

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Judge

Appellate Case No. 2021-000518

Adele J. Pope..... Appellant,

v.

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

**AFFIDAVIT OF APPELLANT OPPOSING RESPONDENT'S MOTION TO DISMISS OR
STRIKE APPELLANT'S INITIAL BRIEF AND DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL**

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who being duly sworn,
deposes and says:

1. This affidavit is based on my personal knowledge, including knowledge of this 2011 FOIA case and the three cases with which the Attorney General of South Carolina ("AG") attempted to consolidate this FOIA case between 2012 and the filing of this second appeal in 2021.

2. I was 67 years old on June 30, 2011 when I made the FOIA requests which are the subject of this appeal and which includes a request for what is now known as the

"Afterman \$4.7 Million Valuation" of the music empire of entertainer James Brown; a 2010 amendment to the James Brown Legacy Trust ("Legacy Trust"); and certain related documents.

3. I am now 78 years old and agree that my counsel's FOIA brief in this matter correctly sets out in what I, as an attorney, believe to be concise and proper appellate form, the history of this case, the facts and the obstacles to my decade-old FOIA requests presented by the AG, acting through the AG's in-house counsel; FOIA counsel; and through the private law firm of Sweeny, Wingate & Barrow, PA ["SWB"], and in cooperation the original defendant Legacy Trust and its trustee, Russell Bauknight.

4. As set out below and in the brief, the AG delayed my FOIA request for 2 years before answering; moved this case from Newberry County to Richland County 10 years ago for the benefit of the Legacy Trust and its owners; began efforts to consolidate this FOIA case with Richland County Case 2010-CP-40-4900 (Richland 4900) in early 2012, more than 9 years ago; and continued and expanded consolidation efforts in 2016 and later, trying to consolidate this FOIA case with 3 others cases, while seeking for 10 years to strike and remove from the public record affidavits recounting the history of the FOIA noncompliance and consolidation efforts.

5. The AG objects to the brief's discussion of the most troublesome aspect of the AG's FOIA noncompliance which came after I visited the AG, Chief Deputy AG and Solicitor General personally on March 6, 2013, and told them of the damage the Afterman \$4.7 Million Valuation, when combined with the AG's alliance with Tommie Rae Hynie, was doing to James Brown's charity, and which was not corrected by *Wilson v. Dallas* [See p.

411, of Exhibits]¹

6. My FOIA counsel Adam Silvernail, Esq., and I had a second meeting with the Solicitor General within a few days of the March 6, 2013 meeting for the same purpose, and the facts of both meetings, like every document in the Exhibits attached to this affidavit, were presented to the lower court in this case, often by both the AG and myself. [Exhibits p. 411]

7. It is undisputed, and has been since 2011, that the Afterman \$4.7 Million Valuation shifted \$1 million of income a year and nearly 1/3 (31%) of the assets of James Brown's "I Feel Good" charity from the charity to a trust for Forlando Brown and 5 clients of Louis Levenson, Esq. [Exhibits, p. 411]

8. On June 10, 2015 I abruptly stopped my efforts to convince the AG to correct the Afterman \$4.7 Million and abandon his alliance with Ms. Hynie and other Richland 4900 plaintiffs who were implementing their publicly announced May 29, 2013 plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement, but I still have an interest in my 2011 FOIA cases for several critical reasons.

9. Since 2011 – a decade ago -- the AG and both SWB and Russell Bauknight, purporting to speak for the State/AG -- have used the Afterman \$4.7 Million Valuation to

¹ The Exhibits attached hereto are only a small sample of the record of this FOIA case, and all were taken from the public record of this FOIA case. They demonstrate to the Court that the motion to strike was apparently made without checking attachment to filings in the public record, even the Answer of the AG himself, filed in 2013. They also show that the AG, through SWB and FOIA counsel, and the Legacy Trust, presented the entire record of Richland 4900, the "Wingate Contract FOIA Suit" and Aiken County Case 2013-CP-02-1337 ("Aiken 1337") to the lower court in this case. At all times from March 2016 the same trial judge presided over all 4 cases and the records of the 4 cases were used by all parties in presentations to the lower court.

make the career-threatening false claim that Robert Buchanan, Jr. and I intentionally overstated the value of James Brown's music empire by \$79 million in sworn IRS filings in order to secure a \$5 million commission from what they claim was James Brown's \$5 million estate. [See Exhibits, p. 406; 410; 415; p. 419 where now Governor McMaster, agreed in deposition to the seriousness of the claim.]

10. The claim was false the first day it was made by the AG to the Supreme Court in May 2011, and the public record shows that Mr. Buchanan and I had brought in \$7.83 million in 18 months – an average of more than \$5 million a year during our short tenure as PR/Trustees which ended on May 26, 2009. [Exhibit, p. 416, 452]

11. As filings by the AG in this FOIA case show, Mr. Buchanan and I took immediate steps to find out, through Richland 4900 discovery, how the AG, the State's chief prosecutor, who was suing us, could make the claim that we had committed a federal felony when his claim went against all evidence in the case. [Exhibits, p. 47; 104, Motion of AG and others for Protective Order; discussion of protective order, p. 197.]

12. As the undisputed record in this case shows, instead of producing the Afterman \$4.7 Million Valuation in 2011 when Mr. Buchanan and I requested it, the AG, through SWB, refused virtually all discovery in Richland 4900. [see above, 10]

13. As the undisputed record in this FOIA case shows, the AG, Ms. Hynie's attorneys, Louis Levenson, Esq., and the Legacy Trust attorneys all shared the draft of the Afterman \$4.7 million valuation in 2010, and the AG even informed the Court of Appeals (then the appellate case in *Wilson v. Dallas*) in August 2010 that a final appraisal was expected within a few weeks that would show that the assets of James Brown's estate and 2000 Trust were

worth less than \$12 million when he died on Christmas Day 2006. [Exhibits, p. 109, 134]

14. As the undisputed record in this FOIA case shows, the \$12 million claimed value was so startling, so incorrect, and so damaging to James Brown's charity that in 2011 attorney Wm. Jeffrey Smith, a Georgetown Law graduate and former patent examiner, and I wrote *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*, which discussed the damage that would be caused to the "I Feel Good" charity's \$3+ million annual royalty stream dedicated to scholarships for needy students by the combined alliance of the AG with Ms. Hynie and a devaluation of James Brown's assets to \$12 million or less. [Exhibits 119 – 121, and text at 124 – 136]

15. As the affidavit of Mr. Smith, who later became my attorney in certain non-FOIA matters, filed in this FOIA case in 2011, shows, we circulated *Private Foundations* for peer review in April 2011. [Exhibits, p. 120]

16. As the record in this FOIA case shows, in May 2011, after withholding the Afterman \$4.7 Million Valuation from the appellate court for 8 months, the AG and other Legacy Trust owners disclosed the results of the claimed \$4.7 Million Valuation to the Supreme Court; withheld the actual valuation document; and began using the Afterman \$4.7 Million Valuation, with substantial success, to destroy my career and reputation, and that of Mr. Buchanan, with FOIA noncompliance and disruption becoming central to the nondisclosure, starting the following month, June 30, 2011. [See Chronology of AG's notice of \$12 million or less in August 2010 and \$4.7 Million filing in Supreme Court in May 2011, Exhibits 98, 99]

17. My counsel's FOIA brief, which I incorporate herein in its entirety, correctly sets

out the history of this case, but I have set out briefly the AG's and Legacy Trust's positions in this FOIA case prior to February 27, 2013, along with subsequent actions of the AG which show how the record, at the request of the AG and Legacy Trust expanded exponentially after the AG told SWB it had never been hired in Richland 4900 and told the Supreme Court a month earlier that it hoped to conclude this FOIA case within a short time.

18. By the fall of 2011 the AG and Legacy Trust had begun efforts to dismiss this appeal; strike citizen affidavits urging the AG to comply with FOIA; and transfer this FOIA case to Richland County. [See Exhibits , pp. 47,48, 159, 161,179, 211,250, 344.]

19. In 2011 the AG began a decade-long effort to strike the affidavits of journalists, an editor and other citizens interested in knowing why the AG, who had effective control over the James Brown assets, had devalued James Brown's charity from about \$80 million at his death to less than \$4 million, and which affidavits, and the attached and referenced media articles, demonstrate the public importance of this extraordinary devaluation by the AG, the state official charged with the protection of charities, of James Brown's "I Feel Good" charity.

20. Under public IRS guidelines the AG's \$79 million devaluation would result in a reduction of required scholarship funds for needy students in South Carolina and Georgia by James Brown's charity the AG controlled from nearly \$4 million a year to about \$50,000.

21. In 2011 the AG and Legacy Trust asked the lower court in Newberry to consider the full record in Richland 4900 and transfer this case, and an affidavit by Mr. Bauknight to support the transfer stated that he had managed the Legacy Trust in Richland County for some time. [Exhibits, pp. 280, 415,461, 2012 Affidavit, pp. 151 - 153]

22. The AG and Legacy Trust were able to move this FOIA case to Richland County, and by January 2012, the AG had already moved the "Wingate Contract FOIA Case" which I filed in Newberry on August 10, 2011, and consolidated it with Richland 4900.²

23. The AG successfully moved the Wingate Contract FOIA case from Newberry to Richland County by using the full Richland 4900 record to convince the circuit court that Richland 4900 was "fiduciary litigation" involving my fiduciary duty (and presumably Mr. Buchanan's) to the Legacy Trust, but neither Mr. Buchanan nor I ever owed a fiduciary duty to the Legacy Trust. [Exhibits, p. 170 -171]

24. In January 2012, the AG stated in this FOIA case, [page 1 of Exhibit J] the position the AG, Legacy Trust and SWB were taking in both FOIA cases:

Despite the numerous motions pending in this case and seemingly countless affidavits submitted by Plaintiff, this suit presents very simple issues of deference to ongoing judicial proceedings and court rulings in another county that deprive the Court of subject matter jurisdiction in this case. These issues are all directed to whether Plaintiff can have a separate [FOIA] 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. The November 30, 2011, Order of this Court in the related FOIA action, 2011-CP-379 (copy attached), consolidated that case with Richland 4900, and encouraged the parties to the instant case to consent to consolidation with Case 4900, but the Plaintiff shows no interest in doing so. Order at p. 6, note 7... [Exhibit J], Memo AG, 1/11/12, this case, p. 1, Exhibit K, p. 155 , w/order of 11/22/11 consolidating Wingate Contract FOIA Suit with Richland 4900, Ex. J, pp. 170 - 176]

² See Exhibits, p. 362, ff, Order of the Honorable Eugene Griffith in the Summer FOIA case, issued in 2014 and filed in this FOIA case in 2020, which shows that Bauknight also tried to consolidate the 2012 Summer FOIA case with this FOIA suit and Richland 4900, and asked Judge Griffith in that FOIA suit to take judicial notice of the Richland County proceedings. [Exs., pp. 170 -176 (order) 379, 399]

25. The AG barely mentioned the October 24, 2011 affidavit of Sr. Asst. AG Tracey Meyers ("AG Meyers") in the 15 page memorandum, calling it the "Apparent Failure to Mail or Deliver FOIA Request," [Exhibits, p. 167] because by then the record in this FOIA case showed that the Meyers October 20, 2011 affidavit was unreliable for multiple reasons including:

a. My October 6, 2011 affidavit and letter to Ms. Meyers, filed in this FOIA case before the Meyers affidavit was signed shows that AG Meyer had not only received the FOIA request for the Afterman \$4.7 Million Valuation, but denied it, even though I repeatedly requested it. [See Ltr. to Meyers, October 5, 2012, 107 – 11, Affidavit 10/6/11, pp. 95- 102]

b. On January 5 AG Meyers made an erroneous claim to another citizen requesting FOIA compliance, claiming that my counsel had prevented FOIA compliance in a hearing held in December 2012, which she did not attend. [Exhibits, 148, 149, D. Williams, Aff. & Ltr. 1/6/12]

c. On January 6, 2012 my counsel in Richland 4900, Daryl Williams, Esq. filed an affidavit which is part of the record in this case which attaches a letter he sent that day to AG Meyers correcting her incorrect statement about the Richland 4900 hearing. [See above]

26. The AG has been attempting for almost a decade to strike the truthful affidavits filed by journalists and other citizens, including the affidavits Mr. Williams and I filed in late 2011 and early 2012 raising issues about the incorrect statements being made by AG Meyers both about the facts and the law.[See AG's List of Motions to Strike, Exhibit 250, 251]

27. As shown on Exhibit H, Mr. Williams' affidavit and letter to AG Meyers show that Mr. Williams stated in this case:

Your description of the events at the December 12, 2011 status conference held in No. 4900, at which neither you nor any attorney

on the AG's staff were present, reflects a misunderstanding of what occurred. No counsel for Ms. Pope stopped or attempted to stop The production of any document to the Court or to anyone else. [Affidavit, D.Williams, Ltr. to Meyers, 1/6/12, Exhibit H, pp. 148 -149]³

28. Among AG Meyers' misstatements to me and others seeking documents under FOIA was the claim that the AG could not release under FOIA the Wingate Contract - the Special Counsel Litigation Retention Agreement under which SWB has claimed since 2010 that it had a right to sue me in Richland 4900 in the name of the State/AG while acting primarily - and solely since 2013 - for the benefit of Ms. Hynie and SWB's other private clients, the owner-successors of the Legacy Trust.

29. In 2011, as today, the Wingate Contract and all of the AG's Special Counsel Litigation Retention Agreements state on their face that they are public documents subject to release under FOIA and that every document gathered or used in the furtherance of the representation is subject to release under FOIA both by SWB and by the AG.

30. By January 2012 Ms. Meyers, based on the AG's own motion filed by the AG in this FOIA suit was claiming the public Wingate Contract could not be released under FOIA because it was under consideration by a court, and the AG filed those claims with his answer in this case in March 2013. [See public record overlooked by AG]

³ The record in this FOIA case contains numerous other examples of problematic communications of AG Meyers, some in the attached sample, including Ltr.Meyers to Pope, 8/5/11, pp.252, 253. AG Meyers is also copied on the January 20, 2012 "Urgent" Communication of SWB attorney Mark Gende, which advised AG Wilson not to comply with his obligation under FOIA to release the public Wingate Contract. Neither AG Meyers nor the AG's FOIA counsel released this public January SWB 2012 communication under FOIA until the fall of 2020, ignoring multiple FOIA requests sent over 8 years. *See Exhibits*, pp. 359 - 360.

31. It was the AG's own motion, through SWB, which is on file in this FOIA suit to prevent release of the public Wingate Contract which AG Meyers used as the claim that release under FOIA was impaired. [Exhibits p. 403, 47,64 and the AG's Motion by SWB dated August 9, 2011, after the FOIA request was made, at p.104 -106]

32. By January 2012 the AG had presented to the circuit court in this FOIA Suit the full record in Richland 4900 and the full record in the Wingate Contract FOIA Suit which the AG had already managed to consolidate with Richland 4900. [see above]

33. The AG even attached the November 22, 2011 FOIA Order of the Honorable Frank Addy, Jr. in the consolidated Wingate Contract FOIA suit to its January 2012 filing, an order which found that the Wingate Contract FOIA suit was "closely related" to Richland 4900, which Judge Addy called the "fiduciary litigation." [Exhibits, p. 170]

34. On January 10, 2012, Russell Bauknight presented an affidavit in this FOIA case to support transferring it to Richland County, which stated in part:

4. For nearly three years I have also served as Trustee for the ...Legacy Trust. The Legacy Trust was created pursuant to a settlement agreement that ended years of litigation surrounding the validity of James Brown's Will and trust.

5. As its Trustee, I manage, control and oversee the Legacy Trust. While the South Carolina [AG] has the right to remove and replace me, the beneficiaries of the Legacy Trust – the James Brown Children, for example – also have the right to remove me...

...

16. In the event this action is not dismissed, it should be transferred to Richland County or consolidated with the actions pending there.
[Affidavit, Bauknight, 1/10/12, this case, p. 2, Exhibit I, p. 151-153, 152]

35. Relying on the Richland 4900 record and the representations of the AG, the circuit court stated in the Wingate Contract FOIA suit order:

The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust.
[Order, Jg. Addy, Wingate Contract FOIA Suit, p. 1, Exhibit], p. 170]

36. While Judge Addy correctly described that Richland 4900 was brought, and has continued since 2010, for the benefit of the Legacy Trust owner-successors, which the AG, at the time controlled, neither Mr. Buchanan nor I ever had a fiduciary duty to the Legacy Trust, its trustee, Ms. Hynie or other Legacy Trust owner-beneficiaries.

37. As my FOIA counsel stated in the brief in this case, SWB's January 20, 2012 letter advising the AG, as the AG's legal counsel, not to comply with FOIA, so as to avoid public embarrassment, and in order not to damage SWB's private clients, is startling, and is important evidence that this FOIA case and the Wingate Contract FOIA Case should have ended in 2012, if not 2011. [Exhibits 359, 360]

38. In 2021 the AG relied on the troublesome 2011 affidavit of AG Meyers, who has apparently been taking, and following orders from the private law firm of SWB since January 2012 with respect to her FOIA duties related to James Brown FOIA matters, as such orders were given to her in 2012 on letterhead of SWB, bearing the Richland 4900 reference. [Exhibits 359, 306]

39. Almost immediately after the January 2012 direction to the AG by SWB not to comply with FOIA, the AG moved to consolidate this FOIA case with Richland 4900 and the consolidated Wingate Contract FOIA case, beginning a 9-year effort by the AG, through SWB, to consolidate this FOIA case with no fewer than 3 other cases. [Exhibits, pp. 403,153, 155,159,175,176,178- 180, 192, 193, Ltr. of Smith to Jg. Manning, dtd. 3/7/13, List of Motions Pending, 250, Also see Plaintiff's Status Report and Memorandum of Law, filed

4/1/13,,pp 278- 282]

40. In 2012 the AG took action to delay my FOIA claims, as set out in the record of this FOIA suit by: seeking consolidation of this FOIA suit with Richland 4900 and the Wingate Contract FOIA Suit; following SWB's direction to the AG to not comply with FOIA, including as to the public Wingate Contract, in order to benefit SWB's private clients; allowing SWB to direct and speak for the State/AG in FOIA matters, as well as in Richland 4900 matters; and by obtaining a months' long delay of this FOIA case by claiming it could not proceed because of a mediation in Richland 4900.

41. Also, in 2012 the AG, through SWB, rejected and filed in Richland 4900 my 2012 offer to let the AG out of Richland 4900 at no cost; separate the Wingate Contract FOIA case from Richland 4900, and, by these actions, would have ended the AG's effort to consolidate this FOIA case with Richland 4900.

42. By February 27, 2013, the day of the first, later substituted, decision in *Wilson v. Dallas*, the AG, both through SWB and FOIA counsel, had presented the entire record in Richland 4900 and the Wingate Contract to the lower court in this FOIA suit to support the AG's position stated in this FOIA Suit on February 1, 2012:

Consolidating Case 350 [this FOIA case] with cases 4900 [Richland 4900] and 379 [the Wingate Contract FOIA Suit] would permit all FOIA and all discovery issues to be determined in one proceeding. [Exhibit K, AG Motion to Consolidate, p. 179]

43. I am unaware of any principle which would prevent my counsel's FOIA brief from discussing both the Supreme Court's *sua sponte* statements about Richland 4900 and my FOIA cases in footnote 29 of the first *Wilson v. Dallas* decision; the AG's March 14

response to footnote 29 after I met with the AG, the Solicitor General and the chief deputy on March 6 and my counsel and I had a second meeting with the Chief Deputy AG and Solicitor General; or the Supreme Court's footnote 30 in the final *Wilson v. Dallas* decision which was issued on May 8, 2013. [See, Exhibits , pp.278, 346]

44. While the Supreme Court's actions in relation to Richland 4900 and my 2011 FOIA cases was unusual, it is clear that the statements in footnote 29, the AG's actions, and later footnote 30 in the final *Wilson v. Dallas* decision relate to this FOIA case and show that 8 years ago the Supreme Court urged that this FOIA matter be considered promptly, which SWB, acting for the AG, simply ignored.

45. I believe it is noteworthy that the Supreme Court specifically mentioned in its opinions the question of whether James Brown's music empire was worth \$100 million (less a \$15 million TIAA debt) when James Brown died, or \$5 million, as the AG has told the Supreme Court since May 2011.

46. I believe that the petitions for rehearing by Louis Levenson, Esq., and James Brown II, in which no fewer than 10 Richland 4900 plaintiffs, through Mr. Levenson, made clear to the Supreme Court their intention to continue Richland 4900, the purpose of which was to stop the appeal of the AG's 2008 settlement, and after *Wilson v. Dallas*, to reinstate the AG's 2008 settlement which the Supreme Court voided as a dismemberment of James Brown's estate plan and "I Feel Good" charity, and reference to these actions in the record of this FOIA case are voluminous.

47. I believe Brown II's description of the contents of the Afterman \$4.7 Million Valuation given to the Supreme Court in March 2013 is relevant and admissible because Sr.

Asst. AG "Sonny" Jones stated that he had a "common interest" with Ms. Hynie's son which lasted until May 8, 2013, and the filing of details of the Afterman \$4.7 Million Valuation confirms that the AG had shared it with others.

48. On April 24, 2013, as my FOIA counsel's brief correctly describes, AG Wilson wrote SWB to confirm that the Office of the AG – with Governor McMaster as AG – never hired SWB in Richland 4900.

49. If the AG had revealed this public letter, which it belatedly revealed in the fall of 2020, and which is in the record in this FOIA Suit, when the letter was requested under FOIA in 2012, it would have surely ended this FOIA suit 8 years ago.

50. As set out in the brief, starting in 2013, the record was expanded at the request of the AG, through SWB and the AG's resistance to release of the public Wingate Contract and the Afterman \$4.7 Million Valuation became even more vitriolic.

51. In addition, Mr. Bauknight, through SWB, began trying to intervene in the 2012 FOIA suit of Journalist Sue Summer which overlapped this FOIA suit by seeking the Wingate Contract; Legacy Trust documents; and Afterman \$4.7 Million Valuation, but also sought the long-public admissions by Ms. Hynie that her marriage ceremony with James Brown was bigamous, the so-called "Hynie Diary," and the AG allowed Bauknight, for the benefit of the now-100%-private owner-successors of the Legacy Trust, to disrupt and delay FOIA compliance in the Summer FOIA suit.

53. As described below, Bauknight and SWB were so successful in disrupting the Summer FOIA case that the AG withheld some documents he was ordered to produce in 2014 until the fall of 2020, when they were released under FOIA and some became part of

the record in this case.

54. On May 29, 2013, I was personally present, along with former Legacy Trust attorneys William Newsome, Esq. and David Black, Esq., Mr. Buchanan and numerous others at the status conference held by Judge Early at which almost all Richland 4900 plaintiffs announced to Judge Early their intention to disregard the Supreme Court's *Wilson v. Dallas* decision and reinstate the AG's 2008 settlement just voided by the Supreme Court.

55. Immediately after the status conference Mr. Newsome, who had been the Legacy Trust's probate claims expert since 2009, served me with a Notice of Disallowance with Notice of Impending Bar which forced me to file what became Aiken County Case 2013-CP-02-1337 ("Aiken 1337") within 30 days or be "forever barred" from being paid the rest of my 2007 SA fee for service to Mr. Brown's estate or anything for my service as PR/Trustee.

56. I filed Aiken 1337 as required in June 2013, and it should never have had anything to do with this FOIA case, but the position of the AG, through Wingate, and Mr. Newsome, was different.

57. As the brief describes, I personally observed, and the record in this FOIA suit shows, the Legacy Trust and the AG, through SWB, sought, and obtained what was a *de facto* stay of this FOIA suit and the Wingate FOIA suit from the *Wilson v. Dallas* decision until March 2016.

58. By August 2013 Peter Afterman, author of the claimed \$4.7 Million Valuation, was working for counsel for Ms. Hynie, SWB's primary private client in Richland 4900, and Mr. Afterman continued to work for Ms. Hynie's counsel until at least 2020.

59. In 2014 a circuit court in a 2012 FOIA case by a journalist directed that many of

the documents I was seeking in my FOIA cases be delivered to the citizen under FOIA, but the only document the AG delivered to me under FOIA was the 2010 amendment to the Legacy Trust.

60 Sue Summer, the FOIA plaintiff, had filed an affidavit in this FOIA suit in my FOIA suit in December 2011, a year before she filed her FOIA suit, which stated in part:

8. I believe that the spirit of the Freedom of Information Act is violated if journalists and members of the general public are denied both easy and prompt access to public documents.

9. I do not believe my FOIA rights or the rights of the general public should be tied to a Richland County lawsuit. [Affidavit, Summer, 12/11, p. 2, Ex. G]

61. The undisputed facts in the record in this case show that the devaluation of the music empire from about \$84 million to \$4.7 million was proposed by one Ms. Hynie's attorneys and carried out by Peter Afterman, working with Legacy Trust attorneys and consulting with Sr. Asst. AG Havird "Sonny" Jones. [Exhibit N].

62. Before June 10, 2015 when my efforts to try to convince the AG not to help Ms. Hynie and the Levenson clients carry out their May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement, I had made many FOIA requests, but the AG never delivered to me under FOIA the Afterman \$4.7 Million Valuation, the Wingate Contract, or the public documents related to these requests.

63. On May 2, 2016 Mr. Bauknight, under oath, reversed the sworn testimony he had used to transfer this FOIA case from Newberry County to Richland County and stated – under oath again – that the Legacy Trust he said he had managed for years in Richland County never existed.

64. On May 17, 2016, Judge Early asked the AG's FOIA counsel:

THE COURT: But isn't the end result that we're going to end up
In 4900 and discovery is going to be wide open in 4900 and
all of this stuff is going to be discoverable; is it not? Aren't we
just wasting our time?

MR. SMITH: I believe that this case is a waste of time, Your Honor,
and its inappropriate. [Transcript, p. 7, 5/17/16]

65. The AG's FOIA counsel, which had not provided the Afterman \$4.7 Million
Valuation and related documents, also told the Court that the AG believed that it had
already provided all the documents it was required to file.

66. In 2016, the AG, through SWB, moved to consolidate Richland 4900 with Aiken
1337, adding the full record of yet another case to the matters presented to the lower court
in this FOIA case.

67. I was the *pro se* Plaintiff in Aiken 1337, which I was required to file after
receiving the Notice of Disallowance with Notice of Impending Bar ("Disallowance") on
May 29, 2013. [Exhibit O].

68. As shown on Exhibit O, both my FOIA counsel and I, as Aiken 1337 plaintiff,
opposed the attempt of the AG to consolidate 4 cases, further delaying my 2011 FOIA
requests.

69. Judge Early did not consolidate the cases but allowed SWB to attend the Aiken
1337 depositions of the AG's staff to protect the AG, which SWB represented to be its client
in Richland 4900.

70. In July 2016 both the Wingate Contract FOIA suit and this FOIA suit were
dismissed, and I appealed both, but the AG and Legacy Trust both continued to pursue

consolidation through SWB with Aiken 1337.

71. In 2016 I deposed the Honorable Henry McMaster who stated emphatically under oath that he never authorized SWB to bring Richland 4900 in the name of the AG and did not know he was a Richland 4900 Plaintiff until after leaving office as AG in 2011, but the AG continued to claim that my FOIA rights were tied to this tort suit the AG said he never filed against us.

72. Governor McMaster, a former U.S. Attorney, knew nothing about the claimed Afterman \$4.7 Million Valuation or the false felony claims based on the \$4.7 million claimed value, but agreed to the seriousness of the State/AG's false claim that Mr. Buchanan and I had overstated the value of Brown's music empire to the IRS to secure a \$5 million commission on Brown's \$5 million estate. [Exhibit Q]

73. The AG's FOIA counsel in my FOIA suits appeared at Governor McMaster's deposition and refused to deliver some of the documents Governor McMaster, then Lt. Governor, had brought, but they were released by the court.

74. In late 2016 the AG and Legacy Trust, through SWB, moved to consolidate discovery in Richland 4900 with the discovery in Aiken 1337.

75. In 2017 I deposed the Honorable Alan Wilson, with FOIA counsel in this case present, and AG Wilson stated that he knew nothing about Richland 4900 or this FOIA suit and knew nothing about the claimed Afterman \$4.7 Value or its use to accuse Mr. Buchanan and me of impropriety.

76. In 2017 Mr. Levenson stated under oath that he had seen the Afterman \$4.7 Million Valuation years earlier, but then changed his sworn testimony.

77. In 2017 I deposed SWB attorneys Kenneth Wingate, Esq., and Everett Kendall, Esq., pursuant to an Order of the Honorable Jean Toal that they testify about about their authorization to commence and continue Richland 4900. [Exhibit P]

78. Neither SWB attorney revealed the existence or contents of the April 24, 2013 letter of the AG; and both stated that they knew of no changes in their Richland 4900 clients since 2010 except the change of AG from Governor McMaster to AG Wilson in 2011.

79. In February 2018 Mr. Bauknight advised a federal court that tens of millions of dollars in litigation costs had been spent on litigation costs since James Brown died, but the AG continues to claim that the Afterman \$4.7 Million Valuation was correct while concealing it under FOIA and continuing to use it to damage Mr. Buchanan and me.

80. By 2020 both FOIA cases had been remanded.

81. On remand, the AG obtained amendment of the complaint and continued the 9-year effort to strike the affidavit of Mr. Williams related to the actions of AG Meyers and others.

82. On remand the AG and SWB both continued to refuse to release the public Wingate Contract, the Afterman \$4.7 Million Valuation, and related documents in discovery or under FOIA.

83. In 2020 the circuit court ordered Wingate to produce the Wingate Contract in Richland 4900 and he did so, but the AG still declined to produce it under FOIA.

84. In 2020 the circuit court ordered the AG to produce the Wingate Contract under FOIA, and the AG finally did so and my other 2011 FOIA case was ended. [Exhibits X and Y]

85. In 2021 SWB continued to interject itself into this FOIA case, asking that it be

given notice and an opportunity to be heard.

86. Solicitor General Cook stated under oath in his 2017 deposition that in 40 years with the AG's office he had never seen a case like Richland 4900, and I agree and affirm that this FOIA case, so far as I know, is unlike any other because the AG has moved it to another county; relied on a known-inaccurate affidavit to stop FOIA compliance for a decade; attempted to consolidate a FOIA suit with a tort suit; attempted to consolidate this tort suit with a fee claim suit in Aiken County; and withheld a fee contract and 2012 letter that would have ended this FOIA suit no fewer than 8 years ago.

87. The 9-year effort of the AG to consolidate this FOIA case with Richland 4900, another FOIA case, and even Aiken 1337, has made it extraordinarily complex and difficult, as have the role of the Legacy Trust and SWB.

88. I believe that every document cited from Richland 4900 is appropriate and in full compliance with the rules because it was the AG who exponentially expanded the matters presented to the lower court by his efforts to consolidated this FOIA suit with Richland 4900 and at least two other suits.

89. The Exhibits I have attached to this affidavit are just a small sample of how the AG – not my counsel and I – presented everything that happened in Richland 4900, Aiken 1337, and the Wingate Contract FOIA Suit to the lower court.

90. The record is clear that as late as 2021 SWB was seeking to delay and disrupt FOIA compliance in this case, and the AG took no action to stop it.

91. I ask the Court to consider that the AG appears to have made no effort to see if matters were actually part of the record below, and does not even appear to have checked

the attachments to the AG's own filings, including the AG's Answer in 2013, which contained 61 pages of communications of AG Meyers and other documents.

92. I incorporate the above and the exhibits, which provide only a small sample of the voluminous record on file in this FOIA, and add the following comments to the AG's objections:

1. pp. 11-12 Direction by Supreme Court to the AG, Legacy Trust owners and others related to the 2011 FOIA request in this case. Cited numerous times in the record of this case, including in sample exhibits. [Also see Ltr. of AG dtd. 3/7/13, both FOIA cases, Exhibit M; Exhibits pp. 278, 347, in Order of Judge Griffith on file in this case since Oct. 27, 2020, on page 2, Exhibit page 363; entire language of footnote filed in this case on 12/18/20 in joint affidavit filed in both Wingate Contract FOIA case and this case, p. 395, ff, at page 16, p. 410 of Exhibits]

2. p.12 –Attorney General's Response to Supreme Court about this case pursuant to Supreme Court's direction in footnote 29.. Specifically referenced in sample Exhibits at p. 457 and presented multiple times to the lower court since March 14, 2013]

3. p. 17 – The Motion for Direction as to Publicity in Richland 4900 was part of the record in Richland 4900 in 2012 as the AG was presenting the entire Richland 4900 to Judge Manning in an effort to consolidate this FOIA case with Richland 4900. AG Made articles part of record. available and separately filed in this FOIA case from the Mot. Direction. Fact is so undisputed no citation would be necessary. Discussed in filing in this case filed 12/18/20 at p. 400 of the Sample Exhibits, and article are attached to numerous filings in this case. [For example, See Exhibit B, filed in this Case on Sept. 30, 2011, at p. 80 of the sample Exhibit: Observer Article "AG's promise to release contracts may resolve Newberry, FOIA suit., See Affidavit of Smith , Ex. 119 ff, discussing articles AG filed In Richland 4900, and also affidavit of Summer dtd. December 8, 2011. AG moved To strike both affidavits from 2011 unti 2021, but they were not stricken. See Ex. 163]

4. Page 17 – This *Forbes* article was properly cited and is relevant as it shows public knowledge that James Brown's estate earned \$5 million the year he died, and it also earned more than \$5 million per year in the following 18 months, when Mr. Buchanan and I served as PR/Trustees, showing the public interest in the AG's decision to adopt the Afterman \$4.7 Million Valuation for a music empire given to a charity which earns \$5 million a year.NOTE: The AG's motion to

strike the Summer Affidavit , Ex. 211, ff. has been on file in this case since December 2011. See also Ex. P. 250]

5. Page 17 – The AG has argued correctly that the public accountings filed In James Brown’s estate are admissible. Also filed in Richland 4900 prior to first consolidation effort, and undisputed throughout the record that \$7.83 million Earned by Brown’s estate in 18 months Mr. Buchanan and I served as PR/Trustees. See reference to public accounting and \$7.83 million earned in 18 months at sample Exhibit p. 416, 452]

6. Motion for Pretrial Publicity was presented to lower court. See 3 above.

7. P. 18, Motion to Lift Stay – Relevant because it was in Richland 4900, which AG was attempting to consolidate with Aiken 1337 and 2 FOIA cases at the time, along with Legacy Trust, which was claiming it did not exist in FOIA case while resisting lifting of stay to release public Wingate Contract, testimony of Governor that he never authorized Richland 4900, Afterman \$4.7 Million Valuation, and other public documents, including the January 2012 direction of SWB to AG not to comply with FOIA, and the April 24, 2013 confirmation of AG Wilson to SWB that the State/AG McMaster never hired SWB in Richland 4900 and would not pay SWB in Richland 4900 its claimed 47.5% of the fee under the public Wingate Contract.

8. Page 20, Affidavits of Bauknight were all used by the AG to seek consolidation with Richland 4900, and that was the first of 2 affidavit which Bauknight used in Richland 4900 to keep Richland 4900 in Richland County, rather than having it to Aiken. Bauknight repeated the claim that the Legacy Trust was managed by him in Richland County, at Ex. 151, ff. in a second affidavit filed in this case in January 2012, at Exhibits, p. 151 – 153, filed in this case for almost 10 years.

9. Page 20 – Motion presented to lower court in attempted consolidation.

10. Page 21 - All were presented to the lower court in effort to persuade FOIA lower court to transfer and consolidate.

11. Page 21 - Wingate Contract is clearly the AG’s Litigation Retention Agreement which was made public by federal court in 2013; states on its face that it is public; but was withheld from release under FOIA by the AG, apparently at the direction of SWB, from 2011 until 2021.

12 Page 21 – Meyers letter, 8/5/11, referenced in this case, as are all other Meyers letters. The Meyers letters are attached to the AG’s Answer in this case, Exhibit 2 to AG’s Answer, 225, ff of Exhibits].

13. Page 21 – Meyers letter, 8/5/11, referenced in this case, as are all other Meyers letters. See numerous Meyers communications attached to AG's 2013 Answer in this Case, Exhibit, pp. 225, ff.
14. Different FOIA Suit -- Page 21 - Meyers letters are all on file in this suit and most, as set out above, were attached to the AG's complaint and cover Meyers' FOIA refusal both in the Wingate Contract Suit and the FOIA suit Brought by journalist Sue Summer after the AG refused to release the Documents under FOIA. See Order of Jg. Griffith, referenced above, and Summer/Meyers correspondence attached to AG's Answer in this case, Exhibits, pp. 227 -229, as well as my Affidavit of October 6, 2011.
15. Page 22-23 – see multiple filings of AG relating to both FOIA suits, consolidation of FOIA suits and Richland 4900. All presented to lower court in this case, including the 61-page attachment to the AG's Answer to the Complaint, filed March 8, 2013, beginning at Exhibits 214.
16. P. 23 – This is the same document referenced in Items 3 and 6.
17. p. 23 – Ltr. Jones to J. Manning – part of FOIA and Richland 4900 and presented to lower court in this case. This is the letter in which Sr. Asst. AG Havird "Sonny" Jones told the Honorable Casey Manning that the AG's Office was ready -- in September 2011 – to release the Wingate Contract, and was both presented to the lower court and widely used for the next 10 years in both this case and the Wingate Contract FOIA case to show the conflict between what AG Jones was saying, AG Meyers was saying, and much later, SWB's direction to AG Wilson in January 2012, not to comply with his duty under FOIA to release the public Wingate Contract. Presented multiple times to the lower court. NOTE: the Letter of AG Jones is specifically referenced on Ex. P. 227, attached to the AG's Answer in this case, in letter of Summer to Meyers dtd. June 10, 2012 where Summer cites that AG Jones confirmed that the Wingate Contract was a public document. Also, the January 20, 2012 ltr. of SWB to the AG, with copy to both AG Meyers and AG Jones, counsels AG Jones to reconsider the plan to release the Wingate Contract under FOIA, and the AG did so – for 8 years. [Ex. P. 360]
18. p. 23 – Motion for Sanctions, presented to the lower court in this case, and numerous references in record over 9 years. See Motion of AG to Strike , Exs. 211, ff. Seeking to strike Pope's affidavit, p. 212, which opposes the Motion for Sanctions. Numerous reference to the sentence in record of sanctions request, including in Sample exhibits, p. 10, 40 [Sanctions letter of Legacy Trust attached to Complaint, Exhibits, pp. 279,349,405,452,453]

19. p. 24 – Williams Affidavit and Ltr. to Meyers filed in this suit 1/6/12

20. Page 25 – Order in Richland 4900 presented to the lower court in this case as part of consolidation attempt by AG, filed 2012 to consolidate R4900 and Wingate Contract FOIA suit already consolidated with Richland 4900 to this FOIA case. Particularly relevant because SWB, 4 months earlier had counseled the AG, as the AG's attorney, to conceal the public Wingate Contract which shows that, as Governor McMaster testified in 2016 and the April 24, 2013 letter of AG Wilson confirms, that SWB was never hired by the State/AG in Richland 4900; had no authority to speak for the State/AG either under FOIA or in Richland 4900; but was using FOIA disruption to stop release of the public document which showed this. The lack of candor of SWB and the Legacy Trust with the Court, while purporting to act for the AG, is documented multiple times within the record of this case, as well as Richland 4900 and Aiken 1337 and the appeals the AG used to encourage the Court to dismiss this brief. See sample Exhibits, p. 80, "AG's Promise to release contracts may resolve Newberry James Brown FOIA case, *Newberry Observer*, September 21, 2011, discussing the September 14 hearing where Mr. Buchanan and I sought to "disqualify Wingate from representing both the state and the private individuals. Also see Exhibits, p. 99 for sample of numerous reference in the record in this case.

21. Page 25 – In 4900 during consolidation, presented to lower court. See responses 3 and 6 above.

22. Page 26 – See response to 21

23. Page 27 – See response to 21

24. Page 27 – Excerpts from the depositions of the AG, Solicitor General were presented to the lower court in this case. See Exhibit Z, sample Exhibits, pp. 394ff, Affidavit of Pope in both FOIA cases, filed in this case on December 18, 2020, which Both references the depositions of Solicitor General Robert Cook, AG Wilson, and others, pp.396, 406, 411 and contains portions of the depositions, w/ the Solicitor General on page 418, Mr. Bauknight (regarding the false felony claim and the Reason the AG was named as a Richland 4900 plaintiff without authority) on 418 – 419; and Governor McMaster on pp. 419 420, all on file in this case and presented to the lower court.,

25. Page 28, Order 2013 – multiple citations available. The June 2013 orders of Judge Early related to all then-pending James Brown cases in Aiken County, including Aiken 1337, which had just been filed in the probate court and removed to the circuit court, and were presented by Judge Early to the Supreme Court in his filing in 2015 in which the Supreme

Court asked for all orders issued since *Wilson v. Dallas*. Judge Early's June 2013 orders became part of every case with which the AG was seeking to consolidate this case at least by 2015, when Judge Early and Judge Manning, *sua sponte* ordered a joint mediation of Richland 4900 and Aiken 1337, and SWB claimed that this FOIA case and the Wingate Contract FOIA case had to be part of that mediation, further delaying this FOIA case, in addition to the stay the AG, through Wingate, sought and obtained from 2013 – 2016. Presented repeatedly to the lower court.

26. Order of Federal Court is one of my documents in the record of this FOIA case to support the statement that the federal court declared the Wingate Contract public, presented multiple times to the lower court. Ord. FOIA 4/1/21 was issued by Judge in this FOIA case.

27 p. 30 Judge Early's 2015 Report to the Supreme Court on all cases to Supreme Court, including Aiken 1337; Multiple citations presented to lower court.

28. Part of Consolidation and effort of AG and Legacy Trust to delay FOIA, presented to lower court as per above explanation.

30. Joint order for mediation in Richland 4900 to which the AG was party and sought, through Wingate, to include this FOIA case. Presented to lower court. Multiple citations.

31. Page 31 – Ltr. of AG's FOIA Counsel to Supreme Court about subject of this FOIA matter, and public record.

32. This is incorrect, it was the AG seeking to consolidate this FOIA case, The Wingate Contract FOIA Case, and Richland 4900 with Aiken 1337. The AG made 2 motion in 2016 for the consolidation, as did the Legacy Trust, and the consolidation efforts of both the AG and Legacy Trust included FOIA and were ongoing during the appeal.

33. The AG presented the full record of both Richland 4900 and 1337, as well As the consolidated FOIA case in this case repeatedly from 2012 until 2019 in Consolidation efforts, and from 2016 until 2019 the same judge heard all of the matters, which the AG was seeking to consolidate. Relevant to the refusal of the AG to comply with FOIA in either FOIA case until 2021, and to delay both at the direction of SWB in 2012, and despite *Wilson v. Dallas*. .

34. All relevant and presented to lower court. See above discussions of AG's 9-year consolidation effort.

35. All relevant and presented to lower court.

36, See discussion above

37 – All relevant and presented to lower court.

The Orders Filed by the AG With the Motion to Dismiss and this FOIA Case.

93. To support his assertion that the brief in this 10-year-old FOIA case should be stricken, the AG filed with this Court two orders from cases the AG tried to consolidate with this FOIA case between 2011 and 2019, including Aiken 1337, as well as Richland 4900, which was consolidated in 2011 with the Wingate Contract FOIA Suit.

94. The AG filed an Order in Appellate Case No. 2019 -000362, an appeal being conducted by Mr. Black, the Legacy Trust attorney who threatened me with sanctions in 2011 if I continued to exercise my FOIA rights.

95. I ask the Court to take judicial notice that in that case Mr. Bauknight admitted that tens of millions of dollars in litigation costs had been spent, but continued to claim that James Brown's worldwide music empire was worth less than \$4.7 Million when he died, while concealing both the litigation costs (filed *ex parte* and discarded by the circuit court after review) and the Afterman \$4.7 Million Valuation (used with Ms. Hynie since 2011).

96. I ask the Court to take judicial notice of the record on appeal ("ROA") in that case which contains the sworn testimony of Governor McMaster, AG Wilson, Solicitor General Robert Cook, and others, portions of which the AG and Legacy Trust have been trying to keep out of Richland 4900 since 2017, but which entered the record of this FOIA case in 2020.

97. I also ask the Court to take judicial notice of the time and effort expended by Mr. Newsome to secure a 2019 court order by a circuit court which did not review the Afterman \$4.7 Million Valuation that it was the best evidence of the date of death value of James Brown's music empire, and also finding that Mr. Buchanan and I breached our fiduciary duty to James Brown's estate and 2000 Trust by conducting the appeal which became *Wilson v. Dallas*.

98. The 2019-362 ROA makes clear the support that the AG's and Legacy Trust's and SWB's FOIA noncompliance and disruption gave to Ms. Hynie and 10 Legacy Trust owner-successors represented by Mr. Levenson in carrying out their May 29, 2013 plan announced to Judge Early to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement.

99. The AG also uses an order dated April 26, 2018 in the first of two pretrial appeals from Richland 4900, 2017-1899 in which the claimed non-existent Legacy Trust continued to pursue the May 29, 2013 announced plan to reinstate the AG's 2008 settlement; dismember James Brown's charity; and blame it on Mr. Buchanan and me, while concealing the public documents (under FOIA and in discovery) which show that we are blameless.

100. As the record in 2017-1899 shows, on or about April 13, 2020, my counsel asked the Court of Appeals to supplement the ROA with the sworn testimony of the Governor, the AG and the Solicitor General, primarily the emphatic sworn testimony of the Governor that he had never hired SWB to bring Richland 4900 in the name of the State/AG; that he had never authorized Russell Bauknight to act on behalf of the State/AG in Richland

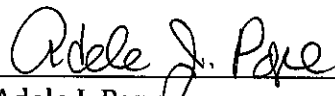
4900; and that he did not even know he was a plaintiff in Richland 4900 until after leaving office as AG in January 2011.

101. As the April 26, 2018 Order in 2017-1899 makes clear, the AG and the Legacy Trust had inextricably intertwined the records of my two 2011 FOIA cases, Richland 4900 and Aiken 1337, and concealing public documents under FOIA was essential to blaming the plan on Mr. Buchanan and me.

102. On April 26, 2018 that Court of Appeals granted the motion to strike, but also declined to strike "documents that were presented to the lower court as part of this case prior to this appeal," which is the case with all documents designated in this appeal.

103. I ask the Court to take judicial notice of the briefs and record of 2018-2229, in which the AG adopts the position of Ms. Hynie and other Legacy Trust owner-successors, but to note that the AG has since been asked to be dropped as a party to this appeal.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO before me this 8th
Day of October, 2021.

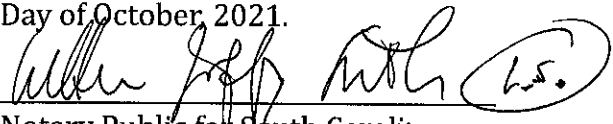

Notary Public for South Carolina
My Commission Expires: 2/27/2027

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee

Defendants.

IN THE COURT OF COMMON PLEAS

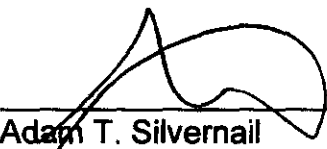
Civil Action No. 2011-CP-36- 00364

SUMMONS

FILED
NEWBERRY COUNTY
2011 AUG -4 A 10:05
JACKIE S. BOWERS
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.


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

August 3, 2011

Attorney for Plaintiff Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff(s)

vs.

Alan Wilson, in his capacity as Attorney General
of South Carolina, and the James Brown Legacy
Trust, by Russell L. Bauknight, its Trustee

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2011-CP - 36- 364

(Please Print)

Submitted By: Adam T. Silvernail

Address: Post Office Box 1898, Columbia, SC 29202

SC Bar #:

80219

Telephone #:

(803) 779-1770

Fax #:

(803) 403-8092

Other:

E-mail:

adam@silvernailfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate's Appeal (910) ☐ Magistrate's Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☒ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)	Declaratory Judgment/Injunction	

Submitting Party Signature: _____

Date: 3 August 2011

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-364

Adele J. Pope,

Plaintiff,

SUMMONS

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee

Defendants.

FILED
NEWBERRY COUNTY
2011 AUG - 3 P 4: 38
JACKIE S. BOWERS
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

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

FILED
RICHLAND COUNTY
2012 JAN 17 PM 4:41
JENNIFER W. MCBRIDE
C.C. & G.S.

August 3, 2011

Attorney for Plaintiff Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36- *364*

COMPLAINT

FILED
NEWBERRY COUNTY
2011 AUG - 3 P 4: 38
JACKIE S. BOWERS
CLERK OF COURT

Plaintiff would respectfully show unto the Court:

**FOR A FIRST CAUSE OF ACTION
(Disclosure of Documents Under FOIA)**

Parties and Jurisdiction

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant Alan Wilson is the Attorney General of South Carolina (AG Wilson), and is successor in office to Henry D. McMaster ("AG McMaster").
3. Defendant James Brown Legacy Trust ("Legacy Trust") is, on information and belief, a public body under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. ("FOIA"), with Russell L. Bauknight as its current trustee. The Legacy Trust is under the continuing and direct control of AG Wilson through the AG's unfettered right at any time and from time to time to remove and replace the trustee of the Legacy Trust with such person as AG Wilson shall select, with all trustees to serve at the AG's pleasure.

FILED
RICHLAND COUNTY
2012 JAN 17 P 4: 41
JANETTE MCCOY
CLERK OF COURT

4. Contrary to the suggestion in its name, the Legacy Trust was not created by James Brown, and was never part of his estate plan. The Legacy Trust was created in late 2008 or early 2009 by AG McMaster, in his official capacity, and others, to receive funds AG McMaster redirected from Brown's estate plan to the new trust he created. Thus AG Wilson anticipates receiving about \$85 Million (if Plaintiff's valuation is correct) or about \$4.7 Million (if Bauknight is correct) – and any recoveries the State receives from Plaintiff in Case 4900, which the Legacy Trust will then manage and distribute both to a charitable trust created by AG McMaster and to private citizens. See Order of the Honorable Doyet A. Early, III, dtd. 5/26/09, Case 2008-CP-02-1647, on appeal to the S.C. Supreme Court.

5. Defendants are subject to the jurisdiction and venue of this Court pursuant to S.C. Code Ann. §30-4-20(a) and §30-4-100, and may be served with summons, process and copy of this Complaint at their respective addresses listed on Exhibits A and B attached hereto.

Facts and FOIA Request

6. On October 2, 2009 AG McMaster issued an announcement related to the use by his office and the State of private, contingency-fee attorneys known as "special counsel." A copy of that statement, with notes, is attached to this Complaint as Exhibit C.

7. On May 19, 2010 private, contingency-fee counsel Kenneth B. Wingate of Sweeney, Wingate & Barrow, PC (the "Wingate Firm"), as sole counsel for AG McMaster, the Legacy Trust and more than 10 private plaintiffs, filed suit against Plaintiff and Robert L. Buchanan, Jr. in Civil Action No. 2010-CP-40-4900 ("Case

4900").

8. The Case 4900 complaint, naming AG McMaster as a beneficiary, includes the following plaintiffs:

- a. Russell L. Bauknight as trustee of the James Brown Legacy Trust;
- b. Bauknight on behalf of McMaster in his capacity as Attorney General of the State of South Carolina; and
- c. McMaster in his capacity as AG of the State of South Carolina.

9. AG McMaster and Bauknight did not attach or provide a signed copy of the Legacy Trust, although AG and Bauknight as his agent in Case 4900 assert Plaintiff caused tens of millions of dollars of damage to the Legacy Trust.

10. AG McMaster and the Legacy Trust, among other false allegations, assert that Plaintiff's and Buchanan's approximately \$85 Million [\$100 Million less the debt to TIAA-CREF] valuation of James Brown's assets was incorrect and improper. They asserted Plaintiff intentionally overstated Brown's assets on the estate tax return for the improper purpose of obtaining a large commission.

11. As described in Exhibit D, an affidavit of Plaintiff on file in Case 4900, AG McMaster also seeks money damages because Plaintiff declined to sign a document agreeing not to criticize McMaster for destroying James Brown's estate plan by creating the Legacy Trust.

12. If true, AG McMaster's false allegations against Plaintiff could subject Plaintiff to both civil and criminal penalties and destroy her career as an attorney.

13. On or about January 12, 2011 AG Wilson replaced AG McMaster, gaining by virtue of his office control over the Legacy Trust, including the right to remove and

replace the trustee at will.

14. On May 4, 2011, Bauknight filed sworn documents asserting Brown's worldwide music empire was worth less than \$4.7 Million when he died on December 25, 2006, making it virtually impossible for Plaintiff and Buchanan to have done tens of millions of dollars of damage to Brown's empire between November 2007 and May 2009.

15. Bauknight's purported \$4.7 Million valuation sharply conflicts with a securities prospectus issued by Bauknight's Case 4900 Co-Plaintiff (through Pinnacle) to raise \$200 Million to acquire the James Brown worldwide music empire at the same time – about 40 times Bauknight's purported valuation. The prospectus is part of Exhibit D.

16. Since May 4, 2011, AG Wilson, through an assistant AG, and Bauknight offered Bauknight's \$4.7 Million valuation of Brown's worldwide music empire as a supplement to the record in a pending James Brown case appeal. The motion to supplement was denied.

17. On information and belief, the actions of both AGs and AG Wilson's assistant described above were taken under color of State law and in an official capacity, and were or should have been consistent with the public interest and ordinary customs and procedures of the AG's office. Likewise, the actions of Bauknight speaking on behalf of the AGs since May 19, 2010 should have met the same standard.

18. On June 30, 2011, Plaintiff sent to AG Wilson and the Legacy Trust separate requests under FOIA for public records related to the Legacy Trust. True

copies of her requests are attached hereto as Exhibits A and B. Plaintiff requested copies of:

The Final and all drafts, signed and unsigned,
of the James Brown Legacy Trust

19. The request to AG Wilson, in addition, sought:

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

20. A copy of both requests was also delivered to the Wingate Firm which, on information and belief, as counsel for both the AG and the Legacy Trust, has a duty to comply with FOIA. See AG's standard Retention Agreement for Special Counsel.

21. Substantially more than fifteen days, excluding Saturdays, Sundays and holidays have elapsed and Plaintiff has received no response on behalf of AG Wilson.

22. As described in Exhibit D, the Wingate Firm has refused to release the requested documents and thousands of other already-public documents for nearly 10 months. AG McMaster's Retention Agreement for other Special Counsel – Wingate has refused to disclose his Retention Agreement – requires special counsel to comply with FOIA.

23. On July 16, 2011 Plaintiff received from attorney J. David Black, Esquire, a response, a copy of which is attached hereto as Exhibit E, denying the request for a copy of the Legacy Trust and threatening Plaintiff as follows:

In the event that you continue to file unnecessary. . . 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.

24. On information and belief, Plaintiff is entitled to review requested documents both in the hands of the AG Wilson and in the hands of the Legacy Trust in accordance with reasonable rules concerning the time and place of access, and no requested record is specifically excluded from disclosure under FOIA.

25. Attorney Black's response is in direct contrast to AG Wilson's position in the *Public Official's Guide to Compliance with South Carolina's Freedom of Information Act* in which AG Wilson states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information.

...

When in doubt, release the document. (p. 1)

26. On information and belief, the actions of the Legacy Trust, through Black, wilfully violate Plaintiff's right to obtain the requested documents and are an arbitrary and wrongful anticipatory interference of a person appointed and controlled by the AG with her right, and the right of other members of the public, to obtain records from both the AG and the Legacy Trust regarding the AG's oversight of the Legacy Trust which must be made available for inspection and copying.

27. Pursuant to FOIA, S.C. Code Ann. §30-4-10 et seq., any person has a right to inspect and copy any public record of a public body.

28. On information and belief, the AG's right of absolute control of the Legacy Trust, along with the support it is provided by the AG's office and the funds the AG's office and Legacy Trust expects to receive and control, including from the State's suit against Plaintiff in Case 4900, make it a public body under §30-4-20. See, for example, Opinions of Henry McMaster, AG, dtd. May 19, 2006 (in response to Merrill/Rutherford)

and December 28, 2006 (in response to McConnell)

29. Plaintiff, a South Carolina citizen faced with threats on behalf of the Legacy Trust and no response of AG Wilson has no adequate remedy at law, and requires an injunction to prevent interference with her rights, and those of other citizens, to these public records.

30. On information and belief, it was willful and reckless for the AG's appointee to assert that attorney-client privilege or work product privilege protects the AG or the Legacy Trust from allowing Plaintiff to inspect and copy the requested documents which create the vehicle used by AG McMaster and Bauknight to pursue collection of tens of millions of dollars from Plaintiff and which documents have been used as an authorization for Bauknight to act on behalf of the State.

31. Based upon the facts set forth above, this Court should enter an order declaring that the requested records are public records and should be made available to the public and Defendant by both AG Wilson and the Legacy Trust, as well as by all special counsel, for inspection and copying as provided for by FOIA.

**FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment that Legacy Trust is a Public Body under FOIA)**

32. The allegations of paragraphs 1 through 31 are incorporated by reference as if fully and specifically set forth herein.

33. In addition, based on the facts set forth above, and other factors set out in the Opinion of AG McMaster dtd. May 19, 2006, including but not limited to its creation and control by the AG and its being supported in whole or in part by public funds, on

information and belief, the Court should declare the Legacy Trust a Public Body as defined in S.C. Code Ann. § 30-4-20(a), with all obligations under FOIA as set out therein.

**FOR A THIRD CAUSE OF ACTION
(Attorneys' Fees Under S.C. Code Ann. § 30-4-100(b))**

34. The allegations of paragraphs 1 through 33 are incorporated by reference as if fully and specifically set forth herein.

35. Plaintiff is informed and believes that if she prevails in this case, in whole or in part, she should be entitled to reasonable legal fees and costs of litigation pursuant to S. C. Code Ann. § 30-4-100(b).

36. On information and belief, the Court should enter an order awarding Plaintiff her legal fees and other litigation expenses incurred in this case pursuant to S. C. Code Ann. § 30-4-100(b).

37. Based upon the facts set out above, this Court should consider punitive measures to stop the threats of the AG's appointee, which are intended to chill and impair the public's right to public information.

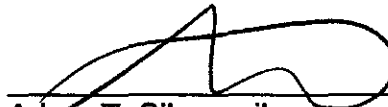
WHEREFORE, Plaintiff respectfully prays to this Court for the following:

- a. That this Court issue an order declaring that the above-described documents are public records under South Carolina law and that such records should be made available for inspection and copying to the Plaintiff by both Defendants as provided by law;
- b. That, in addition, this Court should declare that The James Brown Legacy Trust is a public body subject to all of the obligations of a public body under FOIA;
- c. That this Court should compel Defendant AG Wilson to perform his official duty and the Legacy Trust to comply with FOIA by permitting Plaintiff to inspect and copy the above-described public records as provided by law,

and enjoining them from interfering with such inspection and copying;

- d. That this Court order Defendants to pay the Plaintiff her reasonable attorney's fees and other litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. § 30-4-100.
- e. That the AG should direct the Wingate Firm and all special counsel to comply with their FOIA duties with respect to the Legacy Trust.
- f. That this Court set at the earliest possible time a hearing on the matters set forth herein.
- g. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

August 3, 2011

Attorney for Plaintiff

EXHIBIT - A

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

**1228 Walnut Street
Newberry, South Carolina 29108**

June 30, 2011

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

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

Dear Madam or Sir:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act.

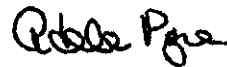
I would like to receive copies of the following documents:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust
2. All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,



Adele J. Pope

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NEWBERRY COUNTY
2011 AUG - 3 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT - B

FILED
NEWBERRY COUNTY
2011 AUG - 3 P 4: 39
JACKIE S. BOWERS
CLERK OF COURT

**1228 Walnut Street
Newberry, South Carolina 29108**

June 30, 2011

Custodian of Records
The James Brown Legacy Trust
Post Office Box 1330
Columbia, South Carolina 29202

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

Dear Madam or Sir:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act.

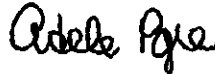
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- The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,



Adele J. Pope

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CLERK OF COURT

EXHIBIT - C

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JACKIE S. BOWERS
CLERK OF COURT

**STATEMENT FROM ATTORNEY GENERAL HENRY McMASTER
ON CAMPAIGN CONTRIBUTIONS BY SPECIAL COUNSEL**

October 2, 2009

FACTUAL NOTE:

In a major fraud case against drug giant Eli Lilly, the company recently made an effort in court to disqualify the attorneys Attorney General Henry McMaster appointed to serve as special counsel to the State of South Carolina, assisting his own attorneys. In a motion to the court, Eli Lilly's attorneys claimed it was illegal for the lawyers chosen to serve as special counsel to have subsequently made contributions to the attorney general's campaigns and therefore should be disqualified from representing the State.

The judge rejected the motion and ruled that the contributions were legal and proper. In fact, attorneys on 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.

During Attorney General McMaster's two terms in office, he has brought many lawsuits for the State. In several, due to their size, complexity and state government's budget constraints, he has appointed outside attorneys to serve as "special counsel" and to work with his attorneys. These were all contingency cases, meaning the special counsel involved receive no compensation unless they win the case. If special counsel loses, they are paid nothing. If they win, the corporate defendant pays their fees and expenses. Win or lose, no tax funds are used to pay them. 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. Since January 2003, the attorney general has appointed twenty-one (21) special counsel in six cases, one of which (Natural Resource Damage) was terminated in 2008 without any action taken.

Of these 21 special counsel appointments over the past seven years, only five (5), including their firms, subsequently made donations to General McMaster's campaigns, totaling \$32,500.

A statement from General McMaster follows:

"As the judge in the Eli Lilly case confirmed in a ruling last week, the contributions my two campaigns for attorney general received from attorneys who serve as special counsel to the State are legal and proper.

However, 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. Otherwise, other defendants may be tempted to repeat these baseless allegations as a delaying

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JACKIE S. BOWER
CLERK OF COURT

EXHIBIT - C

FILED
HEWBERY COUNTY
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JACKIE S. BOWERS
CLERK OF COURT

**STATEMENT FROM ATTORNEY GENERAL HENRY McMASTER
ON CAMPAIGN CONTRIBUTIONS BY SPECIAL COUNSEL**

October 2, 2009

FACTUAL NOTE:

In a major fraud case against drug giant Eli Lilly, the company recently made an effort in court to disqualify the attorneys Attorney General Henry McMaster appointed to serve as special counsel to the State of South Carolina, assisting his own attorneys. In a motion to the court, Eli Lilly's attorneys claimed it was illegal for the lawyers chosen to serve as special counsel to have subsequently made contributions to the attorney general's campaigns and therefore should be disqualified from representing the State.

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During Attorney General McMaster's two terms in office, he has brought many lawsuits for the State. In several, due to their size, complexity and state government's budget constraints, he has appointed outside attorneys to serve as "special counsel" and to work with his attorneys. These were all contingency cases, meaning the special counsel involved receive no compensation unless they win the case. If special counsel loses, they are paid nothing. If they win, the corporate defendant pays their fees and expenses. Win or lose, no tax funds are used to pay them. 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. Since January 2003, the attorney general has appointed twenty-one (21) special counsel in six cases, one of which (Natural Resource Damage) was terminated in 2008 without any action taken.

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However, 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. Otherwise, other defendants may be tempted to repeat these baseless allegations as a delaying

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CLERK OF COURT

tactic in future cases involving special counsel. Further, when it comes to the issue of ethics in government, appearances matter as much as the law. It is important to avoid even the slightest possible appearance of any impropriety.

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."

A LIST OF SPECIAL COUNSEL DONORS AND AMOUNTS TO BE RETURNED IS
BELOW:

J. Preston Strom, Jr. - \$3,500 - 9-30-08
Strom Law Firm - \$3,500 - 9-30-08
Columbia SC
(Appointment signed 11-22-05)

J. Stephen Schmutz - 9-30-07 - \$3500
Schmutz and Schmutz - 9-30-07 - \$3500
Charleston SC
(Appointment signed 11-28-05)

William E. Hopkins Jr. - 12-31-08 - \$1,500
Hopkins and Campbell LLP - 8-11-08 - \$3,500
Columbia SC
(Appointment signed 1-22-08)

John Belton White, Jr. - 3-31-09 - \$1,500, 11-13-07 - \$2,000
Harrison, White, Smith and Coggins 7-5-07 - \$3,500
Spartanburg SC
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

John S. Simmons - 9-30-08 - \$3,000
Law Offices of John S Simmons - 6-30-07 - \$3,500
Columbia SC
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

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EXHIBIT - D

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

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.

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.

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

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

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RICHLAND COUNTY
FILED

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.

JACKIE S. BOWERS
CLERK OF COURT

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NEWBERRY COUNTY
FILED

- 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

gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation. . . shall be considered the exclusive property of . . . South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4010 et seq. . . . This agreement shall be considered a public document.

...

Article IV. COMPENSATION

... Special Counsel shall receive no compensation unless the State of South Carolina receives a settlement or damage award. . .

...

... the Attorney General shall retain 10% of Special Counsel's fees. . .

C. ... Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs ... including expert witness fees . . . Special Counsel's agreement to advance ... costs has been taken into consideration in establishing the fee schedule...

...

Article VI. TERMINATION

A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty or explanation.

21. My FOIA request for the Legacy Trust was met with a threat on behalf of Bauknight to file an abuse of process suit against me. ¹³

22. Particularly troublesome in light of Private Plaintiffs' devaluation scheme is

¹³ See Exhibit C. The FOIA response came from one of Bauknight's 10 (according to Bauknight) attorneys at Nexsen Pruet (NP). NP serves as counsel to Plaintiff AstraZeneca Pharmaceuticals, LP in the Spartanburg County, S.C. case entitled AstraZeneca, LP, Plaintiff v. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Civil Action No. 2011-CP-42-1213 which is referenced herein.

the AG's false allegation, through Wingate, and Bauknight, purportedly speaking on behalf of the AG, that Bob and I overvalued Brown's assets to the IRS under oath by nearly \$80 Million for the improper purpose of getting a big commission.¹⁴

23. I am informed and believe that when such false accusations are made on behalf of the State's chief law enforcement officer, who also enforces tax and fraud laws, they are clearly intended to threaten and intimidate Bob and me, and we are entitled to know if AG McMaster authorized them and AG Wilson condoned them.

24. On July 21, 2011, defending the AG's use of private counsel in a filing in the AZ case, AG Wilson stated:

On occasion, the Attorney General, in carrying out his responsibility, has found that it is necessary to hire outside counsel on a contingency-fee basis. These attorneys. . . take on substantial risks, litigating these matters against multi-billion dollar entities, which employ scores of national law firms. ¹⁵ [Footnote 1 in text] ... Private counsel undertake this representation under the direction and control of the Attorney General. . . . [Reply, p.3] [Emphasis supplied.]

25. In support of his AZ Retention Agreement, AG Wilson stated:

Because the Attorney General is in control of the litigation, and possesses final authority over the case, there is no risk of bias or improper enforcement.

26. AG Wilson – deploring the imbalance of power when a financial giant is

¹⁴ In an Order dated January 8, 2008 in Case No. 122, Judge Early awarded us \$317,000 and unpaid costs for our service as Special Administrators of Brown's Estate from March 7, 2007 - November 20, 2007. Acknowledging our increased commitment as PR/Trustees, the Court also awarded Bob and me ongoing "time plus costs" payments, with interest at the legal rate on unpaid amounts. Neither AG McMaster nor any Interested Person objected to the January 8 Order. As of September 1, 2009, as reflected in the Aiken County records, Bob and I were entitled to approximately \$2.1 Million, plus future interest. [See Order dtd. 1/8/08, Case 122.]

¹⁵ I For example, in contrast to the figures cited by Defendants... Astra Zeneca reported in mid-2009. . . that it had already spent \$593 million defending Seroquel matters.

plitted 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

13. 2007 6:33PM Levenson & Assoc. 404-659-1355 No. 6497 P. 45

Innacie Media & Entertainment, LLC
Amount Requested \$200,000,000

Executive Summary

Project Information

Pinnacle Media & Entertainment, LLC
 Anthony "Chip" Lumar, Chairman/CEO
 Dr. Yamma Brown Lumar, President
 23 Peachtree Center Ave
 Suite 400
 Atlanta, GA 30334-0841
 Tel: 404-343-0841
 Fax: 404-234-2826
www.pinnaclemediaent.com
innacieinfo@pinnacleip.com

Management Team
 Dr. Yamma Brown Lumar, Chairman/CEO
 Dr. Yamma Brown Lumar, President
 Dr. Terry B. Cox, Chairman Windsor Group
 Levoed Carter, Esq.
 Alvin Wynn, The Machine Group
 Calvin Wynn, The Machine Group
 Fred McLaughlin, Undiscovered Live
 Michelle Graves, Special Advisor to Mr. Lumar

Industry
 Content provider to the entertainment industry
 Film/television/cable

Company Resources
 Intellectual Property Rights

Type of Financing Sought
 Acquisition financing for the James Brown Estate

Total Internal Capital Invested
 \$1,300,000 had been pledged by the Owners for
 start up of Pinnacle Communications Inc., and
 Pinnacle Media & Entertainment for print rights
 acquisition, trade show sponsorships, production
 and marketing.

Professionals
 (Approving firm)
 Craig C. Takashin
 Takashin & Company, LLC
 336 Intervale Rd
 Suite B1
 Clifford, NH 03119
 Tel: 603-330-0812

(Banking)
 Wachovia Bank
 Dirk Leford
 Dave Hingueney
 Marietta, GA 30024
 Tel: 770-420-0326
 Fax: 770-420-0634

Pinnacle Communications, Inc c/o Chip Lumar
 404-343-0841
www.pinnaclemediaent.com
innacieinfo@pinnacleip.com

Business Description

Pinnacle Media & Entertainment, LLC "PME" is an independent film production and distribution company. The company specializes in commercial grade theatrical films, documentaries, video and content for the major motion picture/television/cable industries. The company presently has the film option rights to several properties that can be acquired through its sister company, Pinnacle Communications, Inc;

Philosophy

There is an inherent marriage between music entertainment and the film/television industries. Both require massive amounts of content to satisfy the needs of their clients/customers, and this company intends to exploit this fact by appointing the daughter of a true living "Legend" James Brown, to be its leader. Pinnacle Communications Inc is currently reviewing over fifty titles for our film and distribution companies. Upon successful completion of funding, PME will launch the national television and cable networks with Atlanta as its national base of operations.

James Brown Estate Acquisition

On December 25, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Dean Martin, in yearly revenues generated, licensing rights, sampling rights, feature films, documentaries, tributes, and future record sales. We believe the estate of the late James Brown can and will generate over 100 million per year. Under the right management structure and capitalized properly, there will be no end in sight. With the right investment partner, Pinnacle Media & Entertainment will become the premier entertainment/management company in the world. Currently the estate is under the protection of Greenberg Truig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience"

Management

Our President is a distinguished graduate of Mercer University (1995) where she received her Doctorate in Pharmacy. Being the daughter of a star of music and film, Dr. Lumar has had intimate knowledge of both industries. Another advantage Dr. Lumar gives is her access to the Hollywood elite. Among some of the more notable Hollywood are Academy Award winners Jamie Foxx, and Dan Aykroyd, other celebrities' friends includes actor Eddie Murphy, and playwright Tyler Perry. The company will have only one paid employee initially as all other work not performed by the President is outsourced to contract professionals, i.e. directors, scriptwriters, cast and crew professionals on a per-project basis.

FILED
 NEWBERRY COUNTY
 2011 AUG -3 P 4:40
 JACKIE S. BOWERS
 CLERK OF COURT

2007 6:33PM Levenson & Assoc 404-659-1355

No. 6497 P. 11

Pinnacle Media & Entertainment, LLC
Amount Requested \$200,000,000

Executive Summary

arrangement never before realized. The potential for profits from both companies is incalculable, and the returns on investment will be far greater than anyone can imagine.

Pinnacle Communications, Inc. c/o Chip Lumar
404-404-343-0048
www.pinnaclemedia.com
pinnaclemedia@pinnaclecp.com

EXHIBIT B

Witness List 11/12/2010

Full Name	Address
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 29812-1982
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 Hynle-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 Sherpton	106 West 145th Street New York, NY 10038
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

CLERK OF COURT
JACKIE S. BOWERS

FILED
NEWBERRY COUNTY
2011 AUG - 3 P 4:40

Witness List
11/12/2010

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

EXHIBIT C

NEXSEN|PRUET

J. David Black
Member
Admitted in SC

JACKIE S. BOWERS
CLERK OF COURT

-2011 AUG -3 P 4:40

FILED
NEWBERRY COUNTY

July 15, 2011

VIA US MAIL

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

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

Dear Ms. Pope,

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

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

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

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

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

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

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

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

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

Very truly yours,

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

J. David Black

JDB/JGH

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

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:40
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT - E

NEXSEN|PRUET

J. David Black
Member
Admitted in SC

July 15, 2011

VIA US MAIL

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

FILED
NEWBERRY COUNTY
2011 AUG - 3 P 4:40
JACKIE S. BOWERS
CLERK OF COURT

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Nexsen Pruet, LLC
Attorneys and Counselors at Law

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

Very truly yours,

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

J. David Black

JDB/JGH

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

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 11-CP-36-364

MOTION OF ATTORNEY GENERAL
TO DISMISS AND
ALTERNATIVE MOTION TO STRIKE

SCANNED

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:55
JACKIE S. BOWERS
CLERK OF COURT

FILED
RICHLAND COUNTY
2011 JAN 17 PM 4:40
JENNIFER W. MCBRIDE
C.C.P. & G.S.

Without waiving any jurisdictional or other defenses to this complaint, the Defendant Alan Wilson, Attorney General moves for the dismissal of the Complaint herein pursuant to Rules 12(b)(3) and (8), SCRCP, in that, for reasons set forth below, venue is improper and another action is pending between the same parties for the same claim:

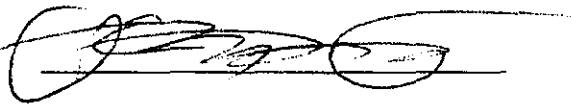
1. Venue is improper in that, in related litigation, the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, November 8, 2010 (copy attached as Exhibit A only in support of 12(b)(3) motion). Further, even if, *arguendo*, the Bauknight Order were not controlling, under S.C. Code Ann. § 15-77-50 (1976), suits against officials of the State in their official capacities must be brought in the circuit where such question, action or controversy shall arise, and the Complaint does not allege a basis for venue in Newberry County. Venue should be in Richland where the other suit is pending.

2. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc., et al, supra*. Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See*, Exhibit D to Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion for Protective Order and including Exhibits D & E thereto (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion). Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the Court in Case 4900. Therefore, this case is subject to dismissal under Rule 12(b)(8).

Subject to the Motion to Dismiss, the Attorney General moves to strike the Affidavit of Plaintiff attached as Exhibit D to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and / or that are irrelevant.

Respectfully submitted,

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

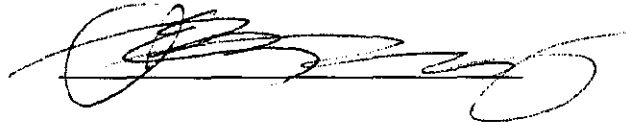
BY: 

September 2, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose and consultation as to the Motion to Dismiss is not required.

A handwritten signature in black ink, consisting of a series of loops and flourishes, positioned above the printed name.

ATTORNEY FOR THE ATTORNEY GENERAL

September 2, 2011

EXHIBIT A

In Support of Rule 12(b)(3) Motion

FILED
HEWDELL COUNTY
201 SEP -6 A 10:55
JACQUE S. BOWERS
CLERK OF COURT

**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

RICHLAND COUNTY
FILED

2010 NOV -9 AM 9:21

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

**ORDER DENYING DEFENDANTS'
MOTION TO CHANGE VENUE**

This matter came before the Court on August 30, 2010 for hearing on Defendants' Motion to Change Venue from Richland County to Aiken County. Counsel for all parties were

SCANNED

050

present. Other motions in this case were also heard on August 30 and separate Orders will issue with regard to those motions.

PROCEDURAL POSTURE

This is a judicial proceeding involving an irrevocable trust of James Brown dated August 1, 2000, as modified by a court-approved settlement agreement, whose sole, professional trustee administers the trust in Richland County, South Carolina. This irrevocable trust is distinguishable from the Estate of James Brown, the administration of which is in the Aiken County Probate Court.

The complaint alleges 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), SCRCF, 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.

FACTS

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 known as the James Brown Irrevocable Trust that was created and funded on August 1, 2000. The James Brown Irrevocable Trust, by its terms, was to be divided into the Brown Family Educational Trust and the James Brown "I feel Good" Trust after his death.

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 to the complaint 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 to the complaint as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was revised to create a "Settlement Entity" in which are vested 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.

Plaintiffs are all of the beneficiaries of the settlement trust, 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. This office is located in Richland County, South Carolina.

ANALYSIS

"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. See Order for Removal of July 19, 2010. 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). The statute designates the trustee's place of business, that is, the place 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 necessary for the courts in the place where the trust records are kept and the trust assets are held to 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 this Court were to determine that venue might be proper in either Richland or Aiken Counties, which it does not, 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). This Court notes that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County, as the August 10, 2007, order of Judge Early directed the trust records to be delivered to 1218 Taylor Street in Columbia, which was Pope's office.

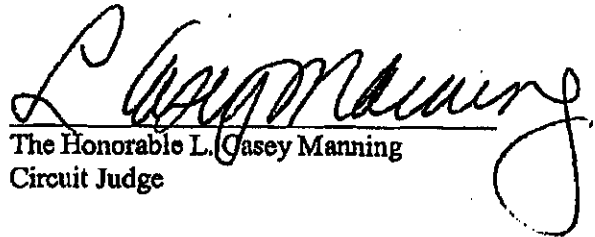
Defendants argue that the matters raised in the complaint relate to an action previously filed in Aiken County. This Court disagrees. The complaint alleges causes of action which are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of 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 is unrelated to the prior litigation involving James Brown's estate or trust.

CONCLUSION

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 County, the initial commencement of this action in Richland County requires that venue remain in Richland County.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Change Venue is DENIED.


The Honorable L. Casey Manning
Circuit Judge

Signed this 8 day of Nov, 2010
at Columbia, South Carolina.

EXHIBIT B

In Support of Rule 12(b)(8) Motion

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:55
JACQUE S. BOWERS
CLERK OF COURT

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.

MOTION TO COMPEL
DISCOVERY

(Requests for Production of Documents)

FILED
NEWBERRY COUNTY
2011 SEP -5 A 10:56
MICHELE S. POWERS
CLERK OF COURT

TO: PLAINTIFFS 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 FOR THE STATE OF SOUTH CAROLINA; DARYL J. BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.¹

2. On October 11, 2010, Defendant Pope served Plaintiffs 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 for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

¹ Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

hereto as Exhibits A-H.

3. Among the documents requested were "[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisement in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately \$4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisement and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

December 2010. Plaintiff asserted that these documents proved that James Brown's assets at death and those of the 2000 Irrevocable Trust were worth only about \$6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

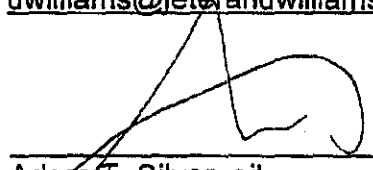
13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

14. Defendant Adele J. Pope is informed and believes that she is entitled to an Order compelling the above-named Plaintiffs to comply with Rule 34, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 34 and 37, applicable case and statutory law, the entire record herein, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

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



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

June 7, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT C

In Support of Rule 12(b)(8) Motion

FILED
NEWBERRY COUNTY
201 SEP -6 A 10:56
JUDICE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs

v.

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

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

Civil Action No. 2010-CE-4900

DEMETRIE W. McBRIDE
Clerk of Court

2011 JUL -5 AM 11:27

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
VARIOUS DOCUMENTS REQUESTED
BY DEFENDANT ADELE J. POPE**

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:56
JACQUE S. BOWERS
Clerk of Court

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

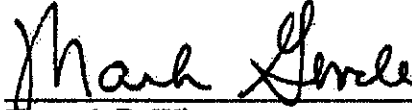
The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17, 2011 reply, including the proposed Confidentiality Order (Exhibit E).

(Signature Page Immediately Following)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

July 1, 2011

EXHIBIT D

FILED
HEMBERY COUNTY
2011 SEP -6 A 10:55
MICHE S. BOWERS
CLERK OF COURT

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

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

June 15, 2011

By U.S. Mail:

Mark V. Gende, Esquire
Sweeny Wingate & Barrow P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
mvg@swblaw.com

4077-7389

Re: Bauknight and others vs. Pope and others
Richland County Case No. 2010-CP-40-4900

Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
6. The file of Zumwalt, Almon & Hayes, PLLC;
7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322; and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,


Adam T. Silvernail

cc: Daryl L. Williams, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
Adele J. Pope, Esquire

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:55
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT E

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:55
JACQUE S. BOWERS
CLERK OF COURT

S·W·B

SWEENEY WINGATE & BARROW P.A.

E-MAILED
9-1-11

June 17, 2011

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

VIA ELECTRONIC MAIL AND U.S. MAIL

Adam T. Silvernail, Esquire
1218 Taylor Street
P.O. Box 1898
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

MAN:0001 1-800-256-2233 1-800-256-2233 1-800-256-2233 1-800-256-2233 1-800-256-2233 1-800-256-2233 1-800-256-2233 1-800-256-2233 1-800-256-2233 1-800-256-2233

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

5. All information and documents related to claims for and against Al Bradley and/or his estate.

These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zumwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENEY, WINGATE & BARROW, P.A.


Mark V. Gende

MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail
Daryl L. Williams, Esquire, via e-mail
Robin A. Braithwaite, Esquire, via e-mail

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee

Defendants.

RICHLAND COUNTY

FILED

IN THE COURT OF COMMON PLEAS

2012 JAN 17 PM 4:38

Civil Action No. 2011-CP-36-00364
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT

SCANNED

JACKIE S. BOWERS
CLERK OF COURT

2011 SEP 30 A 11:50

FILED
NEWBERRY COUNTY

TO: DEFENDANTS AND/OR THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that, ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Plaintiff Adele J. Pope, through her undersigned counsel, will move at the Newberry County Courthouse, 1226 College Street, Newberry, South Carolina, for an order granting her summary judgment on all claims in the complaint herein.

The grounds for this motion are that, viewing the evidence in the light most favorable to Defendants, there is no genuine issue of material fact as to the following:

**The Office of the Attorney General and the Legacy Trust are
Public Bodies for the Purposes of the Freedom of Information Act**

1. It is undisputed that the Office of the South Carolina Attorney General is a public body under the South Carolina Freedom of Information Act ("FOIA").
2. The James Brown Legacy Trust (the "Legacy Trust") is a public body as defined in FOIA because it is supported by the State in the following ways:

- a. It was created by South Carolina Attorney General ("AG McMaster"), who in his Official Capacity as AG, was designated as both a Settlor and Beneficiary thereof.
- b. AG Alan Wilson, as successor in office to AG McMaster, has all of the privileges and obligations of his office with respect to the Legacy Trust.
- c. The State, through the Office of the AG, actively supports the Legacy Trust through the salaries of State employees and other resources of the State.
- d. The Legacy Trust's funding source is, on information and belief, public because it was accomplished solely by AG McMaster's assertion of his *parens patriae* authority by contracting on August 10, 2008 to place the private assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust in the Legacy Trust.¹
- e. AG Wilson controls the Legacy Trust by the unfettered right to remove and replace Russell Bauknight, selected by AG McMaster, and Bauknight's successors.
- f. All major actions of the Legacy Trust require a vote of the AG, and the method of voting – or losing the right to vote -on significant events requires constant vigilance on the part of AG Wilson's Office.
- g. AG Wilson has a further statutory duty to enforce the proper operation of The James Brown "I Feel Good" Private Foundation, transferred to the Legacy Trust by AG McMaster,
- h. The "I Feel Good" Foundation, after payment of 47 1/2 % of taxes and expenses of the Legacy Trust, and after further reduction of \$2 Million, will receive 47 1/2 % of the income of the Legacy Trust.
- i. AG Wilson controls the "I Feel Good" Foundation through Bauknight, its trustee, who was appointed by AG McMaster and may be removed or replaced at will by the AG.
- j. On information and belief, having taken control of both Brown's

¹ McMaster's agreement to fund the Legacy Trust was objected to by all of Brown's claimed and acting PR/Trustees, some of whom have appealed. No stay is in place, however, and the Legacy Trust is now in active operation.

private assets and his foundation for the Legacy Trust through the exercise of public authority and placed them in the Legacy Trust, the AG may not now shield them from public scrutiny.

- k. The AG has delegated to Bauknight, Trustee of the Legacy Trust, and his advisors certain essential public functions of the Office of the AG, including oversight of the "I Feel Good" private foundation and defense of the appeal described below.
- l. The AG has, since 2009, dedicated considerable State resources to defending the May 26, 2009 Aiken County Order which approved AG McMaster's takeover of James Brown's private property, and transfer of same to the Legacy Trust.
- m. The AG has allowed the current Trustee of the Legacy Trust to purport for more than 1 year to speak for the State in pending litigation.

The Attorney General has Approved the FOIA Request

3. On June 30, 2011, Plaintiff sent to AG Wilson and the Legacy Trust separate requests under FOIA for public records related to the Legacy Trust. Plaintiff requested copies of:

The Final and all drafts, signed and unsigned,
of the James Brown Legacy Trust

4. The request to AG Wilson, in addition, sought:

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

5. The AG's office declined to provide the requested documents but did not allege that any such document was exempt from being disclosed under FOIA. As a result of the failure to produce requested documents, Plaintiff filed this action on August

3, 2011.

6. S.C. Code Ann. § 30-4-30(b) provides as follows:

If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

7. The AG did not respond to Plaintiff's request within 15 days. Although a member of the AG's office asserted on August 5, 2011 that the AG had not received the June 30, 2011 request, that request was attached to the complaint herein, which was served on the AG on August 5, 2011. Plaintiff has not to date received any response to her June 30, 2011 FOIA request.

8. Far more than 15 days have now passed since Plaintiff made her June 30, 2011 FOIA request, and, pursuant to S.C. Code Ann. § 30-4-30(b), the request must now be considered approved.

The Requested Documents are Public

9. On September 14, 2011 *The State* newspaper ran an article entitled "Wilson, Loftis Spar Over Hiring Law Firms," a copy of which is attached hereto as Exhibit A which included the following language:

Wilson's office said it is transparent. Contingency agreements with outside law firms are available to members of the public who request them. The office [is] in the process of posting all such agreements on its Web site, said an agency spokesman.

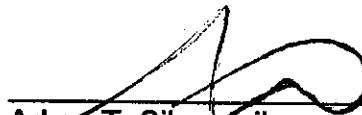
10. Additionally, an article in the September 21, 2011 edition of the *Newberry Observer* entitled "AG's Promise to Release Contracts May Resolve Newberry James

Brown FOIA Case" told that the article's author had received an email from a member of Defendant's staff agreeing to send the author a copy of the fee agreement requested herein. A copy of the article is attached hereto as Exhibit B.

11. It is clear from the Attorney General's statements to the press that his office is aware and believes that the requested documents are public.

For the reasons stated above, Plaintiff asks that the Court issue its order granting her summary judgment on all claims in the complaint herein. This motion is based on the South Carolina Rules of Civil Procedure, applicable case and statutory law, the affidavit of Adele J. Pope filed herewith, all earlier affidavits of Plaintiff on file herein, and such additional documentation as shall properly come before the Court prior to the hearing on this matter.

Respectfully submitted,



Adam T. Silvernail
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September 29, 2011

Attorney for Plaintiff

EXHIBIT A

**The State**
South Carolina's Homepage™[Back](#)

Wednesday, Sep 14, 2011

Posted on Wed, Sep. 14, 2011

Wilson, Loftis spar over hiring law firms

Being 'proactive' or 'pay for play'?

By GINA SMITH

gsmith@thestate.com

State Attorney General Alan Wilson wants two law firms, accused of making pay-to-play political contributions in other states, to monitor transactions in South Carolina's multi-billion-dollar retirement system.

Wilson received \$12,000 in campaign contributions from one of the firm's partners in 2010 although he says that money played no role in his recommendation.

State Treasurer Curtis Loftis opposes Wilson's proposal, saying its unnecessary. Their disagreement also is a sign of friction between two rising stars in S.C. Republican politics.

At issue is an announcement last month by Wilson, elected the state's top lawyer in November, that he wants to hire the two firms, one in Charleston and one in New York, to monitor transactions in the state's retirement system for fraud.

That system has \$26 billion in assets.

Wilson said he has been in talks with Loftis to hire the firms to ensure the investments are watched closely. "In other states, we've seen problems with fraud," Wilson said. "I'm trying to be proactive here in South Carolina."

Loftis said monitoring by outside attorneys is not needed.

"As treasurer, I am the custodian of the state's funds," Loftis said in a statement. "It is important that these large-dollar contracts be without political involvement or interference. Campaign contributions have no place in the decision process of protecting our \$26 billion trust fund.

"We currently monitor for fraud, waste and abuse utilizing several entities and a variety of methods," he said. "Our custodial bank has extensive abilities to monitor our securities, as well as the Retirement System Investment Commission and the State Treasurer's office."

The state recently sued a New York bank, saying it sold the retirement fund improperly risky investments.

Wilson says the S.C. Retirement System Investment Commission has the final say on whether the firms are hired, not Loftis. He plans to pitch the idea to commissioners during a Thursday meeting.

Wilson said the campaign contributions did not affect his recommendation of the firms. Instead, he said it was based on the firms' experience in monitoring pension plans and rooting out fraud.

"All a contribution gets you is my gratitude," he said, adding, if the commission would rather work with other firms instead of the two he is recommending, he will engage them instead.

"I don't care who does the work," Wilson said. "What matters to me is they do it well."

"I'm looking at their ability to perform a free service to protect the system," he added.

Under Wilson's proposal, the attorneys of Labaton Sucharow of New York, whose partners have contributed to Wilson, and Motley Rice in Charleston, who did not contribute, would review pension fund transactions free of charge for signs of fraud. They would be paid legal fees only if subsequently hired by the state to recover money.

Both law firms have been accused of taking part in pay-to-play arrangements in other states, contributing to

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the election funds of public officials who award them contracts.

In 2010, partners of Labaton Sucharow contributed nearly \$43,000 to New York Comptroller Thomas DiNapoli, who is in charge of the state's pension fund, according to media reports. The contributions came after DiNapoli tapped Labaton Sucharow to represent his office in litigation against a mortgage lender.

And after Jack McConnell Jr. opened a Motley Rice branch in Providence, R.I., becoming one of that state's top political contributors for the 2000 elections, that state's attorney general hired Motley Rice to conduct Rhode Island's highly-publicized lawsuit against lead paint manufacturers.

Efforts to reach both firms for comment Tuesday were unsuccessful.

Wilson said accusations are not proof of anything.

However, the relationship between some politicians and some law firms is the subject of increasing scrutiny.

Lisa Rickard, president of the U.S. Chamber Institute for Legal Reform, a national campaign founded by the U.S. Chamber of Commerce to clamp down on litigation, said her organization is speaking out against state attorney generals taking contributions from law firms and awarding them contracts.

"The reality is that these plaintive firms are traveling around the country, visiting with the state attorney generals and selling them on ideas for lawsuits," Rickard said, adding attorney generals should not use outside counsel.

"It's an appearance of impropriety," she said. "If they (attorney generals) are taking contributions and then giving contracts out without going through some kind of process where they're looking at other firms who can also do the work, then there's a problem. It looks like a quid pro quo is going on. These are elected officials who should have a transparent process for bidding out this work."

Wilson's office said it is transparent. Contingency agreements with outside law firms are available to members of the public who request them. The office in the process of posting all such agreements on its Web site, said an agency spokesman.

Reach Smith at (803) 771-8658.

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EXHIBIT Bprint**AG's promise to release contracts may resolve Newberry
James Brown FOIA case**

by Sue Summer
For The Observer
09.21.11 - 08:07 am

In Newberry on Sept. 12, Attorney General (AG) Alan Wilson filed a motion to dismiss a Freedom of Information Act (FOIA) lawsuit in which he was asked to release copies of public documents related to the James Brown music empire.

Among the requested documents was a contingency-fee agreement between former AG Henry McMaster and outside counsel, Columbia attorney Ken Wingate. Wingate represents the State and about 15 private plaintiffs in a Brown suit in Richland County.

Other Brown cases are pending in the Aiken County Circuit Court, the S.C. Court of Appeals, and the S.C. Supreme Court.

The FOIA lawsuit was filed by Newberry resident Adele Pope in August. She and Aiken attorney Robert Buchanan, former Brown trustees, have repeatedly attempted to obtain the fee agreement and other documents for 10 months.

Only two days after Wilson's motion to dismiss the Newberry FOIA suit, on Sept. 14, The State newspaper reported Wilson had announced, through an agency spokesperson, that contingency agreements with outside law firms are available to members of the public who request them and that the AG's office is in the process of posting all such agreements on its website.

"We hope this announcement means that the AG will release the public documents which Pope and Buchanan have been trying to obtain for almost a year, first from McMaster and now from Wilson," said Adam Silvernail, Pope's attorney.

The unreleased contingency-fee contract between McMaster and Wingate authorized Wingate to sue Buchanan and Pope on behalf of the state while simultaneously representing about 15 private plaintiffs.

In a hearing scheduled for Richland County Sept. 14, Pope and Buchanan sought to disqualify Wingate from representing both the state and the private individuals.

In a brief filed last week, Pope also asked that current Brown trustee, Columbia CPA Russell Bauknight, be enjoined from asserting that he acts for the state or the AG. Bauknight replaced Pope and Buchanan as trustee and serves at the AG's pleasure.

Bauknight and AG Wilson have both refused to produce the contingency-fee contract and other documents requested by Pope's two FOIA lawsuits, including documents related to the value of Brown's assets and a copy of McMaster's "Legacy" trust.

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CLERK OF COURT

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In 2008 McMaster forged an agreement with some of Brown's claimed heirs, all of whom were disinherited from his worldwide music empire, and gave them more than half of Brown's assets.

In late 2008 or early 2009, McMaster set up the "Legacy" trust with Bauknight as trustee. To date, no signed complete copy of the Legacy trust has been produced, but at least two incomplete drafts are on file in Aiken County.

Before the McMaster agreement, Brown's estate plan gave his music empire to the "I Feel Good" trust to provide scholarships for needy and deserving students.

Brown's music empire—with royalties to about 850 songs, as well as publicity rights—was widely reported to have a value of \$100 million at his death, less a \$15 million debt. At about \$80 million, the "I Feel Good" trust would have been South Carolina's largest private foundation dedicated solely to scholarships for needy and deserving students.

In December 2010, however, Bauknight filed documents with the Internal Revenue Service placing a \$4.7 million value on Brown's worldwide music empire at his death in 2006.

According to J. David Black of the Columbia law firm Nexsen/Pruet, which represented Bauknight in the IRS filing, Bauknight's \$4.7 million value for Brown's music empire at death is based upon an independent professional appraisal, authorized by Bauknight. When reached by email, Black failed to disclose the name of the New York appraiser.

In Black's email, he claimed Brown's music empire was worth \$4.7 million "because of outstanding debt and bond issues as well as Mr. Brown's prior advisors' mismanagement of his assets." He said further that all of Brown's assets, including the music, had a value of only \$5.7 million.

In 2007 David Cannon, one of three original trustees appointed by Brown, resigned after Pope and Buchanan discovered he had taken \$900,000 from Brown's Trust the previous year. Cannon was indicted in 2010 for felony breach of trust with respect to Brown's assets between 1999 and 2006. He was also indicted for a 2008 forgery related to Brown.

Cannon has not yet been tried, but in November 2010 he was placed, along with former trustee Albert "Buddy" Dallas, on Wingate's witness list in the Richland County case.

Pope and Buchanan, who valued Brown's music assets at about \$85 million, have challenged McMaster's agreement and Bauknight's valuation.

When asked by email when the Wingate contract would be available on the AG's website, spokesperson Mark Plowden responded Tuesday morning, "I am on medical leave, but will have someone send it to you."

Judge Casey L. Manning continued the Richland County hearing to consult with Chief Administrative Judge Alison Renee Lee.

EXHIBIT D

As STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

Adele J. Pope,)

Plaintiff,)

v.)

Alan Wilson, in his capacity as)

Attorney General of South Carolina,)

and James Brown Legacy Trust, by)

Russell Bauknight, its Trustee)

Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-364

Affidavit of Adele J. Pope
Supporting Summary Judgment
Including Determination that
James Brown Legacy Trust
Created by Henry D. McMaster, in his
Capacity as Attorney General
is a Public Body Under FOIA

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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. I request that the Court hold an expedited hearing on this matter; review the documents *in camera*; and grant Summary Judgment as follows:
 - a. The James Brown Legacy Trust is a Public Body under the S. C. Freedom of Information Act ("FOIA").
 - b. Defendants should release copies of the Legacy Trust as requested.
 - c. AG Wilson should release documents about Russell Bauknight's \$4.7 Million valuation of James Brown's worldwide music as requested.
 - d. Attorney's fees and costs are appropriate because the State/Legacy Trust have acted in bad faith in refusing the documents.
3. Facts supporting each of the above are set out below.

The James Brown Legacy Trust ("Legacy Trust")

4. I am informed and believe the name "James Brown Legacy Trust"

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deceptive because the Legacy Trust was not created by James Brown, but by AG Henry McMaster and his trustee, Russell Bauknight. It was never a part of Brown's Estate Plan – the exact opposite.

5. I am informed and believe the Legacy Trust is a vehicle by which the State, through AG McMaster – and now AG Wilson — intends to destroy James Brown's "I Feel Good" private foundation; put Brown's private assets in the Legacy Trust, created by a public official, now called "private"; take \$50 Million Brown gave to needy students; and use it for the AG's private purposes; then cover it up by saying the worldwide music empire the AG took over was worth only \$4.7 Million.

6. I am informed and believe that the Charts Bob Buchanan and I presented to the Aiken Court in 2009 (A & B), and others I have created and attached to this Affidavit, demonstrate the need for the public information I have requested under FOIA.

a. Exhibit A:

Chart 1 - James Brown's INTENTIONS in his Last Will & Trust (2000) (2/09);

b. Exhibit B:

Chart 3 - HOW THE PROPOSED "SETTLEMENT" DESTROYS/IGNORES JAMES BROWN'S INTENTIONS (2/09);

c. Exhibit C:

Attorneys' Fees AG Wilson proposes (\$13 - \$15+ Million)

vs.

Attorneys' fees to be paid by PR/Trustees of The James Brown "I Feel Good" Trust if AG McMaster had not taken over (less than \$2 Million)

d. Exhibit D:

Detail, Lawyers AG Wilson Proposes to pay from funds taken by State from Needy Students; (\$13 - \$15+ Million)

e. Exhibit E:

Value of James Brown's Music Empire AG McMaster's August 10, 2008
Agreement Proposes to Transfer to Legacy Trust – \$84 Million or \$4.7 Million?

f. Exhibit F

Legacy Trust Trustees and Beneficiaries' Position about \$4.7 Million value vs.
\$100 Million value of James Brown Music Empire Then and Now

7. I am informed and believe that but for the support of the State/AG Wilson, the Legacy Trust would exist, but have no chance of taking over James Brown's music empire or taking \$50 Million from needy students.

8. I am informed and believe the requested documents will show that the mighty power of the State/AG has been used to lend credibility to the fabricated \$4.7 Million valuation of James Brown's worldwide music empire; secrete the alleged independent valuation; and prevent appropriate consequences to those who were involved in the undervaluation scheme, including State employees.

9. I am informed and believe that even though it may have been illegally created, the Legacy Trust now functions as a Public Body under FOIA, and should be subject to FOIA.¹

a. August 10, 2008 - AG McMaster takes over Brown's assets

10. Entertainment icon James Brown, one of South Carolina's most talented and generous citizens, died on December 25, 2006, leaving his \$100 Million music empire in

¹ I am informed and believe that the Court should find that it is a Public Body unless the AG confirms on behalf of the State that it is void because it was illegally created.

trust to educate 7 designated grandchildren² and needy and deserving students.³

11. Bob Buchanan and I became Brown's PR/Trustees on November 20, 2007.

12. In late December 2007 some claimed heirs challenged the Estate Plan.

13. The challenges were baseless.

14. On August 10, 2008, without consulting with any Brown fiduciary, AG

McMaster agreed with some of the claimed heirs Brown intentionally excluded from his music empire:

d. that the parties will create an entity (the "settlement entity") that will receive any and all assets or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to the Charitable Trust; (2) 25% to Tommie Rae.. (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. [Emphasis supplied.]

15. In late 2008 or early 2009 the Legacy Trust was created, with Bauknight as its trustee.

16. Modifications to the Legacy Trust were made.

17. The State/AG's office vigorously support the Legacy Trust and its taking of James Brown's private property, intended for needy students.

² A fund of \$285,000 each.

³ Chart 1 and Chart 3 are part of the Record on Appeal ("ROA") and an attachment to Appellant's brief in the appeal from Aiken County Case No. 2008-CP-02-1647 ("Case 1647").

18. In a hearing on January 30, 2009 AG Jones, five months after AG McMaster asserted control over Brown's private assets, said:

There's never been a question with Attorney General McMaster as far as any resources I needed to proceed in this case. We've had these people, these attorney, including myself, to devote whatever time was necessary to proceed with this action. . . [Tr. 1/30/09, Case 322, p.67]

19. Between August 10, 2008 and May 26, 2009 about 5 attorneys paid by the State joined by more than 20 private attorneys fought all of Brown's fiduciaries; to take \$50 Million from The James Brown "I Feel Good" Trust; and transfer Brown's private assets to the Legacy Trust, to be taken over and controlled by the AG.

20. About \$14 Million of the \$50 Million would go to contingency fee lawyers representing clients with baseless claims.

21. The May 26, 2009 circuit court order allowing Brown's assets to be taken by McMaster and put in the Legacy Trust is on appeal, but no stay is in place.

22. I am informed and believe that the State/AG has the awesome duty to control the Legacy Trust and Brown's music empire under ¶ 7.2 of the Trust, which says:

7.2 Right to Remove and Replace. The Trustee of the [Legacy] Trust shall be chosen and appointed by the South Carolina Attorney General, who has the power and right to remove and replace the Trustee.

23. As the person who selects and removes the Trustee the Attorney General/Settlor has the duty to insure, as required by Article XIV that:

The Trustee shall administer the Trust in a manner that does not adversely affect the current qualification and continued qualification of the "I Feel Good" Trust as a charitable trust. If necessary or desirable, the Settlers [including AG/State] agree to modify the terms of this

Agreement to the extent necessary to preserve the charitable tax-exempt status of the I Feel Good Trust to the extent allowed by law.

24. I am informed that the AG's condoning a fabricated "fair market value" of \$4.7 Million for Brown's \$84 Million music empire by the AG's appointee where a private beneficiary has a right of first refusal to buy the music empire is – at best – troublesome, and threatens to take away what remains of The James Brown "I Feel Good" private foundation – now also controlled by AG Wilson.

25. I am informed and believe that the State/AG Wilson is actively supporting the Legacy Trust's devaluation of the \$80 Million "I Feel Good" Foundation, as follows:

- a. First, by reducing the "I Feel Good" Trust from \$80 Million to 47 ½% of \$80 Million LESS \$2 Million, about \$38 Million.
- b. Then by selling the \$80 Million asset to Terry, a family member, for a fake \$4.7 Million "fair market value."

26. Chart C shows how the State/AG Wilson is supporting Terry Brown and Bauknight's other beneficiaries under the Legacy Trust by condoning the fabricated \$4.7 Million value which all know to be false.

27. I am informed and believe that AG McMaster delegated to Bauknight and his advisors the duties of the AG's Office to see that the "I Feel Good" private foundation is managed, operated and invested in accordance with IRS guidelines, making it important for the public to see if Bauknight and others are engaging in self-dealing or impropriety.

28. I am informed that all of the provisions of the Legacy Trust not only allow – but require – the Attorney General/State to support and oversee the management and operation of the Legacy Trust.

29. Between May 26, 2009 and June 8, 2010 the Legacy Trust, supported by

the State, added 10 Nexsen Pruet attorneys and a battery of other attorneys, to insure the Legacy Trust would take over Brown's assets; pay them; and pay the disinherited claimed heirs; and be secured for future control by the AG.

30. At the same time, NP's managing partner announced he was running to be the next AG. And AG McMaster was running to be governor. Both lost on June 8, 2010.

31. The AG's Office, NP and others, however, continued to dedicate extraordinary effort to see that needy students do not get what Brown intended for them.

32. AG Wilson has important day-to-day functions and control over the Legacy Trust, and his active oversight and vigilance is required in at least the following particulars:

- a. Under ¶ 6.1 the approval of AG Wilson or his successor, is required to sell all or substantially all of the assets of the Legacy Trust.
- b. Under ¶ 6.2, however, the State/AG's failure to respond within 30 days to any Beneficiary's request for a vote on any matter could arguably be disastrous. It states:

6.2 Notice of Vote. The Trustee or any Beneficiary may at any time request a vote of the Beneficiaries as to any such matter as may require a vote under this Agreement by giving notice and a request to all the Beneficiaries of a vote pursuant to the terms of Sections 8.3 and 8.4 below. **If a noticed beneficiary [ie., the State/AG] does not respond with its vote on the applicable matter in writing within 30 days after such time as the notice is deemed to have been given, such Beneficiary [the State/AG] shall no longer have the right to vote on such matter. [Bolding and brackets supplied]**

- c. Under §8.3 of the Legacy Trust instruments are deemed delivered either when sent and confirmed (fax) or three days after mail or express service is received by the sending service.

33. Having served as an advisor to trustees for more than 30 years, and having

qualified without objection as an expert in Probate and Trust law in James Brown Case 2009-CP-02-1647, I can say to a reasonable degree of professional certainty that the terms of the Legacy Trust which I have reviewed:

- a. place a high burden of continuing vigilance on the AG to protect the "I Feel Good" Private Foundation, which AG McMaster has already agreed to reduce to less than 47 ½% of its original size; and
- b. could arguably cede all power – and loss of the Trust assets – to minority private beneficiaries by the AG's mere failure (or Bauknight's for him) to respond in 30 days to a faxed vote request.

34. The AG/State has supported the Legacy Trust by delegating to Bauknight, its Trustee, essential functions of the AG's office, including the oversight of the dramatically reduced "I Feel Good" private foundation.

35. The AG/State has supported the Legacy Trust by authorizing Bauknight to assert to the court that he "speaks on behalf of" the Attorney General of South Carolina.

36. AG Wilson's Office supported the wrongdoing of the Legacy Trust's trustee by joining Bauknight's representation to the Supreme Court that Brown's music empire at death was worth less than \$4.7 Million.

37. During this period the State/AG has supported the Legacy Trust by condoning the payment of what will be \$14 Million or more in contingency and secret legal fees, to be taken from needy students and funneled and paid through the Legacy Trust.

38. AG Wilson has supported the Legacy Trust by not admonishing or replacing those who fabricated and/or condoned, a \$4.7 Million value of Brown's music empire when all have knowledge (as defined in the Trust Code) it is false.

39. The State/AG continues to support the Legacy Trust – now paying its own attorneys and allowing the Legacy Trust to hire distinguished outside counsel to fight

this FOIA request so that the public will be prevented from knowing:

- a. How much more than \$14 Million does AG Wilson intend to pay lawyers for dismantling The James Brown "I Feel Good" Foundation?
- b. What members of the AG's Office were involved in the fabricated \$4.7 Million valuation of Brown's assets?
- c. Why did the State authorize the Wingate Firm/Legacy Trust Trustee to accuse Bob Buchanan and me of causing tens of millions of dollars of damage to Brown's music empire while at the same time the trustee (Bauknight) presented to the IRS a fabricated \$4.7 million valuation of the same music empire?
- d. Why did AG Wilson not fire Bauknight and admonish his staff for presenting the \$4.7 Million to the Supreme Court when public documents make clear it was outrageous?
- e. Does AG Wilson's cover up of AG McMaster's takeover of Brown's private property by resisting all FOIA requests mean those intending to create charitable foundations will not do so for fear their private property will be taken over as "the Attorney General's money?"

40. I am informed and believe that the Court should find that the James Brown Legacy Trust is a Public Body under FOIA.

c. The Legacy Trust should be disclosed by both Defendants

41. The Legacy Trust was created by the Attorney General of South Carolina and is now controlled by the Attorney General of South Carolina.

42. The trustee of the Legacy Trust has asserted that he "acts of behalf of" the Attorney General.

43. The Legacy Trust and all modifications are public documents and should be disclosed.

d. The Valuation information is public and should be disclosed

44. The Attorney General of South Carolina has told our Supreme Court that Bob Buchanan and I have misrepresented the value of Brown's music empire to them.

45. The AG's appointee has told the IRS Bob and I lied to them and overstated the James Brown assets to get a big fee.

46. 135+ boxes of James Brown documents which would show that this \$4.7 Million fabrication is an outrage were already made public in August 2007.

47. Documents made public in 2007 show that between 1999 and 2006 Brown earned at least \$50 Million as follows:

In Road Show Revenues, etc.	\$25,000,000.00+
In Royalties	<u>\$25,000,000.00+</u>
	\$50,000,000.00+

And that from 2003 - 2006 Brown earned more than \$5 Million per year, with:

Road Shows (Wm. Morris)	\$ 18,000,000.00+/-
Royalties	<u>\$ 12,000,000.00+/-</u>
	\$ 30,000,000.00+/-

48. In February 2007 one of the attorneys for Brown's original Trustees, Rodney Peeples, Esquire, described to the Aiken Circuit Court Brown's worldwide importance by explaining that Brown earned \$1 Million a week in his annual 3-week overseas show tours.

49. The extraordinary value of Brown's Publicity Rights is exemplified by the single example of the Global Gaming contract negotiated just before Brown's death. According both to Brown's original fiduciaries and published reports, it was projected to produce \$500,000 per year after a 2-3 year development period.

50. Just after Brown's death, a family-owned company, Pinnacle, issued a prospectus to raise \$200 Million for the acquisition of the James Brown assets, asserting that exploitation of Brown's assets was virtually without limit.

51. The AG's Office has even filed with the Supreme Court the portions of the

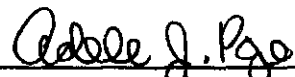
IRS documents it wants the Court to see.

52. The AG's appointed trustee has asserted to the IRS that Bob and I lied and that his independent appraisal is proof of that lie – and the AG's Office has told that to our Supreme Court.

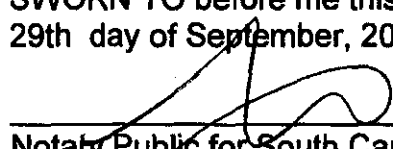
53. I am informed and believe that the documents I seek are public statements by the AG and public documents, and should be disclosed for one or more of the following reasons:

- a. The State has access and control over the appraisal, the IRS documents and the documents it relied on to accuse us of wrongdoing.
- b. There is no basis for confidentiality. All valuations of Brown's assets have been fully aired in Aiken County.
- c. All of Brown's historical financial information was available for inspection and copying without limitation.

FURTHER DEPONENT SAYETH NOT.


ADELE J. PORE

SWORN TO before me this
29th day of September, 2011


Notary Public for South Carolina
My Commission expires: 7/13/2016

(L.S.)

EXHIBIT E

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY

Civil Action No. 2011-CP-36-364

SCANNED

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,
and James Brown Legacy Trust, by
Russell Bauknight, its Trustee

Defendants.

AFFIDAVIT OF ADELE J. POPE
IN FURTHER SUPPORT OF ALL RELIEF
REQUESTED IN COMPLAINT, EXPEDITED
HEARING AND IN CAMERA REVIEW

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JACKIE S. BOWERS
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. I am informed and believe that information I obtained this week (beginning
October 4, 2011) further supports my position that Attorney General Alan Wilson, acting
through C. H. "Sonny" Jones, is vigorously covering up important public documents,
including those sought in this FOIA Suit, which will help the public decide:

a. Did AG/Candidate McMaster authorize the State's first
contingency-fee tort suit against S. C. Citizens Buchanan and
Pope, using only private lawyers to falsely accuse them of
crimes, for the improper purpose of silencing their criticism of
his takeover of James Brown's assets?

b. Did AG McMaster improperly authorize Russell Bauknight
to "speak on behalf of" the Attorney General of South
Carolina in making the false accusation that Buchanan and
Pope caused "tens of millions of dollars" damage to Brown's
worldwide music empire while simultaneously supporting
Bauknight's "appraisal" of those same assets at less than
\$4.7 Million?

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C.C.P. & G.S.

c. How involved was the Office of AG McMaster/Wilson in creating and/or presenting the purported \$4.7 Million value of Brown's music empire to the IRS and Courts and in falsely accusing Buchanan and Pope of criminally overstating Brown's assets at about \$85 Million?

3. Yesterday I printed from the Website of Attorney General Wilson, the 10

Litigation Retention Agreement AG Wilson asserts are:

all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. [Emphasis supplied. See Exhibit A]

4. AG Wilson's Website does not assert – as AG Wilson's Assistant Sonny Jones asserted in September -- that a stay prohibits the dissemination of the McMaster/Wingate Contract to sue Buchanan/Pope.

5. The McMaster/Wingate Contract to sue Buchanan/Pope is "under review by a court" for only one reason: Wingate, on behalf of two AGs, has refused for a year to produce it, and on August 9, 2011 – more than a month after my FOIA request and several days after this suit was filed – sought a protective order asserting it is a private document — a direct violation of the language of all known Litigation Retention Agreements.

6. Wingate and Bauknight - both purporting to speak for the State/AG through Wingate – asserted:

Fee agreements are the epitome of privileged communication. Plaintiffs⁰ [sic] therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement. [See Exhibit B]

7. As relates to the purported less-than \$4.7 Million value of Brown's music empire, on September 9, 2011 I requested, among other documents, the following

information from AG Wilson under FOIA:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 **[in bold]** statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million (\$85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million (\$100,000,000.00) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. **By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although the expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust will not exceed Twelve Million (\$12,000,000.00) Dollars.**

AND

...

4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about \$6.5 Million and his worldwide music empire less than \$4.7 Million on that date.

8. In response to those two requests, on October 3, 2011, AG Wilson, through Sr. Assistant AG Tracy Meyers, said:

Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you. [Emphasis supplied.]

9. A copy of my October 5, 2011 response to Ms. Meyers' letter of October 3 is attached hereto as Exhibit C.

10. Based on the documents received this week, as of October 6, 2011, I am informed and believe that AG Wilson's continued refusal to comply with FOIA shows:

a. Attorney General Wilson's Office does not have a single document to support the assertion made by two Attorneys' General, in two separate years (2010-11), to our S. C. Supreme Court – that James Richardson, the *pro bono* counsel in the Aiken County Appeal of Case 2008-CP-02-1647, Bob Buchanan and I were not truthful with the Court when we asserted that the damage McMaster did to The James Brown "I Feel Good" Trust has the potential to divert "tens of millions of dollars" from the Trust which James Brown intended for needy and deserving students.

b. Attorney General Wilson is actively concealing his office's authorization of, and/or participation in false representations made by AG Wilson's agent Russell Bauknight, "on behalf of the Attorney General of South Carolina" that Bob Buchanan and I criminally overstated Brown's assets by \$79 Million in sworn IRS documents (at about \$85 Million)

c. Attorney General Wilson is concealing his Office's participation in and/or support of the false representation by Bauknight to the IRS and two Courts that James Brown's worldwide music empire at his death was worth less than \$4.7 Million.

11. A chronology of some of the actions of the Attorney General's Office follows:

April 2010	Agent for Tommie Rae threatens that AG Sonny Jones has hired Wingate to sue Bob and me if we do not drop Aiken Cty. Appeal – which would require us to sign agreement not to criticize McMaster for destroying The James Brown "I Feel Good" Fdn.
May 19, 2010	Wingate sues Bob and me. Seeks "ten of millions of dollars." for alleged damage to Brown's worldwide music empire.
August 2010	AG Sonny Jones tell Supreme Court our assertion that McMaster's actions have potential to divert "tens of million of dollars" from "I Feel Good" Trust is untrue – appraisal will show James Brown assets less than \$12 Million.
September 2010	Bob and I counterclaim against Wingate's clients.

October 2010	Bob asks for copy of Wingate Litigation Retention Agreement. [I ask shortly thereafter.]
November 2010	Wingate clients default on counterclaim.
November 2010- October 2011	Wingate/AG McMaster/Bauknight/AG Wilson refuse copy of McMaster/Wingate Agreement to sue Buchanan/Pope
December, 2010	Bauknight presents <u>secret</u> \$4.7 Million "appraisal" of Brown's music empire to IRS and secretly asserts Bob and I overstated Brown's assets at \$85 Million to get a big fee – a crime.
January 2011	IRS issues closing letter after Bauknight's false allegations.
May 3, 2011	Bauknight files sworn I&A in Aiken, asserting \$4.7 Million value.
May 6, 2011	Bauknight/AG Jones ask the Supreme Court to supplement Aiken County appeal record with Bauknight's purported \$4.7 Million value.
May 2011	J. Richardson asks Supreme Court not to supplement Record with Bauknight's purported \$4.7 Million value for music empire.
June 30 - July 2011	I ask, under FOIA, for Litigation Agreement and Valuation Info. Goes to Wingate and Wilson.
July 2011	Supreme Court declines to supplement record.
July 15, 2011	Bauknight threatens me with lawsuit if I exercise FOIA rights.
August 2011	Bob and I continue to seek Litigation Retention Agreement. Wingate and Bauknight – both purported agents for the State - continue to refuse to produce agreement. Assert <u>on behalf of</u> <u>the Attorney General</u> it is private.
September 2011	Jg. Manning continues hearing schedule for motion to disqualify/enjoin Wingate as counsel for State and 12 private plaintiffs and Bauknight as State's purported agent. No stay sought or granted.
September 2011	AG Sonny Jones asserts Jg. Manning granted a stay, preventing release of Wingate/McMaster Agreement to sue Buchanan/Pope.
September 28, 2011	Jg. Manning's 1-word order confirms hearing continued. No stay. [Exhibit D]

October 2011 AG Wilson's Office notifies press that it must stick with AG Jones' story that there is a stay order despite Order of Jg. Manning.

October 5, 2011 AG Wilson's Office posts all Contingency Fee Litigation Agreements except McMaster/Wingate Agreement to sue Buchanan/Pope on Website. Does not assert stay, instead says:

CONTINGENCY FEE LITIGATION RETENTION AGREEMENTS

Below are all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases the Attorney General's Office itself would otherwise be unable to pursue.

Affinion/Trilegiant (marketing and billing) ...

AstraZeneca (Seroquel)...

Cephalon (Provigil, Gabitril, Actiq)...

GSK (Avandia)...

Janssen (Risperdal)...

McKesson (Average Wholesale Price)...

Merck (Vioxx)..

Multiple pharmaceutical companies (Average Wholesale Price)..

Multiple technology companies (liquid Crystal displays)...

Multiple oil companies (underground storage tanks)

October 6, 2011 AG Wilson still refuses to post or comply with FOIA requests for McMaster/Wingate Agreement to sue Buchanan/Pope.

12. I am informed and believe that the AG McMaster/Wingate Litigation

Retention Agreement and other FOIA documents will show that the Wingate suit did not "require specialized expertise or involve an extensive commitment of financial resources and personnel" on the part of the State, but was intended to ruin Bob's and my careers and force us to drop the appeal of McMaster's destruction of James Brown's Estate Plan.

13. I am informed and believe that the date of the contract – expected to be April or early May 2010 – and other FOIA documents will confirm that Wingate, although a certified specialist, conducted no due diligence before using the power of the State, with Bauknight as the State's purported agent, to falsely accuse us – on behalf of the State – of crimes.

14. I am informed and believe that the Wingate contract will show that Wingate, Bauknight as the State's purported agent, and AG Wilson's Office have consistently violated the following requirement, among others, of the Litigation Retention Agreement:

Article III. CASE MANAGEMENT...

F. Public Records

Any material, data, files, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina Freedom of Information Act, South Carolina Code of Laws, §30-4-10 et seq., and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying documents. This Agreement shall be

considered a public document. [Emphasis supplied.]

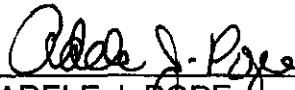
15. I am also informed and believe that the McMaster/Wingate contract to sue Buchanan/Pope will show that either it does not contain, or Wingate has violated, the constitutionally required provision contained in all other Litigation Retention

Agreements:

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

16. Although I have requested a copy of the McMaster/Wingate contract to sue Buchanan/Pope, I believe that the document – authorizing Wingate to use the power of the State to seek to destroy my career and Bob's for the benefit of private individuals -- is void as against public policy, as a violation of my Due Process rights and/or for other reasons.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
6th day of October, 2011


_____(L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/2016

Exhibit A

Enter keyword here

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CONTINGENCY FEE LITIGATION RETENTION AGREEMENTS

Below are all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases that the Attorney General's Office itself would otherwise be unable to pursue.

Affinion/Trilegiant (marketing and billing) – litigation retention agreement

AstraZeneca (Seroquel) – litigation retention agreement

Cephalon (Provigil, Gabitril, Actiq) – litigation retention agreement

GSK (Avandia) – litigation retention agreement

Janssen (Risperdal) – litigation retention agreement

McKesson (Average Wholesale Price) – litigation retention agreement

Merck (Vioxx) – litigation retention agreement

Multiple pharmaceutical companies (Average Wholesale Price) – litigation retention agreement

Multiple technology companies (liquid crystal displays) – litigation retention agreement

Multiple oil companies (underground storage tanks) – litigation retention agreement

LATEST NEWS

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Silent Witness Ceremony Honored 2010 Victims of Fatal Domestic Violence

Oct 4, 2011

Attorney General Alan Wilson led participants through the annual Silent Witness Domestic Violence ceremony that was held today on the south steps of the State House in Columbia. The ceremony marked the first week of National Domestic Violence Awareness Month. During the solemn ceremony, Attorney General Wilson called the names of thirty-four (34) women and ten (10) men from across the state who lost their lives as the result of domestic violence in the previous year. Victims' family members, friends, or volunteers carried a life-sized silhouette representing the victim to the State House steps as a bell was rung for...

[LEARN MORE](#)

Anderson Police Arrest Starr Man In Child Pornography Case

Sep 27, 2011

Attorney General Alan Wilson announced today that the City of Anderson Police Department arrested Kenneth Ray Barnett, 41, of 1642 Mountain Creek Church Road, Starr, South Carolina, on September 22, 2011, on one (1) count of Sexual Exploitation of a Minor.

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PHOTO GALLERY

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Law Enforcement Security

JACKIE S. BOWERS
CLERK OF COURT

2011 OCT - 6 P 3:40

NEWBERRY COUNTY

FILED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

and

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

Plaintiffs

v.

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

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

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

FILED
NEWBERRY COUNTY
2011 OCT - 6 P 3:40
JACKIE S. BOWERS
CLERK OF COURT

TO: DEFENDANTS AND THEIR ATTORNEYS:

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

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

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

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

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

(Signature page to follow)

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:40
JACKIE S. BOWERS
CLERK OF COURT

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 9, 2011

Exhibit C

**1228 Walnut Street
Newberry, South Carolina 29108**

October 5, 2011

BY FAX AND FIRST CLASS MAIL
Fax No. 803-734-3677
[Fx. Copy amended to correct Fax #]

Tracy A. Meyers, Esquire
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

FILED
NEWBERRY COUNTY
OCT - 6 P 3:40
JACKIE S. BOWERS
CLERK OF COURT

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

Dear Ms. Meyers and Records Custodian:

I received yesterday, and thank you for, the letter of Ms. Meyers dated October 3, 2011. With the mailed copy of this letter I am enclosing a deposit of \$300, and ask that I be able to come to your office at the earliest convenience on the first of the following dates you have available:

This Friday, October 7	9:30 - closing
Tuesday, October 11	1 p.m. until closing
Thursday, October 13	9:30 until closing
Monday, October 17	9:30 until closing

My cell phone number is 803-413-0753. Since I am a little over 40 miles away, I would appreciate your letting me know as soon as possible which dates suit.

Please do not let your answers to the questions below delay scheduling my appointment to review whatever documents you have.

I am prepared, each day, to pay the estimated amount - in addition to the enclosed \$300 - of what the additional work we will need to do will take.

I expect my FOIA inquiries to last a long time, as — in order to receive specific documents — I made my initial inquiries as specific as possible. Since I will be examining records which you apparently do not keep in the form I requested, I want my search to be as efficient as possible. I hope your answers to the following questions will help:

a. The Charges you pose. It is my understanding that FOIA requires you to charge the smallest amount necessary to provide the records. You say \$18.90

per hour is the charge for locating and copying. Is it not possible for me to review the records myself – either computer or hard copy – making notes, and then make specific requests?’

For example: The point of my requests 2, 3 and 5 on September 9, 2009 was to determine what information the State has about how much State money has been devoted to James Brown matters since August 2007, and how much to James Brown/James Brown Legacy Trust matters since 2008.

If the State has not compiled this information, as you indicate, I still want to compile my own estimates from the data requested in 2,3 and 5 of my letter of September 9. I have detailed information about hearings, appearances, meeting, etc., which – together with your data – would help put that together.

Will someone at \$18.90 an hour do this with me? Or may I do it myself on a computer at your office – and perhaps bring a more computer-oriented person to assist me? Can it be a combination of the two?

b. Your Response to Requests 2 and 4 Regarding the \$85 Million vs. \$12 Million vs. \$4.7 Million values placed on James Brown's music empire, assets

My request of September 9, 2011 was for:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 **[In bold]** statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million (\$85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million (\$100,000,000.00) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. **By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although the expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust**

will not exceed Twelve Million (\$12,000,000.00) Dollars.

AND

4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about \$6.5 Million and his worldwide music empire less than \$4.7 Million on that date.

Ms. Meyer's response was:

Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you.

I respectfully suggest that this answer is not correct.

In August 2010 the Office of Attorney General McMaster represented to our Supreme Court what the contents of a draft appraisal contained.

In May 2011, the Office of Attorney General Wilson provided our S. C. Supreme Court with copies of portions of an Estate Tax Closing Letter and related IRS documents from January 2011 directly related to this request, showing that – at least by May 6, 2011 – the AG's Office had this information in that form. Those documents – if no others exist – would be responsive to my request if May 6, 2011 is the first day the AG learned that Russell Bauknight asserted James Brown's worldwide music empire was worth less than \$4.7 Million when Brown died.

If the AG's Office learned this information before May 6, 2011, that is the subject of my request #4 of September 9.

As to Request #1, it is reasonable to assume that the AG looked at something when he represented to the South Carolina Supreme Court on August 23, 2010 that an expected appraisal – already in draft form – showed that James Brown's assets – repeatedly reported by the AG's Office and others to be worth \$100 Million (\$85 Million after the TIAA Debt)– would soon be found to be worth less than \$12 Million, a figure, the AG represented, was already found in a draft proposal.

Because of the importance of understanding the State's involvement, if any, in the representation by the AG's appointee, Mr. Bauknight, to the IRS that Bob Buchanan and I committed a criminal overstatement of James Brown's assets on a sworn Estate Tax Return, I ask that you carefully check to confirm that the AG's Office – as you state – has no documents to support its August 2010 assertion of the less-than-\$12 Million value and no record of when it first learned (before May 6) of the less-than \$4.7 Million for the worldwide music empire it reported to the Court on May 6, 109

c. My other FOIA Requests Which Are Not the Subject of Pending Litigation.

I hope that your response to my September 9, 2011 FOIA request means that the AG's Office has reconsidered the 5 Requests I made on July 20, 2011, which you did not challenge, but failed to fill, including those briefly described below, which I may now review and copy:

1. July 20, 2011 - 11-Page Memorandum from "tax experts"
referenced by CH Jones in April 6, 2009 Hearing,
Case 122.
2. July 20, 2011 Communications, Meetings, etc., with Toby Byron of
New York. [He is the man who asserted in
December 2007 that Albert H. "Buddy" Dallas had
offered him 5% of a sale of the James Brown
assets, then later recanted that representation.
He wrote several letters to various people 2007 -
2009, with copies to the SC AG. He had a
number of telephone meetings with Sr. Assistant
AG CH "Sonny" Jones as indicated in the email
of Sonny Jones to RL Buchanan, Jr. and me dated
December 6, 2007 re: \$100 Million initial offer for
James Brown assets.]
3. July 20, 2011 Communications, Meetings, Etc. With Dr. Terry
Bradford Cox . Mr. Cox, also mentioned by Sonny
Jones in his December 6, 2007 email related to the
\$100 Million initial offer for the James Brown assets,
also met at least one additional time – on or about
July 31, 2008 – with Sonny Jones, another AG and
an agent for Tommie Rae Hynie. Like Mr. Byron,
Dr. Cox corresponded with various people and copied
that correspondence to the AG's Office.
4. July 20, 2011 Communications, Meetings, etc., with Albert H.
"Buddy" Dallas and/or Forlando Brown. Mr. Dallas
had numerous documented – and as yet
undocumented – meetings with the Office of AG
McMaster, and his joint venturer, Forlando Brown,
also had various communications, including the
joint February 7, 2008 TV appearance with AG
McMaster.
5. July 20, 2011 PG documents.

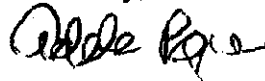
Ltr. to Ms. Meyers, Custodian
October 5, 2011
Page 5

As stated above, please do not let your answers to any of these questions delay scheduling a time for me to come review the documents responsive to my September 9, 2011 request, as I want to do that as soon as possible.

I look forward to coming to the Office; obtaining what you have; and spending a day, or more as needed, gathering the information I have already requested; and learning how to make subsequent requests more efficient so that I may acquire the needed public information as efficiently as possible.

Thank you in advance for an immediate response to my cell phone 803-413-0753 or email to allow me to come to begin obtaining this important public information.

Sincerely,


Adele J. Pope

AJP/ja
Enclosure in mailed copy: Check for \$300.00

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FILED
JUDGMENT IN A CIVIL CASE
NEWBERRY COUNTY

2011 OCT - 6 - P 3:40 CASE NO: 2010CP4004900

JACKIE S. BOWERS
CLERK OF COURT
vs.

Henry Dargan McMaster

Russell Bauknight

Plaintiff

Defendant

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. **continued**
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☐ Statement of Judgment by the Court:**continued**Dated at Columbia, South Carolina, this 28th day of September, 2011.

PRESIDING JUDGE

This judgment was entered on the 3 day of Oct, 2011, and a copy mailed first class this 3 day of Oct, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth B. Wingate
Everett Augustus Kendall II
Mark V. Gende

Daryl L. Williams
J Calhoun Watson
Robin A. Braithwaite
Adam T. Silvernail

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

SCANNED

EXHIBIT F



ALAN WILSON
ATTORNEY GENERAL

October 21, 2011

The Honorable Jackie S. Bowers
Clerk of Court, Newberry County
PO Drawer 10
Newberry, SC 29108-0010

Re: Pope v. Alan Wilson, Attorney General 2011-CP-36-364

Dear Ms. Bowers:

Enclosed for filing with your Office in opposition to Plaintiff's Motion for Summary Judgment in this case are the original affidavit of Tracy Meyers, the September 14, 2011 transcript of proceedings before the Honorable Casey Manning in *Bauknight v. Pope* (2010-CP-40-4900) and the Order of the late, Honorable Marc Westbrook, in *Lominack v. Myers* (2002-CP-32-1890, October 25, 2002). In filing these documents, I do not waive the right to have the Defendant Attorney General's Motion to Dismiss and Motions to Strike heard first and any defenses that he may have including, but not limited to, that the Motion for Summary Judgment is premature. I have also enclosed a certificate of service.

I would appreciate your confirming filing by stamping the enclosed copy of this letter and returning it in the enclosed envelope. Thank you for your assistance.

Yours very truly,

J. Emory Smith, Jr.
Assistant Deputy Attorney General
Counsel for Defendant Attorney General

Enclosures

cc: Adam T. Silvernail, Esquire
A. Camden Lewis, Esquire

Copy of letter mailed 10/24/11

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RICHLAND COUNTY

FILED

2012 JAN 17 PM 4:35

JEANNETTE W. MOBRIDE
C.C.P. & G.S.

FILED
RICHLAND COUNTY
2011 OCT 24 A 11:00

SCANNED

PERSONALLY APPEARED before me, Tracy A. Meyers, who being duly sworn, attests to the following:

1. She is a Senior Assistant Attorney General with the Office of the Attorney General.
2. Among her assigned duties, she is to review Freedom of Information Act requests made of the Office of the Attorney General. Incoming FOIA requests are sent to her.
3. She has reviewed the letter of June 30, 2011 addressed to the Custodian of Records of the Office of the Attorney General and attached as Exhibit A to the Complaint in Pope v. Wilson, et al (2011-CP-36-364. She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA.
4. Attachment of the June 30, 2011 letter to the complaint in the above suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.
6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request to the Office of the Attorney General by Ms. Pope or her attorney, a response to the

FOIA request will be made then if permitted by any Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that request.

Tracy A. Meyers

TRACY A. MEYERS

SWORN TO before me this 20th

day of October, 2011

Shirlechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 6/2/18

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-36-364

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2012 JAN 17 PM 4:35
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I hereby certify that I have served upon counsel for the other parties at the addresses below this October 21, 2011 the original affidavit of Tracy Meyers, the September 14, 2011 transcript of proceedings before the Honorable Casey Manning in Bauknight v. Pope (2010-CP-40-4900) and the Order of the late, Honorable Marc Westbrook, in Lominack v. Myers (2002-CP-32-1890, October 25, 2002).

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
P.O. Box 1898
Columbia, SC 29202-1898

A. Camden Lewis, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
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2011 OCT 24 A 11:00
CLERK OF COURT
RICHLAND COUNTY

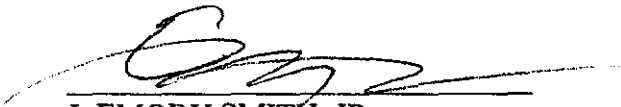

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Attorney for the Attorney General

EXHIBIT G

SCANNED

STATE OF SOUTH CAROLINA **FILED** IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY 2011 DEC 14 9:57 Civil Action No. 2011-CP-36-364

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,
and James Brown Legacy Trust, by
Russell Bauknight, its Trustee

Defendants.

AFFIDAVIT OF W. JEFFREY SMITH
SUPPORTING RELEASE OF ALL
PUBLIC DOCUMENTS REQUESTED
UNDER THE
S. C. FREEDOM OF INFORMATION ACT
BY ATTORNEY GENERAL ALAN WILSON
AND BY
THE JAMES BROWN LEGACY TRUST

PERSONALLY APPEARED BEFORE ME, W. Jeffrey Smith, who being
duly sworn deposes and says:

1. I am over eighteen years old.
2. I have been a resident of Newberry County for more than twenty years.
3. This affidavit is based on my personal knowledge and belief.
4. I received a JD degree from Georgetown Law Center and formerly
served as a patent examiner with the U. S. Patent Office.
5. I am not a party to any James Brown lawsuit, but have a personal
interest in James Brown's musical career and am writing an article with Plaintiff
Adele Pope about James Brown's "I Feel Good" private foundation.
6. A copy of the April 2011 draft of our article, *Private Foundations,
Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good"
Trust doesn't...*, is attached to this affidavit as Exhibit A.

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JEANETTE W. MCBRIDE
C.O. & G.S.
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RICHLAND COUNTY

7. In April 2011 *Private Foundations* was circulated for comment to entertainment and private foundation professionals, and we hope to complete and publish it in 2012.

8. I am informed and believe that the general public, and especially those involved in estate planning and intellectual property issues, have a right to learn whether by taking over James Brown's private assets and creating the Legacy Trust former Attorney General Henry McMaster – who was acting in his official capacity – was serving the public interest, or promoting his campaign to be governor.

9. I have read with interest the articles of Newberry journalist Sue Summer about what McMaster did and about what appears to her – and to me – to be a coverup by Attorney General Wilson of what McMaster did.

10. I am informed and believe that the Legacy Trust, not created by James Brown, but by McMaster as AG, is a public body – as is AG Wilson – under the S. C. Freedom of Information Act, and both should comply with FOIA.

11. My writing about James Brown has three areas of emphasis:

a. The manipulation of the value of Brown's securities and other assets, especially the fabricated \$4.7 million valuation of Brown's worldwide music empire, including any participation the AG's office may have had in that manipulation.

b. The false representations made about who are James Brown's heirs under the Federal Copyright Act, and whether an AG should participate in or condone false statements to courts about Brown's heirs.

c. The Public Policy implications of allowing Attorneys General – as McMaster attempted to do – to take over private foundations, which are private property.

12. I believe that it is wrong for Attorney General Alan Wilson and the Legacy Trust McMaster created in his official capacity to refuse to deliver properly requested public documents related to these issues.

13. I have read, and attach hereto, copies of affidavits filed in another Newberry County FOIA Case which, I am informed and believe, also apply to this case:

Exhibit B	Affidavit of Thomas R. Young, Jr.
Exhibit C	Affidavit of Deborah W. Spence
Exhibit D	Affidavit of Thomas H. Pope III
Exhibit E	Affidavit of Sue Summer

14. I am informed and believe that these people properly assert that prompt compliance with FOIA is important — especially where, as here, there is great public interest in why a public official chose to take over and give away James Brown's private property.

15. I especially endorse Mr. Young's reference to the intent of FOIA, which is to provide members of the general public with prompt access to public documents "at a minimum cost or delay."

16. I am informed and believe that AG Wilson's intentional stonewalling, along with the Legacy Trust, of the FOIA requests of Mrs. Pope and journalist

Sue Summer is wrong.

FURTHER DEPONENT SAYETH NOT.

W Jeffrey Smith
W. JEFFREY SMITH

SWORN TO BEFORE ME this 9th Day
of December, 2011

Archie A. Pyle (L.S.)
Notary Public for South Carolina
My Commission expires: 12/11/13

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee

Defendants.

RICHLAND COUNTY
IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-00364

2011 DEC 14 PM 4:35
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
CERTIFICATE OF SERVICE

I certify that on the 12th day of December, 2011, I have served the Affidavit of W. Jeffrey Smith Supporting Release of All Public Documents Requested Under the S.C. Freedom of Information Act by Attorney General Alan Wilson and by the James Brown Legacy Trust in the above-captioned matter on Defendants by mailing a copy of same to his attorneys of record, by United States Mail, first-class postage prepaid, addressed as follows:

J. Emory Smith, Jr., Esquire
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

A. Camden Lewis, Esquire
Lewis & Babcock, LLP
Post Office Box 11208
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December 12, 2011


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NEWBERRY COUNTY
2011 DEC 14 A 9:57
JACKIE S. BOWERS
CLERK OF COURT

**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.

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.]

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)

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 take 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.

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

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 Mernickle (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. 2/39/09 and 2/30/09.]

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.

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 in early 2007 to raise \$200 million for the purchase of the James Brown assets.

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 these private 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 May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than \$60 million in 2010.

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

Draft (4/11) for Editing only - Do not copy

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 NEWBERRY

Adele J. Pope,

Plaintiff,

v.

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

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

**AFFIDAVIT
SUPPORTING IMMEDIATE RELEASE
OF McMASTER/WINGATE CONTRACT
TO SUE BUCHANAN AND POPE**

Personally appeared before me, Thomas R. Young, Jr., who being duly sworn,
deposes and says:

1. I am a resident of Aiken County.
2. I am over 18 years of age.
3. I make this affidavit based on my personal knowledge and belief.
4. I am a member in good standing of the South Carolina Bar with Bar

number 11643.

5. Currently, I am attorney of record for Robert L. Buchanan, Jr. and Robert L. Buchanan Law Office, P.A. in the declaratory judgment action filed against Buchanan by Cincinnati Insurance Company in federal court.¹ That action involves the malpractice coverage which is in place to defend and to indemnify Buchanan in the lawsuit filed in Richland County against Buchanan by the Attorney General of South Carolina ("Richland County lawsuit").

¹ Cincinnati Specialty Underwriters Ins. Co. v. Buchanan Law Office, PA, et al. 3:10-cv-02986-WOB.

6. The litigation retention agreement signed by former Attorney General Henry McMaster to authorize attorney Kenneth Wingate to sue Robert L. Buchanan, Jr. of Aiken is a document relevant to some of the issues in the declaratory judgment action filed by Cincinnati Insurance Company against Buchanan.

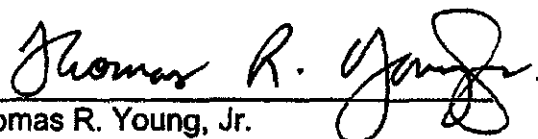
7. My understanding is that Buchanan attempted to obtain a copy of that contract in the Richland County lawsuit. The contract has not been produced in that action.

8. My understanding also is that litigation retention agreements entered into by the Attorney General of South Carolina are public documents.

9. I also understand that 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 to obtain the contract, it will save my client both time and money by having this Court rule that the contract should be released pursuant to the Freedom of Information Act.

FURTHER THE DEPONENT SAYETH NOT.


Thomas R. Young, Jr.

SWORN TO before me this
day of December, 2011

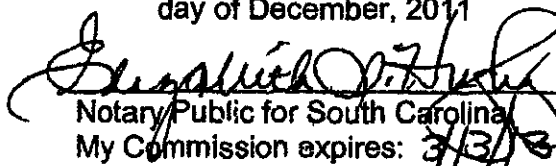
 (L.S.)
Notary Public for South Carolina
My Commission expires: 3/3/13

Exhibit C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION No. 2011-CP-36-379
	)	
ADELE J. POPE,	)	AFFIDAVIT OF DEBORAH W. SPENCE
	)	ASKING FOR RELEASE UNDER
PLAINTIFF,	)	FREEDOM OF INFORMATION ACT OF
	)	AG HENRY MCMASTER'S 2010 CONTRACT
V.	)	WITH ATTY. KENNETH B. WINGATE TO
	)	SUE ADELE POPE AND ROBERT
ALAN WILSON, IN HIS CAPACITY AS	)	BUCHANAN FOR APPEALING ORDER
ATTORNEY GENERAL OF SOUTH	)	IN JAMES BROWN AIKEN CASE
CAROLINA,	)	
	)	
DEFENDANT.)	)	
	)	

PERSONALLY APPEARED BEFORE ME, DEBORAH W. SPENCE, WHO BEING DULY
SWORN, DEPOSES AND SAYS:

1. I AM A RESIDENT OF LEXINGTON COUNTY AND OVER 18 YEARS OLD.
2. THIS AFFIDAVIT IS BASED ON MY PERSONAL KNOWLEDGE AND BELIEF.
3. I AM THE WIDOW OF FLOYD D. SPENCE
4. THROUGH THE YEARS I HAVE KNOWN ATTORNEY GENERAL ALAN WILSON
AND HIS FAMILY, AND HAVE BEEN REPRESENTED BY A MEMBER OF FORMER AG
HENRY MCMASTER'S FAMILY
5. KENNETH B. WINGATE HAS SERVED BOTH AS MY LAWYER AND ATTORNEY
FOR MY HUSBAND'S ESTATE.
6. MRS. POPE BECAME MY LAWYER IN 2002, RECOMMENDED BY AG
MCMASTER'S BROTHER WHO HAD WORKED FOR MY HUSBAND.
7. I LOVE MUSIC AND HAVE BEEN A FAN OF JAMES BROWN FOR DECADES.
8. IN 2007 MRS. POPE BECAME TRUSTEE OF JAMES BROWN'S TRUST,
WHICH INCLUDED THE JAMES BROWN "I FEEL GOOD" PRIVATE FOUNDATION. I
LEARNED THEN THAT BROWN HAD GIVEN HIS ENTIRE MUSIC EMPIRE TO PROVIDE

SCHOLARSHIPS FOR NEEDY AND DESERVING STUDENTS.

9. SINCE LEARNING THAT HENRY MCMASTER - OVER THE OBJECTION OF BROWN'S TRUSTEES - GAVE MORE THAN HALF OF THE "I FEEL GOOD" FOUNDATION TO DISINHERITED CLAIMED RELATIVES, I HAVE FOLLOWED THE AIKEN CASE FAIRLY CLOSELY.

10. I WAS DISTURBED IN THE SPRING OF 2010 WHEN I LEARNED THAT HENRY MCMASTER HAD SUED MRS. POPE USING KENNETH WINGATE, A PRIVATE ATTORNEY WHO ALSO REPRESENTED SOME OF BROWN'S DISINHERITED RELATIVES.

11. I WAS TROUBLED AND INCREDULOUS THAT THE AG WOULD ALLOW MR. WINGATE AND MR. BAUKNIGHT TO FIGHT THE PEOPLE WHO WERE TRYING TO SAVE THE "I FEEL GOOD" FOUNDATION AND GET MONEY FOR PEOPLE BROWN LEFT OUT OF HIS ESTATE PLAN, AND I STILL DON'T UNDERSTAND HOW HE COULD DO THAT.

12. IN AUGUST OF 2011 WHEN I READ THAT MRS. POPE HAD FILED A FREEDOM OF INFORMATION ACT SUIT TO GET THE CONTRACT MCMASTER SIGNED WITH KEN WINGATE I THOUGHT IT MIGHT ANSWER SOME OF MY QUESTIONS.

13. I KNOW THAT AG WILSON HAS STATED THAT ALL OF HIS LITIGATION RETENTION AGREEMENTS WITH OUTSIDE COUNSEL ARE PUBLIC DOCUMENTS, AND BELIEVE THAT THEY SHOULD BE.

14. I THINK THAT THE MCMASTER'S CONTRACT WITH KEN WINGATE SHOULD BE DELIVERED RIGHT AWAY BECAUSE THE PUBLIC HAS A RIGHT TO KNOW WHETHER WHAT AG MCMASTER AND WINGATE AGREED TO WAS APPROPRIATE.

15. I AM CONCERNED THAT AG WILSON'S REFUSAL FOR MORE THAN FOUR MONTHS TO RELEASE A PUBLIC DOCUMENT MAKES IT APPEAR THAT HE IS COVERING UP AN INAPPROPRIATE OR QUESTIONABLE AGREEMENT.

16. ON OCTOBER 31, 2011 ATTORNEY DAVID BLACK OF NEXSEN PRUET,

SPEAKING FOR RUSSELL BAUKNIGHT, MADE VICIOUS STATEMENTS ABOUT MRS. POPE AND MR. BUCHANAN THAT WERE REPEATED IN HUNDREDS OF MEDIA OUTLETS.

16. THE NEXT DAY, I HEARD ANOTHER NEXSEN PRUET LAWYER AND MR. JONES FROM AG WILSON'S OFFICE TRYING TO JUSTIFY TO OUR SUPREME COURT WHY HENRY MCMASTER GAVE AWAY WHAT WAS CORRECTLY DESCRIBED AS BROWN'S "NOBLE ESTATE PLAN."

16. SINCE THEN, AG WILSON'S REFUSAL TO RELEASE THE MCMASTER CONTRACT WITH WINGATE HAS FOCUSED MY ATTENTION ON OTHER TROUBLESOME THINGS MCMASTER DID - OR IS SAID TO HAVE DONE - IN CONNECTION WITH JAMES BROWN'S ESTATE AND TRUST, AND I BELIEVE THE PUBLIC HAS A RIGHT TO LEARN WHAT REALLY HAPPENED..

17. I RECENTLY READ THAT JAMES BROWN MADE A TAPE DISCUSSING HIS INTENTIONS IN HIS WILL AND TRUST WHICH MCMASTER APPARENTLY DID NOT CONSIDER WHEN HE GAVE AWAY HALF OF THE "I FEEL GOOD" TRUST.

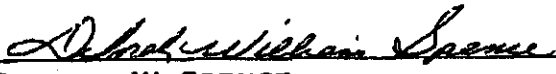
17. THIS MORNING I READ THAT BROWN'S GRANDSON FORLANDO, WHO APPEARED ON TELEVISION IN 2008 WITH MCMASTER TO CRITICIZE MRS. POPE AND MR. BUCHANAN, NOW CONFIRMS THAT THEY PROPERLY DEFENDED BROWN'S ESTATE PLAN.

18. MOST TROUBLESOME, HOWEVER, IS AN ARTICLE BY SUE SUMMER DATED DECEMBER 7, 2011 IN WHICH FORLANDO DESCRIBES A VISIT HE AND HIS FATHER TERRY HAD TO AG MCMASTER'S OFFICE BEFORE TERRY BROWN ABANDONED HIS SUPPORT OF BROWN'S NOBLE ESTATE PLAN WHICH STATES:

"AFTER MY FATHER REFUSED TO JOIN THE FIGHT (TO CONTEST THE WILL AND TRUST), THEY CALLED US TO SOUTH CAROLINA, TO THE ATTORNEY GENERAL'S OFFICE. THEY SAID THEY COULD SETTLE WITHOUT US, AND THEY'D MAKE SURE WE GOT NOTHING. WE WERE GIVEN AN ULTIMATUM," FORLANDO SAID.

19. I AM INFORMED AND BELIEVE THAT AG WILSON SHOULD IMMEDIATELY
RELEASE THE WINGATE CONTRACT.

FURTHER DEPONENT SAYETH NOT.


DEBORAH W. SPENCE

SWORN TO BEFORE ME THIS
8TH DAY OF DECEMBER, 2011


_____(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 7/13/2016

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

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

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT
SUPPORTING IMMEDIATE RELEASE
OF McMASTER/WINGATE CONTRACT
TO SUE BUCHANAN AND POPE

Personally appeared before me, Thomas H. Pope III, who being duly sworn,
deposes and says:

1. I am a resident of Newberry County and a practicing attorney.
2. I am over 18 years of age.
3. Since the death of James Brown, I have read news reports about the various James Brown cases.
4. I understand that a request under the S.C. Freedom of Information Act has been made by at least one newspaper reporter for a copy of the public litigation retention agreement signed by former Attorney General Henry McMaster to authorize attorney Kenneth Wingate to sue Robert Buchanan of Aiken and Adele Pope of Newberry because they appealed an Aiken County settlement related to James Brown.
5. The Freedom of Information Act is intended to provide all members of the public with easy and prompt access to public documents. As far as I know, it contains no provisions that tie its application to any pending action in the same or any other county.

6. To deny prompt relief under the F.O.I.A serves only to encourage secrecy in government.

7. As I understand, all litigation-retention contracts between the Attorney General and private attorneys are public documents, and the documents sought in this suit are the only ones of this type that the Attorney General's office has ever refused to produce.

8. While I am the husband of plaintiff, I affirm that this does not affect my view of the legitimacy of the F.O.I.A. suit to produce what even the Attorney General's office has not denied are public documents.

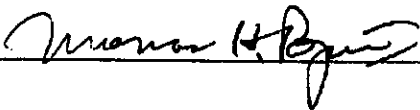
9. I was not asked to write this affidavit by anyone. I do so voluntarily.

10. The public interest in James Brown, legendary musician and philanthropist (per his Will), could not be greater. The public interest in the former Attorney General's decision to hire private attorneys under a cloak of secrecy is equally great.

11. As a former legislative sponsor of the Whistleblower statute, I have always been a proponent of openness in government.

12. I believe that any citizen or journalist who asks for this public document should get it without delay.

FURTHER DEPONENT SAYETH NOT.



SWORN TO before me this
8th day of December, 2011


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

Exhibit E

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

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

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

**AFFIDAVIT OF SUE SUMMER
SUPPORTING IMMEDIATE RELEASE
OF THE McMASTER/WINGATE CONTRACT
TO SUE BUCHANAN AND POPE**

Personally appeared before me, Sue Summer, who being duly sworn, deposes
and says:

1. I am a resident of Newberry County; over 18 years of age; and make this affidavit based on my personal knowledge and belief.
2. I am a journalist and contribute to the *Newberry Observer*.
3. During the last few months, I have written several articles for the *Observer* on the various James Brown court cases. In writing these articles, I have done extensive factual research, including the review of many documents and interviews with several people.
4. I have requested that the Attorney General's office provide me with a copy of the Litigation Retention Agreement between former Attorney General McMaster and attorney Kenneth Wingate, which is one of the documents Plaintiff Adele Pope seeks in this action, no fewer than 6 times.
5. I have reviewed a recent letter of Senior Assistant Attorney General C. Havird

Jones confirming that this is a public document, but have not to date been provided a copy of this document.

6. I have reviewed other Litigation Retention Agreements which the Attorney General has posted on his website, and am informed and believe that each of them states that it is a public document.

7. As both a journalist and a citizen, I have an interest in seeing the Litigation Retention Agreement, which I understand Attorney General McMaster signed in his official capacity.

8. I believe that the spirit of the Freedom of Information Act is violated if journalists and members of the general public are denied both easy and prompt access to public documents.

9. I do not believe my FOIA rights or the rights of the general public should be tied to a Richland County lawsuit.

FURTHER DEPONENT SAYETH NOT.

Sue Summer
SUE SUMMER

SWORN TO before me this
day of December, 2011

Nina Elizabeth Brooks (L.S.)
Notary Public for South Carolina
My Commission expires: 2/17/2015

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-364

Adele J. Pope, Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,
and the James Brown Legacy Trust, by
Russell Bauknight, its Trustee

Defendant.

AFFIDAVIT OF DARYL L. WILLIAMS

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10:19
JACKIE S. BOWERS
CLERK OF COURT

Personally appeared before me, Daryl L. Williams, who being duly sworn,
deposes and says:

1. Attached is a true and correct copy of the letter I sent to Ms. Tracy Meyers today.
2. Neither Attorney General Wilson nor any member of his staff is attorney of record in Case No. 2010-CP-40-4900, and none attended the status conference.

FURTHER DEPONENT SAYETH NOT.


DARYL L. WILLIAMS

SWORN TO before me this
6th day of January, 2012


Notary Public for South Carolina
My Commission expires: 7/13/2016

(L.S.)

FILED
RICHLAND COUNTY
2012 JAN 17 PM 4:34
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Jeter & Williams, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Edwin Russell Jeter
Daryl L. Williams

1204 Main Street, Suite 200 (29201)
Post Office Box 7415
Columbia, South Carolina 29202

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

January 6, 2012

Hon. Tracy Meyers
Senior Assistant Attorney General
Office of the South Carolina Attorney General
PO Box 11549
Columbia, SC 29211-1549

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10:19
JACKIE S. BOWERS
CLERK OF COURT

Re: Letter of January 5, 2012 to Ms. Sue Summer

Dear Tracy:

I am in receipt of your letter of January 5, 2012 to Ms. Sue Summer. As you know, I am one of the attorneys representing Adele J. Pope in the Richland County civil case (No. 4900) you mention in that letter, as well as a suit pending in the United States District Court.

Your description of the events at the December 12, 2011 status conference held in No. 4900, at which neither you nor any attorney on the AG's staff were present, reflects a misunderstanding of what occurred. No counsel for Mrs. Pope stopped or attempted to stop the production of any document to the Court or to anyone else.

With best personal regards.

Very truly yours,

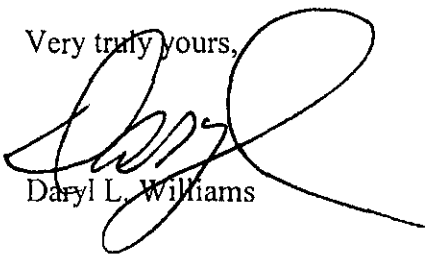

Daryl L. Williams

EXHIBIT I

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Adele J. Pope,

Plaintiff,

vs.

Alan Wilson, in his capacity as Attorney
General of South Carolina and James Brown
Legacy Trust, by Russell L. Bauknight, its
Trustee,

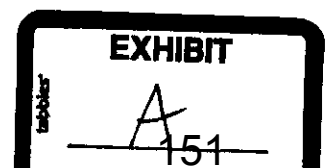
Defendants.

Case No. 2011-CP-36-00364

**AFFIDAVIT OF RUSSELL L.
BAUKNIGHT**

PERSONALLY APPEARED BEFORE ME, the affiant, Russell L. Bauknight, who,
being sworn, deposes and states the following:

1. I am a resident of Richland County, South Carolina;
2. The principal place of administration and usual place of business for the below mentioned Estate and Trusts is located at 1517 Gervais Street, City of Columbia, Richland County, South Carolina 29201;
3. For nearly three years I have served as the court-appointed Personal Representative and Trustee of the James Brown Estate and August 1, 2000, Irrevocable Trust Agreement (Trust);
4. For nearly three years I have also served as the Trustee for the James Brown Legacy Trust. The Legacy Trust was created pursuant to a settlement agreement that ended years of litigation surrounding the validity of James Brown's Will and Trust.
5. As its Trustee, I manage, control, and oversee the Legacy Trust. While the South Carolina Attorney General has a right to remove and replace me, the beneficiaries of the Legacy Trust—the James Brown Children, for example—also have the right to remove me pursuant to the Trust Code.
6. Ms. Adele Pope appealed the settlement agreement and that appeal is pending at

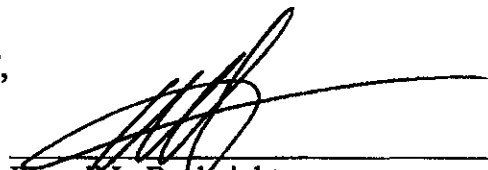


- the South Carolina Supreme Court; both briefing and oral argument have already occurred in that appeal and the parties are awaiting the Court's opinion;
7. At the briefing stage of the appeal, Ms. Adele Pope affirmatively stated that "[p]rivate foundations such as the 'I Feel Good' foundation/trust are not public charities." (Appellants' Brief, p. 5) (attached as **Exhibit A**). Her position that the Trust is private can be found throughout her briefs. (*E.g., id.* at pp. 3,4,5,6,7; Appellants' Reply Brief, pp. 2,5);
 8. The Trust was to be funded with the private property of James Brown. Consequently, Ms. Adele Pope correctly referred to the Trust in her brief as "private";
 9. Similarly, the Legacy Trust will be funded with the private property of James Brown pursuant to the terms of the settlement agreement. The Legacy Trust is designed to carry out the same private charitable goals as the Trust. Consequently, the Legacy Trust is also private;
 10. I understand a Freedom of Information Act (FOIA) request has been filed seeking documents establishing the Legacy Trust;
 11. It is my understanding that FOIA exists to allow a citizen to request documents and information related to public bodies and public documents. Accordingly, I do not believe that the Legacy Trust—a private trust—is the proper object for a FOIA request;
 12. The Legacy Trust is not a public body as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 30-40-20(a) (Attached as **Exhibit B**);
 13. Because the Legacy Trust is not a public body, it does not possess public records as defined in the South Carolina FOIA Statute. See S.C. Code Ann. § 30-40-20(c);
 14. The Legacy Trust is not supported in whole or in part by public funds, nor does the Legacy Trust expend public funds. Accordingly, it is my understanding that the Legacy Trust documents are private trust documents;
 15. Pursuant to the South Carolina Trust Code, Circuit Judge Casey Manning previously ruled that actions involving the James Brown Trusts, including the Legacy Trust, are subject to venue in Richland County. (See Judge Manning's

November 8, 2010 Order on Trust Venue Attached as **Exhibit C**);

16. In the event that this action is not dismissed, it should be transferred to Richland County or consolidated with the action pending there.

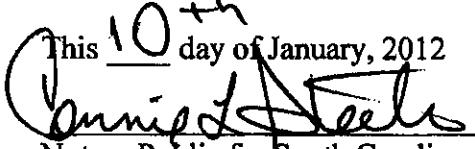
FURTHER AFFIANT SAYETH NAUGHT,



Russell L. Bauknight

SWORN and subscribed to before me

This 10th day of January, 2012



Notary Public for South Carolina

(L.S.)

My commission expires: 2-19-2019

EXHIBIT J

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Adele J. Pope,)
Plaintiff,)
v.)
Alan Wilson, in his capacity as)
Attorney General of South Carolina and)
James Brown Legacy Trust, by)
Russell L. Bauknight, its Trustee,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 11-CP-36-364

MEMORANDUM OF
ATTORNEY GENERAL
IN SUPPORT OF:

MOTION TO DISMISS AND
MOTIONS TO STRIKE

AND IN OPPOSITION TO
SUMMARY JUDGEMENT

FILED
NEWBERRY COUNTY
JAN 13 2012
CLERK OF COURT

INTRODUCTION AND BACKGROUND

The Office of the Attorney General has a long history of advocating the importance of the Freedom of Information Act, but whether the documents Plaintiffs seeks are subject to disclosure under FOIA is not the real issue in this case. Despite the numerous motions pending in this case and seemingly countless affidavits submitted by Plaintiff, the suit presents very simple issues of deference to ongoing judicial proceedings and court rulings in another county that deprive the Court of subject matter jurisdiction in this case. 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. The November 30, 2011, Order of this Court in the related FOIA action, 2011-CP-36-379 (copy attached), consolidated that case with Richland case *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, and encouraged the parties to the instant case to consent to consolidation with case 4900, but Plaintiff has shown no interest in doing so. Order at p. 6, note

FILED
RICHLAND COUNTY
JAN 13 2012
CLERK OF COURT

7. She has, instead, moved for reconsideration of the Order in Case 379 and continued to file numerous affidavits in the instant case.

For reasons discussed below, the Defendant Wilson's Motion to Dismiss should be granted which will moot all other issues. Alternatively, his Motions to Strike should be granted to strike the multiple affidavits of Plaintiff that are riddled with hearsay, speculation and completely irrelevant material. Plaintiff's Motion for Summary Judgment should be denied because of the pending Richland motions, because the Defendant Attorney General has not answered the Complaint and should be given an opportunity to address the FOIA substantively if, *arguendo*, this case is not dismissed and for the other reasons discussed below including the failure of Plaintiff to mail or deliver the FOIA request to the Attorney General's Office.

The relationship of the instant action to Richland proceedings is set forth in Plaintiff's complaint. Instant Plaintiff Pope acknowledges that she is the Defendant in a Richland County suit brought by the former Attorney General McMaster and the current trustee of the James Brown Legacy Trust. (2010-CP-40-4900). She contends that the Richland suit alleges that she caused millions of dollars in damage to the Legacy Trust and that her and her co-defendant's valuation of the trust was incorrect and improper. The Court issued a ruling in case 4900 that stated that venue of that case was proper in Richland County because it was the principal place of administration of the trusts at issue in that case. Order, The Honorable L. Casey Manning, November 8, 2010, Exhibit A to Attorney General's Motion to Dismiss.

Despite the pendency of the Richland action, Plaintiff alleges that she personally sent the Attorney General a FOIA request from her Newberry Office, dated June 30, 2011, for records she alleges are related to the Trust. Complaint, p. 4, ¶18. Plaintiff asked for the following

documents in a letter addressed to the “Custodian of Records of the Office of the Attorney General”:

1. The final and all drafts, signed and unsigned , of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900 as Plaintiff acknowledges; Plaintiff's Return to MTD, p. 2, ¶6; *See, also*, Exhibit D to Complaint, ¶2b; MTD ExhibitB, Motion to Compel, p. 3, ¶ 3, June 7, 2011 [“[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006.”](attachments to Motion omitted); MTD Exhibit C, Motion for Protective Order and including Exhibits D [appraisals] & E [objections to appraisals] thereto (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion).

I

THE DEFENDANT ATTORNEY GENERAL'S MOTION TO DISMISS

Lack of Subject Matter Jurisdiction

Both grounds for this motion are affected by the exclusive jurisdiction of the Richland County Court of Common Pleas as to the documents at issue and its rulings in this case. Because of those proceedings, the Court lacks subject matter jurisdiction in the instant case as

discussed above and below. Rule 12(b)(3).

A

Improper Venue

Venue is improper in that, in related litigation, the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, November 8, 2010 (copy attached as Exhibit A only in support of 12(b)(3) motion). Plaintiff cannot evade that order by bringing a separate FOIA action in another county not connected to case 4900. One Circuit Judge cannot overrule another Circuit Judge. *Cook v. Taylor*, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979); *Enoree Baptist Church v. Fletcher*, 287 S.C. 602, 603, 340 S.E.2d 546, 547 (1986); *Department of Social Services v. Laura D.* 386 S.C. 382, 688 S.E.2d 130 (Ct. App., 2009). Although this authority appears to arise in the context of different circuit judges within the same case, Plaintiff cannot attempt to split off a document issue pending before the Courts in Richland County, put a FOIA label on it, and get a Court in a different County to step in and rule on a matter pending in Richland. Our Courts were not set up this way.

Further, even if, *arguendo*, the Richland venue Order were not controlling, under S.C. Code Ann. § 15-77-50 (1976), suits against officials of the State in their official capacities must be brought in the circuit where such question, action or controversy shall arise, and the Complaint does not allege a basis for venue in Newberry County. Plaintiff claims that her office is in Newberry, but she is using that office as an attempt to avoid raising this issue in Richland

where she and the other parties are already represented by counsel. She cannot splinter the Richland action this way and set up one Court in Newberry against another in Richland County. She characterizes the FOIA action as different, but it is a different theory involving the same documents. Venue should be in Richland where the other suit is pending.

B

Another Action is Pending Among the Same Parties

The Defendant Attorney General recognizes that this Court has ruled against him on this ground in the similar Pope case 2011-CP-36-379 (Order filed November 30, 2011), he maintains the arguments below to preserve them. That Order provided for the consolidation of case 379 with case 4900, *supra*, in Richland County and also encouraged the parties to the instant case to consent to consolidation of this case with case 4900. Order at p. 6, note 7. That Order is now the subject of Plaintiff's Motion for Reconsideration. Subject to his defenses in his Motion to Dismiss herein, he believes that the instant case should be consolidated with case 4900 in Richland County.

Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc., et al, supra*. Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See*, Exhibit D to Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion

for Protective Order and including Exhibits D & E thereto. Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the Court in Case 4900. Therefore, this case is subject to dismissal under Rule 12(b)(8).

This defense is closely related to one of concurrent jurisdiction under which the first court to exercise jurisdiction controls the case. The rule is well settled that “where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.” *Richardson, Plowden, Grier & Howser v. Pyle*, 472 S.E.2d 232, 233 (1996)(fee dispute matter). Although, as follows, *Tucker v. Tucker*, 264 S.C. 172, 177-78, 213 S.E.2d 588, 590 (1975) discussed the rule in the context of administration of an estate, its reasoning and holding apply to the instant case, as well:

While it is true that the circuit court has general jurisdiction in civil matters, once the forum for the administration of an estate has been chosen, the forum or court so assuming jurisdiction has control of the administration of the estate and parties interested in estate matters should apply to the judge of the court. Administration of an estate cannot be in two courts simultaneously. Counsel for the appellant argues, and counsel for the respondent admits in his brief, that the Probate Court of Chesterfield County has jurisdiction to hear an action for the removal of an executor.

A discussion of the question involved is to be found in 20 Am.Jur.2d Courts §128.

‘C. Priority Principle as Controlling Exercise of Concurrent Jurisdiction

‘s 128. Generally. As a rule the exercise of concurrent jurisdiction is controlled by the principle of priority. According to this principle the court of concurrent jurisdiction that first exercises it thereby acquires exclusive jurisdiction to further proceed in the case. In other words, once a court of concurrent jurisdiction has begun to exercise its jurisdiction over a case its authority to deal with the action is, subject to appellate review, exclusive until it is completely disposed of, and no other court of concurrent jurisdiction may interfere with the proceedings thus pending. . . .

‘In several opinions ‘comity’ has been indicated as a motive of the courts to abide by the priority principle, but it appears that it is a legal duty of a court to abide by it, and that the rationale of the rule is to reduce the possibility of the

conflicting exercise of concurrent jurisdiction, especially to reduce the undesirable possibility that a case involving the same subject matter and the same parties be simultaneously proceeded upon in more than one court. Several cases have pointed out that the applicability of the priority rule does not depend on whether one of the two courts of concurrent jurisdiction is superior in rank to the other such court. . . .'

See also, Jordan v. Moses, 10 S.C. 431, 433 (1879) ("no proposition is better settled than that where two tribunals have concurrent jurisdiction, the one which first obtains possession of the subject must adjudicate, and neither party can be forced into another jurisdiction.") *State v. Howell*, 220 S.C. 178, 66 S.E.2d 701 (1951)(criminal proceedings); *see also Sparrow v. Nerzig*, 228 S.C. 277, 89 S.E.2d 718 (1955). Similarly, issues regarding the same documents cannot be in two courts, one in Richland and the other in Newberry. When the Richland Court has exercised jurisdiction first, it now has exclusive jurisdiction over the matter and this Court lacks subject matter jurisdiction of this case.¹ Rule 12(b)(1), SCRCF.

II

THE ATTORNEY GENERAL'S MOTION TO STRIKE SHOULD BE GRANTED

The Attorney General has moved to strike at least 14 affidavits filed by Plaintiff in this case² some of which are attachments to other affidavits, and some related exhibits of Plaintiff.

¹ "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Rule 12(h)(3), SCRCF.

² Plaintiff has also filed on Monday of this week a fifteenth affidavit which is her seventh in this case. This affidavit addresses attorneys fees and costs which are premature at this stage of this case. The Defendant reserves the right to move to strike this affidavit also.

At least 6 of these affidavits were executed by Plaintiff, herself, and many of her affidavits are filled with vitriole and baseless speculation. All of the affidavits should be struck because they are irrelevant and also because many of them are not based upon personal knowledge, contain hearsay, and are speculative. Examples abound of these violations by Plaintiff of the basic rules for affidavits some of which are set forth below:

1. Affidavit attached to Complaint

p.2, ¶ 5 “agent [of party not involved in instant proceeding] advised that if Bob and I did not drop a pending James Brown appeal AG . . . [note omitted] would to[sic] sue us” [hearsay, irrelevant]

p. 3, ¶ 7 Augusta Chronicle cite [hearsay]

p. 3, ¶8, “ I believe the Retention Agreement will show whether AG McMaster . . . was in fact acting to punish Bob and me ;” [lack of personal knowledge; speculation]

2. Affidavit Opposing MTD, September 6, 2008 [sic]

p. 1, ¶2 “public documents, which, I believe, will tell the scandalous story” [lack of personal knowledge, irrelevant, speculative]

p. 4, ¶28, “I still wonder, and believe the public documents AG . . . is withholding will tell me” [lack of personal knowledge, irrelevant, speculative, hearsay]

p. 4, ¶30, “I believe the public documents will show” [lack of personal knowledge; speculative]

p. 3, ¶16 On April 30, 2010, . . . attorney for Brown’s companion . . . threatened

that . . . had already hired contingency-fee lawyer” [hearsay, irrelevant]

3. Supplemental Affidavit, September 16, 2011

Directed to earlier affidavit applying to other Defendant

p. 3, ¶5 quotations from *The Enquirer* which she acknowledges in paragraph 6 is
not entirely accurate [lack of personal knowledge, hearsay, irrelevant]

4. Affidavit in Further Support, October 6, 2011

p. 4, ¶10, speculation about what requested documents will show [speculative,
lack of personal knowledge, irrelevant]

p. 4, ¶11, chronology including some hearsay such as April 10 statement of agent
for person not involved in instant litigation[hearsay, irrelevant]

p. 8, ¶¶15 and 16 speculation about what requested documents will show.

5. Affidavit and exhibits attached to Motion for Summary Judgment

p. 3, ¶¶ 7-9 speculation about documents and other matters [lack of personal
knowledge, speculative, irrelevant]

Exhibit F to MSJ, p. 15 quotations from persons not involved in the instant suit
[hearsay, irrelevant]

6. Affidavit of Summer, December 8, 2011, attached to Smith affidavit, December 9, 2011

¶¶ 16 – 18 references to what others have said in readings or elsewhere [hearsay, lack of
personal knowledge]

7. Affidavit of Summer, January 5, 2012

¶25 “Dallas informed me” (hearsay)

¶28 “Brown told me” (hearsay)

8. Affidavit of Smith, December 9, 2011

¶6, attachment of draft article [hearsay]

9. Affidavit of Pope, January 6

p. 3 “Bauknight secretly tells IRS” [hearsay]

“The rule governing summary judgment provides that ‘[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.’” Rule 56(e), SCRPC (emphasis added). *Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003). Because all of the affidavits appear to be directed to summary judgment, they must meet this standard of Rule 56(e) rather than Rule 11(c) which provides that affidavits and verifications may include matters stated on information and belief.

In numerous respects, the affidavits clearly fail to meet standards of being based upon personal knowledge and containing admissible evidence. They contain inadmissible hearsay and refer to news articles³ which are not admissible. In particular, all of the affidavits are irrelevant. Many of them contain Plaintiff’s account of litigation related to the James Brown estate and the Legacy Trust and allegations about why she needs the documents, but all of those statements are irrelevant to whether she is entitled to the documents under FOIA. As set forth above, Plaintiff is not permitted to bypass proceedings in Richland County pertaining to the trust, but even if, *arguendo*, she could bring this separate FOIA action in Newberry County, all that is relevant to

³ *Trustees of Erskine Coll. v. Cent. Mut. Ins. Co.*, 241 S.E.2d 160, 162-63 (1978).

her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need. S.C. Code Ann. §§30-4 through 30-30-4-50, *et seq.* Plaintiff's lack of entitlement to the documents is discussed *infra* regarding her motion for summary judgment, but those grounds have nothing to do with the alleged need for or importance of the documents.

III

PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT

A

Plaintiff Cannot Use FOIA To Bypass Judicial Proceedings In Richland

Nothing in FOIA, the Rules of Civil Procedure or the Court system of this State would permit Plaintiff to make a FOIA request outside a pending judicial proceeding involving discovery motions pertaining to many of the same documents. *See* exhibits submitted with MSJ. She cannot avoid the Richland proceeding through this process.

Even if discovery motions were not pending in Richland, legal authority suggests that Plaintiff would not be permitted to use FOIA as a discovery tool regarding those proceedings. Clearly she is attempting to use FOIA as a discovery tool because her affidavits contain lengthy accounts regarding the pending Richland litigation from her perspective. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 25, 2002) stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." Although our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass

discovery in criminal proceedings. *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005).⁴ Moreover, our Supreme Court has recognized that “[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146 (1989); *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978).” *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991). Although *Robinson* involved criminal proceedings, the State Supreme Court’s recitation of the federal rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did; however, this issue need not be reached because judicial proceedings are already pending in Richland regarding the same documents, and this Court should not allow Plaintiff to bypass those proceedings nor issue a ruling contrary to the stay order in Richland.

B

The Defendant Attorney General Has Not Answered the Complaint

The Attorney General has filed a Motion to Dismiss the Complaint which should be granted. Even if, *arguendo*, the Motion were not granted, he should be given the opportunity to Answer. Although Rule 56 allows a summary judgment motion to be made before an answer is filed, the standards for granting the motion are much stricter. As stated in *Guterman-Musicant-Kreitzman, Inc. v. I.G. Realty Co.*, 426 So. 2d 1216, 1217-18 (Fla. Dist. Ct.

⁴ As stated in *Robinson*, “the Court of Appeals misapprehended that *Robinson* merely reflects the widely accepted principle that FOIA is not to be used by those under criminal charges to circumvent the limitations of discovery. See, e.g., *State ex rel. Wyant v. Brotherton*, 589 S.E.2d 812, 816-17 (W.Va.2003); *Henderson v. State*, 745 So.2d 319 (Fla.1999). That principle is not implicated here, because the 911 tape was available through both criminal and civil discovery.”

App. 1983):

Although a plaintiff may move for summary judgment before the defendant has answered, the motion should not be granted unless it is clear that an issue of material fact cannot be presented. At such point in the pleading when the plaintiff moved for summary judgment, the plaintiff had the burden of showing the absence of any genuine issue as to all the material facts which, under applicable principles of substantive law, entitled it to judgment as a matter of law. This burden is upon the movant irrespective of whether he or his opponent would at trial have the burden of proof on the issue concerned, and it rests on the movant whether he is by it required to show the existence or non-existence of facts.... In such an instance, the burden is upon the plaintiff to make it appear to a certainty that no answer which the defendant might properly serve could present a genuine issue of fact.

Certainly, Plaintiff cannot demonstrate that an issue of material fact cannot be presented or that "no answer which the defendant might properly serve could present a genuine issue of fact." *Id.* As set forth in the affidavit of Tracy Meyers, Senior Assistant Attorney General, the Office of the Attorney General was not properly served with the FOIA request at issue.

C

Plaintiff's Apparent Failure to Mail or Deliver the FOIA request to the Office of the Attorney General Defeats Any Alleged Entitlement of her to Relief

As stated in Ms. Meyers Affidavit:

She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA..

4. Attachment of the June 30, 2011 letter to the complaint in the [instant] suit does not constitute a request under FOIA to which the Office of the Attorney

General must respond.

This affidavit is consistent with the terms of FOIA, itself. Section 30-4-30 (c) states that “[e]ach public body, upon written request for records made under this chapter shall within fifteen days . . . of the receipt of any such request notify the person making such request of its determination” Therefore, the public body must receive a written request from the person making the request. According to Ms. Meyer’s affidavit, she did not receive the request in this manner. Attachment of the FOIA request to the Complaint in this suit alleging a failure to comply, does not constitute a mailing or delivery of the request to the Office of the Attorney General. Accordingly, Plaintiff cannot obtain judicial relief under FOIA when she has not complied with the terms of that statute.

D

Even if This Court Were to Rule that the Defendant Must Respond Substantively to the FOIA Request, Exempt Matters May Be Withheld

Even if, *arguendo*, this Court were to find a failure to respond to the FOIA, the Defendant Attorney General is still entitled to determine if any requested matters are exempt from disclosure. *Litchfield Plantation Co., Inc. v. Georgetown County Water & Sewer Dist.*, 443 S.E.2d 574, 575 (1994) (“We decline to hold these exemptions can be waived by the public body’s failure to respond within fifteen days.”)

CONCLUSION

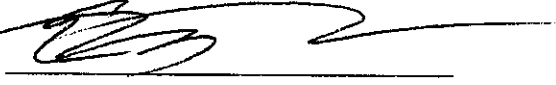
The Freedom of Information Act is a very important law, but it does not permit Plaintiff to bypass other judicial proceedings or, in effect, ask one judge to overrule another. For the

foregoing reasons, this Court should grant the State's Motion to Dismiss, alternatively grant its Motions to Strike and deny Plaintiff's Motion for Summary Judgment. Alternatively, and subject to these defenses, the Defendant Attorney General consents to consolidation of this case with case 4900 in Richland.

Respectfully submitted,

ALAN WILSON
Attorney General

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

BY: 

January 11, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

**STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY****IN THE COURT OF COMMON PLEAS**

ADELE POPE,
plaintiff,

C.A. No.
11-CP-36-379

-v.-

ORDER

ALAN WILSON, in his
capacity as Attorney
General,
defendant.

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County¹. See *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

¹ The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

¹ 

Honorable Casey L. Manning.² At the time of the stay, the parties to the fiduciary litigation (hereinafter "McMaster parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

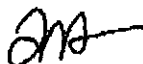
Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.

² At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]

The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

² 

II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWitt v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRCF. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*³ and *Richardson, Plowden, Grier & Howser v. Pyle*.⁴ These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C. at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,⁵ the

³ 264 S.C. 172, 213 S.E.2d 588 (1975).

⁴ 322 S.C. 371, 472 S.E.2d 232 (1996).

⁵ This Rule states, in pertinent part, that

Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of \$50,000 or more; or (2) disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.

Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

[t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

Id. (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker* and *Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. See *McDonald*, 276 S.C. at 575 ("Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction."). This judicial principle has a great resemblance to the Rule 12(b)(8) standard announced by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that "[i]n 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." *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant's *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. See *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2d 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

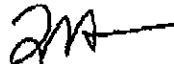
However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they "must be *precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." *Capital City*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. "Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of *mandamus* cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case." *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff's worker's compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court's dismissal improper, the Court of Appeals concluded that

[h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

Id. at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. See *Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

5 

(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to "any person." S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. *See* Rule 26(a), SCRCPP ("Parties may obtain discovery by one or more of the following methods. . ."). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only be appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.⁶

III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.⁷ Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCPP. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. *See* Rule 42(a), SCRCPP ("When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action."); *Creighton v. Coligny Plaza Limited*

⁶ Given this analysis, Defendant's motion to dismiss pursuant to Rule 12(b)(8) is also denied.

⁷ In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) ("Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.").

IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff's complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim to attorney's fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Eighth Judicial Circuit

November 22, 2011
Greenwood, South Carolina

EXHIBIT K

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)
)
Plaintiff,)
)
v.)

Case No. 2012-CP-40-350
[formerly Newberry Co. Case No.
2011-CP-36-364]

Alan Wilson, in his capacity as)
Attorney General of South Carolina and)
James Brown Legacy Trust, by)
Russell L. Bauknight, its Trustee,)
)
Defendants.)

MOTION OF ATTORNEY GENERAL
TO CONSOLIDATE CASES

Russell L. Bauknight, etc., Henry Dargan)
McMaster, in his capacity as Attorney)
General, etc, et al,)
)
Plaintiffs,)
)
v.)

Case No. 2010-CP-40-4900

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

RICHLAND COUNTY
FILED
2012 FEB -2 AM 11:10
JEANETTE W. McBRIDE
C.C.P. & G.S.

Pursuant to Rule 42¹, Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to consolidate *Pope v. Wilson and Bauknight* case 2012-CP-40-350 with *Bauknight and McMaster v. Pope*, case 2010-CP-40-4900. Pursuant to an Order of the Honorable Frank Addy dated January 11, 2012, venue of case 2012-CP-40-350, *supra*, was transferred from Newberry County where it formerly was given the number 2011-CP-36-364. Attached Exhibit A-1.

¹ A Court may order consolidation when "a common question of law or fact are pending before the court" Rule 42.

Although the claims in the complaints of the two cases are not identical, case 4900 is the subject of a number of allegations in and a lengthy exhibit to the Complaint in case 350. *See, eg.* Complaint in 350 at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General at issue in case 350 are also the subject of pending discovery related motions in case 4900. *See*, Exhibit D to case 350 Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion for Protective Order and including Exhibits D & E thereto. Plaintiff is essentially pursuing through case 350 the same discovery issues that are pending before the Court in Case 4900. Therefore common questions of law or fact are present in the two cases. Rule 42.

Another FOIA case brought by Adele Pope in Newberry County (*Pope v. Wilson*, Case No. 2011-CP-36-379) is to be transferred to Richland County and consolidated with case 4900 pursuant to the Order of Judge Addy dated November 22, 2011. Exhibit A-2, attached. Consolidating case 350 with cases 4900 and 379 would permit all FOIA and discovery issues to be determined in one proceeding.

Therefore, the Attorney General respectfully requests that case 350 be consolidated with case 4900.

[Signature block on next page]

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
[SC Bar No. 5262]

BY: 

February 1, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that he does not believe that consultation with counsel for Plaintiff as to the foregoing Motion to Consolidate would serve any useful purpose.



February 1, 2012

ATTORNEY FOR THE ATTORNEY GENERAL

EXHIBIT A-1

COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3600364

Adele J Pope

Attorney General Of South
Carolina

Alan Attorney General
Wilson
Russell L. Trustee
Bauknight

James Brown Legacy
Trust
Attorney General Of
South Carolina

SCANNED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED
NEWBERRY COUNTY
JAN 11 P 4:39
J. SCHIE S. BOWERS
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)

☒ Statement of Judgment by the Court:

Venue transferred to Richland County.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

1-11-12
Date

For Clerk of Court Office Use Only

This judgment was entered on January 11, 2012, and a copy mailed first class or placed in the appropriate attorney's box on January 12, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Adam T Silvernail Po Box 1898 Columbia, SC 29202

J. Emory Smith Jr S.C. Attorney General's Office P.O. Box 11549 Columbia, SC 29211
A. Camden Lewis Lewis & Babcock, LLP P.O. Box 11208 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

St. Jack & S. Bowers (85)

Jackie S Bowers - Clerk of Court

Court Reporter

EXHIBIT A-2

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-36-379

Adele Pope

Alan Wilson

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for Defendant	☐ Plaintiff	☐
	☐ Self-Represented Litigant		

Disposition Type (Check One)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Order Information

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property			
JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	\$ _____	Judgment Amount	\$ _____
Taxable Costs	\$ _____	Taxable Costs	\$ _____
Attorney's Fees	\$ _____	Attorney's Fees	\$ _____
Interest	\$ _____	Interest	\$ _____
Other:	\$ _____	Other:	\$ _____
Total Amount to be Enrolled:	\$ _____	Total Amount to be Enrolled:	\$ _____
If applicable, describe the property, including tax map information and address, referenced in the order.			

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature]
Circuit Court Judge

Judge Code

Date

Nov. 23, 2011

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of November, 2011 and a copy mailed first class this 30th day of November, 2011 to attorneys of record or to parties (when appearing pro se) as follows:
Adam Silvernail, Esq.

The Hon. Emory Smith (Assistant Attorney General) and Mark Gende, Esq. (Courtesy Copy)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]
CLERK OF COURT

**STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY**

IN THE COURT OF COMMON PLEAS

ADELE POPE,
plaintiff,

**C.A. №
11-CP-36-379**

-v-

ORDER

ALAN WILSON, in his
capacity as Attorney
General,
defendant.

FILED
NEWBERRY COUNTY
2011 NOV 30 P 2:13
JACKIE S. BOWERS
CLERK OF COURT

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County¹. See *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

¹ The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

Honorable Casey L. Manning.² At the time of the stay, the parties to the fiduciary litigation (hereinafter "McMaster parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.

² At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]

The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWitt v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938)), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRPC. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*³ and *Richardson, Plowden, Grier & Howser v. Pyle*.⁴ These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,⁵ the

³ 264 S.C. 172, 213 S.E.2d 588 (1975).

⁴ 322 S.C. 371, 472 S.E.2d 232 (1996).

⁵ This Rule states, in pertinent part, that

Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of \$50,000 or more; or (2) disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.

Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

[t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

Id. (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker* and *Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. *See McDonald*, 276 S.C. at 575 (“Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction.”). This judicial principle a great resemblance to the Rule 12(b)(8) standard annunciated by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that “[i]n 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.” *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant’s *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. *See Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2d 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they “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*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. “Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of *mandamus* cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case.” *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff’s worker’s compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court’s dismissal improper, the Court of Appeals concluded that

[h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

Id. at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. See *Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to “any person.” S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. *See* Rule 26(a), SCRCP (“Parties may obtain discovery by one or more of the following methods. . .”). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only be appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.⁶

III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.⁷ Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules “shall be construed to secure the just, speedy, and inexpensive determination of every action.” Rule 1, SCRCP. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. *See* Rule 42(a), SCRCP (“When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action.”); *Creighton v. Coligny Plaza Limited*

⁶ Given this analysis, Defendant’s motion to dismiss pursuant to Rule 12(b)(8) is also denied.

⁷ In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

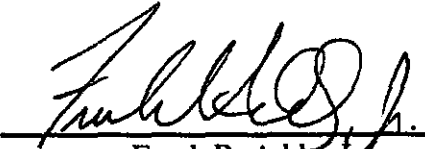
Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) (“Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.”).

IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff’s complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim to attorney’s fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Eighth Judicial Circuit

November 22, 2011
Greenwood, South Carolina

EXHIBIT B

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.

MOTION TO COMPEL
DISCOVERY

(Requests for Production of Documents)

TO: PLAINTIFFS 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 FOR THE STATE OF SOUTH CAROLINA; DARYL J. BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.¹

2. On October 11, 2010, Defendant Pope served Plaintiffs 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 for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

¹ Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

hereto as Exhibits A-H.

3. Among the documents requested were "[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisement in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately \$4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisement and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

December 2010. Said Plaintiffs asserted that these documents proved that James Brown's assets at death and those of the 2000 Irrevocable Trust were worth only about \$6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

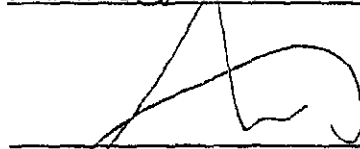
13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

14. Defendant Adele J. Pope is informed and believes that she is entitled to an Order compelling the above-named Plaintiffs to comply with Rule 34, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 34 and 37, applicable case and statutory law, the entire record herein, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

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



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

June 7, 2011

Attorneys for Defendant Adele J. Pope

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 CIRCUIT

Civil Action No. 2010-CP-40490

JENNIFER W. McBRIDE
Clerk of Court
S.C. & D.S.

2011 JUL -5 AM 11:27

CLERK OF COURT
RICHLAND COUNTY

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
VARIOUS DOCUMENTS REQUESTED
BY DEFENDANT ADELE J. POPE**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

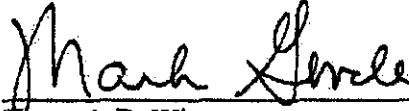
The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17, 2011 reply, including the proposed Confidentiality Order (Exhibit E).

(Signature Page Immediately Following)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

July 1, 2011

EXHIBIT D

June 15, 2011

By U.S. Mail:

Mark V. Gende, Esquire
Sweeny Wingate & Barrow P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
mvg@swblaw.com

4077-7389

Re: Bauknight and others vs. Pope and others
Richland County Case No. 2010-CP-40-4900

Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
6. The file of Zumwalt, Almon & Hayes, PLLC;
7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322; and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,



Adam T. Silvernail

cc: Daryl L. Williams, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
Adele J. Pope, Esquire

EXHIBIT E

SWEENEY WINGATE & BARROW P.A.

June 17, 2011

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x 121
mvg@swblaw.com

VIA ELECTRONIC MAIL AND U.S. MAIL

Adam T. Silvermail, Esquire
1218 Taylor Street
P.O. Box 1898
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

WINGATE & BARROW P.A. • 1218 TAYLOR STREET • COLUMBIA, SOUTH CAROLINA 29202-1898
PHONE: (803) 256-2233 • FAX: (803) 256-2234 • E-MAIL: MVB@SWBLAW.COM

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

5. All information and documents related to claims for and against Al Bradley and/or his estate.

These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zumwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

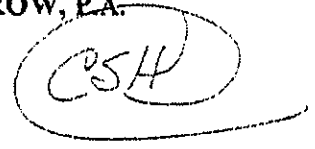
These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENEY, WINGATE & BARROW, P.A.


Mark V. Gende

MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail
Daryl L. Williams, Esquire, via e-mail
Robin A. Braithwaite, Esquire, via e-mail

EXHIBIT L

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

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

Plaintiff.

) IN THE COURT OF COMMON PLEAS

)
) FOR THE EIGHTH JUDICIAL CIRCUIT

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

)
) MOTION TO STRIKE AFFIDAVITS
) DEBORAH W. SPENCE, SUE SUMMER,
) THOMAS H. POPE III, AND
) ADELE J. POPE
)
)

RICH. AND COUNTY
FILED
2012 FEB -3 AM 11:16
DEANETTE W. MCBRIDE
C.J.P. & G.S.

FILED
2011 DEC 28 A 11:00
JACKIE S. BOWERS
CLERK OF COURT
NEWBERRY COUNTY

TO: PLAINTIFF AND HER ATTORNEYS:

Pursuant to Rule 12(f) of the South Carolina Rules of Procedure, Proposed Intervenor¹
hereby move to strike the following Affidavits submitted by Plaintiff in this matter:

1. The Affidavit of Sue Summer Supporting Immediate Release of the McMaster/Wingate Contract to Sue Buchanan and Pope (attached hereto as Exhibit A);
2. The Affidavit of Deborah W. Spence Asking For Release Under Freedom of Information Act of AG Henry McMaster's 2010 Contract With Atty. Kenneth B. Wingate To Sue Adele Pope and Robert Buchanan for Appealing Order in James Brown Aiken Case (attached hereto as Exhibit B);
3. The Affidavit Supporting Immediate Release of McMaster/Wingate Contract to Sue Buchanan and Pope [Thomas H. Pope III] (attached hereto as Exhibit C); and

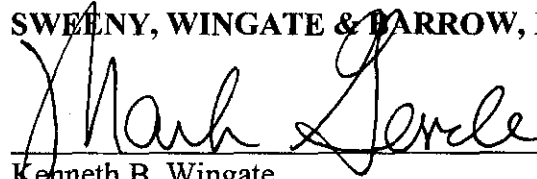
¹ The Proposed Intervenor¹ are as follows: RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually 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. The Proposed Intervenor¹ are the non-governmental Plaintiffs in Case No. 2010-CP-40-4900.

4. The Affidavit of Adele J. Pope Opposing Motion of Terry Brown and Others for Sanctions (attached hereto as Exhibit D).

These Affidavits contain material that is "redundant, immaterial, impertinent, [and] scandalous." Rule 12(f), SCRCPP. Therefore, they are inappropriate and must be stricken by the Court. This Motion may be supplemented by cases, statutes, a Memorandum of Law, or any other pertinent materials.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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

**ATTORNEYS FOR PROPOSED
INTERVENORS**

Columbia, South Carolina

December 22, 2011

EXHIBIT M

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Adele J. Pope,)

Plaintiff,)

v.)

Alan Wilson, in his capacity as)
Attorney General of South Carolina and)
James Brown Legacy Trust, by)
Russell L. Bauknight, its Trustee,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

ANSWER OF ATTORNEY GENERAL

2013 MAR -8 AM 11:23
C.O.P. & C.S.
FILED

The Defendant Attorney General, answering the Complaint herein subject to, and without waiving his Motions in this case including his Motion to Dismiss and Motions to Strike and his Motion to Amend Motion to Dismiss, alleges the following including, subject to all of his motions and defenses, that he has no documents that could be considered responsive to the Freedom of Information Act request at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, Op. No. 27227 (S. C. Sup. Ct., filed February 27, 2013)¹, a case in which Plaintiff was a party:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. The Defendant admits Paragraphs 1 and 2 of the Complaint.

¹ Because most of the allegations of Plaintiff in the instant Complaint regarding the Legacy Trust are irrelevant to that Complaint, this Answer is not intended to address how the Opinion in *Wilson, etc. et al v. Dallas*, et al, may apply, if at all, to the allegations in the instant complaint.

3. The Defendant Attorney General does not admit the first sentence of Paragraph 3 in that it is directed to the Defendant Legacy Trust rather than the Defendant Attorney General and the Trust is to determine what response should be made except that the Defendant admits that Russell Bauknight is the current trustee. As to the remainder of that paragraph, the Defendant craves reference to the pleadings or other documents he has filed in *Bauknight v. Pope*, 2010-CP-40-4900 (case 4900), and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

4. As to paragraph 4 of the Complaint, the Defendant craves reference to the pleadings or other documents he has filed in case 4900, and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

5. As to paragraph 5, the Defendant admits only that he has been served. He denies that this Court has jurisdiction of this matter and denies that venue was proper in Newberry County where this suit was originally brought. Venue was transferred in this case to Richland County pursuant to the Order of the Newberry Court of Common Pleas.

6. As to paragraph 6, the Defendant craves reference to Exhibit C to the Complaint and denies any allegations in the instant complaint which are inconsistent therewith.

7. As to Paragraph 7, the Defendant craves reference to the complaint in case 4900 and denies any allegations in the instant complaint which are inconsistent therewith.

8. As to paragraph 8, the Defendant craves reference to the case-4900) complaint and denies any allegations in the instant complaint which are inconsistent therewith.

9. As to paragraph 9, the Defendant craves reference to the Complaint in case 4900 and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

10. As to paragraph 10, the Defendant craves reference to the Complaint in case 4900, denies that the allegations in the 4900 Complaint are false, and denies any allegations in the instant Complaint which are inconsistent with the 4900 Complaint. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

11. As to paragraph 11, the Defendant craves reference to the Complaint in case 4900 and denies any allegations in the instant complaint inconsistent with the 4900 Complaint. As to the Exhibit D, referenced by Plaintiff, the Defendant admits only that Plaintiff filed the Affidavit but denies the allegation regarding the reason for seeking damages and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

12. As to Paragraph 12, the Defendant denies any allegations in the instant complaint that are inconsistent with the Complaint in case 4900, denies that allegations in the case 4900 complaint are false and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

13. As to paragraph 13, the Defendant admits that he succeeded Henry McMaster as Attorney General, but he denies any allegations inconsistent with the Complaint in case 4900 and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

14. As to paragraphs 14, 15, 16 and 17, the defendant denies any allegations that are inconsistent with the Complaint in case 4900 and any filings by him in that suit. As to paragraph 16, he also denies any allegations inconsistent with any of his filings regarding the referenced motion. The Defendant Wilson denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

15. As to paragraph 18, the Defendant Wilson denies that Plaintiff properly mailed or delivered her Freedom of Information Act request at issue directly to the Office of the Attorney General(OAG) as required by S.C. Code Ann. 30-4-30 (c). *See*, attached affidavit of Tracy Meyers and letter to Ms. Pope of 8.5.11, Exs. pp. 1 & 3, *infra*. He is without sufficient knowledge or information to admit or deny whether she properly mailed or delivered her FOIA request to the Legacy Trust. As to the description of the requests, he craves reference to the alleged letters for their contents.

16. The Defendant admits paragraph 19 but craves reference to the FOIA request for its exact contents.

17. As to Paragraph 20, the Defendant admits only that the document was sent to the Wingate firm, but denies that sending a copy there would trigger the running of time for the response to the FOIA from the OAG under §30-4-30(c). The Defendant craves reference to the Retention Agreement for its contents related to FOIA.

18. As to Paragraph 21, the Defendant admits that his Office did not respond to the referenced FOIA, but denies that the Office was required to do so under that law in that Plaintiff failed to mail or deliver her request to the Office of the Attorney General, even upon inquiry from Ms. Meyers, and therefore, did not trigger the running of time for the response to the FOIA from the Attorney General under §30-4-30(c). *See*, Exs. pp. 1 & 3, *infra*.

19. The Defendant denies Paragraph 22 in that he has moved to strike Exhibit D and is not required to respond to it. As a further response to this paragraph, he craves reference to paragraph 19 of this Answer, *supra*, and craves reference to the Retention Agreement.

20. As to paragraph 23, the Defendant craves reference to the letter for a complete description of its contents.

21. The Defendant denies paragraph 24 as to the OAG in that the request was not properly mailed or delivered to the OAG so as to trigger application of FOIA. Exs. pp. 1 & 3, *infra*. Further, without waiving this defense or any other defense raised as to this complaint including all grounds for lack of subject matter jurisdiction, the exhibits from *Summer v. Wilson*, 2012-CP-36-688 attached hereto demonstrate that the OAG does not have the documents responsive to the FOIA at issue in the instant case except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, *supra*. See, exs., *infra*, pp. 5, 7, 8 and 9. The Defendant Attorney General does not admit the allegations of paragraph 24 which are directed to the Defendant Legacy Trust rather than the OAG as such matters are for the Trust to determine what response should be made.

22. The allegations in paragraph 25 regarding the Black letter do not apply to the Defendant Attorney General or the FOIA directed to the OAG. Further, the Defendant craves reference to the Guide for a complete description of its contents.

23. The allegations in paragraph 26 regarding the Legacy Trust do not apply to the Defendant Attorney General or the FOIA directed to the OAG. Such matters are for the Trust to determine what response should be made. The OAG was not properly served with the FOIA at issue so as to trigger a requirement to respond thereto.

24. As to paragraph 27, the Defendant craves reference to the FOIA statute (S.C. Code Ann. §30-4-10, *et seq.*) and denies any allegations in the instant complaint which are inconsistent therewith.

25. The Defendant Attorney General does not admit the allegations of paragraph 28 because they are directed to the Defendant Legacy Trust rather than the OAG and the Trust is to determine what response should be made.

26. The Defendant Attorney General denies the allegations of paragraph 29 which are directed to him and does not admit those allegations as they are directed to the Defendant Legacy Trust in that the Trust is to determine what response should be made.

27. The Defendant Wilson does not admit the allegations of paragraph 30 as they are directed to the Defendant Legacy Trust , and the Trust is to determine what response should be made. To the extent that this paragraph refers to case 4900, the Defendant Wilson craves reference to the Complaint in that case and denies allegations in paragraph 30 that are inconsistent therewith. To the extent that this paragraph refers to the FOIA as to the OAG, the Defendant craves reference to the above paragraphs of this Answer, The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

28. To the extent that the allegations of paragraph 31 are directed to him, the Defendant Wilson denies them for the reasons set forth above including Answer paragraph 21, *supra*. The Defendant Wilson does not admit the allegations of paragraph 31 to the extent they are directed to the Defendant Legacy Trust in that the Trust is to determine what response should be made.

29. Paragraph 32 is a cumulative Paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and Paragraphs of the Complaint and reasserts them.

30. The Defendant Wilson does not admit the allegations of paragraph 33 as they are directed to the Defendant Legacy Trust, and the Trust is to determine what response should be made.

31. Paragraph 34 is a cumulative paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and paragraphs of the Complaint and reasserts them.

32. The Defendant denies paragraphs 35, 36, and 37.

33. The Defendant denies the requests in the Prayer for Relief to the extent they are directed to him except that he agrees to the current hearing date of March 18, 2013, and subject to his pending motions and all defenses, he is serving and filing his Answer now, although not required, in an effort to bring all matters before the Court so that they may be determined at the hearing on the 18th. To the extent that the requests in the Prayer for Relief are directed to the Defendant Legacy Trust, the Defendant Wilson does not admit them as the Trust is to determine what response should be made.

FOR A SECOND DEFENSE

34. The Court lacks subject matter jurisdiction of this action because the Complaint and attachments make clear that Plaintiff seeks the documents for the purposes of the *Bauknight v. Pope*, 2010-CP-40-4900, litigation pending now which is governed by the Rules of Civil Procedure regarding civil discovery in *Bauknight*. FOIA is an important statute, but it cannot be

used to bypass the rules regarding discovery. The items demanded in the FOIA request at issue in this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

FOR A THIRD DEFENSE

34. The Court lacks subject matter jurisdiction of this action because the Plaintiff failed to accomplish mailing or delivery of her Freedom of Information Act request at issue so as to be received by the Office of the Attorney General as required by S.C. Code Ann. 30-4-30 (c). This ground is supported by the attached affidavit of Tracy Meyers (Exs. p. 1, *infra*) the original of which is already on file in this case.

FOR A FOURTH DEFENSE

35. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc., et al, supra*. Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint.

FOR A FIFTH DEFENSE

36. Subject to and without waiving any defenses raised as to this Complaint by this Answer or by Motion, including all grounds for lack of subject matter jurisdiction, the Attorney General responds herein that the Freedom of Information Act is very important to his Office and that his Office has no documents that could be considered responsive to the FOIA at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas, supra*, at Exs., *infra*, pp. 8 & 9 .

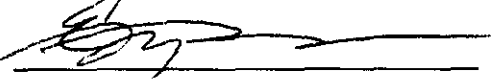
WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays as follows:

1. That judgment for the Defendant be entered as to the Complaint and that the relief sought by the Plaintiff be denied.

2. For such further relief as the Court deems just and proper.

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

March 7, 2013

ATTORNEYS FOR DEFENDANT ATTORNEY
GENERAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) AFFIDAVIT

PERSONALLY APPEARED before me, Tracy A. Meyers, who being duly sworn,
attests to the following:

1. She is a Senior Assistant Attorney General with the Office of the Attorney General.
2. Among her assigned duties, she is to review Freedom of Information Act requests made of the Office of the Attorney General. Incoming FOIA requests are sent to her.
3. She has reviewed the letter of June 30, 2011 addressed to the Custodian of Records of the Office of the Attorney General and attached as Exhibit A to the Complaint in Pope v. Wilson, et al (2011-CP-36-364. She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA.
4. Attachment of the June 30, 2011 letter to the complaint in the above suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.
6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request to the Office of the Attorney General by Ms. Pope or her attorney, a response to the

FOIA request will be made then if permitted by any Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that request.

Tracy A. Meyers

TRACY A. MEYERS

SWORN TO before me this 20th

day of October, 2011

Shurechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 4/2/18



ALAN WILSON
SECURITIES COMMISSIONER

August 5, 2011

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10 25
JACKIE S. BOWERS
CLERK OF COURT

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

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

Dear Ms. Pope:

I am in receipt of one letter from you dated July 19, 2011, and five letters from you dated July 20, 2011, requesting certain documents pursuant to the South Carolina Freedom of Information Act ("FOIA"). I have also been notified by attorneys in the Civil Division of the South Carolina Office of the Attorney General ("SCAG") that you refer to a request dated June 30, 2011 in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

Responding to your letters dated July 19, 2011 and July 20, 2011 is difficult, as I have been informed there are several pending motions filed in Case No. 2010-CP-40-4900 in the Richland County Circuit Court and that several of the pending motions relate to the documents you are currently seeking to obtain through the FOIA requests. I have been informed there are at least three related motions that relate to the FOIA request: (1) a "Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope" filed July 5, 2011, filed by the Plaintiffs; (2) a "Motion to Compel Discovery" dated June 7, 2011, filed by your counsel; and (3) a "Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction", dated July 26, 2011, filed by your counsel.

While there exists an ongoing case in which I have been informed both a "Motion for Protective Order" and a "Motion to Compel Discovery" are outstanding, it seems premature for me to release the requested documents. I am not involved in the civil case in any way and believe the wisest thing to do is to let the presiding judge make the decision on which items, if any, are to be produced and which, if any, are not.

Adele J. Pope
August 5, 2011
Page 2

The FOIA was designed to give the public and the press access to the workings of their government. FOIA is not designed to supplement the rules of civil or criminal discovery. For these reasons, I propose to put your requests on hold pending the outcome of your current litigation. Once litigation is complete, I would then provide you with all of the information you have requested that is available (i.e. not exempt) pursuant to the Act. In the meantime, I will also forward copies of all six letters to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate.

Sincerely yours,



Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn

Sue Summer
1903 Main St.
Newberry, SC 29108
10 June 2012

FILED
NEWBERRY COUNTY
2012 DEC 18 P 2:09
JACKIE S. BOWERS
CLERK OF COURT

Attorney General Alan Wilson & Keeper of Records
Office of the S.C. Attorney General
PO Box 11549
Columbia, SC 29211

By email and registered mail

Dear sir or madam:

I request the following documents under the Freedom of Information Act, and I would like to remind you, with all due respect, that I am not a party in litigation regarding the James Brown estate (as has so often been used by the AG as a reason in denying these documents to others). Some of these requests have been made previously, but I believe all are public documents—and in two cases the reason originally given for denying the release of the documents has been rendered moot.

1. There is no question that the McMaster/Wingate contract is a public document, and a letter from assistant AG Jones acknowledged that fact. He further said the AG's office wanted to release a copy and would do so—except for a stay issued by Judge Manning. My position then was that there was no stay (I was in court at the hearing), but the AG argued there was and refused to release the document in full. After Judge Manning issued an order with no mention of stay, the AG's office then argued his stay was oral. Your office later sent generic, partial documents and claimed that more specific portions (where signatures were to be affixed) were not public. Now that Judge Manning has affirmed that there was no stay, there is no reason why the AG's office cannot now release a full copy of the contract, and I ask to be sent a copy forthwith.
2. Knowing the specifics of how money is to enter the Legacy Trust and to whom it will be paid out is critical in understanding the tax consequences of the McMaster settlement deal—and in evaluating whether the charity was indeed protected, which was ostensibly why McMaster entered the estate proceedings and created the Legacy Trust. McMaster was paid by the State out of the public coffers for his work on this trust, as were the other attorneys from his office who participated in the settlement deal. Since then the AG's office has devoted hours upon hours in concealing the very documents paid for by taxpayer dollars. Therefore, the entirety of the Legacy Trust is a public document, and I ask to be sent a full copy.
3. My request for the Hynle diaries was also previously refused, citing a gag order from Judge Early. A May 22 hearing was held on the gag orders, which were first violated by Ms. Hynle herself in a TV interview six months after the orders were issued. If Judge Early lifts the orders, I want to make sure that my FOIA request for a copy is in place so that a copy may be forwarded to me immediately—and if a copy cannot be sent, please release to me all communications related thereto. It is my understanding that the diaries hold a critical piece of evidence regarding

"Exhibit C"

the spousal claim of Tommie Rae Hynie—evidence that the AG's office might have used to save about one-quarter of the music empire for the charity McMaster claimed to be protecting. I also request any electronic or written communication regarding the AG's office's recent support for Hynie in her effort to maintain the gag orders through her attorney Robert Rosen. (It is in the public interest to bring into the light and discuss the following scenario: The AG's office says the diaries cannot be released because of a gag order, then the AG's office files documents with the court to maintain the gag order. Why would that happen, when the diaries may include important evidence that affects the future of the James Brown "I Feel Good" Trust?).

4. I request any documents related to the \$4.7 million at-death valuation of James Brown's music empire. According to pleadings I have read, the SC Probate Code requires the documentation/appraisal to be filed with the Probate Court, a duty of the current trustee Russell Bauknight who serves at the AG's pleasure. I am most interested to see the documentation for why the AG's office would approve this figure. (If the AG's office has no documentation of the valuation, surely the AG's office would not have signed off on a \$4.7 million filing with the IRS when the AG's office has the duty of enforcing laws, including tax laws.)
5. I request all electronic or other written communication regarding why the AG's office sought no restitution from David Cannon, even though he has a million-dollar home in Honduras.

Thank you for your prompt attention to these requests, and I request any fees to be waived in the public interest. After all, there are perhaps thousands of young people for whom the James Brown "I Feel Good" Trust might open educational opportunities—and that alone makes these questions of great public importance.

Sincerely,

Sue Summer

AG Wilson Continues Battle To Conceal James Brown Documents and Deny FOIA Requests



ALAN WILSON
SECURITIES COMMISSIONER

July 10, 2012

Ms. Sue Summer
1903 Main Street
Newberry, SC 29108

Re: Your Freedom of Information Act ("FOIA") request dated June 10, 2012

Dear Ms. Summer:

Thank you for your phone message today requesting that this Office reissue its letter to you dated July 3, 2012 with a corrected salutation. Per your request, we are today responding again to your FOIA request dated June 10, 2012, a copy of which is enclosed for reference.

I am writing in response to your South Carolina Freedom of Information Act request dated June 10, 2012, and received by the Office on June 12, 2012.

In response to request 1, as the Office has previously advised you, the records of the Attorney General's Office have previously been searched for such information and copies of all documents responsive to the request that are not attorney work product, privileged, or otherwise except pursuant to section 30-4-40 of the Act have previously been provided to you.

In response to request 3, pursuant to the attached Order, signed by the Honorable Doyet A. Early, III, these diaries cannot be disseminated. Accordingly, this matter is "specifically exempted from disclosure by statute or law." In addition, the diaries are the subject of pending motions before the Circuit Court, including the Motion to Vacate or Declare Void/Moot Orders related to Diaries of Tommie Ray Hynie Brown. In further response to request 3, there are no other documents responsive to this request that are not attorney work product, privileged, or otherwise exempt from the Act.

There are no documents responsive to requests 2, 4, and 5.

Yours very truly,

Tracy A. Meyers
Assistant Deputy Attorney General

TAM/tpn

**THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT**

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

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

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

v.

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

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

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

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

**RECORD ON APPEAL
Volume II
(Pages 462-922)**

STATE OF SOUTH CAROLINA)

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THE JAMES BROWN LEGACY TRUST

COUNTY OF AIKEN

THE JAMES BROWN LEGACY TRUST

This Trust Agreement is made this ____ day of _____, 2008, and is executed by (i) the Attorney General of South Carolina, (ii) Tommie Rae Brown; and (iii) the Brown Family LLC, as Settlers, and _____, as the Trustee. This Trust shall be known as The James Brown Legacy Trust.

ARTICLE I)

Establishment of Trust

The Settlers have irrevocably paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement do hereby irrevocably pay over, assign, grant, convey, transfer and deliver unto the Trustees the property described in Schedule A, annexed hereto and made a part hereof. This property and any other property that may be transferred to the Trustees in the future and any property that may be received or which has been received by the Trustees hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustees as hereinafter set forth.

ARTICLE I.

Acceptance by Trustees

The Trustees herein above named have agreed to accept said Trusteeship and all interests in property which may come to them by reason of this Agreement for the benefit and use of the beneficiaries, all in accordance with the provisions hereinafter set forth, and hereby acknowledge receipt of certain assets which are or shall be described on the receipt to be delivered by the Trustees to the Settlers, which receipt is attached to this Agreement. In keeping therewith, the Trustees are hereby vested with all right, title, and interest in and to such assets as are listed on the receipt which is attached hereto as Schedule A and are authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that go with such assets.

ARTICLE 2.

Further Assignments and Additional Contributions

3.1 Additional Instruments and Assignments. The Settlor's covenant and agree to make, execute and deliver to the Trustees such other and further assignments, covenants or instruments as the Trustees may deem necessary or appropriate to effectuate the purposes of this Agreement.

3.2 Additional Contributions. The Settlor, and any other person with the Trustees' consent, shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during his or her lifetime, to contribute cash, securities and/or other property to the Trust created under this Agreement and pursuant to the Private Agreement of August 10, 2008 and any Addenda Agreements thereto.

ARTICLE 3.

Statement of Intent

This Trust Agreement and the Trust it creates are irrevocable and such Trust is intended to comply with the Private Agreement of August 10, 2008 (a copy of which is attached hereto as Exhibit A) the Contribution Agreement dated _____, 2008 (a copy of which is attached hereto as Exhibit B) and any addenda thereto executed by the Settlor or their agents.

ARTICLE 4.

Payments of Expenses and Distributions of Property

5.1 Trust Beneficiaries and Distributional Interests. The Trustee shall hold all assets contributed to this Trust under the terms of the said Contribution Agreement or otherwise and shall distribute the net income of the Trust (the "distributional interests") to the Trust Beneficiaries listed below as follows:

5.1.1 Fifty percent (50%) to the Trustee(s) of the trust provided for under Article V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "I Feel Good" Trust);

5.1.2 Twenty-five percent (25%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

5.1.3 Twenty-five percent (25%) to The Brown Family LLC;

Such distributions shall be net of estate administrative expenses, taxes and legal expenses necessary to enable the estate to properly determine the respective interests of the parties,

provided that netting such legal expenses shall not reduce the distributional share of the I Feel Good Trust below fifty percent (50%).

5.2 Income in Respect of a Decedent. Income of this trust which is income in respect of a decedent for federal or state estate and income tax purposes shall be distributed first to the Trustee of the I Feel Good Trust as all or a portion of such Trust's share hereunder to the extent that such order of distribution does not cause the shares of the Brown Family LLC or of Tommie Rae Brown to be funded with an amount less than the amount with which such shares would be funded if it were not for the provisions of this Article 5.2.3.

(A formula as to the manner of such distributions as provided herein above is set forth in Schedule B, attached hereto.)

5.3 Sale of Assets. Upon the sale of all or substantially all of the assets of the Trust, the Trustee shall distribute the Trust assets to the Beneficiaries according to Section 5.1 and the Trust shall terminate. To the extent that estate or inheritance taxes should be due with respect upon the death of Tommie Rae Brown or any owner of the Brown Family, LLC with respect to any distributional interest in this Trust, the Trustees and Beneficiaries agree that they shall make a good faith effort to consider mechanisms to provide liquidity for such taxes.

ARTICLE 5.

Limitations on Powers of Trustees: Voting

6.1 Actions of Trustees Requiring Approval of Beneficiaries. The Trustees shall have all of the powers described in Article 9, below; provided, however, the Trustees shall require approval of a majority of the Beneficiaries in order to:

6.1.1 Sell all or substantially all of the assets of the Trust;

6.1.2 Terminate the Trust.

Any such vote shall be made by each Beneficiary (as defined in §7.2, below) having a vote equal to such Beneficiary's distributional interest as provided in Section 5.1, above, by or through its acting fiduciary in the case of entities or by or through the individual, agent under power of attorney or Personal Representative or other acting fiduciary in the case of Tommie Rae Brown.

6.2 Notice of Vote. Any Beneficiary may at any time request a vote of the beneficiaries as to any such matter as may call for a vote under this instrument by giving notice and a request to the other Beneficiaries for a vote pursuant to the terms of Sections 8.4 and 8.5, below. If a noticed party does not

respond with its vote on the applicable matter in writing within 30 days of such time as the notice is deemed to have been given, such Beneficiary shall no longer have the right to vote on such matter and the decision to be voted on shall be determined by the majority vote of those voting.

ARTICLE 6.

Resignation, Removal, Appointment and Succession of Fiduciaries

7.1 **Resignation and Appointment Procedure.** Any person or organization at any time serving as a fiduciary hereunder, whether as Trustee or in any other capacity (a "Fiduciary") may resign at any time by providing written notice to another then acting Co-Fiduciary (if there is one), or, if none, to the then beneficiary or one of the then beneficiaries of the affected Trust, setting forth the effective time and date of such resignation on or before such effective time. Notwithstanding the previous sentence, the resignation of a Fiduciary acting alone shall only be effective upon the appointment and qualification of a successor Fiduciary.

All Fiduciary appointments and removals permitted hereunder shall be made by an acknowledged instrument delivered to the Fiduciary(ies) then acting, if any, and, when applicable, to the appointee, and shall become effective on the date or upon the happening of the event specified in the instrument and may be revoked in the same manner at any time before the successor qualifies.

7.2 **Right of Beneficiaries to Remove and Replace.** The Beneficiaries (being the James Brown "I Feel Good" Trust, Tommie Rae Brown and the Brown Family LLC) acting by majority vote may at any time remove any then acting Trustee or Trustees and appoint a successor Trustee or Trustees. Any such vote shall be made by each beneficiary in accordance with their distributional interests.

7.3 **Disability of a Fiduciary.** The determination that a Fiduciary is a disabled person shall be made by a court of competent jurisdiction.

7.4 **Termination of Fiduciary Powers.** An outgoing Fiduciary, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Fiduciary ceases for any reason to be a Fiduciary hereunder, there shall be delivered to such Fiduciary's successor or to another then acting Fiduciary hereunder all of the assets (Trust or otherwise) which were in the possession of such Fiduciary and there shall be made available to each successor Fiduciary a complete financial record and inventory of assets affected thereby. With respect to any properties thus transferred by the outgoing Fiduciary or by such Fiduciary's representative, such Fiduciary shall stand and be discharged of all further duties and obligations.

7.5 **Successor Fiduciary Powers and Authority.** Each successor Fiduciary, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Fiduciary. Title to the entire property (of the Trust or otherwise) shall automatically vest in

any successor Fiduciary without the necessity of any conveyance. The assumption of authority by a successor Fiduciary shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Fiduciary or to such Fiduciary's legal representative). Any corporation into which any corporate Fiduciary acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Fiduciary hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this instrument.

7.6 **Exoneration from Liability for Acts of Prior Fiduciaries.** Each successor Fiduciary shall be exempt from any liability in any way related to the prior actions or omissions of the previous Fiduciaries, and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Fiduciary.

7.7 **Trustee Settlements.** The "Beneficiary" or the "Primary Beneficiary" of any Trust created hereunder or, if none, any individual who is at the time (a) a beneficiary entitled to receive current distributions from any Trust created hereunder, and (b) not then serving as a Trustee, may at any time or from time to time settle any Trustee's or former Trustee's accounts and to the extent permissible by law each settlement shall be binding and conclusive upon all persons who may be interested in the Trust, whether directly or contingent, born or unborn, infant or adult. If the person herein designated with the power to consent to settlements is a disabled person, such power shall only be exercised by his or her guardian or other legal representative.

ARTICLE 7.

Fiduciary Provisions

8.1 **Delegation of Ministerial Acts.** Each Fiduciary hereunder is authorized, by written instrument filed with such Fiduciary's Co-Fiduciary or Co-Fiduciaries, to delegate to such other Co-Fiduciary or Co-Fiduciaries, or any one of them, such Fiduciary's duties with respect to general ministerial acts, specifically including the signing of checks, the execution of tax returns and the execution of instruments of contract, sale or conveyance with respect to a particular Trust's assets, including the opening of checking, brokerage or similar accounts. Upon written assurance by any Fiduciary that such Fiduciary has been delegated such ministerial duties, any third parties shall accept the signature of such Fiduciary as binding upon the affected Trust, shall not require further authorization of any other Fiduciary, and shall be indemnified and held harmless to the extent of such Trust's assets on account of any loss, liability or expense arising out of the acceptance of the signature of any Fiduciary as the basis of any transfer, withdrawal or other transaction.

8.2 Trustee Compensation. For their services as Trustees, the Trustees are entitled to receive an amount which is reasonable for the services rendered at the time services are rendered. At any time there are multiple Trustees serving, the Trustees, collectively, shall share such fee. If there shall be a corporate Trustee serving as Trustee, the corporate Trustee shall be entitled to reasonable compensation for the services rendered, but in no event shall such compensation be more than an amount which is competitively determined to be reasonable for the services rendered among organizations providing similar such services. For the purpose of determining Trustees' fees payable hereunder, all Trusts hereunder shall be treated as one Trust.

8.3 Inventory; Appraisals; Bond. Except as otherwise required by law, the Trustees shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but, upon request, shall make available a statement of receipts and disbursements and an investment review of the assets of any Trust created hereunder at least annually to each person then eligible to receive distributions from such Trust, and each then present beneficiary thereof.

8.4 Notice. Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

Instruments shall be considered delivered: (i) if sent by mail or express service, on the third day following the date of its receipt by the postal service (or such express service), as evidenced by a dated postal (or express) service receipt showing the addressee's name and proper address (as described above); (ii) if sent by facsimile, upon receipt by the sender of a confirmation of receipt from the addressee's facsimile machine indicating (a) the correct telephone number of the addressee's facsimile machine and (b) receipt of the correct number of pages sent as properly received; or (iii) if sent by e-mail, upon receipt by the sender of a confirmation from the addressee's e-mail address indicating that the addressee has opened the e-mail.

In all other cases, the date of actual physical delivery shall be the effective date of delivery and, except as such instrument may specifically provide for a later effective date, it shall be effective for all purposes from such date.

Copies of all instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of trustee resignation, removal, appointment, and/or acceptance, the original of which shall be kept with the Trust records, shall, upon request, be promptly delivered or sent by mail by the Trustee receiving or initiating the same to each other then interested party (i.e., the other then Trustee or Trustees, if any, of the affected Trust or Trusts, and each then beneficiary of the affected Trust or Trusts).

8.5 Notice to Disabled Parties. If a person who is a disabled person is a party to any legal proceeding relating in any manner to any Trust created hereunder, service of process upon the disabled person shall not be required if another individual, who is not a disabled person, is a party to the proceeding and has the same interest as the disabled person.

8.6 Right to Retain Assets. The Trustees are specifically granted the authority to accept and retain liquid and/or illiquid and/or non-income producing assets as Trust investments, specifically being those assets which may have passed to the Settlor's hereof on account of the death of James Brown. The purpose contemplated in the establishment of the Trust is that it engage in the management and holding of liquid and/or illiquid assets received by the Beneficiaries and contributed to this Trust on account of the death of James Brown, including, but not limited to, real estate, limited liability and other closely held companies, partnerships, and corporations, as well as various sorts of intangible property, including copyrights, termination and transfer rights, as well as the right to exploit the name and image of James Brown, all of which are to be managed, invested and/or sold for the benefit of the Trust and its Beneficiaries. It is contemplated that the Trustees shall have the right to buy, sell, lease, license, incorporate and in all other manner modify or exploit for profits for the benefit of the Trust all of such assets and property (tangible, intangible, intellectual or other). In establishing this Trust, the Settlers contemplate that the Trustees will engage in complex transactions and that the Trustees will expend (and are authorized to expend) trust funds on attorneys, accountants, advisors, agents and the appropriate experts in the fulfillment of their duties as Trustees.

ARTICLE 8.

Fiduciary Powers

In the administration of any Trust created hereunder, the Trustees shall have all of the powers granted by law, including but not limited to the powers granted to Trustees by the South Carolina Trust Code (S.C. Code Section 62-7-101, et. seq.), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. In addition to the powers granted under said statute, the Trustees shall have the powers granted above to receive, hold, manage and dispose of the aforesaid property contributed by the Beneficiaries which any one or more of them may have received on account of the death of James Brown.

Without limiting the foregoing, the Trustees shall also have the following powers:

- 9.1 **Determinations.** To determine what property is covered by general descriptions in this instrument.
- 9.2 **Investments and Reinvestments.** Subject to Article 6, to invest or reinvest in and to sell and/or to sell short such securities or other property, real or personal (whether within or without the United States) as they shall determine; to lease all or part of the real or personal property of the estate or trust, even for a term longer than the probable duration of any trust, to grant options for the renewal of leases; and to retain any property received by them for such periods as they determine (including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust), even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments and shall have the right to convert any or all assets of any Trust held hereunder into any other form of asset, diversified or undiversified as they shall determine. The Settlers request that the Trustees honor the wishes of the Trust beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustees determine that such wishes are clearly in contradiction to the purposes and terms of any such Trust.
- 9.3 **Conveyance of Assets.** To convey an absolute fee in possession of any land, and full ownership of any personalty comprising a part of any Trust created hereunder and to sell, exchange, mortgage, partition, pledge, improve or otherwise alter any real or personal property comprising a part of any Trust created hereunder, at public or private sale, at such price and upon such terms as the Trustees shall deem proper and to lease the same for a term extending beyond the life of any Trust created hereunder without prior application to any court for permission to do so.
- 9.4 **Non-Traditional Investments.** In addition to the powers granted under this Article, the Trustees (other than any beneficiary) are expressly authorized to acquire and retain investments not regarded as traditional for Trusts. The Trustees may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership and may sell or write options on assets of the Trust.
- 9.5 **Management and Holding of Assets.** To invest and reinvest all or part of the assets of any trust created hereunder in interests formed principally for the commingling of assets for investment, such as partnerships, limited liability companies, and common trust funds, including any common trust fund of any corporate Fiduciary, including registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such funds; to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee; to employ banks, trust companies, securities brokerage firms and/or independent investment advisors or managers (collectively, "Agents or Advisors"), including affiliates

of any Trustee, located anywhere within or without the United States (including themselves), at the discretion of the Trustees, but at the expense of the Trust, as custodian or agent; and to designate and employ such persons to give investment advice and to hold and manage discretionary investment or trading accounts; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such agent, bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Fiduciary(ies) may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Fiduciary(ies) shall be under no obligation to inspect or verify such stock or securities nor shall the Fiduciary(ies) be responsible for any loss by such bank, trust company, or securities brokerage firm. The Fiduciary(ies) shall not be responsible for the act, default or omission of any such Agent or Advisor except to the extent that the Fiduciary(ies) have been negligent or exhibited willful misconduct in the selection of such Agent or Advisor. The Fiduciaries shall not be liable for relying absolutely on any apparently valid documents or the opinions of counsel and advisors to the Trust.

- 9.6 **Consolidation and Division of Assets.** To hold and administer the assets of the Trusts created hereby in one or more consolidated funds, in whole or in part, in which any separate Trusts shall have undivided interests. Generally, and subject only to the provisions of this instrument, the Fiduciary(ies) shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.
- 9.7 **Borrowing.** To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of such Trust, and to secure any such loan by mortgage or pledge. To maintain margin account(s) and to make such pledges of and other undertakings with respect to assets as the Fiduciary(ies) deem(s) advisable in connection with the establishment and maintenance of such account or accounts. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable for sums borrowed, and each such loan shall be payable only out of assets of the Trust.
- 9.8 **Lending.** To lend all or any portion of the funds of any Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustees may in their discretion impose.
- 9.9 **Receipts, Disbursements and Allocations.** To allocate receipts and disbursements between income and principal in such manner as the Trustees (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply to permit any allocation of administration expenses to income that would require a reduction in the estate tax marital deduction (pursuant to IRC §2056(b)(4)) or charitable deduction (pursuant to Treas. Reg. §20.2055-3(b)), as the case may be. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of

property qualifying for the marital deduction, in which case such allocation shall follow state law, and (ii) in the discretion of the Trustees (other than any beneficiary).

- 9.10 Distributions.** Without the consent of any beneficiary, the Trustees (other than any beneficiary) may make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property allocated to any beneficiary (including any Trust) and without making pro-rata distributions of specific assets. In addition, the Trustees are authorized to select specific assets in funding fractional share distributions and are not required to select a percentage of each specific asset.
- 9.11 Occupancy and Use.** Except as may be otherwise specified elsewhere in this instrument as to any specific property, the Trustee shall have the power to permit any person having an interest in the income of any trust created hereunder to occupy real property or to use personal property held by any such trust upon such terms as the Trustee deems proper, whether rent-free or for the payment of taxes, insurance maintenance and ordinary repairs or other expenses, or upon such other terms and conditions as the Trustee determines.
- 9.12 Related Party Transactions.** To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any Trust the Settlers may have established and to retain such property so long as the Trustees hereunder may deem advisable, whether or not such property is of the class in which Trustees are authorized by law or any rule of court to invest; and to make loans to, or borrow from, any such Trust or Trusts upon such terms and conditions as the Trustees deem advisable.
- 9.13 Management of Closely Held Businesses.** In connection with (a) the continuation or operation of any business or investment interests which become a part of any Trust under this instrument (whether on initial funding, by purchase by the Trustees, by bequest or otherwise), or (b) the establishment of any new business or investment, the Trustees are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by them in respect of the operation of the business) without regard to their being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which any Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which an outright owner of such business could have exercised.
- 9.14 Division or Combination of Trusts.** In the event that the Trustees determine that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for tax (including a desire to enable any such trust to qualify as an eligible shareholder of an S corporation), administrative, liability, environmental, or other reasons), the Trustees shall have the power to divide any

such Trust into further trusts or shares. The Trustees shall also have the power to combine any such Trust created hereunder with any other Trust, whether created by the Settlers or another person, if the terms of the trusts are substantially the same and the Trustees are the same.

9.15 Power to Deal With Environmental Hazards. To use and expend any Trust income and principal: (i) to conduct environmental assessments, audits, and site monitoring; (ii) to take all appropriate remedial action to contain, cleanup or remove any environmental hazard; (iii) to institute legal proceedings concerning environmental hazards or contest or settle legal proceedings; (iv) to comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) to employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. The Fiduciaries shall also have the power: (a) to require, as a prerequisite to accepting as an addition to any Trust hereunder any property, real or personal, from any person, that the transferring party provide evidence satisfactory to the Trustees that the property is not subject to such environmental hazards as the Trustees may specify; (b) to decline to serve as a Fiduciary or to resign if the potential individual liability relating to environmental problems conflicts with fiduciary duties; (c) to set aside as a separate Trust, to be held and administered upon the same governing terms as any other Trust or Trusts for any one or more of the beneficiaries hereunder which the Settlers may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law; and (d) to disclaim any power which, in the sole discretion of such Fiduciary, will or may cause any such Fiduciary to be considered an "owner" or "operator" of property, or which shall otherwise cause any Fiduciary to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The Fiduciaries shall not be personally liable to any beneficiary of any Trust created hereunder, or to any other party interested in any Trust created hereunder, for any claim against any Trust for the diminution in value of trust property arising from the compliance by the Fiduciaries with any federal, state, or local law, rule, or regulation. Any expenses incurred by the Trustees under this paragraph may be charged against income or principal as the Trustees (other than a beneficiary) shall determine.

9.17 Uneconomical Trusts. If at any time any Trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date hereof), as determined by the Trustees, of Fifty Thousand (\$50,000) Dollars or less, the Trustees (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Beneficiary or Primary Beneficiary, or if none, to the person or persons then entitled to receive or have the benefit of the income therefrom, or to the legal representative of such person. If there is more than one current beneficiary, the Trustees shall make such distribution to such current beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated, to such beneficiaries, per stirpes.

9.18 Limitations. Notwithstanding the foregoing, nothing in this instrument shall be construed as permitting a beneficiary who may also be a Trustee of any Trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this instrument upon the exercise of such powers (such

as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

ARTICLE 9

Definitions

10.1 **Trustee, Fiduciary, Personal Representative.** The words "Trustee", "Fiduciary", and/or "Personal Representative", or any modifying or substituted pronouns therefor shall include singular and plural, as well as the masculine, feminine and neuter genders thereof, and shall apply equally to the personal representative, fiduciary, or trustee named herein and to any successor or substitute fiduciary, trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon the fiduciary, trustee and/or personal representative originally named herein.

ARTICLE 10

Power in Trust Protector to Amend

11.1 **Appointment of the Trust Protector.** Should a need arise for a Trust Protector and should a Trust Protector not then be serving, or should there arise circumstances under which it is apparent to the Trustee or to a majority of the then beneficiaries of any Trust created hereunder that the parties' intentions in creating any Trust created under this Agreement may be better served by a modification of any such Trust, then a Trust Protector shall be chosen to consider whether the Trust should be amended. The Trust Protector shall be chosen by a majority vote of the Beneficiaries as provided in Article 6, above.

11.2 **Extraordinary Authority.** Because the parties recognize that it may not be able to anticipate developments and changes which may occur during the term of Trusts created under this Agreement, it wishes to give the Trust Protector extraordinary power and authority over the modification of the Trusts created herein and the distribution of the Trust assets at a time prior to, or later than, that which the parties have otherwise provided herein. These broad powers are granted for the purpose of permitting the Trust Protector to effect the parties' set forth in this Trust Agreement.

11.2.1 **Authority to Amend.** The Trust Protector shall have the power, by an instrument filed with the Trust records, to amend the administrative provisions of this Agreement (including the provisions relating to the Trustee); provided, (i) no power of amendment shall be effective to extend the period for the vesting of any property under the Trust beyond the period for vesting defined elsewhere in this Agreement, (ii) that any such amendment shall be for the sole purpose of effecting the parties' objectives expressed herein.

11.3 **Appointment and Removal of Trustees.** Upon the prior consent of a majority vote of the Beneficiaries, the Trust Protector may remove any Trustee at any time, with or without cause, and

may appoint a successor Trustee to fill any vacancy in the office of Trustee, however caused. The Trust Protector may only serve as Trustee after having resigned as the Trust Protector.

11.4 Liability. No personal liability shall attach to the Trust Protector except for gross negligence or willful wrongdoing. The Trust Protector for any Trust shall be treated for all purposes as a "special trustee" whose powers, duties, and responsibilities are thus limited to those specifically vested in such position (and none, such as responsibility for administration, investments, etc., that result generically to a trustee).

11.5 Written Requirements. No exercise of any power, designation of successor, resignation, or other action of the Trust Protector provided for in this Article shall be effective until such action shall be manifested by an instrument or instruments in writing signed by the person or persons authorized to take such action and delivered to the Trustees or, in the case of the exercise of the power to appoint a Trustee for any Trust for which there is no then serving Trustee, to the person designated as Trustee.

11.6 Successor Trust Protectors. All provisions of this Agreement relating to the Trust Protector shall apply to the original Trust Protector to all subsequent Trust Protectors.

ARTICLE 11.

Termination of Trusts

Notwithstanding anything to the contrary, the trusts created hereunder shall terminate one day prior to the maximum time allowed under the South Carolina Uniform Rule against Perpetuities. At that time, the Trustee shall distribute the trust assets to the beneficiaries of the current income thereof. To the extent that the laws of any jurisdiction under which any Trust created hereunder is being administered lengthen or abolish any, or have no, otherwise applicable rule against perpetuities, then the laws of such jurisdiction shall be applied to determine any mandatory termination of such Trust. Furthermore, to the extent determined by the Trustees (other than any beneficiary), the dispositions made hereunder may be modified such that such distributions are made to newly created (or amended) Trusts having the same provisions as those referred to above, except that such newly created (or amended) Trusts may extend beyond the period referred to in the first sentence of this paragraph if permitted under the then laws of such Trust's jurisdiction. To the extent that any provision of this paragraph would cause any Trust established under this instrument to fail, such provision shall be inapplicable.

ARTICLE 12.

Jurisdiction and Governing Law

All questions pertaining to the construction, validity and effect of this instrument and any Trusts created hereunder shall be determined in accordance with the laws of the State of South Carolina.

ARTICLE 13.

Protection of Charitable Status

The Settlers intend to preserve and protect the charitable tax-exempt status of the "I Feel Good" Trust. Accordingly, this Trust at all times shall be interpreted, managed, invested, administered and in all respects governed consistent with such intent. The Trustee shall administer the Trust in a manner that ensures that the "I Feel Good" Trust qualifies and continues to qualify as a charitable trust. The Settlers agree to modify the terms herein to the extent necessary to preserve the charitable tax-exempt status of the "I Feel Good" Trust to the extent allowed by law.

ARTICLE 14.

Headings

The article and section headings used in this instrument are for convenience only and are not to be considered as part of this instrument.

ARTICLE 15.

Spendthrift Provisions

No beneficiary of any Trust created herein shall have the right, power, or authority to sell, assign, pledge, mortgage, anticipate, or in any manner encumber, alienate, or impair all or any part of his or her interest in such Trust or in the principal or income of such Trust. The beneficial and legal interest in, and the principal and income of, any such Trust and every part thereof shall be free from the interference or control of any creditor or spouse of any beneficiary of this Trust and shall not be subject to the claims of any such creditor or spouse nor liable to attachment, execution, bankruptcy, or any other process of law. This paragraph is intended to cause any Trust created under this instrument to be a "spendthrift trust" as that phrase may be interpreted under the applicable laws of the Trust's jurisdiction.

EXECUTION

IN WITNESS WHEREOF, the Settlers have set their hands and affixed their seals, and the Trustees, in acceptance of this Trust, have set their hands and affixed their seals.

Attorney General of South Carolina for the
James Brown "I Feel Good" Trust

Tommie Rae Brown, individually and on behalf
of her minor child, James Brown

Manager, Brown Family LLC

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF AIKEN)

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw
the within named Settlers, sign, seal and as their act and deed, deliver the within named James Brown
Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS _____
day of _____, 2008.

Notary Public for South Carolina

My Commission Expires: _____

Trustee, James Brown Legacy Trust

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named _____, Trustee, sign, seal and as his/her act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS _____
day of _____, 2008.

Notary Public for South Carolina
My Commission Expires: _____

SCHEDULE A

ASSETS CONTRIBUTED TO THE JAMES BROWN LEGACY TRUST

SCHEDULE B

ALLOCATION AND DISTRIBUTION OF NET INCOME

Distributions of Net Income shall be made to the beneficiaries based on the following formula:

After determination of distributions of Net Income to the Beneficiaries based on the above formula, any component of Net Income that is ordinary income shall first be distributed to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. Next, the Trustees shall distribute any component of Net Income that is capital gain to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. After allocation of ordinary income and capital gain to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income, the Trustees shall distribute remaining Net Income to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. After fully satisfying the share of Net Income allocated to the Trustees of the James Brown "I Feel Good" Trust, the Trustees shall allocate the remaining Net Income pro rata among Tommie Rae Brown and the Brown Family LLC.



ALAN WILSON
ATTORNEY GENERAL

March 7, 2013

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

Re: Pope v. Wilson, Attorney General and Bauknight 2012-CP-40-350 (Pope FOIA I)
Pope v. Wilson 2010-CP-40-4900 (Pope FOIA II consolidated with *Bauknight*)

Dear Judge Manning:

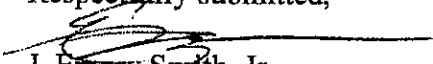
I am hopeful that these cases can be resolved as a result of the hearing set for March 18, 2013.

As you know the Attorney General, strongly supports the Freedom of Information Act as have his predecessors. Without waiving our existing jurisdictional and other defenses to this litigation including all motions, we believe that our Answer and attachments in the Pope I suit that I am filing by mail today and proposed Amended Answer and attachments in Pope II, respond to the FOIA's at issue. These filings in Pope I make clear that we have no documents that could be considered responsive to that FOIA except for a draft of the Legacy Trust attached to our Answer herein. These filings in Pope II provide all the documents that we have that could be considered responsive to that FOIA except for a three page private part of the alleged attorneys fee contract which we have no objection to disclosing if your Honor rules that it may be released. We respectfully request a ruling from the Court regarding the production of this document in the main action in case 4900. We will be prepared to submit this document to the Court and Plaintiff at the hearing on the 18th if the Court rules that it may be produced.

A number of motions are scheduled for the hearing and two new ones are designed to get the above responses before the Court. Although we do not waive these motions, we believe that they may be heard in a relatively summary manner because we have responded to the FOIAs at issue. I am enclosing copies of the additional filings for your reference and an updated motions list reflecting the two additional motions which has not been reviewed by Plaintiff's counsel.

Thank you for your consideration of these matters. If you have questions, please let me know.

Respectfully submitted,


J. Emory Smith, Jr.

Assistant Deputy Attorney General

cc: Adam T. Silvernail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
J. Calhoun Watson, Esquire
The Honorable Jeanette W. McBride

Daryl L. Williams, Esquire
Robin A. Braithwaite, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire

POPE v. WILSON & BAUKNIGHT
Case 2012-40-CP-350

Pending motions

1. **MOTION TO CONSOLIDATE with case 2010-40-CP-4900**
2. **A. MOTION TO DISMISS and ALTERNATIVE MOTION TO STRIKE Affidavit attached to Complaint by Defendant Wilson**

B. And MOTION TO AMEND this Motion with AMENDED MOTION TO DISMISS attached
- 3 **MOTION TO DISMISS by Defendant Bauknight**
4. **MOTIONS TO STRIKE by Defendant Wilson**

MTD and alternative MTS (9-2-11), *supra*

MTS 9-14-11

MTS 9-27-11

Affidavit Adele Pope (9-16-11)

Affidavit Adele Pope (9-6-08)

MTS 10-14-11

Affidavit Adele Pope (10-6-11)

MTS 1-9-12

Affidavit Jeffery Smith (1-3-12)

Affidavit Steven Farrar (1-4-11),

Affidavit Sue Summer (1-5-12)

Affidavit and attachments Adele Pope (1-6-12),

Affidavit Daryl Williams (1-6-12)

Affidavit Adele Pope (1-3-12),

Affidavit Vic MacDonald (1-9-11)

MTS 3-29-12

Affidavit of Sue Summer (3-26-12), Affidavit Adele Pope (3-27-12)

MTS 3-28-12

Affidavit Adele Pope (2-22-12), Affidavit Adele Pope (1-9-12)

5. MOTIONS TO STRIKE by Defendant Bauknight

MTD Affidavits of in support of Summary Judgment;

Amended MTS:

Affidavits of Adele Pope (10-6-11, 1-3-12, 1-9-12 and all attachments)

Affidavits of Jeffrey Smith (1.9.11 (and attachments) and
1.3.12)

Affidavit of Steven Farrar (1.4.12)

Affidavit of Sue Summer (1.5.12)

Affidavit of Daryl Williams (1.6.12)

6. MOTION FOR SUMMARY JUDGMENT by Plaintiff Pope

7. MOTION FOR JUDGMENT ON THE PLEADINGS [ADDED MARCH, 2013]



ALAN WILSON
SECURITIES COMMISSIONER

August 5, 2011

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10:25
JACKIE S. BOWERS
CLERK OF COURT

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

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

Dear Ms. Pope:

I am in receipt of one letter from you dated July 19, 2011, and five letters from you dated July 20, 2011, requesting certain documents pursuant to the South Carolina Freedom of Information Act ("FOIA"). I have also been notified by attorneys in the Civil Division of the South Carolina Office of the Attorney General ("SCAG") that you refer to a request dated June 30, 2011 in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

Responding to your letters dated July 19, 2011 and July 20, 2011 is difficult, as I have been informed there are several pending motions filed in Case No. 2010-CP-40-4900 in the Richland County Circuit Court and that several of the pending motions relate to the documents you are currently seeking to obtain through the FOIA requests. I have been informed there are at least three related motions that relate to the FOIA request: (1) a "Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope" filed July 5, 2011, filed by the Plaintiffs; (2) a "Motion to Compel Discovery" dated June 7, 2011, filed by your counsel; and (3) a "Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction", dated July 26, 2011, filed by your counsel.

While there exists an ongoing case in which I have been informed both a "Motion for Protective Order" and a "Motion to Compel Discovery" are outstanding, it seems premature for me to release the requested documents. I am not involved in the civil case in any way and believe the wisest thing to do is to let the presiding judge make the decision on which items, if any, are to be produced and which, if any, are not.

Adele J. Pope
August 5, 2011
Page 2

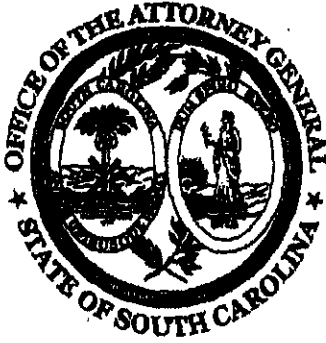
The FOIA was designed to give the public and the press access to the workings of their government. FOIA is not designed to supplement the rules of civil or criminal discovery. For these reasons, I propose to put your requests on hold pending the outcome of your current litigation. Once litigation is complete, I would then provide you with all of the information you have requested that is available (i.e. not exempt) pursuant to the Act. In the meantime, I will also forward copies of all six letters to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate.

Sincerely yours,



Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn



ALAN WILSON
SECURITIES COMMISSIONER

August 5, 2011

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10:25
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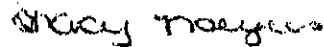
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Adele J. Pope
August 5, 2011
Page 2

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Sincerely yours,



Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn



ALAN WILSON
ATTORNEY GENERAL

March 13, 2013

The Honorable Jeanette W. McBride
Clerk of Court, Richland County
P.O. Box 2766
Columbia, SC 29202

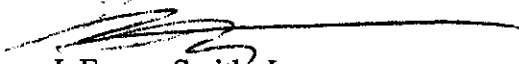
Re: Pope v. Alan Wilson, Attorney General 2012-CP-40-350

Dear Ms. McBride:

Subject to and without waiving any defense motions and defenses in this case, enclosed for filing with your Office for the Defendant Attorney General are exhibit pages 27-42 filed as an additional exhibit to the Answer in this case. This exhibit is another draft of the Legacy Trust and is included in the Record on Appeal in Wilson v. Dallas in addition to the other draft filed last week. I have also enclosed a certificate of service, and I am sending a copy of this additional exhibit to Judge Manning.

Please confirm filing by initialing or stamping the enclosed copy of this letter and returning it in the enclosed envelope. Thank you for your assistance.

Sincerely,


J. Emory Smith, Jr.
Assistant Deputy Attorney General
Counsel for Defendant Attorney General

cc: Adam T. Silvernail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
The Honorable L. Casey Manning

NOTED
MAR 15 AM 10:42
JEANETTE W. MCBRIDE
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

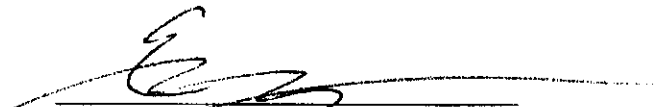
CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2013 MAR 15 AM 10:42
CLERK OF COURT
COLUMBIA, SC

I hereby certify that I have served additional exhibits to the Answer of the Office of the Attorney General upon counsel for the other parties by mailing copies to each of them at the addresses below via the United States Mail this March 13, 2013.

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
P.O. Box 1898
Columbia, SC 29202-1898

Keith M. Babcock, Esquire
Ariail E. King, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211


J. EMORY SMITH, JR.

Assistant Deputy Attorney General
Attorney for the Attorney General

STATE OF SOUTH CAROLINA)
)
) THE JAMES BROWN LEGACY TRUST
)
 COUNTY OF AIKEN)

THE JAMES BROWN LEGACY TRUST

This Trust Agreement is made this ____ day of _____, 2009, and is executed by the Settlor (collectively hereinafter known as the "Settlor") (i) the Attorney General of South Carolina, (ii) Tommie Rae Brown, and (iii) Larry Brown, Venisha Brown, Deanna J. Brown Thomas, Yamma N. Brown Lamar, Daryl Brown and Terry Brown, (the "Brown Adult Children") and _____, as the Trustee. This trust shall be known as The James Brown Legacy Trust (the "Trust").

**ARTICLE I
ESTABLISHMENT OF TRUST**

Pursuant to the Contribution Agreement of even date herewith, the Settlor have irrevocably paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement do hereby irrevocably pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A (also referred to herein as the "James Brown Assets"), annexed hereto and made a part hereof. This property and any other property that may be transferred to the Trustee in the future and any property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

**ARTICLE II
ACCEPTANCE BY TRUSTEE**

The Trustee herein above named has agreed to accept said Trusteeship and all interests in property which may come to the Trustee by reason of this Agreement for the benefit and use of the Beneficiaries (as defined in Section 11.2 below), all in accordance with the provisions hereinafter set forth. In keeping therewith, the Trustee is hereby vested with all right, title, and interest in and to such assets as are listed on Schedule A and is authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that go with such assets.

**ARTICLE III
STATEMENT OF INTENT**

This Trust Agreement and the Trust it creates are irrevocable and this Trust is intended to comply with the Private Agreement of August 10, 2008 ("Original Agreement") as amended by the Addendum dated _____, 2009 to the Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (as amended, the "Agreement") (a copy of which is attached hereto as Exhibit A) ("Private Agreement"), and the Contribution Agreement dated _____, 2009 (a copy of which is

attached hereto as Exhibit B) ("Contribution Agreement"), as the same may be amended or modified by any addenda thereto executed by the Settlers or their duly authorized agents. Any capitalized term not defined herein shall have the meaning ascribed to it in the Agreement.

ARTICLE IV PURPOSE

The Trustee is specifically granted the authority to accept and retain liquid and/or illiquid and/or non-income producing assets as Trust investments, specifically being those assets which may have passed to the Settlers' hereof on account of the death of James Brown. The purpose contemplated in the establishment of the Trust is that it engage in the management and holding of liquid and/or illiquid assets received by the Beneficiaries on account of the death of James Brown and contributed to this Trust, including, but not limited to, real estate, limited liability and other closely held companies, partnerships, and corporations, as well as various sorts of intangible property, including copyrights, termination and transfer rights, as well as the right to exploit the name and image of James Brown, all of which are to be managed, invested and/or sold for the benefit of the Trust and its Beneficiaries. It is contemplated that the Trustee shall have the right to buy, sell, lease, license, incorporate and in all other manner modify or exploit for profits for the benefit of the Trust all of such assets and property (tangible, intangible, intellectual or other). In establishing this Trust, the Settlers contemplate that the Trustee will engage in complex transactions and that the Trustee will expend (and are authorized to expend) trust funds on attorneys, accountants, advisors, agents and the appropriate experts in the fulfillment of its duties as Trustee.

ARTICLE V PAYMENTS OF EXPENSES AND DISTRIBUTIONS OF PROPERTY

5.1 Beneficiaries and Distributional Interests. The Trustee shall hold all assets contributed to this Trust and shall distribute the net income and the principal of the Trust to the Beneficiaries in accordance with their beneficial ownership interests in the Trust assets (the "Distributional Interests").

The Beneficiaries recognize that the result of the Original Agreement was to give the "I Feel Good" Trust (as hereinafter defined) a 50% interest in the James Brown Assets and the Settlement Entity (as defined in the Agreement), subject to the funding of educational trust described below and a pro-rata share of expenses and income (except as expressly provided below with respect to legal expenses). Treating the addition of Terry Brown to the settlement arrangement set out in the Agreement as an expense results, after accounting for such expense, in the following Beneficiaries and their respective Distributional Interests:

(a) Forty-seven and one-half percent (47.5%) to the Trustee(s) of the trusts provided for under Articles V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "James Brown Trust") (such trusts being the "I Feel Good" Trust or the "Charitable Trust" further described in Article VII of the James Brown Trust and the "Brown Family Education Trust" further described in Article VI of the James Brown Trust); provided, however that the first \$2,000,000 payable pursuant to this Distributional Interest shall be payable solely to the Trustee(s) of the Brown Family Education Trust

and the balance solely to the Trustee(s) of the Charitable Trust (the Charitable Trust and the Brown Family Education Trust are referred to herein as the "Brown Trusts");

(b) Twenty-three and three-fourths percent (23.75%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

(c) Four and seventy-nine hundredths percent (4.79%) to each of the Brown Adult Children, each of which interests shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina.

Any distributions of principal to the Trust Beneficiaries shall be in accordance with the same percentage interests.

All distributions shall be net of estate administrative expenses, taxes and legal expenses necessary to enable the estate to properly determine the respective interests of the parties, provided that netting such legal expenses shall not reduce the distributional share of the Brown Trusts below forty-seven and one-half percent (47.5%).

5.2 Income in Respect of a Decedent. Income of this trust which is income in respect of a decedent for federal or state estate and income tax purposes shall be distributed first to the trustee of the Charitable Trust (assuming the Brown Family Education Trust has been fully funded) as to all or a portion of such trust's share hereunder to the extent that such order of distribution does not cause the shares of the Brown Adult Children or Tommie Rae Brown to be funded with an amount less than the amount with which such shares would be funded if it were not for the provisions of this Article 5.2.

5.3 Sale of Assets. Upon the sale of all or substantially all of the assets of the Trust, the Trustee shall distribute the Trust assets to the Beneficiaries according to Section 5.1 and the Trust shall terminate. In addition, upon the partial liquidation of the assets of the Trust, the Trustee shall distribute the proceeds of the liquidation to the Beneficiaries according to the Distributional Interest, such that the Beneficiaries may receive, from time to time, distributions of principal as well as net income. To the extent that estate or inheritance taxes should be due as a result of the death of Tommie Rae Brown or any Brown Adult Children, or any other beneficiaries with respect to any Distributional Interest in this Trust, the Trustee and Beneficiaries agree that they shall make a good faith effort to consider mechanisms to provide liquidity for such taxes.

ARTICLE VI LIMITATIONS ON POWERS OF TRUSTEE; VOTING

6.1 Actions of Trustee Requiring Approval of Beneficiaries. The Trustee shall have all of the powers described in Article 9, below; provided, however, the Trustee shall require approval of a two-thirds majority of the voting interests held by all the Beneficiaries in order to:

- (a) sell all or substantially all of the assets of the Trust; and
- (b) except as provided in section 5.3, terminate the Trust.

For purposes of voting by the Beneficiaries hereunder, the Charitable Trust shall have a 50% voting interest, Tommie Rae Brown, a 25% voting interest, and the Brown Adult Children, a 25% voting interest in the aggregate, which shall be divided equally among the six of them, and may be voted separately by each individual. Any such vote shall be made by each Beneficiary by or through its acting fiduciary in the case of entities having a fiduciary, or by or through the individual, agent under power of attorney or personal representative or other acting fiduciary in the cases of Tommie Rae Brown and the Brown Adult Children.

6.2 Notice of Vote. The Trustee or any Beneficiary may at any time request a vote of the Beneficiaries as to any such matter as may require a vote under this Agreement by giving notice and a request to all the Beneficiaries for a vote pursuant to the terms of Sections 8.3 and 8.4, below. If a noticed Beneficiary does not respond with its vote on the applicable matter in writing within 30 days after such time as the notice is deemed to have been given, such Beneficiary shall no longer have the right to vote on such matter.

ARTICLE VII RESIGNATION, REMOVAL, APPOINTMENT AND SUCCESSION OF TRUSTEE

7.1 Resignation and Appointment Procedure. Any person or organization at any time serving as Trustee hereunder may resign at any time by providing written notice to all the Beneficiaries (or to the parents, guardians of the person, or persons having custody of a Beneficiary who is a minor or otherwise not sui juris) currently entitled to income or principal, setting forth the effective time and date of such resignation on or before such effective time, subject to and only effective upon the appointment and qualification of a successor Trustee; provided, however, that a successor trustee has been duly appointed and has accepted such appointment.

All Trustee appointments and removals permitted hereunder shall be made by an acknowledged instrument delivered to the Trustee then acting, if any, and, when applicable, to the appointee, and shall become effective on the date or upon the happening of the event specified in the instrument and may be revoked in the same manner at any time before the successor qualifies.

7.2 Right to Remove and Replace. The Trustee of the Trust shall be chosen and appointed by the South Carolina Attorney General, who has the power and right to remove and replace the Trustee.

7.3 Disability of a Trustee. The determination that a Trustee is a disabled person shall be made by a court of competent jurisdiction.

7.4 Termination of Trustee Powers. An outgoing Trustee, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Trustee ceases for any reason to be a Trustee hereunder, there shall be delivered to such Trustee's successor hereunder all of the assets (Trust or otherwise) which were in the possession of such Trustee and there shall be made available to each successor Trustee a complete financial record and inventory of assets affected thereby. With respect to any

properties thus transferred by the outgoing Trustee or by such Trustee's representative, such Trustee shall be discharged of all further duties and obligations.

7.5 Successor Trustee Powers and Authority. Each successor Trustee, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Trustee. Title to the entire property (of the Trust or otherwise) shall automatically vest in any successor Trustee without the necessity of any conveyance. The assumption of authority by a successor Trustee shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Trustee or to such Trustee's legal representative). Any corporation into which any corporate Trustee acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Trustee hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this instrument.

7.6 Exoneration from Liability for Acts of Prior Trustees. Each successor Trustee shall be exempt from any liability in any way related to the prior actions or omissions of the previous Trustees, and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Trustee.

ARTICLE VIII TRUSTEE PROVISIONS

8.1 Trustee Compensation. For services as a Trustee, the Trustee is entitled to receive an amount which is reasonable for the services rendered at the time services are rendered, as agreed upon by the Trustee and a majority of the Beneficiaries, voting as provided for in Article VI herein. If for any reason, there are multiple Trustees serving, the Trustees, collectively, shall share such fee. If there is a corporate Trustee serving as Trustee, the corporate Trustee shall be entitled to reasonable compensation for the services rendered, but in no event shall such compensation be more than an amount which is competitively determined to be reasonable for the services rendered among organizations providing similar such services. For the purpose of determining Trustee's fees payable hereunder, any and all Trusts hereunder shall be treated as one Trust.

8.2 Inventory; Appraisals; Bond. Except as otherwise required by law, the Trustee shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but, upon request, shall make available a statement of receipts and disbursements and an investment review of the assets of any Trust created hereunder at least annually to each person then eligible to receive distributions from such Trust, and each then present beneficiary thereof.

8.3 Notice. Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be

physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). The address for all notices to Beneficiaries shall be as set forth opposite their signatures below; provided that any Beneficiary may change such address by written notice to all parties hereto in accordance with this Section 8.3. Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

Instruments shall be considered delivered: (i) if sent by mail or express service, on the third day following the date of its receipt by the postal service (or such express service), as evidenced by a dated postal (or express) service receipt showing the addressee's name and proper address (as described above); (ii) if sent by facsimile, upon receipt by the sender of a confirmation of receipt from the addressee's facsimile machine indicating (a) the correct telephone number of the addressee's facsimile machine and (b) receipt of the correct number of pages sent as properly received; or (iii) if sent by e-mail, upon receipt by the sender of a confirmation from the addressee's e-mail address indicating that the addressee has opened the e-mail.

In all other cases, the date of actual physical delivery shall be the effective date of delivery and, except as such instrument may specifically provide for a later effective date, it shall be effective for all purposes from such date.

Copies of all instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of trustee resignation, removal, appointment, and/or acceptance, the original of which shall be kept with the Trust records, shall, upon request, be promptly delivered or sent by mail by the Trustee receiving or initiating the same to each other then interested party (i.e., the other then Trustee or Trustees, if any, of the affected Trust or Trusts, and each then beneficiary of the affected Trust or Trusts).

8.4 Notice to Disabled Parties. If a person who is a disabled person (who is not otherwise represented by a personal representative or guardian or not otherwise entitled to notice by a procedure provided for in this Agreement) is a party to any legal proceeding relating in any manner to any trust created hereunder, service of process upon the disabled person shall not be required if another individual, who is not a disabled person, is a party to the proceeding and has the same interest as the disabled person.

ARTICLE IX TRUSTEE POWERS

In the administration of the Trust, the Trustee shall have all of the powers granted by law, including but not limited to the powers granted to trustees by the South Carolina Trust Code (S.C. Code Section 62-7-101, et. seq.), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. Without limiting the foregoing,

the Trustee shall also have the following powers (which shall apply equally to any other trust created pursuant to this Agreement):

9.1 Right to Retain Assets. The Trustee is specifically granted the authority to accept and retain the James Brown Assets, whether these are liquid and/or illiquid and/or non-income producing assets, as Trust investments, subject however to the purpose contemplated in the establishment of the Trust as set out in Article IV.

9.2 Investments and Reinvestments. Subject to Articles IV and VI, to invest or reinvest in and to sell and/or to sell short such securities or other property, real or personal (whether within or without the United States) as the Trustee shall determine; to lease all or part of the real or personal property of the estate or trust, even for a term longer than the probable duration of any trust, to grant options for the renewal of leases; and to retain any property received by them for such periods as they determine (including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust), even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments and shall have the right to convert any or all assets of any Trust held hereunder into any other form of asset, diversified or undiversified as they shall determine. The Settlers request that the Trustee honor the wishes of the Beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustee determines that such wishes are clearly in contradiction to the purposes and terms of any the Trusts.

9.3 Conveyance of Assets. To convey an absolute fee in possession of any land, and full ownership of any personalty comprising a part of the Trust and to sell, exchange, mortgage, partition, pledge, improve or otherwise alter any real or personal property comprising a part of the Trust, at public or private sale, at such price and upon such terms as the Trustee shall deem proper and to lease the same for a term extending beyond the life of the Trust without prior application to any court for permission to do so.

9.4 Non-Traditional Investments. In addition to the powers granted under this Article, the Trustee (other than any beneficiary) is expressly authorized to acquire and retain investments not regarded as traditional for trusts. The Trustee may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership and may sell or write options on assets of the Trust.

9.5 Management and Holding of Assets. To invest and reinvest all or part of the assets of the Trust created hereunder in interests formed principally for the commingling of assets for investment, such as partnerships, limited liability companies, and common trust funds, including any common trust fund of any corporate Trustee, including registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such funds; to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee; to employ banks, trust companies,

securities brokerage firms and/or independent investment advisors or managers (collectively, "Agents or Advisors"), including affiliates of any Trustee, located anywhere within or without the United States (including themselves), at the discretion of the Trustee, but at the expense of the Trust, as custodian or agent; and to designate and employ such persons to give investment advice and to hold and manage discretionary investment or trading accounts; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such agent, bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Trustee may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Trustee shall be under no obligation to inspect or verify such stock or securities nor shall the Trustee be responsible for any loss by such bank, trust company, or securities brokerage firm. The Trustee shall not be responsible for the act, default or omission of any such Agent or Advisor except to the extent that the Trustee has been negligent or exhibited willful misconduct in the selection of such Agent or Advisor. The Trustee shall not be liable for relying absolutely on any apparently valid documents or the opinions of counsel and advisors to the Trust.

9.6 Consolidation and Division of Assets. To hold and administer the assets of the Trust created hereby in one or more consolidated funds, in whole or in part, in which any separate trusts shall have undivided interests. Generally, and subject only to the provisions of this instrument, the Trustee shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.

9.7 Borrowing. To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of the Trust, and to secure any such loan by mortgage or pledge. To maintain margin account(s) and to make such pledges of and other undertakings with respect to assets as the Trustee deems advisable in connection with the establishment and maintenance of such account or accounts. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable for sums borrowed, and each such loan shall be payable only out of assets of the Trust.

9.8 Lending. To lend all or any portion of the funds of the Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustee may in Trustee's discretion impose.

9.9 Receipts, Disbursements and Allocations. To allocate receipts and disbursements between income and principal in such manner as the Trustee (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply to permit any allocation of administration expenses to income that would require a reduction in the estate tax marital deduction (pursuant to IRC § 2056(b)(4)) or charitable deduction (pursuant to Treas. Reg. § 20.2055-3(b)), as the case may be. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of property qualifying for the marital deduction, in which case such

allocation shall follow state law, and (ii) in the discretion of the Trustee (other than any Beneficiary).

9.10 Distributions. Without the consent of any Beneficiary, the Trustee (other than any beneficiary) may make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without making pro-rata distributions of specific assets. In addition, the Trustee is authorized to select specific assets in funding fractional share distributions and is not required to select a percentage of each specific asset. The Trustee shall, however, when making distributions, take into account any appreciation and depreciation of the assets and use reasonable efforts to fairly allocate gains and losses among the Beneficiaries.

9.11 Occupancy and Use. Except as may be otherwise specified elsewhere in this instrument as to any specific property, the Trustee shall have the power to permit any person having an interest in the income of any trust created hereunder to occupy real property or to use personal property held by any such trust upon such terms as the Trustee deems proper, whether rent-free or for the payment of taxes, insurance maintenance and ordinary repairs or other expenses, or upon such other terms and conditions as the Trustee determines.

9.12 Related Party Transactions. To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any trust the Settlers may have established and to retain such property so long as the Trustee hereunder may deem advisable, whether or not such property is of the class in which Trustee are authorized by law or any rule of court to invest; and to make loans to, or borrow from, the Trust upon such terms and conditions as the Trustee deems advisable.

9.13 Management of Closely Held Businesses. In connection with (a) the continuation or operation of any business or investment interests which become a part of the Trust under this instrument (whether on initial funding, by purchase by the Trustee, by bequest or otherwise), or (b) the establishment of any new business or investment, the Trustee are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by them in respect of the operation of the business) without regard to their being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which the Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which an outright owner of such business could have exercised.

9.14 Division or Combination of Trusts. In the event that the Trustee determines that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for tax (including a desire to enable any such trust to qualify as an eligible shareholder of an S corporation), administrative, liability, environmental, or other

reasons), the Trustee shall have the power to divide the Trust into further trusts or shares. The Trustee shall also have the power to combine any such trust created hereunder with any other trust, whether created by the Settlers or another person, if the terms of the trusts are substantially the same and the Trustee are the same.

9.15 Power to Deal With Environmental Hazards. To use and expend any Trust income and principal: (i) to conduct environmental assessments, audits, and site monitoring; (ii) to take all appropriate remedial action to contain, cleanup or remove any environmental hazard; (iii) to institute legal proceedings concerning environmental hazards or contest or settle legal proceedings; (iv) to comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) to employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. The Trustee shall also have the power: (a) to require, as a prerequisite to accepting as an addition to any Trust hereunder any property, real or personal, from any person, that the transferring party provide evidence satisfactory to the Trustee that the property is not subject to such environmental hazards as the Trustee may specify; (b) to decline to serve as a fiduciary or to resign if the potential individual liability relating to environmental problems conflicts with fiduciary duties; (c) to set aside as a separate trust, to be held and administered upon the same governing terms as any other trust or trusts for any one or more of the beneficiaries hereunder which the Settlers may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law; and (d) to disclaim any power which, in the sole discretion of such Trustee, will or may cause any such Trustee to be considered an "owner" or "operator" of property, or which shall otherwise cause such Trustee to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The Trustees shall not be personally liable to any beneficiary of the Trust created hereunder, or to any other party interested in the Trust created hereunder, for any claim against any trust for the diminution in value of trust property arising from the compliance by the Trustee with any federal, state, or local law, rule, or regulation. Any expenses incurred by the Trustee under this paragraph may be charged against income or principal as the Trustee (other than a beneficiary) shall determine.

9.16 Uneconomical Trusts. If at any time any trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date hereof), as determined by the Trustee, of Fifty Thousand (\$50,000) Dollars or less, the Trustee (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Beneficiaries in proportion to their Distributional Interests in the Trust.

9.17 Determinations. To determine what property is covered by general descriptions in this instrument.

9.18 Limitations. Notwithstanding the foregoing, nothing in this instrument shall be construed as permitting a beneficiary who may also be a Trustee of any trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this instrument upon the exercise of such powers (such as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

ARTICLE X ADDITIONAL ASSIGNMENTS AND CONTRIBUTIONS

10.1 Further Assurances. The Settlor's covenant and agree to make, execute and deliver to the Trustee such other and further assignments, and instruments as the Trustee may reasonably deem necessary or appropriate to effectuate the purposes of this Agreement.

10.2 Additional Contributions. The Settlor's, and any other person with the Trustee's consent, shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during his or her lifetime, to contribute cash, securities and/or other property to the Trust created under this Agreement.

ARTICLE XI DEFINITIONS

11.1 Trustee, Fiduciary, Personal Representative. The words "Trustee", "fiduciary", and/or "personal representative", or any modifying or substituted pronouns therefor shall include singular and plural, as well as the masculine, feminine and neuter genders thereof, and shall apply equally to the personal representative, fiduciary, or trustee named herein and to any successor or substitute fiduciary, trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon the fiduciary, trustee and/or personal representative originally named herein.

11.2 Beneficiaries. The term "Beneficiary" shall mean the Beneficiaries named or described in Section 5.1 hereof and, where applicable, their heirs, devisees, and successors.

ARTICLE XII TERMINATION OF TRUSTS

Notwithstanding anything to the contrary which would cause an earlier termination of the Trust or any other trusts created hereunder, the Trust and any other trusts created hereunder shall terminate one day prior to the maximum time allowed under the South Carolina Uniform Rule against Perpetuities. At that time, the Trustee shall distribute the Trust assets to the Beneficiaries of the current income and principal thereof. To the extent that the laws of any jurisdiction under which any Trust created hereunder is being administered lengthen or abolish any, or have no, otherwise applicable rule against perpetuities, then the laws of such jurisdiction shall be applied to determine any mandatory termination of such trust. Furthermore, to the extent determined by the Trustee (other than any beneficiary), the dispositions made hereunder may be modified such that such distributions are made to newly created (or amended) trusts having the same provisions as those referred to above, except that such newly created (or amended) trusts may extend beyond the period referred to in the first sentence of this paragraph if permitted under the then laws of such trust's jurisdiction. To the extent that any provision of this paragraph would cause any trust established under this instrument to fail, such provision shall be inapplicable.

**ARTICLE XIII
JURISDICTION AND GOVERNING LAW**

All questions pertaining to the construction, validity and effect of this instrument and any trusts created hereunder shall be determined in accordance with the laws of the State of South Carolina.

**ARTICLE XIV
PROTECTION OF CHARITABLE STATUS**

The Settlers intend to preserve and protect the charitable tax-exempt status of the "I Feel Good" Trust. Accordingly, this Trust at all times shall be interpreted, managed, invested, administered and in all respects governed consistent with such intent. The Trustee shall administer the Trust in a manner that does not adversely affect the current qualification and continued qualification of the "I Feel Good" Trust as a charitable trust. If necessary or desirable, the Settlers agree to modify the terms of this Agreement to the extent necessary to preserve the charitable tax-exempt status of the I Feel Good Trust to the extent allowed by law.

**ARTICLE XV
HEADINGS**

The article and section headings used in this instrument are for convenience only and are not to be considered as part of this instrument.

**ARTICLE XVI
SPENDTHRIFT PROVISIONS**

No beneficiary of any trust created herein shall have the right, power, or authority to sell, assign, pledge, mortgage, anticipate, or in any manner encumber, alienate, or impair all or any part of his or her interest in such trust or in the principal or income of such trust. The beneficial and legal interest in, and the principal and income of, any such trust and every part thereof shall be free from the interference or control of any creditor or spouse of any beneficiary of such trust and shall not be subject to the claims of any such creditor or spouse nor liable to attachment, execution, bankruptcy, or any other process of law. This paragraph is intended to cause any trust created under this instrument to be a "spendthrift trust" as that phrase may be interpreted under the applicable laws of the trust's jurisdiction.

[The remainder of this page is left blank intentionally.]

EXECUTION

IN WITNESS WHEREOF, the Settlor have executed this Agreement and affixed their seals, and the Trustee, in acceptance of this Trust, has caused this Agreement to be executed and its seal affixed.

Addresses:

Attorney General of South Carolina for the James
Brown "I Feel Good" Trust, as Settlor and
Beneficiary

Tommie Rae Brown, individually and on behalf of
her minor child, James Brown II, as Settlor and
Beneficiary

Larry Brown, as Settlor and Beneficiary

Venisha Brown, as Settlor and Beneficiary

Deanna J. Brown Thomas, as Settlor and
Beneficiary, individually and on behalf of her minor
child, Jason Brown-Lewis

Yamma N. Brown Lumar, as Settlor and
Beneficiary, individually and on behalf of her minor
children, Sydney [REDACTED] and Carrington [REDACTED]

Darryl Brown, as Settlor and Beneficiary,
individually and on behalf of his minor child, Janise
[REDACTED] [REDACTED]

Terry Brown, as Settlor and Beneficiary

_____, as Trustee

5406756/3

2406
73

Exs. 40

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named Settlor, sign, seal and as their act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS _____
day of _____, 2009.

Notary Public for South Carolina
My Commission Expires: _____

Trustee, James Brown Legacy Trust

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named _____, Trustee, sign, seal and as his/her act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS _____
day of _____, 2009.

Notary Public for South Carolina
My Commission Expires: _____

2407
-10

Exs. 41

SCHEDULE A

ASSETS CONTRIBUTED TO THE JAMES BROWN LEGACY TRUST

All of Settlor's rights and interest in any assets or proceeds whatsoever to be received or payable to any of the Settlor's, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to persona, image, likeness, royalties etc. (collectively, the "James Brown Assets").

EXHIBIT N

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Adele J. Pope,)
)
Plaintiff,)

C/A No. 12- CP-40-350

vs.)

JAMES BROWN LEGACY TRUST,
MOTION TO STAY

Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
and James Brown Legacy Trust, by)
Russell L. Bauknight, its Trustee,)
)
Defendant.)

FILED
2013 MAR 15 PM 3:52
JENNIFER W. HARRIS
C.C.P. & G.S.

Defendant James Brown Legacy Trust, through its trustee Russell L. Bauknight, moves this Court to stay the above-captioned action pending resolution of certain issues in *Wilson, et al. v. Dallas, et al.*, Opinion No. 27227 (filed February 27, 2013).

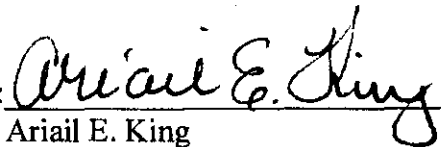
The South Carolina Supreme Court recently issued an opinion in the case of *Wilson, et al. v. Dallas*. In that opinion, the Court considered a “compromise agreement,” approved by the Circuit Court, which had created the James Brown Legacy Trust (“the Legacy Trust”). The Supreme Court held that the compromise agreement was not just and reasonable and reversed the lower court’s approval of the compromise. The opinion states that the settlement could not replace James Brown’s estate plan and trusts by creating new trusts.

The Legacy Trust was to be funded with a future interest. Due to Judge Early’s Order prohibiting distributions during the appeals process, it was never funded and no distributions have been made. If the status of the Legacy Trust continues as presently determined by the South

Carolina Supreme Court, the Legal Trust will not exist after remittitur.¹

Trial courts have the authority and discretion to stay an action. *See, e.g. Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 328 S.E.2d 621 (1985)(holding that trial court abused discretion in denying stay). Stays have been employed in a variety of circumstances in South Carolina, including situations where resolution of a controlling issue is pending in another proceeding. *See, e.g., 4 S.C. Jur. Actions* § 40 (citing *Piedmont Press Ass'n v., Record Pub. Co.*, 1256 S.C. 43, 152 S.E. 721 (1930)). Since there is a significant question as to whether the Legacy Trust exists, which will be resolved at the time of the remittitur, Defendant Bauknight respectfully requests that the motions as to the Legacy Trust be stayed.

A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK & GRIFFIN, LLP
P.O. Box 11208
Columbia, South Carolina 29211

By: 
Ariail E. King

Attorneys for Defendant James Brown
Legacy Trust, by Russell L. Bauknight, its
Trustee

Columbia, South Carolina

March 15, 2013

¹There has been no remittitur yet as on March 14, 2013, four Petitions for rehearing were filed: one on behalf of the Attorney General, one on behalf of Mr. Bauknight, one on behalf of James B., and one on behalf of Mrs. Pope. None of the petitions challenge the Supreme Court's holding as to the Legacy Trust.

EXHIBIT O

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. ^{2012 (en)} ~~2011~~-CP-40-350

PLAINTIFF'S STATUS REPORT AND
MEMORANDUM OF LAW

2013 APR - 1 PM 3:33
CLERK OF COURT
G.S.

By direction of the Honorable L. Casey Manning on March 18, 2013 Plaintiff Adele J.

Pope submits this report of the Status of this case in light of S. C. Supreme Court decision

No. 27227, issued February 27, 2013 and subsequent events.

Summary of Status and Relief Requested

The following summarizes the status of this case ["Case 350"]:

1. This case, brought under the South Carolina Freedom of Information Act ("FOIA"), has been pending for nearly 18 months and is ready to be heard and finally decided at the Court's earliest convenience.
2. Pursuant to the Supreme Court's suggestion (in footnote 29 of the opinion), the FOIA cases "should be considered by the circuit court in the first instance."
3. The Defendant James Brown Legacy Trust (the "Legacy Trust")'s argument that it will not exist if the Supreme Court's opinion stands is baseless, and the Legacy Trust is unquestionably a public body created by the South Carolina Attorney General.
4. All documents held by the Legacy Trust and/or its counsel are under the control of the Attorney General and subject to the provisions of FOIA.
5. The motion to consolidate this case with Case 4900 is now moot in light of the AG's indication that he will seek to withdraw from Case 4900.

These matters are discussed in detail below.

History of Case

Pope made proper requests under the FOIA for the public documents sought herein in June 2011. Those documents include:

The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust (requested from both Defendants) and

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust (requested from Defendant AG only)

Counsel for the Legacy Trust refused to release any documents and threatened to seek sanctions or other relief against Pope if she made further requests to the Legacy Trust under the FOIA. (See Ex. C to Ex. D of the Complaint herein.) The Attorney General failed to timely respond to Pope's FOIA request.

This case was filed on August 3, 2011 in Newberry County. Pursuant to the FOIA, Plaintiff sought a declaration that the requested documents are public; an Order directing their production; and her attorneys' fees incurred in prosecuting this matter. All such relief is provided for by statute. (See S. C. Code Ann. § 30-4-10, et seq.)

At the request of Defendant AG, this case was transferred to Richland County and given its current case number. Subsequently, both Defendants moved separately to consolidate this case with Case No. 2010-CP-40-4900 ("Case 4900"), which is a complex tort case.

Despite continuing requests by Plaintiff for a hearing, no motions have been decided since the case was transferred to Richland County more than a year ago.

On March 15, 2013, the Legacy Trust moved for a stay, based on its assertion that it no longer exists as a result of the Supreme Court's February 27 decision in another case.

Plaintiff opposes this request as set out below and asks again that this matter be heard at the Court's earliest convenience.

The Legacy Trust has Existed for Years, and No Stay Should be Granted.

The Legacy Trust was created by then-Attorney General Henry McMaster prior to May of 2010. Since its creation, the Legacy Trust has prosecuted a Richland County tort action against Pope for more than 2 years; engaged counsel and defended this action for nearly 18 months; sought, for more than a year, to intervene in another FOIA action brought by Pope; and been actively managed by Russell L. Bauknight for more than 3 years (See Affidavit of Bauknight, dtd. 1/10/12). Not once prior to March 15, 2012 had the Legacy Trust questioned its continued existence, despite being directly and continuously involved in litigation.

As is clear from the Supreme Court's opinion, the Court did not declare the Legacy Trust void. Instead, the Court reversed the approval of a *settlement agreement*. Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests that the Supreme Court eradicated the Legacy Trust *ab initio*.

Furthermore, The Legacy Trust's argument that it has no assets is incorrect. Since May 19, 2010 the Legacy Trust has pursued a multimillion-dollar claim against Plaintiff for alleged breaches of fiduciary duty and trust. Indeed, the Legacy Trust is still one of the lead Plaintiffs in Case 4900, wherein it has indicated no doubt as to its existence.

Its 18-month participation in this case also shows that the Legacy Trust has been funded in some manner. It has been and continues to be represented by a well-respected firm which, ostensibly, has been or expects to be paid for its work.

In short, the Legacy Trust exists, despite any current question of the manner or

amount of its funding.

The Legacy Trust is a Public Body and Must Produce the Requested Documents

The Legacy Trust was created by former Attorney General Henry D. McMaster in his official capacity, as is demonstrated by both known drafts of the document. These drafts show “the Attorney General of South Carolina” as one of the Settlers of the Trust. It is absurd to suggest that an entity created by the Attorney General of South Carolina could be considered anything other than a public body.

Our Supreme Court held in *Weston v. Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), that indirect public support of an organization could cause that organization to be treated as a public body. In *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (2003), the Kansas Court held that an organization’s use of state employees (who were not paid outside their state salaries) meant that it was a public body for FOIA purposes. This is particularly instructive, since many attorneys within the AG’s office have, in their capacities as state employees, expended considerable time in defending the Legacy Trust’s existence and pursuing its continued funding under the August 2008 settlement agreement.

In 2006, Attorney General McMaster – citing both of the above cases – opined that “‘indirect’ or ‘in kind’ public funding, such as by virtue of an entity’s use of public employees or governmental resources, is sufficient to invoke FOIA.” (See Opinion dtd. 5/19/06) Following the case law and the Attorney General’s own opinion, the vast state resources dedicated to the Legacy Trust give rise to its status as a public body.

Further, in January 2011, Attorney General McMaster – without the Trustee of the Legacy Trust – signed an amendment indicating that the settlement “created an entity (the ‘Settlement Entity’) to hold all of the assets related to James Brown” See Exhibit A,

attached. This "Confirmation and Amendment" confirms by its own language that the Legacy Trust (which is the "Settlement Entity") had been in existence since the settlement was executed.

The Legacy Trust asks this Court to find that the Attorney General can create an entity which does not have to produce its own public documents if the Supreme Court later finds the Attorney General's actions were improper. The Court should decline to do so and set a hearing on this matter at its earliest convenience.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770 m
Facsimile: (803) 403-8092
adam@silvernaillawfirm

March 27, 2013

Attorney for Plaintiff

EXHIBIT P

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Adele J. Pope,)
)
Plaintiff,)
)
vs.)
)
Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
and James Brown Legacy Trust, by)
Russell L. Bauknight, its Trustee,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No. 12- CP-40-350

**SUPPLEMENTAL AFFIDAVIT OF
RUSSELL L. BAUKNIGHT**

2016 MAY -2 PM 4:32
COURT CLERK
OFFICE

PERSONALLY APPEARED BEFORE ME, the affiant, Russell L. Bauknight, who,
being sworn, deposes and states the following:

1. I am a resident of Richland County, South Carolina;
2. The principal place of administration and usual place of business for the below mentioned Trust is located at 1517 Gervais Street, City of Columbia, Richland County, South Carolina 29201;
3. Since 2009, I have served continuously as the court-appointed Personal Representative and Trustee of the James Brown Estate and August 1, 2000 Irrevocable Trust Agreement (Trust);
4. Also in 2009, the parties to the Will and Trust contest entered into a court approved settlement agreement forming what is often referred to as the court approved Legacy Trust (Legacy Trust). The Legacy Trust was created pursuant to a court approved settlement agreement that ended years of litigation surrounding the validity of James Brown's Will and Trust;
5. The Legacy Trust was to be funded with the private property of James Brown pursuant to the terms of the settlement agreement;
6. The validity of the settlement agreement creating the Legacy Trust and the court order approving the settlement was appealed to the South Carolina Supreme Court;

7. The South Carolina Supreme Court's 2013 decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), overturned the court approved settlement agreement and the creation of the Legacy Trust;
8. The South Carolina Attorney General is not the agent or principal of the Legacy Trust. The settlor, a cotrustee, or a beneficiary may also request the court to remove a trustee, or a trustee may be removed by the court on its own initiative. See S.C. Code Ann. § 62-7-706;
9. It is my understanding that *Wilson v. Dallas* effectively terminated any potential involvement of the South Carolina Attorney General's Office in the Legacy Trust;
10. Since the Supreme Court's order in *Wilson v. Dallas*, the Attorney General has had no involvement in the Legacy Trust;
11. Because of the Supreme Court's order overturning the settlement agreement and creation of the Legacy Trust, the Legacy Trust has ceased to function as a court approved trust;
12. I understand that a Freedom of Information Act (FOIA) request has been filed seeking documents establishing the Legacy Trust;
13. It is my understanding that the Attorney General has provided all documents that would respond to this request, though I do not believe the Legacy Trust is properly subject to the FOIA;
14. It is my understanding that FOIA exists to allow a citizen to request documents and information related to public bodies and public documents. Accordingly, I do not believe that the Legacy Trust—a private trust—is the proper entity for a FOIA request;
15. Even if the Settlement Agreement creating the Legacy Trust had not been overturned, the Legacy Trust is not a public body as defined in the South Carolina FOIA statute. See S.C. Code Ann. § 30-4-20(a) (Attached as **Exhibit A**);
16. Of particular importance, at the briefing stage of the appeal of the settlement agreement, Ms. Adele Pope affirmatively stated that “[p]rivate foundations such as the ‘I Feel Good’ foundation/trust are not public charities.” (Appellants’ Brief, p. 5, attached as **Exhibit B**). Her position that the Trust is private can be found throughout her briefs. (E.g., *id.* at pp. 3, 4, 5, 6, 7; Appellants’ Reply Brief, pp. 2, 5);
17. The private property of James Brown was to fund the Legacy Trust. Consequently, Ms. Adele Pope correctly referred to and admitted that the Trust is not subject to FOIA as it is “private” by her own admission;



18. Because the Legacy Trust is not a public body, it does not possess public records as defined in the South Carolina FOIA statute. See S.C. Code Ann. § 30-40-20(c);
19. The Legacy Trust is not supported in whole or in part by public funds, nor does the Legacy Trust expend public funds. Accordingly, it is my understanding that the Legacy Trust documents are private trust documents;
20. The only funds that the Legacy Trust was ever designed to hold were the private funds of James Brown, and this functioning of the court approved Legacy Trust was overturned and struck down in *Wilson v. Dallas*. Therefore, the court approved Legacy Trust under the settlement agreement does not exist.

FURTHER AFFIANT SAYETH NAUGHT,



Russell L. Bauknight

Sworn and subscribed before me
this 2nd day of May, 2016

 L.S.
Notary Public for the State of South Carolina
My commission expires: 3-21-18

EXHIBIT Q

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

**RESPONSE
OF ATTORNEY GENERAL
TO BRIEF OF PLAINTIFF**

The Attorney General responds as follows to those parts of the Brief of Plaintiff that are addressed to him.

Plaintiff contradicts herself by claiming that the Attorney General has opposed her Freedom of Information Act request and has extended "this simple action into multi-year litigation," while acknowledging that the Attorney General asserts that that he has produced all documents subject to her Freedom of Information Act request. She contests that the Attorney General has complied but can point to no documents withheld other than the Sweeny Wingate documents discussed below which were not part of her original FOIA request. The attached letters of March 7 and 23, 2013, and November 27, 2013, show that the Attorney General was asserting over three years ago both his compliance with FOIA and his willingness for this case to be heard. Delays have not come as a result of the Attorney General's position, and Plaintiff has, herself, contributed the bulk of filings through, among other documents, her submission of at least nine irrelevant, inadmissible affidavits thereby requiring the defendants to move to strike

them.

I

The Attorney General Is Not Required To Produce Sweeny Wingate Documents

Plaintiff's Freedom of Information Act request did not include Sweeny Wingate documents, and the Office of the Attorney General is not required to produce them. Her FOIA request attached to the Complaint (copy attached) was directed to the "Custodian of Records" of the Office of the Attorney General which shows that she did not intend to reach Sweeny Wingate files. Although Plaintiff's counsel requested such files by letter in 2013, Plaintiff has apparently not made a request for such files in a document filed in this litigation before this month. *See*, Memorandum of Plaintiff, January 10, 2012 (attached). FOIA requests may not evolve during the course of litigation, and instead, must be taken as written. Moreover, Plaintiff's Sweeny Wingate request appears to be seeking a valuation or appraisal of the estate and trust, but in an order last year, the Honorable Eugene Griffith found that the Office of the Attorney General did not have the document despite having ordered production of files of Sweeny Wingate. Order, *Summer v. Wilson*, January 16, 2015, p. 6 & 8, attached to Defendant's Memorandum of May 2, 2016.

II

Plaintiff is Not Entitled to an Award of Attorney's Fees

Plaintiff requests attorney's fees and costs at the shockingly high and unsupported respective amounts of \$30,950 and \$1128.10. Plaintiff is not entitled to fees because she has not prevailed in this action. Even if, *arguendo*, she did prevail, she would have to document her hours. She could not claim time for the numerous irrelevant, inadmissible affidavits that she has

filed. She is the party that has turned a simple case into one filled with the numerous documents that she has filed.

A fee “award . . . must be reasonable and supported by adequate findings.” *Burton v. York County Sheriff's Dept.*, 594 S.E.2d 888, 898, 358 S.C. 339, 357-58 (Ct. App.,2004). *See also, Sloan v. South Carolina Dept. of Revenue*, 762 S.E.2d 687, 689, 409 S.C. 551, 555-56 (S.C.,2014). (“Sloan is entitled to recover his reasonable attorney's fees and costs in this action.”). So far, Plaintiff has failed to support her claim. She filed a conclusory affidavit on January 9, 2012, which does not appear to have been updated, asking for \$9,000.00 in attorney’s fees for this case at a rate of \$100.00 per hour and \$300.00 in costs. These amounts undermine her more than tripling that attorney’s fee claim, including the now \$250.00 hourly rate, and her nearly quadrupling her costs. Moreover, she cannot testify by affidavit as to the hours expended by her attorney. Only he can do so.

In fact, Plaintiff’s claims are so high as to shock the conscience of this Court and warrant barring fees altogether under substantial Federal precedent. “[A] district court may, in its discretion, deny a request for attorneys’ fees in its entirety when the request, submitted pursuant to 42 U.S.C. § 1988, is so outrageously excessive it ‘shock[s] the conscience of the court.’” (emphasis added) *Fair Hous. Council of Greater Washington v. Lindow*, 999 F.2d 92, 96 (4th Cir. 1993), citing *Sun Pub. Co. v. Mecklenburg News, Inc.*, 823 F.2d 818, 819 (4th Cir. 1987), (a request for attorneys’ fees, which is so exorbitant as to shock the conscience of the court, may be denied . . .); *Plunkett v. Stephens*, No. C.A. 3:93-0304-19, 1997 WL 907958, at *1 (D.S.C. Dec. 18, 1997)(denying fee request in its entirety quoting *Lindow* and *Sun Publishing*).

In the context of fee-shifting provisions, such as those in 42 U.S.C. § 1988 and Title VII

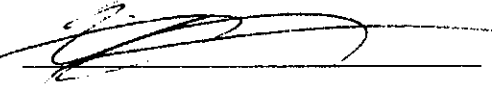
of the Civil Rights Act of 1964, “the Supreme Court has recognized that although a prevailing party ‘should ordinarily recover an attorney’s fee,’ ‘special circumstances’ can render ‘such an award unjust.’” (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)). *Doe v. Bd. of Educ. of Baltimore Cnty.*, 165 F.3d 260, 264 (4th Cir. 1998). Such special circumstances are present here in the grossly excessive hours and for the other reasons noted below. Although this Court is not required to follow this Federal precedent, the cases do provide a strong guidepost for assessing reasonableness, and Plaintiff’s claims are most unreasonable.

For these reasons, and those set forth in the State’s Memorandum of May 2, the Attorney General respectfully requests that judgment be granted to the Attorney General and that Plaintiff’s case be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

May 16, 2016

ATTORNEYS FOR THE ATTORNEY GENERAL

EXHIBIT R

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as Attorney
General of South Carolina, and James
Brown Legacy Trust, by Russell L.
Bauknight, its Trustee,

Defendants.

Case No. 12-CP-40-350

**ORDER GRANTING JAMES
BROWN LEGACY TRUST'S
MOTION TO DISMISS**

RICHLAND COUNTY
FILED
2016 JUN 20 PM 2:12
CLERK OF COURT
C.C.P. 2.6.S.

This matter comes before the Court on the motion of Defendant James Brown Legacy Trust ("the Legacy Trust") for an order dismissing Plaintiff's complaint. The Plaintiff's complaint sought a declaratory judgment that Legacy Trust was a public body that was required to disclose certain documents under the Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. Having carefully considered all of the parties' arguments, the Court hereby GRANTS the Legacy Trust's Motion to Dismiss.

The Legacy Trust moves for an order dismissing this case pursuant to South Carolina Rule of Civil Procedure 12(b)(6) for failure to state facts sufficient to constitute a cause of action. The Legacy Trust asserts three grounds in support of its motion to dismiss: (1) the Legacy Trust is not subject to the Freedom of Information Act ("FOIA"); (2) the Legacy Trust no longer exists following *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and (3) the controversy is moot because Plaintiff is in possession of the documents requested by FOIA from the Legacy Trust.

As to its first ground, the Legacy Trust argues that it is not subject to the FOIA because it was created as a private trust and it is not a public body within the meaning of the act. In order

for an entity to be subject to the FOIA, it must fall within the definition of "public body." *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 400, 401 S.E.2d 161, 163 (1991). The FOIA's definition of "public body" does not explicitly cover a private trust. The definition does, however, extend to "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds," S.C. Code Ann. § 30-4-20(a) (2007). The Plaintiff argues that the Legacy Trust is subject to FOIA under this exception. *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991).

However, our Supreme Court has ruled that "the application of the FOIA beyond traditional governmental entities is limited to statutorily defined public bodies, which are only those entities supported by public funds." *Disabato v. S.C. Ass'n of School Adm'rs.*, 404 S.C. 433, 454-55, 746 S.E.2d 329, 340 (2013) (citing *Weston*, 303 S.C. at 403, 401 S.E.2d at 164). As the Supreme Court has held, a private entity is only subject to the FOIA where it "**receive[s] government funds *en masse***" or it is "**generally supported** by public funds." *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341 (emphasis added).

Here, Plaintiff claims that some level of public funding has gone toward the creation of the Legacy Trust because of the Attorney General's involvement in the settlement agreement creating the Legacy Trust. Plaintiff has failed to alleged facts necessary to quantify this alleged support and has failed to allege any facts showing how the Legacy Trust was generally supported by public funds, created to expend public funds, or has received government funds *en masse*. Absent these factual allegations, Plaintiff's complaint is insufficient to hold the Legacy Trust subject to FOIA, and dismissal on this first ground is warranted.

Second, the Legacy Trust argues that it no longer exists following the South Carolina Supreme Court's holding in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), and, as such,

it cannot be subject to the FOIA. The Court agrees. The operation of the Legacy Trust and the entire compromise agreement creating the Legacy Trust were stayed pending the Supreme Court's review of the compromise agreement. In *Wilson v. Dallas*, the Supreme Court invalidated the compromise agreement that created the Legacy Trust. *Id.* at 450, 743 S.E.2d at 767-78. This Court finds that the Supreme Court's ruling that the compromise agreement could not replace James Brown's existing trusts by creating new trusts explicitly invalidated the existence of the Legacy Trust. *Wilson v. Dallas*, 403 S.C. at 446, 743 S.E.2d at 765. As such, the Legacy Trust does not exist and cannot be subject to FOIA.

Finally, the Legacy Trust argues that the controversy is moot because Plaintiff is in possession of the documents requested from the Legacy Trust. When the documents subject to FOIA are produced, no justiciable controversy remains. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Attorney General has stated in documents submitted to this Court that he has provided the only two documents that would be responsive to Plaintiff's FOIA request. Plaintiff does not contend otherwise. As such, the Court finds that no justiciable controversy remains and, accordingly, this case should be dismissed as moot.

The Court's dismissal of this action rests independently on each of Legacy Trust's three grounds for dismissal. Each ground is sufficient standing alone to grant Legacy Trust's motion to dismiss.

IT IS SO ORDERED.


DOYLE A. EARLY, III
Circuit Judge, Second Judicial Circuit

EXHIBIT S

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope.

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee.

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

ORDER

RICHLAND COUNTY
FILED
2016 JUN 24 AM 11:32
JANET L. W. MOORE
C.P. & O.S.

This matter has come before this Court pursuant to various motions of the parties including motions to dismiss and for judgment on the pleadings of the Defendant Attorney General and a motion for summary judgment of the Plaintiff. After carefully reviewing the filings of the parties and considering the arguments of counsel concerning the motions in Aiken on May 17, 2016, this Court grants the Attorney General's Motion to Dismiss.

The Plaintiff has brought this action under the Freedom of Information Act, S.C. Code Ann. §30-4-10, et seq. seeking the following:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

MR
tel

These documents are potentially discoverable documents under pending litigation in Richland /Aiken counties and will be governed by the South Carolina Rules of Civil Procedure. FOIA is not a tool that may be used to bypass civil discovery in a pending case. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 25, 2002) stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." (copy on file in this case). Although the FOIA at issue in Judge Westbrook's case related to a post conviction case, the reasoning applies to civil cases such as the pending litigation in Richland and Aiken.

Our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). The Supreme Court has also recognized that "[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989)¹; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 409 S.E.2d at 409. Although *Robinson* involved criminal proceedings, our Supreme Court's recitation of the federal

¹ "[A] court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108." *Id.*

rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40(4) for “[m]atters specifically exempted from disclosure by statute or law,” (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are “law.” *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)²; *United States v. Hyass*, 355 U.S. 570, 575 (1958)³; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).⁴

Because the above documents may be sought through discovery in the pending litigation and for the reasons set forth above, IT IS ORDERED that this case be dismissed.

AND IT IS SO ORDERED.

June 14, 2016
Greenville, South Carolina

DOYET A. EARLY, III
DOYET A. EARLY, III
PRESIDING JUDGE

2 “[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights” *Id.*

3 “The phrase ‘a law of the United States,’ as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base” *Id.*

4 “[E]xception [under Ohio discovery statute] for other ‘state law’ may include procedural court rules, and does include [Ohio] Crim.R. 6(E).” *Id.*

EXHIBIT T

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Adele J. Pope, Appellant,

v.

Alan Wilson, in his capacity as Attorney General of
South Carolina, and James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee, Respondents.

Appellate Case No. 2016-001727

Appeal From Richland County
Frank R. Addy, Jr., Circuit Court Judge
Doyet A. Early, III, Circuit Court Judge

Opinion No. 2019-UP-219
Heard February 12, 2019 – Filed June 19, 2019

REVERSED AND REMANDED

Adam Tremaine Silvernail, of Law Office of Adam T.
Silvernail, of Columbia, for Appellant.

Keith M. Babcock, Ariail Elizabeth King, and David Lee
Paavola, all of Lewis Babcock L.L.P., of Columbia, for
Respondent James Brown Legacy Trust, by Russell L.
Bauknight, its Trustee.

Solicitor General Robert D. Cook and Deputy Solicitor General J. Emory Smith, Jr., both of Columbia, for Respondent Alan Wilson.

PER CURIAM: In this action seeking relief under the Freedom of Information Act (FOIA), Appellant Adele Pope seeks review of the circuit court's two separate orders dismissing her complaint.¹ We reverse these orders and remand for an order dismissing the Legacy Trust as a defendant and for further proceedings consistent with this opinion.²

FACTS/PROCEDURAL HISTORY

This FOIA action has a procedural history similar to a second FOIA action filed by Pope (involving a separate FOIA request dated July 19, 2011) and addressed by this court in a published opinion issued simultaneously with this opinion. *See Adele J. Pope v. Alan Wilson, in his capacity as Attorney General of South Carolina*, Op. No. 5657 (S.C. Ct. App. filed Jun 19, 2019). Unique to the present action is Pope's FOIA request dated June 30, 2011, in which Pope requested the following documents from Respondent Alan Wilson, in his capacity as Attorney General of South Carolina (AG):

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust[; and]
2. All correspondence, email and/or other communications between any member of the Office of the [AG] and Russell L. Bauknight between August 1, 2010[,] and May 4, 2011[,] related to the value of the assets of the Estate of

¹ Included in Pope's assignments of error is the argument that the circuit court should have granted her summary judgment motion. However, "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003).

² With the exception of mootness, we decline to address the Attorney General's additional sustaining grounds. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("It is within the appellate court's discretion whether to address any additional sustaining grounds.").

James Brown and/or the James Brown 2000
Irrevocable Trust.

Pope also requested from Respondent James Brown Legacy Trust (Legacy Trust) the "final and all drafts, signed and unsigned, of the James Brown Legacy Trust." This letter was also dated June 30, 2011, and both letters referenced FOIA.

In a letter dated August 5, 2011, in which the AG was responding to Pope's July 19, 2011 FOIA request, the AG referenced Pope's June 30, 2011 letter, stating,

I have also been notified by attorneys in the Civil Division of the [AG] that you refer to a request dated June 30, 2011[,] in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

After having received no direct response to her June 30, 2011 letter, Pope filed this FOIA action in Newberry County on August 3, 2011, seeking the records referenced in her letters to the AG and the Legacy Trust and attaching copies of these letters to her complaint. The AG and the Legacy Trust then filed respective motions to dismiss this action, and Pope subsequently filed a motion for summary judgment. After conducting a hearing on January 11, 2012, the circuit court issued a Form 4 judgment transferring venue to Richland County. The AG later filed a motion for judgment on the pleadings.

In an order dated June 14, 2016, the circuit court granted the AG's motion to dismiss. In its order, the circuit court referenced the pending fiduciary litigation involving the parties (*Bauknight v. Pope*)³ and concluded that FOIA "is not a tool that may be used to bypass civil discovery in a pending case." The circuit court also concluded that the requested documents were exempt under FOIA because the South Carolina Rules of Civil Procedure constitute "law" for purposes of the exemption in section 30-4-40(a)(4) of the South Carolina Code (2007), which

³ Civil Action No. 2010-CP-40-4900.

allows a public body to exempt from disclosure "[m]atters specifically exempted from disclosure by statute or law." Pope filed a motion to alter or amend the circuit court's order, but the circuit court denied the motion.

On June 20, 2016, the circuit court granted the motion to dismiss filed by the Legacy Trust. In its order, the circuit court concluded (1) Pope's complaint failed to allege facts sufficient to characterize the Legacy Trust as a "public body" under FOIA; (2) the Legacy Trust no longer existed because it was invalidated by the supreme court's opinion in *Wilson v. Dallas*;⁴ and (3) Pope's action was moot because she was in possession of the records requested from the Legacy Trust and the AG. Pope filed a motion to alter or amend the circuit court's order, but the circuit court denied the motion. This appeal followed.

LAW/ANALYSIS

I. Mootness

Pope assigns error to the circuit court's conclusion that her FOIA action is moot. Both the AG and the Legacy Trust argue this action is moot because the AG provided copies of the only documents responsive to Pope's request,⁵ which were two unsigned drafts of the Legacy Trust attached to the AG's answer to Pope's complaint. The AG also asserts that these drafts "have long been of public record in *Wilson v. Dallas*, . . . a case in which [Pope] was a party." The AG states that he has no other documents that are responsive to Pope's request. However, Pope asserts that neither the AG nor the Legacy Trust complied with her request.

"A moot case exists 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 reviewing court." *Sloan v. Friends of Hunley, Inc. (Friends I)*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). "If there is no actual controversy, this [c]ourt will not decide moot or academic questions." *Id.* In *Friends I*, our supreme court addressed the question of mootness as it pertained to a FOIA action and affirmed the circuit court's ruling that the case was moot because the defendant provided the requested documents.

⁴ 403 S.C. 411, 450–51, 743 S.E.2d 746, 767–68 (2013).

⁵ The circuit court made this conclusion in its order granting the motion to dismiss filed by the Legacy Trust. Also, the AG asserted mootness as an additional sustaining ground for the order granting his separate motion to dismiss.

Id. at 26, 630 S.E.2d at 477–78.⁶ The court held, "Because the information Sloan sought has been disclosed, there is no continuing violation of FOIA upon which the trial court could have issued a declaratory judgment." *Id.* at 26, 630 S.E.2d at 478.

In *Sloan v. South Carolina Department of Revenue*, our supreme court once again addressed the question of mootness in a FOIA action. 409 S.C. 551, 554–55, 762 S.E.2d 687, 688–89 (2014). The court affirmed the circuit court's finding that the plaintiff's request for a declaratory judgment was mooted when the defendant produced the requested information, but the court also held that the defendant's initial response was incomplete. *Id.* Further, after concluding the action was moot, the court added, "*This . . . does not end the case*; for [the plaintiff] further sought to recover his attorney's fees and costs as provided in section 30-4-100(b)." *Id.* at 555, 762 S.E.2d at 689 (emphasis added). We will address Pope's request for attorney's fees in another section of this opinion.

In determining whether this case is moot, we begin our analysis with the foundation on which Pope bases her claim: "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(a) (2007).⁷ In ruling this action was moot, the circuit court stated Pope did not contest the AG's claim that he had given her all the documents responsive to her request. However, the transcript of the May 17, 2016 motions hearing indicates that Pope challenged this claim. Pope also challenges this claim in her appellate brief. Because there still exists an actual controversy concerning the AG's compliance with Pope's FOIA request, this action is not moot. *See Friends I*, 369 S.C. at 26, 630 S.E.2d at 477 ("If there is no actual controversy, this [c]ourt will not decide moot or academic questions.").

⁶ Therefore, the defendant was able to temporarily avoid the question of whether it was a public body for purposes of FOIA. *See id.* at 24, 630 S.E.2d 476–77 (noting the defendant "sought summary judgment arguing that [the plaintiff's] cause of action for a declaratory judgment finding [the defendant] a public body subject to FOIA was moot because they had fully complied with [the plaintiff's] FOIA request"). On appeal, the defendant finally admitted it was a public body for purposes of the plaintiff's FOIA action. *Sloan v. Friends of Hunley, Inc. (Friends II)*, 393 S.C. 152, 155, 711 S.E.2d 895, 896 (2011).

⁷ We are citing to the version of the statute in effect at the time Pope sent her FOIA request to the AG.

II. Existence of Legacy Trust

Pope asserts the circuit court erred by concluding that the Legacy Trust was no longer in existence due to the supreme court's opinion in *Wilson v. Dallas*, which invalidated the compromise agreement creating the Legacy Trust. She argues that after the opinion in *Wilson v. Dallas* was issued, the Legacy Trust continued to litigate in *Bauknight v. Pope* and there is no evidence in the record showing that a dissolution of the entity as a charitable organization has taken place.

On the other hand, the Legacy Trust argues that the premise to Pope's FOIA action against it was that the Legacy Trust was subject to FOIA because of the AG's involvement in the creation of the trust and his anticipated continuing oversight of the trust. Pope's August 3, 2011 complaint states, in pertinent part, that the Legacy Trust

is, on information and belief, a public body under [FOIA], with Russell L. Bauknight as its current trustee. The Legacy Trust is under the continuing and direct control of [the AG] through the AG's unfettered right at any time and from time to time to remove and replace the trustee of the Legacy Trust with such person as [the AG] shall select, with all trustees to serve at the AG's pleasure.

The Legacy Trust further asserts that the *Wilson* opinion mooted the premise for this action against the Legacy Trust because *Wilson* effectively terminated the AG's involvement in the Legacy Trust. Russell Bauknight's May 2, 2016 affidavit indicates that the AG has had no involvement in the Legacy Trust since the *Wilson* opinion was filed.

Based on the foregoing, we agree that the issuance of the *Wilson* opinion mooted the premise for naming the Legacy Trust as a defendant in this action. However, rather than merely dismissing the Legacy Trust as a defendant, the circuit court granted the Legacy Trust's motion to dismiss Pope's complaint based on the court's erroneous conclusion that the entire action was moot. *See supra* section I. Therefore, we reverse this order. On remand, the circuit court shall issue an order dismissing merely the Legacy Trust as a defendant.⁸

⁸ Because we are ordering the circuit court to dismiss the Legacy Trust as a defendant, we need not reach the issue of whether the Legacy Trust is a public

III. FOIA Exemption

Pope argues the circuit court erred in concluding her FOIA request was subordinate to discovery rules. She asserts that her status as a defendant in pending fiduciary litigation does not affect her rights under FOIA.

We note the circuit court's order granting the AG's motion to dismiss was virtually identical to its order dismissing Pope's complaint in *Adele J. Pope v. Alan Wilson, in his capacity as Attorney General of South Carolina*, Op. No. 5657 (S.C. Ct. App. filed Jun 19, 2019). For the reasons discussed in section I of our published opinion in that case, we reverse the circuit court's order granting the AG's motion to dismiss the present action and remand for further proceedings.

IV. Attorney's Fees

Pope argues she is entitled to attorney's fees because the AG violated FOIA by refusing to provide the requested records. Because we are remanding the case for further proceedings, the question of attorney's fees is premature. See S.C. Code Ann. § 30-4-100(B) (Supp. 2018) ("If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.").

CONCLUSION

Based on the foregoing, we reverse the circuit court's two orders dismissing Pope's complaint and remand for an order dismissing the Legacy Trust as a defendant and for further proceedings consistent with this opinion. In light of this disposition, we need not address Pope's remaining issue. See *Futch*, 335 S.C. at 613, 518 S.E.2d at 598 (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

REVERSED AND REMANDED.

body. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

WILLIAMS, GEATHERS, and HILL, JJ., concur.

EXHIBIT U



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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COLUMBIA, SOUTH CAROLINA 29211
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COLUMBIA, SOUTH CAROLINA 29201
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April 01, 2020

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: Adele Pope v. Alan Wilson (James Brown Legacy Trust)
Lower Court Case No. 2012CP4000350
Appellate Case No. 2016-001727

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

V. Claire Allen, Deputy

Enclosure

cc: Adam Tremaine Silvermail, Esquire
J. Emory Smith, Jr., Esquire
Keith M. Babcock, Esquire
Ariail Elizabeth King, Esquire
David Lee Paavola, Esquire
Robert D. Cook, Esquire

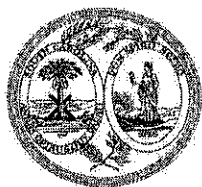
EXHIBIT V

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action Number: 2012-CP-40-350
Adele J. Pope,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER OF DISMISSAL
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
and James Brown Legacy Trust, by	)	
Russell L. Bauknight, its Trustee,	)	
	)	
Defendants.	)	
	)	

Pursuant to the South Carolina Court of Appeals Opinion Number 2019-UP-219, heard February 12, 2019, and filed on June 19, 2019, this Court hereby dismisses Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee from the above referenced matter.

AND IT IS ORDERED.

Clifton Newman
Circuit Court Judge



Richland Common Pleas

Case Caption: Adele J Pope vs Alan Wilson , defendant, et al

Case Number: 2012CP4000350

Type: Order/Dismissal

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2020-05-14 17:01:08 page 2 of 2

EXHIBIT W

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-0350
	)	
Adele J. Pope,	)	
	)	PLAINTIFF'S BRIEF REGARDING
Plaintiff,	)	ISSUES FOR 11/2/20 HEARING
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	

Plaintiff Adele J. Pope ("Plaintiff") submits this brief setting out her position on the issues before this Court on remand from the Court of Appeals' decision in *Pope v. Wilson, et al*, 2019-UP-219 (June 19, 2019).

This action was brought under the South Carolina Freedom of Information Act ("FOIA") on August 3, 2011, after the South Carolina Attorney General ("AG") failed to respond to Plaintiff's request for public documents under FOIA. After the response period passed, Plaintiff brought this FOIA action in Newberry County. The AG appeared and moved for dismissal based, in part, on its position that certain of the documents sought under FOIA were also the subject of discovery requests and motions in *Bauknight, et al*, and *Wilson, et al v. Pope*, Case No. 2010-CP-40-4900 ("Richland 4900"), the AG also sought dismissal on the basis that it alleged it never received the FOIA request.¹

Before his motion to dismiss was fully decided, in March 2013, the AG filed his answer, which contains attachments responsive to certain of Plaintiff's FOIA requests. It further asserts that the AG is not in possession of documents responsive to Plaintiff's request for the

¹ Plaintiff notes that the request was attached to the Complaint herein, which was undisputedly served on the AG, which has to date never issued a proper FOIA response.

\$4.7 million valuation of James Brown's assets and correspondence related thereto.

In 2016, the AG secured an Order of the Circuit Court dismissing this case as moot, which Order was reversed on appeal. The Court of Appeals found that there remained a controversy over whether the AG had responded fully to Plaintiff's FOIA request and, further, that the AG's blanket suggestion that discovery in Richland 4900 barred Plaintiff from exercising her FOIA rights was incorrect.

In October 2020, the AG released several documents in response to a FOIA request by a Newberry journalist's FOIA request which had never been presented or acknowledged in this case, despite bearing directly on issues which have been presented herein. These documents are attached to and described in the Affidavit of Adele J. Pope, filed herewith.²

Among these startling just-released documents is a letter dated January 5, 2011, from Everett A. Kendall, Esquire, to Russell L. Bauknight (and copied to members of the Office of the AG and several counsel for others), which is entirely redacted, other than the words "he is" in between redactions on page 3. It appears exceedingly likely that this correspondence touches on the valuation (and is thus responsive to Plaintiff's FOIA request), as it was sent nearly contemporaneous with the review of the \$4.7 million valuation by the IRS.

This letter is further less than a month removed from an email of William W. Wilkins, Esquire, strategizing with counsel for other parties regarding the timing and disclosure of the \$4.7 million valuation. (See Email of Wilkins, dtd. 12/17/10, attached as Exhibit A) Although sent to members of the Office of the AG and related to the valuation, this email was also not produced in response to Plaintiff's 2011 FOIA request and was first received well after the filing of this case.

² Plaintiff notes that the affidavit contains two typographical errors: 1) Paragraph 19 should say "the AG never hired SWB," and 2) Paragraph 35 should say "is necessary," rather than "in necessary."

The 2010 email and just-disclosed redacted 2011 letter make clear that the AG has not yet attempted to make a full FOIA response which, pursuant to S.C. Code Ann. §30-4-30(c), must make a final determination and disclosure of what documents the public body will make available under FOIA; what documents it considers exempt from disclosure; and the specific exemption claimed for any documents possessed by the public body. Nothing of the sort has happened in this case, and the continued discovery of documents which were responsive in 2011 shows that the AG's failure to properly respond has been against the letter and spirit of the FOIA. The AG should be directed to make a complete and proper response to the 2011 FOIA request, including an unredacted copy of the January 5, 2011 letter and all other responsive documents.

The email noted above makes clear that the AG was involved in communications about the introduction of the appraisal into the then-pending *Wilson v. Dallas* appeal. A "public record," subject to disclosure under the FOIA includes documents "prepared, owned, used, in the possession of, or retained by a public body." The AG at least used the valuation, as demonstrated by the above-described email.

Additionally, Plaintiff requested copies of all draft and final Legacy Trust documents, including any amendments. The AG attached two drafts from the public record to its 2013 answer herein, but has still never provided a copy of a 2010 amendment which was signed by then-AG Henry D. McMaster. (See Exhibit B, which Plaintiff received from a third party) Once again, this demonstrates that the AG has never made a full proper FOIA response herein and must be directed to do so.

Because documents have surfaced piecemeal in the intervening 9 years, the AG must be directed to fully respond pursuant to the FOIA and through the present time with all

responsive documents.

Plaintiff is Entitled to an Award of Attorney's Fees and Costs

The other remaining issue on remand is Plaintiff's cause of action for attorney's fees and costs incurred in this action, pursuant to S.C. Code Ann. §30-4-100(b). Plaintiff notes that pursuant to the Supreme Court's holding in *Sloan, supra*, she is entitled to all fees and costs incurred until this case is finally determined. Upon its direction that the AG make a full and proper FOIA response, this Court should also find that Plaintiff is entitled to recover her reasonable attorneys' fees and costs against the AG, as set out in an affidavit of her counsel to be submitted.

Conclusion

For the reasons set forth above, Plaintiff asks that this Court order the AG to immediately and fully respond to her 2011 FOIA request and to pay the reasonable attorneys' fees and costs incurred in bringing and maintaining this action to enforce Plaintiff's FOIA rights.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

October 27, 2020

Attorney for Plaintiff

EXHIBIT A

Marcie Greene

From: Black, David <DBlack@nexsenpruet.com>
Sent: Friday, December 17, 2010 9:10 PM
To: Sonny Jones; Mary Frances Jowers; 'amedlin@sc.rr.com'
Cc: Fred L. Kingsmore
Subject: FW: Appraisal Footnote
Attachments: np.png; links_1.png; links_2.png

Please see attached. I have also reached the conclusion that this is the best strategy. We do not want to lose credibility with the Court through an unnecessary motion to strike proceeding.

J. David Black
 Member

Nexsen Pruet, LLC
 1230 Main Street, Suite 700
 Columbia, SC 29201
 PO Drawer 2426 (29202)
 T: 803.640.2072, F: 803.727.1409
DBlack@nexsenpruet.com

www.nexsenpruet.com

NEXSEN|PRUET



From: Wilkins, William W.
Sent: Friday, December 17, 2010 3:04 PM
To: Black, David; Kingsmore, Fred L.
Subject: Appraisal Footnote

Gentlemen,

After much discussion with many of you, I propose the following language for the footnote regarding the appraisal:

"In contrast, one of Russell Bauknight's first official acts as personal representative of Mr. Brown's estate was to engage an investment banking firm to conduct an appraisal of the estate's value."

I understand that this language is less descriptive than many of you would like and have proposed. However, the appraisal and the proceedings in which it is involved are not part of the record in this case. The language I propose is as detailed as we should be at this time.

Nonetheless, I understand the importance of the appraisal and the significance of the value it places on Mr. Brown's estate. Further, I believe it is critical to our appeal. Thus, I propose that after the appraisal is accepted by the IRS for tax purposes (which I understand is very likely to occur), we file an amended application with the probate court attaching to it the appraisal as an exhibit. After that time, we will petition the Supreme Court to take judicial notice of the IRS's acceptance of the appraisal and the amended appraisal to which it is an exhibit.

I believe this is the proper course of action for two reasons 1) it is consistent with the rules and 2) it will highlight this important issue for the court at a time of our choosing after Pope and Buchanan have filed their reply brief. If we insert a

detailed footnote in our initial brief it will give Pope and Buchanan the ability to argue that we played fast and loose with the rules, move to strike it from our brief, etc.

I believe this is the best course of action both legally and strategically. We are much better off filing our petition after the IRS has accepted the appraisal and we have filed an amended appraisal with the probate court.

Billy

***PLEASE NOTE
NEW STREET ADDRESS***

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EXHIBIT B

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 Bauknight 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

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.

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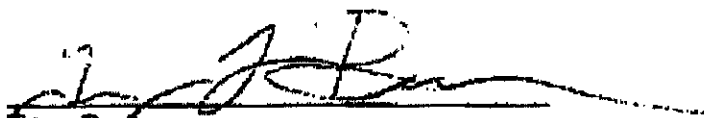
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NPCOL1309027-CAOR-12880 044-1-0900x


Terry Brown

NP0011208327.4-ADR-OMR 0441-00004

EXHIBIT X

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-40-0350

PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
RELIEF UNDER THE S.C. FREEDOM
OF INFORMATION ACT AND IN
OPPOSITIONS TO MOTIONS OF
THE ATTORNEY GENERAL

Plaintiff Adele J. Pope ("Plaintiff") submits this supplemental memorandum supporting the relief sought in her complaint herein and in opposition to motions of the Attorney General to dismiss, to strike and for judgment on the pleadings in the form of the proposed Order attached hereto.

Plaintiff bases this memorandum on the entire record herein, including the Affidavit of Adele J. Pope filed herewith.

Respectfully submitted,

s/Adam T. Silvernail

Adam T. Silvernail

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December 18, 2020

Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-0350
	)	
Adele J. Pope,	)	
	)	ORDER REQUIRING PRODUCTION
Plaintiff,	)	OF PUBLIC RECORDS
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
_____	)	

THIS MATTER COMES BEFORE THE COURT for a hearing on the merits of Plaintiff's claims under the South Carolina Freedom of Information Act.¹ A hearing was held on November 19, 2020.² Present were Adam T. Silvernail, attorney for Plaintiff Adele J. Pope ("Plaintiff") and J. Emory Smith, Jr., attorney for Defendant Alan Wilson, as Attorney General of South Carolina ("Defendant" or "AG"). The Court also heard Defendant's motion to dismiss and motions to strike. For the reasons discussed below, the Court **DENIES** Defendant's motions to dismiss, for judgment on the pleadings, and to strike and **GRANTS** the relief sought in Plaintiff's complaint herein.

BACKGROUND

Plaintiff, a South Carolina citizen residing in Newberry County, commenced this action in Newberry County on August 3, 2011, pursuant to the South Carolina Freedom of

¹ Plaintiff moved for summary judgment in 2011, which motion remains pending. At the November 19, 2020 hearing, however, the parties argued all substantive matters related to this action, and the Court therefore proceeds with determining the merits of the case.

² The Court acknowledges that this case, filed more than nine (9) years ago, has had an extraordinarily long life for a FOIA case. The undersigned, however, was first involved with this case upon its remand in 2020. Because the FOIA is explicitly intended to provide the public access to public documents "at a minimum cost or delay," this Court has endeavored to hear and dispose of this case as efficiently as possible after remand.

Information Act, S.C. Code Ann. §§30-4-10 *et seq.* (the “FOIA”). Alan Wilson, in his official capacity as Attorney General of South Carolina, is the Defendant.³

In her complaint, Plaintiff alleges that on June 30, 2011, she made a proper FOIA request to the AG for the following documents:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

Plaintiff’s complaint further alleges that she received no timely response to her FOIA request, and she filed this action after the expiration of the statutory response time. She seeks a declaration that the documents she has requested are public; injunctive relief directing the AG to turn over all responsive public documents; and attorneys’ fees and costs pursuant to S.C. Code Ann. §30-4-100(b).

The AG responded to the complaint with a motion to dismiss, filed September 7, 2011, asserting that the case should be dismissed under Rule 12(b)(3), due to improper venue, and Rule 12(b)(8), because “[a]nother action is pending among the same parties as to the same or substantially the same claim.” The AG asserted that Plaintiff’s FOIA claims were subordinate to discovery motions pending in Richland County Case No. 2010-CP-40-4900⁴

³ Plaintiff made her FOIA request to and named as Defendants herein both the AG and The James Brown Legacy Trust (“Legacy Trust”). At the time, *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) was pending. The *Wilson* decision held that the AG had effective control over the Estate and Trust of James Brown during the period from 2009 until the decision in 2013. Both James Brown’s Estate/Trust and the Legacy Trust are named Plaintiffs in Richland 4900. In 2016, Judge Early determined that the Legacy Trust did not exist, and that ruling is the law of the case. The Legacy Trust was dismissed by Judge Early’s Order.

⁴ Richland 4900 is a tort suit brought by the AG and a number of private Plaintiffs on May 19, 2010, in which all plaintiffs, including the AG, were represented by private law firm Sweeny, Wingate & Barrow, P.A. (“SWB”).

("Richland 4900"). Notably, the motion makes no mention of the AG not having received the June 30, 2011 FOIA request which is attached to the complaint herein.

Beginning at the filing of its motion to dismiss, the AG has also filed several motions to strike affidavits filed by Plaintiff herein.

On September 30, 2011, Plaintiff moved for summary judgment on all of her causes of action.

On October 24, 2011, Defendant filed an Affidavit of Tracy Meyers, which for the first time alleged that the AG had not received the June 30, 2011 FOIA request.

On January 11, 2012, the Honorable Frank R. Addy, Jr., issued a Form 4 Order, transferring this case to Richland County.

On March 8, 2013, Defendant AG filed an amendment to its motion to dismiss, along with a motion for judgment on the pleadings. These filings asserted for the first time that the AG's nonreceipt of the FOIA request at issue deprive this Court of subject matter jurisdiction.

Also on March 8, 2013, Defendant AG filed an answer, subject to its motion to dismiss, which attached certain documents, which the AG asserted were responsive to Plaintiff's FOIA request.

On May 17, 2016, the Honorable Doyet A. Early, III, heard pending motions in this matter. Among the arguments presented at that hearing was the AG's assertion that this Court lacked subject matter jurisdiction as a result of the AG's alleging that it did not receive the FOIA request at issue.

On June 14, 2016, Judge Early issued an Order granting the AG's motion to dismiss. By separate Order of the same date, Judge Early dismissed the Legacy Trust, finding that it "does not exist and cannot be subject to FOIA" as well as on other grounds. The Order related

to the AG discusses only the Richland 4900 discovery motions as a basis for dismissal.

Plaintiff appealed, and the Court of Appeals reversed the dismissal of the action, holding that the AG must identify “specific language of a discovery rule that expressly prohibits disclosure of a particular type of record.”

The Court of Appeals remanded the case to this Court, and all issues in this case are ripe for disposition.

DISCUSSION

In adopting the FOIA, the General Assembly found “that it is vital in a democratic society that public business be performed in an open manner.” S.C. Code Ann. §30-4-15. Plaintiff has requested certain public records from the AG, which is undisputedly a “public body,” as defined in the FOIA. Because Plaintiff’s complaint includes allegations which would entitle her to declaratory and injunctive relief, as well as an award of attorneys’ fees and costs, the Court first disposes of the AG’s pending motions.

Motions to Strike

The AG argues, as an initial matter, that more than a dozen affidavits filed by Plaintiff should be stricken from the record herein, including affidavits of journalists, a State Senator, members of the public and Plaintiff.⁵ The basis alleged for striking these affidavits is that they are irrelevant and contain inadmissible hearsay. The AG argues, “[a]ll that is relevant to her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need.”

⁵ Although the AG’s motions seek to strike hundreds of pages of affidavit testimony and exhibits from the record, the Court notes that these motions identify only a handful of statements to which the AG objects and did not submit affidavits or other evidence to support its contentions regarding Plaintiff’s filings. Further, the affidavits the AG seeks to strike were contained in the Record on Appeal on file in the previous appeal herein.

While the FOIA does not consider importance of the documents or whether the requestor has any particular need therefor, the AG has based its defenses herein on Plaintiff's identity as a litigant in Richland 4900, as well as its allegations that she was already in possession of documents the AG declined to release to her under FOIA. Plaintiff argues that the affidavits were, at least in part, offered to show both that this case should not be subordinated to Richland 4900 discovery (as requested by the AG) and that journalists and other members of the public were also interested in the FOIA disclosures sought by Plaintiff.

Because the AG raised issues herein related to Plaintiff's identity, as well as her motivation and need to obtain the document, the Court finds that the affidavits are offered for a proper purpose. Further, this Court is able to weigh the relevance of the affidavits to the issues being considered. The AG's motions to strike are therefore **DENIED**.

Subject Matter Jurisdiction

South Carolina Circuit Courts have general jurisdiction over actions for declaratory and injunctive relief the FOIA, as sought by Plaintiff herein. S.C. Code Ann. §30-4-100(a). The AG argues that this Court lacks subject matter jurisdiction over this matter, because it did not receive Plaintiff's June 30, 2011 FOIA request. The AG bases its argument on *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998), a case in which a Federal District Court in California found that it did not have subject matter jurisdiction over a Federal FOIA case in which the plaintiff had not alleged that he submitted a proper FOIA request to the Internal Revenue Service ("IRS") under the IRS's regulations regarding FOIA requests. The District Court dismissed that case because it found the plaintiff had failed to exhaust his administrative remedies prior to filing suit. This Court finds that case distinguishable.⁶

⁶ The Court notes that Federal appellate caselaw does not appear to support the AG's

The AG has filed an affidavit of Tracy Meyers, an employee of the Office of the AG (the "OAG"), which states that the OAG did not have a record of receiving Plaintiff's June 30, 2011 FOIA request. However, the record also contains a letter from Ms. Meyers, dated August 5, 2011, in which Ms. Meyers acknowledges that the Civil Division of the OAG was aware of the June 30, 2011 request. Additionally, Plaintiff has submitted a June 30, 2011 letter from her counsel to SWB (which was counsel of record for the AG in Richland 4900) providing a copy of Plaintiff's June 30, 2011 FOIA request. The AG acknowledges that the letter was sent to SWB. (See Answer of AG, ¶17) Further, Plaintiff argues that the AG undisputedly received her FOIA request as an attachment to the complaint herein, which was served upon the AG in August 2011. The AG's initial motion to dismiss, filed September 2, 2011, makes no mention of the AG's not having received the FOIA request.

The Court therefore finds that Plaintiff properly alleged that she had submitted a FOIA request to the AG on June 30, 2011; that her request was transmitted to counsel for the AG on that date; and that the OAG directly received the FOIA request, at latest, upon its receipt of the complaint herein. As further discussed below, the AG's initial response to the complaint asserts that the AG was not required to produce **any** documents to Plaintiff under the FOIA that the AG considered "subject to pending [discovery] motions" in Richland 4900. The AG did not, as discussed more fully below, make a timely and proper FOIA response upon

contention that receipt of the FOIA request is a precedent to this Court's subject matter jurisdiction over the matter. "[E]xhaustion is a prudential consideration rather than a jurisdictional prerequisite, [and] the district court was not precluded . . . from deciding the merits of Wilbur's FOIA claim notwithstanding his failure to comply with the CIA's FOIA appeal deadline." *Wilbur v. C.I.A.*, 355 F.3d 675 (D.C. Cir. 2004). Because this Court finds, as discussed below, that this case would fall into the "futility" exception to the exhaustion of remedies doctrine, even if applicable, further analysis of this issue is unnecessary.

receipt of Plaintiff's June 30, 2011 FOIA request.

The Court further notes that, even under the analysis of the Federal FOIA used in *Gasparutti, supra*, this Court has subject matter jurisdiction to hear and decide the FOIA issues before it. As noted above, *Gasparutti* involves a dismissal under the exhaustion of remedies doctrine because the plaintiff in that case failed to *plead* that he had submitted a proper FOIA request to the IRS, which complied with the IRS's FOIA regulations. As an initial matter, this Court notes that the Federal FOIA requires that requestors comply with regulations put in place by Federal entities in making FOIA requests. The South Carolina FOIA, however, simply requires that public bodies respond "upon written request." S.C. Code Ann. §30-4-30(c). No particular form is prescribed for the substance or delivery of the request. The AG has not alleged that the statute allows for the agency to make more restrictive regulations, nor that the AG has any regulations which would require a particular form or method of delivery for FOIA requests. In fact, the AG's stated guidance, as stated in the *Public Official's Guide to the FOIA*, is "[w]hen in doubt, disclose the public record." As set out above, it is undisputed that the AG received the June 30, 2011 FOIA request more than nine (9) years ago.

Because the AG's response to the complaint herein was a blanket refusal to provide documents to Plaintiff, the Court finds that Plaintiff's FOIA claims are properly before it and ripe for disposition. To the extent the Federal case cited by the AG is applicable, this Court's analysis reconciles readily with Federal FOIA caselaw.⁷

⁷ As a general rule, a Federal FOIA requester must exhaust his administrative remedies. *Oglesby v. Dep't of the Army*, 920 F.2d 57, 65 (D.C.Cir.1990). The court need not dismiss a claim for failure to exhaust if it determines that the "purposes and policies underlying the exhaustion requirement" would not be undermined by reaching the merits. *Wilbur v. CIA*, 355 F.3d 675, 677 (D.C.Cir.2004); *see also Hidalgo v. FBI*, 344 F.3d 1256, 1258-59 (D.C.Cir.2003)

The AG Must Fully Respond to Plaintiff's FOIA Request

The AG argues that it has provided all responsive documents to Plaintiff's June 30, 2011 FOIA request, and Plaintiff is therefore entitled to no relief in this action. This Court disagrees. S.C. Code Ann. §30-4-30(c) provides that a public body must "notify the person making the request of its determination [of the public records it will release under FOIA] and the reasons therefor." The AG's belated, piecemeal production of certain documents and justifications for not releasing others, which appear to be based solely on the AG's **possession** (as discussed below) of documents, does not satisfy the AG's FOIA responsibility under the statute.

First, the AG alleges that it provided two draft copies of the James Brown Legacy Trust to Plaintiff as attachments to its answer herein. While the documents are attached to the answer, the Court notes that the answer and attachments were not filed and served until March 8, 2013, more than 18 months after the commencement of this case, and that the AG's answer purports to provide those documents subject to its position that Plaintiff is not entitled to them. The S.C. Supreme Court has held that a FOIA action for declaratory and injunctive relief is mooted *upon the public body's production of the requested document*, but that further causes of action for attorneys' fees and costs are not mooted by a delayed response. *See Sloan v. SCDOR*, 409 S.C. 551, 762 S.E.2d 687 (2014).

Further, the AG asserted in its answer that it "does not have" documents responsive

(while exhaustion is not jurisdictional, "as a jurisprudential doctrine, failure to exhaust precludes judicial review" if a merits determination would undermine the purpose of permitting an agency to review its determinations in the first instance). Even in Federal FOIA cases where, as here, the public body has taken the clear position that Plaintiff would not have received a different response to her FOIA request, the Court is justified in proceeding to address the merits of the important FOIA issues presented.

to Plaintiff's request for:

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

This statement does not constitute an adequate FOIA response. Under S.C. Code Ann. §30-4-20(c), public records include those "prepared, owned, used, in the possession of, or retained by a public body" (emphasis supplied). Possession by a public body is therefore not required in order for a document to be a public record responsive to a FOIA request, and so the AG's filings indicating that it "does not have" further documents responsive to Plaintiff's FOIA request is inadequate.

Plaintiff's complaint makes reference to the Litigation Retention Agreement between the AG and SWB, which provides:

Any material, data, files, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfils and obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act . . . and maintain all public records in accordance with State law . . ."

The AG's answer makes reference to the Litigation Retention Agreement for its terms and does not assert that the Litigation Retention Agreement is inapplicable to the FOIA request at issue herein. (See Answer of AG, ¶¶17, 19)

The AG has nonetheless taken the position herein that it need not produce any documents held by SWB or the former Defendant Legacy Trust in response to Plaintiff's FOIA request. The Court finds that, pursuant to both the terms of the Litigation Retention Agreement and §30-4-20(c), responsive documents held by SWB are "owned" by the AG, and in order to make a full and proper FOIA response to Plaintiff, the AG must include documents

held by SWB in its response to Plaintiff's FOIA request.⁸

Richland 4900 Discovery Proceedings do not Exempt any Requested Document from Production under the FOIA

At the hearing on this matter, the AG continued to argue that any response to Plaintiff's FOIA request was barred by discovery motions in Richland 4900 which were pending at the time Plaintiff's FOIA request was made. In the appeal in this case, the Court of Appeals found⁹ that in order to claim a FOIA exemption under S.C. Code Ann. §30-4-40(a)(4) as a result of pending discovery in another case, a public body "must point to the **specific** language of a discovery rule that **expressly** prohibits disclosure of a particular type of record"¹⁰ (emphasis supplied). The AG has not identified any rule expressly prohibiting it from disclosing the documents sought in Plaintiff's FOIA request, and this Court finds that pending motions regarding civil discovery in another case do not, under the applicable Rules of Civil Procedure, expressly prohibit a public body from releasing public records under the FOIA.

Plaintiff is the Prevailing Party and is Entitled to Attorneys' Fees and Costs

Pursuant to S.C. Code Ann. §30-4-100(b), the Court may award the reasonable attorneys' fees and costs to a Plaintiff who has prevailed in an action to secure a public body's compliance with the FOIA. In this case, although the AG has provided Plaintiff with certain

⁸ A member of SWB appeared at the final hearing in this matter, although SWB is neither a party to this case nor counsel of record herein, requesting that SWB be given the opportunity to be heard if this Court considers any relief against SWB. Because this order directs the AG's full FOIA response, including documents it has owned or used, input from SWB or any person or entity over which the AG had control at the time of the FOIA request is not necessary or appropriate. *See Wilson*.

⁹ The Court of Appeals, in its unpublished opinion in this case, made reference to its decision in *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (Ct.App. 2019), for analysis of this issue.

¹⁰ *Pope* at 389, 831 S.E.2d 442 at 448 (Ct.App. 2019).

documents (over 18 months after she filed this case), the AG's initial response to Plaintiff's FOIA request was inadequate. Plaintiff is the prevailing party in this case, as set out in this Order, and the Court finds that she is entitled to an award of reasonable attorneys' fees and costs incurred herein. *See Sloan v. Friends of the Hunley, Inc.*, 393 S.C. 152, 157, 711 S.E.2d 895, 897 (2011) ("When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed." (internal citations omitted)).

CONCLUSION

Based on the foregoing, the Court finds that Plaintiff made a proper request for public records under the FOIA to the AG, which is a public body. None of the grounds the AG has identified in its Motion to Dismiss, Motion for Judgment on the Pleadings and/or Answer support the AG's failure to fully respond to Plaintiff's FOIA request made more than nine (9) years ago, and Plaintiff's prosecution of this case, including her successful appeal, was necessitated by the AG's refusal to make a full and proper response to Plaintiff's June 30, 2011 FOIA request. Further, the Court finds no basis for striking any affidavit filed by Plaintiff herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. Defendant's motions to strike are **DENIED**;
2. Defendant's motions to dismiss and for judgment on the pleadings are **DENIED**;
3. Defendant shall, within 15 days, produce to Plaintiff all documents responsive to her June 30, 2011 FOIA request (from the date of the FOIA request to the date of this Order) which are under the custody or control of the AG, or which the AG has prepared, owned or used;
4. To the extent the AG claims any FOIA exemption for any document which his office

has prepared, owned, or used, the document shall be marked confidential and accompanied by a sworn certification by the Attorney General or his designee that it is his opinion, as the State's highest legal officer, such document cannot be legally produced under the FOIA. He shall state with specificity the facts and law on which he bases his opinion with respect to each document;

5. Any certification and document shall be provided the Court and to Plaintiff's counsel as "confidential" and shall be the subject of a hearing to be held within thirty days of this Order;
6. Plaintiff is the prevailing party in this matter and is therefore entitled to an award of reasonable attorneys' fees and costs incurred in this action, pursuant to S.C. Code Ann. §30-4-100(b). Plaintiff's counsel shall, within thirty (30) days, submit a detailed affidavit of fees and costs requested for consideration by this Court; and
7. This Court shall retain jurisdiction to insure compliance with the FOIA as set out herein and determine the fees and costs to be awarded to Plaintiff.

AND IT IS SO ORDERED.

Clifton B. Newman, Presiding Judge

, South Carolina
December , 2020

EXHIBIT Y

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2012-CP-40-0350
	)	
Adele J. Pope,	)	Affidavit of Adele J. Pope Opposing
Plaintiff,	)	AG's Motion to Strike Affidavits, Supporting
	)	Release Under FOIA of \$4.7 Million Valuation
v.	)	and Legacy Trust Documents; Supporting
	)	Attorney's Fees and Costs
Alan Wilson, in his capacity as	)	for AG's FOIA Noncompliance Since 2011
Attorney General of South Carolina,	)	
Defendant.	)	
_____	)	

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2010-CP-40- 4900
	)	
Adele J. Pope,	)	Affidavit of Adele J. Pope
Plaintiff,	)	In Support of Order Directing
	)	Attorney General to Immediately Release
v.	)	Wingate Litigation Retention Agreement
	)	and all Documents under 2011 FOIA
Alan Wilson, in his capacity as	)	Request and for Related Relief
Attorney General of South Carolina,	)	
Defendant.	)	
_____	)	

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

1. I am over eighteen (18) years of age, and this affidavit is made on my personal knowledge.

2. I am informed and believe that the record in this case; the public record of which I ask the Court to take judicial notice; and documents released by the Attorney General of South Carolina (AG) under FOIA for the first time in October 2020 support an order of the Honorable Clifton Newman as follows:

- a. Denying the Motion of the Attorney General of South Carolina ("AG") to strike public affidavits urging him to comply with FOIA;
- b. Directing that the AG fully comply with my 2011 FOIA requests, and subsequent FOIA requests for the same documents;
- c. Finding that all documents held by the law firm of Sweeny, Wingate & Barrow, PA, ["SWB"] and/or used by the AG are subject to FOIA.
- d. Finding that an award to my counsel of \$47,500 for each case (\$5,000 per year of the AG's FOIA noncompliance) and all costs of each action is reasonable and necessary to assure that the AG complies with FOIA in the future and requires other public bodies to do so.

3. In August 2011, I filed the 2 FOIA cases captioned above against the AG.

4. The FOIA suit now pending as Case No. 2012-CP-40-0350 seeks the 2010 at-death "appraisal" of entertainer James Brown's worldwide music empire (the "Afterman \$4.7 Million Value"); copies of the Legacy Trust and its amendments; and all correspondence between the AG and Russell L. Bauknight regarding the valuation between August 1, 2010 and May 4, 2011. The second FOIA suit which was, over my objection, consolidated with Case No. 2010-CP-40-4900 ("Richland 4900") includes my FOIA request for the AG's contract with SWB and related documents.

5. In May 2010, SWB had filed, on behalf of the AG, Tommie Rae Hynie and the Legacy Trust, the case known as Richland 4900 against Robert L. Buchanan, Jr. and me, which accused us, in part, of having overvalued James Brown's assets.

6. October 2020 FOIA disclosures by the AG to a South Carolina journalist include a completely redacted letter and attachment, dated January 5, 2011, from SWB attorney Everett A. Kendall, Esq., to Bauknight, which was copied to two members of the Office of the AG. [Exhibit A]. Prior to October 2020, this letter had never been produced to me or

noted as a responsive document over which the AG claimed any sort of protection.

7. In a letter dated January 30, 2012, attached as Exhibit B, SWB attorney Mark Gende, Esq. urged the AG not to comply with his FOIA duty to release the "Wingate Contract" to bring Richland 4900. Gende stated:

First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA action. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Second, your decision will jeopardize the rights of your co-litigants...

8. This letter has never been produced to me pursuant to my FOIA requests between 2011 and 2015.

9. In late 2011 Forlando Brown ("Forlando") released an amendment to the Legacy Trust to a journalist, who published it.¹ Although AG McMaster had signed the document before my FOIA request, it was not produced to me in response to my FOIA request and has not been produced to me by the AG during this FOIA litigation.

10. Other public documents released by the AG for the first time in October 2020 have finally clarified facts about the AG's FOIA noncompliance between 2013 and 2016.

11. On February 27, 2013 the Supreme Court stated in the first, later substituted opinion in *Wilson v. Dallas* that my FOIA cases should be considered "in the first instance."

¹ The terms "Legacy Trust" and "Settlement Entity" are used interchangeably by the AG, SWB and others.

12. In his *Wilson v. Dallas* petition for rehearing the AG advised the Court that he would shortly move to have the Attorney General removed as a party to Richland 4900. The AG also advised that he had no objection to the release of the Wingate Contract, and that the hoped "to have resolution of the matter in the near future." [Order. Jg. Griffith, 9/19/14,p. 3, Exhibit C]

13. As shown in a letter of SWB attorney Everett Kendall, Esq., by March 25, 2013, Wingate had made several requests for a meeting with AG Wilson and his staff. [Exhibit D]

14. By letter dated April 12, 2013 (never released under FOIA to my knowledge before October 2020), after a meeting on March 27, 2013, SWB (Kendall) presented a TERMINATION OF LEGAL REPRESENTATION to the AG. [Exhibits E and F]

15. On April 16, 2013 Bauknight, through SWB, moved to intervene in a journalist's FOIA suit, Newberry County Case 2012-CP-36-00688, asserting that the journalist's FOIA suit was an extension of the parties and issues involved in Richland 4900, and an improper attempt to gain through FOIA matter which is subject to discovery motions in Richland 4900. [Ord. Jg. Griffith, *Summer v. Wilson*, 7/8/14, p. 2, Exhibit G]

16. By letter dated April 23, 2013 (never released under FOIA to my knowledge before October 2020), attached as Exhibit H, Kendall acknowledged that the AG had "drawn a line in the sand with respect to our attorney fees and expenses."

17. By letter dated April 24, 2013 to SWB (Kendall) (never released under FOIA to my knowledge before October 2020), Chief Deputy AG McIntosh stated in part:

Your letter is entitled "Privileged Attorney-Client

Communication". Please be advised that the Office of the Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

...As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event there is no liability on this Office for legal fees. [Exhibit I]

18. On May 8, 2013 the Supreme Court issued its final *Wilson v. Dallas* decision.

19. On September 19, 2014, not having been advised either by the Office of the AG, SWB or Bauknight that SWB had never hired Wingate, Judge Griffith ruled in the *Summer v. Wilson* FOIA case in part:

1. The motion of Bauknight to intervene is hereby denied.

2. Defendant [AG] shall, within 30 days produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this order) which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.

...

5. Documents in the Wingate firm's possession that were prepared, owned, used, possessed or retained in whole or in part for the Attorney General are subject to this order and must be produced. . .

6. Plaintiff's counsel shall, within thirty days, submit a statement of fees and costs requested by Plaintiff pursuant to S.C. Code Ann. §30-4-100(b),.... [Exhibit C]

20. In 2015 the circuit court awarded counsel approximately \$39,000 in fees and costs in the *Summer v. Wilson* FOIA, which lasted only about 3 years. [Exhibit J]

21. In January 2020, at a FOIA hearing before the Honorable Clifton Newman, the AG asserted that it could not produce the Wingate Contract because of pending 2011 discovery motions in Richland 4900. Judge Newman set the discovery motions for

hearing a few days later.

22. SWB appeared at the discovery hearing and, without disclosing that SWB had known since 2013 that it had never been counsel for the AG in Richland 4900, continued to oppose release of the Wingate Contract.

23. After Judge Newman ruled on May 12, 2020, that the Richland 4900 Plaintiffs must produce the Wingate Contract in response to my discovery requests in that case, the AG for the first time produced to me a copy of what the AG alleges to be a portion of the Wingate Contract, but still noting that the document was "not [produced] due to [my] FOIA request or this litigation." [Exhibit K]. The document produced by the AG differs from the document produced by SWB in Richland 4900.

24. As of today, the AG has not complied with FOIA requests in either of these cases, and I believe the AG should produce a copy of the entire Wingate Contract.

25. The documents released by the AG in October 2020 make clear that SWB had known since April 24, 2013 that it had never been engaged by the State/AG. Yet it has spent seven years concealing this fact, and using the prestige and power of the Office of the AG, the State's highest legal officer, to conceal documents; disrupt FOIA; and file multiple sanctions requests, motions to strike, and requests for confidentiality orders to advance the Richland 4900 positions of Tommie Rae Hynie and those Plaintiffs aligned with Hynie in Richland 4900.

26. The Court of Appeals' decision reversing Judge Early's dismissal of this case, as I understand it, requires the AG to identify an exception, if there is one, to the release of responsive documents under FOIA.

27. Based in part on the just-released documents confirming that there is no privilege between the AG and SWB, Hynie or any of SWB's other private clients, I am informed and believe there is no exception under FOIA to production of any documents I requested in 2011. The AG should produce all responsive documents which were available when the FOIA request was made and all which have come under the AG's possession or control, or which the AG has since used, including those held by SWB.

28. I am informed and believe that no documents shared with SWB, Hynie, the Levenson clients, the Legacy Trust and/or their attorneys, advisors, or fiduciaries is entitled to any privilege or exception, because SWB and those SWB represents agreed that all documents in Richland 4900 would be subject to FOIA. Further, the AG, unbeknownst to me or this Court, clearly took the position in 2013 that SWB was not its counsel and that their communications were not privileged. [Exhibit I]

29. I am informed that the AG should produce, in the manner required by Judge Griffith 6 years ago, the Afterman \$4.7 Million Value and all related documents.

30. I believe all Legacy Trust documents, including the signed and unsigned documents which I requested in 2011 are owned by the Attorney General and must be produced under FOIA and preserved by the AG as required by S.C. law.

31. The AG's October 2020 documents make clear that the AG is producing under FOIA for other citizens documents he should have produced to me under FOIA in 2011 and in response to subsequent FOIA requests I made between 2011 and 2015, but he has still not produced them to me.

32. Exhibit A, part of the AG's October 2020 FOIA documents also shows that the

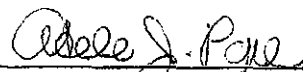
AG is still withholding and/or overly redacting documents he has shared for more than 7 years with Hynie, the Levenson Will/Trust contestants, and attorneys for Forlando.

33. I am informed and believe that a legal fee of \$47,500 in each of these FOIA cases and all costs for more than 9 years of the AG's intentional FOIA noncompliance is both reasonable and necessary to deter the AG from his continuing FOIA noncompliance in James Brown estate and other matters.

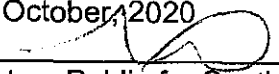
34. I am informed and believe that the award of \$47,500 plus costs in each of these FOIA cases to my attorney is especially appropriate because at least 7 attorneys paid for by the S.C. taxpayers have fought FOIA compliance for 9 years, in addition to SWB attorneys, and this may deter the AG from taking similar actions in the future.

35. I am informed and believe that this fee and cost award is necessary because the AG is the State official charged with the protection of charities.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this 21st Day
of October, 2020


Notary Public for South Carolina

My commission expires: 6/27/2024

EXHIBIT A

B

S·W·B

SWEENEY WINGATE & BARROW P.A.

January 5, 2011

Reply to: Main Office

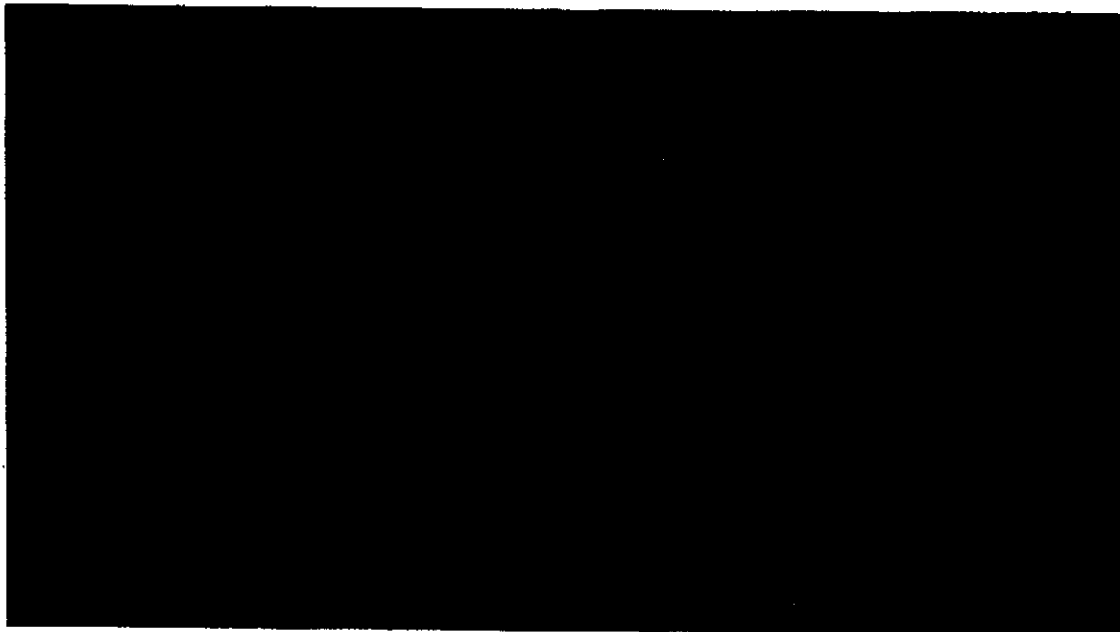
Everett A. Kendall, II
(803) 256-2233 x 130
enk@swblaw.com

Via Email

Russell L. Bauknight, CPA
Bauknight, Pietras & Stormer, P.A.
Post Office Box 1330
1517 Gervais Street
Columbia, SC 29201

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-GC-40-00073
Claim No.:
Our File: 4077-7389

Dear Russell:



MAIN OFFICE: T•803-256-2233 F•803-256-9177 1515 LADY ST. (29201) • POST OFFICE BOX 12120 • COLUMBIA, SC 29211
PEE DEE OFFICE: T•843-383-2146 F•843-383-6150 323 WEST HOME AVE. • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

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Russell L. Bauknight, CPA
1/5/2011
PAGE 2

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Russell L. Bauknight, CPA
1/5/2011
PAGE 3

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[REDACTED]

Russell L. Bauknight, CPA
1/5/2011
PAGE 4

[REDACTED]

[REDACTED]

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Everett A. Kendall, II

cc: David B. Bell, Esquire
J. David Black, Esquire, Nexsen Pruet, LLC
C. Havird Jones, Jr., Esquire, Office of the Attorney General
Lori J. Christman, Levenson & Associates
Mary Frances Jowers, Esquire, Office of the Attorney General
Matt D. Bodman, Esquire, Matt Bodman, P.A.
Fred L. Kingsmore, Jr., Esquire, Nexsen Pruet, LLC
S. Alan Medlin, Esquire

11/02/20

Discovery Tracking Chart
Burdette v. Pope and Burdette

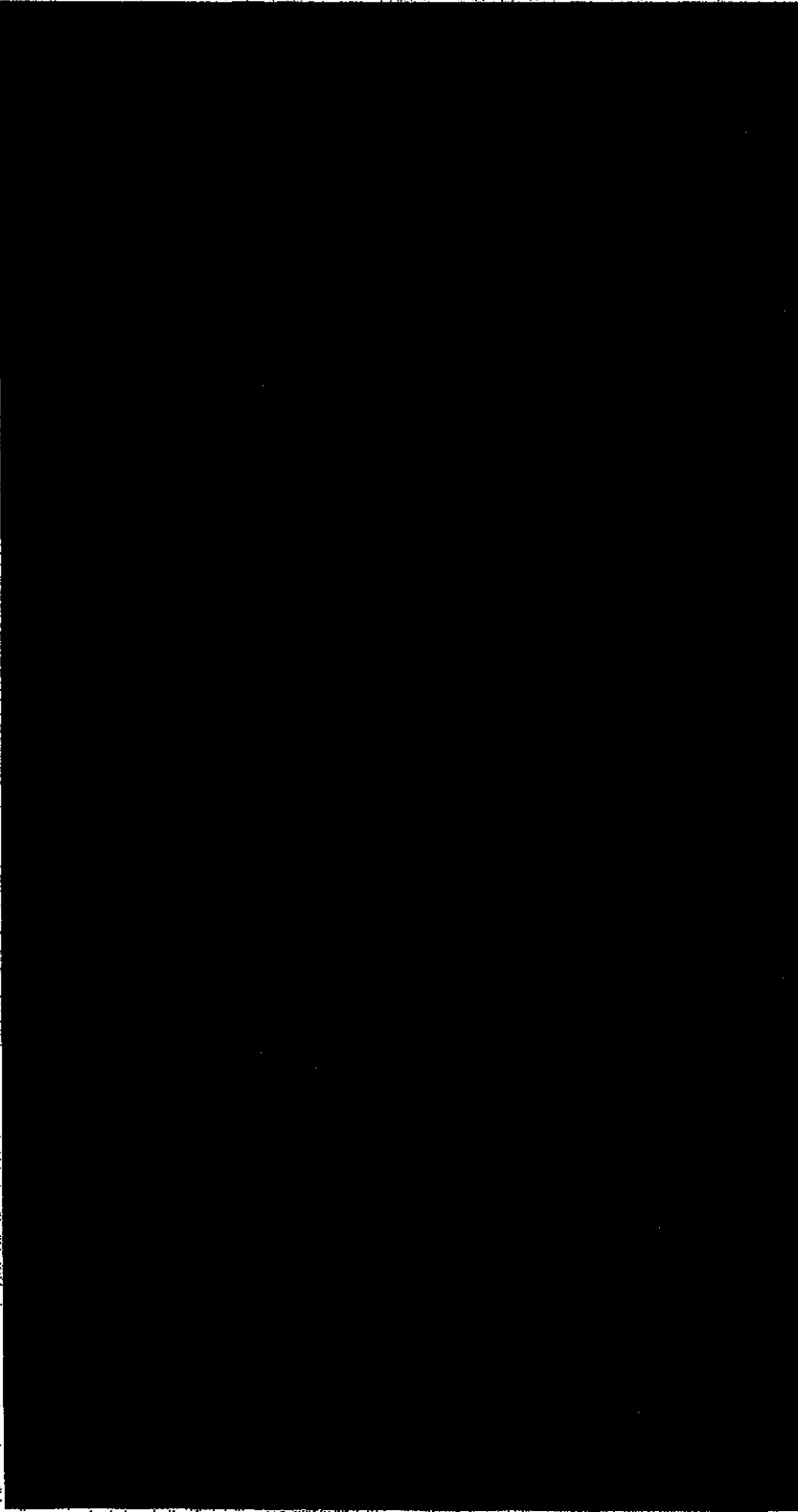


EXHIBIT B

C
S.W.B.

RECEIVED

JAN 20 2012

S.C. Attorney General's Office
Civil Section
SWENY WINGATE & BARROW P.A.

Referred to Victoria, Cook
Answered McIntosh, T. Meyer
ds

JAN 23 2012

January 20, 2012

Received by SWB
Reviewed by/Date _____
Referred to/Date _____
Notes: _____

Reply to: Main Office
Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

URGENT - PRIVILEGED ATTORNEY/CLIENT COMMUNICATION

VIA HAND DELIVERY

Alan Wilson
South Carolina Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. Attorney General:

It is my understanding that you have decided to release what you deem the public portion of the fee agreement in the above-referenced matter. As your attorney in this matter, I am writing to advise you against releasing any portion of the agreement until the Court rules on this matter.

Releasing these documents at this time will have the following detrimental impact on this litigation.

First, you will certainly incur the sanction of costs and attorney fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed the public portions, the Defendants will certainly argue that your actions waive your co-litigants claim to privilege for the remainder of the agreement.

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. You are complying with

MAIN OFFICE T* 803-256-2233 F* 803-256-9177 1515 LAUREL ST. (20201)* POST OFFICE BOX 12120 • COLUMBIA, SC 29211
PER DCA OFFICE T* 843-878-0395 F* 843-878-0395 115 CARRILL WAY • SUITE B • POST OFFICE BOX 88 • HARTSVILLE, SC 29551

ELECTRONICALLY FILED - 2020 Oct 27 2:17 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

both the spirit and letter of FOIA if you decline to produce the requested documents until the Court has determined whether any of the fee agreement is privileged.

I trust that you will reconsider your decision. I am available throughout the day to discuss this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/smt

cc: C. Havird Jones, Jr., Esquire – via electronic mail
Mary Frances Jowers, Esquire – via electronic mail
Tracy Meyers, Esquire – via electronic mail
Russell Bauknight – via electronic mail

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Susan D. Summer,

Plaintiff,

v.

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

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-36-688

ORDER

FILED
NEWBERRY COUNTY
2019 SEP 19 PM 12:56
JACQUE S. JOHNSON
CLERK OF COURT

This Court previously issued an order on July 8, 2014 directing the Defendant to produce documents referenced therein and denying the Motion to Intervene of Russell L. Bauknight, as personal representative of the Estate of James Brown and trustee of the James Brown 2000 Trust. Both the Attorney General and Bauknight filed motions to alter or amend that order. After carefully considering memoranda and letter briefs regarding those motions and arguments at a hearing on July 23, this Court denies the motions except that it rules that the Tommie Rae Hynie Brown diaries are not public records, allows 30 days for production, makes modifications in the process for considering documents alleged to be exempt and makes a few other modifications consistent with this ruling. The contents of the July 8 Order are set forth below with these changes, and this Order shall be substituted for the July 8 Order.

BACKGROUND

Plaintiff, a citizen of South Carolina residing in Newberry County, initiated the with-in captioned action on December 18, 2012, pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§30-4-10 et seq. (Rev. 2007, Supp. 2013), hereinafter (FOIA), seeking

JDJ 1/7

declaratory and injunctive relief. Defendant Alan Wilson is sued in his official capacity as Attorney General of South Carolina.

In her Complaint, plaintiff alleged that defendant had withheld public records to which plaintiff had requested access under FOIA in violation of the FOIA. Plaintiff alleged requests under the FOIA on January 29, 2012, March 1, 2012, June 10, 2012 and September 6, 2012.

On February 13, 2013, defendant moved to dismiss the Complaint or change venue.

On February 15, subject to the above motions, defendant answered denying that he had violated the FOIA. He asserted plaintiff cannot obtain under FOIA documents as to which disclosure or release is under the review or order of a court pending in another legal proceeding, including but not limited to Bauknight v. Pope, Case No. 2010-40-CP-4900 ("Case 4900").

The Answer asserts that defendant has responded to all requests and has supplied any document it has except that it asserts that the Tommie Ray Hynie diaries and Wingate Contract are barred from release by pending motions or court order.

Attached to the Answer were certain documents, including what defendant described as the public portion of the Wingate Contract. Article III F. of the Wingate Agreement states in relevant part:

Any material, data, files, discs, or documents created, produced or gathered by the Special Counsel, or in special counsel's possession in furtherance of this litigation...shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §§30-40-10, et. seq....

On February 27, 2013, plaintiff moved for summary judgment.

That same day, the South Carolina Supreme Court issued its first decision in Wilson v. Dallas, 2013WL697042, February 27, 2013 (No. 27227). Footnote 29 directed that case 4900 and certain FOIA cases should be "considered by the circuit court in the first instance."

2/28/13 2/7

In March 2013, defendant filed a Petition for Rehearing with the Supreme Court addressing footnote 29. He advised the Court that he would shortly move to have the Attorney General removed as a party to Case 4900. He also advised that he had no objection to the release of the Wingate Contract and hoped "to have resolution of this matter in the near future."

On April 16, 2013, Russell L. Bauknight, etc., moved to intervene. Bauknight asserted that this case is an extension of the parties and issues involved in Case 4900, and an improper attempt to gain through FOIA matter which is subject to discovery motions in that case. Bauknight asserted that plaintiff's FOIA requests should be denied and the case consolidated with Case 4900.¹

At the hearing on April 26, 2013, this Court orally denied the Attorney General's requests to transfer this case to Richland County. Without ruling on Bauknight's motion to intervene, the Court allowed his counsel to participate in the hearing.

At a status conference held on May 7, 2014, this Court invited the parties to make submissions. In subsequent filings, the Court was asked to take judicial notice that the FOIA matters transferred to Richland County, one of which was consolidated with Case 4900, had not been concluded. Discovery motions filed in 2010 related to some of the FOIA requests had also not been heard, and Bauknight is currently seeking a delay of both Case 4900 and the related FOIA suits until all James Brown matters are concluded in Aiken County.

At the heart of this dispute is whether the Attorney General should delay or deny FOIA compliance where the public documents sought are the subject of a pending discovery motion in

¹ On November 14, 2013, United States Magistrate Judge J. Gregory Wehrman ruled in a federal case captioned Brown v.. Pope (Case No. 3:08-cv-14-WOB) that the retention agreement between Brown trustee Bauknight and the Attorney General "is a public document due to the involvement of the South Carolina Attorney General." This agreement is one of the public records sought by plaintiff in this case. It should be produced to plaintiff by the Attorney General although Plaintiff has had the document since shortly after the November 14 ruling.

³ GCAL- 3/17

Case 4900; or a discovery order in that (Case 4900) or any other case. Related to that is whether the James Brown Estate and Trust may intervene in FOIA suits to prevent release under FOIA of public documents they are seeking to protect in discovery in a civil suit in which this plaintiff is not a party.

DISCUSSION

In adopting the FOIA, the General Assembly found "that it is vital in a democratic society that public business be performed in an open manner." S.C. Code Ann. §30-4-15 (Rev. 2007). The General Assembly also adopted definitions to be applied in interpreting the FOIA.

For purposes of this litigation, the definitions of "public body" and "public record" are most relevant. As a constitutional officer, the Attorney General and his office are "Public Bodies," and this status subjects both to the full reach of the FOIA. S.C. Code Ann. §30-4-15 (Rev. 2007); Burton v. York Sheriff's Dept., 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). Since plaintiff's requests were for access to public records, the statutory definition of "public record" in S.C. Code §30-4-20 includes all "books, papers, maps, photographs, cards, tapes, records or other documentary materials...prepared, owned, used, or in the possession of the public body" as public records. It is clear that defendant has prepared, used or been in possession of all documents requested by plaintiff. It is further clear from the Attorney General's own standard litigation retention agreement that the documents in Wingate's possession belong to the State, are public records, and are subject to the FOIA.

Defendants claim that FOIA requests must be delayed or denied if there is a pending discovery motion in an unrelated case is inconsistent with both the letter and spirit of the FOIA. As the U.S. Circuit Court for the D.C. Circuit has held with respect to federal FOIA matters in

⁴ *sett* 4/17

North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989), the FOIA and discovery are parallel courses.² Each must be considered separately.

The fact that Bauknight's discovery motion has not been resolved since 2010 makes it clear that the FOIA would be crippled if a public body could refuse to release documents based on discovery disputes or orders in other cases. The purpose of the FOIA is set out as follows in §30-4-15: "...it is vital in a democratic society that...it is possible for citizens...at a minimum cost or delay [get]...access to public documents...."

The facts are clear: plaintiff is a South Carolina citizen. She is a journalist. She made proper FOIA requests to the Attorney General, who is subject to the FOIA. Intervention by plaintiffs in Case 4900, or any other suit where the same documents are at issue, is not authorized by the FOIA. To allow such intervention would defeat the purpose of FOIA. The motion to intervene is denied. The defendant's motion for judgment on the pleadings is denied, and plaintiff's motion for summary judgment is granted. The documents should be forthwith produced by defendant for inspection and copying except for the Tommie Rae Hynie Brown diaries because they are barred from disclosure by the Orders of the Honorable Doyet A. Early, In re: The Estate of James Brown, Aiken County, 2007-ES-02-0056 / 2007-CP-02-0122).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

1. The motion of Bauknight to intervene is hereby denied.
2. Defendant shall, within 30 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order)

² Then Circuit Judge Ruth Bader Ginsburg wrote this decision in which the Court found that Oliver North was entitled to public documents under the FOIA, even if those documents were not discoverable in non-FOIA litigation. Id. at 1099.

5/24 5/17

which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.

3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned, or used, the document shall be marked as exempt and be produced to this Court under seal for review. The sealed documents shall be accompanied by a list of the documents containing a description consistent with the description of privileged documents under Rule 26(B)(5)A), SCRCP and the reasons why Defendant believes they are exempt.

4. The list of exempt documents shall be provided to Counsel for the Plaintiff and Bauknight and shall be the subject of a hearing to be held within thirty days of the production of the list.

5. Documents in the Wingate firm's possession that were prepared, owned used, possessed or retained in whole or in part for the Attorney General are subject to this Order and must be produced. Any documents that the Defendant contends are exempt shall be treated in the same manner as other exempt documents under paragraphs numbered 3 and 4 above.

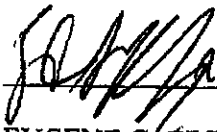
6. Plaintiff's counsel shall, within thirty days, submit a statement of fees and costs requested by plaintiff pursuant to S.C. Code Ann. §30-4- 100(b) (Rev. 2007). At the same time as the hearing to consider exempt documents, this Court shall also issue a ruling as to whether Plaintiff is entitled to attorney's fees and costs for any documents produced which were not previously supplied to her.

6 SEPT. 67

7. This Court shall issue a final judgment after consideration of the above matters.

AND IT IS SO ORDERED.

Sept 19, 2014


EUGENE C. GRIFFITH, JR.
JUDGE, EIGHTH JUDICIAL CIRCUIT

7/7 2014

EXHIBIT D



SWEENEY WINGATE & BARROW P.A.

March 25, 2013

Reply to: Main Office

Everett A. Kendall, II
 (803) 217-3447
 eak@swblaw.com

Via Hand-Delivery

Alan Wilson, Attorney General
 John W. McIntosh, Chief Deputy Attorney General
 Robert D. Cook, Deputy Attorney General
 C. Havird Jones, Jr., Assistant Deputy Attorney General
 Office of the Attorney General, State of South Carolina
 Post Office Box 11549
 Columbia, SC 29211-1549

S.C. Attorney General's Office
 Civil Section

MAR 25 2013

Received by: AKB
 Reviewed by/Date: AKB
 Referred to/Date: AKB
 Notes: _____

RE: **URGENT MEETING REQUEST**
 Our File: 4077-7389

Dear Attorney General:

On several occasions over the last week, Ken Wingate has made a verbal request for a meeting with you and other attorneys in your office. To date, we have only gotten verbal assurances that such a meeting will occur, but with no specific date and time provided.

This is a formal request for a meeting with you and the other attorneys in your office. The purpose of the meeting is to discuss the termination of our representation of the Office of the Attorney General. Given the recent statements of your office contained in filings with the South Carolina Supreme Court and the Circuit Court for Richland County, as well as statements made to the press and in our conversations, this meeting is of the utmost importance and urgency.

Please confirm a time when we can meet on Tuesday, March 26, 2013 or Wednesday, March 27, 2013.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Everett A. Kendall, II

EXHIBIT E

S·W·B

SWEENY WINGATE & BARROW P.A.

April 12, 2013

Reply to: Main Office

Everett A. Kendall, II
(803) 217-3447
eak@swblaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
Robert D. Cook, Deputy Attorney General
C. Havird Jones, Jr., Assistant Deputy Attorney General
Office of the Attorney General, State of South Carolina
Post Office Box 11549
Columbia, SC 29211-1549

RE: Proposed Termination of Representation Agreement
Our File: 4077-7389

Dear Attorney General:

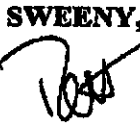
In follow up to our meeting of March 27, 2013, I have drafted the enclosed Termination Agreement to end Sweeny, Wingate and Barrow, P.A.'s representation of the Attorney General in all matters. We would be happy to have further discussions about the particulars, but this draft covers the main issues of concern.

Also, we left with you a Consent Order relieving our firm as counsel in the 4900 case. I would like to submit that to Judge Manning as soon as possible to avoid any confusion in upcoming proceedings, especially in light of your having filed a Motion to be dropped from the lawsuit.

If further discussion is needed, please do not hesitate to call.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.


Everett A. Kendall, II

RECEIVED

APR 15 2013

MAIN OFFICE: T• 803-256-2233 F• 803-256-9177
PEE DEE OFFICE: T• 843-878-0390 F• 843-878-0393

1515 LADY ST. (29201) • POST OFFICE BOX 12120 • COLUMBIA, SC 29212
115 CARGILL WAY • SUITE B • POST OFFICE BOX 96 • HARTSTOWN, SC 29529

Answered cc: Bob T. Smith

EXHIBIT F

TERMINATION OF LEGAL REPRESENTATION

This Agreement as to the termination of legal representation (hereinafter "Termination Agreement") by the law firm of Sweeny, Wingate & Barrow, P.A. (hereinafter "the Firm") and the Attorney General for the State of South Carolina (hereinafter "the Attorney General") is entered this ____ of April, 2013 and is effective retroactively to March 25, 2013.

Whereas, the Firm and Russell L. Bauknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee") entered into an Agreement for Legal Services (hereinafter "Engagement") on or about May 18, 2010; and

Whereas, the Attorney General ratified and accepted the terms of the Engagement on about May 18, 2010, thereby creating a direct attorney-client relationship; and

Whereas, since that time, the Firm has provided valuable legal services to and on behalf of the Attorney General; and

Whereas, the Attorney General does now wish to terminate its engagement with the Firm, without cause;

IT IS THEREFORE AGREED AS FOLLOWS:

The Engagement of the Firm in all matters relating to the Estate of James Brown, is hereby terminated, without cause. Specifically, but without limitation, the Firm is relieved of all obligations arising from the Engagement. To the extent that the Firm has provided legal services and/or representation beyond that which is specifically described in the Engagement, representation on those issues is also hereby terminated without cause. Effective retro-actively to March 25, 2013, Sweeny, Wingate & Barrow, P.A. shall have no obligation to the Attorney General in any legal matter.

It is the understanding of the Firm that the Attorney General wishes to withdraw as a party-plaintiff from Bauknight, et al. v. Pope, Case No. 2010-CP-40-4900 (hereinafter "Case 4900"). The Office of the Attorney General will handle all matters necessary to effect that objective. The Firm shall have no responsibility to assist the Attorney General in this process.

The Attorney General further acknowledges that the Firm has provided valuable services to the Office of the Attorney General since May 18, 2010. For these services, the Attorney General agrees to pay the expenses and legal fees incurred on a *quantum meruit* basis, totaling _____. Payment shall be made within 30 days of this agreement. The payment of these fees shall be credited to the remaining parties to the Agreement.

The Attorney General and the Firm warrant that all communications between them, as well as those among other parties to the Engagement are, and shall remain, confidential and protected by the Attorney-Client Privilege. Neither the Firm nor the Office of the Attorney

General shall disclose such communications to any person not party to the Agreement without the written consent of every party or an order of the Court. This document is included among the confidential communications.

The Office of the Attorney General shall refrain from making any disparaging remarks regarding Sweeny, Wingate & Barrow, P.A. Any reference to the termination of this relationship shall simply be described as arising out of the decision of the Attorney General to withdraw from Case 4900 and that the Firm's legal services are no longer required.

IN WITNESS WHEREOF, we have hereunto set our hand and seal at the County of Richland, State of South Carolina, this ____ day of _____, 2013.

Alan Wilson, Attorney General
State of South Carolina

Kenneth B. Wingate, Esquire
Sweeny, Wingate & Barrow, P.A.

EXHIBIT G

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
Case No. 2012 CP 36-00688

Susan D. Summer,)
Plaintiff,)

v.)

Alan Wilson, Attorney General of)
South Carolina,)
Defendant.)

**ORDER REQUIRING PRODUCTION
OF PUBLIC RECORDS**

FILED
NEWBERRY COUNTY
2011 JUL 8 PM 2 47
JONIE S. POWERS
CLERK OF COURT

BACKGROUND

Plaintiff, a citizen of South Carolina residing in Newberry County, initiated the within-captioned action on December 18, 2012, pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§30-4-10 *et seq.* (Rev. 2007, Supp. 2013), hereinafter (FOIA), seeking declaratory and injunctive relief. Defendant Alan Wilson is sued in his official capacity as Attorney General of South Carolina.

In her Complaint, plaintiff alleged that defendant had withheld public records to which plaintiff had requested access under FOIA in violation of the FOIA. Plaintiff alleged requests under the FOIA on January 29, 2012, March 1, 2012, June 10, 2012 and September 6, 2012.

On February 13, 2013, defendant moved to dismiss the Complaint or change venue.

On February 15, subject to the above motions, defendant answered denying that he had violated the FOIA. He asserted plaintiff cannot obtain under FOIA documents as to which disclosure or release is under the review or order of a court pending in another legal proceeding, including but not limited to Bauknight v. Pope, Case No. 2010-40-CP-4900 ("Case 4900").

1 SEDH 1/5

The Answer asserts that defendant has responded to all requests and has supplied any document it has except that it asserts that the Tommie Ray Hynie diaries and Wingate Contract are barred from release by pending motions or court order.

Attached to the Answer were certain documents, including what defendant described as the public portion of the Wingate Contract. Article III F. of the Wingate Agreement states in relevant part:

Any material, data, files, discs, or documents created, produced or gathered by the Special Counsel, or in special counsel's possession in furtherance of this litigation...shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §§30-40-10, et. seq....

On February 27, 2013, plaintiff moved for summary judgment.

That same day, the South Carolina Supreme Court issued its first decision in Wilson v. Dallas, 2013WL697042, February 27, 2013 (No. 27227). Footnote 29 directed that case 4900 and certain FOIA cases should be "considered by the circuit court in the first instance."

In March 2013, defendant filed a Petition for Rehearing with the Supreme Court addressing footnote 29. He advised the Court that he would shortly move to have the Attorney General removed as a party to Case 4900. He also advised that he had no objection to the release of the Wingate Contract and hoped "to have resolution of this matter in the near future."

On April 16, 2013, Russell L. Bauknight, as personal representative of the Estate of James Brown and trustee of the James Brown 2000 Trust, moved to intervene. Bauknight asserted that this case is an extension of the parties and issues involved in Case 4900, and an improper attempt to gain through FOIA matter which is subject to discovery motions in that case.

2 SEP 2/5

Bauknight asserted that plaintiff's FOIA requests should be denied and the case consolidated with Case 4900¹.

At the hearing on April 26, 2013, this Court orally denied the Attorney General's requests to transfer this case to Richland County. Without ruling on Bauknight's motion to intervene, the Court allowed his counsel to participate in the hearing.

At a status conference held on May 7, 2014, this Court invited the parties to make submissions. In subsequent filings, the Court was asked to take judicial notice that the FOIA matters transferred to Richland County, one of which was consolidated with Case 4900, had not been concluded. Discovery motions filed in 2010 related to some of the FOIA requests had also not been heard, and Bauknight is currently seeking a delay of both Case 4900 and the related FOIA suits until all James Brown matters are concluded in Aiken County.

At the heart of this dispute is whether the Attorney General should delay or deny FOIA compliance where the public documents sought are the subject of a pending discovery motion in Case 4900, or a discovery order in that (Case 4900) or any other case. Related to that is whether the James Brown Estate and Trust may intervene in FOIA suits to prevent release under FOIA of public documents they are seeking to protect in discovery in a civil suit in which this plaintiff is not a party.

DISCUSSION

In adopting the FOIA, the General Assembly found "that it is vital in a democratic society that public business be performed in an open manner." S.C. Code Ann. §30-4-15 (Rev. 2007). The General Assembly also adopted definitions to be applied in interpreting the FOIA.

¹ On November 14, 2013, United States Magistrate Judge J. Gregory Wehrman ruled in a federal case captioned Brown v. Pope (Case No. 3:08-cv-14-WOB) that the retention agreement between Brown trustee Bauknight and the Attorney General "is a public document due to the involvement of the South Carolina Attorney General." This agreement is one of the public records sought by plaintiff in this case. It should be produced to plaintiff by the Attorney General.

³ JCA 3/5

For purposes of this litigation, the definitions of "public body" and "public record" are most relevant. As a constitutional office, the Attorney General and his office are "Public Bodies," and this status subjects both to the full reach of the FOIA. S.C. Code Ann. §30-4-15 (Rev. 2007); Burton v. York Sheriff's Dept., 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). Since plaintiff's requests were for access to public records, the statutory definition of "public record" in S.C. Code §30-4-20 includes all "books, papers, maps, photographs, cards, tapes, records or other documentary materials...prepared, owned, used, or in the possession of the public body" as public records. It is clear that defendant has prepared, used or been in possession of all documents requested by plaintiff. It is further clear from the Attorney General's own standard litigation retention agreement that the documents in Wingate's possession belong to the State, are public records, and are subject to the FOIA.

Defendants claim that FOIA requests must be delayed or denied if there is a pending discovery motion in an unrelated case is inconsistent with both the letter and spirit of the FOIA. As the U.S. Circuit Court for the D.C. Circuit has held with respect to federal FOIA matters in North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989), the FOIA and discovery are parallel courses.² Each must be considered separately.

The fact that Bauknight's discovery motion has not been resolved since 2010 makes it clear that the FOIA would be crippled if a public body could refuse to release documents based on discovery disputes or orders in other cases. The purpose of the FOIA is set out as follows in §30-4-15: "...it is vital in a democratic society that...it is possible for citizens...at a minimum cost or delay [get]...access to public documents...."

² Then Circuit Judge Ruth Bader Ginsburg wrote this decision in which the Court found that Oliver North was entitled to public documents under the FOIA, even if those documents were not discoverable in non-FOIA litigation. Id. at 1099.

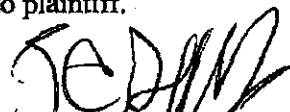
⁴ *SCD* 4/5

The facts are clear: plaintiff is a South Carolina citizen. She is a journalist. She made proper FOIA requests to the Attorney General, who is subject to the FOIA. Intervention by plaintiffs in Case 4900, or any other suit where the same documents are at issue, is not authorized by the FOIA. To allow such intervention would defeat the purpose of FOIA. The motion to intervene is denied. The defendant's motion for judgment on the pleadings is denied, and plaintiff's motion for summary judgment is granted. The documents should be forthwith produced by defendant for inspection and copying.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that

1. The motion of Bauknight to intervene is hereby denied.
2. Defendant shall, within 15 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order) which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.
3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned, or used, the document shall be marked confidential and accompanied by a sworn certification by the Attorney General or his designee that it is his opinion, as the State's highest legal officer, such document cannot be legally produced under the FOIA. He shall state with specificity the facts and law on which he bases his opinion with respect to each document.
4. Any certification and document shall be provided to the Court and to plaintiff's counsel as "confidential" and shall be the subject of a hearing to be held within thirty days of this Order.
5. Plaintiff's counsel shall, within thirty days, submit a statement of fees and costs requested by plaintiff as the prevailing party pursuant to S.C. Code Ann. §30-4-100(b) (Rev. 2007).
6. This Court shall retain jurisdiction to insure compliance with the FOIA as set out herein and determine fees and costs to plaintiff.

Newberry, SC
~~May~~ 8, 2014
July


 Eugene C. Griffith, Jr., Circuit Judge

5 *SCA 5/5*

EXHIBIT H



SWEENEY WINGATE & BARROW P.A.

April 23, 2013

Reply to: Main Office
Everett A. Kendall, II
(803) 256-2233 x 130
eak@swblaw.com

PRIVILEGED ATTORNEY-CLIENT COMMUNICATION

John W. McIntosh
Chief Deputy Attorney General
Office of the Attorney General
P.O. Box 111349
Columbia, SC 29211

RECEIVED
APR 24 2013
Referred to McIntosh/S. Jones
Answered Cook

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No. 2010-CP-40-04900
Our File: 4077-7389

Dear Mr. McIntosh:

I am in receipt of your letter of April 18, 2013, wherein you purport to respond to my letter of April 12, 2013. However, my letter did not request that the Attorney General withdraw from the 4900 case. That motion was made by the Attorney General's office on its own accord. I have made no recommendation on that subject. Rather, the purpose of my letter was to request that you sign a Termination of Legal Representation Agreement, and execute a Consent Order allowing us to withdraw as counsel for the Attorney General in the 4900 case.

I understand that you have now drawn a line in the sand with respect to our attorney fees and expenses. We will act accordingly.

I would appreciate a response from you with either signatures on the documents I have provided, an invitation to further discuss those documents, or an explicit statement that you will neither sign them nor discuss them further.

I remain,

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.


Everett A. Kendall, II

EAK/bcr

MAIN OFFICE: T: 803-256-2233 F: 803-256-0177 1515 LADY ST. (2ND FLOOR) POST OFFICE BOX 12159, COLUMBIA, SC 29211
PEE DEE OFFICE: T: 843-878-0390 F: 843-878-0393 115 CARROLL WAY, SUITE B, POST OFFICE BOX 88, HARTSVILLE, SC 29351

ELECTRONICALLY FILED - 2020 Oct 27 2:12 PM - RICHMOND - COMMON PLEAS - CASE#2012CP4000350

EXHIBIT I



ALAN WILSON
ATTORNEY GENERAL

April 24, 2013

Everett A. Kendall, II, Esq.
Sweeny Wingate & Barrow, PA
P. O. Box 12129
Columbia, SC 29211

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Your File: 4077-7389

Dear Mr. Kendall:

This is to advise that the Attorney General's Office has no responsibility for legal fees to Sweeny, Wingate & Barrow, as this Office did not employ the firm's services.

Your letter is entitled "Privileged Attorney-Client Communication". Please be advised that the Office of Attorney General has never been a client of Sweeny, Wingate & Barrow in this matter.

My letter of April 18, 2013, was a response to your letter of April 12, 2013. However, we are not signing any documents and are always willing to discuss matters. As you are aware, if the Supreme Court decision stands as is, any fees Sweeny, Wingate and Barrow have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown. In any event, there is no liability on this Office for legal fees.

Yours very truly,

John W. McIntosh
Chief Deputy Attorney General

CC: Kenneth Wingate, Esq.

JWM/ds

SCANNED

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-253-6283

EXHIBIT J

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

C.A. No.: 2012-CP-36-00688

Susan D. Summer)

Plaintiff,)

v.)

Alan Wilson, Attorney General of)
South Carolina,)

Defendant.)

**ORDER GRANTING PLAINTIFF
AWARD OF ATTORNEY'S FEES
AND COSTS**

This matter came before the Court upon Plaintiff's application for attorney's fees and costs under section 30-4-100(b) of the South Carolina Code. Having fully considered the motions of both parties, I conclude Plaintiff is entitled to attorney's fees in the amount of \$37,530, and costs of \$1,839.98, for a total award of \$39,369.98, in accordance with section 30-4-100(b) of the South Carolina Code and the factors set forth in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). See S.C. Code Ann. § 30-4-100(b) ("If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof."); *Jackson*, 326 S.C. at 308, 486 S.E.2d at 760 ("[T]he court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services.").

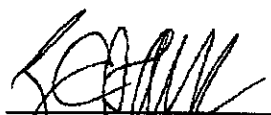
My consideration of this matter included reviewing the affidavit of Plaintiff's counsel, Thomas H. Pope III, regarding his fees through August 11, 2015, as well as the attached exhibit



documenting his electronic time records. In arriving at the above-stated amount of attorney's fees, I concluded Plaintiff is not entitled to fees for time spent on matters involving action in the Aiken County Court of Common Pleas or in the South Carolina Supreme Court. Furthermore, Plaintiff is not entitled to fees for time spent pertaining to issues regarding Russell L. Bauknight (former personal representative of Estate of James Brown and former trustee of "James Brown 2000 trust"), who filed a petition to intervene in this action, or issues regarding the Tommie Rae Hynie Brown diaries, which were declared non-public documents in another action as well as this action. This award of attorney's fees is calculated after considering the time spent by attorney for Plaintiff in pursuing this action and disregarding time spent on non-relevant issues. No request was made by Plaintiff for time expended by co-counsel Jay Bender, Esquire, and therefore the court does not award fees for his time.

Based upon the foregoing, I award Plaintiff attorney's fees in the amount of \$37,530, and costs of \$1,839.98, for a total award of \$39,369.98.

IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Circuit Court Judge

Newberry, South Carolina

August 19th, 2015



EXHIBIT K



ALAN WILSON
ATTORNEY GENERAL

May 20, 2020

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail
P.O. Box 7995
Columbia, South Carolina 29202-7995

Re: Pope v. Wilson - Common Pleas Docket No. 2010CP4004900

Dear Mr. Silvernail:

Because Judge Newman has now ruled on the discovery motions long pending in case 4900 and directed that the Plaintiffs produce the "Wingate Agreement" within 10 days (Order, May 12, 2020), the Office of the Attorney General will now produce to you the document referenced in our Second Supplemental Memorandum in Support of our Motion for Judgment on the Pleadings, filed February 24, 2020, subject to all conditions and caveats therein. This unsigned document is not responsive to Plaintiff's original FOIA request for a copy of the "contract," and it is not subject to production under FOIA for the reasons set forth in that Memorandum. Our production of this document is voluntary, solely discretionary and not due to Plaintiff's FOIA request or this litigation. I waive no claims or defenses of the Attorney General in this case. Other than documents previously produced, we have no documents that could be considered responsive to the FOIA request at issue in this case.

Sincerely,

J. Emory Smith, Jr.
Deputy Solicitor General

ELECTRONICALLY FILED - 2020 Oct 27 2:17 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

AGREEMENT FOR LEGAL SERVICES

This Agreement this ____ of May, 2010 ~~between Sweeney, Wingate & Barrow, P.A.~~ ("Firm") and Russell L. Bauknight as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust ("Trustee"). This agreement shall remain in effect until such time as it is terminated, in writing, by either of the parties.

The Trustee hereby retains the Firm to represent its interest and pursue claims on its behalf against Robert Buchanan and Adele Pope. The Firm hereby agrees to accept such representation.

The parties hereto specifically acknowledge that the following persons, parties, and entities are third-party beneficiaries to this Agreement: Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommy Rae Brown, individually and on behalf of her minor child, James Brown II; Larry Brown, individually and on behalf of his minor children, Lindsey Delores Brown and Janise Vanisha Brown; Vanisha Brown; Deanna J. Brown Thomas, individually and on behalf of her minor child, Jason Brown-Lewis; Yamma N. Brown Lumar, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar; Daryl J. Brown; and Tonya Brown (hereinafter collectively "Third-Party Beneficiaries").

The Third-Party Beneficiaries are signators to a Settlement Agreement dated August 10, 2008 with Addendum dated March 25, 2009. This Settlement Agreement was approved by the Circuit Court of South Carolina by Order dated May 26, 2009. In the event that this Order should be overturned, vacated or in any manner set aside, this Agreement shall continue with the Third-Party Beneficiaries becoming the principal parties.

ATTORNEY FEES

The Firm will be compensated on a contingency fee basis. The fee for professional services will be based upon the gross proceeds of any money collected as result of actions initiated or pursued by the Firm, in the following percentages.

a. Pursuant to the Settlement Agreement dated August 10, 2008, as amended by Addendum dated March 25, 2009, 47.5% of the gross proceeds will be attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for fee calculation purposes only. The Litigation Retention Agreement which is attached hereto as Exhibit A and which is incorporated herein shall govern the terms of representation and the payment of fees to the Firm with respect to the 47.5% of the gross proceeds attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust. For example, fees will be paid to the Firm from these proceeds based on the following schedule:

Amount of net proceeds of judgment or settlement (not including exemplary or punitive damages) (in millions)	Contingent percentage
First \$0 to \$5	23%
Excess over \$5 up to \$10	19%
Excess over \$10 up to \$25	15%
Excess over \$25 up to \$50	11%
Excess over \$50 up to \$100	7%
Excess over \$100	4%

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First \$0 to \$10	10%
Excess over \$10 to \$100	5%
Excess over \$100	3%

b. The remaining proceeds collected will be attributed to the non-charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust for fee calculation purposes only. A fee of 40% will be paid to the Firm from these proceeds.

c. In the event the parties reach an agreement that results in a settlement expressed in non-monetary consideration, the Firm shall be compensated pursuant to Article VI(B) of the Litigation Retention Agreement with respect to the 47.5% attributed to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust and based on the cash-equivalent of such consideration or an hourly fee, whichever is greater, for the balance. The hourly fees shall be calculated as follows:

(a) Partners	\$300.00
(b) Associates	\$225.00
(c) Paralegal	\$125.00

d. In the event that no value is recovered by the Firm on behalf of the Trustee, no fee will be paid to the Firm.

EXPENSE REIMBURSEMENT

Trustee shall reimburse all expenses incurred by the Firm as a result of this representation in accordance with Article V(B) of the Litigation Retention Agreement. Firm will submit invoices to the Trustee on a monthly basis. These expenses will be reimbursed as soon as practicable given the available funds held by the Trust.

It is understood and agreed that the Estate is reimbursing expenses for the benefit of the Estate, the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust. It is

understood that the Estate will be reimbursed 47.5% of these expenses by the Trust upon the distribution of the proceeds from any recovery.

SWEENEY, WINGATE & BARROW, P.A.

By: _____

ESTATE OF JAMES BROWN

By: _____
Its: Personal Representative

JAMES BROWN 2000 IRREVOCABLE TRUST

By: _____
Its: Trustee

JAMES BROWN LEGACY TRUST

By: _____
Its: Trustee

EXHIBIT Z

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case No. 2010-CP-40-4900
Plaintiff,	)	
v.	)	Affidavit Opposing Participation of
	)	SWB Law Firm in this FOIA Case
Alan Wilson, in his capacity as	)	and in Support of Exemplary Legal Fees
Attorney General of	)	Based on Defendant's Release of
South Carolina,	)	of "October 2020 Documents"
Defendant	)	
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case No. 2012-CP-02-
Plaintiff,	)	
v.	)	Affidavit Opposing Participation of
	)	SWB Law Firm in this FOIA Case
Alan Wilson, in his capacity as	)	and in Support of Exemplary Legal Fees
Attorney General of	)	Based on Defendants' Release
South Carolina,	)	of "October 2020 Documents"
Defendant	)	

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

1. I am over eighteen (18) years of age.
2. This affidavit is based on the "October 2020 Documents" released by Defendant ("Attorney General") under FOIA; the subsequent appearance of the private Sweeny, Wingate & Barrow, PA ("SWB") law firm at a hearing in these FOIA cases seeking certain Court consideration; the depositions I have personally taken of SWB attorneys Kenneth Wingate, Esq. ("Wingate") and Everett Kendall, Esq.; Governor

Henry McMaster, Attorney General Alan Wilson, former Chief Deputy AG John McIntosh, Solicitor General Robert Cook and other AG staff; the AG's termination rights expert Robert Miller; Russell Bauknight ("Bauknight"); the Supreme Court's *Wilson v. Dallas* decision; the open records policy of the Estate/2000 Trust of James Brown from November 2007 until May 2009 while Robert Buchanan, Jr. and I served as PR/Trustees, including hearings, stated positions of the parties and Circuit Court rulings related to our nonconfidentiality policy during this period; facts and Court rulings related to the public so-called "Hynie diary;" facts, stated positions of the parties and Court rulings related to claimed confidentiality of the public "Wingate Contract"; facts, stated positions of the parties and Court rulings related to the "Afterman \$4.7 million Value" with which I am personally familiar; the public record and admissions of Tommie Rae Hynie Brown ("Tommie Rae"), Peter Afterman ("Afterman") and others; and my personal knowledge, including from more than 40 depositions I have taken or attended since I made my FOIA requests in related to these cases in June 2011.

3. Based on SWB's and the State/Attorney General's 9 ½ year violation of my FOIA, Due Process, First Amendment and Equal Protection rights in these two FOIA cases, I request that the Court reject efforts of SWB to participate in my FOIA cases; direct the Attorney General to comply with my June 2010 FOIA requests by enforcing the FOIA obligations to which SWB and its private clients, including the now-defunct Legacy Trust and its trustee, agreed in the Wingate Contract in 2010; award exemplary damages to my counsel for the State/AG's intentional violation of my FOIA and constitutional rights for private benefit; and direct the AG to comply with FOIA by an

order substantially in accordance with the 2014 FOIA Order of the Honorable Eugene C.

Griffith, Jr., but addressing the following:

- a. All motions of SWB and its clients to participate in these FOIA cases are denied, but SWB, the Legacy Trust and other SWB clients shall remain bound by their FOIA obligations under the public Wingate Contract as consented to by SWB, the Legacy Trust and all other SWB clients in 2010 in the public Wingate Contract.
- b. The Attorney General shall produce to Pope every document responsive to her June 2011 FOIA requests from the date of such requests to the date of full compliance, including documents of the Attorney General, SWB, the Legacy Trust, its successors and/or any other SWB clients as agreed to in the in the Wingate Contract, and every document requested under FOIA shall be deemed a public document unless the specific document is identified; filed under seal; and certified by the Attorney General and, if applicable, the party seeking exemption under FOIA, in the manner set out herein.
- c. Because she has been determined by the Supreme Court not to have any interest or right in the Estate/2000 Trust of James Brown and Brown's James Brown "I Feel Good" charity which the Attorney General has a public duty to protect, in addition to the AG's duties under FOIA, no claim to privilege or exemption under FOIA may be asserted as to any document used, possessed, or shared with Tommie Rae and/or her counsel and/or advisors.
- d. Every document responsive to Pope's FOIA requests not specifically designated as Confidential on the date of Plaintiff's original FOIA requests shall be deemed public and delivered to Pope.
- e. If the Attorney General claims that any document responsive to Pope's FOIA request and held by the AG, SWB and/or any clients of SWB, the Attorney General shall deliver the specific document under seal to the Court and to Plaintiff's counsel, and shall present a sworn certification of the Attorney General as follows:
 - 1. The AG has reviewed the August 10, 2007 and March 2010 orders of the Honorable Doyet A. Early, III; the 72-page Custody Receipt signed by Russell Bauknight in June 2007; considered the open administration policy of Buchanan and Pope as PR/Trustees from November 2007 until May 2009; the 145 boxes of public James Brown documents delivered to the Legacy Trust trustee in 2009; the 120

boxes of nonconfidential documents held by Pope and reviewed by SWB for 5 days in May 2013; the 50+ CDs of public documents delivered to SWB by Pope; and the public records in the James Brown appeals and, to the best of the knowledge and belief of the AG a copy of the document for which exemption is sought is not contained within those public documents.

2. To the best of the AG's knowledge and belief, the document claimed not to be public and subject to release under FOIA has not been shared with Tommie Rae or her counsel or advisors.

3. To the best of the AG's knowledge and belief, the documents claimed not to be public and subject to release under FOIA, has been treated by the person asserting confidentiality as confidential and not shared with any other party or counsel.

4. To the extent a claim of confidentiality is asserted pursuant to a Court order or directive, the Attorney General has reviewed the order or directive; asserts that it is the AG's opinion the order or directive is enforceable under S.C. law; and the party relying on the confidentiality order has complied with the confidentiality order, including by maintaining records of those reviewing the document claimed to be confidential.

4. Based on the 9 ½ year history of my June 2011 FOIA requests, I believe that the public record shows that SWB and its private clients have unclean hands in my FOIA cases; have no right to participate in my FOIA cases; have agreed that every document used in Richland 4900 belongs to S.C. and is public; have waived any claim of confidentiality by sharing documents with Tommie Rae, her advisors, and others; are bound under the Wingate Contract to allow the AG to produce all documents used in Richland 4900 because they belong to the State of South Carolina; and, through the Attorney General, must deliver to the AG the documents to comply with my 2011 FOIA requests for each and all of the following reasons:

a. Since May 2010 SWB has violated my Due Process rights since May 2010 by concealing the public Wingate Contract while taking unconstitutional,

unauthorized State action against me for the benefit of Tommie Rae and SWB's private clients aligned with Tommie Rae.

b. In addition, since June 2011 SWB has violated its FOIA obligations under the Wingate Contract and my FOIA rights, and induced the Legacy Trust to do so, at great cost to me and to James Brown's charity.

c. In addition, since June 2011 SWB has directly violated my FOIA rights and those of others by not immediately producing the public Wingate Contract and all documents used in Richland 4900 which, under the Wingate Contract, are the property of the State S.C. and subject to FOIA.

d. In addition, since January 2012 SWB has advised the Attorney General, the State official charged with the enforcement of FOIA, not to comply with his duties under FOIA, and aided and abetted the AG in the violation of his public duties under FOIA and the violation of my constitutional rights.

e. In addition, since 2012 SWB has both acted for the State/AG and induced the Attorney General to retaliate against and violate the First Amendment rights of persons making valid FOIA requests, including by seeking sources and notes of a journalist on behalf of the AG [Exhibit A]; secreting the known-public so-called "Hynie-diary" on behalf of the AG; and securing an unconstitutional 2017 order to silence me in a case SWB was seeking to consolidate.

f. In addition, SWB has combined 10 years of extraordinary discovery abuse with 9 ½ years FOIA noncompliance, withholding without justification the public Wingate Contract to conceal SWB's lack of legal authority to act for the State/AG.

g. In addition, SWB withheld the Legacy Trust documents which should have been produced under the Wingate Contract pursuant to my June 2011 FOIA request from 2011 until 2013; induced the Legacy Trust to violate my FOIA requests; then, from 2013, claimed in FOIA cases that the Legacy Trust does not exist, while simultaneously seeking and securing substantial benefits for Tommie Rae and other Legacy Trust owner/successors in Richland 4900.

h. In addition, SWB has supported the false and misleading statements made by Tommie Rae, Peter Afterman, and those aligned with them to multiple courts for more than a decade, used FOIA disruption and noncompliance, including reliance on unconstitutional, inapplicable, ill-gotten or waived confidentiality claims, to deny FOIA compliance and counsel the Attorney General to deny his obligations under FOIA.

5. I crave reference, and ask the Court to consider under Rule 201 SCRE my

earlier filings and affidavits, of those and other citizens, as well as the 100 media and public posts filed by SWB in Richland 4900 in 2012 in connection with their motion for guidance as to pretrial publicity, for an understanding of the origins of the extraordinary role Tommie Rae, her counsel, those aligned with her and Peter Afterman have played in the denial of my FOIA, Due Process, First Amendment and Due Process rights.

6. Tommie Rae was a major client of SWB from 2010 until 2013 as a 23.75% owner-beneficiary of Richland 4900 Plaintiff Legacy Trust, but since April 24, 2013, when the Attorney General made clear he would have no part in paying SWB, and the Legacy Trust disappeared, Tommie Rae, with a 46% stake in Richland 4900, is the principal client of SWB and principal stakeholder in Richland 4900.

7. Further, Tommie Rae is the only disclosed SWB client currently supporting all of the allegations in the never-amended Richland 4900 complaint, which asserts that Tommie Rae is the spouse of James Brown and entitled to a quarter of his worldwide music empire in exchange for half of her non-existent termination rights and those of her son James.

8. Terry Brown ("Brown") and Daryl Brown ("Daryl") have both repudiated the Richland 4900 complaint in filings in the Circuit Court and Court of Appeals, supporting James Brown's estate plan; claiming that the Will/2000 Trust challenges made by clients of Louis Levenson, Esq., were frivolous; and even claiming that Bauknight should have imposed the *In Terrorem* clauses of Brown's estate plan against the Levenson clients for challenging the estate plan.

9. SWB's relationship to Forlando Brown ("Forlando"), who became a 4.79%

Legacy Trust owner-beneficiary in January 2011; planted the false Grammy© claim with Kilpatrick Stockton (KS) that month; but has never been disclosed to the Court as the client of SWB, including in the March 2017 depositions of two SWB attorneys directed by the Honorable Jean Toal, Acting Circuit Judge, to answer questions regarding their authorization to commence and continue Richland 4900.

10. SWB's FOIA noncompliance under the Wingate Contract, and SWB's use of the power and prestige of the State/AG for Tommie Rae since April 24, 2013, when it clearly had no legal authority to do so, have exponentially increased the damage of the denial of my FOIA rights and the FOIA rights of other citizens who are entitled to public information about the role of the State/Attorney General in James Brown's "I Feel Good" charity.

11. The "I Feel Good" Trust should today be South Carolina's largest-ever private foundation for the education of needy students in South Carolina and Georgia.

SWB Breaches Its FOIA Obligations Under the Wingate Contract for 9 ½ Years

12. In June 2011 when I made my FOIA requests SWB was already breaching its obligations under the Wingate Contract by NOT delivering me a copy of the Wingate Contract in discovery in Richland 4900.

13. Whether or not the AG is bound by the Wingate Contract Governor McMaster did not sign should not be the concern of any S.C. citizen making FOIA requests because SWB and all of its private Richland 4900 Plaintiffs/Clients agreed to the unequivocal terms of the Wingate Contract they signed on May 18, 2010.

14. The Wingate Contract states on page 1:

The Litigation Retention Agreement which is attached hereto as Exhibit A and which is incorporated herein shall govern the terms of representation and the payment of fees to the Firm with respect to the 47.5% of the gross proceeds attributable to the charitable portion of the James Brown Estate, the James Brown 2000 Irrevocable Trust, and/or the James Brown Legacy Trust. [Exhibit 1, p. 1]

15. Exhibit A states in part:

F. Any material, data, files discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-40-10 et seq., and to maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document. [p.5, Emphasis supp.]

16. I believe the problem of SWB's not having the Attorney General and most Richland 4900 Plaintiffs¹ sign the Wingate Contract should not be the problem of citizens seeking FOIA compliance by SWB.

17. When I filed my FOIA request for the Wingate Contract with the Attorney General in June 2011, there should have been NO resistance by SWB.

18. Instead, over the next 9 ½ years, SWB moved to intervene in three FOIA

¹ In 2020, when compelled to produce the Wingate Contract in discovery, SWB produced a copy that contained one material difference from the copy of the Wingate Contract produced by Bauknight under Federal Court order in 2013.

cases; sought to transfer three FOIA cases to Richland County and consolidate them with Richland 4900; gave the Attorney General legal advice in January 2012 NOT to comply with his statutory duties under FOIA; continued State action for the benefit of Tommie Rae and private clients after the AG's April 24, 2013 confirmation that SWB had no authority to act for the State/AG.

SWB Creates AG's FOIA Claim that Wingate Contract is "Under Court Review"

19. In September 2011 the Attorney General's Office wrote the Honorable L. Casey Manning saying the AG was ready and more than willing to produce to me its copy of the Wingate Contract, but understood it was under review by the Court.

20. With SWB's clear direction on the face of the Wingate Contract that it was a public document, SWB filed a baseless motion for protective order to keep the Wingate Contract from being release in discovery.

21. For the next 9 years SWB and the Attorney General used the baseless claim that the public Wingate Contract was "under Court review" to evade release under FOIA not only of the Wingate Contract but of every document used by SWB in Richland 4900.

22. In the fall of 2011 the AG posted his public Special Counsel Litigation Retention Agreement contracts with outside counsel, but not the Wingate Contract. His website said the AG was not posting contracts under court review.

23. On January 20, 2012, SWB hand delivered a letter to the Attorney General, first released in 2020, urging the AG not to release the public Wingate Contract under FOIA , and setting out "the following detrimental impact" on Richland 4900:

First, you will certainly incur the sanction of costs and attorneys

fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement.

Secondly, your decision will jeopardize the rights of your co-litigants. Once you release what you have deemed to be the public portions, defendants will certainly argue that your actions waive your co-litigants' claim to privilege for the remainder of the Agreement.

24. SWB advised the AG:

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. . . [Ltr. SWB to AG Wilson, 1/20/20]

25 Today the Attorney General has still not released the Wingate Contract to me under FOIA.

26. The copy of the Wingate Contract SWB produced in discovery in Richland 4900 was materially different from the copy produced by Russell Bauknight in 2013.

27. The AG's copy of the public Wingate Contract will show whether it was signed by David Bell, Esq. for Terry Brown ("Terry") or by Terry himself, as the copy produced by SWB in 2020 shows.

AG's Claim that FOIA Request Sent to AG, SWB and Legacy Trust Not Received

28. I sent my June 2011 FOIA request for the "Afterman \$4.7 million Value" and the Legacy Trust documents to the Attorney General, the Legacy Trust, and to SWB. I also attached a copy of my FOIA request to my FOIA complaint.

29. Under FOIA and the Wingate Contract, SWB had an obligation to consult with the AG, then comply with my FOIA request within the 15-day period, as did the Legacy Trust and the Attorney General.

30. On July 15, 2011 Legacy Trust attorney David Black, Esq., one of the \$375 - \$500-an-hour attorneys engaged by Bauknight as revealed in the October 2020 Documents, responded to my FOIA request.

31. Bauknight's FOIA response, claiming the Legacy Trust, SWB's primary client, was the "Trust and Estate," stated in part:

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 choice other than to file an action against you for abuse of process and sanctions. [Ltr., Black, 7/15/11]

32. Black, and 4 other Legacy Trust lawyers, at least four SWB lawyers, Tommie Rae and Levenson, who signed the Wingate Contract for 11 Plaintiffs, would make good on the Legacy Trust's FOIA promise.

33. By the end of 2011 Tommie Rae, the Legacy Trust and all of the Levenson clients had moved to intervene in the Wingate Contract FOIA case; move it to Richland County; and obtain sanctions against me.

34. By 2012 the AG and Legacy Trust, through SWB, began violating the First Amendment rights of anyone who dared to discuss the contents of the long-public "Hynie diary", not a diary but Tommie Rae's handwritten, discarded notes owned by Brown's 2000 Trust in which Tommie Rae admitted her marriage ceremony with Brown was bigamous, and that she discussed it with Brown it before he did.

35. By December 18, 2020 the AG had not complied with any of my FOIA requests from 2011 and SWB attorneys, Black, and his partners, and Levenson had filed more than a dozen requests for sanctions against me, and, in addition had filed

more than two dozen motions to strike affidavits and filings in my FOIA cases, Richland 4900, and Aiken County Case 2013-CP-02-1337 ("Aiken 1337"). In Aiken 1337 Bauknight, through Black,² is refusing to pay the \$47,972 of my 2007 SA fee, with

² On May 29, 2013, the day Tommie Rae and Levenson announced to the Honorable Doyet A. Early, III, in open court their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which made Tommie Rae the spouse and gave her a quarter of Brown's music empire, Nexsen Pruet ("NP") \$375- \$500-an-hour attorney William Newsome, Esq., identified by Bauknight as his "probate claims expert" disallowed my portion of the joint protective claim Robert Buchanan, Jr. and I had filed in 2009, including for my unpaid \$47,972 SA fee from 2007 and our partial PR/Trustee commissions earned through May 26, 2009 under our contract with Brown's Estate/2000 Trust to be paid on an hourly basis as approved by Judge Early in his first "Payment Order" of March 8, 2008. Our hourly rate was lower than any Legacy Trust attorney as shown on the recently-released public 2008 fee schedule for NP attorneys. The payment order provided for interest at the legal rate on any unpaid amount.

Newsome/Buchanan paid Robert Buchanan's full unpaid partial PR/Trustee commission in 2012, and Buchanan waived interest and the remainder of his claim.

Newsome did not allow or disallow my claim until 2013, after substantial interest had accrued. Then he served me with a "Disallowance" alluding to the false felony claim and forcing me to file Aiken 1337 within 30 days or be "forever barred" from being paid a penny for my PR/Trustee service or the costs I personally paid for the *Wilson v. Dallas* appeal.

In 2017 and 2019, Judge Early again directed that the Estate/2000 Trust pay my \$47,972, with interest at 8 ¾% since March 2008, but Bauknight/Newsome/Burl Williams, Esq. filed 2 motions to pay the \$47,972 into the Court. The second motion to pay into the court was granted by the Honorable Clifton Newman based on Bauknight's incorrect claim that Richland 4900 – for the benefit of Tommie Rae and SWB's private clients – was a "companion case" to Aiken 1337, and on Black's claim that I had consented in 2015 to have my \$47,972 withheld until the conclusion of Richland 4900.

The matter is now the subject of S.C. Court of Appeals Case No. 2020-000962. As of December 18, 2020 Bauknight/Black had secured dismissal of the appeal as Interlocutory; I had asked for reconsideration; and the Court has asked Bauknight/Black to respond.

Judge Early "double approved" Robert Buchanan's payments in 2013 and praised Buchanan's service, all of which was joint with mine, based on Judge Early's personal memory.

In 2019, however, Judge Early, in an order which overlooked the testimony of the Governor, the Attorney General, the Chief Deputy AG, the Solicitor General, Sr. Asst. AG Havird Jones, James Hardin III, Esq.; Wallace Lightsey, Esq.; Judge (Ret'd) Walter Williams; and Graham Foundation Trustee Stephen Lambert, Judge Early held that Buchanan (who had been paid) and I (who have not been paid for any work since November 2007 or the costs of the *Wilson v. Dallas* appeal which I paid) had breached our fiduciary duty by appealing the AG's 2008 settlement

interest at the legal rate from March from March 8, 2008. .

36. In the Court of Appeals, and in 2020 to the Circuit Court, the Attorney General is claiming that an AG staffer has no record or receiving the FOIA request I sent to the AG, the AG's lawyer, and the Legacy Trust the AG controlled.

37. The AG asserts in 2020 that this is a justification for 9 ½ years of FOIA noncompliance.

38. The AG's position in 2020 is troublesome in light of a communication from a member of the AG's staff in the fall of 2011.

39. They AG said:

Responding to your request (number 1 and 4) for appraisals and other documents supporting the position of the Office of the Attorney General and/or Russell Bauknight's position on the valuation of the Estate, this office does not possess any such documents, and therefore, is unable to provide this information to you. [Ltr. AG Meyers, 10/3/11 p. 1]

SWB Seeks to Intervene and AG Violates FOIA Order in Summer FOIA Suit

40. By 2012 a local journalist interested in FOIA and covering the AG's FOIA noncompliance in my suits, began making FOIA requests of her own, and receiving the

which dismembered James Brown's estate plan and were not entitled to any payment for our 5 ½ years of service to James Brown's Estate/2000 Trust or the costs we paid out of pocket for four years for the *Wilson v. Dallas* appeal.

In Aiken 1337 Newsome and Williams claimed, incorrectly, that I had demanded a fee of \$19 million, when I had actually proposed, both before and during the Aiken 1337 trial, to settle for \$2.1 million for ALL of my 5 ½ years service; the costs of the *Wilson v. Dallas* appeal; and the costs of the unnecessary Aiken 1337 in which Bauknight testified that he had spent a million dollars to defend my *pro se* fee claim. Robert Buchanan's fee claim was resolved in a 15-minute hearing in 2013.

resistance SWB was counseling the Attorney General to raise.

41. SWB counseled the Attorney General NOT to comply with his FOIA obligations, and the AG has not done so as of December 18, 2020.

42. In December 2012 journalist Summer filed her own FOIA suit, seeking everything I had sought, plus the so-called "Hynie diary" and other documents.

43. That year the AG, through SWB, had already subpoenaed Summer's notes and sources trying to stop her from writing about the so-called "Hynie diary," which was public from 2007 until 2008; the subject of an unconstitutional *ex parte* gag order from 2008 until 2015; and is now public again.

44. On January 7, 2013 *Lawyer's Weekly* published an article entitled *Records Request Ignored so Reporter Sues State AG.*

45. Exhibit A is a copy of the Attorney General's response to the article.

46. The AG's response and the 100 media articles and public posts filed by SWB in Richland 4900 in 2012 make clear that the AG was defying FOIA and violating First Amendment rights to benefit Tommie Rae.

47. Ignoring the AG's direct control over both Bauknight and the Legacy Trust and ownership of SWB documents, the AG stated:

a. "We received at least six FOIA requests from this reporter and responded to every one."

b. "In some instances, a court order prohibited release of certain documents and in other instances the documents either were not in our possession or they simply did not exist."

48. All documents I requested and all that Summer requested were, under the

Wingate Contract and FOIA, public and subject to being released at the time.

49. The Legacy Trust documents, including the amendment signed by Governor McMaster just before leaving office, did exist. The Afterman \$4.7 million valuation and documents to show it was both inaccurate and fabricated also existed, as did the Wingate Contract.

50. The ex parte gag order was patently unconstitutional and no basis for denying FOIA, and there was no other court order prohibiting release of any document.

51. Judge Griffith's July 2014 Order in the Summer FOIA Suits directs, in relevant part:

1. The motion of Bauknight [SWB's client] to intervene is denied.
2. Defendant [AG] shall within 15 days, produce to plaintiff all documents responsive to all FOIA requests of plaintiff (from the date of the respective requests to the date of this Order) which are under the custody or control of the Attorney General, or which the Attorney General has prepared, owned or used.
3. To the extent defendant asserts that it should not be required to produce any document which his office has prepared, owned or used, the document shall be marked confidential and accompanied by a sworn certificate by the Attorney General or his designee that in his opinion as the State's highest legal officer, such document cannot be legally produced under FOIA.
4. Any certification and document shall be provided to the Court and to Plaintiff's counsel as "confidential" and shall be subject to a hearing within 30 days of this order.
6. This Court shall retain jurisdiction to insure compliance with the FOIA as set out herein and determine fees and costs to plaintiff. [Emphasis supplied]

52. Instead of complying with Judge Griffith's Order, and sending the documents to comply with FOIA, the AG played a game of "Gotcha" with the reporter, delivering the Wingate Contract at the last moment, then claiming the AG did not possess the public documents he used to accuse us of federal felony; and even claiming that the unconstitutional 2008 gag order prevented the AG from releasing his copy of the so-called "Hynie diary."

53. A quarter of James Brown's charity and the integrity of FOIA rested on Tommie Rae's handwritten admissions, but AG allowed Bauknight and Legacy Trust lawyers to waste what by 2018 was tens of millions of dollars of Brown's charity to conceal it.

SWB Asks the Circuit Court to Ignore the FOIA Mandate of Wilson v. Dallas

54. On February 27, 2013 the Supreme Court, in the first, later amended, *Wilson v. Dallas* decision, at footnote 29, stated in part:

Although Brown's music rights have been widely reported as being worth up to \$100 million or more at his death, Bauknight filed documents with the Internal Revenue Service indicating the value of Brown's music empire was only a net of \$4.7 million. The \$4.7 million valuation has been questioned . . .

Further, 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, controlling the charitable trust through the appointment of Bauknight, who

serves at the AG's pleasure. [Emphasis supplied]

55. On March 6, 2013 I personally discussed with the AG, Chief Deputy AG and Solicitor General the damage the fabricated Afterman \$4.7 million Value and Bauknight IRS filings claiming Tommie Rae was James Brown's spouse had done, and threatened to do, to Brown's "I Feel Good" charity.

56. Using the Afterman \$4.7 million Value, under the "fractional share" clause of Brown's 2000 Trust, Bauknight had shifted about \$1 million of income a year and nearly 1/3 (31%) of Brown's "I Feel Good" Trust out of James Brown's charity and over to a taxable trust for Forlando Brown ("Forlando") and 5 clients of Louis Levenson, Esq., all SWB's Richland 4900 clients.

57. Bauknight's shift of funds out of Brown's charity using the Afterman \$4.7 million Value would last for 20 years or more and unnecessarily and substantially increase income taxes.

58. My attorney Adam Silvernail, Esq., and I met a few days later with the Solicitor General and Chief Deputy to discuss the same concerns I had raised a few days earlier.³

59. By 2013 Afterman was working for Tommie Rae's attorneys [Ex.B.C] and in March Tommie Rae's minor son James provided details of the Afterman \$4.7 million

³ The damage caused by the Afterman \$4.7 million Value was fully aired at the trial in Aiken County Case 2013-CP-02-1337 ("Aiken 1337"), but the Circuit Court which supported the reinstatement of the AG's 2008 settlement which dismembered James Brown's estate plan and charity disregarded my testimony and that of expert Steven Johnson, Esq., about this damage. .

claimed Value in rehearing filings in *Wilson v. Dallas*, making clear that confidentiality had not been maintained.

60. In March and April 2013 SWB communicated with the AG and sent the AG a proposed agreement to terminate SWB's representation which required the AG treat its dealings with SWB's private clients since 2010 as confidential despite the mandate of the Wingate Contract.

61. As shown by the October 2020 Documents and public record, by April 23, 2013 all of the documents sought under FOIA by me or in the Summer FOIA suit were not only public under the Wingate Contract but had been shared with Powell Goldstein; Brayan Cave ("PG/BC") which, in James Brown matters, had represented TJBL, an investment group which made 3 letters of intent to buy the music empire for about \$100 million; Forlando Brown ("Forlando") who was seeking to reinstate felon David Cannon, who took \$17 million from Brown, and Albert Dallas; Cannon and Dallas in their effort to move the situs of the 2000 Trust from South Carolina to Georgia as Cannon's takings were being discovered; Terry Brown ("Brown") in tax matters related to his rights of first refusal under the AG's 2008 settlement.⁴ There was no basis to withhold them.

⁴ In 2007 BC, then Powell Goldstein, represented felon David Cannon, who had stolen \$17 million from funds James Brown devised to his charity; and Cannon's co-trustee Albert Dallas in an effort to move Brown's 2000 Trust to Georgia as the funds Cannon had taken were being discovered. On January 2, 2008 BC, still Powell Goldstein, and Bell, who signed the Wingate Contract for Terry, filed U.S. Dist. Ct. Case 3:08-cv-00014-WOB (the "Forlando Federal Suit") seeking to enjoin Brown's 2000 Trust from taking any action until Cannon and Dallas were reinstated as Brown's trustee. BC then began representing TJBL, the investment group which issued 3 letters of intent to buy the James Brown music empire for about \$100 million in 2007 and 2008, and two letter of Terry to buy the tangible personal property at \$2 million.

SWB Disregards April Letter and *Wilson*, Disrupting FOIA for 7 ½ More Years

62. On April 24, 2013 the Attorney General made clear that SWB had no legal authority to act for the State/AG.

63. The April 24, 2013 letter, first released under FOIA by the AG in 2020, makes clear that from that date Tommie Rae was SWB's primary client, now holding an approximately 46% stake in Richland 4900.

64. SWB's undisclosed client, Forlando, held a 4.79% stake in Richland 4900 before *Wilson v. Dallas*, and now holds approximately 9%.

65. SWB's relationship with Levenson, who signed the 40% Wingate Contract for 11 Richland 4900 Plaintiffs, some of whom never knew they were named as parties, and the 11 Richland 4900 Plaintiffs SWB claims to represent, has become increasingly problematic as all denounced Tommie Rae's spousal claims..

66. On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas*. The Supreme Court voided the AG's 2008 settlement and voided Bauknight's PR/Trustee appointment, making clear that the \$375 - \$500-an-hour lawyers working to enforce the AG's 2008 settlement were working for the Legacy Trust.

67. For the next 7 ½ years SWB used FOIA and the power and prestige of the AG's Office to benefit Tommie Rae and blame on Robert Buchanan and me the tax problems and millions of dollars of damage caused by Tommie Rae and the AG's 2008 settlement.

68. The final *Wilson v. Dallas* decision was issued on May 8, 2013.

69. Within two days SWB asked the Richland 4900 Court to stay my FOIA cases

and Richland 4900.

70. SWB told the Circuit Court that the Supreme Court's omission of footnote 29 from the final *Wilson v. Dallas* decision indicated that the Supreme Court placed no importance on the prompt conclusion of Richland 4900 or the FOIA cases. [Ltr. SWB, 5/13]

71. On May 29, 2013 I was present when SWB's client Tommie Rae's, through her personal counsel (Medlin), and Levenson announced to Judge Early in open court their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which had just been voided by the Supreme Court.

72. From 2013 until 2016 no hearing was held in my FOIA cases despite numerous requests by my counsel. Within months after the stay was lifted, the Circuit Court dismissed both cases.

73. My FOIA cases were remanded by the Court of Appeals in 2019, and today SWB is still trying to evade its obligations under the Wingate Contract, and the agreement and waiver of all of its private clients.

74. Since 2013, concealing the AG's April 24, 2013 letter, SWB has used the power and prestige of the Office of the AGI for the benefit of Tommie Rae.

75. SWB's claims about applicable court orders which the AG claims prevent FOIA compliance are not correct.

The Claimed Confidentiality Order Related to the Afterman \$4.7 Million Value is Inapplicable and was Secured by Misrepresented Facts

76. Robert Buchanan and I were the ones who sought the original 2008

confidentiality order on which the AG claims he cannot produce the Afterman \$4.7 million Value, and the 2013 order, issued two years after my FOIA request, was based on misrepresentations to the Court in an affidavit filed by Bauknight.

77. Bauknight has presented several problematic affidavits, including a 2012 affidavit that says he had managed the Legacy Trust in Richland County for 3 years and a 2016 affidavit stating that the Legacy Trust never existed.

78. Bauknight also supported the AG's 2008 settlement in a deposition given in August 2013 in which he called me dishonest and claimed that I (and presumably Robert Buchanan) had "raped" James Brown's estate.

79. Bauknight, as shown in the media articles filed by SWB has claimed since 2010 that the Afterman \$4.7 million Value is "under lock and key," but it was created by Afterman, who worked for the Legacy Trust from 2009 until 2013, and has worked for Tommie Rae from 2013 until 2020.[Exhibit B]

80. The public record, including Supreme Court filings by Tommie Rae's son, show that Bauknight has shared the Afterman \$4.7 million Value with numerous others, and that all SWB clients used it to falsely accuse us of a federal felony.

SWB's FOIA Disruption Conceals the Tommie Rae/Afterman Devaluation Scheme

81. The plan to devalue Brown's music empire to \$24 million or less to discredit "Bobadele" was the 2009 idea of Tommie Rae's attorney, carried out by Afterman.

82. Relying on the Tennessee Case released in 2009 which dealt, in part, with the IRS proceeding related to the valuation of royalties of songwriter Harlan Howard, who died in 2002, Tommie Rae's attorney stated to AG Jones and others:

Attached find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter...It is a treasure trove of information for us, including (1) the method of valuation for songwriter royalties...Based on the information in the opinion Bobadele has [sic] grossly overvalued the estate for 706 purposes. The opinion deals only with royalties and not image and likeness, which apparently was inapplicable to the decedent songwriter. Of course, among ourselves, we are not sure we have the right to image and likeness under SC law, so any separate valuation of that should be discounted accordingly [Medlin email of 8/30/09].

83. Tommie Rae's devaluation proposal was not consistent with what Legacy

Trust attorney Wilkins told the Circuit Court the same month:

THIS ESTATE SHOULD BE AND COULD BE TODAY MAKING A LOT OF MONEY OR BRING ITSELF UP TO MAKE A LOT OF MONEY JUST LIKE THE ESTATE OF MICHAEL JACKSON IS MAKING A LOT OF MONEY TODAY... THIS STAY SHOULD BE LIFTED ...TO ENTER INTO VARIOUS BUSINESS VENTURES FOR THE ESTATE; FOR EXAMPLE, MARKETING JAMES BROWN'S MUSIC, MARKETING HIS IMAGE, HIS PERSONA, DEVELOPING VIDEO GAMES WITH JAMES BROWN AS THE CENTRAL CHARACTER, PRODUCING A DIGITAL REBIRTH OF JAMES BROWN JUST LIKE THE BEATLES ARE DOING TODAY AND NEGOTIATING A MOVIE DEAL. WE'VE HAD NUMEROUS OPPORTUNITIES TO ENTER INTO A DOCUMENTARY SERIES...AND ALL THESE THINGS ARE JUST SITTING THERE READY TO DO.

84. The Afterman \$4.7 million Value is incorrect, and while generated to damage Robert Buchanan and me, it also seriously damaged Brown's charity. It is less than what we brought in per year as PR/Trustees despite constant disruption, \$7.83 million in 18 months.

85. The Afterman \$4.7 million Value was never confidential under the Wingate Contract or FOIA. It was created to help Tommie Rae and the Legacy Trust dismember James Brown's estate plan.

86. James described its contents in 2013 to the Supreme Court, and Forlando testified under oath that it is "bogus."

87. Bauknight has taken no steps to keep it confidential, waiving any claim of confidentiality even if the order for confidentiality had not violated Rule 11.

Legacy Trust and Bauknight Use FOIA Noncompliance for Retaliation

88. In 2010 a Legacy Trust \$375- \$500-an-hour attorney, speaking primarily for Tommie Rae and those taking 52 ½% of Brown's charity, told the Circuit Court of the *Wilson v. Dallas* appeal:

THEY HAVE NO STANDING...VIRTUALLY NO CHANCE OF SUCCESS ON THEIR APPEAL. THEY WILL NEVER BE ABLE TO OBTAIN RESINSTATMENT AS PERSONAL REPRESENTATIVES. THE BENEFICIARIES DON'T WANT [THEM]..

89. Tommie Rae's lawyer also made clear the AG/Legacy Trust's plan to retaliate against Robert Buchanan and me:

WE'RE UNANIMOUS AS MR. WILKINS POINTED OUT ON THIS ISSUE, WE DO NOT WANT THEM TO BE FIDUCIARIES AND IF THEY PREVAIL — IF THEY WIN ON APPEAL AND THEN WE GO BACK AND TRY THOSE WILL AND TRUST CONTESTS AND THEY WIN...AND WE TRY THE OMITTED SPOUSE AND....AND THEY WIN THOSE, THEN EVERYTHING GOES TO CHARITY WHICH YOU BELIEVE ACCORDING TO YOUR ORDER AND WE BELIEVE ACCORDING TO THE LAW THAT'S EXISTED SINCE THE BEGINNING OF COMMON LAW IN MY ESTIMATION THAT THE ATTORNEY GENERAL HAS THE AUTHORITY TO REPRESENT THE CHARITIES IN THAT CASE. THE ATTORNEY GENERAL DOESN'T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT, THE ATTORNEY GENERAL WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL'S OFFICE DOES NOT WANT THEM AS FIDUCIARIES. [Tr. 9/09, Case 1647, P. 33]

90. And an Assistant to AG Jones stated:

...SO, LIKE I SAID, I DON'T WANT TO PLOW THE SAME GROUND THAT MR. WILKINS AND MR. MEDLIN DID, BUT WE DO INCORPORATE THEIR ARGUMENTS.

91. I believe that the October 2020 Documents make clear that SWB's FOIA disruption and the AG's FOIA noncompliance have been essential to the retaliation by the AG, Tommie Rae and those aligned with here in Richland 4900.

The Solicitor General Confirms that Richland 4900 is Extraordinary

92. Like me, the Solicitor General finds Richland 4900 to be unique. In his 2017 deposition, the following took place::

12 Q. Do you know of any lawsuit ever where a person
13 appears as a plaintiff and is not a plaintiff --

14 MR. SMITH: Object to form and scope.

15 Q. -- other than the Wingate lawsuit?

[Objections]

21 A. I would say this: That was a very unique case in
22 terms of the charitable beneficiaries. I know --
23 I know of no other where that has been done.

24 Q. So let me be clear. In your 40 years of practice,
25 you've never seen a case where a person or entity

Page 15

1 is named as a plaintiff, but claims not to be a
2 plaintiff?

[Objections]

8 A. In my 40 years, I have never known of a case like
9 that...

11 and the settling parties were named as in the
12 caption of the complaint at the twelfth hour. I
13 know of no other like that. I -- I do not.

93. I believe that SWB's attempt to be involved in my FOIA cases for the benefit of Tommie Rae make Richland 4900 more unique and more troublesome.

94. Mr. Bauknight, however, did not agree in a deposition I took that the FOIA

disruption by SWB was inappropriate:

5 **Q. Was the purpose of trying to intervene in FOIA**
6 **suits to prevent release of the Wingate contract,**
7 **the \$4.7 million appraisal and the so-called Hynie**
8 **diary?**

9 A. Well, documents that belong to the estate and
10 trust are not subject to FOIA. And no one
11 associated with the Attorney General. . .
12 has
13 any of those documents. And the estate and trust
14 is not subject to FOIA.

The False Felony Claim Alone Merits Release of the Afterman \$4.7 Million Value

95. Russell Bauknight, a CPA, when questioned about the false felony claim in his deposition which I took, denied it, after the following exchange took place:

Q. . . . You have accused me both
5 **outloud and in pleadings on Page 9 of artificially**
6 **inflating the reported value of the estate without**
7 **any substantiation and without any consistency for**
8 **the purpose of justifying their claim -- that**
9 **would be Mr. Buchanan and me -- for approximately**
10 **\$5 million. If we overstated the value of James**
11 **Brown's assets by \$79 million, for the purpose of**
12 **securing a five million-dollar fee, would that**
13 **constitute a felony under the federal law?**

14 MR. BLACK: Object to form.

15 **Q. If you know?**

16 A. Number one, Ms. Pope, I'm not a lawyer. Number
17 two, commissions earned in South Carolina don't
18 fall under federal law and I believe if you're
19 saying I've accused you of a federal felony,
20 you're making that up pure and simple.

96. Unlike Bauknight, the Governor, a former U.S. Attorney, agreed to the seriousness of the false felony claim, which was discussed in his deposition:

Q. Okay, right. Now, I'm just going to show you
 10 Exhibit 12 and that's just to -- I know you're an
 11 old prosecutor and I'm not, but it is a crime to
 12 make a false statement on a Federal Estate Tax
 13 return to receive a benefit. You'd agree with me
 14 on that, wouldn't you?

15 A. Yes, it's a crime to file a false tax return
 16 period. Right.

17 Q. Period. Good.

18 A. Whether you're getting a benefit or not, I
 19 presume.

20 Q. Right. So if someone were to accuse a lawyer who
 21 -- whose livelihood rest on fair dealings with the
 22 IRS of overstating James Brown's assets by
 23 \$79 million for the purpose of receiving a
 24 \$5 million commission, that would be a very
 25 serious charge wouldn't it?

Page 84

[Objections]

3 A. The question again, please.

4 Q. If someone were to accuse a lawyer whose practice
 5 relied on fair dealings with the IRS of having
 6 intentionally overstated James Brown's assets on
 7 the Estate Tax Return, by \$79 million for the
 8 purpose of achieving a \$5 million commission, that
 9 would be a very serious allegation wouldn't it?

[Objections]

12 A. Well, there are lots of parts to that question,
 13 but accusing a lawyer of filing any sort of false
 14 return is -- is serious.

15 Q. Very serious, isn't it?

16 A. Well, serious or very serious or maybe very, very
 17 serious. It's serious.

Tommie Rae's Son Reveals Details of the Afterman \$4.7 Million Value

97. Bauknight told the federal court that he had kept the Afterman \$4.7 million

Value confidential, but five months earlier James told the Supreme Court:

Effectively, the appraisal...which is for the date of death value,

shows the royalty stream belonging to the estate worth approximately \$4.7 million, which is the fair market value of the royalty stream, less outstanding associated debt of approximately \$19 million arising from bonds secured by the royalty stream. Thus, without the bond debt, the date of death value of the royalty stream would be approximately \$24 million, a valuation derived from taking the royalty stream up to the termination dates and discounted back for the present value purpose. Seen in this light, the \$4.7 million date of death valuation for the royalty stream. . . does not seem as counter-intuitive as it might otherwise to a layman guessing what the value of the estate might be.

98. The AG's 2017 deposition, which I took, shows:

**Q. Have you investigated that Mr. Medlin,
9 Mr. Bauknight, and the AG's staff and Nexsen Pruet
10 were working on the devaluation of Brown's music
11 empire to \$4.7 million at the same time Mr. Medlin
12 and your senior assistant, Sonny Jones, were
13 working with the law firm of Ken Wingate to sue
14 Adele Pope and Bob Buchanan for not accepting a
15 hundred million dollar offer for James Brown's
16 assets?**

17 A. I'm going to reread the question because it --

18 **Q. Please. It's question forty-three.**

19 A. Yeah, you've asked me if I've done an
20 investigation in a very long sentence or two, and
21 I'm just not aware of the --

22 **Q. Certainly. Is an important. Take your time.
23 Forty-three.**

24 A. I will restate, I have no personal knowledge that
25 I can recall.

My Personal Knowledge of the Nonconfidential Documents as of May 26, 2009

99. When 80 Boxes of Brown Historical Documents became available by Order of Judge Early on August 10, 2007, but with our rights as SAs to declare certain documents confidential, we favored some confidentiality.

100. After becoming PR/Trustees we determined that uncovering of fraud, including the \$17 million Cannon had taken, and keeping the AG abreast of our actions, was more important than confidentiality, and we conducted an open administration policy until May 26, 2009, allowing everyone access to copy virtually everything except the so-called "Hynie diary," which was under what we thought was a brief gag order.

111. We turned over 145 boxes of NONCONFIDENTIAL documents to Bauknight immediately after he took over as trustee of the Legacy Trust (his PR/Trustee appointment was declared void by the Supreme Court).

112. Bauknight agreed to keep these documents available to use, but did not.

113. Beginning in 2011 the AG and Legacy Trust \$375- \$500-an-hour lawyers began declaring documents that had been public for years as confidential if they showed that Tommie Rae was not Brown's spouse or that the AG's 2008 settlement was a bad idea.

114. That practice continues today both in civil suits and under FOIA.

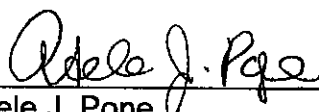
115. SWB was allowed five days in May 2017 to review more than 120 boxes of public documents I have gathered in my defense in Richland 4900, as well as more than 50 CDs of public documents I have had to gather.

116. I do not believe the AG or any SWB lawyer has knowledge of the claimed confidentiality orders on which SWB has counseled the AG to rely.

117. I am informed and believe that exemplary legal fees consistent the hourly rate the State/Attorney General allowed Legacy Trust attorneys to charge to disrupt

FOIA, not produced until October 2020, would be appropriate in my FOIA cases to help prevent the Attorney General from violating his own FOIA policies and FOIA in the future.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

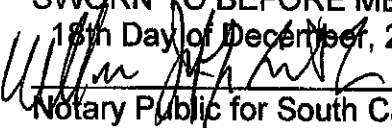
SWORN TO BEFORE ME THIS
18th Day of December, 2020
 (L.S.)
Notary Public for South Carolina
My commission expires: 2/27/2027

Exhibit A

James Brown practices law & speaks in 2002, meeting for the first time



Attorney general responds to article on open-records lawsuit

There are two significant inaccuracies in the article about the James Brown estate and trust, entitled "Record Request Ignored, So Reporter Sues State AG" which appeared in the January 7, 2013, edition of South Carolina Lawyers Weekly. Because I strongly support the Freedom of Information Act, it is important to set the record straight.

The James Brown estate and trust is a complex and complicated case. A freelance reporter has filed a lawsuit against the South Carolina Attorney General's Office, seeking documents related to this matter.

We received at least six FOIA requests from this reporter and responded to every one. In some instances, a court order prohibited the release of certain documents and in other instances the documents either were not in our possession or they simply did not exist. Even when we were unable to provide



documents, my staff wrote to the reporter explaining why they could not be provided. It is simply inaccurate to say the requests were ignored.

Allen Williams

Another inaccuracy in the story concerned the ignorance of a subpoena. Let me explain what actually transpired.

Almost four years ago, a court-appointed Russell Bernhardt of the accounting firm of Bernhardt, PricewaterhouseCoopers, P.A., to be personal representative and trustee of the James Brown estate and trust. The law firm of Dransky Wiggins & Batorry, representing Mr. Bernhardt as personal representative and trustee, as well as other beneficiaries of the James Brown estate and trust, including the oblique

interests, filed an action.

This subpoena was issued by that private law firm, not the Attorney General's Office. My office did not even know about this subpoena until after it had been issued. Once we learned that a subpoena had been issued to a journalist, we took the appropriate steps. Since we did not issue the subpoena, neither my staff nor I could withdraw it. However, we contacted the attorney who issued the subpoena, and he withdrew it. Just as I am an advocate of the open records law, I recognize and respect the First Amendment rights of journalists.

Let me conclude with this: this office has always been fully responsive to every FOIA request we have received, and we will continue to do so.

Allen Williams
South Carolina Attorney General

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Exhibit B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION**

DEANNA BROWN-THOMAS, an individual;)
YAMMA BROWN, an individual; VENISHA)
BROWN, an individual; MICHAEL D. BROWN, an)
Individual; NICOLE C. BROWN, an individual;)
JEANETTE MITCHELL BELLINGER, an)
Individual; SARAH LATONYA FEGAN, an)
Individual; CIARA PETTIT, an individual; and)
CHERQUARIUS WILLIAMS, an individual,)

Plaintiffs,)

v.)

TOMMIE RAE HYNIE, a.k.a. TOMMIE RAE)
BROWN, an individual; JAMES J. BROWN, II, an)
Individual; RUSSELL L. BAUKNIGHT, as the)
Personal Representative of the Estate of James Brown)
And Trustee of The James Brown "I Feel Good" Trust;)
DAVID C. SOJOURNER, JR., as the Limited Special)
Administrator of the Estate of James Brown and)
Limited Special Trustee of The James Brown and)
Limited Special Trustee of The James Brown "I Feel)
Good" Trust; and DOES 1 through 10, inclusive,)
Defendants.)

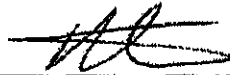
Civil Action No. 1:18-cv-02191-JMC

**DECLARATION OF PETER
AFTERMAN**

I, Peter Afterman, declare as follows:

1. I have personal knowledge of the facts herein and if called as a witness would so testify.
2. As of 2013, I have assisted Tommie Rae Brown and her counsel with advice as to music rights matters, including copyright matters and termination right matters. My assistance as an agent involved helping her counsel provide her with their legal advice about music, copyright, and termination matters.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this Declaration on this 2nd day of September, 2020, at Los Angeles, California.



Peter Afterman

Exhibit C

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyel A. Early III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850

Appellate Case No. 2015-002417 (Court of Appeals)

Appellate Case No. 2018-001990 (Supreme Court)

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited

Special Administrator and Limited Special Trustee;

Deanna Brown Thomas, Yamma Brown, Venisha Brown,

Larry Brown, Terry Brown, and Daryl Brown.....Respondents below,

Of whom Deanna Brown-Thomas, Yamma Brown, and
Venisha Brown are the Appellants.

Affidavit of Peter Afterman

PERSONALLY APPEARED BEFORE ME, PETER AETERMAN, who being duly sworn, deposes and says:

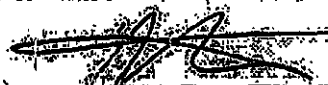
1. My name is Peter Aeterman. I am a resident of Los Angeles, California. I have been the music manager for the James Brown Estate since 2009. I am a multi Grammy and Peabody Award winning music manager. I am an expert in music copyright law. I have worked in the music business for over 40 years.
2. If Tommie Rae Brown is not James Brown's surviving spouse, the Charitable Trust will substantially lose its funding within the next six years because the ownership of James Brown's songs will revert to the heirs per U.S. Copyright Law. Copyright law provides that 50% of termination rights, and control, passes to the surviving spouse, and the rest passes to the children (or children of a deceased child). If Mrs. Brown is not the surviving spouse, all of the termination rights will pass to the children.
3. The primary asset of the Estate and Charitable Trust is the income stream the Charitable Trust currently receives from the exploitation of James Brown's songs, whose copyrights he assigned to music publishers, as is typical in the industry. Other than these copyright royalties, the Estate does not own significant other assets. As I understand it, it is this copyright income stream that would serve as the primary source for the funding of any scholarships.
4. Federal law allows, after a certain time, for the owners of copyright termination rights (the intestate heirs) to claw back the copyright assignments from publishers. The song termination rights are not part of the Estate or Trust, nor can they be, according to federal law. Federal law requires that these termination rights are owned by the writer's intestate heirs, regardless of the writer's intent.
5. The only way the Charitable Trust can benefit from these termination rights is for an intestate heir to contribute the proceeds from her termination rights to the Charitable Trust. Mrs. Brown has agreed (in accordance with the Settlement Agreement attached to the Limited Special Administrator's Notice of Withdrawal in the Court of Appeals) to contribute 65% of her proceeds from the song terminations to the Charitable Trust. Because Mrs. Brown as the surviving spouse would be entitled to a 50%, and controlling share, of the termination rights, the Charitable Trust will receive 32.5% of the total song termination proceeds, but only if she is the surviving spouse. If Tommie Rae Brown is not the surviving spouse, 100% of the song termination proceeds will go to the children. While Mrs. Brown has agreed to contribute 65% of her share of the termination rights proceeds to the Charitable Trust, the children have not agreed to contribute anything. If Mrs. Brown is not the surviving spouse, the Charitable Trust will receive nothing.
6. I agree with the projection in the Settlement Agreement that the termination rights for James Brown are worth tens of millions of dollars. The proceeds from these terminated copyrights will arise when the heirs sell (re-assign) these rights to a publisher, with the

primary valuable sales opportunities arising over the next six years. If Mrs. Brown is not the surviving spouse, the Charitable Trust will lose out on receiving 32.5 percent of the expected tens of millions of dollars.

7. With that basic background about termination rights, here is why the Charitable Trust will substantially lose its funding over the next six years if Mrs. Brown is not the surviving spouse:
- a. As noted above, the Charitable Trust will never receive any proceeds from the valuable termination rights.
 - b. Also, as the copyrights are terminated, the royalty income stream to the Charitable Trust will substantially terminate as well.
 - c. Thus, if Mrs. Brown is not the surviving spouse, the Charitable Trust will suffer a two-fold financial blow: the Charitable Trust will not receive a penny of termination proceeds and the Charitable Trust income stream will lose a substantial portion of its income as the termination rights are exercised.

8. I am over the age of twenty-one (21) years and am competent to testify to the matters stated herein. I have read the foregoing paragraphs, and all matters stated therein are correct and true and based on my personal knowledge and belief, except as to those matters stated on information and belief and as to those matters I believe them to be true.

FURTHER AFFIANT SAYETH NOT.


Peter Afferman

Sworn to before me this
29th day of October, 2019.

 (s.s.)
Notary Public for California
My commission expires: Dec 18, 2021

Max Sagan (Verifying Public)

All documents are attached.

EXHIBIT AA

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	
v.	)	RESPONSE TO POPE'S PROPOSED
	)	ORDER, SUPPLEMENTAL
	)	MEMORANDUM AND AFFIDAVIT
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendants.	)	
	)	

Plaintiff's Proposed Order should be rejected as it provides no valid response to the Attorney General's Proposed Order, and her Supplemental Memorandum and Affidavit should be rejected as irrelevant and untimely.

SUPPLEMENTAL MEMORANDUM AND AFFIDAVIT SHOULD BE REJECTED

The Attorney General objects to Plaintiff's Supplemental Memorandum and 29 page affidavit with 11 pages of exhibits filed after this case was heard and the Court directed the parties to submit proposed orders. Without authorization or a request for leave to file, she submitted these documents after the record was closed in this case and the parties were directed to submit proposed orders. Moreover, the documents add nothing to this case. Much of the affidavit is an irrelevant rehash of Plaintiff's version of history that she has recounted in her numerous affidavits that are already subject to motions to strike. Nothing in the affidavit is new information that became available to Plaintiff after the hearing in this case. Plaintiff requests relief that goes beyond the scope of her own proposed order, her Complaint as well as FOIA in asking for a sworn detailed certificate of the Attorney General regarding withheld documents and the imposition of "exemplary damages." The affidavit and memorandum should be rejected as

untimely and irrelevant to the disposition of this case. Should the Court want a more detailed response, the Attorney General's Office will be glad to submit one upon request.

PLAINTIFFS PROPOSED ORDER SHOULD BE REJECTED.

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney never received this letter.

Plaintiff says that the Attorney General's Office was aware of the request, but awareness is not the same as receipt. Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, that the Office had not received that request, which Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to Ms. Meyers' affidavit of October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor." (emphasis added). The Office of the Attorney General never received the

FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

Plaintiff says that the Attorney General admitted that a copy of the letter was mailed to Sweeny Wingate and Barrow, but his Answer denied that doing so was compliant with the statute which requires that the agency receive the letter. The letter was addressed to the “Custodian of Records” at the Office of the Attorney General not to SWB, and does not show on it that the firm was being copied. Moreover, SWB was not authorized to receive and respond to FOIA requests for the Attorney General.

Plaintiff notes that the Attorney General did not raise this defense in his Motion to Dismiss. He did not do so because that Motion was based upon the limited grounds of improper venue and the pendency of another action between the parties under Rules 12(b)(3) and (8). The Attorney General raised the defense in opposition to Plaintiff’s Motion for Summary Judgment and in a Motion to Amend Motion to Dismiss due to lack of subject matter jurisdiction. He also raised the defense in his answer.

The authority to sue under FOIA is limited to actions “to enforce the provisions of this chapter in appropriate cases” §30-4-100. Therefore, no basis exists for enforcement when no “receipt” of “written request” has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).¹ Plaintiff tries to

¹ “In order to maintain a judicial action under FOIA, a plaintiff must first request documents from an administrative agency and if his request for documents is refused must exhaust his administrative remedies before filing a court action Where a plaintiff has not complied with these procedures, district courts lack jurisdiction over the claim under the exhaustion doctrine and will dismiss the claim for lack of subject matter jurisdiction.” *Gasparutt, supra*. Although this California District Court decision is not binding on this Court, it is consistent with this Court’s conclusion that Plaintiff cannot enforce FOIA in this action when she has not complied with that statute, herself.

distinguish *Gasparatti* as an exhaustion case, but the requirement for exhaustion recognized by that Court came after the initial requests for documents. 22 F. Supp. 2d 1114, 1116 (“In order to maintain a judicial action under FOIA, a plaintiff must first request documents from an administrative agency and if his request for documents is refused must exhaust his administrative remedies before filing a court action.”). Plaintiff never first requested the documents at issue and instead proceeded to sue.

Because of the proposed ruling that the Court lacks subject matter jurisdiction and Plaintiff has failed to state a cause of action in that the Attorney General did not receive the FOIA request by mail or delivery, we do not address Plaintiff’s other arguments including those regarding the motions to strike herein. Should the Court want to consider those arguments, we respectfully request the opportunity to respond to them.

The Attorney General respectfully requests that this Court consider signing his proposed order.

Respectfully submitted,
/s J. EMORY SMITH, JR.
 S.C. Bar No. 5262
 Deputy Solicitor General

ALAN WILSON
 Attorney General

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

Office of the Attorney General
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 Email: esmith@scag.gov

January 19, 2021

ATTORNEYS FOR THE ATTORNEY GENERAL

EXHIBIT BB

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING MOTION TO
	)	AMEND, MOTION TO DISMISS, AND
Alan Wilson, in his capacity as	)	MOTION FOR JUDGMENT ON THE
Attorney General of South Carolina,	)	PLEADINGS
	)	
Defendants.	)	
	)	

This case has come before the Court pursuant to pending motions of the Attorney General to amend motion to Dismiss, for judgment on the pleadings, and to strike numerous affidavits filed by Plaintiff. After carefully considering these motions, Pope's responses to them and counsel's argument about them at a hearing on November 19, 2020, this Court grants the motion to amend and for judgment on the pleadings. Because of this ruling, the Court need not reach the motions to strike in this order.

BRIEF HISTORY OF PROCEEDINGS

Plaintiff brought this action by a Complaint filed in Newberry County on August 3, 2011. The Complaint requested, in part, that the Court declare public documents that she sought by a June 30, 2011, Freedom of Information Act request and that they be made available for inspection and copying.

Following the denial of his earlier motion to dismiss and the transfer of venue to Richland County, Defendant Attorney General filed an Answer to the Complaint that included the defenses asserted in the Motion to Dismiss and Motion to Amend Motion to Dismiss, and added the defense of lack of subject matter jurisdiction arguing that Plaintiff failed to accomplish mailing or delivery

of her FOIA request as required by §30-4-30(c) and because the items requested were exempt from disclosure under FOIA contenting e they are subject to the rules regarding discovery in the Rules of Civil Procedure. The Answer also included the defense that the Office of the Attorney General had no documents that could be considered responsive to the FOIA request except for a draft of the Legacy Trust attached thereto and included in the Record on Appeal in *Wilson v. Dallas*, 403 S.C. 411743 S.E.2d 746 (2013). The Respondent AG also filed a Motion for Judgment on the Pleadings on March 7, 2013.

Judge Early heard pending motions in this case on May 17, 2016. He issued an Order dated June 14 dismissing this case. He found that the documents at issues were potentially discoverable in pending litigation in Richland / Aiken counties and would be governed by the Rules of Civil Procedure. He found that the documents were exempt from disclosure under FOIA for this reason and that FOIA could not be used to bypass civil discovery. The Court denied Plaintiff's Motion to Alter or Amend by Form 4 Order dated August 11, 2011. Plaintiff appealed the above 2016 Orders.

The Court of Appeals reversed the circuit court's order dismissing the Complaint and remanded the case for further proceedings on the basis of its conclusion in *Pope v. Wilson*, 427 S.C. 377, 389, 831 S.E.2d 442, 448, (Ct. App., 2019) which included the statement that “[i]f the government invokes the exemption in section 30-4-40(a)(4), ‘[m]atters *specifically* exempted from disclosure by statute or law,’[footnote omitted; emphasis as added by Court of Appeals] to seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record.” The Court of Appeals found that the case was not moot since Plaintiff challenged the claim that the Attorney General had given her all the documents responsive to her request. The Court did not address the Attorney General's

additional sustaining ground that the Court lacks subject matter jurisdiction due to the failing of the Plaintiff to accomplish mailing or delivery of her FOIA request as required by §30-4-30(c) and also the ground that the Court should strike Pope's 14 affidavits as being irrelevant and because many of them are not based upon personal knowledge, contain hearsay, or are speculative.

**PLAINTIFF HAS NO CLAIM UNDER FOIA
BECAUSE HER REQUEST WAS NOT RECEIVED BY MAIL OR DELIVERY**

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney General never received this letter and Plaintiff has failed to show otherwise.

Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, indicating that the Office had not received a FOIA request that Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to the affidavit of Ms. Meyers dated October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

While FOIA serves a vitally important function in assuring that public business is performed in an open manner, Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal

public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor.” (emphasis added). The Office of the Attorney General never received the FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

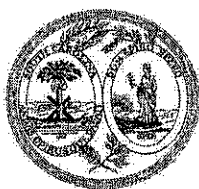
The authority to sue under FOIA is limited to actions “to enforce the provisions of this chapter in appropriate cases” §30-4-100. Therefore, no basis exists for enforcement when no “receipt” of “written request” has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).

CONCLUSION

The Court grants the Motion to Amend the Motion to Dismiss, grants the Amended Motion to Dismiss, and grants the Motion for Judgment on the pleadings because the Attorney General never received the written FOIA request by mail or delivery. Attaching the FOIA request to this lawsuit, another lawsuit, or mailing it to retain counsel is not compliant with the statute. This action is therefore dismissed for lack of subject matter jurisdiction and failure to state a cause of action. As a result, the Court does not rule on the other grounds of the Attorney General’s Amended Motion to Dismiss and Motion for Judgment on the Pleadings.

AND IT IS SO ORDERED

[Electronic signature of Clifton Newman, Circuit Court Judge, follows]



Richland Common Pleas

Case Caption: Adele J Pope vs Alan Wilson , defendant, et al

Case Number: 2012CP4000350

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2021-04-01 13:06:38 page 5 of 5

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EXHIBIT CC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2012-CP-40-350
	)	
Adele J. Pope,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED
	)	MOTION TO ALTER, AMEND OR
Alan Wilson, in his capacity as Attorney	)	VACATE ORDER GRANTING MOTION
General of South Carolina,	)	TO AMEND, MOTION TO DISMISS, AND
	)	MOTION FOR JUDGMENT ON THE
	)	PLEADINGS DATED APRIL 1, 2021
Defendants.	)	
	)	

TO: DEFENDANT AND ITS COUNSEL:

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as she may be heard, Plaintiff Adele J. Pope (Pope) will move, pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*, before the Honorable Clifton Newman ("Judge Newman"), for an Order altering, amending and/or vacating his Order dated April 1, 2021 which failed to grant Plaintiff judgment under FOIA, S.C. Code Ann. §30-4-10, *et seq.*; dismissed this 9 ½-year-old FOIA case; and granted judgment on the pleadings and other relief to the Attorney General of South Carolina ("AG"). A copy of said order is attached hereto. The grounds of this motion are set out below.¹

1. The Court overlooked or misapprehended the well-pled and supported fact that Pope timely delivered her June 2011 FOIA request to the AG, the Legacy Trust, and to SWB, sole

¹ This amended motion is filed to included the attachment, which was not included on the original motion. No changes or additions are made hereto beyond the addition of this footnote and the attachment.

counsel for the AG and Legacy Trust in Richland County Case 2010-CP-450-4900 (“Richland 4900”) at the time of the FOIA request and until at least 2016; and SWB had a duty under the Wingate Contract to inform the AG of the June 2011 FOIA request and both the AG and SWB, in addition to the Legacy Trust, had a duty to deliver the documents requested in Plaintiff’s June and July 2011 FOIA requests, including the following documents requested on June 30, 2011:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust [also known as the “Settlement Entity”]
2. All correspondence, email and/or other communications between any member of the [OAG] and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or The James Brown 2000 Irrevocable Trust.

2. The Court overlooked or misapprehended that judgment on the pleadings cannot be granted where, as in this case, the Complaint alleges:

18. On June 30, 2011, Plaintiff sent to AG Wilson and the Legacy Trust separate requests under FOIA for public records related to the Legacy Trust.

...

20. A copy of both requests was also delivered to the Wingate Firm which, on information and belief, as counsel for both the AG and the Legacy Trust, has a duty to comply with FOIA. See AG’s standard Retention Agreement for Special Counsel.

3. The Court overlooked or misapprehended that S.C. Code Ann. §30-4-30(c) requires that a public body must respond to a written FOIA request within the specified time after *receipt*, but does not specify any method of delivery, nor any particular person or department within a public body to which a FOIA request must be directed.

4. The Court overlooked or misapprehended that, in reversing the Circuit Court’s 2016 grant of judgment on the pleadings in the related FOIA case of *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (Ct.App. 2019), the Court of Appeals summarized the standard for granting judgment

on the pleadings as follows:

"Any party may move for a judgment on the pleadings under Rule 12(c), SCRPC. When considering such motion, the court must regard all properly pleaded factual allegations as admitted." *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). "On review of the motion, the court may not consider matters outside the pleadings." *Id.*

In evaluating a Rule 12(c) motion, the court must consider that "a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties." *Id.* at 287, 533 S.E.2d at 353 (quoting *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). Moreover, "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Id.* (quoting *Russell*, 305 S.C. at 89, 406 S.E.2d at 339).

5. The Court overlooked or misapprehended that the Answer of the AG served in this FOIA suit on March 7, 2013, and filed the following day, **admits that the FOIA request was delivered to SWB** and refers to the Wingate Contract, which it calls the "Retention Agreement," which states:

The Defendant [AG] craves reference to the Retention Agreement for its contents related to FOIA. [AG's Answer, ¶17]

6. The Court overlooked or misapprehended that at the time of the FOIA request in 2011 the AG, the AG's trustee Russell Bauknight, and SWB had all concealed the Wingate Contract/Retention Agreement from Robert Buchanan, Jr. and Plaintiff for months despite repeated requests; that the AG, through SWB, claimed the Wingate Contract was the "epitome of a private document"; and that the AG, SWB and Bauknight had all concealed from multiple courts the clear mandate of the Wingate/Contract/Retention Agreement, namely:

- a. The Wingate Contract is a public document subject to FOIA;
- b. All documents used by SWB in Richland 4900 are Property of the State of SC;

c. All documents used in Richland 4900 are subject to FOIA;

d. SWB has a duty to notify the AG and comply with FOIA when it receives a FOIA request.

7. The Court overlooked or misapprehended that *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998), the only authority cited by the AG in support of the relief granted in the Order, involved the Federal FOIA and an agency which had published specific procedures for making a FOIA request; *Gasparutti* is therefore inapplicable to this case, where neither the South Carolina FOIA nor any known policy published by the AG requires any specific form or addressing of a FOIA request.

8. The Court overlooked or misapprehended that *Gasparutti* was decided on the basis that the plaintiff therein had not exhausted his administrative remedies before filing suit. Federal appellate caselaw does not support the AG's contention that receipt of the FOIA request is a precedent to this Court's subject matter jurisdiction over the matter. "[E]xhaustion is a prudential consideration rather than a jurisdictional prerequisite, [and] the district court was not precluded . . . from deciding the merits of Wilbur's FOIA claim notwithstanding his failure to comply with the CIA's FOIA appeal deadline." *Wilbur v. C.I.A.*, 355 F.3d 675 (D.C. Cir. 2004).

9. The Court overlooked or misapprehended that the AG has demonstrated that, to the extent *Gasparutti* is applicable at all, the AG's conduct has demonstrated that Plaintiff's resubmission of the 2011 FOIA request would have been futile. As set out in the affidavit of Tracy Meyers, which alleges that she did not receive the 2011 FOIA request, Meyers stated:

6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request [which the AG, Legacy Trust and SWB already had] to the [OAG] by Ms. Pope or her attorney, a response to the FOIA request will be made by them if permitted by the Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that

request. [Emphasis supp.]

10. The Court overlooked or misapprehended that the AG made clear in 2011 that it would *not* substantively respond to Plaintiff's June 30, 2011 FOIA request even if she delivered another copy of the request; it is therefore against the letter and the spirit of the FOIA to dismiss this 9 ½ year old FOIA case because the AG takes the position that it did not receive the copy of the FOIA request which was mailed directly to it – especially where it is undisputed that the AG's counsel *had* received the request and that the office of the AG was aware of it.

11. The Court overlooked or misapprehended that if the AG and SWB had simply complied with the AG's statutory duty and the duty of both under the Wingate Contract in July 2011, two 9 ½-year-old FOIA suits by Plaintiff, including two appeals, and a 2012 FOIA suit by a journalist which resulted in a judgment against the AG, would have been avoided, but the AG, Legacy Trust run by the AG's trustee, Russell Bauknight, and SWB all refused to release the public Wingate Contract, and the AG continues to refuse to release it under FOIA in April 2021.

The Court Overlooked that the Court of Appeals Rejected the AG's Claim that Plaintiff Did not Properly Deliver her June 30, 2011 FOIA Request

12. The Court overlooked or misapprehended that the AG raised its purported non-receipt of the 2011 FOIA request as an additional sustaining ground during the appeal of this case and presented the same argument and authority which it has presented to this Court.

13. The Court overlooked or misapprehended that, after the Court of Appeals reversed the dismissal of this case notwithstanding the AG's argument that it did not receive the 2011 FOIA request, the AG again argued that matter in its Petition for Rehearing. The Court of Appeals denied that Petition without requesting a return from Plaintiff.

The Undisputed Record Shows that the AG's 9 ½- Year FOIA Noncompliance Continues to Advance the May 29, 2013 Announced Plan to Disregard *Wilson v. Dallas* and Reinstate the AG's 2008 Settlement

14. The Court overlooked or misapprehended that the AG's FOIA noncompliance prior to *Wilson v. Dallas*, like Richland 4900, was intended to enforce the AG's 2008 settlement which dismembered James Brown's estate plan, and the AG's FOIA noncompliance for the last 8 years has been to help carry out the announced May 29, 2013 plan of Tomirae Hynie and Louis Levenson, Esq., of their intention to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which gave Hynie spousal status and \$1 million a year and a quarter of Brown's "I Feel Good" charity for half of the termination right proceeds she and her son put in the Legacy Trust in 2009.

15. The Court overlooked or misapprehended that if the AG had complied with proper FOIA requests made by Plaintiff in 2011 and a journalist in 2012 (*Summer v. Wilson*), a handful of public documents would have made clear the damage the AG's 2008 settlement did to James Brown's charity and that the spousal, tax, valuation and U.S. Copyright Act claims Hynie and Bauknight were making to the Supreme Court, and which the AG endorsed, were clearly erroneous.

16. The major public documents which the AG has withheld under FOIA to advance the dismembering of James Brown estate plan in favor of Hynie, Forlando and five former Levenson clients as sought in the Richland 4900 Complaint are:

- a. The public so-called "Hynie diary" which confirms in Hynie's handwriting that her 2001 ceremony with Brown was bigamous and the AG has known this since the document was widely disseminated in 2007 and early 2008.
- b. The Wingate Contract, still being withheld under FOIA in 2021, supports the sworn 2016 testimony of now-Governor McMaster that he did not authorize

SWB to bring Richland 4900 in the name of the State/AG; did not authorize Bauknight to act on behalf of the State/AG in that case; and did not know he was a Richland 4900 Plaintiff until after leaving office as AG in January 2011. It also shows that the entire Wingate Contract and every document used in Richland 4900 is public; property of the State of SC; and subject to FOIA.

c. The Afterman \$4.7 million claimed value of Brown's music empire, which earned \$7.83 million in 18 months when Buchanan and Plaintiff were PR/Trustees, was fabricated by one of Hynie's lawyers, Afterman and Legacy Trust lawyers being paid \$375- \$500 an hour. In Forlando Brown's words, it is "bogus." Forlando says this even though the \$79 million devaluation of Brown's music empire shifted \$1 million a year and nearly 1/3 (31%) of Brown's "I Feel Good" Trust away from needy students and over to the trust for Forlando and 6 other family members for more than a decade.

While the AG continues to conceal the Afterman/Bauknight \$4.7 million valuation under FOIA, the AG's own expert Roger Miller testified in 2018 that Brown's copyrights alone were worth as much as \$60 - \$80 million when the AG took control of Brown's assets in 2009 (15 - 20 x annual revenues).

d. The Legacy Trust Amendment signed by Governor McMaster just before he left office as AG; the related assignment to Forlando of 4.79% of the Legacy Trust in January 2011, the month Forlando planted the false Grammy© claim noted by the Supreme Court; and related public Legacy Trust documents owned by the State/AG might help explain Bauknight's claim in 2009 that he held most of the termination rights proceed that would be worth \$8.8 million by 2018, but claimed under oath in 2016 that the Legacy Trust had never existed.

Legacy Trust lawyer Threatens Sanctions or Lawsuit for Pursing FOIA Rights (2011)

17. The Court overlooked or misapprehended that the AG's "October 2020 Documents," recently released under FOIA, confirm that from 2009 until 2013 David Black, Esq., and other Legacy Trust attorneys were paid \$375 - \$500 an hour to enforce the AG's 2008 settlement which dismembered James Brown's estate plan.

18. The Court overlooked or misapprehended that on July 15, 2011 Black claimed the AG's Legacy Trust, the primary Plaintiff in Richland 4900, was private, and threatened Plaintiff with sanctions or a lawsuit if she exercised her FOIA right to receive a copy of the Legacy Trust

amendment Governor McMaster, then AG, had signed 7 months earlier.

19. The Court overlooked or misapprehended that this was the beginning of nearly 10 years of threats, sanctions and FOIA disruption by Black, the Legacy Trust and its owner/successors, and Sweeny, Wingate & Barrow, PA (“SWB”) to benefit Hynie and SWB’s other private Richland 4900 clients.

SWB Directs the Attorney General Not to Comply With His FOIA Duties (2012)

20. The Court overlooked or misapprehended that on January 20, 2012, in a letter described as **URGENT – PRIVILEGED ATTORNEY/CLIENT COMMUNICATION**, on file in this case, SWB attorney Mark Gende, Esq., advised the AG not to comply with his duty under FOIA to produce the Wingate Contract, even though the Wingate Contract states on its face that it is a public document subject to FOIA; that every document used by SWB in connection with Richland 4900 is property of the State of S.C.; and every document held by SWB is subject to FOIA.

21. The Court overlooked that this document was sent to AG Wilson, Sr. Asst., AG Havird Jones, Sr. Asst. AG Tracy Meyers, Asst. AG Mary Frances Jowers; and other AG staff, but, despite multiple FOIA requests, was withheld by the AG under FOIA until 2020 when it became part of the “October 2020 Documents” on file in this case.

22. The Court overlooked or misapprehended that SWB advised AG Wilson that if he complied with his FOIA obligations he would “certainly incur the sanction of costs and attorneys’ fees in the pending FOIA actions” and that this would be “more costly and embarrassing than a decision to continue litigating...”

23. The Court overlooked or misapprehended that SWB advised AG Wilson not to perform his proper duty under FOIA because it would “jeopardize the rights of your [Richland 4900] co-

litigants,” and the AG has followed that advice.

24. The Court overlooked or misapprehended that Hynie and other private clients of SWB constituted a majority of the AG’s co-litigants in 2012 when SWB advised the AG not to comply with his FOIA duties.

The AG Follows SWB’s Advice Not to Comply With his FOIA Duties from 2012 until 2021

25. The Court overlooked or misapprehended that on February 15, 2013 the AG followed SWB’s advice not to comply with FOIA, but to litigate, and resisted release of the public Wingate Contract, Hynie diary, Bauknight/Afterman \$4.7 million and Legacy Trust documents, claiming:

Plaintiff [Summer, a journalist] cannot obtain under FOIA documents as to which disclosure or release is under review or order of a court pending in another proceeding, including... Richland 4900. [Emphasis supp., Ord. Jg. Griffith, 9/19/14]

26. The Court overlooked or misapprehended that the AG also made the entirely incorrect statement that he had responded to the journalist’s multiple FOIA requests and had supplied any documents it had except the so-called Hynie diary and the Wingate Contract.

27. The Court overlooked or misapprehended that the AG’s claimed excuse for not releasing the Wingate Contract, which confirmed that everything used in Richland 4900 belonged to the State and was subject to FOIA, was that it was “under review” in a pending “motion or court order.”

28. The Court overlooked or misapprehended that the “review” the AG claimed should prevent release of the public Wingate Contract (and all other documents) was a motion the AG himself, through SWB, had filed in 2011 (after the FOIA request) and which SWB and the AG prevented from being heard until 2020 by requesting (and getting) a 3-year stay from 2013 – 2016; and by SWB’s bitterly resisting (successfully) at least three separate motions to lift the stay and

have motions heard in Richland 4900 between 2016 and 2020.

29. The Court overlooked or misapprehended that the journalist moved for summary judgment in the Summer FOIA case, the day the Supreme Court suggested that the circuit court should hear Plaintiff's FOIA matters "in the first instance," but the AG, Bauknight and SWB were able to derail and delay FOIA compliance in the Summer FOIA case until (and after) September 19, 2014, when Judge Griffith ruled:

Documents in the Wingate Firm's possession that were prepared, owned used, possessed or retained in whole or in part by the Attorney General are subject to this order and must be produced.

30. The Court overlooked or misapprehended that in 2015 the AG finally produced the Wingate Contract, the Legacy Trust amendment and certain other documents, but still refuses to release them under FOIA in this case 6 years later.

31. The Court overlooked or misapprehended that the October 2020 Documents make clear that the AG not only failed to comply with the FOIA mandate of *Wilson v. Dallas*, but openly disregarded the FOIA order of Judge Griffith in *Summer v. Wilson* and continues to do so by redacting Richland 4900 documents used by Hynie, the Legacy Trust and SWB private clients in their strategy to dismember James Brown's charity in Richland 4900 between 2010 and 2013.

The AG Relies on Unconstitutional, *Ex Parte* and Ill-Gotten Orders and Motions of Hynie and other Richland 4900 Plaintiffs to Evade or Delay FOIA Compliance

32. The Court overlooked or misapprehended that from 2011 until 2021 that AG has used unconstitutional, *ex parte*, and ill-gotten orders, as well as its own motions, through SWB, and those of Hynie, Bauknight and other Richland 4900 Plaintiffs, to claim that the AG is "barred from release [under FOIA] by pending motions or court order."

33. The Court overlooked or misapprehended that many Richland 4900 Plaintiffs,

including the estate of Venisha Brown, Yamma Brown and others, are now openly claiming in Federal Court, and it is part of the record in this case and Richland 4900, that Bauknight, Hynie and Afterman are improperly secreting documents which cannot be privileged since the open mission of Hynie and Afterman from 2013 to 2021 has been to dismember James Brown's charity; take U.S. royalties James Brown gave to his "I Feel Good" charity; and secure and take to London, U.K. the termination rights proceeds Hynie and her son James put into the Legacy Trust in 2009.

34. The Court overlooked or misapprehended that Bauknight, concealing in 2013 that he had shared the Afterman \$4.7 million valuation with Hynie, Forlando and more than a dozen Will/Trust contestants, secured a confidentiality order in Case 3:08-cv-00014-WOB, and both the AG and Bauknight have used the ill-gotten confidentiality order to conceal the contents of the Afterman \$4.7 million value. They have done so even though Hynie's son revealed to the Supreme Court in his *Wilson v. Dallas* rehearing petition that Afterman arrived at the absurd value by valuing Brown's 900+ copyrights at \$23 million; Brown's claims related to the \$17 million Cannon took at near zero; Brown's iconic tangible personal property (TPP) at near zero; Brown's valuable right of publicity at near zero; and reducing the \$23 million by \$19 million for Brown's TIAA debt – an overstatement of about \$4 million.

35. The Court overlooked or misapprehended that the AG claims it cannot produce the Afterman \$4.7 million claimed value under FOIA even though it has been used by the AG since 2010 to falsely accuse Buchanan and Appellant of a federal felony.

36. The Court overlooked or misapprehended that the AG's refusal to release the Afterman \$4.7 million claimed value violates FOIA, the *Summer* Order, *Wilson v. Dallas*, and the Due Process rights of Buchanan and Appellant who continue to be falsely accused of a crime by the

AG, as well as Bauknight and SWB purporting to act on behalf of the State/AG.

37. The Court overlooked or misapprehended that the Wingate Contract makes clear that the Afterman \$4.7 million claimed value and all related documents are property of the State of S.C. and subject to FOIA no matter which Richland 4900 attorney or party is holding them.

The AG's March 2013 Personal Knowledge of Damage to the "I Feel Good" Charity of the Afterman \$4.7 Million Value

38. The Court overlooked or misapprehended that on March 6, 2017 the AG, the Solicitor General and the Chief Deputy AG, in a meeting with Plaintiff and her counsel, and a meeting of the Solicitor General and Chief Deputy a few days later, gained personal knowledge of the damage to James Brown's charity done by concealing the fabricated \$4.7 million Afterman claimed value.

39. The Court overlooked or misapprehended that concealing the Afterman \$4.7 million value under FOIA, and not correcting claims made by Bauknight to the IRS based on the fabricated value, has shifted nearly 1/3 (31%) of Brown's "I Feel Good" charity over to Forlando and other family members, causing hundreds of thousands of dollars of unnecessary income taxes and depriving needy student of \$1 million of scholarship funds a year for more than a decade.

The AG Tells the Supreme Court he Will Conclude FOIA Matters Promptly and Doesn't

40. The Court overlooked or misapprehended that on March 14, 2013 the AG told the Supreme Court that he was getting out of Richland 4900 and hoped to conclude the FOIA matters shortly, then remained in Richland 4900 until 2017 and is still refusing to produce public documents under FOIA and attempting to suppress criticism of his 9 ½ year FOIA noncompliance.

The AG's March 2013 Answer in this FOIA Case Supports Hynie and the Legacy Trust

41. The Court overlooked or misapprehended that on March 8, 2013, with knowledge of the damage his FOIA noncompliance was causing James Brown's "I Feel Good" charity, the AG

filed an Answer in this FOIA case which fully supports the Richland 4900 Complaint, the purpose of which was to enforce the AG's 2008 settlement; make Hynie James Brown's spouse; and give her a quarter of the music empire and its \$4 million annual royalty stream for half of the termination rights proceeds which she and her son had put in the Legacy Trust.

42. The Court overlooked or misapprehended that the AG's refusal to comply with FOIA, and the disruption caused by the AG's private attorney SWB and by Bauknight, has followed the same pattern as in the Summer FOIA case, except that Judge Griffith refused the AG's proposed transfer of the FOIA case to Richland County; directed FOIA compliance for the first time 2 years after the suit was filed; and directed that about \$40,000 in attorneys' fees and costs be paid by the State/AG in that case for its 2-year refusal to comply with FOIA.

The AG's Refusal to Comply with FOIA Supports Hynie and Other SWB Private Clients

43. The Court overlooked or misapprehended that the AG's October 2020 Documents filed in this case confirm that on April 24, 2013 the AG made clear that it had never been a client of SWB in Richland 4900, stating:

This is to advise that the Attorney General's Office has no responsibility for legal fees to [SWB] as this Office did not employ the firm's services.

And:

As you are aware, if the Supreme Court decision stands as is, any fees [SWB] have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown.

44. The Court overlooked or misapprehended that despite this clear statement, from 2013 until 2020 the AG's Answer in this FOIA case fully supports Richland 4900 in which Hynie and other SWB clients continue their effort to dismember James Brown's charity and even though

SWB had secured years of delays in FOIA hearings and two SWB attorneys lacked candor about their representation of the State/AG in depositions ordered by Judge Toal in 2017.

The Supreme Court Acknowledged the AG's Commitment to Get Out of Richland 4900

45. On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas* which, in footnote 30, acknowledges the AG's commitment to get out of Richland 4900.

46. The Court overlooked or misapprehended that with the AG out of Richland 4900 the sole Beneficiary/Owners of the Legacy Trust, the primary Richland 4900 Plaintiff, and their approximate shares in the costs and outcome of Richland 4900 were: Hynie, 46%; Forlando, 9%; and five Levenson clients, 9% each.

The AG Allows the Legacy Trust to Evade FOIA by Claiming it Does Not Exist

47. The Court overlooked or misapprehended that in 2009 both the AG and Bauknight assured the Honorable Doyet A. Early that the AG would carefully oversee the operation of the Legacy Trust which already held termination rights proceeds of the private settling parties which, the AG and Hynie claimed, might be more valuable than James Brown's Estate/2000 Trust.

48. The Court overlooked or misapprehended that the claim was wholly inaccurate at the time made, and is wholly inaccurate now because termination rights will never be able to be exercised against the "I Feel Good" Charity's non-U.S. royalties, which make up about half of the annual royalty stream which was about \$4 million when Buchanan and Petitioner were PR/Trustees and has been \$3.5 million - \$4 million a year since.

49. The Court overlooked or misapprehended that experts Wallace Lightsey, Esq., Wm. Jeffrey Smith and others, and the Ray Charles litigation, have confirmed that multiple strategies exist for charities which hold copyrights to minimize and/or delay the impact of termination rights

elections on their royalty streams, but that sharing a music consultant with someone claiming to be the spouse, but who is not, is not one of those strategies.

50. The Court overlooked or misapprehended that journalists, experts, a State Senator and others, by their affidavits filed in this case since 2011, have shown that the citizens of South Carolina and media in S.C. have great interest in the value of James Brown's music empire and "I Feel Good" Charity and the actions which the AG is taking to assure that the royalties to what is now 1100+ copyrights James Brown devised to his "I Feel Good" Trust for scholarships for needy students are being properly protected from attempts of Hynie and others to siphon off scholarship funds James Brown intended for needy students.

51. The Court overlooked or misapprehended that the AG, based on the Afterman \$4.7 million which has been concealed under FOIA for 9 ½ years, supported and/or joined in Bauknight's incorrect claims to the Supreme Court in 2011 and later that the AG's 2008 settlement saved taxes; that the AG's 2008 settlement was good for Brown's charity; that James Brown's Estate/2000 Trust had no corpus to speak of; that nobody was trying to buy the James Brown assets; and, based on the concealed Afterman claimed valuation, James Brown's worldwide music empire was worth only \$4.7 million when he died.

52. The Court overlooked or misapprehended that by 2018 the AG's own Richland 4900 experts had testified that the TPP valued at near zero could be worth as much as \$20 million; that that "frothy" investors were willing to pay 15 – 20 times revenues, as much as \$60 - \$80 million, for the copyrights; and that the termination rights of all heirs, with certain exceptions, had grown to only \$8.8 million by 2018.

53. The Court overlooked or misapprehended that an AG in charge both of FOIA

compliance and overseeing James Brown's "I Feel Good" charity allowed Bauknight, who signed the Wingate Contract for the Legacy Trust in 2010 and stated under oath in 2012 that he had managed the Legacy Trust in Richland County since 2009, to simply claim that it disappeared with no explanation for what happened to a substantial portion of the termination rights proceeds to U.S. royalties from 1100 copyrights put into the Legacy Trust in 2009.

54. The Court overlooked or misapprehended that because of the AG's control of FOIA, the Legacy Trust, and Richland 4900 until 2013, its refusal to release critical public documents is troublesome, especially where the AG has allowed James Brown's charity to advance 100% of the costs of Richland 4900 to the Legacy Trust since 2010 and Hynie and her son James are now residents of London, U.K.

55. The Court overlooked or misapprehended that AG Tracy Meyers, who claimed in 2011 that she had not received the valid FOIA request, has been included at least since early 2012 in SWB's direction to the AG not to comply with his FOIA duties, suggesting that she may not have inquired of other AG staff to see who did or did not receive Plaintiff's June 30, 2011 FOIA request.

The AG's Representations to the Circuit Court on May 17, 2016 were Incorrect

56. The Court overlooked or misapprehended that the AG and Legacy Trust lacked candor with the Court at the hearing on May 17, 2016, with neither informing the Circuit Court that the AG had never engaged SWB as an attorney, and the AG claiming that all of the documents sought under FOIA were discoverable in Richland 4900, in which the AG is a named party.

57. The Court overlooked or misapprehended that after claiming that the FOIA request should be addressed in Richland 4900, in which the AG was a party, the AG moved the same Circuit Court to be dismissed as a party to Richland 4900 under Rule 21, claiming that it had never

been a party.

58. The Court overlooked or misapprehended that the AG told the Circuit Court on May 17, 2016 that “[w]e believe we provided the documents the Plaintiff seeks,” when the AG had actual knowledge that under the Wingate Contract the State owned every document used in Richland 4900; that it had used but withheld the Afterman \$4.7 million valuation for 5 years; and that it was continuing to withhold both the \$4.7 million valuation and the Legacy Trust documents.

59. The Court overlooked or misapprehended that at the May 2016 hearing the AG raised the claim that Meyers had not received the document, but carefully noted that “we didn’t get the request from her,” never claiming that it was not timely received from someone, and – as SWB had advised – electing to litigate rather than follow the mandate to comply with FOIA.

60. The Court overlooked or misapprehended that the AG’s counsel improperly characterized Plaintiff’s FOIA request as “a waste of time,” and sought to strike 14 affidavits of journalists, Plaintiff and other citizens which urged the AG to comply with his FOIA duties and release the James Brown documents, which were of great public importance.

The AG’s Brief in the FOIA Appeal Continued the AG’s disingenuous Claims

61. The Court overlooked or misapprehended that the AG, to further avoid his FOIA duties as well as his duties to protect the “I Feel Good” charity from Hynie and those aligned with her, claimed disingenuously that he had supplied Plaintiff with all of the documents she had request under FOIA, even though he had not.

62. The Court overlooked or misapprehended that that the AG continued to claim that Richland 4900 was another action pending between the same parties, even though the AG had obtained an order under Rule 21 dismissing it as a party.

63. The Court overlooked or misapprehended that Plaintiff was not entitled to summary judgment in this matter as she had requested on September 29, 2011 despite the AG's FOIA mandate that "when in doubt, release the document."

FOIA Noncompliance has Wasted Millions of Dollars of Brown's Charity

64. The Court overlooked or misapprehended that the AG's and Legacy Trust's FOIA noncompliance and other efforts since May 29, 2013 to reinstate the AG's 2008 settlement have resulted in Bauknight's expenditure of tens of millions of dollars from James Brown's "I Feel Good" charity which Brown intended to be used for the education of needy students, and the AG has made no effort for the Legacy Trust owner-successors pay the tab.

The AG's 2020 Efforts to Strike Affidavits Critical of his FOIA Noncompliance from the Public Record is Improper

65. The Court overlooked or misapprehended that the AG's refusal to release the Afterman \$4.7 million claimed value which is the heart of Hynie's fraudulent value and termination rights claims, and the Legacy Trust amendments made as Forlando planted the false Grammy© claim, have helped Hynie, Forlando and the Cannon trustees with whom Forlando was aligned from 2007 until 2018 defraud multiple state and federal courts.

66. The Court overlooked or misapprehended that the 14 or more affidavits filed in this case reflect the appropriate concern of Plaintiff, journalists, and other citizens that the AG is using FOIA abuse to dismember a charity he has a public duty to protect, and the AG's 2020 efforts to scrub the public record of his failure to comply with his public duty under FOIA violates the Due Process rights of Plaintiff and these citizens and the criteria for sealing public record.

67. The Court overlooked or misapprehended that the Court of Appeals did not honor the

AG's request to strike these legitimate citizen complaints about the AG's failure to comply with his obligations under FOIA.

The AG's Actual Knowledge of the Damage his FOIA Noncompliance is Doing to a Charity He Claims to be Protecting Supports Reversal of this Lower Court's FOIA Dismissal

68. The Court overlooked or misapprehended that on March 6, 2013 the AG, the Solicitor General, and the Chief Deputy AG were personally told of the damage caused to James Brown's charity by the Bauknight/Afterman \$4.7 million claimed value, which includes:

- a. shifting \$1 million a year and nearly 1/3 (31%) of the "I Feel Good" Trust from needy student beneficiaries to Forlando Brown and 6 other family members for more than a decade, under the "fractional share" clause of Brown's trust;
- b. causing Brown's estate to be liable for hundreds of thousands of unnecessary income tax each year, which was not payable when Brown's assets were properly valued at about \$84 million (\$100 million less the correct \$15 million TIAA debt).

The FOIA Answer Confirms the AG's FOIA Noncompliance Benefits Private Individuals

69. The Court overlooked or misapprehended that on March 7, 2013, one day after learning personally of the damage the Bauknight/Afterman \$4.7 million claimed value was doing to James Brown's charity, the AG, served his Answer in this FOIA suit; adopted the Richland 4900 complaint which seeks to enforce the AG's 2008 settlement; adopted the terms of the Wingate Contract, which he called the "Retention Agreement," for FOIA obligations even though he was concealing it; and moved to dismiss based on the letter of AG Tracy Meyers of August 5, 2011 and Affidavit of Meyers, dated October 20, 2011.

70. The Court overlooked that the AG's March 2013 Answer in this FOIA suit supports the dismembering of James Brown estate plan addressed in *Wilson v. Dallas* and the continuing

fraud on state and federal courts by Hynie, Forlando and those associated with them.

71. The Court overlooked that AG's Answer in this FOIA Suit contained the following:

9. ...the Defendant [AG] craves reference to the Complaint in case 4900 and denies any allegations in the instant [FOIA] complaint which are inconsistent therewith... [Complaint, p.3]

10. ...the Defendant [AG] craves reference to the complaint in Case 4900 and denies that the allegations in the 4900 Complaint are false... and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit. [Complaint, p. 3]

...

13. ...the Defendant [AG] admits that he succeeded Henry McMaster as [AG], but denies any allegations inconsistent with the Complaint in Case 4900 and denies that Plaintiff [Pope] may litigate issues in the instant [FOIA] case that are before the Court in case 4900 or that could be raised in that suit. [Complaint, p. 3]

...

15. ... Defendant Wilson denies that Plaintiff properly mailed or delivered her [FOIA] request at issue directly to the ...OAG... He is without sufficient knowledge or information to admit or deny whether she properly mailed or delivered her FOIA request to the Legacy Trust. As to the description of the requests, he craves reference to the alleged letters for their contents [p.4]

17....admits...that the document was sent to the Wingate firm [SWB]....The Defendant craves reference to the Retention Agreement [Wingate Contract] for its contents related to FOIA. [p.4]

18. ...Defendant [AG] admits that his office did not respond to the referenced FOIA....

22....allegations in paragraph 25 regarding the Black letter do not apply to the [AG]... such matters are for the Trust to determine what response should be made...[p.5]

33. The Defendant denies the requests in the Prayer for Relief to the extent they are directed to him except that he agrees to the current hearing date of March 18, 2013... he is serving and filing his Answer now...in an effort to bring all matters before the Court so they may be determined at the hearing on the 18th... p.7 [Emphasis supplied throughout]

Conclusion

For the reasons set forth above, Plaintiff respectfully asks that this Court alter, amend and/or vacate its April 1, 2021 Order; direct that the AG comply with FOIA; and grant Plaintiff

attorney's fees and costs incurred by the AG's FOIA violations for more than nine years. This motion is based on the entire record herein; applicable statutory and case law; and any memorandum which may be presented at or before the hearing on this motion.

Respectfully submitted,

s/Adam T. Silvernail
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April 13, 2021

Attorney for Plaintiff

EXHIBIT A

EXHIBIT DD

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	Case No. 2012CP4000350
Adele J. Pope,	)	
	)	RETURN TO PLAINTIFF'S
Plaintiff,	)	MOTION TO ALTER OR AMEND
	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff's Motion to Alter or Amend should be denied. The motion, like most of her other filings, contains lengthy, irrelevant arguments based upon Plaintiff's versions of proceedings in various litigation over the Brown estate. We do not agree with her baseless accusations and speculation, but choose not to address them because of their irrelevance. Instead, the simple and correct response to this Motion is that this Court properly dismissed this case because "[w]ithout proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered." Order at p. 3. This conclusion was supported by the Meyers affidavit that was attached to and part of the Attorney General's Answer that referenced it. Contrary to Plaintiff's assertion, exhibits attached to pleadings are part of the pleadings and therefore, properly the subject for a motion for judgment on the pleadings. Rule 10, SCRCP, expressly states that "[a] copy of any . . . document . . . which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." Therefore, the Meyers affidavit was properly before this Court regarding the lack of mailing or delivery of the FOIA request to the Office of the Attorney General. It is an affidavit under oath and is dispositive as to the lack of proper mailing or delivery.

Plaintiff also asserts without basis that the Court of Appeals rejected this argument. It did not. The argument was, as she says, in an additional sustaining ground, but the Court did not reach it. It instead remanded for further proceedings which would necessarily include other issues raised by the Defendant.

For the foregoing reasons, the Attorney General respectfully requests that Plaintiff's Motion be denied. Should this Court want to hear argument regarding any other issues in this case, we would respectfully request the opportunity to brief them although they are largely addressed by earlier filings.

Respectfully submitted,

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
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April 16, 2021

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