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SC Court of Appeals

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

Appellate Case No.: 2018-002229

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

RECORD ON APPEAL
Volume II of V
(Pages 491 – 982)

Charles E. Carpenter, Jr.
Carpenter Appeals & Trial Support, LLC
4825 Portobello Road
Columbia, SC 29206
Telephone: (803) 758-2886
charlie@carpenterappeals.com
S.C. Bar No. 1133

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernaillawfirm.com
S.C. Bar No. 80219

William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
wjstv@mindspring.com
SC Bar No. 0005225

Daryl L. Williams
Gertz & Moore, LLP
1416 Laurel Street (29201)
Post Office Box 456
Columbia, SC 29202
dwilliams@gertzandmoore.com
SC Bar No. 6121

Counsel for Appellant Adele J. Pope

Kenneth B. Wingate
Mark V. Gende
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
Telephone: (803) 256-2253
kbw@swblaw.com
mvg@swblaw.com

Counsel for Respondents

Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor
General
PO Box 11549
Columbia, SC 29211
Telephone: (803) 734-3680
esmith@scag.gov

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) IN THE COURT OF COMMON PLEAS

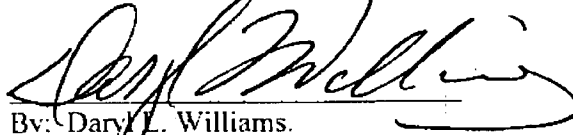
)
) Case No.: 2010-CP-40-4900

[illegible]

Defendant Adele J. Pope hereby requests the production of the following documents and tangible things pursuant to Rule 34 of the South Carolina Rules of Civil Procedure within thirty (30) days from the date of service hereof:

1. All items received in response to the attached May 23, 2011 letter from Mr. Bauknight's attorney William Y. Klett, III, Esquire, to Raymond G. Gonzalez, Esquire, Shackelford, Zumwalt & Hayes, LLP, including both paper and electronic files in the format received by Mr. Bauknight.

JETER & WILLIAMS, P.A.



By: Daryl L. Williams.

1204 Main Street, Suite 200

Post Office Box 7425

Columbia, South Carolina 29202

Telephone: (803) 765-0600

Facsimile: (803) 765-0619

Adam T. Silvermail, Esquire

Law Office of Adam T. Silvermail, LLC

Post Office Box 1898

1218 Taylor Street

Columbia, South Carolina 29202

Telephone: (803) 779-1770

Facsimile: (803) 403-8092

Attorneys for Defendant Adele J. Pope

May 26, 2011

William Y. Klett III
Member
Registered Patent Attorney
Admitted in SC, DC, TX, CO

May 23, 2011

VIA ELECTRONIC (rgonzalez@shacklaw.net) AND U.S. MAIL

Raymond G. Gonzalez, Esquire
Shackelford Zumwalt & Hayes, LLP
1014 16th Ave. South
Nashville, Tennessee 37212

Re: Request for James Brown - related client files
Our File No.: 44146-4

Dear Mr. Gonzalez:

I represent Russell Bauknight, the Personal Representative of the Estate of James Brown, as well as the Trustee of the James Brown 2000 Irrevocable Trust. I have attached for your reference a Certificate of Appointment dated May 29, 2009 from the Aiken County Probate Court evidencing Mr. Bauknight's position

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

The purpose of this correspondence is to request on behalf of Mr. Bauknight a return of all client files that you and your firm may have in your possession relating to representation of Mr. Brown or his related business. In addition to all personal files related to James Brown, including all files related to his life, business, intellectual property, musical recordings, tax matters, and his likeness, persona, or image, I would appreciate, on behalf of the Estate, return of all other files related to the following:

James Brown Enterprises
The New James Brown Enterprises
James Brown Royalty Venture ISPC
Universal Music Group
Dynatone
Cited
Tansoul
Golo
James Brown, LLC
Geronimo

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.253.8205
F 803.727.1452
E WKlett@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

May 23, 2011
Page 2

Intrigue Music Management
DGC Associates
Godfather of Soul Entertainment
James Brown Music Education Foundation
Music Royalty Band prepared by the Phillman Group

This list should not be considered exhaustive.

Please note that this request is not limited to paper files, and all electronic files should be returned via a portable hard drive in native unaltered data format. I look forward to receipt of the requested files.

Sincerely,

A handwritten signature in black ink, appearing to read 'William Y. Klett III', with a stylized flourish at the end.

William Y. Klett III

WYK/amc
Attachment: Certificate of Appointment

MAY 29 2009

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF AIKEN

IN THE MATTER OF James Brown

CASE NUMBER 2007-ES02-0056

CERTIFICATE OF APPOINTMENT

This is to certify that

Russell L. Bauknight

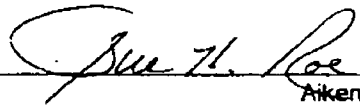
is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
☐ GUARDIAN
☐ CONSERVATOR
☒ TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TURST

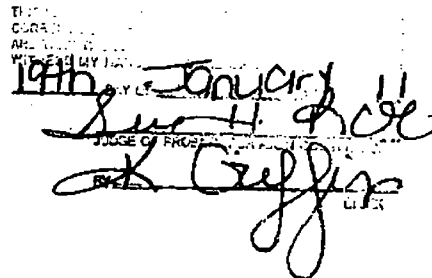
in the above matter and that this appointment, having been executed on the 26th day of May, 20 09, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS: None.

Executed this 26th day of May, 20 09


Aiken County, Probate Court Judge

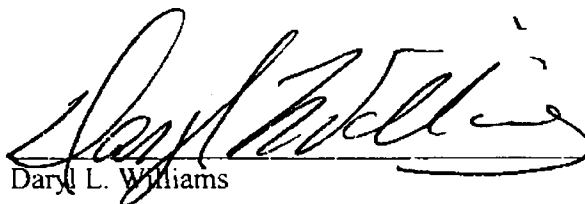
Do not accept a copy of this certificate without the raised seal of the Probate Court.


The seal is circular with the text "Aiken County, South Carolina" around the perimeter. In the center, it says "Probate Court". Overlaid on the seal are several handwritten signatures and dates. One signature is "Sue H. Roe" with the date "May 11 2009". Another signature is "K. Griffin" with the date "May 11 2009". There is also a signature that appears to be "Sue H. Roe" with the date "May 11 2009".

CERTIFICATE OF SERVICE BY MAIL

I, Daryl L. Williams, of Jeter & Williams, P. A., attorneys for the Defendant Adele J. Pope, do hereby certify that on the date noted below the foregoing document, was served on counsel of record by placing a copy thereof in the United States Mail, postage prepaid, addressed as noted below.

Dated Mailed: **May 26, 2011**



Daryl L. Williams

Mailed To:

Mark V. Gende, Esquire
Sweeney, Wingate & Barrow
PO Box 12129
Columbia, SC 29211

Attorney for the Plaintiffs

J. Calhoun Watson, Esquire
SOWELL GRAY STEPP & LAFFITTE, L.L.C.
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Robin A. Braithwaite, Esquire
Braithwaite, Farmer, Boni & Timmerman
P. O. Box 324
Aiken, SC 29802

Attorneys for Defendant Robert L. Buchanan, Jr.

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40,4900

2011 JUL -5 AM 11:26
RECEIVED
C.C.P. & G.S.

PLAINTIFF RUSSELL L. BAUKNIGHT'S RESPONSES TO DEFENDANT ADELE J. POPE'S SECOND SET OF REQUESTS FOR PRODUCTION, INCORRECTLY DESIGNATION BY POPE AS HER FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

TO: DEFENDANT POPE AND HER ATTORNEYS:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute

Russell L. Bauknight's Responses to Defendant Pope's Second Set of Requests for Production of

Documents, incorrectly designation as her First Set of Requests for Production of Documents.

1. All items received in response to the attached May 23, 2011 letter from Mr. Bauknight's attorney William Y. Klett, III, Esquire, to Raymond G. Gonzalez, Esquire, Shackelford, Zumwalt & Hayes, LLP, including both paper and electronic files in the format received by Mr. Bauknight.

RESPONSES:

Plaintiff Bauknight objects to this request as overbroad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff Bauknight also objects to the extent that the instant request seeks documents protected by the attorney-client privilege or Work Product doctrine. Further, the instant request is based upon a privileged client communication which was improperly transmitted to Defendants by Mr. Gonzalez. Plaintiff Bauknight has demanded that all copies of the referenced communication be retrieved. Mr. Gonzalez has demanded return of the privileged May 23, 2011 client communication, which demand has been refused by Defendants. Such refusal by Defendants will be addressed by separate motion in this action, as well as with the appropriate disciplinary authorities.

Subject to the preceding objections, as well as the objections set forth in counsel's June 17, 2011 correspondence, should any nonprivileged documents responsive to Defendants' requests relevant to the instant case be discovered, such documents shall be produced.

(Signature page to follow)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

Mark Gende /ch

Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
June 24, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)

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

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James 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, Carrington Lumar, and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES 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, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

FILED
CLERK OF COURT
2011 JUL 28 PM 2:50
MOTION TO COMPEL
PRODUCTION OF CONTINGENCY-
FEE CONTRACT AND RELATED
DOCUMENTS PRIOR TO HEARING
ON MOTION FOR INJUNCTION

TO: THE PLAINTIFFS, DEFENDANT ROBERT L. BUCHANAN, JR. AND/OR THEIR
COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move for an order compelling the above-named Plaintiffs to to produce the following documents before this Court hears Defendant Pope's pending Motion for injunctions against Plaintiff Russell L. Bauknight and Kenneth B. Wingate and Sweeny Wingate & Barrow, P.A. (collectively, "Wingate") from attempting to act for the Attorney General ("AG") and/or the State of South Carolina (collectively, the "State") while serving all private plaintiffs ("Private Plaintiffs"):

1. The James Brown Legacy Trust under which Bauknight asserts status in the complaint;
2. Any authorization under which Bauknight is authorized to act for the current or former AG;
3. Wingate's contingency-fee contract with Private Plaintiffs and/or the AG/State.

The Grounds of this motion are as follows:

1. That Defendants have sought these and other relevant documents since October 12, 2010.
2. Wingate, Bauknight and Private Plaintiffs have refused to produce these and other documents and 8 Private Plaintiffs have refused to appear at depositions, obstructing Defendant's efforts to obtain these critical documents.
3. Plaintiffs' refusal to produce these critical documents is wholly inconsistent with the policy of the AG as stated in Public Official's Guide to the Freedom of Information Act (FOIA) in which he states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information
...When in doubt, release the document

4. Issues of the use of the name and power of the State in violation of Defendant Pope's constitutional rights are at issue in this case, and Plaintiffs should not be allowed to conceal the authority under which Bauknight and Wingate purport to act for the State

4. On or about May 18, 2011, Defendant Pope moved to enjoin Russell L. Bauknight from attempting to act as agent for the State of South Carolina and to enjoin Wingate from representing the State jointly with the dozen-or-more Private Plaintiffs. Defendant Pope does not challenge, and has never challenged, Wingate's representation of Private Plaintiffs in this action.

5. On or about June 30, 2011, Defendant Pope made a FOIA request for these documents from Bauknight as Trustee of the James Brown Legacy Trust and also of the AG. Counsel for Defendant Pope sent a courtesy copy of the requests to Wingate. The time for the AG to respond has not elapsed, but on or about July 15, 2011, Pope received the response attached as Exhibit A from David Black, who represents Bauknight in other matters.

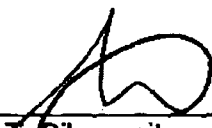
6. On July 13, 2011 a status conference was held before the Honorable Alison Renee Lee, wherein Judge Lee indicated that she would seek to schedule the motion for injunctions against Wingate and Bauknight for hearing as soon as possible and, in any event, before other pending motions in this action.

This motion is based on the United States Constitution; the Affidavit of Nathan Crystal on behalf of the Plaintiff in the case of *AstraZeneca vs. Wilson, as Attorney General*, Spartanburg County Case No. 2011-CP-42-1213, and the entire file in that action, of which the Court is asked to take judicial notice; the entire record herein; and

such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvermail
Law Office of Adam T. Silvermail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvermaillawfirm.com

July 26, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT A

NEXSEN|PRUET

J. David Black
Member
Admitted in SC

July 15, 2011

VIA US MAIL

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

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

Dear Ms. Pope,

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

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

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

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

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

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

1230 Main Street
Suite 700 (2B201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2072
F 803.727.1409
E DBlack@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

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

Very truly yours,

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

J. David Black

JDB/JGH

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

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

2011 JUL -5 AM 11:26
JANET L. M. HARRIS
C.C.P. & G.S.

**PLAINTIFF RUSSELL L.
BAUKNIGHT'S RESPONSES TO
DEFENDANT ADELE J. POPE'S
SECOND SET OF REQUESTS FOR
PRODUCTION, INCORRECTLY
DESIGNATION BY POPE AS HER
FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

TO: DEFENDANT POPE AND HER ATTORNEYS:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the following constitute

Russell L. Bauknight's Responses to Defendant Pope's Second Set of Requests for Production of

Documents, incorrectly designation as her First Set of Requests for Production of Documents.

1. All items received in response to the attached May 23, 2011 letter from Mr. Bauknight's attorney William Y. Klett, III, Esquire, to Raymond G. Gonzalez, Esquire, Shackelford, Zumwalt & Hayes, LLP, including both paper and electronic files in the format received by Mr. Bauknight.

RESPONSES:

Plaintiff Bauknight objects to this request as overbroad, irrelevant, and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff Bauknight also objects to the extent that the instant request seeks documents protected by the attorney-client privilege or Work Product doctrine. Further, the instant request is based upon a privileged client communication which was improperly transmitted to Defendants by Mr. Gonzalez. Plaintiff Bauknight has demanded that all copies of the referenced communication be retrieved. Mr. Gonzalez has demanded return of the privileged May 23, 2011 client communication, which demand has been refused by Defendants. Such refusal by Defendants will be addressed by separate motion in this action, as well as with the appropriate disciplinary authorities.

Subject to the preceding objections, as well as the objections set forth in counsel's June 17, 2011 correspondence, should any nonprivileged documents responsive to Defendants' requests relevant to the instant case be discovered, such documents shall be produced.

(Signature page to follow)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

Mark Gende /ch

Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
June 24, 2011

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James 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, Carrington Lumar, and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES 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, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

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

) RETURN AND OPPOSITION TO
) PLAINTIFFS' MOTION
) FOR A PROTECTIVE ORDER
) CONCERNING VARIOUS DOCUMENTS

TO: ALL PARTIES AND/OR THEIR COUNSEL OF RECORD.

Defendant/Counterclaimant Adele J. Pope opposes Plaintiffs' Motion for Protective

Order because her discovery requests to date do not seek any confidential documents and/or for one or more of the reasons set forth below:

1. Plaintiffs' request for a confidentiality Order in June 2011, more than a year after the case was commenced, is unreasonable because more than 50 parties and non-parties have reviewed, had access to and/or disseminated the requested documents without executing the proposed confidentiality agreement.¹

2. Some Plaintiffs have lacked candor with the Court, failing to disclose they have argued correctly in Georgia and South Carolina Courts that all confidentiality and privilege have been waived as to most documents.²

3. The Court's Order dated August 10, 2007 in Case 122 made all James Brown, James Brown Estate and 2000 Irrevocable Trust documents generated on or before August 10, 2007 available to all Interested Persons, who were allowed to copy and keep all such documents.

4. The Tommie Rae Hynie Brown domestic file was opened and made public in Cases 122 and 322 and parts are contained within the record on appeal. It is also part of

¹ Some of those who have viewed, had access to, and/or disseminated the documents without signing the proposed confidentiality order are David G. Cannon, Albert H. Dallas, Esq., Sandra Matthews, William F. Hammond, Esq., C. Havird Jones, Esq., Mary Frances Jowers, Esq., Keith Babcock, Esq., S. Alan Medlin, Esq., Robert N. Rosen, Esq., Louis Levenson, Esq., David B. Bell, Esq., Daryl J. Brown, Larry Brown, Terry Brown, Deanna Brown Thomas, Yamma N. Brown, Forlando Brown, Romunzo Brown, Venisha Brown, Tonya Brown, Tommie Rae Hynie Brown, Jason Brown Lewis, Lindsey Delores Brown.

² See proper arguments of Louis Levenson, Esq., in Case 122 and before Ga. Court on behalf of Plaintiffs Daryl, Deanna, Yamma and others that privilege as to the Brown Historical Documents directed to be released under the August 10, 2007 Order of the Hon. Doyet A. Early, III, once waived, could not be reasserted.

the documents directed to be made, and made available, to all Interested Persons pursuant to the August 10, 2007 Order of Judge Early.

5. The Greenberg Traurig file was specifically made available and all confidentiality waived pursuant to the August 10, 2007 Order of Judge Early.

6. At the request of some Plaintiffs, the Estate Tax Return and Inventory & Appraisement, originally filed under seal, were made public in Case 322, as was every document presented in any James Brown case in Aiken County.

7. The Cannon and Dallas claim/collection files are directly relevant to the allegation in Plaintiffs' complaint that Buchanan and Pope failed to timely settle the debts of the estate and the counterclaim which alleged Bauknight was negligent, reckless or willful in unreasonably failing to complete the claims litigation. [See Complaint/CC.].

8. Bauknight's appraisal which asserts James Brown's music empire and claim against Cannon and Dallas were worth less than \$4.7 Million at his death are not confidential because they have been presented to the Supreme Court of South Carolina with no claim of confidentiality [See Exhibit A].

9. Bauknight's filing his \$4.7 Million claimed valuation of James Brown's music empire under seal does not make this public document confidential.

10. The "Order" of Judge Early cited as a basis for confidentiality of the Bauknight Inventory & Appraisement either has not been issued or was issued without proper notice and hearing.

11. Where the confidentiality and all privilege was waived on or before May 26, 2009 and documents disseminated broadly, confidentiality cannot be asserted by new counsel for only some of the persons who had access a rights.

12. All documents related to the James Brown Legacy Trust, signed by a former Attorney General, are subject to disclosure under the South Carolina Freedom of Information Act ("FOIA"). And Plaintiffs' counsel has no authority to attempt to make them secret in violation of FOIA, or to bind the State of South Carolina in FOIA violations.

13. The Zumwalt Almon & Hayes file is not confidential or privileged because it was made available to numerous non-parties and counsel by valid waiver prior to May 26, 2009 and it directly relates to the false allegation by Plaintiffs that Buchanan and Pope violated their fiduciary duty as follows:

- 18. . . .
- (b) Failing to engage necessary advisors and appraisal assistance . . .
- (c) Failing to use due diligence in pursuing business opportunities for the estate and trust;
- (d) Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability.
- [Complaint, p. 6]

and allegations against Bauknight by Buchanan and Pope that he acted negligently or wilfully by:

- (iii) In unreasonably making false and unsupported allegations against Defendants after testifying to the contrary
- . . .
- (x) In unreasonably recommending the proposed determination of heirs with insufficient understanding of the federal copyright law implications
- (xi) In unreasonably recommending the proposed settlement which Defendants are informed and believe result in more than \$50 Million of damage to the Estate and Trust, taking more than 65% of Brown's assets from Brown's estate plan.

14. The appraisal and all correspondence with the IRS related to Bauknight's presentation to the IRS of a \$6.5 Million valuation of Brown's Estate and Trust is not confidential and is relevant for the reasons set forth above and the complaint's allegations of:

(d) Failing to use due diligence in determining the value of the estate

15. One year after this action was commenced, Plaintiffs' counsel has not reviewed or in good faith determined that any single document contains information protected from disclosure by statute or contains sensitive personal information, trade secrets, or confidential investigation, development or commercial information [p. 2, proposed Order]. Nor does this Defendant/Counterclaimant seek any such information. She seeks only documents which Plaintiffs and others have seen without signing such an Order.

16. Counsel for the individual Plaintiffs, including Bauknight, has no authority to bind the Attorney General of South Carolina in a confidentiality order.

17. Plaintiffs should be directed to produce – at a minimum – all documents requested from the million pages of James Brown documents which are not confidential.

18. Plaintiff's Motion to Compel Discovery file June 7, 2011, which is incorporated herein by reference, outlines how Plaintiffs have evaded basic discovery since October 11, 2010, and raise the issue of a confidentiality agreement only as a delaying tactic.

19. Plaintiffs have presented no evidence that any Plaintiff has been requested to sign, or signed, an Acknowledgment of Understanding and Agreement to be Bound to the confidentiality Order proposed to Defendant Pope, such as the language contained in the now-obsolete August 6, 2008 federal Order in the Forlando Brown case, 3:08-cv-00014-WO8, binding them as follows:

The undersigned hereby acknowledges that he or she has read the [proposed] Confidentiality Order ...in the above-captioned action, understands the terms thereof, and agrees to be bound byu such terms. The undersigned submits to the jurisdiction of the United States District Court for the District of South Carolina in matters relating to the Confidentiality Order and understands that the terms of said Order obligate him/her to use discovery materials designated CONFIDENTIAL solely for the purposes of the above-captioned action, and

not to disclose any such confidential information to any other person, firm or concern.

20. Plaintiff Deanna B. Thomas, and others, along with their agents, have openly discussed the assets, business information, and value of the James Brown assets, including the appearance of Thomas on national television to discuss the \$100 Million value (\$85 Million after the TIAA debt) placed on the Brown assets by all fiduciaries prior to Bauknight.

21. Plaintiffs current counsel, Sweeney, Wingate & Barrow, was not counsel in prior James Brown Estate/Trust litigation, and to date has failed to sign any certification that a single document is or should be subject to a confidentiality designation such as was contained in the now-obsolete August 6, 2008 federal order as follows:

**CERTIFICATION BY COUNSEL OF DESIGNATION
OF INFORMATION AS CONFIDENTIAL**

Documents produced herewith [whose Bates numbers are listed below (or) which are listed on the attached index] have been marked CONFIDENTIAL, subject to the (proposed) Confidentiality Order entered in this action

By signing below, I am certifying that I have personally reviewed the marked documents and believe, based on that review, that they are properly subject to protection under the terms of Paragraph 3 of the Confidentiality Order...

....I understand that by completing this certification I am submitting to the Jurisdiction of the United States District Court for the District of South Carolina as to any matter relating to this certification.

22. Plaintiffs counsel has failed to accept the onus – even though they have had 10 months to do so – of identifying which, or how many, documents they claim are confidential, or to insert a paragraph such as Paragraph 3 of the now-obsolete federal Order of August 6, 2008, as follows:

3. Documents Which May be Designated Confidential. Any party may

designate documents as confidential but only after review by an attorney³ who has, in good faith, determined that the documents contain information protected from disclosure by statute, sensitive personal information, trade secrets, or confidential research development, or commercial information. The certification shall be made concurrently with the disclosure of the documents, using the form Attached hereto as Attachment A [CERTIFICATION BY COUNSEL OF DESIGNATION OF INFORMATION AS CONFIDENTIAL] which shall be executed subject to the standards of Rule 11 of the Federal Rules of Civil Procedure. Information or documents which are available in the public sector may not be designated as confidential.

23. The proposed confidentiality order failed to contain a **Reading Room** provision such as was contained in the now-obsolete federal order of August 6, 2008 which would "facilitate timely disclosure of large number of documents which may contain confidential documents, but which have not yet been reviewed and marked", such as this Case. Such a provision would require Plaintiffs' counsel to establish a controlled location ("Reading Room") prior to designating any document as confidential; maintaining a log of all persons who have reviewed documents in the Reading Room and the dates and times of their presence; and other information to insure that the "CONFIDENTIAL" designation not be abused.

24. Plaintiffs' counsel has taken no steps to insure, as required in the now-obsolete federal order of August 6, 2008 that CONFIDENTIAL documents, if any, be protected as follows:

...a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or or any other persons identified below ...for any purpose whatsoever other than

³ The attorney who reviews the documents and certifies them to be CONFIDENTIAL must be admitted to the Bar of at least one state but need not be admitted to practice in the District of South Carolina and need not apply for *pro hac vice* admission. By signing the certification, counsel submits to the jurisdiction of this court in regard to certification.

preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation).

25. Plaintiffs have failed to mark as CONFIDENTIAL documents which they have disseminated to others and filed with the Supreme Court and which have been filed elsewhere, including in this case.

26. Plaintiffs have failed to acknowledge that, especially where public documents are involved, confidentiality is not favored, and providing a mechanism for challenging any claimed confidential documents should be included in any Order directing confidentiality, as for, example, paragraph 9 of the now-obsolete federal order of August 8, 2008:

9. 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 remains with the party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice of the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the 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 challenges to the designation of documents as confidential, all material previously designated CONFIDENTIAL [Note: As certified by counsel] shall continue to be treated as subject to the full protection of this Order until one or more of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing

27. Plaintiffs, by their eleventh hour suggestion of a Confidentiality Order to which none of them have been bound for more than two years – and which does not subject them

– or those who disclose CONFIDENTIAL documents -- to the jurisdiction of the Court, are attempting to place an extraordinary burden on Defendant with no burden on themselves, as shown by the following chronology:

August 10, 2007	Order of Judge Early makes 90 boxes of documents available to Plaintiffs, Defendants and all other Interested Persons, <u>including files of Greenberg Traurig, and others.</u> Interested persons copy and disseminate at will. Confidentiality and work product waived by then-PR /Trustees Dallas and Bradley.
2007 - 2009	Complete Hynie/James Brown domestic record reviewed and disseminated, along with records of Yamma/Deanna suit against James Brown, and other records.
August 6, 2008	Federal Court Confidentiality Order creates Reading Room and small number of Confidential Document are certified by counsel for Trustees. Subsequent events render these designations obsolete.
November 2008	Confidentiality Order related to Estate Tax Return. It becomes obsolete when made a part of record and ROA in Case 1647.
2009	Most Plaintiffs ask that the entire record of all James Brown Aiken cases be made part of the record of Case 1647. No objection made, and tens of thousands of pages [now in custody of Bauknight] become part of record without confidentiality order.
January 2009	Bauknight and others have access to entire Estate/2000 Trust file.
2009-2010	Estate Tax Return and approximately \$85 Million value of Estate/2000 Trust part of discussion and ROA (without confidentiality Order) in Case 1647 Appeal. Original Inventory & Appraisal becomes part of ROA in various appeals.
May 26, 2009	Only the CORBIS settlement papers from January 2009 remain confidential.
May 26, 2009	Case 1647 Order replacing Buchanan/Pope without cause is issued. Bauknight named, subject to appeal which is pending.

May 26 - June 22, 2009	Buchanan/Pope deliver, without confidentiality request, approximately 150 boxes of documents to Bauknight, who agrees they will remain available for inspection and copying until the conclusion of the Case 1647 appeal (still pending). [See Custody receipt filed by Plaintiff Bauknight in this Case.]
May 19, 2010	Plaintiffs, who, with others, have had access to documents for a full year without signing the proposed confidentiality agreement, commence this action asserting breach of fiduciary duty of Buchanan and Pope. Appraisal, Valuation and Tax issues are primary components of both Complaint and the Answer and Counterclaim of Buchanan and Pope.
Oct. 10, 2010	Pope serves first of several requests to produce of Pope/Buchanan. [Plaintiffs also serve discovery with which Buchanan and Pope fully comply.]
Nov. 12, 2010	Plaintiffs advise Defendants' counsel documents requested by Pope are "being compiled"
Nov. 16, 2010	Pope responds fully to document request of Plaintiffs (50 pages), noting that many of the necessary documents for trial are in current custody of Russell Bauknight under the June 2009 Custody Agreement. Buchanan also responds fully to all discovery.
Nov. 2010 - April 29, 2011, and since -	Plaintiffs fail to produce documents.
April 29, 2011	Pope's counsel begins effort to see the documents Plaintiffs failed to produce.
May 6, 2011	Bauknight files information about his under-\$6.5 Million appraisal of the James Brown assets and his IRS filing with Supreme Court. Does not seek protective order.
May 6, 2011	Plaintiffs counsel notifies Pope's counsel he will have date for document review "shortly"
May 19, 2011	Counsel for Defendant Pope again writes counsel for Plaintiffs to seek to review responsive documents.

May 26, 2011	Counsel for Defendant Pope again writes requesting date to review documents.
June 7, 2011	Based on complete failure of Plaintiffs to comply, Pope files Motion to compel Bauknight and others to comply with discovery requests.
June, 2011	Plaintiffs assert they will comply, then produce proposed confidentiality order without certification that any document is CONFIDENTIAL or that any Plaintiff or counsel has signed a Certification, Acknowledgment or Consent to be censured by this court if confidentiality is violated.

CONCLUSION

Plaintiffs have for a year refused to comply with basic discovery. Some Plaintiffs have taken advantage of their new counsel, who has no experience in the James Brown proceedings, to present false representations to this Court about prior discovery in other James Brown cases.

This Defendant/Counterclaimant respectfully submits that the Plaintiffs' Motion for a Protective Order should be denied; this Defendant's Motion to Compel (and that of Defendant Buchanan) should be granted with attorneys' fees and costs; and Plaintiffs should be directed to produce all documents they or any other party or counsel has seen without signing the proposed Order.

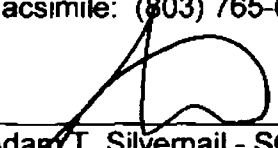
If a confidentiality Order is issued, all Plaintiffs, counsel and non-party advisors and others who have reviewed the documents which are alleged to be CONFIDENTIAL should be required to sign either a "Certification by Counsel of Designation of Information as Confidential" confirming in good faith that the document has never been disclosed to the public and is confidential, or an "Acknowledgment of Understanding and Agreement to be Bound", with signatories of both documents subjecting themselves to censure by this

Court if they disclose – or have previously disclosed – a document which is designated as “Confidential.” Such confidentiality Order should specifically exempt from any CONFIDENTIALITY all documents issued prior to May 26, 2009.

This return is based on the South Carolina Rules of Civil Procedure; the Motion to Compel (Production of Documents) filed herein; and such additional affidavits, memoranda or other filings as shall be presented prior to the hearing.

Respectfully submitted,

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

By: 

Adam T. Silvernail - SC Bar #80219
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092

July 12, 2011

Attorneys for Defendant Adele J. Pope

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

**MOTION TO SUPPLEMENT THE RECORD PURSUANT TO
RULE 212(b), SCACR, OR IN THE ALTERNATIVE, TO TAKE JUDICIAL
NOTICE OF RECORDS FILED IN A RELATED PROCEEDING**

**TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SOUTH CAROLINA SUPREME COURT:**

EXHIBIT

A

Respondents respectfully request that this Court supplement the record of this appeal to include (1) Internal Revenue Service ("IRS") Federal Estate tax records that were received by Respondents after filing their initial brief on December 22, 2010, and that are related to the date of death valuation of the estate and the tax consequences of the settlement agreement and (2) the Supplemental Inventory and Appraisal of the James Brown Estate ("Estate") related to the date of death valuation and appraisal of assets for the Estate. In the alternative, this Court may take judicial notice of these documents as they were filed in the probate court or issued by the IRS in related proceedings.

FACTUAL BACKGROUND

This appeal presents a unique situation: it concerns an ongoing estate and trust that are continuing to be administered in the normal course of estate and trust administration, and matters relating to their ongoing administration are relevant to this appeal. Although the documents that Respondents seek to include in the record had not been prepared and were thus not available when the circuit court issued its May 26, 2009 Order approving the Settlement Agreement, the Supplemental Inventory and Appraisal should properly be considered in this appeal as it was filed as required by the South Carolina Probate Code in the ongoing probate proceeding, and the IRS tax records should properly be considered because they were created as a result of an independent IRS audit of the Estate.

The Supplemental Inventory and Appraisal and IRS tax records refute factual assertions that the Appellants make to support their legal positions before this Court. Because these documents provide *support* to the circuit court's decision to approve the settlement agreement, their inclusion in the record would neither undercut the circuit court's decision, nor hamper appellate review of it. *Cf. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*,

368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the Court] with a platform for meaningful appellate review.").

ANALYSIS

In their brief, Appellants argue: (1) that the settlement will cause serious tax problems for the James Brown Estate and Trust (the "Estate and Trust"); and (2) without the aid of a professional appraisal, Appellants contend that the combined Estate and Trust are worth roughly \$100 Million. Specifically, Appellants make the following misleading representations to this Court:

Tax Consequences:

- On page seven (7) of their brief, Appellants state that "the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest."
- On pages thirty-eight to thirty-nine (38-39), Appellants devote a section of their brief to argue that the settlement will cause serious tax problems. They note that the "settling parties offered no evidence to refute the evidence of a likely tax disaster. Instead, their counsel reassured the court that they were 'dedicated' to preventing it." *Id.* at 39.

Valuation:

- On page five (5), footnote five (5), of their brief, despite never having obtained a professional appraisal, Appellants state that the late James Brown's assets have been valued at roughly \$80-120 Million.
- On page thirty-two (32) of their brief, Appellants note that the trust could be funded with \$100 Million.

See Final Brief of Appellants at pp. 5, 7, 32, 38-39.

Following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, Russell L. Bauknight ("Mr. Bauknight") engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust. This is the first

professional valuation and appraisal of the James Brown music assets since James Brown passed away on Christmas Day 2006. The valuation and appraisal work is now complete. As required by S.C. Code Ann. § 62-3-706, Mr. Bauknight filed the Supplemental Inventory and Appraisal at the Aiken County Probate Court (Supplemental Inventory and Appraisal, Appendix R. pp. 1-6). To protect the Estate and Trust, Mr. Bauknight filed the Supplemental Inventory and Appraisal under seal.

Furthermore, following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, the IRS continued to conduct an independent audit involving the valuation of the James Brown Estate and Trust. The IRS Auditors reviewed all estate tax issues surrounding the James Brown Estate and Trust, including the tax consequences of the subject Settlement Agreement. The Respondents received the IRS Proposed Estate Audit Examination Report ("IRS Audit") on December 27, 2010. (IRS Proposed Estate Audit Examination Report, Appendix R. pp. 7-11). Respondents and the IRS agreed to all adjustments concerning the IRS Audit, and the Respondents received the Final IRS Estate Closing Letter ("Closing Letter") on January 31, 2011.¹ (Final IRS Estate Closing Letter, Appendix R. pp. 12-15). As noted above, the Respondents received each of these documents *after* filing their initial brief on December 22, 2010.

As noted in the IRS Audit, after reviewing the settlement agreement, the IRS specifically concluded that, pursuant to the Internal Revenue Code, the charitable deduction applied and that "[t]he charitable deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 11). Further, the IRS

¹ Because Appellants filed the initial tax return that was subject to the audit, the IRS as a matter of course separately notified the prior fiduciaries that the incorrect estate valuation had been corrected and that the audited return had been accepted. (Appendix R. pp. 13-14). Appellants have since informed Respondents that they disagree with the IRS Final Closing Letter.

Audit found that the marital deduction applied: "[t]he marital deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 10). Respondents argued in their brief that this deduction would apply and that it favored a finding that the Settlement Agreement was *just and reasonable*. Final Brief of Respondents, at 35-36. (The tax return previously filed by Appellants did not seek the marital deduction.) Finally, as noted in the Closing Letter, the Settlement Agreement resulted in zero tax liability to the Estate. (Appendix R. pp. 13-14).

The IRS Audit and Closing Letter show that the IRS rejected Appellants' contention that the settlement agreement will cause additional tax liability, but instead, that the Estate is owed a \$10,000 federal tax refund due to Appellants' overpayment. (R.p. 2760 (Estate Accounting filed by Appellants, first entry on the page: "US Treasury - payment towards Estate Taxes . . . \$10,000"); (Appendix R. p. 7 ("The report, though not final, shows that the estate is entitled to a refund."); (Appendix R. pp. 12-15 (adopting audit, accepting return, and making final determination that no estate taxes are owed: "0.00.")). Additionally, these documents further underscore Respondents position that the Appellants are not professional fiduciaries and are ill-equipped to manage the Estate and Trust.

The Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter reveal that on the date of death, the James Brown Estate and Trust were actually valued at roughly \$6.5 Million.² Referring to the intellectual property—royalty interests, reversion rights, etc.—the IRS Audit revealed that, "[v]aluation of these interests was corrected to fair market value based

² The Supplemental Inventory and Appraisal accounts for only probate assets; it does not include the home of the late James Brown that is valued at roughly \$1.2 Million. That is the case because at the date of his death, the Trust owned the home and trust assets are not considered probate assets. (The Trust still owns the home.) The date of death, gross estate value reported to the IRS included the home, as both probate and non-probate assets must be reported for tax return purposes. Accordingly, the Estate and Trust were valued at roughly \$6.5 Million. (Appendix R. p. 10).

upon expert opinion and financial analysis”—that is, the independent professional appraisal authorized by Mr. Bauknight, as audited and accepted by the IRS. (Appendix R. p. 9). Consequently, the IRS rejected Appellants’ prior inept notion that James Brown’s royalty interests and reversion rights were worth approximately \$84 Million dollars. Accordingly, the date of death valuation of these taxable interests was corrected from \$84 Million to \$4.697 Million.³ (Appendix R. p. 9). This IRS finding, based upon its own independent review and valuation, directly and incontrovertibly refutes Appellants’ contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80-120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record.

Although these documents were not presented (could not be presented) to the circuit court because they did not exist at that time, this Court should consider the evidence. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000) (noting “the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice”); *see also In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) (“Normally, of course, [courts] are not required to consider evidence presented for the first time on appeal . . . [but] [i]t is within the discretion of the court . . . , however, to make limited exceptions to this

³ While this figure may appear low, it is the date-of-death value that controls for purposes of the Federal estate tax return and the probate inventory and appraisal. Furthermore, this final figure accurately accounts for the debts of James Brown including the outstanding bond executed by Mr. Brown during his lifetime whereby he exchanged the rights to his royalty stream for a lump sum payment of \$26 Million. Once the bond debt is retired, the royalty stream will flow to the Settlement Entity where it will be apportioned among the settling parties—which includes the charitable trust that will fund scholarships to needy children attending schools in South Carolina and Georgia.

rule when 'injustice might otherwise result.'" (citing and quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Here it would appear unjust for this Court to rely on Appellants' assertion that the Settlement Agreement will cause additional tax liability to the Estate when the IRS has clearly rejected that contention. Accordingly, these documents are relevant to the current appeal, as they are official records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief.

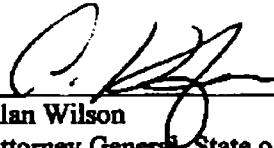
CONCLUSION

As the IRS has independently concluded, the Settlement Agreement does not create additional tax liability to the James Brown Estate. In fact, the Settlement Agreement has reduced the tax liability to the James Brown Estate. Due to the nature of the underlying proceedings, the ongoing probate record on which Appellants' base their appeal must be considered. Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission⁴ based upon their prior unsubstantiated position that the Estate was worth \$80-120 Million.

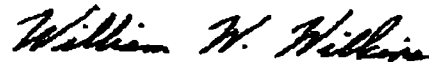
Alternatively, Respondents would respectfully request that this Court take judicial notice of these records for they were filed in a lower court or issued by the IRS in a related proceeding. See *Ins. Comm'n of S.C. v. New S. Life Ins. Co.*, 270 S.C. 612, 635-36, 244 S.E.2d 289, 301 (1978). Furthermore, pursuant to Rule 208(b)(7), SCACR, because the IRS Audit and Closing Letter were received after Respondents filed their initial brief, it would appear appropriate for this Court to recognize the IRS records as supplemental authority to Respondents' brief.

⁴ Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80-120 Million. (R. pp. 2879-80).

Respectfully submitted,



Alan Wilson
Attorney General, State of South Carolina
C. Havird Jones, Jr.
Senior Assistant Attorney General
Robert D. Cook
Assistant Deputy Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Office of the Attorney General
State of South Carolina 29211-1549
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970



William W. Wilkins
J. David Black
Fred L. Kingsmore, Jr.
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
(864) 370-2211
*Attorneys for Respondent Russell L. Bauknight, as
the Court-Appointed Trustee of the James Brown
2000 Irrevocable Trust and Personal
Representative for the Estate of James Brown and
as the Special Administrator and Special Trustee
for the Estate of James Brown and the James Brown
2000 Irrevocable Trust*

Louis D. Levenson
LEVENSON & ASSOCIATES
125 Broad Street
Atlanta, Georgia 30303
(404) 659-5000

Attorneys for James Brown Children and Grandchildren Daryl J. Brown, Individually and on Behalf of His Minor Children, Lindsey Delores Brown and Janise Vanisha Brrown; Deanna J. Brown Thomas, Individually and on Behalf of her Minor Child, Jason Brown Lewis; Yamma N. Brown, Individually and on Behalf of Her Minor Children, Sydney Lumar, Carrington Lumar, and Tonya Brown; Vanisha Brown; Larry Brown

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
(843) 377-1700
Attorneys for Tommie Rae Hynie Brown

Matt Bodman
MATT BODMAN P.A.
1500 Calhoun Street
Columbia, South Carolina 29201
(803) 806-8605
Attorney for Terry Brown

Albert P. Shahid, Jr.
SHAHID LAW OFFICE, LLC
89 Broad Street
Charleston, South Carolina 29401
(843) 853-4500
Attorney for Stephen M. Slotchiver, Guardian ad Litem for James Brown II

May 6, 2011

Columbia, South Carolina

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

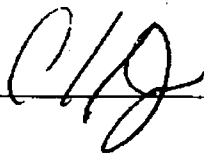
In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

PROOF OF SERVICE

The undersigned certifies that a copy of **RESPONDENTS' MOTION TO SUPPLEMENT THE RECORD** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 2 day of May, 2011, to the address shown below.

James B. Richardson, Jr., Esquire
1229 Lincoln Street
Columbia, SC 29201
(803) 799-9412

Tressa T. H. Hayes, Esquire
Post Office Box 7346
Asheville, North Carolina 28802

A handwritten signature in dark ink, appearing to read 'TTH', is written over a horizontal line.

May 6, 2011.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem .. Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust w/a/d/ August 1, 2000.

APPENDIX TO THE RECORD ON APPEAL

**VOLUME 1 OF 1
(Pages 1-15)**

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I EXHIBITS AND OTHER MATERIALS

1. May 4, 2011 Supplemental Inventory and Appraisalment 1
2. December 27, 2010 Internal Revenue Service Proposed Audit Examination
Report.....7
3. January 31, 2011 Internal Revenue Service Estate Closing Letter 12

IN THE PROBATE COURT
INVENTORY AND APPRAISEMENT
CASE NUMBER: 2007-EB02-0066

Personal Representative(s): Russell L. Boudright

The undersigned, being sworn, states: That the following subdivision contains a complete and accurate inventory and description of all real and personal property of this estate insofar as the undersigned is informant; that he/she has attempted to fairly appraise all listed property of its fair market value, according to the best of his/her knowledge and ability.

Signature: 
Name: Robert L. Goodright
Address: PO Box 1395
Columbia, SC 29202
E-mail: _____
Telephone (C): 803.771.8843
O#: _____
Signature: _____
Name: _____
Address: _____
E-mail: _____
Telephone (C): _____
O#: _____

STATE OF SOUTH CAROLINA
COUNTY OF ALEXANDER
I, _____, Clerk of Court, do hereby certify that _____
has been duly elected _____ of the _____
precinct of _____, _____ County, South Carolina, and is qualified to hold office.

MAY - 9 2011

Clerk of Court

RECEIVED MAY 9 2011

Attorney: Frederic L. Kinnear, Jr.
Address: PO Drawer 2426
Columbia, SC 29202
E-Mail: _____
Telephone: 803.263.6264

For entries of diamonds, the gross domestic shipment of all stones, regardless of size, should be given as of the date of death. List all cut-to-stone stones on appropriate schedules. A theoretical boundary should be utilized for assessing, adjusting or adding to the original inventory. A qualitative and quantitative analysis may be completed to establish the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, further costs and claims should be indicated with the item or items being appraised.

Within ninety (90) days following appointment, a copy of the Inventory and Appraisal shall be sent to each interested person who requests it, and the original Inventory filed with the Probate Court.

RECAPTULATION

Schedule A – Real Estate
Schedule B – Stocks and Bonds
Schedule C – Motor Cars
Schedule D – Insurance on Person's Life:
Schedule E – Jointly Owned Property
Schedule F – Other Miscellaneous
Other Assets Payable to Estate
Schedule G – Transfers during Decedent's Life
Schedule H – Powers of Appointment
Schedule I – Annuities and Retirement Accounts
TOTAL GROSS VALUE
ENCUMBRANCES
TOTAL NET WORTH

Non-Probable		Probable	
\$	95,000.00	\$	0
	0		500,000.00
	0		150,000.00
	0		0
	0		0
	110,000.00		0
	0		4,072,500.00
	0		0
	0		0
	0		0
	0		0
	0		0
\$		\$	9,377,450.00
			(0.00)
			9,377,450.00

FORM 800PG (2000-4)
82-2-704, 82-2-708, 82-2-707, 82-2-709, 82-2-1257

Filed May 4, 2011 FILED May 4 2011 1:40
 Sue H. Rice 11:40pm L. J. Baker PM
 Judge of Probate U.S. District Court Page 1 of 8
 By H. Guffin William J. Baker
Deputy Clerk

Form 986A (Rev. 1/88)		Department of the Treasury - Internal Revenue Service	
Explanation of Items			
Estate of James Brown	Social Security Number	Date of Death 12 25 2008	
Schedule F, Other Miscellaneous Property			
	Description	Shown on Return	As Corrected
2	Royalty interests, Reversion Rights, etc.	84,000,000	4,897,736
	Total of these items	84,000,000	4,897,736
	Shown on Return		84,000,000
	Change to schedule		<79,302,264>

Item 2 - Royalty interests, Reversion Rights, Etc.
Valuation of these interests was corrected to fair market value based upon expert opinion and financial analysis. Adjustment is per section 2031, Internal Revenue Code.

**PROPOSED
ADJUSTMENTS
ONLY**

Form 8884 Rev. 3/08	EXPLANATION OF ITEMS	SCHEDULE NO. II - M
NAME OF TAXPAYER Estate of James J. Brown	DRAFT	DATE of DEATH 12/25/2008

SCHEDULE M - MARITAL DEDUCTION	PER RETURN	CORRECTED
Item 1 - Marital Share under Estate Settlement Agreement	\$0	\$1,128,775
CHANGE TO RETURNED AMOUNT.....	1,128,775	XXXXXXXX
COMPUTED MARITAL DEDUCTION.....	\$1,128,775	\$1,128,775

The marital deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009.
Adjustment is per section 2058, Internal Revenue Code.

DRAFT 12/23/2010

Item 1 - Computation of Marital Share per Settlement Agreement, Approved By Court May 28, 2009

Gross Estate, including Assets of James Brown Trust u/a/d August 1, 2000.....		\$8,542,830
Less: Administrative Expenses, Schedule J	\$525,000	
Debts - Schedule K	64,373	
Mortgages & Liens, Schedule K	0	
Expenses: Non-claim prop.- Schedule L	0	
Federal Estate Taxes.....	0	
State Death Taxes	0	
	\$589,373	(589,373)
Residuary Share Computation Amount		8,953,457
Gross Percentage to Spouse.....	23.7500%	
Less: Share of James Joseph Brown, II.....	-4.7500%	
Net Percentage to spouse.....	18.9900%	18.9900%
Computed Amount to Spouse.....		\$1,128,775

DRAFT 12/23/2010

**PROPOSED
ADJUSTMENTS
ONLY**

Form 990A Rev. 3/99	EXPLANATION OF ITEMS	SCHEDULE II - O
NAME OF TAXPAYER	ESTATE OF James J. Brown	DATE OF DEATH 12/25/06
		DRAFT

SCHEDULE O - CHARITABLE DEDUCTION	PER RETURN	CORRECTED
Item 1 - Bequest of Residuary to Charitable Trust, computed below.....	\$83,989,981	\$5,953,457
LESS: Federal Estate Tax.....	in above	in above
LESS -State Death Taxes.....	in above	in above
SUBTOTAL.....	83,989,981	5,953,457
INCREASE/DECREASE TO AMOUNT SHOWN ON RETURN.....	(77,416,524)	XXXXXX
	\$8,953,457	\$8,953,457

The charitable deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009.
Adjustment is per section 2055, Internal Revenue Code.

COMPUTATION OF TRUST RESIDUE

Gross Estate		\$6,542,830
LESS: Administrative Expenses, Schedule J	\$225,000	
Debts, Sch. K	\$84,373	
Mortgages & Liens, Sch. K	\$0	
Marital Deduction, Schedule M	\$0	
Federal Estate Taxes	\$0	
State Death Taxes	\$0	
	\$689,373	(\$689,373)
Residuary Share Computation Amount	0	\$5,953,457
Percentage to Charitable Trust		47.5000%
Computed Amount to Charitable Trust		\$2,827,892

**PROPOSED
ADJUSTMENTS
ONLY**

DRAFT

12/23/2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-900

JEANE L. M. MCBRIDE
Clerk of Court
& G.S.

2011 AUG 11 AM 11:44

RICHLAND COUNTY
FILED

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
FEE AGREEMENT
AND/OR MOTION TO STRIKE
DEFENDANT POPE'S MOTION TO
COMPEL PLAINTIFFS' FEE
AGREEMENT**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order prohibiting the production of Plaintiffs' Fee Agreement in the above-referenced action.

On July 26, 2011, Defendant Adele Pope through counsel filed a Motion to Compel production of Plaintiffs' Fee Agreement. Fee Agreements are the epitome of privileged communication. Plaintiffs therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement.

Also, or in the alternative, Plaintiffs move the court to strike Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement because the motions seeks to contravene a prior decision of the court concerning the order for hearing motions filed in this complex case.

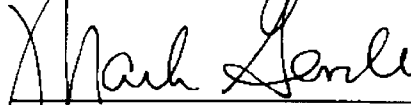
This Motion relies on all applicable statutory and case law and may be supplemented with a memorandum of law, exhibits, affidavits, or other documents.

The Plaintiffs also request costs and fees for the expense in bringing this Motion.

(Signature page to follow)

Respectfully submitted,

SWLENY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 9, 2011

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

) IN THE COURT OF COMMON PLEAS
)
) FOR THE EIGHTH JUDICIAL CIRCUIT
)
)

Adele J. Pope,

Civil Action No.: 2011-CP-36-00379

Plaintiff,

v.

MOTION FOR SANCTIONS

Alan Wilson, in his capacity as
Attorney General of South Carolina

Plaintiff.

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, the Proposed Intervenor¹ move before the Court for an Order granting sanctions against Plaintiff Pope and her attorney, Adam Silvernail. The facts and law in support of this Motion are more fully set forth below.

FACTS BEARING UPON THE MOTION

The fee agreement between Proposed Intervenor and their counsel is the subject of a pending discovery motion before the Court in Richland County Case No. 2010-CP-40-4900 (this case is referred to as "Case No. 4900"). (See Defendant's Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction; Plaintiff's Motion for Protective Order Concerning Fee Agreement and/or Motion to Strike

¹ The Proposed Intervenor are as follows: RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust; as Personal Representative of the Estate of James Brown; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL I. BROWN, individually and on behalf of his minor child, JAMISE R.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRENTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and THERRY BROWN. The Proposed Intervenor are the non-governmental Plaintiffs in Case No. 4900.

Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement; previously provided to the Court by the parties.) During the pendency of these Motions, Plaintiff Pope served a Freedom of Information Act request on the Office of the Attorney General, seeking a copy of the fee agreement. The Attorney General responded but did not produce the agreement, due in part to the pending Motions. Plaintiff Pope then filed this lawsuit in Newberry County to enforce the FOIA request (the instant case is referred to as "Case No. 379"). In order to protect their interests, the non-governmental Plaintiffs in Case No. 4900 made a Motion to Intervene as Proposed Intervenor in this case. Plaintiff Pope opposed this Motion to Intervene. (See Pope's Return and Opposition to Motion to Intervene, attached hereto as Exhibit A; see also Affidavit of Adelle J. Pope Opposing Motion to Intervene, attached hereto as Exhibit B.) By Order dated November 22, 2011, this Court consolidated Case No. 379 with Case No. 4900.² (See Order of Judge Addy, attached hereto as Exhibit C.) Plaintiff Pope filed a Motion to Alter/Amend Judge Addy's Order. (See Motion to Partially Alter or Amend and/or Reconsider and Vacate Order Dated November 22, 2011, attached hereto as Exhibit D.) The statements contained in Plaintiff Pope's Motion to Alter/Amend, as well as statements made in the Affidavit opposing the Motion to Intervene, are the subject of this Rule 11 Motion.

STANDARD OF REVIEW

An attorney's signature on a motion certifies that, "to the best of his knowledge, information and belief there is good ground to support [the motion]." Rule 11, SCRPC. Under

² Specifically, Judge Addy ruled that Defendant Wilson must answer the FOIA action, and that the cases would be consolidated when the pleadings were complete. (Order of Judge Addy, p. 7.) Judge Addy also held that "any motions and issues heretofore outstanding," including the Motion to Intervene, will be taken up by the Richmond County Court in Case No. 4900. (Id.) Out of an abundance of caution, Proposed Intervenor have filed this Motion in the Newberry Court because the improper filing by Plaintiff Pope and Adam Silvernail was made in Newberry. Proposed Intervenor reserve the right to re-file this Motion in Richmond County if the Newberry Court dismisses and/or deems improper the filing of the Motion in the Newberry Court.

Rule 11, "a party and/or the party's attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party and/or attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is good ground to support it." *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008) (citing *Runyon v. Wright*, 322 S.C. 15, 471 S.E.2d 160 (1996)). Further, "[t]he sanction may include an order to pay the reasonable costs and attorney fees incurred by the party . . . defending against the frivolous action." *Id.* (citing *Runyon*).

ARGUMENT

PLAINTIFF POPE, AND THE COUNSEL WHO SIGNED THE PLEADING AND FILED THE AFFIDAVIT, HAVE KNOWINGLY THREATENED CRIMINAL PROSECUTION IN ORDER TO OBTAIN AN ADVANTAGE IN A CIVIL MATTER. THIS CONDUCT IS IN VIOLATION OF RULE 11, SCRCP AND RULE 4.5 OF THE SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT.

According to Rule 4.5 of the *South Carolina Rules of Professional Conduct*, "[a] lawyer shall not present, participate in presenting, or threaten to present criminal or professional disciplinary charges solely to obtain an advantage in a civil matter." Rule 4.5, *South Carolina Rules of Professional Conduct*, Rule 407, SCACR. The rule is clear: a party to a civil suit cannot use the threat of criminal prosecution for the sole purpose of obtaining leverage in a civil case. In spite of this rule, Plaintiff Pope, by and through her attorney Adam Silvermail, have accused Proposed Intervenor of criminal acts and have asked the Newberry Court to so rule. In light of the bright-line rule against such conduct, Plaintiff Pope's (and Adam Silvermail's) decision to put forth this Motion cannot be in good faith and the Motion is frivolous within the meaning of Rule 11.

In Plaintiff Pope's Motion to Alter/Amend, she requests that the Newberry Court make several additional rulings that Judge Addy originally declined to make. In paragraph 18, she

states that "[t]he Court failed to consider and/or find that the AG's consent to the proposed intervention of the private intervenors aids and abets their improper and/or criminal actions under S.C. Code Ann. § 30-4-110" (all citations to the Motion to Alter/Amend are found at Exhibit D). Section 30-4-110 is an expressly criminal statute:

Any person or group of persons who willfully violates the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense.

S.C. Code Ann. § 30-4-110 (1976). On its face, the statute provides for both fines and imprisonment. In Paragraph 30, Plaintiff Pope requests that the Court find that Proposed Intervenor are in violation of the statute: "[t]he Court failed to find and/or consider that the proposed intervenors have violated S.C. Code Ann. § 30-4-110 . . ." Plaintiff Pope makes no mention of any of the protections afforded to criminal defendants by our constitutional system, but rather asks the Court to indict, try, and convict Proposed Intervenor of criminal activity. In paragraph 31 of her Motion to Alter/Amend, Plaintiff Pope expressly mentions her desire that criminal punishment be imposed upon Proposed Intervenor: "[t]he Court failed to find and/or consider that neither their parents nor the Wingate firm may take illegal action on behalf of minors, and that the minors should be exempt from any punishment which should be applied to the adult proposed intervenor" (emphasis added). Proposed Intervenor submit that such an absurd request, made by an attorney-client through her attorney of record, cannot be in good faith.

Plaintiff Pope's Motion to Alter/Amend does not stop at improperly accusing parties of criminal activity. In paragraph 32, Plaintiff Pope accuses Proposed Intervenor's counsel of

criminal activity, and requests that the Newberry Court so find: "[t]he Court failed to find and/or consider that the Wingate Firm is aiding and abetting the adult proposed intervenors in denying [Plaintiff Pope's] FOIA rights and the FOIA rights of other citizens." Proposed Intervenor asserts that these inappropriate, unfounded attacks on Proposed Intervenor and their counsel, in a pleading signed by an officer of the Court and submitted to that Court, are the epitome of frivolous pleadings, are contrary to the *Rules of Professional Conduct*, and are in violation of Rule 11, SCRCP.

Plaintiff Pope also makes improper criminal allegations in her Affidavit submitted in opposition to Proposed Intervenor's Motion to Intervene in Case No. 379 (all citations to Pope's Affidavit are found at Exhibit B). In paragraph three of the Affidavit, Plaintiff Pope states that she is "informed and believe[s] that the willful [sic] violation of FOIA by certain of the proposed intervenors violates § 30-4-110" In paragraph four, Pope further opines that she is "informed and believe[s] that the attempt to intervene is brought by the above-named persons in bad faith to willfully [sic] violate the provisions of FOIA" and that "liability for violation of FOIA is not limited to Public Bodies" It is clear that Plaintiff Pope, in both her affidavit and through a signed motion, is bringing criminal allegations against Proposed Intervenor in an effort to gain an advantage in a civil matter, which is expressly unethical.

CONCLUSION AND REQUESTED RELIEF

Plaintiff Pope's and Adam Silvermail's threat of criminal prosecution in a civil matter cannot have been made in good faith, and is therefore a *per se* violation of Rule 11. Proposed Intervenor requests that the Court strike Plaintiff Pope's 59(e) Motion in its entirety as it relates to the Proposed Intervenor, strike any Affidavit of Plaintiff Pope that makes any allegation of criminal conduct on the part of the Proposed Intervenor, award Proposed Intervenor their

attorneys fees and costs associated with dealing with this Motion, and award Proposed intervenors any other relief the Court deems just and reasonable. Proposed Intervenor reserve the right to supplement this Motion with further briefing (or any other materials) that supports Proposed Intervenor's position on this Motion.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

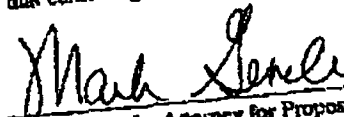


Kenneth B. Wingate
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR PROPOSED
INTERVENORS

Columbia, South Carolina
December 9, 2011

Pursuant to Rule 11, SCRPC, I hereby certify that conferring with Plaintiff Pope's counsel on this matter would serve no useful purpose.



Mark V. Gende, Attorney for Proposed Intervenor

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

)

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

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DEFENDANT POPE'S RETURN
AND MEMORANDUM
OPPOSING RELIEF FROM DEFAULT

JEANETTE
G.S.

2012 APR 12 AM 9:10

FILED
RICHLAND COUNTY

Defendant/Counterclaimant Adele J. Pope respectfully submits that almost two years after filing this suit, none of the clients of Kenneth B. Wingate, Esquire and Sweeney, Wingate & Barrow, PC (collectively "Wingate") should be released from default on the counterclaims for the following reasons:

1. The default was inexcusable.
2. The Plaintiffs have presented no plausible defense to the counterclaims, and have none.
3. Many of the Plaintiffs have committed fraud upon this Court.
4. Plaintiff Tommie Rae, Bauknight and Wingate have actively stonewalled all discovery to prevent disclosing that she was never the spouse of James Brown.
5. Plaintiff Terry Brown, a joint venturer with felon David Cannon; Bauknight;

and Wingate have worked to conceal documents which show that their less-than \$4.7 Million valuation of Brown's worldwide music empire and the Estate/2000 Trust's claim against felon Cannon for the \$13+ Million he took was fabricated.

6. Relief from default will cause great hardship to Buchanan and Pope, as has the filing of this frivolous suit and the 4-year-old frivolous suit of Terry's son Forlando.

7. Terry, his joint venturers and other Plaintiffs have committed fraud upon the Court by advancing conflicting material misrepresentations to the Court by separate counsel and lying to the Court and parties.

This Defendant/Counterclaimant, however, submits that the State of South Carolina and its Attorney General are not in default and Wingate has no authority to seek relief from default on behalf of the State/AG because neither Wingate nor Bauknight had authority to bring this action on behalf of the State AG; the State was never a party to the action; and Wingate has no authority to argue for relief from default on behalf of the State or bind the General Assembly to pay if his purported representation of the State fails.

This return is supported by the Affidavit of Adele J. Pope filed herewith; all other affidavits of Defendants Pope and Buchanan filed herein; and other returns and motions, including the following:

- a. Motion to Dismiss of Buchanan and Pope, dtd. 6/22/10
- b. Affidavit of Adele J. Pope, dtd. 7/23/10, with Exhibits A-L
- c. Affidavit of Default, dtd. 11/10/10
- d. Affidavit of Adele J. Pope, dtd. 4/14/11
- e. Affidavit of Adele J. Pope Supporting Disqualification, dtd. 5/18/11, with Exhibits A, B and C (Exhibit A: Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good" Trust Doesn't. . . (Draft))
- f. Affidavit of Adele J. Pope in Support of Motion to Compel Tommie Rae to Appear at Deposition, dtd. 6/2/11
- g. Affidavit of Buchanan and Pope, dtd. 9/21/10 with Exhibits 1-42
- h. Affidavit of Adele J. Pope in Support of Motion to Compel Deposition of Terry Brown, dtd. 6/2/11

- i. Motion to Compel Discovery, dtd. 6/7/11 with Exhibits.
- j. Return and Opposition to Plaintiffs' Motion for Protective Order, dtd. 7/12/11

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770

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

April 10, 2012

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James Brown 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, Carrington Lumar, and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES 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, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

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

2012 MAY 21 PM 5
CLERK OF COURT
C.C.P. & C.D.
RETURN AND OBJECTION
TO MOTION TO ENFORCE
PURPORTED SETTLEMENT
AGREEMENT

TO: THE PLAINTIFFS, DEFENDANT ROBERT L. BUCHANAN, JR. AND/OR THEIR
COUNSEL.

Defendant Adele J. Pope makes this return and objection to the Motion to Enforce Settlement dated May 18, 2012, purportedly made on behalf of the Plaintiffs, and asserts the following:

A. Buchanan should be paid an immediate \$500,000 hardship distribution, part of the award to him by Jg. Early in the January 8, 2008 Order.

1. An immediate hardship distribution should be made to Robert L. Buchanan, Jr. of Five Hundred Thousand (\$500,000) Dollars from the Estate of James Brown, to alleviate the personal damage he is experiencing because of the outrageous behavior of Russell Bauknight described herein.

2. The distribution, which is less than Buchanan was awarded by Order of the Honorable Doyet A. Early, III dated January 8, 2008 in Aiken County Case No. 2007-CP-02-0122 ("Case 122"), should be approved and directed by Judge Early at the hearing requested by the moving parties and already scheduled in Case 122 for 1:30 p.m. on May 22, 2012.

3. By May 19, 2010 Bauknight had wholly abandoned any pretense of service to the Estate/2000 Trust and was participating in and/or directly supporting the fraud of Terry, Forlando, Tommie Rae and felon David Cannon – including taking all possible action to destroy the reputations and careers of Buchanan and Pope.

4. Some of the unconscionable acts of Terry/Tommie Rae/Bauknight to destroy Buchanan, which also damaged the Estate/2000 Trust, are:

a. Direct refusal to pay any portion of the more-than \$500,000 Buchanan was owed under the January 8 Order for the purpose of destroying his ability to rebuild and practice his career.

b. Naming felon David Cannon as their witness against Buchanan, even though he had stolen \$17 Million from James Brown.

- c. On information and belief, engaging and agreeing to pay Forlando's attorneys, Powell Goldstein (now Bryan Cave).
- d. Falsely accusing Buchanan to the IRS of the crime of overstating the value of Brown's music empire by approximately \$79 Million.
- e. Falsely asserting to the IRS and S.C. Supreme Court that Brown's music empire was worth less than \$4.7 Million when he died, and that Buchanan overstated it at \$85 Million just to get a big commission.
- f. Hiding, in violation of the Probate Code, a purported appraisal.
- g. Asserting that certain persons were Brown's heirs, with actual knowledge that such assertion was false, material and damaged the Estate/2000 Trust.
- h. Concealing numerous documents – including Tommie Rae's diaries – which show that the \$4.7 Million purported value is outrageous and that their heirs statement is wrong.
- i. Supporting Terry's effort to buy the music empire at a fraudulently low value.
- j. Making other false statements about Buchanan and Pope to the Courts with the intention of destroying their careers and reputations.

5. By December 2011 the Estate was in a position to make substantial payments to Bob Buchanan and Pope, to alleviate the hardship caused them, and such payments – which would have stopped the running of 8 3/4% interest – would have been in the best interest of the Estate.

6. Instead, Bauknight – directed by Terry and Tommie Rae – refused.

7. From December 2011 until May 2012 Terry, Tommie Rae and Bauknight were successful in their efforts to prevent Judge Early from considering partial payments to Buchanan which are now 4 years overdue.

8. By late April 2012 Buchanan, unable to continue under the intense financial pressure, advised Pope he would be negotiating with certain people.

9. Pope, having been denied the opportunity to conduct virtually any discovery in this case for 2 years, was not in a position to consider any settlement negotiations related to this case. Nonetheless, understanding Buchanan's hardship, she did not interfere in his negotiations.

10. Pope was out of the United States from May 1 - May 10, 2012.

11. On the morning of May 21, 2012, Pope received the attached Motion to enforce Settlement.

12. Pope is informed and believes that Jg. Early should direct immediate payment to Buchanan – based on hardship – under the January 8 Order, and should reject the Settlement, which is both unconscionable and void.

13. On information and belief, in no event should the fraudulent acts of Terry, Tommie Rae, Forlando and/or Cannon be allowed to delay the payment which Buchanan badly needs.

14. Pope has observed firsthand the extraordinary hardship inflicted on Bob Buchanan by Terry, Forlando, Hynie and Bauknight solely because he and she have done the duty which Judge Early appointed them to do: to vigorously defend the Estate Plan of James Brown as required by his documents.

B. The Motion to Enforce Should be Denied Because the Purported Agreement is void and/or illegal and Movants have unclean hands.

15. The purported mediation agreement should be declared void, and the purported settlement not enforced because it is void and/or unconscionable and/or illegal

and/or the proponents have unclean hands and are not entitled to have it enforced.

16. The purported Settlement is void because it is not signed by the parties and does not even identify who the purported parties to the settlement are.

17. Kenneth Wingate, Esq. and Mark Gende, Esq. have no authority whatsoever to enter into an agreement and bind the State of South Carolina to pay \$500,000.

18. The Agreement is void because it is against public policy and outrageous for the Trustee of the James Brown 2000 Irrevocable Trust to ask anyone to commit to abandon the Trust.

19. The Agreement is void because it is a minor settlement which – on its face – requires minors to pay up to \$500,000 and no guardians *ad litem* have been appointed or other requirements met.

20. The Agreement is void because Buchanan received no consideration by the agreement to pay him what he was already owed.

21. The Agreement is void because the legal parties to Case 4900 did not sign or ratify it within the time required.

22. The Agreement is void because Buchanan could not have met the contingency of agreeing to the terms of Paragraph 11 and it was unconscionable to ask that he do so.

23. The Agreement is void because Buchanan was not asked to resign as PR/Trustee; did not resign as PR/Trustee; and therefore cannot abandon his vigorous defense of the Estate Plan of James Brown.

24. The Agreement is void for vagueness.

25. The Agreement should not be enforced by this Court, but declared VOID by Jg.

Early in the appropriate proceeding.

26. Plaintiffs are estopped to enforce any agreement related to Aiken County matters since they represented to this Court that all Aiken County matters are over.

27. Plaintiffs Tommie Rae, Terry and others have committed numerous fraudulent acts which appear in the record of this Case, and, because of their unclean hands, are not entitled to any equitable relief.

28. The mediation agreement should be declared void because it is unconscionable and was only achieved because Bauknight improperly withheld for three years the more-than \$500,000 to which Buchanan was entitled under an unappealed final order.

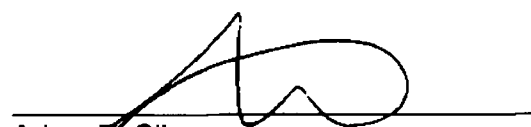
29. The Agreement is void and unenforceable for every other reason presented to this Court before the hearing on this motion.

This return is based on the affidavits of Adele J. Pope on file herein; the Counterclaim of Robert L. Buchanan, Jr. filed in the Forlando suit; and such other information as shall come before this Court before the hearing on this matter.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

May 21, 2012

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

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

) Offer of Judgment of Adele J. Pope
) to the Estate of James Brown

2012 AUG -3 AM 10:24
FILED
CLERK OF COURT
C.C.P. & G.S.

TO: PLAINTIFF ESTATE BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS OF RECORD:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant ESTATE of James Brown, whose current Personal Representative ("PR") is Russell L. Bauknight ("ESTATE") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant is less than the above proffer, ADELE shall seek from ESTATE all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

RECITALS

1. In 2008 Russell Bauknight's lawyer, Freddie Kingsmore of Nexsen Pruet, a

SETTLEMENT

ADELE proposes:

1. The above Recitals will not be a part of the Settlement unless approved by the Personal Representative of the ESTATE.
2. A Final Order in substantially the following form will dismiss the ESTATE as a party to this Case:

The parties having resolved their differences in this Case ("Case 4900"), it is
ORDERED, ADJUDGED AND DECREED:

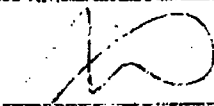
- a. The claims by the ESTATE against ADELE in this Case are hereby dismissed with prejudice and forever ended;
- b. ADELE assents that she is willing to assert her claims, briefly described below, against the ESTATE, in Aiken County and/or elsewhere, where many are now pending:
 1. To set aside the McMaster Settlement and all Bauknight fiduciary appointments related to the Estater/2000 Trust.
 2. To be paid under the January 9, 2008 in Aiken County Case 2007-CP-02-0122.
 3. For a commission as filed in the Aiken County Probate Court.
 4. For the costs of Case 122 and the Forando Case, including fees for those she and Robert Buchanan engaged.

As a result it is appropriate, and this Court hereby dismisses the ESTATE as as party to this action and directs that its name be removed from the caption

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvermail
Law Office of Adam T. Silvermail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
Adam@silvermail.lawfirm.com

Attorneys for Defendant Adele J. Pope

August 2, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

RUSSELL L. Bauknight, as Trustee,
and others

Case No.: 2010-CP-40-4900

and

) Offer of Judgment
) of Adele J. Pope to Tonya Brown

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

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

2012 AUG -3 AM 10:25

FILED

TO: PLAINTIFF TONYA BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HER ATTORNEYS :

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Tonya Brown ("TONYA") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from TONYA all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, as well as interest as provided by Rule 68.

RECITALS

1. TONYA asserts that she is the only child of Teddy, deceased oldest son of entertainment icon James Brown who died on December 25, 2006.

2. ADELE served as a personal representative under the Will of James Brown and Trustee of the 2000 Irrevocable Trust until replaced by Russell L. Bauknight on May 26, 2009 under an Order now on appeal to the S.C. Supreme Court in Case 2008-CP-02-1647 ("Case 1647").

5. On May 19, 2010 TONYA, through Sweeney Wingate & Barrow, PA ("Wingate") filed this suit against ADELE.

6. On November 30, 2010 TONYA, through Wingate, defaulted as to ADELE's counterclaims for attorneys' fees under the S.C. Trust Code and:

- a. Abuse of Process;
- b. Interference with Contract - Pope's entitlement to \$1.5 Million, plus interest at the legal rate from 2009, awarded in a 1/8/08 Order which TONYA approved and did not appeal.
- c. Civil Conspiracy; and
- d. Fraud under § 62-1-106 of the S.C. Code.

7. ADELE makes the Offer set out herein.

Terms of Settlement

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 1. Subject to the terms of this Settlement Order, TONYA and ADELE have resolved their differences in this action, and TONYA is hereby dismissed as a party.
- 2. TONYA dismisses with prejudice all claims against ADELE as set out in the Complaint.
- 3. As to the Counterclaims, TONYA agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan,

Jr. and forcing them to abandon their appeal in Case 1647.

4. TONYA agrees that ADELE is entitled to see any contract TONYA has with WINGATE to bring this suit, and directs WINGATE to produce it.

5. TONYA withdraws all requests to intervene in the FOIA suit, and withdraws her request for sanctions against ADELE.

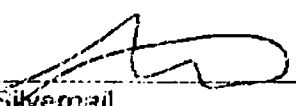
6. TONYA agrees that she is not a beneficiary of the Will or 2000 Trust.

6. TONYA agrees that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

July 26, 2012

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2012 AUG 13 PM 3:48

**PLAINTIFFS' MOTION TO STRIKE
DEFENDANT POPE'S OFFERS OF
JUDGMENT**

**TO: ADAM SILVERNAIL, ESQUIRE, AND DARYL WILLIAMS, ESQUIRE,
ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-
NAMED:**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs intend to move, and do hereby so move, for an Order from the Court striking the following "Offers of Judgment" filed by Defendant Pope in this matter:

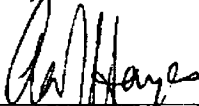
1. Defendant Pope's Offer of Judgment to Lindsey Delores Brown and Janise B. (attached hereto as Exhibit A).
2. Defendant Pope's Offer of Judgment to the South Carolina Attorney General and Russell Bauknight as Agent for the South Carolina Attorney General (attached hereto as Exhibit B).
3. Defendant Pope's Corrected Offer of Judgment to Lindsey Delores Brown and Janise B. (attached hereto as Exhibit C).
4. Defendant Pope's Offer of Judgment to Tonya Brown (attached hereto as Exhibit D).
5. Defendant Pope's Offer of Judgment to Daryl Brown (attached hereto as Exhibit E).
6. Defendant Pope's Offer of Judgment to Russell Bauknight (attached hereto as Exhibit F)
7. Defendant Pope's Offer of Judgment to Terry Brown (attached hereto as Exhibit G).
8. Defendant Pope's Offer of Judgment to Jason Brown-Lewis (attached hereto as Exhibit H).
9. Defendant Pope's Offer of Judgment to Tommie Rae Hynie Brown (attached hereto as Exhibit I).
10. Defendant Pope's Offer of Judgment to Venisha Brown (attached hereto as Exhibit J), and
11. Defendant Pope's Offer of Judgment to Carrington L.(attached hereto as Exhibit K).
12. Defendant Pope's Offer of Judgment to Sydney L. (attached hereto as Exhibit L).

13. Defendant Pope's Offer of Judgment to Deanna Brown Thomas (attached hereto as Exhibit M).
14. Defendant Pope's Offer of Judgment to the Estate of James Brown (attached hereto as Exhibit N).
15. Any other offers that have been served - or may soon be served - on any Plaintiff in this matter.

This Motion is made pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, and is based upon the fact that these offers contain material that is "redundant, immaterial, impertinent or scandalous". These offers are also improper and do not comport with the requirements of Rule 68 of the South Carolina Rules of Civil Procedure. Plaintiffs requests that the Court strike these offers from the record in this matter, and that the Court award Plaintiffs the fees and costs associated with responding to these offers and making this Motion, as well as any other relief the Court deems just and proper. Plaintiffs reserve the right to supplement with Memorandum of Law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 13, 2012

EXHIBIT A

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

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their grandfather, entertainment icon James Brown on August 1, 2000 (the "2000 Trust").

2. James Brown died on December 25, 2006.

3. The 2000 Trust created a separate \$285,000 education fund for each of Lindsey and Janise.

4. On January 24, 2007, when Lindsey was 16 and Janise was 11, their father Daryl J. Brown ("Daryl"), filed Aiken County Case 2007-CP-02-0122 ("Case 122") on their behalf.

5. When Brown's original trustees resigned, at the request of Lindsey and Janise, Adele and Robert Buchanan, Jr. ("Bob") were appointed by the Court as trustees of the 2000 Trust, with all authority and duty as if originally appointed by James Brown.

6. On December 26, 2007, Daryl filed suit to challenge the 2000 Trust, placing in jeopardy Lindsey's and Janise's education funds.

7. On August 10, 2008 Daryl, with others, agreed to substantially reduce, and commingle Lindsey's and Janise's education funds.

8. In an Order dated May 26, 2009 in Case 2008-CP-02-1647 ("Case 1647") the dismantling was approved, and Russell Bauknight became Trustee.

9. Bob and Adele appealed the Case 1647 Order, which is now before the S.C. Supreme Court.

10. On May 19, 2010 Lindsey and Janise (by Daryl) sued Bob and Adele in this Case 2010-CP-40-4900 ("Case 4900"), asserting, among other things, that their appeal in Case 1647 was improper.

11. Janise does not have a guardian *ad Litem* and, on information and belief,

Lindsey has not been informed of the conflict of interest she has with Daryl, her father and Co-Plaintiff.

12. Adele counterclaimed for abuse of process and other causes of action, including attorneys' fees.

13. Adele, Lindsey and Janise, through her parent(s), all now want to resolve their respective claims; confirm the validity of the 2000 Trust; and dismiss Lindsey and Janise as parties to Case 4900.

CONTENTS OF ORDER

The above statements will be included in the Order Granting Final Judgment only if approved by Lindsey and Janise.

The Order Granting Final Judgment shall be in the following form:

This Order Granting Final Judgment resolves all disputes between Lindsey Delores Brown ("Lindsey") and Janise B., a minor, against Adele J. Pope ("Adele") in this Case 2007-CP-40-4900 ("Case 4900"), and Adele's counterclaims against them.

Adele, Lindsey and Janise agree that James Brown believed education was important and provided a \$285,000 education fund for each of Lindsey and Janise under the James Brown 2000 Irrevocable Trust.

The claims of Lindsey and Janise against Adele in this action, and hers against them, are dismissed with prejudice and forever ended.

Adele, Lindsey and Janise agree that no attorneys' fees should be paid from Lindsey's or Janise's education funds.

Adele will take immediate and continuing steps to support Lindsey and Janise in

securing Court approval and immediate payment and/or reimbursement from the Estate/2000 Trust for all reasonable education expenses of Lindsey and Janise from and after the death of James Brown, up to \$285,000.00 each.

Because Lindsey and Janise have ratified the 2000 Trust and Brown's worldwide music empire earned almost \$10 Million last year, Lindsey, Janise and Adele stipulate such payments will not impair the rights of creditors.

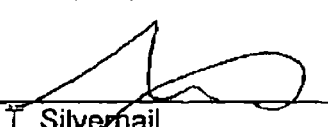
Adele will not at any time, regardless of the outcome of the Case 1647 appeal, seek to enforce the *In Terrorem* clause of the 2000 Trust against Lindsey or Janise.

A Certified Copy of this Judgment may be filed in any Court as evidence of the positions of Lindsey, Janise and Adele.

AND IT IS SO ORDERED.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

July 16, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT B

) IN THE COURT OF COMMON PLEAS

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RECITALS

1. On or about May 19, 2010 Wingate commenced this action naming as two of the Plaintiffs former AG Henry McMaster and Bauknight as agent for AG McMaster.

2. Pope has repeatedly and consistently asserted, and asked the Court to rule, that Wingate has no authority to serve as sole counsel for the AG while serving the interest of private Co-Plaintiffs in this Case, and that Bauknight has no authority to serve as Agent for the AG.

3. In January 2011 AG Alan Wilson succeeded AG McMaster as Attorney General of South Carolina.

4. Since then Wingate and Bauknight have asserted that Wingate serves as sole counsel to, and Bauknight agent for, AG Wilson, to which Pope has objected.

5. Pope's request to enjoin Wingate from serving as sole counsel to the AG while serving the interests of private non-residents of SC, and to enjoin Bauknight from asserting he is the AG's agent, has been denied by Order dated July 5, 2012 (received on July 17, 2012).

6. By Order dated November 22, 2011, at the request of AG Wilson, a Newberry Case in which Pope sought documents under the S.C. Freedom of Information Act ("FOIA") was consolidated but not merged with this Case by direction of The Hon. Frank R. Addy, stating, in part:

1. The Defendant (AG Wilson) . . . will answer Plaintiff's complaint.

2. At the conclusion of the pleadings phase. . . this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);

3. Any motions. . . including an oral motion to intervene by an arguably

interested party, will be taken up by Richland County.

4. Any claim to attorney's fees, as permitted under the [FOIA], will be preserved for resolution by the Richland County Court.

7. The oral motion referenced by Jg. Addy was Wingate, for Tommie Rae Hynie and certain others to intervene in the FOIA Case and prevent release of the McMaster/Wingate contingency fee contract for Wingate to sue Pope in this Case.

8. Since November 2011 various issues and potential issues have arisen which make the action sought herein prudent.

Terms of Settlement

Attorney General Alan Wilson and Russell L. Bauknight in his capacity as agent for Attorney General Wilson and former Attorney General Henry McMaster, with Adele J. Pope, shall submit a Consent Order of Dismissal of Parties which states the following, or any similar language requested by Attorney General Wilson and approved by Pope.

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Case #2011-CP-36-379 in which Pope seeks documents under the South Carolina Freedom of Information Act ("FOIA"), which was consolidated but not merged with this case, is hereby severed.
2. The Dismissal herein shall not apply to the FOIA Case.
3. The Attorney General of South Carolina is hereby dismissed, without prejudice, as a party to this Case.
4. Russell L. Bauknight as agent for the Attorney General of South Carolina, is hereby dismissed, with prejudice, as a party to this Case.
5. The caption of this Case is hereby amended to delete dismissed parties as shown above. [Caption in the Order will remove McMaster, Wilson and all

references to the AG or Bauknight as his agent.]

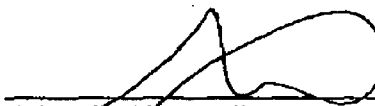
6. The parties are directed to use the above caption in all future filings in this Case.

7. This Order shall not be construed to impair or limit the right of The Honorable Alan Wilson to protect The James Brown "I Feel Good" Trust, including but not limited to seeking to intervene in this Case.

AND IT IS SO ORDERED.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

July 18, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS

)

)

)

Case No.: 2010-CP-40-4900

) ADELE J. POPE'S
) CORRECTED OFFER OF JUDGMENT
) TO LINDSEY DELORES BROWN
) AND JANISE B., A MINOR
)

TO: PLAINTIFFS LINDSEY DELORES BROWN ("LINDSEY") AND JANISE B. AND
THEIR ATTORNEYS, SWEENEY, WINGATE AND BARROW, PA.
("WINGATE"):

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina
Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope
("Adele") proffers an Offer of Judgment in the above-referenced matter as set out
below:

If pursuant to said rule and law, the Offer is not timely accepted and the
judgment against said Defendant Pope is less than the above proffer, said Defendants
shall seek from Plaintiffs all expenses and costs, including attorneys' fees, under South
Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the
South Carolina Trust Code, and all other applicable law, as well as interest as provided
by Rule 68(b).

RECITALS

1. Lindsey and Janise are beneficiaries of the Irrevocable Trust established by



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

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

) Offer of Judgment
) of Adele J. Pope to Tonya Brown

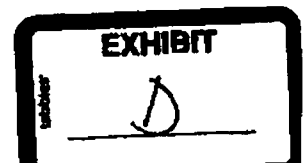
TO: PLAINTIFF TONYA BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HER ATTORNEYS :

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Tonya Brown ("TONYA") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from TONYA all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, as well as interest as provided by Rule 68.

RECITALS

1. TONYA asserts that she is the only child of Teddy, deceased oldest son of entertainment icon James Brown who died on December 25, 2006.



2. ADELE served as a personal representative under the Will of James Brown and Trustee of the 2000 Irrevocable Trust until replaced by Russell L. Bauknight on May 26, 2009 under an Order now on appeal to the S.C. Supreme Court in Case 2008-CP-02-1647 ("Case 1647").

5. On May 19, 2010 TONYA, through Sweeney Wingate & Barrow, PA ("Wingate") filed this suit against ADELE.

6. On November 30, 2010 TONYA, through Wingate, defaulted as to ADELE's counterclaims for attorneys' fees under the S.C. Trust Code and:

- a. Abuse of Process;
- b. Interference with Contract - Pope's entitlement to \$1.5 Million, plus interest at the legal rate from 2009, awarded in a 1/8/08 Order which TONYA approved and did not appeal.
- c. Civil Conspiracy; and
- d. Fraud under § 62-1-106 of the S.C. Code.

7. ADELE makes the Offer set out herein.

Terms of Settlement

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 1. Subject to the terms of this Settlement Order, TONYA and ADELE have resolved their differences in this action, and TONYA is hereby dismissed as a party.
- 2. TONYA dismisses with prejudice all claims against ADELE as set out in the Complaint.
- 3. As to the Counterclaims, TONYA agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan,

Jr. and forcing them to abandon their appeal in Case 1647.

4. TONYA agrees that ADELE is entitled to see any contract TONYA has with WINGATE to bring this suit, and directs WINGATE to produce it.

5. TONYA withdraws all requests to intervene in the FOIA suit, and withdraws her request for sanctions against ADELE.

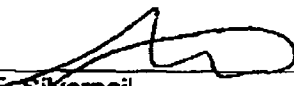
6. TONYA agrees that she is not a beneficiary of the Will or 2000 Trust.

6. TONYA agrees that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
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Adam T. Silvernail
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Telephone: (803) 779-1770
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adam@silvernaillawfirm.com

July 26, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

RUSSELL L. Bauknight, as Trustee,
and others

Case No.: 2010-CP-40-4900

and

Offer of Judgment
of Adele J. Pope to Daryl Brown

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.
Adele J. Pope,

Defendant

TO: PLAINTIFF DARYL BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS :

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Daryl Brown ("DARYL") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from DARYL all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

RECITALS

1. DARYL is a son of entertainment icon James Brown who died on December 25, 2006, leaving his entire music empire to the 2000 Trust for the education of seven designated grandchildren, and - through The James Brown "I Feel Good" private



foundation - to provide scholarships for needy and deserving students.

2. On May 19, 2010 DARYL and others, through Wingate, brought this suit for the improper purpose of damaging the careers of ADELE and Robert Buchanan, Jr., so severely that they would be required to abandon their vigorous defense of Brown's Estate Plan and the "I Feel Good" Trust.

3. DARYL has recently notified Attorney General Alan Wilson of his support for the Estate Plan of his father which he previously sought to destroy.

4. It is the position of ADELE that those who have damaged and sought to destroy the "I Feel Good" Trust - or allowed others to do so - must help restore it or be charged with the costs.

5. In that spirit ADELE makes the Offer set out herein.

SETTLEMENT

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Subject to the terms of this Settlement Order, DARYL and ADELE have resolved their differences in this action, and DARYL is hereby dismissed as a party.

2. DARYL dismisses with prejudice all claims against ADELE as set out in the Complaint.

3. As to the Counterclaims, DARYL agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan, Jr. and forcing them to abandon their appeal in Case 1647.

4. DARYL also agrees ADELE is entitled to the full amount awarded her under the January 8, 2008 Order in Case 122, with interest until paid, and that Plaintiffs intentionally

interfered with this entitlement.

5. DARYL agrees that ADELE is entitled to see any contract DARYL has with WINGATE to bring this suit, and directs WINGATE to produce it.

6. DARYL withdraws all requests to intervene in the FOIA suit, and withdraws his request for sanctions against ADELE.

7. DARYL agrees that he and the other five named children in the valid last Will of James Brown, along with Cinnamon Parris, LaRhonda Pettit and Jeanette Mitchell are the only heirs determined to date, and that Brown died without a surviving spouse.

8. DARYL asserts that Russell L. Bauknight's support of Tommie Rae creates an irreconcilable conflict, making him unable to serve the Estate and Trust of James Brown.

9. DARYL agrees that those fiduciaries, attorneys and advisors who have opposed the Estate Plan of James Brown or declared Tommie Rae to be Brown's spouse should not be paid from the Estate/2000 Trust.

10. DARYL agrees that it would be appropriate for the Estate/2000 Trust to pay up to seven acknowledged heirs of James Brown one (1%) of the annual income of the "I Feel Good" Trust for life to secure their relinquishment or vote in favor of the "I Feel Good" Trust of all rights under the Federal Copyright Act, including Termination Rights.

11. DARYL agrees that except for the 6 acknowledged children and their children, the only method of determination of an heir should be the official DNA testing set up by the Estate in 2007.

12. In consideration of ADELE's agreement if reinstated not to enforce the *In Terrorem* clause for his acts prior to today, DARYL has agreed that he will immediately notify the S. C. Supreme Court of South Carolina of his support of James Brown's Estate

Plan, and desire that it be followed.

13. DARYL will continue his requests to AG Wilson to reverse the actions of his predecessor which, if not reversed, will destroy the "I Feel Good" Trust.

13. DARYL agrees that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvermail
Law Office of Adam T. Silvermail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvermaillawfirm.com

July 26, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT F

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

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RECITALS

1. The LEGACY TRUST was created in late 2008 by former Attorney General Henry D. McMaster ("McMaster") and others as Settlers and Bauknight as its Trustee.
2. Although the LEGACY TRUST bears the name of entertainment icon James Brown, who died on December 25, 2006, it was not created by Brown, but is, instead, the vehicle by which the Attorney General McMaster, under color of his office, took over the private property of James Brown, attempting to give more than half to some of Brown's disinherited claimed relatives selected by McMaster.
3. All James Brown fiduciaries objected to the McMaster/State takeover and Bauknight's appointment.
4. Adele served as a PR under the Will of James Brown and trustee of Brown's 2000 Irrevocable Trust when McMaster asserted his right to take over and control Brown's private property.
5. On January 30, 2009 Bauknight, without revealing to the Court that he was already Trustee of McMaster's LEGACY TRUST, recommended that James Brown's worldwide music be placed in the LEGACY TRUST,
6. Bauknight, recommend the approval of McMaster's takeover of Brown's and placing Brown's assets in the McMaster-controlled LEGACY TRUST even though:
 - a. He knew nothing about James Brown's Estate Plan or wishes;
 - b. He knew nothing about the Federal Copyright Act; and
 - c. He considered tax matters beyond the scope of his inquiry.
7. Without disclosing he was their Trustee, Bauknight also recommended giving more than half of Brown's assets to Brown's companion Tommie Rae and others

intentionally excluded from his music empire.

8. Adele has asserted that if McMaster's takeover succeeds, \$40 - \$80 Million will be taken from James Brown's "I Feel Good" private foundation to educate needy and deserving students, with the loss primarily caused by:

a. McMaster (now AG Wilson) - for turning Brown's private property into a personal political patronage fund, controlling Brown's \$85 Million so that grateful attorneys, investment advisors and others his trustee hires will make political contributors to the AG's campaigns (and Wilson for not acknowledging and correcting McMaster's error.)

b. Bauknight - for breaches of fiduciary duty, including the less-than \$4.7 Million value of Brown's music empire.

b. Tommie Rae - Brown's disinherited companion - about \$40 Million

c. Terry - Brown's son. About \$4.5 Million at the creation, and tens of millions by manipulation of the value of the music empire and exercise of the right McMaster gave Terry to buy the music empire.

d. David Cannon - whose \$17 Million takings from Brown were known by early 2008, and from whom neither Wilson nor Bauknight sought restitution for the needy students.

e. The 35+ attorneys Bauknight and the LEGACY TRUST propose to pay between \$10 and \$20 million for helping destroy the "I Feel Good" Trust.

9. Adele asserts that those who have damaged and destroyed the "I Feel Good" Trust and the Education Trusts Brown created for 7 selected grandchildren must help rebuild them or pay the costs.

10. On information and belief, the assets of the LEGACY TRUST are now:

a. A piece of property Yamma received from James Brown at death;

b. A claim to Brown's Tangible Personal Property ("TPP") or proceeds, valued by Bauknight at less than \$1 Million.

c. Termination Rights of Brown's 6 acknowledged children, fewer than 1/2 of Brown's claimed heirs under the Federal Copyright Act; and

d. Similar Copyright claims of Tommie Rae, of no value because she is not an heir under the Act.

11. On May 19, 2010 the LEGACY TRUST and others, through WINGATE, sued Adele in this Case 4900, claiming she had caused tens of millions of dollars loss to Brown's Estate/2000 Trust.

12. In November 2010 the LEGACY TRUST defaulted as to Adele's counterclaims for actual and punitive damages and attorneys' fees for (1) abuse of process; (2) Civil Conspiracy; (3) Fraud under § 62-1-106; and (4) Intentional interference with a contract/Order of January 8, 2008, by which she is currently owed approximately \$2 Million.

13. After filing this Case 4900, Bauknight told the IRS and S.C. Supreme Court that Brown's TPP was worth less than \$1 Million, and the music empire less than \$4.7 Million at his death.

14. After filing this Case 4900, Bauknight told the S.C. Supreme Court that Tommie Rae's baseless elective share claim was a "slam dunk."

15. After filing this Case 4900, Bauknight and the LEGACY TRUST threatened, then moved for, sanctions against Adele for exercising her rights under the S.C. Freedom of Information Act ("FOIA").

16. After filing this Case 4900 Bauknight, on information and belief to protect Tommie Rae, made false representations to the Supreme Court about the Federal Copyright Act as it relates to Brown's assets.

17. After filing this Case 4900 Bauknight violated his duty under the Probate Code to file the less-than \$4.7 Million appraisal of the music empire.

18. After filing this Case 4900 Bauknight, to protect the LEGACY TRUST and Tommie Rae, has fought to secrete more than a million pages of public documents, including the "diary" of Hynie.

19. Since creating the LEGACY TRUST, Bauknight, McMaster - and now AG Wilson - have paid or propose to pay from assets Brown gave to needy and deserving students \$10 - \$20 Million to 35+ attorneys who are helping and have helped destroy the "I Feel Good" Trust.

20. The 35+ attorneys the LEGACY TRUST wants to pay for their help in destroying Brown's Estate Plan and the "I Feel Good" Trust include substantial contributors to the political campaigns of McMaster, AG Wilson and Wilson's opponent in the AG campaign.

21. Since late 2011 two or more descendants of James Brown have agreed that Adele's vigorous defense of Brown's "I Feel Good" Trust is appropriate; that Adele's appeal of McMaster's takeover of Brown's private property was appropriate; that no probable cause existed to challenged Brown's Estate Plan; that Tommie Rae was not Brown's wife; and that the LEGACY TRUST should not receive Brown's assets.

20. On information and belief, Bauknight and the LEGACY TRUST, rather than taking advantage of this chance to restore the "I Feel Good" Trust, are trying to quash these truthful statements, lending further support to McMaster's egregious error.

21. On information and belief, Bauknight's acts since May 26, 2009 have added millions of dollars of damage to the already-millions he caused by recommending the settlement on January 30, 2009.

22. Bauknight naming of felon David Cannon as a witness, and failure to collect

restitution from him have resulted in several millions of dollars loss to the Estate/2000 Trust.

23. In order to mitigate the damage to the "I Feel Good" foundation, Adele proposes this Offer of Compromise to the LEGACY TRUST.

CONTENTS OF ORDER

The above statements will not be included in the Order Granting Final Judgment.

The Order granting Final Judgment as to the LEGACY TRUST and Bauknight as its trustee, shall have substantially the form and content set out below.

This Order Granting Final Judgment resolves the disputes between Plaintiff/Counterclaim Defendant James Brown Legacy Trust ("Legacy Trust") and Defendant/Counterclaim Plaintiff Adele J. Pope ("Adele") in this Case 2010-CP-40-4900 ("Case 4900") as follows:

1. Legacy Trust's claims against Adele are hereby dismissed with prejudice and forever ended.
2. Legacy Trust's motion to intervene and obtain sanctions against Adele in what was formerly Newberry County Case No. 2011-CP-36-0379 (the "FOIA Case") are hereby withdrawn.
3. Legacy Trust shall, within 10 days, pay to Adam Silvernail \$2,500, representing the portion of Adele's attorneys' fees and costs in the FOIA Case attributable to the Legacy Trust's attempt to intervene and obtain sanctions.
4. Adele is hereby granted judgment against the LEGACY TRUST as set out below:
 - a. The relief granted Adele against Legacy Trust herein, and for which Legacy Trust accepts responsibility hereunder, constitutes only a portion of Adele's losses as described in her Counterclaims, and Legacy Trust and WINGATE agree that this Settlement and Order do not relieve any other Plaintiff of its liability to Adele; nor may this Settlement and Order be used in any manner to

offset or limit the liability of any Plaintiff or other person or entity to Adele.

b. If not fully paid by the Estate/2000 Trust within 150 days of this Order the Legacy Trust will be jointly and severally liable for \$1,970,000.00 of the amount due Adele under the Order of the Honorable Doyet A. Early, III, with interest at the judgment rate from January 1, 2012.

c. The Legacy Trust, for itself and its beneficiaries, agrees not to oppose Adele's request for a full PR/Trustee commission, now pending before the Aiken County Probate and/or Circuit Court.

d. The Legacy Trust, for itself and its beneficiaries, will actively support the immediate Court approval and payment by the Estate/2000 Trust of the following amounts:

1. Jeter & Williams	\$325,000.00
2. Tressa T. H. Hayes, Esq.	\$ 65,000.00
3. James D. Bailey, Esq.	\$110,000.00
4. Adam Silvermail, Esq.	\$165,000.00
5. Adele Pope (costs)	\$ 37,000.00

e. The Legacy Trust, for itself and its beneficiaries, acknowledges its joint and several liability with the Estate/2000 Trust and/or others for all of the amounts described under paragraph d, with interest at the legal rate,

f. Unless this Case 4900 is fully resolved within 210 days of this Order as to all parties and Bauknight has resigned as PR under the Will and Trustee of the 2000 Trust in favor of Adele, the Legacy Trust shall pay Adele \$300,000, representing a portion of her lost wages caused by this Case 4900.

g. The Legacy Trust acknowledges that it is responsible for all taxes and penalties resulting from the less-than \$4.7 Million value of Brown's music empire represented to the IRS.

h. The Legacy Trust and its trustee agree not to make any additional false statements about Adele or Robert Buchanan, Jr., and acknowledge that Adele and Robert Buchanan, Jr. did not overstate the value of James Brown's music empire to the IRS.

i. The Legacy Trust authorizes all payments it has agreed to make hereunder to be paid directly from the Estate and/or 2000 Trust prior to any the transfer of assets of James Brown to the Legacy Trust.

j. The Legacy Trust shall make no distributions to non-charities without Adele's written consent until all of its payments and obligations hereunder are met, with

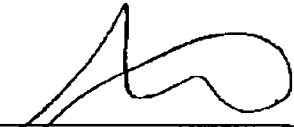
applicable interest.

I. This Settlement does not diminish or affect Adele's rights in any matter pending in any other Court or Case, or as to any other party in this Case 4900.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

July 27, 2012

Attorneys for Defendant Adele J. Pope

EXHIBIT G

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)
)
)

Case No.: 2010-CP-40-4900

) Offer of Judgment
) of Adele J. Pope to Terry Brown
)
)
)

TO: PLAINTIFF TERRY BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS OF RECORD:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Terry Brown ("TERRY") in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant is less than the above proffer, ADELE shall seek from TERRY all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, as well as interest under Rule 68.

RECITALS

1. On or about July 24, 2012 Daryl Brown asked the Attorney General Alan Wilson to prevent the destruction of James Brown's dream.



) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

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Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant Venisha Brown ("VENISHA") in the above-referenced matter as set out below:

RECITALS

1. VENISHA has often honored her famous father James Brown with public



statements and performances, but disgraced him by making a deal with former Attorney General Henry McMaster to take for herself about \$5 Million Brown gave to needy and deserving children through The James Brown "I Feel Good" Trust, Brown's private foundation.

2. McMaster, to accomplish the takeover of Brown's private property for his personal/political use, also appointed VENISHA as an advisor to the "Legacy Trust" McMaster created – using James Brown's name while destroying his dream.

3. On May 19, 2010 Robert Buchanan, Jr. and ADELE were the only two people still vigorously defending James Brown's dream, as directed in his valid Estate Plan, in the S. C. Courts.

4. WINGATE brought this suit so that VENISHA could keep \$5 Million her father did not want her to have and McMaster, through Russell Bauknight who served at his pleasure, could keep control of a \$100 Million music empire James Brown did not want McMaster to have.

5. In November, 2010 VENISHA, through WINGATE defaulted on ADELE's counterclaims for attorneys' fees under the S.C. Trust Code and:

a. Abuse of Process;

b. Interference with Contract – Pope's entitlement to \$1.5 Million, plus interest at the legal rate from 2009, awarded in a 1/8/08 Order which VENISHA approved and did not appeal.

c. Civil Conspiracy; and

d. Fraud under § 62-1-106 of the S.C. Code.

6. Because many acts taken in VENISHA's name have been through an invalid springing Power of Attorney held by VENISHA's sister, Deanna Brown Thomas;

VENISHA has been incarcerated during critical periods of the James Brown proceedings; and WINGATE has refused to allow VENISHA or any other Plaintiff/Counterclaim Defendant to be deposed, ADELE does not know how much VENISHA actually participated, if at all, in the following and other actions taken on her behalf by WINGATE, Bauknight and/or Louis Levenson, Esq.:

- a. The August 10, 2008 deal with Henry McMaster to put McMaster in control of James Brown's \$100 Million private fortune and pay VENISHA about \$5 Million – rather than the 1/6 personal effects Brown gave her;
- b. The May 2011 false representation to the S.C. Supreme Court that James Brown's worldwide music empire was worth less than \$4.7 Million when James Brown died.
- c. The failure to seek recovery in Case 322 or restitution in the criminal proceeding against felon David Cannon.

8. ADELE makes the Offer set out herein to VENISHA.

Terms of Settlement

- a. The above recitals will not be made part of the settlement unless agreed by VENISHA
- b. VENISHA and ADELE agree that the Court should enter an Order dismissing VENISHA as a party in substantially the following form:

The Parties having resolved their differences in this Case, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Subject to the terms of this Settlement Order, VENISHA and ADELE have resolved their differences in this action, and VENISHA is hereby dismissed as a party.
2. VENISHA dismisses with prejudice all claims against ADELE as set out in the

Complaint.

3. As to the Counterclaims, VENISHA agrees that this Case 4900 was an abuse of process brought for the improper purpose of damaging ADELE and Robert Buchanan, Jr. and forcing them to abandon their appeal in Case 1647.

4. VENISHA agrees that Russell Bauknight has breached his fiduciary duty to the Estate of James Brown and the James Brown 2000 Irrevocable Trust in at least the following ways:

- a. By falsely asserting the Tommie Rae Hynie was the wife of Brown;
- b. By valuing James Brown's worldwide music empire at less than \$4.7 Million at his death;
- c. By failing to seek restitution for the \$12+ Million taken by David Cannon.
- d. By failing in 3 years to recover anything from David Cannon in Case 322.
- e. By engaging WINGATE to bring this suit for the improper purpose of stopping ADELE's and Robert Buchanan's appeal of the destruction of James Brown's dream – the "I Feel Good" Foundation.
- f. By asserting to the S.C. Supreme Court that there were no offers to purchase Brown's assets while suing ADELE for not accepting a \$100 Million offer to buy his music empire.
- g. By misrepresenting to the S.C. Supreme Court and others the heirs of James Brown under the Federal Copyright Act Termination Provisions and their rights.

5. VENISHA acknowledges she did not authorize WINGATE to intervene in her behalf or seek sanctions against ADELE in a FOIA suit.

6. If the McMaster Settlement is overturned and ADELE returned as PR/Trustee, VENISHA, in full settlement and dismissal of all claims and suits against

the Estate of James Brown and the James Brown 2000 Irrevocable Trust will accept \$230,000.00, being the approximate net value of her 1/6 of the personal and household effects.

7. If the McMaster Settlement is overturned and ADELE returned as PR/Trustee, VENISHA offers to allow, by proper assignment and/or other documentation, the "I Feel Good" Trust to receive all benefits, if any, VENISHA has as an heir of James Brown under the Federal Copyright Act, including Termination Provisions, and ADELE agrees that it is appropriate for the Estate/2000 Trust to pay VENISHA an amount, at least annually, equal to 1% of the net income of Estate/2000 Trust for VENISHA's life, to be calculated and established in a fair manner by VENISHA and ADELE, and paid by Estate/2000 Trust beginning upon ADELE's reinstatement.

8. VENISHA and ADELE agree that a copy of this Settlement and Dismissal Order may be used for any purpose to show the position of the parties.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvermail
Law Office of Adam T. Silvermail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
Adam@silvermaillawfirm.com

Attorneys for Defendant Adele J. Pope

August 3, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
	)	Case No.: 2010-CP-40-4900
RUSSELL L. Bauknight, as Trustee,	)	
and others	)	
	)	Offer of Judgment of
and	)	Adele J. Pope to Sydney L. , a minor
	)	
HENRY DARGAN McMASTER and	)	
others	)	
	)	
	)	Plaintiffs,
v.	)	
	)	
Adele J. Pope,	)	
	)	Defendant

TO: PLAINTIFF SYDNEY BROWN AND SWEENEY, WINGATE AND BARROW, PA.
 ("WINGATE") HER ATTORNEYS:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff and Counterclaim Defendant SYDNEY L. ("SYDNEY"), a minor, in the above-referenced matter as set out below:

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant Pope is less than the above proffer, said Defendant/Counterclaim Plaintiff shall seek from SYDNEY all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

Recitals

On June 15, 1999 SYDNEY's famous grandfather James Brown created the first



fiduciary duty to SYDNEY by appealing the dismantling of SYDNEY's \$285,000.00 Education Trust.

Terms of Judgment

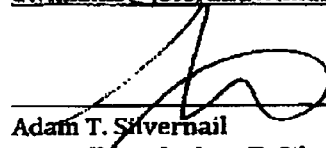
The Court shall issue its order substantially as follows:

1. As to all claims of SYDNEY against ADELE, SYDNEY is entitled to nothing.
2. As to the counterclaims of ADELE against SYDNEY, ADELE, is entitled to judgment against SYDNEY on all causes of action in the aggregate amount of \$1.00.

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
Adam@silvernaillawfirm.com

Attorneys for Defendant Adele J. Pope

August 7, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

RUSSELL L. Bauknight, as Trustee,
and others

Case No.: 2010-CP-40-4900

and

) Offer of Judgment of Adele J. Pope
) to the Estate of James Brown

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

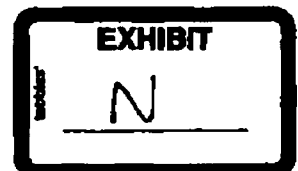
TO: PLAINTIFF ESTATE BROWN AND SWEENEY, WINGATE AND BARROW, PA.
("WINGATE") HIS ATTORNEYS OF RECORD:

Pursuant to South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, and all other applicable law, Defendant Adele J. Pope ("ADELE") proffers an Offer of Judgment to Plaintiff/Counterclaim Defendant ESTATE of James Brown, whose current Personal Representative ("PR") is Russell L. Bauknight ("ESTATE") in the above-referenced matter as set out below.

If pursuant to said rule and law, the Offer is not timely accepted and the judgment against said Defendant is less than the above proffer, ADELE shall seek from ESTATE all expenses and costs, including attorneys' fees, under South Carolina Code §15-35-400, Rule 68 of the South Carolina Rules of Civil Procedure, the South Carolina Trust Code, and all other applicable law, and interest under Rule 68.

RECITALS

1. In 2008 Russell Bauknight's lawyer, Freddie Kingsmore of Nexsen Pruet, a



SETTLEMENT

ADELE proposes:

1. The above Recitals will not be a part of the Settlement unless approved by the Personal Representative of the ESTATE.
2. A Final Order in substantially the following form will dismiss the ESTATE as a party to this Case:

The parties having resolved their differences in this Case ("Case 4900"), it is
ORDERED, ADJUDGED AND DECREED:

- a. The claims by the ESTATE against ADELE in this Case are hereby dismissed with prejudice and forever ended;
- b. ADELE asserts that she is willing to assert her claims, briefly described below, against the ESTATE, in Aiken County and/or elsewhere, where many are now pending:
 1. To set aside the McMaster Settlement and all Bauknight fiduciary appointments related to the Estate/2000 Trust.
 2. To be paid under the January 8, 2008 in Aiken County Case 2007-CP-02-0122.
 3. For a commission as filed in the Aiken County Probate Court.
 4. For the costs of Case 122 and the Forlando Case, including fees for those she and Robert Buchanan engaged.

As a result it is appropriate, and this Court hereby dismisses the ESTATE as as party to this action and directs that its name be removed from the caption

AND IT IS SO ORDERED.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
Adam@silvernaillawfirm.com

Attorneys for Defendant Adele J. Pope

August 2, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

PLAINTIFFS' MOTION FOR
DIRECTION FROM THE COURT
CONCERNING POTENTIAL
PREJUDICIAL TRIAL PUBLICITY

JEANETTE
C.C.P.
CLERK

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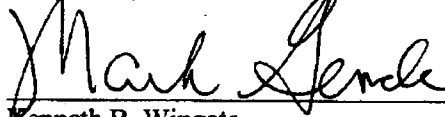
RICHLAND COUNTY
FILED

TO: ADAM SILVERNAIL, ESQUIRE, DARYL WILLIAMS, ESQUIRE, ATTORNEYS
FOR DEFENDANT POPE, AND TO DEFENDANT POPE ABOVE-NAMED:

Plaintiffs hereby request that the Court provide Plaintiffs with guidance on how to proceed in this matter in light of the potentially prejudicial trial publicity that has occurred. For the Court's reference, Plaintiffs have accumulated and indexed a portion of the pretrial publicity that this case has generated (see Binder of Articles, attached hereto as Exhibit A). Upon information and belief, Defendant Pope, her counsel, and/or persons acting on behalf of Defendant Pope may be responsible for many of the statements contained at Exhibit A¹. Plaintiffs are concerned that these statements may be doing continuing harm to the Estate of James Brown and may prejudice this adjudicative proceeding.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 23, 2012

¹ For example, the July 11, 2012 letter of Adam Silvernail to Judge Manning in case 4900 has appeared on *Newberry Observer* reporter Sue Summer's Facebook page (See screenshot from Facebook page, attached hereto as Exhibit B). Upon information and belief, neither counsel for Plaintiffs nor Judge Manning's office disclosed this letter to Sue Summer.

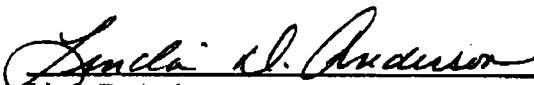
CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Plaintiffs do hereby certify that I have served a copy of the foregoing Plaintiffs' Motion For Direction From The Court Concerning Potential Prejudicial Trial Publicity in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Daryl L. Williams, Esquire
Jeter & Williams. P.A.
1204 Main Street
Post Office Box 7425
Columbia, South Carolina 29202
Attorney for Defendant Adele J. Pope

Adam T. Silvermail, Esquire
1218 Taylor Street
P.O. Box 1898
Columbia, South Carolina 29202-1898
Attorney for Defendant Adele J. Pope

RICHLAND COUNTY
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JANETTE W. McBRIDE
C.C.P. & G.S.


Linda D. Anderson

Columbia, South Carolina

August 23, 2012

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

EXHIBIT A

**TO PLAINTIFFS' MOTION FOR
DIRECTION FROM THE COURT
CONCERNING POTENTIAL
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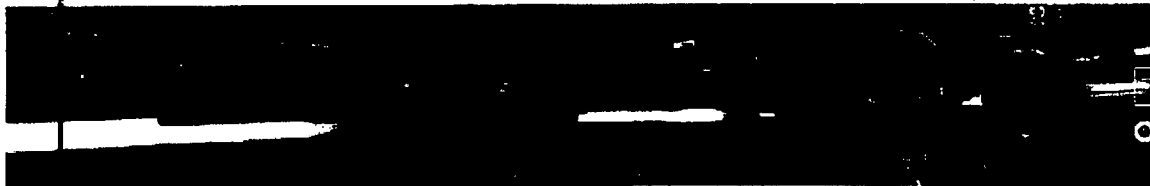
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High SC court to take up James Brown settlement



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Story Created: Nov 1, 2011 at 6:00 AM EDT

(Story Updated: Nov 1, 2011 at 6:30 AM EDT)

COLUMBIA, S.C. (AP) — South Carolina's highest court is the latest setting for a showdown between trustees who say they were unjustly removed from James Brown's charitable organization and state attorneys who brokered a complex settlement.

The state Supreme Court on Tuesday is hearing arguments from the trustees who have sued over the settlement, arguing that then-South Carolina Attorney General Henry McMaster didn't have the authority to push it through and that they were removed because of their opposition.

McMaster's deal gave about half of Brown's assets to a trust, a quarter to Brown's widow and young son, and the rest to his adult children.

The plan ended years of fighting among Brown's heirs that started almost immediately after the Godfather of Soul died of heart failure on Christmas Day 2006.

Reach Kinnard at <http://www.twitter.com/MegKinnardAP>

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<http://www.abccolumbia.com/news/local/132982953.html>

0620

11/1/2011

Ex: ①

SC Supreme Court hears James Brown estate feud

By Sarita Chourey

Morris News Service

Tuesday, Nov. 1, 2011 9:53 AM

COLUMBIA -- Today the South Carolina Supreme Court will take a swing at the charitable legacy of James Brown.

Former state-appointed trustees Robert Buchanan Jr. and Adele Pope are appealing, they say, thwarts Brown's intentions as laid out in legal documents from 1999 against the artist's children and his wife Tomi Rae Brown.

More than a dozen attorneys representing an even larger volume of heirs and dispute are expected to pack the high courtroom.

The central dispute is whether to throw out a settlement that Judge Jack Early approved on May 26, 2009, which replaced the charitable trust with "The Legacy" South Carolina attorney general, and shuffled trustees.

The 2009 agreement gave half of the legendary entertainer's assets to a James Brown quarter to Tomi Rae Brown and a quarter to the six adult children named in James

"My clients are very desirous of the Supreme Court approving Judge Early's settlement and his approval of the settlement," said Atlanta-based attorney, Levenson, for Brown's children and spouse.

"I'm hoping the Supreme Court will recognize the importance of the family and Tomi Rae, bringing peace to what was a contentious estate."

Levenson added: "The appellants don't -- according to law in South Carolina -- It's not their right to disagree (with what was agreed upon)."

But a final brief from the appellants say the settlement takes away more than his private foundation for needy students and instead shifts it to his adult children.

The side consisting of appellants Pope, Buchanan, and former trustees David C. Bradley and others also suggests the circuit court was wrong to to discard trust the settlement agreement negotiated by the Attorney General."

Ex: 5

Brown died at age 73 on Christmas Day of 2006. He left his personal and household items, a maximum of \$2 million for a family educational fund, and the James Brown Foundation to benefit poor students in Georgia and South Carolina schools, according to the will. Brown's family members challenged the plan, alleging that he had suffered from dementia. The South Carolina attorney general intervened, said spokesman Mark Plowden. The state is under state law with protecting all charitable trusts.

The trust/estate's original tax counsel had valued Brown's assets at \$80 million already in the 2000 Trust, according to the appellants' final brief. In 2006, the trust had \$100 million with \$40 million to \$50 million assigned to publicity rights for his estate and \$45 million to royalties for his more than 800 published and unpublished recordings.

The most recent development in the strife over the soul singer's legacy came last week. A circuit court judge sentenced Cannon to three years of home confinement and a fine of \$100,000 for his role in the estate dispute. Cannon did not admit guilt but acknowledged that he had been involved in the dispute.

Wed Nov. 2 8:51 am

News



Tuesday, Nov. 1, 2011 8:17 PM

Updated Wednesday, Nov. 2, 2011 4:38 AM

Arguments begin in James Brown settlement case

By **Sarita Chourey**

Morris News Service

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COLUMBIA — James Brown's mental competence at the time he signed his will and created a trust 10 years ago is being debated in the fight over a settlement of the soul singer's estate.

During arguments Tuesday at the South Carolina Supreme Court, Chief Justice Jean Toal probed the state attorney general's office, which was given control of the 2000 trust and negotiated the settlement, for proof that Brown had indeed been manipulated.

Brown's widow, Tomi Rae Hynie Brown, and some of the entertainer's children challenged his will and the trust a year after his death in 2006, saying that he was under "undue influence" of his trustees David Cannon, Buddy Dallas and Alfred Bradley.

Toal and Justice John Kittredge repeatedly tried to determine why the attorney general's office did not ask two witnesses to Brown's trust whether Brown was signing it under the influence of his trustees.

"It appears to me that when your side is asked what is the evidence of 'undue influence,' you point to the post-death badness of Cannon, Bradley and Dallas (which) retroactively overlays the execution and circumstances surrounding the will and trust to constitute undue influence," Kittredge said.

William Wilkins, an attorney defending the settlement, which is being challenged by Brown's former estate representatives Robert Buchanan Jr. and Adele Pope, said the trust itself provided proof. He said the trustees were given an "unprecedented" management fee and that Cannon had boasted that he could have taken more of the estate.

Ex: 6

But Jim Richardson, representing the former trustees in seeking a reversal of the settlement that Judge Jack Early of the 2nd Judicial Circuit Court approved in 2009, said James Brown had been in complete control.

"All that Cannon, Dallas and Bradley ever did was to breach trust behind his back," said Richardson. "Everybody in this courtroom knows that you could not have misled this man in front of his eyes. He would have fired them in a minute if he had known what they were doing."

Richardson pointed to an affidavit that says Brown, in 2000, the year he signed his will and trust, was "managing multimillion-dollar transactions all over the place ... (he) was in total command of his own situation, but he trusted these people, Dallas, Bradley and Cannon, and they did him wrong, wrong, wrong."

Brown lived in Beech Island and died at age 73 on Christmas Day 2006. He left his personal and household effects to named adult children, up to \$2 million for a family educational fund, and the James Brown I Feel Good Trust to help needy students in Georgia and South Carolina schools, according to the appellants.

The settlement negotiated by the attorney general's office shifted considerable assets to his family members. It gave half to a James Brown Scholarship Fund, a quarter to spouse Tomi Rae, and a quarter to the six adult children named in Brown's will.

In 2008, Brown's assets were estimated to be \$100 million, with \$40 million to \$50 million assigned to publicity rights for his image and likeness, and \$36 million to \$45 million to royalties for his more than 800 published and unpublished songs.

Toal also repeatedly questioned whether family members should receive more of Brown's money than the entertainer had intended in his original will.

"I see a bunch of people who could all be found to have absolutely no valid claim, making an agreement among themselves to divide up what might turn out to be \$100 million," the chief justice said.

Both Toal and Kittredge suggested Brown's widow might have only a tenuous claim on his assets. The chief justice listed a host of instances and circumstances, such as Tomi Rae's Hynie Brown waiving of spousal rights, a prenuptial agreement, and controversial past marriage status.

"If it's decided and she loses ... then you could still reach a settlement with all these other people, children and whoever else is involved, and you'd at least knock out someone who now is entitled to 25 percent of everything and has maybe no claim at all," Toal said.

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AG asked to turn over James Brown documents (SC)

August 11, 2011

A complaint filed in a Newberry court last week against South Carolina Attorney General Alan Wilson asks a judge to order the Attorney General's office to release documents it claims are related to the value of the Godfather of Soul James Brown's assets.

Columbia attorney and former trustee Adele Pope filed a complaint against Wilson and Russell Bauknight, the current trustee of the James Brown Legacy Trust.

The trust, according to the complaint, was never a part of Brown's estate plans but was created by former South Carolina Attorney General Henry McMaster.

Pope claims that on May 4 Bauknight filed documents that valued Brown's "worldwide music empire" at \$4.7 million upon Brown's Christmas Day 2006 death – much less than the \$85 million Pope claims it is worth, after the payment of debts.

In the complaint, Pope states that records for which her Freedom of Information Act requests have been repeatedly denied would prove that the assets are valued at \$85 million – not less than \$4.7 million.

After Brown died in 2006, his trust was ordered to be used to pay for the education of his six children and then to help provide an education for underprivileged children.

Controversy ensued involving the trustees of the estate, and the initial trustees were removed and replaced with Pope and Robert Buchanan.

McMaster and Bauknight filed a lawsuit against Pope and Buchanan in 2010, claiming that the two overvalued the assets at \$85 million.

Over the past 10 months, Pope stated in the complaint, her requests for the records that both Wilson and the legacy trust possess were denied, and, further, she claims that she received a threatening letter from attorneys representing the trust.

• **Featured Posts**

- **AG Wilson attempts to exclude affidavit of local copyright expert in James Brown FOIA lawsuit (SC)**



January 6, 2012

As the new year appeared, so did more filings in the Newberry Freedom of Information Act (FOIA) lawsuit related to the James Brown estate, filed in August. On Dec. 22, Attorney General (AG) Alan Wilson moved to strike an affidavit from local copyright expert W. Jeffrey Smith in support of releasing documents that reveal how **Keep Reading...**

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- **Michigan Supreme Court orders Rosa Parks estate returned to longtime friend, institute**



January 4, 2012

The Michigan Supreme Court has ordered a judge to return the estate of civil rights icon Rosa Parks to her longtime friend Elaine Steele and the institute the two women founded in 1987 to carry on Parks' legacy. In a tersely worded order Thursday, the high court said Wayne County Probate Judge Freddie Burton Jr. **Keep Reading...**

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- **Judge hears arguments in lawsuit against former public administrator (MO)**



January 3, 2012

JOPLIN, Mo. — An attorney for Rita Hunter argued Wednesday that a lawsuit against the former Jasper County public administrator should be dismissed. Kenneth Hall, a

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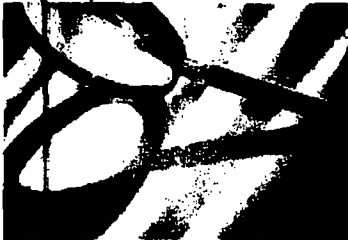
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← [Lawyers accused of overbilling Parks saved her belongings, attorney says \(MI\)](#)

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Dead or alive – James Brown, Danny Tate show threats to property rights thrive

May 22, 2012



That's a headline to grab attention in Austin, Nashville, L.A. and for entertainers across the country – as it should. Growing use of probate instruments like wills, trusts, guardianships and powers of attorney is putting at risk both individual liberties and property rights. An ongoing legal battle involving the “Godfather of Soul” James Brown’s estate helps illustrate this point as also does the case of Nashville rocker Danny Tate who in past years fought a questionable conservatorship (guardianship) and now is targeted in what appears a series of retaliatory actions for speaking out against the perpetrators of his alleged probate abuse and the “justice” system that allows it to continue. The general public may read or hear of such actions while continuing to enjoy an “it can’t happen to me” mindset, but such confidence is misplaced as a reality emerges in which people at all levels of wealth – be it worth \$50,000 to \$100,000, \$1 million or far more – are targeted for Involuntary Redistribution of Assets (IRA) actions. Wealth is relative and in today’s world – there’s always someone happy to take yours.

Disgruntled family members, wannabe heirs and/or disingenuous legal professionals are often perpetrators of IRA actions. The James Brown estate case includes the full range of these parties. Traditional media sources have widely reported on the wrangling of Brown’s heirs – the legitimate, the disinherited and the wannabe, but only The Newberry Observer is reporting on the multi-layered legal industry machinations that commenced in the years following the singer’s December 2006 death and continue today.

Ex:17

In 2000, Brown established the James Brown "I Feel Good" private foundation to provide scholarships for poor children in South Carolina and Georgia. Brown's estate plan reportedly stated that upon his death, "the proceeds of his music empire, including royalties to more than 800 songs, would be rolled into his 'I Feel Good' Trust." Attorneys Adele Pope and Robert Buchanan served from 2007 to 2009 as court-appointed fiduciaries of Brown's estate and trust which includes the "I Feel Good" trust. During Pope's tenure, Newberry Observer reporter Sue Summer reports that Brown's music empire – per all previous Brown fiduciaries – was valued at about \$100 million less a \$15 million dollar debt.

Summer further writes how in late 2008 or early 2009 former South Carolina Attorney General (AG) Henry McMaster and Columbia CPA Russell Bauknight created the "Legacy Trust." She quotes a Pope legal response describing the trust as "McMaster's vehicle to take control of Brown's assets and funnel \$50 million from the needy and deserving students James Brown intended to benefit to claimed heirs Brown intentionally disinherited from his worldwide music empire." AG McMaster appointed current trustee Russell Bauknight who serves at the pleasure of the attorney general. During this timeframe, the estate value was also revised to a reported \$4.7 million at-death appraisal despite, per Pope, the estate generating \$4 to 5 million a year in royalties alone prior to Brown's death.

And though Brown's will and trust included clauses excluding from distributions any parties that challenged his estate plan, McMaster ultimately negotiated a settlement deal giving away more than half of Brown's music empire to those Brown specifically disinherited, including his former companion Tommie Rae Hynie and about half of his alleged children. Summer describes Tommie Rae Hynie as follows:

After Brown's death in 2006, Hynie claimed to be Brown's wife and sued his estate for a share of his \$100 million music empire. The two had exchanged vows in 2001, but Hynie was married to another man at the time. When Brown discovered her marriage, he sued Hynie for an annulment. The Aiken County case was settled when Hynie signed an agreement that she would never claim to be Brown's common-law wife.

With this backdrop, it's difficult to believe that Brown's final wishes are being honored. It's troubling that the state of South Carolina has been such a force in this action. Adele Pope appears to share such sentiments as she continues working to determine how private assets that were once part of a private foundation were then legally placed in an alleged public trust in violation of the asset owner's clear intention? And if it's a public trust, why can't the public access information revealing its details?

Pope has used Freedom of Information Act (FOIA) requests to attempt accessing copies of the trust and documentation regarding the \$4.7 million appraisal. The office of current Attorney General Alan Wilson – the office that prosecutes FOIA violations – has resisted all efforts. Instead, Summer reports "Legacy" trustee Bauknight having "threatened Pope with legal action and sanctions if she continued to exercise her rights under the FOIA."

Most recently, Pope is facing a subpoena related to the diaries of Tommie Rae Hynie. Specifically, Summer writes, Pope is being asked to "turn over all written communications related to the Hynie diaries, including any communications with this reporter, any 'blogger, website or media outlet.'"

Summer's latest article describes a long-time Brown friend suggesting "that the diaries could be key in disallowing Hynie's claim and returning about \$25 million to the Brown trust for needy and deserving children." The diaries were once available to all parties early in the case, but in February 2008, Judge Doyet Early issued an order for a return of the original diary to Hynie attorney Robert

VIDEO: 'Still Hurting' Over Whitney's Death (Video) - Bobbi Kristina Brown Plans on Changing Her Name - Whitney's Sister-in-Law

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James Brown's Charitable Trust Fate Marinating in Confusion

March 11, 2012 | [Comment](#)



The trust of legendary singer and icon James Brown has been battered by greed and confusion since his death.

According to an exclusive EUR source, Sue Summer, a South Carolina journalist, high officials have been attempting to cover up money swindling and trust theft. Now the fate of Brown's charitable trust sits in the hands of the South Carolina Supreme Court.

Summer explained that the media is vilifying the wrong parties. Original trustee of Brown's trust, David Cannon appears to have been stealing money all along, while Robert Buchanan and Adele Pope have been fighting the court to uphold the singer's original wishes to donate his trust funds to poor children's education.

"In an interview with WKDK, you can hear in his own voice, James Brown says he was led by a Bible verse to use his music empire to fund education opportunities," she explained. "He grew up very hard, so he had a lot of sympathy for poor kids... he said not everyone can have his talent, but education can get them an opportunity."

But family members and other interests, who knew of Brown's decision long before his death to give his wealth to needy children, challenged Brown's decisions after his death in the court.

Thus Buchanan and Pope have been targeted. However, they've been attempting to keep with Brown's original plan and Brown's grandson,

Summer also suggested that former Att. General Henry McMaster may have had a hand in the brutal breakdown of Brown's trust and could be financially benefiting from the confusion.

Brown's grandson, Forlando Brown filed a lawsuit in 2008 in an attempt the interests of his grandfather. He alleged that Pope and Buchanan were illegally appointed as the trustees and would not "protect Brown's estate plan from disinherited relatives."

However, shortly after appearing to the media with McMaster in 2008, McMaster entered into a s Brown's Irrevocable Trust.



Ex: 20

Brown's will and trust directed his trustees to vigorously defend his estate plan, and anyone who challenged the estate plan would receive nothing. According to original trustee Dallas and his successors, Bob Buchanan of Aiken and Adele Pope of Newberry, there was no basis for the settlement deal—and it should be overturned.

Estate records show that Brown's trustees Pope and Buchanan obtained court approval to make education distributions to grandchildren before the settlement deal was reached.

The AG's office approached the Brown family about a settlement deal, Daryl said. "I admit, I was very vulnerable then... We were told if we didn't sign on this agreement, the judge would make a decision against us."

The 2008 mediation lasted from 10 a.m. to 10 p.m., and Daryl had misgivings even during the discussions, especially about Brown's companion. The agreement required the children to acknowledge Hynie as their father's wife and to give her one-quarter of his music empire. "I knew that would bite us in the a--," Daryl said.

"Sonny" Jones of the AG's office attended the mediation. Daryl said, "The AG's office was supposed to protect the charity, by law. Everything we did, we went by our lawyer's advice and advice from the AG's office."

In the beginning, he and the family made mistakes, Daryl said. "But after the mistakes were made, who's running the show now? That's the AG and Bauknight. He talks to us terribly, a very nasty attitude. When we call, they say 'we'll get to you whenever.' Something is not right here."

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When questions are asked about the estate, Daryl said, the family is stonewalled. "We're told, 'Don't say anything. You don't want Adele Pope to get back in here.' That's just throwing up a smokescreen."

Things would have been better if his father's last will and testament had been honored, he said. "Things never would have been this way if we'd left it alone."

Buchanan and Pope defended James Brown's estate plan with an appeal to the S.C. Supreme Court, and arguments were heard Nov. 1. After the appeal was filed, Buchanan and Pope were sued by Daryl and others, current trustee Russell Bauknight, and the AG for allegedly causing "millions of dollars" in damages to the estate.

The lawsuit is being handled by the Wingate firm of Columbia, but the AG's office refuses to release a complete copy of the contingency-fee contract authorizing the lawsuit.

"Things were done without me knowing. Just like, I didn't know I was suing Adele Pope until I went over to Columbia with Deanna," Daryl said.

Daryl claims he did not sign a contract with the Wingate firm, and he knew nothing about an October motion by Mark Gende of the Wingate firm to add him as a defendant in a Freedom of Information Act (FOIA) lawsuit filed by Pope for the release of the contract.

"No, I don't know anything about all that. They'll put my name on it, but I'm telling you, I didn't know anything about that," he said.

IN THE MATTER OF:

THE ESTATE OF JAMES BROWN a/k/a JAMES JOSEPH BROWN

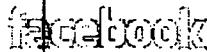
DEPOSITION OF DEANNA BROWN THOMAS

TAKEN ON OCTOBER 31, 2007

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James Brown "I Feel Good" Trust (FOIA Concerns)'s Profile



James Brown "I Feel Good" Trust (FOIA Concerns)

James Brown Grandson Ordered To Attend Status Conference After Firing Legal Team

By Sue Summer

For The Newberry Observer Dec. 7, 2011

In an order issued Dec. 5 by U.S. District Judge William Bertelsman, the grandson of music icon James Brown was ordered to appear on Dec. 15 for a status conference related to his lawsuit against Newberry resident Adele Pope.

In 2008 Forlando Brown sought to enjoin Pope and Aiken attorney Robert Buchanan from acting as trustees of James Brown's Irrevocable Trust, alleging they were illegally appointed on Nov. 20, 2007, and would not protect Brown's estate plan from disinherited relatives.

Two weeks ago Forlando fired his entire legal team because he felt they were not working hard enough to defend his grandfather's estate plan, which directed his entire music empire to be used for educating needy students in South Carolina and Georgia.

Even though Forlando's lawsuit alleges Buchanan and Pope would not defend the estate plan, since that time they have "vigorously" defended the Will and Trust against challenges from disinherited, claimed relatives. On Nov. 1, the S.C. Supreme Court heard arguments in the Buchanan/Pope appeal of a settlement deal between former Attorney General (AG) Henry McMaster and people Brown specifically disinherited—a deal that gave them over half of the assets Brown intended to benefit needy students. Essentially, the deal cut by McMaster dismantled James Brown's estate plan.

Before settling with parties that Forlando characterized in a recent telephone interview as "greedy family members who want something they are not entitled to," the AG's office did not conduct an investigation as to the strength of their claim that Brown had been "unduly influenced" in writing his Will and Trust, according to an admission to the Supreme Court by assistant AG Sonny Jones.

The AG's office also failed to determine whether claimants were in fact family members by failing to require that they participate in the DNA protocol. The AG's office further failed to protect the estate plan by not enforcing its In Terrorem clauses, which means those who contest the Will inherit nothing.

Forlando now agrees that Buchanan and Pope are working to uphold his grandfather's estate plan, and he has stated that he would like to settle the lawsuit against them. He is looking for new legal counsel, and in a last week's telephone interview, he said he was being guided in this process by John Sparks in Atlanta.

"He is helping me find the right counsel because he understands what is at stake," Forlando said.

Exactly how much is at stake remains in controversy. Forlando believes the music empire was worth about \$100 million at his grandfather's death because in 2007 an offer was made to purchase the assets for that amount. Current trustee Russell Bauknight, however, has filed documents with the Internal Revenue Service that allege the value is less than \$4.7 million.

Under the McMaster deal, Forlando's father Terry was given the right to purchase the music assets, but Forlando emphasized: his father did not contest the will.

"After my father refused to join the fight (to contest the will and trust), they called us to South Carolina, to the Attorney General's office. They said they could settle without us, and they'd make sure we got nothing. We were given an ultimatum," Forlando said.

His father's interest was to move the estate to capable management by someone who understands the music business, Forlando said.

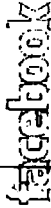
The two of them are working on a biography of James Brown that reveals his childhood hardships. "We want to tell the story, to encourage needy children: they can succeed, too. He left them that opportunity."

The status conference in the Brown v. Pope lawsuit will be held in Charleston before U.S. District Judge William O. Bertelsman of Kentucky on Dec. 15.

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James Brown "I Feel Good" Trust (FOIA Concerns)'s Profile



James Brown "I Feel Good" Trust (FOIA Concerns)

Goats Roar in James Brown FOIA Lawsuit David Asks: 'What Is AG Alan Wilson Hiding?'
(Revision based on telephone interview with Fernando Brown on Saturday afternoon)

By Sue Summer
For the Newberry Observer Dec. 11, 2011

In a July 15 letter, Columbia attorney David Black of the mega-firm Noseny/Prust issued a threat to Newberry resident Adele Pope. If she continued to file requests for documents and information under the Freedom of Information Act (FOIA), he would file an action to have her sanctioned.

On Friday afternoon, Black followed up on that threat through one of his clients, the current trustee of the James Brown trust, Columbia C.P.A. Russell Baunlight.

Mark Gende of the large Columbia law firm Sweeney, Wingate and Barrow filed the motion in the Newberry Courthouse, asking for sanctions against Pope and "other relief the Court deems just and reasonable."

In this action, Gende is representing Baunlight, as well as other private parties that he requested be added as defendants in Pope's FOIA lawsuit against Attorney General (AG) Alan Wilson, which seeks the release of the contingency fee contract between former AG Henry McMaster and the Wingate firm.

Under the contract, the State of South Carolina, Baunlight, and 13 disinherited, claimed relatives of James Brown are suing Pope and Aiken attorney Robert Buchanan, asserting that they caused tens of millions of dollars in damages to Brown's assets while serving as trustees from Nov. 2007 to May 2009.

Ironically, the AG's office has since agreed to litigate by Baunlight to the Internal Revenue Service that the entire Brown music empire was worth a mere \$4.7 million at his death in 2006, even though it was bringing in about \$4-5 million in royalties every year.

The legal Goats of Noseny/Prust and Sweeney, Wingate and Barrow filed the motion for sanctions in their continuing effort to block the release of the contingency fee contract under which McMaster engaged the Wingate law firm to sue Pope and Buchanan for their "vigorous" defense of James Brown's estate plan. As part of that defense, Pope and Buchanan appealed to the S.C. Supreme Court a settlement deal cut by McMaster that essentially disinherited Brown's estate plan. The McMaster deal gives away over half of what Brown intended to be used for the education of poor children to claimed relatives that Brown intentionally disinherited.

After months of having her FOIA requests for the contract dodged by Wilson's office, Pope filed an FOIA lawsuit in August. The suit names only Wilson as a defendant, but at a hearing in November, Gende asked that his private clients—including Baunlight and the claimed relatives—be added as defendants.

The FOIA is intended to grant every citizen access to public documents and government business, and as a public official, Wilson would be subject to the FOIA law. None of Wingate's individual clients are public bodies, however, and Pope had not requested documents or information from them.

All of the AG's contingency fee contracts contain language that confirms they are public documents. AG Wilson has released other contracts on his website, and through his assistant Sonny Jones, Wilson has confirmed that the McMaster/Wingate contract is also a public document. The AG's office has not responded to the emailed question: Is the McMaster/Wingate contract the only contract not released by Wilson?

Judge Frank Ady declined to rule on whether the private parties should be added as defendants in Pope's FOIA lawsuit against AG Wilson, but he ordered the FOIA lawsuit to be consolidated with the McMaster/Wingate lawsuit against Buchanan/Pope in Richland County.

In Pope's answer, she claimed Gende's motion to add private plaintiffs to a lawsuit involving public documents was intended to delay the release of the contract and to deny her the exercise of her FOIA rights. The FOIA includes criminal penalties for violation of the law, a fine of no more \$100 for first offense. Gende's motion for sanctions and penalties asserts Pope has accused his private clients of criminal activity by advising the court that they are intentionally interfering with her FOIA rights.

In essence, Gende did exactly what Black threatened in July: he is attempting to have Pope sanctioned and penalized for attempting to exercise her rights under the FOIA.

Several affidavits of private citizens and journalists from Aiken, Newberry, and Lexington counties have been filed by Pope with a motion for Judge Ady to reconsider the consolidation of the FOIA and civil cases.

All affidavits emphasized the importance of protecting the public interest and keeping the FOIA strong.

Ex:31

Several, including one filed by Debra Spence, widow of former Congressman Floyd Spence, asked the question: what is AG Wilson hiding. "I am concerned that AG Wilson's refusal for more than four months to release a public document makes it appear that he is covering up an inappropriate or questionable agreement."

Spence also asked the court to consider: Black, speaking for Bauknight, made "vicious statements about Mrs. Pope and Mr. Buchanan that were repeated in hundreds of media outlets." At the Supreme Court hearing on Nov. 1, she said, "I heard another Nissen Prust lawyer and Mr. Jones from the AG's office trying to justify to our Supreme Court why Henry McMaster gave away what was correctly described as Mr. Brown's 'noble estate plan.' Since then, AG Wilson's refusal to release the McMaster contract has focused my attention on other troublesome things McMaster did -- or is said to have done -- in connection with Brown's estate and trust, and I believe the public has a right to learn what really happened."

Other affidavits in support of the FOIA, not all of them filed, include those from: Journalist Vic MacDonnell, whose pursuit of documents while editor of the Newberry Observer led to a Reid Montgomery press award for protecting the FOIA; copyright expert Jeff Smith, who has written an article for publication on the copyright issues related to the James Brown estate; and this reporter, who has requested the McMaster/Wingate contract at least six times by telephone, email, and as of last week, by certified mail. The FOIA requires a response in 15 working days.

In Pope's affidavit, she states there is no basis under the law for any of Gande's private clients to enter a FOIA lawsuit against a public official, and that Gande's motion was intended to cause "delay and denial" of her rights. She said the contract should be released because it is a public document that could determine: a) whether any public purpose is being served; b) whether the AG has proposed an illegal fee-sharing arrangement with individuals; c) whether the following provision, found in other contingency fee contracts, is appropriate: "(t)he AG shall retain 10 percent of Special Counsel's fees awarded under this suit."

In a telephone interview Saturday afternoon (Dec. 10), Brown's grandson Forlando—whose father Terry Brown is named as a plaintiff in Gande's motion to sanction Pope—said neither he nor his father knew about the motion until he received a draft of this story by email and was asked to comment. "I did not know my father was a party, and my father didn't know it, either. There is something going on in South Carolina that people need to know about."

Forlando said the attorneys involved in the Brown estate have been working to increase their fees, not to represent him: they would not even return his calls. Two weeks ago Forlando fired his entire legal team and will have new attorneys representing him at a Dec. 15 status conference before U.S. District Judge William O. Bertelsman of Kentucky. The conference relates to a 2008 lawsuit filed by Forlando against Pope and Buchanan that asserts they were illegally appointed and would not defend his grandfather's estate plan.

Forlando reiterated that no one had discussed the motion for sanctions with his father. "My Dad didn't know, and I didn't know until I read your story."

With the filing of the motion on Friday afternoon, the Goliath law firms have made good on the threat of July 15. They are adding for sanctions and penalties against a private citizen for exercising her rights under the FOIA.

The longer AG Wilson allows the Goliaths to pound David, the more it appears that he is hiding something. How big and how bad, or how small and innocuous, no one will know—until the document is released.

###

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Randee Yates Modjeskar likes this.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
Adele J. Pope,	)	Civil Action No.: 2011-CP-36-00379
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR SANCTIONS
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina	)	
Plaintiff.	)	

Pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, the Proposed Intervenor¹ move before the Court for an Order granting sanctions against Plaintiff Pope and her attorney, Adam Silvernail. The facts and law in support of this Motion are more fully set forth below.

FACTS BEARING UPON THE MOTION

The fee agreement between Proposed Intervenor and their counsel is the subject of a pending discovery motion before the Court in Richland County Case No. 2010-CP-40-4900 (this case is referred to as "Case No. 4900"). (See Defendant's Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction; Plaintiff's Motion for Protective Order Concerning Fee Agreement and/or Motion to Strike

¹ The Proposed Intervenor are as follows: RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL I. BROWN, individually and on behalf of his minor child, JANIS R.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENGSHA BROWN; LARRY BROWN; and TERRY BROWN. The Proposed Intervenor are the non-governmental Plaintiffs in Case No. 4900.

Ex:32

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	Civil Action No. 2011-CP-38-00379
Adele J. Pope,	)	
	)	
Plaintiff,	)	PLAINTIFF'S RETURN AND OPPOSITION
	)	TO MOTION TO INTERVENE
v.	)	
Alan Wilson, in his capacity as	)	
Attorney General of South	)	
Carolina,	)	
Defendant.	)	

TO: DEFENDANT AND PURPORTED INTERVENORS, NAMELY ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA; RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN; TOMMIE RAE BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JAMES B.; DARYL J. BROWN, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILD, JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, SYDNEY L. AND CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; AND TERRY BROWN AND/OR THEIR COUNSEL.

Plaintiff opposes the Motion to Intervene for the reasons set out below:

1. Intervention is unwarranted and improper as to all purported intervenors

as follows:

- a. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, is already a party to this action and is properly represented by a member of his office herein.¹ The sole Defendant

¹ Plaintiff has vigorously objected to the purported representation of the Attorney General by contingency-fee counsel which simultaneously represents private individuals. Plaintiff reserves the right to raise her objections herein if the Court grants



STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT OF ADELE J. POPE
OPPOSING MOTION TO INTERVENE
AND IN FURTHER SUPPORT OF
EXPEDITED IN CAMERA REVIEW
AND SUMMARY JUDGMENT

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes
and says:

1. This affidavit is made of my personal information and belief.

2. I am informed and believe that the extraordinary facts of this case; resistance
of Attorney General Alan Wilson to deliver documents he has declared public and
asserted he is "more than willing" to produce; and the direct interference of certain
individuals with knowledge that they are obstructing the compliance by a Public Body of
The S. C. Freedom of Information Act ("FOIA") call into question whether there has
been a violation of S. C. Code § 30-4-110, which states in part:

Any person or group of persons who willfully violates the provisions of this
Chapter shall be deemed guilty of a misdemeanor and upon conviction
shall be fined not more than one hundred dollars...

3. I am informed and believe that the willful violation of FOIA by certain of the
proposed intervenors violates § 30-4-110 and should be addressed by the Court as
follows:

a. Summary Judgment and direction to the Defendant to immediately release

1



jeopardy the right of the public and the press to examine the McMaster/Wingate contract to sue Buchanan/Pope to determine:

- a. whether any public purpose is articulated or fulfilled;
- b. whether the AG proposes an illegal fee-sharing agreement with individuals;
- c. Whether the following provision, found in other Litigation Retention Agreements, is appropriate:

.... Provided, however, the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 3.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
7th day of November, 2011

[Signature] (L.S.)
Notary Public for South Carolina
My Commission expires: 7/12/2016

C:\Users\Adam\Downloads\FOIA.2 AFFIDAVIT EXPEDITE (1).wpd

**LAW OFFICE OF
ADAM T. SILVERNAIL, LLC**

December 9, 2011

POST OFFICE BOX 1886
1218 TAYLOR STREET
COLUMBIA, SOUTH CAROLINA 29202

By E-mail and U.S. Mail:
J. Emory Smith, Jr., Esquire
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Pope vs. Wilson
Newberry County Case No. 2011-CP-36-00379

Dear Emory:

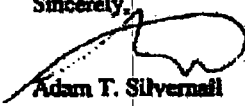
Your letter of this afternoon states that you "stand ready to have these issues resolved in Richland as quickly as possible." If that is the case, why doesn't your office resolve the issues today by sending the requested documents to me and to the press? This would leave only the claim for my fees and costs, now approximately \$5,300, to be resolved by agreement or Order in Newberry County.

As you know, Judge Addy's Order raises issues of public importance. The 5 affidavits filed to date suggest that this case is a blemish Attorney General Wilson's otherwise distinguished service to the State in FOIA compliance. In particular, I bring your attention to the affidavit of Tom Young, which highlights provision in the Freedom of Information Act's preamble that FOIA requests should be honored "*at a minimum cost or delay.*" Attempting to transfer this matter to Richland County will surely force both the State and my client to incur unnecessary additional costs and will delay compliance indefinitely.

Attorney General Wilson, by simply releasing this public document to my client and to the media, can reduce this matter from a public policy debate to a simple discussion over whether my fee should be paid pursuant to S.C. Code Ann. § 30-4-100(b).

By copy of this letter to Sue Summer, who has also sought one or more of the documents requested in this action, I am informing her of this proposal.

Sincerely,


Adam T. Silvernail

cc: (w/ copy of your letter)
Adele J. Pope, Esquire
Mrs. Sue Summer
Thomas R. Young, Jr., Esquire

TEL: 803/778-1770

FAX: 803/403-8032

EMAIL: ADAMSILVERNAILLAWFIRM.COM

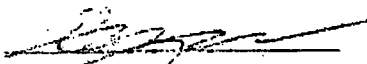
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
Adele J. Pope,	)	Case No. 11-CP-36-364
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MOTION OF ATTORNEY GENERAL
Alan Wilson, in his capacity as	)	TO STRIKE OR EXCLUDE
Attorney General of South Carolina and	)	AFFIDAVIT OF JEFFREY SMITH
James Brown Legacy Trust, by	)	
Russell L. Hauknight, its Trustee,	)	
	)	
Defendants.	)	

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Affidavit of Jeffrey Smith dated December 9, 2011, and attachments thereto in that the Affidavit contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant. The attachments are all irrelevant and the Pope and Spence affidavits and draft article contain hearsay and speculation.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

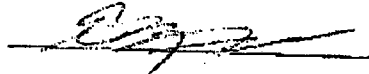
December 22, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

EX:33

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.



December 22, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

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James Brown "I Feel Good" Trust (FOIA Concerns)

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Entertainer

In his estate plan, music icon James Brown established the "I Feel Good" Trust to provide scholarships to needy and deserving children in SC and GA. Will his final wish be granted? FOIA lawsuits in Newberry, SC may help to decide the answer.

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James Brown "I Feel Good" Trust (FOIA Concerns)
Friday

Former James Brown Trustee Fights "Career-Threatening" Allegations of Lying To Court

For The Newberry Observer
By Sue Summer June 17, 2012

In motions filed June 8 and June 14, attorneys for James Brown's companion Tommie Rae Hynle and current Brown trustee Russell Baulright accused former trustee and Newberry resident Adele Pope of Court filings that are "works of fiction" and "statements that are false."

On June 15 Pope responded by asking for an expedited hearing "to determine if Hynle recklessly or intentionally made ... false, career-threatening ... allegations."

The Hynle/Baulright motions also ask the Court to strike Pope's filings because she is not a party to the Brown estate case, and they ask the Court to continue a four-year-old gag order which prohibits Pope and others from discussing Hynle's diaries.

According to a longtime friend of James Brown, the Hynle diaries offer evidence that Hynle was not Brown's wife and should not have been given one-quarter of his music empire in 2009 settlement deal forged by former Attorney General (AG) Henry McMaster.

Hynle's handwritten diaries were discovered in Brown's home after his death. The original trustees had them transcribed, and copies were distributed or discussed with 50-100 people. In 2008 Judge Doyet Early issued a series of gag orders that: required copies of the diaries to be taken up, and; prohibited discussion of the diaries' contents until a hearing was held. The hearing never occurred.

AG Alan Wilson has recently joined in the request to keep Judge Early's gag orders in place, preventing any public scrutiny of whether Hynle's spousal claim was fully investigated by the AG's office before awarding her as much as \$20 million.

Pope requested that there be no delay in lifting the gag orders and that Hynle be compelled to attend the expedited hearing. Pope argued the public should be free to discuss whether the orders had been used to "silence the truth; perpetrate fraud on any court; or allow Hynle to keep \$20 million or more that James Brown gave for scholarships to needy and deserving students through the 'I Feel Good' Trust."

Pope asked for a hearing to "stop the fraud on this and other



James Brown "I Feel Good" Trust (FOIA Concerns)
Saturday

This facebook page was removed in March and down for three weeks, with no warning and no explanation. Comments that may result in having the page removed again have to be removed (i.e., profanity, allegations, etc.). Since I was given no reason before, I am probably being overly-cautious. My apologies.

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Given Morton likes this.

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Carmelle Delfino A copyright law can actually destroy a foundation/trust?
I'm not sure I understand... because that could be very debatable... what kind of phrase or intent or catch all concept was used to create it that can be eliminated after a certain ...see more
16 hours ago · Like



Carmelle Delfino Michael Jackson came back to the U.S. for the memorial of James Brown... He never wanted to come back here but he finally stayed and less than 3 years later he was dead and both knew Conrad Murray

How ironic that the same people he hung out with, so did the other and so was dear ole Al Sharpton hanging from their pockets
6 hours ago · Like

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James Brown "I Feel Good" Trust (FOIA Concerns)
June 15

Review of copyright info, Pope/Smith article (12 photos)
Former James Brown trustee Adele Pope and local copyright attorney Jeff Smith wrote an article on how the McMaster settlement deal essentially destroys the "I Feel Good" Trust, Brown's education charity. Their discussion provides a basic overview of how federal copyright law comes into play in the Brown case. (The article was attached as an exhibit in earlier pleadings.)



Review of copyright info, Pope/Smith article (12 photos)
Former James Brown trustee Adele Pope and local copyright attorney Jeff Smith wrote an article on how the McMaster settlement deal essentially destroys the "I Feel Good" Trust, Brown's education charity. Their discussion provides a basic overview of how federal copyright law comes into play in the Brown case. (The article was attached as an exhibit in earlier pleadings.)

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Half Cocked is a movement, week about South Carolina Gamecock attire

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Ex:49

Courts," a hearing that would address several critical questions:

Search for people, places and things

James Brown "I Feel Good" Trust (FOIA Concerns)

Search for people, places and things

- 1) Is the worldwide music empire of James Brown—including copyrights to over 850 songs and rights to his image—worth \$85 million (as asserted by Pope) or \$4.7 million (as Bauknight and Hynie have claimed)?
- 2) Is Hynie's claim to be Brown's wife a "slam dunk," as Bauknight's attorney told the Supreme Court, or "without merit," as Pope claims?
- 3) About half the value of Brown's worldwide music empire is in publicity rights, which are not subject to termination under federal copyright law. Why then did Bauknight's attorney argue to the Supreme Court, "Termination rights is all this case is about"?
- 4) Are Hynie and the seven claimed children included in the McMaster settlement deal Brown's heirs under federal copyright law, or are other DNA-proven children also Brown's heirs, as Pope asserts?
- 5) Will there truly be nothing left in the "I Feel Good" Trust by 2023-2025 if the McMaster settlement deal is not approved, as asserted by Hynie/Bauknight?

In the June 15 pleadings, Pope also claims that Hynie attorney Robert Rosen—in arguing his client would be irreparably harmed if the Supreme Court discovered the diaries' contents—is in fact offering support for Pope's position that Hynie was not Brown's spouse.

"The diary should be exposed if it will help either a subsequent Attorney General or the Court discover whether an egregious error has been made and \$20 million should stay with the 'I Feel Good' Trust for scholarships..." Pope said.

The McMaster settlement deal has been appealed to the S.C. Supreme Court. Oral arguments were held Nov. 1, but no decision has been issued.

###

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James Brown "I Feel Good" Trust (FOIA Concerns) shared a link.
June 18



For Father's Day, Papa gets a brand new son! Las Vegas man claims James Brown was his father (SC) —
www.estateofdeniel.com

His mother, now deceased, met James

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Don't Miss It! For Editors Only... Do Not Copy

Private Foundations, Copyrights, News and Musical Relationships
or
Why The James Brown "I Feel Good" Trust Doesn't...

By John J. Pope and W. Jeffrey Brown
© 2011

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Over the long years, Brown had earned the reputation as "the hardest working man in show business." Through his music, he became a household name, and his family and estate have continued to prosper. Brown, twenty-eight years from 1955 copyright, undoubtedly made his fortune right.

Don't Miss It!

After 30 years of his death, Brown decided to create the "I Feel Good" Trust as a testament to the person he was. The way to create a family was with education and hard work. Brown's legacy was to be a legacy of education and hard work.

After four years of work with estate planning specialists, Brown's last wish was to be remembered in 2011. It includes a 100-year-old Brown's foundation, the 1000 remaining trust which was managed solely by education. At Brown's death the 2011 Trust created a 1000-year-old foundation for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

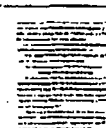
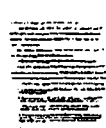
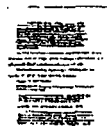
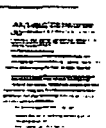
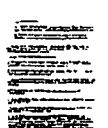
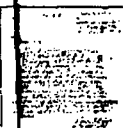
Following is the full release when James Brown's estate plan had all.

1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th.

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Pope Asks For Expedited Hearing re: Hynie Diary, Valuation, Heirs (11 photos)

Pope asks Court to lift gag orders related to Hynie diary and to hold an expedited hearing to deal with questions related to the \$4.7 million valuation of Brown's music empire, Hynie's claim, termination rights, heirs determination and other questions.



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James Brown's Estate and Wishes Remain in Limbo

50

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Image via Wikipedia

The Godfather of Soul passed away on Christmas Day, 2006, and generously left his \$100 million fortune to a special trust set up to help poor and needy children. Yet, four-and-a-half years later, not one child has seen a cent. Why?

1

10

The court battle over his final wishes has dragged on ... and on ... and on, as court fights often do. While most estate fights are devastating for family members,

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both emotionally and financially, this one has affected many more — those that needed help the most. How did this happen?

James Brown passed away with at least nine children, three ex-wives, and a woman who may or may not have been his widow. This woman, Tomi Rae Hynie, was technically still married to another man when she tied the knot with James Brown (although that marriage was later annulled,

5x:55

<http://blogs.forbes.com/trialandheirs/2011/08/08/james-browns-estate-and-wishes-remain-in...> 8/9/2011

0644

reportedly). Hynie also had a child named James Brown, II, which may or may not have been fathered by Brown. To complicate the estate, Brown never updated his will or trust during his five-year marriage to Hynie, so it was unclear if he did or did not want to include Hynie or his new son.

Many feel that Brown's wishes were clear however, and those wishes did not include his family. As a recent article in *Rolling Stone Magazine* pointed out, his former attorney and a former producer who used to work with him both publicly claim that he only wanted his wealth to help needy children, not his own children. His widow and adult children feel otherwise, though, so they have been battling to receive a share of his family fortune.

The case seemed to reach a conclusion, designed to prevent a lengthy and expensive fight, back in early 2009. At that time the Attorney General's office of South Carolina and the family struck a settlement, giving the family a 50% share in the estate. Hynie was to get about one-quarter and another quarter was to pass to all of the children (including James Brown II, who was agreed to be Brown's son). Brown's charitable intent was slashed in half.

Did that resolve things? Not even close. Two of Brown's former trustees, who had been removed from administering the trust, appealed the probate judge's decision to approve the settlement, arguing that Brown's intent was clear and the estate planning documents he signed — including the trust he established for poor children — had never been found to be invalid. That appeal is now with the South Carolina Supreme Court.

And one of Brown's former producers, Jacqueline Hollander, also sued to stop the settlement. She claimed that Brown had created a partnership with her to allow her to manage the trust for needy and poor children. She alleged that he has assigned all of his assets into the trust. She says she has undeniable proof, including Brown on videotape affirming his desire to benefit poor children through this trust. Hollander permitted the *Rolling Stone* writer to review all of her evidence, and together they gave a recent radio interview and explained how Brown's wishes were clear — he wanted poor children to benefit, not his own children. In fact, they pointed out that Brown's relationship with his children had grown so distant in his final years that they had to schedule an appointment to see him.

Unfortunately for Hollander, her lawsuits haven't gone well. She first sued, twice, in Illinois where she said the partnership was created, but those cases were thrown out. She then tried federal court in California, which also dismissed the case not once but twice, because she sued in the wrong court, the judge ruled. This last dismissal happened just recently and Hollander has already appealed the decision, still fighting desperately to enforce what she believes were Brown's clear wishes.

It remains to be seen whether Hollander's efforts, or the appeal in South Carolina which also seeks to have all of Brown's money pass to charity and not his family, will be successful. But what cannot be questioned is that the legal fees, lost time, and court costs expended in these fights mean that if the poor and needy children that Brown wanted to help ever do benefit from his estate, it will be much less — and much later — than Brown ever could have imagined.

Brown's adult children believe that the estate planning documents do not reflect his true wishes, either because of mental incompetency or undue

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DANIELLE'S NEW POST
James Brown's Estate and Wishes
Remain in Limbo

DANIELLE'S NEW POST
Welcome to Trial & Heirs! We Use
Celebrity Stories To Teach About
Estate Planning

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1. James Brown's Estate and Wishes Remain in Limbo	694 views
2. Welcome to Trial & Heirs! We Use Celebrity Stories To Teach About Estate Planning	283 views

ABOUT ME

Danielle and Andy Mayoras, co-authors of *Trial & Heirs: Famous Fortune Fights!*, husband-and-wife legacy expert attorneys, and hosts of the national TV special, *Trial & Heirs: Protect Your Family Fortune!* The charismatic duo has appeared on the Rachael Ray Show, *Forbes*, ABC's *Live Well Network*, and FOX and NBC affiliates. They've lent their expertise and analysis to hundreds of media sources, including *The Associated Press*, *Los Angeles Times*, *The Huffington Post*, *Kiplinger*, and *The Washington Post*, among many others. Danielle and Andy delight audiences nationwide with highly entertaining and informative presentations, dishing the dirt on celebrity estate battles while dispensing important legal information to help people avoid family fights among their heirs. For the latest celebrity and high-profile cases, with tips to protect yourself, your loved ones, and your clients, subscribe to *The Trial and Heirs Update* at www.TrialandHeirs.com.
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**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

May 12, 2012

The Honorable Alan Wilson
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Release of Tommie Rae Diaries; \$4.7 Million "appraisal"
of James Brown music empire; and related documents

Dear Attorney General Wilson:

Last week, strangled by fabricated lawsuits of Tommie Rae Hynie, Terry and Forlando Brown, Bob Buchanan was compelled to choose his family, career and health over continuing his defense of James Brown's estate plan.

Bob's need to be paid what Jg. Early awarded him in 2008 left unanswered:

1. Was Bob right that Tommie Rae was not James Brown's wife?
2. Did Bob defraud the IRS and Supreme Court with an \$85 Million value of Brown's worldwide music empire? Or was the less-than \$4.7 Million valuation placed on it by Terry, Tommie Rae and their trustee the fraud?
3. Wasn't Brown's really worth about \$90 Million when Bob was replaced?

Last night at about 8:45 p.m. I was served with the enclosed subpoena, signed by counsel for Hynie, one of the more than 70 attorneys holding documents which will give answers to the above questions. Almost all seek to be paid from the music empire Terry, Tommie Rae and many now say was worth less than \$4.7 when Brown died.

The Office of the Attorney General of South Carolina holds or controls all documents necessary to tell the truth about whether Bob has committed the fraud – or whether it was others –including Terry, Forlando and their joint venturer David Cannon.

Won't you join me by releasing these documents – and agreeing that all sealed documents related to Terry's \$4.7 Million valuation and Tommie Rae's claimed status with respect to James Brown be made public so the truth will be known.

Thank you for your consideration.

Sincerely,



Adele J. Pope

Enclosures: Ltr. to AG Wilson dtd.5/11/12; Subpoena; Attorneys; emails
cc: Sue Summer, others who have made/supported FOIA requests for documents.

**Lawyers Employed by Attorney General/State of South Carolina
aiding Cannon, Tommie Rae, Terry by holding/refusing to release documents showing
James Brown's Music Empire worth \$85 Million or more/ Tommie Rae not spouse
(2006 - 2012)**

1. Attorney General Henry D. McMaster - term expired January 2011 - On February 10, 2008 reported in WIS-TV interview as follows:

With appeals, McMaster expects this battle [to save The James Brown "I Feel Good" private foundation] could go on for years. That means attorney fees could potentially whittle away money that could be used to educate poor kids.

McMaster says, "There is a concern some could be whittled away, but we think there is so much money involved because his name is so big and the rights to his image - really a valuable thing. We're trying to look at this long terms."

Four months later, with knowledge of the Tommie Rae's diaries, McMaster gave her 25% of Brown's music empire; took over Brown's assets; and has since concealed the diaries AND the less-than \$4.7 Million valuation.

2. Attorney General Alan Wilson - term commenced January 2011
3. Chief Deputy Attorney General John W. McIntosh
4. C. Havird "Sonny" Jones, Esq.:

On December 6, 2007 and thereafter communicated with all counsel in Case 122 about \$100 Million offer. [SEE: Aff. AJP, Case #1647, dtd 5/15/09, Exhibit A; Ltr. Buchanan/P to Atty. General McMaster, 6/27/08]

5. Mary Frances Jowers, Esq.:

See memos, filings and notes from attendance at Buchanan/Pope PR/Trustee meetings confirming facts showing Tommie Rae not married to James Brown. Believed to have read diaries before the Diary Orders. Never questioned \$85 Million value of music empire on I&A filed by original James Brown PR s on Nov. 15, 2007.

6. Robert McNair, Esq.

Failed to report to Court Adele Pope's request to appear and speak - or have State speak - on behalf of needy students at Cannon Alford Plea and sentencing. Advised Court that State's deal with Cannon provided for no recommendation as to sentence or restitution of \$12+ Million stolen from James Brown or for forgery of \$3.7 Million "contract" with Brown.

7. J.C. Nicholson, Esq.
8. Robert Cook, Esq.
9. Emory Smith, Esq.
10. Grace Lewis, Esq. of the Office of Georgia AG. Pro hac vice status terminated.
11. Emory Smith, Esq. -Fighting FOIA release of \$4.7 Million Information since 2011.

Lawyers Asserting that they speak for the Attorney General/State of South Carolina
and/or the trustees for Tommie Rae and Terry holding/refusing to release documents showing
James Brown's Music Empire worth \$85 Million or more/ Tommie Rae not spouse

12. Kenneth Wingate, Esq. - sued Bob for tens of millions of dollars for not accepting \$100 Million offer at the same time his clients were telling BOTH the IRS and the Supreme Court of South Carolina:
 - a. Bob's \$85 Million value of the music empire in IRS filings was both a fraud to get a big fee and a crime.
 - b. Terry and Tommie Rae's value of less than \$4.7 Million is correct.
13. Mark Gende, Esq. - See Wingate. Sought sanctions for Tommie Rae/Terry against Adele Pope for exercising FOIA rights.
14. Scott Barrow, Esq. - contributor to McMaster's campaign after hiring. See Wingate.
15. David Black - reported in 441 media outlets accusing Bob of fraudulent acts the day before the Supreme Court heard the Case 1847 appeal.
17. Freddie Kingsmore, Esq. - told IRS that Brown's music empire was worth less than \$4.7 Million, then filed I&A under seal. Refuses to file \$4.7 Million appraisal required to do by Probate Code.
18. William Klett, Esq. - gathered up information from former Entertainment Counsel Ray Gonzalez which supports \$100 Million valuation of music empire, then asked Gonzalez to destroy his request for the file.
19. William Newsome, Esq. - See Kingsmore
20. Rick Reames, Esq. - See Kingsmore
21. William Wilkins, Esq. - told S.C. Supreme Court he knows value of music empire [\$4.7 million] even though his client earlier adopted the Dallas brief confirming \$85 Million value. Told S.C. Supreme Court Hyrie spousal claim was a slam dunk even though. Believed not to have reviewed the Diary Orders.
22. Camden Lewis, Esq. - obtained Tommie Rae diaries in 2007 when original Brown PR/Trustees engaged him as litigation counsel to protect Brown's Estate Plan. Charged \$600 per hour. Diaries secured by clients during this period. Hired in 2011 by Tommie Rae/Terry's Trustee to prevent release of documents under FOIA. See Babcock.
23. Ariail King, Esq. - See Camden Lewis.
24. Keith Babcock, Esq. - member of Lewis Firm, which gathered Tommie Rae Diaries. Represented 2 original trustees when \$85 Million I&A was filed.
25. Jonathan Harling, Esq. - See Babcock

Lawyers Representing one or more of Terry, Forlando and/or David Cannon
who have previously confirmed Tommie Rae is not Spouse AND
have documents or have made statements that Music Empire is \$85 Million or more.
[Some Paid or expecting to be paid from less than \$4.7 Million Music Empire.]
(2007-2012)

26. Albert Dallas, Esq. - former Trustee. Seeking \$6 Million based on \$100 Million value. Disseminated Tommie Rae Diaries through Wayne Byrd, Esq., who vigorously asserted that Diaries not privileged and Estate/2000 Trust required to use them against Tommie Rae as part of vigorous defense of Estate Plan. Believed to have told Adele Pope of contents of diaries in 2007 before she read them. Asserts left \$100 Million offer on desk of Jg. Early in 2007.
27. William Hammond, Esq. - advised AG McMaster in 2007 that Estate/2000 Trust worth \$80 Million - \$120 Million. Aware of Diaries and other facts showing Tommie Rae not spouse.
28. William Tucker, Esq. - counsel to original trustees. Believed to have advised Bob of contents of Tommie Rae diaries in 2007. See Hammond.
29. Stanley Jackson, Esq. - Professor/Business valuation. Counsel to PR's when I&A showing \$85 Million value of music empire filed. Vigorously asserted Tommie Rae not spouse, with documentation.
30. Audra Byrd, Esq. - See Dallas. No claim for services filed against Estate to date.
31. Wayne Byrd, Esq. - See Dallas. No claim for services filed against Estate to date.
32. Strom Thurmond, Jr., Esq.
33. David Massey, Esq.
34. Rodney Peeples, Esq. - Established DNA protocol for Estate in 2007.
35. Steve Sidmans, Esq. - Worked on offers for Royalties in early 2007. Filed, but withdrew claim for services to Estate.
36. Joel Katz, Esq. - see Sidmans
37. Steve Jacobs, Esq. - see Sidmans
38. William Custer, Esq. - Asserts:
 - a. On behalf of Forlando: Music empire worth \$100+ Million. On behalf of Terry, exercising his right to purchase: music empire worth \$4.7
 - b. On behalf of Forlando: Tommie Rae not wife. On behalf of Terry: originally not wife; now she is.
39. William Shearer, Esq. - See Custer
40. Jennifer Dempsey, Esq. - See Custer
41. Eric Bland, Esq. - Counsel to Cannon
42. Larry Richter, Esq. - counsel to Cannon
43. Jan Warner, Esq. - counsel to Cannon
44. Matt Bodman, Esq.
45. David Bell, Esq.
46. Angela Kirby, Esq.
47. Thomas Lydon, Esq.
48. Max Pickelsimer, Esq.

Additional Lawyers Representing fiduciaries, former fiduciaries of James Brown, Tommie Rae and/or others in relation to James Brown Music Empire now asserted by Tommie Rae, Terry and Bauknight to be worth less than \$4.7 Million

49. Alan Medlin, Esq.
50. Jean Lee, Esq.
51. Robert Rosen, Esq.
52. Andrew Chandler, Esq.
52. Heyward Carter, Esq.
53. David Michel, Esq.
54. Stephen Slotchiver, Esq.
55. Ernest Finney, Esq.
56. Kendall Few, Esq.
57. James Gilreath, Esq.
57. Louis Levenson, Esq.
58. Lori Chrisman, Esq.
59. David Yount, Esq.
60. James Richardson, Esq. – serving Pro Bono Publico
61. Harley Ruff, Esq.
62. Ray Gonzalez, Esq.
63. Matthew Ballenger, Esq.
64. James Bailey, Esq.
65. Peter Shahid, Esq.
66. Ronald Maxwell, Esq.
67. James Overstreet, Jr., Esq.
68. George A. Scott, Esq.
69. Todd Boudreaux, Esq.
70. Julio E. Mendoza, Esq.

NOTE: This is not all of the attorneys who have worked on James Brown matters since his death on December 25, 2006.

Date: May 12, 2012

**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

May 11, 2012

The Honorable Alan Wilson
South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Aiken County Case No. 2008-CP-02-1425 ("Case 1425");
Terry Brown's false \$4.7 Million value of James Brown's
worldwide music empire, and related fraud on the Courts

Dear Attorney General Wilson:

I returned yesterday from being out of the County to Mr. McIntosh's letter of May 1 refusing, on your behalf, to respond to my concerns about fraud related to the James Brown Estate and 2000 Trust by Terry Brown, the Cannon Group trustees and others.

As the article by Jeff Smith and myself which I sent you shows, the fraudulent scheme of Terry Brown to devalue to less than \$4.7 Million – then buy – James Brown's \$100 Million music empire threatens to destroy the approximately \$80 Million James Brown gave to The James Brown "I Feel Good" private foundation for scholarships for needy and deserving students.

When coupled with the knowingly false assertion by Tommie Rae Hynie that she was Brown's spouse, Terry's fraudulent valuation and purchase of the music empire at a fabricated "fair market value" will leave the "I Feel Good" foundation less than \$2 Million. As a result of Terry's fraud, 70+ of South Carolina's most experienced and expensive lawyers – and some from Atlanta – will share with their clients the \$80 Million or more taken from the needy students.

Has the Attorney General's Office changed its policy to refuse to communicate with citizens who are concerned about fraud against Charities and the taxing authorities?

In 2008 Bob Buchanan and I had lawyers, but communicated directly and frequently with Attorney General McMaster and others in your office. Our correspondence – particularly between May and July of 2008 – expressed our grave concern that AG McMaster was taking the side of the Cannon Group trustees, even though it was already known that Cannon had taken more than \$12 Million, and he and Mr. Dallas had fabricated a post-death Schedule to the 2000 Trust.

I think Mr. McIntosh may have attended a May 2008 meeting we had with Mr.

Ltr. to Attorney General Wilson
May 11, 2012
Page 2

McMaster, with no counsel, about matters related to Cannon's fraud and other things.

I do not recall the Attorney General's refusal to communicate with me because I had counsel. Nor do I believe any counsel has the authority to inhibit my ability as a citizen and a pro se lawyer to express and seek answers about:

- a. Terry Brown, his son Forlando and their joint venturer David Cannon betraying James Brown in the most despicable way – by destroying his noble gift to needy and deserving students while pretending to support it.
- b. Tommie Rae Hynle's assertion that she was Brown's spouse at death where she has knowledge – and the documents show – this is not true.
- c. Terry's fraudulent less-than-\$4.7 Million valuation of Brown's worldwide music empire and scheme to take it from The James Brown "I Feel Good" Foundation.
- d. My fear that no private foundation is safe in South Carolina if Terry's scheme works.

I speak for myself and hold Terry Brown and his joint venturers – and not the 70+ lawyers (including about 10 from your office) – responsible for their schemes. But I must wonder:

Would 70 lawyers in 5 years really work to help their clients either "save" or scuttle a \$4.7 Million music empire?

I respectfully ask that you answer my letters of March 5, March 22 and March 30/April 1. I also ask that you grant me a meeting to speak to you about my grave concerns for the future of private philanthropy in South Carolina if Terry Brown's fraudulent scheme succeeds.

I do not know you personally, but hear from friends I trust that you are trying to carry out your high office with the dignity and skill it deserves. For that reason I hope when you see the documents and know the truth you will understand how important it is to end Forlando and Terry's fraud. It could even rescue James Brown's dream of creating a perpetual fund solely for scholarships for needy and deserving students.

Thank you for your consideration.

Sincerely,



Adele J. Pope

AJP/ja - Encl. Ltr. of May 1



ALAN WILSON
ATTORNEY GENERAL

May 1, 2012

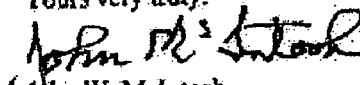
Adele J. Pope
Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108

Re: Your recent letters to the Attorney General

Dear Mrs. Pope:

I am writing in response to your most recent letters to the Attorney General, one dated March 30, 2012, and one dated April 1, 2012, and in follow-up to my previous response to your letters of March 5, 2012, and March 22, 2012. My understanding is that you are represented by counsel in connection with the matters in your letters.

Yours very truly,


John W. McIntosh
Chief Deputy Attorney General

Re: WRITTEN OBJECTION TO SUBPOENA TO ADELE J. POPE - AIKEN #2007-CP-02-0122

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From: Adele Pope

Date: 5/12/2012 6:55:54 AM

To: RKrosen@rosenlawfirm.com

TO: Robert N. Rosen, Esquire
Rosen Law Firm, LLC
18 Broad Street, Suite 201, Charleston, SC 29401

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

Re: Service of Subpoena, Friday Evening, May 11, 2012, 8:45 p.m.

Mr. Rosen:

Tonight I was served at about 8:45 p.m. with a subpoena which refers to a case pending in the Aiken County Probate Court as well as the above-referenced Case number ("Case 122"). The subpoena fails to show the parties to the case, and fails to contain a caption showing the parties.

Along with the subpoena, the process server handed me a check for \$75, payable to "Adele Pope and Robert N. Rosen." This clearly does not comply with the applicable rule. Kindly reissue a check to me, to be received by Tuesday.

The subpoena imposes an undue burden on me for the following reasons:

1. The written and electronic communications related to the disclosure or dissemination of the contents of, or copies of, any diary of Tommie Rae Hynie (a/k/a Brown) span a period of more than five years.
2. Written and electronic communications with reporters, bloggers, websites, or other media outlets related to any diary of Tommie Rae Brown are not under my control; their research would result in a heavy burden; and the documents can be acquired by Tommie Rae Hynie from the same source.
3. You have failed to allow a reasonable time for the completion of this request.
4. Communications prior to the 2008 Diary Orders which are the subject of the hearing, and possibly other documents, may be protected matter.
5. The subpoena requires me to produce documents which Tommie Rae Hynie's counsel is capable of obtaining from public sources and/or Russell Bauknight, her trustee.
6. I am an unretained expert on the issue of Tommie Rae Hynie's status as a non-spouse of James Brown; its impact on the James Brown Probate Proceeding; and its relationship to the heirs provisions of the Federal Copyright Act. As a result, some of the requested documents may be my intellectual property.

I will nevertheless accomplish as much of the task as possible before the hearing if, in addition to correcting the witness fee, you provide me by Tuesday with an additional check for \$750 -- the estimated reasonable cost of search and production of the documents which you have requested.

I will look forward to receiving the check or checks from you by Tuesday, May 15. This communication is intended to comply with Rule 11.

Adele Pope

Columbia, SC 29211

By email and registered mail

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Aaron Hayes Home



sir or madam

James Brown "I Feel Good..

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I request the following documents under the Freedom of Information Act, and I would like to remind you, with all due respect, that I am not a party in litigation regarding the James Brown estate (as has so often been used by the AG as a reason in denying these documents to others). Some of these requests have been made previously, but I believe all are public documents—and in two cases the reason originally given for denying the release of the documents has been rendered moot.

1. There is no question that the McMaster/Wingate contract is a public document, and a letter from assistant AG Jones acknowledged that fact. He further said the AG's office wanted to release a copy and would do so—except for a stay issued by Judge Manning. My position then was that there was no stay (I was in court at the hearing), but the AG argued there was and refused to release the document in full. After Judge Manning issued an order with no mention of stay, the AG's office then argued his stay was oral. Your office later sent generic, partial documents and claimed that more specific portions (where signatures were to be affixed) were not public. Now that Judge Manning has affirmed that there was no stay, there is no reason why the AG's office cannot now release a full copy of the contract, and I ask to be sent a copy forthwith.

2. Knowing the specifics of how money is to enter the Legacy Trust and to whom it will be paid out is critical in understanding the tax consequences of the McMaster settlement deal—and in evaluating whether the charity was indeed protected, which was ostensibly why McMaster entered the estate proceedings and created the Legacy Trust. McMaster was paid by the State out of the public coffers for his work on this trust, as were the other attorneys from his office who participated in the settlement deal. Since then the AG's office has devoted hours upon hours in concealing the very documents paid for by taxpayer dollars. Therefore, the entirety of the Legacy Trust is a public document, and I ask to be sent a full copy.

3. My request for the Hynie diaries was also previously refused, citing a gag order from Judge Early. A May 22 hearing was held on the gag orders, which were first violated by Ms. Hynie herself in a TV interview six months after the orders were issued. If Judge Early lifts the orders, I want to make sure that my FOIA request for a copy is in place so that a copy may be forwarded to me immediately—and if a copy cannot be sent, please release to me all communications related thereto. It is my understanding that the diaries hold a critical piece of evidence regarding the spousal claim of Tommie Rae Hynie—evidence that the AG's office might have used to save about one-quarter of the music empire for the charity McMaster claimed to be protecting. I also request any electronic or written communication regarding the AG's office's recent support for Hynie in her effort to maintain the gag orders through her attorney Robert Rosen. (It is in the public interest to bring into the light and discuss the following scenario: The AG's office says the diaries cannot be released because of a gag order, then the AG's office files documents with the court to maintain the gag order. Why would that happen, when the diaries may include important evidence that affects the future of the James Brown "I Feel Good" Trust?).

4. I request any documents related to the \$4.7 million at-death valuation of James Brown's music empire. According to pleadings I have read, the SC Probate Code requires the documentation/appraisal to be filed with the Probate Court, a duty of the current trustee Russell Bauknight who serves at the AG's pleasure. I am most interested to see the documentation for why the AG's office would approve this figure. (If the AG's office has no documentation of the valuation, surely the AG's office would not have signed off on a \$4.7 million filing with the IRS when the AG's office has the duty of enforcing laws, including tax laws.)

5. I request all electronic or other written communication regarding why the AG's office sought no restitution from David Cannon, even though he has a million-dollar home in Honduras.

Thank you for your prompt attention to these requests, and I request any fees to be waived in the public interest. After all, there are perhaps thousands of young people for whom the James Brown "I Feel Good" Trust might open educational opportunities—and that alone makes these questions of great public importance.

Sincerely,

Sue Summer

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James Brown "I Feel Good" Trust (FOIA Concerns) Freedom of Information Request, asking for: McMaster/Wingate contract, Legacy Trust, Hynie diaries, supporting documents for \$4.7 million appraisal of Brown's music empire, communications related to decision not to ask for restitution from Cannon.

21 hours ago · Like

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James Brown "I Feel Good" Trust (FOIA Concerns) shared South Carolina Press Association's status.

June 4

A bill to strengthen FOIA needs support.

Rep. Bill Taylor of Alken sent this email out Friday:



James Brown "I Feel Good" Trust (FOIA Concerns) shared a link.

June 2

James Brown trustee claims son, grandson conspired with companion (SC) – Estate of Denial
www.estateofdenial.com

In documents filed in Federal Court on Friday, Alken attorney and former James Brown trustee Robert Buchanan alleged that Brown's companion

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James Brown "I Feel Good" Trust (FOIA Concerns)

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In his estate plan, music icon James Brown established the "I Feel Good" Trust to provide scholarships to needy and deserving children in SC and GA. Will his final wish be granted? FOIA lawsuits in Newberry, SC may help to decide the answer.

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James Brown "I Feel Good" Trust (FOIA Concerns) shared a link via James Brown. Wednesday

Again I ask, how can the at death valuation of Mr. Brown's music empire be \$4.7 million, as reported to the IRS by current trustee Russell Bauknight, with the approval of AG Alan Wilson?



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James Brown "I Feel Good" Trust (FOIA Concerns)
17 hours ago

AG Wilson Asks Judge to Conceal Diaries of James Brown's Companion

For The Newberry Observer
By Sue Summer June 9, 2012

The Attorney General (AG) of South Carolina has asked an Alken County Judge to keep sealed the diaries of Tommie Rae Hynle, companion of music legend James Brown—and to keep silent those who have read the diaries.

On June 5, AG Alan Wilson asked to "join and support" Hynle attorney Robert Rosen of Charleston in his pleadings to block the release of the Hynle diaries and to enforce a 2008 gag order by Judge Doyet Early that prevents any discussion of the contents.

According to a longtime Brown friend, the diaries provide important evidence that Hynle was not Brown's wife, and therefore she should not have been included in a 2009 settlement deal that gave her one-quarter of Brown's \$100 million music empire.

On May 22 Newberry resident and former Brown trustee, Adele Pope, argued before Judge Early that she needed to discuss the diaries in order to defend herself against a lawsuit brought by Hynle, some of Brown's alleged children, current Brown trustee Russell Bauknight, and the AG's office. The suit alleges Pope and Alken attorney Robert Buchanan damaged the Brown estate by tens of millions of dollars during the 18 months they served as trustees.

The suit was filed after Pope and Buchanan "vigorously defended" Brown's estate plan, as directed by his will and trust, by appealing the 2009 settlement deal in which former AG Henry McMaster gave away over half of Brown's \$100 million music empire—including royalties and rights to his image—to those Brown had specifically excluded from inheriting it.

Brown's estate plan left his entire music empire to the "I Feel Good" Trust, to help needy and deserving students in South Carolina and Georgia with education costs. Brown also provided up to \$2 million in education funds for certain grandchildren.

Brown left personal and household effects to six named children.

Because of Early's gag order, the diaries could not be discussed in the Buchanan/Pope appeal to the Supreme Court, but based on Pope's June 7 pleadings, the diaries were an important factor in the decision to file the appeal.

The diaries were copied and available to all parties early in the Brown estate controversy, and they may have been read by as many as 100 people before Judge Early issued orders in February and March of 2008 that the diaries were to be taken up and not

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EX:48

James Brown "I Feel Good" T-shirt (for people, places and things)
Tuesday

~~discussed until~~ a further hearing in 10 days.

Aaron Hayes Home

That hearing never occurred.

Six months after Judge Early issued the gag order, in September of 2008, Hynie discussed the diaries with television reporter Gene Petrillo, who asked, "Another big question is what did Tommie Rae write in her own diary about her relationship with Brown? Did she beg him to make her his wife?"

Hyunie's response dodges the question: "James Brown didn't do anything he didn't want to do. How could I beg him to do anything? Nobody marries someone because they were begged -- they marry someone because they love them."

According to Pope's June 7 memorandum, filed in Aiken:
 "Continuing the Gag Orders will prevent AG Wilson from fully investigating whether it was inappropriate for a trustee...to tell our Supreme Court that Hynie's elective share claim was a 'slam dunk.'"

In March of this year the Newberry Observer requested a copy of the Hynie diaries from AG Wilson under the Freedom of Information Act (FOIA). The request was denied, citing Judge Early's 2008 order. (The AG's office did not deny having a copy, only that the diaries could not be released under the gag order.)

Pope's pleadings argue that the gag orders will encourage fraud and prevent her from defending herself against "career-threatening criminal allegations" made by the "State/AG, Hynie, and a trustee serving at the pleasure of the AG."

Pope further argues it is unprecedented that Wilson is requesting to continue a gag order that prevents him from protecting a charitable trust--and from complying with the FOIA, which he has the duty of enforcing.

"Failing to void the Gag Orders....strikes at the very heart of transparency in government," according to the memorandum.

The Wingate firm of Columbia represents the AG, Hymie, Bauknight and others in the lawsuit against Pope and Buchanan. The suit claims they caused tens of millions of dollars in damages, even though Bauknight has filed documents with the IRS that Brown's music empire was worth less than \$4.7 million at his death.

The documents with the low valuation were filed after Brown's son Terry was given the right to purchase the music empire in the McMaster settlement agreement.

###

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James Brown "I Feel Good" Trust (FOIA Concerns)
Tuesday

Pope Memo re Gag Orders, 11 June 2012 (10 photos)

The gag orders re: diaries of Tommie Rae Hynie "invite and encourage fraud. They will prevent Pope from defending herself against career threatening criminal allegations made against her by the State/AG, Hynie and by a trustee serving at the pleasure of the AG."

1. **What is the purpose of the document?**
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 3. **What is the audience for the document?**
 4. **What is the format of the document?**
 5. **What is the date of the document?**
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 7. **What is the status of the document?**
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 9. **What is the future of the document?**
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AG's promise to release contracts may resolve Newberry James Brown FOIA case

by Sue Summer
For The Observer
09.21.11 - 08:07 am

In Newberry on Sept. 12, Attorney General (AG) Alan Wilson filed a motion to dismiss a Freedom of Information Act (FOIA) lawsuit in which he was asked to release copies of public documents related to the James Brown music empire.

Among the requested documents was a contingency-fee agreement between former AG Henry McMaster and outside counsel, Columbia attorney Ken Wingate. Wingate represents the State and about 15 private plaintiffs in a Brown suit in Richland County.

Other Brown cases are pending in the Aiken County Circuit Court, the S.C. Court of Appeals, and the S.C. Supreme Court.

The FOIA lawsuit was filed by Newberry resident Adele Pope in August. She and Aiken attorney Robert Buchanan, former Brown trustees, have repeatedly attempted to obtain the fee agreement and other documents for 10 months.

Only two days after Wilson's motion to dismiss the Newberry FOIA suit, on Sept. 14, The State newspaper reported Wilson had announced, through an agency spokesperson, that contingency agreements with outside law firms are available to members of the public who request them and that the AG's office is in the process of posting all such agreements on its website.

"We hope this announcement means that the AG will release the public documents which Pope and Buchanan have been trying to obtain for almost a year, first from McMaster and now from Wilson," said Adam Silvernail, Pope's attorney.

The unreleased contingency-fee contract between McMaster and Wingate authorized Wingate to sue Buchanan and Pope on behalf of the state while simultaneously representing about 15 private plaintiffs.

In a hearing scheduled for Richland County Sept. 14, Pope and Buchanan sought to disqualify Wingate from representing both the state and the private individuals.

In a brief filed last week, Pope also asked that current Brown trustee, Columbia CPA Russell Bauknight, be enjoined from asserting that he acts for the state or the AG. Bauknight replaced Pope and Buchanan as trustee and serves at the AG's pleasure.

Bauknight and AG Wilson have both refused to produce the contingency-fee contract and other documents requested by Pope's two FOIA lawsuits, including documents related to the value of Brown's assets and a copy of McMaster's "Legacy" trust.

Ex: 62

In 2008 McMaster forged an agreement with some of Brown's claimed heirs, all of whom were disinherited from his worldwide music empire, and gave them more than half of Brown's assets.

In late 2008 or early 2009, McMaster set up the "Legacy" trust with Bauknight as trustee. To date, no signed complete copy of the Legacy trust has been produced, but at least two incomplete drafts are on file in Aiken County.

Before the McMaster agreement, Brown's estate plan gave his music empire to the "I Feel Good" trust to provide scholarships for needy and deserving students.

Brown's music empire—with royalties to about 850 songs, as well as publicity rights—was widely reported to have a value of \$100 million at his death, less a \$15 million debt. At about \$80 million, the "I Feel Good" trust would have been South Carolina's largest private foundation dedicated solely to scholarships for needy and deserving students.

In December 2010, however, Bauknight filed documents with the Internal Revenue Service placing a \$4.7 million value on Brown's worldwide music empire at his death in 2006.

According to J. David Black of the Columbia law firm Nexsen/Pruett, which represented Bauknight in the IRS filing, Bauknight's \$4.7 million value for Brown's music empire at death is based upon an independent professional appraisal, authorized by Bauknight. When reached by email, Black failed to disclose the name of the New York appraiser.

In Black's email, he claimed Brown's music empire was worth \$4.7 million "because of outstanding debt and bond issues as well as Mr. Brown's prior advisors' mismanagement of his assets." He said further that all of Brown's assets, including the music, had a value of only \$5.7 million.

In 2007 David Cannon, one of three original trustees appointed by Brown, resigned after Pope and Buchanan discovered he had taken \$900,000 from Brown's Trust the previous year. Cannon was indicted in 2010 for felony breach of trust with respect to Brown's assets between 1999 and 2006. He was also indicted for a 2008 forgery related to Brown.

Cannon has not yet been tried, but in November 2010 he was placed, along with former trustee Albert "Buddy" Dallas, on Wingate's witness list in the Richland County case.

Pope and Buchanan, who valued Brown's music assets at about \$85 million, have challenged McMaster's agreement and Bauknight's valuation.

When asked by email when the Wingate contract would be available on the AG's website, spokesperson Mark Plowden responded Tuesday morning, "I am on medical leave, but will have someone send it to you."

Judge Casey L. Manning continued the Richland County hearing to consult with Chief Administrative Judge Alison Renee Lee.

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Attorney general still refuses to release documents in two Newberry FOIA cases related to James Brown music empire

by Sue Summer
For The Observer

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Two weeks after a public statement that all contingency fee contracts would be placed on the website of the South Carolina Attorney General (AG), current AG Alan Wilson has still not released former AG Henry McMaster's contract with outside counsel Ken Wingate.

The contract, thought to have been executed in late April or early May 2010, authorized Wingate to sue former James Brown trustees Robert Buchanan of Aiken and Newberry resident Adele Pope. In addition, the contract also apparently authorized Brown's current fiduciary and trustee of the "Legacy" Trust, Columbia CPA Russell Bauknight, to speak on behalf of the attorney general.

On July 19, Pope requested a copy of the Wingate contract under the Freedom of Information Act (FOIA). Pope and Buchanan's efforts to obtain the contract under discovery for nearly a year were unsuccessful.

On Sept. 14, in a newspaper article about outside counsel in an unrelated case, Wilson, through a spokesperson, promised transparency and confirmed all contingency fee agreements with outside counsel are public documents and available on request. Five days later, at this reporter's request, spokesperson Mark Plowden agreed to send the Wingate contract.

On Sept. 22, however, deputy attorney general Bryan Stirling provided a letter by assistant deputy attorney general C.H. Jones Jr. stating the attorney general's office was willing to release the Wingate agreement but would not do so until it received further guidance from the court.

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EX:63

In the Newberry FOIA case, Adam Silvernail of Columbia, Pope's counsel, continues to seek an expedited hearing and release of the documents Pope requested under FOIA more than 60 days ago. In a second FOIA case filed in Newberry in early August, Pope also seeks: to declare the trust created by former attorney general Henry McMaster, called the "James Brown Legacy Trust," a public body; to require release of a copy of the trust; and to obtain information about Bauknight's \$4.7 valuation of Brown's music empire.

Pope's affidavits on file in the FOIA suits assert Bauknight's \$4.7 million is "outrageous" and inconsistent with the \$50 million Brown earned between 1999 and 2006 from royalties and road performances. Pope asserts all of Brown's prior fiduciaries and others have valued Brown's music empire at death about \$85 million or more.

Brown's primary assets, according to Pope's affidavits and J. David Black, counsel for Bauknight as personal representative and trustee, are Brown's music royalties and publicity rights (the right to use his image and persona on products).

As evidence of the value of Brown's publicity rights at death, Pope cites a Global Gaming contract negotiated before Brown's death. The deal to use Brown's image on games has been projected to produce \$500,000 a year after a development period.

Pope's affidavit also quotes counsel for Brown's original fiduciaries who reported to the Aiken Court shortly after Brown's death that Brown had earned a million dollars a week for his annual three-week tours overseas.

Brown continued to be the "hardest working man in show business" until his death at age 73 performing in more than 100 shows in 2006.

In an email last week, Black asserted the \$4.7 valuation of Brown's music empire is low "because of outstanding debt and bond issues as well as Mr. Brown's prior advisors' mismanagement of his assets."

Pope's affidavit attaches 2010 indictments against former trustee David Cannon who is charged with breach of trust with fraudulent intent with respect to James Brown for years 1999-2006. He is also charged with forgery of an employment contract with Brown in 2008.

Cannon has been sued for the return of more than \$12 million, misappropriated between 1999 and 2006. Although indicted more than 18 months ago, he has not been tried.

Cannon's name is on the witness list submitted by Wingate in the state's lawsuit against Buchanan and Pope.

"We hope to have a hearing within the next few weeks if the attorney general does not reverse his position and give us these public documents," Silvernail said.

Buchanan and Pope are asking the South Carolina Supreme Court to reverse a 2006 Aiken County Circuit Court order authorizing McMaster to take control of James Brown's assets. Oral arguments in that case are scheduled for Nov. 1.

As of Monday afternoon, no contingency fee contracts had been posted on the attorney general's website at www.scag.gov.

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Education

Wingate firm, James Brown children, others ask to join Wilson in fighting release of public documents

by Sue Summer
For The Observer

5 days ago | 173 views | 0 | 2 | |

In the latest twist in a Newberry County Freedom of Information Act (FOIA) lawsuit, there was a request made Wednesday morning, Oct. 26, that other parties be allowed to enter the lawsuit as defendants, including some members of the family of music icon James Brown, current Brown trustee Columbia C.P.A. Russell Bauknight and others.

The Newberry FOIA lawsuit, filed Aug. 10 by Newberry resident Adele Pope, asked South Carolina Attorney General Alan Wilson to release the contingency fee litigation agreement between former AG Henry McMaster and the law firm of Kenneth Wingate, which authorized Wingate to sue former James Brown trustees, Pope of Newberry and Robert Buchanan of Aiken.

At Wednesday's hearing in Laurens County before Judge Frank Addy Jr., Mark Gende of the Wingate law firm asked the court to allow his clients from a different case in Richland County to join in the FOIA lawsuit.

Adam Silvermail, counsel for Pope, argued that Wingate's clients should not be parties because no documents have been requested from them. Wilson has been dodging the release of the documents since July when Pope mailed from Newberry an FOIA request for the McMaster/Wingate agreement to sue Buchanan.

Soon after she asked for the contract, Wingate's firm filed a document in Richland County asserting the McMaster/Wingate retention agreement was private and should not be released. After receiving no documents from the attorney general's office, on Aug. 10 Pope filed a lawsuit in Newberry County to obtain the agreement.

Ex: 65

On Sept. 13, Wilson announced in The State newspaper all of his contingency fee litigation agreements with outside counsel were public documents and would be released on his website. Following a request for a copy of the McMaster/Wingate contract, senior assistant attorney general C.H. Jones Jr. wrote the Richland County court on Sept. 22 and claimed Wilson is "ready and more than willing" to release the McMaster/Wingate agreement but the attorney general did not want to violate a stay order allegedly issued by Judge Casey Manning on Sept. 14.

Then on Sept. 28, Richland County Judge Casey Manning issued an order that continued the Sept. 14 case but nowhere on the document is a "stay" mentioned.

On Oct. 10, Wilson posted on his website 10 contingency fee agreements with other attorneys: the Wingate contract was not among them. All 10 state plainly they are public documents. Other agreements also contain a clause that allows the attorney general to retain 10 percent of special counsel's fees.

The attorney general's website said all contracts had been released "except those matters in which disclosure is currently under review by a court." A request for other contracts "under review" received no answer from Mark Plowden, spokesperson for the attorney general's office.

At the Oct. 26 hearing, counsel for the state, Emory Smith Jr., continued to assert a stay was in place on the McMaster/Wingate contract. When Judge Addy said he planned to call Judge Manning, Smith quickly added even if no stay were in place, the FOIA case should be dismissed because of venue and jurisdictional issues.

Silvernail argued the attorney general's office has never claimed the document was not public nor has it ever been argued the attorney general's office was not a public body.

"The AG has declared that the McMaster/Wingate agreement is a public document and there is no basis for his refusal to disclose it," Silvernail said.

The Public Official's Guide to Compliance with South Carolina's Freedom of Information Act contains a letter from Wilson which reads in part: "As public officials, we have an obligation not only to adhere to the letter of this law but also live up to its spirit through compliance with every reasonable FOIA request without delay or obstruction to the individual or entity seeking their right to public information."

He further advises public officials, "When in doubt, disclose the requested information. When in doubt, release the document."

Judge Addy said he hoped to have a ruling by the end of the week.

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Brown grandson fires lawyers in trust lawsuit

by Sue Summer
 For The Observer

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In a surprise move only days before a Dec. 15 federal court hearing on the 2000 Irrevocable Trust of music icon James Brown, his grandson Forlando Brown has fired his entire legal team.

Among those sacked by Forlando are former S.C. Chief Justice Ernest Finney whose wife Frances (Davenport) is from Newberry; the law firm of Finney's son, Jerry Leo Finney; several members of the 1,200-lawyer Atlanta firm, Bryan Cave LLP — formerly Powell Goldstein; and Augusta lawyer David Bell.

Last week, Bryan Cave, the Finneys and Bell filed a motion before Federal Judge William Bertelsman to withdraw as counsel in a lawsuit they filed for Forlando in January 2008 when he was a 21-year-old student. The suit has languished since then but Bell has actively represented Forlando Brown in other matters in Aiken County — always in support of his grandfather's estate plan which leaves his entire music empire to provide scholarships for designated grandchildren and for needy students attending schools in South Carolina and Georgia.

In 2008, Forlando Brown sought to enjoin Newberry resident Adele Pope and Aiken attorney Robert Buchanan from acting as Brown trustees, alleging they were illegally appointed Nov. 20, 2007, and would not protect Brown's estate plan from disinherited relatives.

In the complaint, Forlando Brown stated he was close to his grandfather especially during the last seven years of Brown's life. He said Brown "recognized the value of education and wished he had been able to obtain more of an education during his life." He said Brown's

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Ex: 70

Irrevocable Trust, which leaves his music empire to education, reflects his grandfather's wishes to provide those in need with the opportunity for an education.

Forlando Brown's complaint against Pope and Buchanan asserted the Irrevocable Trust was "believed to have a value in excess of tens of millions of dollars or more." The complaint expressed concern that Brown's "In Terrorem" clause would not be used to enforce his wishes.

A month after Forlando Brown filed the lawsuit in January 2008, he and former South Carolina Attorney General Henry McMaster made a joint appearance on WIS-TV asserting Buchanan and Pope were not working for the poor children Brown intended to benefit. Six months later, however, McMaster entered into a settlement that dismantled Brown's Irrevocable Trust, taking more than half of what Brown gave for scholarships to the needy and giving it to disinherited, claimed relatives.

McMaster also gave the right to purchase Brown's assets to Forlando Brown's father, Terry, who was represented by Powell Goldstein. In defense of Brown's estate plan, Buchanan and Pope appealed McMaster's settlement to the S.C. Supreme Court which heard oral arguments in the case Nov. 1.

In a telephone interview, Forlando Brown said he is now in the process of searching for new attorneys who will vigorously defend his grandfather's estate plan and work to nullify the McMaster deal with claimed relatives. Forlando Brown said the decision to fire previous counsel was the result of his increasing frustration with poor management of the trust.

"My grandfather had a huge estate with rights to music royalties and the use of his image," Forlando Brown said. "He left the tools to raise tons of money for needy children but, after five years, not one child has been given one penny."

Forlando Brown wants attorneys who will fight against the settlement forged by McMaster and his assistant Sonny Jones which gave away more than half of what Brown intended to benefit poor children to those Brown disinherited.

"I want just what my grandfather wanted," Forlando Brown said. "He danced the dances, he sang the songs and he should be the one to decide what happens with his money."

Forlando Brown would like the "In Terrorem" clauses of the will and trust to be enforced.

"If you contest his will, you forfeit your rights," he said. "The same aunts and uncles who are now contesting his will, they sued my grandfather for songs that he wrote. Imagine how he felt about that."

People ask why Brown would leave everything to poor children he would never meet, but Forlando Brown understands.

"My grandfather was a poor child, he had nothing," he said. "He grew up in the home of a prostitute, had to sleep under the house and steal for something to eat."

Forlando Brown said his grandfather had already provided his own children with educational opportunities — his trust provided for his grandchildren's education and, beyond that, he wanted to leave everything to children like himself who would otherwise have no chance to receive an education.

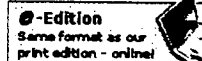
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AUDIO: Goliaths roar in Brown FOIA lawsuit

by Sue Summer
For The Observer

1 day 1 hr ago | 213 views | 0 | 0 | 0 | 0

James Brown estate planning in his own words



download James Brown estate planning in his own words

In a July 15 letter,
Columbia attorney
David Black of the
mega-firm

Nexsen/Pruet issued a

threat to Newberry resident Adele Pope. If she continued to file requests for documents and information under the Freedom of Information Act (FOIA), he would file an action to have her sanctioned.

On Friday afternoon, Black followed up on that threat through one of his clients, the current trustee of the James Brown trust, Columbia C.P.A. Russell Bauknight.

Mark Gende of the large Columbia law firm Sweeny, Wingate and Barrow filed the motion in the Newberry County Courthouse asking for sanctions against Pope and "other relief the Court deems just and reasonable."

In this action, Gende is representing Bauknight, as well as other private parties he requested be added as defendants in Pope's FOIA lawsuit against South Carolina Attorney General Alan Wilson which seeks the release of the contingency fee contract between former South Carolina Attorney General Henry McMaster and the Wingate firm.

Under the contract, the State of South Carolina, Bauknight and 13 disinherited, claimed relatives of James Brown are suing Pope and Aiken attorney Robert Buchanan, asserting they caused tens of millions of dollars in damages to Brown's assets while serving as trustees from November 2007 to May 2009.

Ironically, the attorney general's office has since agreed to filings by Bauknight to the Internal Revenue Service that the entire Brown music empire was worth a mere \$4.7 million at his death in 2006 even though it was bringing in about \$4-5 million in royalties every year.

The legal Goliaths of Nexsen/Pruet and Sweeny, Wingate and Barrow filed the motion for sanctions in their continuing effort to block the release of the contingency fee contract under which McMaster engaged the Wingate law firm to sue Pope and Buchanan for their "vigorous" defense of James Brown's estate plan. As part of that defense, Pope and Buchanan appealed to the South Carolina Supreme Court a settlement deal cut by McMaster that essentially dismantles Brown's estate plan. The McMaster deal gives away more than half of what Brown intended to be used for the education of poor children to claimed relatives that Brown intentionally disinherited.

After months of having her FOIA requests for the contract dodged by Wilson's office, Pope filed an FOIA lawsuit in August. The suit names only Wilson as a defendant but at a hearing in November, Gende asked that his private clients — including Bauknight and the claimed relatives — be added as defendants.

The FOIA is intended to grant every citizen access to public documents and government business and, as a public official, Wilson would be subject to the FOIA law. None of Wingate's individual clients are public bodies, however, and Pope had not requested documents or information from them.

Tuesday

December 13, 2011




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All of the attorney general's contingency fee contracts contain language that confirms they are public documents. Wilson has released other contracts on his website and, through his assistant Sonny Jones, Wilson has confirmed that the McMaster/Wingate contract is also a public document. The attorney general's office has not responded to the emailed question: is the McMaster/Wingate contract the "only" contract not released by Wilson?

Judge Frank Addy declined to rule on whether the private parties should be added as defendants in Pope's FOIA lawsuit against Wilson but he ordered the FOIA lawsuit to be consolidated with the McMaster/Wingate lawsuit against Buchanan/Pope in Richland County.

In Pope's answer, she claimed Gende's motion to add private plaintiffs to a lawsuit involving public documents was intended to delay the release of the contract and to deny her the exercise of her FOIA rights. The FOIA includes criminal penalties for violation of the law, a fine of no more \$100 for first offense. Gende's motion for sanctions and penalties asserts Pope has accused his private clients of criminal activity by advising the court that they are intentionally interfering with her FOIA rights.

In essence, Gende did exactly what Black threatened in July: he is attempting to have Pope sanctioned and penalized for attempting to exercise her rights under the FOIA.

Several affidavits of private citizens and journalists from Aiken, Newberry and Lexington counties have been filed by Pope with a motion for Judge Addy to reconsider the consolidation of the FOIA and civil cases.

All affidavits emphasized the importance of protecting the public interest and keeping the FOIA strong. Several, including one filed by Debra Spence, widow of former Congressman Floyd Spence, asked the question: what is Wilson hiding? "I am concerned that AG Wilson's refusal for more than four months to release a public document makes it appear that he is covering up an inappropriate or questionable agreement."

Spence also asked the court to consider: Black, speaking for Bauknight, made "vicious statements about Mrs. Pope and Mr. Buchanan that were repeated in hundreds of media outlets." At the Supreme Court hearing on Nov. 1 she said, "I heard another Nexsen Pruet lawyer and Mr. Jones from the AG's office trying to justify to our Supreme Court why Henry McMaster gave away what was correctly described as Mr. Brown's 'noble estate plan.' Since then, AG Wilson's refusal to release the McMaster contract has focused my attention on other troublesome things McMaster did — or is said to have done — in connection with Brown's estate and trust and I believe the public has a right to learn what really happened."

Other affidavits in support of the FOIA, not all of them filed, include those from: journalist Vic MacDonald, whose pursuit of documents while editor of The Newberry Observer led to a Reid Montgomery press award for protecting the FOIA; copyright expert Jeff Smith, who has written an article for publication on the copyright issues related to the James Brown estate; and this reporter, who has requested the McMaster/Wingate contract at least six times by telephone, email and, as of last week, by certified mail. The FOIA requires a response in 15 working days.

In Pope's affidavit, she states there is no basis under the law for any of Gende's private clients to enter a FOIA lawsuit against a public official and that Gende's motion was intended to cause "delay and denial" of her rights. She said the contract should be released because it is a public document that could determine: a) whether any public purpose is being served; b) whether the attorney general has proposed an illegal fee-sharing arrangement with individuals; c) whether the following provision, found in other contingency fee contracts, is appropriate: "(t)he AG shall retain 10 percent of Special Counsel's fees awarded under this suit."

In a telephone interview Saturday afternoon, Dec. 10, Brown's grandson, Forlando Brown — whose father, Terry Brown, is named as a plaintiff in Gende's motion to sanction Pope — said neither he nor his father knew about the motion until he received a draft of this story by email and was asked to comment.

"I did not know my father was a party and my father didn't know it either," Forlando Brown said. "There is something going on in South Carolina that people need to know about."

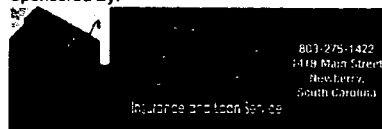
Forlando Brown said the attorneys involved in the Brown estate have been working to increase their fees, not to represent him. They would not even return his calls. Two weeks ago, Forlando Brown fired his entire legal team and will have new attorneys representing him at a Dec. 15 status conference before U.S. District Judge William O. Bertelsman of Kentucky. The conference relates to a 2008 lawsuit filed by Forlando Brown against Pope and Buchanan that asserts they were illegally appointed and would not defend his grandfather's estate plan.

Powerball \$78.00 Million WED 12/14
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NASDAQ	2612.26	↔ 0.00	0.00%
DJIA	12021.39	↓ -162.87	-1.34%
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TSX Comp	11907.89	↓ -126.86	-1.05%

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Education

AG Wilson Attempts to Exclude Affidavit of Local Copyright Expert in James Brown FOIA Lawsuit

by Sue Summer
For The Observer

1 day 12 hrs ago | 155 views | 0 | 3 | |



As the new year appeared, so did more filings in the Newberry Freedom of Information Act (FOIA) lawsuit related to the James Brown estate, filed in August.

On Dec. 22, Attorney General (AG) Alan Wilson moved to strike an affidavit from local copyright expert W. Jeffrey Smith in support of releasing documents that reveal how the James Brown estate plan was dismantled by former Attorney General (AG) Henry McMaster in a settlement deal that gave away over half of Brown's worldwide music empire to non-heirs and disinherited family.

In Smith's affidavit and in an article he is writing, he sites one major failing of the McMaster deal was the fact that the AG's office did not properly establish James Brown's heirs for the purpose of the Federal Copyright Act. The act grants limited future rights in certain of Brown's more than 850 songs to heirs as determined under the act.

Soon after Brown's death on Christmas Day 2006, former Judge Rodney Peoples established a DNA protocol for the estate to determine who Brown's heirs-at-death are—

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Ex: 72

and are not. McMaster ignored the DNA protocol and three properly determined heirs in deciding which parties were to be included in his settlement deal.

Among the settling parties in dispute are Brown's companion, Tommie Rae, who was married to another man at the time she exchanged vows with Brown, and her son. Tommie Rae refused to allow her son to take Peeple's DNA test.

On Jan. 3, Newberry resident and former Brown trustee Adele Pope filed documents opposing the AG's motion to strike Smith's affidavit and article, as well as affidavits from others, including Deborah Spence, widow of former Congressman Floyd Spence, and this reporter. Pope also asked the Court to consider the affidavit of former Observer editor, Vic MacDonald, who won a press award for his vigorous defense of the FOIA.

Pope states that the firm of Columbia superlawyer Camden Lewis and his clients—Brown's original trustees—"collected and agreed to make public the diary of Brown's companion and other records confirming she was not Brown's wife and had waived any claim to be his spouse or enjoy his property." The original trustees also obtained Brown's vasectomy records and sworn testimony that demonstrated Tommie Rae's son was not likely Brown's son.

The Lewis firm represented original trustees "Buddy" Dallas and David Cannon as fiduciaries only and did not assist them in filing a \$10 million claim for commissions.

Smith's affidavit included a draft of an article he is writing with Pope, "Private Foundations, Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good" Trust Doesn't...."

The article explains how the James Brown estate plan was dismantled by former AG McMaster, and it raises the question: what is the future of private philanthropy if an AG is allowed to rewrite at will an estate plan simply because it is challenged by disinherited relatives.

As a copyright expert, Smith wrote in his affidavit that the "intentional and/or reckless disregard for a proper determination of heirs-at-death was a primary factor in the destruction of what should have been the approximately \$80 million James Brown 'I Feel Good' Foundation."

He further stated "no expertise is needed to determine that Brown's music empire—which earned at least \$50 million between 1999 and Brown's death in 2006—does have substantial intellectual property assets and was worth substantially more than \$4.7 million when Brown died..."

Current trustee Russell Bauknight, who serves at the pleasure of AG Wilson, filed IRS documents that claim Brown's worldwide music empire, including both the royalties and rights to exploit Brown's image and persona, was worth less than \$4.7 million at his death.

Former AG McMaster's settlement deal gave Brown's son Terry the right to purchase Brown's music assets. Smith wrote, "The public needs to know about AG McMaster's association with Terry Brown—whom he gave a right to buy Brown's assets—and Terry's law firm, Powell Goldstein, now Bryan Cave, and joint venturers Cannon, Dallas, son Forlano and TJBL, LLC.

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Attorneys for James Brown companion subpoena information about 'explosive' diaries

by By Sue Summer
For The Newberry Observer
05.14.12 - 12:01 pm

On Friday night former James Brown trustee, Adele Pope of Newberry, was served with a subpoena related to the diaries of Brown's former companion, Tommie Rae Hynie.

Pope is being asked to turn over all written communications related to the Hynie diaries, including any communications with this reporter, any "blogger, website or media outlet."

The Observer has requested a copy of the diaries from Attorney General (AG) Alan Wilson under the Freedom of Information Act (FOIA), but the request was refused in March.

In a telephone interview in November, 2011, a longtime friend of music icon James Brown characterized the Hynie diaries as "explosive."

After Brown's death in 2006, Hynie claimed to be Brown's wife and sued his estate for a share of his \$100 million music empire. The two had exchanged vows in 2001, but Hynie was married to another man at the time. When Brown discovered her marriage, he sued Hynie for an annulment. The Aiken County case was settled when Hynie signed an agreement that she would never claim to be Brown's common-law wife.

Brown's will and trust contain clauses that say anyone who challenges his estate plan receives nothing—but those clauses were not enforced by former Attorney General (AG) Henry McMaster. Instead, McMaster worked a settlement deal that gave away over half of Brown's music empire to those he specifically disinherited, including Hynie and about half of his alleged children.

Under Brown's estate plan, the six named children received his household and personal effects, and certain grandchildren under age 35 were given education funds of up to \$285,000 each. The bulk of Brown's music empire was to provide scholarships for needy and deserving students in South Carolina and Georgia through the "I Feel Good" Trust.

The McMaster settlement deal was appealed to the S.C. Supreme Court by Pope and co-trustee, Robert Buchanan of Aiken. During the hearing on Nov. 1, 2011, assistant AG "Sonny" Jones was questioned sharply by the court regarding the AG's investigation into Hynie's claim to be Brown's wife.

A longtime friend of Brown's, during a telephone interview, suggested that the diaries could be key in disallowing Hynie's claim and returning about \$25 million to the Brown trust for needy and deserving children.

James Brown Trustee Claims son, grandson conspired with companion [print](#)

by Sue Summer
For The Observer
05.24.12 - 12:01 pm

In documents filed in Federal Court on Friday, Aiken attorney and former James Brown trustee Robert Buchanan alleged that Brown's companion Tommie Rae Hynie joined Brown's son Terry and grandson Forlando in a conspiracy to destroy James Brown's estate plan.

The allegations were filed in a counterclaim related to a five-year-old lawsuit, originally brought by Brown's grandson Forlando against Buchanan and Newberry attorney Adele Pope.

Buchanan and Pope served as co-trustees of the Brown will and trust from November 2007 to May 2009. Only six weeks after they were court appointed, in Jan. of 2008, Forlando filed suit against them, asserting that Buchanan and Pope would not follow James Brown's noble plan to dedicate his entire music empire to education. In the suit, Forlando asked for the return of original trustees David Cannon, Albert Dallas and Al Bradley.

Bradley died in 2010. Dallas lost an appeal to the S.C. Supreme Court. Cannon entered an Alford plea in Oct. 2011 to indictments that alleged he took \$12 million from James Brown between 1999 and 2007, and that he forged a document in 2008 to cover up his takings.

Forlando's claim that Buchanan and Pope would not defend Brown's estate plan proved inaccurate. In 2009 Buchanan and Pope "vigorously" defended the estate plan with their opposition to and appeal of a settlement deal that Tommie Rae, Terry and others made with former Attorney General (AG) Henry McMaster. The McMaster deal takes away more than half of Brown's \$100 million music empire and gives it to some of Brown's disinherited, claimed relatives. McMaster also gave Brown's son Terry—Forlando's father—a right to buy the music empire at fair market value.

The Buchanan/Pope appeal was heard by the S.C. Supreme Court on Nov. 1, 2011, but no decision has been rendered.

Buchanan's amended counterclaim seeks actual and punitive damages against Forlando. Pope previously filed a counterclaim with similar allegations.

In Nov. 2011, Forlando fired his powerhouse team of attorneys, including former S.C. Chief Justice Ernest Finney and four attorneys from the Atlanta law firm of Bryan Cave.

In a Dec. 2011 interview with this reporter, Forlando characterized the challengers to his grandfather's estate plan as "greedy family members who want

Former James Brown Trustee Fights "Career-Threatening" Allegations of Lying To Court

For The Newberry Observer

By Sue Summer June 17, 2012

In motions filed June 8 and June 14, attorneys for James Brown's companion Tommie Rae Hynie and current Brown trustee Russell Bauknight accused former trustee and Newberry resident Adele Pope of Court filings that are "works of fiction" and "statements ...that are false."

On June 15 Pope responded by asking for an expedited hearing "to determine if Hynie recklessly or intentionally made ... false, career-threatening ... allegations."

The Hynie/Bauknight motions also ask the Court to strike Pope's filings because she is not a party to the Brown estate case, and they ask the Court to continue a four-year-old gag order which prohibits Pope and others from discussing Hynie's diaries.

According to a longtime friend of James Brown, the Hynie diaries offer evidence that Hynie was not Brown's wife and should not have been given one-quarter of his music empire in 2009 settlement deal forged by former Attorney General (AG) Henry McMaster.

Hynie's handwritten diaries were discovered in Brown's home after his death. The original trustees had them transcribed, and copies were distributed or discussed with 50-100 people. In 2008 Judge Doyet Early issued a series of gag orders that: required copies of the diaries to be taken up, and; prohibited discussion of the diaries' contents until a hearing was held. The hearing never occurred.

AG Alan Wilson has recently joined in the request to keep Judge Early's gag orders in place, preventing any public scrutiny of whether Hynie's spousal claim was fully investigated by the AG's office before awarding her as much as \$20 million.

Pope requested that there be no delay in lifting the gag orders and that Hynie be compelled to attend the expedited hearing. Pope argued the public should be free to discuss whether the orders had been used to "silence the truth; perpetrate fraud on any court; or allow Hynie to keep \$20 million or more that James Brown gave for scholarships to needy and deserving students through the 'I Feel Good' Trust."

Pope asked for a hearing to "stop the fraud on this and other Courts," a hearing that would address several critical questions:

1) Is the worldwide music empire of James Brown--including copyrights to over 850 songs and rights to his image--worth \$85 million (as asserted by Pope) or \$4.7 million (as Bauknight and Hynie have claimed)?

2) Is Hynie's claim to be Brown's wife a "slam dunk," as Bauknight's attorney told the Supreme Court, or "without merit," as Pope claims?

3) About half the value of Brown's worldwide music empire is in publicity rights, which are not subject to termination under federal copyright law. Why then did Bauknight's attorney argue to the Supreme Court, "Termination rights is all this case is about"?

4) Are Hynie and the seven claimed children included in the McMaster settlement deal Brown's heirs under federal copyright law, or are other DNA-proven children also Brown's heirs, as Pope asserts?

5) Will there truly be nothing left in the "I Feel Good" Trust by 2023-2025 if the McMaster settlement deal is not approved, as asserted by Hynie/Bauknight?

In the June 15 pleadings, Pope also claims that Hynie attorney Robert Rosen--in arguing his client would be irreparably harmed if the Supreme Court discovered the diaries' contents--is in fact offering support for Pope's position that Hynie was not Brown's spouse.

"The diary should be exposed if it will help either a subsequent Attorney General or the Court discover whether an egregious error has been made and \$20 million should stay with the 'I Feel Good' Trust for scholarships....," Pope said.

The McMaster settlement deal has been appealed to the S.C. Supreme Court. Oral arguments were held Nov. 1, but no decision has been issued.

[print](#)

Las Vegas man claims James Brown was his father

by Sue Summer
The Newberry Observer
06.18.12 - 11:01 am

How many children did music legend James Brown have?

As of Father's Day, perhaps 13.

James Curtis of Las Vegas has stepped forward, claiming to be Brown's son.

His mother, now deceased, met James Brown in Augusta juke joints and became pregnant with him when she was 13 years old, he said.

Brown was also a teenager at the time.

Curtis was born in 1951, which makes him—at age 61—Brown's oldest child, if his claim is proven. He has offered to take a DNA test.

Curtis's mother showed him pictures of the two of them together, and he always knew Brown was his father, he said.

At age 12, Curtis went to the Apollo Theater in New York, where Brown was performing, so that he could meet his father. "His band members and body guards pushed me aside," he said.

Now Curtis would like to receive a share of Brown's estate. "Something, anything—even a piece of jewelry. He didn't provide anything for me through the years, and I want some compensation."

Even if DNA proves that Curtis is Brown's son, he may receive nothing from the Brown estate settlement—but he could benefit as Brown's heir under Federal Copyright laws.

In Brown's will, he left six named children his personal and household effects. They and Brown's companion, Tommie Rae Hynie, challenged Brown's estate plan and were included in a 2009 settlement deal forged by former S.C. Attorney General Henry McMaster. The deal gave away over half of Brown's music empire to the six claimed children and companion.

Brown's estate plan left his entire music empire to the "I Feel Good" Trust, his education charity.

The deal has been appealed to the S.C. Supreme Court. Arguments were heard in November, but no decision has been issued. One reason for the appeal was that the McMaster deal stopped an ongoing procedure to determine who were Brown's heirs under Federal Copyright laws. McMaster's deal also exempted some claimed children from DNA testing.

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http://newberryobserver.com/printer_friendly/19023226

Ex: 78

6/19/2012

[print](#)

Brown's son regrets contesting will, says father's wishes should be followed

by Sue Summer
For The Observer
07.05.12 - 12:01 am

The son of music legend James Brown now regrets that he did not follow his father's wishes as expressed in his will—and expressed concern that his daughters will never receive the education funds their grandfather left them in a trust he established in 2000.

Daryl Brown, in a taped telephone interview on Wednesday (June 27), said, "When my oldest daughter went to school, her mother had to get loans for her because no money was there (in the trust). We asked for it and asked for it, but still no money came."

Had Brown's will been carried out at his death over five years ago, a \$285,000 education fund would have been created for each of Daryl's daughters.

The rest of Brown's music empire would have funded the "I Feel Good" charity to provide scholarships for needy and deserving students in South Carolina and Georgia.

Brown says his younger daughter and a nephew graduate next year, but they have received no assurances that their tuition will be paid, despite pleas to his attorney, Louis Levenson of Atlanta, as well as to Brown trustee Russell Bauknight of Columbia and the office of the S.C. Attorney General (AG).

"They paid off the bond deal. Why is the money for the grandchildren not being released now?" Daryl asked.

"Every time we want to hear where the money goes, we're told this person has to be paid first, that person has to be paid first. They throw up smokescreens," he said.

Brown's estate plan gave his personal and household effects to six children named in the will, including Daryl. Although Daryl did not see the estate plan before his father's death in 2006, his father had told him about the education charity and the grandchildren's education funds.

In 2007 James Brown's estate plan was contested by the children named in the will and by Brown's companion, Tommie Rae Hynie, who claimed to be his wife even though she was married to another man when she and Brown exchanged vows in 2001.

"I just went along with the family, but I admit my mistakes," Daryl said.

Although Daryl's attorney Levenson filed affidavits in 2007 that accused original

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At request of AG, judge keeps gag order on diaries

by Sue Summer
For The Observer
07.16.12 - 12:01 am

Six depositions and three public documents could resolve five years of legal battles by revealing who filed false and misleading statements in the estate hearings of music legend James Brown — but actions in two courts this week could leave documents sealed and questions unanswered for years.

At the request of Attorney General (AG) Alan Wilson and others: on Thursday an Aiken County Judge kept in place a four-year-old gag order related to the diaries of Brown's companion, Tommie Rae Hynie; and on Tuesday a Richland County Judge was asked to order a forced mediation—without completing discovery—in the lawsuit against former Brown trustee, Adele Pope of Newberry.

These rulings could leave unanswered several questions about a 2009 settlement deal forged by former AG Henry McMaster:

- Did McMaster fail to investigate fully the spousal claim of Brown's companion, Tommie Rae Hynie, before giving her one-quarter of Brown's music empire—which may be worth as much as \$20 million?
- Did the current trustee, Russell Bauknight of Columbia, intentionally undervalue Brown's music empire—including rights to Brown's image—at \$4.7 million after one of the Brown children, Terry, was given the right of purchase? All previous trustees valued the music empire at closer to \$80 million.
- What are the terms of the McMaster-created Legacy Trust, and if money from the trust goes to private parties (i.e., Brown's children and companion), does the trust lose its tax-exempt status under the IRS code?
- What are the terms of the contingency-fee contract under which the Wingate law firm of Columbia filed suit against Pope—and is there a valid contract at all? The AG refuses to release a complete copy with signatures, even though the AG is a public official and is named as a plaintiff alongside Bauknight, some of Brown's claimed children, and Hynie. Also of interest: by what authorization does Bauknight speak for the AG in the lawsuit?

Under Brown's estate plan, his worldwide music empire was left to the "I Feel Good" Trust, an education charity for needy students in South Carolina and Georgia. Brown also provided education trusts of up to \$285,000 for some of his grandchildren.

When Hynie and some claimed children contested Brown's estate plan, McMaster stepped in, claiming it was the AG's duty to protect the charity.

Under Brown's estate plan, anyone who contested the will or trust would receive

**AG Wilson and James Brown companion stop deposition,
but not bombshell** [print](#)

by Sue Summer
For The Observer
07.26.12 - 12:01 am

On July 19, S.C. Attorney General (AG) Alan Wilson and Tommie Rae Hynie, former companion of entertainment legend James Brown, obtained an emergency court order—issued orally—to stop a deposition from former Brown trustee Albert “Buddy” Dallas.

The order did not, however, stop James Brown’s friend and attorney of 20+ years from delivering a bombshell in sworn testimony: Hynie and James Brown were not married.

In a sworn statement taken on Friday, Dallas recounted an early-morning phone call in 2006 with Brown and Hynie, confirming that the two were not married and that Hynie was merely a guest in Brown’s home.

According to Dallas, the conversation took place in the summer of 2006, shortly before Brown and Hynie separated for the last time. Hynie returned from the West Coast only once, in October 2006 when the James Brown auditorium was named for Brown. Dallas said Hynie was in the audience with a video-camera, but not with Brown.

After Brown’s death on Christmas Day of 2006, Hynie claimed to be his wife and sued for a spousal share of his worldwide music empire. Some of Brown’s claimed children also contested his will.

Under Brown’s will, certain children received his personal and household goods, and some grandchildren were given education trusts of up to \$285,000. Brown’s music empire was left to the “I Feel Good” education charity for needy and underprivileged children to be educated at institutions in Georgia and South Carolina.

However, a 2009 proposed settlement deal forged by former AG Henry McMaster—who was charged with protecting the needy children’s trust—took over half of Brown’s music empire away from the charity and awarded it to Hynie and the Brown children who had contested his will.

The McMaster deal was appealed by former Brown trustees, Newberry resident Adele Pope and Aiken attorney Robert Buchanan, who were directed by Brown’s estate documents to “vigorously” defend his estate plan.

In 2010, after the appeal was filed, McMaster and others sued Pope and Buchanan for tens of millions of dollars, alleging they had mishandled Brown’s trust when they served as trustees from late 2007 to early 2009.

hurt when he learned Hynie was already married to another man at the time they held a marriage ceremony in 2001.

Dallas testified that Hynie begged James Brown to marry her after she obtained a 2004 annulment from her first husband, but he refused. Although Hynie and Brown continued to be together until their final separation in 2006, Dallas said Brown was never monogamous. He had women guests in his room, and Hynie maintained a room as Brown's guest in another part of the house.

The Hynie marriage myth was not the only grenade Dallas tossed into AG Wilson's lawsuit against Pope. Dallas confirmed there had been at least one \$100 million offer to purchase Brown's assets in 2007—the same assets current trustee Bauknight asserts were worth only \$4.7 million when Brown died.

Pope and Robert Buchanan—now dismissed as a party to the Wingate/McMaster lawsuit—have vigorously asserted that Brown's worldwide music empire was worth about \$85 million when Brown died. They also have filed several documents stating that the McMaster settlement deal destroyed Brown's "I Feel Good" foundation and that Bauknight's less-than \$4.7 million valuation is outrageous.

Dallas agreed.

Dallas resigned as Brown's trustee in November 2007 amid a swirl of allegations that he was involved in the takings of David Cannon, his co-trustee—and that the two were seeking a "kickback" on the sale of Brown's music empire.

In Dallas' sworn statement of July 20, he explained the "kickback" allegation. Dallas said his understanding of the Internal Revenue Code was that the "I Feel Good" foundation could not operate a business, and the assets had to be sold within 60 months after Brown's death. The trustees were simply following that mandate.

Dallas said the term kickback—which he admitted was unfortunate—actually described a "royalty legacy" to be paid by the purchasers to the "I Feel Good" trust, not to Dallas and Cannon.

Dallas described the royalty legacy as a five percent (5%) payment from Brown's worldwide operations that the "I Feel Good" Trust would continue to receive in perpetuity, in addition to the \$100 million purchase price.

"I was very pleased to have negotiated that, and I explained that to Judge Early and all others present Nov. 20, 2007. I have always believed that the royalty payments could amount to more than the corpus of the trust," Dallas said.

"If a 'kickback' ever had been offered, I would have reported it to the proper authorities," Dallas said. He added it is regrettable that in the context of litigation, every word is seized as some kind of leverage—and sadly, the truth is lost.

8/1/12



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James Brown son pleads 'protect the needy children'

by Sue Summer

For The Observer

5 days ago | | | |

In another bombshell twist to the James Brown estate story, Brown's son Daryl has sent an impassioned plea to Attorney General (AG) Alan Wilson, asking Wilson to protect the intended beneficiaries of his father's "I Feel Good" education charity.

"The Attorney General was supposed to protect the needy children, not give away what my father intended for them," Daryl wrote, according to a copy of his letter to AG Wilson received at The Newberry Observer on July 25.

Under James Brown's will, six named children were to be given his household and personal effects, and education trusts of up to \$285,000 were set up for certain grandchildren.

Brown's music empire was left to the "I Feel Good" education charity for needy and underprivileged students at institutions in South Carolina and Georgia.

The will was contested by the children named in the will and by Brown's companion, Tommie Rae Hynie.

The estate plan said anyone who contested the will would receive nothing, but in 2009 former AG Henry McMaster worked a settlement deal that took away over half what Brown intended for charity and gave it to the children and companion who had contested the will.

Daryl was among the children who sued, but he regrets that decision.

He wrote in the letter, "At first I just went along with my family, and this was a mistake."

Daryl wrote that his father's will in Aiken County has never been overturned, and he asks of Wilson, "What gives your office the authority to change my father's will? Is it because my father had only an 8th grade education and you think that you have the right to think for him? Is it because my father is a black American, and black Americans do not have the right to have their wills enforced...Mr. Wilson, why has your office not performed their responsibilities and protect the needy children that my father wanted to educate?"

Not one child has received one dollar in the over five years since his father's death, while lawyers have already been paid millions—with more to come. Lawyers for the Brown children and Hynie are trying to get 50 percent of any monies they receive, Daryl said.

Daryl said his father is "rolling over in his crypt" and pleaded with AG Wilson to protect the trust. "It's not too late."

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Ex: 82



Articles

The Supreme Court judges can correct what will amount to a lynching of all the dreams of a black man to make a difference in the lives of many children by giving them a way out, not a hand out," Daryl wrote.

Daryl also confirmed that Hynie was not Brown's wife and questioned whether her child was his father's. He said his father was not under undue influence when he made his estate plan, that no one told James Brown what to do.

"My youngest daughter and nephew will graduate next year. They have received no assurance that their tuition will be paid. Despite pleas to Brown trustee Bauknight of Columbia, and the South Carolina Attorney General," Daryl wrote.

In conclusion, Daryl pleaded with AG Wilson to give his father's estate plan the same respect that he would have given Brown's close friend, Sen. Strom Thurmond.

Daryl wrote, "I am concerned about my safety, but I feel I must speak out for what is right, no matter what."

Although not signed, the letter's authenticity was confirmed in a telephone call with Daryl Brown and is posted on the Facebook page, James Brown "I Feel Good" Trust (FOIA Concerns).

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Court hears arguments, finger-pointing, at hearing on James Brown restitution [print](#)

by Sue Summer
For The Observer
08.04.12 - 12:01 am

At an Aiken hearing in March, Circuit Court Judge George James was asked to revisit the question of whether former James Brown trustee, David Cannon, should pay restitution on the music legend's missing millions.

The hearing also raised questions about who was responsible for not seeking restitution in the original Cannon hearing.

In October of 2011, Cannon entered an Alford plea and was sentenced to 20 months of house arrest for taking more than \$7 million from Brown.

As part of his plea bargain, Cannon was not required to pay restitution, even though he is part-owner of one of Brown's publishing companies and has bought a million-dollar mansion in Honduras.

Documents submitted to the court by assistant Attorney General (AG) Robert McNair show that Brown took in almost \$80 million between 1999 and his death in 2006, and Cannon received almost \$12 million of that amount. Cannon asserted that was what Brown intended to pay him.

In the transcript of the March hearing, Judge James recounts that he "pointedly" questioned McNair about restitution after Cannon's plea in October. McNair responded that all victims had been notified of the plea hearing, and none were present.

"I don't know whether you can detect my amazement..., but I asked Mr. McNair if the state took any position on restitution. He said no," Judge James said in the transcript.

Although McNair represented to the Court that no one had filed victim statements, pleadings show that former trustee Adele Pope of Newberry—who discovered Cannon's takings—had emailed a victim's statement to the AG's office. Her statement was not presented.

After the October hearing, some of Brown's children expressed their dissatisfaction with the failure of the Court to award restitution, and the hearing in March asked the Court to reopen the question.

The hearing turned into a finger-pointing session with the AG's office, current Brown trustee Russell Bauknight, and the attorney for some of Brown's family, Louis Levenson.

Bauknight is the sole trustee of Brown's assets under a 2009 settlement deal

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Ex: 83

8/6/2012

print

Former Brown trustee appeals gag orders

by Sue Summer
For The Observer
08.21.12 - 12:01 am

Former James Brown trustee Adele Pope of Newberry has asked the S.C. Court of Appeals to take off the muzzle so that she can speak in her defense against a multi-million dollar lawsuit.

On Aug. 13 Pope appealed a July decision by Aiken Judge Doyet Early III to keep in place the gag orders he issued in 2008, orders that prevent anyone from speaking about the diary of Brown companion, Tommie Rae Hynie.

In May Pope asked Early to lift the four-year-old orders, which Hynie herself violated in a Sept. 2008 interview with Augusta reporter Gene Petriello.

Hynie and others have sued Pope for tens of millions of dollars in Richland County, and Pope's appeal brief argues it is critical to her defense that she be allowed to discuss the diary contents related to Hynie's claim of being Brown's wife. Pope also claimed the gag orders allow Attorney General (AG) Alan Wilson to avoid compliance with the Freedom of Information Act (FOIA).

The plaintiffs in the lawsuit against Pope; Wilson, Hynie, current Brown trustee Russell Bauknight, and several claimed Brown children argued in May that the judge should keep the gag orders in place.

In July Early issued a ruling that said he did not have jurisdiction to overturn his own gag orders because of a pending appeal, but there is no appeal in the case for which the gag orders were issued.

According to a longtime Brown friend, the diary contains "explosive" evidence that Hynie was not Brown's spouse and should not have been given a share of Brown's music empire in a 2009 settlement deal forged by former Attorney General (AG) Henry McMaster.

Brown's estate plan left his worldwide music empire to the "I Feel Good" Trust, an education charity for needy children. He left personal effects to six children and set up education trusts for some grandchildren, but he left nothing to Hynie.

Under the settlement deal, McMaster took away over half of what Brown intended for needy children and gave it to Hynie and the claimed Brown children who had contested Brown's estate plan. Brown's will and trust say: 1) anyone who contests the estate plan receives nothing, and 2) his trustees must "vigorously" defend his estate plan.

In accordance with Brown's wishes, Pope and her co-trustee, Bob Buchanan of Aiken, filed an appeal of the McMaster settlement deal. Arguments were heard in the S.C. Supreme Court on Nov. 1, but no opinion has been issued.

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Rolling Stone

Years After Death, Battle for James Brown's Estate Rages On

He left needy kids \$100 million – so why haven't they seen a penny?

by: Matt Birkbeck



James Brown with his fourth wife, Tomi Rae Hynie, in 2006
Gianfranco Calcagno

During his brilliant, troubled life, James Brown always called his own shots. So it wasn't a surprise that Brown set the terms of his legacy after his death. And the centerpiece of that vision was to give virtually his entire fortune, valued then at roughly \$100 million, to a trust to help educate underprivileged children in South Carolina and Georgia.

But nearly five years after his Christmas Day death in 2006, not one needy child has received a penny. That's because Brown's seven children and fourth wife, Tomi Rae Hynie, contested the will in a South Carolina court less than a month after he died. The litigation spiraled into a bitter battle with some two dozen attorneys representing various factions – and became so unwieldy that then-state Attorney General Henry McMaster made a deal in 2009 that affirmed Brown's will but split the estate between the

trust and his family, with the legal expenses borne by the trust.

The settlement was denounced by Brown's advocates, including his longtime attorney Buddy Dallas. "How do you argue against an irrevocable will that provides for needy children? Is that even an argument?" he says. (The attorney for Brown's children responds that the basis of his clients' claim was that the singer had received bad advice and didn't know what he was signing.)

Brown's own legendary childhood – abandoned to an aunt who ran a brothel in Augusta, Georgia, working the streets for pennies and dropping out of school in the seventh grade – contributed to a dysfunctional life replete with drug abuse, failed relationships and multiple arrests. But Brown also credited it with instilling a work ethic that he saw as the foundation for his self-made success.

The singer got the idea for the trust while visiting hospitals and playing benefits to raise money for sick children in the late 1980s. "He spent a lot of time with one girl with spina bifida," says music producer Jacque Hollander, who accompanied Brown to the hospitals. "After, he said, 'I'm going to give them everything I have and touch their lives.'"

Brown was never close to his children – by the end, they had to make an appointment to see him – and was adamant that they wouldn't benefit from his fortune when he died. That was made clear to Dallas at a 1988 business meeting to discuss the trust when he asked Brown, "What about your own children?" Both Dallas and Hollander say Brown pointed his finger in Dallas' face and screamed, "Don't you ever tell me what to do with my money! They will not ride on my back when I'm gone, Mr. Dallas! Do you hear me?"

Despite the 2009 settlement, no money has been paid to Brown's family or the children's trust, and won't be until several outstanding appeals are concluded. As those cases await resolution, Brown's estate continues to shed millions in legal fees. The current court-appointed trustee, accountant Russell Bauknight, declined to say how much money is left, citing his "fiduciary duty" to protect the estate's privacy.

In the meantime, the respect that Brown demanded in life has all but vanished in death. The battle over his fortune has spilled into another ugly dispute, this one over where the Godfather will spend his eternity. Brown wanted to be buried at his South Carolina home, which would become a Graceland-like museum; his children, who control his remains, have them in a temporary crypt on daughter Deanna's property – waiting, like his children's trust, for a final resolution.

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This story is from the August 4, 2011 issue of Rolling Stone.

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AG Wilson wins fight to take Newberry FOIA lawsuit to Richland (SC)

On Wednesday afternoon Judge Frank Addy Jr. ruled that a Newberry Freedom of Information Act (FOIA) lawsuit should be moved to Richland County.

Former James Brown Trustee and Newberry resident Adele Pope brought the lawsuit in August after her June FOIA request for documents was denied by Attorney General (AG) Alan Wilson.

Pope's office and residence are located in Newberry—and it was from Newberry that she made her request to obtain a copy of the Legacy Trust, as well as documents related to the at-death \$4.7 million valuation of Brown's music empire submitted to the IRS by current Brown trustee Russell Bauknight, a Columbia CPA.

The low valuation is being questioned by Pope, who reported in other legal filings that the music empire was bringing in about \$4-5 million every year in royalties and the right to exploit Brown's image.

The Legacy Trust was created by former AG Henry McMaster two years after Brown's death, when he took control of the private assets of the James Brown music empire in a settlement deal with some of Brown's children and his companion Tommie Rae. Brown's will and trust included clauses that said anyone who challenged the estate plan would receive nothing, but McMaster gave away over half of the assets Brown intended for education to those who made just such a challenge.

McMaster and his staff attorneys wrote the Trust document while on the State payroll, and Bauknight, who was appointed by McMaster, now controls the trust at the pleasure of AG Wilson.

On Wednesday morning, Bauknight filed an affidavit that asserted the Legacy Trust is not a public body and a copy of the trust should not be released under the FOIA.

According to a May 16, 2006, legal opinion from then-AG McMaster: "Our Supreme Court, in the Weston case, as well as decisions in other jurisdictions, and our own opinions, have recognized that 'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke the FOIA."

Emily Smith of the AG's office argued that: 1) Newberry was not the proper venue for the hearing; 2) there was another legal action between the parties and Pope should try to obtain copies of the documents in discovery, not under the FOIA.

"The real controversy is in Richland County," Smith said.

In Richland County, the State, the Legacy Trust, Brown's companion Tommie Rae and some of his children are suing former Brown trustees, Pope and Aiken attorney Robert Buchanan, claiming they caused tens of millions of dollars in damages to the trust while serving as trustees for 18 months. The contingency fee contract under which McMaster hired Columbia attorney Kenneth Wingate to sue Buchanan/Pope was the subject of another FOIA lawsuit filed by Pope, a lawsuit that has also been moved to Richland County even though the request was filed in Newberry.

Adam Silvernail, Pope's attorney, argued on Wednesday that being a litigant in another lawsuit gives Pope no more—but no fewer—rights under the FOIA than any other member of the public. "I don't see any compelling reason to send this case to Richland County, where we have different parties and different attorneys. This case is about releasing public documents. The James Brown trust is a public body. This is a question the Richland County judge has no need to take up apart from this case."

Smith argued, "Judge (Casey) Manning is the judge for this complex case."

In ruling on the change of venue, Addy said, "I would be very surprised if another judge said you were not entitled to these documents."

He also said Pope should be given the documents sooner, not later.

The decision was not his alone, he said. He said he had consulted with other judges, who had come to a "consensus" about the ruling.

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November 1, 2011

James Brown's Estate Thriving, but Contests Continue



According to the Associated Press, David Black (a professional money manager) has used a canny licensing deal to wipe out more than \$20 million in debt owed by James Brown's charitable trust. The trust is now able to pay for thousands of college scholarships for needy students.

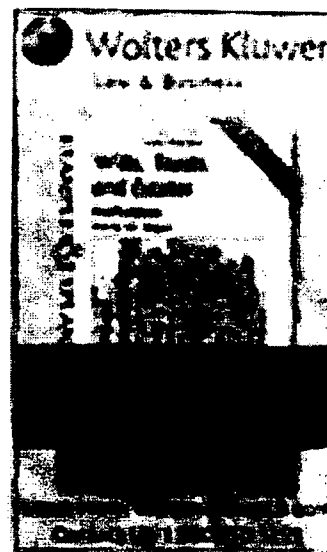
However, Adele Pope and Robert Buchanan, the two ousted trustees, have filed a brief with the Southern Carolina Supreme Court arguing that Black should not be involved with the estate because both Pope and Buchanan opposed hiring Black and because neither of them participated in the negotiations that put the estate in Black's hands.

The attorney general at the time oversaw the deal to hire Black and claims that Pope and Buchanan paid themselves hundreds of thousands of dollars from the estate, failed to appraise Brown's estate, and claimed \$5 million in fees.

Under the current deal, the trust receives half of Brown's assets, Brown's widow and young son receive a quarter, and Brown's grown children receive the rest.

See Saddled by Debt, *James Brown Estate Now Thriving, Still Contested*, The LA Times, Oct. 31, 2011.

Special thanks to Joel Dobris (Professor of Law, UC Davis School of Law) for bringing



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August 20, 2012

The Continued Dispute Over James Brown's Estate



As I have previously discussed, the state has conducted itself in a peculiar manner in resolving the dispute over the Estate of James Brown by refusing to cooperate

with a formal request based upon the Freedom of Information Act. Reports have also reported that it appears that the State of the South Carolina may have misappropriated funds from Brown's estate by declaring certain disinherited or excluded parties as heirs of the estate, contrary to the wishes of the late "Godfather of Soul." The main person who was named was Tommie Rae Hynie, who claimed to be Brown's common law after his death in 2006.

The troubling matter about this dispute is that many news sources do not seem to be concerned with the lack of government accountability in this matter, even though there could be a clear violation of estate and government abuse. What's worse is that these news sources might be intentionally distancing themselves from the story. There are a few legal blogs and reporters who are still reporting on this story, including *The Newberry Observer's Sue Summer*.

See As James Brown Estate Saga Gains Spotlight, South Carolina Fights to Keep Public in Dark, EstateofDenial, Aug. 18, 2012.

0688

Ex:98

wltx.com

Ex-Trustees Want Court to Strike James Brown Deal

1:25 PM, Nov 1, 2011 | comments

Written by
James Gilbert

FILED UNDER

WaterCooler News

Columbia, SC (AP) -- Trustees who say they were unjustly removed from James Brown's charitable trust want South Carolina's Supreme Court to strike a settlement agreement they say shouldn't have been authorized.

Justices on Tuesday questioned trustees who have sued over the settlement that gave about half of Brown's assets to an education fund for needy children, a quarter to his widow and young son and the rest to his adult children.

The trustees say then-South Carolina Attorney General Henry McMaster didn't have the authority to push through the deal that ended years of fighting among Brown's heirs that started after the Godfather of Soul died of heart failure on Christmas Day 2006.

Brown's adult children say the plan was fair and hope the dispute is resolved so poor children can benefit from Brown's benevolence.

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Updated: 8:45 PM Mar 14, 2012

The Inside Story: Deanna Brown talks court battle, James Brown movie deals

Deanna Brown is fighting a heated court battle against her father's former trustee with one focus: payback.

Posted: 7:34 PM Mar 14, 2012

Reporter: Chris Thomas

Email Address: chris.thomas@wrdw.com

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News 12 at 6 o'clock / Wednesday, March 14, 2012

AUGUSTA, Ga. — What do you think of Eddie Murphy as the Godfather of Soul? Deanna Brown is giving us the Inside Story about a possible movie in the works about her father.

She opened up about her family's court battle in News 12's weekly radio segment on 96.3 Kiss FM with Fattz and Cher. Before giving us the scoop on the latest with the James Brown estate, she weighed in on the newly-heated race for sheriff.

"It's a man's world, but it wouldn't be nothing without a woman or a girl," said Deanna with a smile. "Maybe I need to throw my hand in there. That's what's missing ... a woman to pretty this thing up."

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Ex: 100

Not this woman, though. Deanna is fighting a heated court battle with one focus: payback.

"Yes. That's a good way of putting it," Deanna said. "Words of the Godfather himself."

The family has asked a judge to reconsider the house arrest sentence for Brown's former trustee. David Cannon is accused of mishandling Browns funds.

"We're talking about \$7 to \$10 million that you say was squandered?" we asked Deanna.

"Yes," she replied. "We know that we probably won't get all of that back. It's about what was done wrong to be fixed and made right."

The family is also focused on preserving their father's legacy.

"We have two or three deals on the table for a movie," Deanna said. We have not made a decision."

"We hear Eddie Murphy says he would love to play James Brown," we noted.

"And so would I," she said with a smile.

Brown said there's one problem with stars like Murphy.

"I know dad had very serious concerns about a comedian playing him," Deanna said. "Dad said, 'Nothing in my life was funny.'"

Deanna went before a judge this week to ask for that reconsideration. She expects an answer in the coming days. Deanna says her father wanted LeVar Burton to play him on the big screen.

Have information or an opinion about this story? [Click here to contact the newsroom.](#)

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Find this article at:

http://www.wrdw.com/home/headlines/The_Inside_Story_Deanna_Brown_talks_court_battle_James_Brown_movie_deals_142706425.html

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
RUSSELL L. Bauknight, as Trustee,)
and others)
and)
HENRY DARGAN McMASTER and)
others)
Plaintiffs,)
v.)
Adele J. Pope,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No.: 2010-CP-40-4900

Report of Defendant/Counterclaim Plaintiff
Pope Required by Order of July 5, 2012

RICHLAND COUNTY
FILED
2012 AUG - 7 AM 9:52
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Pursuant to the Order of The Honorable L. Casey Manning dated July 5, 2012, as supplemented by Judge Manning's Order for Mediation dated July 19, 2012, Adele J. Pope submits this Report and accompanying Scheduling Order.

Progress of Case 4900 Mediation

Having previously raised specific concerns about premature mediation,¹ Defendant Pope believes that recent events and Judge Manning's Order directing all parties to appear at mediation on or before October 17, 2012 may allow the claims and counterclaims of Defendant Pope and at least three – and as many as a dozen or more – Plaintiffs in this case "Case 4900") to be resolved with all parties attending a mediation conducted without delay

¹ Pope asserted mediation would have been more efficient after addressing the following issues, some of which materially affect jurisdiction and/or standing of Plaintiffs:

1. A.G. Wilson's attempt to delay a year-old S.C. Freedom of Information Act ("FOIA") request.
2. The Wingate Firm's assertion it can be sole counsel for the AG/State and Wingate Private clients.
3. Bauknight's assertion he has authority to speak as an agent for the State/AG.
4. Daryl Brown's public statements that he did not authorize the Wingate Firm to sue Pope.
5. No minors have guardians ad litem, and their parents all have direct conflicts with them.
6. Deposition of Tommie Rae Hynie Brown and Terry Brown to determine their status, positions.

as directed by the Court.

Upon receipt of the Case 4900 Mediation Order, Pope immediately notified Plaintiffs of four suggested mediators, requested that Plaintiffs immediately select a mediator (or suggest alternative names) and suggest dates for August or September, and consider a backup mediator because of the number of parties who must travel to mediation. Counsel also advised that August and September would be preferable to the first half of October because Pope hopes to join her husband in an out-of-the-country volunteer teaching assignment he is attempting to schedule for October.

On August 3, 2012 Plaintiffs rejected the four proposed mediators and suggested two other possible mediators. On August 3 counsel for Pope endorsed one of Plaintiffs' suggested mediators, provided both he and the Plaintiffs are available on an agreeable date in August or September.

The Scope of Mediation

The issues to be addressed in Mediation, and which Defendant addressed in the settlements she proposed which are discussed below, are not in themselves complex. What is complex is the actions of the various Counterclaim Defendants who, Pope asserts, have damaged her by (1) abuse of process; (2) interference with a January 8, 2008 Order in Aiken Case 2007-CP-02-0122 and other contracts; (3) civil conspiracy; and (4) fraud as defined in § 62-1-106. Because mediation has been ordered prior to discovery and prior to dealing with dispositive motions as to certain parties, the issues which may need to be considered at mediation include:

As to the Plaintiffs' Claims:

1. To which Plaintiffs did Pope owe a duty under the Will of James Brown and the James Brown 2000 Irrevocable Trust between November 20, 2007 and May 26, 2009?
2. If Pope owed a duty to a Plaintiff, did she breach it?
3. If Pope breached her duty to any Plaintiff she owed a duty, what damage did it cause to that Plaintiff?
4. Was Pope more than 50% at fault for damage a Plaintiff suffered?
5. Can the State/AG collect damages from Pope for Wingate's private clients, including non-residents of S.C., and not for General Fund?
6. Can Wingate seek an unallocated payment from Pope for his private clients while simultaneously serving (over objection) as sole counsel for the State/AG in this unprecedented tort suit against a S.C. citizen?
7. May the mediator/Pope and counsel deal directly with Daryl Brown, who has made public statements that Wingate is not his attorney, at mediation?

As to Pope's Counterclaims, the following questions apply:

1. Should any or all Plaintiffs/Counterclaim Defendants be relieved from default?
2. Which of the Plaintiffs, if any, has damaged Pope as stated in the counterclaims, and by how much?
3. How do the the AG's actions and the actions of the Wingate private clients in the FOIA and other actions affect this Case, 4900, if at all?

Settlement Offers by Defendant Pope

Focusing on information related to the above issues, counsel for Defendant/Counterclaim Plaintiff has submitted settlement proposals to 12 of the Plaintiffs. While the Settlements are in the form of several Offers of Judgment, counsel has

made clear to the various Plaintiffs that they serve the dual purpose of beginning necessary discussion as to Pope's counterclaims and the claims of each Plaintiff.

Pope's counsel hopes to submit additional offers of settlement prior to mediation.

Counsel for Pope has requested that he and his client, Plaintiffs' counsel and one or more of the 12 clients to whom an offer has been made meet prior to mediation to work on settlement, in hopes that some advance work might narrow the mediation or otherwise help to make it more productive.

To date no response has been received to the offers or requests to meet of Pope.

Scheduling as to Matters not resolved by Mediation before October 17

As requested in the July 5 Order, Defendant has attached a proposed Scheduling Order which will allow Pope and any parties who do not resolve their differences with her in mediation prior to October 17 to proceed seamlessly to discovery and conclusion of the FOIA matters.

[Signatures appear on following page.]

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com


Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
Adam@silvernaillawfirm.com

Attorneys for Defendant Adele J. Pope

August 6, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, and others,
Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

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

)

)

) RETURN OF ADELE J. POPE
) TO MOTION FOR DIRECTION
) FROM COURT CONCERNING
) POTENTIAL PREJUDICIAL
) TRIAL PUBLICITY

)

)

)

Defendant Adele J. Pope submits this Return to the Motion for Direction from the
Court Concerning Potential Prejudicial Trial Publicity made on behalf of Plaintiffs by
Sweeney, Wingate and Barrow, P.A., ("Wingate") on August 23, 2012.

For each reason stated herein Pope asserts that the Court's consideration of this
issue is premature. She asserts that the issue may be appropriate after Plaintiffs have been
deposed, discovery completed, and dispositive motions heard by the Court.

Publicity is Inevitable Because of the Public Issues in this Case.

This case ("Case 4900") and other cases which have arisen since the death of
entertainer James Brown on December 25, 2006 have generated thousands of articles,
television reports and internet postings, articles and comments. This flood of publicity -
some related to Case 4900 -- is expected to continue because of the personalities and the
unique facts and circumstances surrounding the intervention and takeover of the James
Brown assets by the S.C. Attorney General, including:

1. James Brown's \$100 Million worldwide music empire is now being run
by PR/Trustee Russell Bauknight, who serves at the pleasure of AG
Alan Wilson, and who has told the IRS and our Supreme Court that Brown's
music empire was worth less than \$4.7 Million when Brown died.

JEANETTE M. BRIDE
C.C.P. 8.6.3

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RICHLAND COUNTY
FILED

2. If not taken over by McMaster and 52 1/2% given by McMaster to disinherited claimed relatives, Brown's music empire would have gone to The James Brown "I Feel Good" Trust - Brown's private foundation dedicated solely to providing scholarships for needy and deserving students.
3. Brown's \$285,000 education fund for each of Plaintiffs Sydney, Carrington, Janise, Lindsey and Jason was decimated by AG McMaster and their parents - Plaintiffs Daryl, Deanna and Yamma.
4. Defendant Pope alleges that McMaster worked with a Nexsen Pruet attorney and the attorney for Brown's companion Tommie Rae Hynie to form and give Brown's name to the "Legacy Trust," McMaster's vehicle for using his public office to take control of Brown's music empire and create a political patronage fund for the benefit of McMaster and a NP partner expected to be the next Attorney General.
5. Bauknight, Hynie and AG Wilson assert that Pope fraudulently overstated Brown's music empire to the IRS at \$85 Million, while Pope asserts the fraud was committed by Bauknight with his less-than \$4.7 Million value.
6. Pope asserts that Sweeney, Wingate & Barrow, P.A. ("Wingate") cannot legally be sole counsel to the State/AG in this tort suit for money damages to benefit Wingate's private clients - including nonresidents and minors.
7. Pope asserts that Bauknight lacks legal authority to assert that he is acting on behalf of the Attorney General of South Carolina in this lawsuit.
8. Pope asserts Attorney General McMaster brought this lawsuit for the improper purpose of destroying her career so she and Bob Buchanan would abandon their appeal of McMaster's takeover of James Brown's private property.
9. Bauknight and Attorney General Wilson, through Nexsen Pruet, have told the S.C. Supreme Court that the elective share claim of Brown's companion Tommie Rae Hynie was a "slam dunk," while 8 parties to this suit and numerous witnesses have stated she was not Brown's spouse.
10. The Attorney General has refused requests under the S. C. Freedom of Information Act for public documents related to James Brown including:
 - A. A signed copy of Plaintiff Legacy Trust;
 - B. The McMaster/Wingate Litigation Retention Agreement;
 - C. Public documents showing the AG's knowledge of the less than \$4.7 Million valuation of Brown's worldwide music empire; and

D. The AG's copy of the Hynie "diary".

11. Wingate has actively blocked AG Wilson's FOIA compliance and sought sanctions against Pope in a FOIA case.

12. AG Wilson and Bauknight support keeping in place 4-year-old gag orders (the Hynie "diary" Gag Orders) which gag Pope, Sr. Assistant AG Sonny Jones and others from discussing the Hynie "diary" contents which were available to McMaster when he agreed to give Hynie about \$20 Million of Brown's assets.

13. Wingate – purporting to speak for AG Wilson – has recently violated the shield law by sending a subpoena to a journalist demanding that she reveal her sources and notes.

14. AG Wilson and Bauknight did not seek any restitution from David Cannon when he pled guilty to some of the \$12+ million he took from Brown, and have named him as their witness in Case 4900.

Brown's Will and Trust were posted on the web shortly after his death, and remain there. Within the first month after Brown's death, Hynie's lead counsel had issued a press release about the team he put together to represent Hynie. The press release, posted with Hynie's initial filings, remains available on the web.

In January 2007 Hynie appeared on the national Larry King Live television show. Hynie brought with her the marriage license she obtained by concealing her marriage as "evidence" she was Brown's spouse.

Brown's celebrity lawyer Debra Opri appeared with King just after Hynie. Opri, speaking for Brown's "family," confirmed the validity of Brown's estate plan and that Hynie was not Brown's spouse.

The publicity has continued unabated for 5 ½ years, and is likely to continue.

Publicity Self-Generated or fueled by Plaintiffs and their Counsel.

The Court is asked to take judicial notice of the websites, blogs, posts and other self-

generated publicity of Plaintiffs and their counsel, to include the following:

1. Henry McMaster - Public Statements and press releases generated by McMaster on the functions of the Office of the AG; ethics in government, returning "pay-to-play" contributions; transparency in government; and what he asserts he did to help the "I Feel Good" Foundation. In a 2008 WIS TV interview McMaster falsely accused Buchanan/Pope of going "far past the stop sign of conflict of interest."
2. Nexsen Pruet (NP) - See public statements of Leighton Lord and NP on his behalf asserting in 2010 his respect for McMaster and intention to continue his work as Attorney General. Also see October 31, 2011 AP interview with NP attorney David Black, repeated in 440+ media outlets, in which Black states that the return of Buchanan and Pope as Brown's fiduciaries would be "similar to throwing a grenade into the James Brown music empire."
3. AG Alan Wilson - See Home Page of Office of Attorney General Wilson, paid for by taxpayers of South Carolina. See introduction to guide to FOIA and numerous media articles, reports and interview about Wilson's position on FOIA, ethics and transparency in government.
4. Daryl Brown - Daryl Brown has, within the year 2012, given a taped interview to a journalist and written a widely publicized letter to Attorney General Wilson stating that he and his siblings made a mistake by agreeing with AG McMaster to destroy the "I Feel Good" foundation, his father's dream, or to call Hynie Brown's "wife" when she was not.
5. Venisha Brown - has been arrested on felony charges at least three times since the death of James Brown; is believed to be currently incarcerated; and is believe to have been incarcerated when Henry McMaster proposed to give her nearly \$5 Million from the "I Feel Good" Foundation, rather than the 1/6 of his personal and household effects Brown gave her in his Will.
6. Yamma Brown Lumar - Charged with attempted murder of her husband shortly after Brown's death [charges dropped]. Gives frequent interviews and is seen on James Brown Children's Family Foundation site.
7. Deanna Brown Thomas - Augusta radio personality who has given numerous interviews about Brown's charitable intentions, the \$100 Million value and "greedy trustees."
8. Tommie Rae Hynie - Gave radio interview to Gene Petriello about "diary" after the Hynie "diary" Gag Orders were issued. After this suit was filed and Hynie had gone into default on the counterclaims, including that

she was not Brown's spouse, Hynie gave an interview in which she "bared her soul" and asserted she was Brown's widow.

The public importance of both James Brown and the Office of the Attorney General make it unlikely that publicity about the allegations of fraud and impropriety which are the subject of Case 4900 can be controlled. Since – to the extent not resolved in the scheduled pre-deposition mediation – much of this case will be decided by the Court, the extensive publicity may not matter.

The most obvious attempts to influence the outcome in a tribunal to date have been by Plaintiffs or their counsel, including Hynie's plea to Judge Early on national television and NP lawyer David Black's interview with the AP the day before the Supreme Court oral arguments on November 1, 2011.

While there may be a need to consider pretrial publicity issues when the Court is approaching a jury trial, at this point no Plaintiff has been deposed and no scheduling order is even in place. Consideration of trial publicity is premature.

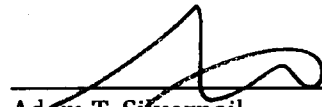
Motion to Vacate Denial of Injunction as to Wingate and Bauknight

Defendant Pope respectfully submits that the Motion of Plaintiffs dated August 23, 2012 and accompanying documents, along with Wingate's recent subpoena to a journalist and filings related to the Hynie "diary" Gag Orders should be considered by this Court in addressing Pope's motion to vacate or alter the Court's July 5, 2012 Order denying injunctions as to Wingate and Bauknight.

This Return is based on the original motion and attachments; the Affidavit of Adele J. Pope filed herewith; and the websites, blogs and posts and other referenced media of which the Court is asked to take judicial notice.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, SC 29202-1898

August 28, 2012

Attorneys for Defendant

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MOTION TO STRIKE
ADDITIONAL AFFIDAVITS OF
DEFENDANT ADELE POPE**

RICHLAND COUNTY
FILED
2012 SEP 14 AM 11:43
JEANETTE M. POPE
C.C.P. & C.V.

**TO: ADAM SILVERNAIL, ESQUIRE AND DARYL L. WILLIAMS, ESQUIRE,
ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-
NAMED:**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs in the above-referenced action plan to move before the Court, and do hereby so move, for an Order striking the following Affidavits:

- Affidavit of Adele J. Pope Opposing Striking Offers of Judgment and In Support of Sanctions Against Any Plaintiffs delaying Or Not Attending Court Ordered Mediation (dated August 21, 2012) (attached hereto as Exhibit A).
- Affidavit of Adele J. Pope Opposing Motion To Strike Offers of Judgment (dated August 15, 2012) (attached hereto as Exhibit B).
- Affidavit of Adele J. Pope related to publicity Motion (dated August 28, 2012) (attached hereto as Exhibit C).

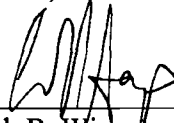
This Motion is made pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, and is based upon the Affidavit's inclusion of material that this "redundant, immaterial, impertinent, or scandalous", as well as the Affidavit's inclusion of material that is wholly irrelevant and inadmissible in this case. Further, the Affidavit contains statements that are not based on personal knowledge.

This Motion may be further supplemented by Affidavits, a Memorandum Of Law, or any other information as may be proper.

(Signature Page Immediately Following)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Aaron J. Hayes

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

September 12, 2012

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

Objection to Motion of
Plaintiffs/Counterclaim Defendants
to Avoid Physical Presence at Mediation
and Memorandum in Support of
Sanctions; Guardian *ad litem* for
Incarcerated Plaintiff/Counterclaim
Defendant Venisha Brown; and
Related Relief

[illegible]

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

Defendant Adele J. Pope responds to the Motion of Plaintiffs "For Exception To Physical Presence Rule at Mediation At Mediation" filed and served September 28, 2012 as follows:

Requested Relief

It is time to stop the 2-year pattern of discovery abuse in this Case by the Attorney General of South Carolina and others, which has recently spread to Aiken County and the S.C. Court of Appeals. The presence of the State's highest legal officer as a Plaintiff/Counterclaim Defendant in this case does not exempt the parties or counsel from compliance with the Rules of Civil Procedure and Orders of this Court.¹

At the Hearing scheduled for Thursday, October 4, 2012 this Honorable Court should direct that all Plaintiffs, including a GAL for incarcerated Venisha Brown and minors Sydney, Carrington, and Janise, attend the October 12, 2012 mediation which was requested by the Plaintiff/Counterclaim defendants on July 5 with the representation that it could be completed within 45 days.

To do so, the Court should find and Order:

1. All Plaintiff/Counterclaim Defendants must comply with the Mediation Order.
2. A GAL must represent the incarcerated Venisha Brown at mediation.

¹Defendant/Counterclaim Plaintiff does not abandon her position that it is illegal for private attorney Kenneth B. Wingate and his firm, Sweeney, Wingate & Barrow, P.A. ("Wingate") to purport to represent the AG/State of South Carolina and Russell L. Bauknight to assert that he speaks "on behalf of the Attorney General of South Carolina." Defendant's motion for reconsideration of this Court's Order denying Injunction as to these issues is pending.

3. Any Plaintiff/Counterclaim Defendants who violate the Mediation Order must appear in person at a sanctions hearing set for a day certain in October 2012.

4. A GAL or unconflicted parent must appear at mediation for each minor.

5. Each Plaintiff/Counterclaim Defendant shall pay his share of the mediation as required by the Rules.

6. All other request in the Motion are premature and were raised in bad faith to divert the Court's attention from the non-compliance of Plaintiff/Counterclaim Defendants with the Mediation Order.

The October 12 Mediation was Requested in Bad Faith

The facts which have developed since July 5, 2012 show that the Attorney General of South Carolina and other Plaintiff/Counterclaim Defendants sought the October 12 Mediation and have taken other action since April 2012 for the sole purpose of preventing release of essential facts which will show that their claims against Defendant/Counterclaim Plaintiff and Robert Buchanan, Jr. were made in bad faith and for the improper purpose of derailing the McMaster settlement appeal.

The material facts which the Attorney General and others are trying to keep from being released are:

1. Tommie Rae was not Brown's surviving spouse and knew it.
2. At least two Plaintiffs acknowledge that the false stipulation that Tommie Rae was Brown's wife and destruction of The James Brown "I Feel Good" Trust were wrong, and should be undone.
3. 7 minor grandchildren were abandoned by their parents & lawyers.
4. Russell Bauknight's less-than \$4.7 Million valuation of James Brown's music empire and the Cannon claim is false.

5. AG McMaster's Office had an improper relationship with David Cannon, Tommie Rae, and their advisors.

6. AG McMaster and Bauknight had knowledge that their representations to the courts about the "Heirs" of James Brown and their rights under the Federal Copyright Act were false.

5. Attorneys seeking to be paid \$20+ Million are working furiously to prevent Attorney General Wilson, the children of James Brown or an unconflicted parent or GAL for the grandchildren from attending Mediation or meeting with Defendant/Counterclaim Plaintiff because saving The James Brown "I Feel Good" Trust will jeopardize their \$20 Million fee.

Procedural Facts

An attached Factual Addendum sets out the chronology of this Case and significant events in other cases. As relates to Plaintiff/Counterclaim Defendants' refusal to appear at Court-ordered mediation and their motion, it is important to note:

1. As was the case with Buchanan, it is the Counterclaims – not the claims of Plaintiff/Counterclaim Defendants – which will be central to any settlement.
2. The \$20+ Million legal fee claim of the following four attorney groups based on another case creates a substantial impediment (among others) to any assertion that a lawyer may serve as agent for a client in this case, especially where most have either participated in, or endorsed Bauknight's less-than \$4.7 Million value of the music empire. (1) Tommie Rae's counsel; (2) Levenson; (3) Terry's counsel; (4) Nexsen Pruet.
3. Buchanan's carrier's representative did not appear at the mediation, and was not needed.
4. Defendant/Counterclaim Plaintiff's claims against the 19 diverse Counterclaim Defendants range from close to zero to over \$4 Million.
[Several of Ms. Pope's offers are of record as part of a Motion to Strike by Mr. Wingate.]
5. Defendant/Counterclaim Plaintiff has no current professional liability coverage.

6. Defendant, in order to have an early, meaningful mediation, has not insisted on presence of any one of a number of carriers who may be called upon in relation to the Counterclaims.

Levenson Cannot Serve as Agent for Any Client at Mediation

The \$20+ Million of expected legal fees of attorney Louis Levenson and the three other attorney groups listed above are directly associated with a pending appeal in another case. The fees of Levenson and Tommie Rae's attorneys alone are expected to exceed \$17 Million. Mr. Levenson's January 2007 contract to represent the "family" calls for Levenson to be paid \$150,000 plus 30% of what he can get for the family.

Under the pending appeal to the McMaster Settlement, Aiken County Case 122

Levenson's original clients achieved the following result:

1. Six claimed children² received about 29% of Brown's assets – now about \$29 Million as valued by Pope, earning Levenson about \$8.7 Million
2. Two adult grandchildren – Forlando and Romunzo – who had fired Levenson had their \$285,000 Education Trust Fund under the 2000 Trust decimated and commingled funds for descendants their grandfather disinherited.
3. Two minor/adult grandchildren – Lindsey and Jason – began as minors but became adults while Levenson was representing them through their parents, but neither they – nor Levenson on their behalf – sought to make them parties as adults.
4. Three minors – Janise, Sydney and Carrington – still minors – had the \$285,000 Education Trust fund created for each of them by James Brown decimated by Levenson and their parents in the McMaster Settlement.
5. Tonya - In original filings in 2007 Levenson's documents claimed she was the daughter of Brown's deceased son Teddy. If so, this would have made her

² Terry (no longer a Levenson client); Larry; Deanna; Yamma; Venisha; Daryl.

the only grandchild of James Brown who is an heir of Brown. In the McMaster settlement, however, she did not receive the 4.79% given the six claimed children.

This diversity alone suggests that the legal positions and interests of the original Levenson clients are so different that it would be risky at best for Mr. Levenson to speak for their interests at mediation. Events since the May 26, 2009 order approving the McMaster settlement which secured Mr. Levenson's \$8.7 Million fee – if the James Brown music empire is worth \$100 Million and the McMaster settlement, now on appeal, is approved – have made it impossible for Mr. Levenson to speak in mediation for any of these clients. They must speak for themselves.

Just some of the Levenson conflicts are highlighted below.

Daryl Brown is now seeking relief from default as to Pope's counterclaims. She has offered him a deal which, if he carries out his stated desire to overturn the McMaster Settlement and Pope and her co-Trustee are reinstated, will produce the following result:

1. Levenson will not get his \$8.7 Million fee.
2. Daryl will get 1% of the income from rights Levenson did not get him.
3. Lindsey will get up to the \$285,000 James Brown gave her.
4. Janise's \$285,000 Fund James Brown gave her will be restored.
5. Pope will let go of her counterclaim if the efforts to save The James Brown "I Feel Good" Trust are successful.

It is hard to imagine that Mr. Levenson could speak for Daryl and his two daughters in this mediation – even though this result would be very favorable for Daryl – because his

own fee is in jeopardy.

As described above, **Lindsey Brown** already had problems with Levenson before this suit was filed. Now she has problems both with Mr. Levenson and with Mr. Wingate, who, on her behalf as an adult failed to respond to the Counterclaims.

Defendant/Counterclaim Plaintiff has made clear that she is willing to accept relatively small payments toward the damages due to her under her counterclaims against any of the grandchildren and children Brown acknowledged who step forward in time to save the "I Feel Good" Foundation and restore it to private hands as Brown intended.

Mr. Levenson simply cannot and should not speak for **Venisha Brown**, who is now incarcerated on her third felony charge since Brown's death. Levenson never sought a GAL for Venisha in Case 122, nor has Mr. Wingate in this case.

Venisha needs a GAL. She has a \$4.7 Million expectancy under the McMaster settlement, and Defendant/Counterclaim Plaintiff has a \$2+ Million claim (at least) against Venisha for tortious interference with her contract to be paid by the Estate/2000 Trust, with interest, under the January 8 Order.

In the dangerous territory created by the McMaster settlement an incarcerated person charged with a felony is now claiming not only to share a private lawyer with the State's top prosecutor but to "speak as one" with him through Levenson. This cannot produce a meaningful mediation of her interest or the public interest Attorney General Wilson must serve.

Levenson and the Less-than \$4.7 Million Vaulation - one of the most

troublesome aspects of the motion is that Levenson and perhaps other counsel who have participated in or endorsed Bauknight's less-than \$4.7 million date-of-death valuation of James Brown's music empire – claimed by Plaintiff and Buchanan to be fraudulent – have a conflict with their clients over their claimed \$20+ Million fee.

The difference between \$85 Million and this \$4.7 Million is important. Further Bauknight's less than \$4.7 Million value – and telling the Supreme Court there were no offers to buy Brown's assets – directly conflict with the claim against Mrs. Pope that she failed to accept a \$90 - \$100 million offer.

At least two of Levenson's clients – Deanna and Daryl – have said publicly that the \$4.7 Million value is not correct. Terry Brown, Levenson's former client, was part of two \$90 - \$100 Million offers.

The most troublesome original client of Levenson, however, is **Terry Brown**. Terry demonstrates what went wrong when the lawyers forgot their clients and focused only on holding onto the \$20 Million AG McMaster took from James Brown's private foundation and gave to them. And when the AG overlooked McMaster's use of his public office to take over on behalf of the government the private property of James Brown in a private foundation properly run by private trustees in accordance with Brown's wishes.

Terry – who now says Brown's music empire was worth less than \$4.7 Million – signed on with Levenson on January 9, 2007.

In early 2007 Levenson and his clients met at Yamma's house with Al Sharpton, a UBS representative and others to figure out how they were going to get it right.

About the same time Terry and son Forlando issued a fake securities prospectus seeking to raise \$200 Million to purchase the music empire and run it through a family company, "Pinnacle."

By March 2007 Terry had associated himself with Cannon and Dallas.

On February 7, 2008 Terry gave sworn testimony in Aiken. He accused Levenson of forging the fee contract. He said Levenson was hired to "CHECK INTO THE WILL AND TRUST AND MAKE SURE EVERYTHING WAS TAKEN CARE OF...THAT EVERYTHING WAS ABOVE BOARD."

His attorney David Bell questioned him:

Q. WAS THERE ANY TALK ABOUT A WILL CONTEST?

A. NO. NO.

Q. TELL US WHY

A. WELL WE ALL KNEW THAT TO CONTEST THE WILL YOU WAS TOTALLY TAKEN OUT OF THE WILL. THAT WAS MY FATHER'S WISHES. I WAS NOT GOING AGAINST WHAT HE SAID REGARDLESS OF WHAT IT WAS. WHETHER WE WIN OR LOSE, IT DOESN'T MAKE ANY DIFFERENCE. WHAT JAMES BROWN SAID, THAT'S THE WAY IT'S GOT TO BE. THAT'S WHAT I BELIEVE

Q.. AND YOU ENDED UP TERMINATING MR. LEVENSON AS YOUR ATTORNEY?

Y. YES, SIR. I DID. [Tr. 2/7/08, p.60]

Terry and two sons filed six grievances in two states against Levenson.

In February and March Terry was party of 2 \$90 - \$100 Million offers to buy the

music empire.

On August 10, 2008 AG McMaster, without Terry, reached his settlement.

On November 19, 2008 Pope testified in Federal Court that the McMaster Settlement posed a \$25 Million threat to The James Brown "I Feel Good" Trust. Terry came up to her afterwards and said "God bless you."

On January 30, 2009, McMaster gave Terry 4.79% of Brown's assets and a 10-year right to buy Brown's music empire to abandon his sworn support of Brown's estate plan.

Terry has not been heard from in person since. His lawyers, Bell and Bodman, however, have made sure they get paid regardless of the Supreme Court's decision. They simultaneously represent Terry in supporting the McMaster settlement deal and Forlando and Romunzo in opposing it.

Terry's current position is unknown, but there have been hints.

By early 2012 Forlando had fired Bell and the other six members of his high-powered legal team.

A journalist reported Forlando as saying that Terry did not even know about this lawsuit (Case 4900) and did not know that Wingate – on his behalf – was seeking sanctions against Pope. He said he and his father were forced into the McMaster settlement deal by the AG's office, and that there was "treachery in South Carolina."

Terry and others must speak for themselves at this important mediation.

Conclusion

These are just a few issues presented by Levenson's representation of absentee

Plaintiffs/Counterclaim Defendants at mediation. There are many more. All lead to the conclusion that these parties cannot be considered as one in this important mediation. They cannot be represented by attorneys for other cases who have multiple conflict issues – their \$20 Million fee being significant among them. But for Venisha and the minors, who should have a GAL, they should be compelled to appear on October 12, 2012; each pay his share; and be sanctioned if they fail to do so.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

October 3, 2012

Counsel for Defendant/Counterclaim Plaintiff
Adele J. Pope.

FACTUAL ADDENDUM

The following is a brief summary of some events leading up to

Plaintiff/Counterclaim Defendants' refusal to comply with the mediation order.

April 2010	Tommie Rae threatens suit if McMaster settlement appeal not dropped.
May 19, 2010	This suit ("Case 4900") begun. Jg Manning told all Aiken County cases are over.
November 2010	Plaintiff/Counterclaim Defendants fail to respond to Counterclaims for: 1. Abuse of Process; 2. Fraud under Probate Code; 3. Interference with Contract (including Buchanan's \$500,000 and Pope's \$1.5 Million -with interest- under January 8, 2008 Order of Jg. Early, case 122) 4. Civil Conspiracy 5. Attorneys' Fees under Trust Code
November 2010	AG Wilson, Tommie Rae & others produce Witness List naming: 1. 14 Witnesses who have confirmed Tommie Rae is not Brown's spouse and who know contents of abandoned writings known as the "diary" are gagged by 2008 "diary" Gag Orders. 2. Felon David Cannon & Albert Dallas, both of whom know "diary" contents, named as Tommie Rae/AG witnesses. 3. <u>Plaintiff/Counterclaim Defendants refuse all discovery for almost 2 years, beginning November 2010.</u>
January 2011	AG/Bauknight file motion for sanctions against Buchanan/Pope for Filing brief to collect fees/costs from Cannon.
May 2011	Bauknight reveals fabricated less-than \$4.7 Million value of Brown's worldwide music empire AND \$12+ Million claim against Cannon. Files sworn I&A.

July 2011	Supreme Court asked to supplement record with fabricated less-than \$4.7 Million value.
July 2011	Bauknight threatens sanctions if Pope exercises FOIA rights.
July 2011- 2012	AG Wilson/Tommie Rae/Bauknight fight all FOIA requests, including for: A. Information about Less-than \$4.7 Million purported value. B. Wingate/McMaster Contract to sue Buchanan/Pope C. The "diary" which AG Wilson has kept and discussed with Dallas - in violation of Gag Orders if not void.
October 2011	<u>Cannon Alford Plea.</u> AG McNair meets with AG Jones, then appears at plea for State and seeks no jail or restitution. [In 2012 Cannon's lawyer says everyone knew about Plea, and what would happen. Most vetted plea she has ever seen.] AG McNair tells Court no victims' statements, ignoring Victims' Statement of Pope asking McNair to speak for needy student beneficiaries of "I Feel Good" Trust from whom Cannon took \$12+ Million.
October 31, 2011	Nexsen Pruet Atty. Black gives scurrilous AP interview about Buchanan/Pope published in 440+ media outlets.
November 1, 2011	Supreme Court oral arguments, McMaster settlement.. Bauknight tells Court: Brown's Estate/Trust have no corpus "to speak of."; No offers to to buy Brown's assets. Elective Share claim was a "slam dunk;" and Copyright Termination Rights is "all this case is about." Deanna/McMaster give interviews after hearing.
2012	Forlando drops lawsuit against Buchanan/Pope. They continue to pursue counterclaims for \$500,000+ cost of frivolous suit. Forlando tells journalist Terry Brown forced into settlement by AG.
2012	AG Wilson, Tommie Rae and Bauknight try to prevent hearings on voiding "diary" Gag Orders, Cannon & Dallas matters in Aiken cases.
2011-2012	Wingate and Bauknight threaten, seek sanctions re: Pope's FOIA requests.
April 2012	Jg. Early has hearing on whether to have hearing.

Jan-March 2012	Bauknight and family blame AG for failure to seek any restitution from Cannon. AG blames Bauknight, says the Trust is Bauknight's responsibility – not his.
May 4, 2012	Mediation with Bob Buchanan. His carrier leaves. No payments by Bob to any Plaintiff/Counterclaim Defendant.
May 2012	Motion to Enforce Settlement with Bob Buchanan reveals he is being paid \$500,000, the amount awarded him under the January 8, 2008 Order, with interest to July 2009.
May 22, 2012	Hearing on "diary" Gag Orders.
May 22, 2012	Tommie Rae's lawyer informs Jg. Early that to ungag the more than 50 people who know the contents of the "diary" and discussed it for months before the Gag Orders "would cause irreparable harm" to her.
June 2012	Tommie Rae makes scurrilous filings in Gag Order matter. Pope requests hearing to determine whether she or Tommie Rae is making false representations to the Court. Hearing set for July 12.
July 2012	Pope re-notices Daryl Brown deposition after he gives taped public report that he wants to repudiate McMaster Settlement and save "I Feel Good" Foundation.
July 5, 2012	AG, Tommie Rae, Bauknight seek Mediation Order. Assure Jg. Manning that mediation can be completed in 45 days and is not sought in order to delay.
July 10, 2012	AG Wilson (Jones)/Tommie Rae, to prevent hearing on July 12, writes to Judge Early:

"On Thursday, July 5, 2012...requested.. Judge Manning issue an order requiring Ms. Pope to Mediate with the settling parties. . . Ms. Pope's counsel objected, claiming the need for additional discovery. Nevertheless, Judge Manning informed counsel that he would sign an order requiring Ms. Pope to mediate, and a proposed order consistent with his oral order was sent to Judge Manning today. . . Based on these events and for other reasons, we ask that In the interest of judicial economy "[Request that the hearing

be cancelled.]

July 19, 2012	Mediation Order issued.
August 19, 2012	Plaintiffs/Counterclaim Defendants seek "Emergency" Oral Order to stop deposition of their witness Albert Dallas. Dallas gives sworn statement that Tommie Rae and Brown not married. She knew it. The 3 discussed in summer of 2006 before parties separated. Tommie Rae's child not Brown's.
August 24, 2012	Plaintiffs/Counterclaim Defendants file motion seeking guidance on pre-trial publicity, with dozens of articles attached.
September 2012	First indications some Plaintiffs will not comply with Mediation Order. Defendant/Counterclaim Plaintiff Pope files Motion.
September 28, 2012	Six Adult Plaintiffs and minors seek advance approval of failure to comply with Mediation Order.

RUSSELL L. BAUKNIGHT, ET AL. V. ADELE J. POPE AND ROBERT L. BUCHANAN, JR.

DOCKET NUMBER 2010-CP-40-4900

PROOF OF ADR

1. Alternative Dispute Resolution (ADR) was conducted in the form of: **Mediation.**
2. The neutral was: **Karl A. Folkens.**
3. The ADR was conducted on **October 12, 2012.**
4. As a result of ADR, this case should be considered (please check one):

_____ Fully Settled by Consent Judgment or a Voluntary Dismissal to be filed by the parties.

_____ Partially Settled, with agreement of the parties on the following issues:

 X At an impasse.

_____ In need of further ADR. I _____ am / _____ am not willing to mediate this case further. I recommend that ADR resume as of:

_____ Continued to (Date):

5. Plaintiffs X were/ _____ were not present.
Defendants X were/ _____ were not present.

6. Other participants were:

 X Lawyers for Plaintiffs: Mark V. Gende, Esq., Kenneth B. Wingate, Esq., Fred L. Kingsmore, Jr., Esq., Aaron J. Hayes, Esq., J. David Black, Esq. & Louis Levenson, Esq., S. Alan Medlin, Esq., Matthew D. Bodman, Esq. & David B. Bell, Esq.

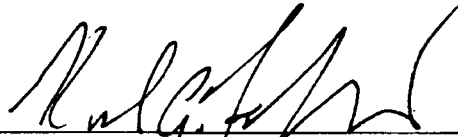
 X Lawyers for Defendants: Adam T. Silvernail, Esq. & Daryl L. Williams, Esq.

 X Others: John W. McIntosh, Esq., C. H. Jones, Jr., Esq. & Mary Frances Jowers, Esq., representatives from the office of the Attorney General of South Carolina; Matt Williams, Defendant's counsel's law clerk; Dahlia Brown, Defendant Terry Brown's wife; Tonya Brown, family member of James Brown; Dr. Yamma Brown & Deanna Brown Thomas, daughters of James Brown; Shawn Thomas, son-in-law of James Brown

7. Choice of the mediator was by:
 X Stipulation

8. The total number of hours spent in ADR was: **12.25** hours, plus travel time and expense.

9. Further comments of the neutral: *None.*



KARL A. FOLKENS, Mediator
P. O. Box 6139, Florence, SC 29502-6139
(843) 665-0100; FAX (843) 665-0500

October 19, 2012

0721

MA12-234

2012 OCT 22 AM 10:13
JENNIFER W. MCBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

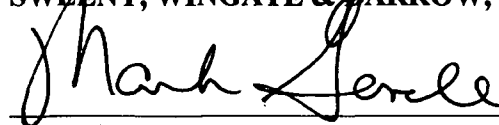
**SUPPLEMENT TO PLAINTIFFS'
MOTION TO SET ASIDE THE ENTRY
OF DEFAULT**

2012 DEC 17 PM 4:29
JANIE W. HARRIS
C.C.P. & G.S.

Plaintiffs hereby submit the following supplement to Plaintiffs' Motion to Set Aside the Entry of Default stemming from Defendant Pope's counterclaims against Plaintiffs. As additional evidence of their meritorious defenses against the counterclaims, Plaintiffs submit the sworn testimony of Albert "Buddy" Dallas, Esq. (attached hereto as **Exhibit A**), wherein he finds fault with the management of the Estate of James Brown, resulting in millions of dollars of damages. Plaintiffs direct the Court's attention to pp. 35:3-21, 35:19-21, and 36:5-6. James Brown died on December 25, 2006, and Ms. Pope was appointed special administrator on March 7, 2007, less than three months after Brown's death. Therefore, Ms. Pope was actively involved in the Estate during the 12-month period—and beyond—to which Mr. Dallas attributes the millions in losses.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

December 17, 2012

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND CASE NO. 2010-CP-40-4900.

RUSSELL L. BAUKNIGHT, as Trustee of the)
James Brown 2000 Irrevocable Trust and)
the James Brown Legacy Trust, as Personal)
Representative of the Estate of James)
Brown, and on behalf of Henry Dargan)
McMaster, in his capacity as Attorney)
General of the State of South Carolina;)
Tommie Rae Brown, individually and on)
behalf of her minor child, James 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, Carrington)
Lumar, and Tonya Brown; Venisha Brown;)
Larry Brown; and Terry Brown)

and)

HENRY DARGAN MCMASTER, in his capacity as)
Attorney General of the State of South)
Carolina; TOMMIE RAE BROWN, individually)
and on behalf of her minor child, JAMES)
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, CARRINGTON LUMAR, and TONYA)
BROWN; VENISHA BROWN; LARRY BROWN; and)
TERRY BROWN,)

Plaintiffs,)

vs.)

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

Defendants.)

SWORN STATEMENT OF

ALBERT H. DALLAS, ESQ.

EXHIBIT

A

1 SWORN STATEMENT OF
2
3 ALBERT H. DALLAS, ESQ.

4
5 July 20, 2012

6 9:55 a.m.

7
8 304 Black Street
9 Thomson, Georgia

10
11 Jan Alderfer Russell, CCR-B-2438, RPR
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1 business, and his response was, "Well, that's tough."
2 As you know, Ms. Pope can be a hard taskmaster.

3 Q. Well, you mentioned Mr. Buchanan's
4 service. As to Ms. Pope's service as personal
5 representative and trustee, are you aware of anything
6 or do you have any criticism of her performance?

7 A. My observation is that we missed a lot of
8 opportunity during the first 12 months after
9 Mr. Brown's death. I think that is attributable to a
10 simple lack of understanding that the James Brown
11 operation required daily management. And to the
12 extent that Mrs. Pope was too cautious, the attorneys
13 for the children, Mr. Levenson, and for Tomi Rae,
14 Mr. Medlin and Mr. Rosen, was equally intrusive and
15 obtrusive in what was in the best interest of the
16 estate and trust. I said to Mr. Rosen and to
17 Mr. Levenson in Aiken, South Carolina at one of the
18 hearings, please don't cause us to lose the aura
19 associated with the passing of Mr. Brown, less we
20 will miss many millions of dollars that literally
21 will be like picking it up off of the street.

22 The euphoria of Mr. Brown's passing -- for
23 example, the most recent example would be Whitney
24 Houston. Her estate will generate more millions this
25 year than probably she accumulated in the prior ten

1 years. Because everybody is nostalgic and
2 sentimental and remember when a particular song was a
3 part of their life and almost out of homage or
4 respect, people buy recordings.

5 For the most part, we missed that with
6 Mr. Brown. We just missed it. And I couldn't get
7 anybody to understand it. I even said, everything
8 will be accounted for, just back off for awhile, just
9 back off. And particularly when we started dealing
10 with a potential sale for the 100 million. I don't
11 know that it would have been 100 million. There is
12 always adjustments. There's always allowances that
13 have to be made in a final negotiation, but it would
14 have been somewhere approaching that number. Of
15 course there was about 15 million owed to TIAA-CREF
16 on the bond issue. Of course after that you're still
17 talking 80, \$85 million. Maybe we were only talking
18 \$75 million. Elvis, the year prior, sold for 115
19 million. And Mr. Brown is a world artist. As much
20 as we love Elvis, he was a national artist.
21 Mr. Brown was an international artist.

22 But it requires -- it's a business that
23 requires day-to-day management and day-to-day
24 promotion. Mr. Brown never ever failed to tell me,
25 when I would caution him about getting his name in

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MOTION TO STRIKE
THE AFFIDAVIT OF DEFENDANT
ADELE POPE DATED
DECEMBER 11, 2012**

RECEIVED
C.C.P.
FIFTH CIRCUIT

2012 DEC 20 AM 11:52

RICHLAND COUNTY
FILED

**TO: ADAM SILVERNAIL, ESQUIRE AND DARYL L. WILLIAMS, ESQUIRE,
ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-
NAMED:**

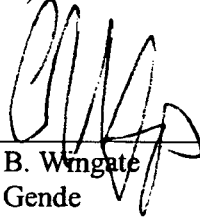
YOU WILL PLEASE TAKE NOTICE that Plaintiffs in the above-referenced action plan to move before the Court, and do hereby so move, for an Order striking the Affidavit of Adele J. Pope dated December 11, 2012 (attached hereto as Exhibit A).

This Motion is made pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, and is based upon the Affidavit's inclusion of material that this "redundant, immaterial, impertinent, or scandalous", as well as the Affidavit's inclusion of material that is wholly irrelevant and inadmissible in this case. Further, the Affidavit contains statements that are not based on personal knowledge.

This Motion may be further supplemented by Affidavits, a Memorandum Of Law, or any other information as may be proper.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

December 18, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)
Plaintiff,)
v.)

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
Defendant.)

MOTION FOR JUDGMENT
ON THE PLEADINGS

POPE V. WILSON [former case 36-379]

Russell L. Bauknight, etc., Henry Dargan)
McMaster, in his capacity as Attorney)
General, etc, et al,)
Plaintiffs,)
v.)

Case No. 2010-CP-40-4900

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

The Defendant Alan Wilson, Attorney General moves for judgment on the pleadings pursuant to Rule 12 (c), SCRCP, in that the moving party is entitled to judgment as a matter of law in this case:

1. The items demanded in the Freedom of Information Act request at issue in this proceeding are exempt from disclosure under FOIA because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

2. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery.

3. FOIA cannot be used as a substitute for or as an addition to discovery of a party opponent.

4. The Court lacks subject matter jurisdiction of this action because the matters at issue are governed by the Rules of Civil Procedure regarding civil discovery in the pending main action of Bauknight v. Pope, with which this case has been consolidated.

For the foregoing reasons, the Defendant Wilson respectfully requests that he be granted judgment in this action.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
S.C. Bar No. 5262
(803) 734-3680
Email: Esmith@scag.gov

BY: 

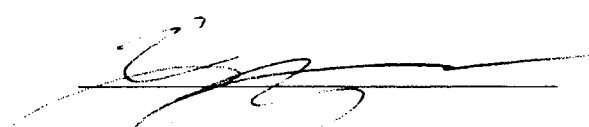
December 20, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCPP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion for Judgment on the Pleadings would serve no useful purpose.

December 20, 2012


ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Civil Action No. 2010-CP-40-4900

[Formerly Newberry County Case No.

2011-Cp-36-379]

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina,

Defendant.

PLAINTIFF'S RETURN AND OPPOSITION
TO MOTION FOR JUDGMENT ON
THE PLEADINGS

RICHLAND COUNTY
FILED
2013 JAN 15 AM 10:13
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO: DEFENDANT AND PURPORTED INTERVENORS, NAMELY RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN; TOMMIE RAE BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JAMES B.; DARYL J. BROWN, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILD, JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, SYDNEY L. AND CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; AND TERRY BROWN AND/OR THEIR COUNSEL.

Plaintiff opposes the Motion for Judgment on the Pleadings (the "Motion") for the reasons set out below:

The Motion is Baseless and Filed in Bad Faith

1. This motion is a continuation of the South Carolina Attorney General's attempts to delay this case and deny Plaintiff her rights under the Freedom of Information Act, which attempts have successfully prevented this matter from being heard for more than 15 months since it was filed in August 2011.

2. The Attorney General ("AG") asks that the Court summarily dispose of Plaintiff's

suit, brought pursuant to the South Carolina Freedom of Information Act ("FOIA"). Despite seeking this drastic relief, the AG tells the Court that the documents sought herein are "exempt from disclosure under FOIA because they are subject to the rules regarding discovery in the Rules of Civil procedure." [Motion, ¶1]

3. The AG cites no law and no rule in support of this assertion, and the undersigned has been unable to find a single case which supports it. Instead, there is a wealth of Federal law which holds that FOIA and discovery are separate procedures which may proceed separately or in tandem.

4. Because it has been cited and argued *in this case*, the AG is well aware of *North v. Walsh*, 881 F.2d 1088 (D.C. Cir. 1989), which included an exhaustive and thoroughly supported evaluation of an argument similar to that which the AG attempts to advance here:

An attempt to interject FOIA "does not extend the scope of discovery under Rule 16" when done as part of criminal discovery. *DeLorean*, 717 F.2d at 480; accord *Murdock*, 548 F.2d at 602. Discovery limitations, civil or criminal, however, do not apply when FOIA requests are presented in a discrete civil action. **The plaintiff's rights in a FOIA action do not depend on his or her identity;** " '[t]he Act's sole concern is with what must be made public or not made public.' " *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, --- U.S. ---, 109 S.Ct. 1468, 1481, 103 L.Ed.2d 774 (1989) (citation omitted); see *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 n. 23, 98 S.Ct. 2311, 2327 n. 23, 57 L.Ed.2d 159 (1978) (stating that person's **rights under FOIA are neither diminished nor enhanced by his "litigation-generated need"** for agency documents); accord *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10, 95 S.Ct. 1504, 1513 n. 10, 44 L.Ed.2d 29 (1975); see also *United States v. Buckley*, 586 F.2d 498, 506 (5th Cir.1978) (stating that **"FOIA provides an**

independent basis for obtaining information potentially useful in a criminal trial"), cert. denied, 440 U.S. 982, 99 S.Ct. 1792, 60 L.Ed.2d 242 (1979); *Comstock Int'l (U.S.A.), Inc. v. Export-Import Bank of the United States*, 464 F.Supp. 804, 805 n. 2 (D.D.C.1979) (noting that FOIA plaintiff presumably sought documents for use in an arbitration proceeding, but holding that **"a party's rights under the FOIA are neither enhanced nor diminished by its status as a private litigant"**); see generally Toran, *Information Disclosure in Civil Actions: The Freedom of Information Act and the Federal Discovery Rules*, 49 GEO.WASH.L.REV. 843, 861 (1981) ("**[A] party's desire to use information obtained under the FOIA in subsequent litigation is not a basis for denying an otherwise legitimate FOIA request.** Indeed, there are situations in which FOIA will permit access to information that would not be available through discovery.") (footnote omitted); Tomlinson, *Use of the Freedom of Information Act for Discovery Purposes*, 43 MD.L.REV. 119, 121 (1984) (same).

North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989) [emphasis supplied]

5. In addition, the Court in *Hoover v. United States Dept. Of the Interior*, 611 F.2d 1132 (5th Cir. 1980), specifically held that a FOIA plaintiff's status as a defendant in civil litigation filed by the government *does not affect his rights under FOIA*:

The appellant landowner's right under the FOIA, where he is in effect asserting the rights of the public to obtain such appraisals, is inherently different than his particularized status as the landowner in the condemnation proceeding. He is entitled to vindicate his public rights in the instant FOIA suit in accordance with the requirements of the FOIA. *Id.*

The AG Seeks to Violate Plaintiff's Right to Equal Protection

6. The AG's argument seeks to deprive Plaintiff of her Constitutional right to equal protection of the laws.

7. The documents sought herein are public and are subject to disclosure to any citizen under FOIA. The State, however, asks the Court to find that FOIA bars *Plaintiff* from receiving the documents due to her status as a defendant in a tort case.

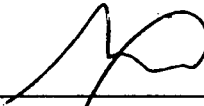
8. The AG asks the Court to find that a class of citizens (those who have been sued by the State) have no rights under FOIA. To do so would violate Plaintiff's right to equal protection under the Fourteenth Amendment to the United States Constitution.

9. Plaintiff is aware that another resident of Newberry County has recently filed suit against the AG under FOIA.¹ That individual seeks numerous documents, including the fee contract which is the subject of this action. Based on the AG's argument in the Motion, the Newberry plaintiff would be entitled to the same documents sought by Plaintiff herein. To arbitrarily treat Plaintiff differently from other individuals making similar FOIA requests is to violate her right to equal protection.

This return is based on the Complaint, prior affidavits and other filings herein; the *South Carolina Rules of Civil Procedure*; the South Carolina Freedom of Information Act; other applicable statutory and case law; and such additional documents as Plaintiff shall file herein prior to the hearing.

¹ That case is captioned *Susan D. Summer vs. Alan Wilson, in his Official Capacity as Attorney General of South Carolina*, Newberry County Case No. 2012-CP-36-688 (filed December 18, 2012).

Respectfully Submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1901 Hampton Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

January 11, 2013

Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

)
) CASE NO. 2010-CP-40-4900

)
)
)
)
)
) MOTION OF DEFENDANT FOR
) SUMMARY JUDGMENT AS TO
) TERRY BROWN

) AND
)
) RUSSELL L. BAUKNIGHT AS AGENT
) FOR TERRY BROWN

FILED
2013 MAR - 7 PM 12:45
JEROME H. BAUKNIGHT
C.P. & G.S.

TO: PLAINTIFF TERRY BROWN AND RUSSELL L. BAUKNIGHT AS HIS AGENT, AND THEIR
COUNSEL, SWEENEY, WINGATE AND BARROW, P.C.:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon
thereafter as she may be heard, Defendant Adele J. Pope will move before the Honorable L.
Casey Manning for an order of Summary Judgment against Terry Brown and Russell L.
Bauknight as his Agent ("Agent") as follows:

1. Dismissing or Granting Summary Judgment as to Terry and Agent's Complaint;
2. Granting Summary Judgment to Pope against Terry and Agent on the causes of
action for fraud; abuse of process; civil conspiracy; and interference with contract;
3. Awarding actual damages against Terry and Agent, jointly and severally,
in the amount of \$4,230,000.00, with prejudgment interest as to \$2.1 Million.

4. Awarding Attorneys' fees and costs in the amount of \$320,000.00, plus all additional attorneys' fees and costs incurred after May 19, 2013.
5. Directing that a jury be impaneled to determine punitive damages; and
6. Equitably charging any interest held by Terry or Agent related to assets of James Brown, the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust with the judgment as set out above.

The Grounds of this motion are:

1. The undisputed material facts contained in the Counterclaim, which are summarized below, with additional developments since its filing, show:

- a. Entertainment icon James Brown stated his clear intention to dedicate his entire musical empire solely to the education of certain grandchildren and needy and deserving students as follows:

- Except as otherwise provided. . . I have intentionally failed to provide for any other relatives or other persons, whether claiming, or to claim, to be an heir of mine or not. Such failure is intentional and not occasioned by accident or mistake. . . . It is the Grantor's intention that the trust estate be available only to the beneficiaries and not to be the Grantor's past or future spouse. The Trustee(s) are directed to enforce this provision. [Emphasis supplied.] [Will, p. 1; Tr. Art. XVIII, XXII]

- b. In 2008 Terry gave sworn testimony of his knowledge and support of Brown's Estate Plan and insisted that Brown's *In Terrorem* clauses be enforced against those who interfered with the Estate Plan.

- c. With such knowledge, Terry, with others, hired attorney Levenson to destroy Brown's estate plan, and agreed to pay him \$150,000.00 plus 30% of what Levenson could get for them from Brown's "I Feel Good" private foundation for needy and deserving students.

- d. By 2008 Terry and his son Forlando had teamed up with felon David Cannon to become part of TJBL, which made three offers to buy Brown's music empire for \$90 Million - \$100 Million.

- e. On January 30, 2009 Terry further violated Brown's Estate Plan and the *In Terrorem* clauses by entering a void contract to acquire 4.79% of the "I Feel Good" Trust and a Right of First Refusal to buy Brown's \$100 Million music empire.

f. On May 18, 2010 Terry and Agent brought this case without cause for improper purposes, including forcing Robert Buchanan and Pope to abandon the appeal of the Aiken County Case 2008-CP-02-1647 Order which approved the void deal.

g. Terry had actual knowledge when he commenced this suit that Buchanan and Pope have owed him no duty since January 30, 2009 when he violated the valid Estate Plan, invoking the *In Terrorem* clauses of Brown's Will and Trust.

h. In 2012 Terry and Agent extracted from Defendant Buchanan an unconscionable "agreement," which should be declared void, purporting to limit Buchanan's ability to defend the Estate Plan of James Brown.

i. Terry and Agent participated in falsely accusing Buchanan of the Federal Crime of overstating Brown's music empire by \$79 Million for the improper purpose of obtaining a large commission, where both knew the allegation to be false, material and damaging.

j. Terry and Agent conspired with Forlando Brown and others to cause other material and special damages to Buchanan and Pope.

k. Terry and Agent have committed fraud under Section 62-1-106, damaging Defendant and Buchanan in numerous ways, including:

1. Fabricating and presenting to the IRS, the Supreme Court and the Probate Court the outrageous claim that Brown's worldwide music empire was worth less than \$4.7 Million, where Terry has actual knowledge that Brown's worldwide music empire is worth \$100 Million or more.
2. Fabricating and presenting to the S. C. Supreme Court James Brown's heirs and their alleged rights under the Federal Copyright Act, with actual knowledge that the representation was both material and false.
3. Telling the S. C. Supreme Court that there have been no offers to buy the James Brown's assets at the same time Terry and Agent alleged losses by Buchanan and Pope for failure to accept a 2007 \$100 Million offer, and Terry participated in two \$90 - \$100 Million offers.
4. Representing that Tommie Rae Hynie was Brown's surviving spouse, and asserting that Jg. Early had so declared her to be, where Terry has actual knowledge Hynie was not Brown's spouse and Jg. Early made no such finding.
5. Terry's attempting to transfer his rights in the Estate of James Brown

(in a document prepared by Agent's counsel) in violation of the Statute of Elizabeth while seeking relief from default as to the counterclaims of Buchanan and Pope.

6. Falsely accusing Buchanan of impropriety for seeking a \$2.1 Million commission for more than six years of valuable service to the Estate, 2000 Trust and Estate Plan of James Brown, and Pope a \$2.8 Million corresponding commission, while concealing their plan to pay \$20 Million or more to Levenson, Rosen and Agent's attorneys from Brown's "I Feel Good" Trust, which Brown intended for scholarships for needy students.

2. Terry and Agent have refused to participate properly in discovery and Terry has refused to present himself at noticed and/or scheduled depositions for more than two years. Terry has further concealed material documents requested in discovery.

3. The evidence shows that Terry and Agent have concealed their collusion with felon David Cannon, Terry's joint venturer, and damaged Brown's Estate and 2000 Trust by \$12 Million or more including:

- a. Agent's engaging Powell Goldstein (now "Bryan Cave"), counsel to Terry, Cannon and TJBL, to assist with Terry's Right of First Refusal ("ROFR")
- b. Terry's participation in soliciting a book about James Brown with the intention of vindicating David Cannon and vilifying Buchanan and Pope, even though Cannon took \$12+ Million from Brown and Buchanan and Pope put the Estate/2000 Trust in a position to recover substantial amounts, including Cannon's million-dollar home in Honduras.
- c. Failing for four years to recover a single dime from Cannon in Case 322.
- d. Failing to seek either jail time or restitution for Cannon, thereby rehabilitating him at the expense of Buchanan and Pope.
- e. Naming Cannon as a witness against Buchanan and Pope in this Case, instead of seeking millions from him.

f. Interfering with Pope's attempts in Aiken County to proceed with recovery of the missing millions.

g. Agent's failure to recover more than \$400,000 of damages caused by Terry's son Forlando in the frivolous Federal Suit brought by Forlando on January 2, 2008 and abandoned by him in 2012.

4. Terry and Agent, for Terry's benefit, have interfered with the valid contracts of Buchanan and Pope, including but not limited to the contracts to make all payments approved in the January 8 and February 20, 2008 Orders in Case 122; the contract with James D. Bailey, Esq.; the contract with Tressa Hayes; the defense of the fabricated Forlando Federal Suit; and other valid obligations entered into by Buchanan and Pope for the protection of the Estate, 2000 Trust and Estate Plan of James Brown.

5. The facts contained in the counterclaims against Terry, which are incorporated herein by reference, are fully supported by the record in this case and matters of which the Court is asked to take judicial notice.

6. As a result of the actions of Terry and Agent, Pope has been damaged in at least the following amounts:

- a. Liquidated damages under the January 8, 2008 Order of Jg. Early of no less than \$2,100,000.00, with daily, pre-judgment interest at the legal rate.
- b. Additional damages in the amount of no less than \$2,130,000.00, including loss of ability to complete her service as PR/Trustee; costs of the Forlando Suit; increased costs, and loss of professional negligence insurance; defense of the Cincinnati lawsuit, prosecution of the Case 1647 appeal; and resulting limitations to her practice as a result of failure to obtain appropriate insurance.

7. Based on the undisputed material facts, including those set out herein, there is no support for Terry's request for relief from default.

8. The actions of Terry and Agent described herein, and more fully set forth in the sworn testimony, depositions interrogatory answers and admissions on in this Case and in the Record on Appeal ("ROA") in Case 1647 and in the ROAs in Cannon and Dallas appeals from Case 122, were taken maliciously and recklessly, and with intention to destroy the careers, reputations and livelihood of Buchanan and Pope and have been effective in doing so.

9. The reckless and intentional nature of Terry's actions, and those of Agent, merit both the punitive damages and equitable relief sought against Terry and Agent herein.

10. Terry and Agent have advised the S. C. Supreme Court that Terry's Federal Copyright Act Termination Rights, which should be equitably charged with the damages to Pope hereunder, are a "valuable right" which Agent is holding in his fiduciary capacity.

11. As a result of the actions of Terry and Agent, including their intransigence in discovery matters, counsel for Pope has performed valuable and necessary services and incurred costs in this case over almost three years, which should be awarded against Terry and Agent under Section 62-7-1004 of the S.C. Trust Code in amount of \$320,000.00 for this case, plus such additional attorneys' fees as are earned and costs incurred after May 19, 2013.

This motion is supported by all Affidavits of Adele J. Pope on file in this Case; the deposition of Robert L. Buchanan, Jr. and the Affidavits of Buchanan, Pope and others made a part thereof; the testimony of Terry Brown in Case 122; the decision of the S. C. Supreme Court dated February 27, 2013 in Case 1647; the decision of the S.C. Court of Appeals dated

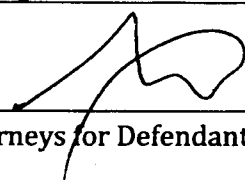
November 6, 2009 in Case 122 (Cannon appeal); the sworn testimony of Albert Dallas; the deposition of Daryl J. Brown; the deposition of Terry Brown; the deposition of Tonya Brown; and such additional affidavits, admissions and other filings which shall be properly presented to the Court prior to the hearing.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

March 5, 2013

By: 
Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Russell L. Bauknight, as Trustee of the
James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as
Personal Representative of the Estate of
James Brown, and on behalf of 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,

Plaintiffs,

vs.

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

Defendants.

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

**ATTORNEY GENERAL ALAN
WILSON'S MOTION TO BE
DROPPED AS A PARTY**

RECEIVED
RICHLAND COUNTY
FEB 25
2013 MAR 25 PM 4:10
JEANETTE L. WILSON
CLERK OF COURT

PLEASE TAKE NOTICE THAT Attorney General Alan Wilson ("Attorney General") through undersigned counsel, will move before the Court of Common Pleas for Richland County within ten (10) days of the date hereof or thereafter at such other time and place as the Court determines, for an Order pursuant to Rule 21, SCRPC, dropping the Attorney General as a party to this action. Rule 21 states that "[p]arties may be dropped or added by order of the court of motion of any party or of its own initiative at any stage of the action and on such terms as are just."

This Motion is based upon the May 18, 2010, from Attorney General McMaster to Russell Bauknight, attached as Exhibit A; the recent South Carolina Supreme Court decision in Wilson et al. v. Dallas et al., 2013 WL 697042 (filed February 27, 2013); the Attorney General's Petition for Rehearing in that case, along with the Attorney General's Motion to Supplement the Record, both attached as Exhibit B; and S.C. Code §62-7-405(c). In the Attorney General's Petition for Rehearing, the Attorney General advised the Supreme Court that he would be shortly moving to have himself removed as a party to this case and that any further action in the case to protect the charitable beneficiaries would be pursued by the Trustee. See Petition for Rehearing, page 26-27.

This Motion shall be made pursuant to statutory and case law of the State of South Carolina and other grounds which may be presented to the Court.

Rule 11 Certification: I certify that consultation with the other parties would serve no useful purpose based upon the decision by the Surpeme Court in Wilson v. Dallas and the four rehearing requests that have been filed in that case.

Respectfully Submitted,



Alan Wilson

Attorney General of the State of South Carolina

John W. McIntosh

Chief Deputy Attorney General

Robert D. Cook

Deputy Attorney General

C. Havird Jones, Jr.

Assistant Deputy Attorney General

Mary Frances Jowers

Assistant Attorney General

Post Office Box 11549

Columbia, South Carolina 29211

(803) 734-3680

March 25, 2013
Columbia, South Carolina

5. Attorneys' fees and costs of \$375,000, and costs incurred after the date of this motion.

The grounds of the motion are:

1. This action was begun and continued for almost three years by Bauknight, acting on behalf and in the name of the Legacy Trust, for the improper purpose of destroying the careers and reputations of Pope and Robert Buchanan, Jr. to force them to abandon their appeal in Case 2008-CP-02-1647 ("Case 1647").
2. The Legacy Trust and Bauknight did so with knowledge as defined in Section 62-7-104 of the S.C. Trust Code that Buchanan and Pope never owed the Legacy Trust any duty.
3. Bauknight is personally at fault for the torts of the Legacy Trust as set out in Pope's Counterclaims, and, therefore, individually liable under S.C. Probate Code Section 62-7-1010(b) and other applicable law.

The undisputed material facts on which this Motion is based include:

1. According to his affidavit, Bauknight has administered the Legacy Trust in Richland County for more than two years.
2. This action was commenced and continued by the Legacy Trust/Bauknight with knowledge that Buchanan and Pope never owed a duty to the Legacy Trust.
3. The Legacy Trust/Bauknight, in concert with Tommie Rae Hynie, AG Havird "Sonny" Jones, and others have slandered and falsely accused Buchanan and Pope of impropriety in their service under the Will of James Brown and the James Brown 2000 Trust, with malice and with knowledge that such allegations were false.
4. Among the false allegations, was the accusation that Buchanan and Pope intentionally overvalued James Brown's assets by \$79 Million in sworn filings with the IRS for the improper purpose of obtaining a \$5 Million commission.
5. The Legacy Trust/Bauknight caused these and other false and malicious allegations to be disseminated in more than 300 media outlets throughout the nation and the world.
6. The Legacy Trust/Bauknight, in furtherance of their schemes, made false and material misstatements to the Probate Court of Aiken County and other Courts, including:

- a. That James Brown's Estate and Trust has no corpus "to speak of" when

they actually owned valuable tangible and intangible property, including Royalties and Publicity Rights associated with Brown's worldwide music empire;

b. That the elective share claim of Tommie Rae Hynie was a "slam dunk;"

c. That certain person were Brown's heirs under the Federal Copyright Act, intentionally excluding known heirs and naming non-heirs.

d. That termination rights are "all this case is about," with knowledge that the right to exploit his image and persona are not subject to termination rights under the Federal Copyright Act and are of great value.

7. The Legacy Trust/Bauknight falsely accused Pope of improperly seeking a \$2.8 Million commission for her 6-8 years of valuable service under the Will/2000 Trust while at the same time proposing to pay:

a. Approximately \$9 Million to attorney Louis Levenson;

b. Approximately \$12 Million to Hynie's attorney Robert Rosen;

c. An estimated \$3.5 Million to his own attorneys;

d. An additional approximately \$12 Million to Hynie;

e. Approximately \$12 Million to Levenson clients or former clients.

8. The Legacy Trust/Bauknight's purpose in taking these malicious actions and making the false statements was for the Legacy Trust/Bauknight to take control of James Brown's \$100 Million worldwide music empire and deliver 52 ½ % of what Brown gave for scholarships to persons he intentionally disinherited.

9. The Legacy Trust/Bauknight damaged the Estate/2000 Trust of James Brown by failing to recover any of the \$17 Million taken by felon David Cannon between 1999 and Brown's death on December 25, 2006.

10. The Legacy Trust/Bauknight, through their attorneys, tried to prevent Daryl Brown and others who did not want to continue to dishonor the Estate Plan of James Brown from speaking out to support his noble gift.

11. The Legacy Trust/Bauknight attempted to deceive the Court by working vigorously to continue a 5-year-old gag on at least 12 witnesses who had knowledge of the contents of the so-called Hynie "diary" and had previously asserted that Hynie was not Brown's spouse.

12. The Legacy Trust/Bauknight threatened Pope and members of the media who attempted to find out what Bauknight was doing with Brown's private assets which, through use of former AG McMaster's public office had been placed in Bauknight's hands.

13. The Legacy Trust/Bauknight asserted to Jg. Early that he [Jg. Early] had declared Tommie Rae Hynie to be Brown's spouse, when he had knowledge that no such thing had occurred.

14. The Legacy Trust/Bauknight destroyed the Education Trusts of seven of Brown's grandchildren, then falsely accused Buchanan and Pope of damaging the grandchildren.

15. The Legacy Trust recklessly and intentionally sought to interfere with Pope's rights under the S.C. Freedom of Information Act ("FOIA") by attempting to intervene in one case and threatening her in another, all to prevent her from obtaining the following public documents:

a. Documents to show Wingate and Bauknight were not properly authorized to bring Case 4900 in the name of (or as agent for) the State of South Carolina through its Attorney General.

b. Documents to show there was not basis for Bauknight's less-than \$4.7 Million valuation of Brown's music empire, which Daryl knows to be false.

c. The Hynie "diary," which the AG's Office has retained in direct (and not inappropriate) disregard for the void or expired Hynie "diary" Gag Orders of 2008.

16. The Legacy Trust/Bauknight further harmed Brown's Estate/2000 Trust by using \$262,500 of Estate funds to purchase releases for Hynie and others from Buchanan's counterclaims.

17. The Legacy Trust/Bauknight refused to pay Buchanan the \$500,000 and Pope the \$1.5 Million, with interest from 2009, they were due under the January 8, 2008 Order – paying only Buchanan, and *only* when he agreed to release Hynie and others.

18. By intentionally working to prevent Buchanan and Pope from recovering attorneys' fees and costs necessarily incurred on behalf of the Estate/2000 Trust in the Forlando suit to prevent the return of felon Cannon and his Co-Trustees.

As a result of the actions of the Legacy Trust/Bauknight, including the false and malicious media publicity which they generated, Pope has been damaged in at least the following amounts:

a. Losses under the January 8, 2008 Order, \$1.9 Million, plus interest already due and payable,

b. Additional losses related to her full commission, approximately \$900,000; and

c. Failure to pay valid contracts, including attorneys' fees for valid defense of the Estate and 2000 Trust, a loss of no less than \$1.2 Million.

This motion is based on the depositions of Daryl J. Brown, Larry Brown and Robert Buchanan, Jr.; all affidavits of Adele J. Pope on file herein; the South Carolina Rules of Civil Procedure, especially Rule 56; and such additional filings as shall properly come before the Court prior to the hearing on this matter.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092

March 22, 2013

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust, etc.
and others,

and

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

Plaintiffs.

v.

Adele J. Pope,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

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

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) MOTION FOR SUMMARY JUDGMENT

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AS TO JAMES B., A MINOR, AND
RUSSELL L. BAUKNIGHT,
AS AGENT FOR JAMES B.

2013 MAR 26 AM 11:05
C.C.P. & G.S.

TO: James B., a minor, and Russell L. Bauknight, his agent ("Agent") and their Counsel Sweeney, Wingate and Barrow, P.C. ("Wingate")

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon thereafter as she may be heard, Defendant Adele J. Pope will move before the Honorable L. Casey Manning at the Richland County Courthouse, for an Order granting her Summary Judgement as to James B., a minor, and Agent, as follows:

1. Judgment in favor of Pope against the James B. and Agent as to all claims of the said Plaintiffs in the Complaint;
2. Judgment in favor of Pope against the James B. and Agent as to all Counterclaims;
3. Actual damages against the James B. and Agent in the amount of \$4 Million, with prejudgment interest on \$2.1 million liquidated damages from the date hereof.
4. Attorneys' fees and costs of \$375,000, and costs incurred after the date of this motion.

The grounds of the motion are:

1. While he does not have a guardian ad litem ("GAL") in this action, wrongful and

reckless actions taken by James B. and in his name in this case and elsewhere by his GAL in Aiken County Case 2008-CP-02-1647 ("Case 1647"), Agent and his mother and natural guardian.

2. Undisputed material facts show:

- a. James B. was not born of any marriage of James Brown and has refused official DNA testing under the protocol established by Rodney Peeples, Esq. shortly after the death of entertainment icon James Brown on December 25, 2006.
- b. James B. has not established that he is an heir of James Brown under S. C. Law or an heir of James Brown under the Federal Copyright Act.
- c. James B.'s mother, in 2004, immediately settled a suit, providing nothing for her son, when James Brown sought DNA testing of James B.
- d. James B. is the only person claiming to be a child of James Brown born born after Brown's widely publicized vasectomy about 20 years before Brown's death. More than a dozen claimed children were born before it.
- e. Both Brown's mother and his GAL refused official DNA testing, even though the test was paid for by Estate of James Brown.
- f. James B. has been exposed to excruciating and unnecessary publicity by his mother, his GAL and Agent.
- g. James B. never challenged the Will of James Brown or the James Brown 2000 Irrevocable Trust, both of which specifically and intentionally omitted him.
- h. James Brown would be entitled to nothing under Brown's Estate Plan even if he were Brown's son.
- i. James B. will only be an Heir if he takes the official DNA test and passes. As such, he would share an interest in the Federal Copyright Act termination rights with some or all of the more than to a dozen other claimed heirs.
- j. Even though James B. was not Brown's son, Brown loved him and provided a fund for him which his mother received at Brown's death.
- k. James B., through his mother and GAL, abandoned any claim to Brown's assets by joining in an August 10, 2008 Settlement, as modified and approved by a circuit court on May 26, 2009 which gave James B. nothing.
- l. James Brown, through his GAL, Agent and mother, has asserted that Brown's music empire and other assets were worth about \$5 Million. Thus, even if he had been a child; had not been intentionally excluded by Brown's Estate

Plan; had not been provided for outside the Will; and had not abandoned his claims against Brown's estate his pecuniary amount under the Probate Code was never damaged by Buchanan and Pope – who, through the Estate, paid for DNA testing– and would likely be \$357,000 or less, taking into consideration other claimed and known heirs as follows:

- A. Proven heirs: 1. LaRhonda; 2. Nicole; 3. Jeanette;
- B. Presumed heirs: 4. Lisa; 5. Larry; 6. Terry; 7. Deanna; 8. Yamma;
- C. Acknowledged by Brown in his Estate Plan but not presumed: 10. Daryl; 11. Venisha;
- D. Other claimed, not-presumed heirs: 12. James B.; 13. Deon; 14. Tonya.

m. Those persons bringing and continuing this suit on behalf of James B. had knowledge, as defined in the S. C. Trust Code, of the following:

(1) Buchanan and Pope owed James B. no duty when they served as PRs under the Will of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.

(2) They have made assertions to the Courts for James B. about James Brown's Estate and 2000 Trust and their respective rights and interests which are material and incorrect, including:

- (a) That James Brown's Estate and Trust has no corpus "to speak of;"
- (b) That the elective share claim of Tommie Rae Hynie was a "slam dunk;"
- (c) That certain persons – but not Jeanette, Nicole and LaRhonda -- were Brown's heirs under the Federal Copyright Act.

n. James B., through his mother, GAL and Agent, severely damaged Buchanan and Pope, to secure about \$12 Million for his mother and about \$12 Million in fees and costs for her attorneys.

As a result of the actions of James B., acting through GAL, Agent and his mother, and including false and malicious media publicity generated by Agent, Pope has been damaged in at least the following amounts:

- a. Losses under the January 8, 2008 Order, \$1.9 Million, plus interest;
- b. Additional losses related to her full commission, approximately \$900,000; and
- c. Failure to pay valid contracts, including attorneys' fees for valid defense

of the Estate and 2000 Trust, a loss of no less than \$1.2 Million.

This motion is based on Petition for Rehearing filed by James B. in the S. C. Supreme Court on or about March 14, 2013, the depositions of Daryl J. Brown, Larry Brown and Robert Buchanan, Jr.; all affidavits of Adele J. Pope on file herein; the South Carolina Rules of Civil Procedure, especially Rule 56; and such additional filings as shall properly come before the Court prior to the hearing on this matter.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092

March 22, 2013

Attorneys for Defendant Adele J. Pope

) IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-4900

RETURN AND OPPOSITION
TO REQUEST FOR STAY AND
REQUEST FOR EXPEDITED
HEARING, SCHEDULING ORDER
AND RELATED RELIEF

2013 APR - 1 PM 3:33

V.

Defendant.

0756

1. The motion fails to comply with the Rules of Civil Procedure, and seeks extraordinary relief available only by proper application and support.

2 Wingate has no authority to make the Letter Motion on behalf of at least 11 of the Plaintiffs because either: they have terminated Wingate; they never engaged Wingate; or Wingate is otherwise prohibited from speaking for them, including:

- a. (1) Alan Wilson as Attorney General of South Carolina, who notified Wingate *in writing and prior to the service of the Letter Motion* that Wingate does not represent the AG's Office;
- b. (2) Plaintiff Russell L. Bauknight as purported Agent for the AG;
- c. (3) Plaintiff Trustee of the James Brown Legacy Trust, because Wingate is estopped to take in the Letter Motion a position fundamentally different from the position taken by the Legacy Trust *at this time* through its attorneys Lewis & Babcock in a FOIA case;
- d. Minor Plaintiffs (4) Sydney L., (5) Carrington L. and (6) Janise B. because Wingate is acting contrary to their interests by trying to dismantle the \$285,000 education trusts James Brown created for them and has refused repeated requests over 3 years to secure a GAL for them;
- e. Minor Plaintiff (7) James B. because Wingate has refused for three years, despite repeated requests, to make James B's GAL part of this case;
- f. Plaintiff (8) Terry Brown because Terry's entire interest in James Brown's Estate was assigned to his son Forlando on January 3, 2011; Wingate concealed the Assignment despite valid discovery requests for almost 2 years; Wingate has repeatedly refused to allow Terry to be deposed; Terry's counsel David Bell, Esq. for himself and counsel Matt Bodman, Esq. has confirmed in writing since the February 27 that he supports the February 27 decision; and it has been confirmed that Terry did not even know Wingate filed Case 4900 in Terry's name or sought to intervene for Terry in a FOIA or seek sanctions against Pope;
- g. Plaintiff (9) Daryl Brown confirmed at his deposition that he did not even know Wingate filed this Case 4900 or the motion to intervene in the FOIA case for him; and he and Plaintiff (10) Lindsey Delores Brown signed a document, filed with the deposition saying Louis Levenson, Esq. is their only lawyer.

- h. Incarcerated Plaintiff (11) Venisha Brown because Wingate cannot speak for her and has refused repeated requests for more than a year for a GAL.

3. The statement that "Plaintiffs still have active and substantial claims against Ms. Pope" is incorrect; unauthorized by many Plaintiffs; and unsupported by the evidence in this case, including the depositions of Robert Buchanan, Jr., Larry Brown, Daryl Brown and Tonya Brown.

4. Wingate announced more than a year ago that he could not represent the remainder the Plaintiffs if he did not represent the AG, putting all Plaintiffs on notice on February 27, 2013, if not earlier, that they needed to seek new counsel.

5. A stay would be unjust and irreparably harm Defendant/Counterclaim Plaintiff Pope in the following, and other, ways:

- a. By continuing to destroy her law practice and reputation;
- b. By continuing her inability to obtain professional negligence insurance, which was cancelled as a result of this suit;
- c. By requiring her continued defense of a suit by Cincinnati over coverage, when, in fact, she is owed damages by Plaintiffs - not her to them.
- d. By preventing Pope's recovery of the \$4+ Million actual damage she and Bob Buchanan incurred as a result of Plaintiffs' (1) abuse of process; (2) intentional interference with contract rights; (3) fraud under Section 62-1-106 of the S.C. Probate Code; and (4) civil conspiracy. [See pending motions for Summary Judgment.]
- e. By preventing Pope from being allowed to clear her name where Attorney General Wilson and Bauknight, asserting the authority and power of the State of South Carolina, have falsely accused Pope and Buchanan of the federal felony of overstating the value of James Brown's assets to the IRS by \$79 Million for the improper purpose of obtaining a large commission.
- f. By the continued violation of Pope's rights under the South Carolina Freedom of Information Act ("FOIA").

g. By preventing Pope from demonstrating that the following false statements have been made to the Court:

- (1) That Tommie Rae's elective share claim was a "slam dunk;"
- (2) That James Brown's worldwide music empire and \$12+ Million claims against felon David Cannon & others were worth less than \$4.7 Million when Brown died;
- (3) That the Brown Estate's and 2000 Trust have no corpus to speak of;
- (4) That nobody wanted to buy the James Brown music empire.

6. The requested stay would be unjust and fail to serve judicial economy by preventing a final determination within a few months of the following:

- a. That Tommie Rae was not Brown's spouse at death; is not an heir of James Brown under State Law or the Federal Copyright Act; and Buchanan and Pope never owed her any duty;
- b. That Buchanan and Pope owed James B. no duty because he is the presumed son of Javed Ahmed and refused to take the \$300 DNA test paid for by the Estate;
- c. That the \$100 Million 2007 offer to sell Brown's music empire Plaintiffs accuse Buchanan and Pope of not accepting was made to their predecessor PR/Trustees before their appointment, and Plaintiffs' contest to Brown's noble Estate Plan precluded acceptance in 2008 of two additional \$90 - \$100 Million offers for Brown's worldwide music empire.
- d. That Buchanan and Pope never owed any duty to Plaintiff Tonya.

7. Justice would not be served by staying this Case, which is almost three years old and – but for approximately five Plaintiff depositions – ready for trial if not concluded by summary judgment.

8. The requested stay would allow Plaintiff Tommie Rae and others to continue their egregious and unprecedented discovery abuse, including:

- a. The evasion by Plaintiffs Tommie Rae and other Plaintiffs of

depositions first noticed two years ago and continuously requested since;

b. The concealing by Plaintiff PR/Trustee of AG McMaster's December 31, 2010 - January 4, 2011 amendment to the Legacy Trust.

c. The refusal of all Plaintiffs to produce documents made public by the August 10, 2007 Order in Case 122 and by other means.

d. The refusal of James B. and others to produce their copies of the fabricated less-than \$4.7 Million value of Brown's music empire.

9. Neither justice nor judicial economy would be served by the Court's staying its hearing on Summary Judgment Motions as more than half of the Plaintiffs.

10. The undisputed facts related to Plaintiffs Sydney L., Carrington L., Janise B., Lindsey and Jason are that Buchanan and Pope, by their pursuit of the Case 1647 appeal:

a. Restored the \$285,000 education trusts of Sydney L., Carrington L., Janise B., Lindsey Delores Brown and Jason Brown-Lewis which their own parents and AG McMaster attempted to take from them;

b. None of the five asked the Supreme Court to reconsider its February 27, 2013 decision; and

c. Wingate and Bauknight, by refusing to obtain a GAL for the minors for almost three years, have damaged them.

b. None has - or ever had - "active and substantial claims against Ms. Pope."

11. Justice and judicial economy will be served if the Court takes the following action:

a. Conduct an expedited hearing, if necessary, and issue Pope's proposed Scheduling Order;

b. Disregard or deny all attempts to delay or stay this or the FOIA cases;

c. Schedule expedited hearings on the merits in the FOIA cases;

d. Dismiss the Complaint of any Plaintiff who refuses to appear at deposition as scheduled;

e. Hear and grant Pope's motions for summary judgment.

This Return and Opposition is supported by all affidavits filed by Pope in this and the FOIA cases; the depositions referenced herein; and such memoranda and additional supporting documents as she may file prior to the hearing on this matter.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm

March 29, 2013

Attorneys for Defendant Adele J. Pope

EXHIBIT A
S·W·B

SWEENEY WINGATE & BARROW P.A.

March 27, 2013

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

VIA EMAIL AND U.S. MAIL

Honorable L. Casey Manning, Jr.
Circuit Court Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Judge Manning:

This letter is in response to your recent request for a written status report on Case 4900 and the related FOIA matters.

As to Case 4900, it is the Plaintiffs' position that the recent South Carolina Supreme Court ruling concerning the James Brown Estate Settlement Agreement and the removal of Ms. Adele Pope as Personal Representative and Trustee has created significant uncertainty among the Plaintiffs' group.

This uncertainty does not alter the fact that the Plaintiffs still have active and substantial claims against Ms. Pope, but does raise issues as to the capacity in which the Plaintiffs will continue Case 4900 and whether Sweeny, Wingate & Barrow, P.A. will be able to continue their representation as a group. These significant matters will not be resolved at the earliest until the cycle of Petitions for Rehearing in the Supreme Court are either denied or heard and decided and remittitur issues and possibly not until the will contests are re-litigated in Aiken County.

Therefore, the Plaintiffs would respectfully request that all matters in Case 4900 be stayed until these important issues are resolved.

As to the FOIA issues, the Plaintiffs' position is that each of the groups of documents at issue, the Sweeny, Wingate & Barrow, P.A. Fee Agreement and the Legacy Trusts documents,

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

0762

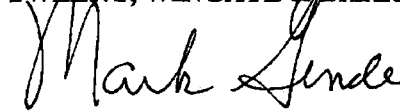
March 27, 2013
Page 2 of 2

are subject to pending discovery disputes in Case 4900. We do not believe that any decision can be made in the FOIA matters until the discoverability of these documents has first been determined in Case 4900, because if these documents are deemed privileged or otherwise protected then they are exempt from discovery under FOIA. As we have stated many times, it is our position that the Defendant is seeking to use FOIA simply as a means to do an end run around of the Rules of Civil Procedure governing Case 4900.

Should the Court have any questions concerning this update, I am available to answer those questions at the Court's convenience.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Mark V. Gende", written over the printed name.

Mark V. Gende

MVG/lda

cc: J. Emory Smith, Jr., Esquire
Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust, etc.
and others,

and

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

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) STATUS REPORT
) OF
) DEFENDANT ADELE J. POPE

By direction of the Honorable L. Casey Manning on March 18, 2013 Defendant Adele

J. Pope submits this report of the status of this case in light of the S. C. Supreme Court

decision issued February 27, 2013 in Aiken County Case 2008-CP-02-1647 and subsequent
events.

Summary of Status and Relief Requested

This report may be summarized as follows:

1. Attorney General Wilson's recent confirmation that the AG's Office is not represented by Plaintiffs' counsel herein and that the AG intends to seek to withdraw from this case substantially reduces its complexity.
2. A Scheduling Order requiring attendance by all parties at noticed depositions is essential to the progress of this nearly-3-year-old case.
3. An attached proposed Scheduling Order would resolve more than twenty-five pending discovery motions and responses, allowing this case to be ready for trial by early 2014.
4. Long anticipated changes in parties or counsel should not delay discovery or trial of this case.

2013 APR - 1 PM 3:33
CCP-CG

These matters are discussed in more detail below.

History of Case

This case was filed on May 19, 2010. A jury trial was demanded.

Plaintiffs sued Buchanan and Pope alleging (1) breach of trust and (2) breach of fiduciary during their service as PRs under the Will of entertainer James Brown and trustees of his 2000 Irrevocable Trust between November 20, 2007 and May 26, 2009.

Defendants answered and counterclaimed alleging (1) abuse of process; (2) Interference with contracts; (3) Fraud under Section 62-1-106; and (4) Civil Conspiracy.

Discovery has languished for two years.

The S. C. Supreme Court's decision of February 27, 2013 affects certain aspects of this case, including a 2011 Newberry case brought under the South Carolina Freedom of Information Act ("FOIA") and consolidated with this case in 2012.

A Scheduling Order Should be Issued

All parties have requested that this Court issue a Scheduling Order. Plaintiffs' proposed order, however, did not address the primary issue delaying this case: the refusal of Tommie Rae, Terry, Venisha, Deanna and Yamma to appear at depositions noticed and scheduled over the past two years.

The proposed Scheduling Order attached hereto as Exhibit A and presented separately to the Court with this report should:

- a. Resolve more than 25 pending discovery motions;
- b. Set a reasonable time for all Party depositions to be completed;
- c. Make document discovery, consisting primarily of already-public documents, easy.
- d. Have this case ready for trial by early 2014.

The FOIA Case Should be Severed and Heard

In its February 27 opinion the Supreme Court recommended that Defendant Pope's FOIA cases against the AG, including a case consolidated with this case in 2012, be considered "in the first instance."

The AG's recent announcement that counsel of record in this case does not represent the AG, and that the AG will seek to withdraw from this case, makes consolidation improvident.

Pope's two FOIA were transferred to Richland County from Newberry County over her objection.

This Court should *sua sponte* sever the consolidated FOIA Case so that both FOIA cases can be heard as soon as possible.

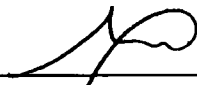
Changes in Parties or Counsel Should Not Delay Discovery or Trial

The February 27 Supreme Court decision prompted AG Wilson's announcements discussed above. Like other litigants, however, the AG must appear with new counsel and move to take the action he proposes. He must also face or resolve his pending motions and those pending against him, including Summary Judgment.

All parties including the AG have been on notice for more than a year that there might the AG might no longer be a party and that this could result in changes of counsel. These changes should not delay discovery or trial.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770 m
Facsimile: (803) 403-8092
adam@silvernaillawfirm

March 25, 2013

Attorneys for Defendant Adele J. Pope

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON

)

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

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

SCHEDULING ORDER

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE B.; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN-LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

Based on the representation of all parties that a Scheduling Order is needed in this 3-
year old complex case, this Court orders as follows:

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-4900

and

RETURN OF DEFENDANT POPE TO
MOTION OF ATTORNEY GENERAL
TO BE DROPPED AS PARTY

Plaintiffs.

V.

Adele J. Pope,

Defendant.

Subject to her motion to strike and disqualify filed herewith, Defendant Pope responds to and opposes the Motion of Alan Wilson, Attorney General (“AG Wilson”), to be dropped as a party to this case. Her reasons are stated below.

AG Wilson must follow the Rules of Civil Procedure to terminate Wingate's representation of the State/AG and Bauknight's Speaking "on behalf of" the AG/State.

For nearly three years since May 19, 2010 two AGs have condoned Wingate's¹ claims that it represents the State/AG and public interest which also representing Tommie Rae Brown and its other private clients in this case. For those same years, two AGs have allowed Plaintiff Russell Bauknight to assert boldly that he speaks "on behalf of the Attorney General of South Carolina."

This claimed authority to speak for the State/AG has been bolstered by the regular presence of *party/client* Sr. Assistant AG Havird "Sonny" Jones.

When Buchanan and Pope challenged Wingate's and Bauknight's authority to speak for the State/AG, AG Wilson fought back – through Wingate.

When the AG/State failed to timely respond to Counterclaims of Buchanan and Pope, Wingate alone filed the State/AG's motion for relief and proposed answer.

In 2011 Wingate reached a purported settlement with Buchanan on behalf of the State/AG which condoned Bauknight's use of Brown's Estate funds to buy releases for Tommie Rae and other Wingate private clients.

In 2012, Wingate, for the State/AG, compelled Pope to attend mediation in this case.

The February 27, 2013 decision in Aiken Case 1647 and the recent revelation that Wingate did not have *written* authority to bring this suit in the name of the State/AG do not change the facts. Regardless of the impropriety of the original filing, the State/AG Wilson, by its actions, is now a party to this case and Wingate is counsel of record for the State/AG. To conclude his participation in this case, AG Wilson must follow the Rules of Civil

¹Sweeney, Wngate and Barrow, P.A. ("Wingate")

Procedure.

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

AG Wilson, like any litigant who realizes his lawyer has a conflict, must take the steps to make a record that he has terminated counsel; appear through new counsel; and proceed.

It would be unjust to use Rule 21 to drop the State/Attorney General as a Party.

Rule 21 SCRCP, entitled "MISJOINDER AND NON-JOINDER" is not – after three years – available to the State/AG. The State is estopped from asserting it.

While it is now clear that Wingate's complaint on behalf of the State/AG was improper, and Bauknight had no authority to speak "on behalf of the Attorney General of South Carolina," both AG McMaster and AG Wilson – speaking through AG Jones and others – vigorously asserted for almost three years that both the Wingate and Bauknight had full authority to act for the State/AG.

Rule 21 allows a Court to add and drop parties if doing so would be just. It would be manifestly unjust to allow the State/AG to damage a South Carolina citizen by suing her for tens of millions of dollars; accusing her of a federal felony; and ruining her reputation to be dropped and never required to face her counterclaims.

It would be unjust to allow the State/AG, or any other litigant, to use Rule 21 in this manner. Like other litigants who regret having brought a baseless suit, the AG/State must

extricate himself in an appropriate matter. Among his options are:

- a. Reach a settlement with Pope (and Buchanan);
- b. Face and defend Defendant's counterclaims (including her motion for summary judgment, currently pending); or
- c. Seek to be realigned based on the February 27 Supreme Court Decision and help Buchanan and Pope defend The James Brown "I Feel Good" Trust.

Rule 21 Cannot be applied to the Counterclaims against the State/AG.

In seeking relief from default as to the counterclaims of Buchanan and Pope, and in its proposed reply to the counterclaims, the Attorney General has never asserted that it was not a proper party to this action. To allow the State/AG to simply be excused from this 3-year-old suit, when it is apparent that its claims against Buchanan and Pope were baseless and their counterclaims meritorious, would be manifestly unjust.

Defendant Pope is unaware of any reported case where a Plaintiff facing summary judgment as to counterclaims has been allowed to be "dropped" as a party. To do so would be only to deny Pope her pending summary judgment, but grant the State/AG both relief from default (which the Court has indicated orally it intends to grant) and summary judgment as to Pope's counterclaims. This would be manifestly unjust.

The Attorney General must Participate in Voiding the Buchanan Settlement.

Among the most troublesome chapters of Wingate/Bauknight's actions on behalf of the State/AG Wilson was the AG/State's condoning Bauknight's use of more than \$250,000²

² There is no basis for Buchanan to repay the \$500,000 because he was owed that amount by the Estate under the January 8, 2008 Order of Judge Early. The impropriety was Bauknight's refusal to pay Buchanan - who had suffered great financial damage by his loyal service to James Brown's Estate/2000 Trust - until Buchanan released Tommie Rae and others from his counterclaims in this suit. Based on her 23½ % under the McMaster settlement, Bauknight used \$117,5000 of Estate funds to purchase Tommie Rae's release

of funds of the Estate of James Brown to purchase releases for Wingate's Private clients Tommie Rae and others from Buchanan's counterclaims.

**The State/AG's criminal allegations and other false charges against Buchanan/Pope
Must be withdrawn or face Court scrutiny.**

It would be unjust under Rule 21 or any other Rule to allow the State/AG to be dropped as a party, leaving the numerous false allegations against Buchanan and Pope – including criminal allegations – which AG Wilson has allowed to be made in the name of the State. Among them are:

1. The false allegation to the Supreme Court that Buchanan/Pope committed the federal felony of overstating the value of Brown's worldwide music empire by \$79 Million for the improper purpose of obtaining a \$5 Million commission.

[AG Jones was present on November 15, 2007, *before Buchanan/Pope were considered to be PRs*, when Buchanan/Pope presented to Jg. Early and Interested Persons a detailed proposal to value the Publicity Rights/Royalties for the Estate Tax Return, without appraisal, at 12 ½ - 14 times average Royalties plus ½ of the 2006 road revenue. *Neither the AG nor any Plaintiff objected to this formula, as required by the Court*, and the \$83+ Million reported on the Estate Tax Return for this and the Cannon claims was within this range. [Exhibit 13, Ret. Recom. of SA s; Tr. Hg. Dtd. 11/15 /07, pp. 304 - 310.]

2. Bauknight/AG Wilson told the Supreme Court that there had been no offers to buy Brown's music empire, and that it was worth less than \$4.7 Million when Brown died.

[AG Jones knows this to be false, as does AG McMaster. See AG Jones email of 12/6/07; McMaster WIS -TV Statements; and a host of other documents.]

3. Bauknight has stated, falsely, that Jg. Early determined Tommie Rae was Brown's spouse and that her elective share claim was a "slam dunk."

[AG Jones and Mary Frances Jowers know from a review of the "diary"

from Buchanan. The February 27 Decision voided Tommie Rae's claimed interest in Brown's assets. If the Buchanan settlement is not also voided, Tommie Rae should return \$117,500 to the Estate.

and other documents these statements are false.]

4. Bauknight told the Supreme Court Brown's Estate/2000 Trust have no corpus "to speak of."

These are just a few of the false statement which Bauknight and Wingate – speaking for the State – have made to this Court and others. It would be entirely unjust to allow the State/AG, having allowed these scurrilous false allegations to be made in its name, to simply be dropped from this case after nearly 3 years.

Wingate and Bauknight should be enjoined from speaking for the AG/State.

The Court's appropriate action in connection with the February 27 Decision and recent revelations about lack of authority of Wingate and Bauknight is for the Court to reconsider and grant Pope's motion to enjoin Wingate from serving as counsel for the State/AG and Bauknight from speaking on behalf of the AG/State.

For four years Bauknight asserted that Tommie Rae was Brown's wife and proposed giving her \$23.5 Million. He proposed giving more than \$25 Million to other disinherited claimed relatives. He failed to recover a dime of the \$17 Million taken by felon Cannon. He, like Wingate, has worked vigorously to destroy The James Brown "I Feel Good" Private Foundation *and* those who vigorously defend it. He cannot serve the State/AG or the public interest.

The State cannot be represented by Jones and other witnesses.

As stated in our Motion to Strike, rule 3.7 "Lawyer as Witness" is clear that "(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless: [exceptions inapplicable here]."

AG Jones is not only a necessary witness but a prime actor in the claims and

counterclaims which are the subject of this suit. AG Mary Frances Jowers is likewise a necessary witness. This has been known since the commencement of this suit and has been a matter of record since Pope formally named both as witnesses on November 16, 2010.

None of the exceptions to Rule 3.7 apply. The AG must abide by the rules. Jones and Jowers may not serve as counsel to the AG/State in this case.

Conclusion

If the State/AG's Motion to be Dropped as a Party is not stricken, as it should be, AG Jones and Jowers should be disqualified as counsel and the Motion denied. An expedited hearing should be held to void the AG's purported settlement with Buchanan; and Pope's Motion for Summary Judgment should be granted.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

July 2, 2012

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, and others
and

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

Plaintiffs.

v.

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

TO: ALL PLAINTIFFS AND THEIR ATTORNEYS:

) IN THE COURT OF COMMON PLEAS

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

) MOTION TO ADD

) WILLIAM FORLANDO JAMES BROWN
) a/k/a FORLANDO JAMAL BROWN
) AS A PARTY

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

2013 APR 25 PM 4:21

RICHLAND COUNTY
FILED

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof on me, so
thereafter as she may be heard, Defendant, through her undersigned counsel, will move
before the Honorable L. Casey Manning at the Richland County Court House, located at
1701 Main Street, Columbia, South Carolina pursuant to Rules 17 and 19, *SCRCP*, and other
applicable law, for an Order for an Order adding William Forlando James Brown, a/k/a
Forlando Jamal Brown ("William"), as a party to this action.

The grounds of this motion are:

1. William is the real party in interest as to the claims of Plaintiff Terry Brown (Terry") against Plaintiffs in this case by virtue of:
 - a. An amendment to Plaintiff Legacy Trust dated December 31, 2010, executed by Terry others in December 2010. [Exhibit A]
 - b. The immediate assignment by Terry to William of all of Terry's interest in assets of the Estate of James Brown (the "Assignment"). [Exhibit B].
2. As a result, William is a necessary party under Rule 17(a) *SCRCP*.
3. Defendant made this motion promptly after she learned of the Assignment in 2013, and confirmed its breadth and import in William's April 10, 2013 deposition in a Federal Suit William brought in 2008 against Defendant and Robert Buchanan, Jr.

4. William has stated under oath in the deposition, and/or provided documents to show:

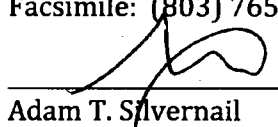
- a. He owns all claims of Terry in this matter, including the right to control this litigation for Terry; and
- b. The Assignment has been presented to the Wingate Firm and its termination as Terry's counsel confirmed in writing;
- c. Neither William nor Terry has sought a stay of this Case since the February 27, 2013 decision of the Supreme Court.
- d. William, for himself and Terry, has voiced his support for the Court's voiding of the McMaster Settlement.

5. The addition of William will not delay the litigation, and may promote settlement, as William has voluntarily withdrawn all claims against Defendant and Buchanan in the Federal Suit, and their counterclaims are proceeding expeditiously.

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 17 and 19, and statements in the deposition of William in the Federal suit, as well as such other proper documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

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



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202
Tel: 803/779-1770
Fax: 803/403-8092
adam@silvernaillawfirm.com

April 16, 2013

Attorneys for Defendant Adele J. Pope

EXHIBIT A

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement). The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein. For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions.
2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Banknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.
3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

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to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Plaintiffs Eric Brown

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

Attorney for Larry Brown, Daryl J. Brown, Janise Vantasha B., Lindsey Delores Brown, Vantasha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown-Lumar, Sydney L. Carrington L. and Tonya Brown



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Assistant Deputy Attorney General
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Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

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Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
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Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Tommie Rae Brown

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

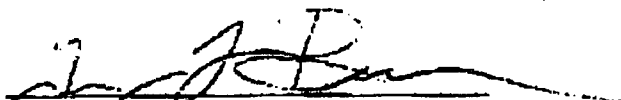
*Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha
B., Lindsey Delores Brown, Vanisha Brown, Deanna J.
Brown Thomas, Jason Brown Lewis, Tanana N. Brown-
Lamar, Sydney L., Carrington L., and Tonya Brown*

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FBIHQ OFFICE 13/2


Terry Brown

HPOL1-201012-1-100-0000 0441-0000

EXHIBIT B

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06/13/2011 04:15 7045688489

AUSTIN & SPARKS
PAGE 02/02

Georgia, Stephens County

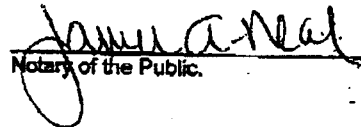
For in consideration of the sum of \$1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011


Terry Brown


Witness


Notary of the Public.

MY COMMISSION
EXPIRES ON
JUNE 7, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-49

**MOTION TO BE RELIEVED AS
COUNSEL
(As To The Attorney General Only)**

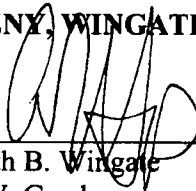
RICHLAND COUNTY
FILED
2013 MAY 10 PM 2:51
JENNIFER W. McBRIDE
C.C.P. & G.S.

**TO: ADAM T. SILVERNAIL, ESQUIRE AND DARYL L. WILLIAMS, ESQUIRE,
ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-
NAMED:**

YOU WILL PLEASE TAKE NOTICE that the undersigned intends to move, and does hereby so move, for an Order from the Court relieving Sweeny, Wingate & Barrow, P.A. as Counsel of Record for the Attorney General of the State of South Carolina in this matter. This Motion is made pursuant to Sweeny, Wingate & Barrow's understanding that the Attorney General no longer wishes to utilize its services as counsel in this case.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

May 10, 2013

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2014 APR 23 AM 9:42
JEROME
CLERK OF COURT

MOTION TO STAY

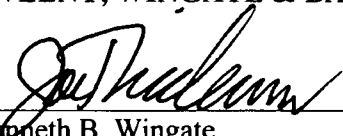
YOU WILL PLEASE TAKE NOTICE the undersigned, as attorneys for the Plaintiffs, will move before the presiding Judge of the Richland County Circuit Court, at the Richland County Courthouse on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting a stay of the case.

The grounds for the motion are that, subsequent to the South Carolina Supreme Court's decision in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013), substantial uncertainty remains with respect to the composition of the plaintiffs' group, the potential for conflicts among the group members, and the capacity in which Sweeny, Wingate & Barrow, PA will be able to continue representing the group. These issues will not be resolved until the various Aiken County will contests that were revived by Wilson v. Dallas are resolved with finality.

Plaintiffs request that the Court stay this matter until such time as the various Aiken County will contests are resolved with finality.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Joseph O. Thickens
Sweeny, Wingate, & Barrow, P.A.
Post Office Box 12129
Columbia SC 29211
(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

April 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

**Plaintiff's Return and Opposition to
Motion of Sweeney, Wingate & Barrow
to Stay and Request for Expedited
Hearing on Summary Judgment**

2014 APR 29 P11 3:56

Plaintiff Adele J. Pope responds to and opposes the motion of Sweeney, Wingate & Barrow, P.A. ("Wingate"), dated April 22, 2014,¹ and requests that the Court hear her pending motion for summary judgment as to all claims at its earliest convenience, as follows:

1. Plaintiff incorporates by reference her Return and Opposition to Motion to Stay filed in *Bauknight vs. Pope* today, along with the affidavit filed therewith.
2. Plaintiff respectfully asks that this matter proceed to a hearing as soon as possible, as these claims under the FOIA have been pending for more than 30 months. The Attorney General has indicated his willingness to appear at a hearing as soon as one is scheduled, and Wingate should not be allowed to delay this action and deny Plaintiff's rights under the FOIA.
3. Although the AG sought and obtained consolidation of this action with *Bauknight vs. Pope*, he has now asked to be removed from that case. In light of his request, Plaintiff

¹ The Motion is captioned *Bauknight, et al, vs. Pope*, but this FOIA action has been consolidated with that matter at the request of the AG. Further, Wingate has sought – purportedly on behalf of over a dozen clients – to intervene in this action.

asks that this matter be immediately severed and a hearing held on her pending motion for summary judgment.

4. Further delay in this long-pending case will serve only to deny Plaintiff her FOIA rights and will cause her irreparable harm. Because the AG is the only proper defendant in this action, and he consents to a hearing, there is no reasonable basis for further delay in this matter.

Plaintiff respectfully asks that the Court deny the request for stay and set her pending motion for summary judgment for hearing at the Court's earliest convenience. This Return and Opposition is based on the Affidavit of Adele J. Pope filed herewith, the entire record in this matter, and such additional affidavits and/or memoranda as shall be filed prior to a decision on this matter.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm

April 29, 2014

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-498

JANETTE W. MCBRIDE
C.C.P. & G.S.

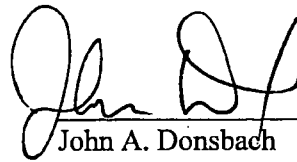
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FILED

RICHLAND COUNTY

PLEASE TAKE NOTICE of the appearance of John A. Donsbach of Donsbach & King, LLC, as counsel for Terry Brown, Plaintiff, in the above-styled matter in accordance with Rule 4(d) of the South Carolina Rules of Civil Procedure. The Clerk of Court is requested to serve notice of all hearings, pleadings and motions upon undersigned counsel for Plaintiff.

This 26 day of November, 2014.



John A. Donsbach
South Carolina Bar No. 69681
Attorney for Plaintiff Terry Brown
Donsbach & King, LLC
P.O. Box 212139
Martinez, Georgia 30917
Telephone: (706) 650-8750
Facsimile: (706) 651-1399
Email: jdonsbach@donsbachking.com

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) MOTION OF ADELE J. POPE
) FOR SUMMARY JUDGMENT,
) DAMAGES AND OFFSET AS TO
) TONYA BROWN, DARYL BROWN,
) VENISHA BROWN AND RUSSELL
) L. BAUKNIGHT AS THEIR AGENT

RICHLAND COUNTY
FILED
2015 MAY 29 PM 1:01
JEANETTE W. MCBRIDE
CLERK, C.O.P. & G.S.

TO: VENISHA BROWN, DARYL BROWN, and TONYA BROWN, and RUSSELL L. BAUKNIGHT,
AS AGENT for each of said PLAINTIFF/COUNTERCLAIM DEFENDANTS ("Bauknight"), and
their counsel:

YOU WILL PLEASE TAKE NOTICE that ten days after service hereof, or as soon
thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Adele")
will move for an Order granting summary judgment in her favor as to all claims by and
counterclaims of VENISHA BROWN ("VENISHA"), DARYL BROWN ("DARYL"), TONYA
BROWN, a/k/a Tonya Brown Fegan ("TONYA"), and RUSSELL L. BAUKNIGHT AS THEIR
AGENT ("BAUKNIGHT"), as follows:

1. Summary Judgment in favor of ADELE as to all claims of VENISHA, TONYA and
DARYL against ADELE in the complaint, and Summary Judgment, joint and

several, against said parties on all of ADELE's counterclaims, with attorneys' fees;

2. Actual Damages in the Amount of no less than \$4.3 million, with prejudgment interest on all liquidated amounts, and interest on the judgment until paid in full;

3. Punitive Damages against BAUKNIGHT, Individually, as agent for VENISHA, TONYA and DARYL, in an amount to be determined by the jury.

4. Equitable Offset against the entire interest and/or entitlement of VENISHA, TONYA, DARYL and BAUKNIGHT in the Estate of James Brown, the James Brown 2000 Trust, the James Brown Legacy Trust ("Legacy Trust"), and/or any other James Brown Entity, to be paid from the first monies available.

5. Offset of and/or against the Federal Copyright Act Termination Rights, and proceeds and products of said Termination Rights, of VENISHA, TONYA, DARYL and/or Plaintiff Legacy Trust, and/or BAUKNIGHT as its trustee and/or successor in interest, as to *Please, Please, Please* and/or any other copyrights whose Termination Rights become subject to vesting prior to judgment.

The grounds of this motion are that under Rule 56 SCRPC considering the undisputed facts, the admissions of the parties, and the disputed facts viewed in the light most favorable to the non-moving parties, ADELE is entitled to judgment as a matter of law as to the complaint and her counterclaims against VENISHA, TONYA and DARYL for Abuse of Process, Civil Conspiracy, Fraud under S.C. Code Ann. §62-1-106, Intentional Interference with Contract and Attorneys' fees. Those admissions and facts include:

- a. James Brown died December 25, 2006 leaving a worldwide music empire.
- b. Brown owned both "Royalties," copyrights to approximately 892 songs, and "Publicity Rights," the right to exploit his image and persona.
- c. Within weeks the Honorable Doyet A. Early, III ("Jg. Early") had been advised by Tommie Rae Hynie ("Hynie") that Brown copyrights alone might be worth \$100 million. [A Royal Bank of Scotland (RBS) professional had valued them at \$42 million in 2006.]
- d. The copyrights of songwriter Harlan Howard, who died in 2002, had recently been valued by the IRS in his estate tax proceeding without an official appraisal at 8 x annual royalties. The 8 was the number of years a song was estimated

to endure.

e. Considering the \$800,000.00 of royalties taken by Brown's trustee David Cannon in 2006, Brown's royalties exceeded \$3 million dollars each year from 2000 until his death.

f. In addition Brown's road show revenues from 2003 - 2006 were approximately \$18 million. Rodney Peeples, Esq., advised the Court that Brown's annual shows in Europe grossed a million dollars a week.

g. Songwriter Howard had no publicity rights of value. By contrast, according to his trustee Albert "Buddy" Dallas, Brown's image worldwide was almost as well-known as the Pope's.

h. Brown's death certificate shows that his last spouse was Adrienne Rodriguez, who died in 1996.

i. In both his 2000 estate plan and 1999 backup estate plan, Brown left his entire music empire to The James Brown "I Feel Good" Trust, to be used exclusively for scholarships for needy students.

j. Brown left a voice tape, made prior to the execution of the 1999 will, confirming his desire to give back to support education.

k. DARYL worked with James Brown; had discussed his estate plan with him; and knew that Brown's intention to create a trust for the education of needy students was Brown's often stated and well-known desire.

l. VENISHA was present with Hynie when Brown's estate plan was executed in 2000, and she and TONYA had also spoken with Brown about his estate plan.

m. From Brown's death until August 10, 2010, VENISHA, DARYL and TONYA repeatedly confirmed that Hynie was not Brown's spouse.

n. With knowledge of the above facts, on or about January 9, 2007 VENISHA, DARYL and TONYA contracted with Louis Levenson, Esq. ("Levenson"). With others, they agreed to pay Levenson \$150,000 plus 30% of what he could get them of James Brown's assets.

o. Levenson served as agent and attorney for VENISHA and TONYA from January 2007 until at least 2014. Levenson served as attorney of record and agent for DARYL for the same period, although DARYL asserted at various times that he had terminated Levenson.

p. On January 26, 2007 VENISHA, DARYL and TONYA, with others, filed suit to restrain and remove Brown's original original trustees, Cannon, Dallas and Al Bradley. The Petition was transferred to the Aiken County Circuit Court and became Aiken Case 2007-CP-02-0122 ("Case 122")

q. On March 7, 2007, nominated by VENISHA, DARYL, TONYA, and others, ADELE, became a non-fiduciary special administrator (SA) of Brown's estate, with Robert Buchanan, Jr. ("BOB").

r. In March 2007 Tom Wells discovered Hynie's handwritten notes discarded in Brown's Beech Island home. The Hynie notes confirmed that Brown refused to marry Hynie after he learned she had concealed her marriage to another when they had a 2001 ceremony.

s. By Order of Jg. Early dated August 10, 2007 Hynie's notes and eighty boxes of other Brown Historical Documents were made public, giving all access to 30 years of Brown financial, business and personal records.

t. In the fall of 2007 it became public that in 1999 Cannon had cashed the "\$5 Million check to nobody." By February 2008, Brown's Estate and 2000 Trust had sued the Cannon trustees to recover \$13+ million missing since 1999.

u. On November 14, 2007 BOB and ADELE asked Jg. Early to approve valuing Brown's Copyrights and Publicity Rights on the Estate Tax Return as follows:

VALUE = $(12 \frac{1}{2} - 14) \times$ annual royalties PLUS annual road show revenues.

v. Neither Attorney General Henry McMaster nor anyone else objected to the valuation formula.

w. In an Inventory & Appraisement (I&A) filed November 15, 2007 Brown's Personal Representatives, Dallas and Bradley valued Brown's assets at \$100 million, less a debt to the NY teachers ("TIAA") of about \$15 million.

x. The I&A valued Brown's Publicity Rights at about \$46 million, and his tangible personal property ("TPP") at \$2 million.

y. The TIAA debt was reduced to \$11 million by 2009 and paid in full in 2011.

z. By Order of Jg. Early dated November 20, 2007, BOB and ADELE were appointed PR/Trustees under Brown's Will and the 2000 Trust. All of their acts were joint.

a. On December 26, 2007 VENISHA, DARYL and TONYA filed suit to set aside

Brown's estate plan and establish an Administration in Intestacy.

aa. By Order of Jg. Early dated January 8, 2008, without objection of VENISHA, DARYL or TONYA, ADELE was awarded \$217,000 in SA fees and ongoing payments as PR/Trustee. The amounts bear interest at the legal rate if not paid within 60 days. On May 26, 2009 Adele was due \$47,972 in SA fees and \$1,473,550 toward her fees for service as PR/Trustee. Interest has accrued at 8 3/4% on that amount for six years.

ab. In the January 8 Order, and orders dated February 20, March 7, April 1, and April 8, 2008 in Case 122, Jg. Early praised the service of Buchanan and Pope, finding their actions since March 7, 2007 to be both appropriate and ethical. Those order are binding on DARYL, VENISHA and TONYA.

ac. Throughout 2008 Levenson called to the attention of the Court the improper acts of David Bell, Esq., ("Bell"), including filing six false grievances and making the false claim that the Levenson contract contained a forgery.

ad. By Order dated April 8, 2008 Cannon, Dallas and Bradley were ordered to pay the attorneys' fees and costs of Case 122.

ah. In early 2008 Christie's appraised Brown's household goods (excluding his fleet of automobiles, band uniforms and certain music items) at about \$1.4 Million. A professional appraisal appraised the Beech Island estate and other real estate at about \$1.2 Million.

ai. Under authority of the Feb. 20 Order, DARYL, TONYA and VENISHA bought Brown's father's house.

aj. In the spring of 2008 ADELE spent a day with TONYA and others to give them an opportunity to ask to hold items back from the Christie's sale of about 350 of the thousands of items owned by Brown. TONYA, DARYL and VENISHA did not timely ask that any item be withheld.

ak. On or about March 12, 2008 DARYL, VENISHA and TONYA filed documents seeking to delay or stop the Christie's sale. They did not request that the GRAMMY© or any other specific item be withheld.

al. In his Order dated April 1, 2008 Jg. Early found that DARYL, VENISHA and TONYA had interfered with the Christie's sale in violation of his February 20, 2008 Order, but that they had not yet caused any damage. He directed that BOB and ADELE sign the Chritie's contract, with the GRAMMY © listed.

ap. On July 9, 2008 Dallas and Bradley asked the S. C. Court of Appeals

to stop the Christie's sale. AG McMaster, Christies, BOB and ADELE asked that the sale proceed. The catalogue with the GRAMMY © was filed with the Court of Appeals.

aq. On July 14, 2008, the Honorable Jasper Cureton directed that the Christie's sale scheduled for July 17 go forward.

ar. The Christie's sale of about 350 items grossed over \$770,000.00.

aq. Levenson, and Yamma Brown attended the sale, and Levenson was present when BOB and ADELE decided to withdraw the GRAMMY© from the sale without penalty.

ar. Under Jg. Early's orders the GRAMMY and thousands of other items were placed in museums for safekeeping pending the outcome of the Will contests.

au. BOB and ADELE also properly packed and shipped by secure storage more than 45 boxes of music and music memorabilia to a secure sound storage facility in Nashville, Tenn.

av. On July 28, 2008 BOB and ADELE filed a motion in Case 122 to charge Dallas and others with the legal fees incurred from interference with the Christie's sale. The motion is still pending.

aw. On August 10, 2008 TONYA, DARYL and VENISHA agreed to a settlement with the AG and others which dismembered the "I Feel Good" Foundation.

ay. TONYA, DARYL and VENISHA claimed the "Settling Parties" were Brown's sole heirs; stipulated that Hynie was Brown's wife; stopped the Estate's official DNA-testing program for non-presumed heirs; and agreed to work together to defeat the interest of all hers and others who opposed the settlement.

az. DARYL, TONYA and VENISHA knew at the time:

1. Hynie was not Brown's spouse;
2. James B. had refused the Estate's official DNA protocol;
3. Jeanette Mitchell, Nicole Parris and La Rhonda Pettit were DNA-proven children of Brown, acknowledged by the Estate in 2007.
4. Michael Deon Brown, imprisoned, was seeking DNA testing.
5. Lisa Brown was acknowledged as Brown's daughter in his first divorce.

6. DARYL claims Brown has at least 3 children in Europe. They, and others, were being identified in Case 2008-CP-02-0872, commenced by TONYA, DARYL and VENISHA, with others, on December 23, 2007.

bc. On September 24, 2008 BOB and ADELE filed the Estate Tax Return, valuing the music empire at \$84 Million.

bd. On May 26, 2009, over objection of BOB and ADELE, the settlement was approved by Jg. Early. BOB and ADELE appealed.

bf. In March 2009 BOB and ADELE wrote AG McMaster raising concerns that, because Terry had been given a right of first refusal to buy the music empire (the "ROFR"), the settling parties would try to devalue the assets.

bk. In June BOB and ADELE turned over 145 boxes of public documents to RUSSELL. Their accounting claimed \$99 million of assets were delivered to RUSSELL. A protective claim showed that as of May 26, 2009 each was owed the amount set out above under the January 8, 2008 Order, and certain additional fees and costs. For their entire service, estimated to take several additional years, BOB asked for PR/Trustee commissions of approximately \$2.1 million and ADELE approximately \$2.8 million.

bm. On August 30, 2009 Hynie's attorney Alan Medlin, Esq. wrote the AG, Levenson and others and said, in part:

Attached please find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter (after Hank Williams)...[Harlan Howard]

It is a treasure trove of information for us, including (1) the method of valuation for songwriter royalties includes an average of some prior years royalty stream multiplied by a multiple (somewhere between 5 and 8 seems reasonable based on the opinion); (2) names of some experts; (3) the Service accepted the multiple of 8. Based on the info in the opinion, Bobadele has [sic] grossly overvalued the estate for 706 purposes. The opinion deals only with royalties and not image and likeness, which apparently was inapplicable to the decedent songwriter. Of course, among ourselves, we are not sure we have the right to image and likeness under SC law, so any separate valuation of that should be discounted accordingly.

bn. On March 22, 2010 Medlin told BOB's attorney Elizabeth Gray, Esq., that AG Sonny Jones had engaged Ken Wingate and would sue if BOB and ADELE did not drop the appeal. BAUKNIGHT's attorney also advised James Richardson, Esq., that a

suit would be filed if the appeal were not dropped.

bp. On May 18 and 19, 2010 Levenson, Bell, BAUKNIGHT and counsel for Hynie signed the contract with Sweeney, Wingate and Barrow, P.C. ("SWB"); authorized the complaint; and filed this suit. (Case 4900"). Sweeney, Wingate & Barrow is the sole counsel for all Plaintiff/Counterclaim Defendants.

bq. The filing of the complaint caused BOB and ADELE to lose their professional liability insurance and to be sued by their carrier. The filing and continuation of the suit have rendered ADELE virtually unable, for five years, to serve as an expert witness, counselor, or mediator, or to obtain professional liability insurance, causing a loss of no less than \$300,000 per year.

cb. On or about May 6, 2011, DARYL, VENISHA and TONYA and RUSSELL, with the AG, asked the S.C. Supreme Court to supplement the record on appeal (ROA) in what became *Wilson v. Dallas* to value Brown's TPP at \$0.5 million and the music empire at \$4.7 million. The Supreme Court declined the motion.

cc. Since 2011 DARYL, VENISHA, TONYA and RUSSELL, with knowledge of its falsity, have claimed to the Supreme Court that ADELE is seeking a \$5 million commission for service to a \$5 million estate. They have also claimed Hynie is Brown's spouse.

cd. The purposes of the South Carolina Probate Code, S.C. Code Ann. § 62-1-101, *et seq.*, include "to discover and make effective the intent of a decedent in the distribution of his property," and the false representations to the Courts made by DARYL, VENISHA, TONYA and RUSSELL as their agent have been with the intention that the Courts rely on the statements and not carry out James Brown's wishes. The Courts have relied on the statements, and ADELE and BOB have been damaged thereby.

ce. Article V of Brown's Will, which provides education trusts for seven of Brown's grandchildren, including two daughter of DARYL, provides in relevant part:

ARTICLE V

Continuance of The Brown Family Education Trust and The James Brown "I Feel Good" Trust. Upon the death of the Grantor, the Trustee shall divide the remaining Trust Estate...into Two (2) separate shares... The two shares shall be equal, subject only to the generation-skipping limitation imposed on **The Brown... Trust** by the maximum available generation-skipping transfer exemption as computed by the following formula. **The Brown ...Trust** shall be a fraction of the Trust Estate... the numerator of which shall be an amount equal to the Grantor's available generation-skipping transfer exemption as

hereafter defined and the denominator shall be an amount equal to the value of the Trust Estate. **For purposes of establishing such fraction the values as finally determined in the Grantor's federal estate tax proceedings shall be used.** The Grantor recognizes that the numerator may be zero. **The Grantor also recognizes that the numerator of such fraction may be equal to or greater than the denominator, in which case the entire Trust Estate shall be distributed to The Brown Family Education Trust.**

cf. Under the above formula, with Brown's assets at \$100 million, the trust share of each of 7 grandchildren is about \$285,000. Under the value claimed by DARYL, VENISHA, TONYA and BAUKNIGHT, the seven would be entitled to more than a third of the assets Brown gave to the 2000 Trust, depriving the "I Feel Good" Foundation of 1/3 or more of its assets for up to 20 years.

cg. Since 2010 DARYL has fired Levenson; "kissed and made up;" and fired Levenson a second time. He is now represented by David B. Bell, Esq. ("Bell") in certain matters.

cq. Before this suit was filed, DARYL did not sign the 40% contingency fee contract, and did not review the complaint. He simply went along with whatever Levenson did. The same is true of TONYA.

cs. Since 2011 DARYL, TONYA, VENISHA and BAUKNIGHT as their agent have intentionally interfered with ADELE's FOIA rights; attempted to intervene in FOIA cases; and attempted to conceal public documents, including the Wingate 40% Litigation Retention Agreement; and the \$4.7 million appraisal.

ct. DARYL, TONYA and VENISHA have made other false and misleading statements to multiple courts.

cu. On March 26, 2014 Bell appeared in certain James Brown cases as attorney for TONYA. At the same time Bell was, through representation of multiple claimed heirs, attempting to siphon off Termination Rights agreements which properly belonged to the Estate/"I Feel Good" Trust, without meaningful opposition from David Sojourner, Esq., who is appointed as Limited Special Administrator at BAUKNIGHT's request.

cv. Both DARYL and TONYA have withdrawn their challenges to the Will of James Brown and confirmed its validity. TONYA, however, recently attempted to withdraw her withdrawal.

cw. On May 22, 2015, TONYA admitted to the S.C. Supreme Court that, but for the appeal of BOB and ADELE, she would never have been declared an heir.

Supporting Documents

This Motion is supported by the Affidavit of Adele J. Pope filed herewith, the depositions of TONYA and DARYL and the complete record of *Wilson v. Dallas*, 743 S.E.2d 746 (2013), and pending Appellate Case Nos. 2013-001649 and 2014-000250, of which the Court is asked to take mandatory judicial notice under Rule 201 SCRE. It is also supported by such additional affidavits and documents as shall be properly provided to the Court prior to the hearing on this matter.

Respectfully submitted,



Adam T. Silvernail, Esquire
Moses & Brackett
1333 Main Street, Suite 260
Columbia, South Carolina 29201
Telephone: (803) 461-2328
Facsimile: (803) 461-2309
asilvernail@mkb-law.com

May 28, 2015

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF ~~Aiken~~ *Richland*

RUSSELL L. Bauknight, as Trustee,
and others

and

HENRY DARGAN McMASTER and
others

Plaintiffs,

v.

Adele J. Pope,

Defendant

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
)
)
)

Case No.: 2010-CP-40-4900

) RETURN AND OPPOSITION TO MOTION
) TO EXEMPT PARTIES FROM
) COMPLIANCE WITH ORDER
) FOR MEDIATION AND
) ATTENDANCE REQUIRED BY ORDER

RICHLAND COUNTY
FILED
2015 AUG 13 PM 4:02
JENNIFER W. HOSKINS
CLERK, P.C. & O.S.

Defendant/Counterclaim Plaintiff (herein "Defendant/CC Plaintiff") responds to the motion of Plaintiffs, through Sweeney Wingate & Barrow, P.C. ("SWB"), to be exempt from the terms of Joint Order for Mediation filed January 20, 2015 (the "Mediation Order") in the above-reference case and in Aiken County Case No. 2013-CP-02-1337.

Plaintiff/CC Defendants' Motion should be denied for each and all of the reasons set forth below:

1. The Mediation Order (**Exhibit A**) specifically directs that "[a]ll parties and counsel of record are directed to participate in and attend the mediation in person." This direction came after SWB and Pope's counsel had fully addressed their positions on the matter in correspondence to the Court.

2. A brief chronology of correspondence leading up to the Mediation Order follows:

November 20, 2014

Judge Early's law clerk transmits the following message to all counsel in both cases:

I would respectfully request everyone to email me with suggestions on the mediation including payment of fees,

	scope of mediation, and any particular requirements that you think would insure a successful result.
November 25, 2014	Pope (in Case 1337) and her counsel (in Case 4900, Exhibit B) write the Court with suggestions, including that "[a]ll Plaintiffs in Case 4900 must attend," and setting out the reasoning for that request.
November 25, 2014	SWB responds, requesting additional time to "fully respond," but proceeding to oppose a requirement that the parties attend mediation. This opposition was based in part on Judge Manning's 2012 mediation Order.
November 26, 2014	Pope's Case 4900 counsel responds (Exhibit C) to SWB's letter with a summary of the ways in which the 2012 mediation was crippled by attendance of "personal counsel" in the place of many Case 4900 Plaintiff/CC Defendants. Pope's counsel notes that Case 4900 is now exempt from mediation, but consents to a second mediation "if the parties are ordered to attend."
December 3, 2014	SWB writes final letter to Court (Exhibit D), again requesting that the parties be exempted from attendance at mediation.
January 20, 2015	Mediation Order filed, requires attendance of all parties.
July 31, 2015	Teleconference attended by all counsel and mediator to discuss scheduling and conditions of mediation. SWB asks mediator to allow non-attendance of parties. Mediator directs that such request must be made to the appropriate Court. All parties agree to mediation date of October 22, 2015, and mediator directs that any counsel scheduled for a hearing in <i>any Court</i> notify mediator, who will request that counsel be protected for this firm mediation date.
January 20, 2015 – August 7, 2015	SWB makes no objection to Mediation Order; files no motion for reconsideration; and seeks no relief from judgment.
August 7, 2015	SWB seeks to exempt more than a dozen Plaintiff/CC

Defendants from attendance at October 22, 2015 mediation.

3. Personal attendance of the parties was extensively addressed, and the Courts Ordered such attendance. Plaintiff/CC Defendants failed to timely move for reconsideration; appeal or seek any relief from the Mediation Order for more than six (6) months, and the Order is binding on the parties. Plaintiff/CC Defendants may not now re-litigate this issue.

4. The motion of SWB is made in bad faith for the purpose of thwarting the progress of this five-year-old case brought by SWB as sole counsel for the Attorney General of South Carolina (the "AG"), Tomirae Hynie, a/k/a Tomirae Brown ("Tomirae") and more than a dozen other Plaintiff/CC Defendants on May 19, 2010.

5. SWB has an irreconcilable conflict of interest in making any request for any of the 18 Plaintiff/CC Defendants; has repeatedly acknowledged its conflict for more than two years; and has refused to resolve the conflict by simply resigning as counsel for the Plaintiffs/CC Defendants.

6. The motion makes no reference to which or how many Plaintiff/CC Defendants are unavailable, and no specific reason is given for excusing any Plaintiff/CC Defendant. There is no evidence that SWB made any inquiry as to **any** Plaintiff/CC Defendants' availability for mediation; who their personal counsel are; or any other inquiry which would advance the resolution of this case.

7. SWB's motion violates both the letter and spirit of the Mediation Order and ADR Rule 6, with which the Mediation Order directs the parties to comply.

8. On information and belief, the Motion is made in a bad-faith attempt to prevent

certain of the Plaintiff/CC Defendants from being fully informed that, by action of SWB, they are seeking relief from default for failing to timely respond to the counterclaims of Defendant/CC Plaintiff in this case.

9. On information and belief, the Motion was made for the improper purpose of continuing the interference of SWB and the Plaintiff/CC Defendants with the FOIA rights of Plaintiff and others.

10. The purpose of the Mediation Order and mediation will be thwarted, and continued lack of respect for the judicial process by SWB and the eighteen Plaintiff/CC Defendants will be furthered if the parties are not required to comply with the Mediation Order.

11. Louis Levenson, Esq., and David Bell, Esq. appeared at an unsuccessful October 2012 mediation, claiming they had full authority to speak for approximately a dozen of the 18 Plaintiffs. Mr. Levenson had been terminated prior to the mediation by *at least 3* of the persons he claimed to have authority to speak for. And Mr. Bell has since been termination by Terry Brown, whom he claimed to represent.

12. Many of the personal lawyers of Plaintiffs, including Mark Toberoff, who asserts he represents a super-majority of the heirs of James Brown, and Atlanta attorney Scott Keniley – like Mr. Bell – have not been admitted *pro hac vice* either in this case or in the FOIA case their clients had consolidated with this case.

13. The parties, including minors with proper representation by a parent, a GAL appointed by this Court, and/or both, are essential to resolution of this case, which is the purpose of mediation.

14. Presence of the parties at mediation is necessary because both SWB and some of the former personal attorneys have direct conflicts with their clients and former clients, and only the parties can address the multi-million-dollar claims pending against all parties, which revolve around the following questions:

- a. Was SWB's bringing this suit as sole attorney for the AG, Tomirae and more than a dozen additional Plaintiffs, including minors and nonresidents, illegal and/or unconstitutional?
- b. Was it reasonable for Defendants to vigorously defend the Estate Plan of James Brown against the claims of Tomirae and others?
- c. Was James Brown's worldwide music empire worth less than \$4.7 million at his death, leaving the "I Feel Good" Trust with fewer than 5 \$20,000 scholarships a year; or about \$84 million, leaving needy students with about two hundred \$20,000 scholarships per year?
- d. Was it reasonable for Defendants not to accept the \$100 million offers for Brown's assets made by Plaintiff/CC Defendant Terry Brown and others at the times they were made?
- e. Was this lawsuit brought in a bad faith to attempt to damage Defendants and thereby derail the appeal which led to the Supreme Court decision in *Wilson v. Dallas*?

MEMORANDUM IN SUPPORT OF COMPLIANCE WITH MEDIATION ORDER

SWB commenced this action against Defendant and Robert Buchanan, Jr. on May 19, 2010. In the fall of 2010, SWB began seeking relief from default after a partner in the firm failed to timely respond to the counterclaims of Defendant and Buchanan for abuse of process; civil conspiracy; intentional interference with contract; fraud; and attorneys' fees.

In 2011 the S.C. Court of Appeals dismissed without prejudice (as premature) Defendant/CC Plaintiff's and Buchanan's challenges to the lawsuit, including that it was illegal for SWB to be sole counsel for AG Wilson and seventeen private plaintiffs.

Five years after the commencement of this suit the question of the legality of the suit and the default remain at the forefront. The problem was made clearer when it was learned in 2013 that neither AG McMaster nor more than a dozen private plaintiffs had signed the Wingate Litigation Retention Agreement. A contract for these Plaintiff/CC Defendants to pay a 40% contingency to SWB had been signed by Louis Levenson, Esq., David Bell, Esq., and counsel for Tomirae. Since then, AG Wilson has reported his position that his predecessor AG, Henry McMaster, did not authorize SWB to sue Buchanan and Defendant in the name of the State/AG.

In the face of these facts SWB has taken extraordinary steps. It has acknowledged its irreconcilable conflict. But it has simply hid its head in the sand and asked the Court to stop the whole proceeding. That request was made in May 2013. It was successful until the Mediation Order.

In late 2014 attorneys for James Brown's estate reported to Judge Early that the matter of payment to Defendant under a 2009 payment order – earning interest under Judge Early' 2009 order at more than \$100,000 per year – could not be resolved until this Case ("Case 4900") was concluded. The payment order is the subject of an Aiken County case in which there had been no prior mediation.

Hearing this, Judge Early contacted Judge Manning. In time, the joint Mediation Order was issued. SWB argued with the Court prior to the Mediation Order that the parties should not be required to attend. The Mediation Order, however, directed that the parties attend. And the Mediation Order directed that the parties otherwise comply with ADR Rule 6.

Neither SWB nor any of the Plaintiffs/CC Defendants, all on notice of the SWB conflict of interest, moved to alter or amend the Mediation Order. It was not appealed by anyone.

Actions made public in cases in which Defendant is not a party make it clear that attendance of the parties at the mediation, now scheduled for October 22, is essential.

In 2012 SWB persuaded the Court to proceed to a pre-discovery mediation without GALs for the minor and incarcerated persons; and without a majority of the Plaintiff/CC Defendants present. SWB represented that Louis Levenson, Esq. and David Bell, Esq., a Georgia attorney, had full authority to bind more than half of the Plaintiff/CC Defendants. At the time Mr. Levenson had been terminated by three of the persons he claimed to represent at mediation. Mr. Bell, never admitted *pro hac vice* in this case, spoke for Terry Brown. Since 2012, the three, and others, have made clear Mr. Levenson has been terminated and does not speak for them. Terry Brown has terminated Mr. Bell.

Mr. Levenson and Mr. Bell now have the conflict that each signed a 40% contingency fee contract with SWB to sue Defendant and Buchanan for people they no longer represent. While the mere signing of the contract was a violation of requirements for contingency fee contracts, it has been exacerbated by SWB, Levenson and Bell trying to keep the actual Plaintiffs away from the mediation. The clear implication is that SWB does not want the Plaintiff/CC Defendants to come to mediation because they will be able to see the extraordinary damage caused to Defendant by both Case 4900 and the FOIA interference.

The AG's withdrawal of support for both SWB and many of the positions it took at

the 2012 mediation is significant, and must be hashed out by the parties at mediation.

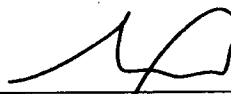
CONCLUSION

The attempt by SWB to evade the Mediation Order and prevent a successful mediation of the parties is the latest in a 2-year effort to prevent any progress in this case. SWB brought this case on behalf of the AG and 17 other Plaintiffs more than five years ago. The motion is an effort to thwart FOIA compliance which – despite SWB's efforts – has demonstrated that this suit was not properly brought either by the State/AG or many of the parties. But the suit has been brought and continued despite the knowledge of its impropriety.

It is time for the Court to call a halt to SWB's attempts to derail this case. The untimely motion to alter the Mediation Order should be rejected, with costs to SWB. Any parties who violate the Mediation Order should be subject to appropriate sanctions under the Rules.

This return is based on the entire record herein, including the Affidavit of Adele J. Pope filed herewith, and any memoranda filed prior to the hearing on this matter.

Respectfully submitted,



Adam T. Silvernail, Esquire
Moses & Brackett
1333 Main Street, Suite 260
Columbia, South Carolina 29201
Telephone: (803) 461-2328
Facsimile: (803) 461-2309
asilvernail@mkb-law.com

August 12, 2015

Attorneys for Defendant Adele J. Pope

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900 - *cert copy*

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 Janise Vanisha Brown; Lindsey)
Delores Brown; Deanna J. Brown Thomas;)
Jason Brown-Lewis; Yamma N. Brown;)
individually and on behalf of her minor)
children, Sydney L., Carrington L., and)
Tonya Brown; Venisha Brown; Larry)
Brown; and Terry Brown)

and)

ALAN WILSON, in his capacity as)
Attorney General of the State of South)
Carolina; TOMMIE RAE BROWN,)
individually and on behalf of her minor)
child, JAMES B., DARYL J. BROWN,)
individually and on behalf of his minor)
child JANISE VANISHA BROWN;)
LINDSEY DELOREST BROWN;)
DEANNA J. BROWN THOMAS; JASON)
BROWN-LEWIS; YAMMA N. BROWN,)
individually and on behalf of her minor)
children, SYDNEY L., CARRINGTON L.,)
and TONYA BROWN; VENISHA)
BROWN; LARRY BROWN; and TERRY)
BROWN,)

Plaintiffs.)

v.)

Adele Pope,)

Defendant.)

ORDER

1.20 2015
[Signature]
C.C.P. & G.S.
Anita Knoepfle *10*
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

v.

Estate of James Brown, Deceased; The
James Brown 2000 Irrevocable Trust;
Russell L., Bauknight, Individually, as
former *Executor de son tort*, and in every
current and former fiduciary status claimed
or held as to the Estate of James Brown and
the James Brown 2000 Irrevocable Trust,

Defendants.

AND:

Robert L. Buchanan, Jr.,

Interested Party.

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-02-1337 -original

ORDER

1.20.15
Liz Godard
C.C.P. & G.S.
Anita Knoepfle 10¹⁰
Deputy Clerk

The Court after conferring with counsel, Judge Manning, and I have determined that judicial economy would be served by a joint, Court-ordered mediation of the of Aiken County Case 2013-CP-02-1337 ("Case 1337") and Richland County Case 2010-CP-40-4900 ("Case 4900").

IT IS, THEREFORE, ORDERED:

1. That Karl Folkens, Esquire, is here by appointed as the mediator and shall choose the time, place, and date of the mediation as soon as possible.
2. All parties and counsel of record are directed to participate in and attend the mediation in person.
3. Counsel must ensure full compliance with Rule 6(b), SCRADR, regarding attendance at the mediation settlement conference.
4. Counsel must certify to the mediator that each has disseminated the mediators "Frequently Asked Questions" to their respective clients within ten (10) days of the scheduled mediation settlement conference.

MAE
#

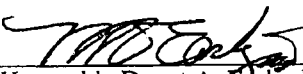
5. The Estate shall advance the cost and expenses of the mediation but will be allowed to deduct said advancements once a distribution is made.

6. Regarding the allocation of the costs of the mediation, the mediator shall have authority to group parties with common interests as one.

7. Within twenty (20) days, counsel shall participate in a pre-mediation telephone conference with the mediator for the purpose of scheduling the mediation and addressing location, timing, and procedure of the mediation settlement conference.

8. The parties shall provide the mediator with a memorandum setting forth their respective positions regarding the issues that need to be resolved within twenty-five (25) days of the date of this order.

AND IT IS SO ORDERED.


The Honorable Doyet A. Early, III
Resident Judge
Second Judicial Circuit

January 17, 2015
Aiken, South Carolina


The Honorable L. Casey Manning
Resident Judge
Fifth Judicial Circuit

January 6, 2015
Columbia, South Carolina

EXHIBIT B

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

Adam T. Silvernail
Direct Dial: (803) 461-2328
Email: asilvernail@mkb-law.com

November 25, 2014

By hand-delivery:

The Honorable L. Casey Manning
Post Office Box 192
1701 Main Street, Room 214
Columbia, South Carolina 29202-0192

Re: *Bauknight, et al vs. Pope*
Richland County Case No. 2010-CP-40-4900

Dear Judge Manning:

We have been informed by Judge Early that you and he will be directing a joint mediation of this case and Aiken County Case No. 2013-CP-02-1337. So that the organization of this mediation can proceed quickly, I am providing you with the enclosed proposed Order Directing Joint Mediation. We believe the terms set out are essential to a productive mediation.

Also enclosed is a copy of my clients correspondence and proposed Order sent to Judge Early today in the Aiken County matter, where she is *pro se*.

By copy of this letter, I am providing the proposed Order to counsel of record, with courtesy copies to others. If your Honor executes the Order, I will be glad to arrange for service on the parties.

I thank you for your consideration, and I wish you and other counsel a happy Thanksgiving.

Very truly yours,



Adam T. Silvernail

cc: Adele J. Pope, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
J. Emory Smith, Esquire (courtesy copy)
John W. McIntosh, Esquire (courtesy copy)
C. Havird Jones, Esquire (courtesy copy)

EXHIBIT C

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300
Facsimile (803) 461-2309

Adam T. Silvernail
Direct Dial: (803) 461-2328
Email: asilvernail@mkb-law.com

November 26, 2014

By e-mail and hand-delivery:

The Honorable L. Casey Manning
Post Office Box 192
1701 Main Street, Room 214
Columbia, South Carolina 29202-0192

Re: *Bauknight, et al vs. Pope*
Richland County Case No. 2010-CP-40-4900

Dear Judge Manning:

I have received Mark Gende's letter to you, which was sent late yesterday. I take issue with many of his requests, as his representation issues are not my client's problem. Nor should they be the Court's.

He further suggests that the mediation should include the FOIA matters. These are not subject to mediation, and I believe it would be error for the Court to allow further delay of these ancient cases by subjecting them to mediation. I ask that Mr. Smith, who represents the Attorney General in the FOIA suits, confirm that the AG does not seek mediation of these cases.

Mr. Gende is correct that your Honor previously excused the parties from attending mediation. The non-attendance of the parties was the primary reason the mediation was unproductive. Several parties were represented by attorneys or others whose authority to speak for certain parties was, at best, murky. Mrs. Pope's letter to Judge Early of yesterday made reference to the conflicts and representation issues present if the parties' counsel of record and/or "personal" counsel are allowed to attend in their stead. Her summary of these issues was an understatement. For the Court's reference, I bring the following points to your attention:

1. No counsel or GAL attended the October 2012 mediation on behalf of minor James B. Because Mr. Bauknight is shown in the caption of Case 4900 as the agent for James B. and all other Plaintiffs, he and his counsel were James B.'s only representatives at that mediation.
2. Louis Levenson, Esquire, attended the mediation, purportedly on behalf of several individual Plaintiffs. Within a couple of days after the mediation, my client received a letter from Levenson's alleged client Daryl Brown indicating that Levenson did not represent him.
3. David Bell, Esquire, attended the mediation as counsel for Plaintiff Terry Brown during a time when Mr. Bell also represented Terry's son Forlando in a Federal case. The positions taken by Terry in this case and by Forlando in the Federal

case were absolutely irreconcilable, and we later learned that Forlando had been assigned all of Terry's interest in the Estate of James Brown in 2011.

4. All Plaintiffs were represented by Sweeny, Wingate & Barrow at the mediation, as Mr. Gende apparently seeks to do a second time. In late 2013, we received via a Federal Court Order, the fee agreement between Plaintiffs and Mr. Gende's firm. Although the document purports to be a contingency-fee agreement, it is not signed by a single Plaintiff other than Mr. Bauknight. Mr. Levenson, Mr. Bell and Alan Medlin, Esquire, signed the fee agreement on behalf of all individual Plaintiffs. Although declared public by the Federal Court and produced by Mr. Bauknight in that case, the fee agreement has still never been produced by the AG in the FOIA action which has been pending for more-than 3 years.

Mr. Gende's request for a status conference seeks to burden Mrs. Pope and the Court with somehow assisting in resolving Mr. Gende's firm's conflicts of interest. This is not the Court's problem, nor is it Mrs. Pope's. If Mr. Gende cannot resolve his conflicts with his clients, his firm should remove itself from this litigation. Instead, it continues to punish Mrs. Pope for its own lack of foresight.

Respectfully, I believe the only way to ensure that conflicts and representation problems do not hinder any further mediation is to direct that **the parties must attend personally**. Doing so will resolve all issues and questions about who may speak for any particular party without the delay and expense involved in a status conference.

Mr. Gende's request to repeat the 2012 mediation and hope for better results is quixotic. We are eager to utilize the ADR process toward its intended end, but we are not eager to waste time in scheduling and attending an unproductive mediation.

Under Rule 3(b)(9) of the ADR Rules, this case is now exempt from mediation. We will not object, however, to another mediation if the parties are ordered to attend and the other conditions of the mediation are reasonable. We believe that there is a substantial chance of success at mediation if the parties are not again exempted from the ADR Rule requiring attendance, and we ask that the Court give both my client and the Plaintiffs the opportunity to resolve this matter by agreement.

Very truly yours,



Adam T. Silvernail

cc: Adele J. Pope, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
J. Emory Smith, Esquire (courtesy copy)
John W. McIntosh, Esquire (courtesy copy)
C. Havird Jones, Esquire (courtesy copy)

EXHIBIT D



SWEENEY WINGATE & BARROW P.A.

December 3, 2014

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x7121
mvg@swblaw.com

Via electronic mail and U.S. mail

The Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, SC 29003

Via electronic mail and U.S. mail

Honorable L. Casey Manning
Chief Administrative Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Judge Early and Judge Manning:

On behalf of the case 4900 plaintiffs' group, thank you for the additional time to respond to the November 20, 2014 email requesting, "suggestions on the mediation including payment of fees, scope of mediation, and any particular requirements that you think would ensure a successful result."

1. Without prejudice to any future position, the plaintiffs have agreed internally to waive any conflicts created by the *Wilson v. Dallas* decision and the Aiken will contest cases for the purpose of complying with the court's order to mediate.
2. The plaintiffs should bear one half of the mediation costs, divided pursuant to their own agreement, and Mrs. Pope should bear one half of the mediation costs. This is essentially the breakdown proposed by Mr. Billy Newsome.
3. The scope of the mediation should be global, including all matters involving Mrs. Pope, the Estate and Trust and all other named plaintiffs.

MAIN OFFICE: T • 803-256-2233 F • 803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12129 • COLUMBIA, SC 29211
PEE DEE OFFICE: T • 843-878-0390 F • 843-878-0393 1115 CARGILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

0821

4. A status conference is necessary to ensure a successful result so that the parties may be charged by the court as to the court's objective for the mediation. Such a charge is necessary because Mrs. Pope continues to raise conditions that appear calculated to undermine the likelihood of a successful mediation.

Below, I briefly review our objections to Mrs. Pope's mediation conditions and then outline what the plaintiffs believe is Mrs. Pope's objective for mediation.

Mrs. Pope seeks to compel all parties to attend mediation in person and force guardians to be appointed for all represented minors. These issues were raised before Judge Manning and ruled upon by him prior to the last mediation. Judge Manning found all minors' interests were properly represented by their parents and all adults were properly represented by counsel.

Mrs. Pope seeks to exclude FOIA matters that have been associated with case 4900. We believe that all matters must be mediated.

Mrs. Pope seeks the Court's Order that certain documents be produced at mediation. All of the documents that she seeks are subject to discovery disputes, and none are necessary to mediate, as the settlement with Mr. Bob Buchanan demonstrated.

Mrs. Pope demands that only counsel of record for Case 4900 be allowed to attend mediation. This is a remarkable request that case 4900 plaintiffs be denied the benefit of personal counsel at mediation.

The plaintiffs believe Mrs. Pope may not intend to make any effort at a global resolution of the matters the court has directed us to mediate. Her mediation conditions and her many prior statements appear to reveal a tactic she has long been attempting to accomplish. Specifically, we believe Mrs. Pope seeks to settle with a single James Brown family member in return for assigning to her some estate interest, no matter its size or viability, in order to use that interest as a pretext to insert herself into all estate litigation and reassert control over the James Brown Estate and Trust.

If this is Mrs. Pope's intention, it is contrary to the South Carolina Supreme Court's statement in *Wilson v. Dallas* that since she has been rightly removed as a fiduciary. Mrs. Pope has nothing left to do with the Estate. This intention is also contrary to what the plaintiffs understand to be the direction of the court in ordering this third case 4900 mediation.

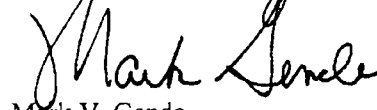
At a status conference, the court should clearly address its objective in ordering mediation to clarify what the plaintiffs believe to be the court's intent that the parties seek a global resolution of all issues with all parties.

December 3, 2014
Page 3 of 4

Thank you for your consideration of these items. Should the Court have any questions concerning this correspondence, I am ready to respond at the Court's convenience.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "Mark V. Gende", is written over the printed name.

Mark V. Gende

MVG/ljm

cc: Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
J. Emory Smith, Jr., Esquire
C. Havird Jones, Jr., Esquire

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

)

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

DEFENDANT ADELE J. POPE'S MOTION
TO ALTER, AMEND AND/OR VACATE
ORDER GRANTING PLAINTIFFS'
MOTION TO SET ASIDE DEFAULT

2015 OCT 20 PM 4:15
CLERK OF COURT
RICHLAND COUNTY

TO: PLAINTIFFS AND/OR THEIR COUNSEL.

Please take notice that Defendant Adele J. Pope, through her undersigned counsel,

moves the Court for an Order altering, amending and/or vacating this Court's October 12, 2015 Order Granting Plaintiffs' Motion to Set Aside Default. The grounds of this motion are set forth below.

BACKGROUND

1. This action was commenced by the filing of a Summons and Complaint in the Richland County Probate Court on May 19, 2010 and subsequent service on Defendants Robert L. Buchanan, Jr. and Adele J. Pope. This matter was subsequently removed to the Circuit Court.
2. Defendants filed and served their Answer and Counterclaim on September 30, 2010.
3. Plaintiffs did not file a response to the counterclaims, and Defendants filed an Affidavit of Default on November 10, 2010.
4. Thereafter, Plaintiffs filed a Motion for Relief from Default on November 16, 2010, with an attached Affidavit of Kenneth B. Wingate, Esquire, and a proposed Reply to Counterclaims.
5. Plaintiffs' counsel acknowledged having received the Answer and Counterclaim, but explained that he "did not recognize it as a counterclaim." (Affidavit of Kenneth B. Wingate)
6. Defendants opposed Plaintiffs' motion to be relieved from default and filed memoranda asserting that Plaintiffs had failed to show "good cause" for relief as required by Rule 55(c).
7. After the December 17, 2012 hearing on the motion, certain Plaintiffs announced their termination of Wingate as their counsel herein, and Wingate moved to be relieved as counsel for the South Carolina Attorney General.¹

ARGUMENT

- I. **Wingate Lacks Authority to Seek Relief from Default for Certain Plaintiffs**
8. As an initial matter, the Court erred in failing to consider and/or find that Wingate lacks authority to speak for certain Plaintiffs herein. Specifically, Wingate has moved to be relieved as counsel for the AG on the basis that the AG has terminated

¹ The AG has also asserted in other litigation that he is not a party to this action, although he has filed a "motion to be dropped as a party" herein. Defendant Pope opposes this motion, and it has not been heard or decided.

Wingate's services. No other counsel has yet filed a notice of appearance for the AG, however, and Wingate's motion to be relieved as counsel has not been heard.

9. Further, Plaintiff Daryl Brown has announced his termination of Wingate as his counsel, although no other counsel has made an appearance on his behalf in this case. Terry Brown, through an assignee, has also announced his termination of Wingate.
10. Plaintiff James Brown Legacy Trust has announced through its counsel Lewis, Babcock & Griffin, LLP, in other litigation its position that it no longer exists. The AG has also taken the position that the Legacy Trust does not exist "at this time." Neither Wingate nor other counsel for the Legacy Trust has sought to remove it from this case, and the Legacy Trust remains subject to Pope's counterclaims herein. What is clear is that Wingate lacks authority to seek relief for the Legacy Trust at this time.

II. No "Good Cause" has Been Shown which would Entitle any Plaintiff to Relief from Default.

11. In addition, the Court erred in failing to consider and/or find that relief from default is not justified under the applicable law, because Plaintiffs have failed to show "good cause."
12. Pursuant to Rule 55(c), SCRPC, the Court may, for good cause shown, set aside an entry of default. In the case of Wham v. Shearson Lehman Bros., Inc., 298 SC 462, 381 S.E. 2d 499 (Ct. App. 1989), the Court held that in determining whether one should be relieved from the entry of default, a court shall consider the following factors: (1) the timing of the Motion for Relief; (2) whether one has a meritorious defense; and (3) the degree of prejudice to the non-moving party if the relief is granted. The law in this regard remained essentially unchanged until the South Carolina Supreme Court ruled in the case of Sundown v. Intedg Industries, 382 SC 601, 681 SE 2d 885 (2009). In that case, the Court found that a "satisfactory explanation" must be given for the default before the above analysis would occur.
13. The Court erred in finding "good cause" where the only explanation put forth by Plaintiffs for the default was the Affidavit of Kenneth B. Wingate, which sets forth two paragraphs which appear intended to support Plaintiffs' a good cause for failing to timely respond to the Counterclaim after being properly served.
14. The Court erred in failing to consider and/or find that the document which Wingate failed to recognize as a counterclaim, in fact, bears the title "**ANSWER AND COUNTERCLAIM OF ROBERT L. BUCHANAN, JR. AND ADELE J. POPE**" in boldface, capital letters. There is no deficiency in the presentation of the counterclaim which could justify Wingate's oversight, and he does not allege any such deficiency.

15. The Court erred in failing to consider and/or find that errors on the part of an attorney will not be the basis for finding good cause to set aside an entry of default. Mr. Wingate states in his affidavit that he had received the counterclaim and marked it for placement in his files on this action.

III. The AG can be held in default; he has not shown "good cause" for relief; and Wingate lacks authority to speak for him.

16. The Court erred failing to consider and/or find that the AG can be held in default and, further, that he has not demonstrated "good cause" to be relieved from default. Plaintiffs have argued that the AG cannot be held in default at all, and they base this argument on Rule 55(e), SCRPC. This argument is misplaced, as is shown by a plain reading of the Rule. Rule 55(e) states:

(e) Judgment Against the State and Certain Other Parties. No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court. [emphasis supplied]

17. This Rule does not, as Plaintiffs assert, preliminarily absolve the AG of default. Rather, it requires presentation of evidence in support of the claim against the State prior to a default judgment being entered. At this stage, where only the entry of default is at issue, Rule 55(e) does not absolve the AG of default herein. Indeed, the identical Federal Rule has been interpreted to allow for the entry of default and a default judgment, where plaintiff could show a meritorious claim. See Bostic v. Harris, 484 F.Supp. 686 (S.D.W.Va. 1979).

18. In any event, Wingate's clear lack of authority to seek this relief on behalf of the state should have precluded the Court's allowing the AG to be relieved from default.

CONCLUSION

For the reasons set forth above, Plaintiff asks this Court to alter, amend or vacate its October 12, 2015 Order Granting Plaintiffs' Motion to Set Aside Default. This motion is based on applicable statutes and caselaw, as well as the entire record herein and any memoranda filed prior to the hearing on this motion.

Respectfully submitted,



Adam T. Silvernail
Moses & Brackett, PC
1333 Main Street, Suite 260
Post Office Box 100261
Columbia, South Carolina 29202
803/461-2328
asilvernail@mkb-law.com

Attorney for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MOTION TO STRIKE
THE AFFIDAVIT OF DEFENDANT
ADELE POPE DATED
FEBRUARY 19, 2016**

RICHLAND COUNTY
FILED
2016 MAR -1 AM 10:46
JENNIFER L. MCCORD
C.C.P. & G.S.

**TO: W. H. BUNDY, JR., ESQUIRE, ATTORNEY FOR DEFENDANT POPE, AND TO
THE DEFENDANT ABOVE-NAMED:**

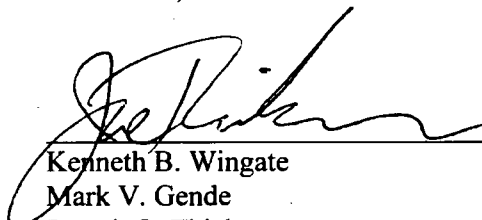
YOU WILL PLEASE TAKE NOTICE that Plaintiffs in the above-referenced action plan to move before the Court, and do hereby so move, for an Order striking the Affidavit of Adele J. Pope dated February 19, 2016 (attached hereto as Exhibit A).

This Motion is made pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, and is based upon the Affidavit's inclusion of material that this "redundant, immaterial, impertinent, or scandalous", as well as the Affidavit's inclusion of material that is wholly irrelevant and inadmissible in this case. Further, the Affidavit contains statements that are not based on personal knowledge.

This Motion may be further supplemented by Affidavits, a Memorandum of Law, or any other information as may be proper.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Joseph O. Thickens
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
February 26, 2016

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

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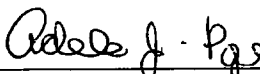
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- b. Whether James Brown's music empire was worth almost \$100 million (less the TIAA debt) on the date of James Brown's death, or approximately \$4.7 million.
- c. Whether Mr. Buchanan and I properly and efficiently defended the estate plan of James Brown from August 10, 2008 until May 8, 2013 against the united efforts of the Attorney General, Tommie Rae Hynie and others to destroy it.
- d. Whether the Christie's sale, including the proposal to sell the GRAMMY, was properly conducted as directed in multiple Orders of the Circuit Court and Court of Appeals.

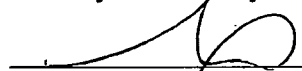
5. I am informed and believe that Mr. Richardson is either 72 or 73 years old and that his practice is less active than it has been for most of the last 45 years.

6. Because Plaintiffs are attempting to delay the trial in this case for what may be many years, and the trial in Aiken County Case 2013-CP-02-1337 (which involves some of the same issues) will not take place until at least July 1, 2017, I am fearful that if Mr. Richardson's testimony is not immediately preserved for both cases, valuable evidence which cannot be duplicated will be lost and justice in both cases will be impaired.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this
19th day of February, 2016


Notary Public for South Carolina
My Commission Expires: 7/12/2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

ALAN WILSON, in his capacity as Attorney
General of the State of South Carolina; TOMMIE
RAE BROWN, individually and on behalf of her
minor child, JAMES BROWN, 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,

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Case No.: 2010-CP-40-4900

**DEFENDANT/COUNTER-
CLAIMANT ADELE POPE'S RULE
11 AND RULE 37, SCRPC MOTION
AND MEMORANDUM IN SUPPORT
OF THE MOTION AND IN
OPPOSITION OF THE
PLAINTIFFS' MOTION FOR A
PROTECTIVE ORDER**

RICHLAND COUNTY
FILED
2016 MAR -1 AM 11:43
JEANNETTE W. HARRISON
C.C.P. & C.S.

Defendant/Counterclaim Plaintiff Adele Pope (hereinafter sometimes referred to as "Pope") hereby moves for sanctions pursuant to Rule 11, SCRPC and Rule 37, SCRPC arising out of the Plaintiffs filing of a motion on February 18, 2016 for a protective Order and/or to quash the notice of deposition of James B. Richardson, Jr., Esquire noticed for March 3, 2016.

The present motion should be granted and the Plaintiffs' motion should be denied for each and all of the reasons set forth below:

1. The Summons and Complaint herein were filed on May 19, 2010 by the Attorney General of South Carolina, with others, who now seek to stop the deposition of a material witness to relevant actions of the parties between July 2008 and May 2013.
2. Counsel for Pope was not consulted prior to the filing of the Plaintiffs' Motion to Quash (nor was any certification included in the Motion that such consultation would serve no useful purpose) as is require by Rule 11, SCRPC. For this reason alone, the motion "shall be stricken." Rule 11(a), SCRPC.
3. Though Plaintiffs did not consult with counsel for Pope, the cover letter and motion itself base their attempt to prevent the deposition of Richardson in part on their pending 2014 motion to stay this case indefinitely and an email from the Honorable L. Casey Manning's law clerk related to certain pending motions. The Plaintiffs, in their cover letter, even go so far as to allege that counsel for Defendant Pope is acting in "disregard of the Court's recent instructions."
4. There is simply no Order, correspondence or other direction from the Court that has indicated that discovery in this case is stayed. Counsel is not acting is disregard of

anything. In fact, counsel is obligated to continue to try and defend their client and prosecute her case in an action that is approaching its sixth year.

5. Plaintiffs state that they “fail to see” how the deposition of James B. Richardson is relevant to this case or what non-privileged information may serve as the subject of the deposition. Whether or not the Plaintiffs “fail to see” the significance of the testimony of the deponent is simply not a valid ground to move for a protective order.
6. Rule 26, SCRCP states, in pertinent part, that a protective order may issue when it is required to “protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense...” In the present case, the Plaintiffs do not attempt to even allege any of the foregoing in their motion.
7. Instead, the Plaintiffs make allegations that, in addition to being irrelevant to a motion for protective order, have no basis in fact, law or rule of civil procedure. Rule 30, SCRCP, clearly allows for the properly noticed deposition to occur. As stated in the Affidavit of Adele Pope, filed contemporaneously and attached as Exhibit A hereto, the substance of the testimony sought to be elicited at the deposition squarely falls within the scope of permissible discovery as outlined in Rule 26, SCRCP.
8. Plaintiffs’ motion to stay this case was filed in April 2014, following their informal request for a stay (via letter) in May 2013. Continuing their efforts to evade and stifle discovery, Plaintiffs have since 2013 used their request for this matter to be stayed indefinitely as a basis to refuse to participate in any discovery. This is impermissible and it is in direct conflict with Rule 11 and Rule 37, SCRCP (Rule 11, SCRCP, states

that no motion shall be interposed for delay and Rule 37 SCRCP states that is a party is subject to sanctions for failure to cooperate in discovery).

9. Plaintiffs complain that the deposition was noticed unilaterally and without any consultation with Plaintiff's counsel. This argument is without any actual basis in rule of civil procedure as Rule 30, SCRCP, specifically allows any party to notice the deposition of a witness. Plaintiffs do not even assert that their counsel is unavailable on March 3, 2016, the date set for the deposition.
10. Simply put, the passage of time continues to erode the likelihood that witnesses to the facts of this case will be available and able to adequately recall the facts of which they currently have personal knowledge, resulting in a denial of Pope's right to defend herself against the claims of the Attorney General and others.
11. Mr. Richardson worked *pro bono publico* for four years on the appeal which resulted in the decision in *Wilson v. Dallas*, 743 S.E.2d 746 (2013). *Wilson* is the subject of a portion of Plaintiff's complaint herein. Mr. Richardson also has critical facts relevant to Pope's abuse of process counterclaim and other counterclaims.
12. Richardson is over seventy (70) years old, and is currently in his 46th year of practicing law. There is absolutely no reason his deposition cannot or should not go forward. Any opposition to the deposition can only be levied for the purpose of delay. Such a delay will materially hurt the ability of Pope to defend herself in this action.
13. As a result of the Plaintiffs' continued tactics of delay and unfounded allegations in the most recent motion and cover letter, Defendant Pope hereby moves for sanctions,

including but not limited to attorney's fees and costs for the filing of this motion and return, pursuant to Rule 11, SCRPC and Rule 37, SCRPC.

14. In compliance with Rule 11, SCRPC, counsel for Defendant Pope sent a letter to counsel for the Plaintiffs on Friday, February 19, 2016, and requested Plaintiffs immediately withdraw their motion and withdraw their allegations made in the cover letter. The withdrawal would have resolved the matter contained in this motion. Counsel for Defendant Pope received no response.

CONCLUSION

This motion and return is based on the South Carolina Rules of Civil Procedure, applicable statutory and case law, the entire record herein, including the Affidavit of Adele J. Pope filed and served herewith, and such additional affidavits and/or memoranda as shall be presented prior to the hearing on this matter. For the reasons set forth above, Defendant respectfully asks this Court to grant Pope's Motion for Sanctions and deny Plaintiffs' motion for protective Order and to quash the Notice of Deposition of James B. Richardson, Jr., Esquire.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully submitted,



W.H. Bundy, Jr.

H. Brent McDonald
Smith, Bundy, Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd., Suite 100
Post Office Box 1542
Mount Pleasant, South Carolina 29465
Telephone: (843) 881-881-1623
Facsimile: (843) 881-4406
whbesq@s3blaw.com

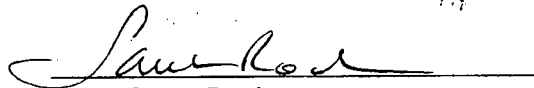
Adam T. Silvermail
Moses & Brackett
1333 Main Street, Suite 260
Columbia, South Carolina 29201
Telephone: (803) 461-2328
Facsimile: (803) 461-2309
asilvermail@mkb-law.com
Attorneys for Defendant Adele J. Pope

Mt. Pleasant, South Carolina
February 22, 2016

CERTIFICATE OF SERVICE

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that true and correct copies of the DEFENDANT/COUNTER-CLAIMANT ADELE POPE'S RULE 11 AND RULE 37, SCRCP MOTION AND MEMORANDUM IN SUPPORT OF THE MOTION AND IN OPPOSITION OF THE PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER were served on all parties via U. S. Mail and/or E-Mail, postage paid, this 22nd day February, 2016, as follows:

Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
1515 Lady Street (29201)
Columbia, SC 29211
Attorneys for Plaintiffs



Sarah Foster Rock

RICHLAND COUNTY
FILED
2016 MAR -1 AM 11:43
JANETTE W. MCBRIDE
C.C.P. & G.S.

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. Bauknight, as Trustee,
and others

and

ALAN WILSON and others,
Plaintiffs,

v.

Adele J. Pope,
Defendant.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)
)
)

Case No.: 2010-CP-40-4900

) Affidavit of Adele J. Pope
) Opposing Plaintiffs' Motion for Protective
) Order and/or to Quash Notice of
) Deposition of James B. Richardson, Jr.
)
)
)
)
)

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

1. I am over eighteen (18) years old, and this affidavit is made of my own personal knowledge and belief.

2. James B. Richardson, Jr., Esquire, along with Tressa T.H. Hayes, Esquire, who no longer lives or practices law in South Carolina, represented Robert L. Buchanan, Jr. and me in the appeal which resulted in the South Carolina Supreme Court's opinion in *Wilson v. Dallas*, 746 S.E.2d 743 (2013).

3. It is important to preserve Mr. Richardson's testimony in this case, in which Mr. Buchanan and I were sued by the Attorney General and others in 2010, in part for conducting the *Wilson v. Dallas* appeal.

4. Mr. Richardson has actual and unique knowledge relevant to this Court's determination of certain of the major issues in this case, namely:

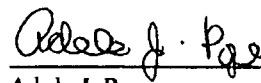
- a. Whether the Plaintiffs brought Case 4900 for the improper purpose of forcing Mr. Buchanan and me to drop the *Wilson v. Dallas* appeal.

- b. Whether James Brown's music empire was worth almost \$100 million (less the TIAA debt) on the date of James Brown's death, or approximately \$4.7 million.
- c. Whether Mr. Buchanan and I properly and efficiently defended the estate plan of James Brown from August 10, 2008 until May 8, 2013 against the united efforts of the Attorney General, Tommie Rae Hynie and others to destroy it.
- d. Whether the Christie's sale, including the proposal to sell the GRAMMY, was properly conducted as directed in multiple Orders of the Circuit Court and Court of Appeals.

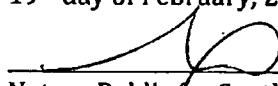
5. I am informed and believe that Mr. Richardson is either 72 or 73 years old and that his practice is less active than it has been for most of the last 45 years.

6. Because Plaintiffs are attempting to delay the trial in this case for what may be many years, and the trial in Aiken County Case 2013-CP-02-1337 (which involves some of the same issues) will not take place until at least July 1, 2017, I am fearful that if Mr. Richardson's testimony is not immediately preserved for both cases, valuable evidence which cannot be duplicated will be lost and justice in both cases will be impaired.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this
19th day of February, 2016


Notary Public for South Carolina
My Commission Expires: 7/12/2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in is capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capacity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) **MOTION OF DEFENDANT TO**
) **ALTER AND/OR AMEND**
) **ORDER DATED MARCH 3, 2016**

RICHLAND COUNTY
FILED
2016 MAR -8 PM 2:16
JENNIFER W. NOBRIE
C.C.P. & G.S.

TO: RUSSELL L. BAUKNIGHT (BAUKNIGHT), AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST (2000 TRUST), THE JAMES BROWN LEGACY TRUST (LEGACY TRUST), AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN, AND ON BEHALF OF ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL OF SOUTH CAROLINA (AG WILSON) AND ALL OTHER PLAINTIFF/COUNTERCLAIM DEFENDANTS HEREIN (PLAINTIFFS), and Sweeney, Wingate and Barrow, P.C. (SWB), their counsel.

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope (Pope) will move, pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*, before the Honorable L. Casey Manning (Jg. Manning) for an Order altering, amending or vacating the injunction imposed by his Order Granting Motion of Plaintiff to Stay dated March 3, 2016 (the "March 3 Injunction"), and received by Defendant/Counterclaim Plaintiff on March 3, 2016, a copy of which is attached hereto as Exhibit A.

The grounds of this motion are:

1. The court overlooked or misapprehended that the March 3 Injunction continues a pattern of violation by the Attorney General of South Carolina and other Plaintiffs of the Due Process, First Amendment and Freedom of Information Act (FOIA) rights of Robert Buchanan, Jr. (Buchanan) and Pope.

2. The court overlooked or misapprehended that March 3 Injunction, as more specifically stated below, assists AG Wilson, his Legacy Trust and other Plaintiffs in damaging James Brown's "I Feel Good" charity, as well as Pope.

3. The court overlooked, or misapprehended that the March 3 Injunction supports and extends the State's and other Plaintiffs' damage to Buchanan and Pope as demonstrated by the following, and other, facts:

- On August 10, 2008 Tommie Rae Hynie (Hynie), AG Henry McMaster and certain former clients of Louis Levenson, Esquire (Levenson) conducted a secret mediation at which AG McMaster contracted to:
 1. Stipulate Hynie was Brown's spouse and give her 25% of Brown's assets;
 2. Give Levenson's clients 25% of Brown's assets;
 3. Stop DNA testing, and declare Hynie's son a child of Brown;
 4. Defeat the claim of any heir, devisee or others not part of the deal.
 5. Designate parties to the contract as Brown's heirs.
 6. Replace Buchanan and Pope with a trustee of their choice.
 7. Put all James Brown assets in the Settlement Entity/Legacy Trust controlled by the AG, who could replace the trustee at will.
- In March 2010 Plaintiffs' agents advised they had hired the law firm of Ken Wingate (SWB), and would sue if the appeal of McMaster's agreement was not dropped.
- In April 2010 Buchanan and Pope, through *pro bono publico* lead counsel, James B. Richardson, Jr. offered AG McMaster everything he was seeking to take from the "I Feel Good" Trust **provided** the minors had GALs and **the Appellate Court agreed, with the Plaintiffs' position, that AG McMaster could substitute his judgment for the judgment of James Brown's fiduciaries.**
- On May 19, 2010, Plaintiffs sued Buchanan and Pope.

- The Complaint in Case 4900 contained false and scurrilous claims against Buchanan and Pope that AG McMaster and Hynie knew to be false.
- From September 2011 until *today*, the 2-page witness list is the **only** document produced by AG Master, AG Wilson or Hynie in Case 4900 document discovery, and they have thwarted and interfered with Pope's FOIA rights, Due Process rights, First Amendment rights, and all discovery in this case.
- In April 2013 AG Wilson and Hynie asked Jg. Manning to stay Case 4900 and the FOIA cases until Jg. Early concluded his Aiken County James Brown cases.
- Since April 2013 AG Wilson, his Legacy Trust and other Plaintiffs have fought all discovery and prevented all hearings in Case 4900.

Dissipation of Termination Rights Funds

4. The Court overlooked or misapprehended that one or more Plaintiffs have received funds since 2013 which are under threat of dissipation, including, but not limited to, royalties from termination rights owned by Plaintiff Legacy Trust.

Violation of Pope's FOIA Rights

5. The Court overlooked or misapprehended that the March 3 Injunction continues the 4 ½ year violation of Pope's FOIA rights by the Attorney General and other Plaintiffs.

Violation of Pope's First Amendment Rights

6. The Court overlooked or misapprehended that the March 3 Injunction continues the violation of Pope's First Amendment rights related to handwritten admissions of Plaintiff Hynie.

Violation of Pope's Due Process

7. The Court overlooked or misapprehended that since April 2013, the State/AG Wilson and other Plaintiffs have deprived Pope of her Due Process Rights under the Fifth and Fourteenth Amendments to the U.S. Constitution by depriving her of the right to

defend herself against the scurrilous claims made herein and prosecute her counterclaims through proper discovery and trial.

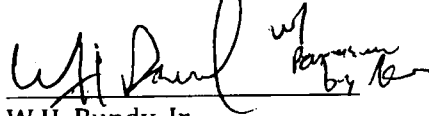
8. The Court overlooked that the March 3 Injunction deprives Pope of a level playing field in which to undo the damage caused by AG McMaster, AG Wilson, the AG's Legacy Trust and other Plaintiffs.

In the alternative, Pope moves for an articulation or directive by the Court establishing actions necessary to lift the March 3 Injunction, and directing Plaintiffs to provide a status report every thirty (30) days as to what continues to justify a stay, and what actions are being taken to alleviate impediments to discovery.

This motion is supported by the Affidavit of Adele J. Pope filed herewith; the Affidavits of Adele J. Pope on file herein; the sworn statement of James B. Richardson, Jr., to be filed herein; and such additional evidence¹ as shall be presented at the hearing on this matter.

¹ In reconsidering the March 3 Injunction, Pope asks the Court to take mandatory judicial notice under Rule 201 SCRE of the full record in Aiken County Cases related to the Estate of entertainer James Brown under the jurisdiction of the Honorable Doyet A. Early, III (Jg. Early). Plaintiff further asks the Court to take mandatory judicial notice of the public postings of AG Wilson, Hynie and other Plaintiffs and their designated witnesses in this case, including the admissions of Plaintiff Yamma Brown in her 2014 book *Cold Sweat*; of Plaintiff Daryl Brown in his 2014 book *My Father the Godfather*, on national television and on his blog; and of public statements of Plaintiffs' witnesses David G. Cannon and Albert H. "Buddy" Dallas, including the sworn statement of Dallas in Case 4900.

Respectfully submitted,



W.H. Bundy, Jr.

H. Brent McDonald

Smith, Bundy, Bybee & Barnett, P.C.

1037 Chuck Dawley Blvd., Suite 100

Post Office Box 1542

Mount Pleasant, South Carolina 29465

Telephone: (843) 881-881-1623

Facsimile: (843) 881-4406

whbesq@s3blaw.com

Adam T. Silvernail

Moses & Brackett, P.C.

1333 Main Street, Suite 260

Columbia, South Carolina 29201

Telephone: (803) 461-2328

Facsimile: (803) 461-2309

asilvernail@mkblaw.com

March 7, 2016

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case pending in Aiken County
	)	No. 2013-CP-02-1337
Plaintiff,	)	
	)	
v.	)	MOTION TO QUASH and
	)	MOTION FOR PROTECTIVE ORDER
Estate of James Brown and The James	)	AS TO SUBPOENAS OF
Brown 2000 Irrevocable Trust,	)	MARY FRANCES JOWERS,
	)	CLYDE H. JONES, JR., AND
Defendants.	)	JOHN W. MCINTOSH
	)	

2016 APR -8 PM 2:05
 JUDGE W. MCINTOSH
 CLERK S.G.S.
 RICHLAND COUNTY
 FILED

Mary Frances Jowers, Clyde H. Jones, and John W. McIntosh move on the grounds and conditions set forth below to quash or modify the subpoenas and deposition notices for them to testify at depositions in this case on April 19 -21, 2016 and produce documents then (copies attached)¹, and in conjunction therewith, for this Court to issue a protective order deferring these depositions until such time as this Court rules upon the anticipated Motion to Consolidate this case with other Brown Estate related litigation. They ask that this Court as soon as possible issue an order prohibiting the taking of these depositions or the production of documents until after the Court is able to hear and decide this motion.

These motions are based on the following grounds:

1. This Motion is governed by Rule 26(c) and 45, SCRCP.
2. Counsel for the above witnesses anticipates that one or more parties to the case

¹ Although Rule 45(c)(3)(A) provides for the filing of motions to quash as to non-parties in the county where such parties reside or are employed, the Order of Acting Chief Justice Beatty of March 24, 2016, vested the Honorable Doyet Early with "exclusive jurisdiction" to "decide all matters pertaining to this case" (copy attached).

Bauknight v. Pope, 2010-CP-40-4900 will move shortly to consolidate that case with the instant case. If those cases are consolidated, the parties to the consolidated cases would have a right to participate in any deposition of these witnesses. Rule 30, SCRCP. Other parties should be given an opportunity to attend and participate in the depositions of these witnesses should consolidation occur. If the current depositions are held before consolidation, the witnesses could be subject to deposition requests from parties not participating in these depositions. Although the witnesses reserve any objections they would have to re-depositions of them, such circumstances and the attendant undue burden (Rule 45(c)(3)(A)(iv)) should be avoided now by deferring their depositions until after consolidation is determined.

3. A portion of the production of documents aspects of the subpoenas subjects the witnesses to an undue burden (Rule 45(c)(3)(A)(iv)) because, in vague and overbroad terms, they demand the production of the “entire file related to the Attorney General’s positions with respect to the appointment and service of Adele J. Pope.”² That request would include numerous documents beyond the scope of Rule 26 as to Plaintiff’s fee claim. This request also does not allow reasonable time for compliance under Rule 45(c)(3)(A)(i) because of its vagueness and overbreadth. Although the witnesses had earlier agreed to the deposition dates, they did not receive the subpoenas including this production request until April 5, 2016. The objections to this part of the production request are particularly

² If Plaintiff and counsel for the witnesses are able to resolve this vagueness and overbreadth objection before this motion is heard and decided, the witnesses will withdraw or modify this ground.

relevant to these witnesses because they are attorneys and may be subject to questioning as to privileged matters. They reserve their right to object to any deposition questions or production of documents on the grounds of applicable privileges.

4. The witnesses are not unwilling to have their depositions taken or produce documents pursuant to the Rules of Civil Procedure, but these matters should be resolved before they undertake their depositions. Therefore, the witnesses request that the subpoenas and deposition notices of them be quashed or modified and in conjunction therewith that a protective order be issued deferring the depositions until consolidation is determined and barring the overbroad "entire file" request.

Respectfully submitted,

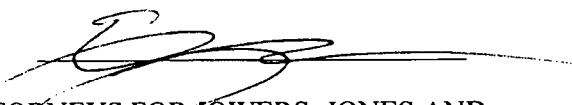
ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY:


ATTORNEYS FOR JOWERS, JONES AND
MCINTOSH

APRIL 8, 2016

Rule 11, SCRCP, Certification:

Undersigned counsel has consulted with opposing counsel in good faith, and they were not able to resolve this matter.

A handwritten signature in black ink, appearing to read "J. Emory Smith Jr.", is written over a horizontal line.

April 8, 2016

J. EMORY SMITH JR.

2010-4900

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Estate of James Brown and The
James Brown 2000 Irrevocable Trust,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) Case Pending in Aiken County

) No: 2013-CP-02-1337

)

)

)

) RETURN AND MEMORANDUM OPPOSING

) MOTION OF ATTORNEY GENERAL

) ALAN WILSON TO QUASH SUBPOENAS

) AND DELAY DEPOSITIONS OF

) JOHN W. McINTOSH, CLYDE H. JONES

) AND MARY FRANCES JOWERS

)

(April 19 - 21, 2016)

2016 APR 12 10:00
JEANETTE
C.C.R.
RICHLAND COUNTY
FILED

TO: ATTORNEY GENERAL ALAN WILSON, SOLICITOR GENERAL ROBERT D. COOK, AND DEPUTY SOLICITOR GENERAL J. EMORY SMITH, ATTORNEYS FOR MARY FRANCES JOWERS, CLYDE H. "SONNY" JONES AND JOHN W. McINTOSH.

Plaintiff in the above-referenced matter opposes the Motion of Attorney General Alan Wilson to Quash subpoenas mailed (as agreed) on March 28, 2016, for the scheduled non-party depositions of lawyers in the office of Attorney General Wilson (AG Wilson), to be taken April 19, 20 and 21, 2016. Plaintiff further opposes the Attorney General's attempt to delay the depositions in this case until an as-yet-unfiled motion to consolidate this case with a 2010 case from another County in which AG Wilson, AG Wilson's Legacy Trust and Tommie Rae Brown ("Tomirae") are Plaintiff/Counterclaim Defendants. The motion was received by email at approximately 5:17 p.m. April 8, 2016.

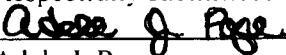
Plaintiff respectfully requests that no hearing be set or order issued because the motion was untimely; is unnecessary; and was made to help obstruct the gathering of testimony critical to this case. Should a hearing be held, Plaintiff respectfully requests that she be given ten days' notice, and that all relief requested by AG Wilson be denied. Plaintiff also requests that AG Wilson and/or deponents be required to pay Plaintiff's legal fees and travel and other costs to respond.

The grounds supporting Plaintiff's position are:

1. There is no basis under Rule 26 (c) or Rule 45 SCRPC to quash the subpoenas or delay the depositions of AG McIntosh, AG Jowers and AG Jones.
2. The motion is untimely, and statements about the subpoenas are incorrect and unverified.
3. The depositions were scheduled and subpoenas issued courteously, with respect for the public office of the Attorney General and schedules of the deponents.
4. Plaintiff began scheduling the depositions by early February 2016, and agreed to times and a place convenient to AG Wilson's staff.
5. The document production was not burdensome, and Plaintiff gave extraordinary assistance to the Attorney General and deponents to make production easy.
6. If a hearing is held, under Rule 37(a)(4) SCRPC the award of reasonable attorneys' fees and costs payable by the Attorney General and/or proposed deponents incurred in responding to the motion, and attending any hearing would be reasonable and fair.
7. The Aiken County Court lacks jurisdiction to hear this matter because none of Ms. Jowers, Mr. Jones or Mr. McIntosh lives or works in Aiken County.
8. The Attorney General appears to be using this untimely motion to benefit himself, the AG's Legacy Trust and Tomirae, who is actively seeking to take copyrights from James Brown's charity. {See Exhibits A and B}

This return is based on the Affidavit of Adele J. Pope filed herewith; Exhibits A and B, attached hereto; and any additional affidavits and filings to be made in the coming 8 days.

Respectfully submitted,



Adele J. Pope
Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

April 9, 2016

MAIL.POPELAWFIRM.COM - ADELE POPE <ADELE@POPELAWFIRM.COM>

RE: MOTION TO QUASH NON PARTY DEPOSITION FILED APRIL 8

**Emory Smith**

Adele Pope

4/9/2016 8:03 AM

From: Emory Smith <ESmith@scag.gov>
To: Adele Pope

Exhibit A-1

I'm responding only to these parts of your email, Adele:

1. The motion to quash was filed yesterday afternoon at the Richland County Courthouse. I have a stamped copy at my office and can send you a PDF of the cover sheet on Monday.
2. Judge Early scheduled that motion for hearing on Tuesday, and I plan to be present. We do not plan to withdraw it.
3. At the status conference this week, Judge Early scheduled the motions in the FOIA cases for hearing in May.

Emory

Sent from my iPhone

> On Apr 9, 2016, at 7:27 AM, Adele Pope <adele@popelawfirm.com> wrote:

>

> Dear Attorney General Wilson, Bob and Emory,

>

> Kindly provide me with the Richland County filing information related to your Motion to Quash filed yesterday in Aiken County Case 2013-CP-40-4900 so that I will have it when my Return and Opposition is prepared.

>

> I am separately writing Attorney General Wilson to urge that he reconsider his support for a consolidation motion (being considered by some) of a 2010 Richland County tort case in which Attorney General Wilson and the AG's Legacy Trust are two of 17 plaintiff/counterclaim defendants with an Aiken County commission claim case filed in 2013 in which the Attorney General has never sought to intervene or participate and the AG's Legacy Trust has no part.

>

> For now, I simply ask, under Rule 11, that you withdraw your motion to delay the non-party depositions of AGs Mary Frances Jowers, John McIntosh and Sonny Jones based on a motion that has not been filed, and which is designed to:

>

> 1. Take \$1 million or more per year from The James Brown "I Feel Good" Trust for needy students, and use it to pay Nexsen Pruet legal fees to protect Tommie Rae Hynie, her son James B., and the trustee of Attorney General Wilson's "private" Legacy Trust, whose counsel is Nexsen Pruet.

>

> 2. Further delay a South Carolina Freedom of Information Act (FOIA) case filed on August 3, 2011 in Newberry County which Attorney General Wilson and the AG's "Legacy Trust had moved to Richland County in 2012; for which AG Wilson and his Legacy Trust have sought a stay since 2013; and which AG Wilson and his Legacy Trust are seeking to consolidate with Richland County Case 4900.

>

> 3. Further delay a FOIA Case filed August 10, 2011 in Newberry County which Attorney General Wilson has already had moved to Richland County and consolidated with Richland Case 4900, and which has not had a merits hearing in 4 1/2 years.

>

4/9/2016

Re: MOTION TO QUASH NON PARTY DEPOSITION FILED APRIL 8

> 4. Use funds James Brown gave The James Brown's "I Feel Good" Trust to assist Tomirae and James B. in their attempt to take 77 of the 900 copyrights James Brown gave to the "I Feel Good" Trust from
> from the "I Feel Good" Trust over the next five years. [See Termination Notices of Tammie [sic] Rae Brown and James Brown filed with Federal Copyright Office, Sept. 2013]

>
> While we can all respond more fully when and if such a motion is filed, I request that you withdraw by Monday at 10 your position that the mere suggestion that such a motion will be filed is a reason to delay the non-party depositions in Case 2013-CP-02-1337 which we have been working to schedule for more than six weeks.

>
> Thank you in advance for your thoughtful consideration of this request.

>
> Sincerely,
> Adele J. Pope
> April 9, 2016
>

Exhibit A-2

Type of Work: Recorded Document

Document Number: V9912D284

Exhibit B-1

Date of Recordation:
2015-08-31

Entire Copyright Document:
V9912 D284 P1-17

Title: I don't know & 73 other titles; musical compositions /
By James Brown, et al.

Notes: Notice of Termination of grant under 17 USC Section 304(c);
date of manner of service of notice: 28Aug13, by
certified mail, return receipt requested.

Party 1: Tommie Rae Brown, widow & James Joseph Brown, II, child of
deceased author James Brown a.k.a. Ted Wright

Party 2: Bug Music d.b.a. T/Q Music, Inc. d.b.a. Trio Music Company

Names: Brown, Tommie Rae
Brown, II, James Joseph
Brown, James
Wright, Ted
Bug Music
T/Q Music, Inc.
Trio Music Company
By James Brown, et al.

=====

Type of Work: Recorded Document

Document Number: V3632D755

Date of Recordation:
2015-08-28

Entire Copyright Document:
V3632 D755 P1-21

Title: I don't know & 93 other titles.

Notes: Notice of termination of grant under 17 USC Section 304(c);
date and manner of service of the notice: 29Aug13, by
certified mail, return receipt requested and regular
mail.

Party 1: Tommie Rae Brown, Widow & James Brown II, child of deceased
author James Brown.

Party 2: Carlin America, Inc. d.b.a. Fort Knox Music, Inc. d.b.a.
Freddy Bienstock Music Company.

Names: Brown, Tommie Rae
Brown II, James
Brown, James
Carlin America, Inc.

Fort Knox Music, Inc.
Freddy Bienstock Music Company.

=====
Type of Work: Recorded Document

Exhibit B-2

Document Number: V9912D283

Date of Recordation:
2015-08-31

Entire Copyright Document:
V9912 D283 P1-10

Title: Please, please, please & 48 other titles; musical
compositions / By James Brown, et al.

Notes: Notice of Termination of grant under 17 USC Section 304(c);
date of manner of service of notice: 26Aug13, by
certified mail, return receipt requested.

Party 1: Tammie Rae Brown (widow) and James Joseph Brown, II (child)
of deceased author James Brown

Party 2: Unichappell Music, Inc.; A/C Jadar Music Corporation and
Dynatone Publishing Company

Names: Brown, Tammie Rae
Brown, II, James Joseph
Brown, James
Unichappell Music, Inc.
A/C Jadar Music Corporation
Dynatone Publishing Company
By James Brown, et al.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

Motion to Consolidate Cases 4900 and 1337 for Purposes of Discovery Only

FILED
2016 APR 13 PM 12:41
CLERK OF COURT
FIFTH CIRCUIT

To: Defendant Pope

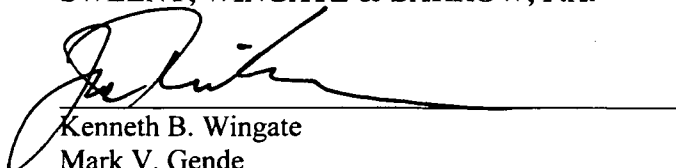
YOU WILL PLEASE TAKE NOTICE the undersigned, as attorneys for the Plaintiffs, will move before the presiding Judge of the Richland County Circuit Court, at the Richland County Courthouse on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order consolidating discovery in Richland County Case 2010-CP-40-4900 ("Case 4900") and Aiken County Case 2013-CP-02-1337 ("Case 1337").

The grounds for the motion are that consolidation is desirable pursuant to Rule 42, SCRCP because discovery in both cases will be substantially similar as both cases arise out of the same facts and occurrence, involve overlapping parties, and will result in potentially offsetting damages verdicts; the consolidation of the cases will permit more efficient administration and serve the interests of judicial economy; and consolidation will serve the convenience of the witnesses.

This Motion may be further supplemented by a Memorandum of Law, by Affidavits, or by any other such information as may be fit and proper.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Joseph O. Thickens
Sweeney, Wingate, & Barrow, P.A.
Post Office Box 12129
Columbia SC 29211
(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
April 11, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2010 APR 27 PM 12:04
CLERK OF COURT
JANICE BROWN

**MOTION TO POSTPONE DEPOSITION
OF TOMMIE RAE BROWN**

TO: BILL BUNDY, ESQUIRE, ADAM T. SILVERNAIL, ESQUIRE AND DARYL L. WILLIAMS, ESQUIRE, ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-NAMED:

PLEASE TAKE NOTICE THAT, the undersigned attorneys for the Plaintiffs, will move before a presiding judge for the Richland County Court of Common Pleas on the tenth (10th) day after service thereof, or as soon thereafter as may be heard, for an Order pursuant to Rule 26(c), SCRCP holding the deposition of Tommie Rae Brown in abeyance to protect the parties from undue burden and expense.

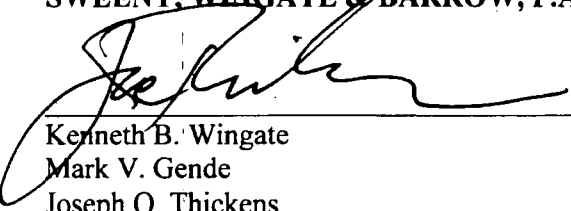
Without consulting counsel, Pope noticed the deposition of Tommie Rae for May 5, 2016. Exhibit A. Plaintiffs respectfully request that the Court issue an order providing that the depositions of Tommie Rae must be taken after her son, James Brown, II, finishes his current school year, which ends on June 10, 2016. Tommie Rae and James Brown II live in Los Angeles, California. Tommie Rae is solely responsible for James, and it would cause undue burden and expense to either cause him to miss school close to the end of term or to make alternate arrangements for his care while his mother travels across the country for her deposition.

This Motion may be further supplemented by a Memorandum of Law, by Affidavits, or by any other such information as may be fit and proper.

[signature page follows]

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Joseph O. Thickens

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

April 25, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

PLAINTIFF'S REPLY TO
DEFENDANT'S MAY 2, 2016
MEMORANDUM

In this FOIA case, Plaintiff Adele J. Pope ("Plaintiff") submits this brief in reply to the May 2, 2016 Memorandum of Alan Wilson, in his capacity as Attorney General of South Carolina ("AG").

The AG's primary argument – that Plaintiff is not entitled to the Wingate Litigation Retention Agreement because that document is a subject of discovery motions in Case No. 2010-CP-40-4900 ("Case 4900") – is contrary to the case law cited in Plaintiff's May 2, 2016 Memorandum in this action, which Plaintiff incorporates herein.

Further, the AG has since 2013 taken the position that he is not a party to Case 4900, despite his active participation as a Plaintiff in Case 4900 since 2010. Plaintiff notes that the AG's Case 4900 counsel has recently withdrawn its motion for protective Order regarding the fee agreement. Although there is no exemption under the FOIA for documents which may be discoverable in other actions, the AG has taken the position since his initial 2011 FOIA response that he need not respond to Plaintiff as a result of the Case 4900 discovery motions. Plaintiff submits that the AG's initial FOIA response was, at best, "equivocal and evasive," like the SCDOR's response discussed in *Sloan v. SC Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014). In that case, the South Carolina Supreme

Court found that the SCDOR's attempt to defer a final determination was an inadequate response under the FOIA. Likewise, the AG's response to Plaintiff asserted his position that the "wisest thing to do" would be to await an outcome of the discovery motions in Case 4900.

The AG argues that he need not respond to Plaintiff's FOIA request because she received the Wingate Litigation Retention Agreement via a Federal Court Order in 2013, despite identifying no exemption under the FOIA which would justify withholding the document for this reason. The same is true for the AG's position that his filings in *Summer vs. Wilson*, a Newberry County FOIA action to which Plaintiff is not a party, somehow serve to satisfy Plaintiff's FOIA rights. Plaintiff is unaware of any statute or case which supports the AG's apparent position that he need respond only to one of multiple FOIA requests from different individuals for similar documents.

Conclusion

For the reasons set forth above and in Plaintiff's other filings herein, Plaintiff asks that this grant her motion for summary judgment and deny the motions of the AG.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm

May 16, 2016

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT**

Civil Action No. 2010-CP-40-4900

2016 MAY 19 AM 9:37

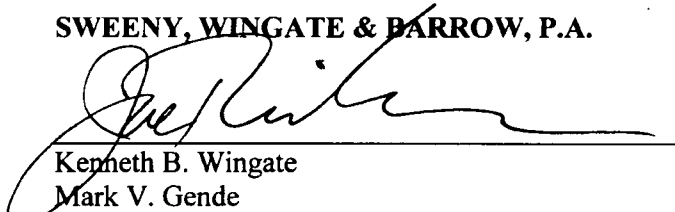
**MOTION FOR SUMMARY JUDGMENT
AS TO ALL OF THE
COUNTERCLAIMS OF DEFENDANT
POPE**

TO: BILL BUNDY, ESQUIRE, ADAM T. SILVERNAIL, ESQUIRE AND DARYL L. WILLIAMS, ESQUIRE, ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that Plaintiffs intend to move, and do hereby so move, for an Order from the Court granting Plaintiffs summary judgment in their favor on all of Defendant Pope's Counterclaims. The grounds for this motion are that Defendant Pope's claims are precluded as a matter of law by the doctrine of collateral estoppel by the decision of the South Carolina Supreme Court in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). Specifically, the Court in Wilson v. Dallas affirmed the removal for cause of Defendant Pope as PR/Trustee and found that notice and a hearing were provided on that issue. Based on the Court's decision, and as set forth in the attached Memorandum of Law, Plaintiffs request that this Court enter an Order granting summary judgment as to all of Defendant Pope's Counterclaims. This Motion is supported by the attached Memorandum of Law, which is hereby incorporated by reference in its entirety, and may be further supplemented by memoranda, affidavits, or by any other such information as may be fit and proper.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Joseph O. Thickens
Sweeney, Wingate, & Barrow, P.A.
Post Office Box 12129
Columbia SC 29211
(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
May 17, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)
)
Plaintiff,)
)
v.)

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
)
Defendant.)

**RESPONSE TO PLAINTIFF's
BRIEF**

Russell L. Bauknight, etc., Henry Dargan)
McMaster, in his capacity as Attorney)
General, etc, et al,)
)
Plaintiffs,)
)
v.)

Case No. 2010-CP-40-4900

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

RICHLAND COUNTY
FILED
2016 MAY 19 AM 9:04
JEANETTE W. MANNING
C.C.P. & G.S.

Plaintiff's brief raises but a single claim pertaining to her Freedom of Information Act request which is that she is entitled to receive the three page Wingate private agreement that she already has. She falsely contends that "for four years," the Office of the Attorney General has "worked . . . to evade release of the Wingate Agreement under the FOIA" despite her having the document for two and a half years and despite this Office's expression of willingness to release it if the Court would authorize it. *Brown v. Pope*, 3:08-cv-14-WOB, November 15, 2013 (the Honorable J. Gregory Wehrman, Magistrate Judge)(copy attached to Attorney General memorandum of May 2). Undersigned counsel wrote the Honorable Casey Manning about this

matter on March 7 and 28, 2013, expressing a willingness to have a hearing regarding the Wingate agreement, and submit it if the Court so ruled. On November 27, 2013, undersigned counsel wrote the Judge that the Office of the Attorney General had not delayed this matter and that Plaintiff now had the signed Wingate agreement. The November 27 letter explained that the Office of the Attorney General was not a party to that agreement and had previously had only an unsigned copy. The three page agreement had been the subject of still undecided Motions to Compel and for Protective Order in the main part of this case with which this FOIA proceeding was consolidated. *See* attached copy of Motion to Compel, p. 2, item 3, June 7, 2011[requesting contingency fee contract] (attachments to Motion omitted) and Motion for Protective Order regarding fee agreement.

The Attorney General is willing to give Plaintiff a copy of the three page agreement although she already has it, but doing so should not be deemed a result of this proceeding. FOIA must be applied in accordance with the law, and that law, as explained in the Defendant's Memorandum of May 2, 2016, exempts matters in this case that are governed by the Rules of Civil Procedure. Plaintiff's FOIA relates to pending discovery motions in the main part of case 4900, and are subject to the discovery process in that case.

In her Return, Plaintiff cites *North v. Walsh*, 881 F. 2d 1088 (D.C. Cir. 1988) and *Hoover v. United States*, 611 F. 2d 1132 (5th Cir. 1980) for the proposition that Federal Freedom Information Act rights are not controlled by discovery limitations. *North* does not apply here because it addressed a limitation related to records compiled for law enforcement purposes under 5 U.S.C. §552 (b)(7). *Hoover*, is inapplicable because it considered a federal FOIA exception for "inter-agency or intra-agency memorandums or letters which would not be available by law to a

party other than an agency in litigation with the agency.” §552(b)(5). Neither federal exemption is similar to the exemption at issue in the instant case nor does the federal FOIA (§552(b)) appear to contain such a limitation. S.C. Code Ann. § 30-4-10(a)(4) (“(a) [a] public body may but is not required to exempt from disclosure the following information: . . . (4) [m]atters specifically exempted from disclosure by statute or law”). As explained in this Defendant’s memorandum, this exemption under South Carolina law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are law. Moreover, a more recent United States Supreme Court decision cited by our own South Carolina Supreme Court (*State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991)) and quoted by the Fourth Circuit Court of Appeals (*Neely v. F.B.I.*, 208 F.3d 461, 464 (4th Cir. 2000)) supports a broader limitation on the use of federal FOIA as to matters related to ongoing litigation. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989) (“a court must be mindful of this Court’s observations that the FOIA was not intended to supplement or displace rules of discovery”).

The remaining issue raised by Plaintiff is attorney’s fees which she requests at the shockingly high and unsupported respective amounts of \$38,725 and \$1229.60. Plaintiff is not entitled to fees because she has not prevailed in this action. Even if, *arguendo*, she did prevail, she would have to document her hours. She could not claim time for the numerous irrelevant, inadmissible affidavits that she has filed. She is the party that has turned a simple case into one filled with the numerous documents that she has filed.

A fee “award . . . must be reasonable and supported by adequate findings.” *Burton v. York County Sheriff’s Dept.*, 594 S.E.2d 888, 898, 358 S.C. 339, 357-58 (Ct. App., 2004). See

also, *Sloan v. South Carolina Dept. of Revenue*, 762 S.E.2d 687, 689, 409 S.C. 551, 555-56 (S.C.,2014). (“Sloan is entitled to recover his reasonable attorney's fees and costs in this action.”). So far, Plaintiff has failed to support her claim. She filed a conclusory affidavit on January 9, 2012, which does not appear to have been updated, asking for \$9,000 in fees at an hourly rate of \$100.00 and \$300.00 in costs. These amounts undermine her quadrupling her fee claim to over \$38,000.00 including the now \$250.00 hourly rate and her quadrupling her costs. Moreover, she cannot testify by affidavit as to the hours expended by her attorney. Only he can do so.

In fact, Plaintiff's claims are so high as to shock the conscience of this Court and warrant barring fees altogether under substantial Federal precedent. “[A] district court may, in its discretion, deny a request for attorneys' fees in its entirety when the request, submitted pursuant to 42 U.S.C. § 1988, is so outrageously excessive it ‘shock[s] the conscience of the court.’” (emphasis added) *Fair Hous. Council of Greater Washington v. Landow*, 999 F.2d 92, 96 (4th Cir. 1993), citing *Sun Pub. Co. v. Mecklenburg News, Inc.*, 823 F.2d 818, 819 (4th Cir. 1987), (a request for attorneys' fees, which is so exorbitant as to shock the conscience of the court, may be denied . . .); *Plunkett v. Stephens*, No. C.A. 3:93-0304-19, 1997 WL 907958, at *1 (D.S.C. Dec. 18, 1997)(denying fee request in its entirety quoting *Landow* and *Sun Publishing*).

In the context of fee-shifting provisions, such as those in 42 U.S.C. § 1988 and Title VII of the Civil Rights Act of 1964, “the Supreme Court has recognized that although a prevailing party ‘should ordinarily recover an attorney's fee,’ ‘special circumstances’ can render ‘such an award unjust.’” (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)). *Doe v. Bd. of Educ. of Baltimore Cnty.*, 165 F.3d 260, 264 (4th Cir. 1998). Such special circumstances are present

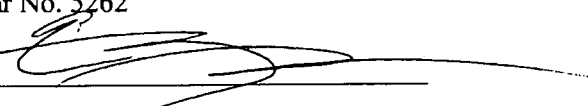
here in the grossly excessive hours and for the other reasons noted below. Although this Court is not required to follow this Federal precedent, the cases do provide a strong guidepost for assessing reasonableness, and Plaintiff's claims are most unreasonable.

For these reasons, and those set forth in the State's Memorandum of May 2, the Attorney General respectfully requests that judgment be granted to the Attorney General and that Plaintiff's case be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

May 16, 2016

ATTORNEYS FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in his capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capacity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) MOTION BY CASE 1337 PLAINTIFF
) TO STRIKE AND FOR COSTS
) AND ATTORNEY FEES FROM
) THE ATTORNEY GENERAL AND
) CERTAIN OTHER PLAINTIFFS

RICHLAND COUNTY
FILED
2016 MAY 27 PM 3:50
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

And

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ADELE J. POPE,

Plaintiff,

-v-

ALAN WILSON, in his Capacity as Attorney
General of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

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

) MOTION BY CASE 1337 PLAINTIFF
) TO STRIKE AND FOR COSTS AND
) ATTORNEY FEES FROM
) THE ATTORNEY GENERAL AND
) CERTAIN OTHER PLAINTIFFS

IN RE:

Proposal of Alan Wilson, in his Capacity as Attorney
General of South Carolina, and others, to consolidate

discovery in this action with the following case:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	Case No. 2013-CP-02-1337
	)	
Adele J. Pope,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
The Estate of James Brown and the James	)	
Brown 2000 Irrevocable Trust,	)	
	)	
Defendants.	)	
	)	

TO: PLAINTIFFS TOMIRAE BROWN; ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL OF SOUTH CAROLINA; RUSSELL L. BAUKNIGHT IN HIS CAPACITY AS TRUSTEE OF THE JAMES BROWN LEGACY TRUST; RUSSELL L. BAUKNIGHT, IN HIS CAPACITY AS AGENT ON BEHALF OF TOMIRAE BROWN AND JAMES B. (A MINOR); RUSSELL L. BAUKNIGHT AS PURPORTED AGENT ACTING ON BEHALF OF ATTORNEY GENERAL ALAN WILSON; AND OTHER PLAINTIFFS IN CASE 2010-CP-40-4900, AND THEIR COUNSEL:

YOU WILL PLEASE NOTICE THAT at the hearing to be held before The Honorable Doyet A. Early, III, on June 7, 2016, or as soon thereafter as she may be heard, Adele J. Pope, in her capacity as *pro se* Plaintiff in Aiken County Case 2010-CP-02-1337 (Case 1337), will move for an Order as follows:

1. Striking the Motion of Alan Wilson, Attorney General of South Carolina; Russell L. Bauknight, as purported agent for Attorney General Wilson; and other Plaintiffs in Case 2010-CP-40-4900 ("Case 4900");
2. Charging Attorney General Alan Wilson, and Russell L. Bauknight as agent for Tomirae Brown, James B. (a Minor), and as purported agent for Alan Wilson in his capacity as Attorney General of South Carolina, with legal fees and costs of Adele Pope for the defense of this action.

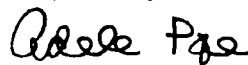
The grounds of this motion are:

1. Plaintiffs' counsel Sweeney, Wingate and Barrow, P.C. ("Wingate"), has no legal authority to act on behalf Case 4900 Plaintiff Alan Wilson, in his capacity as Attorney General of South Carolina, in the filing of the Motion to Consolidate.

2. Russell L. Bauknight (Bauknight) has no legal authority to act in Case 4900 or any other case as agent on behalf of Attorney General Wilson.
3. The Court in Case 4900 lacks jurisdiction to take the requested action.
4. Judge Manning has denied a request for change of venue.
5. The Consolidation Motion, on its face, continues the 3-year violation by AG Wilson of his commitment made to the Supreme Court of South Carolina in his Petition for Rehearing in *Wilson v. Dallas* filed March 14, 2013.
6. The Consolidation Motion violates Public Policy and the duty of the Attorney General of South Carolina to protect The James Brown "I Feel Good" Charity because AG Wilson, by the Consolidation Motion, attempts to place funds James Brown left to his "I Feel Good" Charity to pay legal fees of his Co-Plaintiffs Tomirae, James B., and others who are seeking to dismember James Brown's Charity.
7. On the face of the pleadings, there are fifteen Plaintiff/Counterclaim Defendants in Richland Case 4900 who are not parties to Case 1337.
8. The Consolidation was not properly served on Aiken 1337 Plaintiff, and was not filed in that case.

This Motion to Strike is based on the Complaints, Answers and Counterclaims in each of the five cases (including three FOIA cases) AG Alan Wilson has sought to consolidate with Case 4900 since 2011; the affidavit of Adele J. Pope filed herewith; the Constitution of the United States and South Carolina; the statutory duties of the Attorney General ; the limitations placed on the engagement of outside counsel; and the positions of AG Alan Wilson as stated in the public record and depositions of Assistant AG Mary Frances Jowers and Sr. Assistant AG Havird "Sonny" Jonesin Aiken Case 1337, concluded on May 19, 2016. It will further be based on a Memorandum or Memoranda, and any other documents properly filed by movant before the hearing on the Motion.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: (803) 413-0753
adele@popelawfirm.com
Plaintiff, *pro se*

May 20, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in is capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capcity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) RETURN AND MEMORANDUM
) OF AIKEN CASE 1337 PLAINTIFF
) OPPOSING MOTION OF
) ATTORNEY GENERAL & OTHERS
) TO CONSOLIDATE
) FOR PURPOSES OF DISCOVERY

RICHLAND COUNTY
FILED
2016 MAY 27 PM 3:21
JEANETTE W. HARRIS
C.C.P. & G.S.

And

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ADELE J. POPE,

Plaintiff,

-v-

ALAN WILSON, in his Capacity as Attorney
General of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

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

) RETURN AND MEMORANDUM OF
) AIKEN CASE 1337 PLAINTIFF
) OPPOSING MOTION OF
) ATTORNEY GENERAL & OTHERS
) TO CONSOLIDATE CASES
) FOR DISCOVERY

Reserving all rights under, and incorporating herein, her May 21, 2016, Motion
to Strike the Motion of Attorney General Alan Wilson, Tomirae Brown and others to

consolidate the above cases ("Richland 4900" and "FOIA #2") with Aiken County Case No. 2013-CP-02-1337 ("Aiken 1337"), Aiken 1337 Plaintiff, *pro se*, Adele J. Pope, responds to, and opposes, the Motion to Consolidate.

The grounds of Pope's objections to the Consolidation Motion are all those stated in the Motion to Strike, and the following:

1. Aiken 1337 is not "before the Court" as contemplated by Rule 42 SCRCP.
2. Aiken 1337, Richland 4900 and FOIA #2 do not share common questions of fact.
3. Aiken 1337, Richland 4900 and FOIA #2 do not share common questions of law.
4. Consolidating Aiken 1337 With Richland 4900, with 40 party- and non-party witnesses, does not further expedition or economy, and will cause delay and prejudice.
5. Consolidation will result in prejudice and confusion by infusing Nexsen Pruet lawyer/witnesses and Pope, a lawyer/Party into Richland 4900.
6. Consolidation where the Attorney General remains aligned with Tomirae and James B. in Richland 4900 will cause prejudice and confusion in Aiken 1337.
7. Consolidation where the Attorney General remains aligned with Tomirae and James B. will cause confusion about Buchanan & Pope's protection of the "I Feel Good" Charity's 900 Copyrights in Aiken 1337.
8. Consolidation where the Attorney General remains aligned with Bauknight in multiple roles, including Trustee of the McMaster Legacy Trust, will prejudice Pope in Aiken 1337.
9. Consolidation where the Attorney General remains aligned with Tomirae but the Brown's Estate, through LSA Sojourner, claims she is not Brown's spouse, will prejudice Pope.
10. Where Judge Early has awarded James B. \$700,000 in legal and GAL fees in a case from which Pope was excluded, consolidation will result in prejudice.

The objection of Aiken 1337 Plaintiff is based on her Motion to Strike; the Affidavit of Adele J. Pope dated May 21, 2016 filed herein; the Depositions of Mary Frances Jowers, Havird "Sonny" Jones, and James B. Richardson, Jr., in Aiken 1337; and the pleadings in all three cases.

MEMORANDUM OF LAW OPPOSING CONSOLIDATION FOR DISCOVERY

Rule 42(a) SCRCP provides for actions "before the court" to be consolidated where they "involve a common question of law or fact." Rule 42 (b) further provides for separate trials and other separation of consolidated matters "in furtherance of convenience or to avoid prejudice." If the parties consent to consolidation, they may be held to that decision, even if it later turns out not to have been favorable. *See Ellis v. Oliver, 307 S.C. 365, 415 S.E. 2d 400 (1992).*

The Consolidation Motion involves two Richland County cases and an Aiken County case. These three cases are not "before the court" as contemplated by Rule 42.

Where a party opposes consolidation, as Aiken 1337 Plaintiff Pope does, the Court must determine that consolidation will further convenience, avoid prejudice, and be conducive to expedition and economy. Further, the Court must be mindful of "always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State." *See 42(b) SCACR.*

Consolidation of Richland 4900, Aiken 1337 and FOIA #2 for discovery violates all of the consolidation principles of Rule 42. At the heart of the problem is the continuing alliance of Attorney General Alan Wilson with his Richland 4900 Co-

Plaintiff/CC Defendants Tomirae and her son James B., and also the multiple roles held by Russell Bauknight in Richland 4900. Some of these issue are discussed in more detail below.

Consolidation of Richland 4900, FOIA #2 and Aiken 1337 is not “before the Court” as contemplated by Rule 42 SCRCP.

Consolidation under Rule 42 (a) of cases “before the court” contemplates that they are in the same court in the same county. It does not sanction a change of court or a change of venue. The fact that a complex Richland County tort case, involving claims and counterclaims of \$50 million or more, and a straightforward Aiken County commissions claim case are both assigned to the same judge does not put them “before the court” for purposes of Rule 42(a). Nor may the Attorney General's Consolidation Motion be used to, in effect, to obtain a change of venue in Richland 4900.

In 2010 the Attorney General and others sued Robert Buchanan and Adele Pope in Richland County, where neither lived or worked. A change of venue to Aiken, Buchanan's home, was appropriate. It was denied, however, based – at least in part – on sworn statements by Bauknight that he has managed the James Brown Legacy Trust (the “McMaster Legacy Trust”) in Richland County since 2009. The Court denied the request of Buchanan and Pope to change venue.

In 2011 Pope brought FOIA #2, along with another FOIA case, in her home, Newberry County, where her FOIA requests had been made. At the urging of Attorney General Wilson, with Bauknight and others, venue of the two FOIA cases was transferred to Richland County. One has been consolidated, but not merged, with

Richland 4900. Attorney General Wilson is seeking to consolidate the second one, and to subordinate it to discovery in Richland 4900.

This changing of venue has resulted in prejudice to the letter and spirit of FOIA.

A Newberry FOIA Case, already transferred once; a complex Richland County tort case; and an Aiken County claims case removed from Probate Court are not properly "before the court" for consolidation under Rule 42(a).

Aiken 1337, Richland 4900 and FOIA #2 Do Not Share Common Questions of Fact.

The death of music icon James Brown has spawned more than twenty lawsuits, including Richland 4900. It was filed more than six years ago by one South Carolina Attorney General, and has been pursued for the last three years by another. More than 100 lawyers have become involved in James Brown matters. At least eight of them are being paid by the taxpayers of South Carolina.

All of these many cases share a common fact. They have something to do with James Brown. Few have qualified for any consolidation.

Richland 4900, Aiken 1337 and FOIA #2 do not share common questions of fact necessary to make them appropriate for consolidation under Rule 42(a). Their differences are discussed below.

a. Richland 4900 Facts Relate to the McMaster Settlement Deal

On August 10, 2008 Attorney General Henry McMaster contracted with Tomirae and Atlanta attorney Louis Levenson to dismember James Brown's estate plan. Part of that contract was to treat Tomirae as Brown's spouse and for Tomirae and the Attorney

General to work together to defeat the claims of any person who was not part of the McMaster Settlement.

On September 9, 2009 Alan Medlin, Esq., speaking of Buchanan and Pope, told Judge Early:

... WE'RE UNANIMOUS AS MR. WILKINS POINTED OUT ON THIS ISSUE. WE DO NOT WANT THEM TO BE FIDUCIARIES AND IF THEY PREVAIL -- IF THEY WIN ON APPEAL AND THEN WE GO BACK AND TRY THOSE WILL AND TRUST CONTESTS AND THEY WIN THOSE AND WE TRY THE OMITTED SPOUSE AND THE ELECTIVE SHARE AND THE PRETERMITTED CHILD CONTEST AND THEY WIN THOSE, THEN EVERYTHING GOES TO THE CHARITY...

THE ATTORNEY GENERAL DOESN'T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT, THE ATTORNEY GENERAL WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL'S OFFICE DOES NOT WANT THEM AS FIDUCIARIES.
[Tr. P. 29, *Emphasis supplied.*]

Present at the hearing was Assistant Attorney General J.C. Nicholson, III. Nicholson told Judge Early he supported the arguments of Wilkins and Medlin.

By September 9, 2009 Medlin, Tomirae's tax lawyers, Nexsen Pruet attorney Freddie Kingsmore and others were secretly working on attacking the \$100 million value placed on James Brown's assets by five PR/Trustees.

In early 2010 Medlin advised Buchanan's lawyer that Sr. Assistant AG Sonny Jones had hired the law firm of Kenneth Wingate ("Wingate") and would sue if Buchanan and Pope did not drop the appeal which led to the *Wilson v. Dallas* decision.

On May 18, 2010 Levenson, Medlin, Bauknight and David Bell, Esq., secretly signed the contract to bring Richland 4900.

Among the Richland 4900 allegations against Buchanan and Pope was that they should have accepted a \$100 million offer for Brown's music empire made in 2007.

Just three months later, however, Jones told the Appellate Court in *Wilson* that the settling parties were expecting an appraisal within a few weeks that would show Brown's Estate and 2000 Trust assets were worth less than \$12 Million when he died.

The day before oral argument in *Wilson* in 2011, Bauknight's lawyer was quoted in hundreds of media outlets making vitriolic claims about Buchanan and Pope.

At oral argument in *Wilson*, Bauknight's lawyer told the Supreme Court that Tomirae's elective share claim was a "slam dunk," that Brown's Trust has no corpus to speak of, and that Tomirae controlled the Federal Copyright Act Termination Rights to the approximately 900 Copyrights James Brown gave his "I Feel Good" Charity.

Three years after the Supreme Court's final decision in *Wilson*, the alliance of the Attorney General, Tomirae and Bauknight continues unabated in Richland 4900.

Most Richland 4900 facts developed after the McMaster Settlement was reached.

b. FOIA #2 Facts Relate Solely to the Attorney General's Failure to Comply.

In 2010 Buchanan and Pope took the position in Richland 4900 that it was improper for Attorney General McMaster, Tomirae and other non-residents of South Carolina to share a single, private law firm - Wingate.

The Attorney General's Litigation Retention Agreements with outside special counsel are public documents. In 2011 Pope made a FOIA request for the Wingate Agreement.

The questions of fact in FOIA #2 can be boiled into one: Why did Attorney

General Wilson refuse for 4 ½ years to produce the Wingate Contract under FOIA?

c. Aiken 1337 Facts Relate to the Buchanan/Pope Service and Appeal.

In connection with Buchanan's and Pope's commission claims, it does not matter whether Tomirae is ultimately determined to be Brown's spouse, or James B. Brown's child. The fact issues of Aiken 1337 include:

- a. Was it appropriate for Buchanan and Pope as PR/Trustees to defend Brown's estate plan against Tomirae's spousal claims ?
- b. Was it appropriate for Buchanan and Pope to defend against claims of James B. where he was not a presumed child and refused DNA tests?
- c. Was it appropriate for Buchanan and Pope to defend against Cannon and Dallas ?
- d. Was it appropriate for Buchanan and Pope to protect Brown's 900 Copyrights against unwarranted and avoidable Terminations?
- e. Was it appropriate for Buchanan and Pope to pursue the *Wilson* appeal ?

But for the propriety of the *Wilson* appeal, which has already been confirmed by the *Wilson* decision and the deposition of James Richardson, Jr., the questions of fact in Aiken 1337 relate principally to actions *before* May 26, 2009.

Consolidation is not appropriate because the cases do not share common questions of fact.

Aiken 1337, Richland 4900 and FOIA #2 Do Not Share Common Questions of Law.

A review of just some of the questions of law involved in Richland 4900, FOIA #2 and Aiken 1337 shows that they do not share common questions of law.

a. Questions of Law in Richland 4900

Richland 4900 involves serious and complex legal questions of constitutional

proportions. They arise out of the seven-year relationship of the Attorney General with Tomirae, James B., the McMaster Legacy Trust, Levenson and Bell. Those issues include:

1. Did Attorney General McMaster, Tomirae, Levenson and Bell commit an abuse of process by bringing Richland 4900 to stop the *Wilson* appeal?
2. Did the Attorney General and Bauknight violate SCPC 62-1-106 by claiming to the Court that Brown's estate was worth only \$5 million when suing Buchanan and Pope for not accepting a \$100 million offer?
3. Did the Attorney General and other Richland 4900 Plaintiffs conspire with Forlando, Cannon and/or others to further damage Buchanan and Pope?
4. Did the Attorney General and other Richland 4900 Plaintiffs interfere with the proper contracts of Buchanan and Pope as PR/Trustees?

b. Questions of Law in FOIA #2

The FOIA #2 questions of law relate solely to the Attorney General's failure to honor Pope's 2011 FOIA. No discovery is needed to reach the questions.

c. Questions of Law in Aiken 1337

The principal legal question in Aiken 1337 is: Should James Brown's Estate/2000 Trust pay Pope, as it has paid Buchanan, in accordance with Judge Early's Order of January 8, 2008?

There are simply no significant common questions of law in the three cases. If the Attorney General is successful in consolidating a second FOIA matter, as he is attempting to do, the lack of common legal issues will be even greater. In the second FOIA matter there are additional legal questions, which have nothing to do with Aiken 1337. They include:

1. Is the McMaster Legacy Trust a public body under FOIA?

2. Should the Attorney General be required to release under FOIA the \$4.7 Million appraisal he, Bauknight and James B., with others, used in Supreme Court filings?

**Placing 40 Plaintiffs and Other Witnesses in Aiken 1337
Will Causes Delay and Prejudice**

There are only three parties to Aiken 1337: Pope, Brown's Estate and Brown's 2000 Trust. The Estate/2000 Trust has named only three witnesses: Pope, Buchanan and Bauknight. Discovery over the last few months has been efficient. The parties will be well prepared for trial in July 2017.

Aiken 1337 Plaintiff has no current plans to depose at least sixteen of the Richland 4900 Plaintiff/CC Defendants in Aiken 1337. Nor does she plan to depose most of the 40 or more Richland 4900 witnesses in Aiken 1337.

To inject these parties and witnesses into discovery in Pope's commission claim case would cause extraordinary delay. This unnecessary delay of the Aiken 1337 trial would be both costly and prejudicial to Pope. As a small example: Pope's unpaid 2007 SA fee, \$47,000, with legal interest since March 2008, has been due and accruing interest under Judge Early's January 8, 2008 Order for 8 years.

Under Rule 42 consolidation must further expedition or economy. It should not cause delay and prejudice.

**Consolidation Will Infuse Nexsen Pruet lawyer/witnesses and Pope, a
lawyer/Party, into Richland 4900, Causing Confusion and Prejudice.**

On May 29, 2013, Bauknight served Pope with a Notice of Disallowance of the Joint Commissions Claim filed by Buchanan and Pope in July 2009. As a result, she was forced to file Aiken 1337 to preserve claims which had already been allowed by the

Estate and 2000 Trust, the majority of which, in addition, had been approved by Judge Early in his January 8, 2008 Order.

On October 8, 2013, Judge Early "double approved" payments made to Buchanan under the January 8, 2008 Order.

Thus, despite Judge Early's approval of Buchanan's commissions for their joint service, Pope was forced to pursue her commission claim in Aiken 1337. She elected to do so *pro se*. In Richland 4900 Pope elected to have attorneys to pursue her counterclaims against the many persons who sued her in 2010. Her right both to represent herself in Aiken 1337 and to be represented by the lawyers of her choice in Aiken 4900 is a substantial right. The same is true of her right to trial by jury in Aiken 4900. Rule 42 is clear that any consolidation which tampers with, or threatens, that substantial right should be avoided.

Nexsen Pruet attorneys represent Bauknight individually; as Trustee of the McMaster Legacy Trust; and in other capacities.

At least three Nexsen Pruet lawyers, speaking for Bauknight, made vitriolic, inaccurate claims to the media and the courts about Buchanan and Pope. Two others actively worked on the claimed \$4.7 million valuation of Brown's music empire which was presented to the IRS and Supreme Court. As such, these lawyers have made themselves likely witnesses in Richland 4900.

If Richland 4900 and Aiken 1337 were consolidated for discovery, Pope, in addition to her Richland 4900 lawyers, would need participate in discovery to protect her commission claim in Aiken 1337. Likewise, Nexsen Pruet lawyers who are likely witnesses in Richland 4900 would be allowed to step forward as *lawyers* to protect

Bauknight , individually, and in all of the following capacities:

1. Bauknight as agent for Tomirae in Richland 4900;
2. Bauknight as claimed agent acting for Attorney General Wilson in 4900;
3. Bauknight as agent for James B., with no GAL, in 4900;
4. Bauknight as Trustee of the McMaster Legacy Trust;
5. Bauknight as agent for the original Levenson clients in Richland 4900, even those who have terminated Levenson;
6. Bauknight as agent for Terry Brown, whose interest in Richland 4900 has been transferred to Forlando Brown;

It would cause extraordinary confusion and prejudice to inject half a dozen lawyers, including Pope, into Richland 4900 when they are also witnesses in Case 4900. It would also waste charitable funds.

When Attorney General McMaster, Tomirae, Levenson and Bell hired Wingate to represent them in Richland 4900 six years ago, Wingate agreed not to be paid unless it recovered from Buchanan or Pope. No taxpayer dollars would be spent. No dollars from James Brown's "I Feel Good" Charity would be spent.

If Nexsen Pruet, which has been paid millions from Brown's charity, becomes involved in Richland 4900, Brown's charitable funds will be placed at the service of Tomirae and others seeking to dismember it.

Attorney General Wilson's Continuing Alliance With Tomirae, James B. and Others Will Cause Prejudice and Confusion if Consolidation is Allowed.

On March 14, 2013 Attorney General Wilson told the Supreme Court he intended to be dropped as a party to Richland 4900. Three years later he not only remains a party, but remains aligned with Tomirae and James B. This troublesome alliance

persists even though Limited Special Administrator Dave Sojourner and several Richland 4900 Plaintiff/CC Defendants have filed briefs in the South Carolina Court of Appeals asserting that Tomirae was not Brown's spouse.

While this conflict must necessarily be sorted out in Richland 4900, it has no place in Aiken 1337. Buchanan and Pope never had any duty to Tomirae. To consolidate discovery while the Attorney General – charged with the protections of charities – sides with Tomirae and allows her lawyers to be paid from James Brown's charity will cause confusion and prejudice to Pope in Aiken 1337.

Consolidation where the Attorney General and Bauknight Remain Aligned With Tomirae and James B. Will Cause Confusion About "I Feel Good" Charity's 900 Copyrights in Aiken 1337.

On November 1, 2011 Bauknight's attorney Wilkins told the South Carolina Supreme Court that Copyright Terminations is "all this case is about." Case 4900 Plaintiff/CC Defendants Deanna and Yamma claimed that if the McMaster Settlement were not approved, there would be nothing in the "I Feel Good" Charity by 2023.

All Richland 4900 Plaintiff, including the Attorney General, chose to ignore the HALF of James Brown's real Statutory Heirs under the Copyright Act with whom the "I Feel Good" Trust could have made agreements to delay and/or diminish any loss to the "I Feel Good" Trust from Termination Rights.

The record in Aiken 1337 is clear that Buchanan and Pope took all reasonable steps to implement a DNA & Dignity Program to protect the copyrights from unnecessary and avoidable exercise of Copyright Act Termination Rights. Judge Early's unappealed March 8, 2008 Order to determine heirs, sought by them, confirms it.

On August 28, 2013, just months after *Wilson*, Tomirae and James B. filed Termination Notices with the Federal Copyright Office. Their goal: to take the royalties from 90 of the 900 copyrights James Brown gave the "I Feel Good" Charity over the next then years.

Copyright Attorney Marc Toberoff denounced the Tomirae attempted terminations. Attorney General Wilson and Bauknight did not.

In October 2013, David Sojourner was appointed to defend the estate plan of James Brown. The appointment, according to Sojourner, did not include the right to protect James Brown's 900 copyrights. Bauknight retained that right.

In less than three years Sojourner has spent more than \$1.3 Million in legal fees, but lacks the mandate to protect the "I Feel Good" Trust's copyrights. Meanwhile, the Attorney General and Bauknight, both with a duty to protect the copyrights, are aligned with Tomirae and her son..

These conflicts are the necessarily the subject of Richland 4900. It would be manifestly unjust and prejudicial to Pope to inject them into Aiken 1337, where Buchanan and Pope never owed a duty to Tomirae.

**Consolidation, with Bauknight's Multiple Roles,
Will Result in Confusion and Prejudice**

The multiple roles Bauknight continues to hold – and the Attorney General continues to condone despite *Wilson* – are the necessary subject of Richland 4900. As with many of the Richland 4900 issues, they have no place in Aiken 1337. They will simply cause confusion, delay and prejudice to Pope.

James B's \$700,00.00 Legal and GAL Award Will Prejudice Pope

On June 10, 2013 Judge Early, at the request of Tomirae, Levenson and Bauknight, ruled in administrative orders that Buchanan and Pope would not be allowed to participate in any James Brown Aiken cases except their own claims cases.

In 2015 Judge Early awarded James B. what is expected to be \$700,000.00 or more in legal and GAL fees in one of the cases from which Buchanan and Pope were excluded.

In another case from which Buchanan and Pope were excluded from participation, Judge Early has found that Tomirae was Brown's spouse. He did so without benefit of her own handwritten notes to the contrary.

LSA Sojourner is seeking to overturn these two rulings. Attorney General Wilson and Bauknight are not. To allow James B., who has not been determined to be entitled to a penny of James Brown's assets, into Aiken 1337 discovery with a \$700,000.00 war chest would cause extreme prejudice to Pope.

Buchanan and Pope never owed James B. any duty. He was not a presumed child, and he refused paid-for DNA testing. James B. has no role in Pope's Aiken 1337 commission claims case.

The Consolidation Motion Should be Stricken

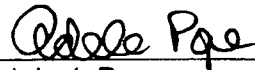
Aiken 1337 Plaintiff incorporates her Motion to Strike the Consolidation Motion served in Richland 4900. She also incorporates her Return and Supplemental Return in Aiken 1337 to the attempt of Attorney General Wilson to quash deposition subpoenas of Sonny Jones and Mary Frances Jowers. For the reasons stated in both,

the Consolidation Motion should be stricken.

Conclusion

For all of the reasons stated above, and in the incorporated documents, consolidation of Richland 4900 and Aiken 1337 for any purpose should be denied. The cases do not have common facts or law. Consolidation would only serve to delay Aiken 1337. It would make Case 1337 vastly more costly. And, because of the Attorney General's and Bauknight's continued alliance with Tomirae and James B., and Bauknight's multiple roles, consolidation would be both confusing and prejudicial to Pope.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com

Plaintiff *pro se*, Aiken 1337

May 26, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

PLAINTIFF'S RETURN AND
OPPOSITION TO MOTION OF
SWEENEY, WINGATE AND
BARROW, P.C., TO CONSOLIDATE

RICHLAND COUNTY
FILED
2016 JUN -7 AM 11:03
JEANNETTE WOODBRIDGE
C.C.P. & C.S.

Plaintiff Adele J. Pope ("FOIA Plaintiff") submits this return and opposition to the motion of Sweeney, Wingate and Barrow, P.C. ("Wingate") to consolidate, which motion was filed on behalf of all Plaintiffs in the matter captioned *Bauknight, et al, vs. Pope*, Richland County Case 2010-CP-40-4900 ("Case 4900"). The grounds for FOIA Plaintiff's opposition are set forth below.

1. FOIA Plaintiff herein supports the Motion to Strike of Adele J. Pope, as *pro se* Plaintiff in Aiken Case 2013-CP-02-1337 ("Case 1337") and believes both that motion and the long-pending motion of Wingate to be relieved as counsel for the AG (who appears to nonetheless be a movant in Wingate's motion to consolidate Case 4900 with Case 1337) should be disposed of prior to addressing the motion to consolidate.

2. FOIA Plaintiff filed this action for declaratory and injunctive relief under the South Carolina Freedom of Information Act (the "FOIA") in Newberry County on August 10, 2011.

3. On motion of Alan Wilson, in his capacity as Attorney General of South Carolina ("AG"), this case was transferred to Richland County and consolidated with Case 4900.

4. In 2011, Wingate filed a motion to intervene in this FOIA case on behalf of more

than a dozen private individuals, for the express purpose of preventing release of a document sought by FOIA Plaintiff from the AG.

5. On April 11, 2016, Wingate filed a motion on behalf of the AG and other Case 4900 Plaintiffs to consolidate Case 4900 (presumably including this already-consolidated FOIA action) with Case 1337.

6. After more than four (4) years of delay caused in part by the attempted intervention, Wingate notified the Court on April 18, 2016 that he would be withdrawing his motion to intervene on behalf of the private Case 4900 Plaintiffs.

7. Consolidation of Case 4900 and this FOIA action with Case 1337 will be inefficient and cause further delay in this nearly five-year-old FOIA action, which has only two parties and two attorneys involved. Further, consolidation would again place Wingate's private clients into this FOIA matter, which is against the spirit of the FOIA and in violation of FOIA Plaintiff's rights under the FOIA.

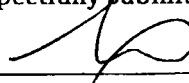
8. The FOIA provides that it is intended to provide a speedy and inexpensive method for members of the public to obtain public documents from public bodies. See Order of the Honorable Eugene C. Griffith, Jr., dated September 17, 2014, in *Summer vs. Wilson*, Case No. 2012-CP-36-0688 and related Appellate Case No. 2014-002222. Because consolidation will cause further expense and delay, FOIA Plaintiff opposes consolidation of Case 4900 with Case 1337.

Conclusion

For the reasons set forth above, FOIA Plaintiff asks that this Court strike Wingate's motion to consolidate Case 4900 with Case 1337 or, in the alternative deny it and allow this FOIA action to proceed to final disposition as soon as possible. This return is based on the South Carolina Rules of Civil Procedure, especially Rule 42; the FOIA and other applicable

statutes and case law; and the entire record herein.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm

June 6, 2016

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT
CASE NO.: 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, et. al.,)
)
and)

ALAN WILSON, et. al.)
)
Plaintiffs,)

v.)

ADELE J. POPE,)
)
Defendant.)

**NOTICE OF MOTION AND
MOTION FOR PROTECTIVE
ORDER**

RICHLAND COUNTY
FILED
2016 JUN 15 PM 3:42
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**TO: WILLIAM H. BUNDY, ESQUIRE, M. BRENT MCDONALD, ESQUIRE, ADAM
T. SILVERNAIL, ESQUIRE, KENNETH B. WINGATE, ESQUIRE, MARK V.
GENDE, ESQUIRE and ALL COUNSEL OF RECORD**

YOU WILL PLEASE TAKE NOTICE that Tommie Rae Brown, by and through her undersigned attorneys, will move before the presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit, at the Richland County Courthouse, Columbia, South Carolina, at a time approved by the Court, for a protective order pursuant to Rule 26 and other rules of the South Carolina Rules of Civil Procedure limiting questions asked by counsel in the deposition of Tommie Rae Brown to the issues related to this case and for an order restraining any counsel from questioning Ms. Brown regarding her marriage to Javed Ahmed and/or James Brown as these issues are *res judicata* per the Orders of the Honorable Doyet A. Early, III, dated January 13, 2015 (attached hereto as **Exhibit "A"**) and October 26, 2015 (attached hereto as **Exhibit "B"**), and not relevant nor likely to lead to evidence or information relevant to this matter.

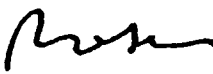
The basis for this Motion is that counsel for Adele Pope has provided a copy of the Prenuptial Agreement between Mr. and Mrs. Brown as well as other documents regarding their

marriage which indicates that they intend to question her regarding these documents during her deposition. The issue of the validity of the marriage between Mr. and Mrs. Brown was resolved and therefore *res judicata*.

Further, Adele Pope is restrained and enjoined from involving herself in any issue related to the Estate and Trust of James Brown. See Exhibit "C" attached hereto.

Ms. Brown reserves the right to supplement this Motion with additional grounds as may be appropriate. This Motion is further based on South Carolina Rules of Civil Procedure, the Common and Statutory Laws in the State of South Carolina, and other controlling laws, and may be supported by memoranda, affidavits, and/or other appropriate documentation.

ROSEN LAW FIRM, LLC

By:  
Robert N. Rosen
S. Alan Medlin
18 Broad Street, Suite 201
Post Office Box 1840
Charleston, SC 29402
(843) 377-1700
ATTORNEY FOR TOMMIE RAE BROWN

Charleston, South Carolina
June 15, 2016

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN RE THE ESTATE OF
JAMES BROWN A/K/A
JAMES JOSEPH BROWN

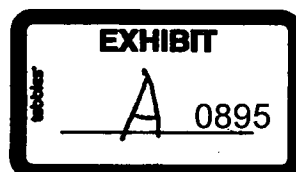
) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT

) Case Nos.: ~~2013-CP-02-02840-0004~~
) 2013-CP-02-02850 *cert. copy*

) **ORDER RE PETITIONER TOMMIE RAE**
) **BROWN'S MOTION FOR SUMMARY**
) **JUDGMENT AND THE LIMITED**
) **SPECIAL ADMINISTRATOR'S MOTION**
) **FOR SUMMARY JUDGMENT**

This matter came before the court on November 24, 2014 on Petitioner Tommie Rae Brown's Motions for Summary Judgment filed October 30, 2007, November 26, 2007, and April 28, 2014, and the Limited Special Administrator's (LSA's) Motion for Summary Judgment dated May 29, 2014. Each of these Motions requests summary judgment determining whether Mrs. Brown is the surviving spouse of James Joseph Brown. All parties have submitted detailed memoranda in support of their respective positions as well as responsive memoranda, and all parties have consented to a Joint Stipulation of Facts filed September 5, 2014.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, M. Jean Lee, David L. Michel, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach, counsel for the LSA David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II; (5) David B. Bell and Matthew D. Bodman, counsel for Daryl Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) Louis Levenson, counsel for Deanna Brown Thomas, Yamma N. Brown, Venisha Brown, and Larry Brown; and (8) William Barr and Vera Gilford, counsel for amicus curiae Jeanette Mitchell.



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I. SUMMARY JUDGMENT STANDARD.

The standard for granting summary judgment is clear:

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbankv. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181-82 (2013).

II. HISTORY OF THE CASE AND STATEMENT OF FACTS.

A. These Proceedings.

Mrs. Brown filed a petition for Elective Share or Omitted Spouse's share on February 1, 2007, asserting she is the surviving spouse of Mr. Brown. She filed a Motion for Summary Judgment on October 30, 2007 on the issue of her ceremonial marriage to Mr. Brown and the legality of said marriage. Mrs. Brown filed the same motion along with the Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment on November 26, 2007.

On December 20, 2007, Mrs. Brown filed Petitions to Set Aside the Will and Trust. Similarly, on December 26, 2007, five of the six Devisees from the 2000 will filed Petitions to Set Aside the Will and Trust. Before these Petitions were heard, Mrs. Brown and other parties to the estate litigation participated in mediation which resulted in a private settlement agreement. In the settlement agreement, Mrs. Brown was recognized by all parties thereto as the surviving spouse of Mr. Brown. The settlement agreement provided that it was a binding private agreement, regardless of court approval, and provided that it bound personal representatives and trustees, as allowed by law. The settlement agreement expressly provided that the provision

MAE
P2

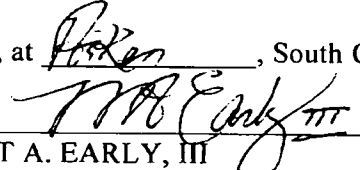
Mr. Brown knew he could pursue an annulment from Mrs. Brown as he initiated such an action himself. If he wanted to annul his marriage, he could have proceeded with the action he commenced. But he decided not to proceed with it. As he never obtained an annulment during his lifetime, his marriage was never annulled and he was married to Mrs. Brown at the time of his death, certainly for the purposes of surviving spouse pursuant to S.C. Code Ann. § 62-2-802, which required him to take action. Further, in this case, Mr. Brown affirmatively sought to benefit specifically from the Findings of Fact in the annulment order. These are the very Findings of Fact the LSA now wants this Court to ignore. He alleged in his own short-lived annulment action that the "Findings of Facts of the Charleston Family Courts" were binding.³⁵

Therefore, it is hereby ORDERED, DECREED and ADJUDGED that Tommie Rae Brown is the surviving spouse of James Joseph Brown. The Family Court's April 15, 2004 Final Order is binding on James Joseph Brown and his heirs and must be respected by this Court.

It is further ORDERED, DECREED and ADJUDGED that the Petitioner Tommie Rae Brown's Motion for Summary Judgment on her status as James Joseph Brown's wife and surviving spouse is granted, and the Limited Special Administrator's Motion for Summary Judgment is denied.

It is further ORDERED, DECREED and ADJUDGED that all other issues, including the validity of the prenuptial agreement between Tommie Rae Brown and James Joseph Brown are reserved for a future determination.

This 13 day of January 2015, at Pickens, South Carolina.


DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

³⁵ Joint Stipulation of Facts at 000070, ¶ 10 (Mr. Brown's Amended Complaint for Annulment).

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

FILED 10.26.15
[Signature]
CLERK
[Signature] 1230
Deputy Clerk

IN RE THE ESTATE OF
JAMES BROWN A/K/A
JAMES JOSEPH BROWN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Case Nos.: 2013-CP-02-02849 - orig
2013-CP-02-02850 - copy

**ORDER RE RESPONDENT'S AND
AMICI CURIAE'S MOTIONS TO ALTER,
AMEND OR RECONSIDER ORDER RE
PETITIONER'S MOTION FOR
SUMMARY JUDGMENT AND THE
LIMITED SPECIAL ADMINISTRATOR'S
MOTION FOR SUMMARY JUDGMENT**

This matter came before the court on June 30, 2015 on the following motions: the Limited Special Administrator's Motion to Alter, Amend and Reconsider filed January 26, 2015; Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown's Motion to Alter or Amend Judgment and/or for Reconsideration dated January 26, 2015; Jeanette Mitchell, Sarah LaTonya Brown Fegan, Ciara Petitt, Cheriarius Williams and LaRhonda Petitt's Motion to Reconsider Alter Amend January 13, 2015 Order; Daryl Brown's Motion to Alter, Amend and Reconsider filed January 28, 2015; Michael Deon Brown's Motion to Alter, Amend and Reconsider dated February 2, 2015; and Terry Brown's Motion to Alter, Amend and Reconsider filed February 2, 2015. Petitioner filed a Return in Opposition to Respondents' Motions to Alter, Amend or Reconsider on July 6, 2015.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, Arnold S. Goodstein, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach and Lyndey Zwing, counsel for the Limited Special Administrator David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II; (5) Matthew D. Bodman, counsel for



[Signature]
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Daryl Brown and Michael Deon Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) William Barr and Ittriss J. Jenkins, counsel for Jeanette Mitchell and Amici Curiae LaRhonda Pettit, Ciara Pettit, Cheriquarius Williams, and Sarah LaTonya Brown Fegan; and (8) J. David Black; counsel for Russell Bauknight, Personal Representative of the James Brown Estate and Trustee of the James Brown 2000 Irrevocable Trust Agreement.

I. ISSUES BEFORE THE COURT.

This Court had an extensive hearing on the Respondent's respective Motions on June 30, 2015. All points raised in these Motions have already been considered and denied in this Court's Order filed January 13, 2015 granting Petitioner's Motion for Summary Judgment. In granting Petitioner's Motion for Summary Judgment, this Court relied only upon the applicable law as well as the stipulated facts and took judicial notice of the pleadings and other documents in this case.¹ The only real issue in controversy at the June 30, 2015 hearing was the interpretation of *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd*, 379 S.C. 589, 666 S.E.2d 906 (2008). This Court reiterates that it relied only upon the applicable law and facts as agreed upon in the Joint Stipulation of Facts in granting Petitioner's Motion for Summary Judgment.

At the hearing on Respondents' Motions to Alter, Amend or Reconsider held on June 30, 2015, Respondents argued that *Lukich* was dispositive of this matter and agreed that this Court's determination of the impact of *Lukich* on this case would be determinative. Consequently, this Order focuses specifically on the impact of *Lukich*. Respondents contend that *Lukich* changes prior law by holding that a bigamous marriage is voidable, and Petitioner contends that *Lukich* is

¹ See Joint Stipulation of Facts filed September 5, 2014 at p. 5, ¶ 10 which states:

The parties could not reach an agreement as to other facts but agree this Court can take judicial notice, as it deems appropriate, of the files, pleadings, transcripts of hearings, briefs and oral arguments in this Court, the Court of Appeals and the Supreme Court along with the Record on Appeal from the Court of Appeals and Supreme Court, in all cases concerning or related to Petitioner's elective share and omitted spouse claims.

and that first marriage is therefore void ab initio, meaning that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Despite the contention of the LSA, *Hallums* is in accord with the bigamy statute, *Lukich*, and all other case precedent in treating bigamous marriages as void ab initio. Unlike Mrs. Brown's first marriage, which was found to be bigamous and void, the first marriage in *Hallums* was found not to be bigamous and was therefore valid. However, if the first marriage in *Hallums* had been found to be bigamous and void, the opinion indicates that the second marriage would have consequently been valid because the wife would have had no impediment to her second marriage and thus could inherit. That is exactly Mrs. Brown's case: her first marriage has been found to be bigamous and void, so that she had no impediment to her marriage to Mr. Brown: their marriage is valid and she is his surviving spouse.

II. CONCLUSION.

Respondents would have this Court become the first court ever in the history of South Carolina to hold that any form of validity attaches to a bigamous marriage. The Court declines that invitation. Regardless of whether it is annulled sooner, annulled later, or even not annulled at all, a bigamous marriage is not a marriage for any purpose known to the law. The holding in *Lukich*, which also held that a voidable marriage based on intoxication is valid between the date of marriage and the date of annulment, confirms the statutory and case precedent rule that all bigamous marriages are void and never a marriage.

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Therefore, it is hereby ORDERED, DECREED and ADJUDGED that the Respondents' and Amici Curiae's Motions to Alter, Amend and Reconsider are denied.

AND IT IS SO ORDERED.

This 20 day of Oct, 2015, at Barney, South Carolina.


DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH CIRCUIT
) CASE NO.: 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, et. al.,

and

ALAN WILSON, et. al.

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

MOTION FOR PROTECTIVE ORDER

RICHLAND COUNTY
FILED
2016 JUN 27 AM 11:53
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**TO: WILLIAM H. BUNDY, ESQUIRE, M. BRENDT MCDONALD, ESQUIRE, DAM
T. SILVERNAIL, ESQUIRE, KENNETH B. WINGATE, ESQUIRE, MARK V. GENDE,
ESQUIRE and ALL COUNSEL OF RECORD**

YOU WILL PLEASE TAKE NOTICE that Tommie Rae Brown, by and through her undersigned attorneys, will move before the presiding Judge of the Common Pleas Court for the Fifth Judicial Circuit, at the Richland County Common Pleas Court, 1701 Main Street, Columbia, South Carolina, on _____ day of _____, 2016, at _____ a.p.m., for an Order of Protection pursuant to Rule 30(j)(3), Rule 30(d), Rule 26(c) and Rule 26(b)(1), SCRCP, to protect Tommie Rae Brown from answering questions at her deposition or having to engage in any further discovery on issues of her marriage to James Brown and/or her annulment of her purported marriage to Javed Ahmed.

The basis of this Motion is as follows:

1. This Court previously granted summary judgment on the issue of the validity of the marriage of Tommie Rae Brown and James Brown. See Exhibits "A" and "B" attached to

the Motion for Protective Order filed June 15, 2016.

2. Tommie Rae Brown was deposed by attorneys for Adele Pope in this case and was asked a series of questions about her marriage to James Brown and the annulment of her marriage to Javed Ahmed. The deposition transcript will be available in due course.

3. Counsel for Tommie Rae Brown filed a Motion for Protective Order to stay said improper discovery on June 15, 2016.

4. Counsel is required to file this Motion by Rule 30(j), SCRCP, as counsel directed Tommie Rae Brown not to answer questions of Adele Pope's counsel.

Tommie Rae Brown is entitled to an Order of Protection for the following reasons:

1. Counsel for Adele Pope questioned Tommie Rae Brown regarding her marriage to James Brown and the annulment of her purported marriage to Javed Ahmed and presented documents relating to these issues to her during her deposition and asked her questions about those documents. The issue of the validity of the marriage between Mr. and Mrs. Brown was resolved and is therefore *res judicata*.

2. Further, Adele Pope is restrained and enjoined by the Supreme Court of South Carolina from involving herself in any issue related to the Estate and Trust of James Brown. *See Exhibit "C"* attached to the Motion for Protective Order filed June 15, 2016.

3. Adele Pope is estopped from relitigating the issue of the marriage.

4. The issue of the marriage is wholly irrelevant to the pending case and if it is relevant, the issue is *res judicata* and cannot be relitigated in this case

5. Therefore, the questions are irrelevant and outside the scope of discovery. Rule 26(b)(1) states:

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to

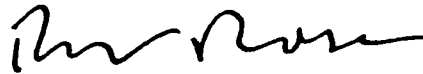
the claim or defense of the party seeking discovery or to the claim or defense of any other party. . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Rule 26(b)(1), SCRCP. The issue of Mrs. Brown's marriage is not relevant to the subject matter of the pending litigation which concerns the breach of Adele Pope's fiduciary duties and various counterclaims alleging torts against plaintiffs not related to the marriage.

6. Further, the examination was conducted in bad faith as Adele Pope is not entitled to relitigate the issue of the marriage and indeed has been enjoined from doing so. In addition, Ms. Pope has had a long history of using personal information about Mrs. Brown in the press and on the internet to annoy, embarrass, and oppress Mrs. Brown. This Court can take judicial notice of the publicity generated by Ms. Pope and her contacts in the press in the Estate case. Therefore, the questions at Mrs. Brown's deposition violate Rule 30(d), SCRCP.

Ms. Brown reserves the right to supplement this Motion with additional grounds as may be appropriate. This Motion is further based on South Carolina Rules of Civil Procedure, the Common and Statutory Laws in the State of South Carolina, and other controlling laws, and may be supported by memoranda, affidavits, and/or other appropriate documentation.

ROSEN LAW FIRM, LLC



Robert N. Rosen
18 Broad Street, Suite 201
Post Office Box 1840
Charleston, SC 29402
(843) 377-1700

S. Alan Medlin
1713 Phelps Street
Columbia, SC 29205

ATTORNEYS FOR TOMMIE RAE BROWN

Charleston, South Carolina
June 22, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	PLAINTIFF'S MOTION TO
	)	ALTER, AMEND AND/OR
v.	)	VACATE ORDER GRANTING
	)	ATTORNEY GENERAL'S MOTION
Alan Wilson, in his capacity as	)	TO DISMISS
Attorney General of South Carolina,	)	
	)	
Defendant.	)	

RICHLAND COUNTY
 FILED
 2016 JUL -1 PM 3:44
 JEANETTE W. NOBRIDE
 C.S.P. & G.S.

Plaintiff Adele J. Pope ("Plaintiff") hereby moves for an Order altering, amending and/or vacating the Order of the Honorable Doyet A. Early, III, dated June 14, 2016, mailed for filing on June 21, 2016, and received by Plaintiff on June 24, 2016, pursuant to Rule 59(e), *South Carolina Rules of Civil Procedure*. A copy of said Order is attached as **Exhibit A**.

The grounds of this motion are as follows:

1. The Court overlooked or misapprehended that the Attorney General's motion to dismiss this case was heard on October 26, 2011 and denied by Order of the Honorable Frank R. Addy, Jr., on November 22, 2011, at which time the Attorney General was directed to answer the complaint.

2. The Court overlooked or misapprehended that the Attorney General did not seek reconsideration of Judge Addy's denial of the motion to dismiss.

3. The Court overlooked or misapprehended that all Litigation Retention Agreements of the Attorney General related to the engagement of outside counsel are public, and the agreement sought herein should have been produced under FOIA in 2011.

4. The Court overlooked or misapprehended that the Attorney General continued his refusal to produce the Litigation Retention Agreement under FOIA even after it was declared public in November 2013 by an Order of the Federal Court.

5. The Court overlooked or misapprehended that the Circuit Court Order of the Honorable Marc H. Westbrook, issued on or about October 25, 2002, is not binding precedent or applicable to civil cases under the FOIA.

6. The Court overlooked or misapprehended that the FOIA is intended to provide a speedy and inexpensive method for anyone to obtain public documents from public bodies upon proper request, and that the Court's Order herein has denied Plaintiff that right and violates the letter and spirit of the FOIA.

7. The Court overlooked or misapprehended that, under the FOIA, Plaintiff is entitled to reasonable attorneys' fees and costs for the almost-five-years the AG has refused to produce all of the relevant documents, namely:

- a. The published policies and/or rules and regulations of the Office of the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).
- b. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.
- c. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-0073 on behalf of the AG and/or the State of South Carolina.

8. The Court overlooked or misapprehended that Plaintiff, by virtue of being sued by the Attorney General of South Carolina in 2010, did not lose her FOIA rights.

9. The Court overlooked or misapprehended that the 2015 Order of the Honorable Eugene C. Griffith, Jr., in another James Brown FOIA matter, is more apposite to this case than the 2002 Westbrook Order, although neither is controlling.

10. The Court overlooked or misapprehended that making FOIA compliance subject to discovery in two cases in two counties where the FOIA request did not originate would unduly prejudice Plaintiff, the media and citizen non-parties to pending litigation.

11. The Court overlooked or misapprehended that citizens and the media may not freely participate in discovery in cases in which they are not parties.

12. The Court overlooked or misapprehended that its Order prevents the public and the media from reviewing under FOIA the AG's hiring of contingency-fee counsel to be sole counsel for the AG in a civil suit against two private citizens, which, on information and belief, has never occurred before in this State.

13. The Court overlooked or misapprehended that it was improper and inconsistent with the letter and spirit of the FOIA to move a 2011 FOIA case from Newberry to Richland County and subject it to discovery in a third county in which neither the Attorney General nor the McMaster Legacy Trust is a party.

14. The Court overlooked or misapprehended that the "common interest" privilege AG Wilson claims with contestants to James Brown's Will, and their attorneys and agents, in other civil proceedings to which this Court's Order would subordinate the issues in this FOIA case, has no role in FOIA.

15. The Court overlooked or misapprehended that FOIA is an appropriate mechanism for Plaintiff to seek and receive public documents regarding the AG's hiring of contingency-fee counsel to sue private citizens.

16. The Court overlooked or misapprehended that the combined actions of the AG, the Court's Order of November 22, 2011, the Court's refusal to conduct a hearing for more than four (4) years, and the Order of June 14, 2016, have denied Plaintiff not only her FOIA rights, but her Due Process rights under the 5th and 14th Amendments of the United States Constitution and the South Carolina Constitution.

17. The Court overlooked or misapprehended that the combined Orders have violated Plaintiff's Equal Protection rights under the United States Constitution by treating her differently from all other citizens with FOIA rights, solely on the basis that she was sued by the Attorney General of South Carolina and the McMaster Legacy Trust, a Trust controlled by the Attorney General of South Carolina.

18. The Court overlooked or misapprehended that the undisputed facts related to the procedural posture and conduct of this case as set out in the Affidavit of Adele J. Pope filed herewith and incorporated herein, were properly before this Court, as summarized in the attached Affidavit of Plaintiff.

This motion is based on the South Carolina Rules of Civil Procedure, especially Rule 59(e); the positions taken by the Attorney General and the McMaster Legacy Trust in civil cases related to The James Brown "I Feel Good" Trust and the Estate and 2000 Trust of James Brown, including the Attorney General's claimed privilege with Tommie Rae Brown, will contestants and others; the rulings related to persons other than Plaintiff in James Brown FOIA matters since this case was filed on August 3, 2011; and the entire record herein, including the affidavit filed herewith and affidavits in this matter and by journalists and citizens in other James Brown FOIA matters. The Court is asked, pursuant to SCRE Rule 201, to take mandatory judicial notice of these documents in the consideration of this motion to alter, amend or vacate.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvernaillawfirm.com

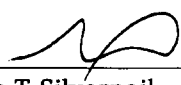
July 1, 2016

Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 1, 2016, he has served a copy of the foregoing document on counsel for the Defendants by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

J. Emory Smith, Esquire
Office of the Attorney General
PO Box 11549
Columbia, SC 29211


Adam T. Silvernail

2016 JUL -1 PM 3:44
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COURT
FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Russell L. Bauknight, et al,)
)
Plaintiffs,)
)
v.)
)
Adele Pope,)
)
Defendant,)
_____)

IN THE COURT OF COMMON PLEAS

No. 2010-CP-40-4900

**MOTION FOR PROTECTIVE ORDER
AS TO DEPOSITION OF
ATTORNEY GENERAL**

RICHLAND COUNTY
FILED
2016 JUL 20 PM 4 15
JEANNETTE W. MURPHY
C.C.P. & G.S.

Pursuant to Rules 26(c) Attorney General Alan Wilson moves for a protective order as to the taking of his deposition pursuant to the Second Amended Notice of Deposition (copy attached) or at any other time in this case, on the following grounds:

1. The deposition should not be taken before this Court rules on the Attorney General's Motion to be removed as a party to this case. The Attorney General also will be out of State on August 12, 2016, when the deposition is noticed.
2. Regardless of whether that Motion is granted, the Attorney General's testimony by deposition should not be compelled because he is a high ranking State Constitutional officer. The burden is on the Defendant who noticed the deposition to show that the information sought is essential, that it is not obtainable elsewhere, and that the deposition of the Attorney General would not interfere with his government responsibilities. Defendant cannot make such a showing.
3. Alan Wilson was not Attorney General when this suit was initiated and during much of its history and therefore lacks personal knowledge of all or most of the matters at

issue in the suit.

4. All or most of any questions he might be asked would be subject to attorney client and work product privileges.
5. Questioning of the Attorney General with objections thereto would likely take more than a day of his time. Depositions of two lawyers on his staff in a related proceeding took nearly four days. Such a time consuming deposition would interfere with the Attorney General's handling of the important duties of his Office.
6. His deposition would be an undue burden for all of the above reasons.

For the above reasons and other good cause to be shown by a memorandum in support of this Motion, the Attorney General respectfully requests that this Motion be granted.

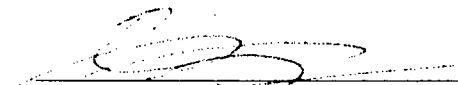
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

JULY 18, 2016

ATTORNEYS FOR ALAN WILSON

Rule 11, SCRCP, Certification:

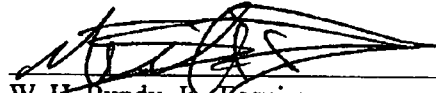
Undersigned counsel has consulted with opposing counsel, Walter H. Bundy, Esquire, in good faith. Mr. Bundy does not consent to this motion, but he does agree not to take the deposition on August 12 and agrees to defer the deposition until after this motion is decided if the motion is heard on August 22, 2016.

A handwritten signature in black ink, appearing to read "J. Emory Smith Jr.", is written over a horizontal line.

July 18, 2016

J. EMORY SMITH JR.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: 843-881-1623
whbesq@s3blaw.com
bmcdonald@s3blaw.com

and

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street
Columbia, South Carolina 29201
Telephone: 803-779-1770
adam@silvernaillawfirm.com
Attorneys for Adele J. Pope.

Mt. Pleasant, South Carolina
June 23, 2016

CERTIFICATE OF SERVICE

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that true and correct copies of the Second Amended Notice of Deposition of Alan Wilson were served on all parties via E-Mail and U. S. Mail, postage paid, this 23rd day of June, 2016, as follows:

Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
)
Columbia, SC 29211
Attorneys for Plaintiffs
kbw@swblaw.com;
mvg@swblaw.com;


Sarah Foster Rock

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND CO.
FILED
2016 JUL 29 PM 12:33
JEANNETTE M. HODRICH
C.C.P. & G.S.

**MOTION FOR PROTECTIVE ORDER
QUASHING THE DEPOSITION OF
TONYA BROWN**

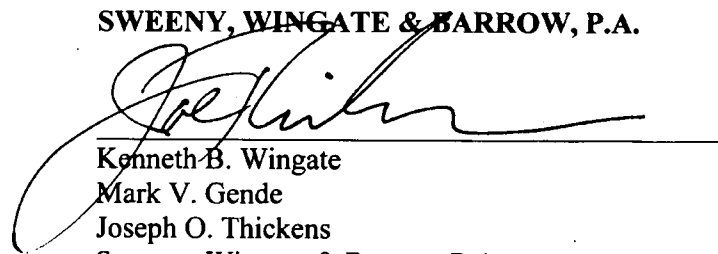
TO: BILL BUNDY, ESQUIRE, ADAM T. SILVERNAIL, ESQUIRE AND DARYL L. WILLIAMS, ESQUIRE, ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-NAMED:

PLEASE TAKE NOTICE THAT the undersigned attorneys for the Plaintiffs will move before a presiding judge for the Richland County Court of Common Pleas on the tenth (10th) day after service thereof, or as soon thereafter as may be heard, for a Protective Order pursuant to Rule 26(c), SCRCP quashing the Notice of Deposition of Tonya Brown, unilaterally scheduled by Defendant Pope for September 22, 2016. The grounds for this motion are that Tonya Brown was already deposed in Case 4900 on February 8, 2013, and good cause does not exist for a subsequent deposition. Therefore, pursuant to Rule 30(a)(2), SCRCP, a protective order is appropriate in this matter.

Pursuant to Rule 11, SCRCP, Counsel certifies that he has communicated with opposing counsel prior to filing this motion, and a good faith effort has been made to resolve this matter. This motion may be further supported by affidavits, deposition testimony, or a memorandum of law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Joseph O. Thickens
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
July 28, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
Adele J. Pope,
Plaintiff,
v.
Estate of James Brown and The
James Brown 2000 Irrevocable Trust,
Defendants.

) IN THE COURT OF COMMON PLEAS
)
) 10-4900
) Aiken County Case No. 2013-CP-02-1337
)
)
) PLAINTIFF'S RETURN TO MOTION
) OF DEFENDANTS FOR
) PROTECTIVE ORDER AS TO DEPOSITION
) OF DAVID C. SOJOURNER, JR.
) AND
) MEMORANDUM IN SUPPORT OF RETURN

RICHLAND COUNTY
FILED
2016 AUG -5 AM 9:43
JENNIFER W. MORRIS
C.C.P. & G.S.

Plaintiff opposes the Motion of Defendants for a Protective Order as to the
Deposition of David C. Sojourner, Jr.

Plaintiff respectfully requests the Court to issue its Order making Russell L.
Bauknight and Nexsen Pruet (NP) liable for the costs of the original deposition, and
jointly liable with Sojourner for the re-deposition.

This Return is based on the Status Report of the Hon. Doyet A. Early, III (Jg.
Early) dated May 5, 2015; the Sojourner deposition; the deposition of Tomirae in
Richland 4900; and the public record of the Tomirae spousal proceeding, as to which
mandatory judicial notice under Rule 201SCRE is requested.

MEMORANDUM IN SUPPORT OF RETURN AND RE-DEPOSITION

a. The Distribution of \$2 Million to Tomirae and Will Contestants is Relevant.

On November 1, 2011 Bauknight/NP told the S.C. Supreme Court:

- a. Tomirae's elective share claim was a "slam dunk."
- b. In 2012 Tomirae and "the children" would exercise Termination Rights
and get 100% of the royalties to "Please, Please, Please."
- c. Termination Rights are all this Estate is about. [Tr. Sup. Ct. 48:49 - 50]

In 2012 the The Ray Charles Foundation challenged an attempt by the Charles heirs to exercise Termination Rights without participation of the Charity.

In 2012 Bauknight/NP paid Wingate \$500,000 for expert witness fees. On information and belief the fee was to try to refute Pope's and Smith's positions set out in *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*¹ They have not been refuted.

On March 6, 2013 Plaintiff met with AG Wilson and explained how Bauknight/NP's \$5MM valuation and alliance with Tomirae damaged the "I Feel Good" Charity and its 900 copyrights.

On May 26, 2013, in open court, the following happened:

1. Medlin & Levenson announced to Jg. Early their intention to reinstate the McMaster settlement.
2. Medlin, Levenson and Bauknight/NP urged Jg. Early to exclude Buchanan and Plaintiff from his James Brown cases. [He did so June 13.]
3. AG Wilson expressed his satisfaction with Bauknight.

On August 28, 2013 Tomirae filed Termination Notices with the Federal Copyright Office, claiming to be Brown's spouse. She sought to terminate "Please, Please, Please." Neither Bauknight nor Sojourner objected.

On May 5, 2015 Jg. Early filed a status report asserting Pope's \$2.8MM claim filed in 2009 was for \$5MM. He praised Bauknight.

In 2015 a Federal Circuit Court agreed that The Ray Charles Foundation had a right to protect itself in Termination Rights matters, a theme of *Private Foundations...*

¹ The \$500,000 was returned without interest in 2013.

In 2016 it was rumored that 3 James Brown songs had sold for \$6MM.

On May 20, 2016 Sojourner was deposed. Both Bauknight/NP and Sojourner's counsel repeatedly made objections and directed Sojourner not to answer questions.

In June 2016 Tomirae was paid \$1MM from the sale of "Please, Please, Please" and 2 other songs, while Sojourner and his lawyers were being paid \$1.4MM to defend against her spousal claim.. Some children challenging the Will got \$1MM.

Defendants have refused to pay Plaintiff's 2009 claim even though half of the \$2.8 MM was due on May 26, 2009 under Jg. Early's Compensation Order. That half has been earning interest for 7 years under Jg. Early's Order. The second half of the \$2.8 MM was due, if not earlier, on May 8, 2013, the day Pope's service ended.

While this \$2.8MM claim has been pending, Bauknight has disbursed (or been ordered to disburse) more than \$6 MM to Tomirae, Will/Trust contestants, lawyers and fiduciaries – from an Estate Bauknight/NP valued at \$5 MM

A salient feature of the service of Buchanan and Pope was that the combined cost of their work and that of their carefully-selected counsel, was modest. James Bailey, Esquire, served honorably for 18 months for a claimed fee of about \$300,000. Tressa Hayes, Esq., handled the Cannon and Dallas appeals and other matters for less than \$150,000.

At Pope's request, James B. Richardson, Jr., a distinguished appellate lawyer, served *pro bono publico* as lead counsel on the *Wilson v. Dallas* appeal.

Another feature of Pope's service was her study and understanding of Federal Copyright Act Termination Rights as they relate to S.C. Probate law.

Private Foundations... addresses the need of charities which own copyrights to protect their royalties from improper or premature attempts by claimed heirs to exercise Termination Rights. That protection begins with a proper at-death heirs determination.

Pope's desire to save \$3+ MM annual royalties from Brown's copyrights for needy beneficiaries of the "I Feel Good" Charity did not stop when her paid service ended on May 8, 2013.

From May 2013 until June 10, 2015, Pope worked *pro bono publico* as a private citizen to urge the AG and others to save the "I Feel Good" Charity's copyrights.

Pope sent a copy of *Private Foundations ...* to Sojourner. She offered to help Sojourner without charge on copyright issues. Charles Carpenter, Esq., another distinguished appellate lawyer, volunteered to work *pro bono publico* on a U.S. Certiorari Petition which raises issue now being raised in the Tomirae appeal.

But the parties to the Tomirae appeal consist only of those who want to reinstate the McMaster Settlement and a fiduciary (Sojourner) who claims he has no obligation to protect James Brown's copyrights.

Plaintiff no longer has standing to try to save the "I Feel Good" Charity. That ended on June 10, 2015. But Plaintiff does have a right under the Rules of Civil Procedure to uninterrupted depositions providing evidence as to whether her \$84 MM valuation of Brown's music empire was reasonable. She has a right to elicit evidence supporting her position that the quality and quantity of the Buchanan/Pope fiduciary service compares favorably with that of Bauknight/Sojourner.

b. Sojourner Must Provide Documents and Answer Questions About Payments

Sojourner has personally approved as reasonable about \$1.4MM in fees to himself and his former law firm. For many months Bauknight paid Sojourner \$60,000 a month. Sojourner's documents show Bauknight stopped paying him after Sojourner challenged the finding that Tomirae was Brown's spouse and an order granting \$700,000 in GAL and legal fees to her son James B.

Bauknight has advised Jg. Early that he will remain involved with Sojourner and that he holds the "purse strings."

Bauknight/NP cannot claim a Common Interest with Sojourner as to these matters where both serve Tomirae and James B through the McMaster Legacy Trust. Defendants had no right to attempt to direct non-disclosure of Sojourner's documents or transactions with Bauknight and NP on any issue related to Tomirae or James B.

c. The Details of the "Please, Please, Please" and "Try Me" Sales are Relevant

Tomirae has testified that her lawyers handled her getting \$1 MM and "some children" getting another \$1MM from the sale of "Please, Please, Please," "Try Me" and a 3d James Brown song. Any privilege as to details of these sales, if it ever existed, has been waived by Defendants by sharing the financial details, and proceeds, with someone not yet determined to be Brown's spouse.

A sale of 3 of Brown's 900 copyrights, whether at \$6 Million, as rumored, or some other price, is relevant to Pope's claim.

Defendant's have vigorously, and viciously claimed since 2011 that Buchanan and Pope intentionally overstated Brown's assets by \$79 MM to get a \$5 MM

fee. The claim was so pervasive that Jg. Early, in 2015, told the Supreme Court Pope, alone, was seeking a \$5 MM fee.

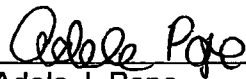
In 2011 Defendants told the Supreme Court that Brown's Estate was worth only \$5 MM. They said Tomirae and the children would "automatically" get 100% of the royalties from "Please, Please, Please" in 2012. They made other Termination Rights claims which conflict with *Private Foundations*...

Plaintiff should be allowed to explore the full details of the sales and other transactions in a Sojourner re-deposition. They are relevant to Aiken 1337. They are not privileged. Defendant should not have directed Sojourner to withhold documents or decline to answer questions about these matters.

Conclusion

For the reasons stated herein, and in the Return to Sojourner's motion, which is incorporated herein, Defendants' Motion for Protective Order as to the deposition of David C. Sojourner should be denied. Bauknight and NP should pay the costs of the deposition. Mr. Sojourner should be re-deposed at the joint expense of Sojourner, Bauknight and NP. Defendants' counsel should be cautioned not to interpose speaking objections, or direct Mr. Sojourner not to answer any question.

Respectfully submitted,



Adele J. Pope
Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

August 1, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Russell L. Bauknight, as Trustee of the) Civil Action No.: 2010-CP-40-4900
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,)
Plaintiffs,)
vs.)
Adele J. Pope and Robert L. Buchanan,)
Jr.,)
Defendants.

RICHLAND COUNTY
FILED
2016 AUG 11 PM 3:24
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**Notice of Special Appearance and
Motion to be Dropped as a Party**

To: Clerk of Court and all Counsel of Record

As the court may recall, by way of an order dated October 4, 2007, the Attorney General was allowed to intervene in the "James Brown Case" pursuant to his *parens patriae*, statutory, and case law authority, to protect the interests of any charitable beneficiaries and any assets that may have been impressed with a charitable trust. See attached *Exhibit A*, Order Granting Motion to Intervene, dated October 4, 2007.

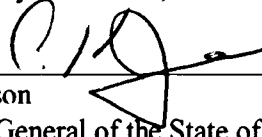
As the Court may further recall, the Attorney General was allowed to assume a monitoring role in these matters pursuant to the Supreme Court's opinion in *Wilson v. Dallas*, and the approval of Russell Bauknight. See attached *Exhibit B*, Order Withdrawing Attorney General, dated October 30, 2013.

Consistent with the Attorney General's position in the above matters, the undersigned Office of the Attorney General hereby enters a special appearance in this matter as counsel of record for Alan Wilson, in his capacity as Attorney General of the State of South Carolina, in the above-captioned matter. The undersigned enters this special appearance for the purpose of arguing and handling all matters related to Attorney General Alan Wilson's Motion to be Dropped as a Party dated March 25, 2013, attached to this Notice as *Exhibit C*.

The Attorney General is filing this Notice of Appearance in an abundance of caution. While the Notice may not be necessary, the Notice is being filed to avoid any dispute regarding who can argue and handle the Motion to be Dropped as a Party. In addition, the Motion to be Dropped as a Party is being served again upon all counsel.

Rule 11 Certification: I certify that consultation with opposing counsel would serve
no useful purpose.

Respectfully Submitted,



Alan Wilson

Attorney General of the State of South Carolina

John W. McIntosh

Chief Deputy Attorney General

Robert D. Cook

Solicitor General

C. Havird Jones, Jr.

Senior Assistant Deputy Attorney General

Mary Frances Jowers

Assistant Deputy Attorney General

Post Office Box 11549

Columbia, South Carolina 29211

(803) 734-3680

August 11, 2016
Columbia, South Carolina

Exhibit A

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

IN RE:

THE ESTATE OF JAMES BROWN

A/K/A JAMES JOSEPH BROWN

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

FILED

C/A No. 2007-CP-02-122

Deputy Clerk

OCT 11 2007

ORDER GRANTING MOTION TO INTERVENE ON BEHALF OF SOUTH CAROLINA ATTORNEY GENERAL HENRY D. McMASTER AND GEORGIA ATTORNEY GENERAL THURBERT E. BAKER

AE
#1

This matter came to be heard before the Court on September 24, 2007, pursuant to Rule 24, SCRCP, by way of a Motion for Intervention by the Attorney General of South Carolina to enforce the due application of those funds given or appropriated to any charitable trust created by the Last Will of James Brown dated August 1, 2000, and the Irrevocable Trust Agreement of James Brown dated August 1, 2000, or any other assets of the Estate of James Brown that may be impressed with a charitable trust. The South Carolina Attorney General also made this motion on behalf of Georgia Attorney General Thurbert E. Baker pending that office's submission of the appropriate *pro hac vice* paperwork as required by Rule 404, SCRCP. Appearing on behalf of the Attorney General of South Carolina was C. H. Jones, Jr., Senior Assistant Attorney General, and appearing on behalf of the Attorney General of Georgia was Grace Evans Lewis, Senior Assistant Attorney General. There was no objection from any of the parties as to the granting of this motion.

Therefore, pursuant to its *parens patriae*, statutory (see S.C. Code §1-7-130 and §62-7-405 and Georgia Code §53-12-115), common law and case authority (see *Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005); *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); and *W. C. Watson v. W. F. Wall, et al.*, 229 S.C.

500, 93 S.E.2d 918 (1956)), the Motion of the South Carolina Attorney General and the Georgia Attorney General to intervene in this matter to represent and protect the interests of the beneficiaries of any charitable trust created by the Last Will of James Brown dated August 1, 2000, and the Irrevocable Trust Agreement of James Brown dated August 1, 2000, or any other assets of the Estate of James Brown that may be impressed with a charitable trust is, therefore, GRANTED.

AND IT IS SO ORDERED this 4th day of October, 2007.



DOYET A. EARLY, III
Resident Judge, Second Judicial Circuit

Exhibit B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
IN RE:	)	C/A No.: 2007-CP-02-122
THE ESTATE OF JAMES BROWN	)	C/A No.: 2008-CP-02-1647
A/K/A JAMES JOSEPH BROWN	)	C/A No.: 2008-CP-02-872
	)	C/A No.: 2009-CP-02-597
	)	C/A No.: 2009-CP-02-1140
	)	C/A No.: 2009-CP-02-1810

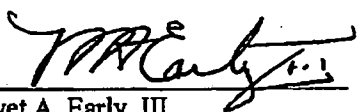
ORDER WITHDRAWING ATTORNEY GENERAL

This matter comes before the Court by way of the Attorney General's request to withdraw from the above-referenced cases. This Court previously granted the Attorney General's Motion to Intervene by Order filed October 11, 2007, in Case 2007-CP-02-122. In addition, the Attorney General is a named party in cases 2008-CP-02-1647, 2008-CP-02-0872, 2009-CP-02-597, 2009-CP-02-1140, and 2009-CP-02-1810, all cases related to the James Brown Estate and Trust.

This Court finds that allowing the Attorney General to withdraw is appropriate, in light of the Supreme Court's opinion in Wilson v. Dallas, Op. No. 27227 (SC. Sup. Ct. refilled may 8, 2013); the appointment of Russell Bauknight as Special Trustee by Order dated June 13, 2013; the appointment of Russell Bauknight as Special Administrator dated June 13, 2013; and the Attorney General's desire, pursuant to his statutory and common law authority, to have a monitoring role in this matter.

Accordingly, the Attorney General is withdrawn from these cases. This Order is without prejudice to the Attorney General's right to move to intervene in the future, as he finds appropriate based on his monitoring of the case.

AND IT IS SO ORDERED.


Doyet A. Early, III
Presiding Judge


July 30, 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

EXHIBIT E

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED

MAR 14 2013

The Honorable Doyet A. Early, III, Circuit Court Judge
S.C. Supreme Court

Case No. 2008-CP-02-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem, Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of The Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and the James Brown 2000 Irrevocable Trust, Defendants,

of whom Robert L. Buchanan, Jr., and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are, Appellants,

and Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are, Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust w/a/d August 1, 2000

Appellate Case No. 2009-142286

PETITION FOR REHEARING

Introduction

Respondent Alan Wilson, in his capacity as Attorney General of the State of South Carolina, respectfully requests, pursuant to Rule 221, SCACR, a rehearing of the decision of the Court rendered on February 27, 2013. We emphasize at the outset that we have nothing but the greatest respect for the Court and that the Petition is not intended in any way to detract from that respect. But we must file this Petition, nevertheless, because, based upon the decision as written, we do not believe the Court had the full story concerning the Attorney General's role in the Brown settlement or the Office's part or lack thereof in any administration of the charitable trust.

We had thought that in our Brief and at oral argument we had provided the Court with the information it needed to accurately assess the part the Attorney General played in this settlement. Assuming we did not, however, this Petition is presented to ensure the Court now has all the facts and the applicable law. Specifically, based upon the information presented herein, we seek to have the Court modify its Opinion consistent with what we believe is a more accurate depiction of the role of the Attorney General in this case. Such modification is important because, otherwise, we fear the decision will have a lasting adverse impact upon the credibility of the Office of Attorney General, which this Court has recognized as the executive office designated to protect charitable trusts and defend the public interest. *See, State ex rel. Condon v. Hodges*, 349 S.C. 232, 239, 562 S.E.2d 623, 628 (2002) ["(a)s the chief law officer of the State, (the Attorney General) may ... exercise all such power and authority as public interests may from time to time require, and may institute, conduct and maintain all such suits and proceedings as he deems necessary for the enforcement of the laws of the State, the preservation of order

and the protection of public rights." *See also, City of Cola. v. Tatum*, 174 S.C. 366, 177 S.E. 541, 546 (1934) ["It is doubtless due to the insistence of the Attorney General that the rights of the public have been so carefully guarded"].

Argument

The Court is absolutely correct that the Attorney General was substantially involved in the Brown settlement because of his longstanding common law and statutory duty "as the protector, supervisor and enforcer of charitable trusts[.]" 2013 WL 697042, *Op.* at 18. But equally involved were the numerous other parties in this case. This was not a situation where the Attorney General's Office directed anyone or anything. Of course, the Attorney General's legal authority concerns only the charitable beneficiaries, not private parties or interests. *See* S.C. Code Ann. § 1-7-130 (1986). Here, all other Respondents had widely divergent interests and adverse positions to each other. Those positions were each represented vigorously by well-respected counsel. A settlement of such complexity and magnitude cannot be arrived at by Attorney General fiat. Thus, in no sense, did the Attorney General "broker," nor could he have, the terms of the settlement. Nor did he "direct[] a compromise which ultimately resulted in the AG obtaining virtual control over Brown's estate," as this Court found. *Op.* at 19.

Instead, consummation of the Settlement was a hard-fought, hotly-contested process and agreed to at arms-length by the parties with the assistance of one of the most highly respected mediators in this State, Tom Wills. Contrary to the Court's implication throughout its decision, the Attorney General is not a dictator, and he did not dictate the terms of this settlement. This settlement arrived at was fair, reasonable, and was approved by a highly regarded circuit judge after seven strenuous, hard fought days of

ruling, we now see no need to pursue this action further. We advise this Court, therefore, that we will shortly move to have the Attorney General removed as a party in this action and any further action in this case to protect the charitable beneficiaries may be pursued by the new trustee.

Conclusion

In summary, we would submit to this Court that we have diligently pursued the protection of the charitable trust in this case. The Court may disagree with the terms of the settlement which was reached, and we fully respect the Court's ruling. However, in light of the challenges facing us to uphold the trust, particularly the credibility of those we would need to call as witnesses in that regard, we thought settlement was the most prudent course. These were the very individuals who stood accused of fraud and with the promotion of a scheme of cunning and artifice, by Appellants' lawsuit. Clearly, as the circuit court found, there was a good faith controversy and we believed the terms of the settlement were fair and reasonable. 81 A.L.R. 124 (citing *State v. Southern R. Co.*, 82 S.C. 12, 62 S.E. 116 (1908) [court possesses discretion to refuse Attorney General's motion to discontinue]. We still believe that today. We respectfully request that the Court modify its Opinion accurately to reflect the Attorney General's role in the settlement, consistent with the facts and arguments set forth above.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

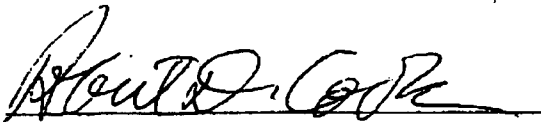
ROBERT D. COOK
Deputy Attorney General

C. HAVIRD JONES, JR.
Assistant Deputy Attorney General

MARY FRANCES JOWERS
Assistant Attorney General

J.C. NICHOLSON, III
Assistant Attorney General

1000 Assembly Street
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3970

By: 

By: 

Attorneys for Respondent Alan Wilson.

March 14, 2013.

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF COMMON PLEAS
07-CP-02-122

IN RE: ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN

TRANSCRIPT OF RECORD

SEPTEMBER 28, 2008
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQ.
ATTORNEY FOR THE THE HEIRS

ROBERT N. ROSEN, ESQ.
DAVID L. MICHEL, ESQ.
M. JEAN LEE, ESQ.
S. ALAN MEDLIN, SQ.
ATTORNEYS FOR THE TOMI RAE HYNIE BROWN

ADELE J. POPE, ESQ.
ROBERT L. BUCHANAN, JR., ESQ.
SPECIAL ADMINISTRATORS

A. PETER SHAHID, JR., ESQ.
ATTORNEY FOR THE GUARDIAN AD LITEM

STEPHEN M. SLOTCHIVER, ESQ.
GUARDIAN AD LITEM

1 MCMASTER SAT AT ONE TABLE. THE BUDGET AND CONTROL BOARD
2 AND THE TRUSTEE OF THE CHARITABLE TRUST WHICH WAS MENTAL
3 HEALTH -- IT'S A STATE FUND -- SAT AT THE OTHER TABLE AND
4 THE SUPREME COURT SAID IN THAT CASE THAT THE ATTORNEY
5 GENERAL IS THE PROPER PARTY TO PROTECT ADMINISTRATION OF
6 THE CHARITABLE TRUST.

7 SO, IF ANYBODY DISAGREES WITH WHAT THE ATTORNEY
8 GENERAL IS DOING IN THIS CASE, THEY HAVE NO STANDING. THE
9 ATTORNEY GENERAL IS HERE. HE IS PROCEEDING IN GOOD FAITH.
10 WE HAVE A DEAL WHICH WE THINK IS A REMARKABLE DEAL TO GET
11 SCHOLARSHIPS TO THE KIDS.

12 NOW, THE THOUGHT WOULD BE IF --

13 THE COURT: SO, YOU HAVE THE AUTHORITY ON BEHALF OF
14 THE STATE AND THE TRUSTS FOR THE CHILDREN TO TELL THIS
15 COURT YOU THINK IT IS AN EXCELLENT SETTLEMENT ON BEHALF
16 FOR THEIR BENEFIT?

17 MR. JONES: YES, SIR. AND, ALSO, A PRIVATE
18 SETTLEMENT DOESN'T HAVE TO BE APPROVED -- PRESENTED TO THE
19 COURT FOR APPROVAL. THE ATTORNEY GENERAL TAKES A LITTLE
20 DIFFERENT POSITION. MR. MEDLIN AND I HAVE GONE BACK AND
21 FORTH ABOUT THIS, BUT IN A TRUST WE FEEL, YOUR HONOR, THAT
22 THE RESOLUTION THAT WE HAVE MUST BE PRESENTED TO YOU IN
23 WHICH WE'LL DO THAT AT THE APPROPRIATE TIME WHEN THE TAX
24 ISSUES AND A FEW OTHER THINGS THAT'S BEEN WORKED OUT, AND,
25 HOPEFULLY, THAT IS PROBABLY IN JUST A COUPLE WEEKS AWAY.

1 I MIGHT BE OVERSTATING THAT, BUT THE OTHER THOUGHT
2 ABOUT IT IS, YOUR HONOR, SUPPOSE THAT LITIGATION CONTINUES
3 AND WE HAVE SOME RIGHTS THAT THESE INDIVIDUALS -- LOUIS
4 LEVENSON'S CLIENTS AND MR. MEDLIN AND ROSEN'S CLIENT HAVE
5 PUT IN FOR THE ATTORNEY GENERAL THAT WE COULD LOSE. SO,
6 WE HAVE A STAKE IN THIS, BUT SUPPOSE THAT MR. BELL
7 PROCEEDS, AND THEN THAT LIGHTS BACK UP MR. ROSEN AND IT
8 LIGHTS BACK UP LOUIS LEVENSON, AND WE PROCEED ON WITH
9 LITIGATION AND WE GET A GOOSE EGG FOR THE CHARITY. OKAY.
10 WHO IS TRYING TO REPRESENT THE ATTORNEY GENERAL THEN?
11 THEY CAN WALK AWAY AND WE'RE SITTING THERE WITH OUR PALMS
12 TO THE SKY. SO, THERE IS NO QUESTION, YOUR HONOR, THAT IT
13 IS VERY IMPORTANT THAT WE REACH A RESOLUTION THAT WE THINK
14 IS IMPORTANT AND WILL PRESENT TO THE COURT.

15 I THINK MR. BELL HAS DONE A GOOD JOB. YOU'VE SEEN
16 HOW THINGS MOVED THROUGH HERE THAT HE STOOD BY THE
17 CHARITABLE TRUST AND THAT'S WHAT WE'VE DONE, AND WHAT
18 WE'VE DONE IS MAKE A RESOLUTION THAT GOING INTO THE
19 MEDIATION I DIDN'T THINK WE POSSIBLY COULD GET, AND WE'RE
20 VERY SATISFIED WITH IT.

21 THERE IS ANOTHER ISSUE THAT I WANT TO BRING TO THE
22 COURT'S ATTENTION IS THAT BEFORE THE MEDIATION STARTED --
23 AND WE FILED A PLEADING ON THIS TODAY, YOUR HONOR, THAT I
24 UNDERSTAND THAT THE PROBATE JUDGE ROE IS NOT IN, AND, SO,
25 SHE'LL BE SENDING IT UP TO YOU -- IS THAT MR. BELL SAID

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF COMMON PLEAS
08-CP-02-1647

HENRY DARGAN MCMASTER, ET
AL.,

PLAINTIFFS
vs.

ALBERT H. DALLAS, ET AL.,
DEFENDANTS

TRANSCRIPT OF RECORD

NOVEMBER 25, 2008
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQ.
LORI CHRISTMAN, ESQ.
ATTORNEYS FOR THE THE HEIRS

ROBERT N. ROSEN, ESQ.
DAVID L. MICHEL, ESQ.
T. HEYWARD CARTER, ESQ.
S. ALAN MEDLIN, ESQ.
ATTORNEYS FOR THE TOMI RAE HYNIE BROWN

ADELE J. POPE, ESQ.
ROBERT L. BUCHANAN, JR., ESQ.
SPECIAL ADMINISTRATORS

A. PETER SHAHID, JR., ESQ.
ATTORNEY FOR THE GUARDIAN AD LITEM

1 IT'S FRIGHTENING. THE PROBLEM THAT WE SEE IS BY
2 APPOINTING A SPECIAL ADMINISTRATOR, A SPECIAL TRUSTEE, THE
3 SOLE PURPOSE IS TO RAMROD THIS SETTLEMENT THROUGH AND --

4 THE COURT: WELL, MR. BAILEY, I TAKE ISSUE WITH YOUR
5 TERMINOLOGY OF RAMROD THE SETTLEMENT THROUGH. THE
6 SETTLEMENT IS NOT GOING TO BE RAMRODDED THROUGH ANYBODY.
7 WHAT WE'RE TRYING TO DO IS OFFER EVERYBODY AN OPPORTUNITY
8 TO REVIEW THE WRITTEN DOCUMENT AND THEN COME BACK INTO
9 COURT TO SEEK APPROVAL AT WHICH TIME YOU CAN EXPRESS ANY
10 OBJECTIONS TO IT THAT YOU WISH.

11 IT MAY BE THAT WE WOULD HAVE TO SEE WHETHER WE'RE
12 GOING TO HEAR THAT REQUEST TO APPROVE THE SETTLEMENT
13 BEFORE WE HAVE THE EVIDENTIARY DUE PROCESS HEARING ON THE
14 PETITION FOR REMOVAL. IT WOULD CERTAINLY BE AN
15 OPPORTUNITY FOR MR. BELL TO ARGUE AND PRESENT HIS CASE ON
16 THE ISSUES THAT HE RAISED IN CHAMBERS, I.E., WHETHER OR
17 NOT A SETTLEMENT CAN BE APPROVED WITHOUT HIS CLIENTS'
18 INVOLVEMENT.

19 SO, IT WON'T BE RAMRODDED BY ANY STRETCH OF THE
20 IMAGINATION. IT WILL ONLY BE APPROVED OR DISAPPROVED
21 AFTER A VERY THOUGHTFUL DISCUSSION BY EVERYBODY AND
22 EVERYBODY HAVING AN OPPORTUNITY TO PRESENT TO ME THEIR
23 PROS AND CONS. SO, RAMROD -- I TAKE ISSUE WITH THAT
24 DESCRIPTION.

25 MR. BAILEY: WELL, YOUR HONOR, I VIEW IT AS

1 MRS. POPE: THROUGH DECEMBER 8 AND TODAY EXCEPT FOR
2 AN HOUR TOMORROW AND ONE PRESCHEDULED MEETING IS MY LAST
3 DAY IN THE OFFICE AND MY OFFICE WILL BE ESSENTIALLY CLOSED
4 UNTIL THE EIGHTH.

5 THE COURT: I AM CERTAINLY GOING TO GRANT THAT.

6 MRS. POPE: THANK YOU, JUDGE.

7 THE COURT: IT WOULDN'T WANT YOU SHOOTING ME.
8 ASSUMING AFTER DECEMBER 8 -- WE GOT CHRISTMAS. WOULD 30
9 DAYS AFTER THAT DECEMBER 8 BE PALATABLE?

10 MRS. POPE: WELL, JUDGE, I AM RETIRING FROM THE
11 PRACTICE OF LAW ON DECEMBER 31 AND I HAVE A TRIAL
12 SCHEDULED -- A WEEK-LONG SCHEDULE FOR DECEMBER 15 IN
13 ORANGEBURG, AND, SO, I'M CONCERNED THAT WE DON'T HAVE THE
14 PARTIES JOINED, AND, SO, I WOULD THINK 30 DAYS AFTER THE
15 PARTIES ARE JOINED, AND WE AGAIN -- WE HAVE CONCERNS ABOUT
16 THAT WHICH WE MAY HAVE TO RAISE IN SOME OTHER WAY BY
17 RECONSIDERATION OR OTHERWISE, BUT, JUDGE, NOBODY WANTS
18 MORE THAN MR. BUCHANAN AND ME TO SEE THIS CASE PROPERLY
19 SETTLED. WE ARE CONSIDERING WHETHER TO REPRESENT
20 OURSELVES PRO SE SINCE WE'VE BEEN SUED INDIVIDUALLY, BUT
21 WE WANT MORE THAN ANYONE THAT IF IT IS SETTLED THAT IT BE
22 SETTLED WITH PROPER DUE PROCESS AND WE HAVE GRAVE CONCERNS
23 ABOUT THAT.

24 SO, I WOULD SAY 30 DAYS AFTER ALL -- AFTER THE COURT
25 HAS DETERMINED WHO ARE THE NECESSARY PARTIES AND THOSE

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF AIKEN

2008-CP-02-1647

HENRY DARGAN MCMASTER, ET AL. :

-VS-

TRANSCRIPT OF RECORD

RUSSELL L. BAUKNIGHT, ET AL. :

JANUARY 30, 2009

AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DOYET A. EARLY, III, JUDGE.

A P P E A R A N C E S:

LOUIS LEVENSON, ESQUIRE

LORI CHRISTMAN, ESQUIRE

ATTORNEYS FOR THE HEIRS

ROBERT N. ROSEN, ESQUIRE

DAVID L. MICHEL, ESQUIRE

T. HEYWARD CARTER, ESQUIRE

S. ALAN MEDLIN, ESQUIRE

ATTORNEYS FOR TOMMIE RAE HYNIE BROWN

ADELE J. POPE, ESQUIRE

ROBERT L. BUCHANAN, JR., ESQUIRE

SPECIAL ADMINISTRATORS

A. PETER SHAHID, JR., ESQUIRE

ATTORNEY FOR THE GUARDIAN AD LITEM

1 TO ENTER INTO THE AGREEMENT.

2 IN ADDITION, THE ATTORNEY GENERAL'S OFFICE WAS
3 CONSIDERING THAT THEY WOULD, ONCE ENTERED INTO THIS
4 AGREEMENT, BECOME A PARTY TO SOME POTENTIAL RIGHTS UNDER THE
5 FEDERAL COPYRIGHT LAW THAT THEY MAY NOT HAVE RECEIVED ANY
6 PORTION OF WITHOUT ENTERING INTO THE AGREEMENT. SO WHEN
7 PUTTING TOGETHER THE LESS THAN 100 PERCENT PORTION FROM THE
8 ESTATE OR TRUST THAT'S THERE NOW PLUS THE FACT THAT THEY
9 WOULD SHARE IN FUTURE RIGHTS CREATED UNDER THE FEDERAL
10 COPYRIGHT LAW, THEY FELT THEY WERE MAKING A FAIR AND
11 REASONABLE SETTLEMENT OF THEIR CASE.

12 Q. AND IN RECEIVING THE INFORMATION FROM THE SOUTH CAROLINA
13 ATTORNEY GENERAL'S OFFICE, YOU PERCEIVED REAL CONCERNS FROM
14 THE REPRESENTATIVES THAT YOU SPOKE TO THAT THEY WERE WORRIED
15 THAT ULTIMATELY THE OUTCOME OF THESE LAWSUITS MIGHT RESULT IN
16 THEM RECEIVING LESS THAN THE AGREED AMOUNT?

17 A. WELL, THE SPECIFIC CONCERNS AND EXAMPLES THAT THEY
18 RAISED WITH RESPECT TO HOW THEY MIGHT NOT RECEIVE 100 PERCENT
19 OF FUNDING FOR THE CHARITABLE TRUSTS WERE IF MR. ROSEN'S
20 CLIENT WERE TO PREVAIL AND THAT HIS CLIENT RECEIVE A 50
21 PERCENT OR ONE-THIRD INTEREST IN THE ASSETS, THEN THE
22 CHARITABLE TRUST WOULD OBVIOUSLY RECEIVE LESS THAN 100
23 PERCENT FUNDING.

24 IF MR. SHAHID'S CLIENT WERE TO PREVAIL AS AN OMITTED
25 CHILD, THE ATTORNEY GENERAL'S OFFICE WOULD END UP WITH A

1 SITUATION WHERE THE CHARITABLE TRUST WAS FUNDED WITH LESS
2 THAN 100 PERCENT.

3 IF THE WILL CONTESTS THAT WERE BEING LITIGATED WERE
4 SUCCESSFUL, THE ATTORNEY GENERAL'S OFFICE WOULD SEE
5 ABSOLUTELY NOTHING GOING INTO THE CHARITABLE TRUST UNLESS
6 ULTIMATELY SOMETHING WAS FOUND TO HAVE ALREADY BEEN FUNDED
7 INTO A TRUST. THERE YOU HAVE TO LOOK AT WHAT -- HOW THAT
8 LITIGATION WITH RESPECT TO THE VALIDITY OF THE TRUST ITSELF
9 TURNED OUT. SO THERE WERE MANY SITUATIONS WHERE I WAS GIVEN
10 EXAMPLES WHERE THE CHARITABLE TRUST WOULD RECEIVE MUCH LESS
11 FUNDING THAN 100 PERCENT.

12 Q. WHAT INFORMATION DID YOU RECEIVE FROM MR. ROSEN'S
13 CLIENT'S REPRESENTATIVE THAT LED TO YOUR RECOMMENDATION?

14 A. WELL, THE COMMON THEME AMONGST THE SETTLING PARTIES WAS
15 SIMILAR TO WHAT THE ATTORNEY GENERAL PUT FORTH, THE RISKS AND
16 HAZARDS ASSOCIATED WITH LITIGATION AS WELL AS THE COPYRIGHT
17 BENEFITS UNDER FEDERAL COPYRIGHT LAW DOWN THE ROAD IN THE
18 FUTURE. MR. ROSEN'S CLIENT CERTAINLY HAD THE SIMILAR RISKS
19 OF LITIGATION. HIS CLIENT POSSIBLY WOULD NOT PREVAIL IN
20 EFFORTS TO SHOW THAT THE MARRIAGE WAS VALID, MAY NOT PREVAIL
21 IN GETTING EITHER THE ONE-THIRD OR 50 PERCENT SHARE SO THAT
22 THE POTENTIAL FOR GETTING NOTHING FOR MR. ROSEN'S CLIENT WAS
23 OUT THERE.

24 IN ADDITION, THAT SAME ISSUE WOULD AFFECT THE BENEFITS
25 RECEIVED UNDER THE FEDERAL COPYRIGHT LAW AND WHETHER OR NOT

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Adele J. Pope and Robert L. Buchanan, Jr.,
as Personal Representatives of the Estate
of James Brown, Deceased, and as
Trustees of the James Brown 2000
Irrevocable Trust,
and
James Brown Enterprises, Inc.
Plaintiffs,

C/A #: 2008-CP-02-322

COMPLAINT
(Jury Trial Demanded)

vs.

David G. Cannon, Albert H. Dallas,
Judge Alford A. Bradley, Joel A. Katz,
Greenberg Traurig, LLP and
Enterprise Bank of South Carolina,
Defendants.

COPY
ORIGINAL FILED
FEB 05 2008
AIKEN COUNTY
CLERK OF COURT

RESIDENCE OF THE PARTIES

1. Adele J. Pope and Robert L. Buchanan, Jr. are Personal Representatives of the Estate of James Brown, Deceased, and Trustees of the James Brown 2000 Irrevocable Trust appointed by Orders of this Court dated March 7, 2007 and November 20, 2007.

2. Prior to his death on December 25, 2006, James Brown was a resident of Aiken County. His Estate is currently being administered in Aiken County where the beneficiaries and relative interests of the beneficiaries of his Estate and Trust and the ownership of James Brown Enterprises, Inc. are in the process of determination.

3. James Brown Enterprises, Inc. is a South Carolina corporation.

4. David G. Cannon is a resident of Barnwell County, South Carolina, and is, on information and belief, the sole owner of DGC Associates.

Exhibit G

Calculation of Potential Costs, Fees and Expenses Deductible from the Proceeds of Greenberg Traurig's Proposed Pullman Group Bond Refinancing Transaction

Proposed Royal Bank of Scotland Loan	\$25,200,000.00
Less Pullman Group Bond Repayment	<u>20,100,000.00</u>
Net Proceeds	\$ 5,100,000.00

Less Potential Fees and Commissions as Per Exhibits C and D

(a) Pullman Group [Exhibit D, pp. 1-2, ¶ 2]	\$ 637,500.00
(b) Greenberg Traurig [Exhibit C, p. 2, ¶ 6]	265,000.00
(c) David G. Cannon [Exhibit D, p. 2, ¶ 7]	1,459,640.00
[Exhibit D, p. 2, ¶ 4]	255,000.00
(d) Albert H. Dallas [Exhibit D, p. 2, ¶ 6]	549,019.00
[Exhibit D, p. 2, ¶ 9]	255,000.00
(e) Intrigue Music [Exhibit D, p. 2, ¶ 3]	165,000.00
(f) Charles Bobbitt [Exhibit D, p. 2, ¶ 5]	<u>200,000.00</u>
Total Potential Fees and Commissions	<u>\$4,386,159.00</u>
Net Proceeds After Fees and Commissions	\$ 713,841.00

Less Estimated Expenses and Reserve Fund Based on 1999 Pullman Group Bond Transaction [Exhibit F]

(a) Legal Fees	\$ 250,000.00
(b) Copyright & Due Diligence	48,000.00
(c) Audit & Valuation	20,000.00
(d) Retainer for Royalty Audit	5,000.00
(e) Retainer for Trust Audit	2,500.00
(f) Rating Agency Fees	150,000.00
(g) Trustee's Commitment Fee & Legal	13,500.00
(h) Trustee's Counsel	8,000.00
(i) Investors Counsel	40,000.00
(j) Bowne Printing	10,000.00
(k) Soundscan	5,000.00
(l) KPMG	10,000.00
(m) Expenses, including overnight, messenger, fax, travel, phone	10,000.00
(n) Reserve Fund	1,260,000.00
Total Fees, Expenses and Reserve Fund	<u>\$1,832,000.00</u>

Negative Net Proceeds After Fees, Commissions and Expenses minus \$1,118,159.00

EXHIBIT G

MAY 31 2009

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

PROBATE COURT

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

ACCOUNTING
(Supplemental and Amended)

[] FINAL
[X] INTERIM #1A

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

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

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

*If a consolidated accounting, use this column.

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

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

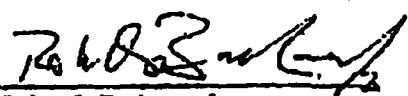
PAGE 1 OF 2

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

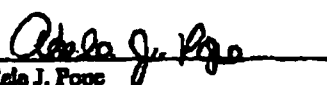
Filed: 5-20-2009
Sue H. Roe
Jud 274 Probate
By: [Signature]

[Signature]

MAY 22 2009

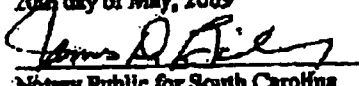
Signature: 

Name: Robert L. Buchanan, Jr.
Address: 212 Nowberry Street NW
P.O. Box 463
Aiken, South Carolina 29802-0463
Telephone(O): 803-649-2586

Signature: 

Name: Adela J. Pope
Address: 1218 Taylor Street
PO Drawer 7125
Columbia, SC 29202-7125
Telephone(O): 803-779-1870

SWORN to before me this
20th day of May, 2009

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/12/15

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

PAGE 2 OF 2

2742

0946



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) 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 Henry Dargan McMaster, In
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
indiydually 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

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

**DEFENDANT/COUNTER-
CLAIMANT ADELE POPE'S
NOTICE OF MOTION AND
MOTION TO COMPEL**

and
ALAN WILSON, in his capacity as Attorney
General of the State of South Carolina; TOMMIE
RAE BROWN, individually and on behalf of her
minor child, JAMES BROWN, 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,

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

FILED
2016 AUG 15 PM 1:29
JEANETTE W. HODGINS
C.C.P. & G.S.

Defendant/Counter-claimant Adele Pope (hereinafter referred to as "Pope") hereby moves for an Order from this Court directing that the counsel of record in this case for the named parties provide sworn verifications from each of their clients for the Interrogatory Answers served on

Counsel for Pope on July 21, 2016. Rule 33(a), SCRPC expressly states, in pertinent part, as follows: "Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reason for objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections signed by the attorney making them."

The Plaintiff parties did not provide sworn verifications for their Interrogatory Answers.

The undersigned communicated with opposing counsel and has attempted in good faith to resolve the matter contained herein prior to filing this motion.

This motion is based on the South Carolina Rules of Civil Procedure, applicable statutory and case law, the entire record herein, and such additional affidavits and/or memoranda as shall be presented prior to the hearing on this matter. For the reasons set forth above, Pope's Motion should be granted.

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
Smith, Bundy, Bybee & Barnett, P.C.
1037 Chuck Dawley Blvd., Suite 100
Post Office Box 1542
Mount Pleasant, South Carolina 29465
Telephone: (843) 881-881-1623
Facsimile: (843) 881-4406
whbesq@s3blaw.com

Adam T. Silvermail
Moses & Brackett
1333 Main Street, Suite 260
Columbia, South Carolina 29201
Telephone: (803) 461-2328
Facsimile: (803) 461-2309
asilvernail@mkb-law.com
Attorneys for Adele J. Pope

Mt. Pleasant, South Carolina
August 11, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2016 AUG 15 PM 1:34
JANETTE M. HODGINS
C.C.P. & G.S.

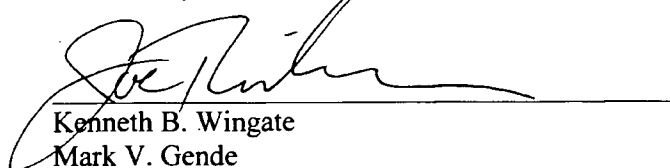
**MOTION FOR PROTECTIVE ORDER
QUASHING THE NOTICE OF
DEPOSITION OF VENISHA BROWN**

TO: BILL BUNDY, ESQUIRE, ADAM T. SILVERNAIL, ESQUIRE AND DARYL L. WILLIAMS, ESQUIRE, ATTORNEYS FOR DEFENDANT POPE, AND TO THE DEFENDANT ABOVE-NAMED:

PLEASE TAKE NOTICE THAT the undersigned attorneys for the Plaintiffs will move before a presiding judge for the Richland County Court of Common Pleas on the tenth (10th) day after service thereof, or as soon thereafter as may be heard, for a Protective Order pursuant to Rule 26(c), SCRCP quashing the Notice of Deposition of Venisha Brown, unilaterally scheduled by Defendant Pope for August 23, 2016. The grounds for this motion are that counsel for the Plaintiffs is informed that Venisha Brown is currently incarcerated in Georgia, and therefore her deposition cannot proceed as noticed. Therefore, pursuant to Rule 30(a)(2), SCRCP, a protective order is appropriate in this matter regarding the unilateral notice by Defendant Pope. Pursuant to Rule 11, SCRCP, Counsel certifies that he has communicated with opposing counsel prior to filing this motion, and a good faith effort has been made to resolve this matter. This motion may be further supported by affidavits, deposition testimony, or a memorandum of law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Joseph O. Thickens

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
August 11, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2016 AUG 26 PM 1:43
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

MOTION FOR PROTECTIVE ORDER
AS TO THE DEPOSITION OF HENRY
D. MCMASTER

Pursuant to Rules 26(c) and 30(j)(3), SCRCP, the undersigned counsel for Henry D. McMaster, former Attorney General for the State of South Carolina, moves for a protective order to preserve any objections made during his deposition on August 18, 2016, on the grounds of attorney-client or work product privileges and any directions given to him not to testify about such matters. Mr. McMaster preserves any other objections made on his behalf during the deposition although a motion on this ground is not required.

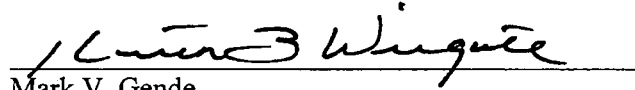
The transcript of the deposition is not yet available, but undersigned counsel will file it in support of this motion when it is available, and after Mr. McMaster has had the opportunity to read, note any changes, and sign the transcript. Counsel for Mr. McMaster will file a memorandum with the deposition transcript identifying those parts of the deposition in which objections were made consistent with this motion. Counsel will file only the typed deposition transcript, but will also file the video tape of the deposition or an audio recording thereof if the Court requests such formats.

Therefore, Mr. McMaster requests that this Court issue a protective order preserving his objections, and barring further questioning by counsel for Defendant about such matters.

Undersigned counsel certifies that consultation with opposing counsel pursuant to Rule 11, SCRCP, would serve no useful purpose.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Kenneth B. Wingate", is written over a horizontal line.

Mark V. Gende

Kenneth B. Wingate

Joseph O. Thickens

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
August 25, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

and

ALAN WILSON, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

RICHLAND COUNTY
FILED
2016 AUG 26 PM 3:46
JEANETTE W. MCBRIDE
C.C.P. & G.S.

DEFENDANT/COUNTERCLAIMANT
ADELE J. POPE'S
RETURN TO MOTION OF
PLAINTIFF FOR PARTIAL
SUMMARY JUDGMENT

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

Defendant/Counterclaimant Adele J. Pope (hereinafter sometimes referred to as "Pope")

opposes the motion of Plaintiffs for partial summary judgment on Pope's counterclaims for the reasons set forth below:

PRELIMINARY STATEMENT

It is the Plaintiffs themselves who articulated nearly six (6) years ago to the day in this very action why this motion for partial summary judgment must be denied. In their return to the Defendants' motion to dismiss this action, the Plaintiffs stated:

"However, not one of the lawsuits brought in relation to this [Brown] Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate."

Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss dated August 27, 2010, p. 5. Indeed, the Plaintiffs convinced Judge Manning of their position and Judge Manning, in denying Pope's motion to dismiss this action, ruled as follows:

"A review of this Order [the May 26, 2009 Settlement Order] indicates that these cases are not similar in any significant respect to the case at bar. Not one of the lawsuits brought in relation to this Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate. Third, to the extent other claims were made, they were brought against Defendants in their representative capacity as P.R. or Trustee, while the claims in this case were brought against the Defendants individually."

Order denying Motion to Dismiss filed November 9, 2010.

The Plaintiffs now wish to reverse their position, upon which they were previously successful, and seek a ruling from this Court in this very same case that "Pope's counterclaims are barred by the doctrine of collateral estoppel because the Supreme Court's opinion in Wilson v. Dallas [the appeal arising out of the May 26, 2009 Settlement Order] conclusively establishes the validity of Plaintiffs' claims in this action." Plaintiffs' Brief in Support of Motion for Partial Summary Judgment dated May 17, 2016, p. 2.

As will be shown in this Memorandum in Opposition to the Plaintiffs' Motion for Partial Summary Judgment, the Plaintiffs' position is wholly inconsistent with the law of South Carolina

as well as their own previous positions for which they received the benefit of an Order adopting those positions and allowing them to proceed with this action in the first instance. The Motion for Partial Summary Judgment should be denied.

ARGUMENT

I. Summary Judgment Standard

Summary judgment is a drastic remedy which should be cautiously invoked so that no person will be improperly deprived of a trial of disputed factual issues. See *Baughman v. American Tel. and Tel. Company*, 306 S.C. 101, 112 S.E.2d 537, 543, (1991). In determining whether to grant summary judgment, pleadings and documents on file must be liberally construed in favor of non-moving party who must be given benefit of all favorable inferences that might be reasonably drawn from the record. See *Bates v. City of Columbia*, 301 S.C. 320, 391 S.E. 2d 733 (Ct. App. 1990). If triable issues exist, those issues must go to the jury. *Rothrock v. Coplan*, 305 S.C. 402, 409, S.E. 2d 366 (1991). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of law. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (1997); *Baugus v. Wessinger*, 303 S.C. 412, 401, S.E. 2d 169 (1991). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Tupper, Supra*; *Koester v. Carolina Rental Ctr. Inc.*, 313 S.C. 490, 443 S.E.2d 392 (1994); *Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577 (1990). See also, *Hamilton v. Miller*, 301 S.C. 45, 389 S.E.2d 652 (1990) (Trial court should deny summary judgment if there is a genuine issues as to conclusions or inferences to be drawn from undisputed evidentiary facts).

II. Summary Judgment is Premature

This action was commenced on May 19, 2010 by the filing and service of the Summons and Complaint herein.

Pope and Robert L. Buchanan, Jr. ("Buchanan"), who was also named as a Defendant herein, timely answered and asserted counterclaims against all Plaintiffs for:

1. Abuse of Process;
2. Civil Conspiracy;
3. Fraud Under S.C. Code Ann. Section 62-1-106;
4. Attorneys' Fees; and
5. Intentional Interference with Contract.

Plaintiffs defaulted on the counterclaims, but were relieved from their default by Order of the Honorable L. Casey Manning, dated October 12, 2015.

Pope noticed the depositions of several Plaintiffs beginning in Spring 2011, but Plaintiffs refused to appear, instead moving for protective Orders on all deposition notices issued by Pope or Buchanan. The first Plaintiff's deposition was taken in December 2012, and another was deposed in January 2013. Beginning in March 2013, Plaintiffs sought a stay of this action related to the alleged "judicially created conflict" of Sweeney, Wingate and Barrow, P.C., which has been sole counsel of record for all Plaintiffs since the commencement of this case. As a result of their counsel's alleged conflict, Plaintiffs again refused to appear at depositions until the stay request was lifted on April 8, 2016.¹ Plaintiff Tommie Rae Brown was deposed on June 16 and 17, 2016. Lt. Gov. Henry McMaster, in his individual capacity, was deposed on August 18,

¹ Defendant's Motion to Alter, Amend and/or Vacate Judge Manning's Order granting a stay and Affidavit of Adele J. Pope supporting that motion are incorporated herein by reference.

2016. Other Plaintiffs have refused to show up for properly noticed depositions and many others have yet to be scheduled and taken. Indeed, discovery in this action was begun anew by Order of this Court on April 8, 2016. Each deposition that has been taken by counsel for Pope since the lifting of the stay was/is incredibly difficult to schedule and is subject to motions for protective orders that have not yet been heard by the Court thereby preventing Pope from even taking those depositions in full.

Pope has identified dozens of potential witnesses in her interrogatory answers, and Plaintiffs previously provided a witness list naming more than a dozen witnesses.² Pope expects a number of non-party witness depositions, following the completion of the long-delayed party depositions. Written discovery is also not yet complete—including outstanding discovery asking the Plaintiffs to fully identify the damages they are claiming in this action. The Scheduling Order entered by the Court does not even require the Plaintiffs to name their expert witness until November 30, 2016.

Because Pope has not had a full and fair opportunity to undertake discovery, particularly the depositions of Plaintiffs, their experts and other key witnesses, summary judgment should be denied. “[S]ummary judgment should not be granted until the opposing party has had a full and fair opportunity to complete discovery.” *Baughman v. American Tel. and Tel. Company*, 306 S.C. 101, 112 410 S.E.2d. 537, 543, (1991).

Pope is entitled to a full and fair opportunity to complete all appropriate discovery prior to the Court’s considering Plaintiffs’ motion.

III. Collateral Estoppel Does Not Bar any of Pope’s Counterclaims

² The Plaintiffs have failed to verify the limited interrogatories they have responded to in this action as required by Rule 33, SCRCP. This is the subject of an outstanding motion to compel. However, it also highlights both the fact that discovery in an early stage and the fact that the limited discovery that has been answered by the Plaintiffs fails to be complete and comply with the Rules of Civil Procedure.

“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.” *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). “The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” *Id.* “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue.” *Id.* (quoting *Snavelly v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008)). “The doctrine of collateral estoppel should not be rigidly or mechanically applied.” *Id.* at 555, 684 S.E.2d at 782.

a. *Wilson v. Dallas*

Plaintiffs argue that South Carolina Supreme Court’s affirmance of Buchanan and Pope’s removal as PR/Trustees in *Wilson v. Dallas*, 743 S.E.2d 746 (2013), collaterally estops her from pursuing her counterclaims herein. This argument completely overlooks that Pope’s counterclaims are based on the Plaintiffs’ conduct—not Pope’s conduct. The Supreme Court simply did not decide in *Wilson v. Dallas*—nor any other case for that matter—whether or not the Plaintiffs’ in this action are liable for abuse of process, civil conspiracy, intentional interference with contract, violation of S.C. Code Ann. Section 62-1-106, or an award of attorneys’ fees in this case pursuant to S.C. Code Section 62-7-1004. Indeed, the record in *Wilson* closed in 2009. The filing of this action took place months later. Plaintiff could thus not have had a “full and fair opportunity to litigate” the issues put forth in her counterclaims during

the prosecution of the *Wilson* appeal because it both had nothing to do with the present counterclaims and the record was closed.

Plaintiffs' again quote the single paragraph in the *Wilson* opinion which acknowledges certain complaints not ruled upon in the lower Court. The quoted paragraph is dicta, at best, and the Supreme Court never made any finding that Pope or Buchanan breached any duty to any Plaintiff.

Instead, the issues decided in *Wilson* were:

1. Will the Circuit Court's approval of the McMaster settlement which dismembered James Brown's estate plan be reversed? [The Supreme Court answered this in the affirmative.]
2. Will the Circuit Court's decision to replace Pope and Buchanan as PR/Trustees prior to a hearing on their removal be reversed?³ [The Supreme Court declined to do so.]

The Supreme Court never addressed Pope's counterclaims in this action in *Wilson*. Perhaps even more fundamental to the fallacy of Plaintiffs' current position is that it misapprehends the relevant facts and the nature of the law giving rise to the counterclaims. The main thrust of the Plaintiffs' argument is that *Wilson v. Dallas* conclusively established that the Plaintiffs had numerous legitimate reasons for bringing this action. This, of course, is inconsistent with their previous position in this action. It is also not, in fact, true. And, finally, without conceding its truth, it would not matter under the law for a counterclaim of abuse of process or any other counterclaim made herein. "To cause process to issue without justification is an essential element of malicious prosecution, but not of abuse of process. In the latter, the issuance of the process may itself be justified; it is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 695

³ The lower Court's Order Approving Settlement Agreement specifically noted that the "court ha[d] not heard the [removal action] pending the settlement approval." (May 26, 2009 Order at 9).

(1967); see also *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (Ct.App. 2008)(cert. den'd June 24, 2009). Moreover, whether or not Plaintiffs had legitimate reasons for bring this lawsuit (an allegation which we deny) has nothing to do with whether or not there could ever be facts giving rise to the other counterclaims.

None of the issues in the instant case were “directly determined by” the Supreme Court in *Wilson*. Further, Buchanan and Pope were precluded from participation in James Brown issues after May 8, 2013. Pope is therefore not collaterally estopped from pursuing the counterclaims which are based on issues not “directly determined by” the *Wilson* Court.

a. The Forlando Federal Case

Plaintiffs further argue that the findings of the Honorable William O. Bertelsman in *Brown v. Pope and Buchanan*, 3:08-cv-00014-WOB (the “Forlando Federal Case”) collaterally estop Pope from pursuing her counterclaim for civil conspiracy. As an initial matter, Pope notes that none of the Plaintiffs were parties to the Forlando Federal Case other than the James Brown 2000 Irrevocable Trust. Although common parties are no longer required to establish collateral estoppel, the vast difference in the parties to the two actions should be taken into consideration in this Court’s analysis.⁴

Regardless of whether the Forlando Federal Suit could bring about collateral estoppel as to any issue in this case, it does not. The conspiracy presented in that case related to the 2008 filing of a Federal case. Although Forlando is identified as a part of the civil conspiracy at issue in Case 4900, Pope alleges herein that all Plaintiffs conspired to cause damage to Pope by threats and filing and prosecuting this action and taking other actions to force Pope and Buchanan to drop their appeal of the McMaster settlement.

⁴ Any comparison to the Forlando case is further complicated by the fact that Forlando dropped all of his claims against the 2000 Trust, Buchanan and Pope in 2012, then made the false claim to the Court that he had no assets and no expectation of assets in the James Brown litigation unless his father died.

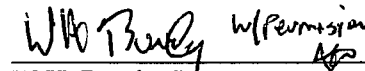
Plaintiffs identify only causes of action set out in the Forlando Federal suit and this case. They do not attempt to identify what issues they assert are precluded by the decision in the Federal case. Because the issues in the two cases differ, the Federal Court did not directly determine any issue common to Case 4900.

Conclusion

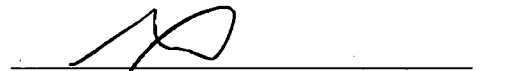
Summary judgment in this matter is premature, and the Plaintiffs' motion must be denied in light of ongoing and incomplete discovery, which has been delayed for years despite Pope's continuous efforts to proceed with depositions and other discovery. In the event the Court proceeds to the merits of Plaintiffs' motion, it must still be denied. As set out above, Plaintiffs' argument that Pope is collaterally estopped as a result of *Wilson* or the Forlando Federal Case is incorrect. Summary judgment should therefore be denied; discovery should be concluded; and this matter should proceed to trial.

This return is based on the Affidavit of Adele J. Pope filed herewith; the depositions of C. Havird "Sonny" Jones and Mary Frances Jowers taken in Aiken County Case No. 2013-CP-02-1337; the documents listed on Schedule A of the Affidavit of Pope, of which the Court is asked to take mandatory judicial notice under Rule 201, SCRE; the August 18, 2016 deposition of Henry D. McMaster; and such additional documents as shall be presented by Pope prior to or at the hearing on this matter.

Respectfully submitted,

 w/permission

W.H. Bundy, Jr.
M. Brent McDonald
SMITH, BUNDY, BYBEE & BARNETT, P.C.
1037 Chuck Dawley Blvd., Suite 100
Post Office Box 1542
Mount Pleasant, South Carolina 29465
Telephone: (843) 881-881-1623
Facsimile: (843) 881-4406
whbesq@s3blaw.com


Adam T. Silvernail
LAW OFFICE OF ADAM T. SILVERNAIL, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

August 26, 2016

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document on Plaintiff/Counterclaim Defendants on August 26, 2016, by depositing a copy of the same into the United States Mail, First-class postage prepaid, addressed as follows:

Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Joseph O. Thickens, Esquire
Sweeny, Wingate & Barrow, P.C.
PO Box 12129
Columbia, South Carolina 29211

RICHLAND COUNTY
FILED
2016 AUG 26 PM 3:46
JANETTE W. MCBRIDE
C.C.P. & G.S.


Adam T. Silvernail

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in is capacity
as Attorney General of the State of
South Carolina, and others

and

ALAN WILSON, in his capacity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

)

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

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MOTION OF DEFENDANT TO
DISMISS ALL CLAIMS OF
PLAINTIFF VENISHA BROWN
UNDER RULE 41(B)

RICHLAND COUNTY
FILED
2016 SEP 19 AM 8:44
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

TO: VENISHA BROWN AND RUSSELL L. BAUKNIGHT ON BEHALF OF VENISHA BROWN, and
Sweeny, Wingate and Barrow, P.C. ("Wingate"), their counsel.

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon
thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope")
will move before the Honorable Doyet A. Early, III for an Order Involuntarily Dismissing the
Complaint of Venisha Brown ("Venisha") and Russell L. Bauknight ("Bauknight") as agent
for Venisha Brown in this action under Rule 41 SCRPC, especially Rule 41(b).

The Grounds of this Motion are that involuntary dismissal under Rule 41 is
appropriate and just because Venisha has failed to prosecute her claims and failed to
comply with the South Carolina Rules of Civil Procedure.

The history of Venisha's failure to prosecute this action is set out in part below.

On May 19, 2010 Venisha filed the Complaint in this action ("Richland 4900"). The Complaint contained vitriolic and false claims against Buchanan and Pope.

On or about July 18, 2012, the Estate of James Brown paid or advanced funds for Buchanan to release his Counterclaims against Venisha herein.

On or about August 3, 2012, Pope served Venisha with an Offer of Judgment herein. Thereafter counsel for Venisha filed the Offer of Judgment and moved to strike it.

On or about March 26, 2016 Judge Early was assigned to Richland 4900.

On June 23, 2016, Defendant noticed Venisha's deposition, but Venisha's counsel filed a Motion for Protective Order on her behalf.

After a hearing held on August 29, 2016, Judge Early ordered Venisha to appear at her deposition which was scheduled for September 22, 2016.

On September 12, 2014, Venisha's counsel notified Judge Early that he was unable to locate Venisha and requested a telephone conference pursuant to Judge Early's Order setting Venisha's deposition.

A telephone hearing related to Venisha's anticipated failure to comply with the Order to appear at deposition was held before Judge Early on September 14, 2016. Present in addition to Jg. Early were: Joseph O. Thickens, Esq., counsel of record for Venisha and Bauknight as her agent; Walter H. Bundy, Jr., Esq., and Adam Silvernail, Esq. Counsel provided no acceptable reason for Venisha's anticipatory violation of Jg. Early's Order for her to appear at deposition. Nor is there any excuse or for Venisha's multiple breaches of the SCRCF over the last six years.

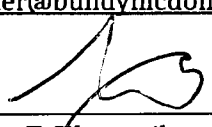
As a result of Venisha's failure to prosecute her claims, Pope asks that Venisha's

Complaint, and that of Bauknight as her Agent be dismissed with prejudice pursuant to Rule 41(b) and Pope's Counterclaims and all relief sought against Venisha proceed.

This motion is based on the Complaint herein; the Motion of Venisha to Intervene in the FOIA suit consolidated herewith, now on appeal; the Offer of Judgment of Adele J. Pope to Venisha filed herein on or about August 3, 2012; and the Affidavits of Adele J. Pope and Robert L. Buchanan, Jr. ("Buchanan") on file herein; the Notices of Deposition to Venisha served herein; the Order of the Honorable Doyet A. Early, III, directing Venisha to appear at deposition; and the September 14, 2016 statement of Venisha's counsel that Venisha will not appear at her Court-ordered deposition scheduled for September 22, 2016.

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
(888) 552-1559
walter@bundymcdonald.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

September 14, 2016

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

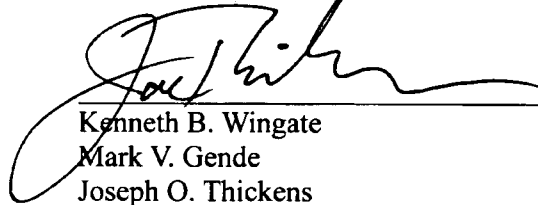
RICHLAND COUNTY
FILED
2016 NOV 22 PM 3:51
JENNIFER L. HARRIS
C.C.P. # 65

**MOTION FOR
CONFIDENTIALITY ORDER**

PLEASE TAKE NOTICE THAT the undersigned, as attorneys for the Plaintiffs, will move before the presiding Judge of the Richland County Circuit Court, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Confidentiality Order pertaining to all documents produced in the course of discovery in the above-captioned matter, 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. A Proposed Confidentiality Order with associated attachments is attached hereto as Exhibit 1.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Joseph O. Thickens

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

November 22, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Case No.: 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Alan Wilson, in is capacity
as Attorney General of the State of
South Carolina, and others

RETURN OF AIKEN 2013-CP-02-1337 PLAINTIFF
TO JOINT MOTION TO CONSOLIDATE
EXPERT DISCOVERY

and

ALAN WILSON, in his capcity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

2017 JAN 20 AM 8:36
RICHLAND COUNTY
FILED
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

AND

COUNTY OF AIKEN

Case No. 2013-CP-02-1337

Adele J. Pope,

Plaintiff,

v.

RETURN OF AIKEN 2013-CP-02-1337 PLAINTIFF
TO JOINT MOTION TO CONSOLIDATE
EXPERT DISCOVERY

Estate of James Brown and The James Brown
2000 Irrevocable Trust,

Defendants.

TO: PLAINTIFFS IN RICHLAND COUNTY CASE 2010-CP-40-4900 AND DEFENDANTS IN AIKEN

COUNTY CASE 2013-CP-02-1337, ATTORNEY GENERAL ALAN WILSON AND COUNSEL OF RECORD.

Pro Se plaintiff in the above-referenced Case 2013-CP-02-1337 opposes the motion of Alan Wilson, in his Capacity as Attorney General of the State of South Carolina, and other Plaintiffs in Richland County Case 2010-CP-40-4900 and Defendants in Aiken County Case 2013-CP-02-1337 to consolidate discovery of expert witnesses in this Case for each and all of the following reasons:

1. The earlier motion of AG Alan Wilson and others to consolidate discovery in these two cases was denied; no motion to alter or amend was filed; and non-consolidation is the law of the case.
2. Based on the sworn testimony of Lt. Governor Henry McMaster in 2016, any effort of the law firm of Sweeny, Wingate and Barrow, PA to move or otherwise act in Richland County Case 2010-CP-40-4900 on behalf of the South Carolina AG is both unconstitutional and improper.
3. Based on said sworn testimony of former AG, and now Lt. Governor, Henry McMaster, the Motion, to the extent it is being made by Richland County Plaintiff Russell L. Bauknight claiming to act "on behalf of the Attorney General of South Carolina" is both unauthorized and improper.
- 4.. Richland County Plaintiff James Brown Legacy Trust, having declared to Judge Early that it no longer exists, and having benefitted from such representation, is estopped to move for any relief in the Richland County case or elsewhere
5. The motion is made in bad faith in an attempt to waste \$500,000.00 or more of funds James Brown left to The James Brown "I Feel Good" Charity which AG Wilson has a duty to protect, and not to dissipate, for the benefit of Tommie Rae Hynie ("Hynie"), her son and others.
6. The motion is made in bad faith in an attempt to mask the fact that in the six and a half years since Richland 2010-CP-40-4900 was filed twenty experts have opined that the actions of

Robert Buchanan, Jr. and Adele Pope were proper, and none have opined in either case that any action they took was improper.

7. The motion is made to prevent return of \$2 million prematurely and improperly disbursed to Hynie and Levenson Will/Trust contestants which Plaintiff AG Wilson should have stopped or reversed.

8. The motion is made to try to secure \$20 million in unearned and undeserved legal fees for Louis Levenson, Esq., David Bell, Esq., and counsel for Hynie.

This motion is based on the Affidavit of Adele J. Pope dated January 17, 2017 filed herewith; the filed of the designated attached to that Affidavit; and such other documents as shall properly come before the Court at the hearing on this matter.

CONCLUSION

The motion should be denied as brought in bad faith for an improper purpose. Aiken County Plaintiff should be granted attorneys' fees and costs for providing this response.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Plaintiff *pro se*, Aiken County Case 2013-CP-02-1337

January 17, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN 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,

Plaintiffs

v.

Adele J. Pope,

Defendant

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT**

Civil Action No. 2010-CP-40-4900

FILED
2011 MAR -6 AM 11:46
JEANNETTE W. HOBBS
C.C.P. & G.S.

**MOTION FOR
PROTECTIVE ORDER
CONCERNING CERTAIN QUESTIONS
POSED TO THE WITNESS DURING
THE DEPOSITION OF DEANNA
BROWN-THOMAS**

PLEASE TAKE NOTICE THAT pursuant to Rule 30(J)(3) SCRPC, the undersigned, as attorneys for the Plaintiffs, will move before the Honorable Doyet A. Early, III, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order concerning certain questions posed by defendant's counsel to Mrs. Deanna Brown Thomas at her deposition taken March 1, 2017. This motion is made within five business days of the objections.

On five occasions, counsel for Mrs. Brown-Thomas directed her not to answer certain questions on the basis that the questions invaded the attorney-client privilege. A transcript of the deposition is not yet available, and counsel will supplement this motion with deposition excerpts, once a transcript has been produced.

Generally speaking, without the benefit of the exact wording of the transcript, the five occasions objected to include defendant's counsel inquiring into conversations between Mrs. Brown-Thomas and her attorney(s): (1) a conversation with her attorney about the Aiken will contest matters; (2) a series of questions concerning an unidentified settlement agreement where she only knows of the terms through discussions with her counsel; (3) a conversation she had with her counsel about due diligence in managing the Estate of James Brown; (4) a question about a section of Plaintiff's Complaint in 4900 where defense counsel asked her what her attorney told her about the section; and (5) a question at a meeting where she was represented by her attorney and certain issues were discussed.

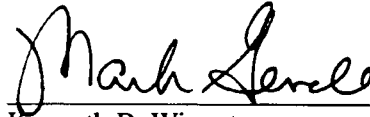
Counsel for Mrs. Brown-Thomas requests the Court to protect her from responding to any of these areas of questioning, because they invade her attorney-client privilege.

This Motion may be further supported and supplemented by a Memorandum of Law and/or affidavits.

The undersigned represents that consultation with the opposing party would serve no useful purpose and good faith attempts to resolve the issues were made orally at the subject deposition.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in cursive script, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

Everett A. Kendall, II

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

March 3, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Russell L. Bauknight, et al,)
Plaintiffs,)
v.)
Adele Pope,)
Defendant,)

IN THE COURT OF COMMON PLEAS

No. 2010-CP-40-4900

**REPLY TO
SUPPLEMENTAL RETURN TO
ATTORNEY GENERAL'S
MOTION TO BE DROPPED
AS PARTY**

2017 APR 12 PM 2:59
CLERK OF COURT
RICHLAND COUNTY

Defendant Pope contends that the Attorney General cannot be dropped on the ground of sovereign immunity because it was not pleaded as an affirmative defense in his 2010 Answer to the Counterclaim. The Attorney General is not relying on sovereign immunity. He is asserting the different grounds of absolute prosecutorial / quasi-judicial immunity, and as argued in his Supplemental Memorandum, those grounds are covered by the Attorney General's Failure to State a Claim defense asserted in the 2010 Answer.

Absolute immunity and sovereign immunity are different as recognized by our Supreme Court in *Williams v. Condon*, 553 S.E.2d 496, 508, 347 S.C. 227, 248-49 (S.C.App.,2001).

In 1985, our Supreme Court decided *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741. This case is significant because the Court largely abolished the doctrine of sovereign immunity. . . .The duties of a prosecutor fall into the exceptions enumerated by *McCall* and § 15-78-60. The case law cited throughout this opinion clearly supports the proposition that a prosecutor's typical duties are "judicial" or "quasi-judicial" in nature. Accordingly, this Court finds a prosecutor, in his official capacity, is immune from a Tort Claims Act suit involving "judicial" or "quasi-judicial" acts, provided a defendant prosecutor raises the affirmative defense of sovereign immunity in his return. *See Tanner v. Florence City-County Bldg. Comm'n*, 333 S.C. 549, 511 S.E.2d 369 (Ct.App.1999) (holding sovereign immunity is an affirmative defense that must be pled).

553 S.E.2d 496, 508. As stated in, *Office of State Attorney, Fourth Judicial Circuit of Florida v. Parrotino*, 628 So.2d 1097, 1099 (Fla.,1993), “[t]o summarize, judicial and prosecutorial immunity in Florida long have existed apart from sovereign immunity, have an independent basis in law and policy, and have not been waived.” See also, *MK Ballistics Systems v. Simpson*, 2007 WL 2022025, at *3 (N.D.Cal.,2007)(their tests are different); *State ex rel. Dept. of Justice v. District Court of Eighth Judicial Dist. In and For Cascade County*, 560 P.2d 1328, 1330, 172 Mont. 88, 92 (Mont. 1976)(“different concepts”).

Although *Williams* said “sovereign immunity” should be raised by a prosecutor as an affirmative defense in response to a Tort Claims Act suit, it had to have meant prosecutorial / quasi-judicial immunity because “[t]he defendants sought dismissal pursuant to the defenses of prosecutorial immunity and the immunity afforded them under the South Carolina Tort Claims Act.” Moreover, Pope did not bring her counterclaims under the Tort Claims Act as did the *Williams* plaintiff.

Regardless of the differences between sovereign immunity and prosecutorial immunity, this issue may be argued now. Immunity is an affirmative defense under South Carolina case law¹, but some cases indicate that it may be covered by the affirmative defense of failure to state a claim or cause of action or raised in a later pleading after the answer. Although Plaintiff says that South Carolina law “expressly and unequivocally requires the defense of sovereign

¹ Although no case expressly holds that “prosecutorial immunity” or “quasi-judicial immunity” are affirmative defenses, *Williams* indicates that they would be found to be such defenses in its reference to the affirmative defense of “sovereign immunity” discussed above.

immunity to be pled,”² our case law is more flexible as to specifics of asserting immunity, and we cited two cases from other jurisdictions that support that immunity is covered by the Attorney Generals’ affirmative defense of failure to state a claim under Rule 12(B)(6), SCRCF, in his Answer to the Counterclaim.³ *Plyler v. Burns*, 647 S.E.2d 188, 195, 373 S.C. 637, 649 (2007), held that “although [a defendant] failed to include the affirmative defense of common law judicial immunity in its motion to dismiss, [the defendant’s] inclusion of the defense in the supporting memorandum was sufficient to comply with the intent of Rule 8(c), SCRCF, in this case.” Pope “has not demonstrated that she suffered prejudice or unfair surprise in any way.” *Plyler*, 647 S.E.2d at 195. Accordingly, the Attorney General’s claim of prosecutorial and quasi-judicial immunity should be considered now.

Prosecutorial / quasi-judicial immunity is a very important doctrine. As stated in *Parrotino*, *supra*, 628 So. 2d at 1098-99.

American law has long recognized that prosecutorial immunity from suit rests on the same footing as the immunity conferred upon judges and grand juries. *Imbler v.*

²Pope cites *Tanner v. Florence City-County Bldg. Com’n*, 511 S.E.2d 369, 371, 333 S.C. 549, 552 (Ct.App.,1999) overruled in part, on other grounds, *Olson v. Faculty House of Carolina, Inc.*, 580 S.E.2d 440, 444, 354 S.C. 161, 168 (2003), for the pleading requirement, but *Tanner* is a Tort Claims Act case, and possibly suggests that raising the ground in a motion for summary judgment would be sufficient. 511 S.E. 2d at 371 (“The Department has not pled sovereign immunity in its answer, nor did it mention any exceptions to the waiver of immunity contained in the South Carolina Tort Claims Act in its motion for summary judgment.”). *Plyler v. Burns*, 647 S.E.2d 188, 195, 373 S.C. 637, 649 (2007), *infra*, shows that a memorandum may be sufficient.

³ *Ramsey v. City of Forest Park*, 418 S.E.2d 432, 433, 204 Ga.App. 98, 99 (Ga.App.,1992)(“an answer pleading a defense of failure to state a claim at least would be minimally sufficient to give notice of substantive immunity defenses. . . .”); *Baker v. Sudo*, 240 Cal.Rptr. 38, 42, 194 Cal.App.3d 936, 942 (Cal.App. 4 Dist.,1987)(affirmative defense of failure to state a cause of action sufficient to raise statutory immunity)

Pachtman, 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976). This particular type of immunity embraces persons who exercise a judicial or quasi-judicial function; and the immunity rests on the sound public policy that a strict guarantee of immunity is necessary to preserve the effectiveness and impartiality of judicial and quasi-judicial offices. Both judges and prosecutors alike should be free from the threat of suit for their official actions, because permitting suit in this situation could deter a full and unfettered exercise of judicial or quasi-judicial authority.

Office of State Attorney, Fourth Judicial Circuit of Florida v. Parrotino, 628 So.2d 1097, 1098–99 (Fla.,1993).

As stated by the United States Supreme Court in *Imbler v. Pachtman*, 424 U.S. 409, 422–24 (1976)

The common-law immunity of a prosecutor is based upon the same considerations that underlie the common-law immunities of judges and grand jurors acting within the scope of their duties.²⁰ These include concern that harassment by unfounded litigation would cause a deflection of the prosecutor's energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust. One court expressed both considerations as follows:

“The office of public prosecutor is one which must be administered with courage **992 and independence. Yet how can this be if the prosecutor is made subject to suit by those whom he accuses and fails to convict? To allow this would open the way for unlimited harassment and embarrassment of the most conscientious officials by those who would profit thereby. There would be involved in every case the possible consequences of a failure to obtain a conviction. There would always be a question of possible civil action in case the prosecutor saw fit to move dismissal of the case. . . . The apprehension of such consequences would tend toward great uneasiness and toward weakening the fearless and impartial policy which should characterize the administration of this office. The work of the prosecutor would thus be impeded, and we would have moved away from the desired objective of stricter a fairer law enforcement.” *Pearson v. Reed*, 6 Cal.App.2d 277, 287, 44 P.2d 592, 597 (1935).

This important doctrine extends to the responsibilities of the Attorney General regarding charities for the reasons set forth in the Attorney General's Opening Memorandum. See, S.C. Code Ann. §1-7-130; *Metro Charities, Inc. v. Moore*, 748 F.Supp. 1156, 1163–64 (S.D.Miss.,1990); *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (C.A.4 ,1989);

Mathis v. McDonough, 2014 WL 3894133, at *11 (D.Md.,2014). Therefore, absolute prosecutorial and quasi-judicial immunity apply so as to bar the counterclaims against the Attorney General herein.

For the foregoing reasons and those set forth in his Supplemental Memorandum, the Attorney General respectfully requests that his Motion to Drop be granted.

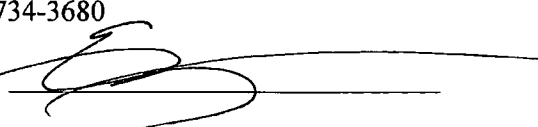
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

APRIL 7, 2017

ATTORNEYS FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

and

ALAN WILSON, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

2017 APR 13 PM 10:34
**DEFENDANT'S SUPPLEMENTAL
RETURN TO THE ATTORNEY
GENERAL'S MOTION TO BE
DROPPED**

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

Defendant Adele J. Pope ("Pope") hereby provides this supplemental response to Plaintiff

Attorney General's Motion to Be Dropped as a Party ("Motion"). Though the Court has already heard argument on the Motion, received briefing on the Motion, and taken the Motion under advisement, this supplemental response was necessitated by the Attorney General's filing of a supplemental memorandum in support of its motion to be dropped as a party. In response thereto, Pope incorporates her previous memorandum and argument made before the Court and further states as follows:

The basis for the Attorney General's supplemental memorandum on its motion to be dropped appears to be an argument that it should be dropped from the action that it filed against Pope in which it is now a counterclaim defendant because of sovereign immunity pursuant to the South Carolina Tort Claims Act. See S.C. Code Ann. Section 15-78-10 et seq. The Attorney General, however, did not assert the affirmative defense of sovereign immunity in its responsive pleading. Inexplicably, the Attorney General did not cite South Carolina law that expressly and unequivocally requires the defense of sovereign immunity to be pled. In *Tanner v. Florence City-County Building Commission*, 333 S.C. 549, 511 S.E.2d 369 (Ct.App. 1998), the Court of Appeals succinctly stated the law as follows:

"Historically, the common law doctrine of sovereign immunity insulated governmental entities from liability for torts committed by their employees. In South Carolina, total sovereign immunity was abolished by the decision in *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985). Reacting to *McCall*, the legislature adopted the South Carolina Tort Claims Act. S.C.Code Ann. § 15-78-10 to -200 (Supp.1998). That act waives sovereign immunity for torts committed by the State of South Carolina, its political subdivisions, and governmental employees acting within the scope of their official duties. The act, however, lists numerous exceptions to the waiver of immunity. S.C.Code Ann. § 15-78-60 (Supp.1998)."

"This court has held that under the South Carolina Tort Claims Act '[t]he burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense.' *Niver v. South Carolina Dep't of Highways & Public Transp.*, 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct.App.1990). **The decision of our supreme court in the case of *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994),**

put to rest any remaining question about the necessity of pleading sovereign immunity as an affirmative defense. In *Washington*, the court said 'we overrule the antiquated rule that sovereign immunity is a jurisdictional bar and, accordingly, cannot be waived. We join those jurisdictions which hold that sovereign immunity is an affirmative defense that must be pled.' *Id.* at 114-15, 451 S.E.2d at 898 (citations omitted); *see also Town of Duncan v. State Budget & Control Bd., Div. of Ins. Servs.*, 326 S.C. 6, 11 n. 14, 482 S.E.2d 768, 773-74 n. 14 (1997) (reversing a trial court order to the extent it was based on sovereign immunity as no answer had been filed in case and sovereign immunity, as an affirmative defense, must be pled)."

333 S.C. at 552 (emphasis supplied).

Accordingly, sovereign immunity is not a basis in this action for the Attorney General to be dropped from the action because it was not pled as an affirmative defense by the Attorney General in its responsive pleading that was served over six (6) years ago. The Motion to Drop should be denied.

Respectfully submitted,



W.H. Bundy, Jr., Esq.
M. Brent McDonald, Esq.
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

Adam T. Silvernail
LAW OFFICE OF ADAM T. SILVERNAIL, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

April 6, 2017
Summerville, SC

Attorneys for Defendant Adele J. Pope