

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

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

Civil Action No. 2010-CP-40-4900

2017 FEB -1 AM 10:02
RICHLAND COUNTY
CLERK OF COURT

and

SECOND
AMENDED
CONFIDENTIALITY ORDER

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 II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

RECEIVED

DEC 17 2018

SC Court of Appeals

Plaintiffs

v.

Adele J. Pope,

Defendant

ME
TH

Whereas this Court has determined that a Confidentiality Order is necessary in this case and certain discovery material herein is and should be treated as confidential; accordingly, it is ORDERED:

1. **Scope.** All documents produced in the course of discovery herein, all responses to discovery requests, and all deposition testimony and deposition exhibits, all documents referenced in this Court's Administrative Order of August 30, 2016 (filed September 1, 2016) in Aiken County Case 2013-CP-02-1337, and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information, as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document and which will permit complete removal of the Confidential designation. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. However, the inadvertent or unintentional production of documents without prior designation as confidential shall not be deemed a waiver, in whole or in part, of the right to designate documents as CONFIDENTIAL, as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential, but only after review of the documents by an attorney who has, in good faith, determined that the documents contain information properly protected from disclosure by statute or regulation, or which contain sensitive personal information, trade secrets, research, development, or business/commercial information that justifies protection from disclosure. The certification shall be made concurrently with the disclosure of the documents,

using the form attached hereto at **Attachment A**, which shall be executed subject to the standards of Rule 11 of the South Carolina Rules of Civil Procedure. Information or documents which are or have been publicly available may not be designated as CONFIDENTIAL.

4. **Depositions.** Portions of depositions shall be deemed CONFIDENTIAL only if designated as such when the deposition is taken or within seven business days after receipt of the transcript by the designating party's attorney. Such designation shall specify the portions to be protected, by page and line numbers.

5. **Protection of Confidential Material.**

(a) **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties, or any other persons identified below (*See Section ¶ 5.b.*), for any purposes whatsoever, other than preparing for and conducting the instant litigation (including any appeal in this litigation).

(b) **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at **Attachment B** hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

- (i) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
- (ii) parties and employees of a party to this Order, but only to the extent that prior to disclosure, counsel shall certify that the specifically named individual's assistance is necessary to the conduct of the litigation;

- (iii) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;
- (iv) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and
- (v) other persons only upon consent of the producing party or upon Order of the Court, and on such conditions as are agreed to or Ordered.

Nothing contained in this paragraph 5 is intended to or shall prevent counsel for any party from questioning a deponent about a document designated CONFIDENTIAL pursuant to this Order. In this event, counsel shall comply with the provisions of paragraph 4 above regarding designating appropriate portions of the subject deposition(s) CONFIDENTIAL. Further, Attachment B need not be obtained from the deponent prior to counsel questioning the deponent regarding the subject document(s).

(c) **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this Order. Counsel shall maintain the originals of the forms signed, pursuant to Paragraph 5(b), by persons acknowledging their obligations under this Order.

(d) **Copies.** All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies"), of documents designated as CONFIDENTIAL under this Order or any portion of such a document, shall be immediately affixed with the designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the Court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure, including:

(1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (e.g. in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in the applicable South Carolina Rules of Civil Procedure. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the Court under seal shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document be filed under seal. The parties understand that documents may be filed under seal only with the permission of the Court, after proper Motion pursuant to any applicable South Carolina Rules of Civil Procedure.

(7) **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order, unless that party moves for an Order providing such special protection.

(8) **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

(a) The burden of proving the necessity of a CONFIDENTIAL designation rests with the party asserting confidentiality.

(b) A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents

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shall have fifteen (15) days from service of said written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the CONFIDENTIAL designation.

(c) Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

- (i) the party who claims that the documents are CONFIDENTIAL withdraws such designation in writing;
- (ii) the party who claims that the documents are CONFIDENTIAL fails to move timely for an Order designating the documents as confidential as set forth in paragraph 8.b. above; or
- (iii) the court rules that the documents should no longer be designated as confidential information.

(d) Challenges to the confidentiality of documents may be made at any time, and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

9. Treatment on Conclusion of Litigation.

(a) **Order Remains in Effect.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation, unless otherwise agreed or ordered.

(b) **Return of CONFIDENTIAL Documents.** Within thirty (30) days after the conclusion of the litigation, including conclusion of any appeal, all documents treated as confidential under this Order, including copies as defined above (*See* Section ¶ 5.d.) shall be returned to the producing party, unless: (1) the document has been entered as evidence or filed (unless introduced or filed under seal); (2) the parties stipulate to destruction in lieu of return; or (3) as to documents containing the notations, summations, or other mental impressions of the

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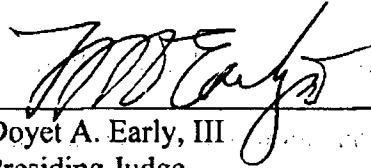
receiving party, that party elects destruction. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including an index which refers or relates to information designated CONFIDENTIAL, so long as that work product does not duplicate verbatim substantial portions of the text of confidential documents. This work product continues to be CONFIDENTIAL under the terms of this Order. An attorney may use his or her work product in a subsequent litigation, provided that its use does not disclose the confidential documents.

10. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who demonstrates an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties shall have been given notice and an opportunity to be heard on the proposed modification.

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the South Carolina Rules of Civil Procedure, or otherwise, until such time as a document-specific ruling shall have been made by the Court.

12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon the above named Plaintiffs and Defendant, and their respective legal counsel.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

1-24, 2017

Bamberg, South Carolina.