

**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**

**RECEIVED**  
SEP 24 2018  
SC Court of Appeals

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**Appellate Case No.: 2017-001899**

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

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**RETURN AND MEMORANDUM OPPOSING MOTION OF  
RESPONDENTS TO STRIKE**

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Joined by more than fifteen Respondents, including one which claims not to exist, the Attorney General (AG), through private counsel Sweeny, Wingate and Barrow, PA (SWB), submits his second Motion to Strike a reply brief filed by Appellant in this appeal. With Robert Buchanan, Jr., Appellant worked from August 2008 until May 8, 2013 to prevent the AG, Respondents Tommie Rae and Terry Brown<sup>1</sup>, and others from dismembering the estate plan of entertainer James Brown, including Brown's education trust for 7 grandchildren and his "I Feel Good" Charity. Eight years ago, in May 2010, the AG and others, through SWB, brought this suit to damage and discredit Buchanan and Pope. (R., pp. 178-188) The case has not yet been tried.

For each of the reasons set forth below, the Motion to Strike of the AG and other Respondents should be denied:

1. The Motion to Strike made by SWB on behalf of AG Wilson is improper.
2. The AG's Motion to Strike violates the AG's statutory duty to protect charities.
3. Motions by Respondent James Brown Legacy Trust should not be permitted.
4. Respondent James Brown Legacy Trust has lacked candor with the Court.
5. SWB's Motion for Venisha Brown, who is deceased, should be denied.
6. SWB should not make motions for minor and formerly-minor Respondents.
7. Actions of Respondents Deanna Thomas and others are inconsistent with the motion.
8. SWB lacks authority to speak for Respondent Terry Brown.
9. If SWB can speak for James B., James B has lacked candor with the Court.
10. Respondents' motion seeks to prevent a *Wilson v. Dallas* review of legal costs.
11. Affidavits properly established many undisputed facts in the lower court.
12. Respondents' specific claims of deficiency in the brief lack merit.
13. Affidavits presented by Buchanan and Pope are appropriate and relevant.
14. Respondents' new claim about Buchanan was incorrect and required a response.
15. Footnote 6 and the Record on Appeal (ROA) properly refute claims about Buchanan.
16. The Memorandum in Support of Deposition of AG is proper.
17. Appellants' Reply Brief to Respondents properly addresses new matters.
18. Most facts cited in Appellant's Reply Brief are undisputed at this time.

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<sup>1</sup> Heirs and claimed heirs of James Brown will be identified by their first names.

This Return is supported by Appellant's Return to Motion to Strike of AG Wilson, filed September 17, 2018, incorporated herein; the Record on Appeal (ROA) in this case; and the memorandum which follows.

### **MEMORANDUM OPPOSING MOTION TO STRIKE BRIEF**

18 years ago, entertainer James Brown executed what should have been an ironclad estate plan. Eight years ago, shortly after filing this suit (Richland 4900) , all Respondents agreed:

... the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. **This objective was the often stated and well-known desire of James Brown.** [*Emphasis supplied.* Mem. Opp. p. 2] (R., p.1307)

With this knowledge, in May 2010 the AG and other Respondents sued Buchanan and Pope to discredit them and try to stop an appeal of the AG's 2008 settlement which dismembered James Brown's estate plan; put Brown's assets into Respondent James Brown Legacy Trust; destroyed the already-instituted plan to protect Brown's "I Feel Good" Charity's 900 copyrights from premature and improper attempts to exercise rights under Sections 203 and 304 of the U.S. Copyright Act (Termination Rights); gave 47 ½% of Brown's "I Feel Good" Charity to a (New) Charity created and controlled by the AG; gave 23 ½% to Respondent Tommie Rae; gave Respondent Terry Brown and Will/2000 Trust contestants represented by Louis Levenson, Esq. the remainder of Brown's assets; and gave Terry a right of first refusal to buy Brown's music empire ( the "ROFR").

By filing Richland 4900 and their subsequent acts, the AG and settling parties were successful in sullyng Buchanan and Pope, but they failed to stop the appeal which became *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). That decision voided the deal brokered by the

AG and the Estate/2000 Trust appointments of Russell Bauknight, trustee of the AG's Legacy Trust. It did not, however, address the Termination Rights Respondents had assured the Court they had put in Respondent Legacy Trust.

On May 29, 2013, Levenson and counsel for Respondent Tommie Rae announced to the Honorable Doyet A. Early, III in open court their intention to disregard the Supreme Court's decision in *Wilson v. Dallas* and reinstate the AG's 2008 settlement deal. (R., pp. 1079, 1002, 1044, 1996). Hearing this, AG Wilson, through Sr. Asst. AG Havird "Sonny" Jones, told Judge Early of the AG's pleasure that Bauknight, whom the AG had helped put back in control of James Brown's assets. (R., p. 1079) Within three months Bauknight's music manager, Peter Afterman, was helping Tommie Rae and Respondent James B. siphon off U.S. copyright royalties Brown gave his "I Feel Good" Trust. (R., pp. 1012, 1044, 1091, 1995, 1012).

Continuing to damage Buchanan and Pope is as important to Respondents today as it was before the *Wilson v. Dallas* decision because they have information which refutes the claims made to the Court about the value of Brown's assets, Termination Rights and Brown's heirs in an effort to justify the first, 2008 dismembering. (See, for example, *Private Foundations* R, pp. 1589 – 1600; Ltr. Pope to AG Wilson, Sojourner, dtd. 4/3/12 (R., pp. 1814- 1817). This Motion to Strike supports putting the AG and Tommie Rae back in 75% control of James Brown's assets and giving more than 2/3 of Browns assets to Tommie Rae and the AG's (New) Charity. (R., pp. 171, 1328 – 1329).

As set out below, the role of SWB in filing the Motion to Strike is either unconstitutional or improper as to the AG and every other Respondent. Even if it were properly made for all Respondents, the motion is without merit, untimely, and intended to prevent a fair review of this 8-year-old case. The motion should be denied.

**1. The Motion to Strike made by SWB on behalf of AG Wilson is improper.**

From May 19, 2010 until January 11, 2011, SWB was the sole attorney of record in Richland 4900 for now-Governor McMaster; Respondent James Brown Legacy Trust; and Bauknight “on behalf of” the AG. Governor McMaster has now stated under oath that he did not authorize SWB to bring Richland 4900 in the name of the State/AG. (R., p. 1014, 1086).

From January 2011, when AG Wilson took office, until today. SWB has continued to speak as the primary – and only – lawyer for the AG and all other Respondents with respect to the allegations in the Complaint. (R., p. 176).

In 2012, one of 2 FOIA cases SWB and the AG were seeking to transfer to Richland County and consolidate with Richland 4900 was consolidated but not merged with Richland 4900 (R., pp. 61- 67, 561-567). The AG’s FOIA counsel, Emory Smith, Esq., spoke only in the FOIA matter. SWB spoke in all other matters.

In 2013 AG Jones, formerly introduced to the Honorable L. Casey Manning as a client of SWB in Richland 4900, filed a motion for the AG to be dropped as a party. (R., p. 790-792). The motion was not signed by SWB, the AG’s counsel of record. (R, p. 792) Appellant opposed and moved to strike the motion, and SWB asked Judge Manning not to hear any motion, even in the FOIA case. There was no hearing on the motion to be dropped. (Mot. Filed 10/12/15, R., pp. 829, 830, f. 1).

On August 11, 2016 in 2016 AG Jones filed a Notice of Special Appearance, and re-filed the 2013 motion as Exhibit C (R., p. 861-862). This, in effect, renewed an apparently-abandoned 3-year-old motion.

Special Appearance counsel now suggests that Appellant has waived her rights to limit the AG's special appearance, which AG Jones himself limited. This is not the case. The AG, like other litigants, must follow the rules when he appears. *State v. Cooper*, 342 S.C. 389, 536 S.E. 2d 870 (2000), *Ex Parte Condon*, 583 354 S.C. 634, S.E2d 430 (2003). SWB is the AG's attorney of record. The AG should not speak through two voices, especially where one represents private interests. SWB should not be allowed to file the Motion to Strike on behalf of the AG. The AG claims through AG Jones that he was dismissed as a party pursuant to Rule 21 because he was improperly joined. It would be manifestly unjust to allow him to pursue a different course, to reinstate the AG's 2008 settlement, in the Motion to Strike.

Even if SWB were able to act for the AG, none of the constitutional criteria necessary for private special counsel to speak on behalf of the State/AG has been met. Those requirements are set out in Appellant's Brief in Support of Injunction, (R, p. 1634 ff, esp. pp. 1645 – 1664). Even the AG's own claimed constitutional standard for special counsel to act for the State/AG, as set out in the lower court order of the Honorable Roger Couch (R., p. 96 -133, esp. p. 102, f2) has not been met.

The AG is not controlling the litigation even though the SWB contract says that he does. (R.,p. 1239). The AG is not counsel of record (R., p.177). The litigation serves a private purpose.

**2. The AG's Motion to Strike violates the AG's statutory duty to protect charities.**

The AG, through Sr. Assistant AG Havird "Sonny" Jones, was present on May 29, 2013 when Levenson – speaking for a dozen Respondents -- and counsel for Respondent Tommie Rae announced to the Honorable Doyet A. Early, III in open court their intention to defy the decision of the South Carolina Supreme Court in *Wilson v. Dallas* issued May 8, 2013 and reinstate the settlement deal brokered in 2008 by the AG. (R., p. 1079, 1004, para. 41, 1044, para. 239) The

AG's settlement which was a primary subject of the Complaint in this action, take 100% of Brown's 2000 Trust and gives them to beneficiaries selected by the AG, not by Brown. More than half went to non-charities. (R., p. 1328) Under S.C. Code Ann. Section 62-7-405(c) (2009) it is the duty of the AG to protect funds appropriated to charities, including Brown's "I Feel Good" Charity. The Motion to Strike is at cross purposes with that duty. SWB's Motion to Strike on behalf of the AG should be denied.

**3. Motions by Respondent James Brown Legacy Trust should not be permitted.**

Since 2013, Respondent James Brown Legacy Trust has told Judge Early and this Court that it simply ceased to exist when the *Wilson v. Dallas* decision was rendered. This is entirely inconsistent with its actions and the Motion to Strike.

In August 2010 SWB described the role of the AG's Legacy Trust in this litigation. (R., p. 1328). All of Brown's assets would now go into Respondent James Brown Legacy Trust, which SWB described as the "Charitable Settlement Entity." (R. p. 1328). SWB demonstrated how the Legacy Trust's assets would then flow 23 ½% to Respondent Tommie Rae; 47 ½% to the AG's (New) Charity; and 4.79% to each of six now-former Levenson clients. (R., p. 1328).

In 2010, Bauknight claimed a \$2.8 million IRS estate tax charitable deduction for assets SWB told the court would pass through Respondent Legacy Trust, and by 2011 the AG and Bauknight, with others, told the Supreme Court that the AG's settlement and creation of the AG's Legacy Trust saved estate taxes. (R.,p, 1824 – 1825). It did not. (R., p. 2094-2095).

In June 2011 Appellant, made a FOIA request for a copy of the Legacy Trust. Counsel, and counsel for counsel for Bauknight claimed it was private and threatened Appellant with sanctions or a lawsuit if she pursued her requests. (R. p. 555- 557).

A Legacy Trust December 2010 amendment became part of the record in Richland 4900 only because it was publicly released by Forlando Brown, son of Respondent Terry, a party to the amendment. (R., p. 2040 - 2046).

The May 8, 2013, *Wilson v. Dallas* decision voided the AG's settlement deal as to Brown's estate and 2000 Trust; voided Bauknight's appointments; but did not specifically address what would happen to the Termination Right the settling parties had assured Judge Early they had placed in the AG's Legacy Trust. There is no evidence in the record of a proper termination of Respondent Legacy Trust. A party which claims it no longer exists, especially under the above facts, should not be allowed to pursue a Motion to Strike or other relief.

**4. Respondent James Brown Legacy Trust has lacked candor with the Court.**

To the extent SWB is allowed to make the Motion to Strike on behalf of Respondent James Brown Legacy Trust, it has unclean hands. It has clearly lacked candor with the court, including that its trustee took a \$2.8 million estate tax charitable deduction for assets purportedly passing to the Legacy Trust, \$2 million of which was going to private individuals. (R., p. 998, para.34).

The Motion to Strike of Respondent Legacy Trust should be disregarded or denied.

**5. SWB's Motion for Venisha Brown, who is deceased, should be denied.**

James Brown, natural father of now-deceased Respondent Venisha Brown, gave Venisha 1/6 of his personal and household effects, valued on Brown's estate tax return as filed at more than \$50,000. In addition, with about a dozen siblings, Venisha had Termination Rights under Sections 203 and 304 to some of Brown's U.S. royalties. Beginning in 2012, those Termination Rights could have provided Venisha with a steady income. Instead, in 2007 Levenson contracted to get 30% of what he could get for Brown's "family," and Venisha never got the legacy, or a much-needed guardian ad litem (GAL).

In August 2008 Levenson agreed to “stipulate” that Respondent Tommie Rae was Brown’s spouse, cutting Venisha’s Termination Rights in half. By 2010, with Venisha incarcerated, Levenson signed the SWB 40% contract for her. (R, pp.1252). Then Levenson and SWB refused for 7 years to appoint a GAL for Venisha. (R, pp. 1071-1072) There is no evidence she received an offer from Buchanan and Pope before Richland 4900 was filed, or one from Appellant in August of 2012. In 2012 SWB moved to strike the Offer of Judgment made by Appellant which would have provided help and a steady income to Venisha. (R., pp. 671-676, 687- 689).

Venisha never signed the SWB contract. (R., pp. 1235-1253) Any recovery to Venisha from Buchanan and Appellant, after expenses, would first pay 40% to SWB, then 30% to Levenson.

In 2016 SWB told the lower court that Venisha could not be found to be deposed. (R., pp. 1190- 1191) Yet SWB moved for partial summary judgment on her behalf as to Appellant’s counterclaims. And Venisha, through other lawyers, actively asserted that Respondent Tommie Rae was not Brown’s surviving spouse. (R., 1884).

Venisha died five days after the SWB Motion to Strike was filed. Between James Brown’s death and Venisha’s own death twelve years later, no person presented a valid durable power of attorney to act for Venisha in this case.

SWB had no authority to act for Venisha. Where counsel claims a client, who is known to be disabled cannot be found, counsel should not be allowed both to prevent the appointment of a GAL and then act for that party. SWB’s Motion to Strike for Venisha should be denied. SWB should be required to promptly substitute her Venisha’s estate as a Respondent.

**6. SWB should not make motions for minor and formerly-minor Respondents.**

In May 2010 Levenson signed the SWB 40% contingency fee contract for Respondents Jason Brown-Lewis, Janise Brown, Lindsey Brown, Sydney L. and Carrington L. (R., p. 1252, 1887) For eight years SWB and Levenson rejected repeated efforts to have a GAL appointed for then-minors. (R., p. 50) SWB and Levenson worked against the interest of the minors in favor of the AG's settlement which dismembered their education trusts. (R., pp. 50; 116-1196; 1987 – 1993, 2080).

These Respondents who reached majority have never filed ratifications, after proper disclosure, of the actions SWB and Levenson took for them, including in two mediations.

Respondent Jason Brown-Lewis was a young adult when this suit was brought. His deposition in 2016 differs materially from positions taken for him by SWB. (R., pp. 2111 – 2118, 2128). The same is true of others. (R., p. 2081).

Levenson has either been terminated, or was never hired, by these five Respondents. He signed the SWB contract for them. (R., pp. 1884, 1887- 1889).

SWB has no legal authority to act for the minors; filed a Motion to Strike which is against their interest; and has unclean hands because it has prevented the appointment of a GAL for the minors. The Motion to Strike continues a plan to damage and discredit Buchanan and Appellant for filing an appeal which restored the education trust until age 35 for 7 designated grandchildren of James Brown, including Respondents Jason, Janise, Lindsey, Sydney and Carrington. In addition, Buchanan and Pope helped restore the ½ of their future Termination Rights (after the death of their parents) for the lifetime of Respondent Tommie Rae. There is nothing to suggest that these minors and former minors would support the Motion to Strike, or that a GAL for the

minors would allow it. On this basis alone, SWB's Motion to Strike on behalf of these five Respondents should be denied.

**7. Acts of Respondent Deanna Thomas and others are inconsistent with the motion.**

The current, public position of Respondents Deanna, Tonya, Yamma, Larry, Daryl and Terry is that Respondent Tommie Rae was not the surviving spouse of James Brown; has no Termination Rights under Section 203 and 304 of the U.S. Copyright Act; and is not entitled to any benefit from the James Brown Estate or James Brown's royalties. (R., pp. 1999, 796, 1182 – 1185 ) The Motion to Strike is made to support a complaint which seeks to damage Appellant and Buchanan for appealing a deal which put Tommie Rae and the AG in 75% control of Brown's assets; "stipulated" that Tommie Rae was Brown's spouse; and gave Tommie Rae 23 ½% of Brown's copyrights, royalties, income from Right of Publicity, tangible personal property, claims against former trustees and other assets. (R., p. 1328).

None of these Respondents signed the SWB 40% contingency fee contract. It was signed for all except Terry by Levenson. (R., p. 1252). All five have now terminated Levenson, and Terry has terminated David Bell, Esq., who signed for him. (R., p. 1251).

By 2012 Daryl had fired Levenson; repudiated the AG's settlement and sought to uphold his father's estate plan. (R., pp. 730 – 731) Yet SWB exempted Daryl from the 2012 mediation, and Levenson attended for him. (R., pp. 1071-1072, 1987 - 1994) As the Motion to Strike shows, by the time Daryl was deposed on December 21, 2012, Levenson and Bauknight had met with Daryl and brought him back into the foal - but only temporarily. (R., p. 1994).

SWB has no authority to file a motion on behalf of these Respondents, and the Motion to Strike is directly contrary to their actions in this and other courts. The motion should be denied.

## **8. SWB lacks authority to speak for Respondent Terry Brown.**

In March 2007 Respondent Terry Brown and his son Forlando fired Levenson and aligned themselves with felon David Cannon and his Co-Trustee Albert Dallas. Cannon and Dallas sought to sell Brown's music empire under a claimed agreement called the "October 18 [2006] Letter," reaping 5% each of the sale for Dallas and Cannon; 15% for music manager Frank Copsidas; and 5% for the law firm of Brown's entertainment lawyer, Joel Katz. Over the next ten years, Terry, Forlando and Bell, their lawyer, would file false grievances against Levenson and submit false statements and affidavits in State and federal court. It was Forlando who, in January 2011, planted the false Grammy© claim with an Atlanta law firm (KS) which was noted by the Supreme Court in the *Wilson v. Dallas* decision.

On January 2, 2008 Forlando filed a federal suit to enjoin the 2000 Trust until Cannon and Dallas were reinstated. He pursued the injunction until April 2012.

Despite Terry and Forlando's already-known history with Levenson, and the pending federal suit, in January 2009 the AG gave Respondent Terry, who had been part of 3 attempts by TJBL to buy Brown's music empire for \$90 to \$100 million, a right of first refusal (ROFR) to buy the music empire.

By 2010 Bell was supporting the devaluation of Brown's music empire for Terry, while Forlando consistently told the federal court that the assets were worth \$100 million or more.

In January 2011 AG Wilson, through AG Jones, secretly distributed to the settling parties the transfer of Terry's interest in Brown's estate and the ROFR to Forlando (R, p. 1020). Judge Manning was not told of the transfer, and a motion to add Forlando as the real party in interest for Respondent Terry has been pending for more than five years.

In 2012 and later, Bell and Forlando – concealing the transfer – told the Federal Court Forlando has no assets and no expectation of assets from the James Brown estate litigation unless Terry dies. Terry and Bell, with knowledge of the real value of the music empire, supported the Bauknight/Afterman devaluation to \$4.7 million. That devaluation not only failed to save estate taxes (which were payable by the children-recipients of household effects) but caused an unnecessary multi-million dollar income tax problem which will continue until Respondent Carrington L. reaches age 35.<sup>2</sup>

SWB had no authority to serve the Motion to Strike for Respondent Terry because Forlando, who terminated SWB, is the real party in interest as to Terry's claim.

**9. If SWB can speak for the minor James B, he has lacked candor with the Court.**

There is no dispute that Buchanan and Pope never owed a duty to James B. He was a non-presumed claimed child of James Brown who refused to take a paid-for DNA test under the Estate's official DNA testing system.

In 2010 James B., without a GAL, sued Buchanan and Pope for – among other things – failing to accept the 2007 \$100 million offer for Brown's music empire.

For 8 years SWB refused repeated requests for a GAL in this case, and twice exempted James B from appearance or a GAL at mediation.

In 2013 it was James B. who, in a Petition for Rehearing, explained to the Supreme Court – for the first time – how Peter Afterman and Bauknight had devalued Brown's music empire,

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<sup>2</sup> Under the "Fractional Share" formula of Brown's 2000 Trust, the devaluation of the music empire by about \$79 million shifted nearly 1/3 of Brown's assets from the "I Feel Good" Charity to the taxable 7 Grandchildren's Trust . The excess assets will return to the "I Feel Good" Trust as the 7 grandchildren reach 35. In the meantime. The shifting of assets by the devaluation will both generate unnecessary income taxes and reduce available scholarships for needy students by millions of dollars over twenty years.

Schedule F of the Estate Tax Return – from \$84 Million to \$4.7 million. Yet his mother, Respondent Tommie Rae, told this Court that Termination Rights – which apply only to U.S. Royalties (about half of them) -- could be worth millions of dollars.

In 2016 James B was awarded approximately \$700,000.00 in legal and GAL fees in Aiken, even though his maximum claim is for approximately 1/20 of an estate he claims was worth \$5 million when James Brown died. James B. and his mother both now claim to be a resident of London, England.

SWB lacks any authority to file a Motion to Strike or other action on behalf of this minor. To the extent he is authorized to speak for James B., James B. had lacked candor with the Courts and, aided by Bauknight and Afterman, siphoned off assets from the “I Feel Good” Charity.

**10. Respondents’ motion seeks to prevent a *Wilson v. Dallas* review of legal fees.**

On May 8, 2013, the South Carolina Supreme Court issued a mandate in *Wilson v. Dallas* that the lower court review all attorneys’ fees and fiduciary fees in relation to this action. Clearly, this case, Richland 4900, was brought in relation to *Wilson v. Dallas* and with the intention that the appeal be stopped. The Motion to Strike seeks to prevent fair review of the millions of dollars in legal fees spent to discredit Buchanan and Pope in connection with *Wilson v. Dallas*.

Buchanan and Pope filed proper accountings and a proper final accounting showing assets with a gross value of over \$99 million and a net value of over \$88 million (after an \$11.3 million TIAA debt) being delivered to Bauknight. (R. pp. 1464-1498). His appointment was declared void in *Wilson v. Dallas*. Yet since his appointment Bauknight has never filed a proper accounting for the Estate, omitting both the beginning and ending value of Brown’s assets on accountings. No accounting has been filed since 2016.

This Motion to Strike, intended to prevent a fair review of legal fees, should be denied.<sup>3</sup>

**11. Affidavits properly established many undisputed facts in the lower court.**

Where matters are being presented to the court prior to trial, affidavits, along with depositions and admissions of the parties, discovery responses and request for mandatory judicial notice under 201 SCRE are an appropriate way to establish the facts of the case. Respondents failure to file affidavits to refute any facts they believed were incorrect does not make affidavits of Buchanan and Pope improper. Each of the Affidavit presented by Buchanan and Appellant, whether their own or a statement of others, was proper, and those included are relevant to this pre-trial appeal.

**12. Respondents' specific claims of deficiency in the brief lack merit.**

On page 2 Respondents refer to "this Court's prior action striking Appellant's entire initial brief" and assert that Appellant "refuses to comply with the South Carolina Appellate Court Rule." These overzealous statements are incorrect. Appellant has carefully complied with the rules, and only certain small portions of the initial brief -- those related to actions after the filing of the notice of appeal -- were removed in the amended initial brief.

On page 2 Respondents assert that the reply brief contains arguments not included in the initial brief. This is correct only insofar as Appellant was required to respond to new matters raised by Respondents as well as Respondents' inaccuracies. Respondents assert that the Reply Brief as to Respondents references and heavily relies on "irrelevant material," but the material relied on was not found irrelevant by the lower court and is directly relevant to the tortured eight-year history

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<sup>3</sup> For example, in 2016 Respondent James B., who asserts his mother was Brown's spouse, sought, and Bauknight did not object to, a GAL fee and attorney fee for Peter Shahid, Esq., of about \$700,000.00, even though Shahid filed a Petition for Rehearing for James B. which claims Brown's music empire was worth only \$4.7 million at his death and James B's maximum claim is 1/20 of that, after expenses.

of this case. Respondents assert that the brief contains “unqualified declarations of disputed facts without any reference.” As the full record now before this Court shows, the AG and remaining 17 Respondents simply did not dispute many of the material facts set forth by Buchanan and Appellant in their affidavits and filings, making much of the record undisputed for purposes of this appeal. Further, Respondents’ own Termination Rights expert, Roger Miller, Esq., differs sharply from non-expert Afterman, and supports Buchanan and Appellant about the claimed value of Brown’s 900 copyrights. (R., pp. 995-996).

Respondents assert that Appellant’s brief is a “clever, but improper, manufacturing of history.” It is actually a straightforward telling of the history made by two of the State’s highest legal officers who, for 11 years, damaged Appellant, Robert Buchanan and the charity the two AGs had a statutory duty to protect; attacked fiduciaries who protected the charity; failed to recover \$17 million stolen from funds given the charity; and failed to correct false IRS filing which shifted nearly 1/3 of the charity to a taxable trust, causing the loss of millions of dollars in scholarship funds. The story was made more compelling five years ago, when on March 6, 2013 Appellant personally met with AG Wilson and his senior staff; confidentially outlined the millions of dollars damage to James Brown’s “I Feel Good” Charity by the AG and his appointed trustee; and the AG not only failed to take action, but has since allowed tens of millions of dollars to be spent in legal fees to try to cover up the destruction and false filings.

The AG and his senior staff have testified under oath about the March 6, 2013 meeting in a case which AG Wilson sought to consolidate with this case. SWB was allowed to attend depositions of the AG’s staff. Those depositions are now part of the public record in Aiken County Case 2013-CP-02-1337. So are the court-ordered depositions of two SWB attorneys. Had a single fact set out by Buchanan and Pope in affidavits and filings since January 11, 2011 been incorrect,

AG Wilson, his staff, the Trustee of Respondent James Brown Legacy Trust or any of the 17 Respondents could have filed those depositions in this case or presented an affidavit pointing out what that person believed to be inaccurate. The record shows that this did not happen.

**13. Affidavits presented by Buchanan and Pope and appropriate and relevant.**

The 17 Respondents complain on page 2 and 3 of the “numerous and voluminous affidavits, typically over [Appellant’s] signature.” They complain that the affidavits are appended with numerous documents relating to various cases. Respondents fail to acknowledge what the record shows: the AG and other Respondents improperly sued Buchanan and Pope in Richland County; told the Court that the proceedings in Aiken County were over; and claimed that both James Brown’s 2000 Trust and Respondent James Brown Legacy Trust were being administered in Richland County. (R., p. 1322 - 1329). As a result, Buchanan and Appellant were required to file voluminous documents about their service in more than a dozen Aiken County cases. In Aiken County Judge Early had taken broad judicial notice of the many James Brown cases assigned to him. There is nothing inappropriate about parties seeking, or the Court taking, mandatory or discretionary judicial notice of other proceedings. It is especially important where, as here, parties are taking positions in other courts which are directly contrary to the positions being taken in this case.

On page 3 Respondents refer to their request made, and granted, that the lower court require all affidavits in this case be filed under seal. (R., pp. 27 – 28). The request by the AG for the Court to violate, without review, the sacred principle of open records in the South Carolina courts, was unfortunate. The 2-page March 15, 2017 Order which sealed the January 17, 2018 affidavit and provided that future affidavits (without review) be filed under seal does not tell the Court anything except that a lower court did not follow the important open records policy of this State. There was

no finding that any statement was untrue or improper. Nor has the AG, the Governor, or any member of the AG's senior staff filed an affidavit to assert which, if any, statement is incorrect. None of the affidavits is irrelevant. Most of the facts have never been challenged under oath by any of the 17 Respondents.

Respondents repeatedly claim on page 3 that the facts of this case are "manufactured" and "irrelevant" and a "carefully manufactured tapestry." This is not correct. They are facts.

**14. Respondents' new claim about Buchanan was incorrect and required a response.**

The response to Respondents' incorrect claim about Buchanan is neither "inappropriate" nor "irrelevant" as the AG and other Respondents claim. Where the AG has ruined a properly-serving fiduciary's career with this case; withheld from 2009 until 2012 \$500,000 Buchanan should have been paid, with interest, under a court order; and then, as a condition of payment, secretly required him not to file a Petition for Rehearing in *Wilson v. Dallas*, it is relevant to this appeal. It is even more relevant where the AG and other Respondents then suggested to the South Carolina Supreme Court (while concealing the condition) that Buchanan had abandoned his support for James Brown's estate plan by not filing a Petition for Rehearing after the first *Wilson v. Dallas* decision. This was just one of the misrepresentations to the Supreme Court by the trustee of the AG's James Brown Legacy Trust, and others, condoned and not corrected by the AG.

**15. Footnote 6 and the Record on Appeal Properly Refute Claims about Buchanan.**

On pages 4 – 6 Respondents assert in detail that none of the documents listed or the statements in paragraph 6 refutes the statements made by Respondents in their initial brief. This is incorrect, and the Court is asked to review the documents filed by Buchanan and Appellant referenced in footnote 6 of the Reply brief which outline Buchanan's involvement and the still-

pending motion to void as against public policy the conditions the AG attached to the \$500,000 payment made to Buchanan in 2012. (for example, Mot to Stay filed 11/30/10, R., pp.386-389; Ret. And Obj., filed 5/12/12, R. pp. 585-589) Contrary to Respondents' position on page 4, everything cited refutes the claim of Respondents about Buchanan in their initial brief.

As to the October 2013 findings of Judge Early about the propriety of Buchanan's service; that Buchanan is not subject to any disgorgement; and that Judge Early leaves open the possibility of Buchanan's re-entry into Richland 4900, on pages 4 and 5, Respondents complaint that this information was presented to the lower court by affidavit, rather than by a copy of the transcript. This complaint is without merit. The facts of Judge Early hearings are a matter of public record and undisputed. The persons present at the October 2013 hearing were Judge Early, Buchanan and counsel for Respondent Estate/2000 Trust. If anything in an affidavit or filing by Appellant in 2015, or later, had been incorrect, two Respondents could merely have challenged the statements in their own affidavit.

In addition, in a Status Report filed with the Supreme Court in May of 2015, Judge Early discussed the payments to Buchanan. In short, the presentation of the undisputed facts about Judge Early's oral rulings about Buchanan in a *Wilson v. Dallas* remand review hearing were responsive to incorrect, new matters raised in Respondents' Initial Brief; were properly presented to the lower court; and are relevant to this appeal.

**16. The Memorandum in Support of Deposition of AG is proper.**

Respondents assert that Section J of Appellant's Reply Brief to Respondents, entitled **AG Wilson Continued Richland 4900, FOIA Matters and Consolidation**, is an example of what they describe as the "manufacturing process." Respondents, two years after a Memorandum in Support of Deposition of Attorney General and Opposing Protective Order (R. p. 1996-2020) was

filed with the lower court on August 29, 2016, suggest that its form is defective, and that it failed to contain proper citations. Respondents, again, fail to show that any fact or reference in the 25-page memorandum is incorrect, or that the lower court failed to take the requested mandatory judicial notice under Rule 201 SCRE. If a single fact or reference in the Memorandum was incorrect, 17 Respondents had more than a year to file affidavits or statement asserting what they claimed to be an inaccuracy.

The Memorandum was accurate. It was filed to show the lower court that an AG who said he knew nothing about a case he had been controlling since January 2011, had, in fact, taken many positions to damage Buchanan and Pope. They including the AG's attempts since 2011 to prevent release under FOIA and in discovery of Respondent Tommie Rae's handwritten admissions that she was married, living with her husband and thought she might be pregnant before conducting a bigamous ceremony with Brown; the SWB contract which shows SWB was not properly authorized to bring Richland 4900 in the name of the State/AG; and the January 2011 amendment to Respondent James Brown Legacy Trust/Settlement Entity.

**17. Appellant's Reply Brief to Respondents properly addresses new matters.**

On pages 6 to 8 Respondents assert that Appellant's brief is being used as a vehicle to argue issues not argued in Appellant's brief in violation of *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989) and *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 439 S.E.2d 283, n.3 (Ct. App. 1993). This is not the case. As shown below, and in the record, each response was appropriate.

**A. The "Role of Buchanan" properly responded to Respondents' Brief.**

Respondents, with direct knowledge of Respondent Estate/2000 Trust of its inaccuracy, not only state that Buchanan's role in Richland 4900 is finally ended, but fail to acknowledge that in October 2013, with the acquiescence of two Respondents in the case, Judge Early specifically and clearly left open the possibility of re-entry into

Richland 4900, and a motion to deal with the matter has been pending since 2012. That was when the AG imposed on Buchanan, without advising the Supreme Court, the condition that Buchanan not file a Petition for Rehearing after the first decision in *Wilson v. Dallas*. Correcting Respondents' assertions in the Initial Brief of Respondents is material to this appeal, and appropriate. It relates directly to whether the AG and other Respondents should have been released from default; whether the AG should be deposed; whether SWB should be disqualified; and whether the AG should have been dropped as a party under Rule 21. There is no attempt by Appellant to make a new argument, only to correct an inaccurate one.

**B. Section i, regarding Governor McMaster properly responds to the Initial Brief**

On page 7, Respondents assert that Appellant's stating to this Court in Section i, page 7, the fact that Governor McMaster, under oath, twice stated that he did not authorize SWB to bring Richland 4900 against Buchanan and Pope in the name of the State/AG was improper. It was not. Appellant was properly advising the Court how the documentation about which Respondents complained supports the disqualification of SWB. Surely, an explanation of the documents which outline the Governor's own sworn testimony twice in 2016 that he did not authorize SWB to bring this suit against Buchanan and Pope in his name as AG in 2010 is a proper response to Respondents' initial brief. SWB's knowledge for two years that the AG never properly authorized this suit to be filed by a private law firm for the private benefit of Respondent Tommie Rae and others is directly material to the disqualification issue in this appeal.

**C. Section j, about AG Wilson's actions properly responds to Respondents' brief.**

Respondents admit that Section j, page 8, entitled "AG Wilson Continued Richland 4900, FOIA Matters and Consolidation" is a response to their initial brief, but then assert that it is not "primarily a specific reply" and that it is too long. The section is a proper response to the brief, and four pages describing Respondent AG's unprecedented attempts with SWB over four years to transfer three separate FOIA cases from other counties to Richland County; subordinate them to discovery in this case; and conceal documents which show the \$4.7 million claimed value of James Brown's music empire was fabricated; Respondent Tommie Rae admitted in her own handwriting that her ceremony with Brown was bigamous; the Legacy Trust was secretly amended in December 2010 to allow Terry/Forlando to begin the purchase/sale process just as Bauknight told the IRS the music empire was worth only \$4.7 million; and the SWB contract was not signed by the AG or any of the 17 Respondents except Bauknight. The criticism is without merit. Appellant has properly and succinctly responded to Respondents' claims.

**D. Section K, "AG Wilson's Actual Knowledge..." is a proper response.**

Much of Respondents' Initial Brief was spent claiming that the documents designated by Appellant and the facts cited were not relevant to this appeal. Respondents assert what they believe were the important parts of the *Wilson v. Dallas* decision. In reply, Appellant has appropriately set out Respondents' defiance of that decision and how the AG has continued his alliance with Tommie Rae and allowed Bauknight to pay Peter Afterman as he helps Respondents Tommie Rae and James B. siphon off royalties Brown gave the "I Feel Good" Charity.

The fact that an AG who claims he knows nothing about this case actually met with Appellant in person between the two *Wilson v. Dallas* decision, and personally learned of the IRS and Supreme Court filings of his staff and appointed trustee is relevant to every aspect of this appeal, and an appropriate response to Respondents' Brief filed for the AG and others. Respondents' statement on pages 7 and 8 that section K contains statements "devoid of any reference" is simply incorrect.

#### **E. Appellant Relies on Material to her Reply**

On page 8 Respondents reference this Court's ruling with respect to Appellant's Initial Brief. That ruling required Appellant to remove matters presented to the lower court after the filing of the notice of appeal. Appellant did so. And the Amended Initial Brief was filed. In response, Respondents designated more than fifty documents for inclusion in the ROA. They were included, and copies of the ROA have now been served and filed. Respondents assert that "Appellant is seeking to reintroduce much of the same irrelevant material [from the initial brief], as well as add more irrelevant matter". This is incorrect. The examples provided by Respondents provide no basis to strike any portion of the brief. Each is discussed below.

##### **a. Section a of Appellant's Reply Brief is Appropriate**

In response to Respondents' multi-page assertion that Appellant's Initial Brief was too long, and designations were improper, Appellant's Reply Brief included a section, entitled "Richland 4900 is Complex and Requires a Complete Record." This is true. It is an appropriate response.

##### **b. Section F, *Private Foundations, Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good Trust" doesn't...***

In May 2010 Respondents sued *Private Foundation...* co-author, Appellant, and Robert Buchanan claiming they had no understanding of the U.S. Copyright Act or its application to the value of James Brown assets (R. p. 176). In August 2010, AG Jones signed a document claiming James Brown's music empire would be shown to have a value of less than \$12 million. Buchanan and Pope did not know at the time that Tommie Rae and Peter Afterman were actually already working to reduce the value of the music empire to \$4.7 million.

By March 2008 Buchanan and Pope had begun preparing for the protection of the "I Feel Good" Trust's 900 copyrights from premature and defective Termination Rights elections by claimed heirs, which would come into play beginning in 2012. They secured an order from Judge Early to determine James Brown's heirs under both state and federal law. In addition, in June 2008, Buchanan and Pope hired Wm. Jeffrey Smith to assist with preparing to protect the copyrights. (R., p. 2100). In 2012 Termination Rights would slowly begin to affect the U.S. royalties held by Brown's "I Feel Good" Charity, which make up about half of the \$3+ million annual royalty streams, but multiple strategies existed for reducing their impact.

Smith is a retired patent lawyer. He graduated from Clemson and Georgetown Law Center. He had extensive knowledge and an interest in music. On August 10, 2008, however, Respondent AG brokered a deal which not only dismembered Brown's estate plan but threatened its 900 copyrights. The AG contracted to remove Buchanan and

Pope; “stipulate” that Tommie Rae was Brown’s spouse; “stipulate” that James B. was a child, even though he was not a presumed child and had refused DNA testing; stop the Estate’s DNA testing protocol; and work with Tommie Rae and five Levenson clients to defeat the claims of any heirs not favored by the AG. The AG’s deal left no room for planning to protect the copyrights, and Smith did not continue to work for the Estate/2000 Trust.

In 2009 the AG gave Terry Brown the ROFR, and by August 2010 AG Jones was claiming the music empire Terry had a right to buy was worth less than \$12 million. *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown “I Feel Good” Trust doesn’t* was produced in draft form to professionals by Pope and Smith in April 2011. It showed how the combined failure to protect the copyrights with a proper heir’s determination, with the proposed devaluation, left the “I Feel Good” Charity with almost nothing. (R., pp. 1708-1722). The following month, the AG and others revealed to the Supreme Court that they had actually devalued Brown’s music empire from \$84 million (\$99 million less a \$15 million TIAA debt) to \$4.7 million (\$23.7 million less an overstated \$19 million TIAA debt). *Private Foundations ...* was filed with the Court in 2011 and thereafter.

Seven years after *Private Foundations ...* was filed in the lower Court and given to the AG and all Respondents, the AG and other Respondents assert on page 7 of their Motion to Strike that “the writing referenced by Appellant is not legitimate, is saturated with legal error and fiction, is completely irrelevant to this appeal...” The claim is incorrect.

On October 1, 2011, counsel for Respondent Estate/2000 Trust told our Supreme Court in oral argument in *Wilson v. Dallas* that Termination Rights are all this case is about. He also told the Court, incorrectly, that by 2023 there would be nothing left in the “I Feel Good” Trust by 2023 if the AG’s plan to give away 52 ½% of Brown’s “I Feel Good” Charity in exchange for certain Termination Rights were not upheld. He said Respondent Tommie Rae controlled the Termination Rights, which were automatic. He said if Respondent Tommie Rae did not control the Termination Rights, Terry Brown and 5 Levenson Will contestants did. He even said that nobody was trying to buy James Brown’s assets, and that Brown’s Estate and 2000 Trust had no corpus to speak of. [ Oral Argument, *Wilson v. Dallas*, 11/1/11]. He was not correct. He failed to tell the Supreme Court that only half of Brown’s \$3+ million royalty stream, the U.S. copyrights, could be affected. He failed to tell the Court that several of the original settling “children” might not be children under the Copyright Act; the grandchildren had not been considered; and the original settling children were fewer than half of Brown’s claimed children.

By 2012 the Ray Charles Foundation had filed suit to protect itself from premature and defective Termination Notices. By 2013 the AG had been personally told of the millions of dollars damage being done by AG Jones and Bauknight, but the AG continued to praise Bauknight as he paid Peter Afterman to help Tommie Rae and James B. try to siphon off U.S. Royalties that should be educating needy student between 2015 and 2023.

Between 2011 and 2018 Respondents have not presented either to the lower court, or this Court, any evidence that *Private Foundations...* contains a single legal error in its presentation of the damage the AG and Bauknight did, and continue to do, to the “I Feel Good” Charity. When Respondents finally engaged Termination Rights experts in 2017 in this case, those experts did not refute any of the law or conclusions of Buchanan and Appellant with respect to how the AG damaged the “I Feel Good” Charity by stopping the DNA testing protocol and declaring as James Brown’s heirs only persons favored by his Sr. Assistant. The Court may elect to take judicial notice of the unnecessary extreme discord now at play because AG Jones failed to understand the importance of a proper heirs determination and the interplay between U.S. Copyright Act Sections 203 and 304 and State Probate law.

Respondents’ challenged the relevance of *Private Foundations...* in their initial brief. Appellant properly corrected them in Reply.

**c. The Weight of the Testimony of Wm. Jeffrey Smith has not been determined.**

It is undisputed that Buchanan and Pope engaged Wm. Jeffrey Smith to assist with Termination Rights issues in June of 2008. It is undisputed that Smith, some of whose qualifications are set out above, co-authored *Private Foundations...* in 2011. It is undisputed that the deal brokered by the AG in 2008 to stop the Estate/2000 Trust’s heirs-determination procedure and declare as James Brown’s heirs’ persons chosen by AG Jones damaged the “I Feel Good” Charity and its 900 copyrights. The issue of qualification of experts raised by Respondents is not yet ripe in this pre-trial appeal.

**17. Most facts cited in Appellant’s Reply Brief are undisputed at this time.**

From page 8 to page 13 Respondents continue to claim that facts which have not been refuted in any sworn statement by any of the 17 Respondents are “part of the manufactured tapestry” or from affidavits that are “wholly disputed” or “highly questionable.” If a fact stated in an affidavit is “wholly disputed” or “highly questionable,” the proper course is for the party with valid evidence to dispute it to prepare and file an affidavit refuting the claimed incorrect fact. That simply has not happened here, as set out below.

**a. Respondent James Brown Legacy Trust Has No Meritorious Defense.**

As stated above, in 2010 SWB claimed Respondent Legacy Trust was a charitable trust (R., p.p. 1127, 1328). In 2011 Respondent Legacy Trust’s lawyer claimed it was private and not subject to FOIA, although it was created and effectively controlled by the AG. By 2013 it was claiming not to exist, but vigorously pursuing this action. It is undisputed that Buchanan and Appellant never owed any duty to this enterprise. It has no meritorious defense to their counterclaims.

**b. Facts Stated in Appellant’s and Buchanan’s Affidavits are Largely Undisputed**

On Page 9 Respondents assert that Appellant's statement that the challenged affidavits are "largely undisputed" is "blatant unwarranted fantasy." Yet they again do not point to a single sworn statement of any of the 17 Respondents, 91 claimed witnesses, or experts to refute the facts.

**c. The Requirement that Buchanan not protect himself and other act of the AG.**

Respondents, on pages 9 and 10, suggest that Appellant and Buchanan do not understand the decision in *Wilson v. Dallas*. This is incorrect. They do not dispute what the Supreme Court ruled. The brief points out only that the Grammy© claim was false, as was the claim by the AG, the State's highest legal officer, that Brown's Estate and 2000 Trust were worth about \$6.5 million when he died, and that before Buchanan and Pope overstated the value of James Brown's music empire by \$79 million to secure a \$5 million commission for 18 months' work. Appellant states correctly that these claims had a devastating impact on their careers and reputations. The Supreme Court was appropriately concerned by these false claims. To have the AG, the State's chief prosecutor, claim that trustees have committed a federal felony is extremely serious. Added to these claims, was the claim that the AG's settlement and devaluation of the music empire to \$4.7 million saved estate tax. The Supreme Court, not surprisingly, decided not to reinstate Buchanan and Appellant.

When the AG prevented Buchanan from filing a Petition for Rehearing, correcting the inaccurate statements became more challenging.

The problem, which is at play in this case, is that the AG's claims were inaccurate; Appellant visited AG Wilson, Solicitor General Cook and former Chief Deputy McIntosh on March 6, 2013 and told them, quietly that they were inaccurate and damaging the "I Feel Good" Charity. Then the AG continued to attack Buchanan and Pope, allowing Bauknight to waste millions of charitable dollars in the announced plan to put Tommie Rae and the AG back in control of Brown's music empire.

A filing by Beth Bauknight, CPA and wife of Brown's Trustee, in this case in 2010 shows that in just 18 months Buchanan and Pope collected about \$7.8 million of income; reduced the TIAA debt to \$11.3 million; and delivered to the AG's Trustee in May 2009 \$99+ million of assets, with a net of about \$88 Million. (R. p.p. 1464-1508). The devaluation scheme proposed by Tommie Rae's lawyer in 2009 to discredit "bobadele" (R. p. 1983) had its intended effect because it was endorsed and supported by the AG.

**d. The Claim that Appellant's attempts to mislead the Court is Incorrect.**

Appellant is unable to understand Respondents' claim with respect to the second paragraph of page 13 of the Reply Brief but denies the unsupported claim by Respondents that a short quotation from the *Wilson v. Dallas* decision is a "blatant attempt to mislead this Court" or "part of the tapestry of the manufacturing process." The *Wilson v. Dallas* citation is entirely appropriate.

e. **The damage to Buchanan and Pope is found throughout the record.**

On pages 10 and 11 Respondents object to Pope's statement that the damage to both Buchanan and Pope is found throughout the record. There is no basis for this objection, which was a proper response to Respondents' brief.

f. **Respondents failed to challenge most of the facts asserted by Buchanan and Pope.**

Respondents continue on page 11 of the motion to assert that Appellant's statements are false, but fail to point to a single affidavit, deposition or verified interrogatory of any of the 17 Respondents which refutes the facts as set out in affidavits filed by Buchanan and Appellant. The criticism is without merit.

g. **Section II of Appellant's Argument is proper.**

On page 11 Respondents appear to be presenting a sur-reply to this Court stating what they do not like about Appellant's Reply brief. This argument does not address the subject of the motion. Appellant respectfully requests that it be disregarded as an additional attempt to argue its position with the Court.

h. **None of Appellant's Arguments Should be the Subject of a Motion to Strike**

On pages 12 and 13 Respondents continue what appears to be an attempted sur-reply to Appellant's argument. There is no basis to strike any of Appellant's arguments.

1. **Buddy Dallas** - As stated in her brief, Dallas' sworn statement deals only with the first month of Buchanan's and Pope's joint service as PR/Trustees. The entire remainder deals with their service as special administrators, and before they – with the consent of all individual Respondents – were appointed PR/Trustees on November 20, 2007. What Mr. Dallas says that is important is that there were people looking to pay \$100 million or thereabouts for Brown's music empire in the year after his death. This supports the position that that the claimed \$4.7 million value fabricated by Respondent Tommie Rae's advisors, the AG's Trustee and Peter Afterman is outrageous.

2. **Judge Early's findings** – The findings set out on page 17 are undisputed, and no basis to strike is suggested.

3. **Wilson v. Dallas Does Not Provide a Meritorious Defense** – In another sur-reply Respondents cite a lower court order issued in 2017 which is now subject to a motion to alter or amend and is not final as evidence of a meritorious defense. The order is especially noteworthy because the AG, through private counsel SWB, continues to pursue partial summary judgment and rely on an order granting him partial summary judgment after he has been dismissed as a party under Rule 21. The use of the AG of the power of the state in this case is already problematic. When the AG then allows a private law firm to pursue on his behalf partial summary judgment in a lawsuit from which he has been dismissed under Rule 21, both Due Process rights of Appellant and public trust are undermined. This is an example of the damage to be done when private lawyers act on behalf of the State/AG without proper constitutional restraints

or oversight, including when the AG does not review and sign all pleadings by his private attorneys.

**4. The devaluation to \$4.7 million is undisputed, not alleged.**

While the record was not fully developed until after *Wilson v. Dallas*, the fact of a 2009 scheme to devalue Brown's 900 copyrights to \$24 million or less and value the right of publicity at zero to discredit "bobadele" is undisputed. (R. p. 2233). It was referenced by advisors to Tommie Rae and carried out by Peter Afterman and Bauknight in 2010. It included a hidden \$3 million overstatement of Brown's TIAA debt within the claimed \$4.7 million value. It was presented to the IRS with the AG's blessing; and then used to make claims about Buchanan, Pope by using a known, ill-gotten IRS refund. *Wilson v. Dallas* did not consider, under the Fractional Share division formula of Brown's 2000 Trust, that Bauknight's valuation had shifted nearly 1/3 of the assets and \$3+ million annual income devised to the "I Feel Good" Charity and into the taxable trust to educate 7 grandchildren. Unless improperly disbursed to James Brown's grandchildren, the bulk of this fund will languish, and pay millions in unnecessary income taxes, until the 7 grandchildren reach age 35.

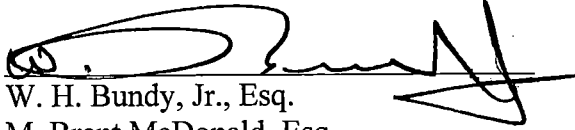
While the 7 Grandchildren's trust was traditionally called \$2 million, that was only because the Fractional Share determined at Brown's death was \$2 million/value of Trust. At \$100 Million that made the 7 Grandchildren's share 1/50, or \$2 Million. At \$6.5 million, the Grandchildren's Trust will hold nearly 1/3 of Brown's assets. Whether this dismemberment of the "I Feel Good" Trust was intentional or reckless has not been determined, but the AG's refusal to correct it is undisputed.

### CONCLUSION

Respondents' Motion to Strike should be denied. SWB, a private law firm, has no authority to make the Motion to Strike for the AG. Nor can SWB act for Respondent minors or Respondent adults who never hired SWB and who have terminated the lawyers who signed the SWB 40% contingency for them. Nor can SWB move for Respondent James Brown Legacy Trust, which claims not to exist, deceased Respondent Venisha Brown, or others. To the extent SWB has the authority to act for any Respondent, the Motion to Strike is without merit. Respondents seek to use the Motion to Strike to principally to complain about now-undisputed facts which they never challenged by affidavit, deposition or verified interrogatories in the eight years this case has been pending. Each section of the Reply Brief as to Respondents is appropriate. As the ROA now on

file with the Court shows, Appellant's brief is fully supported by the record. The motion should be denied. SWB should be compelled to substitute the Estate of Venisha Brown as a Respondent.

Respectfully submitted,



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*Attorneys for the Appellant Adele J. Pope*

September 24, 2018

STATE OF SOUTH CAROLINA  
In the Court of Appeals

RECEIVED

SEP 24 2018

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

Appellate Case No.: 2017-001899

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

PROOF OF SERVICE

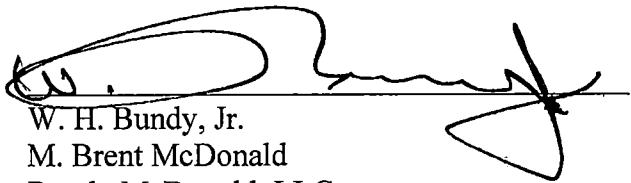
I certify that I have served the Return and Memorandum Opposing Motion of Respondents To Stike on Respondents on September 24, 2018, addressed to their attorneys of Record as follows:

**VIA US MAIL- Certified Mail**  
**Return Receipt Requested**

Kenneth B. Wingate, Esquire  
Mark V. Gende, Esquire  
Joseph O. Thickens, Esquire  
Sweeny, Wingate & Barrow, P.A.  
1515 Lady Street  
Columbia, SC 29201

**VIA US MAIL- Certified Mail**  
**Return Receipt Requested**

C. Harvid, Jones, Esquire  
Emory Smith, Esquire  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211



W. H. Bundy, Jr.  
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**ATTORNEYS FOR APPELLANT ADELE  
J. POPE**

September 24, 2018

*Bundy McDonald*  
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September 24, 2018

**VIA HAND-DELIVERY**

The Honourable Jenny Abbott Kitchings  
Clerk of Court – The South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**

SEP 24 2018

SC Court of Appeals

Re: Russell Bauknight, *et. al.* vs. Adele J. Pope  
Appellate Case No. 2017-001899

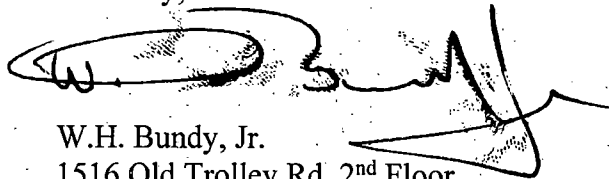
Dear Ms. Kitchings:

Enclosed please find (1) original and (6) copies of Appellant Adele J. Pope's Return and Memorandum Opposing Motion of Respondents' To Strike and Proof of Service of same upon all counsel of record.

Please file the original and return a file stamped copy to our courier.

I thank you for your attention to this matter, and as always, please do not hesitate to call me should you require anything further.

Sincerely,



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Summerville, SC 29485  
(888) 552-1559  
Attorney for Appellant

WHB/kjw

cc: *via US Certified Mail- Return Receipt Requested & Email*  
Kenneth B. Wingate, Esquire  
Mark V. Gende, Esquire  
C. Harvid Jones, Esquire  
Emory Smith, Esquire