

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
OCT 30 2020
SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2020-000967

Adele J. Pope, Appellant,

v.

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

**REPLY TO RETURN OF RESPONDENTS TO MOTION TO
SUPPLEMENT THE RECORD**

In their Return to Appellant's Motion to Supplement the Record, Respondents do not deny that Sweeny, Wingate and Barrow, PA [SWB] for 7 ½ years, and with knowledge that it lacked any authority to do so, used the power and prestige of the Attorney General of South Carolina ("State/AG") to advance the fraud of Tommie Rae Hynie, Forlando Brown and those aligned with them, to damage Robert Buchanan, Jr. and Appellant Adele Pope in Richland County Case 2010-CP-40-4900 ["Richland 4900"]. Respondents do not address that during those same 7 ½ years their own fiduciary was claiming to act "on behalf of" the AG while also acting on behalf of Hynie and others aligned with her. They do not deny that Respondents and SWB, until October 2020, concealed this lack of authority to act for the State/AG from multiple courts for 7 ½ years.

Respondents say Appellant was untimely in presenting the AG's October 2020 documents; that the AG's October 2020 Documents should have been presented to the lower court first; and that no judicial notice should be taken of them.

Respondents say that the AG's October 2020 revelations about SWB, and about Respondents' own fiduciary, are not relevant to this appeal, where a circuit judge enjoined the payment to Appellant of \$47,972, with interest, until SWB and Hynie conclude a lawsuit in which they have, without authority, appropriated the name and prestige of the State/AG for 7 ½ years, and disrupted FOIA compliance for 9 ½ years.

Respondents assert that these facts should not be considered by the Court in deciding whether it should reverse its dismissal and consider setting aside Nonpayment Orders which violate Appellant's Due Process rights.

Respondents say that the facts, including that since 2013 Richland 4900 has been conducted by SWB solely for Hynie and those private individuals, are not relevant to Appellant's request that the Court reconsider its dismissal of this appeal.

Respondents say the Court should not consider whether the circuit court trampled on Appellant's Due Process right by issuing Nonpayment Orders which may withhold her \$47,972 for a decade while supporting a decade of fraud in Richland 4900 by Hynie, Forlando¹ and certain former clients of Louis Levenson, Esq.

Appellant respectfully submits that Respondents are not correct.

On April 24, 2013 Attorney General Alan Wilson, through Chief Deputy AG John McIntosh, made clear that the State/AG was never a client of SWB in Richland 4900; that it would

¹ To avoid confusion all descendants and claimed descendants of entertainer James Brown are referred to herein by first names.

not pay its claimed 47.5% share of the costs entertainer James Brown's charity was advancing to Hynie and others seeking to dismember his charity; and that if *Wilson v. Dallas* were not altered, SWB would be required to disgorge everything it had been paid since 2010. With that knowledge SWB, Hynie and Russell Bauknight have conducted vicious, relentless litigation to damage Robert Buchanan, Jr. and Appellant Pope for 7 ½ years in Richland 4900; two FOIA cases associated with Richland 4900; and S.C. District Court Case 3:08-cv-00014-WOB, conducted by SWB's undisclosed client, Forlando Brown.

The AG's October 2020 Documents confirm that the dozen Nexsen Pruet (NP) attorneys who had worked since 2009 for Richland 4900 Plaintiff "Legacy Trust" at \$375 - \$500 to damage and discredit Robert Buchanan, Jr. and Appellant for defending the estate plan of James Brown, never missed a beat. They have continued their relentless attacks until October 30, 2020, virtually ignoring both the AG's clear April 24, 2013 letter and *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

On May 29, 2013 Levenson and one of Hynie's attorneys, Alan Medlin, Esq., announced in open court the plan to ignore *Wilson v. Dallas* and reinstate the AG's 2008 settlement. Levenson had already told the Supreme Court in his *Wilson v. Dallas* petition for rehearing that he would continue Richland 4900.

From the AG's April 24, 2013 letter until October 30, 2020 Hynie's fraud on multiple courts; attempts to blame the damage she has caused on Buchanan and Appellant in Richland 4900; and 9 ½ years of FOIA disruption to cover up the weakness of her positions has been fully supported by a dozen attorneys for Respondents; six of Hynie's own attorneys; Levenson and his staff; at least six SWB attorneys; and a bevy of "experts" engaged by Bauknight, but serving Hynie's Richland 4900 interests. Among these is Peter Afterman, Hynie's nonexpert music

manager since 2013. It was Afterman who fabricated the \$4.7 million claimed at-death value of James Brown's worldwide music empire in 2010 to discredit "Bobadele."²

By the end of 2013 Afterman had helped Hynie file public documents with the U.S. Copyright Office to siphon off royalties from the "I Feel Good" charity. Bauknight had called Appellant untruthful; endorsed the AG's 2008 settlement under oath; and claimed that Appellant (and presumably Buchanan) had "raped" James Brown estate while defending the estate plan from the AG's effort from 2008 to 2013 to "stipulate" that Hynie was Brown's spouse and give her about \$1 million of income a year and a quarter of Brown's charity for her nonexistent termination rights and those of her minor son.

SWB, Hynie and Bauknight have continued their relentless attacks on Buchanan and Appellant for the entire 7 ½ years since the April 24, 2013 letter was sent.

The AG's October 2020 Documents were released less than a month ago, and impact every aspect of Richland 4900 and the FOIA graveyard it has created. They place squarely at the feet of SWB, Hynie and those aligned with Hynie -- including Respondents, through Bauknight --- the pretrial morass in which Richland 4900 finds itself a decade after it was filed.

² Both Hynie and Afterman have repeatedly recanted the claimed \$4.7 million value, including in Supreme Court filings. Both now claim that termination rights, which will slowly apply only to the U.S. royalties which make up about half of Brown's \$4 million annual royalty stream, are worth "tens of millions of dollars."

Respondents have paid Afterman [Inaudible Productions] more than \$1 million since April 2013 while he has served as agent for Hynie and her attorneys in siphoning off royalties James Brown left to his "I Feel Good" charity to educate needy students.

By 2017 Respondents had withdrawn Afterman as an expert to value song sampling revenues when his qualifications were challenged.

As part of the claimed \$4.7 million value, Afterman valued Brown's iconic personal property, his right of publicity (image and likeness), and Brown's claims against former trustee Cannon and others related to the \$17 million Cannon had taken at zero, or near zero.

The Court should take judicial notice as requested, and make the AG's October 2020 Documents a part of the record in this case. It should reconsider and reverse its dismissal order, and make the AG's October 2020 Documents a part of the record on appeal ("ROA").

This reply is supported by Appellant's motion and the memorandum which follows.

MEMORANDUM IN REPLY IN SUPPORT OF SUPPLEMENTATION OF RECORD

Incorporation of Petition for Rehearing and Motion

Appellant incorporates in her reply in their entirety her Petition for Rehearing and related documents filed herein, and Appellant's Motion to Supplement the Record. Appellant refutes every claim in the Return not specifically addressed herein.

Respondents' Background Omits Critical Facts About Richland 4900

Respondents overlook in their Background that the essential element of this appeal is the Due Process violation resulting from the lower court's injunction, with no support in the record, of Respondents' payment to Appellant of \$47,972 which should have been paid to Appellant more than 11 years ago.

The basis for the injunction, and consequent denial of Appellant's Due Process rights, was the lower court's findings, without any evidence, that Aiken County Case 2013-CP-02-1337 ("Aiken 1337") and Richland 4900 are "companion cases;" that Respondents are seeking offset in Richland 4900; and that Appellant consented in 2015 to the injunction imposed on her in 2020. The AG's 2020 Documents highlight the lower court's error. With already-known information, they show:

1. Respondents' fiduciary Bauknight has served the interests of Hynie in Richland 4900, not the interests of James Brown's estate plan, for 10 ½ years.
2. Bauknight has known for at least 7 ½ years that he had no authority to act for the State/AG, but continued to do so for the benefit of Hynie and those aligned with her.

3. Bauknight's 9 1/2 -year FOIA disruption has been fueled at least since 2012 by SWB's direction to the AG, the public official charged with the enforcement of FOIA, not to comply with FOIA because it might be embarrassing or damage Hynie and others.
4. With knowledge of the April 24, 2013 letter of AG McIntosh, SWB represented to Judge Early in 2016 that the AG was a client of SWB, gaining permission to attend and delay depositions of the AG's staff in Aiken 1337.
5. Respondents – through Bauknight – have repeatedly accused Appellant of “officious intermeddling” in James Brown matters, where actually Hynie, SWB and Forlando have intermeddled in Aiken 1337 and valid FOIA cases for 7 ½ year since the Chief Deputy McIntosh's April 24, 2013 letter.
6. SWB and Bauknight obtained relief from default as to Buchanan's and Pope's counterclaims for both the AG and Hynie on October 13, 2015 without disclosing that the AG had notified SWB that it was not a client of SWB 2 ½ years earlier.
7. Court of Appeals Case No. 2017-001899, the appeal of the AG's being relieved from default, then dismissed under Rule 21, was conducted and decided without SWB, the AG or Respondents notifying this Court that the State/AG was never a client of SWB.
8. Two FOIA cases were moved from Newberry County and have been delayed since 2011 based on the representation by SWB, Bauknight “on behalf of” the AG, and Respondents, that the AG was a party to Richland 4900 when all had actual knowledge from April 24, 2013 that the AG's position was that it was never a client of SWB.
9. Since now-Governor McMaster stated under oath in October 2016 that he had never authorized SWB to file Richland 4900 in the name of the State/AG; did not authorize Bauknight to speak “on behalf of” the AG in Richland 4900; and did not know he had been named as a Richland 4900 Plaintiff until after leaving office in January 2011, SWB, Respondents, Hynie, and Bauknight acting on behalf of both Hynie and the AG, have vigorously sought to suppress this sworn testimony.
10. Governor McMaster's sworn 2016 testimony, that he did not sue Buchanan and Pope is entirely consistent with the letter of Chief Deputy AG John McIntosh to SWB on April 14, 2013, which SWB and Bauknight have concealed in Richland 4900, three FOIA cases, two Richland 4900 appeals and three FOIA appeals in the last 7 ½ years.

Charts A and B, when taken with the Richland 4900 complaint which has never been amended, and the Wingate Contract which SWB withheld until 2020, show that SWB and Hynie's counsel have known since 2010 that Governor McMaster did not authorize Richland 4900 to be brought in the name of the State/AG, but they did it anyway. For more than a decade they have used the power and prestige of the Office of the Attorney General, and the funds of James Brown's charity, to ruin the careers and reputations of Buchanan and Appellant.

Chart C is a small excerpt from an exhibit proffered at trial in Aiken 1337 in 2018. It shows that years of litigation; additional damage to Buchanan and Appellant; and expenditures from James Brown's charity could have been stopped at any point since April 24, 2013 if either SWB or Respondents had notified the Richland 4900 Courts of the April 24, 2013 letter of Chief Deputy AG McIntosh. It also shows the lengths to which SWB and Respondents, through Bauknight, have gone to damage Buchanan and Appellant, principally for the benefit of Tommie Rae and Forlando, since the AG's April 24, 2013 letter to SWB. Chart C recites:

1. Bauknight asserts tens of millions of dollars in legal fees from James Brown's charity spent since 2007.
2. Bauknight asserts millions spent related to Pope's \$2.8 million fee claim [which Pope offered to settle before and during the Aiken 1337 trial for \$2.1 million].
3. Peter Afterman [Inaudible Productions] paid \$300,000+ per year while helping Tommie Rae & James B. siphon off James Brown "I Feel Good" copyright royalties.
4. [SA/ST] Sojourner paid \$1.5 million [to defend James Brown's estate plan against Hynie], but claims no duty to protect the copyrights.
5. Deanna, Yamma, others provide additional evidence Tommie Rae not spouse.
6. Bauknight/Sojourner/Tommie Rae sued over alleged backroom copyright deals.

...

[2013] Disallowance Requires Pope to File Aiken 1337. Bauknight claims \$99 Million Less \$15 Million TIAA Debt is Overinflated and Self-Serving (May 29, 2013 – 2018)

...
AG Helps Reinstate Bauknight – Continues to Pursue Richland 4900
with Tommie Rae

The AG's October 2020 Documents show two things. First, Appellant was never intermeddling in James Brown estate matters. Instead, since April 2013, SWB and Bauknight, acting for Tommie Rae, and purporting to act for the AG, have intermeddled in FOIA cases; Aiken 1337; Forlando's 2008 federal suit to enjoin the 2000 Trust until felon David Cannon was reinstated, U.S. District Court Case No. 3:08-cv-00014-WOB; and anywhere else they can, including this \$47,972 SA fee matter, to assure that Buchanan and Pope never be paid a penny until they give up and agree to the false "fact" that it was good for James Brown's charity to declare Hynie the spouse of James Brown and give her a quarter of his music empire.

Second, at any point in the last 7 ½ years – including now – the damage to Buchanan and Pope, and the costs James Brown's charity, through Bauknight, has advanced to Hynie and Forlando to inflict that damage, could be brought to a halt.

The records to show just how much Respondents have spent from James Brown's charity since May 26, 2009 to damage Buchanan and Appellant were filed by Bauknight *ex parte* with the Aiken 1337 Court. They were reviewed; discarded; and the order for production rescinded when Appellant's counsel objected to the circuit court's *ex parte* review of these critical documents during trial.

The AG's October 2020 Documents suggest that this Court might find that that the circuit court should not have issued an order which allows Respondents to waste \$47,972 or more in legal fees to assure that Appellant not be paid \$47,972, with interest, where only Hynie, Forlando and Will/Trust contestants will reap any benefit from Richland 4900.

RESPONSES TO THE ARGUMENT OF RESPONDENTS

A. The Supplement is Appropriate Whether or Not the Motion Arrived Before Dismissal

The motion to supplement arrived on the day of the dismissal order. Respondents assert that this was too late. It was not. The Court should consider these material documents in both its decision to reconsider the dismissal and in the appeal itself.

B. The Court of Appeals has Current Jurisdiction over All Aiken 1337 Matters

Respondents assert that this case should have been submitted to the lower court, but there is no lower court to present it to. All aspects of Aiken 1337 except the undisputed judgment of Appellant's \$47,972 SA fee are now the subject of Court of Appeals Case 2019-000362.

The Court is asked to take judicial notice that Appellant has now asked the Supreme Court, the Richland 4900 FOIA Court, and the Court in this case to take judicial notice of the AG's startling October 2020 Documents.

C. The Circuit Court's Order Enjoining Payment of Pope's \$47,972 Until the Conclusion of Richland 4900, an Unauthorized, Unconstitutional "State Action," is Relevant to this Appeal

1. SWB's Service to Hynie, Forlando and those Aligned with Them Confirms that Richland 4900 is not a "companion case" to Aiken 1337.

As shown on Chart B, and discussed above, Forlando and Hynie now have a greater-than 50% stake in Richland 4900, and Respondents Estate/2000 Trust have no stake. Their fiduciary is acting "on behalf of" Hynie and those aligned with her. Respondents have even engaged Levenson in Aiken 1337 to take positions contrary to the Richland 4900 Plaintiffs who have terminated him, and in favor of the AG's 2008 settlement which favors Hynie.

The last 7 1/2 years Bauknight has, without authority, used the power and prestige of the AG's office to carry out Hynie's and Forlando's plans. This unauthorized State action makes clear that Richland 4900 is not, and never was, a companion case to Aiken 1337.

2. The Lower Court Violated Appellant's Due Process and Equal Protection Rights by Enjoining the Payment of her \$47,972 until Hynie Concludes Richland 4900.

Due process is violated when a party is denied fundamental fairness. *City of Spartanburg v. Parris*, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (1968). Due process is flexible and calls for such procedural protections as the particular situation demands. *Sloan v. S.C. Bd. Of Physical Therapy Exam'rs*, 370 S.C. 452, 636 S.E.2d 598 (2006). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *S.C. Dep't. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). Due process has been denied in Richland 4900 since it was commenced. The Nonpayment Orders have continued that violation of Appellant's Due Process right, and the AG's October 2020 Documents make this clear.

In addition, the \$47,972 Nonpayment Orders have violated Appellant rights to equal treatment as a creditor of Respondents. They have done so while Respondents paid tens of millions of dollars to equal or lower-priority creditors to benefit Hynie and Forlando.

D. Judicial Notice of Documents Confirming an Abuse of the Power and Prestige of the Office of the Attorney General is appropriate.

Even if they were not part of the ROA in this case, which has not been submitted, the Court should take judicial notice of the AG's 2020 Documents. They are undisputed, extraordinary, relevant, and reliable.

1. The AG's October 2020 Documents Show SWB, With No Authority, used State/AG Power to Damage Buchanan and Pope for 7 ½ Years Principally for Hynie.

Charts A, B and C, and the records in Court of Appeals Case No. 2017-001899 and 2018-002229 make clear that SWB and Respondents have withheld the critical October 2020

Documents for 7 ½ years to damage Buchanan and Appellant principally for the benefit of Hynie, but they have also provided extraordinary benefit to Forlando. Forlando's trust share has been increased tenfold at the expense of James Brown's charity by the \$4.7 million valuation by Hynie's music agent.

SWB even undertook to represent Respondents to assure that Buchanan and Appellant's counsel were not reimbursed for the approximately \$400,000 spent between 2008 and 2012 to prevent Forlando from enjoining the 2000 Trust. Forlando paid no part from his enhanced trust share for his 4-year effort, with 8 attorneys, to reinstate felon David Cannon as James Brown's trustee.

2. The AG's October 2020 Documents Confirm SWB's Disruption of FOIA for 9 ½ Years to Benefit Hynie, Forlando and Those Aligned With Them to Damage Buchanan and Pope.

In 2012 the release of four public documents under FOIA could have brought an end to Richland 4900 and the FOIA cases, and avoided Aiken 1337. Yet, as the AG's October 2020 Documents show, SWB counseled the AG to violate his duties under FOIA to avoid embarrassment and to help Hynie and those aligned with her damage Buchanan and Pope. The AG did that. Until 2020.

3. The AG's October 2020 Documents Show that Respondents and SWB used AG/State Authority to Conceal Forlando's Fraud to Damage Buchanan and Pope.

Forlando's fraud on multiple courts began on Halloween Day 2007, months after he became aligned with felon David Cannon, who had stolen \$17 million from James Brown between 1999 and Brown's death on Christmas Day 2006. It has continued with false grievances filed against Levenson; Forlando's accusing Levenson of forgery of his fee contract; false affidavits in the federal court; the planting of the false Grammy© claim related to the 2008

Christie's sale; and Forlando's simultaneous support for the \$4.7 million Afterman claimed value for Brown's music empire and work on a \$200 million prospective sale.

Forlando has been an undisclosed SWB client since January 2011. He has helped SWB and Hynie damage Buchanan and Pope since. With Hynie, he holds a majority stake in Richland 4900.

4. The AG's October 2020 Documents Confirm that SWB Used State/AG Authority to Help Conceal Hynie's Fraud on Multiple Courts to Damage Buchanan and Pope.

The record in Richland 4900 is full of evidence of the fraud of Hynie and Forlando. The October 2020 Documents show how SWB and Bauknight, without authority, used the power and prestige of the Office of the AG to conceal this evidence in Richland 4900 and three FOIA cases to damage Buchanan and Appellant.

E. The Circuit Court Violated Appellant's Due Process Rights by Withholding her \$47,972

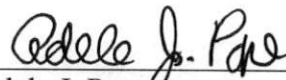
As stated above, the circuit court, with no evidentiary support in the record, relied on the representations of Respondents, through Bauknight, that Richland 4900 was a companion case to issue its injunction. This material error resulted in a reading of Rule 67 which was not only incorrect, but which violated her Due Process and Equal Protection rights for the benefit of Hynie and Forlando.

CONCLUSION

Based on the foregoing, this Court should consider the extraordinary October 2020 documents; order that they be made part of the record; reverse its decision to dismiss and retain this appeal; and direct that briefing proceed expeditiously because of the constitutional violations at stake.

[Signature on following page]

Respectfully submitted,



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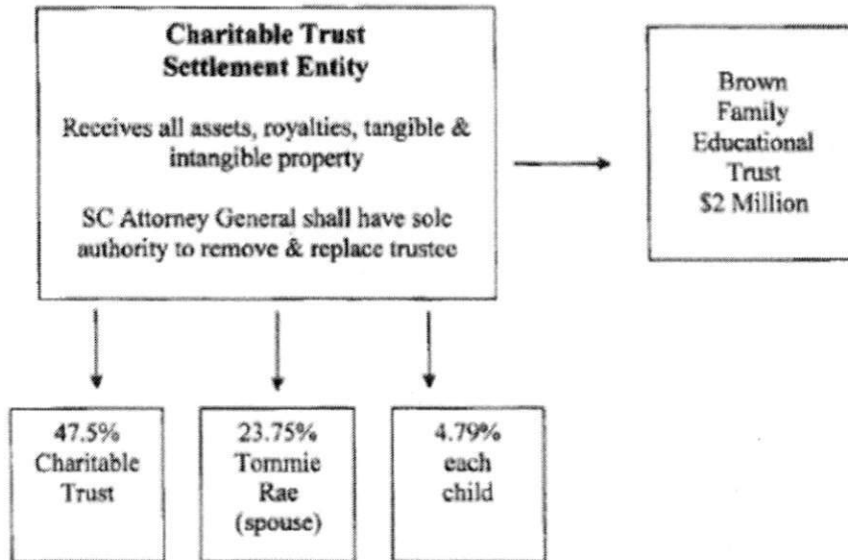
October 30, 2019

Chart A:

Clients of SWB In 2010

(As Represented by SWB at August 2010 Hearing before Judge Manning)

The Charitable Trust is diagrammed as follows:



Percentage of Damages and Costs

<u>Clients:</u>	<u>Percentage:</u>
1. Attorney General of South Carolina (AG)	47.5%
2. James Brown Legacy Trust (Legacy Trust)	100% ¹
3. Tommie Rae Hynie (Tommy Rae)	23.75%
4. Terry Brown (Terry)	4.79%
5. Levenson Clients (Daryl, Larry, Venisha, Deanna, Yamma)	23.95%
6. Estate/2000 Irrevocable Trust of James Brown	0%

Claimed Ownership of Copyright Termination Rights

100%

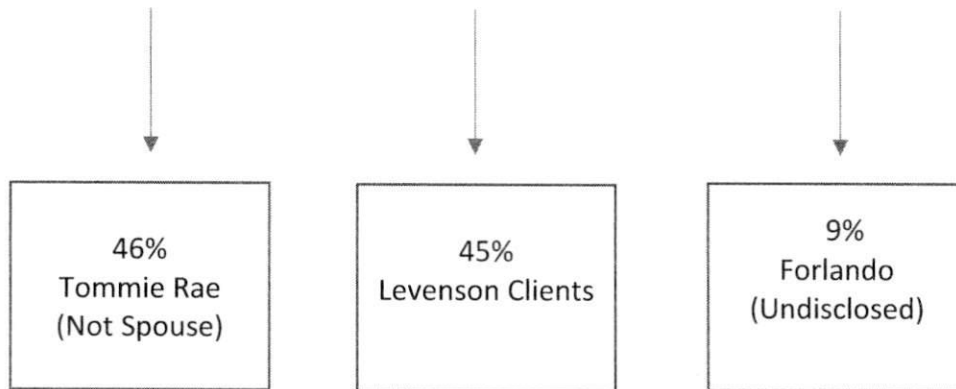
¹ To be reimbursed by SWB clients in proportion to Legacy Trust ownership.

Chart B:

Clients of SWB In 2020

After the following actions:

1. Terry transfers his interest in Richland 4900 /Legacy Trust to Forlando in 2011.
2. Attorney General's April 24, 2013 letter confirms State/AG not client of SWB.
3. Bauknight's 2016 affidavit and circuit court order state Legacy Trust does not exist.



Percentage of Damages and Costs

1. See above for percentage of damages.
2. Liability for costs advanced by Bauknight from Estate of James Brown unknown.

Claimed Ownership of Copyright Termination Rights

10% each by the following Richland 4900 Plaintiffs: Terry, Estate of Venisha, Deanna, Yamma, Tonya, and James¹.

¹ Descendants and claimed descendants of James Brown identified by first names to avoid confusion

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The James Brown 2000 Irrevocable Trust..... Respondents

CERTIFICATE OF SERVICE

I certify that on the 30th day of October, 2020 I served the Reply to Return of Respondents to Motion to Supplement the Record on Respondents' counsel by hand deliver at the address shown below:

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