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Mar 14 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Appeal from Richland County  
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Judge

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Appellate Case No. 2021-000518

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Adele J. Pope..... Appellant,

v.

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

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**APPELLANT’S RETURN AND OPPOSITION TO RESPONDENT’S MOTION  
TO STRIKE AMENDED INITIAL BRIEF**

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Appellant Adele J. Pope (“Appellant”) opposes the motion of Respondent Alan Wilson, in his capacity as Attorney General for South Carolina (“Respondent”) to strike her Amended Initial Brief. The grounds for Appellant’s opposition are set out below.

**Background and Summary of Appellant’s Position**

This is an appeal from 2021 Orders of the Richland County Circuit Court dismissing this Freedom of Information Act (“FOIA”) case more than a decade after Appellant made her June 30, 2011 FOIA request to the South Carolina Attorney General for public documents including the purported \$4.7 million valuation of James Brown’s extensive and important music catalog and other assets.

While this case presents simple FOIA issues, the procedural history and record have been expanded and complicated by the efforts of Respondent, the James Brown Legacy Trust and Sweeny, Wingate & Barrow, P.A., to avoid multiple courts' consideration of the merits of the case. The underlying history and facts of this matter are outlined in the 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, filed in this Court on October 8, 2021, with over 400 pages of supporting documentation from the record in this case below. Appellant refers to and incorporates said Affidavit in support of this Return.

For the second time, Respondent moves to strike Appellant's initial brief based on Respondent's incorrect assertion that certain documents were not presented to the lower court in this case.<sup>1</sup> All of the material referenced in Respondent's motion was, in fact, filed below *in this case* and is properly before this Court.

Respondent also objects to Appellants request that this Court take judicial notice of the publishing of a recent article in the *New York Times* to support her statement that matters addressed in this case are of public importance today, as they were when Appellant's FOIA request was made over a decade ago.

Finally, Respondent, without citing any Rule, statute or caselaw in support of its argument, asks this Court to strike a section of Appellant's initial brief regarding

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<sup>1</sup> Respondent makes no objection to any statement within Appellant's Statement of the Case or Statement of Facts, nor to any document cited in support thereof or designated for inclusion in the Record on Appeal herein. Appellant notes that the working draft of the Record on Appeal including all documents designated to date is

the due process violations which have occurred in this case. Appellant submits that all of her arguments had to be adjusted in compliance with this Court's December 10, 2021 Order, which required her amended initial brief to refer only to matter filed in this case below. The inclusion of a separate section discussing the due process issues, which were raised in her September 1, 2021 initial brief, was part and parcel of her compliance with this Court's Order.

Appellant asks that this Court deny Respondent's motion entirely and allow this 10 1/2-year-old FOIA case to proceed to its final conclusion. Appellant's detailed responses to Respondent's motion are set forth below.

**I. All materials cited in Appellant's Amended Initial Brief were "presented to the lower court" as required by Rule 210(c) and this Court's December 10, 2021 Order.**

Respondent lists three documents referred to on page 39 of Appellant's amended initial brief, which Respondent argues were not filed in this case below. Once again, Respondent has failed to carefully review the record in this case before asking this Court to strike Appellant's filing. Appellant addresses each of the three documents about which Respondent complains in turn:

**A. Motion to Supplement the Record on Appeal in *Wilson v. Dallas*.**

Respondent incorrectly argues that this document was not presented below. This motion was originally made by Respondent and others in *Wilson v. Dallas* on May 6, 2011, seeking to supplement the long-closed record in that case with documents indicating James Brown's assets were worth only \$4.7 million at his

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in excess of 900 pages.

death, rather than the approximately \$100 million which all fiduciaries prior to Bauknight had reported. This motion was made months after the purported \$4.7 million valuation was completed. The delay in notifying this Court (where *Wilson* was then pending) was apparently based on an accord among Respondent and others that the purported value would be best presented after Appellant and Robert L. Buchanan, Jr., filed their brief in *Wilson*. See Exhibit A, email among William W. Wilkins, Esq., Asst. AG C.H. Jones and others (which was presented to the lower court and designated for inclusion in the Record on Appeal herein), attached hereto.

The Motion to Supplement was filed in this case as Exhibit A to Appellant's May 17, 2016 Reply to Memoranda of Defendants and was thereby presented to the lower court. A copy of that Reply and its attachments is attached as Exhibit B hereto.

Appellant did not include this document in her Designation of Matter to be Included in the Record on Appeal as a result of an oversight, but the document can and will be designated with any additional documents needed for her initial reply brief herein pursuant to Rule 209(a). Its relevant portions are also referenced numerous times in other designated documents.

**B. Return to Appellants' Request for Extension of Time in *Wilson v. Dallas*.**

The relevant portion of this document, originally filed by Respondent in this Court in *Wilson v. Dallas* on August 23, 2010, has been presented to the lower court within more than one filing. Specifically, Appellant included a verbatim quote of the language referred to in the amended initial brief on page 3 of Appellant's Affidavit in

Further Support of all Relief Requested, which was filed in this case on October 6, 2011 and is designated as #18 in her amended designation of matter to be included in the record on appeal herein. Appellant notes that the same block-quoted language from the document is included in her October 5, 2011 letter to Assistant Attorney General Tracey Meyers (filed as Exhibit C to the 10/6/11 affidavit). A copy of that affidavit and exhibit are attached hereto as Exhibit C.

When Appellant's final brief is filed, the reference to the record on appeal herein will be adjusted to cite the quoted language which was presented to the lower court.

**C. Complaint, *Bauknight, et al, and Wilson, et al vs. Pope, Richland 4900.***

Respondent again asserts that this document was not presented to the lower court in this case. In fact, the entire Complaint, as well as the Answer and Counterclaim of Appellant and Robert L. Buchanan, Jr., was filed in this case as Exhibit B to Appellant's motion, dated November 30, 2011, to partially reconsider the Order of the Honorable Frank R. Addy, Jr. A copy of that motion and the relevant exhibit thereto is attached as Exhibit D.

While the motion attaching the Complaint was initially filed in the separate FOIA case which then bore Newberry County Case No. 2011-CP-36-0379, the attached copy has been found within the Court's file in this FOIA case since it was transferred from Newberry County and to Richland County in early 2012. The document includes a note (presumably made by the Clerk of Court) reading "2012-350," the circuit court case number of this case, suggesting that it was filed in both

FOIA cases before the transfer of those two cases from Newberry County to Richland County.

Appellant attaches as Exhibit E a printout of filings in the lower court in this case which specifically notes the title of Exhibit D and links to the exact document attached as Exhibit D.

In addition, on September 2, 2011, Respondent moved to dismiss this case in part based on the Richland 4900 Complaint, asserting that “the claims in the complaints are not identical.” See Exhibit F, p. 2. The Richland 4900 Complaint was clearly presented by Respondents to the Newberry FOIA Court to support its effort to transfer this FOIA case from Newberry to Richland County.

Both because the Richland 4900 Complaint *is* on file in this case and because it was certainly “presented to the lower court” as required by the Rule and this Court’s previous Order, Appellant submits that it is properly referred to in her brief.

Appellant notes that this document was not included in her Designation of Matter, which can be corrected in her additional designations on reply, as provided in Rule 209(a).

All matter referred to in Appellant’s amended initial brief was presented to the lower court. Respondent neither fully reviewed the record below nor contacted Appellant regarding these items, instead electing to make a second and erroneous motion to strike her amended initial brief. Appellant submits that all matter referred to was appropriate under the Rules and this Court’s Order, and Respondent demonstrates no basis for striking any portion of her amended initial brief.

**II. Respondent Presents no Basis for Striking Appellant’s Proper Request for Judicial Notice.**

Respondent asks this Court to strike footnote 12 from Appellant’s Initial Brief, which reads:

Sisario and Knopper, “After 15 Years of Infighting, James Brown’s Estate is Sold,” *New York Times*, December 13, 2021. The Court is asked to take judicial notice of this report of the recent sale of James Brown’s music catalog for a reported \$90 million.

As an initial matter, Appellant submits that Respondent’s objection to Appellant’s request should have been included, if at all, in Respondent’s brief and considered on a full record herein. Instead, Respondent continues its frequent efforts to edit Appellant’s filings by way of repeated motions to strike.

Appellant submits that this request for judicial notice is properly made and can be considered by this Court once the full record is before it. The request for judicial notice of a recent news article is included as support for Appellant’s statement that the value of James Brown’s assets “is a matter of public importance today,” as it has been since prior to the filing of this FOIA case. [Amended Initial Brief, p. 40] Respondent does not suggest that there is any dispute as to the fact that this recent article was published, and its existence is the only fact of which judicial notice is necessary to support Appellant’s statement.

Appellant submits that, regardless of whether the Court should take the requested judicial notice, there is no basis to strike footnote 12.

**III. No Basis Exists for Striking Appellant’s Argument VI.**

Respondent argues, without citation to any statute, case or rule, that it was inappropriate for Appellant to restructure her initial brief after this Court struck it

*at Respondent's request.* Although Respondent suggests in the instant motion that Respondent's motion asked this Court to preemptively tailor Appellant's amended brief, Appellant submits that the Court's Order did not so limit her.

In its September 24, 2021 Motion to Dismiss Appeal or Alternative Motion to Strike, Respondent states clearly, "Appellant's entire brief must be struck." [Motion to Dismiss or Strike, dtd. 9/24/21, p. 2, on file herein] Although this Court declined to dismiss the appeal, it did grant the motion to strike. This Court's Order makes no direction to Appellant to comply with Respondent's demands regarding her amended brief. Appellant submits that, given Respondent's wide-ranging motion which expressly did not list every matter it sought to strike, it was impossible to simply delete matters from the original brief and re-file it. Instead, Appellant took the time and care required to ensure Respondent and this Court have the benefit of a coherent and complete brief with references to documents which will be included in the Record on Appeal in compliance with this Court's December 10, 2021 Order.

Appellant further notes that her original brief raised due process violations at pages 25 and 26, and repeatedly raised those objections below. This was not new matter in the Amended Initial Brief. There is no prejudice to Respondent, since it has yet to file its brief herein and can respond properly to this longstanding argument when it files its brief herein.

### **Conclusion**

For the foregoing reasons, Appellant submits that this Court should deny Respondent's motion in its entirety; accept Appellant's Amended Initial Brief as filed; and allow this almost 11-year-old FOIA case to proceed. This return is based

on the Exhibits filed herewith, Appellant's October 7, 2021 Affidavit and exhibits which are on file herein, and the entire record in this case.

Respectfully submitted,

s/Adam T. Silvernail  
Adam T. Silvernail (Bar No. 80219)  
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1905 Marion Street (29201)  
Post Office Box 7995  
Columbia, South Carolina 29202-7995  
(803) 779-1770  
[adam@silvernailfirm.com](mailto:adam@silvernailfirm.com)

*Counsel for Appellant*

March 14, 2022

# 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\_l.png; links\_s.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  
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[www.nexsenpruet.com](http://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\***

**William W. Wilkins**  
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**NEXSEN|PRUET**



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# EXHIBIT B

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-CP-40-350

**PLAINTIFF'S REPLY TO MEMORANDA OF DEFENDANTS**

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In this FOIA case, Plaintiff Adele J. Pope (“Plaintiff”) submits this brief in reply to the Memorandum of Alan Wilson, in his capacity as Attorney General of South Carolina (“AG”) in support of his pending motions to amend, dismiss, for judgment on the pleadings and to strike and in reply to the James Brown Legacy Trust’s Supplemental Memorandum in Support of its Motion to Dismiss and in Opposition to Plaintiff’s Motion for Summary Judgment.

**I. As to the AG’s Memorandum**

In his Memorandum, the AG argues that he is entitled to prevail in this case because: he claims not to have received Plaintiff’s June 30, 2011 request until he was served with the Summons and Complaint herein (to which a copy is attached); he claims not to possess the \$4.7 million appraisal of James Brown’s music empire and related documents; and he asserts this case should be dismissed under Rule 12(b)(8), because the same or similar claims are pending between the parties in another action.

In March 2013, the AG moved to amend his answer herein and produced certain

public documents responsive to Plaintiff's June 30, 2011 request which had not previously been released to her by the AG.

By presenting public documents in this action, approximately a year and a half after its inception, the AG has acknowledged that it did indeed possess responsive public documents. In *Sloan v. SC Dep't of Revenue*, 409 S.C. 551, 762 S.E.2d 687 (2014), our Supreme Court found that a FOIA plaintiff was entitled to declaratory relief and attorneys' fees even where the public body had produced the requested documents three weeks after the plaintiff therein filed suit. Likewise, the AG's delayed production of documents herein moots nothing.

The AG further asserts that the Newberry County Court in a FOIA case to which Plaintiff is not a party has found that the AG does not possess the \$4.7 million appraisal of James Brown's music empire. First, Plaintiff is not bound by a finding in a case to which she has never been a party. Second, a public body need not possess a document to make it responsive and subject to production under the FOIA. Instead, the FOIA requires a public body to release all responsive public documents "prepared, owned, used, in the possession of, or retained by a public body." S.C. Code Ann. §30-4-20(c). The statute itself makes clear that possession of a document is not a prerequisite to release under the FOIA. As set out in Plaintiff's May 2, 2016 Memorandum, the AG moved the Supreme Court to accept the \$4.7 million valuation in 2011 (see Exhibit A), and he also sued Plaintiff and Robert L. Buchanan, Jr., in 2010 for, among other things, presenting an inflated valuation of James Brown's assets for the purpose of securing a \$5 million commission. If true, this claim by the AG would constitute a Federal felony. In his Motion to Supplement the Record in *Wilson v. Dallas*, the AG discusses in detail the basis for the valuation [see, e.g., footnote 3 on p. 6 of

Exhibit A]. The Motion to Supplement is signed by Sr. Asst. AG C. Havird Jones, and makes clear that the AG has "used" the appraisal.

The AG suggests that he need not produce documents which were later filed in *Summer v. Wilson*, since those are available from the Court's files. The AG points to no exception to the FOIA, and Plaintiff is aware of none, which would exempt documents from release because they are available elsewhere.

The AG takes the position that Plaintiff's case must be dismissed for lack of subject matter jurisdiction, where he claims that he did not receive her initial June 30, 2011 FOIA request. This argument is disingenuous where the AG was served with the Summons and Complaint herein nearly five (5) years ago, and has still never made a proper FOIA response to Plaintiff. S.C. Code Ann. §30-4-30, which sets out the procedure for making a request for release of public documents under the FOIA, prescribes no particular form or method for making a request, and Plaintiff's June 30, 2011 request was attached to the Complaint herein, which was served on the AG in August 2011.

In his Memorandum, the AG argues that he has produced all documents responsive to Plaintiff's request for "the final and all drafts, signed and unsigned, of the James Brown Legacy Trust." Plaintiff notes that, even if the draft documents produced by the AG were in fact all responsive documents, the AG did not produce those until approximately eighteen (18) months after this lawsuit was filed. His initial response to this action was to move for dismissal, asserting that Plaintiff could not seek documents from him under the FOIA in light of then-pending discovery motions in Richland County Case No. 2010-CP-40-4900 ("Case 4900"). He continues to take that position in his May 2, 2016 Memorandum.

## **II. As to the James Brown Legacy Trust's Memorandum**

The James Brown Legacy Trust, created by former AG Henry D. McMaster (the

“McMaster Legacy Trust”) argues that it should be dismissed because the McMaster Legacy Trust “as challenged by Plaintiff no longer exists.” This argument completely overlooks the fact that the McMaster Legacy Trust was created by the Attorney General. Plaintiff is unable to find a published case, and the McMaster Legacy Trust points to none, in which the question of whether a partially-charitable trust created by a public official, acting in his official capacity on behalf of the State, could ever be considered anything other than a public body. Instead, the cases cited by Plaintiff in her May 2, 2016 Memorandum show that even modest in-kind support of an entity can justify a finding that it is a public body for the purposes of FOIA.

Additionally, the McMaster Legacy Trust now appears to take the position that it does exist and has existed, but is retroactively exempted from FOIA because the Supreme Court invalidated the settlement which would have further funded it. A review of the South Carolina Trust Code makes clear that a trust is created, even where its source of funding is revocable and uncertain. The Reporter’s Comments to S.C. Code Ann. § 62-7-401 (2016) make clear that “the property interest necessary to fund and create a trust need not be substantial. A revocable designation of the trustee as beneficiary of a life insurance policy or employee benefit plan has long been understood to be a property interest sufficient to create a trust.” (See S.C. Code Ann. § 62-7-103(11) (2016), where property is defined.) Likewise, the funding of the McMaster Legacy Trust, even if affected by *Wilson v. Dallas*, was complete and the Trust created upon the signing of the settlement agreement in 2009. The McMaster Legacy Trust may not now avoid the effect of the AG’s involvement just because it did not turn out as he expected.

Further, the AG’s own public filings indicate that the McMaster Legacy Trust was substantially funded prior to the *Wilson v. Dallas* decision. In their December 22, 2010

Brief, Respondents asserted:

The Settlement Agreement created an entity containing all of Brown's probate and non-probate assets (Settlement Entity) Additionally, the family members increased the Settlement Entity's worth by contributing valuable assets, including federal copyright termination rights....

The McMaster Legacy Trust goes on to argue that its creation by the AG is insufficient to support a finding that it is a public body without a showing of public funds passing to or through it. This is simply out of line with applicable case law (as cited by Plaintiff in her previous filings), which makes clear that in-kind contributions are sufficient to justify a finding that an entity is a public body.

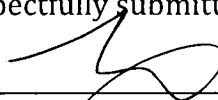
The document attached as Exhibit A is one of a multitude filed in Aiken County and appellate proceedings in which the AG's office defends the existence and funding of the McMaster Legacy Trust.

As to the McMaster Legacy Trust's argument that Plaintiff is not entitled to her FOIA rights as a result of the State, the McMaster Legacy Trust and others having sued her in Case 4900, none of the authorities the McMaster Legacy Trust cites support the proposition that any citizen is deprived of her FOIA rights as a result of her involvement in litigation with the State.

### **Conclusion**

For the reasons set forth above and in Plaintiff's other filings herein, Plaintiff asks that grant her summary judgment herein and deny the motions of the AG and the McMaster Legacy Trust.

Respectfully submitted,



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May 16, 2016

Attorney for Plaintiff

# EXHIBIT A

**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.

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**MOTION TO SUPPLEMENT THE RECORD PURSUANT TO  
RULE 212(b), SCACR, OR IN THE ALTERNATIVE, TO TAKE JUDICIAL  
NOTICE OF RECORDS FILED IN A RELATED PROCEEDING**

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TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE  
SOUTH CAROLINA SUPREME COURT:

Respondents respectfully request that this Court supplement the record of this appeal to include (1) Internal Revenue Service (“IRS”) Federal Estate tax records that were received by Respondents after filing their initial brief on December 22, 2010, and that are related to the date of death valuation of the estate and the tax consequences of the settlement agreement and (2) the Supplemental Inventory and Appraisal of the James Brown Estate (“Estate”) related to the date of death valuation and appraisal of assets for the Estate. In the alternative, this Court may take judicial notice of these documents as they were filed in the probate court or issued by the IRS in related proceedings.

### **FACTUAL BACKGROUND**

This appeal presents a unique situation: it concerns an ongoing estate and trust that are continuing to be administered in the normal course of estate and trust administration, and matters relating to their ongoing administration are relevant to this appeal. Although the documents that Respondents seek to include in the record had not been prepared and were thus not available when the circuit court issued its May 26, 2009 Order approving the Settlement Agreement, the Supplemental Inventory and Appraisal should properly be considered in this appeal as it was filed as required by the South Carolina Probate Code in the ongoing probate proceeding, and the IRS tax records should properly be considered because they were created as a result of an independent IRS audit of the Estate.

The Supplemental Inventory and Appraisal and IRS tax records refute factual assertions that the Appellants make to support their legal positions before this Court. Because these documents provide *support* to the circuit court’s decision to approve the settlement agreement, their inclusion in the record would neither undercut the circuit court’s decision, nor hamper appellate review of it. *Cf. Queen’s Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*,

368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) (“Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the Court] with a platform for meaningful appellate review.”).

### ANALYSIS

In their brief, Appellants argue: (1) that the settlement will cause serious tax problems for the James Brown Estate and Trust (the “Estate and Trust”); and (2) without the aid of a professional appraisal, Appellants contend that the combined Estate and Trust are worth roughly \$100 Million. Specifically, Appellants make the following misleading representations to this Court:

#### Tax Consequences:

- On page seven (7) of their brief, Appellants state that “the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest.”
- On pages thirty-eight to thirty-nine (38–39), Appellants devote a section of their brief to argue that the settlement will cause serious tax problems. They note that the “settling parties offered no evidence to refute the evidence of a likely tax disaster. Instead, their counsel reassured the court that they were ‘dedicated’ to preventing it.” *Id.* at 39.

#### Valuation:

- On page five (5), footnote five (5), of their brief, despite never having obtained a professional appraisal, Appellants state that the late James Brown’s assets have been valued at roughly \$80–120 Million.
- On page thirty-two (32) of their brief, Appellants note that the trust could be funded with \$100 Million.

See Final Brief of Appellants at pp. 5, 7, 32, 38-39.

Following the circuit court’s approval of the Settlement Agreement and after Appellants entered their notice of appeal, Russell L. Bauknight (“Mr. Bauknight”) engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust. This is the first

professional valuation and appraisal of the James Brown music assets since James Brown passed away on Christmas Day 2006. The valuation and appraisal work is now complete. As required by S.C. Code Ann. § 62-3-706, Mr. Bauknight filed the Supplemental Inventory and Appraisal at the Aiken County Probate Court (Supplemental Inventory and Appraisal, Appendix R. pp. 1-6). To protect the Estate and Trust, Mr. Bauknight filed the Supplemental Inventory and Appraisal under seal.

Furthermore, following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, the IRS continued to conduct an independent audit involving the valuation of the James Brown Estate and Trust. The IRS Auditors reviewed all estate tax issues surrounding the James Brown Estate and Trust, including the tax consequences of the subject Settlement Agreement. The Respondents received the IRS Proposed Estate Audit Examination Report ("IRS Audit") on December 27, 2010. (IRS Proposed Estate Audit Examination Report, Appendix R. pp. 7-11). Respondents and the IRS agreed to all adjustments concerning the IRS Audit, and the Respondents received the Final IRS Estate Closing Letter ("Closing Letter") on January 31, 2011.<sup>1</sup> (Final IRS Estate Closing Letter, Appendix R. pp. 12-15). As noted above, the Respondents received each of these documents *after* filing their initial brief on December 22, 2010.

As noted in the IRS Audit, after reviewing the settlement agreement, the IRS specifically concluded that, pursuant to the Internal Revenue Code, the charitable deduction applied and that "[t]he charitable deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009." (Appendix R. p. 11). Further, the IRS

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<sup>1</sup> Because Appellants filed the initial tax return that was subject to the audit, the IRS as a matter of course separately notified the prior fiduciaries that the incorrect estate valuation had been corrected and that the audited return had been accepted. (Appendix R. pp. 13-14). Appellants have since informed Respondents that they disagree with the IRS Final Closing Letter.

Audit found that the marital deduction applied: “[t]he marital deduction has been calculated in accordance with the Settlement Agreement dated August 10, 2008, as amended March 3, 2009.” (Appendix R. p. 10). Respondents argued in their brief that this deduction would apply and that it favored a finding that the Settlement Agreement was *just and reasonable*. Final Brief of Respondents, at 35-36. (The tax return previously filed by Appellants did not seek the marital deduction.) Finally, as noted in the Closing Letter, the Settlement Agreement resulted in zero tax liability to the Estate. (Appendix R. pp. 13-14).

The IRS Audit and Closing Letter show that the IRS rejected Appellants’ contention that the settlement agreement will cause additional tax liability, but instead, that the Estate is owed a \$10,000 federal tax refund due to Appellants’ overpayment. (R.p. 2760 (Estate Accounting filed by Appellants, first entry on the page: “US Treasury – payment towards Estate Taxes . . . \$10,000”); (Appendix R. p. 7 (“The report, though not final, shows that the estate is entitled to a refund.”); (Appendix R. pp. 12-15 (adopting audit, accepting return, and making final determination that no estate taxes are owed: “0.00.”)). Additionally, these documents further underscore Respondents position that the Appellants are not professional fiduciaries and are ill-equipped to manage the Estate and Trust.

The Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter reveal that on the date of death, the James Brown Estate and Trust were actually valued at roughly \$6.5 Million.<sup>2</sup> Referring to the intellectual property—royalty interests, reversion rights, etc.—the IRS Audit revealed that, “[v]aluation of these interests was corrected to fair market value based

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<sup>2</sup> The Supplemental Inventory and Appraisal accounts for only probate assets; it does not include the home of the late James Brown that is valued at roughly \$1.2 Million. That is the case because at the date of his death, the Trust owned the home and trust assets are not considered probate assets. (The Trust still owns the home.) The date of death, gross estate value reported to the IRS included the home, as both probate and non-probate assets must be reported for tax return purposes. Accordingly, the Estate and Trust were valued at roughly \$6.5 Million. (Appendix R. p. 10).

upon expert opinion and financial analysis”—that is, the independent professional appraisal authorized by Mr. Bauknight, as audited and accepted by the IRS. (Appendix R. p. 9). Consequently, the IRS rejected Appellants’ prior inexpert notion that James Brown’s royalty interests and reversion rights were worth approximately \$84 Million dollars. Accordingly, the date of death valuation of these taxable interests was corrected from \$84 Million to \$4.697 Million.<sup>3</sup> (Appendix R. p. 9). This IRS finding, based upon its own independent review and valuation, directly and incontrovertibly refutes Appellants’ contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80-120 Million dollars. Absent the inclusion of the Supplemental Inventory and Appraisal, the IRS Audit, and the Closing Letter, the Court is left with a factual and legally inaccurate probate and circuit court record.

Although these documents were not presented (could not be presented) to the circuit court because they did not exist at that time, this Court should consider the evidence. *See CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000) (noting “the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice”); *see also In re AOV Indus. Inc.*, 797 F.2d 1004, 1012 (D.C. Cir. 1986) (“Normally, of course, [courts] are not required to consider evidence presented for the first time on appeal . . . [but] [i]t is within the discretion of the court . . . , however, to make limited exceptions to this

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<sup>3</sup> While this figure may appear low, it is the date-of-death value that controls for purposes of the Federal estate tax return and the probate inventory and appraisal. Furthermore, this final figure accurately accounts for the debts of James Brown including the outstanding bond executed by Mr. Brown during his lifetime whereby he exchanged the rights to his royalty stream for a lump sum payment of \$26 Million. Once the bond debt is retired, the royalty stream will flow to the Settlement Entity where it will be apportioned among the settling parties—which includes the charitable trust that will fund scholarships to needy children attending schools in South Carolina and Georgia.

rule when ‘injustice might otherwise result.’” (citing and quoting *Singleton v. Wulff*, 428 U.S. 106, 121 (1976)). Here it would appear unjust for this Court to rely on Appellants’ assertion that the Settlement Agreement will cause additional tax liability to the Estate when the IRS has clearly rejected that contention. Accordingly, these documents are relevant to the current appeal, as they are official records of the Estate that contradict Appellants’ misleading valuation and tax assertions contained within their brief.

### CONCLUSION

As the IRS has independently concluded, the Settlement Agreement does not create additional tax liability to the James Brown Estate. In fact, the Settlement Agreement has reduced the tax liability to the James Brown Estate. Due to the nature of the underlying proceedings, the ongoing probate record on which Appellants’ base their appeal must be considered. Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission<sup>4</sup> based upon their prior unsubstantiated position that the Estate was worth \$80-120 Million.

Alternatively, Respondents would respectfully request that this Court take judicial notice of these records for they were filed in a lower court or issued by the IRS in a related proceeding. *See Ins. Comm’n of S.C. v. New S. Life Ins. Co.*, 270 S.C. 612, 635–36, 244 S.E.2d 289, 301 (1978). Furthermore, pursuant to Rule 208(b)(7), SCACR, because the IRS Audit and Closing Letter were received after Respondents filed their initial brief, it would appear appropriate for this Court to recognize the IRS records as supplemental authority to Respondents’ brief.

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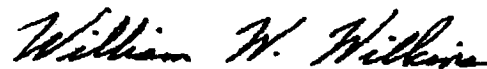
<sup>4</sup> Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80-120 Million. (R. pp. 2879-80).

Respectfully submitted,



---

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Attorney General, State of South Carolina  
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Senior Assistant Attorney General  
Robert D. Cook  
Assistant Deputy Attorney General  
J.C. Nicholson, III  
Assistant Attorney General  
Mary Frances Jowers  
Assistant Attorney General  
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Representative for the Estate of James Brown and  
as the Special Administrator and Special Trustee  
for the Estate of James Brown and the James Brown  
2000 Irrevocable Trust*

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*Attorney for Stephen M. Slotchiver, Guardian ad Litem for James Brown II*

May 6, 2011

Columbia, South Carolina

# EXHIBIT C

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF NEWBERRY )

IN THE COURT OF COMMON PLEAS  
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

FILED  
NEWBERRY COUNTY  
2011 OCT -6 P 3:40  
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?

FILED  
RICHLAND COUNTY  
2012 JAN 17 PM 4:37  
JEANNETTE M. MCBRIDE  
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. Plaintiffs<sup>0</sup> [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 secret \$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 on behalf of the Attorney General 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

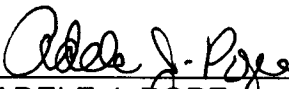
considered a public document. [Emphasis supplied.]

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

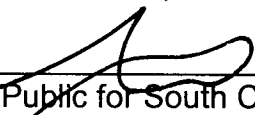
  
\_\_\_\_\_  
Notary Public for South Carolina (L.S.)  
My Commission expires: 7/13/2016

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 F#]

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  
#1  
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,

\*\*\*\*\*

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.

Please confirm if this is true, so that I may avoid another FOIA suit.

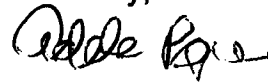
Ltr. to Ms. Meyers, Custodian  
October 5, 2011  
Page 5

\*\*\*\*\*  
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

2012-350

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF NEWBERRY )  
 )  
 ADELE J. POPE )  
 \_\_\_\_\_ )  
 Plaintiff, )  
 vs. )  
 )  
 ALAN WILSON )  
 \_\_\_\_\_ )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 EIGHTH JUDICIAL CIRCUIT  
 CASE NO.: 2011-CP-36-00379  
**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: Adam T. Silvernail, Esquire, Bar No. 80219 Address: Post Office Box 1898, Columbia, SC 29202 Phone: (803) 779-1770 Fax (803) 403-8092 E-mail: adam@silvernailfirm.com Other: _____	Defendant's Attorney: See Schedule A _____, Bar No. _____ Address: P _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
---	---

**MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**  
 **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**  
 **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

**SECTION I: Hearing Information**  
 Nature of Motion: Plaintiff's Motion to Alter or Amend and/or Reconsider and Vacate  
 Estimated Time Needed: 30 Minutes Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**  
 Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.  
 \_\_\_\_\_ 29 November 2011  
 Signature of Attorney for  Plaintiff /  Defendant Date submitted

**SECTION III: Motion Fee**  
 PAID - AMOUNT: \$ \_\_\_\_\_  
 EXEMPT: (check reason)
 

<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	JACKIE S. BOWERS CLERK OF COURT 2011 NOV 30 AM 10:18 FILED NEWBERRY COUNTY
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	
<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	
<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief	
<input type="checkbox"/> Motion for Stay in Bankruptcy	
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 60)	
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	
<input type="checkbox"/> Other: _____	

 Name of Court Reporter: \_\_\_\_\_

**JUDGE'S SECTION**  
 Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_  
 JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**  
 Collected by: J. Jolly Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ 25.00  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

**SCHEDULE A  
to Motion Coversheet**

**Counsel for Defendants:**

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

**Attorney for Defendant Attorney General**

Kenneth B. Wingate, Esquire  
Mark V. Gende, Esquire  
Sweeney, Wingate & Barrow, P.A.  
1515 Lady Street  
Post Office Box 12129  
Columbia, South Carolina 29211

**Attorneys for purported intervenors**

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

2011 NOV 30 A 10:18 Case No.: 2011-CP-36 - 379

ADELE J. POPE,

-v- Plaintiff, S. BOWERS  
Clerk of Court

) MOTION TO  
) PARTIALLY ALTER OR AMEND  
) AND/OR RECONSIDER AND VACATE  
) ORDER DATED NOVEMBER 22, 2011

ALAN WILSON, in his Capacity as Attorney  
General of South Carolina,  
Defendant.

SCANNED

TO: THE DEFENDANT ALAN WILSON, Attorney General of South Carolina, by J. Emory Smith, Esquire, AND TO PROPOSED INTERVENORS TOMMIE RAE HYNIE, individually and on behalf of her minor child JAMES B; HENRY DARGAN McMASTER; 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. And CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; RUSSELL L. BAUKNIGHT, as purported agent for Defendant and as agent for each of the aforementioned proposed intervenors and in each fiduciary capacity in which he seeks to intervene.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as she may be heard, Plaintiff Adele J. Pope will move, through her undersigned counsel, pursuant to Rules 52 and 59(e), SCRPC, and all other applicable Rules of Civil Procedure, for an order partially altering, amending, reconsidering and/or vacating the judgment of the Honorable Frank R. Addy, Jr. dated November 22, 2011, a copy of which was received on November 22, 2011, and which is attached hereto as Exhibit A.

FILED  
RICHLAND COUNTY  
2012 FEB -3 AM 11:28  
JENNIFER W. MCBRIDE  
C.C.P. & G.S.

**UNCHALLENGED RULINGS BY THE COURT**

1. The Order properly stated that this Court had jurisdiction to hear and decide this Case, brought under the South Carolina Freedom of Information Act ("FOIA").
2. The Court properly declined to dismiss this FOIA case and properly directed

Defendant to answer.

## **MATTERS THE COURT FAILED TO CONSIDER AND/OR FIND**

### **I. Purpose of FOIA**

3. The Court failed to consider and/or find that the sole purpose of FOIA is to ensure that public bodies promptly release public documents properly requested by any person.

4. The Court failed to consider and/or find that where, as here, the documents to be produced may be illegal, improper or related to former, pending or contemplated litigation, such matters may be the subject of other litigation, which should have no bearing on FOIA disclosure.

5. The Court failed to consider and/or find that any substantial delay in compelling compliance with FOIA constitutes denial of FOIA rights.

6. The Court failed to consider and/or find that the parties in FOIA litigation should be limited to those seeking public documents and parties which are or are alleged to be public bodies.

### **II. Facts of this FOIA Case**

7. The Court failed to consider and/or find that on July 19, 2011, Plaintiff made a proper FOIA request for the following documents, all of which are public documents:

- a. The Attorney General's policies related to the release of litigation retention agreements with outside counsel, only approximately a dozen of which have been executed by Attorneys General of South Carolina;
- b. The Agreement of former AG Henry McMaster with attorney Kenneth B. Wingate of Sweeney, Wingate & Barrow, P.C. (The "Wingate Firm") to bring a tort suit against Robert L. Buchanan, Jr. and Plaintiff

for money damages allegedly caused by their appeal of Aiken County Case 2008-CP-02-1647 and other alleged improprieties.

- c. AG McMaster's authorization for Russell L. Bauknight to act on behalf of the AG/State in the suit brought by the Wingate Firm.

8. The Court failed to consider and/or find that no stay or other impediment existed to prevent release of the McMaster/Wingate contract to sue Buchanan/Pope or other requested documents.

9. The Court failed to consider and/or find that the AG has no written policy with respect to its litigation retention agreements, but both AG Wilson and AG McMaster have repeatedly confirmed, as do all litigation retention agreements, that they are public documents and subject to FOIA disclosure.

10. The Court failed to consider and/or find that Plaintiff's FOIA request was proper and that Plaintiff sought public documents, but AG Wilson nevertheless refused to release the McMaster/Wingate contract to sue Buchanan/Pope or Bauknight's authorization.

11. The Court failed to consider and/or find that on August 10, 2011 Plaintiff properly commenced this action to require AG Wilson to comply with FOIA.

12. The Court failed to consider and/or find that AG Wilson, without cause, moved to dismiss this case and that such motion was interposed for the purpose of delaying or denying Plaintiff's FOIA rights.

13. The Court failed to consider and/or find that on or about September 13, 2011 AG Wilson confirmed publicly that all litigation retention agreements are public documents and should be produced.

14. The Court failed to consider and/or find that on or about September 22, AG Wilson, through Senior Assistant AG C. Havird Jones, confirmed that AG Wilson is "ready

and more than willing" to produce the documents requested by Pope.

15. The Court failed to take judicial notice that one or more members of the media have repeatedly requested copies of the McMaster/Wingate contract to sue Buchanan/Pope, which requests have also been denied by the office of AG Wilson.

16. The Court failed to consider and/or find that all active litigation retention agreements of AG McMaster and/or AG Wilson other than the McMaster/Wingate contract to sue Buchanan/Pope have now been publicly posted on the AG's website.

17. The Court failed to consider and/or find that the AG's refusal is directly contrary to the AG's published policy regarding FOIA disclosure.

18. The Court failed to consider and/or find that the AG's consent to the proposed intervention of the private intervenors aids and abets their improper and/or criminal actions under S.C. Code Ann. § 30-4-110.

19. The Court failed to consider and/or find that Plaintiff and Robert L. Buchanan, Jr. have never served as Trustees of the James Brown Legacy Trust.

20. The Court failed to consider and/or find that Plaintiff is entitled to the \$6,000 legal fees she has incurred to date, with costs of \$325, together with such additional fees at the rate of \$100 per hour (to a maximum \$1,500 per month), plus costs, as shall be incurred until AG Wilson has produced to Plaintiff all documents sought in this action.

**III. Consolidation of the FOIA Suit and the Wingate Tort Case is Improper.**

21. The Court failed to consider and/or find that it lacks jurisdiction to consolidate the FOIA Suit with the Wingate Case, an unrelated tort suit which is not before this Court.

22. The Court failed to consider and/or find that it cannot consolidate cases in

different judicial circuits without notice and an opportunity to be heard properly given to all parties to both cases.

23. The Court failed to consider and/or find that consolidation constitutes a denial of Plaintiff's FOIA rights.

24. The Court failed to consider and/or find that consolidation and the attendant delay violate the due process rights of all parties seeking the public documents which are the subject of this action.

25. The Court failed to consider and/or find that consolidation denies Plaintiff equal protection by delaying, for what may be years, her receipt of public documents which should be available without any delay to any member of the public through a proper FOIA request.

26. The Court failed to consider and/or find that consolidation with the Wingate Case effectively grants the private intervenors' improper motion to be a part of this FOIA action and thus violates Plaintiff's rights under FOIA.

27. The Court failed to consider and/or find that the consolidation order does not comply with Rule 42, SCRPC, because, among other things, there are no common questions of law and fact between the FOIA suit and the Wingate Tort Case.

28. The Court failed to consider and/or find that, as shown on Exhibit B, the tort claims in the Wingate Case are not similar to those asserted in this FOIA suit.

29. The Court failed to consider and/or find that the counterclaims of Buchanan and Pope, as asserted in the Answer and Counterclaim, attached herto as Exhibit C, are unrelated to the subject matter of this FOIA suit.

#### **IV. Illegal Action by Proposed Intervenors.**

30. The Court failed to find and/or consider that the proposed intervenors have violated S.C. Code Ann. § 30-4-110, which states in part:

*Any person or group of persons who willfully violates the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars.... [emphasis supplied]*

31. The Court failed to find and/or consider that neither their parents nor the Wingate Firm may take illegal action on behalf of minors, and that the minors should be exempt from any punishment which should be applied to the adult proposed intervenors.

32. The Court failed to find and/or consider that the Wingate Firm is aiding and abetting the adult proposed intervenors in denying Plaintiff's FOIA rights and the FOIA rights of other citizens.

#### **V. *In camera* review.**

33. The Court failed to find and/or consider that *in camera* review should not have been necessary because AG Wilson acknowledged that the requested documents were public, and they should have been produced.

34. The Court failed to find and/or consider that, to the extent not immediately produced to Plaintiff, the Court should have required that the documents be delivered to the Court for *in camera* review and immediate release.

#### **VI. Miscellaneous.**

35. The Court failed to find and/or consider that Newberry County Case No. 2011-CP-32-0364 is not before this Court at this time, and it is premature for the Court to speculate as to any appropriate action in that case.

36. The Court failed to find and/or consider that neither AG Wilson nor any member of his staff is counsel of record in the Wingate Case.

This motion is based on FOIA, the South Carolina Rules of Civil Procedure, especially Rules 52 and 59(e); the entire record in this matter; and the complaint and answer and counterclaim in the Wingate Case, of which the Court has taken judicial notice.

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  
[adam@silvernailfirm.com](mailto:adam@silvernailfirm.com)

November 29, 2011

Attorney for Plaintiff

#### AFFIRMATION OF COUNSEL

I certify pursuant to Rule 11, SCRCP, that consultation with opposing counsel is not required for a Motion to Alter or Amend and/or Reconsider or would serve no useful purpose as to the Motion herein.



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Adam T. Silvernail



Honorable Casey L. Manning.<sup>2</sup> 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.

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<sup>2</sup> 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*<sup>3</sup> and *Richardson, Plowden, Grier & Howser v. Pyle*.<sup>4</sup> 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,<sup>5</sup> the

<sup>3</sup> 264 S.C. 172, 213 S.E.2d 588 (1975).

<sup>4</sup> 322 S.C. 371, 472 S.E.2d 232 (1996).

<sup>5</sup> 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 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

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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.<sup>6</sup>

### 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.<sup>7</sup> 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*

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<sup>6</sup> Given this analysis, Defendant’s motion to dismiss pursuant to Rule 12(b)(8) is also denied.

<sup>7</sup> 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.

6 JTB

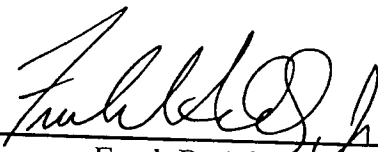
*Partnership*, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) (“Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.”).

#### 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

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.

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

IN THE PROBATE COURT

Civil Action No. 2010 - GC - 4000073

SUMMONS

APPROPRIATE OFFICER  
PROBATE COURT  
RICHLAND COUNTY, S.C.

10 MAR 19 PM 1:10

FILED

JACKIE S. BOWERS  
CLERK OF COURT

2011 NOV 30 A 10:19

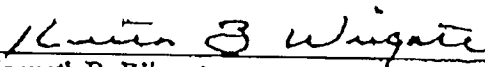
FILED  
NEWBERRY COUNTY

TO: THE DEFENDANTS, ADELE J. POPE AND ROBERT L. BUCHANAN, JR.:

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.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina  
May 19, 2010

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

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

and

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

Plaintiffs

v.

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

IN THE PROBATE COURT

Civil Action No. 2010-GC-4000073

COMPLAINT  
(Jury Trial Demanded)

FILED  
10 MAY 19 PM 1:10  
AMY J. HARRIS, CLERK  
PROBATE COURT  
RICHLAND COUNTY, S.C.

FILED

COME NOW THE PLAINTIFFS who, for their claim for relief against the Defendants, allege and will show as follows:

PARTIES

1. Russell L. Bauknight is the court-appointed Trustee of the James Brown 2000 Irrevocable Trust and the Trustee of the James Brown Legacy Trust. Bauknight is also the court-appointed Successor Personal Representative of the Estate of James Brown, the celebrated entertainer, who died on December 25, 2006, a resident of Aiken County, South Carolina. Bauknight serves in each of these capacities pursuant to a Settlement Agreement approved by Order of the Aiken County Circuit Court dated May 26, 2009.

2. Bauknight brings this action as Trustee of the James Brown 2000 Irrevocable Trust (hereinafter "the Trust") and as Trustee of the James Brown Legacy Trust, and as Personal Representative of the Estate of James Brown (hereinafter "the Estate"), and on behalf of the beneficiaries of the Estate and the Trusts. Bauknight is hereinafter referred to as "Trustee Plaintiff."

3. The following are parties to this action by virtue of their being beneficiaries of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust and/or the James Brown Legacy Trust. These Plaintiffs will hereinafter be referred to as the "Beneficiary Plaintiffs" and include:

- a. Henry Dargan McMaster in his capacity as the Attorney General for the State of South Carolina;
- b. Tommie Rae Brown, individually and on behalf of her minor child, James Brown II;
- c. Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown;

*Complaint*

- d. Lindsey Delores Brown;
- e. Venisha Brown;
- f. Deanna J. Brown Thomas;
- g. Jason Brown-Lewis;
- h. Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar and Carrington Lumar;
- i. Larry Brown;
- j. Tonya Brown; and
- k. Terry Brown

4. Defendants were formerly Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust.

JURISDICTION AND VENUE

5. The Estate of James Brown is being probated in Aiken County, South Carolina.

6. The principal place of the administration of the Trust is Richland County, South Carolina. The Trustee maintains his usual place of business in Richland County, South Carolina. The records pertaining to the Trust are kept in Richland County, South Carolina.

7. Defendant Adele J. Pope is, upon information and belief, a resident of Newberry County. At all times pertinent to the matters alleged herein, Pope was a licensed attorney with her law office located in Richland County, South Carolina. During the time she served as a co-trustee of the James Brown 2000 Irrevocable Trust, she maintained her office and kept all documents relating to the Trust and the Estate in Richland County.

8. Defendant Robert L. Buchanan, Jr. is, upon information and belief, a citizen and resident of Aiken County, South Carolina. At all times pertinent to the matters alleged herein, he

*Complaint*

was a licensed attorney. During the time he served as a co-trustee and co-personal representative of the Estate, Buchanan transacted substantial business in Richland County and derived substantial income from the administration of the Estate and the Trust in Richland County and participated in the maintaining of the Trust and Estate documents in Richland County.

9 The Probate Court has exclusive jurisdiction over the matters raised herein pursuant to S.C. Code Ann. §§ 62-1-302 and -7-201.

10. Venue in this matter is proper in Richland County, South Carolina pursuant to S.C. Code Ann. §§ 62-7-108 and -204.

**FACTUAL ALLEGATIONS**

11. A document purporting to be Mr. Brown's Last Will and Testament ("Will"), dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. The Will nominated three individuals as Personal Representatives, namely, Albert H. Dallas, David G. Cannon, and Alfred A. Bradley, and they were appointed by the Probate Court by Order dated January 18, 2007. These same individuals were also appointed Trustees under a document purporting to create the James Brown 2000 Irrevocable Trust ("Trust").

12. Thereafter, a number of actions were filed in the Aiken County Probate Court in connection with the Will and Trust, all of which were removed to the Aiken County Circuit Court.

13. On or about September 24, 2007, the South Carolina Attorney General intervened in the Circuit Court actions to represent the interests of the charitable beneficiaries of the Trust.

14. On August 10, 2007, the Aiken County Circuit Court accepted Cannon's resignation as, *inter alla*, Personal Representative and Trustee. On November 20, 2007, the Aiken County Circuit Court accepted the resignations of Dallas and Bradley as Personal

*Complaint*

Representatives and Trustees and appointed the Defendants Robert L. Buchanan, Jr. and Adele J. Pope as substitute Personal Representatives and Trustees.

15. Following additional litigation in the Aiken County Circuit Court, the Beneficiary Plaintiffs entered a comprehensive settlement resolving all their disputes and ending the litigation between them, which agreement was, after an extensive hearing, approved by the Aiken County Circuit Court by an Order entered on May 26, 2009. That Order also removed the Defendants as the substituted Personal Representatives and Trustees.

**FOR A FIRST CAUSE OF ACTION**  
**(Breach of Fiduciary Duty)**

16. All allegations set forth above are incorporated herein.

17. As Personal Representatives and Trustees of the Estate of James Brown and the James Brown 2000 Irrevocable Trust, the Defendants owed fiduciary duties to the Estate, Trust and the beneficiaries of each (collectively "The Affected Parties"), including a duty of care, of impartiality, and of loyalty as well as a duty to prudently administer the probate and trust estates.

18. Upon information and belief, during their appointment as substitute Personal Representative and Trustee, the Defendants repeatedly and chronically breached their fiduciary duty to the Affected Parties in multiple ways, including but not limited to the following particulars:

- a. Failing to properly manage the estate and trust;
- b. Failing to engage necessary advisors and appropriate assistance to manage the estate and trust, causing, upon information and belief, millions of dollars of lost opportunities for the estate and trust;
- c. Failing to use due diligence in pursuing business opportunities for the estate and trust;

*Complaint*

- d. Failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability;
- e. Mishandling an auction of personal property at great cost to the estate and trust;
- f. Failing to timely settle the debts of the estate;
- g. Failing to keep accurate accounting records for the estate and trust;
- h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;
- i. Failing to sell the assets of the estate and trust at a prudent time, for example, by failing to accept an offer to buy the estate and trust for \$100 million in November 2007, as demonstrated by their own testimony under oath, while, upon information and belief, the current value of the estate is now worth tens of millions of dollars less;
- j. Taking improper adversarial positions to the settlement entered into by the beneficiaries of the Estate and Trust and approved by the Circuit Court;
- k. Failing to account to the Attorney General as required by law;
- l. Wasting time and estate and trust assets engaging in federal court litigation which was personal to the Defendants rather than necessary to the administration of the estate and trust;
- m. Refusing to follow the Circuit Court's instructions in executing the settlement agreement and fighting the settlement agreement despite their lack of standing and the fact that the settlement was approved by the Circuit Court as being in the best interest of the Estate;

*Complaint*

- n. Acting in bad faith, as evidenced by such actions as
- i. filing a lengthy motion opposing the settlement even before they were informed of the terms of the settlement ;
  - ii. providing to the Internal Revenue Service a road map of the settling parties' plan to deal with tax issues, for no apparent purpose other than to sabotage the settlement agreement;
  - iii. Taking inconsistent legal positions for their own personal interests, such as asserting their right to continue as fiduciaries pending their appeals despite having taken the contrary position when their predecessors appealed, insisting that the settling parties give notice to noninterested persons when Defendants refused to do so whenever they sought relief (such as the payment of their fees), and contesting the settling parties' contention that the estate was in an emergency situation when they themselves had asserted that position shortly before;
  - iv. Despite being judicially estopped by the South Carolina Court of Appeals, asserting they have a right to prosecute the Trust's and Estate's claims against Dallas, Cannon, and Bradley.
- o. Being unequipped and/or unwilling to conduct the administration of the estate, as they admitted by seeking the appointment of a special administrator to handle the administration because the estate was in an "emergency" situation, as further demonstrated by such breaches as:
- i. Failing to understand the fundamentals of the operation of the music business, which constitutes the essential value of the trust and estate, and

*Complaint*

failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;

ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuation, including but not limited to tax valuation;

iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence."

p. Engaging in conflicts of interest, such as

i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;

ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets.

iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be \$5 million.

q. By misrepresenting or presenting inaccurate statements under oath to the Court;

r. By failing to file appropriate tax returns;

s. By allowing statutes of limitations to run, thereby preventing opportunities for the estate and trust to receive reimbursement for music rights misappropriated by others;

*Complaint*

- t. By failing to comply with the requirements of the South Carolina Uniform Prudent Investor Act, including but not limited to the failure to implement an investment policy for the trust; and
- u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately \$5 Million in fees.

19. Despite the terms of the Order of May 26, 2009, removing the Defendants as Personal Representatives and Trustees, the Defendants have nevertheless continued to breach their fiduciary duties to the Affected Parties by continuing to take actions harmful to the estate and trust and the interests of the Affected Parties, including but not limited to contesting the settlement by filing multiple appeals and objecting to substitution, all to the detriment of the Affected Parties and in violation of their fiduciary duty to the Affected Parties.

20. As a result of Defendants' breach of their fiduciary duties to the Affected Parties, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

**FOR A SECOND CAUSE OF ACTION**  
**(Breach of Trust)**

- 21. All allegations set forth above are incorporated herein.
- 22. The acts and omissions of the Defendants constitute a breach of trust pursuant to S.C. Code Ann. § 62-7-1001(a).
- 23. As a result of Defendants' breach of trust, Plaintiffs are entitled to an order

*Complaint*

- a. compelling Defendants to redress the breach of trust by paying money, restoring property, or by other means as may be required to remedy the breach;
- b. ordering the Defendants to account for all property of the Estate and Trust;
- c. denying compensation to the Defendants for all services provided by them for work on behalf of the Estate or Trust;
- d. such other relief as may be necessary to remedy the breach.

24. As a result of Defendants' breach of trust, Plaintiffs are entitled to judgment against the Defendants for damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

**FOR A THIRD CAUSE OF ACTION**  
(Negligence)

25. All allegations set forth above are incorporated herein.

26. Defendants provided services to the Estate and Trust apart from, and in addition to the requirements for the administration of the Estate and Trust. In doing so, Defendants were obligated to provide such services in a reasonable manner, consistent with the applicable standard of care.

27. The acts or omissions of the Defendants in providing these services were careless, negligent, grossly negligent, willful, wanton, reckless, and in conscious disregard of the rights of the Affected Parties.

28. As a result of the Defendants' acts or omissions, the Affected Parties have incurred actual damages in the form of:

- (a) loss, waste, or spoliation of the assets of the Estate and Trust;
- (b) diminution in the present value and income generation of the Estate and Trust;

*Complaint*

(c) diminution in the future stream of profit and income from the corpus of the Estate and Trust.

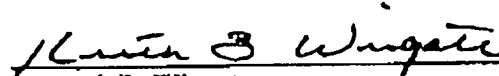
29. As a result of Defendants' negligent and grossly negligent acts and omissions, the Plaintiffs are entitled to judgment against the Defendants for actual and punitive damages in such sums as may be proved at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

WHEREFORE, The Plaintiffs pray for a judgment against the Defendants for, relief as set forth above, actual and punitive damages in such sums as may be proven at trial, together with prejudgment interest and interest on the judgment as provided by law, for attorney fees and the costs of this action, and for such other and further relief as may be provided by law.

**PLAINTIFFS DEMAND A JURY TRIAL.**

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**



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

**ATTORNEYS FOR THE PLAINTIFFS**

Columbia, South Carolina  
May 19, 2010

# EXHIBIT E



# Richland County Fifth Judicial Circuit Public Index



[Richland County Home Page](#) [Online Payments](#) [Public Index](#) [City of Columbia Municipal Ct](#) [S.C. Judicial Department](#) [Summary Ct Dockets](#)

<b>Switch View</b>					
<b>Adele J Pope vs Alan Wilson , defendant, et al</b>					
<b>Case Number:</b>	2012CP4000350	<b>Court Agency:</b>	Richland County Common Pleas	<b>Filed Date:</b>	01/17/2012
<b>Case Type:</b>	Common Pleas	<b>Case Sub Type:</b>	Use AP Case Type 999	<b>File Type:</b>	Non-Jury
<b>Status:</b>	Judgment	<b>Assigned Judge:</b>	Early, Doyet A. III		
<b>Disposition:</b>	Judgment	<b>Disposition Date:</b>	06/03/2020	<b>Disposition Judge:</b>	Clerk Of Court C P, G S, And Family Court
<b>Original Source Doc:</b>		<b>Original Case #:</b>			
<b>Judgment Number:</b>	2012CP4000350	<b>Court Roster:</b>			

<a href="#">Case Parties</a> <a href="#">Judgments</a> <a href="#">Tax Map Information</a> <a href="#">Associated Cases</a> <a href="#">Actions</a> <a href="#">Financials</a>						
Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Pope, Adele J	Decline to Sign:Order/Other	Filing		06/08/2021-11:12		
South Carolina Attorney General	NEF(04-23-2021 08:45:21 AM) Order/Amend	Filing		04/23/2021-08:46		
South Carolina Attorney General	Order Denying Motion to Alter or Amend	Order		04/23/2021-08:45		
Wilson, Alan	NEF(04-16-2021 08:31:38 AM) Memo/Memo in Opposition	Filing		04/16/2021-08:48		
Wilson, Alan	Memo/Return to Motion to Alter or Amend	Filing		04/16/2021-08:31	04/23/2021-08:31	
Pope, Adele J	NEF(04-13-2021 01:23:17 PM) Amended/Other	Filing		04/13/2021-13:34		
Pope, Adele J	Amended/Motion to Alter, Amend or Vacate Order Granting Moti	Filing		04/13/2021-13:23		
Pope, Adele J	NEF(04-12-2021 01:18:28 PM) Motion/Alter and/or Amend	Filing		04/12/2021-13:23		
Pope, Adele J	Motion/Alter, Amend or Vacate Order Granting Motion to Amend	Motion		04/12/2021-13:18	04/23/2021-13:18	
Wilson, Alan	NEF(04-01-2021 03:04:45 PM) Order/Other	Filing		04/01/2021-15:13		
Wilson, Alan	Order Granting Motion to Amend, Motion to Dismiss, Motion fo	Order		04/01/2021-15:04		
Pope, Adele J	NEF(02-08-2021	Filing		02/08/2021-		

Attorney General	Alternative Motion to Strike			14:45	14:45	
Pope, Adele J	Motion to Partially Alter or Amend and/or Reconsider and Vac	Motion		02/03/2012-11:53	05/10/2012-11:53	
Pope, Adele J	Motion to Strike and Alternative Reply in Opposition to Prop	Motion		02/03/2012-11:32	05/10/2012-11:32	
South Carolina Attorney General	Motion to Strike Affidavits of Deborah W. Spence, Sue Summer	Motion		02/03/2012-10:52	05/10/2012-10:52	
Pope, Adele J	Renewed Motion to Alter or Amend and/or Reconsider and Vacat	Motion		02/03/2012-09:36	05/10/2012-09:36	
Pope, Adele J	Motion for Expedited Hearing	Motion		02/03/2012-09:28	05/10/2012-09:28	
Pope, Adele J	Motion For Summary Judgment	Motion		02/03/2012-09:27	05/10/2012-09:27	
Pope, Adele J	Motion to Strike and Alternative Return and Opposition to Pr	Motion		02/03/2012-09:24	05/10/2012-09:24	
South Carolina Attorney General	Motion Of Attorney General to Strike Affidavit and Exhibits	Motion		02/03/2012-09:15	05/10/2012-09:15	
South Carolina Attorney General	Motion Of Attorney General to Strike Supplemental Affidavit	Motion		02/03/2012-09:14	05/10/2012-09:14	
South Carolina Attorney General	Motion Of Attorney General to Strike or Exclude Pope Affidav	Motion		02/03/2012-09:13	05/10/2012-09:13	
Pope, Adele J	Motion/Motion Filing Fee	Filing		02/02/2012-11:11	06/21/2016-11:11	
Wilson, Alan	Motion to Consolidate With Case 2010CP4004900	Motion		02/02/2012-09:59	05/10/2012-09:59	
Pope, Adele J	Verification/Verified	Filing		01/23/2012-12:58	06/21/2016-12:58	
Pope, Adele J	Supplemental Affidavit of Plaintiff	Filing		01/17/2012-16:48	06/21/2016-16:48	
Pope, Adele J	Affidavit of Adele J. Pope Supporting Summary Judgment Inclu	Filing		01/17/2012-16:44	06/21/2016-16:44	
Pope, Adele J	Affidavit of Adele J. Pope in Further Support of All Relief	Filing		01/17/2012-16:42	06/21/2016-16:42	
Wilson, Alan	Certificate of Service	Filing		01/17/2012-16:41	06/21/2016-16:41	
Wilson, Alan	Certificate of Service	Filing		01/17/2012-16:40	06/21/2016-16:40	
Pope, Adele J	Affidavit of Adele J. Pope Opposing All Motions to Strike	Filing		01/17/2012-16:38	06/21/2016-16:38	
Pope, Adele J	Return and Opposition to All Motions to Strike of Defendant	Filing		01/17/2012-16:38	06/21/2016-16:38	
Wilson, Alan	Transcript Of Record	Filing		01/17/2012-16:34	06/21/2016-16:34	
Wilson, Alan	Affidavit of Tracy A. Meyers	Filing		01/17/2012-16:34	06/21/2016-16:34	
Pope, Adele J	Affidavit of W. Jeffery Smith Supporting Release of All Publ	Filing		01/17/2012-16:30	06/21/2016-16:30	
Pope, Adele J	Affidavit of Adele J	Filing		01/17/2012-	06/21/2016-	

# EXHIBIT F

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  
 NEWBERRY COUNTY

Case No. 11-CP-36-364

SCANNED

MOTION OF ATTORNEY GENERAL  
 TO DISMISS AND  
 ALTERNATIVE MOTION TO STRIKE

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), SCRPC, 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

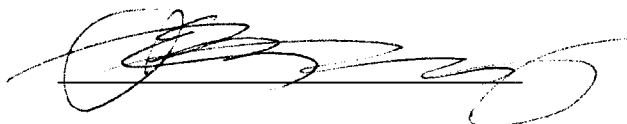
BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

September 2, 2011

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 several loops and flourishes, positioned above a horizontal line.

September 2, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

**SECTION III: Motion Fee**

X PAID – AMOUNT: \$25.00

- EXEMPT:  Rule to Show Cause in Child or Spousal Support  
(check reason)  Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRCP)  
 Proposed order submitted at request of the court; or,  
reduced to writing from motion made in open court per judge's instructions  
Name of Court Reporter:  
 Other:

**JUDGE'S SECTION**

- Motion Fee to be paid upon filing of the attached order.  
 Other:

JUDGE \_\_\_\_\_

CODE: \_\_\_\_\_ Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: J. Tolley

Date Filed: \_\_\_\_\_

- MOTION FEE COLLECTED: 25.00  
 CONTESTED – AMOUNT DUE: \_\_\_\_\_

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

**RECEIVED**

**Mar 14 2022**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
In the 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.

---

**PROOF OF SERVICE**

---

I certify that I have served the Appellant’s Return and Opposition to Respondent’s Motion to Strike Amended Initial Brief by emailing a copy of same on March 14, 2022, addressed to his attorney of record as follows:

J. Emory Smith, Jr., Esquire  
[esmith@scag.gov](mailto:esmith@scag.gov)  
*Counsel for Respondent Attorney General*

s/Adam T. Silvernail  
Adam T. Silvernail