differences.

The purchase price for the Assets will be \$2 million. If a letter of credit is necessary, to demonstrate security of the funds, one will be provided. The purchase price assumes clear title to the Assets and that the sale will be on a debt-free and lien free basis. The purchase price will be all cash, paid at closing and financed by a private funding group that is our partner.

Our intent, upon receiving your agreement to this letter of intent, is to submit definitive written agreement for the purchase of the Assets (the "Definitive Agreement") that will include

- a. A closing date within 30 days following the signing of the purchase agreement.
- b. A letter of credit to support the offer.
- c. A condition that all material consents required to complete the proposed acquisition shall have been obtained prior to closing.
- d. Customary representations, warranties and covenants for this type of acquisition, including, but not limited to, organization and good standing,

- authority and enforceability, good title, no liens and encumbrances, condition of assets, licenses and compliance with laws, absences of adverse changes, material contracts, no undisclosed liabilities and financial statements.
- e. Customary indemnification against breach of warranties and existing liabilities.
 - f. An escrow fund of Two Hundred fifty Thousand Dollars (\$250,000) from the Purchase Price will be set aside for two years to provide security for the indemnification of TJBL any breaches of the seller's representations, warranties and obligations.

This letter agreement will remain in effect for 30 days after your acceptance below, unless earlier superseded by the definitive Agreement (the Term).

In consideration of the substantial resources that TJBL will be expending in connection with pursuing this proposed acquisition, from the time of the acceptance of this letter agreement until such time as this letter agreement has terminated (the "Exclusivity Period"), the Estate shall not and shall counsel each of their respective representatives, agents, advisors or affiliates (collectively, the "Seller Group") not to initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, any proposal or offer ("Acquisition Proposal") to acquire all or any significant part of the business or properties, capital stock or capital stock equivalents of the Estate or otherwise effect a change in control thereof, of any kind whatsoever, or provide any non-public information to any third party in connection with an Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Estate to abandon, terminate or fail to consummate the proposed acquisition, or otherwise encourage or facilitate any of the foregoing. The Estate shall immediately notify the TJBL if any member of the Seller Group receives during the term of this letter agreement any indications of interest, requests for information or offers in respect of an Acquisition Proposal. The Estate represent and warrant that no member of the Seller Group is party to or bound by any agreement with respect to an Acquisition Proposal other than under this letter agreement.

This letter of intent shall not create any binding obligation on the part of any of the parties hereto to enter into the Definitive Agreement or to effect the proposed acquisition or any other transaction regarding the Assets, the Estate, nor shall this letter agreement create any other binding obligation except for the Term and Exclusivity Period above and the Governing Law and the Expiration Date set forth below. Such provisions will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. A binding agreement with respect to the proposed acquisition will result only from the execution of the Definitive Agreement and will be entirely subject to the terms and conditions contained therein.

This letter agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of South Carolina without giving effect to any choice of law rules that may require the application of the laws of any other jurisdiction (the "Governing Law").

This letter of intent will expire at 5:00 p.m., Eastern Time, on April 1, 2008, unless sooner accepted below (the "Expiration Date").

Based upon our experience, we are confident in our ability to structure a mutually beneficial transaction in a professional and timely manner. If you have any questions

regarding our interest, please feel free to contact me. Thank you for your consideration of our interest in this transaction.

Very truly yours,

TERRY LEE BROWN

THE JAMES BROWN LEGACY, INC.

By: _____
Terry Bradford Cox

AGREED AND ACCEPTED
_____, 2008

THE ESTATE OF JAMES BROWN

By: _____

THE IRREVOCABLE TRUST OF JAMES BROWN,
dated August 1, 2000

By: _____

CC: David B. Bell, Esq.
James Bailey, Esq.
John Sparks, Esq.
Steve A. Matthews, Esq.

THE JAMES BROWN LEGACY, INC.
683 GREENVIEW AVENUE, NE, ATLANTA, GEORGIA 30305

March 27, 2008

Ms. Adele J. Pope
1218 Taylor Street
PO Drawer 7125
Columbia, SC 29202
Adele @popelawfirm.com

Mr. Robert L. Buchanan, Jr.
212 Newberry Street NW
P.O. Box 463
Aiken, SC 29802-0463
rbuchananjr@bellsouth.net

Dear Ms. Pope and Mr. Buchanan:

We are pleased to submit this letter of intent on behalf of The James Brown Legacy, Inc. (hereinafter "TJBL") expressing our intent to purchase all of the assets of the irrevocable trust established by Mr. James Brown dated August 1, 2000 (the "Trust"), in its entirety, including, without limitation, James Brown Enterprises, Inc that is owned by the Trust. All of these assets will be collectively referred to as the "Assets."

Our intent is to purchase all of the Assets because we believe that to obtain maximum value for the Assets so that the legacy of James Brown and his noble wishes as setout in the Trust can be fulfilled, the Assets must be sold as a unit instead of breaking up the items and liquidating them piecemeal. As you surely know, merely selling the items individually will do nothing to perpetuate the good works of James Brown.

The purchase price for the Assets will be between \$90,000,000 and \$100,000,000 plus a continuing payment equal to five percent of the gross profits that we generate from licensing those Assets that can be licensed, all depending on the outcome of our due diligence described below. The purchase price assumes clear title to the Assets and that the sale will be on a debt-free and lien free basis. The purchase price will be all cash, paid at closing and financed by a private funding group that is our partner.

Our intent, upon receiving your agreement to this letter of intent, will be to conduct an in depth due diligence of the Assets and simultaneously develop a strategic plan and infrastructure that will build and promote the legacy of James Brown. We intend to work and partner with government agencies and educational institutions to turn James Brown's home into an experiential setting commiserate with the stated intentions of the I Feel Good Trust. We also envision plans that will include the establishment of the James Brown Museum. The purpose of this museum will be to tell the story of how James Brown persevered against all odds: a true "Horatio Alger" story. We will also work and partner with other interested parties within the strategic plan to maximize the brand equity and performance of the Assets

over time. We believe that this approach, coupled with the right structured sales agreement, will provide the most value for all interested parties.

We anticipate we will need a period of 90 days for due diligence, if all required information and people who have had influence on the assets are available (the "Due Diligence Period"). Our due diligence will focus on a review of all of the Assets, including, but not limited to, a legal review of all intellectual property and rights, all contracts and agreements, all litigation and an accounting review of the financial statements of JBE for the last 3 complete fiscal years.

At the end of the Due Diligence Period, we anticipate submitting a definitive written agreement for the purchase of the Assets (the "Definitive Agreement") that will include

- a. A deposit payment of \$5 million to be credited toward the purchase price at the closing.
- b. A closing date within 30 days following the signing of the purchase agreement.
- c. A condition that all material consents required to complete the proposed acquisition shall have been obtained prior to closing.
- d. Customary representations, warranties and covenants for this type of acquisition, including, but not limited to, organization and good standing, authority and enforceability, good title, no liens and encumbrances, condition of assets, licenses and compliance with laws, absences of adverse changes, material contracts, no undisclosed liabilities and financial statements.
- e. Customary indemnification against breach of warranties and existing liabilities.
- f. An escrow fund of Five Million Dollars (\$5,000,000) from the Purchase Price will be set aside for two years to provide security for the indemnification of TJBL any breaches of the seller's representations, warranties and obligations.

To help provide resources to protect the Assets and get the Estate and/or Trust some cash sooner rather than later, we are willing to manage the Trust assets during the Due Diligence Period. If you will allow this, TJBL will need an agreement and your full support to determine marketability of assets and enter into arrangements to secure cash infusions.

This letter agreement will remain in effect for 120 days after your acceptance below, unless earlier superseded by the definitive Agreement (the Term).

In consideration of the substantial resources that TJBL will be expending in connection with pursuing this proposed acquisition, from the time of the acceptance of this letter agreement until such time as this letter agreement has terminated (the "Exclusivity Period"), the Trust shall not and shall counsel each of their respective representatives, agents, advisors or affiliates (collectively, the "Seller Group") not to initiate, solicit, entertain, negotiate, accept or discuss, directly or indirectly, any proposal or offer ("Acquisition Proposal") to acquire all or any significant part of the business or properties, capital stock or capital stock equivalents of the Trust or otherwise effect a change in control thereof, of any kind whatsoever, or provide any non-public information to any third party in connection with an Acquisition Proposal or enter into any agreement, arrangement or understanding requiring the Trust to abandon, terminate or fail to consummate the proposed acquisition, or otherwise encourage or facilitate any of the foregoing. The Trust shall immediately notify the TJBL if any member of the Seller Group receives during the term of this letter agreement any

indications of interest, requests for information or offers in respect of an Acquisition Proposal. The Trust represent and warrant that no member of the Seller Group is party to or bound by any agreement with respect to an Acquisition Proposal other than under this letter agreement.

This letter of intent shall not create any binding obligation on the part of any of the parties hereto to enter into the Definitive Agreement or to effect the proposed acquisition or any other transaction regarding the Assets, the Trust, nor shall this letter agreement create any other binding obligation except for the Term and Exclusivity Period provisions above and the Governing Law and the Expiration Date set forth below. Such provisions will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. A binding agreement with respect to the proposed acquisition will result only from the execution of the Definitive Agreement and will be entirely subject to the terms and conditions contained therein.

This letter agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of South Carolina without giving effect to any choice of law rules that may require the application of the laws of any other jurisdiction (the "Governing Law").

This letter of intent will expire at 5:00 p.m., Eastern Time, on April 1, 2008, unless sooner accepted below (the "Expiration Date").

Based upon our experience, we are confident in our ability to structure a mutually beneficial transaction in a professional and timely manner. If you have any questions regarding our interest, please feel free to contact me. Thank you for your consideration of our interest in this transaction.

Very truly yours,

THE JAMES BROWN LEGACY, INC.

By: _____
Terry Bradford Cox

AGREED AND ACCEPTED
_____, 2008

THE ESTATE OF JAMES BROWN

By: _____

THE IRREVOCABLE TRUST OF JAMES BROWN,
dated August 1, 2000

By: _____

CC: C. H. Jones, Jr., Esq.
Bill Shearer, Esq.
William V. Custer, Esq.
Jennifer Dempsey, Esq.
David B. Bell, Esq.
James Bailey, Esq.
Steve A. Matthews, Esq.
John Sparks, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

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

) AFFIDAVIT OF BUCHANAN
) AND POPE IN SUPPORT OF
) DISMISSAL BASED ON
) STATUTES OF LIMITATION

2010 SEP 28 PM 1:21

PERSONALLY APPEARED BEFORE ME, Robert L. Buchanan, and Adele J. Pope
(Pope), who, being duly sworn, depose and say:

1. This affidavit is truthful based on our personal knowledge related to or arising out of our service as Special Administrators of the Estate of James Brown (SAs), Personal Representatives of the Estate of James Brown (PRs) and/or Trustees of the James Brown 2000 Irrevocable Trust (Trustees).

2. The information contained in this affidavit is submitted solely for the purpose of establishing what the Plaintiffs knew or reasonably should have known (and were obligated to investigate further), and when they knew or reasonably should have known (and were obligated to investigate further) the information. By including the information, Buchanan and Pope do not adopt, endorse or accept any portion of the information that consists of accusations made against them by others and reserve the right to dispute or contest such accusations.

3. For purposes of considering dismissal of this case under statutes of limitations (and on other relevant grounds), we ask the Court, in addition to considering the matters herein averred, to take judicial notice of Plaintiffs' admissions and other facts contained within the record of pending and decided James Brown cases, including those in the Aiken County probate and circuit courts, the S. C. District Court, and the S. C. Court of Appeals and Supreme Court.¹

4. Attached to this affidavit are excerpts from the more than 3,000 pages of transcripts of at least 20 hearings, the more than 350 filings in the James Brown cases, and documents provided by Plaintiffs and their more than 20 attorney/agents, including attorneys Louis Levenson, David Bell, Powell Goldstein ("PG")³, David Yount, Alan Medlin and Robert Rosen. An index of attachments briefly describes them.

5. Emphasis has been supplied and some documents enlarged for ease of review.

I. Prior to November 20, 2007

6. All Plaintiffs except Bauknight, who, to the best of our knowledge, was not involved at the time, had access to our books and records, as well as all historical records of James Brown and his entities by Court order and our agreement as early as August 10, 2007. AG McMaster audited our records in late 2007 and early 2008. Assistant AG

¹ Records of which the court is asked to take judicial notice are the Aiken County Clerk of Court /real estate records, the Estate of James Brown, Probate File No. 2007-ES-02-0056, the transcripts of the hearings, orders and decisions in Circuit Court Case Nos. 2007-CP-02-0122 ("Case 122"), 2008-CP-02-322 ("Case 322"), 2008-CP-02-0872 ("Case 872"), 2008-CP-02-1647 ("Case 1647"), 2009-CP-02-1810 ("Case 1810"), the James Brown Estate claims cases, the appeals from Case 122 (the "Cannon Appeal", "Dallas Appeal," and "Case 1647/1810 Appeal"), as well as S. C. District Court Case 3:08-cv-00014-WOB.

³ Including attorneys William Shearer, Jennifer Dempsey, Frank McGaughey, and William Custer

Jowers was invited to our weekly meetings beginning in November 2007, and attended several.

II. Knowledge of all Interested Persons as of November 20, 2007

7. The record shows that all Interested Persons in the Estate/2000 Trust had the following knowledge by the end of the day on November 20, 2007:

a. James Brown was one of South Carolina's most famous and generous citizens. [Ex. 1]

b. It was an often stated and well-known desire of James Brown to provide financial assistance to education, especially for needy and deserving students. [Ex.2]

c. Plaintiff Deanna Brown Thomas and former PR/Trustee David Cannon, under James Brown's Power of Attorney ("POA"), had obtained Brown's attorney's estate planning file. All were aware of the PR/Trustees' duty to enforce the *In Terrorem* clauses, as was Tommie Rae, who witnessed one of the 2000 estate planning documents. [Will; Trust]

d. James Brown intentionally excluded his children and all past and future spouses, from his music empire. *In Terrorem* forfeiture clauses required his PR/Trustees to resist all attacks on his estate plan as an affront to his wishes. [Will; Trust]

e. James Brown's Will acknowledged only 6⁴ of a possible dozen or more children. The 6 received nothing in the 2000 Trust. The 6 received only James Brown's personal effects in his Will, subject to the *In Terrorem* forfeiture clauses. [Will/2000 Trust]

f. No Plaintiffs had challenged James Brown's estate plan, which was known to family and had been funded and in open existence and the 2000 Trust a matter of public record in two states for more than 7 years. [Ex. 3]

g. Plaintiff Deanna J. Brown Thomas was a co-fiduciary with David Cannon, Albert Dallas and Alfred Bradley under Mr. Brown's Power of Attorney for 7 years before Mr. Brown's death. [Ex. 4]

⁴ Brown's Will acknowledged Deanna, Yamma, Terry, Larry, Venisha and Daryl. His first divorce decree also acknowledged Teddy (now deceased) and Lisa. Various others heir status. Cinnamon, Jeanette and La Rhonda passed official DNA tests established by Trust/Estate attorney Peeples, Lewis & Babcock.

h. On December 26, 2006, the day after James Brown died, Atlanta law firm Greenberg Traurig ("GT") formed the James Brown Music Education Foundation, naming Plaintiff Yamma N. Brown and Deanna Brown Thomas as two of its board members. Its website remained up in October 2007. [See Order dtd. 4/8/08; Ex. 5]

i. After James Brown died, Plaintiff Deanna J. Brown Thomas became a trustee with Dallas and Cannon, and Plaintiff Yamma N. Brown an executive/assistant of the James Brown 2000 Trust, and the two of them gained access to the Brown's home estate, owned by the 2000 Trust. They abandoned the positions in January 2007. [Ex. 6, 7]

j. In January 2007 the six acknowledged children, together with grandchildren Forlando and Romunzo Brown (Terry's children), hired Atlanta attorney Levenson and began plans to take control of Brown's assets in violation of the estate plan. [Interrog., Depos. F. Brown, Ex. 8, 9]

k. Levenson requested that then-attorneys for the Estate/2000 Trust Strom Thurmond and others not file Brown's Will, but Thurmond complied with S. C. law and filed it on January 18, 2007. [See Tr. Hg. 2/09/07, p. 52]

l. On January 24, 2007, Levenson filed Case 122, seeking removal and an accounting of Dallas and Cannon as PR/Trustees. Levenson's clients, the 6 children acknowledged in Brown's Will, asserted standing under the Will and 2 adult grandchildren clients, Forlando and Romunzo, asserted standing under the 2000 Trust, as did Yamma, Daryl and Deanna for their minor children. [Affidavits, Y. Lumar, D. Brown, D. Thomas, Ex. 10]

m. In Court filings Levenson acknowledged the validity the 2000 Trust for purposes of Case 122. [Tr. Hg. 2/09/07 p. 18]

n. By February 2007 Terry Cox (the Gramh Windsor Group) was working with Levenson's clients and Plaintiff Yamma N. Brown's husband to raise \$200 million to acquire Brown's assets, partnering with Pinnacle Music and Entertainment, LLC, with Plaintiff Yamma N. Brown (a/k/a Dr. Lumar) serving as president. [Ex. 11]

o. On February 9, 2007, Hynie Brown's attorney expressed concern that Brown had "made a fortune" which could be worth \$100 million; and that there was fear that the Dallas Group would try to sell the James Brown assets for \$20 million [Tr. Hg. 2/9/07, pp. 44, 48]

p. James Brown's family, his fiduciaries, and their attorneys rejected all of Tommie Rae's claims, based on James Brown's death certificate; Mr. Brown's intentional disinheritance of her; her prenuptial agreement in 2001; the fact that she concealed her extant marriage when she obtained a license and conducted a marriage

ceremony with Mr. Brown in December 2001; and her agreement, made part of a 2004 Aiken County Order, never to claim to be Brown's common law spouse. [See, for example Mot. Dismiss, Cannon, dtd. 11/25/08, w/ exhibits]

q. With full knowledge of the 2000 Trust and Brown's assets, Tommie Rae waived any right to Brown's property at his death, including any rights to claim to be an heir under the Will, the 2000 Trust and the Federal Copyright Act. [Ex. 12]

r. By May 2007 Terry Brown and his sons Romunzo and Forlando (a/k/a William, a/k/a "Flip") Brown had fired Levenson. Cox and the Machine Group (Alvin and Calvin Waters) were working with Forlando to present to Dallas a proposal to enhance the Brown assets. Dallas wanted a sale. [Tr. Hg. 11/20/07, pp. 439 -454, Ex. 13]

s. By June 2007 Forlando Brown and Cox, Dallas and Alvin/Calvin were working on a proposed \$100 million sale of the Brown assets. [See Hg. 11/20/07, pp 439-454]

t. By June 15, 2007, Estate/2000 Trust attorney Bill Hammond insisted the 2000 Trust required a sale of Brown's royalties and that Buchanan/Pope, although not fiduciaries, would breach their fiduciary duty if they did not approve a sale by Dallas and Cannon. [Ex. 14]

u. On July 10, 2007, PG sent Dallas and Cannon documents to move the 2000 Trust to Georgia. [PG later became attorneys for Forlando, Terry Brown, and the Cox investor group, but has refused, despite court order, to deliver their file.] [Ex. 15]

v. On July 17, 2007, Buchanan/Pope discovered \$900,000 taken from Brown's 2006 royalties. [Cannon decision, Ct. Appeals] and in August Cannon wired \$866,000 to Honduras to complete a turnkey retirement home. [Tr. Hg. 11/15/07, pp. 77-83]

w. In September the Dallas Group filed about \$16 million of claims against the Estate. [See Order dtd. 4/8/08]

x. In September 2007 AG McMaster and the Georgia AG appeared in Case 122. An order filed October 11, 2007 (with Buchanan and Pope's consent) admitted them to Case 122. The AG s had total access to Brown's files and the Estate/Trust files from then until May 26, 2009. [Orders dtd. 10/11/07 & 8/10/08]

y. On October 12, 2007. Cox, without disclosing his various relationships, made an offer (letter of intent) on behalf of the James Brown Legacy, Inc., "a corporation to be formed" to purchase the James Brown assets for \$100 million. [Ex. 16]

z. In November 2007 Levenson advised the Court and all Plaintiffs except for Bauknight of James Brown's almost \$18 million road revenues for the years 2003 - 2006. [Ex. 17]

aa. By November 2007 Brown's \$3+ million 2006 royalties, after adding back the \$900,000 taken by Cannon were known. [Ex. 18, Cannon Decision]

ab. On November 15, 2007, seeking Court approval, Buchanan/Pope presented to the Court and Interested Persons, including all Plaintiffs except Bauknight, a detailed proposal to value the Publicity Rights/Royalties for the Estate Tax Return, without appraisal, at 12 ½ - 14 times average Royalties plus ½ of the 2006 road revenue. [Exhibit 19, Ret. Recom. of SA s; Tr. Hg. Dtd. 11/15 /07, pp. 304 - 310]

ac. By November 20, 2007. it was known that the Dallas Group, Greenberg Traurig ("GT"), Intrigue, Pullman, Bobbit and others were claiming at least 45% of the \$100 million sale, based largely on an October 18- 20, 2006 letter from GT disclosed to the Court and to all Plaintiffs except Bauknight and AG McMaster by Levenson in February 2007. [Tr. Hg. 2/9/07, p. 46]

ad. By November 20, 2007, Dallas, by then wholly discredited, resigned, following Cannon. Cannon claimed 5th amendment rights from November 15 forward. \$7+ million was missing since 1999 when the 2 actively served as POAs and Trustees. [Orders dtd. 3/7 & 4/8/08; Cannon decision]

ae. On November 20, 2007 the same day, Cox spoke under oath about the \$100 million offer, and Dallas said he was expecting an additional proposal by the end of the year, if not earlier. Calvin and Alvin were brought by Levenson as witnesses to the \$100 million deal, which included Terry Brown's son, Forlando – also known as "Flip" and William. [Tr. Hg. 11/20/07, pp. 439-454]

af. At the November 20, 2007 hearing, any persons, including all Plaintiffs who appeared individually or through counsel except for Bauknight, who did not approve the method of reporting to the IRS, without appraisal, of the Publicity Rights and Royalties, as proposed by Buchanan/Pope on November 15, 2007, were directed by the Court to make objection. None were made. [Tr. Hg. 11/20/07, pp. 304 0310]

II. Knowledge of all Interested Persons acquired on or before May 18, 2008.

10. The record shows that in addition to the above knowledge, by May 18, 2008 all Interested Persons in the 2000 Trust and Estate of James Brown had acquired the following knowledge:

- a. A detailed Inventory & Appraisement ("I&A") filed by Dallas under oath on November 15, 2007, showed assets in the 2000 Trust at Brown's death, with retained rights, at \$26,332,792.00 and assets in the Estate at 58,667,048.00 [Exhibit 20, I&A; Tr. Hg. 11/15/07, p. 149]
- b. Bill Hammond's report to AG Jones stated that the Brown assets were worth \$80 - \$120 million, with about \$20 million in the 2000 Trust.
- c. On November 21, 2007 AG Jones asserted Buchanan/Pope's service as both Trustees and PRs was improper and raised possible ethical problems.
- d. Between November 30, 2007 and January 4, 2008 the AG s of Georgia and S.C. filed numerous documents accusing Buchanan/Pope of impropriety, while Dallas and joint-venturer Forlando filed similar documents accusing Buchanan and Pope, and also accusing Judge Early. PG helped with Dallas' motion to recuse Jg. Early.
- e. On December 14, 2007 AG Jones and the Georgia AG filed documents asserting the actions of Buchanan and Pope went "far past the stop sign of conflict of interest." [Mot. AG s Alter/Amend, 59(e), p. 3.]
- f. On December 21, 2007 the Georgia AG asserted in a hearing in Case 122 that Pope had adopted the position of Levenson "who seeks to destroy the charitable trust"; that Pope's "interests are adverse to the interests of the charitable beneficiary"; and that "there are serious issues of breach of fiduciary duty related to Adele Pope and Bob Buchanan." [Tr. Hg. 12/21/07, p. 24, Ex. 21]
- g. On December 21, AG Lewis, under AG McMaster, opposed our right to select counsel to recover losses caused by Cannon and others, asserting we should not control the litigation because "one of the greatest breaches of all may be the breach of Adele Pope and Bob Buchanan." [Tr., Hg. 12/21/07, pp. 24, 25.]
- h. On December 21, 2007 AG Lewis also opposed our filed, detailed request for fees as SA s and prospective payments towards our PR/Trustees' commissions, specifically pointing out details to which she objected.⁵ [Tr. Hg. 12/21/07, p. 64]

⁵ By contrast, Tommie Rae's attorney stated "[w]e would certainly take the position at the appropriate time, Mr. Buchanan and Ms. Pope have provided extraordinary services as compared to the usual estate administration....". He also said "[w]e don't think the Attorney General from

i. At the December 21, 2007 hearing the Court was informed of Tommie Rae's newly filed challenges to the 2000 Trust. [Tr. Hg.12/21/07, p. 58]. Challenges from the Levenson clients followed. By January 6, we made clear our intention to vigorously defend Brown's estate plan as directed by Brown's documents.⁶

j. At a January 4, 2008 hearing in Case 122, the Court and all Interested Parties were advised of a 43-page complaint filed in Federal Court against Buchanan and Pope. Levenson advised that Count one seeks removal and Court Two seeks injunctive relief to us from proceeding, and that "its got about 120 paragraphs of factual statements." [Tr. Hg. 1/4/08, p. 64, 69.]

k. By motion and affidavit dtd. January 4 - 6, 2009 Pope advised "one of our primary acts as SA s ...was preventing an imprudent sale of Mr. Brown's assets.." We asked the Court to schedule a full hearing "to determine that what Mr. Buchanan and I have done as SA s and...as [PR/Trustees] is proper. [Mot. Dtd. 1.4.08; Ex.22]

l. By January 7, 2008 Forlando, represented by counsel for himself and Terry in State Court, along with Dallas/Bradley counsel PG, amended his federal complaint to seek damages, personally, against us for conversion and other alleged impropriety. [Exhibit 23]

m. Br order dated January 8, 2008 Judge Early made detailed findings and awarded us \$317,000.00 SA fees, plus costs, plus "continuing payment on a 'time plus costs' basis for themselves and their staff [for work from November 21]. ... This shall be a deposit toward, and without prejudice to, their full commissions as [PR/Trustees]." Legal interest applied to amounts unpaid after 60 days. [Exhibit 24, Order dtd. 1/8/08]

o. At the January 9 hearing, AG Jones advised of his knowledge of the federal lawsuit by saying "when the federal lawsuit was filed . . . the pleadings were very similar to the ones that we presented ... I'd like to state for the record in direction of my office and Attorney General that our matter is before your Honor. . . We took no part in that participation." [Tr. Hg. 1/9/08, pp. 72,73]

p. On February 7, 2008 AG McMaster appeared on WIS television program with Forlando to assert that actions of Buchanan/ Pope "went far past the stop sign of conflict of interest."

Georgia has a stake in any of these matters... This a South Carolina trust," [Tr., Hg. 12/21/07, pp. 58,61]

⁶ On November 28 Buchanan/Pope filed pleadings asserting no probable cause existed to challenge either the 2000 Trust or the Will. [Compl. DJ, 11/28/07]

q. On February 29, 2008 "The James Brown Legacy, Inc." of which Forlando was part owner, and from which Dallas and Cannon sought options or a "kickback", sent a letter of intent to purchase the assets of the 2000 Trust for \$90 - \$100 million. It was not accepted. [Exhibit 25]

r. On March 25, 2008 Buchanan's affidavit attached our Application for Estate Tax Extension filed March 24 with the IRS, and fully disclosed our position that the estimated value of Brown's "Royalties, image, persona, publicity rights, and all rights associated w/ unpublished songs" was about \$80 million. [Exhibit 26]

s. On March 26, 2008 Cox, Terry Brown sent 2 \$92- \$102 million letters of intent to purchase Estate/2000 Trust assets [Exhibit 27]. We notified the Court and parties of our rejection of these offers.

t. By April 22, 2008 emails generated by terminated attorney Hammond and Dallas and Cannon's own testimony demonstrated the fraud under §62-1-106 of Dallas and Cannon, as was found in the April 8 order; that both lied about not engaging PG; that both were working with PG to prevent the delivery of the PG file; and that both, with Hammond, had extensive contacts with AG Jones.

11. On information and belief, the information to meet the requests of the investigations of the AG s of two states, and those of PG, Forlando and the former PR/Trustees, with copies for all Plaintiffs, constituted a complete report of our actions and the existence of any supposed complaint before May 18, 2008.

III. Knowledge of Plaintiffs, other Interested Persons Before May 18, 2009

12. The record shows that in addition to the above knowledge, before May 18, 2009 all Plaintiffs and other Interested Persons in the 2000 Trust and Estate of James Brown had acquired the following knowledge:

a. Beginning March 2008 Buchanan and Pope respectfully and repeatedly notified AG McMaster of their positions, making him fully aware, with all Interested Persons, of their positions and actions. [See for examples, Ex. 28, 29, 30, 31, and 32]

b. In September 2008 Buchanan and Pope gave lengthy depositions in the Forlando Federal Court case, and in November were questioned, with Plaintiff

Terry present and his attorney Bell questioning Defendants. [Tr. Hg. 11/18/08]

c. On September 25, 2008 we filed the Estate Tax Return. Consistent with the earlier filings, the amount passing to The James Brown "I Feel Good" Trust was shown as approximately \$83 million.

d. On information and belief, by August 10, 2008, Bauknight had been selected by the AG and those attending the secret mediation, and obtained knowledge of all matters known to Plaintiffs. [Exhibit 33]

e. By September 2008 we made clear that the AG and Settling parties, who had generated estate taxes which under James Brown's estate plan were not required to be paid by the Estate/2000 Trust, should work on both the tax issues and the Royalty and Publicity Rights development. [See Ex. 34 and 35]

f. The Amended Complaint dated November 7, 2008 [Exhibit 36] and our charts produced in February 2009 [Exhibit 37] confirm that Plaintiffs had detailed knowledge of all of our actions by early March 2009. The Amended Complaint even accused us of acts previously approved by Court Orders. [See, for example, Ex. 38]

g. By March 2009 we had made it clear that we believed it violated our fiduciary duty to sign the settlement agreement which made a knowingly incorrect determination of the heirs of James Brown, damaging the Estate/Trust's copyright rights, and required us not to complain of AG McMaster, a public official, or what he had done. [Ex. 40]

13. We are informed and believe that this action was filed more than one year after Plaintiffs received a full report, with details, of all of our actions, including those raised in the complaint.

14. On information and belief, we were relieved by the Court of Appeals of any liability for mismanagement of the 2000 Trust and Estate after May 26, 2009, which liability rests on Russell Bauknight pending the outcome of the appeal of our replacement by him.

[Exhibit 41]

IV. August 2010 Assertion to Supreme Court regarding Value of Assets

15. In August 2010, AG Jones, for the first time, predicted that Plaintiff Bauknight

would shortly produce an appraisal showing the James Brown assets were worth only \$12 million at Brown's death.

16. This revelation is inconsistent with our testimony through March 2009, the representations of Plaintiffs, and the statements of the more than 30 attorneys who have represented Plaintiffs, the Estate/2000 Trust and the former fiduciaries since Brown's death.⁷ The lowest value of Mr. Brown's assets at a time near his death which we recall hearing was in an email from counsel for Tommie Rae which we accidentally received; considered unreliable; and disregarded until it was mentioned by counsel for Tommie Rae in the Case 1647 hearings. [Ex. 42]

17. If Brown's assets were worth \$12 million, unrecouped expenses \$2.5 million, and personal effects \$1.5 million, Brown's Estate Plan would give the "I Feel Good" private foundation about half of Brown's assets, as follows:

Total value of Assets:	\$12,000,000.00	
Expenses	(2,500,000.00)	
Pers. Eff., Est. Taxes	<u>(1,500,000.00)</u>	
2000 Trust for division:	\$ 8,000,000.00	
Grandchildren's Education	\$ 2,000,000.00	(7 @ \$285,000.00 +/-)
"I Feel Good " Foundation	\$6,000,000.00	

⁷ Attorneys who represent or have represented one or more Plaintiffs and/or the former fiduciaries include (1) Strom Thurmond, (2) David Miller, (3) Rodney Peebles, (4) Cam Lewis, (5) Keith Babcock, (6) Jonathan Harling, (7) Arial King, (8) Bill Hammond (9) Bill Tucker (10) Stan Jackson (11) Wayne Byrd, (12) Havird Jones, (13) Mary F. Jowers, (14) JC Nicholson, (15) Robert Rosen (16) Alan Medlin (17) Heyward Carter (18) Jean Lee (19) Jan Warner (20) Max Pickelsheimer (21) Fred Kingsmore (22) David Bell (23) PG attorneys Shearer (24) Custer (25) Dempsey and (26) McGaughey, GT attorneys (27) Sidman and (28) Katz, (29) Leon Friedman, (30) Levenson and (31) Yount, (32) Maxwell, (33) David Black.

18. If, as Plaintiffs asserted for the first time nearly four years after Brown's death, Brown's assets were worth only \$12 million, the AG's August 10, 2008 agreement and subsequent agreement with Terry Brown would give the "I Feel Good" Foundation only about 15 % of James Brown's assets, and decimate the Education Trust for 7 grandchildren, all to the benefit of disinherited persons, approximately as follows:

Total value of Assets:	\$12,000,000.00
Expenses	(2,500,000.00)
Estate Taxes (minimum)	<u>(1, 380,000.00)</u>
Amount for Division	\$ 8,120,000.00

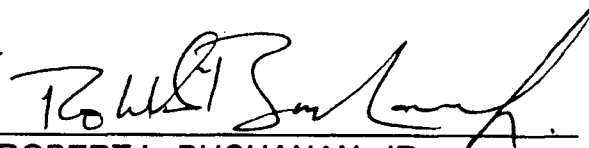
To Children & Hynie Brown (52 ½%)	\$4,263,000.00

<u>To "I Feel Good" Foundation</u> <u>(47 ½% LESS \$2 million)</u>	<u>\$1,857,000.00</u>

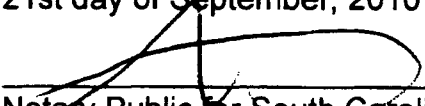
For Undesignated Descendants	\$2,000,000.00

19. Under the AG's agreement, if approved on appeal, Terry Brown also has a 10-year right to purchase assets valued at \$12 million and be part of a company owned with son Forlando who has valued assets at \$150 million, and which has proposed options or a "kickback" for Dallas and Cannon.

FURTHER DEPONENTS SAYETH NOT.


ROBERT L. BUCHANAN, JR.

SWORN TO before me this
21st day of September, 2010


_____(L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/16

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
21st day of September, 2010

[Signature]
Notary Public for South Carolina

(L.S.)

My Commission expires: 7/13/14

Index of Exhibits Attached to Affidavit Dated September 21, 2010

- Exhibit 1 - Excerpt, Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, dated 8/27/10, this case.
- Exhibit 2 - Excerpt, Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, dated 8/27/10, this case.
- Exhibit 3 - Certificate and Agreement of Trust, James Brown 2000 Irrevocable Trust, including the "Brown Family Education Trust" and The James Brown "I Feel Good" Trust, dtd. 8/1/00
- Exhibit 4 - Excerpt, James Brown Power of Attorney, dtd. 6/15/99
- Exhibit 5 - Latham email to Yount, Levenson and others, dtd. 10/5/07 re: James Brown Music Education Foundation
- Exhibit 6 - Minutes of Trustees' Meeting, Irrevocable Trust Agreement of James Brown, 12/27/06
- Exhibit 7 - Minutes of Trustees' Meeting, Irrevocable Trust Agreement of James Brown, 1/3/07
- Exhibit 8 - Memorandum and Representation Agreement between Louis Levenson, Esquire and Terry Brown, Larry Brown, Daryl J. Brown, Vanisha Brown, Deanna J. Brown Thomas and Yamma N. Brown Lumar, dtd. 1/8/07
- Exhibit 9 - Excerpts, Motion to Require Disclosure of Secret Settlement dtd. 8/18/09, Case 122 (With portion of Attachments, Excerpt Ans. Interrog. Forlando Brown)
- Exhibit 10 - Excerpts, Deposition of Forlando Brown
- Exhibit 11- Executive Summary, Management Team Lumar, Lumar, Cox, others, excerpts of email dtd. 11/12/07
- Exhibit 12 - Prenuptial Agreement, dtd. 11/27/01
- Exhibit 13- Excerpts, Cox, Forlando (William) Brown, and Machine Group (Alvin & Calvin Waters) Presentation, May 2007
- Exhibit 14 - Email from Bill Hammond to Adele Pope and Keith Babcock, dtd. 6/15/07

- Exhibit 15- Powell Goldstein Documents to transfer 2000 Trust to Georgia; Excerpts, Affidavit of Adele J. Pope, dtd. 5/1/08 and Exhibit A (Case 122); Excerpts, Order of the Honorable Doyet A. Early, III Regarding the Deposition of William B. Shearer, Frank S. McGaughey, III and Joel Katz and Application for Stay of Same, dtd 6/15/08
- Exhibit 16 - Letter, dtd. 10/12/07, from The James Brown Legacy, Inc. (name pending), to Buddy Dallas and Alford Bradley
- Exhibit 17- Email from David Yount to All Counsel, dtd. 11/10/07
- Exhibit 18- Statement, James Brown LLC Royalties Collected and Bonds Outstanding through 2007
- Exhibit 19- Excerpts, Return and Recommendation of Special Administrators, dtd. 11/14/07
- Exhibit 20- Excerpts, Inventory & Appraisement, dtd. 11/15/07
- Exhibit 21- Excerpts, Transcript of 12/21/07 Hearing, Case 122
- Exhibit 22 - Excerpts, Affidavit of Adele J. Pope, dtd. 1/6/08, Case 122; Excerpt, 3/7/08 Hearing Transcript
- Exhibit 23- Excerpts, Amendment to Complaint of Forlando Brown, Federal Case
- Exhibit 24- Order Directing Payment of Fees and Costs of Special Administrators, dtd. 1/8/08
- Exhibit 25 - Letter from TJBL, Inc. To Buchanan and Pope, dtd. 2/29/08
- Exhibit 26 - Excerpts, Affidavit of Robert L. Buchanan, Jr., dtd. 3/25/08 and Application for Extension of Time to File Estate Tax Return, dtd. 3/24/08
- Exhibit 27 - Letters of TJBL, Inc to Buchanan and Pope, dtd. 3/27/08
- Exhibit 28 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 3/10/08
- Exhibit 29 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 6/13/08
- Exhibit 30 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 6/16/08
- Exhibit 31 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 6/27/08

- Exhibit 32 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 7/25/08
- Exhibit 33 - Letter of William W. Wilkins to the South Carolina Supreme Court, dtd. 8/31/10
- Exhibit 34 - Letter of Buchanan and Pope to AG McMaster and Louis Levenson, dtd. 9/2/08
- Exhibit 35 - Excerpts, Letter of Buchanan and Pope to AG McMaster, Levenson, Medlin and Bell, dtd. 10/20/08
- Exhibit 36 - Excerpts, Amended Petition for Removal and Restraint, dtd. 11/7/08, with Selected Attachments
- Exhibit 37 - Charts showing effects of "settlement" on Estate and Trust of James Brown
- Exhibit 38 - First Semi-Annual Report to Devisees, Beneficiaries and Attorney General, dtd 5/20/08, with attachments, and Interim Accounting #1, Estate of James Brown, dtd. 6/24/08, with attachments
- Exhibit 39 - Reserved
- Exhibit 40 - Agreement, dtd. 8/10/08
- Exhibit 41 - Order Substituting Parties and Amending Order Granting Motion to Sever and Proceed Separately, dtd. 4/5/10
- Exhibit 42 - Email from S. Alan Medlin to other counsel, dtd. 7/31/08

EXHIBIT 1

Oria

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE 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 Brown; 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
Brown and Carrington Brown; 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; 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
BROWN and CARRINGTON BROWN;
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS

2010 AUG 27 PM 5:24
JEANETTE W. HARRIS
C.C.P. & G.
S.E.

FILED

In this lawsuit, Plaintiffs seek redress for the substantial injury done to the financial
legacy of one of South Carolina's most famous and generous icons, the late James Brown. This

EXHIBIT 2

Memorandum in Opposition to Motion to Dismiss
2010-CP-40-4900

Injury was the result of acts and omissions of the former Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Adele Pope and Robert J. Buchanan, Jr. The resulting damage—which could be in the tens of millions of dollars—threatens the fulfillment of the very legacy they were charged with protecting.

James Brown died on December 25, 2006. The initial Personal Representatives and Trustees were removed and replaced by Adele Pope and Robert Buchanan on November 20, 2007. On that date, they assumed all fiduciary responsibilities to the Estate and Trust. On May 26, 2009, Judge Doyett A. Early, III removed Pope and Buchanan as Personal Representatives and Trustees and installed Russell L. Bauknight in those positions.

Prior to May 26, 2009, a number of disputes arose among the Plaintiffs concerning the validity of the estate documents, the assertion of an elective share, and the identification of beneficiaries. By way of a negotiated agreement, the Plaintiffs have agreed to set aside their differences on these issues. This Settlement Agreement was approved in full by Judge Early on May 26, 2009 (a copy of which is attached at Exhibit A). Although specifically ordered to do so, Defendants have refused to sign the Settlement Agreement.

The most significant component of the Settlement Agreement is the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. Mr. Brown's family members and the Attorney General, through their compromise in the Settlement Agreement, seek to fulfill this objective. The acts and omissions of the Defendants have significantly compromised this dream.

In this lawsuit, the Plaintiffs seek to recover damages for multiple breaches of fiduciary duty and other acts of negligence on the part of the Defendants. Defendants seek to obfuscate

90 61102
Columbiana SC 29200

CERTIFICATE AND AGREEMENT OF TRUST
"IRREVOCABLE TRUST AGREEMENT"
JAMES BROWN & TRUSTEES AUGUST 1, 2000"

MISCELLANEOUS

VOL 1088 PAGE 116

The undersigned Grantor(s) and Trustee(s) of a certain trust (the "trust")
represent, warrant, certify and agree as follows:

EXHIBIT 3

1. The Grantor(s) of the trust is/are: James Brown
2. The Trustee(s) of the trust is/are: Alford A. Bradley, Albert H. Dallas, David G. Cannon
3. The Successor Trustee(s) of the trust is/are: As Appointed by the original Trustee(s),
as and if necessary
4. The Beneficiaries of the trust are: Grantor, The Brown Family Education Trust,
The James Brown "I Feel Good" Trust
5. The trust is evidenced by written agreement dated: August 1, 2000.
The trust provides, in general, full and unrestricted powers for the Trustees to act in the
same manner and capacity as any individual can act for/in his own behalf.
6. The trust is revocable and amendable _____ irrevocable X
7. The trust is governed by the laws of the state of South Carolina
8. The trust Tax I.D. No. is: Applied For
9. Any two (2) of the Trustees, (or any one (1) acting upon the written authority, direction or
consent of any one (1) of the other Trustees), shall have the authority to execute binding
deeds, mortgages, notes, contracts, contracts of sale and purchase, and all other
document(s) incident or otherwise pertaining to the administration of the trust pursuant to
the applicable laws of the state in which the trust is transacting business.
10. The undersigned Grantor(s) and Trustee(s) jointly and severally indemnify and hold
harmless third parties or entities from any liabilities and expenses that arise
from reliance on this Certificate of Agreement. This indemnification and hold harmless
shall survive termination or amendment of the trust.
11. Third parties or entities may rely upon this Certificate and Agreement
until it receives a new Certificate and Agreement advising of any changes to the trust.
12. This Certificate and Agreement supersedes any prior certificates, documents, or
information provided to Any parties regarding the trust.
13. Where there are more than one Grantor and one Trustee or where the Grantor(s) and
Trustee(s) are not the same person(s), this Certificate and Agreement (and its provisions)
may be executed in counterparts all of which shall together be considered as one
document.
14. This Certificate and Agreement may be recorded in any jurisdiction for any purpose.

End of Page. See Next Page for Execution.

1395

2001023955 Augusta - Richmond County
2001023955 08/07/2001 11:15:55.00
\$12.00 AGREEMENT

001023955 08/07/2001 11:15:55.00

IN WITNESS WHEREOF, the Grantor(s) and Trustee(s) have signed this Certificate and Agreement this 1 day of AUGUST, 2000.

WITNESSES:

MISCELLANEOUS

VOL 1088 PAGE 117

[Signature] (Seal)

James Brown, Grantor

[Signature] (Seal)

Alford A. Bradley, Trustee

[Signature] (Seal)

Albert H. Dallas, Trustee

[Signature] (Seal)

David G. Cannon, Trustee

STATE OF South Carolina
COUNTY OF Aiken

ACKNOWLEDGMENTS

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of written Certificate and Agreement of Trust Irrevocable Trust Agreement of James Brown was this day produced to me in the above State and County by James Brown, Grantor, and Alford A. Bradley, Albert H. Dallas, and David G. Cannon, Trustee(s), all being parties hereto and was executed and acknowledged by them to be their free act and voluntary deed and all have the requisite capacity to execute this Trust Agreement.

WITNESS my signature this 1st day of August, 2000.

[Signature] (Seal)

Signature of Notary Public

H. PEWAIN HERRING

Printed Name of Notary Public

Notary Public for: SC

My Commission Expires: 3/17/2010

RECORDED 8-24-01 @ 10 50 hrs
[Signature]
R.M.C. AIKEN COUNTY

1396

19712

Filed in this office
Augusta - Richmond County
08/07/2001 11:15:55.00
Elaine C. Johnson

P.O. Box 61102
Columbia, SC 29260

DEED

VOL 2004 PAGE 270

Book 00717:1624 Augusta - Richmond Coun
2001005412 02/26/2001-14:02:12.00
\$28.00 POWER OF ATTORNEY
2001005412 Augusta - Richmond County

THIS POWER OF ATTORNEY SPECIFICALLY REVOKES ALL OTHER
POWERS OF ATTORNEY THAT I HAVE PREVIOUSLY EXECUTED.

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

DURABLE POWER OF ATTORNEY

EXHIBIT 4

KNOW ALL MEN BY THESE PRESENTS that as principal (the "Principal") I, *James Brown*, a resident of the State and County aforesaid, have made, constituted and appointed and by these presents do make, constitute and appoint *Alford A. Bradley, David G. Cannon, Albert H. Dallas and Deanna Brown Thomas*, to serve as my true and lawful Attorney(s)-in-Fact ("Attorney") to exercise the powers set forth below. These powers are to be exercised by them jointly, by the majority vote of all of them at any time so serving, provided that the vote of *David G. Cannon and/or Albert H. Dallas* is with the majority position. The affidavit or certificate under penalty of perjury of any of my Attorneys shall be conclusive evidence insofar as third parties are concerned that any act of such Attorney has been authorized by a valid majority of my Attorneys.

It is my intention and direction that there, at all times, be three serving Attorneys. If at any time one or more of my three originally named Attorneys is no longer serving then the remaining original Attorney(s) shall nominate and appoint successor Attorneys to ensure that there are at all times three serving Attorneys. If at any time none of the three originally named Attorneys are serving in that event the then serving successor Attorneys shall be the final class of Attorneys to serve and no further nominations or appointments of successor Attorneys shall be made.

My Attorney and my Standby Attorney is subject to removal as provided in Article II, paragraph D, below.

ARTICLE I

Empowerment of Attorney

Attorney is authorized in Attorney's absolute discretion from time to time and at any time with respect to my person and my property, real or personal, at any time owned or held by me and without authorization of any court (and regardless of whether I am mentally incompetent or physically or mentally disabled or incapable of managing my property and income), as follows:

A. Powers in General

To do and perform all and every act, deed, matter, and thing whatsoever in and about my estate, property and affairs as fully and effectually, to all intents and purposes, as I might or could do in my own proper person, if personally present, the specifically enumerated powers described below being in aid and exemplification of the full, complete and general power herein granted and not in limitation or definition thereof.

EXHIBIT 5

Adele J. Pope

From: Bill Latham [bill.latham@nelsonmullins.com]
Sent: Friday, October 05, 2007 2:34 PM
To: David Yount
Cc: Louis Levenson; adele@popelawfirm.com; rlbuchananjr@bellsouth.net
Subject: RE: JB Music Foundation

David:

Your E-mail took is inaccurate. Deanna and Yamma certainly were/are Board Members of the Foundation, and they authorized the use of their names in multiple telephonic Foundation meetings. They both participated in Board meetings and received minutes reflecting both their roles and their involvement.

We suggest that a meeting of the Foundation's Board of Directors be called to address any questions or concerns Deanna and Yamma may have about the Foundation. In this meeting, the Board (including Yamma and Deanna) could authorize shutting down the Website or other action the Board may deem appropriate. If this is acceptable, we can start working on mutually agreeable dates for the meeting.

Let me know--

Bill

HOME

VCARD

BIO

LOCATION

**Nelson
Mullins**

William H. Latham
Attorney at Law
bill.latham@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP
Meridian, 17th Floor
1320 Main Street, Columbia, SC 29201
Tel: 803.255.9533 Fax: 803.255.9075
www.nelsonmullins.com

Bill,

We are curious as to why this website is still up and whether donations are being submitted to Intrigue in Florida?
<http://jbmusicfoundation.com/index.cfm>.

Please instruct Intrigue to immediately remove the names of Deanna Brown and Dr. Yamma Brown from the "Board" section of the website. Deanna and Yamma are not board members nor have they given authorization to use their names in support of the purported foundation.

EXHIBIT 6

MEETING OF TRUSTEES
IRREVOCABLE TRUST AGREEMENT
OF JAMES BROWN
DECEMBER 27, 2006

It having come to the attention of the Trustees that ALFORD A. BRADLEY, named Trustee, Irrevocable Trust Agreement of James Brown dated August 01, 2000, has failed to qualify and accept responsibility as Trustee, by unanimous agreement of the other two named Trustees, ALBERT H. DALLAS and DAVID G. CANNON, Deanna Brown issue by appointed Trustee to serve in lieu of the named ALFORD A. BRADLEY with all rights and obligations as Trustee as if originally named by Grantor, JAMES BROWN, by signature attached below, the undersigned, Deanna Brown accepts the responsibility and duties of Trustee, Irrevocable Trust of James Brown dated August 01, 2000.

This 27th day of December, 2006.

Deanna Brown
Albert H. Dallas
David G. Cannon

EXHIBIT 7

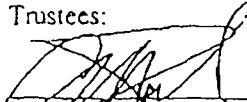
MINUTES OF TRUSTEES IRREVOCABLE TRUST AGREEMENT JAMES BROWN U/A DATED AUGUST 1, 2000

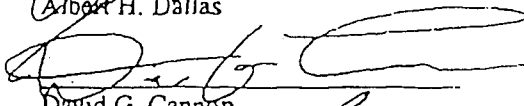
WHEREAS, the Trustees of the Irrevocable Trust Agreement of James Brown dated August 1, 2000 (the "Trust Agreement"), constituting, ALBERT H. DALLAS, DAVID G. CANNON and DEANNA BROWN did meet at the offices of Smith, Massey, Brodie, Thurmond & Guynn, P.A. on January 3, 2007;

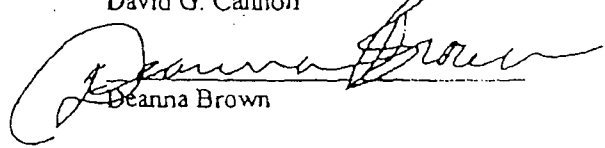
WHEREAS, the Trustees of the Trust Agreement by their signatures below do hereby resolve to hire YAMMA BROWN LUMAR, the daughter of James Brown, found to be a competent and qualified person as an executive assistant to the Trustees to assist the Trustees in carrying out the responsibilities of their office.

NOW, THEREFORE, it is hereby resolved that the Trustees will hire YAMMA BROWN LUMAR as an executive assistant to the Trustees of the Trust Agreement to work at the pleasure of the Trustees, and that no employment agreement will be entered into with YAMMA BROWN LUMAR, and that this resolution shall not be construed as an obligation to provide continued employment.

Trustees:


Albert H. Dallas


David G. Cannon


Deanna Brown

Effective Date: January 3, 2007

00053

EXHIBIT 8



LEVENSON & ASSOCIATES

Attorneys At Law

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Louis Levenson
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January 8, 2007

MEMORANDUM AND REPRESENTATION AGREEMENT
CONFIDENTIAL AND ATTORNEY CLIENT PROTECTED

To: Heirs at Law/Children of James Brown, Deceased
Mr. Terry Brown
Mr. Larry Brown
Mr. Daryl J. Brown
Ms. Vanisha Brown
Ms. Deanna J. Brown Thomas
Ms. Yamma N. Brown Lumar

Based on the preliminary discussions I have had with [REDACTED] prior to today, and based upon your meeting with me on January 8, 2007 in Augusta, Georgia, you have indicated that you, as individuals and as a family, wish legal representation. This representation is needed in connection with starting a legal investigation into matters related to your father's estate and his trust (and an accounting of the latter from the trustees, if such a trust exists) and, most importantly, the enforcement of a) your rights under the Estate of James Brown, deceased (whether such estate is created under a Last Will and Testament of James Brown, deceased or through an estate established due to complete or partial intestacy), and b) to review and advise you of your rights under the Irrevocable Trust Agreement of James Brown (dated August 1, 2000) and under any other trusts that may have been lawfully created by your father either during his life or through his will (note that the Irrevocable Trust appears to create two more trusts to possibly take effect after Mr. Brown's death, "The Brown Family Education Trust" and "The James Brown 'I Feel Good' Trust").

I have read what purports to be James Brown's Last Will and Testament dated August 1, 2000 and also his Irrevocable Trust Agreement of August 1, 2000. I have seen in the media (via internet) that certain documents may bear Mr. Brown's signature and that of Ms. Tomi Rae Hynie (as to the Trust), though I have not yet seen these nor do I think that these documents are valid or legally enforceable. It is not even totally clear that these documents are the last documents that were made by Mr. James Brown during his lifetime, which issue may be resolved once the Will is offered for Probate and certain petitions are filed to request of the Trust or Trusts (and any co trustees operating and serving the Trust) an accounting of the financial affairs since the date of its creation. All of the above is a brief summary of my investigation into the documents and the persons in charge of the affairs of James Brown should be commenced BEFORE any action is taken to object to any will or trust (we will discuss what these documents say about people who object to the validity of the will or the trust).

~~It is difficult if not impossible to advise you this moment as to your rights under either of these documents until my office has been able to see and review a number of documents that have not yet been shown to anyone, including trust accountings, bank records, correspondence, etc. relating to both the estate and trust. It is also important to look at the methods by which James Brown acted with respect to the trust (ie was he a beneficiary under that trust? And if so, what income or other assets did he receive from it?).~~

Particularly as to the trust, it is crucial to determine whether the trust is/was valid under South Carolina law and that the 2 or 3 trustees have served according to law and that there has been proper management of the trust assets since the trust was allegedly created in 2000 and that an accounting of the finances of the trust has been made.

~~[REDACTED]~~ This means that I will be your personal lawyer for every person who has signed below and will also serve as the lawyer for the "family" of persons whose names appear below, so that I can make the investigation described above and can get for you documents and information to inform you, the clients, of what has been done and what needs to be done. It is likely that some manner of Court proceedings in South Carolina will be necessary and you, by your signatures below, authorize me to file whatever is necessary to protect your rights and to investigate the claims that you have.

~~[REDACTED]~~

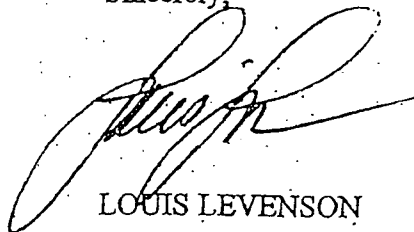
~~[REDACTED]~~

~~[REDACTED]~~

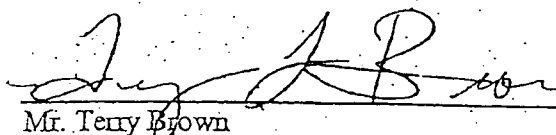
~~[REDACTED]~~

By your signatures below you are consenting to my representation and authority to act on your behalf as your attorney in any and all matters referenced above, including appearing in any litigation matters for you.

Sincerely,


LOUIS LEVENSON

Consented to:


Mr. Terry Brown

1402

EXHIBIT 9

Estate and the Trust, control the amount of money that would go into a Trust to be created, and determine how much each other beneficiary of the Estate would receive. Aunt Deanna, Uncle Darren and Aunt Yamma planned to create a new company that would be under their control and that would control the assets of the Estate and Trust. Mr. Sharpton, Mr. White and Mr. Levenson would benefit by contributing in various forms to this plan.

Uncle Darren and Aunt Yamma said they would give the Plaintiff \$10 million and a Porsche Boxter to go along with the plan and keep quiet. Mr. Levenson said that if the existing trustees did not go along, he would manipulate the court system in order to obtain the assets of the Estate and Trust so that the family and their advisors could implement this plan.

A presentation was made at the meeting by Uncle Darren regarding the plan with slides and a power point with approximately six different screens. At the conclusion of the presentation, everyone shook hands and said that James Brown did not get it right, but they were going to get it right. The group then started drinking wine and smoking cigars and continued discussing the plan to take over the Estate and Trust.

After the meeting, the Plaintiff told Dr. Cox that no one had mentioned his education at the meeting. Dr. Cox told the Plaintiff that he had two choices: go along with the plan or object to the plan. The Plaintiff decided to object. The Plaintiff did not understand how the family could disregard his grandfather's will and the Trust. The Plaintiff asked Dr. Cox after the meeting how could he help stop what these people were trying to do to his grandfather's will and Trust. Dr. Cox suggested that they try to get in front of the trustees to attempt to get the Plaintiff's education paid for as required by the Trust.

Around this same time frame, the Plaintiff's Aunt Yamma and Uncle Darren were involved in an altercation (the stabbing of his Uncle Darren) that the Plaintiff witnessed. The same night as

the altercation, the Plaintiff told his Aunt Yamma and Uncle Darren that he was not going to participate in a plan to contravene his grandfather's wishes.

The Plaintiff arranged for Dr. Cox to meet Mr. Dallas at Mr. Dallas's law office in Thomson, Georgia. Alvin and Calvin Waters also attended that meeting and reported that they knew some investors from Asia who might be willing to purchase the assets of the Trust and Estate. At that meeting, Mr. Dallas listened for five minutes, ended the meeting, and said that the Plaintiff would no longer be involved in such a plan. Mr. Dallas stated that he wanted Dr. Cox to put together a real plan that the trustees could evaluate to further the interests of the James Brown legacy. Mr. Dallas told Dr. Cox that any plan needed to contemplate purchasing the assets of the Trust and Estate for at least \$100 million, because the assets were worth at least that, and that it was "incumbent upon me to get the most value for the estate and Plaintiff's assets. I owe him that much respect. Hell, we all do."

From that point, Dr. Cox worked on a way to bring a deal to Mr. Dallas as Trustee that was better than what the other children were presenting and one which would honor Plaintiff's grandfather's wishes. The discussions about the structure of the plan has changed constantly since that time. Plaintiff and Dr. Cox had sporadic conversations every month to discuss how they could stop the children from attacking the will and trust ensuring that the Plaintiff's grandfather's wishes were carried out. The Plaintiff discussed what was going on in the Aiken County court with Dr. Cox. Dr. Cox and the Plaintiff had several discussions regarding how to best to arrange a purchase of the assets of the Estate and Trust, including sales of the assets, leases of the assets, and/or the use of management companies. Dr. Cox thought it was important to have a spokesperson for the Estate and Trust and initially that was to be the Plaintiff's sole role assuming a purchase ever occurred. The Plaintiff was not going to be an investor or principal in this venture.

EXHIBIT 10

0101

1 a third party person coming in to evaluate the
2 assets, look at his offer, see if it matched up,
3 what was the margin difference, and make a
4 decision. But he would at least know what he was
5 dealing with in terms so that, you know, that the
6 kid over here could get his education paid, and
7 they could move this thing down the road is what
8 the initial idea was.

9 Q Okay. And I want you to help me kind of pin this
10 on a time line, if you would, and let's use the
11 event of your termination of your original counsel,
12 Mr. Levenson, and tell me if these events with--
13 Initial events with Mr. Cox occurred before or
14 after that termination, which I think was in early
15 April.

16 A It was before.

17 Q It was in March, wasn't it?

18 A Yeah, it was in March. It was-- I had met Terry
19 back in January or February.

20 Q Okay.

21 A It was-- We were having these conversations before
22 then.

23 Q Okay.

24 A Because as you well know, that-- That Chip and, or
25 excuse me, Darren, Lamar, Yamma, Deanna, her

0102

1 husband, UBS guy, Jim Blackwell and a host of
2 investors, Louis and David Yonk from his firm had
3 this meeting at Chip's house where they were going
4 to basically take over these assets and manipulate
5 these assets to make money for them basically is
6 what they were going to do.

7 And that was-- Gosh, that was February--
8 That must have been February, early in the year,
9 because it was not too long after that that Terry
10 and I began to have conversations about it because
11 I-- I quickly realized no one had the Trust
12 interest or educating Trust, or my education, in

13 their scopes at all. It was simply, how do I break
14 this thing to get the money in my pocket and go buy
15 cars and everything else you'd expect?

16 Q Well, how about this proposed third-party appraisal
17 by Mr. Cox and what would eventually evolve into
18 the \$100 million dollar offer? When did that
19 happen?

20 A That was after he had said he wanted to-- He
21 wanted to give him a shot at trying to do something
22 with these assets. And what I mean "do something,"
23 I mean a business solution to help resolve those
24 issues. I said okay.

25 I went and talked to, at the time, the

0103

1 Trustee, Mr. Dallas, about it. I said, you know, I
2 don't know much about any of this stuff, but would
3 you at least see him? Buddy, you know, being a
4 Trustee and knowing me since I was, gosh, little as
5 anything, he said okay, sure, I'll-- I'll meet
6 with the guy. Let me see what he has to say.

7 Well, apparently Terry put together a
8 spectacular offer to him. Buddy-- I mean, the
9 conversation probably lasted not even a half hour
10 after Buddy-- He showed Buddy everything, how it
11 was going to work and everything, and Buddy
12 basically looked at him and said, okay. I listened
13 to him to get you down here, but now that you're
14 down here, he's not involved anymore, but what
15 you've got here is what this Trust needs to have.

16 Go back, put this together and come back and see
17 me.

18 And then, you know, conversations are
19 what started to happen between them. Now, what
20 were in those conversations, I don't really know.
21 I only know what was told me outside of them, and
22 what was told me outside of them is Buddy thought
23 that it was a good deal for the Trust because you
24 had somebody that was going to come in and evaluate
25 the assets, not Terry or anyone else doing it, but

0104

1 a third party evaluating so that you made sure you
2 got a fair price, and at the same time provide a
3 source of income to the Trust on a yearly basis to
4 continue funding this Trust for forever and ever
5 and ever and ever and ever and ever and ever and
6 ever, and giving the Trust an interest in these
7 royalties and things so that you can continue to
8 educate children. And if you didn't get to
9 \$100 million dollars, you got to eighty or ninety
10 or whatever it was, it was a worthwhile expenditure
11 on behalf of an investor because you're educating
12 children.

13 Q Did this third-party appraisal ever take place, to
14 your knowledge?

15 A No. Before they got in real detail about it, of
16 course, Buddy was removed and I think Terry and
17 Toby Byron had been working together to put the
18 things together to move forward, and I think they
19 gave a, or were trying to give a presentation in
20 Judge Early's courtroom in Bamberg. But I-- I
21 mean, it was all behind in judge's chambers.

0105

13 Q Now, Mr. Dallas and Mr. Bradley resigned in late
14 November of 2007, so is your testimony that the
15 first, I guess fruition of these negotiations would
16 have been close to the time he resigned in late
17 November or were there written offers before that?

18 A I don't know the exact dates. I know that I-- I
19 think I'm-- I recall conversations getting down
20 basically to the bare details of putting the whole
21 thing together. I just don't remember the exact
22 time it happened as it relates to the November date
23 when they resigned over in Bamberg.

24 Q Okay. And did you have a role in whatever that
25 offer was when it was made?

0106

3 sure that everything was sound and-- And standard.
4 And that was his involvement.

5 And Gray had brought-- I think Gray is
6 the one-- I'm pretty sure Gray is the one who had
7 the investors that were willing to put \$100 million
8 dollars on the table. And so because of that and
9 because of the relationship he had and the
10 contribution he made in to bringing the real
11 dollars in that Buddy was requesting, I believe
12 that's why he was on this.

13 Q That's why he was a signatory?

14 A Uh huh.

15 Q Okay. But this was Doctor Cox's deal? The --

16 A Uh huh.

17 Q -- same deal? Okay.

18
19 MR. CUSTER: You need to-- You need to say
20 "yes" out loud.

21 THE WITNESS: Yes. I'm sorry.

22

23 BY MR. WILLIAMS:

24 Q On the last page I see copies going to two lawyers,
25 one of whom is John Tiller. This is a lawyer at

0109

1 Haynesworth Sinkler Boyd, who I know. Who is
2 John Sparks? Do you know?

3 A Yes, sir.

4 Q Who is he?

5 A He is an attorney that has-- He has his own
6 private practice. Him and Terry have had-- Have
7 been involved in a prior-- A prior litigation
8 before. He handled some things for Terry when
9 it came to amounts of money and things in business,
10 and Terry had a company called the Graham Windsor
11 Group --

12 Q Uh huh.

13 A -- which was a former group of the Mescon Group,
14 which handled government contracts for the Air
15 Force and for the Pentagon Department, and John had

4 and it was a sticking point with me, that the more
5 money that was made off the assets shouldn't go
6 into the hands of, you know, people that don't know
7 James Brown. Kind of like all the attorneys
8 milking it right now. It shouldn't do that. It
9 ought to go back to the Trust to educate more
10 children.

21 Q You keep talking about the attorneys kind of eating
22 at the trough here, and I'm just kind of curious.
23 Other than you, who's paying your attorneys in this
24 case?

25 A Other than me?

0129

1 Q Other than you.

2 A I would imagine the Trust does that. If you're
3 insinuating that I'm helping in that milking of
4 the-- Of the assets, I would have to submit to you
5 that if we were not in such a situation with
6 incompetent Trustees that are not independent and
7 that are not fair minded and have the capacity to
8 handle these assets, we wouldn't be here. That's
9 just my opinion.

10 Q I'm-- I'm asking you if there's a third-party, not
11 a named party, in the Federal lawsuit we're here
12 about, who is making payments to your lawyers for
13 the prosecution of this case, either in the form of
14 advances or as loans or direct payments that don't
15 have to be repaid by you?

16 A I don't know anything about it.

0135

4 Q Okay. Let me go back and make sure I understand
5 that-- Kind of as we go past the removal of
6 Mr. Dallas and Mr. Bradley and this October twelfth
7 letter proposal, your involvement would be as a
8 spokesperson and not for any equity interest in the
9 transaction?

23 And they-- The overwhelming answer to
24 that is, get these assets out of the hands of these
25 crazy people who don't know what they're doing.

0137

1 They have no clue what they're doing at all, and I
2 think the Christie's sale is a perfect example of
3 absolute incapability to be able to manage assets
4 of an entertainer. It just bombed and it was
5 horrible and-- And that's a business point that
6 you could look at, that you can tell was an utter
7 disaster. I mean, a huge blunder. Huge.

19 BY MR. WILLIAMS:

20 Q I'll hand you what's been marked-- Marked as
21 Defendant's 9. It bears the, on the cover page
22 Bates Number FB005903. It is unsigned. Can you
23 identify that?

24 A Yes, sir.

25 Q Okay. What is that?

0138

1 A This is an offer made by Terry Cox and TJBL in
2 March of this year, or late March of this year.

3 Q Okay. Was the letter ever signed, to your
4 knowledge?

5 A I do not believe so.

6 Q By Mr. Cox? By Doctor Cox?

7 A I believe he did sign it.

10 Q Okay. And how did you get an unsigned copy?

11 A He gave it to me before he sent it over. I wanted
12 to look at it.

13 Q Okay. And you told me your role had changed and
14 you'd become more involved, but I still don't know
15 what your enhanced role beyond being a spokesperson
16 in the proposed James Brown Legacy, Inc. entity is.

17 Now, were you going to be a partial owner?

18 A My role was to be a majority owner.

19 Q A majority owner?

20 A Yes, sir.

0140

2 Q This calls for a purchase price, and I'm looking at
3 the third paragraph on the first page, of between
4 \$90 and \$100 million dollars.

5 A Yes, sir.

6 Q You weren't putting up \$90 to \$100 million dollars,
7 were you?

8 A Do you mean me, myself personally?

9 Q You, yourself personally.

10 A No, sir.

11 Q Okay. So there were some investors who were going
12 to advance that much money and let you be the
13 majority owner of a corporation owning the assets
14 that they were buying? Is that what you're telling
15 me?

16 A Yes, sir.

17 Q And how much control would you have over the
18 management of the assets?

19 A One hundred percent control. Now, that doesn't
20 mean one hundred percent ownership, but one hundred
21 percent control of what they did with it.

0141

10 A You maybe-- You don't understand. You're getting
24 And you've got to remember. These
25 investors, I knew them personally.

0142

1 Q Well, other than Doctor Cox, who were the
2 investors?

3 A Well, that, I don't think I'm at liberty to say.

4 Q And why not?

5 A Because I don't think they'd want their information
6 given out.

7 Q Do you have a confidentiality agreement with them
8 that forbids you from disclosing their identities?

9 A I believe there was a non-disclosure set up and
10 confidentiality where you couldn't talk about

23 James Brown Legacy, Inc., the proposed acquiring
24 entity, then your idea of obtaining clear title to
25 the Trust assets would have been a conveyance by
0157
1 Dallas, Bradley and Cannon after March 27, 2008?

4 THE WITNESS: No. What I'm saying to you is
5 that all of the claims that the-- The Trust
6 and the Estate have right now, I submit to you
7 would virtually all go away.

8 But the problem is, is that the
9 alleged Trustees we have right now, if I may
10 speak to you clearly, people just don't like
11 them that much. And there's a lot of reasons
12 why. A lot of the actions they've taken are
13 not the right decisions to make with
14 entertainment assets. They are horrible
15 decisions.

23 But I can tell you one thing that I
24 do believe. If we were not in this mess and
25 Buddy Dallas was still the Trustee, these

0158
1 claims would not be here and neither would
2 anybody else be contesting anything, as a
3 matter of fact. But because we're here, where
4 we are now, thus we're spending tons of time
5 and tons of litigation and--

6 And-- And let me say also that a
7 sale of an asset to someone I'm involved in or
8 something like that, I think you'll find these
9 claims will go away.

14 Q Are you-- Well, are you aware that even prior to
15 your grandfather's death and certainly after his
16 death, the Pullman Group was involved in and had
17 brought a lawsuit in New York State, even while
18 they did business with your grandfather, to obtain
19 millions of dollars from him?

21 This is going to bomb. And he was right, of
22 course, and so were other people.

0241

8 Q Okay. Now, there were a few things-- And this is
9 where we start jumping around a little bit because
10 I wrote down some things you-- I think you
11 testified earlier that you could put \$150 million
12 dollars on the table today or relatively quickly.
13 Do you recall that testimony?

14 A Yes, sir.

15 Q Where would that come from?

16 A As I said earlier, I have contacts, equity firms,
17 investors that were interested before that we were
18 bringing to the table before, that I could still go
19 back and talk to and put this together --

21 A -- if given the opportunity.

22 Q Okay. Let's make a list of those contacts you
23 have.

24 A And that's what I said earlier. I couldn't give
25 you those because I had the agreements that said

0242

1 I'm not at liberty to give that information out.

2 Q You have more than one agreement?

3 A Well, it's more than one agreement with different
4 people.

5 Q So you have-- You have multiple agreements with
6 different groups of people?

7 A Yes, sir.

8 Q Okay. How many agreements do you have?

25 Q Okay. How many agreements, non-disclosure

0243

1 agreements do you have?

2 A Three.

3 Q Okay. And who-- Who proposed the agreements? The
4 investors or you?

5 A The investor.

6 use James Brown. I mean, and I say again, you have
7 to understand. I know these people over a course
8 of time and have a personal relationship, and so
9 they sympathize with what I had to go through.

10 Q Okay. And what-- Who else is involved in the
11 corporation to be formed and you would have
12 majority control or majority ownership? Terry Cox
13 would have an ownership interest?

14 A Doctor Cox and the investors.

15 Q Whoever these-- Whoever you choose of these five
16 or six groups?

17 A Yes, sir.

18 Q So you would have majority ownership. Terry Cox
19 would have some level of ownership?

20 A Yes, sir.

21 Q And was that determined, what his level of
22 ownership would be?

23 A No, sir.

24 Q Okay.

25 A He has said that he-- In the beginning he said he
0262

1 wanted five percent, which is what he said was--
2 He thought that was still being too generous, and--
3 But then that, of course, changed as people see the
4 numbers and how much it's worth, but ultimately I
5 had the final decision to say I'm not going to do
6 that. We're going to do it this way.

7 Q So it was your idea-- I assume your role is
8 fifty-one percent or is it more?

9 A Fifty-five.

10 Q Fifty-five percent.

11 Terry Cox is five percent?

12 A (Indicating).

13 Q And that would-- You've got to say "yes" or "no"
14 for the record.

15 A Yes, sir. Yes, sir.

16 Q You, fifty-five percent. Right?

17 A Yes.

18 Q And Terry Cox is five percent?

8 be done. This can be done this way.

9 You know, I have tons and tons of the
10 connections to put this whole deal together that
11 would solve all of these problems. And this is all
12 about money.

13 And I could right now, if all these
14 issues were off the table and we were talking about
15 settling this thing and doing it, right now I could
16 put \$150 million dollars on this table and settle
17 this thing right now. But no one's ever given
18 anybody the opportunity to do that.

19 Q Is that what you ultimately want out of this
20 litigation, the opportunity to put \$150 million
21 dollars on the table to buy the assets of the Trust
22 and the Estate?

25 THE WITNESS: No. The ultimate goal was to get

0167

1 my education paid. As I've gotten into it and
2 seen the destruction that they have caused, I
3 feel it's necessary to get these assets away
4 from these crazy people that don't know what
5 they are doing.

6 And I don't mean to be insulting,
7 but they have no independence in what they're
8 doing, and I think that's very clear.

15 And they've abandoned their
16 fiduciary responsibilities to look at offers
17 that would help my education which, you know,
18 that would be very helpful to me if I could
19 get my education paid, looking to go to law
20 school and all those other things, as well as
21 all the other children.

22 So that's the ultimate goal, but it
23 takes this process by way of a mechanism to do
24 it.
25

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

Executive Summary

EXHIBIT 11

Inter Information

Pinnacle Media & Entertainment, LLC
Anthony "Chip" Lumar, Chairman/CEO
Yanina Brown Lumar, President
13 Peachtree Center Ave
Suite 600
Atlanta, GA 30308
Tel: 404-343-0048
Fax: 404-254-2326
www.pinnaclemediacorp.com
info@pinnaclemediacorp.com

Sanctioned Team

Anthony "Chip" Lumar, Chairman/CEO
Yanina Brown Lumar, President
Terry B. Cox, Graham Windsor Group
Coyote Carter, Esq.

John Waters, The Machine Group

John Waters, The Machine Group
Rod McKnight, Undiscovered Live
Michelle Graves, Special Advisor to Mr. Lumar

Industry

Content provider to the entertainment industry
Film/television/cable

Company Resources

Intellectual Property Rights

Types of Financing Sought

Acquisition financing for the James Brown Estate

Total Internal Capital Invested

\$1,100,000 has been pledged by the Owners for start up of Pinnacle Communications Inc., and Pinnacle Media & Entertainment for print rights acquisition, trade show sponsorships, production and marketing.

Professionals

(Accounting firm)
Greg C. Takosian
Takosian & Company, LLC
136 Intervale Rd
Duke 01
Dorchester, NH 03242
Tel: 617-230-0332

Banking

Bank of America
136 Intervale Rd
Duke 01
Dorchester, NH 03242
Tel: 617-230-0332

Business Description

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

Philosophy

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

James Brown Estate Acquisition

On December 23, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Don Martin, in yearly revenues generated, licensing rights, merchandising rights, feature films, documentaries, tributes, and future record sales. We believe the estate of the late James Brown can and will generate over 100 million per year. Under the right management structure and capitalized properly, there will be no end in sight. With the right investment partner, Pinnacle Media & Entertainment will be come the premier entertainment/management company in the world. Currently the estate is under the protection of Greenberg Traub, more specifically Joel Katz. Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience"

Management

Our President is a distinguished graduate of Mercer University (1993) where she received her Doctorate in Pharmacy. Being the daughter of a star of music and film, Dr. Lumar has had intimate knowledge of both industries. Another advantage Dr. Lumar gives is her access to the Hollywood elite. Among some of the more notable Hollywood and Academy Award winners Janis Fox, and Dan Aykroyd, other celebrities' friends include actor Eddie Murphy, and playwright Tyler Perry. The company will have only one paid employee initially as all other work not performed by the President is outsourced to contract professionals, i.e. directors, scriptwriters, cast and crew professionals on a per-project basis.

Pinnacle Media & Entertainment, LLC

Executive Summary

Amount Requested \$200,000,000

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

EXHIBIT 12

STATE OF Florida)
COUNTY OF Franklin) PRENUPTIAL AGREEMENT

This Prenuptial Agreement is made this 11 day of November, 2001, by and between Tommie Ray Hyne and James J. Brown.

WHEREAS, James J. Brown has disclosed to Tommie Ray Hyne that he has certain income, property, and liabilities; and

WHEREAS, Tommie Ray Hyne has disclosed to James J. Brown that she has certain income, property, and liabilities; and

WHEREAS, each party has full knowledge of all rights conferred by law upon him or her by virtue of the proposed marriage, but it is their desire that their respective rights be determined and fixed by this Agreement; and,

WHEREAS, the parties acknowledge that they have ascertained and weighed all the facts, conditions, and circumstances likely to influence their judgment in entering into this Agreement; that they have had the opportunity to seek advice, instruction, and explanation from independent counsel of their choice, that they have each given due consideration to such matters and questions; and, that they clearly understand and consent to the provisions of this Agreement, and that they are entering into this Agreement freely, voluntarily, and with full knowledge.

NOW THEREFORE, in consideration of the mutual promises herein contained and the marriage about to be entered into, the parties mutually covenant and agree as follows:

SECTION 1 Acknowledgement

James J. Brown acknowledges that:

(a) He is fully acquainted with the business and resources of Tommie Ray Hyne;

(b) She has answered all the questions he has asked about her income and assets;

(c) He understands that by entering into this Agreement he will receive, as her widower or in the event of divorce, substantially less than the amount he would otherwise be entitled to receive;

(d) He has at all times had the opportunity to receive the advice of counsel of his own

choosing;

(e) He has carefully weighed all the facts and circumstances, and desires to marry Tommie Ray Hyne regardless of any financial arrangements made for his benefit; and,

(f) He is entering into this agreement freely, voluntarily, and with full knowledge.

Tommie Ray Hyne acknowledges that:

(a) She is fully acquainted with the business and resources of James J. Brown;

(b) He has answered all the questions she has asked about his income and assets;

(c) She understands that by entering into this Agreement she will receive, as his widow or in the event of divorce, substantially less than the amount she would otherwise be entitled to receive;

(d) She has at all times had the opportunity to receive the advice of counsel of her own choosing;

(e) She has carefully weighed all the facts and circumstances, and desires to marry James J. Brown regardless of any financial arrangements made for her benefit; and,

(f) She is entering into this agreement freely, voluntarily, and with full knowledge.

SECTION 2 Estate Waiver

Subject to the further provisions of this Agreement, neither of the parties, if surviving the other, nor such survivor's heirs, executors, administrators, and assigns shall make any claim to statutory distributive share, or any claim of any other nature whatsoever in and to any part of the estate of the other to which he or she might be entitled as surviving spouse were it not for the execution and delivery of this Agreement; and each party hereby waives, discharges, and releases:

(a) all such rights as a spouse to share in or make any claim against the estate of the other to devolve in the same manner as if he or she had predeceased the other;

(b) any right, title, or interest whatsoever which he or she may acquire or be entitled to

acquire at any time hereafter by reason of
their marriage in the property of the other
or the other's estate under the laws of any
state or country;

(c) any right of election against a decedent
spouse's estate accorded pursuant to the laws
of any state in which the parties may reside;

(d) any right as an omitted spouse pursuant
to the laws of any state in which the parties
may reside; and,

(e) any right to act as Personal
Representative, Conservator, or Administrator
of the other's estate.

Nothing set forth herein, however, shall limit or otherwise affect either party's entitlement to receive such benefits as the other may voluntarily elect to provide for him or her by will or other instrument disposing of property upon death.

SECTION 3

WAIVER OF PROPERTY SETTLEMENT AND ALIMONY

Each party expressly waives, discharges, disclaims, and releases any right, title, interest, or claim in or to: (a) the other party's real or personal property; and (b) any non-marital property, as defined by the laws of any state where a domestic action is brought. Each party expressly agrees not to make any claim or demand for alimony and hereby waives any right to receive alimony, or other such payment of support, in the event of separation or divorce of the parties.

SECTION 4

Separate Assets

Except as otherwise specifically provided herein, each of the parties shall hold in his or her own name and right, and keep and retain the sole ownership, control, and enjoyment of, any and all property, real, personal, and mixed, which he or she shall own at the time of said marriage or may thereafter acquire or receive as his or her own absolute property, without interference by or from the other party and in like manner as if said marriage had not taken place; and each party may dispose of said property during his or her life or by his or her last will or other testamentary disposition, to any legatee or legatees, or devisee or devisees, whom he or she may select (albeit to the exclusion of the other party); and in default of such will or other disposition, each party's entire estate, real, personal, and mixed, shall descend according to the statute of distribution then in force in this state relative to the distribution of intestate estates (or to the comparable statute of the state in which the party is domiciled at the time of his or her death) to

the exclusion of the other party, who shall in no event take any part as widow or widower, heir-at-law or next of kin, except to the extent provided in such will.

SECTION 5

Income from, and Reinvestment of, Separate Assets

Any assets obtained by either party as a consequence of the use, investment, reinvestment, or any transfer of any portion of their separate estate, and any income therefrom, and any appreciation in the value thereof, shall remain part of such separate estate.

SECTION 6

Separate Property; Debts

Each of the parties shall remain solely liable for any of the debts incurred prior to the marriage. The payment of any portion of the party's premarital debts by the other party shall not obligate the payor to make any further payments with regard to such debt, nor shall such payment create any interest in any property securing such debt unless the party owning the property acknowledges, in writing, that such payment creates any interest in such property; the writing need not be executed in the same manner as this Agreement.

SECTION 7

Consequences of Commingling Income and Assets

(A) Notwithstanding the provisions of this Agreement that allow the parties to maintain their separate income and assets, the parties recognize that it is possible, through accident or intent, for their income or assets to become, or appear to be, commingled. It is the parties' intention that such commingling or pooling of assets not be interpreted to imply any abandonment of the terms or provisions of this Agreement and that the provisions contained herein addressing the parties' interest in jointly-held property be applied. In other instances each party shall be determined to be the owner of that proportion of the total fund of value of the assets in question which reflects the proportionate amount deposited or invested by each party.

(B) Nor shall the fact that the parties may file joint state or federal income tax returns, or make gifts of property or cash to each other, or not account to each other with regard to the expenditure of the income, be interpreted to imply any abandonment of the terms and provisions of this Agreement.

SECTION 8

Divorce

In the event that James J. Brown files for a divorce from Tommie Ray Hyne, then Tommie Ray Hyne shall be entitled to

receive from James J. Brown Seventy-Five Thousand Dollars (\$75,000.00) as a full and final property settlement.

In the event that Tommie Ray Hyne files for a divorce from James J. Brown, then Tommie Ray Hyne shall be entitled to receive from James J. Brown Fifty Thousand Dollars (\$50,000.00) as a full and final property settlement.

SECTION 9 Voluntary Gifts to Spouse

Nothing contained herein shall in any manner bar or affect the right of either party to claim or receive any additional property of any nature and character that the other party, by last will and testament or other testamentary disposition, or by instrument executed or any act done during his or her life, may give, devise, or bequeath, or transfer, assign, or set over, to the other.

SECTION 10 Amendment

During their joint lives and so long as the marriage has not been terminated by divorce, dissolution of marriage, or annulment, the parties reserve the right to amend this Agreement by an instrument in writing, executed by each of them before witnesses. Any such amendment shall be valid and binding to the full extent as though the provisions of such amendment had been set forth herein.

SECTION 11 Effective Date

The terms of this Agreement are intended to have effect only in the event that the contemplated marriage shall be entered into and shall be effective on that date.

SECTION 12 Partial Invalidity

If any provision of this Agreement or portion of such provision or the application thereof to any person or circumstances shall to any extent be held invalid or unenforceable, the remainder of this Agreement (or the remainder of such provisions) and the application thereof to other persons or circumstances shall not be affected thereby.

SECTION 13 Supplementary Documentation

The parties agree to execute, acknowledge, and deliver from time to time such instruments as may be necessary or appropriate to release any right which either might have in the property of the other but for this Agreement, so as to enable the other to

make such transfer or other disposition of his or her property as he or she may from time to time desire in the same manner as if their proposed marriage had never been entered into.

SECTION 14 Counterparts

This Agreement may be executed simultaneously in two or more multiple original copies, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

SECTION 15 Section and Other Headings

The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

SECTION 16 Entire Agreement

This Agreement embodies the entire understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

SECTION 17 Waiver

The waiver by either party of a breach of any term of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

SECTION 18 Binding Agreement

This Agreement shall inure to the benefit of and be binding upon the heirs, legatees, executors, administrators, successors, and assigns of the parties hereto.

SECTION 19 Attorneys' Fees

In the event any action is brought to enforce, or for the breach of, any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorneys' fees.

SECTION 20 Governing Law

This agreement shall be construed in accordance with, and the rights and duties of the parties hereto shall be governed by, the laws of the State where the parties reside.

IN WITNESS WHEREOF, the parties have duly executed this Agreement
as of the date first above written.

In the Presence of:

Tommie Lane

John Brown (L.S.)

James L. Lally

John Brown (L.S.)

STATE OF Georgia)
COUNTY OF Lincoln)

PERSONALLY appeared before me the undersigned who, on oath,
says that (s)he was present and saw the within named James J.
Brown and Tommie Rae Hynie sign, seal, and as their acts and
deeds deliver the foregoing Prenuptial Agreement, and that (s)he,
with the other witness subscribed above, witnessed the execution
thereof.

John Brown

SWORN to and subscribed
before me this 27 day of November, 2001.

Frank H. Carter
Notary Public for the State of Georgia

My Commission expires : 8/1/04

EXHIBIT 14

Adele J. Pope

From: Bill Hammond [whamm@bellsouth.net]
Sent: Friday, June 15, 2007 1:17 PM
To: Brown Est. / Robert L. Buchanan Jr.
Cc: adele@popelawfirm.com; Keith M. Babcock
Subject: Disbursements from Bond Deal and repudiation of Writer's Share sale

Adele and Bob: You asked about the disbursement of the bond proceeds. I sent you the list of disbursements of approximately \$15M. These are the disbursements made by Leon Friedman from a net check to him at the bond closing. All of the costs- Pullman; lawyers etc. were taken out before Leon received the net proceeds. I am obtaining from Leon the disbursements made by the closing attorneys prior to his receipt of the net. The Morgan Stanley account was in the name of JBE, Inc. and was controlled by JB. I will send the pre \$15M disbursements on the closing statement to you as soon as it is available. If litigants wish to chase rabbits I guess that is better than bothering us with relevant matters before the court.

I recall Phil stating there were some \$6M+- in closing costs which had never been accounted for by JBE or JB, amortized and deducted. You will recall that Phil and I concluded these previously undeducted costs and the NOL carry forward would largely offset the gain from the sale of the writer's share and payoff of the bond as it relates to JBE, Inc. A charitable deduction would offset some part of the gain at the estate level. Therefore, it is discouraging to hear that you object to going forward with the sale of the writer's share, especially when it appears it can be done with a limited tax consequence, provide much needed liquidity to the estate, and force any contract claims in the October letter, if any, to be proven as a claim against the estate at a later time, and without even allowing GT the opportunity to explore settlement with Pullman. I have been representing fiduciaries, both corporate and individual for over 25 years and this is not a prudent fiduciary course of action. It is likewise inconsistent with the terms of the trust, which requires a sale of all assets to immediately, and not 5-10 years from now, fund the education of grandchildren and deserving residents of GA/SC. When the GC reach age 35, they receive no benefits from the education trust, so waiting to fund it is to their detriment. If the October letter and claims there under are valid claims and contractual obligations, they will be asserted whether the Writer's share is sold or not. I have advised the PR's to obtain separate counsel for any claim they may have, if any, under the October letter, since I represent the estate and trust. So your decision to hold this revenue stream, which will decline over time and is under the control of third parties is a risky and imprudent fiduciary call. I have the estate and children's interest in mind and do not understand your objection to maximizing the estate's value, or taking the risk of its diminution over time. I have no dog in this race except the beneficiaries of the trust and make these comments sincerely. Bill

Adele J. Pope

From: Bill Hammond (whamm@bellsouth.net)
Sent: Thursday, June 21, 2007 3:13 PM
To: adele@popelawfirm.com
Cc: Brown Est. / Robert L. Buchanan Jr.; Keith M. Babcock
Subject: RE: Disbursements from Bond Deal and repudiation of Writer's Share sale

It is not an income producing asset if it produces no income to provide benefits consistent with the purposes of the trust. When the royalties decline and go to interest first and the length of the bond payoff extends to 10 or more years, I suppose you can explain to the beneficiaries of the trust who received no benefits for ten years or more, or no benefits at all if there is a default, that holding this indebted income stream for 10 or more years was not only reasonable but advantageous to carry out the intent and purposes of the trust- to provide scholarships. The fact that no beneficiary received any benefit for 10+ years, or the fiduciaries held a declining asset which otherwise went into default and never provided a benefit, is in my opinion a breach of fiduciary duty by (1) imprudently holding this assets as an investment, when a prudent person would not, and (2) failing to operate the trust in accord with its terms- para 3 of Article VII cited below. No prudent fiduciary would hold a debt financed income producing asset in a charitable trust with no certain maturity date, if there was any substantial risk of loss or uncertainty concerning the level of royalty receipts in the future, which were under the control of third parties and not even fixed in amount.

You and Bob seem to imply that doing the GT sale is self dealing by the fiduciaries, since they have a claim under the October letter or under separate agreements with the deceased or related entities. You need to think about my comments in the paragraph above separate and distinct from their claims. If they have a valid claim, it is a claim against the estate/entity and must be filed and proved like any other claim. It is not automatically payable from the proceeds of a new GT sale of this income stream. It will likewise be subject to court approval. Assuming they have valid claims, they are payable from estate/entity assets whether you sell the writer's share or not. Think about this as fiduciaries. I refused to advise them as a lawyer for the estate and trust, so my advice to you is likewise independent of their claims. Seek the opinion of a good corporate fiduciary you know and ask them would they hold this particular debt financed and uncertain income stream in a charitable trust, if they could sell it today and net \$10M+ and dispose of a \$15M estate debt.

I am at home taking it easy after being in the hospital for the last five days. My heart works so efficiently that it extrudes 95% of the blood on each pump in a resting position, rather than 60-70% for a normal person. The strength of my heart makes my body think my blood pressure is too high and my parasympathetic nervous system reduces my heart rate from 70 to 35. Unfortunately, if I am standing up I pass out, which occurred twice

1426

Phil Farr, a client of mine for over 20 years, asked me a technical federal tax question shortly before filing returns for James Brown Enterprises, Inc. under a power of attorney which were due and the statute of limitations on amendment running in a few days. I answered his specific question. I must appear in a contempt hearing this Tuesday in Bamberg, SC for some reason. I certainly had no knowledge that Judge Early's Order in August would prohibit me from answering a client's tax question concerning returns that needed to be filed, regardless of who filed them, and which were authorized to be prepared by Phil months before Judge Early's Order. The new accountant was given Phil's contact information to transition the accounting work over to him and never called Phil. Phil thought he was still obligated to do these amended returns for the years 2003-6. I thought since he called and was working on them that they had decided to let Phil finish them, since he had been working on them and gathering information for months, and simply answered his technical filing question, which consumed about 10-15 minutes of my time. So if I am in contempt it will be a surprise to me. I think the judge believes I was continuing to represent the estate after his Order removed all lawyers in August. Phil's question concerned his fiduciary responsibility to file the returns and liability if he failed to timely file them when due and when the POA from JBE, Inc. had not been withdrawn. I told him to file to avoid any malpractice liability. If we had failed to amend the 2003 return and adjust the net operating loss carry forward downward by over a \$1.0M, then all of the subsequent year returns would have been flawed and ultimately false with income understated by over \$1.0M. I think it is just a misunderstanding and will report to you from Jail in Bamberg if I am wrong. Bill

From: Sharon Enoch [mailto:SEnoch@mindspring.com]

Sent: Thu 11/15/2007 12:27 PM

To: FMTaylor; George R Hall; William F. Hammond; James B. Ellington; William J. Keogh, III; Edward J. Tarver; David E. Hudson

Subject: Estate of James Brown

Gentlemen,

David has asked me to locate a partner from your firm asap, and I have been unable to reach anyone by phone. He would like you to know about testimony taking place in the James Brown matter in Bamberg this morning. Apparently, an accountant has testified that he received advice from your firm in September of this year, after the court ordered your dismissal in August. David says the judge is livid, and you might need to have someone in court to represent your interests.

I will let you know if I receive any additional information.

SHARON BLAIR ENOCH

1427

Law Offices of David B. Bell

EXHIBIT 15

POWELL
GOLDSTEIN

Atlanta • Washington • Dallas

Direct Dial No.
404/572-6651
E-Mail: fmcgaughey@pogolaw.com

July 10, 2007

Albert H. Dallas, Esq.
Dallas Law Firm
304 Black Street, SE
Thomson, Georgia 30824

Re: The James Brown "I Feel Good" Trust

Dear Buddy:

Enclosed for your review and consideration is a document by which the Trustees of the above-referenced trust would change the controlling law of the trust, and amend the powers of the Trustee. Essentially, this moves the trust to Georgia. When you have had a chance to look at this and to consult with David Cannon and Judge Bradley, please let me know if there are any questions.

Best regards.

Very truly yours,

Frank S. McGaughey, III

For POWELL GOLDSTEIN LLP

FSM/jp

Enclosure

cc: William B. Shearer, Jr.
ODMA\PCDOCS\ATL\117525311

3-7-08

5:25

1428



**IRREVOCABLE TRUST AGREEMENT OF JAMES BROWN
CREATING THE BROWN FAMILY EDUCATION TRUST AND
THE JAMES BROWN "I FEEL GOOD" TRUST**

**DECLARATION OF TRUSTEES CHANGING CONTROLLING LAW
AND AMENDING THE POWERS OF THE TRUSTEE**

WITNESSETH, that by Trust Agreement dated August 1, 2000 (the "Trust Agreement"), James Brown as Grantor did establish The Brown Family Education Trust and The James Brown "I Feel Good" Trust (the "Trusts") with Alford A. Bradley, Albert H. Dallas and David G. Cannon as Trustees (the "Trustees"); and

WHEREAS, Article XIX of the Trust Agreement provides that notwithstanding that the laws of the State of South Carolina are initially to govern the execution of the Trusts, the Trustees are authorized to declare by written instrument that the Trusts from the date of such instrument shall be governed by the laws of another state which shall thereafter become the Controlling Law of the Trusts; and

WHEREAS, Article XIX of the Trust Agreement further provides that if the Controlling Law of the Trusts changes, the Trustees may by written instrument amend the Trustees' powers and such other provisions of the Trust Agreement as they may consider necessary or desirable to secure that such powers and provisions shall be as valid and effective under the applicable law.

THEREFORE, the Trustees of the Trusts hereby declare that:

1. They are the sole acting Trustees of the Trusts.
2. The Controlling Law of the Trusts shall hereafter be the laws of the State of Georgia.

3. The Trust Agreement is hereby amended by incorporating therein, but only to the extent not in conflict with any current provision thereof, each of the powers contained in Official Code of Georgia § 53-12-232.

IN WITNESS WHEREOF, the Trustees have hereunto affixed their hands and seals this _____ day of _____, 2007.

Signed, sealed, and delivered
in the presence of:

_____(SEAL)
ALFORD A. BRADLEY, Trustee

Witness

Witness

Notary Public
My Commission Expires:

[AFFIX NOTARIAL SEAL]

Signed, sealed, and delivered
in the presence of:

_____(SEAL)
ALBERT H. DALLAS, Trustee

Witness

Witness

Notary Public
My Commission Expires:

[AFFIX NOTARIAL SEAL]

1430

Signed, sealed, and delivered
in the presence of:

_____(SEAL)
DAVID G. CANNON, Trustee

Witness

Witness

Notary Public
My Commission Expires:

[AFFIX NOTARIAL SEAL]

\\ODMA\PCDOCS\ATL\1187649\1

1431

BROWN 2000 IRREVOCABLE TRUST)
_____)

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly sworn,
deposes and says:

1. Attached to this affidavit as Exhibit A is a copy of the latest correspondence we
received from Powell Goldstein, LLP in relation to our request, as Personal Representatives and
Trustees, for their file.

2. In accordance with the Court's August 10, 2007 Order and our rights both as Personal
Representatives and Trustees, we continue to attempt to obtain the files of Powell Goldstein and
Greenberg Traurig from the law firms and from former Trustees Dallas and Bradley.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
1st day of May, 2008

Loree W. Mangum (L.S.)
Notary Public for South Carolina
My Commission expires: 8/31/2014

04/29/08 TUE 18:13 FAX 101 572 5955

POWELL GOLDSTEIN 10

Enc 1

Daryl L. Williams, Esq.

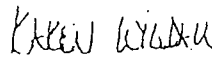
April 29, 2008

Page 2

As an initial matter, we disagree that your clients are the successor trustees of the Irrevocable Trust, as their appointment was by a court that wholly lacks jurisdiction and therefore had no jurisdiction or ability to appoint your clients as trustees of the Irrevocable Trust. Your clients are strangers to the Irrevocable Trust, and as such, have no right to seek the privileged communications that we had with the previous trustees or the work product arising out of our employment.

Furthermore, even if you were representing the legitimate successor trustees of the Irrevocable Trust, they would have no right to obtain our privileged communications with the prior trustees or our work product. Our relationship is with the individual fiduciaries, not the Estate or Irrevocable Trust, as you have argued. As I am sure you are aware, neither a trust nor an estate is a legal entity. A trust can only be represented by the trustees and an estate can only be represented by the estate's representatives, executors or administrators. See e.g., Am. Jur. Trusts § 3 ("A trust is not a legal entity."); Rhone v. Bolden, 608 S.E.2d 22 (Ga. Ct. App. 2004) ("[T]he lawyer's client is the administrator, not the estate."); South Carolina Probate Code § 62-1-109. Because neither a trust nor an estate is a separate legal entity, neither a trust nor an estate is considered the client of a lawyer. The majority view of state courts, including Georgia and South Carolina, is that because trusts and estates are not legal entities and cannot hire lawyers, the lawyer hired by the fiduciary represents only the fiduciary as a client. As such, your clients have no right to the privileged communications or work product related to our representation of Messrs. Dallas, Bradley and Cannon as the personal representatives of the Estate of James Brown and as the trustees of the Irrevocable Trust.

Very truly yours,



KAREN WILDAU
General Counsel

FOR POWELL GOLDSTEIN LLP

1271864\1

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

DARYL J. BROWN, individually and on behalf of)
his minor children, LINDSEY DELORES)
BROWN and JANISE VANISHA BROWN,)
VANISHA BROWN, LARRY BROWN,)
DEANNA J. BROWN THOMAS, individually and)
on behalf of her minor child JASON BROWN)
LEWIS, YAMMA N. BROWN, individually and on)
behalf of her minor children SYDNEY L. [REDACTED])
and CARRINGTON L. [REDACTED] and TONYA)
BROWN; TERRY BROWN, ROMUNZO)
BROWN and FORLANDO BROWN,)

and)

TOMMIE RAE HYNIE BROWN,)

and)

ROBERT L. BUCHANAN, JR. and ADELE J.)
POPE as Personal Representatives and Trustees)

Plaintiffs,)

v.)

DAVID G. CANNON, ALBERT H. DALLAS,)
ALFRED A. BRADLEY, as former Personal)
Representatives and former Trustees; and other)
Interested Persons: HENRY DARGAN)
McMASTER in his capacity as Attorney General)
of the State of South Carolina;)
MANUFACTURERS & TRADERS BANK;)
JAMES [REDACTED], CINNAMON N.M.)
PARIS, LARHONDA PETITT and JEANETTE)
MITCHELL, as potential heirs of James Brown,)

Defendants)

IN RE:)

ESTATE OF JAMES BROWN AND THE JAMES)
BROWN 2000 IRREVOCABLE TRUST)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
(On Removal from Probate Court)

CIVIL ACTION NO: 2007-CP-02-0122

FILED

6-10-08

Liz Godard
C.C.P. & G.S.

Amie Smith
Deputy Clerk

ORDER REGARDING THE
DEPOSITIONS OF WILLIAM B.
SHEARER, FRANK S. MCGAUGHEY,
III, AND JOEL A. KATZ AND
APPLICATION OF STAY TO SAME

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

JUN 10 2008

Liz Godard
C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

ORDER REGARDING THE DEPOSITIONS OF WILLIAM B. SHEARER, FRANK S.
MCGAUGHEY, III, AND JOEL A. KATZ AND APPLICATION OF STAY OF SAME

This matter came before me by telephone conference on June 5, 2008. The telephone
conference was requested in writing (with notice to all parties, including the deponents' counsel)
by Louis Levenson, as counsel for certain parties in this action, seeking to enforce Fulton
County, Georgia, subpoenas for depositions (of William B. Shearer, Esq. scheduled for
Wednesday, June 11, 2008 at 2:00 p.m.; Frank S. McGaughey, III, Esq. scheduled for Thursday,
June 12, 2008 at 9:00 a.m., and Joel A. Katz, Esq. scheduled for Thursday, July 31, 2008 at 9:00
a.m.) to witnesses who reside outside of South Carolina. Based on statements by counsel for
deponents William B. Shearer and Frank S. McGaughey, III that the depositions could not take
place because of a claim that the matters in this litigation are all stayed by that certain Order of
the Court of Appeals of South Carolina dated May 28, 2008, Louis Levenson, attorney for Daryl
J. Brown and certain other plaintiffs sought confirmation from this Court that any stay which
may relate to the appeal taken by Albert H. Dallas and Alfred A. Bradley as to certain issues in
this case does not apply to these previously ordered depositions.

The sole question before this Court is whether the depositions of William B. Shearer,
Frank S. McGaughey, III, and Joel A. Katz previously ordered and noticed in this matter, may
proceed under normal discovery procedures as to all matters related to the Estate of James
Brown and litigation related to the Estate of James Brown.

Various parties objected to any ruling by this Court as to the applicability of the stay
resulting from the appeal of Messrs. Dallas and Bradley. Those objections as to the depositions

EXHIBIT 16

The James Brown Legacy, Inc.
(name pending)
28 East Andrews Dr.
Suite K
Atlanta, GA 30305

October 12, 2007

Mr. Buddy Dallas
Judge Alford Bradley
The Irrevocable Trusts of James Brown, dated 8-1-00
The Brown Family Educational Trust
The James Brown "I Feel Good" Trust

Dear Mr. Dallas and Judge Bradley:

We are pleased to present this initial presentation of a corporation to be formed, after approval, named "The James Brown Legacy, Inc." (hereinafter "JBL") and letter of intent to begin due diligence involved with the James Brown Trust Estate (Trust Estate) with the objective of a purchase of the Trust Estate in its entirety, image, songbook, etc. of James Brown. We make this presentation as an initial introduction of our intent and with the understanding that any final agreement will be subject to formal documentation and acceptance and approval by the Trust Estate and the Court.

It is our belief that the legacy of James Brown and his noble wishes as setout in the trust documents will be best served by maximizing the value of the non-performing assets of the Trust Estate and transferring the items to a group interested in not only paying a fair price but also interested in continuing the altruism of Mr. Brown. It is our belief that the Trust Estate will have peak value by keeping the items grouped together and selling them as a unit instead of breaking up the items and liquidating them piecemeal. As you surely know, merely selling the items individually will do nothing to perpetuate the good works of James Brown.

Our organization's mission will be to develop a Strategic Plan and infrastructure that will build and promote the legacy of James Brown. We intend to work and partner with government agencies and educational institutions to turn James Brown's home into an experiential setting commiserate with the stated intentions of the I Feel Good Trust. We also envision plans that would include the establishment of the James Brown Museum. The purpose of this museum will be to tell the story of how James Brown persevered against all odds: a true "Horatio Alger" story. We will also work and partner with other interested parties within the Strategic Plan to maximize the brand equity and performance of the idle assets over time. We believe that this approach, coupled with the right structured sales agreement, will provide the most value for all interested parties.

Our intent is to make a formal offer to the Estate of James Brown and the Irrevocable Trust of James Brown dated 8-1-00 and must meet several criteria and approval by certain specific parties. Our intent is to purchase the assets, in their entirety, of the trust estate to include the writer's share of the music, the songbook, all intellectual property, real estate, personal property such as costumes, etc., Mr. Brown's image and persona, individually and as an entertainer to include all indicia, stage names such as "Godfather of soul", "The hardest working man in show business", etc.

Our intent is to make a formal offer, as of the date of this letter, for the above referenced property, for a payment of \$100 million US dollars plus Five percent (5%) of the gross profits of the company to be formed, JBL, to be portioned to the "I Feel Good" Trust over a determined period of time as legacy royalties. Our formal offer shall provide earnest money in the amount of \$100,000.00 to be paid into the Estate/Trust as directed during the initial 90 day period which will begin upon approval of the formal offer by the Court. In order to maximize the value of the Trust Assets, we also anticipate the Trust granting JBL contingent, exclusive rights to maximize Trust Assets during the 90-day period, the contingency being our eventual closing on the transaction. During this period, JBL will have all of the rights and privileges to determine marketability of assets and enter into arrangements to secure cash infusions. Further, inasmuch as the closing of the purchase, if approved by the parties and the Court, will be as of the date of this letter and all income or receipts of the Trust will be part of the assets that we will be purchasing, the \$100,000.00 earnest money may be paid into the Estate/Trust from any source during that 90 day period.

We envision that, upon tentative approval of the formalized offer by the Court, we will begin a brief period of due diligence.

By the end of the first 90 days following tentative approval, if JBL's due diligence warrants proceeding further, JBL will make a payment of \$5 million to be credited toward the purchase price at the closing. That payment will begin an additional 90 day period in which the parties have to finalize and close the transaction. Provided all the conditions set forth in the formal offer are met, the closing will occur on or before the 90th day following the \$5 million dollar payment. Principals of our group have already been in contact with John H. Tiller, Esq. of Haynsworth Sinkler Boyd, P.A., who has tentatively agreed to be the closing attorney, should the Court approve our formal offer.

At the final closing, the remaining balance of the \$100 million offer shall be paid. We anticipate that the Gross Profits Agreement will be executed at that time as well.

As you will certainly understand, this letter of intent is subject to due diligence by us and our agents. We anticipate certain contingencies to be in the formal offer, including a completed inventory and appraisal of all items in the Trust, assurance of control of assets, assurance of full rights to publicity, reasonable financing if necessary, no limitations or conditions that would inhibit the implementation of the JBL Strategic Plan to develop the James Brown Legacy, and no impediments to creating performing assets over time.

We understand and appreciate that this letter of intent and any formal offer shall be subject to evaluation and approval of both the Special Administrators and the final approval of the Court.

As you understand, it is our hope and desire to maintain the legacy and good will of James Brown as so aptly set forth in the Trust agreements. We understand the limitations that the Trust may have at this juncture, however. As a small demonstration of our wish to "keep up the good works" of James Brown, we wish to provide the Trust Estate with funds necessary to continue James Brown's tradition of providing turkeys for the needy this Thanksgiving 2007. We believe that this important tradition is needed to maintain the James Brown Legacy, Mr. Brown's wishes, and are honored to assist.

We appreciate the opportunity to provide this letter of intent and believe it be truly reflective of the valuation of the estate at this time. If the Trust Estate is willing to consider entering into a formal agreement, kindly contact me or my counsel, John T. Sparks, Sr., within the next 30 days.

I look forward to discussing this matter with you further.

Sincerely,

Gray M. Campbell

cc: John T. Sparks, Sr., Esq., Austin & Sparks, P.C.
cc: John H. Tiller, Esq., Haynsworth Sinkler Boyd, P.A.

EXHIBIT 17

Page 2 of 3

.I. what do you think about this?

From: David Yount [mailto:david@LevensonLaw.com]
Sent: Saturday, November 10, 2007 2:18 PM
To: dcale@popelawfirm.com; rlbuchananjr@bellsouth.net; d_michel@yahoo.com; rnrosen@rosen-lawfirm.com;
medlin@sc.rr.com; Carter@eckb.com; Ariail E. King; wjh@LewisBabcock.com; Keith M. Babcock; jacksonstanley@bellsouth.net;
Davidbell@davidbelllawfirm.com; rmaxwell@maxwelllawfirm.com; Ericbland@blandrichter.com; ronnie@blandrichter.com;
mg@jimgriffinlaw.com; AGSJONES@ag.state.sc.us; Grace Lewis; aggframpto@ag.state.sc.us; akirby@rngclaw.com;
yeskirkland@bellsouth.net; robtyoungatty@yahoo.com; cmcgowan@mcgowanhood.com; islj@jtbpa.com;
elder@mcgowanhood.com; bat@jtbpa.com; shahidlo@bellsouth.net
Cc: Louis Levenson
Subject: Brown estate - William Morris Agency document

To All:

Pursuant to subpoena and our various communications with William Morris Agency we obtained the documents attached on Friday Nov. 9.

My office is therefore copying these documents to you.

These documents reflect that touring revenue (each date is segregated by individual in the agency, I think) from 2003 till date of death was almost \$18,000,000, assuming that all dates were booked through the agents for Mr. Brown and not done by Mr. Brown himself or by those around him.

Our information indicates that there were dates he worked not identified to the agency (though we do not have specific information). This fact would only cause the total touring number to increase. Obviously Mr. Cannon and Mr. Hlas (and possibly Mr. Bradley) who were utilizing 7th Decade for some operational purpose have failed to account to us or to anyone how this flow of revenue moves logically from one entity to another.

We urge you that you agree that the written information from William Morris can be used at the hearing on Nov. 15 and at any other hearings or for trial in lieu of a live witness to authenticate the documents. If there are any objections to the documents being used for evidence on the 15th, please advise me so we may make arrangements for a live witness from the agency.

Thank you.
Louis Levenson

David M. Yount, Esq.
Levenson & Associates
125 Broad Street, SW
Atlanta, Georgia 30303
(404) 659-5000 office
(404) 372-8935 mobile
(404) 659-1355 fax
vid@levensonlaw.com

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Information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the recipient, you are hereby notified that any review, dissemination, distribution or of this communication is strictly prohibited. If you are not the intended

EXHIBIT 18

James Brown LLC

Royalties Collected and Bonds Outstanding

	<u>Royalties Collected ^</u>	<u>Payment Date</u>	<u>Bonds Outstanding</u>
1999	\$1,032,554.23	6/15	\$26,000,000.00
total royalties collected	<u>\$1,032,554.23</u>		
2000	\$1,596,176.93	6/15	\$25,909,283.92
total royalties collected	<u>\$1,348,428.88</u>	12/15	\$25,396,905.43
	<u>\$2,944,605.81</u>		
2001	\$2,305,036.04	6/15	\$24,150,140.52
total royalties collected	<u>\$1,074,752.45</u>	12/15	\$24,078,139.33
	<u>\$3,379,788.49</u>		
2002	\$1,057,903.19	6/15	\$24,009,207.57
total royalties collected	<u>\$1,048,498.84</u>	12/15	\$23,952,127.22
	<u>\$2,106,402.03</u>		
2003	\$2,136,093.43	6/15	\$22,801,045.79
total royalties collected	<u>\$1,242,989.45</u>	12/15	\$22,502,410.65
	<u>\$3,379,082.88</u>		
2004	\$1,397,204.19	6/15	\$22,039,147.49
total royalties collected	<u>\$1,120,244.51</u>	12/15	\$21,831,123.44
	<u>\$2,517,448.70</u>		
2005	\$2,165,950.04	6/15	\$20,574,656.98
total royalties collected	<u>\$1,905,941.08</u>	12/15	\$19,533,120.58
	<u>\$4,071,891.12</u>		
2006	\$1,192,310.13	6/15	\$19,150,036.75
total royalties collected	<u>\$1,543,930.35</u>	12/15	\$18,405,366.94
	<u>\$2,736,240.48</u>		
12/25/06 Trust Account Balances	\$2,144,730.85		
(certain trust account balances may be used as a credit towards the final payment of Bonds, once all fees and expenses have been paid and proper authorization is received)			
2007	\$2,149,774.35	6/15	\$17,026,624.18
total royalties collected	<u>\$2,149,774.35</u>		

^ includes interest earned to payment date

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CIVIL ACTION NO. 2007-CP-02-0122
	)	
	)	
IN RE:	)	RETURN AND RECOMMENDATION
	)	OF
THE ESTATE OF JAMES BROWN	)	SPECIAL ADMINISTRATORS
A/K/A JAMES JOSEPH BROWN	)	
_____	)	

The Special Administrators of the Estate of James Brown, Robert L. Buchanan, Jr. and Adele J. Pope, make the return to Motions and recommendations set out below:

AS TO THE TANGIBLE PERSONAL PROPERTY

1. They believe that the immediate adoption and seamless implementation of such a plan to value the TPP including Personal and Household Effects (PHE), is in the best interest of the Estate.
2. They believe that any plan must balance the rights of the beneficiaries of the Will to receive, in kind, Personal and Household Effects (PHE), with the need for appropriate security for the payment of Estate Taxes and expenses, where applicable.
3. They are informed that Tom Wells, engaged by the PRs, with others, has completed an inventory of assets owned by the Estate. They request that the Court engage Llewellyn M. Dykes at a cost of no more than Thirty Thousand (\$30,000.00) Dollars to value the TPP on or before December 25, as of December 25, 2006 (whether claimed by the Estate, the Trust, or any Brown Entity).
4. With respect to the TPP, they further recommend the following:
 - a. All TPP, other than cars titled in the name of James Brown Enterprises, Inc., collectively be reported on the Inventory & Appraisal as assets of the Estate,

AS TO THE VALUATION OF THE ROYALTIES, IMAGE, NAME AND PERSONA

6. The SAs oppose the motion to engage New York Counsel because resources are available locally to perform the same task at a savings of what is estimated to be at least \$50,000.

7. Because of the crisis caused by the termination one month before the due date of the Estate Tax Return of the primary financial advisor of James Brown and the Brown Entities, the SAs request that the Court approve the following valuation procedure for the Royalties, Image, Name and Persona of James Brown:

- a. A unified valuation of the Royalties, Image, Name and Persona, which appears to be appropriate based on the scant case law and legal commentary.
- b. Use of the following formula for date-of-death valuation of the Royalties, Image, Name and Persona of James Brown, working with Williams Sellars, CPA, M&T Bank and the available records of David Cannon:
 1. 1 year royalties, based on 5 yr. M&T average
 2. PLUS 50% of Gross known Performance Contracts from 2006
 3. X - a figure recommended by accountant within range of 12.5 - 14.
 4. LESS payoff amount due M&T Bank as of date of death
 5. EQUALS date-of-death value of Royalties, Image, Name and Persona
- c. The royalties, image and personal should be returned as Estate assets, with full disclosure that they may be claimed, in whole or in part, by James Brown Enterprises, Inc., which, in turn, may be claimed, in whole or in part, by the Trust.
- d. The PRs should be directed to prepare, with the assistance of the SAs, a detailed report to accompany the above valuation when filed with the Estate Tax Returns in March, 2008, to include:
 1. A complete explanation of the structure of the \$26,000,000, 7.98% Royalty-Backed Pay-through Note, Class A No A-1 (CUSIP No. 470277 AA2) and receipts, payments and misappropriations from said fund. (This would including the structure of James Brown Royalty Venture I SPC, Inc, James Brown, L.L.C., etc.)
 2. A detailed explanation of the filing, and failure to file, tax returns with respect to the various entities.

3. A compilation of all known and available information about Mr. Brown's (and the Estate's) performance and other contracts during 2006 and 2007, including those entered into after death.
4. Complete information about the structure of Brown Entities, including Geronimo Music Ltd., to the extent known.
5. Complete information about any unpublished masters, to the extent known.
6. A complete explanation of the Royal Bank of Scotland 2006 proposed refinancing transaction.
7. A complete explanation of the proposal of Greenberg Traurig to refinance the TIAA note in October of 2006.
8. A complete explanation of Mr. Brown's relationship with David Cannon, 7th Decade, Intrigue and others which may be relevant to the valuation issue.

8. The above valuations (including TPP) should be declared to be reasonable, but without prejudice to any party to assert a different value in proceeding related to the Estate, Trust and Brown Entities.

AS TO COMBINING ACCOUNTS FOR THE ESTATE, TRUST AND BROWN ENTITIES

The SA s request that the Court allow combined funds of the Estate, Trust and Brown Entities (other than the James Brown "I Feel Good Trust" if and when it is funded), with proper documentation. The reasons for such joint funds are:

1. The assets of the Estate, Trust and Brown Entities cannot be segregated with certainty at this time.
2. The James Brown Irrevocable Trust document specifically authorizes loans to the Estate.
3. Administrative costs will be avoided.
4. By Order dated August 10, 2007, the PRs of the Estate were directed to take no

EXHIBIT 20

STATE OF SOUTH CAROLINA

COUNTY OF: AIKEN

IN THE MATTER OF: JAMES BROWN

IN THE PROBATE COURT

INVENTORY AND APPRAISEMENT

CASE NUMBER: 2007-ES-02-0058

Filed: 11-15-2007Sue H. Roe
Judge of ProbateBy: K. Duffin☒ ORIGINAL☐ SUPPLEMENTAL #

Personal Representative (s): ALBERT H. DALLAS, and ALFRED A. BRADLEY

Decedent's Social Security Number: 259-32-3801Decedent's Date of Death: December 25, 2006Was there a will? ☒ YES ☐ NO

Domicile at death:

Aiken

SC

(county)

(state)

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SVORN to me this 15th day of
November 20 07

Stanley G. Jackson
Notary Public for South Carolina
My Commission Expires: _____

Attorney: Stanley G. Jackson

Address: 321 1/2 Newberry Street SW.
Aiken, SC 29801E-Mail: jacksonstanley@bellsouth.netTelephone: 803.643.1003Signature: [Signature]Name: Albert H. DallasAddress: Post Office Box 115 Post Office Box 1150
Thomson, GA 30824

E-Mail: _____

Telephone (O): (706) 595-7170

(H): _____

Signature: [Signature]Name: Alfred A. BradleyAddress: 1803 Green Pond RD
Aiken, SC 29803E-Mail: usaball@bellsouth.netTelephone (O): 803.648.4201(H): (803) 652-8443

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Non-Probate	Probate
Schedule A - Real Estate		
Schedule B - Stocks and Bonds		Unknown
Schedule C - Notes Due Decedent and Cash		
Schedule D - Insurance on Person's Life: Part 1 - Payable to Estate		
Part 2 - Payable to Beneficiary		
Schedule E - Jointly Owned Property		
Schedule F - Other Miscellaneous		
Other Assets Payable to Estate		
Schedule G - Transfers during Decedent's Life		
Schedule H - Powers of Appointment		NONE
Schedule I - Annuities and Retirement Accounts		NONE
TOTAL GROSS VALUE	\$ 85,683,562.99	
ENCUMBRANCES	(0)	
TOTAL NET WORTH	\$ 85,683,562.99	

bond indebtedness secured thereby, and multiplying the sum by 66.66512% (the ownership interest of James Brown Enterprises, Inc. in James Brown LLC). The net realizable value of James Brown Enterprises, Inc. upon the sale of its assets and liquidation to the trust will necessarily be less than the value above, since it is a C corporation for federal income tax purposes and obtained no step up in the inside basis of its assets for income tax purposes. These trust assets are includable in the deceased's taxable estate under IRC Section 2038 (a). The value of the persona and other tangible and intangible rights associated with James Brown, his image and likeness, is estimated to be \$50,000,000 and the other one half of the \$100,000,000 offer and is included in Schedule F, net of items listed elsewhere herein. The Schedule F amount may be determined by the Court to be owned by James Brown Enterprises, Inc., which is 100% owned by the Irrevocable Trust of August 1, 2000, and therefore not part of the probate estate. None of this value in Schedule G is payable to the estate, but is includible in the federal gross taxable estate before deductions.

Additional offers are expected for assets owned by the estate and the trust. It is anticipated that this inventory and appraisal will be amended when these offers are received and considered, when appraisals are obtained, and further inquiries made into the circumstances surrounding the acquisition of JTWRs property in Schedule E above.

TOTAL SCHEDULE G

(also enter amounts payable to estate under recapitulation, page 1)

\$ 26,332,792.00

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment - Property, both real and personal, over which Decedent possessed a Power of Appointment whether Testamentary or otherwise.

Did Decedent possess a Power of Appointment? ☐ YES ☒ NO

If "yes", did Decedent exercise the power of appointment in favor of estate? ☐ YES ☒ NO

If "yes", please describe and list total amount payable to estate.

(If more space is required, insert additional sheets of same size.)

EXHIBIT 21

1

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

CIRCUIT COURT
2007-CF-02-0122

IN RE:

THE ESTATE OF JAMES BROWN
a/k/a JAMES JOSEPH BROWN

TRANSCRIPT OF RECORD

Heard on Friday, December 21, 2007
Aiken, South Carolina

BEFORE:

THE HONORABLE DOYET A. EARLY III
CIRCUIT COURT JUDGE

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154

THE COURT: Ma'am, I'm going around the room as nice as I can.
Ms. Lewis.

MS. LEWIS: Thank you, Your Honor. Ms. Levenson in his petition
for accounting has taken the position that the trust has not
been funded, and as a result that the charitable trust is
invalid.

It is disturbing to hear Adele Pope say today that the
charitable trust is not currently funded, because she has
adopted the position of Louis Levenson who seeks to destroy the
charitable trust. It points out, once again, that Adele Pope's
interests are adverse to the interests of the charitable
beneficiary. And that as a trustee, there are serious issues of
breach of fiduciary duty related to Adele Pope and Bob Buchanan.
If Adele —

THE COURT: Ma'am, I'm asking you to address the issue of Mr.
Gilreath and Few.

MS. LEWIS: I am, Your Honor. If Adele Pope and Bob Buchanan —

THE COURT: And look at me when you talk.

MS. LEWIS: I will, Your Honor.

THE COURT: Thank you.

MS. LEWIS: If Adele Pope and Bob Buchanan have the right to
control litigation over breaches of fiduciary duty of the
charitable trust, they have a conflict of interest because one
of the greatest breaches of all may be the breach of Adele Pope

and Bob Buchanan.

And I would point out that this Court has already issued a final order on this question. At the hearing on September 24th, an order was issued related to the engagement of Mr. Gilbreath.

THE COURT: Mr. Who?

MS. LEWIS: Mr — what's his name?

THE COURT: I don't know who you're talking about.

MR. JONES: Gilreath and Few.

MS. LEWIS: Gilreath and Few. That's right.

And in that order, Ms. Pope wanted them to represent all Brown entities, James Brown, the Estate of James Brown, and the I Feel Good Trust.

The attorney generals objected to her hiring counsel to represent the I Feel Good Trust and the Court in its order said that the Attorney Generals of Georgia and South Carolina would represent and protect the interests of the I Feel Good Trust.
That's a final order.

THE COURT: Anything else?

MR. JONES: One thing more, Your Honor.

THE COURT: Hold on. Mr. Bell?

MR. BELL: Your Honor, we would — you know, it's interesting we're here today because there is a need to expedite everything and I agree with that, but we also hear today from Ms. Pope that it could be a five-year transaction to finish these matters.

I — as much as all of us would like for it to be expedited, I don't think any of us believe that this matter is going to be concluded within a short period of time. And so the thought that it has to be made today on hiring Kendall Few and Mr. Gilreath, who are excellent attorneys —

THE COURT: What is your objection, if any? The fee agreement?

MR. BELL: Absolutely. If the attorney generals can negotiate with a quality law firm a better fee agreement, I think we ought to go that way.

THE COURT: Mr. Jones?

MR. JONES: Your Honor, I think, well, I know Professor Medlin and the P.R. trustees have cited provisions of the Trust Code and Probate Code. We don't dispute those. I think our posture at the first hearing was, we just came into this. We can get someone to go by the A.G.'s fee agreement. No one qualms that either the trust is funded first or it goes to the estate. And we have an interest in this —

THE COURT: Sure, you do.

MR. JONES: — because ultimately we're protecting charitable beneficiaries. And we've offered out in an e-mail, and actually it was a 30 percent rate rather than a 33 and a third percent and now they've dropped it to a 30 percent rate, to show the dramatic difference in the two. Millions of dollars in this. And we would offer that to show that, wait a minute here, we can

save millions of dollars with appropriate counsel. And we came in late in this matter and —

THE COURT: Let me ask you this, not being rude and interrupting you, but if I sign an order saying I will appoint Gilreath and Few under the fee arrangements that you have structured, would you have any problem with that?

MR. JONES: Under the fee — no, Your Honor.

THE COURT: Just the fee arrangement, not the quality of lawyer, what —

MR. JONES: No, no.

THE COURT: — they're going to do, which is trying to regroup —

MR. JONES: But Your Honor, they've already said they won't go by that —

THE COURT: They may not. If they won't then we get somebody else.

MR. JONES: Yes, sir. I don't have a problem with that. In fact, I think Your Honor pointed out at the first hearing, Mr. Gilreath and Kendall Few, you can't go beyond those individuals.

THE COURT: I think you agree with that.

MR. JONES: No question. And Your Honor said, well, you might can talk them down. And I think I said on the record, I don't have to talk them down I've got to get Kendall Few, Jr. to come in and take the spot. All we're trying to do is save money. No

MS. POPE: Mr. Dallas, Mr. Cannon, Mr. Bradley,

MR. LEVENSON: Greenberg Traurig.

MS. POPE: Greenberg Traurig. Accountants, Ms. Tomi Rae.

MR. MEDLIN: Our client.

MS. POPE: Ms. Tomi Rae, Farr, everybody.

THE COURT: Hold on. I think the Probate Code is pretty clear on that, if I remember my abbreviated probate practice. Go to their claim.

MR. MEDLIN: Mr. Buchanan and Ms. Pope's claim, we would suggest that they in effect have the authority to approve their own claims.

THE COURT: And they've sidestepped that, likely so.

MR. MEDLIN: Sure. They also have the ability as Ms. Pope pointed out to ask the Court for guidance and approval, but even if they had implicitly already approved their own claims, interested persons would have the ability to ask the Judge to review the compensation. And so, I think the process was joined appropriately in by Mr. Buchanan and Ms. Pope who are asking rather than telling us that they want to take their fees.

With respect to the amount of their fees, although special administrators are included within the definition of personal representative for many purposes of the Probate Code, the section that Ms. Lewis cites has one provision she omitted. And that is, you can order beyond the maximum fee for extraordinary

services.

We would certainly take the position at the appropriate time, Mr. Buchanan and Ms. Pope have provided extraordinary services as compared to the usual estate administration, but that ceiling that she cites applies only if you determine there are not extraordinary services.

THE COURT: If I do approve it, what's the payment, how is it paid?

MR. MEDLIN: I think that's what Mr. Jones wanted to hear about from me, and I would agree with Mr. Jones and I think with the language of the petition of Mr. Buchanan and Ms. Pope that that becomes a question of fiduciary accounting at the appropriate time. We need to determine what services were performed on behalf of what entity. We've got an estate and a trust, although that now is an issue.

THE COURT: When you say that's an issue, I assume that we have not had the attack on the validity of the trust.

MS. POPE: Yes, Your Honor.

THE COURT: I mean, formally.

MS. LEWIS: I haven't seen it. What's the attack?

MR. BELL: It's been filed.

MS. POPE: I haven't read it yet.

MS. LEWIS: Louis, did you file it yesterday?

MR. ROSEN: I filed it. You'll be served in due course.

But we would want to make the distinction that hearing from someone and treating them as a party or an interested person as to a particular matter are two different issues. And we want to make clear that we don't necessarily disagree that we have a Judge who is civil and courteous and is willing to hear from someone, that person actually has a stake in that particular matter.

THE COURT: Well, be specific. What are you talking about?

MR. MEDLIN: Well, as to that, we don't think the Attorney General from Georgia has a stake in any of these matters.

There's nothing that I see in South Carolina law, the code dealing with probate or trusts, the code dealing with the attorney general generally under Title One that says that an attorney general from another state can come in and discuss an issue about a South Carolina trust.

This is a South Carolina trust. This trust does not, as was bandied about earlier, and perhaps loosely in this estate administration, benefit the poor children of Georgia and South Carolina. In fact, Ms. Lewis says herself in her petition that it benefits poor and financially-needy children, youth or young adults who seek and have need of such assistance to obtain further education at the many educational entities and/or institutions available in the States of South Carolina and Georgia.

THE COURT: Yes, ma'am.

MS. LEWIS: And as to the legal services that they've put forward, number one, we submit that the affidavits don't show that legal services were rendered. And to the extent the Court might want to construe this as a request for extraordinary services, they're not extraordinary.

Just looking at Mr. Buchanan's affidavit. Here's one: Two trips to Security Federal for bank deposits. That cost \$100. And then we have a series of telephone calls, meetings; that's about it. That's not extraordinary.

On the issue —

THE COURT: Address the issue of whether or not you have an interested party.

MS. LEWIS: Okay. Your Honor, in addressing that issue, I'd like to go ahead and address the motion that the Attorney General of Georgia has filed for a stay of the declaratory judgment proceeding —

THE COURT: We're not addressing that.

MS. LEWIS: Oh. we're not going to address it today?

THE COURT: Not that, no, ma'am. Not the stay. Just asking your position on whether or not you're —

MS. LEWIS: Okay. Well, could I ask the Court to consider this motion for stay at the hearing on January the 9th?

THE COURT: Yes, ma'am.

THE COURT: Consent order to that effect. Pass to it everybody before me.

MR. ROSEN: Yes, sir.

THE COURT: What else do we got this morning?

MR. LEVENSON: May I raise an issue that may be in aid of sort of expediting some discovery? There was correspondence from Ms. Pope or Mr. Buchanan, I'm not sure, that suggested that the South Carolina Attorney General had information that Exhibit B, to the purported trust was created after the death of James Brown.

And I would just like someone who has knowledge of that as an officer of the Court to speak for the record on that because it is germane to many issues which are A., pending and will likely be pending hereafter. And it would, you know, if we just know as a *judicio aid*, fact, we would not need to prove it either through discovery or at trial.

MS. POPE: And as an adjunct to that, at the hearing I believe on November 20th Ms. Lewis — sorry, Your Honor. Ms. Lewis asked to admit into evidence the trust. And I don't think anybody looked at the documents she handed up to the Court. I assume that it did not contain the second Schedule B. which is undated and unsigned.

I've written her a letter and she attempted to call me. I didn't hear from her, but I don't think I would have admitted

MR. MEDLIN: It doesn't have Dewain Herring's footer on it as the other pages did.

MS. POPE: Well, Dewain Herring wasn't available.

THE COURT: Hold on. Sonny, next?

MR. JONES: We were looking through the trust documents like everybody else and then you look at one that's got the Schedule B. which is good language for us. The other one is blank. One was blank and one was complete.

And somewhere in the course of things, Mr. Dallas calls our office. He's an attorney. He calls our office. He'll talk about sending me documents or whatever it might be.

And one time he called, I remember him saying something like, I asked the question, he said, that was prepared earlier in the year. And then when the issue came up as Bob and Adele were proceeding to file the documents and they addressed it to me. I said, well, I think I remember something about that document being a document this year.

So what I did, I turned around and e-mailed Mr. Jackson and I think I copied Buddy Dallas and Mr. Bradley saying we need to know along with a couple other things if you would, what's the origin of this. It's my understanding that it was produced this year, right in January or February by the trustees as they got together as to what their thoughts would be, what would be included in the trust.

got on today's agenda?

MS. POPE: Merry Christmas, happy holidays.

THE COURT: Also merry Christmas and happy holidays to everyone. First of all, let me hand out — for the record, I'm handing out the order sealing the record. This is Mr. Cannon's financial declaration showing a negative net worth. Mr. Levenson. Professor. My S.A.s, P.R.s, et cetera. Mr. Jackson.

MS. POPE: Your Honor, if I could just say —

THE COURT: To the Honorable A.G. from Georgia. Mr. Bell.

MR. BELL: Your Honor, I do not care for one. If I don't have it, then I can't violate the order.

THE COURT: Retracting the one for Mr. Bell.

MS. POPE: Your Honor, I would just like —

THE COURT: Hold on.

MS. POPE: Could I tell everybody that I have someone going to Roatan today, and I have notified Mr. Cannon's attorney that I'm going to ask them to take pictures. Bob and I are not sending them. It's a young lawyer we just happen to know he's going to Roatan for the holidays. And I have asked them to take pictures and I have offered to pay them on an hourly basis for taking pictures of the lot. I have notified —

MR. JONES: While they're there; right?

MS. POPE: While they're there. Only for the hours while

EXHIBIT 22

11. If the Court determines, after a full hearing, that Mr. Buchanan and I cannot continue to serve properly and ethically as Personal Representatives and Trustees at the same time, I ask the Court to take such measures as will balance the interest of our acting properly and ethically and doing the least damage to Mr. Brown's Estate Plan.

12. I believe that Mr. Buchanan and I have acted in utmost good faith first in our service as SAs, and as Personal Representatives and Trustees since November 20, 2008.

13. I believe the resignation of Mr. Dallas and Mr. Bradley was entirely appropriate. I believe our appointment by the Court was appropriate.

14. In the fall of 2007, Mr. Dallas and Mr. Bradley advised us, and the accountant, that there was no Advisory Committee under Mr. Brown's Trust. When we became PR/Trustees, we filed for charitable recognition of the James Brown "I Feel Good" Trust. For the Advisory Committee, we selected a former South Carolina State Superintendent of Education and the now-president of South Carolina State University. We believe they embody Mr. Brown's goals and love of education. We sought, and are still seeking, to add a child of Mr. Brown who supports the goals of the 2000 Trust.

15. I ask the Court to schedule a full hearing on the motion for reconsideration of our appointment, to determine that what Mr. Buchanan and I have done as Special Administrators, and to date as Personal Representative and Trustees, is proper.

16. I also ask the Court to declare that it is both ethical and proper under Mr. Brown's documents for us to continue to serve as both Personal Representatives and Trustees.

17. I ask that my counsel be allowed to cross examine, among others, Forlando Brown, to determine whether the lawsuit he has filed against us in Federal Court was orchestrated or

motivated by Messrs. Dallas and Cannon, since he is using the law firm that helped Mr. Cannon and Mr. Dallas in July 2007 with trying to remove Mr. Brown's Trust from the State of South Carolina.

18. Every Will or Trust which has more than one outright beneficiary has potential conflicts. Mr. Brown's Estate Plan contemplated service by the same persons as his Personal Representatives and Trustees.

19. Mr. Buchanan and I have worked steadily for 10 months to do everything we could, first to preserve the assets, and now to uphold his Estate Plan. I believe if we had not been appointed, and prevented it, Mr. Cannon, Mr. Dallas and Mr. Bradley would now have millions of dollars, and Mr. Brown's Estate and Trust would be in grave condition.

20. If, after this review, the Court finds that it is not both ethical and reasonable for Mr. Buchanan and me to serve both as Personal Representatives and Trustees, I would intend to work with Mr. Buchanan to tender my resignation in a way that would ensure that Mr. Brown's Estate and Trust not be put at risk of falling back into the hands of Mr. Cannon, Mr. Bradley and Mr. Dallas.

21. In this complex matter, which includes at least 5 separate lawsuits, special conflicts may arise. When they do, it will be entirely appropriate, and we, the Court, or any appropriate party, may seek either a Special Administrator or Special Trustee to deal with a particular situation. To avoid more duplication and confusion, however, I believe this procedure should be implemented only as and when needed.

22. Mr. Buchanan and I have served for only 6 weeks. We are trying to resolve seven years of mismanagement. I hope to continue to do that if the Court finds my service appropriate.

Mr. Brown's Estate and Trust if the same fiduciaries were not serving both as his Personal Representatives and as Trustees.

5. As shown on Exhibit A, attached hereto, Albert Bradley, prior to January 2, 2003, failed to perform his duties as Trustee for six years. After that, he has joined in, and supported, the acts of Mr. Cannon and Mr. Dallas.

6. One of our primary acts as SA s from March 7, 2007 - August 10, 2007 was preventing an imprudent sale of Mr. Brown's assets which would have immediately paid Mr. Dallas and Mr. Cannon more that \$ 2 Million.

7. Along with Mr. Buchanan, I have both a fiduciary duty and a great desire to preserve Mr. Brown's Estate Plan, as outlined in his Will and the 2000 Trust, for the education of children, including his grandchildren.

8. I believe that my fiduciary duty includes taking all reasonable measures to assure that Messrs. Cannon, Dallas and Bradley not return as fiduciaries for the Estate or Trust.

9. I do not desire, however, to be serving and vigorously defending Mr. Brown's Estate Plan, something which is expected to consume more than 70% of my available time for the next year (and perhaps longer) unless accusations made against Mr. Buchanan and me by the South Carolina Attorney General (and others) related to our service as SA s are resolved in our favor after a full evidentiary hearing.

10. I now agree that I should not have believed the representations of Mr. Dallas and Mr. Bradley, speaking through their lawyer in open Court, that James Brown Enterprises, Inc. had never been transferred to the 2000 Trust. Nor should I have believed many other representations by them. I ask to take the stand to tell the Court about these matters.

Excerpts, Order of the Honorable Doyet A. Early, III dtd. March 7, 2008

Aiken County Case No. 2007-CP-02-0122 ("Case 122")

On January 6, 2008 Buchanan and Pope served a response to all motions to alter or

amend. It was supported in part by affidavits of Buchanan and Pope. They requested:

1. That the Court proceed with, and deny, all attempts of Dallas and Bradley to set aside their permanent resignations;
2. That the Court order Bradley and Dallas to fully account for, and deliver to them as Successors, a complete accounting for the Estate and the 2000 Trust; and
3. That the Court conduct a full hearing on the propriety of their appointment and grant certain additional relief.⁷

On December 13, 2007 and January 28, 2008, Bradley and Dallas filed Supplemental Motions to Alter, Amend or Vacate. The supplemental Motions assert, in part, that this Court lacked jurisdiction to accept the resignations and appoint a successor.

Pope and Buchanan responded to the Supplemental Motions, asserting that they were not timely. Additional testimony, affidavits⁸ and filings were made a part of the record at the hearing.

⁷ Buchanan and Pope, among other things, asked the Court to find:

- DAE
#4
- a. Because of the damage caused to James Brown, the James Brown 2000 Trust, and the Brown Entities by Messrs. Cannon, Dallas and Bradley, it was both proper and in the best interest of the Estate to appoint PRs and Trustees to serve in both capacities. Separating those functions would cause unnecessary duplication and hinder the Estate Plan of James Brown.
 - b. Buchanan and Pope ethically and properly performed their service as SAs and their claim for past services was properly ordered by the Court.
 - c. Buchanan and Pope, or other properly designated fiduciaries, may ethically serve simultaneously as PRs and Trustees under Mr. Brown's Will and the 2000 Trust, and Buchanan and Pope have properly done so since November 20, 2007.

⁸ Including the Affidavits of Buchanan and Pope, with attachments, served on January 18, 2008.

EXHIBIT 23

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Forlando J. Brown,

Plaintiff,

v.

Adele J. Pope, individually and
As Trustee of the Irrevocable Trust
established by James Brown in
August 1, 2000, and

Robert L. Buchanan, Jr., individually and
As Trustee of the Irrevocable Trust
established by James Brown in
August 1, 2000,

Defendants.

Case No. 3:08-co-00014-CMC

AMENDMENT TO COMPLAINT

COMES NOW Plaintiff Forlando J. Brown and hereby amends his Complaint against Adele J. Pope, individually and as a purported Trustee of an Irrevocable Trust established by James Brown on August 1, 2000 (the "Irrevocable Trust"), and Robert L. Buchanan, Jr., individually and as a purported Trustee of the Irrevocable Trust, by adding the following counts and additions to the prayer for relief thereto:

**COUNT III – TORTIOUS INTERERENCE WITH GIFT, PROSPECTIVE
CONTRACTUAL, BUSINESS, OR ECONOMIC RELATIONS**

1.

Plaintiff incorporates the allegations in his Verified Complaint as if fully set forth herein.

**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~~; 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 ~~Lamar~~ and Carrington ~~Lamar~~; 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~~; 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 ~~ISLAM~~ and CARRINGTON ~~LAMAR~~; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

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

2010 OCT - 1 PM 3:43

FILED

AFFIDAVIT OF BETH BAUKNIGHT