STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2010-CP-40-4900

Appellant Case No.: 2017-001899

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

APPELLANT'S REPLY BRIEF TO RESPONDENTS

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Appellant respectfully submits the following reply to the Brief of Respondent[1]

INCORPORATION

Appellant incorporates its Reply to the Brief of Respondent Attorney General as if fully stated herein. Appellant also relies upon her Final Brief in responding to the arguments made by Respondents, and expressly rejects any of Respondents' arguments not expressly agreed to herein.

RESPONSE TO RESPONDENTS' FACTUAL ASSERTIONS

a. Richland 4900 is Complex and Requires a Complete Record

The facts of this case are extraordinary and complex.[2] It is eight years old, and discovery is not complete. The Attorney General ("AG") had a FOIA case[3] consolidated with Richland 4900 in 2012. In 2016, the AG and others sought to consolidate discovery with discovery in a case in which the AG and most Richland 4900 Plaintiffs are not parties. (R.pp. 846-847)

Five years after the AG and others failed to timely respond to counterclaims, all were relieved from default. No analysis was made of the claimed meritorious defense of each Counterclaim Defendant nor is any reflected in the record. No examination of prejudice to Appellant was addressed. (R.pp. 51-53)

After vigorously pursuing Richland 4900 for seven years, the AG has been dismissed as a party under Rule 21 SCRCP. But he continues to pursue summary judgment as to the counterclaims. (R.pp. 983-1053)[4]

The Governor of South Carolina has given two depositions in relation to his bringing Richland 4900, and confirmed he did not authorize it to be brought in his name as AG.[5] (R.pp.

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[1] Appellant denies all allegations of the Brief of Respondents not specifically addressed herein.
[2] Richland County Case 2010-CP-40-4900 ("Richland 4900")
[3] S. C. Freedom of Information Act §§30-4-10 *et seq.*
[4] This motion has not yet been ruled upon due and owing to the Automatic Stay brought about by this appeal.
[5] Governor Henry D. McMaster was Lieutenant Governor when he was deposed.

1054-1106; R.pp. 1996-2020) The Governor was AG for seven months of the seven years the AG was in Richland 4900 before being dismissed. The current AG had been in Richland 4900 for five years when the lower court found that he cannot be deposed.

The lower court found that the private law firm which brought Richland 4900 in the name of the State/AG with no written authorization to do so may continue to serve both the AG and Respondents seeking to dismember The James Brown "I Feel Good" Trust. The lower court also found that it is permissible for Russell Bauknight, trustee of a Richland 4900 Plaintiff trust which now claims it does not exist, may continue to speak in Richland 4900 "on behalf of " the Attorney General of South Carolina. (R.pp. 59-60)

On pages 3- 6 and 7 – 15 Respondents outline the law and assert summarily that designations are irrelevant to the appeal. The relief should not be granted. The voluminous record below is largely of the AG's own making. The lower court decisions in this appeal are extraordinary. Appellant's brief and designations are appropriate and relevant to the matters before the Court in this appeal. Some of the material facts Respondents overlooked or stated incorrectly are addressed below.

b. The role of Robert Buchanan, Jr. in Richland 4900 Until 2012

On page 1 Respondents summarily dismiss Buchanan's role by simply saying that Respondents and Buchanan settled all claims in July 2012.[6] This fails to acknowledge that Buchanan and Pope acted jointly as to the counterclaims and every issue at stake in this appeal until July 2012. At that time, as a condition to being paid for his 2008 and 2009 service, the current

[6] On page 12 Respondents assert incorrectly that references to the record supporting Buchanan's active participation in this suit until July 2012 and his possible re-entry are not relevant. (R.pp. 1335-1338; R.pp. 495-497; R.pp. 585-591; R.pp. 1579-1580; R.pp. 72-73; R.pp. 1108-1139)

AG required that Buchanan not take any further action to protect the "I Feel Good" Trust in the *Wilson v. Dallas appeal.* (R.pp. 585-591)

In 2013, the Honorable Doyet A. Early, III ("Judge Early") found that all of Buchanan's service was proper and that no disgorgement under *Wilson v. Dallas* of payments to Buchanan was appropriate. (R.pp. 1007-1008; R.p. 1997 FN4) Judge Early left open the possibility of Buchanan's re-entry into Richland 4900. Id. Respondent Estate/2000 Trust paid Buchanan and did not object to Judge Early's findings. Id.

Since every act of Appellant and Buchanan in relation to James Brown from March 2007 until July 2012 was joint, Judge Early's ruling, and Respondent Estate/2000 Trust's acquiescence in the rulings, show that neither the Estate/2000 Trust nor other Respondents had a meritorious defense to the counterclaims.

c. The Misconduct of the James Brown Legacy Trust, its Trustee and Beneficiaries

Respondent James Brown Legacy Trust is not, as its name suggest, a trust created by James Brown. It was set up in 2009 by the AG and seven Richland 4900 Plaintiffs.

The Legacy Trust claimed to hold certain "Termination Rights" of seven of the Respondents under sections 203 and 304 of the U.S. Copyright Act.[7] *Wilson v. Dallas*, 403 S.C. 411, 421, 743 S.E.2d 746, 752 (2013). The AG's 2008 settlement proposed to put all of James Brown's assets in the Legacy Trust and distribute its assets and income as follows:

The AG's (New) Charity	47.5%
Respondent Tommie Rae Brown[8]	23.75%
Respondents Daryl, Deanna, Yamma, Venisha, Larry & Terry	4.79% each.

[7] The Affidavit/Opinion of Wm. Jeffrey Smith outlines the role of Termination Rights in this case. (R.pp. 2100-2210)

[8] Respondent Tommie Rae Brown and claimed children and grandchildren of James Brown are generally referred to by first names to avoid confusion.

Wilson v. Dallas, 403 S.C. at 422, 743 S.E.2d at 752; (R.pp. 1306-1321)

Buchanan and Appellant never served as fiduciaries to the AG's Legacy Trust, the AG's (New) Charity, or Tommie Rae, who make up more than seventy (70%) of the beneficial owners of the Legacy Trust's assets and income. *Wilson v. Dallas*, 403 S.C. at 422, 743 S.E.2d at 752. Yet the tens of millions of dollars sought from Buchanan and Pope in the Richland 4900 complaint are for Respondent Legacy Trust and its beneficiaries. (R.pp. 176-188)

The AG and Respondent Tommie Rae, contrary to the AG's assertion, have 75% voting control of Respondent Legacy Trust. *Wilson v. Dallas*, 403 S.C. at 422, 743 S.E.2d at 752. In addition, the AG has the absolute right to remove and replace the trustee of the Legacy Trust, Bauknight, at will. *Wilson v. Dallas*, 403 S.C. at 421, 743 S.E.2d at 752.

Bauknight, trustee of the AG's Legacy Trust, claims it does not exist. Yet it filed a brief in this case and is pursuing partial summary judgment in Richland 4900. Further, Bauknight has provided no evidence of what happened to its assets.

These facts confirm that the AG's Legacy Trust has no meritorious claims or defenses to counterclaims in Richland 4900.

d. Documentation Supporting Disqualification of Wingate and Bauknight

Respondents object to the substantial number of documents submitted in support of the motion to disqualify the private Wingate firm and to enjoin Russell Bauknight from purporting to act as agent for the AG. (R.pp. 1617-1627; R.pp. 1581-1588; R.pp. 1689-1743; R.pp. 477-480; R.pp. 1605-1609; R.pp. 471-473) These filings of Buchanan and Pope cover the span from the filing of the disqualification motion on May 18, 2011 until the motion was ruled upon more than a year later.

The documents are necessary to show that Respondents knew from 2010 that they were not authorized to act for the State/AG. The AG, Wingate and Bauknight prevented discovery of that lack of authorization by FOIA and discovery interference.

The documents also show Respondents concealed Terry Brown's 2011 transfer of his interest in Brown's music empire to Forlando Brown, including a right of first refusal to buy James Brown's music empire (the "ROFR"). The AG gave Terry the ROFR in January 2009. (R.pp. 1996-2020)

Respondents sued Buchanan and Pope for not selling Brown's music empire for $100 million to TJBL, an investor group of which Terry was a part. (R.pp. 772-774) Then Bauknight and Terry told the Supreme Court that Brown's music empire was worth only $4.7 million as Terry/Forlando worked on a possible sale for more than $100 Million. *Wilson v. Dallas*, 403 S.C. at 416, 743 S.E.2d at 749.

The documents give the facts and evidence which show that private counsel and Bauknight should not speak for the AG who, in *Wilson v. Dallas*, was prevented from dismembering the "I Feel Good" Charity.

e. Affidavits Confirm No Meritorious Claims or Defenses

Respondents assert that all affidavits filed by Appellants should be disregarded. A court order which directs an affidavit to be sealed *without reviewing its* contents does not provide support for Respondents' position. (R.pp. 27-28) The affidavits, largely undisputed, show that Respondents have no meritorious defense to any counterclaims.[9]

[9] Because of Respondents' failure to challenge the AG's participation in substantial discovery and other facts material to the counterclaims in this case, Appellants will review these and other designations to determine if the record can be reduced while still providing the Court with a full record. Requests to withdraw documents will be in accordance with SCACR.

f. *Private Foundation, Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good" Trust doesn't...*

A year before the Ray Charles Foundation asserted the standing of a charity to prevent dissipation of its copyrights by premature and improper Termination Rights, Appellant and Wm. Jeffrey Smith wrote *Private Foundations*... It has been on file since 2011. It is relevant to the damages caused by the AG by misrepresentations to the Court about Termination Rights.

g. Opinion/Affidavit of Smith Supports Copyright Issues

Smith is a graduate of Georgetown University Law Center and a former patent lawyer. He was engaged by Buchanan and Pope in 2008 to assist with preparing for Termination Rights. His affidavit is material to this appeal, including his insights about the Ray Charles litigation, the Michael Jackson estate and other issues.

h. Facts Related to the Role of Two AGs and the Legacy Trust

Respondents ask the Court to affirm rulings related to "good cause shown," the "interests of justice" and "meritorious defenses" in a factual vacuum. They object to Due Process arguments. Facts and documents related to the State's 8-year involvement in this case are material and essential to the issues in this appeal.

i. Governor McMaster Confirms he Did Not Authorize Richland 4900

In 2016 now-Governor Henry McMaster testified that he did not authorize Wingate to file this suit in the name of the AG. (R.p. 2006 FN) Yet for six years before and two since Respondents have continued to claim that Buchanan and Pope breached their fiduciary duty to the AG's Legacy Trust and its beneficiaries by:

> j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the circuit court.
> . . .
> m. ...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;

p. Engaging in conflicts of interest, such as

> 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.

(R.p. 185 (emphasis supplied))

The Richland 4900 Plaintiffs even moved to intervene in a FOIA suit and accused Appellant of abusing FOIA for asking for a copy of the Wingate contract. (R.pp. 1798-1799; R.pp. 1800-1803)

For six years Respondents successfully prevented a GAL from being appointed for the incarcerated Venisha and the minor Richland 4900 Plaintiffs. (R.p. 796)

In 2013, after *Wilson v. Dallas,* the Wingate contract was finally released by a Federal Judge. It showed that AG McMaster had never signed the contract; authorized Richland 4900 to be brought in the name of the State/AG; or authorized Bauknight to speak on behalf of the AG.

j. AG Wilson Continued Richland 4900, FOIA Matters and Consolidation

In January 2011, AG Alan Wilson took office. AG Wilson aligned himself with Respondent Terry Brown and Terry's son Forlando. (R.pp. 1996-2020) The two were represented by David Bell, Esq.

Bell and Forlando had sought since January 2008 to reinstate felon David Cannon and his co-trustee Albert Dallas as trustees of Brown's 2000 Trust. Id. One of AG Wilson's first acts as AG was to seek sanctions against Buchanan and Pope for filing a brief that might have helped recover from Cannon some of the costs of obtaining his resignation. Id.

On January 18, 2011, AG Wilson's Senior Assistant Havird "Sonny" Jones, distributed an amendment to Respondent Legacy Trust to the Richland 4900 Plaintiffs. The Legacy Trust

amendment gave Terry Brown a right to begin exercising due diligence to buy Brown's assets. Id; (R.pp. 2039-2047) AG Jones also distributed an assignment from Terry Brown to Forlando of Terry's right of first refusal to buy Brown's music empire (the "ROFR").

That same month, Bell and Forlando planted a false Grammy© story to discredit Buchanan and Pope.[10] Memorandum in Support of Deposition of Attorney General and Opposing Protective Order, pp. 6-7 (R.pp. 2001-2002)

In May 2011, the AG, Terry and the trustee and beneficiaries of the AG's Legacy Trust told the Supreme Court that Brown's worldwide music empire[11] was worth only $4.7 million when Brown died on Christmas Day 2006. In a FOIA suit the AG would later say he did not have the claimed $4.7 million "appraisal." (R.p. 2203)

The claimed $4.7 million value, the product of Peter Afterman, immediately confirmed Buchanan and Pope's civil conspiracy claim – that the Richland 4900 Plaintiffs had conspired to devalue the music empire to discredit them.

AG Wilson then began doing two things. He began evading FOIA requests for the $4.7 million appraisal or supporting documents. He also began claiming to the Supreme Court that Buchanan and Pope had committed the federal felony of overstating the assets by $79 million to get a $5 million commission. (R.pp. 1996-2020) Despite the assertions of Respondents, this was a claim that Buchanan and Appellant had committed a felony.

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[10] The false story about the 2008 Christie's sale was planted in January 2011 on the website of a prestigious law firm. Neither Appellant nor Robert Potter, Esq., incorrectly attributed with halting a 2008 attempt by Buchanan and Pope to sell James Brown's Grammy©, knew about the false post. The false story, intended to damage Buchanan and Pope, appears to have been noted in 2013 by the Supreme Court in *Wilson v. Dallas.*

[11] Schedule F, Estate Tax Return

The $7.8 million in James Brown royalties Buchanan and Pope had brought in during the 18 months they served as Brown's PR/Trustee was just one of hundreds of pieces of evidence that the $4.7 million at-death value was baseless. (R.pp. 1464-1465) But it had the intended effect. Respondents' brief asserts that the Supreme Court's concerns "parallel" those of the Richland 4900 Plaintiffs. This is inaccurate. The Richland 4900 Plaintiffs, principally the AG, created the Supreme Court's concerns by the known false claim that Buchanan and Pope were seeking a $5 million commission for 18 months service to a $5 million estate.

All knew that Buchanan's $2.1 million claim was for his 5 ½ years of service; Pope's request was for $48,000 in 2007 unpaid SA fee; $1.4 million already-earned partial PR/Trustee fee under a court-approved contract for herself and a staff of at-times 10; and a request for discretionary additional up to $1.4 million at the end of her service, from assets delivered to Bauknight in excess of $99 Million.

In addition, Bauknight had secured an order from Judge Early assuring that Buchanan and Pope could get no funds while the appeal which became *Wilson v. Dallas* was pending. (R.pp. 1997-1998, FN4) James B. Richardson, Jr., Esq., stepped forward and served *pro bono publico* as lead appellate counsel.

The filing of Richland 4900 caused Buchanan and Pope to have their professional insurance cancelled. They were sued by their carrier.

In short, from January 2011 until 2015 and later, AG Wilson and Bauknight were instrumental in withholding both under FOIA and discovery the documents necessary to show that the $4.7 million value was incorrect; that the AG had damaged the "I Feel Good" Trust's 900 copyrights by declaring heirs and stopping the heirs determination proceeding; and that the

Wingate contract did not authorize Bauknight to act for the AG or to sue in the name of the State/AG. (R.pp. 1998, 2005-2006; R.pp. 1054-1107; R.pp. 2227-2248 (Under Seal))

In addition to other attacks by the Richland 4900 Respondents, in 2011, David Bell, Esq., with Terry Brown's son Forlando, planted a false Grammy© story which would concern the Supreme Court in 2013. Two years later the Supreme Court expressed concern about an attempted 2008 sale of the Grammy©. *Wilson v. Dallas*, 403 S.C. at 448-449, 743 S.E.2d at 767.

The Grammy© had actually been voluntarily withdrawn in July 2018. Buchanan and Pope, with counsel for ten Richland 4900 Plaintiffs present, withdrew the Grammy© without penalty over urging of Christie's counsel to leave it in the sale. They did not want Respondent Estate/2000 Trust to pay a $5,000 legal fee to defend a sale estimated to be only about $20,000.

In short, the Richland 4900 parties conspired to damage Buchanan and Pope by the devaluation, and did so. They also made false representations in violation of §62-1-106 (one of Appellant's Counterclaims), and Buchanan and Pope were damaged thereby. In addition, they continued – and continue today – a lawsuit for the purpose of achieving their goal in another proceeding – to dismember James Brown's estate plan. (Abuse of process is one of Appellant's Counterclaims).

AG Wilson's active participation in inflicting damage on Buchanan and Appellant did not stop with *Wilson v. Dallas.*

k. AG Wilson's Actual Knowledge of Wrongdoing After March 6, 2013

The *Wilson v. Dallas* decision, by voiding the appointment of Bauknight so that the Estate/2000 Trust would not be bound by his acts, gave the "I Feel Good" Trust a fresh start to protect itself and the 900 copyrights James Brown gave it.

The *Wilson v. Dallas* decision, however, did not correct all of the tax problems and losses to Brown's charity caused by Bauknight's devaluation of the music empire to $4.7 Million. (R.pp. 337-369)

On March 6, 2013 Appellant met with the AG and explained the tax and charitable problems caused by the devaluation, with no corresponding estate tax benefit. (R.pp. 2012-2013; R.pp. 1042-1043)

The following week the AG told Appellant and the Supreme Court he was getting out of Richland 4900. *Wilson v. Dallas*, 743 S.E.2d 746 at FN 30. Instead he did exactly the opposite – for four years.

By May 10, 2013, the AG had reinstalled Bauknight and asked that Richland 4900 be stayed for Judge Early to complete his work in Aiken. (R.pp. 1798-1799) From 2013 until 2015 Peter Afterman was paid by Bauknight while he helped Respondents Tommie Rae and James B. try to take U.S. Royalties from more than 90 of the "I Feel Good" Trust's 900 copyrights between 2015 and 2023. (R.p. 1044)

On May 29, 2013, ten Richland 4900 Plaintiffs announced to Judge Early their intention to reinstate the AG's Settlement. (R.p. 1002) At Respondents' request, Buchanan and Appellant were excluded from participation in any Aiken James Brown cases.

In October 2013 Judge Early conducted a *Wilson v. Dallas* remand hearing related to Buchanan's service. *Wilson* had directed:

> In addition, the circuit court shall review the propriety of all fees, including attorneys' fees and trustees' fee, paid in relation to this action, and shall order all unearned fees or unapproved fees to be disgorged and returned to Brown's estate. 743 S.E.2d 767.

In 2015, Respondent Tommie Rae was found to be Brown's spouse. Judge Early was asked by the Supreme Court to provide a status report. Judge Early failed to recall the May 29, 2013 public announcement of the intention of Tommie Rae and at least five other Legacy Trust beneficiaries to reinstate the AG's 2008 settlement. (R.p. 1002)

Then the AG, Tommie Rae and others – who claimed to oppose her in other matters – engaged in extensive discovery and efforts to continue to discredit Buchanan and Appellant over the $4.7 million; the tax problems Bauknight had caused; and their false Termination Rights claims. (R.p. 2100-2210)

I. Miscellaneous Corrections to Respondents' Statement of Facts

Page 2 of the brief states: "Appellant was removed for cause as personal representative and trustee in connection with The Estate on May 26, 2009." The only cause for the removal in the May 26, 2009 order was the AG's Settlement.

Page 2 of the brief states that Appellant appealed her removal and "other issues not relevant to the instant appeal." *Wilson v. Dallas* is relevant to this appeal, including the description of the AG's (New) Charity, footnotes 12 and 30, and other parts.

On page 23 Respondents assert that Plaintiff submits no evidence of damage. The damage to both Buchanan and Pope is found throughout the record. (R.p. 1854) Not being paid a court-

approved 2007 SA fee, and having one's malpractice insurance cancelled are just two small examples.

REPLY ARGUMENT

I. Appellant's Brief and Designations Are Proper

As stated above, and as will be clear within the record before the Court, Appellant has put before the Court an appropriate record. If, because of the AG's and other Respondents' failure to challenge most of the facts, the record can be shortened with Respondents' consent, Appellant will shorten it.

II. There is no basis to Set Aside the Default of Any Richland 4900 Plaintiff

Appellant incorporates into this argument her entire argument as to Respondent AG in her Reply to Respondent AG's brief.

The standard for granting relief from an entry of default under Rule 55(c) is "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 interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial 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 the plaintiff if relief is granted. *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 for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.,* 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalnaker,* 312 S.C.

373, 375, 440 S.E.2d 408, 409 (Ct.App.1994). Importantly, the first inquiry in a "good cause" analysis requires first that the defaulting party must provide a justifiable explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 753 S.E.2d 587 (2014).

In an attempt to meet its burden under Rule 55(c), SCRCP, Respondents submitted the affidavit of Kenneth Wingate, Esq. (R.pp. 1535-1537) The affidavit simply establishes that the Answer and Counterclaims were received and that there was not a timely response. The facts stated in the affidavit do not meet the "good cause" standard for relief from default. See *White Oak Manor, Inc.*, 753 S.E.2d 587 (no good cause where a defaulting party's insurance agent was negligent in failing to answer the complaint); *Roche v. Young Bros., Inc.*, 318 S.C. 207, 456 S.E.2d 897 (1995)(losing complaint within corporation was not ground to set aside default); *Richardson v. PV, Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009)(negligence of an attorney or and insurance company is imputable to a defaulting litigant); *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009)(negligence of insurance agent was not good cause).

The affidavit states that "I can only surmise that this document was among 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." (R.p. 1536) This does not amount to "good cause." *Ledford v. Pennsylvania Life Ins., Co.*, 267 S.C. 671, 677, 230 S.E.2d 900, 903 (1976) (counsel's misinterpretation of documents in the file does not excuse default "where even a cursory examination" of the documents in the file "would have disclosed the fallacy of the assumption which he made."). The pleading in this case was entitled "Answer and Counterclaim." Even a review of the caption would have alerted anyone that a counterclaim was asserted.

Even if this Court were to conclude that simply failing to read the pleading and timely respond to the counterclaims amounts to good cause, which it does not, the affidavit of Kenneth Wingate, Esq. does not state what, if any, the meritorious defense would be for each of the Plaintiffs/Counterclaim Defendants. The untimely Answer filed on November 16, 2010 is a general denial with four conclusively pled affirmative defenses. This pleading does not establish a meritorious defense for each of the Plaintiffs/Counterclaim Defendants—all represented by the same counsel in this action.

A. The Dallas Statement Supports Buchanan's and Pope Civil Conspiracy Claim

On page 21 and 22 of their brief, Respondents assert that a 2-page statement by Albert "Buddy" Dallas, Esq.[12] supports their claim for meritorious defenses to Buchanan's and Appellant's counterclaims. The Dallas statement actually supports Buchanan's and Pope's civil conspiracy claim, and lends no support to Respondents' position.

Dallas speaks of the year after Brown's death, when he was PR/Trustee for 11 months. Buchanan and Appellant were special administrators until the 12th month. Dallas said:

> Q. Well you mentioned Mr. Buchanan's service. As to Ms. Pope's service as personal representative and trustee are you aware of anything or do you have any criticism of her performance?
>
> A. My observation is that during the first 12 months after Mr. Brown's death. I think that is attributable to a simple lack of understanding that the James Brown operation required daily management. And to the extent that Mrs. Pope was too cautious, the attorney for the children, Mr. Levenson, and for Tomi Rae, Mr. Medlin and Mr. Rosen, was equally intrusive and obtrusive in what was in the best interest of the estate and trust. I said to Mr. Rosen and to Mr. Levenson in Aiken, South Carolina at one of the hearings, please don't cause us to lose the aura associated with the passing of Mr. Brown, less [sic] we will miss many millions of dollars that literally will be like picking it up off the street.
>
> The euphoria of Mr. Brown's passing – for example, the most recent

[12] Albert "Buddy" Dallas was an original Trustee and Personal representative of the James Brown 2000 Irrevocable Trust and under the Will of James Brown. He resigned from those position on November 20, 2007.

example would be Whitney Houston. Her estate will generate more millions this year than probably she accumulated in the prior ten years. Because everybody is nostalgic and sentimental and remember when a particular song was a part of their life and almost out of homage or respect, people buy recordings.

For the most part, we missed that with Mr. Brown. We just missed it. And I couldn't get anybody to understand it. I even said, everything will be accounted for, just back off for awhile, just back off. And particularly when we started dealing with a potential sale for the 100 million. I don't know that it would have been 100 million. There is always adjustments. There's always allowances that have to be made in a final negotiation, but it would have been somewhere approaching that number. Of course, there was about 15 million owed to TIAA-CREF (sic) on the bond issue. Of course after that you're still talking 80, $85 million. Maybe we were only talking $75 million. Elvis, the year prior, sold for 115 million. And Mr. Brown is a world artist. As much as we love Elvis, he was a national artist.
[Emphasis supplied.]

B. Judge Early's Findings Regarding Buchanan Confirms No Meritorious Defense

All of Buchanan's and Pope's acts were joint. When Judge Early "double approved" Buchanan's service in October 2013 and found there was no basis for disgorgement under *Wilson v. Dallas,* Respondent Estate/2000 Trust was bound by that finding.

C. *Wilson v. Dallas* Does Not Provide a Meritorious Defense

Wilson v. Dallas confirms that Respondents did not have a meritorious defense; that the AG exceeded his authority; and that the AG had tried to dismember a charity he was supposed to protect.

The Court voided Bauknight's appointment. The concerns they raised about Buchanan and Pope, including the Grammy© claim and the claim that they wanted a $5 million commission from a $5 million estate, were false, and were created by the AG and his Richland 4900 Co-Plaintiffs.

D. The Simultaneous $100 Million Claim and $4.7 Million Claim Show That Respondents' Claims and Defenses to the Counterclaims are Not Meritorious

The most significant "concern" of the Supreme Court was a direct result of the devaluation scheme set out in Buchanan's and Pope' civil conspiracy counterclaim. (R.pp. 364-366)

In 2011, the AG and other Richland 4900 Plaintiffs told the Supreme Court that an IRS closing letter in James Brown's estate tax proceeding proved that Buchanan and Appellant had intentionally fabricated the $84 million value of Brown's assets to get a $5 million commission on a $5 million estate. (R.pp. 2101-2103) At the same time the AG and others were suing Buchanan and Pope for not accepting a 2007 $100 Million offer. (R.pp. 176-188) The AG and Legacy Trust trustee told the Supreme Court that nobody had made an offer or was trying to buy the James Brown assets. (R.pp. 2100-2210)

The devaluation scheme is at the core of the civil conspiracy claim. (R.pp. 337-370; R.pp. 2101-2102) It was being pursued by Respondents in tandem with the claim that Buchanan and Appellant had caused tens of millions of dollars damage by not selling the same assets for $100 million in 2007. (R.p. 183)

The record is clear that the devaluation scheme began in 2009. (R.p. 1983) The record also contains many admissions of Richland 4900 Plaintiff which support the greater value. (R.pp. 1939-1995; R.pp. 164-1469)

E. Other Impediments to Meritorious Defenses to the Counterclaims

The facts stated herein show that no Richland 4900 Plaintiff has a meritorious defense to any counterclaim. In addition, a number of Richland 4900 Plaintiffs have additional bars to recovery on their claims and to any defense of the counterclaims.

a. Plaintiffs 1. Tonya, 2. James B., 3. Tommie Rae. Buchanan and Appellant never owed any duty to these three Richland 4900 Plaintiffs. There can be no breach.

b. Plaintiffs 4. Jason, 5. Lindsey; 6. Janise and 7. Sydney - These four adults have provided no evidence of any claim. Jason Lewis has confirmed the $100 million value. (R.p. 2111-2119) None has presented any evidence to support any claim or defend any counterclaim.

c. Plaintiffs 8. Venisha and 9. Carrington L. Carrington is a minor and Venisha, according to her counsel, cannot be found. (R.p. 947) Neither has presented any evidence to support any claim or defend any counterclaim.

d. Respondent James Brown Legacy Trust. Respondents Legacy Trust has acted improperly since 2009. Further Buchanan and Pope never owed it a duty.

e. 11. Estate of James Brown; 12. James Brown 2000 Irrevocable Trust
Buchanan and Pope restored 100% of the 2000 Trust assets the AG proposed to take.

f. 13. Daryl, 14. Deanna; 15. Terry; 16. Larry; 17 Yamma
Buchanan's and Pope's fiduciary duty to these 5 ended when the challenged Brown's Will. All now assert Respondent Tommie Rae is not Brown's spouse.

g. 18.The Attorney General. *Wilson v. Dallas* has made clear that the AG acted improperly to reach the now-void settlement.

III. Sweeny, Wingate and Barrow should be disqualified from Representing the AG

In their brief, Respondents cite to a single trial court order in support of their claim that Sweeny, Wingate and Barrow should not be disqualified from representing Respondent AG and other private citizens as Plaintiffs in the same action. In addition to the trial court order having no precedential authority on this Court, the case of *State v. Eli Lilly* did not involve the Attorney General's being represented by private counsel who also represented other private plaintiffs in the same action. Due process requires that the AG control the litigation brought on his behalf, but the AG cannot control the litigation if other private citizens are also prosecuting the same claims in tandem. Appellant incorporates her arguments in her Final Brief.

The record of the conflicts and improper acts taken by Wingate and Bauknight taken on behalf of the State/AG is undisputed. Both should be enjoined from participating in this case on behalf of the State/AG.

IV. Respondent AG Wilson Should be Deposed.

The Governor has agreed to be deposed twice. *See* R.pp. 1996-1997; *See* also R.p. 2006 FN4 His Chief Deputy has been deposed. Id. The Solicitor General has confirmed under oath that Appellant was not the greedy, incompetent person documents he and the AG presented to the Court claim that she is. (R.p. 1043)

The AG agreed to be deposed in Aiken 1337, a case in which he is not even a party, but which he tried to consolidate with this case. (R.p. 1924-1930) He continued for six years a case Governor McMaster said he did not bring. (R.pp. 985-986) He should be deposed.

CONCLUSION

For the reasons stated herein and for the reasons stated in the Final Brief of Appellant, the Orders which are the subject of this appeal should be reversed and this matter remanded to the Circuit Court.

[signature page follows]

Respectfully submitted,

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December 4, 2018

STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Case No. 2010-CP-40-4900

Appellant Case No.: 2017-001899

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

And

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

v.

Adele J. Pope, Defendant,

Of whom Adele J. Pope is Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that Appellant's Reply Brief to Respondents complies with Rule 211(b), SCACR

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