

STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

RECEIVED

APR 09 2020

SC Court of Appeals

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 III of V
(Pages 983 – 1468)

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

**Index to Record on Appeal
Appellate Case No. 2018-002229**

Volume I (Pages 1 –490)

<u>I. Orders</u>	<u>Page</u>
Order of Jg. Early (“Jg. Early”) Granting Mot. to Intervene, 10/4/2007.....	1
Order of Jg. Early, dtd. 1/8/08 [Payment Order].....	3
Order of Jg. Early dtd. 2/20, 2008 re: Tommie Rae diaries.....	See 1999
Order of Jg. Early, dtd. 2/20/08 [Approv. Sale of Tangible Personal Property (TPP), etc.].....	7
Order of Jg. Early, dtd. 4/1/08 [Directing PR/Tees to Sign Christie’s Contract]	15
Order of Jg. Early, dtd. 4/8/08 [Confirming Apptmt./Service of Buchanan & Pope].....	21
Order of Jg. Cureton, dtd. 7/14/08 [Deny Dallas Mot. for Stay of Christie’s Sale].....	71
Order of Jg. Early, dtd. 7/23/08 [Approving Education Payments].....	74
Order, Hon. Roger Couch, dtd. 9/22/09 State of S.C. vs. Eli Lilly.....	See 1777
Order of Jg. Early, dtd. 11/13/08 [Dismissing Pullman Claim].....	81
Order of Jg. Early, dtd. 3/15/2010 [Release of Attys’ Fee & other Comp.].....	84
Order of Jg. Early, dtd. 4/5/2010 [Substituting Parties, Etc.].....	86
Order of the Hon. Amy McCulloch, 7/19/2010 [Removing Rich. 4900 to Circuit Ct.].....	89
Form 4 Order of the Hon. L. Casey Manning (Jg. Manning), 8/31/10 [Und. Advisement].....	90
Order of Jg. Manning, dtd. 11/8/10 [Denying Motion to Dismiss].....	91
Order of Jg. Manning, dtd. 11/8/10 [Denying Defendant’s Motion to Change Venue].....	99
Order of Jg. Manning, dtd. 1/7/11 [Denying Reconsid. Venue & Dismiss Ords.].....	105
Order, Court of Appeals, 3/16/11	107
Order, Court of Appeals, 5/31/11.....	110
Remittitur of Court of Appeals dtd. 7/26/11.....	112
Order of the Hon. Frank R. Addy, Jr., dtd. 11/22/11 [FOIA Nby. Case 11-CP-36-379].....	114
Order of Jg. Addy, dtd. 1/11/2012 [Transf. Venue of Nby. FOIA 11-364 to Richland].....	121
Order of Jg. Manning, dtd. 7/5/12 [Concerning Continuance.] [no page 2 in order]	123
Order of Jg. Manning, dtd. 7/5/2012 Concerning Defendant Adele Pope’s Motion to Disqualify Sweeny, Wingate & Barrow, P.A. from Representing the Office of the Attorney General of South Carolina, Enjoining Russell Bauknight from Purporting to Speak for the Office of the Attorney General, and other Relief.....	125
Order of Jg. Manning, dtd. 7/13/12 of Dismissal.....	127
Order of Jg. Manning, dtd. 7/19/2012 to Conduct Mediation.....	129
Order of Jg. Manning, dtd. 10/5/2012 Concerning Plaintiff’s Motion for Exception to Physical Presence Rule at Mediation.....	132
Order of Jg. Early Withdrawing Attorney General, Various Cases, Oct.30, 2013.....	See p.928
Order of the Hon. William O. Bertelsman, dtd. 3/28/14 Case 3:08-cv-00014-WOB.....	135
Order of Jg. Early & Jg. Manning, filed 1/20/15 [Joint Mediation].....	155
Order of Supreme Court dtd. April 20, 2015, <i>In Re: Estate of Brown</i>	158

Order of Supreme Court dtd. June 10, 2015, In-Re: Estate of Brown	161
Order of Jg. Manning, dtd. 10/13/2015 Concerning Plaintiff's Motion for Exception to Physical Presence Rule at Mediation.....	166
Order of Jg. Manning, dtd. 10/13/15 Granting Plaintiffs' Motion to Set Aside Entry of Default.....	168
Form 4 Order of Jg. Manning, 2/9/2016 [Continued Under Advisement].....	171
Order of Jg. Manning, dtd. 3/2/16, Granting Plaintiffs' Motion to Stay.....	172
Order of the Honorable Donald W. Beatty, dtd. 3/24/16 [Aiken 1337].....	174
Order of the Honorable Donald W. Beatty, dtd. 3/24/16 [Richland 4900 and FOIA 350].....	175
Order of Jg. Early, dtd. 4/8/16 Lifting Stay.....	176
Order of Jg. Early, dtd. 6/14/16 [Dismiss FOIA 350].....	177
Order of Jg. Early, dtd. 6/14/16 [Dismiss FOIA Richland 4900].....	180
Order of Jg. Early, dtd. 6/14/16 Granting James Brown Legacy Trust's Motion to Dismiss [FOIA 350].....	183
Form 4, Order of Jg. Early, dtd. 7/15/16 [Mot. Consolidate Ak 1337 & Rich.4900 Denied]...	187
Order of Jg. Early, dtd. 7/25/16 [Scheduling Order] Note: Says "Proposed"	189
Form 4 Order of Jg. Early, dtd. 7/26/16 [Deny Reconsid of Legacy Trust Dismissal, 2012-CP-40-350].....	191
Form Order of Jg. Early, dtd. 7/27/16 [Deny Mot. to Dismiss FOIA Richland 4900.]	193
Order of Jg. Early, dtd. 9/13/16 Denying Defendant's Mot. for Sanctions.....	195
Order of Jg. Early, dtd. 9/21/16 Granting Plaintiffs' Motion for Protective Order as to Daryl J. Brown and Tonya Brown.....	199
Order of Jg. Early, dtd. 11/22/16 [Deny 59 Motion].....	202
Order of Jg. Early, dtd. 12/27/16 Granting Plaintiffs' Motion for Protective Order Concerning Deposition of Larry Brown.....	203
Order of Jg. Early, dtd. 1/23/17 Granting Plaintiffs' Motion for Protective Order s Concerning Deposition of Larry Brown.....	205
Order of Jg. Early, dtd. 1/24/17 [Second Amended Confidentiality Order].....	207
Order of Jg. Early, dtd. 2/6/17 Denying Motion to Consolidate Depositions of Expert.....	215
Order of the Hon. Jean H. Toal, 3/1/2107.....	See 2335
Order of Jg. Early, dtd. 3/7/17 Compelling Defendants' Production of Documents.....	217
Order of Jg. Early, dtd. 3/9/17 Concerning Plaintiff's Motion to Strike January 17, 2017 Affidavit of Defendant.....	219
Order of Jg. Early, dtd. 3/9/17 Regarding Motion for Protective Order as to Tommie Rae Brown's Deposition.....	221
Order of Jg. Early, dtd. 5/31/17 Granting Attorney General Alan Wilson's Motion to be Dropped as a Party.....	223
Order of Jg. Early, dtd. 6/6/17 [Protective Order, Wingate and Kendall Deposition].....	229
Order of Jg. Early, dtd. 6/23/17 Granting Plaintiffs' Motion for Summary Judgment as to Defendant's Counterclaims.....	231

Order of Jg. Early, dtd. 8/2//17 Denying Defendant Pope's Motion to Alter or Amend Order Dropping Attorney General as a Party.....	247
Order of Jg. Early, dtd. 12/6/17 Denying Defendant's Motion to Lift Stay While on Appeal	249
Order of Jg. Early, dtd. 11/25/18 Denying Defendant/Counterclaim Plaintiff's Motion to Alter, Amend and/or Reconsider and/or Vacate Order Granting Plaintiff's Motion for Summary Judgment.....	254
w/ Email Chain of Jg. Early and Black 11/13-20/18.....	257

II. Pleadings and Motions

Summons and Complaint, Richland 4900, May 19, 2010.....	258
Motion to Remove, June 11, 2010.....	272
Certificate of Transmittal as to Removal to Circuit Court.....	271
Motion to Dismiss of Defendants Buchanan & Pope, June 22, 2010.....	274
w/List of 11 Attachments to Motion to Dismiss.....	285
Return and Opposition to Motion to Dismiss, <i>Wilson v. Dallas</i> , 3/16/10.....	286
<i>Wilson v. Dallas</i> , Factual Addendum.....	302
Ex.A: Agreement of Attorney General and Settling Parties, Aug. 10, 2008.....	312
Motion of Buchanan and Pope to Transfer Venue, dtd. August 2, 2010.....	316
w/ Affidavit of Pope dtd. July 23, 2010.....	319
Order of Jg. Early, August 10, 2007.....	328
Order Denying Motion to Reconsider, April 8, 2008.....	330
Brief of Trustees & PRs as to Validity and Incontestability of 2000 Trust, 4/23/09.....	333
New York State Ethics Opinion 06-06, Aug. 28, 2006.....	378
Order Approving Education Payments, dtd. July 23, 2008.....	384
Response to Forlando Brown's motion to disqualify Levenson, etc., ...	386
w/ Ex. A: Ltr. of Bell to Levenson, dtd. April 4, 2007.....	387
Ex. B: Transcript, Deposition of Forlando Brown, October 2007.....	388
Ex. C: Affidavit of Levenson, dtd. January 16, 2008.....	395
w/Levenson Billing Invoice.....	398
Motion to Strike Defendants' Motion to Transfer Venue, August 10, 2010.....	399
Acknowledgment, dtd. August 27, 2010.....	401
Answer and Counterclaim of Buchanan and Pope, Sept. 30, 2010.....	405
Motion to Strike Defendants' Affidavit in Support of Dismissal, dtd. Oct. 1, 2010.....	438
Motion to Set Aside Entry of Default, dtd. Nov. 16, 2010.....	440
Answer to Counterclaim, dtd. Nov. 16, 2010.....	443
Rule Rule 59, etc., Motion (Denying Motion to Dismiss), dtd. Nov. 19, 2010.....	447
Defendant's Rule 59, etc. Motion (Denying Motion to Change Venue), Nov. 19, 2010.....	450
Motion to Stay Proceedings, dtd. Nov. 30, 2010.....	452
Initial Brief of Appellant (Buchanan/Pope) <i>Wilson v. Dallas</i>	456
Notice of Appeal, February 16, 2011.....	469

Pope's Motion to Disqualify and/or Enjoin Sweeny Wingate (AG), etc, May 18, 2011.....	472
Motion to Compel Discovery (Deposition of Terry Brown), May 27, 2011.....	476
Return and Opposition of Pope to Mot. for Protective Order (Terry Brown), 6/2/11.....	480
Return and Opposition of Pope to Motion for Protec. Order (Lindsey), 6/22/11.....	484
Plaintiffs' Mot. for Prot. Order Concerning Various Documents, dtd. 7/1/11.....	487

VOLUME II (Pages 491 – 982)

Pope's First Request to Produce to Plaintiff Bauknight.....	491
w/ Ltr. of Klett to Gonzalez, dtd. May 23, 2011.....	493
Bauknight's Responses to Second Set of Requests for Production, dtd. June 24, 2011.....	498
Mot. to Compel Production of Contingency-Fee Contract Prior to Injunction Hg., 7/26/11.....	501
w/ Ex. A: Ltr. Black to Pope, 7/15/11 re: Request for Documents Under FOIA.....	505
Ex. B: Bauknight Responses to Request, dtd. Jun 24, 2011.....	508
Ret. and Opposition to Plaintiffs' Mot. for Protective Order (Various Documents), 7/12/11.....	511
w/ Ex.A: Mot. of AG, others to Supplement the ROA, <i>Wilson v. Dallas</i> , 5/6/11.....	524
Proposed Appendix to the ROA, <i>Wilson v. Dallas</i> , w/ Exhibits	
Amended Inventory & Appraisalment, James Brown Estate, dtd. 5/4/11.....	537
Proposed Adjustments to James Brown Estate Tax Return.....	538
Plaintiffs Mot. for Protective Order Concerning Fee Agreement, etc, 8/9/11.....	541
Motion of Proposed Intervenors for Sanction, FOIA Case 2011-CP-36-379.....	544
Pope's Return and Memorandum Opposing Relief from Default, April 10, 2012.....	550
Return and Objection to Motion to Enforce Purported Settlement, May 21, 2012.....	553
Offer of Judgment of Pope to Estate of James Brown, dtd. August 2, 2012.....	560
Offer of Judgment of Pope to Tonya Brown, dtd. July 26, 2012.....	563
Plaintiffs' Motion to Strike Offers of Judgment of Pope, dtd. Aug. 13, 2012.....	566
w/ Ex. A: Offer of Judgment to Lindsey Brown and Janise B., a minor.....	570
Ex/ B: Offer of Judgment to the S.C. Atty. General and Bauknight, Agent.....	575
Ex. C: Offer of Judgment to Lindsley Brown and Janise B., a minor.....	580
Ex. D: Offer of Judgment to Tonya Brown.....	581
Ex. E: Offer of Judgment to Daryl Brown.....	585
Ex.F: Offer of Judgment to Bauknight, as Trustee of the Legacy Trust.....	590
Ex. G: Offer of Judgment to Terry Brown.....	599
Ex. L: Offer of Judgment to Sydney L, a minor.....	606
Ex. N: Offer of Judgment to the Estate of James Brown.....	608
Plaintiffs' Mot. for Direction Concerning Potential Prejudicial Trial Publicity, 8/23/12.....	611
w/ Exhibit A, Table of Contents, Media Binder Index.....	614
Ex. 1: High S.C. Court to take up James Brown settlement.....	620
Ex. 5: S.C. Supreme Court hears James Brown estate feud.....	621
Ex. 6: Arguments begin in James Brown settlement case.....	623

Ex. 11: AG asked to turn over James Brown documents (SC).....	625
Ex. 17: Dead or alive – James Brown...threats to property rights thrive.....	627
Ex. 20: James Brown Charitable trust Fate Marinating in Confusion.....	629
Ex. 25 Deposition of Deanna Brown Thomas, Oct. 31, 2007.....	631
Ex. 31: Goliath's Road in James Brown FOIA Suit.....	633
Ex. 32: Motion for Sanctions , FOIA Case 2011-CP-36-00379.....	635
Plaintiff's Return and Opposition to Motion to Intervene, FOIA 11-36-00379.....	636
Affidavit (Pope) Oppo. Mot. to Intervene and for other relief, 11-36/00379, 11/7/11....	637
Ltr. of Silvernail to Smith, re: Pope v. Wilson FOIA case, Dec. 9, 2011.....	639
Ex. 33: Mot. of Attorney General to Strike/Exclude Aff. of Wm. J. Smith.....	640
Ex. 49: Fmr. J. Brown Trustee fights "Career-Threatening" Allegations.....	642
Ex. 55: James Brown's Estate and Wishes Remain in Limbo.....	644
Ltr., Pope to AG Wilson, 5/12/12 re: Release of T.R. diaries & \$4.7 million docs.....	646
w/ enclosures.....	647
Ltr. of Pope to AG Wilson dtd. May 11, 2012, re: \$4.7 million value.....	651
Ltr. of Chief Deputy AG McIntosh dtd. May 1, 2012 to Pope.....	653
Email of Pope to Rosen, dtd. May 12, 2012 re: Service of subpoena.....	654
Ex. 47: Summer FOIA Request to Attorney General, June 10, 2012.....	655
Ex. 48: AG Wilson Asks Judge to Conceal Diaries..., June 9, 2012.....	657
Ex. 62: AG's Promise to Release Contract May Resolve...FOIA Case, 9/21/11.....	659
Ex. 63: AG Still Refuses to Release Docs in Newberry FOIA Case, 9/29/11.....	661
Ex. 65: Wingate Firm, Jas. Brown Children, ask to Join AG Wilson...11/2/11.....	663
Ex. 70: Brown's Grandson Fires Lawyers in Trust Lawsuit, 12/9/11.....	665
Ex. 71: James Brown Estate Planning in his own Words, 12/13/11.....	667
Ex. 72: AG ..Attempts to Exclude Affid. Of Copyright Expert...FOIA, 1/5/12.....	669
Ex. 75: Attys. for,,... Companion Subpoena info about "explosive" diaries, 5/15/12..	671
James Brown Son Claims Son/Grandson conspired with Companion, 5/25/12.....	672
Ex. 77: Fmr. Jas. Brown Trustee fights "career-threatening" allegations, 6/17/12.....	673
Ex. 78: Las Vegas man claims James Brown was his father, 6/19/12.....	675
Ex. 79: son Regrets Contesting Will, .Fathers Wishes s/d be followed; 7/5/12.....	676
Ex. 80: At Request of AG, Judge Keeps Gag Order on Diary, 7/16/12.....	677
Ex. 81: AG Wilson & companion stop depos, but not bombshell, July 26, 2012.....	678
Ex. 82: Jas. Brown's son pleads "protect the needy children"... Aug. 6, 2012.....	680
Ex. 83: Court Hears Argument, Finger Pointing....Hearing on Restitution, 8/4/12.....	682
Ex. 84: Fmr. Brown Trustee Appeals Gag Orders, 8/21/12.....	683
Ex. 87: Rolling Stone: Year After Death, Battle...James Brown...rages on, 8/4/11....	684
Ex. 88: AG Wilson Brings Fight....Newberry lawsuit to Richland, 3/13/12.....	686
Ex. 95: Will, Trusts & Est. Prof., Brown....Contest Continues, 11/1/11.....	687
Ex. 98: W,T & E Prof., Continued Dispute over ...Brown Estate, 8/20/12.....	688
Ex. 99: Ex Trustees Want Court to Strike James Brown deal, 11/1/11.....	689

Ex. 100: Inside Story: Deanna Brown Talks Court Battle, Movie Deals, 3/14/12.....	690
Motion to Enforce Settlement Agreement, May 18, 2012.....	
Report (Pope) Required by Order of July 5, 2012, Aug. 6, 2012.....	692
Return (Pope) to Motion for Direction from Court... Trial Publicity, Aug. 28, 2012.....	697
Plaintiff's Mot. to Strike Additional Affidavits of Defendant Pope, Sept. 12, 2012.....	703
Objection to Motion of Plaintiffs to Avoid Physical Presence at Mediation, etc., 11/3/12.....	706
w/ Factual Addendum.....	717
Proof of ADR, dtd. October 19, 2012	721
Supp. Plaintiffs' Motion to Set Aside Entry of Default, dtd. 12/17/2012.....	722
w/Ex. A: Sworn Statement of Albert Dallas, July 20, 2012.....	724
Plaintiffs' Motion to Strike Affidavit of Pope dtd. 12/11/2012, Dec. 18, 2012.....	728
Motion for Judgment on the Pleading (FOIA), Dec. 20, 2012.....	730
Plaintiffs' Return & Opposition to Motion for Judgment on Pleadings (FOIA), 1/11/13.....	732
Mot., Defendant for Summary Judgment as to Terry Brown, Bauknight as Agent, 5/5/13.....	737
Attorney General Alan Wilson's Mot. to be Dropped, March 25, 2013.....	744
Motion for Summary Judgment (Pope) as to James Brown Legacy Trust & Trustee, 3/22/13.....	747
Mot. for Summary Judgment (James Brown II, then a minor), & Bauknight, Agent, 3/22/13.....	752
Ret. & Opp. (Pope) to Request for Stay & Request for Expedited Hearing, etc., 3/29/13.....	756
w/ Ex. A: Ltr. of Gende to Judge Manning dtd. March 27, 2013.....	762
Status Report of Defendant Pope, dtd. March 25, 2013.....	764
w/ proposed scheduling order.....	768
Return of Defendant Pope to Motion of AG to be Dropped as Party, July 2, 201[3].....	769
Mot. to Add Forlando James Brown as Party, dtd. April 16, 2013.....	776
w/Ex. A: Confirmation & Amendment, Settlement Entity (Legacy Trust), 1/4/11.....	778
Ex. B: Assignment of Terry Brown to Forlando Brown, dtd. 1/3/2011.....	784
Motion (Sweeny, Wingate, Barrow, PA) to be Relieved as Counsel, AG Only, 5/10/13.....	785
Motion (Plaintiffs) to Stay, April 22, 2014.....	787
Pl.'s Ret. Opp. to Mot. of SWB to Stay and Request Expedited Hearing on S.J 4/29/2014.....	789
Notice of Appearance, Donsbach for Terry Brown, dtd., Nov. 26, 2014.....	791
Mot. (Pope), Sum. Jmt., Damages & Offset (Tonya, Daryl, Venisha & Bk. Agent) 5/28/15.....	793
Return and Opp. to Mot. to Exempt Parties (Mediation Order Requirements), 8/12/15.....	803
w/ Ex. A: Order for Mediation.....	811
Ex. B: Ltr. of Silvernail to Jg. Manning, dtd. Nov. 25, 2014.....	815
Ex. C: Ltr. of Silvernail to Jg. Manning, dtd. Nov. 26, 2014.....	817
Ex. D: Ltr. of Gende to Jg. Early, Jg. Manning, dtd. Dec. 3, 2014.....	820
Defendant Pope's Motion to Alter, Amend; etc., Order Setting Aside Default, 10/20/2015.....	824
Plaintiffs' Motion to Strike Affidavit of Pope dtd. Feb. 19, 2016, dtd. 2/26/16.....	829
w/ Ex. A: Affidavit (Pope) Opposing Motion for Prot. Order (Richardson Depos.).....	831
Defendant's Motion/Memo. Opposing Motion of Plaintiffs for Protective Order, 2/22/16.....	833
w/ Ex. A: Affidavit of Pope dtd. 2/19/16 (Richardson Deposition).....	839

Motion of Defendant to Alter, Amend, etc., Order Granting Stay, dtd. March 7, 2016.....	842
Motion to Quash and Mot. for Prot. Order (subpoenas to Jowers, Jones, McIntosh), 4/8/16....	847
Return & Memo. Opposing Motion to Quash Subpoenas, Jowers, etc., dtd. 4/9/16.....	851
w/ Ex. A Email Chain Smith/ Pope, dtd. 4/9/16.....	853
Ex. B: U.S. Copyright Office, Termination Notices, Tommie Rae, James II, served 8/26-29/13, recorded, Copyright Office, 8/28 - 8/31/15.....	855
Mot.(Richland 4900 Plaintiffs) to Consolidate w/Aiken 1337 for discovery, 4/11/16.....	857
Mot. to Postpone Deposition of Tommie Rae, dtd. April 25, 2016.....	859
Plaintiffs' Reply to Defendants' May 2, 2016 Memorandum, dtd. May 16, 2016.....	862
Motion of Plaintiffs as to all Counterclaims of Defendant Pope, dtd. May 17, 2016.....	864
Response to Plaintiffs' Brief, (FOIA) May 16, 2016.....	866
Motion by Case 1337 Plaintiff to Strike, etc., dtd. May 20, 2016.....	871
Ret.& Memo. of Aiken 1337 Plaintiff Opposing Mot. of AG, Others to Consolidate, 5/26/16.....	874
FOIA Pl's. Ret. & Opp. to Motion of SWB to Consolidate, dtd. June 6, 2016.....	890
Mot.(Tommie Rae) for Protective Order (Depos. Questions), dtd. June 15, 2016.....	893
w/Ex.A: Order, Tommie Rae Summary Judgment, 1/13/2015.....	895
Ex. B: Order Denying Reconsideration of TR Sum. Jmt. Ord., 8/20/15.....	898
Motion for Protective Order (Tommie Rae), June 22, 2016.....	902
Plaintiffs' Mot. to Alter, Etc., Attorney General Mot. to Dismiss (FOIA), July 1, 2016.....	905
Motion for Protective Order as to Deposition of the Attorney General, dtd. July 18, 2016.....	910
w/ Second Amended Notice of Deposition, 6/23/16.....	913
Mot. for Protective Order (to Quash Depos. of Tommie Rae), dtd. 7/28/16.....	915
Aiken 1337 Plaintiff.s Ret. to Mot. of Def's. for Prot. Order (Sojourner Depos.), 8/1/16.....	917
Notice of Special Appearance & Mot. to be Dropped as Party (Attorney General), 8/11/16....	923
w/ Ex. A: Order Granting Mot. to Intervene of Behalf of AG, dtd. 10/4/07.....	926
Ex. B: Order Withdrawing Attorney General, dtd. Oct.30, 2013, Various Cases.....	928
Ex. C: See AG's March 2013 Motion to be Dropped.....	744
AG's Petition for Rehearing, <i>Wilson v. Dallas</i>	929
Motion to Supplement the Record on Appeal, <i>Wilson v. Dallas</i>	See 524
w/ Ex.A: Transcript of Hearing September 28, 2008.....	34
Other Attachments to AG's Motion:	
Transcript of Hearing, November 25, 2008.....	937
Transcript of Hearing, January 30, 2009.....	940
Complaint, Estate/2000 Trust vs. Cannon, Dallas, etc., 2/8/08.....	943
Ex. G, Calculation of Potential Costs, Proposed Refinancing Transaction, ...	944
Portion, Accounting, Interim #1A, May 20, 2009.....	945
Pope's Motion to Compel, (Interrogatory Verifications, etc) dtd. August 11, 2016.....	947
Motion for Protective Order (Deposition, Venisha Brown), Aug. 11, 2016.....	949
Mot. for Prot. Order (Deposition of Lt. Gov. McMaster), Aug. 25, 2016.....	951
Defendant's Return to Motion of Plaintiffs for Partial Summary Judgment, Aug. 26, 2016.....	954

Mot. of Defendant to Dismiss all Claims of Defendant Venisha Brown, Rule 41(B), 9/14/16.....	964
Mot. for Confidentiality Order, dtd., Nov. 22, 2016.....	967
Return of Aiken 1337 Plaintiff to Joint Motion to Consolidate Expert Discov., 1/17/17.....	969
Mot. for Protective Order (Deposition of Deanna Brown-Thomas), March 3, 2017.....	972
Reply to Supp. Return to AG's Motion to be Dropped as Party, April 7, 2017.....	975
Defendants' Supp. Return to the AG's Motion to be Dropped, April 6, 2017.....	980

VOLUME III: (Pages 983 – 1468)

Pope Response to Mot. of Pl. Tommie Rae for Protective Order, 12/30/2016.....	983
Plaintiffs' Mot. to Strike Affidavit of Pope, dtd. Jan. 23, 2017.....	990
Deposition Privilege Log of Kendall.....	993
w/ Deposition of Kendall (condensed), March 6, 2017	997
Deposition Privilege Log of Wingate.....	1010
w/Deposition of Wingate, March 6, 2017.....	1016
Rule 59, etc. Motion of Pope, Tommie Rae protective order, 3/24/17.....	1029
Supp. Memorandum in Support of Motion of AG to be Dropped as Party, 4/3/17.....	1034
Reply to Supp. Ret. Of AG to be Dropped as Party, 4/7/17.....	1037
Ret. And Opposition of Tommie Rae to Rule 59 Motion, dtd. 4/20/17.....	1042
Mot. of Defendant to Alter, Amend, Etc., Order re: Kendall/Wingate Depos, 6/16/17.....	1046
w/ Protective Order, Wingate & Kendall, June 6, 2017.....	1048
Mot. Protective Order, Tiffany Provence, June 15, 2017.....	1050
Mot. for Protective Order, Jason Brown-Lewis, June 26, 2017.....	1052
Pope Return to Jason Brown-Lewis Mot. for Prot. Order, June 27, 2017.....	1055
Am. Mot. for Protective Order, Provence, dtd. June 28, 2017.....	1060
Pope's Ret. To Motion as to Brown-Lewis, dtd. 6/27/17.....	1063
Affidavit/Opinion Wm. Jeffrey Smith, July 14, 2017.....	1068
Defendant Pope's Mot. Alter/Amend Mot. of AG to be Dropped, July 19, 2017.....	1179
Defendant Pope's Mot. Alt/Amend Grant of Summary Jmt. As to C.Claims, 7/13/17.....	1233
Ex. A, Ord. Granting Summary Jmt. As to Counterclaims, 5/8/17, p. 1 only.....	1304
Plaintiffs' Mot. to Strike, dtd. August 7, 2017.....	1306
Memorandum of Law in Opposition to Motion to Lift Stay, dtd. Nov. 10, 2017.....	1308
Notice of Filing of Original Depos. Transcripts, Oct. 19, 2017.....	1312
Ret. And Opposition to Motion to Strike Memorandum and Smith Opinion, dtd.10.19/17...	1314
Motion to Lift Stay, dtd. October 24, 2017.....	1316
Motion of Donsbach to be Relieved as Counsel, dtd. Oct. 10, 2018.....	See 2337
Ret. & Memo. Oppose Motion of Terry Brown Counsel to be Relieved, dtd.10/29/18...	See 2339
Supplemental Motion for Order for Limited Lifting of Stay, dtd. Oct. 30, 2018.....	1325
w/ Ex. A, Complaint, Deanna Brown-Thomas & others v. Hynie & others 1/12/18...	1345
Ex. B, Declaration of Tommie Rae Brown, dtd. 2/28/18.....	1357
Ex. C: Estate/2000 Trust Motion to Dismiss, 2/28/18.....	1361

III. Hearings and Transcripts

Transcript of Hearing, August 30, 2010.....	1370

Transcript of Hearing, August 29, 2016	1418

VOLUME IV. (Pages 1469 –1961)

III. Hearings and Transcripts (Continued)

Transcript of Hearing, August 29, 2016 (continued).....	1469
Transcript of Hearing, December 21, 2007.....	1522
Transcript of Hearing, September 28, 2008.....	1527
Transcript of Hearing, January 11, 2012.....	1529
Transcript of Hearing, March 31, 2014.....	1531
Transcript of Hearing, May 17, 2016.....	1533

IV. Exhibits and Other Documents

Last Will and Testament of James Brown, dated August 1, 2000.....	1535
James Brown 2000 Irrevocable Trust, dated August 1, 2000.....	1542
Amendments and Ratifications, James Brown 2000 Irrevocable Trust.....	1562
Certificate of Trust, James Brown 2000 Trust, filed August 7, 2001.....	1566
Durable Power of Attorney, James Brown, to Deanna & others filed 2/25/01.....	1567
Consent Order of Dismissal, Brown vs. Hynie Ahmed Brown, 2004.....	1568
Meeting of Trustees, 2000 Trust, Dec. 27, 2006.....	1569
Minutes of Trustees, 2000 Trust, January 3, 2007.....	1570
Affidavit of Daryl J. Brown, dtd. January 24, 2007.....	1571
Pinnacle Media and Entertainment, LLC, \$200 Million Prospectus, 2007.....	1574
Email chain, Deanna Brown Thomas, Louis Levenson, Esq., March 7-15, 2007.....	1575
Grahm Windsor Group, Terry Cox PhD., Developing the James Brown Legacy, 2007.....	1576
Ltr. Poowell Goldstein to Dallas, July 10, 2007, re: Change of Situs of 2000 Trust.....	1577
w/ proposed Declaration to Change Situs.....	1578
Supplement Order Related to Disbursement of Realty Proceeds, August 19, 2007.....	1579
Ltr. of TJBL to Dallas/Bradley, dtd. October 12, 2007.....	1583
Email Yount to AGS Jones, others, Nov. 10, 2007 re: \$18 Million Wm. Morris Revenues....	1586
Return and Recommendation of Special Administrators, Nov. 14, 2007.....	1587
Inventory & Appraisement, Est. of James Brown, Nov. 15, 2007.....	1589
Ltr. of Pope to Phil Farr, CPA, dtd. June 15, 2007, w/ handwritten notations.....	1590
Email Wm. Hammond to Pope/Buchanan, cc: Babcock, dtd. 6/15/07.....	1591
Ltr. Lewis & Babcock to Dallas/Bradley, Nov. 16, 2007 re; possible resignations.....	1592
Email Sonny Jones to Buchanan/Pope, cc others dtd. Nov. 21, 2007.....	1593
Ltr. Pope to Sonny Jones dtd. Nov. 21, 2007.....	1594
Affidavit Wm. Hammond, dtd. Nov. 30, 2007.....	1596
Email Sonny Jones to Buchanan/Pope, etc. 12/6/07, re: attached \$100 Million Offer.....	1598
Pet. to Set Aside Trust, Tommie Rae, December 19, 2007.....	1599
Complaint, Forlando Brown vs. Buchanan/Pope, Trustees of 2000 Trust, Jan. 2, 2008.....	1601
Excerpts, Affidavit Pope, January 6, 2008, re: challenges to service.....	1604

Order Directing Payment of Fees and Costs, January 8, 2008.....	1607
Email, AG Mary Fr. Jowers to Buchanan/Pope, others, Feb. 13, 2008 re: Christie's sale.....	1608
Email Cox to Buchanan/Pope w/ copies to AG Jones, others, dtd. 2/29/08.....	1609
w/ TJBL Ltr. of Intent to Purchase, between \$90 and \$100 Million, etc.....	1610
Ltr. Buchanan/Pope to Attorney General McMaster, March 10, 2008.....	1613
Application, Hardship Extension of File/Pay Estate Tax Return, James Brown, 3/24/08.....	1614
Ltr. of TJBL on behalf of Terry Brown (TPP purchase, \$2 million), dtd. 3/27/08.....	1619
Email from Forlando Brown to Buchanan/Pope, dtd. April 3, 2008.....	1622
Order Denying Mot. to Reconsider Appt. Buchanan/Pope, April 8, 2008, p.1 only.....	1623
Ltr. Wayne Byrd to Levenson, w/ copy to Jg. Early, May 1, 2008.....	1624
First Semi-Annual Report of PR/Trustee to Devisees, AG, etc, May 20, 2008.....	1625
Ltr. Estate (Buchanan/Pope) to AG McMaster, dtd., June 13, 2008.....	1636
Ltr. of AG Jones to Wayne Byrd, dtd. 6/26/08 re: Emerg. Pet. for Appt. for Sp. Trustee.....	1645
Ltr. of AG Jones to Jg. Early, July 7, 2008, re: recommendations for Sp. Trustee.....	1646
Ltr. Estate (Buchanan/Pope) to AG McMaster dtd. June 27, 2008.....	1647
Ltr. Estate (Buchanan/Pope) to AG McMaster, AG Jones, July 25, 2008.....	1649
Ltr. Attorney General to Buchanan/Pope, July 30, 2008 re: approval as trustees.....	1650
Email chain, Rosen, etc., 7/31- 8/1/08 re: DNA order, Cox meeting.....	1652
Agreement August 10, 2008 among Attorney General and others.....	1653
Email Sonny Jones to Judge Early, others, dtd/ 8/12/08, re: Settlement of 8/10/08.....	1657
Email of Rosen to Pope, others, 8/12/2008; Re: settlement, request to "stop all work".....	1658
Ltr. from Estate/2000 Trust (Buchanan/Pope) to AG McMaster, others, 9/2/08.....	1659
Excerpts, Depos. of Forlando Brown, 9/27/08, Federal Suit.....	1662
U.S. Estate Tax Return, Schedule F, Est. of James Brown, Sept. 24, 2008.....	1664
Ltr. Estate (Buchanan/Pope) to AG McMaster, etc., dtd. 10/20/08 re: royalty, image, etc.....	1665
Amended Petition for Removal Restraint, Nov. 7, 2008.....	1667
Email Chain Medlin, Buchanan, etc. dtd. 2/18 – 2/19/09.....	1668
Petition of James Brown III for Review of Compensation.....	1670
Ltr. from IRS (Goodlett) to Buchanan/Pope dtd. March 24, 2009.....	1671
Ltr. of Estate/2000 Trust (Buchanan/Pope) to AG McMaster, 4/10/09 re: Corbis Contract.....	1672
Email Chain, Hayes to Jg. Early, others, 5/14 – 5/15/09, Subject: Corbis Hearing.....	1673
Interim Accounting #1, Nov. 20, 2007 – May 20, 2009.....	1674
Final Accounting (Reserving Rights), May 21 -27, 2009.....	1688
Ltr. Buchanan/Pope to Bauknight, June 22, 2009.....	1693
Custody Receipt of Bauknight, June 22, 2009.....	1694
Ltr. of Buchanan/Pope to Klett, June 24, 2009 re: Reasons for Approval of Corbis.....	1703
Memorandum to Bauknight from Buchanan/Pope, July 14, 2009.....	1707
Supp. Affid. of Buchanan/Pope in Support of Commissions, July 13, 2009.....	1708
Email of Medlin to AG Jones, others, dtd. Aug. 30, 2009, re: Tax Valuation.....	1711
Indictment, David G. Cannon, February 2010.....	1712

Order for Release of Info. Related to Attys' Fees & Other Comp, 3/15/2010.....	1713
Motion for Judgment for Costs (against Cannon), May 3, 2010.....	1715
Certificate of Service, May 24, 2010.....	1719
First Request to Admit to Plaintiffs, Aug. 12, 2010.....	1720
Memorandum in Support of Dismissal of Complaint, Aug. 10, 2010	1723
Supp. Memorandum Supporting Dismissal of Complaint, Aug. 25, 2010.....	1732
Ex. B. Motion for Extension of Time, <i>Wilson v. Dallas</i> Aug. 13, 2010.....	1765
Plaintiffs' Memo. in Opposition to Defendants' Mot. to Change Venue, Aug. 27, '10.....	1769
Ex. A: Order Approving Settlement Agreement.....	1776
Ex. B: Order, Hon. Roger Couch, State of S.C. vs. Eli Lilly, Spg. Cty, 9/22/09.....	1777
Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, 8/27/10.....	1815
Affidavit of Bauknight, dated August 26, 2010.....	1831
Second Supp. Memorandum in Support of Dismissal of Complaint, dtd. Aug. 27, 2010.....	1833
Affidavit of Buchanan/Pope in Supp. of Dismissal based on Stat. of Limitatns., 9/21/10.....	1837
Affidavit of Beth Bauknight, dtd. October 1, 2010.....	1850
Affidavit of Default, dtd. November 10, 2010.....	1852
Ex. A: Summons, Richland 4900 (Probate Court), May 19, 2010.....	1857
Ex. B: Answer and Counterclaim, Sept. 30, 2010.....	1859
Email of Kendall to Watson, others, dtd. Nov. 12, 2010.....	1855
Plaintiffs' Responses to First Request to Admit of Plaintiff Pope, dtd. 9/23/10.....	1862
Ltr. of Williams to Kendall, dtd. Nov. 8, 2010, re: Rule 11 as to Responses.....	1865
Plaintiffs' Witness List, October 12, 2010.....	1869
Affidavit of Wingate, dated November 16, 2010.....	1871
Initial Brief of Appellants, <i>Wilson v. Dallas</i> October 22, 2010.....	1871
w/ Chart 1 – James Brown's Intentions in Last Will & Trust.....	1885
Chart 3- How the Proposed Settlement Destroys/Ignores James Brown's Intentions....	1886
Affidavit of Williams, dtd. November 30, 2010.....	1888
Response of Pope to First Request for Production of Documents, Nov. 16, 2010.....	1890
Answers of Pope to First Interrogatories of Plaintiffs, dtd. Nov. 16, 2010.....	1899
Confirmation and Amendment to Settlement Entity (Legacy Trust), Jan 4, 2011.....	1909
Assignment of Terry Brown to William Forlando James Brown, Int. Est. of JB, 1/3/11.....	1915
Notice of Appeal, Feb. 16, 2011, p. 1, only.....	1916
Plaintiffs' Memorandum of Law in Support of Mot. to Set Aside Entry of Default, 4/11/12..	1917
Exhibit B: Order, 9/22/09, State of S.C. v. Eli Lilly, ...	1924

VOLUME V. (Pages 1962-2371)

<i>Private Foundations, Copyright Heirs and Musical Millionaires: Why the James Brown</i>	
<i>"I Feel Good" Trust doesn't...</i> , Draft, April 2011.....	1962
Compilation, Registered Copyrights of James Brown, 1956-60, 1978-81.....	1974
Affidavit of Pope Supporting Disqualification, Injunction & Related Relief, May 18, 2011...	1975

w/ Ex. B: How Bauknight's Sale to Terry Destroys "I Feel Good" Fdn. (3/11).....	1983
Ex.C: Ltr., Black to Pope, July 15, 2011, Re; Requests for Docs under FOIA.....	1984
Affidavit of Pope Supporting Production of Legacy Trust, Contract w/AG, etc., Aug. 1, '11....	1986
Ex.A: Ltr. Pope to Attorney General Wilson dtd. March 5, 2012.....	1995
Order of Jg. Early dtd. Feb. 20, 2008 re: Tommie Rae diaries.....	1999
Ltr. Pope to Attorney General, Cannnon, Bauknight, others, dtd. March 30, 2012.....	2000
Ex. B: Ltr. Pope to AG Wilson, Chief Dep. McIntosh, April 1, 2012.....	2005
Supplement Affidavit of Pope Supporting Injunction, Etc., filed April 12, 2012.....	2009
Affidavit of Pope Requesting Deposition of 5 of 91 Witnesses, etc., July 1, 2012.....	2012
Ltr. of Silvernail to Jg. Manning, July 11, 2012.....	2015
Supp. Affidavit of Pope Supporting Injunction, Disqualification, etc., Jan. 12, 2013.....	2020
w/ Ex. A: Record Request Ignore, so Reporter Sues State AG, Jan. 2013.....	2025
Ltr. Pope to Wilson, Sojourner, Bauknight, dtd. April 3, 2014 re: Settlement Proposal.....	2026
Affidavit (Pope) Oppos. Stay of FOIA Case & Supp. Summary Jmt., etc., April 29, 2014.....	2030
Ltr. of Pope to Potter dtd., June 26, 2014.....	2034
Affid. of Pope Opposing Mot. of AG, Others to Stay, and Supp. Summ. Jmt., etc, 4/29/14....	2038
Notice of Appearance, Donsbach, dtd. Nov. 26, 2014.....	2040
Supplemental Memorandum in Opp. Motion to Set Aside Default, filed Feb. 6, 2015.....	2042
w/Ex.A: Proposed Order	2044
Status Report of Judge Early, May 6, 2015, S.C. Supreme Court.....	2052
Response to Judge Early's Status Report of Daryl Brown, et al. dtd. May 13, 2015.....	2055
Response of Judge Early's Status Report of Terry Brown, filed May 15, 2015.....	2058
Affidavit Supporting Sum. Jmt, Damages, Offset, Transfer Termination Rights, 5/28/15.....	2062
Plaintiffs' Memo. of Law in Opp. to Defendant's Mot. to Alter, etc., (Default), 11/24/15.....	2066
Memorandum in Supp. of Mot. to Amend Ans, Jmt Pleading, etc., [FOIA], 5/22/16.....	2071
Plaintiffs' Memo in Supp. Mot. for SJ as to Defendant's Counterclaims, May 17, 2016.....	2074
Deposition of Tommie Rae Brown, June 16, 2016.....	2088
Deposition of Jason Brown-Lewis, June 29, 2017.....	2096
Affid. Pope in Supp. Motion to Alter, etc. [FOIA] Order Granting AG Mot. Dismiss, 7/1/16..	2101
Plaintiffs' Revised Memo in Supp. of Summary Jmt. as to D's Counterclaims, Aug. 26, '16..	2110
Defendant's Supp. Mem. Oppo to Mot. for Sum Jmt., etc., dtd. Sept. 23, 2016.....	2127
w/Ex. A: Ltr. of Bundy to Jg. Early, dtd. Sept. 23, 2016.....	2129
October 26, 2012 Certification of Daryl, Lindsey, Janise Brown.....	2135
Ex.B: Facebook posts of Tommie Rae, Sept. 18.....	2137
Deposition of Yamma Brown, January 27, 2017.....	2139
Affidavit of Harley Ruff,, June 23, 2017.....	2145
Affidavit of Service of Richland 4900 Complaint on Pope.....	2148
Notice of Motions Roster Publication, August 2010.....	2149
Affidavit, Buchanan & Pope, Sept 21, 2010 (Supp. Dismissal Based on Stats. of Limit'n.)..	2150
w/Index to Exhibits 1 through 42.....	2163

COS, Answer & CC of Buchanan/Pope, 10/30/2010.....	2166
Ltr. of Watson to Jg. Manning, dtd. October 1, 2010 (re: Prop. Ord. Dismissal).....	2167
Ltr. of Skalamera to McBride, dtd. Nov. 10, 2010 (re: Affidavit of Default).....	2168
COS, Affidavit of Default, dtd. Nov. 10, 2010.....	2169
COS, Answer to Counterclaim, Nov. 16, 2010.....	2170
Affidavit of Pope (Disqualification of Pl's. Counsel, Injunction, etc), May 18, 2011.....	2171
Affidavit of Silvernail, May 27, 2011, w/ attached emails.....	2179
What Rosen Wants.....	2185
What Levenson Wants, 10/12/12.....	2186
Affidavit of Pope (Re: Compel Terry Brown to Appear at Depos.), June 2, 2011.....	2187
Affidavit of Pope (in Support of Wingate Private Clients, etc.), December 5, 2011.....	2199
Motion to Enforce Settlement Agreement, dtd. May 18, 2012.....	2209
Affidavit of Pope (Oppose Motion to Strike Offers of Jmt.), Aug. 15, 2012.....	2211
Affidavit of Pope (Oppose Striking Offers of Judgment, etc), August 21, 2012.....	2213
Affidavit of Pope Related to Publicity/Motion, dtd. August 28, 2012.....	2219
w/ Exhibit B: S.C. attorney general sued in James Brown case.....	2229
Emails F. Brown to Kenily, to Jg. Early, Sept. 27, 2013 (Re: Tommie Rae Terminations).....	2231
Ltr. to Pope to Attorney General and others, dtd. April 3, 2014.....	2232
Affidavit of Pope (Re: Require Compliance w/ Mediation Order), Aug. 13, 2015.....	2236
Affidavit of Pope (Support Mot. Alter/Amend), dtd Aug. 7, 2016.....	2245
w/ Ex.A: Depos. Bauknight, August 20, 2013.....	2249
Affidavit Pope (Support Depos. of AGs Jowers, Jones, McIntosh), April 19, 2016.....	2259
w/ Ex. A: Email chain, Pope/Jowers, etc.....	2264
Ex. B: Additional Emails.....	2267
Ex. C: Copyright Termination Notices, T.R. Brown & James II, Aug. 2013.....	2272
Affidavit of Pope (Supp. Mot. to Strike Consolid. Mot. of AG, Others) May 21, 2016.....	2280
Supp. Affidavit of Aiken 1337 Plaintiff (Oppose Discovery Consolid.), June 2, 2016.....	2287
Schedule F, Tax Return of Estate of James Brown.....	2293
Affidavit of Pope (Support Mot. Alt., Amend, Etc., AG's Mot. to Dismiss), July 1, 2016.....	2294
Affidavit of Pope (Support Mot. Compel Lindsey Deposition Attendance), Aug. 22, 2016.....	2303
w/ Schedule of Documents A – T.....	2310
Ex. M: Ltr. Buchanan/Pope, AG McMaster, June 13, 2008 (re: Est Plan of J. Brn.).....	2312
Ex. O: Ltr. Buchanan/Pope (Fax) to AG McMaster, March 16, 2009 (Beech Island).....	2315
Ex. P: Fax Ltr. to Klett from Buchanan/Pope, 6/24/09, CORBIS/GreenLt.Contract).....	2317
Ex. Q: Email Medlin to AG Jones, others, Aug. 30, 2009, re: Tax Valuation.....	2321
Ex. S: Email Chain, Pope, Levenson & Others, Nov. 5, 2012.....	2322
Deposition of Deanna Brown Thomas, March 1, 2017.....	2330
Form 4 Order of Jg. Toal, 3/1/2017 (Wingate/Kendall Depositions)	2335
Ltr. of S.C. Court Admin. to Silvernail, dtd., July 26, 2017.....	2336
Motion of Donsbach to be Relieved as Counsel, dtd. Oct. 10, 2018.....	2337

Ret. & Memo. Oppose Motion of Terry Brown Counsel to be Relieved, dtd.10/29/18.....	2239
Email Bundy to Jg. Early, dtd. Nov. 15, 2018 re: Outstanding Motions.....	2367
Ret. of Appellant to Mot. of AG, others to Strike Mot. to Lift Stay, Nov.20, 2018	2368

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

DEFENDANT/COUNTERCLAIM
PLAINTIFF'S
RESPONSE TO MOTION OF
PLAINTIFF/COUNTERCLAIM
DEFENDANT TOMMIE RAE
BROWN FOR PROTECTIVE
ORDER

RICHLAND COUNTY
FILED
2017 JAN -5 PM 4:14
JEANNETTE W. JACOBS
C.C.P. & C.S.

Defendant/Counterclaim Plaintiff Adele J. Pope ("Defendant") responds to and opposes
the motion of Plaintiff/Counterclaim Defendant Tommie Rae Brown ("Moving Party") for a

protective Order concerning her deposition taken on June 16 and 17, 2016 in this case.

Summary of Relief Requested by Defendant

Directions that Moving Party not answer questions related in any way to her marital status were improper. The very basis for which Moving Party claims she is entitled to a judgment in this action is that she alleges she was the surviving spouse of James Brown, and, as such, she alleges that Defendant owed her various duties that were breached by the Defendant. In sum, Moving Party's allegations of her marital status are at the heart of the present action. Whether or not it was reasonable for Defendant to take certain positions regarding Moving Party's marital status based upon facts associated with the Moving Party's claims that she was married to the late James Brown is an integral inquiry in this action. Moreover, Moving Party has not given any legal basis recognized in South Carolina for the entry of the protective order related to discovery she seeks to avoid—notwithstanding the fact that the burden is on the party asserting the privilege. *State v. Love*, 275 S.C. 55, 271 S.E.2d 110 (1980)(Burden is on the party asserting the privilege to show such a privilege applies); Rule 30(j)(3), SCRPC.

The motion for protective order filed by Moving Party's personal counsel¹ should be denied. The deponent should be directed to appear for a continuation of the deposition and be responsible for all costs thereof, including legal fees and costs of Defendant's counsel resulting from the directions not to answer.

Facts and Argument

Entertainer James Brown died ten years ago on Christmas Day 2006. His death certificate shows that Brown had no spouse, and was predeceased by his third wife, Adrienne Rodriguez. The informant for Brown's death certificate was Dr. Yamma Brown, a co-Plaintiff of Moving

¹ Moving Party's Counsel of record in this action did not make the present motion; rather, her personal counsel made a "limited appearance" for the purposes of this motion only.

Party in this case ("Richland 4900").

By February 2007, Moving Party filed claims to be Brown's spouse and seeking a portion of his assets. Brown's Estate and 2000 Trust asserted Moving Party was not Brown's spouse, a position they are taking today in the South Carolina Court of Appeals.

In March 2007, certain facts came to light that Moving Party was married and living in Texas before she met Brown. Additionally, certain facts suggested that the marriage was concealed during a 2001 ceremony with Brown. He discovered her marriage in 2003.

In a consent order of the Honorable Doyet A. Early, III, dated March 8, 2008, filed in the Estate case, most of Moving Party's Co-Plaintiffs in this action agreed with Brown's Estate/2000 Trust that Moving Party was not Brown's spouse. [Order. Dtd. 3/8/08]

In August 2008, however, certain Richland 4900 Plaintiffs agreed to a settlement brokered by former Attorney General Henry McMaster that stipulated that Moving Party would be treated as Brown's spouse. [The settlement was declared void in 2013.]

On May 19, 2010, Moving Party, with others, filed Richland 4900. Moving Party claimed Buchanan and Defendant were negligent and breached their fiduciary duty to her, among other claims, arising out of Moving Party's alleged status as a beneficiary of an Estate and as the surviving spouse. Buchanan and Defendant answered and counterclaimed that they never owed Moving Party any duty or fiduciary duty because she was neither a beneficiary of Brown's estate plan nor his spouse. Defendant also contends in this action that her conduct relative to the position she took while PR and Trustee that Moving Party was not the surviving spouse nor a beneficiary of an Estate or the James Brown 2000 Irrevocable Trust was reasonable. An issue that is in dispute—the reasonableness of the conduct of Defendant related to the marital status of the Moving Party—is at the heart of this negligence action. Additionally, there is an issue of fact

in dispute in this action, and other actions, related to a pre-nuptial agreement that will have bearing on the conduct of the Defendant in this action.

In January 2015, Judge Early, in a case in which Defendant and Buchanan were not allowed to participate, issued an order finding Moving Party to be Brown's spouse. The order is currently under appeal by Brown's Estate/2000 Trust and a number of Richland 4900 Plaintiffs.

All facts related to Moving Party's marital status and facts associated with the alleged marital status have been in material dispute in Richland 4900 since its commencement six and a half years ago. Over the course of the deposition, Moving Party's personal counsel instructed her not to answer each of the questions highlighted in the excerpts submitted to the Court. The objections and instructions not to answer the questions almost exclusively had as their stated basis that Moving Party's counsel did not wish for Moving Party to answer questions regarding her marriage to Javed Ahmed, her alleged marriage to James Brown, or any facts attendant to such marital claims of the Moving Party.

None of counsel's instructions to Moving Party not to answer questions was based on any recognized privilege (attorney-client, marital or otherwise). Instead, the instructions not to answer were based on the 2015 order which is not final and which Defendant was prevented from any opportunity to be heard. Moving Party's counsel additionally cited a 2015 Order of the South Carolina Supreme Court in another action as a basis for his directions that his client not answer numerous questions. Counsel asserted that his interpretation of that Order disallowed any examination of Moving Party with regard to her relationships and marriage in this case. The 2015 Order of the Supreme Court does no such thing.

Essentially, Moving Party's argument is that she can bring this action and claim that Defendant acted unreasonably toward her and negligently and willfully breached a

duty and a fiduciary duty owed to her arising out of her alleged status as the surviving spouse², but no facts related to her status as a surviving spouse or the reasonableness of any conclusion otherwise are discoverable. This is simply inconsistent with due process, South Carolina law, and the South Carolina Rules of Civil Procedure.

In at least one instance, Moving Party's counsel observed that he thought a question fell into a "grey area," but nonetheless directed her not to answer the question. (Depo., p. 285).

Defendant is unaware of any rule or controlling case that supports the positions taken by Moving Party. Instead, Rule 30(j)(3) provides, "Counsel shall not direct or request that a witness not answer a question, unless that counsel has objected to the question on the ground that the answer is protected by a privilege or a limitation on evidence directed by the court or unless counsel intends to present a motion under Rule 30(d), SCRPC." No privilege was asserted, there was (and remains) no order limiting the scope of Moving Party's deposition in this matter, and there has been no showing that the examination was conducted in bad faith or in such a manner as unreasonably to annoy, embarrass or oppress the deponent. See Rule 30(d), SCRPC.³

It would thus appear that Moving Party's refusal to answer the questions was based on a unilateral determination of relevancy made by her counsel. The Rules of Civil Procedure offer no support for refusals to answer based on relevancy, and all of the questions that Moving Party refused to answer, as well as the questions which would logically follow, are proper under Rules 26 and 30, SCRPC.

The Complaint filed by Moving Party and others alleges that Defendant and Buchanan breached their fiduciary duties by, among other alleged acts and omissions, appealing the 2008

² Moving Party's alleged status as a beneficiary of an Estate arises solely out of her argument that she was the surviving spouse as she was not named as a beneficiary in the Last Will and Testament of James Brown.

³ The only grounds asserted by the Moving Party for the entry of the Protective Order in which she seeks are res judicata and collateral estoppel. Neither res judicata or collateral estoppel are grounds for a protective order under Rule 30(d), SCRPC.

settlement which stipulated she would be treated as Brown's spouse.

Defendant has also counterclaimed against Moving Party and others for abuse of process and other torts related to the wrongful filing of this case in order to force Defendant and Buchanan to drop their appeal of the 2008 settlement and gain other collateral advantages.

For both the defense of Plaintiffs' claims and the prosecution of her own claims, Defendant is entitled to develop in discovery what facts and information were available in 2007, 2008 and 2009 related to the likelihood Moving Party was not Brown's surviving spouse, regardless of any subsequent finding in the Aiken cases. A ruling granting the protective order as to the discovery sought would greatly prejudice the Defendant in this action.

"The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." *In re Anonymous Member of South Carolina Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001). Our Supreme Court has found depositions to be "one of the most powerful and productive" avenues for discovery in civil litigation matters. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 435, 673 S.E.2d 448, 457 (2009).

Rule 26, SCRPC, entitles Defendant to conduct discovery on any matter relevant to the proceeding. As stated above, the facts and information available during Defendant's and Buchanan's tenure as fiduciaries related to the marital status of an individual claiming to be the surviving spouse is relevant to this case and deposition questions related to the topic are reasonably calculated to lead to the discovery of admissible evidence. No privilege was asserted on any of the questions asked. No Order in this case limits the questions that may be asked of Moving Party in any way. No recognized grounds have been asserted, much less shown, under Rule 30(d) by the Moving Party to preclude the questions asked or the inevitable follow up questions. Most importantly, considering the nature of this case, the Defendant would be

prejudiced if she was precluded from conducting the discovery which the Moving Party seeks to avoid.

Conclusion

For the reasons set forth above, the Court should deny Moving Party's motion and direct that the deposition be reconvened at Moving Party's expense to allow examination of the deponent on all questions which she improperly refused to answer and any additional questions which flow from the answers given.

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

December 30, 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
2017 JAN 25 PM 1:54
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**PLAINTIFFS MOTION TO STRIKE
AFFIDAVIT OF ADELE POPE DATED
JANUARY 17, 2017**

COMES NOW THE PLAINTIFFS, by and through undersigned counsel, who moves this Court to strike from the Record all or portions of the Affidavit of Adele Pope, dated January 17, 2017 and filed with this Court in response to Plaintiffs' Motion to Consolidate Expert Discovery.

This Motion is made pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure, on the grounds that the Affidavit and its Exhibits are redundant, immaterial, impertinent and/or scandalous. In general, the Affidavit contains no facts relevant to the issue before the Court, *ie*, whether the deposition of expert witnesses in two cases before this Court should be consolidated for judicial economy, to minimize the burden on the witnesses, and in the interest of justice. In particular, the Affidavit

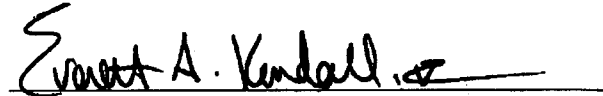
- Makes accusations impugning the character and motives of elected officials, government employees, and officers of this Court (*eg.* ¶ 2, 3, 5, 6, 7, 8, 9, 12, 14, 24, 33, 34, 36, 43, 47, 64, 69, 70, 71, 72
- Repeats and restates allegations of the various pleadings that have no bearing on the pending Motion (*eg.* ¶ 2, 8, 9, 13, 65, 67
- Undermines the authority of this Court by mischaracterizing prior Court actions (*eg.* ¶ 2, 9, 45, 47, 58, 69
- States conclusions of law as though they were facts based on personal knowledge or belief (*eg.* ¶ 2, 8, 22, 45, 47, 54, 67, 70
- Mischaracterizes testimony, actions and statements by others (*eg.* ¶ 3, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 19, 20, 21, 22, 27, 29, 34, 46, 47, 51, 51, 56, 58, 65, 67, 68, 69, 71, 72

- Impermissibly draws inferences regarding the knowledge, thoughts, motives or beliefs of others or the meaning of documents (eg., ¶ 2, 3, 6, 7, 8, 9, 12, 16, 22, 27, 28, 29, 32, 33, 34, 36, 38, 42, 47, 49, 52, 56, 62, 64, 65, 67, 69, 70, 71, 72)
- Places documents into the record that are not relevant to any issue being considered by the Court (eg., ¶ 19 (Exhibit A), 27 (Exhibit B), 31 (Exhibit C), 37 (Exhibit D), 50 (Exhibit E), 55 (Exhibit F), 59 (Exhibit G), 67 (Exhibit H))

Movant respectfully asks that this Court review the Affidavit and assess the propriety and civility of the statements contained therein and strike from the record all redundant, immaterial, impertinent and/or scandalous statements.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B Wingate
Mark V. Gende
Everett A. Kendall
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

January 23, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)
Plaintiff)

v.)

DEPOSITION PRIVILEGE LOG

Estate of James Brown and The)
James Brown 2000 Irrevocable)
Trust,)
Defendants.)

In Re:

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-02-1337

Adele J. Pope,)
Plaintiff)

v.)

Estate of James Brown and The)
James Brown 2000 Irrevocable)
Trust,)
Defendants.)

DEPOSITION OF EVERETT A. KENDALL, ESQUIRE

PRIVILEGE LOG

The following objections have been made pursuant to South Carolina Rules of Professional Conduct 1.6(a), 1.9(c)(1) – (2), the South Carolina Rules of Civil Procedure, and the South Carolina Rules of Evidence.

The Rules of Professional Conduct requires that every attorney owes to his client and former clients an ethical duty of confidentiality, and requires an attorney to claim a

privilege where he is being compelled to reveal what he believes may be privileged information. See Rules 1.6(a), 1.9(c), SCRPC.

The attorney-client privilege is tailored to protect confidences disclosed within the attorney-client relationship. The courts recognize such a privilege where:

- (1) [] legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

State v. Doster, 276 S.C. 647, 651 284 S.E.2d 218, 218-20 (S.C. 1981). This privilege does not end when the attorney-client relationship ends, and a duty of confidentiality is owed to former clients. See *Spence v. Wingate*, 395 S.C. 148, 716, S.E.2d 920 (2011) (stating "fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended").

The attorney's work-product privilege extends to documents created in preparation for litigation as well as the attorney's impressions, conclusions, opinions, or legal research and theories. See *Hickman v. Taylor*, 329 U.S. 495, 511 (1947) (stating an attorney's "interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible [work]" is protected as it relates to preparation of a client's case).

Page/Line Numbers	Question/Response sought to be protected	Basis of Privilege Claim
15:25 – 16:15	Attorney Pope seeks privileged work-product information regarding what attorney at Sweeney, Wingate and Barrow was the "supervisory attorney" during a specified period of time.	Work-product related to preparation and handling of case. Additionally, this question seeks information outside of the scope of Justice Toal's March 1, 2017 Order limiting the deposition subject matter to Mr. Kendall's "authorization to file and continue the law suit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 9, 2010 and continuing today." See attached.
18:6 – 14	Attorney Pope seeks privileged work-product information regarding the firm's process and procedures in handling a case.	Work-product related to preparation and handling of case.

	joint defense privilege with David Sojourner.	
62:5 - 12	Attorney Pope seeks information regarding his client, Venisha Brown's incarceration and the effect it has on her representation.	Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys. This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
65:13 - 22	Attorney Pope seeks information regarding Mr. Kendall's awareness of a motion filed by Defendants relating to valuation of the Brown estate.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
62:23 - 63:4	Attorney Pope seeks information regarding Mr. Kendall's awareness of the Estate's inventory and appraisal.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
63:5 - 14	Attorney Pope seeks information regarding Mr. Kendall's awareness of Orders executed by Judge Early approving the sale of an asset from the Estate.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
63:15 - 22	Attorney Pope seeks information regarding Mr. Kendall's awareness of appellate court filings made by Albert Dallas and an Order executed by Judge Cureton approving the sale of an asset from the Estate.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
63:23 - 65:3	Attorney Pope seeks information regarding Mr. Kendall's awareness of a Petition for Review of Compensation of the Defendants.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
68:13 - 22	Attorney Pope seeks information regarding Mr. Kendall's involvement in "FOIA matters on behalf of parties" to this law suit.	Attorney-Client privilege based on conversations between the clients and Mr. Kendall and associated attorneys. Work product containing documents, theories, strategies, opinions, and

		mental impressions of Mr. Kendall and associated attorneys for Plaintiffs. This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.
73:4 – 13	Attorney Pope seeks information regarding communications with Mr. Medlin regarding this case.	This question seeks information outside of the scope of Justice Toal's March 1, 2017 Order.

EVERETT A. KENDALL, II, ESQUIRE

1 (Pages 1 to 4)

Page 1		Page 3	
STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS COUNTY OF AIKEN C/A. No. 2013-CP-02-1337 Adale J. Pope,) Plaintiff,) vs.) Estate of James Brown and) The James Brown 2000) Irrevocable Trust,) Defendant.) DEPOSITION OF EVERETT A. KENDALL, II, ESQ. ***** Monday, March 6, 2017 4:07 p.m. - 5:35 p.m. The deposition of EVERETT A. KENDALL, II, ESQ., was taken on behalf of the Plaintiff at the law offices of Gertz & Moore, LLP, 1416 Laurel Street, Columbia, South Carolina, on the 6th day of March, 2017 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.		EXHIBITS (Continued) PAGE 2 Plaintiff's Exhibit No. 8.....50 (Email dtd 12/6/07 frm Mr. Jones) 3 Plaintiff's Exhibit No. 9.....51 (Ltr dtd 7/30/08 frm Mr. McMaster) 4 Plaintiff's Exhibit No. 10.....52 (Partial transcript of Hearing dtd 8/30/10) 5 Plaintiff's Exhibit No. 11.....52 (Partial transcript of Hearing dtd 8/30/10) 6 Plaintiff's Exhibit No. 14.....54 (Plaintiff's Motion to Dismiss Petition for Writ of Prohibition dtd 2/28/11) 7 Plaintiff's Exhibit No. 17.....55 (Ltr dtd 6/29/08 frm Mr. Levenson) 8 Plaintiff's Exhibit No. 2.....58 (Questions for Mr. Wingate and Mr. Kendall) 9 Defendant's Exhibit No. 1.....69 (Return and Opposition to Motion) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 STIPULATIONS It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure. It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby reserved.	
Page 2		Page 4	
1 APPEARANCES: 2 Adale J. Pope, Esquire 3 Law Office of Adale J. Pope, P.C. 4 1228 Walnut Street 5 Henderson, South Carolina 29108 6 Appearing Pro Se 7 William C. Newcome, III, Esquire 8 Nexsen Pruet, LLC 9 1230 Main Street, Suite 700 10 Post Office Drawer 2426 11 Columbia, South Carolina 29201 12 Attorney for the Defendant 13 14 R. Davis Rowser, Esquire 15 Rowser, Newman & Beasley, LLC 16 1508 Washington Street 17 Columbia, South Carolina 29201 18 Attorney for Mr. Kendall 19 20 21 22 23 24 25 INDEX PAGE Direct Examination by Ms. Pope.....4 Cross-Examination by Mr. Rowser.....69 Redirect Examination by Ms. Pope.....70 Stipulations.....3 Certificate.....74 Verification of Deponent.....75 Exhibit Page.....76 EXHIBITS PAGE 17 Plaintiff's Exhibit No. 1.....5 (Judge Toal's order dtd 3/1/17, Form 4) 18 Plaintiff's Exhibit No. 3.....13 (Summons, C/A No. 2010-GC-4000073) 19 Plaintiff's Exhibit No. 12.....22 (Agreement for Legal Services dtd 5/18/10) 20 Plaintiff's Exhibit No. 3.....39 (Email dtd 7/31/08 frm Mr. Rosen) 21 Plaintiff's Exhibit No. 6.....43 (Form 706) 22 Plaintiff's Exhibit No. 13.....44 (Motion to Supplement Record, C/A No. 08-CP-2-1647) 23 Plaintiff's Exhibit No. 16.....44 (Appendix to Record on Appeal, C/A No. 08-CP-2-1647) 24 Plaintiff's Exhibit No. 7.....47 25		1 EVERETT A. KENDALL, ESQ., having been duly sworn, 2 deposes and testifies as follows: 3 4 DIRECT EXAMINATION 5 BY MS. POPE: 6 Q. Mr. Kendall, will you state your full name 7 for the record, please? 8 A. Everett Augustus Kendall, II. 9 Q. Okay. And you -- am I correct that you 10 don't need the deposition process described to 11 you by me? 12 A. No, I'm familiar with it. 13 Q. Okay. And we are here today in Case 14 2013-CP-02-1337, which I will sometimes refer to 15 as Aiken 1337. You're familiar with what that 16 case is? 17 A. Yes, generally speaking. 18 Q. Okay. Now, I'll also be referring to 19 another case, which is Richland County Case 20 2010-CP-40-4900 and I will refer to it as the 21 Wingate Suit. I think some people refer to it as 22 Richland 4900. You know about that case, too? 23 A. I do. 24 Q. And you are counsel -- you and your law 25 firm, Sweeney, Wingate & Barrow, PA -- A. (Nods head affirmatively.)	

GARBER REPORTING SERVICE

803-256-4500

0997

Page 5	Page 7
1 Q. -- are counsel for the Plaintiffs in that 2 lawsuit? 3 A. That's correct. 4 Q. Okay. Have -- 5 MR. HOWSER: Let me just -- before I 6 forget. He'll reserve the right to read and 7 sign. 8 MS. POPE: Oh, absolutely. I 9 apologize. Yes. 10 BY MS. POPE: 11 Q. You would like to read and sign your 12 deposition? 13 A. Yes. 14 Q. Yes, okay. Now, are you familiar -- I'm 15 going to use for the most part the exhibits from 16 the Wingate deposition, which has just taken 17 place a couple of hours earlier. And so if I 18 forget and refer to them as Wingate 1, you'll 19 forgive me. We'll just -- but the numbers will 20 be the important thing, so. 21 (Off the Record) 22 (Plaintiff's Exhibit No. 1, as previously 23 marked, was presented for identification.) 24 Q. All right. Are you familiar with Exhibit 25 No. 1?	1 Q. Okay. So -- 2 A. And not in regard to this. I know Alan 3 Madlin. He was a professor of mine. I met Sonny 4 Jones for the first time in conjunction with 5 this. But all of those meetings took place in 6 the early 2010, May 2010. 7 Q. Okay. So anything that went on in relation 8 to what became the Wingate Suit during the months 9 of March and April, you were not involved in? 10 A. I do not have any recollection of being 11 involved prior to early May. 12 Q. Okay. 13 A. If I had involvement prior to that, it could 14 have been incidental. 15 Q. Okay. 16 A. But I -- I don't recall anything other -- 17 that occurred much before about two weeks before 18 the lawsuit was actually filed. 19 Q. Okay. I'm just -- just to either tweak your 20 memory or preclude your later memory, do you 21 recall any threat or warning made by Alan Madlin 22 to counsel for Bob Buchanan that a lawsuit would 23 be filed if the appeal, which became Wilson 24 versus Dallas were not dropped? 25 MR. HOWSER: Object to the form.
Page 6	Page 8
1 A. I've seen Judge Tol's Order, yes. 2 Q. Okay. Are you -- do you recall the 3 affidavit that you filed in opposition to having 4 your deposition taken in Aiken 1337? 5 A. Yes. 6 Q. What was the gist of what you had to say in 7 your affidavit? 8 A. Well, the affidavit speaks for itself. 9 Generally describes the fact that I had no 10 knowledge of the James Brown Estate or its 11 administration prior to being retained or just 12 leading up to the formal retention. Everything I 13 know about the manner in which it was 14 administered and any of the history of it has 15 come as a result of that representation. 16 Q. Okay. Did you prior -- well, let me ask you 17 this. When did your representation in the 18 Wingate Suit from your perspective begin? 19 A. The beginning of May 2010. 20 Q. Okay. Prior to the beginning of May 2010, 21 had you had a number of meetings with Alan Madlin 22 and Sonny Jones? 23 A. No. 24 Q. You had not had any? 25 A. Not prior to May 2010.	1 MR. NEWSOME: Object to the form. 2 A. I'm going to ask you to repeat your 3 question, if you don't mind, or have it read 4 back. 5 THE COURT REPORTER: "Either to tweak 6 your memory or preclude your later memory, 7 do you recall any threat or warning made by 8 Alan Madlin to counsel for Bob Buchanan in a 9 lawsuit -- that a lawsuit would be filed if 10 the appeal, which became ..." 11 MS. POPE: Wilson versus Dallas. 12 THE COURT REPORTER: Okay. "Wilson 13 versus Dallas were not dropped?" 14 THE WITNESS: I have no personal 15 knowledge of that. 16 MR. NEWSOME: Same objection. 17 MR. HOWSER: Same objection. 18 BY MS. POPE: 19 Q. Do you recall that prior to the filing of 20 the Wingate Suit, a similar admonition was made 21 by Freddie Kingmore of the Farsen Frust firm? 22 MR. HOWSER: Object to the form. 23 MR. NEWSOME: Object to the form. 24 A. I have no personal knowledge of that. 25 Q. Okay. Do you -- do you know whether any

Page 9	Page 11
1 lawsuit had been authorized before you became 2 involved? 3 A. You're going to need to rephrase that. 4 Q. Okay. 5 A. I don't know what you mean by "any" and by 6 "authorized." 7 Q. Okay. Thank you. Let me do better. 8 Do you know whether the Wingate lawsuit had 9 been authorized or action on the Wingate Suit was 10 commenced prior to your becoming involved in May 11 of 2010? 12 A. I assisted in the drafting of the complaint, 13 so -- so by "authorization," if you mean was I 14 authorized to assist in drafting the complaint, 15 yes, I was. 16 Q. When you began working on the complaint, was 17 it already in place? 18 A. Had it been filed? 19 Q. No, no. Was it in working form? 20 A. Do you mean was there a Word processing 21 document in existence? 22 Q. Yes. 23 A. I don't recall whether I drafted the first 24 draft or whether I was provided information by 25 others. I don't recall.	1 Q. When do you believe that they first acquired 2 that status? 3 A. Which status? 4 Q. The status of having the same right to 5 confidential communications as the clients they 6 represent. 7 A. As to -- I don't know when their 8 attorney/client relationship with -- in other 9 words, I don't know when Alan Madlin's 10 attorney/client relationship began with 11 Ms. Brown. 12 My relationship started in early May and 13 immediately -- because it was all associated with 14 representation, it immediately all took the 15 character of attorney/client communications. 16 Q. And do you today assert that your 17 communications with Alan Madlin have the 18 character of attorney/client communications? 19 A. If they involve this matter, they do. 20 Q. Okay. All right. Do you believe the same 21 is true of Louis Levenson? 22 A. Yes. 23 Q. Do you believe the same is true of David 24 Bell? 25 A. Yes.
Page 10	Page 12
1 Q. Do you consider Alan Madlin a client? 2 A. No. 3 Q. Have you ever considered Alan Madlin a 4 client? 5 A. No. 6 Q. Okay. Do you consider Louis Levenson a 7 client? 8 A. No. 9 Q. Have you ever considered Louis Levenson a 10 client? 11 A. No. 12 Q. Do you consider David Bell a client? 13 A. No. 14 Q. Have you ever considered David Bell a 15 client? 16 A. No. 17 Q. Do you believe that you share a common 18 interest privilege with any of those three 19 gentlemen? 20 A. They are attorneys for clients that I 21 represent in this matter and they have been 22 involved in our conversations. So I believe that 23 all of the communications with them are the same 24 as communications with my clients and the clients 25 that they represent.	1 Q. Do you believe the same is true of Sonny 2 Jones? 3 A. Yes. 4 Q. Do you believe the same is true of Alan 5 Wilson? 6 A. Yes. 7 Q. Do you believe the same is true of every 8 other person in the Office of the Attorney 9 General? 10 A. Yes. 11 Q. Do you believe the same is true of members 12 of the law firm of Parker Poe? 13 A. I don't know their role in this matter. 14 Q. Do you believe the same is true of Scott 15 Keniley? 16 A. I don't know him. 17 Q. Okay. Do you believe the same is true of 18 Matthew Bodman? 19 A. If I recall, I've had very little 20 communication with Matthew Bodman and he was 21 local counsel, I believe, for David Bell at the 22 time I have communicated with him. So to the 23 extent that that's correct, yes. 24 Q. Who does David Bell speak for? 25 A. I don't have that chart in front of me, but

Page 21	Page 23
1 a lot of discussion about who was going to sign 2 the complaint and who was going to be named in 3 the complaint? 4 A. I don't recall about who was going to sign. 5 I do recall about who was going to be named and 6 what the caption would look like. 7 Q. And did you at first have Henry 8 McMaster -- I mean, you -- I'm sorry. Do you not 9 recall that there was also discussion about who 10 was going to sign the contract? 11 A. Which contract? 12 Q. The contract to bring the Wingate lawsuit. 13 A. There was discussion about the form of the 14 fee agreements and the engagement agreements. 15 Q. Was it your first contract presented to 16 Henry McMaster as Attorney General with him as a 17 signatory to the contract? 18 A. I don't recall first what -- I don't recall 19 what was first. And I -- let me also say this. 20 I was not the primary relationship partner and so 21 much of that conversation -- I was involved in 22 some of the drafting of some of the agreements, 23 but I was not involved at the highest level of 24 that conversation. 25 Q. Who was involved at the highest level of	1 is? 2 A. Of document 12? 3 Q. Yes. 4 A. The first portion of this is between the 5 firm and Mr. Bauknight in his various capacities 6 on behalf of the Estate and the Trust that he 7 was -- that he was representing. And it contains 8 a fee agreement. It contains a lot of terms, but 9 it's the engagement letter. 10 Out of sequence with that is also a 11 portion -- or is the -- a portion of the 12 agreement with the Attorney General's Office that 13 starts at Exhibit A, Bauknight 129, and runs 14 through 140. That is -- that document is 15 incorporated into and made part of the letter 16 authorization from then Attorney General Henry 17 McMaster, which is at 141. 18 142, 143, and 144 are the adoptions or 19 ratifications, whatever you want to call them, by 20 other -- the remaining individual clients. So it 21 is -- this document is in multiple parts. It 22 is -- it has to be read together. And it is 23 fully authorized by all -- all of the clients. 24 Q. Now, let's just look at the contract for a 25 minute. Do you believe that as to all matters
Page 22	Page 24
1 that -- 2 A. Ken Wingate was the primary relationship 3 partner. 4 (Plaintiff's Exhibit No. 12, as previously 5 marked, was presented for identification.) 6 Q. Okay. Let's look at Wingate No. 12 and see 7 if you can tell me what that is. 8 A. (Perusing.) These are the multiple forms 9 that comprise the engagement agreement between 10 our firm and our clients. 11 Q. Okay. Is there anything, so far as you 12 know, missing from the Wingate firm's litigation 13 agreement as set -- as presented in 12? 14 A. I don't recognize that there's anything 15 missing. 16 Q. So is it fair to say that you consider the 17 Wingate contract to be certain pages signed by 18 Mr. Bauknight in various capacities, an unsigned 19 Litigation Retention Agreement, a letter, and 20 then three pages of additional documents; is that 21 correct? 22 A. No. 23 Q. Okay. Can you describe to me what -- what 24 you believe that the authorization and the 25 meaning of the whole and the various components	1 related to the charitable portions of your 2 representation that you are bound by the Attorney 3 General's Litigation Retention Agreement? 4 A. No -- no. The genesis of that portion of 5 the agreement was a concern about the fee 6 schedule that we had agreed to with the other 7 parties. And to the extent that the Attorney 8 General was representing the charitable interest, 9 which were part of the overall settlement entity, 10 they wanted a -- the Attorney General's Office 11 wanted those funds or those recoveries treated 12 differently or -- as far as the fee scale. 13 And so the principal aspect of Exhibit A 14 that we were asked to comply with was the fee 15 schedule portion of it. 16 If the other portions were to be complied 17 with, we did not -- we were told -- and 18 this -- this, I don't know whether I heard 19 directly or whether I heard internally to our 20 firm. But it's been my understanding that Sonny 21 Jones expressly stated that all of these parts 22 were not what they were after. It was really the 23 fee schedule and that was what we were bound -- 24 what they wanted us to stick to. 25 Q. Okay. So the 11 pages of the Attorney

Page 25	Page 27
1 General's requirements, do I understand that you 2 do not believe that the Wingate firm is -- 3 considers those a part of the contract? 4 A. The whole document is part of the contract 5 and it's 12 pages. But we were not asked by the 6 Attorney General's Office to strictly comply with 7 some of the other terms. 8 Q. Did you discuss that lack of compliance with 9 anyone at the Attorney General's Office other 10 than Sonny Jones? 11 A. I told you, I did not have that conversation 12 with Sonny Jones. It's my understanding -- 13 Q. Okay. 14 A. -- through interoffice communications and 15 that's what I can't tell you -- you know, 16 sometimes you absorb institutional knowledge and 17 you can't remember where it came from; that's the 18 case with this. 19 Q. That's fine. If you can help me, because 20 I'm most interested in everything you know, but 21 segregating it from what you independently 22 learned -- 23 A. Uh-huh (affirmative response). 24 Q. -- from some representative of either 25 Attorney General Alan Wilson, Attorney General	1 A. That would -- those were conversations with 2 me. 3 Q. Oh, okay. 4 A. Now, I cannot quote them. It's just -- 5 Q. But the -- okay. 6 A. But that was the gist of the conversations I 7 had. This is during the time -- early time frame 8 when we were putting together this whole thing. 9 Q. Right. 10 A. And this case in -- this Exhibit A came into 11 the mix at that time and it was -- it was 12 communicated to me that because of the charitable 13 natures of the interest they were protecting, 14 they wanted us to have a different fee and 15 expense understanding than what Mr. Baucknight had 16 agreed to. 17 Q. All right. And that would be up to 18 23 percent of your contingency? 19 A. It's whatever it says in here. 20 Q. Okay. 21 A. What I recall about it basically was, there 22 was within that settlement entity and the way 23 that they had structured that settlement 24 agreement, some portion of -- some -- a portion 25 of income to that settlement entity was allocated
Page 26	Page 28
1 Alan Wilson himself, or Attorney General McIneris 2 himself, or some person. So let's see if we can 3 revisit that quickly. 4 A. Let me to tell you then what I know of my 5 personal knowledge. I've never -- first of all, 6 I've never spoken to Attorney General Alan Wilson 7 directly. I can't recall having any direct email 8 correspondence with him. I know that I have 9 received documents that he has signed. 10 Now, as far as this, my conversations with 11 Sonny Jones about Exhibit A occurred prior to the 12 total body of things coming together and him 13 expressing to me at that time that the reason 14 they wanted to use it was the fee scale -- fee 15 schedule. 16 Q. Who -- 17 A. And I think there are also some expense -- 18 some expense limitations and those kinds of 19 things. They were concerned about the financial 20 component of it, given that we were protecting 21 the interest of a charitable trust. 22 Q. So Sonny Jones told someone, you think, that 23 it was the fee component of Schedule A that was 24 important -- of primary importance to the 25 Attorney General?	1 between the Trust and the others. And the 2 portion that gets allocated to the Trust was to 3 be -- the fee was to be applied differently. 4 Q. Well, let's -- 5 A. It's whatever's in there. 6 Q. Let's actually look at it -- 7 A. Okay. 8 Q. -- and see if you can refresh your 9 recollection. 10 A. (Witness complies.) Okay. 11 Q. Okay. And so the fee agreement with respect 12 to what was defined as the charitable portion of 13 the contract gave the Wingate firm a maximum of a 14 23 percent contingency; is that right? 15 A. It's -- yeah, according to the fee schedule, 16 zero to \$5 million -- the first -- essentially, 17 the first \$5 million would be 23 percent. 18 Q. Right, right. And then less than 23 percent 19 if you recovered more than \$5 million? 20 A. Yeah, as it -- as it continues to go up, the 21 percentage continues to decrease. 22 Q. So I didn't say that right. Then it would 23 be 23 percent less a contingency for the 24 charitable portion of -- 25 A. Yes.

EVERETT A. KENDALL, II, ESQUIRE

8 (Pages 29 to 32)

Page 29

1 Q. -- any recovery.
2 A. The effect would be that it would be less
3 than 23 percent after \$5 million.
4 Q. Right. Now -- and did you -- were you
5 required by the contract to pay ten percent of
6 that fee to the Attorney General's Office?
7 A. I don't recall ever discussing that with
8 them. I believe you're referring to the last
9 sentence of paragraph three of page six, which
10 seems to say that -- well, it says the Attorney
11 General shall retain ten percent of Special
12 Counsel's fee awarded under this section three.
13 Q. Were you aware of that as a provision of the
14 contract?
15 A. If I was, I don't recall.
16 Q. Okay. Is it your recollection that you were
17 not subject to the oversight provisions of the
18 Attorney General as set out in Exhibit A?
19 A. Is there a specific paragraph that you want
20 me to refer to?
21 Q. Well, does -- does -- is the gist of
22 Schedule A that the Attorney General controls the
23 litigation in which he's a party?
24 A. I don't -- I don't think it's fair to
25 characterize this 12-page document with a single

Page 30

1 sentence "gist."
2 Q. Okay.
3 A. I think here's -- but here's your -- here's
4 what you're asking me, I think. The purpose, as
5 I said, of this document, as I understood at the
6 time, was primarily concerned with the fee
7 schedule.
8 We had a dynamic working relationship with
9 the Attorney General's Office. They had
10 sign-off -- they had the ability to sign off or
11 approve, not literally signature, but they --
12 they approved every action we took from the time
13 we filed the lawsuit until -- during the entire
14 time I was personally involved.
15 So did they have -- did they exercise
16 oversight? To the extent that they were a
17 client, they exercised that oversight. Did it
18 strictly comply with the terms of this document?
19 I doubt it.
20 Q. All right. Good. Let me hold on, because I
21 want to be very clear about this. You said,
22 "During the time in which I was involved."
23 You're talking now until the end of 2011 or after
24 you became reinvolvement in late 2011?
25 A. I have had no communications since I became

Page 31

1 reinvolvement.
2 Q. So when you say, "During the time that I was
3 involved," you mean from shortly prior to
4 May 19th, 2010, until the end of 2011?
5 A. That is what I meant, but -- and -- but let
6 me amend my last sentence.
7 Q. Sure.
8 A. I have communicated with the Attorney
9 General's Office since then. I haven't done it
10 in an attorney/client relationship context. I
11 have not discussed 4900 with them. I have
12 exchanged emails I know with Emory Smith
13 recently.
14 Q. Okay.
15 A. But going to back to this, yes, my period of
16 involvement, personal involvement, for this
17 purpose was from early May 2010 to sometime
18 towards the end of 2011. I can't be precise
19 about what that date was.
20 Q. Okay. That's fine. That's fine. We're
21 getting there. Now -- but very important, were
22 you involved -- well, let me back up to your
23 previous answer.
24 When you say that each action you took from
25 May 19th, 2010, until late 2011 was authorized by

Page 32

1 the Attorney General, tell me whether you recall
2 authorizations from anyone other than Sonny
3 Jones.
4 A. I remember -- Sonny Jones was the principal
5 person we dealt with. I -- so my memory is, yes.
6 I cannot remember relying on an authorization
7 from Mary Francis Jowers.
8 She was involved in a lot of the writing and
9 sharing the drafting responsibilities that we
10 did. I interfaced with her quite a bit with
11 preparing discovery responses on behalf of the
12 Attorney General's Office. But I don't recall
13 that I accepted authorization from her.
14 Q. Okay.
15 A. So.
16 Q. So Sonny. Anyone else?
17 A. No.
18 Q. You -- directly to you?
19 A. No.
20 Q. So your dealings then but for -- was it a
21 single meeting with Henry McMaster?
22 A. That's correct.
23 Q. But for a single meeting with Henry McMaster
24 were with Sonny?
25 A. That's correct.

Page 37	Page 39
1 us contemporaneously. 2 Q. Right. 3 A. It's not -- it's not reflected here, but 4 this was -- this letter was given to us. 5 Q. Okay. Who gave it to you? 6 A. I don't recall. 7 Q. Okay. All right. So did you advise Henry 8 McFaster that he would breach his fiduciary duty 9 as Attorney General if he didn't file this 10 lawsuit by May 15th? 11 A. I do not recall that I gave such advice. 12 Q. Did Alan Madlin give such advice? 13 A. I don't recall that. 14 Q. Do you recall anyone giving it? 15 A. No. 16 Q. Do you know what the -- 17 A. And by -- I'm saying one way or the other, I 18 don't -- that's how you should construe my saying 19 "I don't remember." I don't remember, yes; I 20 don't remember, no. 21 Q. Was Alan Madlin in the meeting with you and 22 Mr. Wingate and the Attorney General? 23 A. To the best of my recollection, he was. 24 Q. Do you recall the issue of the statute of 25 limitations coming up prior to the filing of the	1 Buchanan and Adele Pope? 2 MR. NEWSOME: Object to the form. 3 MR. HONER: Object to the form. 4 A. No. 5 Q. Did you ever observe his desire to damage 6 them? 7 A. No. 8 (Plaintiff's Exhibit No. 5, as previously 9 marked, was presented for identification.) 10 Q. Let me ask you if you know anything about 11 the subject of Wingate No. 5. 12 A. Subject line or the whole -- you want me to 13 look at the whole? 14 Q. The whole thing. The contents, the people, 15 the timing, everything. 16 A. Okay. I know that I -- I was not involved 17 on July 31st, 2008, on anything about this; had 18 no -- no knowledge of the matters at all. 19 Q. Okay. 20 A. The people -- I don't know Marsha Jones. I 21 don't know Chandler. I don't know David. I 22 don't know Carter. I don't know JLee. And I'm 23 reading email names. 24 Q. Sure, that's fine. Take your time. 25 A. I only know Mr. Rosen by reputation. I
Page 38	Page 40
1 complaint? 2 A. I was aware that the statute of 3 limitations -- there was a statute of 4 limitations, as there is in just about any 5 lawsuit. 6 Q. Are you aware of what it was for this 7 matter? 8 MR. HONER: Well -- 9 MR. NEWSOME: Objection. It's beyond 10 the scope of the deposition. 11 MR. HONER: Yeah, I'll go with that 12 objection. If you -- I'll let you use your 13 discretion. 14 A. Somebody -- at some point, somebody must 15 have communicated to us what it was because I 16 recall that it was -- it was eminent. 17 Q. Do you recall that it was a one-year statute 18 of limitations? 19 A. I recall it was tied to some filing in the 20 Probate Court and that it was one year. 21 Q. Okay. Let's -- let's take a look at ... 22 A. That's without waiver to those objections. 23 I'll -- just trying to be cooperative. 24 Q. Okay. Did you ever become aware that Sonny 25 Jones had a bit of a vendetta against Bob	1 can't tell you that I've met him and if it has -- 2 if I have, it was very -- in passing. 3 I have heard in open court that there was a 4 DMR process. That's all I know about it. 5 Q. Okay. 6 A. Is that the subject you want me to comment 7 on? 8 Q. No, the whole thing. 9 A. Okay. (Reading.) I have no knowledge of 10 any of this. 11 Q. Do you know who Alan Madlin is referring to 12 as "Adolph"? 13 A. No. 14 Q. Do you know who Alan Madlin is referring to 15 as the "three enigmas"? 16 A. I can't speak for who he's referring to. I 17 have heard that name used, that label used -- 18 Q. Well -- 19 A. -- in open court. 20 Q. -- does Alan Madlin use that to refer to the 21 original common fiduciaries? 22 A. If he's used that term with me, it would be 23 subject to attorney/client privilege. 24 Q. Well, if he's used it in open court, it 25 wouldn't, would it?

Page 41

1 A. I haven't ever seen him speak in open court
2 on -- as part of this engagement where I've been
3 present. Because when I've been present, I have
4 been the attorney for the Plaintiffs, the lead
5 attorney. And so I'm not aware of any time when
6 I have been present when he has spoken.
7 Q. Do you know who Dr. Terry Cox is?
8 A. I've heard the name. I do not know him.
9 Q. Okay. Do you know anything about his
10 relationship to a hundred-million-dollar offer
11 referenced in your complaint?
12 A. To the extent that I do, it would be part of
13 my work product and attorney/client privilege.
14 Q. Knowing -- knowing whether Terry Cox was the
15 one to make a hundred-million-dollar offer would
16 be the subject of attorney/client privilege?
17 A. Either that or attorney work product,
18 because I would have only learned it in the
19 course and scope of my engagement as counsel for
20 the Plaintiffs.
21 Q. Do you refuse to answer whether you know
22 what connection, if any, Terry Cox had to the
23 allegation in your complaint that Bob and Adale
24 should have accepted a hundred-million-dollar
25 offer?

Page 43

1 independent investigation before filing a
2 multi-million-dollar lawsuit against Adale Pope
3 and Bob Buchanan?
4 MR. NEWSOME: Object to the form.
5 MR. HOWSER: Object to the form.
6 A. That's -- I have always complied with my
7 obligations pursuant to Rule 11.
8 MS. POPE: Would you read the question
9 again?
10 THE COURT REPORTER: "Is it fair to say
11 you did no independent investigation before
12 filing a multi-million-dollar lawsuit
13 against Adale Pope and Bob Buchanan?"
14 A. That's outside the scope of the lawsuit.
15 Q. Do you refuse to answer?
16 A. I do.
17 (Plaintiff's Exhibit No. 6, as previously
18 marked, was presented for identification.)
19 Q. Okay. Look at Wingate No. 6. Do you know
20 anything about that?
21 A. I cannot recall whether I've seen this
22 before. I've seen -- I've seen similar
23 documents. This specific one, I don't know.
24 Q. This is Schedule F of the estate tax return
25 of James Brown in which Bob Buchanan and Adale

Page 42

1 MR. NEWSOME: I want object to the
2 question. It's very beyond the scope.
3 MS. POPE: Are you directing him not to
4 answer?
5 MR. HOWSER: I think it's beyond the
6 scope.
7 THE WITNESS: Then I'll --
8 MS. POPE: Are you directing him not to
9 answer?
10 MR. HOWSER: I am.
11 MS. POPE: Okay.
12 A. I'll refuse to answer.
13 Q. Okay.
14 A. I decline to answer. Excuse me.
15 Q. Do you think that the public allegations you
16 made against Bob Buchanan and Adale Pope in the
17 complaint are subject to attorney/client
18 privilege?
19 A. The complaints themselves -- the allegations
20 in the complaint themselves are not. What I
21 personally know about them and how I learned
22 about them are subject to work product and
23 attorney/client privilege. It will -- it would
24 be incumbent upon us obviously to prove it.
25 Q. Is it fair to say that you did no

Page 44

1 Pope, through CPA William Sellers, valued James
2 Brown residuary assets, including his publicity
3 rights and approximately 850 copyrights at
4 \$4 million. Does that refresh your memory?
5 A. I see all of that information contained
6 here.
7 Q. Do you --
8 A. I've told you, I don't have a memory of
9 whether I have seen this document. I can read
10 what it says.
11 Q. Do you know anything about the value of the
12 James Brown assets?
13 A. If I do, it's subject to work product and
14 attorney/client privilege and I'll decline to
15 answer.
16 (Plaintiff's Exhibit Nos. 13 and 16, as
17 previously marked, were presented for
18 identification.)
19 Q. Okay. Then let's look at -- let's look at
20 Wingate 13 and 16, which is a public document, a
21 Motion to Supplement the Record pursuant to Rule
22 212, filed by your client, Alan Wilson, and a
23 portion of the appendix. I'd like you to take
24 all the time you need to look at that document --
25 those documents, which were filed on or about

Page 45

1 May 6, 2011.
2 A. As I'm doing this, I will state that while I
3 represent Mr. Wilson in the 4900 suit, I do not
4 represent Mr. Wilson and have never represented
5 or advised Mr. Wilson in the Wilson versus Dallas
6 matter. So he is not my client in that case;
7 just to the extent your question assumed that and
8 the same for Exhibit 15, so.
9 Q. Well, let's look at them. I want to ask you
10 some questions about them.
11 A. Sure. Go ahead.
12 Q. Have you had an opportunity to look at the
13 documents?
14 A. I have gone through them. I have not read,
15 studied them.
16 Q. Are you aware that beginning approximately
17 May 6, 2011, Alan Madlin and the Attorney General
18 began telling the Appellate Court that James
19 Brown's assets were worth less than \$7 million
20 and his music empire worth less than
21 \$4.7 million?
22 MR. HOWSER: Object to the form.
23 MR. NEWSOME: Object to the form.
24 MR. HOWSER: It's beyond the scope,
25 too.

Page 46

1 MR. NEWSOME: Yeah, object to scope.
2 A. I'll decline to answer.
3 Q. Would you have wanted to know that if you
4 were suing Bob Buchanan and Adale Pope for not
5 accepting a hundred-million-dollar offer for the
6 assets?
7 MR. NEWSOME: Object to the form --
8 MR. HOWSER: Object to the form and the
9 scope.
10 MR. NEWSOME: -- and object to the
11 scope.
12 A. I'll decline to answer.
13 Q. Okay. Are you aware of what the position of
14 Bob Buchanan and Adale Pope was with respect to
15 the marital status of Tommie Rae Synia?
16 MR. NEWSOME: Object to the form;
17 object to the scope.
18 MR. HOWSER: Same objection.
19 A. I'll decline to answer.
20 Q. Okay. Are you aware what the position of
21 the Estate of James Brown today is with respect
22 to the marital status of Tommie Rae Synia?
23 MR. NEWSOME: Object to the question;
24 beyond the scope.
25 MR. HOWSER: Same -- same objection.

Page 47

1 A. I'll decline to answer.
2 (Plaintiff's Exhibit No. 7, as previously
3 marked, was presented for identification.)
4 Q. Okay. Let's look at Wingate 7 and take all
5 the time you need. See if that ...
6 A. (Reading.) Okay. I see it.
7 Q. Okay. Are you familiar with the subject of
8 that -- what's the number, please? Sorry.
9 A. 7.
10 Q. Are you familiar with the subject of
11 Wingate 7?
12 A. In reference to that question, I'll take
13 another look at it. (Reading.)
14 Seem to be a number of subjects here. Is
15 there any particular subject you want to ask me
16 about?
17 Q. You know whose handwriting it is?
18 A. I do not.
19 Q. Okay. Are you aware of handwritten notes by
20 Tommie Rae Synia, also known as Brown?
21 A. I think that -- I don't know how that
22 relates to my authorization to file a lawsuit on
23 behalf of the Attorney General or to continue
24 that representation, so I'll decline to answer.
25 Q. Did you on behalf of Russell Bauknight seek

Page 48

1 to intervene in a FOIA suit by journalist Gus
2 Sumner to prevent release of this very document?
3 A. I'm aware that our law firm did. I was --
4 that was during the period when I was not
5 personally involved and I never made any
6 appearance in that matter.
7 Q. Okay. Have you ever made any appearance or
8 filed any pleadings in the three FOIA matters in
9 which Wingate Plaintiffs have become involved?
10 A. If -- I don't -- not to my knowledge, not to
11 my memory.
12 Q. Okay.
13 A. So not to my knowledge.
14 Q. Okay. Are you aware that the Wingate firm
15 attempted to prevent release of what became known
16 as the "Synia diary," certain handwritten notes
17 of Tommie Rae?
18 MR. HOWSER: Object to the form and to
19 the scope.
20 MR. NEWSOME: Same objections.
21 A. And I just note the public record will say
22 what we did.
23 Q. Would you answer my question?
24 A. No.
25 Q. Okay. You decline to answer?

Page 49

1 A. I do decline to answer.
2 Q. Okay. Are you aware that the Wingate firm
3 has attempted to prevent release of the Wingate
4 contract under the Freedom of Information Act?
5 MR. NEWSOME: Object to the form;
6 object to the scope.
7 MR. HOWSER: Same objection.
8 A. And I'll decline to answer. The public
9 record will speak for itself.
10 Q. Are you aware that the Wingate firm has
11 attempted to prevent release under FOIA or
12 otherwise of an amendment to your client, the
13 Plaintiff Legacy Trust, signed about December 31,
14 2010, by Henry McMaster and others?
15 A. Am I aware? By the way, I work for Sweeny,
16 Wingate & Barrow. We don't call it the Wingate
17 firm. But we -- I -- again, I was not personally
18 involved in any of those matters.
19 Q. Are you aware that the Wingate firm --
20 Sweeny, Wingate & Barrow -- has attempted to
21 prevent release under FOIA of an amendment to
22 your client, the Plaintiff Legacy Trust?
23 MR. NEWSOME: Object to the form;
24 object as being beyond the scope.
25 MR. HOWSER: Same objection.

Page 51

1 February of 2017?
2 A. I did.
3 Q. Did you conduct it on behalf of the Attorney
4 General of South Carolina?
5 A. Conduct it on behalf of all of my clients.
6 Q. Did the Attorney General of South Carolina
7 write the Wingate firm in 2013 terminating their
8 services?
9 A. No.
10 Q. Did you file a motion to be relieved -- did
11 the Wingate firm file a motion in 2013 to be
12 relieved as counsel based on the representation
13 that the Attorney General had asserted that he no
14 longer wanted the Wingate firm to represent him?
15 A. We did file a motion. What the specifics of
16 it were, I haven't seen it in a long time. I
17 don't recall all that it says.
18 Q. Did the Attorney General withdraw in 2016
19 that request that you withdrew?
20 A. I'm not aware of that.
21 (Plaintiff's Exhibit No. 9, as previously
22 marked, was presented for identification.)
23 Q. Are you familiar with Wingate 9, a letter to
24 Bob Buchanan and Adale Pope from Henry McMaster
25 dated July 30th, 2009?

Page 50

1 A. I'll decline to answer and just point, the
2 public record will say what our firm has done in
3 that regard.
4 (Plaintiff's Exhibit No. 8, as previously
5 marked, was presented for identification.)
6 Q. Look at Wingate 8, please, see if you know
7 anything about that.
8 A. (Reading.) I don't recognize having seen
9 this before.
10 Q. You don't recognize an email from Sonny
11 Jones to Bob Buchanan dated December 6, 2007,
12 related to the James Brown Legacy Trust initial
13 offer?
14 MR. NEWSOME: Object to the form.
15 A. That's correct, I do not recognize that
16 document.
17 Q. Okay. That's not the question. Do you know
18 anything about the subject of the document?
19 A. That's a different question.
20 MR. HOWSER: Object to that as beyond
21 the scope.
22 MR. NEWSOME: Same objection.
23 A. I'll decline to answer.
24 Q. Okay. Did you conduct the deposition of Bob
25 Buchanan in the Wingate Suit on the 3rd of

Page 52

1 A. This seems familiar, but I can't -- I can't
2 swear one way or the other. It just seems
3 familiar.
4 Q. Do you have a recollection of the first
5 meeting before Judge Manning related to the
6 Wingate lawsuit in August of 2010?
7 A. First meeting with whom?
8 Q. I'm sorry, I said meeting. The first
9 hearing of the Wingate Suit in August of 2010.
10 A. The date is not familiar. If you can remind
11 me of the subject.
12 Q. Okay.
13 A. Was that the Motion to Dismiss?
14 Q. Yes.
15 A. I do recall.
16 (Plaintiff's Exhibit Nos. 10 and 11, as
17 previously marked, were presented for
18 identification.)
19 Q. Okay. I'm going to hand you Wingate 10 and
20 Wingate 11 and ask you to tell me all that you
21 can recall about that hearing.
22 A. I recall that we had it. I recall that
23 there were -- that we argued a long time. And I
24 recall that the Motion to Dismiss was denied.
25 Q. All right.

Page 53

1 A. I don't recall the individual things that
2 were said.
3 Q. Okay. Do you recall that Mr. Buchanan and
4 Ms. Pope filed an appeal and a Writ of
5 Prohibition related to the legality of a private
6 law firm speaking for the Attorney General?
7 A. I recall there was a motion filed and I had
8 forgotten about the appellate actions until
9 recently. But, yes, I'm aware -- I'm aware that
10 there was some appellate action taken. Don't
11 recall specifically what the motions or writs
12 were, petitions were. And I know it arose out of
13 the Court's denial of your Motion to Disqualify
14 us.
15 Q. Well, was it the Motion to Disqualify or the
16 Motion to Dismiss the lawsuit because it was
17 brought by a private law firm in the name of the
18 Attorney General?
19 A. I don't remember what the caption of the
20 motion. I remember the order and I just looked
21 at it. I've just seen it fairly recently, but I
22 can't remember what the motion was.
23 I remember Judge Manning basically denying
24 the motion. Seems like it was a Motion to
25 Disqualify us for that motion, but maybe you

Page 55

1 A. I don't recall the specifics of arguments
2 that were made to the Court. I do recall that
3 Sonny Jones was aware of the retention. I recall
4 that Sonny Jones was involved in the preparation
5 of the response to your motion and I -- so that
6 much I'm aware of. But the specifics of what was
7 said to the Court on a given day, I don't recall.
8 Q. All right. Are you aware of any of the
9 improprieties of David Ball prior to the
10 commencement of the Wingate lawsuit?
11 A. No.
12 (Plaintiff's Exhibit No. 17, as previously
13 marked, was presented for identification.)
14 Q. Okay. Let me look at -- get you to look at
15 Wingate 17, a letter of Louis Levenson to the
16 Senior Assistant Attorney General in the State
17 Bar of Georgia related to various grievances
18 filed by David Ball against Mr. Levenson. Does
19 that refresh your memory about that?
20 A. No, it doesn't.
21 MR. HOWSER: I object to the form of
22 the question and to the scope --
23 MR. NEWSOME: Same objection.
24 MR. HOWSER: -- in the sense that this
25 is something to the State Bar of Georgia

Page 54

1 couched it as a Motion to Dismiss. I don't
2 recall.
3 (Plaintiff's Exhibit No. 14, as previously
4 marked, was presented for identification.)
5 Q. Let's look at Wingate 14, a letter from you
6 to the South Carolina Court of Appeals dated
7 February 28th, 2011, and see --
8 A. Okay.
9 Q. -- if that refreshes your memory.
10 A. Okay. (Reading.) I'm aware of this filing.
11 Someone signed this on my behalf, but I was
12 involved in the drafting of it initially.
13 Q. Okay. And had you and Mr. Wingate just told
14 the Court back in the previous August that it was
15 perfectly all right for a private law firm to
16 bring a lawsuit in the name of the Attorney
17 General of South Carolina?
18 A. I don't remember all that we said. I do
19 know that we have taken that position.
20 Q. And did you know that you told the Court
21 that Sonny Jones knew about those things and he
22 was involved in a California case and he said it
23 was all right?
24 MR. NEWSOME: Object to the form.
25 MR. HOWSER: Object to the form, yeah.

Page 56

1 on ...
2 BY MS. POPE:
3 Q. Do you know anything about the amendment to
4 your client, the Legacy Trust, which took place
5 on December 13 -- I'm sorry, at the end of
6 December of 2010 in which was disseminated by
7 Sonny Jones in early 2011?
8 MR. NEWSOME: Object to the form.
9 A. The amendment to what?
10 Q. Your client, the Plaintiff Legacy Trust.
11 A. I'm not sure I know how that relates to the
12 scope. So just reread the question and let me
13 see what the question was.
14 THE COURT REPORTER: "Do you know
15 anything about the amendment to your client,
16 the Legacy Trust, which took place on
17 December 13 -- I'm sorry, at the end of
18 December of 2010 in which was disseminated
19 by Sonny Jones in early 2011?"
20 THE WITNESS: I don't know that that
21 has anything to do with the authorization
22 for me to bring this lawsuit or to continue
23 the lawsuit.
24 BY MS. POPE:
25 Q. Do you decline to answer?

Page 61

1 with Deanna, Yanna, Jason Lewis, and Yanna's
2 minor children, as well as Vanisha change when
3 they terminated Louis Levenson?
4 A. I probably already floated this. I'm going
5 to -- I'm going to tell you that I think it's
6 outside the scope, but since I probably already
7 opened that, I'll just say our relationship -- we
8 maintained relationship with all of these folks.
9 Q. Does the Wingate firm claim today any
10 attorney/client relationship or joint defense
11 privilege with David Sojourner?
12 A. No, I don't --
13 MR. NEWSOME: Objection to the form and
14 it's outside the --
15 THE WITNESS: Yeah.
16 MR. NEWSOME: -- scope.
17 BY MS. POPE:
18 Q. Well, is it "no" or you decline to answer?
19 A. It is outside the scope. I will tell you
20 "no." We do -- well, let me say this. As it
21 relates to this lawsuit, I do not represent him.
22 Whether our firm has ever represented him on any
23 other matters, I don't know.
24 Q. That's fine. I was speaking about this
25 matter.

Page 62

1 A. Okay.
2 Q. Okay.
3 A. We have not represented David Sojourner in
4 this matter.
5 Q. Was the fact that Vanisha Brown has been
6 incarcerated throughout this case been a problem
7 either with Mr. Levenson speaking for her or
8 Deanna Brown Thomas acting through a power of
9 attorney?
10 MR. HOWSER: Object to the form.
11 MR. NEWSOME: Same objection.
12 A. I'll decline to answer.
13 Q. Okay. Are you aware of the motion of Bob
14 Buchanan and Adele Pope to value the James Brown
15 copyrights and publicity rights by formula as
16 filed with the Circuit Court in November of 2007
17 and referenced in the hearing held November 15,
18 2007?
19 MR. HOWSER: Object to the form and
20 scope.
21 MR. NEWSOME: Same objection.
22 A. Decline to answer.
23 Q. Are you aware of the inventory and
24 appraisal prepared by tax specialist William
25 Hammond and filed on or about November 15, 2007?

Page 63

1 MR. HOWSER: Object to the form and to
2 the scope.
3 MR. NEWSOME: Same objection.
4 A. I'll decline to answer.
5 Q. Okay. Are you aware of orders of Judge
6 Early dated February 20th and April 1st approving
7 and directing the Christie sale?
8 MR. NEWSOME: Object to the --
9 MR. HOWSER: Object to the form --
10 MR. NEWSOME: -- form and object to the
11 scope.
12 MR. HOWSER: -- and scope, yep. Same
13 objection.
14 A. I'll decline to answer.
15 Q. Are you aware of the filings by Alhart
16 Dallas in the Court of appeals and the order of
17 Judge Curston dated July 14, 2008, approving the
18 July 17, 2008 Christie sale?
19 MR. NEWSOME: Object to the form;
20 object to the scope.
21 MR. HOWSER: Same objection.
22 A. Decline to answer.
23 Q. Okay. Are you aware that your client, James
24 B., filed a Petition for Review of Compensation
25 of Mr. Buchanan and Mr. Pope in March of 2009 in

Page 64

1 Aiken County?
2 MR. HOWSER: Object to the form and
3 scope.
4 MR. NEWSOME: Same objections.
5 A. And I want to comment about the preamble to
6 your setup for that sentence. My client, James
7 B. I don't represent James B. I represent the
8 people that are listed on that lawsuit.
9 Q. Do you represent James B. through his
10 mother?
11 A. Oh, is that who you're referring to, the
12 son?
13 Q. Yes.
14 A. Okay. Well, then we should be clear.
15 Q. Oh, I apologize. I'm an used to not putting
16 his whole name in documents. I apologize.
17 A. Well, I -- I do -- he is a minor child that
18 is represented in this suit.
19 Q. Okay.
20 A. And what was your question?
21 Q. Are you aware of a petition filed by James
22 B. for Review of Compensation of Buchanan and
23 Pope in March of 2009 in Aiken County?
24 MR. NEWSOME: Object to the form;
25 object to the scope.

Page 65	Page 67
1 Q. And the -- 2 MR. HOWSER: Same objection. 3 MS. POPE: Thank you. 4 Q. And are you aware of the response filed by 5 Mr. Buchanan and Mr. Pope to that filing? 6 MR. HOWSER: Same objection. 7 MR. NEWSOME: Same objections. 8 A. Decline to answer. 9 Q. Okay. Are you aware of the estate tax 10 return of the Estate of James Brown and 11 attachments filed by William Sellers, CPA? 12 MR. HOWSER: Object to the form and 13 scope. 14 MR. NEWSOME: Same objections. 15 A. Decline to answer. 16 Q. Okay. Do you agree that Henry McMaster 17 waived any attorney/client privilege as to who 18 authorized the bringing and conduct of the 19 Wingate Suit in his name as A.G.? 20 A. "Any" is too broad. I will say that for 21 purposes of this deposition, as to the issues 22 surrounding our engagement and authorization to 23 proceed, the Court has stated that it was waived. 24 Q. Okay. 25 A. I will agree that they have made statements	1 what comes under the scope of our mutual -- their 2 mutual relationship as my client. 3 Q. Do you know who made the decision for 4 Mr. McMaster not to sign the Wingate Retention 5 Agreement? 6 A. I -- 7 MR. HOWSER: I object to the form of 8 that question. 9 MR. NEWSOME: Same objection. 10 A. I -- and I'm going to disagree with the 11 premise of the question. 12 Mr. McMaster signed the agreement. 13 Although, he did not put -- his signature is not 14 affixed to the signature block that's on the 15 form, he signed it by virtue of having 16 incorporated it into his letter. 17 Q. Do you know whether anyone made a decision 18 not to tell Henry McMaster that he was a named 19 Plaintiff in the Wingate Suit? 20 A. I'm not aware that any such decision was 21 made. And to the contrary, I am confident that 22 he would have understood that based on the 23 meeting that we had in his office. 24 Q. Have you ever heard before 2016 that 25 Governor McMaster did not know he was a Plaintiff
Page 66	Page 68
1 that have put it in controversy which creates an 2 opportunity for me to talk about it, so. 3 Q. Do you agree that -- would you give the same 4 answer as to Russell Banknight bringing this 5 lawsuit on behalf of the Attorney General of 6 South Carolina? 7 A. Mr. Banknight has not waived any privilege 8 whatsoever. Was that your question? 9 Q. Mr. Banknight purporting to act for the 10 Attorney General of South Carolina was the 11 question. 12 A. Maybe you have to start over because I 13 don't -- I can't trace your question anymore. 14 Q. Okay. Did Henry McMaster waive any 15 privilege Mr. Banknight may have in claiming that 16 he is a Plaintiff or that -- I'm sorry, that he 17 was a Plaintiff in the Wingate Suit from May 19th 18 of 2010 until January 11th, 2011, on behalf of 19 Attorney General McMaster? 20 A. I want to -- 21 MR. HOWSER: I object to the question. 22 A. I'm not sure I understand it, but I do want 23 to try to respond. Mr. Banknight is not an 24 attorney. I don't know what privilege may exist 25 between he and the Attorney General other than	1 until after he left office? 2 MR. NEWSOME: Object to the form. 3 MR. HOWSER: Same objection. 4 A. I first became aware of that very recently, 5 but it was post his deposition. 6 Q. Was 2016 post the McMaster deposition the 7 first time you learned that Mr. McMaster said he 8 did not authorize Russell Banknight to act on his 9 behalf in the Wingate Suit? 10 MR. NEWSOME: Object to the form. 11 A. That is the first time I became aware of 12 that position by Mr. McMaster. 13 Q. Okay. And just to be sure, you're unaware 14 and have -- well, let me ask it twice. Is it 15 correct that you -- you do not recall having 16 participated in any FOIA matters on behalf of 17 parties to the Wingate Suit? 18 MR. NEWSOME: Object to the form -- 19 MR. HOWSER: Object to the form and 20 scope. 21 MR. NEWSOME: -- and scope. 22 A. I'll decline to answer. 23 MS. POPE: Thank you. 24 MR. NEWSOME: No questions of this 25 witness.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)
Plaintiff)

v.)

Estate of James Brown and The)
James Brown 2000 Irrevocable)
Trust,)
Defendants.)

DEPOSITION PRIVILEGE LOG

2011 MAR 20 PM 8:59

In Re:

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-02-1337

Adele J. Pope,)
Plaintiff)

v.)

Estate of James Brown and The)
James Brown 2000 Irrevocable)
Trust,)
Defendants.)

DEPOSITION OF KENNETH WINGATE, ESQUIRE

PRIVILEGE LOG

The following objections have been made pursuant to South Carolina Rules of Professional Conduct 1.6(a), 1.9(c)(1) – (2), the South Carolina Rules of Civil Procedure, and the South Carolina Rules of Evidence.

The Rules of Professional Conduct requires that every attorney owes to his clients and former clients an ethical duty of confidentiality, and requires an attorney to claim a

privilege where he is being compelled to reveal what he believes may be privileged information. See Rules 1.6(a), 1.9(c), SCRPC.

The attorney-client privilege is tailored to protect confidences disclosed within the attorney-client relationship. The courts recognize such a privilege where:

- (1) [] legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived.

State v. Doster, 276 S.C. 647, 651 284 S.E.2d 218, 218-20 (S.C. 1981) (citation omitted). This privilege does not end when the attorney-client relationship ends, and a duty of confidentiality is owed to former clients. See *Spence v. Wingate*, 395 S.C. 148, 716, S.E.2d 920 (2011) (stating “fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended”).

The attorney’s work-product privilege extends to documents created in preparation for litigation as well as the attorney’s impressions, conclusions, opinions, or legal research and theories. See *Hickman v. Taylor*, 329 U.S. 495, 511 (1947) (stating an attorney’s “interviews, statements, memoranda, correspondence, briefs, mental impressions, personal beliefs, and countless other tangible and intangible [work]” is protected as it relates to preparation of a client’s case).

Page/Line Numbers	Question/Response sought to be protected	Basis of Privilege Claim/Objection
22:16 – 025:16	Attorney Pope seeks attorney-client and work-product privileged information regarding “issues related to the statute of limitations.”	Attorney-client privilege based conversations between the clients and Mr. Wingate and associated attorneys regarding theories, strategy, and legal opinions. Work-product privilege based on mental impressions, beliefs, and legal research and theories of the attorney. Additionally, this question seeks information outside of the scope of Justice Toal’s March 1, 2017 Order limiting the deposition subject matter to Mr. Wingate’s “authorization to file and continue the law suit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 9,

59:18 – 22	Attorney Pope seeks information regarding the identity of members of the Legacy Trust who have voted or authorized suit since 2011, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
59:23 – 25	Attorney Pope seeks information regarding the identity of members of the Legacy Trust who have voted or authorized suit since May 2013, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
60:10 - 16	Attorney Pope seeks information regarding Mr. Kendall's relationship status with Terry Brown in early 2011, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
60:17 – 19	Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys. Work product containing documents affecting litigation between his client and Mr. Kendall and associated attorneys for Plaintiffs. Attorney Pope seeks attorney-client and work product privileged information regarding a letter from Mr. Kendall's client firing his firm in 2012, which is also outside of the scope of Justice Toal's March 1, 2017 Order.	
60:20 – 23	Attorney-Client privilege based on conversations between a client and Mr.	

	Kendall and associated attorneys. Attorney Pope seeks attorney-client privileged information regarding the firm reestablishing a relationship with Terry Brown, which is also outside of the scope of Justice Toal's March 1, 2017 Order.	
60:25 – 61:8	Attorney-Client privilege based on conversations between a client and Mr. Kendall and associated attorneys. Attorney Pope seeks information regarding Mr. Kendall's attorney-client privilege with certain clients after they terminated Louis Lavenson, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
61:9 – 23	Attorney Pope seeks information about his firm's attorney-client relationship or joint defense privilege with David Sojourner, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
62:5 - 12	Attorney Pope seeks information regarding Venisha Brown's incarceration and the effect it has on her representation, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
65:13 – 22	Attorney Pope seeks information regarding Mr. Kendall's awareness of a motion filed by Defendants relating to valuation of the Brown estate, which is outside	

	of the scope of Justice Toal's March 1, 2017 Order.	
62:23 – 63:4	Attorney Pope seeks information regarding Mr. Kendall's awareness of the Estate's inventory and appraisal, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
63:5 – 14	Attorney Pope seeks information regarding Mr. Kendall's awareness of Orders executed by Judge Early approving the sale of an asset, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
63:15 – 22	Attorney Pope seeks information regarding Mr. Kendall's awareness of appellate court filings made by Albert Dallas and an Order executed by Judge Cureton approving the sale of an asset, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
63:23 – 65:3	Attorney Pope seeks information regarding Mr. Kendall's awareness of a Petition for Review of Compensation of the Defendants, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
68:13 – 22	Attorney Pope seeks information regarding Mr. Kendall's involvement in "FOIA matters on behalf of parties to" this law suit, which is outside of the scope of Justice Toal's March 1, 2017 Order.	
73:4 – 13	Attorney Pope seeks information regarding communications with Mr.	

	Medlin regarding this case, which is outside of the scope of Justice Toal's March 1, 2017 Order.	

KENNETH B. WINGATE, ESQUIRE

1 (Pages 1 to 4)

Page 1	Page 3
STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS COUNTY OF AIKEN C/A No. 2013-CP-02-1337 Adele J. Pope,)) Plaintiff,)) vs.)) Estate of James Brown and) The James Brown 2000) Irrevocable Trust,)) Defendant.) DEPOSITION OF KENNETH B. WINGATE, ESQ. Monday, March 6, 2017 2:08 p.m. - 3:51 p.m. The deposition of KENNETH B. WINGATE, ESQ., was taken on behalf of the Plaintiff at the law offices of Gertz & Moore, LLP, 1416 Laurel Street, Columbia, South Carolina, on the 6th day of March, 2017 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition.	EXHIBITS (Continued) PAGE 1 Plaintiff's Exhibit No. 8.....45 (Email dtd 12/6/07 frm Mr. Jones) 2 Plaintiff's Exhibit No. 9.....47 (Ltr dtd 7/30/08 frm Mr. McMaster) 3 Plaintiff's Exhibit No. 10.....49 (Partial transcript of Hearing dtd 8/30/10) 4 Plaintiff's Exhibit No. 11.....51 (Partial transcript of Hearing dtd 8/30/10) 5 Plaintiff's Exhibit No. 12.....53 (Agreement for Legal Services dtd 5/18/10) 6 Plaintiff's Exhibit No. 13.....61 (Motion to Supplement Record, C/A No. 08-CP-2-1647) 7 Plaintiff's Exhibit No. 14.....63 (Plaintiff's Motion to Dismiss Petition for Writ of Prohibition dtd 2/28/11) 8 Plaintiff's Exhibit No. 15.....65 (Plaintiff's Motion to Strike Dft. Pope's Offers of Judgment) 9 Plaintiff's Exhibit No. 16.....68 (Appendix to Record on Appeal, C/A No. 08-CP-2-1647) 10 Plaintiff's Exhibit No. 17.....70 (Ltr dtd 6/20/08 frm Mr. Levenson) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 STIPULATIONS It is stipulated and agreed that this deposition is being taken pursuant to the South Carolina Rules of Civil Procedure. It is stipulated by and between counsel and the witness that the reading and signing of the following deposition be, and the same are, hereby reserved.
Page 2	Page 4
1 APPEARANCES: 2 Adele J. Pope, Esquire 3 Law Office of Adele J. Pope, P.C. 4 1228 Walnut Street 5 Newberry, South Carolina 29108 6 Appearing Pro Se 7 William G. Newsome, III, Esquire 8 Maxsen Pruet, LLC 9 1230 Main Street, Suite 700 10 Post Office Drawer 2426 11 Columbia, South Carolina 29201 12 Attorney for the Defendant 13 14 R. Davis Howser, Esquire 15 Howser, Newman & Basley, LLC 16 1508 Washington Street 17 Columbia, South Carolina 29201 18 Attorney for Mr. Wingate 19 20 21 22 23 24 25 INDEX PAGE 13 Direct Examination by Ms. Pope.....5 14 Cross-Examination by Mr. Howser.....78 15 Stipulations.....3 16 Certificate.....79 17 Verification of Deponent.....80 18 Errata Page.....81 19 20 21 22 23 24 25 EXHIBITS PAGE 17 Defendant's Exhibit No. 1.....4 (Return and Opposition to Motion) 18 Plaintiff's Exhibit No. 1.....6 (Judge Toal's order dtd 3/1/17, Form 4) 19 Plaintiff's Exhibit No. 2.....6 (Questions for Mr. Wingate and Mr. Kendall) 20 Plaintiff's Exhibit No. 3.....6 (Summons, C/A No. 2010-GC-4000073) 21 Plaintiff's Exhibit No. 4.....9 (Partial transcript of Mr. Buchanan dtd 2/3/17) 22 Plaintiff's Exhibit No. 5.....37 (Email dtd 7/31/08 frm Mr. Rosen) 23 Plaintiff's Exhibit No. 6.....40 (Form 706) 24 Plaintiff's Exhibit No. 7.....42 (Handwritten notes) 25	1 MR. HOWSER: Before we begin, can I ask 2 her just to mark the Order? You may be 3 doing that, as well as the return? 4 MS. POPE: I have marked the Order as 5 Plaintiff's 1. Dave, if you want to mark 6 the return as your 1 or however, that's 7 fine. 8 MR. HOWSER: (Tendering.) 9 MS. POPE: Yeah. You want to mark that 10 as Defendant's 1? 11 MR. HOWSER: That's fine. 12 MS. POPE: Yeah, sure. 13 (Defendant's Exhibit No. 1 was marked 14 for identification purposes.) 15 MS. POPE: Are your affidavits 16 attached, Dave? 17 MR. HOWSER: That's your -- 18 MS. POPE: Oh. 19 MR. HOWSER: -- return. 20 MS. POPE: Oh, oh, I'm sorry, my 21 return. 22 MR. HOWSER: Yeah, because it relates 23 to -- 24 MS. POPE: Oh, I gotcha. 25 MR. HOWSER: -- the 30 questions, so.

GARBER REPORTING SERVICE

803-256-4500

1016

Page 5

1 MS. POPE: Oh, I'm sorry. Okay.
 2 MR. HONER: That's why.
 3 MS. POPE: Okay. That's fine. All
 4 right. Thank you.
 5 KENNETH B. WINGATE, ESQ., having been duly sworn,
 6 deposes and testifies as follows:
 7 DIRECT EXAMINATION
 8 BY MS. POPE:
 9 Q. All right. Now, Ken, I'm Adele Pope and I'm
 10 the Pro Se Plaintiff in Aiken County Case
 11 2013-CP-02-1337. If you don't mind, I'll refer
 12 to that case in today's deposition as Aiken 1337.
 13 A. Sure.
 14 Q. Do you need me to explain the deposition
 15 procedure to you?
 16 A. No.
 17 Q. Okay. Would you like to read and sign your
 18 deposition?
 19 A. Yes.
 20 Q. Okay. Thank you. And, Ken, in order to
 21 save us time, I have marked my first five
 22 exhibits and I'm going to identify them for us.
 23 And if I've said anything incorrectly, if you'll
 24 correct me, and then I'll give you an opportunity
 25 to talk to your lawyer about them, if you wish.

Page 6

1 (Plaintiff's Exhibit No. 1, as previously
 2 marked, was presented for identification.)
 3 The first is the Order of Acting Circuit
 4 Judge Jean Toal dated March 1, 2017, related to
 5 this deposition, is that correct?
 6 A. Are you asking me if that's what that is?
 7 Q. Yes.
 8 A. Jean Toal, March 1; it looks like 2017, yes.
 9 Q. Okay. And you're familiar with the Order?
 10 A. Yes, I am.
 11 (Plaintiff's Exhibit No. 2, as previously
 12 marked, was presented for identification.)
 13 Q. Okay. And now Plaintiff's 2 you will not be
 14 familiar with because it is a list of questions
 15 that I intend to ask you today and -- and -- but
 16 I want -- if you'd like to have an opportunity to
 17 discuss them with your lawyer so we could move
 18 faster along in the deposition, I'll be glad for
 19 us to after we identify those documents.
 20 (Plaintiff's Exhibit No. 3, as previously
 21 marked, was presented for identification.)
 22 Then Plaintiff's 3 is the Summons of what is
 23 now Aiken -- I'm sorry -- what is now Richland
 24 County Case 2010-CP-40-4900, that I will refer to
 25 today as the Wingate Suit, but some people refer

Page 7

1 to as Richland 4900. Is that -- is Plaintiff's 3
 2 the caption to the Summons of that case?
 3 A. I don't know. It doesn't have that civil
 4 action number on it.
 5 Q. Okay. Can you tell me if you know why it's
 6 not that civil action number?
 7 A. No, I have no idea.
 8 Q. Did you file --
 9 A. This says 2010-GC-4000073 and I don't know
 10 what that is.
 11 Q. Okay. Was the Wingate Suit filed in Probate
 12 Court?
 13 A. I don't recall.
 14 Q. Okay. Can you look at Plaintiff's 3 and see
 15 if the Plaintiff and the Defendants as named
 16 therein are the original Plaintiffs and
 17 Defendants in the Wingate Suit?
 18 A. I don't recall.
 19 Q. You don't recall who the Plaintiffs and
 20 Defendants in the Wingate Suit were?
 21 A. You would have to show me, Adele, the
 22 Summons including its entirety in the 4900 case
 23 to compare to this Document 3 that you've shown
 24 me. It appears to relate to some of the same
 25 parties, but without the 4900 caption, I do not

Page 8

1 know.
 2 Q. Can you look at the filing date on that
 3 Exhibit 3 and see where it was filed and when?
 4 A. Filed May 19, 2010, Amy McCulloch, Probate
 5 Judge, Richland County. So it looks like this
 6 document was filed -- this Exhibit 3 was filed in
 7 the Probate Court.
 8 Q. And does that refresh your recollection that
 9 the Wingate Suit was filed on May 19th, 2010, in
 10 the Probate Court for Richland County?
 11 A. I'm not denying that it was, but I am
 12 confused by this Exhibit 3 with a different case
 13 number than what you've been talking about.
 14 Q. Is that a Probate Court case number on
 15 Exhibit 3?
 16 A. It appears to be.
 17 Q. Okay. And is "GC" the indication normally
 18 of litigation in the Probate Court?
 19 A. I do not know how they caption it.
 20 Q. Do you have any recollection that that case
 21 was removed from the Probate Court to the Circuit
 22 Court?
 23 A. Not specifically.
 24 Q. Okay.
 25 A. I do not.

Page 9

1 (Plaintiff's Exhibit No. 4, as previously
2 marked, was presented for identification.)
3 Q. Okay. Let me show you Plaintiff's
4 Exhibit 4, which is the caption and a few pages
5 of the deposition of Robert Buchanan, Jr., taken
6 in February 27, 2017, in the Wingate Suit. Do
7 you recognize that?
8 A. I do not.
9 Q. Okay. Do you recognize the caption?
10 A. Again, I don't know all of the specific
11 individuals, all of their names, all of the
12 spellings of their names, any of that kind of
13 detail. This appears to be a caption certainly
14 involving case 4900 and Russell Bauknight, as
15 Trustee, and others, as Plaintiffs --
16 Q. Okay.
17 A. -- against you and Robert L. Buchanan, as
18 Defendants.
19 MS. POPE: Okay. All right.
20 Mr. Houser, would you like to discuss any of
21 these with your client before we proceed?
22 MR. Houser: I would discuss Exhibit
23 No. 2.
24 MS. POPE: Thank you. We'll go off the
25 record for a minute.

Page 10

1 (Off the record from 2:16 p.m. to 2:22 p.m.)
2 MR. Houser: We'll state for the record
3 that there are a number of questions or
4 subjects in Exhibit No. 2 that are clearly,
5 in our opinion, outside the scope of what
6 Acting Circuit Judge Tolal has directed that
7 Mr. Wingate and Mr. Kendall answer, but I
8 guess we best take it up as each question is
9 asked.
10 BY MS. POPE:
11 Q. In response to your deposition subpoena,
12 Mr. Wingate, you filed an affidavit with the
13 Court saying that your knowledge about the
14 Wingate Suit was limited to matters that you
15 learned from clients and work product. Have I
16 said that correctly?
17 A. I don't know. If you'll show it to me.
18 Q. You don't know what you said to the Court in
19 your affidavit to try to prevent this deposition?
20 A. You're quoting a document. I'll be glad to
21 look at the document that you're quoting.
22 Q. But you don't remember?
23 A. I'll be glad to look at the document.
24 Q. Well, my question is: Do you remember what
25 you told the Court in order to avoid being

Page 11

1 deposed?
2 A. I did file an affidavit.
3 Q. Okay. What did that affidavit tell the
4 Court?
5 A. Put it in front of me and we'll discuss it.
6 Q. I don't want to have it in front of you. I
7 want to know what you recall about what you
8 represented to the Court last week about your
9 possible testimony.
10 A. You're going to make this a long, slow day,
11 Adele. Put the document in front of me. We'll
12 be glad to talk about it. I'm not going to be
13 reciting from memory so that then there's a
14 transcript to try to compare word for word. Put
15 the document in front of me. I'm delighted to
16 discuss it.
17 Q. I don't choose to put the document in front
18 of you. I want to know if you have any memory of
19 what representation you made to the Court about
20 why you should not be deposed today.
21 A. And I've already answered that question.
22 MR. Houser: I object to the question
23 on the basis it's been asked and answered a
24 number of times.
25 Q. Who are your clients in the Wingate Suit?

Page 12

1 A. The Plaintiffs.
2 Q. Is Russell Bauknight, as Trustee of the
3 James Brown 2000 Irrevocable Trust, your client?
4 A. Yes.
5 Q. Is Russell Bauknight, as Trustee of the
6 James Brown Legacy Trust, your client?
7 A. Yes.
8 Q. Is Russell Bauknight, acting on behalf of
9 Attorney General Alan Wilson, your client?
10 A. Yes.
11 Q. Is Russell Bauknight, acting on behalf of
12 Tommie Rae Bryant -- Brown, individually and on
13 behalf of her minor child, your client?
14 A. Yes.
15 Q. Is Daryl J. Brown your client?
16 A. Yes.
17 Q. Is Janise Vanisha Brown your client?
18 A. Yes.
19 Q. Do you know whether she's a minor or not?
20 A. I do not know her.
21 Q. Is Lindsey Delores Brown your client?
22 A. To save you reading all of these, I think
23 the answer to each one of these is going to be
24 "yes."
25 Q. Is Lindsey Delores Brown your client?

KENNETH B. WINGATE, ESQUIRE

4 (Pages 13 to 16)

Page 13	Page 15
1 A. Yes. 2 Q. Is Deanna J. Brown Thomas your client? 3 A. Yes. 4 Q. Is Jason Brown-Lewis your client? 5 A. Yes. 6 Q. Is Yanna H. Brown, individually and on 7 behalf of her minor children, Sydney Lamar and 8 Carrington Lamar, your client? 9 A. Yes. 10 Q. Is Tonya Brown your client? 11 A. Again, I think that the answer to all of 12 these is "yes" and let me explain myself. 13 I don't deal with these individuals 14 directly. As you'll learn through the course of 15 this deposition, I am the attorney through whom 16 this case was brought into our office. 17 I have not been the principal attorney 18 dealing with these matters, so I am testifying as 19 to the best of my knowledge in each of these 20 cases. And, again, I have said, to my knowledge, 21 yes, we represent all of these parties. 22 Q. That's not my question. Is Tonya Bryant -- 23 Brown your client? 24 A. To my knowledge, yes. 25 Q. Is Vanisha Brown your client?	1 Q. Is Jason Brown-Lewis your client? 2 A. To the best of my knowledge, yes. 3 Q. Is Yanna H. Brown, individually and on 4 behalf of her minor children, Sydney Lamar and 5 Carrington Lamar, your client? 6 A. To the best of my knowledge, yes. 7 Q. Is Tonya Brown your client? 8 A. To the best of my knowledge, yes. 9 Q. And Vanisha Brown? 10 A. Same answer. 11 Q. Is Larry Brown your client? 12 A. Same answer. 13 Q. Is Terry Brown your client? 14 A. Same answer. 15 Q. Has there been any change in your clients 16 since the commencement of this Wingate Suit on 17 May 19th, 2010? 18 A. To my knowledge, no. 19 Q. Was there a change of Attorneys General? 20 A. Yes. Henry McMaster was the Attorney 21 General. Alan Wilson is now the Attorney 22 General. 23 Q. Do you believe that Henry McMaster 24 authorized you to bring the Wingate Suit? 25 A. Yes, I know that he did.
Page 14	Page 16
1 A. To my knowledge, yes. 2 Q. Is Larry Brown your client? 3 A. To my knowledge, yes. 4 Q. Is Terry Brown your client? 5 A. To my knowledge, yes. 6 Q. Is Alan Wilson, in his capacity as Attorney 7 General of the State of South Carolina, your 8 client? 9 A. Yes. 10 Q. Is Fannie Rae Brown, individually and on 11 behalf of her minor child, your client? 12 A. Yes. 13 Q. Is Daryl J. Brown your client? 14 A. I'm going to give the same answer, again, 15 Adele, to the best of my knowledge, yes, yes, 16 yes, yes, yes. 17 Q. Is Janice Vanisha Brown your client? 18 A. Yes, to the best of my knowledge. 19 Q. Do you know whether she's a minor or an 20 adult? 21 A. I do not know. 22 Q. Is Lindsey Delores Brown your client? 23 A. To my knowledge, yes. 24 Q. Is Deanna J. Brown Thomas your client? 25 A. To the best of my knowledge, yes.	1 Q. Okay. Tell me how that happened. 2 A. I had a couple of meetings with the Attorney 3 General at which this suit was discussed and he 4 authorized us, serving as his counsel, to file 5 the suit. 6 Q. Do you know when the meetings took place? 7 A. Just prior to, meaning within the week or 8 couple of weeks prior to the filing of the suit. 9 Q. Okay. Did you tell the Attorney General 10 that he would be named as a Plaintiff in the 11 Wingate lawsuit? 12 A. Yes. 13 Q. Personally? 14 A. Yes. 15 Q. Who was present when you told him? 16 A. Had a couple of different meetings with him. 17 There was a meeting that I had with him and with 18 Alan Medlin. There was a separate meeting that I 19 had with him and some of his staff in his office. 20 Q. Okay. I want to, as carefully as I can, go 21 through those two meetings, please. 22 A. Uh-huh (affirmative response). 23 Q. To the best of your recollection, when was 24 the first meeting? 25 A. Again, in a short period of time prior to;

GARBER REPORTING SERVICE

803-256-4500

1019

KENNETH B. WINGATE, ESQUIRE

5. (Pages 17 to 20)

Page 17	Page 19
1 meaning within a week or two prior to the filing 2 of the suit. 3 Q. Okay. So if the suit was filed on May 4 19th -- we agree that it was filed on May 19, 5 2010? 6 A. That sounds right. 7 Q. Okay. So this would have been after the 8 first of May of 2010? 9 A. Yes. I'd say early 2000 -- early May 2010. 10 Q. Now, had you been dealing with Alan Medlin 11 and Sonny Jones since March 2010 or earlier? 12 A. I don't recall the date when I was first 13 contacted by Alan and Sonny, but it would have 14 been in about the time frame that you're 15 describing. 16 Q. Okay. 17 A. So a month or two prior to the filing of the 18 suit. 19 Q. And is it fair to say that a month or two 20 prior to the filing of the suit, you had actually 21 begun to draft the complaint? 22 A. I don't recall. 23 Q. If Alan Medlin told someone that you had 24 already worked on the complaint from paragraph A 25 to paragraph double B, or something to that	1 Henry McMaster? 2 A. I do not recall. 3 Q. Okay. Who else was at the meeting with you 4 and Sonny Jones? 5 A. We were in the conference room in the AG's 6 office right outside of Henry's -- or right 7 adjoining Henry's personal office. And Henry sat 8 at the head of the table. I was seated to his 9 left. Rett Kendall was seated next to me on my 10 left. I believe that Alan Medlin was seated on 11 Rett's left. 12 On the other side of the table, as I recall, 13 was McIntosh, John McIntosh with the AG's office, 14 Sonny Jones with the AG's office, and Mary 15 Francis Jowers with the AG's office, as I recall. 16 Q. Now, Ken, I think you are speaking to me 17 about a meeting that took place in May of 2010; 18 is that correct? 19 A. That sounds right. 20 Q. Okay. I want to back up, if I could for a 21 moment, to your first meeting or meetings with 22 Sonny and Alan Medlin. When was your first 23 meeting or what can you remember at all, if 24 anything, about your first meeting with Alan 25 Medlin and Sonny Jones?
Page 18	Page 20
1 effect, would you have any reason to think that 2 was an incorrect statement in March of 2013? 3 MR. NEWSOME: Object to the form of the 4 question. 5 MR. HOWER: Object to the form; it's 6 pitting. 7 THE WITNESS: I'm sorry. Repeat the 8 question. 9 MS. POPE: Can you ... 10 THE COURT REPORTER: "If Alan Medlin 11 told someone that you had already worked on 12 the complaint from paragraph A to paragraph 13 double B, or something to that effect, would 14 you have any reason to think that was an 15 incorrect statement in March of 2013?" 16 MR. HOWER: Same objection. 17 MR. NEWSOME: Same objection. 18 A. I have -- I have no specific recollection of 19 that time frame and I certainly have no idea what 20 Alan Medlin may have told somebody. 21 Q. Did you begin working on the complaint in 22 the Wingate Suit as early as March of 2013? 23 A. I do not recall. 24 Q. Did you begin working on the complaint in 25 the Wingate Suit before your first meeting with	1 A. I don't recall specifics because there were 2 a number of such conversations or meetings. 3 Q. Okay. So before you met with the Attorney 4 General -- 5 THE WITNESS: Let's pause one second. 6 (Off the Record) 7 MS. POPE: I'll just start over since 8 we had a little -- 9 MR. HOWER: Sorry about that. 10 MS. POPE: -- discussion. No, no, 11 that's fine. 12 BY MS. POPE: 13 Q. I want to go back and see what you can 14 remember of any of your meetings with Sonny Jones 15 and Alan Medlin before you met with Attorney 16 General McMaster. 17 A. Okay. 18 Q. Anything you can recall about any meetings, 19 any conversations with them? 20 A. Again, all I recall is that there were 21 several. I can recall at least one that took 22 place at my office with at least Alan and Sonny. 23 Don't remember if -- I think Mary Francis would 24 have been involved. And then several phone 25 conversations, as well.

GARBER REPORTING SERVICE

803-256-4500

1020

KENNETH B. WINGATE, ESQUIRE

6 (Pages 21 to 24)

Page 21	Page 23
1 Q. Okay. Would these have been with Mary 2 Francis and Sonny or Sonny or Sonny and Alan or 3 do you recall? 4 A. I can't recall those details. 5 Q. Okay. Do you recall whether you had the 6 complaint drafted when you had the meeting, which 7 you've just described with the Attorney General, 8 your first meeting? 9 A. I do not recall. 10 Q. Okay. Do you recall showing him the 11 complaint? 12 A. I do not recall that. 13 Q. Okay. Now, there was a second meeting. Was 14 the second meeting closer to the time of the 15 filing of the complaint? 16 A. They were in close proximity to one another, 17 so I don't recall the specific date, time, place. 18 There were conversations and meetings going on. 19 Q. Okay. Did you have any conversation with 20 Henry McStastar other than the two meetings you've 21 described? 22 A. Not that I recall. Most of my communication 23 at that point in time was with the Deputy 24 Attorney General, Sonny Jones, and with Mary 25 Francis Jowers.	1 privilege asserted in this case among the 2 parties and to the extent -- and I wasn't 3 present at the hearing that Judge Toal 4 handled and so I'm not -- other than 5 reviewing the Order, I don't know to what 6 extent you're allowed to go into privileged 7 matters. 8 But to the extent you're seeking 9 discussions among Mr. Wingate, Mr. Madlin, 10 the Attorney General's office that go beyond 11 the scope of the issue of whether he was 12 authorized to represent the Attorney 13 General's office, I want to object to -- 14 MR. HOWSER: And I would object to 15 that. 16 MS. POPE: Mr. Newsome, are you 17 directing Mr. Wingate not to answer or to 18 limit his answer? 19 MR. NEWSOME: I am directing him not to 20 reveal any privileged information beyond the 21 scope of what Judge Toal has ordered him to 22 respond to. 23 MS. POPE: Have you read Judge Toal's 24 Order? 25 MR. NEWSOME: If you're -- well, you're
Page 22	Page 24
1 Q. Okay. 2 A. Most of the communication. 3 Q. And did Sonny and Mary Francis approve the 4 complaint? 5 A. I don't know what you mean by "approve." 6 They were involved in the drafting of the 7 complaint. 8 Q. Sonny and Mary Francis were? 9 A. Yes. 10 Q. Was Alan Madlin involved in the drafting of 11 the complaint? 12 A. As I recall, he was. 13 Q. Okay. Do you recall who was concerned about 14 the one-year statute of limitations? 15 A. No, I do not. 16 Q. Okay. Do you recall any issues related to 17 the statute of limitations? 18 A. I do. 19 Q. Okay. Tell me what you recall, please. 20 A. Just that -- 21 MR. NEWSOME: I'm going to object real 22 quick to the extent that you're seeking any 23 information that is protected by the 24 attorney/client privilege. 25 There's been a common interest	1 referring to this right here? 2 MS. POPE: Let's go off the record a 3 minute. 4 (Off the record from 2:38 p.m. to 2:39 p.m.) 5 MS. POPE: I understand, Mr. Newsome, 6 you have an objection. The question is: 7 Are you directing Mr. Wingate not to answer? 8 MR. NEWSOME: I am directing -- 9 MR. HOWSER: Mr. Newsome has asserted 10 that there's a privilege. Based on his 11 assertion, as attorney for Mr. Wingate, I'm 12 directing him not to answer and we'll file 13 the appropriate return. 14 MS. POPE: Okay. So let me understand. 15 Mr. Newsome in this case has asserted a 16 privilege. 17 MR. HOWSER: Correct. 18 MS. POPE: And he has asserted that 19 Jean Toal, in her capacity as a Circuit 20 Court Judge, has -- has issued some Order 21 related to a privilege, and based on his 22 representation, you are directing 23 Mr. Wingate to limit his answers? 24 MR. HOWSER: You are completely 25 misstating what his objection is. His

KENNETH B. WINGATE, ESQUIRE

7 (Pages 25 to 28)

Page 25

1 objection is to disclosure of
2 attorney/client privileged matter related to
3 a joint defense agreement.

4 And he has also asserted that your
5 question goes beyond the Order of Judge Toal
6 and that Judge Toal has directed that
7 Mr. Wingate and Mr. Kendall answer questions
8 related to their authorization to represent
9 certain parties in the lawsuit they have
10 brought that has calendar number 1337.

11 MR. NEWSOME: That's correct. Thank
12 you.

13 MS. POPE: And based on that,
14 Mr. Houser, you are directing him to limit
15 his answers?

16 MR. HOUSER: I am.

17 MS. POPE: Okay.

18 BY MS. POPE:

19 Q. Do you share today a joint interest
20 privilege with Alan Madlin?

21 A. Don't know.

22 Q. You don't know? Okay. Do you share today a
23 joint interest privilege with Louis Levenson?

24 A. Don't know.

25 Q. Do you share today a joint interest

Page 27

1 A. Some hearings.

2 Q. And did you not accept responsibility for
3 the lawsuit when it was filed?

4 A. I don't know what you mean by "accepting
5 responsibility."

6 Q. Okay. All right. It is your -- it is your
7 representation that you today represent all the
8 Plaintiffs in the Wingate lawsuit?

9 A. To the best of my knowledge, yes.

10 Q. And that you began to represent Attorney
11 General Alan Wilson when he took office?

12 A. After Henry's term ended and Alan Wilson
13 became the Attorney General, yes.

14 Q. It is -- it is your representation that you
15 represent Russell Bauknight on behalf of the
16 Attorney General of South Carolina?

17 A. Yes.

18 Q. It is your representation that you were
19 authorized by Henry McMaster to represent Russell
20 Bauknight on behalf of the Attorney General of
21 South Carolina?

22 A. I'm telling you that I met with the Attorney
23 General, Henry McMaster, and he authorized this
24 lawsuit to go forward.

25 Q. Did he see the complaint to know who the

Page 26

1 privilege with the Attorney General of South
2 Carolina?

3 A. Those are issues you'll take up with the
4 attorney who's handling this litigation:
5 Mr. Kendall.

6 Q. Are you responsible for this litigation,
7 Mr. Wingate, the Wingate Suit? Are you
8 responsible for it?

9 A. What do you mean "responsible"?

10 Q. Are you -- are you the attorney who brought
11 the Wingate lawsuit to the firm and undertook the
12 representation of the Plaintiffs in the Wingate
13 Suit?

14 A. No, I'm not.

15 Q. Who is?

16 A. I've already described for you that I was
17 initially contacted about this representation and
18 Mr. Kendall has been the one handling the
19 litigation.

20 Q. Did you not, Mr. Wingate, attend the very
21 first hearing in this matter yourself?

22 A. I've attended a number of hearings. I don't
23 know what you're referring to as the very first
24 hearing. I have attended hearings.

25 Q. And at those hearings --

Page 28

1 Plaintiffs were?

2 A. He knew who the Plaintiffs were.

3 Q. Did he know Russell Bauknight was bringing
4 this lawsuit on behalf of the Attorney General of
5 South Carolina?

6 A. I discussed that with Henry McMaster, yes, I
7 did.

8 Q. Personally?

9 A. Yes, personally.

10 Q. Approximately when?

11 A. I've already said a couple of times, within
12 a few weeks prior to the filing of the lawsuit.

13 Q. Okay. Did Mr. McMaster sign the contract
14 with the Wingate law firm?

15 A. Henry McMaster signed a letter -- and if you
16 want to parse through it, let's put it in front
17 of us -- authorizing the suit to go forward.

18 Q. Did Henry McMaster sign the contract with
19 the Wingate law firm?

20 A. I've said, Henry signed a letter authorizing
21 the suit to go forward with our firm representing
22 the Plaintiffs.

23 Q. Mr. Wingate, did you at first draft a
24 contract for Mr. Wingate (sic) to sign as
25 Attorney General and he did not sign it?

Page 33

1 met?
 2 A. I don't know what you're talking about.
 3 Q. Do you know who signed the agreement to
 4 engage your law firm to bring the Wingate
 5 lawsuit?
 6 A. Which agreement are you talking about?
 7 Q. Your Wingate litigation fee agreement to
 8 bring the Wingate Suit, which you filed on
 9 May 19th of 2010. Do you know who filed the
 10 contract with your law firm?
 11 A. No, I do not know. Put a document in front
 12 of me and we can talk about it.
 13 Q. Today, you don't remember who signed that
 14 agreement?
 15 A. Put it in front of us and we'll talk about
 16 it.
 17 Q. Answer my question, please. Do you --
 18 A. I said --
 19 Q. -- recall today who signed that agreement?
 20 A. I do not.
 21 Q. Do you recall that more than a dozen of your
 22 clients didn't sign the agreement?
 23 A. I don't handle. I didn't handle. I haven't
 24 handled. I don't know.
 25 Q. We'll get to it in a minute. Do you know

Page 35

1 A. Those who have appeared at the hearings that
 2 you have seen.
 3 Q. No, no, I --
 4 A. Rett Kendall and Mark Gende.
 5 Q. So, in your opinion, the -- the conduct of
 6 the Wingate Suit has been the responsibility of
 7 Rett Kendall and Mark Gende?
 8 A. Yes.
 9 Q. You do not accept responsibility for the
 10 conduct of the Wingate suit?
 11 A. I don't know what you mean by accepting
 12 responsibility. I'm telling you, Rett Kendall
 13 and Mark Gende are the attorneys in our firm who
 14 take care of the day-to-day handling of all
 15 aspects of this case.
 16 Q. I'm not interested in the day-to-day. I'm
 17 interested in who authorized it, who has
 18 continued it, who thinks they're representing the
 19 Attorney General, who -- who keeps making motions
 20 for Summary Judgment. I want to know who is
 21 responsible for this suit. I think you know what
 22 that means as a lawyer.
 23 A. And I have answered the question.
 24 MR. NEWSOME: Object to the form of the
 25 question.

Page 34

1 who Louis Levenson is?
 2 A. He's an attorney.
 3 Q. Is he a client of yours?
 4 A. I do not know what the relationship is.
 5 You're making this a lot more complicated,
 6 Adels, than you need to. I have told you that I
 7 received the phone call at the outset about this
 8 matter. Others in the firm have been handling
 9 it, so those details I do not know. I have met
 10 Louis Levenson on a couple of occasions. I don't
 11 deal with him. I don't know.
 12 Q. Ken, is a suit against a lawyer for tens of
 13 millions of dollars a "detail"?
 14 A. You are putting words in -- you're
 15 attempting to put words in my mouth. I never
 16 said anything remotely like the question you've
 17 just asked.
 18 What I've said is, I have not handled this
 19 litigation against you on a day-in and day-out
 20 basis. Others have been involved in those
 21 management of relationships.
 22 Q. Tell me who all of the others, other than
 23 you, who've been responsible for the conduct of
 24 this suit filed against Bob Buchanan and Adale
 25 Pope on May 19th, 2010.

Page 36

1 MR. HOSMER: Object to the form.
 2 Q. Who is it?
 3 A. I have answered the question.
 4 Q. I'm going to ask it once more because I
 5 didn't hear the answer.
 6 MR. HOSMER: Well ...
 7 MR. NEWSOME: Same objection.
 8 A. It's a law firm.
 9 Q. The law firm. Who are the principals in
 10 your law firm?
 11 A. Mark Barrow, Ken Wingate, Rett Kendall, Mark
 12 Gende, and Martin Driggers.
 13 Q. Okay. And the law firm is responsible for
 14 the actions of its lawyers?
 15 MR. HOSMER: Object to the form.
 16 MR. NEWSOME: Same objection.
 17 A. The law firm has handled this litigation.
 18 Q. Did you prior to filing this lawsuit do
 19 anything to determine whether the allegations
 20 were true or false?
 21 A. Yes.
 22 Q. Did you do anything to determine whether
 23 the -- many of the allegations had been made long
 24 prior to the -- let me start over. Did you make
 25 any effort to determine whether the statutes of

KENNETH B. WINGATE, ESQUIRE

10 (Pages 37 to 40)

Page 37	Page 39
1 limitations had passed as to many of the 2 allegations in the complaint? 3 A. I think we're here today to talk about the 4 authorization to proceed with the lawsuit. I'm 5 not going to go into what did we think about and 6 how did we analyze all of the issues. 7 Q. Do you refuse to answer my question? 8 A. Repeat it. 9 Q. Were you aware that the statute of 10 limitations had passed as to many of the 11 allegations you made in your complaint? 12 A. I do not -- 13 MR. NEWSOME: Object to the form. 14 A. I do not intend to answer that question. 15 That does not relate to the authorization to 16 proceed with this lawsuit. 17 Q. You refuse to answer that question? 18 A. Yes, I do. 19 Q. Okay. I'll expect you to file a motion. 20 (Plaintiff's Exhibit No. 5, as previously 21 marked, was presented for identification.) 22 Hand you Wingate 5 and ask you if you've 23 seen that before. 24 A. No, I've never seen this before. 25 Q. Were you aware prior to the commencement of	1 Q. Do you recall that one of the allegations of 2 the complaint was that Bob Buchanan and Adele 3 Pope should have accepted a 4 hundred-million-dollar offer made for James 5 Brown's assets in 2007? 6 A. Put the complaint in front of me and we'll 7 be glad to look at it paragraph by paragraph. 8 Q. Do you refuse to answer? 9 A. I'm saying I don't recall those details. 10 That's a lengthy document -- 11 Q. Do you think -- 12 A. -- from six years ago. 13 Q. It's a lengthy document in a pending 14 lawsuit, isn't it, Mr. Wingate? 15 A. I've already answered your question. 16 Q. Have you made any effort to determine 17 whether the allegation that Bob Buchanan and 18 Adele Pope should have accepted a 19 hundred-million-dollar offer was correct or 20 appropriate? 21 MR. ROUSE: I object and instruct him 22 not to answer; that goes beyond the Order of 23 Justice -- of Judge Tol. 24 MR. NEWSOME: Same objection. 25 BY MS. POPE:
Page 38	Page 40
1 this lawsuit that Sonny Jones had a substantial 2 personal bias against Bob Buchanan and Adele 3 Pope? 4 MR. NEWSOME: Object to the form. 5 MR. ROUSE: Object to the form. 6 A. I'm here to talk about the authorization to 7 proceed with the lawsuit. 8 Q. Do -- 9 A. I do not know. 10 Q. Do you not know or do you refuse to answer? 11 A. Both. 12 Q. You do not know and you refuse to answer, 13 okay. Do you know who Dr. Terry Cox is? 14 A. Is that someone you're referencing on 15 Exhibit 5? I said I'm not -- I'm not familiar 16 with Exhibit 5. 17 Q. That's not the question. The question is: 18 Do you know who Dr. Terry Cox is? 19 A. Not that I recall. 20 Q. Do you recall seeing Bob Buchanan and Adele 21 Pope for not accepting a hundred-million-dollar 22 offer? 23 A. I remember filing a suit against you and Bob 24 Buchanan. The allegations of the complaint speak 25 for themselves.	1 Q. Do you know who Alan Madlin in Wingate 5 was 2 referring to by the name of "Madlin"? 3 A. No. 4 (Plaintiff's Exhibit No. 6 was marked for 5 identification purposes.) 6 Q. All right. Let me hand you Plaintiff's 4. 7 Did you know anything about the value of the 8 James Brown assets when you filed the Wingate 9 lawsuit? 10 A. Did I know anything about the assets of the 11 Estate? 12 Q. The value of the assets. 13 A. There were issues related to the assets of 14 the Estate -- 15 Q. That's not my -- 16 A. -- what they were, how they were valued. 17 Again, that's beyond the scope of were we 18 authorized to file this suit. 19 Q. Did you, in fact, allege that as a result of 20 Bob Buchanan and Adele's Pope (sic) 21 non-acceptance of a hundred-million-dollar offer 22 that at the time of the filing of the suit, the 23 assets were worth tens of millions of dollars 24 less? 25 MR. NEWSOME: Object --

CARBER REPORTING SERVICE

803-624-4500

KENNETH B. WINGATE, ESQUIRE

11 (Pages 41 to 44)

Page 41	Page 43
1 MR. HORSER: Object -- 2 MR. NEWSOME: -- to the form. 3 MR. HORSER: So do I. 4 A. Again, put the complaint in front of me and 5 if it's within the scope of this deposition, 6 we'll talk about it. 7 Q. Do you refuse to answer without the 8 complaint? 9 A. Yes. I'm not going to let you just put 10 words in my mouth. If you've got a document, 11 let's -- put it in front of me and we'll talk 12 about it. 13 Q. Were you aware at the time that this 14 complaint was being prepared that Alan Madlin was 15 proposing a devaluation of James Brown's assets? 16 MR. NEWSOME: Object to the form. 17 A. I don't know what you're talking about. 18 Q. Okay. All right. Let's look at Wingate's. 19 Do you recognize that form? 20 A. I recognize this as to the form being one 21 portion of a federal estate tax return, a Form 22 706. 23 Q. In what estate? 24 A. What this document says -- and I did not 25 prepare this document -- it says "Estate of James	1 with respect to the marital status of James Brown 2 and Tommie Rae Rynle? 3 A. I do not. 4 Q. Do you know what the position of the Estate 5 of James Brown with respect to the marital status 6 of Tommy Rae Rynle and James Brown is today? 7 A. I do not. 8 Q. Do you know that there are -- that that 9 issue is pending in the South Carolina Court of 10 Appeals? 11 A. I do not. 12 Q. Okay. Were you aware at the commencement of 13 this suit that by her own handwritten notes, 14 Tommie Rae had admitted that she was married and 15 living in Texas and might be pregnant before she 16 left? Her husband -- 17 A. Is that a question? 18 Q. I'll finish in a minute -- before she left 19 her husband and took up with James Brown? 20 A. I don't understand -- 21 MR. HORSER: Object to -- object to the 22 form of the question, assuming it's a 23 question. 24 MR. NEWSOME: Same objection. And also 25 beyond --
Page 42	Page 44
1 Brown." 2 Q. All right. Okay. But you don't know any 3 more than that? 4 A. I -- correct. I do not know more than that. 5 Q. All right. 6 A. I did not generate this document. 7 (Plaintiff's Exhibit No. 7 was marked for 8 identification purposes.) 9 Q. Let's look at Wingate 7. Do you know 10 anything about Wingate 7? 11 A. Do not. 12 Q. Okay. Do you know what it is? 13 A. No, I do not. 14 Q. Okay. Do you know anything about the Rynle 15 notes, sometimes called the "Rynle diary"? 16 A. No, I do not. 17 Q. Do you know who Alan Wingate -- I'm sorry. 18 Do you know who Alan Madlin represented when this 19 lawsuit was filed? 20 A. My understanding is that he represented 21 Tommie Rae Rynle. 22 Q. Do you know who he represents today? 23 A. I do not. 24 Q. Do you know what the position of the Estate 25 speaking through Bob Buchanan and Adele Pope was	1 MR. HORSER: And object to the 2 statement. 3 MR. NEWSOME: -- also beyond the scope 4 of this deposition. 5 BY MS. POPE: 6 Q. But you're not aware? 7 A. I don't know. 8 Q. Okay. Do you know anything about the 9 marital status of Tommie Rae Rynle and James 10 Brown? 11 A. I do not. 12 Q. Do you think that was an important inquiry 13 before you took her on as a client, along with 14 those who have said she's not the wife? 15 MR. HORSER: I object to the question. 16 MR. NEWSOME: Same objection. 17 A. As it relates to the authorization to 18 proceed with this suit, I was contacted by the 19 Plaintiffs group, which included her counsel, 20 asking us to undertake the lawsuit against Adele 21 Pope and Bob Buchanan. 22 Q. Okay. And you -- you made no -- well, you 23 made no inquiry into the conflict issues related 24 to that? 25 A. I am not going to answer what inquiries I

Page 49	Page 51
1 and/or meetings with his staff attorneys. 2 Q. In which -- 3 A. Two meetings with Henry. 4 Q. In which one did Henry authorize you to file 5 this lawsuit in his name as Attorney General? 6 A. The last of those meetings. 7 Q. Okay. And you -- 8 A. Prior to the filing of the suit, of course. 9 Q. And you don't recall when it was? 10 A. It was within a week. I think I testified 11 earlier within a week prior to the filing of the 12 suit. 13 MS. POPE: Okay. Let's mark -- no, 14 actually -- yeah, let's mark this. 15 (Plaintiff's Exhibit No. 10 was marked 16 for identification purposes.) 17 BY MS. POPE: 18 Q. This is No. 10. 19 A. Is this two copies of the same thing, Adele? 20 Q. Oh, yeah. 21 A. Is that the one that he can look at? 22 Q. Yeah. 23 THE WITNESS: Do you have one? 24 MS. POPE: (Tendering.) 25 MR. NEWSOME: Thank you.	1 Attorney General's office, who was one of our 2 clients. 3 Q. And Mr. Jones was there and allowed himself 4 to be introduced as your client? 5 A. That is correct. 6 Q. Okay. Now, do you recall from looking at 7 Exhibit 10 that that meeting had a short break 8 for lunch and then came back? Does that refresh 9 your memory about ... 10 A. It does not refresh my memory. 11 MS. POPE: Okay. Let's mark the next 12 one. 13 (Plaintiff's Exhibit No. 11 was marked 14 for identification purposes.) 15 BY MS. POPE: 16 Q. Okay. Let me hand you Plaintiff's Exhibit 17 11. I mean, I'm sorry, Wingate 11. And let's 18 see if that helps you remember what happened in 19 the afternoon. 20 A. (Reading.) Is this also a partial 21 transcript? 22 Q. Yes, it is. It's a partial transcript of 23 the same day. 24 MR. ROMSER: Somehow I wound up 25 with -- Adele, I wound up with something
Page 50	Page 52
1 BY MS. POPE: 2 Q. Okay. And Wingate 10 is a portion of a 3 transcript of record in the Wingate Suit, 4 August 30th, 2010. If you'll just glance at that 5 a minute. 6 A. I think you just said to me that this is a 7 portion of a transcript? 8 Q. It is. 9 A. Okay. I've glanced at it. I haven't read 10 it. 11 Q. Okay. Well, take the time you need, please. 12 A. (Reading.) Still reading. Just give me 13 another moment. 14 Q. Sure. 15 A. (Reading.) Okay. I've read it. 16 Q. Okay. Does this refresh your recollection 17 about your participation in the Wingate Suit? 18 A. No, it does not, really. I do remember that 19 I appeared at several hearings at different times 20 with either Rett Mendall, my partner, or Mark 21 Gende, and that there would be occasions, as 22 appears in this partial transcript that you've 23 given me, where I'm indicating to the Court that 24 we represent, among others in the court that day, 25 Sonny Jones, an attorney with the South Carolina	1 that says 7 in the ... 2 A. (Reading.) Okay. I've looked at the 3 partial transcript you've given me. 4 Q. Is it fair to say that you were responsible 5 for arguing to the Court that Judge Early should 6 not be responsible for this case, that it should 7 remain in Richland County? 8 A. The portion of the transcript that you've 9 given me from the August 30, 2010 hearing does 10 describe or discuss the question of venue. 11 Q. Okay. And you were responsible for the 12 argument that you were making to the Court that 13 day, were you not? 14 A. I was the person addressing the Court. 15 There are questions or statements by the Court, 16 which means Judge Manning, and there are 17 questions, arguments, what have you, made by me 18 according to this partial transcript. And there 19 were a lot of other people at the hearing that 20 day, too. 21 Q. Who do you recall? 22 A. Well, I've just -- reading the partial 23 transcript that you've given me, Adele, it says 24 that I'm introducing to the Court a group of my 25 clients, which included Sonny Jones of the South

KENNETH B. WINGATE, ESQUIRE

15 (Pages 57 to 60)

Page 57	Page 59
1 handling and has handled things such as this 2 agreement. 3 Q. I understand.	1 himself to be bound by this contract? 2 MR. HORSER: Object to the form.
3 A. And, no, I am -- I do not know all the 4 details of what all is in this packet that you're 5 calling Exhibit 12.	3 MR. NEWSOME: Same objection. 4 A. I know that Henry McMaster looked me in the 5 eye and said, "You're authorized to file this 6 suit against Adele Pope and Bob Buchanan."
6 Q. Well, I want you to take all the time you 7 need because this is what we're here about, 8 Mr. Wingate. I want to know everything you know 9 and know. So all the time it takes you to 10 refresh your memory, please do --	7 Q. "In my name as Attorney General?" 8 MR. NEWSOME: Object to the form. 9 A. I don't recall the verbatim words. He 10 looked me in the eye -- the subject of the 11 meeting was: Is there going to be a suit and 12 would Sweeny, Wingate & Barrow, PA, be 13 representing the group of Plaintiffs?
13 A. And I've just answered the question. 14 Q. Well, I'm not through. So I want -- I want 15 you to take all the time to refresh your memory 16 about anything you can refresh your about, 17 because I have some questions about the contract.	14 As I just referenced in connection with the 15 Judge Manning argument, that a group of parties 16 had a global settlement. They collectively came 17 to us -- one of them was the Attorney General of 18 South Carolina -- and asked us to represent them 19 in suing Adele Pope and Bob Buchanan.
18 A. I've already answered you that I'm not the 19 one who negotiated, so there's not a memory to be 20 refreshed. I don't understand why you have a 21 hard time understanding that answer. 22 Q. Okay. So you never understood the contract?	20 Q. Did you know he -- did he know he would be 21 named as a Plaintiff when he gave you that 22 authorization? 23 MR. HORSER: Object to the form of the 24 question.
22 A. It's not what I said. I said I did not 23 negotiate the contract. 24 Q. Well, Mr. Wingate, I didn't actually get a 25 "yes" or "no" answer from you about that. You're	25 MR. NEWSOME: Same objection.
Page 58	Page 60
1 often bound by a contract that you don't 2 negotiate, aren't -- aren't you? 3 MR. HORSER: Object to the form.	1 A. His Deputy Attorney General, Sonny Jones, 2 who had been the first contact with me with Alan 3 Medlin, who also was in the meeting with me and 4 with the Attorney General, and who also was the 5 continuous go-between between their office and 6 mine, was present for those conversations, yes.
4 MR. NEWSOME: Same objection. 5 A. The scope of this deposition is: Was this 6 law firm authorized to sue you? And I'm telling 7 you that I'm not the attorney within the firm who 8 dealt with those matters. I have no firsthand 9 knowledge to be refreshed.	7 Q. Did -- did Mr. McMaster understand when he 8 authorized it that he was named as a Plaintiff? 9 A. I believe that he did, absolutely, yes. 10 Q. Okay. Good. Now -- 11 A. And on an ongoing basis, there would be 12 hearings, such as the one we just did before 13 Judge Manning in the transcript that we reviewed 14 a few moments ago, in which representatives -- 15 usually Sonny Jones, sometimes Mary Francis 16 Jowers, sometimes Emory Smith -- would be present 17 and would sit in the back of the courtroom with 18 either Mr. Kendall or Mr. Gende, or occasionally 19 me in the early stage, representing the group of 20 the Plaintiffs, who had come to us with the 21 request.
10 Q. Do you know whether this is the Wingate 11 firm's contract with the Plaintiffs in the 12 Wingate lawsuit? Do you know that, "yes" or 13 "no"? And then any explanation you want to give. 14 A. I have already told you, I'm not the one who 15 negotiated all those details. I do not know. 16 Q. You do not know whether this is the 17 contract?	22 Q. Well, now Mr. McMaster left office 23 approximately eight months after the lawsuit was 24 filed; isn't that right? 25 A. I think the election was in 2010, right. So
16 Q. Yes do not know whether this is the 17 contract? 18 A. It's what I just said. 19 Q. Okay. Do you know from looking at this or 20 from any other source which of the Wingate Suit 21 clients filed -- executed the contract with the 22 Wingate firm?	
22 A. I didn't handle those. No, I do not know. 23 Q. You do not know. Do you know whether the 24 Attorney General of South Carolina understood	

GARBER REPORTING SERVICE

803-452-7500

KENNETH B. WINGATE, ESQUIRE

16 (Pages 61 to 64)

Page 61	Page 63
1 if the suit was filed in May of 2010, the 2 election would have been in November of 2010 and 3 the new A.G., Alan Wilson, would have gone into 4 office in January of 2011. 5 Q. Right. So -- but, again, in January of 6 2011, you have no evidence that Alan Wilson 7 himself authorized the continuation of the suit 8 other than having seen his name on a verification 9 of a document; is that correct? 10 A. I'm not the one who was -- 11 MR. NEWSOME: Object to the form. 12 A. -- dealing with all those things, so I do 13 not know. 14 Q. Okay. But you have no information? 15 A. I'm not saying I do or I don't. I said I do 16 not know. 17 Q. Well, wait a minute. Do you have any -- do 18 you know whether there is anything to confirm the 19 transition of the contract of the Attorney 20 General of South Carolina with your firm from 21 Henry McMaster to Alan Wilson? 22 A. I do not know. Rett Kendall was handling 23 that aspect of the litigation. 24 MS. POPE: Okay. Mark this one. 25 (Plaintiff's Exhibit No. 13 was marked	1 Buchanan and Adale Pope for not accepting a 2 hundred-million-dollar offer? 3 MR. NEWSOME: Object to the form. 4 MR. HOWSER: Object to the form. 5 That's beyond the scope. 6 A. And I'm not going to answer the question. 7 You're -- I'm here today regarding the 8 authorization to proceed with the lawsuit. 9 Q. You refuse to answer, okay. 10 (Plaintiff's Exhibit No. 14 was marked for 11 identification purposes.) 12 Q. Let's look at Plaintiff's 14, please. 13 A. (Reading.) I've been given pages -- well, a 14 cover letter and then it looks like one, two, and 15 eight. Is that the entire packet? 16 Q. That's the entire packet; that's Wingate 14. 17 A. Okay. I've looked at it. 18 Q. Okay. Are you familiar with your 19 representation to the Court that it was entirely 20 illegal -- I'm sorry, I'll start over. 21 Do you recall your representation to the 22 Court that it was entirely appropriate for a 23 private law firm to bring a tort suit against 24 Mr. Buchanan and Ms. Pope without the Attorney 25 General being an attorney of record?
Page 62	Page 64
2 for identification purposes.) 3 BY MS. POPE: 4 Q. Plaintiff's 13. 5 A. (Reading.) Okay. 6 Q. If you'll just take a moment to see if you 7 can familiarize yourself with Wingate 13. 8 A. I'm not familiar with this document. 9 Q. Okay. Well, if you can familiarize yourself 10 with the facts surrounding the document. 11 A. Are you saying you want me to read the 12 document? 13 Q. Yeah, please. 14 A. It's nine pages long. 15 MR. HOWSER: Take your time. 16 A. (Reading.) I glanced over it. 17 Q. Do you know when Alan Madlin and Sonny Jones 18 and others began telling the Appellate Courts 19 that James Brown's music empire was worth only 20 \$4.7 million when he died? 21 A. I have no -- 22 MR. NEWSOME: Object to the form of the 23 question. 24 A. I have no knowledge of that. 25 Q. Okay. Do you think it would have been important to know when you were suing Bob	1 A. That's a long, contorted question and my 2 basic response is: If that question relates to 3 this partial document I've been given, then I'm 4 not the one who prepared or signed or filed this 5 document, so I have no idea how this document 6 relates to the question you've just asked. 7 Q. Well, maybe it would be easier to just let 8 me give you the question and then we'll talk 9 about the document. 10 A. Take a shot at it. 11 Q. Okay. Did you represent to the Court, the 12 lower court, you, that it was entirely 13 appropriate for the Wingate firm to be pursuing a 14 tort suit against Bob Buchanan and Adale Pope 15 without the Attorney -- in the name of the 16 Attorney General without the Attorney General 17 being an attorney of record? 18 MR. NEWSOME: Object to the form. 19 A. And I have no idea what you're talking 20 about, so my answer is: No, I do not recall 21 making that representation. 22 Q. Okay. And if the lower court ruled not to 23 dismiss the lawsuit for that purpose and an 24 appeal was taken with a Writ of Prohibition, do 25 you recall anything whatsoever about that issue?

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

RICHLAND COUNTY
FILED
2017 MAR 29 AM 10:27
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

) **DEFENDANT/ COUNTERCLAIM**
) **PLAINTIFF ADELE J. POPE'S**
) **NOTICE OF MOTION AND MOTION**
) **PURSUANT TO RULE 59(E)**
) **AND RULE 60(B)(2), SCRCP**

Defendant Adele J. Pope ("Defendant" or "Pope") will move before this Court within ten days of notice hereof or at the earliest possible time thereafter for an Order altering and amending its Order dated March 9, 2017, filed March 21, 2017 (a copy of the order is attached hereto as Exhibit A), pursuant to Rule 59(e) and Rule 60(b)(2), SCRCR, and respectfully requests the Court amend its Order and overrule all objections made by the Plaintiff/Deponent Tommie Rae Brown ("TRB"), order TRB to answer all the questions she refused to answer, re-appear at the reconvening of her deposition in South Carolina at her expense to answer any additional questions that result from answers given to the questions she previously refused to answer, and to pay all of the Popes attorney's fees, and costs associated therewith.

The grounds, *inter alia*, for the requested relief are based upon the following errors of law and newly discovered evidence which by due diligence could not have been discovered and indeed did not exist at the time of the hearing on this matter which occurred on Monday, November 21, 2016 (hereinafter hearing).

1. The Court failed to rule or provide the legal or factual basis for allowing TRB to refuse to answer questions related to the issue of her status as James Brown's surviving spouse. If the Court adopted the reasoning and arguments of TRB at the hearing on this matter, the Court erred in sustaining TRB's deposition objections and her refusal to answer questions. The error being that the Court's ruling deprives Defendant of the ability to defend against the allegations made by TRB in her Complaint. In her deposition TRB testified on the issue as follows:

Q. Okay do you know why you brought this lawsuit?

A. Why I brought this lawsuit?

Q. Yes, Ma'am.

A. Probably because of being robbed and taken advantage of and kicked out and excluded and just completely abused and taken from.

Q. Okay

A. I have lost a lot of material things, personal things, pride.

Q. You were robbed, what else?

A. Well, I mean, if this is -- if you're asking me if I believe that Ms. Pope took anything from me or my husband that was not due to her or did not act completely lawfully in every way to her responsibilities as she was supposed to handle them, then, yeah, I do believe that she handled things wrong.

Q. Okay. Handled these wrong?

A. Handled things wrong.

Q. Okay.

A. Things went wrong. She had a responsibility to make sure they were handled correctly, and I don't believe that they were, in my opinion.

Deposition of Tommie Rae Brown dated June 16, 2016, Volume 1, Page 134, Ln 12 thru 21; page 135, Ln 1 thru 14:

In the Complaint TRB alleges that Pope breached fiduciary duties Pope allegedly owed to TRB. As a matter of law Pope would only owe a duty to TRB if TRB was in fact the surviving spouse. (See paragraph 18 of Complaint). TRB, however, was not mentioned in the Will or the Trust. Notwithstanding the fact that TRB was not mentioned in the Will or Trust, one such alleged breach of this alleged fiduciary duty was "taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court." (See paragraph 18 of Complaint). The parties to the settlement agreement agreed to, among other things, that TRB was in fact the surviving spouse. TRB is suing Pope for contesting the settlement agreement, which declared TRB the surviving spouse.

The issue in this case is not whether TRB was, or is in fact, the surviving spouse of James Brown but whether Pope, based upon what she knew or what was available to her during the period referenced in the Complaint, acted reasonably in deciding to contest TRB's claim that she was the surviving spouse. Indeed, the agreement was overturned and

remanded for further proceedings on the inadequacy of the evidence to justify such an agreement as to TRB's status as the surviving spouse. In preventing Defendant from questioning her the very issue for which Plaintiff is suing the Defendant is a fundamental violation of her procedural and substantive due process rights.

2. The Court erred in failing to rule on TRB's counsel's objection at Tr.366:1-4.

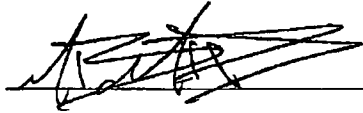
3. Two weeks ago, on March 8, 2017, TRB entered into a settlement agreement with the Limited Special Administrator of the estate and the Limited Special Trustee of the trust and the Personal Representative of the Estate and Trust that provides, *inter alia*, as follows:

"within (10) days of a final appellate court decision in the Surviving Spouse Appeal establishing that TRB is or is not Decedents surviving spouse, TRB will withdraw and/or dismiss her Spousal Claims and release the LSA from any and all claims she may have, as surviving spouse or otherwise."

This newly discovered evidence completely undermines any argument that TRB is the surviving spouse, even if there was any merit to the argument upon which the court was heretofore relying on in its order. As such, the order should be granted relief from the order pursuant to Rule 60(b)(2), SCRCP.

[signature page follows]

Respectfully submitted,



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
BUNDY MCDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
888-552-1559
walter@bundymcdonald.com
brent@bundymcdonald.com

and

Adam T. Silvernail, Esquire
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
Attorneys for Defendant/Counterclaim Plaintiff Adele J. Pope

March 24, 2017
Summerville, South Carolina

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

**SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
MOTION TO BE DROPPED
AS PARTY**

Respectfully, the Attorney General submits this supplemental memorandum in support of his Motion to be Dropped as a Party. In addition to those arguments previously submitted regarding that Motion, the Attorney General, asserts that dropping him as a party to this action is appropriate because he is absolutely immune from suit with respect to the counterclaims herein. This issue may be raised now because it is covered by the Attorney General's defense of failure to state a claim under Rule 12(B)(6), SCRCPP, in his Answer to the Counterclaim.¹

The South Carolina Supreme Court has found a prosecutor is absolutely immune from suit under 42 U.S.C §1983 or the South Carolina Tort Claims Act "for actions relating to their prosecution of an individual as a criminal defendant-regardless of the prosecutor's motivation."

¹ 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)

the state attorney general was vested with "the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order and protection of public rights." *Capitol Stages, Inc. v. State of Mississippi*, 157 Miss. 576, 128 So. 759, 763 (1930) (citing 2 R.C.L. §§ 4 and 5, at 915-17). The state court action was, therefore, a civil enforcement proceeding of the type for which absolute immunity applies.

* * *

Thus, regardless of their motivation in bringing the action, so long as defendants were performing a prosecutorial function, they enjoy absolute immunity from plaintiffs' claims relative to the civil proceeding. And in the court's view, it is manifest that in proceeding with the civil litigation before the chancery court, Moore and Warren were acting in their prosecutorial capacities on behalf of the state.

Metro Charities, Inc. v. Moore, 748 F.Supp. 1156, 1163-64 (S.D.Miss.,1990)

In *State v. Superior Court In and For County of Maricopa*, 921 P.2d 697, 700, 186 Ariz. 294, 297 (Ariz.App. Div. 1,1996), the Court applied absolute prosecutorial immunity to claims against the Attorney General for abuse of process and malicious prosecution for civil actions taken against the Plaintiff as to an adult care facility. See also, *Dinsdale v. Com.*, 675 N.E.2d 374, 377, 424 Mass. 176, 180 (1997) ("absolute immunity [extends] to government attorneys in their conduct of civil litigation as well").

Under the above authority from the United States Supreme Court, the Fourth Circuit Court of Appeals and numerous other courts, absolute immunity clearly extends to the Attorney General in this action so as to bar the counterclaims against him. Therefore, for this reason, and the others noted herein, his Motion to be Dropped as a Party should be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

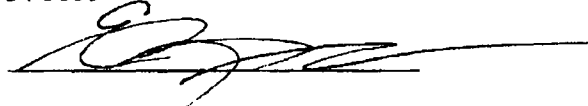
ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues next page]

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:

A handwritten signature in black ink, appearing to be "J. Emory Smith, Jr.", written over a horizontal line.

APRIL 3, 2017

ATTORNEYS FOR THE ATTORNEY GENERAL

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
RECEIVED
JULY 12 2017
CLERK OF COURT

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), SCRCp, 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), SCRCp, 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.

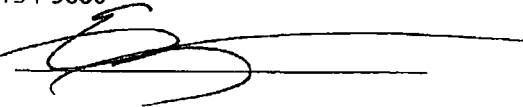
Respectfully submitted,

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, et. al.,

and

ALAN WILSON, et. al.

Plaintiffs,

v.

ADELE J. POPE,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

CASE NO.: 2010-CP-40-4900

**TOMMIE RAE BROWN'S RETURN IN
OPPOSITION TO
DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION PURSUANT TO RULE 59(E)
AND RULE 60(B)(2), SCRPC**

2017 APR 25 AM 9:26

Tommie Rae Brown ("Mrs. Brown"), as and for her Return to Adele J. Pope's Motion Pursuant to Rule 59(e) and Rule 60(b)(2), filed on or about March 24, 2017, seeking to alter and amend the Court's Order regarding the Motion for Protective Order as to Mrs. Brown's Deposition, which was filed March 21, 2017, respectfully shows the court as follows:

1. Mrs. Brown notes, as previously argued at the hearing on November 21, 2016 and in her memorandum of law, discovery may not be taken on issues which are resolved and such discovery is barred under res judicata, collateral estoppel, and similar preclusive doctrines. See *Matter of Wilcher*, 56 B.R. 428, 435 (Bankr. N.D. Ill. 1985); *Lawrence v. Household Bank (SB), N.A.*, 505 F. Supp. 2d 1279, 1285 (M.D. Ala. 2007); *DeSiervi v. Liverzani*, 136 A.D.2d 527, 527, 523 N.Y.S.2d 147, 148 (1988); *Davis v. Hennepin Cty.*, No. A11-1083, 2012 WL 896409, at *3 (Minn. Ct. App. Mar. 19, 2012). Mrs. Brown sought a protective order pursuant to rule 26 to limit questions asked by counsel in her deposition regarding her marriage to Javed Ahmed and/or James Brown, as the Court previously determined the validity of these marriages in the Orders dated January 12, 2015 and October 26, 2015. Those rulings expressly held that only the Family

Court has jurisdiction to question the annulment of Mrs. Brown's marriage to Ahmed and that the annulment was binding on all third parties.

2. Mrs. Brown believes this Court reviewed and considered all evidence before it with regarding to Mrs. Brown's Motion for Protective Order. The Court relied on the legal arguments and memoranda at the hearing on November 21, 2016. Following the hearing, Mrs. Brown's counsel provided the Court with a transcript of the deposition, highlighting his specific objections for which he sought a protective order. The Court took this matter under advisement and issued an Order regarding the Motion for Protective Order as to Mrs. Brown's Deposition, dated March 9, 2017 and filed March 21, 2017 (the "Order"), attached hereto as **Exhibit "A"**.

3. Defendant Adele J. Pope ("Ms. Pope") asks this court to alter or amend its Order under Rules 59(e) and 60(b)(2), SCRPC.

4. A Rule 59(e) motion to reconsider is an extraordinary remedy. South Carolina Rules of Civil Procedure Rule 59 Notes indicate that Rule 59 is "substantially the Federal Rule." Rule 59, SCRPC, Notes. "Rule 59(e) of the Federal Rules of Civil Procedure provides a mechanism for an aggrieved party to petition the Court to alter or amend a judgment under certain limited circumstances. The purpose of a Rule 59(e) motion is to allow the court to reevaluate the basis for its decision. Because the interests in finality and conservation of judicial resources, Rule 59(e) motions should be granted sparingly. Thus, Rule 59(e) motions are not at the disposal of an unsuccessful party to 'rehash' the same arguments and facts previously presented" *Rouse v. Nielson*, 851 F. Supp. 717, 734 (D.S.C. 1994) (internal quotations omitted).

5. The Fourth Circuit has similarly said of Rule 59(e) motions that, "[i]n general 'reconsideration of a judgment after its entry is an extraordinary remedy which should be used

sparingly.” *Pac. Ins. Co. v. American Nat’l Fire Assoc.*, 148 F.3d 396, 402 (4th Cir. 1998) (citations omitted). “A motion under Rule 59(e) is not authorized ‘to enable a party to complete presenting his case after the court has ruled against him.’” *Id.* at 403 (citation omitted). “The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.” *Id.* (citation omitted).

6. Rule 60(b)(2), SCRCF, enables a court to relieve a moving party from a final judgment, order, or proceeding based on “newly discovered evidence.” Ms. Pope attempts to use the settlement agreement that Mrs. Brown and the Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of the James Brown 2000 Irrevocable Trust (the “LSA”), executed on March 8, 2017, as grounds for relief from the Order. Ms. Pope incorrectly argues that the settlement agreement “completely undermines any argument that TRB is the surviving spouse[.]” Ms. Pope’s Motion, p.4. Ms. Pope’s position is exactly the opposite of the terms of the settlement agreement (attached hereto as **Exhibit “B”**), from which she selectively quotes. The essence of the settlement agreement is that the Estate and Trust are dismissing their opposition to Mrs. Brown’s status as surviving spouse. The settlement agreement states that Mrs. Brown will contribute 65 percent of the 50 percent of the termination rights proceeds that she will receive if she is determined to be the surviving spouse. The settlement agreement states that the value of these proceeds could be tens of millions of dollars. These are proceeds that the charitable trust would otherwise not receive without (1) Mrs. Brown being confirmed as the surviving spouse, *and* (2) her contribution of the proceeds to the charitable trust. Obviously, therefore, the Estate and Trust would support the confirmation of Mrs. Brown’s status as surviving spouse, as opposed to Mr. Pope’s selective and inaccurate reading of the settlement

agreement¹. Moreover, the settlement agreement requires there to be a final order, either from the appellate court or the lower court, that Mrs. Brown is or is not James Brown's surviving spouse before any action is taken.

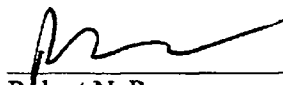
7. Paragraph 2 of Ms. Pope's motion does correctly state that the Court failed to issue a ruling on Mrs. Brown's counsel's objection at Tr. 366:1-4. To the extent that such an omission requires the Court to issue an amended order, Mrs. Brown requests that the Court rules on that objection and does not alter or amend its previous ruling.

8. Nothing has been presented in Ms. Pope's Motion that would give rise to the Court reconsidering, altering, or amending its ruling.

9. Mrs. Brown respectfully asks this Court to deny all relief requested by Ms. Pope.

WHEREFORE, Mrs. Brown respectfully requests that this Court deny Defendant/Counterclaim Plaintiff's Motion for Reconsideration, and reaffirm its Order filed March 21, 2017.

ROSEN LAW FIRM, LLC



Robert N. Rosen
18 Broad Street, Suite 201
Post Office Box 1840 (29402)
Charleston, SC 29401
(843) 377-1700
RNRosen@rosen-lawfirm.com

ATTORNEY FOR TOMMIE RAE BROWN

Charleston, South Carolina
April 20, 2017

¹ Ms. Pope's ill-considered appeal of the 2009 settlement agreement cost the charitable trust tens of millions of dollars. In that agreement, as this Court is well-aware, Mrs. Brown and the Brown children contributed approximately 50 % of all the termination rights proceeds to the charitable trust. Because Ms. Pope succeeded in destroying that settlement agreement, the charitable trust lost the right to these tens of millions of dollars of termination rights proceeds. Because Mrs. Brown has now agreed to contribute 65% of her share of the termination rights proceeds, the charitable trust will benefit immensely. It appears, however, that the Brown children's share of the termination rights proceeds will remain irretrievably lost to the charitable trust—thanks to Ms. Pope's appeal.

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
TO ALTER AND/OR AMEND
ORDER REGARDING DEPOSITIONS
OF KENNETH B. WINGATE, ESQUIRE
AND EVERETT A. KENDALL, ESQUIRE
IN CASE NO. 2013-CP-02-1337**

RICHLAND COUNTY
FILED
2017 JUN 19 AM 11:42
JEANETTE W. MCBRIDE
C.C.P. & G.S.

**TO: PLAINTIF/COUNTERCLAIM DEFENDANTS AND THEIR COUNSEL SWEENEY,
WINGATE & BARROW, P.C. ("Wingate") :**

YOU WILL PLEASE TAKE NOTICE that ten (10) 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 Doyet A. Early, III (Jg. Early) for an Order altering, amending or
vacating his ORDER dated June 6, 2017 and received by Defendant/Counterclaim Plaintiff
on June 9, 2017, a copy of which is attached hereto as Exhibit A.

The grounds of this motion are:

1. This Court was without jurisdiction to enter an Order in this case, which Order is in connections with depositions taken and motions filed in Aiken County Case No. 2013-CP-02-1337 ("Case 1337").
2. The Order nonetheless is filed in Richland County and bears the case number of the above-captioned action.
3. Pope asks that this Court take mandatory judicial notice of her Motion to Alter, Amend and/or Vacate this Order, filed in Case 1337 on June 15, 2017.

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
BUNDY McDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: (843) 492-4134
Facsimile: (843) 843-712-7318
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@silvernailfirm.com

June 16, 2017

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

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
CIVIL ACTION NO.: 2010-CP-40-4900

ORDER

RICHLAND COUNTY
FILED
2017 JUN -8 AM 8:47
JEANETTE B. MCGRINDE
C.C.P. & G.S.

In Re:

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

Adele J. Pope,

Plaintiff

v.

Estate of James Brown and The
James Brown 2000 Irrevocable
Trust,

Defendants.

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2013-CP-02-1337

This matter came before me pursuant to a Motion of Protective Order sought by Kenneth B. Wingate, Esquire ("Wingate") and Everett A. Kendall, II, Esquire (Kendall) arising out of questions put to them at their depositions.

The record reveals that Wingate and Kendall were subpoenaed to give deposition testimony in the above matters. Prior to the time that Wingate and Kendall were to appear for their



depositions pursuant to their subpoenas, through counsel each of them moved in the Court of Common Pleas for Richland County for Orders quashing the subpoenas. On March 1, 2017, each of their motions was heard by the Honorable Jean H. Toal, acting Circuit Court Judge. Judge Toal denied the motions to quash but in so doing ruled that the "Plaintiff will be permitted to question each of these attorneys on their authorization to file and continue the lawsuit of the Attorney General and others against Robert Buchanan and Adele Pope, filed May 19, 2010 and continuing today."

Wingate and Kendall have now sought a protective order to prohibit them from having to answer questions objected to at their depositions conducted on March 6, 2017, since the questions which they refused to answer at their depositions went beyond the limitations on the subject matter(s) upon which Plaintiff Adele Pope, Esquire was allowed to question them under the Order of Judge Toal.

The Court has carefully considered the arguments and submittals of Plaintiff Adele Pope and Wingate and Kendall. The Court has read the entire deposition transcripts and reviewed the Order of Judge Toal. The Court has considered the applicable cases dealing with one Circuit Judge modifying the Orders of another Circuit Judge.

After considering this matter, I find and conclude the questions objected to are all beyond the permitted scope of the parameters of the Order allowing the depositions and that the Protective Order should be granted. Accordingly, Wingate and Kendall shall not be required to answer those questions set forth in their Privilege Logs.

AND IT IS SO ORDERED.

Bamberg, South Carolina
June 14, 2017


Doyet A. Early, III
Circuit Court Judge

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

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 FOR
PROTECTIVE ORDER
FOR JUNE 27, 2017
DEPOSITION OF
TIFFANY PROVENCE**

2017 JUN 19 PM 2:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

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 Protective Order pertaining to the deposition of Tiffany Provence.

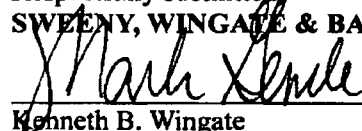
The grounds for this Motion are that Tiffany Provence is unavailable on the appointed date due to long-scheduled vacation plans and defense counsel selected the date of this deposition without consent of Plaintiffs' counsel. Plaintiffs' counsel sought to avoid a hearing but defendant's counsel would not agree to change the date.

Therefore, Plaintiffs, and Tiffany Provence, seek a Protective Order from appearing at the June 27, 2017 deposition.

This Motion may be further supported and supplemented by a Memorandum of Law and/or affidavits.

The undersigned represents that he has made a good-faith effort to resolve these issues prior to the filing of this Motion and that further discussion is futile.

Respectfully submitted,
SWEENEY, WINGATE & BARROW, P.A.



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

June 15, 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

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 FOR
PROTECTIVE ORDER
FOR JUNE 29, 2017
DEPOSITION OF
JASON BROWN-LEWIS**

RICHLAND COURT
FILED
2017 JUN 26 PM 4:24
JEANNETTE W. McBRIDE
C.C.P. & G.S.

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 Protective Order pertaining to the deposition of Jason Brown-Lewis.

Plaintiffs seek to postpone the deposition due to the medical unavailability of Russell Bauknight. As set forth in the attached affidavit from Mr. Bauknight, he had been planning to personally attend this deposition, which is scheduled for Los Angeles, CA. His personal attendance was required because counsel for Defendant Pope refused to conduct the deposition by video conference. Mr. Bauknight underwent major heart surgery in May 2017. Last week, he was advised by his cardiologist that cross-country air travel was not permitted. Mr. Bauknight has a follow up appointment scheduled with the cardiologist on Thursday, June 29, the same day as the scheduled deposition.

Mr. Bauknight, as the lead Plaintiff in this litigation, is entitled to be personally present at the deposition of another party. He is entitled to assist counsel in preparing cross-examination, which would necessarily require the ability to review any documents physically presented to the witness during the deposition. For these reasons, telephonic participation is insufficient to provide meaningful participation.

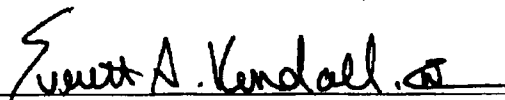
Therefore, Plaintiffs seek a Protective Order postponing any deposition that would require long-distance travel for Mr. Bauknight until he has been medically cleared, to include the deposition of Jason Brown Lewis, scheduled for June 29, 2017.

This Motion may be further supported and supplemented by a Memorandum of Law and/or affidavits.

The undersigned represents that he has made a good-faith effort to resolve these issues prior to the filing of this Motion and that further discussion is futile.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "Everett A. Kendall, II", is written over a horizontal line.

Kenneth B. Wingate
Mark V. Gende
Everett A. Kendall, II
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

June 26, 2017

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 COURT
FILED
2017 JUN 27 AM 9:56
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
RETURN TO MOTION OF
PLAINTIFF/COUNTERCLAIM
DEFENDANTS FOR
FOR PROTECTIVE ORDER
AS TO THE DEPOSITION OF
JASON BROWN-LEWIS

TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS AND/OR THEIR COUNSEL.

Defendant/Counterclaim Plaintiff Adele J. Pope opposes the motion of

Plaintiffs/Counterclaim Defendants for a protective Order concerning the deposition of Jason Brown-Lewis. The grounds of this return are as follows:

1. Jason Brown-Lewis filed this action against Robert L. Buchanan, Jr. and Adele J. Pope on May 19, 2010. It is the only action he has filed as an adult since his grandfather's death on December 25, 2006.
2. Mr. Brown-Lewis is currently seeking summary judgment against Defendant on her counterclaims even though she and Buchanan were responsible for having the McMaster settlement deal, which dismembered Mr. Brown-Lewis' interest in the James Brown 2000 Irrevocable Trust and damaged his termination rights under the Federal Copyright Act, declared void.
3. Defendant has incurred approximately \$2,000 in non-refundable travel costs for the deposition and engaged a Court Reporter.
4. Russell L. Bauknight is not the "lead Plaintiff" in this action, but instead is one of more than a dozen Plaintiffs, including the Attorney General (prior to *Wilson v. Dallas*, he also served as agent for most of the parties (see Wingate Litigation Retention Agreement)).
5. According to the Wingate Litigation Retention Agreement, it appears that if there is a "lead Plaintiff" after the *Wilson* decision, it is the Attorney General, who controls both the Legacy Trust and has responsibility for protecting the James Brown "I Feel Good" charitable Trust.
6. The deposition of Jason Brown-Lewis was scheduled by agreement with Plaintiffs' counsel, and the notice was properly served on May 31, 2017.
7. The undersigned contacted Plaintiffs' counsel on March 28, 2017 to seek

acceptable dates and locations for the deposition of Mr. Brown-Lewis.

8. Between March 28, 2017 and May 16, 2017, Plaintiffs' counsel did not identify or consent to any date for the deposition.
9. On May 15, 2017, Plaintiffs' counsel did notify the undersigned that Mr. Bauknight was scheduled for surgery and that they were seeking dates to accommodate his recovery.
10. By email of May 16, 2017, Plaintiffs' counsel proposed either June 28 or June 29 for the deposition.
11. Defendant thereafter proposed a location for the deposition, since Plaintiffs' counsel had not been able to provide a specific area convenient to Mr. Brown-Lewis. Plaintiffs' counsel did thereafter confirm that the location proposed by Defendant was acceptable.
12. Defendant proceeded with serving the notice of deposition on May 30, 2017.
13. Counsel for Plaintiffs and Defendant exchanged email correspondence regarding the expected length of the deposition and other details related to travel planning, but at no time prior to June 26, 2017 did Plaintiffs indicate that they would seek to delay the deposition or that there was any uncertainty regarding their attendance.
14. On June 9, 2017, Defendant and her counsel booked flights and hotel rooms for the deposition.
15. On June 26, 2017 at 2:52 p.m., Everett Kendall, Esquire, emailed the undersigned to ask that the deposition be delayed in light of Russell L. Bauknight's inability to travel to the deposition.

16. Within a few minutes, the undersigned responded that he could not consent to delay the deposition, where travel plans and a Court reporter were already in place.
17. In the same correspondence, Defendant's counsel offered for Mr. Bauknight to participate by telephone, so long as Plaintiffs' counsel took responsibility for arranging his participation.
18. The undersigned received no response to that offer until the instant motion was received via email at 4:56 p.m. on Monday, June 26, 2017.
19. In the motion, Plaintiffs assert that Mr. Bauknight was notified by his doctor last week that he would not be able to travel. Plaintiffs nonetheless made no contact with Defendant to seek a delay or otherwise to accommodate Mr. Bauknight's travel restriction until Monday, June 26, 2017.
20. On Thursday, June 22, 2017, Plaintiffs advised the Court that they could not attend a potential hearing on another of their motions to stop a deposition, because they would be preparing for and traveling to the deposition of Jason Brown-Lewis. Plaintiff and her counsel have likewise spent the week preparing for the deposition.
21. Although Mr. Bauknight is entitled to attend the deposition if he wishes and is able, Defendant is unaware of any rule or law which requires rescheduling of a deposition which a represented party is unable to personally attend. Additionally, Defendant notes that Mr. Bauknight has not personally attended many of the recent depositions in this case.

For the reasons set forth above, Defendant respectfully asks that this Court deny

Plaintiff/Counterclaim Defendants' Motion and direct the parties to proceed with the long-scheduled and properly noticed deposition. This motion is based on the South Carolina Rules of Civil Procedure, especially Rule 30; and the entire record herein.

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
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

June 27, 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

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
2017 JUN 30 PM 2:52
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

AMENDED MOTION FOR
PROTECTIVE ORDER
FOR JUNE 27, 2017
DEPOSITION OF
TIFFANY PROVENCE

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 Protective Order pertaining to the deposition of Tiffany Provence. This is an Amendment to the Motion filed June 15, 2017.

The grounds for this Motion are that Tiffany Provence is unavailable on the appointed date due to long-scheduled vacation plans and defense counsel selected the date of this deposition without consent of Plaintiffs' counsel. As an additional grounds, Plaintiffs seek to continue the deposition of Ms. Provence until after the conclusion of the trial scheduled in the matter of Adele Pope v. Estate of James Brown, 2013-CP-02-1337. Plaintiffs' counsel sought to avoid a hearing but defendant's counsel would not agree to change the date or the further continuance.

Therefore, Plaintiffs, and Tiffany Provence, seek a Protective Order from appearing at the June 27, 2017 deposition. Plaintiffs further seek a Protective Order staying this deposition until after the trial of Case 1337.

This Motion may be further supported and supplemented by a Memorandum of Law and/or affidavits.

The undersigned represents that he has made a good-faith effort to resolve these issues prior to the filing of this Motion and that further discussion is futile.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "Kenneth B. Wingate", 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

June 28, 2017

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
2017 JUN 27 AM 9:56
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
RETURN TO MOTION OF
PLAINTIFF/COUNTERCLAIM
DEFENDANTS FOR
FOR PROTECTIVE ORDER
AS TO THE DEPOSITION OF
JASON BROWN-LEWIS

TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS AND/OR THEIR COUNSEL.

Defendant/Counterclaim Plaintiff Adele J. Pope opposes the motion of

Plaintiffs/Counterclaim Defendants for a protective Order concerning the deposition of Jason Brown-Lewis. The grounds of this return are as follows:

1. Jason Brown-Lewis filed this action against Robert L. Buchanan, Jr. and Adele J. Pope on May 19, 2010. It is the only action he has filed as an adult since his grandfather's death on December 25, 2006.
2. Mr. Brown-Lewis is currently seeking summary judgment against Defendant on her counterclaims even though she and Buchanan were responsible for having the McMaster settlement deal, which dismembered Mr. Brown-Lewis' interest in the James Brown 2000 Irrevocable Trust and damaged his termination rights under the Federal Copyright Act, declared void.
3. Defendant has incurred approximately \$2,000 in non-refundable travel costs for the deposition and engaged a Court Reporter.
4. Russell L. Bauknight is not the "lead Plaintiff" in this action, but instead is one of more than a dozen Plaintiffs, including the Attorney General (prior to *Wilson v. Dallas*, he also served as agent for most of the parties (see Wingate Litigation Retention Agreement)).
5. According to the Wingate Litigation Retention Agreement, it appears that if there is a "lead Plaintiff" after the *Wilson* decision, it is the Attorney General, who controls both the Legacy Trust and has responsibility for protecting the James Brown "I Feel Good" charitable Trust.
6. The deposition of Jason Brown-Lewis was scheduled by agreement with Plaintiffs' counsel, and the notice was properly served on May 31, 2017.
7. The undersigned contacted Plaintiffs' counsel on March 28, 2017 to seek

acceptable dates and locations for the deposition of Mr. Brown-Lewis.

8. Between March 28, 2017 and May 16, 2017, Plaintiffs' counsel did not identify or consent to any date for the deposition.
9. On May 15, 2017, Plaintiffs' counsel did notify the undersigned that Mr. Bauknight was scheduled for surgery and that they were seeking dates to accommodate his recovery.
10. By email of May 16, 2017, Plaintiffs' counsel proposed either June 28 or June 29 for the deposition.
11. Defendant thereafter proposed a location for the deposition, since Plaintiffs' counsel had not been able to provide a specific area convenient to Mr. Brown-Lewis. Plaintiffs' counsel did thereafter confirm that the location proposed by Defendant was acceptable.
12. Defendant proceeded with serving the notice of deposition on May 30, 2017.
13. Counsel for Plaintiffs and Defendant exchanged email correspondence regarding the expected length of the deposition and other details related to travel planning, but at no time prior to June 26, 2017 did Plaintiffs indicate that they would seek to delay the deposition or that there was any uncertainty regarding their attendance.
14. On June 9, 2017, Defendant and her counsel booked flights and hotel rooms for the deposition.
15. On June 26, 2017 at 2:52 p.m., Everett Kendall, Esquire, emailed the undersigned to ask that the deposition be delayed in light of Russell L. Bauknight's inability to travel to the deposition.

16. Within a few minutes, the undersigned responded that he could not consent to delay the deposition, where travel plans and a Court reporter were already in place.
17. In the same correspondence, Defendant's counsel offered for Mr. Bauknight to participate by telephone, so long as Plaintiffs' counsel took responsibility for arranging his participation.
18. The undersigned received no response to that offer until the instant motion was received via email at 4:56 p.m. on Monday, June 26, 2017.
19. In the motion, Plaintiffs assert that Mr. Bauknight was notified by his doctor last week that he would not be able to travel. Plaintiffs nonetheless made no contact with Defendant to seek a delay or otherwise to accommodate Mr. Bauknight's travel restriction until Monday, June 26, 2017.
20. On Thursday, June 22, 2017, Plaintiffs advised the Court that they could not attend a potential hearing on another of their motions to stop a deposition, because they would be preparing for and traveling to the deposition of Jason Brown-Lewis. Plaintiff and her counsel have likewise spent the week preparing for the deposition.
21. Although Mr. Bauknight is entitled to attend the deposition if he wishes and is able, Defendant is unaware of any rule or law which requires rescheduling of a deposition which a represented party is unable to personally attend. Additionally, Defendant notes that Mr. Bauknight has not personally attended many of the recent depositions in this case.

For the reasons set forth above, Defendant respectfully asks that this Court deny

Plaintiff/Counterclaim Defendants' Motion and direct the parties to proceed with the long-scheduled and properly noticed deposition. This motion is based on the South Carolina Rules of Civil Procedure, especially Rule 30; and the entire record herein.

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
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

June 27, 2016

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

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

Case No.: 2010-CP-40-4900

RUSSELL L. Bauknight, as Trustee,
and others

and

ALAN WILSON and others,

Plaintiffs,

v.

Adele J. Pope,

Defendant

Opinion/Affidavit of William Jeffrey Smith

FILED
JUL 14 PM 2:01
JANETTE W. MCBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, WILLIAM JEFFREY SMITH, who
being duly sworn, deposes and says:

1. I am over twenty one years of age, and give the opinions stated herein based on personal information, and, within my area of expertise, to a reasonable degree of professional certainty.

2. I am a graduate of Georgetown University Law Center and a former patent examiner with the United States Patent and Trademark Office.

3. I was engaged in June 2008 by the Estate of James Brown and the James Brown 2000 Irrevocable Trust to explore issues related to the protection of James Brown's "I Feel Good" Charity from the premature and/or improper exercise by heirs and claimed heirs of Federal Copyright Act Termination Rights, which would begin to come into play in 2012.

4. Shortly after I was engaged Attorney General Henry McMaster brokered a

settlement deal which stopped the Estate's official DNA testing program; declared Tomirae, Brown's companion, would be stipulated to be his spouse; and declared that fewer than half of Brown's claimed children, along with Tomirae's son, would be Brown's heirs.

5. I did not continue to work after August 12, 2008, the day the McMaster settlement was announced, but I have remained interested in Brown's music and copyright issues related to his estate.

6. I was engaged by Defendant as an expert in this case and in Aiken County Case 2013-CP-02-1337 in 2016.

7. I have not been deposed in this case, but have been deposed in the Aiken Case, and incorporate herein in its entirety my opinions as stated in my deposition.

8. In addition, I have review the non confidential parts of many depositions of experts in this case, as well as the Aiken case, and attach parts of a number of those depositions to this Affidavit.

9. My review of these depositions, especially the depositions of Plaintiffs' Termination Rights experts Roger Miller and Jonas Herbsman, and the depositions of Russell Bauknight, provide further support for my opinion that the Attorney General's in action taking over James Brown's assets; terminating the heirs proceeding that Robert Buchanan, Jr. and Adele Pope were conducting for James Brown's estate; and then devaluating Brown's music empire to damage Mr. Buchanan and Mrs. Pope caused James Brown's "I Feel Good" Charity great damage, as it did Mr. Buchanan and Mrs. Pope.

10. I am informed and believe that the incorrect representation made to the

Supreme Court by the Attorney General and Tomirae to support their efforts to take over the assets James Brown gave his "I Feel Good" Charity damaged Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Trust and its 900 copyrights for needy students. They said in part:

This IRS finding music empire] , based upon its own independent review and valuation, directly and incontrovertible 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...

CONCLUSION ...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 commission.

...
F4 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. (Rpp.2879-80)

11. I am informed and believe that Attorney General's and Tomirae's inaccurate claims a few weeks later continued to damage Mr. Buchanan and Mrs. Pope in their efforts to protect the "I Feel Good" Charity and its copyrights. They said:

In fact, the IRS tax records reveal that the Settlement Agreement benefitted the Estate in that it no longer owes any federal estate taxes. Moreover, the IRS records show that the Estate/s charitable deduction was not impacted by the Settlement Agreement and further, that the Estate was able to favorably utilize the marital deduction because of the Settlement Agreement. All of this reveals that Appellants' assertions in their brief regarding the alleged negative tax consequences that would flow from the Settlement Agreement are patently incorrect. These official IRS documents are relevant to the current appeal as they are records of the Estate that contradict Appellants' misleading valuation and tax assertions contained within their brief. [Emphasis supplied.]

...Appellants intimate the appraisal is not legitimate. . . the IRS has accepted the date of death valuation of the assets; it has the final word in this matter.

The Court should supplement the record on appeal to include the IRS tax records, and the Supplemental Inventory and Appraisement...

... Not once did the circuit court order approving the Settlement Agreement address asset valuation... Appellants' myopic focus on asset valuation can only be explained, then, by one fact: their nary \$5 Million personal representative fee petition. R. Pp.3879-80) If the valuation of the assets asserted by the Appellants falls, then their fee petition and credibility falls with it. As explained below, the valuation asserted by the Appellants is based on pure speculation and unsupported by their own citations...

No One Ever Made an Offer

The [willing buyer/willing seller] argument is inapplicable here, however, because no one ever made an offer...Every valuation Appellants rely upon is nothing more than speculation.

Appellants have misrepresented to this Court the 'offers' were made to the Estate and Trust to buy its assets:

... At the date of James Brown's death, the intellectual property assets of his estate were worth roughly \$4.7 Million...

Appellants' opposition to the supplement is simply an attempt to appear credible regarding their fee petition. The basis for their valuation argument has been shown to be groundless....

12. After the *Wilson v. Dallas* decision the Attorney General continued his alliance with Tomirae and support of Mr. Bauknight and Mr. Bauknight continued to attack Mr. Buchanan and Mrs. Pope despite public documents which showed Mr. Bauknight had valued Brown's Right of Publicity at zero, and overstate Brown's deductions in the IRS estate tax proceed by \$5 Million. In a deposition given August 20, 2013 deposition in Case 3:08-cv-00014-WOB, Mr Bauknight, talking about the PBW \$4.7 Million "appraisal" said:

Page 54

2 Q: What information did you provide to Philpott

3 Ball for use in this evaluation?

4 A: Information I obtained from Ms. Pope and Mr.

5 Buchanan.

6 Q: Numbers?

7 A: Excuse me?

8 Q: That would be basically numbers?

9 A: That would be approximately 180 boxes of stuff

10 that I obtained from Pope and Buchanan....

Page 55

1 A: I don't know what a Bates stamp is, so ---

2 Q: The second paragraph on that page is a general

3 introduction to a list of what are called

4 general assumptions. The second sentence of

5 that paragraph reads, these general assumptions

6 have been made based on conversations with

7 persons familiar with the estate and the music

8 industry and a commonsense view of business and

9 popular culture. Do you see that sentence?

10 A: Yes.

11 Q: Who would the persons familiar with the estate

12 have been, to your knowledge?

13 A: At this point I can only assume me, possibly

14 Peter Afterman. I don't know who else. I

15 don't recall. It's been several years.

16 Q: I understand, but you're the only person I have

17 to ask.

18 A: I hear you.

19 Q: Do you know who the persons familiar with the

20 music industry would have been?

21 A: I don't know who they spoke with other than the

22 person I've just mentioned here.

23 Q: And the commonsense view of business and

24 popular culture would have been anyone other

25 than theirs, to your knowledge?

Page 56

1 A: No. These are the valuation experts. These

2 are actually the same experts Adele Pope has

3 used in the past. They're nationally known
4 experts. How they -- you know, I'm not a
5 valuation expert. I went out and hired the
6 best I could find to do this valuation. But
7 how they did their job I -- you know, I don't
8 know. I'm not a valuation expert. The people
9 they spoke with, I'm sure they, as part of
10 their business, know who to talk to about
11 different industries that they're valuing. But
12 I don't know who they spoke with. I would just
13 tell you I went out and hired competent highly
14 respected professionals to do what Adele Pope
15 and Bob Buchanan should have done the moment
16 they were involved in this estate instead of
17 guessing. Taking somebody's letter of interest
18 and throwing \$100 million on a federal estate
19 tax return and a probate form so that they can
20 jack up their fees. They were self-serving in
21 the number they chose. Had no basis
22 whatsoever, in fact. And they didn't even
23 bother to hire somebody to do a valuation. I
24 went out and hired competent respected
25 professionals. I would further say that my

Page 57

1 competent respected professionals then had to
2 sit down with the highly respected well known
3 valuation team from the Internal Revenue
4 Service out of, I believe, Kansas City. People
5 who value assets like this. Royalty streams.
6 They brought their royalty stream experts in.
7 Those people sat down with my experts and
8 agreed. We put the right value on the 706, and
9 Adele Pope's value was disregarded. So other
10 than that, I don't know how else they did their
11 job.

Page 62

17 Q: Have you ever seen any court documents from
18 Aiken County regarding a formula to value the
19 royalties of James Brown's works?

20 A: A formula?

21 Q: A formula approved by the court for ---

22 A: Approved by the court.

23 Q: Yes, sir.

24 A: I've heard discussion of people -- I want to

25 say Adele Pope had some kind of testimony

Page 63

1 somewhere, but I don't know where I've seen it,

2 where people were talking with -- talking about

3 some kind of formula for valuing royalties.

4 But approved by the court, I'm not familiar

5 with that. And frankly, that wouldn't matter

6 to the IRS anyway. The IRS is going to use the

7 values that they choose and can substantiate as

8 appropriate for their purposes.

Page 65

2 Q: Any other areas of criticism?

3 A: I couldn't begin to get into all of them...

8 ... They failed to even review the 706

9 that they filed, because they had testified in

10 court -- I believe Adele Pope testified in

11 court it contained some unknown person's

12 schedule of assets in the 706 that they filed

13 with the IRS and they didn't even know it. You

14 know, it seems to me if you file a tax return

15 and sign it, you ought to know what's in there...

Page 68-70

14 Q: Yes.

15 A: Well, let me just clearly say, the Terry Cox

16 letter of interest -- I have spoken with Terry

17 Cox about that supposed letter of interest.

18 Yes, I've seen that letter of interest. Terry

19 Cox laughs at that letter of interest and said

20 it was never intended to be an offer. Maybe

21 you all should follow up with Terry Cox on

22 this, because your client has made some just

23 fantasy statements by way of Sue Summer in the

24 Newberry paper about this \$100 million value...

Page 69

4 ... Well, if your clients are so naive
5 and inexperienced as they are in this industry
6 and trying to do this job that they believe
7 that, they're foolish. And to this day she
8 spouts that off like it's a fact. She's
9 showing her total lack of business experience
10 in dealing with a letter of interest. It's
11 simply something designed to peak interest so
12 you can get your foot in the door to look at
13 documents to see what's really there. And
14 that's all Terry Cox ever intended. And
15 frankly, when he got in the door and he did see
16 what was here, he agreed. There's no way to
17 sell these assets. And frankly, your client
18 doesn't even understand enough to know that
19 there's no way to sell these assets...

Page 70

...
2 Q: That doesn't ring a bell to you?
3 A: No. I wasn't aware that anybody else had ever
4 offered to buy any assets, not that anybody has
5 ever offered to buy assets. But the only one
6 I've ever heard referred to by Pope is this
7 supposed offer from Terry Cox which never was
8 an offer. She put \$100 million out there so
9 she could collect a \$5 million claim which
10 she's filed. Purely self-serving. Purely self-
11 serving. Selling assets of the estate to take
12 money for herself and leave it insolvent.
13 Purely self-serving. I'm sorry. I get carried
14 away. I get passionate about something I'm
15 working on when I see such wrong doing.

13. Mr. Bauknight and the Attorney General have continued to claim that James Brown's copyrights were worth only \$4.7 Million, and his Right of Publicity zero, when he died despite strong evidence to the contrary. In his January 31, 2014 ^{up} deposition

Mr. Bauknight again attacked Mr. Buchanan and Mrs. Pope for what we know was a very conservative value of \$84 Million. Mr. Bauknight said:

10 RESUMING EXAMINATION

11 BY MS. POPE:

**12 Q. Is there any reason why you didn't designate
13 anyone at Philpott Ball as an expert in this case?**

**14 A. I designated experts based on advice of my
15 attorneys.**

**16 Q. So you don't know why someone in Philpott Ball was
17 this not designated?**

18 A. I don't know.

**19 Q. And Philpott Ball is the firm that valued James
20 Brown's music empire at less than 4.7 million as
21 of the date of his death?**

**22 A. I don't agree with your term "empire." I don't
23 know where you came up with that, but the
24 intellectual property of the estate and trust of
25 James Brown was valued by Philpott Ball and**

Page 38

1 Werner.

**2 Q. Well, actually, Mr. Bauknight, isn't the Schedule
3 F not simply the intellectual property, but the
4 entire music empire?**

**5 A. I'm not sure what you're referring to at Schedule
6 F and if you'd let me, please, before you
7 interrupt, I'd like to finish my answers. You're
8 starting to speak before I finish.**

**9 Q. Oh, I certainly want you to finish. Please let's
10 do not speak over each other. Do you believe that
11 James Brown had a music empire?**

**12 A. I believe James Brown had intellectual property.
13 I don't understand what you mean by empire...**

Page 57.

**9 Q. Now, am I correct that you valued Mr. Brown's
10 intellectual property in filings with the IRS at
11 less than 4.7 million as of his date of death?**

12 A. It was -- well, number one, I did not value it.

13 That was the investment banking firm of Philpott
14 Ball and Werner that prepared the professional
15 valuation of the IP of James Brown. I reported
16 that value to the Internal Revenue Service. That
17 value was examined by the service at the agent
18 level, was reviewed by the agent's manager. That
19 was forwarded to the national office of the
20 Internal Revenue Service and the Internal Revenue
21 Service national office brought in the royalty
22 engineers, as they called them, which are the
23 royalty experts, who spoke directly with my
24 investment banking firm of Philpott Ball and
25 Werner, and those royalty examiners for the

Page 58

1 service agreed with the valuation done by my
2 experts. To my knowledge, that's the only
3 valuation that has been done on Mr. Brown's IP...

14. Mr. Bauknight's Termination Rights expert in this case, however, who
was disclosed last year, contradicted Mr. Bauknight and made the \$84 Million
value Mr. Buchanan and Mrs. Pope put on Brown's assets appear conservative.

Under oath at his deposition on March 16, 2017 Mr. Miller said:

Q. Right, so but buy low is still essential to the concept, right?"

A. [Miller] When possible.

Q. Right.

A. But, in my experience, if you want to buy this type of high quality content, you
are often, more so than not, a price taker, not a price maker in the market.

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. Solid gold.

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And:

Q. And there is nothing second [sic.] secret about your opinion that James Brown's is
a solid gold catalog?

A. No. I think anybody would agree.

Q. Okay.

A. Who is familiar with the work.

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?

[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5... But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

15. In addition to the Attorney General's and Tomirae's own expert, many Plaintiffs have disagreed with the Attorney General and Mr. Bauknight about Mr. Bauknight's valuation; Tomirae's claim to be Brown's spouse; and other positions Tomirae, the Attorney General and Mr. Bauknight continue to take. Brown's grandson Jason Brown-Lewis has recently made statements under oath contrary to the Attorney General's and Bauknight's claims. Excerpts from his June 29, 2017 deposition in this case are set out below:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
RUSSELL L. BAUKNIGHT, et al.,)
and ALAN WILSON, et al.)

Plaintiffs,)
)
VS.) No. 2010-CP-40-4900
)
ADELE J. POPE,)
)
Defendant.)
)

DEPOSITION OF JASON BROWN-LEWIS
LOS ANGELES, CALIFORNIA
THURSDAY, JUNE 29, 2017
REPORTED BY:
LINDA D. WHITE
CSR NUMBER 12009

54...

14 Q. See if I can jog your memory. Do you know
15 that one of the allegations in your Complaint is that
16 Adele Pope and Bob Buchanan should have accepted
17 \$100 million offer for James Brown's assets in 2007?

...

20 THE WITNESS: I do know of that Complaint, yes.

21 BY MR. SILVERNAIL:

22 Q. Were you aware of the \$100 million offer
23 itself?

24 A. I wasn't aware of it being an offer. I was
25 aware of it being an estimate of the value of the

55

1 Estate.

2 Q. And when did you become aware that that was an
3 estimate of the value of the Estate?

4 A. About 2013, 2014. Something like that. 2012,
5 2013.

6 Q. Did you know anything about the value of the
7 Estate between Mr. Brown's passing and then?

8 A. No.

9 Q. Do you have any opinion today about what the

10 value of Mr. Brown's Estate is?

11 A. Yes.

12 Q. What you think?

13 A. My opinion is: If it's -- if somebody's

14 willing to pay \$100 million, or if it's being estimated

15 by an outside party as \$100 million, it's worth double

16 or triple that...

18 Q. Do you know who was?

19 A. No. Yes. Tommie Rae was involved selling

20 songs and her lawyers.

21 Q. Do you know who her lawyers are?

22 A. Yeah, Rose and [sic.] something. It's the guy with

23 the bow tie. Am I right?

24 MR. KENDALL: You're right.

25 MR. SILVERNAIL: That's a fair identification.

63

1 MR. KENDALL: We know who that is.

2 THE WITNESS: I think Peter Afterman.

19 Q. And do you remember that the Estate had set up

20 a D.N.A. protocol to test anybody who claimed to be an

21 heir?

22 A. Yes.

14 Q. Now, there were a couple of folks that you

15 listed as children of your grandfather earlier who you

16 didn't just mention in that list of people who took

17 D.N.A. tests. If I'm hearing correctly, I did not hear

18 Larry Brown or Daryl Brown, do you know whether they

19 took D.N.A. tests at all?

20 A. I know Daryl did. I know Larry refused.

21 Q. And?

22 A. Or I believe. This is what I have an

23 understanding of.

24 Q. And do you -- have you heard anything about

25 what the results of Daryl's test were?

67

1 A. That he's not my granddad's biological child.
2 Q. Okay. To your knowledge, Larry has never, to
3 date, taken a D.N.A. test?
4 A. To my knowledge, no.
5 Q. Okay. Now, some of the people who were
6 identified as biological children of your grandfather
7 were not mentioned in his Will or Trust, correct?
8 A. Right.
9 Q. But do you understand that all biological
10 children have the same rights as one another under the
11 copyright statutes?
12 A. I do.
13 Q. And do you believe that makes it important to
14 determine who the biological heirs are?
15 A. Yes.
16 Q. Do you believe that process is complete?
17 A. No.
18 Q. And included in that process would be the
19 determination of whether there was a spouse who survived
20 Mr. Brown, correct?
21 A. Yes.
22 Q. And I think I heard you say earlier that that
23 was up on appeal?
24 A. Yes.
25 Q. Do you think Tommie Rae and her son should get
68
1 more than half of your grandfather's copyright rights?
2 MR. KENDALL: Objection.
3 THE WITNESS: No.
4 BY MR. SILVERNAIL:
5 Q. Did you know that Mr. Buchanan and Ms. Pope
6 worked from 2008 until 2013 to try to avoid that result?
7 MR. KENDALL: Objection.
8 THE WITNESS: No.
9 BY MR. SILVERNAIL:
10 Q. Do you have any opinion of what the value of
11 your grandfather's Estate is generally?
12 A. Yes.

13 Q. Tell me what that is.

14 A. At this point, I'm content -- well, I have the
15 same opinion of it being \$100 million.

16 Q. You believe that is the value?

17 A. At this point, yes.

18 Q. And do you believe it's ever been less than
19 \$100 million since he passed away?

20 A. No, it's only gone up since then.

21 Q. Now, are you aware that your grandfather had a
22 Will and Trust from 1999?

23 A. Yes.

24 Q. Are you aware that they're generally similar
25 to the last Will and last Trust he had from 2000?

69

1 A. Yes.

...

15 Q. Now, after your grandfather passed away, have
16 you ever seen documents that are sometimes referred to
17 as Tommie Rae's diaries?

18 A. I have not seen them.

19 Q. Are you aware of them?

20 A. I am....

25 And I know that there was also an issue
73

1 brought up about a reporter who got a hold of them and
2 they went public. However, the courts tried to shut it
3 down, but it became public again or something like that.
4 So I know there was a fiddle around with the diary.

...

13 Q. Do you have any idea what your grandfather's
14 personal property -- and personal property being
15 furniture, collectables, photos, items around the house
16 more or less, do you have any idea what his personal
17 property would be worth?

18 A. Is this my opinion or is this factual?

19 Q. I'm asking you if you have any idea
20 personally.

21 A. So you saying all the items in the house, the

22 house, the land, the things in the land?

23 Q. No, I'm not including the home itself, the

24 buildings. I'm talking about the stuff that could be

25 picked up and taken away.

84

1 A. Everything that was in that house I would

2 probably estimate it, to give you my best opinion, I

3 remember the Christie's sale didn't make anything near

4 what we were expecting. But I would estimate all that

5 stuff to be \$1 million to \$1.5 million.

6 Q. Did you attend the Christie's sale?

7 A. Not at all.

8 Q. Did your mom?

9 A. I think she did. If she didn't attend it

10 physically, she attended it telephonically.

11 Q. Do you know whether any members of the family

12 purchased items at the Christie sale?

13 A. My mother purchased an item.

...

1 Q. Now, do you remember what the Christie's sale

2 brought in?

3 A. Was it \$800,000, something like that? How

4 much was it?

14 Q. And do you recall whether you or any members

15 of your family tried to stop the Christie's sale from

16 occurring?

17 A. Yes.

18 Q. And was that you?

19 A. I believe I was a part of that on paper. I

20 can't remember if I was of age then.

21 Q. It was held in July of 2008.

22 A. Then yes, I was a part of that.

23 Q. And was your mother a part of it?

24 A. Yes.

...

86

...

9 Q. Did you know that Judge Early, who was
10 presiding over the Estate proceedings, had approved the
11 Christie's sale and directed it to take place in two
12 Orders?

13 MR. KENDALL: Object to the form.

14 THE WITNESS: I didn't know it was two. I thought
15 it was just one, but I'm not surprised with two.

16 BY MR. SILVERNAIL:

17 Q. And have you ever seen the document Christie's
18 produced? It was entitled "Selection for Sale"?

19 A. Is it the booklet with all the photos in it?

20 Q. Prior to that.

21 A. No.

22 Q. So you weren't aware that the exact items
23 which Christie's would auction were presented to the
24 Court and that that selection for sale was circulated to
25 all the parties in that case?

87

1 A. No.

2 Q. And did you know that the judge had offered a
3 process for family members to ask to withhold certain
4 items?

5 A. No.

6 Q. So I can anticipate the answer, but just to be
7 clear, were you aware that none of Mr. Levenson's
8 clients made a request to withhold any item from the
9 sale?

10 A. No.

11 Q. And did you personally communicate any
12 requests to withhold any item from the sale to anybody
13 other than your lawyer?

14 A. I didn't.

...

25 Q. You don't have any idea what your
89

1 grandfather's music brings in in a year?

2 A. I have an idea.

3 Q. What's your idea?

4 A. \$2- to \$4 million a year.

5 Q. And did that change any after your
6 grandfather's passing?

7 A. It fluctuated a bit higher and then lower.

8 And then when the movie came out, higher.

9 Q. Do you have any expectation that your
10 grandfather's music will begin a general consistent
11 decline anytime in the near future?

12 A. Yes, it would, just as everything fades away
13 at some point.

14 Q. Do you think that -- do you expect that in the
15 next four or five years or are we talking over decades?

16 A. We're talking over the next 30 to 40 years,
17 maybe even longer till my granddad's music dies.

18 Q. Would you agree with me?

19 A. Actually, my granddad's music will never die.

20 He's the most sampled artist in the world. And he's
21 also Michael Jackson's biggest idol. He will never die
22 and neither will his music.

.....
25 Q. And so you are aware that there's a pending
93

1 dispute between the Michael Jackson's estate and the IRS
2 about valuation of some aspects of his estate?

3 A. I'm somewhat aware, but I'm not fully
4 knowledgeable.

5 Q. Were you aware that the dispute seems to be
6 that the estate believes Michael Jackson's image and
7 likeness was worth approximately \$2,100 and the IRS
8 believes it was approximately \$430 million?

...
6 Q. Now, take a look back through. And I tell you
7 what, we're short on copies of this one. I'm going to
8 hand this back to you, turned over to Page 5. And the
9 answers to Interrogatory Number 8 there, particularly
10 8A, which I believe generally asks for identification of
11 anybody to whom Tommie Rae Hynie had been married,

12 correct?

13 A. It does state that.

14 Q. And is it correct that the response provided
15 in bold is that responding parties only know of a
16 marriage to Javed Ahmed, possible past addresses in
17 Texas; is that correct?

18 A. That's what it reads, yes.

19 Q. Okay. So as of March 4th, 2008, when this
20 document is dated on Page 6, the members of your family
21 represented by Louis Levenson were taking the position
22 that Tommie Rae's only marriage had been to Javed Ahmed,
23 correct?

24 MR. KENDALL: Object to the form.

25 THE WITNESS: Yes.

11 Q. Okay. Do you know who Ray Charles is?

12 A. Yes.

13 Q. Are you aware that he left behind a charitable
14 foundation?

15 A. Yes.

16 Q. Have you heard anything about what the value
17 of that foundation is?

18 A. No.

...

24 Were you aware that Ray Charles's foundation
25 was approximately \$50 million?

110

1 A. No. This is his foundation, not his estate?

2 Q. Yes.

3 A. Okay.

4 Q. Do you think James Brown's foundation should
5 be at least that much?

6 A. Well, to my knowledge, I don't know there
7 being a James Brown foundation.

8 Q. I'm referring to the James Brown I Feel Good
9 Trust.

10 A. It's -- I mean, not trying to sound arrogant
11 here, but James Brown did more physically and during his

12 life. I would -- I would speculate that it would be
13 worth a bit more than \$50 million, but it would be in
14 the same ballpark.

3 Q. Now, earlier today I think you -- and correct
4 me if I'm misremembering or misunderstood -- but I think
5 you told me that you thought the things in your
6 grandfather's house, exclusive of the house and the
7 property itself might be worth \$1 million to a million
8 and a half dollars?

9 A. On the low end, yes.

10 Q. Did you know Mr. Bauknight had valued that
11 property at close to or maybe zero?

12 A. No.

13 Q. I think this is obvious. But just for the
14 record, does that sound like a reasonable valuation to
15 you?

16 A. No.

16. I was designated as a witness in this case more than six months ago, but
Plaintiffs have not tried to depose me. If they did, my testimony would be similar to my
opinions stated in the article I wrote with Mrs. Pope in 2011, *Private Foundations,
Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust
doesn't..*, and my sworn testimony given in Aiken Case No. 2013-CP-02-1337 on
March 14, 2017. My opinions, given to a reasonable degree of certainty within my
areas of expertise, are set out in part below:.

7 Q Okay. And then you've got a stack of
8 something underneath that notebook. I don't know
9 if I've seen that yet.

10 A Well, for instance, this is about what's
11 going on in the Prince estate. And, of course,
12 looking at the Prince estate, it's partly to see

13 the value of some of these musicians' estates when
14 they die and how much money is involved with both
15 Michael Jackson, Ray Charles, Prince, and the
16 valuations of their estates and how it can run into
17 the hundreds of millions of dollars, whether it's
18 publicity rights, copyrights or different things
19 like that, and some of the problems with
20 determining heirs and how important it is to
21 determine the heirs in these situations.
22 But, of course, but every -- each case is
23 different. Prince estate, no will, but it's still
24 very important, obviously, to find the heirs and
25 determine who the heirs are because of copyright

Page: 27

1 terminations.

2 MR. WILLIAMS: In case you didn't catch
3 it, he's saying Prince's, as in the late --

4 THE WITNESS: Yeah...

...

19 Q Let me --

20 What was the artificial devaluation of
21 Brown's assets described in paragraph 7?

22 A Well, I've seen the papers -- we've got a
23 list of -- I might have to find that piece of
24 paperwork later.

25 I guess it was basically the idea that we

Page: 84

1 all know about the -- what the royalty interests
2 were, but image and persona and the idea that --
3 I've studied -- I know about the -- what's going on
4 in the Ray Charles estate, the Prince estate,
5 Michael Jackson estate, and the amount of money
6 that's being talked about is anywhere from a
7 hundred million to 250 million or more in some of
8 those estates, and there's no reason why -- I don't
9 see any reason why the James Brown estate wouldn't
10 be in that same ballpark.

11 And it seems obvious that it was based on

12 the income at the time and all the publicity rights
13 and all the different things that going -- the idea
14 of going from, you know, 84 million to -- or in the
15 realm of a hundred million down to 4.7 million just
16 seems unbelievable. I mean, it's just -- you know,
17 it's like a factor of 10. You know, if it was a
18 small percentage ...
19 But to do something that's more than a
20 factor of 10, that's -- to me, that's an artificial
21 devaluation; I mean, that there's no -- there was
22 no basis for that.

...

Page 85

16 Q How are the other what you called music
17 empires similar to the estate of James Brown's?
18 A You say how are they similar? That's the
19 question?
20 Q How do you compare them?
21 A Well, I compare them by time period,
22 general popularity of the person, the known -- the
23 worldwide recognition of the person, the popularity
24 of their songs, the sampling, the publicity. Just
25 the career.

Page: 86

1 When somebody writes and performs
2 songs -- I mean, not only just performs songs. I
3 mean, there's obviously been a lot of performers
4 over the years, but, I mean, somebody -- the people
5 who actually writes songs -- see, you're back in
6 the copyright area -- but performance and persona
7 for decades, those estates know that they have
8 ongoing values of hundreds of millions of dollars
9 sometimes.
10 I mean, Elvis died 40 years ago, and a
11 lot of people don't know anything about him but his
12 estate is generating a tremendous amount of money
13 now, and Michael Jackson and Prince are gonna be
14 probably way beyond that, probably because they

15 wrote a lot more of their songs, they're just more
16 well-known worldwide probably, and -- so that --
17 And, once again, it's not the particular
18 number as far as what you mentioned, the
19 84 million, but the idea of saying something --
20 4.7 million, given the amount of money that was
21 coming in for all kinds of different situations per
22 year, it just -- that seems very artificial to me.
23 Seems very unreasonable.

....

11 Q Your opinions that you have given include
12 the opinions stated in the article "Private
13 Foundations, Copyright Heirs and Musical
14 Millionaires"?

15 A Yes.

16 Q "Why the James Brown 'I Feel Good' Trust
17 doesn't" ...

18 Is that correct?

19 A That's correct.

20 Q I'd like you to look at that article and
21 see if there's a section in that article called
22 "Almost nothing."

23 A Yes. I see it.

24 MS. POPE: Before we begin, let's mark
25 that, please, as an exhibit.

Page: 124

...

17 Q And does the article deal with a concern
18 about a devaluation of James Brown's assets as well
19 as other copyright concerns?

20 A Yes, it does.

21 Q And at that time, was the case now known
22 as Wilson versus Dallas on appeal?

23 A Yes.

24 Q It was on appeal to set the scene from
25 about May of 2009 until 2013?

Page: 125

1 A Yes. Of course, that's when the decision

2 came out, yes.

3 Q Okay. At that time, had Sonny Jones and
4 others announced that an appraisal would be
5 forthcoming that would show James Brown's assets to
6 be less than \$12 million?

7 A Yes. That's right.

17. Nothing in the sworn deposition testimony of the Attorney General's and Tomirae's experts desingnated in this case, but deposed in other cases, persuades me to change my position that the Attorney General, Tomirae and Bauknight intentionally devalued James Brown's assets by tens of millions of dollars to damage Mr. Buchanan and Mrs. Pope in the eyes of the Supreme Court, but Attorney General's alliance with Tomirae and those false devaluation and filings, through Bauknight, also severely damaged The James Brown "I Feel Good" Charity and its 900 copyrights.

18. I do not find anything in the expert, party and lay witness depositions I have reviewed which refutes my opinions or provides any support for the Attorney General's and Bauknight's devaluation of James Brown assets to less than 1/10 of their real value in order to attempt to discredit Mr. Buchanan and Mrs. Pope.

19. The deposition of the Attorney General's and Tomirae's expert Jonas Herbsman, Esq., at his deposition on March 17, 2017 in Aiken County Case 2013-CP-02-1337 does not, in my opinion, provide any support for Mr. Bauknight's devaluation of James Brown's assets or the attacks on Mr. Buchanan and Mrs. Pope related to their protection of the copyrights James Brown gave his "I Feel Good" Charity. Parts of Mr. Herbsman's testimony are set out below:

IN THE COURT OF THE COMMON PLEAS
SECOND JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

-----X

ADELE J. POPE,

PLAINTIFF, -against-

Case No.: 2013-CP--02-1337

ESTATE OF JAMES BROWN and THE JAMES BROWN

2000 IRREVOCABLE TRUST,

DEFENDANTS.

-----X

DATE: March 16, 2017

TIME: 9:25 A.M.

CONFIDENTIAL EXAMINATION BEFORE TRIAL

of the Expert Witness, JONAS HERBSMAN,

ESQ., taken by the respective parties, under the South Carolina Rules of Civil Procedure, pursuant to a Court Order, held at the offices of Shukat Arrow Hafer Weber & Herbsman, LLP, 494 Eighth Avenue, 6th Floor, New York, New York 10001, before

Cleo Shenkin, a Notary Public of the State of New York

...

Q. Okay, do you recall who first engaged you?

A. Mark Gende.

Q. Okay. Now, let me talk just a few minutes about your qualifications.

You are a transactional lawyer; is that correct?

A. Correct.

Q. Okay. Do you do any litigation

A. No.

Q. Well, first of all, tell me, if you will, a little bit about termination rights under Section 203 and 304 of the Federal Copyright Act.

A. Okay, well, termination rights are a right for an author who when they created the work in question may not have had the negotiating power to negotiate a good deal, may have negotiated away their rights, and so the termination rights give the author an opportunity at a certain point in time to terminate the grant that was given and recapture those rights. And depending on whether the author is still alive, you know, it's the author who exercises the rights or it's the author's widow and children who exercises the rights or it's the -- if there are no widow and children, there are next of kin provisions, all the way down to an executor, who might exercise those rights if there are no appropriate next of kin, widow, children.

And depending on which you are talking about, there is a 56-year termination right, there is a 35-year termination right. The 35 termination right, that is only available if you are -- if it was a grant that was made by the author directly, as opposed to the earlier termination right in copyright law, the 56-year termination right, which is a right that is just a general termination right, not specific to having been a grant by the author made after 1978.

Are we going further?

Q. Whatever you would like to say, I am interested.

A. I think that is good.

Q. Well, let me ask you, how do you determine heirs under the Federal Copyright Act?

A. Well, either someone has to be acknowledged by the creator of the work in their lifetime, so someone being acknowledged as a child, either their natural child, they could be adopted or they could be otherwise acknowledged as the, you know, as the heir or -- you know, as a child or as a spouse.

Q. Tell me what you mean by "otherwise acknowledged."

A. Well, if an individual during their lifetime acknowledges a child as their child and they can form the basis for the individual being acknowledged as an heir, despite the child not necessarily being officially adopted or a natural child. If an order affiliation is being issued, if someone has been recognized as the child.

Q. Are you aware of any litigation related to the determination of children under the Federal Copyright Act?

A. Yes.

Q. Okay. Tell me about those cases.

A. Well, I am not prepared to give full dissertations on the cases; that is not what I prepared for this morning.

Q. Well, I just want to know what you know sitting here today. I am not asking for a full dissertation, I just want to know your knowledge or understanding about any litigation you are aware of related to the determination of children

under the Federal Copyright Act termination rights provisions.

A. Hank Williams, there was a Hank Williams case with Hank Williams' daughter. And, again, I would have to go and do the -- you know, review again, to be able to have an appropriate conversation about it.

Q. Sure. Sure.

Do you recall whether the question was whether she was or was not the daughter?

A. I don't recall.

Q. Okay. Are you aware of any other Federal Copyright Act termination rights case involving the question of whether someone is a child that you are aware of?

A. Off the top of my head, no.

Q. Okay. Now, are you aware nationwide of any Federal Copyright Act termination rights litigation or case or article or study related to the determination of who is a spouse under the Federal Copyright Act?

A. To quote specific cases, no.

...

Q. Okay. All right, now, we will just short of go through it. You believe your first conversation was November 21, 2016 with whom?

A. Mark Gende.

Q. Okay. And is it correct that on November 21, 2016, Mark Gende wrote you and said "Jonas, attached are additional documents for your review and certain documents for your review"?

Q. Did he tell you that the personal representative had told the Internal Revenue Service that James Brown's assets were worth only about 6.5 million when he died?

A. No.

...

Q. Okay. And are you aware that the valuation of one's image and persona could be a substantial issue in the case of a celebrity?

A. Yes.

Q. Okay. Are you aware of the pending Michael Jackson litigation

A. I am.

Q. Okay. You are not a lawyer in the Michael Jackson --

A. I am not involved in the litigation.

Q. Okay, just tell me briefly what is going on with Michael Jackson.

A. A dispute has arisen as to the values of Michael Jackson's name and likeness on the date of his death.

Q. Okay.

A. And my understanding is that the difference in opinion is that Mr. Jackson's Estate tax return indicated a value of approximately \$6,000 and the IRS believes it is approximately \$1.3 billion.

Q. Well, have they reduced that to a \$150 million now?

A. I think they may have.

Q. Right. In other words, the issue of the value of a celebrity's image and persona at death is important?

A. It is.

Q. And James Brown is certainly a

personality who would fit into the category of persons whose image would be important?

A. Yes.

Q. Okay. Without divulging client secrets, would you have a way of comparing James Brown to Bob Marley?

A. From a name and likeness perspective?

Q. Yes.

A. Is that what we are talking about?

Q. For the moment.

A. Okay. Well, you would need to consider the image of each individual at the time of their death. So one would have to look at how the individual was positioned in the eye of the public at the time of their death to determine, you know, what the value would be of that name and likeness. So comparing two specific individuals is difficult because the market for each of them is generally going to be different.

...

Q. So sitting here today, you have no -- and I am not asking you to be an expert in an area that you are not an expert, but you have no idea of the comparable value of James Brown's image and persona at death to Bob Marley; is that correct?

A. I could not personally be the expert who would make that valuation.

Q. Well, do you just have a personal opinion, a nonexpert opinion?

A. I do.

Q. So tell me about it.

A. I think that James Brown was

one of the seminal musical figures of the 20th Century and that there would have been a substantial market for his name and likeness, if handled properly.

Q. And, again, the date-of-death value that one must put on an estate tax return must make some reasonable assumptions, correct?

A. Yes.

...

Do you know anything about the at-death value of James Brown's personal property?

A. I do not know what the value would have been of his personal property.

Q. Okay. Do you know anything about its value today?

A. I know some was auctioned via Christie's; I do not know what the ultimate total is that was recognized and I don't know what is left, so I don't know what the value would be.

...

Q. Okay. Have you seen a Barnebys [sic.] add for a pair of James Brown's shoes for \$1500 minimum?

A. I have not.

Q. Okay. Do you know what in fact was in the Christie's sale and what was left after the Christie's sale?

A. I do not.

Q. Are you aware of which of the thousands of items were placed in museums for safekeeping during the litigation?

A. No.

I just know that items were referred to in the papers I saw as having been -- potentially being placed in museums.

Q. Okay. Right.

Did you see an order, in fact, dated February 20, 2008 that allowed the personal representatives to place items of tangible personal property in museums for safekeeping?

A. I did.

Q. Did you understand why that order was necessary?

A. My recollection was that items were being held in a house that had some structural issues.

Q. And did you understand that at least arguably from and after December 26th those five contesting children would have lost any special status with respect to the personal effects?

A. I only know that from what I read; I personally don't know whether that is correct or not.

Q. Okay. Have you dealt with in terrorem clauses before?

A. I have seen them, I have read them, I have not been a party to a litigation involving them.

Q. Okay. So were you aware that at the time of the order, the sixth child, who had not contested the will, was asserting that he owned all the personal and household effects?

A. I do recall reading that.

...

Q. Okay. So you don't have any knowledge that the larger body of personal tangible property had been valued at about \$2 million?

A. I recall seeing the number 2 million, but I don't know exactly what

items were specifically included with the valuation of that number.

Q. Okay. Did you know that Christie's had conducted an appraisal of the household items?

A. Yes.

Q. Okay. And did you see what value Christie's put on the items it a braced [sic.]?

A. I have not seen the Christie's appraisal.

...

Q. Do you know that Mr. Bauknight told the IRS that James Brown's image, persona, copyrights, claim against Greenberg Traurig, claim against former trustee David Cannon, claim against Morgan Stanley, claim against Phillip Farr, business tangible personal property and other assets had a value of only \$4.7 million at James Brown's death?

MR. WILLIAMS: Object to the form.

A. No.

Q. Would that surprise you?

MR. WILLIAMS: Object to the form.

A. I couldn't form an opinion on it without knowing the basis of how that value was derived.

Q. And none of your work has been related to the propriety of a proper valuation of James Brown's assets?

A. No.

Q. Okay. And none has been attempted?

A. No.

That is not my area.

...

Q. I think we were taking a break for you to secure the names of two lawyers you have spoken with about this matter since November 21, 2016; is that correct?

A. Correct.

Q. Who are they?

A. Rett Kendall.

Q. Okay.

A. And William Newsome.

Q. Okay. What do you know about Rett Kendall and William Newsome?

A. That they are attorneys representing the Estate of James Brown.

Q. Okay. Do you know who else Rett Kendall represents?

A. I do not.

Q. Do you know the name Tomi Rae Hynie?

A. I do.

...

Q. Did you do any research to determine who all the people were who were challenging Ms. Hynie's status as James Brown's spouse?

A. No.

That wasn't in the scope of what I was asked to do.

...

This is a document, Exhibit 2, Plaintiff's Exhibit 2 is a petition of respondent James B. for rehearing, received March 14, 2013 by the South Carolina Supreme Court in a case which became known as Wilson v. Dallas, case No. 2008-CP-02-1647.

Do you know anything about the Wilson versus Dallas decision?

A. No.

Q. Okay. In your preparation, did anyone talk to you about the subject of that appeal or the ruling of the court?

A. I don't recall a conversation on that.

...

Q. Right, but did you know at the time, which was more than six years after his death, whether James B. had been determined to be James Brown's child?

A. No.

Q. Do you know that, in fact, he had refused DNA testing?

A. I don't know one way or the other.

It's not relevant to what I was asked to examine.

Q. Do you know whether he was born of a marriage?

A. No.

Q. Do you know whether he was born of the marriage of Tomi Rae Hynie to Javed Ahmed?

A. No.

...

Q. Okay. Did Mr. Gende tell you that Ms. Hynie was one of his clients?

A. No.

...

Q. Okay. Do you know that in September of 2010 Mr. Bauknight and others received a document which they claim is a proper appraisal of Mr. Brown's intellectual property at less than \$4.7 million?

MR. WILLIAMS: Object to the form.

A. I haven't seen an appraisal.

Q. Okay. Did you know that that had happened in September of 2010?

A. I know that an appraisal was sought.

Q. Do you know when it was received?

A. I don't know the date it was received.

Q. If I tell you it was September 2010, do you have any information to the contrary?

A. I do not.

...

Q. Okay. Now, looking back at Plaintiff's Exhibit 2, would it be fair to say that James B. is discussing the results of that appraisal on page six and elsewhere?

A. (Witness perusing document.)

When you say James B. is discussing it, it's Peter Shahid.

Q. James B.'s lawyer?

A. James B.'s lawyer.

(Witness perusing document.)

There is a discussion of an appraisal submitted to the IRS, but I don't know if it is the appraisal that you are referring to or that Mr. Bauknight provided on the date that you are referring to.

Q. Okay. But on page six, Mr. Shahid refers to an appraisal, which he says "confirmed by the IRS on audit, which is for the date-of-death value, shows the royalty stream belonging to the Estate worth approximately \$4.7 million, which is the fair market value of the royalty stream less outside associated debt of

approximately \$19 million arising from bonds secured by the royalty stream"?

A. It does say that.

Q. Okay. Do you know anything about the debt he is talking about?

A. I would assume he is talking about the bonds that were held by TIAA-CREF issued by David Pullman.

Q. Yes.

Actually, everybody says TIAA-CREF, but it's really just TIAA, isn't it, the New York Teachers?

A. The Teachers Association, Association of Teachers.

Q. Right. People confuse it a lot, you see it in the documents. But what do you know about the TIAA debt?

A. That they are bonds issued and secured by publishing royalties and record royalties.

Q. Have you studied the Pullman or the TIAA bond in connection with your representation?

A. No. I have not seen it.

Q. All right. Do you know whether the date-of-death value of the TIAA bond was 19 million, as stated by James B., or actually about 16 million?

A. I have no knowledge of that.

Q. Okay. All right, do you know the difference between an IRS audit and a closing letter?

A. Yes.

...

All right, now, do you know that in early 2011, Mr. Buchanan and Mrs. Pope received notice that the value of

Mr. Brown's Schedule F assets in the Estate tax proceeding had been reduced from 84 million to 4.7 million?

A. Only to the extent that I saw reference to it in the documents I was provided.

Q. Okay. Did you know that both immediately took steps to make sure that their names weren't associated with that 79 million devaluation?

A. I am not aware of that.

Q. Okay. Did you know that later, Mr. Bauknight and others asserted that Bob Buchanan and Adele Pope had overstated the value of James Brown's assets by \$79 million for the improper purpose of obtaining a large commission?

MR. WILLIAMS: Object to the form.

A. I have seen documents that refer to that.

Q. Would that be a felony under the IRC?

MR. WILLIAMS: Object to the form.

A. I am unaware of what is or is not a felony.

Q. Okay. You wouldn't want to commit one, would you?

A. I wouldn't want to commit a felony, but I can't comment on what is or is not a felony, I am not familiar with those rules.

Q. Nor would you want to be accused of one, would you?

A. No.

Q. Okay. All right.

And do you know anything else

about the value of the James Brown assets on his date of death that you have not told me?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets on November 20, 2007, when Adele Pope and Bob Buchanan took office?

A. No, I wasn't asked to assess valuation.

Q. Okay. Well, do you know anything else that you have learned from anyone?

A. No.

Q. Okay. Do you know anything else about the value of the James Brown assets when Bob Buchanan and Adele Pope surrendered those assets to Russell Bauknight on May 26, 2009?

A. No.

Q. Okay. So is it fair to say you have no information to suggest that the Estate and Trust decreased in value during that time?

A. No, I would say I was not asked to examine that issue.

Q. Okay. And you have no such knowledge?

A. No.

Q. Have you ever read an article written by Adele Pope and William Jeffrey Smith entitled, Private Foundations, Copyright Heirs and Musical Millionaires or Why the James Brown "I Feel Good" Trust Doesn't?

A. Yes.

...

Q. Was there anything in the

article that you found to be incorrect?

A. I didn't assess the article for whether it was correct or not.

Q. Okay. Why were you reading it?

A. It was provided to me with other documentation, so I read through it.

Q. Okay. Do you agree with the premise of Mr. Smith and Ms. Pope that the determination of heirs is critical to a charity for the protection of its copyrights?

A. I am not sure of the question -- I am not sure I am following the question.

Q. Well, I'm sorry, let's see if we can make a context here.

A. Sure.

Q. Are you aware that James Brown left the bulk of his assets to charity?

A. Yes.

Q. Okay. To the James Brown "I Feel Good" private foundation?

A. Yes.

Q. Okay. And you and I both know that a private foundation bears the name private, but is a charity in many respects?

A. Yes.

Q. Okay. And James Brown's will actually provided that the residue of his estate, except for \$2 million, went to the "I Feel Good" private foundation, correct?

A. That is what the will said, yes.

Q. Okay. And that the "I Feel Good" foundation was dedicated solely to the education of needy and deserving students in Georgia and South Carolina?

A. I have also read someplace else

that it was for students from anyplace, so I can't -- I haven't read the foundation documents, so I can't confirm or -- I know it's for the benefit of education for underprivileged, yes.

Q. Okay, right.

Did you know that he had done two estate plans a year apart, both leaving his residuary assets for the education of needy students?

A. I did read that in the documents.

Q. Okay, good.

All right, so would it be fair to say that the "I Feel Good" charity and any other charity holding copyrights would have a duty to protect those copyrights?

A. If a charity validly holds a copyright, they should protect it.

...

Q. Right, okay. Now, then, would it be fair to say that the "I Feel Good" Trust, if he owned those copyrights, like any other charity in America, would have a duty to protect the copyrights for the benefit of the charity?

A. I think that would depend on the specific state law applying to charities within the state, so I can't opine as to whether South Carolina law requires, you know, a charity to do or not do something.

Q. Okay. Well, I am not talking about maximize or such as that, I am just talking about a general fiduciary duty to protect your assets, trustees have that duty, don't they?

A. Yes.

Q. Okay. So if a trustee has a duty to protect its assets, then one method of protecting those assets is to protect it against incorrect or premature exercise by heirs of terminations rights; would you agree?

A. I would think that a charity should do what is most prudent to generate the best value from the assets which they have.

...

Q. Okay. So in your representation of the James Brown matter, your expertise, you never attempted to look at the issue of the likelihood that Ms. Hynie would have been determined to the spouse?

A. I have accepted that Ms. Hynie would be determined to be the spouse.

...

Q. Okay. Do you know in fact that Ms. Hynie admitted in handwritten notes that she was married, living in Texas and thought she might be pregnant when she took up with James Brown, concealed her marriage and then later, in 2001, had a ceremony with Mr. Brown?

A. I am familiar with those statements, but I haven't seen the notes.

...

Q. Were you aware that despite the appeal by both the Estate and at least three of her co-plaintiffs in the Wingate suit, Ms. Hynie received \$1 million in 2015 or early 2016 in relation to a sale or transfer of "Please, Please, Please" and two other songs?

A. I am not aware of that.

Q. Okay. Were you aware that Ms. Hynie claimed in court filings that Brown's music empire, including all his Schedule F residuary assets, were worth only \$4.7 million when he died and that the total of all James Brown assets was only 6.5 million?

A. Only to the extent that I have read it in the documents that I have been provided.

Q. Were you aware that it was Tomi Rae's lawyer who proposed in 2009 to value Brown's copyrights like those of Harlan Howard and value Brown's publicity rights at zero?

A. No.

Q. Do you know who Harlan Howard is?

A. No.

Q. Okay.

A. A performer, I assume.

Q. Would you compare Harlan Howard in any way to James Brown?

A. I don't know who Harlan Howard was.

...

Q. Okay. Did you know that twice in the year 2016 Henry McMaster, who is now the governor South Carolina, has stated under oath that he did not authorize the Wingate suit to be filed in the name of the attorney general?

A. I don't think I am aware of that.

Q. Okay. Are you aware that Mr. McMaster, now Governor McMaster, said under oath in this case, just shortly before you were hired, that he never

authorized Mr. Bauknight to act on behalf of the attorney general in the Wingate suit?

A. I haven't seen any documents related to that.

Q. If it turned out that the Wingate suit was either unconstitutional or illegal or both, would that affect your opinion?

A. No.

Q. Okay. Do you know who Dr. Yamma Noyola Brown is?

A. I believe also a child of James Brown.

Q. Right. Do you know that she and Deanna and others are currently represented by Marc Toberoff?

A. No.

Q. Do you know who Marc Toberoff is?

A. Yes.

Q. If Marc Toberoff were trying to take away a charity's copyrights, the charity might want to protect itself, mightn't it?

A. I don't know that Marc Toberoff is trying to take away a charity's copyrights.

Q. Do you know anything about Marc Toberoff's actions in connection with James Brown?

A. No.

Q. Okay. Do you know anything about Marc Toberoff's actions with respect to heirs and other charities?

A. I know that Marc Toberoff represents individuals seeking to reclaim rights via termination filings.

Q. Okay. Are you aware of the Ray Charles litigation?

A. Yes.

Q. Okay. Is it fair to say that the heirs of Ray Charles are adverse to Ray Charles's charity?

A. I wouldn't know one way or the other; I am just aware of the fact that there is litigation with the heirs regarding terminations.

Q. Well, the litigation, wasn't the litigation the heirs trying to terminate the copyrights and saying that the charity had no business being there and the charity saying our royalties are affected, we have a right to be here?

A. I can't comment on that; I know that the litigation exists, but I haven't been involved in it and I haven't read any of the documentation.

Q. Okay. All right. Do you know anything about Larry Brown?

A. No.

Q. Okay. Have you ever seen the circumstance related to termination rights where a child is born of a marriage, acknowledged in a will, but may not be the DNA proven child; do you know anything about that?

A. No, I don't think that specific circumstance.

Q. All right. And then if you added, in addition, then challenged the will in which he was acknowledged, but still, that would be a complicated fact, wouldn't it?

A. Yes.

Q. And when you are dealing with termination rights, you have really got to look at the facts, don't you?

A. Yes.

Q. You wouldn't want to make any quick decisions without having an understanding of who the heirs were, right?

A. Correct.

19. Mr. Herbsman's testimony confirms my opinion that since the *Wilson v. Dallas* decision the alliance of the Attorney General, Tomirae and Bauknight has continued to damage Mrs. Pope and, where needed, Mr. Buchanan, and the millions of dollars the Attorney General has allowed Mr. Bauknight to spend from Brown's Charity for this purpose is unprecedented for a Constitutional Officer charged with the protection of a charity such as the James Brown "I Feel Good" Trust.

20. Portions of the deposition of Plaintiffs' CPA expert Ellison Thomas taken April 14, 2017 are set out below:

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 AIKEN COUNTY
4 DEPOSITION OF WILLIAM ELLISON THOMAS
5 ADELE J. POPE,
6 Plaintiff,
7 vs. CASE NO. 2013-CP-02-1337
8 ESTATE OF JAMES BROWN AND THE JAMES BROWN 2000
9 IRREVOCABLE TRUST,
10 Defendants.

11

12

13 DEPONENT: WILLIAM ELLISON THOMAS

14 DATE: April 14, 2017

15 TIME: 1:15 p.m. - 3:52 p.m.

16 LOCATION: Nexsen Pruet, LLC

205 King Street, Suite 400

17 Charleston, South Carolina, 29401

18

REPORTED BY: SARAH GACIOCH

...

18 Q. Well, I want you to recall all of the
19 discussions that you can recall with Mr. Gende
20 and/or Mr. Newsome or Mr. Bauknight about these two
21 cases, okay? Because they are about the service of
22 Bob Buchanan and Adele Pope. So I want you to
23 recall anything that anybody has told you that I'm
24 not going to find on this disc about the service of
25 Bob Buchanan and Adele Pope.

1 A. And I'll answer you very generally, I'm not
2 going to sit here and tell you that I can recall the
3 details of conversations that I've had weeks ago,
4 months ago.

5 Q. Okay.

6 A. I can tell you generally that we have talked
7 about the facts in this case.

8 Q. Tell me what you mean by that.

9 A. We've talked about the probate accountings.
10 We've talked about the documents that support the,
11 you know, the notice of the creditor's claim or the
12 allowance of the claim or we've talked about the
13 706. We have talked about the documents in this
14 case.

15 Q. When you have talked about the 706, did you
16 also talk about the modifications to the estate tax
17 proceeding by Mr. Bauknight?

18 A. No. We have talked about this 706.

19 Q. So you've made no attempt to look into how

20 Mr. Bauknight valued James Brown's Schedule F assets
21 at \$4.7 million?

22 **A. I have not looked at anything, other than**
23 **this 706.**

24 Q. Okay. Well, that was -- this is the 706 that
25 was in that proceeding, isn't it?

1 **A. The 706 that I have was the one that was**
2 **filed by you and Mr. Buchanan.**

3 Q. Well, it's the only one that's been filed,
4 isn't it?

5 **A. That I don't know.**

6 Q. Okay. So you were not asked to look to how,
7 for example, the Schedule F2 assets changed from 84
8 million to 4.7 million?

9 **A. I have not been asked to do that.**

10 Q. Have you given any thought to that?

11 **A. I have given no thought to how they changed.**

...

14 Q. Okay.

15 **A. But the issue I'm tracking here is whether**
16 **there was a tax liability.**

17 Q. Uh-huh. Okay. And did you reach a
18 conclusion about that?

19 **A. On whether there was a tax liability?**

20 Q. An estate tax liability?

21 **A. I reached a conclusion on the issue with the**
22 **Christie's money, and I followed it through to the**
23 **tax return that was filed. So the first thing I**
24 **looked at is what I just told you.**

25 Q. Uh-huh.

1 **A. The next thing is a cover letter from March**
2 **24, 2008 from Sellers and Durant, and it is a -- it**
3 **is a hardship request for an application for an**
4 **extension of Form 4768. In Mr. Sellers' cover**
5 **letter he says, attached is a letter prepared by the**
6 **Estate Personal Representatives detailing the status**
7 **of the estate and related entities.**

8 Q. And did you give the date of that extension

9 and letter so we'll have it on the record, please?

10 **A. It's March 24, 2008.**

11 **Q. Okay.**

12 **A. And, of course, any of these are signed under**
13 **penalty of perjury.**

14 **Q. And while you're looking at that extension**
15 **request, what's the gross estate that's stated on**
16 **that extension request on March 24, 2008?**

17 **A. I don't see an amount.**

18 **Q. I'm sorry, we'll just share that for a**
19 **moment, if you don't mind.**

20 **A. Sorry, just so we're clear, I don't see that**
21 **amount on the Form 4768. Attached there is a**
22 **Schedule -- a letter on page 4 that makes reference**
23 **to a total net worth of \$62 million.**

24 **Q. How about the gross?**

25 **A. The gross value -- I'm sorry, that's the**
1 **question, sorry -- was \$91,600,000.00.**

2 **Q. Right.**

3 **A. And then one of the last paragraphs on page 5**
4 **of this letter says, the PR/Trustees intend to make**
5 **a substantial deposit towards the estate taxes when**
6 **the net proceeds of the Christie's sale are**
7 **received. This is estimated to be in September or**
8 **October of the Christie's sale proceeds according to**
9 **the Court Order -- according to the Court Order**
10 **schedule.**

...

16 **Q. Now, would you agree that but for the \$2**
17 **million and the tangible personal property, all**
18 **money in James Brown's Estate under his estate plan**
19 **was -- would have been considered, from a tax**
20 **standpoint, as paid or permanently set aside to**
21 **charity?**

22 **A. I'm sorry, what was that?**

23 **Q. Except for his personal and household effects**
24 **and the \$2 million for education for the certain**
25 **grandchildren, was all the rest of James Brown's**

1 Empire paid or permanently set aside to a charity?

2 **A. Well, that's what the will and the trust say.**

3 Q. Right. Right.

4 **A. Yes.**

5 Q. Right. So when you're thinking about estate
6 taxes, whether you get a charitable deduction or not
7 is pretty huge, right?

8 **A. Well, yeah.**

25 Q. Do you know of any significant event between
1 March 24, 2008 and the fall of 2008, when the
2 Christie's money comes in?

3 **A. I mean, if you ask me about a specific event,**
4 **I'll tell you if I know about it or not.**

5 Q. Do you know that the Attorney General of
6 South Carolina had asserted he had the right to take
7 over the operation of the James Brown assets, stop
8 the action of the fiduciaries under James Brown's
9 documents, designate the people he wanted to
10 designate as heirs, and remove the Trustees and
11 replace them with Trustees he selected; did you know
12 all that?

13 **A. The way you asked the question I think would**
14 **require a legal conclusion.**

15 Q. Okay.

16 **A. And I'm not a lawyer.**

17 Q. Sure. Sure.

18 **A. So if all that happened, that would be**
19 **something that would be a legal issue.**

20 Q. Okay. Well, but let me ask you this. If
21 among the things that happened on August 10, 2008 --

22 **A. Yes.**

23 Q. -- was that the Attorney General said, I'm
24 giving half of this charity to private individuals,
25 and I'm declaring Tommie Rae Hynie the wife, that
1 makes it an accounting problem, doesn't it?

2 **A. No. I think you've again asked me something**
3 **that would require a legal conclusion.**

4 Q. Well, let's just you and I assume that on
5 August 10, 2008 the Attorney General said, I'm
6 stipulating Tommie Rae Hynie is the wife, and I'm
7 giving half of these assets to noncharities, just
8 take my word that, that is what happened.

9 A. Well, first of all, I think that the parties
10 would -- I think that in a situation like this all
11 the parties would have to agree. You said the
12 Attorney General did something, and again, that's a
13 legal question. So from the standpoint of what I
14 know about settling estate matters, I think the
15 parties have to agree.

16 Q. I wish you had been there by my side, Mr.
17 Thomas, in 2008, because that is what Mr. Buchanan
18 and Ms. Pope thought, too. Nevertheless, that
19 wasn't what happened. On August 10, 2008 the
20 Attorney General stipulated that a person, not a
21 charity, would get 25 percent of James Brown's
22 assets, and that some other people would get another
23 25 percent, and the Trustees did not agree that he
24 had the authority to do that.

25 So would you agree that in terms of preparing
1 an estate tax return, if you have an estate of a
2 certain size, and you have somebody saying it goes
3 to charity, and somebody saying it goes to private
4 individuals, you have yourself a dilemma; would you
5 agree with that?

6 A. That would be a legal dilemma.

7 Q. Yeah, but it would be an accounting dilemma
8 also; wouldn't it be?

9 A. It would be an accounting dilemma for someone
10 that was charged with some accounting role in it,
11 but the settlement would be -- would be a legal --
12 would be decided by the parties and whatever --
13 whatever legal, you know...

14 Q. Let me just add this fact, if the Attorney
15 General asserted on August 10, 2008 and James
16 Brown's fiduciaries didn't agree with him, and the

17 Court did not determine until May 26, 2009 the
18 answer to that, would that create a dilemma for
19 people preparing an estate tax return, anybody,
20 accountant, lawyer, anyone?

21 A. I'm not sure "dilemma" is the right word. I
22 mean, it would -- it would require, you know -- it
23 would -- it would require something being done that
24 I don't do on a daily basis, so I'm not the person
25 that can tell you --

1 Q. Right.

2 A. -- what the -- what the issue would be there.

3 Q. Well, it's a little bit of a hard issue,
4 isn't it? If you go a whole year with a big estate
5 with the fiduciary saying it all goes to charity and
6 somebody else saying, no, it doesn't, half of it
7 goes to private individuals, it's just a problem,
8 wouldn't you say?

9 A. Well, you keep framing questions where I'm --
10 I'm getting lost, because on the one end you're
11 saying the fiduciary does something, and those are
12 all legal issues.

13 Q. Right. Right.

14 A. Those are not accounting issues.

15 Q. Okay. So you don't have any opinions then
16 about whether Bob Buchanan and Adele Pope or Bill
17 Sellers, the accountant, faced a dilemma when that
18 happened on August 10, 2008?

19 A. When you say -- you'd have to ask me a
20 specific dilemma that they faced.

21 Q. All right. Well, I will. Okay. On August
22 10, 2008, the Attorney General of South Carolina
23 asserted the right to settle the James Brown Estate
24 matter without James Brown's fiduciaries to declare
25 that Tommie Rae Hynie would be treated as the spouse
1 for all purposes, to give her 25 percent of the
2 assets of the estate, and to give five claimed
3 children of James Brown another 25 percent. The
4 fiduciaries of James Brown's Estate did not agree

5 with the Attorney General's assertion that he had
6 that authority.

7 **A. Okay.**

8 Q. Did that create a dilemma from August 10,
9 2008 until May 26, 2009, when the Circuit Court
10 agreed with the Attorney General?

11 **A. And, again, what you have described to me is**
12 **that there was a -- August the 10th, for lack of,**
13 **I'll use the word, agreement, that wasn't blessed**
14 **until sometime in May 2009 by the Court.**

15 Q. Yes.

16 **A. So I would -- I would say that, yes, that's**
17 **true. There was a period where if the Attorney**
18 **General did that, then that's what happened, and**
19 **then it wasn't blessed by the Court the way that I**
20 **would think that the probate matter would flow, but,**
21 **again, I'm an accountant who does work in estate**
22 **matters -- does forensic accounting in estate**
23 **matters.**

24 Q. Right.

25 **A. But would not be the person to say that**
1 **there's a dilemma.**

2 Q. What about -- let me just take you all the
3 way through the dilemma, and I know it feels
4 confusing, because you're not the first person who's
5 felt confused by it, but suppose then the Circuit
6 Court agrees with the Attorney General on May 26,
7 2009, and the Supreme Court on May 8th, 2013 doesn't
8 agree with the Attorney General --

9 **A. Correct.**

10 Q. -- so don't you really have a dilemma that's
11 lasted from August 10, 2008 until May 8th, 2013?

12 **A. But when you say "a dilemma," I'm not sure --**

13 Q. Well --

14 **A. What dilemma?**

15 Q. Can you take a marital deduction for someone
16 who's not a wife?

17 **A. Well, the answer to that from the code would**

18 probably be, no, that you can't take a deduction,
19 but if the -- if the -- I'll give you an example,
20 okay, because I don't -- I'm not going to get
21 wrapped around the axle on legal matters, okay? I
22 was involved in a dispute recently that was an A, B
23 Will. There was Will A, there was Will B. The
24 settlement was a mixed bag.

25 Q. Sure...

19 Q. I don't want to cut you off. No. No. I
20 agree with you.

21 A. But I'm sitting here as an accountant who
22 works in these matters that says, I have seen things
23 resolved that don't follow the documents. So if you
24 asked me -- which your question was, can you take a
25 marital deduction if you don't have a spouse? I

1 would probably have to say, no, the code is pretty
2 clear that you can't take a marital deduction if you
3 don't have a spouse, but if you file an estate or a
4 706 or whatever filings you filed and there was an
5 agreement that there was one, does that become an
6 invalid, false filing? I don't know. I wouldn't
7 think so.

8 Q. I completely agree with everything you've
9 said about all the other cases. Cases can and
10 should be settled, we agree on that, when there is a
11 reasonable settlement that everybody can live with,
12 whether they like it or not; we agree on that, don't
13 we? That's customary, isn't it?

14 A. Yes.

15 Q. But if you have an instance where the
16 Attorney General has said, I get to say the way it
17 is --

18 A. And Ms. Pope, at that point I'm an
19 accountant.

20 Q. Okay, good.

21 A. The Attorney General is a lawyer. He's the
22 chief law enforcement officer of South Carolina. So

23 I can't -- I can't --

24 Q. So you really can't speak to the dilemma, if
25 there was one, of fiduciaries defending an estate
1 plan that they don't believe the Attorney General
2 has the right to dismember?

3 A. That would be a legal issue. That would not
4 be --

5 Q. Right.

6 A. -- in my opinion, an accounting issue.

...

1 Q. Okay. What, if anything, do you know about
2 the claimed overinflated, self-serving, valuation of
3 James Brown's assets?

4 A. I have looked at the probate -- I mean, I
5 have looked at the 706, and I have looked at the
6 valuation process, the road map to valuation, so to
7 speak, for estate issues.

8 Q. Have you read the opinion -- have you read
9 the deposition of Roger Millot [SIC.], the Defendant's
10 expert in this case?

11 A. I don't recall if I have.

12 Q. Do you recall -- do you recall being told his
13 opinion that 15 to 20 times royalties would not be
14 at all surprising for a gold-standard copyright
15 package, such as James Brown's?

16 A. Well, I may or may not have read that.

17 Q. Okay. Do you know what the annual revenues
18 for James Brown's copyrights were for the decade
19 before his death?

20 A. Roughly, yes.

21 Q. What?

22 A. Well, you said "the decade," I would look
23 more at, like, 5 to 6 years, in round numbers is
24 about \$3 million.

25 Q. And though it was actually a little more
1 coming in from sources that didn't make it to TIAA,
2 didn't they?

3 A. There were some, yes.

4 Q. And what's 20 times \$3 million?
5 A. I'm not here to do math.
6 Q. You don't know what 20 times \$3 million is?
7 A. I think it's 60 million. I hate to do math
8 on a high wire.
9 Q. Right.
10 A. I have everything to lose and nothing to
11 gain.
12 Q. Well, let's keep going. What's 15 times 3
13 million? You're doing very well. 45 to 60 million
14 would be what Mr. Miller would say would have been
15 within the range reasonable for the copyrights
16 alone. Do you know what else made up the Schedule
17 F2 assets of James Brown's Estate?
18 A. When you say the "Schedule F2," which --
19 Q. Well, was the music empire, the publicity
20 rights, the 900 copyrights, the claim against Farr,
21 the claim against Cannon, the claim against GT, the
22 sampling revenue claims, the claim against Morgan
23 Stanley, the business tangible personal property,
24 that was the Schedule F2, and certain other assets
25 was with the Schedule F2 residuary assets, 84
1 million.
2 A. You're talking about the 706 that you signed?
3 Q. Yes.
4 A. And what's the question, again?
5 Q. Have you looked at the values of all of those
6 components of the Schedule F2 music empire and
7 residuary assets?
8 A. I haven't done a valuation.
...
2 Q. What if you had put 4.7 million and used that
3 same description, do you think -- may I finish? Do
4 you think it should have gotten past the IRS
5 process?
6 A. And, again, this is not about what the number
7 is. This is about what you have to do to get to the
8 number to put it on the 706, to take the documents

9 and file the 706 with the IRS.

10 Q. Okay. Let's talk about that a little bit.

11 Do you know anything about the Estate of Herlen [sic.]

12 Howard?

13 A. I remember reading something.

14 Q. Was it the conclusion -- or, actually, a

15 fact, not a conclusion, in the Estate of Herlen

16 Howard that an accountant familiar with Herlen

17 Howard's copyrights was an appropriate person to

18 value his copyrights, even though he wasn't an

19 appraiser, and didn't have traditional expertise; do

20 you recall that?

21 A. No, if you're telling me he was an accountant

22 who valued the copyrights on an estate return.

23 Q. Yes.

24 A. Okay.

25 Q. So do you agree that copyrights and publicity

1 rights are unique assets and arguably hard to value?

2 A. Are they unique assets and hard to value?

3 Q. Yes.

4 A. Which one? Copyrights and what else?

5 Q. Publicity rights.

6 A. Well, I don't know. When you say "unique,"

7 they would be unique to the person, but they

8 wouldn't be unique like one of a kind.

21. I am informed and believe that the sworn Deposition of Mrs. Pope's Intellectual Property Litigation expert Wallace Lightsey, Jr., taken on April 10, 2017, portions of which are printed below, lends support to my opinion that the attacks by the Attorney General, Bauknight and the Wingate Firm on Mr. Buchanan and Mrs. Pope, were baseless because, as a team, they were wisely and appropriately protecting the "I Feel Good" Trust and its 900 copyrights generally, and specifically

protecting the copyrights from improper and/or premature Termination Rights elections

by claimed heirs:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:
ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:

Defendants. :

DEPOSITION OF WALLACE K. LIGHTSEY, ESQUIRE

DATE TAKEN: April 10, 2017

TIME BEGAN: 10:00 a.m.

TIME ADJOURNED: 10:50 a.m

LOCATION: Nexsen Pruet

55 E. Camperdown Way

Greenville, South Carolina

REPORTED BY: Tami I. Watters, RPR, CRR

EveryWord, Inc.

P.O. Box 1459

Columbia, South Carolina 29202

(803) 212-0012

....

14 Q Okay. The second sentence: "At that

15 time -- of the second paragraph -- Termination

16 Rights were described as a 'coming storm,' with the

17 first substantial impact expected in 2013."

18 What is that -- does that refer -- how --

19 Explain that to me, I should say.

20 A Well, and that's not my phrase, the
21 "coming storm," but I think it's a good description
22 of the sense, again, among the sort of general IP
23 lawyer community.

24 Again, there was an awareness of
25 termination rights; that there was a provision for
Page: 12

1 it in the '76 Act, and to my awareness and what I
2 was seeing from the groups that I belonged to,
3 there was a growing sense that this was an issue
4 that was gonna start coming up with more frequency.
5 And for post-'78 grants, the 35-year window for
6 termination would go into effect -- or would start
7 in 2013, and then for the works from the late
8 fifties through the sixties, which would be kind of
9 the heyday, really, of the recording industry, the
10 56-year window for those works would start coming
11 up again around that same time.

12 Q Okay.

13 A And this was -- too, this was about when
14 you started to see some significant case law
15 developing on termination rights, particularly in
16 the kind of situation that this case presents.

17 Q Okay. Is it your opinion that the
18 absence of case law is somehow an excuse for not
19 knowing about the operations of termination rights?

20 A I wouldn't call it an excuse. But,
21 again, what I'm -- what I understand I'm being
22 asked to talk about is the general awareness among
23 the IP community.

24 Q So does the absence of case law, in your
25 opinion, account for --

Page: 13

1 What does case law -- or there being no
2 case law, where does that fit in your mind?

3 A Well, I mean, that's how lawyers become
4 aware of issues. You know, unless you are a

5 Hollywood entertainment lawyer and you're being
6 asked to deal with these issues on a day-to-day
7 basis, for somebody like me, how I would become
8 aware of this would be through hearing about a
9 case, like the Winnie the Pooh case or something
10 like that, which is the first one I remember.

11 Q Okay. The next sentence says -- well,
12 paragraph 3, sentence 1: "There are ways for
13 charities to limit losses from the exercise by
14 heirs of Termination Rights."
15 Where does that fit inside of your
16 opinion? What does that sentence have to do with
17 general awareness?

18 A Well, in connection with this matter,
19 I've attempted to educate myself a little more on
20 termination rights, so I have done some reading and
21 some research on it to learn how these things work.
22 And like I said, I remember hearing about
23 the Winnie the Pooh case. I remember hearing a
24 little bit about the Marvel cases and the Superman
25 case. So I had a vague notion that that -- those
Page: 14

1 issues being out there.

2 When Adele asked me to get involved with
3 this, I tried to learn a little bit more about it.

4 And, in the course of doing that, I feel very
5 strongly that what that sentence says is correct.

6 Q Okay.

7 A But that's been a process of
8 self-education for this case.

9 Q Okay. Do you know whether Mrs. Pope made
10 any inquiry into how to find ways for charities to
11 limit losses from the exercise by heirs of
12 termination rights during her fiduciary service?

13 A I've read the article that she drafted
14 with Jeff -- Smith? Is that right?

15 So I've got -- I've got that
16 understanding of what she did.

17 Q Okay. Do you know whether or not that
18 article was drafted during her fiduciary service?

19 A I'm not sure.

20 Q Okay. So beyond that article, do you
21 know of any other instance in which Mrs. Pope made
22 efforts to limit losses from the exercise by heirs
23 of termination rights during her fiduciary service?

24 A Well, all my communications with Ms. Pope
25 about this have been over the last year plus.

Page: 15

1 But -- I mean, we did talk about it a little bit
2 when we first talked about the case, and we had
3 some follow-up conversations and we had some
4 e-mails that I've produced.

5 So I've gotten some understanding of the
6 facts from her perspective from those things.

7 Q Okay. Do you know that the -- the time
8 brackets for Mrs. Pope's fiduciary service?

9 A I've read it. I think she was appointed
10 in 2007. I'm not sure. And I can't remember
11 exactly when she was replaced.

12 Q Okay.

13 A My understanding is that she continued to
14 do some work during the appeal of the decision to
15 replace her.

16 Q Okay. So --

17 A I kind of got a general time frame. It
18 was either '07 or '09 through 2013.

19 Q Okay. So I think you have it in your
20 head.

21 So it's November 2007 until May 26, 2009.

22 That's when the lower court issued a settlement
23 agreement -- or order approving a settlement
24 agreement.

25 Do you know of anything that Mrs. Pope

Page: 16

1 did during that window to limit the losses from the
2 exercise by heirs of termination rights?

3 A My understanding from her article was
4 that during that time she and the other gentleman
5 were working on cataloging the works that were
6 bequeathed to the trust to get a handle on what
7 kinds of contracts had been entered into with
8 regard to those works to determine -- or at least
9 start trying to determine who the heirs were, who
10 could rightfully claim termination rights under the
11 statute, as well as whether the alleged spouse had
12 a right to claim termination rights under the
13 statute.

14 Q Okay. And so then how -- in your
15 opinion, how do you limit the losses? What do you
16 do?

17 A Well, I think -- my opinion is, A: This
18 is an incredibly complex set of legal processes;
19 and B: There have been some decisions, notably the
20 Milne case and the Steinbeck case, that have
21 further complicated and created confusion around
22 it.

23 So I think all of that together gives a
24 trust like the "I Feel Good" Trust a good bit of
25 bargaining power to work out something with the
Page: 17

1 music publishers, as well as the heirs, that would
2 get a maximum amount of future income to the trust
3 in the most efficient way possible.

4 Q Do you have any concrete examples of how
5 that would work?

6 A Just, you know, the Milne case and the
7 Steinbeck case both involved a situation like this
8 where the authors' will left the rights to the
9 works to an entity or an individual who was not the
10 same as the statutory heirs to the termination
11 rights.

12 And there, the publishers went and
13 negotiated a deal, you know, with the -- I guess
14 I'd call it legatees -- to get an increased royalty

15 rate and cut out the heirs altogether.
16 So those would be my particular examples.
17 Q Would it be reasonable or would it be
18 prudent to try and make a deal with the heirs?
19 A You know, I think -- I thought about
20 that. I think it depends on the circumstances; how
21 many there are, what kind of attitude they have
22 about respecting the wishes of the deceased author
23 as expressed in the estate documents.
24 I certainly think that would be a
25 strategy that could be used to see what --

Page: 18

1 And I think there, the objective would be
2 to see what can be worked out to get the maximum
3 amount of income for the trust in the most
4 efficient way. You don't necessarily want to end
5 up in litigation, because that can be expensive.
6 Q Uh-huh.

7 A So if something could be worked out with
8 the publishers and with the heirs, that might be
9 the best approach. But depending on the
10 personalities of the people you're dealing with,
11 that may not be the best approach.

12 Q Okay. Is it correct that if the heirs
13 exercise their termination rights, then they can
14 completely cut out the trust?

15 A For -- for works that are subject to the
16 termination rights, yeah.

17 Q Is that -- that is correct?

18 A I think so, yeah. If they go through all
19 the hoops to do that and if you get a majority
20 interest to do it.

21 Q Right.

22 A But then again, I would say, you know,
23 you've got the Milne case and the Steinbeck case
24 that kind of created a blueprint for a way for
25 publishers to go around that and do a deal with the
Page: 19

1 legatee, if that's the right word, that cuts out
2 the heirs.

3 Q Uh-huh. The next sentence you have here
4 is paragraph 3: "The Ray Charles Foundation case
5 makes clear that a charity owning copyrights has a
6 right to be part of the Termination Rights process
7 because its royalty stream is at stake."

8 Is that just a -- what are you trying to
9 communicate with that sentence?

10 A Well, just that the Ninth Circuit in that
11 case held that the foundation had standing to
12 contest a notice of termination by the heirs.

13 Q Okay. Do you intend to offer any
14 opinions besides what's written right here?

15 A I haven't been asked to, so ...

16 Q Okay. Can you generally tell me your
17 opinion of what role your opinion has, if I can ask
18 that question?

19 A I really don't know.

20 Q Okay.

21 A I'm not sure exactly how this fits into
22 the whole broader issues in the case.

23 Q Okay. Do you have any -- do you know how
24 much Mrs. Pope is asking the estate to pay for her
25 work?

Page: 20

1 A I've seen a figure of 1.4 million.

2 Q Okay.

3 A I don't know if that -- I'm thinking
4 there may be something more.

5 Q Yes. Okay. So you generally would come
6 to Aiken County and you would testify that
7 termination rights were a new thing and IP
8 lawyers -- even IP lawyers weren't fully familiar
9 with the workings of it?

10 A Well, again, I'd -- you know, I can't say
11 exactly what I'll be asked to testify to or what
12 the judge might consider me an expert on or not an

13 expert. That's up to the court to decide.

14 Q Sure.

15 A As I've said, I do believe, within the
16 general community of lawyers who practice
17 intellectual property, which I do believe I'm
18 representative of -- a good representative of, that
19 there was only a vague awareness of termination
20 rights up until, you know, starting maybe in the
21 mid-2000s; 2006 and later --

22 Q Okay.

23 A -- when some of these cases started
24 coming down and we started hearing more about this.

25 Q Okay. Would you agree that a fiduciary

Page: 21

1 should seek entertainment counsel in trying to
2 learn about these rights?

3 A I wouldn't have an opinion on that.

4 Q Okay. Those are all the questions I

5 have. I may want to make some copies of your file.

6 A Sure. Sure.

7 - - -

8 EXAMINATION

9 - - -

10 BY MS. POPE:

11 Q Mr. Lightsey, can you describe for me how
12 thick your file is?

13 A It's, I guess, about 2 or 3 inches.

14 Q All right. So would you say there are at
15 least a couple of hundred pages in there?

16 A Probably.

17 Q And is it fair to say you've done a good
18 bit of thinking about this issue since we first
19 talked?

20 A Yes.

21 Q Okay. You were asked about the knowledge
22 of entertainment lawyers with respect to
23 termination rights back in 2008 and today.
24 Do you know of any entertainment lawyers

25 within the state of South Carolina?

Page: 22

1 A No.

2 Q Okay. In researching termination rights,
3 have you thought about whether, in certain
4 instances, a knowledge of state probate law is as
5 important as a knowledge of the copyright law?

6 A Yes. I think -- my understanding is
7 that when there are questions about who is a child
8 or who is a spouse for purposes of the termination
9 rights, that that's determined by state law.

10 Q Certainly the spouse, if not the
11 children?

12 A Uh-huh.

13 Q Is that correct?

14 A Yes.

15 Q So does that mean that if a foundation
16 such as the "I Feel Good" Charity wanted to protect
17 itself in the termination rights area, job one
18 would be not to create a spouse if there isn't one?

19 A I think -- if there's a question about
20 whether somebody who claims to be a spouse really
21 is or really qualifies, I think that's an essential
22 question, just because of this whole negotiation
23 process I've touched on.

24 Under the termination provisions of the
25 Copyright Act, if the person is -- does qualify as
Page: 23

1 a spouse, they get -- and there are children, the
2 spouse has a 50 percent vote on whether to
3 terminate. And since a majority is required, if
4 there is a spouse and children, then the spouse has
5 to be part of that majority or you won't be able to
6 get the necessary percentage to terminate.

7 So, yeah, I think that would be
8 absolutely essential.

9 Q And in connection with the determination
10 of heirs under the federal Copyright Act, is it

11 fair to say that even today there has been very
12 little litigation over the issue of how to
13 determine who are children?

14 A Yeah. I'm not aware of any, other than
15 this litigation.

16 Q And if, for example, James Brown had a
17 child who was acknowledged in his divorce but not a
18 biological child, to date, do we have any guidance
19 about whether that child would be considered an
20 heir under the federal Copyright Act?

21 A None that I know of.

22 Q Okay. What if, for example, James Brown
23 had a child who was not born of a marriage and
24 acknowledged only in a will, which the child
25 contested? Do we have any guidance that you're
Page: 24

1 aware of under the federal Copyright Act about that
2 child's entitlement to termination rights?

3 A No.

4 Q What if James Brown, in his documents,
5 intentionally disinherited any child who claimed --
6 who challenged his estate plan? Do we have any
7 court guidance on whether -- the impact of such a
8 provision in the will might affect termination
9 rights?

10 A None that I know of.

11 Q Okay. Now, at least during those early
12 years after the death of a person who owns as many
13 as 900 copyrights, could the probate process be
14 even more important than the entertainment law
15 process?

16 A You'll have to explain that one.

17 Q Well, during the early years after
18 James Brown's death -- let's just use him as the
19 example -- could the proper determination of heirs
20 have been as important to termination rights
21 protection as anything else?

22 A Yeah. I think that would be an essential

23 early step.

24 Q So if Mrs. Pope was replaced in 2009,
25 would there be any reason to stop that process?

Page: 25

1 A No. I mean, I think -- I think anybody
2 who was trying to maximize the income for the trust
3 would have to get to a firm conclusion as to who
4 the people are who are entitled to exercise the
5 termination rights so that you can then decide on
6 the best strategy for dealing with that.

7 Q And so if on August 10, 2008 the attorney
8 general agreed to stipulate that a claimed spouse
9 would be treated as a spouse, despite overwhelming
10 evidence to the contrary, would that be a wise
11 method of protecting the copyrights?

12 A Based just on what you've said, I would
13 say no.

14 I would acknowledge, I think you have to
15 look at all the circumstances in the case,
16 including, as I said, the personalities of the
17 people involved.

18 Q Okay.

19 A You know, if -- for example, if the
20 spouse were very supportive of the trust position
21 and wanted to give full effect to the desires of
22 Mr. Brown, in that circumstance, it might move the
23 trust to try to work something out quickly with
24 her. But I think it just depends on the whole
25 situation.

Page 26

1 Q Well, that reminds me. Did the Smith and
2 Pope article suggest a mechanism called splitting
3 heirs?

4 A Yeah.

5 Q Can you explain how what you've just said
6 relates to the term "splitting heirs"?

7 A Well, because the -- a termination has to
8 be done by people who have a majority of the rights

9 to terminate.

10 If there are multiple heirs and the --
11 again, I'm not sure if I'm using the right word.
12 I'm not a probate lawyer. The legatee or devisee
13 or whoever -- the recipient under the will has the
14 opportunity to negotiate and try to get the best
15 deal it can for the trust. So if there are
16 multiple heirs, it's possible to split them up.
17 Some may be more cooperative, some may be less.
18 And if you can split them and get a majority and
19 work out a deal that's good for the trust, that's a
20 good strategy.

21 Q And -- back to the attorney general. If
22 on August 10, 2008 the attorney general stopped the
23 DNA testing process which had been in place since
24 shortly after James Brown's death, would that have
25 helped the protection of the "I Feel Good" Trust
Page: 27

1 termination rights?

2 A I don't see how it could. Again, I
3 think -- I think a good strategy for the trust is
4 to try to work out something with the music
5 publishers initially and, if possible, with the
6 heirs.

7 But whatever -- whatever is done, I don't
8 think you'd want to have it subject to a later
9 attack on the grounds that somebody who was part of
10 that didn't really have a termination right.

11 Q You were asked what you knew about
12 Mr. Buchanan and Ms. Pope's service, and I will
13 tell you: It was from November 2007 until May 26,
14 2009 that they served as personal representatives.
15 Have you heard of or were you aware of
16 something known as the Peeples' DNA protocol?
17 A Yes.

18 Q Did you understand that it had been begun
19 by the original -- counsel for the original
20 personal representatives and continued by

21 Mr. Buchanan and Ms. Pope?

22 A I don't know the details of it.

23 Q Okay. Did you understand that it had

24 been stopped on August 10, 2008 by the attorney

25 general?

Page: 28

1 A I understood that it was stopped.

2 Q Did you understand that when he did so,

3 he declared that five -- I'm sorry -- six claimed

4 children would be determined to be James Brown's

5 heirs?

6 A Yeah. I'm sorry. I don't really

7 remember the details.

8 Q Okay. You don't remember that it was

9 fewer than -- half or fewer than the potential

10 heirs?

11 A Yes. I knew it was not the whole group.

12 Q Okay. And did you know that at least

13 three of those were not presumed heirs even under

14 South Carolina law?

15 A I don't remember.

16 Q Okay. All right. Now, tell me just a

17 little bit about the Ray Charles case.

18 A It was a similar situation with a great

19 songwriter and recording artist. Ray Charles

20 bequeathed his -- I guess the residuary of his

21 estate to a foundation, a charitable foundation,

22 like Mr. Brown did here, and then the statutory

23 heirs under the termination provisions sent

24 termination notices to the publishing companies,

25 and the foundation brought a suit to declare those

Page: 29

1 termination notices ineffective.

2 District court held that the foundation

3 did not have standing to challenge the termination,

4 and the Ninth Circuit reversed and held that it did

5 have standing because of its interest in the

6 royalty stream.

7 Q And that case was begun in about 2012?

8 A That sounds right.

9 Q And approximately when was it concluded?

10 A I think the Ninth Circuit decision was in
11 2015.

12 Q Okay. Do you know what's happened since
13 2015?

14 A No. I did check the district court

15 docket on PACER, I don't know, a month or two ago,
16 and I could not see anything that happened since
17 the remand.

18 Q Do you know who represented the heirs in
19 that matter?

20 A No.

21 Q I'm gonna hand you a document -- well,
22 before that, let me ask you this: I would like, if
23 we could, to mark your file as an exhibit, and then
24 if Mr. Williams and I can agree to a CD of the file
25 or something that would be smaller --

Page: 30

1 A That's fine.

2 Q -- may I do that?

3 A Sure.

4 Q We'll mark that, then, as Plaintiff's
5 Exhibit 1, your entire file.

6 ---

7 (File marked Plaintiff's Exhibit
8 Number 1, for identification.)

9 ---

10 MS. POPE: I'd like to hand you
11 Plaintiff's Exhibit 2.

12 ---

13 (Value of Tomirae Federal Copyright Act
14 Termination Rights at Death of James Brown
15 marked Plaintiff's Exhibit Number 2, for
16 identification.)

17 ---

18 BY MS. POPE:

19 Q I'm gonna give you a moment to look at
20 it, because I think we'll agree, you haven't seen
21 it before today; is that correct?

22 A That's correct.

23 Q If you'll take a moment to glance at it.

24 And I'll represent that it is my work.

25 A Okay.

Page: 31

1 Q When you're ready to chat about it, let
2 me know.

3 A Okay. I'm ready.

4 Q I have attempted in this document to
5 recreate the position of James Brown's estate and
6 trust as it was on November 20th, 2007.

7 If the -- and I have concluded that the
8 value of Tomi Rae's federal Copyright Act
9 termination rights at the death of James Brown was
10 negligible based on the facts that were available
11 between the period 2007 and May 26, 2009.

12 If these facts existed and there was fair
13 proof of them on the part of the estate and trust,
14 should they have taken advantage of those facts to
15 protect the copyrights?

16 A I think certainly, in this type of
17 situation, the trust should challenge -- what's
18 Tomi Rae's last name?

19 Q Hynie-Brown.

20 A I would certainly think the trust would
21 challenge her claim.

22 I don't know -- I don't claim to have any
23 expertise on how you decide if someone was a spouse
24 under state law. I know that the -- or it's my
25 understanding the Copyright Act doesn't speak to

Page: 32

1 that, but I certainly do think it would be
2 appropriate to challenge the claim.

3 Q And before one would settle with or try
4 to split Tomi Rae off from the other heirs to

5 protect the charity, would the estate and trust not
6 need to evaluate the strength of her claim as a
7 spouse?

8 A Say that again.

9 Q Okay. If the -- if the charity is
10 looking to protect itself before it makes a deal
11 with Tomi Rae, should it not evaluate the strength
12 of her ability to be demonstrated to be the spouse?

13 A Yes. Absolutely.

14 Q Okay. Now, even if Tomi Ray had been
15 determined absolutely to be the spouse on the date
16 of James Brown's death, would there still have been
17 impediments to her taking the royalties from the "I
18 Feel Good" Charity?

19 A Well, at the most basic level, she still
20 would have to get at least one of the other heirs
21 to join with her.

22 Q Okay.

23 A And then, as I've said, I think the Milne
24 and Steinbeck cases create a mechanism for someone
25 in the position of the trust to do a deal with the
Page: 33

1 music publishers to cut her off.

2 Q And isn't it fair to say that when

3 James Brown died, if his first famous work was in
4 1956, there were about six years for the estate and
5 trust to be planning to protect the "I Feel Good"
6 Charity?

7 A Yes, if the copyright was secured in
8 1956.

9 Q And, of course, anyone -- when the
10 majority of heirs seeks to make an election, a
11 majority is in fact needed; is that correct?

12 A Majority interest, right.

13 Q Or the spouse plus one.

14 A Right.

15 Q And only half of the heirs are needed to
16 stop an election; is that correct?

17 A If they have 50 percent, correct.

18 Q And there's certain technical and complex

19 election requirements, are there not?

20 A It's very complex.

21 Q And there must be at least a two-year

22 period when the election is made before the

23 termination can be effective; is that correct?

24 A That's right. The notice of termination

25 has to be served at least two years before the

Page: 34

1 effective date of termination.

2 Q And in the case of Tomi Rae, there might

3 have been, to challenge any attempt at termination,

4 a dozen or more children, the charity, and the

5 charity itself; would that be -- would that fairly

6 state the situation back in 2007?

7 A Yes.

8 Q Okay. And does everybody now kind of

9 understand that termination elections apply only to

10 American copyrights?

11 A Yes.

12 Q And James Brown, of course, had worldwide

13 copyrights?

14 A That's right.

15 Q And they do not apply to derivative

16 works?

17 A There's a derivative work exception for

18 derivative works made before the termination.

19 Q Okay.

20 A So if you make a derivative work on the

21 basis of an existing grant and then a termination

22 comes in, you can continue to exploit that

23 derivative work.

24 Q So if there's a derivative work of

25 James Brown and American copyright is terminated,

Page: 35

1 the foundation, his devisee, would continue to

2 enjoy the royalties from the derivative work unless

3 and until it was terminated?

4 A That's correct.

5 Q Okay. Now, is it fair to say -- I don't

6 want to spring too much on you -- but both

7 samplings and joint ownerships create further

8 complexity, do they not?

9 A Yes. That's true.

10 Q And is it fair to say that the

11 sampling -- a sampling could actually be a small

12 part of a subsequent copyright?

13 A Yes.

14 Q And so that that copyright might have a

15 35-year life of its own?

16 A Yes.

17 Q And in that case, in a sampling of a

18 James Brown work, the James Brown rift, let's say,

19 might be a small part of that work?

20 A Correct.

21 Q So if James Brown had, for example, 210

22 copyrights of which he had only a sampling part,

23 would the "I Feel Good" Charity likely be able to

24 have a major part in the termination rights of

25 those works?

Page: 36

1 A Yes.

2 Q And then -- but those works might be --

3 the termination rights issue could be delayed for

4 many years; is that fair to say?

5 A Yes.

6 Q Okay.

7 A Depending on when the work was created.

8 Q Thank you. I'm gonna ask you to take a

9 quick look at Plaintiff's --

10 MS. POPE: Just to be sure, the value of

11 the termination rights was Exhibit 3?

12 THE WITNESS: I think it was

13 Plaintiff's 2.

14 - - -

15 (Value of Levenson 5 Clients' Federal
16 Copyright Act Termination Rights at Death of
17 James Brown marked Plaintiff's Exhibit
18 Number 3 for identification.)

19 - - -

20 THE WITNESS: And before you move on,
21 too, another thing I would say that's
22 interesting, and another level of complexity
23 with music in particular, is that sound
24 recordings made before February of 1972 are
25 not covered by federal copyright. They would
Page: 37

1 be subject to common law-copyright. So they
2 are not subject to the termination rights.

3 BY MS. POPE:

4 Q Okay. Well, let's talk a minute about
5 sound recordings between '72 and '78.
6 If James Brown had a number of sound
7 recordings during that time, those sound recordings
8 are protected for 56 years, if he's properly
9 renewed them; is that correct?

10 A I think it's -- well, it would be the --

11 I think it would be the life of the author plus 70
12 years.

13 Q But -- but my question was -- I'm sorry.

14 I didn't say it correctly.

15 They would not be subject --

16 A Oh, to termination.

17 Q -- to termination --

18 A That's correct.

19 Q -- for more than 56 years.

20 And so it's fair to say that all the
21 works between -- of the sound recordings between
22 '72 and '78 could experience a 56-year life before
23 termination?

24 A That's correct.

25 Q And do you know whether '72 to '78 was a
Page: 38

1 period during which James Brown had an important
2 part in the musical genre?
3 A I can't say specifically, but I would
4 think that's true.
5 Q He actually did for decades, didn't he?
6 A Yes.
7 Q Now, just looking at Plaintiff's 3.
8 Again, this is my work, and it is my evaluation
9 that the termination rights of the five Levenson
10 clients who reached the deal with the attorney
11 general on August 10, 2008 had a value of less than
12 5 percent of the value of James Brown's copyrights
13 on that -- at that time, at James Brown's death.
14 And, again, my reasons that I have set
15 out, you have no specific knowledge about that?
16 A Correct.
17 Q But those reasons were certainly within
18 the purview of a probate lawyer, even if she wasn't
19 an entertainment lawyer; would that be fair to say?
20 A I would think that anybody who is a
21 trustee would want to consider these things.
22 Q Okay. And then again, even if all five
23 of the Levenson clients had been determined to be
24 heirs of James Brown, they would still face many of
25 the same impediments that Tomi Rae would face; is
Page: 39
1 that fair to say?
2 A In general terms?
3 Q Yes.
4 A Yes, as I've talked about.
5 Q And so they would have to meet the
6 election requirements.
7 A Right.
8 Q And have the two-year delay.
9 A Right.
10 Q Even if they were a majority.
11 A Correct.
12 Q And if they weren't a majority, of course

13 they would have to find somebody to work with.

14 A Correct

22. In connection with the forming of my opinions, I have gleaned from the affidavit of Elizabeth Alexander that a story was placed on the Kilpatrick Stockton law firm website in which Robert Potter, Esq., was attributed with stopping the sale of the Grammy at the James Brown Christie's sale, but that Mr. Potter did not halt the sale, and was unaware of the post. I understand from other documents that the Grammy story was placed on the firm's website in January 2011, by David Bell, Esq., one of the lawyers who signed the contract to hire the Wingate law firm in this suit.

23. I have reviewed public documents which show that, while the Academy seeks to prevent Grammy sales, their legal position is questionable; Johnny Cash, Stevie Wonder and others have sold Grammys; and Toni Braxton's Grammy has been the subject of a possible sale by a Federal Bankruptcy Court..

24. In forming my opinions I have attended and read transcripts of a number of hearings since 2011, including those related to James Brown's Freedom of Information Act cases, where the Attorney General, the Wingate Firm and Mr. Bauknight joined Tomirae in harsh attacks on Mrs. Pope and a local journalist in an effort to prevent release of documents, including Tomirae's handwritten admissions that she was married when she had a ceremony with Brown; the documents to show how Mr. Bauknight could have valued James Brown's Right of Publicity and iconic personal property almost no value; and amendments to the Legacy Trust which is controlled by

the Attorney General, but Mr. Bauknight and the Attorney General claim is not subject to public disclosure. It have also reviewed many of the 100 James Brown articles the Wingate Firm filed in this case when they were seeking guidance as to pre-trial publicity.

25. I have also reviewed the deposition of R. B. Alexander, Defendant's valuation expert, with particular emphasis on his Right of Publicity experience. Portion of his deposition, taken March 27, 2017, are set out below:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:
ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:
Defendants. :

DEPOSITION OF RICHARD BOATWRIGHT ALEXANDER

DATE TAKEN: March 27, 2017

TIME BEGAN: 10:40 a.m.

TIME ADJOURNED: 2:10 p.m.

...
page 23-33

20 Q Fair enough. Have you ever conducted a
21 valuation analysis of copyrights?

22 A Yes. A little bit different context than
23 this. We've evaluated copyrights for people who
24 owned brand names that are copyrighted. We've --
25 That's been primarily what we've

Page: 24

1 evaluated; what is a brand name worth, what is --
2 and some of that, of course, is intangible.

3 Q Who all have you provided that valuation
4 opinion to?

5 A Brown Shoe Company, the Brown Group,
6 St. Louis. They've now changed their name.
7 Nations Bank, at that time we were
8 working with them, Pick N Pay stores, which was 13,
9 1400 stores that declared bankruptcy. Nations Bank
10 had the debt. We were working with them, what's
11 the value of the name Pick N Pay, along with all
12 their other real estate holdings and so forth.

13 Q Okay.

14 A So what's the name worth is really what
15 it amounts to. In today's jargon, what's the brand
16 worth.

17 Q Well, in analyzing the name, what -- what
18 do you do to go about arriving at a value for it?

19 A Well, you go through a process. I look
20 at -- in James Brown's case, this case we're
21 talking about, you have his publicity rights, his
22 persona, what are they worth.

23 So you can get a lot of that information
24 or some broad outlines of information public
25 knowledge. In other words, if you look at Forbes
Page: 25

1 or you look at the Internet, you then talk to
2 people who market those rights, who sell those
3 rights, who lease those rights. That can be
4 attorneys, but usually it's what I'm gonna call
5 entertainment companies that do that. So that's
6 what I would --

7 I would also talk to people in that

8 business, which I also did, and what are they -- in
9 other words, what do they think it's worth or what
10 does -- what interest do they have.

11 And James Brown was number 11, I think,
12 on the dead celebrity's list at Forbes. He was
13 making pretty good money. Of course, he wasn't
14 there to spend it either, but he was making pretty
15 good money after he died, so ...

16 Q I think some of that's covered in here.

17 A Right.

18 Q We can go through it.

19 A One of the big things you look at is what
20 is the estate or what are they throwing off; in
21 other words, what is their cash flow.

22 Q Okay.

23 A Then you can use a cap rate; you know, a
24 multiple on the cash flow is one method you could
25 use.

Page: 26

1 Q Okay.

2 A Or should use.

3 Q You mentioned methods. What other
4 methodology should you use in doing valuations?

5 A Well, cash, what does it throw off, is
6 the main thing. Then what are the opportunities
7 for the persona.

8 Advertising -- ads are a good source of
9 revenue, you might say; unpublished songs. I mean,
10 a person of James Brown's stature with 8 to 900
11 copyrights, those have a tremendous value -- or
12 could have a tremendous value for a person of
13 Brown's stature.

14 There are other rights, termination
15 rights, that could flow to the estate and what are
16 they worth.

17 There are a lot of different avenues.

18 And if you, you know, look at the others that --
19 you know, Bob Marley, Ray Charles, Elvis Presley.

20 There are many others.

21 Q Have you ever valued the estate of
22 another entertainer?

23 A No.

24 Q Do you believe that you have valued this
25 estate?

Page: 27

1 A Yes.

2 Q Okay. Tell me generally -- or even
3 specifically -- what experience in life and work
4 and education you have to value an entertainer's
5 estate.

6 What qualifies you to provide that
7 valuation?

8 A Just experience in having done other
9 things. But I have never done an entertainer.

...

17 Q Okay.

18 A But, having said that, Mr. Williams, also
19 in this situation, I talked to other people. One,
20 Charlotte, a friend of mine, is Reggie Smith. He's
21 Arthur Smith's son. James Brown recorded at Arthur
22 Smith Studios. He also did the soundtrack to
23 Deliverance, Dueling Banjos.

24 So Reggie took me through all the rights
25 of those songs and what that was actually worth to

Page: 28

1 the family.

2 So I was talking to people who had
3 experience with that that I knew on a -- and talked
4 with. So you're starting, you know, to get some --
5 while certainly not an expert to value or say I've
6 done 20 entertainers or 10 entertainers or 3
7 entertainers, you're starting to get a feel by
8 people you know of what they do or what is entailed
9 with that....

Page: 29

2 Q Okay. What documents did you look at --

3 e. references documents related to royalties,

4 publicity rights, assets, liabilities.

5 What documents specifically are you

6 referring to?

7 A I have looked at so many documents that

8 Ms. Pope and Mr. Buchanan had, as well as through

9 what was available to the -- generally.

10 To tell you which ones I looked at, it

11 would almost be which ones I didn't look at.

12 Q Okay. What documents do you recall that

13 relate to publicity rights?

14 A We looked at several. One was -- was a

15 gaming company. I think the one was \$400,000 a

16 year. There was an offer on the table that they

17 wanted to use a -- basically a slot machine

18 company.

19 Q Okay.

20 A And they wanted the rights basically when

21 somebody hit the number to say, oh, "I Feel Good,"

22 and put it on the video screen.

23 So that was an example, I mean, of -- we

24 looked at an offer for that. That was pretty good

25 money.

Page: 30

1 Q Do you recall who made the offer and

2 when?

3 A I think it was Global Gaming, but I

4 don't -- but I could be wrong.

...

10 Q Any other publicity rights documents?

11 A Looked at several -- when you're going

12 through other stars, Bob Marley who, I would say,

13 you know, is a lesser-known star than James Brown,

14 and the different publicity rights that they

15 engaged in, which is public record, what are they

16 doing in that persona.

17 Of course, the biggest star of all is

18 Elvis, Elvis Presley, and they use his persona. I

19 mean, they even have shows where they use him
20 on-screen.

21 So there are a lot of personas -- of
22 publicity rights in the use of the persona that the
23 estate or the trust would own that generates
24 income.

25 Q Did you undertake any inquiry to find out

Page: 31

1 how much income that would be?

2 A Looking at the records that you have in
3 Fortune Magazine, Forbes Magazine and different
4 trade magazines, you assume they know a little bit
5 about what they're talking about, but I didn't go
6 back and say: Okay. Forbes Magazine said Elvis
7 made 7 million in a quarter from these rights. Is
8 that an accurate number or not?

9 Q Okay.

10 A But if you check with three or four
11 different sources and the number is 6.9 million to
12 7.3 million, you assume 7.3 from trade magazines,
13 trade reporters, people in the -- would be an
14 accurate number.

15 Q Okay.

16 A And they're also looking at tax returns,
17 they're looking at financial statements, etc.

18 Q Okay. How do you extrapolate what, say,
19 Elvis makes in a given year and turn that into a
20 potential number for what Mr. Brown could make in a
21 given year, persona and image?

22 A At that point you're basically using as
23 much logic and as much as you can.

24 If you talk to the people in the
25 industry, you say: What's the potential for

Page: 32

1 this -- this star?

2 Elvis, of course, died in '77 and he's
3 making more money today than he ever made when he
4 was alive. Of course, you've got inflation and

5 everything else doing that.
6 While James Brown may not be Elvis, he's
7 bigger in Asia, bigger in Africa, and he was a
8 writer and a --
9 Elvis was an entertainer. James Brown
10 was an entertainer, a writer, a dancer. He was in
11 more areas music-wise than Elvis was.
12 Elvis never had the copyrights that
13 James Brown has. He wasn't an author. He wasn't a
14 writer.
15 Q So how do you bridge what Elvis brings in
16 to what James Brown could bring in? How do you --
17 A I'm not sure you bridge it. You use all
18 the stars, Ray Charles, all of them, as a potential
19 guide, and then you try to evaluate each section of
20 what they can do.
21 So I'm not sure you can take one law firm
22 and bridge it into what another law firm could do.
23 You just say: We're in the same line of work. You
24 know, the potential is here, so ...
25 Q Okay. Tell me what -- so you -- tell me
Page: 33
1 what your total valuation is. What's your opinion?
2 A Mine was -- when I got through, I thought
3 Ms. Pope and Mr. Buchanan were about right. I
4 thought at the time it was probably about
5 90 million.
6 Q Okay. And --
7 A So I thought 85 was okay.
8 Q And at the time, what do you -- as in as
9 of the date of his death? What are we saying?
10 A Yes, at the date of his death.
11 Q So it's your professional opinion that at
12 the date of his death, Mr. Brown's estate was worth
13 90 million?
14 A Thereabouts.

Page -93

12 Q Okay. Do you ever value publicity
13 rights?

14 A Have I ever valued them?

15 Q Yes.

16 A A little bit. We used to make shoes for
17 NASCAR. We made them for Dale Earnhardt, Jr. with
18 his logos and things on them.

19 So we were aware of royalty rights that
20 went to Dale Earnhardt, Sr. as opposed to other
21 drivers who got lesser, so -- and for publicity
22 rights that Dale Earnhardt, Sr. --

23 So we worked in that venue. Also, we
24 made products for schools; tennis shoes and novelty
25 items for schools. So let's just say UCLA

Page: 88

1 basketball, shoes drew a lot more money, so a lot
2 bigger royalties going to the UCLA. University of
3 South Carolina basketball in early nineties.

4 Q Okay. But have you ever independently
5 undertaken a valuation of publicity rights to
6 determine what they're worth?

7 A In connection with this and connection
8 with others, yes, we were -- what the publicity
9 rights were; and, again, some subjectiveness to
10 that.

11 Q What were the publicity rights that you
12 valued?

13 A Dale Earnhardt, Sr., NASCAR driver.

14 Q And who hired you to do that?

15 A NASCAR.

16 Q Okay. They hired your firm?

17 A Yes.

18 Q Said: We want you to value the publicity
19 rights of Dale Earnhardt, Sr.?

20 A When he died, there was the firm that
21 made his seatbelts and all the safety equipment
22 that he used, and Carousel Capital in Charlotte
23 owned that company and wanted to know what the

24 publicity rights were -- what they thought the
25 publicity rights were for Dale Earnhardt, Sr., and
Page: 89

1 we helped evaluate that along with several other
2 people who did it, in-house people.

3 Q Who are the other people?

4 A Carousel Capital in-house people.

5 Q Let me ask this: What role did you have
6 in the valuation?

7 A They called me, knew of Carousel Capital
8 and asked me to take a look at the -- just do what
9 Ms. Pope asked us to do in 2013 to see if we
10 couldn't help with the value there. We looked at
11 the publicity rights, which were big.

12 Q I mean, what did that look like? What's
13 the analysis?

14 A How much money would a firm pay for the
15 rights to use Dale Earnhardt's -- Sr.'s persona for
16 a period of time.

17 Q Okay. What did you conclude?

18 A I concluded that was probably worth about
19 \$25 million. I was a little low.

20 Q Okay. Do you -- any other publicity
21 rights that you've valued?

22 A Probably been entailed in some of the
23 stuff we do. But, no, not that I distinctly --

24 Q So the Dale Earnhardt one, you did this
25 in conjunction with Carousel Capital?

Page: 90

1 A They owned it. They owned Simpson Racing
2 which made all the safety equipment.

3 When he died in the wreck in Daytona, it
4 was safety equipment issues.

5 Q Right.

6 A And so the company that made all of Dale
7 Earnhardt's safety equipment for his cars, suits,
8 his helmets, everything, and sold them to tons of
9 other drivers as well, were concerned about

10 exposure with the safety equipment company that
11 they owned. Carousel Capital owned Simpson Racing.

12 Q So help me understand how that fits into
13 the valuation of publicity rights.

14 A Let's just say that Simpson Racing had
15 had a failure of their equipment that caused
16 Mr. Earnhardt's death. His family or his heirs, or
17 whoever had control of his estate, owned his
18 estate -- in this case, Teresa Earnhardt and Dale
19 Earnhardt, Jr. and a few others -- might come back
20 and say: Okay, what are the -- we're entitled to
21 compensation on the publicity rights that we would
22 have had.

23 Q From?

24 A Dale Earnhardt, Sr., had he not succumbed
25 to his injuries caused by your equipment. That was
Page: 91

1 the factor at the time.

2 Q I'm not sure I follow.

3 A If -- if Dale Earnhardt had been earning
4 \$25 million a year -- well, let's say a dollar a
5 year to make the numbers work right -- earning a
6 dollar a year from publicity rights prior to his
7 death as a major star on the NASCAR circuit and he
8 died because Simpson Racing furnished faulty
9 equipment to him, one of the claims by the estate
10 might be: We would have made \$12 over the next 12
11 years from publicity rights of Mr. Earnhardt.
12 Because of your failed equipment, we're not able to
13 earn those. We have a claim against you for \$12

14 or --

15 Q Okay.

16 A -- some number.

17 Q Okay.

18 A So Carousel Capital, which owned the firm
19 that made all the safety equipment and which we had
20 done some work for prior to looking at the shoes
21 that they made that were fire retardant, we were

22 one of the ones asked to come in and help see what
23 the exposure might be; what Dale Earnhardt, Sr.'s
24 persona might be worth that his estate might come
25 after them for.

Page: 92

1 Q Okay. And that was the only time you've
2 done a publicity rights analysis?

3 A Uh-huh -- well, probably been involved in
4 several others, but that specific one, yes.

5 Q Okay. In doing that analysis, did you
6 look at -- did you look at contracts? Did you look
7 at a history of earnings? What did you do?

8 A Where are we now?

9 Q The publicity rights analysis for Dale
10 Earnhardt.

11 A Yeah. You looked at what he -- yeah, but
12 the current deals he had.

13 Q What else?

14 A The potential deals he could do. That
15 almost changed yearly as things would happen in his
16 sport.

...

Page 93

...

22 Q Have you seen -- I believe you testified
23 previously that you've never seen the valuation
24 that was used --

25 A I have not seen Mr. Bauknight or his

Page: 95

1 advisors' appraisal.

...

7 (Initial Designation of Experts and
8 Disclosure of Opinions marked Defense Exhibit
9 Number 2, for identification.)

10 - - -

11 BY MR. WILLIAMS:

12 Q Can you read that first paragraph?

13 A "Alexander is not aware of any facts

14 which could support a willing buyer and a willing
15 seller, each with knowledge of the relevant facts
16 and circumstances, placing a less-than \$4.7 million
17 value on James Brown's music empire at his death."

18 Q Yes, sir. Is that your opinion?

19 A Yes.

...

7 Q Okay. Did you look at any financial
8 documents related to your valuation in preparation
9 for your work on this case?

10 A I looked at the financial documents that
11 were available that Bradley, Dallas, and Cannon had
12 done back at the time.

13 Q And that was -- and in looking at those,
14 that's how you arrived at Defense 1? Defense 1 is
15 the affidavit.

16 A In part. Put it this way: I looked at
17 everything that Ms. Pope and Mr. Buchanan furnished
18 me. So I'm not sure, in retrospect, those were the
19 only financial documents, but they were certainly
20 documents I looked at.

21 Q Okay. Did you look at any financial
22 documents in preparation for coming to this
23 deposition?

24 A Yes. I looked at financial -- some
25 financial documents -- well, key is financial
Page: 97

1 documents.

2 I'm looking at -- when you ask that
3 question, I'm looking at financial statements. I
4 looked at reports, summations, but not what I would
5 call a financial statement.

6 So, yeah, I looked at some documents that
7 became finances. How about that?

8 Q Okay. How many times have you served as
9 an expert witness in a case?

10 A Expert witness?

...

12 THE WITNESS: Let's see. You asked
13 earlier about depositions. Expert witness, I
14 think this would be the fourth or fifth time.
15 Let's see. Eastern District of
16 North Carolina, then there was Bill Belk is
17 one, two, three -- four or -- this being the
18 fourth or fifth.

19 BY MR. WILLIAMS:

20 Q Okay. Have you ever testified at trial
21 as an expert witness?

22 A Yes.

23 Q Okay. Which ones are those?

24 A All the ones I mentioned.

25 Q So those all were --

Page: 98

1 A Trials.

2 Q Okay.

3 A Landcraft Properties, Western District of
4 North Carolina, Piedmont Venture Capital, Eastern
5 District of North Carolina, Bill Belk and family,
6 appropriate investment trial.

7 Q What was the Belk trial?

8 A Bill Belk had invested money out of his
9 children's trusts in certain things which his wife,
10 who they were going through a divorce, felt like he
11 should put back in; they were not appropriate
12 investments, so ...

13 Q Okay. Where was that?

14 A Charlotte.

15 Q What was your testimony or what was
16 your --

17 A That since the money he'd invested from
18 his children were less than 5 percent of their
19 trust in an investment I considered risky, that I
20 thought it was probably appropriate given the
21 amount of money in the trust.

22 Q Okay. What was your -- what was the
23 expert analysis or what was the area of expertise

24 you were qualified by the judge in?

25 A Was the -- was the amount of money that

Page: 99

1 Mr. Belk had invested on behalf of his children's

2 trusts appropriate -- an appropriate investment.

3 Q Okay.

4 A Asked to valuate his investment expertise

5 or his investment choices.

....

26. In connection with my opinion that the joint action of the Attorney General, Mr. Bauknight and Tomirae, both before and since the decision in Wilson v. Dallas, has deprived The James Brown "I Feel Good" Charity of a strong, expert witness to what is necessary to protect the "I Feel Good" Charity, I have reviewed the testimony of a number of experts, including Thomas Pope. Mr. Pope, with Jay Bender, represented journalist Sue Summer in a James Brown Freedom of Information Act case. Some of his April 11, 2017 deposition testimony is set out below:

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF AIKEN

ADELE J. POPE, :

: Civil Action No.:

Plaintiff, :

: 2013-CP-02-1337

vs. :

:

ESTATE OF JAMES BROWN and THE :

JAMES BROWN 2000 IRREVOCABLE :

TRUST, :

:

Defendants. :

DEPOSITION OF THOMAS H. POPE, III, ESQUIRE

DATE TAKEN: April 11, 2017

...

13 EXAMINATION

14 - - -

15 BY MR. WILLIAMS:

16 Q Good morning, Mr. Pope.

17 A Good morning.

18 Q My name is Burl Williams. I'm a lawyer
19 in Greenville, Nexsen Pruet firm, and I represent
20 the estate and trust in a lawsuit that Mrs. Pope
21 brought against it for fiduciary fees.

22 A Right.

23 Q That is the case that we're appearing in
24 this morning.

25 A Correct.

18 A Right. Well, I say where I fit -- of
19 course, it's not my decision to say, but I would --
20 you're asking me so I'll tell you.
21 I fit because I had -- I've seen all the
22 work that Adele has done, but also I have
23 represented a journalist in a FOIA case and I see
24 how much difficulty is added by the attorney
25 general being hardnose, unreasonable, aggressive.

Page 6

1 And so I think in this case, not only has
2 she done lots of work for which she should be
3 paid -- lots of very good work --
4 And I -- I've read her claim and all the
5 documents with it and associated with it, and I've
6 also read Steve Johnson's deposition, and I've been
7 involved in a good bit of probate and fiduciary
8 litigation. I don't do taxes and I don't hold
9 myself out as an expert in estates, but I have seen
10 fights between people over fiduciary duties and the
11 like.

12 And so you ask where I fit. I'd say that

13 Adele and Bob discharged their duties beautifully
14 at great cost, financial and otherwise.
15 The AG made that way more difficult than
16 it had to be. The AG -- particularly Sonny Jones,
17 but the whole thing.
18 You got the attorney general bringing a
19 suit, signing a fee contract that had no party
20 signing it, bringing suit on their behalf without
21 their consent, in league with the estate, your
22 client, and others taking unreasonable positions.
23 The attorney general has already had his
24 hand slapped -- and that would be a light way of
25 putting it -- for trying to orchestrate a
Page 7

1 settlement that completely dismembered
2 James Brown's estate.
3 So I've read a lot of documents, but I
4 think that's where I fit in. The AG made this even
5 more difficult, and Adele and Bob served nobly and
6 well at great cost.
21 Q Well, let's do fact first.
22 A Okay.
23 Q As a fact witness with personal knowledge
24 of the rigors of doing the fiduciary work while
25 being challenged by the AG --

Page 8

1 A Well --
2 Q Let's kind of reboot and you tell me kind
3 of your fact witness position or fact witness
4 thoughts.
5 A It's more expert. But as far as facts
6 go, I'm aware of the work because I see it
7 firsthand; the fact that there are over 120 boxes
8 of documents, I think, and the fact that the
9 difficulty --
10 Because I'm not a probate expert but I
11 have done probate litigation, I am familiar with
12 claims being filed, and there were numerous claims.

13 There was mishandling by the initial appointed PRs
14 and trustees who acted horribly, and the estate
15 files were in a mess.

16 And so I know that Adele and Bob
17 straightened that out and got stability, as
18 Steve Johnson said.

19 But I really rely on the facts as related
20 by Steve Johnson more than what I've seen, but I
21 have seen facts that support everything he says.

22 Q Okay. So then tell me what you would
23 testify to as a fact witness.

24 A Well, it would depend on what the
25 questions were. But I would say that I know
Page 9

1 personally that Adele and Bob worked extremely
2 hard --

3 Q Okay.

4 A -- and that they were castigated at every
5 turn by opposing counsel and claimants' counsel and
6 everybody else.

7 And, you know, you've got one of the
8 children of James Brown had a guardian ad litem who
9 got \$700,000, and that's just a fraction of the
10 participants in the case; not even a principal
11 player and he got \$700,000. So I think her claim
12 is reasonable.

13 Q Did he get 700,000 or did he make a claim
14 for 700,000?

15 A The court approved it, as I understand
16 it.

20 Is that what you think you will testify
21 to as an expert in this case?

22 A And the fact that her job was made more
23 difficult by the AG's office.

24 Q Okay. Tell me -- let's start with expert
25 testimony.

Page 10

1 A Uh-huh.

2 Q Have you ever testified as an expert
3 before?

4 A I have.

5 Q Okay. Will you tell us about that?

6 A I testified one time for Harold Jacobs
7 with your firm on attorney's fees.

8 Q Okay.

9 A I testified in this class action case --
10 this is a long time ago. It was about 2000 -- but
11 Speights & Runyan. They had a plaintiffs' case
12 that was -- as I recall, it was a hearing on the
13 attorney's fees; the reasonableness of the
14 settlement and the attorney's fees.

15 I think I testified for him twice. I'm
16 not sure. I'm not a hundred percent sure.

17 Q Okay.

18 A I gave an affidavit one time for Pope
19 Johnson in connection -- it wasn't really
20 attorney's fees but it was related to attorney's
21 fees. Went to the workers' comp statute, if you
22 settle a workers' comp claim for X dollars and then
23 you bring a third-party action after that and you
24 settle the third-party action for really a fraction
25 of what it really was worth but there wasn't enough

Page: 11

1 insurance or whatever, then you reduce the lien of
2 the comp carrier which creates more for the client
3 and more for the attorney. So sort of collaterally
4 related.

5 Q Okay.

6 A I've given an affidavit to a lawyer one
7 time as an expert on his attorney's fees in a
8 family court case.

9 I don't think there'd be any others. I
10 think that's it.

11 Q Okay. I counted about six. Does that
12 sound right?

13 A Five or six, yeah.

14 Q Okay. Have you ever testified in court
15 as an expert?

16 A Yeah. I did federal court for
17 Mr. Jacobs.

18 Q Okay. That's the only time?

19 A I testified in court as a party once.

...
5 Q Okay.

6 A I've handled a good number of fiduciary
7 cases, but I've never testified about the fees.

8 Q Okay. You were gonna also tell me about
9 the difficulties of litigating when the attorney
10 general opposes you.

11 A Uh-huh.

12 Q Okay.

13 A Well, is that -- yes.

14 Q Okay. Is that an expertise or --

15 A No. That's a fact-based scenario. I

16 don't say the attorney general is always impossible
17 to deal with, but I've known of another case prior
18 to this. But this is certainly a primo example.

19 And the supreme court basically approved
20 that notion. They said the attorney general was
21 way out of his -- out of line when they overturned
22 the settlement in favor of Bob and Adele.
23 And as I understand it, Sonny Jones was
24 defending the agreement, and a chief justice at the
25 oral argument said: "Who did you talk to to
Page: 14

1 determine that these people making undue influence
2 claims had any basis in fact for the claims?"

3 He said he talked to the lawyers for one
4 of the claimants.

5 Q Okay.

6 A Never talked to anybody that helped
7 prepare the will or watched -- or witnessed the
8 will being signed or anything along those lines.

9 And as I recall, the chief justice said

10 to Sonny Jones: "Well, you must not practice in
11 this area much."

12 Q Okay.

13 A So the -- as I understand it, when --

14 You know, Adele and Bob didn't ask for
15 this job. They were asked by the court on a
16 nomination by some of the parties -- I don't
17 remember which one -- to do it because of her
18 expertise and because of Bob's standing also as a
19 fine lawyer with fine reputations.

20 And they undertook this without seeking
21 it. And everybody wanted them, but, for some
22 reason, the attorney general didn't.

23 Q Okay.

24 A And he has fought them every step of the
25 way.

Page: 15

1 Q Okay.

2 A And I don't say it's Alan Wilson and
3 Henry McMaster. I think it's more Sonny Jones.

4 He's given too much power.

5 I'm aware of another estate he handled
6 back in the 1990s that my father and brother
7 handled where Sonny Jones was so difficult. The
8 trust was gonna provide money -- it was a vague
9 trust with three trustees. They had the discretion
10 to decide who to give it to. They knew that the
11 decedent, Buck Brown of Anderson County, loved
12 Clemson. That wasn't the only school he loved, but
13 he loved Clemson.

14 And Sonny was so difficult, that they
15 made the decision to move the trust to Georgia and
16 give the money to the University of Georgia.

17 That's -- my father, his eyes turned
18 green or blue and black every time he thought of
19 Sonny Jones --

...

3 Q Okay.

4 A I've seen the work. I've seen the order
5 of January 2008 where the judge said they were to
6 be paid hourly going forward. And nobody appealed
7 that order on the other side.

8 Q Okay.

9 A It was just a mammoth amount of work. I
10 made some notes going through it.
11 The first is this \$4.7 million estate.
12 When the year he died, the Royal Bank of Scotland
13 valued the royalties only at \$42 million.
14 Cannon offered Yamma and Deanna
15 \$5 million if he could get 5 percent of the estate.
16 Judge Peeples said that James Brown made a million
17 dollars a week when he toured Europe.
18 Terry Cox had a letter of intent of
19 \$100 million for the estate. Corbis GreenLight was
20 a contract that Bob and Adele negotiated right
21 before they were dismissed whereby they would pay
22 \$2 million for publicity rights for two years only;
23 in other words, that was a cash infusion for two
24 years while this appeal went on.
25 And, of course, the PR didn't agree with
Page: 17

1 that so it didn't happen.
2 Bill Sellars, a CPA, helped her prepare
3 the return, and they put a value of \$84 million.
4 Richard Alexander said it was worth more than that,
5 but it was a rumor that Forlando -- I don't know
6 where he was gonna come up with it -- wanted to pay
7 \$150 million for the estate.
8 And then we see recently Toberoff, the
9 leading publicity rights lawyer and copyright
10 lawyer in the entertainment world in the whole
11 country practically, one of the top five, is now in
12 this case filing briefs in the supreme court for a
13 couple of children talking about the proceeds from
14 the copyright termination rights being a very
15 valuable asset.

16 So she was fighting for the estate plan
17 for a reason. She wanted a lot of money to go into
18 the trust, the "I Feel Good" Trust, and Bob did,
19 too.

20 And Bob had to get out because it was
21 ruining his life. He was behind in his home
22 payments. He was a sole practitioner. His wife
23 didn't work. But Adele is not gonna do that, as
24 you probably well know by now.

25 Q Well, I hear you on these -- these

Page: 18

1 instances where you believe somebody has assigned a
2 value to it.

3 A Uh-huh.

4 Q But what's that got to do with being
5 convinced that the fiduciary fee is proper?

6 A Because she did lots of things -- she had
7 to defeat claims, she had to -- Cannon and Dallas
8 filed enormous claims, like 16 million. They stole
9 money that she found out about. The judge praised
10 her in his order of January 2008.

11 She got certification, whatever the word
12 is, for the "I Feel Good" Trust, which hadn't
13 happened -- it should have happened years before
14 but it didn't -- to preserve the integrity of his
15 charitable status.

16 She was the only person -- she and Bob
17 were the only people that were looking at the
18 estate plan and wanted to fulfill it to its
19 maximum.

20 Q Right.

21 A Now if somebody can prove an undue
22 influence claim, let them prove it. Don't get in
23 league with them and try to defeat the estate plan.
24 If somebody can prove they're the wife,
25 which is now on appeal -- and it should be on

Page: 19

1 appeal, even though nobody deposed this woman,

2 which is surprising. I don't expect you to, but I
3 don't know why the limited special administrator
4 didn't.
5 She has fought to preserve this estate
6 plan, and she's done thousands of hours of work. I
7 don't know how many hours. I would say over
8 10,000, 15,000.

...

17 Q Okay.

18 A She also continued to work during the
19 appeal after May 2009 until the supreme court
20 affirmed her position. And she hired a lawyer
21 who -- what was she gonna do? Say: "Here are 120
22 boxes of documents. Go figure out what the appeal
23 is about"? She worked with him.

24 Q Okay.

25 A And she didn't know until after a year
Page: 20

1 after Jim Richardson took the case that he was
2 gonna do it pro bono.
3 And, of course, David Black of your firm
4 challenged his integrity in court and said he
5 wasn't working pro bono, which was just -- make
6 anybody's blood boil. Jim Richardson is
7 Mr. Integrity.
8 And he won the case. And he did what
9 great lawyers do: He synthesized it down to the
10 important issues and he won. All caps, underlined,
11 he won. And Adele won, and Bob won. So she'd been
12 vindicated up to that point.
13 Now, after that -- after 2013 she hasn't
14 done anything. I don't think she's seeking
15 anything beyond that. But she was working during
16 2009 to 2013 to preserve the estate plan by helping
17 her lawyer on appeal.

...

4 Q Okay. You mentioned she got an IRS
5 certification for the "I Feel Good" Trust. You

6 mentioned the January 2008 order.
7 Is there anything else that stands out in
8 your mind of things done that convince you the
9 fiduciary fee is reasonable?
10 A Well, she -- I mean, she hired
11 Ray Gonzalez. She had to go to that house over
12 there. It was -- it was -- the James Brown house.
13 She had to preserve the security of it and found
14 out there was a leak. She had to hire somebody to
15 come take all these boxes full of recordings and
16 take them to Nashville, Tennessee for safekeeping.
17 She was faced with a totally mismanaged
18 trust. So it wasn't like she was starting -- it
19 wasn't like a banker died and had all his documents
20 in neat order and you could go through it and work
21 hard but still figure it out.
22 With James Brown she had to -- she
23 couldn't even get cooperation from James Brown's
24 accountant, let alone the former PRs who were
25 fighting her tooth and nail and stealing money.

Page: 22

1 And she caught them.
2 Q Uh-huh.
3 A And she was praised for catching them,
4 and Cannon got prosecuted for it, although the AG
5 surprisingly didn't bother to come to the
6 sentencing hearing and ask for restitution. That
7 seems bizarre to me. But that's another indication
8 of strangeness.
9 So she did lots of things. The security
10 of the house was a big thing; dealing with
11 claimants. There was suits pending in three states
12 when she took over. She had to hire counsel in
13 other places to deal with them.
14 I mean, there's umpteen boxes of
15 documents that support what she did, and it's set
16 out in her claim.
17 I mean, I could get the document and

18 revive my memory, but her claim and her suit
19 provide plenty of information sufficient to justify
20 the amount she's seeking.

21 Q Okay. Let's look at what I'm gonna mark
22 as Defense 1. And this is an expert witness
23 disclosure.

24 A Okay.

3 Q Okay. Second paragraph talks about a
4 public official taking control of assets.

5 Does that have anything to do with your
6 opinion in this case?

7 A Yeah. He doesn't -- the attorney general
8 doesn't have the authority to take control over the
9 James Brown "I Feel Good" Foundation, but that's
10 what he did.

11 He has authority to supervise it and make
12 sure that the terms of the foundation are carried
13 out. He doesn't have authority to control it. So,
14 yeah, it does.

15 If he hadn't been in here -- the attorney
16 general is the leading law enforcement official in
17 the state. He has a status that is quite high in
18 the eyes of the public.

19 And, honestly, I think that the people
20 that colluded together on the settlement thought
21 that that -- and maybe they were right for a
22 while -- but having him put his imprimatur on this
23 settlement was just gonna grease the wheels and
24 make it slide on through.

25 So she was fighting the chief law

Page: 25

1 enforcement of the state and he did take control,
2 and that's not appropriate. So I think the
3 paragraph is correct.

4 Q Okay. So your opinion all ties into the
5 presence of the attorney general in this
6 litigation?

7 A That one does, yeah.

8 Q Okay. What does Case 4900 or Journalist

9 Sue Summer have to do with this case?

10 A Well, my experience in the Sue Summer

11 case was -- like, I met the same stone walls that

12 Adele has. That's really basically it. Because we

13 were requesting documents.

14 She's a journalist and, on her behalf, we

15 made -- with Jay Bender's, co-counsel, help, we

16 sought out the documents that were very important

17 to the James Brown case and to the public, and

18 those would be the fee agreement Sweeny Wingate had

19 with the attorney general and all the parties,

20 which we got.

21 It was actually produced in the federal

22 case while our FOIA request was pending, but we got

23 that. We asked for the Hynie diaries. They were

24 produced by an unknown, anonymous third party while

25 this was pending.

Page: 26

1 But we prevailed and the judge awarded

2 her attorney's fees in that. We did not get the

3 \$4.7 million appraisal documents because the AG's

4 office said they did not have that.

5 I mean, I'm not denying they did not have

6 those documents, but after the final order was

7 issued, we asked the judge to reconsider

8 whether they -- if they had used those documents

9 under FOIA, then they should still be protected and

10 they should go get those documents from whoever had

11 them and present them to us. And the judge

12 declined to rule on that because the case was over,

13 as he saw it, and he did not rule.

14 But we were successful in large part, and

15 we got Ms. Summer's attorney's fees paid. So

16 that's the relation.

17 I mean, it doesn't -- what it is, it is.

18 We got documents that related to 4900, but that

19 wasn't the only purpose of it.

20 Q Okay. You mentioned the 4.7 million
21 appraisal. Why did you want to see that?
22 A Because it seems preposterous. I mean,
23 she thought it did, I think it does. Anybody in
24 the world thinks it does. You ask a guy on the
25 street that ...

Page: 27

1 Q Do you know -- have you ever seen it?

2 A No, I've never seen it.

3 Q You have never signed a confidentiality
4 order and looked at it?

5 A I've never seen it, any part of it.

6 Q Okay.

7 A I mean, there are farmers in

8 Newberry County that are worth more than that; I

9 mean, honestly. It's ludicrous.

10 He had a \$3 million-plus stream of income

11 every year before he died.

12 Q So you've never looked at it, but you

13 just assume it's incorrect?

14 A I would bet my life on it being

15 incorrect.

5 Q Okay.

6 A I'd say that James Brown is probably --

7 in terms of his cultural popularity, he's probably

8 right there with Elvis. He might be a step behind

9 him, but not much.

10 Q How much in publicity rights did

11 Mrs. Pope and Mr. Buchanan generate during their

12 fiduciary service?

13 A I don't know. They tried to do one with

14 Corbis.

15 Q Do you know the terms of that deal?

16 A I don't.

17 Q Okay. Beyond Corbis, do you know if they

18 generated any other publicity rights?

19 A I don't know.

20 Q How about the prior fiduciaries?

21 A How about what?

22 Q The prior fiduciaries. Were they able to
23 do it?

24 A No. I think they were so busy stealing,
25 they never got around to it.

4 Q If you could just generally look through
5 the -- page 20 of Defense 1.

6 A Right. Uh-huh.

7 Q I read most of this -- it leads with a

8 number of paragraphs saying: "Journalists and
9 citizens have a right to know" ...

10 Is most of this really focused towards
11 something beyond the claims case? I mean, do
12 you --

13 A A lot of this is focused on my attempts
14 to -- under FOIA to get documents and information
15 from the attorney general.

16 Q Okay. I mean, do you think that it would
17 be proper to come down to the trial of this case
18 and discuss all these matters?

19 I mean, do you think they're relevant to
20 the claims case?

21 A I may not discuss them in exactly these
22 words. I think it's relevant to know what the
23 attorney general's bad influence was on this entire
24 estate.

25 He put his imprimatur on things and took
Page: 30

1 positions that were not related to fulfilling the
2 estate plan of James Brown.

3 And to me -- and that's what a trustee
4 and a PR's duty is, is to be single-mindedly
5 focused on implementing the wishes of the decedent.
6 Whether it's James Brown or Joe Smith, that's what
7 you're supposed to do.

8 And the fact that a bunch of heirs want
9 to change that or allege spouses want to change
10 that, it's contrary to what role the PR and the

11 trustee should be playing.

12 Q Okay.

13 A So you would think the AG would want to
14 implement the estate plan, but he was siding with
15 contestants of the will; people who had been left
16 out, omitted children, people who were not spouses.
17 It's astounding, really.

10 Q Yes, sir. Tell me why this Toberoff --

11 you brought this Toberoff printout.

12 Tell me why it's important to you. Why

13 did you bring it here today?

14 A Well, on valuation, I mean, Toberoff is
15 on a filing in the supreme -- in the court of
16 appeals as of counsel on behalf of -- let's see --
17 Deanna Brown, Yamma, and Venisha alleging how
18 important -- that the proposed settlement may
19 violate federal copyright laws and that the
20 proposed settlement would create a conflict of
21 interest for the PRs of the estate who may stand to
22 recover significant fees from the recovery of
23 proceeds from copyright termination rights.

24 I don't know whether that's true or not,

25 but I just mean a guy from Malibu, California is

Page: 34

1 weighing in on a \$4.7 million case on behalf of two
2 heirs or three heirs out of 15 and saying it's
3 significant?

4 So, I mean, it goes to valuation. If the
5 biggest hotshot in publicity rights in America
6 weighs in on behalf of two somewhat minor claimants
7 in this whole estate, then he must think it's worth
8 a lot of money.

...

9 Q Okay.

10 A I know it relates only to 4900, but -- I

11 mean, of course, she didn't have clients because

12 she hadn't got any malpractice insurance because of
13 these oppressive lawsuits against her; like

14 Forlando's and the one that Bauknight is -- 4900
15 that he brought. And it was brought to run her
16 off, to squash her like a bug to get her not to
17 appeal, and that wasn't -- that was like pouring
18 gasoline on a fire.

19 Q Have you ever seen a document that
20 supports that sentence you just made, that the
21 lawsuit was brought in order to run her off?

22 A They told her to -- if she appealed,
23 they'd sue her.

...
11 Q Okay.

12 A I know she turned away clients to handle
13 James Brown.

14 Q Okay.

15 A It was very busy. I mean, she was
16 dealing with misappropriating funds from PRs, she
17 was dealing with an incredible mess of documents
18 that made no sense, which took just a -- just to
19 get them together and put them in -- inventory them
20 and get them in the right form, talking to a CPA
21 that wasn't giving them information and hadn't
22 filed tax returns.

23 I mean, at every turn, it was a difficult
24 task. And when she got appointed as the PR, the
25 task wasn't over. She kind of stopped the

Page: 37

1 misappropriations and caught it and duly handled
2 it, but she and Bob continued then to reconstruct
3 what was there. Hired Bill Sellars and whatnot and
4 consulted with Ray Gonzalez later, and --
5 Very, very busy.

6 Q Okay.

7 A I can't give you each year -- what
8 happened each year, but I know she was very, very
9 busy.

...
14 Q Okay. To state the obvious, you're

15 married to Mrs. Pope?

16 A Correct.

17 Q You may have some -- a little bit of a
18 bias?

19 A I would say, as a husband, I would have a
20 bias, but I wouldn't testify if I didn't believe
21 it.

11 Q Of course, if you come down to Aiken, we
12 try this case, it's fair game to ask you: You do
13 stand to benefit from recovery --

14 A We keep separate bank accounts --

15 Q Okay. Well, let's --

16 A -- so you could draw your own
17 conclusions.

18 I don't stand to benefit. I think her
19 intentions are to give a lot of this money to
20 charity, whatever she gets, but that's her
21 business.

22 Q Well, I never asked that question during
23 the deposition, so perhaps you can amplify on it.

24 Do you know what the intention is if a
25 full fee recovery were provided?

Page: 42

1 A Well, A: I'd say that's nobody's
2 business; but, B: She has said she intends to give
3 a good bit of it to charity, and we are very
4 charitable oriented.

5 That's one influence she's had over me.

6 I give as much as I can give to the charities that
7 interest me, which are most of the Newberry Opera
8 House, the Newberry YMCA, and my college.

22 BY MS. POPE:

23 Q I have just two questions: Could you
24 briefly describe the documents that you brought and
25 that you looked at in preparation for this

Page: 43

1 deposition?

2 A I looked at Steve Johnson's deposition, I

3 looked at the claim you filed, plus all the

4 supporting documents, which is about 4 inches

5 thick -- yeah, 3, 4 inches thick.

6 I looked at your deposition, Alan

7 Wilson's, the Forlando suit, bunches of court

8 orders, the report of Jim Hardin. Complaint in

9 4900 I did not look at, but I'm aware of the fact

10 there are 130-plus boxes of documents that you

11 dealt with.

12 But your supplemental affidavit in

13 support of the claim furnishes a large portion of

14 those documents.

15 Q Did you also look at your own files?

16 A Oh, yeah. I had my FOIA files for

17 Sue Summer against the AG, which are four pleadings

18 notebooks probably 4 or 5 inches high. Looked at

19 those.

20 But -- of course, I was familiar with

21 them, but I did glance at them.

27. I have reviewed documents which show that since the Wilson decision Mr.

Sojourner was paid about \$1.5 Million; Mr. Bauknight's lawyers have been paid several

millions; Tomirae's son's guardian ad litem and lawyer have been awarded about

\$700,000; and other funds have been spent to help Tomirae and to continue to

discredit Mr. Buchanan and Mrs. Pope.

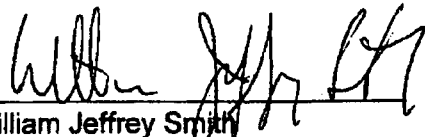
28. The Attorney General and Mr. Bauknight have allowed Tomirae to be paid

\$1 Million from 3 James Brown songs and, so far as I can see, have done nothing to

challenge the termination rights Tomirae is attempting to exercise to take a portion of

the "I Feel Good" Charity's royalties to 90 or so of its 900 copyrights between now and 2023.

FURTHER DEPONENT SAYETH NOT.


William Jeffrey Smith

SWORN TO BEFORE ME this 14th
Day of July, 2017

 (L.S.)
Notary Public for South Carolina
My commission expires: 8/27/2023

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

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION TO ALTER, AMEND
VACATE AND/OR RECONSIDER
ORDER GRANTING ATTORNEY
GENERAL'S MOTION TO BE
DROPPED AS A PARTY

RICHLAND COUNTY
FILED
2017 JUL 19 AM 10:51
JEANETTE W. MCBRIDE
C.C.P. & G.S.

TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS AND/OR THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as

soon thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope") will move pursuant to Rules 52 and 59(e), SCRPC, and all applicable South Carolina Rules of Civil Procedure, for an order vacating altering or amending the Order Granting Attorney General's Motion to be Dropped as a Party of the Honorable Doyet A. Early, III ("Jg. Early"), dated May 31, 2017 and filed June 12, 2017, a copy of which is attached hereto as Exhibit A (the "Order"). Notice of entry of the signed order was received on July 10, 2017.

Summary of Relief Requested

For one, more or all of the following reasons, and based on the Answer and Counterclaim of Pope and Robert L. Buchanan, Jr. ("Buchanan"), this Court should alter, amend, vacate and/or reconsider its May 31, 2017 Order:

- a. The Attorney General has, with knowledge that it was illegal and without merit, pursued this action to damage and discredit Buchanan and Defendant by making them appear incompetent, greedy and hostile, so that the Attorney General and Tomirae could personally benefit from funds James Brown gave for scholarships for needy students through his James Brown "I Feel Good" Charity.
- b. The Attorney General has carried out the scheme to damage and discredit Buchanan and Defendant through taxpayer-paid staff; the James Brown Legacy Trust ("McMaster Legacy Trust"), over which the Attorney General and Tomirae hold 75% voting control; and Russell Bauknight ("Bauknight"), acting "on behalf of the Attorney General of the State of South Carolina.
- c. In carrying out the scheme to discredit and damage Buchanan and Defendant, the Attorney General, with Tomirae and Bauknight intentionally undervalued James Brown's Right of Publicity and iconic personal property at zero, or near zero in Brown's Internal Revenue Service proceeding ("IRS"); overstated Brown's debts by \$5 Million to the IRS; obtained an ill-gotten "refund" from the IRS, then used that ill-gotten IRS "refund" to claim Buchanan and Pope had committed a federal felony by properly valuing Brown's music empire at \$84 Million.
- d. In carrying out the scheme to discredit Buchanan and Defendant, the Attorney General, with knowledge of his alliance with felon David Cannon and history of Dirty tricks, condoned and/or joined David Bell, Esq. ("Bell") in planting the false

Grammy © post related to Robert Potter, Esq., which was noted by the Supreme Court in *Wilson v. Dallas*.

- e. The Attorney General has, since telling the Supreme Court in 2013 he was seeking to be dropped as a party to this action, pursued it more vigorously; condoned Bauknight's waste of millions of dollars of Brown's "I Feel Good" Charity to try to discredit Defendant; evaded and consolidated James Brown Freedom of Information Act ("FOIA") requests with this case; taken no action to make Bauknight correct the false IRS filings, which damage the "I Feel Good" Charity; condoned a payment of \$700,000.00 in legal and GAL fees for Tomirae's son from Brown's Charity; and continued to take other actions prejudicial to the administration of justice which violate his Constitutional and Statutory duties.

For the above reasons, and each reason stated in Defendant's Motion to Alter, Amend or Vacate the Partial Summary Judgement Order of Judge Early granted to the Attorney General and others, the entirety of which Motion is incorporated herein, the Order should be vacated and this 7-year-old case, including Defendant's counterclaims (and Buchanan's if his settlement is found to be void), should proceed to trial.

The Attorney General's Staff Had Knowledge the Wingate Suit was Illegal

1. The Court overlooked or misapprehended that this action, commenced on May 19, 2010, by the filing by private attorneys Sweeny, Wingate & Barrow, P.C. ("Wingate Firm"), on behalf of then-Attorney General, now Governor, Henry D. McMaster ("Governor McMaster") and Bauknight "on behalf of" the Attorney General and others, was unconstitutional and illegal when filed because a private law firm was sole counsel both to Tomirae and other nonresidents, including minors, and the Attorney General.
2. The Court overlooked or misapprehended that, based on his sworn deposition testimony in 2016, Governor McMaster did not authorize the Wingate Firm to bring this suit in the name of the State/Attorney General, and did not authorize Bauknight to sue Buchanan and Defendant on behalf of the State/Attorney General.
3. The Court overlooked or misapprehended that the deposition given by Governor

McMaster, on October 19, 2016, demonstrates how Defendant has been deprived of a level playing field by the Attorney General in this suit, including not having been paid \$47,000 (ordered to be paid with interest in 2008) for her 2007 SA service to James Brown's estate, and nothing for the six years between November 20, 2007 and May 8, 2013 while she worked protect James Brown's noble estate plan and "I Feel Good" Charity:

4. **Q. Right. I want you to refresh your recollection**

5. **8 for as long as it takes because I want to talk to**

6. **9 you about whether my -- the opposition of Bob**

7. **10 Buchanan and Adele Pope to the settlement was**

8. **11 reasonable. Because my commission --**

9. **12 A. Well, I'll tell you -- I'll tell you that now. I**

10. **13 would say no because that's --**

11. **14 Q. Well, I need to know why.**

12. **15 A. Well, ma'am, that's going to -- if you're wanting**

13. **16 me to read this and be able to engage in that kind**

14. **17 of discussion, --**

15. **18 Q. I do.**

16. **19 A. -- you're going to miss your plane.**

17. **20 Q. That's all right. I can miss it.**

18. **21 A. And, by the way, that is not my signature.**

19. **22 That's -- someone apparently signed it for me.**

20. **23 Q. Well, if someone signs your signature and is not**

21. **24 authorized to do it, you have means to fix that,**

22. **25 don't you?**

23. **Page 50**

24. **1 A. Mrs. Pope, they would have been authorized to do**

25. **2 it. I'm not asserting that any of these documents**

26. **3 are fraudulent.**

27. **4 Q. Well, Mr. McMaster, you sued me six years ago, --**

28. **5 A. Ma'am, I did not sue you.**

29. **6 Q. -- and I have -- please let me finish the**

30. **7 statement and the question. And I have not been**

31. **8 --**

32. **9 A. That's a statement.**

33. **10 Q. -- paid for my work since 2007 as a result of the**

34. **11 suit you brought against me, so I'm here today to**

35. **12 find out whether there was any basis for bringing**

36. **13 that suit. Judge Early has been told that I**

37. **14 cannot be paid until Richland 4900 is concluded,**

38. **15 and so I need to know what your basis for suing me**

39. **16 for conducting an appeal of 4900 was, whether it**

40. 17 was reasonable?

41. 18 A. Ma'am, I did not sue you, --

42. The Court overlooked or misapprehended that Sr. Assistant Attorney General Sonny Jones ("AG Jones"), however, worked with Tomirae, Bauknight and the Wingate Firm for approximately two months before the suit was filed, including intense work between May 12 and May 18, 2010, finalizing the complaint; deciding who would sign the complaint; and approving the complaint itself.

43. The Court overlooked or misapprehended that even though Governor McMaster had no knowledge that the Attorney General was a named Plaintiff; that Bauknight was named as a Plaintiff acting on behalf of the Attorney General; or that he (through AG Jones) and Tomirae were controlling the Wingate litigation through their 75% ownership of the McMaster Legacy Trust he had created, Governor McMaster had a duty to see that the staff on which he relied did not bring a frivolous lawsuit which was patently illegal under the *Santa Clara* case and the ruling of Judge Crouch in the *Eli Lilly* case issued in 2009, both of which set out in detail the control by the Attorney General and other terms necessary to prevent the use by the Attorney General of Special Counsel legal from violating Due Process rights of Defendants.

44. The Court overlooked or misapprehended that, in addition to Governor McMaster, former Chief Deputy John McIntosh ("AG McIntosh") and Solicitor General Robert Cook ("AG Cook") were aware of pressure to file suit against Buchanan and Pope by AG Jones and Tomirae's lawyer Alan Medlin ("Medlin"); and each has stated under oath that he did not, and could not, authorize the Wingate Suit to be filed in the name of the State/Attorney General or authorize Bauknight to act as a Plaintiff "on behalf of" the Attorney General.

[Depos., McIntosh, 2/8/17 ; Depos., Cook, 2/8/17.]

45. The Court overlooked or misapprehended that AG Jones was an expert on the operation of the Attorney General's Special Counsel Litigation Retention Agreements, and knew that both the Wingate Agreement and the Complaint violated constitutional requirements and the Due Process Rights of Buchanan and Pope because. [Depos., Jones, 5/4, 5/16.]

46. The Court overlooked or misapprehended that AG Jones, like Bauknight, Louis Levenson, Esq. ("Levenson") and Tomirae's lawyers knew that all of the claims of wrongdoing they were making were false, and intended to cover up false allegations the Attorney General, Tomirae, Levenson and Bell had made to Judge Early, and would continue to make to the Appellate Courts.

47. The Court overlooked or misapprehended that, under oath, neither AG Jones or nor Assistant Attorney General Mary Frances Jowers ("AG Jowers"), who, according to Wingate Attorney Everett Kendall, Esq. , worked on every aspect of the Wingate Suit from its planning until Kendall was no longer involved in it for personal reasons more than a year after the suit was filed[See Depos. E. Kendall, 3/6 / 17 Aiken Case No. 2013-CP-02-1337], either claimed to lack memory of these events; claimed protection as to communications with Medlin, Levenson, Bell and Bauknight under the "Common Interest" doctrine; or declined to answer for other reasons. [Depos. Jones, Jowers]

48. The Court overlooked or misapprehended that the terms of the Wingate Litigation Agreement put the Attorney General and Tomirae in effective control of the Wingate suit, and with increased control after the *Wilson v. Dallas* decision, but there is no known document authorizing Bauknight to sue on behalf of the State/Attorney General.

49. The Court overlooked or misapprehended that the Wingate Agreement was signed by Bauknight and attorneys who would reap about \$10 Million in contingency legal fees if they could stop the *Wilson v. Dallas* appeal, but not by most Plaintiffs.

50. The Court overlooked or misapprehended that, even though the Wingate Agreement, on its face, declares that it is a public document and subject to the Freedom of Information Act ("FOIA"), the Attorney General, Bauknight and Wingate – for 7 years – have wasted both State and James Brown's "I Feel Good" Charity's funds trying to keep the Wingate Agreement secret.

51. The Court overlooked or misapprehended that AG Jowers and AG Jones have not spoken candidly about the false claims of the Wingate Suit both because both seem to have little memory and because the Attorney General is claiming that the "common interest " they have shared with Bauknight (since 2008), with Wingate (since 2011), and with Tomirae's and James B's attorneys (from 2008 until May 8, 2013) shields their wrongful communications with Medlin, Levenson, Peter Shahid, Esq. ("Shahid") and others.

52. The Court overlooked or misapprehended that, despite multiple efforts (as described below) to obtain the Wingate Agreement, the Attorney General, Bauknight and Wingate Firm were able to conceal this public document until September 2013, four months after the *Wilson v. Dallas* decision (May 8, 2013), and three months after Judge Early banned Buchanan and Defendant from being witnesses or otherwise participating in the James Brown Aiken County cases (June 13, 2013).

53. The Court overlooked or misapprehended that when the Wingate Suit was filed, Governor McMaster had actual knowledge from Philanthropist John Rainey and others that AG Jones had been waging a personal vendetta against Buchanan and Defendant since

November 2007, when they declined to agree to let Governor McMaster control the litigation against felon David Cannon; use McMaster's Special Counsel Agreement which gave his office 10% of the fee earned by the attorneys; and allow AG Jones to select a political supporter of McMaster as counsel, rather than attorneys Few & Gilreath, who had been selected by Buchanan and Pope.

54. The Court overlooked or misapprehended that two months before filing suit, in March 2010, Tomirae's lawyer and Bauknight's lawyer had both threatened to sue Buchanan and Pope if they did not drop the appeal which became *Wilson v. Dallas*.

55. The Court overlooked or misapprehended that, in response, Buchanan and Pope presented the Attorney General with a complete Agreement by which they would have resigned and allowed the McMaster settlement deal to be implemented, subject only to two conditions: 1. the Appellate Court approve the Agreement, which stated that the Attorney General could -- and had -- substituted his judgment for that of Buchanan and Defendant; and 2. The Agreement needed to be signed by GALs for the minors (whose education trusts had been damaged by their own parents' agreeing to the McMaster settlement).

56. The Court overlooked or misapprehended that the Attorney General and settling parties would not respond, despite repeated requests, to the proposal.

57. The Court overlooked or misapprehended that at the time this suit was filed, the Attorney General, Bauknight and all other Plaintiffs had knowledge, as defined in the S. C. Trust Code, that:

- a. Tomirae, by her own handwritten admissions, was married, living in Texas with her husband, and thought she might be pregnant before meeting James Brown and, later concealing her marriage and conducting a bigamous ceremony with Brown.
- b. Buchanan's and Defendant's \$84 Million [\$99 Million less \$15 Million TIAA

Debt] value of Brown's Music Empire on Schedule F of the sworn Estate Tax Return was correct and conservative.

- c. The McMaster settlement deal generated millions of dollars in estate, excise and income taxes.
- d. Governor McMaster's settlement threatened the "I Feel Good" Charity's plan to minimize the impact of Federal Copyright Act Termination Rights on the "I Feel Good" Charity because McMaster stopped the Estate's DNA testing protocol; declared fewer than half of Brown's claimed heirs to be James Brown's heirs; and "stipulated" that Tomirae would be considered to be Brown's spouse despite overwhelming evidence to the contrary.

58. The Court overlooked or misapprehended that since August 2009, Tomirae, AG Jones and Bauknight had been working on a scheme to discredit Buchanan and Defendant by devaluing Brown's 900 copyrights to \$24 Million or less; valuing Brown's Right of Publicity at zero; and then claiming Buchanan and Pope had overvalued the assets to get a big commission. [See Email, Medlin 8/30/09]

59. The Court overlooked or misapprehended that Buchanan and Defendant moved to dismiss the complaint, in part because it was illegal and violated their Due Process rights.

60. The Court overlooked or misapprehended that a week after the Wingate Suit was filed, a principal in the Wingate Firm made a \$1,000 contribution to McMaster's campaign.

61. The Court overlooked or misapprehended that Buchanan and Defendant, subject to the Motion to Dismiss, served an Answer and Counterclaim the entirety of which is incorporated herein.

62. The Court overlooked or misapprehended that, when served, a member of the Wingate Firm marked the Answer and Counterclaim "file;" failed to timely respond; then, on November 17, 2010, moved for relief from default.

63. The Court overlooked or misapprehended that on August 30, 2010, the motion to dismiss and other matters were heard by the Honorable L. Casey Manning ("Judge

Manning”), and AG Jones attended and was introduced by Wingate as one of Wingate’s many clients.

64. The Court overlooked or misapprehended that, after discussing the issue with AG Jones over a lunch during the hearing, Wingate assured Judge Manning that AG Jones was familiar with the *Santa Clara* case and Judge Couch’s Order; that the Wingate Suit was legal; and that Judge Early had already ruled on the issue. [Tr., Hg. 8/30/10]

65. The Court overlooked or misapprehended that Governor McMaster answered interrogatories before leaving office on January 11, 2011, but they were verified by his successor in office, Attorney General Alan M. Wilson (“Attorney General Wilson”).

66. The Court overlooked or misapprehended that in December 2010 the Attorney General, Bauknight and others filed their initial brief in *Wilson*, making the false claim that Tomirae and others had valuable Federal Copyright Act Termination Rights, but that the value of the Termination Rights could not be determined because Buchanan and Defendant had not secured an appraisal.

67. The Court overlooked or misapprehended that the Attorney General and Bauknight had received the Philpott, Ball, Werner (“PBW”) appraisal three months earlier, in September 2010, but decided not to disclose it to the Supreme Court for eight months.

Attorney General Wilson Authorizes the Continuation of the Wingate Suit

68. The Court overlooked or misapprehended that, upon taking office in January 2010, Attorney General Wilson authorized the Wingate Suit to continue.

69. The Court overlooked or misapprehended that in January 2011 the false Grammy © claim which would later be cited by the Supreme Court, was placed on a law firm website by Bell and his clients, with the apparent knowledge and consent of the Attorney General.

70. The Court overlooked or misapprehended that at the time the Attorney General had actual knowledge of dirty tricks played by Bell, who was aligned with felon David Cannon, including the filing of multiple false grievances against Levenson in two states, even accusing Levenson of forging his fee contract with a grandchild of James Brown.

71. The Court overlooked or misapprehended that several years later, after the *Wilson* decision referenced the false Grammy © claim, Robert Potter, Esq., who was attributed with halting the Grammy © sale, responded to Pope's inquiry saying we was not aware of the post. [See Aff. E. Alexander.]

72. The Court overlooked or misapprehended that on February 16, 2011, Defendant filed a Petition for Writ of Prohibition in the Court of Appeals, seeking to prevent the Attorney General from continuing the Wingate suit and/or from sharing private contingency-fee counsel with the private Plaintiffs, and the Attorney General, through Wingate, opposed the petition.

73. The Court overlooked or misapprehended that in April 2011 Termination Rights expert Wm. Jeffrey Smith and Defendant circulated a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* for review by professionals.

74. The Court overlooked or misapprehended that *Private Foundations* explains how the Attorney General's incorrect determination of heirs; misunderstanding of the Federal Copyright Act Termination Rights; refusal to properly conclude the Estate's DNA testing protocol; and devaluation of Brown's assets after giving Bell's client a right of first refusal to buy James Brown Music Empire, would leave Brown's "I Feel Good" Trust with almost nothing.

75. The Court overlooked or misapprehended that on or about May 5, 2011 the Attorney General and Bauknight made the known false claim to the Supreme Court that the Internal Revenue Service had determined that the assets on Schedule F of James Brown's Estate Tax Return, referred to by Buchanan and Defendant as the "Music Empire", had a value of less than \$4.7 Million; that no estate tax was payable by Brown's estate under the McMaster settlement deal; and that Bauknight had even obtained a refund.

76. The Court overlooked or misapprehended that the \$4.7 Million claim and the ill-gotten "refund" were the result of material, false statements made to the IRS by Bauknight, the full extent of which would not be understood by Defendant and Buchanan until after the first *Wilson v. Dallas*, as described in more detail herein.

77. The Court overlooked or misapprehended that from mid-2011 until today (as later explored in detail) the Attorney General, Bauknight and Bauknight's advisors have repeated to the Supreme Court and other courts, based on the ill-gotten "refund," the known false claim that McMaster settlement deal saved estate taxes; that Buchanan and Defendant misled the Courts about the tax consequences of the McMaster settlement; and that Buchanan and Defendant intentionally overstated Brown's music empire by \$79 Million to get a \$5 Million commission.

78. The Court overlooked or misapprehended that the Attorney General fully understood that, as the State's highest legal officer, and charged with the protection of charities, The Attorney General's false accusation that Buchanan and Pope had overstated James Brown's Music Empire by \$79 Million to the IRS to get a \$5 Million commission, a federal felony, would make them appear both incompetent and greedy.

79. The Court overlooked or misapprehended that on August 1, 2011 the Supreme

Court declined to supplement the record on appeal ("ROA") with the \$4.7 Million claimed value, but would later cite the Attorney General's accusations based on the false the \$4.7 Million claim, and the false planted Grammy © claim, as reasons not to disturb Judge Early's decision to replace Buchanan and Defendant.

80. The Court overlooked or misapprehended (as more fully set out below) that in August 2011 the Attorney General began to evade FOIA requests while Bauknight, working with the Attorney General, began trying to intervene in James Brown FOIA cases; move them to Richland County; consolidate them with the Wingate Suit; and prevent release of public documents which would show the \$4.7 Million claimed value was fabricated; Tomirae was not Brown's spouse; and that the Wingate Suit was illegal.

81. The Court overlooked or misapprehended that in September 2011 the Attorney General told Judge Manning he was ready and "more than willing" to release the Wingate Agreement, but his Wingate Firm lawyer simultaneously argued it was private and could not be released.

82. The Court overlooked or misapprehended that in October 2011, while suing Buchanan and Defendant for tens of millions of dollars and falsely accusing them of a felony, the Attorney General allowed former trustee David Cannon – who had taken \$17 Million of funds James Brown gave his "I Feel Good" Charity --- to enter an *Alford* plea, and the Attorney General neither sought jail time nor restitution.

83. The Court overlooked or misapprehended that Tomirae's lawyers helped prepare Bauknight's lawyers for the *Wilson* Supreme Court oral arguments held November 1, 2011.

84. The Court overlooked or misapprehended that on the day before the Supreme Court oral argument in *Wilson*, which was attended both by Attorney General Wilson and

former Attorney General McMaster, Bauknight's lawyer was quoted in more than 330 media outlets making vicious statements attacking Buchanan and Pope, even saying that the Court's reinstating them would be like "throwing a hand grenade into the James Brown estate."

85. The Court overlooked or misapprehended that at the Wilson oral argument Bauknight, through counsel, made known false and/or misleading statements to the Supreme Court about the value of Brown's assets; Brown's heirs; the Federal Copyright Act Termination Rights provisions; and Tomirae's marital status, most or all of which the Attorney General and Bauknight knew to be false.

86. The Court overlooked or misapprehended that Bauknight's counsel told the Supreme Court Tomirae's elective share claim was a "slam dunk;" James Brown's estate and 2000 Trust had no corpus to speak of; Tomirae and her son controlled the Federal Copyright Act Termination Rights; and that the *Please, Please, Please* royalties would automatically be lost by the "I Feel Good" Charity in 2012 if the McMaster settlement deal were not upheld.

87. The Court overlooked or misapprehended that Bauknight, with others, claimed incorrectly that because of Termination Rights there would be nothing left in the "I Feel Good" Charity in 2023 if the McMaster Settlement were not upheld.

88. The Court overlooked or misapprehended that the Attorney General and Bauknight had actual knowledge that Brown's valuable Right of Publicity was not subject to Termination Rights, nor were Brown's non-American copyrights, his personal property, or his multi-million-dollar claims against Cannon, Greenberg Traurig and others.

89. The Court overlooked or misapprehended that Peter Afterman had identified more

than 200 songs of other artists which sampled James Brown's songs, and royalties from many of the samplings, as well as Brown's own copyrights from the late 1990s and later, would not be threatened by Termination Rights election attempts until 2030 or later.

90. The Court overlooked or misapprehended that in April 2012 Federal Judge William O. Bertelsman, at the request of Forlando Brown, dropped Forlando's frivolous Complaint to enjoin the James Brown 2000 Trust until felon David Cannon and Albert Dallas were reinstated, along with claims against Buchanan and Defendant he had made in amendments to the Complaint.

91. The Court overlooked or misapprehended that Bauknight, with secret knowledge that Terry Brown's interest in James Brown's estate had been transferred to Forlando a year earlier, allowed Forlando to lie to Judge Bertelsman, telling the Court that he had no assets and had no expectation of assets from the James Brown litigation unless Terry Brown died.

92. The Court overlooked or misapprehended that Judge Bertelsman stated that his father had told him you could not squeeze "blood out of a stone," the attitude Judge Bertelsman would adopt with respect to Forlando; which both Bell and Bauknight knew to be false; and which neither corrected.

93. The Court overlooked or misapprehended that in the spring of 2012 Buchanan, who had not been paid for James Brown work since 2008, was experiencing serious financial hardship and was forced to settle with the Attorney General.

94. The Court overlooked or misapprehended that, before allowing Buchanan to be paid, the Attorney General and settling parties extracted a commitment that Buchanan do nothing to help Defendant try to save James Brown's "I Feel Good" Charity, and that

Buchanan not file a Petition for Rehearing when the *Wilson* decision was rendered.

95. The Court overlooked or misapprehended that the Attorney General did not tell the Appellate Court in *Wilson* of this unconscionable requirement; tried to make it appear to the Court that Buchanan was at odds with Defendant; and that a Motion to Void the unconscionable requirement is still pending.

96. The Court overlooked or misapprehended that in 2012 the Attorney General allowed Brown's "I Feel Good" Charity to pay Buchanan \$500,000.00 to secure releases for himself, Bauknight, and Tomirae and from Buchanan's counterclaims in this lawsuit, and neither Tomirae nor anyone else has repaid Brown's "I Feel Good" Charity.

97. The Court overlooked or misapprehended that in August 2012 the Attorney General and others obtained an "emergency" oral order from Judge Manning stopping the deposition of their own witness, Albert "Buddy" Dallas, when it became clear that Dallas was going to testify that Tomirae was not Brown's spouse, but Dallas gave a sworn statement confirming Tomirae's handwritten admissions that she was not Brown's spouse, as well as a 2006 three-way conversation he, Tomirae and Brown had confirming that they were not married.

98. The Court overlooked or misapprehended that after the *Wilson* oral argument, the attacks on Defendant and others related to the attempt of the Attorney General and Bauknight to conceal evidence that Tomirae was not Brown's spouse; the Wingate Suit was not legal; and the \$4.7 Million value was fabricated became more vitriolic.

99. The Court overlooked or misapprehended that in 2012, in an effort to prevent release of Tomirae's already public handwritten admissions that she was not Brown's spouse from Judge Early's *ex parte* unconstitutional gag orders issued in 2008,

Bauknight's counsel told Judge Early he had already found Tomirae to be Brown's spouse; the Attorney General and Bauknight called Pope's court filings "works of fiction"; and both made claims that the Attorney General and "family" were tired of Defendant's meddling.

100. The Court overlooked or misapprehended that, as a result of the joint efforts of the Attorney General, Tomirae and Bauknight, Judge Early declined to void the 2008 gag orders, thereby preventing discussion of the already-public handwritten admissions, which Tomirae's lawyer incorrectly tried to characterize as a "diary" until after Judge Early had ruled in 2015 that Tomirae was Brown's spouse.

101. The Court overlooked or misapprehended that since 2011 journalists, public officials (now Sen. Tom Young) and other citizens have provided affidavits urging the Attorney General to release public James Brown information, but he has refused.

102. The Court overlooked or misapprehended that in 2012 the Attorney General filed a Motion for Guidance Related to Pre-Trial Publicity, and filed more than 100 articles, including those by journalist Sue Summer, in this case.

103. The Court overlooked or misapprehended that the articles filed by the Attorney General, including those in the *New York Times*, as well as local and Augusta articles, help demonstrate the Attorney General's and Bauknight's efforts to discredit Buchanan and Defendant and praise Bauknight for fighting for the McMaster Settlement [Mot. PreTr. Publ.]

104. The Court overlooked or misapprehended that in July 2012 the Attorney General and others secured an Order for mediation in this suit, even though there had been very little discovery.

The October 12, 2012 Wingate Suit Mediation

105. The Court overlooked or misapprehended that after securing an Order for Mediation on July 30, 2012, the Attorney General and others began to seek exemption for the parties from attending the mediation, while at the same time forcing Defendant to have her carrier there to waste Defendant's fast-depleting professional negligence fund.

106. The Court overlooked or misapprehended that the Attorney General had actual knowledge that Defendant's and Buchanan's carriers had provided attorneys to defend the 2000 Trust in Forlando's injunction suit from 2008 until May 2009, including in a 2-day temporary injunction hearing in Beaufort, S.C. in the fall of 2008; participate in extensive discovery; and attend several additional telephone hearings.

107. The Court overlooked or misapprehended that both Buchanan and Pope had experienced a large increase in their premiums as a result of Forlando's frivolous suit; and that the 2000 Trust was seeking to have those legal fees and costs reimbursed out of Forlando's \$285,000 trust share.

108. The Court overlooked or misapprehended that Buchanan and Defendant had found alternate insurance with Cincinnati, but that, upon the filing of the Wingate Suit, Cincinnati had sent notice of cancellation of the insurance of both, and had sued Buchanan and Pope.

109. The Court overlooked that the Attorney General had knowledge that if he could deplete Pope's fund with her carrier, it would be even more difficult for her to try to save the "I Feel Good" Trust.

110. The Court overlooked or misapprehended that, after requiring that Pope's carrier attend the mediation, the Attorney General sought an exemption from attendance

for Tomirae and many of the Levenson clients, and fought Defendant's efforts to have the minors, and Venisha, who was incarcerated, and who were pursuing the Wingate Suit as Plaintiffs without GALs, represented by GALs at the mediation.

111. The Court overlooked or misapprehended that Defendant sent Offers of Compromise to the minors and the Attorney General prior to the mediation, but, instead of seeing them as an opportunity to save the "I Feel Good" Charity, the Attorney General and others, through Wingate, filed the Offers of Compromise and asked that they be stricken.

112. The Court overlooked or misapprehended that the Attorney General claimed that that Defendant was trying to divide the Plaintiffs, which was true: Defendant wanted to be aligned with the half (or half + 1) of James Brown's heirs who wanted to be fairly – but not overly – compensated for Federal Copyright Act Termination Rights cooperation with James Brown's "I Feel Good" Charity.

113. The Court overlooked or misapprehended that by 2012 the Ray Charles litigation over Termination Rights was demonstrating how important it is for an Estate which owns significant copyrights which feed into a charity to maneuver the complex relationship between the Federal Copyright Act Termination Rights provisions; State Probate law; and the need for independent trial counsel protecting the Estate/Charity who have no legal obligation to family, or claimed family.

114. The Court overlooked or misapprehended that, with Judge Manning's consent, only a handful of Plaintiffs attended the mediation, and, instead, Levenson, Bell, and counsel for Tomirae attended with AG McIntosh, AG Jones and AG Jowers.

115. The Court overlooked or misapprehended that Wingate assured Judge Manning that Levenson had the authority to speak for, and bind, about a dozen Plaintiffs,

when actually Daryl Brown had terminated Levenson, as had Daryl's daughters.

116. The Court overlooked or misapprehended that Tomirae and James B. did not attend, and neither did James B's GAL in the Aiken cases. Instead, James B. was represented by Medlin and Bauknight.

117. The Court overlooked or misapprehended that Tomirae issued a public post on the day of the mediation suggesting that Defendant had stolen from the family and was "the last of the rats."

118. The Court overlooked or misapprehended that in 2017 Bauknight would claim under oath that Pope would not settle for \$40 Million, when the truth was that Pope said in October 2012 that if dropping the *Wilson v. Dallas* appeal to try to save the "I Feel Good" Charity before the decision was a condition of being paid, she would not accept payment, no matter what was offered.

119. The Court overlooked or misapprehended that the public charts and records, including those prepared by Defendant in 2012, make clear that AG McIntosh, AG Jones and AG Jowers all had personal knowledge by 2012 of Bauknight's material misstatements, by millions of dollars, to the IRS; the ill-gotten "refund"; and the improper use of the false filings by the Attorney General, Bauknight, and others to commit fraud on the courts and improperly accuse Buchanan and Pope of a federal felony.

120. The Court overlooked or misapprehended that those public October 2012 Charts include: 1. What Levenson Wants; 2. What Adele Wants; 3. What Daryl wants; 4. What Tommie Rae Wants; 5. Bauknight/Legacy Trust Fraud; and 6. What Nexsen Pruet Wants, and each is incorporated herein by reference.

1st *Wilson v. Dallas* Decision; Pope Meeting; & Attorney General's Actual Knowledge of Bauknight's False Claims to IRS; Ill-Gotten "Refund"; & False Statements to Court (March 6, 2013)

121. The Court overlooked or misapprehended that in December 2012 Defendant's daughter, who had two young children, suffered an event requiring a brain tumor to be removed, and Defendant to work on James Brown matters in another town while she recovered.
122. The Court overlooked or misapprehended that almost immediately after the event the Attorney General and other Plaintiffs moved for a scheduling order and trial of this case in the summer of 2013.
123. The Court overlooked or misapprehended that the first *Wilson v. Dallas* decision which was rendered on February 27, 2013, cited almost identical facts to the false Grammy © claim planted by Bell, but the Court did not have full knowledge that Christie's legal counsel had urged the Grammy © sale to proceed, calling the Academy's tactics strongarm and without legal basis; Johnny Cash and Stevie Wonder had sold Grammys ©; both Judge Early and the Court of Appeals had specifically approved the Grammy © sale; the Grammy © was properly withdrawn without penalty to prevent the legal costs of defense of its sale in New York; Bauknight had subsequently valued the Grammy at \$20,000, higher than its original value, on return; but then Bauknight had told the IRS that the Grammy© and thousands of other items stored in four museums had a value of zero, or near zero.
124. The Court overlooked that the Supreme Court, having been told (falsely) that James Brown's total assets were worth about \$6.5 Million and his Estate only \$5 Million, cited what it believed to be Buchanan's and Pope's \$5 Million fee claim for working

18 months on a \$5 Million Estate.

125. The Court overlooked or misapprehended that Buchanan and Pope, seeking only to protect the "I Feel Good" Charity and uphold Brown's estate plan, as was their duty, were surprised to learn that the Supreme Court's decision had been so deeply impacted by false accusations made by the Attorney General, Bauknight as the Attorney General's agent, and Bell, including those fabricated after the McMaster deal was approved by Judge Early on May 26, 2009.

126. The Court overlooked or misapprehended that the Supreme Court, based on misleading statements, apparently also believed that Buchanan agreed with the position of the Attorney General.

127. The Court overlooked or misapprehended that the Supreme Court did admonish the Attorney General to conclude the FOIA suits and the Wingate Suit "in the first instance."

128. The Court overlooked or misapprehended that Pope has never sought any commission other than her approximately \$47,000 unpaid 2007 SA fee; approximately \$1.4 Million for the 18 months between November 20, 2007 and May 26, 2009 in accordance with her Court-approved contract with the Estate/2000 Trust, timely paid or with interest as ordered by Judge Early in 2008; and up to an additional \$1.4 million, in the discretion of the Court, for the entire period she served the James Brown Will and 2000 Trust, from November 20, 2007 until (what became) May 8, 2013.

129. The Court overlooked or misapprehended that, with the *pro bono publico* service of lead appellate counsel; the efficient work of Tressa Hayes, Esq.; and much work by Buchanan and Pope, the legal fees of the *Wilson v. Dallas* appeal would be less than

David Sojourner, Esq., would charge for his first two months as Limited Special Administrator/Trustee ("LSA/LST") to defend the estate plan, but disclaiming any duty to protect the "I Feel Good" Charity's 900 copyrights.

130. The Court overlooked or misapprehended that on March 6, 2013, knowing only of the \$2 Million overstatement of James Brown's Charitable Deduction (taking a \$2.8 Million deduction with only \$.8 Million going to Charity, and \$2 Million going to grandchildren), but not yet knowing about Bauknight's \$3 Million overstatement of Brown's TIAA debt, Pope met with Attorney General Wilson, AG McIntosh and AG Cook.

131. The Court overlooked or misapprehended that Pope explained to Attorney General Wilson, AG McIntosh and AG Cook how Bauknight's intentional devaluation of Brown's assets and overstated deductions, with Bauknight's assertion to the IRS that Tomirae was Brown's spouse, if not corrected, could aid Tomirae in her claim to be Brown's spouse, and – more importantly – if not corrected could reduce the annual required payout for scholarships to needy students from more than \$3 Million to about \$50,000 a year.

132. The Court overlooked or misapprehended that Attorney General Wilson, AG McIntosh and AG Cook all said they were hearing this for the first time, and seemed surprised.

133. The Court overlooked or misapprehended that Attorney General Wilson excused himself early to have lunch with a Nexsen Pruet attorney, but said he would not be talking about the James Brown issue, and he now claims protection for his Nexsen Pruet communications between February 27 and May 8, 2013, under the "Common Interest" doctrine.

134. The Court overlooked or misapprehended that Pope, AG McIntosh and Pope's attorney Adam Silvernail met a second time with AG Cook and AG McIntosh, reviewing the same false representations that had been made by Bauknight to the IRS, and the Court after Bauknight secured the ill-gotten "refund."

135. The Court overlooked or misapprehended that four years later AG Cook testified under oath at his deposition that he never thought Pope was incompetent or greedy, and always thought she expressed genuine concern for protecting Brown's "I Feel Good" Charity, but that the false and vitriolic attacks by the Attorney General and Bauknight as the Attorney General's claimed agent are inconsistent with AG Cook's beliefs.

136. The Court overlooked or misapprehended that Attorney General Wilson called Pope before March 14, 2013, to say he was moving to get out of the Wingate Suit; told the Supreme Court the same, and that he hoped to conclude the FOIA matters soon; then went on to do exactly the opposite.

Tomirae's Son Reveals Details of Devaluation Scheme to Damage Buchanan & Pope in Petition for Rehearing in Supreme Court

137. The Court overlooked that under a claim that they shared a "Common Interest" with Tomirae and her lawyers, James B., Bauknight, Bell and Levenson, between the two *Wilson v. Dallas* decisions, the Attorney General and Bauknight refuse to release communications during this time, but the Petition for Rehearing and Reply of James B. in *Wilson* reveal the continuing scheme to denigrate Buchanan and Defendant, as well as details of what, since March 14, 2013, has been known to be an additional false \$3 Million overstatement to the IRS and Courts of James Brown's deductions by Bauknight.

138. The Court overlooked or misapprehended that in his Petition for Rehearing and Reply James B. issued a vitriolic attack on Buchanan and Pope, again making the

known-false claim that the Attorney General and settling parties did not have the appraisal to value Tomirae's and the settling parties' Termination Rights when they filed their initial brief in December 2010.

139. The Court overlooked or misapprehended that James B.'s Petition and Reply also reveal the details of the claimed "appraisal" of the Music Empire (Schedule F, Estate Tax Return) by PBW. From James B.'s Petition, it became apparent:

- a. Bauknight had claimed \$5 Million of deductions to which James Brown's estate was not entitled in Brown's estate tax proceeding.
- b. \$3 Million of the \$5 Million overstatement was hidden from the IRS within the PBW "appraisal", which valued Brown's TIAA debt at \$19 Million – rather than the correct value of less than \$16 Million.
- c. Bauknight had valued Brown's Right of Publicity at zero, although Michael Jackson's was known to be valued by the IRS at more than \$150 Million, and Whitney Houston's at \$11 Million.
- d. Bauknight had valued all of Brown's thousands of items of Tangible Personal Property ("TPP"), including the household goods valued by Christie's at more than a million; the items sold at the Christie's sale; items in four museums for safekeeping; the Rolls Royce and fleet of vehicles; and 45+ boxes of music items placed by Buchanan and Pope in a music storage facility in Nashville, Tenn., at zero, or near zero, while all other Fiduciaries had valued these items at about \$2 Million.

140. The Court overlooked or misapprehended that, with this knowledge, the Attorney General, Tomirae and Bauknight continued their scheme to defraud the Court to discredit Buchanan and Pope and hold onto control of "I Feel Good" Charity's assets for their own personal benefit.

141. The Court overlooked or misapprehended that that Attorney General's plan did not change when, on May 8, 2013, the Supreme Court voided Bauknight's appointment and confirmed its earlier decision.

**The Attorney General, Bauknight and Wingate Ignore *Wilson v. Dallas*;
Tomirae and Levenson Publicly Announce Intention to Reinstate McMaster Deal
(May 29, 2013)**

142. The Court overlooked or misapprehended that within a day of the *Wilson* decision Tomirae, the Attorney General and Bauknight's lawyers were working to have Bauknight reinstated.

143. The Court overlooked or misapprehended that by May 10, 2013 the Attorney General had secured Bauknight's re-appointment.

144. The Court overlooked or misapprehended that by May 10, 2013 the Attorney General, Bauknight and Tomirae, through Wingate, had told Judge Manning that the deletion by the Supreme Court of Footnote 29 From the final *Wilson* decision meant that the Supreme Court placed no importance on concluding the Wingate Suit or the FOIA matters, and asked Judge Manning stay the Wingate and FOIA suits until Judge Early concluded the James Brown litigation in Aiken County.

145. The Court overlooked or misapprehended that on May 29, 2013 Bauknight served Pope with a Notice of Disallowance with impending bar, asserting Pope was not entitled to any payment; claiming Pope might be subject to disgorgement of her partial SA fee for her service in 2007; and repeating the false claim that Buchanan and Pope had inflated the value of Brown's assets to get a big commission.

146. The Court overlooked or misapprehended that on May 29, 2013 Judge Early held a status conference in Barnwell, and Levenson and Tomirae's lawyer announced in open court their intention to reinstate the McMaster settlement deal, then Levenson, Tomirae and Bauknight urged Judge Early to ban Buchanan and Pope from participation in James Brown cases.

147. The Court overlooked or misapprehended that Attorney General Wilson, with direct knowledge of both Bauknight's IRS fraud and his fraud on the Supreme Court, expressed to Judge Early his satisfaction with Bauknight, and the Attorney General's intention to withdraw as a party and "monitor" the Aiken James Brown cases now that Bauknight had been reappointed.

148. The Court overlooked or misapprehended that while he did follow through on withdrawing from the Aiken Cases, the Attorney General, Bauknight on behalf of the Attorney General, the McMaster Legacy Trust and Tomirae have vigorously pursued the Wingate Suit for the entire period since May 8, 2013.

**At Request of Tomirae, Levenson & Bauknight, Buchanan & Pope
Banned from Hearings (June 13, 2013)**

149. The Court overlooked or misapprehended that on June 13, 2013, without a hearing, Judge Early issued Administrative Orders which excluded Buchanan, Defendant and all former PR/Trustees under Brown's Will and 2000 Trust from participating in Judge Early's James Brown hearings.

150. The Court overlooked or misapprehended that Pope, when not reinstated on May 8, 2013, decided to work *pro bono publico* as a private citizen to try to save James Brown's "I Feel Good" Charity, and did so diligently until June 10, 2013.

151. The Court overlooked or misapprehended that in May 2013, Pope and Buchanan, along with Harley Ruff, Esq., Wm. Jeffrey Smith, W. Steven Johnson, Esq., and James Hardin III, Esq., provided immediate and inexpensive expertise to demonstrate how -- based on the *Wilson* ruling -- the damage Bauknight had caused with his IRS filings could be corrected; the representations about the Copyright Act Termination Rights made by the Attorney General and Bauknight had been incorrect, but could be corrected; and that

there were multiple strategies, as the Ray Charles Foundation was using, to protect the "I Feel Good" Charity's 900 copyright royalties from any substantial dissipation, including dissipation by improper or premature attempts by claimed heirs to exercise Termination Rights elections.

152. The Attorney General had knowledge that Pope, even though she was unable to secure professional negligence coverage because of the Forlando and Wingate Suits, had been engaged by the \$50 Million Graham Foundation to assist with a multi-year self study as it moved into its third generation as a family foundation, and, in addition, had estate planning, Termination Rights and probate litigation expertise.

153. The Court overlooked or misapprehended that the Attorney General, Bauknight, Tomirae, Levenson and Bell, however, did not want *pro bono publico* help to save what should now be South Carolina's largest-ever private foundation dedicated solely to the education of needy students; the lawyers wanted \$10 million; and the Attorney General wanted the benefits to be reaped from personal control over a \$100 Million foundation.

**Forlando Suit Reveals Bell/Bauknight Aligned in Wingate Suit
(August 20, 2013)**

154. The Court overlooked or misapprehended that, after Judge Early excluded Buchanan and Pope from participation in the James Brown Aiken hearings on June 13, 2013, Bauknight, the Attorney General and Tomirae began to reinstate the McMaster settlement deal which dismembered Brown's "I Feel Good" Charity and threatened its copyrights.

155. The Court overlooked or misapprehended that Bauknight was so effective in dismembering the "I Feel Good" Charity a second time that in 2015 Tomirae's lawyer

suggested to Judge Early that Bauknight should be knighted.

156. The Court overlooked or misapprehended that at the time of his deposition in Case 3:08-cv-00014-WOB (the "Forlando Suit") on August 20, 2013, Bauknight was still concealing his alliance with Bell on the Wingate contract; the PBW \$4.7 Million "appraisal"; and the Dec 2010/January 2011 McMaster Legacy Trust amendment and Assignment which showed Terry had secretly transferred his interest in Brown's Estate to his son Forlando.

157. The Court overlooked or misapprehended that Bauknight's August 20, 2013 deposition made clear that Bauknight and Bell would help each other continue the false attacks on Buchanan and Pope, and that Bauknight even claimed that Forlando had done nothing wrong in his 4-year effort to enjoin the James Brown 2000 Trust from taking any action until felon David Cannon and Albert "Buddy" Dallas were reinstated as James Brown's Trustees.

158. The Court overlooked or misapprehended that at his 2013 deposition in the Forlando Suit, Bauknight concealed Bell's signing of the Wingate Agreement, and Terry Brown's 2011 transfer of his interest in Brown's Estate to Forlando, and, in addition, sought to conceal both the \$4.7 Million PBW appraisal and the Wingate Agreement.

159. The Court overlooked or misapprehended that Bauknight said Buchanan's and Defendant's efforts for the 2000 Trust to recover some of the costs of Forlando's 4-year suit to enjoin the 2000 Trust until felon David Cannon and Albert Dallas were reinstated as a trustees was "frivolous and meritless." Asked about Forlando's suit, he said:

12 Q: Do you believe that Forlando Brown was ever

13 asserting claims against the trust?

14 A: I don't have a view on it.

15 Q: So you don't have a view one way or the other?
16 A: I don't have an opinion.
17 Q: Do you know when Forlando Brown dropped the
18 claims, the affirmative claims contained in the
19 complaint and the amendments of the complaint?
20 A: I believe it was sometime around May of 2012.
21 That's when I wrote to the court dropping the
22 counterclaim on behalf of the trust because I
23 felt it was meritless.

160. The Court overlooked or misapprehended that when questioned about the
Supreme Court's voiding his PR/Trustee appointment in *Wilson Bauknight* said:.

Q: I am correct, am I not, that the May 2013
23 second Supreme Court opinion voided your
24 initial appointment under the May 2009
25 settlement order, correct?

Page 42

1 A: It had language in there -- I'm not sure quite
2 how to take the language in there. I don't
3 know at what point it would have voided it,
4 because I don't know if they were aware that I
5 was also SAST. And obviously if they -- if I
6 had not been SAST, you couldn't go back and
7 void the appointment and have no PR trustee or
8 no fiduciary for the estate trust. So it was
9 very unclear as to what point it was for. But
10 that said, it made no difference because I was
11 SAST.

12 Q: The opinion did use the word void though? Do
13 you recall that?

14 A: I don't know that it did or not.

15 Q: You don't recall that?

16 A: I haven't reviewed that.

17 Q: Okay. And the opinion you just gave about you
18 can't go back and void an appointment ---

19 A: I didn't say they couldn't. I just said I was
20 unclear as to what they did.

21 Q: Okay. I'm sorry.

22 A: But in the end it made no difference because I
23 was SAST at that same period.

Bauknight, Levenson, Tomirae, Bell Use June 13, 2013 Orders to Continue Fraud on Court and False Claims Against Defendant

161. The Court overlooked or misapprehended that Judge Early's June 13, 2013 Orders issued at the request of Levenson, Bell and Bauknight, by preventing Buchanan and Pope from any participating in any James Brown Aiken case for three years, even as witnesses, gave Bauknight (still the Attorney Generals' agent), Levenson, Bell and Tomirae three years of direct access to Judge Early with no opportunity for Buchanan and Pope to refute the false \$4.7 Million value claim and other false statements being made to continue the damage to them.

162. The Court overlooked or misapprehended that by July 8, 2013 Bauknight had delivered an *ex parte* "ethics" opinion of Nathan Crystal, Esq., to Judge Early which, according to Judge Early, gave him comfort that it was appropriate for Bauknight to defend the estate plan he had been viciously attacking for four years,

163. The Court overlooked or misapprehended that because the Crystal opinion was *ex parte*, and has not been released, it is not known whether Crystal disclosed to Judge Early, or addressed, that Bauknight was continuing to act in the Wingate Suit on behalf of Tomirae, James B. and the Levenson Will/Trust contestants.

164. The Court overlooked or misapprehend that by 2015 the Attorney General, Tomirae and Bauknight had achieved their goal of having Tomirae declared the spouse of James Brown in a summary judgment proceeding in which Buchanan and Pope were not allowed to be witnesses; and from which heirs other than Tomirae and her son who were not represented by Levenson or Bell were excluded.

165. The Court overlooked or misapprehended that on October 12, 2013, Judge

Early held a hearing related to Buchanan's service, all of which was joint with Pope.

166. The Court overlooked or misapprehended that Judge Early, based on personal knowledge, approved Buchanan's retention of his 2007 SA fee, and all amounts paid Buchanan for his service through May 26, 2009, in accordance with Buchanan's and Pope's court-approved "time + costs" contract with the Estate/2000 Trust, and confirmed that under *Wilson* there was no basis for Buchanan to disgorge any of these amounts.

167. The Court overlooked or misapprehended that Judge Early, based on his personal knowledge, praised Buchanan and "double approved" his payments, even leaving open the possibility of Buchanan's receiving addition compensation if the Motion to Void his Wingate Suit settlement with the Attorney General and others was successful.

168. The Court overlooked or misapprehended that Judge Early directed Bauknight's lawyer to prepare an order reflecting his ruling regarding the Buchanan service and approval of payments, but no order was ever delivered or entered.

169. The Court overlooked or misapprehended that in 2014 Judge Early denied Defendant's motion for partial summary judgment for her SA fee and PR/Trustee commission for the same periods, but, based on the Attorney General's and Bauknight's false allegations in the Wingate Suit and Bauknight's false claim about the Grammy ©, partial summary judgment was denied.

170. The Court overlooked or misapprehended that Tomirae and Bauknight have bragged to Judge Early about Bauknight's accomplishments for four years (since 2013), as Bauknight has continued to serve Tomirae and the Attorney General in the Wingate Suit, and have continued the false claims related to the fabricated \$4.7 Million value, the ill-gotten "refund", the false Grammy© story planted by Bell, and the false claim that it was

Buchanan and Pope who had made improper IRS filings – not Bauknight.

171. The Court overlooked or misapprehended that in 2015 Judge Early delivered a Status Report to the Supreme Court which contained various inaccuracies resulting from Bauknight's and Tomirae's false statements; praised the fine service of Bauknight; asserted, despite the public May 29, 2013, announcement by Tomirae and Levenson of their intention to reinstate the McMaster settlement deal, that he was unaware of any settlement discussions; stated (incorrectly) that he believed Pope might be seeking a \$5 Million commission; and stated (incorrectly) that the James Brown heirs proceeding had been properly completed.

172. The Court overlooked or misapprehended that the Supreme Court's Orders issued on June 10, 2015 in response to Judge Early's Status Report are being used by Tomirae, Bauknight and the Attorney General to continue their damage the reputations and careers of Buchanan and Defendant.

The Wingate Suit is Illegal and Violates the Rules of Professional Conduct

173. The Court overlooked or misapprehended that Governor Henry McMaster has now confirmed under oath the he did not authorize the Wingate Firm to name the Attorney General as a Plaintiff in this action, and did not authorize Bauknight to be a Plaintiff "on behalf of" the Attorney General.

174. The Court overlooked or misapprehended that the Wingate Agreement violates both State law as to contracts with the State and the Rules of Professional responsibility.

175. The Court overlooked or misapprehended that the jurisdiction to bring an illegal suit in the name of the State/Attorney General can, and should be raised, and

corrected by the Court now, denying the Attorney General, Bauknight as his agent, and the McMaster Legacy Trust any relief under their complaint.

176. The Court overlooked or misapprehended that Attorney General Wilson's approving the illegal Wingate Suit did not make it legal.

The Attorney General's Use of the Cannon Criminal Matter to Damage Buchanan and Pope, With the False Felony Claim, Constitute Violations of Section 17-1-20

177. The Court overlooked that the Attorney General, Bauknight as the Attorney General's agent, and Wingate have used the Cannon criminal proceeding and allegations that Buchanan and Defendant committed a federal felony improperly for the purpose of damaging Buchanan and Pope in the Wingate Suit and achieving a civil benefit for themselves in violation of Section 17-1-20 of the South Carolina Code and *In the Matter of Jolly*, 239 S.E.2d 490, 269 S.C. 668 (1977).

178. The Court overlooked or misapprehended that David Cannon contacted AG Jones shortly after August 10, 2007, just after Buchanan and Pope had discovered some of the \$17 Million Cannon had taken from funds James Brown left for needy students in his "I Feel Good" Trust.

179. The Court overlooked or misapprehended that within months lawyers who had represented Cannon and Albert Dallas began making political contributions to former Attorney General McMaster, and Attorney General McMaster spoke on WIS-TV of the vast value of James Brown's name, image and assets. [Depos. Jones, Jowers, Ex. WIS-TV Interview, 2/2008.]

180. The Court overlooked or misapprehend that on November 21, 2007, the day after they were appointed as PR/Trustees, AG Jones asked Buchanan and Pope to resign and tried to persuade Judge Early to allow the Attorney General to control the civil suit

against Cannon by selecting counsel and using the Attorney General's Litigation Retention Agreement which would give the Attorney General's Office 10% of Special Counsel's fee.

181. The Court overlooked or misapprehended that in November 2007 the Attorney General ordered a SLED investigation; AG Jones was designated as the contact; and the Attorney General's office -- not the local solicitor -- has handled the Cannon criminal matter since.

182. The Court overlooked or misapprehended that in 2010 Cannon was indicted for about \$12 Million of the \$17 Million he took from funds Brown gave the "I Feel Good" Charity between 1999 and 2007, and for a 2008 forgery to cover up some of the taking, but the Attorney General never reported the forgery in the civil proceeding.

183. The Court overlooked or misapprehended that the Attorney General sued Buchanan and Defendant in the Wingate Suit, and by October 2010 had named David Cannon as one of the Attorney General's witnesses against Buchanan and Pope, even though he had been indicted.

184. The Court overlooked or misapprehended that at the same time the Attorney General and Bauknight (claiming to be the Attorney General's agent) had in hand a fabricated \$4.7 Million "appraisal" which they would present to the IRS, and later to the Courts, as the basis for claiming Buchanan and Pope had committed a federal felony by (according to the false claim) valuing Brown's music empire at \$84 Million, instead of \$4.7 Million, to try to obtain a \$5 Million commission on a \$5 Million estate.

185. The Court overlooked that for the entire time since, Cannon has continued to be designated as the Attorney General's witness for the benefit of the Attorney General, Bauknight, and those the Attorney General has chosen to benefit.

186. The Court overlooked that Bauknight, in addition to claiming to be the Attorney General's agent in the Wingate Suit, is a part-time law enforcement officer.

187. The Court overlooked or misapprehended that the Attorney General engaged Ellison Thomas, CPA in the Cannon criminal investigation, and also engaged him to testify in this case about alleged errors of Buchanan and Pope (but failed to tell him about the \$4.7 Million devaluation).

188. The Court overlooked or misapprehended that Thomas was also engaged in other James Brown matters to assist Bauknight; found only \$7 Million of the \$17 Million Cannon took; and refuses to disclose his findings in the matter of Albert Dallas, Cannon's co-trustee.

189. The Court overlooked that, especially in light of the false felony claim which has been lodged against Buchanan and Pope for six years, the Cannon criminal and civil matters have become improperly intertwined with this case, and the Cannon criminal proceeding is being used to advance the Attorney General's and Bauknight's personal interest.

190. The Court overlooked or misapprehended that one of the first acts of Attorney General Wilson after taking office in January 2011 was to file a motion for sanctions against Buchanan and Pope for filing a brief which supported recovery of about \$1.2 Million in court-ordered costs from Cannon in relation to the 2007 action for his removal. [Sanctions were not granted.]

191. The Court overlooked or misapprehended that AG Jones met with the prosecutors in October 2011, the day Cannon was allowed to enter an *Alford* plea to a small number of the takings; that following the meeting no restitution or jail sentence was

recommended; and that the Court was not told about Pope's Victim's Statement in which she asked the Attorney General's office to notify the Court about the damage to needy student beneficiaries of James Brown's "I Feel Good" Trust from the millions of dollars Cannon had taken.

192. The Court overlooked or misapprehended that Section 17-1-20 provides that no prosecuting officer shall receive any fee or reward from or in behalf of a prosecutor for services in any prosecution or business to which it is his official business to attend, nor be concerned as counsel or attorney for either party in a civil action depending upon the same facts, and that Cannon is being improperly used in this suit to provide a benefit to the Attorney General; Bauknight acting "on behalf of" the Attorney General; and Tomirae and those the Attorney General elects to favor.

193. The Court overlooked or misapprehended that the Attorney General's use of Cannon to support false felony claims against Buchanan and Pope while seeking neither restitution nor jail time for his taking \$17 Million, based on the same facts is unfair and prejudicial to the administration of justice.

The Attorney General's and Bauknight's FOIA Abuse to Damage Buchanan and Pope

194. The Court overlooked or misapprehended that, while seeking to prevent hearings in the Wingate Case since May 10, 2013, the Attorney General and Bauknight have actively worked in three FOIA cases to have James Brown FOIA matters transferred from other counties; consolidated with discovery in the Wingate Suit; and then buried in discovery and not heard.

195. The Court overlooked or misapprehended that a journalist was successful in 2015 in obtaining some of the public documents the Attorney General, Bauknight and

Wingate have concealed, but the Attorney General told the Honorable Eugene C. Griffith, Jr., that the Attorney General did not have a copy of the PBW \$4.7 Million "appraisal" which both Bauknight and the Attorney General have used to make false representations to the Supreme Court about the ill-gotten "refund."

196. The Court overlooked or misapprehended that Judge Early's Orders dismissing Defendant's FOIA suit seeking public documents from the Attorney General and the McMaster Legacy Trust, and the records now pending in the South Carolina Court of Appeals, which are incorporated herein by reference, show that it would be manifestly unjust for the Attorney General to transfer FOIA cases to Richland County; subordinate FOIA requests to discovery in this case; and then be dropped as a party so that there will be no relief under FOIA, making the Wingate Suit a James Brown FOIA graveyard.

**The Attorney General Has Aided Tomirae in Siphoning Off Royalties
From James Brown's "I Feel Good" Charity**

197. The Court overlooked or misapprehend that the records pending in the South Carolina Court of Appeals related to both the Tomirae spousal claim and the Will/Trust contests, which are incorporated herein by reference, show that the Attorney General, through Bauknight, has aided Tomirae in siphoning off \$1 Million from James Brown's "I Feel Good" Charity in 2015 in order to damage Defendant in this case.

198. The Court overlooked or misapprehended that when David Sojourner was named SA/ST in October 2013 Defendant promptly sent Sojourner a copy of *Private Foundations, Copyright Heirs...* and offered, *pro bono publico* whatever assistance she could give to Sojourner or his counsel to help them understand the complexities and interrelationship between the Federal Copyright Act, State Court spousal proceedings and Federal Copyright Act Termination Rights.

199. The Court overlooked or misapprehended that Sojourner never agreed to speak to Pope, but charged \$1.4 Million in SA/ST and legal fees between October 2013 and April 2015; took a single deposition (the supported the estate plan); and claimed he had no duty or responsibility to protect Brown's 900 copyrights.

200. The Court overlooked or misapprehended that none of the Attorney General, Bauknight or Sojourner, during the two-year window they had to set aside the defective 2013 Tomirae Terminations, took a single step to challenge the Tomirae terminations or protect the "I Feel Good" Charity's copyrights, although they were warned by copyright litigation expert Marc Toberoff, representing some claimed children, that the Tomirae Terminations were improper and should be challenged.

201. The Court overlooked or misapprehended that it was reckless and malicious for Bauknight to be so concerned with preventing Buchanan and Pope from confirming that the McMaster settlement was terrible that he failed to engage someone to protect Brown's "I Feel Good" Charity's 900 copyrights while those seeking to siphon off royalties were represented by Toberoff.

202. The Court overlooked or misapprehended that the result was an entirely unnecessary payment to Tomirae in 2015 of about \$1 Million, related to 3 of Brown's 900 songs; and another approximately \$70,000 payment to James B., as well as payments to others, for the same transaction.

203. The Court overlooked or misapprehended that in his deposition in January 2017 in Pope's claim case, Bauknight claimed (incorrectly) that he did not even know about the Tomirae terminations (in the public record for 2 years) until the money changed hands in 2015, saying:

**Q. When Tommie Rae Hynie filed termination elections
15 in August of 2013, did you have a duty as the
16 person charged with protecting the James Brown "I
17 Feel Good" Trust to challenge those termination
18 elections?**

19 A. Ms. Pope, that shows how little you know about
20 termination rights. Maybe you're just simply
21 unaware of the fact that nobody had to tell me
22 that they were even filing those termination
23 rights notices, Ms. Pope. I did not even know of
24 that issue until cash had changed hands. But
25 because of you, I've been totally out of the loop.
Page 114

1 I had no idea and legally no one had an obligation
2 to tell me that those termination rights had been
3 filed. You've got a look on your face right now
4 of total disbelief and that just leads me to
5 totally believe you have no clue how these
6 termination rights work.

**7 Q. Mr. Bauknight, have you not previously testified
8 that Peter Afterman came to you and asked you if
9 he could help Tommie Rae Hynie file termination
10 elections?**

11 A. I'm not aware of having testified to that at all.

12 Q. Did that happen?

13 A. I don't know.

**14 Q. You don't recall Peter Afterman coming to you and
15 asking you if he could help Ms. Hynie with
16 termination elections?**

17 A. I do not recall that.

204. The Court overlooked or misapprehended that after paying what he describes as "millions and millions" of dollars to his lawyers to try to silence Defendant, and at least \$1.4 Million for Sojourner, by 2017 Bauknight, Sojourner, Tomirae and the Levenson clients had hatched new deals rewarding Tomirae and others for 9 years of frivolous litigation against James Brown' noble estate plan, and assuring that Bauknight, Sojourner and theirs lawyers could keep the millions they have reaped from attacking

Buchanan and Pope while not protecting the "I Feel Good" Charity and seeking to reinstate the McMaster settlement.

205. The Court overlooked or misapprehended that it is asked to take judicial notice of the entire record on appeal in both the Tomirae spousal proceeding and the Will/Trust challenges appeal, which confirm that Bauknight's and the Attorney General's successful efforts to exclude Buchanan and Pope, as interested citizens with expertise about James Brown, litigation, and Termination Rights issues, have severely damaged Buchanan and Pope, and also Brown's "I Feel Good" Charity.

**The Attorney General Condones Bauknight's Continued
False Claims about the Tax "Refund" and False \$4.7 Million Value Claim**

206. The Court overlooked or misapprehended that the Attorney General and Bauknight, as well as Levenson and Bell, have had actual knowledge since at least 2008 that both under the Brown's Will and the McMaster Settlement deal, estate tax would be due because the \$2 Million payable to the grandchildren's education Trust (estate-tax free) used up the full \$2 Million exemption available to James Brown's estate on the Estate Tax Return.

207. The Court overlooked or misapprehended that at the McMaster settlement hearings both Harley Ruff and Pope testified under oath that the McMaster deal would cause numerous estate tax, and other tax problems.

208. The Court overlooked or misapprehended that Ruff's uncontroverted testimony given on April 6, 2009 before Judge Early shows:

8 Q REFERRING TO THAT ESTATE TAX RETURN PORTION OF WHICH
9 IS IN FRONT OF YOU, CAN YOU EXPLAIN THE CALCULATIONS FOR
10 THE CHARITABLE DEDUCTION THAT ARE CLAIMED BY THE ESTATE OF
11 JAMES BROWN?

12 A YES. THIS ESTATE TAX DEDUCTION FOLLOWS THE TERMS OF

13 THE WILL AND THE 2000 IRREVOCABLE TRUST WHICH STATE THAT
14 AN AMOUNT EQUAL TO THE GENERATION-SKIPPING TRANSFER
15 EXEMPTION AS I RECALL \$2 MILLION HERE IS TO PASS TO A
16 SPECIAL EDUCATIONAL TRUST, THE VARIOUS PERSONAL EFFECTS
17 WERE TO BE TRANSFERRED TO FAMILY MEMBERS, AND EVERYTHING
18 ELSE WAS TO PASS TO A WHOLLY-CHARITABLE TRUST, AND,
19 THEREFORE -- THEREFORE, THE DEDUCTION LISTED IN SCHEDULE O
20 OF THE ESTATE TAX RETURN IS THE LION'S SHARE, OVER
21 95 PERCENT, OF THE VALUE OF THE ESTATE IS REPORTED.

32

3 Q WHAT DOES THE TRUST CONSIST OF? IS IT MORE THAN ONE
4 TRUST?

5 A IT'S ONE IRREVOCABLE TRUST DOCUMENT, BUT I BELIEVE IT
6 SPLITS INTO TWO SUB-TRUSTS AT THE TIME OF HIS DEATH.

7 Q ALL RIGHT. AND DO YOU -- CAN YOU TELL THE COURT HOW
8 -- WHAT THE TWO TRUSTS ARE?

9 A THE ONE TRUST IS THE -- WHAT I AM CALLING THE
10 EDUCATIONAL TRUST WHICH IS A TRUST THAT WAS CREATED FOR
11 THE BENEFIT OF CERTAIN DECENDANTS TO PAY THEIR EDUCATIONAL
12 COSTS AND IT WAS CAPPED AT THE AMOUNT EQUAL TO WHAT WAS
13 THEN THE GENERATION-SKIPPING TRANSFER TAX EXEMPTION WHICH
14 WAS THEN \$2 MILLION. THE "I FEEL GOOD TRUST" IS A
15 WHOLLY-CHARITABLE TRUST THAT WAS TO RECEIVE THE BALANCE.

...
23 MR. BAILEY: I MEANT MR. BUCHANAN AND MRS. POPE, YOUR
24 HONOR.

25 THE WITNESS: MR. BROWN'S TRUST DID ALLOW FOR -- HE
1 ALLOWED IN THE ORIGINAL TRUST FOR THE FUTURE AMENDMENT
2 INCLUDING AN AMENDMENT AFTER HIS DEATH IF SO NEEDED TO
3 QUALIFY FOR THE CHARITABLE DEDUCTION.

4 Q AND WOULD THAT BE CUSTOMARY FOR CHARITABLE TRUSTS?

5 A YES.

...
10 Q NOW, IF A SETTLEMENT IS TO BE REACHED IN THE CASE
11 WHAT WOULD THE PARTIES NEED TO DO TO PRESERVE THE
12 CHARITABLE DEDUCTION?

13 A WELL, THEY WOULD NEED TO ENSURE THAT THE PIECE OF THE
14 ESTATE THAT ULTIMATELY WILL PASS TO CHARITY WILL QUALIFY
15 FOR A CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055. I
16 AM HIGHLY CONCERNED AND CONVINCED, IN FACT, THAT THE
17 SETTLEMENT AS PRESENTLY SET UP DOES NOT SO QUALIFY FOR ANY
18 CHARITABLE TAX DEDUCTION UNDER CODE SECTION 2055.

19 Q AND CAN YOU --

20 THE COURT: WHY'S THAT? HOLD ON. WHY IS THAT?

21 THE WITNESS: BECAUSE IT'S CODE SECTION --

1220

22 THE COURT: LET ME MAKE SURE I UNDERSTAND YOUR
23 OPINION. AS TO THE SETTLEMENT AGREEMENT THAT'S BEING
24 PROPOSED TO THE COURT YOU ARE OF THE OPINION THAT THE
25 PORTION GOING FOR THE NEEDY CHILDREN, I.E., THAT TRUST,

35

1 WOULD NOT QUALIFY?

2 THE WITNESS: YES, SIR. I AM OF THAT OPINION.

...

16 THE COURT: WHAT IS THE NAME OF THAT CASE?

17 THE WITNESS: GALLOWAY; G-A-L-L-O-W-A-Y. IT IS A
18 THIRD CIRCUIT CASE FROM JUNE OF 2007. I DO HAVE A COPY OF
19 IT HERE WHERE THE FACTS ARE VERY CLOSE IF NOT ON POINT
20 WITH THE FACTS IN PLACE HERE. THE THIRD CIRCUIT RULED
21 THAT UNDER THOSE FACTS THAT THE CHARITABLE DEDUCTION WAS
22 DISALLOWED UNDER 2055(E)(2) COMPLETELY.

36

25 THE COURT: LET ME ASK IT LIKE THIS. UNDER THE

37

1 SETTLEMENT AGREEMENT THE PORTION GOING TO, FOR LACK OF
2 BETTER TERM, THE AG TO BE ADMINISTERED UNDER THE TRUST FOR
3 THE NEEDY CHILDREN YOU ARE OF THE OPINION THAT IT DOES NOT
4 QUALIFY FOR THE CHARITABLE DEDUCTION?

5 THE WITNESS: YES, YOUR HONOR.

6 THE COURT: AND, OBVIOUSLY, THAT WOULD CREATE
7 ADDITIONAL TAXES TO THE ESTATE?

8 THE WITNESS: YES, YOUR HONOR, TREMENDOUS ADDITIONAL
9 TAXES.

10 Q ARE THERE ANY OTHER PROBLEMS WITH THE FORM OF THE
11 LEGACY TRUST OR THE RIGHT OF FIRST REFUSAL THAT IT
12 CONTAINS OR THAT IS CONTAINED WITH THE DOCUMENTS?

13 A THE RIGHT OF FIRST REFUSAL IN MY VIEW IF EXERCISED
14 UPON WOULD CONSTITUTE SELF-DEALING UNDER INTERNAL REVENUE
15 CODE SECTION 4941. ..

38

1 I HAVE GRAVE CONCERNS ABOUT THE ABILITY OF THE CHARITABLE
2 TRUST TO QUALIFY FOR EXEMPT STATUS IN THE FIRST PLACE.
3 EVEN IF IT WERE TO SO QUALIFY, AN ACT OF SELF-DEALING
4 WOULD SUBJECT EITHER THE CHARITABLE TRUST OR THE JAMES
5 BROWN LEGACY TRUST TO SELF-DEALING TAXES UNDER CODE
6 SECTION 4941 AND OR 4947.

... And as to the "stipulation" that Tomirae was Brown's spouse]

5 THE COURT: WELL, IF IT'S NOT BINDING ON THE IRS,
6 WHAT DOES THE IRS LOOK TO TO DETERMINE WHETHER OR NOT SHE
7 IS OR THERE IS AN ISSUE AS TO WHETHER OR NOT SHE'S THE

1221

8 WIFE?

9 THE WITNESS: THERE ARE FOUR FACTORS THAT HAVE TO
10 BE -- FOUR HURDLES, IF YOU WILL, THAT HAVE TO BE OVERCOME
11 TO OBTAIN THE MARITAL DEDUCTION UNDER CIRCUMSTANCES LIKE
12 THIS... FIRST, THERE HAS TO BE A CONTROVERSY.

13 THE COURT: HOLD ON. A CONTROVERSY?

14 THE WITNESS: YES, SIR.

15 THE COURT: WHAT ELSE?

16 THE WITNESS: SECOND, IN THE CASE OF A SETTLEMENT,
17 THE SETTLEMENT HAS TO BE IN GOOD FAITH.

18 THE COURT: GOOD FAITH SETTLEMENT.

24 Q HAVE YOU SEEN ANY DOCUMENTS OR HAS ANYONE PRESENTED
25 YOU ANY DOCUMENTS THAT WOULD LEAD YOU TO BELIEVE THAT
(HARLEY RUFF-DIRECT BY BAILEY)

41

1 THESE TAX QUESTIONS HAVE BEEN PRESENTED TO THE IRS FOR --
2 ON INQUIRY AS TO WHAT THE IRS'S POSITION MIGHT BE?

3 A NO, SIR.

4 Q IS THERE A WAY TO DO THAT?

5 A YES. ONE COULD REQUEST WHAT'S CALLED A PRIVATE
6 LETTER RULING.

13 Q WOULD YOU RECOMMEND A PRIVATE LETTER RULING ON ANY OF
14 THE ISSUES IN THIS CASE?

15 A ABSOLUTELY AND IN ALL OF THEM. BOTH OF THEM, I
16 SHOULD SAY.

...

21 Q MR. RUFF, WHEN YOU LOOKED AT THE ESTATE TAX RETURN
22 YOU ASSUMED THE VALUATION WAS ACCURATE; IS THAT CORRECT?

23 A I DID AND I DIDN'T DEEM THE VALUATION IMPORTANT FOR
24 PURPOSES OF MY ANALYSIS.

209. The Court overlooked or misapprehended that, as shown in the Ruff Affidavit filed herewith, the South Carolina Supreme Court's decision in *Wilson v. Dallas*, by restoring James Brown's plan to leave the bulk of his assets to The James Brown "I Feel Good" Charity, alleviated the excise tax issues caused by the McMaster settlement deal, and much of the estate tax problem, but it did not remove the multiple problems caused by the \$4.7 Million value claim and incorrect reduction of the Charitable Deduction from about \$83 Million to \$2.8 Million (actually \$.8 Million), which reduces the required annual scholarship payout for needy students from more than \$3 Million a year to as little as

\$50,000.

210. The Court overlooked or misapprehended that the Attorney General, with knowledge of the damage to the "I Feel Good" Trust of Bauknight's false IRS, Probate Court and Supreme Court filings, has refused to direct Bauknight to correct them.

The Attorney General's Continuing Damage to Defendant by Endorsing Bauknight's \$3+ Million Overstatement of Brown's TIAA Debt in IRS and Court Filings

211. The Court overlooked or misapprehended that the material overstatement of James Brown's debt to the New York Teachers (TIAA) -- claiming the approximately \$15 Million TIAA Debt was \$19 Million -- was central to the scheme of Bauknight, the Attorney General and Tomirae to discredit Buchanan and Pope by devaluing James Brown's assets to make Buchanan and Pope appear incompetent and greedy.

212. The Court overlooked that the improper \$3+ Million overstatement of the TIAA debt was hidden by Bauknight within the PBW "appraisal" so that it could not be detected by the IRS or Court.

213. The Court overlooked or misapprehended that the hidden \$3+ Million unwarranted deduction was used to obtain the ill-gotten "refund", which, in turn, was used by the Attorney General and Bauknight in Supreme Court filings which claimed (incorrectly) the McMaster settlement deal resulted in no estate tax on Brown's estate.

214. The Court overlooked or misapprehended that neither the IRS nor the Supreme Court could have detected the false \$3+ Million TIAA overstatement until it was discussed by James B. in his Petition for Rehearing and Reply filed in March 2013, because it was imbedded within the PBW appraisal.

215. The Court overlooked or misapprehended that if the PBW appraisal were not being concealed, the Court might be able to tell whether PBW knew the approximately \$15

Million TIAA debt was being overstated to \$19 Million, or whether the false \$19 Million number was provided to PBW by Bauknight.

216. The Court overlooked or misapprehended that Bauknight claims to have no memory of this issue, or of the \$2 Million overstatement of the charitable deduction, even though he is a CPA; the Attorney General and Bauknight continue to conceal the PBW appraisal in discovery and FOIA; the Attorney General and Court continue to praise Bauknight, including for his successful IRS "audit"; and the Attorney General asserts nobody in his office even reviewed the appraisal, which makes up \$3+ Million of Bauknight's \$5 Million overstatement of Brown's debts to the IRS on what Bauknight and the Attorney General claim is a \$6.5 Million gross estate.

217. The Court overlooked or misapprehended that the Attorney General and Bauknight as the claimed agent for the Attorney General have unclean hands related to the false felony claim against Buchanan and Pope in this matter, which is grounded in Bauknight's overstatements of Brown's deductions.

James Brown's Right of Publicity Was Improperly Valued at Zero

218. The Court overlooked or misapprehended that the Attorney General has had knowledge (as defined in the S. C. Trust Code) since 2011, when he began to make the claim that Buchanan and Pope had overstated Brown's assets by \$79 Million to get a \$5 Million fee, that a value of zero for James Brown's Right of Publicity was improper.

219. The Court overlooked or misapprehended that the Attorney General participated in or condoned Bauknight's scheme to reject the 2009 Corbis GreenLight 2-year Publicity Rights contract which Buchanan and Pope had secured, and which was projected to bring in \$1 - \$2 Million per year - in order to devalue Brown's Right of

Publicity and discredit Buchanan and Defendant.

James Brown's Tangible Personal Property Was Improperly Valued at Zero or Near Zero

220. The Court overlooked or misapprehended that the Attorney General, continues to claim, with Bauknight, that James Brown's tangible personal property has a value near zero when both have actual knowledge that the Christie's sale, which the Attorney General approved, generated hundreds of thousands of dollars for only about 350 items; thousands of items were placed by Buchanan and Pope in museums for safekeeping; and more than 45 boxes of music items were packaged and shipped by Buchanan and Pope to a sound storage facility in Nashville.

221. The Court overlooked or misapprehended that the Attorney General has taken no action to require that these material misstatements by Bauknight to the IRS and Courts be corrected.

222. The Court overlooked or misapprehended that the refusal of the Attorney General to require Bauknight to correct material misstatements to the IRS and Courts about the values and taxes the McMaster settlement would have generated, suggests that the Attorney General supports the Levenson/ Tomirae plan announced in May 2013 to reinstate the McMaster settlement deal, and justify it – again – with false claims.

Rule 21 Provides No Basis for the AG to be Removed from this Action

223. The Court overlooked or misapprehended that Rule 21, SCRPC, does not allow for the dismissal of counterclaims against a party who has actively participated in the litigation for more than seven (7) years. Rule 21 provides that "[p]arties may be dropped or added by order of the court on motion of any party . . . on such terms as are just."

224. The Court overlooked or misapprehended that it would be manifestly unjust to allow the AG, whose continuing participation in this matter since 2010 has both caused and increased the irreparable damage done to Pope and to Buchanan by this illegal and meritless lawsuit, to now be excused.

225. The Court overlooked or misapprehended that, in addition to participation as a Plaintiff in this case, the AG has successfully had one FOIA case against him moved from another county and consolidated with this case. He has tried to have two other FOIA cases transferred to Richland County and consolidated with this case. He asserts these FOIA cases are subordinate to discovery in this case, and this Court has in fact dismissed two FOIA cases on that basis.

226. The Court overlooked or misapprehended that Rule 21 is entitled "Misjoinder and Non-joinder of Parties." This rule operates where the wrong entity or person is named in a lawsuit. Defendant has been able to find no reported case in which a *plaintiff* has alleged that he should be "dropped" as the result of misjoinder.

227. The Court overlooked or misapprehended that the AG has participated extensively in this case since its May 2010 commencement.

228. The Court overlooked or misapprehended that, as stated by the Court 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 Civil Procedure" [citing *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115 (1978)].

229. The Court overlooked or misapprehended that allowing the AG to be "dropped" as a party would deprive Defendant/CC Plaintiff of the substantial right to

pursue her long-pending counterclaims against the AG. It could also impair her counterclaims against Bauknight, who has acted as the Attorney General's agent for these seven years, and is serving at the pleasure of the Attorney General as Trustee of Counterclaim Defendant James Brown Legacy Trust.¹

230. The Court overlooked or misapprehended that our Supreme Court has held that by removing a defendant as a party, the lower Court had deprived the plaintiff therein of "its substantial right to name its defendant." *Neeltec Enterprises, Inc. v. Long*, 397 S.C. 563, 725 S.E.2d 926 (2012). It would thus be inappropriate to force the discontinuation of Defendant/Counterclaim Plaintiff's counterclaims against the Attorney General by granting his Rule 21 motion.

231. The Court overlooked or misapprehended that Rule 21 is a procedural rule, not one of substantial law. It cannot be applied to allow the State/Attorney General to end his claims against Defendant/Counterclaim Plaintiff. In the event the Attorney General, after appearing properly as counsel, wishes to dismiss his claims against Pope, he may seek a voluntary dismissal under Rule 41(a)(2). This rule allows a plaintiff to voluntarily dismiss a claim, but allows the Court to impose appropriate conditions (such as assessment of attorneys' fees, costs or other relief to the defendant). *Ralston Purina Co. v. Odell*, 248 S.C. 37, 148 S.E.2d 736 (1966). Rule 41(a)(2), like Rule 21, could not be used to obtain a dismissal of the counterclaims against the Attorney General, Bauknight as his agent, or the Attorney General's McMaster Legacy Trust.

¹ The Legacy Trust was created by AG Henry McMaster and others in 2009. In January 2011 AG Wilson succeeded to McMaster's position, including 75% control with Tomirae, and the right to remove and replace Bauknight at will.

The Attorney General is not Entitled to any Type of Immunity in this Action.

232. The Court overlooked or misapprehended that the Attorney General is not entitled to immunity from Pope's counterclaims herein.

233. The Court overlooked or misapprehended that any immunity which may have applied to claims against the Attorney General was waived by his bringing this civil lawsuit against two private South Carolina citizens; by his doing so as a co-Plaintiff with more than a dozen private resident and non-resident individuals and entities; by his use of a private attorney with those non-residents; and/or by his failure, through his selected private attorney, to assert any immunity defense by motion or answer for more than six (6) years after the Attorney General and others commenced this action.

234. The Court overlooked or misapprehended that the Attorney General cannot be entitled to prosecutorial immunity in this civil action, especially where he has denied (incorrectly) for the pendency of this case that he accused Pope of committing a crime.

235. The Court overlooked or misapprehended that both the Complaint and the Attorney General's fee agreement with the Wingate firm make clear that this case was not brought to enforce a charity, but rather to seek money damages (and a portion of the legal fees) for the Attorney General and funds for private parties from two private South Carolina citizens who had already been replaced as Trustees of the James Brown "I Feel Good" Charity at the time this lawsuit was commenced.

236. The Court overlooked or misapprehended that the Attorney General's fee agreement with the Wingate firm provides for the AG to receive 10% of any contingency fee payable on a recovery herein.

237.

The Attorney General's Expert In This Case Has Confirmed Buchanan and Pope's \$84 Million was Correct and Conservative and Bauknight's \$4.7 Million Wrong

238. The Court overlooked or misapprehended that the Attorney General, Bauknight and Tomirae, in defiance of the *Wilson* mandate, have not only continued to vigorously pursue the Wingate Suit to retake for the McMaster Legacy Trust the assets of Brown's "I Feel Good" Charity, but moved to consolidate discovery in this suit with the Defendant's 2013 claims case so that James Brown's "I Feel Good" Charity will pay for Tomirae's and the Attorney General's experts in this case.

239. The Court overlooked or misapprehended that, when the motion to consolidate was denied, to further damage Defendant, the Attorney General and Bauknight interrupted every relevant deposition in Defendant's commission suit; named the same experts in the two suits; then allowed James Brown's charity to pay for experts in both cases.

240. The Court overlooked or misapprehended that the Attorney General, Tomirae and Bauknight have not told their own experts about the \$4.7 Million value claim and the ill-gotten "refund," but Bauknight has nevertheless tried to use his "successful" IRS proceeding, the ill-gotten "refund" and *Wilson* to justify not paying Defendant for work, even as SA in 2007.

241. The Court overlooked or misapprehended that the Attorney General's own Termination Rights experts, deposed in New York, made clear that Buchanan's and Pope's \$84 Million value for the Music Empire on Schedule F of the Estate Tax Return (\$99 Million less \$15 Million TIAA Debt) was correct and conservative, and that Buchanan's \$4.7 Million (\$23.5 Million less TIAA debt inflated to \$19 Million) was outrageous.

242. The Court overlooked or misapprehended that Miller made clear that

Brown's 900 copyrights alone (without the Right of Publicity and other assets included in the \$84 Million) had a value of \$45 Million to \$60 Million when he died:

Q. Right, so but buy low is still essential to the concept, right?

A. **[Miller] When possible.**

Q. Right.

A. **But, in my experience, if you want to buy this type of high quality content, you are often, more so than not, a price taker, not a price maker in the market.**

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. **Solid gold.**

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And later:

Q. And there is nothing second [sic.] secret about your opinion that James Brown's is a solid gold catalog?

A. No.

I think anybody would agree.

Q. Okay.

A. **Who is familiar with the work.**

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?

[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5. My firm originated in 2006 and we were the only ones who remained, everybody else was later consolidated. But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

The Attorney General's Condoning of the False Grammy© Claim Was Improper

243. The Court overlooked or misapprehended that when the Attorney General and Bauknight committed to bring the Wingate Suit (secretly) with Bell, both had actual knowledge that Bell had filed at least five false grievances against Levenson in Georgia and

South Carolina, including making the false claim that Levenson forged his fee agreement with Terry Brown's son; Bell had filed false affidavits in federal court; Bell had participated in about ten James Brown cases without proper *pro hac vice* status; and, generally, Bell was closely associate with David Cannon, then under indictment, and Cannon's co-trustee Albert Dallas.

244. The Court overlooked that both AG Jones and Bell had dealings in January 2011 with the Atlanta law firm that posted the false Grammy © claim about Robert Potter, Esq., and knew – at least when Defendant learned *after Wilson* – that Bell had planted the false Grammy© claim, with knowledge of its falsity.

245. The Court overlooked that the Attorney General and all Wingate Suit Plaintiffs have actual knowledge that the Attorney General himself had approved the Christie's sale, including the specifically-listed Grammy © in the South Carolina Court of Appeals when Dallas tried to stop the sale in 2008; that Levenson was at the sale and present when the Grammy © was properly withdrawn, without penalty; and that that Christie's counsel had urged Buchanan and Pope to leave it in the sale, calling the Academy's tactics strongarm, but Buchanan and Pope made the proper business decision for Brown's Estate and 2000 Trust not to spend legal fees to defend the sale of this item.

Buchanan and Pope Did Not Engage In the Extreme Discord

246. The Court overlooked or misapprehended that Buchanan and Pope were always respectful with the Court; honored Court orders, including the 2008 unconstitutional Hynie gag orders; and that Pope worked *pro bono public* as an interested private citizen for two years after *Wilson* to try to help save Brown's "I Feel Good" Charity from a second dismembering – not hinder, as Bauknight, Sojourner and

the Attorney General have claimed.

247. The Court overlooked or misapprehended that Pope's good faith is confirmed by the sworn 2017 deposition testimony of Solicitor General Robert Cook, even though the Attorney General's actions have been inconsistent with Cook's testimony.

Conclusion

For the reasons set forth above, Pope asks that this Court alter, amend, vacate and/or reconsider its May 31, 2017 Order Granting the Attorney General's Motion to be Dropped as a Party. This motion is based on the entire record herein; the South Carolina Rules of Civil Procedure, especially Rules 52 and 59(e); applicable statutory and case law; the affidavit of Harley Ruff, Esq., filed herewith; and any additional affidavits and/or memoranda presented prior to the hearing on this matter.

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
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

July 19, 2017

*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 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-40-4908

2017 JUL 14 PM 2:00
ANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

DEFENDANT/COUNTERCLAIM
PLAINTIFF ADELE J. POPE'S
MOTION TO ALTER, AMEND,
RECONSIDER AND/OR VACATE
ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT AS TO COUNTERCLAIMS

TO: PLAINTIFFS AND THEIR COUNSEL, SWEENEY, WINGATE AND BARROW, P.C.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as she may be heard, Defendant/Counterclaim Plaintiff Adele J. Pope ("Pope") will move pursuant to Rules 52 and 59(e), SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order vacating altering or amending the ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS of the Honorable Doyet A. Early, III ("Jg. Early"), dated June 23, 2017 and filed July 8, 2017, a copy of which is attached hereto as Exhibit A (the "Summary Judgment Order"). Notice of entry of the signed order was received on July 10, 2017.

SUMMARY OF RELIEF REQUESTED

For the reasons set forth in the Answer and Counterclaim of Defendant and Robert L. Buchanan, Jr. ("Buchanan") herein, and based on the Affidavit of Wm. Jeffrey Smith; the depositions on file in this Case; the depositions, affidavits and admissions of Buchanan, Plaintiffs and Defendants in other James Brown Cases, and of Plaintiffs' and Defendant's designated experts in this case taken in other James Brown cases, of which the Court is requested to take mandatory judicial notice under Rule 201 SCRE, Defendant respectfully requests that the Court void, alter and/or amend its Order dated January 7, 2014 by directing the following:

1. Voiding the Summary Judgment Order as violating Rule 56 SCRCP, the U. S. and South Carolina Constitutions; and other applicable case and statutory law.
2. Ruling that the Wingate Suit is illegal and that, through the Wingate Suit, the State/Attorney General, the James Brown Legacy Trust ("McMaster Legacy Trust") and Russell L. Bauknight ("Bauknight") acting "on behalf of the Attorney General of

South Carolina," through the Summary Judgment Order, the Rule 21 Dismissal Order, and other others procured by the State/AG and its agents, have, with intent to damage Robert Buchanan, Jr. ("Buchanan") and Defendant, continuously violated the Due Process, First Amendment and FOIA Rights of Buchanan and Defendant; their statutory FOIA rights; and their right to be paid under their valid, court-approved contract with Plaintiff Estate/2000 Trust of James Brown.

3. Ruling that neither the Attorney General nor any other Plaintiff is entitled to Summary Judgment as to any Counterclaim because, when viewed under the Rule 56 standard, the facts, admissions and reasonable inferences therefrom show that Defendant is entitled to judgment and damages, including special damages, against each Plaintiff as to abuse of process; civil conspiracy; intentional interference with contract; fraud under Section 62-1-106; and attorneys' fees.

4. Ruling that, under the Rule 56 standard, the 2012 "settlement" with Buchanan is void because the Attorney General violated his statutory duty, through Bauknight, by using James Brown's charitable funds to pay \$500,000 to Buchanan to settle Buchanan's valid counterclaims against Tomirae, Terry Brown and the Levenson Will/2000 Trust contestants.

5. Ruling that, in addition, the Buchanan "settlement" is void because it was unconscionable, and a violation of his duty to The James Brown "I Feel Good" Charity for the Attorney General to secretly force Buchanan NOT to file a petition for Rehearing in *Wilson v. Dallas*; fail to advise the Supreme Court of his unconscionable and improper requirement; then try to make it appear to the Supreme Court that Buchanan did no support Defendant's effort to save The James Brown "I Feel Good" Charity.

6. Ruling that Defendant (and Buchanan) are not estopped to recover damages from all Plaintiffs by *Wilson v. Dallas*, and the Honorable Doyet A. Early, III, has so ruled as to Buchanan after *Wilson* on October 12, 2013.

7. Ruling that because former Attorney General Henry McMaster, now Governor of South Carolina ("Governor McMaster") has confirmed under oath in this case (the "Wingate Suit") that he did not authorize Wingate Firm to name the Attorney General as a Wingate Suit Plaintiff; did not authorize Bauknight to act on behalf of the Attorney General in the Wingate Suit; and did not know this had happened until he left office in January 2011, the Wingate Suit has been illegal for the entire seven years it has been viciously pursued to damage Buchanan and Pope's careers and reputations for the private benefit of the Attorney General and Tomirae.

8. Ruling that Attorney General Alan Wilson's January 2011 authorization to continue the Wingate Suit did not make the illegal Wingate Suit legitimate because

the State/Attorney General did not sign the Wingate Special Counsel Litigation Retention Agreement; there has never been a written authorization for the Wingate Firm or Bauknight to act on behalf of the State/Attorney General; and such authorization, if it existed, would violate Due Process and the Separation of Powers Clause by allowing the private Wingate Firm to serve the interests of non-resident Tomirae while serving the State; and by paying 10% of the legal fee to the Attorney General where he had improperly delegated control of the Wingate Suit to a private law firm.

6. Finding that, under Rule 56, the Attorney General is responsible, with Tomirae and James B, for the 7-year malicious, false assault on Buchanan's and Defendant's reputations and careers because the Attorney General and Tomirae, through their 75% voting control of the James Brown Legacy Trust ("McMaster Legacy Trust") have had individual control of the Wingate Suit for 7 years, and the Attorney General, at all times, has had the right to remove and replace Bauknight as Trustee of the McMaster Legacy Trust.

7. Finding that the McMaster Legacy Trust, the primary vehicle to carry out the Attorney General's and Tomirae's plan to secure James Brown's assets and allow Tomirae to siphon off copyright royalties belonging to James Brown's "I Feel Good" Charity, cannot escape liability or obtain Summary Judgment by claiming it does not exist.

8. Finding that Attorney General McMaster, Tomirae and Bauknight, if the McMaster Legacy Trust has dissolved, have dissolved it improperly and are liable as the real parties in interest.

9. Finding, under Rule 56 analysis, that the Levenson Will/Trust contestants are liable as to all counterclaims because they joined the Attorney General, Bauknight and Tomirae in their scheme to damage Buchanan and Defendant with actual knowledge that Buchanan and Defendant has carefully and effectively protected James Brown's noble estate plan, which was valid, and its 900 copyrights; that Tomirae was not Brown's spouse, and had no rights under the Federal Copyright Act Termination Rights provisions; that James Brown's assets were worth \$100 Million or more when he died; and that the McMaster settlement deal, if Bauknight had not improperly devalued assets and overstated deductions by \$5 Million in IRS filings, would have generated millions of dollars in estate, excise and income taxes if it had not been voided by the Supreme Court.

10. Finding under Rule 56 analysis that continuation of the Wingate Suit from and after March 2013, when Attorney General Wilson, Solicitor General Robert Cook, and former Chief Deputy John McIntosh obtained actual and unmistakable correct evidence of Bauknight's false IRS filings; ill-gotten estate tax "refund"; and

the use by the Attorney General of the fabricated \$4.7 Million "appraisal" and ill-gotten refund to damage Buchanan and Defendant in Supreme Court filings, has caused Defendant extraordinary injury as contemplated in §62-1-106 and provided millions of dollars of undeserved benefits to Plaintiffs and their attorneys.

11. Finding that the State's highest legal officer has, since 2011, publicly and falsely accused Buchanan and Defendant of the federal felony of overstating James Brown's assets by \$79 Million in order to secure a \$5 Million commission on a \$5 Million estate, with knowledge of the falsity of the claim, and has recklessly allowed Bauknight to make the same known false claim on behalf of the Attorney General.

12. Finding under Rule 56 that the Attorney General has had knowledge since 2011 that David Bell, Esq. and his clients posted the false GRAMMY withdrawal claim noted by the Supreme Court; that Levenson was present when the GRAMMY was properly withdrawn without penalty; but the Attorney General has knowingly endorsed the known false claim to damage Buchanan and Defendant.

13. Finding under Rule 56 analysis that Defendant is not estopped to pursue her claim by Wilson v. Dallas, 743 S.E.2d 746 (2013); the Status Report of Judge Early or the June 10, 2015 Orders, and that all demonstrate how the 7+-year fraud on the IRS and the Courts under §62-1-106 by Plaintiffs has injured Defendant and benefitted Plaintiffs.

14. Finding that the Attorney General, in defiance of Wilson v. Dallas, has continued, with Tomirae and the McMaster Legacy Trust, through Bauknight, to damage Defendant while praising Bauknight, who has wasted millions of dollars while allowing Tomirae to siphon off \$1 Million and attempt to take part of the American royalties from 90 of The James Brown "I Feel Good" Charity's 900 between 2015 and 2023.

15. Finding that concealing the 2010 Wingate Litigation Agreement, which was not signed by most Wingate Suit Plaintiffs, but by Bauknight and lawyers seeking \$10 Million in legal fees if they could stop the Wilson appeal by making Buchanan and Defendant appear to be incompetent, malicious and greedy, is clear evidence under Rule 56 that Summary Judgment as to Defendant's counterclaims should be denied.

16. Finding that all Plaintiffs admit they had knowledge on May 19, 2010 that James Brown, by his extraordinary talent and hard work, had amassed millions of dollars he intended for scholarships for needy students through his "I Feel Good" Charity; generous additional gifts for certain claimed children and grandchildren; and decades of additional benefits for all of his children and grandchildren from Termination Rights to some of his American copyright royalties under the Federal

Copyright Act, but that, despite this knowledge, Plaintiffs brought this suit to damage and discredit fiduciaries protecting Brown's estate plan from being dismembered by the alliance of the Attorney General and Tomirae for their personal gain.

17. Finding that, under Rule 56 analysis, the Attorney General, Levenson clients, and Terry, knew before filing the Wingate Suit that Tomirae's and Bauknight's proposal to value Brown's Right of Publicity at zero; devalue his Tangible Personal Property to less than \$500,000; and overstate his deductions in IRS filings by \$5 Million; then discredit Buchanan and Pope in known false court filings using an ill-gotten IRS "refund" was improper, but nevertheless joined in the conspiracy for their own gain.

18. Finding that under the Rule 56 analysis, the Attorney General's, Legacy Trust's and Tomirae's 6-year evasion of both FOIA and discovery, including by false statements to the FOIA courts, to prevent release of public documents showing Bauknight's fabricated \$4.7 Million devaluation and that before Tomirae met James Brown she was married, living in Texas with her husband; and though she might be pregnant; and further showing that after James Brown discovered his ceremony with Tomirae was bigamous, she begged him to marry her, demonstrate that all have unclean hands and are not entitled to any equitable relief by way of summary judgment.

19. Finding under rule 56 that Terry and the Levenson clients knew, and know, that Tomirae's Federal Copyright Act Termination Rights claims were baseless, but conspired with her, and joined in known false statements to the Court, to damage Buchanan and Defendant.

20. Finding that Plaintiff is not estopped by Wilson v. Dallas to assert her counterclaims herein; that the issues in the Wingate Suit were not ruled on by the Supreme Court; but that the dicta is the result of Plaintiffs' - especially the Attorney General's - known false, public denunciations of Buchanan and Pope based on their own improper filings with the IRS and Courts.

21. Finding that the footnote related to 3:08-cv-00014-WOB is both incorrect and misleading; that in 2012 Forlando, at his own request, dropped his fabricated lawsuit to enjoin James Brown's 2000 Trust until felon David Cannon and Albert Dallas were reinstated as Trustees; that Judge Early found in 2008 that the Forlando suit impaired Brown's 2000 Trust; and the Court praised Buchanan's and Pope's service.

22. Finding that neither the 2000 Trust nor Buchanan and Pope recovered against Forlando for the high cost of Forlando's frivolous suit to reinstate Cannon

and Dallas because, with knowledge of its falsity, Bell and Forlando told the Court Forlando had no assets and no expectation of assets from the James Brown litigation unless his father died; and Bauknight -- for the 2000 Trust -- claimed under oath in 2013 that Forlando had done nothing wrong in trying to reinstate Cannon and Dallas.

23. Finding under Rule 56 that the Attorney General is not entitled to be dismissed as a party to this action, and for each and every reason stated herein, no Plaintiff is entitled to Summary Judgment as to any counterclaim of Defendant.

Whether Wingate Suit Illegal Should Be Decided Before Summary Judgment.

1. The Court overlooked or misapprehended that former Attorney General, now Governor, Henry McMaster ("Governor McMaster"), has stated under oath in 2016 that he did not authorize the Wingate Firm to bring the Wingate Suit in the name of the State/AG; did not authorize Bauknight to bring the Wingate Suit on behalf of the Attorney General; and did not know that as Attorney General he was named as a Plaintiff in the Wingate Suit until after leaving office in January 2011.

2. The Court overlooked or misapprehended that, under oath, both Solicitor General Robert Cook and former Chief Deputy John McIntosh have stated they lacked legal authority to authorize the Wingate Suit to be filed naming the State/Attorney General as a Plaintiff, and did not authorize it.

3. The Court overlooked or misapprehended that by 2013 Attorney General Alan Wilson was claiming in James Brown FOIA suits that the Attorney General did not have a contract, while the Attorney General's sole lawyers in the Wingate Suit, the Wingate Firm, claimed that the contract was confidential.

4. The Court overlooked or misapprehended that 23 - 40% Wingate

Contingency Agreement, when released after *Wilson v. Dallas* in 2013 revealed that it was not signed by the State/Attorney General or by most Plaintiffs, but by Bauknight and attorneys seeking about \$10 Million in legal fees if they could stop the appeal which became *Wilson v. Dallas*.

The Attorney General's Role in the Wingate Suit is Unique & Unconstitutional

5. The Court overlooked and misapprehended that the Wingate Suit is unique in the nation because it is the only known tort suit brought by an Attorney General against his own citizens for the benefit of nonresidents (Tomirae and others); without the Attorney General participating as an attorney; and in which the Attorney General shares a single, private lawfirm with out-of-state residents, including minors without a GAL.

6. The Court overlooked or misapprehended that the Attorney General in alliance with Tomirae, has, for seven years violated Defendant's Due Process rights under the U.S. and State Constitutions, and the S.C. Constitution Separation of Powers clause by placing the mighty power of the State/Attorney General in the hands of a private attorney to damage a citizen of South Carolina for the benefit of Tomirae and the Attorney General.

7. The Court overlooked or misapprehended that the Attorney General Alan Wilson has testified under oath in 2017 that he authorized the Wingate Suit, even though he knows nothing personally about James Brown, the "I Feel Good" Charity or the James Brown Legacy Trust ("McMaster Legacy Trust") over which he and Tomirae have had 75% voting control since 2011.

8. The Court overlooked or misapprehended that for four years after he told the South Carolina Supreme Court that he was seeking to get out of the Wingate Suit the AG, Tomirae, the McMaster Legacy Trust and Bauknight and his agent vigorously pursued the Wingate Suit, continuing the damage to Pope, including the known false claim that Pope and Bauknight committed the federal felony of overstating Brown's assets by \$79 Million to obtain a \$5 Million commission on a \$5 Million estate.

9. The Court overlooked or misapprehended that not only did the Attorney General and Bauknight as his agent vigorously pursue the Wingate Suit, but sought to evade compliance with FOIA by transferring all James Brown FOIA cases to Richland County; consolidating them with discovery in the Wingate Suit; and leaving them mired in stagnant discovery in this multi-million-dollar tort suit.

10. The Court overlooked or misapprehended that the purpose of the Attorney General's FOIA actions, like the scheme he is carrying out with Tomirae in the Wingate Suit, is to damage Buchanan and Pope so they appear greedy and unreliable, and to hide documents, which show: Bauknight's \$4.7 Million value was fabricated to damage Buchanan and Pope; Tomirae has admitted she was not Brown's spouse, and begged him to marry her; David Bell was part of the Wingate Suit when he planted the false Grammy claim; and the State/Attorney General and most clients did not sign the improper Wingate Agreement.

11. The Court overlooked or misapprehended that since March 2013 the Attorney General and Bauknight have spent millions of dollars James Brown gave his "I

Feel Good" Charity to continue the conspiracy to demean, damage and discredit Buchanan and Pope; prevent proper discovery; and allow Tomirae to siphon off royalties from copyrights James Brown gave his "I Feel Good" charity.

12. The Court overlooked or misapprehended that since March 6, 2013 when he met with Pope, the Attorney General has had actual knowledge of the damage the Wingate Suit is doing to her, while also damaging the "I Feel Good" Charity, by concealing documents which show Bauknight's \$5 Million overstatement of James Brown's debts in IRS estate tax filings, and use by the Attorney General of Bauknight's IRS "refund" resulting from the overstatement to damage Defendant; pay \$700,000 to the lawyer and GAL for Tomirae's son; and pay millions of dollars to Bauknight's attorneys who are not protecting James Brown's copyrights.

13. The Court overlooked or misapprehended that this Case, the Wingate Suit, is the only suit of its kind within the State of South Carolina, and perhaps the nation where a State Attorney General has sued a private citizen of his State in a tort suit; sharing with non-residents of the State (Tomirae, Terry Brown and the Levenson clients) a single, private law firm (the "Wingate Firm"); the law firm works for the benefit of the non-residents and the Attorney General; there is no written contract with the State/Attorney General; the Attorney General is not a lawyer in the case, and claims he does not control the litigation.

14. The Court overlooked or misapprehended that this Court lacks jurisdiction, and it would be manifestly unjust, to grant any relief to the State/Attorney General where the Attorney General who commenced the litigation with Tomirae and others did not sign

a valid Litigation Retention Agreement with the Wingate Firm and has asserted under oath that he did not authorize the Wingate Firm to bring the Wingate Suit with the Attorney General as a Plaintiff; did not authorize Bauknight to sue Buchanan and Pope on behalf of the State/Attorney General; and did not know he , as Attorney General, was named as a Plaintiff until after leaving office in January 2011.

15. The Court overlooked or misapprehended that that the current Attorney General ("Attorney General Wilson") could not make the illegal and unconstitutional Wingate Suit legal in 2011 by authorizing its continuation where the question of the legality of the lawsuit was before the Court of Appeals at the time and Attorney General obtained dismissal of the question as premature.

16. The Court overlooked or misapprehended that the issue of the legality of The Wingate Suit is squarely before the Circuit Court at this time; is ripe; and should be addressed before any relief is granted to the Attorney General, Bauknight as the Attorney General's claimed agent, or the McMaster Legacy Trust.

The McMaster Legacy Trust's Claim Not to Exist Precludes Summary Judgment

17. The Court overlooked or misapprehended that the James Brown Legacy Trust ("McMaster Legacy Trust") was created by Governor McMaster, Tomirae and others by January 2009, and that Tomirae and the Attorney General have had voting control over the McMaster Legacy Trust for more than seven years.

18. The Court overlooked or misapprehended that, in addition, the Attorney General exercises further control over the McMaster Legacy Trust with an absolute right

to remove and replace Bauknight, its trustee.

19. The Court overlooked or misapprehended that while vigorously pursuing the Wingate Suit and evading FOIA compliance since the *Wilson v. Dallas* decision in 2013, the McMaster Legacy Trust had claimed it does not exist.

20. The Court overlooked or misapprehended that Tomirae's agents have vigorously claimed that the McMaster Legacy Trust does exist and that Bauknight should be knighted.

21. The Court overlooked or misapprehended that Judge Early has ruled, however, that the McMaster Legacy Trust does not exist, which ruling is on appeal.

22. The Court overlooked or misapprehended that, having granted the McMaster Legacy Trust a favorable (albeit appealed) ruling that it does not exist, and is not subject to FOIA, it would be manifestly unjust for the Court to allow the McMaster Legacy Trust to pursue, for the 75% personal benefit of Tomirae and the Attorney General, summary judgment where Buchanan and Pope owed no duty to Tomirae ever and she and the McMaster Legacy Trust brought this suit to damage them.

The Undisputed Evidence Before the Court is that Buchanan and Pope Properly Valued James Brown's Music Empire at \$99 Million Less the \$15 Million TIAA Debt, and that the McMaster settlement deal, if properly reported and not voided by the Supreme Court, would have generated millions of dollars in estate, excise and income tax payable by James Brown's estate.

23. The Court overlooked or misapprehended the on August 10, 2008 the Attorney General brokered the settlement deal which would put the Attorney General and Tomirae, through Bauknight, in 75% control of James Brown's assets until May 8, 2013.

24. The court overlooked that the following month Buchanan and Pope filed James Brown's Estate Tax Return, properly reporting Brown's the Schedule F assets, Brown's 900 Copyrights, Royalties, Business Claims, Tangible Personal Property (except jewelry); 45 boxes of unpublished work and other music memorabilia; and other miscellaneous assets (the "Music Empire") at \$84 Million.

25. The Court overlooked that the \$84 Million was based, in part, on a formula presented to Judge Early to which the Attorney General and others made no objection, and before and since has been shown by expert and lay testimony to be reasonable.

26. The Court overlooked or misapprehended that the Attorney General's and other Plaintiffs' expert testified in 2017 that \$45 Million to \$60 Million was not inappropriate for the value of the 900 copyrights alone, at Brown's death. Termination Rights expert Roger Miller said in his deposition this year:

Q. Right, so but buy low is still essential to the concept, right?

A. [Miller] When possible.

Q. Right.

A. But, in my experience, if you want to buy this type of high quality content, you are often, more so than not, a price taker, not a price maker in the market.

Q. So, you think James Brown's assets were very spectacular assets, don't you?

A. Solid gold.

Q. Solid gold, right, right. [Depos. Miller, 17, p. 10.]

And later:

Q. And there is nothing second [sic.] secret about your opinion that James

Brown's is a solid gold catalog?

A. No. I think anybody would agree.

Q. Okay.

A. Who is familiar with the work.

Q. Okay. And there is nothing secret about your opinion that 15 to 20 times multiples [\$45 - \$60 Million] would not be an unreasonable value for James Brown's catalog?

A. No

Q. Nor would it have been when he died?
[Objection/response]

A. When he died valuations were as frothy, if not more so. There was an initial, what I call influx of private equity in the space around 2004 and '5. My firm originated in 2006 and we were the only ones who remained, everybody else was later consolidated. But there was a time when 20 times multiples was a pretty common multiple of pay for very high quality assets like this.

Q. Okay. And let me just ask you this, because you know all of this and I don't, but when there was the general downturn in 2008, is it fair to say that these kinds of assets held their value as well as anything else?

A. It is.

Q. Or even better?

A. Yeah, I would say even better...

27. The Court overlooked or misapprehended that in the McMaster settlement hearings Bauknight said he did not know the value of the James Brown assets, but had heard \$80 Million.

28. The Court overlooked or misapprehended that both Pope and expert Harley Ruff, Esq. testified that the McMaster Deal would result in millions of dollars of estate, excise and income taxes, and the Attorney General's only response was to give Judge Early the resume of about five tax experts, none of whom would testify.

29. The Court overlooked or misapprehended that two months after Judge Early approved the McMaster deal, in August 2009, Tomirae's lawyer proposed to the Attorney General and Bauknight to devalue Brown's copyrights to about 8 times multiples (\$24 Million) and to value Brown's Right of Publicity at zero in order to discredit Buchanan and Pope.

30. The Court overlooked or misapprehended that in August 2010 the Attorney General told the Appellate Court an appraisal to arrive in a few weeks would show Brown's assets at less than \$12 Million.

31. The Court overlooked that the PBW "appraisal" did arrive in September 2010, but was kept secret from the Supreme Court until May, 2011, eight months later, after the record was closed.

32. The Court overlooked or misapprehended that, with the PBW appraisal in hand, in December 2010 the Attorney General and others told the Court in their Initial Brief that Tomirae's Termination Rights were valuable but they did not have the means available to determine the value.

33. The Court overlooked or misapprehended that at the same time, Bauknight, with the blessing of the Attorney General, told the IRS that Brown's 900 Copyrights were worth \$23.7 Million; Brown's Publicity Rights were worth zero; Brown's

Tangible Personal Property was worth zero; Brown's claims against Cannon and others for the \$17 Million Cannon took from funds Brown gave his "I Feel Good" Charity was worth zero; and that other miscellaneous assets were worth zero.

34. The Court overlooked that by the above devaluation, including a \$3 Million hidden overstatement of Brown's TIAA debt to \$19 Million and an overstatement of Brown's charitable deduction from \$.8 Million to \$2.8 Million, Bauknight obtained an ill-gotten "refund" from the IRS.

35. The Court overlooked or misapprehended that the following month, David Bell, planted a false Grammy story on the website of lawyer Robert Potter, Esq., without Potter's knowledge.

36. In May 2011, after the record was closed, the Attorney General, Levenson and Bell - despite repeated public statements of their own clients to the contrary - moved to supplement the *Wilson* record with the claim that the IRS has "agreed" that Brown's music empire was worth \$4.7 Million when he died, and that Buchanan and Pope had intentionally overstated the value of James Brown's assets by \$79 Million in sworn IRS filings to obtain a \$5 Million commission on a \$5 Million estate.

37. The false GRAMMY claim and the ill-gotten "refund" would be central to the false claim by the Attorney General and Bauknight, as the Attorney General's agent, for the next six years that Buchanan and Pope had committed the federal felony of overstating Brown's asset by \$79 Million to obtain a \$5 Million commission.

38. With knowledge from their own experts of its falsity, the Attorney General and Bauknight claimed to multiple courts that there was no market for the James Brown assets. In 2013 Bauknight said in his deposition in the Forlando Suit:

Page 62

17 Q: Have you ever seen any court documents from
18 Aiken County regarding a formula to value the
19 royalties of James Brown's works?

20 A: A formula?

21 Q: A formula approved by the court for ---

22 A: Approved by the court.

23 Q: Yes, sir.

24 A: I've heard discussion of people -- I want to

25 say Adele Pope had some kind of testimony

Page 63

1 somewhere, but I don't know where I've seen it,
2 where people were talking with -- talking about
3 some kind of formula for valuing royalties.
4 But approved by the court, I'm not familiar
5 with that. And frankly, that wouldn't matter
6 to the IRS anyway. The IRS is going to use the
7 values that they choose and can substantiate as
8 appropriate for their purposes.

Page 69

22 Q: What about the Terry Brown letter of interest,
23 slash, offer in the spring of 2008, prior to

24 the Christie's auction? An offer ---

25 A: You'll have to show it to me to understand what

Page 70

1 you're talking about.

2 Q: That doesn't ring a bell to you?

3 A: No. I wasn't aware that anybody else had ever
4 offered to buy any assets, not that anybody has
5 ever offered to buy assets. But the only one
6 I've ever heard referred to by Pope is this
7 supposed offer from Terry Cox which never was
8 an offer. She put \$100 million out there so
9 she could collect a \$5 million claim which
10 she's filed. Purely self-serving. Purely self-
11 serving. Selling assets of the estate to take
12 money for herself and leave it insolvent.
13 Purely self-serving. I'm sorry. I get carried
14 away. I get passionate about something I'm
15 working on when I see such wrong doing.

And in 2017, Bauknight testified at his deposition in Aiken Case No. 2013-CP-02-1337:

10 RESUMING EXAMINATION

11 BY MS. POPE:

12 Q. Is there any reason why you didn't designate
13 anyone at Philpott Ball as an expert in this case?

14 A. I designated experts based on advice of my
15 attorneys.

16 Q. So you don't know why someone in Philpott Ball was
17 this not designated?

18 A. I don't know.

19 Q. And Philpott Ball is the firm that valued James
20 Brown's music empire at less than 4.7 million as
21 of the date of his death?

22 A. I don't agree with your term "empire." I don't
23 know where you came up with that, but the
24 intellectual property of the estate and trust of
25 James Brown was valued by Philpott Ball and

Page 38

1 Werner.

2 Q. Well, actually, Mr. Bauknight, isn't the Schedule
3 F not simply the intellectual property, but the
4 entire music empire?

5 A. I'm not sure what you're referring to at Schedule
6 F and if you'd let me, please, before you

7 interrupt, I'd like to finish my answers. You're
8 starting to speak before I finish.
9 Q. Oh, I certainly want you to finish. Please let's
10 do not speak over each other. Do you believe that
11 James Brown had a music empire?
12 A. I believe James Brown had intellectual property.
13 I don't understand what you mean by empire.

Page 58

9 Q. Now, am I correct that you valued Mr. Brown's
10 intellectual property in filings with the IRS at
11 less than 4.7 million as of his date of death?
12 A. It was -- well, number one, I did not value it.
13 That was the investment banking firm of Philpott
14 Ball and Werner that prepared the professional
15 valuation of the IP of James Brown. I reported
16 that value to the Internal Revenue Service. That
17 value was examined by the service at the agent
18 level, was reviewed by the agent's manager. That
19 was forwarded to the national office of the
20 Internal Revenue Service and the Internal Revenue
21 Service national office brought in the royalty
22 engineers, as they called them, which are the
23 royalty experts, who spoke directly with my
24 investment banking firm of Philpott Ball and
25 Werner...

Summary Judgment is Premature Because Discovery is Ongoing.

39. The Court overlooked or misapprehended that the Court should not have granted summary judgment because, through no fault of Defendant, discovery is not complete.

The State/Attorney General and Others Have Abused and Delayed Discovery

40. The court overlooked and misapprehended that in the 7 years since the Attorney General filed this lawsuit for the purpose of destroying the reputations and

careers of Buchanan and Pope the mighty power of the State has been placed in service of the McMaster Legacy Trust both prior to, and since, *Wilson v. Dallas*.

41. The Court overlooked or misapprehended that, contrary to the report of this Court to the South Carolina Supreme Court in 2015, Tomirae and the Levenson clients announced in open court on May 29, 2013 their intention to reinstate the McMaster Settlement deal which dismembered James Brown's "I Feel Good" Charity and unnecessarily threatened its 900 copyrights based on false IRS documents and false claims about James Brown's heirs and the Federal Copyright Act Termination Rights provisions.

42. The Court overlooked or misapprehended that Solicitor General Robert Cook admits that in March 2013 Defendant advised the Attorney General personally of the damage his alliance with Tomirae and the false statement being made by Bauknight to the IRS were causing the "I Feel Good" Charity, the Attorney General has worked vigorously since May 9, 2013 to reinstate the McMaster settlement deal, retake control of the James Brown "I Feel Good" Charity and allow Tomirae to siphon off benefits from Brown's "I Feel Good" Charity to which she is not entitled.

43. The Court overlooked or misapprehended that the Attorney General, despite his claims to the Supreme Court, has allowed Bauknight to continue his false, vitriolic attacks to damage Buchanan and Pope, even though he knows they are based on intentional misstatements by Bauknight to the IRS and Courts, and had continued to evade discovery of the public documents which show:

1. Tomirae was not Brown's spouse, and knew it. [Handwritten admission, public since 2007.]

2. Bauknight's \$4.7 Million "appraisal" (Based on known false understatements of assets and overstatements of debts).
3. The Wingate Suit is illegal and was never properly authorized (Wingate Agreement).
4. The Legacy Trust was amended and Forlando became the real party in interest the same month Bell planted the false Grammy claim (January 2011).

44. The Court overlooked or misapprehended that, with the blessing of the Attorney General, Bauknight's false, vitriolic attacks intended to advance the McMaster settlement deal became even more vitriolic after June 10, 2013 when, at the request of Levenson, Tomirae and Bauknight, Judge Early banned Buchanan and Pope from participation in Aiken County James Brown cases while the Honorable L. Casey Manning, at the request of the Attorney General and Tomirae, stayed all discovery and FOIA hearings for three years.

45. The Court overlooked or misapprehended that Bauknight, after Buchanan and Pope were banned from participation in all Aiken cases except their own claims -- even repeated his \$3 Million overstatement of the TIAA debt, and made extraordinary, vitriolic false claims in his depositions in the Forlando Suit, Aiken 2013-CP-02-1337 and elsewhere.

46. The Court overlooked or misapprehended that the discovery abuse and Attorney General's condoning of Bauknight's and Tomirae's false claims to benefit their position in this case hit their mark in 2015 when Judge Early determined Tomirae to be

Brown's spouse without anyone proffering her handwritten admissions she was not Brown's spouse, then reported to the Supreme Court: that the heirs had been properly determined; that the Court had heard no suggestion of any settlement; and that the Court believed Pope was seeking a \$5 Million commission.

47. The Court overlooked or misapprehended that the Court's ruling that the Attorney General could not be deposed in this case gave the State/ Attorney General, Tomirae and the Legacy Trust an improper advantage over Defendant in her counterclaims, and should be reconsidered and rescinded before any hearing on the merits.

48. The Court overlooked or misapprehended that since 2011 the Attorney General, Legacy Trust and Bauknight have tried to create a FOIA graveyard of the Wingate Suit, in order to cover up the material misstatements they have made (or condoned) to the IRS and Courts, as is shown by the James Brown matters now pending in the Court of Appeals.

Collateral Estoppel Does Not Bar Defendant's Counterclaims.

49. The Court overlooked or misapprehended that collateral estoppel based on the 2013 *Wilson v. Dallas* decision is not available to Plaintiffs in their attempt to avoid liability to Defendant (and Buchanan if the motion to void his improper "settlement" is reversed) because none of the elements is met; the issue of plaintiffs' conspiracy to damage and discredit Plaintiffs as incompetent and greedy through a scheme to devalue James Brown's assets and making false statements to both the IRS and the Courts, so that

the Courts would not believe Buchanan's and Plaintiff's reasonable opposition to the McMaster deal was not "actually litigated" in Wilson v. Dallas. In fact, the Supreme Court denied the post-record attempt of some Plaintiffs to ask the Court to consider the fabricated \$4.7 Million value and the resulting, ill-gotten "refund", but the Court refused to do so on August 1, 2011. See Carolina Renewal, Inc. v. S. Carolina dep't of Transp., 385 S.C. 550, 554, 684 S.E. 2d 779, 782 (Ct. App. 2009).

50. The Court overlooked or misapprehended that the propriety of Plaintiffs' false claim that James Brown's \$84 Million Music Empire was worth only \$4.7 Million, and the ill-gotten "refund" resulting from Bauknight's \$5 Million overstatement of debts to the IRS (\$3 Million of which was concealed within the PBW "appraisal"), was neither " (1) actually litigated in the prior action"; nor " (2) directly determined by the prior action;" nor (3) "necessary to support " the judgment in Wilson v. Dallas , confirming that Estoppel is unavailable to Plaintiffs under Carolina.

51. The Court overlooked or misapprehended that that the Supreme Court's decision to support Judge Early's replacement of Pope was not a ruling on the value of their services because the only cause for their 2009 removal within the record was their failure to support and sign a settlement the Supreme Court found was void, and had dismembered James Brown's noble estate plan.

52. The Court overlooked or misapprehended that Judge Early's Order which was upheld with respect to the replacement of Buchanan and Pope specifically held that the removal was NOT for cause, and that any for-cause hearing was held in abeyance.

53. The Court overlooked or misapprehended that the dicta in Wilson v. Dallas is,

however, evidence of the success of the Attorney General, Tomirae and Bell had in making Buchanan and Pope appear greedy, vitriolic and incompetent by planting the false GRAMMY claim; making the false claim in an unsuccessful motion to supplement the record on appeal that Buchanan and Pope wanted a \$5 Million commission from Brown's \$5 Million estate; and other false statements, such as were made by Bauknight's counsel to the media the day before oral argument, in an effort to damage the careers and reputations of Buchanan and Pope with false claims both to the IRS and the Courts.

54. The Court overlooked or misapprehended that the issue of whether the Grammy sale was appropriate did not meet any of the three criteria for collateral estoppel in Wilson v. Dallas, and was, in fact, a direct result of the damage done to Buchanan and Plaintiff by Bell, a signatory on the Wingate Litigation Retention Agreement, who planted the false claim in 2011 to advance the Wingate Suit in the hope of reaping millions in legal fees by discrediting them with the false Grammy claim.

55. The Court overlooked or misapprehended that had the GRAMMY issue been litigated, the Court would know that Robert Potter, lauded for "halting" the GRAMMY sale, did not halt the GRAMMY sale; that the Attorney General had actually asked the Court to approve the sale when Albert Dallas and Forlando tried to stop it; that Judge Early had specifically directed Buchanan and Pope to sign the contract listing the GRAMMY; that the sale, as confirmed by Christie's counsel in Levenson's presence, was perfectly legal; that Johnny Cash, Stevie wonder and others have sold GRAMMYs; that at least one Federal Bankruptcy Court has been involved in a GRAMMY sale issue; and that the GRAMMY was appropriately entered and appropriately withdrawn to avoid legal defense costs.

56. The Court overlooked or misapprehended that if the GRAMMY issue had been litigated, the record would have shown that the GRAMMY was valued at \$15,000 - \$20,000 by Christie's ; was valued by Bauknight at \$20,000 on its return; and that Bauknight told the IRS the year after its return that ALL of James Brown's thousands of items of Tangible Personal Property (including about 350 pieces sold for about \$800,000 at Christies) were worth less than \$200,000 when Brown died.

57. The Court overlooked or misapprehended that the Wingate Suit Plaintiffs, having agreed with and condoned Bauknight's intentional devaluation of Brown's GRAMMY to a value near zero, are estopped from claiming any loss.

58. The Court overlooked and misapprehended that the endorsement by the State's highest legal officer of false IRS filings and the use of those false filings in Supreme Court filings to damage the credibility of Buchanan and Pope so that the Attorney General and Tomirae could retain control of the James Brown assets and siphon off royalties belonging to The James Brown "I Feel Good" Charity caused, and continues to cause, great damage to Defendant and Buchanan.

59. The Court overlooked or misapprehended that the Supreme Court's decision to uphold Judge Early's decision to replace Buchanan and Pope did not in any way adjudicate the value of their services, and the issue of entitlement to fees and commissions was specifically remanded.

60. The Court overlooked or misapprehended that the State/AG and the Court violated Defendant's Due Process and Equal Protection Rights under the U.S. and State Constitutions by Judge Early's granting Plaintiffs' motion for summary judgment after his

specific findings on October 12, 2013 that all of Buchanan's service was proper; no disgorgement under Wilson was appropriate; that Buchanan may retain all payments under his contract with James Brown's Estate/2000 Trust; and even that Buchanan may, under certain circumstances, make a claim in the Wingate Suit. [Transcript. 10/12/13, Buchanan claim], where all of Buchanan's and Pope's service was joint.

61. The Court overlooked or misapprehended that the Estoppel is not applicable, and that the State, including in the Summary Judgment Order, continues to deprive Defendant of a full and fair opportunity to be heard; to refute the false felony claim made by the Attorney General and Bauknight as the Attorney General's agent; and level playing field, to show that she has been continuously and improperly damaged by fraudulent State Action planned in 2009 and carried out in the Wingate Suit since May 2010.

62. The Court overlooked or misapprehended that the Court's Order punishes Plaintiff for daring to try to protect James Brown's "I Feel Good" Charity from improper State Action which was, and is, prejudicial to the administration of justice.

63. The Court overlooked or misapprehended that the Conspiracy and Fraud in this case were not to remove Buchanan and Pope, who had been removed, but to damage and discredit them, ruining their careers and credibility, so that the Courts would not believe their true lay and expert testimony that the McMaster settlement deal dismembered The James Brown "I Feel Good" Charity; threatened its 900 copyrights; threatened (if not voided) millions of dollars in estate and income taxes; and could only be justified by known false representations to the IRS and Courts.

**Judicial Estoppel Is Not Applicable Because Plaintiffs' Inconsistent Statements
Were Made to Mislead Both the IRS and the Courts.**

64. The Court overlooked or misapprehended that, even without discovery, there is abundant evidence that ALL Plaintiffs made, or allowed Bauknight to make on their behalf, inconsistent statement as part of an intentional effort to mislead the Court. See Cothran v. Brown, 357 S.C. 210, 592 S.E. 2d. 629 (2004).

65. The Court overlooked or misapprehended that the Court's finding that "Plaintiff's [sic] assertions were not made in an intentional effort to mislead the Court..." is a disputed factual finding which, under Rule 56 SCRPC must be read to support Defendant – namely that the assertions WERE made in an intentional effort to mislead the Court.

66. The Court overlooked or misapprehended that, as to both estoppel assertions, the Attorney General and all Plaintiffs are bound and estopped by their representations to the Court in 2010 that the causes of action in this Wingate Suit have nothing to do with Wilson v. Dallas

67. The Court overlooked or misapprehended that, over Buchanan's and Plaintiff's objections, the Attorney General and other Plaintiffs' argued, and the Honorable L. Casey Manning agreed, that this Wingate Case is different from Wilson and the Alken County James Brown cases.

68. The Court overlooked or misapprehended that, even if the criteria for estoppel were met – and they were not -- it is Plaintiffs who, having benefitted from the claim that Wilson v. Dallas bears no relation to the Wingate Suit, would be estopped to attempt to use dicta in that 2013 decision to defeat counterclaims in this 2010 suit.

Under Rule 56 Analysis Defendant is Entitled to Relief as to All Counterclaims.

A. Abuse of Process

69. The Court overlooked or misapprehended that as to each Plaintiff all of the elements of Abuse of Process have been met, namely (1) an ulterior purpose and (2) willful acts in the use of the process not proper to the conduct of the proceeding. *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551, 555-556 (2010).

70. The Court overlooked or misapprehended that the ulterior purpose was not to replace Buchanan and Pope, who had been replaced, but to use the mighty power of the State/Attorney General, through Bauknight and the McMaster Legacy Trust, to so damage their reputations and careers with false, fabricated accusations that they would be forced to abandon their duty to appeal a settlement which dismembered The James Brown "I Feel Good" Charity.

71. Having lost the appeal, the Attorney General, with personal knowledge that the claims are false, has continued this abusive lawsuit for more than four years for the same ulterior purpose, and with ever-increasing damages to Plaintiff.

72. The Court overlooked or misapprehended that the Court's "multiple specific examples in support of Mrs. Pope's removal" were not part of the record on appeal, but a direct and proximate result of the false statements made by the State's highest legal officer and Bauknight, acting as his agent, and do not meet the Rule 56 standard.

73. The Court overlooked or misapprehended that there was no legitimate purpose whatsoever for the State's highest legal officer, or Bauknight as his agent, to

attack, denigrate and falsely accuse Buchanan and Pope of the federal felony of overstating Brown's assets by \$79 Million where all Plaintiffs had actual knowledge that Bauknight was in the process of understating Brown's Right of Publicity by millions of dollars and overstating deductions available under the McMaster settlement by \$5 Million to make Buchanan and Pope appear greedy and incompetent.

74. The Court overlooked that the "willful" act element of Defendants' Abuse of Process claim was met by the State's highest legal officer, and the Constitutional Officer charged with the protection of charities allowing his agent Bauknight to intentionally understate the value of Brown's assets to the IRS; intentionally (and secretly) overstate Brown's deductions by \$5 Million; claims that Brown's music empire was worth only \$4.7 Million at his death; then accuse Defendant and Buchanan of the felony of overstating Brown's assets by \$79 Million to get a \$5 Million commission, all for the purpose of discrediting Buchanan and Pope so Plaintiffs could siphon off assets belonging to James Brown's "I Feel Good" Charity Buchanan and Pope were properly protecting.

75. The Court overlooked or misapprehended that the success of the Attorney General in planting a false felony claim against Buchanan and Pope, based on material misstatements to the IRS and a "refund," along with a fabricated Grammy claim against Buchanan and Pope cannot serve as "cause to demonstrate that Plaintiffs' pursuit of this action is not a willful act through which process has been misapplied or abused."

76. The Court overlooked or misapprehended that the sole, paramount or primary reason of the Attorney General and other Plaintiffs for bring the action was to discredit, demean and damage Buchanan to the extent that they could not credibly defend

against the Attorney General's and Tomirae's scheme, through Bauknight, to dismember James Brown's "I Feel Good" Charity and its 900 copyrights for personal gain.

77. The Court overlooked that what the Court characterizes as "various legitimate concerns" about Buchanan's and Pope's administration were not legitimate because all were based on the false, material IRS filings by Bauknight, and the Attorney General's and other Plaintiffs' reliance on those false filings, the ill-gotten "refund" and additional knowing false and material misstatements by the Attorney General and Bauknight to the Court about James Brown's heirs and the Federal Copyright Act.

78. The Court overlooked that in addition to the false IRS claims, Bauknight made the false representations to the Supreme Court that Tomirae was Brown's spouse; that she and her son controlled the Federal Copyright Act Rights; that Termination Rights were automatic, and the royalties to "Please, Please, Please" would go automatically 50% to Tomirae in 2012; or, if not to Tomirae, to the Levenson clients; and that Tomirae's elective share claim was a "slam dunk."

79. The Court overlooked or misapprehended that all of the Plaintiffs knew Bauknight's representations to the Supreme Court and Tomirae to be false and/or misleading; and that the only reason Tomirae received \$1 Million in payments for part of the "Please, Please, Please" royalties in 2015 was that David Sojourner, Esq. failed to protect the "I Feel Good" Trust's copyrights and Bauknight and Peter Afterman helped Tomirae siphon off royalties to which she was not entitled.

80. The Court overlooked or misapprehended that Tomirae's elective share claim, and claim to be Brown's spouse, were never a "slam dunk" until the Attorney

General arbitrarily decided to favor Tomirae and her son, and to aid them, through Bauknight, in siphoning off assets which belong to James Brown's charity.

81. The Court overlooked or misapprehended that by his own admission Bauknight has spent millions and millions of dollars to defeat Buchanan's and Pope's claims, and that Tomirae's lawyer has claimed he should be knighted.

82. The Court overlooked or misapprehended that the abuse of process continued after March 6, 2013, when Attorney General Wilson was told personally of Bauknight's tax fraud and a possible way to correct it without damaging James Brown's "I Feel Good" Charity or Bauknight.

83. The Court overlooked or misapprehended that the Attorney General and Solicitor General Robert Cook had actual knowledge on March 6, 2013, that Plaintiff was competent; not greedy; and acting to try to save the "I Feel Good" Charity, but, instead, elected to authorize Bauknight and the Wingate Firm to continue the false, malicious, vitriolic lawsuit by which the Attorney General and Tomirae seek to damage Defendant so they can retake the assets of James Brown's "I Feel Good" Charity.

B. All Plaintiffs Were Part of the Tomirae/Attorney General/ Bauknight Civil Conspiracy.

84. The Court overlooked or misapprehended that this actions is clearly "a combination of two or more persons joining for the purpose of causing special damage to the plaintiff." Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822 (Ct. App. 2011).

85. The Court overlooked that even without discovery, under the Rule 56 standard, Defendant has met all of the element of civil conspiracy necessary to recover.

Lyon v. Sinclair Refining Co. 189 S.C. 136, 200 S.E. 78 (1938), and the "essential consideration" that the "primary purpose or object of the combination is to injure the plaintiff." Lee v. Chesterfield General Hosp., Inc. 289 S.C. 6, 13, 344 S.E. 2d 378, 383 (Ct. App. 1986).

86. The Court overlooked or misapprehended that the dicta in Wilson v. Dallas, which was issued three years after the Wingate Suit was filed, and reflected the false, malicious felony claim the Attorney General was making against Buchanan and Pope could not establish good faith grounds for bringing the Wingate Suit in 2010.

87. The Court overlooked or misapprehended that in their depositions in Aiken County Case 2013-CP-02-1337 AG Sony Jones and AG Mary Frances Jowers can state no grounds for bringing the suit; Governor Henry McMaster has stated under oath that he did not bring the suit as Attorney General, and did not authorize Bauknight to bring it on his behalf as Attorney General; Attorney General Wilson knows nothing about the Suit; and most Plaintiffs knew nothing to support the Wingate Suit when it was filed.

88. The Court overlooked or misapprehended that the improper Wingate Litigation Agreement, signed not by the Plaintiffs but by Attorneys seeking \$10 Million in legal fees if they could stop the Wilson v. Dallas appeal, is, alone, substantial evidence that the primary purpose of the Wingate Suit was to injure Defendant and Buchanan.

89. The Court overlooked or misapprehended that there is no evidence that all of the Plaintiffs had either the same justification, or any justification, for participating in the Wingate Suit, as depositions show that many were not even advised of the filing until years after the lawsuit was filed.

90. The Court overlooked that to the extent the Plaintiffs had the same "justification" to bring the Wingate suit, it was based on their unjustified and primary purpose, to injure Buchanan and Defendant so that they could dismember James Brown's noble estate plan.

91. The Court overlooked or misapprehended that it is manifestly unjust for the Court to find that the holding in Wilson is relevant to defeat some of Plaintiff's claims, but not relevant to support a cause of action for civil conspiracy.

92. The Court overlooked or misapprehended that the Attorney General, the McMaster Legacy Trust and Bauknight as the Attorney General's and Tomirae's agent, have maliciously continued their conspiracy to damage Defendant for four years after the Attorney General told the South Carolina Supreme Court he was seeking to be dismissed as a party to the Wingate Suit.

93. The Court overlooked that in furtherance of the conspiracy, since May 8, 2013, the Attorney General has condoned the payment to counsel and GAL for James B. of approximately \$700,000.00; the payment to Sojourner of about \$1.5 Million not to protect the copyrights; and the payment to Bauknight's lawyers, while he still serves Tomirae, millions of dollars, all for the purpose of injuring Defendant.

94. The Court overlooked or misapprehended that the actions of the Attorney General since March 6, 2013, when he had direct, personal knowledge of the intentional false IRS filings by Bauknight and the use of the false IRS filings in false Supreme Court filings, has been consistently prejudicial to the administration of justice.

95. The Court overlooked or misapprehended that the January 2011 planting by

David Bell, Esq., a signatory to the Wingate Litigation Retention Agreement, of the false Grammy claim was malicious; in furtherance of the civil conspiracy to damage Defendant and Buchanan; and did, in fact, damage them.

C. Plaintiffs Intentionally Interfered with Plaintiff's Court-Approved Contract.

96. The Court overlooked or misapprehended that Plaintiff has a valid contract with the Estate of James Brown and James Brown 2000 Trust, which contract was approved by Order of Judge Early dated January 8, 2008, and under which Buchanan has been paid for all service through May 26, 2009.

97. The Court overlooked or misapprehended that in its answer to the Complaint in Aiken Case 2013-CP-02-1337, the Estate/2000 Trust does not deny the existence of the contract, and did not deny it with respect to Buchanan.

98. The Court overlooked or misapprehended that it is undisputed that Judge Early's payment Order provided for interest at the legal rate to be paid on all amounts not paid under the contract within 60 days.

99. The Court overlooked or misapprehended that the Estate/2000 Trust did not deny the existence of the contract in their untimely response to Buchanan's and Pope's claims.

100. The Court overlooked or misapprehended that all Plaintiffs knew of the existence of the contract, and the decision of most Plaintiffs to interfere with payments to Buchanan and Pope under the Court-approved contract.

101. The Court overlooked that no Plaintiff who was a party to Aiken County Case 207-CP-02-0122, including the Attorney General, timely objected to the Contract or the

Payment Order of Judge Early, and some praised the service of Buchanan and Pope at the hearing on December 21, 2007 for approval of the Contract.

102. The Court overlooked or misapprehended that counsel for Tomirae, specifically, praised Buchanan and Pope for using "belt and suspenders" to seek Court approval of a contract the James Brown Will and Trust allowed them to make with themselves, individually, without Court approval.

103. The Court overlooked or misapprehended that the Contract and Payment Order approving the Contract, and directing that interest be paid on unpaid amounts, was known to all Plaintiffs (except the McMaster Legacy Trust, which was not a party to Case 2007-CP-02-1337 at the time).

104. The Court overlooked or misapprehended that Defendant, like Buchanan, demonstrated each of the elements for tortious interference with contractual relations, namely: 1. The existence of a contract; 2. Knowledge of the contract; 3. Intentional procurement of its breach; 4. The absence of justification; and 5. Resulting damages. Kindard v. Crosby, 315 S.C. 237, 240, 433 S.E. 2d 835, 837 (1993) .

105. The Court overlooked or misapprehended that its finding seven years after issuing an Order approving the contract, that there was no contract, is inconsistent with the law of the case in Aiken County Case 2013-CP-02-1337; the payments to Buchanan made in this case, and approved by Judge Early; and the standard of review required by Rule 56.

106. The Court overlooked that the statement that Pope's and Buchanan's appointment by the Court overlooks that they were appointed under the Will and 2000

Trust of James Brown, with all authority and duties as if originally appointed by James Brown (with the exception of the duty to appoint a third trustee), and that the contract which the Court approved stemmed from their contract with the Estate and 2000 Trust as authorized by those documents. [Apptmt. Order. 11/20/07]

107. The Court overlooked or misapprehended that the many cases cited about general rules of contract ignore the record before Judge Early as to Plaintiff's contract; Buchanan's and Pope's Petition for Approval of the Contract; the hearing on the Petition; and the Payment Order approving the contract.

D. Defendant Has Been Injured by the Fraud of Plaintiffs Under §62 -1-106.

108. The Court overlooked or misapprehended that the following portion of Section 62-1-106 of the South Carolina Probate Code (2009) directly applies to this action:

Whenever fraud has been perpetrated in connection with any Proceeding or an any statement filed under this Code or if fraud is used to circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not, but only to the extent of the benefit received.

109. The Court overlooked or misapprehended that the false heirs determination and others known false representations to the Courts, beginning before the commencement of this action, and continuing today, have damaged Defendant.

110. The Court overlooked that the fraud on the Supreme Court, following the claimed zero value of Brown's Right of Publicity and Tangible Person Property to the IRS and the securing of an ill-gotten IRS "refund" proximately caused injury to Defendant as required by the Code.

111. The Court overlooked that Plaintiffs never raised the statute of limitations as a defense to Defendant's fraud under §62-1-106 claims, and relief to Defendant for the false and fraudulent claims is not barred because they have been ongoing since 2009.

112. The Court overlooked or misapprehended that even innocent Defendants such as James B. have benefitted from the 62-1-106 Termination Rights and Valuation Fraud on multiple courts of Tomirae, the Legacy Trust and the Attorney General.

**Multiple Plaintiffs Benefitted, and Defendant Was Injured, by the Devaluation & Other Fraud of Tomirae, the Attorney General, Bauknight & Bell ,
Federal Case No. 3:08-cv-00014-WOB and the Fraud of David Bell, Esq.**

113. The Court overlooked or misapprehended that the footnote related to a lawsuit filed against Plaintiff Estate/2000 Trust of James Brown on January 2, 2008, bears no relation to this action, except that Georgia lawyer David Bell, Esq., represented Forlando Brown in claiming to support the James Brown 2000 Irrevocable Trust in that federal suit, while simultaneously representing Forlando's father, Terry Brown, in seeking to dismember Brown's "I Feel Good" Trust as part of the McMaster settlement deal.

114. The Court overlooked or misapprehended that Forlando's lawsuit was commenced in January 2008 seeking an injunction against Plaintiff James Brown 2000 Irrevocable Trust until David Cannon and Albert "Buddy" Dallas were reinstated as its trustees. The Complaint and Forlando, both agree that James Brown's assets were worth at least \$100 Million when Brown died and offers of \$150 Million were available in late 2008, after the Attorney General and Tomirae claimed the right to take 75% control of Brown's assets and give away more than half of the "I Feel Good" Charity.

115. The Court overlooked or misapprehended that Buchanan and Pope

successfully defended the 2000 Trust in a November 2008 Forlando Suit hearing seeking to temporarily enjoin the 2000 Trust and reinstate the Cannon Trustees.

116. The Court overlooked or misapprehended that at that hearing the Estate Tax Return, with a value of the James Brown assets at approximately \$100 Million less the \$15 Million TIAA debt was discussed in detail, and no objection was made to the value.

117. The Court overlooked or misapprehended that in December 2010 and January 2011, after the commencement of the Wingate Suit, Attorney General Henry McMaster, Terry Brown and others, amended the McMaster Legacy Trust so that Terry's right of first refusal to purchase the James Brown assets could be set in motion.

118. The Court overlooked or misapprehended that following the amendment to the McMaster Legacy Trust, Terry Brown transferred his entire interest in the James Brown estate to Forlando.

119. The Court overlooked or misapprehended that on or about January 18, 2011 AG Jones secretly distributed the Legacy Trust Amendment and Assignment to Bauknicht and the settling parties, and Forlando began the period of due diligence provided in the McMaster settlement deal.

120. The Court overlooked or misapprehended that in the same month Bell and Forlando planted the false Grammy claim on the Kilpatrick Stockton (KS) website.

121. The Court overlooked or misapprehend that the claim that Robert Potter, Esq., had halted the Grammy sale was false because the Grammy had been voluntarily and appropriately withdrawn by Buchanan and Pope, with Levenson present, over the urging of Christie's counsel that it remain in the sale.

122. The Court overlooked or misapprehended that the National Academy of Recording Arts and Sciences had no contract with Brown which would prevent a sale of the Grammy; Johnny Cash and others have sold Grammys; and Christie's counsel advised the there was no basis to withdraw the Grammy.

123. The Court overlooked or misapprehended that the Grammy was withdrawn appropriately to avoid the legal cost of defending the sale, and because Dallas and others had already chilled the sale.

124. The Court overlooked or misapprehended that in late 2010 the Attorney General supported Bauknight in the false claim to the IRS that all of James Brown's thousands of items of Tangible Personal Property, including the approximately \$800,00 of items sold at Christie's in 2008, had a value of less than \$200,000.

125. The Court overlooked or misapprehended that from January 2011 until after the *Wilson* decision in 2013 Bell, Bauknight and the Attorney General kept concealed the Wingate Litigation Agreement which was not signed by the Attorney General, but was signed by Bell.

126. The Court overlooked or misapprehended that in 2011 Forlando became disgruntled with Bauknight over what he claimed was Bauknight's failure to consider a possible \$200 Million sale of the James Brown assets to Oprah Winfrey or her agents.

127. The Court overlooked or misapprehended that Forlando , who had reviewed the \$4.7 Million Bauknight/PBw appraisal denounced it as "bogus" in a sworn deposition.

128. The Court overlooked or misapprehended that in the fall of 2011 Forlando

“fired” all of his attorneys, including Bell, and asked the Court the Honorable William O. Bertelsman to drop all of his claims against the 2000 Trust, and the claims made in the amendments to his Complaint against Buchanan and Pope.

129. The Court overlooked or misapprehended that Bauknight abandoned the 2000 Trust's counterclaims for attorneys' fees against Forlando, and offset against Forlando's share of the 2000 Trust, for the 4-year attempt to reinstate the Cannon Trustees.

130. The Court overlooked or misapprehended that in 2012 Bauknight, with actual (but secret) knowledge that Forlando had become the owner of Terry's interest in the Estate, allowed Forlando to represent to the Federal Court that he had no assets and no expectation of assets from the James Brown estate litigation unless his father died.

131. The Court overlooked or misapprehended that when Buchanan became financially desperate in 2012 and reached a settlement in the Wingate Suit, his carrier was not paid for protecting the 2000 Trust against Forlando's attempted injunction, but retained the right to seek redress for some of the loss from his service from Forlando.

132. The Court overlooked or misapprehended that Buchanan and Pope appropriately made claims against Forlando which were not the same counterclaims made in this case because Forlando knew, and stated, the value of Brown's music empire was \$100 Million or more; knew, and stated, that Tomirae was not Brown's spouse, and her handwritten admissions showed that she begged Brown to marry her after he discovered she had been married during their bigamous ceremony. Further the false claims of the Attorney General, Bauknight and Tomirae to the Courts about heirs and the Federal

Copyright Act Termination Rights were not a part of the Forlando Suit because all parties, despite Forlando's bad acts and desire to reinstate Cannon and Dallas, agreed that Brown's noble estate plan should be upheld and that The James Brown "I Feel Good" Charity and its 900 copyrights protected.

133. The causes of action in the Forlando Suit related to the attempt to enjoin the 2000 Trust and reinstate the Cannon trustees even though Cannon had taken \$17 Million from funds Brown gave the "I Feel Good" Charity to educate needy students.

134. The Court overlooked or misapprehended that in July 2012 the Attorney General and other Plaintiffs reached a settlement in the Wingate Suit with Buchanan, who had become financially desperate, and that he was paid the amount under his Contract with the Estate/2000 Trust through May 26, 2009, plus some interest.

135. The Court overlooked or misapprehended that in the 2012 settlement Buchanan retained his right to seek redress against Forlando, but his carrier was not paid.

136. The Court overlooked or misapprehended that both before and after the Wilson v. Dallas decision, Bauknight, instead of supporting the two fiduciaries who had protected James Brown's estate from Cannon, claimed in a 2013 deposition in the Forlando Suit that Forlando had done nothing wrong and that Buchanan and Pope were the wrongdoers.

137. The Court overlooked or misapprehended that in 2013 Bell reappeared in the Forlando case, claiming to the federal court that he was not being paid for his work.

138. The Court overlooked or misapprehended that Bell, with knowledge of its falsity, continued the claim that Forlando had no assets. Further, he assured the Court

that the issue of attorneys' fees was being litigated in the State Court.

139. The Court overlooked or misapprehended that Bell, a Georgia lawyer, has a long history of false statements in the James Brown matters, including the filing, with Forlando and family, of multiple grievances against Louis Levenson, Esq., in Georgia and South Carolina, even accusing Levenson of forging his fee contract with Forlando's brother.

140. Bauknight's vitriolic deposition given in the Forlando Suit in September 2013, which is incorporated herein in its entirety, demonstrates the level of vitriol Bauknight spewed, and the Attorney General praised, as part of the conspiracy to damage and discredit Buchanan and Pope, who, by then, had actual evidence of the \$5 Million intentional overstatement of Brown's debts to the IRS, including a claim that Brown was giving \$2.8 Million to charity, when he was giving only \$.8 Million.

141. The Court overlooked or misapprehended that, assured (incorrectly) that Forlando had no assets; that Defendant 2000 Trust Buchanan and Pope had defended no longer sought repayment for the cost of Forlando's 4-year effort to reinstate Cannon and Dallas; and assured that the matters were being handled in State Court, Judge Bertelsman, who had previously dismissed all of Forlando's claims against the 2000 Trust, Buchanan and Pope 2012, praised the work of Buchanan and Pope, but declined to grant judgment against the claimed impoverished Forlando. Judge Bertelsman's Order was not reversed on appeal.

142. Consistent with the continuing scheme to try to damage Buchanan and Pope from in any way possible, after *Wilson Bauknight* hired Wingate - Tomirae's lawyer -

- to try to prevent Defendant's carrier from being reimbursed for his work to save James Brown's "I Feel Good" Trust from Cannon and Dallas, including a 2-day hearing in November 2008 where Forlando asked that the 2000 Trust be paralyzed until Cannon, who was known to have taken \$17 Million from funds Brown gave his "I Feel Good" Charity, was reinstated as trustee.

143. As a result of the false (abandoned) Forlando Suit in which Defendant's carrier protected the 2000 Trust from 2008 through May 26, 2009, and the fabricated, false claims in the Wingate Suit, both Buchanan and Defendant lost their professional insurance and were sued by their carrier, and Defendant is still unable to obtain professional negligence insurance as a result of the pending Wingate Suit.

The Tomirae/ Legacy Trust/Attorney General \$4.7 Million Devaluation Scheme to Damage Defendants; Ill-Gotten IRS "Refund"; and False Supreme Court Filings, Including False Copyright Claims, Support all Counterclaims.

144. The Court overlooked and misapprehended that Plaintiff's Termination Rights Expert in this case, Expert Roger Miller, has stated under oath that James Brown's music catalog is "sold gold" and that anyone in the business would of purchasing music catalogs would know that.

145. The Court overlooked that in his deposition in Aiken 2013-CP-02-1337, which is incorporated herein by reference, Miller is of the opinion that Brown's music catalog at his death was easily worth \$45- \$60 Million, and is still worth that much.

146. The Court overlooked or misapprehended that of Brown's 900 copyrights only the American copyrights, and only a portion of the America copyrights, may be subject to Termination Rights, and that James Brown's catalogue is worldwide.

147. The Court overlooked or misapprehended that by 2011, when Bauknight, the Attorney General and Tomirae made numerous false statements to the South Carolina Supreme Court about Termination Rights, the value of James Brown's assets; and James Brown's heirs under the Federal Copyright Act, and vitriolic claims that Buchanan and Pope were incompetent and greedy, all knew the claims to be false.

148. The Court overlooked or misapprehended that none of Plaintiff's experts, in the seven years this suit has been pending, has formed an opinion as to the value of James Brown's Right of Publicity at death.

149. The Court overlooked or misapprehended that Defendant's expert R.B. Alexander, who worked with Right of Publicity values related to the Estate of Dale Earnhart, Jr., has confirmed under oath that Buchanan's and Pope's \$84 Million value for James Brown's 900 copyrights and Right of Publicity, with other music empire assets, including a fleet of vehicles and about 50 boxes of music memorabilia, on the Estate Tax Return, is appropriate, but that his personal opinion is that the value (after the \$15 Million TIAA debt) is about \$90 Million.

150. The Court overlooked or misapprehended that by 2009 Michael Jackson had died, and that the IRS values Jackson's Right of Publicity at more than \$150 Million.

151. The Court overlooked or misapprehended that by the end of 2009, as a result of the Gignilliat v. Savage decision, it was clear that Brown's Right of Publicity, which is not subject to Termination Rights, would pass under his will to The James Brown "I Feel Good" Charity to be used solely for the education of needy student.

152. The Court overlooked or misapprehended that with knowledge of all of the

above, in August 2009 – three months after she and now-Governor Henry McMaster took effective control of the James Brown assets – Tomirae proposed to Bauknight and the Attorney General to devalue James Brown's 900 copyrights to \$24 Million or less and value his Right of Publicity at zero as a way to discredit Buchanan and Pope.

153. The Court overlooked or misapprehended that in the next month, September 2009 Bauknight hired Peter Afterman, who would claim on his website to have been hired by the State of South Carolina, as a musicologist.

154. The Court overlooked or misapprehended that Afterman was Bauknight's "expert" to work simultaneously with the appraisers at Philpott, Ball, Werner (PBW) on the \$4.7 Million "appraisal" and on a report claiming that Greenberg Traurig ("GT") had failed to collect as much as \$15 million of James Brown's pre-death sampling revenues.

155. The Court overlooked or misapprehended that in March 2010 both Bauknight lawyer and Tomirae's lawyer separately threatened to sue Buchanan and Pope if they did not drop the appeal of the McMaster Settlement deal.

156. The Court overlooked or misapprehended that in 2010 Buchanan and Pope offered for the Attorney General and Settling Parties to have everything they had agreed to get, with Buchanan and Pope to walk away if the Court of Appeals would agree that the Attorney General's judgment could be substituted for their judgment in approving the McMaster deal, and GALs approved the settlement for the minors whose trusts had been reduced.

157. The Court overlooked or misapprehended that under the proposal, Buchanan and Pope would resign as soon as the Court approved the settlement, and Judge

Early would have been asked to determine their commissions and fees.

158. The Court overlooked or misapprehended that the Attorney General and Settling parties declined to respond.

186. The Court overlooked or misapprehended that between May 12 and May 18, 2010, Sr. Assistant AG Sonny Jones, counsel for Tomirae, the Wingate Firm, and counsel for Bauknight, with others worked on the Wingate Suit complaint.

159. The Court overlooked or misapprehended that Tomirae, Bauknight and the Attorney General had all reviewed the Final Accounting of Buchanan and Pope which showed that on May 26, 2009 they had delivered \$99 Million of Gross Assets to Bauknight on their replacement, and that the TIAA Debt had been reduced to \$11 Million.

160. The Court overlooked or misapprehended that Jones was an expert on Special Counsel Litigation Retention Agreements; knew the Due Process requirements under the Santa Clara decision and a recent order in the Eli Lilly case; and knew that McMaster had been criticized for what the Wall Street Journal called "pay to play" in which no-bid Special Counsel attorneys and their families made large contributions to McMaster's campaigns and McMaster's office (not the State's general fund) retained 10% of their legal fees.

161. The Court overlooked or misapprehended that McMaster, who was running for Governor, had said he would not accept further contributions from Special Counsel, although he believed them to be legal.

162. The Court overlooked or misapprehended that prior to the filing of the Wingate Suit Complaint, Governor McMaster signed a letter that does not disclose that the

State/Attorney General is going to be a party to the Wingate Suit or that Bauknight had any right as a Plaintiff to sue Buchanan and Pope on behalf of the Attorney General.

163. The Court overlooked or misapprehended that on or before May 19, 2010 the Wingate Agreement was signed by Bauknight, Tomirae's lawyer, and Levenson and Bell. If they could damage Buchanan and Pope enough to stop the appeal which would become *Wilson v. Dallas*, the lawyers would reap about \$10 Million; their clients another \$30 Million or so; all from James Brown's "I Feel Good" Charity; all based on the known false "stipulation" that Tomirae was Brown's spouse and false claims made to Judge Early about heirs; federal estate taxes; and Federal Copyright Act Termination Rights.

164. The Court overlooked or misapprehended that the Wingate Complaint was approved by the office of Governor McMaster, Bauknight and lawyers for more than a dozen Plaintiffs, and contained scurrilous, false allegations about Copyright Termination Rights, Taxes, Valuation, the Christie's sale, and other alleged improper actions which the staff of Governor McMaster, Louis Levenson, Esq. ("Levenson"), David Bell, Esq. ("Bell"), Bauknight and Tomirae's counsel ("Medlin" and "Rosen") and the GAL and lawyer for Tomirae's son all knew to be false, barred by statutes of limitations, or both.

165. The Court overlooked that in violation of ethical rules, most of the fifteen Plaintiffs did not sign the \$40% Wingate Contingency Free Agreement (for individuals), and many of the Plaintiffs were unaware of the existence of the Wingate Suit until years after it was filed.

166. The Court overlooked or misapprehended that in the Wingate Suit the mighty power of the State was placed in the Wingate Firm's hands to be used against

Buchanan and Pope for the benefit of Tomirae, the Attorney General and the Attorney General's "Legacy Trust" he had created to hold the James Brown assets taken over in the McMaster Settlement through 3 Plaintiffs: the Attorney General; the McMaster Legacy Trust; and Bauknight "on behalf of the Attorney General of South Carolina."

167. The Court overlooked or misapprehended that since May 26, 2009, Tomirae and the Attorney General had effective control of James Brown's charitable and non-charitable assets through the McMaster Legacy Trust. In addition the Attorney General could remove and replace Bauknight his trustee, at Will.

168. The Court overlooked or misapprehended that among the known false and scurrilous claims in the Wingate Suit Complaint were two conflicting ones: 1. The false claim that Buchanan and Pope should have accepted a 2007 \$100 Million offer for Brown's assets; and the false claim that they had intentionally overvalued Brown's assets to gain a large commission.

169. The Court overlooked and misapprehended that a week after the Wingate Suit was filed, a principal in the Wingate Firm contributed \$1,000 to the McMaster campaign, which was not returned.

170. The Court overlooked or misapprehended that in August 2010 the Attorney General, Tomirae and others told the Appellate Court in *Wilson* that an appraisal of James Brown's assets was expected in a few weeks which would show that Brown's assets were worth less than \$12 Million when he died.

171. The Court overlooked or misapprehended that at the first hearing, despite not having told Governor McMaster he was a Plaintiff in the Wingate Suit, and Bauknight

was the Attorney General's claimed agent, AG Jones appeared with Wingate Firm members; and was introduced as one of the Wingate Firm's clients.

172. The Court overlooked or misapprehended that Wingate Firm members assured the Court, based on representations of AG Jones, that it was perfectly legal for the Attorney General to be using a private lawyer to sue Buchanan and Pope; that Sonny Jones was involved in both the Crouch Order in the Lilly case and Stanta Clara decision; and that Judge Early had already ruled that it was appropriate.

173. The Court overlooked or misapprehended that, at the same time, the Attorney General, through AG Jones, claimed that an attempt to dismiss the suit or change venue was inappropriate because the Wingate Suit was unrelated to the *Wilson* appeal.

174. The Court overlooked or misapprehended that the PBW "appraisal" arrived as expected, but the Attorney General, Bauknicht, Tomirae and others agreed to withhold it from the Supreme Court in *Wilson* for 8 months, until the record on appeal ("ROA") and last brief were filed.

175. The Court overlooked or misapprehended that, although it was not known until after the first *Wilson* decision, the PBW \$4.7 "appraisal" which arrived in September 2010 was a mere reflection of Tomirae's devaluation scheme, with the 900 copyrights at \$23.7 Million, reduced by the the TIAA debt, overstated by more than \$3 Million, at \$19 Million.

176. The Court overlooked or misapprehended that in October 2010, the Wingate Firm moved for relief from default because Wingate had received the Answer and

Counterclaims; marked "file" on them; and not timely responded.

177. The Court overlooked or misapprehended that in October 2010 the Attorney General, the Legacy Trust and Bauknight named David Cannon, who had taken \$17 Million from funds Brown gave the "I Feel Good" Charity, and Albert "Buddy" Dallas, as Plaintiffs' witnesses against Buchanan and Pope in the Wingate Suit.

178. The Court overlooked or misapprehended that, with the blessing of the Attorney General, in late 2010 Bauknight told the IRS that Brown's Copyrights were worth \$23.7 Million; Brown's Rolls Royce and fleet of automobile and thousands of items of Tangible Personal Property in museums and at home, including the \$800 of items sold by Christie's were worth about \$120,000; that Brown's Right of Publicity was worth zero; that Brown's millions of dollars of uncollected sampling claims owed at his death were worth zero; and that his claim against GT, the accountant who had understated Brown's income by \$3 million a year; and Cannon, who took \$17 Million were worth zero.

179. The Court overlooked or misapprehended that Bauknight, with the blessing of the Attorney General also overstated the Estate Tax Charitable Deduction to which Brown's Estate was entitled under the McMaster settlement deal by \$2 Million, taking a \$2.8 Million charitable claim where only \$.8 was going to charity, and the \$2 Million was going to Brown's grandchildren.

180. The Court overlooked that all of Tomirae's advisors; some of the dozen Attorney General attorneys; and at least three of Bauknight's attorneys, had actual knowledge that an estate tax refund was impossible under the McMaster settlement deal because every dollar going to James B. or the Levenson clients generated 40 cents or more

of estate taxes.

181. The Court overlooked or misapprehended that both the \$2 overstatement of Brown's Charitable deduction and the \$3 Million overstatement of the TIAA debt were concealed (one within the PBW appraisal), and might not have been noted by the IRS.

182. The Court overlooked or misapprehended that, based on these material misrepresentations, and with the blessing of the Attorney General, Bauknight obtained an IRS closing letter.

183. The Court overlooked or misapprehended that everyone with any IRS experience knows that a closing letter is not an endorsement by the IRS of Bauknight and Tomirae's devaluation to \$4.7 Million, and can be withdrawn for fraud, mistake and other reasons.

184. The Court overlooked or misapprehended that in December 2010 the Attorney General, Tomirae and Bauknight filed their initial brief in the Supreme Court and made the knowing false claim that, because of the failure of Buchanan and Pope to secure an appraisal, they were unable to value the Settling Parties' "valuable" termination rights under the Federal Copyright Act.

185. The Court overlooked or misapprehended that at Brown's death and prior to the Attorney General's "stipulation" that Tomirae was to be considered Brown's spouse for all purposes, the value of Tomirae's termination rights was near zero, and the value of the 5 Levenson claimed children's termination rights was above zero, but small.

186. The Court overlooked or misapprehended that in December 2010 Bauknight's lawyers prepared an amendment to the McMaster Legacy Trust which

allowed Terry Brown to begin Due Diligence on a possible sale of the James Brown assets, and which was secretly signed by Governor McMaster shortly before he left office.

187. The Court overlooked or misapprehended that A few days later Terry. Secretly assigned his right of first refusal (ROFR) to buy the James Brown assets to Forlando.

188. The Court overlooked or misapprehended that in the same month, month, Bell and/or his clients, who were dealing with Kilpatrick Stockton("KS") lawyers, planted the false GRAMMY claim on the obscure KS website that would be noted by the Supreme Court in its *Wilson* decision.

189. The Court overlooked or misapprehended that upon taking office in January 2011 Attorney General Alan Wilson authorized the Wingate Suit to continue.

190. The Court overlooked or misapprehended that in January 2011 the Attorney General, Tomirae and others sought sanctions against Buchanan and Pope for filing a brief trying to collect some of the \$1.2 Million cost of his removal as ordered by Judge Early.

[Sanctions against Buchanan and Defendant were not granted.]

191. The Court overlooked or misapprehended that in April 2011 Copyright expert Wm. Jeffrey Smith, who had been hired by Buchanan and Pope in June 2008 to help with Termination Rights issues, with Pope, circulated to professionals a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....*, which describes how the McMaster settlement, including the Attorney General's decision to "stipulate" that Tomirae was Brown's spouse; stop the ongoing Peoples DNA protocol which was properly determining heirs; and declare that

fewer than half of Brown's claimed children were his descendant/ heirs, with the devaluation to \$12 Million announced by the Attorney General, left the "I Feel Good" Charity with almost nothing.

192. The Court overlooked or misapprehended that expert Smith and Wallace Lightsey, Jr., Defendant's experts in this case, like Pope, have confirmed that multiple strategies exist, such as those employed by the Ray Charles Foundation, for charities owning copyrights to protect themselves from premature or improper exercise of Termination Rights by claimed heirs, and diminish the negative impact on the charity of Termination Rights.

193. The Court overlooked or misapprehended that after the last brief was filed in Wilson in early May 2011, Bauknight filed an amended Inventory & Appraisement ("I & A") and a motion to supplement the record on appeal ("ROA") in Wilson claiming Brown's assets were worth about \$6.5 Million, with Brown's music empire having a value of less than \$4.7 Million.

194. The Court overlooked or misapprehended that thereafter, the Attorney General, Tomirae and Bauknight began claiming that nobody had ever made an offer for the James Brown assets and that Buchanan and Pope had intentionally overstated the value of Brown's assets in sworn IRS filings in order to secure a \$5 Million commission from a \$5 Million estate, a federal felony.

195. The Court overlooked or misapprehended that, as was intended, the Court was naturally concerned that the constitutional officer in charge of protecting charities was accusing fiduciaries of seeking a \$5 million commission which was 100% of the at-

death value of an estate dedicated mostly to charity.

196. The Court overlooked or misapprehended that in 2011 when the Wingate Firm refused to release the fabricated \$4.7 Million appraisal or a copy of the public Wingate Litigation Retention Agreement, Defendant filed a FOIA suit for the \$4.7 Million appraisal and related documents.

197. The Court overlooked or misapprehended that since 2011 the Attorney General, the Legacy Trust and Bauknight have vigorously evaded all James Brown FOIA requests for long-public documents that shown Tomirae was not Brown's spouse (Hynie handwritten notes), the fabricated PBW \$4.7 Million appraisal; the McMaster Legacy Trust; and the Wingate Litigation Retention Agreement.

198. The Court overlooked or misapprehended that in the fall of 2011, Wingate – on behalf of ALL Plaintiffs – moved to intervene in a FOIA suit seeking a copy of the public Wingate Litigation Retention Agreement.

199. The Court overlooked or misapprehended that in September 2011 the Attorney General announced that he was "ready and more than willing" to produce the Wingate Litigation Agreement under FOIA, but, instead, joined Wingate in a vicious fight to consolidate the FOIA suit with the Wingate Suit; subordinate the FOIA request to discovery in the Wingate Suit; and bury it with a confidentiality Order.

200. The Court overlooked that between 2011 and 2016 the Attorney General, Wingate and Bauknight took similar action to prevent release under FOIA of the long-public handwritten notes in which Tomirae admitted she was married; living with her husband in Texas; and though she might be pregnant before she met James Brown, and

begged Brown to marry her after he learned that their 2001 ceremony was bigamous.

201. The Attorney General and his staff admitted in Supreme Court filings that the Attorney General had reviewed Tomirae's handwritten admissions before his decision to "stipulate" that Tomirae was Brown's wife, as had scores of others, including Buchanan and Pope.

202. The Court overlooked or misapprehended that in October 2011 the Attorney General, who was handling both the Cannon criminal matter and the Cannon civil matter, allowed Cannon to enter an *Alford* plea and sought no restitution.

203. The Court overlooked or misapprehended that on October 31, 2011, in furtherance of the conspiracy to discredit Buchanan and Pope, the day before the Wilson oral argument, Bauknight's lawyer gave an interview to the Associated Press in which he claimed that returning Buchanan and Pope would be like throwing a hand grenade into the James Brown estate.

204. The Court overlooked or misapprehended that emails produced in other cases, but withheld by the Attorney General and Tomirae in this case, show that Tomirae's lawyer and a tax lawyer for Bauknight coached the Legacy Trust's counsel on how to present the fabricated \$4.7 Million value claim to the Supreme Court and other aspects of the *Wilson* Supreme Court argument, even though both had actual knowledge of the secret devaluation of Brown's assets and intentional overstatement of Brown's deductions by \$5 Million in the IRS proceeding.

204. The Court overlooked or misapprehended that at the Supreme Court oral argument Bauknight, supported by both McMaster and Attorney General Wilson who

were present, made a number of knowing false statements to the Supreme Court.

205. The Court overlooked that, with knowledge that it was false, the Attorney General supported Bauknight's claim that Tomirae's elective share claim was a "slam dunk;" that Copyright Act Termination Rights were automatic, and that all the royalties to "Please, Please, Please" would be lost to Tomirae and her son, or to the Levenson and Bell clients, in 2012; that he "knew" the value of Brown's assets; and that Termination Rights are "all this estate is about;" that Brown's estate and trust had no corpus to speak of; that that nobody was trying to buy it."

206. The Court overlooked or misapprehended that Bauknight's counsel's statements to the Supreme Court misstated the Copyright Act and were in direct conflict with Plaintiffs' expert Roger Miller, who has confirmed that anyone in the business would have known that Brown's music catalog alone was "gold standard" and worth 15 - 20 times revenues (\$45 - \$60 Million) at his death and later.

207. The Attorney General, through AG Jones, who acknowledged he knew almost nothing about Termination Rights, supported the false Bauknight claims, including the claim that, but for the Master settlement deal, there would be nothing in James Brown's "I Feel Good" Charity in 2023.

208. In 2012, upon learning that their own witness, Albert Dallas, was prepared to testify in detail of his knowledge that Tomirae was not Brown's spouse, the Attorney General and other Wingate Suit Plaintiffs obtained an oral order from Judge Manning stopping the deposition.

209. In 2012 Tomirae, Bauknight and the Attorney General furiously tried to

prevent release of the long-public handwritten admission by Tomirae that she was married, living with her husband, and thought she might be pregnant before she met and conducted a ceremony with Brown.

210. The Court overlooked or misapprehended that in May 2012 Judge Early considered Pope's request to lift two *ex parte* gag orders he had issued in 2008 which concealed the long-public admissions which, in addition, showed Tomirae begged Brown to marry her after he discovered she was married, but he Brown refused.

211. The Court overlooked or misapprehend that in August 2012 Judge Early declined to rule on lifting the unconstitutional gag orders, finding he lacked jurisdiction because of the pending Wilson appeal.

212. The Court overlooked or misapprehended that after the *Wilson* ruling, Judge Early, without a hearing, banned Buchanan and Pope from participation in any Aiken County James Brown case except their own, depriving Pope of the opportunity to seek to set aside the unconstitutional gag order.

213. The Court overlooked or misapprehended that in 2012 a reporter following the Pope FOIA cases made certain FOIA requests of her own, including a request for Tomirae's handwritten admissions which Pope had not sought under FOIA.

213. The Court overlooked or misapprehended that the Attorney General and Bauknight, with Tomirae, began a vicious attack on the journalist, even seeking her sources and notes, claiming that she was an agent of Pope.

214. The Court overlooked or misapprehended that by 2015 Jay Bender, Esq., and Thomas Pope III, counsel for the journalist, had secured orders under FOIA requiring the

Attorney General to release many of the documents he has still refused to release in this case.

215. The Court overlooked or misapprehended that instead of releasing the \$4.7 Million appraisal and related documents, as directed by Judge Eugene C. Griffith, Jr., the Attorney General asserted to Judge Griffith that neither the Attorney General nor his staff had seen the \$4.7 appraisal on which Bauknight and the Attorney General have, since 2011, been basing the false claim that Buchanan and Pope committed the federal felony of overstating Brown's assets by \$79 Million to obtain a \$5 Million commission.

217. The Court overlooked or misapprehended that, in lieu of a deposition in this case, Dallas gave sworn testimony, which is incorporated herein by reference, that Brown and Tomirae were not married; that she begged Brown to marry her; but Brown was hurt by Tomirae's concealing her marriage, and refused.

218. The Court overlooked or misapprehended that Dallas testified under oath that he, Tomirae and James Brown had a 3-way phone conversation in the summer of 2006 – before Brown and Tomirae separated for the last time – confirming that they were not married, and that she was a mere guest at Brown's Beech Island mansion.

218. The Court overlooked or misapprehended that Buchanan became financially desperate in 2012 and advised Pope he needed to settle. He told Pope he needed \$500,000.00 then more than he would need the \$2.1 Million reasonable fee he was requesting for all of his years of service.

219. In order for Bauknight to pay Buchanan the \$500,000 he had earned under the Buchanan/Pope contract with the Estate/2000 Trust through May 26, 2009, the

Attorney General extracted from Buchanan a commitment that he would do nothing to help Pope, and the improper commitment that Buchanan would not file a Petition for Rehearing when the Wilson decision was rendered.

220. The Court overlooked or misapprehended that the Attorney General failed to notify the Supreme Court of his improper requirement that Bauknight NOT protect the "I Feel Good" Trust, at rehearing, and, instead, tried to make it appear to the Supreme Court that Buchanan no longer opposed the McMaster settlement deal.

221. The Court overlooked or misapprehended that in 2012, even though they had not complied with discovery request, Plaintiffs asked Judge Manning to direct a mediation in the Wingate Suit, which he did.

222. The Court overlooked or misapprehended that most Wingate Suit Plaintiffs did not attend the mediation, but Levenson and Bell attended, claiming they had authority to speak for nearly a dozen Plaintiffs – including some who had terminated them.

223. The Court overlooked or misapprehended that prior to the mediation Pope offered to let the minors and Attorney General out of the Wingate Suit if they would help save the "I Feel Good" Charity which, all knew, was dismembered by the McMaster settlement deal.

224. The Court overlooked or misapprehended that instead of responding to her offers of judgment, the Attorney General and others filed the offers with the Court, and asked Judge Manning to strike them.

225. The Court overlooked or misapprehended that Chief Deputy John McIntosh, AG Jones and AG Mary Frances Jowers, attended the October 2012 Wingate Suit mediation.

226. The Court overlooked or misapprehended that Tomirae did not attend the mediation, but issued a public post that day claiming the mediation was being held to get rid of Pope, whom she said had taken things from the family and was the "last of the rats."

227. The Court overlooked or misapprehended that in 2017 Bauknight would claim that Pope would not even accept \$40 million in 2012.

228. The Court overlooked or misapprehended that a correct statement was that Pope said in 2012 that no matter what she was offered at that time, she would not accept it if a condition of being paid was that Pope abandon the appeal which should have saved The James Brown "I Feel Good" Charity from being dismembered.

229. The Court overlooked or misapprehended that in December 2012 Pope's daughter, who had two small children, suffered a brain tumor event.

230. The Court overlooked that almost immediately after the event the Attorney General and other Wingate Suit Plaintiffs asked for a scheduling order and trial of the Wingate Suit in the summer of 2013.

The Attorney General and Tomirae Continue their Alliance, FOIA Evasion and the Wingate Suit, Defying Wilson v. Dallas (2013 - 2017)

231. The Court overlooked or misapprehended that in the first *Wilson* decision, issued February 27, 2013, the Supreme Court admonished the Attorney General to conclude the FOIA matters and the Wingate Suit "in the first instance."

232. The Court overlooked or misapprehended that on March 6, 2013 Pope met with Attorney General Wilson, McIntosh and Solicitor General Robert Cook, and discussed with them the damage to the "I Feel good" Charity that would result if the false IRS filings

were not corrected. She suggested that they could be easily corrected, because the *Wilson* decision corrected most of the tax problems. The claimed \$5 Million value and other misstatements, however, posed problems for the "I Feel Good" Charity, reducing its required annual payout in scholarships for needy students from \$3+ Million to as little as \$50,000.

233. The Court overlooked or misapprehended that Cook, with an extensive file of James Brown, stated under oath that he believed Pope sincerely worked to try to save the "I Feel Good" Charity; was competent and never appeared to him to be greedy.

234. The Court overlooked or misapprehended that the Attorney General's and Bauknight's statements to the Court, however, have been exactly the opposite.

235. The Court overlooked or misapprehended that In March 2013 the Attorney General told the Supreme Court and Pope he was going to get out of the Wingate Suit, but he did the opposite.

236. The Court overlooked or misapprehended that on May 8, 2013 the second *Wilson* decision was rendered, voiding Bauknight's appointment.

237. The Court overlooked or misapprehended that by May 9, 2013 the Attorney General and Tomirae were working to have Bauknight reinstated.

238. The Court overlooked or misapprehended that on May 10, 2013, the Attorney General asked Judge Manning to stay all proceedings in the Wingate Suit and FOIA cases until Judge Early concluded the James Brown matters in Aiken County, telling Judge Manning that the Supreme Court's dropping the footnote related to concluding the FOIA and Wingate Suits meant the Court had no interest in having those matter proceed

promptly.

239. The Court overlooked or misapprehended that on May 29, 2013, within a day of the Wilson v. Dallas remittitur, Tomirae's counsel and Levenson asked Judge Early in open Court to go *in camera* and hear why the McMaster settlement deal should be immediately reinstated.

240. The Court overlooked or misapprehended that same day, May 29, 2013, Bauknight, Levenson and Tomirae all asked that Buchanan and Pope, along with their own witness Dallas, be banned from participation in James Brown hearings in Aiken.

241. The Court overlooked or misapprehended that the only things Buchanan and Pope had in common with Dallas was that all knew Brown's assets were worth \$100 million when he died; all knew that there was no credible evidence to support Tomirae's spousal claim; and all knew that the McMaster deal was an even greater threat to the "I Feel Good" Charity than the \$15 Million commission Dallas and his co-fiduciaries had sought.

242. The Court overlooked or misapprehended that on June 10, 2013 Judge Early granted Tomirae's and Levenson's request, banning Pope, Buchanan and other former trustees from participating in any James Brown case except their own cases.

243. The Court overlooked or misapprehended that in August 2013, Tomirae and James B., with the aid of Peter Afterman, filed defective documents in the Federal Copyright Office attempting to exercise Termination Rights as to about 90 of Brown's 900 copyrights between 2015 and 2023.

244. The Court overlooked or misapprehended that from 2013 until 2016, when

this lawsuit was assigned by the Supreme Court to Judge Early, Tomirae, Bauknight and Levenson continued to make false claims about the value; did not correct the false IRS filings; and continued to make vicious statement about Pope, and Buchanan when needed, with no forum for Buchanan and Pope to correct the false statements.

245. The Court overlooked or misapprehended that Pope worked *pro bono publico* from May 8, 2013 until June 10, 2015, to try to convince the Attorney General and the Court not to reinstate the McMaster settlement deal; not to undervalue Brown's "I Feel Good" Charity and to take reasonable steps to protect the "I Feel Good" Charity's annual \$3 Million plus royalty stream from inappropriate attempts by Tomirae and others to take away a portion of the royalties.

246. The Court overlooked or misapprehended that David C. Sojourner, Esq., appointed to protect the estate plan in the Tomirae proceeding and James B. proceedings, declined to meet with Pope; charged about \$1.4 Million for himself and lawyer between October 2013 and May 2016; took one deposition; and asserted under oath that he had no responsibility to protect Brown's copyrights.

247. The Court overlooked or misapprehended that Bauknight paid counsel, in his words, "millions and millions" of dollars, but continued to serve as Tomirae's Trustee in the Legacy Trust and did nothing for the two years between 2013 and 2015 to stop Tomirae from being paid \$1 Million in 2015.

248. The Court overlooked or misapprehended that Bauknight made no protest when Judge Early awarded a \$700,000.00 fee to James B's GAL and lawyer, even though the fee could have been avoided if James B. had simply taken the Peoples DNA Protocol the

Estate/2000 Trust paid \$300 for him to take in 2008.

249. The Court overlooked that, according to their claim that Brown's estate was worth \$5 Million at death, and James B's claim is only 1/20 if he is 100% successful, Bauknight's payment of a \$700,000 legal/GAL fee where the minor's lawyer, in addition, has a contingency fee arrangement with Tomirae, is unreasonable in comparison to the \$2.8 Million sought by Pope for six years of nearly-full-time service to the Estate/2000 Trust of James Brown.

250. The Court overlooked or misapprehended that the vigorous pursuit of the Wingate Suit, including attempting to consolidate discovery with Pope's claim case so that Brown's "I Feel Good" Charity's funds could pay for Tomirae's and the Legacy Trust's experts, all to damage Pope so that he could retake control over the James Brown assets and allow Tomirae to siphon off royalties to which she is not entitled, was a direct violation by the Attorney General of his statutory duties, and further evidence that his acts have been prejudicial to the administration of justice.

Terry and Daryl are Liable for Fraud and Wrongdoing of Bell.

251. The Court overlooked or misapprehended that when he approved the Complaint in this case, although he did not notify Terry, Bell had actual knowledge that the claims were false.

252. The Court overlooked or misapprehended that when he joined in the false \$4.7 Million claim with the Attorney General and Bauknight, Bell had actual knowledge from Forlando and other sources that Brown's assets were worth \$100 Million or more, but joined in the false filings to damage Pope and Buchanan.

253. The Court overlooked or misapprehended that even though Terry has now terminated Bell, he is bound by the material, false filings he allowed Bell to authorize Wingate to make on Terry's behalf, and is liable to Defendant (and possibly Buchanan).

254. The Court overlooked or misapprehended that Buchanan and Pope owed neither Daryl nor Terry any duty after they filed suit to set aside the Will and 2000 Trust.

255. The Court overlooked or misapprehended that Daryl has publicly admitted that James Brown's estate plan is valid, and should be upheld, while allowing Levenson, Bell and Wingate to make knowing false, contrary statements in this case.

256. The Court overlooked or misapprehend that neither Terry nor Daryl has produced a scintilla of evidence of any wrongdoing by Buchanan and Pope.

257. The Court overlooked or misapprehended that the deposition admissions of Terry and Daryl, and the knowing false statements made on their behalf by Bell, along with the malicious false GRAMMY plant, confirm that they are liable, under the Rule 56 analysis, to Pope on all Counterclaims.

258. The court further overlooked and misapprehended that Terry and Daryl's attempted intervention in FOIA suits exacerbates the wrongdoing and malice of their actions.

259. The Court overlooked or misapprehended that neither Terry, nor Daryl, nor any Plaintiff should have been released from default, and the Order of Judge Manning granting such relief should be set aside.

**A Dozen Plaintiffs, Including Minors, are Liable to Defendant
for Levenson's Fraud and Wrongdoing in this Suit**

260. The Court overlooked or misapprehended that most of Deanna, Yamma Larry, Daryl, Venisha, Terry, Tonya, Janise, Lindsey and Sydney and Carrington did not even on May 19, 2010 know the Wingate Suit was being filed by Wingate, through authorization by Levenson, for the purpose of damaging and discrediting Buchanan and Pope.

261. The Court overlooked or misapprehended, however, that all have failed to repudiate the statements and actions they know to be false and malicious which Wingate, through Levenson, has taken on their behalf.

262. The Court overlooked or misapprehended that under the Rule 56 analysis Levenson's sole motivation, for himself and a dozen Plaintiffs, in joining the conspiracy with the Attorney General, Tomirae and Bauknight to damage Buchanan and Pope was to secure about \$9 Million for himself and about \$11 Million for his clients to which all knew they were not entitled.

263. The Court overlooked or misapprehended that their public admissions in Yamma's autobiography and in the South Carolina Court of Appeals make clear that at the time of the McMaster settlement, at the time of the filing of the Wingate Suit, and at all times since, the dozen Levenson clients/Wingate Suit Plaintiffs knew Brown's Will and Trust were valid, and what he wanted; knew Tomirae was not Brown's spouse; knew Buchanan and Pope had properly and professionally defended Brown's Estate Plan and 900 copyrights; knew that the allegations of the Wingate Complaint were false; yet joined

in the Tomirae/Attorney General/ Bauknight conspiracy to damage Buchanan and Pope for their own benefit.

Bauknight is Liable to Defendant for Illegal Acts "On Behalf of" the State/AG

264. The Court overlooked or misapprehended that Bauknight is liable as to each counterclaim for wrongful acts he took as the claimed and apparent agent of the Attorney General of South Carolina.

265. The Court overlooked that Bauknight's malicious acts to damage Buchanan and Pope using the power of the State/Attorney General, and the Attorney General's condoning and praising such actions, are prejudicial to the administration of justice and violate Buchanan's and Pope's Due Process rights.

Granting the Attorney General & Others Relief from Default Was Improper

266. The Court overlooked or misapprehended that the Order of Judge Manning granting the Attorney General and other Plaintiffs relief from default was improper, and that this case should have been ended in 2011 with a damage hearing for Buchanan and Pope.

The Attorney General and Bauknight Are Liable as Successors in Interest For Damages Caused by the McMaster Legacy Trust.

267. The Court overlooked or misapprehended that the McMaster Legacy Trust is the vehicle used by the Attorney General and Tomirae to damage Buchanan and Pope, and to seek personal, improper benefits from Brown's charity.

268. The Court overlooked or misapprehended that it would be inappropriate to

grant any relief to the McMaster Legacy Trust while it claims it does not exist, and Defendant is entitled to judgment against the Attorney General and Bauknight as its successors in interest under all causes of action if it does not, in fact, exist.

No Plaintiff Is Entitled to Any Relief Because All Have Unclean Hands.

269. The Court overlooked or misapprehended that because of their participation in or support of known material false statements to the IRS in an amount as large as their claimed value of the Estate, and in using the false IRS filings to damage Buchanan and Defendants all Plaintiffs have unclean hands.

270. The Court overlooked or misapprehended that because of their unclean hands neither the Attorney General nor any other Plaintiff is entitled to equitable relief hereunder.

Buchanan and Pope Never Owed Any Duty to Tomirae or the McMaster Legacy Trust

271. The Court overlooked or misapprehended that because Buchanan and Pope never owed any fiduciary duty to Tomirae, her son, or the McMaster Legacy Trust, and the Attorney General, Bauknight and Tomirae knew that, their fabricated action for damage for breach of a fiduciary duty to them Buchanan and Pope never had, for the purpose of damaging Buchanan and Pope, was, on its face, evidence of intentional wrongdoing.

272. The Court overlooked or misapprehended that because James Brown's documents specifically withdraw standing from any person challenging the estate plan, the same result applies to all Levenson clients after December 26, 2007 and to Terry Brown after he joined the McMaster settlement deal in January 2009.

**Most Plaintiff and Defendant Experts With Opinions, and Many Plaintiffs,
Support Buchanan/Pope's \$84 Million Value and Admit Defense of
Tomirae/Attorney General's/Bauknight's False Heir and Copyright Claims
Appropriate.**

273. The Court overlooked or misapprehended that in seven years Plaintiffs have not produced a single expert in this case to support the Attorney General/Bauknight/Tomirae claim that Brown's Schedule F assets ("Music Empire") had a value of \$23.7 Million, reduced by a \$19 Million TIAA debt, which devaluation is at the center of the scheme to discredit and damage Buchanan and Pope; and Bauknight himself has confirmed under oath that he had no expertise to do so.

274. The Court overlooked or misapprehended that the fiduciary charged with defending the estate plan and protecting it against Tomirae has admitted under oath Court filings that he knows nothing about Federal Copyright Act Termination Rights; and in 2013 he refused Pope's offer of free help to bring him up to speed on Termination Rights.

275. The Court overlooked or misapprehended that Roger Miller, Plaintiffs' Termination Rights expert, has agreed \$45 - \$60 million could even be low for the at-death value of Brown's copyrights.

276. The Court overlooked or misapprehended that experts who have given testimony that support Buchanan's and Pope's valuation of about \$99 Million less the TIAA Debt of approximately \$15 Million, and/or the propriety and trustworthiness of Buchanan and Pope in forming a proper value include R.B. Alexander (valuation expert), Wallace Lightsey, Jr. (IP Attorney); Charles Carpenter, Jr, Esq., (*pro bono publico* U.S. Cert. Petition to try to save "I Feel Good" Charity from Tomirae); Wm Jeffrey Smith (Copyright

Termination Rights expert, hired by Buchanan/Pope informed of Attorney General's settlement and takeover on Aug. 10, 2008); Harley Ruff, Esq. (see testimony before Judge Early, 4/3/09); William Sellars, CPA (would not have signed Estate Tax Return if \$84 Million not reasonable).; Pope; Thomas Pope, Esq., (worked with Jay Bender, Esq. to secure \$4.7 Million valuation documents from Attorney General under FOIA); James C. Hardin, III, Esq.; and Steven Johnson, Esq., (IRS agent who approved \$4.7 Million must not have known what he was doing).

277. The Court overlooked or misapprehended that, in addition Jason Lewis, Yamma Brown and others have made public statements which fully support the positions taken by Buchanan and Pope as to value and Termination Rights, and the validity of Brown's estate plan, despite supporting the known false and misleading statements made by Levenson on their behalf in the Complaint and elsewhere.

Defendant Is Entitled to Attorney's Fees at the Conclusion of This Matter.

278. The Court overlooked or misapprehended that Plaintiff is entitled to attorneys' fees in this matter both under the statute related to Trusts and because they were awarded in her contract and Judge Early's Payment Order which approved it.

CONCLUSION

For the foregoing reasons, Pope submits that this Court should alter, amend, vacate and/or reconsider the Summary Judgment Order and direct that the parties continue with discovery and trial on the counterclaims herein. This motion is based on the Affidavit of Wm. Jeffrey Smith, filed herewith, as well as the entire record in this matter; applicable

statutory and case law; and the South Carolina Rules of Civil Procedure, especially Rule 59(e).

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
BUNDY McDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: (843) 492-4134
Facsimile: (843) 843-712-7318
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

July 13, 2017

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown 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-40,490

2011 JUL -8 PM 5:20
FILED
CLERK OF COURT
SOUTH CAROLINA
RICHLAND COUNTY

ORDER GRANTING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANT'S
COUNTERCLAIMS

WBC
#1

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
2017 AUG -9 AM 11:32
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

PLAINTIFFS'
MOTION TO STRIKE

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 an Order striking the Defendant's affidavit and memorandum in support of their Motion to Alter, Amend, Reconsider and/or Vacate Order Granting Plaintiffs' Motion for Summary Judgment.

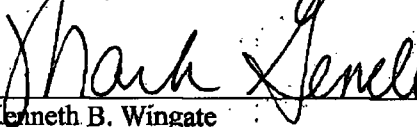
Plaintiffs contend the Defendant's 111 page affidavit and 71 page memorandum contain numerous false, inaccurate, defamatory, redundant, immaterial, impertinent, scandalous and otherwise improper statements. Plaintiffs' therefore move for an order striking the affidavit and memorandum, pursuant to Rule 12(f) SCRPC.

Because the objectionable material is so numerous, Plaintiffs' have not listed each item in this motion, but will prepare a summary for the court at the Court's request or at the time of the hearing of the motion.

This motion may be supplemented with a memorandum of law.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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

August 7, 2017

) IN THE COURT OF COMMON PLEAS

) THE 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, et al.**

Plaintiff,

Y.

Adele J. Pope ,

Defendant.

) Civil Action No.: 2010-CP-40-04900
) APPELLATE CASE NO. 2017-001523

**MEMORANDUM OF LAW IN OPPOSITION
TO MOTION TO LIFT STAY**

RICH LAND SECURITY
FILED
2017 NOV 13 AM 10:43
JEANNETTE L. HOBBS
C.C.P. #259

Defendant's Motion to Lift the Stay imposed by SCRAP 241(a) should be denied, its contents stricken from the record in this case, and the attorneys sanctioned for the following reasons:

1. On its face, the Motion makes no reference to any Rule, the specific relief sought or any statement of applicable law.
2. Statements and accusations made in the Motion are patently false, defamatory, inflammatory, and/or wholly irrelevant.
3. The filing of this Motion, given its contents and tone, is in violation of the Supreme Court's Order admonishing the Defendant against interference with the administration of the Estate.

4. The statements made by subscribing attorneys are a flagrant subterfuge to avoid this Court's directive that similar statements by the Defendant must be filed under seal. Counsel has subsequently filed an Affidavit of Ms. Pope in violation of prior Court order.
5. The statements made by the subscribing attorneys regarding elected officials, attorneys, parties, and other individuals are outrageous, disrespectful, uncivil and have no place in our judicial system.
6. The "argument" of the subscribing attorneys is wholly without merit, bears no relationship to the standard for lifting the automatic stay and violates the requirements of SCRCP Rule 11 requiring a good faith basis for filing any pleading.

FACTS

Defendant has twice filed a Notice of Appeal on multiple orders of the Trial Court. In conjunction with the first Notice of Appeal, the Defendant filed a Motion to hold the appeal in abeyance.¹ The appeal was dismissed *sua sponte* by the Court of Appeals as interlocutory, without any ruling on the motion. Within a few weeks, Defendant filed a second Notice of Appeal² as to many of the same orders.³ Now Defendant, once again, seeks to avoid the consequences of filing a Notice of Appeal by seeking to lift the stay.

Defendant's contention that the stay has been waived is based on a false statement of facts. Plaintiffs' counsel appeared before the trial court on a Motion to Reconsider the Order Granting Summary Judgment to Plaintiffs as to all of the Defendant's counterclaims on October

¹ There is no such relief provided by SCRAP or SCRCP.

² The Court of Appeals has requested that the parties brief the issue of the appealability of the orders. No ruling has been issued.

³ The orders appealed from relate to the dismissal of the Attorney General as Plaintiff, a Protective Order regarding the deposition of the Attorney General, denial of a motion to remove Sweeny, Wingate & Barrow, PA as counsel for the Plaintiffs, and setting aside an entry of default.

- Attorney Ken Wingate, Attorney General Alan Wilson, and the court-appointed PR Russell Bauknight are accused of "secreting" a fee agreement, the existence of which was disclosed, but for which protection from disclosure was sought. See FN 2. In addition, the Attorney General and the PR are accused of hiding other documents. See p. 6 and FN 11.
- The Attorney General is accused of misusing his official position to prosecute a personal attack on Pope. See Para a.4; e; and g
- The Attorney General is accused of making false and misleading statements to the Supreme Court. See Para. A.5.
- The Attorney General is accused of controlling litigation to which he is a not a party. The allegations imply that the Attorney General is manipulating the court-appointed PR of the Estate. See Para. A6
- The Attorney General is accused of being complicit in tax fraud. See Para a.7, a.8
- Attorney David Bell is accused of planting "false" information that was relied upon by the Supreme Court without any substantiation that Mr. Bell was involved or that the information was false. See Para a.9. Counsel goes on to accuse Mr. Bell of a "years-long history of dirty tricks." Para a.10.
- Counsel makes a back-handed swipe at Attorney Louis Levenson by suggesting that grievance procedures have been initiated against him. See FN 6. Mr. Levenson's reputation and actions are repeatedly impugned through innuendo and implication.
- Mrs. Hynie-Brown and her minor son are accused of "siphon[ing] off assets." Peter Afterman, a music agent who is not a party to this suit, is accused of being an accomplice and committing fraud on the U.S. Copyright Office. The Attorney General and the PR are accused of turning a blind-eye to this wrongful conduct. Para b.and FN 8, also p. 6.

Not only are none of the allegations relevant to either the Motion or even the underlying lawsuit, but counsel has chosen to launch this assault in a forum where the individuals have no ability to respond.

B. Counsel shows utter disrespect for parties, attorneys, witnesses, and elected officials.

Throughout the Motion, counsel refuses to refer to people by their proper name or their official title. Instead, counsel provides labels that are intended to reflect negatively or derisively on the individual. For example:

- The wife of James Brown, Tommie Rae Hynie-Brown is repeatedly referred to only by her first name (see a.3; a.4; a.8; a.11; b; c; d; etc.), and it is consistently misspelled.

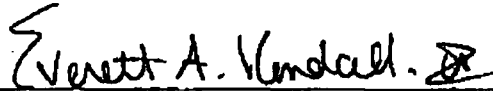
This practice must stop now. Given that prior warnings and prohibitions have not deterred her, only the most drastic of remedies remain.

Therefore, Plaintiff respectfully asks this Court to consider the gravity of this situation and issue an Order:

- (1) Striking Defendant's Answer
- (2) Requiring Defense counsel to personally reimburse Plaintiff for attorney fees and costs required to respond to this Motion
- (3) Striking the Motion and Affidavit from the Record
- (4) Admonishing counsel and Pope from any further attempts to interfere with the administration of the Estate and Trust of James Brown.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Everett A. Kendall, II
Mark V. Gende
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

November 10, 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 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

**NOTICE OF FILING OF
ORIGINAL DEPOSITION
TRANSCRIPTS**

NOTICE
FILED
2011 OCT 19 AM 9:18
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

**TO: PLAINTIF/COUNTERCLAIM DEFENDANTS AND THEIR COUNSEL SWEENEY,
WINGATE & BARROW, P.C. ("Wingate") :**

Defendant Adele J. Pope hereby gives notice of the filing of the following original
transcripts of depositions in this action:

1. Sworn Statement of James B. Richardson, Jr., taken March 3, 2016;
2. Deposition of Tommie Rae Brown, taken June 16-17, 2016 (2 Volumes);
3. Deposition of Henry Dargan McMaster, taken August 18, 2016;
4. Statement on the Record, August 19, 2016;
5. Statement on the Record, August 19, 2016;
6. Deposition of Lindsey Delores Brown, taken September 19, 2016;
7. Deposition of Janise Vanisha Brown, taken September 19, 2016;

8. Attempted Deposition of Venisha Brown, September 22, 2016;
9. Deposition of Terry Brown, taken November 2, 2016;
10. Statement on the Record, November 11, 2016;
11. Deposition of Yamma Brown, taken January 27, 2017;
12. Deposition of Deanna J. Brown-Thomas, taken March 1, 2017;
13. Statement for the Record (James Brown Legacy Trust), April 3, 2017; and
14. Deposition of Jason Brown Lewis, taken June 28, 2017 (note: original not sealed by California Court Reporter).

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
BUNDY McDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: (843) 492-4134
Facsimile: (843) 843-712-7318
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

October 19, 2017

*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 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

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

)

RETURN AND OPPOSITION TO
PLAINTIFFS' MOTION TO STRIKE
MEMORANDUM AND OPINION OF
COPYRIGHT EXPERT
WILLIAM JEFFREY SMITH

2011 OCT 19 AM 9:17
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
FILED

For each and every reason stated below, Defendant opposes the Motion of Plaintiff
to Strike Defendant's Memorandum and Opinion/Affidavit of Copyright Expert William
Jeffrey Smith:

- a. Counsel is estopped to seek any relief on behalf of the Attorney General of South Carolina during the pendency of the appeal of his dismissal under Rule 21.
- b. The James Brown Legacy Trust is estopped to seek any relief in this action where it claims not to exist, and that issue is the subject of a pending appeal.
- c. Plaintiffs' Motion fails to identify a single allegation which is either false or inappropriate, as required by Rule 12(f) SCRCF.
- d. In defense of Plaintiffs' Rule 56 Motion for Partial Summary Judgment, Defendant has properly presented admissible evidence to support her opposition, including depositions of parties, experts, and others.

- e. The sworn testimony of Plaintiffs' own expert Roger Miller, as cited by Smith, that Brown's copyrights were worth \$45 Million to \$60 Million at Brown's death is relevant to the motion.
- f. The sworn testimony of litigation expert Pope is relevant to show how the Attorney General's FOIA Interference has affected the James Brown cases.
- g. The sworn testimony of Intellectual Property expert Wallach Lightsey, Jr., about the efforts the Ray Charles Foundation has taken to protect its copyrights from Termination Rights claims of heirs is relevant to the motion.
- h. The sworn testimony of Plaintiffs' expert Jonas Herbsman, Esq., that he has no litigation experience with sections 203 and 304 of the Federal Copyright Act and knows nothing about the value of Brown's assets is relevant to the partial summary judgment motion.
- i. Testimony of witnesses related to Bauknight's \$5 Million overstatement of debts in the James Brown IRS proceeding is relevant.
- j. The depositions of grandson Jason Brown Lewis, and others, support Defendant's and Buchanan's \$100 million value, and are relevant.

Respectfully submitted,
W.H. Bundy, Jr.
H. Brent McDonald
BUNDY MCDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: (843) 492-4134
Facsimile: (843) 843-712-7318
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

October 19, 2017

*Attorneys for Defendant/Counterclaim
Plaintiff Adele J. Pope*

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**Appeal from Richland County
Court of Common Pleas**

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

Appellate Case No. 2017-001899

**RICHLAND COUNTY
FILED
2017 OCT 24 AM 11:50
JEANNETTE W. MCBRIDE
C.C.P. & G.S.**

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

v.

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

Of whom Adele J. Pope is the Appellant.

MOTION TO LIFT STAY

TO: ALL RESPONDENTS NAMED ABOVE, AND THEIR COUNSEL, SWEENEY, WINGATE AND BARROW, P.C. ("WINGATE").

YOU WILL PLEASE TAKE NOTICE that at the hearing to be held before the Honorable Doyet A. Early, III, at the Aiken County Courthouse, at 1 p.m. on Tuesday, October 31, 2017, or as soon thereafter as Appellant may be heard, Appellant will move before the Honorable Doyet A. Early, III ("Judge Early"), for an expedited hearing and expedited Order Lifting the stay in this appeal.

An expedited hearing and Order Lifting Stay will serve justice and judicial economy and should be granted for one, more or all of the following reasons:

- a. Respondents have waived any stay in this 7 1/2 -year-old case; proceeded with a request for partial summary judgment after two appeals were filed; and no stay was asserted by Respondents or acknowledged by Judge Early until fact witnesses and experts, including Respondents' own experts, showed:
 1. In 2016 the Governor of South Carolina testified twice under oath that he did not authorize this lawsuit to be brought in the name of the State/Attorney General. He testified he did not authorize Russell Bauknight to sue "on behalf of the Attorney General of South Carolina" (the "AG"). In 2017, however, the AG's attorney Kenneth Wingate, Esq., testified that the Governor did authorize him to file this suit as sole counsel for the State/AG and other Plaintiffs.¹
 2. The AG, although not counsel of record in this case, will get 10% of the Wingate firm's legal fee under the Wingate contract²
 3. The AG and Tomirae still have 75% control of Plaintiff James Brown Legacy Trust they created in 2009.³ The millions of dollars sought from Buchanan and Appellant in the complaint is for the Legacy Trust.

¹ McMaster testified by deposition to the same effect in this suit, and later in Aiken Case 2013-CP-02-1337 ("Aiken 1337"). Wingate testified by deposition in Aiken 1337.

² Wingate, Bauknight and the AG were successful in secreting the Wingate contract from 2010 until 2013, although it says on its face it is subject to the S.C. Freedom of Information Act ("FOIA"). It was released in 2013 by a federal judge in 3:08-cv-00014-WOB.

³ The remaining 25% vote is held by 5 former clients of Louis Levenson, Esq., and a former client of David Bell, Esq. The AG has the right to remove and replace Bauknight at will.

4. Since May 29, 2013, when Levenson and counsel for Tomirae announced to Judge Early their intention to reinstate the 2008 McMaster settlement, the AG, Tomirae and Levenson have used this suit to continue their attack on Buchanan and Appellant.
5. Many representations made by the AG and Bauknight to the Supreme Court and other courts about Termination Rights under Sections 203 and 304 of the Federal Copyright Act have been misleading, incomplete or false.⁴
6. A G Wilson, after being dismissed as a party to this case, obtained an order for partial summary judgment, and continues to control the litigation through Plaintiff Legacy Trust and Bauknight as his agent.
7. The AG has endorsed and supported Bauknight's intentional \$79 million devaluation of James Brown's assets in IRS filings; Bauknight's overstatement of Brown's deductions by \$5 Million; and his ill-gotten IRS "refund" with actual knowledge (at least since March 6, 2013) that the representations were incorrect; damaged the "I Feel Good" Trust in favor of his "private" Legacy Trust; and needed to be corrected.
8. Since 2011 the AG, Bauknight and Tomirae have used the ill-gotten IRS "refund" to damage Robert Buchanan, Jr. and Appellant and make the known incorrect claim that the McMaster settlement saved taxes.
9. The false Grammy © claim which appeared on the Kilpatrick Stockton ("KS") website in January 2011, and was noted by the Supreme Court in *Wilson*, was planted by Bell, a party to the Wingate contract.⁵

⁴ See Opinion/Affidavit of Wm. Jeffrey Smith, co-author of *Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't*; Aiken 1337 deposition and exhibits of IP expert Wallace Lightsey, Esq.; and Aiken 1337 deposition testimony of Respondents' experts in this case, Roger Miller and Jonas Herbsman, Esq. Also see Grinblat, *Nine Ways to Avoid Copyright Terminations*, Part I and Part II, and the 9th Circuit decision related to the Ray Charles Foundation.

⁵ Even Robert Potter, Esq., the KS attorney attributed with "halting" the Grammy © sale, did not know of the incorrect post. The Grammy© was actually properly entered into the 2008 Christie's sale and properly withdrawn, over advice of Christie's counsel, and with Levenson present. Buchanan and Appellant elected not to pay an estimated \$5,000 legal fee to defend a sale estimated to bring in about \$20,000. A motion to charge former trustee Albert Dallas with interference with the Christie's sale was filed July 27, 2008, and is still pending. Dallas and fellow-trustee felon David Cannon have been named by the Attorney General and other Respondents as witnesses in this case.

10. The false Grammy® plant continued Bell's years-long history of dirty tricks in James Brown matters.⁶

11. Respondents' claimed \$4.7 million "appraisal" of James Brown's music empire is actually a devaluation of Brown's 900 copyright to \$23.7 million proposed by Tomirae; a claimed zero value for Brown's Rights of Publicity and other valuable assets; and a \$3 million overstatement Brown's debt to TIAA secreted within the "appraisal".⁷

- b. A stay would allow Plaintiffs Tomirae, James B. and others to continue to siphon off assets in violation of the Statute of Elizabeth.⁸
- c. A stay would allow the Attorney General and Tomirae to spend additional millions of dollars, in addition legal and SA fees of about \$5 million already paid by Bauknight, to retake personal control of the James Brown assets for their private Legacy Trust.
- d. A stay would allow the Attorney General to continue to represent to the Court of Appeals his Legacy Trust does not exist while it seeks millions of dollars from Appellant in this case, and Tomirae's lawyers assert that it does exist and Bauknight should be "knighted" for his actions.
- e. A stay is manifestly unjust to Buchanan and Appellant, whose careers and reputations have been ruined for 7 ½ years in an illegal lawsuit brought by the AG, Tomirae, Levenson and Bell to stop the *Wilson v. Dallas* appeal.

⁶ In 2008 Bell and clients filed 6 grievances against Levenson in two states, even claiming Levenson's 30% + \$150,000 contingency fee was forged.

⁷ The full details of how the AG and settling parties arrived at the impossible claim that the McMaster settlement saved taxes, and even produced an IRS "refund," were not known until the Petition for Rehearing of Tomirae's son was filed in *Wilson v. Dallas* in March 2013. See Affidavit of Harley Ruff, Esq., showing how the *Wilson* decision which voided the AG's deal rendered many - but not all - of the AG's claims moot -- unless the settlement deal is reinstated, as proposed to Judge Early in May 2013.

⁸ Tomirae, who lives in England, was paid \$1 million in 2015 for a "sale" of 3 James Brown songs. Two years earlier Peter Afterman helped Tomirae file defective termination elections trying to take a portion of the royalties from 90 of Brown's 900 copyrights between 2015 and 2023. Ignoring steps such as those taken by the Ray Charles Foundation, Bauknight and the Attorney General did nothing in the 2-year window to contest the Tomirae filings.

Until at least 2014 Afterman's website claimed he was hired by the State of South Carolina to manage the James Brown assets.

- f. A stay could allow Bauknight to disburse another \$500,000.00 for expert costs for the Attorney General and Tomirae, as he did in 2012. [Funds returned without interest a year later.]
- g. A stay would reward the Respondents for an illegal 7 ½-year-old lawsuit improvidently brought and prolonged by the State of South Carolina through two AGs and a private law firm.
- h. A stay could further damage Appellant and Brown's "I Feel Good" Charity by allowing Levenson to collect an undisclosed amount from the "common fund" he claims to have helped create with the McMaster settlement deal.⁹

This motion is based on the entire record in this case and the briefs and records on appeal ("ROAs") in the five James Brown cases now on appeal,¹⁰ of which the Court is asked to take mandatory judicial notice under Rule 201 SCRE.

It is also based on additional facts from the public record, as set out in the following Memorandum and as will be presented to the Court at the hearing.

MEMORANDUM IN SUPPORT OF EXPEDITED LIFTING OF STAY

On August 10, 2008 Attorney General Henry McMaster asserted the right to take control of the James Brown assets through a "Legacy Trust" he created with Tomirae and five will contestants represented by Levenson.

On May 8, 2013 the S. C. Supreme Court voided the deal and the appointment of Bauknight.

⁹ In a complaint filed in 2017 Levenson seeks an unspecified amount for the "common fund" he helped create with the 2008 McMaster settlement deal.

¹⁰ See S. C. Ct. of Appeals ("Ct. Appeals") Case No. 2016-0001708 (Pope v. Wilson); the briefs and ROA in Ct. Appeals Case No. 2016-001727 (Pope v. Wilson and James Brown Legacy Trust; the depositions of Respondents' and Appellant's expert witnesses and current and former staff of the Attorney General taken in this case and in Aiken County Case 2013-CP-02-01337 ("Aiken 1337"); the Opinion/Affidavit of William Jeffrey Smith, herein; the Tomirae spousal proceeding in circuit court and the Ct. Appeals; and the Complaint of Louis Levenson, Esq. in 2017-CP-02-00592,

On May 29, 2013 Levenson and a lawyer for Tomirae announced in open court to Judge Early their intention to ignore *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

To retain the 75% control he and Tomirae had over James Brown's assets through the "Legacy Trust" they created in 2009, the AG and Tomirae (with Levenson) needed to do several things. They needed to make sure facts presented about the Federal Copyright Act remained distorted, as they had been since 2011. They needed to continue the myth that James Brown's assets were worth only \$4.7 million when he died, and that the deal did not generate millions of dollars in taxes. They needed to keep facts about Tomirae's marriage secret. And they needed to cover up Bauknight's failures to account and intentional misstatements.

The AG, the Legacy Trust and Tomirae also needed to continue to attack and denigrate Buchanan and Appellant through the Wingate Suit --- even though the AG had told both the Supreme Court and Appellant he was getting out.

For 4 ½ years the AG and Bauknight have continued to suppress public documents both in Wingate suit discovery and FOIA. The Wingate suit remains the FOIA graveyard it had been since 2011.¹¹

By 2017 Levenson was so confident of reinstating the deal that he filed a complaint

¹¹ The four documents the Attorney General, Tomirae and Bauknight most needed to hide were: 1. The Wingate contract; 2. An amendment to the Legacy Trust and related assignment which put grandson Forlando Brown in line to exercise the rights of first refusal the Attorney General had given his father; 3. The claimed \$4.7 Million "appraisal" which Plaintiffs used in Supreme Court filings to assert that Buchanan and Appellant were not only incompetent but greedy and deceitful; and 4. Tomirae's long-public handwritten admissions that she was married, living in Texas, and possibly pregnant before falsifying a marriage license application and conducting a ceremony with Brown.

seeking an undisclosed amount from the "common fund" he had helped create with the 2008 McMaster settlement. Tomirae and the Levenson clients had been paid \$2 million for a totally avoidable "sale" of three of James Brown's 900 copyrights. Tomirae's son had been awarded \$700,000.00 in GAL and legal fees. And the AG was simultaneously seeking partial summary judgment and dismissal as a party to this suit.

James Brown's "I Feel Good" charity is funding the second takeover, and the necessary attack on Buchanan and Appellant. By Bauknight's own sworn statements, he has spent millions of dollars to prove them wrong.

Bell, Levenson and Tomirae continue to appear at odds in appellate proceedings. They are, in fact, untied in the Wingate suit in an effort to re-take 52 ½% of Brown's assets with baseless will contests; weak spousal claims; and misrepresentations about the size of Brown's assets and Termination Rights.

By 2016, the AG and his Legacy Trust began to have problems. Governor McMaster stated twice under oath that he did not authorize the Wingate firm to bring suit in the name of the State/AG. He said he didn't know he was a Plaintiff until after he left office. His lawyer, however, claimed that McMaster had, in fact, authorized him to name the State/AG as a party.

AG Wilson secured an order not to be deposed in this case, in which he is a Plaintiff.¹² He was, however, deposed in another James Brown case. In that case, AG Wilson stated that in 2011 he authorized this lawsuit to continue, thinking he was simply maintaining the *status quo*.

¹² See Order dtd. 9/21/16, in which the Court states that Wilson "was not the Attorney General when this suit was initiated, and, therefore, lacks personal knowledge of most of the matters at issue in this suit."

The AG has continued his vigorous pursuit of this suit and support of Bauknight after March 2013, when he was personally advised of Bauknight's \$2 million overstatement of Brown's charitable deduction; his misstatements about Termination Rights; and other problems.¹³

Nearly five years after the first *Wilson v. Dallas* decision, two James Brown FOIA cases and three others are pending in appellate courts. In every one of them, at least one of The AG, Wingate and Bauknight is actively working against the James Brown's "I Feel Good" Charity, and in aid of the Legacy Trust the AG now claims is private. In three of the five, the three continue their baseless, 7 ½ year attack on Appellant and Buchanan.

Conclusion

The Court should grant an expedited hearing and lift the stay related to this appeal. Failing to do so would continue the irreparable damage to Appellant; be unjust; and would not promote judicial economy.

¹³ Bauknight claimed a \$2.8 Million charitable deduction, even though only \$.8 million was going to charity, and \$2 million was going to grandchildren. It was this overstatement which resulted in the ill-gotten "refund" Bauknight and the Attorney General claim demonstrates that the McMaster settlement deal actually saved taxes. See Affid. Of Harley Ruff, Esq., related to the tax problems actually caused by the McMaster settlement.]

Respectfully Submitted,

W.H. Bundy, Jr.
H. Brent McDonald
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: (843) 492-4134
Facsimile: (843) 712-7318
walter@bundymcdonald.com



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

Counsel for Appellant

October 24, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document on counsel for Movant and Plaintiff/CC Defendants on October 24, 2017, by hand-delivering a copy of the same, addressed as follows:

J. Emory Smith, Jr., Esquire
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
Mark V. Gende, Esquire
1515 Lady Street
Columbia, SC 29201

RICHLAND COUNTY
FILED
OCT 24 AM 11:50
KINETTE W. MCBRIDE
C.C.P. & G.S.



Adam T. Silvernail

**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**

Appellate Case No. 2017-001899

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

And

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

v.

Adele J. Pope and Robert L. Buchanan, Jr., Defendants.
Of whom Adele J. Pope is Appellant

SUPPLEMENTAL MOTION FOR ORDER FOR LIMITED LIFTING OF STAY

TO: THE HONORABLE DOYET A. EARLY, III, CIRCUIT JUDGE

Based on the 2018 death of Plaintiff Venisha Brown, and other filings by most of the 17

Plaintiff/Counterclaim Defendant/Respondents (herein "Plaintiffs") to this Appeal, including filings by 7 Plaintiffs in U.S. District Court Case No. 1:18-cv-02191-JMC [*Brown v. Hynie*],¹ Appellant respectfully moves this Honorable Court for an Order pursuant to Rule 241(c) and (d) lifting the automatic stay for the limited purposes set out below. Lifting of the stay is necessary to preserve the Court's jurisdiction during this pre-trial appeal and to prevent contested matters from becoming moot.

The limited actions which this Court is asked to take to preserve the broad jurisdiction it has had over the 17 Plaintiffs and the assets of deceased entertainer James Brown, including about 900 copyrights and related rights, for 7 ½ years, and to prevent the contested issues from becoming moot are:

1. To substitute the Estate of Venisha Brown, by its duly appointed PR, for Venisha Brown as a Plaintiff/Counterclaim Defendant/Respondent.
2. If no duly appointed SC PR presents within (30) days, appoint a receiver to marshal and secure all assets of Venisha, and all assets in which Venisha has, or has claimed, an interest since May 19, 2010 over which this Court has jurisdiction, including vested "Termination Rights" discussed below.
3. To enjoin the transfer of any assets of Venisha Brown, her Estate and each Non-resident Plaintiff listed herein, and all assets in which any one of them has, or has claimed an interest, either legal or equitable, since May 19, 2010 over which this Court has jurisdiction, including but not limited to Tangible Personal Property (TPP) formerly owned by James Brown; all assets of Plaintiff Estate of James Brown, Plaintiff James Brown 2000 Irrevocable Trust (2000 Trust) and Plaintiff James Brown Legacy Trust (Legacy Trust), and/or their successors in interest, including James Brown's 900 Copyrights and any termination interests under Sections 304 and 203 of the U.S. Copyright Act, 17 U.S.C. §§304 and 203 (Termination Rights), and all

¹ *Brown v. Hynie* was formerly U.S. District Court, Central District of California, Western Division, Case No. 2:18-cv-00307-SVW-JPR, filed January 12, 2018. The Complaint is attached as Exhibit A.

proceeds and products of the Termination Rights; any interest in the approximately \$37,5000 settlement (per person) now pending in the S.C. Court of Appeals; and any other interests, legal or equitable, subject to the jurisdiction of this Court, until the conclusion of this appeal.

4. To enjoin the transfer of, and secure, all assets of Plaintiff Tommie Rae Brown based on her residence to London, UK and the participation of Peter Afterman, music manager of Plaintiff Estate of James Brown, in transfers of \$1 million or more to her in 2015, before she left the Country. These transactions are described in Exhibit A, Complaint filed in U.S. District Court, Central Dist. of California Case No. 2:18-CV-00307 [*Brown v. Hynie*], filed January 12, 2018; the Declaration of Tommie Rae Brown filed in that that case dated February 28, 2018. [Exhibit B]; and said Plaintiff's deposition in this case.
5. To appoint an independent guardian *ad litem* (GAL) and receiver for minor Plaintiff James B., to secure and preserve his assets based on his 2016 relocation to London, UK after being awarded a \$700,000.00 legal and GAL fee in Aiken County, which fee is of a lower priority than some or all of Appellant's claims against Plaintiff Estate of James Brown, including approximately \$100,000 due on her twice-court-approved, unpaid 2007SA fee of under \$48,000 Plaintiff Estate/2000 Trust has refused to pay; and failure of Plaintiffs' counsel to appoint a GAL for James B for over 7 years.
6. To enjoin the transfer of any assets over which this Court has jurisdiction to or for the benefit of James B., other than what is necessary for his current support until age 18.
7. To enjoin the transfer of all assets under the jurisdiction of this Court of Tonya, a/k/a Sarah LaTonya Fegan, in the same manner as set out for Venisha Brown, and to take the same action as to all non- South Carolina resident Beneficiaries during the pendency of this appeal.
8. To add Forlando J. Brown, a/k/a William James Brown and William Forlando Brown² as a party to this action, as the real-party-in- interest to Plaintiff Counterclaim Defendant Terry Brown since January 3, 2011, pursuant to Assignment, as more fully described in Return to Motion and Memorandum

² In January 2011 Plaintiff Terry transferred to Forlando, also known as William, his entire interest in James Brown's estate, including a right of first refusal (ROFR) to purchase Brown's music empire. (R.,p.) That month, Forlando and David Bell, Esq., planted the false Grammy © claim noted in 2013 by the Supreme Court in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746, FN 30 (2013). (R., p.),

related to Terry and Forlando filed October 29, 2018, which is incorporated herein, and based on orders terminating their counsel.

9. To enjoin the transfer of assets of Forlando and Terry subject to the jurisdiction of this Court, as provided above for Venisha Brown.
10. To require an accounting of the PR of Plaintiff Estate of James Brown based on his failure to account since 2016 and his 2018 admission to the California Federal Court that more than ten million (\$10,000,000.00) dollars³ in litigation costs have been spent since 2007 from funds devised to James Brown's "I Feel Good" Trust which he valued in IRS filings at about \$4 million.
11. To poll formerly- minor Plaintiffs Janise Brown, Sydney Lumar and Carrington Lumar to determine if they ratify action taken for them by Louis Levenson, Esq., and Plaintiffs' counsel during minority when Levenson signed the Wingate contract for them; Wingate moved for them to intervene in a FOIA suit to prevent release of the Wingate contract; the Wingate firm and Levenson prevented the appointment of a GAL for them; and Appellant issued offers which would have let them out of this Case (Richland 4900).
12. To freeze the approximately 3/10 of the Plaintiff 2000 Trust which was shifted by Bauknight, in January 2011 from James Brown's "I Feel Good" Charity to the 2000 Trust shares of Plaintiffs Jason Brown-Lewis, Lindsey Brown, Janise Brown, Sydney Lumar, Forlando Brown, and Carrington Lumar to the extent the 1/7 share of each Plaintiff grandchild is not needed for the current education benefits (to age 35) of said Plaintiff pending the outcome of the appeal and the resolution of the disputed question of whether James Brown's "I Feel Good" Trust should have been devalued from about \$80 million to About \$4 million by Peter Afterman and Russell Bauknight.

This request is based on the 2013 revelation that Peter Afterman was the "music expert" for the disputed \$4.7 million claimed value of James Brown's music empire, and the 2017 and 2018 disclosures that Mr. Afterman is working with Mr. Baunight to deprive this Court of jurisdiction over the James Brown royalties

³ On p. 3 of the Estate/2000 Trust's Memorandum, Doc. 21, p. 12 of 55, Plaintiff states: "Litigation costs to the estate and ultimately to the charitable trust have now run into the tens of millions of dollars." In the same page 3 and the preceding page, he states that Plaintiffs Deanna Thomas, Yamma Brown, Tonya Brown transferred their Termination Rights to Plaintiff Legacy Trust. He states:

"The Settling Parties agreed that Mrs. Brown was the surviving spouse and assigned *proceeds* of any termination rights they may obtain to an entity which would include the probate estate and termination rights proceeds. *Thus in that agreement, those Settling Plaintiff did the very thing they say in this action cannot be done: assign the proceeds of termination rights to a third party.*

See Exhibit C attached hereto.

owned by Plaintiffs which are the source of payment for Appellant's (and possibly Buchanan's) counterclaims. Whether intentional or not, the devaluation of Brown's music empire from \$84 million to \$4.7 million, shifted about 30% of the assets and income of the "I Feel Good" Charity to these six Plaintiffs and Romunzo Brown, increasing the share of each in the 2000 Trust from about 1/300 to about 1/25 of the 2000 Trust.⁴

13. To determine the successors in Interest to Plaintiff/Counterclaim Defendant James Brown Legacy Trust; add them as parties to this action; and appoint a receiver to marshal and secure all assets owned, formerly owned, or claimed, by the Legacy Trust, based on its claim to the S.C. Court of Appeals that it does not exist.
14. To enjoin Plaintiff Estate from making the proposed transfer to Daryl Brown sought in his September 11, 2018, Motion and Affidavit, attached as Exhibit D.
15. To take such additional action as is necessary or appropriate to preserve the Court's jurisdiction which was conferred voluntarily by all 17 Plaintiffs on this Court on May 19, 2010, over the Plaintiffs, Defendants and all assets of James Brown and assets they acquired a result of his death, including 900 copyrights and all Termination Rights related to those copyrights.
16. To take such additional actions as shall prevent the contested issues raised in this appeal, the Complaint, the Answer and Counterclaim and motions in this case from becoming moot during the pendency of the appeal.

The grounds of this motion are that events since December 2017 confirm that some Plaintiffs are actively seeking, by multi-million dollar legal fees and transfers from Plaintiff Estate/2000 and of Termination Rights and proceeds transferred to Plaintiff Legacy Trust on or before January 2009, to deprive this Court of jurisdiction over this appeal and render moot the disputed issues in the appeal. Lifting the stay for the limited purposes set out above is necessary for the Court to preserve jurisdiction over this pre-trial appeal; prevent further violations of the

⁴, based on the sworn 2018 expert testimony of Roger Miller, Esq., W. Steven Johnson, Esq., and Appellant in the trial of Aiken County Case 2013-CP-02-1337.

Statute of Elizabeth, S.C. Code §27-23-10; and prevent the disputed issues from becoming moot.

This Motion is supported by Appellant's October 24, 2017 Motion to Lift Stay; the complete file of *Brown v. Hynie*, of which the Court is asked to take judicial notice; the documents referenced herein and the memorandum which follows.

MEMORANDUM IN SUPPORT OF LIMITED LITING OF STAY

a. The AG's Settlement; The Tommie Rae/Afterman Devaluation; Richland 4900 Jurisdiction; and the Forlando Grammy © Plant

On August 10, 2009 the Attorney General (AG) asserted the right to take 75% control of the James Brown assets with Tommie Rae Brown.

By January 2009 adult Plaintiffs had placed their Termination Rights in Plaintiff Legacy Trust, with Russell Bauknight as Trustee. Without revealing this, Bauknight and the AG recommended that the Honorable Doyet A. Early, III, approve his settlement deal. To convince the Court, the AG and others asserted correct testimony of probate and tax experts Pope and Harley Ruff, Esq., about the settlement were incorrect; made incorrect representations about Brown's heirs; and made incorrect statements about Termination Rights and the Court's jurisdiction under the U.S. Copyright Act.

In April 2009 Bauknight testified that he would (using James Brown's money) work to carry out the AG's plan, which dismembered James Brown's estate plan. Bauknight testified he saw no conflict in being PR/Trustee under Brown's estate plan and Trustee of the AG's Legacy Trust.

On May 26, 2009, Judge Early approved the AG's settlement and replaced Buchanan and Appellant with Bauknight. By sworn accounting, they delivered in excess of \$99 million in assets to Bauknight, with a debt to the TIAA of \$11.3 million. (Final Acct., dtd. 6/29/08, R., p.1509).

For six years Bauknight and Beth Bauknight, CPA, the accountant he hired, did not pick up the estate and income tax file of CPA William Sellars, who had been appointed by Judge Early, but resigned after the AG's settlement was announced.

Bauknight, at the suggestion of counsel for Tommie Rae Brown, hired Peter Afterman. He testified in 2017 that he and Afterman speak almost daily about every aspect of James Brown's music copyrights.

In August 2009 Tommie Rae's counsel proposed to devalue Brown's copyrights to \$24 million or less and value Brown's right of publicity at zero to discredit "bobadele".

In March 2010 the same counsel advised Buchanan's lawyer that the AG had hired the Wingate firm, and would sue if they did not drop the appeal of the AG's settlement.

On May 18, 2010 Louis Levenson, Esq., signed the Wingate contingency fee contract for about 10 Plaintiffs, including minors. Many did not know of this until years later. Now-Governor McMaster, then AG, did not sign. He testified in 2016 that he did not authorize the Wingate firm to sue Buchanan and Pope in the name of the State/AG, and did not know the AG was a Plaintiff until after he left office in January 2011.

On May 19, 2010 the Attorney General and 16 others sued Buchanan and Pope for tens of millions of dollars. Buchanan and Pope counterclaimed for millions of dollars, based on fraud on

the court; intentional interference with their (first priority) court-awarded SA fee and partial PR/Trustee payment contract with Plaintiff Estate/2000 Trust; civil conspiracy; and other causes of action.

In September 2010 Afterman and Bauknight secured a valuation of Brown's music empire that: valued Brown's 900 copyrights at \$23.7 million, less a claimed \$19 million (undisclosed) TIAA debt, and valued Brown's right of publicity, TPP, Rolls Royce, claims against David Cannon, sampling revenues and other assets at zero, or near zero, for a total of \$4.7 million.

When Buchanan and Pope sought to dismiss Richland 4900 on the basis that jurisdiction over the parties and James Brown's assets was in Aiken County, the AG, Estate and 2000 Trust assured the Court repeatedly that all matters had been concluded in Aiken County and that Richland County was the appropriate jurisdiction. Thus, by their own action all Plaintiffs conferred jurisdiction on this Court. In their February 28, 2018 filing in California, however, Plaintiffs Estate/2000 Trust have totally reversed positions. They now claim that Aiken County – from which Buchanan and Pope have been banned from proceedings – has jurisdiction over all James Brown assets. Plaintiff Estate/2000 Trust presents 55 pages of claimed evidence that Aiken County, under the federal Probate Exception, and otherwise, has jurisdiction. He states:

In 2013 the South Carolina Supreme Court affirmed the removals but reversed the circuit court's approval of the settlement agreement, citing the need for further evidence to approve it. Thus, the will and trust and contests and spousal claims were revived.

In a single paragraph, the Estate/2000 Trust's fiduciary seeks to deprive this Court of the jurisdiction over person and subject matters so freely given, and defended, by the AG, the Estate, the 2000 Trust, and the AG's Legacy Trust in 2010 when they needed to try to stop the *Wilson v.*

Dallas appeal, but elected not to go to Aiken County where Buchanan lived and the matter had been litigated.

The millions of dollars distributed by the Estate/2000 Trust without accounting, and without making any provision even for Appellant's \$48,000 SA fee which has been approved and outstanding for almost 11 years, make clear the Plaintiffs' intention to deprive this Court of its jurisdiction to hear Appellant's claims and render the questions in this pre-trial appeal moot.

In late 2010 Bauknight presented the \$4.7 million value to the IRS; claimed Brown's total gross estate was about \$6.5 million and claimed \$2.8 million was going to Plaintiff James Brown Legacy Trust or the AG's (New) Charity, which owns 47 ½% of the Legacy Trust. Bauknight did not disclose that \$2 million of the \$2.8 million was going to grandchildren – not charity.

Under Brown's 2000 Trust's "Fractional Share" formula, when the IRS failed to challenge the Bauknight/Afterman value, approximately 3/10 of the 2000 Trust assets were shifted from Brown's "I Feel Good" Charity into the education trusts for Plaintiffs Jason, Lindsey, Janise, Sydney and Carrington, where they will be subject to income taxes until these grandchildren reach 35.

In January 2011, in violation of the Statute of Elizabeth, Terry Brown secretly transferred his interest in Richland 4900 and right of first refusal to buy Brown's music empire to his son, Forlando Brown. That month, Forlando planted the false Grammy © claim that would be noted by the Supreme Court in 2013.

In April 2011 Pope and Wm. Jeffrey Smith circulated to professionals, and gave to the AG, *Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown "I Feel*

Good” Trust doesn’t... The article explains how the AG’s failure to protect James Brown’s copyrights, combined with a devaluation, would leave the charity with almost nothing.

In 2011 Plaintiffs told the Supreme Court that Brown’s music empire was worth \$4.7 million, and that a proposal to give over half of the assets to individual Plaintiffs saved taxes. The devaluation actually saved no estate taxes⁵; shifted about 3/10 of Brown’s assets from Brown’s “I Feel Good” Charity to the trusts for 6 grandchildren Plaintiffs until age 35; and caused serious income tax problems. The AG’s Trustee told the Supreme Court Plaintiff Tommie Rae Brown’s elective share claim was a “slamdunk” He also said that Plaintiff Estate/2000 Trust had no corpus to speak of; that nobody was trying to buy the assets; that Termination Rights were “all this estate is about;” and that, but for the AG’s 2008 settlement, there would be nothing left in the 2000 Trust in 2023.

At the same time, the AG and Mr. Bauknight were not revealing under FOIA Ms. Brown’s handwritten admissions that she was married, living with her husband, and possibly pregnant when she conducted a ceremony with Brown.

On February 27, 2013 the Supreme Court, in the first (now replaced) *Wilson v. Dallas* decision, instructed the Attorney General to conclude Richland 4900 and the FOIA cases “in the first instance”.

On March 6, 2013 Appellant met with Attorney General Wilson, then-Chief Deputy AG

⁵ Brown’s estate plan allocates the \$2 million estate tax exemption available to James Brown in 2006, the year of his death, to the Grandchildren’s Education Trust, thus requiring the 6 children who were given TPP to pay the only estate taxes due, approximately \$200,000 on the personal and household effects devised to them. The AG had known this since 2007, and Bauknight since 2009. Yet both, with knowledge that it was incorrect, claimed to the Supreme Court that the ill-gotten “refund” Bauknight got in January 2011, which caused millions of dollars in income tax problems, was proof that Buchanan and Pope were greedy and incompetent.

John McIntosh, and Solicitor General Robert Cook to discuss the damage done to the "I Feel Good" Charity by Bauknight's devaluation and IRS filings. Within a few days, Appellant and counsel Adam Silvernail met with AG Cook and AG McIntosh for the same purpose.

Solicitor General Robert Cook, according to his deposition testimony entered in Aiken 1337 in 2018, believed Pope was competent, concerned about the "I Feel Good" Trust, and not greedy. Yet the AG, Bauknight and Plaintiff have continued their attack on Appellant and Buchanan for five years.

In his Petition for Rehearing the Attorney General assured the Supreme Court he was getting out of Richland 4900, and hoped to end the James Brown FOIA cases soon. He also called Appellant to say he was getting out of Richland 4900. He did not.

On May 8, 2013, the Supreme Court issued its final *Wilson v. Dallas* decision.

The Court voided the AG's settlement deal; voided Bauknight's PR/Trustee appointments; and noted the AG's representation that he would be getting out of Richland 4900. The Supreme Court did not address the Plaintiff's Legacy Trust, which had been in operation since 2009.

By May 12, 2013 the AG and counsel for beneficiaries of the AG's Legacy Trust were working to overturn the result in *Wilson v. Dallas*. To do so, they would need to continue to attack and discredit Buchanan and Appellant – and prevent the Court from hearing their defenses and counterclaims. They also had to prevent by discovery and FOIA non-compliance Tommie Rae Brown's admissions about her bigamous ceremony with Brown; the \$4.7 million claimed valuation; and the tax problems the settlement caused. In addition, they would have to continue to make incorrect statements about the U.S. Copyright Act. (For example, they never disclosed that

Termination Rights apply only to U.S. Copyright, about half of Brown's royalties.).

The AG and others, through Wingate, told the Richland 4900 Court that the Supreme Court's final *Wilson v. Dallas* decision confirmed that it placed no importance on concluding either the James Brown FOIA matters or Richland 4900. They asked to stay all Richland County and FOIA matters.

On May 29, 2013 Approximately 13 Plaintiffs, including 8 who are now parties to *Brown v. Hynie*, announced to the Honorable Doyet A. Early, III, in open court, their intention to reinstate the 2008 settlement which put the AG in effective control of James Brown's fortune; gave 47 ½ % to the AG's (New) Charity; and gave 52 ½% to Will contestants.

On June 13, 2013, Judge Early excluded Buchanan and Pope from all of his James Brown cases except their own claims cases.⁶ This left Bauknight and the 12 Plaintiffs who wanted to disregard *Wilson v. Dallas* free to repeat their same, incorrect claims about Buchanan and Pope, taxes, heirs and the Copyright Act they were making in Richland 4900, but without Buchanan's and Pope's input, thus rendering moot the issues in Richland 4900.

In August 2013, Peter Afterman, the music manager for Plaintiff Estate helped Plaintiffs Tommie Rae Brown and James B. file defective, public, Termination Rights claims in the U.S. Copyright Office. The Estate's agent helped Tommie Rae and James B. try to take U.S. Royalties from more than 90 of the 'I Feel Good' Charity's copyrights between 2015 and 2023. Neither Mr.

⁶ At the time, and until late 2014, when he and the Honorable L. Casey Manning issued a *sua sponte* Order for a joint mediation in Richland 4900 and Aiken 1337, Judge Early had no involvement in Richland 4900. Richland 4900 and Pope's two FOIA cases, both now pending in the Court of Appeals, were assigned to Judge Early by the Supreme Court in 2016.

Bauknight, nor Plaintiff Estate/2000 Trust's SA/ST took any action, as had The Ray Charles Foundation, to challenge the defective public filings during the 2-year window they had to challenge them. This resulted in a transfer of more than \$2 million to six or more Plaintiffs in 2015 or 2016, even though all had previously transferred their Termination Rights to Plaintiff James Brown Legacy Trust in 2009.

In August 2013, Bauknight, claiming Forlando had done nothing wrong in his 4-year suit against Plaintiff 2000 Trust, hired Wingate to prevent payment to Appellant's counsel for their successful stopping of Forlando's injunction suit seeking to reinstate Cannon and Dallas as trustees of the 2000 Trust.⁷ Bauknight also claimed in a deposition that Appellant had "raped" Brown's estate, and that the settlement he had recommended in 2009 was a good one.

In September 2013, as was testified to by Mr. Levenson in December 2017, Mr. Afterman also met with additional heirs of James Brown, and solicited the business of those persons, and Plaintiffs Deanna, Yamma, and Tonya Brown, to take copyrights from Brown's "I Feel Good" Charity, and away from the jurisdiction of this Court as to Appellant's counterclaims. Despite this, and with the announced intention to join with Tommie Rae to disregard Wilson v. Dallas; dismember the "I Feel Good" Charity; and continue the destruction of Plaintiff's career and reputation, the Levenson Will/Trust contestants supported Mr. Bauknight as PR/Trustee.

In October 2013 Judge Early "double approved" Mr. Buchanan's service; praised his work, all of which was joint with Appellant; said he did not have to return the \$500,000 paid to him in

⁷ Bauknight had dropped the 2000 Trust's request for Forlando to pay the attorneys' fees for his 4-year attempt to reinstate Cannon and Dallas from his interest in the 2000 Trust several years earlier, losing legal fees which could have been charged to Forlando.

2012; and left open his possible re-entry into Richland 4900 if the Court finds that it was a violation of the AG's statutory duty to prevent Mr. Buchanan from filing a Petition for Rehearing in *Wilson v. Dallas* without telling the Supreme Court.

From 2013 until 2018 Terry told the circuit court and S.C. Court of Appeals that he supported James Brown's estate plan, when he was actually aligned in this suit to damage Appellant with those he said had frivolously contested Brown's estate plan.

In 2015 Tommie Rae Brown was declared Brown's spouse without the Estate, through David Sojourner, Esq, even proffering the Plaintiff Tommie Rae's handwritten admissions that the ceremony with Brown was bigamous. This was after Mr. Sojourner had attempted to exclude all heirs from the proceeding who were not a part of the Attorney General's 2008 settlement.

In 2015 the Supreme Court asked Judge Early to give a status report after he declared Tommie Rae Brown to be Brown's spouse.

In May 2015 Judge Early delivered a Status Report to the Supreme Court. Failing to recall the May 29, 2013 announcement by Levenson and Tommie Rae's counsel in open court, Judge Early advised the Supreme Court that he was unaware of any settlement talks.⁸

⁸ Several persons filed responses setting out errors in Judge Early's Status Report. Appellant and Buchanan, not parties to the proceeding below, were not asked to respond to the Status Report, and did not. As a result, the Supreme Court was unaware of the 2013 publicly announced intention of Deanna, Yamma, Venisha, Tommie Rae, Larry Daryl and others to continue their alliance; continue to evade a correct heir proceeding; and take 52 ½% of the "I Feel Good" Charity for themselves. It was also left with the impression that Appellant, alone, was seeking a \$5 million commission for 18 months' service to a \$5 million estate. The language of the Status Report also suggested that Buchanan had settled the case against him, rather than been paid to release his counterclaims against Plaintiffs. A stern Order of the Supreme Court following the Status Report abruptly ended Appellant's 2-year *pro bono publico* effort (May 2018 – June 10, 2015) to try to persuade Attorney General Wilson and Sojourner to take appropriate steps to protect the "I Feel Good" Trust's copyrights from dissipation by Termination Rights, as The Ray Charles Foundation was doing.

In 2016 Several Will/Trust contestants were awarded \$37,500, including Tonya Brown, who had no interest under the Will or 2000 Trust. Terry Brown has challenged this payment, but his lawyer recently claimed that he had been terminated by Forlando, Romunzo and Terry, who are *pro se*.

In 2018 Mr. Sojourner's 2016 deposition was filed in Aiken 1337. His deposition and filings by Plaintiff Terry Brown in the Court of Appeals reveal that Mr. Sojourner and his lawyer charged about \$1.4 million to "defend" James Brown's estate plan against the claims of Tommie Rae Brown, James B. and the Will/Trust contests. But he claimed he had no duty to protect the copyrights.

In 2016 Plaintiff James B. was awarded approximately \$700,000.00 in legal and GAL fees, even though he had claimed in a strong Petition for Rehearing with the Supreme Court that Brown's music empire was worth only \$4.7 million when he died, and the entire estate only about \$5 million. James B's maximum claim is 1/20.

In December 2017 Plaintiff Estate/2000 Trust called Mr. Levenson as a witness against Appellant in Aiken 1337. The thrust of his "fact" testimony was that Buchanan and Pope had no duty to defend James Brown's estate plan. Mr. Levenson, over objection of Terry Brown, also testified as to why he believed the Will/Trust contestants had probable cause to challenge the Estate Plan. In short, the lawyer for the Will/Trust contestants is being used by Mr. Bauknight to carry into effect the announced intention to ignore *Wilson v. Dallas* and continue to denigrate Buchanan and Pope.

In 2017 AG Wilson was deposed in Aiken 1337. He testified that shortly after taking office

he authorized Richland 4900 to continue to “maintain the status quo.” Yet AG Wilson knew nothing about the litigation, Brown’s estate, the 2000 Trust, the Legacy Trust he had effectively controlled since 2011, or the \$4.7 million claimed value of Brown’s music empire. AG Wilson did not recall what happened at his March 2013 meeting with Appellant, but did not challenge her recollection of the meeting.

In 2017 Pope was awarded, for the second time, her \$47,972 SA fee previously awarded, with interest, in January 2008. The order provided for interest from March 2008. Although disbursing tens of millions of dollars, Plaintiff Estate/2000 Trust had not paid this amount more than a year later.

By 2017 Mr. Levenson had filed a claim for pay from the “common fund” he asserts he created, even though he has consistently sought to set aside James Brown’s estate plan since January 2007.

In January 2018 *Brown v. Hynie* revealed that Bauknight and Sojourner, with Peter Afterman, had spent “tens of millions” of dollars to try to reinstate the AG’s settlement. They have paid millions to attack Appellant; to evade FOIA compliance; and to assure that the contested issues raised in Buchanan’s and Appellant’s 2010 Answer and Counterclaim be rendered moot.

Bauknight told the Federal Court that the Estate and 2000 Trust were unaware of Peter Afterman’s assisting Tommie Rae Brown and James B. to try to take royalties from more than 90 copyrights.

In September 2018 Venisha Brown died, leaving behind an estate which includes 1/6 of Brown’s PHE and the proceeds from at least 5 copyright Terminations filed by Tommie Rae with

the aid of Peter Afterman. She may have additional vested termination rights, including those owned by the Legacy Trust, in which she has almost a 5% interest. In addition, she had been awarded \$37,500 in a settlement.

In September 2018 an order was issued declaring James B. to be Brown's child because nobody presented evidence refuting the same.

In September 2018 Daryl Brown applied to get his Estate distribution. [See Exhibit D]. By then, however, a number of the Plaintiffs were claiming that neither Daryl nor Larry Brown was an heir under the Copyright Act or had any Termination Rights.

In short, Plaintiffs, including the AG, have worked since (and even before) their May 29, 2013 announcement to attack and damage Buchanan and Appellant in order to carry out their publicly announced plan to disregard the Supreme Court's decision in *Wilson v. Dallas*; put all of James Brown's assets into the AG's Legacy Trust; and discredit Buchanan and Pope as greedy, incompetent felons. Only this case, Richland 4900, provides an opportunity for Appellant, and possibly Buchanan, to address the false claims; restore their reputations; be compensated for the interference with their contract for payment from Plaintiff Estate/2000 Trust; and be compensated for years of damage to their careers from Plaintiffs.

Richland 4900 is unique in that the Court has jurisdiction over the AG, all beneficiaries under Brown's Will; all current beneficiaries under Brown's 2000 Trust; all beneficiaries under the AG's Legacy Trust; and all living PR/Trustees who have served under Brown's Will and 2000 Trust except Albert Dallas; all assets formerly owned by James Brown; and the Termination Rights under Section 203 and 304 of the Copyright Act of what is claimed to be a "supermajority" of

James Brown's heirs. The Court has clear jurisdiction over the following important contested issues, and others:

1. Should the James Brown Legacy Trust been relieved of default where Buchanan and Pope never owed it a duty, and it now claims not to exist?
2. Should the AG have been relieved from default where Governor McMaster has stated under oath that he did not authorize the suit to be filed in the name of the State/AG and his successor AG worked for years to prevent the Wingate contract from being released under FOIA?
3. Should Plaintiffs Tommie Rae Brown, Tonya Brown, James B., and the Legacy Trust, to whom Buchanan and Pope never owed a duty, be relieved from default?
4. Did Plaintiffs Deanna Thomas, Yamma Brown, Terry Brown, Larry Brown, Daryl Brown, and Venisha Brown commit fraud on the Courts which damaged Pope when they agreed to "stipulate" that Tommie Rae was Brown's spouse and consented to Tommie Rae's 2009 proposal and Bauknight devaluation of Brown's \$84 million music empire to \$4.7 million with knowledge of its falsity?
5. Should Appellant (and possibly Buchanan), be allowed to offset a portion of the nearly 1/25 (rather than 1/300) of Brown's 2000 Trust now held in each of the Trusts for Plaintiffs Lindsey Brown, Janise Brown, Sydney Lumar, Carrington Lumar, and Jason Brown-Lewis if they are relieved from default?
6. Should Terry Brown be relieved from default where he and Forlando Brown, his- real-party- in- interest since January 2011, have repeatedly defrauded the courts to damage Buchanan and Pope while claiming to defend James Brown's estate plan?
7. Should any Plaintiff be relieved from default where all 17 Plaintiffs have intentionally interfered with Pope contract with Plaintiff Estate/2000 Trust and the approximately \$1.47 million due under the contract on May 26, 2009 for the 18 months she and her large staff worked to protect James Brown's estate plan including from the AG's and Settling Parties attempts to dismember it?
8. Which Plaintiffs participated in the attempt to devalue the James Brown assets to damage "bobadele," and should they be relieved from default?
9. Was James Brown's music empire worth \$99 Million less a TIAA debt of about \$15 million when he died, or \$23.7 million less a \$19 million TIAA debt?

10. Should the AG be deposed in Richland 4900 where he has voluntarily submitted to a deposition in Aiken 1337 and provided valuable information?
11. Can the Wingate firm continue to represent the AG and other Plaintiffs where most have publicly announced their intention on May 29, 2013 to dismember Brown's "I Feel Good" Charity by disregarding *Wilson v. Dallas*?
12. Can Bauknight speak for the AG in Richland 4900 where he has paid music advisor Peter Afterman \$1 million while Afterman helps Plaintiffs Tommie Rae and James B. siphon off royalties from the "I Feel Good" Charity?
13. Should the AG be relieved from default where he has taken effective control of the James Brown assets, then done nothing to protect them?

When this case was filed, and Buchanan and Pope urged that it should be dismissed or transferred to Aiken, all Plaintiffs successfully argued that this Court was the only Court to have jurisdiction over the parties and subject of this action because both the 2000 Trust and Legacy Trust had their situs in Richland County. The Plaintiffs are now actively working both to deprive this Court of jurisdiction over the parties and the 900 copyrights. They are asking for, and receiving, millions of dollars in distributions from funds that may be needed to fund Appellant's counterclaims. Lifting the stay will preserve the Court's jurisdiction and prevent the important contested issued in this case from becoming moot.

Since 2013 – but especially in 2018 – Plaintiffs have been seeking to render moot issues related to their liability and offset against their share of the Estate, 2000 Trust, Legacy Trust and Termination Rights. They seek to deprive the Court of jurisdiction over their persons and over the millions of dollars of distributions and payments which are lower priority than Appellant's counterclaims against them.

Conclusion

Rule 241(c) and (d) SCACR provide that in deciding to lift the stay the Court should consider whether lifting the stay is necessary to preserve the Court's jurisdiction or to prevent contested issues from becoming moot. The facts show that lifting the stay for the limited purposes stated herein is essential as to both. Appellant's motion to lift the stay should be granted.

Respectfully submitted,

s/Walter H. Bundy, Jr.
Walter H. Bundy, Jr. (SC Bar #1012)
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
888-552-1559
walter@bundymcdonald.com

and

Adam T. Silvernail, E
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
Attorneys for Defendant Adele J. Pope

October 30, 2018

Marc Toberoff (CA State Bar No. 188547)
mtoberooff@toberoffandassociates.com
Douglas Fretty (CA State Bar No. 279829)
dfretty@toberoffandassociates.com
TOBEROFF & ASSOCIATES, P.C.
23823 Malibu Road, Suite 50-363
Malibu, CA 90265
Telephone: (310) 246-3333
Facsimile: (310) 246-3101

Attorneys for Plaintiffs Deanna Brown-Thomas, Yamma Brown,
Venisha Brown, Michael D. Brown, Nicole C. Brown, Jeanette Mitchell
Bellinger, Sarah LaTonya Fegan, Ciara Pettit and Cherquarius Williams

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEANNA BROWN-THOMAS, an
individual; YAMMA BROWN, an
individual; VENISHA BROWN, an
individual; MICHAEL D. BROWN, an
individual; NICOLE C. BROWN, an
individual; JEANETTE MITCHELL
BELLINGER, an individual; SARAH
LATONYA FEGAN, an individual;
CIARA PETTIT, an individual; and
CHERQUARIUS WILLIAMS, an
individual,

Plaintiffs,

vs.

TOMMIE RAE HYNIE a.k.a.
TOMMIE RAE BROWN, an
individual; JAMES J. BROWN II, an
individual; RUSSELL L.
BAUKNIGHT, as the Personal
Representative of the Estate of James
Brown and Trustee of The James
Brown "I Feel Good" Trust; DAVID C.
SOJOURNER, JR., as the Limited
Special Administrator of the Estate of
James Brown and Limited Special
Trustee of The James Brown "I Feel
Good" Trust; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 2:18-CV-00307

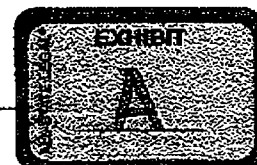
COMPLAINT FOR:

- [1] DECLARATORY RELIEF
(28 U.S.C. § 2201);
- [2] ACCOUNTING;
- [3] CONVERSION;
- [4] UNJUST ENRICHMENT;
- [5] INTENTIONAL
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE;
- [6] NEGLIGENT
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE;
- [7] VIOLATION OF
CALIFORNIA BUS. AND
PROF. CODE §§ 17200 *ET*
SEQ. and §§ 17500 *ET SEQ.*
and CALIFORNIA
COMMON LAW UNFAIR
COMPETITION

DEMAND FOR JURY TRIAL

COMPLAINT

1345



1 Plaintiffs Deanna Brown-Thomas, Yamina Brown, Venisha Brown,
2 Michael D. Brown, Nicole C. Brown, Jeanette Mitchell Bellinger, Sarah
3 LaTonya Fegan, Ciara Pettit and Cherquarius Williams (hereinafter, the
4 "Plaintiffs"), by and through their attorneys of record, hereby allege as follows:

5 **JURISDICTION AND VENUE**

6 1. This is a civil action for declaratory and injunctive relief under the
7 United States Copyright Act, 17 U.S.C. §§ 101 *et seq.* (hereinafter, "the
8 Copyright Act"), for declaratory relief under the Declaratory Judgment Act, 28
9 U.S.C. § 2201, and for related state-law claims.

10 2. This Court has original subject matter jurisdiction over the claims
11 set forth in this complaint pursuant to the Copyright Act, 17 U.S.C. § 101 *et*
12 *seq.*, 28 U.S.C. §§ 1331, 1332, and 1338(a) and (b), and the Declaratory
13 Judgment Act, 28 U.S.C. § 2201.

14 3. This Court has supplemental jurisdiction over the related state
15 claims herein pursuant to 28 U.S.C. § 1367(a) in that these claims form part of
16 the same case and controversy as the federal claims herein.

17 4. This Court has personal jurisdiction over the defendants in that
18 defendants are regularly doing business in the State of California and in this
19 district, and because a substantial portion of the relevant acts complained of
20 herein occurred in the State of California and in this District.

21 5. Venue is proper in the United States District Court for the Central
22 District of California pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(a) because
23 a substantial part of the events and the wrongful conduct giving rise to this
24 action occurred in this district, upon information and belief Defendants
25 TOMMIE RAE HYNIE and her son JAMES BROWN II maintain residences in
26 this district, and all Defendants are otherwise subject to this Court's personal
27 jurisdiction with respect to this action.

28 6. The federal termination rights and interests under the Copyright

1 Act, 17 U.S.C. §§ 304 (c) and 203(a), and the proceeds therefrom, at issue in this
2 action are not the subject of the probate and other proceedings in South Carolina
3 regarding Brown's will and trust, or of any other past or pending proceeding.

4 NATURE OF THE ACTION

5 7. The legendary singer-songwriter James Joseph Brown a.k.a. James
6 Brown (hereinafter "Brown") died on Christmas Day, December 25, 2006.
7 Defendant TOMMIE RAE HYNIE (hereinafter, "HYNIE"), his estranged
8 purported wife, from a notoriously bigamous marriage, was not named as a
9 beneficiary in Brown's will, to no one's surprise. Nor was her son, whom she
10 conspicuously named JAMES JOSEPH BROWN II (hereinafter "JAMES II").
11 HYNIE therefore embarked on a series of duplicitous business machinations
12 calculated to (i) deprive Brown's children of their rightful interests in Brown's
13 music under the Copyright Act and (ii) divert the financial proceeds from such
14 interests to herself, in violation of the Copyright Act and state common law.
15 Each of these wrongful acts by Defendants threatens irreparable harm to
16 Brown's family, and must be swiftly brought to an end.

17 8. Plaintiffs are Brown's biological children, and as to two deceased
18 children, grandchildren, and, as such, qualify as Brown's statutory heirs under
19 the Copyright Act.

20 9. Defendant HYNIE claims to be Brown's surviving spouse, despite
21 having concealed from Brown that she was, in fact, married to another man
22 when she married Brown. Nonetheless, HYNIE, in an unrelated South Carolina
23 probate action challenging Brown's will and trust, somehow obtained a spousal
24 ruling in her favor. In that action, JAMES II was also perfunctorily declared to
25 be Brown's biological child, despite widespread skepticism.

26 10. For purposes of this copyright action, however, Plaintiffs assume
27 and in no way seek to re-litigate HYNIE's and JAMES II's purported status as
28 Brown's surviving spouse and child, respectively, though this is unsupported by

1 the facts or law, and Plaintiffs otherwise reserve all rights, defenses and
2 remedies as to these issues.

3 11. As Brown's alleged widow and child, HYNIE and JAMES II
4 purport to constitute a majority of Brown's statutory heirs under the U.S.
5 Copyright Act, and, as such, to allegedly control Brown's "termination rights"
6 under Sections 304(c)(1) and 203(a) of the Copyright Act, regarding the
7 copyrights to hundreds of valuable musical compositions authored or co-
8 authored by Brown (hereinafter, the "Composition(s)").

9 12. The termination interest is without doubt *the* most important
10 interest under the Copyright Act, after copyright itself. Pursuant to the Act, the
11 termination interest belongs to the author, and upon the author's death to his
12 statutory defined heirs, principally his surviving spouse, children, and, in the
13 case of any deceased child, grandchildren. 17 U.S.C. §§ 304 and 203. Thus,
14 notwithstanding HYNIE's alleged spousal status, Brown's children and his
15 grandchildren (in the case of two deceased children), most of whom constitute
16 Plaintiffs, are entitled to an undivided *50% of the copyright termination interests*
17 *in the Compositions*, 17 U.S.C. §§ 304(c)(2)(B), 203(a)(2)(B). In turn, HYNIE
18 and JAMES II have an absolute concomitant duty under state common law to
19 account to these co-owners for *50% of all proceeds from Brown's termination*
20 *interests*.

21 13. In violation of the Copyright Act and their common-law duties,
22 HYNIE and JAMES II have conspired with the other Defendants (the personal
23 representative and trustee and the limited special administrator and special
24 trustee of Brown's estate and trust, respectively) to usurp Plaintiffs' rights and
25 interests in Brown's Compositions, and to divert for Defendants' sole benefit the
26 financial proceeds they are obligated to share with Plaintiffs. Plaintiffs are
27 informed and believe and based thereon allege that, among other brazen
28 conduct, Defendants have concealed illegal back-room agreements deliberately

1 designed to destroy, circumvent and/or dilute Plaintiffs' interests. Defendants'
2 illicit trafficking in the termination interests violates the Copyright Act and the
3 strong legislative policies behind its termination provisions. Decisive Court
4 intervention is needed to prevent Defendants from destroying Plaintiffs'
5 valuable copyright interests in the Compositions, and their state common-law
6 rights to an allocate share of the proceeds derived therefrom.

7 **PARTIES**

8 14. Plaintiff DEANNA BROWN THOMAS is the biological daughter
9 of James Brown, and is an individual and citizen of, and resides in, the State of
10 South Carolina, in the County of Aiken, and is and at all times has been a citizen
11 of the United States.

12 15. Plaintiff YAMMA BROWN is the biological daughter of James
13 Brown, and is an individual and citizen of, and resides in, the State of Georgia,
14 in the County of Cobb, and is and at all times has been a citizen of the United
15 States.

16 16. Plaintiff VENISHA BROWN is the biological daughter of James
17 Brown, and is an individual and citizen of, and resides in, the State of South
18 Carolina, in the County of Aiken, and is and at all times has been a citizen of the
19 United States.

20 17. Plaintiff MICHAEL D. BROWN is the biological son of James
21 Brown, and is an individual and citizen of, and resides in, the State of California,
22 in the County of Sacramento, and is and at all times has been a citizen of the
23 United States.

24 18. Plaintiff NICOLE C. BROWN is the biological daughter of James
25 Brown, and is an individual and citizen of, and resides in, Vancouver, British
26 Columbia and is and at all times has been a citizen of Canada.

27 19. Plaintiff JEANETTE MITCHELL BELLINGER is the biological
28 daughter of James Brown, and is an individual and citizen of, and resides in, the

1 State of Georgia in the County of Richmond, and is and at all times has been a
2 citizen of the United States.

3 20. Plaintiff SARAH LATONYA FEGAN is the biological
4 granddaughter of James Brown, and is an individual and citizen of, and resides
5 in, the State of Georgia in the County of Richmond, and is and at all times has
6 been a citizen of the United States.

7 21. Plaintiff CIARA PETTIT is the biological granddaughter of James
8 Brown, and is an individual and citizen of, and resides in, the State of Texas, in
9 the County of Harris, and is and at all times has been a citizen of the United
10 States.

11 22. Plaintiff CHERQUARIUS WILLIAMS is the biological
12 granddaughter of James Brown, is an individual and citizen of, and resides in,
13 the State of Texas, in the County of Harris, and is and at all times has been a
14 citizen of the United States.

15 23. Plaintiffs are informed and believe and based thereon allege that
16 Defendant HYNIE is an individual and citizen of, and resides or until recently
17 resided in, the State of California, in the County of Los Angeles, and is and at all
18 times has been a citizen of the United States.

19 24. Plaintiffs are informed and believe and based thereon allege that
20 Defendant JAMES J. BROWN II is HYNIE's son (currently, age 16), and is an
21 individual and citizen of, and resides or until recently resided in, the State of
22 California, in the County of Los Angeles, and is and at all times has been a
23 citizen of the United States.

24 25. Plaintiffs are informed and believe and based thereon allege that
25 Defendant RUSSELL L. BAUKNIGHT is the Personal Representative of the
26 Estate of James Brown a.k.a. James Joseph Brown (hereinafter, the Estate"), and
27 the Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000
28 (hereinafter, the "Trust") (hereinafter, Mr. Bauknight is referred to in both

1 capacities as the "Personal Representative").

2 26. Plaintiffs are informed and believe and based thereon allege that
3 Defendant DAVID C. SOJOURNER, JR. is the Limited Special Administrator
4 of the Estate, and the Limited Special Trustee of the Trust (hereinafter Mr.
5 Sojourner is referred to in both capacities as the "LSA"), appointed in October,
6 2013 to defend the Estate and Trust against numerous claims *by HYNIE*. (The
7 LSA and the Personal Representative are hereinafter collectively referred to as
8 the "Estate and Trust Fiduciaries.")

9 27. Plaintiffs are informed and believe and based thereon allege that the
10 fictitiously named Defendants captioned hereinabove as Does 1 through 10,
11 inclusive, and each of them (hereinafter "DOE(S)") were in some manner
12 responsible or legally liable for the actions, damages, events, transactions, and
13 circumstances alleged herein. The true names and capacities of such fictitiously
14 named defendants, whether individual, corporate, associate, or otherwise, are
15 presently unknown to Plaintiffs, and Plaintiffs will amend this Complaint to
16 assert the true names and capacities of such fictitiously named Defendants when
17 the same have been ascertained. For convenience, each reference herein to a
18 named Defendant or to Defendants shall also refer to the Doe Defendants and
19 each of them.

20 28. Plaintiffs are informed and believe and based thereon allege that
21 each of the Defendants was the agent, partner, servant, employee, or employer of
22 each of the other Defendants herein, and that at all times herein mentioned, each
23 of the Defendants was acting within the course and scope of such employment,
24 partnership and/or agency and that each of the Defendants is jointly and
25 severally responsible for the damages hereinafter alleged.

26 //

27 //

28 //

STATUTORY BACKGROUND

29. James Brown was not only a talented singer and performer; he was a prolific songwriter, authoring or co-authoring approximately nine hundred (900) musical Compositions. Plaintiffs are informed and believe and based thereon allege that Brown long ago assigned the copyrights to most of his Compositions to various music publishers of which Warner-Chappell Music, Inc. is the principal successor.

30. The U.S. Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the "Copyright Act" or "Act"), provides an author and certain statutorily defined heirs of the author (principally, the surviving spouse, children and, in the case of a deceased child, grandchildren) with the inalienable right to recapture the copyright to the author's creative material, after a lengthy waiting period, by statutorily terminating without cause prior transfer(s) of such copyright, so long as the proscribed statutory notice of termination is served on the prior grantee or successor grantee and filed with the U.S. Copyright Office, within delineated time windows.

31. Section 304(c) of the Copyright Act provides for the termination of pre-1978 transfers of copyright or rights under copyright by the author or author's heirs during a five (5) year period, commencing fifty-six (56) years after the date a work first secured a statutory copyright by registration or publication. 17 U.S.C. § 304(c)(3). Section 203(a) of the Copyright Act provides for the termination of post-1977 transfers of copyright or rights under copyright by the author during a five (5) year period commencing thirty-five (35) years after the date the subject copyright or rights under copyright were transferred. *Id.* § 203(a)(3). In every case, the requisite notice of termination must spell out the "effective date" of termination, within the five-year termination "window," when the previously transferred copyright or rights under copyright will be recaptured by the author or his statutory heirs.

1 32. Congress carefully limited the class of persons who can exercise
2 termination rights. If living, the author alone can exercise termination rights. If
3 the author is deceased, the termination rights are shared by the author's
4 surviving spouse, children, and, in the case of any deceased child, grandchildren.
5 *Id.* §§ 304(c)(1)-(2), 203(a)(1)-(2). Importantly, an author's testamentary intent
6 and will are irrelevant to the operation of the Copyright Act's termination
7 provisions and to the rights and interests of the author's *statutory heirs* as
8 designated by the Act.

9 33. If an author is survived by a spouse and children, the surviving
10 spouse is deemed to own 50% of the termination interest, and the author's
11 surviving children, and the grandchild(ren) of any deceased child, own
12 collectively the other 50% of the termination interest on a *per stirpes* basis. *Id.*
13 §§ 304(c)(2)(A)-(C), 203(a)(2)(A)-(C). Notably, the termination right can only
14 be exercised by those persons that collectively own more than one-half of the
15 termination interest. *Id.* §§ 304(c)(1), 203(a).

16 34. The copyright interests in a work recaptured via statutory
17 termination are *co-owned* by the statutory heirs in the same proportion as their
18 share of the termination interests set forth above, *id.* §§ 304(c)(6), 203(b), and
19 such co-ownership interest vests upon the *service* of the applicable notice of
20 termination. *Id.* §§ 304(c)(6)(B) and 203(b)(2).

21 35. Congress was very protective of the termination interest and, to that
22 end, enacted a number of provisions to prevent any waiver, encumbrance and/or
23 interference with the termination interest.

24 36. First, "[t]ermination of the [prior copyright] grant may be effected
25 notwithstanding *any* agreement to the contrary, including an agreement to make
26 a will or to make a future grant." *Id.* §§ 304(c)(5), 203(a)(5)(emphasis added).

27 37. Second, "[a] further grant, or agreement to make a further grant, of
28 any right covered by a terminated grant is valid only if made after the effective

1 date of the termination[.]” except that such a grant or agreement may be made
 2 “after the notice or termination has been served” with “the original grantee or
 3 such grantee’s successor in title.” *Id.* §§ 304(c)(6)(D), 203(b)(4).

4 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

5 38. HYNIE worked as a Janis Joplin impersonator in Las Vegas,
 6 Nevada and as a back-up singer in the James Brown Revue. Much controversy
 7 surrounded HYNIE’S purported marriage to Brown in December, 2001 because
 8 at the time HYNIE was married to another man (Javed Ahmed), a fact she
 9 intentionally concealed from Brown. Although HYNIE’S 1997 marriage to
 10 Ahmed was eventually annulled in 2004, this was long after her purported
 11 marriage to Brown, and Brown and Hynie *never* remarried.

12 39. In fact, in 2004 when Brown found out about HYNIE’S secret 1997
 13 marriage to another man, he commenced legal action in South Carolina to annul
 14 his bigamous marriage to HYNIE, while HYNIE counterclaimed for a divorce.
 15 The two eventually settled that action in an August 16, 2004 consent order,
 16 wherein HYNIE even agreed to “forever waive any claim to a *common-law*
 17 marriage to [Brown]” (emphasis added). Plaintiffs are informed and believe and
 18 thereon allege that not long after Brown’s death, HYNIE and her son JAMES II,
 19 who is a minor, moved in with a new man previously unknown to Brown’s
 20 family.

21 40. HYNIE’S claim that JAMES II was Brown’s biological child has
 22 likewise been engulfed in controversy. Plaintiffs are informed and believe and
 23 on that basis allege that Brown had a vasectomy in the 1980s to specifically
 24 avoid paternity suits, and that JAMES II is the only child born in the over-
 25 twenty-year period between Brown’s vasectomy and his death to claim Brown
 26 was his biological father.

27 //

28 //

1 and profits Defendants wrongfully or unlawfully derived or shall derive from
2 any rights or interests in the Compositions.

3 ON THE FIFTH CLAIM FOR RELIEF

4 11. For an award of damages in an amount to be adjudicated at trial,
5 plus prejudgment interest;

6 12. For punitive or exemplary damages; and

7 13. For an order preliminarily during the pendency of this action and
8 thereafter permanently enjoining Defendants, and all persons acting in concert
9 with them, from engaging in any conduct that interferes with or disadvantages
10 Plaintiffs' negotiations or business dealings with any potential licensee and/or
11 grantee of any rights in the Compositions, including WCM.

12 ON THE SIXTH CLAIM FOR RELIEF

13 14. For an award of damages in an amount to be adjudicated at trial,
14 plus prejudgment interest; and

15 15. For an order preliminarily during the pendency of this action and
16 thereafter permanently enjoining Defendants, and all persons acting in concert
17 with them, from engaging in any conduct that interferes with or disadvantages
18 Plaintiffs' negotiations or business dealings with any potential licensee and/or
19 grantee, including WCM, of any rights in the Compositions.

20 ON THE SEVENTH CLAIM FOR RELIEF

21 16. For an order requiring that Defendants provide a complete
22 accounting to Plaintiffs of all monies, gains, profits, and advantages Defendants
23 have derived from any rights or interests in the Compositions;

24 17. For an order requiring that Defendants provide a complete
25 restitution to Plaintiffs of all monies, gains, profits, and advantages, derived
26 from any rights or interests in the Compositions, and owed to Plaintiffs;

27 18. For an order imposing a constructive trust over all monies, gains,
28 profits, and advantages that Defendants wrongfully or unlawfully derived or

shall derive from any rights or interests in the Compositions;

19. For an order preliminarily during the pendency of this action and thereafter permanently enjoining Defendants, and all persons acting in concert with them, from engaging in such further unfair, fraudulent, and/or unlawful business practices and unfair competition under California Business and Professions Code §§ 17200 *et seq.* and/or §§ 17500 *et seq.*, as alleged hereinabove; and

20. For such other and further relief and remedies available under California Business and Professions Code §§ 17200 *et seq.* and/or §§ 17500 *et seq.*, which the Court may deem just and proper.

ON ALL CLAIMS FOR RELIEF

21. For Plaintiffs' costs of suit;

22. For interest at the highest lawful rate on all sums awarded Plaintiffs other than punitive damages;

23. For reasonable attorneys' fees; and

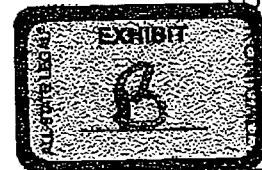
24. For such other and further relief as the Court deems just and appropriate.

Dated: January 12, 2018

TOBEROFF & ASSOCIATES, P.C.

By: /s/ Marc Toberoff
Marc Toberoff

Attorneys for Plaintiffs Deanna Brown-Thomas,
Yamna Brown, Venisha Brown, Michael D.
Brown, Nicole C. Brown, Jeanette Mitchell
Bellinger, Sarah LaTonya Fegan, Ciara Pettit
and Cherquarius Williams



DECLARATION OF TOMMIE RAE BROWN

I, Tommie Rae Brown, declare as follows:

1. I have personal knowledge of the facts set forth below, which are known to me to be true and correct, and if called upon to testify, I could testify competently thereto.

2. I and my minor son, James Brown, II ("JB II"), have been involved since 2007 in connection with matters arising out of the death of my husband Joseph James Brown a/k/a James Brown in 2006, including in regard to various probate and related litigation matters in South Carolina courts involving *inter alia* disputes with other purported heirs, including certain Plaintiffs herein.

3. I and/or my attorneys have interacted numerous times in connection with the above Estate matters with Russell L. Bauknight, the Personal Representative of the Estate of James Brown ("Estate") and Trustee of the James Brown "I Feel Good" Trust ("Trust"), and David C. Sojourner, Jr., the Limited Special Administrator of the Estate and Trust.

4. Mr. Bauknight and Mr. Sojourner reside in South Carolina and have resided here at all times since 2013 to the best of my personal knowledge.

5. My husband James Brown died in 2006 and purportedly left a will and an irrevocable inter vivos charitable trust contemporaneously executed in 2000.

6. In 2007, administration of my husband's estate commenced in Aiken County, South Carolina, resulting in litigation over the 2000 will and trust, including *inter alia* that certain Plaintiffs in this action contested the 2000 will and trust, and so did I, by contesting the will and trust in a separate action as well as claiming my statutory spousal rights. Our son, JB II, asserted his state statutory pretermitted child share. Extensive litigation ensued in the South Carolina state court probate administration of the estate.

7. In 2008, I and *inter alia* certain Plaintiffs in this action entered a settlement agreement that resolved the will and trust litigation as well as the spousal

1 litigation. After lengthy and extensive hearings, the South Carolina circuit court in
2 2009 approved the settlement agreement. Certain other parties appealed. In 2013
3 the South Carolina Supreme Court reversed the circuit court's approval of the
4 settlement agreement, and the will and trust contests and the spousal claims were
5 revived.

6 8. In 2015, the South Carolina trial court ruled that that I was the
7 surviving spouse of James Brown. Certain Plaintiffs in this action appealed that
8 ruling in the South Carolina state appellate courts, which appeal is pending. My
9 status as surviving spouse has not been finally determined by the South Carolina
10 courts. My status as surviving spouse is fundamental to the issue of who owns the
11 termination rights in the copyrights to myriad James Brown compositions.

12 9. In March 2017, I entered into a settlement agreement with the Estate
13 and Trust that resolved my probate litigation cases. In June 2017, certain Plaintiffs
14 herein filed in the South Carolina state court probate administration a motion to
15 compel disclosure of any other settlement negotiations involving the Estate and
16 Trust and me. The trial court denied their motion, as well as their motion to alter or
17 amend, which trial court ruling those certain Plaintiffs herein are currently appealing
18 in the South Carolina appellate courts. Those alleged settlement negotiations at
19 issue in the appeal are alleged and referred to in Paragraph 46 of Plaintiffs'
20 Complaint in this action as the "Concealed Terms."

21 10. The Estate and Trust have incurred millions of dollars in legal fees and
22 costs in the above litigation, which has been contentious and has continued for over
23 a decade.

24 11. Plaintiffs: (a) allege herein that I am the surviving spouse "for purposes
25 of this action" reserving all rights, defenses, and remedies (Doc. 1, ¶ 10), and
26 simultaneously appeal the ruling in South Carolina affirming that I am the surviving
27 spouse; and (b) allege and purport to put at issue in the Complaint herein the alleged
28 Concealed Terms (Doc. 1, ¶ 46) that Plaintiffs were barred from obtaining in South

1 Carolina by a state court opinion denying their motion to compel disclosure on
2 grounds that such disclosure is contrary to South Carolina law.

3 12. True and correct copies of the above-referenced opinions affirming that
4 I am the surviving spouse and denying the motion for disclosure are attached hereto,
5 respectively, as Exhibits A and B.

6 13. True and correct copies of notices of appeal from the above rulings
7 filed by certain of the Plaintiffs in this action are attached hereto, respectively, as
8 Exhibits C and D. These appeals are currently pending in the South Carolina state
9 appellate court.

10 14. JB II and I currently reside in London, England, where we have resided
11 continuously since December 2016.

12 15. I intend that JB II and I will reside in the United Kingdom for the
13 foreseeable future, and at least until he finishes attending school here.

14 16. I have applied for and am awaiting receipt of a United Kingdom
15 residency permit.

16 17. I have a United Kingdom national health card and general practitioner.

17 18. I moved from Nevada to California in May 2015. I moved from
18 California to London in December 2016. I have not otherwise lived in California.

19 19. I do not own and have never owned real property in California. I lived
20 in premises that I rented during the period that I lived in California.

21 20. I do not currently conduct any business in California.

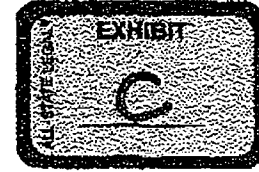
22 21. I have been in litigation in the South Carolina courts with regard to my
23 status and rights as James Brown's surviving spouse since 2007, including litigation
24 involving a number of the Plaintiffs in this action. My lawyers in South Carolina
25 have handled all communications with the Plaintiffs through their counsel regarding
26 the litigation or any copyright termination rights, including during the time I lived in
27 California.

28

1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct.
3 Executed on February 28, 2018, at London, U.K.

4 

5
6 Tonumie Rae Brown
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 Edward M. Anderson (SBN 198183)
2 Regina Yeh (SBN 266019)
3 ANDERSON YEH PC
4 401 Wilshire Boulevard, 12th Floor
5 Santa Monica, California 90401
6 Tel: (310) 496-4270 Fax: (888) 744-0317
7 edward@andersonyehlaw.com
8 regina@andersonyehlaw.com

9 J. David Black, *pro hac vice* pending
10 NEXSEN PRUET, LLC
11 1230 Main Street, Suite 700
12 Columbia, South Carolina 29202
13 Phone: 803.771.8900
14 Facsimile: 803.727.1409
15 DBlack@nexsenpruet.com

16 Attorneys for Defendants
17 RUSSELL L. BAUKNIGHT, as the
18 Personal Representative of the Estate of
19 James Brown and Trustee of The James
20 Brown "I Feel Good" Trust

21 UNITED STATES DISTRICT COURT
22 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

23 DEANNA BROWN-THOMAS, an
24 individual; YAMMA BROWN, an
25 individual; VENISHA BROWN, an
26 individual; MIDHAEL D. BROWN,
27 an individual; NICOLE C. BROWN,
28 an individual; JEANETTE
MITCHELL BELLINGER, an
individual; SARAH LATONYA
FEGAN, an individual; CIARA
PETIT, an individual; and
CHERQUARIUS WILLIAMS, an
individual,

Plaintiffs,
v.

TOMMIE RAE HYNIE a.k.a.
TOMMIE RAE BROWN, an
individual; JAMES J. BROWN II, an
individual; RUSSELL L.
BAUKNIGHT, as the Personal
Representative of the Estate of James

CASE NO. 2:18-CV-00307-SVW-JPR

[Hon. Stephen V. Wilson]

DEFENDANT ESTATE AND
TRUST'S NOTICE OF MOTION
AND MOTION TO DISMISS
COMPLAINT PURSUANT TO FED.
R. CIV. P. 12(b)(1), (2), (3), AND (6),
OR, IN THE ALTERNATIVE TO
TRANSFER VENUE TO THE
DISTRICT OF SOUTH CAROLINA
PURSUANT TO 28 U.S.C. § 1404,
1406; AFFIDAVIT OF RUSSELL L.
BAUKNIGHT IN SUPPORT
THEREOF

[Proposed] Order lodged concurrently
herewith]

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO
FED. R. CIV. P. 12(b)(1), (2), (3), AND (6), OR, IN THE ALTERNATIVE TO
TRANSFER VENUE TO THE DISTRICT OF SOUTH CAROLINA PURSUANT TO
28 U.S.C. § 1404, 1406

1 Brown and Trustee of The James
2 Brown "I Feel Good" Trust; DAVID
3 C. SOJOURNER, JR., as the Limited
4 Special Administrator of the Estate of
5 James Brown and Limited Special
6 Trustee of The James Brown and
7 Limited Special Trustee of The James
8 Brown "I Feel Good" Trust; and
9 DOES 1 through 10, inclusive,

Date: April 16, 2018

Time: 1:30 p.m.

Courtroom: 10A

Action Filed: January 12, 2018

10 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

11 PLEASE TAKE NOTICE THAT on April 16, 2018, at 1:30 p.m., in Courtroom
12 10A of the First Street Courthouse before the Honorable Stephen V. Wilson, located at
13 350 West 1st Street, Los Angeles, CA 90012, defendant Mr. Russell L. Bauknight
14 makes this limited appearance as the court-appointed Personal Representative of the
15 James Brown Estate and Trustee of the James Brown Irrevocable Trust Agreement (the
16 Estate and Trust) to file this motion to dismiss the complaint pursuant to Rules
17 12(b)(1), (2), (3), and (6) of the Federal Rules of Civil Procedure. The grounds for the
18 Motion are as follows:

- 19 1. A Declaratory Judgment action is an improper basis for Federal Jurisdiction;
- 20 2. The plaintiffs' own pleadings, affidavits, and exhibits fail to state a valid
21 Copyright claim or other claim that is ripe or plausible against the Estate and Trust;
- 22 3. The Estate and Trust are all located in South Carolina;
- 23 4. The South Carolina Probate Court and Appellate Courts have prior *in rem*
24 jurisdiction over the matters asserted in the Plaintiffs' own pleadings, affidavits, and
25 exhibits;
- 26 5. The Probate Exception to Federal Jurisdiction prevents this Court from
27 asserting jurisdiction over the Plaintiffs' own pleadings, affidavits, and exhibits;
- 28 6. The plaintiffs' own pleadings, affidavits, and exhibits fail to state a
connection between the claims sought in their lawsuit and California;
7. The plaintiffs' own pleadings, affidavits, and exhibits show that the factual

ii

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO
FED. R. CIV. P. 12(b)(1), (2), (3), AND (6), OR, IN THE ALTERNATIVE TO
TRANSFER VENUE TO THE DISTRICT OF SOUTH CAROLINA PURSUANT TO

TABLE OF CONTENTS

1		
2	I.	INTRODUCTION.....1
3	II.	FACTUAL BACKGROUND AND SOUTH CAROLINA ESTATE
4		LITIGATION.....2
5	III.	JURISDICTION AND VENUE ALLEGATIONS.....5
6		
7	A.	Subject Matter Jurisdiction.....5
8	B.	Personal Jurisdiction.....5
9	C.	Venue.....6
10	IV.	THE COMPLAINT MUST BE DISMISSED BECAUSE NONE OF THE
11		CLAIMS ARISE UNDER THE COPYRIGHT ACT AND THERE IS NO
12		BASIS FOR SUBJECT MATTER JURISDICTION.....6
13	A.	Diversity Jurisdiction.....6
14	B.	The Declaratory Judgment Act Is Not A Basis For Federal Subject
15		Matter Jurisdiction.....6
16	C.	The Complaint Does Not Arise Under The Copyright Act.....6
17	D.	The Copyright Claim The South Carolina Courts Have Prior In Rem
18		Jurisdiction.....7
19	E.	The Copyright Claim Plaintiffs Have Not Asserted A Valid Claim
20		Under The Copyright Act.....9
21	V.	THE COMPLAINT MUST BE DISMISSED BECAUSE THIS COURT
22		LACKS PERSONAL JURISDICTION OVER BAUKNIGHT AND THE
23		ESTATE AND TRUST.....13
24	A.	Legal Standard For Personal Jurisdiction.....13
25	B.	Three-Prong Analysis Requires Dismissal Under Fed. R. Civ. P.
26		12(B)(2).....16
27		
28		

ELECTRONICALLY FILED - 2018 Oct 30 3:47 PM RICHARD - COMMON PLEAS - CASE#2010CPA004900

1	1. <i>Prong One</i>	16
2	2. <i>Prong Two</i>	17
3	3. <i>Prong Three</i>	18
4		
5	VI. THE COMPLAINT ASSERTS CLAIMS THAT ARE NOT RIPE FOR	
6	ADJUDICATION	19
7	VII. THE COMPLAINT MUST BE DISMISSED FOR FAILURE TO PLEAD	
8	A "PLAUSIBLE" CLAIM	21
9	VIII. IF THE COURT DOES NOT DISMISS THE COMPLAINT, VENUE	
10	SHOULD BE TRANSFERRED TO THE DISTRICT OF SOUTH	
11	CAROLINA	23
12	IX. CONCLUSION	25
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 Defendants Russell L. Bauknight as Personal Representative of the James Brown
2 Estate and Trustee of the James Brown Irrevocable Trust Agreement (incorrectly
3 named as the James Brown I feel Good Trust¹) (collectively the "Estate and Trust")
4 submits this memorandum of law in support of their motion to dismiss pursuant to
5 Rules 12(b)(1), (2), (3), and (6) of the Federal Rules of Civil Procedure ("Fed. R. Civ.
6 P."), or, in the alternative to transfer venue from the Central District of California to the
7 District of South Carolina pursuant to 28 U.S.C. § 1404(a).

8 **I. INTRODUCTION**

9
10 This action was improperly filed in the USDC, for the Central District of
11 California. The complaint asserts seven claims for relief, and only the first purports to
12 raise a claim arising under the federal copyright laws. The other six claims are
13 supplemental South Carolina state law claims.

14 As set forth in greater detail below, litigation over The James Brown Estate has
15 been ongoing in South Carolina since 2007. The probate case is ongoing, and the
16 plaintiffs in this action continue to participate in the Estate litigation and continue to
17 appeal decisions by the South Carolina Court of the Common Pleas for Aiken County.

18 Having failed to achieve their goals in South Carolina's state courts, plaintiffs have
19 filed this complaint sounding in tort and breach of fiduciary duty, but masquerading as a
20 claim arising under the Copyright Act. In essence, the complaint is nothing but a veiled
21 attack on prior decisions of the South Carolina Probate Court.

22 What plaintiffs failed to achieve in South Carolina they cannot accomplish here
23 because settled Supreme Court and Ninth Circuit authority mandate dismissal for lack of
24 subject-matter jurisdiction, lack of personal jurisdiction, improper venue, insufficiency
25 of service of process and failure to state a claim on which relief can be granted.

26
27 ¹ The James Brown Estate remains in Probate, as such the Irrevocable Trust has yet to be
28 funded.

1 proceeds. Thus, in that agreement, those Settling Plaintiffs did the very thing they say
2 in this action cannot be done: assign the proceeds of termination rights to a third party.

3 The 2008 settlement was divided approximately as follows: 50% to the charitable
4 trust, 25% to the Settling Plaintiffs, and 25% to Mrs. Brown and JB II. After extensive
5 hearings, the South Carolina circuit court in 2009 approved the settlement agreement
6 and, according to its terms, appointed defendant Russell L. Bauknight as personal
7 representative and trustee, and removed the two successor personal representatives and
8 trustees. The removed personal representatives and trustees appealed. In 2013, the
9 South Carolina Supreme Court affirmed the removals, but reversed the circuit court's
10 approval of the settlement agreement, citing the need for further evidence to approve it.
11 Thus, the will and trust contests and the spousal claims were revived. To avoid any
12 appearance of a conflict of interest, the circuit court appointed defendant Sojourner as
13 Limited Special Administrator to handle the litigation. Litigation costs to the estate and
14 ultimately to the charitable trust have now run into the tens of millions of dollars.
15 Although the charitable trust purportedly was to provide scholarships to needy children,
16 to date not one penny has been available for those scholarships because the probate
17 litigation has continued.

18 Also in 2013, unbeknownst to the Estate and Trust, Mrs. Brown and JB II filed
19 copyright termination notices for certain songs written by Mr. Brown. (Compl. ¶¶
20 50-51.) Counsel for many of the plaintiffs in this action sent a letter to the publisher
21 contending that Mrs. Brown and JB II did not have the authority to file termination
22 notices and, upon information and belief, those plaintiffs filed their own termination
23 notices. In 2015, Mrs. Brown and JB II sold the publisher's share of five terminated
24 songs. (*Id.* at ¶ 52.) In the sales agreement, the publisher/purchaser required that all
25 children's proceeds—including JB II—be held in escrow until all the heirs of Mr.
26 Brown were finally determined. (*Id.* at ¶ 53.) Plaintiffs intervened in the agreement
27 and convinced the publisher/purchaser to agree to amend the agreement to allow the
28

1 immediate distribution of the sale proceeds to plaintiffs, who, inter alia, released
2 Mrs. Brown and her agents for matters related to that agreement. (*Id.*)

3 Plaintiffs presumably obtained DNA proof of paternity in accordance with the
4 South Carolina probate estate administration protocol and insisted that JB II, who had
5 already submitted to and passed a DNA test, do so again in accordance with the probate
6 estate administration protocol, which he again passed. However, several of the non-
7 plaintiff putative children have failed to submit to the probate DNA protocol, so their
8 status as children entitled to termination rights remains unsettled in the probate court.

9 Mrs. Brown sought partial summary judgment in the South Carolina probate
10 administration that she was the surviving spouse of Mr. Brown. After extensive
11 briefing and argument, the trial court issued an order in 2015 ruling that Mrs. Brown
12 was the surviving spouse. Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
13 and Michael D. Brown (Appealing Plaintiffs) and others filed a motion to alter and
14 amend. After extensive additional briefing and argument, the circuit court denied the
15 motion to alter and amend and in 2015 again issued an order holding that Mrs. Brown
16 was the surviving spouse of Mr. Brown. The plaintiffs to this action are the same
17 plaintiffs currently in the South Carolina state appellate courts. Thus, of particular
18 importance to this action, because of Appealing Plaintiffs' appeal, the status of Mrs.
19 Brown as surviving spouse has not been finally determined. Consequently, her right to
20 any termination rights has not been finally determined and until such time the Estate
21 and Trust is unaware of which parties will have an ultimate seat at the table.

22 In 2016, Mrs. Brown entered into a settlement agreement with Mr. Sojourner and
23 Mr. Bauknight in their representative capacities. (Compl. ¶ 44.) In that agreement,
24 Mrs. Brown agreed to contribute to the charitable trust 65% of any proceeds she might
25 receive from termination rights and to dismiss all other claims against the estate. (*Id.*)
26 In return, the estate agreed to withdraw its appeal of the circuit court ruling that Mrs.
27 Brown is the surviving spouse, which withdrawal the South Carolina appellate court

1 proceeds. Thus, in that agreement, those Settling Plaintiffs did the very thing they say
2 in this action cannot be done: assign the proceeds of termination rights to a third party.

3 The 2008 settlement was divided approximately as follows: 50% to the charitable
4 trust, 25% to the Settling Plaintiffs, and 25% to Mrs. Brown and JB II. After extensive
5 hearings, the South Carolina circuit court in 2009 approved the settlement agreement
6 and, according to its terms, appointed defendant Russell L. Bauknight as personal
7 representative and trustee, and removed the two successor personal representatives and
8 trustees. The removed personal representatives and trustees appealed. In 2013, the
9 South Carolina Supreme Court affirmed the removals, but reversed the circuit court's
10 approval of the settlement agreement, citing the need for further evidence to approve it.
11 Thus, the will and trust contests and the spousal claims were revived. To avoid any
12 appearance of a conflict of interest, the circuit court appointed defendant Sojourner as
13 Limited Special Administrator to handle the litigation. Litigation costs to the estate and
14 ultimately to the charitable trust have now run into the tens of millions of dollars.
15 Although the charitable trust purportedly was to provide scholarships to needy children,
16 to date not one penny has been available for those scholarships because the probate
17 litigation has continued.

18 Also in 2013, unbeknownst to the Estate and Trust, Mrs. Brown and JB II filed
19 copyright termination notices for certain songs written by Mr. Brown. (Compl. ¶¶
20 50-51.) Counsel for many of the plaintiffs in this action sent a letter to the publisher
21 contending that Mrs. Brown and JB II did not have the authority to file termination
22 notices and, upon information and belief, those plaintiffs filed their own termination
23 notices. In 2015, Mrs. Brown and JB II sold the publisher's share of five terminated
24 songs. (*Id.* at ¶ 52.) In the sales agreement, the publisher/purchaser required that all
25 children's proceeds—including JB II—be held in escrow until all the heirs of Mr.
26 Brown were finally determined. (*Id.* at ¶ 53.) Plaintiffs intervened in the agreement
27 and convinced the publisher/purchaser to agree to amend the agreement to allow the
28

1 state law claims in the complaint.¹⁵ Plaintiffs' choice of forum seems to be principally
2 motivated by the location of plaintiffs' copyright counsel.

3 The Central District of California is undoubtedly a substantially more expensive
4 district in which to litigate this case than would be the District of South Carolina.
5 Moreover, California federal judges and jurors should not have to spend their valuable
6 time on a matter centered in South Carolina, the venue of probate, administration, and
7 all other litigation pertaining to the James Brown Estate and Trusts.

8 Under the *GNC* factors, South Carolina is not only a proper forum for this
9 lawsuit, but a far more convenient one for parties and witnesses.

10 Pursuant to 28 U.S.C. § 1404 and *GNC*, this lawsuit should be transferred to the
11 United States District Court for the District of South Carolina, if not dismissed.

12 **IX. CONCLUSION**

13
14 For the above reasons, this Court should dismiss, or in the alternative, transfer
15 this case.

16 Respectfully submitted,

17 Dated: February 28, 2018

18 By: /s/ Edward M. Anderson

19 Edward M. Anderson
ANDERSON YEH PC

20 J. David Black
NEXSEN PRUET, LLC

21 Attorneys for Defendant Russell L.
22 Bauknight as Court Appointed Personal
23 Representative of the James Brown
24 Estate and Trustee of The James Brown
25 Irrevocable Trust Agreement

26
27 ¹⁵ Only the seventh claim under California law may be more familiar to a California-based
28 federal Judge.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-4900

Russell Bauknight, et al.,)
Plaintiffs,)
vs.) TRANSCRIPT OF RECORD
Henry Dargan McMaster, et al.,)
Defendants.)

August 30, 2010
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:

KENNETH B. WINGATE, ESQUIRE
EVERETT A. KENDALL, II, ESQUIRE
Attorneys for Plaintiffs

DARYL L. WILLIAMS, ESQUIRE
J. CALHOUN WATSON, ESQUIRE
Attorneys for the Defendants

Crystal Holmes

Official Court Reporter

E X H I B I T SNO. DESCRIPTIONI.D. EVD.

(REPORTER'S NOTE: NO EXHIBITS WERE INTRODUCED AT THE
HEARING.)

I N D E XWITNESSDIRECT CROSS REDIRECT RECROSS

(REPORTER'S NOTE: NO WITNESSES TESTIFIED AT THE
HEARING.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right. You want to do the Motion to Transfer Venue first I think, so.

MR. WINGATE: If I may ---

THE COURT: It doesn't matter, however y'all want to handle it.

MR. WINGATE: There's also a Motion to Strike

THE COURT: Okay.

MR. WINGATE: --- the Motion for a Transfer of Venue. And if I may suggest, Your Honor, that may be the appropriate one to take up first just in logical sequence.

THE COURT: It doesn't matter to me.

MR. WILLIAMS: It was the last one filed if that makes a difference.

THE COURT: Beg your pardon?

MR. WILLIAMS: It's the last motion filed, if that makes a difference, as far as ---

THE COURT: Well, whatever's y'all's pleasure. Whatever y'all want to hear first?

MR. WILLIAMS: We would like to proceed with the Motion to Dismiss which does incorporate the Venue

1 issue.

2 THE COURT: Okay.

3 MR. WINGATE: I respectfully, submit, Your
4 Honor, that ---

5 THE COURT: If y'all can't agree on which
6 motion, what we'll hear first, we've got problems.

7 MR. WINGATE: Let him proceed. As it
8 relates to the Motion to Dismiss, unless and until
9 Your Honor decides on where ---

10 THE COURT: On venue.

11 MR. WINGATE: --- venue lies ---

12 THE COURT: You say it dovetails -- help me
13 out.

14 MR. WILLIAMS: It dovetails because this case
15 involves the Estate and Trust of James Brown which
16 have been administered ---

17 THE COURT: Why isn't Doyet Early hearing
18 this case? Why am I hearing it? Go ahead.

19 MR. WILLIAMS: That is my question exactly.

20 THE COURT: Well, go ahead.

21 MR. WILLIAMS: Because it involves probate
22 ---

23 THE COURT: I thought Judge Early had been
24 assigned that case.
25

1 MR. WINGATE: This is a different case, Your
2 Honor.

3 MR. WILLIAMS: Well ---

4 THE COURT: Well, y'all disagree on that,
5 okay. It's a good start.

6 MR. WILLIAMS: It clearly relates to just
7 about everything Judge Early has been hearing.

8 THE COURT: Beg your pardon?

9 MR. WILLIAMS: I clearly relates to just
10 about everything Judge Early has been hearing.

11 THE COURT: All right.

12 MR. WILLIAMS: This case -- this civil action
13 number was initiated by a filing in Richland County
14 Probate Court. And our motion of the Defendant's --
15 my name is Daryl Williams, by the way. I represent
16 the Defendant Adele Pope. Mr. Cal Watson represents
17 ---

18
19 THE COURT: This is the day for suing lawyers
20 or something? What going on?

21 MR. WILLIAMS: I'm not suing any today.

22 THE COURT: Okay.

23 MR. WILLIAMS: Ms. Pope and Mr. Buchanan
24 were, as of March 2007, appointed by Judge Early to be
25 the Special Administrators ---

1 THE COURT: All right.

2 MR. WILLIAMS: --- of the Estate of James
3 Brown which had been submitted to probate in Aiken
4 County and which was the subject of a lawsuit, another
5 proceeding in addition to the probate proceeding filed
6 just a couple of weeks after the Will was admitted to
7 probate. It was under the auspices of that case, the
8 first contested case proceeding, if you will, down
9 there, case number 122. I'll refer to a few cases by
10 number for shortening purposes. They were appointed
11 SA's with no fiduciary duties.

12 By -- on November the 20th, 2007, the last
13 two of the three original personal representatives of
14 the Estate of James Brown and Trustees, the same
15 people, of the 2000 Irrevocable Trust of Mr. Brown,
16 resigned under some pressure. On that day in open
17 court, with the consent and support of all parties
18 involved other than the Attorneys General of the
19 States of South Carolina and Georgia, and Georgia was
20 later dismissed from the -- from future proceedings,
21 Ms. Pope and Mr. Buchanan were appointed by Judge
22 Early, court appointed, successor PR's and Trustees.

23 THE COURT: All right.

24 MR. WILLIAMS: There were clearer proceedings
25

1 in Aiken County beginning in mid-January with the
2 informal probate of a Will with case 122 involving the
3 Estate and Trust.

4 The Probate Code provides in 62-3-201 that if
5 you've got an initial proceeding in one county, that
6 county is the venue for all subsequent proceedings and
7 has the exclusive jurisdiction of future proceedings
8 ---

9 THE COURT: So it should stay in Aiken County
10 is what ---

11 MR. WILLIAMS: It should say in ---

12 THE COURT: All right.

13 MR. WILLIAMS: Actually, what it should --
14 what should happen is it should be dismissed here and
15 the Plaintiffs be required to refile in Aiken County
16 or apply to Aiken County, under that same statute, for
17 permission to transfer venue.
18

19 THE COURT: All right.

20 MR. WILLIAMS: In other words, this Court's
21 jurisdiction is really limited to dismissing the case
22 and at most, allowing them to seek ---

23 THE COURT: Dismiss without prejudice, go
24 back to see Judge Early or go back to Aiken County?

25 MR. WILLIAMS: Yes ---

1 THE COURT: That's your position?

2 MR. WILLIAMS: That's our position. That's
3 the first reason this should be dismissed.

4 And the Plaintiffs here have agreed, there's
5 an action called case 1647. 1647 was filed in Probate
6 Court in Aiken County and subsequently removed to
7 Common Pleas for Judge Early. 1647 is the case number
8 under which the hearings were held that ultimately led
9 to the entry of the Order on May 26th, 2009, which
10 removed Ms. Pope and Mr. Buchanan and substituted Mr.
11 Bauknight as the successor PR/Trustee pursuant to an
12 agreement among the Plaintiffs in this -- in this
13 action.

14
15 When that case -- the amended petition in
16 that case was filed in November of 2008, in which
17 everybody was a party, filed by the AG as I recall,
18 alleges the principal place of administration of the
19 Estate and Trust is Aiken County, South Carolina. So
20 the Plaintiffs have already admitted that's where the
21 administration has been and should be.

22 The Estate is clearly under probate, it is
23 not closed there. That, Your Honor, is where this
24 case ought to be and ought to get there by virtue of
25 this Court's dismissal without prejudice.

1 THE COURT: All right.

2 MR. WILLIAMS: Now, that argument -- and we
3 submitted an Order to that effect.

4 To go further with the grounds for dismissal
5 of the case though, should the Court go beyond and
6 want to hear other things -- and this -- this is not a
7 transfer of venue under the traditional transfer of
8 venue the way lawyers and judges think about in Common
9 Pleas. This is a Probate -- a mandatory Probate Code
10 direction. So I'm not even arguing change of venue as
11 we traditionally think about it.

12 This case should be dismissed because the
13 Plaintiffs have failed to provide the required
14 affidavit under 15-36-100 to file a negligence action
15 against a lawyer. Now, they have filed a responsive
16 memorandum which they said, we're not suing them
17 because they're lawyers. That's not what the
18 Complaint says. The Complaint specifically points out
19 that they are lawyers, and they both are, and alleges
20 in paragraph 26 in the third cause of action for
21 negligence, the Defendants provided services to the
22 Estate and Trust apart from and in addition to the
23 requirements for the administration of the Estate and
24 Trust.
25

1 It goes on to allege that having done so,
2 they're obligated to do that in a reasonable manner
3 consistent with the applicable standard of care.

4 Your Honor, that is, to me at least, clearly
5 an allegation that they acted as lawyers, not as --
6 not as merely PR's and Trustees but as something
7 beyond that, as lawyers. Having done that, the
8 Plaintiffs are required to file the affidavit under
9 15-36-100. They have not done so. 15-36-100
10 mandates, mandates dismissal of a case for failure to
11 file the affidavit.

12 So that's the second ground, Your Honor, for
13 dismissal of the case.

14 THE COURT: All right.

15 MR. WILLIAMS: Because so much has gone on in
16 Aiken County, Your Honor, all or virtually all of the
17 allegations of misconduct have been addressed at some
18 point or the other by Judge Early; or, are subject to
19 proceedings that are still pending; and/or, may be
20 involved on appeal to the South Carolina Supreme Court
21 which fairly recently has pulled all of the Brown
22 appeals out of the Court of Appeals and taken
23 jurisdiction over them.

24 By way of example, just to go through this
25

1 kind of quickly, Your Honor, if I can, paragraph 18(a)
2 of the Complaint alleges generally, I guess, what the
3 main beef here is, a failure to properly manage the
4 Estate and Trust. That question has been addressed
5 before.

6 August 8, 2008, Judge Early entered an Order
7 specifically denying a Motion to Reconsider the
8 appointment of Ms. Pope and Mr. Buchanan made by one
9 or more parties, including the Attorney General. And
10 this is what that Order says.

11 After review of the entire record, first,
12 those motions are denied. Second, a finding by Judge
13 Early, Buchanan and Pope have served properly to date
14 in their capacity of SA's, what we talked about, and
15 later PR/Trustees. They should continue as PR's and
16 Trustees. And it's important to note, and Trustees.
17 They're wearing both hats and there has been some
18 complaint that that's improper, although Mr. Bauknight
19 is doing it as well. Subject to the right, their
20 right, the Court's rights, or any interested person,
21 including these Plaintiffs, to seek the appointment of
22 a Special Administrator if that were to be appropriate
23 for any particular question.

24 So Judge Early has been presented, and
25

1 presented in the context with a motion to remove them.

2 And also in the context of their own motion to say,

3 Judge, tell us we've been doing this right. If not,

4 then let us know and we'll get on our horse and ride

5 into the sunset and you can let somebody else do this.

6 So generically, the big beef has been looked
7 at by Judge Early before.

8 Some other particular allegations that I
9 would like to draw this Court's attention to,

10 paragraph 18(e) of the Complaint, the allegation is
11 that Pope and Buchanan mishandled an auction of
12

1 certain items. The Circuit Court issued an Order on
2 February 20th allowing them to do that.

3 Entered another Order April 1st, allowing
4 them to sign the contract setting the terms of the
5 sale. The Attorney General intervened in this
6 proceeding to encourage the Court of Appeals to allow
7 this auction. They allowed the Attorney General to
8 intervene so they considered his brief. And their
9 resolution was, the auction may take place as
10 scheduled, which in fact it did.

11 So, that allegation, the auction was
12 mishandled, has been the subject of hearings and
13 orders at two different levels of the court system in
14 the State of South Carolina.

15 I am not going to do every one of these, Your
16 Honor, just bear with me, I'm going to give just a few
17 examples.

18 Paragraph 18(i), Pope and Buchanan are
19 alleged to have failed to sell the assets of the
20 Estate and Trust in a prudent time. Specific example,
21 a hundred million dollar offer in November of 2007.
22 Remember, they were appointed November 20th, 2007.
23 This offer was subject to live testimony on the day
24 the last two PR/Trustees resigned. The attorneys for
25

1 the children of James -- five of the children of James
2 Brown who were Plaintiffs in this case, the attorney
3 for those five of these Plaintiffs ---

4 THE COURT: Including James Brown, Jr., the
5 seven year old?

6 MR. WILLIAMS: Not including him.

7 THE COURT: Not include James Brown, Jr.?

8 MR. WILLIAMS: He was a party -- he was a
9 party to the hearing but what I'm getting ready to
10 tell you is, an attorney for the five of the adult
11 children -- five of the six adult children who were
12 named in his Will, cross-examined the gentleman who
13 came down to convey this offer at the request of one
14 of the presiding PR/Trustees and clearly inferred that
15 the whole deal was designed to generate kickbacks to
16 the -- to the PR/Trustees who have just resigned. So
17 there was -- this is not a clear offer. It was
18 suspicious when made. No one demanded it be accepted
19 that day.
20

21 One or two others real quickly and I'll move
22 on.

23 The Settlement Order entered on May 26, 2009,
24 directed Mr. Pope -- I mean, Ms. Pope and Mr. Buchanan
25 -- first of all, it removed them. And then in the

1 next paragraph it directed them to sign the Settlement
2 Agreement. They refused to sign it, to execute the
3 Settlement Agreement, so it is subject to an appeal
4 from the South Carolina Supreme Court. And there are
5 other allegations in the Complaint alleging that the
6 appeal itself is taken in bad faith and is injuring
7 the Estate and Trust and the settlement parties.

8 What I'm suggesting, very quickly, is this is
9 in front of the South Carolina Supreme Court. Whether
10 they are man -- whether they are required to sign
11 that, whether their appeal has any validity to it,
12 which we submit it certainly does. And this is a
13 collateral attack on the rights of Pope and Buchanan
14 to seek relief from appellate courts of this state.
15 And we think that's totally improper and certainly the
16 issues are pending other places.

17 Finally, one last matter I would like to
18 point out, in the -- in the Complaint they ask -- they
19 ask in this Complaint which they would like to have
20 heard by this Court on the merits, to deny
21 compensation to them for their services and the work
22 done on behalf of the Estate or Trust when they were
23 serving as Judge Early's appointed PR's and Trustees.

24 The problem with this, Your Honor, their
25

1 compensation is in front of the -- front of the Court
2 in Aiken County, it's in front of Judge Early. They
3 have a motion pending in front of Judge Early, also
4 filed a claim of their orders entered that addressed
5 their compensation as SA's and future compensation as
6 PR/Trustees. They sought, they -- and seek in this
7 motion for Judge Early to direct payment of their --
8 the unpaid portion of their SA fees and to settle the
9 additional commissions that are due them for their
10 services as PR and Trustee. These Plaintiffs ask this,
11 Court to step in, intervene, take something off of
12 Judge Early's plate which is already pending in front
13 of him.

14
15 Your Honor, there are -- there are cases that
16 the allegations are substantially similar -- the
17 parties are not exactly the same but they are in some
18 cases, substantially similar in Aiken County, in front
19 of the Supreme Court.

20 This seeks to find, for whatever reason,
21 another forum to rehash these issues. And we think
22 that requires dismissal of the Complaint.

23 In addition, you can see the -- if you recall
24 the allegation about not accepting the offer in
25 November of 2007, just by way of a quick example.

1 Obviously, if there's something wrong with that, then
2 all the Plaintiffs were on inquiry notice as of
3 November 2007 of what they now allege was wrongdoing
4 by Pope and Buchanan.

5 There's a one year statute of limitations for
6 certain steps of fiduciary under the Probate Trust
7 Code. Two years if fraud is involved. Although it's
8 really not alleged in this Complaint, we think the
9 statute of limitation is invoked by pleading, four
10 parts of the document itself. And estoppel, judicial
11 estoppel by these Plaintiffs from what we've seen --
12 just seen on some of the issues that -- that they
13 raised.

14
15 Now, Mr. Watson who is smarter than I, is
16 going to address some further grounds for the Motion
17 to Dismiss, Your Honor.

18 THE COURT: Y'all want to dissect it, you
19 want to go down it, Mr. Wingate, or wait until they're
20 finished? All right.

21 MR. WINGATE: Well, let them ---

22 THE COURT: Okay. Yes, sir, into the record
23 so we get ---

24 MR. WATSON: Yes, sir, Your Honor. Cal
25 Watson ---

1 THE COURT: Yes, sir.

2 MR. WATSON: --- Defendant Buchanan. May it
3 please the Court.

4 Your Honor, I'd like to begin by just
5 adopting Mr. Williams' arguments on behalf of Mr.
6 Buchanan and reiterating the fact that this Court
7 doesn't have jurisdiction because of the probate
8 argument he made with respect to the venue issue.

9 THE COURT: Yes, sir.

10 MR. WATSON: So, Your Honor, just for the
11 record I want to officially adopt all his arguments
12 and reiterate that one.

13 In addition, Your Honor, we have briefed all
14 these issues very extensively and we received the
15 brief late Friday from the Plaintiffs as well. So
16 these issues that we're talking about are in the
17 briefs. We've attached a number of documents to
18 illustrate what we -- what we indicate. So what I'd
19 like to do is just hit the highlights and ---
20

21 THE COURT: Yes, sir.

22 MR. WATSON: --- direct you back to our
23 briefs because otherwise I would be restating our
24 briefs.

25 Your Honor, even though I am coming or

1 arguing second, the arguments I'm making really are
2 primary arguments because they deal with serious
3 constitutional and statutory issues.

4 What we have here, Your Honor, is a suit
5 against two private individuals to collect private
6 damages. The Attorney General is involved and the
7 Attorney General's claims are jumbled in with the
8 private Plaintiffs' and that's really a problem here
9 because the Attorney -- the Attorney General really
10 doesn't have the authority to file private suit
11 against these private individuals. And there are a
12 couple of reasons why participation by the Attorney
13 General in this suit as Plaintiff is wrong and
14 warrants dismissal of the case in addition to
15 everything Mr. Williams said.
16

17 First, there's really no legislative
18 authority that allows the Attorney General to
19 participate in this suit. And, Your Honor, if you
20 look at the Complaint, no legislative authority is
21 alleged. We -- this is simply not how power of the
22 State should be used in seeking private damages
23 against private individuals.

24 We cited a case in our brief, Your Honor, by
25 the name of California versus Infineon Technologies

1 AG, it's cited in our brief. The cite is 531 F.2d
2 1124. It's a 2007 federal case in California that's
3 very instructive. There in that case various Attorney
4 Generals, I think about 40 of them, sought money
5 damages on behalf of their states and individuals and
6 businesses in their states. It was a price fixing
7 kind of case.

8 And the Court discussed there in very great
9 detail the ability of these Attorney Generals to sue
10 for money damages. And they found in that case
11 specifically, because the South Carolina Attorney
12 General was participating in that suit, that the South
13 Carolina Attorney General needed specific legislative
14 authorization to sue for money damages. And that --
15 in that case he was seeking or asserting claims under
16 the Unfair Trade Practices Act and there was no
17 legislative authorization.

18 In addition, the Court found that the common
19 law parens patrie authority extended only to actions
20 for injunctive relief. And here, as I said, we have
21 no statutory authority and no allegations for
22 injunctive relief.

23 What we have as far as any legislative
24 authority that relates to the Attorney General and
25

1 trusts are two Code provisions. They're cited in our
2 brief. South Carolina Code Annotated 1-7-130,
3 provides that, quote, the Attorney General shall force
4 the due applications of funds given to public
5 charities within the state, prevent trusts, breaches
6 of trust and the administration thereof -- and then
7 the rest is irrelevant.

8 Also South Carolina Code Annotated 67-7-
9 405(c) provides that the Attorney General and others,
10 quote, may maintain a proceeding to enforce a
11 charitable trust.

12 Your Honor, these statutes don't apply for
13 two reasons. One is, the Brown Estate didn't create a
14 public charity. The 2000 Trust is a private
15 irrevocable trust which divided into a 501(c)3
16 foundation for education and a non-charitable trust
17 for certain -- education benefits for certain of
18 Brown's grandchildren. While the 501(c)3 foundation
19 is accorded some of the same protections of a charity
20 and can serve a public purpose, it is not a public
21 charity.

22 So if you -- if you -- the statute simply
23 doesn't apply because it doesn't -- we're not dealing
24 with a public charity within the scope of that
25

1 statute.

2 And even if Your Honor disagrees with that,
3 these -- the allegations of the Complaint simply don't
4 fall within these statutes. This is not an action to
5 enforce trust. The Plaintiffs aren't seeking any
6 injunctive relief. There's no request for enforcement
7 of any of the terms of any trust. And the Plaintiffs
8 can't ask the Court to prevent a breach of trust
9 because all of the alleged wrongful actions have
10 already taken place. So the portion that talked about
11 preventing breaches of trust by definition can't --
12 can't take place. There's no mention of anything of
13 in these Complaints other than the Court -- other than
14 the Plaintiffs asking the Court for money damages or
15 return of property and then -- it is simply
16 inappropriate for the Attorney General to participate
17 along with private parties and sue these private
18 individuals for private damages.
19

20 The second reason that the Attorney General
21 can't participate is that the Attorney General must
22 have a separate interest or unique interest of the
23 State under this parens patriae authority.

24 We cited case number in our brief called
25 Alfred L. Snapp and Son Inc. versus Puerto Rico. It's

1 458 United States 592. It's a 1982 United States
2 Supreme Court Case. And there the Court held that in
3 order to maintain a parens patrie suit, the State must
4 articulate an interest apart from the interest of the
5 private parties and this simply hasn't happened.
6 There's no allegation in here where the Attorney
7 General is doing that. The relief that is being
8 sought, if it's proper at all, we vehemently deny that
9 it is, could be sought just as effectively by the
10 Trust itself. And there's simply just no unique
11 interest for the State of South Carolina in this
12 private suit against private individuals.

13
14 For all those reasons, the -- the
15 participation by the Attorney General is inappropriate
16 in the case and must be dismissed on that ground.

17 Also, Your Honor, the hiring of or the use of
18 contingency fee counsel by the Attorney General, we
19 believe violates the due process rights of the
20 Defendants. The -- and -- the Attorney General cannot
21 hire contingency fee counsel to pursue both the
22 interest of the State and the interest of the private
23 parties at the same time. The conflict between
24 counsel's presumed motivations, on the one hand to
25 seek the highest return for his client, the private

1 Plaintiffs, as opposed to seeking just return result
2 from the State as required by the Supreme Court, can't
3 be reconciled and that's another reason that the case
4 should be dismissed.

5 Also, Your Honor, the South Carolina Code
6 Annotated 33-56-180, again cited in our brief,
7 mandates that this case be dismissed because the
8 Defendants at all times were acting within their scope
9 of authority as agents as defined by this statute to
10 the I Feel Good Trust which is the trust -- one of the
11 trusts we're talking about. As a private foundation,
12 the I Feel Good Trust and its agents are given the
13 protections of charitable organizations under this
14 statute. And for this reason, Your Honor, this is the
15 fatal flaw that also justifies dismissal.
16

17 The statute of limitations has expired. Mr.
18 Williams briefly mentioned that. But the record,
19 which you don't have before you that's in Aiken, is
20 replete with examples of Defendants fully disclosing
21 what they're doing, being reviewed by the Plaintiffs
22 in detail. They testified under oath at least seven
23 times and there was an opportunity to cross-examine
24 throughout the course of this proceeding or these
25 proceedings.

1 And, Your Honor, for this reason the statue
2 of limitation has expired because, as Mr. Williams
3 said, it's a one year statute. This is outlined in
4 much greater detail in our brief. I won't rehash the
5 specific issues now.

6 THE COURT: All right. That's fine.

7 MR. WATSON: And, Your Honor, there are --
8 many of these parties are improper. There is an
9 allegation of a Legacy Trust as Plaintiff. And I
10 don't think anyone disputes that these Defendants
11 never served as Trustees of a Legacy Trust. And as
12 such, they do not and cannot have a fiduciary duty or
13 obligation to the Legacy Trust or any of its
14 beneficiaries. There's no case law in South Carolina
15 or anywhere else that I've ever seen that poses a
16 fiduciary duty on persons who aren't fiduciaries. It
17 just -- there's just no case law cited by the
18 Plaintiffs in their brief and I'm not aware of any.

19 A number of the alleged beneficiaries who are
20 Plaintiffs in this case violated the in terrorem
21 (phonetic) clause which would eliminate their claim to
22 be a beneficiary, and therefore if they aren't a
23 beneficiary of the Trust, they can't participate in
24 this suit. That is also outlined in much greater
25

1 detail in our brief.

2 And two of the parties, we believe should be
3 here that aren't -- or they are necessary parties. We
4 don't believe any party should be here. But these we
5 believe are necessary and that's Forlando (phonetic)
6 and Romaunzo (phonetic) Brown who were two of the
7 seven designated potential qualified beneficiaries for
8 the Brown Family Education Trust. They asserted in
9 other actions that as a result in terrorum clause,
10 they are the only beneficiaries of the Education Trust
11 yet they aren't Plaintiffs.

12 So, Your Honor, for all of those reasons,
13 which as I say are further outlined in much much
14 greater detail in our brief and -- and responded to in
15 Plaintiffs' brief, we would ask that the Court dismiss
16 this action, first primarily because of Mr. Williams'
17 initial argument but in the alternative, for these
18 argument.

19
20 THE COURT: All right. Thank you, sir.

21 Mr. Wingate. I Feel Good Trust, is that the
22 name of it?

23 MR. WINGATE: I Feel Good.

24 THE COURT: You know, he also had a big hit
25 called Bewildered. Go ahead, Mr. Wingate.

2
1 MR. WINGATE: May it please the Court, Your
2 Honor. Ken Wingate along with my partner, Rhett
3 Kendall.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And we are before you today in
6 connection with the Irrevocable Charitable Trust
7 established by the entertainer James Brown.

8 As Your Honor is aware from the pleadings,
9 our firm represents the 15 or so Plaintiffs listed on
10 the caption of the case which include globally all of
11 the beneficiaries of this Irrevocable Trust, both the
12 charitable and private individuals.

13 I would ask that Your Honor -- well, first,
14 let me introduce -- we're here representing, as you're
15 aware from the caption, an array of folks. I believe
16 Your Honor knows Sonny Jones ---
17

18 THE COURT: Yes.

19 MR. WINGATE: --- an attorney with the South
20 Carolina Attorney General's office, one of our
21 clients. Also we represent Russell Bauknight who is
22 very critically, Your Honor, the professional Trustee
23 of this Trust. I'll just come back and address that
24 in a moment. His counsel, Freddie Kingsmore is here
25 with us today. And then one of the family members,

1 Deanna Brown Thomas, daughter of James Brown, with her
2 husband ---

3 THE COURT: Let help me you all out. It
4 might be logistical. We all work, we come to work
5 early, we stay late sometimes. But we all eat in the
6 middle of the day. And about 1:00 I'm going to eat.
7 So this is the problem, it's a real one. You want to
8 stop now and come back after lunch?

9 MR. WINGATE: Let's stop now and come back ---
10

11 THE COURT: Okay. Well, you know, I just --
12 it's just practical. It's a practical problem.

13 MR. WINGATE: Sure.

14 THE COURT: I'm going to eat, y'all need to
15 eat regardless of this case or anything else. Let's
16 stop now. I start back at 2 anyway, so.

17 MR. WINGATE: Perfect.

18 THE COURT: I've got other things scheduled
19 but we'll pick up with you guys at 2. That will be
20 the best way to do it, in my opinion. We'll break for
21 lunch, come back at 2.

22 All right, thank you all.

23 MR. WINGATE: Thank you, Your Honor.

24 (The Court was in recess.)

25 THE COURT: All right, Mr. Wingate.

1 MR. WINGATE: Thank you, Your Honor, please
2 the Court. I'll just sort of briefly start over. My
3 name is Ken Wingate. I'm here with my partner, Rhett
4 Kendall. And together we represent the 15 or so
5 Plaintiffs, Your Honor, in this Charitable Irrevocable
6 Trust action.

7 THE COURT: Yes, sir.

8 MR. WINGATE: I was starting to say before
9 the lunch break that some of the clients are here. Of
10 course Russell Bauknight, the Trustee, is the
11 principal Plaintiff. His separate counsel, Freddie
12 Kingsmore is with us today. I believe Your Honor
13 knows Sonny Jones with the South Carolina Attorney
14 General's office.

15 THE COURT: Clemson class of '70? Was it
16 '70?

17 MR. JONES: 70, yes, sir.

18 MR. WINGATE: That's why he's behind ---

19 THE COURT: I understand.

20 MR. WINGATE: --- Your Honor. And also
21 Deanna Brown Thomas, the daughter of James Brown is
22 with us with her husband ---

23 THE COURT: I noticed she smiled when I said
24 Bewildered, The Apollo 1963 Live. Go ahead.
25

1 MR. WINGATE: Well noted. Your Honor, we knew
2 that exactly what did happen right before the lunch
3 break would nappen.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And that is there'd be a whole
6 big bowl of spaghetti, all these lawsuits that have
7 been filed, whip them up, stir them up, mix them up,
8 throw out a quote, throw out a pleading, throw out a
9 caption and try to confuse the matter and say only
10 Jack Early could possibly sort through this mess.

11 This is real simple, Your Honor. There are
12 two different things. There is the Last Will and
13 Testament of James Brown. This is in Aiken County in
14 the Probate Court -- well actually it's in Circuit
15 Court in Jack Early's hands.

16 This, Your Honor, is the 2000 Irrevocable
17 Charitable Trust of James Brown which was created as a
18 separate entity prior to his death which was 2000, he
19 died December of '06. Was funded prior to his death
20 and is an entirely separate entity. And what we're
21 here for, Your Honor, we're going to sort of split
22 things. As you heard before lunch, counsel has been
23 arguing both on their Motion to Dismiss the
24 Plaintiffs' Complaint ---
25

1 THE COURT: And venue, right.

2 MR. WINGATE: --- and the transfer of venue
3 and have said that they all sort of tie together.
4 Well, that's again part of this stirring up a bowl of
5 spaghetti, just trying to make it all sound too
6 complex. It really is a pretty straightforward
7 analysis.

8 We submitted, Your Honor, on Friday, a brief
9 -- and I would just point out that at the bottom of
10 page 2 and at the bottom of page 3 are two different
11 diagrams of the estate plan of James Brown. And it
12 really helps to show the flow of things.

13 THE COURT: I don't know whether it's made it
14 to the file, let me doubt check. Do you have an extra
15 copy?

16 MR. WINGATE: I don't -- I have one that's
17 got a highlight on it if you don't mind that.

18 THE COURT: If they don't mind. Y'all have a
19 copy of this, don't you?

20 MR. WATSON: Yes, Your Honor.

21 THE COURT: And at the bottom of page 2, Your
22 Honor, is the estate plan which shows the Will, the
23 document I showed you just a second ago, that's over
24 there in Aiken, which pours over or gives the assets
25

1 upon James Browns' death to his Irrevocable Trust.
2 And then that Irrevocable Trust splits into two parts,
3 fifty percent of it was the I Feel Good Trust, a
4 Charitable Trust for the education of students in
5 South Carolina and Georgia, and then the other fifty
6 percent for his family.

7 During the course of the last several years
8 of litigation which has gotten so much attention,
9 there was a settlement that was achieved, Your Honor,
10 and this global settlement that brought all 15 of
11 these people together on this caption into one group,
12 rewrote the estate plan, rewrote the terms of the
13 Trust. And the revised Trust is what Your Honor sees
14 on page 3, the second diagram that's at the top of
15 that chart.

16
17 THE COURT: All right.

18 MR. WINGATE: And again, Your Honor, you see
19 that Will just sits over there in Aiken. The Estate
20 administration is over in Aiken. But the Settlement
21 Trust, the Charitable Trust that receives the
22 royalties, the intangible assets, the intellectual
23 property of James Brown, is then administered in
24 Richland County, South Carolina by Russell Bauknight,
25 the Trustee, for the purpose of, as you see on that

1 chart, a Charitable Trust that remains for education
2 purposes, why the South Carolina Attorney General is
3 in this case as one of our client Plaintiffs, and is
4 about ---

5 THE COURT: The AG, they came in by agreement
6 by everybody, the AG ---

7 MR. WINGATE: That is correct, Your Honor.

8 THE COURT: As it says here, sole authority
9 to remove and replace Trustees, is that fair enough?
10

11 MR. WINGATE: (Affirmative response.)

12 THE COURT: Everybody?

13 MR. WILLIAMS: That is, as I ---

14 THE COURT: That's what it says.

15 MR. WILLIAMS: As I understand it, that is
16 what the -- what is provided in the Settlement
17 Agreement. That is not what was provided in the
18 original estate plan ---

19 THE COURT: Okay.

20 MR. WILLIAMS: -- of Mr. Brown.

21 THE COURT: That's good enough. That's good
22 enough.

23 MR. WILLIAMS: Just so you know.

24 THE COURT: Okay.

25 MR. WILLIAMS: It's not completely accurate.

1 THE COURT: Go ahead, Mr. Wingate.

2 MR. WINGATE: So, with all of these
3 beneficiaries in this global settlement, having
4 created this Charitable Trust that's administered
5 right here by Russell Bauknight who is a CPA and is
6 the sole Trustee, all we have to do, Your Honor, is a
7 very simple statutory analysis.

8 This is not a probate case. Counsel was
9 arguing 62-3 -- I'm sorry, 62-1-302. That's in the
10 probate section of the Probate Code. And as Your
11 Honor, knows, the first half of Title 62 deals with
12 estates and the back half deals with trusts. We're
13 not in the Estate Code. We're not in the Probate Code.
14 We're not in Aiken County. We're dealing with an
15 Irrevocable Trust which is in the back of Title 62 and
16 is administered in South -- Richland County, South
17 Carolina.

18 And the statutory analysis, Your Honor, is
19 just super simple. I've cited in the brief Section
20 62-7-204 which is the venue statute for an Irrevocable
21 Trust of this nature. And it simply says, venue for a
22 judicial proceeding involving a Trust is in the county
23 of this state in which the Trust's principal place of
24 administration is or will be located.
25

1 Current tense, where is it today? Where is
2 the principal place of administration? And then the
3 Code simply cites, this is the Trust Code over 62-7-
4 108, which is again the brief, which defines, quote,
5 principal place of administration. It's not where the
6 beneficiaries live. It's not where the settlor lived.
7 It is purely and simply, quote from 62-108, the
8 principal administration of a trust is the Trustee's
9 usual place of business. And it gives an explanation
10 as to why. Because that is where the records
11 pertaining to the Trust are kept.

12 In this case, Your Honor, we are dealing as
13 is pointed out in the brief, literally with hundreds
14 and hundreds of boxes worth of records which have
15 always been in Richland County. In fact, counsel
16 didn't go so far as to say but even when Ms. Pope and
17 Mr. Buchanan were the Trustees of this Trust -- now
18 they were wearing two hats. They were the SA's, the
19 Special Administrators of the Estate. They were also
20 Trustees of this Trust. Buried among those Orders is
21 an Order of Judge Early that said, and all of the
22 Trust records are going to be kept at Ms. Pope's
23 office at 1218 Taylor Street in Columbia, South
24 Carolina.
25

1 So even just as a point of history in this
2 case, this Irrevocable Charitable Trust, distinct from
3 the Estate, has always been administered in Richland
4 County.

5 THE COURT: If she's no longer a Trustee or
6 SA, why would that still apply, her business address
7 here in Richland County, if she's been taken out of
8 the picture?

9 MR. WINGATE: You're right, it does no longer
10 apply.

11 THE COURT: All right.

12 MR. WINGATE: But when she gave up the hat of
13 Trustee, along with Mr. Buchanan, and it was
14 transferred to Russell Bauknight ---
15

16 THE COURT: That's where he is?

17 MR. WINGATE: That's where he is.

18 THE COURT: Okay.

19 MR. WINGATE: His address is on Gervais
20 Street.

21 THE COURT: All right.

22 MR. WINGATE: In Richland County, the only
23 place he's done business for decades.

24 And so clearly, jurisdiction and venue both
25 lie squarely within this Court.

1 Your Honor, they also make a distinction
2 between the continuity of all of these proceedings and
3 a big train wreck of lawsuits that has taken place and
4 how this one is just one more caboose on the end of
5 the train and it needs to follow along with all of the
6 other ones.

7 The Trust Code is also very distinct in
8 saying statutorily that every trust proceeding is a
9 unique judicial proceeding. This is the first time
10 that this suit over these issues has been brought in
11 any court in order to rectify problems with the James
12 Brown Irrevocable 2000 Trust. And that's cited, Your
13 Honor, in Section 62-7-201.

14 So without belaboring the point as far as
15 venue, I think my point is well made, venue under the
16 separate statute lies solely in Richland County.

17 I would make one more point, Your Honor, then
18 I will defer to Mr. Kendall to deal with some of the
19 Motion to Dismiss elements. And that goes to the
20 subject matter jurisdiction.

21 Again, counsel has stirred things up to
22 confuse a Probate Estate under the Probate Code from a
23 Trust Estate under the Trust Code as to subject matter
24 jurisdiction. Those same sections which I cited for
25

1 Your Honor in the brief, clearly say that exclusive
2 subject matter jurisdiction of trust matters lies in
3 the Probate Courts in South Carolina. And as you
4 asked earlier this morning at 9:00, is this an appeal
5 or what is this? This is probate, isn't it?

6 This was filed by Russell Bauknight and the
7 Attorney General and all of the family members
8 globally in the Richland County Probate Court as a
9 Trust lawsuit

10 THE COURT: All right.

11 MR. WINGATE: And then it was moved to Your
12 Honor to the Circuit Court. So subject matter
13 jurisdiction unquestionably has been properly
14 satisfied. This suit was initiated in the Probate
15 Court. All we're arguing about is venue and we would
16 show Your Honor that respectfully and simply, it's
17 right here in Richland County. There's nowhere else it
18 could be.

19 THE COURT: All right. Thank you, sir.

20 MR. KENDALL: Thank you, Your Honor, and I
21 will -- I will also be brief because I know we have
22 lots of counsel waiting.

23 Unfortunately, the issue has been confused in
24 part because so many issues were thrown out in the
25

1 brief and in the motion as being reasons to dispose of
2 this case. In fact, I liked the way they were grouped
3 together here and I will deal with them as well.

4 First of all, the issue of failure to file an
5 affidavit in support of what they -- they have
6 characterized as a legal malpractice action. A
7 reading of the Complaint -- a plain reading of the
8 Complaint, we -- at not time do we allege that the
9 Pope and Buchanan served as attorneys for the Estate
10 or the Trust, simply that they were attorneys, period.

11 And the reason for that is it -- it matters
12 later on when you establish the duties of -- that are
13 down in the other parts.

14 But in terms of whether we have sued for
15 professional malpractice, which would require an
16 affidavit pursuant to 15-36-100, we have not. We just
17 sued for negligence.

18 The second issue or category that they put
19 out as being reasons to throw this case out is that
20 they allege that these are issues that have already
21 been, a) put before the Court; and, b) decided upon,
22 finally, and that neither is correct.

23 This is the only time when the beneficiaries
24 of these things have alleged damages arising out of
25

1 the breach of fiduciary duties, breaches of trust and
2 negligent acts of these two individual.

3 So there -- they can -- in fact you'll find
4 it interesting in the record, there is not a single
5 petition attached to any of the documents they've
6 provided you. They haven't ever given you the
7 Compliant that says, here's where they're trying to do
8 the same things before. Instead what they've done is
9 cite some dicta from various things taken out of
10 context and incomplete in its rendering to the Court.

11 For example, the -- they contest 18(a) of the
12 Complaint or allegation 18(a) of the Complaint which
13 is, in fact, a very general thing, that they failed to
14 administer the Trust properly. And they point to an
15 Order of Feb -- of April 8th of 2008 where it says
16 that Judge -- that they say Judge Early says that
17 they've done everything right. Well, that's not at
18 all what Judge Early says. And in fact, since they
19 administered this Estate for another year or more
20 after that Order, it wouldn't matter what he was
21 ruling on in that regard.

22 But if you look to the record which they
23 didn't provide you, you find out that in fact that was
24 a procedural question about whether their appointment
25

1 was proper. And so there was issues raised about --
2 about the -- the procedure used and also whether they
3 could represent both the Trust and the Wills and his
4 statement was, they have properly served. And I
5 believe he meant that in both equitably and procedural
6 terms, not in substantive terms because there was no
7 hearing on that issue. There was no time at which any
8 of this evidence was put before the Court. And they
9 didn't bring that evidence because it's not here.

10 And, Your Honor, the mishandling of the
11 auction. The only thing they gave you in reference to
12 that is Orders that authorize the Christie's Auction
13 and you'll find that there's no Order that ever says
14 that they did it right. In other words, just because
15 the Court has handed them the keys to the car doesn't
16 mean the Court has authorized them to run into a brick
17 wall.
18

19 THE COURT: By the way, I watched Train last
20 night with Elmer Gantry? Who played Elmer Gantry?
21 Help me out.

22 MR. WINGATE: I can't help you on that one.

23 THE COURT: You guys are really a big help.
24 Go ahead. I'll think of it in a minute. Train, The
25 Great 1944, going to steal all the artwork out of

1 Paris, take it to Germany, Berlin. Never mind.

2 MR. KENDALL: The ---

3 THE COURT: The -- it was Elmer Gantry, who
4 played Elmer Gantry?

5 MR. WILLIAMS: I'll look for it on my
6 Blackberry.

7 (Laughter.)

8 THE COURT: All right, go ahead.

9 MR. WILLIAMS: I won't remember.

10 THE COURT: Who? Nobody knows.

11 MR. WILLIAMS: I can't remember.

12 THE COURT: I'll think of it in a minute. Go
13 ahead.

14 MR. KENDALL: Okay, very good. So the point
15 is ---

16 THE COURT: He won an Oscar for Elmer Gantry
17 in 1967. Go ahead.

18 (Laughter.)

19 THE COURT: Go ahead.

20 MR. KENDALL: Given that -- given that we --
21 given that you were given authorization to go to the
22 Christie's sale does not mean that -- that it's a
23 blessing on -- they could do it as reckless ---

24 THE COURT: Saying you can drive the car,
25

1 didn't say ---

2 MR. KENDALL: --- run into the wall and we're
3 going to show that they did.

4 Your Honor ---

5 THE COURT: Burt Lancaster, thank you, very
6 much. Go ahead. Burt Lancaster.

7 MR. KENDALL: Your Honor, the -- they talk
8 about a failure to -- our allegations of their failure
9 to accept a hundred million dollar offer. They may
10 have lots of good reasons that they want to put to the
11 Court for not having accepted that. We have lots of
12 good reasons we're going to argue but that's a fact
13 question. That issue's never been disposed of, just
14 because we've heard about it before. The refusal to
15 sign a consent and similar things.
16

17 One of the things, Your Honor, that -- that
18 we need to -- I want to bring to the Court's attention
19 as I know you're going to have to consider this
20 carefully, is a lot of this has been addressed. In
21 fact, a lot of the challenges they've raised are
22 addressed, in fact in the Settlement Agreement and the
23 Order approving the Settlement Agreement. Not the
24 issues that we raised as allegations of negligence in
25 the breach of trust of fiduciary duty but rather the

1 defenses they have raised.

2 And for example, the issue of the Attorney
3 General's constitutional and statutory authority to
4 bring this claim. Judge Early's already ruled on
5 that. In fact, this is just another effort to attack
6 that issue. In fact, we've provided that Order to
7 you. We've also provided an Order in another case
8 where the same issues were raised. Judge Couch looked
9 at this issue and said, yeah, you can -- the Attorney
10 General has the constitutional authority.

11 The representations about the California
12 case, the context of that has not been fully explained
13 to the Court here. Sonny Jones was in California
14 during that hearing. He knows it very well and
15 provided it to me during lunch about some of the --
16 the incorrect characterizations that may have
17 occurred. And so, Your Honor, I may supplement to
18 fully explore that issue at some time, if I may have
19 leave of the Court to do that or include it in our
20 proposed Order. I'll come back to that.

21 But the issues of the use of contingency fee
22 agreement have already been raised but those are
23 reasons to dismiss this case. That may be a basis for
24 disqualifying me but not to dismiss the lawsuit. So
25

1 that's of no moment.

2 The issue of the charitable immunity, I just
3 want to preserve for the record. We haven't addressed
4 that in our briefs because it was raised for the first
5 time not in the motion but rather in the memorandum as
6 a new basis just the other day. So that's -- that's a
7 novel issue not preserved in the motion itself.

8 The issue of the improper parties was
9 disposed of by Judge Early. That issue -- with four
10 days of testimony, that was one of the most dominant
11 themes in the entire testimony preceding the approval
12 of this Order. And Judge Early heard from it all and
13 made a number of very specific findings that everybody
14 who is a party to this agreement or all of the
15 interested parties, all of the beneficiaries, and that
16 they are properly going forward in this matter.

17 So the issue of whether all the proper
18 parties are here, Judge Early's already disposed of
19 that and said, this group is the proper group.

20 And if they think necessary parties aren't
21 here, that's not our -- you don't dismiss a Complaint
22 for that, you file a Rule 19 motion and you bring --
23 you bring them in if you feel they're necessary.

24 Your Honor, I have gone over a lot of
25

1 information very quickly and I apologize that I've had
2 to do it ---

3 THE COURT: No, no, you might present it
4 quickly but I'll think about it slowly.

5 MR. KENDALL: I know you will, and I
6 appreciate that. And we -- if we're invited to do
7 when we present ---

8 THE COURT: I'll give everybody a full
9 opportunity to do the best you can, I promise you.

10 MR. KENDALL: But I also just raise this,
11 Your Honor. The fact that -- we didn't argue yet the
12 Motion to Strike. We also filed a Motion to Strike
13 this whole venue motion on the grounds it was not made
14 timely. The Motion to Dismiss was filed inside the 30
15 days for answering the Complaint. And they filed 10
16 bases for the dismissal, none of which were venue
17 motions or venue bases.
18

19 Then they in August, realizing that they had
20 failed to raise that issue, separately filed a motion.
21 But Rule 12(g) set -- very clearly states that you
22 have to put it all in your first motion. You can't
23 later go back and add additional grounds from Rule 12
24 to -- as motions and defenses. It has to be done in
25 the first motion. They failed to do it.

1 So, Your Honor, I would just move you can
2 strike the Motion to Change Venue to the extent you
3 take the motion under advisement, Your Honor, the
4 motion. Until you decide you have venue, you
5 shouldn't even consider -- you shouldn't consider this
6 motion either.

7 THE COURT: All right. Mr. Williams,
8 anything in response?

9 MR. WILLIAMS: I won't take long but I would
10 like to point this out regarding exactly who's filing
11 this lawsuit. Paragraph 2 of the Complaint, Mr.
12 Bauknight brings this action as Trustee, yadadada, and
13 as Personal Representative of the Estate of James
14 Brown. Paragraph 18(a), Mr. Wingate references the
15 first one I pulled out to show you, alleges that the
16 Defendants failed to properly manage the Estate and
17 Trust, so that the Probate Code's venue provisions are
18 in play here and we would respectfully suggest they
19 trump the Trust ---
20

21 THE COURT: All right.

22 MR. WILLIAMS: Everything else, though, we
23 would be happy to ---

24 THE COURT: I'm going to give both sides a
25 chance. You want to add anything in response?

1 MR. WATSON: The only thing I'd add -- and,
2 Your Honor, we will -- a lot of this is covered in the
3 briefs and we will respond. But the claim under South
4 Carolina Code Annotated 33-56-180 that counsel said
5 was not included in the motion is basis number 10 in
6 our Motion to Dismiss, just for the record, Your
7 Honor.

8 THE COURT: All right. Anything further? If
9 not, let me see y'all for just two minutes back here
10 for a second.

11 ----- END OF TRANSCRIPT OF RECORD -----
12
13
14
15
16
17
18
19
20
21
22
23
24
25

State of South Carolina
County of Richland

Court of Common Pleas

Russell Bauknight,
and others,

and

Alan Wilson, in his
capacity as Attorney
General of the State of
South Carolina, and
others,

Plaintiffs,

vs.

Adele Pope,

Defendant.

Transcript of Record
2010-CP-40-4900

August 29, 2016
Bamberg, 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:

J. Emory Smith, Esquire
Sonny Jones, Esquire
Attorneys for Attorney General

Mark V. Gende, Esquire
Attorney for the Plaintiffs

Walter Henry Bundy, Jr., Esquire
Adam Silvernail, Esquire
Brent McDonald, Esquire
Attorneys for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

8

2

I N D E X

WITNESS

PAGE

(No witnesses.)

3

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.
DFT EXH. 1	Addendum	95	95

Page 2

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

8
+

4

1 (The following proceedings were held August 29,
2 2016.)

3 (Off-the-record discussions held.)

4 THE COURT: All right. Let's go ahead and put
5 on the record what we've worked out, and then we'll
6 go from there.

7 MR. GENDE: As far as their motion for -- to

8-29-16+Bauknight%2C+Wilson%2C+et+al+v+Adele+Pope.txt
8 compel the verifications --

9 THE COURT: All right. Verifications.

10 MR. GENDE: -- as we stated before, we do agree
11 to provide those. We're in the process of getting
12 those. We answered those in the normal course that
13 discovery is answered, the attorneys signed on
14 behalf, as typically is done. They have cited a
15 section of the rule --

16 THE COURT: Y'all have agreed to do it when?

17 MR. GENDE: Well, as soon as we can. We
18 actually have some that we can deliver to them even
19 right now. We have about three of them.

20 THE COURT: That ain't going to cut it.

21 MR. GENDE: I understand. And I'm willing for
22 the Court --

23 THE COURT: That's not acceptable. Tell me
24 your best guesstimate.

25 MR. GENDE: If in conjunction with the

5

1 depositions we can get all this nailed down within
2 the next four weeks, as early-on discovery, that's
3 plenty of time. I think that would allow us to work
4 through this. You have seen in the filings that we
5 have gone from, for example, Mr. Levenson being in,
6 who is a conduit to many of our clients, to not
7 being in, to being back in again.

8 So although it's my problem and I'm not trying
9 to force that on the Court or the other side, I'm
10 just repeating that so that you understand I do have
11 a problem I'm working through. I assure you we are

Page 4

12 working through it, we are seeking to get all the
13 verifications. We have some already to show that
14 we're doing that in good faith --

15 THE COURT: Hold on one second.

16 I'm sorry. Well, obviously they're entitled to
17 have the answers verified and the rules require that
18 you file them. I've been in your shoes before. So
19 I'm going to order them to verify within three
20 weeks. If you can't do that, then get me back on
21 the phone and we'll talk.

22 MR. GENDE: Understood, Your Honor.

23 THE COURT: What you want? One week? Two
24 weeks? Tomorrow?

25 MR. BUNDY: I want them yesterday, obviously.

6

1 THE COURT: I understand that.

2 MR. BUNDY: But the problem with -- and three
3 weeks, if it's your ruling, I'll live with it. I'd
4 like to have them in two weeks.

5 And the other thing is, this sort of stands on
6 its head the notion that I get to try my case and do
7 this discovery according to the rules, by my
8 strategy. I do things maybe a little different. I
9 like to ask questions, I like to get answers to
10 interrogatories, I like to get documents
11 authenticated, and then take depositions. That's
12 just the way I like to do it, and I think the rules
13 permit me to do it in any order I want to.

14 THE COURT: Well, certainly they do. All

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
15 right. I want answers verified within three weeks.

16 That's the ruling of the Court.

17 MR. BUNDY: Thank you, Your Honor.

18 MR. GENDE: So that takes care of that issue.

19 That leads us into the various motions for
20 protective order from the plaintiffs' side of 4900,
21 and then they have some motions to compel which I
22 think will end up getting discussed in the various
23 motions --

24 THE COURT: All right. Let's go ahead in that
25 order. The first one is Tommie Rae Brown. And

♀

7

1 Rosen wants to be present, so when we set the next
2 group of hearings, which will be shortly, Ms. Pope,
3 I'm going to include the Tommie Rae Brown one in
4 that.

5 MR. GENDE: And that's a different motion for
6 protective order. She has been deposed and was
7 directed not to answer some questions, so that deals
8 with that direction and whether there's privilege.
9 The rest of these protective orders deal with the
10 depositions actually occurring.

11 THE COURT: All right. So with what we need to
12 set, Ms. Pope -- we're off the record.

13 (Off-the record discussions held.)

14 THE COURT: All right. That brings us to
15 Delores, Janise, Daryl, Tonya and Venisha. Can we
16 do all those together or separately or we need to do
17 them separately or --

18 MR. GENDE: I think they break into three
Page 6

19 categories. With respect to two of them, Daryl and
20 Tonya, Daryl and Tonya have already been deposed in
21 Case 4900. And I let Mr. Bundy know that. He
22 communicated back to me, and his belief is that
23 based on your order lifting the stay that stated
24 discovery should begin again anew, which is the
25 order you made April 8th, 2016, that that was

f

8

1 referring not just to the written discovery, which
2 was the context in which you gave that order because
3 there were all kinds of outstanding motions, and you
4 said, hey, we can resolve all this just by saying
5 let's let discovery begin anew. And then I
6 submitted this proposed draft. He believes that
7 also applies to depositions that have been taken.

8 We don't believe that the intent of the order
9 where you said discover begins anew in a case
10 applies to depositions that have already been taken;
11 therefore, we believe those who have had depositions
12 taken in a case should not be subject to being
13 re-deposed.

14 THE COURT: Mr. Silvernail?

15 MR. SILVERNAIL: Yes --

16 THE COURT: They're talking about Daryl and
17 Tonya.

18 MR. SILVERNAIL: Yes, sir.

19 THE COURT: They've already been deposed.

20 MR. SILVERNAIL: They were deposed. Again,
21 Your Honor's order does say discovery begins anew.

22 In addition to that, we've brought to the
23 plaintiffs' attention that in the time since these
24 folks were deposed, I believe one in December 2012
25 and one in January 2013, the Supreme Court made its

9

9

1 decision in Wilson vs. Dallas, and both of these
2 deponents have made multiple changes of position in
3 the Aiken County cases.

4 As Your Honor is probably more familiar than I,
5 it's been a bit of a musical chairs with lawyers
6 over there in the will contest cases along the way.
7 But both of these folks have withdrawn, one of them
8 attempted to un-withdraw, that was Tonya Brown, I
9 don't know that was heard; Daryl Brown withdrew his
10 will contest. As Your Honor would recall, his
11 attorney appeared at the hearing, Your Honor, held
12 on the settlement of some claims in the will contest
13 cases and opposed the settlement.

14 All of this relates back because these are two
15 of the more than a dozen private plaintiffs that
16 have sued Ms. Pope for unreasonably handling and
17 opposing the settlement, which was eventually thrown
18 out by Wilson vs. Dallas, and related to the will
19 contests. And her positions taken in those and
20 other cases in Aiken before Your Honor, before this
21 case came along, and both of these folks, in sitting
22 for their deposition, have had substantial and
23 multiple changes of position that they've taken in
24 Your Honor's court and in the appellate courts from
25 the positions they were taking at the time we

Page 8

1 deposed them. And so I believe --

2 THE COURT: So you were there when Daryl and
3 Tonya were deposed?

4 MR. SILVERNAIL: I deposed them, Your Honor.

5 THE COURT: And you want a go at them again?

6 MR. SILVERNAIL: I do. Although to be clear, I
7 don't think -- I don't want to be too hemmed in.
8 Obviously if I -- on some of these areas -- and
9 those depositions were fairly long. They related a
10 lot to document authentication. Unfortunately,
11 we've recently gotten another round of requests to
12 admit authenticity of documents denied.

13 THE COURT: I'm just asking you very simply:
14 Do you want to simply re-depose those two people,
15 Daryl and Tonya?

16 MR. SILVERNAIL: Yes, sir.

17 THE COURT: And you've already deposed them
18 once? Let me see that order I signed dealing with
19 discovery.

20 All right. Go ahead.

21 MR. SILVERNAIL: And as Your Honor set out in
22 the order, discovery is beginning anew. I believe
23 we're entitled both for that reason and totally
24 separately because of the substantial changes in
25 position --

1 THE COURT: But what if everybody else takes
2 changes in position? What will we do now; re-depose
3 everybody every time they change their position?

4 MR. SILVERNAIL: Well, Your Honor, those were
5 two of the three depositions we had had in this case
6 before Your Honor took jurisdiction over it shortly
7 before its sixth birthday. So that's a real limited
8 risk here.

9 THE COURT: All right. So your motion for
10 protective order is that they've already been
11 deposed?

12 MR. GENDE: Yes. I'd have a couple responses
13 to Mr. Silvernail, at which time the Court would
14 consider --

15 THE COURT: I'm not cutting him off.

16 MR. SILVERNAIL: I think you've heard what I
17 have to say, Your Honor.

18 THE COURT: All right.

19 MR. GENDE: Simply this: The time period issue
20 hasn't changed. Case 4900 has a time period dealing
21 with the administration of Ms. Pope, and these two
22 witnesses were able to be fully questioned about
23 that time period. Mr. Silvernail's remarks about
24 the Aiken case is irrelevant to Case 4900. There's,
25 of course, the judicial efficiency and cost case.

12

1 We'd all have to pay for this; these are out-of-town
2 witnesses. As you've already indicated, there's the
3 whole question as to why they should get a second
4 bite at the apple. If they feel they have changed

Page 10

5 their positions in a court, there's a record of that
6 and they can use that to impeach them if they feel
7 they should.

8 with respect to your order, you have the right
9 to construe the order. And as I have already
10 stated, the context of that order was when you were
11 faced with -- there's probably 40 or more
12 outstanding motions on written discovery. And it
13 was, I think, all of our understandings at the
14 time -- I can only speak for myself.

15 But our understandings at the time you signed
16 this is that you were referring to written
17 discovery. And it's just a slippery slope, what
18 they're asking for. Mr. Buchanan was deposed in
19 case 4900. His deposition lasted several days, and
20 it's not even done because I haven't gotten the
21 chance to ask questions. But are they going to want
22 to re-depose him and re-open several days on that?
23 It's just a bad idea.

24 THE COURT: All right. I'll get y'all
25 something this week. That takes care of Daryl and

13

1 Tonya.

2 Who is next; Venisha, Janise, Lindsey?

3 MR. GENDE: I think the others can break down
4 into two groups if counsel --

5 THE COURT: Lindsey, Janise, and Venisha?

6 MR. GENDE: well, without mentioning the names,
7 let's talk about them like this, if the Court agrees

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
8 and the other side: There are some witnesses who

9 were minors at the time the action was commenced,
10 and the basis for our protection order for that is
11 they were properly represented under the probate
12 code by their parents in the action.

13 And in the sense they're not even parties to
14 the action, the caption clearly states that the
15 parents brought it in their interest, and so that --
16 they should not be deposed, regardless of whether
17 they've reached majority or not at this time
18 because, again, it deals with events that were --
19 occurred when they were minors. So that's one group
20 of people.

21 THE COURT: So which ones were or are minors?

22 MR. GENDE: The minors relate to --

23 THE COURT: You got Lindsey, Janise, Venisha.

24 MR. GENDE: Well, we have several. We have
25 James Brown, Jr., again --

14

1 THE COURT: He's not on here.

2 MR. GENDE: Yeah. That's not on there because
3 that hasn't been noticed. I don't think they've
4 made an attempt to notice that one at that point.
5 I'm just giving you a full list of how many this
6 might apply to in the long run.

7 THE COURT: Well, tell me how many it applies
8 to.

9 MR. GENDE: James Brown, Jr. is one that it
10 would apply to; Janise Venisha Brown is one that it
11 would apply to, and Sydney Lumar and Carrington

Page 12

12 Lumar are ones to whom it would apply to. Again,
13 not all of those have been deposed, but -- or have
14 been noticed, but the ruling would be applicable to
15 that.

16 THE COURT: Mr. Silvernail, you want to take
17 the minors' depositions?

18 MR. SILVERNAIL: Your Honor, none -- of the
19 three people we're here about today, which is all I
20 want to bore you with, none of them are minors. One
21 of them -- Janise Venisha Brown was a minor at the
22 time of the filing of the complaint. Lindsey
23 Dolores Brown was captioned as a minor even though
24 she was over the age of 18 when this case was filed.
25 Both of them are over 18 now.

15

1 THE COURT: Thank you.

2 All right. What's the motion on protective
3 order on Lindsey Delores Brown? I'm going to do
4 what's before me. I can't anticipate. Lindsey,
5 what's your --

6 MR. GENDE: Yeah. Lindsey Delores Brown is not
7 one of the minors, and I don't think she was on the
8 list that I just read off. She's in this other
9 category of people --

10 THE COURT: Which is what? What is your
11 objection to the deposition of Lindsey Delores
12 Brown?

13 MR. GENDE: We aren't really objecting to her
14 deposition. We're receiving a protective order for

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
15 these reasons: They served us with deposition

16 notices; Mr. Bundy feels he doesn't, based on the
17 rule, have to consult with us prior to selecting
18 dates for the depositions. He selected dates. For
19 a lot of reasons, those dates weren't workable.

20 He gave us two weeks from the date that he
21 selected to select a different date if that date
22 didn't work, and if we couldn't pick something from
23 the two weeks, it was too bad. We couldn't do that.

24 As I mentioned earlier, we're working very
25 hard, but are not able to have direct

16

1 communication at this time with all of our clients
2 for some of the reasons --

3 THE COURT: Well, is Lindsey Delores Brown a
4 client of yours?

5 MR. GENDE: She is a client of ours in this
6 case, yes. And as you know --

7 THE COURT: So it's a scheduling issue with
8 Lindsey Delores Brown; is that correct?

9 MR. GENDE: These are all scheduling issues.

10 THE COURT: All right. Janise Venisha Brown,
11 is that also a scheduling issue or is there more to
12 it?

13 MR. GENDE: Janise Venisha Brown is a minor.
14 She fits in that other category -- or she was a
15 minor at the time of the bringing of the case, let
16 me state it that way.

17 THE COURT: So that's your problem with that
18 one; she was a minor?

Page 14

19 MR. GENDE: Correct.
20 THE COURT: How about scheduling?
21 MR. GENDE: I'm sure scheduling will be a
22 challenge.
23 THE COURT: All right. And the other one, I
24 think, is Venisha. What's her situation?
25 MR. GENDE: The situation with Venisha is a

17

1 scheduling issue. There are also other issues
2 related to venisha that are unique to her. I think
3 that Your Honor might be aware of some of her
4 struggles --
5 THE COURT: No, sir. I've --
6 MR. GENDE: I'm sorry. I'm assuming knowledge
7 from the prior cases.
8 THE COURT: I know that. But I've been dealing
9 with this thing for so long and they all run -- I do
10 remember you.
11 MR. GENDE: I understand. Thank you.
12 THE COURT: Go ahead. What's going on with
13 Venisha?
14 MR. GENDE: Janise -- or Venisha has been in
15 and out of jail. She's in Georgia. We've made a
16 number of attempts to find out where she is. Family
17 members who we've talked to are not certain at this
18 point whether she's in jail, out of jail; she's not
19 had a regular home, and she has personal issues to
20 the point that Deanna Brown Thomas is actually her
21 power of attorney and acts on her behalf.

22 So it's -- even if she were identified and I
23 could speak with her about her deposition and
24 seeking to schedule it, I might still have a further
25 motion based on capacity.

18

1 THE COURT: Okay.

2 MR. GENDE: So she's in a unique situation all
3 her own.

4 THE COURT: Do you have any law that if someone
5 was a minor when you sued them that they can't be
6 deposed?

7 MR. GENDE: We do have some law. And I'll be
8 happy to --

9 THE COURT: How about once they turn -- reach
10 the age of majority?

11 MR. GENDE: I don't have a full memorandum. I
12 will be happy to give you a supplement, but let me
13 give you what I have on that. First of all, there
14 isn't a lot of law on this in South Carolina. There
15 is a Siegler vs. Southwest Railroad Company. It's
16 85 S.C. 345. It's a 1910 case, so it's hot off the
17 press. And it's a situation where a minor or
18 someone who was a minor when the case was brought
19 and had a guardian ad litem representing their
20 interests was required, because of unique
21 circumstances, to be substituted when they became of
22 majority.

23 The unique circumstances are, as the case got
24 to trial, they found that the appointment of the
25 guardian ad litem was defective. So something had

Page 16

1 to be done to cure that defect. And so because of
2 that, the Court initially said -- the trial court
3 said it couldn't do anything. It went up, the
4 Supreme Court said, yes, you could, you could put
5 the person who had reached majority in place.

6 That case, importantly, does not establish the
7 substitution of party once they reach the age of
8 majority. It was a special case that dealt with a
9 problem; there was a problem in the guardian ad
10 litem appointment. All right. And in this case,
11 the particular problem was a signature that wasn't
12 gotten, so really the guardian ad litem wasn't
13 effective all the years they thought it was.

14 There is another case -- again, so Siegler vs.
15 Southwest Railroad Company stands for the
16 proposition that there is no triggering event to
17 mandate substitution unless there had been some
18 defect when the parents were representing as -- on
19 behalf of the minor.

20 There's Shuttleworth vs. Huey [phonetic], which
21 is a South Carolina Court of Appeals case. Again,
22 very old case, we're all the way back to 1853 now
23 before the Civil War. Shows you how little juris
24 prudence there is on this. This is a case that does
25 not require someone who was a minor when a case was

8-29-16+Bauknight%2c+wilson%2c+et+al+v+Adele+Pope.txt
brought and as the case goes on reaches majority to

be substituted in their majority.

The situation is there, it's certainly an option, but the person who can trigger it would be the minor who has now become majority. They would have to say, for some reason, they wanted that change. They could, by doing nothing, ratify the continuing of the case the way it is.

So that case which we found does not find any triggering event such as age that requires someone who is a minor when a case was brought to be substituted in their majority. We couldn't find a single case where the South Carolina Court has held to the substitution of a party who has reached the age of majority being required.

In our case, the operative time at issue here is the period of administration of Ms. Pope from SA up through her removal. These children were children and minors at that time, and so we do not feel that there's any necessity for them to give testimony concerning events that occurred when they were minors.

Finally, in the complaint it is styled that, for example, Daryl Brown brings the case individually and on behalf of his minor child Janise

21

Venisha Brown. It is not that Janise Venisha Brown was what we might call a full party; her father was appropriately representing her. And that appropriate representation --

Page 18

5 THE COURT: If my 14-year-old child is involved
6 in a car wreck, I have to be the GAL to bring the
7 lawsuit. But that doesn't preclude a defense lawyer
8 from taking my child's deposition.

9 MR. GENDE: Here is, I think, the code section
10 that does give us the difference to that, and that's
11 in the 62-1-403 probate code.

12 THE COURT: Hold on one second. What's that
13 code section say?

14 MR. GENDE: 62-1-403. We're looking at
15 subsection 2, line 2, line 3.

16 Also there have been -- you know, it might be
17 the law of the case that there's no need for this
18 because there have been attempts on the
19 defendant/cross-claim plaintiff, Ms. Pope, to have
20 the Court appoint guardian ad litem for these minor
21 children as we went into mediation.

22 It was argued when Judge Manning had the case.
23 He ruled that there was no need for that, that the
24 probate code applied, and that these minors were
25 properly represented in this matter, their interests

22

1 were properly represented in this matter, as is
2 pled, on behalf of this minor child by this section
3 of the probate code.

4 If you would -- I didn't know if you were
5 waiting for the book to come to you.

6 THE COURT: No. Go ahead.

7 MR. GENDE: Section 62-1-403, subsection 2 ii

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
8 is a long section. Let me get down to the last

9 sentence, which is the pertinent part. It says: If
10 there is no conflict of interest, no conservator or
11 guardian has been appointed, a person may represent
12 his minor or unborn issue.

13 Then the next section, iii, reads that a minor
14 or unborn or unascertained person who is not
15 otherwise represented is bound by an order to the
16 extent his interest is adequately represented by
17 another party having a substantially identical
18 interest in the proceeding.

19 And that's what we would argue is the situation
20 here. That's what we have argued it is before.
21 Judge Manning has held that there was no need to
22 appoint a guardian ad litem, that the minor children
23 were properly represented. And because of that,
24 representing the parents -- or, excuse me, deposing
25 the parents is the appropriate opportunity to give

‡

23

1 to Ms. Pope and her counsel to determine the
2 thoughts and the interests of these minor children
3 who were properly represented by their parents who
4 filed this suit on behalf --

5 THE COURT: Has Daryl Brown's deposition been
6 taken?

7 MR. GENDE: Daryl Brown's deposition has been
8 taken.

9 THE COURT: All right.

10 Mr. Bundy, or one of you. All right. Lindsey
11 is a scheduling problem; we're going to deal with

Page 20

12 that. You got one that's, perhaps, incarcerated?

13 MR. BUNDY: Your Honor, if you don't mind, I'd
14 like to digress a minute about the scheduling
15 problem.

16 When this started, when I got in this case, I
17 wrote counsel a letter. I said, can we agree on
18 scheduling protocol because, obviously, there are
19 going to be problems. I sent him a letter. I said,
20 here's what I'd like to do: I'll blind notice
21 something two months out, okay, and give you two or
22 three weeks to call me back and tell me whether or
23 not you can find them, whether you can get a date
24 and all of that, and we'll work something out. But
25 I've got to have a notice, because you can wait

24

1 months and months and months without a notice, and
2 nobody is going to do anything unless you send them
3 notice.

4 So in this case, since they wouldn't agree to
5 that, I sent these notices out 60 days in advance,
6 didn't hear anything from them for a month and a
7 half. And then all of a sudden they call me and
8 say, well, we got a problem finding them, and we
9 want you to put off these depositions and we'll let
10 you know when we find them.

11 Well, that's just unworkable from my
12 standpoint. I mean, I -- we'll never take the
13 depositions that way. And I'd like you to consider,
14 if you would, a protocol where we at least can --

8-29-16+Bauknight%2c+wilson%2c+et+al+v+Adele+Pope.txt
15 and I put this in our proposed scheduling order. I
16 believe I suggested a protocol because we're simply
17 being the can kicked down the road. And until
18 such time --
19 THE COURT: It's getting kicked to me.
20 MR. BUNDY: Sir?
21 THE COURT: It's getting kicked to me. I don't
22 like scheduling depositions.
23 MR. BUNDY: Well --
24 THE COURT: I've got more to do than scheduling
25 y'all's depositions.

25

1 MR. BUNDY: No, sir. It's just that if they --
2 THE COURT: I'm not fussing at you.
3 MR. BUNDY: Sir?
4 THE COURT: I'm not fussing at you.
5 MR. BUNDY: Okay. I just want to take the
6 depositions, Judge, and I'd like to do it in a
7 reasonable way.
8 THE COURT: Sounds like to me y'all can't work
9 together, so I'm going to set a date for them.
10 MR. BUNDY: Thank you, sir.
11 THE COURT: All right. How about -- do you
12 need to take this little child or is Daryl going to
13 be enough for you?
14 MR. SILVERNAIL: Your Honor, all the --
15 Mr. Gende --
16 THE COURT: It's a simple question.
17 MR. SILVERNAIL: We need to take the child's
18 deposition. And, again, I note she's not a child

Page 22

19 today.

20 THE COURT: Thank you. That's all I ask.

21 The lady who is having issues, Venisha, if
22 she's incarcerated, obviously you got to get a
23 GAL -- I think the rules require a GAL for an
24 incarcerated person -- and then you have to go
25 through the GAL, or perhaps she has other problems

26

1 that require a GAL. I don't know.

2 MR. SILVERNAIL: And, Your Honor, I'm not
3 trying to bore you, but I do want to state for the
4 record we moved to appoint a GAL for Venisha a few
5 years ago when we knew she was, in fact,
6 incarcerated. Today we're hearing from Mr. Gende
7 they don't know whether she's incarcerated or not --

8 THE COURT: Well, I don't either.

9 MR. SILVERNAIL: -- and so we noticed -- she's
10 represented, she's a plaintiff, and a counterclaim
11 defendant. We noticed her deposition on June 23rd.
12 And today, on August 29th, more than two months
13 later, we're still not -- I mean, they don't seem to
14 be ready to commit to a schedule. We need her to
15 appear. And I haven't seen any evidence put before
16 the Court that she is currently incarcerated.

17 THE COURT: Thank you. When do you want to
18 depose Lindsey, Janise, and Venisha? Give me some
19 dates.

20 MR. SILVERNAIL: Your Honor, I -- I think I can
21 be very flexible in the month of September on dates

22 8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
other than the 15th, the 27th, and the 28th.

23 THE COURT: As to Lindsey, Janise, and Venisha,
24 within five days send me by e-mail with copy to
25 everyone, give me five dates in September, and I'm

27

1 going to arbitrarily choose three of them; 1A, 1B,
2 1C.

3 MR. SILVERNAIL: Okay.

4 THE COURT: If Ms. Brown, Venisha, is
5 incarcerated, we may have to jump through a couple
6 hoops to get that one.

7 MR. SILVERNAIL: Thank you, Your Honor. And I
8 would note, although the scheduling of these -- and
9 you've resolved the issue about getting their
10 deposition. We filed motions after they did not
11 appear for their depositions on August 19th for
12 costs related to that.

13 THE COURT: That's not before me today, I don't
14 think. Is it?

15 MR. BUNDY: Yes, sir.

16 MR. SILVERNAIL: Your Honor, we'd ask it be
17 heard in conjunction with the motions for protective
18 order since they related to the same subject. They
19 did not appear at their depositions on August 19th.
20 So the motion, I believe, was filed the following
21 Monday.

22 THE COURT: That's the return motion to compel
23 as to Lindsey and Janise?

24 MR. SILVERNAIL: Yes, Your Honor.

25 THE COURT: Be glad to hear you.
Page 24

1 MR. SILVERNAIL: All right. As Mr. Bundy
2 explained, we made extensive attempts to get these
3 depositions scheduled. The notices were sent out on
4 June 23rd. I believe August 10th was the first time
5 we received a communication from the
6 plaintiff/counterclaim defendant's lawyer indicating
7 that they were in the process --

8 THE COURT: June 23 was notice for when?

9 MR. SILVERNAIL: It was noticed for August 19th
10 for 10:00 and 2:00 for these two ladies'
11 depositions.

12 THE COURT: And you didn't hear until August
13 the 10th?

14 MR. SILVERNAIL: We didn't get any response
15 from them until August 10th, at which point they
16 wrote and raised the objection Your Honor has heard
17 about the one child having been a minor and also
18 indicated that they were in the process of looking
19 into scheduling for Lindsey who was not a minor.

20 Your Honor, as Mr. Bundy explained, this case
21 is six years old --

22 THE COURT: I know how old it is. What
23 happened in connection -- what happened on the 19th?
24 Did you show up?

25 MR. SILVERNAIL: On the 19th we showed up with

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
1 a court reporter and a videographer --

2 THE COURT: And nobody is there?

3 MR. SILVERNAIL: At 10:00, no witness appeared.
4 We made a record of that. At 2:00, we came back for
5 the second one. No witness appeared.

6 THE COURT: All right. What kind of fees do
7 you want?

8 MR. SILVERNAIL: Your Honor, we've asked for
9 \$7,500 in fees to prepare for these depositions, to
10 pay the court reporter and the videographer. And
11 I'll be glad to present an affidavit with a
12 breakdown, Your Honor.

13 THE COURT: Well, you got to prepare for them
14 if you're going to take them down the road. I'm not
15 going to give you \$7,500. That's sort -- costs for
16 the videographer, court reporter. And how many
17 hours you think you had going over there, sitting
18 and waiting?

19 MR. SILVERNAIL: Your Honor, they were at my
20 office, so we -- that would make for a total of an
21 hour and a half preparing the court reporter and
22 everything else and being in the room.

23 THE COURT: Send me an affidavit to that effect
24 and you can show it to Mr. Gende.

25 Yes, sir?

‡

30

1 MR. GENDE: In response to that, several
2 things: First of all, they are correct that they
3 unilaterally noticed the depositions on --

4 THE COURT: What do you mean, unilaterally?

Page 26

5 MR. GENDE: I'm just using that term to say
6 there wasn't communication. I don't know what --
7 the letter that Mr. Bundy is talking about, I'm sure
8 that I'm just forgetting it as I sit here right now;
9 however, what they're leaving out, which is
10 important, and I have a copy here if the Court needs
11 to see it, is my July 15. Okay. So that's June
12 23rd. I don't know what day of the week that is.

13 But my July 15th letter to them where I deal
14 with every one of the depositions that they
15 noticed -- now, I inadvertently leave off Lindsey
16 Brown. I will admit to an inadvertence leaving that
17 name off. But everyone else, Mr. McMaster,
18 Mr. Wilson, Daryl Brown, Tonya Brown, Janise Venisha
19 Brown, Venisha Brown, Janise Brown, I attempt to
20 deal with those, so I did not wait till August to
21 communicate with them on that.

22 Secondly, on August 10th we did communicate
23 with them again. We communicated specifically about
24 these two. And then several days before the
25 deposition, the week of the deposition -- and just

31

1 as a sidelight, we've produced Tommie Rae during
2 this time, we've reached an agreement to produce
3 Henry McMaster during this time, and there's been
4 discussion and there's still issues about producing
5 Attorney General Wilson. So we're not sitting back
6 doing nothing. We're getting verifications, we're
7 taking attempts to contact these people.

8 However, I send them the e-mail on August 10th
9 and tell them, you know, we're not going to be able
10 to produce these people; we're trying, but we can't.
11 I then filed a motion for protective order on August
12 15th. Then on a couple of days before the --

13 THE COURT: For the two that were noticed on
14 the 19th?

15 MR. GENDE: Correct. So they've gotten notice
16 that I filed a motion for protective order on August
17 15th. I think it's interesting he decided not to
18 mention that.

19 Also that week, he sent me an e-mail,
20 Mr. Silvernail, saying, hey, I haven't gotten the
21 distance that these people are going to travel so we
22 can have a check ready for their witness fee. Again
23 I said, we've filed a motion for protective order,
24 we've communicated to you about this, we think we've
25 done everything that we need to.

32

1 There was a second e-mail either the next day
2 or the day after about the very same issue. I said,
3 we're not going to appear. On the 18th we produced
4 Henry McMaster at the office being videoed. At that
5 deposition, as a sidebar, the videographer asked
6 Mr. Silvernail, are there going to be depositions
7 tomorrow? Mr. Silvernail, in full knowledge that
8 there weren't because I had communicated to him
9 numerous times, told her, oh, yes, we're going to
10 have depositions, be here.

11 I don't think he's entitled to any fees. This
 Page 28

12 is a scheduling issue that we're trying to work
13 through. He had a whole lot more knowledge than he
14 just led on in his argument that this wasn't going
15 to happen.

16 THE COURT: Please send me a proposed order
17 stating your position, and send me a proposed order
18 stating your position within five days.

19 MR. GENDE: Thank you, Your Honor.

20 MR. SILVERNAIL: Thank you, Your Honor.

21 THE COURT: Now, as to the scheduling of those
22 three, you're going to give me several dates in
23 September, and I'll select 1A, 1B and 1C. But,
24 Mr. Gende, y'all --

25 MR. GENDE: We're going to do everything we

2

33

1 can, Your Honor.

2 THE COURT: Y'all just sort of chirp in on
3 which one of those you want to be 1A --

4 MR. GENDE: We will. And if there's an
5 insurmountable problem, as you mentioned in the
6 other one, we'll communicate directly to the Court
7 and bring you in on this, even though I know and we
8 know that you don't want to be involved in
9 scheduling issues.

10 THE COURT: No, sir.

11 Now, to eliminate this in the future, is a
12 deposition protocol something that we need?

13 MR. BUNDY: I believe it is.

14 THE COURT: Okay. Then you send me one and

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
15 I'll send it to them; y'all make whatever changes

16 you want in it, and I'll adopt it as an
17 administrative order.

18 MR. GENDE: That's fine, Your Honor.

19 THE COURT: All right. That takes us down to
20 the protective order as to Alan Wilson. Is that
21 where we are? And then that leaves us after that,
22 AG motion to be dropped, motion for summary
23 judgment. Is that where we are?

24 MR. GENDE: Yes. And I think the AG would like
25 to go last and our motion for summary judgment to go

34

1 first, and I have no objection to that order.

2 THE COURT: All right. Anybody need a bathroom
3 break? Okay. Let's do this: Let's do the
4 deposition of Alan Wilson protective order and then
5 we'll take about a five-minute bathroom break, come
6 back, and finish up.

7 All right. Now I have the protective order of
8 Alan Wilson; is that correct?

9 MR. SMITH: Yes, Your Honor. Did you get a
10 copy of our memo? I mailed it and e-mailed it on
11 Friday. I've got an extra copy if --

12 THE COURT: The answer is I did. And I did,
13 over the weekend, read it. Let me find it. I got
14 one on the revised memo for the counterclaim, I got
15 the one on Alan Wilson. When did you send it?

16 MR. SMITH: Friday, I think around noon, Your
17 Honor.

18 THE COURT: Got it. I did and I read it.
Page 30

19 That's the one that you discussed the Morgan rule.
20 MR. SMITH: Yes, Your Honor.
21 THE COURT: And the Morgan case. All right.
22 I've read the whole memo. Be glad to hear from you.
23 MR. GENDE: Thank you, Your Honor. I hope I
24 can make this brief. The motion --
25 THE COURT: You're pretty thorough in the memo.

4

35

1 It sets out why we shouldn't depose the Attorney
2 General unless it absolutely meets the requirements
3 under the Morgan rule. Is that correct?
4 MR. SMITH: That's our position, Your Honor.
5 And they don't appear to be disputing in their memo,
6 which I just received in court today --
7 THE COURT: I have not received that.
8 MR. SMITH: -- an opposition to it. They don't
9 appear to be opposing the Morgan rule, but instead
10 try to claim that they fall under it. But the
11 Morgan rule sets a very high standard, and that is
12 that the information sought must be essential, that
13 it's not obtainable elsewhere, and the deposition of
14 the official would not interfere with his government
15 responsibilities.
16 And we believe that -- and the burden is on
17 them to show that it meets all three of those
18 exceptions. And we believe that they cannot --
19 THE COURT: well, what information does Alan
20 Wilson have that all the rest of the people who are
21 involved would be essential that they can't get from

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
them?

22
23 MR. SMITH: well, we don't believe he has any
24 information, Your Honor, and their memo doesn't show
25 that he does. He was not attorney general when

36

1 the --

2 THE COURT: That's correct. General McMaster
3 was.

4 MR. SMITH: Right. General McMaster was
5 attorney general when this suit was brought. The
6 suit was brought on matters that had occurred up
7 until that point. Alan Wilson was not in office
8 then, therefore, he has no personal knowledge about
9 it.

10 They have -- half of the memo deals with
11 lengthy rehashing of their version of the history of
12 this proceeding, none of which has anything to do
13 with the need to depose Alan Wilson. Beginning on
14 page 18, they claim that --

15 THE COURT: Page 18 of what?

16 MR. SMITH: Of their memo. They talk about --

17 THE COURT: I don't have it. Hold on, hold on.

18 MR. SILVERNAIL: Your Honor, if I can approach,
19 I'll be glad to hand up a copy.

20 THE COURT: Thank you.

21 MR. SILVERNAIL: I was planning to argue this
22 one myself, but --

23 THE COURT: Page 18. What?

24 MR. SMITH: Yes, Your Honor. They talk about
25 reasons why they believe they need to take Attorney

Page 32

1 General Wilson's deposition. But they're all
2 dealing with matters about the course of litigation,
3 why things have continued in the litigation, a
4 meeting between Adele Pope and Attorney General
5 Wilson about the litigation. She was there, she
6 doesn't need to depose him about why she was there.

7 All of these deal with litigation strategies.
8 If they can take the deposition of Attorney General
9 Wilson in this case, then they can take the
10 deposition of opposing counsel in any case in which
11 they're involved. It certainly does not show any
12 need --

13 THE COURT: Wilson is not representing -- he's
14 not acting as a lawyer in this case, is he?

15 MR. SMITH: well, he is the attorney general,
16 he is a party, and he's also a lawyer, Your Honor.

17 THE COURT: But he's not counsel for Plaintiff,
18 is he?

19 MR. SMITH: No, Your Honor.

20 THE COURT: No.

21 MR. SMITH: But they're asking him about
22 litigation decisions in this case. That's what they
23 want to ask about in pages 18 and thereafter in
24 their memo. They don't want to depose him about
25 matters that occurred that are at issue in the

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
1 lawsuit because he wasn't attorney general then, he
2 didn't observe those matters, he's not a party to
3 them. They're not entitled to take his deposition
4 about the course of the litigation.

5 And that certainly does not fall under the
6 category under Morgan of being essential, it does
7 not fall under the category of not being obtainable
8 elsewhere, it does not fall under the category of a
9 deposition that would not interfere with his other
10 government responsibilities.

11 For example, let me show you on page 17, she
12 talks about her meeting with --

13 THE COURT: Hold on one second, please. His
14 page 17?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: All right.

17 MR. SMITH: She wants to inquire about the
18 attorney general's relationships with James
19 Buchanan. The attorney general was not in office
20 when James Buchanan -- when this suit was brought,
21 Case 4900. She wants to depose him about her -- the
22 attorney general's meeting with herself. She was
23 there, she doesn't need to depose him about that.

24 She speaks on page 18: Years later, the
25 vitriolic attacks have continued. Maybe she's

39

1 referring to her own, Your Honor, because she's
2 filed affidavit after affidavit in these various
3 cases with vitriolic statements in it.

4 Again, this is all about the course of the
Page 34

5 litigation; this is not about being a witness to the
6 facts of the case. We believe that this case falls
7 squarely within the Morgan rule. Morgan has been
8 applied to public officials who are defendants in
9 suits, public officials who have been plaintiffs in
10 suits.

11 The Bogan case involved the deposition of the
12 defendant mayor. The Franklin case involved the
13 deposition of the director of the defendant Office
14 of Thrift Savings. The McCarthy case involved the
15 deposition of the EPA administrator. In Re: U.S.
16 involved a deposition of Attorney General Reno in a
17 federal prosecution.

18 In Re: FDIC involved the depositions of three
19 FDIC directors. The McNamee case involved the
20 deposition of former chief of staff of a legislator.
21 U.S. v. Northside Realty Associates from the
22 District Court of Georgia involved the deposition of
23 the attorney general and a suit initiated by him on
24 behalf of the United States.

25 The Highland case involved the deposition of

40

1 the plaintiff New Jersey Attorney General. Johnson
2 v. Clark involved the deposition of the county
3 executive of the county defendant. Paige v. Kennedy
4 involved the deposition of the Secretary Tax
5 Commissioner in a FOIA action apparently against
6 him.

7 The State Board of Pharmacy involved the

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
deposition of the California Attorney General

8
9 regarding appropriate attorneys' fees. And it says
10 in that case: If the head of a government agency
11 was subject to having his deposition taken
12 concerning any litigation affecting his agency or
13 any litigation between private parties which may
14 indirectly involve some activity of his agency, we
15 would find that the heads or government department
16 members of the president's cabinet would be spending
17 their time giving depositions and would have no
18 opportunity to perform their functions. It would be
19 oppressive and vexatious to require the head of the
20 government agency to submit to interrogation that
21 might last for several hours, and would, of course,
22 disturb government business.

23 One of the showings they have to make here is
24 information is not obtainable elsewhere. They've
25 already taken depositions of Sonny Jones and Mary

41

1 Frances Jowers in Case 1337. They've asked to take
2 the deposition of Henry McMaster in Case 4900.

3 Alan Wilson was not in office when these suits
4 were brought; therefore, we believe they've failed
5 to meet the Morgan rule, and that it would be an
6 undue burden under Rule 26 of the South Carolina
7 Rules of Civil Procedure for his deposition to be
8 taken.

9 And I believe it's in my memo, Your Honor, but
10 we've got written discovery requests pending too.
11 They could obtain information that way, Your Honor.

Page 36

12 Thank you.

13 THE COURT: Yes, sir.

14 MR. SILVERNAIL: Your Honor, Mr. Smith ran you
15 through a long list of the cases that he's based his
16 argument on and the circumstances in those cases.
17 Not one of them involves an attorney general as a
18 co-plaintiff with a bunch of private individuals
19 suing somebody and that attorney general now being
20 subject to counterclaims for abuse of process, civil
21 conspiracy, and some other matters related to the
22 bringing of this action.

23 The maintaining of this action is also
24 important. When Mr. Wilson was attorney general,
25 the Supreme Court reversed Wilson vs. Dallas. He

♀

42

1 made some filings -- he, Attorney General Wilson,
2 made some filings with the Supreme Court setting out
3 his position and his plans for 4900. He came and
4 filed a motion in this case in 2013, which Your
5 Honor is going to hear later today, to be dropped as
6 a party based on what appears to be an allegation
7 that he was never actually a party in a case he's
8 shown as a plaintiff in.

9 Your Honor asked a really interesting question
10 earlier, which is, is he a lawyer in this case?
11 He's not. This case is incredibly unusual, if not
12 totally unique, because he's -- Mr. Wilson's office
13 is not on the pleadings in this case. He is
14 represented by Mr. Gende's firm. That's -- now,

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
Mr. Jones recently filed a limited notice of

appearance. But for six years, Mr. Wilson is a
co-plaintiff with these 15 other folks and entities.
We're entitled to examine Mr. Wilson about his
relationship with these folks.

Mr. McMaster, just last week or the week
before, came to his deposition and also seemed to be
surprised. He didn't believe he was a party to this
case. You know, we're entitled to find out what the
attorney general's position is on this. Yes, there
was a change; we've deposed Mr. McMaster. He didn't

43

shed a whole lot of light on some of this, although
he did on some other parts.

We're entitled to know what the attorney
general knows, what his relationships are with the
other plaintiffs here. The damages alleged under
our counterclaims are continuing, and he's now been
attorney general for five of the six years this case
has been pending, or thereabout.

And so, number one, I don't think Morgan
applies here. This case is unlike any of the long
laundry list of cases rattled off there. And
Mr. Smith made reference to one of them in
particular that talked about private party
litigation indirectly involving the state office.
This isn't indirect. Mr. Wilson is one of the lead
plaintiffs in this case. He's been here since day
one, his office was introduced as a client of
Mr. Gende's firm at the very first hearing in this

Page 38

19 case.
20 we took issue with the attorney general's
21 participation in this case. We continue to take
22 issue with the attorney general's participation, for
23 constitutional and other reasons, but Judge Manning
24 denied our motion on that. I think there's a 59
25 motion that's been pending for quite some time.

44

1 The attorney general's participation in this
2 case is material to our counterclaims, and so we're
3 entitled to know what the attorney general, who is
4 here now, who has been here since Wilson vs. Dallas
5 was decided, who has taken some substantively
6 changed positions in the record in this case, who we
7 have not deposed before, we're entitled to
8 understand his position.

9 THE COURT: What has he changed his position
10 on?

11 MR. SILVERNAIL: Well, after Wilson vs. Dallas
12 was decided, he came and said, oh, heavens, I'm not
13 a party to this case, I should be dropped. Your
14 Honor is going to hear that this afternoon. We
15 oppose that motion. We'll go through that in a
16 little bit.

17 But, you know, it was a little startling. I
18 don't know of any case where years in, one of the
19 plaintiffs, particularly when it's the State of
20 South Carolina through the attorney general, came
21 and said, oh, heavens, not a party. Mr. Bauknight

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
22 was supposed to bring this suit, I think was what
23 they've alleged, and I guess we'll hear more about
24 their position in a little while.
25 But, you know, we're entitled to learn from

45

1 Attorney General Wilson what lead to that
2 revelation. The case was filed in 2010. That
3 motion was filed nearly three years after the case
4 was filed. This wasn't sort of, oops, we've got the
5 wrong plaintiffs in here and we need to fix a
6 clerical error. We're entitled to learn from
7 Mr. Wilson about that. We're entitled to learn from
8 Mr. Wilson about his relationship with the
9 co-plaintiffs.

10 Again, Your Honor, we're alleging civil
11 conspiracy and continuing damages under several
12 theories. And, you know, I'd note that the attorney
13 general, in his memo, has made reference to an
14 expectation that we'll want to know about privileged
15 information and that he doesn't know anything
16 relevant.

17 Your Honor, if it's all appropriately
18 privileged, which I don't think it will be, or if he
19 doesn't know anything relevant, it's going to be a
20 short deposition. But we're entitled to go ask. If
21 they want to raise objections to particular
22 questions, then we'll go through that process. But
23 in this event, in this case, we're entitled to take
24 the deposition of the attorney general.

25 I don't think any of the Morgan cases and those
Page 40

1 that -- or the Morgan case or the cases that come
2 behind that -- I've read through those. None of
3 those encompass a situation that really stands on
4 all fours with this.

5 This is not a governmental agency undertaking
6 some, you know, civil action to bring somebody into
7 compliance; this was the attorney general suing
8 Adele Pope for tens of millions of dollars and her
9 counterclaims against the attorney general as
10 alleged in the answer and counterclaim.

11 I don't think the Morgan cases control, but
12 even if they do, I certainly think we've shown
13 necessity to have Mr. Wilson's deposition. We have
14 offered, of course, and will continue to work with
15 them on scheduling it. We understand that
16 Mr. Wilson is busy. He's the attorney general, he's
17 got things to do, and we'll be reasonable about how
18 we handle that.

19 But, you know, they seem to have asserted some
20 things that I think are entirely premature before
21 we've asked the first question in a deposition, such
22 as privilege and relevance, and then separately,
23 that we can't have his deposition at all. And I've
24 gone through, at some length, why I think we're
25 correct on that.

1 THE COURT: Thank you.

2 Anything in reply?

3 MR. SMITH: Yes, sir, briefly. I believe that
4 his argument is a proverbial distinction without a
5 difference. Morgan applies squarely here. The fact
6 that he's sued Adele Pope is not a distinction for
7 other --

8 THE COURT: Do you know of another case where
9 the AG has sued another individual?

10 MR. SMITH: Well, we cited several in here,
11 Your Honor, in which the AG had -- was the plaintiff
12 or the head of the agency bringing the action,
13 including criminal cases in the New Jersey case, the
14 U.S. vs. Northside. The attorney general was in a
15 suit initiated by him on behalf of the United
16 States. The New Jersey case in here, the attorney
17 general was a plaintiff -- or deposition of
18 plaintiff New Jersey Attorney General. So the AG
19 has been a plaintiff in those cases.

20 He refers to their counterclaim against the
21 attorney general. Your Honor, the counterclaim was
22 filed in 2010 before Alan Wilson took office in
23 2011. And so it, too, just as the main lawsuit, was
24 based upon events that occurred prior to his taking
25 office. And so, therefore, his testimony is not

48

1 necessary, relevant, and certainly doesn't meet the
2 Morgan standards in this case.

3 They, instead, want to ask him about litigation
4 decisions, about the course of litigation, all of

Page 42

5 which is irrelevant to the facts of the suit, all of
6 which should be privileged and, therefore, they
7 cannot show an essential need for it, they cannot
8 show that they cannot obtain this information
9 elsewhere, and they cannot show that it would not be
10 a burden on him.

11 Sonny Jones and Mary Frances' depositions took
12 five days. The deposition of Henry McMaster took
13 four hours. We do not believe that the attorney
14 general, under Morgan, should have to give up that
15 much time in a futile effort to ask questions that
16 are irrelevant, that are privileged, and that are
17 squarely covered by the Morgan rule.

18 THE COURT: Thank you.

19 MR. SMITH: Thank you, Your Honor. Let's take
20 about a quick five-minute break.

21 (Short break.)

22 THE COURT: All right. Motion for summary
23 judgment, is that next in line?

24 MR. GENDE: Yes, Your Honor. May it please the
25 Court. This is plaintiffs'/counterclaim defendants'

49

1 motion for summary judgment with respect to all of
2 Ms. Pope's counterclaims.

3 THE COURT: How is this case any different than
4 the case in federal court where the federal judge
5 granted summary judgment?

6 MR. GENDE: That's a very good question.
7 First, we're making this argument based on the issue

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
8 of occlusion, federal estoppel grounds. So I just

9 want to be clear from the outset that I'm not
10 prejudicing any opportunity to make another summary
11 judgment motion at the end of discovery on the
12 evidence should the Court not grant this summary
13 judgment motion.

14 We have filed a memorandum in support of our
15 motion for summary judgment. We have importantly
16 filed a revised memorandum and motion in support of
17 our motion for summary judgment, and that is what we
18 incorporate here by reference and upon which we'll
19 be relying for our arguments today. It's a
20 substantial argument, and I will do my very best to
21 make it clear and concise. And if I --

22 THE COURT: Well, I'm going to grant each of
23 you a little additional time on this one. It's a
24 very interesting situation, and, obviously, it's a
25 dispositive motion. So if you need a little extra

50

1 time, I'll be glad to give it to you.

2 MR. GENDE: Thank you, Your Honor.

3 Ms. Pope answered our complaint and filed five
4 counterclaims. She filed claim for abuse of
5 process, civil conspiracy, intentional infliction of
6 contract, violation of code 62-1-106, and attorneys'
7 fees.

8 THE COURT: 62-1-106.

9 MR. GENDE: 62-1-106, and attorneys' fees.
10 We're moving for summary judgment on all of those
11 counterclaims on the basis of collateral estoppel

Page 44

12 issue, issue of preclusion, presents the party from
13 relitigating an issue that was decided in a previous
14 action, regardless of whether the claims in the
15 first and subsequent lawsuit are the same.

16 Our memo states -- and I won't repeat it for
17 you, I have incorporated this -- the elements of
18 this issue of preclusion, that an issue was actually
19 litigated, that it was necessary to the support of
20 the prior judgment and, importantly, the courts in
21 South Carolina have done away with any mutuality
22 requirement as to the parties.

23 Now, we believe that summary judgment is
24 appropriate as to all of Pope's counterclaims
25 because of the South Carolina Supreme Court decision

51

1 in Wilson v. Dallas. I would like to quickly review
2 what we feel are the important and relevant holdings
3 in that, that precludes Ms. Pope's claim.

4 Before I do that, however, it's important to
5 note that in Wilson v. Dallas, the Supreme Court was
6 very careful to notice that Ms. Pope's -- on the
7 issue that's important to us, her removal, that she
8 was contesting in the appeal, that she had an
9 opportunity to be heard, that she was, you know,
10 provided the opportunity to answer on her behalf; as
11 the court put it, notice and hearing were provided,
12 and the court had cause to remove Ms. Pope as it was
13 in the best interest of the Estate.

14 That is a holding central to Wilson v. Dallas.

15 It is one of the questions presented in the Supreme
16 Court case; was her removal proper or not? And the
17 Supreme Court, after noticing that Ms. Pope had
18 notice, she had a hearing, she had everything
19 necessary to invoke issue of preclusion, they made
20 their decision upholding your determination that she
21 was properly removed for cause and it was in the
22 best interest of the Estate.

23 Now, it's also very important that the Supreme
24 Court added some reasons for their decision
25 supporting that. And in Wilson v. Dallas, quote:

52

1 we are also aware that the appellants -- and, of
2 course, they're referring to Mr. Buchanan and
3 Ms. Pope, and Mr. Buchanan has settled and is gone
4 in this matter. We're also aware that appellants
5 have sought \$5 millions in fees for their services
6 as fiduciaries for a relatively short interval of
7 time.

8 In addition, Defendant Pope, I would clarify,
9 sought and obtained permission from the circuit
10 court to sell iconic assets from Brown's estate in
11 order to raise funds, and a large portion of the
12 amount raised went first to pay appellant's own
13 attorneys' fees.

14 They continue, and I'm just leaving
15 Mr. Buchanan out: Defendant Pope also
16 unsuccessfully attempted to sell Brown's Grammy
17 award at auction. The process was halted only
18 because officials from the National Academy of
Page 46

19 Recording Arts and Sciences reclaimed the award
20 after informing appellants that it was longstanding
21 policy that the award could not be sold by
22 recipients or anyone acting on their behalf.
23 And then the Court concludes this section and
24 says: These actions and the extreme discord between
25 the parties convinces that the appellants' continued

53

1 service as fiduciaries is not in the best interest
2 of the Estate.
3 We believe that that section of Wilson v.
4 Dallas allows us to invoke inefficient preclusion.
5 The matter was actually litigated, it was finally
6 determined, and it was necessary to support the
7 Court's adjudication. So it was conclusively
8 established as a matter of law by the highest state
9 in South Carolina that Ms. Pope was validly removed
10 for cause, that she had both adequate notice and
11 hearing on the issue.
12 Now, importantly, the Supreme Court's findings
13 supporting their position coincide with many
14 allegations of the plaintiffs' complaint. The ones
15 that I read are incorporated at various parts in the
16 plaintiffs' complaint against Ms. Pope. So our suit
17 is based in part on items that the South Carolina
18 Supreme Court have raised as serious concerns and as
19 part of the grounds on which they have upheld your
20 decision of her for-cause removal. That's
21 important. I'd like to go through each of the

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
22 counterclaims that she states and explain why each
23 counterclaim has to fall as a matter of law because
24 of Wilson v. Dallas.
25 The first counterclaim she has is abuse of

54

1 process. And in our memo, we go through the law on
2 abuse of process. I just want to highlight a couple
3 of things: Abuse of process has the essential
4 purpose -- or, excuse me, the essential modus of an
5 ulterior purpose and a willful act in using of the
6 process not proper in the conduct of the proceeding.
7 It's the idea that the process was misapplied or
8 abused. It's the malicious misuse or perversion of
9 the process for an end not lawful or warranted.

10 And we cite the Food Lion, Inc. vs. United Food
11 and Commercial Workers Union. I'd like to
12 supplement the memorandum with a few more quotes
13 from that case. That's 351 S.C. 65. And here, the
14 Court of Appeals reviews in 2002 what is still the
15 current law on abuse of process. They point out on
16 page 255 of the southeast second version -- the
17 southeast second is 565 SE 2d beginning at 251.

18 They point out that Food Lion correctly
19 observes that an abuse of process action may lie if
20 a party prosecutes "an entire lawsuit for collateral
21 purposes." That phrase "entire lawsuit" is very
22 important. The Food Lion vs. United Food case also
23 states, beginning on page 255, running into 256, the
24 distinction between the two requirements is evident
25 in the language of the Restatement of Torts.

Page 48

1 And here the case -- the Court relies on the
2 Restatement of Torts: "One who uses a legal
3 process, whether criminal or civil, against
4 another --" and then in italics is the word
5 primarily -- "primarily to accomplish a purpose for
6 which it is not designed is subject to liability to
7 the other for harm caused by the abuse of process."
8 Then they cite the section from the Restatement.

9 Then they continue as noted in the Restatement
10 comment: "The significance of primarily is that
11 there is no action for abuse of process when the
12 process is used for the purpose for which it is
13 intended, but there is an incidental motive of spite
14 or ulterior purpose of benefit to the defendant."
15 Then they cite the Restatement sections.

16 Then they continue: "Accordingly, liability
17 exists, not primarily because a party merely seeks
18 to gain a collateral advantage by using some legal
19 process, but because the collateral objective was
20 its sole or paramount reason for acting."

21 And then finally, and we're still on page 256:
22 "There is no abuse of process, however, when the
23 process is used to accomplish the result for which
24 it was re-created, regardless of an incidental
25 or --" again in italics -- "concurrent motive of

8-29-16+Bauknight%2c+Wilson%2c+et+al+v+Adele+Pope.txt
spite or ulterior purpose."

And I, unfortunately, don't have an extra copy of this, but I'll be happy to hand my copy up to the Court.

THE COURT: Please do.

MR. GENDE: The pertinent sections that I read are both marked with a yellow sticky and highlighted.

Based on the elements of abuse of process and the law that we have listed in our memo and that I read from the case that I just handed up, the plaintiff has to have an ulterior motive for filing this suit, an ulterior purpose.

Wilson v. Dallas holds conclusively as a matter of law that there are numerous legitimate reasons behind the plaintiff bringing this lawsuit.

Ms. Pope was removed for cause, there was extreme discord, there was the question about the fees being paid, there was the Grammy and how it was attempted to be sold. There are numerous legitimate causes to bring this lawsuit. The lawsuit was not brought for an ulterior purpose.

In addition to that, we didn't commit any willful act in furtherance of some abuse of process. In her counterclaim, Ms. Pope alleges that the

57

lawsuit was brought for the purpose of coercing her to abandon her appeal of the settlement agreement. Now, that is the abuse that she's claiming.

Now, for purposes of -- we contest that, of
Page 50

5 course. But for purposes of summary judgment, let's
6 go ahead and take the facts or pleadings in the
7 light most favorable to the non-moving party. Let's
8 assume that that was a reason for bringing 4900, to
9 attempt to try to bring pressure on Ms. Pope to
10 abandon her appeal of the settlement agreement.

11 And all of the plaintiffs -- what holds all of
12 the plaintiffs together is the settlement agreement.
13 All signatories of either the original settlement
14 agreement or the addendum to the settlement
15 agreement, that's where the plaintiffs' group comes
16 from.

17 The mere commencement of civil action for
18 justifiable purpose can't be an abuse of process.
19 Ms. Pope wants to allege that, well, using that to
20 try to motivate me to abandon my appeal, that's the
21 abuse of process. There's an interesting case that
22 we discuss at some length in our revised memorandum,
23 Russell v. Risher. It's a case involving some local
24 people. It was a case where a State House member --

25 THE COURT: Ms. Sylvia Risher --

58

1 MR. GENDE: That's right.

2 THE COURT: -- who lived here in Bamberg.

3 MR. GENDE: That's correct. There were many
4 luminaries who were part of that case. And what's
5 very interesting about that case is it's as
6 on-all-fours as you can get with our situation.
7 Here you have a representative and the Clerk of the