

STATE OF SOUTH CAROLINA  
In the Supreme Court

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MAR 24 2021

S.C. SUPREME COURT

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

Appellate Case No. 2021-000160

Adele J. Pope.....Petitioner,

v.

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

REPLY TO RETURN TO  
PETITION FOR WRIT OF CERTIORARI

Petitioner Adele J. Pope (“Petitioner”) submits the following reply to the Return to Petition for Writ of Certiorari filed by Respondents.

Summary of Response to Return of Petitioners

The Return of Respondents misstates certain facts, but does not deny the essential facts which were before the Court of Appeals when it dismissed as not immediately appealable two lower court orders, including a final order. Those orders approve through an “equitable” reading of Rule 67, SCRCP, an unauthorized deposit of almost \$100,000.00 of Petitioner’s funds, undisputedly awarded to her by a 2017 final judgment, into the Clerk of Court for Aiken County; deny her Due Process rights; enjoin her from seeking return of her funds either from the court or from Respondents as the original \$47,972 debt continues to accrue approximately \$8,500 of

interest a year.

The undisputed facts before the Court of Appeals when it dismissed this appeal were that since 2009 Petitioner has been owed \$47,972, the unpaid portion of a \$317,000 fee awarded by the Honorable Doyet A. Early, III, to Robert Buchanan, Jr. and Petitioner as a Special Administrator (“SA”) fee for their 8 months’ SA service in 2007.

In November 2019 Respondents determined that they owed Petitioner \$97,066.99 under Judge Early’s 2017 summary judgment order awarding Petitioner the \$47,972, plus interest from March 8, 2008. Respondents deposited Petitioner’s judgment funds into the court without court approval and without notice, then moved for court approval of the unauthorized deposit under Rule 67, SCRCF. Respondents told a new circuit court judge that their request for approval of the unauthorized deposit under Rule 67 was an equitable matter; that Petitioner had consented to the deposit; and that it was “equitable” to approve retaining almost \$100,000.00 of Petitioner’s judgment funds until Tommie Rae Hynie and other owner/successors of the James Brown Legacy Trust (“Legacy Trust”) conclude Richland County Case 2010-CP-40-4900 (“Richland 4900”).

In its first order the circuit court adopted virtually every claim of Respondents. In the second, final order the circuit court allows the clerk to hold nearly \$100,000.00 of Petitioner’s judgment funds, and allows Respondents to hold nearly \$8,500 per year of interest until the conclusion of Richland 4900. Neither order provides any procedure for obtaining return of Petitioner’s funds from the clerk or Respondents. Both finally enjoin Petitioner from seeking return of the funds earned in an 8-month period in 2007 for an indefinite period subject to the whim of Hynie and Russell Bauknight which may last for Petitioner’s lifetime.

In the Return Respondents abandon their former, incorrect claim that Petitioner agreed to

this taking of her funds. The Return also agrees that Rule 67 could not have been applicable to the unauthorized deposit. [Return, pp. 19 -20]

The lower court's approval of the unauthorized deposit is final. The lower court's orders overrule a final summary judgment order of Judge Early from which no appeal was taken. The orders violate Rule 67 in a manner which violates Petitioner's Due Process and Equal Protection rights and is novel. The orders allow the clerk to hold the bulk of Petitioner's judgment funds and Respondents to continue to hold about \$8,500 a year of Petitioner's funds, with no procedure for seeking their return.

This Court should exercise its discretion to grant certiorari and reverse the Court of Appeals. Respondents should be directed to pay Petitioner her \$47,972, with interest at the legal rate since March 8, 2008, and the costs of this appeal.<sup>1</sup>

### **RESPONSE TO PETITIONER'S BACKGROUND<sup>2</sup>**

Pages 2 through 5 the Return set out a factual history which omits material facts and misstates certain facts. Petitioner craves reference to pages 1 through 8 of the Petition as well pages 12 through 31 of Petitioner's Memorandum Opposing Motion to Dismiss Appeal [Supp. App, pp. 59-78] for a complete statement of the relevant facts. Petitioner addresses below some of the material facts necessary to an understanding of the response to the Return.<sup>3</sup>

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<sup>1</sup>Footnote 1 on page 1 of the Return asserts that Petitioner has violated Rule 242 SCACR by failing to file an appendix. Petitioner believes that the Petition as filed complies with the applicable procedure during the COVID-19 pandemic.

<sup>2</sup>Petitioner incorporates her Petition for Writ of Certiorari herein, and refutes each statement in the Return unless specifically agreed to herein.

<sup>3</sup> Petitioner notes the following scrivener's errors in the Petition: p. 7, β 2, line 2: "Respondents' memorandum" should say "Petitioner's memorandum." P 5, end of line 8, should say "her," not "here."

**a. The Deposit into the Court was Made Without Prior Notice or Approval**

In several places the Return suggests that Respondents sought court approval and gave notice of the deposit before it was made. This is not the case. In November 2019 Respondents determined that approximately \$97,000 was due under the 2017 summary judgment order which approved Petitioner's unpaid portion of \$317,000 awarded to Robert Buchanan, Jr. and Petitioner in January 2008.

**b. The Role of Tommie Rae Hynie and Respondents' Fiduciary in Richland 4900**

In March 2021 the U.S. Supreme Court refused to consider Tommie Rae Hynie's petition for certiorari to review this Court's 2020 decision that Hynie was not the spouse of James Brown. This ruling, however, is no indication that Hynie will abandon her efforts to retain control over Brown's music empire through Bauknight and her music manager, Peter Afterman. Since 2013 Afterman has been paid more than \$1 million by Respondents as he helped Hynie siphon off royalty proceeds she assigned to the Legacy Trust in 2009. It is also unlikely that Hynie will relinquish control over Richland 4900 so long as Respondents keep paying her bills. Bauknight continues to pursue Richland 4900 "on behalf of" Hynie and as Trustee of the Legacy Trust, of which Hynie is an approximately 46% stakeholder. Respondents did not disclose the relationship of their fiduciary to Hynie to the lower court.

The extraordinary role Hynie has had in Richland 4900 since 2010 is described in the Affidavit of Petitioner dated August 31, 2020. [Supp. App., pp. 98 -120, and Exhibit 3, "What... Rosen Wants (2012)"]

**b. Payments to Buchanan and Other Fiduciaries**

The Return overlooks that Buchanan and Petitioner served jointly as SAs and as

PR/Trustees from 2007 until 2009, and jointly defended Brown's estate plan against Hynie and the AG's 2008 settlement. In 2013 Judge Early "double approved" all of Buchanan's service with Petitioner; approved his full share of the \$317,000 SA fee they had earned in 2007 and he had awarded in 2008; and approved the partial PR/Trustee fees Buchanan was paid in 2008 and 2012 under Judge Early's approval of their contract with Respondents in the same order. Judge Early found there was no basis for disgorgement of any of these amounts under *Wilson v. Dallas*.

Respondents also paid SA/ST David Sojourner more than \$1.4 million between October 2013 and 2016. They even paid substantial sums to counsel for felon David Cannon and his co-trustees.

**c. Petitioner Never Consented to the withholding of her Funds**

The Return appears to have abandoned Respondents' incorrect claim to the lower court that Petitioner consented to the unauthorized deposit and withholding of her funds. Yet this claim, without a scintilla of evidence in the record, is cited in the lower court's final order approving and continuing the unauthorized deposit.

**d. Respondents Never Sought any Offset Against Petitioner**

The Return states throughout that Respondents are entitled to an offset against Petitioner's 2017 judgment. On page 4 of the Return Respondents claim they may be awarded "millions of dollars in potential damages" in Richland 4900 This is simply incorrect. The 2-page answer of Respondents in "Aiken 1337" seeks no offset, and was never amended.

The never-amended Richland 4900 complaint provides nothing for Respondents. [Supp. App., pp. 88-89]. For almost 11 years it has sought funds for the Legacy Trust, to be distributed to Hynie and other Legacy Trust "Beneficiary Owners." It was filed in 2010 to try to stop the appeal

which became *Wilson v. Dallas*. Since 2013 it has been continued as the vehicle of Hynie and those still aligned with her to carry out her May 29, 2013 announced plan to defy *Wilson v. Dallas* and reinstate the AG's 2008 settlement which dismembered Brown's estate plan.

In 2010 SWB4 advised the court that Hynie held a 23.75% stake in Richland 4900, with Terry Brown and five Levenson clients each holding a 4.79% stake. As a result of a 2011 Legacy Trust assignment and the AG's 2013 confirmation that he never engaged SWB, Hynie now has an approximately 46% stake in Richland 4900. Forlando Brown holds about 9%.

The Legacy Trust remains the primary Richland 4900 Plaintiff. Its owner/successors, directly adverse to Brown's charity since Richland 4900 was filed, are the only possible recipients of any recovery in Richland 4900.<sup>5</sup>

**e. The 2019-000362 Appeal Record Describes Buchanan's and Petitioner's Service**

In footnote 2 on page 3 the Return states that Respondents' brief in Appellate Case 2019-000362 is a recounting of the facts concerning Petitioner's PR/Trustee service. That is not correct. Respondents brief reflects the 12-year alliance of their fiduciary with Hynie. An accurate summary of the PR/Trustee service of Buchanan and Petitioner can be found in the Aiken 1337 complaint; in Buchanan's filings in July 2013; and in the depositions which Judge Early considered in his 2017 summary judgment order, then overlooked in his January 16, 2019 order. They include sworn statements and documents of the Governor; the AG; the Chief Deputy AG; the Solicitor General; at least two other AG attorneys; Kenneth Wingate, Esq.; SWB attorney Everett Kendall, Esq.;

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<sup>4</sup> Sweeny, Wingate & Barrow, PA. ("SWB") is sole counsel of record to all Richland 4900 Plaintiffs in the circuit court. The AG specially appeared in 2016 and is part of two pending appeals.

<sup>5</sup> The Return refers to a cost award which was not made part of the record.

expert Wallace Lightsey, Esq.; expert James Hardin III, Esq.; Judge (Ret'd) Walter Williams; Graham Foundation Trustee Stephen Lambert; and others.

**f. Judge Early's Commitment to Hynie's Plan did Not Change the \$47,972 Ruling**

On page 3, and throughout the Return, Respondents assert that the January 16, 2019 order of Judge Early provides support for the circuit court's approval of Respondents' unauthorized deposit of Petitioner's judgments funds. This is not the case.

Judge Early's increasingly strong commitment to Hynie's May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement is reflected throughout his January 16, 2019 order. Despite this favoring of Hynie, Judge Early clearly ruled in both 2017 and 2019 that Petitioner was entitled to be paid her \$47,972 with interest from March 8, 2008. Further, the January 2019 order failed to grant Respondents' Rule 67 request to pay Petitioner's funds into the court.

**g. Response to Procedural History as Stated in the Return**

On pages 5 and 6 Respondents set out their position with respect to their motion to dismiss. The Return fails to note that the record before the Court of Appeal contains undisputed evidence that the orders approving the unauthorized deposit were final and otherwise appealable on multiple grounds. The Return also overlooks the public documents released by the AG in 2020.

The AG's April 2013 confirmation that his office never hired SWB fully supports the sworn testimony of the Honorable Henry McMaster in Aiken 1337. Governor McMaster testified that he did not authorize SWB to bring Richland 4900 in the name of the State/AG; did not authorize Bauknight to act for the AG in Richland 4900; and that did not know he was a named Richland 4900 Plaintiff until after leaving office as AG in January 2011.

It is noteworthy that in 2013, before tens of millions of dollars had been spent, the AG warned SWB that amounts advanced to them for Richland 4900 might be subject to disgorgement under *Wilson v. Dallas*. It is also noteworthy that neither SWB attorney who was directed to testify about the commencement and continuation of Richland 4900 in 2017 revealed the material 2013 communications from the AG on that very subject. Both Wingate and Kendall stated they knew of no change in SWB's Richland 4900 clients since 2010 except the change of AG in 2011.

### **RESPONSE TO THE ARGUMENT OF RESPONDENTS IN THE RETURN**

The Return argues on pages 6 to 16 that the Court of Appeals correctly dismissed this appeal. The Return overlooks the law and facts which the Court of Appeals failed to consider.

#### **I. The Court Should Review the Final Order Approving Deposit of Petitioner's Funds**

On pages 7 and 8 the Return correctly states certiorari is a matter of sound judicial discretion. Petitioner respectfully asserts that it should be granted in this case.

##### **a. The Unauthorized Deposit Constitutes a Taking and Violates Due Process Rights**

Judge Early's fee award of \$47,972 and interest was final as to Petitioner's entitlement to her SA fee earned during 8 months in 2007. Judge Early's failure to grant Respondents' request to deposit those funds into the court is the law of the case and not reviewable by a subsequent circuit judge. Respondents knew this when they made the unauthorized 2019 deposit for the benefit of Hynie and other Legacy Trust beneficiary/successors. Respondents knew when they sought approval of the unauthorized payment that it could not be approved under any constitutional reading of Rule 67. They told the court the Rule 67 consideration was a matter of "equity" and that Petitioner had consented to the deposit. Neither statement was correct.

On pages 19 and 20 Respondents admit that Rule 67 could not possibly apply to the

unauthorized deposit. They even characterize an attempt to analyze Rule 67 as “bizarre.”

Petitioner’s analysis of Rule 67’s inapplicability to this case is hardly bizarre, where the lower court’s hearing, including Respondents’ argument in support of payment into the court, was completely focused on Rule 67. [Supp. App. p. 21, l. 17 – p. 23, l. 23] It was *Petitioner* who argued against Respondents that Rule 67 was inapplicable. [Supp. App., p. 25, ll. 5-6]

This admission by Respondents that Rule 67 could not possibly apply to Respondents deposit confirms that the lower court’s “equitable” approval and extension of this taking for what may be a decade or more is manifestly unjust and a violation of Petitioner’s Due Process rights.

**b. The Lower Court Orders Promote Hynie’s Open Violation of *Wilson v. Dallas***

Since 2010 Richland 4900 has been Hynie’s platform to hold onto, and now to attempt to reinstate, the AG’s 2008 settlement by damaging the fiduciaries who challenged the AG’s 2008 settlement. That settlement “stipulated” that Hynie was James Brown’s spouse; proposed to give her about \$1 million a year and a quarter of Brown’s “I Feel Good” charity in exchange for half of the U.S. royalty termination rights she had put in the Legacy Trust for herself and her son; and put Hynie and the AG in 75% control of Brown’s worldwide music empire.

In 2013 this Court suggested that the circuit court should consider Richland 4900 and related FOIA cases “in the first instance.” The AG told the Court he was getting out of Richland 4900 and hoped to conclude the FOIA cases shortly.

On May 29, 2013 Hynie and most Richland 4900 Plaintiffs announced their plan to defy *Wilson v. Dallas*. Richland 4900 and the related FOIA disruption and noncompliance were essential to their strategy. Since 2013 Hynie and those aligned with her have used SWB’s discovery abuse and FOIA disruption to conceal Hynie’s public handwritten admissions of her

bigamy; the \$4.7 million “appraisal” by Hynie’s music manager Peter Afterman which shifted about \$1 million a year and nearly 1/3 of Brown’s charity’s assets to Forlando Brown and six others for more than a decade; and even the public “Wingate Contract” to bring Richland 4900.

In February 2018 Respondents told a federal court that tens of millions of dollars in litigation costs has been spent from James Brown’s charity. The appealed orders approve Respondents’ unauthorized deposit of Petitioner’s \$47,972, with interest, and retention of her additional interest, until Hynie concludes her open violation of *Wilson v. Dallas* in Richland 4900, which Respondents are funding. This, at a minimum, is an indirect violation of *Wilson v. Dallas*.

**c. The Lower Court’s Orders Cannot be Reconciled with *Russo v. Sutton***

The Return admits that the deposit without prior approval of Petitioner’s undisputed judgment funds cannot be justified under any reasonable reading of Rule 67 or *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995). It was, however, Rule 67 on which Respondents based their motion for approval of their deposit, made without prior court approval. Petitioner notes that the lower court engaged in a discussion of *Russo* and its interpretation of Rule 67 during the hearing on Respondents’ motion. [Supp. App. pp. 25, ll. 7-16; 26, l. 18 – 27, l. 22]

**d. The Testimony of the Governor, AG and Solicitor General Make this Matter Novel**

Respondents, after making an unauthorized deposit of Petitioner’s judgment funds, which were not subject to any offset, asked the circuit court to tie the return of those funds to the conclusion of a 10-year-old lawsuit mired in discovery abuse, misaligned parties, FOIA disruption, and two pretrial appeals.

The Solicitor General stated that he had not seen a case like Richland 4900 in forty years. The sworn testimony of the Governor, the AG, the Solicitor General and others which Judge Early

considered when he failed to grant the Respondents' deposit request makes clear that orders approving Respondents' unauthorized deposit while allowing \$8,500 of interest to accrue each year on a \$47,972 debt serves no legal or equitable purpose. They promote Hynie's 14-year assault on James Brown's estate plan and charity. Petitioner's Due Process rights continue to be denied with no corresponding benefit to Brown's charity.

On page 8 the Return asserts that the merits of the lower court's orders should not be considered. Nor should "mere errors" of the Court of Appeals. Petitioner respectfully submits that the undisputed facts which confirm constitutional violations should be considered at any level.

## **II. Dismissal by the Court of Appeals Was Not Correct**

### **a. The Second Deposit Order Was a Final Judgment**

Respondents made an improper unauthorized post-judgment deposit of Petitioner's judgment funds. Then they sought to justify it under Rule 67. The lower court agreed with them and summarily granted the relief, which violated Petitioner's Due Process and Equal Protection rights, and which was not supported by the record; any Rule or law; or *Russo*.

Petitioner sought reconsideration of the order. The second and final order continued approval of the unauthorized deposit, but allowed interest to continue to run at 8 ¾%. This allows the State to hold nearly \$100,000.00 of Petitioner's money. Respondents are now holding about \$4,000 of Petitioner's money. And Respondents will keep holding an additional \$8,500 per year of Petitioner's money until some unspecified future time tied to the whim of Hynie. There is no procedure for recovery of Petitioner's funds within the foreseeable future. There is no remedy for

Petitioner other than this appeal.<sup>6</sup>

**b. The Lower Court Orders Are Appealable Under S.C. Code Ann. § 14-3-330**

The Return asserts on pages 10 through 16 that the lower court orders are not appealable under S.C. Code Ann. § 14-3-330. As set out in the Petition at pages 9 to 18, this is incorrect.

Respondents suggest on page 11 that judicial economy will be served by dismissal of this appeal. That is not the case. There is nothing piecemeal about this appeal. The Supreme Court is in a position to reverse the lower courts improper, final and summary orders approving Respondents' deposit into the court without any legal basis and without notice or court order.

1. The Lower Court Orders Involve the Merits

As stated in the Petition, the lower court's orders, in addition to being final, involve the merits. The deposit was finally approved. Respondents now agree Rule 67 could not apply and is not relied on to support their position.<sup>7</sup>

2. The Deposit Orders Affect Substantial Rights.

Respondents assert that the appealed orders do not affect Petitioner's substantial rights. They assert on page 12 and in footnote 2 that the orders do not reverse Judge Early's 2017 summary judgment order, but explicitly recognize it. This analysis is incorrect and ignores both the final January 16, 2019 order and the Due Process Clause, as well as undisputed facts.

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<sup>6</sup> *Ex Parte Wilson*, 367 S.C. 7, 625 S.E2d 205 (2005), cited in the Return, is inapplicable to the facts of this appeal as it deals with an interlocutory appeal of an order quashing a subpoena *duces tecum*. It does, however, support the appealability of final orders as to issues within a case pursuant to current SCRCP 54(b).

<sup>7</sup> Respondents' reliance on *Jefferson by Johnson v. Gene's Used Cars*, 295 S.C. 317, 368 S.E.2d 456 (1988) is misplaced. That case involved the grant or denial of a Rule 6(b) motion which did not fully determine the issue. The lower court orders here fully and finally approve Respondents' prior deposit of Petitioner's nearly \$100,000.00 into the court for an unspecified time, with no procedure for return even though Rule 67 could not possibly apply.

Judge Early ordered that Petitioner's funds be paid to her. The Probate Code requires the same. A creditor must be paid. Respondents violated Rule 67 by placing undisputed judgment funds into the hands of the state, then attempting to justify it under Rule 67. They were successful at the lower court level. The lower court orders, however, reversed an earlier judgment and violated Petitioner's undisputed property rights and the Due Process clause. They also violated Petitioner's Equal Protection and Probate Code rights as a first priority creditor.

3. The Deposit Order was both made in a Summary Proceeding and Final

On pages 13 through 16 Respondents assert that the motion for approval of Respondents' unauthorized deposit of Petitioner's judgment funds was not summary. This is not correct.

The motion to approve the unauthorized deposit was made by summary application; granted; and then confirmed in a final order. That final order violated Rule 67 in a way which deprived Petitioner of Due Process and other substantial rights.

Respondents note that South Carolina law is scant as to this appeal. This may be because it is both bold and novel for someone to pay another's judgment funds into the court without court approval; with no procedure to do so; and with knowledge that Rule 67 is not applicable.

4. The Deposit Order Involves Injunctive Relief.

Respondents incorrectly assert that the appealed orders do not involve any injunctive relief. With no support in the record, and solely invoking the equitable power of the court, the orders deprive Petitioner of her property without any legal procedure to do so. Petitioner is enjoined from collecting her funds or \$8,500 a year of additional interest accruing annually. The orders restrain the clerk of one county from releasing funds until a case in another county with different parties is concluded. The orders provide no procedure for return of Petitioner's funds.

### **III. Undisputed Facts about Lower Court Orders Are Relevant to the Appeal**

On pages 16 through 19 the Return suggests that the merits of the summary lower court orders are not relevant to their appeal. Further the Return asserts that the merits proposed by Petitioner are “meritless and/or have been waived.” This is not correct.

#### **A. The Deposit Order Violates Petitioner’s Due Process Rights**

As set out in the Petition and throughout this reply, Petitioner’s Due Process rights have been violated. The Return does not refute the facts which support those violations. There is no support for the Return’s claims that Petitioner has waived or not properly preserved her Due Process and other claims in this appeal.

On page 17 Respondents again suggest that there was notice and a right to be heard before the improper deposit was made. This is not correct. Petitioner’s counsel asked for the funds. Respondents deposited them with knowledge that Rule 67 would not apply. Then Respondents asked for approval of what they had done under Rule 67.

#### **B. Judge Early’s Previous Denial of Respondents’ Attempted Deposit is Significant**

The Return gives great weight to the January 16, 2019 order – except for the parts that make clear for the third time that Petitioner’s \$47,972, with interest since March 9, 2009, should be paid to Petitioner. And the part which does not grant Respondents’ request for a Rule 67 deposit into the court.

Respondents assert that Judge Early’s failure to grant the Rule 67 deposit request is unimportant. That is not the case. Judge Early did not grant the Rule 67 deposit because it was not applicable to his final summary judgment order. Respondents accepted that as the law of the case and did not appeal.

**D. Richland 4900 and Aiken 1337 are Not “Companion Cases.”**

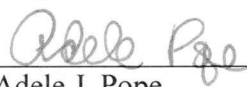
As is demonstrated in the Petition and herein, the Solicitor General correctly stated that he had not seek a case like Richland 4900 in forty years. Unfortunately, Richland 4900 continues today as a tribute to the ability of Hynie and those aligned with her, at the expense of the taxpayers of South Carolina and James Brown’s charity, to conduct a baseless, 14-year raid on James Brown’s noble estate plan and blame the damage on anyone who dares to challenge her spousal claims.

**Conclusion**

Respondents’ arguments in the Return fail to address the facts and law which show that the orders on appeal are final, violate Petitioner’s Due Process and other rights, and should be considered and reversed. The lower court’s approval of the unauthorized deposit of Petitioner’s \$47,972, with interest, was final and appealable on other grounds as well. The Court of Appeals had before it proper facts to identify the constitutional violations and violation of Rule 67 by Respondents through a conflicted fiduciary serving the interests of Tommie Rae Hynie.

The Supreme Court should grant Certiorari; reverse the decision of the Court of Appeals; reverse the lower court’s orders; and direct Respondents to pay to Petitioner \$47,972, with interest from March 8, 2008, and the costs of this action.

Respectfully submitted,

  
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