

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

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SC Court of Appeals

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

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2018-002229

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

And

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

v.

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

Of whom Adele J. Pope is Appellant.

RECORD ON APPEAL (AMENDED)
Volume IV of IV
(Pages 1407 – 1752)

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**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM
OPPOSITION TO DEFENDANTS'
MOTION TO CHANGE VENUE**

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JEANETTE S. C.C. BRIDE

FILED

I. NATURE OF THE CASE

This is not a judicial proceeding regarding the Estate of James Brown, the administration

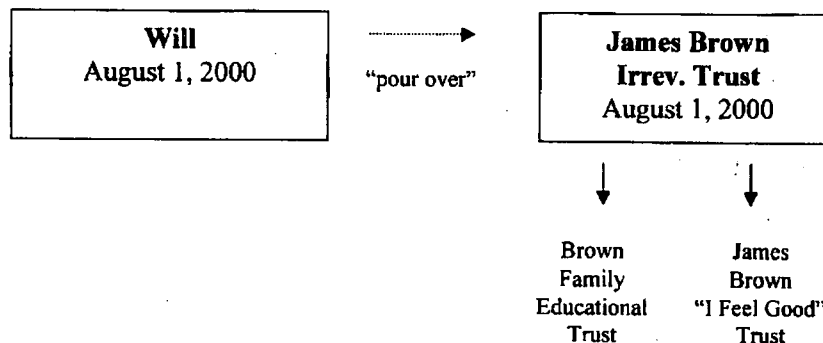
of which is in the Aiken County Probate Court. This action does not ask the Court to construe the will, enforce the will, determine the beneficiaries, or otherwise administer the Estate of James Brown in any way.

This is a judicial proceeding involving the Irrevocable Trust of James Brown dated August 1, 2000, a separate legal entity, whose sole, professional trustee administers the trust in Richland County, South Carolina.

This is a suit alleging causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRPC, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County. This memorandum sets forth the grounds for opposition to such motion.

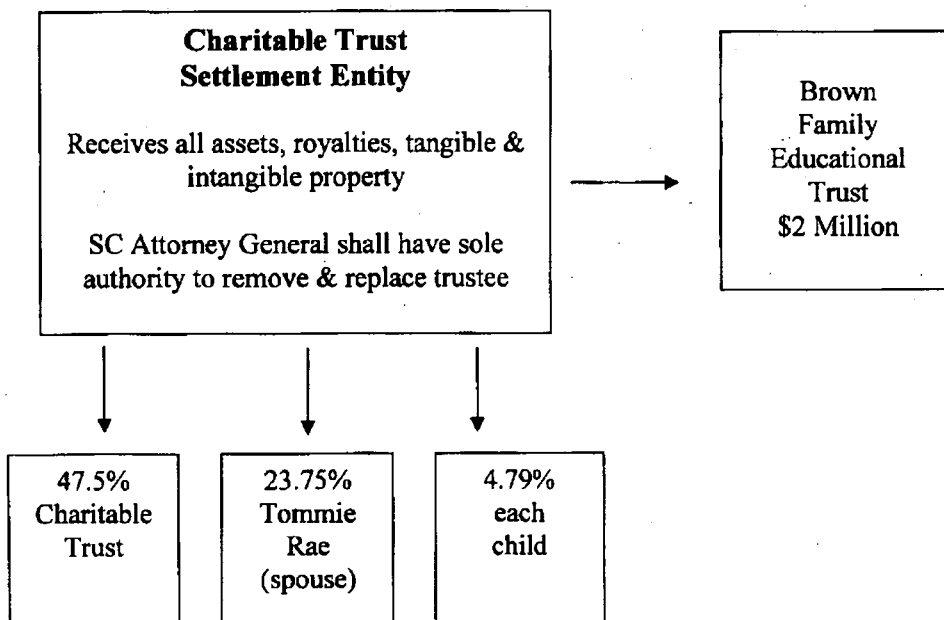
II. FACTS BEARING ON THE MOTION

The original estate plan of James Brown included a Last Will and Testament which “poured over” the bulk of his estate to a separate, irrevocable trust that was created and funded on August 1, 2000. The relationship between the estate and the Irrevocable Trust are shown as follows:



After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is attached hereto as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached hereto as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was entirely re-written to create a "Settlement Entity" which incorporates all assets, including all royalties, tangible and intangible property of James Brown. The order provides that: "A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable." The order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

The Charitable Trust is diagramed as follows:



Plaintiffs are all of the beneficiaries of such trusts established by the late entertainer James Brown, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. Such office is located in Richland County, South Carolina.

It is worth noting that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County. The Order of the Honorable Doyet A. Early, III, dated August 10, 2007, a copy of which is attached hereto as Exhibit C, specifically provides that: "This Court orders and directs the deliver to 1218 Taylor Street, Columbia, South Carolina, of all files and documents in the possession of all attorneys, accountants, and other financial advisors whose service has been terminated as set out herein, and who have rendered prior service to James Brown, the Estate of James Brown, any Brown Entity, and/or any Brown Trust." See also Exhibited D hereto, which includes a sixty (60) page list of documents maintained by the former trustees, Pope and Buchanan, at the trust's office at 1218 Taylor Street in Columbia. Defendants now seek to assert that the administration of the trust is not in Richland County, South Carolina.

III. ARGUMENT

"The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.' On the other hand, venue is the place or geographical location of trial." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which **the trust's principal place of administration** is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust's "principal place of administration":

Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is **the trustee's usual place of business where the records pertaining to the trust are kept**, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). Note that the statute designates the trustee's place of business where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is essential that the courts in the place where the trust records are kept and the trust assets are held should deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Bauknight. Mr. Bauknight's usual place of business is at his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if the court were to determine that venue might be proper in either Richland or Aiken Counties, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). Defendants will argue that the matters raised in the complaint relate to an action previously filed in Aiken County. That is erroneous. The complaint alleges causes of action which are entirely new and are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code provides that "[a] proceeding under this section does not result in

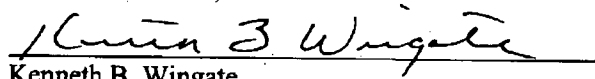
continuing supervisory proceedings." This trust litigation against the former trustees stands on its own feet, and is unrelated to any prior litigation involving James Brown's estate or trust.

IV. CONCLUSION

In this case, Defendants have moved to change venue from Richland County to Aiken County. Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken, the initial commencement of this action in Richland County requires that venue remain in Richland County.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
August 27, 2010

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

SECOND JUDICIAL CIRCUIT

HENRY DARGAN MCMASTER, in his)
capacity as Attorney General of the State)
of South Carolina; DARYL J. BROWN,)
on behalf of his minor children, LINDSEY)
DELORES BROWN and JANISE)
VANISHA BROWN; DEANNA J.)
BROWN THOMAS, on behalf of her minor)
children, JASON BROWN LEWIS;)
YAMMA N. BROWN, on behalf of her)
minor children, SYDNEY LUMAR,)
CARRINGTON LUMAR, and TONYA)
BROWN; VANISHA BROWN; and)
LARRY BROWN; TOMMIE RAE)
HYNIE BROWN)

Petitioners,)

- vs-)

RUSSELL L. BAUKNIGHT,)
as Special Administrator and Special)
Trustee for The Estate of James Brown)
and The James Brown 2000 Irrevocable)
Trust, TERRY BROWN, ROMUNZO)
BROWN; FORLANDO BROWN;)
CINNAMON N.M. PARIS; LARHONDA)
PETITT; and JEANNETTE MITCHELL)

Respondents.)

In Re:)

The Estate of James Brown and The James)
Brown 2000 Irrevocable Trust u/a/d)
August 1, 2000)

Case No.: 08-CP-02-1647

(Case No.: 07-CP-02-0122)
(Estate of James Brown)

(Case No.: 08-CP-02-00872)
(Wills/Trust/Heirs Matter)

**ORDER APPROVING
SETTLEMENT AGREEMENT**

FILED

5-26-09

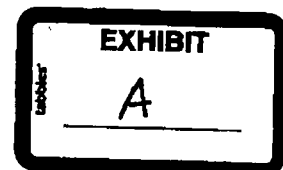
L. Hader
C.C.P. & G.S.

Anita Knope 945
Deputy Clerk

This matter comes before the Court on a Motion for Approval of Settlement Agreement.

The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

DAG
#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 Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

Defendants

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MEMORANDUM
OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS**

FILED
2010 AUG 27 4:24:24
JEANETTE W. BRIDGEMAN
C.C.P. & J.

In this lawsuit, Plaintiffs seek redress for the substantial injury done to the financial legacy of one of South Carolina's most famous and generous icons, the late James Brown. This

injury was the result of acts and omissions of the former Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Adele Pope and Robert J. Buchanan, Jr. The resulting damage—which could be in the tens of millions of dollars—threatens the fulfillment of the very legacy they were charged with protecting.

James Brown died on December 25, 2006. The initial Personal Representatives and Trustees were removed and replaced by Adele Pope and Robert Buchanan on November 20, 2007. On that date, they assumed all fiduciary responsibilities to the Estate and Trust. On May 26, 2009, Judge Doyett A. Early, III removed Pope and Buchanan as Personal Representatives and Trustees and installed Russell L. Bauknight in those positions.

Prior to May 26, 2009, a number of disputes arose among the Plaintiffs concerning the validity of the estate documents, the assertion of an elective share, and the identification of beneficiaries. By way of a negotiated agreement, the Plaintiffs have agreed to set aside their differences on these issues. This Settlement Agreement was approved in full by Judge Early on May 26, 2009 (a copy of which is attached at Exhibit A). Although specifically ordered to do so, Defendants have refused to sign the Settlement Agreement.

The most significant component of the Settlement Agreement is the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. Mr. Brown's family members and the Attorney General, through their compromise in the Settlement Agreement, seek to fulfill this objective. The acts and omissions of the Defendants have significantly compromised this dream.

In this lawsuit, the Plaintiffs seek to recover damages for multiple breaches of fiduciary duty and other acts of negligence on the part of the Defendants. Defendants seek to obfuscate

their own culpability by characterizing this action as a continuation of that which has gone before. Defendants seek to confuse matters by raising irrelevant issues that do not bear on the merits of this suit. Defendants seek to avoid responsibility by litigating issues that are not before this Court. For these reasons, and the reasons set forth below, Defendants' Motion to Dismiss should be denied.

In their Motion to Dismiss, Defendants set forth ten bases, which are addressed herein:

1. **Plaintiffs need not comply with S.C. Code Ann. § 15-36-100 because Plaintiffs have not alleged professional negligence.**

Defendants contend that Plaintiffs' suit should be dismissed because it is not accompanied by an expert witness affidavit required under S.C. Code Ann. § 15-36-100 (1976, as amended). This code section is inapplicable because Plaintiffs have not alleged professional malpractice by Defendants. Plaintiffs' claims concern Defendants' breach of duties attendant to them as personal representatives and trustees (hereinafter collectively "administrators"), not as licensed attorneys.

2. **This matter is unique and neither precisely nor substantially the same as any litigation with similar parties or similar claims.**

Defendants assert that Plaintiffs' suit should be dismissed because "the matters alleged in this action are substantially the same as matters alleged in other cases pending in the State Court or the South Carolina Court of Appeals." (Mot. Dismiss, p. 3) Defendants do not cite Rule 12(b)(8), SCRCP in their Motion to Dismiss, but we assume it to be the basis for their motion. "In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity

of parties, causes of action and relief. We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). Accordingly, we interpret the rule narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).” Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 105-106, 674 S.E.2d 524, 531-32 (Ct.App.2009) (internal citations omitted).

Defendants are unable to satisfy the requirements of Rule 12(b)(8). The case of Corbett v. City of Myrtle Beach, decided before Capital City Ins. Co. but unaffected by its ruling, focused on whether a “claim involves the same parties and is based upon the same facts and circumstances” as the case already pending. 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct.App.1999). In Corbett, a widow brought a consolidated wrongful death and survivor action. A year later, she filed a tort claim for negligent infliction of emotional distress as a bystander. The Court found the tort claim properly dismissed because the facts and circumstances giving rise to the wrongful death and survivor actions were the same as those giving rise to the tort action.

Such similarities are absent in the case *sub judice*. Defendants contend that four cases are substantially similar to this case:

McMaster v. Dallas, et al, 2009-CP-02-1647 (“Case 1647”);¹
McMaster v. Brown, et al, 2009-CP-02-1810 (“Case 1810”);
Thomas, et al v. Bradley, et al, 2007-CP-02-0122 (“Case 122”); and
Brown, et al v. Pope, et al, 2008-CP-02-0872 (“Case 872”).

These cases were resolved by way of the May 26, 2009 Order approving settlement, which is under appeal. A review of the May 26 Order indicates that these cases are inapposite to the case at bar. There are no doubt “other action[s] pending” in what can be termed the Brown Estate litigation. Indeed, there have been suits contesting the Will and Trust; the suitability of Cannon,

¹ Defendants cite “James Brown Case 2009-CP-02-1647” in their Motion to Dismiss, p. 3. We assume they mean 2008-CP-02-1647 as a 2009 case cannot be found in the Aiken County Judicial Index.

Dallas, and Bradley as fiduciaries; and the existence of elective share, omitted spousal share, and omitted child claims. However, not one of the lawsuits brought in relation to this Estate concerns the breaches of fiduciary duty by Adele Pope and Robert Buchanan in the management of the Estate.

Although other actions are pending that at times involve the same parties and appear to involve some of the same facts, the claims of these other actions are not based upon the same facts and circumstances as those in the case at bar.

3. The series of court orders cited by Defendants do not amount to a ratification of the acts that give rise to the causes of action in this matter.

Defendants submit that a series of Circuit Court and Appellate orders ratify the acts of Defendants in their service as administrators. We address each in turn.

a. Circuit Court Order dated January 8, 2008

By way of an Order dated January 8, 2008, Circuit Judge Early granted the payment of fees and costs for Defendants work as administrators. A trial court's provision of fees does not amount to a ratification of the acts for which the fees are paid. Payment acknowledges the completion of those acts, but not the reasonableness of such acts as contemplated in this lawsuit. At least one lawyer-executor discovered that an award of administrative fees does not shield the administrator from liability as an administrator or as a member of the Bar. In the Matter of W. Richard James, 267 S.C. 474, 229 S.E.2d 594 (1976).

b. Circuit Court Order dated April 8, 2008

By way of an Order dated April 8, 2008, Circuit Judge Early denied the motion to reconsider Defendants' appointment as administrators. In the Order, Judge Early observes that Defendants "have properly performed" and "that their service in light of the emerging facts related to the former PR/Trustees has been outstanding." Id., p. 41, 46. We submit that Judge

Early's statements are dicta. "Judicial dicta is 'not essential to the decision.' Dicta or, as it is also known, dictum 'is a statement on a matter not necessarily involved in the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision.'" Nash v. Tindall Corp., 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct.App.2007) (internal citations omitted). Judge Early's order should be read "in light of the judge's intent as discerned from the order as a whole." White's Mill Colony Inc. v. Williams, 363 S.C. 117, 124, 609 S.E.2d 811, 815, FN 1. (Ct.App.2005) (citing Weil v. Weil, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct.App.1989) (holding that "[t]he determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety")). The doctrine of the "law of the case" should not be applied to expressions that are not necessary to the decision of an order. Id.

The central decision of the April 8 Order was the denial of a motion to reconsider Defendants' appointment as administrators. Based on the evidence before him, Judge Early concluded that nothing had changed from the date of appointment to warrant their removal. As knowledgeable and experienced as Judge Early is with the substance of this case, he has never peered behind the curtain of the Defendants' administrative activities. A denial of a motion to reconsider and the expression of favorable opinions on estate management based on limited facts should not operate as a ratification of all of Defendants' acts.

c. Circuit Court Order dated February 20, 2008

By way of an Order dated February 20, 2008, Judge Early provided for the disposition of certain tangible personal property and real estate. Judge Early made this disposition in light of the extensive mishandling of the Estate by Defendants' predecessors, Albert Dallas, David

Cannon and Alfred Bradley. In the issuance of this order, like all others, Judge Early acted based on the facts before him. A sale of these items may have seemed a progressive step in the shadow of the deplorable administration of Dallas, Cannon and Bradley. However, the February 20 Order did not – and could not – contemplate the widespread mishandling that occurred by Defendants during the course of their administration.

d. Circuit Court Order dated April 1, 2008

On April 1, 2008, Judge Early issued an Order finding that the provisions of his earlier filed Order of February 20 had been complied with and the contract and sale contemplated therein should be executed. The reasoning regarding the February 20, 2008 Order (§3.c. *supra*) in this subsection is incorporated herein by reference.

e. Court of Appeals Order dated July 14, 2008

By way of an Order dated July 14, 2008, Judge Jasper Cureton of the Court of Appeals instructed that the Christie's Auction sale should proceed. This brief order concerned a procedural issue (i.e. whether a stay should be lifted) rather than a substantive evaluation of Defendants' acts as administrators.

f. Court of Appeals Order dated November 5, 2009

Defendants contend that an Order of the Court of Appeals dated November 5, 2009 and relieving them of fiduciary responsibility operated as an approval of their previous acts. First, we are unable to identify an order dated November 5, although there are several dated November 6, 2009. The Order we assume is referenced in Defendants' Motion to Dismiss is one dated November 6 signed by Judges Williams, Geathers and Cureton of the South Carolina Court of Appeals. Contrary to Defendants' assertion that the Order operates as a ratification of Defendants' fiduciary acts, the Order simply denotes a transfer of fiduciary duties at a particular

date in time. We can only assume that Defendants' place great stock in the Court of Appeals' language that "Bauknight should be substituted because the liability for mismanagement of the Estate or the Trust now falls on him, not [Pope and Buchanan]." Order, p. 6. Plaintiffs place great stock in this language as well. For if the Court of Appeals' Order demarcates an end to a period of liability for Defendants, it follows that a period existed for which Defendants can be held liable. Our Complaint alleges breaches of duty by Defendants during the period of their administration. It does not allege breach of duty by Defendants for mismanagement of the Estate after the Settlement was approved, because a fiduciary relationship did not then exist. The Order of November 6, 2009 is only concerned with the procedural substitution of parties necessary in the wake of Defendants' replacement with Bauknight.

4. The Attorney General has the statutory and constitutional authority to intervene on behalf of charitable trusts.

Defendants assert multiple grounds for dismissal in part 4 of their Motion to Dismiss, all stemming from their general contention that the Attorney General is exceeding his statutory and constitutional authority by being a plaintiff in a private tort suit. Many of these grounds attack the propriety of the Attorney General's appointment of private attorneys as special counsel, addressed in part five of our Memorandum, *infra*. In their litany of other arguments in this part of their Motion, Defendants assert that the Attorney General has no right to be a plaintiff in this private tort suit, that the Attorney General's presence in the suit violates the separation of powers, that the Attorney General has no beneficial interest in the estate plan at issue, and that there are no allegations that Plaintiff Bauknight is a proper agent of the Attorney General. Defendants also contend that campaign finance reform laws prohibit the Attorney General from participating in this lawsuit. Lastly, Defendants argue generally that the Attorney General has exceeded his statutory authority in the realm of regulating the administration of public charities.

The Attorney General is a party to this lawsuit because of the statutory scheme set up by the legislature for the enforcement and administration of charitable trusts. The Attorney General has done nothing but act according to statutorily granted authority and procedure since the beginning of this litigation. Moreover, Defendants, in their tireless effort to prevent the approval of the Settlement Agreement, pursued and lost this argument. Judge Early plainly ruled that the Attorney General has the very authority and standing that Defendants seek to deny. *See Order Approving Settlement* at pp. 20-23.

One of the primary statutes authorizing the Attorney General's presence in this case is S.C. Code Ann. § 1-7-130:

The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make to the General Assembly any report or return required by law.

S.C. Code Ann. § 1-7-130 (1976). Defendants contend that this statute limits the Attorney General's authority vis-à-vis the enforcement of charitable trusts. The plain language of the statute reveals the opposite; this provision is a grant of authority to the Attorney General's office to protect charitable institutions. Further, the Attorney General is given specific authority over the enforcement of charitable trusts such as the one at issue in this case: "The settlor of a charitable trust, the trustee, *and the Attorney General, among others* may maintain a proceeding to enforce [a charitable trust]." S.C. Code Ann. § 62-7-405(c) (1976) (emphasis added). The Official Comment to this section of the Code indicates that the Legislature gave the Attorney General standing to sue, even when other entities with standing have brought suit: "The grant of standing to the settlor [in § 62-7-405(c)] does not negate the right of the state attorney general or persons with special interests to enforce either the trust or their interests." Official Comment, S.C. Code Ann. § 62-7-405 (1976). Additionally, the statutes make clear that the Attorney

General, at least for the purposes of the Trust Code, is a "beneficiary" of a charitable trust. See S.C. Code Ann. § 62-7-103(2)(C) (1976) ("'Beneficiary' means a person that . . . [i]n the case of a charitable trust, has the authority to enforce the terms of the [t]rust"); see also S.C. Code Ann. § 62-7-1001(a) (1976) ("A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust"). Without question, the statutory law of South Carolina gives the Attorney General the right to intervene to enforce a charitable trust and to sue the trustee of a charitable trust for breach of trust, because the Attorney General, as a representative of the people, is a beneficiary of such a trust.

South Carolina case law confirms the propriety of the Attorney General acting on behalf of a charitable trust. In Furman University v. McLeod, the Supreme Court explained the rule:

[The Attorney General at the time of this case], as Attorney General of South Carolina, upon whom is imposed the responsibility of protecting interests of the public in matters relating to the administration and enforcement of charitable trusts, has been named Defendant . . . Under [the predecessor to S.C. Code Ann. § 1-7-130], the Attorney General of South Carolina is charged with the duty of '[e]nforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof.' It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having 'immediate or peculiar interests.'

Furman Univ. v. McLeod, 238 S.C. 475, 482-83, 120 S.E.2d 865, 868 (1961). Not only does this case reinforce the statute granting the Attorney General the authority to enforce a charitable trust, it also speaks of the Attorney General's duty from the "general law" to administer the trust. The Supreme Court reinforced these basic rules of law in the more recent case of Epworth Children's Home v. Beasley, wherein the Court recognized the authority of the Attorney General to oppose an orphanage-trustee's petition to dissolve a charitable trust, even when the trustee and the only other presently existent beneficiary consented to the dissolution. 365 S.C. 157, 163-64, 616

S.E.2d 710, 713-14 (2005) (citing S.C. Code Ann. § 1-7-130 (2005); S.C. Code Ann. § 62-7-503 (1987) (revised and incorporated into current S.C. Code Ann. § 62-7-405 (1976)); Furman Univ., 238 S.C. at 482, 120 S.E.2d at 868) (“The South Carolina Attorney General’s Office (the State), as authorized by statute, responded by opposing the [t]rustee’s petition and asking the probate court to protect the interests of the charitable trust”). South Carolina case law is clear: the Attorney General’s office has the authority to represent the interests of the people of South Carolina in matters pertaining to charitable trusts, and this authority goes so far as to allow the Attorney General to challenge the decisions of the trustee made with the consent of the beneficiaries.

The undisputed facts in this case indicate that the Attorney General’s office is doing nothing more than its statutory duty to act on behalf of charitable trusts. Mr. Brown’s will established two testamentary trusts, the Brown Family Educational Trust and the “I Feel Good” Trust. (See Order Approving Settlement, p. 3, May 26, 2009) The latter trust was created to provide scholarships to students in South Carolina and Georgia. (Order Approving Settlement, p.3.) The Attorney General intervened in the litigation in September of 2007 to protect the interests of any charitable trusts created by Mr. Brown’s will, and the Attorney General has been involved in the case since then pursuant to Judge Early’s granting the Motion to Intervene. (Order Approving Settlement, p. 5.) The litigation over the will and trusts of Mr. Brown settled in 2008, with Judge Early approving the settlement in May of 2009. (Order Approving Settlement, pp. 9-11.) Plaintiff Bauknight was appointed Special Administrator and Special Trustee for the purposes of reviewing the settlement. (Order Approving Settlement, p. 11.) As part of the settlement, another charitable trust was set up as a successor to the “I Feel Good” Trust. See 2008 Settlement Agreement, ¶ 5(b). As a result of the continuing existence of a

charitable trust, the Attorney General has remained in the litigation, actively seeking to recover funds for the trust so that its charitable purpose may be continued and expanded. Well-established South Carolina law authorizes the Attorney General to participate in this lawsuit, Defendants' myriad objections notwithstanding.

Finally, the Attorney General asserts that South Carolina's campaign finance reform laws, S.C. Code Ann. §§ 8-13-100 et seq. (2009 Supp.), and specifically § 8-13-1342, are wholly inapplicable to this complex probate litigation. The Attorney General is acting in his *parens patriae* role as the chief legal officer for the State, not as an individual candidate for elected office.

5. **It is well-established law that the Attorney General may appoint private attorneys to act as special counsel on behalf of the State.**

Defendants contend that the Attorney General is without authority to appoint private attorneys as special counsel to represent the State of South Carolina. This issue has been resolved in favor of the Attorney General by a Circuit Court applying Supreme Court precedent. In South Carolina v. Eli Lilly and Co., case no. 07-CP-42-1855, the defendant pharmaceutical company moved to disqualify the special counsel appointed by the Attorney General to prosecute the case on behalf of the State, arguing that the employment of special counsel violated the separation of powers doctrine and the due process clauses of the United States and South Carolina Constitutions. (See Order of Judge Couch Denying Motion to Disqualify Special Counsel, p. 3, Sept. 22, 2009 and attached hereto at Exhibit B (hereinafter "Order of Judge Couch").) In Eli Lilly, Judge Couch ruled that it is within the boundaries of the Attorney General's authority to hire private counsel, even counsel retained on a contingent fee basis:

[T]here is no question that the Attorney General has authority to hire legal counsel to protect the State's interests . . . the South Carolina Supreme Court has

recognized that the Attorney General, as the State's chief legal officer, possesses the authority to appoint and approve private counsel to represent the State. Courts have almost universally recognized that Attorneys General possess broad authority to appoint private attorneys as special counsel on a contingent fee basis to assist in the representation of the public interest.

(Order of Judge Couch, p. 7-8 (citing Cooley v. S.C. Tax. Comm'n, 204 S.C. 10, 28 S.E.2d 445 (1943))). In Cooley, the Supreme Court recognized the Attorney General's authority to employ special counsel in investigating the appropriate taxable value of a decedent's estate. See Cooley, 28 S.E.2d at 445, 447-48 ("the Attorney General, pursuant to the powers vested in him as the Supreme Law Officer of [South Carolina], authorized and directed the employment of special counsel in this case to represent and protect the interests of the State"). Simply stated, Defendants' contention that the Attorney General may not employ private counsel is without merit under the well-established law of South Carolina.

6. **Plaintiffs have joined all necessary parties to the suit. Forlando and Romunzo Brown are not indispensable parties as contemplated under the Rules of Civil Procedure. Further, the appointment of Guardians ad Litem are unnecessary.**

Defendants contend that the failure to join Forlando and Romunzo Brown and the failure to secure the appointment of *guardians ad litem* (GALs) for the minor parties is fatal to this matter. We address each accusation in turn.

a. **Failure to join Forlando and Romunzo Brown as parties.**

Forlando and Romunzo Brown are not indispensable parties as contemplated under Rule 19, SCRCF. Relief can still be accorded the parties in their absence and a disposition in the case will neither impair Forlando and Romunzo to protect their interest nor leave the present parties subject to a substantial risk of incurring double or inconsistent obligations. Further, even if Forlando and Romunzo were indispensable parties, the proper relief is for the Court to *add* them under Rule 19(a), rather than *dismiss* the suit. Dismissal is triggered under Rule 19(b) when the

Court determines that the indispensable party *cannot*, for whatever reason, be made a party to the suit. If Forlando and Romunzo are indispensable, a motion must be filed by Defendants to make them parties and then the Court must add them, if appropriate, under Rule 19(a). Rule 19(b) is not reached until Rule 19(a) is resolved.

b. Failure to secure the appointment of GALs.

The appointments of GALs are unnecessary for the minors involved in this matter. The Probate Code provides that a settlement may be executed by "parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise" and that minors "represented only by their parents may be bound only if their parents join with other competent persons in execution of the compromise." S.C. Code Ann. § 62-3-1102(1), (3) (1976, as amended). Parents are sufficient representatives of the minors in this matter.

7. This action is unaffected by a statute of limitations and the doctrine of estoppel.

The Probate Code provides that a proceeding may not be commenced "against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust." S.C. Code Ann. § 62-7-1005(a) (1976, as amended). If such a report was not sent, a three year limitations period runs from the earliest of "(1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust." § 1005(c). The earliest of these three dates is May 26, 2009, the date on which Defendants were removed as trustees.

The earliest "a report that adequately disclosed the existence of a potential claim for breach of trust" would have come to the attention of a beneficiary or his representative would have been May 26, 2009 when Bauknight assumed control of the Estate. As the Complaint in

this case was filed May 10, 2010, Plaintiffs are within a one-year statute of limitations under Section 1005(a). The more likely circumstance is that a Section 1005(a) report was never given and the three-year period of limitations applies. Either way, this action is not barred by a statute of limitations.

Equitable Estoppel applies when a party "by his actions, conduct, words or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." State Acc. Fund v. South Carolina Second Injury Fund, 388 S.C. 67, 693 S.E.2d 441, 446 (Ct.App.2010) (citing Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct.App.2006)). Specifically, Defendants contend that Plaintiffs had knowledge "of all actions of Buchanan/Pope, and as demonstrated by the record, either approved the actions or failed to notify the Probate Court and/or the Circuit Court . . ." Mot. Dismiss, pp. 8-9. As discussed earlier in this section of our memorandum, we submit that the first notice Plaintiffs received of the maladministration by Defendants was when Bauknight was named administrator and had the opportunity to closely examine the Estate.

8. **Plaintiffs have standing because this suit is not against the Estate, but rather against its administrators.**

Defendants contend that the *in terrorem* clause bars certain Plaintiffs from bringing this suit. The *in terrorem* clause is inapplicable to this matter as this suit is brought against Defendants for maladministration and does not involve attempts by beneficiaries "to contest, claim an interest in or otherwise dispute the disposition of Grantor's estate . . ." Mot. Dismiss, p. 9 (citing Article XXI of Irrevocable Trust).

9. **Because Defendants' acts affected the health of the Legacy Trust, they are liable even though they never served as trustees of the Legacy Trust.**

Defendants are correct in stating that they never served as trustees of the Legacy Trust

(i.e. the settlement trust). However, Defendants acts as administrators of the charitable and family trusts directly affected the Legacy Trust as it became the successor-trust to the charitable and family trusts under Defendants' control.

10. **Section 33-56-180 is wholly inapplicable to this case.**

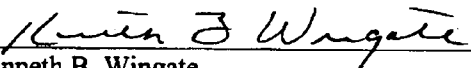
Section 33-56-180 (1976 as amended) applies only "in an action brought against the charitable organization." As the "I Feel Good Trust" is not being sued in this matter, § 180 does not apply. Section 180 is further inapplicable because Defendants were directors, not employees (agents, servants, officers) of the trust. Even if § 180 did apply, Plaintiffs could recover individually against Defendants because their conduct was "reckless, wilful [*sic*], or grossly negligent."

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that Defendants' Motion to Dismiss be DENIED.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


Kenneth B. Wingate
Everett A. Kendall, II
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Columbia, South Carolina 29211
(803) 256-2233
ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
August 27, 2010

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

Defendants

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**AFFIDAVIT OF
RUSSELL L. BAUKNIGHT**

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

2010 AUG 27 PM 4:24

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PERSONALLY APPEARED BEFORE ME, the undersigned, Russell L. Bauknight, who after being duly sworn, deposes and says:

1. I am Russell L. Bauknight, Trustee of the James Brown 2000 Irrevocable Trust and Personal Representative of the Estate of James Brown.

2. On or about May 26, 2009, I was appointed to the positions of Trustee and Personal Representative in this matter by way of an Order of the Honorable Doyet A. Early, III.

3. At the time of my appointment, my usual place of business was located at 1517 Gervais Street, Columbia, SC.

4. Immediately following my appointment, I began the process of moving a large volume of documents, books, records and financial information from Adele Pope's office at 1218 Taylor Street, Columbia, SC to my office.

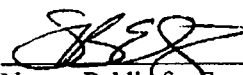
5. Since my appointment as Trustee, all of the books, records and documents have remained in Richland County. All business activity of the administration of the Trust has been conducted at or through my office.

FURTHER AFFIANT SAYETH NOT.



Russell L. Bauknight

SWORN TO and subscribed before me
this 26 day of AUGUST, 2010



(L.S.)
Notary Public for South Carolina
My commission Expires: 7/21/2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-

4900

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

SECOND SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
DISMISSAL OF COMPLAINT

2010 AUG 27 PM 1:22
JEANETTE W. HARRIS
C.C.R. & G.S.

Defendants supplement their Memoranda Supporting dismissal of the Complaint

herein, by new information received by counsel in this case on August 25, 2010.

Defendants ask the Court to take judicial notice of Exhibit A, dated August 23, 2010, for presentation to the Supreme Court of South Carolina on behalf of Plaintiff Terry Brown and others, but not on behalf Plaintiffs Russell L. Bauknight. The far-reaching and startling consequences have not been fully analyzed.

The following, however, is known from the record of Case 122 , Case 1647, and the brief in the Albert Dallas appeal from Case 122, which Bauknight Plaintiff Bauknight has adopted:

1. In Exhibit A Terry Brown and others assert for the first time in the 3 years and 9 months since the death of music icon James Brown, that Russell L. Bauknight has ordered [and already a reviewed preliminary draft of] an appraisal which will show that the assets of James Brown at his death on December 25, 2006 were worth only \$12 million.
2. To the knowledge of Defendants, neither Bauknight nor other Plaintiffs have ever notified any Court – including the Probate Court for Aiken County – of this startling revelation, which is wholly inconsistent with the approximately \$85 Million value of the James Brown assets known and discussed under oath and in filings for almost three years.
3. The figure of \$85.6 Million is stated twice in Buchanan and Pope's Dallas brief, now before the Supreme Court, which brief was adopted by Plaintiff Bauknight in 2010, as the gross value of the Brown assets (after considering the TIAA debt). [See Exhibit B, Excerpts from Amended Brief, Dallas Appeal]
4. The \$12 million which Terry Brown and some Plaintiffs now assert is the date-of-death value of the James Brown assets is less than 1/7 of that reported on the Estate Tax Return by Defendants under penalties of perjury, and repeatedly discussed in Court. [See for example Exhibit B, Partial Transcript of testimony of Adele Pope]
5. The \$12 million value is less than 1/7 the \$85,663,563 date-of-death value of Brown's assets reported by prior fiduciaries Dallas and Bradley (now deceased) to the Court, under oath on the inventory and appraisal filed in the Aiken County Court of November 15, 2007. [See Exhibit C]
6. The \$12 Million is less than 1/7 of the value which purported branding expert

Dr. Terry Cox of the Graham Windsor Group, who organized (and made Terry and his son Forlando part of) a group to purchase the James Brown assets repeatedly placed on those assets and/or supported in testimony under oath [November 15, 2007, Case 122] and offers, made with Terry Brown. [See Exhibit D]

7. The \$12 million date-of-death value of the James Brown assets is wholly inconsistent with, and less than 1/7 the date-of-death value discussed repeatedly in open court and filings by Terry's joint venturer David Cannon; and the some of the more than 20 lawyers who have represented Dallas and Cannon.

8. The \$12 million date-of-death value is less than 1/10 of the \$150 million Forlando Brown, joint venturer with Terry¹ stated in a federal court deposition on September 28, 2008 - three days after the Estate Tax Return was filed.

9. Terry Brown, and Bauknight as his Trustee, now claim Terry has a right of first refusal to purchase the James Browns assets and retain any interest in the purchaser which the purchasers allow him to have. This is in addition to the 39% claimed by his son Forlando.

10. Terry – who, with family members, will be a substantial owner on both sides of the sale and purchase of the James Brown assets — now asserts that Brown's assets had a date-of-death value which is 1/10 of known value. This is not only extraordinary, but one of the most troublesome of the many "twists and turns" the Court's order dated April 8, 2008 predicted.

11. The suggestion that Pope and Buchanan, nominated by all Plaintiffs except the Attorney General on November 20, 2007 to serve as PR/Trustee would have – 10 months later – valued the James Brown assets at 7 times their real value for some nefarious reason is, at best, outrageous.

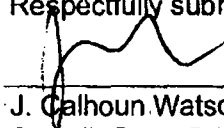
The far-reaching implications of this remarkable assertion that James Brown's music empire was not the \$100 million (about \$85 when reduced by the TIAA debt) everyone has believed for years, but a mere \$12 million, information never before revealed, cannot be analyzed in a day. Nor can it be easily analyzed by a Court which

¹ Represented by Terry's same counsel in Aiken, and represented by Dallas/Cannon counsel Powell Goldstein (now Bryan Cave) in Federal court, and a 39% owner of TJBL, LLC, the then- prospective purchaser of the James Brown assets.

does not have an understanding of the perjury and fabrication that has gone on by
Terry Brown's joint venturers in Aiken County.

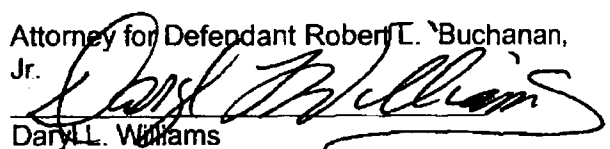
This new information only highlights why dismissal remains the appropriate
remedy, with leave of counterclaimants to seek transfer from the Aiken County Court of
the counterclaims to be filed herein..

Respectfully submitted,



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Attorney for Defendant Robert L. Buchanan,
Jr.



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Facsimile: (803) 765-0619

Attorney for Defendant Adele J. Pope

August 27, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
)

) FIFTH JUDICIAL CIRCUIT
)

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

AND)

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

Plaintiffs,

vs.

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

Defendants.

Civil Action No.: 2010-CP-40-4900

AFFIDAVIT OF DEFAULT

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

2010 NOV 10 PM 4:31

RICHLAND COUNTY
FILED

PERSONALLY appeared before me, J. Calhoun Watson and Daryl L. Williams, who
being duly sworn depose and say as follows:

1. We are the attorneys for Defendant Robert L. Buchanan, Jr. ("Defendant Buchanan") and Defendant Adele J. Pope ("Defendant Pope") in the above-captioned action.

2. Plaintiffs filed a Summons and Complaint in this matter on May 19, 2010 which is attached hereto as **Exhibit A**.

3. Defendants Buchanan and Pope were served with the Summons and Complaint by personal service on May 24, 2010.

4. Defendant Buchanan and Defendant Pope served their Answer and Counterclaim on Plaintiffs, by and through their counsel, via hand-delivery as evidenced by the Certificate of Service, on September 30, 2010. Answer and Counterclaim of Robert L. Buchanan, Jr. and Adele J. Pope with the Certificate of Service is attached hereto as **Exhibit B**.

5. Plaintiffs' Answer to Counterclaim was due to be served on or before November 1, 2010.

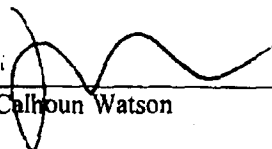
6. Plaintiffs have failed to file an answer or otherwise respond to the Counterclaims of Defendant Buchanan and Defendant Pope.

7. Plaintiffs have not sought, nor have Defendant Buchanan and/or Defendant Pope agreed to any extension of time for Plaintiff to file an answer or responsive pleading to the Counterclaim of Defendant Buchanan and Defendant Pope.

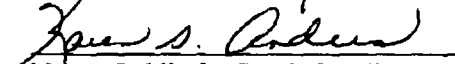
8. Plaintiffs are not a corporate entities, infants, minors, incompetent person, or persons in active military service.

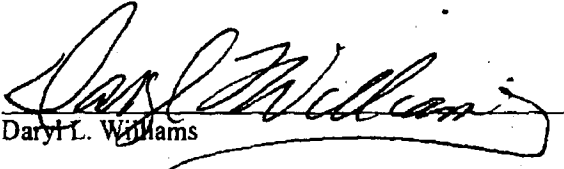
9. The time for answering the Counterclaim has now expired; no responsive pleading has been received from Plaintiffs; therefore, Plaintiffs are in default.

10. Both affiants are members of the South Carolina Bar.

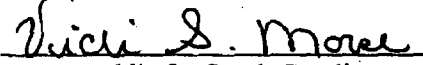

J. Calhoun Watson

SWORN to and subscribed before
me this 10th day of September, 2010.


Notary Public for South Carolina
My Commission expires: 02/24/2017


Daryl L. Williams

SWORN to and subscribed before
me this 10th day of November, 2010.


Notary Public for South Carolina
My Commission expires: 9/1/2019

Rett Kendall

From: Rett Kendall
Sent: Friday, November 12, 2010 4:15 PM
To: 'cwatson@sowellgray.com'; 'dwilliams@jeterandwilliams.com'
Cc: Ken B. Wingate
Subject: 4077-7389: Bauknight, et al. v. Buchanan and Pope

Attachments: Order Denying Defendants' Motion to Dismiss.



Order Denying
Motion to Dismiss...

Cal and Daryl,

In the event your street mail is as slow as ours, I am providing you notice of the entry of Judge Manning's Order denying the Defendants' Motion to Dismiss.

If this is your first notice, I look forward to receiving your Answer on or before November 29, 2010.

Rett

Everett A. Kendall, II
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
1515 Lady Street (29201)
Columbia, SC 29211
(803) 256-2233
eak@swblaw.com



CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same, to the following address(es):

Pleadings:

**ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE
(Jury Trial Demanded)**

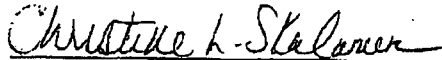
JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 SEP 30 PM 1:07

RICHLAND COUNTY
FILED

Counsel Served:

(VIA HAND DELIVERY)
Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Attorneys for Plaintiffs



Christine L. Skalamera

September 30, 2010

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 Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tammie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

IN THE PROBATE COURT

Civil Action No. 2010 - GC - 44006873

SUMMONS

FILED
10 MAR 19 PM 1:10
AMERICAN
PROBATE COURT
RICHLAND COUNTY, S.C.

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

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

AND

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

Plaintiffs,

vs.

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

Defendants.

Civil Action No.: 2010-CP-40-4900

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

2010 SEP 30 PM 1:07

RICHLAND COUNTY
FILED

ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE

(Jury Trial Demanded)

Defendants Robert L. Buchanan, Jr. and Adele J. Pope, subject to their Motion to Dismiss and any Motion filed or to be filed for a change of venue, answer the Complaint of Plaintiffs and Counterclaim against Plaintiffs, as follows:

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same, to the following address(es):

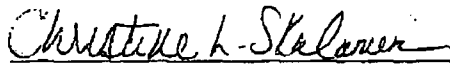
Pleadings:

**ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE
(Jury Trial Demanded)**

2010 SEP 30 PM 1:07
FILED
SOUTH CAROLINA COUNTY
JEANETTE W. McBRIDE
C.C.P. & G.S.

Counsel Served:

(VIA HAND DELIVERY)
Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Attorneys for Plaintiffs


Christine L. Skalamera

September 30, 2010

EXHIBIT C

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' RESPONSES TO FIRST
REQUESTS TO ADMIT
OF DEFENDANT ADELE J. POPE**

**TO: DARYL L. WILLIAMS, ESQUIRE, ATTORNEY FOR DEFENDANT ADELE J.
POPE AND TO DEFENDANT ABOVE NAMED:**

36. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

37. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

38. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

39. Admitted.

40. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

41. Admitted.

42. Denied. The referenced document is incomplete.

43. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

44. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

45. Denied. The referenced document is incomplete.

46. Admitted.

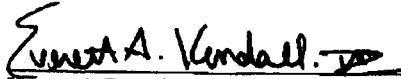
47. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny.

48. Admitted.

49. After reasonable inquiry, the information known or readily obtainable concerning this document is insufficient to allow Plaintiffs to admit or deny. Also, the referenced document is incomplete.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Everett A. Kendall, II
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
September 23, 2010

EXHIBIT A

Jeter & Williams, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Edwin Russell Jeter
Daryl L. Williams

1204 Main Street, Suite 200 (29201)
Post Office Box 7425
Columbia, South Carolina 29202

Tel. 803/765-0600
Fax 803/765-0619

November 8, 2010

Everett A. Kendall, II, Esquire
Sweeney, Wingate & Barrow
PO Box 12129
Columbia, SC 29211

Re: In Re: Estate of James Joseph Brown
ALPS Corporation, Claimant
Civil Action No. 2009-CP-2-02407

Dear Rett:

Please consider this correspondence the required consultation under Rule 11 regarding your clients' responses to Defendant Pope's First Requests to Admit.

Of the 90 documents your clients were asked to authenticate, for approximately 44 of those documents you responded that information was not readily obtainable to enable you to admit or deny their authenticity.

We do not believe this was an appropriate answer in that many of the documents for which your clients asserted such a position were generated by one or more of them or their attorneys/agents or are contained in the record of Case 2007-CP-02-0122 (Case 122), or Case 2008-CP-02-0872 (Case 872).

As you know, Case 122, was commenced by six of your clients, Daryl, Terry, Larry and Venisha Brown, Deanna Thomas and Yamma Brown, and is still pending in the Circuit Court for Aiken County (as to attorneys' fees and costs the Court has awarded against Dallas, Bradley and Cannon); the S. C. Court of Appeals (2d Cannon Appeal); and the Supreme Court of South Carolina (Dallas Appeal). We see no basis for your clients, all of whom are parties to Case 122, to assert the lack of information to admit or deny the authenticity of these 44 documents.

I am asking that your clients review their responses to the 44 document requests which they refused to admit or deny and serve an amended, correct response no later than the end of November, 2010.

This document was served on all of your client Plaintiffs in Case 1647, which is currently pending in the Supreme Court of South Carolina.

REQUEST NO. 49: - email from Alvin Calvin the Machine Group to Flip, monkiwringch87@yahoo.com dated Thu., 12 Jul 2007.

Availability:

As shown on the document, this document was faxed to Adele Pope by your clients Deanna, Yamma, Larry, Venisha and Daryl. It was faxed by their agent David Yount, Office of Louis Levenson, on November 13, 2007. As stated in the affidavit of Beth Bauknight, this document is in the possession of your client Plaintiff Russell Bauknight.

REQUEST NO. 50: - email from Alvin Calvin to Forlando Brown, monkiwringch87@yahoo.com, dated Sat., 14 Jul, 2007 10:13:43 and reply from Forlando Brown at 10:23:51 the same day.

Availability:

As shown on the document, this document was faxed to Adele Pope by your clients Deanna, Yamma, Larry, Venisha and Daryl. It was faxed by their agent David Yount, Office of Louis Levenson, on November 13, 2007. As stated in the affidavit of Beth Bauknight, this document is in the possession of your client Plaintiff Russell Bauknight.

REQUEST NO. 51: - email from Forlando Brown, monkiwringch87@yahoo.com dated Sat., 14 Jul, 2007 to AlvinCalvin

Availability:

As shown on the document, this document was faxed to Adele Pope by your clients Deanna, Yamma, Larry, Venisha and Daryl. It was faxed by their agent David Yount, Office of Louis Levenson, on November 13, 2007. As stated in the affidavit of Beth Bauknight, this document is in the possession of your client Plaintiff Russell Bauknight.

REQUEST NO. 52: - Letter of Adele J. Pope to Phil Farr dated June 15, 2007.

Availability:

This letter has been available to all Plaintiffs since August 10, 2007, and is part of the record of Case 122.

REQUEST NO. 53: Letter of John Stewart, Internal Revenue Service to Robert L. Buchanan, Jr. and others dated March 24, 2009.

6. Petition to Set Aside Trust dated December 19, 2007

Availability:

This complaint has been available to all Plaintiffs since January 2008, and was discussed on the record of Case 122 by Sr. Assistant A. G. Jones, agent for your client Henry D. McMaster in early 2008, in which Mr. Jones compared the federal court filing of Forlando Brown to similar filings of the S. C. Attorney General in Circuit Court.

REQUEST NO. 94: - Motion of Robert L. Buchanan, Jr. and Adele J. Pope for Judgment for Costs, Including Attorneys' Fees, Against David G. Cannon, Case 2007-CP-02-0122, dated May 3, 2010, with Schedule A, Affidavits Supporting Motion for Judgment of Costs against David G. Cannon.

Availability:

This motion was served on your client Plaintiffs in May 2010.

REQUEST NO. 102: - Letter of Audra Byrd to Adele Jeffords Pope and Robert L. Buchanan, Jr. dated March 16, 2010

Availability:

The authenticity of this letter has can be readily verified by Plaintiffs.

REQUEST NO. 104: - consent Order of Dismissal of the Honorable Peter R. Nuessle, Family Court Judge, In the Family Court, Second Judicial circuit, dated August 14, 2004 and filed August 16, 2004, Case No. 04-DR-02-157.

Availability:

This order was issued by the Court in a Case in which your client Plaintiff Tommie Rae Brown was a party, and attaches an agreement to which she was a party.

REQUEST NO. 105: - supplemental Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in support of Commissions and Payment of Certain Priority Expenses of Administration, dated July 13, 2009, Case No. 08-CP-02-1647, 07-CP-02-0122, No. 08-CP-02-0872.

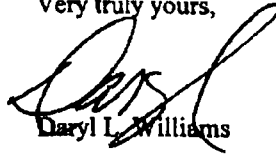
Availability:

This document was served on all parties.

Please send your complete and correct response to these more than forty items by November 15, 2010 so that we can avoid court intervention as to this matter.

With best personal regards.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Daryl L. Williams', written over a printed name.

Daryl L. Williams

cc: J. Calhoun Watson, Esquire
Adele J. Pope, Esquire
Robert L. Buchanan, Jr., Esquire

EXHIBIT B

Witness List

11/12/2010

Full Name	Addresses
Jeff Allen	145 West 57 Street 15th Floor New York NY 10019
Russell L. Bauknight	1517 Gervais St. P.O. Box 1330 Columbia, SC 29202
Jim Blackwell	3455 Peachtree Road NE, Suite 1700 Atlanta, GA 30326
Charles Bobbitt	3280 Golf-Linx Drive Snellville, GA 30039
Daryl J. Brown	1120 Court Drive, Apt. R Duluth, GA 30096
Forlando J. Brown	156 Liberty Hill Road Eastanollee, GA 30538
Larry Brown	110 Dresden Drive Martinez, GA 30907
Terry Brown	156 Liberty Hill Road Eastanollee, GA 30538
Tonya Brown	2417 Castlewood Dr. Augusta, GA 30904
Vanisha Brown	P.O. Box 652 Clearwater, SC 29822
Yamma N. Brown	305 Legran Bend Atlanta, GA 30328
Deanna J. Brown-Thomas	P.O. Box 652 Clearwater, SC 29822
Robert L. Buchanan	212 Newberry St., NW P.O. Box 463 Aiken, SC 29802-0463
David G. Cannon	9459 Marlboro Ave Barnwell, SC 29812-1962
Frank Copsidas	601 West 26th Street Suite 1080 New York, NY 10001
Albert H. Dallas	304 Black Street Thomson, GA 30824-2919
William F. Hammond	P.O. Box 1564 Augusta, GA 30903-1564
Tommie Ray Hynie-Brown	Los Angeles, CA
Joel A. Katz	3290 Northside Parkway, Ste 400 Atlanta, GA 30326
Adele J. Pope	1228 Walnut ST Newberry, SC 29180
Al Sharpton	106 West 145th Street New York, NY 10039
William H. Tucker	111 Park Ave, SW Aiken, SC 29801
Alvin Waters	Atlanta, GA
Calvin Waters	Atlanta, GA
Andre White	5122 Hunters Luck Stone Mountain, GA 30088

Witness List

11/12/2010

Full Name	Address
Andre White	75 Piedmont Ave NE Atlanta, GA 30303

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

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

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,
Plaintiffs

v.

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

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No. 10-CP-40-4900

**AFFIDAVIT OF
KENNETH B. WINGATE**

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

2010 NOV 16 PM 4:45

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, the undersigned, Kenneth B. Wingate, who after being duly sworn, deposes and says:

1. I am Kenneth B. Wingate. I am an attorney licensed to practice law in the State of South Carolina. The statements contained herein are true and correct based upon my personal knowledge.
2. I am counsel of record for the Plaintiffs in this litigation.
3. I have received and reviewed the Affidavit of Default filed by Defendants on November 10, 2010. This Affidavit was received at my office on November 15, 2010, through the United States Postal Service.
4. At some previous date, a copy of the Defendants' Answer and Counterclaim was delivered to my office. Through my investigation, I have not been able to determine when or how it was received.
5. I have reviewed the time records since September 30, 2010, and can find no reference to the receipt or review of the Answer and Counterclaim.
6. On or about September 30, 2010—the date Defendants claim to have served the Answer and Counterclaim—we were in the process of preparing proposed Motions for Judge Manning in response to Defendants' Motions to Dismiss and Motions to Change Venue. Both sides submitted these to Judge Manning on October 1, 2010.
7. I have no memory of receiving the Answer and Counterclaim. However, the single copy in our file has my handwriting on it instructing my staff to file the document in the Brown litigation file. I can only surmise that this document was among the others that were being exchanged at or about this time, that I did not recognize it as a counterclaim, and simply sent it to be filed.
8. I had no reason to suspect that an Answer and/or counterclaim would be filed during that period of time. In response to the Summons and Complaint, Defendants filed a Motion to Dismiss in lieu of an Answer. Defendants also filed a Motion to Change Venue. On August 30, 2010, hearings were held before Judge Manning on these motions. As stated previously, proposed orders were due to Judge Manning on October 1, 2010. At no time between the hearing and October 1, 2010, did Defendants withdraw their Motions.
9. On November 12, 2010, I received a copy of Judge Manning's Orders denying the Motions to Dismiss and to Change Venue. Copies of these Orders were sent to the attorneys for the Defendants by email stating that we "look forward to receiving your Answer on or before November 29, 2010." A copy of this email is attached at Exhibit A, hereto.

10. Between September 30, 2010, and today, I have had no communication with the attorneys for the Defendants regarding the filing of this Answer and Counterclaim. Defendants' attorneys made no effort to contact me prior to filing the Affidavit of Default. Upon receipt of the Affidavit, my staff investigated and found the copy that had been filed at my instruction.

FURTHER AFFIANT SAYETH NOT.

Kenneth B. Wingate
Kenneth B. Wingate

SWORN TO and subscribed before me
This 16 day of November, 2010

Amarie L. Miller
Notary Public for South Carolina

My Commission Expires: 9/17/20

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, Carrington Lumar, and Tonya Brown;
Venisha Brown; Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-

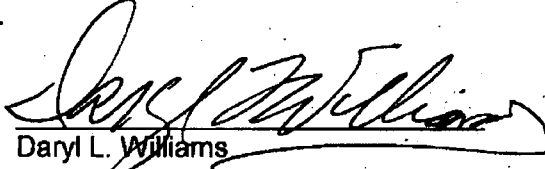
AFFIDAVIT OF DARYL L. WILLIAMS

PERSONALLY APPEARED BEFORE ME, Daryl L. Williams who, being duly sworn,
deposes and says:

I am counsel for Defendant Adele J. Pope in the above-captioned action.

Attached hereto are true copies of the Complaints in two declaratory judgment actions filed on November 17, 2010 by The Cincinnati Specialty Underwriters Insurance Company. One names Buchanan Law Office, P.A. and Robert L. Buchanan as Defendants (Civil Action No. 3:10-cv-02986); the other names Adele J. Pope as Defendant (Civil Action No. 3:10-cv-2987). Both actions are now currently pending un the United States District Court for the District of South Carolina. I obtained these copies from the PACER electronic document filing system of the United States District Court and they are true copies of documents available through that system.

FURTHER DEPONENT SAYETH NOT.


Daryl L. Williams

SWORN TO BEFORE ME this 30th
Day of November, 2010

Wicki S. Moore

Notary Public for South Carolina
My commission expires: 9/1/2019

EXHIBIT A

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement). The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein. For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions.

2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Banknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.

3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

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to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.

NPCOL1208537.4-ABW-10MK1044146-00004

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Brown Thomas, Jason Brown Lewis, Yawana H. Brown-
Lamar, Sydney L. Carrington L., and Tanya Brown*

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Lunar, Sydney L. Carrington L., and Tanya Brown*

Terry Brown

REF ID: A66702

EXHIBIT B

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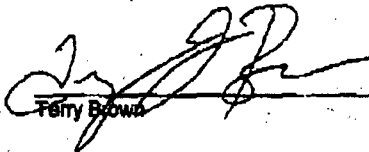
AUSTIN & SPARKS
PAGE 02/02

Georgia, Stephens County

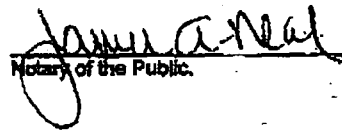
For in consideration of the sum of \$1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011


Terry Brown


Witness


Notary of the Public.

MY COMMISSION
EXPIRES ON
JUNE 7, 2011

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

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

and

ALAN WILSON,¹ in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Plaintiffs,

v.

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

OF WHOM:

Adele J. Pope is the Appellant.

NOTICE OF APPEAL

¹ Pursuant to Rule 265(d), Petitioner has updated the caption to reflect the new Attorney General. It is unclear whether Russell L. Bauknight, who is designated in the complaint as acting "on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina" has been authorized to act on behalf of Attorney General Wilson.

**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 and Robert L. Buchanan, Jr.,

Defendants.

**THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

Civil Action No.: 2010-CP-40-04900

RICHLAND COUNTY
FILED
2012 APR 11 PM 4:53
JEANETTE W. McBRIDE
C.C.P. & G.S.

**PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF THE MOTION
TO SET ASIDE ENTRY OF DEFAULT**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter an Order setting aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs.

FACTS BEARING UPON THE MOTION

This case is but one of many stemming from the probate of the Estate of the late singer and entertainer James Brown. This action involves claims by the current Personal Representative and Trustee (Plaintiff Russell Bauknight) against the prior PR/Trustees, Defendants Adele Pope and Robert Buchanan. The facts set forth herein are taken from the Affidavit of Kenneth B. Wingate, which is attached to the filed Motion to Set Aside. Another copy of the Affidavit is attached hereto as Exhibit 1.

Plaintiffs filed the Complaint on May 19, 2010. Defendants responded to the Complaint by filing a Motion to Dismiss and Motion to Change Venue. The Court heard these Motions on August 30, 2010. After the hearing, Judge Manning requested proposed orders on the Motions, due on October 1, 2010. On information and belief, Defendants served an Answer and Counterclaims on Plaintiffs on September 30, 2010, *before* the proposed orders were due on Defendants' Motions to Dismiss and Change Venue. Judge Manning's Order denying the Motion to Dismiss was received by Plaintiffs' counsel on November 12, 2010. Plaintiffs' counsel forwarded a copy of this Order to counsel for Defendants on November 12, and stated in the email that counsel "look[ed] forward to receiving your Answer on or before November 29, 2010." (See Exhibit A to Affidavit of Kenneth B. Wingate.) Three days later—on November 15—Plaintiffs' counsel received a copy of the Affidavit of Default (filed November 10, 2010). Plaintiffs filed this Motion on November 16, 2010, the day after receiving the Affidavit of Default. Plaintiffs also filed an Answer to the Counterclaims on November 16, 2010.

STANDARD OF REVIEW AND APPLICABLE LAW

According to Rule 55(c) of the South Carolina Rules of Civil Procedure, “[f]or good cause shown the court may set aside an entry of default . . .” Rule 55(c), SCRPC. The Court of Appeals has explained that the “good cause” standard “requires a party seeking relief from an entry of default . . . to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 144-45, 719 S.E.2d 703, 706 (Ct. App. 2011) (quoting Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)). Once a satisfactory explanation is provided, “the trial court must also consider [the Wham factors]: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” Id. (quoting Sundown Operating Co. at 607-608, 681 S.E.2d at 888) (reciting the factors taken from Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). The trial court need not make specific findings of fact regarding each factor “if there is sufficient evidence in the record to support the trial court’s decision. Id. (citing Sundown Operating Co. at 608, 681 S.E.2d at 888). Finally, “the decision whether to set aside an entry of default is within the sound discretion of the trial court.” Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)).

ARGUMENT

I. THE ATTORNEY GENERAL’S OFFICE CANNOT BE HELD IN DEFAULT.

In its statutory role as the protector of charitable trusts, the Attorney General's Office is a party plaintiff in this case. The Attorney General's Office, as an agency of the State of South Carolina, cannot be held in default. Rule 56(e), SCRCP.

II. PLAINTIFFS CAN PROVIDE A SATISFACTORY EXPLANATION FOR THE ENTRY OF DEFAULT, AND CAN DEMONSTRATE THAT THE WHAM FACTORS ARE SATISFIED. THEREFORE, PLAINTIFFS HAVE SHOWN "GOOD CAUSE" WHY THE COURT SHOULD SET ASIDE THIS ENTRY OF DEFAULT.

A. Explanation for Default.

As set forth in the Affidavit of Kenneth B. Wingate, the explanation for Plaintiffs' default on the Counterclaims is simple: Defendants served their Answer and Counterclaims the day before proposed orders on Defendants' Motion to Dismiss were due. Plaintiffs were in the process of preparing said orders and awaiting the Court's ruling on Defendants' Motion to Dismiss. Defendants filed their Answer and Counterclaims *without withdrawing their pending Motion to Dismiss*. Defendants therefore filed their Answer and Counterclaims at an odd time in the litigation, when Plaintiffs would not be expecting an Answer or Counterclaims, because Defendants' Motion to Dismiss was pending, orders were being submitted, and—importantly—Defendants' had not withdrawn their Motion to Dismiss. This smacks of a litigation tactic intended to take advantage of the circumstances. Plaintiffs responded immediately when notified of the default.

Vacating this default would serve the ends of justice by allowing Plaintiffs to defend the Counterclaims against them, which involve many of the same issues as Plaintiff's primary claims against Defendants. See Part II.B.ii., infra. Plaintiffs are also not the stereotypical defaulting party, since they have been actively participating in (and indeed initiated) this lawsuit. Plaintiffs have not slept on any of their rights.

B. Wham Factors.

i. Timing of the Motion for Relief.

As set forth in the Affidavit of Kenneth B. Wingate, the Affidavit of Default (dated November 10, 2010) was received by Sweeny, Wingate & Barrow, P.A. on November 15, 2010. Plaintiffs filed this Motion the next day, November 16, 2010. Clearly, Plaintiffs did not waste any time in responding to the Affidavit of Default, and Plaintiffs have thus satisfied the first Wham factor.

ii. Meritorious Defenses.

Of note are the nature of Plaintiffs' primary claims for breach of fiduciary duty against Defendants. All parties are actively litigating these primary claims, which amount to meritorious defenses to Defendants' Counterclaims. If these primary claims prevail, Defendants cannot logically succeed in their Counterclaims (involving allegations of Plaintiffs' alleged improper actions).

Plaintiffs also filed and served an Answer to Counterclaims on November 16, 2010. In Plaintiffs' Answer, Plaintiffs deny the factual assertions of Defendants' Counterclaims. Therefore, the issues on the counterclaims are joined and suitable for resolution by the Court or a jury.¹ Plaintiffs also assert the affirmative defenses of Rule 12(b)(6), waiver, estoppel, unclean hands, and *res judicata*/collateral estoppel, and are prepared to move forward in establishing those defenses.

¹ Plaintiffs do not concede that Defendants' Counterclaims would survive a dispositive motion, and Plaintiffs specifically reserve the right to file such motions on the Counterclaims. Plaintiffs are simply pointing out to the Court that they deny Defendants' allegations in the Counterclaims and will contest all such issues.

Through their case-in-chief and their denials/affirmative defenses relating to Defendants' Counterclaims, Plaintiffs have shown that they have meritorious defenses to the Counterclaims. Thus, the second Wham factor is satisfied in favor of Plaintiffs.

iii. The Degree of Prejudice to Defendants.

In light of the ongoing nature of this litigation and Plaintiffs' immediate filing of a Motion to Set Aside the Default, Defendants have not and will not suffer any prejudice if the Court sets aside the entry of default. Discovery in this case is ongoing, so Defendants will have ample opportunity to develop the facts needed to establish their Counterclaims. Further, Defendants have known—ever since the day after they filed the Affidavit of Default—that Plaintiffs contested the default. Thus, Defendants' overall litigation strategy cannot have been colored by reliance on the entry of default, because Defendants have had notice of this Motion since November 16, 2010. Defendants will suffer no prejudice if this default is lifted. The third Wham factor is satisfied in favor of Plaintiffs.

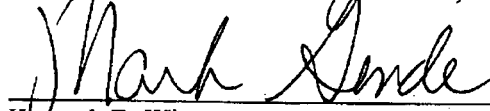
CONCLUSION

For the foregoing reasons, Plaintiffs assert that there is "good cause" to set aside the entry of default with respect to Defendants' Counterclaims against Plaintiffs. Additionally, the Attorney General's Office cannot be held in default. Therefore, this Motion should be granted.

[Signature Block on Following Page]

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

Aaron J. Hayes

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
April 11, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
STATE OF SOUTH CAROLINA
ex rel. Henry McMaster, in his capacity
as Attorney General of the State of
South Carolina,

Plaintiff,

vs.

ELI LILLY AND COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Case No. 2007-CP-42-1855

ORDER

MARC KITCHENS

2009 SEP 22 PM 2:00

FILED
CLERK OF COURT
SPARTANBURG COUNTY

THIS CAUSE is before the Court upon the Motion of Defendant Eli Lilly and Company (Lilly) to Disqualify Special Counsel filed on August 21, 2009. This matter was fully briefed by the parties, and was argued to the Court on August 31, 2009. After carefully considering all of the parties' written submissions and the oral arguments made by counsel, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

On July 19, 2006, for the purpose of pursuing litigation relating to the Lilly-manufactured drug Zyprexa, Attorney General McMaster entered into a "Litigation Retention Agreement for Special Counsel Appointed by the South Carolina Attorney General" signed by three lawyers as "Special Counsel." The three lawyers were John S. Simmons, John Belton White, Jr., and F. Kenneth Bailey, Jr. According to his Affidavit submitted in this matter, Attorney General McMaster's aim in suing was to recoup state funds and penalties related to Lilly's alleged wrongful conduct in marketing Zyprexa.

AKL
21



**Private Foundations, Copyright Heirs and Musical Millionaires:
or
Why The James Brown "I Feel Good" Trust doesn't...**

By Adele J. Pope and W. Jeffrey Smith¹

©²
2011

God has Smiled on Me³

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

Anticipating trouble from relatives who knew about Brown's estate plan but did

¹ Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

² While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

³ The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

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not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody⁴

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.⁵

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."⁶

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

⁴ The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

⁵ AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

⁶ WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Wil; claims of Brown's companion; and other claims. [See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

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the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up) Turn it Aloose ⁷

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back *some* of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs--in limited instances--may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves. ⁸

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private

foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

⁷ (Give it up) Turn it Aloose was published in 1969.

⁸ The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

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By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors⁹ must take at least the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"¹⁰ to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.
5. Update the baseline heirs data until all copyrights expire.
6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.
7. As and when helpful, "split heirs"¹¹ to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

⁹ Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

¹⁰ The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

¹¹ The heirs must act by majority. This allows foundations to "split heirs" — finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

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James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.¹²

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.¹³

The known facts included:

1. Brown's royalties continued to earn about least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]
5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible termination before 2016 -- ten years after Brown's death. [See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

¹² Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the Real Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
 - a. Nearly 40 songs from 1968.
 - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
 - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
 - d. "Hot pants", "Soul power" and others from 1971.
 - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights]
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full – 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.
14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one

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of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.¹⁴

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.¹⁵

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Memickle (3).

Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

¹⁴ Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

¹⁵ Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);¹⁶
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
 - 1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
 - 2. Then had a marriage ceremony with Brown although she was already married;
 - 3. Separated from Brown in 2003 when he discovered she was married;
 - 4. Obtained an annulment of her previous marriage in March 2004;
 - 5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets ¹⁷ and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

That changed on August 10, 2008.

¹⁶ On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

¹⁷ Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

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"No, no, no, no (don't leave me this way)"¹⁸

On August 10, 2008 the AG's staff and some of the claimed heirs¹⁹ met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, all of whom had been specifically disinherited by Brown from his copyrights.
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.²⁰

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 1/29/09 and 1/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

¹⁸ "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

¹⁹ The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

²⁰ According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

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On January 30, 2009, three weeks after his appointment—with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal—the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract — considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee — already trustee for Brown's companion and the disinherited settling relatives — to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation — the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"²¹

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status—a gift not from Brown but from the AG—that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them — not all properly-determined heirs over the duration of the copyrights — were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

²¹ This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.²² The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"²³

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.²⁴

²² In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

²³ The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

²⁴ Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus to raise \$200 million for the purchase of the James Brown assets.

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James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.²⁵

Think (about it)²⁶

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations of these individuals.

25

In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight. Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, has earned tens of millions of dollars.

²⁶ The copyright to "Think (about it)" was issued in 1973.

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COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

<u>Date of Publication/ Copyright</u>	<u>Description of Works</u>	<u>Earliest Possible Termination</u>
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE CIRCUIT COURT

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

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

) Affidavit of Adele J. Pope
) Supporting Production of Legacy Trust,
) Fee Contract with State/AG
) and Related Documents prior to
) Hearing on Motion for
) Injunctions

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

v.

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

RICHLAND COUNTY
FILED
2011 AUG -2 PM 1:08
JEANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly
sworn deposes and says:

1. On May 19, 2010 Kenneth B. Wingate and his firm (collectively "Wingate"¹)
filed this suit against Robert L. Buchanan, Jr. ("Bob") and me seeking tens of millions of
dollars in tort damages for then-Attorney General Henry D. McMaster ("AG McMaster"
or the "State") and about 15 private individuals ("Private Plaintiffs").

2. I ask the Court to require Wingate and Plaintiffs, before the hearing on my
motion to enjoin them from acting for the AG/State, to produce signed copies of the
originals and any amendments to the following documents:

a. Wingate's Retention Agreement(s) with the AG/Plaintiffs;

¹ The Firm name is Sweeney, Wingate and Barrow, P.C.

- b. The James Brown Legacy Trust ("Legacy Trust")²;
- c. The AG's authorization for Bauknight to assert he speaks on behalf of the AG.

3. Serving simultaneously as sole counsel for Private Plaintiffs³ and the AG, Wingate named in the caption of the Complaint as parties:

- a. RUSSELL L. BAUKNIGHT... on behalf of [AG McMaster];
- b. BAUKNIGHT.. as Trustee of the James Brown Legacy Trust; and
- c. AG McMaster.

4. For 9 months Wingate and Bauknight have refused to produce the requested documents either through discovery or, more recently, under the S. C. Freedom of Information Act ("FOIA")

5. I first learned of Wingate's involvement in April 2010 when Plaintiff Tommie Rae Brown's agent advised that if Bob and I did not drop a pending James Brown appeal AG Sonny Jones⁴ would to sue us through contingency-fee counsel Wingate.⁵

² The Legacy Trust, although bearing Brown's name, was not created by James Brown or part of his estate plan. It was created by AG McMaster and Bauknight in either late 2008 or 2009.

³ Private Plaintiffs include:

- a. 5 of the 7 grandchildren/beneficiaries of a \$285,000 education fund
- b. 6 adults Brown gave personal effects under the Will but specifically excluded from his \$85 Million worldwide music empire;and
- c. 3 other persons Brown specifically excluded from both the Will and 2000 Trust.

⁴ While we were PR/Trustees C Havird ("Sonny") Jones, acting for AG McMaster, tried to force Bob and me to use AG McMaster's Litigation Retention Agreement in hiring attorneys AG McMaster selected. By Order dated Jan.8, 2008, the Court declined his request.[See Tr., Hg. 12/21/07, Case 122]

⁵ The appeal is in Case 2008-CP-02-1647 ("Case 1647"). In that appeal, Bob and I oppose a settlement which will take \$50 Million from Brown's 2000 Trust, dedicated to educate 7 grandchildren and needy and deserving students, and give it to 6 of Brown's more than a dozen claimed heirs, all of whom Brown disinherited from his worldwide music empire.

6. I am informed and believe that a copy of the AG's Retention Agreement will help explain Tommie Rae's threat, and may shed light on whether a \$1,000 contribution to AG McMaster's political campaign by a Wingate firm principal, Scott Barrow just after this suit was filed was improper.

7. Recently the Augusta Chronicle reported about a Litigation Retention Agreement AG Wilson approved which was made public, and discussed a \$1,052 political contribution made long before the engagement – not immediately after, as here. [See "SC Treasurer's Friend Gets up to \$3 million in State Work", 7/24/11]

8. I am informed and believe the Retention Agreement will show whether AG McMaster, who acted under color of state law and in his official capacity, and whose actions should have been consistent with the public interest, was in fact acting to punish Bob and me for conducting a proper appeal; not hiring lawyers he tried to force us to hire; and/or not signing a document preventing us from criticizing AG McMaster's destruction of James Brown's estate plan.⁶

9. The State/AG McMaster sued me for tens of millions of dollars – many times my personal net worth. AG McMaster, through Wingate, has made false allegations against me which, if true, would destroy my career as an attorney and expose me to both civil and criminal charges, including those of the IRS and SCDOR with whom I

⁶ As an attorney advising creators of private foundations, I have a duty to caution clients in S.C., or intending to transfer a private foundation here, that AG Master claims the authority to take over any estate or private foundation involved in a formal testacy case; rewrite the Settlor's estate plan to McMaster's liking; and replace the Settlor's properly-serving trustees with AG McMaster's appointees. What AG McMaster and his staff did to destroy James Brown's estate plan is described in "Private Foundation, Copyright Heirs and Musical Millionaires: Why The James Brown 'I Feel Good' Trust doesn't....," filed in this case [Smith & Pope, Dr., Apr.2011] I believe AG McMaster's suit violates my First Amendment rights.

have worked for more than 30 years on behalf of clients.

10. The requested documents will demonstrate how the AG proposes to share funds he hopes to collect from me and who will pay if Bob and I are successful in the counterclaims (on which Plaintiffs are now in default).

11. The requested documents should also answer the following questions:

- a. Did either the Legacy Trust or a separate document give Bauknight legal authority to assert he speaks for AG McMaster?
- b. If not, is Bauknight's assertion that he speaks on behalf of the AG improper?
- c. If so, is either the State or McMaster liable for Bauknight's actions, including the default and any counterclaim judgment?
- d. Can Bauknight continue to speak on behalf of the AG/State after filing sworn documents with the Court and IRS asserting Brown's worldwide music empire was worth less than \$4.7 Million⁷ at the same time he knew Brown's Royalties for 2010 were about \$5.4 Million and Brown earned \$4 - \$6 Million each year from 2003 - 2006?

12. I am informed and believe that the requested documents and facts revealed since the filing of the complaint will demonstrate that Wingate's and Bauknight's commitment to Private Plaintiffs prevents them from serving the AG/State in this suit.

13. I am informed and believe that the Retention Agreement should provide what happens when – as here – it becomes clear that Defendants are not at fault and

⁷ Bauknight revealed on May 4, 2011 - 4 years and 4 months after Brown died -- that he had used a valuation of \$4.7 Million for Brown's worldwide music empire and \$12 Million claim against former PR/Trustees Dallas and Cannon to obtain an IRS closing letter. Two months earlier, on February 11, 2011 Bauknight reported in a sworn accounting that Brown's Royalty receipts for 2010 were approximately \$5.4 Million. [Acctg. Aiken Cty, 2/11/11]

Brown's \$4-\$6 million annual earnings for 2003 -2006 from his worldwide music empire are fully documented in exhibits and filings in Cases 122 and 322.

the AG's Private Co-Plaintiffs do not represent the public interest and/or are, or may become, subjects of investigations by the AG or other Federal or State Agencies.

14. Just a few of the facts now known are:

- a. 8 or more Private Plaintiffs are not residents of South Carolina.
- b. Plaintiff (Georgia resident) Venisha was jailed in South Carolina on felony charges during the relevant period.
- c. There is substantial evidence that some or all of Private Plaintiffs Bauknight⁸, Yamma⁹, Terry¹⁰ and Tommie Rae¹¹, and their agents, are actively involved in the manipulation of the value of James Brown's securities and other assets for improper purposes.
- d. Private Plaintiff (Yamma) has valued James Brown's assets at 30 times (\$200 Million) Private Plaintiff Bauknight's \$6.5 Million value.
- e. Plaintiff Bauknight represented to the IRS that Brown's worldwide music empire and \$12+ Million claim against former PR/Trustees Dallas and Cannon was worth less than \$4.7 Million at his death.
- f. 1 minor Plaintiff is a possible witness (not a suspect) in an

⁸ Bauknight said in January 2009 he didn't know the value, but had heard Brown's assets were worth \$80 Million.

⁹ After being part of a prospectus to raise \$200 Million to acquire the James Brown assets, Yamma apparently now joins Bauknight in asserting those same assets were worth only \$6.5 Million. [See Prospectus, Exhibit A] 3 witnesses on Wingate's Witness List [Exhibit B] are also named in the \$200 Million Prospectus (Joel Katz and Alvin & Calvin Waters)

¹⁰ Plaintiff Terry was part of 2 \$90 Million - \$102 Million offers to buy Brown's assets. His son Forlando is a 39% owner of the purchase entity. Terry now apparently claims a right to buy Brown's worldwide music empire at Bauknight's new \$4.7 Million.

¹¹ In February 2007 Tommie Rae, through an attorney, asserted Brown's "book of music" (Royalties), had a value as high as \$100 Million. [Tr. 2/9/07, Case 122] Royalties are about ½ of Brown's worldwide music empire, the other half being his image and persona ("Publicity Rights"). In 2009 Tommie Rae, Terry and Bauknight stopped a 2-year Publicity Rights contract with GreenLight (May 2009 - May 2011) which has earned tens of millions annually for Einstein, Steve McQueen and others. The interference now appears to have been part of a devaluation scheme culminating in Bauknight's May 4 disclosure of the music empire at \$4.7 Million.

unfortunate shooting death and ongoing murder investigation (adult charged) which took place at his 16th birthday party this year.

- g. Plaintiff Terry was part of a scheme to sell the James Brown assets for \$100 Million; create an IPO; and pay options or a "kickback" to former PR/Trustees Cannon and Dallas.
- h. Wingate's Witness List names as a witness for AG McMaster Cannon, indicted in 2010 for felonies against Brown for every year from 1999 - 2006 and a 2008 forgery, now awaiting trial.
- i. Wingate's Witness List names as a witness for AG McMaster Albert Dallas, found by the Court to have committed fraud under Probate Code §62-1-106 in James Brown cases, and who is being sued by the Estate/2000 Trust for secretly misappropriating more than \$12 Million from James Brown.
- j. Wingate – 14 months after filing suit has apparently failed to pay disclosed experts Hobbs and Provence. See AG's standard Retention Agreement.
- k. Wingate - lacking experience in the James Brown cases – has made misrepresentations to this Court, including about the status of other cases in a proposed order which the Court in this case signed.¹²

15. I am informed and believe that, like other Retention Agreements, the Wingate Agreement is a public record.

16. In my more than 30 years as an attorney for litigants in trust and estate matters, I have never known an AG to be a co-Plaintiff using joint private counsel in a tort suit for money damages against a South Carolina citizen.

17. Although I have been involved in a number of matters in which the AG was involved, I do not recall any time when – as here – the AG is party to a case but the AG (or an associate) is not counsel of record for the AG only.

¹² See Order Denying Motion to Dismiss, proposed by Wingate, in which the Court found that four Aiken County cases were no longer pending when all were active.

18. I do not recall in 30 years seeing any private citizen – as Bauknight does here – assert in a case that he acts “on behalf of the Attorney General of the State of South Carolina.”

19. I am informed and believe that AG McMaster’s contingency-fee Litigation Agreement with Wingate as Special Counsel should contain significant provisions, as found in other AG Contracts, to allow the AG to end a case without merit and to protect Bob and me from the use of the State’s power to support abusive acts of private counsel and Private Plaintiffs. [See AstraZeneca agreement AG McMaster signed on October 20, 2006 (“AZ”), which did not involve Private Co-Plaintiffs.]

20. Portions of the AZ agreement, with emphasis supplied, are:

RECITALS

WHEREAS, the Attorney General has concluded it is in the best interest of the State ...to retain Special Counsel specifically for this litigation matter

...
WHEREAS, Special counsel specifically represents that he has the skill, experience and competence necessary for the meaningful prosecution of this matter.

Article II. SERVICES

...
2. ... Special counsel shall provide legal services to the Attorney General... for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation. .

3. ... All pleadings, motions, briefs, formal documents and agreements must bear the signature of the Attorney General or his designated assistant.

Article III. CASE MANAGEMENT

...F. **Public Records**
Any material, date, files, discs, or documents created, produced or

pitted against the AG's office with its \$7 Million annual budget – stated:

AstraZeneca seeks to ensure that itself, or any other major corporation engaging in widespread unfair and deceptive conduct, maintains such a massive advantage in resources that this [AG Wilson's] Attorney General's Office – and others around the country – are simply without resources to effectively enforce their state statutes.

27. I attended a hearing in July 2011 on the AG's motion to dismiss AZ's case challenging private counsel and heard AG Jones speak of the unfairness of giant entities such as AZ attempting to intimidate relatively small ones like the AG's office.

28. In this case against Bob and me, AG McMaster's office is the giant.

29. I am informed and believe that if the Court requires the Wingate Retention Agreement(s) and other requested documents to be delivered before the injunction hearing, it will help the parties and Court address the following essential questions related to the injunction request:

1. Is Bauknight's assertion that he speaks on behalf of AG McMaster legal?
2. Did all Private Plaintiffs sign the Retention Agreement (as is required for a contingent fee), and did they cede control to the AG so that the State would not trample on our Constitutional rights as citizens?
2. Is any public policy articulated for the State/AG joining Private Plaintiffs in this tort suit for money damages against us?
3. Is any Public Policy violated or served by AG McMaster's sharing a single private law firm and attorney-client privilege with Private Plaintiffs?
4. Did AG McMaster violate his own policy and/or the Retention Agreement by not maintaining control over the litigation and signing the complaint?
5. What does the Retention Agreement provide if Private Plaintiffs/Bauknight become targets of securities, tax or fraud investigations and their witnesses are under indictment or investigation in South Carolina?
6. How are the funds recovered from Bob and me, if any, shared?

7. How is our judgment against Plaintiffs, if any, to be paid?
8. May Wingate properly assert the State's privileges and immunities to attempt to relieve Private Plaintiffs from default?
9. Did AG McMaster approve seeking money damages against us for not signing an agreement not to criticize AG McMaster ?
10. Does the Retention Agreement designate Bauknight to speak on behalf of, or bind, the AG and State?
11. What action, if any, has AG Wilson taken to amend the Retention Agreement or Bauknight authorization to act on behalf of the AG?

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this
1st day of August, 2011

 (L.S.)
Notary Public for South Carolina

My commission expires: 7/13/2016

EXHIBIT A

Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108

March 5, 2012

The Honorable Alan Wilson
Attorney General for the State of South Carolina
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

BY EMAIL and ORDINARY FIRST CLASS MAIL

Re: Cannon vs. PR, Estate of James Brown (Aiken # 2008-CP-02-1425)
Dallas vs. PR, Estate of James Brown (Aiken # 2008-CP-02-1426)
Est. of Bradley vs. PR, Estate of James Brown (2008-CP-02-1427)

Dear Attorney General Wilson:

This letter is written to comply with Rule 11 in the above cases, as well as all other cases in which I am – or may be – involved, individually, with the companion of James Brown, Tommie Rae Hynie ("Tommie Rae").

A former James Brown trustee recently called to my attention the importance of the personal diaries of Tommie Rae Hynie in confirming the validity of Brown's Estate Plan and saving The James Brown "I Feel Good" Trust. He also advised me that Tommie Rae and two of Brown's children were present when his Estate Plan was executed.

Use of the facts surrounding the execution of Mr. Brown's Estate Plan must await the decision of our Supreme Court, but Tommie Rae's diaries have a direct and immediate impact on Bob Buchanan's and my individual commission claims.

For that reason, I ask your help in seeking a modification of Jg. Early's 2008 orders related to Ms. Hynie's diaries, the contents of which we all have knowledge¹

While you have not yet moved to intervene in the above cases, your office has sought to prevent my intervention. So I trust that you plan to intervene.

I will briefly review the chain of custody of Tommie Rae's diaries:

Between James Brown's death on December 25, 2006 and January 22, 2007

¹I use "Knowledge" as it is defined in the S. C. Trust Code, since it is The James Brown "I Feel Good" Trust which Mr. Buchanan and I vigorously sought to defend.

custody of the diaries was jointly controlled by the original trustees ("Cannon Group") and Brown's daughters Yamma and Deanna.

From January 23 to August 10, 2007 the diaries were controlled by the Cannon Group, and were disseminated and discussed (without limitation) with Bob Buchanan and me as Special Administrators (SAs), numerous counsel, and others.

From August 10, 2007 the diaries were transferred to the central location where they were controlled until November 20, 2007 by Messrs. Dallas and Bradley, represented by Lewis & Babcock. During this time they remained available for reading, copying, etc., without restriction [except for a privilege box], by any interested party.

On November 20 the last of the Cannon Group resigned; Lewis & Babcock were relieved; and Bob and I became PR/Trustees. The documents remained available.

In early 2008 Wayne Byrd, Esquire, provided a typed copy of Tommie Rae's diary which was widely read, including by me and presumably the AG's staff.

On February 20, 2008, as the result of a telephone conference requested by Tommie Rae's counsel and held on February 14, 2008, the first order was issued, "restraining all counsel and all parties from disseminating" Tommie Rae's diaries or transcripts. No attempt was made to silence discussion among the large number of people who had already read and were aware of their contents.

A second order dated March 8, 2008 and filed March 10, 2008, was similar. It recited that the matter came before the Court on February 20, 2008 – the day the first order was issued.

On March 10, 2008 a third order referred to "several Motions filed by [Tommie Rae]," including a February 15, 2008 Motion to Require All Prior and Current Personal Representatives and Others to Return Diaries."

The March 10 Order directed Tommie Rae's counsel Robert Rosen to "hold these items as an officer of the court pending further order of the Court."

The March 10 Order, for the first time, stated "[n]o party shall use the information in the diaries for any purpose pending further order of the Court." The Court then ordered "[a]ll agents for all parties or counsel, or former counsel or former personal representatives, including all investigators" to turn over all copies of Tommie Rae's diaries to the Clerk of Court. Then the order went on to say:

No party waives any position on the admissibility or the discoverability of the diaries or copies. No party admits any liability for any improper or actionable act of any kind and all deny the same.

Throughout the above period Mr Byrd, Bob Buchanan and I – and presumably the AG – knew that Tommie Rae's diaries would – and should– be used to defeat her challenges to James Brown's estate plan, filed 3 months earlier, and otherwise as appropriate to promote the Estate Plan of James Brown from which she was excluded (in contemplation of their void marriage ceremony).

The Court acknowledged that Bob Buchanan and I were in possession of 90 boxes of documents², and did not require us to comb these boxes for diaries. It directed for the first time, however, that access to the boxes be limited to "counsel of record or paralegals or associates under the direct control of counsel of record in this case." The Court ordered that any party or counsel finding Tommie Rae's diaries or copies turn them over to the Clerk of Court.

While the Orders were well-intentioned and clearly issued to maintain an orderly discovery process, several problems interfered:

1. The Orders were issued in Case 122. By May 2008, however, the Court acknowledged that each James Brown case is separate under the Probate Code, and began to give separate case numbers to the many Brown cases.³
2. The Orders did not contain proper captions or give any idea whom the Court intended to bind, raising serious Due Process and First Amendment issues.
3. The Order not to disseminate information about the diaries was given without any notice or hearing to the multitudes it purports to bind.
4. As stated below, the contemplated discovery never took place.

What everyone planned to do to assure that James Brown's wishes were carried out was delayed by the May 28, 2008 Order of Jg. Cureton. It was then stopped entirely by the August 10, 2008 decision of AG McMaster to "stipulate" that Tommie Rae was Mr. Brown's wife.

Mr. McMaster's stipulation, of course, does not bind Bob Buchanan, me or any person not a party to his agreement. Nor does it, in my opinion, diminish the wisdom of the use of the contents of the diaries to demonstrate the reasonableness of our vigorous defense of the Estate Plan of James Brown in our compensation cases.

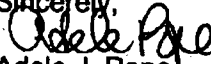
²The 90 boxes had increased to more than 145 when we were replaced by Mr. Bauknight.

³See, for example, Ord. Dtd. 8/19/08 finding that the 3 above cases were inadvertently placed in Case 122, and should have the separate numbers set out above.

Letter to The Honorable Alan Wilson
March 5, 2012
Page 4

I ask that you join me in asking Judge Early to immediately release restrictions in the above orders so that Tommie Rae's diaries may be disseminated and used as appropriate in the above and other cases.

Thank you for your consideration and a prompt response.

Sincerely,

Adele J. Pope

P.S. I hope to use the contents of Tommie Rae's diaries in various matters, including:

1. Defense of Tommie Rae's claim for tens of millions of dollars by the Wingate Firm against Bob Buchanan and me in Richland County.
2. Bob's and my counterclaims against Tommie Rae for abuse of process; civil conspiracy; & intentional interference with contract in the Wingate Case.
(Tommie Rae is currently seeking relief from default as to the counterclaims.)
3. To prevent Tommie Rae, through Wingate, from intervening in my Newberry County Case under the S. C. Freedom of Information Act ("FOIA"), now in Richland.
4. In Bob's and my commission claims now pending in the Probate Court for Aiken County.
5. In my professional writings about AG McMaster's failure to properly determine James Brown's heirs under the DNA protocol established by Rodney Peeples, Esq. and implemented by Peeples and Lewis & Babcock, LLP, and how it damaged The James Brown "I Feel Good" Trust under the termination provisions of the Federal Copyright Act.

cc: Aiken County Probate Court (for file No. 2007-ES-02-0056)
Robert Buchanan, Jr
Albert Dallas
David Cannon
Estate of Al Bradley
Russell Bauknight

Law Office of Adele J. Pope, PC
1228 Walnut Street
Newberry, South Carolina 29108

March 30, 2012

David G. Cannon
P.O. Box 865
Barnwell, SC 29812

Russell Bauknight, Individually & as
PR of the Estate of James Brown and
Trustee of the James Brown 2000 Irrevocable Trust
% David Black, Esquire
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201

Estate of Alfred A. Bradley
1803 Green Pond Rd.
Aiken, SC 29803

Robert L. Buchanan, Jr., Esquire
212 Newberry Street NW
P.O. Box 463
Aiken, South Carolina 29802-0463

The Honorable Alan Wilson
Attorney General for the State of South Carolina
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

Re: **Cases 2007-CP-02-1425, -1426
and -1427; all *pro se* claims of
Robert L. Buchanan, Jr., ALPS,
The Hartford, James D. Bailey, Esq;
and/or Tressa T.H. Hayes related to
The Estate of James Brown and/or
The James Brown 2000 Irrevocable Trust**

Gentlemen:

I am writing you in response to Judge Early's email of March 29, 2012 and in compliance with Rule 11. As we all know, regardless of the outcome of the Supreme Court's decision in Case 1647 the claims of all creditors and taxing authorities must be resolved prior to turning the assets over to the Legacy Trust.

With more than thirty lawyers and six fiduciaries having filed more than \$20 Million of claims – \$15+ Million with Summary Judgment pending since 2008 and more than ½ million paid by Mr. Bauknight since December 2011 – it seems to me that the parties and those who have moved to intervene should go to Judge Early on the

23rd of April with an orderly plan to proceed with resolution of Cases 1425, 1426 and 1427 – as well as others.

Here are my thoughts – and request – related to these issues:

1. The January 8, 2008 Order for Partial Payment to Buchanan/Pope

a. I believe Bob Buchanan and I should be paid as directed by the Order of Jg. Early dated January 8, 2008. [See filings in the Probate Court for exact amount as of September 1, 2009 – about \$2.1 Million. Interest is accruing since that date.]

b. The payment to us – like any payment to Bauknight or anyone he has engaged – will be subject to disgorgement if the claims or counterclaims in Richland County Case 4900 produce a judgment against us/Bauknight.

2. The ALPS claim should be resolved and paid as a priority expense of administration. When paid by the Estate/2000 Trust, the ALPS claim against Forlando – including claims for a frivolous proceeding – would be assigned to the Trust to collect against Forlando in the Federal Proceeding.

3. The Hartford/Buchanan claim should be resolved and paid in a similar manner.¹

4. The claim of James D. Bailey – like that of Cam Lewis' Firm and Rodney Peeples, Esq. – should be paid in full for the following reasons:

a. He faithfully served the Estate/2000 Trust under the applicable documents.

b. He properly defended the Estate Plan – win or lose.

¹ While the Forlando Federal Case is still pending, my Motion to Dismiss for lack of prosecution – based largely on Forlando's false and frivolous filings – is pending, and a similar motion by Mr. Buchanan is expected. Jg. Bertelsman has terminated all counsel for Forlando – terminated by Forlando in late 2011; and Forlando has violated the Court's orders to obtain new counsel and to respond to my Status Report. If his Complaint is dismissed, the 2000 Trust and Bob Buchanan and I individually have counterclaims against Forlando, including for attorneys' fees and costs. Mr. Bauknight has been asked to intervene to protect the 2000 Trust as to its counterclaims. To date he has declined to do so.

c. The debt, incurred under a valid contract with the then-PR/Trustees, was liquidated in 2009 and should be earning interest at 8 3/4% (simple interest)

5. The Cannon Claim needs to be properly resolved:

While motions have been going back and forth in Case 1425 since my January 4, 2012 Motion to Intervene and Dismiss, apparently Mr. Pickelsimer – who said he was not representing Mr. Cannon in 1425 – and Nexsen Pruet attorney Wm. Newsome entered into and filed a Stipulation of Dismissal of Case 1425, signed in February. I found this in the Court House yesterday (March 29, 2012). I suggest:

- a. This apparently means the Estate is not seeking either costs or frivolous proceedings relief or attorneys' fees against Mr. Cannon for the \$6 Million filing.
- b. Someone involved in the Dismissal should notify Jg. Early, since this happened after my motion to intervene – but nearly six weeks ago.

6. The Dallas Claim needs to be properly resolved:

This week Mr. Dallas – still *pro se* - told me that any suggestion that Mr. Buchanan's and my intervention should be delayed until he has obtained counsel is incorrect; that he may obtain counsel; but that he and his Bankruptcy Trustee have already consented to our intervention. He also confirmed that he is ready to proceed with his \$6 Million claim, which he bases on:

- a. Vigorous defense of the Estate Plan of James Brown;
- b. Vigorous defense of all claims of Tommie Rae;
- c. Assertion that Tommie Rae is not Brown's wife, and James II could not be his son;
- d. \$100 Million value of the Estate/2000 Trust and offers he procured and left with the Court.
- e. His service to James Brown and/or purported agreements.

My individual position is that:

- a. Mr. Dallas' claim should be dismissed for lack of prosecution.

- b. If not, Summary Judgement should be granted.
- c. Mr Dallas' \$6 Million claim should fail based on the following:
 - 1. Mr. Dallas vigorously defended the Estate Plan;
 - 2. The Estate/2000 Trust were worth \$100 Million LESS the TIAA debt when Mr. Brown died.
 - 3. Mr. Dallas, with Cam's firm and Jg. Peeples, vigorously defended against the claim of Tommie Rae, uncovering the vasectomy; numerous affidavits; and the legal history necessary to defeat her claim – but for the Settlement.
 - 4. Mr. Dallas, with Jg. Peeples, established a DNA protocol to protect Brown's copyrights .[See my article: Private Foundations, Copyright Heirs and Musical Millionaires: or Why The James Brown "I Feel Good" Trust doesn't...]
 - 5. Mr. Dallas, however, was present and serving as a co-fiduciary when David Cannon took \$17 Million and did nothing to stop it.
 - 6. Mr. Dallas has done nothing to help recover the missing \$17 Million.
 - 7. The Estate/Trust's position as set out by Mr. Few and Mr. Gilreath in Case 322.

7. Case 322 - Claims against Dallas, Bradley, Cannon, Farr and GT:

- a. Filings and information show that Farr, Enterprise Bank and Bradley have been settled.
- b. No apparent action to proceed against either Cannon or Dallas.
- c. This Case – filed on behalf of Mr. Buchanan and me as PR/Trustees in February 2008 – should proceed to its conclusion.

Ltr. to Mr. Cannon and others
March 30, 2012
Page 5

8. The Buchanan/Pope PR/Trustee Commission claim & the Bauknight Claim, through 2011:

These claims are ready to be heard and decided, but should be heard AFTER the Dallas claim is resolved.

As you may know, I qualified as an expert in Probate and Trust law in Case 1647. Based on my above-referenced article, I request that you agree my area of expertise now extends to the relationship of heirs under State Law and the Federal Copyright Act.

Thank you for your consideration. I hope we will have an opportunity to speak before April 23 and resolve some of the above matters.

Sincerely,

s/

Adele J. Pope

AJP/ja
Enclosure for some - My Article

EXHIBIT B

**Law Office of Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108**

April 1, 2012

The Honorable Alan Wilson
South Carolina Attorney General
John W. McIntosh, Chief Deputy
Post Office Box 11549
Columbia, South Carolina 29211

Re: David G. Cannon vs. Estate of James Brown
Aiken County Case No. 2008-CP-02-1425 ("Case 1425")

Albert H. Dallas vs. Estate of James Brown
Aiken County Case No. 2008-CP-02-1426 ("Case 1426")

Alfred A. Bradley vs. Estate of James Brown
Aiken County Case No. 2008-CP-02-1427 ("Case 1427")

Dear Attorney General Wilson and Mr. McIntosh:

I received and thank Mr. McIntosh for his letter of March 29, 2012 confirming that my letter to Attorney General Wilson dated March 5, 2012 and second letter received on March 22, 2012 are under review.

I read Mr. McIntosh's letter after sending out a March 30 letter; a copy of the April 2011 draft of "Private Foundations, Copyright Heirs and Musical Millionaires: or Why the James Brown 'I Feel Good' Trust Doesn't.."; and an email. I enclose those three items to aid in your review.

Since the Attorney General has not moved to intervene in the three cases – or in Case 2008-CP-02-0322 ("Case 322"), which seeks return of \$13+ Million taken by Cannon and perhaps others – I am taking the liberty of setting out a chronology of events to help you with your review.

I believe that my personal goals as a former Trustee of The James Brown "I Feel Good" private foundation are wholly consistent with the public's interest: to recover as much as possible of the \$17 Million taken by Cannon from funds James Brown intended for scholarships for needy and deserving students; and to see that Cannon and his joint venturers do not destroy the "I Feel Good" foundation.

HISTORY and CHRONOLOGY - CASES 1425, 1426, 1427

December 25, 2006	James Brown dies.
Aug. 10 2007	CANNON resigns as Brown's PR/Trustee.
August 2007	CANNON and DALLAS contact Sonny Jones.
September 2007	\$5 Million CANNON took in 1999 discovered ¹ .
September 2007	CANNON, DALLAS, Bradley file \$15+ Million claims.
October 2007	AG McMaster intervenes in James Brown Case 122. ²
October 2007	CANNON reports to a friend: "[t]he tide seems to be turning. I went to the Attorneys General of SC & GA and they have entered the proceedings. The Judge and other attorneys have been quite [sic]."
November 20, 2007	DALLAS and Bradley resign.
January 2, 2008	FORLANDO Brown files federal suit to reinstate CANNON & DALLAS as trustees. ³
February 2008	Estate/2000 Trust sue CANNON, DALLAS for \$13+ million taken since 1999.
March 2008	CANNON, DALLAS & Bradley file Cases 1425 - 27 after their \$15+ Million claims disallowed by Estate.

¹ Cannon cashed and kept the \$5 Million "check to nobody" in the summer of 1999.

²Case 2007-CP-02-122 was brought to remove CANNON, DALLAS and Al Bradley.

³ In 2007 CANNON, FORLANDO & DALLAS, with attys. Powell Goldstein & Atlanta investors, proposed a \$100 Million sale/TPO of Brown's music empire. CANNON & DALLAS each sought \$5+ Million PLUS secret options or a "kickback" from the purchasers. FORLANDO was a secret 39% owner of the purchaser. His father Terry joined the group by early 2008.

August 2008 Estate moves for Summary Judgment, Case 1425 - 27.
 claims.

November 2008 CANNON forges & utters fake \$3.7 Million "agreement"
 with Brown, attempting to cover up takings.

May 26, 2009 Bauknight becomes PR/Trustee.

June 4, 2009 Bauknight directs Case 322 lawyers not to speak
 confidentially with Buchanan & Pope.⁴

2009 - 2012 No action taken to defeat/dismiss Cases 1425/1426/1427.
 No recovery from CANNON or DALLAS in Case 322.

February 2010 CANNON indicted.

December 2010 Bauknight tells IRS Brown's music empire AND claims
 against CANNON/DALLAS worth less than \$4.7 Million.⁵

Jan. 31, 2011 McMaster/Bauknight seek sanctions against Buchanan
 & Pope for filing brief to obtain costs from CANNON.⁶

October 2011 Pope urges AG McNair to speak for victims - needy
 and deserving students -- at CANNON plea.

Oct. 27 2011 CANNON enters plea. AG seeks no restitution or jail time.

⁴ Bob Buchanan and I helped discover most of the \$17 Million taken by CANNON, but (with Messrs. Few/Gilreath) honored the request made by Bauknight, through David Black, Esq., just 10 days after his appointment. I believe it gutted claims against CANNON & DALLAS.

⁵ I have a personal interest in correcting this misstatement because Mr. Bauknight and the AG's office have made false, criminal assertions to the IRS (Bauknight) and to the Ct. of Appeals that Mr. Buchanan and I fabricated the \$85 Million (\$100 MM less TIAA debt) value of Brown's music empire on the federal estate tax return to get a large commission.

⁶ My FOIA request for documents showing how McMaster - 3 weeks after leaving office - asserted his former position to seek sanctions against me has, to date, revealed no answer.

Ltr. to Attorney General Wilson and Mr. McIntosh
April 1, 2012
Page 4

Dec. 2011 - Jan. 2012	Pope moves to Intervene/dismiss/defeat \$15+ Million Claims of CANNON and others in Cases 1425 - 27.
Feb. - March 2012	AG Wilson, Bauknight work to prevent or delay hearing on Dismissal of CANNON, other claims.
March 1, 2012	CANNON/Bauknight file Stipulation of Dismissal, Case1425, without notifying Jg.Early, parties. No attorneys' fees or Rule 11 costs sought from CANNON for frivolous \$6 Million claim.

I hope the above facts will make your review easier.

I request that either Mr. McIntosh or Attorney General Wilson – or both – allow Mr. Buchanan and me a brief opportunity to discuss these important cases with you in person before the hearing Judge Early has now scheduled for the 23rd of April. I can be reached at 803-413-0753.

Thank you for your consideration.

Sincerely,



Adele J. Pope

AJP/ja
Enclosures:

1. Letter of Pope to David G. Cannon and others dtd. 3/29/12
2. Private Foundations, Copyright Heirs and Musical Millionaires: or Why the James Brown "I Feel Good" Trust doesn't.. [Draft 4/11]
3. Email - Pope to various persons, 3/29/12

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

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

) SUPPLEMENTAL
) AFFIDAVIT OF ADELE J. POPE
) SUPPORTING INJUNCTION
) AGAINST WINGATE/BAUKNIGHT
) REPRESENTING STATE/AG WHILE
) REPRESENTING TOMMIE RAE,
) TERRY AND OTHERS
) AND OPPOSING RELIEF FROM
) DEFAULT BASED ON VALIDITY OF
) CLAIMS; PLAINTIFFS' FRAUD UPON
) COURT DISCOVERY ABUSE AND
) DAMAGE TO DEFENDANTS

JEANETTE W. POPE
C.C.P. & J.

2012 APR 12 AM 9:11

RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly
sworn, deposes and says:

1. This Affidavit is based on my personal knowledge and belief.
2. Robert Buchanan, Jr. and I have never opposed the Wingate Firm's
representation of its private adult clients: Tommie Rae Hynie, Terry and others.
3. I am informed and believe that the Wingate Firm's and Bauknight's fiduciary
duties to Tommie Rae and Terry are in direct conflict with the public interest and
preclude their being able to speak on behalf of the State/AG.
4. Since 2007 I have personally observed Wingate's private clients in James
Brown cases in Aiken County and elsewhere, and am informed and believe that the

conduct of some of them and some of their many attorneys has been the most egregious I have seen in my 30+ year legal career, including:

a. Terry Brown, with his sons, filing 6 grievances in two states to obtain a result in Aiken County Case 2007-CP-02-0122.

b. Bauknight's false accusation that Bob Buchanan and I committed the crime of overstating James Brown's music empire at about \$85 Million, while asserting to the IRS and the SC Supreme Court a fabricated less-than \$4.7 Million value of Brown's worldwide music empire.

c. Deanna Brown's threats to ruin Bob Buchanan and me through Rule 11 sanctions and otherwise if we did not support the settlement.

d. Tommie Rae's threats to sue us if we did not abandon our appeal in Case No. 2008-CP-02-1647 – a threat carried out by the Complaint in this action.

e. Concealing public documents.

f. Engaging and retaining lawyers to take opposing positions in separate cases at the same time.

5. My letters to Attorney General Wilson dated March 5, 2012 and April 1, 2012, with attachments, confirm my concern in Aiken County cases that Terry, Tommie Rae and Bauknight are interfering with recovery of the \$13+ Million taken by felon David Cannon and may attempt to conceal Tommie Rae's diaries. They are attached hereto as Exhibits A and B.

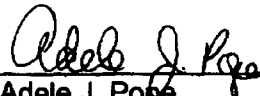
6. Attached hereto as Exhibits C, D, E and F are recent filings in the frivolous Federal suit brought by Terry Brown's son and joint venturer Forlando Brown 4 years ago. They outline some of the fraud Terry and Forlando have committed on the Courts.

7. As the documents and other filings herein show, Bob Buchanan and I have suffered financially and professionally during the 4 years it has taken to demonstrate that Forlando's January 2, 2008 suit against us was wholly without merit and brought to

assist Forlando and Terry in the takeover of James Brown's assets and destruction of the James Brown "I Feel Good" Trust.

8. I ask the Court to relieve me of having to spend another 4 years confirming Terry and Tommie Rae's wrongdoing, and to prevent the Wingate firm from using the power of the State of South Carolina to make my task more difficult.

FURTHER DEPONENT SAYTEH NOT.


Adele J. Pope

SWORN TO befor me this 9th day of
April, 2011

 (L.S.)
Notary Public for South Carolina
My commission expires: 7/13/2014

D:\Data\docs\BROWN ADMINISTRATION\AFFIDAVIT.SUPP.INJUNCTION.NOT RELIEVE FROM DEFAULT.WPD

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

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

) AFFIDAVIT OF ADELE J. POPE
) REQUESTING DEPOSITIONS
) OF 5 OF 91 WITNESSES,
) RULING ON INJUNCTION,
) SEVERING OF FOIA CLAIM,
) AND RELATED RELIEF,
) FOLLOWED BY DAY-CERTAIN
) MEDIATION

FILED
RICHLAND COUNTY

2010 JUL 19 PM 14:31
CLERK W. MCBRIDE
S.C.

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE , who being duly
sworn, deposes and says:

1. I am a Defendant in this Case, and a counterclaim Plaintiff.
2. I am informed and believe my counterclaims will be the primary subject of the
mediation in this case when it is held. They are briefly described below:

a. **Abuse of Process** - Plaintiffs' claim was maliciously commenced
for the improper purpose of forcing Bob Buchanan and me to abandon or
dismiss our appeal of the May 26, 2009 Order in Case 1647.

b. **Civil Conspiracy** - combining with each other and third parties to injure us.

c. **Intentional Interference with Contract** - the January 8, 2008
Order/Contract which gave Bob \$500,000.00 and me \$1,500,000.00, with
interest since 2009.

d. **Fraud under §62-1-106 of the S.C. Probate Code** - by intentional improper assertion of James Brown's "heirs" under the Federal Copyright Act; intentional undervaluation of Brown's worldwide music empire; and other false representations and filings.

e. **Attorneys' fees** - as provided in S. C. Trust Code Section 62-7-1004.

3. I am a Certified Mediator, and have been one for many years.

4. I was fortunate enough to be trained by Michael K. Lewis and Linda R.

Singer, two of the finest mediation specialists in the United States, at the Harvard Mediation training program.

5. Mr. Lewis, according to a recent ABS JAMS Blog, is "a former Foreign Service Officer...known for his ability to resolve the most complex disputes in virtually every area of law ...," and Ms. Singer is described as "tenacious, intelligent and possessing an innate ability to settle cases that others could not."

6. While I do not actively seek appointments as a mediator, my training with Mr. Lewis and Ms. Singer instilled in me an abiding belief in the value of mediation when it is done properly.

7. In James Brown Case 1647 I have unfortunately seen the vast damage to be caused where some of the parties are so anxious to conclude a complex matter that they forget even Rule #1 of Mediation – that the parties must be there.

8. Four years after the secret, rushed mediation and partial Case 1647 settlement, our Supreme Court is addressing the damage caused by the failure to follow basic rules.

9. I have heard reports that at least some of Plaintiffs, including Plaintiffs Terry Brown and Daryl Brown, now assert they should never have challenged their father's

f. Name the mediator, date and time; Order all Parties to appear; and direct each party to pay 1/17 of the mediator's cost.

2. The Settlement recently reached by Bob Buchanan on May 4 is instructive for the following reasons:

- a. The Counterclaim Defendants/Plaintiffs received nothing in their claim.
- b. Bob received the \$500,000.00 he was awarded by Jg. Early in January 8 Order which gave me \$1.5 Million, with interest.
- c. The agreement conforms to Jg. Early's final April 8, 2008 Order finding Bob's and my service as both ethical and appropriate.
- d. The agreement conforms to Hynie's assessment to Jg. Early about Bob's and my service in September 2008:

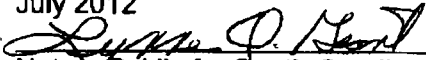
MR. MEDLIN: ...WE HAVE THE HIGHEST REGARD
FOR MRS. POPE AND MR. BUCHANAN. I HAVE SAID
THAT IN OPEN COURT BEFORE, AND I WILL
CONTINUE TO SAY THAT BECAUSE I KNOW I DO,
AND I'M PRETTY SURE EVERYBODY ON MY TEAM
DOES.

THE COURT: AND SO DO I. [Hg., Case 122,
9/28/08, p.54.]

FURTHER DEPONENT SAYTEH NOT.


Adele J. Pope

SWORN TO before me this 1st day of
July 2012

 (L.S.)
Notary Public for South Carolina
My commission expires: 8-12-2020

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

POST OFFICE BOX 1898
1218 TAYLOR STREET
COLUMBIA, SOUTH CAROLINA 29202

July 11, 2012

By e-mail and U.S. Mail:
The Honorable L. Casey Manning
Post Office Box 192
1701 Main Street, Room 214
Columbia, South Carolina 29202-0192

Re: Bauknight et al vs. Pope and Buchanan ("Case 4900")
Case No. 2010-CP-40-4900

Dear Judge Manning:

We received yesterday afternoon a proposed Order for mediation presented by Kenneth Wingate purporting to represent the State of South Carolina through its Attorney General Alan Wilson, whose name has never appeared in the caption of a Circuit Court Order in this case before.

We believe that for each of the following – and other reasons – the Order is premature:

1. The Parties are not yet joined. The parties are not joined – especially with the *ex parte* removal of Henry McMaster from the pleadings when we have a motion that he be joined individually after his deposition.

2. Wingate has no Authority to Bind the General Fund of the State of South Carolina as to the Counterclaims, and neither Bauknight nor Wingate is an agent of the AG/State. We have firmly asserted since the commencement of this action that Sweeney, Wingate & Barrow ("Wingate") lacks all authority to speak for or bind the State of South Carolina; and has never been authorized to do so. This matter is especially critical since the State – if it is a party – is now seeking relief from default as to Mrs. Pope's and Mr. Buchanan's counterclaims for:

- A. Abuse of process;
- B. Intentional Interference with Contract;
- C. Civil Conspiracy; and
- D. Attorneys' fees.

We have also alleged that McMaster's bringing this suit exceeded and recklessly or intentionally abused his office.

A decision about whether Wingate has any authority to bind the general fund of the State of South Carolina as to our counterclaims is essential to any mediation.

You have indicated your intention to rule against us on our motion to enjoin Wingate and Bauknight from purporting to speak as agents for – or bind – the State of South Carolina, but have not yet issued a written Order on that motion.

A decision on this important issue of first impression in this State is critical to our ability to proceed to mediation.

3. Daryl Brown asserts he did not hire Wingate. In light of his recent statements to the press, there is substantial doubt as to whether Daryl Brown authorized Wingate to bring this suit. The deposition of this Plaintiff/Counterclaim Defendant is critical on that point, and Wingate has refused for 15 months to make him available.

4. The Minors have no Guardians ad Litem. The parents of the minors in this Case have obvious conflicts with their children, and no guardians *ad litem* have been appointed.

5. Tommie Rae Hynie Brown was not Brown's spouse. Defendants owed her no duty. Plaintiff/Counterclaim defendant Tommie Rae Hynie Brown, a companion of James Brown, has refused for 15 months to be deposed. Her deposition is critical to any evaluation of the strength of Mrs. Pope's counterclaim and Tommie Rae's claim to be relieved from default.

6. Terry Brown/Bauknight's false less-than \$4.7 Million valuation. Terry Brown and Russell Bauknight have told the IRS and the South Carolina Supreme Court that James Brown's worldwide music empire was worth less than \$4.7 Million when James Brown died on December 25, 2006 and that there has never been an offer to buy the assets. Nonetheless, this suit asserts that there was an offer in the fall of 2007 for \$100 Million and that Buchanan/Pope should have taken it, causing tens of millions of dollars of loss.

The deposition of these two Plaintiff/Counterclaim Defendants will help resolve this \$95 Million discrepancy in the alleged value of the James Brown assets – critical to any mediation.

7. Minimal document discovery must take place prior to mediation. Almost no document discovery would be necessary before mediation, because Buchanan/Pope have copies of tens of thousands of pages of public documents. What is needed is the depositions, since Plaintiff/Counterclaim defendants refused to admit the authenticity of approximately 100 public documents. We only need to obtain a handful of additional documents, chiefly:

1. The alleged Contingency Fee Contract between McMaster and Wingate;
2. A copy of the signed Legacy Trust; and
3. Tommie Rae Hynie Brown's "diary" which has been widely disseminated.
[Ms. Pope is currently seeking to void a 4-year old Gag Order which would allow her to speak freely at mediation about the contents of the Hynie "diary."]

8. Buchanan did not conduct mediation. Bob Buchanan did not attend a proper mediation, as most of the Plaintiff/Counterclaim defendants were not present. It is my client's position that Bauknight/Wingate's attempt to make Bob Buchanan abandon his duty to the Estate Plan of James Brown without notifying and receiving permission from the S.C. Supreme Court and/or resigning is void. There has been no settlement presented to this Court for approval.

9. Deposition of Plaintiffs/Counterclaim defendants. Defendant/Counterclaim Plaintiff stands ready to conduct all of these deposition within 60 days if the Plaintiff/Counterclaim defendants will cooperate – something they have refused to do for more than a year. These depositions must be taken before a meaningful mediation can be held.

10. No expert testimony in two years. In two years Plaintiffs/Counterclaim defendants have produced no expert's report in support of any of their claims, although they have designated two expert witnesses. Unless they are not going to have one, these reports should be produced.

11. Early mediation after 6 depositions: It is likely the value of Mrs. Pope's counterclaims – and whether any Plaintiff/Counterclaim Defendant should be relieved from default – can be properly evaluated after the 3 documents listed above are released and the following depositions are taken: Tommie Rae, Terry, Daryl, Bauknight, McMaster and Albert Dallas. These will be important to the issue of Hynie's not being Brown's spouse; Bauknight/Terry's alleged \$4.7 Million value; and the offers – all essential element of both the defense and Counterclaims.

12. Suggestion that Mrs. Pope is uncooperative is false. The record is clear that Defendant/Counterclaim Plaintiff Pope has made repeated and substantial efforts to move this matter along, but that Plaintiff/Counterclaim Defendants have simply stonewalled traditional case management matters such as Plaintiff deposition.

13. Plaintiff/Counterclaim Defendants' failure to comply with Mediation Rules. Counterclaim Defendant/Plaintiff have made no effort to comply with the Mediation Rules, including but not limited to their failure to set forth any fact making it necessary to conduct an early mediation while refusing to comply with deposition notices for more than a year; failure to demonstrate how premature mediation could be efficient; and even unilaterally changing the caption on the proposed Order to prevent the appearance at the mediation of Henry D. McMaster, who, if the Order is signed, must be added.

14. The removal of Henry D. McMaster as a purported party and addition of Alan Wilson – with Wingate and Bauknight as his purported agents – was improper. There is no evidence whatsoever that – as the proposed Order's caption states – Russell Bauknight was authorized to continue this action as the Agent for Attorney General Alan Wilson, or Wingate to change the caption to so reflect. If the new Attorney General has authorized or condoned Wingate's presentation of this Order, he should be deposed as to why he is covering up the wrongdoing of McMaster, who must

be added as a party.

15. The wrongdoing of McMaster and Bauknight is an essential element of the request for relief from default. McMaster's presence as a party is essential to the case and to the mediation. Since January 2011, except as automatically mandated by the Appellate Court Rules, Attorney General Wilson has made no appearance. This last-minute change in a proposed order distributed without a motion is both unwarranted and improper.

16. The Freedom of Information Act suit must be severed prior to mediation. It is not only unusual but arguably unconstitutional to demand that a South Carolina Citizen be required to participate in a mediation in order for the Public Body – here the Attorney General of South Carolina – to comply with FOIA. The single FOIA case which has been consolidated with this case cannot proceed to mediation or be stayed for 90 days on the whim of Wingate.

17. Failure to require Plaintiffs, including the State (if a party) to pay. The mediation rules are clear that all parties – including Buchanan who has not yet presented a settlement or been dismissed from the action – pay equal shares of the mediation expenses. Here, that would result in Plaintiffs being responsible for 1/17 of such expenses.

18. The Mediation Order was presented for an Improper Purpose. The mediation order was timed and presented to achieve a result in an Aiken County case: to delay or prevent Judge Early from issuing an Order which should declare void or expired a 4-year old Gag Order which will allow the more than 50 people familiar with writings of Plaintiff/Counterclaim Defendant Tommie Rae. Those who know of the explosive contents of the Tommie Rae diary – but whom the Plaintiff/Counterclaim Defendants are trying to Gag – are not only Defendants but longtime friends of James Brown named as Plaintiff/Counterclaim Defendants' witnesses in this case, including Andre Moses White and Albert Dallas. Media reports of the diary contents suggest that this information could be pivotal in this matter.

19. McMaster's hiding of the "explosive" diary and AG Wilson's coverup of McMaster's actions are central to the Counterclaims. The wrongdoing within the Office of Henry McMaster – including giving \$20 Million of James Brown's assets to Brown's companion – are essential to determining whether the State and Tommie Rae should be relieved from default. The Gag Orders should be voided before mediation.

20. Plaintiffs/Counterclaim Defendants have lacked candor with the Court. In order to prevent dismissal or release of this action, Plaintiffs, now Counterclaim Defendants in default, told this Court that Case 122 in Aiken was over. That, and other representations they have made to the Court, are false.

21. The Order fails to designate a mediator or set a date certain for mediation. With five law firms and more than 15 parties involved in this action (all of whom must attend mediation),

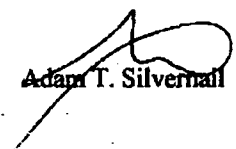
Letter to Judge Manning
July 11, 2012
Page 5

mediation is unlikely to occur without the Court designating a mediator and setting a time for mediation.

We understood from the status conference that Plaintiff/Counterclaim Defendants would make a motion or request which would address at least some of the above issues and comply with the ADR Rules. They did not. We respectfully request an opportunity to be heard on the record in open Court on our opposition to this matter so that there will be a complete record. Once again, we do not agree with Plaintiff/Counterclaim Defendants' representation of what happened off the record *in camera*.

Thank you for your consideration.

Sincerely,



Adam T. Silvernail

cc (via e-mail only):

Mark V. Gende, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
Daryl L. Williams, Esquire
Adele J. Pope, Esquire
J. Emory Smith, Esquire

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	) Case No. 2010-CP-40-4900
RUSSELL L. BAUKNIGHT, as Trustee of	) Supplemental Affidavit of Adele J. Pope
the James Brown 2000 Irrevocable Trust and	) Supporting Injunction
others	) Against Wingate and Disqualification
and	) from Representing
HENRY DARGAN MCMASTER, in his	) State of South Carolina/Attorney General
capacity as Attorney General of the State of	) and Injunction Against
South Carolina and others	) Bauknight from Asserting he Speaks
Plaintiffs.	) on Behalf of Attorney General
v.	) and
Adele J. Pope and Robert L. Buchanan, Jr.,	) Related Relief
Defendants.	)

RICHLAND COUNTY
 FILED
 2013 JAN 15 AM 10:11
 KENNETH W. MCBRIDE
 C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly sworn,
deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. I am informed and believe that newly-uncovered and/or confirmed facts provide compelling evidence that this Court should issue an Order enjoining and disqualifying Kenneth B. Wingate and members of the firm of Sweeney, Wingate and Barrow, P.C. (collectively "Wingate") from representing the State of South Carolina/Attorney General ("AG") in this action while also representing Daryl Brown and other private Wingate clients.
3. I am also informed and believe that these facts support this Court's injunction preventing Russell L. Bauknight from asserting that he speaks on behalf of the Attorney General of South Carolina.
4. I am informed and believe that Wingate and Bauknight have materially participated in preventing me and others from knowing these facts by the following means:

- a. By refusing to present Daryl Brown for a deposition for more than a year.
- b. By allowing Louis Levenson to appear for Daryl Brown at a mediation Wingate requested on Daryl's behalf at a time when Wingate had reason to know that Levenson had been fired by Daryl Brown.
- c. By concealing from Defendants and the Court that Wingate was never hired by Daryl Brown, but, instead by Levenson – purportedly acting as Daryl's agent – for the improper purpose of securing for Levenson a legal fee between \$7.6 Million and \$9.1 Million, or more, in an Aiken County case.
- d. By concealing from this Court that Daryl never authorized Wingate to move to intervene in a S. C. Freedom of Information Acts ("FOIA") suit, and that such authorization, if made, was made by Levenson for the same improper purpose.
- e. By concealing that Daryl never asked Wingate to seek sanctions against me in the FOIA suit, and the authorization, if any, was made by Levenson for the same improper purpose.
- f. By Wingate's assertion for more than a year and a half that his Litigation Retention Agreement to represent the State of South Carolina/Attorney General was "private" when, according to a January 2013 statement of the Attorney General, no such contract existed.

5. I am informed and believe that these facts support not only this Court's injunction against Wingate and Bauknight, as requested, but also the following:

- a. Sua sponte dismissal of the State/AG as a party to this action on the jurisdictional grounds that they were illegally named as parties Plaintiff;
- b. Addition of Henry McMaster, individually, as a party, so that he may be held accountable, if appropriate, for the misrepresentation that this Case was properly authorized to be brought on behalf of the AG/ State of South Carolina;
- c. An Order that the deceptive Caption be amended to make clear that Wingate does not represent the State of South Carolina/Attorney General, and Bauknight does not speak as agent for the State/Attorney General.

d. An Order charging Wingate and Bauknight with the costs of their actions.

6. Many of the recently revealed and/or clarified facts became clear at the

deposition of Daryl J. Brown, the first Plaintiff to submit to a deposition in this 2 1/2-year-old case; media statements made by Attorney General Alan Wilson; and a televised interview with Plaintiff Daryl Brown aired in January 2013 and other media statements by Plaintiffs.

7. I ask the Court to consider the Wilson statements, some of which are attached as Exhibits A and B, as well as the deposition of Daryl J. Brown and his televised interview on Will: Family Secrets, aired nationwide in January 2013.

8. The most startling new and/or confirmed facts include that the State of South Carolina/Attorney General recently asserted the State/AG never contracted with Wingate to bring this suit against Robert Buchanan, Jr. and me on behalf of the State, despite the following:

a. for nearly 2 years Wingate has referred to his Litigation Retention Agreement with the State and asserted that it was a sacred, "private" agreement.

b. A Sr. Assistant AG, in September 2011, told this Court [Jg. Manning] that Attorney General Wilson's Office was "ready and more than willing" to release the Wingate contract which, it now appears, never existed.

9. Daryl Brown, named by Wingate as one of the Plaintiffs in this action, at his deposition on December 21, 2012, and in earlier statements which he does not refute, has stated:

a. He never met Wingate before this lawsuit was filed; never met him during the first two years the suit was pending; and did not even know this Case 4900 was being filed.

b. Wingate was hired by attorney Levenson to bring this suit in Daryl's name. Levenson expects to get between \$7.6 Million and \$9.1 Million, or more, of the money James Brown left to educate needy and deserving students in the "I Feel Good" Trust if Bob Buchanan and I can be made to abandon our appeal of a settlement in Aiken Case 2008-CP-02-1647 ("Case 1647").

c. Daryl did not know that Wingate moved to intervene in a FOIA suit on Daryl's behalf, and Wingate's request for sanctions in the FOIA suit against me for Daryl was either not authorized, or authorized by Levenson for the same improper purpose.

d. Wingate allowed Levenson to attend the 2012 mediation which Wingate sought in Daryl's name, at a time when both Levenson and Wingate had actual knowledge that Daryl had fired Levenson, and apparently without Wingate's attempting to find out whether Daryl himself could come to the mediation.

e. Wingate and Bauknight – both purporting to speak for the State – falsely accused me of revealing the contents of the Hynie "diary" to the media and making improper contact with Daryl, without ever contacting Daryl, Hynie and others who would know the claims to be false.

f. Daryl has not read a single of the more than 50 Orders issued in Aiken County Cases 2007-CP-02-0122 ("Case 122"), 2008-CP-02-872 (Case 872"); and Case 1647 although he was a Plaintiff in all three cases; is bound by the Orders; and such Orders virtually exonerate Bob Buchanan and me from all of the false claims made by Wingate/Levenson in Daryl's name in this suit.

g. Daryl recently stated in a televised interview that nobody told James Brown what to do, confirming that Brown's Will and the 2000 Trust which created The James Brown "I Feel Good" private foundation are valid; Daryl was entitled only to 1/6 of Brown's Tangible Personal Property; and Levenson is not entitled to any of the \$9.1 Million he brought this suit and others suits in Daryl's name to secure. Further, Daryl knew this when he engaged Levenson.

h. Daryl does not refute that he correctly told a journalist that Hynie was not Brown's spouse and he and family member knew it when they made a deal with her from which he hopes to get \$5 Million.

i. Daryl and 5 siblings signed a January 2007 contract to pay Levenson \$150,000 plus 30% of what he could get them by destroying James Brown's Estate Plan, and Levenson – now hoping to get \$9.1 Million or more – has acted unchecked as Daryl's agent since early 2007.

j. By letter dated September 2010 and widely circulated by Daryl himself, Daryl terminated Levenson and apparently had no contact with Levenson from the termination until some time after the October 2012 mediation when– under undisclosed circumstances – they "kissed and made up."

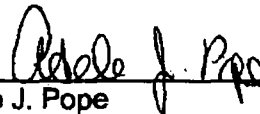
k. Levenson/Wingate continued to act for Daryl throughout the time Levenson was terminated, resisting Daryl's deposition and taking other action, concealing

the termination.

7. Wingate and Bauknight, purporting to speak for the State/AG, and using the mighty name and power of the State of South Carolina, have violated my First Amendment Free Speech rights, and those of others; and my Due Process rights by falsely accusing Bob Buchanan and me of a federal crime then denying us even the basic rights to information and documents which show these career-threatening claims are false.

8. I am informed and believe that Wingate and Bauknight cannot serve the public interest while supporting Levenson's secret commencement and continuation of this action in Daryl's name for the purpose of securing \$9.1 Million or more which James Brown gave to scholarships for needy and deserving South Carolina and Georgia students.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this 12th day
of January, 2013.

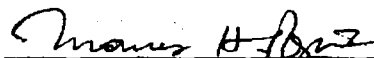
 (L.S.)
Notary Public for South Carolina
My commission expires: -3-28-2022

Exhibit A

SOUTH CAROLINA LAWYERS WEEKLY | January 7, 2013

NEWS / 3

Record request ignored, so reporter sues state AG

■ AMBER NIMOCHS

Ambernimochs@scbar.org

The journalist subpoenaed by Attorney General Alan Wilson this summer has filed a complaint against him alleging violations of the state's Freedom of Information Act and seeking a long list of documents related to the ongoing settlement of James Brown's estate.

Sue Summer has been reporting on the legal conflicts plaguing the estate of the Godfather of Soul, who died in 2006. Summer's stories for the Newberry Observer have examined the settlement deal former attorney general Henry McMaster drew up for the Brown estate, claims about the value of Brown's musical holdings, and the legal relationship between Brown and his wife Tommie Rae Brown.

In August 2012, Wilson issued a broad subpoena seeking all of Summer's notes and documents related to her coverage of the Brown case. He quickly canceled the subpoena after several stories about it ran in state and national media. Attorney Jay Bender, who represents Summer, said he believed the subpoena was retaliatory.

In her FOIA complaint filed Dec. 18 in the Newberry County Court of Common Pleas, Summer says she began asking the AG's office for public documents related to the James

Brown case in fall of 2011. She sought a copy of the litigation retention agreement between former attorney general Henry McMaster and Kenneth B. Wingate and his firm. Summer says McMaster retained Wingate to file suit against two former trustees of the Brown estate who contested the deal, Adelle Pope and Robert Buchanan.

Brown's will left the bulk of his fortune to the "I Feel Good" scholarship trust for poor children in Georgia and South Carolina, but McMaster created a new entity, the Legacy Trust, when disputes over the original trust threatened to leave it in legal purgatory. The South Carolina Supreme Court heard an appeal of the Legacy Trust settlement in November 2011, but has not ruled on the case.

According to Summer's claim, the AG's office first responded that it was "ready and more than willing" to release the contract she sought, but a few months later the staff informed Summer that the litigation agreement was private, eventually describing it as "attorney work product."

Mark Powell, a spokesman for the attorney general's office, said last week that the office can't release the document because the state does not hold the contract with Wingate. A private firm retained by the estate does.

"There is no signed contingency fee

”

It is my hope that he is going to step up and be that person he is claiming to be.

Sue Summer

agreement in this case," Powell said. He also said the attorney general's office has an established track record of supporting freedom of information laws.

After the initial ruling by the attorney general's office on the Wingate contract, Summer wrote a letter protesting the staff's decision and sought copies of the documents that created the Legacy Trust, and documents related to claims against the estate and the estate's valuation. Summer said she has received none of the documents she requested.

Summer says she hopes her claim

will spur Wilson to greater action on freedom of information issues.

"It is my hope that he is going to step up and be that person he is claiming to be," Summer said.

She said she wants to highlight the need for an enforcement mechanism that will give muscle to the state's open records laws. Filing suit is the only resort for those who face official refusal to release public documents. For years, newspapers have taken on the task of suing to enforce freedom of information laws, but with the newspaper industry in decline, someone or something needs to fill the gap to help those laws remain viable, she said.

Since her original requests for documents in 2011, Summer has also asked the AG's office for Tommie Rae Brown's diary, which is under a circuit court judge's gag order, and documents related to it; documents related to former estate trustee David G. Cannon; and documents related to the estate's dealings with Nexsen Puetz and lawyers for Tommie Rae Brown. She said she has received none of those.

The complaint asks that the attorney general be found in violation of FOIA in each instance and that he provide the documents requested. It also seeks attorney's fees and costs.

Follow Amber Nimochs on Twitter @NCLWTechTalk.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

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

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900
(Formerly Newberry No.2011-CP-36-379)

AFFIDAVIT OF ADELE J POPE
OPPOSING STAY OF FOIA CASE
AND SUPPORTING
SUMMARY JUDGMENT REQUIRING
A.G. WILSON TO COMPLY WITH FOIA

2014 APR 29
PM 3:56

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

1. This affidavit is based on my personal knowledge.
2. I am over 21 years old.
3. I ask the Court to deny the April 2014 request made on behalf of Attorney General Alan Wilson ("AG Wilson") and others through the private law firm of Kenneth B. Wingate, Esquire ("Wingate") to stay this case for what may five years or more.
4. A stay or this Freedom of Information Act ("FOIA") case will continue the irreparable harm the State, through two AGs, has caused Robert Buchanan, Jr. and me since May 19, 2010 when AG Henry McMaster and Russell L. Bauknight as the agent for both the State/AG and Tommie Rae Hynie, sued us for tens of millions of dollars.
5. I believe that the public James Brown documents other citizens and I have sought under FOIA since June 2011 will show that fraud committed on the S.C. Supreme Court and other courts by Bauknight; Wingate; Hynie and David Bell, Esquire

was condoned and/or joined in by the office of AG Wilson; materially affected the outcome of the *Wilson v. Dallas* decision; has already irreparably harmed my career and that of Mr. Buchanan; and has deprived The James Brown "I Feel Good" of fiduciaries who will protect the "I Feel Good" Trust and its copyrights to more than 800 published and unpublished songs.

6. As demonstrated on Exhibit A, a letter I wrote AG Wilson and others on April 3, 2014, I believe a stay will reward AG Wilson for his improper refusal to comply with FOIA in James Brown matters; support the State's continued unfair promotion of Hynie by allowing Bauknight and Wingate to continue to represent both the State/AG and Hynie; threaten the 800+ copyrights Brown gave to the "I Feel Good" Trust; and allow Bauknight to continue to make intentional false statements to multiple courts about Brown's heirs, the value of Brown's assets and the Federal Copyright Act termination rights provisions.

7. As demonstrated on Exhibit B, constitutional arguments by the Plaintiff in *Cephalon, Inc. v. State of South Carolina*, made April 21, 2014, I am informed and believe that the State's suing Bob Buchanan and me in the Wingate Suit in May 2010 with Wingate as the sole attorney for both the State and Hynie, violated the U.S. Constitution, based on the holdings set out in Exhibit B.

8. I am informed and believe that the suit was punitive in nature; and intended to punish us by ruining our careers and reputations for protecting the "I Feel Good" Trust in the *Wilson v. Dallas* appeal.

9. I am informed and believe that AG Wilson then improperly allowed Wingate, speaking for Bauknight "on behalf of" AG Wilson himself, to try to intervene in three

10. I ask that the Court grant me Summary Judgment and attorneys' fees in the amount of Thirty Seven Thousand Five Hundred and 00/100 (\$37,500.00) Dollars; and costs in the amount of about \$ 875.00 for the 2 ½ years spent by my attorney to obtain the public documents AG Wilson should have released in 2011.

11. I ask the Court to grant additional attorneys' fees at the rate of \$250.00 per hour, and costs, after May 1, 2014, if AG Wilson does not promptly end this case and pay them, because the public official charged with FOIA enforcement should comply with the law he enforces.

12. I do not seek sanctions, but request that the Court admonish the Attorney General to uphold his public duty to comply – and make others comply – with FOIA. His failure to do so erodes public trust.

13. I am informed and believe that the public trust has been particularly damaged by AG Wilson's intentional FOIA delays and his allowing Wingate to interfere with three separate FOIA cases, halting FOIA compliance in James Brown matters where AG Wilson's own actions; those of his trustee Bauknight; and those of his predecessor AG Henry McMaster are in question. And the questions involve the 'I Feel Good' Trust, a charity they have a duty to enforce.

14. My request is based on the reasonableness of my attorney's fees as requested herein; the value of my counsel's services to me and to South Carolina citizens who cherish their FOIA rights; and the extraordinary assault on FOIA carried out by AG Wilson and on Mr. Buchanan and me in the James Brown matters;

15. I incorporate by reference the affidavits of other citizens on file in this case, and my affidavit opposing stay in the Wingate Case.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
29th day of April, 2014

Jonathan H. Pope (L.S.)
Notary Public for South Carolina
My Commission expires: 3.28.2022

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

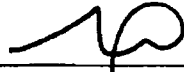
) Case No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2015 FEB - 6 PM 3:54
JEANETTE M. JORDON
C.C.P. & G.

DEFENDANT ADELE J. POPE'S
SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO PLAINTIFFS' MOTION
TO SET ASIDE DEFAULT

Defendant Adele J. Pope submits her supplemental memorandum in opposition to
relief from default in the form of the proposed Order attached hereto as Exhibit A.

Respectfully submitted,



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Attorneys for Defendant Adele J. Pope

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES B.; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
L., CARRINGTON L., and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) ORDER DENYING MOTION FOR RELIEF
FROM DEFAULT

THIS MATTER COMES BEFORE THE COURT on Plaintiffs' Motion for Relief from

Default, filed November 16, 2010.¹ A hearing was held on December 17, 2012 on this motion, and the Court has considered the memoranda filed by all parties, along with the arguments by counsel. After consideration, the Court denies the motion and directs the Clerk of Court to make an entry of default as to the counterclaims against Plaintiffs herein. The Court makes the following specific findings of fact and conclusions of law:

This action was commenced by the filing of a Summons and Complaint in the Richland County Probate Court on May 19, 2010 and subsequent service on Defendants Robert L. Buchanan, Jr. and Adele J. Pope. This matter was subsequently removed to the Circuit Court. Defendants filed and served their Answer and Counterclaim on September 30, 2010. Plaintiffs did not file a response to the counterclaims, and Defendants² filed an Affidavit of Default on November 10, 2010. Thereafter, Plaintiff's filed a Motion for Relief from Default on November 16, 2010, with an attached Affidavit of Kenneth B. Wingate, Esquire, and a proposed Reply to Counterclaims.

Plaintiffs' counsel acknowledged having received the Answer and Counterclaim, but explained that he "did not recognize it as a counterclaim." (Affidavit of Kenneth B. Wingate) Defendants opposed Plaintiffs' motion to be relieved from default and filed memoranda asserting that Plaintiffs had failed to show "good cause" for relief as required by Rule 55(c). After the December 17, 2012 hearing on the motion, certain Plaintiffs announced their termination of Wingate as their counsel herein, and Wingate moved to be relieved as counsel for the South Carolina Attorney General.³

¹ Henry Dargan McMaster, as Attorney General for the State of South Carolina was originally a Plaintiff herein. In January 2011, Alan Wilson took office as the State's Attorney General. Issues related to representation of the AG's office are discussed below.

² A settlement reached by Defendant Robert L. Buchanan, Jr. is subject to a motion for review.

³ The AG has also asserted in other litigation that he is not a party to this action, although he has filed a "motion to be dropped as a party" herein. Defendant Pope opposes this motion, and it has not been heard or

As an initial matter, this Court finds that Wingate lacks authority to speak for certain Plaintiffs herein. Specifically, Wingate has moved to be relieved as counsel for the AG on the basis that the AG has terminated Wingate's services. No other counsel has yet filed a notice of appearance for the AG, however, and Wingate's motion to be relieved as counsel has not been heard. Further, Plaintiff Daryl Brown has announced his termination of Wingate as his counsel, although no other counsel has made an appearance on his behalf in this case. Terry Brown, through an assignee, has also announced his termination of Wingate.

Plaintiff James Brown Legacy Trust has announced through its counsel Lewis, Babcock & Griffin, LLP in other litigation its position that it no longer exists. The AG has also taken the position that the Legacy Trust does not exist "at this time." Neither Wingate nor other counsel for the Legacy Trust has sought to remove it from this case, and the Legacy Trust remains subject to Pope's counterclaims herein. What is clear is that Wingate lacks authority to seek relief for the Legacy Trust at this time.

In addition, this Court finds that relief from default is not justified under the applicable law, because Plaintiffs have failed to show "good cause."

Pursuant to Rule 55(c), SCRPC, the Court may, for good cause shown, set aside an entry of default. In the case of Wham v. Shearson Lehman Bros., Inc., 298 SC 462, 381 S.E. 2d 499 (Ct. App. 1989), the Court held that in determining whether one should be relieved from the entry of default, a court shall consider the following factors: (1) the timing of the Motion for Relief; (2) whether one has a meritorious defense; and (3) the degree of prejudice to the non-moving party if the relief is granted. The law in this regard remained essentially unchanged until the South Carolina Supreme Court ruled in the case of Sundown v. Intedge Industries,

decided.

382 SC 601, 681 SE 2d 885 (2009). In that case the court held as follows:

"Rule 55(a) provides that when a party fails to respond to a Complaint, the Clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause". Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the entries of justice. Once a party has put forth a satisfactory explanation for the default, the court must also consider (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to Plaintiff if the relief is granted Id. at 607 and 608.

Sundown introduces a new factor for the court to consider before going further to look at the three other factors outlined in Wham. As pointed out by the South Carolina Supreme Court in Limehouse v. Hulsey, 397 S.C. 39, 723 S.E.2d 211 (Ct. App. 2011, *rev'd on other grounds* by Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (2013)),

"The good cause standard of Rule 55(c), requires as a threshold burden, a party to put forth "an explanation for the default and give reason why vacation of the default entry would serve the interest of justice" however, a trial court need not make specific findings of fact for each factor if sufficient evidence supports a trial court's determination that no reasonable explanation exists to vacate the default.

The court in Limehouse went on to state as follows:

"In South Carolina, *negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside the entry of default.* See Vanvolkenburg, 312 S.C. at 375, 440 S.E.2d at 410 (indicating prior to Sundown, that the imputed negligence of any attorney to a defaulting litigant is not good cause). Similarly, our supreme court has recognized subsequent to Sundown that the good cause standard of Rule 55(c), encompasses a degree of reasonableness. See Richardson v. P.V. Inc., 383 S.C. 610, 618-19, 682 S.E.2d 263, 267 (2009) (finding, after Sundown, that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve

an appellant from entry of default); see also Black's Law Dictionary 1133 (9th ed. 2009) (defining negligence as the failure to act reasonably under a specific set of circumstances). It stands, therefore, that because unreasonable conduct does not amount to good cause, and unreasonable explanation for defaulting is not a satisfactory explanation that serves a sufficient interest of justice." (emphasis added).

In Limehouse, the explanation for failing to answer within thirty (30) days had to do with the fact that the case had been removed to Federal Court and was thereafter remanded to State Court. The counsel representing the Defendant contended that he was operating under the belief that he was entitled to an additional thirty (30) days after the case had been remanded from Federal Court, a contention which the court found to be erroneous. Accordingly, it was noted that the trial court had addressed the counsel's explanation of default and specifically found it unreasonable.

In the case at hand, the Affidavit of Kenneth B. Wingate sets forth two paragraphs which appear intended to support Plaintiffs' a good cause for failing to timely respond to the Counterclaim after being properly served. Paragraphs 7 and 8 of Mr. Wingate's Affidavit state as follows:

7. I have no memory of receiving the Answer and Counterclaim. However, the single copy in our file has my handwriting on it instructing my staff to file the document in the Brown litigation file. I can only surmise that this document was among the others that were being exchanged at or about this time, that I did not recognize it as a counterclaim, and simply sent it to be filed.

8. I had no reason to suspect that an Answer and/or counterclaim would be filed during that period of time. In response to the Summons and Complaint, Defendants filed a Motion to Dismiss in lieu of an Answer. Defendants also filed a Motion to Change Venue. On August 30, 2010, hearings were held before Judge Manning on these motions. As stated previously, proposed orders were due to Judge Manning on October 1, 2010. At no time between the hearing and October 1, 2010, did Defendants withdraw their Motions.

Defendants point out, and the Court acknowledges, that the document bears the title **"ANSWER AND COUNTERCLAIM OF ROBERT L. BUCHANAN, JR. AND ADELE J. POPE"** in boldface capital letters. There is no deficiency in the presentation of the counterclaim which could justify Wingate's oversight, and he does not allege any such deficiency. As stated in Limehouse, supra, negligence on the part of an attorney will not be the basis for finding good cause to set aside an entry of default. Mr. Wingate states in his affidavit that he had received the counterclaim and marked it for placement in his files on this action.

In paragraph 8 of the Affidavit, Mr. Wingate states that he had no reason to suspect that an Answer or Counterclaim would be filed during that period of time due to the fact that the Defendants had previously filed a Motion to Dismiss as well as a Motion to Change Venue. As the Court will note in the preamble to the Answer and Counterclaim, the Answer and Counterclaim was filed subject to those Motions. The Rules of Civil Procedure do not make any exception to default for this situation, and the Court is aware that the practice of filing an answer during the pendency of a motion to dismiss is commonplace. Mr. Wingate had filed suit on behalf of the Plaintiffs, and his failure to review the coverpage to the responsive pleading is not "good cause" for relief from default herein.

Indeed, this case is somewhat analogous to the case of Bage v. Southeastern Roofing, 373 SC 457, 646 SE 2d 153 (Ct. App. 2007) In that case, the Court, commenting on the defendant's failure to respond to the Summons and Complaint, stated, "It is axiomatic that Southeastern Roofing simply did not give this matter the proper attention it required". Id. at 474. Under this rationale, Mr. Wingate's clear statement that the failure to respond to the counterclaim was his own oversight cannot support granting the Plaintiffs relief from default.

Plaintiffs have argued that the AG cannot be held in default at all, and they base this

argument on Rule 55(e), SCRPC. This argument is misplaced, as is shown by a plain reading of the Rule. Rule 55(e) states:

(e) Judgment Against the State and Certain Other Parties. No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court. [emphasis supplied]

This Rule does not, as Plaintiffs assert, preliminarily absolve the AG of default. Rather, it requires presentation of evidence in support of the claim against the State prior to a default judgment being entered. At this stage, where only the entry of default is at issue, Rule 55(e) does not absolve the AG of default herein. Indeed, the identical Federal Rule has been interpreted to allow for the entry of default and a default judgment, where plaintiff could show a meritorious claim. See Bostic v. Harris, 484 F.Supp. 686 (S.D.W.Va. 1979). In any event, it is clear that Wingate lacks authority to seek relief on behalf of the State.

CONCLUSION

Based on the foregoing, it is therefore ORDERED, ADJUDGED AND DECREED that the Plaintiffs' motion to set aside default is DENIED. A hearing shall be held to determine the amount of damages as to each Plaintiff due to Adele J. Pope under her counterclaims herein.

AND IT IS SO ORDERED.

L. Casey Manning
Circuit Judge
Fifth Judicial Circuit

Columbia, South Carolina
February , 2015

The Supreme Court of South Carolina

Alan Wilson, et al

v.

Albert H. Dallas, et al

Appellate Case No. 2009-142286

Status Report

RECEIVED

MAY - 8 2015

S.C. Supreme Court

I conducted a status conference on May 29, 2013 concerning the remand of the Wilson v. Dallas appeal. All parties through their attorneys and some claimants were present. The paramount theme of the meeting was to insure that all remanded matters were to be moved forward in an expeditious manner concomitantly with a structured and efficient administration of the estate and trust. An administrative order was issued on June 13, 2013 which addressed all mandates of the remand and segregated all of the various matters, claims and challenges to the will and trust and identified the proper parties to each respective case. (I will make reference to many orders in my status report. I am not making them exhibits. I believe copies to all orders have been provided to the Court pursuant to previous order. If the Court requires any of the mentioned orders, they are readily available. Please let me know.)

I will first update the status of the litigation. At the time of the remand, the will and trust litigation involved claims challenging the validity of the will and trust, spousal claims and an omitted child claim. By order dated December 16, 2013 Tommie Rae Brown's claims for an omitted spouse's share of the estate, her claim for an elective share and James Brown II's claim for a pretermitted child share of the estate were all severed so each case could move forward, without interference from other cases and to facilitate efficiency. By order dated February 7, 2014 the parties were identified for each respective case. Tommie Rae Brown and James Brown, II were designated as petitioners in their respective actions. The respondents were David C. Sojourner, Jr. in his capacity as Limited

concluded. Accordingly, Mr. Bauknight had not paid personal representative or trustee distributions in that matter.

In response to the administrative order of June 13, 2013, Mrs. Pope filed a twelve (12) page "Statement of Fees". She filed hundreds of pages of attachments with her statement. I include the statement, but not the attachments. I am not sure if my interpretation of her statement is correct, but she appears to claim in excess of \$2,000,000.00 for SA fees for service through May 26, 2007.

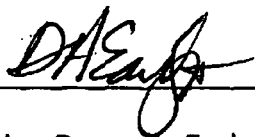
She claims since May 26, 2007 she has spent more than 4000 hours in connection with the Wilson v. Dallas appeal and other matters which protect the 2000 Estate Plan of James Brown. She stated her hourly rate was \$325-\$350. She states the amount exceeds the request she made for a full commission of \$2,845,930.00. Her claim remains unresolved. It appears that she claims approximately \$5,000,000.00 in fees. The Richland County suit with her counterclaims is still pending. She moved for summary judgment on the fees owed to her in the Aiken matters. I heard the motion and denied it because of the existence of factual issues in dispute.

Judge Manning and I signed a joint order requiring that the parties in both cases participate in mediation. One attempt at mediation had been unsuccessful, but all parties were agreeable and seemed to me to be motivated to once again try to reach a global resolution of the issues. All agreed to let Karl Folkens mediate. He had issued a mediation plan that addressed the concerns of all parties and had a date scheduled when the stay was ordered. Judge Manning and I are hopeful that this mediation will be productive.

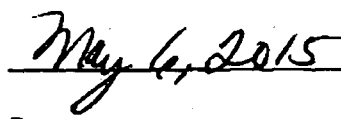
The Order requesting this status report inquired whether any proposed settlement agreement has been submitted for court approval. The answer is an unequivocal no. No lawyer, party or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. Neither am I aware of any rumor or "courthouse talk" of any proposed settlement.

This case has been and continues to be very complicated, challenging, diverse, contested, interesting, and time consuming as any matter I have presided

over. There are scores of legal issues which have and must be decided with over fifty (50) lawyers having appeared, each having been an outstanding advocate for his client, which has made this case very confrontational. Notwithstanding all the "bumps in the road", I am confident my management of this case has now put it in a posture for the final resolution of all issues which will now allow the complete administration of Mr. Brown's Estate.

A handwritten signature in cursive script, appearing to read "DA Early", written over a horizontal line.

Judge Doyet A. Early, III

A handwritten date "May 6, 2015" written in cursive script over a horizontal line.

Date

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
2015 NOV 30 AM 11:42
JEANNETTE W. MCGRINE
Clerk & C.S.

**Plaintiffs' Memorandum of Law
In Opposition to Defendant's Motion to
Alter, Amend and/or Vacate Order
Granting Plaintiffs' Motion to Set Aside
Default**

To: Defendant Pope and her counsel:

Come now the plaintiffs in opposition to defendant's motion to alter, amend and/or vacate this court's order granting plaintiffs' motion to set aside default as to defendant's counter-claims.

STANDARD OF REVIEW

A Rule 59(e) motion cannot be used to make new arguments not made at the hearing.

Stevens & Wilkinson of S. Carolina, Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014)

The trial court need not make specific findings of fact regarding each factor "if there is sufficient evidence in the record to support the trial court's decision. Id. (citing Sundown Operating Co. at 608, 681 S.E.2d at 888).

"The decision whether to set aside an entry of default is within the sound discretion of the trial court." Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)).

ARGUMENT

I. Defendant's Argument Concerning Plaintiffs' Counsel's Authority to Represent Certain Defendants is a Red Herring, Irrelevant and was not raised at the hearing.

Sweeny, Wingate, and Barrow, PA was counsel of record for all plaintiffs when the initial complaint was filed in 2010, when the defendant answered and counter-claimed, when the motion to set aside default was filed, when the motion to set aside default was argued in 2012, and remains counsel of record for all plaintiffs today.

A lawyer's representation of a client continues until such time as the lawyer is terminated by the client and, in matters actively before a court, an order to substitute counsel is entered by

the court. See Ex parte Strom, 343 S.C. 257, 262, 539 S.E.2d 699, 701 (2000) (holding that “after entering an appearance with the court, an attorney must receive a court order pursuant to Rule 11(b) in order to be relieved as counsel.”)

It is true that on March 25, 2013, the attorney general’s office filed a motion to be dismissed from the case, and that the Court has yet to rule on that motion.

With respect to all other plaintiffs and contrary to Mrs. Pope’s absolutely baseless assertions, Sweeny, Wingate, and Barrow PA, has never been informed of any termination of representation by any plaintiff. Therefore, Sweeny, Wingate, and Barrow, PA did represent and still represents all plaintiffs. The defendant provides no evidence for her assertions to the contrary. Therefore, Sweeny, Wingate and Barrow, PA had authority to seek relief from the default.

Additionally, a Rule 59(e) motion cannot be used to make new arguments not made at the hearing. Stevens & Wilkinson, 409 S.C. at 567, 762 S.E.2d at 695 (2014). The defendant did not raise any representation issues at the hearing and cannot do so now.

Finally, the defendant apparently does not believe her own flawed arguments, because her proof of service lists only attorneys with Sweeny, Wingate and Barrow, P.A. as counsel for plaintiffs. If the defendant truly believed other counsel represented the plaintiffs, she could have served several other attorneys, including the attorney general’s office’s counsel. She did not do so because she knows service on any other attorney would not have been effective.

II. Good Cause Entitling the Plaintiffs to Relief has been Shown

In plaintiffs’ motion to set aside default, the affidavit of Kenneth B. Wingate, the memorandum of law in support of plaintiffs’ motion to set aside default, and the record of the

hearing, plaintiffs' counsel argued grounds for good cause. Plaintiff's incorporates those arguments by reference and attaches at Exhibits A, B, C, and D each document or record.

In addition, the court's order clearly states:

1. Plaintiffs have demonstrated good cause for setting aside the entry of default, and the Court has considered each of the factors set forth in Wham v. Shearson Lehman Bros., 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989).
2. Therefore, the record in this case demonstrates that the Plaintiffs have shown good cause for failing to serve an answer on or before November 1, 2010 and the interests of justice will be served by vacating any entry of default.

Order of October 13, 2015. Exhibit E.

The trial court need not make specific findings of fact regarding each factor "if there is sufficient evidence in the record to support the trial court's decision. Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 144-45, 719 S.E.2d 703, 706 (Ct. App. 2011) (citing Sundown Operating Co. at 608, 681 S.E.2d at 888). The court's order clearly indicates it found good cause and the Wham factors were satisfied, therefore relief from default is appropriate.

The defendant disagrees with the court's finding of good cause, but cites no legal authority to contravene the court's analysis. "The decision whether to set aside an entry of default is within the sound discretion of the trial court." Id. (citing Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)). The defendant cites no legal basis to disturb the court's discretion.

III. The Attorney General was Not in Default or in the Alternative was Properly Relieved from Default under the Same Analysis as the Other Parties.

The defendant claims that Rule 55(e) only protects the attorney general from a default judgment and not an entry of default. This is a distinction without a difference, because once there is an entry of default the entry of the default judgment is merely a ministerial function of the clerk of court.

The defendant attempts to support her position by appealing to a federal case from West Virginia. Not only is this case not controlling, as it is a federal case interpreting the federal rules, it simply does not apply to facts even remotely similar to this case. It involves claims between individuals and not entry of default against state agencies.

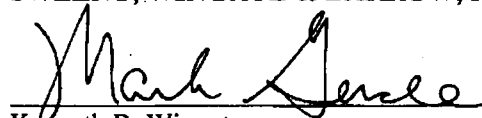
In any event, even if Rule 55(e) did not protect the Attorney General from default in this matter, the court's order found the same analysis supporting relief from default applied to the plaintiffs' group as a whole applied to the Attorney General as well.

CONCLUSION

For the reasons stated above, the defendant's motion to alter, amend, and/or vacate its October 12, 2015 order granting plaintiffs' motion to set aside default should be denied.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Joseph O. Thickens

Sweeny, Wingate & Barrow, P.A.

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(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
November 24, 2015

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

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AS TO
DEFENDANT'S COUNTERCLAIMS**

INTRODUCTION

Plaintiffs submit this Memorandum in support of their Motion for Summary Judgment as to Defendant Pope's Counterclaims in the above-captioned action pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and the doctrine of collateral estoppel.

FACTS/BACKGROUND

This is a suit alleging causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action by way of a Complaint filed May 19, 2010. Defendant Pope answered and asserted five counterclaims: Abuse of Process, Civil Conspiracy, Intentional Interference with Contract, Violation of S.C. Code 62-1-106, and Attorney's Fees pursuant to S.C. Code 62-7-1004. Plaintiffs' now assert this Motion for Summary Judgment on the grounds that Pope's counterclaims are barred by the doctrine of collateral estoppel because the Supreme Court's opinion in Wilson v. Dallas conclusively establishes the validity of the Plaintiffs' claims in this action.

LEGAL STANDARD

Pursuant to Rule 56(c), SCRCF, a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S. Carolina Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior

action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” Id. “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” Id. (citing Snavelly v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008)).

In dispensing with the mutuality requirement, our courts have applied collateral estoppel only when the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue. Carolina Renewal, 385 S.C. at 555, 684 S.E.2d at 782. Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim. Laughon v. O'Braitis, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004).

ARGUMENT

Summary judgment is appropriate in this matter because each of the counterclaims alleged by Defendant Pope fails as a matter of law as a result of the South Carolina Supreme Court’s decision in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). To emphasize, the grounds for this motion are found solely in the Wilson v. Dallas opinion, and are based on the contention that Wilson v. Dallas conclusively establishes facts which preclude Defendant Pope’s counterclaims as a matter of law. Thus, summary judgment is ripe in this matter and there is no legal or equitable need for discovery prior to the Court ruling on the Plaintiffs’ Motion for Summary Judgment as to Defendant Pope’s Counterclaims. This Memorandum will first set

forth the relevant holdings from Wilson v. Dallas, and then discuss their effect on each counterclaim alleged by Defendant Pope.

I. Wilson v. Dallas conclusively establishes that Defendant Pope was validly removed for cause from her position as a fiduciary of the Estate and Trust after notice and a hearing.

The grounds alleged for Pope's counterclaims are her assertion that the Plaintiffs brought this case in an attempt to force her to abandon or dismiss her appeal of this Court's May 26, 2009 order approving the settlement agreement reached between the James Brown family members and SC Attorney General and removing Pope as a fiduciary for cause. Counterclaim ¶ 78. Since September 10, 2010, when Pope originally asserted these counterclaims, the Supreme Court issued its decision in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). As part of its holding in Wilson v. Dallas, the Supreme Court affirmed this Court's removal of Pope from her role as a fiduciary for cause and made other findings which conclusively establish a meritorious basis for the Plaintiffs' claims and prevent Pope from relitigating the basis for their assertion. In particular, the Supreme Court found that "the circuit court did not violate the statutory provisions regarding the removal of personal representatives. *Notice and a hearing were provided, and the court had cause to remove [Pope] as it was in the best interests of the estate.*" Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766 (emphasis added).

In support of its determination, the Supreme Court cited the following specific examples of Defendant Pope's conduct:

We are also aware that Appellants have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, [Defendant Pope] sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. [Defendant Pope] also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that

it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. *These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.*

Id. at 448-49, 743 S.E.2d at 766-67 (emphasis added). These findings by the Supreme Court show that the issues regarding Pope's removal for cause have been actually litigated, finally determined, and were necessary to support the Court's adjudication of the Wilson v. Dallas appeal. Accordingly, it is conclusively established that Pope was validly removed for cause, and that she had both adequate notice and hearing on that issue. See Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766. Importantly, the Supreme Court's findings coincide with the allegations in Plaintiffs' Complaint. (See, e.g., Compl. ¶¶ 18.e., 18.h., 18.p.i-iii.)

Given the foregoing, it is clear that the elements required for the application of collateral estoppel have been met because Pope's removal for cause was (1) actually litigated in Wilson v. Dallas; (2) directly determined by the Court in that action; and (3) necessary to support the prior judgment. See Carolina Renewal, 385 S.C. at 554, 684 S.E.2d at 782. Additionally, the Supreme Court expressly determined that Pope had notice and a hearing on her removal for cause, and thus it is established that a full and fair opportunity was afforded to litigate that question. Accordingly, each element required for the application of collateral estoppel is directly addressed and met by the Wilson v. Dallas opinion, and at a minimum it is established that the Plaintiffs had legitimate grounds upon which to bring suit against Pope for her actions while a fiduciary of the Estate and Trust.

II. Each of Pope's counterclaims fails as a matter of law because of Wilson v. Dallas.

A. Abuse of Process

Pope's first counterclaim is for abuse of process. The essential elements of abuse of process are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the

conduct of the proceeding. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions 388 S.C. 394, 403, 697 S.E.2d 551, 555 - 556 (2010). "Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required." Hainer v. Am. Med. Int'l, Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). "The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself." *Id.* Importantly, to sustain a claim for abuse of process, "a party must allege facts sufficient to show not only that the lawsuit was brought for an ulterior purpose, i.e., for collateral reasons, but that willful acts were taken through which the process was misapplied or abused." Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 74, 567 S.E.2d 251, 255 (Ct. App. 2002).

Thus, to sustain a claim for abuse of process, the Plaintiffs must have had an ulterior purpose for filing this suit against Mrs. Pope, and must have committed some willful act not proper in the regular course of the proceeding. Pope's Counterclaim alleges that she is "informed and believe[s] that Plaintiffs have maliciously commenced this legal action for an ulterior purpose of forcing Defendants to abandon or dismiss the appeal of the May 26, 2009 order of the Circuit Court of Aiken County approving a settlement desired by Plaintiffs." Counterclaim ¶ 78.

In fact, as the record in Wilson v. Dallas confirms, the Plaintiffs had numerous legitimate reasons for bringing suit against Pope for breach of her fiduciary duties. Pursuant to the Wilson v. Dallas decision, the issue of Defendant Pope's proper removal for cause is conclusively established as a matter of law. Specifically, the Supreme Court held that "the circuit court did not violate the statutory provisions regarding the removal of [Pope]. Notice and a hearing were provided, and the court had cause to remove them as it was in the best interests of the estate." *Id.*

at 448, 743 S.E.2d at 766 (emphasis added). The Supreme Court also cited multiple specific examples of Pope's malfeasance which are quoted above. These findings by the Supreme Court coincide with the allegations in Plaintiffs' Complaint. (See, e.g., Compl. ¶¶ 18.e., 18.h., 18.p.i-iii.) Therefore, Wilson v. Dallas establishes at a minimum that the Plaintiffs had legitimate grounds upon which to bring suit against Mrs. Pope. In addition, moving beyond the ulterior purpose element, the Plaintiffs could not have committed any "willful act" through which process was misapplied or abused because Wilson v. Dallas, at a minimum, vindicated the Plaintiffs' decision to seek judicial redress for the activities noted in the court's opinion justifying her for-cause removal.

Additionally, Pope's claims for abuse of process are moot because the stated grounds for this claim, that the Plaintiffs sought the dismissal of Pope's appeal in Wilson v. Dallas, no longer exists. "Before any action can be maintained, there must exist a justiciable controversy," which means "a real and substantial controversy which is appropriate for judicial determination." Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). Accordingly, our courts refuse to determine "moot and academic questions or make an adjudication where there remains no actual controversy." Id. at 431, 468 S.E.2d at 864. "A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court. S. Carolina Ret. Sys. Inv. Comm'n v. Loftis, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013). The Supreme Court's opinion in Wilson v. Dallas constitutes an "intervening event" which moots Pope's counterclaim because, as discussed above, it is now conclusively established that Pope was correctly removed for cause, and thus the Plaintiffs have clearly justifiable grounds upon which to sue her in her capacity as a former fiduciary of the Estate.

B. Civil Conspiracy

"A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct.App. 2011). The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005). It is essential that the plaintiff prove all of these elements in order to recover. Lyon v. Sinclair Refining Co., 189 S.C. 136, 200 S.E. 78 (1938). The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether 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 379, 383 (Ct.App.1986).

"[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987). Because the essence of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006) (citing Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989). Mere speculation is insufficient to sustain a claim for civil conspiracy. See Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2011), (upholding a directed verdict on a claim for civil conspiracy where the record contained no evidence, only speculation, that any of the parties conspired with each other for the purpose of harming the decedent or her estate).

The prosecution of this suit for breach of fiduciary duty is not an “unlawful enterprise.” In fact, as set forth above, Wilson v. Dallas establishes that the Plaintiffs have numerous good faith grounds for bringing this lawsuit, which is confirmed by the supreme court’s finding that Pope was properly removed for cause. By virtue of this ruling, the Plaintiff’s pursuit of this lawsuit is unquestionably “lawful” in that the Plaintiffs have a right of action against Pope for damages she caused while acting as a fiduciary.

Interestingly, one of the third parties Pope alleges was part of the conspiracy is Forlando Brown. See Counterclaim ¶ 87. Forlando is not a plaintiff in this action, but brought suit against Pope in federal court seeking her removal as a fiduciary of the James Brown Estate. Pope filed similar counterclaims in that action, including a cause of action for civil conspiracy. Forlando eventually dismissed his claims against Pope, but Pope continued to assert her counterclaims and both parties moved for summary judgment on those claims.

In granting Forlando’s motion for summary judgment, the district court noted in particular regarding her civil conspiracy claim that Pope’s allegations were made in a “conclusory fashion” and amounted to speculation. See Forlando J. Brown v. Adele J. Pope, 3:08cv00014-WOB, Doc. No. 344 *Memorandum Opinion and Order* (attached as Exhibit A); see also Brown v. Pope, 610 F. App’x 239 (4th Cir. 2015) (affirming grant of summary judgment in favor of Forlando). Thus, in this case Pope is also collaterally estopped from asserting the Plaintiffs engaged in a civil conspiracy with Forlando because the issue was actually litigated, directly determined by the court, and necessary to support the court’s grant of summary judgment to Forlando. 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) (noting that “[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action.”)

Pope's other allegations regarding the existence of a conspiracy in this action are made in the same conclusory manner as her allegations against Forlando. More importantly, the core of her allegations has been eviscerated by Wilson v. Dallas: Pope alleges that the Plaintiffs joined together with other parties in a joint venture to obtain Pope's removal as a fiduciary of the Estate and oppose her request for a commission. Counterclaim ¶ 91. First, as set forth above, Wilson v. Dallas affirmed Pope's removal for cause and thus established the validity of efforts to remove her from that role. Second, after having been validly removed for cause, Pope cannot now claim damage resulting from efforts to remove her from her role, even if multiple parties desired that goal. Thus, her claim for damages resulting from the expenditure of her personal money "in fulfilling the duty of protecting, defending and enhancing Mr. Brown's estate plan" (Counterclaim ¶ 93) fails as a matter of law.¹ Additionally, Defendant's request for a commission is at issue in the pending Case 1337 in Aiken County.

C. Intentional Interference with Contract

To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 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. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must show: 1) intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) resulting in injury. Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007).

¹ To the extent Pope has continued in such efforts since June 2015, her actions are in direct violation of the attached Supreme Court order specifically directing her to cease further attempts to involve herself in the Estate of James Brown.

Even if Pope's brief service as a fiduciary is characterized as a contractual relationship with the Estate and Trust, she cannot present evidence that the Plaintiffs caused the breach of this contract. Pope's removal as PR/Trustee by the circuit court was affirmed by the South Carolina Supreme Court in Wilson v. Dallas. The court in Wilson found the circuit court had cause to remove Pope because her removal was in the best interests of the estate. 403 S.C. at 448, 450, 743 S.E.2d at 766, 767. The court noted that Pope sought \$5 million in fees for services as a fiduciary for a relatively short interval of time. The court also cited the payment of fees from the proceeds of the asset sale and the discord between the parties as reasons why her continued service as a fiduciary was not in the best interest of the estate. Id. at 448-449, 743 S.E.2d at 766-767. Clearly, none of the actions of the Plaintiffs caused the Supreme Court to uphold the trial court's order terminating Pope's fiduciary position.

Wilson v. Dallas establishes that Pope cannot prove an absence of justification on the part of the Plaintiffs for seeking to have her removed, as required by the fourth element under a claim for interference with contract. As set forth above, there were numerous reasons cited by the Supreme Court validating Pope's removal as a fiduciary and finding as a matter of law that her removal was in the best interests of the Estate, and the Supreme Court has since admonished Pope to cease her continued attempts to involve herself in the Estate. Therefore, summary judgment is appropriate as to Pope's claim for Intentional Interference with Contract.

D. Violation of 62-1-106 (Fraud and Evasion)

Pope's claim under § 62-1-106 fails because it is not her claim to assert following her removal for cause, and it is barred by the applicable statute of limitations. Section 62-1-106 of the South Carolina Code (2009) provides:

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or 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) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Following the affirmation of Pope's removal for cause by Wilson v. Dallas and the supreme court's subsequent admonishment that Pope cease her involvement in the affairs of the Estate, Pope unquestionably lacks standing to bring this cause of action. She ceased to be a fiduciary of the Estate on May 26, 2009, but her counterclaims were filed on September 10, 2010. She was not a fiduciary of the Estate at the time her counterclaim was filed, and thus could not bring a claim on behalf of the Estate. Furthermore, Pope alleges fraudulent representations by the Plaintiffs that have caused "injury to the Estate, 2000 Trust, and Defendants." Counterclaim ¶ 104. To the extent Pope continues to maintain this counterclaim on behalf of the Estate and Trust, her actions are in direct contravention of the Supreme Court's June 2015 Order. Exhibit B. Accordingly, summary judgment is also appropriate as to Pope's § 62-1-106 claim.

In addition, Pope claims the Attorney General failed to address certain issues regarding the correct heirs to the Estate in Aiken County case 2008-CP-02-0872. According to Pope, the AG entered into an agreement on August 10, 2008 regarding the identity of heirs. Pope claims this stipulation of heirs was incorrect. However, Pope's Counterclaim was filed on September 10, 2010, and therefore this cause of action, even if she was able to assert it, fails as a matter of law due to the operation of the two-year statute of limitations set forth in § 62-1-106.

E. Attorney's Fees pursuant to S.C. Code 62-7-1004

S.C. Code Ann. § 62-7-1004 provides that "[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy." Even assuming that this case could be construed broadly as one "involving the administration of a trust," Pope cannot show that an award of attorney's fees would be required by "justice and equity." Because Pope was properly removed from her fiduciary role for cause, justice and equity would not require Pope's attorney's fees to be paid in this matter. Wilson v. Dallas shows that Pope's claims are unsupported by the record. Moreover, Pope has claims pending in Case 1337 which seek the same relief in whole or in part, and the Supreme Court ordered that any and all fee applications relating to the Brown Estate must be reviewed and approved by the Circuit Court. Wilson v. Dallas, 403 S.C. at 451, 743 S.E.2d at 768. Thus, Pope's request for attorney's fees are more properly adjudicated in connection with Case 1337, Pope's fee claim case.

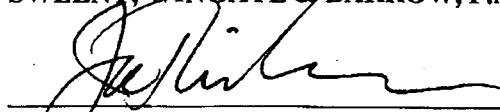
CONCLUSION

Mrs. Pope's counterclaims are barred by collateral estoppel based on the Supreme Court's holding in Wilson v. Dallas. Therefore, for the reasons stated above, Plaintiffs respectfully request that this Court grant summary judgment as to Mrs. Pope's counterclaims.

[signature page follows]

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

May 17, 2016

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT
FOR THE STATE OF SOUTH CAROLINA
RICHLAND COUNTY

DEPOSITION OF TOMMIE RAE BROWN

RUSSELL L. BAUKNIGHT, et. al.

and

VOLUME I

ALAN WILSON, et. at.

Plaintiffs,

vs. CASE NO. 2010-CP-40-4900

ADELE J. POPE,

Defendant.

DEPONENT: TOMMIE RAE BROWN

DATE: June 16, 2016

TIME: 10:11 a.m. - 4:36 p.m.

LOCATION: Nexsen Pruet
1230 Main Street, Suite 700
Columbia, SC 29202

REPORTED BY: SARAH GACIOCH

1 testimony that could possibly be of any relevance,
2 because the issue of the marriage has been decided
3 is not going to be retried in this case. Now, of
4 course, that's up to Judge Early, but I have
5 properly filed a Motion for Protective Order which
6 stays in discovery pending the hearing of this
7 motion, because I'm happy for the motion to be heard
8 as soon as possible, and if the judge says she has
9 to answer the question, then, of course, she will
10 answer the question.

11 So with that, I am going ask this motion
12 be marked as an exhibit by the court reporter. It
13 can be Tommie Rae Brown Exhibit 1. Thank you very
14 much. Do not answer the question. Counsel, move
15 on.

16

17 (PLAINTIFF'S EXHIBIT NO. 1
18 WAS MARKED FOR IDENTIFICATION)

19

20 BY MR. BUNDY:

21 Q. Were you married to Javed Ahmed on 12
22 February 1977?

23 MR. ROSEN: I'm instructing you not to
24 answer the question for reasons previously stated.

25 BY THE WITNESS: Yes, sir.

1 an extensive hearing, approved by the Aiken County
2 Circuit Court by an order dated May 26, 2009. That
3 order also removed defendants as substituted
4 Personal Representatives and Trustees; do you see
5 that?

6 **A. Yes, I do.**

7 Q. Okay. So tell me about what you know about
8 the disputes and the litigation that were existing
9 in this matter prior to this Comprehensive Settlement
10 Agreement?

11 **A. I don't recall. I just know that there were**
12 **some problems, and I don't really recall. I was**
13 **taking care of my family --**

14 Q. Okay.

15 **A. -- and my husband at the time.**

16 Q. Okay.

17 **A. I don't remember.**

18 Q. Well, this complaint was filed on May 19,
19 2010.

20 **A. Okay.**

21 Q. All right. And your husband had been dead or
22 passed at that time about 4 years, right, a little
23 under 4 years?

24 **A. '10.**

25 Q. Okay. So what I'm talking about is disputes

1 impartiality, to prudently administer the probate
2 and trust estates. Did these -- do you have any
3 information that these defendants owed you a
4 fiduciary duty?

5 MR. GENDE: Object to the form of the
6 question.

7 BY THE WITNESS: I believe that because
8 he was my husband, that they did owe it to me,
9 because they should have been protecting him. If
10 they were stealing from him, then, yeah, of course I
11 would be concerned about that.

12 BY MR. BUNDY:

13 Q. You're claiming the defendants were stealing
14 from him?

15 A. I don't know. If you're saying that another
16 dispute is happening, if I felt like they were
17 taking it from me or I felt they owed me something
18 in respect to them trying to hurt my husband, I
19 would say, yeah, because I would protect my husband.

20 Q. Okay. I'm not talking about Dallas and
21 Cannon anymore, I'm talking about the defendant, Ms.
22 Pope. I'm talking Adele Pope now, okay?

23 A. Right.

24 Q. Do you contend Adele Pope stole money from
25 your husband?

1 **A. No. I don't know that.**

2 Q. Okay. Do you -- do you believe that Adele
3 Pope intended to hurt you personally?

4 **A. I -- I couldn't say. I don't know that.**

5 MR. GENDE: Object to the form.

6 BY MR. BUNDY:

7 Q. Do you have any evidence she intended to hurt
8 you permanently?

9 **A. No, I don't.**

10 Q. Do you know Ms. Pope?

11 **A. No. I do not.**

12 Q. Okay. Do you know why you brought this
13 lawsuit?

14 **A. Why I brought this lawsuit?**

15 Q. Yes, ma'am.

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

19 Q. Okay.

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

22 Q. I want to go through this quickly, then we
23 are going to take a little break, because he's got
24 to change the tape.

25 **A. That's fine.**

1 **that's what I felt like.**

2 Q. Okay. Well, can you specifically tell me
3 what she did that defamed you, the specific words,
4 the dates?

5 A. **No, I can't. No, I can't.**

6 Q. Okay.

7 A. **I can just tell you that, and you're a bright**
8 **man, I'm sure you can -- no. I can't give you**
9 **specifics at this time.**

10 Q. Okay. How about Mr. Buchanan, can you give
11 me any specifics about him?

12 A. **Mr. Buchanan --**

13 MR. GENDE: Object to the form of the
14 question.

15 BY THE WITNESS: Yeah. I don't really
16 have much to say about Mr. Buchanan, and I didn't
17 feel personally attacked by him.

18 BY MR. BUNDY:

19 Q. Okay. So do you think Mr. Buchanan did a
20 good job and Mr. Pope didn't?

21 MR. GENDE: Object to the form of the
22 question.

23 BY THE WITNESS: I can't say that. I'm
24 not a businessperson. I'm a distraught wife that's
25 just trying to recover some dignity and respect.

1 MR. GENDE: Same objection.

2 BY THE WITNESS: -- and people are
3 telling me that I'm not, and they are going to fight
4 me.

5 BY MR. BUNDY:

6 Q. Okay.

7 **A. So obviously they changed their minds.**

8 Q. So in fact, some of these people who signed
9 this document back in August 2008 who agreed you
10 were his wife are now taking a different position in
11 court?

12 **A. Yeah, now it seems.**

13 MR. GENDE: Objection to the form.

14 BY MR. BUNDY:

15 Q. Is that correct?

16 **A. That's what it seems to be, yeah.**

17 Q. Okay. All right. It says, they further
18 agree not to contest any claim by Tommie Rae by
19 virtue of her status of surviving spouse and to file
20 any now appropriate pleadings and documents
21 recognizing and stipulating said status as spouse.
22 Well, they have not lived up to that promise, have
23 they?

24 MR. GENDE: Object to the form of the
25 question.

1 **A. Okay.**

2 Q. Okay. And number four says, what? Would you
3 read that to yourself?

4 **A. Okay. I've read it.**

5 Q. Now, you -- in your complaint against them,
6 which is what we're here about today, had issues
7 with the Christie's sale, but is it fair to say you
8 really, like you told me earlier, you don't know
9 what those specific problems are?

10 **A. No. I don't really know anything about the**
11 **Christie sale. I was not informed about it. I was**
12 **on the road on tour at the time. I was not even in**
13 **the country.**

14 Q. Okay.

15 **A. So as far as anything that has to do with**
16 **property sold or who decides who sells it or what**
17 **it's worth or whether they had the right to do it or**
18 **not, I don't know.**

19 Q. And you weren't told a judge had approved it
20 either?

21 **A. I was out of the country on the road working.**

22 Q. But apparently at some point in time you were
23 told by somebody it was a problem, because it's in
24 the complaint?

25 **A. I was told after -- after it happened, and it**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, et al.,
and ALAN WILSON, et al.

Plaintiffs,

VS.

ADELE J. POPE,

Defendant.

No. 2010-CP-40-4900

DEPOSITION OF JASON BROWN-LEWIS
LOS ANGELES, CALIFORNIA
THURSDAY, JUNE 29, 2017

REPORTED BY:
LINDA D. WHITE

CSR NUMBER 12009

1 mediation.

2 BY MR. SILVERNAIL:

3 Q. Were you aware that there was a document
4 produced and filed setting out terms of a settlement?

5 A. No.

6 Q. Were you aware that there was a case that went
7 to the Supreme Court about whether settlement were valid
8 or not?

9 A. Oh, yes.

10 Q. What do you know about that case?

11 A. The Supreme Court shot it back to Circuit
12 Court in response, asking how did they determine
13 Tommie Rae being the wife.

14 Q. And you believe that's all the Supreme Court
15 said?

16 A. That's what I remember reading.

17 Q. Have you read the Supreme Court's opinion?

18 A. I saw it on the news.

19 Q. And so do you recall anything else about the
20 settlement that was at issue before the Supreme Court?

21 A. No.

22 Q. And were you made aware of that before the
23 Supreme Court issued its opinion and you saw the news?

24 A. No.

25 Q. Have you attended any of the Court hearings

1 over your grandfather's Estate?

2 A. Yes.

3 Q. Do you know how many?

4 A. One.

5 Q. How long ago was that?

6 A. I believe it was 2007 or 2008.

7 Q. So fairly early on?

8 A. Yes.

9 Q. Have you attended any matter related to the

10 litigation over in South Carolina in the last few years?

11 A. No.

12 Q. Now do you believe Tommie Rae was James

13 Brown's wife when he died?

14 A. No.

15 Q. And do you know what position your mother

16 takes about that?

17 A. Not exactly.

18 Q. How do you mean "not exactly"?

19 A. She takes -- I would have -- I'm not sure. I

20 don't want to assume, but my response is based off of

21 what we saw on the news as well, reports of Tommie Rae

22 having already been married at the time of being married

23 to my grandfather is what I understand that she

24 understands.

25 Q. And do you know today where the litigation

1 or the individual Mr. Buchanan and Ms. Pope from the
2 trustee position at the Estate.

3 Q. Were you aware that neither of them have
4 served in that position in several years?

5 A. Yes.

6 Q. Do you know who the current trustee is?

7 A. Yes.

8 Q. Who's that?

9 A. Mr. Bauknight.

10 Q. And so what else do you know about the
11 allegations in the lawsuit we're here in today?

12 A. I can't recall them at this point. I have to
13 be refreshed.

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?

18 MR. KENDALL: Object to the form.

19 You can answer, if you know the answer.

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

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.

17 Q. Now you mentioned Mr. Bauknight a moment ago,
18 the current trustee. Have you met him?

19 A. Yes.

20 Q. How many times?

21 A. Twice.

22 Q. And where were those meetings?

23 A. New York City.

24 Q. Both of them?

25 A. Yes.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

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

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

AFFIDAVIT OF ADELE J. POPE
IN SUPPORT OF PLAINTIFF'S
MOTION TO ALTER, AMEND OR
VACATE ORDER GRANTING
ATTORNEY GENERAL'S MOTION
TO DISMISS

RICHLAND COUNTY
FILED
2016 JUL - 1
JANETTE W. MOSEBIDE
C.C.P. & C.S.
3:44 PM

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who being duly sworn,
deposes and says:

1. I am informed and believe that in his Order of June 14, 2016 dismissing my
FOIA case filed August 10, 2011, the Honorable Doyet A. Early, III ("Judge Early")
overlooked or misapprehended the undisputed facts within the record before him,
including:

- a. Adele Pope is a citizen of South Carolina; a resident of Newberry County;
and entitled to rights under the South Carolina Freedom of Information Act, S.C.
Code Ann § 30-4-10 et seq. (FOIA).
- b. Defendant Alan Wilson is the Attorney General of South Carolina ("AG
Wilson") and the Constitutional Officer charged with the proper enforcement of
FOIA.
- c. The James Brown Legacy Trust is a trust created by former AG Henry
McMaster, and not by entertainer James Brown, in 2009 (the "McMaster Legacy
Trust"). Russell L. Bauknight has been its trustee since 2009, and serves at the
pleasure of the AG.
- d. On October 2, 2009 AG McMaster announced his policy related to the
engagement by the AG of outside Special Counsel as follows:

**STATEMENT FROM ATTORNEY GENERAL HENRY McMASTER ON
CAMPAIGN CONTRIBUTIONS BY SPECIAL COUNSEL**

... "The judge... ruled the contributions were legal and proper. In fact, both sides of the case had contributed to the attorney general's campaigns. Further, no public funds whatsoever were or will be used to compensate the attorneys... "In several, due to size, complexity and state government's budget constraints, he has appointed outside attorneys to serve as "special counsel" and to work with his attorneys. They were all contingency fee cases, meaning the special counsel involved receive no compensation unless they win the case. ... This is a wise economic strategy for the State, which is able to recover its damages from the defendant at no cost to the taxpayers in a meritorious case it could not otherwise have been able to bring.

...these perfectly legal donations should not be allowed to create a distraction from the critically important issues our State faces now or in the future. I believe the best interests of the State will be served by eliminating the issue altogether. ... For all those reasons, I am today returning the \$32,500 in donations special counsel attorneys, or their firms, have made to my campaigns for attorney general. And I will decline future contributions from my office's special counsel attorneys."

e. AG Wilson's FOIA position as stated in the Public Official's Guide to the Freedom of Information Act (FOIA) is:

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

f. In 2010 AG Wilson, the McMaster Legacy Trust and Mr. Bauknight, on behalf of AG McMaster, with others, sued Robert L. Buchanan, Jr. and Ms. Pope claiming, among other things, that they failed to accept a 2007 offer for the music empire of entertainer James Brown.

g. The AG, the McMaster Legacy Trust, and a number of non-S.C. residents shared a single private law firm, Sweeny, Wingate & Barrow, P.C. ("Wingate").

h. On January 18, 2011 AG Jones distributed to the Respondents in *Wilson v. Dallas* a January 2011 amendment to the McMaster Legacy Trust and an assignment by *Wilson* Respondent Terry Brown to his son Forlando Brown of his right of first refusal to buy James Brown's music empire (the "ROFR")

i. In 2011 AG Wilson began to claim that James Brown's music empire was worth only \$4.7 Million at his death, and that Mr. Buchanan and Ms. Pope had intentionally overstated its value on a sworn estate tax return for the improper

purpose of obtaining a \$5 Million commission.

j. At the suggestion of Mr. Buchanan, in the summer of 2011 Ms. Pope made certain FOIA requests of AG Wilson and the McMaster Legacy Trust. Among the documents sought were:

1. A copy of the Wingate Litigation Retention Agreement;
2. A copy of Amendments to the McMaster Legacy Trust; and
3. Certain documents related to the AG's claim that James Brown's music empire was worth \$4.7 Million when he died December 25, 2006.

k. AG Wilson declined to produce the requested documents.

l. On July 15, 2011 David Black, Esq., an attorney for Mr. Bauknight and the Legacy Trust wrote Ms. Pope claiming the McMaster Legacy Trust was private, and stating:

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

m. On August 3 and 10, 2011 Ms. Pope filed two FOIA suits in Newberry County, where the FOIA requests had been made. One sought the \$4.7 million valuation documents and McMaster Legacy Trust and its amendments. The second sought the Wingate Litigation Retention Agreement.

j. All of AG McMaster's Litigation Retention Agreements with outside counsel declare that documents held by special counsel are subject to FOIA, and confirm that the litigation is controlled by the AG.

k. Shortly after this suit was filed, Tomirae Hynie, later known as Tommie Rae Brown, with other nonresidents of South Carolina, moved to intervene in this FOIA suit, and to obtain sanctions against Ms. Pope.

l. On September 12, 2011 AG Wilson moved to dismiss the FOIA suit requesting the Wingate Agreement or, in the alternative, to change venue to Richland County; consolidate the FOIA suit with his suit against Ms. Pope and Mr. Buchanan; and subordinate the FOIA request to discovery in that suit. Both AG Wilson and the McMaster Legacy Trust took similar action in the FOIA case seeking the \$4.7 Million appraisal and copies of the McMaster Legacy Trust amendments.

m. On September 21, 2011 a journalist covering the FOIA suit reported that a member of AG Wilson's staff had emailed the journalist agreeing to send a copy

of the Wingate Agreement.

n. On September 21, 2011, Sr. Assistant AG Jones wrote the Honorable L. Casey Manning, Judge in the suit the AG and McMaster Legacy Trust brought against Mr. Buchanan and Ms. Pope, and said of the Wingate Agreement:

This Office is ready and more than willing to provide the document at this time.

o. Despite the AG's representation, almost 5 years later the Wingate Agreement has not been produced under FOIA.

p. Ms. Pope's counsel filed numerous Affidavits during the FOIA litigation encouraging AG Wilson to produce the Wingate Agreement and other public documents.

q. Among those supporting the release of the Wingate Agreement under FOIA was Thomas R. Young, Jr., Esquire, Mr. Buchanan's attorney in a suit filed against Mr. Buchanan and Pope to terminate their insurance after they were sued by AG McMaster and the McMaster Legacy Trust. Mr. Young said, in part:

6. ... The litigation retention agreement...is a document relevant to some of the issues in the declaratory judgment action filed by Cincinnati Insurance Company against Buchanan.

9. I also understand the the Freedom of Information Act is intended to provide members of the general public with prompt access to public documents "at a minimum cost or delay." See S.C. Code Sec. 30-4-15 (emphasis added)...

10. While I have the ability to issue a federal court subpoena upon the Attorney General of South Carolina...it will save my client both time and money by having the contract....released...pursuant to FOIA.

r. Mr. Young advised the Court that he could obtain the Wingate Agreement by discovery in the Federal Suit, but that the purpose of FOIA was for South Carolina citizens to be able to obtain public documents quickly for the lowest cost.

s. Mr. Young's affidavit, and those of other journalists and citizens, echoed the statement of AG Wilson himself relating the importance of FOIA compliance to our democracy.

t. AG Wilson moved to strike the affidavits and dismiss the complaint. He also sought to transfer Pope's FOIA suit to Richland County if it was not dismissed.

u. On October 24, 2011 a hearing was held before the Honorable Frank R. Addy, Jr. on Ms. Pope's Motion for Summary Judgment and AG Wilson's Motion to Dismiss.

Wingate appeared at the hearing on behalf of the McMaster Legacy Trust and more than a dozen private plaintiffs, many non-residents of South Carolina. AG Wilson filed a Memorandum in Support of Motion to Dismiss and Strike, and Opposing Summary Judgment. He argued:

...These issues are all directed to whether Plaintiff can bring a separate Freedom of Information Act action in Newberry County to sidestep or make an end-run around pending judicial proceedings in Richland County involving the same documents that are at issue in civil discovery in Richland." [Emphasis supplied.]

... Wilson's Motion to Dismiss should be granted which will moot all other issues... because judicial proceedings are already pending in Richland regarding the same documents, and this Court should not allow Plaintiff to bypass those proceedings...

v. On October 31, 2011 Mr. Black, Attorney for the McMaster Legacy Trust and Mr. Bauknight, was quoted in more than 300 media outlets making vitriolic statements about Mr. Buchanan and Ms. Pope.

w. On November 1, 2011 the South Carolina Supreme Court held oral arguments in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

x. Counsel for Mr. Bauknight and AG Jones argued for the respondents. Mr. Bauknight's counsel referenced the \$4.7 Million value claim, supporting documents of which were the subject of one of Ms. Pope's FOIA suits. He said:

...So, what we have, and if I can use an example, one of his first famous hits, was a song called "Please, Please, Please." And he copyrighted that song. February 27, 1956. The copyright was to expire two thousand fifty-two, in 2050. But the ... Termination Rights ripen next year. So next year, when those Termination Rights are exercised, Mrs. Brown and the children will get the copyright a hundred percent. And be entitled to 100% of the royalties. Now 50% of those royalties is flowing into the Estate because James Brown had 50% at his death.

So you've got the Estate up here, getting those royalties, now since the debt has been paid off, since last Friday. But when they exercise those Termination Rights, the Estate doesn't get the royalties anymore, so it goes down. But Mrs. Brown and the children, they get the 100%. And as every song is terminated, it keeps going like this, until finally, in about 20 years, the Estate gets nothing. And Mrs. Brown and the children got it all. And that's what they gave up....

y. AG Wilson, through AG Jones, added:

But if we had gone through and won everything, starting in '23 our income starts dropping off. And by 2025 we've lost 75% of our income. We have nothing. If we litigate this thing to 2015 and come – this is a factor with us, one of the factors – and come back before this Court with Tommie Rae Hynie Brown, come back before this Court with undue influence, and come back before this Court with the omitted child, we win. And what do we get? In 2015 we have no money left.

z. By Order dated November 22, 2011, Judge Addy directed AG Wilson to answer Ms. Pope's FOIA Complaint; transferred the FOIA suit to Richland County; and directed that it be consolidated, but not merged, with AG Wilson's and the McMaster Legacy Trust's suit against Mr. Buchanan and Ms. Pope.

aa. AG Wilson did not seek to alter or amend the November 22 Order of Judge Addy. Ms. Pope's counsel did seek to amend the Order.

ab. In December 2011, the Wingate Proposed Intervenor moved for sanctions against Ms. Pope and her attorney, Adam Silvermail.

ac. On December 9, 2011 AG Wilson, through Emory Smith, Esquire, wrote Judge Addy:

We respectfully request that this Court deny the Motion for Reconsideration and proceed with the consolidation of this case with case 4900 in Richland... The sooner that this case is consolidated with case 4900, the faster the issues in this case can be resolved for the benefit of all parties. We stand ready to have these issues resolved in Richland as quickly as possible.

ad. Judge Addy denied Pope's Motion for Reconsider, which was not appealable at that time.

ae. On December 6, 2011 AG Wilson answered, as directed by Judge Addy. The AG's answer asserted in part:

Plaintiff cannot use FOIA to overrule or bypass proceedings in Case 4900 in Richland County." (3d)

Another action is pending among the same parties as to the same or substantially the same claim under SCRCF, Rule 12(b)(8)

The Richland County Court of Common Pleas has exclusive jurisdiction of matters related to the documents at issue. (5th)

af. In April 2012, at Forlando Brown's request, the Federal Court dismissed his baseless 52-page 2008 complaint to enjoin Brown's 2000 Trust until David Cannon and Albert Dallas were reinstated as Trustees of Brown's Trust, and amendments suing Mr. Buchanan and Ms. Pope.

ag. Concealing his receipt of the ROFR and his father's interest in James Brown's estate, Forlando Brown told Judge Bertelsman that he had no assets and no expectation of any assets from the James Brown litigation unless his father died.

ah. In July 2012 Mr. Buchanan became financially challenged and was required to settle with AG Wilson and the Master Legacy Trust. He was required by the AG not to file a Petition for Rehearing after the Supreme Court ruled in *Wilson* and was prohibited from helping Ms. Pope in any way.

ai. Mr. Buchanan remained in Forlando's Federal Suit.

aj. On February 27, 2013 the South Carolina Supreme Court issued its first opinion in *Wilson v. Dallas*. Footnote 29 to that opinion stated:

... the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, for Wingate to sue Appellant Pope on behalf of the State, Bauknight, and others while also representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately

incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, effectively controlling the charitable trust through the appointment of Bauknight, who serves at the AG's pleasure.

ak. On March 6, 2013 Ms. Pope met with AG Wilson to urge him to change his position; protect the James Brown for the "I Feel Good" Charity; correct the value of Brown's assets in IRS filings; and take other steps to properly determine heirs and protect to 900 copyrights James Brown gave the "I Feel Good" Trust from the premature and/or improper attempt of claimed heirs to exercise Federal Copyright Act Termination Rights.

al. AG Wilson called Ms. Pope and told her he was seeking to be dropped as a party to his suit against Mr. Buchanan and Ms. Pope. After that, he filed a Petition for Rehearing in *Wilson* making the same statement to the Supreme Court.

am. On March 7, 2013 AG Wilson moved to amend his answer in this FOIA case, claiming he had released all but 3 pages of the Wingate Agreement.

an. On or about March 14, 2013 James B., a party to *Wilson*, filed a Petition for Rehearing outlining details of the \$4.7 million appraisal AG Wilson had refused to produce under FOIA.

an. On May 8, 2013 the final *Wilson* decision was issued, which removed footnote 29.

ao. On May 12, 2013, Wingate wrote to the Circuit Court, stating in part:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters.

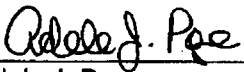
...
Therefore, Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that [the Wingate/FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court. [Emphasis supplied.]

ap. From March 2013 to April 2016, the Court refused to set a hearing in these FOIA cases, despite more than fourteen (14) requests by Plaintiff's counsel during that period.

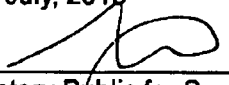
aq. After the case was assigned to the Honorable Doyet A. Early, III, a hearing was held on May 17, 2106, which resulted in the Order which is the subject of Plaintiff's motion to alter, amend or vacate.

2. I am informed and believe that the State, through AG Wilson, Mr. Bauknight as trustee of the McMaster Legacy Trust and agent for AG Wilson, and the order of Judge Addy, with the inaction of Judge Manning at the request of AG Wilson's counsel, have deprived me of my FOIA, Due Process and Equal Protection Rights.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this 1st day
of July, 2016


Notary Public for South Carolina
My Commission Expires: 7/13/2018

RICHLAND COUNTY
FILED
2016 JUL -1 PM 3:44
JEANETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 1, 2016, he has served a copy of the foregoing document on counsel for the Defendants by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

J. Emory Smith, Esquire
Office of the Attorney General
PO Box 11549
Columbia, SC 29211


Adam T. Silvernail

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2016 AUG 29 AM 9:48
JEANNETTE H. MCBRIDE
C.C.P. & G.S.

**PLAINTIFFS' REVISED
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANT'S
COUNTERCLAIMS**

INTRODUCTION

Plaintiffs submit this Supplemental Memorandum in support of their Motion for Summary Judgment as to Defendant Pope's Counterclaims in the above-captioned action pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and the doctrine of collateral estoppel.

FACTS/BACKGROUND

This is a suit alleging causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action by way of a Complaint filed May 19, 2010. Defendant Pope answered and asserted five counterclaims: Abuse of Process, Civil Conspiracy, Intentional Interference with Contract, Violation of S.C. Code 62-1-106, and Attorney's Fees pursuant to S.C. Code 62-7-1004. Plaintiffs now assert this Motion for Summary Judgment on the grounds that Pope's counterclaims are barred by the doctrine of collateral estoppel because the Supreme Court's opinion in Wilson v. Dallas conclusively establishes the validity of the Plaintiffs' claims in this action.

LEGAL STANDARD

Pursuant to Rule 56(c), SCRPC, a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S. Carolina Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel

must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.” Id. “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” Id. (citing Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct.App.2008)).

In dispensing with the mutuality requirement, our courts have applied collateral estoppel only when the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue. Carolina Renewal, 385 S.C. at 555, 684 S.E.2d at 782. Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim. Laughon v. O'Braitis, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004).

ARGUMENT

Summary judgment is appropriate in this matter because each of the counterclaims alleged by Defendant Pope fails as a matter of law as a result of the South Carolina Supreme Court’s decision in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). To emphasize, the grounds for this motion are found solely in the Wilson v. Dallas opinion, and are based on the contention that Wilson v. Dallas conclusively establishes facts which preclude Defendant Pope’s counterclaims as a matter of law. Thus, summary judgment is ripe in this matter and there is no legal or equitable need for discovery prior to the Court ruling on the Plaintiffs’ Motion for Summary Judgment as to Defendant Pope’s Counterclaims. This Memorandum will first set

forth the relevant holdings from Wilson v. Dallas, and then discuss their effect on each counterclaim alleged by Defendant Pope.

I. Wilson v. Dallas conclusively establishes that Defendant Pope was validly removed for cause from her position as a fiduciary of the Estate and Trust after notice and a hearing.

The grounds alleged for Pope's counterclaims are her assertion that the Plaintiffs brought this case in an attempt to force her to abandon or dismiss her appeal of this Court's May 26, 2009 order approving the settlement agreement reached between the James Brown family members and SC Attorney General and removing Pope as a fiduciary for cause. Counterclaim ¶ 78. Since September 10, 2010, when Pope originally asserted these counterclaims, the Supreme Court issued its decision in Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013). As part of its holding in Wilson v. Dallas, the Supreme Court affirmed this Court's removal of Pope from her role as a fiduciary for cause and made other findings which conclusively establish a meritorious basis for the Plaintiffs' claims and prevent Pope from relitigating the basis for their assertion. In particular, the Supreme Court found that "the circuit court did not violate the statutory provisions regarding the removal of personal representatives. *Notice and a hearing were provided, and the court had cause to remove [Pope] as it was in the best interests of the estate.*" Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766 (emphasis added).

In support of its determination, the Supreme Court cited the following specific examples of Defendant Pope's conduct:

We are also aware that Appellants have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, [Defendant Pope] sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. [Defendant Pope] also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that

it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. *These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.*

Id. at 448-49, 743 S.E.2d at 766-67 (emphasis added). These findings by the Supreme Court show that the issues regarding Pope's removal for cause have been actually litigated, finally determined, and were necessary to support the Court's adjudication of the Wilson v. Dallas appeal. Accordingly, it is conclusively established that Pope was validly removed for cause, and that she had both adequate notice and hearing on that issue. See Wilson v. Dallas, 403 S.C. at 448, 743 S.E.2d at 766. Importantly, the Supreme Court's findings coincide with the allegations in Plaintiffs' Complaint. (See, e.g., Compl. ¶¶ 18.e., 18.h., 18.p.i-iii.)

Given the foregoing, it is clear that the elements required for the application of collateral estoppel have been met because Pope's removal for cause was (1) actually litigated in Wilson v. Dallas; (2) directly determined by the Court in that action; and (3) necessary to support the prior judgment. See Carolina Renewal, 385 S.C. at 554, 684 S.E.2d at 782. Additionally, the Supreme Court expressly determined that Pope had notice and a hearing on her removal for cause, and thus it is established that a full and fair opportunity was afforded to litigate that question. Accordingly, each element required for the application of collateral estoppel is directly addressed and met by the Wilson v. Dallas opinion, and at a minimum it is established that the Plaintiffs had legitimate grounds upon which to bring suit against Pope for her actions while a fiduciary of the Estate and Trust.

II. Each of Pope's counterclaims fails as a matter of law because of Wilson v. Dallas.

A. Abuse of Process

Pope's first counterclaim is for abuse of process. The essential elements of abuse of process are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the

conduct of the proceeding. Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions 388 S.C. 394, 403, 697 S.E.2d 551, 555 - 556 (2010). "Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required." Hainer v. Am. Med. Int'l, Inc., 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). "The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself." *Id.* Importantly, to sustain a claim for abuse of process, "a party must allege facts sufficient to show not only that the lawsuit was brought for an ulterior purpose, i.e., for collateral reasons, but that willful acts were taken through which the process was misapplied or abused." Food Lion, Inc. v. United Food & Commercial Workers Int'l Union, 351 S.C. 65, 74, 567 S.E.2d 251, 255 (Ct. App. 2002). "[I]t is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process." Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967). "An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process. However, there is no liability when the process has been carried to its authorized conclusion, even though with bad intentions." First Union Mortgage Corp. v. Thomas, 317 S.C. 63, 74-75, 451 S.E.2d 907, 914 (Ct. App. 1994).

Based on the foregoing, to sustain a claim for abuse of process, the Plaintiffs must have had an ulterior purpose for filing this suit against Mrs. Pope, and must have committed some willful act not proper in the regular course of the proceeding. Regarding the first element, Pope's Counterclaim alleges that she is "informed and believe[s] that Plaintiffs have maliciously commenced this legal action for an ulterior purpose of forcing Defendants to abandon or dismiss the appeal of the May 26, 2009 order of the Circuit Court of Aiken County approving a settlement desired by Plaintiffs." Counterclaim ¶ 78.

In fact, as the record in Wilson v. Dallas confirms, the Plaintiffs had numerous legitimate reasons for bringing suit against Pope for breach of her fiduciary duties. Pursuant to the Wilson v. Dallas decision, the issue of Defendant Pope's proper removal for cause is conclusively established as a matter of law. Specifically, the Supreme Court held that "the circuit court did not violate the statutory provisions regarding the removal of [Pope]. Notice and a hearing were provided, *and the court had cause to remove them as it was in the best interests of the estate.*" Id. at 448, 743 S.E.2d at 766 (emphasis added). The Supreme Court also cited multiple specific examples of Pope's malfeasance which are quoted above. These findings by the Supreme Court coincide with the allegations in Plaintiffs' Complaint. (See, e.g., Compl. ¶¶ 18.e., 18.h., 18.p.i-iii.) Therefore, Wilson v. Dallas establishes at a minimum that the Plaintiffs had legitimate grounds upon which to bring suit against Mrs. Pope.

In addition, moving beyond the ulterior purpose element, the Plaintiffs could not have committed any "willful act" through which process was misapplied or abused because Wilson v. Dallas, at a minimum, vindicated the Plaintiffs' decision to seek judicial redress for the activities noted in the court's opinion justifying her for-cause removal. Rather, throughout this case, "the process has been carried to its authorized conclusion" as is allowed. First Union Mortgage Corp., 317 S.C. at 74-75, 451 S.E.2d at 914. Also critical to the "willful act" element of Pope's claim for abuse of process is a showing of "malicious misuse or perversion of the process for an end not lawfully warranted". Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967). Examples of malicious use of process include the use of a warrant of arrest to extort money (249 S.C. at 213, 153 S.E.2d at 696), and the filing without statutory authority of a petition to seek the commitment of a neighbor to a mental institution (Pallares v. Seinar, 407 S.C. 359, 373, 756 S.E.2d 128, 134 (2014)).

By contrast, “[t]he mere commencement of a civil action by the service of a summons, as required by the Code, cannot amount to the tort known as abuse of process.” Russell v. Risher, 272 S.C. 182, 185, 249 S.E.2d 908, 909 (1978). In Russell, the plaintiff demanded that the defendant resign as a clerk at the House of Representatives, and threatened a cause of action in the event the clerk refused. The defendant clerk did in fact refuse, and the plaintiff brought suit. On appeal, the supreme court held that the defendant clerk’s counterclaim for abuse of process should have been dismissed, noting that “[i]t is not unusual for plaintiffs, in the negotiation stage, to demand more than they are entitled to receive.” Russell v. Risher, 272 S.C. 182, 185, 249 S.E.2d 908, 909 (1978). Similar to the scenario in Russell, Pope claims in this case that the Plaintiffs threatened the filing of this suit in the hopes of obtaining Pope’s resignation from her position as a fiduciary of the Estate and Trust in the course of negotiations prior to filing this suit. Taking this allegation in the light most favorable to Pope, her counterclaim for abuse of process nevertheless fails because, as explained in Russell, it is not unusual during negotiations for potential litigants to ask for more than they are entitled to receive, or to seek to resolve all outstanding claims at one time.

B. Civil Conspiracy

“A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff.” Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct.App. 2011). The elements of a civil conspiracy in South Carolina are (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages. LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Cowburn v. Leventis, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App.2005). It is essential that the plaintiff prove all of these elements in order to recover. Lyon v. Sinclair Refining Co., 189 S.C.

136, 200 S.E. 78 (1938). The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether 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 379, 383 (Ct.App.1986).

“[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” Island Car Wash, Inc. v. Norris, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct.App.1987). Because the essence of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. Pye v. Estate of Fox, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006) (citing Vaught v. Waites, 300 S.C. 201, 387 S.E.2d 91 (Ct.App.1989)). Mere speculation is insufficient to sustain a claim for civil conspiracy. See Gordon v. Busbee, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2011), (upholding a directed verdict on a claim for civil conspiracy where the record contained no evidence, only speculation, that any of the parties conspired with each other for the purpose of harming the decedent or her estate).

The prosecution of this suit for breach of fiduciary duty is not an “unlawful enterprise.” In fact, as set forth above, Wilson v. Dallas establishes that the Plaintiffs have numerous good faith grounds for bringing this lawsuit, which is confirmed by the supreme court’s finding that Pope was properly removed for cause. By virtue of this ruling, the Plaintiff’s pursuit of this lawsuit is unquestionably “lawful” in that the Plaintiffs have a right of action against Pope for damages she caused while acting as a fiduciary.

Next, even if no unlawful enterprise exists, our supreme court has held that the tort of civil conspiracy can arise where one party to the alleged conspiracy has justifiable grounds for an

action, but others join in the act who do not have the same justification. See Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719, 724 (1942) (noting that "where an act done by an individual, though harmful to another, is not actionable because justified by his rights, yet the same act becomes actionable when committed in pursuance of a combination of persons actuated by malicious motives and not having the same justification as the individual"). Any assertion by Pope to the effect that some or all of the Plaintiffs were unjustified in participating in this suit is forestalled because at the time this action was commenced, all of the Plaintiffs, as parties to the settlement agreement between the litigants to the various James Brown will contest matters, had the same justification for bringing this suit against Defendant Pope. While the court's opinion ultimately abrogated the settlement agreement, at the time of the filing of this suit all of the Plaintiffs had the same justification for suing Mrs. Pope. Thus, while a lawful act can become a civil conspiracy when pursued solely to injure a third party, Wilson v. Dallas confirms as a matter of law that there were justifiable grounds for the Plaintiffs to seek damages for Pope's breach of duty.

Interestingly, one of the third parties Pope alleges was part of the conspiracy is Forlando Brown. See Counterclaim ¶ 87. Forlando is not a plaintiff in this action, but brought suit against Pope in federal court seeking her removal as a fiduciary of the James Brown Estate. Pope filed similar counterclaims in that action, including a cause of action for civil conspiracy. Forlando eventually dismissed his claims against Pope, but Pope continued to assert her counterclaims and both parties moved for summary judgment on those claims.

In granting Forlando's motion for summary judgment, the district court noted in particular regarding her civil conspiracy claim that Pope's allegations were made in a "conclusory fashion" and amounted to speculation. See Forlando J. Brown v. Adele J. Pope,

3:08cv00014-WOB, Doc. No. 344 *Memorandum Opinion and Order* (attached as **Exhibit A**); see also Brown v. Pope, 610 F. App'x 239 (4th Cir. 2015) (affirming grant of summary judgment in favor of Forlando). Thus, in this case Pope is also collaterally estopped from asserting the Plaintiffs engaged in a civil conspiracy with Forlando because the issue was actually litigated, directly determined by the court, and necessary to support the court's grant of summary judgment to Forlando. 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) (noting that "[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action.")

Pope's other allegations regarding the existence of a conspiracy in this action are made in the same conclusory manner as her allegations against Forlando. More importantly, the core of her allegations has been eviscerated by Wilson v. Dallas: Pope alleges that the Plaintiffs joined together with other parties in a joint venture to obtain Pope's removal as a fiduciary of the Estate and oppose her request for a commission. Counterclaim ¶ 91. First, as set forth above, Wilson v. Dallas affirmed Pope's removal for cause and thus established the validity of efforts to remove her from that role. Second, after having been validly removed for cause, Pope cannot now claim damage resulting from efforts to remove her from her role, even if multiple parties desired that goal. Thus, her claim for damages resulting from the expenditure of her personal money "in fulfilling the duty of protecting, defending and enhancing Mr. Brown's estate plan" (Counterclaim ¶ 93) fails as a matter of law.¹ Additionally, Defendant's request for a commission is at issue in the pending Case 1337 in Aiken County.

¹ To the extent Pope has continued in such efforts since June 2015, her actions are in direct violation of the attached Supreme Court order specifically directing her to cease further attempts to involve herself in the Estate of James Brown.

C. Intentional Interference with Contract

To establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 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. Kinard v. Crosby, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). To establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must show: 1) intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) resulting in injury. Eldeco, Inc. v. Charleston Cty. Sch. Dist., 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007). Pope's claim fails as a matter of law because her appointment as Personal Representative and Trustee was made pursuant to statute, and thus does not sound in contract. See S.C. Code § 62-3-701; -613; § 62-7-701; 812). Similarly, the Court's January 8, 200 Order awarding her fees was grounded in South Carolina law, citing Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989). Thus, both Pope's tenure as a fiduciary of the Estate and Trust and the Court's Order awarding her attorney's fees are unquestionably not contractual in nature, but are rather grounded in the Court's authority pursuant to statute and caselaw regarding attorney's fees. Pope's argument that her fee claim is somehow contractual in nature is further forestalled by the observation of our supreme court that "[c]ourts cannot create contracts for the parties". Trotter v. State Farm Mut. Auto. Ins. Co., 297 S.C. 465, 472, 377 S.E.2d 343, 347 (Ct. App. 1988); see also Terminix Int'l, Inc. v. Rice, 904 So. 2d 1051, 1057 (Miss. 2004) ("A scheduling order is not a contract between the parties, but rather an order of the court."); Boston Prop. Exch. Transfer Co. v. Iantosca, 720 F.3d 1, 12 (1st Cir. 2013) (holding that an order assigning one party's legal claims to another "was not a contract" where the

compelled assignor “did not bargain for, offer, or accept the assignment order, which was imposed on it over its strong objection.”); Lueck's Home Imp., Inc. v. Seal Tite Nat., Inc., 142 Wis. 2d 843, 848, 419 N.W.2d 340, 342 (Ct.App. 1987) (“[A] restitution consent order is not a contract”); Goldberg v. Trakas, 206 F. Supp. 867, 869 (E.D.S.C. 1962) ([A]n order of the Court issued by consent of the parties is not to be deemed a contract”); Ketab Corp. v. Mesriani Law Grp., No. CV1407241RSWLMRWX, 2016 WL 911816, at 2 (C.D. Cal. Mar. 7, 2016) (dismissal of contract claims including intentional interference with contractual relations was appropriate where the claims were based on a settlement order because a “Settlement Order is a court order, and not a contract.”).

Further, Pope’s appointment by the court did not create a “contract” based on an attorney-client relationship. Ordinarily, the relationship between the attorney and client is one of contract, either express or implied. However, courts have differentiated between a traditional contractual attorney-client relationship and one based upon court appointment. See e.g., American Mut. Liab. Ins. Co. v. Superior Court, 113 Cal.Rptr. 561, 570 (1974) (“*Save where appointed by court*, the relationship of attorney and client is created by contract.”) (emphasis added). In Moore v. McComsey, 459 A.2d 841, 844 (1983), the Superior Court of Pennsylvania held that an inmate could not bring a breach of contract claim against his court-appointed public defender because “there was no contract of employment between [inmate] and trial counsel, for counsel had been court appointed.” Similarly, in Grand Blanc Landfill, Inc. v. Swanson Environmental, Inc., 505 N.W.2d 46, 48–9 (1993), the court held that the court’s act of appointing an expert did not give rise to a contract because the required contractual elements were not met.

In the present case, Pope can not prevail on an intentional or tortious interference with a contract claim because no contract was created between Pope and the Estate and Trust. Analogous to the Moore case, Pope was appointed by the court; therefore, the relationship between Pope and the Estate and Trust was not a contractual one. See 459 A.2d 841. Additionally, like the expert in Grand Blanc Landfill, Pope's court-appointed status and the court order concerning fees do not adequately satisfy the elements required to form a valid contract. See 505 N.W.2d 46. As a result, Pope did not have a contractual relationship with the Estate and Trust and her counterclaims for intentional and tortious interference with contract fail as a matter of law.

Finally, even if Pope's brief service as a fiduciary is characterized as a contractual relationship with the Estate and Trust, she cannot present evidence that the Plaintiffs interfered with the contract. Pope's removal as PR/Trustee by the circuit court was affirmed by the South Carolina Supreme Court in Wilson v. Dallas. The court in Wilson found the circuit court had cause to remove Pope because her removal was in the best interests of the estate. 403 S.C. at 448, 450, 743 S.E.2d at 766, 767. The court noted that Pope sought \$5 million in fees for services as a fiduciary for a relatively short interval of time. The court also cited the payment of fees from the proceeds of the asset sale and the discord between the parties as reasons why her continued service as a fiduciary was not in the best interest of the estate. Id. at 448-449, 743 S.E.2d at 766-767. Clearly, none of the actions of the Plaintiffs caused the Supreme Court to uphold the trial court's order terminating Pope's fiduciary position.

Again, Wilson v. Dallas establishes that Pope cannot prove an absence of justification on the part of the Plaintiffs for seeking to have her removed, as required by the fourth element under a claim for interference with contract. As set forth above, there were numerous reasons cited by

the Supreme Court validating Pope's removal as a fiduciary and finding as a matter of law that her removal was in the best interests of the Estate, and the Supreme Court has since admonished Pope to cease her continued attempts to involve herself in the Estate. Therefore, summary judgment is appropriate as to Pope's claim for Intentional Interference with Contract.

D. Violation of 62-1-106 (Fraud and Evasion)

Pope's claim under § 62-1-106 fails because it is not her claim to assert following her removal for cause, and it is barred by the applicable statute of limitations. Section 62-1-106 of the South Carolina Code (2009) provides:

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or 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) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

First, Pope ceased to be a fiduciary of the Estate on May 26, 2009. The decision in Wilson v. Dallas upheld her removal for cause.

Next, following the affirmation of Pope's removal for cause by Wilson v. Dallas and the supreme court's subsequent admonishment that Pope cease her involvement in the affairs of the Estate, Pope unquestionably lacks standing to bring this cause of action. She ceased to be a fiduciary of the Estate on May 26, 2009, but her counterclaims were filed on September 10, 2010. She was not a fiduciary of the Estate at the time her counterclaim was filed, and thus could not bring a claim on behalf of the Estate. Furthermore, Pope alleges fraudulent representations by the Plaintiffs that have caused "injury to the Estate, 2000 Trust, and

Defendants.” Counterclaim ¶ 104. To the extent Pope continues to maintain this counterclaim on behalf of the Estate and Trust, her actions are in direct contravention of the Supreme Court’s June 2015 Order. **Exhibit B.** Accordingly, summary judgment is also appropriate as to Pope’s § 62-1-106 claim.

Finally, Pope claims the Attorney General failed to address certain issues regarding the correct heirs to the Estate in Aiken County case 2008-CP-02-0872. According to Pope, the AG entered into an agreement on August 10, 2008 regarding the identity of heirs. Pope claims this stipulation of heirs was incorrect. However, Pope’s Counterclaim was filed on September 10, 2010, and therefore this cause of action, even if she was able to assert it, fails as a matter of law due to the operation of the two-year statute of limitations set forth in § 62-1-106.

E. Attorney’s Fees pursuant to S.C. Code 62-7-1004

The general rule is that attorney’s fees are not recoverable unless authorized by contract or statute. Seabrook Island Prop. Owners’ Ass’n v. Berger, 365 S.C. 234, 238, 616 S.E.2d 431, 434 (Ct. App. 2005). S.C. Code Ann. § 62-7-1004 provides that “[i]n a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney’s fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.” Even assuming that this case could be construed broadly as one “involving the administration of a trust,” Pope cannot show that an award of attorney’s fees would be required by “justice and equity.” Because Pope was removed from her fiduciary role by the court for cause, and such removal was upheld by the supreme court, justice and equity would not require Pope’s attorney’s fees to be paid in this matter.

Wilson v. Dallas shows that Pope’s claims are unsupported by the record. Moreover, Pope has claims pending in Case 1337 which seek the same relief in whole or in part, and the Supreme

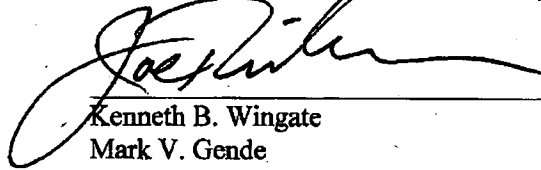
Court ordered that any and all fee applications relating to the Brown Estate must be reviewed and approved by the Circuit Court. Wilson v. Dallas, 403 S.C. at 451, 743 S.E.2d at 768. Thus, Pope's request for attorney's fees are more properly adjudicated in connection with Case 1337, Pope's fee claim case.

CONCLUSION

Mrs. Pope's counterclaims are barred by collateral estoppel based on the Supreme Court's holding in Wilson v. Dallas. Therefore, for the reasons stated above, Plaintiffs respectfully request that this Court grant summary judgment as to each of Mrs. Pope's counterclaims.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
August 26, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, and others

and

ALAN WILSON, in his capacity as Attorney
General of the State of South Carolina and
others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) **DEFENDANT'S SUPPLEMENTAL**
) **MEMORANDUM IN OPPOSITION**
) **TO MOTION FOR SUMMARY**
) **JUDGMENT AND IN**
) **SUPPORT OF DEFENDANT'S**
) **POSITION AS TO OTHER**
) **PENDING MOTIONS**

RICHLAND COUNTY
FILED
2016 SEP 23 AM 10:10
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

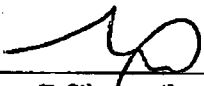
Supplementing her memoranda filed in connection with Plaintiff/Counsel's claim in
Defendants' motion for summary judgment and other matters, Defendant/Counsel claims
Plaintiff Adele J. Pope ("Defendant") supplements the record with the letter to the
Honorable Doyet A. Early, III, dated September 22, 2016, and the documents set out therein
(Exhibit A) and a recent Facebook post by Plaintiff Tommie Rae Brown regarding published
news reports related to Plaintiff Daryl Brown (Exhibit B).

Such of the referenced documents which are not on file as of today will be filed with
the Court as received.

[SIGNATURE BLOCK APPEARS ON FOLLOWING PAGE]

Respectfully submitted,

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September 23, 2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing document on counsel for Plaintiff/CC Defendants on September 23, 2016, by emailing and depositing a copy of the same into the United States Mail, First-class postage prepaid addressed as follows:

Kenneth B. Wingate, Esquire
Joseph O. Thickens, Esquire
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Adam T. Silvernail

2016 SEP 23 AM 10:18
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RICHLAND COUNTY
JEANETTE W. MCBRIDE
CLERK, P. & G.S.

EXHIBIT A

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September 23, 2016

By E-mail and U.S. Mail:
The Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, South Carolina 29003

Re: *Bauknight, et al, and Wilson, et al vs. Pope*
Case No. 2010-CP-40-4900

Dear Judge Early:

On behalf of our client, Defendant/Counterclaim Plaintiff Adele J. Pope, we are writing your Honor to both supplement our arguments made before the Court on August 29, 2016, in relation to Plaintiff/Counterclaim Defendants' motion for partial summary judgment as to Mrs. Pope's counterclaims and to keep the Court informed regarding ongoing discovery in this matter. I anticipate that as discovery continues in its normal course there will be additional matters requiring supplementation. Should you desire some other format for the presentation of such supplements, please just let me know.

As your Honor will recall, we argued strenuously that the motion for partial summary judgment could not be granted without discovery. We believe that what has happened in discovery since August 29 continues to bear that out and should be a part of the record. It is our position that the discovery affects the motion for summary judgment and other motions argued that day.

We will review these separately with respect to the various Plaintiff/CC Defendants who have recently been deposed.

Plaintiff/CC Defendant Venisha Brown

As the Court is aware, Venisha Brown has been a Plaintiff/CC Defendant in this action for six years. A motion for partial summary judgment and numerous other motions have been filed on her behalf. Since August 29, 2016, however, she has failed and refused to appear at a deposition. Her deposition was properly noticed for September 23, 2016. Counsel moved for a protective Order to prevent the deposition. Thereafter, your Honor Ordered that the deposition take place on September 22, 2016. We attempted to agree with Plaintiffs' counsel to cancel the deposition in exchange for a stipulation that she would not appear. Plaintiffs' counsel refused such a stipulation, and we proceeded with the deposition yesterday. Again, Venisha Brown did not appear.

As your Honor knows, a motion to dismiss Venisha Brown's complaint for failure to prosecute has been served and is pending. In addition, Venisha Brown has failed to verify her Interrogatory answers. They have, instead, been verified by someone who appears to have a "springing" power of attorney executed in Georgia in 2008 and filed in 2010, after the commencement of this action.

We respectfully request that the motion to dismiss Venisha's complaint, your Honor's Order directing her to appear at the deposition at which she failed to appear, the exhibits to that deposition, and this letter be made part of the record in opposition to her motion for partial summary judgment and all other relief requested on behalf of Venisha Brown.

Plaintiff/Counterclaim Defendant Lindsey Delores Brown

It is my understanding that this case (Richland 4900) is the only James Brown case in which Lindsey Delores Brown is a Plaintiff as an adult and has been since the commencement of the action.

Filings have been made in this action on behalf of Lindsey for six years. In 2013, as with Venisha and Janice Brown, it became known that Lindsey had not executed the 40% contingency-fee agreement with the Wingate firm to commence this action. In 2012, Mrs. Pope made an offer to Lindsey which would have dismissed her from this action at no cost. The offer was filed and met with a motion to strike made on Lindsey's behalf. As your Honor knows, Lindsey did not appear at her deposition scheduled for August 19, 2016, and your Honor Ordered that she appear on September 19, 2016. When Lindsey was deposed on September 19, she gave significant testimony relative to her pending motion for partial summary judgment and other motions made on her behalf.

Lindsey testified that she had never seen the Richland 4900 Complaint; did not know Robert Buchanan, Adele Pope or Russell Bauknight; and did not know of the existence of Richland 4900 until a week prior to her deposition on September 19, 2016.

Lindsey further testified that prior to last week when she met her Richland 4900 counsel, she has seen lawyers only twice since her grandfather's death. Once was at the Olive Garden a few years earlier, and the second was at the home of her aunt Deanna.

A document Lindsey admits she signed is witnessed by an attorney with the firm of Louis Levenson and bears the date October 26, 2012.

If the first meeting was on October 26, 2012, it was more than two years after Mr. Levenson signed the Richland 4900 contingency-fee contract on Lindsey's behalf and approximately two weeks after Mr. Levenson appeared at the first Richland 4900 mediation. It was represented to Judge Manning that counsel who appeared had full authority to settle on behalf of their clients.

We respectfully submit that the two Lindsey Delores Brown depositions, their exhibits, and your Honor's Order directing the depositions should be entered as a supplement to our response to Lindsey's motion for partial summary judgment and all other relief sought by Lindsey.

Plaintiff/Counterclaim Defendant Janise Vanisha Brown

As your Honor is aware, there were two depositions for Janise Vanisha Brown, which followed the same path as described above for her sister Lindsey.

Janise's testimony was almost identical to that of her sister, with certain minor exceptions. First, Lindsey was fifteen when this action was commenced, but an adult prior to the final decision in *Wilson v. Dallas*. Like Lindsey, Janise testified that she had never met any lawyer in the James Brown matters until a few years ago; that she met her Richland 4900 attorney only the week before the deposition; and that she had never seen the complaint in Richland 4900 before the September 2016 meeting with her attorneys.

Like her sister, Lindsey testified that she did not know Mrs. Pope, Mr. Buchanan or Mr. Bauknight. She specifically confirmed that she had never authorized Mr. Bauknight to act as her agent. She had no knowledge of anyone having sought to intervene in a FOIA case on her behalf.

Like Lindsey, Janise signed a document dated October 26, 2012, which we have taken the liberty of attaching to this letter. At the time she signed Exhibit A, Janise was seventeen years old.

We respectfully request that the motion made on Janise's behalf for partial summary judgment; your Honor's Order related to her deposition; and the two depositions, with all exhibits including the October 2012 document be accepted by the Court as a supplement to the record.

Because of the serious nature of the facts revealed in the three depositions we have conducted or attempted to conduct, we respectfully request that the Court hold any ruling on motions on behalf of any Plaintiff/Counterclaim Defendant open until the deposition of that Plaintiff has been concluded. With respect to our progress in obtaining such depositions, we wish to make the following report on the status of the depositions of the following Plaintiff/Counterclaim Defendants:

1. Daryl J. Brown - In addition to all of the reasons cited to re-depose Daryl Brown, we advise the Court that a news report appearing on or about September 17, 2016, suggested that Mr. Brown is contesting a recently-obtained DNA test and has reported that he has terminated his lawyers and obtained new counsel. (See television report, WRDW, September 17) While we were unaware of any ongoing testing and have no other details, we respectfully submit that the Court should consider Daryl Brown's public statements in connection with our request that he be re-deposed. In that regard, we ask the Court to take judicial notice of Mr. Brown's 2012

deposition, already on file with the Court, and the fact that he, also, did not sign the Wingate 40% contingency-fee contract to bring Richland 4900. That contract was signed on his behalf by Louis Levenson, Esquire.

2. Henry Dargan McMaster – Mr. McMaster, among other statements, said that his office had concluded that the Attorney General's co-Plaintiff/CC Defendant Tommie Rae Brown was not James Brown's spouse. He also testified that if Mr. Buchanan and Mrs. Pope had performed the actions recounted in their first semi-annual report to the Attorney General and others, such actions were laudable. We ask the Court to receive this deposition into the record when the transcript is available.
3. Deanna Brown Thomas – We have scheduled the deposition of Deanna Brown Thomas for October 26, 2016. This is Ms. Thomas' first deposition since October 31, 2007 in an Aiken County case before your Honor.
4. Dr. Yamma N. Brown – The deposition of Dr. Brown is scheduled for October 28, 2016.
5. Attorney General and Plaintiff/CC Defendant Alan Wilson is currently seeking not to be deposed. We believe that his deposition is essential based on both our earlier stated position and what has taken place since the hearing. In 2011 when Robert Buchanan, Jr. and Ms. Pope sought an early appeal of Judge Manning's decision not to dismiss Richland 4900, AG Wilson was successful in having the early appeal dismissed. For the five years since, he has actively participated in this action, allowing numerous filings to be made on his behalf. We ask that the Court, considering recent events with our earlier arguments, direct that Attorney General Wilson be deposed. The presence of the AG in this litigation is a central factor, especially in light of his recent statements to Your Honor supporting actions taken by Mr. Bauknight in this case.
6. Robert Buchanan, Jr., was an original Defendant/CC Plaintiff. In 2010 he and Ms. Pope moved to dismiss this case as unconstitutional because of the AG's participation. Had they been successful, damages to Mr. Buchanan and Ms. Pope would have been limited to a loss of their professional negligence insurance and a suit by Cincinnati. In 2012 Mr. Buchanan reached a "settlement" in which he was required not to file a Petition for Rehearing in *Wilson v. Dallas* when the decision was rendered, and was prohibited from doing anything that might help Ms. Pope. A motion to void the settlement as against public policy because it was not disclosed to the Appellate Court is pending. We ask that it be heard at the next hearing. Mr. Buchanan's deposition was commenced in 2012, but not completed. As soon as the motion is resolved, we plan to complete Mr. Buchanan's deposition.
7. Terry Brown – We will shortly propose dates to depose Mr. Brown in November 2016 under the consent protocol.

8. Jason Brown-Lewis - We will shortly propose dates to depose Mr. Brown-Lewis in November under the consent protocol.
9. James Brown Legacy Trust - Because of substantial issues related to the control, ownership and assets of the James Brown Legacy Trust, we will shortly be preparing detailed written discovery before conducting depositions of principals or fiduciaries. We anticipate that we should be able to begin Legacy Trust deposition discovery by January or February.
10. Plaintiffs' Experts- The Plaintiffs' experts have not yet been identified by the Plaintiffs pursuant to the current Scheduling Order. We have just received written discovery responses indicating that such experts will apparently be responsible for providing the bulk of the testimony regarding the existence or non-existence of any damages allegedly suffered by the Plaintiffs.

As to the remaining depositions, we will be noticing them according to the consent protocol, but are willing to accelerate the consent protocol in any reasonable manner acceptable to the Court and the Counterclaim Defendants.

As an update to written discovery, we have received certain basic, written discovery from Plaintiff/CC Defendants and have, within the week, received the Court Ordered verifications for Plaintiffs other than Venisha Brown. We will follow up on these matters, including the service of additional written discovery.

Because your Honor is in Bamberg and the file in Columbia, we are taking the liberty of attaching a copy of this letter to a very brief supplemental memorandum in opposition to summary judgment and in support of our other positions which will be served and filed this afternoon. Should your Honor wish that any of this be briefed in greater detail when the transcripts arrive, we will be happy to do so.

With kindest regards I remain

Very truly yours

A handwritten signature in black ink, appearing to be "W.H. Bundy, Jr.", with a large, stylized "W" and a trailing flourish.

W.H. Bundy, Jr.

Enclosures

cc: (by email only)
Adele J. Pope, Esquire
Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
Mark V. Gende, Esquire
Kenneth B. Wingate, Esquire
C. Havird Jones, Esquire

October 26, 2012

2:30 PM

1. The undersigned Daryl J. Brown, Janise Brown and Lindsey Brown certify that Louis Levinson is currently our lawyer and any reference to terminating the services of Louis Levinson or his firm is incorrect. The specific purported letter dated Sept 10, 2010 from Daryl J. Brown to Louis Levinson is clearly an error and is revoked and rescinded to the extent that it terminates our lawyer's responsibilities to us and to continue in his efforts on our behalf to enforce the terms of the Settlement in the James Brown Estate and Trust which is currently awaiting a decision by the Supreme Court of South Carolina.

2. We understand that we will not talk to any lawyers about our case nor allow anyone to talk to us about our case except through our lawyer Louis Levinson.

continued on page (2)

~~Witness~~
Janise Brown
Daryl Brown
Lindsey Brown
Cory Brown

~~Daryl J. Brown~~
~~Janise Brown~~
~~Lindsey Brown~~

3. We understand and agree that this letter will be provided to the SC Attorney General, Judge Hoyt A. Early, Adele Pope and Russell Bucknright to inform them of our current intentions and wishes regarding entering the Settlement Agreement. Approved by Judge Early and our intention to hire Mr. Lori Lervenson continue his representation of our legal interests. Any statements to the contrary in the letter dated Sept 19, 2010 were the result of us being mislead about the effects of the litigation or the Settlement of the Estate and Trust. Litigation and we wish to make it clear now that we do not wish to oppose the Settlement and will cooperate with all efforts to preserve the Legacy of James Brown through his Estate and Trust as such is set forth in the Settlement Agreement.

This 26 Day of October, 2012.

Daryl J. Brown

James Brown

James Brown

Lindsey Brown

Walter Earl Barnett

EXHIBIT B

Tomirae Brown

September 18 at 4:33am · 🌐

I told you that I would never say.... "I told you so".... when indeed, I am praying for our collective peace of mind. GOD BLESS YOU James Brown. We're almost free of this unnecessary torture. I know he would want me to thank you for all of your due diligence.
Mrs. Brown & James Brown II.



1.2K Views

👍 Like ➦ Share

👤👤👤 120

5 shares

27 Comments

👤 Jeannie Mortensen Isn't there enough money for all? Did they say 37000 only for each child? Must be a misunderstanding?

Like · 🕒 3 · September 18 at 5:12am

👤 Lynn Meinhold-Thomas on your side

Like · 🕒 1 · September 18 at 5:23am

👤 Mary Kryah I support you baby!!

Like · 🕒 2 · September 18 at 5:30am

➔ 👤 Tomirae Brown replied · 1 Reply

👤 Tomirae Brown Forgive me for what to some, may seem to be immature. In our defence... This all has been precipitated by Daryl Brown's comments both on television and in his autobiography/hell all book.... where in which Daryl is carelessly & wildly spewing his heartless diatribe of how our son & I, Who are blatantly referred to as... James Brown's partner and illegitimate child. Daryl insistently Swearing that "my right hand to God... that is not my father's child"!!... Well, two DNA tests later, and the senseless removal of one of my husbands legs. Just so they could test us properly???

Only to find that 99.999 % of his bone marrow actually proved to be (conclusively and finally) ONCE AND FOR ALL!!! To be his beloved son & namesake: James Brown II.

I remain humbled and forgiving of my step children. How ever.... in the absence of such an honest and stern father figure such as my husband. It is my duty as a wife and mother to try and teach them to be more respectful of their step mother, ill brother and especially their Father. Because I love them all and only want what is best for our family!

God bless all of you. I love you and pray for you every day. I'm still here for you when you need to be reminded that you are all better than that. And we were all taught better than that by him as well.... Respect!!!

Like · 🕒 21 · September 18 at 5:46am

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
 RICHLAND COUNTY

3
4 DEPOSITION OF YAMMA BROWN

5 RUSSELL L. BAUKNIGHT, et. al.

6 and

7 ALAN WILSON, et. al.

8 Plaintiffs,

9 vs. CASE NO. 2010-CP-40-4900

10 ADELE J. POPE,

11 Defendant.
12 _____

13 DEPONENT: YAMMA BROWN

14 DATE: January 27, 2017

15 TIME: 9:59 a.m. - 1:36 p.m.

16 LOCATION: South Carolina Bar Conference Center
17 1501 Park Street
18 Columbia, SC 29201

19 REPORTED BY: SARAH GACIOCH
20
21
22
23
24
25

1 **A. No.**

2 Q. Okay. All right. Turn, if you would, back
3 to the first page. It says, this agreement made
4 this 10th day of the August 2008; is that consistent
5 with your recollection of when the agreement was
6 made?

7 **A. Yes.**

8 Q. Okay, and we know from the document we looked
9 at earlier that Ms. Pope and Mr. Buchanan were
10 appointed in November of 2007; is that correct?

11 **A. Yes.**

12 Q. And so that's roughly 9 months, something
13 like that, between the settlement agreement and when
14 they were appointed?

15 MR. GENDE: Object to the form.

16 BY THE WITNESS: If she was appointed in
17 November and this is August, whatever that time
18 period is.

19 BY MR. MCDONALD:

20 Q. Sure. Nine, ten months, something like that?

21 **A. Yes.**

22 Q. Okay. Under paragraph one, "All parties who
23 sign below hereby recognize and stipulate, for all
24 purposes and matters, that Tommie Rae was the legal
25 wife of James Brown, during his lifetime and at the

1 time of his death, and qualifies as his surviving
2 spouse, and agree not to contest any claim by Tommie
3 Rae by virtue of her status as surviving spouse and
4 to file any and all appropriate pleadings and
5 documents recognizing and stipulating said status as
6 a spouse," is that what you agreed to?

7 **A. Yes.**

8 Q. Notwithstanding the fact that you believed
9 that she was not the spouse, correct?

10 **A. Correct.**

11 Q. Okay, and what was the purpose of agreeing
12 that she was the spouse when you didn't believe she
13 was the spouse?

14 **A. Because it was a settlement, and there are**
15 **going to be things you agree to. Everybody is going**
16 **to have to give up something, so that was it.**

17 Q. Turn to the second page under five.

18 **A. Uh-huh, yes.**

19 Q. It says, It is noted that all parties to this
20 agreement have filed, at separate times, pleadings
21 objecting to the validity of the August 1st, 2000
22 Will of James Brown and August 1st, 2000 Irrevocable
23 Trust; did I read that correctly?

24 **A. Yes.**

25 Q. So does this refresh your recollection that,

1 that, if anyone?

2 **A. The attorneys.**

3 Q. The attorneys?

4 **A. The attorneys.**

5 Q. And when you say -- I'm sorry to go back.

6 When you say "attorneys," you're talking about

7 Sweeny, Wingate & Barrow, right?

8 **A. Yes, I am.**

9 Q. All right. I beg your indulgence, I'm
10 wrapping up.

11 **A. No problem.**

12 Q. Did you have any involvement in valuing the
13 estate trust assets at approximately \$6 million for
14 the music when the settlement, Exhibit 5, was signed
15 in January 2011?

16 **A. Did I personally?**

17 Q. Yes.

18 **A. No.**

19 Q. Okay. And what about just the music at \$4.7
20 million, did you have any involvement in that?

21 **A. No. I believe that was what the Trustee had**
22 **figured out it to be.**

23 Q. And did you have an understanding as to
24 whether or not that was an accurate valuation?

25 **A. Again, I didn't know if the 100 million that**

1 came across was accurate. I just -- I know that
2 those numbers have been thrown out there, so it
3 seemed pretty accurate to us at that time.

4 Q. And I'm sorry. Not to be confusing --

5 A. The 5, the lower amount seemed more accurate
6 than the 100.

7 Q. That seemed more accurate --

8 A. Yes.

9 Q. -- to you? And why did that seem more
10 accurate?

11 A. Because the \$100 million value that came out
12 was almost like somebody pulling it out of the air.
13 It didn't come from --

14 Q. And do you know where the --

15 A. -- something credible.

16 Q. I'm sorry, I didn't let you finish. I
17 apologize. Are you finished?

18 A. Go ahead. Yes.

19 Q. Do you know where the \$4.7 million number
20 came from?

21 A. I don't know.

22 Q. Okay, and did you understand that, that
23 number was based upon their -- whoever came up with
24 that number was taking the position that, that was
25 the value of the estate at the time of your father's

1 passing?

2 A. Yes. I did know that.

3 Q. So you understood that even though you were
4 looking at these numbers later, 2011 or wherever it
5 was, you understood that what they were taking the
6 position is that's what the value of estate or
7 assets were worth, the music was worth as of the
8 date of your father's passing?

9 A. Yes, I did.

10 MR. MCDONALD: Thank you very much, Ms.
11 Brown. I appreciate your time.

12 BY THE WITNESS: Thank you.

13 MR. GENDE: No questions.

14 BY THE VIDEOGRAPHER: This concludes
15 Tape No. 3 and the deposition of Yamma N. Brown.
16 We're off the record at 1:36 p.m.

17

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25

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Russell L. Bauknight, et al.

and

Alan Wilson, as Attorney General et al
Plaintiffs,

v.

Adele J. Pope

Defendant.

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

) AFFIDAVIT OF HARLEY D. RUFF

2017 JUL 19 AM 10:52
JEANNE E. W. MCBRIDE
Clerk & G.S.
RICHLAND COUNTY
FILED

PERSONALLY APPEARED BEFORE ME, HARLEY RUFF, who being duly sworn, deposes and says:

1. I am over 21 years of age.
2. I am a Certified Specialist in Estate Planning and Probate Law.
3. On April 6, 2009 I qualified without objection as an expert in Estate Planning and Probate law and related tax matters in the case related to a settlement brokered by former Attorney General Henry McMaster related to the estate and 2000 Trust of entertainer James Brown.
4. I was examined on direct examination by James Bailey, Esq., attorney for James Brown's Estate and 2000 Trust..
5. I was cross examined by Alan Medlin, Esq. and Louis Levenson, Esq., both of whom represented persons who had contested Brown's estate plan, and who were parties to the McMaster settlement which was being considered by Judge Doyet A. Early, III.

6. It was my opinion to a reasonable degree of professional certainty, based on James Brown's Will, 2000 Trust and the portion of James Brown's estate tax return that I considered, that the McMaster settlement would increase the Federal Estate Taxes payable by James Brown's estate by millions of dollars.

7. At that time James Brown's Estate claimed an Estate Tax Charitable Deduction of \$83, 419,981 for assets passing at James Brown's death to The James Brown "I Feel Good" Trust, Brown's charitable foundation to educate needy students.

8. Under the McMaster settlement nearly 25% would pass to Tommie Rae, whose status as Brown's claimed spouse was disputed, and just over 25% to various claimed children of James Brown.

9. It was, and is, my opinion to a reasonable degree of professional certainty within my areas of expertise that the McMaster settlement, based on the Estate Tax Return as filed, would cause Brown's estate to incur many millions of dollars in estate taxes.

10. Because of the structure of James Brown's estate plan and the McMaster settlement, with \$2 Million without taxes going to James Brown's education trust for certain grandchildren, the value of all property passing to Brown's claimed children attracted an Estate Tax, which would have been several millions of dollars.

11. If instead of the \$84,114, 529 value of Brown Schedule F assets as shown on the Estate Tax return, the Schedule F assets were \$ 4.7 Million, there would still be estate taxes due under the McMaster settlement.

12. With a gross estate of approximately \$6.5 Million, if the IRS accepted the claim that Tommie Rae was Brown's spouse and entitled to a marital deduction, AND

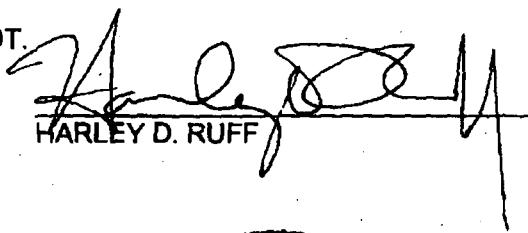
the Legacy Trust qualified for a charitable deduction, under the McMaster Settlement, about \$1.8 Million would be subject to estate taxes.

13. It was, and is, my opinion that there was substantial doubt as to whether the Legacy Trust created by Attorney General McMaster would qualify for a federal estate tax charitable deduction. It was also my opinion that the right of a family member to purchase the assets placed James Brown's charity in jeopardy of incurring excise tax as a result of self-dealing. Finally, it was my opinion that there was some doubt as to whether Tommie Rae would qualify for a marital deduction.

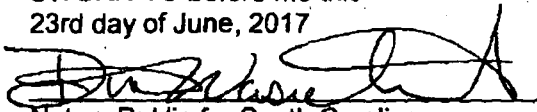
14. It was, and is, my opinion that seeking a private letter ruling from the IRS as to this complicated settlement proposal was appropriate.

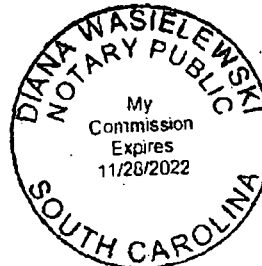
15. The *Wilson v. Dallas* decision, by voiding the McMaster settlement, suspended some of the concerns I raised.

FURTHER DEPONENT SAYETH NOT.


HARLEY D. RUFF

SWORN TO before me this
23rd day of June, 2017

 (L.S.)
Notary Public for South Carolina
My Commission expires: 11/28/2022



STATE OF SOUTH CAROLINA)
COUNTY OF Richland)

Russell L. Bauknight, et al

Plaintiff (s)

(vs.)

Adele J. Pope and

Robert L. Buchanan, Jr.

Defendant (s)

THE UNDERSIGNED Cecil McRacken
WHO BEING DULY SWORN, SAYS THAT HE SERVED TH FORGOING:

☒ SUMMONS
☒ COMPLAINT
CIVIL COVER SHEET

AFFIDAVIT OF SERVICE
DOCKET NUMBER

2010-GC-110-0073

LIS PENDENS
MECHANIC'S LIEN
RULE

ACTION ON
served:

ADELE J. POPE

ADELE J. POPE (AT HER RESIDENCE)

TIME SERVED 10:00 AM LEAVING WITH him/her 1 COPY (IES) OF THE SAME AT:

1228 WALNUT ST. NEWBERRY SC 29108

ON THIS 24 DAY OF MAY 2010, AND THAT HE KNOW THE PERSON SO SERVED TO
BE THE DEFENDANT MENTIONED AND DESCRIBED IN THE PLEADING (S) SERVED AND THAT THE
DEPONENT IS NOT A PARTY TO NOR INTERESTED IN THE ACTION, THE DEFENDANT IS, OR
✓ IS NOT IN THE UNITED STATES MILITARY

Sworn to before me this 24th day of

May 2010

Notary republic for South Carolina

Commission expires

1-11-2017

(SIGNED)

THIS IS A HOUSE

THIS IS A MOBILE HOME

STATE OF
SOUTH CAROLINA

NOTICE OF MOTION SCHEDULE

August 13, 2010



**Motion "MCHVEN - Motion to Transfer Venue" for Case:
2010CP4004900 - Russell Banknight , plaintiff, et al vs Henry Dargan
McMaster , defendant, et al has been added to the following Motions
Roster:**

MOTION ROSTER AUGUST 30, 2010 COURTROOM 2-C

**This hearing of this motion has been scheduled for Monday, August 30,
2010 at 11:00 am.**

The above referenced case is scheduled for a Motion Hearing before Judge L. Casey Manning in Courtroom 2-C. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing.

Mail Mailing To

**Kenneth B. Wingate
1515 Lady Street
Columbia, SC 29201**

Court Info

**Richland County Common Pleas
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201-9201**

**Judge Alison R. Lee
Chief Administrative Judge
Fifth Judicial Circuit**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

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

) AFFIDAVIT OF BUCHANAN
) AND POPE IN SUPPORT OF
) DISMISSAL BASED ON
) STATUTES OF LIMITATION

2010 SEP 28 PM 1:21

PERSONALLY APPEARED BEFORE ME, Robert L. Buchanan, and Adele J. Pope

(Pope), who, being duly sworn, depose and say:

1. This affidavit is truthful based on our personal knowledge related to or arising out of our service as Special Administrators of the Estate of James Brown (SAs), Personal Representatives of the Estate of James Brown (PRs) and/or Trustees of the James Brown 2000 Irrevocable Trust (Trustees).

2. The information contained in this affidavit is submitted solely for the purpose of establishing what the Plaintiffs knew or reasonably should have known (and were obligated to investigate further), and when they knew or reasonably should have known (and were obligated to investigate further) the information. By including the information, Buchanan and Pope do not adopt, endorse or accept any portion of the information that consists of accusations made against them by others and reserve the right to dispute or contest such accusations.

3. For purposes of considering dismissal of this case under statutes of limitations (and on other relevant grounds), we ask the Court, in addition to considering the matters herein averred, to take judicial notice of Plaintiffs' admissions and other facts contained within the record of pending and decided James Brown cases, including those in the Aiken County probate and circuit courts, the S. C. District Court, and the S. C. Court of Appeals and Supreme Court.¹

4. Attached to this affidavit are excerpts from the more than 3,000 pages of transcripts of at least 20 hearings, the more than 350 filings in the James Brown cases, and documents provided by Plaintiffs and their more than 20 attorney/agents, including attorneys Louis Levenson, David Bell, Powell Goldstein ("PG")³, David Yount, Alan Medlin and Robert Rosen. An index of attachments briefly describes them.

5. Emphasis has been supplied and some documents enlarged for ease of review.

I. Prior to November 20, 2007

6. All Plaintiffs except Bauknight, who, to the best of our knowledge, was not involved at the time, had access to our books and records, as well as all historical records of James Brown and his entities by Court order and our agreement as early as August 10, 2007. AG McMaster audited our records in late 2007 and early 2008. Assistant AG

¹ Records of which the court is asked to take judicial notice are the Aiken County Clerk of Court /real estate records, the Estate of James Brown, Probate File No. 2007-ES-02-0056, the transcripts of the hearings, orders and decisions in Circuit Court Case Nos. 2007-CP-02-0122 ("Case 122"), 2008-CP-02-322 ("Case 322"), 2008-CP-02-0872 ("Case 872"), 2008-CP-02-1647 ("Case 1647"), 2009-CP-02-1810 ("Case 1810"), the James Brown Estate claims cases, the appeals from Case 122 (the "Cannon Appeal", "Dallas Appeal," and "Case 1647/1810 Appeal"), as well as S. C. District Court Case 3:08-cv-00014-WOB.

³ Including attorneys William Shearer, Jennifer Dempsey, Frank McGaughey, and William Custer

Jowers was invited to our weekly meetings beginning in November 2007, and attended several.

II. Knowledge of all Interested Persons as of November 20, 2007

7. The record shows that all Interested Persons in the Estate/2000 Trust had the following knowledge by the end of the day on November 20, 2007:

a. James Brown was one of South Carolina's most famous and generous citizens. [Ex. 1]

b. It was an often stated and well-known desire of James Brown to provide financial assistance to education, especially for needy and deserving students. [Ex.2]

c. Plaintiff Deanna Brown Thomas and former PR/Trustee David Cannon, under James Brown's Power of Attorney ("POA"), had obtained Brown's attorney's estate planning file. All were aware of the PR/Trustees' duty to enforce the *In Terrorem* clauses, as was Tommie Rae, who witnessed one of the 2000 estate planning documents. [Will; Trust]

d. James Brown intentionally excluded his children and all past and future spouses, from his music empire. *In Terrorem* forfeiture clauses required his PR/Trustees to resist all attacks on his estate plan as an affront to his wishes. [Will; Trust]

e. James Brown's Will acknowledged only 6⁴ of a possible dozen or more children. The 6 received nothing in the 2000 Trust. The 6 received only James Brown's personal effects in his Will, subject to the *In Terrorem* forfeiture clauses. [Will/2000 Trust]

f. No Plaintiffs had challenged James Brown's estate plan, which was known to family and had been funded and in open existence and the 2000 Trust a matter of public record in two states for more than 7 years. [Ex. 3]

g. Plaintiff Deanna J. Brown Thomas was a co-fiduciary with David Cannon, Albert Dallas and Alfred Bradley under Mr. Brown's Power of Attorney for 7 years before Mr. Brown's death. [Ex. 4]

⁴ Brown's Will acknowledged Deanna, Yamma, Terry, Larry, Venisha and Daryl. His first divorce decree also acknowledged Teddy (now deceased) and Lisa. Various others heir status. Cinnamon, Jeanette and La Rhonda passed official DNA tests established by Trust/Estate attorney Peebles, Lewis & Babcock.

h. On December 26, 2006, the day after James Brown died, Atlanta law firm Greenberg Traurig ("GT") formed the James Brown Music Education Foundation, naming Plaintiff Yamma N. Brown and Deanna Brown Thomas as two of its board members. Its website remained up in October 2007. [See Order dtd. 4/8/08; Ex. 5]

i. After James Brown died, Plaintiff Deanna J. Brown Thomas became a trustee with Dallas and Cannon, and Plaintiff Yamma N. Brown an executive/assistant of the James Brown 2000 Trust, and the two of them gained access to the Brown's home estate, owned by the 2000 Trust. They abandoned the positions in January 2007. [Ex. 6, 7]

j. In January 2007 the six acknowledged children, together with grandchildren Forlando and Romunzo Brown (Terry's children), hired Atlanta attorney Levenson and began plans to take control of Brown's assets in violation of the estate plan. [Interrog., Depos. F. Brown, Ex. 8, 9]

k. Levenson requested that then-attorneys for the Estate/2000 Trust Strom Thurmond and others not file Brown's Will, but Thurmond complied with S. C. law and filed it on January 18, 2007. [See Tr. Hg. 2/09/07, p. 52]

l. On January 24, 2007, Levenson filed Case 122, seeking removal and an accounting of Dallas and Cannon as PR/Trustees. Levenson's clients, the 6 children acknowledged in Brown's Will, asserted standing under the Will and 2 adult grandchildren clients, Forlando and Romunzo, asserted standing under the 2000 Trust, as did Yamma, Daryl and Deanna for their minor children. [Affidavits, Y. Lumar, D. Brown, D. Thomas, Ex. 10]

m. In Court filings Levenson acknowledged the validity the 2000 Trust for purposes of Case 122. [Tr. Hg. 2/09/07 p. 18]

n. By February 2007 Terry Cox (the Grahm Windsor Group) was working with Levenson's clients and Plaintiff Yamma N. Brown's husband to raise \$200 million to acquire Brown's assets, partnering with Pinnacle Music and Entertainment, LLC, with Plaintiff Yamma N. Brown (a/k/a Dr. Lumar) serving as president. [Ex. 11]

o. On February 9, 2007, Hynie Brown's attorney expressed concern that Brown had "made a fortune" which could be worth \$100 million; and that there was fear that the Dallas Group would try to sell the James Brown assets for \$20 million [Tr. Hg. 2/9/07, pp. 44, 48]

p. James Brown's family, his fiduciaries, and their attorneys rejected all of Tommie Rae's claims, based on James Brown's death certificate; Mr. Brown's intentional disinheritance of her;her prenuptial agreement in 2001; the fact that she concealed her extant marriage when she obtained a license and conducted a marriage

ceremony with Mr. Brown in December 2001; and her agreement, made part of a 2004 Aiken County Order, never to claim to be Brown's common law spouse. [See, for example Mot. Dismiss, Cannon, dtd. 11/25/08, w/ exhibits]

q. With full knowledge of the 2000 Trust and Brown's assets, Tommie Rae waived any right to Brown's property at his death, including any rights to claim to be an heir under the Will, the 2000 Trust and the Federal Copyright Act. [Ex. 12]

r. By May 2007 Terry Brown and his sons Romunzo and Forlando (a/k/a William, a/k/a "Flip") Brown had fired Levenson. Cox and the Machine Group (Alvin and Calvin Waters) were working with Forlando to present to Dallas a proposal to enhance the Brown assets. Dallas wanted a sale. [Tr. Hg. 11/20/07, pp. 439-454, Ex. 13]

s. By June 2007 Forlando Brown and Cox, Dallas and Alvin/Calvin were working on a proposed \$100 million sale of the Brown assets. [See Hg. 11/20/07, pp 439-454]

t. By June 15, 2007, Estate/2000 Trust attorney Bill Hammond insisted the 2000 Trust required a sale of Brown's royalties and that Buchanan/Pope, although not fiduciaries, would breach their fiduciary duty if they did not approve a sale by Dallas and Cannon. [Ex. 14]

u. On July 10, 2007, PG sent Dallas and Cannon documents to move the 2000 Trust to Georgia. [PG later became attorneys for Forlando, Terry Brown, and the Cox investor group, but has refused, despite court order, to deliver their file.] [Ex. 15]

v. On July 17, 2007, Buchanan/Pope discovered \$900,000 taken from Brown's 2006 royalties. [Cannon decision, Ct. Appeals] and in August Cannon wired \$866,000 to Honduras to complete a turnkey retirement home. [Tr. Hg. 11/15/07, pp. 77-83]

w. In September the Dallas Group filed about \$16 million of claims against the Estate. [See Order dtd. 4/8/08]

x. In September 2007 AG McMaster and the Georgia AG appeared in Case 122. An order filed October 11, 2007 (with Buchanan and Pope's consent) admitted them to Case 122. The AG s had total access to Brown's files and the Estate/Trust files from then until May 26, 2009. [Orders dtd. 10/11/07 & 8/10/08]

y. On October 12, 2007. Cox, without disclosing his various relationships, made an offer (letter of intent) on behalf of the James Brown Legacy, Inc., "a corporation to be formed" to purchase the James Brown assets for \$100 million. [Ex. 16]

z. In November 2007 Levenson advised the Court and all Plaintiffs except for Bauknight of James Brown's almost \$18 million road revenues for the years 2003 - 2006. [Ex. 17]

aa. By November 2007 Brown's \$3+ million 2006 royalties, after adding back the \$900,000 taken by Cannon were known. [Ex. 18, Cannon Decision]

ab. On November 15, 2007, seeking Court approval, Buchanan/Pope presented to the Court and Interested Persons, including all Plaintiffs except Bauknight, a detailed proposal to value the Publicity Rights/Royalties for the Estate Tax Return, without appraisal, at 12 ½ - 14 times average Royalties plus ½ of the 2006 road revenue. [Exhibit 19, Ret. Recom. of SA s; Tr. Hg. Dtd. 11/15 /07, pp. 304 - 310]

ac. By November 20, 2007. it was known that the Dallas Group, Greenberg Traurig ("GT"), Intrigue, Pullman, Bobbit and others were claiming at least 45% of the \$100 million sale, based largely on an October 18- 20, 2006 letter from GT disclosed to the Court and to all Plaintiffs except Bauknight and AG McMaster by Levenson in February 2007. [Tr. Hg. 2/9/07, p. 46]

ad. By November 20, 2007, Dallas, by then wholly discredited, resigned, following Cannon. Cannon claimed 5th amendment rights from November 15 forward. \$7+ million was missing since 1999 when the 2 actively served as POAs and Trustees. [Orders dtd. 3/7 & 4/8/08; Cannon decision]

ae. On November 20, 2007 the same day, Cox spoke under oath about the \$100 million offer, and Dallas said he was expecting an additional proposal by the end of the year, if not earlier. Calvin and Alvin were brought by Levenson as witnesses to the \$100 million deal, which included Terry Brown's son, Forlando – also known as "Flip" and William. [Tr. Hg. 11/20/07, pp. 439-454]

af. At the November 20, 2007 hearing, any persons, including all Plaintiffs who appeared individually or through counsel except for Bauknight, who did not approve the method of reporting to the IRS, without appraisal, of the Publicity Rights and Royalties, as proposed by Buchanan/Pope on November 15, 2007, were directed by the Court to make objection. None were made. [Tr. Hg. 11/20/07, pp. 304 0310]

II. Knowledge of all Interested Persons acquired on or before May 18, 2008.

10. The record shows that in addition to the above knowledge, by May 18, 2008 all Interested Persons in the 2000 Trust and Estate of James Brown had acquired the following knowledge:

a. A detailed Inventory & Appraisalment ("I&A") filed by Dallas under oath on November 15, 2007, showed assets in the 2000 Trust at Brown's death, with retained rights, at \$26,332,792.00 and assets in the Estate at 58,667,048.00 [Exhibit 20, I&A; Tr. Hg. 11/15/07, p. 149]

b. Bill Hammond's report to AG Jones stated that the Brown assets were worth \$80 - \$120 million, with about \$20 million in the 2000 Trust.

c. On November 21, 2007 AG Jones asserted Buchanan/Pope's service as both Trustees and PRs was improper and raised possible ethical problems.

d. Between November 30, 2007 and January 4, 2008 the AG s of Georgia and S.C. filed numerous documents accusing Buchanan/Pope of impropriety, while Dallas and joint-venturer Forlando filed similar documents accusing Buchanan and Pope, and also accusing Judge Early. PG helped with Dallas' motion to recuse Jg. Early.

e. On December 14, 2007 AG Jones and the Georgia AG filed documents asserting the actions of Buchanan and Pope went "far past the stop sign of conflict of interest." [Mot. AG s Alter/Amend, 59(e), p. 3.]

f. On December 21, 2007 the Georgia AG asserted in a hearing in Case 122 that Pope had adopted the position of Levenson "who seeks to destroy the charitable trust"; that Pope's "interests are adverse to the interests of the charitable beneficiary"; and that "there are serious issues of breach of fiduciary duty related to Adele Pope and Bob Buchanan." [Tr. Hg. 12/21/07, p. 24, Ex. 21]

g. On December 21, AG Lewis, under AG McMaster, opposed our right to select counsel to recover losses caused by Cannon and others, asserting we should not control the litigation because "one of the greatest breaches of all may be the breach of Adele Pope and Bob Buchanan." [Tr., Hg. 12/21/07, pp. 24, 25.]

h. On December 21, 2007 AG Lewis also opposed our filed, detailed request for fees as SA s and prospective payments towards our PR/Trustees' commissions, specifically pointing out details to which she objected.⁵ [Tr. Hg. 12/21/07, p. 64]

⁵ By contrast, Tommie Rae's attorney stated "[w]e would certainly take the position at the appropriate time, Mr. Buchanan and Ms. Pope have provided extraordinary services as compared to the usual estate administration....". He also said "[w]e don't think the Attorney General from

i. At the December 21, 2007 hearing the Court was informed of Tommie Rae's newly filed challenges to the 2000 Trust. [Tr. Hg. 12/21/07, p. 58]. Challenges from the Levenson clients followed. By January 6, we made clear our intention to vigorously defend Brown's estate plan as directed by Brown's documents.⁶

j. At a January 4, 2008 hearing in Case 122, the Court and all Interested Parties were advised of a 43-page complaint filed in Federal Court against Buchanan and Pope. Levenson advised that Count one seeks removal and Court Two seeks injunctive relief to us from proceeding, and that "its got about 120 paragraphs of factual statements." [Tr. Hg. 1/4/08, p. 64, 69.]

k. By motion and affidavit dtd. January 4 - 6, 2009 Pope advised "one of our primary acts as SA s ... was preventing an imprudent sale of Mr. Brown's assets.." We asked the Court to schedule a full hearing "to determine that what Mr. Buchanan and I have done as SA s and...as [PR/Trustees] is proper. [Mot. Dtd. 1.4.08; Ex.22]

l. By January 7, 2008 Forlando, represented by counsel for himself and Terry in State Court, along with Dallas/Bradley counsel PG, amended his federal complaint to seek damages, personally, against us for conversion and other alleged impropriety. [Exhibit 23]

m. Br order dated January 8, 2008 Judge Early made detailed findings and awarded us \$317,000.00 SA fees, plus costs, plus "continuing payment on a 'time plus costs' basis for themselves and their staff [for work from November 21]. ... This shall be a deposit toward, and without prejudice to, their full commissions as [PR/Trustees]." Legal interest applied to amounts unpaid after 60 days. [Exhibit 24, Order dtd. 1/8/08]

o. At the January 9 hearing, AG Jones advised of his knowledge of the federal lawsuit by saying "when the federal lawsuit was filed . . . the pleadings were very similar to the ones that we presented ... I'd like to state for the record in direction of my office and Attorney General that our matter is before your Honor. . . We took no part in that participation." [Tr. Hg. 1/9/08, pp. 72,73]

p. On February 7, 2008 AG McMaster appeared on WIS television program with Forlando to assert that actions of Buchanan/ Pope "went far past the stop sign of conflict of interest."

Georgia has a stake in any of these matters... This a South Carolina trust," [Tr., Hg. 12/21/07, pp. 58,61]

⁶ On November 28 Buchanan/Pope filed pleadings asserting no probable cause existed to challenge either the 2000 Trust or the Will. [Compl. DJ, 11/28/07]

q. On February 29, 2008 "The James Brown Legacy, Inc." of which Forlando was part owner, and from which Dallas and Cannon sought options or a "kickback", sent a letter of intent to purchase the assets of the 2000 Trust for \$90 - \$100 million. It was not accepted. [Exhibit 25]

r. On March 25, 2008 Buchanan's affidavit attached our Application for Estate Tax Extension filed March 24 with the IRS, and fully disclosed our position that the estimated value of Brown's "Royalties, image, persona, publicity rights, and all rights associated w/ unpublished songs" was about \$80 million. [Exhibit 26]

s. On March 26, 2008 Cox, Terry Brown sent 2 \$92- \$102 million letters of intent to purchase Estate/2000 Trust assets [Exhibit 27]. We notified the Court and parties of our rejection of these offers.

t. By April 22, 2008 emails generated by terminated attorney Hammond and Dallas and Cannon's own testimony demonstrated the fraud under §62-1-106 of Dallas and Cannon, as was found in the April 8 order; that both lied about not engaging PG; that both were working with PG to prevent the delivery of the PG file; and that both, with Hammond, had extensive contacts with AG Jones.

11. On information and belief, the information to meet the requests of the investigations of the AG s of two states, and those of PG, Forlando and the former PR/Trustees, with copies for all Plaintiffs, constituted a complete report of our actions and the existence of any supposed complaint before May 18, 2008.

III. Knowledge of Plaintiffs, other Interested Persons Before May 18, 2009

12. The record shows that in addition to the above knowledge, before May 18, 2009 all Plaintiffs and other Interested Persons in the 2000 Trust and Estate of James Brown had acquired the following knowledge:

a. Beginning March 2008 Buchanan and Pope respectfully and repeatedly notified AG McMaster of their positions, making him fully aware, with all Interested Persons, of their positions and actions. [See for examples, Ex. 28, 29, 30, 31, and 32]

b. In September 2008 Buchanan and Pope gave lengthy depositions in the Forlando Federal Court case, and in November were questioned, with Plaintiff

Terry present and his attorney Bell questioning Defendants. [Tr. Hg. 11/18/08]

c. On September 25, 2008 we filed the Estate Tax Return. Consistent with the earlier filings, the amount passing to The James Brown "I Feel Good" Trust was shown as approximately \$83 million.

d. On information and belief, by August 10, 2008, Bauknight had been selected by the AG and those attending the secret mediation, and obtained knowledge of all matters known to Plaintiffs. [Exhibit 33]

e. By September 2008 we made clear that the AG and Settling parties, who had generated estate taxes which under James Brown's estate plan were not required to be paid by the Estate/2000 Trust, should work on both the tax issues and the Royalty and Publicity Rights development. [See Ex. 34 and 35]

f. The Amended Complaint dated November 7, 2008 [Exhibit 36] and our charts produced in February 2009 [Exhibit 37] confirm that Plaintiffs had detailed knowledge of all of our actions by early March 2009. The Amended Complaint even accused us of acts previously approved by Court Orders. [See, for example, Ex. 38]

g. By March 2009 we had made it clear that we believed it violated our fiduciary duty to sign the settlement agreement which made a knowingly incorrect determination of the heirs of James Brown, damaging the Estate/Trust's copyright rights, and required us not to complain of AG McMaster, a public official, or what he had done. [Ex. 40]

13. We are informed and believe that this action was filed more than one year after Plaintiffs received a full report, with details, of all of our actions, including those raised in the complaint.

14. On information and belief, we were relieved by the Court of Appeals of any liability for mismanagement of the 2000 Trust and Estate after May 26, 2009, which liability rests on Russell Bauknight pending the outcome of the appeal of our replacement by him. [Exhibit 41]

IV. August 2010 Assertion to Supreme Court regarding Value of Assets

15. In August 2010, AG Jones, for the first time, predicted that Plaintiff Bauknight

would shortly produce an appraisal showing the James Brown assets were worth only \$12 million at Brown's death.

16. This revelation is inconsistent with our testimony through March 2009, the representations of Plaintiffs, and the statements of the more than 30 attorneys who have represented Plaintiffs, the Estate/2000 Trust and the former fiduciaries since Brown's death.⁷ The lowest value of Mr. Brown's assets at a time near his death which we recall hearing was in an email from counsel for Tommie Rae which we accidentally received; considered unreliable; and disregarded until it was mentioned by counsel for Tommie Rae in the Case 1647 hearings. [Ex. 42]

17. If Brown's assets were worth \$12 million, unrecouped expenses \$2.5 million, and personal effects \$1.5 million, Brown's Estate Plan would give the "I Feel Good" private foundation about half of Brown's assets, as follows:

Total value of Assets:	\$12,000,000.00	
Expenses	(2,500,000.00)	
Pers. Eff., Est. Taxes	<u>(1,500,000.00)</u>	
2000 Trust for division:	\$ 8,000,000.00	
 Grandchildren's Education	 \$ 2,000,000.00	 (7 @ \$285,000.00 +/-)
 "I Feel Good " Foundation	 \$6,000,000.00	

⁷ Attorneys who represent or have represented one or more Plaintiffs and/or the former fiduciaries include (1) Strom Thurmond, (2) David Miller, (3) Rodney Peeples, (4) Cam Lewis, (5) Keith Babcock, (6) Jonathan Harling, (7) Arial King, (8) Bill Hammond (9) Bill Tucker (10) Stan Jackson (11) Wayne Byrd, (12) Havird Jones, (13) Mary F. Jowers, (14) JC Nicholson, (15) Robert Rosen (16) Alan Medlin (17) Heyward Carter (18) Jean Lee (19) Jan Warner (20) Max Pickelsheimer (21) Fred Kingsmore (22) David Bell (23) PG attorneys Shearer (24) Custer (25) Dempsey and (26) McGaughey, GT attorneys (27) Sidman and (28) Katz, (29) Leon Friedman, (30) Levenson and (31) Yount, (32) Maxwell, (33) David Black.

18. If, as Plaintiffs asserted for the first time nearly four years after Brown's death, Brown's assets were worth only \$12 million, the AG's August 10, 2008 agreement and subsequent agreement with Terry Brown would give the "I Feel Good" Foundation only about 15 % of James Brown's assets, and decimate the Education Trust for 7 grandchildren, all to the benefit of disinherited persons, approximately as follows:

Total value of Assets:	\$12,000,000.00
Expenses	(2,500,000.00)
Estate Taxes (minimum)	<u>(1,380,000.00)</u>
Amount for Division	\$ 8,120,000.00

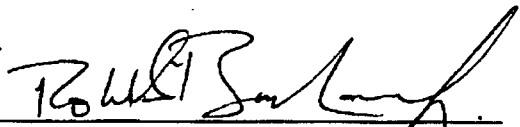
To Children & Hynie Brown (52 ½%)	\$4,263,000.00

<u>To "I Feel Good" Foundation</u> <u>(47 ½% LESS \$2 million)</u>	<u>\$1,857,000.00</u>

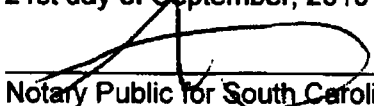
For Undesignated Descendants	\$2,000,000.00

19. Under the AG's agreement, if approved on appeal, Terry Brown also has a 10-year right to purchase assets valued at \$12 million and be part of a company owned with son Forlando who has valued assets at \$150 million, and which has proposed options or a "kickback" for Dallas and Cannon.

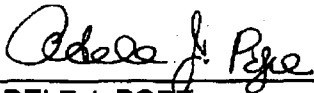
FURTHER DEPONENTS SAYETH NOT.


ROBERT L. BUCHANAN, JR.

SWORN TO before me this
21st day of September, 2010


Notary Public for South Carolina
My Commission expires: 7/13/16

(L.S.)


ADELE J. POPE

SWORN TO before me this
21st day of September, 2010


Notary Public for South Carolina

(L.S.)

My Commission expires: 7/13/13

Index of Exhibits Attached to Affidavit Dated September 21, 2010

- Exhibit 1 - Excerpt, Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, dated 8/27/10, this case.**
- Exhibit 2 - Excerpt, Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, dated 8/27/10, this case.**
- Exhibit 3 - Certificate and Agreement of Trust, James Brown 2000 Irrevocable Trust, including the "Brown Family Education Trust" and The James Brown "I Feel Good" Trust, dtd. 8/1/00**
- Exhibit 4 - Excerpt, James Brown Power of Attorney, dtd. 6/15/99**
- Exhibit 5 - Latham email to Yount, Levenson and others, dtd. 10/5/07 re: James Brown Music Education Foundation**
- Exhibit 6 - Minutes of Trustees' Meeting, Irrevocable Trust Agreement of James Brown, 12/27/06**
- Exhibit 7 - Minutes of Trustees' Meeting, Irrevocable Trust Agreement of James Brown, 1/3/07**
- Exhibit 8 - Memorandum and Representation Agreement between Louis Levenson, Esquire and Terry Brown, Larry Brown, Daryl J. Brown, Vanisha Brown, Deanna J. Brown Thomas and Yamma N. Brown Lumar, dtd. 1/8/07**
- Exhibit 9 - Excerpts, Motion to Require Disclosure of Secret Settlement dtd. 8/18/09, Case 122 (With portion of Attachments, Excerpt Ans. Interrog. Forlando Brown)**
- Exhibit 10 - Excerpts, Deposition of Forlando Brown**
- Exhibit 11 - Executive Summary, Management Team Lumar, Lumar, Cox, others, excerpts of email dtd. 11/12/07**
- Exhibit 12 - Prenuptial Agreement, dtd. 11/27/01**
- Exhibit 13 - Excerpts, Cox, Forlando (William) Brown, and Machine Group (Alvin & Calvin Waters) Presentation, May 2007**
- Exhibit 14 - Email from Bill Hammond to Adele Pope and Keith Babcock, dtd. 6/15/07**

- Exhibit 15- Powell Goldstein Documents to transfer 2000 Trust to Georgia; Excerpts, Affidavit of Adele J. Pope, dtd. 5/1/08 and Exhibit A (Case 122); Excerpts, Order of the Honorable Doyet A. Early, III Regarding the Deposition of William B. Shearer, Frank S. McGaughey, III and Joel Katz and Application for Stay of Same, dtd 6/15/08
- Exhibit 16 - Letter, dtd. 10/12/07, from The James Brown Legacy, Inc. (name pending), to Buddy Dallas and Alford Bradley
- Exhibit 17- Email from David Yount to All Counsel, dtd. 11/10/07
- Exhibit 18- Statement, James Brown LLC Royalties Collected and Bonds Outstanding through 2007
- Exhibit 19- Excerpts, Return and Recommendation of Special Administrators, dtd. 11/14/07
- Exhibit 20- Excerpts, Inventory & Appraisement, dtd. 11/15/07
- Exhibit 21- Excerpts, Transcript of 12/21/07 Hearing, Case 122
- Exhibit 22 - Excerpts, Affidavit of Adele J. Pope, dtd. 1/6/08, Case 122; Excerpt, 3/7/08 Hearing Transcript
- Exhibit 23- Excerpts, Amendment to Complaint of Forlando Brown, Federal Case
- Exhibit 24- Order Directing Payment of Fees and Costs of Special Administrators, dtd. 1/8/08
- Exhibit 25 - Letter from TJBL, Inc. To Buchanan and Pope, dtd. 2/29/08
- Exhibit 26 - Excerpts, Affidavit of Robert L. Buchanan, Jr., dtd. 3/25/08 and Application for Extension of Time to File Estate Tax Return, dtd. 3/24/08
- Exhibit 27 - Letters of TJBL, Inc to Buchanan and Pope, dtd. 3/27/08
- Exhibit 28 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 3/10/08
- Exhibit 29 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 6/13/08
- Exhibit 30 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 6/16/08
- Exhibit 31 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 6/27/08

- Exhibit 32 - Excerpts, Letter of Buchanan and Pope to AG McMaster, dtd. 7/25/08
- Exhibit 33 - Letter of William W. Wilkins to the South Carolina Supreme Court, dtd. 8/31/10
- Exhibit 34 - Letter of Buchanan and Pope to AG McMaster and Louis Levenson, dtd. 9/2/08
- Exhibit 35 - Excerpts, Letter of Buchanan and Pope to AG McMaster, Levenson, Medlin and Bell, dtd. 10/20/08
- Exhibit 36 - Excerpts, Amended Petition for Removal and Restraint, dtd. 11/7/08, with Selected Attachments
- Exhibit 37 - Charts showing effects of "settlement" on Estate and Trust of James Brown
- Exhibit 38 - First Semi-Annual Report to Devisees, Beneficiaries and Attorney General, dtd 5/20/08, with attachments, and Interim Accounting #1, Estate of James Brown, dtd. 6/24/08, with attachments
- Exhibit 39 - Reserved
- Exhibit 40 - Agreement, dtd. 8/10/08
- Exhibit 41 - Order Substituting Parties and Amending Order Granting Motion to Sever and Proceed Separately, dtd. 4/5/10
- Exhibit 42 - Email from S. Alan Medlin to other counsel, dtd. 7/31/08

CERTIFICATE OF SERVICE

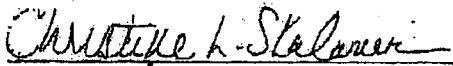
I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by hand delivering a copy of the same, to the following address(es):

Pleadings:

ANSWER AND COUNTERCLAIM
OF ROBERT L. BUCHANAN, JR. AND
ADELE J. POPE
(Jury Trial Demanded)

Counsel Served:

(VIA HAND DELIVERY)
Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
(803) 256-2233
Attorneys for Plaintiffs


Christine L. Skalamera

September 30, 2010

FILED
2010 SEP 30 PM 1:07
JEANETTE W. McBRIDE
C.C.P. & G.S.

*file
James
Brown*

October 1, 2010

VIA ELECTRONIC MAIL and U. S. MAIL

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201

RE: Russell L. Bauknight, et al. vs. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File No.: 5478/1503

Dear Judge Manning:

As requested, enclosed please find a proposed **Order for Dismissal** for your consideration which I submit on behalf of both defendants. As you may recall, this matter was argued on August 30, 2010. Should you have questions or need further information, Daryl Williams and I are both available at your convenience.

With kind regards, I remain

Very truly yours,

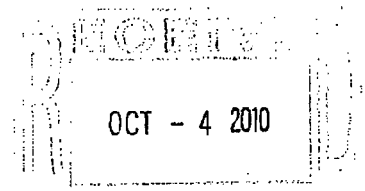
Cal Watson

J. Calhoun Watson

JCW:cls

Enclosures

cc: Kenneth B. Wingate, Esquire - via email and U. S. Mail
Everett A. Kendall, II, Esquire - via email and U. S. Mail
Daryl L. Williams, Esquire -- via email



NOV 15 2010

4677-7389

November 10, 2010

VIA HAND DELIVERY

The Honorable Jeanette W. McBride
Clerk of Court - Richland County
Richland County Judicial Center
1701 Main Street
Columbia, SC 29201

RE: Russell L. Bauknight, et al. vs. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File No.: 5478/1503

Dear Ms. McBride:

Enclosed for filing please find the original and two copies of an **Affidavit of Default** in the above-referenced matter. We ask that you file the original and return the file-stamped copies to us via our courier.

By copy of this letter and as evidenced by the Certificate of Service, we are serving a copy of the same on all counsel of record.

Thank you for your assistance.

Very truly yours,



Christine L. Skalamera
Legal Assistant to J. Calhoun Watson
:cls

Enclosures

cc: Kenneth B. Wingate, Esquire - via U. S. Mail
Everett A. Kendall, II, Esquire - via U. S. Mail
Daryl L. Williams, Esquire - via email

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant, of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *defendant Robert L. Buchanan, Jr.*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

AFFIDAVIT OF DEFAULT

Counsel Served:

Kenneth B. Wingate, Esquire
Everett A. Kendall, II, Esquire
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Attorneys for Plaintiffs

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

2010 NOV 10 PM 8:59

RICHLAND COUNTY
FILED

Christine L. Skalamera
Christine L. Skalamera

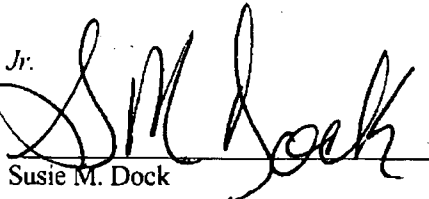
November 10, 2010

CERTIFICATE OF SERVICE

I, the undersigned assistant of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Plaintiffs do hereby certify that I have served a copy of the foregoing *Answer to Counterclaim* in connection with the above-referenced case by *hand delivery* to the following addresses:

Daryl L. Williams, Esq.
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, SC 29202
Attorneys for Defendant Adele J. Pope

J. Calhoun Watson, Esq.
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, SC 29211
Attorneys for Defendant Robert L. Buchanan, Jr.


Susie M. Dock

RICHLAND COUNTY
FILED
2010 NOV 16 PM 4:47
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Columbia, South Carolina
November 16, 2010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs.

v.

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

) IN THE COURT OF COMMON PLEAS

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

) AFFIDAVIT OF ADELE J. POPE
) SUPPORTING DISQUALIFICATION
) OF PLAINTIFFS' COUNSEL
) INJUNCTION AGAINST COUNSEL
) AND PLAINTIFF BAUKNIGHT;
) AND RELATED RELIEF

2011 MAY 19 PM 1:08
FILED
RICHLAND COUNTY
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly
sworn, deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. On May 12, 2011 I learned that on May 4, 2011 Plaintiff Russell Bauknight had filed sworn documents asserting James Brown's worldwide musical empire at Brown's death on December 25, 2006 had a value of only \$4,697,736 – less than 1/12 of its actual fair market value on his death. Bauknight asserts all asset of the Estate and 2000 Trust were worth only about \$6.5 Million when Mr. Brown died.
3. I am informed and believe that this valuation is not only wrong but outrageous – and intended to benefit of Terry Brown and Tommie Rae Hynie Brown, for

whom Bauknight serves as Trustee.

4. For four years Hynie Brown and Terry Brown, with others, have engaged in a plan to take the assets of The James Brown "I Feel Good" Trust for themselves, depriving the needy and deserving students James Brown intended to benefit. They have done so in at least three ways:

- a. Filing knowingly false documents about which assets were owned by Brown; which by the 2000 Trust; and which they claim.
- b. Filing knowingly false representations as to who are the heirs of James Brown.
- c. Manipulating the value of James Brown's assets to reduce the \$80 Million Brown gave to the "I Feel Good" Trust for scholarships for needy and deserving students.

5. Former Attorney General Henry D. McMaster and his assistant AG Havird "Sonny" Jones became involved in the James Brown cases in late 2007 through a close association with PR/Trustees Albert "Buddy" Dallas and now-indicted David Cannon and their advisors. Jones also developed a close relationship with advisors to Hynie Brown.

6. The damage McMaster and AG Jones did to the "I Feel Good" Trust before May 4, 2011 is outlined in the April 2011 draft of "Private Foundations, Copyright Heirs and Musical Millionaires:," attached hereto as Exhibit A and incorporated herein.

7. Plaintiff Bauknight undertook to serve as trustee for Terry Brown in early 2009, and recommended (without disclosing he was to be Terry's trustee) that the court give Terry a right to buy Brown's assets.

8. As outlined in "Private Foundations...", the first hint of Bauknight's massive

undervaluation of Brown's assets came in August 2010 when then-AG McMaster informed the Court of Appeals that Bauknight had reviewed a draft appraisal that would show Brown's assets were worth less than \$12 Million.

9. Exhibit B is a chart prepared by me which shows the damage to the "I Feel Good" Foundation of a sale of Brown's assets at \$12 Million.

10. Bauknight's devaluation to \$5,953, 457, which AG Jones and AG McMaster apparently condoned, threatens to completely destroy the "I Feel Good" Foundation, reducing it to less than \$1 million, as follows:

a. To Brown's disinherited companion (18.96%)	\$1,128,775
b. To children and claimed children Brown specifically excluded from his music empire (4.79% x 7)	\$2,000,390
c. To the Family Education Trust, rewritten by McMaster	\$2,000,000
d. To The James Brown " I Feel Good" private foundation (47.5% LESS \$2 Million)	\$ 827,292

11. I am informed and believe that AG McMaster's contingency fee contract with Sweeney, Wingate and Barrow (the "Sweeney Firm") was made to try to silence Mr. Buchanan and me and force us to abandon our appeal of McMaster's settlement described in the article; serves no proper public purpose; violates my Due Process Right; violates my First Amendment rights; and illegally uses the name and power of the State to seek funds against me for private citizens, including McMaster.

12. I am informed and believe that the substantial contribution to McMaster's political campaign made by Mark Barrow, a principal in the Sweeney Firm, just after being awarded the contingency fee contract to sue us, was either illegal or

inappropriate, or both, as was the contribution of Powell Goldstein law firm at about the time McMaster appeared on television to support their client and falsely attack us. Powell Goldstein represents Terry Brown and his purchase group, and formerly represented Cannon and Dallas.

13. The unfounded attacks by AG Jones and AG McMaster on Mr. Buchanan and me are fully documented in the Record on Appeal in Case 2008-CP-02-1647, which I incorporate herein by reference. I am informed and believe they began as a direct retaliation because Mr. Buchanan's and I would not hire private attorneys AG McMaster, through AG Jones, tried to force us to hire.

14. I am informed and believe that the Sweeney Firm contract and this suit, in which Bauknight as purported agent for the Attorney General (either past or present) and the Sweeney Firm's simultaneous service as counsel for the State of South Carolina and private citizens attempting to destroy the "I Feel Good" Foundation, serve only the private needs of McMaster, Jones, Terry Brown and Hynie Brown. I believe that the Sweeney Firm has an irreconcilable conflict of interest and their vicious and unfounded attacks are not tempered by any duty to serve the public.

15. Members of the Sweeney Firm, who were not involved in the James Brown cases in Aiken County, have made material misrepresentations to this court about those cases, including the false assertion that Judge Early's April 8, 2008 findings of the propriety of our service from March 7, 2007 to that date is dicta. The AG's office, which has no attorney other than the Sweeney Firm serving as counsel of record herein, has actual knowledge that this representation is false, as are others which have

been made.

16. I am informed and believe the false allegations made by Bauknight and AG Jones, now on behalf of AG Wilson – including the suggestion that Mr. Buchanan and I overstated the Brown assets by \$79 Million – are quasi-criminal in nature; violate our Due Process rights; and are intended to destroy our professional reputations and careers. This is particularly troublesome since Mr. Buchanan and I did not seek our positions; were court-appointed; and properly served until May 26, 2009 when we were relieved of management responsibility pending the outcome of the Case 1647 appeal.

17. I am informed and believe that Bauknight and the Sweeney Firm should not be allowed to speak as agents for the Attorney General of South Carolina where the biased positions and false statements they have made will, if not stopped, serve not only to destroy the "I Feel Good" private foundation but also to discourage private philanthropy in the State of South Carolina.

18. I do not know whether AG Alan Wilson participated in or condoned the massive understatement of the value of Brown's assets, but am informed and believe his deposition – requested for July 2011 – is necessary to determine the truth of the matter.

19. I am informed that AG Jones and McMaster knowingly and intentionally exceeded and abused the power of their offices for personal, and McMaster's political, purposes; should answer individually for their actions, including the filing of this suit; and should not be protected by the power of the State.

20. I ask the Court to take judicial notice of a complaint filed on March 14, 2011 by Nexsen Pruet, LLC, a law firm involved in the James Brown cases, which outlines

other alleged abuses by former AG McMaster of contracts with private counsel.

[See Complaint for Declaratory Judgment, Civil Action No. 2011-CP-42-1213, 3/14/11.]

21. I am informed and believe that if AG Wilson, at his deposition, ratifies or acknowledges active participation in Bauknight's attempt to reduce the value of Brown's musical empire to less than \$5 million and destroy the "I Feel Good" Foundation, he, also, should be joined as an individual defendant because no public purpose would or could be served by the destruction of a private foundation created by one of South Carolina's most talented and generous citizens.

22. Based on the extraordinary and unprecedented actions of a former AG and current assistant AG Jones, I am informed and believe that the following, or similar, steps are necessary to alleviate the violation of my Due Process and First Amendment rights and to serve the ends of justice:

- a. Substitute Henry D. McMaster, individually, for Henry D. McMaster as Attorney General ("AG") and Russell Bauknight as his individual agent, as plaintiff and counterclaim defendants.
- b. Require a day-certain deposition of McMaster and AG Alan Wilson if either fails to appear, as requested, for a deposition requested in July 2011.
- c. Disqualify and enjoin the Sweeney Firm from representing the State or its Attorney General in this action, based on its illegal contract and irreconcilable conflict in simultaneously representing Terry Brown, Hynie Brown and others.
- d. Enjoin Bauknight from purporting to speak as an Agent of the AG.
- e. Add as an individual party (either counterclaim or third-party defendant) McMaster and Assistant AG Jones (and AG Wilson only if he ratifies their actions).
- f. Upon conclusion of the Wilson and McMaster depositions, allow amendment to our pleadings and counterclaims or crossclaims to seek individual relief against McMaster and Jones and other relief consistent with the facts revealed on May 4th and in the depositions.

23. McMaster, AG Jones and Bauknight have each had knowledge (as defined in the Trust Code) since becoming involved in the Brown cases that the fair market value of Brown's assets at death, as defined by the IRS, was between about \$86 Million and about \$110 Million. Branding expert Dr. Terry Cox's figures, set out below, have been available since June 2007:

Image/Likeness	\$40MM - \$50MM
Music Catalogue	\$36MM - \$45MM (Industry standard is 12- 15 x revenue)
Property	\$10MM - \$15 MM

24. Based on the IRS definition that fair market value is "the price at which a willing buyer and a willing seller, neither being under compulsion to buy or to sell both having reasonable knowledge of all relevant facts", the \$84 Million value Bob Buchanan and I placed on Brown's Publicity Rights, Royalties, \$12+ million claim against Albert Dallas/David Cannon and other residuary assets was fair but conservative.

25. Neither AG McMaster nor AG Jones filed any objection to the approximately \$85 Million value set out in the estate tax return filed on September 24, 2008.

26. The \$85 Million¹ was within the value range placed on Brown's assets by some Plaintiffs in a securities prospectus issued in early 2007 (\$200 million). [See Exhibit C] ;3 separate proposals made in 2007 and 2008 to purchase Brown's assets (\$90 - \$102 million) by Terry Brown and others; Cox's valuations; and the \$80 - \$120 Million opinion of Estate/Trust's tax then-tax-counsel.

27. The \$85 Million is substantially less than the \$150 million value placed on

¹ About \$100 Million, less the TIAA royalty-backed debt.

the assets by Forlando Brown, a 39% owner in the prospective purchaser, in September 2008.

28. The \$85 Million value was also consistent with our Motion filed in November 2007 asking Judge Early to approve the valuation method of Brown's Royalties as reported on the estate tax return as a multiple of his \$3 million annual royalties.

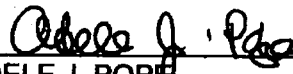
29. On November 20, 2007 Judge Early asked AG McMaster and others to notify him of any objections to our valuation method. Nobody objected.

30. My attorneys have noticed the depositions of Plaintiffs Terry Brown and Tommie Rae Hynie Brown for June 2011 and also asked to depose AG Wilson and former AG McMaster in July 2011.

31. I respectfully submit that the depositions of former AG McMaster and AG Wilson are essential, and request that the Court, if they do not appear in July, direct that each appear on a day certain.

32. I request that the Court also order the depositions of Hynie Brown and Terry Brown on a day certain should they fail to appear in June as noticed.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
18th day of May 2011


Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS

)

) Case No. 2010-CP-40-4900

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

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN II; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE VANISHA BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN - LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children, SYDNEY
LUMAR, CARRINGTON LUMAR, and
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

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

AFFIDAVIT OF
ADAM T. SILVERNAIL

2011 JUN - 1 PM 12:13

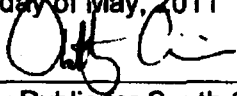
PERSONALLY APPEARED BEFORE ME, Adam T. Silvermail, who, being duly
sworn, deposes and says:

1. The document attached as Exhibit A is a true and correct copy of an email exchange between my co-counsel and counsel for Plaintiffs, with dates spanning May 17, 2011 through May 26, 2011.

FURTHER DEPONENT SAYETH NOT.


ADAM T. SILVERNAIL

SWORN TO before me this
27th day of May, 2011


_____(L.S.)
Notary Public for South Carolina
My Commission expires: 11/3/2015

5/27/2011

Silvermaillawfirm.com Mail - Fw: Baukni...



Adam Silvermail <adam@silvermaillawfirm.com>

Fw: Bauknight v Pope and Buchanan

Daryl Williams <dwilliams@jeterandwilliams.com>
To: adam@silvermaillawfirm.com

Fri, May 27, 2011 at 9:03 AM

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to any other party any transaction(s) or tax related matter(s) that may be addressed herein.

— Original Message —

From: Daryl Williams
To: Mark V. Gende
Cc: Ken B. Wingate
Sent: Thursday, May 26, 2011 1:01 PM
Subject: Re: Bauknight v Pope and Buchanan

Mark:

When I noticed these depositions I told you we'd work with you. You've given no alternative dates for us to consider. If your clients are unwilling to do that, I suggest you file your motion.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

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| — Original Message —

<https://mail.google.com/mail/?ui=2&ik...>

5/27/2011

Silvermaillawfirm.com Mail - Fw: Baukni...

From: Mark V. Gende
To: Daryl Williams
Cc: Ken B. Wingate
Sent: Thursday, May 26, 2011 11:38 AM
Subject: RE: Bauknight v Pope and Buchanan

Daryl:

As I informed you earlier, your unilateral selection, without any consultation, of the dates and locations for the depositions of Tommy Brown and Terry Brown do not work. We will not be present on those dates. If I need to file a motion for a protective order, please let me know immediately; otherwise it is my understanding that they are not going forward. We will continue working with you and Adam to provide dates acceptable to all counsel and witnesses concerning the depositions you desire to take.

Mark V. Gende
Sweeny, Wingate & Barrow, PA
1515 Lady Street
Columbia, South Carolina 29201
T (803) 256-2233
F (803) 256-9177

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From: Daryl Williams [mailto:dwilliams@jeterandwilliams.com]
Sent: Thursday, May 26, 2011 11:21 AM
To: Mark V. Gende
Cc: adam@silvermaillawfirm.com; Cal
Subject: Re: Bauknight v Pope and Buchanan

Mark:

It is inconvenient to travel to Augusta for this. Case is here, parties can be deposed here.

If there is a problem with the scheduled date of June 14 for Terry Brown, please let me know immediately and give alternate dates. Otherwise, we'll see you then.

We also need to settle on Tommy Rae Hynie's deposition by next week. While I don't want to travel if she's not going to appear, we need to get this one done.

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200 (29201)
P.O. Box 7425
Columbia, SC 29202
Telephone: 803-765-0600
Facsimile: 803-765-0619

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— Original Message —

From: Mark V. Gende

To: Daryl Williams

Sent: Thursday, May 19, 2011 3:36 PM

Subject: RE: Bauknight v Pope and Buchanan

Daryl:

Still working on it. However, at this time I do know that Terry Brown would like to be deposed in Augusta, if possible. I'll get back to you on the others, as far as locations and times. Thanks.

Mark V. Gende

Sweeny, Wingate & Barrow, PA

1515 Lady Street

Columbia, South Carolina 29201

T (803) 256-2233

F (803) 256-9177

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From: Daryl Williams [mailto:dwilliams@jeterandwilliams.com]

Sent: Tuesday, May 17, 2011 3:50 PM

To: Mark V. Gende

Subject: Bauknight v Pope and Buchanan

Mark:

Any progress on scheduling the depositions we have noticed/requested, i.e., Tomie Rae Hynie, Terry Brown, former AG McMaster and AG Wilson?

Thanks.

Daryl L. Williams

Jeter & Williams, P.A.

1204 Main Street, Suite 200 (29201)

P.O. Box 7425

Columbia, SC 29202

Telephone: 803-765-0600

Facsimile: 803-765-0619

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5/27/2011

Silvermaillawfirm.com Mail - Fw: Baukni...

**What
Robert Rosen wants.**

\$9.7 Million

for 1 ½ years' work destroying James Brown's Estate Plan, including

The James Brown "I Feel Good" Trust

and

**Getting Tommie Rae 23.5% of a music
empire Rosen & Tommie Rae say was
worth less than \$4.7 Million
on December 25, 2006 –
the day that matters.**

**What
Louis Levenson wants.**

\$8.7 Million

for 1 ½ years' work destroying

The James Brown "I Feel Good" Trust

and for destroying the

**\$285,000 Education Trust Funds of
Lindsey, Janise, Sydney, Carrington & Jason.**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE CIRCUIT COURT

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

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

Plaintiffs.

v.

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

AFFIDAVIT OF
ADELE J. POPE IN
SUPPORT OF MOTION TO COMPEL
TERRY BROWN
TO APPEAR AT A DEPOSITION

FILED
2011 JUN 3 AM 10:25
RICHLAND COUNTY
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly
sworn, deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. Over the last four years I have had personal contacts with Terry Brown
("Terry") and direct dealings with his agents, including his first attorney, Louis Levenson,
Esquire, and others.
3. I have also had dealings with Terry's son Forlando (William), former
PR/Trustees David Cannon and Albert "Buddy" Dallas and others who worked with
Terry on the TJBL, LLC venture to purchase the James Brown assets; create an IPO;
and provide options or a "kickback" to Cannon and Dallas.
4. I am informed and believe Terry's deposition will show that for years Terry
correctly represented that Brown's Will and the James Brown 2000 Irrevocable Trust,
both executed August 1, 2000, which create the "I Feel Good" private foundation (the
"Estate Plan") are valid and should be vigorously enforced by his fiduciaries..

5. I am informed and believe Terry's deposition will show that Terry has knowledge that Brown's assets, including his worldwide music empire, were worth \$85 Million or more at Brown's death on December 25, 2006.

6. I am informed and believe that Terry's deposition will confirm that since January 30, 2009 Terry has participated in the intentional downward manipulation of the value of James Brown's securities and other assets for his personal benefit, damaging the "I Feel Good" foundation, Mr. Buchanan and me.

7. I am informed and believe Terry's deposition will show that his most recent act – joining Russell Bauknight in telling the S. C. Supreme Court that Brown's music empire was worth less than \$5 Million when Brown died – threatens to destroy the "I Feel Good" foundation, reducing it from the approximately \$80 Million Brown intended for needy and deserving students to less than \$1 Million.

8. I am informed and believe that Terry's deposition and the exhibits which will be made a part of that deposition will confirm in this case the following, and other, facts already known in other James Brown cases:

a. Terry is the oldest of James Brown's 5 legitimate living children.

b. About a dozen people claim to be Brown's heirs, including one minor born after Brown's vasectomy.

c. Terry has knowledge James Brown's Estate Plan intentionally excludes all children and past and future spouses from Brown's music empire, leaving it solely to education of needy and deserving students in the "I Feel Good" Trust and certain grandchildren in the Brown Family Education Trust.

d. Terry has knowledge that his father's Estate Plan gave him only 1/6 of his personal and household effects.

e. Terry discussed Brown's estate plan and assets with his father before Brown's death on December 25, 2006, and Brown told Terry he believed his

assets to be worth hundreds of millions of dollars.

f. Terry has never worked in James Brown's businesses.

g. Between 2000 and 2007 Terry's sons received education benefits from the James Brown 2000 Trust.

h. Terry did not learn of Cannon and Dallas' \$12+ Million misappropriations from Brown and the 2000 Trust until it was discovered by Mr. Buchanan and me.

i. James Brown died on December 25, 2006.

j. On January 9, 2007 Terry and others, including his sister Yamma, hired Atlanta Attorney Louis Levenson to help investigate wrongdoing by Brown's original Trustees, Albert "Buddy" Dallas, now-indicted David Cannon and now-deceased Al Bradley.

k. In early 2007 Brown's son Forlando, Levenson and others met at the house of Yamma Lumar to plan a proposed takeover of the James Brown assets.

l. Shortly thereafter, while Terry and Yamma were Levenson's clients, Yamma's husband, through Pinnacle Management, issued a prospectus to raise \$200 Million to purchase the Brown assets.

m. On January 26, 2007 Terry and others filed what became Case 2007-CP-02-0122 ("Case 122") in Aiken County, seeking removal of Dallas and Cannon, and appointment of a Special Administrator.

n. On March 7, 2007, at the request of Terry and others, Bob Buchanan and I were appointed limited Special Administrators of Brown's estate.

o. About March 24, 2007 Terry and his sons fired Levenson and aligned themselves with Dallas and Cannon.

p. At Dallas' suggestion, Terry and his sons hired Georgia attorney David B. Bell, Dallas' close friend.

q. By June 15, 2007 Terry's son Forlando was involved with Cannon and Dallas in a proposal to sell the James Brown assets for \$100 Million; create an IPO; and pay options or a "kickback" to Cannon and Dallas.

r. On June 15, 2007 and on November 20, 2007 when under oath, prospective investor Dr. T. Cox valued the James Brown assets at between \$86 Million and \$110 Million. His June proposal was as follows:

Image/Likeness	\$40MM - \$50MM
Music Catalogue	\$36MM - \$45MM (Industry standard is 12- 15 x revenue)
Property	<u>\$10 MM - \$15 MM</u>
TOTAL	\$86 MM - \$110 MM [ROA, p. 466]

s. On July 10, 2007 Atlanta attorneys Powell Goldstein sent Dallas and Cannon documents to move the 2000 Trust from South Carolina to Georgia.

t. On July 17, 2007 Bob Buchanan and I discovered that \$900,000 was taken from the Irrevocable Trust in 2006.

u. On about July 26 - 28, 2007 Dallas and Cannon secretly signed the Powell Goldstein documents to attempt to move the Trust to Georgia. Cannon also secretly resigned and the trustees attempted a secret appointment of attorney Bill Hammond.

v. On August 10, 2007 Cannon resigned in open court.

w. In September 2007 Terry participated in a filed stipulation in Case 122 stating incorrectly that Brown's company, James Brown Enterprises, Inc. ("JBE, Inc.") was not in Brown's Irrevocable Trust.

x. On October 12, 2007 the Cox investor group, on behalf of an "entity to be formed" offered to purchase Brown's assets for about \$100 Million.

y. On October 31, 2007, under oath, Forlando said he had never heard of a \$100 Million offer - even though he was part of the October 12 offer. [Depos., Case 122]

z. On November 15, 2007 Dallas and Bradley correctly valued Brown's assets at \$85,663,562.99 on the Inventory and Appraisement ("I&A"). [ROA, p. 2672]

aa. In November 2007 Terry and others learned that the proceeds from the \$18 Million Brown earned for his road shows between 2003 and 2006 had gone into a company owned by Cannon.

ab. In November 2007 Terry, although asked by the Court, did not object to the Buchanan/Pope proposal to value Brown's royalties on the estate tax return by a formula of about 12 times the annual \$3 million royalties.

ac. On November 20, 2007 Terry consented to the Order appointing Bob Buchanan and me as PR/Trustees after Dallas and Bradley resigned.

ad. On November 20, under oath, Dr. Cox testified about his \$100 Million offer, but did not disclose Forlando's involvement and asserted that the proposal to

give options or "kickback" to Cannon and Dallas was a "mistake". [ROA, pp. 2038 -2040.]

ae. On December 5, 2007 the investor group was formed as TJBL, LLC, and Forlando given a 39% interest.

af. In late December 2007 Powell Goldstein lawyers worked with Dallas to try to require Judge Early's recusal and Forlando on the federal suit he planned to file.

ag. In late December 2007, some of Terry's siblings, through attorney Levenson, challenged the Will and Trust. Terry, Bob Buchanan and I have all asserted the challenges are without merit.

ah. On January 2, 2008, Forlando, represented by Bell and Powell Golstein, filed his federal suit to remove Bob Buchanan and me; enjoin the 2000 Trust; and return Dallas and Cannon as trustees.

ai. On January 8, 2008 Judge Early ordered in Case 122 that Bob Buchanan and I be paid \$317,000 plus costs for our service as Sas, and continuing payments on a "time plus costs" basis for our service as PR/Trustees, as a deposit towards our full commission. Terry did not seek reconsideration of or appeal, the January 8 Order.

aj. In January 2008 Terry filed grievances in South Carolina and Georgia against Levenson, asserting it was unethical for Levenson to challenge Brown's Will, naming Terry as a defendant.

ak. On February 7, 2008 Terry testified in Case 122 as follows:

A. WELL, WE ALL KNOW THAT TO CONTEST THE WILL YOU WAS TAKEN TOTALLY OUT OF THE WILL. THAT WAS MY FATHER'S WISHES. I WAS NOT GOING AGAINST WHAT HE SAID REGARDLESS OF WHAT IT WAS. WHETHER WIN OR LOSE, IT DOESN'T MAKE ANY DIFFERENCE. WHAT JAMES BROWN SAID, THAT'S THE WAY IT'S GOT TO BE. THAT'S WHAT I BELIEVE.

...

A. I WOULDN'T TRY TO BREAK THE WILL, NOR THE TRUST, THAT'S WHAT MY DAD WANTED.

...

Q. WHILE MR. LEVENSON REPRESENTED YOU, DID HE EVER TELL YOU THAT PART OF THE REPRESENTATION WAS FOR YOU - FOR HIM TO TRY TO BREAK THE WILL AND BREAK THE TRUST?

A. NO, NO, NO, NO, NO, NO. I WOULDN'T HAVE BEEN A PART OF THAT.

al. By February 27, 2008 Terry had become a part of TJBL, LLC, and participated in a \$92 - \$102 MM TJBL, LLC offer to purchase Brown's assets.

am. On March 27, 2008 Terry was part of another TJBL, LLC offer to purchase the James Brown assets for \$92- \$102 MM.

an. While participating in the two offers, Terry simultaneously asserted that Bob Buchanan and I had no authority to sell Trust assets because our appointment was flawed.

ao. Terry, through Bell, actively participated in hearings in February and March 2008 opposing the appointment of Bob Buchanan and me as trustees and our attempts to stabilize the Estate and 2000 Trust.

ap. Terry's objections to our appointment and actions were rejected by the Court, and Terry did not challenge or appeal Orders in Case 122 dated January 8, February 1, March 7, April 1 or April 8, 2008 approving our fees; approving the Christie's auction sale and directing us to execute the contract; refusing to allow Dallas to withdraw his resignation as trustee; and, at our request after hearing, approving both our November 20, 2007 appointment and all of our service as both SA s and PR/Trustees from March 7, 2007 to April 8, 2008 as both proper and ethical.

aq. Terry did not contest specific findings in the March 7 and April 8, 2008 orders about the massive wrongdoing of Cannon and Dallas, or that both had committed fraud upon the Court.

ar. Powell Goldstein failed to turn over its Estate/Trust file as ordered on August 10, 2007, and Dallas and Cannon – defying the order – failed to direct its delivery.

as. Cannon and Dallas both misrepresented the Powell Goldstein relationship to the Court, saying they had never hired Powell Goldstein. When a \$48,225 re-bill was sent to the Estate in March 2008, Dallas recanted.

at. By April 2008 Powell Goldstein, in addition to their relationship with Cannon and Dallas, were representing Forlando and TJBL, LLC .

au. On August 12, 2008 some Plaintiffs in this Case ("Case 4900") announced they had reached a private binding agreement on August 10, 2008 resolving most issues among them.

av. None of Terry or his sons was invited to the meeting which led to the August 10, 2008 agreement, and Bob Buchanan and I were not invited.

aw. From August 12, 2008 until January 30, 2009 Terry and both of his sons, through Bell, vigorously opposed the settlement.

ax. Bell and Powell Goldstein conducted depositions of Robert Buchanan and me in September 2008.

ay. Terry had the opportunity to review Brown's estate tax return, filed by Buchanan/Pope on September 24, 2008, shortly after it was filed. We valued Brown's assets and those in the 2000 Trust at about \$85 Million, about \$84 Million of which was Brown's music empire and related assets. Terry made no objection or exception to the return.

az. On September 27, 2008 Forlando testified that offers of \$150 Million remained available for the James Brown assets.

ba. On November 12, 2008 Cannon uttered a forged compensation agreement intended to make it appear that Bob Buchanan and I falsely accused him of taking \$900,000 from the Trust. Terry learned of this forgery before this Case 4900 was filed.

bb. On November 18 and 19, 2008 Terry attended two days of hearings in Forlando's federal suit, in which Bell and Powell Goldstein attorneys questioned Mr. Buchanan and me extensively about every aspect of our service.

bc. I voiced strong concern for the damage the proposed settlement threatened to do to Brown's Estate Plan.

bd. After my testimony concluded, Terry Brown came up to me and said "God bless you."

be. On November 25, 2008 Bell appeared on WJBF television and asserted that there was no settlement and could not be one without Terry.

bf. In December 2008 and January 2009 Terry, Forlando and Romunzo filed objections to the proposed settlement, which was submitted for consideration in Case 2008-CP-02-1647 ("Case 1647").

bg. From January - May 2009 Bell actively participated in Case 1647, speaking on behalf of Terry, Forlando and Romunzo, even though Bell was not admitted *pro hac vice* and Forlando filed a Notice of Special appearance saying he was never served in Case 1647.

bh. On January 7, 2009 Russell Bauknight was appointed limited Special Administrator/Special Trustee to consider the proposed settlement as it existed at the time.

bi. On January 29 and 30, 2009 Terry offered to abandon his sworn support for the Estate Plan of his father for a 4.79% interest in James Brown's assets and a 10-year right of first refusal to purchase the Brown assets.

bj. Between January 30 and March 26, 2009 Powell Goldstein (now Bryan Cave), in addition to their relationship with Cannon and Dallas, their representation of TJBL, LLC and Forlando in federal court (supporting Brown's Estate Plan), undertook to represent Terry in the negotiation of his right of first refusal to buy Brown's assets.

bk. In January 2009 Bob Buchanan and I proposed to give TJBL, LLC a court-approved period of due diligence and a right of first offer (not a right of first refusal) to make a proposal to purchase the Brown assets.

bl. In February 2009, Terry, now aligned with Brown's companion Hynie Brown, opposed our right of first offer to TJBL, LLC which was likely to result in a substantial, good faith proposal to purchase the assets and required full disclosure of all deals with insiders.

bm. On or about January 31, 2009 Levenson called Bob Buchanan to tell him the settling parties were threatening us with grievances and Rule 11 sanctions if we continued to oppose the settlement Terry had recently joined.

bn. After that, Bell sent a letter to Mr. Buchanan threatening to file a grievance against him if he did not resign. Mr. Buchanan delivered the letter to Judge Early.

bo. By March 2009, after securing the first refusal, Terry began to devalue the assets, threatening to further damage to the "I Feel Good" Trust.

bp. On or about March 19, 2009 Terry received, through Bell, a copy of our letter to AG McMaster expressing concern that devaluation attempts – which would severely damage the "I Feel Good" private foundation – had already begun.

bq. Terry has knowledge as to when Bauknight agreed to be Terry's trustee; why Bauknight's fiduciary relationship with Terry, Hynie Brown and others was concealed until March 26, 2009; and when the discussions about devaluing the James Brown assets began.

br. Terry has knowledge that in the Spring of 2009 he refused to agree to our proposed sale of James Brown's home estate to family members, asserting that it interfered with his right of first refusal.

bs. Terry has knowledge that in April and May 2009 he participated in thwarting the CORBIS settlement which would have secured an advantageous 2-year Publicity Rights management contract with Bill Gates Company GreenLight, to run from May 1, 2009 - April 30, 2011, causing loss.

bt. Terry has knowledge that the May 26, 2009 Order of Judge Early in Case 1647, and certain other orders, are on appeal to the S. C. Supreme Court.

bu. Terry has knowledge that he has directed, approved or acquiesced in Bauknight's failure to pursue the Estate/Trust's \$12+ Million claim for damages against Cannon and Dallas, and has not disallowed their frivolous claims against the Estate - even though he had more than a year to do so before the Dallas Bankruptcy.

bv. Terry has knowledge that he has directed, approved and/or acquiesced in Bauknight's failure to pay proper priority debts and priority expenses of administration of the Estate, including those to Hogan & Hartson, Bob Buchanan, James Bailey and me.

bw. Terry has knowledge that he directed, approved and/or acquiesced in Bauknight's June 2009 direction that counsel pursuing the claims against Cannon and Dallas not speak of anything confidential to Bob Buchanan and me - thus gutting the Estate/Trust's claim against Cannon and Dallas.

bx. Terry has knowledge that Bauknight has actively thwarted attempts to recover attorneys' fees and costs against Cannon and the Estate of Bradley as directed in the April 8, 2008 Order, damaging the Estate, the 2000 Trust, Robert Buchanan, others and me.

by. Terry has knowledge of whether Hynie Brown's agent spoke for him in the spring of 2009 when he threatened to bring this tort suit for money damages through a contingency-fee lawyer selected by Sonny Jones if Bob Buchanan and I did not drop our appeal in Case 1647.

bz. Terry has knowledge about how he and the then-Attorney General of South Carolina agreed to share the costs, including the contingency fee of Sweeney, Wingate and Barrow, responsibility and proceeds from any recovery - or payment of any losses - in this Case.

ca. Terry has knowledge of when the Legacy Trust was actually signed; what amendments have been made to it; and who is a party to it.

cb. Terry has knowledge that Bob Buchanan and I were never fiduciaries of the Legacy Trust; that it is impossible to honor the Legacy Trust and the Estate Plan; and that we have consistently honored our duty to James Brown.

cc. Terry has knowledge of his participation in any and all representations to the IRS, the current Attorney General of South Carolina and/or others that James Brown's music empire at death had a value of less than \$5 Million.

cd. Terry has information that various allegations in the May 19, 2010 Complaint in this action ("Case 4900") are false; that he knew them to be false; and that they were intended to damage my legal career. Among them are:

(1) The false allegation that Mr. Buchanan and I "engaged in self-dealing by paying themselves hundreds of thousands of dollars in fees..." when Terry knows every penny we were paid was authorized by the January 8, 2008 Order he did not appeal in Case 122.

(2) The false allegation that Mr. Buchanan and I acted improperly in "[f]ailing to sell the assets at a prudent time, for example by failing to accept an offer to buy the estate and trust in November 2007....while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less...".

[Terry Brown knew that the challenge of his joint venturer Albert "Buddy" Dallas to our appointment made acceptance of this offer at the time impossible.]

ce. Terry has knowledge that after he and his trustee Bauknight accused us of causing the Estate/2000 Trust to lose tens of millions of dollars in value, on or about August 2010, Bauknight told the Court of Appeals he had secured a draft appraisal which would show Brown's assets at death were worth less than \$12 Million, and the final appraisal was expected in a few weeks.

cf. Terry has knowledge that we could not have caused tens of millions of dollars of damage to Brown's Estate and Trust if it was worth less than \$12 Million when we got it, and we reduced the debts by \$6 Million and defeated more than \$31 Million of claims between November 20, 2007 and May 26, 2009.

cg. Terry has knowledge of when the startling appraisal asserting that all of Brown's assets are worth less than \$6.5 Million arrived, and what input, if any, he had in valuing the assets at less than 1/12 of what he had offered to pay for them.

ch. Terry has information that in December 2010 he and Bauknight concealed this startling appraisal from the Supreme Court when they filed their brief in the Case 1647 Appeal.

ci. Terry has knowledge that a valuation of Brown's assets at only about \$6.5 Million is inconsistent with known facts about James Brown's assets and income.

cj. Terry has knowledge that the settlement, if not reversed, will transfer \$50

Million or more in value from the needy and deserving students who are Brown's primary intended beneficiaries to persons he intentionally disinherited from his music empire.

ck. Terry has knowledge about his participation in May 4, 2011 assertion to the Supreme Court that the following James Brown assets were worth less than \$5 Million when he died:

1. Browns Publicty Rights (Image/Persona);
2. Browns Royalties related to more than 800 published and unpublished songs; and
3. Brown's 51% interest in Geronimo, LLC and in other publishers of his songs.
4. Brown's \$12+ million claim against Albert Dallas, David Cannon and others for misappropriations between 1999 and 2007. [ROA pp. 2137, 2624, 2637.]

cl. Terry has knowledge that family, experts and investors have valued Brown's assets at between \$80 Million and \$150 Million.

cm. Terry has knowledge that if he is allowed to purchase the James Brown assets for about \$6.5 Million the "I Feel Good" Trust will be reduced from the \$80 Million Brown set aside for needy and deserving students to less than \$1 million, as follows:

a. To Brown's disinherited companion (18.96%)	\$1,128,775
b. To children and claimed children Brown specifically excluded from his music empire (4.79% x 7)	\$2,000,390
c. To the Family Education Trust, rewritten by AG McMaster	\$2,000,000
d. To The James Brown "I Feel Good" private foundation (47.5% LESS \$2 Million)	\$ 827,292 ¹

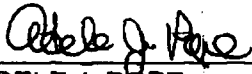
¹ The documents reveal that the IRS allowed a charitable deduction of \$2,827,292, but do not reveal whether Bauknight disclosed that \$2 Million of that 47.5% is paid from the "I Feel Good" Trust to the private, non-charitable education Trust.

9. I am informed and believe that Terry Brown's deposition is critical, and will support our position that Terry Brown should not be relieved from default; that Bob Buchanan and I fully complied with every duty we had to Terry; that our duty to him ended on January 30, 2009 when he abandoned his father's Estate Plan; and that Terry Brown has intentionally interfered with our Court-approved contract with the Estate/Trust and damaged our careers for personal gain and with no cause to do so.

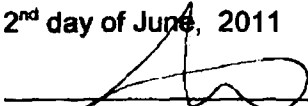
10. I am informed and believe that the deposition of Terry Brown will also confirm my actual and punitive damages against Terry Brown, jointly and severally with such other defendant who may also be held liable, including the actual damages set out below are correct:

- a. Unpaid fees and costs awarded by Order of the Honorable Doyet A. Early, III dated January 8, 2008: \$1,473,550.00
(Plus interest from 9/1/09)
- b. The costs to me of defending against intentional understatement of the value of Brown's assets, to be determined by the Court.
- c. Punitive damages, to be determined by a jury.
- d. All costs of defense of this action under S.C. Code Section 62-7-1004 and/or other applicable law.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
2nd day of June, 2011



Notary Public for South Carolina
My Commission expires: 7/13/12

(L.S.)

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	) Case No. 2010-CP-40-4900
RUSSELL L. BAUKNIGHT, as Trustee of	) Affidavit of Adele J. Pope in
the James Brown 2000 Irrevocable Trust and	) Support of Depositions of
others	) Wingate Firm Private Clients;
and	) Continued Discovery as to Wingate
HENRY DARGAN MCMASTER, in his	) Private Clients; Injunction as to
capacity as Attorney General of the State of	) Wingate and Bauknight's purported
South Carolina and others	) Actions on behalf of the State/AG
	) and
Plaintiffs.	) Opposing Wingate Firm Withdrawal
	) as counsel for Private Clients
v.	)
Adele J. Pope and Robert L. Buchanan, Jr.,	)
Defendants.	)

RICHLAND COUNTY
 FILED
 2011 DEC -8 AM 9:12
 EANNETTE W. MCBRIDE
 C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly sworn,
 deposes and says:

1. This affidavit is based on my personal knowledge and belief.
2. This suit, commenced May 19, 2010 (the "Wingate Suit") was brought by Kenneth B. Wingate, Esquire and members of his firm, Sweeney, Wingate and Barrow, PC (collectively "Wingate").
3. The Wingate Suit is the second suit brought against Robert L. Buchanan, Jr. ("Bob") and me related to our service to the Estate of James Brown and the James Brown 2000 Irrevocable Trust for the specific purpose of ruining our careers and reputations.
4. The first suit was brought without any basis by Forlando Brown, on January 2, 2008, just 43 days after our appointment; contained numerous false statements; and alleged that Bob and I were illegally appointed and would not properly defend and protect the 2000 Trust, to which James Brown gave his entire music empire (the "Forlando Suit").

5. Although it has been clear for years that Bob and I were properly appointed and would – and did – protect and defend the 2000 Trust and James Brown's estate plan, the Forlando Suit is still pending in S. C. Federal District Court.

6. Forlando is not a party to this suit, but his father and joint venturer Terry Brown is one of Wingate's approximately dozen private clients in the Wingate Suit.

7. Forlando and Terry are joint venturers with felon David Cannon, former trustee Buddy Dallas and others in a scheme for TJBL, LLC to buy the James Brown assets; create an IPO; and pay options or a "kickback" to Cannon and Dallas.

8. When Wingate brought this suit in May 2010, Wingate had knowledge, as defined in the S. C. Trust Code, and accepted, that his private clients had many conflicts of interest.

9. Despite these conflicts, and additional conflicts which have developed since, Wingate elected to represent all Wingate private clients in this suit.

10 Wingate, apparently with the consent of its private clients, elected to assert that Bauknight, one of Wingate's private clients, could speak on behalf of the AG/State, and that Wingate, while seeking tort damages for the Wingate private clients, could simultaneously represent the State/AG.

11. To date neither Wingate nor Bauknight has produced any documentation to suggest that either's purported representation of the State/AG while pursuing funds in a tort suit for private clients, is legal, authorized, or proper, or – more importantly, that either Wingate or Bauknight has the authority, acting without an AG as co-counsel and directing the case, to bind the AG/State of South Carolina in Bob's and my counterclaims for which Wingate is now seeking relief from default, as follows:

- a. Abuse of Process
- b. Civil Conspiracy
- c. Intentional Interference with Contract
- d. Violation of § 62-1-106, fraud under the S. C. Probate Code
- e. Attorneys' fees.

11. Wingate had knowledge when he filed the Wingate Suit that his client Terry and Forlando were represented in ongoing James Brown matters by Georgia lawyers Bryan Cave, LLP, formerly Powell Goldstein ("Bryan Cave") and David B. Bell, Esquire.

12. Wingate also had knowledge of the actions, including dirty tricks, of Terry, Forlando, Cannon, some of the Bryan Cave attorneys and Bell since James Brown's death on December 25, 2006, to include:

- a. In early 2007 Forlando and Wingate clients Deanna, Yamma, Terry and others hired Louis Levenson, and agreed to pay him a 30% contingency fee if he could dismantle Brown's estate plan and get it for them.
- b. By June 2007 Terry and Forlando had fired Levenson; hired Bell; become aligned with felon David Cannon, Buddy Dallas and others to attempt to sell Brown's assets; create an IPO and pay options or a "kickback" to Cannon and Dallas.
- c. In July 2007, as the Cannon/Dallas wrongdoing was being uncovered Powell Goldstein lawyer Wm. Shearer sent secret documents to move the 2000 Trust to Georgia to escape court scrutiny.
- d. In a September 2007 interview Forlando told reporters Cannon was honest and courageous.
- e. In 2007 Bell filed an elective share claim for Velma Brown, Brown's first wife, even though she had divorced Brown and the decree was on file in the Richmond Cty. courthouse near Bell's office.
- f. On December 5, 2007 Forlando was given 39% of TJBL, the purchase entity seeking to buy Brown's assets, with Forlando's only contribution being the fabricated lawsuit filed on his behalf by Powell Goldstein and Bell on Jan 2, 2008.

g. In December 2007 Powell Goldstein attorney Jennifer Dempsey secretly helped Dallas prepare a scurrilous brief trying to force recusal of Jg. Early.

h. The complaint in the Forlando Suit attached a fake Schedule B to the 2000 Trust which Dallas & Cannon had fabricated after Brown's death to make it appear that Brown's publicity rights – about half the value of his \$100 Million music empire– had been put in the 2000 Trust before Brown died.

i. In early 2008, to advance their position in the civil suits, Bell, for Terry, Forlando and a brother, filed six grievances with two separate states [Ga. & S.C.] against Levenson.

j. In the grievances and a related motion Bell falsely accused Levenson of forging Forlando and his brother's names to the Levenson fee agreement.

k. By March 2008 Powell Goldstein had re-billed Brown's estate \$48,225, and in addition to Cannon and Dallas, was representing Forlando, Terry, and TJBL.

l. Since 2009 Bell has simultaneously filed documents and motions for Forlando in both the State Court and the Forlando Suit to uphold Brown's estate plan, while at the same time filing documents for Terry seeking to dismantle the estate plan and allow Terry to buy Brown's assets.

m. Until fired, Bryan Cave asserted in the Forlando Suit that Brown's 2000 Trust must be upheld, while simultaneously advising Terry in his attempts to dismantle the 2000 Trust in S. C. State Court, and buy the James Brown assets.

n. In 2009 Bell threatened Bob with a judicial grievance if Bob did not immediately resign as PR/trustee. [Bob delivered the threat to Jg. Early & counsel.]

13. Since the Wingate Suit was filed in May 2010, Terry, Forlando, Bell and Bryan Cave, joined by Wingate and other Wingate private clients — have continued their questionable actions as follows:

a. Bell now asserts for Terry that Brown's worldwide music empire was worth less than \$4.7 million when Brown died, while Forlando continues to assert its value is at least 20 times that much.

b. Terry, who participated in 2 \$90 Million - \$100 Million TJBL offers to buy the James Brown assets has now told the S. C. Supreme Court that there never was an offer to buy the assets – even though the Wingate Suit complaint refers to one.

c. Wingate client Deanna told the media on November 1, 2011, without any factual

support, that if the settlement she is promoting to dismantle Brown's estate plan is set aside "the charitable trust would not have a dime by 2015."

d. On November 1, 2011, Bauknight, now trustee for Terry, through counsel, made the following representations to the S.C. Supreme Court which, on information and belief, Bauknight had knowledge were either false or misleading:

(1) Of Brown's Estate/2000 Trust he said: "there is no corpus to speak of."

(2) Of the Terry/TJBL offers to buy the Brown assets he said: "Nobody's trying to buy it."

(3) Of the \$100 Million value placed on the Brown assets by all fiduciaries other than Bauknight, as well as Forlando, he said: "the Hundred Million dollars is a figure that has come out of the air."

(4) Refusing to acknowledge that Brown's Publicity Rights have at least as much value as his U.S. Royalties, he said that termination rights related to Brown's copyrights are "all this Estate is about."

(5) Failing to admit that termination rights do not apply to derivative works and in other instances, and that Bauknight has improperly determined Brown's heirs under Federal Copyright law, he said that as a result of copyright termination laws: "in about 20 years the Charitable Trust gets nothing."

e. Bauknight has asserted that Brown's worldwide music empire, claims against Cannon, Dallas Katz and others and Brown's tangible personal property, together, were worth less than \$4.7 million when Brown died.

f. Wingate has listed felon David Cannon as a witness against Bob and me in the Wingate Suit, but refuses to divulge what he will say.

g. Terry, Deanna, Tommie Rae and other Wingate private clients have simply refused to appear at noticed depositions or to produce a single document other than the witness list.

h. Wingate has listed as the Estate's witness against Bob and me Joel Katz, even though Bauknight recently moved to amend a complaint against Katz and his law firm to allege about \$5 million in lost sampling royalties caused by the Katz firm.

i. Bell has asked Jg. Bertelsman to allow him to withdraw because he was terminated by Forlando, but has not filed any similar request in State Court, suggesting that the "termination" was merely to delay a scheduled status conference or as a tactic in the Forlando/Terry/Cannon venture to obtain the

James Brown assets.

14. The Wingate Suit, like the Forlando Suit, has to some extent met its intended result, namely:

- a. To damage my reputation by falsely accusing me of improper acts, including criminal understatement of James Brown's assets;
- b. To destroy my ability to continue to practice law as I was accustomed, especially damaging my ability to serve as a consultant and expert – which was becoming an important focus of my career;
- c. To damage Bob's distinguished career.
- d. To punish Bob and me for conducting the Case 1647 appeal, which intended result is clear from the face of the Wingate Suit Complaint

15. The Forlando Suit resulted in my loss of traditional legal negligence insurance, and a fourfold increase in my insurance costs the following year. The Wingate Suit, just by the filing, resulted in the cancellation of my insurance and rendered me unable to buy affordable professional negligence insurance.

16. In addition, this Wingate Suit has directly caused me to lose time and effort in the *pro se* defense of yet another lawsuit, in which Cincinnati, which cancelled my insurance, challenges coverage as to the Wingate Suit.

17. I am informed and believe that if the Court allows Wingate to escape responsibility by withdrawing, he and the Wingate private plaintiffs will enjoy a long delay in their already 6-month refusal to appear at noticed depositions and 12-month failure to comply with basic discovery requests in the suit they brought.

18. The delay on the part of Wingate and the Wingate private clients prejudices Bob, me and others who are entitled to payments for priority expenses of administration, including judgments ordered by the Aiken Court – some bearing interest at the legal rate

– and the Estate of James Brown.

19. On information and belief, the closing of James Brown's Estate – already open for 5 years on January 18, 2012 – must be delayed until a final judgment as to our counterclaims against the Wingate private clients, and failing to direct Terry Brown, Tommie Rae and others to appear at depositions will prolong the lost time and damage.

20. In the more than 18 months since bringing the Wingate Suit, Wingate and his private clients have simply refused to appear at noticed depositions or produce a single document to support their scurrilous claims – other than a witness list.

21. I am informed and believe that Wingate, having contracted to represent these private clients who do not and cannot represent the public interest, cannot represent the State of South Carolina/AG in this tort suit against me for one or more of the following reasons:

- a. It violates my due process rights, and Bob's, as well as the public interest.
- b. Is not legal for a private lawyer to act as an attorney general while serving private individuals, and attempting to collect funds for their benefit.
- c. It violates my equal protection rights.
- d. It violates the S. C. Constitution's separation of powers provisions.
- e. Every other reason raised by Bob or me in our Motion to Dismiss, Answer and Counterclaim, Briefs in Support of Dismissal; and Briefs in Support of Injunction as to Wingate and Bauknight.

22. I am informed and believe that it would be unjust to allow either Wingate or his private clients to escape or delay responsibility for what both have done to damage Bob and me just because Wingate and Bauknight asserted in the suit they brought for the Wingate private clients that Wingate and Bauknight were speaking for the AG/State when

they had no authority to do so.

23. I ask the Court to take judicial notice of all of the AG's published contingency fees agreements with outside counsel, posted on AG Wilson's website; and to note that Wingate, in bringing and continuing the Wingate Suit, has violated some of the standard, essential terms contained in every one of them.

24. I ask the Court to take judicial notice that no known AG Litigation Retention Agreement allows a private lawyer to sign pleadings or appear without the AG, or authorizes a private citizen such as Bauknight to speak on behalf of the State/AG.

25. I ask the Court to take judicial notice that all known Litigation Retention Agreements assert that they are public documents.

26. I am informed and believe that if the Court directs the prompt deposition of Terry Brown and other Wingate private plaintiffs we have noticed it will serve the ends of justice, as well as judicial economy.

27. It was Wingate and Wingate's private clients who elected to bring this suit, and they should be required to see it through, including joint and several responsibility for the counterclaims Bob and I have asserted.

28. I am informed and believe that if Wingate is allowed to abandon his private clients it may take months for them to find counsel who will accept responsibility for this suit, posing an even greater hardship on Bob, me and the Estate of James Brown.

29. It has taken Bob and me almost four years to fully uncover the egregious facts of the Forlando Suit – namely that Forlando, then a 21-year-old student, was given a 39% interest in TJBL, LLC with no contribution other than serving as a front-man for felon David Cannon and Buddy Dallas to sue Bob and me with the intention that we be

discredited and resign; that the James Brown assets be sold to TJBL; and that Cannon and Dallas be paid the options or "Kickback" they demanded.

30. I am informed and believe that Terry Brown – through Wingate – is now continuing that quest for himself, Cannon, Dallas and Forlando, in the Wingate Suit.

31. Forlando's recent firing of Bryan Cave and Bell suggests that the deposition of Terry Brown, noticed more than 7 months ago in April 2011 – and the noticed depositions of Wingate's other private clients – should go forward and may promptly uncover material facts related to the Wingate Complaint and our counterclaims, as to which Wingate's private clients are currently seeking relief from default.

32. I am sixty eight years old, and my practice – especially consulting and serving as an expert – is largely on hold because of the Forlando Suit and the false allegations Wingate and Wingate's private clients have made against me. I wish to resume that part of my career.

33. I am informed and believe that enjoining Wingate and Bauknight from representing and/or speaking on behalf of the AG/State is proper, but should not delay the depositions or other discovery related to the Wingate's private clients.

34. Wingate has already proceeded on behalf of the Wingate private clients without the State by both appearing and filing a motion on behalf of his private clients in a Newberry County suit. This motion – still pending – and his other actions make it clear that he can continue solely on behalf of the Wingate private clients both here and elsewhere.

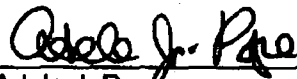
35. I am informed and believe that the if the Wingate private clients are allowed to continue to evade noticed depositions in this 18-month-old case the closing of the Estate

of James Brown, which has been open in Aiken County since January 2007, could be delayed another five years.

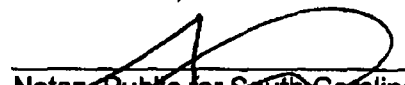
36. In summary, I respectfully submit that justice and judicial economy will be served by the Court's:

- a. Enjoining Wingate from serving as counsel for the State/AG in this suit;
- b. Enjoining Bauknicht from speaking on behalf of the current or former AG/State;
- c. Directing that Terry Brown, Tommie Rae and Wingate's other private clients forthwith appear at depositions at times and places set by the Court.
- d. Hearing all discovery motions related to Wingate's private plaintiffs and ordering them to comply with the discovery they have evaded.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this 5th day
of December, 2011

 (L.S.)
Notary Public for South Carolina
My commission expires: 7/13/2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

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

Defendants

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

2012 MAY 18 PM 5:22
JENNIFER H. BROWN
C.C.P. & G.S.

FILED

**TO: ROBIN A. BRAITHWAITE, ESQUIRE AND J. CALHOUN WATSON, ESQUIRE,
ATTORNEYS FOR DEFENDANT ROBERT L. BUCHANAN, JR., AND TO THE
DEFENDANT ABOVE-NAMED:**

The Plaintiffs in the above-referenced action intend to move before this Court, and do hereby so move, for an Order from this Court enforcing the terms of the Mediation Agreement entered between Plaintiffs and Defendant Robert L. Buchanan in this case, attached hereto as Exhibit A.

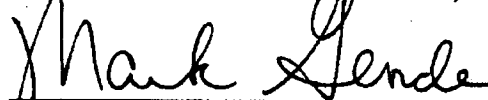
Plaintiffs and Defendant Buchanan held a mediation on Friday, May 4, 2012, at which the Mediation Agreement was reached. Upon information and belief, Defendant Buchanan now refuses to comply with the terms of this Agreement and seeks to avoid it altogether.

The proper venue in which to enforce this Agreement is in the pending Richland County action (Case No. 2010-CP-40-04900), as evidenced by Defendant Buchanan's caption on a draft of the proposed Final Settlement Agreement, attached hereto as Exhibit B.

Plaintiffs request that this Court order that Defendant Buchanan comply with the Mediation Agreement. This Motion may be further supplemented with a Memorandum of Law, and any other supporting materials that may be relevant to this Motion.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina
May 18, 2012

Exhibit T

SCOTT KENILEY

From: William James Brown <williamjames.brown@yahoo.com>
Sent: Friday, September 27, 2013 12:39 PM
To: SCOTT KENILEY
Subject: Fw: Notice to the Court - The Estate of James Brown A/K/A: James Joseph Brown
Attachments: Brown - Terminations - MT Letter to Warner-Chappell 9.23.2013.pdf

----- Forwarded Message -----

From: William James Brown <williamjames.brown@yahoo.com>
To: "dearlylc@sccourts.org" <dearlylc@sccourts.org>
Sent: Friday, September 27, 2013 12:37 PM
Subject: Notice to the Court - The Estate of James Brown A/K/A: James Joseph Brown

Dear Judge Early,

I hope you are well. Out of an abundance of caution and in respect to this court, I am submitting this letter written on behalf of certain interested parties by their counsel, to the court. The letter contains pertinent information I believe the court is entitled to as your Honor continues to oversee these Estate of James Brown matters.

The letter outlines knowledge of actions, taken on behalf of certain interested parties under the courts jurisdiction, that are intended to strip the "I Feel Good" Trust of James Brown of revenues. The letter points to certain representatives of the Estate of James Brown assisting in filing notice of termination rights, on behalf of Tommie Rae Hynie, pursuant to the copyright act, that will do harm to this courts jurisdiction in such legal matters. It is my assumption that all the actions taken by Estate representatives, that deal specifically with the Estate of James Brown, under this courts jurisdiction, be noticed to the court for guidance and approval.

Very Respectfully,

William Forlando Brown

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

And

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ADELE J. POPE,

Plaintiff.

-v-

ALAN WILSON, in his Capacity as Attorney
General of South Carolina,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) AFFIDAVIT OF ADELE J. POPE
) IN SUPPORT OF
) MOTION TO STRIKE
) CONSOLIDATION MOTION

) OF
) ATTORNEY GENERAL AND OTHERS

RICHLAND COUNTY
FILED
2010 MAY 27 PM 3:51
JEANETTE W. MCBRIDE
C.C.P. & G.S.

) IN THE COURT OF COMMON PLEAS

) SECOND JUDICIAL CIRCUIT

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

) AFFIDAVIT OF ADELE J. POPE
) IN SUPPORT OF

) MOTION TO STRIKE
) CONSOLIDATION MOTION

) OF
) ATTORNEY GENERAL AND OTHERS

IN RE:

Proposal of Alan Wilson, in his Capacity as Attorney
General of South Carolina, and others, to consolidate
discovery in this action with Aiken County Case 2013-CP-02-1337

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly sworn, deposes and says:

1. I am over 21 years of age, and this Affidavit is made of my own personal knowledge.

2. The Motion of Attorney General Alan Wilson ("AG Wilson"), Tomirae Brown, and others to consolidate my Aiken County commissions claims case (Aiken 1337) with Richland County Case 2010-CP-40-4900 (Richland 4900), a tort suit they brought against me in 2010, and a Freedom of Information Act (FOIA) suit already consolidated with Richland 4900, for purposes of discovery, was not properly served on me; did not even contain the caption of Aiken 1337; and, on information and belief, was never filed in Case 1337.

3. The current parties to Case 1337 are shown in the caption set out below:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
Adele J. Pope,	)	Case No. 2013-CP-02-1337
	)	
Plaintiff	)	
	)	
v.	)	
	)	
The Estate of James Brown and the James	)	
Brown 2000 Irrevocable Trust,	)	
	)	
Defendants.	)	

4. The AG, Tomirae and other Richland 4900 Plaintiffs made the Consolidation Motion without stating the caption or parties of the cases, which would have shown on its face that about fifteen Richland 4900 Plaintiff/Counterclaim Defendants are not parties to Aiken 1337.

5. The AG and others made the motion with actual knowledge that the attorney they share in Case 4900, Kenneth Wingate of Sweeney, Wingate and Barrow, P.C., ("Wingate"), has **of record** actual and irreconcilable conflicts in the simultaneous representation of the AG and the private Case 4900 Plaintiff/Counterclaim Defendants.

6. The AG made the motion with actual knowledge that **none** of the below-named Richland 4900 Plaintiff/Counterclaim Defendants is a party to Aiken 1337, and **none** has sought to intervene in Aiken 1337 in the 3 years since it was filed on June 10, 2013:

- a. AG Alan Wilson
- b. Russell Bauknight ("Bauknight") purportedly acting on behalf of AG Alan Wilson
- c. The James Brown Legacy Trust, a part-charitable/part private trust created by AG Henry McMaster, Tomirae and others (the "McMaster Legacy Trust")
- d. Bauknight, as agent for James B., a minor (without GAL);
- e. Tonya Brown and Bauknight, as agent for Tonya Brown;
- f. Jason Brown Lewis, and Bauknight as agent for Jason Lewis;
- g. Lindsey Delores Brown and Bauknight as agent for Lindsey;
- h. Janice Venisha Brown and Bauknight as agent for Janice Venisha;
- i. Venisha Brown and Bauknight as agent for Venisha Brown
- j. Deanna Brown Thomas and Bauknight as agent for Deanna;
- k. Yamma Brown Lumar and Bauknight as agent for Yamma;
- l. Larry Brown and Bauknight as agent for Larry;
- m. Terry Brown, and Bauknight as agent for Terry Brown;

n. Bauknight as agent for minors Sydney L. and Carrington L.

7. AG Henry McMaster and the above persons sued Robert Buchanan, Jr., and me six years and two days ago in Richland 4900.

8. In 2011 AG Wilson and Bauknight sought to change venue in two Newberry County FOIA suits and consolidate them with Richland 4900. They were successful in one FOIA case, as shown in the caption above.

9. As a result of AG Wilson's actions, both FOIA cases were delayed for 4 ½ years.

10. In 2012 AG Wilson and Bauknight sought to transfer a Newberry County FOIA suit brought by a Newberry journalist seeking the so-called Hynie "diary," to Richland County, and to consolidate it with Richland 4900.

11. AG Wilson was unsuccessful in the journalist's case; the journalist's FOIA suit is now resolved; and the so-called Hynie "diary" has been re-released as a public document.

12. On February 27, 2013, the first decision in *Wilson v. Dallas* admonished AG Wilson to conclude the Wingate suit [Richland 4900] and the FOIA suit in the first instance.

13. In his Petition for Rehearing filed with the South Carolina Supreme Court on March 14, 2013, AG Wilson told the Court the following about Case 4900:

The Attorney General's intent not to bring the action on behalf of the Attorney General's Office is fully demonstrated by a letter, dated May 18, 2010, to Mr. Bauknight...

AND

From the standpoint of the Attorney General, in light of this Court's

ruling, we now see no need to pursue this action further. We advise this Court, therefore, that we will shortly move to have the Attorney General removed as a party in this action and any further action in this case to protect the charitable beneficiaries may be pursued by the new trustee.

14. On June 10, 2013, at the request of Tomirae, certain Case 4900 Plaintiffs, and Bauknight, Judge Doyet A. Early, III, issued administrative orders prohibiting Adele Pope and Robert Buchanan, Jr. from participating in Aiken County James Brown cases other than their own claims cases.

15. Judge Early's administrative orders were issued 3 days after Aiken 1337 was filed, and I have been prohibited from participation in Aiken County cases involving fifteen Richland 4900 Plaintiffs/Counterclaim Defendants since.

16. AG Wilson thereafter withdrew from the Aiken County James Brown cases, and – until he made the Consolidation Motion – has not sought to become involved in discovery in any Aiken County case.

17. Since Bob Buchanan and I were barred from participation in the Aiken James Brown cases in 2013, Judge Early has:

- a. Declared Case 4900 Plaintiff Tomirae to be Brown's spouse
- b. Awarded Tomirae's son James B. what Dave Sojourner asserts could be \$700,000 in legal and GAL fees, payable from funds James Brown gave his "I Feel Good" Charity. [Both Orders are under review.].

18. On information and belief, AG Wilson now asserts, as Buchanan and Pope asserted when Richland 4900 was filed, that Wingate has no legal authority to claim that he is acting on behalf of the Attorney General of South Carolina in Richland 4900, or in any other case.

19. On information and belief, the public record of which the Court is asked to take judicial notice, shows that Bauknight now claims that the McMaster Legacy Trust, including its original charitable component, is a private trust.

20. On information and belief, AG Wilson now admits that Russell Bauknight has no legal authority to file any Motion or otherwise act on behalf of Plaintiff/Counterclaim Defendant the Attorney General of South Carolina in Case 4900.

21. As a result of AG Wilson's recent admissions, I am informed and believe that all motions, including the Consolidation Motion, filed by Wingate on behalf of AG Wilson are improper, illegal, and should be stricken and declared void by the Court.

22. I am informed and believe that the Attorney General; those acting improperly on his behalf; and their Co-Plaintiff in Case 4900, Tomirae, filed this Consolidation Motion, and an earlier Motion to Quash made by AG Wilson in Aiken 1337, for the improper purpose of evading the depositions of Sr. Assistant AG Havird "Sonny" Jones, Assistant AG Mary Frances Jowers in Aiken 1337 and Tomirae in Richland 4900.

23. I incorporate herein my Return and Supplemental Return to AG Wilson's Motion to Quash.

22. I am informed and believe that it would violate the Attorney General's public duty, and be manifestly unjust to me, to allow Attorney General Wilson, and Bauknight acting on his behalf, while serving Tomirae, to inject themselves, with lawyers paid for by James Brown's "I Feel Good" charity, into my commission claim case.

23. I believe \$2,525.00 is an appropriate fee for my having to oppose the Attorney General's motion as to Case 1337, and that it should be charged against Attorney General Wilson, Bauknight, individually, and Tomirae.

FURTHER DEPOONENT SAYETH NOT.

Charles J. Pope
Adele J. Pope

SWORN TO BEFORE ME, This
21st Day of May 2016

Margaret H. Pope (L.S.)
Notary Public for South Carolina
My Commission expires: 3-28-2022

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

ALAN WILSON, in his capacity as Attorney
Attorney General of the State of South
Carolina; and others,

Plaintiffs.

v.

Adele J. Pope,

Defendant.

) IN THE COURT OF COMMON PLEAS

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

) SUPPLEMENTAL
) AFFIDAVIT OF AIKEN 1337
) PLAINTIFF IN OPPOSITION TO
) DISCOVERY CONSOLIDATION
) MOTION OF ATTORNEY GENERAL
) AND OTHERS

2015 JUN -6 PM 3:31
RICHLAND COUNTY
FILED
JENNIFER W. McGUIRE
C.C.P. & G.S.

IN RE:

Proposal of Alan Wilson, in his Capacity as Attorney
General of South Carolina, and others, to consolidate
discovery in this action with Aiken County Case 2013-CP-02-1337

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly
sworn, deposes and says:

1. The Interrogatories and Motion served by Attorney General Wilson, the
McMaster Legacy Trust and other Richland 4900 Plaintiff/Counterclaim Defendants
help clarify why discovery in Richland 4900 should not be consolidated with Aiken 1337.

2. The following areas of discovery are material to Richland 4900, but have
virtually no place in Aiken 1337:

a. The AG's Post-Settlement Relationship With Cannon, Forlando and Bell

- b. The Attorney Generals' 8-Year Alliance with Tomirae and James B
- c. Use of the \$4.7 Million Devaluation to Damage Buchanan & Pope
- d. The Assets and Control of the McMaster Legacy Trust.

3. The conduct of discovery in Richland 4900, and the attempt to prevent discovery in the consolidated FOIA case, are the work of my counsel in those cases. But it is *my* role, as *pro se* counsel in Aiken 1337 to mitigate costs and delay.

4. I am informed and believe that embroiling Aiken 1337 in Richland 4900 discovery will delay my July 2017 trial and be costly to me. Set out below is just one example of the discovery in Richland 4900 which does not relate to Aiken 1337.

The Attorney Generals' Relationship With Cannon, Bell and Forlando

5. The relationship of AG McMaster, Cannon, David Bell, Esq., and Forlando, who tried to reinstate Cannon as trustee, is a matter of record through May 26, 2009. The witnesses to this relationship in Aiken 1337 have already been deposed.

6. What happened with these relationships after the McMaster Settlement is an important matter for discovery in Richland 4900.

7. The following is a mere sampling of the witnesses, facts and issues which may be explored in Richland 4900 discovery, but have no place in Aiken 1337:

2009

On May 26, 2009 Jg. Early approves the McMaster Settlement.

David Black - On June 4, 2009 NP lawyer David Black directs Few & Gilreath, pursuing claims against Cannon, Dallas & others, not to share any confidential communications w/ Buchanan & Pope.

Kendall Few - On June 5, 2009 Few agrees to Black's directive.

No recovery from Cannon/Dallas in Case 322 from 2009 - 2016..

Alan Medlin - Medlin & others exchange emails proposing to value Brown's Estate like Est. of Harlan Howard, and assert Publicity Rights have zero value.

Freddie Kingsmore -NP Atty. Kingsmore meets with SLED agent, who reports NP lawyers and AG's Office have gone through James Brown files.

2009 - 2010

AG Henry McMaster - Receives SLED Report in 2009. In Feb. 2010, Cannon indicted. McMaster, not local solicitor, retains control of Cannon case.. Cannon not indicted for the \$5 Million "check to nobody." discovered in 2007. In 2010 AG McMaster names Cannon & Dallas as Richland 4900 witnesses.

2010

David Bell - In May 2010 Bell signs 40% Wingate Contingency Contract for Terry. Represents son Forlando in Federal Suit taking opposite position.

William Wilkins - In September 2010 \$4.7 Million appraisal arrives. Wilkins, and Settling Parties, decide to withhold from Appellate Court until after briefs.

Russell Bauknight - In the fall of 2010, Bauknight tells IRS that music empire, was worth less than \$4.7 Million, including claim against Cannon: Buchanan/ Pope valued the below assets at \$84 Million:

2, Residue of assets including those owned by the estate, trust & other James Brown entities, including but not limited to royalty interests, ...image, persona, licenses and other related rights, including Geronimo, LLC,....James Brown Enterprises, Inc..Also including but not limited to rights and claims against former Prs/Trustees...for losses during the period prior to the death of James Brown.
[Emphasis supplied. See Exhibit A, Sch. F as filed by Buchanan/Pope]

Terry Brown - On December 31, 2010 Terry, AG McMaster and others sign Amendment to McMaster Legacy Trust.

2011

Forlando Brown - On January 3, 2011, Forlando receives from Terry: "all my interest of every nature and kind in the Estate of James Brown."

AG Alan Wilson - In January 2011, AG Wilson's staff meets with Forlando,

NP lawyers, Bauknight to begin due diligence on a possible asset sale. AG Wilson seeks sanctions against Buchanan & Pope for filing brief that would help recover Case 122 costs from Cannon. [Sanctions denied, but brief stricken.]

William Custer - In fall of 2011, Powell Goldstein (PG) Attorneys & Bell notify Federal Court they have been terminated by Forlando.

Sue Summer - In late 2011 journalist Summer reports on Forlando's disagreements with Bauknight, apparently related to Forlando's belief Bauknight should have considered possible \$200 Million sale of Brown's music empire to Oprah Winfrey. Forlando distributes secret Amendment and Assignment..

Robert McNair III - In October 2011 Asst. AG McNair attends Cannon *Alford* plea. Asserts no victims statements even though Pope sent one for needy students. No restitution or jail time sought.

Beth Bauknight - In 2011 Beth Bauknight has incident with Terry/Forlando climbing fence and asking to enter Beech Island mansion.

2012 - 2015

Jay Bender - AG Wilson represents journalist in FOIA suits to obtain McMaster Legacy Trust, Wingate Agreement that shows Bell's signature.

Emory Smith - Asserts on behalf of AG Wilson that there are no Legacy Trust Amendments. Declines to release portions of Wingate Agreement.

McMaster Legacy Trust - Bauknight, simultaneously serving as trustee of the McMaster Legacy Trust and PR, tries to intervene in, and stop, FOIA suits.

2012

Forlando Brown - In April 2012 Forlando makes false representation to Jg. Bertelsman that he has no assets, and no expectation of any assets in the James Brown litigation unless Terry dies. Bauknight does not correct.

David Cannon - Cannon tells author James McBride that he has seen two boxes full of \$100 bills in the home of James Brown.

Deanna Brown - Deanna and others seek to overturn Cannon Order. Deanna claims: to media: "Plenty liars...plenty thieves."

2013

Creighton Waters - Asst. AG Waters represents to Jg. James that Cannon

embezzled \$7.7 Million. State/AG treats approximately \$5 Million as "earned." Hearing reveals that Cannon's seaside mansion listed for sale for \$1.3 Million.

Michael Melanos - Melanos, attorney for Forlando, falsely accuses Buchanan and Pope in Federal Suit of having "misappropriated" James Brown assets.

2014

John Donsbach - Donsbach files notice claiming to be "additional counsel" for Terry in Richland 4900.

Creighton Waters - Judge James issues Order on April 23, 2014 finding that David Cannon earned \$12 Million from James Brown since 1999. Also finds:

"The financial resources of the James Brown Trust are bleak and teetering on collapse without the payment of restitution by the defendant."

Yamma Lumar - In 2014 Yamma reports in *Cold Sweat* that she and Deanna were offered, \$5 Million, 5% of Brown's estate, by Cannon and Dallas.

2016

Terry Brown - Terry files brief in Tomirae Appeal claiming Tomirae is a "bigamist;" Other objections to spousal findings.

Bell/Bodman - On April 11, 2016, Bell files brief in Tomirae Appeal adopting Sojourner's brief, or alternatively Terry Brown's.

Michael Deon Brown - On April 11, 2016, through Bell, Michael files brief opposing Tomirae. In May 2016 Michael posts himself on facebook holding stack of \$100 bills and with two cars.

Other Parties, Witnesses and Discovery Issues

8. I am informed and believe that the above properly supplements my claim and earlier affidavit, which I incorporate, that consolidation of Richland 4900 and Aiken 1337 would be unjust and not promote judicial economy.

FURTHER DEPOONENT SAYETH NOT.

Adele J. Pope
Adele J. Pope

SWORN TO BEFORE ME, This
2nd Day of June 2016

Lefee O. Smith (L.S.)
Notary Public for South Carolina
My Commission expires: 8-12-2020

Exhibit A

Estate of: **James Brown**

259-32-3801

SCHEDULE F - Other Miscellaneous Property Not Reportable Under Any Other Schedule

(For jointly owned property that must be disclosed on Schedule E, see the instructions for Schedule E.)

(If you elect section 2032A valuation, you must complete Schedule F and Schedule A-1.)

1	Did the decedent at the time of death own any works of art or items with collectible value in excess of \$3,000 or any collections whose artistic or collectible value combined at date of death exceeded \$10,000? If "Yes," submit full details on this schedule and attach appraisals.	Yes X	No
2	Has the decedent's estate, spouse, or any other person, received (or will receive) any bonus or award as a result of the decedent's employment or death? If "Yes," submit full details on this schedule.		X
3	Did the decedent at the time of death have, or have access to, a safe deposit box? If "Yes," state location, and if held in joint names of decedent and another, state name and relationship of joint depositor. See attached If any of the contents of the safe deposit box are omitted from the schedules in this return, explain fully why omitted.		

Item number	Description. For securities, give CUSIP number. If trust, partnership, or closely held entity, give EIN	Alternate valuation date	Alternate value	Value at date of death
1	Jewelry and Furs. Value based on former Personal Representatives' Probate Court Inventory and Appraisement balance. Tangible Personal Property.	CUSIP number or EIN, where applicable		114,529
2	Residue of assets including those owned by the estate, trust & other James Brown entities including but not limited to royalty interests, reversion rights, image, persona, licenses & other related rights including rights owned by Geronimo, LLC; James Brown DBA The New James Brown Enterprises, Inc. (sic); and James Brown Enterprises, Inc. Also including but not limited to rights and claims against former PRs/Trustees, Seventh Decade and/or others for losses during the period prior to the death of James Brown.			84,000,000
Total from continuation schedules (or additional sheets) attached to this schedule				0
TOTAL. (Also enter on Part 5-Recapitulation, page 3, at item 6.)				84,114,529

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(See the instructions on the reverse side.)JSA
6R8012 0.030

SEE PR 4' STATEMENT C ATTACHMENT #1

Schedule F - Page 19

JB Estate13

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

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

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2010-CP-40-4900

AFFIDAVIT OF ADELE J. POPE
IN SUPPORT OF PLAINTIFF'S
MOTION TO ALTER, AMEND OR
VACATE ORDER GRANTING
ATTORNEY GENERAL'S MOTION
TO DISMISS

RICHLAND COUNTY
FILED
2016 JUL -1
3:44
JANET M. MCBRIDE
C.C.P. & C.S.

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who being duly sworn,
deposes and says:

1. I am informed and believe that in his Order of June 14, 2016 dismissing my
FOIA case filed August 10, 2011, the Honorable Doyet A. Early, III ("Judge Early")
overlooked or misapprehended the undisputed facts within the record before him,
including:

a. Adele Pope is a citizen of South Carolina; a resident of Newberry County;
and entitled to rights under the South Carolina Freedom of Information Act, S.C.
Code Ann § 30-4-10 et seq. (FOIA).

b. Defendant Alan Wilson is the Attorney General of South Carolina ("AG
Wilson") and the Constitutional Officer charged with the proper enforcement of
FOIA.

c. The James Brown Legacy Trust is a trust created by former AG Henry
McMaster, and not by entertainer James Brown, in 2009 (the "McMaster Legacy
Trust"). Russell L. Bauknight has been its trustee since 2009, and serves at the
pleasure of the AG.

d. On October 2, 2009 AG McMaster announced his policy related to the
engagement by the AG of outside Special Counsel as follows:

**STATEMENT FROM ATTORNEY GENERAL HENRY McMASTER ON
CAMPAIGN CONTRIBUTIONS BY SPECIAL COUNSEL**

... "The judge... ruled the contributions were legal and proper. In fact, both sides of the case had contributed to the attorney general's campaigns. Further, no public funds whatsoever were or will be used to compensate the attorneys... "In several, due to size, complexity and state government's budget constraints, he has appointed outside attorneys to serve as "special counsel" and to work with his attorneys. They were all contingency fee cases, meaning the special counsel involved receive no compensation unless they win the case. ... This is a wise economic strategy for the State, which is able to recover its damages from the defendant at no cost to the taxpayers in a meritorious case it could not otherwise have been able to bring.

...these perfectly legal donations should not be allowed to create a distraction from the critically important issues our State faces now or in the future. I believe the best interests of the State will be served by eliminating the issue altogether. ... For all those reasons, I am today returning the \$32,500 in donations special counsel attorneys, or their firms, have made to my campaigns for attorney general. And I will decline future contributions from my office's special counsel attorneys."

e. AG Wilson's FOIA position as stated in the Public Official's Guide to the Freedom of Information Act (FOIA) is:

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

f. In 2010 AG Wilson, the McMaster Legacy Trust and Mr. Bauknight, on behalf of AG McMaster, with others, sued Robert L. Buchanan, Jr. and Ms. Pope claiming, among other things, that they failed to accept a 2007 offer for the music empire of entertainer James Brown.

g. The AG, the McMaster Legacy Trust, and a number of non-S.C. residents shared a single private law firm, Sweeny, Wingate & Barrow, P.C. ("Wingate").

h. On January 18, 2011 AG Jones distributed to the Respondents in *Wilson v. Dallas* a January 2011 amendment to the McMaster Legacy Trust and an assignment by *Wilson* Respondent Terry Brown to his son Forlando Brown of his right of first refusal to buy James Brown's music empire (the "ROFR")

i. In 2011 AG Wilson began to claim that James Brown's music empire was worth only \$4.7 Million at his death, and that Mr. Buchanan and Ms. Pope had intentionally overstated its value on a sworn estate tax return for the improper

purpose of obtaining a \$5 Million commission.

j. At the suggestion of Mr. Buchanan, in the summer of 2011 Ms. Pope made certain FOIA requests of AG Wilson and the McMaster Legacy Trust. Among the documents sought were:

1. A copy of the Wingate Litigation Retention Agreement;
2. A copy of Amendments to the McMaster Legacy Trust; and
3. Certain documents related to the AG's claim that James Brown's music empire was worth \$4.7 Million when he died December 25, 2006.

k. AG Wilson declined to produce the requested documents.

l. On July 15, 2011 David Black, Esq., an attorney for Mr. Bauknight and the Legacy Trust wrote Ms. Pope claiming the McMaster Legacy Trust was private, and stating:

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

m. On August 3 and 10, 2011 Ms. Pope filed two FOIA suits in Newberry County, where the FOIA requests had been made. One sought the \$4.7 million valuation documents and McMaster Legacy Trust and its amendments. The second sought the Wingate Litigation Retention Agreement.

j. All of AG McMaster's Litigation Retention Agreements with outside counsel declare that documents held by special counsel are subject to FOIA, and confirm that the litigation is controlled by the AG.

k. Shortly after this suit was filed, Tomirae Hynie, later known as Tommie Rae Brown, with other nonresidents of South Carolina, moved to intervene in this FOIA suit, and to obtain sanctions against Ms. Pope.

l. On September 12, 2011 AG Wilson moved to dismiss the FOIA suit requesting the Wingate Agreement or, in the alternative, to change venue to Richland County; consolidate the FOIA suit with his suit against Ms. Pope and Mr. Buchanan; and subordinate the FOIA request to discovery in that suit. Both AG Wilson and the McMaster Legacy Trust took similar action in the FOIA case seeking the \$4.7 Million appraisal and copies of the McMaster Legacy Trust amendments.

m. On September 21, 2011 a journalist covering the FOIA suit reported that a member of AG Wilson's staff had emailed the journalist agreeing to send a copy

of the Wingate Agreement.

n. On September 21, 2011, Sr. Assistant AG Jones wrote the Honorable L. Casey Manning, Judge in the suit the AG and McMaster Legacy Trust brought against Mr. Buchanan and Ms. Pope, and said of the Wingate Agreement:

This Office is ready and more than willing to provide the document at this time.

o. Despite the AG's representation, almost 5 years later the Wingate Agreement has not been produced under FOIA.

p. Ms. Pope's counsel filed numerous Affidavits during the FOIA litigation encouraging AG Wilson to produce the Wingate Agreement and other public documents.

q. Among those supporting the release of the Wingate Agreement under FOIA was Thomas R. Young, Jr., Esquire, Mr. Buchanan's attorney in a suit filed against Mr. Buchanan and Pope to terminate their insurance after they were sued by AG McMaster and the McMaster Legacy Trust. Mr. Young said, in part:

6. ... The litigation retention agreement...is a document relevant to some of the issues in the declaratory judgment action filed by Cincinnati Insurance Company against Buchanan.

9. I also understand the the Freedom of Information Act is intended to provide members of the general public with prompt access to public documents "at a minimum cost or delay." See S.C. Code Sec. 30-4-15 (emphasis added)...

10. While I have the ability to issue a federal court subpoena upon the Attorney General of South Carolina...it will save my client both time and money by having the contract....released...pursuant to FOIA.

r. Mr. Young advised the Court that he could obtain the Wingate Agreement by discovery in the Federal Suit, but that the purpose of FOIA was for South Carolina citizens to be able to obtain public documents quickly for the lowest cost.

s. Mr. Young's affidavit, and those of other journalists and citizens, echoed the statement of AG Wilson himself relating the importance of FOIA compliance to our democracy.

t. AG Wilson moved to strike the affidavits and dismiss the complaint. He also sought to transfer Pope's FOIA suit to Richland County if it was not dismissed.

u. On October 24, 2011 a hearing was held before the Honorable Frank R. Addy, Jr. on Ms. Pope's Motion for Summary Judgment and AG Wilson's Motion to Dismiss.

Wingate appeared at the hearing on behalf of the McMaster Legacy Trust and more than a dozen private plaintiffs, many non-residents of South Carolina. AG Wilson filed a Memorandum in Support of Motion to Dismiss and Strike, and Opposing Summary Judgment. He argued:

...These issues are all directed to whether Plaintiff can bring a separate Freedom of Information Act action in Newberry County to sidestep or make an end-run around pending judicial proceedings in Richland County involving the same documents that are at issue in civil discovery in Richland." [Emphasis supplied.]

... Wilson's Motion to Dismiss should be granted which will moot all other issues... because judicial proceedings are already pending in Richland regarding the same documents, and this Court should not allow Plaintiff to bypass those proceedings...

v. On October 31, 2011 Mr. Black, Attorney for the McMaster Legacy Trust and Mr. Bauknight, was quoted in more than 300 media outlets making vitriolic statements about Mr. Buchanan and Ms. Pope.

w. On November 1, 2011 the South Carolina Supreme Court held oral arguments in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

x. Counsel for Mr. Bauknight and AG Jones argued for the respondents. Mr. Bauknight's counsel referenced the \$4.7 Million value claim, supporting documents of which were the subject of one of Ms. Pope's FOIA suits. He said:

...So, what we have, and if I can use an example, one of his first famous hits, was a song called "Please, Please, Please." And he copyrighted that song. February 27, 1956. The copyright was to expire two thousand fifty-two, in 2050. But the ... Termination Rights ripen next year. So next year, when those Termination Rights are exercised, Mrs. Brown and the children will get the copyright a hundred percent. And be entitled to 100% of the royalties. Now 50% of those royalties is flowing into the Estate because James Brown had 50% at his death.

So you've got the Estate up here, getting those royalties, now since the debt has been paid off, since last Friday. But when they exercise those Termination Rights, the Estate doesn't get the royalties anymore, so it goes down. But Mrs. Brown and the children, they get the 100%. And as every song is terminated, it keeps going like this, until finally, in about 20 years, the Estate gets nothing. And Mrs. Brown and the children got it all. And that's what they gave up....

y. AG Wilson, through AG Jones, added:

But if we had gone through and won everything, starting in '23 our income starts dropping off. And by 2025 we've lost 75% of our income. We have nothing. If we litigate this thing to 2015 and come – this is a factor with us, one of the factors – and come back before this Court with Tommie Rae Hynie Brown, come back before this Court with undue influence, and come back before this Court with the omitted child, we win. And what do we get? In 2015 we have no money left.

z. By Order dated November 22, 2011, Judge Addy directed AG Wilson to answer Ms. Pope's FOIA Complaint; transferred the FOIA suit to Richland County; and directed that it be consolidated, but not merged, with AG Wilson's and the McMaster Legacy Trust's suit against Mr. Buchanan and Ms. Pope.

aa. AG Wilson did not seek to alter or amend the November 22 Order of Judge Addy. Ms. Pope's counsel did seek to amend the Order.

ab. In December 2011, the Wingate Proposed Intervenor moved for sanctions against Ms. Pope and her attorney, Adam Silvernail.

ac. On December 9, 2011 AG Wilson, through Emory Smith, Esquire, wrote Judge Addy:

We respectfully request that this Court deny the Motion for Reconsideration and proceed with the consolidation of this case with case 4900 in Richland... The sooner that this case is consolidated with case 4900, the faster the issues in this case can be resolved for the benefit of all parties. We stand ready to have these issues resolved in Richland as quickly as possible.

ad. Judge Addy denied Pope's Motion for Reconsider, which was not appealable at that time.

ae. On December 6, 2011 AG Wilson answered, as directed by Judge Addy. The AG's answer asserted in part:

Plaintiff cannot use FOIA to overrule or bypass proceedings in Case 4900 in Richland County." (3d)

Another action is pending among the same parties as to the same or substantially the same claim under SCRCP, Rule 12(b)(8)

The Richland County Court of Common Pleas has exclusive jurisdiction of matters related to the documents at issue. (5th)

af. In April 2012, at Forlando Brown's request, the Federal Court dismissed his baseless 52-page 2008 complaint to enjoin Brown's 2000 Trust until David Cannon and Albert Dallas were reinstated as Trustees of Brown's Trust, and amendments suing Mr. Buchanan and Ms. Pope.

ag. Concealing his receipt of the ROFR and his father's interest in James Brown's estate, Forlando Brown told Judge Bertelsman that he had no assets and no expectation of any assets from the James Brown litigation unless his father died.

ah. In July 2012 Mr. Buchanan became financially challenged and was required to settle with AG Wilson and the Master Legacy Trust. He was required by the AG not to file a Petition for Rehearing after the Supreme Court ruled in *Wilson* and was prohibited from helping Ms. Pope in any way.

ai. Mr. Buchanan remained in Forlando's Federal Suit.

aj. On February 27, 2013 the South Carolina Supreme Court issued its first opinion in *Wilson v. Dallas*. Footnote 29 to that opinion stated:

... the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, for Wingate to sue Appellant Pope on behalf of the State, Bauknight, and others while also representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately

incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, effectively controlling the charitable trust through the appointment of Bauknight, who serves at the AG's pleasure.

ak. On March 6, 2013 Ms. Pope met with AG Wilson to urge him to change his position; protect the James Brown for the "I Feel Good" Charity; correct the value of Brown's assets in IRS filings; and take other steps to properly determine heirs and protect to 900 copyrights James Brown gave the "I Feel Good" Trust from the premature and/or improper attempt of claimed heirs to exercise Federal Copyright Act Termination Rights.

al. AG Wilson called Ms. Pope and told her he was seeking to be dropped as a party to his suit against Mr. Buchanan and Ms. Pope. After that, he filed a Petition for Rehearing in *Wilson* making the same statement to the Supreme Court.

am. On March 7, 2013 AG Wilson moved to amend his answer in this FOIA case, claiming he had released all but 3 pages of the Wingate Agreement.

an. On or about March 14, 2013 James B., a party to *Wilson*, filed a Petition for Rehearing outlining details of the \$4.7 million appraisal AG Wilson had refused to produce under FOIA.

an. On May 8, 2013 the final *Wilson* decision was issued, which removed footnote 29.

ao. On May 12, 2013, Wingate wrote to the Circuit Court, stating in part:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters.

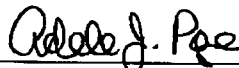
...
Therefore, Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that [the Wingate/FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court. [Emphasis supplied.]

ap. From March 2013 to April 2016, the Court refused to set a hearing in these FOIA cases, despite more than fourteen (14) requests by Plaintiff's counsel during that period.

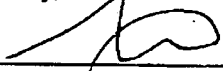
aq. After the case was assigned to the Honorable Doyet A. Early, III, a hearing was held on May 17, 2106, which resulted in the Order which is the subject of Plaintiff's motion to alter, amend or vacate.

2. I am informed and believe that the State, through AG Wilson, Mr. Bauknight as trustee of the McMaster Legacy Trust and agent for AG Wilson, and the order of Judge Addy, with the inaction of Judge Manning at the request of AG Wilson's counsel, have deprived me of my FOIA, Due Process and Equal Protection Rights.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this 1st day
of July, 2016


Notary Public for South Carolina
My Commission Expires: 7/12/2016

RICHLAND COUNTY
FILED
2016 JUL -1 PM 3:44
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 1, 2016, he has served a copy of the foregoing document on counsel for the Defendants by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

J. Emory Smith, Esquire
Office of the Attorney General
PO Box 11549
Columbia, SC 29211


Adam T. Silvermail

In the Matter Of:

Bauknight vs Pope

DEANNA J. BROWN THOMAS

March 01, 2017



www.spectrumcourtreporting.com

814 Johnnie Dodds Blvd., Suite B.

Mount Pleasant, SC 29464

spectrumaaa@gmail.com

843.849.0133

1 MR. BUNDY: Strike that question.

2 Q. Did you come to the opinion that your father
3 was not married to Ms. Hynie prior to his death?

4 MR. GENDE: Object to the form.

5 BY THE WITNESS: Yes.

6 BY MR. BUNDY:

7 Q. Okay. And what -- what brought you to that
8 conclusion?

9 A. There was an incident in my father's home
10 some years back, and after that incident happened
11 papers were found. Papers that were found through
12 his trustees or lawyers or whatever were legal --
13 was a legal marriage certificate of her being
14 married to Javed Ahmed, February of 1997 in Houston,
15 Texas.

16 Q. Did that arise out of some domestic --

17 A. Yes.

18 Q. -- dispute between your father and --

19 A. Yes.

20 Q. -- Ms. Hynie; is that correct?

21 A. Yes.

22 Q. Okay, and is it fair to say that during the
23 course of discovery in that domestic family court
24 litigation, this prior wedding certificate was
25 discovered, correct?

1 A. Yes.

2 Q. Okay. Up until then, did you believe that
3 this lady was your husband -- your father's wife?

4 A. Yes.

5 Q. Okay, because they had a ceremony?

6 A. Yes. There was a ceremony. I attended the
7 ceremony.

8 Q. Okay.

9 A. And we had no reason to believe.

10 Q. Okay. Neither did Mr. Brown. Mr. Brown
11 didn't know about it either, did he?

12 A. Until he saw that paper.

13 Q. Okay. Now, after the family -- the domestic
14 dispute brought to light the existence of this prior
15 marriage, okay, what did your father say while he
16 was alive relative to his opinion as to whether he
17 was married to this lady or not?

18 A. He was not.

19 Q. He told you that?

20 A. I've -- I've heard him in conversation. I
21 was not the only one there. It was a personal
22 family conversation.

23 Q. Right.

24 A. He is not her husband.

25 Q. And he said that?

1 A. **Yes.**

2 Q. I am not her husband?

3 A. **Yes.**

4 Q. Okay. And after --

5 A. **And she is not my wife, add that too.**

6 Q. Excuse me, I'm sorry. So he disclaimed her
7 before he passed away as his wife, she's not my
8 spouse?

9 MR. GENDE: Object to the form.

10 BY MR. BUNDY:

11 Q. Is that correct?

12 A. **He said, she is not my wife.**

13 Q. And after that time, are you aware of
14 anything that -- did that ever change, as far as you
15 knew, in terms of your father's opinion?

16 A. **No. It did not change.**

17 MR. GENDE: Object to the form.

18 BY MR. BUNDY:

19 Q. All right. Do you remember when the last
20 time you had a discussion with him about it before
21 he passed away, relative to the --

22 A. **No. I don't remember a time when we had a
23 discussion about it, but we talked.**

24 Q. Did Ms. Hynie ever acknowledge to you that,
25 in fact, she was not lawfully married to Mr. Brown?

1 MR. GENDE: Object to the form.

2 BY THE WITNESS: No, but I heard a
3 conversation. She didn't say it to me, but I heard
4 the conversation.

5 BY MR. BUNDY:

6 Q. Tell me who she was talking to and what she
7 said.

8 A. She was talking to Daryl Brown's mother,
9 Beatrice Ford.

10 Q. Okay. And what did she say to Daryl Brown's
11 mother, Beatrice Ford?

12 A. James said he was going to take me to Vegas
13 and marry me, and he has not done that yet, and she
14 was upset.

15 Q. So you didn't get the impression that was a
16 renewal of existing vows. It was a -- they were
17 going to get married, right?

18 A. They were going to get married, legally for
19 the first time.

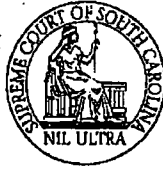
20 Q. For the first time, okay.

21

22 (DEFENDANT'S EXHIBIT NO. 7
23 WAS MARKED FOR IDENTIFICATION)

24

25 Q. This is Exhibit No. 6, I believe; is that



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

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200
COLUMBIA, SOUTH
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July 26, 2017

Via U.S. Mail and Email

Adam T. Silvernail, Esq.
adam@silvernaillawfirm.com
P.O. Box 7995
Columbia, SC 29202

RECEIVED

JUL 26 2017

SC Court of Appeals

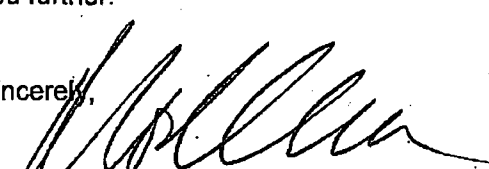
In re: Bouknight v. Pope, et al, 2010CP4004900

Dear Mr. Silvernail:

This is in response to your letter dated July 21, 2017, requesting a transcript from proceedings heard in 2012 from Crystal Holmes, a court reporter previously employed by this office.

When court reporters leave our employ, they have to deliver their records to us. In maintaining court reporter records, we adhere strictly to Rule 607, which requires that court reporter records be kept for five years. Therefore, the records to prepare a transcript from proceedings heard before July 2012 are no longer available. I am sorry that I cannot assist you further.

Sincerely,


Desiree R. Allen
Court Reporter Manager

CC (via email):

J. Emory Smith, Jr., Esq., (esmith@scag.gov)
Mark V. Gende, Esq., (mvg@swblaw.com)
Walter H. Bundy, Esq., (walter@bundymcdonald.com)
Adele J. Pope, Esq., (adele@popelawfirm.com)

Jenny S. Kitchings, Clerk, S.C. Court of Appeals ✓

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

Upon Motion of the undersigned, John A. Donsbach, that he be allowed to withdraw as counsel for Terry Brown, William Forlando Brown a/k/a Forlando Brown, and Romunzo Brown in accordance with Rule 11(b) of South Carolina Rules of Civil Procedure. The parties have terminated counsel's services and requested counsel's withdrawal. As such, withdrawal is appropriate under Rule 1.16(a)(3) of the South Carolina Rules of Professional Conduct. Counsel has not consulted with the opposing party as such consultation would serve no useful purpose.

Respectfully submitted, this 10th day of October, 2018.

s/ John A. Donsbach
John A. Donsbach
South Carolina Bar No. 69681
Attorney for Terry Brown, Forlando Brown,
Romunzo Brown
Donsbach Law Group, LLC
P.O. Box 212139
Martinez, Georgia 30917-2139
Telephone: (706) 650-8750
Facsimile: (706) 651-1399
Email: jdonsbach@donsbachking.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
CASE NO. 2010-CP-40-4900

RUSSELL BAUKNIGHT, as Trustee of)
the James Brown 2000 Irrevocable Trust)
and the James Brown Legacy Trust, as)
Personal Representative of the Estate of)
James Brown, and on behalf of Alan)
Wilson in his capacity as Attorney)
General of the State of South Carolina,)
and others,)

And)

ALAN Wilson in his capacity as Attorney)
General of the State of South Carolina,)
and others,)

Plaintiffs.)

v.)

Adele J. Pope)

Defendant.)

**RETURN AND MEMORANDUM
OPPOSING MOTION OF COUNSEL FOR
PLAINTIFF TERRY BROWN AND REAL-
PARTY-IN-INTEREST FORLANDO
BROWN TO BE RELIEVED AS
COUNSEL BASED ON ASSERTED
TERMINATION BY CLIENT**

The motion of John Donsbach, Esq., to be relieved as counsel in this case for Plaintiff/Respondent Terry Brown ("Terry") and Terry's real-party-in-interest, Forlando Brown¹, should be denied for the following reasons:

1. Forlando's and Terry's fabricated "Terminations" of counsel are part of their 11-year fraud on this and other Courts.
2. This Court lacks jurisdiction to hear the motion until the stay, which Terry and Forlando support, is lifted.

¹ Forlando Brown is also known as William James Brown and William Forlando Brown.

3. Terry and Forlando seek to deprive this Court of jurisdiction over them and their assets, including their "Termination Rights" and under §§ 203 and 304 of the Copyright Act, and proceeds.
4. Terry is seeking to conceal violations of the Statute of Elizabeth, S.C. Code § 27-23-10 *et. seq.*, since this case was filed in 2010.
5. Terry and Forlando are seeking to render the contested issues in this Case moot.

Since 2007 Terry and Forlando Brown have worked with felon David Cannon and his co-trustee Albert Dallas to damage and discredit Robert Buchanan, Jr. and current Appellant/Counterclaim Plaintiff; cover up the \$17 million theft of Cannon; and secure the James Brown assets for themselves, with a \$5 million commission to Dallas, while claiming to support James Brown's estate plan. Fabricating "terminations" of Bell, Donsbach, even Sweeny, Wingate and Barrow, PC. ("Wingate") are just part of the tactics Terry and Forlando have employed since 2010 to damage Appellant/Counterclaim Plaintiff, and which show that there was no basis for Terry to be relieved of default, and that both the assets of Terry and Forlando, including Termination Rights, which are now under the jurisdiction of this Court, should remain available for satisfaction and offset of the counterclaims of Appellant/Counterclaim Defendant and possibly Buchanan.

The current appeal involves, among other issues, whether Terry should be relieved from default as to Appellant/Counterclaim Plaintiff's and Buchanan's counterclaims for abuse of process, fraud on the courts, intentional interference with contract, and other claims, as well as attorneys' fees, costs and offset against Terry's interest in Respondents Estate/2000 Trust and James Brown Legacy Trust. The fraud on the Courts includes known false statements and support for a \$4.7 million valuation of Brown's assets which increased the share of Forlando in Plaintiff 2000 Trust from about 1/300 to about 1/25, and the planting of the false Grammy © story which

was noted by the Supreme Court. Also, it is the direct fraud of Forlando, the real party in interest who now holds (or claims) Terry's Termination Rights and shares in Plaintiff James Brown Legacy Trust, which, in turn now claims it does not exist.

The "termination" of Donsbach is a tactic to deprive the Court of jurisdiction and render the important contested issues in this appeal moot so that Terry, Forlando and Dallas can deprive the Court of jurisdiction over the pending appeal and render the contested issued in the appeal moot. Donsbach should be questioned as to whether he had a part in the scheme.

Terry and Forlando, who have repeatedly defrauded multiple courts, should not be relieved from default as to the judgment Buchanan and Counterclaim Plaintiff/ Appellant received against them in 2010 after Plaintiffs voluntarily subjected themselves and their share in the assets of James Brown and Termination Rights related to his 900 copyrights to the jurisdiction of this Court on May 19, 2010 in an effort to discredit and damage Buchanan and Pope.

If Terry and Forlando are able to escape the jurisdiction of this Court, taking with them the Termination Rights they placed in Plaintiff James Brown Legacy Trust and other South Carolina assets, some of the issues in the pre-trial appeal and Appellant's counterclaim for the millions of dollars of damage they have caused to her will be rendered moot.

Terry and Forlando, by their "termination" of John Donsbach, now seek to deprive this Court of jurisdiction over them and their assets, including their Termination Rights under §203 and §304 of the Copyright Act, and interest in Brown's Tangible Personal Property (TPP) against which Appellant has a claim for offset, and over which this Court may lose jurisdiction if the stay is not lifted and Donsbach questioned as to the circumstances of his "termination." The "termination", along with the death of Plaintiff/Counterclaim Defendant Venisha Brown and the

claim of Plaintiff/Counterclaim Defendant James Brown Legacy Trust that it has ceased to exist, if the stay is not lifted, threaten to deprive this Court of jurisdiction over the parties and real-parties-in-interest, leaving not assets for the Court to address Terry's violations of the Statute of Elizabeth; the damage caused by Forlando's false Grammy© filing; and damage from the \$79 million devaluation of James Brown's music empire.

The motion was improperly filed without using the e-filing system. It appears to be directly related to a federal case in which some Plaintiffs appear to be asking the Court to divide up assets over which the surrendered jurisdiction to this Court in 2010.²

MEMORANDUM IN OPPOSITION TO MOTION TO RELIEVE COUNSEL

a. The Donsbach "Termination" Continues 11 Years of Fraud on Courts

In January 2007 Terry Brown and sons Forlando and Romunzo hired Louis Levenson, Esq. to help them, and others, set aside entertainer James Brown's estate plan without running afoul of Brown's *In Terrorem* clauses. Levenson filed suit for Terry and Forlando to remove Cannon and Dallas as Brown's PR/Trustees. They nominated Buchanan and Pope³ as special administrators

² The Court is asked to take judicial notice of the documents referenced herein, including the Complaint and Motions to Dismiss in U.S. Dist. Ct., Central Dist. of CA, Case No. 2:18-cv-00307, now transferred to S.C. and filings in S.C. District Court Case 3:08-cv-00014-WOB.

³ When selected, Appellant was a Certified Specialist in Estate Planning and Probate Law; a member of the American College of Trust and Estate Counsel (ACTEC); had more than 25 years of fiduciary litigation experience; and had done work for the Trustees of the nearly- \$50 Million Graham Foundation of Greenville, SC. In 2011 Appellant and Wm. Jeffrey Smith authored *Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* The article deals with how the Attorney General's failure to understand and protect the "I Feel Good" Charity through a proper heirs determination and "splitting heirs" to protect the Charity's 900 copyrights, with the Bauknight devaluation, left the \$80 million "I Feel Good" Charity with almost nothing for needy students.

By March 2007 Terry and Forlando had terminated Levenson and aligned themselves with Brown's PR/Trustees Cannon and Dallas⁴; and hired Bell, a close friend of Dallas. By that time Cannon had already filed a fabricated \$900,000 judgment against Brown's estate, and Dallas had falsely accused an associate in Levenson's office of improperly altering an affidavit. The Estate/Trust, through Buchanan and Pope, would soon uncover the \$17 million Cannon took from James Brown between 1999 and Brown's death on Christmas Day, 2006.

In July 2007 Powell Goldstein (PG) sent Cannon and Dallas documents to move James Brown's 2000 Trust and "I Feel Good" Charity from South Carolina to Georgia as SAs Buchanan and Pope were poised to uncover the first \$900,000 of the missing millions Cannon had stolen from James Brown. The documents were defective, and the transfer did not take place. The goal of Cannon and Dallas in taking the 2000 Trust from South Carolina was to affect a quick sale of James Brown's music empire for about \$100 million; reap a \$10 Million commission for themselves and nearly \$15 million for Brown's music manager

By August 2007 Cannon had resigned, claiming the \$900,000 taking was a "mistake." The Honorable Doyet A. Early, III, (Judge Early) ordered the services of PG, Greenberg Traurig (GT) and other counsel who had worked with Cannon terminated, and Cannon and Dallas agreed to deliver their files. PG refused to deliver its file.⁵

By September Forlando had hired PG to "investigate" Buchanan and Pope.

⁴ A third PR/Trustee, Alfred Bradley, died in 2010.

⁵ PG claimed it had not worked for Brown's estate until Buchanan and Pope received a \$47,000 bill, they sent to Cannon for the efforts to try to move the 2000 Trust to Georgia. Bauknight obtained the GT file in 2010, which contains information about a 2006 \$42 million professional appraisal by the Royal Bank of Scotland of 800 of Brown's 900 copyrights but concealed the contents.

On October 31, 2007 Forlando testified in a deposition that he was satisfied with the service of Buchanan and Pope. On November 20, 2007, when he resigned, Dallas told Judge Early he had worked “hand in glove” with Buchanan and Pope, and Forlando supported their appointment as PR/Trustees.

By November 30, however, Dallas was trying to undo his resignation, and Forlando and PG were assisting. In December PG worked simultaneously on a motion for Dallas to require Judge Early to recuse himself, and on what would become the “Forlando Federal Suit.”

On January 2, 2008 Forlando, through Bell and PG, filed S.C. District Court Case No. 3:08-cv-00014-WOB, known as the “Forlando Federal Suit.”. Claiming Forlando could get no relief in State court, Federal Suit Forlando’s 50+ page Complaint sought to enjoin James Brown’s 2000 Trust from taking any action until Cannon and Dallas were reinstated.

Forlando, Terry and Romunzo also moved before Judge Early to disqualify Levenson, claiming Levenson had changed legal positions when, for Venisha and other family members, he sued to set aside Brown’s Will and 2000 Trust. Terry and sons also filed six false grievances against Levenson in two states. Bell claimed for them that Levenson’s 30% contract with Terry and the family contained a forged signature.

Judge Early issued an order declining to disqualify Levenson and finding that Forlando’s and Terry’s 2007 contract with Levenson contemplated a Will/Trust contest. Judge Early ruled that Forlando and Terry – not Levenson – had changed legal positions. Judge Early also directed Bell to correct a misleading filing.⁶

⁶ Over the next ten years, Bell, a Georgia lawyer, participated in numerous S.C. Brown cases.

In February 2008 James Brown's Estate/2000 Trust, through Buchanan and Pope, filed suit against Cannon, Dallas and others to recover the \$17 million Cannon had taken. Buchanan and Pope also disallowed the claims of Cannon and Dallas for about \$5 million each, which had been filed in September 2007. The two sued.⁷

The 2000 Trust, through Buchanan and Pope, counterclaimed in the Forlando Suit, asking Forlando to pay for the attorneys' fees and costs of the frivolous attempt to reinstate Cannon and Dallas from his share of Brown's 2000 Trust. Under the "Fractional Share" formula for funding the 2000 Trust, at the time Forlando's share was about a 1/300 interest in the assets and income of the 2000 Trust until age 35.⁸

Levenson's deposition testimony in Aiken County Case 2013-CP-02-1337 (Aiken 1337) supports the position that Forlando's suit was fabricated and frivolous. Levenson outlined the 11-year impact Cannon and Dallas, through Bell, Terry and Forlando, have had on the James Brown litigation. He said, in part:

I believe that Bell's action to disqualify Judge Early, to disqualify me, bar grievances, were all the architecture of Buddy Dallas, designed to distract and dissuade the parties who were interested in getting to the meat and potatoes of the case and getting to it, which frankly they did a pretty good job. [Depos., p. 45]

⁷ When Buchanan and Pope were replaced by Russell Bauknight on May 26, 2009, both the Cannon and Dallas claims were ready to be resolved in favor of Brown's Estate/2000 Trust. Cannon was named as a witness against Buchanan and Pope in Richland County Case 2010-CP-40-4900 (Richland 4900), and nothing was recovered from him prior to his death in 2018. Russell Bauknight allowed Dallas, who was named as a Richland 4900 witness against Buchanan and Pope, to convert his claim from a \$5 million PR/Trustee commission claim to a contract claim for a percentage of the sale of Brown's assets. Dallas has been promoting a sale of the music empire for about \$100 million – with a \$5 million commission for himself – since 2007. Even though Dallas was co-trustee with Cannon when he took the \$17 million Brown left to his "I Feel Good" Charity, and helped cover up Cannon's taking, his \$5 million claim against James Brown's estate has not been resolved since 2007.

⁸ Forlando's education trust share under the "Fractional Share" formula of Brown's 2000 Trust is determined as of Brown's death, but is based on the Generation Skipping Exemption (GST) available in the year of Brown's death (\$2 million) and the value of the 2000 Trust after it gets assets under Brown's Will. At the time, the IRS estate tax proceeding was pending, but it appeared that the Fractional Share of the 7 Granchildren's Trust would be about \$2 Million/\$84 million, or 1/42 of Brown's assets and \$3+ million annual income. About 41/42 would go to the "I Feel Good" Charity.

Levenson also testified about Bell, who – but for his fabricated “terminations” – has represented Terry and Forlando in multiple James Brown cases since 2007: Levenson said:

- A. Ms. Pope said, long, so let the record reflect I agree with her. Yes.
 Absolutely. Mr. Bell was in league with Mr. Dallas. I believe that. I would tell that to his face. I believe Mr. Dallas was providing funds, or consideration, if not funds, for all three of them, Bell and his clients, to take positions that were supportive of Cannon for reasons that would only benefit Mr. Dallas if Mr. Cannon were to survive less bloody.

Describing the relationship between Cannon, a felon who had taken \$17 million from James Brown, and Dallas, Levenson said: “Cannon was the tail. Buddy was the dog.”

In August 2008 the Attorney General of South Carolina (AG) asserted the right to take effective control of James Brown’s assets⁹; declare Tommie Rae and six others Brown’s heirs; stop the Estate’s heirs’ determination; and give more than 2/3 of Brown’s assets to Tommie Rae and the AG’s (New) Charity.

In September 2008, Buchanan and Pope filed Brown’s Estate Tax Return, valuing Brown’s music empire (Schedule F) at \$84 million.¹⁰ The same week Forlando testified in a Federal Suit deposition that offers of \$150 million were still available for Brown’s music empire.¹¹ Within a few days, Forlando and all Plaintiffs had copies of the return.

⁹ Since 2009 the AG and Tommie Rae have held 75% voting control of Plaintiff Legacy Trust, and more than 2/3 beneficial interest, with the AG’s (New) Charity holding 47 ½% and Tommie Rae 23 ½%. The AG also has the right to remove and replace Bauknight, Trustee of the Legacy Trust, at will.

¹⁰ The \$84 million consists of approximately \$99 million for Brown’s 900 copyrights; right of publicity; claims against Cannon & others; Rolls Royce and fleet of vehicles, and other Tangible Personal Property (TPP), reduced by Brown’s debt of approximately \$15 million to the New York Teachers (TIAA).

¹¹ Both Terry and Forlando were part of TJBL, LLC, an Atlanta Investment Group seeking to purchase Brown’s assets. Between October 2007 and March 2008, TJBL sent three letters of intent to purchase the music empire for \$90 - \$100 million, and two offers to purchase Brown’s TPP for \$2 million. Forlando, with no contribution, was given a 39% interest in TJBL when it was officially formed on Dec. 5, 2007 as a Georgia LLC. Forlando concealed his TJBL interest from the Federal Court, claiming that he was an

In October 2008 Cannon uttered a forged "contract" with James Brown to the SLED agent investigating his activities. The forgery was intended to make some of the \$17 million Cannon took appear to be contract payments.

In November 2008 a 2-day Federal Court hearing was held on the temporary injunction Forlando was seeking against the 2000 Trust. With Forlando, Terry, Bell and PG counsel present, Brown's estate tax return was examined at length. No suggestion was made that the \$99 million (less \$15 million TIAA) debt was inaccurate.¹²

In January 2009, the AG, with knowledge of Terry's alliance with Cannon¹³, and Cannon's history, made Terry part of his settlement. Terry, with PG serving as his tax counsel, was given nearly 5% of Brown's assets and a right of first refusal to purchase Brown's music empire (the ROFR). A few minutes later, Russell Bauknight, already trustee of the AG's Legacy Trust, recommended that Judge Early approve the AG's settlement deal.

impoverished student desiring only to have his education paid for and carry out the wishes of his famous grandfather.

¹² Terry and Forlando did not oppose the formula presented by Buchanan and Pope to Judge Early in November 2007 for valuing the copyrights and right of publicity on the estate tax return. The formula proposed 12 ½ - 14 times annual royalties and ½ annual gross road revenues. Brown had brought in \$18 million in road revenues between 2003 and 2006. Judge Early gave Terry, Forlando and others 10 days to object to the valuation formula, but none did. In 2017 the Estate/2000 Trust's Copyright expert Roger Miller testified in a deposition about an influx of capital in the market for copyrights beginning in 2004 or 2005, and frothy investors seeking to buy "solid gold" music catalogs such as Brown's for 15 - 20 x annual revenues in 2006. Branding expert Terry Cox, part of TJBL with Forlando and Terry, valued the right of publicity (image and persona) in 2007 at \$45 - \$50 million.

¹³ A 2009 SLED Report into Cannon's actions and chart prepared for the Attorney General by Ellison Thomas, CPA, for Cannon's plea hearing, show that more than \$80 million came into Brown between 1999 and the end of 2006, and that Cannon "paid" himself more than \$12 million from these funds. Thomas failed to include an additional \$5 million that came to Brown in 1999 and the \$5 million "check to nobody" Cannon paid himself in 1999 from TIAA proceeds. The records nevertheless make clear that Brown brought in an average of more than \$8 million a year from 1999 until his 2006 death, and that Cannon took about 15%.

In seven days of hearings, Terry joined in the efforts of the AG, Tommie Rae and Bauknight to persuade Judge Early that Terry's purchase under the ROFR would be at fair market value and that the AG should stop the Estate's DNA-testing; put the AG in control; give "family" 52 ½% of Brown's assets; and "stipulate" that Tommie Rae and 7 "heirs" chosen by the AG were Brown's heirs under the Copyright Act and otherwise. Terry and others confirmed they had put their Copyright Act Termination Rights in Plaintiff Legacy Trust; that other heirs were not harmed. They claimed that Termination Rights were strictly a Federal issue.

Persuaded by the AG, Terry and others, on May 26, 2009 Judge Early approved the AG's settlement; put the AG in effective control of the James Brown assets; and replaced Buchanan and Pope with Bauknight. Bauknight stated under oath that he saw no conflict being PR/Trustee under Brown estate plan but working to carry out the AG's settlement deal.

In the fall of 2009, Terry supported lifting the stay imposed by the Buchanan/Pope appeal of the AG's settlement and securing an order from Judge Early that prevented any payment to Buchanan or Pope (and others) without Court order.

From 2009 until 2013 Terry and Bell actively participated in the efforts of the AG and Bauknight to discredit Buchanan and Pope, who were standing in the way of the plan to dismember James Brown's estate plan.

In August 2009 Terry and Forlando, supported Tommie Rae's proposal to discredit "bobadele" by devaluing Brown's 900 copyrights to \$24 million or less, and valuing Brown's right of publicity at zero. They supported hiring Peter Afterman, who was introduced by the sister of Tommie Rae's lawyer.

In February 2010 Cannon was indicted for about \$12 million of the \$17 million he had taken, and for a 2008 forgery to cover it up. The AG's office, rather than the local solicitor, handled the Cannon criminal case. In October 2010 the AG, Terry and others named Cannon as a witness against Buchanan and Pope in Richland 4900.

On May 18, 2010 Bell signed the Wingate contract for Terry to sue Buchanan and Pope and approved the Richland 4900 Wingate Complaint. (R., p.) Terry has ratified Bell's actions but claimed in his 2016 deposition (with Donsbach present) that he relied on lawyers for the allegations in the Richland 4900 Complaint and did not know anything about his ROFR.

On May 19, 2010 the Wingate firm filed Richland 4900 against Buchanan and Pope. Now-Governor Henry McMaster, without his knowledge, was named as a Plaintiff. Bauknight, with no legal authorization, claimed to be acting "on behalf of" the AG. From 2010 until 2013 Terry helped the AG and Bauknight conceal the Wingate contract under both discovery and FOIA, even though the contract says on its face it is subject to FOIA. (R, p.)¹⁴

In August 2010 Terry, the AG and others told the Appellant Court in what became *Wilson v. Dallas* that an appraisal was expected within a few weeks that would show that James Brown's estate and 2000 Trust were worth less than \$12 million when he died.

In September 2010 the Peter Afterman \$4.7 million valuation arrived, but Terry agreed with the AG, Bauknight and others not to show it to the Supreme Court for 8 months.

In December 2010 Terry supported Bauknight's IRS filings that set values for Brown's assets: 900 copyrights, \$23.7 million; Brown's right of right of publicity, zero; Brown's claims

¹⁴ Over Bauknight's objection, the Wingate contract was released by the Honorable William O Bartelsman (Judge Bertelsman) in the Forlando Federal Suit in the fall of 2013.

against Cannon, Dallas and others, zero; Brown's Rolls Royce and fleet of vehicles, zero; and Brown's TPP zero, even though in 2008 Terry/TJBL had twice offered to buy the TPP for \$2 million.

In January 2011 AG Alan Wilson replaced Governor McMaster as Attorney General, taking effective control of James Brown's music empire. Six years later, AG Wilson testified under oath that he authorized Richland 4900 to continue but knew nothing about the suit; nothing about James Brown's assets or music empire; nothing about Brown's heirs or estate plan; nothing about Richland 4900; and nothing about Plaintiff Legacy Trust he controls with Tommie Rae.

In January 2011, when the IRS did not challenge Bauknight's \$79 million devaluation of Brown's music empire, more than 30% of the assets of the "I Feel Good" Charity were shifted under Brown's 2000 Trust from the "I Feel Good" Charity to the 7 Grandchildren's Trust (R., p.). In addition to enhancing the value of Terry's ROFR, the devaluation to \$4.7 million took about \$3 million in scholarships a year from needy students and increased Forlando's trust share more than 10 times., from about 1/300 of the 2000 Trust to about 1/25.¹⁵

¹⁵ Under the "Fractional Share" clause of Brown's 2000 Trust, at the original \$84 million, Forlando's share had been 1/7 of about 1/42. Because the Fractional Share division is tied to the estate tax proceeding, the devaluation of Brown's assets by \$79 million, and the IRS's failure to challenge the \$4.7 million claimed value, shifted nearly 1/3 of the "I Feel Good" Charity's assets and income (nearly \$1 million a year) into the *taxable* 7 Grandchildren's Trust, where it will remain, taxed unnecessarily each year, until returned to the "I Feel Good" Charity as Forlando and the 7 other grandchildren reach 35. This tax problem is in addition to the annual reduction of required scholarships for needy students by about \$3 million caused by the Bauknight/Afterman devaluation to \$4.7 million. The serious charitable and tax problems caused by the Bauknight devaluation, and a simple way to resolve them, were discussed personally by Appellant with AG Wilson, then-Chief Deputy John McIntosh, and Solicitor General Robert Cook on March 6, 2013. The following week Appellant and counsel Adam Silvernail, Esq., discussed the same problems again with AG McIntosh and AG Cook.

In January 2011 Forlando planted the false Grammy © claim that would be noted by the Supreme Court in 2013 on the website of an Atlanta law firm.¹⁶ That month the AG, Terry and Forlando also sought sanctions against Buchanan and Pope for filing a brief that would have helped collect the approximately \$1.2 million costs associated with securing Cannon's resignation. Judge Early had directed Cannon and Dallas to pay these amounts in a 2008 Order.

In January 2011 Terry, the AG and others also signed an amendment to Plaintiff Legacy Trust¹⁷ allowing Terry to begin due diligence under his ROFR.¹⁸ Terry immediately transferred the ROFR and his interest in Brown's estate to Forlando. The documents were prepared by Bauknight's lawyers and circulated by the AG's office. Beginning in 2011 Terry worked with Bauknight and the AG to prevent disclosure of the secret Legacy Trust amendment. In 2013 Bauknight claimed under oath that the Assignment from Terry to Forlando was invalid. Terry's 2016 testimony was to the contrary.

In April 2011 Pope and Wm. Jeffrey Smith¹⁹ published *Private Foundations, Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good" Trust doesn't*. The article

¹⁶ The false planted story attributed Robert Potter, Esq., of KS, with "halting" the 2008 sale of James Brown's Grammy © at Christie's. The placing of the Grammy with Christie's, and the decision to withdraw it not to pay a \$5,000 legal fee to defend the sale of an approximately \$20,000 item were both proper and were made with Levenson present. Potter confirmed to Appellant that he was unaware of the false post. [See Affidavit, E. Alexander]

¹⁷ Plaintiff James Brown Legacy Trust is also known as the "Settlement Entity."

¹⁸ The amendment was prepared by one of the dozen Nexsen Pruet (NP) lawyers hired by Russell Bauknight, trustee of Plaintiff James Brown Legacy Trust. Terry, immediately and secretly, assigned his interest in his James Brown's asset, including the ROFR, to Forlando. The Amendment and Assignment were distributed by the Attorney General's office (OAG) to settling parties.

¹⁹ Smith, a retired lawyer, Georgetown Law graduate and former patent examiner, was also a former Clemson DeeJay and electrical engineering graduate. Smith attended Woodstock fifty years ago and has been a lifelong student of all genres of music. In June 2008 Buchanan and Pope contracted with Smith for a modest price to assist them with preparing for issues related to Termination Rights, which would begin to impact a few of the "I Feel Good" Trust's 900 copyrights as early as 2012. The AG's August 2008 settlement deal stopped the heirs determination under both State and Federal law which Judge Early

shows how a devaluation of the music empire (Schedule F, Estate Tax Return) to \$12 million and a sale to Terry at that price under the ROFR would leave James Brown's "I Feel Good" Trust with almost nothing. *Private Foundations* proposed that charities could reduce or eliminate the impact of Termination Rights by a proper heirs determination, followed by "splitting heirs" – working with the most cooperative half (or half +1) of heirs to protect the copyrights.

In late 2011 Forlando became disenchanted with Bauknight. He later testified that Bauknight had refused to consider a possible sale of Brown's music empire for as much as \$200 million through contacts of Scott Kenily, Esq.²⁰

In May 2011 Forlando and Terry, with others, asked the Supreme Court to supplement the ROA in *Wilson v. Dallas* to show that Brown's music empire was worth only \$4.7 million when Brown died in 2006.²¹ Terry and Forlando joined the AG and others in the claim that Bauknight's ill-gotten \$10,000 IRS refund proved that the AG's settlement deal saved taxes. [Bauknight had overstated deductions by \$5 million.²²]

had authorized, at the request of Buchanan and Pope, in March 2008. Ten years later the heirs determination is incomplete.

²⁰ Dallas was claiming a commission of at least \$5 million, even though he was co-Trustee with Cannon while Cannon took \$17 million; did nothing to stop Cannon's theft; and wasted more than \$1 million in Estate funds covering up the takings.

²¹ By then Terry and others knew that between 1999 and 2006 Brown had brought in more than \$80 million, an average of more than \$8 million a year. Terry knew that the Estate had brought in more than \$7.3 Million in 18 months that Buchanan and Pope were PR/Trustees. And Terry knew from Forlando that Bauknight had rejected overtures for a sale of the music empire for as much as \$200 million.

²² After being unnecessarily taxed for 20 years or more, the funds which the Bauknight/Afterman \$79 million devaluation shifted to the 7 Grandchildren's Trust will return to the "I Feel Good" Charity as each of the 7 designated grandchildren reaches age 35. In the meantime, millions of dollars in scholarships will be lost, and millions of dollars in unnecessary income tax will be due. The exact amount is not known because Bauknight has failed to account since 2016, and there is no evidence of whether Beth Bauknight, CPA, has properly reported the Fractional Share division resulting from the \$4.7 million value. See Affidavit of Harley Ruff, Esq.. The Fractional Share tax problems were explored by Appellant

After May 2011, based on the same IRS “refund”, Terry joined the AG and Bauknight in repeatedly claiming that Buchanan and Pope overstated the value of Brown’s assets in IRS filings by \$79 million to get a \$5 million commission on a \$5 million estate, a federal felony. By Bauknight’s 2018 admission to a California Federal Court that he had spent “tens of millions” of dollars on legal fees from Brown’s “I Feel Good” Charity which he had valued at about \$4 million, it was clear that the Afterman \$79 million devaluation was improper.²³

In the fall of 2011, Terry moved to intervene in a FOIA case to prevent disclosure of the Wingate contract. Terry even sought sanctions against Pope in the FOIA suit, but later testified he knew nothing about the suit.

In October 2011 the AG allowed Cannon to enter an *Alford* plea to some of the takings. Neither the AG nor Bauknight sought restitution or jail time for Cannon, even though Cannon had taken \$17 million directly from funds Brown devised to educate needy students.

On November 1, 2011, Terry supported Bauknight’s claims to the Supreme Court that Tommie Rae’s elective share was a “slamdunk;” that Tommie Rae and James B. controlled the Termination Rights; that Brown’s Estate and 2000 Trust had no corpus to speak of; that Termination Rights are all this estate is about; and that, but for the AG’s settlement, there would be nothing in the “I Feel Good” Trust by 2023. [ROA, p.] Bauknight also represented to the Supreme Court that nobody was trying to buy Brown’s assets.

(qualified as an expert) and expert W. Steven Johnson, Esq., in the trial of Aiken County Case 2013-CP-02-1337 (Aiken 1337) in 2018.

²³ In addition to Forlando’s sworn testimony that the \$4.7 million was “bogus”, the testimony and public admissions of Jg. Walter Williams (retired); Buchanan; Plaintiff Jason Brown-Lewis; and others confirm that the \$4.7 million value is improper. This includes the filings of multiple Richland 4900 Plaintiffs that only a portion of the rights to only 5 of Brown’s 900 copyrights sold for about \$6 million.

In the fall of 2011 Forlando fabricated the firing of Bell in the Forlando Suit. Forlando's goal was to evade offset from his now-enhanced 2000 Trust share of the approximately \$400,000.00 of legal fees and costs advance by ALPS and Buchanan's carrier to defend against his efforts to reinstate Cannon and Dallas. Forlando also terminated PG and a third law firm representing him in the Forlando Federal suit.

In the spring of 2012 Judge Bertelsman allowed Forlando to drop his 4-year frivolous suit, based on Forlando's false claim to Judge Bertelsman that he had no assets and no expectation of assets from the James Brown litigation unless Terry were dead. At the time, Forlando actually owned nearly 5% of Plaintiff Legacy Trust; Terry's 1/6 of Brown's personal and household effects; and -- at a minimum -- Terry's vested Termination Rights and a share of the Termination Rights proceeds Terry and others had put in the Legacy Trust.

In 2012 Terry joined the AG and Bauknight in claiming both to Judge Early and the Supreme Court that Tommie Rae was Brown's spouse and making vitriolic false claims about Pope. Pope was seeking to void 2008 *ex parte* gag orders related to Tommie Rae's public handwritten admissions that she was married, living with her husband, and possibly pregnant before leaving her husband and conducting a ceremony with Brown.

In July 2012 Terry, Tommie Rae, the AG and others "settled" with Buchanan. The AG consented to Bauknight's paying Buchanan \$500,000 to secure releases for Richland 4900 Plaintiffs from Buchanan's counterclaims. While the Wingate contract requires each Plaintiff to pay his share of costs, Bauknight paid nearly \$25,000 for Terry's release by Buchanan; more than \$100,000 for Tommie Rae's release; and more than \$200,000 for the AG's (New) Charity's

release.²⁴ [Buchanan retained his claims against Forlando, and the transfer of Terry's assets to Forlando was not disclosed to him.]

Terry supported the AG's requirement that Buchanan not help protect the "I Feel Good" Charity by the filing of a Petition for Rehearing in *Wilson v. Dallas*.

In 2012 Terry rejected Pope's Offer of Judgment which would have helped save James Brown's estate plan. Forlando claimed to Appellant that he had "fired" Wingate, but Wingate never reported the firing to the Richland 4900 Court.

On October 31, 2012 Bauknight created JB BIOPIC, LLC, for-profit South Carolina Corporation for which there has never been a proper accounting.²⁵ Terry's financial interest in JB BIOPIC, LLC, and the results of his transfer of that interest to Forlando, are the subject of this case.

In February 2013 the S.C. Supreme Court issued its first, later substituted, decision in *Wilson v. Dallas*. The false claim of the AG and Terry that Buchanan and Pope were seeking a \$5 million commission from a \$5 million estate and the false Grammy © claim were clearly reflected in the Court's decision not to reinstate Buchanan and Pope.

On March 6, 2013, Pope met with AG Wilson, Solicitor General Robert Cook and then-Chief Deputy AG John McIntosh to review the damage to Brown's "I Feel Good" Charity Bauknight had caused by the devaluation to \$4.7 million value, including both tax problems and

²⁴ The \$500,000 paid to Buchanan was what he was owed on a time + costs basis as unpaid partial PR/Trustee commission under his contract with the Estate/2000 Trust through May 26, 2009, when he was replaced, without the court-ordered interest. Bauknight stated under oath in 2018 in Aiken 1337 that Buchanan had not received any PR/Trustee commission.

²⁵ The Corporation was created 2 years after this lawsuit was filed. It was listed at \$1 on one or more Bauknight accountings, then disappeared. Bauknight has not accounted since 2016.

the reduction in scholarships for needy students by \$3 million a year. She suggested how the devaluation could still be corrected quietly, by anyone other than Bauknight. Pope and her attorney had a second visit with AG Cook and AG McIntosh for the same purpose.

Solicitor General Cook testified in 2016 that he believed Pope was competent and sincerely concerned about the "I Feel Good" Trust, not greedy as claimed by Bauknight and the AG in their filings. In his 2017 deposition AG Wilson did not recall the meeting but stated he did not challenge Pope's recollection of it.

The Supreme Court had admonished AG Wilson to conclude Richland 4900 and the James Brown FOIA matters "in the first instance," and the AG told both Pope and the Supreme Court that he was getting out of Richland 4900. By March 27, 2013, however, the plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement was already being implemented by Terry, the AG and others.

To disregard the Supreme Court and reinstate the AG's 2008 settlement, the AG, Terry and others settling parties -- spending James Brown's fortune -- needed to: continue justification of the \$4.7 million value claim to discredit Buchanan and Pope; continue their incorrect statements to the Court about Brown's heirs and Termination Rights; prevent re-release of the "Hynie diary" (Tommie Rae's handwritten admissions) under FOIA; stop Richland 4900 until Judge Early approved the AG's settlement a second time; silence Buchanan and Pope; and keep Brown's real heirs out of the Tommie Rae and James B. proceedings. Terry and Forlando, with Dallas, could

help by claiming to be strong supporters of the estate plan so that there would appear to be a real controversy, and so that it would appear to be too expensive to defend James Brown's estate plan.²⁶

On March 14, 2013 Plaintiff James B's lawyer filed a Petition for Rehearing attempting to justify the \$4.7 million claimed value. His petition revealed that in the IRS proceeding Bauknight had valued Brown's 900 copyrights at \$23.7 million and Brown's Right of Publicity, Rolls Royce, fleet of vehicles, other TPP and the claims against Cannon and others at zero, or near zero. Within the appraisal, Bauknight had overstated Brown's TIAA debt by \$3 million, claiming it was \$19 million, rather than about \$15 million.²⁷ He worked in tandem with the AG and others on their Petitions for Rehearing.²⁸

The AG claimed in his Petition that he was getting out of Richland 4900 and hoped to conclude the FOIA matters shortly. Bauknight claimed in his Petition that he could change gears and now defend the estate plan he, Wingate and a dozen other lawyers had been working to defeat for four years. Levenson's Petition for Rehearing assured the Supreme Court that the Richland 4900 claims against Buchanan and Pope were meritorious.

On March 27, 2013, just days after the AG filed his Motion to be Dropped from Richland 4900, Terry, the AG and others asked the Honorable L. Case Manning (Judge Manning) NOT to

²⁶ The Court is asked to compare the legal fees and costs incurred by Buchanan and Pope to defend James Brown's estate plan and appeals of both Cannon and Dallas over a nearly-6-year period from December 2007 until May 8, 2013 with the "tens of millions" of dollars the AG has allowed Brown to spend to try to dismember Brown's "I Feel Good" Charity and take its 900 copyright twice.

²⁷ Before Shahid's filing, the \$4.7 million claimed value was known, but how it was allocated among the assets on Schedule F2 of the Estate Tax Return, and the \$3 million overstatement of the TIAA debt (from about \$15 million to \$19 Million) were not publicly known. Terry, Forlando and Bell, however, knew of these problems in 2010.

²⁸ Sr. Asst. AG Jones testified in his 2016 deposition that the AG and Settling Parties continued to share a "common interest" privilege they formed on August 10, 2008 until the final *Wilson v. Dallas* decision of May 8, 2013.

hear anything in either the FOIA cases or Richland 4900. In a Return filed April 1, 2013, Appellant opposed the stay request. She asserted Wingate lacked authority to speak for Terry and other Plaintiffs, because:

...f. Plaintiff (8) Terry Brown because Terry's entire interest in James Brown's Estate was assigned to his son Forlando on January 3, 2011; Wingate concealed the Assignment despite valid discovery requests for almost 2 years; Wingate has repeatedly refused to allow Terry to be deposed; Terry's counsel David Bell, Esq, for himself and counsel Matt Bodman, Esq., has confirmed in writing since February 27 that he supports the February 27 decision; and it has been confirmed that Terry did not even know Wingate filed Case 4900 in Terry's name or sought to intervene for Terry in a FOIA suit or seek sanctions against Pope.

On April 25, 2013 Bauknight formed JB IP HOLDINGS, LLC, a for-profit South Carolina Corporation with a term ending 12/3/2099. Bauknight has never accounted for the assets transferred to, or income of, this corporation. Terry's interest in JB IP HOLDINGS, LLC, and/or the amount of this LLC which he has transferred to Forlando, is unknown at this time.

On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas*, and by May 12, the AG, Terry, Levenson and Tommie Rae had worked to temporarily reinstate Bauknight. A second request had been made to stay Richland 4900 and the FOIA cases.

On May 29, 2013 Levenson and Tommie Rae's lawyer announced to Judge Early in open court their intention to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. Bauknight, Tommie Rae and Levenson asked Judge Early to exclude Buchanan and Pope, who had both tax and Termination Rights expertise, from all James Brown proceedings. AG Wilson, through Sr. Asst. AG Jones, expressed his pleasure that Bauknight had been reinstated. Bell, while continuing Terry's and Forlando's alliance with the AG and Tommie Rae in Richland 4900, asserted his clients were pleased with the *Wilson v. Dallas* decision.

By early June 2013 Forlando, who had earlier testified that the \$4.7 million claimed value was “bogus”, had hired Michael Melonakos, Esq., William Bird, Esq., and Andrew King, Esq., to help him evade Buchanan’s and Pope’s discovery requests in the Forlando Federal Suit. Melonakos attacked Buchanan and Pope, even repeating the false Dallas claim from 2008 that Appellant had had an affair with Judge Early.

On July 26, 2013 Tressa Hayes presented an Affidavit in Support of Judgment for Attorney’s Fees and Costs Against Defendants Cannon and Dallas outlining the details of the Cannon/Dallas interference, as well as her efficient work in the Wilson v. Dallas appeal.²⁹ Her total claim over 4 years was \$105,546.75.

In his August 20, 2013 deposition in the Forlando Federal Suit, Bauknight defended the AG’s 2008 settlement; claimed that Appellant had “raped” James Brown’s estate³⁰; claimed that Forlando had done nothing wrong in his 4-year effort to reinstate Cannon and Dallas, and that Buchanan and Pope’s counterclaim for costs was baseless. Bauknight, also claimed that Terry’s Assignment to Forlando was invalid because a PG lawyer had advised him to that effect. This

²⁹ To understand the extraordinary efforts of Cannon and Dallas, aided by Forlando in the 2008 Federal Suit, to damage Buchanan and Pope and re-take control over Brown’s music empire, the Court is asked to take judicial notice of the claim Affidavit of Tressa Hayes, Esq., dtd. July 26, 2013, in Aiken Case 122. Hayes filed the affidavit in response to the May 8, 2013 Wilson v. Dallas remand instructions and the Administrative Orders of the Honorable Doyet A. Early, III (Judge Early) dated June 13, 2013. Her total fee as one of 2 lawyers in the lower court defense against the AG’s settlement; preparing the Dallas and Cannon appeals; and assistance to James Richardson, Esq., *pro bono publico* lead appellate counsel in *Wilson v. Dallas*, was approximately \$105,000.00.000. As reported in his 2015 Status Report, Judge Early found the entire Hayes fee appropriate, but Bauknight paid Hayes only \$50,000 of the approximately \$76,000 due, and *without interest as provided in the South Carolina Probate Code (SCPC)*. Yet in 2018 Bauknight told the U.S. District Court for the Central District of California, Western Div., Case No. 2:18-cv-00306 that “tens of millions of dollars” had been spent in litigation costs from funds that James Brown gave his “I Feel Good” Charity.

³⁰ See Affidavit off Adele J. Pope opposing Allowing Counsel (Melonakos, Bird and King) to be relieved as counsel.

sworn testimony was inconsistent with the testimony and filings of the AG, Terry and Forlando. Bauknight revealed that Peter Afterman was the music "expert" on the \$4.7 million valuation.³¹

Bauknight's position about the Forlando Federal Suit differed from Levenson's sworn testimony of November 1, 2017: Asked about the Forlando Federal Suit, he said:

Q. Did you believe that it had any merit?

A. No. No I did not. [p. 48]

The following week Peter Afterman helped Tommie Rae and James B. file defective Termination Rights notices with the U.S. Copyright seeking to siphon off U.S. royalties from more than 90 James Brown copyrights between 2015 and 2023.

On September 14, 2013 Peter Afterman, in addition to helping Tommie Rae and James B. try to siphon off royalties, solicited Venisha and others at an Atlanta office. According to Levenson, Deanna refused to work with Tommie Rae. In addition, Toberoff was relying solely on DNA testing, causing problems for Richland 4900 Plaintiffs Larry Brown and Daryl Brown.³²

On September 23, 2013, Marc Toberoff, Esq. representing Terry and others, objected Warner/Chappell about Peter Afterman's help given Tommie Rae and James B. in their efforts to take royalties from more than 90 of Brown's 900 copyrights by 2023. He claimed, for Terry, that

³¹ Afterman later claimed to be an "expert" to show that GT had failed to collect more than \$10 million in pre-death sampling revenues for Brown. This expertise was exactly the opposite of the zero value he applied to the sampling revenues in the \$4.7 million. GT challenged his qualifications, and Afterman was withdrawn as an expert.

³² Levenson testified in his Nov. 1, 2017 deposition that Afterman had flown several DNA-proven heirs in for the meeting. A facebook post of DNA-proven daughter Jeanette Mitchell shows that Richland 4900 Plaintiffs Deanna, Yamma and Tonya were present, with Jeanette, LaRhonda (now deceased) and Nicole.

Tommie Rae was not Brown's spouse and James B. not Brown's son. [Depos. Terry Brown, 11/2/16, p 39- 43] The letter was sent by Forlando to Judge Early.

Terry and Toberoff were not, however, seeking to save James Brown's charity. They were seeking to weaken Bauknight – then siphon off the copyrights. By 2016 Terry's relationship with Marc Toberoff was "terminated."

In October 2013, after Deanna, Venisha and other Levenson Will/Trust contestants nominated Bauknight as PR/Trustee, while Forlando's lawyer Kenily also applied, Judge Early appointed Bauknight as PR/Trustee under Brown's Will and 2000 Trust, even though he continued to be Trustee of the AG's Legacy Trust.³³ At Bauknight's request, David Sojourner, Esq., was appointed limited SA/ST.

At his appointment hearing Bauknight claimed that he had paid off the \$14 million TIAA debt, which was only \$11.3 million when he was appointed. He claimed that he and Peter Afterman had provided value to Brown's estate and 2000 Trust. He did not disclose that Afterman was working for Tommie Rae.

By 2014, while still aligned with Tommie Rae in Richland 4900, Bell and Terry were working to exclude all real heirs from the Tommie Rae and James B. proceedings unless they were represented by Levenson or Bell. And Bell, in addition, was gathering various heir/clients for his side of the planned settlement announce by Levenson and Tommie Rae on May 26, 2013.

³³ From 2013 until today Bauknight has pursued Richland 4900 on behalf of Plaintiff James Brown Legacy Trust, while claiming in both lower court cases and the Court of Appeals that the Legacy Trust no longer exists. Tommie Rae's lawyer claimed in a hearing before Judge Early that it does exist, and that Bauknight should be "knighted" for his service to its beneficiaries: Tommie Rae, the AG's (New) Charity; Terry, Venisha and others James Brown excluded from his 2000 Trust and residuary estate.

In 2016 Tommie Rae stated in her deposition in this case that she was paid about \$1 million in 2015 for the “sale” of 3 James Brown songs, and that “some children” were also paid about \$1 million. When Venisha and others sued Bauknight, Tommie Rae and Sojourner in 2018 in California Federal Court, it became clear that the sale was approximately \$6 million; was a portion of the rights to 5 songs; and that Venisha, Terry and others had received a portion of the funds. The funds went to Venisha, Tommie Rae, Terry and others because neither Sojourner nor Bauknight had taken any action to challenge the Tommie Rae/James B./Afterman defective Termination Notices during the 2-year window before they could be exercised.³⁴

At the summary judgment hearing in the Forlando Federal suit, Bell returned as Forlando’s lawyer and continued the false claim that Forlando had no assets and no expectation of assets from the James Brown litigation unless Terry were dead. Bauknight’s counsel, speaking for Plaintiff 2000 Trust, did not correct the false statement. Bauknight’s counsel reported to the Court that the 2000 Trust sought nothing from Forlando and should not be there. Bell also told the Court he was Terry’s lawyer and not being paid in the Forlando Federal Suit.

By 2016 Sojourner and his former law partner had charged Brown’s estate \$1.4 million; taken only 1 deposition; and allowed Tommie Rae to be declared Brown’s spouse without even proffering her handwritten admissions that she was married, living with her husband and possibly pregnant before her ceremony with Brown.

In 2016 James B., whose maximum interest is 1/20 of an estate he claims was worth only \$5 million when Brown died, was awarded approximately \$700,000.00 in legal and GAL fees,

³⁴ Unlike Bauknight’s and Sojourner’s failure to protect the “I Feel Good” Charity from the “Tommie Rae Terminations,” The Ray Charles Foundation has successfully defended its right to challenge Termination Rights filings and confirmed in the 9th Circuit that a Charity whose royalties might be diminished by Termination Rights has standing to challenge those rights.

even though he had refused a paid-for \$300 DNA test. \$500,000 was for the work his attorney and GAL had done to that date, while \$200,000 was for approximately 40 depositions (at \$5,000 each) he said he would be taking to protect his interest in Brown's estate.

On November 2, 2016 Terry was deposed in Richland 4900. He stated that his lawyers were Kenily and Donsbach. A Wingate firm attorney also appeared for "all of the plaintiffs in case 4900 of which Mr. Terry Brown is one." [Depos., p. 4] When asked about the Complaint in 4900, Terry did not know what a complaint was (p. 43). He did not know what trusts Bauknight a trustee was of [p. 46], and did not know what the James Brown Legacy Trust was. (p. 48), but he acknowledged that Bauknight speaks for the trust. Terry testified that Bell no longer represented him. [p.56] but could not remember when he had stopped representing him.

Terry also claimed to know nothing about Richland 4900 or the FOIA suit in which he, had moved to intervene to stop release of the Wingate contract. P.28. He did not know whether James Brown and Tommie Rae were married. P. 2,3. He knew nothing about the January 2011 assignment of all of his interest in Brown's estate and property to Forlando except that he and Forlando were working together, and it was prepared by a lawyer "out of Atlanta." Yet Terry claimed:

A. What James Brown wanted, simple as that. That's all I ever wanted, simple as that. That's all I ever wanted, what James Brown wanted. P. 33

By 2017 Richland 4900 Plaintiff Terry was claiming to the S.C. Court of Appeals (correctly) that the Will/Trust challenges of Plaintiffs Venisha, Deanna, Yamma, Tonya, Daryl and Larry, were baseless. Yet he stayed aligned with them in Richland 4900, where they seek to dismember James Brown's estate plan a second time.

In 2018 the parties moved, once again, to Federal Court. They seek to escape the jurisdiction of the Richland County Court, and the S.C. Court of Appeals. There they can implement their 2013 announced intention to disregard *Wilson v. Dallas*; reinstate the AG's settlement; and deprive this Court and the S.C. Court of appeals of jurisdiction over them, as well as the assets and issues they placed before this Court in 2010.

b. This Court Lacks Jurisdiction to hear the Motion Until the Stay is Lifted

The motion was filed in a Court which lacks jurisdiction to hear it, and without following the required e-filing procedure. On that basis alone, it should be denied.

c. The Terry/Forlando Motion Seeks to Deprive the Court of Jurisdiction

The motion is intended to deprive the Court of jurisdiction over the Richland 4900 Plaintiffs, Forlando, who is the real-party-in-interest for Terry, and all matters related to James Brown's 900 copyrights, including Termination Rights of Plaintiffs and Appellant under §§ 203 and 304 of the U.S. Copyright Act, over which this Court was granted by the Plaintiffs, and assumed, jurisdiction in 2010.

d. The Motion Seeks to Conceal Terry's Statute of Elizabeth Violations

The motion is intended to cover up Terry's violations of the Statute of Elizabeth, S.C. Code § 27-23-10 *et. seq.*, including transfers to Forlando of his Interest in Plaintiff James Brown Legacy Trust, the personal and household effects (PHE) of James Brown, and Terry's Termination Rights and proceeds.

e. Terry and Forlando Seek to Render Contested Issues Moot

The motion is intended to render moot the contested issues in this case, including Appellant's right to payment of her counterclaims by offset against Terry's vested Termination Rights, their proceeds; Terry's interest in Plaintiff James Brown Legacy Trust; his PHE; and transfers to Forlando.

f. Counsel Should be Examined Regarding the Alleged Termination

Counsel should be examined under oath about his participation in Forlando's fourth "termination" of counsel, including why it was not filed in the S.C. Court of Appeals or the e-filing system.

Conclusion

This Court should hold the motion in abeyance until the stay imposed by the appeal in this case has been lifted as a result of Venisha Brown's death and other events. After Forlando is added as a party to this action, counsel should be examined. If he has participated in the fabricated "termination", the motion should be denied, and appropriate steps taken.

Respectfully submitted,

s/Walter H. Bundy

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October 29, 2018

From: **Walter Bundy** <walter@bundymcdonald.com>

Date: Thu, Nov 15, 2018 at 1:28 PM

Subject: James Brown Estate: Outstanding Motions

To: Early, Doyet A. <dearlyj@sccourts.org>

Cc: <aknoepfle@aikencountysc.gov>, <dearlyc@sccourts.org>, Early, Doyet A. Secretary (Karin Coker) <dearlysc@sccourts.org>, Adele Pope <adele@popelawfirm.com>, Mark V. Gende <MVG@swblaw.com>, Eugene Covington <gcovington@covpatlaw.com>, Williams, Burl F. <BWilliams@nexsenpruet.com>, Whbundy <WHBundy@att.net>, Adam T. Silvernail <adam@silvernaillawfirm.com>

Dear Judge Early:

I am writing to you on behalf of Adele J. Pope.

Richland 4900: The matter is on appeal, and a Supplemental Motion to Lift Stay has been filed, with hearing requested by Adam Silvernail. We believe this Motion must be heard and ruled on before anything else can be heard or decided because of the stay. Counsel in that case are Sweeny, Wingate and Barrow, PA, this firm and Adam Silvernail, who are copied on this email.

Aiken 1337: Your honor previously ruled proposed orders be submitted 15 days after the receipt of the entire transcript, which arrived on November 13, 2018. We calculate the date for submission of proposed orders to be November 28, 2018. My client is traveling out of the Country over the Christmas holidays, and we would request additional time above the 15 days for the submission of proposed orders. Counsel in Aiken 1337 are this firm, Burl Williams and Billy Newsome, who are copied on this email.

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**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. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown
And

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

Adele J. Pope and Robert L. Buchanan, Jr., Defendants.
Of whom Adele J. Pope is Appellant

**RETURN OF APPELLANT TO MOTION OF ATTORNEY GENERAL AND OTHER
RESPONDENTS TO STRIKE MOTION TO LIFT STAY**

Defendant opposes the Motion of Attorney General Alan Wilson, the James Brown Legacy Trust, deceased Plaintiff Venisha Brown and 14 additional Plaintiffs to Strike Plaintiffs' Supplemental Motion for Partial Lifting of the Stay in this appeal for each and all of the following reasons:

1. The Circuit Court lacks jurisdiction to address the motion to strike unless and until

the automatic stay resulting from this pretrial appeal is lifted.

2. The Honorable Doyet A. Early, III, presiding Judge in the lower court proceeding, has advised counsel that he is leaving the bench and has not scheduled the requested hearing on Appellant's motion for partial lifting of the stay, which must be heard before all other motions, yet some Respondents are urging Judge Early to rule on matters subject to this appeal prior to addressing the motion for partial lifting of the stay.
3. Until a motion to lift stay is granted, the Circuit Court's role is limited to addressing and limited to granting or denying the motion to lift stay.
4. Plaintiffs' use of the Circuit Court caption in this Appellate matter confuses the Court, as this matter is pending in the Court of Appeals.
5. Marc Toberoff, Esq., counsel for Respondents Venisha Brown, deceased, Deanna Brown Thomas, Yamma Brown Lumar in In Re: The Estate of James Brown, Appellate Case, No. 2018-0001900 has advised the South Carolina Supreme Court in a MOTION TO ACCEPT PETITION FOR WRIT OF CERTIORARI OR, IN THE ALTERNATIVE, FOR EXTENSION OF TIME TO FILE..., filed on November 9, 2018, which is incorporated herein by reference, that Venisha Brown died intestate on September 23, 2018, and, as of November 9 no Personal Representative had been appointed, thus no party has had authority since September 23, 2018 to make any motion, including the motion to strike, on behalf of Venisha Brown.
6. Plaintiff James Brown Legacy Trust is not entitled to any relief under the motion because it has claimed to the S.C. Court of Appeals that it does not exist, while pursuing a motion for partial summary judgment in this case and being, at a minimum, the equitable owner of the vested rights of Venisha Brown to some of the U.S. Copyright royalties now vested in Venisha under 17 U.S.C. 304(c) to "Baby cries over the Ocean" and 245 additional James Brown copyrights filed by Respondents Venisha Brown, Tonya Brown, Deanna Brown and others with the U.S. Copyright Office in 2018, after having been served on June 1, 2016 by mail on Warner-Tamerland Publishing Corporation and others, as is shown in Recorded Document V9955 D041 in the public records of the U.S. Copyright Office, the entire 49 pages of which this Court is asked to take judicial notice.
7. This Court has jurisdiction over the vested rights to the U.S. royalty proceeds to these 245 songs and had jurisdiction over them when the notice was served on June 1, 2016, and the rights vested in Venisha Brown and other individual Respondents and/or Respondent James Brown Legacy Trust, because all Respondents advised this Court in 2010 that they had placed such rights in Respondent James Brown Legacy Trust.
8. The Richland 4900 Court has had jurisdiction over these 245 copyrights and Termination Rights related to them since May 19, 2010 when Venisha Brown and all Respondents submitted themselves to the jurisdiction of this Court in the filing

of their Complaint against Robert Buchanan, Jr. and Appellant.

9. Appellant's right as a creditor of Venisha Brown in this case and appeal, in which Appellant seeks to overturn the lower court's decision which relieved Venisha and other Plaintiffs from default as to the counterclaim of Buchanan and Appellant, is superior to the \$2.4 million judgment obtained against Venisha Brown on or about 2014 now on file in Aiken County, and the concerted action of Venisha Brown and Respondent James Brown Legacy Trust to distribute these vested copyright royalties to persons other than as directed by this Court at the conclusion of the appeal is an overt attempt to deprive the Court of jurisdiction over Venisha's assets and render the issues in dispute in the appeal moot.
10. Respondent James Brown Legacy Trust and Respondents acting on behalf of the deceased Venisha Brown have unclean hands and have openly violated the Statute of Elizabeth since 2016.
11. Venisha acted in bad faith and direct violation of the Statute of Elizabeth prior to her death at the same time her counsel in this case advised this Court that she could not be found to be deposed by serving a claim to rights to U.S. royalties to 245 James Brown copyrights, while refusing to present herself for deposition. The bad faith was exacerbated when Venisha obtained partial summary judgment as to Appellant's counterclaims against her while refusing to appear.
12. Plaintiffs Sydney Lumar and Carrington Lumar are not entitled to any relief under the motion because their 40% SWB contract, as minors, was signed by Louis Levenson, Esq.; was not signed by any parent or guardian; both Mr. Levenson and SWB prevented the appointment of a GAL; and their 2016 depositions show that they have absolutely no knowledge of any breach of fiduciary duty of Robert Buchanan, Jr. or Appellant.
13. The \$500,000.00 payment made by Plaintiff Estate/2000 Trust to Buchanan to secure his release of Plaintiffs from the counterclaims in this case is clear evidence that the counterclaims of Appellant are meritorious.
14. Where now Governor Henry McMaster has admitted under oath in 2016 that he did not authorize Sweeny Wingate and Barrow, PA (SWB) to file this suit in his name as AG and did not know that it had been filed in the name of the State/AG until after he left office, SWB has no authority to continue to file this motion on behalf of the State/AG.
15. The allegations made, and relief requested in the November 13, 2018 motion by Attorney General Alan Wilson (AG Wilson) are inconsistent with AG Wilson's representation to the Honorable Doyet A. Early, III (Judge Early) on November 9 that he is taking no part in this case; inconsistent with AG Wilson's deposition excerpt testimony and exhibits filed in Aiken County Case 2013-CP-02-1337 (Aiken 1337), and inconsistent with the deposition testimony of Solicitor General Robert Cook, both filed in Aiken 1337 in 2018, of which the Court is asked to take judicial notice.

16. The allegations made, and relief requested on behalf of Plaintiffs Tonya Brown, Deanna Thomas and Yamma Lumar in the motion to strike are inconsistent the claims they are currently making in the S.C. District Court Complaint filed with the Motion to Lift Stay and the above-referenced Supreme Court Petition for Certiorari.
17. The allegations made, and relief requested on behalf of Plaintiff Tommie Rae Brown are inconsistent with her claim that she and Plaintiff James B., a minor, are now residents of London, U.K. and not subject to federal court jurisdiction over her termination interests under Sections 203 and 304 of the U.S. Copyright Act, 17 U.S.C. 101 et seq.
18. For all reasons stated in the Motion to Lift Stay and related filings

Respectfully submitted,

s/W.H. Bundy Jr.
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November 20, 2018

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

The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

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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.

CERTIFICATE OF COUNSEL

The undersigned counsel for Appellant certifies pursuant to Rule 210(g) that the Record on Appeal (Amended) served herewith includes all matter designated by Appellant and Respondents and no other matter.

s/Adam T. Silvernail

Adam T. Silvernail

Counsel for Appellant

June 15, 2020