

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

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

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SC Court of Appeals

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 IV OF V

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1. I am Beth Bauknight. I am employed with the firm of Bauknight, Pietras & Stormer, P.A. The statements contained herein are made from my personal knowledge.

2. Since approximately May 26, 2009, I have served as the custodian of the records relating to the Estate of James Brown. I am personally familiar with documents that were filed by the former Personal Representatives, Adele Pope and Robert J. Buchanan, in the Aiken County Probate Court.

3. Attached hereto at Exhibit A is a true and correct copy of an "Interim Accounting" filed by the former Personal Representatives on May 20, 2009.

4. Attached hereto at Exhibit B is a true and correct copy of a "Final Accounting" filed by the former Personal Representatives on June 24, 2009.

Further, the Affiant sayeth not.

Beth Bauknight
Beth Bauknight

SWORN TO and subscribed before me
This 1st day of October, 2010

Harriet W. Craps
Notary Public for South Carolina
My Commission Expires: 9/19/2016

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

PROBATE COURT

IN THE MATTER OF ESTATE OF JAMES BROWN
CASE NUMBER 2007-ES-02-0056ACCOUNTING
(Supplemental and Amended)☐ FINAL
☒ INTERIM #1A

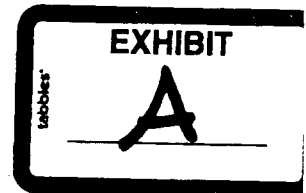
The undersigned Personal Representatives submit this Supplemental and Amended Accounting, which covers the period from November 20, 2007, through May 20, 2009.¹

The attached documentation sets forth a complete accounting for the period specified, which is summarized as follows:

	Income	Principal	Total*
Beginning Balance			\$100,000,000.00
Plus: Receipts			\$ 6,196,325.60
Subtotal			\$106,196,325.60
Less: Disbursements			\$ (6,333,310.58)
Ending Balance			\$ 99,863,015.02

*If a consolidated accounting, use this column.

The Personal Representatives declare that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the best knowledge and belief of the Personal Representatives.

FORM #360PC (7/87)
SCPC 3-704, 3-1003

PAGE 1 OF 2

¹ This amends and supplements the accounting that covers November 20, 2007 through June 20, 2008.

Filed: 5-20-2009

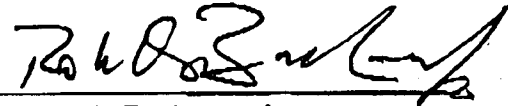
Sue H. Roe
Judge of Probate

1466

STATE OF SOUTH CAROLINA
CORRECT COPY OF THE ORIGINAL ACCOUNTING STATEMENT
WITNESS MY HAND AND SEAL OF THE COURT THIS 20th

JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.

AR
P.B.M.

Signature: 

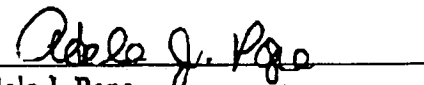
Name: Robert L. Buchanan, Jr.

Address: 212 Newberry Street NW

P.O. Box 463

Aiken, South Carolina 29802-0463

Telephone(O): 803-649-2586

Signature: 

Name: Adele J. Pope

Address: 1218 Taylor Street

PO Drawer 7125

Columbia, SC 29202-7125

Telephone(O): 803-779-1870

SWORN to before me this

20th day of May, 2009

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 2/18/15

**ATTACHMENT TO
SUPPLEMENTAL AND AMENDED ACCOUNTING¹
OF ROBERT L. BUCHANAN, JR. AND ADELE J. POPE
PERSONAL REPRESENTATIVES
IN THE MATTER OF THE ESTATE OF JAMES BROWN**

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
11/20/07	To Show Assets at beginning of period. ² Valued as per \$100 Million offer of Terry Cox GWC, dtd. October 12, 2007 and confirmed in sworn statement by Cox on Nov. 20, 2007. See transcript of 11/20/07 hearing, Case 2007-CP-02-122:		
	1. Security Federal Account #408015768 consisting primarily of remainder of original \$25,000 loan from TIAA and Shout! Factory contract. [See Supplemental Order re: Disbursement of Royalty Proceeds dtd 8/19/07.]	\$	87,060.85
	2. Security Federal Acct. #427486282, remainder, loan from TIAA in accordance with 8/19/07 Order.	\$	64,761.91
	3. 430 Douglas Drive, Beech Island, South Carolina Estate [owned by James Brown 2000 Trust but included for control purposes]	\$	1,215,000.00
	4. Personal and Household Effects ("PHE") ³ devised under Item I of Will dtd August 1, 2000.	\$	425,053.00 ⁴
	5. Remaining Tangible Personal Property ("TPP")	\$	1,574,947.00

¹ This accounting amends and supplements the accounting filed earlier, and covers the period for November 20, 2007 through May 20, 2009.

² Assets may be owned within James Brown Enterprises, Inc. (JBE, Inc.), James Brown, LLC or another Brown Entity. JBE, Inc., is equitably owned by the James Brown 2000 Trust.

³ At Estate Tax Value.

⁴ As reported on Estate Tax Return

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	6. Remaining assets ⁵	\$ 96,633,177.24	
	Total value, Beginning assets:	\$100,000,000.00	
	Less Secured Claims, Etc.:		\$ 17,026,624.18
	1. TIAA Royalty Debt		
	2. Priority loan from TIAA/M&T, Trustee		\$ 100,000.00
	3. Other claims, including Debts and disputed claims at nominal carrying value.		\$ 1.00
	NET VALUE OF BEGINNING ASSETS	\$ 82,873,374.82	
11/20/07	Beginning Assets as shown above: \$100,000,000.00	\$100,000,000.00	
11/20/07	Sizemore Security (Ck #1033) SFB #5768		\$ 4,284.00
11/28/07	D. Washington (Ck #1039) SFB #5768		\$ 403.81
11/28/07	Aiken County Probate Court - filing fee, Complaint for DJ (Ck #1040) SFB #5768		\$ 150.00
11/29/07	Cruise Security (Ck #1041) (for Trust) - Installation of Security System, April. Not paid by former Trustees [Advance to 2000 Trust] SFB #5768		\$ 3,976.45
11/30/07	Service Charge SFB #5768		\$ 10.00
12/2/07	Interest Deposit SFB #5768	\$ 8.13	
12/4/07	Hogan and Hartson, LLP - Portion fee. as per Court Order dtd 6/22/07 (Ck #1042) (Estate, JBE and JB, LLC, as per 8/10/07 Order) SFB #5768 . Engaged per Court Order		\$ 17,444.27

⁵ Residue of assets including those owned by estate, trust & other James Brown entities including but not limited to royalty interests, image, persona, Publicity Rights, licenses & other related rights including rights owned by Geronimo, LLC; James Brown d/b/a The New James Brown Enterprises, Inc. Also including but not limited to rights and claims against former PRs/Trustees, Seventh Decade and/or others for losses during the period prior to the death of James Brown. Also includes: GG Contract and Soundexchange Contract.

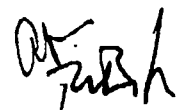
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DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
12/4/07	Sellars and Cole, LLC. Engaged per Court Order dtd. 8/10/07 (Ck #1043) SFB #5768 10/31 bill, Estate \$2,354.00 11/30 bill, "I Feel Good" Trust \$5,368.00 11/30 bill, Estate \$4,325.29		\$ 12,047.29
12/4/07	D. Washington - w/e 12/1/07 (Ck #1044) SFB #5768		\$ 494.81
12/4/07	Beech Island Water District (for Trust) (Ck#1045) Accis. #01-3940-00 \$68.96 #01-3942-00 \$31.93 SFB #5768		\$ 100.89
12/4/07	Tony M. Pounds - reimbursement, petty cash at guard house (Ck #1046) SFB #5768		\$ 42.19
12/4/07	Sizemore Security - Invoice dtd. 11/25/07; Inv. #143890 (Ck #1047) SFB #5768		\$ 2,462.47
12/5/07	Deposit - SC State Treasurer, Contingencies Account SFB #5768	\$ 876.34	
12/5/07	Deposit - AARC (Alliance of Artists and Recording Companies) Royalty SFB #5768	\$ 2,540.23	
12/5/07	Deposit - Geronimo Music, LLC, 6 mo. ended 9/30/07 (Trust) SFB #5768	\$ 16,856.19	
12/5/07	Deposit - Geronimo Music, LLC, 2 nd and 3 rd Qtr. Artist Fee SFB #5768	\$ 8,938.97	
12/5/07	D. Washington - w/e 12/8/07 (Ck #1048) SFB #5768		\$ 494.81
12/5/07	Sizemore Security (Ck #1049) Inv. #143723, 11/18/07 \$2,189.82 portion, Inv. #143256, 11/11/07 \$1,810.18 NOTE: Begin excess payments to bring down debt of former PR/Trustees SFB #5768		\$ 4,000.00
12/5/07	SCE&G (Ck #1050) SFB #5768		\$ 765.42

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
12/11/07	Sizemore Security (Ck #1051) SFB #5768 Inv. #144449, 12/2/07 \$ 2142.00 rem., Inv. #143256, 11/11/07 \$ 448.96 portion, Inv. #142911, 11/4/07 \$1,409.04		\$ 4,000.00
12/11/07	D. Washington - w/e 12/15/07 (Ck #1052) SFB #5768		\$ 494.00
12/11/07	Tony Pounds - petty cash. guard house (Ck #1053) SFB #5768		\$ 200.00
12/13/07	Deposit - AFM New Use (PP) SFB #5768	\$ 489.80	
12/15/07	Royalties received, 2 nd Half, 2007	\$ 2,441,417.38	
12/15/07	Royalties applied to TIAA debt as follows: Principal: \$1,996,452.32 Interest: \$444,965.06		\$ 2,441,417.38
12/18/07 ^a	D. Washington - w/e 12/22/07 (Ck #1055) SFB #5768		\$ 494.81
12/18/07	Sizemore Security (Ck #1058) SFB #5768 Inv. #145161, 12/2/07 \$ 2,142.00 portion, Inv. #144791, 12/9/07 \$1,858.00		\$ 4,000.00
12/18/07	SC Employment Security Commission (Ck #1062) - 3 rd & 4 th Quarter SFB #5768		\$ 25.00
12/18/07	AT & T (Ck #1065) (Home Estate Security)		\$ 310.28
12/26/07	D. Washington - w/e 12/29/07 (Ck #1056) SFB #5768		\$ 494.81
12/26/07	Sizemore Security (Ck #1059) SFB #5768 Inv. #145457, 12/23/07 \$ 2,142.00 rem., Inv. #144791, 12/9/07 \$ 284.00 rem., Inv. #142911, 11/4/07 \$ 761.66 portion, Inv. #142466, 10/28/07 \$ 812.34		\$ 4,000.00
12/31/07	Interest Deposit SFB #5768	\$ 12.04	

^a Checks 1054, 1060, 1063, 1064, 1159, 1160, 1217, 1293, 1294, 1278 Void

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
1/2/08	D. Washington - w/e 1/5/08 (Ck #1057) SFB #5768		\$ 494.81
1/2/08	Sizemore Security (Ck #1061) SFB #5768 Inv. #145788, 12/30/07 \$ 2,298.31 rem., Inv. #142466, 10/28/07 \$1,329.66 portion, Inv. #142171, 10/21/07 \$ 372.03		\$ 4,000.00
1/2/08	Aiken County Treasurer, Aiken County Taxes (Ck #1066) SFB #5768		\$ 6,791.29
1/9/08	Petry Cash - guard house (Ck #1067) SFB #5768		\$ 100.00
1/9/08	Benjamin Franklin, Plumbing (Ck #1068) SFB #5768		\$ 194.50
1/9/08	D. Washington - w/e 1/12/08 (Ck #1069) SFB #5768		\$ 494.81
1/10/08	Auto-Owners Insurance, Home Insurance Policy #47-412-829-00 (Ck #1070) SFB #5768		\$ 598.17
1/11/08	Deposit - Ab. St. Management, refund (JBE, Inc.) SFB #5768	\$ 270.00	
1/14/08	AT & T, Acct #803-827-2065 (Ck # 1071) SFB #5768		\$ 35.46
1/15/08	IRS - User Fee, Application for Determination - James Brown "I Feel Good" Trust. \$750 of \$870, charitable donations, incorrectly deposited by former PRs into account entitled I Feel Good Trust of James Brown, but used for non- charitable Educational Trust. Note: account was closed and paid to JBE, Inc. by former Trustees Cannon, Bradley and Dallas prior to August 10, 2007. See Exhibit B to Supp Aff. of AJP, dated 1/7/08. (Ck #1072) SFB #5768		\$ 750.00
1/15/08	Benjamin Franklin, Plumbing (Ck #1073) SFB #5768		\$ 684.27
1/17/08	KFR - mileage, miscellaneous, masters transfer (Ck #1074) SFB #5768		\$ 300.00



DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
1/17/08	Sizemore Security (Ck #1075) SFB #5768 Inv. #146262, 1/6/08 \$ 2,373.23 portion, Inv. #142171, 10/21/07 \$ 1,626.77		\$ 4,000.00
1/17/08	AT & T, (Ck # 1076) SFB #5768		\$ 65.89
1/17/08	Beech Island Water District (Ck #1077) Accts. #01-3940-00 \$18.17 #01-3942-00 \$13.20 SFB #5768		\$ 31.37
1/18/08	D. Washington - w/e 1/19/08 (Ck #1078) SFB #5768		\$ 494.81
1/18/08	Sound Archives - deposit for transport to archives (Ck #1082) SFB #5768		\$ 1,800.00
1/22/08	SCE & G (Ck #1083)		\$ 1,532.20
1/22/08	Petty Cash (Ck #1085) SFB #5768		\$ 100.00
1/23/08	Sizemore Security (Ck #1084) SFB #5768 Inv. #146724, 1/13/08 \$ 2,499.09 rem., Inv. #142171, 10/21/07 \$ 143.20 portion, Inv. #141634, 10/14/07 \$ 357.71		\$ 3,000.00
1/23/08	Sizemore Security (Ck #1086) SFB #5768 Inv. #147018, 1/20/08 \$ 2,443.30 portion, Inv. #141634, 10/14/07 \$ 556.70		\$ 3,000.00
1/23/08	Security Federal Bank -, Form 941 for 3Q 2007 (Ck #1087) SFB #5768		\$ 1,769.45
1/23/08	SC DOR - 3Q 2007 Form WH1605, Estate (Ck #1088) SFB #5768		\$ 238.28
1/23/08	US Treasury - 4Q 2007 Form 941, Estate (Ck #1089) SFB #5768		\$ 1,691.62
1/23/08	SC DOR - 4Q 2007 Form WH1606, Estate (Ck #1090) SFB #5768		\$ 264.55
1/23/08	Deposit - Wedge Productions (JBE), contract extension SFB #5768	\$ 15,000.00	
1/25/08	D. Washington - w/e 1/26/08 (Ck #1079) SFB #5768		\$ 494.81

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
1/31/08	Interest Deposit SFB #5768	\$ 8.64	
2/1/08	D. Washington - w/c 2/02/08 (Ck #1080) SFB #5768		\$ 494.81
2/5/08	Lisa H. Hicklin - Transcripts for Hearings: 2/9/07; 6/13/07; 8/10/07; 9/24/07; 11/15/07; 11/20/07; 1/4/08; 1/9/08 (Ck #1091) SFB #5768		\$ 1,202.50
2/7/08	Jessie F. Beeher - consultation (Ck #1092) SFB #5768		\$ 1,500.00
2/8/08	D. Washington - w/c 2/09/08 (Ck #1081) SFB #5768		\$ 494.81
2/12/08	Aiken County - filing fee, Motion (Ck #1094) SFB #5768		\$ 25.00
2/12/08	D. Washington - w/c 2/16/08 (Ck #1095) SFB #5768		\$ 494.81
2/12/08	Petty Cash (Ck #1096) SFB #5768		\$ 100.00
2/13/08	Deposit - Wedge Productions House of Blues. Estate i/n/o <u>New</u> JBE SFB #5768 ⁷	\$ 15,000.00	
2/13/08	Deposit - SoundExchange (<u>New</u> JBE, Inc.) SFB #5768	\$ 2,613.03	
2/13/08	SCE & G - all 8 accounts (DRAFT) SFB #5768		\$ 1,999.70
2/13/08	Sizemore Security (Ck #1097) SFB #5768 Inv. #147789, 2/3/08 \$ 2,180.26 portion, Inv. #141634, 10/14/07 \$ 819.74		\$ 3,000.00
2/13/08	Sizemore Security (Ck #1098) SFB #5768 Inv. #147293, 1/27/08 \$ 2,142.00 rem., Inv. #141634, 10/14/07 \$ 407.85 portion, Inv. #141340, 10/07/07 \$ 450.15		\$ 3,000.00

⁷ Followup i/c indicates last payment. See file.

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
2/13/08	Beech Island Water District (Ck #1099) Accts. #01-3940-00 \$85.06; #01-3942-00 \$12.84 SFB #5768		\$ 97.90
2/13/08	AT & T (Ck #1100)		\$ 102.21
2/13/08	Sellars and Cole, LLC (Ck #1101) SFB #5768 1/31 bill, Estate \$ 368.00 1/31 bill, JBE, Inc. \$ 45.00 1/31 bill, James Brown, LLC \$ 45.00 1/31 bill, Irrev Trust \$ 100.00 1/31 bill, "I Feel Good" Trust \$ 670.00		\$ 1,228.00
2/13/08	Auto-Owners Insurance - House Insurance (Ck #1102) SFB #5768		\$ 598.17
2/15/08	Sizemore Security (Ck #1103) SFB #5768 Inv. #148094, 2/10/08 \$ 2,142.00 portion, Inv. #141340, 10/07/07 \$ 858.00		\$ 3,000.00
2/15/08	Kane Office Technologies, Inc. - Cannon Litigation (Ck #1104) SFB #5768		\$ 164.92
2/19/08	Chargeback, Soundexchange as per bank SFB #5768		\$ 2,613.03
2/19/08	Chargeback fee, as per bank SFB #5768		\$ 5.00
2/20/08	Lisa H. Hicklin - 2/7/08 hearing (Ck #1105) SFB #5768		\$ 1,144.00
2/21/08	Sizemore Security (Ck #1108) SFB #5768 Inv. #148433, 2/17/08 \$ 2,142.00 rem., Inv. #141340, 10/07/07 \$ 833.85 portion, Inv. #140759, 9/30/07 \$ 24.15		\$ 3,000.00
2/22/08	D. Washington - w/e 2/23/08 (Ck #1106) SFB #5768		\$ 494.81
2/22/08	To show closing transfer from SFB #6282 to SFB #5768. No change in assets. To show interest earned prior to transfer. SFB #427486282 closed.	\$ 613.78	
2/26/08	Law Office of James D. Bailey, PC - portion, 2/12/08 bill (Ck #1109)		\$ 15,000.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
2/26/08	Hogan & Hartson, LLP - portion, legal fees, Pullman Litigation (NY) (Ck #1110)		\$ 15,000.00
2/26/08	Buchanan (Office) - partial payment for costs, etc., as per Court Order dtd 1/8/08 (Ck #1111)		\$ 15,000.00
2/26/08	Pope (Office) - partial payment for costs, etc., as per Court Order dtd 1/8/08 (Ck #1112)		\$ 15,000.00
2/26/08	Sizemore, Inc. (Ck #1115) Inv. #148797, 2/24/08 \$ 2,142.01 portion, Inv. #140759, 9/30/07 \$ 857.99		\$ 3,000.00
2/27/08	SCE & G - all 8 accounts (DRAFT)		\$ 1,286.37
2/28/08	D. Washington - w/e 2/29/08 (Ck #1107)		\$ 494.81
2/29/08	US Treasury - Form 940, JBE, Inc., 2007 (Ck #1118)		\$ 351.83
3/02/08	Interest Deposit	\$ 9.97	
3/7/08	D. Washington - w/e 3/08/08 (Ck #1113)		\$ 494.81
3/10/08	Miscellaneous Deposit, SFB #5768	\$ 33.61	
3/11/08	Cheri L. Young, RPR - Transcript for 12/21/07 Hearing (Ck #1116)		\$ 124.35
3/11/08	Augusta Turf & Specialty Vehicles - golf cart battery, labor, parts and servicing (Ck #1117)		\$ 360.95
3/11/08	Deposit - House Insurance Refund (\$598.17) Entertainment Partners (\$20.13)	\$ 618.30	
3/11/08	Deposit - AFTRA, Grammys 50 th Anniv. Special Residual	\$ 812.56	
3/11/08	Deposit - Warner Music Group (\$144.89) BMI (\$58.08)	\$ 202.97	
3/11/08	Cpt. Pounds - Petry Cash (Ck #1121)		\$ 100.00
3/14/08	D. Washington - w/e 3/15/08 (Ck #1114)		\$ 494.81
3/19/08	Deposit - SoundExchange (New JBE, Inc.)	\$ 2,690.41	
3/19/08	Law Office of James D. Bailey, PC (Ck #1145)		\$ 500.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
3/19/08	Beech Island Water District (Ck #1122) Accts. #01-3940-00 \$13.20 #01-3942-00 \$13.20		\$ 26.40
3/19/08	AT & T (Ck #1123)		\$ 65.79
3/19/08	Secure storage- storage, masters, Inv. dtd 2/29/08 (less previous payment of \$1,800.00) (Ck #1124)		\$ 358.32
3/20/08	Sizemore, Inc. (Ck #1125) Inv. #149295, 3/2/08 \$ 2,142.00 rem., Inv. #140759, 9/30/07 \$ 229.61		\$ 2,371.61
3/20/08	Sizemore, Inc. (Ck #1126) Inv. #149783, 3/9/08		\$ 2,521.43
3/20/08	Sellers DuRant - Inv. #2008-08, accounting services (Ck #1127)		\$ 1,999.50
3/21/08	D. Washington - w/e 3/22/08 (Ck #1120)		\$ 494.81
3/21/08	LINK Conference Call, LLC - for 2/19/08 teleconference; Inv dtd 3/1/08 (Ck #1128)		\$ 9.50
3/21/08	AT & T (Ck #1129)		\$ 35.39
3/22/08	First Citizens Visa, reimbursement for transport of Masters (Ck #1132)		\$ 427.08
3/27/08	SC Ct of Appeals - Filing Fee, Mot. (Ck #1136)		\$ 25.00
3/28/08	D. Washington - w/e 3/29/08 (Ck #1133)		\$ 494.81
4/1/08	SCE & G - all 8 accounts (DRAFT) SFB #5768		\$ 916.71
4/2/08	Lisa Hicklin - Transcript, 2/20/08 hearing (Ck #1139)		\$ 409.50
4/4/08	Clarke American, checks - DRAFT (debited on 3/19/08)		\$ 62.25
4/4/08	Interest Deposit	\$ 5.35	
4/4/08	To adjust for bank error. Check of D. Washington cleared at 0.81 cents below actual amount	\$ 0.81	

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
4/4/08	Richards (Ck #1137) - overdue rental payments for furs. Required for release to Christie's.		\$ 630.00
4/4/08	Aiken County Planning and Development - map of 430 Douglas Dr., Beech Island (Ck #1146)		\$ 25.00
4/5/08	D. Washington - mileage and extra help (Ck #1138)		\$ 200.00
4/7/08	Windsor Jewelers (Ck #1140) - appraisal ordered by Cannon, Dallas and Bradley but not paid. Required for release to Christie's.		\$ 5,700.00
4/7/08	D. Washington - w/e 4/5/08 (Ck #1134)		\$ 494.81
4/7/08	D. Washington - Petty Cash (Ck #1142)		\$ 100.00
4/7/08	Innovative Solutions - outside copies: Corbis Litigation (Ck #1147)		\$ 224.81
4/11/08	D. Washington - w/e 4/12/08 (Ck #1143)		\$ 494.81
4/17/08	National Financial Services, LLC (WAMU) i/n/o James Brown - Deposit	\$ 1,392.87	
4/17/08	Sizemore, Inc. (Ck #1130) Inv. #149977, 3/26/08 \$ 2,314.17 portion.. Inv. #150287, 3/23/08 \$ 685.83		\$ 3,000.00
4/17/08	Sound Archives (Ck #1131)		\$ 1,500.00
4/18/08	D. Washington - w/e 4/19/08 (Ck #1144)		\$ 494.81
4/18/08	Beech Island Water District (Ck #1151) Accts. #01-3940-00: \$13.20; #01-3942-00 \$13.20		\$ 26.40
4/18/08	AT & T (Ck #1152)		\$ 139.35
4/25/08	D. Washington - w/e 4/26/08 (Ck #1148)		\$ 494.81
4/28/08	Kane Office Technologies, Inc. - Cannon Litigation. #8395 (Ck #1153)		\$ 248.05
4/28/08	LINK Conference Call, LLC - for 3/31/08 teleconference; Inv dtd 4/1/08 (Ck #1154)		\$ 24.60

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
4/28/08	Sizemore, Inc. (Ck #1155) portion, Inv. #150287, 3/23/08		\$ 1,000.00
4/28/08	Law Office of James D. Bailey, PC - portion, 2/12/08 bill (Ck #1156)		\$ 3,000.00
4/29/08	Lisa Hicklin - Transcript for 3/07/08 hearing (Ck #1149)		\$ 682.50
4/30/08	Laboratory Corporation of America - DNA Testing of James Brown II (Ck #1157)		\$ 300.00
4/30/08	Interest Deposit	\$ 2.45	
5/1/08	Deposit - Enterprise Bank Acct #151000007 (James Brown Irrev. Trust)	\$ 4,140.74	
5/1/08	Deposit - SoundExchange (New JBE, Inc.)	\$ 22,605.31	
5/1/08	D. Washington - w/e 5/2/08 (Ck #1150)		\$ 494.81
5/1/08	Hatcher, Stubbs, Land, Hollis & Rothschild - retainer fee (Ck #1158)		\$ 1,000.00
5/5/08	SCE & G - all 8 accounts (DRAFT)		\$ 619.08
5/6/08	Beech Island Water District (Ck #1166) Accts. #01-3940-00: \$11.92; #01-3942-00: \$11.00		\$ 22.92
5/6/08	Sound Archives - storage of masters, invoice range LP20856 (Ck #1167)		\$ 490.90
5/6/08	US Treasury - Penalty and Interest for JBE, Inc., Form 940, period 12/31/07 (Ck #1168)		\$ 37.91
5/6/08	AT & T (Ck #1175)		\$ 98.51
5/6/08	Law Office of James D. Bailey, PC - (Ck #1176) remainder, 2/12/08 bill \$ 729.45 portion, 3/13/08 bill \$ 2,270.55		\$ 3,000.00
5/6/08	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1177)		\$ 3,000.00
5/6/08	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1178)		\$ 3,000.00
5/9/08	D. Washington - w/e 5/9/08 (Ck #1163)		\$ 494.81

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
5/12/08	Aiken County Clerk of Court (Ck #1179)		\$ 150.00
5/14/08	SC Department of Revenue - Estate of JB, for 9/30/07 quarter, Former PR/Trustees, 10/31/07 (Ck #1180)		\$ 43.64
5/14/08	Sellars DuRant - Inv. #2008-417 accounting services (Ck #1181)		\$ 999.00
5/14/08	D. Washington (Ck #1182) Extra mileage \$100.00 Petty Cash \$100.00		\$ 200.00
5/16/08	D. Washington - w/e 5/16/08 (Ck #1164)		\$ 494.81
5/22/08	Deposit - Purchase of 2506 Parkway Drive, Augusta, GA (payable to Estate of James Brown)	\$ 6,000.00	
5/22/08	To set up Note, Security Deed, Quitclaim of JJ Brown house and contents as per Court Order dtd 2/20/08. Note is portion of remaining assets described above. \$54,000.00		
5/22/08	Cordle Law Firm - Costs and Taxes, estimated 2008; closing, sale of Joseph Brown (Ck #1162)		\$ 257.35
5/22/08	Law Office of James D. Bailey, PC - portion, bill \$ 3,000.00 (Ck #1183)		\$ 3,000.00
5/23/08	D. Washington - w/e 5/23/08 (Ck #1165)		\$ 494.81
5/23/08	Deposit - Universal Music Group, Inc. Payable to James Brown DBA Godfather of Soul Music c/o JB Ross & Associates, PC	\$ 47.91	
5/23/08	D. Washington - extra mileage (Ck #1184)		\$ 100.00
5/27/08	Innovative Solutions - outside copies (Ck #1191)		\$ 22.31
5/29/08	Aiken County Clerk of Court - Motion for Approval of Scheduling Order, Will/Trust/Heirs Proceeding (Ck #1161)		\$ 25.00
5/30/08	D. Washington - w/e 5/30/08 (Ck #1185)		\$ 494.81

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DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
5/30/08	D. Washington - extra mileage (Ck #1188)		\$ 100.00
5/30/08	Interest Deposit	\$ 3.14	
6/3/08	SCE & G - DRAFT		\$ 100.42
	Acct #4-2100-7444-7824 \$24.86		
	Acct #4-2100-7444-7045 \$67.15		
	Acct #4-2100-7444-6733 \$ 8.41		
6/4/08	D. Washington - petty cash (Ck #1192)		\$ 250.00
6/4/08	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1193)		\$ 3,000.00
6/4/08	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1194)		\$ 3,000.00
6/4/08	Law Office of James D. Bailey, PC - portion, 3/13/08 bill (Ck #1195)		\$ 5,000.00
6/4/08	Hogan & Hartson, LLP - portion. legal fees. Pullman Litigation (NY) (Ck #1196)		\$ 3,000.00
6/6/08	D. Washington - w/c 6/7/08 (Ck #1186)		\$ 494.81
6/6/08	D. Washington - extra mileage (Ck #1189)		\$ 100.00
6/9/08	AT & T (Ck #1197)		\$ 113.08
6/9/08	Beech Island Water District (Ck #1198) Accts. #01-3940-00: \$11.00; #01-3942-00: \$11.00		\$ 22.00
6/13/08	Deposit - Entertainment Partners, payable to James Brown ck #68022373 dtd 1/4/08 \$71.79 ck #68418020 dtd 2/29/08 \$44.33	\$ 116.12	
6/13/08	Sound Archives - storage of masters, invoice range LZ88382 (Ck #1199)		\$ 490.90
6/13/08	D. Washington - Extra Mileage (Ck #1190)		\$ 100.00
6/13/08	D. Washington - w/c 6/14/08 (Ck #1187)		\$ 494.81
6/15/08	Royalties received, 1 st Half, 2008	\$ 1,460,887.94	

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
6/15/08	Royalties applied to TIAA debt as follows: Principal: \$848,003.67 Interest: \$612,884.27		\$ 1,460,887.94
6/18/08	Lisa H. Hicklin – Transcripts for Hearing on 4/25/08 (Ck #1200)		\$ 510.25
6/20/08	Deposit – Entertainment Partners, payable to James Brown, ck #68015973 dtd 1/3/08	\$ 78.64	
6/20/08	D. Washington – extra mileage (Ck #1203)		\$ 100.00
6/20/08	David Washington - w/e 6/21/08 (Ck #1202)		\$ 494.81
6/25/08	Deposit – AFTRA (payable to: ICO:Trust of James Brown)	\$ 565.00	
6/27/08	David Washington - w/e 6/28/08 (Ck #1204)		\$ 494.81
6/27/08	D. Washington – extra mileage (Ck #1205)		\$ 100.00
6/27/08	Deposit – 2506 Parkway Mortgage Payment (Joseph Brown House), Payment #1	\$ 599.51	
7/3/08	D. Washington – extra mileage (Ck #1207)		\$ 100.00
7/8/08	SCE & G – DRAFT		\$ 201.32
7/9/08	Deposit – Auto-Owners Insurance (payable to James Brown Trust)	\$ 393.61	
7/11/08	D. Washington - w/e 7/12/08 (Ck #1208) (E/T)		\$ 494.81
7/11/08	D. Washington – extra mileage (Ck #1209)		\$ 100.00
7/15/08	AT & T (Ck #1201)		\$ 114.49
7/18/08	D. Washington - w/e 7/19/08 (Ck #1210) (E/T)		\$ 494.81
7/18/08	D. Washington – extra mileage (Ck #1211)		\$ 100.00
7/25/08	D. Washington - w/e 7/26/08 (Ck #1212) (E/T)		\$ 494.81
7/25/08	D. Washington – extra mileage (Ck #1213)		\$ 100.00
7/25/08	Deposit – Joseph Brown House, Payment #2	\$ 599.51	
7/28/08	Beech Island Water District (Ck #1219) Accts. #01-3940-00: \$13.20; #01-3942-00: \$13.20 (T)		\$ 16.40

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
7/28/08	Lisa H. Hicklin - Transcript for Hearing on 6/30/08 (Ck #1220)		\$ 354.25
7/28/08	Secure storage - invoice range MG66029 (Ck #1221)		\$ 490.90
7/30/08	Deposit - Loan from Security Federal	\$ 15,000.00	
7/30/08	D. Washington - Petty Cash (Ck #1222)		\$ 200.00
7/30/08	Security Federal - 1 st Qtr 2008 Fed UH & SS/MC tax deposit (Ck #1224)		\$ 1,981.95
7/30/08	SCDOR - 1 st Qtr 2008 SC UH (Ck #1225)		\$ 308.55
7/31/08	Interest Deposit	\$ 0.46	
7/31/08	D. Washington - extra mileage (Ck #1229)		\$ 100.00
7/31/08	SCDOR - 2 nd Qtr 2008 SC IT UH (Ck #1228)		\$ 264.55
7/31/08	US Treasury - 2 nd Qtr 2008 Fed UT & SS/MC UH Form 941 (Ck #1227)		\$ 1,699.62
7/31/08	Security Federal - 1 st Qtr 2008 FUTA deposit (Ck #1223)		\$ 56.00
7/31/08	SC Employee Security Commission - 1 st Qtr 2008 SUTA (Ck #1226)		\$ 278.00
8/1/08	D. Washington - w/e 8/02/08 (Ck #1214) (E/T)		\$ 494.81
8/1/08	D. Washington - extra mileage (Ck #1215)		\$ 100.00
8/4/08	SCE & G - DRAFT		\$ 211.68
8/6/08	Deposit - Estate Form 940 Refund, 12/07	\$ 115.07	
8/6/08	Counter Check - Sanford Brucker Banks - House Insurance deposit		\$ 3,000.00
8/7/08	Beech Island Water District (Ck #1230) Accts. #01-3940-00: \$11.00; #01-3942-00: \$11.00 (T)		\$ 22.00
8/7/08	AT & T (Ck #1231)		\$ 115.13
8/7/08	Secure storage - invoice range MN36788 (Ck #1232)		\$ 484.84

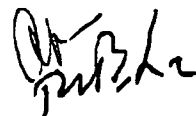
DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
8/8/08	D. Washington - extra mileage (Ck #1218)		\$ 100.00
8/8/08	D. Washington - w/e 8/09/08 (Ck #1216) (E/T)		\$ 494.81
8/15/08	D. Washington - w/c 8/16/08 (Ck #1235) (E/T)		\$ 494.81
8/15/08	D. Washington - extra mileage (Ck #1236)		\$ 100.00
8/22/08	D. Washington - w/e 8/23/08 (Ck #1237) (E/T)		\$ 494.81
8/22/08	D. Washington - extra mileage (Ck #1238)		\$ 100.00
8/25/08	Deposit - proceeds from Christie's sale (notation: total of \$468,326.12, remainder available 9/10/08)	\$ 5,000.00	
8/25/08	Deposit - proceeds from Christie's sale	\$ 463,326.12	
8/29/08	D. Washington - w/e 8/30/08 (Ck #1239) (E/T)		\$ 494.81
8/29/08	D. Washington - extra mileage (Ck #1240)		\$ 100.00
9/01/08	Interest Deposit	\$ 9.86	
9/2/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1241)		\$ 50,000.00
9/2/08	Tressa T. H. Hayes, Esquire - Shipley & Hayes, partial payment appellate matters (Ck #1242)		\$ 10,000.00
9/2/08	Law Office of Sherry T. Barnes - payment towards fees/costs, Georgia Farm Bureau suit (Ck #1243)		\$ 5,000.00
9/2/08	Pope (Office) - partial payment for costs, etc., SA pyl. as per Court Order (Ck #1244)		\$ 100,000.00
9/2/08	Buchanan (Office) - partial payment for costs, etc., SA pyl. as per Court Order (Ck #1245)		\$ 100,000.00
9/2/08	Hogan & Harrison, LLP - portion, legal fees, Pullman Litigation, As per Court Order (NY) (Ck #1246)		\$ 50,000.00
9/2/08	Beech Island Water District (Ck #1255) Accts. #01-3940-00 and #01-3942-00 (T)		\$ 33.56

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
9/2/08	D. Washington - full sat. admin. claim against Estate (Ck #1268)		\$ 1,392.79
9/3/08	Deposit - Christie's sale	\$ 4,137.00	
9/5/08	D. Washington - w/e 9/6/08 (Ck #1247) (E/T)		\$ 494.81
9/5/08	D. Washington - extra mileage (Ck #1248)		\$ 100.00
9/8/08	SCE & G - DRAFT		\$ 234.18
9/9/08	SC Court of Appeals, Cannon Appeal (Ck #1256)		\$ 100.00
9/12/08	D. Washington - w/e 9/13/08 (Ck #1249) (E/T)		\$ 494.81
9/12/08	D. Washington - extra mileage (Ck #1250)		\$ 100.00
9/12/08	Cruise Security (Ck #1257) - (E/T)		\$ 276.50
9/12/08	Aiken County Circuit Court-filing fee (Ck #1258)		\$ 100.00
9/15/08	D. Washington - petty cash (Ck #1259)		\$ 100.00
9/15/08	D. Washington - petty cash (Ck #1260)		\$ 100.00
9/16/08	Aiken County - Motion filing (Ck #1262)		\$ 25.00
9/17/08	Premium Financing Specialists, Inc. - insurance on house (Ck #1266)		\$ 7,791.86
9/17/08	Security Federal Bank - DEBIT. payoff on loan		\$ 15,122.50
9/19/08	AT & T (Ck #1233)		\$ 108.06
9/19/08	D. Washington - w/e 9/20/08 (Ck #1251) (E/T)		\$ 494.81
9/19/08	D. Washington - extra mileage (Ck #1252)		\$ 100.00
9/22/08	Deposit - soundexchange. Estate of James Brown	\$ 4,674.15	
9/22/08	Deposit - 20 th Century Fox Film, JBE Inc., FSO James C Brown. The New JBE, Inc.	\$ 2.92	
9/22/08	Deposit - secure storage refund for overpayment	\$ 858.56	

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
9/23/08	US Treasury - payment towards Estate Taxes (Ck #1234)		\$ 10,000.00
9/26/08	D. Washington - w/e 9/27/08 (Ck #1253) (E/T)		\$ 494.81
9/26/08	D. Washington - extra mileage (Ck #1254)		\$ 100.00
9/29/08	Lisa Hicklin, portion of 8/19/08 transcript (Ck #1277)		\$ 40.00
9/30/08	Interest Deposit	\$ 15.36	
10/3/08	D. Washington - w/e 10/4/08 (Ck #1271) (E/T)		\$ 494.81
10/3/08	D. Washington - mileage (Ck #1274)		\$ 100.00
10/3/08	Adjustment for 0.81 cents not paid to Mr. Washington in Ck 1253	\$ 0.81	
10/6/08	Lisa H. Hicklin, remainder for 8/19/08 transcript (Ck #1267)		\$ 77.00
10/6/08	Zumwalt, Almon & Hayes, PLLC - invoice #10689 (Grammy Museum) (Ck #1269)		\$ 557.50
10/7/08	Lisa H. Hicklin, 9/28/08 transcript (Ck #1270)		\$ 331.50
10/8/08	SCE&G - DRAFT		\$ 287.90
10/10/08	D. Washington - w/e 10/11/08 (Ck #1272) (E/T)		\$ 494.81
10/10/08	D. Washington - milcage (Ck #1275)		\$ 100.00
10/10/08	Aiken County Clerk of Court - Motion to Dismiss. Farr Claim (Ck #1279)		\$ 25.00
10/10/08	Sizemore Security - portion, Inv. #150630 (Ck #1280)		\$ 1,000.00
10/10/08	Vann Appraisal Services - appraisal for estate taxes (Ck #1281)		\$ 3,700.00
10/10/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1282)		\$ 15,000.00
10/15/08	Difference in 10/15/08. BMI \$65.40 and Ent. Ptnrs. \$30.68	\$ 96.08	

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
10/16/08	Ellis Lawhome & Sims, PA - invoice #94077 (Ck #1283)		\$ 625.00
10/16/08	The Law Office of Leon Friedman - Brown v. AC&R v. Polygram, CA #3:92-1195-0 (Ck #1284)		\$ 350.00
10/16/08	Pope (Office) - partial payment for costs, etc., SA pyl. as per Court Order (Ck #1285)		\$ 15,000.00
10/16/08	Buchanan (Office) - partial payment for costs, etc., SA pyl. as per Court Order (Ck #1286)		\$ 15,000.00
10/16/08	Beech Island Water District (Ck #1287) Accts. #01-3940-00: \$13.20; #01-3942-00: \$13.20 (T)		\$ 26.40
10/16/08	Shipley & Hayes, PC, remainder payment through 10/9/08 appellate matters (Ck #1288)		\$ 7,580.00
10/17/08	D. Washington - w/c 10/18/08 (Ck #1273) (E/T)		\$ 494.81
10/17/08	D. Washington - mileage (Ck #1276)		\$ 100.00
10/18/08	Deposit - Soundexchange (Est. of James Brown)	\$ 3,738.26	
10/08	Deposit - Christie's	\$ 60,922.25	
10/21/08	adjustment on ck #1269		\$ 20.00
10/23/08	D. Washington - w/c 10/25/08 (Ck #1291) (E/T)		\$ 494.81
10/23/08	D. Washington - mileage (Ck #1292)		\$ 100.00
10/23/08	Deposit - (Christie's)	\$ 20,192.50	
10/27/08	AT & T (Ck #1295)		\$ 122.88
10/27/08	Sellars DuRant (Ck #1296)		\$ 9,191.00
	10/15 bill, Estate	\$8,324.00	
	10/15 bill, "I Feel Good" Trust	\$ 394.00	
	10/15 bill, James Brown	\$ 473.00 (E)	
10/28/08	Secure storage - invoice range NB73227 (Ck #1297)		\$ 484.84

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
10/28/08	LOAJP, PC - reimbursement, copies/costs for Cannon and Dallas/Bradley Appeals. 10/14-10/27 (Ck #1299)		\$ 951.24
10/28/08	Beech Island Water District (Ck #1300) Accts. #01-3940-00: \$13.20; #01-3942-00: \$13.20 (T)		\$ 26.40
10/28/08	Aiken County Clerk of Court - motion fee (Ck #1305)		\$ 25.00
10/28/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1306)		\$ 5,000.00
10/29/08	US Treasury - Estate of James Brown, Form 941, 3/31/08, EIN 20-7238700 (Ck #1307)		\$ 87.24
10/29/08	SCE&G - DRAFT		\$ 307.93
10/29/08	Hogan & Harrison, LLP - portion, legal fees, NY portion of \$25-\$31 Million claim, Pullman Litigation, as per Court Order (NY); Inv. # 1726701, 1735964, 1743933 (Ck #1298)		\$ 20,079.29
10/30/08	D. Washington - w/e 11/01/08 (Ck #1303) (E/T)		\$ 494.81
10/30/08	D. Washington - mileage (Ck #1304)		\$ 100.00
10/31/08	SC Department of Revenue - Estate of James Brown, WH-1605, 3 rd Qtr (Ck #1309)		\$ 264.55
10/31/08	US Treasury - Estate of James Brown, Form 941, 3 rd Qtr (Ck #1308)		\$ 1,699.62
11/2/08	Interest Deposit	\$ 13.12	
11/5/08	D. Washington - w/e 11/08/08 (Ck #1301) (E/T)		\$ 494.81
11/5/08	D. Washington - mileage (Ck #1302)		\$ 100.00
11/5/08	Beech Island Water District (Ck #1310) Accts. #01-3940-00: \$11.00; #01-3942-00: \$11.00 (T)		\$ 22.00
11/5/08	LOAJP, PC - costs only, 11/4 bill (Ck# 1311)		\$ 894.94
11/6/08	AT & T (Ck #1312)		\$ 116.47
11/6/08	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1313)		\$ 10,000.00



DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
11/6/08	Buchanan (Office) - partial payment for costs, etc., SA pyl., as per Court Order (Ck #1314)		\$ 10,000.00
11/6/08	Deposit - Entertainment Partners	\$ 31.20	
11/13/08	SC Dept. Of Revenue - David Washington (Ck #1321)		\$ 500.00
11/13/08	Deposit - Christie's	\$ 500.00	
11/14/08	D. Washington - w/e 11/15/08 (Ck #1315) (E/T)		\$ 494.81
11/14/08	D. Washington - mileage (Ck #1316)		\$ 100.00
11/15/08	Zumwalt, Almon & Hayes, PLLC - invoice #10739 (Ck #1322)		\$ 481.25
11/15/08	Aiken County Treasurer - 2008 Property Taxes (Ck #1323)		\$ 6,945.15
11/21/08	D. Washington - w/e 11/22/08 (Ck #1317) (E/T)		\$ 494.81
11/21/08	D. Washington - milcage (Ck #1318)		\$ 100.00
11/21/08	Secure storage - storage, invoice range MW56468 (Ck #1325)		\$ 969.68
11/25/08	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1338)		\$ 5,000.00
11/25/08	US Treasury - Notice No. CP171 dtd 11/10/08; Taxpayer ID 57-0929939 (Ck #1337)		\$ 82.71
11/25/08	Secure storage- storage, masters, Inv. NJ75254 dtd. 10/31/08 (Ck #1333)		\$ 484.84
11/25/08	Sellars DuRant - Inv. #2008-1987 accounting services (Ck #1332)		\$ 440.00
11/28/08	D. Washington - w/e 11/29/08 (Ck #1319) (E/T)		\$ 494.81
11/28/08	D. Washington - mileage (Ck #1320)		\$ 100.00
11/30/08	Interest Deposit	\$ 5.96	
12/3/08	SCE&G - DRAFT		\$ 279.89
12/5/08	D. Washington - mileage (Ck #1327)		\$ 100.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
12/5/08	D. Washington - w/e 12/6/08 (Ck #1326) (E/T)		\$ 494.81
12/10/08	Zumwalt, Almon & Hayes, PLLC - invoice #10771 (Ck #1324)		\$ 192.50
12/10/08	Secure storage - masters, Inv. NT46097 did. 11/30/08 (Ck #1344)		\$ 490.90
12/10/08	AT & T (Ck #1345)		\$ 66.96
12/10/08	AT & T (Ck #1346)		\$ 43.47
12/10/08	Deposit - AARC \$3,116.34; National Fin. \$2.11	\$ 3,118.45	
12/12/08	Security for files: \$683.15 (Ck #1347); shelves/lock \$50.12; labor \$150.00		\$ 883.00
12/12/08	C. Edwards (Ck #1348)		\$ 150.00
12/12/08	D. Washington - mileage (Ck #1329)		\$ 100.00
12/12/08	D. Washington - w/e 12/13/08 (Ck #1328) (E/T)		\$ 494.81
12/15/08	Royalties received, 2 nd Half, 2008	\$ 1,590,412.21	
12/15/08	Royalties applied to TIAA debt as follows: Principal: \$ 1,017,004.94 Interest: \$ 573,407.27		\$ 1,590,412.21
12/19/08	D. Washington - w/e 12/27/08 (Ck #1340) (E/T)		\$ 494.81
12/19/08	D. Washington - mileage (Ck #1331)		\$ 100.00
12/19/08	D. Washington -extra mileage (Ck #1341)		\$ 100.00
12/22/08	Beech Island Water District (Ck #1349) Acct. #01-3940-00		\$ 35.20
12/24/08	D. Washington - w/e 1/3/09 (Ck #1342) (E/T)		\$ 494.81
12/24/08	D. Washington - mileage (Ck #1358)		\$ 100.00
12/31/08	Interest Deposit	\$ 3.55	
	Debt Outstanding (TIAA-CREF): \$13,165.163.25		
1/2/09	SCE & G - DRAFT		\$ 69.61

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
1/2/09	D. Washington - Mileage (extra trips) (Ck #1351)		\$ 100.00
1/2/09	D. Washington - reimbursement, supplies (Ck #1356)		\$ 100.00
1/6/09	Lisa Hicklin, transcript for 11/25/08 hearing (Ck #1339)		\$ 217.75
1/8/09	Cameron Edwards - assistance (Ck #1355)		\$ 75.00
1/8/09	SC Court of Appeals - filing motion (Ck #1141)		\$ 25.00
1/9/09	Robert L. Buchanan, Jr. - Reimbursement for Corbis Travel (Ck #1343)		\$ 739.98
1/9/09	D. Washington - w/e 1/9/09 (Ck #1359)		\$ 494.81
1/9/09	D. Washington - mileage (Ck #1360)		\$ 100.00
1/10/09	Deposit - Soundexchange \$10,685.86; AFTRA \$172.28	\$ 10,858.14	
1/14/09	LINK Conference Call, LLC - Inv dtd 1/1/09 (Ck #1352)		\$ 36.96
1/14/09	AT & T (Ck #1350)		\$ 108.67
1/14/09	Secure Storage - storage, masters, Inv. PA94865 dtd. 12/31/08 (Ck #1353)		\$ 484.84
1/14/09	Beech Island Water District (Ck #1354) Acct. #01-3942-00		\$ 55.00
1/15/09	SC Department of Revenue - D. Washington (Ck #1357)		\$ 500.00
1/15/09	Shipley & Hayes, PC - partial payment, appellate matters (Ck #1370)		\$ 5,000.00
1/15/09	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1371)		\$ 5,000.00
1/15/09	Hogan & Hartson, LLP - portion, legal fees, NY portion of \$25-\$31 Million claim, Pullman Litigation, as per Court Order (Ck #1372)		\$ 2,000.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
1/15/09	LOAJP, PC - costs only. 1/15/09 bill (Ck #1373)		\$ 3,095.43
1/16/09	D. Washington - w/e 1/17/09 (Ck #1361)		\$ 494.81
1/16/09	D. Washington - extra mileage (Ck #1364)		\$ 100.00
1/18/09	Deposit - Entertainment Partners, James Brown	\$ 20.00	
1/20/09	D. Washington - petty cash reimbursement (Ck #1367)		\$ 100.00
1/23/09	D. Washington - w/e 1/24/09 (Ck #1362)		\$ 494.81
1/23/09	D. Washington - extra mileage (Ck #1365)		\$ 100.00
1/27/09	DRAFT - Check Order		\$ 101.25
1/28/09	Lisa Hicklin, transcript for 10/23/08 hearing (Ck #1169)		\$ 523.25
1/29/09	Kane Office Technologies - briefs, Dallas and Bradley Appeal (Ck #1374)		\$ 172.16
1/30/09	D. Washington - w/e 1/31/09 (Ck #1363)		\$ 494.81
1/30/09	D. Washington - extra mileage (Ck #1366)		\$ 100.00
1/30/09	SCE & G - DRAFT		\$ 72.73
2/1/09	Interest Deposit	\$ 3.50	
2/2/09	US Treasury - Fourth Quarter, 2008, Form 941 (Ck #1289)		\$ 1,699.62
2/2/09	SC Department of Revenue - 4 th Quarter, 2008, Form 1606 UH (Ck #1377)		\$ 264.55
2/6/09	Deposit - AFTRA (James Brown)	\$ 36.70	
2/6/09	D. Washington - w/e 2/6/09 (Ck #1170)		\$ 494.81
2/6/09	D. Washington - mileage (Ck #1171)		\$ 100.00
2/9/09	SC Court of Appeals - Bauknigh Appeal Notice \$100; Motion \$25 (Ck #1378)		\$ 125.00
2/9/09	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1376)		\$ 5,000.00

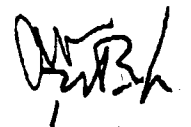


DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
2/9/09	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1379)		\$ 5,000.00
2/9/09	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1380)		\$ 5,000.00
2/9/09	Shipley & Hayes, PC - partial payment, appellate matters (Ck #1381)		\$ 5,000.00
2/12/09	D. Washington - w/e 2/12/09 (Ck #1172)		\$ 494.81
2/12/09	D. Washington - mileage (Ck #1173)		\$ 100.00
2/12/09	D. Washington - petty cash (Ck #1174)		\$ 100.00
2/12/09	Chargeback of \$36.70; fee of \$5.00		\$ 41.70
2/20/09	D. Washington - w/e 2/20/09 (Ck #1382)		\$ 494.81
2/20/09	D. Washington - mileage (Ck #1383)		\$ 100.00
2/23/09	Secure Storage - storage, masters, Inv. PG31370 dtd. 1/31/09 (Ck #1386)		\$ 484.84
2/25/09	Lisa Hicklin - transcript of 10/23/08 hearing, for appeal (Ck #1393)		\$ 40.00
2/25/09	Daphne H. Helms - transcript of 1/30/09 hearing (Ck #1390)		\$ 667.75
2/25/09	Ben Franklin plumbing - repairs/ maintenance. Beech Island House (Check #1387)		\$ 300.00
2/27/09	D. Washington - w/e 2/27/09 (Ck #1384)		\$ 494.81
2/27/09	D. Washington - mileage (Ck #1385)		\$ 100.00
2/27/09	Aiken County Clerk (Ck #1398)		\$ 25.00
2/27/09	Ben Franklin - plumbing repairs/maintenance, Beech Island Home (Ck #1394)		\$ 1,863.50
2/27/09	Aiken County Probate Court (Ck #1397)		\$ 33.75
2/27/09	D. Washington - miscellaneous expense. plumbing (Ck #1403)		\$ 100.00
3/01/09	Interest Deposit	\$ 2.05	

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
3/2/09	Zumwalt, Almon & Hayes PLLC - Inv. #10834 (Ck #1395)		\$ 770.00
3/2/09	Sellars, Cole & Bachkosky, LLC - Inv. 2009-29 (Ck #1396)		\$ 500.00
3/2/09	First Citizens Visa - reimbursement for AJP's trip to NY re: Corbis Litigation (Ck #1400)		\$ 637.30
3/2/09	AT&T - (Ck #1401)		\$ 111.14
3/2/09	Hogan & Hartson - Pullman matter. partial payment (Ck #1402)		\$ 2,000.00
3/2/09	Shipley & Hayes, PC - partial payment, appellate matters (Ck #1415)		\$ 2,000.00
3/2/09	Law Office of James D. Bailey, PC - partial payment, fees and costs (Ck #1416)		\$ 2,000.00
3/2/09	LOAJP, PC - costs only. 3/2/09 bill (Ck# 1417)		\$ 1,497.20
3/2/09	Kane Office Technologies - final brief, Cannon Appeal (Ck #1389)		\$ 226.08
3/2/09	SCE&G - DRAFT		\$ 87.27
3/3/09	Deposit - Sony BMG	\$ 34.77	
3/3/09	Kane Office Technologies - Julia/Royalties Project (Ck #1418)		\$ 21.40
3/3/09	Kinko's (Ck #1388)		\$ 28.09
3/6/09	SC Dept. of Rev. - D. Washington (Ck #1419)		\$ 400.00
3/6/09	D. Washington - w/e 3/7/09 (Ck #1404)		\$ 494.81
3/6/09	David Washington - mileage (Ck #1405)		\$ 100.00
3/12/09	Aiken County Circuit Court, Motion 59(e). McMaster Case, March 4 Order (Ck #1420)		\$ 25.00
3/13/09	D. Washington - w/e 3/14/09 (Ck #1406)		\$ 494.81
3/13/09	David Washington - mileage (Ck #1407)		\$ 100.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
3/17/09	James D. Bailey - copies of Herring file (Ck #1433)		\$ 105.42
3/18/09	AT&T - (Ck #1425)		\$ 109.74
3/18/09	Secure storage- Invoice Range PR23539 (Ck #1426)		\$ 484.84
3/18/09	Zumwalt, Almon & Hayes, PLLC - Invoice #10863 (Ck #1427)		\$ 577.50
3/20/09	D. Washington - w/e 3/21/09 (Ck #1421)		\$ 494.81
3/20/09	David Washington - mileage (Ck #1422)		\$ 100.00
3/24/09	Aiken County Clerk of Court - file summons and complaint (Ck #1409)		\$ 150.00
3/24/09	Aiken County Clerk of Court - file summons and complaint (Ck #1408)		\$ 150.00
3/27/09	D. Washington - w/e 3/28/09 (Ck #1423)		\$ 494.81
3/27/09	David Washington - mileage (Ck #1424)		\$ 100.00
3/30/09	SCE&G - DRAFT		\$ 88.75
3/30/09	Deposit - Entertainment Partners (James Brown)	\$ 32.96	
3/31/09	Interest Deposit	\$ 1.26	
4/3/09	D. Washington - w/e 4/4/09 (Ck #1410)		\$ 494.81
4/3/09	David Washington - mileage (Ck #1411)		\$ 100.00
4/6/09	Deposit - Entertainment Partners (James Brown)	\$ 4.22	
4/8/09	Harley Ruff, Esquire- deposit for services (Ck #1428)		\$ 1,500.00
4/8/09	Buchanan (Office) - partial payment for costs, etc., as per Court Order (Ck #1429)		\$ 2,000.00
4/8/09	Pope (Office) - partial payment for costs, etc., as per Court Order (Ck #1430)		\$ 2,000.00
4/9/09	D. Washington - w/e 4/11/09 (Ck #1457)		\$ 494.81
4/9/09	David Washington - mileage (Ck #1458)		\$ 100.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
4/10/09	Deposit - soundexchange (Estate)	\$ 6,705.80	
4/16/09	SC Dept. Of Rev - D Washington (Ck #1432)		\$ 300.00
4/16/09	AT&T - (Ck #1466)		\$ 118.80
4/16/09	Secure storage - Invoice Range PY48727 (Ck #1467)		\$ 484.84
4/17/09	D. Washington - w/e 4/18/09 (Ck #1459)		\$ 494.81
4/17/09	David Washington - mileage (Ck #1460)		\$ 100.00
4/20/09	Beech Island Water District (Ck #1468) Accts. #01-3942-00 and #01-3940-00 (\$50.00 each)		\$ 100.00
4/23/09	Zumwalt, Almon & Hayes PLLC - Inv. #10904 (Ck #1469)		\$ 1,058.75
4/24/09	D. Washington - w/e 4/25/09 (Ck #1461)		\$ 494.81
4/24/09	David Washington - mileage (Ck #1462)		\$ 100.00
4/28/09	Aiken County Clcrk of Court - Motion Fee, case #1647 (Ck #1470)		\$ 25.00
4/29/09	SC Department of Revenue - Form WH-1605. 1Qtr, 2009 (Ck #1472)		\$ 342.80
4/29/09	SC Employment Security Commission - Form UCE-120, 1Qtr, 2009 (Ck #1473)		\$ 85.35
4/29/09	Security Federal Bank - Form 940 Deposit. 1Qtr, 2009 (Ck #1474)		\$ 56.00
4/29/09	US Treasury - Form 941. 1Qtr, 2009 (Ck #1475)		\$ 1,884.92
4/30/09	Interest Deposit	\$ 1.05	
5/1/09	SCE&G - DRAFT		\$ 105.72
5/1/09	D. Washington - w/e 5/2/09 (Ck #1463)		\$ 494.81
5/1/09	D. Washington - mileage (Ck #1464)		\$ 100.00
5/1/09	SC Dept. Of Revenue - David Washington (Ck #1476)		\$ 523.97



DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
5/1/09	Aiken County Clerk of Court - motion fee. Case #0597 (Ck #1477)		\$ 25.00
5/8/09	D. Washington - w/c 5/9/09 (Ck #1465)		\$ 494.81
5/8/09	D. Washington - mileage (Ck #1412)		\$ 100.00
5/15/09	D. Washington - w/c 5/16/09 (Ck #1413)		\$ 494.81
5/15/09	D. Washington - mileage (Ck #1414)		\$ 100.00
5/20/09	To show assets remaining at end of Period:		
	1. Security Federal Account #408015768		\$ 14,837.78
	2. 430 Douglas Drive, Beech Island. South Carolina Estate [owned by 2000 Trust]		\$ 1,215,000.00
	3. Personal and Household Effects ("PHE") devised under Article I of Will, and/or proceeds		\$ 425,053.00
	4. Remaining Tangible Personal Property ("TPP"); including TPP at I.P. Stanback Museum and Planetarium, S.C. State University; TPP on loan to Lucy Craft Laney Museum of Black History; TPP on loan to Augusta Museum of History; TPP on loan to South Carolina State Museum; masters, etc. located in secure storage; and automobiles		\$ 1,574,947.00
	5. Note, Security Deed, JJ Brown House sale		\$ 54,000.00
	6. Remaining assets as described above.		\$ 96,579,177.24
	Total value, remaining assets: \$99,863,015.02		
	TOTAL	\$ 106,196,325.60	\$ 106,196,325.60

Less Secured Claims, etc.:

1. TIAA Royalty Debt	\$ 13,165,163.25
2. Priority loan from TIAA/M&T. Trustee	\$ 100,000.00

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	3. Other claims, including Debts and disputed claims at nominal carrying value. ¹	\$ 1.00	
	Total Debts listed above	\$ 13,265,164.25	
	NET VALUE OF ENDING ASSETS	\$ 86,597,850.77	

¹ See Attached list of Status of Claims.

Estate of James Brown - 2007-ES-02-0056

STATUS OF CREDITORS' CLAIMS

November 20, 2007 - May 20, 2009

1: CLAIMS RESOLVED (OR PARTIALLY RESOLVED) IN FAVOR OF ESTATE (BY DISALLOWANCE OR JUDGMENT)

NO.	CREDITOR	EXPLANATION	AMOUNT DISALLOWED
1	Bobby Bennett a.k.a. Famous Flames	Hearing 10/23/08. Disallowed. Form Order dtd. 10/23/08.	\$ 450,000.00
2	Gene Staulcup & Associates, Inc.	Hearing 10/23/08. Disallowed. Form Order dtd. 10/23/08.	\$ 2,508.25
3	Greenberg Traurig, LLP	Withdrawn. See Ltr dtd 3/10/08.	\$ 155,602.85
4	Phillip G. Farr, CPA, PC	Hearing 10/23/08. Disallowed. Form Order dtd. 10/23/08.	\$ 25,977.60
5	Roosevelt Royce Johnson I	Disallowed 8/12/08 and 2/6/09. No timely petition filed.	\$ 2,500,000.00
6	The Pullman Group, LLC	Disallowed as per Judge Early's oral Order on 10/23/08 and written Order of 11/13/08. ¹ See footnote 1.	\$ 31,000,000.00
7	William Murrell (also see Chart 2)	\$8,170 granted; \$1,100 denied, Order of Jg. Early dtd 10/23/08	\$ 1,100.00
8	Dr. Rita Udom, MD	Claim filed on 9/28/07. Disallowed on 8/12/08.	\$ 22,500.00
9	Leon (Lee) Austin	Claim filed on 9/20/07. Disallowed on 8/12/08.	\$ 9,999.99
TOTAL CLAIMS RESOLVED			\$ 34,167,688.69

¹ By the terms of Jug. Early's Order, This Order cannot, and does not, affect the outcome of the claim pending against James Brown in the New York case on December 25, 2006, the date of his death, in which the Estate of James Brown, James Brown Enterprises, Inc. and James Brown, LLC are defending Pullman Group counterclaims.

STATE OF SOUTH CAROLINA
COURT OF PROBATE AND VICES

THIS IS TO CERTIFY
CORRECT COPY OF THE ORIGINAL FILED IN THE COURT
WITNESS MY HAND AND SEAL OF THE COURT THIS 20th
DAY OF MAY 2009
JUDGE OF PROBATE FOR Aiken County, SC
By *[Signature]*

1499

[Handwritten Signature]

2: VALID CLAIMS/PRIORITY EXPENSES OF ADMINISTRATION (SECTION 62-3-805(a)(1))² BY ALLOWANCE, ACKNOWLEDGMENT OR JUDGMENT/ORDER AND CLAIMS HAVING SPECIAL STATUS

May 20, 2009

No.	CREDITOR	EXPLANATION	CLASS	PAYMENT STATUS
1	M&T Bank, Trustee TIAA	Claim secured by Assignment and terms of indenture. Also see claim file 9/20/07 for \$473,595.46		Current - \$13,165,163.25
2	Hogan and Hartson, LLP	Counsel Pullman NY litigation. Engaged by Ct. Orders dtd. 6/22/07 and 8/10/07, Case 122. Hrly. rate and costs, as per contract	Priority (Admin.)	\$109,523.56 (5/1/09)
3	Law Office of James D. Bailey, PC	Counsel, Probate and Circuit Court matters including claims resolution; Will/Trust Defense; Spousal/Heirs Claims; and other general matters; co-counsel. Appellate matters. Hrly. rate and costs, as per contract	Priority (Admin.) allowed by PRs	\$116,605.42 (5/1/09)
4	Shipley & Hayes, PC	Primary Appellate counsel and co-counsel in certain Circuit Court matters; Hrly rate and costs as per contract	Priority (admin.) allowed by PRs	\$29,580 (5/1/09)
5	Smith, Massey, Brodie & Thurmond	Counsel to former PRs/Trustees. Allowed as per Court Order (Hearing 10/23/08) claim plus interest at Jmt. rate.	Priority (Admin.)	\$33,322.20, plus interest unpaid
6	Art Gold (Gold and Coulson, LLC)	Counsel fee and costs Corbis/Illinois litigation; counsel Hollander vs. Estate/Trust, filed 5/09. Hrly rate plus costs as per contract	Priority (Admin.)	Unpaid
7	Harley Ruff	Tax consultations etc., hrly rate plus costs as per contract		\$1,500 paid; approx. \$1,500 due (5/20/09)

² SECTION 62-3-805. For Classification of claims.

(a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) costs and expenses of administration, including attorney's fees, and reasonable funeral expenses.

[Handwritten Signature]

No.	CREDITOR	EXPLANATION	CLASS	PAYMENT STATUS
8	Buchanan and Pope	Special Administrators Commissions, pursuant to Jg Early Order, dtd 1/8/08, Case 122. \$317,000 plus unreimbursed costs of \$2,415.38 plus interest per Order	Priority (Admin.) as per jmt	Partial payment
9	Buchanan and Pope	Personal Representative/Trustees' Commissions as per Will Item IV, plus Article VIII, partially allowed to date per Order of Jg. Early, 1/8/08; plus claims for reimbursement, defense of frivolous Federal litigation; indemnity; defense other pending litigation and tax matters; and payment of future expenses	Priority (Admin.) Partial, per judgment	Unpaid
10	Cruise Security	Installation Security system. Claim filed and satisfied.	Priority (Admin.)	\$4,041.45 - paid
11	David Washington	Re: prior service Amount 1,392.79 paid. Claim filed and satisfied.	Priority (Admin.)	\$1,392.79 - paid
12	Lewis & Babcock, LLP	Counsel to former PR/Trustees Cannon, etc. Acknowledged validity of claim, but subject to amount to be determined by Court by stipulation w/Claimant; hearing pending; Claims filed \$246,552.45 and \$348,960.43; AG, Trust and Estate	Priority (Admin.)	Amount/payment pending
13	Rodney A. Peebles	Counsel to former PR/Trustees, Cannon, etc., claim of \$97851.66. Acknowledged validity of claim, but subject to amount to be determined by Court by stipulation w/Claimant.	Priority (Admin.)	Amount/payment pending
14	William Murrell (also see Chart 1)	Portion of claim granted: \$8,170 granted; \$1,100 denied, Order of Jg. Early dtd 10/23/08	General	\$8,170 - unpaid

3: PENDING, UNRESOLVED CLAIMS (PARTIAL)

No.	CREDITOR	EXPLANATION	PAYMENT STATUS
1	Albert H. Dallas	Petition of Former PR/Trustee for approx. 5% of \$90-\$100 MM PLUS \$624,876.00. Disputed in its entirety	Unpaid/disputed
2	Alfred A. Bradley	Makes various claims PLUS \$12,795.76. Disputed in its entirety	Unpaid/disputed
3	Augusta Communications, Inc.	\$800.00. Under review	Unpaid
4	CA Reid, Sr. Memorial	\$17,995.00 Under review	Unpaid
5	Charles A. Bobbitt	Claim for \$200,000.00 Petition for Allowance pending. Disputed	Unpaid
6	David G. Cannon	Former PR/Trustee 5% of \$90-\$100 MM PLUS additional amounts. Disputed in its entirety. Petition for Allowance pending	Unpaid/disputed
7	Georgia Dept of Revenue	\$26,828.35. Claim filed 5/18/07	Unpaid
8	Hull, Towill, Norman, Barrett & Salley	Petition for Allowance pending. Re: disputing claim \$ 124,518.26	Unpaid
9	International Formal Wear	\$ 17,889.00. Under review. Claim filed 10/1/07. May be barred by limitation	Unpaid
10	Intrigue Music Management, Inc.	Petition for Allowance pending. Claim in excess of \$175,000. Disputed in its entirety.	Unpaid/disputed
11	IRS	\$14,366.25 PLUS other unfiled claims and liens, including liens related to Federal Estate taxes remain unpaid	Unpaid
12	Jackson Law Office	Petition for Allowance Pending \$61,273.25. Disputed	Unpaid
13	Kirby Locksmith, Inc.	\$371.47. Under review	Unpaid
14	LaRhonda Pettit	Claim filed on 8/23/07. Disallowed 8/12/08. Disputed in its entirety.	
15	Lewis Lease Equipment Co., Inc. D/B/A Lewis Bus Line	Under review. Holding vehicles. Estate lacks funds to cover; engaged counsel; Georgia; resolved. Claim filed 8/23/07 \$6,335.00	Unpaid
16	Nicole Parris	\$9,999.99	Unpaid
17	Suggs Johnson	Petition for Allowance pending. \$5,747.81	Unpaid

No.	CREDITOR	EXPLANATION	PAYMENT STATUS
18	Tom Wells	Petition for Allowance pending \$39,994.26. Has been paid substantial amounts by PR/Trustees	Claim amount Unpaid

MEL
TJL

JUN 29 2009

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

PROBATE COURT

IN THE MATTER OF ESTATE OF JAMES BROWN
CASE NUMBER 2007-ES-02-0056

ACCOUNTING

[X] FINAL (RESERVING ALL RIGHTS)¹
[] INTERIM #

The undersigned Personal Representatives submit this Final Accounting, which covers the period from May 21, 2009, through May 27, 2009, and relates to the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

The attached documentation sets forth a complete accounting for the period specified, which is summarized as follows:

	Income	Principal	Total*
Beginning Balance			
Plus: Receipts		\$ 99,863,015.02	
Subtotal		\$ 2,338,393.75	
Less: Disbursements		\$ 102,201,408.77	
Ending Balance in hands of Buchanan and Pope		\$(102,201,408.77)	
		\$ 0*	

*If a consolidated accounting, use this column.

The Personal Representatives declare that this account has been examined and that its contents represent a correct statement of all receipts and disbursements and are true to the knowledge and belief of the Personal Representatives.

FORM #360PC (7/87)
SCPC 3-704, 3-1003

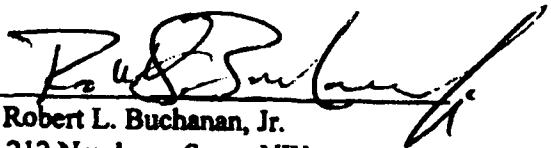
PAGE 1 OF 2

¹ \$99,860,509.21 was delivered to Russell L. Bauknight, reserving all rights pursuant to the appeal of this Court's Termination of Appointment dated May 26, 2009 and all objections and reservations to the Order of the Honorable Doyet A. Early, III, dated May 26, 2009.

1504

Filed: 6-24-2009
Sue H. Roe
Judge of Probate
By: S. Ready

JUN 29 2009

Signature: 

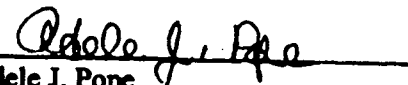
Name: Robert L. Buchanan, Jr.

Address: 212 Newberry Street NW

P.O. Box 463

Aiken, South Carolina 29802-0463

Telephone(O): 803-649-2586

Signature: 

Name: Adele J. Pope

Address: 1218 Taylor Street

PO Drawer 7125

Columbia, SC 29202-7125

Telephone(O): 803-779-1870

SWORN to before me this
24th day of June, 2009

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 04-08-2012

JUN 29 2009

**ATTACHMENT TO FINAL ACCOUNTING
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**

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
5/21/09	To Show Assets at beginning of period:		
	1. Security Federal Account #408015768	\$ 14,837.78	
	2. 430 Douglas Drive, Beech Island, South Carolina Estate [owned by 2000 Trust]	\$ 1,215,000.00	
	3. Personal and Household Effects ("PHE") devised under Article I of Will, and/or proceeds	\$ 425,053.00	
	4. Remaining Tangible Personal Property ("TPP"); including TPP on loan to S.C. State University, Lucy Craft Laney Museum of Black History, Augusta Museum of History, SC State Museum; masters, etc. located in secure storage; and automobiles	\$ 1,574,947.00	
	5. Note, Security Deed, JJ Brown House sale	\$ 54,000.00	
	6. Remaining assets ¹	\$ <u>96,579,177.24</u>	
	Total Value, Beginning Assets	\$ 99,863,015.02	
	Less Secured Claims, etc.:		
	1. TIAA Royalty Debt		\$ 13,165,163.25
	2. Priority loan from TIAA/M&T, Trustee		\$ 100,000.00
	3. Other claims, including Debts and disputed claims at nominal carrying value. ²		\$ 1.00
	Total Debts listed above		\$ <u>13,265,164.25</u>
	NET VALUE OF BEGINNING ASSETS	\$ 86,597,850.77	

¹ Residue of assets including those owned by estate, trust & other James Brown entities including but not limited to royalty interests, image, persona, Publicity Rights, licenses & other related rights including rights owned by Geronimo, LLC; James Brown d/b/a The New James Brown Enterprises, Inc. Also including but not limited to rights and claims against former PRs/Trustees, Seventh Decade and/or others for losses during the period prior to the death of James Brown. Also includes: GG Contract and Soundexchange Contract. Assets may be owned within James Brown Enterprises, Inc. (JBE, Inc.), James Brown, LLC or another Brown Entity.

² See list of Status of Claims attached to Interim Accounting I A covering the period through May 20, 2009.

JUN 29 2009

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	Beginning Assets as shown above: \$99,863,015.02	\$ 99,863,015.02	
5/22/09	D. Washington - w/e 5/23/09 (Ck #1436)		\$ 494.81
5/22/09	David Washington - mileage (Ck #1437)		\$ 100.00
5/22/09	Lisa Hicklin - transcripts for hearings: 3/4-3/6/09 (Ck #1438)		\$ 1,911.00
5/22/09	Royalties received through May 26, 2009 inclusive of earnings	\$ 2,338,393.75	
5/22/09	Royalties applied to TIAA debt as follows: Principal: \$1,776,883.24 Interest: \$ 561,510.51		\$ 2,338,393.75
5/27/09	To show assets transferred (RESERVING ALL RIGHTS) to Russell L. Bauknight on May 27, 2009:		
	1. Security Federal Account #408015768		\$ 12,331.97
	2. 430 Douglas Drive, Beech Island, South Carolina Estate [owned by 2000 Trust]		\$ 1,215,000.00
	3. Personal and Household Effects ("PHE") devised under Article I of Will, and/or proceeds		\$ 425,053.00
	4. Remaining Tangible Personal Property ("TPP"); including TPP at I.P. Stanback Museum and Planetarium, S.C. State University; TPP on loan to Lucy Craft Laney Museum of Black History; TPP on loan to Augusta Museum of History; TPP on loan to South Carolina State Museum; masters, etc. located in secure storage; and automobiles		\$ 1,574,947.00
	5. Note, Security Deed, JJ Brown House sale		\$ 54,000.00
	6. Remaining assets as described above.		\$ 96,579,177.24
	Total value, assets transferred: \$99,860,509.21		
5/27/09	To show assets remaining in hands of Buchanan and Pope as PR/Trustees	\$ 0.00	\$ 0.00

JUN 29 2009

DATE	DESCRIPTION	RECEIPTS	DISBURSEMENTS
	TOTAL	\$ 102,201,408.77	\$ 102,201,408.77
	Less Secured Claims, etc.:		
	1. TIAA Royalty Debt	\$ 11,388,280.01	
	2. Priority loan from TIAA/M&T, Trustee	\$ 100,000.00	
	3. Other claims, including Debts and disputed claims at nominal carrying value. ¹	\$ 1.00	
	Total Debts listed above	\$ 11,488,281.01	
	NET VALUE OF TRANSFERRED ASSETS	\$ 88,372,228.20	

*Also see the following exhibits:

Exhibit 1 - Summary of Accountings of Buchanan and Pope

Exhibit 2 - Custody Receipt for books and records transferred (without prejudice) to Russell L. Bauknight in connection with (temporary) management of Estate and Trust on or before June 23, 2009

¹ See list of Status of Claims attached to Interim Accounting 1A covering the period through May 20, 2009.

JUN 29 2009

EXHIBIT 1
SUMMARY OF ACCOUNTINGS OF BUCHANAN AND POPE, ESTATE OF JAMES
BROWN AND JAMES BROWN 2000 IRREVOCABLE TRUST

Assets at Beginning of Period (11/20/07)	\$	100,000,000.00
Less Secured Claims, Etc.:	\$	(17,026,624.18)
1. TIAA Royalty Debt		
2. Priority loan from TIAA/M&T, Trustee	\$	(100,000.00)
3. Other claims, including Debts and disputed claims at nominal carrying value.	\$	(1.00)
Net Value of Beginning Assets	\$	82,873,374.82
Assets at End of Period (5/26/09)	\$	99,860,509.21
Less Secured Claims, etc.:		
1. TIAA Royalty Debt	\$	(11,388,280.01)
2. Priority loan from TIAA/M&T, Trustee	\$	(100,000.00)
3. Other claims, including Debts and disputed claims at nominal carrying value.	\$	(1.00)
Net Value of Ending Assets	\$	88,372,228.20



SWEENEY WINGATE & BARROW P.A.

October 1, 2010

Reply to: Main Office
Kenneth B. Wingate
(803) 256-2233 x 133
kbw@swblaw.com

VIA HAND DELIVERY

The Honorable L. Casey Manning, Jr.
Judge, Fifth Judicial Circuit
Richland Judicial Center
1701 Main Street
Columbia, SC 29201

RE: Bauknight, et al. v. Buchanan and Pope
Case No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Judge Manning:

Please find enclosed a proposed Order Striking Defendant's Motion To Transfer Venue. The matter was before Your Honor on August 30, 2010, along with other motions that were argued on the same day. The enclosed order, if signed and filed, would obviate the need for you to consider the defendant's motion to transfer venue.

Thank you for your attention to this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Kenneth B. Wingate

KBW/alm
Enclosures

cc/enc: Daryl L. Williams, Esquire (via E-Mail and U.S. Mail)
J. Calhoun Watson, Esquire (via E-Mail and U.S. Mail)

1510

LTR. WATSON TO MANNING

SEE PAGE 2213

NOV 15 2010

4077-7389

November 10, 2010

VIA HAND DELIVERY

The Honorable Jeanette W. McBride
Clerk of Court - Richland County
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201

RE: Russell L. Bauknight, et al. vs. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File No.: 5478/1503

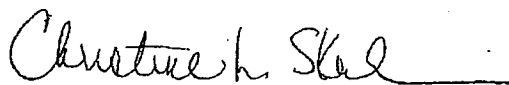
Dear Ms. McBride:

Enclosed for filing please find the original and two copies of an **Affidavit of Default** in the above-referenced matter. We ask that you file the original and return the file-stamped copies to us via our courier.

By copy of this letter and as evidenced by the Certificate of Service, we are serving a copy of the same on all counsel of record.

Thank you for your assistance.

Very truly yours,



Christine L. Skalamera
Legal Assistant to J. Calhoun Watson
:cls

Enclosures

cc: Kenneth B. Wingate, Esquire - via U. S. Mail
Everett A. Kendall, II, Esquire - via U. S. Mail
Daryl L. Williams, Esquire - via email

1512

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. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

AND

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

Plaintiffs,

vs.

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

Defendants.

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

AFFIDAVIT OF DEFAULT

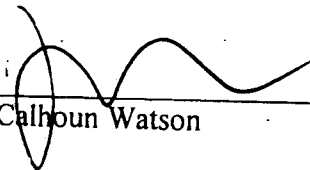
JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 NOV 10 PM 4:31

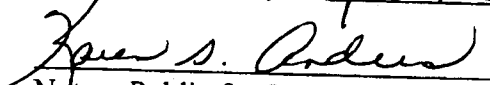
RICHLAND COUNTY
FILED

PERSONALLY appeared before me, J. Calhoun Watson and Daryl L. Williams, who being duly sworn depose and say as follows:

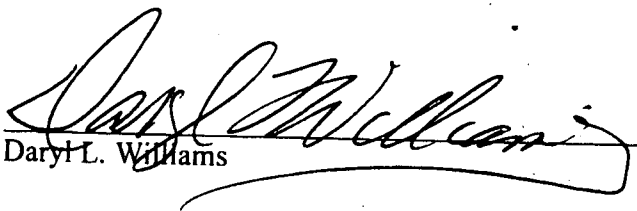
1. We are the attorneys for Defendant Robert L. Buchanan, Jr. ("Defendant Buchanan") and Defendant Adele J. Pope ("Defendant Pope") in the above-captioned action.
2. Plaintiffs filed a Summons and Complaint in this matter on May 19, 2010 which is attached hereto as **Exhibit A**.
3. Defendants Buchanan and Pope were served with the Summons and Complaint by personal service on May 24, 2010.
4. Defendant Buchanan and Defendant Pope served their Answer and Counterclaim on Plaintiffs, by and through their counsel, via hand-delivery as evidenced by the Certificate of Service, on September 30, 2010. Answer and Counterclaim of Robert L. Buchanan, Jr. and Adele J. Pope with the Certificate of Service is attached hereto as **Exhibit B**.
5. Plaintiffs' Answer to Counterclaim was due to be served on or before November 1, 2010.
6. Plaintiffs have failed to file an answer or otherwise respond to the Counterclaims of Defendant Buchanan and Defendant Pope.
7. Plaintiffs have not sought, nor have Defendant Buchanan and/or Defendant Pope agreed to any extension of time for Plaintiff to file an answer or responsive pleading to the Counterclaim of Defendant Buchanan and Defendant Pope.
8. Plaintiffs are not a corporate entities, infants, minors, incompetent person, or persons in active military service.
9. The time for answering the Counterclaim has now expired; no responsive pleading has been received from Plaintiffs; therefore, Plaintiffs are in default.
10. Both affiants are members of the South Carolina Bar.


J. Calhoun Watson

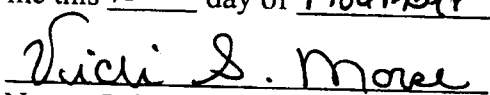
SWORN to and subscribed before
me this 10th day of September, 2010.


Notary Public for South Carolina

My Commission expires: 02/24/2014


Daryl L. Williams

SWORN to and subscribed before
me this 10th day of November, 2010.


Notary Public for South Carolina

My Commission expires: 9/1/2019

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James ~~Brown~~; 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 ~~LAMAR~~ 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 PROBATE COURT

Civil Action No. 2010 - GC - 4000073

SUMMONS

FILED
10 MAR 19 PM 1:10
RICHLAND COUNTY, S.C.

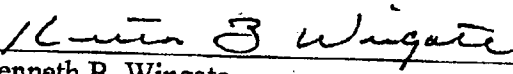
FILED

TO: THE DEFENDANTS, ADELE J. POPE AND ROBERT L. BUCHANAN, JR.:

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

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 19, 2010

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

AND

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

Plaintiffs,

vs.

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

Defendants.

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

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

2010 SEP 30 PM 1:07

RICHLAND COUNTY
FILED

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

(Jury Trial Demanded)

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

CERTIFICATE OF SERVICE

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

Pleadings:

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

Counsel Served:

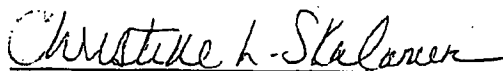
(VIA HAND DELIVERY)
Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Attorneys for Plaintiffs

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

2010 SEP 30 PM 1:07

FILED

ANDERSON COUNTY


Christine L. Skalamera

September 30, 2010

CERTIFICATE OF SERVICE

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

Pleadings:

AFFIDAVIT OF DEFAULT

Counsel Served:

Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Plaintiffs

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

2010 NOV 10 PM 8:59

RICHLAND COUNTY
FILED

Christine L. Skalamera
Christine L. Skalamera

November 10, 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

Civil Action No. 2010-CP-40-4900

**PLAINTIFF HENRY D. MCMASTER'S
ANSWERS TO DEFENDANT'S FIRST
SET OF CONTINUING
INTERROGATORIES**

TO: DEFENDANTS AND THEIR ATTORNEYS:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the following constitute

Henry D. McMaster's Answers to First Set of Continuing Interrogatories propounded by Defendant Adele J. Pope.

1. Give the names and addresses of persons known to Henry Dargan McMaster, in his capacity as Attorney General for the State of South Carolina and/or any attorneys and/or employees in the office of the Attorney General and/or his or their counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

See "Witness List" attached hereto. Additional information will be provided by supplemental response when it becomes available.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Henry Dargan McMaster, in his capacity as Attorney General for the State of South Carolina and/or his agents that relate to the claim or defense in the case.

ANSWER:

Responding Plaintiff does not have information responsive to this Interrogatory.

3. List the names and addresses of any expert witnesses whom Henry Dargan McMaster, in his capacity as Attorney General for the State of South Carolina, proposes to use as a witness at the trial of the case and state the subject matter on which and the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

ANSWER:

- (a) **Tiffany Provence
Provence Messervy LLC
117 W 7th North Street
Summerville, SC 29483-6618**

Ms. Provence has been retained to review the documents, testimony and other relevant information related to the allegations set forth in the Complaint. She is expected to offer opinion testimony concerning the standard of care applicable to a Personal Representative and to a Trustee, the ethical considerations involved in serving as a fiduciary under the facts of this case, and whether the Defendants have met the standard of care or ethical obligations in this case. Ms. Provence has not yet formulated her opinion.

**(b) Mark T. Hobbs, CPA
The Hobbs Group, P.A.
1704 Laurel Street
Columbia, SC 29201**

Mr. Hobbs has been retained to review the documents, testimony and other relevant information related to the allegations set forth in the Complaint. He is expected to offer opinion testimony concerning damages sustained by the Plaintiffs as a result of the acts or omissions of the defendants. Mr. Hobbs has not yet formulated his opinion.

4. For each person known to Henry Dargan McMaster, in his capacity as Attorney General for the State of South Carolina, or his counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendant of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

See Responding Plaintiff's response to Interrogatory No. 1, above.

5. Set forth with specificity the evidence which you contend will support the allegations contained in the following paragraphs of the Complaint. If the evidence is documentary or in electronic format, identify the document or data base in which the evidence is contained and who has custody, possession or control of it. If testimonial, identify the person on whom you will rely for such testimony.

Paragraph 18:

- a. Failing to properly manage the estate and trust;
- b. Failing to engage necessary advisors and appropriate assistance to manage the estate and trust, causing, upon information and belief millions of dollars of lost opportunities for the estate and trust;
- c. Failing to use due diligence in pursuing business opportunities for the estate and trust;
- d. Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability;
- e. Mishandling an auction of personal property at great cost to the estate and trust;
- f. Failing to timely settle the debts of the estate;
- g. Failing to keep accurate accounting records for the estate and trust;
- h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;
- i. Failing to sell the assets of the estate and trust at a prudent time, for example, by failing to accept an offer to buy the estate and trust for \$100 million in November, 2007, as demonstrated by their own testimony under oath, while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less;
- j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court;
- k. Failing to account to the Attorney General as required by law;
- l. Wasting time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust;
- m. Refusing to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate;
- n. Acting in bad faith, as evidenced by such actions as:
 - i. Filing a lengthy motion opposing the settlement even before they were informed of the terms of the settlement;
 - ii. Providing to the Internal Revenue Service a road map of the settling

parties' plan to deal with tax issues, for no apparent purpose other than to sabotage the settlement agreement;

- iii. Taking inconsistent legal positions for their own personal interests, such as asserting their right to continue as fiduciaries pending their appeals despite having taken the contrary position when their predecessors appealed, insisting that the settling parties give notice to non-interested persons when Defendants refused to do so whenever they sought relief (such as the payment of their fees), and contesting the settling parties' contention that the estate was in an emergency situation when they themselves had asserted that position shortly before;
- iv. Despite being judicially estopped by the South Carolina Court of Appeals, asserting they have a right to prosecute the Trust's and Estate's claims against Dallas, Cannon, and Bradley;
- o. Being unequipped and/or unwilling to conduct the administration of the estate, as they admitted by seeking the appointment of a special administrator to handle the administration because the estate was in an "emergency" situation, as further demonstrated by such breaches as:
 - i. Failing to understand the fundamentals of the operation of the music business, which constitutes the essential value of the trust and estate, and failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;
 - ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuations, including but not limited to tax valuation;
 - iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence";
- p. Engaging in conflicts of interest, such as:
 - i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;
 - ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets;
 - iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be \$5 million;
- q. By misrepresenting or presenting inaccurate statements under oath to the Court;

- r. By failing to file appropriate tax returns;
- s. By allowing statutes of limitations to run, thereby preventing opportunities for the estate and trust to receive reimbursement for music rights misappropriated by others;
- t. By failing to comply with the requirements of the South Carolina Uniform Prudent Investor Act, including but not limited to the failure to implement an investment policy for the trust; and
- u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately \$5 million in fees.

Paragraph 26:

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

Paragraph 27:

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

Paragraph 28:

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

- a. Loss, waste, or spoliation of the assets of the Estate and Trust;
- b. Diminution in the present value and income generation of the Estate and Trust; and
- c. Diminution in the future stream of profit and income from the corpus of the Estate and Trust,

OBJECTION: Responding Plaintiff objects to this Interrogatory on the grounds that it seeks disclosure of the thoughts and strategies of counsel, and is thus protected by the Attorney Work-Product Doctrine. To the extent counsel may have shared this information with the Responding Plaintiff, the information is protected by the Attorney-Client Privilege. Responding Plaintiff further objects to this "contention"

interrogatory as being premature, overly broad, and unduly burdensome given the early stages of discovery in this case. Subject to this objection, Responding Plaintiff answers all sub-parts of this Interrogatory as follows:

ANSWER:

The documentary evidence that will support Plaintiffs' claims will be drawn from the documents produced by these Plaintiffs, produced by the Defendants, and obtained from third-parties by way of subpoena or otherwise. Additional documentary evidence may be drawn from public records, including documents on file with the Aiken County Probate Court, the Court of Common Pleas for Aiken County, the South Carolina Court of Appeals, the South Carolina Supreme Court, the South Carolina Department of Revenue, the Internal Revenue Service and other public bodies. Testimonial evidence will be taken from the transcripts and affidavits of Adele Pope and Robert J. Buchanan that were created in association with other litigation. Additional testimonial evidence is expected from the witnesses listed above and others such as may become known to the Plaintiffs through discovery.

Plaintiffs expect to glean a copious volume of evidence from these and possibly other sources. At this stage in the litigation, Plaintiffs have not and cannot filter the information to provide any more specific response to this contention interrogatory.

6. Did you or your agents know on June 30, 2008 that the mediation which took place on August 10, 2008 was being considered? If not, when was the first date that you and your agents learned of a proposal for mediation.

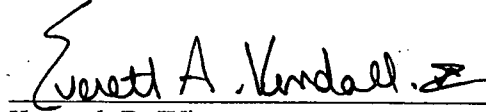
OBJECTION: Responding Plaintiff objects to this Interrogatory to the extent that it requests information protected by the Attorney-Client Privilege. Further, the

Responding Plaintiff objects to the vague and imprecise terms, including “your agents” and “being considered” and “proposal for mediation.” Subject to this Objection, Responding Plaintiff answers as follows:

ANSWER: No response.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, reading "Everett A. Kendall, II". The signature is written in a cursive style with a large initial "E" and a stylized "K".

Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
November 12, 2010

Witness List

11/12/2010

Full Name	Addresses
Jeff Allen	145 West 57 Street 15th Floor New York NY 10019
Russell L. Bauknight	1517 Gervais St. P.O. Box 1330 Columbia, SC 29202
Jim Blackwell	3455 Peachtree Road NE, Suite 1700 Atlanta, GA 30326
Charles Bobbitt	3280 Golf-Linx Drive Snellville, GA 30039
Daryl J. Brown	1120 Court Drive, Apt. R Duluth, GA 30096
Forlando J. Brown	156 Liberty Hill Road Eastanollee, GA 30538
Larry Brown	110 Dresden Drive Martinez, GA 30907
Terry Brown	156 Liberty Hill Road Eastanollee, GA 30538
Tonya Brown	2417 Castlewood Dr. Augusta, GA 30904
Vanisha Brown	P.O. Box 652 Clearwater, SC 29822
Yamma N. Brown	305 Legran Bend Atlanta, GA 30328
Deanna J. Brown-Thomas	P.O. Box 652 Clearwater, SC 29822
Robert L. Buchanan	212 Newberry St., NW P.O. Box 463 Aiken, SC 29802-0463
David G. Cannon	9459 Marlboro Ave Barnwell, SC 29812-1962
Frank Copsidas	601 West 26th Street Suite 1080 New York, NY 10001
Albert H. Dallas	304 Black Street Thomson, GA 30824-2919
William F. Hammond	P.O. Box 1564 Augusta, GA 30903-1564
Tommie Ray Hynie-Brown	Los Angeles, CA
Joel A. Katz	3290 Northside Parkway, Ste 400 Atlanta, GA 30326
Adele J. Pope	1228 Walnut ST Newberry, SC 29180
Al Sharpton	106 West 145th Street New York, NY 10039
William H. Tucker	111 Park Ave, SW Aiken, SC 29801
Alvin Waters	Atlanta, GA
Calvin Waters	Atlanta, GA
Andre White	5122 Hunters Luck Stone Mountain, GA 30088

Witness List

11/12/2010

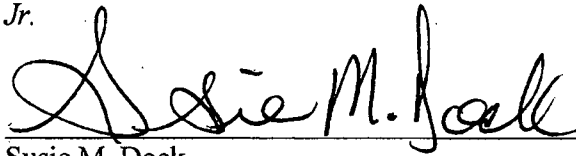
Full Name	Addresses
Andre White	75 Piedmont Ave NE Atlanta, GA 30303

CERTIFICATE OF SERVICE

I, the undersigned assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Plaintiffs, do hereby certify that I have served a copy of the foregoing **PLAINTIFF HENRY D. MCMASTER'S ANSWERS TO DEFENDANT'S FIRST SET OF CONTINUING INTERROGATORIES** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daryl L. Williams, Esq.
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, SC 29202
Attorneys for Defendant Adele J. Pope

J. Calhoun Watson, Esq.
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
Attorneys for Defendant Robert L. Buchanan, Jr.


Susie M. Dock

Columbia, South Carolina
November 12, 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 ~~Lewis~~ and Carrington ~~Lewis~~; 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 ~~Lewis~~ and CARRINGTON ~~Lewis~~; 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. 10-CP-40-4900

**AFFIDAVIT OF
KENNETH B. WINGATE**

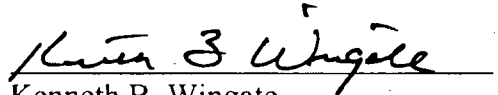
RICHLAND COUNTY
FILED
2010 NOV 16 PM 4:45
JEANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, the undersigned, Kenneth B. Wingate, who after being duly sworn, deposes and says:

1. I am Kenneth B. Wingate. I am an attorney licensed to practice law in the State of South Carolina. The statements contained herein are true and correct based upon my personal knowledge.
2. I am counsel of record for the Plaintiffs in this litigation.
3. I have received and reviewed the Affidavit of Default filed by Defendants on November 10, 2010. This Affidavit was received at my office on November 15, 2010, through the United States Postal Service.
4. At some previous date, a copy of the Defendants' Answer and Counterclaim was delivered to my office. Through my investigation, I have not been able to determine when or how it was received.
5. I have reviewed the time records since September 30, 2010, and can find no reference to the receipt or review of the Answer and Counterclaim.
6. On or about September 30, 2010—the date Defendants claim to have served the Answer and Counterclaim—we were in the process of preparing proposed Motions for Judge Manning in response to Defendants' Motions to Dismiss and Motions to Change Venue. Both sides submitted these to Judge Manning on October 1, 2010.
7. I have no memory of receiving the Answer and Counterclaim. However, the single copy in our file has my handwriting on it instructing my staff to file the document in the Brown litigation file. I can only surmise that this document was among the others that were being exchanged at or about this time, that I did not recognize it as a counterclaim, and simply sent it to be filed.
8. I had no reason to suspect that an Answer and/or counterclaim would be filed during that period of time. In response to the Summons and Complaint, Defendants filed a Motion to Dismiss in lieu of an Answer. Defendants also filed a Motion to Change Venue. On August 30, 2010, hearings were held before Judge Manning on these motions. As stated previously, proposed orders were due to Judge Manning on October 1, 2010. At no time between the hearing and October 1, 2010, did Defendants withdraw their Motions.
9. On November 12, 2010, I received a copy of Judge Manning's Orders denying the Motions to Dismiss and to Change Venue. Copies of these Orders were sent to the attorneys for the Defendants by email stating that we "look forward to receiving your Answer on or before November 29, 2010." A copy of this email is attached at Exhibit A, hereto.

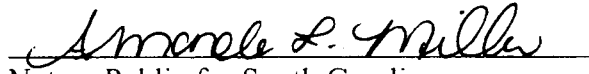
10. Between September 30, 2010, and today, I have had no communication with the attorneys for the Defendants regarding the filing of this Answer and Counterclaim. Defendants' attorneys made no effort to contact me prior to filing the Affidavit of Default. Upon receipt of the Affidavit, my staff investigated and found the copy that had been filed at my instruction.

FURTHER AFFIANT SAYETH NOT.


Kenneth B. Wingate

SWORN TO and subscribed before me

This 16 day of November, 2010


Notary Public for South Carolina

My Commission Expires: 9/17/20

Rett Kendall

From: Rett Kendall
Sent: Friday, November 12, 2010 4:15 PM
To: 'cwatson@sowellgray.com'; 'dwilliams@jeterandwilliams.com'
Cc: Ken B. Wingate
Subject: 4077-7389: Bauknight, et al. v. Buchanan and Pope

Attachments: Order Denying Defendants' Motion to Dismiss.



Order Denying
Motion to Dismiss...

Cal and Daryl,

In the event your street mail is as slow as ours, I am providing you notice of the entry of Judge Manning's Order denying the Defendants' Motion to Dismiss.

If this is your first notice, I look forward to receiving your Answer on or before November 29, 2010.

Rett

Everett A. Kendall, II
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
1515 Lady Street (29201)
Columbia, SC 29211
(803) 256-2233
eak@swblaw.com

1538



recorded statements, including:

- a. More than 1 million pages of documents he or his staff reviewed, or were available for review, on or before **August 10, 2008**, including McMaster's WIS TV Statement of February 7, 2008; McMaster's public statements about his role in controlling the grand jury; McMaster's public statements about his role as Tax Collector; the records from his campaign for governor; and Affidavits, Exhibits, Orders, Transcripts, correspondence, emails, documents, depositions, accountings, Inventories, records, and videos in connection with the James Brown Probate, Circuit Court and Federal Court matters.
- b. Additional documents described above & generated/acquired between August 10, 2008 and May 26, 2009.
- c. Additional documents described above & generated/acquired between May 26, 2009 and the commencement of this action on May 19, 2010.
- d. Additional documents described above & generated/acquired after May 19, 2010.
- e. The documents from the Probate Court; Case 122; Case 322; Case 872, the Claims cases; the Dallas Bankruptcy; Case 1647; Case 1810; the Forlando Federal Suit; the Corbis/GreenLight Litigation, the Pullman Group Litigation, the Georgia proceeding to obtain the Powell Godlstein("PG") file; the David G. Cannon criminal indictments for years 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006 & uttering a forged document on November 12, 2008; the Cannon Appeal and decision dated November 6, 2009; the Dallas/Bradley appeal, dismissed November 2010; and probate file of Al Bradley, deceased.

[All such documents are in the possession or control of the Office of the AG or other Plaintiffs. See Custody Receipts of Russell L. Bauknight.]

- 2. **Alan Wilson** - Attorney General Elect - no recorded statements. See #1, above.
Alan Wilson
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, South Carolina 29201
- 3. **C. Havird "Sonny" Jones, Jr.** - written and recorded statements, as in #1, above.
C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
Office of the Attorney General

State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

4. **S. Alan Medlin** - Numerous written and recorded statements in possession of Plaintiffs.

Alan Medlin, Esquire
1713 Phelps Street
Columbia, South Carolina 29205

5. **Asst. AG Mary Frances Jowers** - written and recorded statements as in #1, above.

Mary Frances Jowers, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

6. **A G Staffer Sandra Matthews** - written and recorded statements as in #1, above.

Sandra Matthews
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

7. **Assistant AG J. C. Nicholson** - written and recorded statements as in #1, above.

J.C. Nicholson, III, Esquire
Assistant Attorney General
Office of the Attorney General
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

8. **Plaintiff Terry Brown** - written and recorded statements as in #1, above.

Terry Brown
c/o David B. Bell, Esquire
Bell & Bell Associates

619 Greene Street
Post Office Box 1011
Augusta, Georgia 30903-1011

9. **Ms. Inez Tenenbaum** - Written Statements in possession of Plaintiffs.

353 Blue Heron Court
Lexington, South Carolina 29072

10. **Dr. Leonard McIntyre** - Written Statements in possession of Plaintiffs.

Dr. Leonard A. McIntyre
Campus P.O. Box 8103
SC State University
300 College Street NE
Orangeburg, SC 29117

11. **Judge Walter Williams (Retired)** - Written Statements in possession of Plaintiffs.

12. **Dr. Ann Carmichael** - Written Statements in possession of Plaintiffs.

13. **Rita Cullum, Esquire** - Written Statement on file with Court, Copy with Plaintiffs.

14. **W. Steven Johnson** - Written Statement on file with Court, copy with Plaintiffs.

W. Steven Johnson, Esquire
TODD & JOHNSON, L.L.P.
609 Sims Avenue
P.O. Box 11262
Columbia, South Carolina 29211

15. **Terry Cox** - Written and Recorded Statements

Grahm Windsor Group
Atlanta, Georgia

16. **Jane Pope Cooper** - No written or recorded statements.

Jane B.M. Pope
48 W. 68th Street
New York, New York

17. **Deanna B. Thomas** - written and recorded statements as in #1, above.

Deanna J. Brown Thomas
c/o Kenneth B. Wingate, Esquire
Sweeny, Wingate and Barrow
1515 Lady Street
P.O. Box 12129
Columbia, South Carolina 29211

18. **Jason Brown Lewis** - Written Statements in possession of Plaintiffs

Jason Brown Lewis
c/o Kenneth B. Wingate, Esquire
Sweeny, Wingate and Barrow
1515 Lady Street
P.O. Box 12129
Columbia, South Carolina 29211

19. **Russell L. Bauknight** - written and recorded statements as in #1, above.

Russell L. Bauknight
1717 Gervais Street
Columbia, South Carolina 29201

20. **Freddie Kingsmore, Esquire** - Written Statements in possession of Plaintiffs.

Fred L. Kingsmore, Jr., Esquire
Nexsen Pruet Adams Klemmeier, LLC
1441 Main Street, Suite 1500
P.O. Drawer 2426
Columbia, South Carolina 29202

21. **David Black, Esquire** - written and recorded statements as in #1, above.

J. David Black, Esquire
Nexsen Pruet Adams Klemmeier, LLC
1441 Main Street, Suite 1500
P.O. Drawer 2426
Columbia, South Carolina 29202

22. **Rick Reames, Esquire** - Written Statements only.

Nexsen Pruet Adams Klemmeier, LLC
1441 Main Street, Suite 1500
P.O. Drawer 2426
Columbia, South Carolina 29202

23. **William Wilkins, Esquire** - written and recorded statements as in #1, above.

Nexsen Pruet Adams Klemmeier, LLC
1441 Main Street, Suite 1500
P.O. Drawer 2426
Columbia, South Carolina 29202

24. **Harley Ruff, Esquire** - written and recorded statements in possession of Plaintiffs.

Harley D. Ruff, Esquire
Ruff & Ruff, LLC
17 Professional Village Circle
Beaufort, South Carolina 29907

25. **Forlando Brown** -written and recorded statements as in #1, above.

Forlando J. Brown
c/o David B. Bell, Esquire
Bell & Bell Associates
619 Greene Street
Post Office Box 1011
Augusta, Georgia 30903-1011

26. **Romunzo Brown** - written and recorded statements as in #1, above.

c/o David B. Bell, Esquire
Bell & Bell Associates
619 Greene Street
Post Office Box 1011
Augusta, Georgia 30903-1011

27. **Daryl Brown** - written and recorded statements as in #1, above.

c/o Kenneth B. Wingate, Esquire
Sweeny, Wingate and Barrow
1515 Lady Street
P.O. Box 12129
Columbia, South Carolina 29211

28. **Larry Brown** -written and recorded statements as in #1, above.

c/o Kenneth B. Wingate, Esquire
Sweeny, Wingate and Barrow
1515 Lady Street
P.O. Box 12129
Columbia, South Carolina 29211

29. **Venisha Brown** -written and recorded statements as in #1, above.
c/o Kenneth B. Wingate, Esquire
Sweeny, Wingate and Barrow
1515 Lady Street
P.O. Box 12129
Columbia, South Carolina 29211
30. **Ray Gonzalez, Esquire** - Written Statements only in possession of Plaintiffs.
Ray Gonzalez, Esquire
Zumwalt, Almon & Hayes PLLC
1014 16th Ave South
Nashville, TN 37212
31. **Art Gold, Esquire** - Written and recorded statements.
Gold & Coulson
Chicago, Illinois
32. **Leon Friedman, Esquire** - Written statements only
Leon Friedman, Esquire
148 East 78th Street
New York, New York 10021
33. **Larry Fridie** - Written and Recorded Statements
Address Unknown
34. **Freida Carter** -written and Recorded Statements
Address Unknown
35. **Albert H. "Buddy" Dallas** -written and recorded statements as in #1, above.
Albert H. Dallas, Esquire
304 Black Street, S.E.
P.O. Box 1150
Thomson, GA 30824-1150
36. **David G. Cannon** - written and recorded statements as in #1, above.
David G. Cannon
P.O. Box 865
Barnwell, SC 29812
37. **Keith Babcock, Esquire** - written and recorded statements as in #1, above.
Keith M. Babcock, Esquire
Lewis & Babcock, LLP
Post Office Box 11208

Columbia, South Carolina 29211

38. **Jonathan Harling, Esquire** -written and recorded statements as in #1, above.
W. Jonathan Harling, Esquire
Lewis & Babcock, LLP
Post Office Box 11208
Columbia, South Carolina 29211
39. **Ariel King, Esquire** -written and recorded statements as in #1, above.
Ariel E. King, Esquire
Lewis & Babcock, LLP
Post Office Box 11208
Columbia, South Carolina 29211
40. **Stan Jackson, Esquire** - written and recorded statements as in #1, above.
Stanley G. Jackson, Esquire
321 1/2 Newberry St., SW
Aiken, SC 29801
41. **Wayne Byrd, Esquire** -written and recorded statements as in #1, above.
R. Wayne Byrd, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 2116
Myrtle Beach, South Carolina 29587
42. **Audra Byrd, Esquire** - written and recorded statements as in #1, above.
Turner Padgett Graham & Laney, PA
P.O. Box 2116
Myrtle Beach, South Carolina 29587
43. **David Yount, Esquire** - written statements only, in possession of Plaintiffs
Address unknown
44. **Louis Levenson, Esquire** - Written and recorded statements, as in #1, above.
Louis Levenson, Esquire
Levenson & Associates
125 Broad Street, SW
Atlanta, Georgia 30303
45. **Jay Ross, Esquire**
Jay B. Ross and Associates, PC
840 W Grand Ave
Chicago, Ill. 60642

46. **Jerome Hoesch, Esquire** - Written Statements. Also see GT file.
Address to be supplied if needed
47. **William Shearer, Esquire** - Written and Recorded Statements. See PG file.
Bryan Cave, LLP
One Atlantic Center, Fourteenth Floor
1201 Peachtree Street, NW
Atlanta, Georgia 30309
48. **James Gilreath, Esquire** - Written and Recorded Statements. See Case 322 files.
James R. Gilreath, Esquire
The Gilreath Law Firm, P.A.
110 Lavinia Avenue
P.O. Box 2147
Greenville, SC 29602
49. **Kendall Few, Esquire** - Written and Recorded Statements. See Case 322 files.
J. Kendall Few, P.A.
95 Stillhouse Ridge
Greer, SC 29650
50. **William Tucker, Esquire** - Written and Recorded Statements. See Probate files.
Address to be supplied if needed.
51. **William Custer, Esquire** - Written and Recorded Statements. See Probate files.
Bryan Cave, LLP
One Atlantic Center, Fourteenth Floor
1201 Peachtree Street, NW
Atlanta, Georgia 30309
52. **William Hammond, Esquire** - Written and Recorded Statements in Possession of Plaintiffs.
Hull, Towill, Norman, Barrett & Salley, P.C.
801 Broad Street, Suite 700
Augusta, Georgia 30901
53. **Dewain Herring** - Written Statements in possession of plaintiffs
Address to be supplied if needed
54. **Rodney Peeples, Esquire** - written and recorded statements in possession of plaintiffs
Rodney A. Peeples, Esquire
Post Office Box 426
Barnwell, South Carolina 29812

55. **Robert Rosen, Esquire** - written and recorded statements in possession of plaintiffs

Robert N. Rosen, Esquire
Post Office Box 1840
Charleston, South Carolina 29402

56. **Jennifer Dempsey, Esquire** – written statements in possession of plaintiffs

Jennifer B. Dempsey, Esquire
Bryan Cave, LLP
One Atlantic Center, Fourteenth Floor
1201 Peachtree Street, NW
Atlanta, Georgia 30309

57. **David B. Bell, Esquire** - written and recorded statements in Possession of Plaintiffs and in Case 322 file

David B. Bell, Esquire
Bell & Bell Associates
619 Greene Street
Augusta, Georgia 30903-1011

58. **Heyward Carter, Esquire** - written statements in possession of Plaintiffs

T. Heyward Carter, Jr., Esquire
Andrew Chandler, Esquire
Evans, Carter, Kunes & Bennett, PA
115 Church Street
PO Box 369
Charleston, South Carolina 29402-0369

59. **Forbes Magazine Staff** - written statements in the public domain and available to Plaintiffs

60. **Staff of GreenLight** - confidential information and general information in the public domain

61. **Ebony Magazine** - information in the public domain

62. **Frank McGaughey, Esquire** – written statements in possession of plaintiffs

Frank S. McGaughey, Esquire
Bryan Cave, LLP
One Atlantic Center, Fourteenth Floor
1201 Peachtree Street, NW
Atlanta, Georgia 30309

63. **Tommie Rae Hynie Brown** – written and recorded statements as in #1, above.

Tommie Rae Hynie Brown
c/o Robert N. Rosen, Esquire
Post Office Box 1840
Charleston, South Carolina 29402

Interrogatory 2:

Give the names and addresses of every person known to your to have information concerning the administration of the Estate of James Brown or the 2000 Irrevocable Trust.

Answer:

See Answer to Interrogatory #1, above and #7, below. Tressa T. H. Hayes, Esquire, James D. Bailey, Esquire; William Sellars, Esquire; Alan Rothschild, Esquire; Matthew Ballenger, Esquire; James Richardson, Esquire; Christie's; Staff of S. C. State Museum; Staff of Augusta Museum of History; Staff of I. P. Stanback Museum & Planetarium; Dr. Michael Einhorn; Heyward Carter, Esquire other names contained within the files delivered to Russell Bauknight in June 2009.

Interrogatory 3:

Give the names and addresses of every professional retained by you to advise you in your duties as Personal Representative of the Estate of James Brown or as Trustee of the 2000 Irrevocable Trust.

Answer:

See Answer to Interrogatories #1 and 2, above and #7, below.

Interrogatory 4:

Give the names and addresses of every person or entity to whom you delegated any of your duties as Personal Representative of the Estate of James Brown or as Trustee of the 2000 Irrevocable Trust.

Answer:

Defendants did not delegate their duties. They were assisted by various individuals, as designated in Interrogatories #1, #2 and #7.

Interrogatory 5:

Give the names and addresses of every person whom you consulted that provided information, analysis or recommendations that you relied upon in carrying out your duties as Personal Representative of the Estate of James Brown or as Trustee of the 2000 Irrevocable Trust.

Answer:

See Answer to Interrogatories #1 and #2, above and #7, below.

Interrogatory 6:

List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of the case.

Answer:

Defendants have not identified experts at this time, other than those, including Defendants, who are listed above or were identified as experts in other James Brown matters or who may be both fact and expert witnesses.

Interrogatory 7:

For each person known to the parties or counsel to be a witness concerning the facts of this case (to include every person identified in your responses to these interrogatories) set forth a summary sufficient to inform the other party of the important facts known to or observed by such a witness, or provide a copy of any written or recorded statements taken from such witness.

Answer:

1. **HENRY D. McMASTER, Plaintiff (former Plaintiff upon substitution)** - McMaster has knowledge of the following:

The James Brown Estate and 2000 Trust Intended to Support Education

- a. By early 2008 McMaster knew that Brown's valid Estate Plan excluded all of his children and all past and future spouses from his music empire -- and that none were beneficiaries of the 2000 Trust. He knew James Brown's music empire, with a value between \$80 - \$120 Million, was given solely to education.
- b. By mid-2008 records in McMaster's office and elsewhere show that Jones had developed a close relationship with, and reliance upon, Alan Medlin, whose client's interest was directly adverse to the Estate Plan of James Brown.
- c. By mid-2008 McMaster's office had information to confirm that PG was simultaneously working for Dallas & Cannon (even though both denied it), as well as for their joint venturers Cox, Terry Brown, Forlando and TJBL, LLC.
- d. McMaster is expected to testify that on July 30, 2008 reliable information from voluminous records, fiduciaries, Leon Friedman, Atty. Bill Hammond, Terry Cox and others placed the gross value of the James Brown assets at between \$80 Million and \$120 Million.
- e. McMaster has information that Brown's Royalties to more than 800 songs and Publicity Rights are Brown's primary assets, and are of approximately equal value.
- f. McMaster is expected to confirm that by mid-November 2007 his office knew Dallas & Cannon had secretly attempted to move the James Brown 2000 Trust to Georgia to escape scrutiny of the S. C. Courts.
- g. McMaster is expected to testify that he was fully aware from and after December 5, 2007 that TJBL's \$100 million offer could not be accepted, and why.
- h. Beginning in November 2007 McMaster's office tried to control the attorney who would seek recovery of the more than \$7 million Cannon had taken. A January 7, 2008 order rejected McMaster's attempt.
- i. McMaster is expected to testify that on July 12, 2008 he asked the Court of Appeals to approve the Christie's sale, which was approved and held July 17.

The Secret Settlement Which Destroyed Brown's Estate Plan

- a. McMaster is expected to testify that but for his actions on August 10, 2008, the "I Feel Good" foundation would have been South Carolina's largest private foundation dedicated solely to scholarships for needy and deserving students.
- b. McMaster has information related to when and why he authorized the

secret August 10, 2008 mediation.

- c. McMaster is expected to testify about Jones' secret meeting with Alan Medlin, Terry Cox and others on or about July 31, 2008.
- d. McMaster is expected to testify that in July 2008 he authorized a secret mediation to be conducted without the PR/Trustees of Brown's Estate & the 2000 Trust.
- e. McMaster is expected to testify that as a result of the secret mediation he signed a private agreement on August 10, 2008 to transfer about \$40 million of James Brown's assets to non-beneficiaries of the 2000 Trust.
- f. On August 10 McMaster contracted, in what was described as a "binding private agreement," to give over half of what Brown gave the 2000 Trust to non-beneficiaries specifically excluded by James Brown.
- g. McMaster is expected to testify that he was repeatedly warned that the actions of his Sr. Assistant AG Jones were troublesome and damaged the Estate Plan of James Brown and The James Brown "I Feel Good" private foundation.
- h. McMaster is expected to testify that on January 30, 2009 his office contracted to give Terry Brown, represented by Powell Goldstein ("PG"), a right of first refusal to purchase all of the James Brown assets.
- i. McMaster has information related to his January 30 agreement with Terry, which increased the loss to James Brown's Estate Plan to about \$50 million -- taking more than 65% of the assets intended for the "I Feel Good" private foundation.
- j. McMaster is expected to testify that Terry Brown was given nothing in the 2000 Trust, and McMaster's records confirmed Terry was a joint venturer with Cannon and Dallas in the venture from which Cannon & Dallas were seeking options or a "kickback".
- k. McMaster is expected to explain why Jones predicted to the Supreme Court in 2010 that Brown's assets were worth only \$12 million at Brown's death, and whether McMaster authorized such representation.
- l. McMaster is expected to testify about the evidence presented to him by Rosen, Medlin and Levenson in support of his decision to take more than 65% from the Trust.
- m. McMaster is expected to testify he knows Dallas filed bankruptcy in Georgia, listing a \$6 Million claim against the Estate/Trust as his primary asset.

n. McMaster is expected to testify as to when and how he, Tommie Rae Hynie and the Brown Family, LLC formed the "Legacy Trust", and any amendments.

Policy Issues Raised By This Suit and McMaster's Takeover of Brown Estate and Private Foundation

- a. McMaster is expected to testify that McMaster's office has never before joined with private individuals, including non-residents of SC, to bring a tort suit for money damages against S. C. private citizens for the benefit of his private Co-Plaintiffs.
- b. McMaster is expected to explain why he thought it was proper for the State to take over James Brown's private property, including his estate and non-charitable trust.
- c. McMaster is expected to testify how allowing Attorneys General to take over and control the private property deceased South Carolina citizens have left in carefully created estate plans raises serious economic, constitutional and regulatory problems.
- d. McMaster is expected to testify that if the Attorney General can take over any private foundation – and give it to people the Settlor intended to disinherit – many citizens of South Carolina may elect not to create private foundations.
- e. McMaster is expected to testify that estates and private foundations are private property which should not be appropriated by the State acting through its Attorney General.
- f. McMaster is expected to testify why he believes that entering into a private agreement with non-beneficiaries of the James Brown 2000 Trust, giving them and their lawyers more than 65% of the Trust, in his view, benefitted the public.

McMaster's Knowledge Of or Acquiescence in Acts Of His Office

- a. McMaster is expected to testify the Georgia AG entered Case 122 *pro hac vice* under Mc Master, and both sought to overturn the order accepting Dallas' resignation.
- b. McMaster is expected to testify of his knowledge in 2007 that Cannon and Dallas had filed more than \$10 million of claims against the Estate, and that he knows such claims are frivolous.

c. McMaster has information related to when and how he learned of the forged "compensation agreement" uttered by Cannon on November 12, 2008 for the purpose of discrediting Buchanan and Pope.

d. McMaster is expected to confirm his knowledge of New York Ethics Opinion 06-06 and how his office reconciled taking over a private foundation and an estate with his duties related to criminal enforcement, tax enforcement and charitable regulation.

e. McMaster is expected to confirm the validity and authenticity of documents generated and received by his office.

Failure to Follow Procedures and/or Take Corrective Action

a. McMaster is expected to testify that in 2007 Jones established a close relationship with Dallas, Cannon and their advisors, in which Dallas revealed that he had filed a false motion and false stipulation about the ownership of Brown's company, James Brown Enterprises, Inc. (JBE, Inc.); and that Dallas/Cannon had secretly appointed William Hammond trustee of the 2000 Trust after Buchanan/Pope discovered that Cannon took \$900,000 from the 2000 Trust in 2006.

b. McMaster is expected to testify that his office never commenced any civil action against Albert "Buddy" Dallas, even though McMaster was aware that Dallas and David G. Cannon misappropriated more than \$10 Million from James Brown and the 2000 Trust.

c. McMaster is expected to testify that he never commenced any civil action against David Cannon even though he was aware of both Cannon's \$10 Million+ misappropriations and a forgery uttered by Cannon on November 12, 2008 intended to discredit Buchanan and Pope.

d. McMaster is expected to testify that he never secured PG's Estate/ 2000 Trust file, which contains additional details of the Cannon/Dallas joint venture, even though Dallas was directed to deliver it in an Order dated August 10, 2007 consented to by Cannon, Dallas and Bradley.

e. McMaster is expected to testify that his office never commenced any civil action to recover funds from Cannon.

f. McMaster has information confirming that Jones' actions have delayed and damaged the possibility for recovery from Dallas and Cannon.

- g. McMaster has information that he either authorized or acquiesced in Bauknight's failure to collect the approximately \$1.2 million cost of Case 122 from any of Dallas, Cannon or Bradley.
- h. McMaster is expected to testify that he either authorized or acquiesced in Bauknight's failure to recover any costs of the federal suit for the 2000 Trust.
- i. McMaster is expected to testify that on December 5, 2007 Jones asserted "Joe Katz" was the man to see about the \$100 Million offer, but McMaster's office never asked or required Dallas to deliver the 55,000 page file or 5,000 emails of Greenberg Traurig ("GT), despite Dallas' direction in the August 10 Order to do so.
- j. McMaster is expected to testify that the engagement of Sweeney, Wingate and Barrow violated McMaster's own procedures for hiring outside counsel.
- k. McMaster has information that in November 2007, Jones intentionally delayed the engagement of counsel to seek redress against Cannon even though it was already known that he had taken almost \$6 million.
- l. McMaster has information that not one penny has been recovered by him or Bauknight from Cannon or Dallas from September 2007 through November, 2010.
- m. McMaster has information that Cannon was indicted in February 2010, but was not tried during his administration.

Campaign Activities

- a. During the relevant time McMaster was the Attorney General of South Carolina ("AG") and an unsuccessful candidate for governor.
- b. McMaster is expected to testify that this suit was brought by McMaster's office, in part, to force Buchanan and Pope to sign a document agreeing not to criticize McMaster or his actions. [See Comp.]
- c. McMaster has information that Mark Barrow of Sweeney, Wingate & Barrow made a \$1,000 contribution to McMaster's campaign just after this suit was filed.
- d. McMaster is expected to testify that he personally solicited at least one large contribution from a James Brown attorney who, after consultation with the clients, declined to contribute.

Buchanan and Pope Attacked for Defending Brown Estate Plan

- a. On **July 30, 2008**, with the knowledge described below, McMaster wrote Buchanan and Pope confirming his support for them as permanent Trustees of the 2000 Trust. [Exhibit A]
- b. Eleven days later, on **August 10, 2008**, in a secret mediation attended by Sr. Assistant AG Jones, McMaster contracted to replace Buchanan/Pope with a trustee selected by him and by non-beneficiaries of the 2000 Trust.
- c. McMaster has information that counsel for Plaintiff Tommie Rae and others threatened Buchanan and Pope with this suit if they did not drop the appeal which is now described in their Initial Brief [Exhibit B].
- d. On December 14, 2007 McMaster objected to the November 20 Order appointing Buchanan/Pope and accepting Dallas' resignation, using affidavits of Dallas and his associates.
- e. By early 2008 McMaster knew that Jones about November 27 promised investor Cox (who was seeking to purchase the Brown assets), and others, that he was armed to proceed to remove Buchanan & Pope and would find a new trustee for Cox to work with.
- f. By the first half of 2008 McMaster knew Buchanan and Pope repeatedly and respectfully raised their concerns about Jones' close relationship with Cannon and Dallas, and the damage Jones was causing.
- g. By April 2008 McMaster knew that Brown's 1999 Estate Plan, for which alternate probate was sought by Buchanan & Pope, was almost identical to his 2000 Estate Plan, giving Brown's entire music empire to education, with "I Feel Good" Scholarship going to Voorhees, U.S.C. Salkehatchie & U.S.C. Aiken.
- h. By July 30 McMaster's office had fully investigated all actions of Buchanan & Pope and had not timely appealed the findings, after hearings, of the propriety of their actions in the August 10, 2007, January 8, February 20, March 7, April 1 and April 8 Orders in Case 122.
- i. McMaster is expected to testify that in the August 10 private agreement he also contracted with non-beneficiaries to try to oust Buchanan and Pope, whose actions he had just approved. [See Exhibit A]
- j. McMaster is expected to testify that instead of asking Buchanan and Pope for their input regarding a settlement, McMaster's office relied heavily on Alan Medlin, a U.S.C. professor whose client's interest is directly adverse to the James Brown "I Feel Good" Trust.
- k. McMaster is expected to testify that on February 7, 2008 McMaster appeared

on WIS Television and falsely accused Buchanan and Pope of simultaneously working for "the family and the poor kids" and asserting that their actions "went far past the stop sign of conflict of interest."

l. McMaster has information that his office tried to force Buchanan and Pope to hire lawyers selected by McMaster to conduct the Estate and Trust's business, and that Jones was enraged when they declined to do so.

m. McMaster is expected to testify about his decision to get rid of Buchanan and Pope and replace them with Bauknight.

2. Alan Wilson, Esquire - Attorney General Elect

Attorney General Wilson is expected to have knowledge of the following facts:

- a. When he first learned of Case 4900.
- b. Which of Mr. McMaster's positions with respect to the right of an Attorney General to take over the private property of estates of South Carolinians he is attempting to enforce.
- c. Whether he has ratified the contingency fee contract of AG McMaster, Tommie Rae Brown, Terry Brown, Jason Lewis and others with Sweeney, Wingate and Barrow, and if so the terms of the contract and any amendments.
- d. Whether the fact that Julie Houston is the mother-in-law of his brother's wife impacts his ability to work with Sweeney, Wingate & Barrow.
- e. Whether he supports joining Tommie Rae Brown and Terry Brown in a private suit against Buchanan and Pope for their benefit, and what public interest he believes is served thereby.
- f. Whether the Attorney General continues to support the right asserted by McMaster to take over private foundations; completely rewrite estate plans; and convert private foundations to public charities without the consent of the trustees.
- g. His position on all matters raised above with respect to McMaster.
- h. Whether he will obtain the 55,000 documents and 5,000 emails of the GT file which Bauknight failed to recover for more than a year; or the PG file, which Bauknight has not acquired.

i. His opinion as to action Bauknight has taken to enhance the Publicity Rights of James Brown since the AG's office joined Tommie Rae, Terry Brown & others in rejecting the CORBIS/GreenLight settlement and 2-year Publicity Rights contract for May 1, 2009 - May 1, 2011.

j. The impact of McMaster's asserted right to take over private foundations and estates which give to charity on South Carolina citizens, charitable giving in South Carolina, and those seeking to relocate to South Carolina.

Wilson is expected to testify based on documents in possession of Plaintiffs and Defendants.

2. C. Havird "Sonny" Jones, Jr. - is expected to testify as follows:

a. Jones has information about all of the issues about which McMaster has information and is expected to have information about issues about which Wilson has information. [See #1 and #2, above].

b. Jones has information related to the facts contained in the documents stated in Paragraph I A - E of the Answer to Interrogatory # 1.

c. Jones has information regarding his false accusations of impropriety on the part of Buchanan and Pope, beginning November 21, 2007, which were refuted by the Court, after hearing.

d. Jones is expected to share information concerning the AG's knowledge of threats to ruin Buchanan and Pope if they continued to defend James Brown's Estate Plan.

4. S. Alan Medlin - Medlin has information regarding the following facts:

a. Medlin is one of six attorneys for Tommie Rae Hynie Brown in the Aiken County James Brown cases.

b. Tommie Rae was specifically excluded from both the Will of James Brown and the James Brown 2000 Irrevocable Trust.

c. Medlin has information about: the Orders dated February 19, March 7, August 10, August 19, and November 20, 2007, and January 8, February 20, March 7, April 1, and April 8, 2008 in Case 122; the events, hearings and transactions leading up to these orders and the actions taken after them; Case 1647 and Case 4900.

- d. Medlin has information about his duty to represent the interest of Hynie Brown – and not the best interest of the Estate Plan of James Brown.
- e. Medlin has information related to his involvement with the AG's office, the secret mediation, accounting concerns, and other issues related to the Brown estate, 2000 Trust and foundation.

5. Assistant AG Mary Frances Jowers - Ms. Jowers has the following knowledge:

- a. She was invited to each weekly meeting of Buchanan and Pope as PR/Trustees, and attended several.
- b. She was closely involved during the period that Court approval of the Chrisitie's sale was being ordered [See email dtd. 2/08].
- c. She has information about the progress of the Lukich case
- d. Buchanan or Pope's books, records, reports and explanations of all of their actions or any inaction were available to her at all times.

6. A G Staffer Sandra Matthews - Ms. Matthews has knowledge about:

- a. Her audit, and the audit of other members of the AG's staff, of Buchanan and Pope's records as well as the Brown Historical Records and those of Dallas and Cannon.
- b. Her review of the Estate Tax Return of James Brown.

7. Assistant AG J. C. Nicholson - has knowledge of the trials in which the AG's office is involved.

8. Plaintiff Terry Brown - Has knowledge of facts contained within the record, including:

- a. His sworn testimony as to the validity of James Brown's Estate Plan.
- b. The six grievances he and his 2 sons filed against Levenson in February 2008 because Levenson, their former lawyer, challenged the validity of Brown's 2000Trust and Will.
- c. The facts and affidavits he filed with the grievance committees about Levenson and the validity of his Father's Estate Plan.

- d. His joint venture with Cannon, Dallas and Cox.
- e. His statements to Mrs. Pope after 2 days of hearings in November, 2009.
- f. His insistence in January 2010 that Brown's Estate Plan be upheld, which he withdrew when Jones gave him almost 5% of Brown's assets and a right to buy all of James Brown's assets.

9. Ms. Inez Tenenbaum - former State Superintendent of Education and member of the Advisory Board of the 2000 Trust has knowledge that she served on an Advisory Committee, and then the Advisory Board and recommended Dr. Leonard McIntyre to serve, and that she resigned in connection with a federal post.

10. Dr. Leonard McIntyre - has knowledge of the following facts:

- a. S. C. State alums helped preserve James Brown's memorabilia and had an exhibition which was lauded by many.
- b. His service on the Advisory Committee to the "I Feel Good" Trust, and then the Advisory Board.

11. Judge Walter Williams (Retired) - has knowledge of facts about his service on the Advisory Board

12. Dr. Ann Carmichael - Has knowledge of the facts related to her service on the Advisory Board.

13. Rita Cullum, Esquire - Has knowledge as stated in her affidavit on file in Case 122 that she was asked, and opined, about the propriety of service of the same person(s) as PR and Trustee in a unified Estate Plan.

14. W. Steven Johnson - has knowledge of the facts stated in his affidavit on file in Case 122, copy in possession of Plaintiffs.

15. Jane Pope Cooper - Along with other family members, has knowledge of the following facts:

- a. That her mother, Adele Pope, was devoted to the task of properly carrying out her duties to the Estate, 2000 Trust and Estate Plan of James Brown.
- b. Between 2007 and 2010 almost the only time she was with her mother and her mother was not working on James Brown matters was a short period before Jane married on December 6, 2008. Expected to testify that Mrs. Pope's love of

education and sense of duty have been apparent throughout.

16. Deanna B. Thomas - has knowledge of the following:

- a. She is not a beneficiary of the 2000 Irrevocable Trust, and receives only 1/6 of Brown's personal and household effects ("PHE"), reduced by Estate Taxes and subject to the *In Terrorem* clause.
- b. Facts in her deposition given on October 31, 2007 and affidavits and testimony on file in Aiken County and her suit against Brown.
- c. Facts from the Brown Family Foundation;
- d. Facts from her service with Dallas and Cannon as POA and Trustee.
- e. Facts from working with Fridie and Herring of Brown's estate plan.
- f. Facts from Brown's family meeting to explain that he was not going to provide for the family as they wanted.
- g. Facts about Brown's love of education and desire to give back to the poor.
- h. Facts about her attempt, with Yamma, to raise \$200 Million from investors to obtain Brown's assets.
- i. Facts about her relationship and negotiations with Dallas and Cannon.
- j. Facts about her negotiations with Hynie Brown.
- k. Facts about her service as attorney-in-fact with Cannon and Dallas for about 7 years before Brown's death, and about going with Cannon to pick up James Brown's estate planning file together.
- l. Facts about Debra Opri's appearance, at the family's request, on the Larry King show after Brown's death to confirm that Brown was not married to Tommie Rae at his death; and that Brown's 2000 Trust was in existence.
- m. Deanna has information about and was involved in, the efforts by Pinnacle (Darren Lumar) and her sister Yamma to find investors to put in \$200 million for the James Brown assets.
- n. Deanna is expected to testify that at a meeting held at the Lumar home in early 2007 she, Yamma, Levenson, Yount and others planned the takeover of the James Brown assets.

- o. Deanna is expected to testify that James Estate Plan is consistent with his wishes as she stated in her deposition and that she advised Levenson if her father's wishes were carried out she and five of her siblings are entitled to Brown's personal and household effects.
- p. Deanna is expected to testify that she commenced Case 122 on behalf of her minor child, asserting his status as a recipient of education benefits under the 2000 Trust; and her own status as a recipient of personal property only under Brown's Will - as confirmed in affidavits on file.
- q. Deanna is expected to testify that on the day of the Christie's sale, July 17, 2008, she appeared on television in New York attempting to chill the bidding on the sale.
- r. Deanna is expected to admit that she either joined or acquiesced in Tommie Rae's February 2009 "Emergency Motion" which resulted in the Estate/Trust being unable to complete a court-approved "Right of First Offer" which would have provided a fair market value for the James Brown Assets.
- s. Deanna is expected to admit that he either joined or acquiesced in rejecting the GreenLight 2-year Publicity Rights contract, to run from May 1, 2009 until May 1, 2011, causing loss and thwarting the ability to establish the true value of Brown's assets.

18. Jason Brown Lewis - has information regarding the matters relating to Deanna. above.

19. Russell L. Bauknight - has information related to his due diligence in recommending the settlement; has information related to each of the witnesses herein; has information re: the value of Truste/Estate assets; failure to collect from Cannon and Dallas; failure to execute GreenLight 2-year Agreement; Estate and Income Tax issues; information about the 10 attorney he engaged in 2009 to conduct the estate's administration; information about Black's directed to Few & Gilreath not to speak to Buchanan/Pope about confidential matters, etc.

20. Freddie Kingsmore, Esquire - personal attorney to Bauknight. Has information regarding Bauknight's actions. Has information about the June 2, 2009 meeting with Buchanan & Pope.

21. David Black, Esquire - has information related to the various \$90 - \$102 Million offers made for the James Brown assets between October 2007 and March 2008; the \$200 Million prospectus prepared by Levenson clients in early 2007, just after the death of James Brown; the approximately \$400,000 per year reported by Hynie Brown to be received by Brown during the period prior to his death; the reduction in the TIAA debt since Brown's death; the misappropriated Voxonic contract; the details of the plan by

Steve Sidman, Dallas, PG, Joel Katz and others in June 2007 to market the James Brown assets for \$100 Million and create an IPO expected to generate more than \$50 Million per years. The analysis made by Bauknight in his decision of all financial analysis of Bauknight's recommendation to give a right of first refusal to Terry on January 30, 2009 of assets TJBL, LLC owner Forlando valued at the time at \$150 million; the problems associated with represented both the seller and the purchaser in a \$100 million transaction; how Jones arrived at a prediction that the James Brown assets were worth only \$12 million at death; his consultations with Deanna & Yamma about the \$200 Million Prospectus; Terry about the Right of First Refusal; Forlando about his sworn \$150 million valuation; Leon Friedman about his \$100 Million assessment of the value of the James Brown assets; Phil Farr about the adjustment needed in the valuation resulting from Farr's failure to report the TIAA assets; the \$18 million road revenues generated by James Brown in the 3 years prior to his death; the negative impact on the value of the James Brown assets by refusal of Hynie Brown and Terry to approve the CORBIS/GreenLight 2-year publicity rights contract for May1, 2009 - May 2011; the negative impact on the value of the assets of the grant of first refusal to Terry; the negative impact on the value of the James Brown assets by the interference of Tommie Rae in the Right of First Offer process proposed for February 2009; the date-of-death value of the \$13 Million claim against Cannon, Dallas and others and the damage to the estate by a decision not to pursue those claims; the historical information about the royalty and other valuation information contained in the PG and GT files, as well as detailed data about the \$100 Million June 2007 offer of GT; detailed information from Levenson and/or Bell about the \$200 Million prospectus.

Has other information about the documents referenced in Answer 1 to Interrogatory #1, above.

22. Rick Reames, Esquire - may have information related to the various \$90 - \$102 Million offers made for the James Brown assets between October 2007 and March 2008; the \$200 Million prospectus prepared by Levenson clients in early 2007, just after the death of James Brown; the approximately \$400,000 per year reported by Hynie Brown to be received by Brown during the period prior to his death; the reduction in the TIAA debt since Brown's death; the misappropriated Voxonic contract; the details of the plan by Steve Sidman, Dallas, PG, Joel Katz and others in June 2007 to market the James Brown assets for \$100 Million and create an IPO expected to generate more than \$50 Million per years. The analysis made by Bauknight in his decision of all financial analysis of Bauknight's recommendation to give a right of first refusal to Terry on January 30, 2009 of assets TJBL, LLC owner Forlando valued at the time at \$150 million; the problems associated with represented both the seller and the purchaser in a \$100 million transaction; how Jones arrived at a prediction that the James Brown assets were worth only \$12 million at death; his consultations with Deanna & Yamma about the \$200 Million Prospectus; Terry about the Right of First Refusal; Forlando about his sworn \$150 million valuation; Leon Friedman about his \$100 Million assessment of the value of the James Brown assets; Phil Farr about the adjustment needed in the valuation resulting from Farr's failure to report the TIAA assets; the \$18 million road

revenues generated by James Brown in the 3 years prior to his death; the negative impact on the value of the James Brown assets by refusal of Hynie Brown and Terry to approve the CORBIS/GreenLight 2-year publicity rights contract for May 1, 2009 - May 2011; the negative impact on the value of the assets of the grant of first refusal to Terry; the negative impact on the value of the James Brown assets by the interference of Tommie Rae in the Right of First Offer process proposed for February 2009; the date-of-death value of the \$13 Million claim against Cannon, Dallas and others and the damage to the estate by a decision not to pursue those claims; the historical information about the royalty and other valuation information contained in the PG and GT files, as well as detailed data about the \$100 Million June 2007 offer of GT; detailed information from Levenson and/or Bell about the \$200 Million prospectus. Has information about the approximately \$3 Million TIAA royalty revenue of James Brown in the years of his death (adjusted for \$800,000 Cannon misappropriation) and post-death royalties; has information about the secreted assets of James Brown reported to the Court in February 2007.

May have other information about the documents referenced in Answer 1 to Interrogatory #1, above.

23. **William Wilkins, Esquire** - Has information about the documents referenced in Answer 1 to Interrogatory #1, above.

24. **Harley Ruff, Esquire** - Has information consistent with his testimony and the documents in possession of Plaintiffs.

25. **Forlando Brown** - 39% Owner of TJBL, LLC. Has information regarding the \$200 Million prospectus of January 2007; the several \$90 - 102 Million offers of October 2007 - March 2008; his sworn \$150 million valuation of the James Brown assets in September 2009; his meetings with various bankers, investors and industry representative; his grievances filed in South Carolina and Georgia against Louis Levenson based on Levenson's December 2008 contest of James Brown's Estate Plan; and the information contained in the complaint and amended complaint of January 2008 filed in federal court. Has information about his special appearance in Case 1647. Has information about the \$200 Million prospectus prepared while he and D. Lumar were clients of Levenson, and continued actions and interactions as to sale after Levenson terminated. Has information regarding the family's long-held knowledge of the validity of James Brown's estate plan.

26. **Romunzo Brown** - Has information about his grievances filed against Levenson for bringing the December 2007 action to challenge the Will and 2000 Trust, from which Romunzo receives a \$285,000 education fund, subject to the Spendthrift and *In Terrorem*. Has information about being represented by David Bell who simultaneously represented those opposed to the settlement and those who supported it, and who actively participated in Case 1647 though not a S.C. attorney, and not admitted *pro hac vice*.

27. **Daryl Brown** - Has financial information about the treatment of payments of Road Revenue from his on-the-road experience with Brown for many years before his death. Has information related to the family meeting prior to Brown's death, and information about heirs and all matters in the Aiken County James Brown cases. Has information related to the meeting prior to the "October 18 Letter" by which GT, Dallas, Cannon and other contemplate a sale or pledge of James Brown's songs; the various \$90 - \$102 Million offers made for the James Brown assets between October 2007 and March 2008; the \$200 Million prospectus prepared by Levenson clients in early 2007, just after the death of James Brown; the approximately \$400,000 per year reported by Hynie Brown to be received by Brown during the period prior to his death in excess of the TIAA documents; the reduction in the TIAA debt since Brown's death; the misappropriated Voxonic contract; the global gaming deal; the details of the plan by Steve Sidman, Dallas, PG, Joel Katz and others in June 2007 to market the James Brown assets for \$100 Million and create an IPO expected to generate more than \$50 Million per year. The Forlano valuation of the Brown assets in September 2009 at \$150 million; the right of first refusal; the CORBIS/GreenLight 2-year publicity rights contract for May 1, 2009 - May 2011 rejection; ; the negative impact on the value of the assets of the grant of first refusal to Terry; the negative impact on the value of the James Brown assets by the interference of Tommie Rae in the Right of First Offer process proposed for February 2009; the \$200 Million prospectus. Has information about the approximately \$3 Million TIAA royalty revenue of James Brown in the years of his death (adjusted for \$800,000 Cannon misappropriation) and post-death royalties; has information about the secreted assets of James Brown reported to the Court in February 2007.

28. **Larry Brown** - has information consistent with his representations and those of his agents in the Brown cases, as well as the information held by Terry, Daryl, Levenson, Yamma, Deanna and others. Has information that Lisa Brown is an heir of James Brown, and other information about heirs.

29. **Venisha Brown** - Has information about her actions and transactions with respect to the estate, 2000 Trust and Brown assets; her witnessing of the Advisory Board document with Tommie Rae; her giving of a spring power of attorney to Deanna, effective only in certain instances; and her ratification of actions taken on her behalf by Deanna. Also have information of Larry, Daryl, Deanna, Yamma and Levenson.

30. **Ray Gonzalez, Esquire** - Entertainment counsel. Has information consistent with the file.

31. **Jesse Beeber, Esquire** - Propsective Entertainment counsel. Single consultation.

32. **Leon Friedman, Esquire** - Has information about his call in early 2008 that a mediation should take place to resolve the \$100 million James Brown assets. Has information about how he and others arrived at this value; information James Brown, GT, Dallas, Bradley, Richard Gergel and others over a period of years. Has information

about the lawsuit brought by Deanna and Yamma against James Brown and others in 2002 and the defense and settlement thereof. Has information about James Brown's royalties and copyright issues, including contracts with publishers, renewals, terminations, extensions, and other agreements executed by Brown prior to his death, and the files, cases and matters contained in the four boxes delivered by him. Has information about meetings and contracts with GT as shown in the GT file and the Friedman file.

33. **Larry Fridie** - Has information about the 4-year process to form the James Brown 2000 Irrevocable Trust; the weekly meeting held at James Brown's office to discuss the formation of the "I Feel Good" Trust; the participation of Deanna in providing information for James Brown's Estate Plan, and other business and personal information consistent with his sworn video statement.

34. **Freida Carter** - Named by Brown as a fiduciary in some of his Estate Planning documents. Has information about Brown, his company and other matters consistent with her sworn video statement.

35. **Albert H. "Buddy" Dallas** -has information related to the various \$90 - \$102 Million offers made for the James Brown assets between October 2007 and March 2008; the \$200 Million prospectus prepared by Levenson clients in early 2007, just after the death of James Brown; the approximately \$400,000 per year reported by Hynie Brown to be received by Brown during the period prior to his death; the reduction in the TIAA debt since Brown's death; the misappropriated Voxonic contract; the details of the plan by Steve Sidman, Dallas, Cannon, PG, Joel Katz and others in June 2007 to market the James Brown assets for \$100 Million and create an IPO expected to generate more than \$50 Million per year. The analysis made by Bauknight in his recommendation to give a right of first refusal to Terry on January 30, 2009 ; his consultations with D. Lumar and others about the \$200 Million Prospectus; Terry about the Right of First Refusal; Forlando about his sworn \$150 million valuation; Leon Friedman about his \$100 Million assessment of the value of the James Brown assets; Bill Hammond about his \$80 - \$120 Million valuation estimate and the preparation of the Inventory & Appraisal filed by Stan Jackson on November 15, 2007 ("I&A"); his communications with Phil Farr; the \$18 million road revenues generated by James Brown in the 3 years prior to his death; the negative impact on the value of the James Brown assets by refusal of Hynie Brown and Terry to approve the CORBIS/GreenLight 2-year publicity rights contract for May1, 2009 - May 2011; the negative impact on the value of the James Brown assets by the interference of Tommie Rae in the Right of First Offer process proposed for February 2009; his bankruptcy and claim assertion that his primary asset is the \$6 Million commission claim against the Estate of James Brown, and the values and computations which resulted in such claim; Bauknight's failure to pursue claims prior to his Bankruptcy and the reason therefor; the historical information about the royalty and other valuation information contained in the PG and GT files, as well as detailed data about the \$100 Million June 2007 offer of GT; detailed information from Levenson and/or Bell about the \$200 Million prospectus. Obtaining information

from Mr. Dallas, other than the voluminous information already in possession of Plaintiffs and Defendants will be affected by the September 17, 2010 Bankruptcy filing of Mr. Dallas.

36. **David G. Cannon** - Has detailed information about the civil status of Tommie Rae and James Brown. Has information related to the various \$90 - \$102 Million offers made for the James Brown assets between October 2007 and March 2008; the \$200 Million prospectus prepared by Levenson clients in early 2007, just after the death of James Brown; the approximately \$400,000 per year reported by Hynie Brown to be received by Brown during the period prior to his death; the reduction in the TIAA debt since Brown's death; the misappropriated Voxonic contract; the details of the plan by Steve Sidman, Dallas, Cannon, PG, Joel Katz and others in June 2007 to market the James Brown assets for \$100 Million and create an IPO expected to generate more than \$50 Million per year. The analysis made by Bauknight in his recommendation to give a right of first refusal to Terry on January 30, 2009 ; his consultations with the parties about the \$200 Million Prospectus; Leon Friedman about his \$100 Million assessment of the value of the James Brown assets; Bill Hammond about his \$80 - \$120 Million valuation estimate and the preparation of the Inventory & Appraisal filed by Stan Jackson on November 15, 2007 ("I&A"); his communications with Phil Farr; the \$18 million road revenues generated by James Brown in the 3 years prior to his death; the negative impact on the value of the James Brown assets by refusal of Hynie Brown and Terry to approve the CORBIS/GreenLight 2-year publicity rights contract for May 1, 2009 - May 2011; the negative impact on the value of the James Brown assets by the interference of Tommie Rae in the Right of First Offer process proposed for February 2009; and other information within his files, in possession of Plaintiffs as well as valuation information contained in the PG and GT files.

39. **Keith Babcock, Esquire** - Former counsel for the Estate and 2000 Trust. Has information, including valuation and administration information, consistent with the files and filings made by him in Aiken County and files delivered to Bauknight in May and June, 2009.

38. **Jonathan Harling, Esquire** - Former counsel for the Estate and 2000 Trust. Has information, including valuation and administration information, consistent with the files and filings made by him in Aiken County and files delivered to Bauknight in May and June, 2009.

39. **Arial King, Esquire** - Former counsel for the Estate and 2000 Trust. Has information, including valuation and administration information, consistent with the files and filings made by him in Aiken County and files delivered to Bauknight in May and June, 2009.

40. **Stan Jackson, Esquire** - Former counsel for the Estate and 2000 Trust and Dallas and Bradley. Has information, including valuation and administration information,

consistent with the files and filings made by him in Aiken County and files delivered to Bauknight in May and June, 2009. Has knowledge about the detailed financial analysis and other information contained in the I&A filed by him on November 15, 2007 in Aiken County, including possible confirmation of Hammond's preparation of the I&A.

41. **Wayne Byrd, Esquire** - Former counsel to Dallas and Bradley. Has information about his assurances to the Court, made in early 2008 that information necessary for the Estate Tax Return and income tax returns would be forthcoming, but efforts to produce same thwarted by Dallas, Cannon and others. Has information about Case 322, Cannon and Dallas' false representations that they had not been represented by Powell Goldstein ("PG") and his retraction of the false representation upon receipt of the \$48,225 bill. Has information about the joint venture of Cannon, Dallas, Terry and Forlando, and Dallas and Cannon's seeking options or a "kickback" from purchasers in the \$100 million proposed sale, as well as the more than \$10 Million commission from the Estate/2000 Trust. Has information about PG and Dallas' interference with the Christie's sale, and Forlando and other family members' participation in the chilling of the Christie's sale - with James Brown's children participating in destroying the value of the only asset he chose to give them in order to discredit Buchanan and Pope and obtain the entertainment empire from which he intentionally excluded them. Has information as to the Bankruptcy of Dallas and its effect on Case 322 and other matters.

42. **Audra Byrd, Esquire** - Has information similar to that of Wayne Byrd.

43. **David Yount, Esquire** - Former counsel with Levenson. Has information about the Contingency Fee contract entered into on January 8, 2007 and later allegations that the signature of at least one signer was forged; Deanna's service as Trustee with Dallas and Cannon, and Yamma's service as Executive Assistant to the Board of the 2000 Trust. The Levenson clients' affirmation of the validity of the James Brown 2000 Trust and Will in hearings and filings in early 2007; Deanna's emails regarding her father's wishes that they receive PHE; affidavits of Deanna, Daryl and Yamma confirming their support of the Estate Plan; the arrangements for the Larry King live visit of Debra Opri; his contacts with the media throughout his representation; the financial information and sources for the preparation of the \$200 Million prospectus of Pinnacle in early 2007; the unsavory threats made to him because of a mistaken affidavit he filed; the impact of that accidental affidavit on the litigation; the termination of Levenson by Terry, Forlando and Romunzo in March 2007; the use of threatened and filed grievances by David Bell as a trial tactic; the financial information and consultations with UBS representatives, industry representatives and other used in the preparation of the \$200 Million prospectus in early 2007, and later proposals in June 2007 to sell the James Brown assets for \$100 Million, with \$10+ million commission to Dallas and Cannon and, in addition, options or a "kickback" from purchases, who planned for form an IPO. The July or August 2007 deal with Alvin & Calvin Waters (the "Machine Group") in which Dallas sought a \$10 million downpayment as a good faith deposit on a \$100 million deal; the denial of Forlando Brown on October 31, 2007 of his participation in such deal, although he did participate; the October 2007 offer from an

entity to be formed; the formation of TJBL, LLC on December 5, 2007 with 39% interest in Forlando.

44. **Louis Levenson, Esquire** - Counsel to Deanna, Yamma, Daryl, Venisha and Larry, and former counsel to Darren Lumar, Romunzo, Terry & Forlando. Has information about the Contingency Fee contract entered into on January 8, 2007 and later allegations that the signature of at least one signer was forged; Deanna's service as Trustee with Dallas and Cannon, and Yamma's service as Executive Assistant to the Board of the 2000 Trust. His request that Strom Thurmond not file the Will of James Brown while, and Thurmond's compliance with S. C. Law in filing the Will. His admission in open Court, along with counsel for Hynie Brown, that the Trust had been in existence and recognized by the public for more than 6 years before Brown's death and that, on behalf of its minor beneficiaries Levenson had requested an accounting. The Levenson clients' - being all devisees under the Will speaking for minors who were beneficiaries of the Trust, along with Forlando and Romunzo - affirmation of the validity of the James Brown 2000 Trust and Will in hearings and filings in early 2007; Deanna's email, made an Exhibit by Levenson, confirming that if her father's wishes were carried out the PHE would already be theirs; affidavits of Deanna, Daryl and Yamma confirming their support of the Estate Plan; Deanna and Yamma's 2002 lawsuit in which they acknowledge that James Brown elected to disinherit them from his musical empire; Yamma's information on the death certificate that Brown had no surviving spouse; the arrangements for the Larry King live visit of Debra Opri; Debra Opri's representation of James Brown from 200 - 2002 in the Lisa Agbalaya case; James Brown's firing of his Universal Agent for overbooking him, which firing letters were published in the Village Voice; Levenson's contacts and statements to the media throughout his representation; the financial information and sources for the preparation by Levenson's then-client Lumar of the \$200 Million prospectus to raise funds for an enterprise of which his client Yamma would be president; the due diligence as to value and other aspects of valuation prior to the offering, and Levenson's participation, if any, in the drafting; the unsavory threats made against David Yount because of a mistaken affidavit he filed and the six subsequent grievances filed against Levenson in 2 states by Terry, Romunzo and Forlano, supplemented by David Bell, which Levenson described to the Georgia Bar as trial tactics; Levenson's later communication, after allying himself with Mr. Bell, to Buchanan that the "curtain would fall" if he and Adele Pope did not abandon the support of Brown's Estate Plan; his threats to Pope, made through Jim Gilreath, disclosed on the record; the financial information and consultations with UBS representatives, industry representatives and other used in the preparation of the \$200 Million prospectus in early 2007, and later Dallas/Forlando proposals in June 2007 to sell the James Brown assets for \$100 Million, with \$10+ Million commission to Dallas and Cannon and, in addition, options or a "kickback" from purchasers, who planned for form an IPO. The July or August 2007 deal with Alvin & Calvin Waters (the "Machine Group") in which Dallas sought a \$10 million downpayment as a good faith deposit on a \$100 million sale; the denial by Forlando Brown on October 31, 2007 of his participation in such deal, although he did participate; the October 2007 offer from an entity to be formed; the formation of TJBL, LLC on

December 5, 2007 with 39% interest in Forlando. Levenson's repeated attempt throughout 2008 to obtain the PG file which the Court had ordered delivered on August 10, 2007, and the depositions of McGaughey and others; the progress in obtaining the PG and GT files after August 10, 2008 and the damage any failure has done to the \$13 Million claim against Dallas/Cannon – a principal asset of the Estate. The reduction in value of this valuable right by failure of Bauknight to seek early dismissal of the Dallas appeal – which was sought by Buchanan and Pope, but which Bauknight failed to pursue.

45. **Jay Ross, Esquire** - Counsel to James Brown, the Estate and Entities. Has information consistent with his representations and documents in the file, including the CORBIS files.

46. **Jerome Hoesch, Esquire** - GT Attorney. Has information consistent with his letter regarding Estate Tax issues. See file in possession of Plaintiffs. Also see GT file.

47. **William Shearer, Esquire** - Member of PG, attorneys for Dallas/Cannon as PR/Trustees, TJBL, LLC, Terry Brown & Forlando Brown. Has information, including valuation information, about matters stated for each of these, as well as Levenson. Firm continued to assist Dallas after termination on August 10, 2007. See PG file. Has information regarding Forlando Federal Case.

48. **James Gilreath, Esquire** - Counsel for Estate/ 2000 Trust, JBE, Inc. Has information about the value of the claims against Dallas, Cannon and others; has information about Case 322 files.

49. **Kendall Few, Esquire** - Has information about Case 322, including value of claims.

50. **William Tucker, Esquire** - Former probate counsel to Estate. Has information about valuation.

51. **William Custer, Esquire** - Has information about all matters listed for Levenson, Forlando, Dallas, Cannon, Hammond, Jackson and Terry Brown, as well as the Forlando Federal Suit.

52. **William Hammond, Esquire** - Written and Recorded Statements in Possession of Plaintiffs.

53. **Dewain Herring** - See file with Aiken County Clerk of Court. Has information about Estate Plan, Deanna's participation.

54. **Rodney Peeples, Esquire** - Former counsel for the Estate and 2000 Trust. Has information, including valuation and administration information, consistent with the files and filings made by him in Aiken County and files delivered to Bauknight in May and

June, 2009.

55. **Robert Rosen, Esquire** - Attorney and agent for Tommie Rae. Has information about what he described as substantial knowledge of Tommie Rae about Brown's business.

56. **Jennifer Dempsey, Esquire** - Attorney, PG. Assisted Dallas after terminated by Court on August 10, 2008. Has information about value of assets; proposed sale of Brown's assets within one year of death; information about Dallas, Cannon, Forlando, Terry, the Forlando Federal suit, the January, 2009 Right of First Refusal; Terry Brown's valuation information in connection with Right of First Refusal.

57. **David B. Bell, Esquire** - Counsel to Terry, Romunzo and Forlando and former attorney for Darren Lumar, deceased. Has information about Levenson's Contingency Fee contract entered into on January 8, 2007 and later allegations that the signature of at least one signer was forged; Deanna's service as Trustee with Dallas and Cannon, and Yamma's service as Executive Assistant to the Board of the 2000 Trust. Levenson's request that Strom Thurmond not file the Will of James Brown while, and Thurmond's compliance with S. C. Law in filing the Will. His numerous statements and confirmations both by Mr. Bell and his clients in open Court in both the Aiken and Federal Court proceedings, that the 2000 Trust had been in existence and funded with JBE, Inc. and James Brown's iconic home estate since 2000; Bell and the clients for whom he serves as agents have repeatedly confirmed that James Brown elected to disinherit his children from his musical empire and provided only a \$285,000 education fund for seven designated grandchildren, provided they did not violate the *in terrorem* or spendthrift clauses. Has information about the \$200 Million prospectus to raise funds for an enterprise of which Yamma would be president, including how, in early 2007, a \$200 Million value was assigned to the James Brown Assets and other due diligence as to value and other aspects of valuation prior to and after the offering. Also has information about the approximately \$100 Million valuation placed on the James Brown Assets by Cox, assigning approximately equal values to the Royalties and Publicity Rights, and other aspects of the \$100 Million proposal of June, 2007 to market the James Brown Assets; create an IPO; and give options or a kickback from the purchase entity to Cannon and Dallas. Has information about the October, 2007 \$100 Million offer, made by a corporation to be formed and the formation thereafter on December 5 of TJBL, LLC with his client Forlando owning a 39% interest and joint venturing with Dallas and others. Has information about his clients' reaction to the December 26 challenge to the James Brown 2000 Irrevocable Trust and Will of James Brown, including his assistance in filing 6 grievances in 2 states against Mr. Levenson in which they accused him of unethical behavior for challenging the Trust. Has information that Bell further unsuccessfully sought to disqualify Levenson and supplemented a client's grievance with an allegation that his signature to the Levenson Compensation Agreement had been forged. Has information about how his client Forlando concluded in September of 2009 that the value of the James Brown Assets had increased to \$150 Million. Has additional information as shown by the record of the James Brown cases

listed in Answer to Interrogatory #1.

58. **Heyward Carter, Esquire** - written statements in possession of Plaintiffs
Address to be supplied if needed

59. **Forbes Magazine Staff** - Has information about their annual list of "top earning dead celebrities."

60. **Staff of GreenLight** - Has information about the phenomenon that deceased celebrities are often easier to market than living celebrities; public information about the rehabilitation of Steve McQueen, their representation of the Einstein Estate and other successes which were at play in the proposed GreenLight 2-year Publicity Rights contract slated to run May 1, 2009 through May 1, 2011.

61. **Ebony Magazine** - information in the public domain

62. **Frank McGaughey** - Attorney, PG. Assisted Dallas after terminated by Court on August 10, 2008. Has information about value of assets; proposed sale of Brown's assets within one year of death; information about Dallas, Cannon, Forlando, the Forlando Federal suit, the January, 2009 Right of First Refusal; Terry Brown's valuation information in connection with Right of First Refusal.

Interrogatory 8:

Set forth a list of the assets of the Estate of James Brown, whether held in his personal name, in a trust, or a corporate capacity. For each asset, set forth its last known location, last known custodian, and value as of the date of death.

Answer:

This is information available as of November 15, 2010 and will be supplemented upon review of the 55,000 documents and 5,000 emails in the GT file and the PG file, both of which are in control of Plaintiff Bauknight or other Plaintiffs.

By September 25, 2008, with a partial settlement announced but terms not disclosed – but with likelihood that all assets were not going to The James Brown "I Feel Good" foundation as directed by Brown – Buchanan and Pope solicited the input of all settling parties in the preparation of the Estate Tax Return, due September 25, 2008, for which no additional extensions were available.

Through agents Alan Medlin, and later Heyward Carter the Attorney General and

Settling Parties declined to prepare or participate in the preparation of the Estate Tax Return, and later declined to deal with the income tax issues raised by the Settlement.

Until May 26, 2009 the AG, Forlando (who had previously stipulated to the contrary) and Cannon vigorously asserted that JBE, Inc. was an asset of the 2000 Trust. At times Dallas, who lied to the Court and parties about various matters, disagreed with Cannon – who had served with him as trustee for more than 7 years — about whether or not JBE, Inc was in the 2000 Trust they had administered for this time. Dallas directed his counsel Jackson to sign the stipulation, but later asserted he lied to keep his position.

In summary, JBE, Inc's status as owned by the 2000 Trust was not finally determined until Dallas and Bradley admitted to the Court of Appeals in their brief that JBE, Inc. has been an asset of the 2000 Trust since 2000. This brought an end to two years of confusion.

Determining the ownership of Brown's Publicity Rights was as troubling as the Royalties, with the following chronology:

December 25, 2006	Brown dies.
By January 2, 2007	Dallas and Cannon create fabricated Schedule B to show Publicity Rights transferred to Trust by Brown (and JBE, Inc.)
Before March 2007	Jerome Hoesch writes opinion indicating neither JBE, Inc. nor Publicity Rights in 2000 Trust
By March 5, 2007	Bill Hammond and William Shearer hired to advise about "All Schedules B"
March 5, 2007	Hammond advises Dallas/Cannon to leave assets in Estate unless clear evidence of transfer to Trust.
March 26, 2007	Cannon/Dallas assert Publicity Rights in Trust - not Estate
August 10, 2007	Cannon resigns after Buchanan/Pope discover he took \$900,000 from 2000 Trust in 2006.
August 31, 2007	Dallas files Motion to Declare JBE, Inc. an Asset of the Estate - not Trust

September 24, 2007

Dallas files Stipulation that JBE, Inc. and
Publicity Rights in Estate - not Trust.

Spring 2008

Dallas admits he and Cannon fabricated the
second Schedule B.

Between the Spring of 2008 and May 26, 2009 Pope is unaware of any credible evidence that the Publicity Rights were placed in the Trsut.

Upon review of the GT and PG files, which Pope has not reviewed as of November 15, 2010, the above may be modified.

Trust accountant Bill Hammond asserted in mid-2007 that the value of the assets of both the Trust and Estate was \$80 - &120 million, with at least \$20 million in the 2000 Trust. [Determination of when and how the TIAA debt is to be counted – and whether gross or net values are to be determined – have resulted various statements of “value” made a various time by various parties.]

Dallas' gross value of assets on the Inventory & Appraisement, believed to be prepared by Hammond with assistance of PG and others, was \$85,663,562.99. Buchanan and Pope's brief in the Dallas Appeal, adopted by Bauknight, sets the gross value of Brown's assets (Estate and Trust) at \$86.6 Million at Brown's death.

It has been generally known throughout that Brown's primary assets are his rights to more than 800 published and unpublished songs (the “Royalties”) and Brown's Publicity Rights, and that they have approximately equal value. Included within the Royalties is Geronimo, LLC, owned by the Trust at Brown's death. Brown's individual contract with Geronimo gives him the writer's share, individually.

Brown's home estate was owned by the 2000 Trust at his death. His claim to Joe Brown's house was outright. The ownership of Brown's TPP is the subject of a Declaratory Judgment action filed November 27, 2007 and not yet heard. The status of that action since Mr. Bauknight took control of administration on May 26, 2009 is not known.

See Estate Tax Return; letter following Estate Tax Return removing Fabricated Dallas Schedule B which Dallas had given to accountant; testimony and documents Forlando Federal Suit, November 18 -19, 2009; I&A; Testimony and correspondence of Bill Hammond; testimony of Adele Pope; statements of Alan Medlin; Accountings filed by Defendants; and GT and PG files for additional information; and Order related to delayed filing of Amended I&A.

As of May 26, 2009 it appeared, based on records of Leon Friedman and others, that JBE, Inc. held about 2/3 of Brown's major Royalties. It is these royalties which produced about \$3 million in the year of Brown's death (when adjusted for the \$900,000

taking). This was in addition to the \$18 Million of gross road revenues between 2003 and 2006. Much of the funds were siphoned off by prior fiduciaries.

In addition, see transcript of February 2008 hearing and later hearing regarding \$400,000 additional revenue per year reported by agent for Hynie Brown and testimony and affidavits about extensive and valuable items missing. See Transcript of February, 2007 hearings and affidavits filed by Levenson clients.

Also see sworn and unsworn valuations of Terry Cox, Dallas, Cannon, GT, PG, Terry, Bell, Forlando, their agents, and others, for the proposition that Brown's Royalties and Publicity Rights are of approximately equal value. [See also Brief of Appellants in Dallas – adopted by Bauknight.]

See 2-day Federal Hearing on November 18 and 19, 2009, attended by PG, Bell, Forlando and Terry, in which no objection was made to value of assets as reported on Federal Estate Tax Return by Bell or PG. [Since 2007 attorneys for TJBL, LLC, Terry, Forlando, Dallas and Cannon.]

Sworn testimony of PG/Bell client Forlando – 39% owner of TJBL – made within days of the filing of the Estate Tax Return that in September 2008 is to the effect that the James Brown assets had a value of \$150 Million in September 2009.

There was not enough evidence on September 24, 2008 to rely on the \$200 Million Prospectus generated in early 2007 by then-Levenson clients Lumar and Forlando Brown. This is, however, the closest information to the death of James Brown.

On September 24, 2009, having complied with their obligations under the Federal Tax Laws without knowing the as-yet-to-be-announced terms of the partial settlement among some parties, Buchanan and Pope attended to other matters – including seeking (unsuccessfully) help on the income tax issues raised by the settlement. See various communications with the IRS and agents for Plaintiffs.

Voluminous testimony, documents, statements of counsel and others confirm the accuracy of the valuation, with caveats, placed on the Estate Tax Return.

Interrogatory 9:

What was the value of the Estate of James Brown at the date of his death?

Answer:

See Answers to Interrogatories #1, #2, #7 and #8.

Interrogatory 10:

Set forth a list of all documents that you contend support your evaluation of the value of the Estate of James Brown at the date of his death.

Answer:

See Answers to Interrogatories #1, #2, #7 and #8.

Interrogatory 11:

Set forth the names and addresses of all insurance companies which may have liability coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy. Your response should include any coverage in effect during the period of your service as Special Administrator, Personal Representative, or Trustee of the Estate and Trusts involved in this litigation. Your response should include professional as well as personal policies, such as excess or umbrella coverages.

Answer:

The following coverages may apply:

ALPS - \$500,000 less costs of defense

Cincinnati \$500,000

Interrogatory 12:

What was your personal net worth on the date the lawsuit was served on you?

Answer:

This Defendant objects to the violation of her Due Process Rights, First Amendment Violations and Violation of State Privacy Policies by the Attorney General attempting to Obtain her Private Financial Information for the benefit of Private Individuals, subjecting her personal information to FOI requests. [Upon resolution of the right of the AG to bring this private tort suit for damages and a proper protective Order, she will produce same to the Court.]

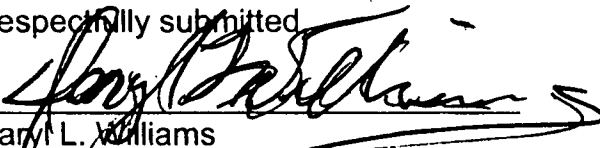
Interrogatory 13:

Set forth the name and address of every financial institution to whom you have provided a financial statement in the last five years.

Answer:

This Defendant objects to the violation of her Due Process Rights, First Amendment Violations and Violation of State Privacy Policies by the Attorney General Attempting to Obtain her Private Financial Information for the benefit of Private Individuals, subjecting her personal information to FOI requests. [Upon resolution of the right of the AG to bring this private tort suit for damages and a proper protective Order, she will produce same to the Court.]

Respectfully submitted



Daryl L. Williams

Jeter & Williams, P.A.

1204 Main Street, Suite 200

Post Office Box 7425

Columbia, South Carolina 29202

Telephone: (803) 765-0600

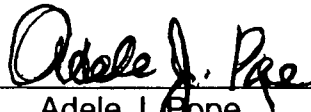
Facsimile: (803) 765-0619

November 16, 2010

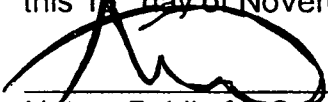
Attorney for Defendant Adele J. Pope

VERIFICATION

I have read the Answers of Adele J. Pope to First Interrogatories of Plaintiff. As of the date hereof, the matters and things therein stated are true to my own knowledge, except those matters and things therein stated on information and belief, and as to those I believe them to be true.

By: 
Adele J. Pope

SWORN to and subscribed before me
this 16th day of November, 2010

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 13, 2016

FILED
2010 DEC 10 AM 10:22
JEANETTE W. McBRIDE
C.C.P. & G.S.

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

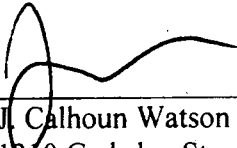
DEFENDANT ROBERT L. BUCHANAN, JR.'S MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO STAY PROCEEDINGS

RICHLAND COUNTY
FILED
2011 MAY 12 PM 3:19
JEANETTE H. MCGRIDE
C.C.P. & G.S.

Robert L. Buchanan, Jr., by and through his undersigned counsel, hereby adopts the Memorandum in Support of Defendant Adele J. Pope's Memorandum in Support of Defendants'

Motion to Stay Proceedings, filed November 30, 2010. For the reasons set forth in this Memorandum, this Motion should be granted.

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

By: 

J. Calhoun Watson
1910 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211
(803) 929-1400

Attorneys for Defendant Robert L. Buchanan, Jr.

Columbia, South Carolina
May 12, 2011

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

and

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 ADELE J. POPE
) SUPPORTING DISQUALIFICATION
) OF PLAINTIFFS' COUNSEL
) INJUNCTION AGAINST COUNSEL
) AND PLAINTIFF BAUKNIGHT;
) AND RELATED RELIEF

2011 MAY 11 PM 1:08
JEANIE C. POPE
CLERK OF COURT
SIDE

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly
sworn, deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. On May 12, 2011 I learned that on May 4, 2011 Plaintiff Russell Bauknight had filed sworn documents asserting James Brown's worldwide musical empire at Brown's death on December 25, 2006 had a value of only \$4,697,736 – less than 1/12 of its actual fair market value on his death. Bauknight asserts all asset of the Estate and 2000 Trust were worth only about \$6.5 Million when Mr. Brown died.
3. I am informed and believe that this valuation is not only wrong but outrageous – and intended to benefit of Terry Brown and Tommie Rae Hynie Brown, for

whom Bauknight serves as Trustee.

4. For four years Hynie Brown and Terry Brown, with others, have engaged in a plan to take the assets of The James Brown "I Feel Good" Trust for themselves, depriving the needy and deserving students James Brown intended to benefit. They have done so in at least three ways:

- a. Filing knowingly false documents about which assets were owned by Brown; which by the 2000 Trust; and which they claim.
- b. Filing knowingly false representations as to who are the heirs of James Brown.
- c. Manipulating the value of James Brown's assets to reduce the \$80 Million Brown gave to the "I Feel Good" Trust for scholarships for needy and deserving students.

5. Former Attorney General Henry D. McMaster and his assistant AG Havird "Sonny" Jones became involved in the James Brown cases in late 2007 through a close association with PR/Trustees Albert "Buddy" Dallas and now-indicted David Cannon and their advisors. Jones also developed a close relationship with advisors to Hynie Brown.

6. The damage McMaster and AG Jones did to the "I Feel Good" Trust before May 4, 2011 is outlined in the April 2011 draft of "Private Foundations, Copyright Heirs and Musical Millionaires:," attached hereto as Exhibit A and incorporated herein.

7. Plaintiff Bauknight undertook to serve as trustee for Terry Brown in early 2009, and recommended (without disclosing he was to be Terry's trustee) that the court give Terry a right to buy Brown's assets.

8. As outlined in "Private Foundations...", the first hint of Bauknight's massive

undervaluation of Brown's assets came in August 2010 when then-AG McMaster informed the Court of Appeals that Bauknight had reviewed a draft appraisal that would show Brown's assets were worth less than \$12 Million.

9. Exhibit B is a chart prepared by me which shows the damage to the "I Feel Good" Foundation of a sale of Brown's assets at \$12 Million.

10. Bauknight's devaluation to \$5,953, 457, which AG Jones and AG McMaster apparently condoned, threatens to completely destroy the "I Feel Good" Foundation, reducing it to less than \$1 million, as follows:

a. To Brown's disinherited companion (18.96%)	\$1,128,775
b. To children and claimed children Brown specifically excluded from his music empire (4.79% x 7)	\$2,000,390
c. To the Family Education Trust, rewritten by McMaster	\$2,000,000
d. To The James Brown " I Feel Good" private foundation (47.5% LESS \$2 Million)	\$ 827,292

11. I am informed and believe that AG McMaster's contingency fee contract with Sweeney, Wingate and Barrow (the "Sweeney Firm") was made to try to silence Mr. Buchanan and me and force us to abandon our appeal of McMaster's settlement described in the article; serves no proper public purpose; violates my Due Process Right; violates my First Amendment rights; and illegally uses the name and power of the State to seek funds against me for private citizens, including McMaster.

12. I am informed and believe that the substantial contribution to McMaster's political campaign made by Mark Barrow, a principal in the Sweeney Firm, just after being awarded the contingency fee contract to sue us, was either illegal or

inappropriate, or both, as was the contribution of Powell Goldstein law firm at about the time McMaster appeared on television to support their client and falsely attack us. Powell Goldstein represents Terry Brown and his purchase group, and formerly represented Cannon and Dallas.

13. The unfounded attacks by AG Jones and AG McMaster on Mr. Buchanan and me are fully documented in the Record on Appeal in Case 2008-CP-02-1647, which I incorporate herein by reference. I am informed and believe they began as a direct retaliation because Mr. Buchanan's and I would not hire private attorneys AG McMaster, through AG Jones, tried to force us to hire.

14. I am informed and believe that the Sweeney Firm contract and this suit, in which Bauknight as purported agent for the Attorney General (either past or present) and the Sweeney Firm's simultaneous service as counsel for the State of South Carolina and private citizens attempting to destroy the "I Feel Good" Foundation, serve only the private needs of McMaster, Jones, Terry Brown and Hynie Brown. I believe that the Sweeney Firm has an irreconcilable conflict of interest and their vicious and unfounded attacks are not tempered by any duty to serve the public.

15. Members of the Sweeney Firm, who were not involved in the James Brown cases in Aiken County, have made material misrepresentations to this court about those cases, including the false assertion that Judge Early's April 8, 2008 findings of the propriety of our service from March 7, 2007 to that date is dicta. The AG's office, which has no attorney other than the Sweeney Firm serving as counsel of record herein, has actual knowledge that this representation is false, as are others which have

been made.

16. I am informed and believe the false allegations made by Bauknight and AG Jones, now on behalf of AG Wilson – including the suggestion that Mr. Buchanan and I overstated the Brown assets by \$79 Million – are quasi-criminal in nature; violate our Due Process rights; and are intended to destroy our professional reputations and careers. This is particularly troublesome since Mr. Buchanan and I did not seek our positions; were court-appointed; and properly served until May 26, 2009 when we were relieved of management responsibility pending the outcome of the Case 1647 appeal.

17. I am informed and believe that Bauknight and the Sweeney Firm should not be allowed to speak as agents for the Attorney General of South Carolina where the biased positions and false statements they have made will, if not stopped, serve not only to destroy the “I Feel Good” private foundation but also to discourage private philanthropy in the State of South Carolina.

18. I do not know whether AG Alan Wilson participated in or condoned the massive understatement of the value of Brown's assets, but am informed and believe his deposition – requested for July 2011 – is necessary to determine the truth of the matter.

19. I am informed that AG Jones and McMaster knowingly and intentionally exceeded and abused the power of their offices for personal, and McMaster's political, purposes; should answer individually for their actions, including the filing of this suit; and should not be protected by the power of the State.

20. I ask the Court to take judicial notice of a complaint filed on March 14, 2011 by Nexsen Pruet, LLC, a law firm involved in the James Brown cases, which outlines

other alleged abuses by former AG McMaster of contracts with private counsel.

[See Complaint for Declaratory Judgment, Civil Action No. 2011-CP-42-1213, 3/14/11.]

21. I am informed and believe that if AG Wilson, at his deposition, ratifies or acknowledges active participation in Bauknight's attempt to reduce the value of Brown's musical empire to less than \$5 million and destroy the "I Feel Good" Foundation, he, also, should be joined as an individual defendant because no public purpose would or could be served by the destruction of a private foundation created by one of South Carolina's most talented and generous citizens.

22. Based on the extraordinary and unprecedented actions of a former AG and current assistant AG Jones, I am informed and believe that the following, or similar, steps are necessary to alleviate the violation of my Due Process and First Amendment rights and to serve the ends of justice:

- a. Substitute Henry D. McMaster, individually, for Henry D. McMaster as Attorney General ("AG") and Russell Bauknight as his individual agent, as plaintiff and counterclaim defendants.
- b. Require a day-certain deposition of McMaster and AG Alan Wilson if either fails to appear, as requested, for a deposition requested in July 2011.
- c. Disqualify and enjoin the Sweeney Firm from representing the State or its Attorney General in this action, based on its illegal contract and irreconcilable conflict in simultaneously representing Terry Brown, Hynie Brown and others.
- d. Enjoin Bauknight from purporting to speak as an Agent of the AG.
- e. Add as an individual party (either counterclaim or third-party defendant) McMaster and Assistant AG Jones (and AG Wilson only if he ratifies their actions).
- f. Upon conclusion of the Wilson and McMaster depositions, allow amendment to our pleadings and counterclaims or crossclaims to seek individual relief against McMaster and Jones and other relief consistent with the facts revealed on May 4th and in the depositions.

23. McMaster, AG Jones and Bauknight have each had knowledge (as defined in the Trust Code) since becoming involved in the Brown cases that the fair market value of Brown's assets at death, as defined by the IRS, was between about \$86 Million and about \$110 Million. Branding expert Dr. Terry Cox's figures, set out below, have been available since June 2007:

Image/Likeness	\$40MM - \$50MM
Music Catalogue	\$36MM - \$45MM (Industry standard is 12- 15 x revenue)
Property	\$10MM - \$15 MM

24. Based on the IRS definition that fair market value is "the price at which a willing buyer and a willing seller, neither being under compulsion to buy or to sell both having reasonable knowledge of all relevant facts", the \$84 Million value Bob Buchanan and I placed on Brown's Publicity Rights, Royalties, \$12+ million claim against Albert Dallas/David Cannon and other residuary assets was fair but conservative.

25. Neither AG McMaster nor AG Jones filed any objection to the approximately \$85 Million value set out in the estate tax return filed on September 24, 2008.

26. The \$85 Million¹ was within the value range placed on Brown's assets by some Plaintiffs in a securities prospectus issued in early 2007 (\$200 million). [See Exhibit C] ;3 separate proposals made in 2007 and 2008 to purchase Brown's assets (\$90 - \$102 million) by Terry Brown and others; Cox's valuations; and the \$80 - \$120 Million opinion of Estate/Trust's tax then-tax-counsel.

27. The \$85 Million is substantially less than the \$150 million value placed on

¹ About \$100 Million, less the TIAA royalty-backed debt.

the assets by Forlando Brown, a 39% owner in the prospective purchaser, in September 2008.

28. The \$85 Million value was also consistent with our Motion filed in November 2007 asking Judge Early to approve the valuation method of Brown's Royalties as reported on the estate tax return as a multiple of his \$3 million annual royalties.

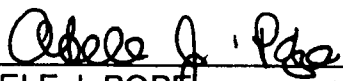
29. On November 20, 2007 Judge Early asked AG McMaster and others to notify him of any objections to our valuation method. Nobody objected.

30. My attorneys have noticed the depositions of Plaintiffs Terry Brown and Tommie Rae Hynie Brown for June 2011 and also asked to depose AG Wilson and former AG McMaster in July 2011.

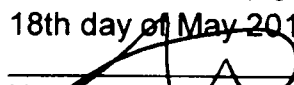
31. I respectfully submit that the depositions of former AG McMaster and AG Wilson are essential, and request that the Court, if they do not appear in July, direct that each appear on a day certain.

32. I request that the Court also order the depositions of Hynie Brown and Terry Brown on a day certain should they fail to appear in June as noticed.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
18th day of May 2011


Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

**Private Foundations, Copyright Heirs and Musical Millionaires:
or
Why The James Brown "I Feel Good" Trust doesn't...**

By Adele J. Pope and W. Jeffrey Smith¹

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2011

God has Smiled on Me³

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

Anticipating trouble from relatives who knew about Brown's estate plan but did

¹ Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

² While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

³ The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody⁴

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.⁵

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."⁶

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

⁴ The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

⁵ AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

⁶ WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Will; claims of Brown's companion; and other claims. [See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up) Turn it Aloose ⁷

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back *some* of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs--in limited instances--may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves. ⁸

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private

foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

⁷ (Give it up) Turn it Aloose was published in 1969.

⁸ The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors⁹ must take at least the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"¹⁰ to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.
5. Update the baseline heirs data until all copyrights expire.
6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.
7. As and when helpful, "split heirs"¹¹ to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

⁹ Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

¹⁰ The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

¹¹ The heirs must act by majority. This allows foundations to "split heirs" – finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

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James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.¹²

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.¹³

The known facts included:

1. Brown's royalties continued to earn about least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]
5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible termination before 2016 -- ten years after Brown's death. [See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

¹² Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the *Real* Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
 - a. Nearly 40 songs from 1968.
 - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
 - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
 - d. "Hot pants", "Soul power" and others from 1971.
 - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights]
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full – 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.
14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one

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of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.¹⁴

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.¹⁵

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Mernickle (3).

Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

¹⁴ Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

¹⁵ Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);¹⁶
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
 1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
 2. Then had a marriage ceremony with Brown although she was already married;
 3. Separated from Brown in 2003 when he discovered she was married;
 4. Obtained an annulment of her previous marriage in March 2004;
 5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets ¹⁷ and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

That changed on August 10, 2008.

¹⁶ On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

¹⁷ Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

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"No, no, no, no (don't leave me this way)"¹⁸

On August 10, 2008 the AG's staff and some of the claimed heirs¹⁹ met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, *all of whom had been specifically disinherited by Brown from his copyrights.*
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.²⁰

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 1/29/09 and 1/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

¹⁸ "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

¹⁹ The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

²⁰ According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

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On January 30, 2009, three weeks after his appointment--with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal--the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee -- already trustee for Brown's companion and the disinherited settling relatives -- to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation -- the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"²¹

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status--a gift not from Brown but from the AG--that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them -- not all properly-determined heirs over the duration of the copyrights -- were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

²¹ This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.²² The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"²³

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.²⁴

²² In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

²³ The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

²⁴ Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus to raise \$200 million for the purchase of the James Brown assets.

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James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.²⁵

Think (about it)²⁶

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations of these individuals.

25

In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight. Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, has earned tens of millions of dollars.

²⁶ The copyright to "Think (about it)" was issued in 1973.

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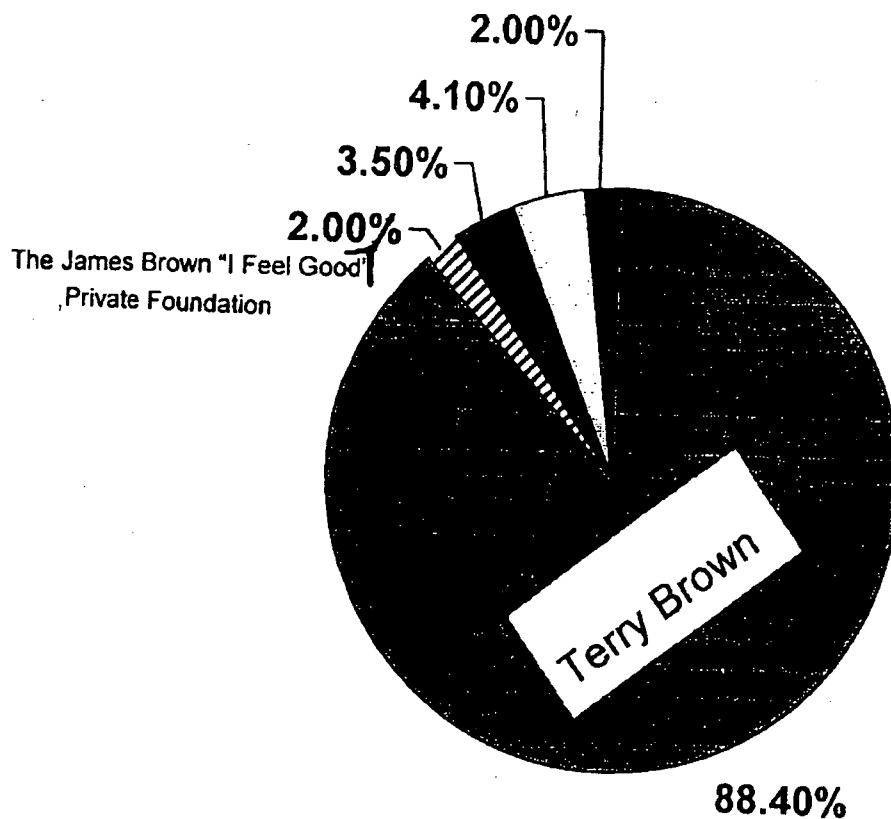
COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

<u>Date of Publication/ Copyright</u>	<u>Description of Works</u>	<u>Earliest Possible Termination</u>
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

EXHIBIT B

Chart 5 - How Bauknight's Sale of James Brown Assets to Terry Brown at \$12 Million Under Right of First Refusal Destroys The James Brown "I Feel Good" Private Foundation

(03/11)



- ☒ Terry Brown
- ☒ "I Feel Good" Private Foundation
- ☒ Administrative Expenses
- ☐ Other Settling Parties
- ☒ G'Children's Trust as Modified by McMaster

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

Executive Summary

Information

Pinnacle Media & Entertainment, LLC
 by "Chip" Lumar, Chairman/CEO
 Ma Brown Lumar, President
 Three Center Ave

143-0048

-234-2325

pinnaclemedent.com

medinfo@pinnaclelp.com

Project Team

by "Chip" Lumar, Chairman/CEO
 Ma Brown Lumar, President
 y B. Cox, Graham Windsor Group
 Carter, Esq.

Waters, The Machine Group

Waters, The Machine Group

Knight, Undiscovered Live

e Graves, Special Advisor to Mr. Lumar

y
 provider to the entertainment industry
 Division/Visible

Key Resources

Intellectual Property Rights

Financing Sought

Financing for the James Brown Estate

Internal Capital Invested

000 has been pledged by the Owners for
 of Pinnacle Communications Inc., and
 e Media & Entertainment for print rights
 tion, trade show sponsorships, production
 marketing.

Locations

Operating firm)

. Takalan

in & Company, LLC

Private Rd

1

, NH 03249

7-230-0832

12)

via Bank

dford

unguassr

A, GA 30026

3-420-0326

0-420-0634

is Communications, Inc c/o Chip Lumar
 14-343-0048

pinnaclemedent.com

lomedialafo@pinnaclelp.com

Business Description

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

Philosophy

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

James Brown Estate Acquisition

On December 25, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Dean Martin, in yearly revenues generated, licensing rights, sampling rights, feature films, documentaries, tributes, and future 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 become the premier entertainment/management company in the world. Currently the estate is under the protection of Greenberg Truig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the load 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 notables Hollywood are Academy Award Winners Jamie Foxx, and Dan Aykroyd, other celebrities' friends includes 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.

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

No. 6497

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.

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., Carrington L., 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.; 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 and Robert L. Buchanan, Jr.,
Defendants.

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

AFFIDAVIT OF
ADAM T. SILVERNAIL

2011 JUN - 1 PM 12:13

PERSONALLY APPEARED BEFORE ME, Adam T. Silvernail, who, being duly

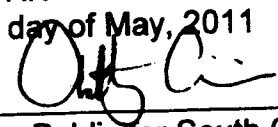
sworn, deposes and says:

1. The document attached as Exhibit A is a true and correct copy of an email exchange between my co-counsel and counsel for Plaintiffs, with dates spanning May 17, 2011 through May 26, 2011.

FURTHER DEPONENT SAYETH NOT.


ADAM T. SILVERNAIL

SWORN TO before me this
27th day of May, 2011



Notary Public for South Carolina

(L.S.)

My Commission expires: 11/3/2015

5/27/2011

Silvermaillawfirm.com Mail - Fw: Baukni...



Adam Silvermail <adam@silvermaillawfirm.com>

Fw: Bauknight v Pope and Buchanan

Fri, May 27, 2011 at 9:03 AM

Daryl Williams <dwilliams@jeterandwilliams.com>
To: adam@silvermaillawfirm.com

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to any other party any transaction(s) or tax related matter(s) that may be addressed herein.

— Original Message —

From: Daryl Williams
To: Mark V. Gende
Cc: Ken B. Wingate
Sent: Thursday, May 26, 2011 1:01 PM
Subject: Re: Bauknight v Pope and Buchanan

Mark:

When I noticed these depositions I told you we'd work with you. You've given no alternative dates for us to consider. If your clients are unwilling to do that, I suggest you file your motion.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

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1607

| — Original Message —

<https://mail.google.com/mail/?ui=2&ik...>

From: Mark V. Gende
To: Daryl Williams
Cc: Ken B. Wingate
Sent: Thursday, May 26, 2011 11:38 AM
Subject: RE: Bauknight v Pope and Buchanan

Daryl:

As I informed you earlier, your unilateral selection, without any consultation, of the dates and locations for the depositions of Tommy Brown and Terry Brown do not work. We will not be present on those dates. If I need to file a motion for a protective order, please let me know immediately; otherwise it is my understanding that they are not going forward. We will continue working with you and Adam to provide dates acceptable to all counsel and witnesses concerning the depositions you desire to take.

Mark V. Gende
Sweeny, Wingate & Barrow, PA
1515 Lady Street
Columbia, South Carolina 29201
T (803) 256-2233
F (803) 256-9177

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From: Daryl Williams [mailto:dwilliams@jeterandwilliams.com]
Sent: Thursday, May 26, 2011 11:21 AM
To: Mark V. Gende
Cc: adam@silvermaillawfirm.com; Cal
Subject: Re: Bauknight v Pope and Buchanan

Mark:

It is inconvenient to travel to Augusta for this. Case is here, parties can be deposed here.

If there is a problem with the scheduled date of June 14 for Terry Brown, please let me know immediately and give alternate dates. Otherwise, we'll see you then.

We also need to settle on Tommy Rae Hynie's deposition by next week. While I don't want to travel if she's not going to appear, we need to get this one done.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

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1608

— Original Message —

From: Mark V. Gende

To: Daryl Williams

Sent: Thursday, May 19, 2011 3:36 PM

Subject: RE: Bauknight v Pope and Buchanan

Daryl:

Still working on it. However, at this time I do know that Terry Brown would like to be deposed in Augusta, if possible. I'll get back to you on the others, as far as locations and times. Thanks.

Mark V. Gende
Sweeny, Wingate & Barrow, PA
1515 Lady Street
Columbia, South Carolina 29201
T (803) 256-2233
F (803) 256-9177

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From: Daryl Williams [mailto:dwilliams@jeterandwilliams.com]

Sent: Tuesday, May 17, 2011 3:50 PM

To: Mark V. Gende

Subject: Bauknight v Pope and Buchanan

Mark:

Any progress on scheduling the depositions we have noticed/requested, i.e., Tomie Rae Hynie, Terry Brown, former AG McMaster and AG Wilson?

Thanks.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to any other party any transaction(s) or tax related matter(s) that may be addressed 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; and Others,

Plaintiffs.

v.

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

) IN THE CIRCUIT COURT

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

) AFFIDAVIT OF
) ADELE J. POPE IN
) SUPPORT OF MOTION TO COMPEL
) TOMMIE RAE HYNIE BROWN
) TO APPEAR AT A DEPOSITION

2011 JUN -3 10 25

REC'D
C. J. 11-3-11
RIDE

RICHLAND COUNTY

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly

sworn, deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. Plaintiff Tommie Rae Hynie Brown ("Tommie Rae"), who filed this suit against Bob Buchanan and me in May 2010 seeking "tens of millions of dollars" of damages, notified us, through her counsel, that she refuses to attend her deposition noticed for June 26, 2011, in the County of her residence.
3. I ask this court to require Tommie Rae to appear at her scheduled deposition or at a deposition to be taken as soon as possible in her home county on a day set by the Court.
4. I am informed and believe Tommie Rae's deposition and the documents to be made a part of that deposition, will confirm the following facts, already revealed in other James Brown cases and orders by which, on information and belief, Tommie Rae is bound:

a. In 2007 Tommie Rae nominated me as a Special Administrator ("SA") of the Estate of James Brown in Aiken County Case 2007-CP-02-0122 ("Case 122"), a case she and others commenced.

b. Prior to my nomination, Tommie Rae filed an affidavit and appeared at a February 9, 2007 Case 122 hearing with six attorneys, seeking both an SA and an injunction against Brown's original PR/Trustees. [Tr., p.4.] Through her agent Tommie Rae made the following representations to the Court:

...WHETHER SHE'S THE WIFE OR NOT HIS WIFE THAT'S A MATTER TO BE DETERMINED AT A LATER TIME, BUT NO ONE DISPUTED THE FACT THAT SHE LIVED IN THE HOME WITH HIM AND HAD GREAT KNOWLEDGE OF WHAT HAPPENED. [Tr., p 44]

and

HERE IS MR. BROWN WHO MADE A FORTUNE IN THE MUSIC BUSINESS WHOSE BILLS WERE NOT PAID...

and

THIS LITIGATION GOING ON IN NEW YORK, LITERALLY, IF YOU DON'T ACT TOMORROW, THEY CAN SIGN A CONTRACT TO SIGN [sic] ALL OF MR. BROWN'S BOOK OF MUSIC WHICH COULD BE WORTH \$100 MILLION - THEY COULD SELL IT FOR 20 MILLION IN ORDER TO RECEIVE THEIR TWO MILLION [Tr. p. 48.]

c. Tommie Rae approved orders dated February 19 and March 7, 2007 in Case 122, appointing Bob Buchanan and me as SAs, with limited oversight duties.

d. In an Order dated November 20, 2007 in Case 122, upon resignation of all of Brown's original PR/Trustees, Tommie Rae approved our appointment as PR/Trustees under the Will of James Brown and the James Brown 2000 Irrevocable Trust, both dated August 1, 2000.

e. At a hearing on December 21, 2007 and pursuant to an unappealed Order dated January 8, 2008 in Case 122, Tommie Rae approved our request for payments of \$317,000 and unpaid costs as SAs, as well as ongoing payments on a "time plus costs" basis for our service as PR/Trustees. The January 8 Order provided that all amounts not paid within 90 days would bear interest at the legal rate. At the December 21 hearing Tommie Rae's counsel stated:

THE COURT: Well, I'm going to find out if anybody objects. If they do, we'll hear the objections at the next time. Anybody object to their petition? Mr. Levenson?

MR. LEVENSON: No, Sir.

THE COURT: Mr. Rosen? [Counsel for Tommie Rae]

MR. ROSEN: No., Sir. [Tr., p. 51.]

...
MR. MEDLIN: [Counsel for Tommie Rae] First of all, Ms. Pope as usual expressed much more eloquently than I could the procedures for appropriately dealing with claims...

...
THE COURT: Hold on... 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... 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...

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 ...

f. Tommie Rae's agents attended and actively participated in hearings held in February and March 2008 in Case 122 the subjects of which included:

- (1) the propriety of the Christie's auction sale and contract;
- (2) whether former PR/Trustees Dallas and Bradley could withdraw their resignations as trustees; and
- (3) whether our actions as SA s and our appointment and service as PR/Trustees were appropriate and ethical.

g. Tommie Rae objected to the Christie's sale, but reached a compromise in which certain items were withdrawn. She did not appeal the Case 122 orders directing the Christie's sale and our execution of the contract with Christie's.

h. Tommie Rae supported; her counsel participated in the drafting (April 8); and did not appeal Orders dated March 7, 2007 and April 8, 2008 making specific findings of the impropriety and fraud upon the Court committed by Brown's

original PR/Trustees and the propriety of our appointment and service through April 8, 2008.

i. On August 1, 2000 Tommie Rae witnessed the execution of some of the documents which were part of Brown's Estate Plan.

j. Tommie Rae and Brown were contemplating marriage, and made notations about what she ("Miss Rae") might expect as the "future Mrs. Brown."

k. Tommie Rae has knowledge that Brown's Estate Plan intentionally excluded her as a future spouse, all other past and future spouses, and all of his children and claimed children from his music empire.

l. Tommie Rae has knowledge that her child was born on or about June 11, 2001 in Las Vegas, Nevada; that Brown was not present; and that she provided all information for the birth certificate.

m. Tommie Rae has knowledge that in June 2001, in contemplation of the marriage ceremony she planned to enter with Brown, she waived all claims to his assets other than the limited award specified in the Agreement.

n. Tommie Rae had knowledge when she executed the Pre-Nuptial Agreement that Brown's Estate Plan left his entire music empire to education – with education trusts for certain grandchildren and the bulk – about \$80 Million – to The James Brown "I Feel Good" private foundation for scholarships for needy and deserving students.

o. Tommie Rae has knowledge that when she signed the Pre-Nuptial Agreement and when she applied for a marriage license she failed to disclose that she was married to Javed Ahmed.

p. Tommie Rae has knowledge that James Brown was estranged from daughters Deanna and Yamma, in part because, knowing they were excluded from his Estate Plan, Yamma and Deanna sued Brown in 2002 claiming he owed them about \$1 Million in royalties.

q. Tommie Rae has knowledge that James Brown did not know she was married to Javed Ahmed until David Cannon informed him in 2003.

r. Tommie Rae has knowledge regarding the claims, counterclaims and settlement in James Brown's 2004 legal proceeding against her

s. Tommie Rae has knowledge of Brown's financial affairs, including that Brown's annual income at death was about \$8 Million; that about \$3 Million per year came from Brown's rights related to more than 850 published and

unpublished songs ("Royalties"); that his image and persona ("Publicity Rights") are of great value; and that \$84 Million is a conservative date-of-death value for Brown's music empire and \$12+ Million claim against former PR/Trustees Cannon and Dallas and others.

t Tommie Rae has knowledge that much of 2007 and 2008 was spent trying to uncover more than \$12 Million of misappropriations by Dallas and Cannon, and that her attorneys were present in June 2007 when Mr. Levenson stated:

WHAT WE'RE ATTEMPTING TO DO SIMPLY IS TO FIND OUT ON BEHALF OF ANY INTERESTED PERSON OF WHICH MY CLIENTS ARE SOME -- INTERESTED IS AS DEFINED IN THE SOUTH CAROLINA CODE -- WHAT HAPPENED TO \$24 MILLION? THIS IS SO SIMPLE. . .

u. For more than a year, Tommie Rae made no objection to the \$85,663,562.99 date-of-death valuation of Brown's assets in the Inventory and Appraisement ("I&A") filed by two of Brown's original PRs. [ROA , p. 2672]

v. Tommie Rae has knowledge that Bob Buchanan and I vigorously and appropriately enforced James Brown's Estate Plan as specifically directed by James Brown.

w. In August 2008 Tommie Rae, through her agent, advised Bob Buchanan and me that she and then- Attorney General Henry McMaster "speak as one" as to matters related to the Estate of James Brown.

x. With knowledge that valuation was a critical issue, Tommie Rae and her advisors declined our request to help prepare the estate tax return and address other tax matters related to Brown's estate.

y. Tommie Rae has knowledge that by January 30, 2009 Bauknight had agreed to serve as her trustee and trustee for Terry Brown, and that she and Terry were trying to get nearly 30% of Brown's assets and a right to purchase all of Brown's assets.

z. Tommie Rae has knowledge that by early 2009, with an unreasonable profit motive, she, her agents, Terry, Bauknight and others, undertook a to bring about a massive downward manipulation of the value of James Brown's securities and other assets, which has resulted in their assertion that Brown's musical empire has a value of less than \$5 Million.

aa. Tommie Rae has knowledge that the less-than \$5 Million valuation of Brown's music empire is less than 1/15 the value Tommie Rae has previously asserted was correct.

ab. Tommie Rae has knowledge that on June 15, 2007 and on November 20, 2007 when under oath, prospective investor Dr. T. Cox valued the James Brown assets at between \$86 Million and \$110 Million, as follows:

Image/Likeness	\$40MM - \$50MM
Music Catalogue	\$36MM - \$45MM (Industry standard is 12- 15 x revenue)
Property	<u>\$10 MM - \$15 MM</u>
TOTAL	\$86 MM - \$110 MM [ROA, p. 466]

ac. Tommie Rae's has knowledge that her agents met with Cox and an attorney at the office of AG McMaster on or about July 30, 2008 and discussed the value of Brown's assets.

ad. Tommie Rae has knowledge that Terry Brown and Terry's son Forlando are joint venturers with Cannon (now indicted) and Dallas in a venture to purchase the James Brown assets; create and IPO; and pay options or a "kickback" to Cannon and Dallas.

ae. Tommie Rae, on information and belief, has knowledge that in April 2010 her agent threatened to bring this lawsuit if Mr. Buchanan and I did not abandon our appeal in Case 2008-CP-02-1647, which Brown's Estate Plan required that we take.

af. Tommie Rae had knowledge when she filed this lawsuit on May 19, 2010 that it contained allegations that were both false and misleading, and, on information and belief, her specific intention, and that of Terry Brown and others, was to cause harm to Mr. Buchanan and me.

ag. Tommie Rae has knowledge that her threats, filing and continuation of this lawsuit have damaged my legal career and that of Mr. Buchanan, resulting in substantial loss, including loss of our professional negligence insurance and other damages.

5. I am informed and believe that the deposition of Tommie Rae will serve to confirm the position in our answer and counterclaim that Tommie Rae's claims against Mr. Buchanan and me are without merit; that we never owed her any fiduciary duty; and that she should be liable to us for damages as to each of the following counterclaims:

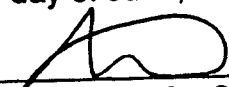
- a. Abuse of Process
- b. Civil Conspiracy
- c. Intentional Interference with Contract
- d. Violation of Section 62-1-106 of the Probate Code

e. Attorneys' fees.

FURTHER DEPONENT SAYETH NOT.


ADELE J. PORE

SWORN TO before me this
2nd day of June, 2011


_____(L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/16

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Plaintiffs.

and

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

v.

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

) IN THE CIRCUIT COURT

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

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

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

2011 AUG -2 PM 1:08

RICHLAND COUNTY
FILED

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

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

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

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

¹ The Firm name is Sweeney, Wingate and Barrow, P.C.

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

3. Serving simultaneously as sole counsel for Private Plaintiffs³ and the AG, Wingate named in the caption of the Complaint as parties:

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

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

5. I first learned of Wingate's involvement in April 2010 when Plaintiff Tommie Rae Brown's agent advised that if Bob and I did not drop a pending James Brown appeal AG Sonny Jones⁴ would to sue us through contingency-fee counsel Wingate.⁵

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

³ Private Plaintiffs include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. 8 or more Private Plaintiffs are not residents of South Carolina.
- b. Plaintiff (Georgia resident) Venisha was jailed in South Carolina on felony charges during the relevant period.
- c. There is substantial evidence that some or all of Private Plaintiffs Bauknight⁸, Yamma⁹, Terry¹⁰ and Tommie Rae¹¹, and their agents, are actively involved in the manipulation of the value of James Brown's securities and other assets for improper purposes.
- d. Private Plaintiff (Yamma) has valued James Brown's assets at 30 times (\$200 Million) Private Plaintiff Bauknight's \$6.5 Million value.
- e. Plaintiff Bauknight represented to the IRS that Brown's worldwide music empire and \$12+ Million claim against former PR/Trustees Dallas and Cannon was worth less than \$4.7 Million at his death.
- f. 1 minor Plaintiff is a possible witness (not a suspect) in an

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

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

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

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

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

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

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

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

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

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

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

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

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

RECITALS

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

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

Article II. SERVICES

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

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

Article III. CASE MANAGEMENT

...F. Public Records

Any material, date, files, discs, or documents created, produced or

gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation. . . shall be considered the exclusive property of . . . South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4010 et seq. This agreement shall be considered a public document.

...

Article IV. COMPENSATION

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

...

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

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

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

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

...

Article VI. TERMINATION

A. Termination by the Parties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

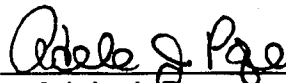
28. In this case against Bob and me, AG McMaster's office is the giant.

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

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

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

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this
1st day of August, 2011

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

EXHIBIT A

13. 2007 6:33PM Lewenson & Assoc. 404-659-1355

No. 0427 P. 46

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

Executive Summary

Company Information

Pinnacle Media & Entertainment, LLC
Anthony "Chip" Lumar, Chairman/CEO
Yasmina Brown Lumar, President
Peachtree Center Ave
Suite 500
404-343-0048
404-254-2826

www.pinnaclemedia.com
pinnaclemediainfo@pinnacleip.com

Management Team

Anthony "Chip" Lumar, Chairman/CEO
Yasmina Brown Lumar, President
Terry B. Cox, Graham Windsor Group
David Carter, Etc.
John Waters, The Machine Group
David Waters, The Machine Group
David McKnight, Undiscovered Lives
Michelle Graves, Special Advisor to Mr. Lumar

Industry

Content provider to the entertainment industry
Film/television/cable

Company Resources

Intellectual Property Rights

Type of Financing Sought

Acquisition financing for the James Brown Estate

Total Internal Capital Invested

\$1,100,000 has been pledged by the Owners for start up of Pinnacle Communications Inc., and Pinnacle Media & Entertainment for print rights acquisition, trade show sponsorships, production and marketing.

Professionals

(Accounting firm)
Greg C. Takasian
Takasian & Company, LLC
336 Intervale Rd
Suite B1
Ottisford, NH 03249
Tel: 617-230-0812

(Banking)

Wachovia Bank
Dirk Ledford
Days Munguester
Marietta, GA 30026
Tel: 770-420-0326
Fax: 770-420-0634

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 Dean Martin, in yearly revenues generated, licensing rights, sampling 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 become the premier entertainment/management company in the world.

Currently the estate is under the protection of Greenberg Truig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience"

Management

Our President is a distinguished graduate of Mercer University (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 notables Hollywood are Academy Award winners Jamie Foxx, and Dan Aykroyd, other celebrities' friends includes 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 Communications, Inc c/o Chip Lumar
404-404-343-0048
www.pinnaclemedia.com
pinnaclemediainfo@pinnacleip.com

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 B

Witness List

11/12/2010

Full Name	Addresses
	145 West 57 Street 15th Floor New York NY 10019
	1517 Gervais St. P.O. Box 1330 Columbia, SC 29202
	3455 Peachtree Road NE, Suite 1700 Atlanta, GA 30326
	3280 Golf-Linx Drive Snellville, GA 30039
	1120 Court Drive, Apt. R Duluth, GA 30096
	156 Liberty Hill Road Eastanollee, GA 30538
	110 Dresden Drive Martinez, GA 30907
	156 Liberty Hill Road Eastanollee, GA 30538
	2417 Castlewood Dr. Augusta, GA 30904
	P.O. Box 652 Clearwater, SC 29822
	305 Legran Bend Atlanta, GA 30328
is	P.O. Box 652 Clearwater, SC 29822
	212 Newberry St., NW P.O. Box 463 Aiken, SC 29802-0463
	9459 Marlboro Ave Barnwell, SC 29812-1962
	601 West 26th Street Suite 1080 New York, NY 10001
	304 Black Street Thomson, GA 30824-2919
	P.O. Box 1564 Augusta, GA 30903-1564
	Los Angeles, CA
	3290 Northside Parkway, Ste 400 Atlanta, GA 30326
	1228 Walnut ST Newberry, SC 29180
	106 West 145th Street New York, NY 10039
	111 Park Ave, SW Aiken, SC 29801
	Atlanta, GA
	Atlanta, GA
	5122 Hunters Luck Stone Mountain, GA 30088

Witness List

11/12/2010

Full Name	Address
	75 Piedmont Ave NE Atlanta, GA 30303

EXHIBIT C

NEXSEN|PRUET

J. David Black
Member
Admitted in SC

July 15, 2011

VIA US MAIL

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

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

Dear Ms. Pope,

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

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

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

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

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

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

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

Very truly yours,

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

J. David Black

JDB/JGH

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

I. Background

On May 19, 2010 Kenneth Wingate and members of his firm, Sweeney, Wingate and Barrow, PC (collectively "Wingate") commenced this tort action in the Probate Court for Richland County. It was timely removed to the circuit court.

Wingate is sole counsel to 15 private plaintiffs, now also counterclaim defendants, some of whom are minors and most of whom are non-residents of South Carolina ("Private Plaintiffs").

The Complaint asserts that Wingate is also sole counsel for Henry D. McMaster in his capacity as Attorney General of the State of South Carolina (the "State"), and that Defendant Russell Bauknight speaks on behalf of the State.

Plaintiffs seeks tens of millions of dollars of damages from Defendants, asserting both criminal and civil wrongdoing during their service as fiduciaries under the Will and 2000 Irrevocable Trust of entertainment icon James Brown from 2007 until 2009¹.

Defendants were replaced as PR/Trustees by Bauknight on May 26, 2009. Their replacement as Brown's PR/Trustees is under appeal to the S. C. Supreme Court.

A November 6, 2009 Order of the S. C. Court of Appeals confirmed that, effective May 26, 2009, all responsibility and liability for administration of the Estate/2000 pending the outcome of the appeal rests with Plaintiff Bauknight.

Among the false allegations in the Complaint – which would subject Defendants to criminal prosecution, if true - is that Defendants intentionally overstated the value of James

¹ It is undisputed that Buchanan and Pope never served as fiduciaries of the so-called "James Brown Legacy Trust". The Legacy Trust was not created by Brown and not part of his estate plan. It was created by McMaster, with Bauknight as his trustee, in later 2008 or early 2009.

Brown's worldwide music empire when they told the IRS that it was worth about \$85 Million.² Plaintiffs assert this was a false value which Buchanan and Pope were improperly using to obtain a large commission.

Within three weeks of the filing of the Complaint a Wingate principal made a \$1,000 contribution to AG McMaster's gubernatorial campaign.

By Answer and Counterclaim dated September 30, 2010, Defendants denied any wrongdoing and asserted numerous defenses. Among them was that the State is estopped because on July 30, 2008 AG McMaster, after extensive investigation of their actions, wrote Defendants and supported their permanent service as trustees under Brown's Estate Plan. This was just eleven days before McMaster reached a private agreement to replace Defendants, take control of Brown's assets, and destroy Brown's Estate Plan which Defendants are required to defend.

Defendants' counterclaims seek actual and punitive damages and demand a trial by jury on the following causes of action:

1. Abuse of Process;
2. Civil Conspiracy;
3. Intentional Interference with Contract;
4. Fraud under S. C. Probate Code §62-1-106 to circumvent the provisions and purposes of the South Carolina Probate (and Trust) Code; and
5. Attorneys Fees under S. C. Trust Code §62-7-1004.

Plaintiffs failed to timely respond to the counterclaims and are in default. Their

² \$100 Million less a debt resulting from a 1999 financing arrangement (the "TIAA Debt").

Motion for Relief from Default filed November 16, 2010 is pending.

On January 12, 2011 AG McMaster was replaced by AG Wilson.

In May 2011 documents filed in Aiken County and elsewhere revealed that in December 2010 and January 2011 Bauknight had obtained an IRS closing letter for Brown's Estate by presenting an appraisal asserting Brown's worldwide music empire was worth only \$4.7 Million when Brown died on December 25, 2006, and asserting to the IRS that Buchanan and Pope had overvalued Brown's assets by about \$79 Million.

This revelation made clear that someone had, in fact, made false representations to the IRS.

Bauknight's valuation is about 1 /15 the value all other James Brown fiduciaries have assigned to Brown's music empire, and was made at the same time written reports confirmed that Brown's royalties alone earned \$5.4 Million in the year 2010.

Bauknight assertion to the IRS and Courts that Brown's music empire was worth only \$4.7 Million, and all assets of both Brown's 2000 Trust and Estate only \$6.5 Million, is one of the most extraordinary twists and turns in a host of James Brown cases already full of surprises.

The \$4.7 Million valuation has implications for this case, as well as others. It would have been virtually impossible for Buchanan and Pope, as Wingate/Bauknight assert for the State, to have caused tens of millions of dollars damage in fewer than two years to a music empire which, they assert, had a value of only \$4.7 Million to start.

Based in part on Bauknight's valuation, on May 18, 2011 Pope moved to enjoin and disqualify Wingate from representing the State and Bauknight from asserting he speaks as the State's agent.

Related relief was also sought in the May 18 motion.³

For at least 9 months, Wingate has simply refused to comply with routine discovery. Among documents Wingate has refused to produce are those related to Bauknight's \$4.7 Million valuation – requested in November 2010 – and Wingate's Litigation Retention Agreement with the State.⁴ Eight Plaintiffs, including McMaster, have refused to appear at noticed depositions.

Pope has moved to require Wingate's Litigation Retention Agreement with McMaster to be produced before the disqualification hearing.

Plaintiffs opposed the motion and assert it is private, even though all known Litigation Retention Agreements executed by AG McMaster state that they are public documents.

The hearing on Pope's May 18, 2011 motion has been scheduled for September 13, 2011..

³ The Motion also seeks:

- a. To Substitute McMaster individually as Plaintiff/Counterclaim Defendant;
- b. To depose McMaster , who failed to appear at his noticed deposition.
- d. Relief related to AG Wilson's position about Bauknight's \$4.7 Million value.
- e. Possible amendments to add a crossclaim.

⁴ Wingate/Bauknight have refused to comply with all requests for document review, including requests made in 2010 for valuation information while Bauknight was obtaining the "appraisal" which showed the \$4.7 Million value and his dealings with the IRS were ongoing.

II. Questions Presented

In light of the above developments, Pope respectfully submits that the questions for consideration by the Court at this injunction/disqualification hearing are:

1. Should Wingate, with obligations to his Private Plaintiffs, be enjoined/disqualified from representing and binding the State as to the Complaint and Counterclaims in this case?
2. Should Bauknight and Wingate be enjoined from asserting in the Caption and to the Court that Bauknight speaks on behalf of the State?
3. Have Wingate's refusal to comply with discovery regarding Bauknight's \$4.7 million value, refusal to produce McMaster's Litigation Retention Agreement and other actions confirmed he cannot act for the State?
4. Was the State's engagement of Private Counsel to accuse Defendants of both criminal and civil wrongdoing, with no control or oversight by the State, a violation of their Due Process Rights and/or otherwise illegal and improper?
5. Should the Court grant the additional relief sought in the May 18 motion?

III. The State's Policy for Retention of Outside Contingency Fee Counsel

Former Attorney General McMaster used Litigation Retention Agreements with outside counsel only about seven times between 2003 and 2011.

On July 19, 2006 AG McMaster executed what he has represented to be his standard Litigation Retention Agreement to sue drug maker Eli Lilly. Of record in Spartanburg County, that and all of McMaster's known Contingency Fee Contracts with Outside Counsel ("Litigation Retention Agreements") have the following features:

- (1) They are Contingency Fee Contracts.
- (2) They require that the AG review all pleadings
- (3) They state that Outside Counsel is being used for a public purpose
- (4) They state that Outside Counsel is paid only if the State receives an

- award.
- (5) They provide that all settlement negotiations are controlled by the AG.
 - (6) They prohibit Outside Counsel from accepting payment from other sources.
 - (7) They require Outside Counsel to advance costs, including experts.
 - (8) They provide that Outside Counsel may delegate within his firm, but not to others.
 - (9) They say that the Agreement is a public document.
 - (10) They require Outside Counsel to comply with FOIA.

This Defendant can find no other suit brought by the State using Outside Counsel where a member of the staff of the AG is not co-counsel of record. In fact AG McMaster's control of the litigation is the hallmark of his defense of the use of Litigation Retention Agreements.

Litigation Agreements with Outside Counsel to bring tort suits, prior to this case, have been used by the State only where the State needed expertise it did not have within the Office of the Attorney General and/or where the State's limited resources would be compromised by an extraordinarily strong Defendant. For example, in 2006 AG McMaster announced he would be using Outside Counsel to sue several pharmaceutical giants to obtain more than \$40 Million for the State.

In October 2009, after being criticized in a Wall Street Journal article for accepting large campaign contributions from Outside Counsel with whom he had Litigation Retention Agreements, AG McMaster publicly articulated the AG's Office's policy related to acceptance of campaign contributions:

[T]hese perfectly legal donations should not be allowed to create a distraction from the critically important issues our State faces now or in the future. I believe the best interests of the State will be served from eliminating the issue altogether...Further, when it comes to the

issue of ethics in government, appearances matter as much as the law. It is important to avoid even the slightest possible appearance of any impropriety.

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

A week later, on October 9, 2009 AG McMaster wrote the Wall Street Journal to defend his standard Litigation Retention Agreement and justify his former acceptance of large contributions from Outside Counsel. He said:

Yes, outside counsel assisting me on this case and their firms have made legal contributions to my campaigns since 2002. But so have the attorneys of Lilly's firm, in almost identical amounts.

...
My Special Counsel Retention Agreement has been heralded nationwide as the pro-business model by tort reform groups and is being considered by our legislature to become law.

...
Yes, I do have 71 attorneys in my office, but only eight try civil cases... Lilly's local firm has over 400 attorneys, its Philadelphia firm over 500.

...
...So, I must use outside counsel, but every decision is made by me. [Emphasis supplied]

As shown in the case caption, Wingate purports to represent then-Attorney General McMaster, Russell Bauknight "on behalf of" AG McMaster, and approximately a dozen other Plaintiffs, including minors represented by their parents.

While Wingate has refused to produce his fee contract with the State or his private plaintiffs, he does not deny that he is serving on a contingency-fee basis. To the knowledge of Defendants, this is the first suit brought on behalf of the State by its AG in which neither the AG nor an attorney on his staff has signed the pleading or been listed as counsel.

Public records indicate that this case was the seventh or eighth case in the 8-year history of McMaster's service as AG in which outside counsel were engaged. All other outside counsel, according to McMaster's public statements, were contingency fee arrangements in which Outside Counsel, under McMaster's Special Counsel Retention Agreement, a public document, assisted the AG's office.

IV. Injunction/Disqualification of Wingate and Injunction as to Bauknight

In what is the first case of its kind known to Defendant Pope, Wingate, a private law firm, brought this private tort suit for money damages against Pope and Robert L. Buchanan, Jr. No public wrong was alleged, no public purpose was articulated (or existed), and no attempt was made to allocate the "tens of millions" Plaintiffs sought in damages against Buchanan and Pope.

Also for the first time, Bauknight, a private citizen, boldly asserts on the face of the Complaint that he is acting "on behalf of" the Attorney General of the State of South Carolina. It is not clear whether Bauknight asserts that his authority to act on behalf of the State survived the transition from AG McMaster to AG Wilson.

Pope asserts that under the present facts, and particularly in light of developments within the case, Wingate's simultaneous representation of the State and private individuals who are the numerical and financial majority of the Plaintiffs/Counterclaim Defendants is improper, illegal or both.

Pope also asks that Russell L. Bauknight be enjoined from asserting in the caption of this Case, and otherwise, that he is acting "on behalf of Henry Dargan McMaster [or any AG], in his capacity as Attorney General of the State" because Bauknight has no authority

to make such representation or to bind the State.

Defendant Pope does not seek impair Wingate's representation of his dozen or more private clients because a majority are sophisticated business persons who, unlike the State, may waive Wingate's conflicts.

V. Procedural History Relevant to Injunction/Disqualification

On December 25, 2006 James Brown, one of South Carolina's most talented and generous citizens died owning a worldwide entertainment empire. His primary assets are his royalties to more than 850 published and unpublished songs (the "Royalties") and his Publicity Rights.

Brown's Estate Plan disinherited all heirs and claimed heirs from his music empire, leaving an education fund for certain grandchildren and the bulk in his private "I Feel Good" foundation for the education of needy and deserving students.

On November 20, 2007 Defendants Buchanan and Pope became fiduciaries under Brown's Estate Plan, as the actions of former fiduciaries Cannon/Dallas – and the more than \$12 Million they misappropriated from Brown – were coming to light.

Between December 19 and 26, 2007 some Plaintiffs contested Brown's Estate Plan.

By February 2008 both Plaintiff Terry Brown and his son Forlando had become joint venturers with Cannon, Dallas in relation to an enterprise called TJBL. With Atlanta investors, Terry and Forlando were to be part of a purchase of Brown's assets with Cannon and Dallas receiving options or a "kickback".

On May 26, 2009 a settlement among some Plaintiffs which shifts about \$50 Million from the needy and deserving students Brown intended to benefit from his \$80 Million James Brown "I Feel Good" private foundation, to disinherited relatives and claimed heirs

was approved by a circuit court. An appeal of the Settlement is pending in the S. C. Supreme Court. (the "Case 1647" appeal).

In April 2010 an agent of Plaintiff Tommie Rae Hynie advised that if Defendants, did not drop the Case 1647 appeal, contingency fee attorney Wingate had been engaged by a senior assistant AG to sue them.

At the time Wingate had not participated in any James Brown cases.

VI. Bauknight should be enjoined from asserting that he acts for the State or the AG.

Bauknight cannot speak for the State or AG for one simple reason: he has no authority whatsoever to do so.

Bauknight's bringing the AG to this case through his assertions is clearly intended to intimidate Buchanan and Pope. It violates their Due Process rights to a level playing field.

Wingate and Bauknight – without statutory or common law basis to do so – assert in the caption and body of the Complaint that Bauknight is speaking on behalf of the State.

Should Defendants' counterclaims bear the same fruit that Plaintiffs hope to reap in the Complaint, Bauknight would be utterly powerless to direct the legislature to appropriate the State's share to be paid to Buchanan and Pope.

Bauknight's recently revealed sworn statement that he values Brown's music empire at less than \$4.7 Million places him squarely in the cross hairs of already-documented manipulation of the value of Brown's securities and other assets. He has no right to use the office of the AG – whose duties extend to issues of securities fraud – to shield himself from a counterclaim for fraud under §62-1-106, or from anything else which may be revealed

when the underlying documents for this startling revelation are released.

Bauknight should be enjoined from representing that he speaks on behalf of the State or any Attorney General, and Plaintiffs should be directed to strike such representations from the Complaint.

VII. Wingate Should be Enjoined from Simultaneous Representation of Private Plaintiffs and the State or any current or former AG in this Case.

Allowing Wingate to simultaneously represent the State and numerous private plaintiffs violates Defendant Pope's right to due process, and Wingate should be enjoined from continuing to represent the State.

Due Process mandates that "officers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy to be decided." *Tumey v. Ohio*, 273 U.S. 510, 522 (1927); *Mallett v. Mallett*, 323 S.C. 141, 147, 473 S.E.2d 804, 808 (Ct. App. 1996). This bedrock principle is applied for its prophylactic effect, that is, it is applied without any evidence showing actual misconduct. All that is required is the existence of a "possible temptation to the average man as judge." *Tumey*, 273 U.S. at 532. While this principle does not apply directly to private attorneys acting as advocates for the state, the same reasoning underlying this principle drives the conclusion that attorneys representing the state must be as reasonably free of impermissible and distorting motivations as is possible. Wingate is not free from impermissible and distorting motivations.

Prosecutors. While an attorney for the sovereign is required to pursue the sovereign's interests with vigor, it is still nevertheless true that an attorney general, while acting as an advocate, has certain ethical and moral duties which are far beyond those

required of an attorney acting on behalf of a private party:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

United States v. Berger, 295 U.S. 78, 88 (1935); portions quoted in *State v. Peake*, 353 S.C. 499, 509, 579 S.E.2d 297, 302 (2003) (Burnett, J., concurring). "A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions." *Marshall v. Jerrico*, 446 U.S. 238, 249 (1980); accord *Langford v. McLeod*, 269 S.C. 466, 472, 238 S.E.2d 161, 163 (1977) (Statute prohibiting prosecuting officers from accepting fees or awards is "clearly directed at the evil of a situation where the pecuniary interests of a prosecutor come into conflict with his official duties."). Indeed, the mere risk of such impermissible motivation is a violation of due process. *Marshall*, 446 U.S. at 248. See also, *People ex rel. Clancy v. Superior Court*, 705 P.2d 347, 351-52 (Cal. 1985).

The financial or other motivation to abuse the use of coercive governmental power in this manner would so undermine the societal fabric of good faith by governmental agents in carrying out the judicial process that it would certainly arise to a deprivation of liberty

without due process. The neutrality of the judge or jury would fall far short of purging the constitutional violation in such a scheme. Due Process in the criminal courts requires the good faith pursuit of the public interest at all levels of the process, meaning not just the judge or jury, but the prosecutor as well.

Such financial motivations have been found to violate the Due Process Clause even though it does not necessarily follow that if government prosecutors are paid on a contingency basis that implies that they will all base their prosecution decisions on something other than their perception of the public interest. The same is true for judges if they were paid on the basis of convictions obtained. Yet, the likely harm to the public trust arising from the popular perception of the likelihood of improper motivation by government actors is of such importance that Due Process bars these arrangements. *Tumey v. Ohio*, 273 U.S. 510, 522 (1927); *Aetna Life Ins Co v. Lavoie*, 475 U.S. 813 (1985); *Ward v. Monroeville*, 409 U.S. 57, 60 (1972); *State ex rel. McLeod v. Crowe*, 272 S.C. 41, 48, 249 S.E.2d 772, 776 (1978). Wingate has used the State's power to accuse defendants of a crime for the benefit of his Private Plaintiffs. This bias is intolerable under our constitution.

Civil Governmental Attorneys When one moves from the criminal to the civil realm the constitutional implications are less obvious than for prosecutors. However, it is clear that civil government attorneys are held to a higher standard than their private counterparts. *Berger's* statement that: "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore,

in a criminal prosecution is not that it shall win a case, but that justice shall be done," while applying to prosecutors, undoubtedly applies to civil actions as well. The D.C. Circuit Court of Appeals has noted that "... no one, to our knowledge, has suggested that the principle does not apply with equal force to the government's civil lawyers." *Freeport-McMoran Oil & Gas Co v. Fed. Energy Regulatory Comm'n.*, 962 F.2d 45, 47 (D.C.Cir. 1992). The Supreme Court of Rhode Island has applied the *Berger* holding to governmental attorneys who conduct civil litigation on behalf of that State, *State of Rhode Island v. Lead Paint Industries Assn, Inc.*, 951 A.2d 428 (R.I. 2008), as has the Supreme Court of California. *County of Santa Clara v. Superior Court*, 235 P.3d 21 (Cal. 2010). This principle of civil government attorneys being held to a higher constitutional standard finds support in other areas of constitutional analysis. For example, the Fourteenth Amendment's Due Process clause applies to "state action," whether or not that action occurs in the criminal or civil sphere. *Connecticut v. Doe*, 501 U.S. 1 (1991); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); and *Mathews v. Eldridge*, 424 U.S. 319 (1976). When the State acts, all constitutional protections are triggered. Private parties, on the other hand, are not expected to act in the public interest and enjoy much more freedom of action and are given much greater leeway in pursuing selfish interests. However, a state actor, when acting to impose the State's coercive power on an individual, is charged with a fiduciary duty to assess and pursue the public interest rather than private interests.

While it is certainly true that it is impossible to police each instance of violation of this norm, the result of this practical difficulty is that the courts adopt prophylactic limits on the private motivations of those exercising state power. As stated in *Mathews*, when the

government is involved in a suit with private entities, even in a civil case, the social contract embodied in the Due Process Clause is at stake. 424 U.S. at 319. The prohibition against private financial interests for government attorneys in civil litigation applies despite the presence of elements of control that might prevent such improper motivations from actually distorting the attorney's judgment. Protections such as supervising attorneys, public integrity sections, and the attorney's own peers are present, yet those protections are not sufficient to allow the use of contingency fees for attorneys on the state payroll.

Private State Actors The State may not avoid its constitutional obligations by simply delegating functions to private actors. To hold otherwise would invite wholesale avoidance of constitutional obligations in direct contravention of the democratic notion of constitutional limits on public power. Thus, in the aftermath of *Brown v. Board of Education*, some states transferred the power to operate public schools to private individuals. Such a scheme was struck down in *Allen v. County School Board of Prince Edward County*, 198 F.Supp 497, 503 (ED Va. 1961). In *West v. Atkins*, 487 U.S. 42 (1998), the Supreme Court held that contracting with a private physician to provide medical treatment to inmates meant that doctor acted under color of state law. When private attorneys representing the State perform the State's functions, they too are deemed to be state actors.

Instead of acting on behalf of its client's private interests heedless of the public interest, the public attorney may find it necessary to accept less compensation, or to dismiss a case, or to accept non-monetary relief, all in the public interest. An attorney for a private client is not subject to such constraints.

The presence of a neutral judge or jury does not cure, and is basically irrelevant to, the constitutional issues. Why this is so is capable of clear proof by analogy. Consider a

scheme in which a prosecutor's compensation was solely based upon a contingency agreement which consisted of payment for each criminal conviction and no payment for each acquittal. Can anyone doubt that such an arrangement would be so repugnant, and would so violate this country's social compact, that it would be immediately struck down as unconstitutional despite the presence of a neutral adjudicator? Consider an additional scenario. The Attorney General pays a member of his staff, an assistant attorney general, a percentage of the penalties obtained in civil actions, while refusing to pay the assistant for cases in which no penalties are obtained. While involving a mere civil action, the constitutional implications of improper personal distortions of public decision-making in such a scheme are clear. So, how does hiring a private attorney to represent the Attorney General solve these constitutional problems?

One court, in looking at this issue, has developed four classifications which determine the amount of constitutional scrutiny that should apply to each. The four classifications are: criminal cases; pure remedial cases; cases involving penalties; and cases involving the public interest. *County of Santa Clara v. Superior Court*, 235 P.3d 21 (Cal. 2010).

Santa Clara held a contingency fee violates Due Process in a criminal case and enforcement cases that are quasi-criminal in nature. Enforcement cases and public interest cases that threaten private property interests, but which fall short of being quasi-criminal, still require strict minimum controls in order to comport with Due Process. *Id.* at 35. The other class of cases is those cases involving no public interest as such, i.e. simple contract actions. There is no prohibition against contingency fee arrangements in the last class of simple actions involving no public interest.

This case, as stated above, is quasi-criminal in nature and similar enforcement actions and also subject to such prohibitions.

Use of Contingency Fee Agreements in Enforcement Actions

Marshall and *Santa Clara* offer confirmation that the contingency fee agreement in this case is improper.⁵ *Marshall* was a civil enforcement action which dealt with the constitutionality of a provision in the Fair Labor Standards Act and whether it violated due process. The challenged provision allowed the Department of Labor to recover enforcement costs from the "civil penalties" collected by regional offices of the Employment Standards Administration ("ESA"). The Supreme Court, as a preliminary conclusion, held that while due process does not require strict neutrality of government attorneys, it places limits on their lack of neutrality. "A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and in some contexts raise serious constitutional questions." *Marshall*, 446 U.S. at 249.

Marshall held that the since no government official had a personal economic interest in the enforcement of the Act, and since the economic impact on the local prosecutor's office was minimal, the scheme was constitutional. The recovery was less than 1 percent

⁵ This case represents both a quasi-criminal matter and the type of enforcement proceeding for which the personal financial interests of the private attorney created by the contingency fee agreement render the fee agreement improper. Because of these concerns, the federal government has prohibited contingency fee arrangements in this type of agency enforcement action. Executive Order No. 13433, *Protecting American Taxpayers From Payment of Contingency Fees*, 72 F.R. 28441 (May 16, 2007) (prohibiting federal agencies from using contingency fee counsel.) In *Young v. United States ex rel. Vuitton et Fils, S.A.*, 481 U.S. 787, 811 (1987), the Supreme Court held that, even without proof of wrongdoing, private attorneys cannot represent the government if they have even the "potential for private interest." *Id.* at 805-806 (emphasis in original). Wingate's private interests are obvious.

of the ESA budget, and because of the allotment procedure by the national office, the regional offices had little to no incentive to assess large penalties. Under the facts of that case, *Marshall* held that the possibility of improperly motivated enforcement was "too remote to violate the constraints applicable to the financial or personal interest of officials charged with prosecutorial or plaintiff-like function." *Id.* at 251.

Marshall indicates the issue of constitutionally impermissible risk of bias will depend on the facts of each case, including the degree of remoteness of the personal financial interest. In this case, Wingate and the State have refused to produce a copy of the fee agreement with private counsel despite repeated demands. In *Astrazeneca v. State*, the Attorney General of South Carolina entered into a contingency fee agreement with a private firm that allowed the Attorney General's Office to share in 8% of the attorneys fees recovered. See, *Defendants [Attorney General] Reply to Astrazeneca's Response In Opposition to Defendant's Motion to Dismiss the Complaint*, 2011-CP-42-1213, Spartanburg County Court of Common Pleas, filed July 21, 2011, pp.10 and 17. The wilful refusal of the State to produce the fee agreement which is in his possession, entitles Defendants to the inference that the fee agreement in this case is adverse to Wingate's and the State's position; and is similar to the *Astrazeneca* agreement in allowing for a split of the attorneys fees with private plaintiffs. Thus, for purposes of deciding this motion, the Court should assume that not only does private counsel have a financial interest in this case, but that the State has been hiding its own financial interest, and that of Private Plaintiffs, in this case. Because the State/Wingate would not be disinterested financially and would not be focused only upon protecting the public interest, these financial interests and those of Private Plaintiffs are the type of impermissible interest that creates the risk

of bias and runs afoul of due process. Simply put, there is no one guarding the public henhouse when the State, Wingate and Private Plaintiffs all have a financial interest in the outcome.

Plaintiffs have asserted they seek tens of millions of dollars in damages from the Defendants. The Attorney General, Private Plaintiffs and private counsel all have a large financial interest in the outcome of this case. Certainly, private counsel's law firm and Private Plaintiffs hope to recover hundreds of thousands of dollars, if not millions, should they be successful in prosecuting this suit. For a small firm of about 15 attorneys, the possible fee would be huge. The risk of private financial considerations influencing the prosecution of this enforcement action lacks any degree of remoteness, and is therefore, under *Marshall*, a violation of due process which requires that private counsel be enjoined from representing the Attorney General.

Quite apart from the constitutional violation arising from the financial interest of the Attorney General's Office in this case, the Attorney General has turned the conduct of this case over to private counsel and Private co-Plaintiffs and has not only failed to take control of the case, but has not even appeared. This lack of control is a violation of due process.

In *Lead Industries*, the Rhode Island Supreme Court wrestled with the issue of contingency fee counsel representing the state in a matter of public interest, the abatement of lead pigment as a public nuisance. The Attorney General brought the suit on behalf of the people of the State, and was represented by a private contingency fee attorney. The action was a civil action to abate a public nuisance, and although the origin of public nuisance law was in criminal law, it had developed into a civil wrong which the Attorney General could abate on behalf of the State's citizens. The Court engaged in a lengthy

discussion of the special duty of the Attorney General to seek justice, *Id.* at 476, and then held that Due Process would allow a contingency fee attorney in a civil enforcement action provided carefully circumscribed circumstances meant the Attorney General retained absolute and total control over all critical decisions. *Lead Industries* held that the Attorney General's authority could not be delegated to the private attorney; rather the private attorney must be subordinate to the Attorney General. *Id.* To ensure that courts did not pay mere lip service to this bedrock concept and rely on mere contractual recitations, *Lead Industries* laid out a three prong test: 1) the Attorney General will retain complete control over the course and conduct of the litigation; 2) the Attorney General will retain a veto power over the decisions of outside counsel; and 3) a senior member of the Attorney General's staff must be personally involved in all stages of the litigation. *Id.* at 477. In addition to the Attorney General exercising total control, the Court required that the Attorney General "must also appear to the citizenry of Rhode Island and to the world at large, to be exercising such control." *Id.* Only in that context of the world believing that the Attorney General was in charge of the case, would the Due Process concern of having a financially interested attorney representing the public interest be satisfied. Having decision making Private co-Plaintiffs makes it clear that the public interest has been subordinated.

Marshall and *Lead Industries* considered factors that might mitigate the risk of impermissible bias. The next case to consider that issue was *Santa Clara*, supra. *Santa Clara* was another civil enforcement case, and because the attorneys were prosecuting the action in the name of the public, they were "subject to a heightened standard of ethical

conduct applicable to public officials acting in the name of the public." *Id.* at 35.⁶ Fair prosecutions in matters brought in the name of the public is of vital concern to the Defendant and to the public, and it is of the highest concern that the judicial process remain fair and untainted by improper personal motivations of the part of government attorneys.

Santa Clara found that the contingency fee in the nuisance abatement action did constitute a conflict of interest. However, in cases in which the right to continue in a business, or other fundamental constitutional rights, are not implicated, the contingency contract could be permissible if "conflict-free government attorneys retain the power to control and supervise the litigation." *Id.* at 36.⁷

Santa Clara recognized the practical difficulties created by the trial court trying to monitor the control and supervision of private attorneys, as well as the difficulty of the Defendant trying to monitor the State's control of opposing counsel which would include extensive discovery efforts which the plaintiffs would frustrate with claims of attorney-client and work product privilege. It also noted the special duty of the State's attorney to pursue justice rather than victory. In balancing these factors, *Santa Clara* reached a similar result to *Lead Industries*. Due Process could be satisfied only if the government did not delegate governmental authority to the private attorney, and if the private attorney operated in a clearly subordinate role that did not supplant the government attorneys' roles. *Id.* at 36-37.

⁶ *Santa Clara* noted this heightened standard would be less than the standard applied to prosecutors or judges, but would be greater than the standard applied in an ordinary civil case. *Id.* at 35

⁷ In this case the Attorney General's office is not conflict free. Accordingly, the reason for allowing the conflict of interest to be neutralized in *Santa Clara*, is missing in this case.

As *Lead Industries* and *Santa Clara* realized, the inimical consequences to Due Process that results from an attorney for the government having a financial interest in the outcome, can be avoided only if the private attorney's role is so subordinated that it appears to the citizens of South Carolina, and the world at large, that the Attorney General is exercising total control over the case. As will be discussed below, the Attorney General has clearly failed that test in this case.

Santa Clara drew heavily from the controls established in *Lead Industries*, 951 A.2d at 477. After modification, *Santa Clara* held that the fee agreement between the Attorney General and private counsel must, at a minimum, contain the following protections against impermissible bias:

- a. Decisions regarding settlement of the case are reserved exclusively to the discretion of the public entity's own attorneys;
- b. Any Defendant that is the subject of such litigation may contact the lead government attorneys directly, without having to confer with contingent fee counsel;
- c. The public entity attorneys will retain complete control over the course and conduct of the case;
- d. The government attorneys retain a veto power over any decisions made by outside counsel; and,
- e. A government attorney with supervisory authority must be personally involved in overseeing the litigation.

235 P.2d at 40. *Santa Clara* emphasized that these requirements were not exhaustive and that additional requirements might be advisable in other situations.

There is a Lack of Continuing Control in this Case

The *Santa Clara* controls are conspicuously absent in this case. The Attorney General has not only ceded control to a private attorney but to a majority of Private Plaintiffs who are acting in their own interests. Since the "control" required by *Santa Clara*

and *Lead Industries* is obviously more than the normal control any client has to control his own litigation, and must be construed to mean day to day control, the Attorney General has not met that requirement by not even appearing in the case. Furthermore, there are fifteen other private parties all represented by Wingate. The General Attorney General has no control and the public interest cannot be served.⁸

The Attorney General's Office has not appeared in the case through a member of his staff but is being represented by the same private attorney representing the private parties. Defendants are unable to contact a lead attorney from the Attorney General's office and no one from that office has appeared as counsel, much less be in control. Wingate General has refused to produce a fee contract and has not established any contractual controls by the AG over him or Private Plaintiffs.

The Attorney General has actively sought to discourage those who attempt to examine its compliance with Due Process and its control over this litigation. Rather than making its fee agreement available for Defendants to determine whether the Attorney General's arrangement with its private attorney violates Due Process, the Attorney General has instead allowed its private attorney, who has a personal interest in the matter, to refuse to produce the fee agreement. Whether the State has an improper incentive to share a contingency fee with Wingate and Private Plaintiffs is an issue which all have

⁸ The pressure on the Attorney General to agree with his fellow plaintiffs involves, among others: one plaintiff who was jailed in South Carolina on felony charges during the relevant period; another plaintiff who was part of a plan to purchase the James Brown assets for \$90 - \$100 million, create an IPO and pay options or a "kickback" to Brown's former fiduciaries; another who was involved in a \$200 Million initial public offering to raise funds to purchase James Brown's assets but is now claiming the assets are only worth \$6.5 million. Wingate, however, is not only required to be persuaded but to be controlled by the decisions of his Private Plaintiffs.

stonewalled.

Under the *Marshall/Lead Industries/Santa Clara* approach, the State/Wingate is violating the Due Process Clause by using a private attorney without instituting sufficient controls. It follows that the injunction should be issued prohibiting contingent fee counsel from representing the Attorney General.

"Continuing Control" is an Inadequate Constitutional Protection

However, even the *Santa Clara* ruling fails to give sufficient weight to certain bedrock principles of Due Process. When the state itself brings an enforcement action against a private party that threatens that private party's property rights, the private attorneys representing the state must pursue the public interest since Due Process requires that those acting on behalf of a state pursue the public interest rather than their own financial concerns. Allowing the use of private actors to alleviate the concerns about improper motivations affecting the public interest, opens up a huge end run around the constitutional limitations upon state action. If a public attorney cannot act pursuant to a contingency fee, there is a constitutional problem with achieving the same result through a private attorney.

While *Santa Clara* and *Lead Industries* place great confidence in the protections against a Due Process violation resting on a foundation of "continuing control", there are a number of problems with this approach.

Another problem is that as a practical matter, it is impossible for a reviewing court to determine whether or not such control is, in fact, being exercised. The failure of courts to require mechanisms for achieving and maintaining control leaves it to the offices of the attorneys general to find the desire and innovation themselves to establish control. Given

the justification of budget difficulties and the desire to relieve the burden on themselves as reasons to hire private counsel, it is unlikely a state attorney general's office will devote the resources it has sought to avoid expending. In this particular case, the Attorney General of South Carolina has minimized its involvement to the extent that it even sought to have a private trustee, as Plaintiff, represent its interests in its representational capacity.

Another problem is that from a theoretical perspective, the idea of "continuing control" is illusory. The reason for hiring private attorneys is that they bring special expertise needed for the case; expertise which the attorneys general offices often do not possess. The private attorneys will use their expertise to shape and conduct the litigation. The more the attorneys general have to devote staff time to control the case, the less the benefit and effectiveness to the state of hiring private attorneys. Yet, the less the state controls the daily activities of the private attorneys, the greater the threat to constitutional values.

To merely conclude, as several courts have, that the states will exercise the control necessary, is too easy and convenient given these practical and theoretical concerns.⁹

⁹Oversight by the courts would require a continuous and intrusive inquiry. Even then, how would the court and the defendants discover the "facts" required to make a determination. As the United States Supreme Court has recognized, it is almost impossible to monitor a conflict of interest once it is found. *Young v. United States ex rel. Vuitton*, 481 U.S. 787, 812-813 (1987). If one were to follow the Rhode Island approach of a "subordinate lawyer" exception to Due Process (*Lead Industries*, supra.), that would generate factual disputes regarding the sufficiency of control by the government supervisor. And, that would also create the problem of the defendant entering into the relationship between the Plaintiff and its attorney, to police the relationship. Of course, that would be fought on grounds of attorney-client and work product privileges.

Given the practical difficulties in policing the oversight, many courts will be tempted to simply accept the contractual provisions of the fee agreement at face value in order to avoid oversight issues. The obvious problem is that the contract may be giving lip service to oversight by using the formulaic words required by prior precedent. The mere inclusion of particular

Certainly, in this case, the absence of evidence of contractual restrictions and day-to-day involvement by the Attorney General's Office, makes such a conclusion problematic. Pope requests that this Court enjoin Sweeny Wingate from further representation of the Attorney General on grounds that the doctrine of "continuing control" is inadequate as a matter of law to prevent Due Process violations.

Because Plaintiff's counsel's law firm made improper campaign contributions to the Attorney General's re-election campaign after being selected as counsel, they should be enjoined from further representation of the Attorney General.

Under South Carolina law, a person, including an attorney, is prohibited from making campaign contributions to the public official who awarded the contract to him. There is an exception, not applicable here, where the contract is awarded through a competitive bidding process. Here, the Attorney General awarded the contract to Wingate and afterward a principal in Wingate's firm made a contribution of \$1,000 to the Attorney General's gubernatorial primary campaign, an act which is prohibited. Accordingly, counsel should be enjoined from further representation of the State in this case.

S.C. Code Ann. §8-13-1342, known as the South Carolina Ethics, Government Accountability, and Campaign Reform Act (the "Campaign Reform Act"), states:

No person who has been awarded a contract with the State, a county, a municipality, or a political subdivision thereof, other than contracts awarded through competitive bidding practices, may make a contribution after the awarding of the contract or invest in a financial venture in which a public official has an interest if that official was in a position to act on the contract's award.

Because a Wingate principal made a campaign contribution to the Attorney General after he awarded them the contingency fee contract to represent the Attorney General in this

words in a fee agreement is a questionable check on the influence and power of outside counsel, and is a very weak reed on which to rest constitutional protections.

case, the contribution was in clear violation of the statutory language.

"A contract which contravenes public policy is void." *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277, 437 S.E.2d 168, 171 (Ct.App. 1993). While a statute may not specifically provide for invalidation of the contract, when it is "consistent with and essential to effectuating the public policy embodied in the statute," non-enforcement is available as a remedy. *United States v. Acme Process Equip. Corp.*, 385 U.S. 138, 145 (1966). In a procurement policy matter, the Court of Appeals for the Second Circuit held that it was clearly against public policy to enforce an agreement that was contrary to the intent of the procurement statute and regulations. *Quinn v. Gulf and Western Corp.*, 644 F.2d 89 (2d Cir. 1981).

The policy behind the Campaign Reform Act is transparency and avoidance of the appearance of impropriety. Given these policies, it is an appropriate and necessary remedy to enjoin further representation of the Attorney General by the offending law firm.

Public Policy Prohibits Contingency Fee Contracts Under These Circumstances

The contingency fee contract violates the public policy of South Carolina, including policies issued by the Attorney General's Office, statutes passed by the General Assembly, case law decisions, and ethical codes/opinions, concerned about the appearance of impropriety in that financial motivations may harm the public trust in the fairness of the judicial system. Accordingly, this court should hold the contingency fee contract is invalid, and should enjoin Sweeny, Wingate from representing the Attorney General in this action.

The Court is aware of the national concern about the huge attorneys fees paid to friends of Attorneys General around the country in the tobacco litigation. In many cases, firms made millions of dollars who were not lead counsel and contributed very little to the

overall effort. South Carolina was not immune to this controversy, as it was reported in 2000 that Attorney General Charles Condon handpicked seven law firms to represent the State in the tobacco litigation, six of which included the Attorney General's friends or political supporters.¹⁰

The suits against drug companies by states have re-ignited this controversy since one firm in particular has obtained numerous contingency fee contracts to represent states, after which the firm and its co-counsel made large financial contributions to the Attorneys General who hired them. As referenced above, South Carolina has not been immune to this issue, since large campaign contributions became political issues in 2009 after it was reported that contributions were made to Attorney General McMaster's campaigns in the *Lilly* case.¹¹ Recently our current Attorney General, by approving a contingency fee contract which has a potential value of \$3 million, has become involved in press reports about his approval of the State Treasurer's award of a contingency fee contract to his fraternity brother.¹² In numerous states, including South Carolina, the public has been exposed to accusations of "pay to play" being the way to earn contingency fee contracts to represent the state, which have the effect of harming the public's trust in the fairness of our judicial system.

¹⁰ See Assoc.Press, *Lawyer Fees Weren't S.C.'s, Official Says*, Charlotte Observer, May 2, 2000, at 1Y.

¹¹ See, Assoc. Press, *"SC AG accepted campaign cash from lawyers he hired"*, September 24, 2009; Legal Newsline.com, *"SC AG McMaster taking contributions from outside counsel he hired"*, September 24, 2009.

¹² See, Assoc.Press, *Old-boy network, or smart legal move?*, South Carolina Lawyers Weekly, August 1, 2011, at p.5; *"SC Treasurer's Friend Gets up to \$3 Million in State Work"*, Augusta Chronicle, July 24, 2011.

The judicial and executive branches of South Carolina have been very suspicious of contingency contracts in the area of judicial administration and public procurement. It is fair to say, that with the very limited exception of certain contingency fee contracts in civil case, it is against the public policy of this State to engage in contingency fee contracts in areas involving public officials. In the judicial system, criminal prosecutors are prohibited from accepting contingency fees. *Langford v. McLeod*, 269 S.C. 466, 472, 238 S.E.2d 161, 163 (1977) In divorce cases, contingency fees are generally improper in domestic cases and rarely justified because of the incentives to discourage reconciliation which are not in the public interest. S.C. Bar Ethics Advisory Opinion, 82-13. See also *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991); App. Ct. Rule 407 (1.5) (d) (1). Expert witnesses are not allowed to be paid under a contingency fee contract out of concerns that their testimony might be influenced by their financial interests.

In the area of public administration, the Attorney General's Office has opined that counties may not hire accountants on a contingency fee basis to audit the business personal property forms that were filed with the local county. Attorney General Opinion, 1990 WL 5992356 at *1 (S.C.A.G. Mar. 15, 1990). One reason cited in the opinion was that an auditor should not hire private parties to perform duties assigned to the auditor by general law. However, the Attorney General also expressed concern that compensation should be independent of the independent agent's finding of a liability for unpaid taxes. Such a system, would "jeopardize impartial examinations" and would therefore be "highly suspect." The Attorney General found the agreement would have to be terminated since it "is a general doctrine that contracts injuriously affecting public or government services are invalid The purpose of the rule is to prevent persons from assuming a position

where selfish motives may impel them to sacrifice the public good to private benefit." *Id.* at 2. Whether or not the accountants would have actually fallen prey to improper motivations is unknown, and probably unlikely. However, that did not prevent the Attorney General from holding the contract must be terminated. Clearly the mere possibility of an improper motivation is sufficient to invalidate a contract where the public trust in government is in play.

As discussed previously, it is the public policy of South Carolina that a person may not make campaign contributions to a public officer who awarded them the contract, S.C. Code Ann. §8-13-1342, and implicit in that public policy is that the contract awarded should be terminated. Attorney General McMaster recognized the dangers; announced his public policy to prevent even the appearance of abuse; and then, in this case, violated his own policy.

For this and other reasons Wingate should be enjoined from acting under his contract with the State.

Conclusion

For the reasons stated herein, the Court should issue an Order enjoining the Wingate Firm from representing the State and/or the Attorney General and enjoining Russell L. Bauknight from asserting that he speaks for the State and/or the Attorney General.

Respectfully submitted,



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September 14, 2011

Attorneys for Defendant Adele J. Pope

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 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 [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

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 [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.

THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2010-CP-40-04900

2012 APR 11 PM 4:53
JEANETTE W. McBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF THE MOTION
TO SET ASIDE ENTRY OF DEFAULT

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter an Order setting aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs.

FACTS BEARING UPON THE MOTION

This case is but one of many stemming from the probate of the Estate of the late singer and entertainer James Brown. This action involves claims by the current Personal Representative and Trustee (Plaintiff Russell Bauknight) against the prior PR/Trustees, Defendants Adele Pope and Robert Buchanan. The facts set forth herein are taken from the Affidavit of Kenneth B. Wingate, which is attached to the filed Motion to Set Aside. Another copy of the Affidavit is attached hereto as Exhibit 1.

Plaintiffs filed the Complaint on May 19, 2010. Defendants responded to the Complaint by filing a Motion to Dismiss and Motion to Change Venue. The Court heard these Motions on August 30, 2010. After the hearing, Judge Manning requested proposed orders on the Motions, due on October 1, 2010. On information and belief, Defendants served an Answer and Counterclaims on Plaintiffs on September 30, 2010, *before* the proposed orders were due on Defendants' Motions to Dismiss and Change Venue. Judge Manning's Order denying the Motion to Dismiss was received by Plaintiffs' counsel on November 12, 2010. Plaintiffs' counsel forwarded a copy of this Order to counsel for Defendants on November 12, and stated in the email that counsel "look[ed] forward to receiving your Answer on or before November 29, 2010." (See Exhibit A to Affidavit of Kenneth B. Wingate.) Three days later—on November 15—Plaintiffs' counsel received a copy of the Affidavit of Default (filed November 10, 2010). Plaintiffs filed this Motion on November 16, 2010, the day after receiving the Affidavit of Default. Plaintiffs also filed an Answer to the Counterclaims on November 16, 2010.

STANDARD OF REVIEW AND APPLICABLE LAW

According to Rule 55(c) of the South Carolina Rules of Civil Procedure, “[f]or good cause shown the court may set aside an entry of default . . .” Rule 55(c), SCRPC. The Court of Appeals has explained that the “good cause” standard “requires a party seeking relief from an entry of default . . . to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 144-45, 719 S.E.2d 703, 706 (Ct. App. 2011) (quoting Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)). Once a satisfactory explanation is provided, “the trial court must also consider [the Wham factors]: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” Id. (quoting Sundown Operating Co. at 607-608, 681 S.E.2d at 888) (reciting the factors taken from Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). The trial court need not make specific findings of fact regarding each factor “if there is sufficient evidence in the record to support the trial court’s decision. Id. (citing Sundown Operating Co. at 608, 681 S.E.2d at 888). Finally, “the decision whether to set aside an entry of default is within the sound discretion of the trial court.” Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)).

ARGUMENT

I. THE ATTORNEY GENERAL’S OFFICE CANNOT BE HELD IN DEFAULT.

In its statutory role as the protector of charitable trusts, the Attorney General's Office is a party plaintiff in this case. The Attorney General's Office, as an agency of the State of South Carolina, cannot be held in default. Rule 56(e), SCRCP.

II. PLAINTIFFS CAN PROVIDE A SATISFACTORY EXPLANATION FOR THE ENTRY OF DEFAULT, AND CAN DEMONSTRATE THAT THE WHAM FACTORS ARE SATISFIED. THEREFORE, PLAINTIFFS HAVE SHOWN "GOOD CAUSE" WHY THE COURT SHOULD SET ASIDE THIS ENTRY OF DEFAULT.

A. Explanation for Default.

As set forth in the Affidavit of Kenneth B. Wingate, the explanation for Plaintiffs' default on the Counterclaims is simple: Defendants served their Answer and Counterclaims the day before proposed orders on Defendants' Motion to Dismiss were due. Plaintiffs were in the process of preparing said orders and awaiting the Court's ruling on Defendants' Motion to Dismiss. Defendants filed their Answer and Counterclaims *without withdrawing their pending Motion to Dismiss*. Defendants therefore filed their Answer and Counterclaims at an odd time in the litigation, when Plaintiffs would not be expecting an Answer or Counterclaims, because Defendants' Motion to Dismiss was pending, orders were being submitted, and—importantly—Defendants' had not withdrawn their Motion to Dismiss. This smacks of a litigation tactic intended to take advantage of the circumstances. Plaintiffs responded immediately when notified of the default.

Vacating this default would serve the ends of justice by allowing Plaintiffs to defend the Counterclaims against them, which involve many of the same issues as Plaintiff's primary claims against Defendants. See Part II.B.ii., infra. Plaintiffs are also not the stereotypical defaulting party, since they have been actively participating in (and indeed initiated) this lawsuit. Plaintiffs have not slept on any of their rights.

B. Wham Factors.

i. Timing of the Motion for Relief.

As set forth in the Affidavit of Kenneth B. Wingate, the Affidavit of Default (dated November 10, 2010) was received by Sweeny, Wingate & Barrow, P.A. on November 15, 2010. Plaintiffs filed this Motion the next day, November 16, 2010. Clearly, Plaintiffs did not waste any time in responding to the Affidavit of Default, and Plaintiffs have thus satisfied the first Wham factor.

ii. Meritorious Defenses.

Of note are the nature of Plaintiffs' primary claims for breach of fiduciary duty against Defendants. All parties are actively litigating these primary claims, which amount to meritorious defenses to Defendants' Counterclaims. If these primary claims prevail, Defendants cannot logically succeed in their Counterclaims (involving allegations of Plaintiffs' alleged improper actions).

Plaintiffs also filed and served an Answer to Counterclaims on November 16, 2010. In Plaintiffs' Answer, Plaintiffs deny the factual assertions of Defendants' Counterclaims. Therefore, the issues on the counterclaims are joined and suitable for resolution by the Court or a jury.¹ Plaintiffs also assert the affirmative defenses of Rule 12(b)(6), waiver, estoppel, unclean hands, and *res judicata*/collateral estoppel, and are prepared to move forward in establishing those defenses.

¹ Plaintiffs do not concede that Defendants' Counterclaims would survive a dispositive motion, and Plaintiffs specifically reserve the right to file such motions on the Counterclaims. Plaintiffs are simply pointing out to the Court that they deny Defendants' allegations in the Counterclaims and will contest all such issues.

Through their case-in-chief and their denials/affirmative defenses relating to Defendants' Counterclaims, Plaintiffs have shown that they have meritorious defenses to the Counterclaims. Thus, the second Wham factor is satisfied in favor of Plaintiffs.

iii. The Degree of Prejudice to Defendants.

In light of the ongoing nature of this litigation and Plaintiffs' immediate filing of a Motion to Set Aside the Default, Defendants have not and will not suffer any prejudice if the Court sets aside the entry of default. Discovery in this case is ongoing, so Defendants will have ample opportunity to develop the facts needed to establish their Counterclaims. Further, Defendants have known—ever since the day after they filed the Affidavit of Default—that Plaintiffs contested the default. Thus, Defendants' overall litigation strategy cannot have been colored by reliance on the entry of default, because Defendants have had notice of this Motion since November 16, 2010. Defendants will suffer no prejudice if this default is lifted. The third Wham factor is satisfied in favor of Plaintiffs.

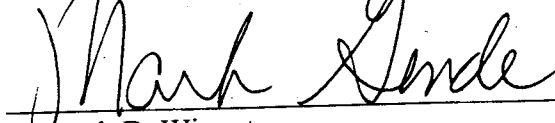
CONCLUSION

For the foregoing reasons, Plaintiffs assert that there is "good cause" to set aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs. Additionally, the Attorney General's Office cannot be held in default. Therefore, this Motion should be granted.

[Signature Block on Following Page]

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

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ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
April 11, 2012

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 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 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

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. 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 CIRCUIT

Civil Action No. 2010-CP-49-4900

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

2012 APR 11 PM 4:53

RICHLAND COUNTY
FILED

**PLAINTIFFS' MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT POPE'S MOTION TO
DISQUALIFY SWEENEY, WINGATE &
BARROW, TO ENJOIN RUSSELL
BAUKNIGHT, TO SET DEPOSITIONS,
AND TO AMEND ANSWER
FOLLOWING DEPOSITIONS**

For the following reasons, Plaintiffs respectfully request that the Court deny all of Defendant Pope's multiple requests associated with this Motion.

FACTUAL AND PROCEDURAL BACKGROUND

This case is but one of many stemming from the probate of the Estate of the late singer and entertainer James Brown. Under Mr. Brown's estate plan, several of his relatives were named as beneficiaries of the will (the individual plaintiffs in this action), and two charitable trusts were established, one in favor of some of his relatives in support of their education, and another in favor of needy children in general in Georgia and South Carolina. This current action is brought by the successor personal representative/trustee against the prior personal representatives/trustees in order to recover the funds of the Estate and Trusts that were tortiously squandered by the Defendants. The interests of the charitable trusts are also represented by the office of the Attorney General, pursuant to his statutory authority to administer and enforce charitable trusts. The squandered funds were to be used to fund the settlement agreement resolving the underlying distribution of funds to the takers of the Estate and the charitable trusts.

STANDARD OF REVIEW

In South Carolina, orders granting motions to disqualify counsel have been held to affect a party's "substantial rights," and are therefore immediately appealable in spite of their intermediate nature. See Hagood v. Sommerville, 362 S.C. 191, 197-98, 607 S.E.2d 707, 710 (2005); see also id. ("The right to be represented by an attorney of ones choosing is one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken, or could discontinue an action due to the potential impact on both the attorney-client relationship and the overall litigation and trial of the case").

ARGUMENT

1674

In her Motion, Defendant Pope requests an order from the Court granting her five types of "relief": 1) Defendant Pope seeks to have the law firm of Sweeny, Wingate & Barrow disqualified/enjoined from representing the Attorney General in this matter, 2) to have Russell Bauknight enjoined from being the agent of the Attorney General, 3) to have the Attorney General dismissed as a party plaintiff in this action, 4) to have a day certain set for the depositions of Attorneys General Henry McMaster and Alan Wilson, and 5) to be allowed to amend her answer/counterclaims/crossclaims after the depositions to add parties to the litigation (i.e. to add/substitute various members of the office of the Attorney General, including the Attorney General himself, as individual parties to the litigation). Plaintiffs address each of Defendant Pope's requests in turn.

1. **Defendant Pope has no valid basis for moving to disqualify Sweeny, Wingate & Barrow as special counsel for the Attorney General; it is the well-established law of South Carolina that the Attorney General may appoint private special counsel to represent the State's interests in tort lawsuits. Further, Defendant Pope's attempts to point to other reasons for disqualification have no merit.**

In her Motion and accompanying Affidavit, Defendant Pope seeks the disqualification of Sweeny, Wingate & Barrow from this case because the firm is both Special Counsel to the Attorney General and counsel to the individual Plaintiffs and Plaintiff Bauknight. Defendant Pope proffers many confusing and meritless contentions to support her argument, including A) that the appointment of special counsel violates her Due Process and First Amendment rights, B) that the appointment of special counsel is generally illegal and void, C) that there is a conflict of interest for Plaintiffs' counsel, among other confusing contentions. Plaintiffs address these specific arguments in turn in the corresponding paragraphs that follow.

A) Plaintiffs counter all of Defendant Pope's arguments by directing the Court to the well-established law of South Carolina. The Attorney General's use of special counsel is

expressly allowed by the law and there is no conflict of interest for Plaintiffs' counsel. 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 A (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)). Judge Couch also specifically rejected the Due Process argument. See Order of Judge Couch, p. 15 ("Lilly contends that the use of contingent fee representation against it violates its due process rights. This argument is meritless"). 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, Defendant Pope's contention that the Attorney General may not employ private counsel is without merit under the well-established law of South Carolina.

In her Affidavit, Defendant Pope directs the Court's attention to a pending case in Spartanburg County wherein a major pharmaceutical company is challenging the Attorney General's appointment of special counsel in a SCUTPA proceeding against the pharmaceutical company. See AstraZeneca Pharmaceuticals v. Wilson, Case No. 2011-CP-42-1213 (filed March 14, 2011). In that case, the plaintiff claims that the appointment of special counsel on a contingent fee basis in a quasi-criminal proceeding violates its constitutional rights. In this action, Plaintiffs are not seeking any criminal penalties or sanctions against Defendants. Further, Plaintiffs do not bring any quasi-criminal type cause of action, nor are Plaintiffs bringing any type of SCUTPA-like "enforcement" action. To use Judge Couch's words from Lilly, "this is a tort action plain and simple." See Order of Judge Couch, p. 6. Plaintiffs are seeking nothing more than the damages required to make them whole. Plaintiffs have sued Defendants for breach of fiduciary duty, breach of trust, and negligence. None of these causes of action have anything to do with criminal or quasi-criminal remedies. Thus, this case is squarely within the boundaries set forth by Lilly and Cooley. AstraZeneca is inapplicable.

In her Memorandum, Defendant Pope cites to three non-controlling cases from other jurisdictions to support her contention that the fee agreement in this case violates her rights.¹ Ms. Pope's Memorandum misconstrues the holdings of all three cases, insofar as she contends that they support her position. In Marshall v. Jerrico, the United States Supreme Court held that a statutory provision in the federal Fair Labor Standards Act allowing the Secretary of Labor (via the Employment Standards Administration) to recover civil penalties for statutory violations—and then allowing regional ESA offices to receive reimbursement for the costs of litigating said

¹ One of the cases to which Ms. Pope cites is a U.S. Supreme Court case, Marshall v. Jerrico, Inc., 446 U.S. 238 (1980). At issue in that case was the Due Process Clause of the Fifth Amendment, not the Due Process Clause of the Fourteenth Amendment. Thus, a technical reading of the case would reveal that its holding does not apply to the

cases from the amount recovered as a civil penalty—to be constitutional under the Due Process Clause of the Fifth Amendment. See 446 U.S. 238, 252 (1980). Making many of the same arguments as the Defendant in this case, the challengers to the statute in Marshall argued that the fee/cost provision violated the Due Process Clause’s guarantee of “neutrality in adjudicative proceedings.” Id. at 242. The Court noted that the strict neutrality requirements of some of the Court’s other cases did not apply in a situation where the agency was acting in an adversarial, prosecutorial/plaintiff-like function rather than in a quasi-judicial capacity. See id. at 243-44, 248 (citing Tumey v. Ohio, 273 U.S. 510 (1927); Ward v. Village of Monroeville, 409 U.S. 57 (1972)). One of the reasons the Court held as it did was because “it is plain that the enforcing agent is in no sense financially dependent on the maintenance of a high level of penalties.” Id. at 251. In this case, no one at the Attorney General’s office stands to benefit personally from the outcome of this litigation. Thus, the Marshall case, by its own terms, does not apply to cases where the government is in a “plaintiff-like” capacity. Further, the Attorney General’s employment of Special Counsel is expressed allowed by South Carolina law, see Lilly discussion, supra, even if Special Counsel is retained on a contingency basis. Defendant Pope has no valid Marshall argument.

In County of Santa Clara v. Superior Court, the Supreme Court of California examined the propriety of contingency-fee special counsel in an action for the abatement of an alleged public nuisance. 235 P.3d 21, 25 (Cal. 2010). In concluding that such fee agreements were not per se unconstitutional, the Court rejected a reading of one of its prior cases that in any way construed public nuisance actions as always triggering the “constitutional and institutional interests present in a criminal case.” See id. at 31-32 (citing People ex rel. Clancy v. Superior

States. However, should the Court choose to apply the rule from Marshall, Plaintiffs argue that it favors their position, not Ms. Pope’s.

Court, 705 P.2d 347 (Cal. 1985)). Additionally, and more important for the purposes of the instant litigation, the Court noted that “in ordinary civil cases, we do not require neutrality when the government acts as an ordinary party to a controversy, simply enforcing its own contract and property rights against individuals and entities that allegedly have infringed upon those interests . . .” Id. at 33 (emphasis added). The Court then proceeded to set forth factors to determine whether a contingency fee agreement in a public nuisance action was constitutionally permissible. See id. at 36-40. Defendant Pope would have this Court apply these factors to this case, but Plaintiffs would point out to the Court that Santa Clara appears to apply only in the public nuisance setting. See id. at 35 (“We must determine whether this heightened standard of neutrality is compromised by the hiring of contingent-fee counsel to assist government attorneys in the prosecution of a public-nuisance abatement action. . .”). Defendant Pope’s reliance on Rhode Island v. Lead Industries Association, Inc. is similarly misplaced, as that case involved private counsel in a public nuisance action. See 951 A.2d 428, 434 (R.I. 2008). The instant action in no way involves public nuisance, quasi-criminal, or criminal causes of action.

B) Defendant Pope states generally that the representation agreement in this case is “illegal and void.” Plaintiffs assert, for the various reasons mentioned in the Memorandum, that they are proceeding precisely according to the law of South Carolina. Defendant Pope also discusses the alleged impropriety of a campaign contribution made by Sweeny, Wingate & Barrow member Mark S. Barrow to a campaign of former Attorney General McMaster. In her Affidavit, Ms. Pope simply states that she is “informed and believe[s]” that such a contribution was illegal. In an effort to bolster her position, Ms. Pope cites to S.C. Code Ann. § 8-13-1342 and claims that the fee agreement in this case is a “clear violation” of the statute. What Ms. Pope’s argument ignores, however, is Mr. Barrow’s First Amendment right to contribute to the

candidate of his choice. Moreover, the State Ethics Commission has expressly condoned donations to the Attorney General from lawyers working as special counsel. See Order of Judge Couch pp. 29-30 (citing Ethics Op. SEC A092-019 (Dec. 18, 1991)). In construing § 8-13-1342 vis-à-vis special counsel's donations to attorney general campaigns, the Ethics Commission has held the statute inapplicable:

The Commission does not believe that the General Assembly intended to restrict campaign contributions to the extent that employees of companies that contract with the State would be prohibited from making a campaign contribution. Accordingly, the Attorney General's campaign may accept campaign contributions from lawyers and employees of firms that receive contracts to provide legal services under the Attorney General's Associate Counsel Program.

Ethics Op. SEC A092-019 (emphasis added).

C) Lastly, Plaintiffs assert that there is no conflict of interest created by the law firm of Sweeny, Wingate & Barrow representing both the interests of the charitable trusts (as counsel for the Attorney General and for Russell Bauknight) and the interests of the takers under the will (as counsel for the individual Plaintiffs). All parties share exactly the same interest: to recover the tortiously squandered funds that would have been distributed according to the settlement agreement agreed to by all parties to the estate plan [save the Defendants in this action].

Regarding any other contention Defendant Pope may raise in her arguments concerning this motion, Plaintiffs assert that Defendant Pope is simply making irrelevant, unfounded arguments in an attempt disqualify Plaintiffs' counsel. Defendant Pope's contentions ignore the law of South Carolina as set forth in Lilly and Cooley.

2. **Defendant Pope's desire to have Russell Bauknight enjoined as an agent of the Attorney General is a non-sequitur. Mr. Bauknight is not, and does not purport to be, anything other than the court-appointed successor personal representative/trustee of the estate plan of James Brown. As previously stated, the estate plan created charitable trusts, trusts in which the Attorney General has an interest.**

Defendant Pope takes issue with the “agency” relationship she alleges to exist between Plaintiff Bauknight and the Attorney General’s office, and wishes to have Mr. Bauknight enjoined from “speaking for” the State. Defendant’s argument is illogical.² Mr. Bauknight is doing no such thing as “speaking for” the State. Plaintiffs’ counsel speaks for the Plaintiffs, both governmental and individual, in this litigation. Furthermore, Mr. Bauknight is simply the court-appointed successor trustee of two charitable trusts, trusts in which the Attorney General has an interest that arises as a matter of law. As such, the relationship between Mr. Bauknight, the Attorney General’s office, and Plaintiffs’ counsel in this case is simply patterned according the appropriate statutory scheme for enforcing charitable trusts. See S.C. Code Ann. § 62-7-405(c) (1976) (emphasis added) (“The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce [a charitable trust]”).

The Attorney General in his *parens patriae* capacity has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and the Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. See South Carolina Dep’t of Mental Health v. McMaster, et al., 372 S.C. 175, 642 S.E.2d 52 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities); Epworth Children's Home v. W. F. Beasley, et al., 365 S.C. 157, 616 S.E.2d 710 (2005); and Furman Univ. v. McLeod, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); see also S.C. Code Ann. §1-7-130 and S.C. Code Ann. § 62-7-405(c).

² Plaintiffs submit that none of the pleadings in this case even give rise to a colorable argument in favor of a preliminary injunction. A preliminary injunction is proper only when “(1) [the plaintiff] would suffer irreparable harm if the injunction is not granted; (2) the party seeking injunction will likely succeed in the litigation; and (3) there is an inadequate remedy at law.” Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (citing Scratch Golf Co. v. Dunes West Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004)). As discussed at length in this Memorandum, Defendant Pope’s contention that she suffers “injury” from the structure of this action is unwarranted and contrary to South Carolina law.

Section 62-7-405(c) also allows the settlor, trustee, and among others [i.e. parties with “special interests”] to enforce a charitable trust. § 62-7-405(c). 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, Section 1-7-130 provides the Attorney General with a specific statutory mandate to act in a protective manner with respect to charitable funds.³ In Furman 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).

The general law is that the purpose for providing authority pursuant to statute to allow other parties to bring an action to enforce charitable trusts was to provide assistance to the Attorney General because of that Office’s lack of resources to be in all charitable trust cases. See Bogert Trusts and Trustees § 411 (“Since the Attorney General protects the rights of the people of the state, he has been chosen as the protector, supervisor, and enforcer of charitable

³ “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).

trusts”). In light of the law allowing the Attorney General to take part in litigation involving charitable trusts—even alongside other parties with standing who have brought suit on behalf of the trust—Defendant Pope’s claim that Mr. Bauknight is somehow improperly “speaking for” the State is rendered meritless.

Defendant Pope takes significant issue with the wording of the caption in this matter. Specifically, she argues that the phrase “Russell L. Bauknight . . . on behalf of Henry Dargan McMaster” evidences an inappropriate agency relationship between Bauknight and the Attorney General. For the reasons stated in the paragraphs above, Plaintiff Bauknight and the Attorney General are simply following the appropriate statutory model for enforcing a charitable trust. Further, and even if the caption is incorrectly worded—a point Plaintiffs do not concede—it is of no consequence to the substance of this action. The law is clear that a mistake in the caption, not affecting notice to a party, is immaterial to the merits of the action. See Tyrolf v. Veterans Administration, 82 F.R.D. 372, 374 (E.D. La. 1979) (“[A] defective caption does not deprive the court of its power to look beyond the caption in order to determine jurisdiction . . . ‘the caption usually is not considered a part of the pleader’s statement of claim or response and is not determinative as to the parties to the action or the Court’s jurisdiction...’”) (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1322 at 458-61).⁴ Defendant Pope’s attempts to point to a problem with the caption are unavailing in light of the proper statutory framework for this action.

⁴ See also Jensen v. Conrad, 292 S.C. 169, 171, 355 S.E.2d 291, 292 (Ct. App. 1987) (“[T]he defendants have not claimed that they were misled or otherwise prejudiced by the designation of the incorrect county in the caption of the summons. An error in a non-essential portion of the summons cannot affect its validity unless prejudice is shown”) (citations omitted); U.S. v. Providence Journal Co., 108 S.Ct. 1502, 1511 n. 11 (1988) (“How a case is captioned is of no significance to our holding . . . courts must look behind names that symbolize the parties to determine whether a justiciable case or controversy is presented.”) (internal quotation marks omitted). See generally 27 Tammy B. Farrell et al., Fed. Proc. L. Ed. § 62:104 (2008) (“[t]he caption of a complaint is not part of the statement of the claim . . . courts give effect to the substance of a document and not to its caption”).

3. **Defendant Pope's contention to remove the Attorney General as a party plaintiff in this action ignores the well-established statutory and case law of South Carolina, which expressly grants the Attorney General the authority to administer and enforce charitable trusts.**

In the interests of conciseness, Plaintiffs will not belabor the law set forth in Section 2, supra, establishing the Attorney General's interest in charitable trusts. Moreover, if Defendant Pope still challenges the Attorney General's place in a private tort action against private, individual defendants, Plaintiffs will reiterate the law as set forth by Judge Couch in his prior Order: "In its *parens patriae* role, the State of South Carolina acts to protect children, charities, and other members of society who need special protection . . . In cases where it is fulfilling its *parens patriae* role the State of South Carolina may be adversarial to allegedly abusive or neglectful parents, negligent charitable trustees, or other wrongdoers." Order of Judge Couch, p. 7 (citation omitted); see also Epworth Children's Home v. W. F. Beasley, et al., 365 S.C. 157, 163, 616 S.E.2d 710, 713 n.3 (2005) (citing Furman at 482, 120 S.E.2d at 868) ("The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts").

4. **It is improper for Defendant Pope to seek to depose Attorneys General McMaster and Wilson in their individual capacities.**

Plaintiffs contest the need for Defendant Pope to depose either Attorney General McMaster or Attorney General Wilson in their individual capacities. Neither individual is a personal party to this litigation; rather, it is the Office of the Attorney General that is pursuing this lawsuit and the other related suits. Further, any information gleaned from either Attorney General would undoubtedly be the work product—including thoughts and mental impressions—of an attorney working on the case. See SCRCP 26(b)(3) (mental impressions of party's attorney

receive special protection, even when court orders other trial preparation materials turned over in discovery). Plaintiffs assert this is wholly inappropriate and unnecessary.

5. Defendant has no legal basis on which to seek amendment of her pleadings to add any of her “suggested” parties to litigation.

In her Motion and her Affidavit, Defendant Pope claims that adding Attorneys General McMaster and Wilson, Assistant Attorney General Jones, and Russell Bauknight as individual plaintiffs and/or counterclaim defendants in this action will provide “relief” for her alleged constitutional injuries. As discussed in Sections 1 and 2, supra, Defendant Pope has no valid constitutional complaint with respect to the way this action is structured, because all parties are acting in their statutorily appointed roles. Further, and without delving into the intricacies of the South Carolina Tort Claims Act, Plaintiffs assert that any attempt to name state officers in this suit is improper. All state officers in this case were obviously acting within the scope of their roles as legal officers of the State in making their strategic decisions as to how best proceed with this and related litigation. See S.C. Code Ann. § 15-78-70(a) (1976).⁵ Defendant’s allegations make no plausible claim to the contrary. Additionally, any attempt to add Russell Bauknight as an individual is also improper, since he is acting solely in his capacity as successor personal representative/trustee.

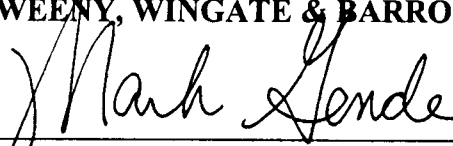
CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that all requests made by Defendant Pope in this Motion before the Court are unfounded. Therefore, the Motion should be denied.

Respectfully submitted,

⁵ “(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).” S.C. Code Ann. § 15-78-70(a) (emphasis added).

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Aaron J. Hayes

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

April 11, 2012

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Plaintiff, do hereby certify that I have served a copy of **PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT POPE'S MOTION TO DISQUALIFY SWEENEY, WINGATE & BARROW, TO ENJOIN RUSSELL BAUKNIGHT, TO SET DEPOSITIONS, AND TO AMEND ANSWER FOLLOWING DEPOSITIONS** in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Adam T. Silvernail, Esquire
1218 Taylor Street
Post Office Box 1898
Columbia, SC 29202-1898
Attorney for Defendant Adele J. Pope

Daryl L. Williams, Esquire
Jeter & Williams, P.A.
1204 Main Street
Post Office Box 7425
Columbia, SC 29202
Attorney for Defendant Adele J. Pope

Robin A. Braithwaite, Esquire
Braithwaite, Farmer, Boni and Timmerman
759 Richland Avenue, West
Post Office Box 324
Aiken, SC 29802-0324
Attorney for Robert L. Buchanan, Jr.

J. Calhoun Watson, Esquire
Sowell, Gray, Stepp & Laffitte, LLC
1310 Gadsden Street, Columbia, SC 29201-3002
P.O. Box 11449
Columbia, SC 29211
Attorney for Robert L. Buchanan

Columbia, South Carolina
April 11, 2012


Linda D. Anderson

1687

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

MASS MITCHEMS

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.

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1688



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

and

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

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

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SUPPLEMENTAL
AFFIDAVIT OF ADELE J. POPE
SUPPORTING INJUNCTION
AGAINST WINGATE/BAUKNIGHT
REPRESENTING STATE/AG WHILE
REPRESENTING TOMMIE RAE,
TERRY AND OTHERS
AND OPPOSING RELIEF FROM
DEFAULT BASED ON VALIDITY OF
CLAIMS; PLAINTIFFS' FRAUD UPON
COURT DISCOVERY ABUSE AND
DAMAGE TO DEFENDANTS

JEANETTE W. POPE
C.C.P.
2012 APR 12 AM 9:14

RICHLAND COUNTY
FILED

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

1. This Affidavit is based on my personal knowledge and belief.
2. Robert Buchanan, Jr. and I have never opposed the Wingate Firm's
representation of its private adult clients: Tommie Rae Hynie, Terry and others.
3. I am informed and believe that the Wingate Firm's and Bauknight's fiduciary
duties to Tommie Rae and Terry are in direct conflict with the public interest and
preclude their being able to speak on behalf of the State/AG.
4. Since 2007 I have personally observed Wingate's private clients in James
Brown cases in Aiken County and elsewhere, and am informed and believe that the

conduct of some of them and some of their many attorneys has been the most egregious I have seen in my 30+ year legal career, including:

- a. Terry Brown, with his sons, filing 6 grievances in two states to obtain a result in Aiken County Case 2007-CP-02-0122.
- b. Bauknight's false accusation that Bob Buchanan and I committed the crime of overstating James Brown's music empire at about \$85 Million, while asserting to the IRS and the SC Supreme Court a fabricated less-than \$4.7 Million value of Brown's worldwide music empire.
- c. Deanna Brown's threats to ruin Bob Buchanan and me through Rule 11 sanctions and otherwise if we did not support the settlement.
- d. Tommie Rae's threats to sue us if we did not abandon our appeal in Case No. 2008-CP-02-1647 – a threat carried out by the Complaint in this action.
- e. Concealing public documents.
- f. Engaging and retaining lawyers to take opposing positions in separate cases at the same time.

5. My letters to Attorney General Wilson dated March 5, 2012 and April 1, 2012, with attachments, confirm my concern in Aiken County cases that Terry, Tommie Rae and Bauknight are interfering with recovery of the \$13+ Million taken by felon David Cannon and may attempt to conceal Tommie Rae's diaries. They are attached hereto as Exhibits A and B.

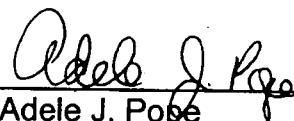
6. Attached hereto as Exhibits C, D, E and F are recent filings in the frivolous Federal suit brought by Terry Brown's son and joint venturer Forlando Brown 4 years ago. They outline some of the fraud Terry and Forlando have committed on the Courts.

7. As the documents and other filings herein show, Bob Buchanan and I have suffered financially and professionally during the 4 years it has taken to demonstrate that Forlando's January 2, 2008 suit against us was wholly without merit and brought to

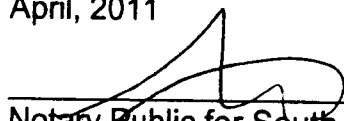
assist Forlando and Terry in the takeover of James Brown's assets and destruction of the James Brown "I Feel Good" Trust.

8. I ask the Court to relieve me of having to spend another 4 years confirming Terry and Tommie Rae's wrongdoing, and to prevent the Wingate firm from using the power of the State of South Carolina to make my task more difficult.

FURTHER DEPONENT SAYTEH NOT.


Adele J. Pope

SWORN TO befor me this 9th day of
April, 2011


_____(L.S.)
Notary Public for South Carolina
My commission expires: 7/13/2011

D:\Data\docs\BROWN ADMINISTRATION\AFFIDAVIT.SUPP.INJUNCTION.NOT RELIEVE FROM DEFAULT.WPD

EXHIBIT A

Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108

March 5, 2012

The Honorable Alan Wilson
Attorney General for the State of South Carolina
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

BY EMAIL and ORDINARY FIRST CLASS MAIL

Re: Cannon vs. PR, Estate of James Brown (Aiken # 2008-CP-02-1425)
Dallas vs. PR, Estate of James Brown (Aiken # 2008-CP-02-1426)
Est. of Bradley vs. PR, Estate of James Brown (2008-CP-02-1427)

Dear Attorney General Wilson:

This letter is written to comply with Rule 11 in the above cases, as well as all other cases in which I am – or may be – involved, individually, with the companion of James Brown, Tommie Rae Hynie ("Tommie Rae").

A former James Brown trustee recently called to my attention the importance of the personal diaries of Tommie Rae Hynie in confirming the validity of Brown's Estate Plan and saving The James Brown "I Feel Good" Trust. He also advised me that Tommie Rae and two of Brown's children were present when his Estate Plan was executed.

Use of the facts surrounding the execution of Mr. Brown's Estate Plan must await the decision of our Supreme Court, but Tommie Rae's diaries have a direct and immediate impact on Bob Buchanan's and my individual commission claims.

For that reason, I ask your help in seeking a modification of Jg. Early's 2008 orders related to Ms. Hynie's diaries, the contents of which we all have knowledge¹

While you have not yet moved to intervene in the above cases, your office has sought to prevent my intervention. So I trust that you plan to intervene.

I will briefly review the chain of custody of Tommie Rae's diaries:

Between James Brown's death on December 25, 2006 and January 22, 2007

¹I use "Knowledge" as it is defined in the S. C. Trust Code, since it is The James Brown "I Feel Good" Trust which Mr. Buchanan and I vigorously sought to defend.

custody of the diaries was jointly controlled by the original trustees ("Cannon Group") and Brown's daughters Yamma and Deanna.

From January 23 to August 10, 2007 the diaries were controlled by the Cannon Group, and were disseminated and discussed (without limitation) with Bob Buchanan and me as Special Administrators (SAs), numerous counsel, and others.

From August 10, 2007 the diaries were transferred to the central location where they were controlled until November 20, 2007 by Messrs. Dallas and Bradley, represented by Lewis & Babcock. During this time they remained available for reading, copying, etc., without restriction [except for a privilege box], by any interested party.

On November 20 the last of the Cannon Group resigned; Lewis & Babcock were relieved; and Bob and I became PR/Trustees. The documents remained available.

In early 2008 Wayne Byrd, Esquire, provided a typed copy of Tommie Rae's diary which was widely read, including by me and presumably the AG's staff.

On February 20, 2008, as the result of a telephone conference requested by Tommie Rae's counsel and held on February 14, 2008, the first order was issued, "restraining all counsel and all parties from disseminating" Tommie Rae's diaries or transcripts. No attempt was made to silence discussion among the large number of people who had already read and were aware of their contents.

A second order dated March 8, 2008 and filed March 10, 2008, was similar. It recited that the matter came before the Court on February 20, 2008 – the day the first order was issued.

On March 10, 2008 a third order referred to "several Motions filed by [Tommie Rae]," including a February 15, 2008 Motion to Require All Prior and Current Personal Representatives and Others to Return Diaries."

The March 10 Order directed Tommie Rae's counsel Robert Rosen to "hold these items as an officer of the court pending further order of the Court."

The March 10 Order, for the first time, stated "[n]o party shall use the information in the diaries for any purpose pending further order of the Court." The Court then ordered "[a]ll agents for all parties or counsel, or former counsel or former personal representatives, including all investigators" to turn over all copies of Tommie Rae's diaries to the Clerk of Court. Then the order went on to say:

No party waives any position on the admissibility or the discoverability of the diaries or copies. No party admits any liability for any improper or actionable act of any kind and all deny the same.

Throughout the above period Mr Byrd, Bob Buchanan and I – and presumably the AG – knew that Tommie Rae's diaries would – and should– be used to defeat her challenges to James Brown's estate plan, filed 3 months earlier, and otherwise as appropriate to promote the Estate Plan of James Brown from which she was excluded (in contemplation of their void marriage ceremony).

The Court acknowledged that Bob Buchanan and I were in possession of 90 boxes of documents², and did not require us to comb these boxes for diaries. It directed for the first time, however, that access to the boxes be limited to "counsel of record or paralegals or associates under the direct control of counsel of record in this case." The Court ordered that any party or counsel finding Tommie Rae's diaries or copies turn them over to the Clerk of Court.

While the Orders were well-intentioned and clearly issued to maintain an orderly discovery process, several problems interfered:

1. The Orders were issued in Case 122. By May 2008, however, the Court acknowledged that each James Brown case is separate under the Probate Code, and began to give separate case numbers to the many Brown cases.³
2. The Orders did not contain proper captions or give any idea whom the Court intended to bind, raising serious Due Process and First Amendment issues.
3. The Order not to disseminate information about the diaries was given without any notice or hearing to the multitudes it purports to bind.
4. As stated below, the contemplated discovery never took place.

What everyone planned to do to assure that James Brown's wishes were carried out was delayed by the May 28, 2008 Order of Jg. Cureton. It was then stopped entirely by the August 10, 2008 decision of AG McMaster to "stipulate" that Tommie Rae was Mr. Brown's wife.

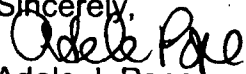
Mr. McMaster's stipulation, of course, does not bind Bob Buchanan, me or any person not a party to his agreement. Nor does it, in my opinion, diminish the wisdom of the use of the contents of the diaries to demonstrate the reasonableness of our vigorous defense of the Estate Plan of James Brown in our compensation cases.

²The 90 boxes had increased to more than 145 when we were replaced by Mr. Bauknight.

³See, for example, Ord. Dtd. 8/19/08 finding that the 3 above cases were inadvertently placed in Case 122, and should have the separate numbers set out above.

I ask that you join me in asking Judge Early to immediately release restrictions in the above orders so that Tommie Rae's diaries may be disseminated and used as appropriate in the above and other cases.

Thank you for your consideration and a prompt response.

Sincerely,

Adele J. Pope

P.S. I hope to use the contents of Tommie Rae's diaries in various matters, including:

1. Defense of Tommie Rae's claim for tens of millions of dollars by the Wingate Firm against Bob Buchanan and me in Richland County.
2. Bob's and my counterclaims against Tommie Rae for abuse of process; civil conspiracy; & intentional interference with contract in the Wingate Case.
(Tommie Rae is currently seeking relief from default as to the counterclaims.)
3. To prevent Tommie Rae, through Wingate, from intervening in my Newberry County Case under the S. C. Freedom of Information Act ("FOIA"), now in Richland.
4. In Bob's and my commission claims now pending in the Probate Court for Aiken County.
5. In my professional writings about AG McMaster's failure to properly determine James Brown's heirs under the DNA protocol established by Rodney Peeples, Esq. and implemented by Peeples and Lewis & Babcock, LLP, and how it damaged The James Brown "I Feel Good" Trust under the termination provisions of the Federal Copyright Act.

cc: Aiken County Probate Court (for file No. 2007-ES-02-0056)
Robert Buchanan, Jr
Albert Dallas
David Cannon
Estate of Al Bradley
Russell Bauknight

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE PROBATE COURT
CASE NUMBER: 2007-ES-02-0056

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2007-CP-02-0122

IN RE: THE ESTATE OF)
JAMES BROWN)
a/k/a JAMES JOSEPH BROWN)

ORDER RE: PETITIONER
TOMMIE RAE BROWN'S
MOTION FOR PROTECTIVE ORDER

COURT REPORTER:

LANA R. McMANUS, CSR

This matter came before the Court on Petitioner Tommie Rae Brown's Motion for a Protective Order. All counsel were duly notified. The Court heard the motion via telephone conference on Thursday, February 14, 2008.

The Court stays the deposition of Tommie Rae Brown scheduled for February 18, 2008 pending resolution of the status of the former personal representatives, Messrs. Dallas and Bradley. All counsel, including Mr. David Bell, who noticed the deposition, will be protected on the timeframe for taking Mrs. Brown's deposition regardless of any scheduling Order or other Order of the Court.

The Court issued an oral Order restraining all counsel and all parties from disseminating Mrs. Brown's diary or transcript thereof or any other privileged material owned by Mrs. Brown. The present and former Personal Representatives will not disseminate the diary or transcripts thereof whether or not originals or copies of same are in the Wells privilege box.

AND IT IS SO ORDERED.

[Signature]
Doyet A. Early, III

Resident Judge

Second Judicial Circuit (H.E.D.)

2-20-2008

Feb 20, 2008

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

[Signature]
C.C.P. & G.S.
[Signature] 20
Deputy Clerk

G:\R\LP8083\Disc\Order re TRB Mot for Prot Ord re DEPO.doc

FEB 20 2008

[Signature]
C.C.P. & G. S., Aiken County, S.C.
[Signature]
Deputy Clerk

1696

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE PROBATE COURT
CASE NUMBER: 2007-ES-02-0056

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2007-CP-02-0122

IN RE: THE ESTATE OF)
JAMES BROWN)
a/k/a JAMES JOSEPH BROWN)

ORDER REGARDING PETITIONER
TOMMIE RAE BROWN'S DIARIES

DATE OF HEARING:
PRESIDING JUDGE:
COURT REPORTER:

FEBRUARY 20, 2008
DOYET A. EARLY
LISA A. HICKLIN

This matter came before the Court on February 20, 2008, upon motion of Tommie Rae Brown for the return of her personal diaries and all copies thereof.

At that time, the Court issued an oral Order which the Court now reduces to writing requiring that all original diaries of Tommie Rae Brown be turned over to her counsel, Robert N. Rosen, immediately and that all counsel, former counsel, parties, former parties, personal representatives and trustees and former personal representatives and trustees and all of their agents and investigators and any other person in possession of a copy or copies of Tommie Rae Brown's diaries are restrained from disseminating or giving said copies to anyone or allowing any person to read said copies, pending further Order of the Court.

AND IT IS SO ORDERED.


Doyet A. Early, III
Resident Judge
Second Judicial Circuit

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

MAR 10 2008


Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.

Deputy Clerk

37 8
1697
5.10pm
Order Regarding Petitioner Tommie Rae Brown's Diaries

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE PROBATE COURT
CASE NUMBER: 2007-ES-02-0056

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2007-CP-02-0122

IN RE: THE ESTATE OF)
JAMES BROWN)
a/k/a JAMES JOSEPH BROWN)

SECOND ORDER RE: PETITIONER
TOMMIE RAE BROWN'S
MOTION FOR PROTECTIVE ORDER

DATE OF HEARING:
PRESIDING JUDGE:
COURT REPORTER:

DOYET A. EARLY

This matter comes before the Court on several Motions filed by Tommie Rae Brown: Motion for a Protective Order dated February 13, 2008; Motion for Protective Order, Sanctions and Fees dated February 18, 2008; and Motion to Require All Prior and Current Personal Representatives and Others to Return Diaries dated February 15, 2008.

All parties and all counsel agree that the original ~~and all copies~~ of Tommie Rae's diaries will be placed in the possession of Tommie Rae Brown's counsel, Robert N. Rosen, who will hold these items as an officer of the court pending further order of the Court. No party shall use the information in the diaries for any purpose pending further order of the Court. All agents for all parties or counsel, or former counsel or former personal representatives, including all investigators, shall turn over all diaries of Tommie Rae Brown and all copies thereof to the Clerk of Court. No party or counsel will disseminate the diaries or copies thereof.

No party waives any position on the admissibility or the discoverability of the diaries or copies. No party admits any liability for any improper or actionable act of any kind and all parties deny same.

The former personal representatives (Mr. Bradley, Mr. Cannon, and Mr. Dallas) will file an affidavit with the Court within 30 days explaining in detail how they came into possession of Tommie Rae Brown's diaries and any other personal papers or documents.

The motions will be held in abeyance pending further order of the Court.

The Personal Representatives have possession of 90 boxes of documents. Only counsel of record or paralegals or associates under the direct control of counsel of record in this case shall have access to the boxes without imposing on anyone the responsibility to search, if diaries or copies thereof are found in the boxes, any party and counsel (or their agent) finding them shall promptly turn them over to ~~Mr. Rosen~~ the Clerk of

AND IT IS SO ORDERED.

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

Doyet A. Early, III
Resident Judge
Second Judicial Circuit

MAR 19 2008

CCCP & G.A. Aiken
Deputy Clerk

3.7

8

5:10pm

1638

EXHIBIT B

**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

April 1, 2012

The Honorable Alan Wilson
South Carolina Attorney General
John W. McIntosh, Chief Deputy
Post Office Box 11549
Columbia, South Carolina 29211

Re: David G. Cannon vs. Estate of James Brown
Aiken County Case No. 2008-CP-02-1425 ("Case 1425")

Albert H. Dallas vs. Estate of James Brown
Aiken County Case No. 2008-CP-02-1426 ("Case 1426")

Alfred A. Bradley vs. Estate of James Brown
Aiken County Case No. 2008-CP-02-1427 ("Case 1427")

Dear Attorney General Wilson and Mr. McIntosh:

I received and thank Mr. McIntosh for his letter of March 29, 2012 confirming that my letter to Attorney General Wilson dated March 5, 2012 and second letter received on March 22, 2012 are under review.

I read Mr. McIntosh's letter after sending out a March 30 letter; a copy of the April 2011 draft of "Private Foundations, Copyright Heirs and Musical Millionaires: or Why the James Brown 'I Feel Good' Trust Doesn't.."; and an email. I enclose those three items to aid in your review.

Since the Attorney General has not moved to intervene in the three cases – or in Case 2008-CP-02-0322 ("Case 322"), which seeks return of \$13+ Million taken by Cannon and perhaps others – I am taking the liberty of setting out a chronology of events to help you with your review.

I believe that my personal goals as a former Trustee of The James Brown "I Feel Good" private foundation are wholly consistent with the public's interest: to recover as much as possible of the \$17 Million taken by Cannon from funds James Brown intended for scholarships for needy and deserving students; and to see that Cannon and his joint venturers do not destroy the "I Feel Good" foundation.

HISTORY and CHRONOLOGY - CASES 1425, 1426, 1427

December 25, 2006	James Brown dies.
Aug. 10 2007	CANNON resigns as Brown's PR/Trustee.
August 2007	CANNON and DALLAS contact Sonny Jones.
September 2007	\$5 Million CANNON took in 1999 discovered ¹ .
September 2007	CANNON, DALLAS, Bradley file \$15+ Million claims.
October 2007	AG McMaster intervenes in James Brown Case 122. ²
October 2007	CANNON reports to a friend: "[t]he tide seems to be turning. I went to the Attorneys General of SC & GA and they have entered the proceedings. The Judge and other attorneys have been quite [sic]."
November 20, 2007	DALLAS and Bradley resign.
January 2, 2008	FORLANDO Brown files federal suit to reinstate CANNON & DALLAS as trustees. ³
February 2008	Estate/2000 Trust sue CANNON, DALLAS for \$13+ million taken since 1999.
March 2008	CANNON, DALLAS & Bradley file Cases 1425 - 27 after their \$15+ Million claims disallowed by Estate.

¹ Cannon cashed and kept the \$5 Million "check to nobody" in the summer of 1999.

²Case 2007-CP-02-122 was brought to remove CANNON, DALLAS and Al Bradley.

³ In 2007 CANNON, FORLANDO & DALLAS, with attys. Powell Goldstein & Atlanta investors, proposed a \$100 Million sale/TPO of Brown's music empire. CANNON & DALLAS each sought \$5+ Million PLUS secret options or a "kickback" from the purchasers. FORLANDO was a secret 39% owner of the purchaser. His father Terry joined the group by early 2008.

August 2008	Estate moves for Summary Judgment, Case 1425 - 27. claims.
November 2008	CANNON forges & utters fake \$3.7 Million "agreement" with Brown, attempting to cover up takings.
May 26, 2009	Bauknight becomes PR/Trustee.
June 4, 2009	Bauknight directs Case 322 lawyers not to speak confidentially with Buchanan & Pope. ⁴
2009 - 2012	No action taken to defeat/dismiss Cases 1425/1426/1427. No recovery from CANNON or DALLAS in Case 322.
February 2010	CANNON indicted.
December 2010	Bauknight tells IRS Brown's music empire AND claims against CANNON/DALLAS worth less than \$4.7 Million. ⁵
Jan. 31, 2011	McMaster/Bauknight seek sanctions against Buchanan & Pope for filing brief to obtain costs from CANNON. ⁶
October 2011	Pope urges AG McNair to speak for victims -- needy and deserving students -- at CANNON plea.
Oct. 27 2011	CANNON enters plea. AG seeks no restitution or jail time.

⁴ Bob Buchanan and I helped discover most of the \$17 Million taken by CANNON, but (with Messrs. Few/Gilreath) honored the request made by Bauknight, through David Black, Esq., just 10 days after his appointment. I believe it gutted claims against CANNON & DALLAS.

⁵ I have a personal interest in correcting this misstatement because Mr. Bauknight and the AG's office have made false, criminal assertions to the IRS (Bauknight) and to the Ct. of Appeals that Mr. Buchanan and I fabricated the \$85 Million (\$100 MM less TIAA debt) value of Brown's music empire on the federal estate tax return to get a large commission.

⁶ My FOIA request for documents showing how McMaster -- 3 weeks after leaving office -- asserted his former position to seek sanctions against me has, to date, revealed no answer.

Dec. 2011 - Jan. 2012	Pope moves to intervene/dismiss/defeat \$15+ Million Claims of CANNON and others in Cases 1425 - 27.
Feb. - March 2012	AG Wilson, Bauknight work to prevent or delay hearing on Dismissal of CANNON, other claims.
March 1, 2012	CANNON/Bauknight file Stipulation of Dismissal, Case1425, without notifying Jg.Early, parties. No attorneys' fees or Rule 11 costs sought from CANNON for frivolous \$6 Million claim.

I hope the above facts will make your review easier.

I request that either Mr. McIntosh or Attorney General Wilson – or both – allow Mr. Buchanan and me a brief opportunity to discuss these important cases with you in person before the hearing Judge Early has now scheduled for the 23rd of April. I can be reached at 803-413-0753.

Thank you for your consideration.

Sincerely,



Adele J. Pope

AJP/ja
Enclosures:

1. Letter of Pope to David G. Cannon and others dtd. 3/29/12
2. Private Foundations, Copyright Heirs and Musical Millionaires: or Why the James Brown "I Feel Good" Trust doesn't.. [Draft 4/11]
3. Email - Pope to various persons, 3/29/12

Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108

March 30, 2012

David G. Cannon
P.O. Box 865
Barnwell, SC 29812

Russell Bauknight, Individually & as
PR of the Estate of James Brown and
Trustee of the James Brown 2000 Irrevocable Trust
% David Black, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Estate of Alfred A. Bradley
1803 Green Pond Rd.
Aiken, SC 29803

Robert L. Buchanan, Jr., Esquire
212 Newberry Street NW
P.O. Box 463
Aiken, South Carolina 29802-0463

**Re: Cases 2007-CP-02-1425, -1426
and -1427; all *pro se* claims of
Robert L. Buchanan, Jr., ALPS,
The Hartford, James D. Bailey, Esq;
and/or Tressa T.H. Hayes related to
The Estate of James Brown and/or
The James Brown 2000 Irrevocable Trust**

The Honorable Alan Wilson
Attorney General for the State of South Carolina
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

Gentlemen:

I am writing you in response to Judge Early's email of March 29, 2012 and in compliance with Rule 11. As we all know, regardless of the outcome of the Supreme Court's decision in Case 1647 the claims of all creditors and taxing authorities must be resolved prior to turning the assets over to the Legacy Trust.

With more than thirty lawyers and six fiduciaries having filed more than \$20 Million of claims – \$15+ Million with Summary Judgment pending since 2008 and more than ½ million paid by Mr. Bauknight since December 2011 – it seems to me that the parties and those who have moved to intervene should go to Judge Early on the

23rd of April with an orderly plan to proceed with resolution of Cases 1425, 1426 and 1427 – as well as others.

Here are my thoughts – and request – related to these issues:

1. The January 8, 2008 Order for Partial Payment to Buchanan/Pope

a. I believe Bob Buchanan and I should be paid as directed by the Order of Jg. Early dated January 8, 2008. [See filings in the Probate Court for exact amount as of September 1, 2009 – about \$2.1 Million. Interest is accruing since that date.]

b. The payment to us – like any payment to Bauknight or anyone he has engaged – will be subject to disgorgement if the claims or counterclaims in Richland County Case 4900 produce a judgment against us/Bauknight.

2. The ALPS claim should be resolved and paid as a priority expense of administration. When paid by the Estate/2000 Trust, the ALPS claim against Forlando – including claims for a frivolous proceeding – would be assigned to the Trust to collect against Forlando in the Federal Proceeding.

3. The Hartford/Buchanan claim should be resolved and paid in a similar manner.¹

4. The claim of James D. Bailey – like that of Cam Lewis' Firm and Rodney Peeples, Esq. – should be paid in full for the following reasons:

a. He faithfully served the Estate/2000 Trust under the applicable documents.

b. He properly defended the Estate Plan – win or lose.

¹ While the Forlando Federal Case is still pending, my Motion to Dismiss for lack of prosecution – based largely on Forlando's false and frivolous filings – is pending, and a similar motion by Mr. Buchanan is expected. Jg. Bertelsman has terminated all counsel for Forlando – terminated by Forlando in late 2011; and Forlando has violated the Court's orders to obtain new counsel and to respond to my Status Report. If his Complaint is dismissed, the 2000 Trust and Bob Buchanan and I individually have counterclaims against Forlando, including for attorneys' fees and costs. Mr. Bauknight has been asked to intervene to protect the 2000 Trust as to its counterclaims. To date he has declined to do so.

c. The debt, incurred under a valid contract with the then-PR/Trustees, was liquidated in 2009 and should be earning interest at 8 3/4% (simple interest)

5. The Cannon Claim needs to be properly resolved:

While motions have been going back and forth in Case 1425 since my January 4, 2012 Motion to Intervene and Dismiss, apparently Mr. Pickelsimer – who said he was not representing Mr. Cannon in 1425 – and Nexsen Pruet attorney Wm. Newsome entered into and filed a Stipulation of Dismissal of Case 1425, signed in February. I found this in the Court House yesterday (March 29, 2012). I suggest:

- a. This apparently means the Estate is not seeking either costs or frivolous proceedings relief or attorneys' fees against Mr. Cannon for the \$6 Million filing.
- b. Someone involved in the Dismissal should notify Jg. Early, since this happened after my motion to intervene – but nearly six weeks ago.

6. The Dallas Claim needs to be properly resolved:

This week Mr. Dallas – still *pro se* - told me that any suggestion that Mr. Buchanan's and my intervention should be delayed until he has obtained counsel is incorrect; that he may obtain counsel; but that he and his Bankruptcy Trustee have already consented to our intervention. He also confirmed that he is ready to proceed with his \$6 Million claim, which he bases on:

- a. Vigorous defense of the Estate Plan of James Brown;
- b. Vigorous defense of all claims of Tommie Rae;
- c. Assertion that Tommie Rae is not Brown's wife, and James II could not be his son;
- d. \$100 Million value of the Estate/2000 Trust and offers he procured and left with the Court.
- e. His service to James Brown and/or purported agreements.

My individual position is that:

- a. Mr. Dallas' claim should be dismissed for lack of prosecution.

- b. If not, Summary Judgement should be granted.
- c. Mr Dallas' \$6 Million claim should fail based on the following:
 - 1. Mr. Dallas vigorously defended the Estate Plan;
 - 2. The Estate/2000 Trust were worth \$100 Million LESS the TIAA debt when Mr. Brown died.
 - 3. Mr. Dallas, with Cam's firm and Jg. Peeples, vigorously defended against the claim of Tommie Rae, uncovering the vasectomy; numerous affidavits; and the legal history necessary to defeat her claim – but for the Settlement.
 - 4. Mr. Dallas, with Jg. Peeples, established a DNA protocol to protect Brown's copyrights .[See my article: Private Foundations, Copyright Heirs and Musical Millionaires: or Why The James Brown "I Feel Good" Trust doesn't...]
 - 5. Mr. Dallas, however, was present and serving as a co-fiduciary when David Cannon took \$17 Million and did nothing to stop it.
 - 6. Mr. Dallas has done nothing to help recover the missing \$17 Million.
 - 7. The Estate/Trust's position as set out by Mr. Few and Mr. Gilreath in Case 322.

7. Case 322 - Claims against Dallas, Bradley, Cannon, Farr and GT:

- a. Filings and information show that Farr, Enterprise Bank and Bradley have been settled.
- b. No apparent action to proceed against either Cannon or Dallas.
- c. This Case – filed on behalf of Mr. Buchanan and me as PR/Trustees in February 2008 – should proceed to its conclusion.

8. The Buchanan/Pope PR/Trustee Commission claim & the Bauknight Claim, through 2011:

These claims are ready to be heard and decided, but should be heard AFTER the Dallas claim is resolved.

As you may know, I qualified as an expert in Probate and Trust law in Case 1647. Based on my above-referenced article, I request that you agree my area of expertise now extends to the relationship of heirs under State Law and the Federal Copyright Act.

Thank you for your consideration. I hope we will have an opportunity to speak before April 23 and resolve some of the above matters.

Sincerely,

s/

Adele J. Pope

AJP/ja
Enclosure for some - My Article

Draft (4/11) for Editing only - Do not copy

Private Foundations, Copyright Heirs and Musical Millionaires:
or
Why The James Brown "I Feel Good" Trust doesn't...

By Adele J. Pope and W. Jeffrey Smith¹

©²
2011

God has Smiled on Me³

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

¹ Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

² While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

³ The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

Draft (4/11) for Editing only - Do not copy

Anticipating trouble from relatives who knew about Brown's estate plan but did not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody⁴

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.⁵

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."⁶

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation –

⁴ The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

⁵ AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

⁶ WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Will; claims of Brown's companion; and other claims. [See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up) Turn it Alose⁷

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back *some* of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a complete explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs--in limited instances--may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves.⁸

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private

⁷ (Give it up) Turn it Alose was published in 1969.

⁸ The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors⁹ must take at least take the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"¹⁰ to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.
6. Update the baseline heirs data until all copyrights expire.
7. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.

⁹ Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

¹⁰ The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

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8. As and when helpful, "split heirs"¹¹ to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.¹²

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.¹³

The known facts included:

1. Brown's royalties continued to earn at least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]

¹¹ The heirs must act by majority. This allows foundations to "split heirs" – finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

¹² Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible termination before 2016 -- ten years after Brown's death. [See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]
8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the *Real* Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
 - a. Nearly 40 songs from 1968.
 - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
 - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
 - d. "Hot pants", "Soul power" and others from 1971.
 - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights].
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full -- 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.

14. Brown did not file a termination notice for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.¹⁴

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.¹⁵

¹⁴ Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

¹⁵ Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Mernickle (3).

Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);¹⁶
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
 1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
 2. Then had a marriage ceremony with Brown although she was already married;
 3. Separated from Brown in 2003 when he discovered she was married;
 4. Obtained an annulment of her previous marriage in March 2004;
 5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets ¹⁷ and the long-term

¹⁶ On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

¹⁷ Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a

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importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

That changed on August 10, 2008.

"No, no, no, no (don't leave me this way)"¹⁸

On August 10, 2008 the AG's staff and some of the claimed heirs¹⁹ met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, *all of whom had been specifically disinherited by Brown from his copyrights.*
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.²⁰

forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

¹⁸ "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

¹⁹ The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

²⁰ According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up

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Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 2/39/09 and 2/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

On January 30, 2009, three weeks after his appointment--with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal--the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee -- already trustee for Brown's companion and the disinherited settling relatives -- to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation — the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"²¹

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status—a gift not from Brown but from the AG--that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

²¹ This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them – not all properly-determined heirs over the duration of the copyrights – were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.²² The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"²³

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

²² In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

²³ The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

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In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.²⁴

James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.²⁵

Think (about it)²⁶

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations these private individuals.

²⁴ Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus in early 2007 to raise \$200 million for the purchase of the James Brown assets.

²⁵ In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight. Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than \$60 million in 2010.

²⁶ The copyright to "Think (about it)" was issued in 1973.

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COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

<u>Date of Publication/ Copyright</u>	<u>Description of Works</u>	<u>Earliest Possible Termination</u>
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

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1721

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Forlando J. Brown,

Plaintiff,

vs.

Adele J. Pope, individually and As Trustee of
the Irrevocable Trust established by James
Brown in August 1, 2000, and

Robert J. Buchanan, Jr., individually and As
Trustee of the Irrevocable Trust established by
James Brown in August 1, 2000,

Defendants.

Civil Action No.: 3:08-cv-00014-WOB

**STATUS REPORT OF
ADELE J. POPE, INDIVIDUALLY,
INCLUDING REQUEST TO
PROCEED WITH DISCOVERY
AND TRIAL**

Pursuant to the Order of this Court dated June 11, 2009, defendant Adele J. Pope, in her *individual* capacity, provides the status report set out herein.

Request that Court Relieve Terminated Counsel and
Require Plaintiff to Proceed with Discovery and Trial

Since the status report filed with this Court in November 2011, Forlando Brown's terminated counsel have apparently lost contact with Plaintiff. And Plaintiff has simply failed to comply with the Court's direction that he notify the Court of new counsel by January 31, 2012.

There is abundant evidence that Forlando's disappearance is simply the latest tactic in a four-year plan of deception of this Court and the State Court. Defendant/Counterclaim Plaintiff Adele Pope asks this Court to relieve Plaintiff's original counsel and order that this case proceed through discovery and to trial. Further failures to comply with this Court's directives should not be tolerated.

Forlando Brown is not – and has never been -- the impoverished student he represented himself to be in the complaint filed in this action in January 2008.

Forlando, his father Terry, and the original James Brown trustees (the "Cannon Group") seek Brown's \$100 Million worldwide music empire for themselves. In the five years since Brown's death on December 25, 2006 they have shown they will do anything to get it.

Their plan, revealed in late 2007 and early 2008, has been constant:

1. Sell/Buy the James Brown assets for \$100 Million -or as cheaply as they can get it¹ - making money on both sides of the deal;
2. Form an IPO in which Forlando has 39% and/or other management control;
3. Pay the Cannon Group \$15 Million as legitimate PR/Trustee commissions;
4. In addition, give the Cannon Group secret options or a "kickback."
5. Divert attention from the \$17 Million Cannon and others took from James Brown between 1999 and 2007 by attacking Buchanan and Pope.

Four years ago Forlando brought this suit to oust "two prominent attorneys" who had been appointed Brown's trustees fewer than 45 days earlier. There was no basis for his claim that Buchanan and Pope would not protect Brown's estate plan. Buchanan and Pope were already vigorously defending Brown's "I Feel Good" Trust from frivolous suits filed by a minority of Brown's children and his companion just two weeks earlier.

¹ In one of the most extraordinary twists and turns of the James Brown cases, Terry Brown – now claiming a right to buy Brown's worldwide music empire with Forlando and others – has told the State Court that the music empire was worth less than \$4.7 Million when Brown died. This outrageous assertion flies in the face of the \$9 Million Brown grossed in 2006 alone and the \$79 Million which came into his hands between 1999 and 2006. It also contrasts sharply with the \$85 - \$100 million value placed on the assets by Buchanan, Pope, Forlando and all of the Cannon Group. If Terry buys the music empire for \$4.7 Million, The James Brown "I Feel Good" Trust, Brown's private foundation for scholarships for needy students, will have less than \$1 Million. Under Brown's estate plan, the "I Feel Good" Trust was given about \$80 Million.

With clear evidence that Buchanan and Pope were properly managing Brown's assets and vigorously defending Brown's estate plan, in 2008 Forlando, Terry and the Cannon Group tried to destabilize Brown's 2000 Trust and Buchanan and Pope in the following, and other, ways:

- a. Cannon presented a forged 1999 "Agreement" asserting Brown agreed to pay Cannon \$3.7 Million. [This made it appear that Buchanan/Pope had falsely accused Cannon of taking money from Brown.]
- b. Forlando interfered with the Christie's sale – approved by three Court orders.
- c. The Cannon Group tried to withdraw their resignations.

In January 2009 the Terry/Forlando deception became extraordinarily sophisticated. While it remains so, their goals have not changed. From 2009 - 2012 the two – represented at times by the same counsel – are taking opposite positions in the various James Brown cases. They are taking these opposite position in the Federal Court, State Courts in three counties, and the S.C. appellate courts. Some of their conflicting positions, briefly summarized, are:

- a. Forlando asserts Brown's music empire is worth \$100 - \$150 Million. Terry, claiming a right to buy it, now asserts it is worth less than \$4.7 Million.
- b. Terry now says Brown's companion was his Wife. Forlando continues - correctly – to assert that she is not.
- c. Terry asserts Brown's companion owns valuable rights under the Federal Copyright Act, which she is sharing with Terry. Forlando's position –like that of Buchanan and Pope – is that she gets nothing under the Copyright Act.
- d. Terry has told the S.C. Appellate Court that the Cannon Group committed fraud. Despite his plea, Forlando continues to assert Cannon's innocence.
- e. Terry, with nothing to lose because Brown gave him none of the music empire, now asserts Brown's *in terrorem* clause should not be implemented. Forlando asserts it should.
- f. Terry asserts there should be no DNA testing of James II. Forlando says Charles Bobbit is James' father and DNA testing should be required.

Forlando's "disappearance" appears to be a litigation tactic.

Forlando, accompanied by Terry, appeared before this Court three months ago. Forlando confirmed he was satisfied with what his terminated counsel had done. His statements make it clear that Forlando and Terry have waived the conflicts related to their contrary filings. They are not being led by counsel or by the Cannon Group. Forlando and Terry are now firmly at the helm of the operation to get the James Brown assets for themselves.²

There is every indication that Forlando's termination and loss of contact with former counsel is just another litigation strategy to delay a day of reckoning for the duplicitous Terry/Forlando actions.³ In a State Court (Richland County) case Terry has similarly dodged discovery and a noticed deposition for more than a year.

Whether or not Forlando's disappearance is mere strategy, the case should proceed.

The S.C. Supreme Court Case Should not Delay this Case

The pending appeal in Aiken County Case 2008-CP-02-1647 ("Case 1647") should not delay this case.

On January 29, 2009, a "SPECIAL APPEARANCE OF MATT BODMAN ON BEHALF OF FORLANDO BROWN" in Case 1647 stated in relevant part:

Matt Bodman shows the Court that Forlando Brown has never been served nor has an acknowledgment of service been entered on his behalf.

² Mr. Bell, not a member of the S.C. Bar, has been *pro hac vice* counsel for Terry, Romunzo and Forlando Brown in some of the State Court cases since 2007.

³ Interestingly, Forlando Brown has not, to the knowledge of Pope, notified the State Court of his termination of Mr. Bell.

Matt Bodman makes this special appearance for Forlando Brown and shows the Court that Forlando Brown is not in default inasmuch as he has never been served with a Summons and Complaint, he has never waived service, and he has not made an appearance in this case.

Matt Bodman makes this special appearance for Forlando Brown and shows the Court that Forlando Brown has not violated the in terrorem clause contained in the Will and Trust of James Brown.

...Matt Bodman, for Forlando Brown, makes this special appearance without submitting to the jurisdiction of this Court. [See ROA, Case 1647, p.582.].

In short, on the very day Terry joined the settlement to dismantle Brown's estate plan, Forlando hedged the Terry/Forlando position by asserting in a special appearance that he was no part of the settlement case.⁴ He should not now ask the Court to use Case 1647 to delay this case.

The Supreme Court's decision in Case 1647 should have no impact on Buchanan and Pope's individual claims against Forlando, and his against them have proven to be without merit.

The four-year hardship to Buchanan and Pope should not continue.

On January 2, 2008 Forlando Brown filed his baseless claims against Buchanan and Pope. His intention was not as stated. It was to acquire Brown's music empire for himself and his joint venturers.

Four years is long enough for Buchanan and Pope to have endured these attacks without being allowed the discovery and trial they are seeking. Brown's refusal to comply with the Court's directive to name new counsel should not delay this case.

⁴ See: Special Appearance of Matt Bodman on Behalf of Forlando Brown to Motion to Realign, Et Al dtd. January 29, 2009. Case 1647 ROA582.

Conclusion

Defendant/Counterclaim Plaintiff Pope respectfully requests that this Court relieve terminated counsel for Forlando Brown; conduct a status hearing which Forlando Brown is directed to attend; and order that this case proceed with discovery and trial.

Respectfully submitted,

JETER & WILLIAMS, P.A.



s/ Daryl L. Williams

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**Attorneys for Defendant Adele J. Pope,
individually**

Columbia, South Carolina
March 7, 2012

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Forlando J. Brown,	)	Civil Action No.: 3:08-cv-00014-WOB
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>MEMORANDUM OF LAW IN</u>
Adele J. Pope, individually and As	)	<u>SUPPORT OF MOTION TO DISMISS</u>
Trustee of the Irrevocable Trust established	)	<u>AND CONDUCT DISCOVERY OF</u>
by James Brown in August 1, 2000, and	)	<u>DEFENDANT ROBERT L.</u>
	)	<u>BUCHANAN, JR., INDIVIDUALLY</u>
Robert L. Buchanan, Jr., individually and	)	<u>AND IN SUPPORT OF DEFENDANT</u>
As Trustee of the Irrevocable Trust	)	<u>ADELE J. POPE INDIVIDUALLY TO</u>
established by James Brown in August 1,	)	<u>DISMISS COMPLAINT, SCHEDULE</u>
2000,	)	<u>DISCOVERY, AND FOR RELATED</u>
	)	<u>RELIEF</u>
Defendants.	)	
	)	

Defendant Robert L. Buchanan, Jr. has moved, in his individual capacity, pursuant to Federal Rule of Civil Procedure 41(b) and the inherent power of the Court to dismiss Plaintiff's Complaint and allow Defendants to proceed with discovery. Defendant Buchanan, in his individual capacity, submits this Memorandum of Law in Support of his Motion and in Support of Motion of Defendant Adele J. Pope Individually to Dismiss Complaint, Schedule Discovery, and for related Relief, (ECF No. 209) filed March 22, 2012. For the reasons that follow, this Motion must be granted.

FACTUAL BACKGROUND

Using this suit, Plaintiff Forlando Brown ("Forlando") has set into motion a devastating series of events that has placed Defendants Pope and Buchanan (individually "Pope" and "Buchanan" and collectively "Defendants") in an impossible position, resulting in a four year old litigation that has greatly harmed and injured Defendants while seeking largely abandoned relief

that simply cannot be granted.¹ Enough is enough. The Complaint must be dismissed to end Plaintiff's manipulation of the court system.

When this suit was filed over four years ago in January 2008, Defendants served as PR/Trustees of the 2000 Trust established by James Brown on August 1, 2000 (the "2000 Trust"). In his Complaint, Forlando sought removal of Defendants as Trustees of the 2000 Trust, alleging that Defendants failed to protect the Brown Family Education portion of the 2000 Trust and that Defendants prevented Forlando from receiving the funds he was "rightfully owed under the 2000 Trust," and that Defendants have an irreconcilable conflict of interest. (ECF No. 1). Significantly, Plaintiff sought to enjoin the 2000 Trust from taking any action. Defendants counterclaimed, seeking attorney's fees pursuant to Section 62-7-1004 of the South Carolina Trust Code (ECF No. 86).²

Several months later – without the participation or knowledge of Defendants – a settlement was reached by some of Brown's heirs. While acknowledging the validity of the 2000 Trust, the settling parties, who were given nothing under the Trust, sought to disregard its terms and *in terrorem* clause, take more than half of Brown's assets, and turn the remaining minority of assets which should have gone to The James Brown "I Feel Good" private foundation over to a new trust to be created and controlled by the South Carolina Attorney General.³

¹ Moreover, Plaintiff's Complaint was when filed – and continues to be – frivolous.

² Affidavit of Robert L. Buchanan, Jr., dated April 3, 2012, attached hereto as **Exhibit A**.

³ By motion dated January 20, 2009, the Attorney General of South Carolina, Tommie Rae Hynie Brown, and five of James Brown's adult children filed a motion requesting court approval under S.C. Code Ann. § 62-3-1102 of a settlement agreement reached on August 10, 2008. In its essential features, the settlement agreement reduced the share of the charitable trust in the residuary estate from 100% (less \$2,000,000 for the grandchildren's trust) to 50% and distributed the amount of this reduction, half to Tommie Rae (Brown's former companion) and half to the adult children participating in the settlement. A new trust was created, to be controlled by the Attorney General. The Attorney General negotiated the settlement and agreed to it on behalf of the 2000 Trust. Defendants, as trustees were not informed of the negotiations

On May 26, 2009, the Honorable Doyet A. Early, III approved the settlement. As part of the settlement, Judge Early removed Pope and Buchanan as PRs/trustees, replacing them with Russell Bauknight. Ironically, the settlement agreement destroyed the Brown Family Education portion of the 2000 Trust – the very trust that Forlando claims in this suit that Pope and Buchanan failed to protect. Defendants opposed the settlement for a number of reasons, including the fact that the settlement eliminated the Education Trust.⁴ For this reason and others, Defendants declined to execute the settlement agreement and, based on Brown's direction in the Will and 2000 Trust that they vigorously defend his estate plan, appealed the settlement.⁵

On May 19, 2010, Bauknight and the settling parties (including Forlando's father and the Attorney General) filed suit against Defendants in state court in Civil Action No.: 2010-CP-40-4900 ("Case 4900"). Among other things, these parties alleged that (1) Defendants wasted "time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust" and (2) refused "to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate." In other words, Defendants were

leading to the agreement and did not participate. The motion came on for hearing before the Honorable Doyet A. Early, III, beginning January 30, 2009. Hearings continued on March 4, 5, 6, and 25, and April 4 and 6. On March 26, the proponents of the settlement filed modified documents evidencing modifications of the settlement agreement. By the end of the hearings another adult son had joined in the settlement in consideration of the grant of a right of first refusal to buy the assets of the estate, and the share of the charitable trust was further reduced to 47.5%. The charitable trust was agreed to be replaced with a new trust, called "The Legacy Trust," the trustee of which would be named by the Attorney General, who would control the new trust. Expenses and taxes of the Legacy Trust were assigned as follows: Tommie Rae, 25%; the Brown Family, LLC, 25%; and the "I Feel Good" Trust, 25%.

⁴ Defendants also asserted that, among other flaws, the settlement agreement is not just and reasonable and that the Attorney General grossly exceeded his authority.

⁵ The Supreme Court heard arguments on November 11, 2011. The Court, however, has not issued an Opinion.

sued in state court for vigorously defending the 2000 Trust in this suit. But more incredibly, Defendants were sued in state court – by Forlando’s father, among others – for opposing a settlement that would destroy the very trust that Forlando claimed that Defendants failed to protect!⁶

As the Court is aware, Forlando fired his counsel in late 2011. At the December 15, 2011 status conference, Forlando was ordered to retain new counsel within 45 days and to notify the Court of replacement counsel. Forlando ignored this Order. Subsequently, Forlando failed to file a Status Report or respond to Pope’s Status Report filed March 7, 2012.

This Court is now faced with a Plaintiff who has not only abandoned his already-moot claim, but he has ignored two Orders of this Court. As early as his February 2008 television interview he declared his intention to destroy the careers of “two prominent attorneys.” Forlando Brown has, by commencing and continuing this action, caused more than \$600,000 loss to Pope, Buchanan and their carriers. As long as this Complaint remains pending, Plaintiff will continue to wreak havoc on Defendants’ personal financial circumstances.⁷ For these reasons and the reasons outlined below, the Complaint must be dismissed to end Forlando’s manipulation of the court system. In turn, Defendants should be allowed to proceed on their Counterclaim.

ARGUMENT

The “authority of a court to dismiss sua sponte for lack of prosecution has generally been considered an inherent power, governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (citations and quotation omitted). While dismissal for failure to prosecute should be imposed only after

⁶ See Affidavit of Robert L. Buchanan, Jr., dated April 3, 2012.

⁷ See Affidavit of Robert L. Buchanan, Jr., dated April 3, 2012.

careful exercise of judicial discretion, it is clear that dismissal is an appropriate disposition against a party who disregards court orders and fails to proceed as required by court rules. *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639, 642-43 (1976).

In addition to the Court's inherent power, Federal Rule of Civil Procedure 41(b) allows for the dismissal of this suit. A district court has authority under Rule 41(b) to dismiss the case with prejudice, on its own motion, for failure to prosecute. *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962). A district court's power under Rule 41(b) to dismiss for failure to prosecute or obey court order or federal rule is an inherent aspect of its authority to enforce its orders and insure prompt disposition of lawsuits. *Goforth v. Owens*, 766 F.2d 1533 (11th Cir 1985). The legal standard to be applied under Rule 41(b) governing dismissal for failure to prosecute or to obey court order or federal rule is whether there is a clear record of delay or willful contempt and a finding that lesser sanctions would not suffice. *Id.* See also; *Pickel v. U.S.*, 746 F.2d 176 (3rd Cir 1984); *Hildebrand v. Honeywell, Inc.*, 622 F.2d 179 (5th Cir. 1980). The district court must balance considerations of sound judicial administration, applying four criteria: (1) the degree of personal responsibility on the part of the plaintiff; (2) the amount of prejudice to the defendant caused by the delay; (3) the presence or absence of a "drawn out history" of 'deliberately proceeding in a dilatory fashion;' and (4) the effectiveness of sanctions less drastic than dismissal. *McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976).

Other Courts use a similar analysis. For example, the Court in *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 870 (3d Cir.1984) used the standard consisting of six factors that must be considered in deciding a motion under Rule 41(b): (1) the personal responsibility of the plaintiff; (2) prejudice to defendants; (3) a history of dilatoriness; (4) the willfulness or bad faith of the plaintiff's conduct; (5) the adequacy of sanctions less drastic than dismissal; and (6) the

meritoriousness of the plaintiff's claims. *See also United States v. USX Corp.*, 68 F.3d 811 (3d Cir.1995) (citing *Adams v. Trustees of the New Jersey Brewery Employees' Pension Trust Fund*, 29 F.3d 863, 870 (3d Cir.1994)). Not all of the factors need to be met for dismissal to be warranted. *Hicks v. Feeney*, 850 F.2d 152, 156 (3d Cir.1988), cert. denied, 488 U.S. 1005, 109 S.Ct. 786, 102 L.Ed.2d 777 (1989).

Regardless of the standard used, the result should be dismissal of Plaintiff's Complaint. Without question, the third and sixth elements are met. This case has been pending for almost four and one half years, and the relief Plaintiff seeks is moot and cannot be granted. The first element is also met: Forlando willfully violated two orders of this Court and should be fully responsible for those violations. Moreover, his actions have been highly the prejudicial to the Defendants since both Pope and Buchanan have been forced to defend this frivolous suit in federal court seeking moot and abandoned relief; at the same time and as a result of this case, Defendants are also forced to defend Case 4900 in state court filed by Plaintiff's father, among others, who claims negligence by Pope and Buchanan for opposing the settlement agreement which destroyed the Education Trust.⁸ Moreover, as indicated in the Affidavit of Robert L. Buchanan, Jr., Defendant Buchanan has incurred substantial financial loss as a result of Plaintiff's actions.

Next, the willfulness of Plaintiff's conduct is obvious: Plaintiff clearly intended to greatly harm the Defendants, declaring as early as his February 2008 television interview he that he intended to destroy the careers of "two prominent attorneys."⁹ In addition, Plaintiff's willfulness

⁸ As the Court may recall, Terry Brown – Forlando's father and a plaintiff in Case 4900 – attended the hearing on Plaintiff's request for injunctive relief in November 2009 in Beaufort, S.C.

⁹ Ironically, Plaintiff asserts in this case that Defendants were irreconcilably conflicted by serving as both PR and Trustee. When Judge Early replaced Defendants in May 2009, he

is further evidenced by his request to stay this matter and his vigorous opposition to Defendants' multiple efforts to lift the stay and conduct discovery. Finally, there is no merit to Plaintiff's claim – even if Forlando has not abandoned the matter, the relief he seeks is moot. Defendants have not served as PR/Trustees in almost three years and the relief he seeks – or sought – cannot be granted. For this reason, the result of these actions should be the dismissal of his complaint. Simply put, this Court has no other reasonable alternative. To allow the persistent and willful disregard of Court Orders and judicial process denigrate the civil justice process and the integrity of this Court.

CONCLUSION

For the reasons stated above, Plaintiff's Complaint must be dismissed and Defendants should be allowed to conduct discovery on their Counterclaim. Accordingly, this Motion and the Motion of Defendant Adele J. Pope Individually to Dismiss Complaint, Schedule Discovery, and for related Relief, (ECF No. 209) filed March 22, 2012, should be granted.

[Signature page follows]

replaced them with Russell Bauknight, who also served as both PR and Trustee. The fact that Forlando did not pursue a similar claim against when Bauknight served in the exact role is another indication of willfulness of Plaintiff's conduct.

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

By: s/J. Calhoun Watson

J. Calhoun Watson

Fed. I.D. No.: 4794

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By: s/Elizabeth Van Doren Gray

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Robert E. Horner

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(803) 929-1400

**Attorneys for Defendant Robert L. Buchanan, Jr.,
individually**

Columbia, South Carolina
April 3, 2012

CERTIFICATE OF SERVICE

I, the undersigned Attorney, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for Defendant Robert J. Buchanan, Jr., individually and As Trustee of the Irrevocable Trust established by James Brown in August 1, 2000, do hereby certify that I have served the plaintiff in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
DISMISS AND CONDUCT DISCOVERY OF DEFENDANT
ROBERT L. BUCHANAN, JR., INDIVIDUALLY AND IN
SUPPORT OF DEFENDANT ADELE J. POPE
INDIVIDUALLY TO DISMISS COMPLAINT, SCHEDULE
DISCOVERY, AND FOR RELATED RELIEF**

Address:

Forlando J. Brown
4403 Northside Parkway, Unit 1422
Atlanta, GA 30327

s/ J. Calhoun Watson
J. Calhoun Watson

April 3, 2012

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

Forlando J. Brown,	)	Civil Action No.: 3:08-cv-00014
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Adele J. Pope, individually and As	)	
Trustee of the Irrevocable Trust established	)	
by James Brown in August 1, 2000, and	)	
	)	
Robert J. Buchanan, Jr., individually and	)	
As Trustee of the Irrevocable Trust	)	
established by James Brown in August 1,	)	
2000,	)	
Defendants.	)	
	)	
	)	

MEMORANDUM IN SUPPORT OF MOTION OF DEFENDANT ADELE J. POPE TO DISMISS COMPLAINT, SCHEDULE DISCOVERY AND FOR RELATED RELIEF

Plaintiff has flagrantly ignored the last two Orders of this Court, one to obtain new counsel within forty-five days of the Status Conference held December 15, 2011 and the second to respond to Pope's Status Report filed March 7, 2012. The contempt he openly displayed is just the latest misconduct in which he has engaged in the course of this action, beginning with the filing of the original complaint.

Plaintiff defrauded this Court by the filing of the complaint in this action, on January 2, 2008, and subsequent amended complaints with knowledge, as defined in Section 62-7-104 of the South Carolina Trust Code that material facts stated therein were false. He has continued to make false and material misrepresentations to this Court throughout, including:

- a. His assertion that he was an impoverished student, when he and his father, Terry Brown, were substantial secret owners in an enterprise known as TJBL or "The James Brown Legacy," which seeks to purchase the worldwide music empire of entertainment icon James Brown for \$100 million; create an IPO; and give option or a "kickback" to felon David Cannon and other resigned trustees of James Brown.
- b. The repeated representation to this Court that Plaintiff was not a party to Aiken County Case 122 when he was actually a plaintiff in that case.
- c. The repeated representation to this Court that Plaintiff was not bound by the orders of the S.C. State Court, when he was so bound.
- d. The repeated representation to this Court that Forlando desired only to carry out the valid estate plan of James Brown while he was actually working with Terry to dismantle Brown's estate plan.
- e. The representation to this Court that Forlando sought nothing other than the \$285,000 education trust his grandfather set up for him, when he was a 39% owner with management control of TJBL
- f. The engagement and continued use of counsel who supported The James Brown "I Feel Good" Trust in this case while seeking to dismantle it in the State Court cases.
- g. The engagement and continued use of counsel who supported his \$150 Million valuation of Brown's music empire in this Case while representing for Terry in State Court that it is worth less than \$4.7 Million.
- h. That the "termination" of his counsel when these discrepancies were no longer effective, without terminating Bell in State Court.

Forlando Brown has had knowledge for four years of – and intended – the financial, professional and personal hardship he has caused Defendants Pope and Buchanan. As early as his February 2008 television interview he made clear his intention to destroy the careers of "two prominent attorneys."

Forlando Brown has, by commencing and continuing this baseless action, caused more than \$600,000 loss to Pope, Buchanan and their carriers.

Defendant Pope bases this motion on the failure of Plaintiff Forlando J. Brown to comply with the Orders of this Court; the undisputed facts contained in her status report filed in this case on March 7, 2012, which is incorporated herein by reference; all earlier status reports, motions and affidavits of Adele J. Pope filed herein; and such additional affidavits and/or memoranda as have been or shall be timely filed by defendants Pope and Buchanan prior to the hearing on this matter.

More than four years ago Forlando Brown, grandson of entertainment icon James Brown, brought this action asking the Court to protect the valid estate plan of his famous grandfather. James Brown left his entire \$100 million worldwide music empire to education.¹ About \$80 Million was dedicated to his "I Feel Good" private foundation, whose sole function was to provide scholarships for needy and deserving students. Forlando asked this Court to protect his interest in a \$285,000 education trust which James Brown created for him under his estate plan.²

Forlando asserted Robert Buchanan, Jr. and Adele Pope were illegally appointed trustees of Brown's 2000 Trust in Aiken Case 2007-CP-02-0122 ("Case 122"). Forlando said he was not a party to Case 122. Forlando further asserted that Buchanan and Pope obtained their appointment by trickery and asserted they would not vigorously defend Brown's estate plan against challenges filed 2 weeks earlier by Brown's companion Tommie Rae Hynie and five of his more than a dozen claimed children.

¹ At Brown's death his royalties to more than 800 songs – about half of the value of the music empire – were encumbered by a debt of approximately \$15 Million to TIAA. Thus, the date-of-death value was sometimes reported as \$100 Million and sometimes – taking the TIAA debt into consideration – as about \$85 Million. The TIAA debt was paid in full in October 2011.

² The 2000 Irrevocable Trust, at Brown's death, split into 2 subtrusts: The James Brown "I Feel Good" private foundation (about \$80 Million) and the Brown Family Education Trust (about \$2 Million), with an education trust fund for each of seven designated grandchildren.

In fact, Forlando was not only a party to Case 122, he was a plaintiff.³

In addition to misrepresenting his status in the State Court proceedings, Forlando concealed the devious plans he, his father Terry Brown, and the Cannon Group, Brown's resigned trustees, had to secure James Brown's assets for themselves. Forlando had already been hard at work on these plans, including:

- a. In early 2007: Forlando and an uncle created a fake securities prospectus seeking to raise \$200 Million to buy James Brown's music empire;
- b. In June 2007 Forlando, under the name of William, joined the Cannon Group in a scheme to sell/buy Brown's music empire for \$100 million; create an IPO; and pay the Cannon Group \$15+ million plus secret options or a "kickback." Forlando/William was to be the family spokesman.
- c. On December 5, 2007 Forlando became a 39% owner in the purchase group, TJBL. [By February 2008 Terry was making offers on behalf of TJBL.]
- d. By December 2007 Forlando's counsel – some also counsel for the Cannon Group -- were working to discredit Buchanan, Pope and the State Court Judge who presided over their appointment.⁴

In short, when he filed this action in early 2008, and at all times since, Forlando has had knowledge as defined in the South Carolina Trust Code⁵ that his action was brought for an improper purpose and was baseless. Yet he continued. Forlando's television appearance in February 2007 made his mission clear – to destroy "two prominent South Carolina attorneys." The financial hardship he has place on them has, to some extent, met its goal.

³ Forlando also did not seek reconsideration of, or appeal, numerous Orders in Case 122, including those dated January 8, February 20, March 7, April 1 and April 8, 2008. Those orders held that the work of Buchanan and Pope was outstanding; that the Cannon Group had committed fraud upon the Court; and that Cannon and Dallas had fabricated documents and otherwise acted improperly.

⁴ Forlando's dirty trick have continued. Among them, in 2008 he, Terry and brother Romunzo filed six grievances in 2 states against his original attorney in Case 122.

⁵ See S.C. Code Ann. § 62-7-104 for a definition of knowledge.

As a result of Forlando's suit, Pope's professional negligence insurance was cancelled – causing an almost 10-fold increase in costs. Shortly after Pope secured new, less expensive insurance (3 times the original cost), Terry Brown sued Buchanan and Pope in 2010 – this time for not agreeing to dismantle Brown's estate plan. Terry's suit effectively caused Pope to lose – until this or Terry's suit is resolved -- her ability to practice law as she had done for more than 30 years.

Recognized as a "Superlawyer"® with an "AV" Martindale Hubbell rating and a member of ACTEC when she accepted the James Brown appointment, Pope – then approaching 65 – was serving as counsel, as well as a consultant and expert in Trust and Estate matters. She has since written professionally about the relationship of State Probate Law and the "Heirs" provisions under the Federal Copyright Act. With this 4-year-old suit pending, however, she is effectively unable to practice the consulting and expert witness part of her career. Every year that she is unable to clear her name causes further damage in that area. Mrs. Pope is living her own nightmare version of Dickens' *Bleak House*. She prays this Court to end it.

JETER & WILLIAMS, P.A.

s/ Daryl L. Williams

Daryl L. Williams
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1204 Main Street, Suite 200
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(803)765-0600
(803) 765-0619
dwilliams@jeterandwilliams.com

**Attorneys for Defendant Adele J. Pope,
Individually**

Columbia, South Carolina
March 22, 2012

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Forlando J. Brown,

Plaintiff,

vs.

Adele J. Pope, individually and As
Trustee of the Irrevocable Trust
established by James Brown in August 1,
2000, and
Robert J. Buchanan, Jr., individually and
As Trustee of the Irrevocable Trust
established by James Brown in August 1,
2000,

Defendants.

Civil Action No.: 3:08-cv-00014-WOB

**AFFIDAVIT
OF ADELE J. POPE
SUPPORTING DISMISSAL OF
COMPLAINT AND
RELATED RELIEF**

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly
sworn, deposes and says:

1. I incorporate my Status Report filed with the Court on March 7, 2012 and confirm that the statements made in that report are true and correct to the best of my knowledge.
2. I am informed and believe that Forlando Brown, when he filed this action on January 2, 2008 had knowledge as defined in the S.C. Trust Code that there was no reasonable basis for his actions and that filing this suit would damage me personally and my career as a trust and estate lawyer.
3. This suit has damaged me and will continue to cause substantial harm to me until it is resolved.
4. As a result of this suit, my professional negligence insurance was canceled, and the cost of coverage for the following year increased by nearly 10-fold. The next year I secured less expensive insurance at about 3 times the original cost. Forlando's

joint venturer Terry Brown, with others, then sued Bob Buchanan and me in 2010 – this time for not agreeing to dismantle Brown's estate plan. Terry's suit effectively caused me to lose – until this or Terry's suit is resolved – my ability to practice law as I had done for more than 30 years.

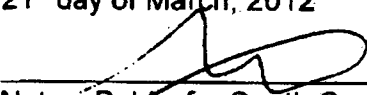
5. During the period I served as Court-appointed Trustee of the James Brown 2000 Irrevocable Trust, I was designated as a Superlawyer; maintained an "A" Martinadale Hubbell rating and was a member of the American College of Trust and Estate Counsel. My practice included serving as counsel, as well as a consultant and expert, in trust and estate matters. I have since written professionally about the relationship of State Probate Law and the "Heirs" provisions under the termination provisions of the Federal Copyright Act. With this 4-year-old suit pending, however, I am effectively unable to practice the consulting and expert witness part of my career.

6. Every year that I am unable to fully clear my name by resolving the lawsuit by Forlando and by his father and joint venturer Terry Brown causes further damage to my career.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
21st day of March, 2012


Notary Public for South Carolina,
My Commission expires: 7/12/2016

(L.S.)

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

and

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

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Case No.: 2010-CP-40-4900

AFFIDAVIT OF ADELE J. POPE
REQUESTING DEPOSITIONS
OF 5 OF 91 WITNESSES,
RULING ON INJUNCTION,
SEVERING OF FOIA CLAIM,
AND RELATED RELIEF,
FOLLOWED BY DAY-CERTAIN
MEDIATION

FILED
RICHLAND COUNTY
JUL 19 PM 4:31
J. H. MCBRIDE
CLERK, P. & G.S.

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

1. I am a Defendant in this Case, and a counterclaim Plaintiff.
2. I am informed and believe my counterclaims will be the primary subject of the
mediation in this case when it is held. They are briefly described below:

- a. **Abuse of Process** - Plaintiffs' claim was maliciously commenced
for the improper purpose of forcing Bob Buchanan and me to abandon or
dismiss our appeal of the May 26, 2009 Order in Case 1647.
- b. **Civil Conspiracy** - combining with each other and third parties to injure us.
- c. **Intentional Interference with Contract** - the January 8, 2008
Order/Contract which gave Bob \$500,000.00 and me \$1,500,000.00, with
interest since 2009.

1744

d. **Fraud under §62-1-106 of the S.C. Probate Code** - by intentional improper assertion of James Brown's "heirs" under the Federal Copyright Act; intentional undervaluation of Brown's worldwide music empire; and other false representations and filings.

e. **Attorneys' fees** - as provided in S. C. Trust Code Section 62-7-1004.

3. I am a Certified Mediator, and have been one for many years.

4. I was fortunate enough to be trained by Michael K. Lewis and Linda R.

Singer, two of the finest mediation specialists in the United States, at the Harvard Mediation training program.

5. Mr. Lewis, according to a recent ABS JAMS Blog, is "a former Foreign Service Officer...known for his ability to resolve the most complex disputes in virtually every area of law ...," and Ms. Singer is described as "tenacious, intelligent and possessing an innate ability to settle cases that others could not."

6. While I do not actively seek appointments as a mediator, my training with Mr. Lewis and Ms. Singer instilled in me an abiding belief in the value of mediation when it is done properly.

7. In James Brown Case 1647 I have unfortunately seen the vast damage to be caused where some of the parties are so anxious to conclude a complex matter that they forget even Rule #1 of Mediation – that the parties must be there.

8. Four years after the secret, rushed mediation and partial Case 1647 settlement, our Supreme Court is addressing the damage caused by the failure to follow basic rules.

9. I have heard reports that at least some of Plaintiffs, including Plaintiffs Terry Brown and Daryl Brown, now assert they should never have challenged their father's

noble estate plan to give his worldwide music empire for scholarships for needy and deserving student.

10. I have thought many hours about whether – if these reports are true – a mediation of my counterclaims in this case could result in Daryl, Terry, and others relinquishing some of their claims to dismantle their father's Estate Plan in favor of the "I Feel Good" Trust. Their depositions will help me – and them – be ready to address these complex issues at mediation.

11. I am very concerned for the 7 designated grandchildren James Brown wanted to educate because in the Case 1647 mediation they were abandoned by their own parents. A guardian ad litem for the minors, and the required presence of 2 of them who are now adults, should help keep that from happening here.

12. I incorporate by reference the letter of my counsel to Jg. Manning dated July 11, 2012, a copy of which is attached hereto as Exhibit A., as a fair statement of the many problems caused by Sweeney, Wingate and Barrow's ("Wingate") stonewalling discovery then presenting an Order for mediation which fails to not address serious issues.

13. Wingate's discovery abuse is the most egregious I have encountered in more than 30 years of practice, including cases I have worked on with Mr. Wingate over the years.

14. Whether Wingate can represent the State of South Carolina – and bind the general fund as to my counterclaims – is an essential question which needs to be answered before mediation, as is Mr. Bauknight's claim – modified as of yesterday – that he speaks as Agent for two separate Attorneys General of S.C.

15. I am informed and believe that these answers are extremely important since Plaintiffs are now seeking relief from default.

16. I deny any suggestion that I wish to delay mediation. The opposite is true, but I want a settlement – if one is reached – to be valid and binding on all parties to this case, including some who have not been parties to any other James Brown case.

17. I believe we could be ready for a meaningful mediation in fewer than 90 days by just taking the following small steps:

- a. Depose 6 of Plaintiffs' claimed 91 witnesses , including 5 Plaintiffs¹.
- b. The Court rule on the Wingate/Bauknight injunction request.
- c. Of the more than 1 million pages of public documents which relate to this action, require only 4 to be at mediation:
 - (1) The signed Legacy Trust created by Henry McMaster;
 - (2) The authorization, if any for Wingate/Bauknight to act for the AG/State;
 - (3) An Order vacating the 2008 Hynie "diary" Gag Orders.²
 - (4) Bauknight's less-than \$4.7 Million appraisal of Brown's worldwide music empire – which he has failed to file, as required.
- d. Appoint one or more guardians ad litem for the minors.
- d. Sever or decide the FOIA Case;
- e. Require McMaster and someone with authority to negotiate for the current AG/State to attend if the injunction request is denied.

¹ Plaintiffs' witness Albert Dallas is scheduled to be deposed July 20.

² Judge Early has ruled that today he has no jurisdiction to void three 4-year-old Gag Orders this week. I plan to ask the Supreme Court to find that he does have jurisdiction, or that the orders were void ab initio.

f. Name the mediator, date and time; Order all Parties to appear; and direct each party to pay 1/17 of the mediator's cost.

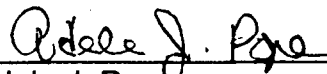
2. The Settlement recently reached by Bob Buchanan on May 4 is instructive for the following reasons:

- a. The Counterclaim Defendants/Plaintiffs received nothing in their claim.
- b. Bob received the \$500,000.00 he was awarded by Jg. Early in January 8 Order which gave me \$1.5 Million, with interest.
- c. The agreement conforms to Jg. Early's final April 8, 2008 Order finding Bob's and my service as both ethical and appropriate.
- d. The agreement conforms to Hynie's assessment to Jg. Early about Bob's and my service in September 2008:

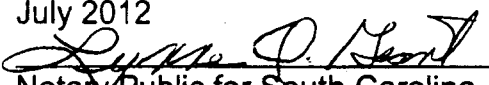
MR. MEDLIN: ...WE HAVE THE HIGHEST REGARD
FOR MRS. POPE AND MR. BUCHANAN. I HAVE SAID
THAT IN OPEN COURT BEFORE, AND I WILL
CONTINUE TO SAY THAT BECAUSE I KNOW I DO,
AND I'M PRETTY SURE EVERYBODY ON MY TEAM
DOES.

THE COURT: AND SO DO I. [Hg., Case 122,
9/28/08,p.54.]

FURTHER DEPONENT SAYTEH NOT.


Adele J. Pope

SWORN TO before me this 1st day of
July 2012

 (L.S.)

Notary Public for South Carolina

My commission expires: 8-12-2020

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

and

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 ADELE J. POPE
) SUPPORTING DISMISSAL
) OF DARYL BROWN, LINDSAY
) BROWN AND JANISE BROWN
) AS PLAINTIFFS AND BAUKNIGHT
) AS THEIR AGENT
) IF DARYL BROWN FAILS TO
) APPEAR AT NOTICED DEPOSITION

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

1. This Affidavit is based on my personal knowledge and belief.
2. The Article attached as Exhibit A follows several months of rumors that the firm of Sweeney, Wingate & Barrow, PC ("Wingate") brought this 2-year-old tort suit against Robert Buchanan and me – seeking tens of millions of dollars – without the written authorization of some or all of the Plaintiffs.
3. Wingate's contingency representation, on information and belief, must be in writing.
4. For 2 years, Wingate, Bauknight and two Attorneys General of South

Carolina have refused to produce the Wingate Contingency-Fee contract, asserting that it was private because Wingate represented former AG McMaster and also Daryl and other private clients.

5. Two Plaintiffs have now said they did not engage Wingate.

6. If Daryl Brown's taped statement is correct, I am informed and believe that his Complaint against Bob Buchanan and me should be dismissed.

7. If Daryl Brown actually signed the contingency-fee engagement with Wingate, I am informed and believe it will be revealed at his deposition.

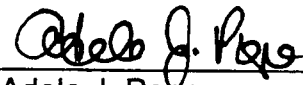
8. I am also informed and believe that whether the Complaint of Daryl Brown's children Lindsay and minor Janise should also be dismissed will be resolved.

9. I am also informed and believe that the deposition will reveal whether Wingate, without authorization, sought to intervene for Daryl in a South Carolina Freedom of Information Act ("FOIA") Case – and sought sanctions against me for Daryl.

10. The Plaintiffs, including Daryl if he is one, have repeatedly abused the discovery process in this case and, on information and belief, dismissal is merited.

11. I am informed and believe that the deposition of Terry Brown is necessary for the same reasons stated as to Daryl's.

FURTHER DEPONENT SAYTEH NOT.


Adele J. Pope

SWORN TO before me this 1st day of
July 2012

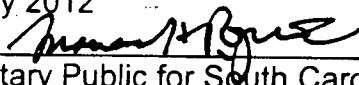
 (L.S.)
Notary Public for South Carolina
My commission expires: 3-28-2022

Exhibit A

James Brown's Son Regrets Contesting Will

Daryl Brown says father's wishes should be followed

Posted on: 07/1/12 by [EurPublisher](#)

0 Comments

Font Size: A' A' A

0

Tweet 5

Like 6



Daryl Brown

*The son of music legend James Brown now regrets that he did not follow his father's wishes as expressed in his will—and he shared his concern that his daughters will never receive the education funds their grandfather left them in a trust he established in 2000.

1751

Daryl Brown, in a taped telephone interview on Wednesday (June 27), said, "When my oldest daughter went to school, her mother had to get loans for her because no money was there (in the trust). We asked for it and asked for it, but still no money came."

Had Brown's will been carried out at his death over five years ago, a \$285,000 education fund would have been created for each of Daryl's daughters.

The rest of Brown's music empire would have funded the "I Feel Good" charity to provide scholarships for needy and deserving students in South Carolina and Georgia.

Brown says his younger daughter graduates next year and his nephew is already in school, but they have received no assurances that their tuition will be paid, despite pleas to his attorney, Louis Levenson of Atlanta, as well as to Brown trustee Russell Bauknight of Columbia and to the office of the S.C. Attorney General (AG).

"They paid off the bond deal. Why is the money for the grandchildren not being released now?" Daryl asked.

"Every time we want to hear where the money goes, we're told this person has to be paid first, that person has to be paid first. They throw up smokescreens," he said.

Brown's estate plan gave his personal and household effects to six children named in the will, including Daryl. Although Daryl did not see the estate plan before his father's death in 2006, his father had told him about the education charity and the grandchildren's education funds.

In 2007 James Brown's estate plan was contested by the children named in the will and by Brown's companion, Tommie Rae Hynie, who claimed to be his wife even though she was married to another man when she and Brown exchanged vows in 2001.

"I just went along with the family, but I admit my mistakes," Daryl said.

Although Daryl's attorney Levenson filed affidavits in 2007 that accused original trustees—"Buddy" Dallas, David Cannon, and Alford Bradley—of mismanagement of the trust, Daryl now claims they did not exercise "undue influence" over Brown when he set up his estate plan. "I trusted those guys. My father trusted those guys. I'd known Mr. Dallas since I was a little boy."

Daryl insisted, "James Brown knew what he was doing. Nobody ran James Brown, he did it his own way."

On Nov. 1, however, "Sonny" Jones of the AG's office told the S.C. Supreme Court that the "undue influence" claim by Daryl and others supported a settlement deal forged by former AG Henry McMaster—a deal that gave more than half of Brown's music empire to Daryl, certain other children, and Hynie.



James Brown & Daryl Brown

Brown's will and trust directed his trustees to vigorously defend his estate plan, and anyone who challenged the estate plan would receive nothing. According to original trustee Dallas and his successors, Bob Buchanan of Aiken and Adele Pope of Newberry, there was no basis for the settlement deal—and it should be overturned.

Estate records show that Brown's trustees Pope and Buchanan obtained court approval to make education distributions to grandchildren before the settlement deal was reached.

The AG's office approached the Brown family about a settlement deal, Daryl said. "I admit, I was very vulnerable then... We were told if we didn't sign on this agreement, the judge would make a decision against us."

The 2008 mediation lasted from 10 a.m. to 10 p.m., and Daryl had misgivings even during the discussions, especially about Brown's companion. The agreement required the children to acknowledge Hynie as their father's wife and to give her one-quarter of his music empire. "I knew that would bite us in the a—," Daryl said.

"Sonny" Jones of the AG's office attended the mediation. Daryl said, "The AG's office was supposed to protect the charity, by law. Everything we did, we went by our lawyer's advice and advice from the AG's office."

In the beginning, he and the family made mistakes, Daryl said. "But after the mistakes were made, who's running the show now? That's the AG and Bauknight. He talks to us terribly, a very nasty attitude. When we call, they say 'we'll get to you whenever.' Something is not right here."

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When questions are asked about the estate, Daryl said, the family is stonewalled. "We're told, 'Don't say anything. You don't want Adele Pope to get back in here.' That's just throwing up a smokescreen."

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Things would have been better if his father's last will and testament had been honored, he said. "Things never would have been this way if we'd left it alone."

Buchanan and Pope defended James Brown's estate plan with an appeal to the S.C. Supreme Court, and arguments were heard Nov. 1. After the appeal was filed, Buchanan and Pope were sued by Daryl and others, current trustee Russell Bauknight, and the AG for allegedly causing "millions of dollars" in damages to the estate.

The lawsuit is being handled by the Wingate firm of Columbia, but the AG's office refuses to release a complete copy of the contingency-fee contract authorizing the lawsuit.

"Things were done without me knowing. Just like, I didn't know I was suing Adele Pope until I went over to Columbia with Deanna," Daryl said.

Daryl claims he did not sign a contract with the Wingate firm, and he knew nothing about an October motion by Mark Gende of the Wingate firm to add him as a defendant in a Freedom of Information Act (FOIA) lawsuit filed by Pope for the release of the contract.

"No, I don't know anything about all that. They'll put my name on it, but I'm telling you, I didn't know anything about that," he said.

Daryl is considered to be the child closest to his father. He toured with him for eight years and travelled around the world twice, and even as a young man, he worked for his father in the summers. He is planning a CD and is available for performances through the website, thesonsoffunk.com.

"My father was a genius. He knew what he wanted to do, and he knew what other people would do—and other people got greedy...People need to sit down now and really do his wishes," Daryl said.

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1754

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
others

and

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 ADELE J. POPE
) RELATED TO PUBLICITY MATTER

FILED
RICHLAND COUNTY
JANETIE W. McBRIDE
C.C.P. & G.S.
AUG 28 PM 3:49

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

1. I have been involved in the James Brown cases for almost 5 ½ years and am
familiar with many of the hundreds of thousands of pages of publicity generated in the
print media, on television and on the internet since Brown's death on Christmas Day
2006.

2. I am informed and believe that Sweeney, Wingate and Barrow, P.A.
("Wingate") and Russell L. Bauknight, both purporting to speak for Attorney General
Alan Wilson, have taken steps within the last few months to threaten and intimidate me;
threaten and intimidate Wingate client Daryl Brown; and secure the \$20 Million to \$30
Million they plan to pay about 35 lawyers who have destroyed The James Brown "I Feel
Good" Trust, by the following acts:

a. Issuing a subpoena to the journalist who conducted a taped interview with Daryl Brown, seeking her sources and notes;

b. Asking Judge Early to keep in place 4-year-old gag orders (the "Hynie 'diary' Gag Orders") which gag me from discussing the known contents of Hynie's "diary," also known to at least 3 attorneys in the AG's office and many others who are also gagged.

c. Stopping by an "emergency" request to the Court the deposition of their witness Albert "Buddy" Dallas, whose sworn statement shows Hynie knew she and Brown were not married and Hynie begged Brown to marry her.

3. As is demonstrated below, Plaintiffs in this case ("Case 4900") -- including two Attorneys General¹ -- have used the media for their own purposes for years, but now seek guidance when:

a. At the October 12 mediation Plaintiff Daryl Brown may agree with Defendant Pope that AG Wilson is covering up the wrongful destruction of Brown's "I Feel Good" private foundation by McMaster and Daryl's siblings.

b. Plaintiff Terry Brown, who has already testified under oath to the validity of Brown's "I Feel Good" Trust may also be ready to break ranks with McMaster and the "family."

c. A GAL for incarcerated Venisha -- if one is appointed -- may inquire whether Venisha even knew about the Wingate lawsuit or that she sought sanctions against me in a FOIA suit.

d. Yamma Lumar's ability to speak for her minor children may be questioned since she, her attorney Louis Levenson and AG McMaster agreed to destroy the \$285,000 education trust James Brown gave each of them.

¹ I do not believe either Attorney General McMaster or Attorney General Wilson was ever a legal Plaintiff to this action because I believe Wingate's presenting himself as the sole attorney for the AG/State in this tort suit brought for the primary benefit of Hynie and other Wingate private clients violates my Due Process Right and/or is illegal under S.C. Law and/or is improper. Jg. Manning has, however, disagreed with me. His July 5, 2012 Order declining to enjoin Wingate from being sole counsel for the State/AG or Bauknight for asserting that he speaks on behalf of the Attorney General of South Carolina is now subject to my motion for reconsideration.

e. Plaintiff Lindsey Brown may come to the mediation and say she did not even know she was a Plaintiff in Case 4900 until she read about it in the media and did not authorize Wingate to seek sanctions against me.

f. Daryl, with and for his minor daughter, may agree with me that The James Brown "I Feel Good" Trust and her education trust should be saved.

g. If fourteen witnesses and four attorneys in AG Wilson's office were ungagged from the 4-year-old Hynie "diary" Gag Orders it would be easy to evaluate whether McMaster abused his public office by taking \$20 Million from the "I Feel Good" Foundation and giving it to Hynie.

d. The public is beginning ask how Brown's music empire, which earned \$10 Million in 2011 could have been worth less than \$4.7 Million when he died, as AG Wilson and AG-appointee Bauknight represented to the Supreme Court.

4. I am informed and believe that the media should be left alone to do the job our Constitution allows them to do unless and until it is appropriately demonstrated that the Court's intervention is necessary because media coverage threatens the fairness of a scheduled jury trial.

5. I am informed and believe that the vast majority of the publicity surrounding the James Brown cases has been generated or fueled by Plaintiffs, their attorneys and their media specialists.

6. Attempts to manipulate the media began in early 2007 when Hynie's lead attorney issued a press release declaring her to be Brown's "widow"; naming the members of the legal team he had put together to overcome the generally known fact that she was not Brown's spouse. That press release is still on the web.

7. That same month – before I was appointed an SA of Brown's Estate at Hynie's request – Hynie appeared on the national Larry King live show brandishing her fraudulently obtained marriage license as "evidence" she was Brown's spouse.

8. Brown's celebrity attorney Deborah Opri appeared after Hynie, confirming Hynie was not Brown's spouse and that his Estate Plan – leaving his music empire for scholarships for needy students – was valid.

9. There was much publicity in 2007 and 2008 as Bob Buchanan and I uncovered the more than \$12 Million Brown's original trustee David Cannon took from funds Brown gave to the "I Feel Good" Foundation.

10. What went unnoticed by the media in 2008 – because of McMaster's vast publicity machine – was that McMaster was receiving large political contributions from Cannon's Atlanta lawyers and Cannon did not get indicted for two years.

11. In February 2008 McMaster took his James Brown story to WIS TV in a program on how Brown's grandson Forlando was challenging "two prominent lawyers," Bob Buchanan and me.

12. McMaster falsely accused Bob and me on the WIS TV program of working for the family and the "poor kids" at the same time, which he said went "far past the stop sign of conflict of interest."

13. In July 2008 Plaintiff Deanna appeared on television in New York with the Reverend Al Sharpton to chill the Christie's sale which had been approved in three court orders, including an order of the S.C. Court of Appeals issued just days before.

14. On July 30, 2008 AG McMaster agreed in writing that Bob and I were appropriate permanent trustees of Brown's Trust.

15. Eleven days later, however, on August 10, 2008, McMaster and Hynie's attorney, with "the Levenson clients" announced a deal which would be refined over the next year to give McMaster total control of Brown's private property; replace people who

support Brown's Estate Plan with Bauknight; and create a \$100 Million political patronage fund for McMaster and the managing partner of Bauknight's law firm, Nexsen Prute (NP), who expected to be the next Attorney General.

16. In 2009 Bob Buchanan and I were threatened with sanctions and Rule 11 filings by attorney Louis Levenson if we failed to quit our PR/Trustee positions and drop our opposition to the McMaster deal.

17. Levenson carried the message to the media for Plaintiffs Deanna, Yamma, Daryl, Larry and Venisha: The people "standing in the way of the settlement better get out of the way."

18. On September 25, 2009 the NP partner announced his candidacy for Attorney General. From then until they were defeated in June 2010 he and McMaster and NP sites touted their belief in transparency in government; strong ethics; belief in strong and fair criminal enforcement; and belief that government should not step into matters better handled by the private sector.

19. On November 1, 2009 *Atlanta Magazine* produced a huge spread *The Debtor* about the deceased ex-husband of Plaintiff Yamma Brown Lumar, including pictures of Plaintiffs Yamma, Sydney and Carrington.

20. In February 2010 – nearly three years after his takings were discovered – Cannon was indicted for \$12+ Million of the \$17+ Million he took from Brown and his 2008 forgery to cover it up. He was never tried while McMaster was in office.

21. In the spring of 2010 Hynie's attorney approached Bob's attorney and told her I was really the one they were after. He asked that Bob abandon his appeal of McMaster's deal. He said that Sr. Assistant Sonny Jones had already hired

contingency-fee attorney Ken Wingate, who was working on the complaint against us.

22. Bob refused then – and still refuses – to drop the appeal or lie about me.

23. Plaintiffs filed this tort lawsuit against Bob Buchanan and me on May 19, 2010. During the 2+ years this suit has been pending at least the following Plaintiffs have given self-generated interviews and/or taken other public action related to the claims and counterclaim in this case including:

a. Henry McMaster – Public Statements and press releases generated by McMaster on the functions of the Office of the AG; ethics in government, returning “pay-to-play” contributions; transparency in government; and what he asserts he did to help the “I Feel Good” Foundation. In a 2008 WIS TV interview McMaster falsely accused Buchanan/Pope of going “far past the stop sign of conflict of interest.”

b. Nexsen Pruet (NP) – See public statements of Leighton Lord and NP on his behalf asserting in 2010 his respect for McMaster and intention to continue his work as Attorney General. Also see October 31, 2011 AP interview with NP attorney David Black, repeated in 440+ media outlets, in which Black states that the return of Buchanan and Pope as Brown’s fiduciaries would be “similar to throwing a grenade into the James Brown music empire.”

c. AG Alan Wilson - See Home Page of Office of Attorney General Wilson, paid for by taxpayers of South Carolina. See introduction to guide to FOIA and numerous media articles, reports and interview about Wilson’s position on FOIA, ethics and transparency in government.

d. Daryl Brown - Daryl Brown has, within the year 2012, given a taped interview to a journalist and written a widely publicized letter to Attorney General Wilson stating that he and his siblings made a mistake by agreeing with AG McMaster to destroy the “I Feel Good” foundation, his father’s dream, or to call Hynie Brown’s “wife” when she was not.

e. Venisha Brown - has been arrested on felony charges at least three times since the death of James Brown; is believed to be currently incarcerated; and is believe to have been incarcerated when Henry McMaster proposed to give her nearly \$5 Million from the “I Feel Good” Foundation, rather than the 1/6 of his personal and household effects Brown gave her in his Will.

f. Yamma Brown Lumar - Charged with attempted murder of her husband shortly after Brown’s death [charges dropped]. Gives frequent interviews

and is seen on James Brown Children's Family Foundation site.

g. Deanna Brown Thomas - Augusta radio personality who has given numerous interviews about Brown's charitable intentions, the \$100 Million value and "greedy trustees."

h. Tommie Rae Hynie - Gave radio interview to Gene Petriello about "diary" after the Hynie "diary" Gag Orders were issued. After this suit was filed and Hynie had gone into default on the counterclaims, including that she was not Brown's spouse, Hynie gave an interview in which she "bared her soul" and asserted she was Brown's widow.

24. Less than a month after filing this suit, a Wingate partner made a contribution to McMaster's campaign. McMaster did not return it as he had promised to do in a press release when accused by the *Wall Street* journal of pay-to-play schemes.

25. In April 2011 Jeffrey Smith and I circulated our draft of *Private Foundations, Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good" Trust doesn't...* to Duke Foundation, other professionals for comment.

[We did not intend to publish it until after the S.C. Supreme Court rules on the McMaster Settlement deal.]

26. On May 6, 2011 AG Wilson and Bauknight asked the S.C. Supreme Court to supplement Settlement appeal record ("Case 1647") with the less-than \$4.7 Million value. The Supreme Court declined to do so.

AG Wilson and Bauknight assert:

27. On September 4, 2011 Plaintiff Yamma Lumar gave a video interview on "Miss Independent." She gave numerous other interviews throughout 2011,

28. On October 31, 2011, the day before the Supreme Court oral arguments on the McMaster settlement, NP attorney David Black gave an interview in which he said

that the return of Bob Buchanan and me as Brown's fiduciaries – a subject of the next days arguments – would be “similar to throwing a grenade into the James Brown music empire.”

29. Black's story was published in more than 440 media outlets on November 1, 2011 and later.

30. NP attorney Black has given interviews and statements to support Bauknight's false claim that his less-than \$4.7 Million valuation of Brown's worldwide music empire was correct and that Bob's and my approximately \$85 Million valuation was fraudulent.

31. At the taped Supreme Court arguments, available to the press and public, Bauknight, through counsel, represented:

- a. Hynie's elective share claim was a “slam dunk”
- b. Copyright Termination Rights is “all this case is about”.
- c. There were no offers to buy Brown's assets.
- d. The James Brown Estate and 2000 Trust have no corpus “to speak of.”

32. Outside after the November 1 Oral Arguments Deanna Brown Thomas made false statements to the media about the impact of the Federal Copyright Act intended to suggest that the Settlement which took more than 52 ½% of the “I Feel Good” foundation and paid lawyers between \$20 and \$30 Million was really good for the “I Feel Good” Trust.

33. In late 2011 and early 2012 media reports confirmed Brown's grandson Forlando, son of Plaintiff Terry Brown, had fired his powerful Atlanta law firm and asked a federal judge to dismiss his fabricated 4-year-old claim against Bob Buchanan and

me – which the Court did.

34. In 2012 there were media reports that Terry – who had under oath supported Brown Estate Plan in testimony given in Aiken in 2008 – did not know Wingate had sued to make him part of the FOIA suit or sought sanctions against me.

35. In the summer of 2012 Plaintiff Venisha was arrested on the third felony charge lodged against her since James Brown's death. This was widely reported in the international media.

36. By August 23, 2012 the contingency-fee attorneys for Hynie and Brown's children saw the \$20 - \$30 Million McMaster/Bauknight/Wilson was allowing them to take from Brown's "I Feel Good" Trust was in jeopardy if their clients agreed with me at the October 12 mediation that the destruction of Brown's Estate Plan should never have happened and they should not have given Hynie the fabricated "wife" stipulation.

37. On information and belief, both the Publicity Motion and Wingate/AG Wilson's subpoena to the journalist to try to get to her sources were intended to threaten and intimidate Daryl, Terry and others who might break ranks with the fabricated "family" at mediation and acknowledge the following facts:

- a. Bauknight's less-than \$4.7 Million valuation is outrageous;
- b. Brown's acknowledged children and AG McMaster knowingly fabricated the "heirs" of James Brown under the Federal Copyright Act, then assigned a false value to the rights of the "heirs."
- c. Hynie was not Brown's spouse when he died.
- d. McMaster abused his public office by creating the Legacy Trust political patronage fund from Brown's private property, and AG Wilson is covering it up

38. This affidavit is based on my personal knowledge and belief.

FURTHER DEPONENT an SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
28th day of August, 2012

[Signature] (L.S.)
Notary Public for South Carolina
My Commission expires: 7/17/2016

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 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. [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

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. [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 [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 CIRCUIT

Civil Action No. 2010-CP-405900

2012 NOV 20 AM 11:40
JEANETTE W. McNEEL
C.C.P. & G.S.

RICHLAND COUNTY
FILED

**PLAINTIFFS' MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT POPE'S MOTION TO
VACATE, SET ASIDE, ALTER AND/OR
AMEND ORDER DENYING
INJUNCTION AS TO RUSSELL L.
BAUKNIGHT SERVING AS AGENT
FOR THE STATE/ATTORNEY
GENERAL AND DENYING
INJUNCTION AND
DISQUALIFICATION OF SWEENEY,
WINGATE & BARROW, P.A. AS SOLE
COUNSEL TO BOTH THE STATE/AG
AND PRIVATE PLANITIFFS,
INCLUDING NON-RESIDENTS OF
SOUTH CAROLINA, IN A TORT SUIT
FOR MONEY DAMAGES AGAINST A
SOUTH CAROLINA CITIZEN**

TO: DARYL WILLIAMS, ESQ. AND ADAM SILVERNAIL, ESQ., ATTORNEYS FOR
DEFENDANT POPE, AND TO DEFENDANT POPE ABOVE-NAMED:

For the following reasons, the Plaintiffs above-referenced hereby respectfully request that the Court deny Defendant Pope's Motion to Vacate, Set Aside, Alter and/or Amend the Court's Order of July 5, 2012.

FACTS BEARING UPON THE MOTION

Plaintiffs filed this lawsuit in May of 2010 in order to recover the damages sustained to the Estate of James Brown, related trusts, and beneficiaries thereto who have settled underlying litigation involving the Estate. Defendant Pope and former Defendant Buchanan are former Personal Representatives of the Estate and former Trustees of the James Brown 2000 Irrevocable Trust (a testamentary trust). By Motion dated May 18, 2011, Defendant Pope moved to—among other items of “relief”—disqualify the law firm of Sweeny, Wingate & Barrow, P.A. from representing Plaintiffs (hereinafter referred to simply as “Motion to Disqualify”). After a hearing on April 12, 2012, and via Order dated July 5, 2012, the Honorable L. Casey Manning, Jr. denied Defendant Pope's Motion. Thereafter, Defendant Pope filed the instant Motion to Vacate, Set Aside, etc. (hereinafter referred to simply as “Motion to Vacate, Set Aside, etc.”) Defendant Pope claims that this Motion is made pursuant to Rules 59(a), (b), (e), and 60(a) and (b) of the South Carolina Rules of Civil Procedure.¹ Plaintiffs oppose this Motion and assert that the Court's Order of July 5 should not be disturbed.

ARGUMENT

I. DEFENDANT POPE HAS ERRONEOUSLY ENTITLED THIS MOTION WITH AN INCORRECT CAPTION IN ORDER TO IMPROPERLY ADVANCE NEW ARGUMENTS.

¹ Based on a plain reading of their text, Rules 59(a), (b), and 60(a) do not apply to this Motion. Further, Defendant Pope has made no argument that any of the grounds listed in Rules 60(b)(1) through (5) apply to this Motion. Therefore, Plaintiffs respond to this Motion as if it were made solely under Rule 59(e).

Defendant Pope's title for her original Motion to Disqualify is as follows: "Defendant Adele J. Pope's Motion to Disqualify And/Or Enjoin Sweeney [sic], Wingate & Barrow from Representing State of South Carolina or Attorney General; to Enjoin Russell Bauknight; to Amend Answer Following Depositions and to Set Depositions If Required." This Motion resulted in the July 5, 2012 Order, which is entitled "Order Concerning Defendant Adele Pope's Motion to Disqualify Sweeney, Wingate & Barrow, P.A. from Representing the Office of the Attorney General of South Carolina, Enjoining Russell Bauknight from Purporting to Speak for the Office of the Attorney General, and Other Relief." However, in moving to reconsider this Order, Defendant Pope has devised a new title for this Motion:

Adele J. Pope's Motion to Vacate, Set Aside, Alter and/or Amend Order Denying Injunction as to Russell L. Bauknight Serving as Agent for the State/Attorney General and Denying Injunction and Disqualification of Sweeney [sic], Wingate & Barrow, PA as sole Counsel to Both the State/AG and Private Plaintiffs, Including Non-Residents of South Carolina, in a Tort Suit for Money Damages Against a South Carolina Citizen.

The title of this Motion bears little resemblance to the title of original Motion to Disqualify. It is clear that Defendant Pope is trying to embed new arguments into the caption. Plaintiffs assert that this practice is improper, and request that the Court disregard the caption to this Motion. See Fields v. Reg'l. Med. Ctr. of Orangeburg, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005) (citations omitted) (noting that a Rule 59(e) motion cannot be used to raise issues that could have been raised prior to the complained-of ruling).

II. EACH OF DEFENDANT POPE'S GROUNDS FOR RECONSIDERATION ARE UNAVAILING TO OVERTURN THIS COURT'S ORIGINAL DECISION.

As to Defendant Pope's "Grounds for Reconsideration" Nos. 1, 2, 3, 6, 7, 8, 9, 10, 12, 13, 14, 15, and 18, Plaintiffs assert that these are mere re-wordings of Defendant Pope's original arguments in her Motion/Memorandum to Disqualify. Plaintiffs have fully briefed these issues

in their Memorandum of Law in Opposition to the Motion to Disqualify, which Plaintiffs hereby incorporate by reference and attach hereto as **Exhibit A** (Plaintiffs also incorporated this Memorandum by reference at the oral argument on this Motion).

In Ground for Reconsideration No. 4, Defendant Pope states that “[t]he Court failed to consider and/or find that the injunctions should be granted because the AG’s authority to engage special counsel from the private sector is limited to matters which represent the interests of the State of S.C. in special situations and complex litigation.” In light of this case’s designation as complex (per the Order of Judge Lee), Defendant Pope’s Ground No. 4 is a non-sequitur.

In Ground for Reconsideration No. 5, Defendant Pope states—among other arguments—that “the Complaint neither alleges nor presents . . . any public right to be protected.” Plaintiffs note that this argument ignores the presence of a charitable trust (as a named Plaintiff) in this matter.

In Ground for Reconsideration No. 11, Defendant Pope claims that “[t]he Court failed to consider, find and order that the injunctions should be granted because the AG has no beneficial interest in James Brown’s Private Estate Plan and is prohibited by law from having an interest as a beneficiary of the Legacy Trust.” Defendant Pope offers no legal support for this assertion. Further, this statement again ignores the presence of charitable interests in this case.

In Ground for Reconsideration No. 16, Defendant Pope argues that “[t]he Court failed to consider and find that Wingate has threatened Pope with sanctions – and sought them on behalf of the Wingate Private Clients for exercising her rights under FOIA while it is the duty of his purported client the AG to comply with FOIA.” As a preliminary matter, Plaintiffs note that no part of the related FOIA actions is at issue in either this Motion or Defendant Pope’s original Motion to Disqualify, and therefore Ground No. 16 cannot be considered on this Motion. See

Fields, supra. More importantly, Ground for Reconsideration No. 16 contains a significant misstatement of fact. Plaintiffs have not sought sanctions against Defendant Pope for “exercising her rights under FOIA,” but rather have sought sanctions against Defendant Pope for her Motion that Plaintiffs be assessed criminal penalties under FOIA *in a civil case*. In a Motion in Case 2011-CP-36-00379 (which has been consolidated with Case 4900), Defendant Pope requested that the Newberry Court impose criminal fines upon Plaintiffs in a civil matter. (See Motion for Sanctions in Case 379 and accompanying exhibits, all attached hereto as **Exhibit B**.) Defendant Pope’s improper request is the subject of the Motion for Sanctions, not Defendant Pope’s other actions taken in furtherance of her FOIA request.² Thus, Ground for Reconsideration No. 16 is wholly unfounded.

In Ground for Reconsideration No. 17, Defendant Pope states that her Motion should be granted “because it is now apparent the AG cannot and should not support the action of Wingate Private Plaintiffs Terry Brown and Bauknight in undervaluing James Brown’s worldwide music empire at less than \$4.7 Million for their private purposes where the proper value was about \$85 Million.” Plaintiffs assert that Defendant Pope cannot support this non-dispositive Motion with a conclusory statement of fact about one of the primary factual contentions in this case. This argument is unsupported and misplaced.³

Ground for Reconsideration No. 19 is particularly objectionable, and reads as follows:

The Court failed to consider and find that the injunctions should be granted because it is the duty of the AG Wilson to investigate documented statements such as that of Daryl Brown that he did not contract with Wingate to represent him; that he knew nothing about the suit until after it was filed; and that he regrets contesting his father’s will which left about \$80 Million to The James Brown “I

² Though the FOIA requests are not the subject of the instant Motion, Plaintiffs do not concede that they have any merit.

³ Though the valuation of the Estate is not the subject of this Motion, Plaintiffs do not concede that Defendant Pope is accurate on any of her statements of valuation.

Feel Good" Trust, while Wingate must protect Tommie Rae and other Wingate Private Clients whom James Brown intentionally excluded from his Estate Plan.

Upon information and belief, Defendant Pope is referring to an alleged letter from Daryl Brown to the South Carolina Attorney General. This letter has not been authenticated, is not an affidavit, and therefore does not merit notice by the courts of this State. Further, Defendant Pope did not raise this issue in her original Motion to Disqualify, and therefore she cannot argue it on this Motion. See Fields, supra.

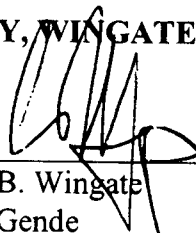
Finally, Defendant Pope argues in Ground' for Reconsideration No. 20 that her Motion should be granted because "Wingate's clients have falsely accused Pope of overstating the value of James Brown's assets by \$79 Million, which would be a crime." Nothing in the Complaint or record of this case anywhere indicates that Plaintiffs are charging Defendant Pope with a crime. This case is a pure tort matter, and Plaintiffs have stated such in open court.

CONCLUSION

For the foregoing reasons, Plaintiffs assert that Defendant Pope's Motion to Set Aside, Vacate, etc. is without merit and should be denied.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
November 20, 2012

JL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

Robert E. Lominack,

Plaintiff.

-vs-

Donald V. Myers, Solicitor,
Eleventh Judicial Circuit,

Defendant.

IN THE COURT OF COMMON PLEAS

2002-CP-32-1890

ORDER

ORIGINAL
FILED
2002 OCT 30 A 8:28
THOMAS H. COHERFORD
CLERK OF COURT
LEXINGTON, SC

This matter came before the Court following the Plaintiff's filing of a complaint seeking declaratory and injunctive relief pursuant to the South Carolina Freedom of Information Act ("FOIA"). Prior to the filing of the complaint, the Plaintiff had sent a letter to the Defendant Donald Myers, Solicitor, Eleventh Judicial Circuit, requesting, pursuant to the FOIA, all materials in the possession of the Solicitor's Office relating to a criminal case where the Plaintiff is representing the Defendant in a post conviction relief action against the Defendant's prior legal counsel. By letter dated May 23, 2002, Defendant Myers denied Plaintiff's FOIA request, indicating that Section 17-27-150(B) provides the procedure for discovery in a capital post-conviction relief case, and that the Plaintiff should use that process rather than trying to circumvent the statute by filing a request for these documents under the FOIA. The Plaintiff then filed this Complaint. The issue before the Court is whether to compel compliance with Plaintiff's FOIA request.

I find that Section 17-27-150 of the South Carolina Code details the method of discovery in post-conviction relief proceedings. Further, it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants. U.S. v. Murdock, 544 F.2d 599 (5th Cir. 1976);

Frushauf Corp v. Thornton, 507 F.2d 1253 (6th Cir. 1974); N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132 (1975).

Therefore, the information sought in this case cannot be obtained under the State Freedom of Information Act and can only be obtained by utilizing the discovery procedure set out by Statute.

Plaintiff's request for declaratory and injunctive relief is denied.

AND IT IS SO ORDERED.

MHW
#2


Marc H. Westbrook
Resident Judge
Eleventh Judicial Circuit

October 25th, 2002.

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 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 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 Lester and Carrington Lester; 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 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 LESTER and CARRINGTON LESTER; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

Defendants

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT POPE'S MOTION TO
DISQUALIFY SWEENEY, WINGATE &
BARROW, TO ENJOIN RUSSELL
BAUKNIGHT, TO SET DEPOSITIONS,
AND TO AMEND ANSWER
FOLLOWING DEPOSITIONS**

1773

EXHIBIT

A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

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 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 CIRCUIT

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT POPE'S MOTION TO
DISQUALIFY SWEENEY, WINGATE &
BARROW, TO ENJOIN RUSSELL
BAUKNIGHT, TO SET DEPOSITIONS,
AND TO AMEND ANSWER
FOLLOWING DEPOSITIONS**

1774

EXHIBIT

A

STATE OF SOUTH CAROLINA

COUNTY OF Newberry

Adele J. Pope

Plaintiff,

vs.

Alan Wilson in his capacity as Attorney
General for South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CASE NO.: 2011-CP-36-00379

**MOTION
COVERSHEET**

Plaintiff's Attorney:

Adam Silvernail, Bar No. _____

Address:

PO Box 1898, Columbia, SC 29202

Phone: 803.779-1770 Fax 803.403-8092

E-mail: mvg@swblaw.com Other: _____

Defendant's Attorney:

Mark V. Gende, Bar No. 72835

Address:

PO Box 12129, Columbia, SC 29211

Phone: (803) 256-2233 Fax (803) 256-9177

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Sanctions

Estimated Time Needed: 20 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Mark V. Gende
Signature of Attorney for ☒ Plaintiff / ☐ Defendant

12/9/11
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$** \$25.00

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$** _____

☐ **CONTESTED - AMOUNT DUE: \$** _____

1775

EXHIBIT

B

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina

Plaintiff.

) IN THE COURT OF COMMON PLEAS

) FOR THE EIGHTH JUDICIAL CIRCUIT

) Civil Action No.: 2011-CP-36-00379

) MOTION FOR SANCTIONS

FILED
NEWBERRY COUNTY
2011 DEC 12 A 10:46
JACKIE S. BOWERS
CLERK OF COURT

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, the Proposed Intervenor¹ move before the Court for an Order granting sanctions against Plaintiff Pope and her attorney, Adam Silvernail. The facts and law in support of this Motion are more fully set forth below.

FACTS BEARING UPON THE MOTION

The fee agreement between Proposed Intervenor and their counsel is the subject of a pending discovery motion before the Court in Richland County Case No. 2010-CP-40-4900 (this case is referred to as "Case No. 4900"). (See Defendant's Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction; Plaintiff's Motion for Protective Order Concerning Fee Agreement and/or Motion to Strike

¹ The Proposed Intervenor are as follows: 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; 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 children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN. The Proposed Intervenor are the non-governmental Plaintiffs in Case No. 4900.

Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement; previously provided to the Court by the parties.) During the pendency of these Motions, Plaintiff Pope served a Freedom of Information Act request on the Office of the Attorney General, seeking a copy of the fee agreement. The Attorney General responded but did not produce the agreement, due in part to the pending Motions. Plaintiff Pope then filed this lawsuit in Newberry County to enforce the FOIA request (the instant case is referred to as "Case No. 379"). In order to protect their interests, the non-governmental Plaintiffs in Case No. 4900 made a Motion to Intervene as Proposed Intervenors in this case. Plaintiff Pope opposed this Motion to Intervene. (See Pope's Return and Opposition to Motion to Intervene, attached hereto as Exhibit A; see also Affidavit of Adele J. Pope Opposing Motion to Intervene, attached hereto as Exhibit B.) By Order dated November 22, 2011, this Court consolidated Case No. 379 with Case No. 4900.² (See Order of Judge Addy, attached hereto as Exhibit C.) Plaintiff Pope filed a Motion to Alter/Amend Judge Addy's Order. (See Motion to Partially Alter or Amend and/or Reconsider and Vacate Order Dated November 22, 2011, attached hereto as Exhibit D.) The statements contained in Plaintiff Pope's Motion to Alter/Amend, as well as statements made in the Affidavit opposing the Motion to Intervene, are the subject of this Rule 11 Motion.

STANDARD OF REVIEW

An attorney's signature on a motion certifies that, "to the best of his knowledge, information and belief there is good ground to support [the motion]." Rule 11, SCRCP. Under

² Specifically, Judge Addy ruled that Defendant Wilson must answer the FOIA action, and that the cases would be consolidated when the pleadings were complete. (Order of Judge Addy, p. 7.) Judge Addy also held that "any motions and issues hereafter outstanding," including the Motion to Intervene, will be taken up by the Richland County Court in Case No. 4900. (*Id.*) Out of an abundance of caution, Proposed Intervenors have filed this Motion in the Newberry Court because the improper filing by Plaintiff Pope and Adam Silvernail was made in Newberry. Proposed Intervenors reserve the right to re-file this Motion in Richland County if the Newberry Court dismisses and/or deems improper the filing of the Motion in the Newberry Court.

Rule 11, “a party and/or the party’s attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it.” Ex parte Gregory, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (citing Runyon v. Wright, 322 S.C. 15, 471 S.E.2d 160 (1996)). Further, “[t]he sanction may include an order to pay the reasonable costs and attorney fees incurred by the party . . . defending against the frivolous action.” Id. (citing Runyon).

ARGUMENT

PLAINTIFF POPE, AND THE COUNSEL WHO SIGNED THE PLEADING AND FILED THE AFFIDAVIT, HAVE KNOWINGLY THREATENED CRIMINAL PROSECUTION IN ORDER TO OBTAIN AN ADVANTAGE IN A CIVIL MATTER. THIS CONDUCT IS IN VIOLATION OF RULE 11, SCRPC AND RULE 4.5 OF THE SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT.

According to Rule 4.5 of the *South Carolina Rules of Professional Conduct*, “[a] lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter.” Rule 4.5, *South Carolina Rules of Professional Conduct*, Rule 407, SCACR. The rule is clear: a party to a civil suit cannot use the threat of criminal prosecution for the sole purpose of obtaining leverage in a civil case. In spite of this rule, Plaintiff Pope, by and through her attorney Adam Silvernail, have accused Proposed Intervenor of criminal acts and have asked the Newberry Court to so rule. In light of the bright-line rule against such conduct, Plaintiff Pope’s (and Adam Silvernail’s) decision to put forth this Motion cannot be in good faith and the Motion is frivolous within the meaning of Rule 11.

In Plaintiff Pope’s Motion to Alter/Amend, she requests that the Newberry Court make several additional rulings that Judge Addy originally declined to make. In paragraph 18, she

states that "[t]he Court failed to consider and/or find that the AG's consent to the proposed intervention of the private intervenors aids and abets their improper and/or criminal actions under S.C. Code Ann. § 30-4-110" (all citations to the Motion to Alter/Amend are found at Exhibit D). Section 30-4-110 is an expressly criminal statute:

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be find three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

S.C. Code Ann. § 30-4-110 (1976). On its face, the statute provides for both fines and imprisonment. In Paragraph 30, Plaintiff Pope requests that the Court find that Proposed Intervenor are in violation of the statute: "[t]he Court failed to find and/or consider that the proposed intervenors have violated S.C. Code Ann. § 30-4-110 . . ." Plaintiff Pope makes no mention of any of the protections afforded to criminal defendants by our constitutional system, but rather asks the Court to indict, try, and convict Proposed Intervenor of criminal activity. In paragraph 31 of her Motion to Alter/Amend, Plaintiff Pope expressly mentions her desire that criminal punishment be imposed upon Proposed Intervenor: "[t]he Court failed to find and/or consider that neither their parents nor the Wingate firm may take illegal action on behalf of minors, and that the minors should be exempt from any punishment which should be applied to the adult proposed intervenors" (emphasis added). Proposed Intervenor submit that such an absurd request, made by an attorney-client through her attorney of record, cannot be in good faith.

Plaintiff Pope's Motion to Alter/Amend does not stop at improperly accusing parties of criminal activity. In paragraph 32, Plaintiff Pope accuses Proposed Intervenor's counsel of

criminal activity, and requests that the Newberry Court so find: “[t]he Court failed to find and/or consider that the Wingate Firm is aiding and abetting the adult proposed intervenors in denying [Plaintiff Pope’s] FOIA rights and the FOIA rights of other citizens.” Proposed Intervenor assert that these inappropriate, unfounded attacks on Proposed Intervenor and their counsel, in a pleading signed by an officer of the Court and submitted to that Court, are the epitome of frivolous pleadings, are contrary to the *Rules of Professional Conduct*, and are in violation of Rule 11, SCRPC.

Plaintiff Pope also makes improper criminal allegations in her Affidavit submitted in opposition to Proposed Intervenor’s Motion to Intervene in Case No. 379 (all citations to Pope’s Affidavit are found at Exhibit B). In paragraph three of the Affidavit, Plaintiff Pope states that she is “informed and believe[s] that the wilful [sic] violation of FOIA by certain of the proposed intervenors violates § 30-4-110” In paragraph four, Pope further opines that she is “informed and believe[s] that the attempt to intervene is brought by the above-named persons in bad faith to wilfully [sic] violate the provisions of FOIA” and that “liability for violation of FOIA is not limited to Public Bodies” It is clear that Plaintiff Pope, in both her affidavit and through a signed motion, is bringing criminal allegations against Proposed Intervenor in an effort to gain an advantage in a civil matter, which is expressly unethical.

CONCLUSION AND REQUESTED RELIEF

Plaintiff Pope’s and Adam Silvernail’s threat of criminal prosecution in a civil matter cannot have been made in good faith, and is therefore a per se violation of Rule 11. Proposed Intervenor request that the Court strike Plaintiff Pope’s 59(e) Motion in its entirety as it relates to the Proposed Intervenor, strike any Affidavit of Plaintiff Pope that makes any allegation of criminal conduct on the part of the Proposed Intervenor, award Proposed Intervenor their

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-00379

PLAINTIFF'S RETURN AND OPPOSITION
TO MOTION TO INTERVENE

2011 DEC 12 A 10:46
JACKIE S. BOWERS
CLERK OF COURT

FILED
NEWBERRY COUNTY

TO: DEFENDANT AND PURPORTED INTERVENORS, NAMELY ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA; 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; 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 CHILDREN, SYDNEY L. AND CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; AND TERRY BROWN AND/OR THEIR COUNSEL.

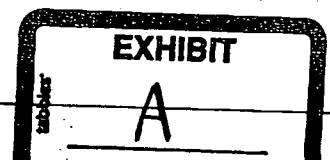
Plaintiff opposes the Motion to intervene for the reasons set out below:

1. Intervention is unwarranted and improper as to all purported intervenors

as follows:

- a. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, is already a party to this action and is properly represented by a member of his office herein.¹ The sole Defendant

¹ Plaintiff has vigorously objected to the purported representation of the Attorney General by contingency-fee counsel which simultaneously represents private individuals. Plaintiff reserves the right to raise her objections herein if the Court grants



herein to filing a motion to intervene in this action is a patent attempt to further delay the outcome of this matter and deprive Plaintiff of her rights under FOIA.

- b. The Legacy Trust, although it is a public body and must comply with FOIA, was not named as a Defendant herein because Plaintiff has not yet sought the documents in question from the Legacy Trust.
- c. The remaining purported Intervenor are persons or entities not subject to compliance with requests made under FOIA. Plaintiff has never made a FOIA request to any of these persons or entities, and none is a public body as defined in FOIA.

2. Defendant Attorney General has thus far deprived Plaintiff of her rights under FOIA by refusing, without justification under FOIA, to produce the requested documents and mounting a dilatory defense to this action. At the center of the Attorney General's attempts to have this proper action dismissed are his assertions that this case is an alter ego of discovery proceedings in a Richland County case involving Plaintiff, Defendant and numerous other parties.

3. By participating in the motion to intervene, the Attorney General attempts to bolster his incorrect argument that the Richland County proceedings preclude this action. Instead, the absurdity of these private individuals intervening in a simple FOIA action brings into stark relief the differences between this action and the Richland County case. As the U.S. Supreme Court made clear in *North v. Walsh*, 881 F.2d 1088 (D.C.Cir. 1989), discovery proceedings in other cases do not affect FOIA claims.

4. The only portion of FOIA which implicates the individual purported intervenors is S.C. Code Ann. § 30-4-110, which states in part:

the motion to intervene.

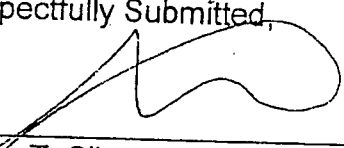
Any person or group of persons who willfully violates the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars... [emphasis supplied]

5. Although the purported intervenors are, for the most part, not public bodies subject to FOIA, they do, jointly or severally, constitute persons or a group who have worked with the Attorney General to deprive Plaintiff of her rights under FOIA.

6. Because the Attorney General is already a party to this action and the other purported intervenors have no interest in this action, their motion to intervene should be denied.

This return is based on the Affidavit of Plaintiff filed herewith; Plaintiff's Complaint, prior affidavits and other filings herein; the *South Carolina Rules of Civil Procedure*; the South Carolina Freedom of Information Act; other applicable statutory and case law; and such additional documents as Plaintiff shall file herein prior to the hearing.

Respectfully Submitted,



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

November 7, 2011

Attorney for Plaintiff

EXHIBIT B

FILED
NEWBERRY COUNTY
2011 DEC 12 A 10:46

JACKIE S. GOWERS
CLERK OF COURT

1784

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT OF ADELE J. POPE
OPPOSING MOTION TO INTERVENE
AND IN FURTHER SUPPORT OF
EXPEDITED IN CAMERA REVIEW
AND SUMMARY JUDGMENT

FILED
NEWBERRY COUNTY
2011 DEC 12 A 10:46
JESSIE S. BOWERS
CLERK OF COURT

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes
and says:

1. This affidavit is made of my personal information and belief.

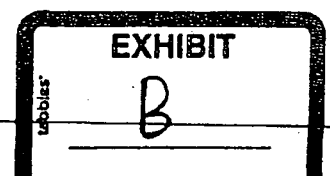
2. I am informed and believe that the extraordinary facts of this case; resistance
of Attorney General Alan Wilson to deliver documents he has declared public and
asserted he is "more than willing" to produce; and the direct interference of certain
individuals with knowledge that they are obstructing the compliance by a Public Body of
The S. C. Freedom of Information Act ("FOIA") call into question whether there has
been a violation of S. C. Code § 30-4-110, which states in part:

Any person or group of persons who willfully violates the provisions of this
Chapter shall be deemed guilty of a misdemeanor and upon conviction
shall be fined not more than one hundred dollars...

3. I am informed and believe that the wilful violation of FOIA by certain of the
proposed intervenors violates § 30-4-110 and should be addressed by the Court as
follows:

a. Summary Judgment and direction to the Defendant to immediately release

1785



the McMaster/Wingate Agreement to sue Buchanan/Pope which AG Wilson agrees is a public documents;

b. Expedited *in camera* review of the remaining requested documents.

c. Denial of all motions to intervene on the grounds that all except the Legacy Trust are not public bodies; and no FOIA request has been made of any proposed intervenor;

d. Intervenors Terry, Tommie Rae, Daryl, Larry, Tonya and Venisha Brown, Deanna Thomas, Yamma Lumar and Russell Bauknight, jointly and severally with defendant, be directed to pay all attorneys' fees and costs related to the defense of the motion to intervene.

e. Summary Judgment against Defendant as to all other issues.

4. I am informed and believe that the attempt to intervene is brought by the above-named persons in bad faith to wilfully violate the provisions of FOIA; that liability for violation of FOIA is not limited to Public Bodies; and that these persons should accept such liability because:

a. Proposed intervenor Bauknight is represented and advised by an 180-person law firm which has expertise in the FOIA area, including defense of the State's only FOIA criminal case.

b. Proposed intervenors Terry, Tommie Rae, Daryl, Larry, Tonya, Venisha, Yamma and Bauknight have moved to intervene to cause delay and denial of my FOIA Rights with knowledge they are not public bodies, and no FOIA request has been made of them.

c. The above-named persons have actual knowledge that their motion to intervene has actually delayed the State's compliance with Plaintiff's FOIA request, and that they have no right to intervene.

d. There is no basis under the law, civil rules or cases of South Carolina for any proposed intervenor to be made a party defendant to this action.

5. I am also informed and believe that further delay, which is being wilfully caused by the proposed intervenors, with the consent of AG Wilson, places in great

jeopardy the right of the public and the press to examine the McMaster/Wingate contract to sue Buchanan/Pope to determine:

- a. whether any public purpose is articulated or fulfilled;
- b. whether the AG proposes an illegal fee-sharing agreement with individuals;
- c. Whether the following provision, found in other Litigation Retention Agreements, is appropriate:

.... Provided, however, the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 3.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
7th day of November, 2011

[Signature] (L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/2016

EXHIBIT C

FILED
NEWBERRY COUNTY

2011 DEC 12 A 10:47

JACKIE S. BOWERS
CLERK OF COURT



ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

ADELE POPE,
plaintiff,

C.A. No
11-CP-36-379

-v-

ORDER

ALAN WILSON, in his
capacity as Attorney
General,
defendant.

FILED
NEWBERRY COUNTY
2011 NOV 30 P 2:13
JACKIE S. BOWERS
CLERK OF COURT

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County¹. See *Bauknight v. Pope*, 2010 CP-4004900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

FILED
NEWBERRY COUNTY
2011 DEC 13 P 10:47
JACKIE S. BOWERS
CLERK OF COURT

¹ The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

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1 *AM*

EXHIBIT

tabbies

EXHIBIT D

FILED
NEWBERRY COUNTY
2011 DEC 12 A 10:47
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

ADELE J. POPE,

Plaintiff,

-v-

ALAN WILSON, in his Capacity as Attorney
General of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)

) Case No.: 2011-CP-36 - 379
)

) MOTION TO
) PARTIALLY ALTER OR AMEND
) AND/OR RECONSIDER AND VACATE
) ORDER DATED NOVEMBER 22, 2011
)
)
)

TO: THE DEFENDANT ALAN WILSON, Attorney General of South Carolina, by J. Emory Smith, Esquire, AND TO PROPOSED INTERVENORS TOMMIE RAE HYNIE, individually and on behalf of her minor child JAMES B; HENRY DARGAN McMASTER; 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 children SYDNEY L. And CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; RUSSELL L. BAUKNIGHT, as purported agent for Defendant and as agent for each of the aforementioned proposed intervenors and in each fiduciary capacity in which he seeks to intervene.

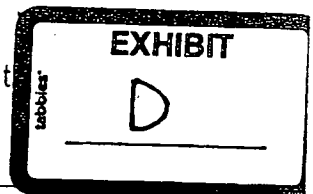
YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as she may be heard, Plaintiff Adele J. Pope will move, through her undersigned counsel, pursuant to Rules 52 and 59(e), SCRPC, and all other applicable Rules of Civil Procedure, for an order partially altering, amending, reconsidering and/or vacating the judgment of the Honorable Frank R. Addy, Jr. dated November 22, 2011, a copy of which was received on November 22, 2011, and which is attached hereto as Exhibit A.

UNCHALLENGED RULINGS BY THE COURT

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1. The Order properly stated that this Court had jurisdiction to hear and decide the Case, brought under the South Carolina Freedom of Information Act ("FOIA").

2. The Court properly declined to dismiss this FOIA case and properly directed



Defendant to answer.

MATTERS THE COURT FAILED TO CONSIDER AND/OR FIND

I. Purpose of FOIA

3. The Court failed to consider and/or find that the sole purpose of FOIA is to ensure that public bodies promptly release public documents properly requested by any person.
4. The Court failed to consider and/or find that where, as here, the documents to be produced may be illegal, improper or related to former, pending or contemplated litigation, such matters may be the subject of other litigation, which should have no bearing on FOIA disclosure.
5. The Court failed to consider and/or find that any substantial delay in compelling compliance with FOIA constitutes denial of FOIA rights.
6. The Court failed to consider and/or find that the parties in FOIA litigation should be limited to those seeking public documents and parties which are or are alleged to be public bodies.

II. Facts of this FOIA Case

7. The Court failed to consider and/or find that on July 19, 2011, Plaintiff made a proper FOIA request for the following documents, all of which are public documents:
 - a. The Attorney General's policies related to the release of litigation retention agreements with outside counsel, only approximately a dozen of which have been executed by Attorneys General of South Carolina;
 - b. The Agreement of former AG Henry McMaster with attorney Kenneth B. Wingate of Sweeney, Wingate & Barrow, P.C. (The "Wingate Firm") to bring a tort suit against Robert L. Buchanan, Jr. and Plaintiff

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for money damages allegedly caused by their appeal of Aiken County Case 2008-CP-02-1647 and other alleged improprieties.

- c. AG McMaster's authorization for Russell L. Bauknight to act on behalf of the AG/State in the suit brought by the Wingate Firm.

8. The Court failed to consider and/or find that no stay or other impediment existed to prevent release of the McMaster/Wingate contract to sue Buchanan/Pope or other requested documents.

9. The Court failed to consider and/or find that the AG has no written policy with respect to its litigation retention agreements, but both AG Wilson and AG McMaster have repeatedly confirmed, as do all litigation retention agreements, that they are public documents and subject to FOIA disclosure.

10. The Court failed to consider and/or find that Plaintiff's FOIA request was proper and that Plaintiff sought public documents, but AG Wilson nevertheless refused to release the McMaster/Wingate contract to sue Buchanan/Pope or Bauknight's authorization.

11. The Court failed to consider and/or find that on August 10, 2011 Plaintiff properly commenced this action to require AG Wilson to comply with FOIA.

12. The Court failed to consider and/or find that AG Wilson, without cause, moved to dismiss this case and that such motion was interposed for the purpose of delaying or denying Plaintiff's FOIA rights.

13. The Court failed to consider and/or find that on or about September 13, 2011 AG Wilson confirmed publicly that all litigation retention agreements are public documents and should be produced.

14. The Court failed to consider and/or find that on or about September 22, AG Wilson, through Senior Assistant AG C. Havird Jones, confirmed that AG Wilson is "ready

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and more than willing" to produce the documents requested by Pope.

15. The Court failed to take judicial notice that one or more members of the media have repeatedly requested copies of the McMaster/Wingate contract to sue Buchanan/Pope, which requests have also been denied by the office of AG Wilson.

16. The Court failed to consider and/or find that all active litigation retention agreements of AG McMaster and/or AG Wilson other than the McMaster/Wingate contract to sue Buchanan/Pope have now been publicly posted on the AG's website.

17. The Court failed to consider and/or find that the AG's refusal is directly contrary to the AG's published policy regarding FOIA disclosure.

18. The Court failed to consider and/or find that the AG's consent to the proposed intervention of the private intervenors aids and abets their improper and/or criminal actions under S.C. Code Ann. § 30-4-110.

19. The Court failed to consider and/or find that Plaintiff and Robert L. Buchanan, Jr. have never served as Trustees of the James Brown Legacy Trust.

20. The Court failed to consider and/or find that Plaintiff is entitled to the \$6,000 legal fees she has incurred to date, with costs of \$325, together with such additional fees at the rate of \$100 per hour (to a maximum \$1,500 per month), plus costs, as shall be incurred until AG Wilson has produced to Plaintiff all documents sought in this action.

III. Consolidation of the FOIA Suit and the Wingate Tort Case is Improper.

21. The Court failed to consider and/or find that it lacks jurisdiction to consolidate the FOIA Suit with the Wingate Case, an unrelated tort suit which is not before this Court.

22. The Court failed to consider and/or find that it cannot consolidate cases in

different judicial circuits without notice and an opportunity to be heard properly given to all parties to both cases.

23. The Court failed to consider and/or find that consolidation constitutes a denial of Plaintiff's FOIA rights.

24. The Court failed to consider and/or find that consolidation and the attendant delay violate the due process rights of all parties seeking the public documents which are the subject of this action.

25. The Court failed to consider and/or find that consolidation denies Plaintiff equal protection by delaying, for what may be years, her receipt of public documents which should be available without any delay to any member of the public through a proper FOIA request.

26. The Court failed to consider and/or find that consolidation with the Wingate Case effectively grants the private intervenors' improper motion to be a part of this FOIA action and thus violates Plaintiff's rights under FOIA.

27. The Court failed to consider and/or find that the consolidation order does not comply with Rule 42, SCRCP, because, among other things, there are no common questions of law and fact between the FOIA suit and the Wingate Tort Case.

28. The Court failed to consider and/or find that, as shown on Exhibit B, the tort claims in the Wingate Case are not similar to those asserted in this FOIA suit.

29. The Court failed to consider and/or find that the counterclaims of Buchanan and Pope, as asserted in the Answer and Counterclaim, attached herto as Exhibit C, are unrelated to the subject matter of this FOIA suit.

IV. Illegal Action by Proposed Intervenor.

30. The Court failed to find and/or consider that the proposed intervenors have violated S.C. Code Ann. § 30-4-110, which states in part:

Any person or group of persons who willfully violates the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars.... [emphasis supplied]

31. The Court failed to find and/or consider that neither their parents nor the Wingate Firm may take illegal action on behalf of minors, and that the minors should be exempt from any punishment which should be applied to the adult proposed intervenors.

32. The Court failed to find and/or consider that the Wingate Firm is aiding and abetting the adult proposed intervenors in denying Plaintiff's FOIA rights and the FOIA rights of other citizens.

V. In camera review.

33. The Court failed to find and/or consider that *in camera* review should not have been necessary because AG Wilson acknowledged that the requested documents were public, and they should have been produced.

34. The Court failed to find and/or consider that, to the extent not immediately produced to Plaintiff, the Court should have required that the documents be delivered to the Court for *in camera* review and immediate release.

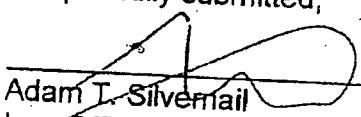
VI. Miscellaneous.

35. The Court failed to find and/or consider that Newberry County Case No. 2011-CP-32-0364 is not before this Court at this time, and it is premature for the Court to speculate as to any appropriate action in that case.

36. The Court failed to find and/or consider that neither AG Wilson nor any member of his staff is counsel of record in the Wingate Case.

This motion is based on FOIA, the South Carolina Rules of Civil Procedure, especially Rules 52 and 59(e); the entire record in this matter; and the complaint and answer and counterclaim in the Wingate Case, of which the Court has taken judicial notice.

Respectfully submitted,


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

November 29, 2011

Attorney for Plaintiff

AFFIRMATION OF COUNSEL

I certify pursuant to Rule 11, SCRCP, that consultation with opposing counsel is not required for a Motion to Alter or Amend and/or Reconsider or would serve no useful purpose as to the Motion herein.


Adam T. Silvernail



SWEENY WINGATE & BARROW P.A.

March 27, 2013

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

VIA EMAIL AND U.S. MAIL

Honorable L. Casey Manning, Jr.
Circuit Court Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Judge Manning:

This letter is in response to your recent request for a written status report on Case 4900 and the related FOIA matters.

As to Case 4900, it is the Plaintiffs' position that the recent South Carolina Supreme Court ruling concerning the James Brown Estate Settlement Agreement and the removal of Ms. Adele Pope as Personal Representative and Trustee has created significant uncertainty among the Plaintiffs' group.

This uncertainty does not alter the fact that the Plaintiffs still have active and substantial claims against Ms. Pope, but does raise issues as to the capacity in which the Plaintiffs will continue Case 4900 and whether Sweeny, Wingate & Barrow, P.A. will be able to continue their representation as a group. These significant matters will not be resolved at the earliest until the cycle of Petitions for Rehearing in the Supreme Court are either denied or heard and decided and remittitur issues and possibly not until the will contests are re-litigated in Aiken County.

Therefore, the Plaintiffs would respectfully request that all matters in Case 4900 be stayed until these important issues are resolved.

As to the FOIA issues, the Plaintiffs' position is that each of the groups of documents at issue, the Sweeny, Wingate & Barrow, P.A. Fee Agreement and the Legacy Trusts documents,

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March 27, 2013

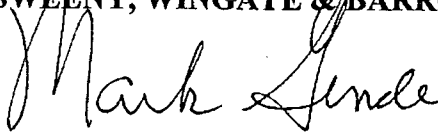
Page 2 of 2

are subject to pending discovery disputes in Case 4900. We do not believe that any decision can be made in the FOIA matters until the discoverability of these documents has first been determined in Case 4900, because if these documents are deemed privileged or otherwise protected then they are exempt from discovery under FOIA. As we have stated many times, it is our position that the Defendant is seeking to use FOIA simply as a means to do an end run around of the Rules of Civil Procedure governing Case 4900.

Should the Court have any questions concerning this update, I am available to answer those questions at the Court's convenience.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "Mark V. Gende", written over the printed name.

Mark V. Gende

MVG/lda

cc: J. Emory Smith, Jr., Esquire
Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust, etc.
and others,

and

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

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

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

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STATUS REPORT
OF
DEFENDANT ADELE J. POPE

By direction of the Honorable L. Casey Manning on March 18, 2013 Defendant Adele J. Pope submits this report of the status of this case in light of the S. C. Supreme Court decision issued February 27, 2013 in Aiken County Case 2008-CP-02-1647 and subsequent events.

Summary of Status and Relief Requested

This report may be summarized as follows:

1. Attorney General Wilson's recent confirmation that the AG's Office is not represented by Plaintiffs' counsel herein and that the AG intends to seek to withdraw from this case substantially reduces its complexity.
2. A Scheduling Order requiring attendance by all parties at noticed depositions is essential to the progress of this nearly-3-year-old case.
3. An attached proposed Scheduling Order would resolve more than twenty-five pending discovery motions and responses, allowing this case to be ready for trial by early 2014.
4. Long anticipated changes in parties or counsel should not delay discovery or trial of this case.

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These matters are discussed in more detail below.

History of Case

This case was filed on May 19, 2010. A jury trial was demanded.

Plaintiffs sued Buchanan and Pope alleging (1) breach of trust and (2) breach of fiduciary during their service as PRs under the Will of entertainer James Brown and trustees of his 2000 Irrevocable Trust between November 20, 2007 and May 26, 2009.

Defendants answered and counterclaimed alleging (1) abuse of process; (2) Interference with contracts; (3) Fraud under Section 62-1-106; and (4) Civil Conspiracy.

Discovery has languished for two years.

The S. C. Supreme Court's decision of February 27, 2013 affects certain aspects of this case, including a 2011 Newberry case brought under the South Carolina Freedom of Information Act ("FOIA") and consolidated with this case in 2012.

A Scheduling Order Should be Issued

All parties have requested that this Court issue a Scheduling Order. Plaintiffs' proposed order, however, did not address the primary issue delaying this case: the refusal of Tommie Rae, Terry, Venisha, Deanna and Yamma to appear at depositions noticed and scheduled over the past two years.

The proposed Scheduling Order attached hereto as Exhibit A and presented separately to the Court with this report should:

- a. Resolve more than 25 pending discovery motions;
- b. Set a reasonable time for all Party depositions to be completed;
- c. Make document discovery, consisting primarily of already-public documents, easy.
- d. Have this case ready for trial by early 2014.

The FOIA Case Should be Severed and Heard

In its February 27 opinion the Supreme Court recommended that Defendant Pope's FOIA cases against the AG, including a case consolidated with this case in 2012, be considered "in the first instance."

The AG's recent announcement that counsel of record in this case does not represent the AG, and that the AG will seek to withdraw from this case, makes consolidation improvident.

Pope's two FOIA were transferred to Richland County from Newberry County over her objection.

This Court should *sua sponte* sever the consolidated FOIA Case so that both FOIA cases can be heard as soon as possible.

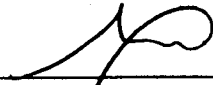
Changes in Parties or Counsel Should Not Delay Discovery or Trial

The February 27 Supreme Court decision prompted AG Wilson's announcements discussed above. Like other litigants, however, the AG must appear with new counsel and move to take the action he proposes. He must also face or resolve his pending motions and those pending against him, including Summary Judgment.

All parties including the AG have been on notice for more than a year that there might the AG might no longer be a party and that this could result in changes of counsel. These changes should not delay discovery or trial.

Respectfully submitted,

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



Adam T. Silvernail
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Telephone: (803) 779-1770 m
Facsimile: (803) 403-8092
adam@silvernaillawfirm

March 25, 2013

Attorneys for Defendant Adele J. Pope

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON

)

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

)

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James 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 children, Sydney
L., Carrington L., and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

SCHEDULING ORDER

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 children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

Based on the representation of all parties that a Scheduling Order is needed in this 3-
year old complex case, this Court orders as follows: 1804

Depositions

1. Parties who have not been deposed shall appear upon 10 days' notice as follows:

a. On or before May 31, 2013: Tommie Rae Brown; Terry Brown; Deanna B. Thomas and Adele Pope;

b. Within 30 days thereafter (before June 30, 2013): Yamma Brown; Lindsey Brown; Venisha Brown;

c. Within 30 days thereafter (before July 31, 2013): Russell Bauknight; Jason Brown, and Guardians *ad Litem* (GALs) for all minor parties.

2. Plaintiffs' counsel shall present orders for appointment of GALs for all minors and the incarcerated Plaintiff before their depositions.

3. Counsel for Venisha Brown shall forthwith present this Order to the Warden where she is incarcerated, and notify the Court and counsel of any additional requirements necessary to schedule her deposition.

4. Except for personal emergencies, all Parties shall appear at depositions as noticed.

5. If a Party fails to appear at deposition, his or her counsel must provide deposing counsel with 2 alternate dates within 2 weeks of the scheduled deposition when he or she will appear.

6. Non-party depositions shall be completed by October 31, 2013.

Document Production

7. Counsel for Plaintiffs¹ may view all nonprivileged documents of Defendant Pope on 3 consecutive days in April 2013, to be designated by Pope within 10 days of this Order.

8. Counsel for Defendant may view all nonprivileged documents of Plaintiffs on 3

¹ Counsel may be accompanied by one or more clients.

consecutive days in May 2013, to be designated by Plaintiff Bauknight within 10 days of this Order.

Expert Witnesses

9. Plaintiffs shall produce all expert witness names, addresses and opinions on or before August 1, 2013.

10. Defendant shall produce all expert witness names, addresses and opinions within 120 days of receipt of the last opinion of Plaintiffs' experts.

11. A party desiring to depose an expert shall do so within 120 days of receipt of such expert's opinions.

Admonition to Parties to Cooperate with Discovery

12. The purpose of this Order is to direct the completion of discovery in a prompt and orderly manner so that this case, if not settled, may proceed to trial.

13. Each party is directed to comply with the schedule set out herein, and to cooperate fully with discovery.

14. On or before October 1, 2013, counsel for Plaintiffs and Defendant shall hold a discovery conference and report to this Court:

- a. The failure of any Party to comply with discovery which cannot be resolved in good faith;
- b. A privilege list by each Party of all documents NOT produced at the request of the opposing party and the legal basis for refusal to produce.
- c. A complete list of all unresolved discovery motions, with date of filing.

15. Any party who fails to cooperate fully with discovery as set out in this Order shall be subject to sanction by this Court.

Dispositive Motions

16. All dispositive motions shall be filed within 30 days after the conclusion of the party and expert witness depositions.

Trial

17. Trial shall take place on or after February 1, 2014

Addition and Withdrawal of Parties and/or Counsel

18. All parties have been on notice for more than a year that one or more parties or counsel may withdraw, be added, or terminated. No change in counsel or parties shall delay the schedule as set out herein.

Severance of Freedom of Information Act ("FOIA") Case

19. The Attorney General of South Carolina ("AG") has given notice that he is not represented by Plaintiffs' counsel of record in this case and that the AG intends to seek to withdraw from the case.

20. As a result of the AG's said notice, this Court finds that the FOIA case in which the AG is Defendant should be immediately severed from this case, to proceed to hearing in the first instance.

AND IT IS SO ORDERED.

L. Casey Manning, Presiding Judge

Columbia, South Carolina
March , 2013

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900
(Formerly Newberry No.2011-CP-36-379)

AFFIDAVIT OF ADELE J POPE
OPPOSING STAY OF FOIA CASE
AND SUPPORTING
SUMMARY JUDGMENT REQUIRING
A.G. WILSON TO COMPLY WITH FOIA

2014 APR 29 PM 3:55

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes
and says:

1. This affidavit is based on my personal knowledge.
2. I am over 21 years old.
3. I ask the Court to deny the April 2014 request made on behalf of Attorney General Alan Wilson ("AG Wilson") and others through the private law firm of Kenneth B. Wingate, Esquire ("Wingate") to stay this case for what may five years or more.
4. A stay or this Freedom of Information Act ("FOIA") case will continue the irreparable harm the State, through two AGs, has caused Robert Buchanan, Jr. and me since May 19, 2010 when AG Henry McMaster and Russell L. Bauknight as the agent for both the State/AG and Tommie Rae Hynie, sued us for tens of millions of dollars.
5. I believe that the public James Brown documents other citizens and I have sought under FOIA since June 2011 will show that fraud committed on the S.C. Supreme Court and other courts by Bauknight; Wingate; Hynie and David Bell, Esquire

was condoned and/or joined in by the office of AG Wilson; materially affected the outcome of the *Wilson v. Dallas* decision; has already irreparably harmed my career and that of Mr. Buchanan; and has deprived The James Brown "I Feel Good" of fiduciaries who will protect the "I Feel Good" Trust and its copyrights to more than 800 published and unpublished songs.

6. As demonstrated on Exhibit A, a letter I wrote AG Wilson and others on April 3, 2014, I believe a stay will reward AG Wilson for his improper refusal to comply with FOIA in James Brown matters; support the State's continued unfair promotion of Hynie by allowing Bauknight and Wingate to continue to represent both the State/AG and Hynie; threaten the 800+ copyrights Brown gave to the "I Feel Good" Trust; and allow Bauknight to continue to make intentional false statements to multiple courts about Brown's heirs, the value of Brown's assets and the Federal Copyright Act termination rights provisions.

7. As demonstrated on Exhibit B, constitutional arguments by the Plaintiff in *Cephalon, Inc. v. State of South Carolina*, made April 21, 2014, I am informed and believe that the State's suing Bob Buchanan and me in the Wingate Suit in May 2010 with Wingate as the sole attorney for both the State and Hynie, violated the U.S. Constitution, based on the holdings set out in Exhibit B.

8. I am informed and believe that the suit was punitive in nature; and intended to punish us by ruining our careers and reputations for protecting the "I Feel Good" Trust in the *Wilson v. Dallas* appeal.

9. I am informed and believe that AG Wilson then improperly allowed Wingate, speaking for Bauknight "on behalf of" AG Wilson himself, to try to intervene in three

James Brown FOIA matters and have them consolidated with the Wingate Suit to prevent release of the Wingate Litigation Retention Agreement and other public documents.

10. I believe that the Court's granting a stay in this FOIA case or the Wingate Suit, or declining to grant summary judgment, will continue the AG/State's unjust attack on Mr. Buchanan and me; allow the AG to ignore FOIA; and allow Wingate and Bauknight to continue to advance the baseless claims of Hynie and her son.

11. I incorporate by reference the affidavits of citizens on file in this case and my other FOIA case demonstrating the importance of FOIA to a free society. AG Wilson has moved to strike those affidavits. They should not be stricken.

12. Granting a stay of this FOIA case or the Wingate Suit will:

- a. Allow Hynie to continue her 7-year evasion of even a single deposition.
- b. Prevent a prompt decision that Hynie was not Brown's spouse.
- c. Prevent confirmation that Hynie's suit for millions of dollars against Bob Buchanan and me was baseless because we owed her no duty.
- d. Prevent the public, media and courts from examining why Wingate, with no legal authority to do so, filed the Wingate Suit in 2010 and has continued it for four years.
- e. Prevent the public, media and courts from examining why AG Wilson is allowing Wingate and Bauknight to continue the Wingate Suit.
- f. Prevent the public, media and courts from examining the actions of the Legacy Trust created by AG McMaster, a Wingate Suit plaintiff.
- g. Prevent the public, media and courts from examining and discussing the widely-known contents of the so-called Hynie "diary."
- h. Prevent the public, media and courts from examining the outrageous \$4.7 million Bauknight "appraisal" of Brown's worldwide music empire.

i. Prevent the public, media and courts from examining why AG Wilson kept secret the \$4.7 million appraisal while using it to accuse Bob Buchanan and me of a felony.

j. Prevent the public, media and courts from examining why AG Wilson told the Supreme Court that there was never an offer to buy Brown's music empire while suing Bob Buchanan and me for not accepting a \$100 million offer.

k. Prevent the public, media and courts from examining AG Wilson's part in Bauknight, David Bell's and Forlando Brown's false representations to the S. C. Supreme Court and the Federal District Court, including Forlando's simultaneous claim in one court that the \$4.7 million value of the music empire was correct and in another that it was "bogus."

l. Prevent the public, media and courts from examining why AG Wilson supported Bauknight's claims to the S. C. Supreme Court that Hynie was Brown's wife, and her elective share claim a "slam dunk."

m. Prevent the public, media and courts from examining why AG Wilson joined Hynie in the false claim that she and her son control the Federal Copyright Act termination rights related to the 800+ Royalty copyrights Brown gave to the "I Feel Good" Trust.

n. Prevent the public, media and courts from examining why AG Wilson and Bauknight condoned Forlando Brown's actions as described in part on Exhibit C, a Memorandum (partial) filed by Bob Buchanan.

9. AG Wilson's refusal to comply with FOIA and allowing Wingate to delay FOIA compliance by consolidating FOIA cases with the Wingate Suit, has prevented release of the following, and other, public James Brown documents since 2011:

1. The Wingate Litigation Retention Agreement;
2. The Bauknight \$4.7 million appraisal.
3. The Legacy Trust created by AG McMaster to hold James Brown's assets which he proposed to take over, and amendments to it.
4. The AG's copy of widely-disseminated handwritten notes of Tommie Rae Hynie after James Brown discovered she was married.

10. I ask that the Court grant me Summary Judgment and attorneys' fees in the amount of Thirty Seven Thousand Five Hundred and 00/100 (\$37,500.00) Dollars; and costs in the amount of about \$ 875.00 for the 2 ½ years spent by my attorney to obtain the public documents AG Wilson should have released in 2011.

11. I ask the Court to grant additional attorneys' fees at the rate of \$250.00 per hour, and costs, after May 1, 2014, if AG Wilson does not promptly end this case and pay them, because the public official charged with FOIA enforcement should comply with the law he enforces.

12. I do not seek sanctions, but request that the Court admonish the Attorney General to uphold his public duty to comply – and make others comply – with FOIA. His failure to do so erodes public trust.

13. I am informed and believe that the public trust has been particularly damaged by AG Wilson's intentional FOIA delays and his allowing Wingate to interfere with three separate FOIA cases, halting FOIA compliance in James Brown matters where AG Wilson's own actions; those of his trustee Bauknight; and those of his predecessor AG Henry McMaster are in question. And the questions involve the 'I Feel Good' Trust, a charity they have a duty to enforce.

14. My request is based on the reasonableness of my attorney's fees as requested herein; the value of my counsel's services to me and to South Carolina citizens who cherish their FOIA rights; and the extraordinary assault on FOIA carried out by AG Wilson and on Mr. Buchanan and me in the James Brown matters;

15. I incorporate by reference the affidavits of other citizens on file in this case, and my affidavit opposing stay in the Wingate Case..

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
29th day of April, 2014

Jonathan H. Pope (L.S.)
Notary Public for South Carolina
My Commission expires: 3-28-2022

**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

April 3, 2014

Exhibit A

The Honorable Alan Wilson
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

David C. Sojourner, Jr., Esquire
c/o John Beach, Esq.
Adams and Reese, LLP
1501 Main Street, 5th Floor
Columbia, South Carolina 29201

Russell L. Bauknight
% William Newsome
Nexsen Pruet
1230 Main Street, Suite 700
P.O. Box 2426
Columbia, South Carolina, 29202-2426

Re: Saving The James Brown "I Feel Good" Private Foundation -
Proposal for \$200,000 per year settlement in lieu of
\$2 million per year legal fees to Adams & Reese and Nexsen Pruet

Dear Attorney General Wilson, Dave and Russell:

On September 13, 2012 the State of South Carolina, speaking through AG Wilson and three assistants (including Sonny Jones, who signed for AG Wilson), joined Tommie Rae Hynie and Terry Brown (Matt Bodman) in the following representations to the South Carolina Supreme Court:

"This appeal is an unabashed attack on Mrs. Tommie Rae Brown, the surviving spouse of James Brown... And while Pope can use her word processor to change the caption, there is nothing she can do to change the facts establishing Tommie Rae's marriage to James Brown. ...Pope has inappropriately used her brief...to carry out a back-door challenge to the family's settlement agreement which is the subject of the *Wilson v. Dallas* appeal before the Supreme Court..." [Emphasis supplied]

Then there were pages of "setting the record straight" trying to prove that Ms. Hynie had been Brown's wife. AG Wilson claimed AG McMaster's due diligence included:

reviewing a copy of the diaries at issue before the protective orders

AND:

... Pope clings to *her* frivolous allegation that there was an impediment to the marriage of James and Tommie Rae...

Just 5 months later the first *Wilson v. Dallas* decision suggested that challenging Ms. Hynie's claim was not that frivolous.

Between the September filing and the *Wilson v. Dallas* decision, *in a suit brought by Henry McMaster as Attorney General of South Carolina*, and Russell Bauknight as the AG's claimed agent, Russell Bauknight paid \$563,000 from the funds James Brown gave to the "I Feel Good" Trust to the firm of Kenneth Wingate. To protect Ms. Hynie.

The \$563,000 was in addition to Ken Wingate's 40% contingency.

TODAY - April 3, 2014, a year after *Wilson v. Dallas* – Mr. Wingate is *still* speaking for the State of South Carolina. Russell Bauknight, *still* claims to speak both for AG Wilson and Ms. Hynie in the Wingate Suit.

And Nexsen Pruet and Adams and Reese are being paid at an annual rate of about \$2 million a year to fight against (1) a plan to save the entire "I Feel Good" Trust; (2) the copyrights to its Royalties to more than 800 songs; AND (3) the HALF of James Brown's real heirs who will make the plan work.

I urge you not to waste another \$2 million this year. The problem can be solved in a matter of months for about \$200,000 – with very little legal costs. It is mostly a matter of pulling out the orders and motions pending when AG McMaster took over the operation of Brown's estate and Trust. Adams and Reese refuses to do that. But charge a quarter of a million dollars in 3 months. With nobody checking on it.

The plan is clear and simple. It will probably bring the Estate litigation to a close in less than a year – except for a possible appeal by Ms. Hynie. Of little concern. It is:

1. MAKE COPYRIGHT DEALS ONLY WITH THOSE NOT CHALLENGING THE WILL AND 2000 TRUST.
2. PROTECT THE BACKUP 1999 WILL & TRUST WHICH MAKE THE ESTATE PLAN IRONCLAD.
3. MAKE AGREEMENTS WITH NON-PRESUMED, DNA-PROVEN CHILDREN WHO WILL ACTIVELY SUPPORT THE ESTATE PLAN AND HAVE CHALLENGED MS HYNIE'S SPOUSE STATUS: Tonya (subject to Peeples DNA Protocol); La Rhonda (now children); Nicole; Jeanette; James Curtis (subject to Peeples Protocol); Michael.
4. CONTRACT WITH ONLY HALF (Or Half + 1) of the Children:
That's all you need to protect the copyrights.

5. ONLY CONTRACT WITH THOSE WHO ACCEPT REASONABLE OFFERS. DON'T BE RUSHED.

6. VOID THE 6-year old **GAG ORDERS**. YOU DON'T HAVE TO LOOK AT THE original HYNIE "DIARY". AG WILSON and loads of others have copies. And Forlando Brown and Albert Dallas have already discussed the contents in the media AND under oath in sworn statements/depositions. [Remember, everyone knows what the contents are. And two AGs never even complied with the Gag Orders by turning in their copies.]

7. DON'T REQUIRE JAMES B. TO TAKE A DNA TEST. JUST MOVE TO DISMISS HIS CLAIM BECAUSE HE DID NOT ATTACH A SUMMONS; FILED IT IN THE WRONG COURT; DID NOT SERVE THE AFFECTED HEIRS, AS REQUIRED; AND **IS NOT JAMES BROWN'S PRESUMED CHILD BECAUSE HE WAS NOT BORN OF ANY MARRIAGE**. And he did not even serve the Estate or 2000 Trust with a Summons and Complaint

(It will be his problem to decide whether he takes the DNA test. If so, do not let Adams and Reese disclaim knowledge of the chain of custody. Remember, James B's counsel has already announced once to the media that he passed a DNA test with improper chain of custody.)

The \$300 James B. problem, as a result of the action of Mr. Bauknight and two AG s – and now Adams and Reese – has been allowed to become a 7-year \$1 million dollar problem – at the expense of needy student beneficiaries of the "I Feel Good" Trust.

8. STOP WASTING HUNDREDS OF THOUSANDS OF DOLLARS TO FIGHT DNA-PROVEN AND ACKNOWLEDGED CHILDREN. [Instead, make them a fair offer. If they don't accept it, wait 6 months and make it again.]

9. MAKE THE FOLLOWING OFFERS in exchange for: (1) Termination Rights Cooperation; (2) Support of the 2000 Estate Plan; (3) and Support of the Estate/2000 Trust's position that James Brown died without a surviving spouse. [AND TR waived all claims even if a spouse.]

A. To the FIRST of DARYL or TERRY to accept: \$50,000 a year for life;

Ltr. to Attorney General Wilson and others

April 3, 2014

Page 4

B. To the SECOND of Daryl or TERRY, if he accepts within 30 days: \$20,000 a year for life.

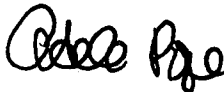
C. TO THE FIRST FOUR of Nicole, Jeanette, LaRhonda (now daughters), Michael PLUS any of James B., Tonya and James Curtis who take and pass DNA test under the Peoples DNA Protocol): \$20,000 per year for life.

There is simply no reason to pay \$2 million in legal fees each year to fight this simple, fair – and kind – way to save the “I Feel Good” Trust and allow that \$2 million to be flowing each year to scholarships for needy and deserving student beneficiaries of the “I Feel Good” Trust, as James Brown intended.

I am willing to help *pro bono publico* with saving the “I Feel Good” Trust. Please call on me if I can do that.

Thank you for your consideration.

Sincerely,



Adele J. Pope

AJP/ja

Enclosure: Excerpts, Motion filed by AG Wilson, TR Hynie, Terry Brown & others, 9/13/12

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

SEP 13 2012

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case Nos. 2007-CP-02-0122, 2007-ES-02-0056

IN RE: THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN

Adele J. Pope Appellant,

v.

Alan Wilson, Attorney General of the State of South Carolina, Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, and Tommie Rae Brown, ... Respondents.

**MOTION TO DISMISS OR STAY APPEAL, OR FOR EXTENSION OF TIME TO FILE
RESPONDENTS' INITIAL BRIEF**

This case involves former personal representative/trustee Adele J. Pope's attempt to vacate four year old discovery orders related to the personal diaries of Tommie Rae Brown, the surviving spouse of James Brown. Below, Pope moved the circuit court to vacate these orders; the circuit court correctly determined it did not have jurisdiction to hear the motion because the case was pending in the Supreme Court. Pope appealed. Respondents respectfully move this Court for an order dismissing Pope's Appeal because the lower court did not have subject matter jurisdiction; in the alternative, Respondents move this Court for an order dismissing this appeal because Pope lacks standing; in the alternative, Respondents move this Court for an order

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dismissing this appeal because the diary orders are the law of the case; in the alternative, Respondents move this Court for an order staying this appeal pending an opinion from the South Carolina Supreme Court in *Wilson v. Dallas*.¹ Finally, if the Court determines that it is required to proceed with the appeal, Respondents request that the deadline for filing their initial brief be extended to thirty (30) days after receipt of this Court's order denying dismissal or, if a stay is granted, the lifting of the stay.

GENERAL BACKGROUND

This appeal is an unabashed attack on Mrs. Tommie Rae Brown, the surviving spouse of James Brown and a settling party in *Wilson v. Dallas*. In her filings with this Court, Pope has dropped "Brown" as Tommie Rae's married name and replaced it with her maiden name, "Hynie." The pleadings and filings in this case all use Tommie Rae's married name: "Brown." Yet Pope has decided to alter the caption and Mrs. Brown's name. And while Pope can use her word processor to change the caption, there is nothing she can do to change the facts establishing Tommie Rae's marriage to James Brown. Although the narrow question before this Court addresses whether the lower court properly determined it could not exercise jurisdiction, Pope has inappropriately used her brief to try to impeach the underlying basis for Tommie Rae's use of "Brown" as her married name and to carry out a back-door challenge to the family's settlement agreement which is the subject of the *Wilson v. Dallas* appeal pending before the Supreme Court. Consequently, before turning to the legal issues it is necessary to set the record straight.

¹ *Wilson v. Dallas* is the appeal brought by Appellant Pope to challenge the May 26, 2009 global settlement agreement that resolved all of the family litigation in the James Brown Estate and Trust actions.

Tommie Rae and James were married in Beech Island, South Carolina on December 14, 2001. See Marriage Certificate at Exhibit A. Mrs. Brown gave birth to their son James Brown II. See Paternity Test Results at Exhibit B; Social Security Documents at Exhibit C. In 2003, Out of an abundance of caution and to avoid any question about the legitimacy of their marriage, Tommie Rae and James turned to the South Carolina Courts. James paid for counsel to represent Tommie Rae in family court to judicially confirm that she was not married to another man (Javed Ahmed) at the time she married James.² See Exhibit D (Request to Admit No.9). On April 15, 2004, the family court issued an order finding and concluding that Tommie Rae had no impediment to her marriage with James because any attempted marriage by Tommie Rae to Ahmed was never valid—*void ab initio*—as Ahmed was already married at the time of any attempted marriage to Tommie Rae. See Exhibit E. The unappealed family court order is in lock-step with South Carolina law. “A mere marriage ceremony between a man and a woman [i.e., Ahmed and Tommie Rae], where one of them has a living wife or husband [i.e., Ahmed], is not a marriage at all. Such a marriage is absolutely void, and not merely voidable.” *Day v. Day*, 216 S.C. 334, 2338, 58 S.E.2d 83, 85 (1950). The *Day* opinion recognizes the clear mandate of the bigamy statute. As noted by this Court in *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), South Carolina’s bigamy statute is located at S.C. Code Ann. § 20-1-80.

In footnote 2 of the *Lukich* opinion, this Court confirmed the clear mandate of the bigamy statute and the Supreme Court decision in *Day* by noting that the result in *Lukich* would not apply to a marriage that was void *ab initio* because of the bigamy statute. The purported marriage of Tommie Rae and Ahmed falls squarely into the situation described by the bigamy

² Pope’s predecessor fiduciaries, Cannon, Dallas, and Bradley told James Brown that Tommie Rae was already married to Javed Ahmed when she and James got married because they claimed that she had previously engaged in a marriage ceremony with Ahmed.

statute, the *Day* decision, and this Court's opinion in *Lukich*³: Because Ahmed was already married at the time of any attempted ceremony with Tommie Rae, Tommie Rae was never married to Ahmed and thus had no impediment to her valid licensed and certificated marriage to James Brown. To accept Pope's position on this issue would render the absurd result that the bigamy statute does not prevent a married person from being legally married to more than one spouse at a time, unless and until a court decides otherwise.

This Court's *Lukich* opinion also recognizes that James Brown would not have been allowed to intervene in the family court matter.⁴ Nor, *a fortiori*, would he have been allowed to appeal in a case in which he was not allowed to intervene. If James Brown could not intervene or appeal, then his personal representatives, standing in his shoes, could not do so. Yet that is exactly what Pope continues to try to do. Her former co-fiduciary, Robert Buchanan, testified against her position: he recognized that, pursuant to this Court's opinion in *Lukich*, James Brown had no standing to contest the family court order and that consequently Buchanan and Pope had no standing to do so and that this Court's *Lukich* opinion confirmed that Tommie Rae had no impediment to marrying James Brown.⁵

Although Pope professes to speak for James Brown, he had a different position than Pope asserts. In his autobiography, published in 2005, *after* all the family court proceedings, he discusses and confirms his marriage to Tommie Rae:

Now, having married Tomi Rae Brown, I once again much to my amazement, wanted children. And happily, so did she. . . .

³ The result in *Lukich* was based on the facts in that case, which were different from the bigamy statute situation referred to in *Day* and in footnote 2 of the *Lukich* opinion.

⁴ Even if he could have intervened, there would be no need; James Brown's support of the family court proceeding is evidenced by his payment of Tommie Rae's legal fees. See **Exhibit D**.

⁵ See **Exhibit F** (Settlement Hearing Transcript, March 25, 2009 pp. 29-32, 37-38). Mr. Buchanan has recently settled with the settling parties and has agreed to have no further involvement in matters regarding James Brown.

....
One of the happiest days of our marriage was when Tomi Rae Brown gave birth to our little baby boy. She was now the mother of our offspring, and neither of us would ever forget that or let the other down for the sake of our child. And both of us vowed never to forget that.

JAMES BROWN, I FEEL GOOD, A MEMOIR OF A LIFE OF SOUL 232, 234 (Penguin Books 2005) (excerpts at **Exhibit G**). James Brown also named Tommie Rae as his spouse for health insurance purposes. *See Exhibit H*.

Before entering into the settlement agreement that Pope is appealing in *Wilson v. Dallas*, the South Carolina Attorney General's Office, representing the charitable beneficiaries, conducted a thorough due diligence investigation of the facts and law surrounding the marriage issue and concluded that litigating the validity of the marriage was a potentially losing proposition. At the March 25, 2009 settlement hearing, the circuit court pointedly asked the Attorney General whether "you have . . . diligently examined all of the possible outcomes? Have you examined all the documents and pleadings and affidavits and court orders and case law and statutes? And having done that, are you of the opinion that the settlement is in the best interest of these needy children?" *See Exhibit I* (Settlement Hearing Transcript, March 25, 2009, p. 165). He responded as follows: "without a doubt, your honor. Attorney General [McMaster], as I mentioned to you earlier on, has not restricted me on any resources in my office that are necessary at my beck and call to do the work we needed to do." *Id.* The due diligence undertaken by the Attorney General included analyzing all of the factual information presented above. It included utilizing all resources available to the office of the Attorney General in an attempt to track down Ahmed. It also included, as Pope admits in her brief, reviewing a copy of the diaries at issue before the protective orders were put in place.

The Attorney General also analyzed practical considerations, such as the chances of success in a jury trial. Or, how the cost of litigation would affect the value of the Estate and

Trust? See **Exhibit J** (Settlement Hearing Transcript, April 6, 2009 pp. 155-56). Ultimately, the South Carolina Attorney General and the family entered into a settlement agreement that specifically recognized that Mrs. Brown "was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse." See **Exhibit K**, (Settlement Agreement Order, p.14). While Pope clings to *her* frivolous allegation that there was an impediment to the marriage of James and Tommie Rae, *her* allegation is contradicted by the above family court order. But even if there were no family court order, *her* allegation is nothing more than a factual dispute for a jury to decide. *Howell v. Littlefield*, 211 S.C. 462, 46 S.E.2d 47 (1947) (holding that question whether a woman claiming to be the widow of a deceased man for omitted spouse purposes, was the widow, was a question of fact for resolution by the jury). If the existence of factual disputes precluded settlement, no case would ever settle.

Pope is the former court-appointed successor personal representative/trustee of James Brown's Estate and Trust. That Pope was appointed by the court is important because it underscores the fact that Pope and James Brown were absolute strangers: she never knew him; she never knew his family; she never knew about his marriage to Tommie Rae Brown; and she never knew about his relationship with the child of their marriage, his young son James Brown II. Nevertheless, since the day it was announced that the family had reached a settlement agreement between themselves and the South Carolina Attorney General, Pope has insisted that she knows better than James Brown. Moreover, even though she is no longer a fiduciary, she apparently feels that she has been anointed to continue to make statements to the public that contravene James Brown's clear statements, and she wants to use the diary to do so.

Although her conduct is confounding, it is explainable: there is no conflict of interest like self-interest.

POPE'S \$2.5 MILLION CONFLICT OF INTEREST

Before Pope was removed as the personal representative/trustee, she filed a claim against the Estate for approximately \$2.5 million dollars *See Exhibit L*. Although she had been the personal representative/trustee for only eighteen (18) months before her removal⁶, she had the audacity to file a claim for that amount. Her claim is simply egregious when viewed against the backdrop of her actual work and the value of the Estate and Trust.

The current personal representative/trustee, Russell Bauknight, had to correct numerous problems arising from his predecessors' administration.⁷ In addition to correcting numerous problems from Pope's administration, including tax problems stemming from her failure to file income tax returns due during her administration, her successor Bauknight also addressed the estate tax. Mr. Bauknight did what a personal representative should have done but what all of his predecessors, including Pope, failed to do: he obtained an independent, professional valuation of the intellectual property of James Brown's Estate as of the date of his death on December 25, 2006. Including the value produced through the independent, professional valuation, James Brown's Estate was found to be worth \$6.5 Million at the date of his death. *See Exhibit O* ("Gross Estate," 4th page of exhibit). That independent, professional valuation was then submitted to and scrutinized by the Internal Revenue Service (IRS). Inside the IRS is a division that deals exclusively with business and royalty valuations, and its officers reviewed the valuation and accepted it. Afterwards, the federal government refunded \$10,000 in estate taxes

⁶ At the time of her removal, hundreds of thousands of dollars had been paid to Pope and Buchanan leaving a bank account balance of roughly \$14,000. *See Exhibit M*.

⁷ Such problems include, for example, Pope's intentional failure to exploit the estate's assets in an ill-advised attempt to avoid estate creditors. *See Exhibit N* (Settlement Hearing Transcript, March 25, 2009, pp. 105-07). This did nothing to avoid creditors' claims, but merely failed to maximize trust income and assets for the benefit of the beneficiaries, including the charitable beneficiaries.

that Pope erroneously concluded were due. See **Exhibit P** (Pope Administration's Accounting, 8th page of exhibit, 9/23/08 Disbursement of \$10,000 for "US Treasury-payment towards Estate Taxes."); **Exhibit O** (1st page of exhibit, first paragraph: "The report, though not final, shows that the estate is entitled to a refund."); **Exhibit Q** (2d page of exhibit, "Net Estate Tax . . . \$ 0.00").

While the past fiduciaries haphazardly claimed the date of death value of James Brown's Estate was worth varying amounts around \$100 Million, not one of them ever provided any substantiation for that figure. That number was created by Cannon, Dallas, and Bradley (and followed by Pope), yet never substantiated by an analytical business valuation model or methodology. When Pope was questioned about the methodology used by her predecessors to arrive at the valuation, she responded that she "never thought about it" See **Exhibit R** (Settlement Agreement Transcript, March 4, 2009, p.137). She explained that, "I just don't think about it. That was not my - - I had too much else to think about." *Id.* And of course, regardless of whether she thought about the methodology, she never did anything to verify the amount. She claimed that she did not have enough money to pay for an appraisal.⁸ *Id.* at 140. But that was the case because after selling James Brown's iconic personal property, instead of getting an appraisal, she paid herself.⁹

Pope has asserted that the professional valuation obtained by Mr. Bauknight, which she never bothered to obtain and which the IRS has reviewed and approved, is the result of a

⁸ Yet Mr. Bauknight managed to obtain a professional appraisal.

⁹ See **Exhibit P**, Accounting entries of the Christies Auction: the sale netted \$554,077.87. *Id.* at 6-7th, 9th, and 11th pages of exhibit (note entry of "receipts," e.g., 8/25/08: \$463,326.12). Pope paid herself \$132,000. *Id.* at 6th, 9-14th pages of exhibit (note "disbursements" to Pope, e.g., 9/2/08: \$100,000.00). Additionally, Pope paid herself \$21,000 from other Estate assets. *Id.* at 3-5th pages of exhibit (note "disbursements" to Pope).

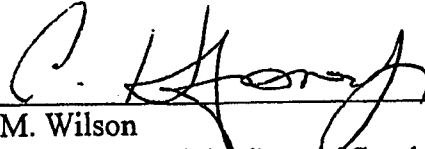
conspiracy¹⁰ to give away the estate. (**Brief of Appellant**, p.14-15). Pope actually writes that Mrs. Brown and Terry Brown have a plan to “[d]evalue James Brown’s music empire then buy it for the ‘family’ at the fabricated ‘fair market value’ – leaving the ‘I Feel Good’ [trust] with almost nothing.” *Id.* Pope never mentions, however, that neither Mrs. Brown nor Terry Brown has control over the assets. Accordingly, Pope’s conspiracy also includes the current personal representative/trustee, who has control over the assets, the Attorney General, who polices the job of the personal representative/trustee, and the IRS, which reviewed and accepted the “fair market value” of the assets. *See Exhibits O & Q.*

Pope alleges that the estate tax return filed by Mr. Bauknight contains fraudulent assertions about the validity of the marriage that she seeks to prove invalid through release of the diary (as if the diary alone would somehow override the overwhelming legal proof of the validity of the marriage). (**Brief of Appellant**, p.14 (“Failure to take jurisdiction and declare . . . [the] orders void promotes and encourages fraud on the courts”)). Her assertion again includes the IRS. This time with the outrageous assumption that it would not have investigated the validity of the marital deduction claimed by the estate even though the IRS would have been due millions more in taxes if the marriage was invalid and Pope’s unsubstantiated valuation stayed the same. Her conspiracy in valuing the estate also fails to observe that, by accepting her unsubstantiated valuation and refuting the professional valuation of the estate obtained by Mr. Bauknight, the IRS would have been due millions of dollars based solely on the value of the settlement shares received by James Brown’s children, separate and apart from the marital issue.

Pope’s theory essentially claims that the IRS was involved in the conspiracy as to both

¹⁰ Pope has written extensively about her conspiracy theories in numerous affidavits. *See Exhibits S, T, & U.* In fact, she has even begun drafting an article that she often cites to as evidence of the conspiracy. *See Exhibit S* (exhibit A).

The Settling Parties hereby join and support Tommie Rae Brown's Motion to Dismiss Adele Pope's appeal regarding the diary orders.



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Cephalon, Inc.

v.

State of South Carolina *ex rel.* Alan Wilson

Case No. 2012-CP-40-07317

Court of Common Pleas, Richland County, South Carolina

April 21, 2014

Oral Argument

Impermissible Motivations

- “A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision and **in some contexts raise serious constitutional questions.**” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 249-50 (1980)(emphasis added).
- “A fair prosecution and outcome in a proceeding brought in the name of the public is a matter of vital concern both for defendants and for the public, whose interests are represented by the government and to whom a duty is owed to ensure that the judicial process remains fair and **untainted by an improper motivation on the part of attorneys representing the government.**” *Cnty. of Santa Clara v. Superior Court*, 235 P.3d 21, 35 (Cal. 2010)(emphasis added).

Due Process Requirements

- Normal civil case – contingent fee not an issue
- Action so punitive as to be quasi-criminal – *per se* due process violation
- Enforcement action – control by neutral AG required

Action Akin to a Criminal Prosecution – *Per Se* Violation

- “It also seems beyond dispute that **due process would not allow** for a criminal prosecutor to employ private co-counsel pursuant to a contingent-fee arrangement” *Santa Clara*, 235 P.3d at 31 n.7 (emphasis added).
- “But just as certainly **there is a class of civil actions** that demands the representative of the government to be **absolutely neutral**. This requirement **precludes the use in such cases of a contingent fee arrangement.**” *People ex rel. Clancy v. Superior Court*, 705 P.2d 347, 352 (Cal. 1985) (emphasis added).
- “The rule against the use of contingency fees in criminal actions has been extended to **certain civil actions that resemble criminal prosecutions**. Some civil cases may “demand[] the representative of the government to be **absolutely neutral**.” *Merck Sharp & Dohme Corp. v. Conway*, 861 F. Supp. 2d 802, 813 (E.D. Ky. 2012) (quoting *Clancy*, 705 P.2d at 352) (emphasis added).

When a Civil Case is Quasi-Criminal

- “Even in those cases where the legislature ‘has indicated an intention to establish a civil penalty, we have inquired further whether the statutory scheme was **so punitive either in purpose or effect**,’ as to ‘transfor[m] what was clearly intended as a civil remedy into a criminal penalty’” *Hudson v. United States*, 522 U.S. 93, 99 (1997)(emphasis added).
- “In determining whether the sanction is **so punitive in nature as to have been transformed into a criminal sanction**, we review . . . the factors set forth in *Kennedy v. Mendoza-Martinez*” *State v. Price*, 333 S.C. 267, 272, n.5 (1998)(emphasis added).

SCUTPA Action Akin to Criminal Proceeding

Kennedy v. Mendoza-Martinez Factors:

1. Affirmative disability/restraint
 - Permanent injunctive relief sought by AG is affirmative disability/restraint
2. Sanction historically regarded as punishment
 - \$5,000 penalty per violation is punitive
3. Scienter required
 - SCUTPA penalties require finding of scienter (willfulness)
4. Sanction promotes retribution and deterrence
 - State's Complaint - "punish and deter"/"willful and intentional behavior"
5. Behavior is criminal
 - AG alleges that Cephalon's conduct is a crime
6. Non-punitive purpose for penalties
 - Only purpose is punitive – "putting an end to and holding offenders accountable for unfair or deceptive acts and practices"
7. Sanction is excessive in relation to non-punitive purpose
 - There is no non-punitive purpose of penalties

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Public Enforcement Action Requires Neutral Control

- “A fair prosecution and outcome in a proceeding brought in the name of the public is a matter of vital concern both for defendants and for the public” *Santa Clara*, 235 P.3d at 35.
- “[R]etention of private counsel on a contingent-fee basis is permissible in such cases if **neutral**, conflict-free government attorneys retain the power to control and supervise the litigation.” *Id.* at 36 (emphasis added).
- Improper financial interest can arise either by way of the prospect of “institutional gain” to the government lawyer’s office or the lawyer’s own financial gain. *Marshall v. Jerrico*, 446 U.S. 238, 250 (1980).

AG Cannot Exercise Neutral Control

- **AG is Not Neutral Because of its 10% Share**
 - “the civil penalties would be the big #”
- **No Case Has Ever Upheld Such a Share Where Applied to Penalties**

Fee Agreement Violates Separation of Powers

- State legislature has “duty and authority” to appropriate funds and “to specify the conditions under which appropriated monies shall be spent.” *Edwards v. State*, 383 S.C. 82, 90 (2009).
- §1-7-150(B): “**All monies**, except investigative costs or costs of litigation **awarded by court order or settlement**, awarded the State of South Carolina by judgment or settlement **in actions** or claims **brought by the Attorney General on behalf of the State** or one of its agencies or departments **must be deposited in the general fund of the State**” (emphasis added)
- §1-7-85: “Notwithstanding any other provision of law, the Office of the Attorney General may obtain reimbursement for its costs in representing the State . . . in civil . . . proceedings. These costs may include, but are not limited to, attorney fees or investigative costs or costs of litigation **awarded by court order or settlement**” (emphasis added).

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“awarded by court order or settlement”

- Contingent fees are contractual obligation
- Including of fees in dismissal order is not “award”
 - “This distribution and compensation calculation **shall be included** in a final order in the case.” Section IV.A.7 (emphasis added).
- AG and outside lawyers don’t track costs/hours

that “every order short of a final decree is subject to reopening at the discretion of the district judge”). In short, “Rule 59(e) provides that a court may alter or amend the judgment if the movant shows . . . that there has been a clear error of law or a manifest injustice.” *Robinson v. Wix Filtration Corp. LLC*, 599 F.3d 403 (4th Cir. 2010) Here, like Pope, Buchanan submits that the Court erred in misapprehending the facts or arguments on the counterclaims. Specifically, however, this Memorandum addresses the counterclaim for abuse of process.

FACTUAL BACKGROUND

The Court’s March 28, 2014 Order (“Order”) found and adopted certain facts:

1. On October 31, 2007, Forlando Brown praised Pope and Buchanan in his deposition, using (or agreeing with) descriptions such as “trustworthy,” “courageous,” “honest,” and “really tried to do the right thing.” (Order pp.3-4)
2. The Court specifically found that “he [Forlando Brown] testified without qualification that he believed Pope and Buchanan to be honest courageous, and trustworthy, and that he reposed confidence in their service as PRs and Trustees of his grandfather’s Estate.” (Order, p. 10)
3. In November 2007, Judge Early appointed Pope and Buchanan as PRs and Trustees with full authority over Brown’s Estate. (Order, p. 4)
4. Plaintiff filed this action on January 2, 2008, seeking the removal of Pope and Buchanan on various grounds, alleging that they were operating under a conflict of interest and had breached their fiduciary duties. (Order, pp. 4-5)
5. This Court specifically found that “there is sufficient circumstantial evidence from which one could reasonably infer that plaintiff brought this action to remove Pope and Buchanan for an improper purpose, either because they were obstacles to the destruction of James Brown’s Estate Plan or to plaintiff’s plans to attempt to obtain some of his grandfather’s music rights for himself.” (Order, p. 10)
6. This Court specifically found that “plaintiff never challenged Bauknight’s appointment, in which he served the same dual role, and it is undisputed that Judge Early ruled in April 2008 that it was “customary and appropriate” for the same persons to serve as PRs and Trustees under such circumstances.” (Order, p. 12)
7. This Court specifically found that “it is undisputed that, at the time this suit was filed, there were insufficient funds in the Trust to make such [education] payments and that funds did not become available until after the Christie’s sale in July 2008. And,

although Judge Early issued an order dated July 23, 2008, authorizing Pope and Buchanan to make such payments, plaintiff did not thereafter apply for education payments from the Trust.” (Order, p. 13)

8. This Court specifically found that while “plaintiff argues that he was concerned that Pope and Buchanan were not actively defending the will contest and pursuing discovery and depositions in that matter. . . it is undisputed that this federal case was filed only weeks after the will contest was filed, and thus it would not be reasonable to expect that discovery in the state action would have been actively underway at such an early juncture.” (Order, p. 13)
9. This Court specifically found that “when Bauknight participated in and approved the settlement in early 2009, which essentially dismantled the educational trust, plaintiff took no action against him.” (Order p. 13)
10. This Court specifically found that “there is sufficient evidence that the purported reasons that plaintiff filed this lawsuit were, in fact, pretextual, as evidenced by his inconsistent and conflicting conduct, and that the real purpose of the suit was to force Pope and Buchanan to resign or assist in removing them for other reasons.” (Order, pp. 13)

The Court overlooked, erred, and misapprehended the following facts:

1. During the eight weeks between Brown’s October 31, 2007 deposition and the filing of the initial Complaint filed on January 2, 2008, Forlando Brown formally acquired a 39% membership in The James Brown Legacy, LLC (“TJBL, LLC”), an entity formed to purchase the James Brown assets. TJBL, LLC filed its Articles of Organization with the Georgia Secretary of State on December 5, 2007 – less than one month before this suit was filed.¹
2. Forlando Brown paid nothing for the 39% membership in TJBL, LLC.²

ARGUMENT

During the period between October 31, 2007 and December 2, 2008, Forlando Brown formally acquired a 39% membership in an entity formed to purchase the James Brown assets *for*

¹ Deposition of Forlando Brown taken September 27, 2008, pp. 137-148 and Exhibit 9 are attached hereto as **Exhibit 1**; Deposition of Forlando Brown taken April 10, 2013, pp. 70-75, 182-184, Exhibits 10 and 58 are attached hereto as **Exhibit 2**.

² Deposition of Forlando Brown taken September 27, 2008, pp. 137-148 and Exhibit 9 are attached hereto as **Exhibit 1**; Deposition of Forlando Brown taken April 10, 2013, pp. 70-75, 182-184, Exhibits 10 and 58 are attached hereto as **Exhibit 2**.

no monetary consideration. Within days, “plaintiff brought this action to remove Pope and Buchanan for reasons that were “pretextual, as evidenced by his inconsistent and conflicting conduct, and that the real purpose of the suit was to force Pope and Buchanan to resign or assist in removing them for other reasons.”³

While this Court found a reasonable inference that Brown filed this action because Pope and Buchanan “were obstacles to the destruction of James Brown’s Estate Plan” or to Brown’s plans “to attempt to obtain some of his grandfather’s music rights for himself,” this Court did not find “conduct by him [Forlando Brown] outside the course of these proceedings or acts taken in the case which are not properly a part of the process.”⁴ The Court, however, erred by overlooking the reasonable inference that *Forlando Brown filed this lawsuit as his consideration or contribution for this 39% ownership interest in TJBL, LLC.*

Brown’s actions “center on events occurring outside of the process” and could reasonably be construed to constitute a “form of coercion to obtain a collateral advantage.” *Horton v. Wescott Land Co., LLC*, 730 S.E.2d 340, 352 (S.C. Ct. App. 2012). Based on the Court’s findings in the March 28 Order, therefore, Brown’s use of this lawsuit as consideration for his membership in the proposed purchasing entity is an inference easily sufficient to constitute a willful act. Since inferences must only be ‘reasonable in light of the competing inferences,’ Plaintiff’s Motion for Summary Judgment should have been denied. Given this inference, this Court simply cannot “establish affirmatively that the adverse party cannot prevail under *any* circumstances” or that Plaintiff has “a right to judgment with such clarity as to leave *no room for controversy.*” (emphasis added). *Phoenix Sav. & Loan, Inc. v. Aetna Cas. & Sur. Co.*, 381 F.2d 245 (4th Cir. 1967).

³ Order, p. 13.

⁴ Order, p. 14.

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.; 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

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 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.

) IN THE COURT OF COMMON PLEAS

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) Case No. 2010-CP-40-4900

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RICHLAND COUNTY
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JEANNETTE W. MCGRIDE
C.C.P. & G.A.

DEFENDANT ADELE J. POPE'S
SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO PLAINTIFFS' MOTION
TO SET ASIDE DEFAULT

Defendant Adele J. Pope submits her supplemental memorandum in opposition to
relief from default in the form of the proposed Order attached hereto as Exhibit A.

Respectfully submitted,



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EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

)

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

) ORDER DENYING MOTION FOR RELIEF
FROM DEFAULT

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 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.

THIS MATTER COMES BEFORE THE COURT on Plaintiffs' Motion for Relief from

Default, filed November 16, 2010.¹ A hearing was held on December 17, 2012 on this motion, and the Court has considered the memoranda filed by all parties, along with the arguments by counsel. After consideration, the Court denies the motion and directs the Clerk of Court to make an entry of default as to the counterclaims against Plaintiffs herein. The Court makes the following specific findings of fact and conclusions of law:

This action was commenced by the filing of a Summons and Complaint in the Richland County Probate Court on May 19, 2010 and subsequent service on Defendants Robert L. Buchanan, Jr. and Adele J. Pope. This matter was subsequently removed to the Circuit Court. Defendants filed and served their Answer and Counterclaim on September 30, 2010. Plaintiffs did not file a response to the counterclaims, and Defendants² filed an Affidavit of Default on November 10, 2010. Thereafter, Plaintiff's filed a Motion for Relief from Default on November 16, 2010, with an attached Affidavit of Kenneth B. Wingate, Esquire, and a proposed Reply to Counterclaims.

Plaintiffs' counsel acknowledged having received the Answer and Counterclaim, but explained that he "did not recognize it as a counterclaim." (Affidavit of Kenneth B. Wingate) Defendants opposed Plaintiffs' motion to be relieved from default and filed memoranda asserting that Plaintiffs had failed to show "good cause" for relief as required by Rule 55(c). After the December 17, 2012 hearing on the motion, certain Plaintiffs announced their termination of Wingate as their counsel herein, and Wingate moved to be relieved as counsel for the South Carolina Attorney General.³

¹ Henry Dargan McMaster, as Attorney General for the State of South Carolina was originally a Plaintiff herein. In January 2011, Alan Wilson took office as the State's Attorney General. Issues related to representation of the AG's office are discussed below.

² A settlement reached by Defendant Robert L. Buchanan, Jr. is subject to a motion for review.

³ The AG has also asserted in other litigation that he is not a party to this action, although he has filed a "motion to be dropped as a party" herein. Defendant Pope opposes this motion, and it has not been heard or

As an initial matter, this Court finds that Wingate lacks authority to speak for certain Plaintiffs herein. Specifically, Wingate has moved to be relieved as counsel for the AG on the basis that the AG has terminated Wingate's services. No other counsel has yet filed a notice of appearance for the AG, however, and Wingate's motion to be relieved as counsel has not been heard. Further, Plaintiff Daryl Brown has announced his termination of Wingate as his counsel, although no other counsel has made an appearance on his behalf in this case. Terry Brown, through an assignee, has also announced his termination of Wingate.

Plaintiff James Brown Legacy Trust has announced through its counsel Lewis, Babcock & Griffin, LLP in other litigation its position that it no longer exists. The AG has also taken the position that the Legacy Trust does not exist "at this time." Neither Wingate nor other counsel for the Legacy Trust has sought to remove it from this case, and the Legacy Trust remains subject to Pope's counterclaims herein. What is clear is that Wingate lacks authority to seek relief for the Legacy Trust at this time.

In addition, this Court finds that relief from default is not justified under the applicable law, because Plaintiffs have failed to show "good cause."

Pursuant to Rule 55(c), SCRPC, the Court may, for good cause shown, set aside an entry of default. In the case of Wham v. Shearson Lehman Bros., Inc., 298 SC 462, 381 S.E. 2d 499 (Ct. App. 1989), the Court held that in determining whether one should be relieved from the entry of default, a court shall consider the following factors: (1) the timing of the Motion for Relief; (2) whether one has a meritorious defense; and (3) the degree of prejudice to the non-moving party if the relief is granted. The law in this regard remained essentially unchanged until the South Carolina Supreme Court ruled in the case of Sundown v. Intedge Industries,

decided.

382 SC 601, 681 SE 2d 885 (2009). In that case the court held as follows:

"Rule 55(a) provides that when a party fails to respond to a Complaint, the Clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause". Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the entries of justice. Once a party has put forth a satisfactory explanation for the default, the court must also consider (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to Plaintiff if the relief is granted Id. at 607 and 608.

Sundown introduces a new factor for the court to consider before going further to look at the three other factors outlined in Wham. As pointed out by the South Carolina Supreme Court in Limehouse v. Hulsey, 397 S.C. 39, 723 S.E.2d 211 (Ct. App. 2011, *rev'd on other grounds* by Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (2013)),

"The good cause standard of Rule 55(c), requires as a threshold burden, a party to put forth "an explanation for the default and give reason why vacation of the default entry would serve the interest of justice" however, a trial court need not make specific findings of fact for each factor if sufficient evidence supports a trial court's determination that no reasonable explanation exists to vacate the default.

The court in Limehouse went on to state as follows:

"In South Carolina, *negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside the entry of default. See Vanvolkenburg*, 312 S.C. at 375, 440 S.E.2d at 410 (indicating prior to Sundown, that the imputed negligence of any attorney to a defaulting litigant is not good cause). Similarly, our supreme court has recognized subsequent to Sundown that the good cause standard of Rule 55(c), encompasses a degree of reasonableness. *See Richardson v. P.V., Inc.*, 383 S.C. 610, 618-19, 682 S.E.2d 263, 267 (2009) (finding, after Sundown, that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve

an appellant from entry of default); see also Black's Law Dictionary 1133 (9th ed. 2009) (defining negligence as the failure to act reasonably under a specific set of circumstances). It stands, therefore, that because unreasonable conduct does not amount to good cause, and unreasonable explanation for defaulting is not a satisfactory explanation that serves a sufficient interest of justice." (emphasis added).

In Limehouse, the explanation for failing to answer within thirty (30) days had to do with the fact that the case had been removed to Federal Court and was thereafter remanded to State Court. The counsel representing the Defendant contended that he was operating under the belief that he was entitled to an additional thirty (30) days after the case had been remanded from Federal Court, a contention which the court found to be erroneous. Accordingly, it was noted that the trial court had addressed the counsel's explanation of default and specifically found it unreasonable.

In the case at hand, the Affidavit of Kenneth B. Wingate sets forth two paragraphs which appear intended to support Plaintiffs' a good cause for failing to timely respond to the Counterclaim after being properly served. Paragraphs 7 and 8 of Mr. Wingate's Affidavit state as follows:

7. I have no memory of receiving the Answer and Counterclaim. However, the single copy in our file has my handwriting on it instructing my staff to file the document in the Brown litigation file. I can only surmise that this document was among the others that were being exchanged at or about this time, that I did not recognize it as a counterclaim, and simply sent it to be filed.

8. I had no reason to suspect that an Answer and/or counterclaim would be filed during that period of time. In response to the Summons and Complaint, Defendants filed a Motion to Dismiss in lieu of an Answer. Defendants also filed a Motion to Change Venue. On August 30, 2010, hearings were held before Judge Manning on these motions. As stated previously, proposed orders were due to Judge Manning on October 1, 2010. At no time between the hearing and October 1, 2010, did Defendants withdraw their Motions.

Defendants point out, and the Court acknowledges, that the document bears the title **"ANSWER AND COUNTERCLAIM OF ROBERT L. BUCHANAN, JR. AND ADELE J. POPE"** in boldface capital letters. There is no deficiency in the presentation of the counterclaim which could justify Wingate's oversight, and he does not allege any such deficiency. As stated in Limehouse, *supra*, negligence on the part of an attorney will not be the basis for finding good cause to set aside an entry of default. Mr. Wingate states in his affidavit that he had received the counterclaim and marked it for placement in his files on this action.

In paragraph 8 of the Affidavit, Mr. Wingate states that he had no reason to suspect that an Answer or Counterclaim would be filed during that period of time due to the fact that the Defendants had previously filed a Motion to Dismiss as well as a Motion to Change Venue. As the Court will note in the preamble to the Answer and Counterclaim, the Answer and Counterclaim was filed subject to those Motions. The Rules of Civil Procedure do not make any exception to default for this situation, and the Court is aware that the practice of filing an answer during the pendency of a motion to dismiss is commonplace. Mr. Wingate had filed suit on behalf of the Plaintiffs, and his failure to review the coverpage to the responsive pleading is not "good cause" for relief from default herein.

Indeed, this case is somewhat analogous to the case of Bage v. Southeastern Roofing, 373 SC 457, 646 SE 2d 153 (Ct. App. 2007) In that case, the Court, commenting on the defendant's failure to respond to the Summons and Complaint, stated, "It is axiomatic that Southeastern Roofing simply did not give this matter the proper attention it required". *Id.* at 474. Under this rationale, Mr. Wingate's clear statement that the failure to respond to the counterclaim was his own oversight cannot support granting the Plaintiffs relief from default.

Plaintiffs have argued that the AG cannot be held in default at all, and they base this

argument on Rule 55(e), SCRCP. This argument is misplaced, as is shown by a plain reading of the Rule. Rule 55(e) states:

(e) Judgment Against the State and Certain Other Parties. No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court. [emphasis supplied]

This Rule does not, as Plaintiffs assert, preliminarily absolve the AG of default. Rather, it requires presentation of evidence in support of the claim against the State prior to a default judgment being entered. At this stage, where only the entry of default is at issue, Rule 55(e) does not absolve the AG of default herein. Indeed, the identical Federal Rule has been interpreted to allow for the entry of default and a default judgment, where plaintiff could show a meritorious claim. See Bostic v. Harris, 484 F.Supp. 686 (S.D.W.Va. 1979). In any event, it is clear that Wingate lacks authority to seek relief on behalf of the State.

CONCLUSION

Based on the foregoing, it is therefore ORDERED, ADJUDGED AND DECREED that the Plaintiffs' motion to set aside default is **DENIED**. A hearing shall be held to determine the amount of damages as to each Plaintiff due to Adele J. Pope under her counterclaims herein.

AND IT IS SO ORDERED.

L. Casey Manning
Circuit Judge
Fifth Judicial Circuit

Columbia, South Carolina
February , 2015

1851

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

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

) Affidavit of Adele J. Pope
) Supporting Summary Judgment, Damages
) and Offset/Transfer of Termination Rights
) Under Federal Copyright Act

2015 MAY 29 PM 1:01
JANETTE W. MORRIS
C.C.P. & G.S.

RICHLAND COUNTY
FILED

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

1. This affidavit is made of my own personal knowledge and belief.
2. I am over eighteen and have practiced law for more than thirty years.
3. I have reviewed the facts set out in my motion for Summary Judgment and other relief against Daryl Brown, Tonya Brown, Venisha Brown and Russell L. Bauknight, as their agent, dated today.

4. To the best of my knowledge and belief, each fact set out therein is true and correct, and I incorporate said facts herein.

5. Attached hereto as Exhibit A are portions of the deposition of Daryl Brown take in this Case on December 21, 2012.

6. On page 7 and 8 of his deposition, Daryl admitted that he never saw the complaint in this case until more than 2 years after the suit was filed; does not know what a breach of duty is (p. 8); and became aware that he was a Plaintiff in this case when Louis

Levenson, Esq. informed him he was a Plaintiff.

7. None of Tonya, Venisha, or Daryl signed the 40% contingency fee contract with Sweeny, Wingate and Barrow ("SWB").

8. Daryl's only complaint about what Bob and I did appears to be the Christie's sale, but Daryl had complete details of the Christie's sale in August 2008, more than eighteen (18) months before he filed suit.

9. Daryl refused to answer whether he was aware of what amount the Christie's sale generated (pp. 16-17); identified Levenson as his attorney; and did not know the name of his SWB attorneys.

10. Attached hereto as Exhibit B is an article published this week in my local newspaper about Daryl's current position.

11. Attached hereto as Exhibit C is the Notice of Appearance filed by David B. Bell, Esq., counsel for Tonya, on March 26, 2014.

12. Attached hereto as Exhibit D are portions of the deposition of Tonya Brown, whose name is now Sarah LaTonya Brown Fegan.

13. Venisha has been incarcerated during substantial periods, and both Louis Levenson, Esq. and Russell Bauknight have repeatedly refused to appoint a GAL for her.

14. I ask the Court to take judicial notice of the offers I made to Daryl, Tonya and Venisha BEFORE the *Wilson v. Dallas* decision as evidence of my good faith, and the bad faith of Russell as their agent. SWB and Bauknight not only rejected my offers, they moved to strike them.

15. I am informed and believe that Daryl, Venisha, Tonya and Russell as their agent

brought this illegal lawsuit; continued it; intentionally devalued James Brown's music empire; and made numerous false statements to the Court with intention of damaging me so that I could not protect the "I Feel Good" Foundation.

16. The damage caused me has exceeded \$4.3 million, including loss from the court-approved payments to me under the January 8, 2008 order of Judge Early; lost wages for five years in excess of \$300,000 per year; failure to pay on valid contracts which Bob Buchanan and I entered into on behalf of the Estate/2000 Trust with James Bailey, Esq., and Tressa Hayes, Esq.; legal fees in the Forlando Federal Suit; legal fees in FOIA cases; legal fees and costs in four appeals since May 8, 2013; and legal fees and costs of approximately \$300,000 in this case.

12. I am informed and believe that these costs should not be borne by the needy and deserving students James Brown intended to benefit, but by Brown's family members and claimed heirs who have attempted to dismember the "I Feel Good" Foundation. The Federal Copyright Act Termination Rights of Daryl, Tonya, Venisha and others, and by Russell, individually, as their agent, should be part of that payment.

13. In considering this Summary Judgment motion, I request under Rule 201 SCRE that the Court take judicial notice of the entire record of *Wilson v. Dallas*, 743 S.E.2d 746 (2013) and pending Appellate Cases No. 2013-001649 and 2014-000250, as well as of Aiken County Cases 2007-CP-02-0122 and 2008-CP-02-1647.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
Adele J. Pope

SWORN TO before me this
28th day of May, 2015

[Signature]
Notary Public for South Carolina
My Commission Expires: 7/12/2016

EXHIBIT A

**Transcript of the Testimony of
DARYL J. BROWN**

Date: December 21, 2012



**CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index**

1230 Richland Street
Columbia, SC 29201
Phone: (803) 252-3445 / (800) 822-0896
Fax: (803) 799-5668
Email: contact@creelreporting.com
Internet: www.creelreporting.com

Page 1

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF RICHLAND) C/A #: 10-CP-40-4900
 3
 4 REYNOLD L. BAUMGART, as)
 5 Trustee of the James Brown)
 6 2000 Irrevocable Trust and)
 7 the James Brown Legacy Trust,)
 8 and Personal Representative of)
 9 the Estate of James Brown,)
 10 and on of Henry Dargan)
 11 McMaster, in his capacity as)
 12 Attorney General of the State)
 13 of South Carolina; Tommie)
 14 Rame Brown, individually and)
 15 on behalf of her minor)
 16 child, James Brown,)
 17 Daryl J. Brown, individually)
 18 and on behalf of his minor)
 19 child Janise Vanisha Brown;)
 20 Lindsey Delores Brown; Deanna)
 21 J. Brown Thomas; Jason)
 22 Brown-Lewis; Yanna N. Brown,)
 23 individually and on behalf of)
 24 her minor children, Sydney)
 25 Lamar, Carrington Lamar, and)
 26 Tomiya Brown; Venisha Brown;)
 27 Larry Brown; and Terry Brown,)
 28 and)
 29
 30 HENRY DARGAN MCMASTER, in his)
 31 capacity as Attorney General)
 32 of the State of South)
 33 Carolina; TOMMIE RAE BROWN,)
 34 individually and on behalf of)
 35 her minor child, JAMES)
 36 BROWN; DARYL J. BROWN,)
 37 individually and on behalf of)
 38 his minor child, JANISE)
 39 VANISHA BROWN; LINDSEY)
 40 DELORES BROWN; DEANNA J.)
 41 BROWN THOMAS; JASON)
 42 BROWN-LEWIS; YANNA N. BROWN,)
 43 individually and on behalf)
 44 of her minor children, SYDNEY)
 45 LAMAR, CARRINGTON LAMAR, and)
 46 TOMIYA BROWN; VENISHA BROWN;)
 47 LARRY BROWN and TERRY BROWN,)

Page 3

1 APPEARANCES:
 2 Mark V. Gendic, Esquire
 3 Aaron J. Hayes, Esquire
 4 SWEENEY WINGATE AND BARROW, P.A.
 5 1515 Lady Street
 6 Columbia, South Carolina 29201
 7 Attorney for the Plaintiff
 8 Adam T. Silvernail, Esquire
 9 LAW OFFICE OF ADAM T. SILVERNAIL, L.L.C.
 10 1901 Hampton Street
 11 Columbia, South Carolina 29201
 12 Attorney for the Defendant
 13 Daryl L. Williams, Esquire
 14 Max Williams, Law Clerk
 15 JETER AND WILLIAMS, P.A.
 16 1204 Main Street
 17 Columbia, South Carolina 29201
 18 Co-Counsel for the Defendant
 19
 20 ALSO PRESENT:
 21 Adele J. Pope, Esquire (VIA Telephone)
 22 LAW OFFICE OF ADELE J. POPE, PC
 23 1228 Walnut Street
 24 Newberry, South Carolina 29108
 25 Defendant
 26
 27 Mary Frances G. Iversen, Esquire
 28 Assistant Attorney General
 29 OFFICE OF THE ATTORNEY GENERAL
 30 STATE OF SOUTH CAROLINA
 31 Post Office Box 11549
 32 Columbia, South Carolina 29211-1549
 33 Observing
 34
 35 C. H. Sonny Jones, Esquire
 36 Assistant Deputy Attorney General
 37 OFFICE OF THE ATTORNEY GENERAL
 38 STATE OF SOUTH CAROLINA
 39 Post Office Box 11549
 40 Columbia, South Carolina 29211-1549
 41 Observing
 42
 43
 44
 45

Page 2

1)
 2 Plaintiffs,)
 3)
 4 v.)
 5)
 6 Adele J. Pope,)
 7)
 8 Defendant.)
 9)
 10)
 11)
 12)
 13)
 14)
 15)
 16)
 17)
 18)
 19)
 20)
 21)
 22)
 23)
 24)
 25)

DEPOSITION OF

DARYL J. BROWN

 Friday, December 21, 2012
 11:50 a.m. - 3:33 p.m.

The deposition of DARYL J. BROWN, taken on
 behalf of the Defendant at the law offices of SWEENEY
 WINGATE AND BARROW, 1515 Lady Street, Columbia,
 South Carolina, on the 21st day of December, 2012
 before Carla S. Dominick, Court Reporter and Notary
 Public in and for the State of South Carolina,
 pursuant to Notice of Deposition.

Page 4

1 INDEX
 2 MR. BROWN: PAGE:
 3 MR. SILVERNAIL.....EXAMINATION.....5
 4 CERTIFIED QUESTION.....16
 5 Signature Sheet.....138
 6 Certificate.....139
 7
 8

EXHIBITS

9 Defendant's Exhibit Numbers 1 through 34A
 10 (See Exhibit Notebook)
 11
 12

STIPULATIONS

15 It is stipulated and agreed that this
 16 deposition is being taken pursuant to the South
 17 Carolina Rules of Civil Procedure.
 18

19 It is stipulated by and between counsel and the
 20 witness that the reading and signing of the following
 21 deposition be, and the same are, hereby not waived.
 22 Signature sheet is included on page 138.
 23
 24
 25

1 (Pages 1 to 4)

Page 5

1 DARYL J. BROWN, having been duly sworn, testifies
2 and deposes as follows:
3 MR. BROWN - EXAMINATION BY MR. SILVERNAIL:
4 Q: Mr. Brown, I'm Adam Silvernail. I represent
5 Defendant Adele J. Pope in Richland County case
6 number 2010-CP-40-4900. I'm going to ask you
7 some questions here today during your
8 deposition. I would just ask that if you have
9 any questions, ask me rather than your counsel,
10 Mark or Aaron. If you need me to repeat
11 anything or clarify anything, by all means let
12 me know. If you need to take any breaks, just
13 let us know and --
14 A: Okay.
15 Q: -- we will do that. And with that said, we'll
16 go ahead and get started. Now, Mr. Brown, tell
17 me, if you would, when did you first become
18 aware of Richland County case number 2010-CP-
19 40-4900?
20 MR. GENDE: Object to the form of the question.
21 Q: And you can go ahead and answer.
22 MR. GENDE: Same objection.
23 A: Yeah.
24 Q: Can you not answer the question?
25 A: No.

Page 6

1 Q: Okay. Are you familiar with the case in which
2 we're taking your deposition this morning?
3 A: Yes. I am familiar with it, yeah.
4 Q: Okay. But you don't recall when you first
5 became aware that this case existed?
6 A: Well, actually I can't tell you the actual
7 date.
8 Q: Could you give me a general idea?
9 A: Sometime, I guess, maybe about four, five, six
10 months ago. I don't -- you know, I've heard
11 more about it today than I've ever heard at
12 all.
13 Q: Okay. And although you're not sure of the
14 exact date, do you have any memory of how you
15 became aware of this litigation?
16 A: I think it was at the actual court. Appellate
17 court.
18 Q: Okay. Would that be the supreme court here in
19 Columbia?
20 A: I guess it would be. I guess -- I don't know
21 court -- where it was. All I know it was
22 appellate court. That's it.
23 Q: All right. And so, I'd like to --
24 MR. SILVERNAIL: Mark, here's a full copy of --
25 MR. GENDE: Thank you.

Page 7

1 MR. SILVERNAIL: -- everything we've got here.
2 Q: I'd like to pass a document over for you to
3 take a look at, if you would.
4 MR. GENDE: And if you want, we could just flip
5 through these pages.
6 MR. SILVERNAIL: Whichever is easier.
7 MR. GENDE: You've got those marked?
8 MR. SILVERNAIL: Yes.
9 Q: Can you identify that document?
10 A: No.
11 Q: And if you need to take a few minutes to look
12 through it, by all means do.
13 A: No. I don't need for that. No.
14 Q: All right. Have you ever seen it before?
15 A: No.
16 Q: All right. If you would, I'd like to go
17 through the document and ask you some questions
18 based on it. If you would flip over --
19 MR. GENDE: And I, just for the record, object to
20 any questions on a document that the witness
21 has just said he does not recognize and cannot
22 identify.
23 MR. SILVERNAIL: All right.
24 Q: Well, if you would, flip over two pages from
25 where you are. One page back from there. Can

Page 8

1 you tell me the title over on the right of that
2 document?
3 A: To the right of it, it says complaint.
4 Q: Okay. And again, this is a document that you
5 say you're seeing for the first time this
6 morning.
7 A: Right.
8 Q: Or this afternoon, or wherever we are. On page
9 five there is a heading there that says for a
10 first cause of action. Do you see that one?
11 A: Yes, I do.
12 Q: What does it say below that?
13 A: "All allegations set forth above all
14 incorporate hearings --"
15 Q: Just below the heading of for a first cause of
16 action.
17 A: Which line?
18 Q: The one immediately below it in parenthesis.
19 A: Sixteen?
20 Q: Just above 16. The second line of the heading
21 there.
22 A: Breach of fiduciary duty.
23 Q: Okay. Are you familiar with the --
24 A: No.
25 Q: -- term breach of --

2 (Pages 5 to 8)

Page 9

1 A: No.
2 Q: -- or the idea of breach of fiduciary duty?
3 A: No.
4 Q: Okay. All right. Well, let's go back for a
5 second. Do you know who Adele Pope is?
6 A: Yes.
7 Q: Could you tell me who she is?
8 A: I know she was former trustee.
9 Q: All right. And when you say former trustee,
10 are you referring to the 2000 irrevocable trust
11 of James Brown?
12 MR. GENDE: Object to the form.
13 Q: Can you answer that?
14 A: No.
15 Q: Okay. Well, when you say trustee, tell me what
16 Ms. Pope was trustee of as far as you know?
17 A: Well, James Brown estate.
18 Q: All right. The James Brown estate.
19 A: Yeah.
20 Q: Just because we're all relatively familiar.
21 But for the record would you tell me what the
22 James Brown estate is?
23 A: It's my father's estate.
24 Q: And this would be James Brown --
25 A: Right.

Page 10

1 Q: -- the worldwide entertainer?
2 A: Right.
3 Q: All right. When did Mr. Brown pass away?
4 A: In 2006, Christmas day.
5 Q: And during the -- after he passed away, during
6 the administration of this estate, do you
7 recall when Ms. Pope became involved?
8 A: I don't quite remember what day it was or how
9 it came about, but I would assume maybe around
10 February -- you know what. I really don't
11 know.
12 Q: Okay. Could you give me a year, you think?
13 A: Well, it probably was 2007, but I really don't
14 know what day, or what time, or anything of
15 that nature.
16 Q: All right.
17 A: I just -- I just knew it was.
18 Q: Okay. Now, do you know anything about Ms.
19 Pope's service as trustee?
20 A: I wasn't happy with it.
21 Q: How were you not happy with it?
22 A: I didn't think she did anything. I don't think
23 she had any real concern about what my father's
24 interest was.
25 Q: When you say that she didn't do anything or she

Page 11

1 didn't have any concern, could you give me some
2 specific instances of what lead you to --
3 A: Well, let's look at the Christie deal. Let's
4 look at the Christie since we're -- one thing
5 that always comes to mind with me. If you
6 really knew anything about what you were doing
7 you wouldn't have even sold his piano.
8 Q: All right. How do you mean?
9 A: Well, later on you could use that as a part of
10 his museum or things of that nature, you know.
11 Certain things you just don't get rid of.
12 Q: All right. And do you have any memory of why
13 the Christie sale was held?
14 A: Well, the Christie sale was probably held
15 because was trying to get money to pay off or
16 whatever, but it was a complete failure because
17 it was done completely wrong. That was one
18 thing I -- I was totally against that. I
19 didn't like that at all. There was also a list
20 of things that we gave her to not sell and she
21 did it anyway. So that's why I say she had no
22 concern about my father or his children and
23 what we were, you know, trying to show her for
24 somebody that don't know James Brown.
25 Q: And when you say there was a list, I think you

Page 12

1 used the term that we gave her. Tell me who we
2 is.
3 A: My sisters. We put a list together, and they
4 had put a list together. And I was informed --
5 you know, had told her a couple of things that
6 I thought that should stay there, you know, and
7 the piano was one of them, you know, because we
8 had plans of doing, you know, a museum later
9 on. And that always -- that always bothers me.
10 It just seems like it was just, you know, a
11 matter of just -- it's just trying to make this
12 money real quick and do whatever we need to do,
13 blah, blah, blah, and things of that nature,
14 and I thought that was handled real sloppy.
15 Q: Well, as to the Christie's sale what would you
16 have done differently, or what would you have
17 had Ms. Pope do differently than Mr. Buchanan?
18 A: Well, first of all, she was -- she should have
19 came and talked to the family first. She
20 didn't do that.
21 Q: All right. Have you ever met Ms. Pope?
22 A: Once.
23 Q: Do you recall --
24 A: And it was brief.
25 Q: Do you recall generally when or where that was?

3 (Pages 9 to 12)

Page 13

1 A: In the courtroom. One of the -- I don't know
2 what day it was, but one of the hearings. It
3 was just a brief -- just a brief, you know,
4 high and goodbye. That was it.
5 Q: All right. And so, getting back to the
6 complaint that's there in front of you. If you
7 would, would you tell me what paragraph 18 says
8 there on that same page?
9 A: "Upon information and belief, during the
10 appointment as substitute personal
11 representative and trustee, the Defendant
12 repeatedly breached the fiduciary duty to
13 effect parties in multiple ways including, but
14 not limited, to filing particulars." Do you
15 want me to continue reading?
16 Q: If you would, I'd like to go with you through
17 those one at a time.
18 MR. GENDE: I just want to insert an objection here,
19 because we're talking about a document that Mr.
20 Brown has already indicated that he cannot
21 identify and that he has not seen. You're
22 essentially having him read paragraphs into the
23 record, and this is going to be a substantial
24 waste of time with respect to the amount of
25 time this deposition will take because you have

Page 14

1 identified 48 documents, approximately 45 of
2 which we're going to have similar issues with.
3 And so, you know, I'll give some indulgence
4 here at the beginning of the deposition, but if
5 this is how we're going to approach these 45
6 documents then I'm going to move to terminate
7 the deposition now and get direction from the
8 court as to how this questioning should
9 continue.
10 MR. SILVERNAIL: Well, you are not terminating the
11 deposition at this point, are you?
12 MR. GENDE: I am not.
13 MR. SILVERNAIL: Okay. All right.
14 Q: Then if you would, Mr. Brown, bear with me and
15 we'll -- now, in paragraph A there, you are
16 aware -- or let's go back. Are you aware that
17 this is a complaint that began a lawsuit?
18 MR. GENDE: Object to the form of the question.
19 Asked and answered.
20 MR. SILVERNAIL: All right.
21 Q: Are you aware that you are a plaintiff in this
22 litigation?
23 A: Yes.
24 Q: When did you become aware that you are a
25 plaintiff in this litigation?

Page 15

1 A: By being informed by my lawyer.
2 Q: And can you tell me generally even when that
3 was?
4 A: Like I say, not a particular day.
5 MR. GENDE: I'm going to object to any questions
6 that would ask his communications with his
7 lawyer. I've allowed you to ask a question
8 that went to the fact that this lawyer
9 communicated something. Anything that would go
10 to that communication would be objectionable
11 based on attorney/client privilege.
12 MR. SILVERNAIL: I'm not sure that the date and
13 existence or general time period in which he
14 became aware that he was a plaintiff in this
15 litigation is a privileged fact.
16 MR. GENDE: Go ahead and ask your question and then
17 I'll lodge an objection if necessary.
18 Q: Can you tell me what year you became aware you
19 were a plaintiff in this litigation?
20 A: No.
21 Q: What is your understanding of what this
22 litigation is about? And by this litigation,
23 I mean the Richland County case we're here
24 taking this deposition in today?
25 A: Whenever I -- whatever I hear today, that's

Page 16

1 what I'm aware of.
2 Q: Okay. So you don't have any idea what this
3 litigation is about?
4 MR. GENDE: Object to the form of the question.
5 Q: You can answer.
6 MR. GENDE: You can answer if you know.
7 A: No.
8 Q: Okay. All right. So let's speak a little more
9 generally then. You mentioned the Christie
10 sale.
11 A: Uh-huh (affirmative response.)
12 Q: What about the result of the Christie sale did
13 you find dissatisfactory?
14 MR. GENDE: Object to the form. He's already
15 answered.
16 Q: You indicated that you were disappointed with
17 the arrangement of the sale and the selection
18 of the items, I believe. But what about the
19 outcome of that sale?
20 MR. GENDE: Object to the form. Mischaracterized
21 the Plaintiff's earlier -- you know, the
22 Plaintiff's earlier testimony.
23 CERTIFIED QUESTION
24 Q: Are you aware of what amount of money the
25 Christie sale generated?

4 (Pages 13 to 16)

Page 17

1 A: I'm not going to answer that question.
 2 MR. WILLIAMS: Would you certify that question and
 3 answer, please, ma'am.
 4 Q: All right. Tell me, prior to the Christie sale
 5 -
 6 MR. GENDE: And just on that point also, Daryl, one
 7 attorney can participate for Ms. Pope. Not
 8 two. And so, Adam --
 9 MR. WILLIAMS: One attorney can ask questions.
 10 MR. GENDE: If Adam is going to be on the record as
 11 the attorney doing this deposition, then Adam
 12 needs to be the one who is conducting the
 13 deposition.
 14 MR. WILLIAMS: He is.
 15 MR. GENDE: And I object to any participation by you
 16 on the record in this deposition.
 17 MR. WILLIAMS: I object to your ongoing intervention
 18 with this witness in trickering -- trying to
 19 coach him as to what his answers ought to be.
 20 All your objections are reserved under the
 21 rules.
 22 MR. GENDE: I have every right to object to the form
 23 of the question and I have an obligation to,
 24 and I'm also allowed to make a short statement
 25 of the basis of that objection.

Page 18

1 Q: Mr. Brown, let's move away from the Christie
 2 sale for a moment. Aside from the Christie
 3 sale, can you give me any other happenings for
 4 examples of things that you believe Ms. Pope
 5 did not do correctly?
 6 A: I said the one main thing was she did not know
 7 James Brown. She never consulted with the
 8 family. If she had done that, then she would
 9 have come out off a little better than what she
 10 did.
 11 Q: And what damage was done by Ms. Pope not having
 12 known James Brown?
 13 A: One of the things was the estate itself was
 14 worse off than what it started with.
 15 Q: Can you explain what you mean by that?
 16 A: Financially is as far as I'm going to go. It's
 17 financially.
 18 Q: Well, can you tell me what you mean by worse
 19 off financially?
 20 A: Well, I mean, basically the estate was owed
 21 money at the point, and it's still -- it was
 22 even owed even more money after she got
 23 finished.
 24 Q: All right. What evidence do you base that
 25 belief on?

Page 19

1 A: Attorney. My attorney sitting down and talking
 2 with me.
 3 Q: Okay. And when you refer to your attorney, who
 4 are you referring to?
 5 A: Louis Levenson.
 6 Q: Okay. And we'll come back to that in a minute.
 7 And so, the estate was -- can you give me any
 8 specific --
 9 A: Like I said, I talked to my lawyer about it.
 10 Q: No, no. And by all means you don't need to
 11 tell me the content of that conversation. But
 12 can you tell me a specific fact on which you
 13 base your belief that the estate was in worse
 14 shape financially than before?
 15 A: Just basically from what was shown to me by my
 16 attorney.
 17 Q: And, I mean, have you reviewed any statements
 18 of income for the estate?
 19 A: Like I said, what I reviewed with my attorney
 20 at the time and I do not wish to share that
 21 with anybody.
 22 Q: Well, I'm just asking what documents you've
 23 reviewed.
 24 A: I don't even know what documents actually they
 25 were. I just know what I seen, you know. I'm

Page 20

1 not -- you know, whatever my attorney said to
 2 do, that's what I hired him for, that's what we
 3 do.
 4 Q: And do you know who your attorney in this case
 5 is?
 6 A: Yes. As far as Louis Levenson.
 7 Q: Well, we're here today in Richland County case
 8 number 2010-CP-40-4900. Do you have an
 9 attorney in this case?
 10 A: Yeah, I guess I -- yeah, I would.
 11 Q: And who is that?
 12 A: In 2000 -- say that again? Rephrase that
 13 question again.
 14 Q: All right. Can you tell me who your lawyer is
 15 in the case we are taking this deposition in
 16 today in Richland County?
 17 A: I really couldn't tell you who it is, you know.
 18 Q: All right. Well, I guess we don't need to
 19 come quite back to that. Let's go forward for
 20 a minute, if we can.
 21 MR. SILVERNAIL: Could we mark that Defendant's One.
 22 (Defendant's Exhibit Number One was marked for
 23 identification purposes.)
 24 Q: I'd like to have you look at another document
 25 with me, if you would. Have you ever seen this

5 (Pages 17 to 20)

Page 49

1 thing." Can you find that?
 2 A: Oh, yes. You want me to read it?
 3 Q: I would appreciate it.
 4 A: "And another thing. I don't have lawyers and
 5 I did not authorize the Wingate Law Offices to
 6 sue Adele Pope in my name. The attorneys --"
 7 it says, "attorneys care nothing about
 8 underprivileged and all they care about is
 9 their large fee and they need a name." And I
 10 just told you that. That's anger. That's what
 11 I was seeing. That wasn't projected between
 12 anybody. That's everybody that's sitting here.
 13 Any lawyers.
 14 Q: Well, let's look at the first part of that for
 15 a second. Did you hire the Wingate -- or the
 16 Wingate Law Office to sue Adele Pope?
 17 A: That was not my lawyer. Louis Levenson.
 18 Q: You personally didn't -- didn't take any action
 19 to sue --
 20 A: I go by whatever my lawyer -- no. My lawyer
 21 tells me what he's going to do. That's it.
 22 Basically that's -- you know, that's what I
 23 hire him for. I'm not a lawyer. I don't know
 24 the law. I don't know what has to be done.
 25 That's it.

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1 Q: Okay.
 2 MR. SILVERNAIL: Can we mark that?
 3 (Defendant's Exhibit Number Four was marked for
 4 identification purposes.)
 5 Q: I'll hand you one more.
 6 A: Uh-huh (affirmative response.)
 7 Q: Can you identify that document?
 8 A: Yeah.
 9 Q: Okay. What is it?
 10 A: It's a document terminating my lawyers.
 11 Q: Did you write this?
 12 A: Oh, yeah. I wrote this.
 13 Q: Do you know when you wrote it?
 14 A: Actually, that's September 2010. That was
 15 another point of getting attention. I had no
 16 intention of firing my lawyer. I just told you
 17 that. The same thing with that that goes along
 18 with this. All that is a part of this.
 19 Q: Well, let's take a look at it for a minute.
 20 A: Uh-huh (affirmative response.)
 21 Q: It's dated September 10th, 2010?
 22 A: Uh-huh (affirmative response.)
 23 Q: All right. Is that the date when you wrote it?
 24 A: No.
 25 Q: Okay. Do you have any idea when you did write

Page 51

1 it?
 2 A: It was actually wrote two weeks before I sent
 3 it out.
 4 Q: Okay. And do you remember when that was?
 5 A: I think it was in November, I think it was, I
 6 did that. Yeah, around November. Something
 7 like that. Yeah, it was around the first of
 8 November or second week in November. I forgot
 9 about it because it's so long, done and done
 10 with, and I left those things. They're gone.
 11 Q: And when you say November, would that be of
 12 2012?
 13 A: Yes, it would be.
 14 Q: Okay. And, bear with me for a moment. And so,
 15 you did not mean to fire your lawyer with
 16 this?
 17 A: No. No. It was just to get their attention.
 18 That's all this was.
 19 Q: Okay. Did you get attention?
 20 A: Oh, yeah. Oh, yeah.
 21 Q: Did anything change after this letter?
 22 A: Yes, it did.
 23 Q: What was that?
 24 A: I got to be more -- have a more understanding
 25 what the key part was of everything. I had

Page 52

1 more understanding what -- who Mr. Bauknight
 2 was as a man, as a person. And me and my
 3 lawyer sat down and we -- like I said, it was
 4 a thing where we just basically -- you know, we
 5 laughed about it. Because Louis knows me and
 6 he know my temper. He know how I can be
 7 sometimes. And I said, Louis, I've never had
 8 a -- he said, but you sure got my attention.
 9 I said, well, that's what it was for. To get
 10 your attention.
 11 Q: And --
 12 A: To get everybody's attention. Okay? Including
 13 you guys, the supreme court, everybody. The
 14 world's attention on James Brown. Because at
 15 that point there was no attention on James
 16 Brown. Not one piece was attention on James
 17 Brown. But then when I talked to them -- after
 18 I talked to them I found out that they had a
 19 lot more interest than I thought they did.
 20 They were doing a lot more things that I could
 21 imagine and I was really pleased with it.
 22 Q: All right. And -- well, let's go back just a
 23 second in what you said about learning the
 24 Attorney General's part.
 25 A: Uh-huh (affirmative response.)

13 (Pages 49 to 52)

Page 53

1 Q: What is your understanding of the Attorney
2 General's part in --
3 A: Well, they're to protect -- basically to
4 protect the underprivileged education. That's
5 their job. That's what they do, you know. And
6 I think they're doing a pretty good job of it.
7 Q: And do you stay in contact with the Attorney
8 General's Office?
9 A: No, I don't.
10 Q: Have you ever met anybody from over there?
11 A: A good friend right there.
12 Q: And who are you motion at?
13 A: Sonny Jones.
14 Q: Okay. How far do you all go back?
15 A: Just from the -- meeting him in the courtroom
16 and different things.
17 Q: All right.
18 MR. GENDE: Brief break.
19 (Off the Record)
20 Q: All right. Now, I think you were telling me a
21 little bit about Sonny Jones.
22 A: Yes.
23 Q: Do you recall when you first met him?
24 A: Wow. I guess after the -- I'm trying to think
25 of the first court date that we had, but I

Page 54

1 can't remember. That's a long ways back. I
2 can't remember the actual date or day. I think
3 it was one of the first court hearings when all
4 this thing started. And I think at the time,
5 I think still Mr. Cannon was still trustee at
6 the time. So that's how far back.
7 Q: And do you see Mr. Jones often?
8 A: No. He won't play golf with me, you know.
9 Q: Do you guys keep in touch by phone?
10 A: No. No.
11 Q: Okay. Now, I'd like to spend a little time
12 looking with you at this document that I was
13 just handed this morning.
14 A: Are you done with this?
15 Q: Yes.
16 MR. SILVERNAIL: You can mark that, if you will.
17 (Defendant's Exhibit Number Five was marked for
18 identification purposes.)
19 Q: Do you recognize that?
20 A: Oh, yeah. Yes, I do.
21 Q: Tell me what that is.
22 A: That's the kiss and make up. That's the short
23 end that everything is okay. That we're going
24 to be -- you know, I was just trying to get
25 their attention. That's all.

Page 55

1 Q: Why did you write this?
2 A: Well actually, you know, like I said, it was --
3 we sat down together and wrote it up. Me and
4 Louis, and we put this together.
5 Q: Okay. All right. Did you have any other help
6 or input?
7 A: No. That was it.
8 Q: Okay. And then it looks like this is also
9 signed by your daughters.
10 A: Uh-huh (affirmative response.)
11 Q: And your daughters are
12 A: Janise and Vanisha -- I mean, Lindsey and
13 Janise Brown.
14 Q: Okay. How old are they?
15 A: One is 17 and one is 22.
16 Q: And which is who?
17 A: Well, my older daughter is Lindsey. She's 22-
18 years-old, which I have a grandson. And
19 Lindsey -- Janise is -- she's 17. She
20 graduates out of high school this year.
21 Q: Do they live in Georgia?
22 A: Uh-huh (affirmative response.)
23 Q: Do they live with you or near you?
24 A: Near me, yeah.
25 Q: All right. And it looks like they signed this

Page 56

1 document as well?
2 A: Oh, yeah. They were -- we were all there.
3 Q: Okay. And if you could, paraphrase for me what
4 this says. I know you expressed briefly --
5 A: Do you want me to read what it says?
6 Q: Just give me your understanding of what this
7 says. You can be brief.
8 MR. GENDE: Object to the form of the question. I
9 mean, the document is in front of you.
10 Q: You can go ahead and answer.
11 A: I'll take the advice of my --
12 MR. GENDE: Well, I'm not particularly giving any
13 advice. I'm not giving advice. I'm making a
14 formal objection for the record to this
15 question.
16 A: Basically like -- you're reading it, and that's
17 basically what it says. Everything is fine.
18 We're going to be okay. We're going to move
19 forward. Louis don't worry. I'm not -- don't
20 worry about this ever again. And that's
21 basically what this is. And it gave more
22 information. At that time we were also worried
23 -- talking about the kids' education. And also
24 her mother, which I'm still married to her.
25 Needed to know about some things. And we all

14 (Pages 53 to 56)

Page 57

1 were sitting there just like -- you know, and
2 he went over everything and it was just -- it
3 was just nice. It was just nice to know that,
4 you know -- he let me know how important I was
5 and how the things that I did know, you know,
6 were very important. And, you know, how
7 important I was to the family and different
8 things that were going on.
9 Q: Okay. So your wife attended this meeting?
10 A: She was there, too. That's Stacy Brown. She
11 was one of the witnesses.
12 Q: Where did you all have this meeting?
13 A: At home. At her house.
14 Q: Okay. And is that in --
15 A: My truck ain't big enough.
16 Q: Is that in Augusta?
17 A: Yeah.
18 Q: All right. And was any -- I'm sorry. Did I
19 already ask you if anybody else was at this
20 meeting?
21 A: No. That's the only ones there.
22 Q: All right. And tell me the date of this
23 letter.
24 A: The date of this letter was -- I'm trying to
25 figure it out, because --

Page 58

1 Q: Well, there's a date up at the top.
2 A: Yeah. The 26th. October 26th, 2012.
3 Q: And is that date correct?
4 A: That is correct, yeah.
5 Q: Okay. Did you give this letter to anybody
6 other than your lawyer?
7 A: No. No. He's the only one that had this
8 letter. That's it.
9 Q: Okay. But you acknowledged on the second page
10 that it could be -- paragraph three that begins
11 at the top of the second page. And there's a
12 list of folks in that paragraph who it could be
13 sent it.
14 A: Of course, yeah. Yeah. You have to. That was
15 everybody that I got the attention.
16 MR. SILVERNAIL: If you'll mark that.
17 (Defendant's Exhibit Number Six was marked for
18 identification purposes.)
19 Q: And I'll hand you what is Exhibit --
20 COURT REPORTER: Six.
21 MR. SILVERNAIL: Six. Okay.
22 Q: Let me hand you this if I could. Do you
23 recognize that?
24 A: Yeah. Yeah. It's one of -- I'm assuming it is
25 one of the letters I sent to Adele, the

Page 59

1 termination of the lawyer I think it was at the
2 time.
3 Q: Okay. So you personally mailed that to --
4 A: Oh, yeah.
5 Q: -- and that would be to Adele Pope?
6 A: Yeah.
7 Q: Okay. So you personally dropped that in the
8 mail?
9 A: Uh-huh (affirmative response.)
10 Q: Okay. And was it by mail or was it delivered?
11 A: No. It was by mail.
12 Q: Okay.
13 MR. SILVERNAIL: You all. I'm sorry. I'm going to
14 have to ask to take just a minute of a break.
15 MR. GENDE: No problem.
16 (Lunch break fro 12:50 p.m. to 1:35 p.m.)
17 Q: All right. Mr. Brown, I hope you had a nice
18 lunch.
19 A: Oh, yeah.
20 Q: We're going to keep barreling on through. I'm
21 going to hand you this document.
22 MR. SILVERNAIL: If we didn't before, can we mark
23 that one. I think we are at Seven. That will
24 be Seven, right?
25 COURT REPORTER: This is Seven, yes, sir.

Page 60

1 MR. SILVERNAIL: Okay.
2 (Defendant's Exhibit Number Seven was marked for
3 identification purposes.)
4 MR. SILVERNAIL: Can we go off the record for just a
5 second.
6 (Off the Record)
7 (Defendant's Exhibit Number A was marked for
8 identification purposes in place of Exhibit Number
9 Seven.)
10 Q: All right. Mr. Brown, can you identify that
11 document?
12 MR. GENDE: Are you on the record just mention the
13 change we made?
14 MR. SILVERNAIL: Yeah, just to be clear. We've
15 taken the handwritten letter that we received
16 this morning and made it A rather than
17 including it in the numbered sequence so that
18 the remaining exhibits will go along the same
19 line and keep their original numbers.
20 Q: I'm sorry. Mr. Brown, do you recognize that
21 document?
22 A: No.
23 Q: All right. Can you tell what it is by looking
24 at it?
25 A: It looks like another civil action. Actually,

15 (Pages 57 to 60)

EXHIBIT B

**Dancers
earn
awards**

LOCAL • 7



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SPORTS • 6

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Wednesday, May 27, 2015 •

Brown's son comments on case

By Sue Summer
For The Newberry Observer

NEWBERRY — The S.C. Supreme Court ordered Aiken Judge Doyet Early to update the court on what has happened in the estate of music legend James Brown since the case was returned to Aiken two years ago.

In May 2013, the Supreme Court overturned a 2009 settlement deal that "dismembered" Brown's estate plan, and the case was returned to Aiken for further proceedings.

The Supreme Court, in its *Wilson v. Dallas* decision, directed Early to appoint trustees for Brown's charity in accordance with Brown's will and trust documents, which called for three trustees. Early was also directed to review all legal fees.

In defiance of the Supreme Court directive, Early appointed only one trustee, Columbia CPA Russell Bauknight. During a 2013 hearing in which potential trustees were "interviewed," Bauknight testified he would refuse to serve if Early appointed other fiduciaries.

There is no record in previous filings that Early has required all attorneys to reveal their fees, nor has a hearing been held to review the fees.

In its April 20 order, the Supreme Court requested Judge Early to address seven specific questions:

- Who are the heirs, beneficiaries, and parties of interest of the estate?
- Whose status has yet to be determined?
- What is the effect of the prenuptial agreement executed by Tommie Rae Hynie?
- Is DNA testing for heirs completed?
- What determination has been made about the standing of the parties in the will and trust contests?
- Have fees been reviewed?

See BROWN | 2

1867

Brown

From page 1

• Has a proposed settlement been submitted for court approval?

The Supreme Court referred to Brown's companion as "Hynie," not "Brown," despite Early's January 2015 order that declared her to be Brown's wife.

Under the Federal Copyright Act, Brown's marital status may have a long-term impact on his education charity, the "I Feel Good" Trust.

The trust is funded with Brown's music empire, including the copyrights to over 850 songs and the rights to his image.

After Brown's death on Christmas Day 2006, Brown's companion and some children contested his will and trust, and former Attorney General Henry McMaster worked a 2009 settlement deal that gave to will contestants over half of what Brown left to his education charity.

Brown's will and trust included in terrorem clauses that said: anyone

who contests either document, receives nothing.

The McMaster settlement was appealed by the second set of Brown trustees, Adele Pope of Newberry and Robert Buchanan of Aiken. In May 2013 the S.C. Supreme Court overturned the settlement, calling it a "dismemberment" of Brown's estate plan, and returned the case to Early.

The Brown case, two years later, is still not resolved.

Two months ago the Supreme Court asked the Aiken Clerk of Court to submit all of Judge Early's orders related to the James Brown estate since the Wilson v Dallas decision, and the Court

put further proceedings in Aiken on hold. The Court's April 20 order gave Judge Early 20 days to provide "a thorough and detailed update" on the status of the estate.

The April 20 order did not address one of the most debated questions related to the Brown estate: what documents did Russell Bauknight provide to the professional appraiser who determined the at-death appraisal of Brown's music empire was \$4.7 million?

In the summer of 2006, only months before Brown died, the Royal Bank of Scotland was prepared to loan Brown \$42 million on the royalties alone, not including

rights to his image — and a \$100 million offer was on Judge Early's desk when the settlement agreement was approved.

Attorney General Alan Wilson has not required Bauknight to provide a copy of the appraisal or supporting documents to those who have requested appraisal documents from him under the Freedom of Information Act, even though Bauknight was appointed trustee by AG Henry McMaster under the settlement agreement.

Wilson claims never to have seen the appraisal, but his deputy "Sonny" Jones argued in 2011 that the Supreme Court should supplement the record in Wilson v Dallas with the \$4.7 million value.

In a telephone interview on April 27, Brown's son Daryl praised the Supreme Court for its efforts to sort out what has happened to his father's dream of helping needy students — and he affirmed what he wrote in a letter to Wilson almost three years ago, in May 2012.

"The Attorney General was supposed to protect the needy children, not give away what my father intended for them," he said.

In the letter Daryl criticized McMaster for a settlement that ignored his father's wishes, and he criticized Judge Early for failing to protect the "I

Feel Good" Trust. Daryl wrote his father had every right to expect the State of South Carolina to carry out his will the way he left it, not the way someone else wanted it.

"Many people died in a great civil rights struggle in this country. Men, women, and children of both races died that a time would come when all people would be treated equal in a court," he wrote.

Despite the sacrifices made in that struggle, Daryl said, South Carolina courts have not treated his father as respectfully as the courts would have treated his father's friend, Strom Thurmond.

"It is all about respect... for a black American who accomplished much and survived a segregated America, sincerely believing ... that education was a way out of the ghetto for young people and believing ... that right would prevail in the end. Hopefully, the Supreme Court judges can give some direction to both the Attorney General and ... local judges, to first read the person's will and then follow the law."

Daryl Brown stressed in the telephone interview that his father's civil rights have been violated throughout the entire proceeding. "At this point in our history, it's disappointing," he said.

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EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)

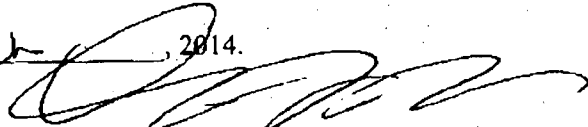
IN RE: THE ESTATE OF JAMES BROWN
a/k/a JAMES JOSEPH BROWN

) Case No.: 2007-ES-02-0056
) Case No.: 2008-CP-02-1647
)
)

NOTICE OF APPEARANCE

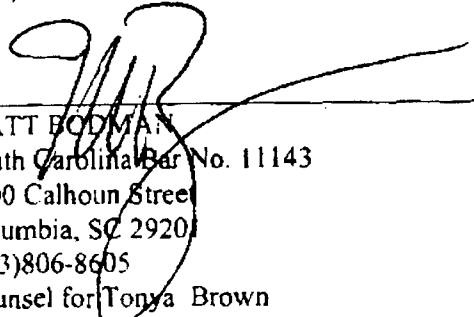
COMES NOW, Matthew Bodman and David B. Bell, and notify the Court that are appearing as counsel of record for Tonya Brown a/k/a Sarah Latonya Brown Fegan. The undersigned will serve as counsel for Tonya Brown in all matters involving the captioned case.

This 26th day of March, 2014.



DAVID B. BELL

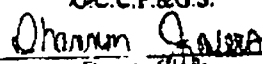
Georgia State Bar No. 047750
619 Greene St.
Augusta, GA 30901
(706) 724-1882



MATT BODMAN
South Carolina Bar No. 11143
1500 Calhoun Street
Columbia, SC 29201
(803) 806-8605
Counsel for Tonya Brown

3-27-14


D.C.P. & G.S.



Shannon G. Galt
Deputy Clerk

EXHIBIT D

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
 2 COUNTY OF RICHLAND) C/A #: 10-CP-40-4900
 3
 4 RUSSELL L. BAUKNIGHT, as)
 5 Trustee of the James Brown)
 6 2000 Irrevocable Trust and)
 7 the James Brown Legacy Trust,)
 8 as Personal Representative of)
 9 the Estate of James Brown,)
 10 and on of Henry Dargan)
 11 McMaster, in his capacity as)
 12 Attorney General of the State)
 13 of South Carolina; Tommie)
 14 Rae Brown, individually and)
 15 on behalf of her minor)
 16 child, James B. [REDACTED],)
 17 Daryl J. Brown, individually)
 18 and on behalf of his minor)
 19 child Janise Vanisha Brown;)
 20 Lindsey Delores Brown; Deanna)
 21 J. Brown Thomas; Jason)
 22 Brown-Lewis; Yamma N. Brown,)
 23 individually and on behalf of)
 24 her minor children, Sydney)
 25 L. [REDACTED], Carrington L. [REDACTED], and)
 Tonya Brown; Venisha Brown;)
 Larry Brown; and Terry Brown,)
)
 16 and)
)
 17 HENRY DARGAN MCMASTER, in his)
 18 capacity as Attorney General)
 19 of the State of South)
 20 Carolina; TOMMIE RAE BROWN,)
 21 individually and on behalf of)
 22 her minor child, JAMES)
 23 B. [REDACTED]; DARYL J. BROWN,)
 24 individually and on behalf of)
 25 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,)

1)
 Plaintiffs,)
 2)
 v.)
 3)
 Adele J. Pope,)
 4)
 Defendant.)
 5)
 6)
 _____)

7
 8
 9 DEPOSITION OF

10
 11 SARAH LATONYA FEGAN

12
 13 *****

14
 15 Friday, February 8, 2013

16 9:59 a.m. - 12:26 p.m.
 17

18
 19 The deposition of SARAH LATONYA FEGAN, taken on
 20 behalf of the Defendant at the law offices of SWEENEY
 21 WINGATE AND BARROW, 1515 Lady Street, Columbia,
 22 South Carolina, on the 8th day of February, 2013
 23 before Carla S. Dominick, Court Reporter and Notary
 24 Public in and for the State of South Carolina,
 25 pursuant to Notice of Deposition.

Examination by Mr. Silvernail
[Emphasis supplied] 50

1 A: Yes.

2 Q: Okay. And how many songs did he produce during
3 his lifetime?

4 A: One.

5 Q: Okay. Was that done in conjunction with Mr.
6 Brown or on his own? And when I say Mr. Brown,
7 I mean your grandfather there.

8 A: Rights of Teddy Brown.

9 Q: So you inherited those from your father?

10 A: Yes.

11 Q: And are you personally involved in the
12 administration of those rights?

13 A: No.

14 Q: All right. Now, I want to talk about the issue
15 within case 4900 for a few minutes. Are you
16 familiar with this case?

17 A: Yes.

18 Q: When did you first learn about it?

19 A: Through my -- Levenson.

20 Q: Do you recall what year that was?

21 A: No.

22 Q: Okay. Did you read the complaint in this case?

23 A: It's been several papers.

24 Q: All right. Are you aware that you are a
25 plaintiff in this case?

1 A: Yes.

2 Q: Why did you bring this case?

3 A: My attorney. You know, I depend on him for
4 counsel and --

5 Q: Okay. Well, you're aware that you're a
6 plaintiff, so you know you're suing Adele Pope,
7 correct?

8 A: Yes.

9 Q: And you're aware that you did sue Bob Buchanan,
10 correct?

11 A: Yes.

12 Q: Do you have any idea what grounds you sued them
13 on?

14 A: No.

15 Q: Okay. Do you personally have any opinion about
16 their service as personal representatives and
17 trustees?

18 MR. GENDE: Object to the form of the question.

19 A: I depend on my counsel, Louis Levenson.

20 Q: Okay. Do you know how long Ms. Pope and Mr.
21 Buchanan served as personal representatives and
22 trustees?

23 A: No.

24 Q: All right. Do you know a gentleman named Sonny
25 Jones?

1 A: Correct.

2 Q: Do you know what anyone else got under the
3 settlement?

4 A: No one has got anything under the settlement.

5 Q: All right. Well, do you know what the
6 agreement provided for other people to receive?

7 A: No.

8 Q: Okay. Would you go on back. There's a
9 document attached behind that entitled James
10 Brown Legacy Trust.

11 A: Okay.

12 Q: Are you familiar with this document?

13 A: No.

14 Q: Okay. Is today the first time you've seen it?

15 A: I don't know. It's been many documents.

16 Q: All right. Have you ever heard of the James
17 Brown Legacy Trust?

18 A: Yes.

19 Q: Okay. When did you first hear of it?

20 A: After it was approved a settlement.

21 Q: And when you say it was approved, would that
22 have been the May 26th, 2009 order?

23 A: Yes.

24 Q: All right. And do you know what the Legacy
25 Trust is?

1 A: No.

2 Q: Have you signed the Legacy Trust?

3 A: I don't know.

4 Q: Within this document it talks about the Brown

5 Family LLC. Have you ever heard of that

6 entity?

7 A: Yes.

8 Q: Okay. When did you first hear of the Brown

9 Family LLC?

10 A: After the approval of the settlement.

11 Q: What is the Brown Family LLC?

12 A: I don't know.

13 Q: Do you know if you're a member of that LLC?

14 A: No, I don't know.

15 Q: Okay. Do you know who manages the LLC?

16 A: No.

17 MR. GENDE: What was the number of this one?

18 MR. SILVERNAIL: This was 72.

19 MR. GENDE: Just for the record, Mr. Silvernail has

20 requested this to be marked as Defendant's

21 Exhibit 72.

22 (Defendant's Exhibit Number 72 was marked for

23 identification purposes.)

24 Q: All right. Now, I'd like to get you to look at

25 what we have numbered Defendant's 80. This is

1 would receive nothing?

2 MR. GENDE: Object to the form of the question.

3 A: No.

4 Q: Do you expect to receive anything from your
5 grandfather's estate or trust?

6 A: No.

7 Q: Nothing?

8 A: No.

9 Q: Okay. But you contested his will and his
10 trust, I believe you said earlier, based on the
11 fact that it did leave you nothing; is that
12 correct?

13 A: Correct.

14 Q: And yet under this settlement you have agreed
15 to take nothing, haven't you?

16 MR. GENDE: Object to the form of the question.

17 A: Repeat the question.

18 Q: Well, you told me a moment ago that you don't
19 expect to receive anything under the settlement

20 --

21 MR. GENDE: Object --

22 Q: -- is that correct?

23 MR. GENDE: Object to the form of the question.

24 Misstates her prior testimony.

25 MR. SILVERNAIL: Well, then let's ask it again.

1 A: It does not remain today.

2 Q: So you do not believe you will receive your
3 father's share of the estate?

4 A: No.

5 Q: Okay. Do you believe you will receive any
6 other share of the estate?

7 A: I don't know.

8 Q: Okay. But you have agreed to a settlement that
9 purports to set out how the estate and trust
10 will be distributed?

11 A: When we signed it, it was as we agreed; Louis
12 and his clients.

13 Q: All right. And have y'all agreed?

14 A: No.

15 MR. GENDE: Object to the form of the question.

16 Q: I don't want to confuse you, but I'd like to go
17 back with you to the previous Number 72, I
18 believe. Now, this is the motion for approval
19 of the settlement agreement that we looked at
20 a few minutes ago. I believe you testified
21 that you had seen this document before; is that
22 correct?

23 A: Yeah, this part.

24 Q: Okay. This was filed in a case numbered 2008-
25 CP-02-1647.

1 Q: -- how their interest in this will be divided?

2 MR. GENDE: Object to the form.

3 A: Well, they may have but I don't know.

4 Q: Okay. Do you believe they can agree on that
5 without you?

6 MR. GENDE: Object to the form.

7 A: No, because it say all parties.

8 Q: Turn with me back over to copy of the James
9 Brown Legacy Trust document that is behind
10 that. I'm afraid the pages to this document
11 don't appear to be numbered. But the second
12 page of the document, which is -- has article
13 two at the top. Under article four on that
14 page, which is -- has sub numbered paragraphs
15 of 5.1. Subparagraph 5.1.3 says that 25
16 percent will be distributed to the Brown Family
17 LLC that we had talked about earlier. But I
18 just want to clarify. You said you don't know
19 if you have any interest in that entity?

20 A: I don't know.

21 Q: All right. Do you know if that entity owns any
22 assets today?

23 A: No, I don't know.

24 Q: All right. And today you don't know what you
25 expect to receive?

1 A: No, I don't.

2 Q: Okay. But I believe you did say earlier you
3 didn't believe it would be your father's share
4 of the estate; is that correct?

5 MR. GENDE: Object to the form.

6 A: Well, I don't know.

7 Q: Okay. Do you have any -- is there any pending
8 plan to sort that out that you know of?

9 A: No.

10 Q: Okay. Have you had any conversations other
11 than with your lawyer about who will get what?

12 A: No.

13 Q: Not with your aunts or your uncles?

14 A: No.

15 Q: All right. Now, tell me, you have sued Ms.
16 Pope and Mr. Buchanan in case 4900. What is it
17 you want from them?

18 MR. GENDE: Object to the form of the question.

19 A: It was advice from our attorney Levenson.

20 Q: What relief do you seek from them?

21 A: I don't know.

22 Q: Okay. You've sued them for breach of fiduciary
23 duty. Do you know what breach of fiduciary
24 duty means?

25 A: No.

1 Q: Okay. And just to be sure. Can you tell me
2 any ways in which they've breached their
3 fiduciary duty that you believe?

4 A: No.

5 Q: Now, you've also sued Ms. Pope and Mr. Buchanan
6 for breach of trust. Do you know what breach
7 of trust is?

8 MR. GENDE: Object to the form of the question.

9 A: That we didn't trust them.

10 Q: Okay. And you've also sued them for
11 negligence. Do you know what negligence is?

12 A: Yes.

13 Q: Tell me what negligence is?

14 A: You neglect. Not doing properly. Neglecting
15 your duties.

16 Q: Okay. And can you give me any examples of
17 negligence that you believe Ms. Pope or Mr.
18 Buchanan undertook.

19 A: That was taken from the counsel of my attorney.

20 Q: Okay. But you personally don't know of any?

21 A: No.

22 Q: All right. Now, during Mr. Brown, your
23 grandfather's, lifetime, did you ever discuss
24 the value of his assets with him?

25 A: No.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

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5. Both sides seek damages in excess of several million dollars.

6. The eighteen Plaintiff/CC Defendants can be grouped as follows:

I. **The State/AG (1-2)** 1. The **Attorney General** ("AG") and 2. the "Legacy Trust" which he created, using James Brown's name ("**Legacy Trust**"), in late 2008 or early 2009. [This case has involved AG Henry McMaster and AG Alan Wilson.]

II. **Tomirae and her son (3-4)**. Neither Plaintiff 3. Tomirae Hynie, a/k/a Tomirae Brown ("**Tomirae**") nor her son 4. **James B.** is a beneficiary under the Will/2000 Trust. Bob and I had a duty to defend against all challenges to the estate plan.

III. **Other Minor Will Contestants Without GAL (5-6)**. 5. **Sydney L.** and 6. **Carrington L.**, like James B., brought this suit without a GAL. SWB refuses to have a GAL appointed.

IV. **Adult Will Contestants now or formerly represented by Mark Toberoff, ¶-11)**. Federal Copyright Act termination rights are an important asset of many Plaintiff/CC Defendants. Mark Toberoff, of Malibu, California, is (or was in 2013) the announced personal attorney for: 7. **Tonya Brown Fegan**, 8. **Deanna Brown Thomas**, 9. **Yamma B. Lumar**, 10. **Larry Brown** 11. **Venisha Brown** as to termination rights.

V. **Grandchildren and Claimed Grandchildren Who Contested Estate Plan. (12- 14)** While minors -- acting through their parents -- the following challenged the estate plan Bob and I were required to defend: 12. **Jason Brown Lewis** 13. **Lindsey Delores Brown**; 14. **Janice Venisha Brown**. All are now adults, and, on information and belief, are not currently represented by counsel in South Carolina other than SWB.

VI. **Others Who Have Terminated Both Louis Levenson, Esq. and David Bell, Esq. (15-16)**. 15. **Terry Brown** and 16. **Daryl Brown**. Mr. Levenson and Mr. Bell, a Georgia attorney not admitted *pro hac vice* in this case, appeared at the 2012 mediation for about a dozen Plaintiff/CC Defendants. SWB, Mr. Bell and Mr. Levenson represented that either Mr. Levenson or Mr. Bell had full authority to settle all claims and counterclaims for these parties. They did not. Three were not represented by either at the time. Since 2012 many have terminated Mr. Levenson, Mr. Bell, or both.

VII. **James Brown 2000 Irrevocable Trust (17) and Estate of James Brown (18)**, acting through Russell L. Bauknight.

7. Since late 2010 all of the Plaintiff/CC Defendants have been seeking relief from

default after an SWB attorney received our answer and counterclaim; marked it for filing; and failed to timely respond.

8. In 2010 Bob and I asked the Honorable L. Casey Manning to dismiss the Complaint, including for the reason that it was unconstitutional and improper for a private law firm to represent the State/AG and private plaintiffs, including minors and out-of-state residents. Judge Manning declined, and the Court of Appeals — at the request of AG Wilson and others – dismissed this important challenge as premature. Whether the suit is illegal, and whether the State/AG and other Plaintiff/CC Defendants will be relieved of default, remain critical issues in this case.

9. I am informed and believe that the individual clients who are in default – not the lawyer who allowed them to go into default – are essential to a successful mediation.

10. In 2011 SWB, acting for all Plaintiffs other than the State/AG, moved to intervene in a Newberry County FOIA case. SWB sought to prevent release of its own Litigation Retention Agreement. The Wingate Litigation Agreement was declared a public document by a federal judge in 2013.

11. SWB, aided by AG Wilson, had that FOIA case transferred from Newberry County and consolidated, but not merged with this case, causing considerable additional damage to me.

12. We have learned that a number of Plaintiff/CC Defendants who are proposed FOIA intervenors were not advised that SWB was seeking to intervene in a FOIA case on their behalf.

13. SWB admits it has an irreconcilable conflicts in its representation of the

State/AG and seventeen diverse Plaintiff/CC Defendants, making it critical that the parties themselves – not just SWB and/or attorneys with a pecuniary interest in an unrelated matter – appear at mediation.

14. I am informed and believe that it would be manifestly unjust to me to allow SWB and parties who have been suing me for five years to evade the mediation requirements without cause for a second time.

15. I am informed and believe that the Plaintiff/CC Defendants have been allowed to simply ignore both the letter and spirit of the mediation requirements. At the first mediation, Plaintiff/CC Defendant Deanna Thomas posted a public picture, with comment, from inside the mediation. Tomirae, without cause, simply failed to attend, but issued the following public post on the day of the mediation:

“This mediation today is to get rid of Adelle Pope an X trustee appointed by the state that has misappropriated and slandered this family with her hatred.”

16. This case has been made more complex by SWB's admission in 2013 that it has an irreconcilable conflict in representing the State/AG and the private Plaintiff/CC Defendants. Instead of resigning in the face of its admitted conflict, SWB has tried for more than two years to thwart the progress of the case, including this mediation.

17. I am informed and believe these attempts by SWB to evade discovery – and now a potentially productive mediation – are made to try to keep the Plaintiff/CC Defendants from knowing the damage SWB's actions being taken in this case continue to cause me.

18. I am informed and believe that my claims against the minor Plaintiff/CC

Defendants, in which they are currently seeking relief from default, and their claims against me, cannot be resolved without either an unconflicted parent or a GAL appointed for the minor Plaintiff/CC Defendant in this case attending the mediation. This includes:

- a. James B. - either his mother, Tomirae, or a GAL, or both;
- b. Sydney L. and Carrington L. - either their mother, or a GAL, or both.

19. I am informed and believe that SWB's refusal to appoint a GAL for incarcerated adults has delayed progress of this case, and will damage mediation attempts.

20. In 2012 Louis Levenson, Esq., and David Bell, Esq., a Georgia lawyer not admitted *pro hac vice* in this case or the consolidated FOIA attempted intervention, appeared at mediation representing they had full authority to settle for about a dozen Plaintiff/CC Defendants. At the time *at least 3* were not represented personally either by Mr. Bell or Mr. Levenson at the time. Since, others have terminated them.

21. The discovery in 2013 that Mr. Levenson and Mr. Bell had signed the 2010 Wingate 40% contingency Litigation Retention Agreement for approximately a dozen Plaintiff/CC Defendants calls into further question whether either Mr. Levenson or Mr. Bell should purport to represent them at the mediation scheduled for October 22. This is especially true since *at least* the following Plaintiff/CC Defendants are not clients of record in an active case of the lawyer who claimed to have full authority to settle for each of them at the 2012 mediation: Terry Brown, Daryl Brown, Tonya Brown Fegan, Janice Venisha Brown, Lindsey Delores Brown, and Jason Brown Lewis.

22. I am informed and believe that I have a right to rely on an Order requiring the parties to attend mediation and comply with the Mediation Rules, both because it is fair

and because no party sought reconsideration of the Mediation Order.

23. After the 2012 mediation, it was learned that Mr. Levenson had actually been terminated by Daryl Brown, Lindsey Brown and Janice Venisha Brown *before* the mediation. Mr. Levenson had misrepresented his authority to speak for them at the unsuccessful mediation.

24. On information and belief, SWB's attempts to evade attendance and compliance with the Mediation Rules damages me; is intended to benefit SWB; and causes lack of respect for the legal process.

25. On information and belief, SWB's irreconcilable conflict of interest and its failure to comply with the requirement that its 40% contingency fee Agreement be signed by the clients makes it imperative that the clients themselves attend the mediation and try to resolve this lawsuit which has been pursued in their names for five years.

26. A number of the Plaintiffs/CC Defendants have expressed open disagreement with their joint position held at the 2012 mediation, as articulated to the Supreme Court on November 1, 2011, namely:

"As far as Mrs. Brown is concerned she certainly had a serious claim as omitted spouse and certainly a slam dunk claim as an elective share."

AND

"Lukich's got nothing to do with this case."

AND, as to the suggestion of a \$100 million value:

"I know what it is because the IRS has now done its audit, and... settled this estate and given us a closing letter."

AND:

"James Brown copyrighted over 800 songs. He sold those copyrights to various publishers. The publishers in return agreed to pay him 50 cents on the dollar of every royalty collected. He bundled up those agreements and went to New York and he borrowed \$26 million dollars, pledging those, 50% of those royalties in payment of the debt. Well, of course, before he died that \$26 million just evaporated somewhere. ...

AND

Lemme tell you what they gave up. That is. Mrs. Brown and the children. Getting back to what..James Brown copyrighted one of his songs, he sold the copyright to a publisher. There's also a provision in the Copyright Law called Termination Rights. Prior to the expiration ...many years prior to the expiration of the copyright, the artist, in this case James Brown, can exercise Termination Rights which means he notifies the publisher I terminate the copyright. I want it back. And he gets it back by operation of law, automatically. And that means he's entitled to 100% of the royalties. Well, of course, James Brown died. But under law when that happened the rights is vested in Mrs. Brown and the children. ...

So, what we have, and if I can use an example, one of his first famous hits, was a song called "Please, Please, Please." And he copyrighted that song February 27, 1956. The copyright was to expire two thousand fifty-two, in 2052. But the ex..., Termination Rights ripen next year. So next year, when those Termination Rights are exercised, Mrs. Brown and the children will get the copyright a hundred percent. And be entitled to 100% of the royalties. Now 50% of those royalties is flowing into the Estate because James Brown had 50% at his death.

So you've got the Estate up here, getting those royalties, now since the debt has been paid off, since last Friday. But when they exercise those Termination Rights, the Estate doesn't get the royalties anymore, so it goes down. But Mrs. Brown and the children, they get the 100%. And as every song is terminated, it keeps going like this, until finally, in about 20 years, the Estate gets nothing. And Mrs. Brown and the children got it all. And that's what they gave up. Considerably... a very valuable right. And that's it.

So, when you look at it in the big scale of the Termination Rights, which is really, all of the ...all this Estate is about, Mrs. Brown and the children gave up a great deal...when they reached the settlement.

.....

AND

... But as a spouse, she gets 50% and they get 50%. So let's take her out of the picture. The children get it all. The charitable trust gets nothing. In about 20 years.

27. I am informed and believe all Plaintiff/CC Defendants have now admitted, as was stated to the South Carolina Supreme Court that day:

"... James Brown... was passionate about a charity for needy children..."

28. Since 2013 AG Wilson, still a client of record of SWB in this case, has indicated that the State/AG has terminated SWB; claimed that AG McMaster never intended to engage SWB to bring this suit in the name of the State/AG; has moved to drop his claims against me; and has taken other actions to which only the remaining Plaintiff/CC Defendants must react to make the mediation successful.

29. These positions are inconsistent with the AG's representations to the Supreme Court on November 1, 2011, namely:

"But the important thing about the settlement, for the AG's office, is that along with the settling, we got the Termination Rights for those parties..."

AND

Well, uh, research into termination rights in situations like James Brown, who wrote most of his songs, is that they'll start terminating because of James Brown's starting in the fifties...

... But if we had gone through and won everything, starting in '23 our income starts dropping off. And by 2025 we've lost 75% of our income. We have nothing. If we litigate this thing to 2015 and come - this is a factor with us, one of the factors - and come back before this Court with Tommie Rae Hynie Brown, come back before this Court with undue influence, and come back before this Court with the omitted child, we win. And what do we get? In 2015 we have no money left. And we only have 6 or 7 years to get any money... So, if this thing is sent back, and we litigate this thing, in 2023 - 25 we have nothing. Now we'll have forty years from, from the end of each song to get 47%.

30. Importantly, AG Wilson (with others) has now asserted that neither he nor anyone in his office reviewed the "appraisal" which purportedly supported the claim that

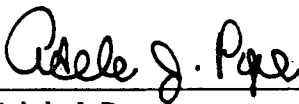
James Brown's worldwide music empire was worth less than \$4.7 million when he died.

31. Fewer than half of the Plaintiffs are now represented by the personal attorney who spoke for them when this suit was filed and/or who signed the 40% Wingate Litigation Agreement purporting to bind them.

32. I am informed and believe that both the complexity of this case and the conflicts of SWB and certain others attorneys make it critical for a successful mediation for all parties to attend the October 22 mediation and otherwise comply with the joint mediation order and mediation rules.

33. I ask the Court to charge SWB with the legal fees necessary to defend against this motion, which, on information and belief, is for the benefit of SWB – and not the parties.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this
13th day of August, 2015.


Notary Public for South Carolina

My Commission Expires: 7/13/2016

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 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 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 Lumar and Carrington Lumar; 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 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 LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
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CLERK, S.C.S.

**Plaintiffs' Memorandum of Law
In Opposition to Defendant's Motion to
Alter, Amend and/or Vacate Order
Granting Plaintiffs' Motion to Set Aside
Default**

To: Defendant Pope and her counsel:

Come now the plaintiffs in opposition to defendant's motion to alter, amend and/or vacate this court's order granting plaintiffs' motion to set aside default as to defendant's counter-claims.

STANDARD OF REVIEW

A Rule 59(e) motion cannot be used to make new arguments not made at the hearing. Stevens & Wilkinson of S. Carolina, Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014)

The trial court need not make specific findings of fact regarding each factor "if there is sufficient evidence in the record to support the trial court's decision. Id. (citing Sundown Operating Co. at 608, 681 S.E.2d at 888).

"The decision whether to set aside an entry of default is within the sound discretion of the trial court." Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)).

ARGUMENT

I. Defendant's Argument Concerning Plaintiffs' Counsel's Authority to Represent Certain Defendants is a Red Herring, Irrelevant and was not raised at the hearing.

Sweeny, Wingate, and Barrow, PA was counsel of record for all plaintiffs when the initial complaint was filed in 2010, when the defendant answered and counter-claimed, when the motion to set aside default was filed, when the motion to set aside default was argued in 2012, and remains counsel of record for all plaintiffs today.

A lawyer's representation of a client continues until such time as the lawyer is terminated by the client and, in matters actively before a court, an order to substitute counsel is entered by

the court. See Ex parte Strom, 343 S.C. 257, 262, 539 S.E.2d 699, 701 (2000) (holding that “after entering an appearance with the court, an attorney must receive a court order pursuant to Rule 11(b) in order to be relieved as counsel.”)

It is true that on March 25, 2013, the attorney general’s office filed a motion to be dismissed from the case, and that the Court has yet to rule on that motion.

With respect to all other plaintiffs and contrary to Mrs. Pope’s absolutely baseless assertions, Sweeny, Wingate, and Barrow PA, has never been informed of any termination of representation by any plaintiff. Therefore, Sweeny, Wingate, and Barrow, PA did represent and still represents all plaintiffs. The defendant provides no evidence for her assertions to the contrary. Therefore, Sweeny, Wingate and Barrow, PA had authority to seek relief from the default.

Additionally, a Rule 59(e) motion cannot be used to make new arguments not made at the hearing. Stevens & Wilkinson, 409 S.C. at 567, 762 S.E.2d at 695 (2014). The defendant did not raise any representation issues at the hearing and cannot do so now.

Finally, the defendant apparently does not believe her own flawed arguments, because her proof of service lists only attorneys with Sweeny, Wingate and Barrow, P.A. as counsel for plaintiffs. If the defendant truly believed other counsel represented the plaintiffs, she could have served several other attorneys, including the attorney general’s office’s counsel. She did not do so because she knows service on any other attorney would not have been effective.

II. Good Cause Entitling the Plaintiffs to Relief has been Shown

In plaintiffs’ motion to set aside default, the affidavit of Kenneth B. Wingate, the memorandum of law in support of plaintiffs’ motion to set aside default, and the record of the

hearing, plaintiffs' counsel argued grounds for good cause. Plaintiff's incorporates those arguments by reference and attaches at Exhibits A, B, C, and D each document or record.

In addition, the court's order clearly states:

1. Plaintiffs have demonstrated good cause for setting aside the entry of default, and the Court has considered each of the factors set forth in Wham v. Shearson Lehman Bros., 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989).
2. Therefore, the record in this case demonstrates that the Plaintiffs have shown good cause for failing to serve an answer on or before November 1, 2010 and the interests of justice will be served by vacating any entry of default.

Order of October 13, 2015. Exhibit E.

The trial court need not make specific findings of fact regarding each factor "if there is sufficient evidence in the record to support the trial court's decision. Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 144-45, 719 S.E.2d 703, 706 (Ct. App. 2011) (citing Sundown Operating Co. at 608, 681 S.E.2d at 888). The court's order clearly indicates it found good cause and the Wham factors were satisfied, therefore relief from default is appropriate.

The defendant disagrees with the court's finding of good cause, but cites no legal authority to contravene the court's analysis. "The decision whether to set aside an entry of default is within the sound discretion of the trial court." Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)). The defendant cites no legal basis to disturb the court's discretion.

III. The Attorney General was Not in Default or in the Alternative was Properly Relieved from Default under the Same Analysis as the Other Parties.

The defendant claims that Rule 55(e) only protects the attorney general from a default judgment and not an entry of default. This is a distinction without a difference, because once there is an entry of default the entry of the default judgment is merely a ministerial function of the clerk of court.

The defendant attempts to support her position by appealing to a federal case from West Virginia. Not only is this case not controlling, as it is a federal case interpreting the federal rules, it simply does not apply to facts even remotely similar to this case. It involves claims between individuals and not entry of default against state agencies.

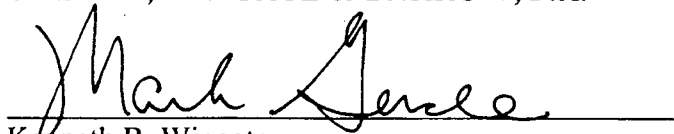
In any event, even if Rule 55(e) did not protect the Attorney General from default in this matter, the court's order found the same analysis supporting relief from default applied to the plaintiffs' group as a whole applied to the Attorney General as well.

CONCLUSION

For the reasons stated above, the defendant's motion to alter, amend, and/or vacate its October 12, 2015 order granting plaintiffs' motion to set aside default should be denied.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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Columbia, South Carolina
November 24, 2015