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STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Estate of Prince Rogers Nelson,

Decedent.

Court File No. 10-PR-16-46

COMERICA BANK & TRUST, N.A.'S MEMORANDUM IN SUPPORT OF MOTION TO APPROVE RESCISSION OF EXCLUSIVE DISTRIBUTION AND LICENSE AGREEMENT

REDACTED

INTRODUCTION

Almost immediately after its appointment as personal representative of the Estate of Prince Rogers Nelson (the "Estate"), Comerica Bank & Trust, N.A. (the "Personal Representative") was presented with claims of conflicting rights to the sound recordings of Prince Rogers Nelson (the "Decedent") held by Warner Bros. Records, Inc. ("WBR") and UMG Recordings, Inc. ("UMG"). The claims stem from a series of agreements between WBR and the Decedent that were entered prior to death and from the Exclusive Distribution and License Agreement dated January 31, 2017, between the Estate and NPG Records, Inc. and UMG (the "UMG Agreement"), negotiated by the former Special Administrator of the Estate, Bremer Trust National Association ("Special Administrator"). Specifically, WBR has claimed that the Special Administrator sold rights to UMG that WBR already holds based on its previous agreements with the Decedent.

After a thorough investigation of WBR's claims of conflicting rights, the Personal Representative cannot unequivocally assure UMG or the Court that no overlap exists between the rights granted under the UMG Agreement and the rights held by WBR. As a result of this

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uncertainty and to avoid the considerable cost, delay, and potential exposure associated with litigating against UMG and WBR, the Personal Representative has concluded that it is in the best interest of the Estate to rescind the UMG Agreement.

BACKGROUND

I. RIGHTS TO THE DECEDENT'S SOUND RECORDINGS AS OF APRIL 2016.

At the time of his death, the Decedent had three categories of sound recordings: (1) recordings initially released by WBR ("WBR Masters"), including his major hits from 1979-1995; (2) recordings independently released by the Decedent's recording company, NPG Records, Inc. ("NPG Masters"); and (3) unreleased recordings ("Vault Masters"). (*See* 9/27/16 McMillan Aff. ¶ 22.)

When the Decedent passed away during April 2016, the NPG Masters and the Vault Masters were not being fully commercially exploited. (*See id.*) The WBR Masters were licensed to WBR pursuant to a license and distribution agreement dated April 16, 2014, by and between WBR, on the one hand, and the Decedent, PRN Music Corporation, Paisley Park Enterprises, Inc., and NPG Records Inc., on the other hand (the "2014 WBR Agreement"). (Cassioppi Decl. Ex. A.) The 2014 WBR Agreement provides WBR with, [redacted] (*Id.*) [redacted] (*Id.* ¶ 4.) [redacted]

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[redacted] (*Id.*) The Special Administrator and its representatives did not obtain copies of the Decedent's pre-2014 agreements with WBR during the time they negotiated with UMG and executed the UMG Agreement. (*Id.* ¶ 5.)

In their submissions to the Court, the Special Administrator and its advisors represented that, under the 2014 WBR Agreement, [redacted] (*See* 9/27/16 McMillan Aff. ¶ 30 (stating that [redacted]).) It is unclear what analysis the Special Administrator or its advisor L. Londell McMillan ("McMillan") conducted on [redacted] language in the 2014 WBR Agreement prior to representing to the Court that [redacted].

II. THE SPECIAL ADMINISTRATOR'S NEGOTIATIONS WITH UMG AND WBR.

Beginning June 2016, the Special Administrator began negotiating for entertainment deals aimed at exploiting the Decedent's sound recordings and other intellectual property. (*See* Special Admin.'s Mem. in Supp. of Motion to Approve Recommended Deals ("Special Admin. Mem.") at 2.) Specifically, the Special Administrator—through its counsel and its entertainment advisors, McMillan and Charles Koppelman ("Koppelman")—began negotiating a license and distribution deal with UMG. (*See* 9/27/16 McMillan Aff. ¶ 29.) Simultaneously, the Special

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Administrator and its advisors were negotiating with WBR, including to address a compilation album and the Purple Rain Deluxe Album. (*Id.*; *see* Special Admin. Mem. at 22.)

By late September 2016, the Special Administrator had reached agreements regarding the basic terms of these entertainment deals. (*See generally* Special Admin. Mem.) Pursuant to the Court's August 30, 2016 Order, the Special Administrator submitted the recommended deals with UMG and WBR, among others, to the Court for its review and approval. (*Id.*) [redacted] (*See* 10/6/16 Order.)

With the Court's authorization, the Special Administrator finalized its agreement with UMG. During negotiations, the Special Administrator, through McMillan, conveyed to UMG its understanding that [redacted] (*See* Cassioppi Decl. Ex. B.) Again, it is unclear what analysis was conducted regarding the [redacted] language in the 2014 WBR Agreement prior to the Special Administrator making this representation to UMG.

III. ON JANUARY 31, 2017, THE SPECIAL ADMINISTRATOR ENTERED INTO THE UMG AGREEMENT.

On January 31, 2017, UMG and the Special Administrator executed the UMG Agreement. (*Id.* Ex. C.) During a telephone conference with the Court on January 31, 2017, the Court approved the UMG Agreement, but ordered the parties to refrain from announcing the deal until the following Monday, February 6, 2017. (*Id.* ¶ 8.)

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The UMG Agreement provided that, in exchange for an immediate advance of [redacted] [1] (plus additional advances to be triggered by future events), the Estate granted UMG certain rights [redacted]. (*Id.* Ex. C.) Of relevance here, Section 2.1.1 of the UMG Agreement provides [redacted]. (*Id.*)

IV. IN FEBRUARY 2017, IMMEDIATELY AFTER THE PERSONAL REPRESENTATIVE WAS APPOINTED, WBR CLAIMED THAT WBR AND UMG HELD CONFLICTING RIGHTS TO THE DISPUTED MASTERS.

Effective February 1, 2017, the Personal Representative was appointed, replacing the Special Administrator.

On February 9, 2017, UMG issued a press release announcing the UMG Agreement. (Cassioppi Decl. Ex. D.) The Press Release referred to the Disputed Masters, stating that "beginning next year [in 2018,] UMG will obtain U.S. rights to certain renowned Prince albums released from 1979 to 1995." (*Id.*)

The next day, on February 10, 2017, WBR wrote to Comerica in response to UMG's Press Release. (*Id.* Ex. E.) In its letter, WBR alleged that it holds, among other rights, [redacted], and expressed concern that the UMG Agreement infringed on these and other rights that WBR alleged it holds. (*Id.*) WBR also contacted UMG directly in response to the Press Release, claiming that the Estate had granted UMG rights held by WBR and that WBR and [redacted] (*Id.* Ex. F.)

[1] [redacted] percent of the advance, or [redacted], was paid to McMillan and Koppelman as a commission and not paid to the Estate.

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V. UMG RESPONDED TO WBR'S CLAIM BY DEMANDING RESCISSION OF THE UMG AGREEMENT.

On February 22, 2017, UMG wrote to the Personal Representative regarding the issues raised by WBR. (*Id.* Ex. G.) In particular, UMG expressed concern that two sets of rights granted by the UMG Agreement may conflict with rights held by WBR. (*Id.*) First, UMG wrote that WBR was claiming [redacted], which UMG believed would conflict with its rights [redacted] under the UMG Agreement. (*Id.*) Second, UMG wrote that WBR was claiming [redacted], which would conflict with Section 2.1.1 of the UMG Agreement, which [redacted]. (*Id.*) In other words, both WBR and UMG claimed [redacted].

In the February 22 letter, UMG demanded that the Personal Representative provide it with copies of the 2014 WBR Agreement and amendments thereto and that the Personal Representative place all funds paid by UMG in escrow. (*Id.*) UMG threatened to seek immediate injunctive relief against the Estate and file suit for fraud and breach of contract if the Personal Representative did not comply with its demands within 24 hours. (*Id.*)

The Personal Representative immediately responded to notify UMG that it was investigating WBR's claims and that all funds disbursed to the Estate were subject to this Court's supervision and therefore secure. (*Id.* Ex. H.) The Personal Representative has not been able to provide a copy of the 2014 WBR Agreement to UMG because it is subject to strict confidentiality provisions, which WBR has declined to waive. (*Id.* ¶ 13.)

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VI. THE PERSONAL REPRESENTATIVE INVESTIGATED WBR'S CLAIMS.

In response to WBR's and UMG's correspondence, the Personal Representative immediately commenced an investigation to determine whether any inconsistencies exist between the rights held by WBR and those granted by the Estate to UMG. As part of the investigation, the Personal Representative's counsel reviewed documents and communications, including the following:

- The 1977 agreement between the Decedent and WBR;
- The 1983 agreement between the Decedent and WBR;
- The 1986 agreement between the Decedent and WBR;
- The 1991 agreement between the Decedent and WBR;
- The 2014 WBR Agreement;
- Drafts of proposed amendments to the 2014 WBR Agreement;
- The October 18, 2016 amendment to the 2014 WBR Agreement;
- Correspondence between the Special Administrator, its counsel, and/or its advisors regarding the 2014 WBR Agreement and proposed amendments thereto;
- Drafts of the UMG Agreement;
- The UMG Agreement; and
- Correspondence between the Special Administrator, its counsel, and/or its advisors regarding the UMG Agreement.

(*Id.* ¶ 14.) The Personal Representative's counsel also consulted with individuals involved in, or who had reviewed, the WBR and UMG Agreements, including the following:

- Scott Edelman of Gibson Dunn & Crutcher LLP, counsel for UMG;
- Richard Werder and Christopher Tayback of Quinn Emanuel, counsel for WBR;
- L. Londell McMillan, who negotiated the UMG Agreement, and Charles Koppelman, the other entertainment advisor retained by the Special Administrator;
- Traci Bransford of Stinson Leonard Street LLP, who served as entertainment counsel for the Special Administrator;
- Meister Seelig & Fein LLP, which was retained as counsel for the Special Administrator in connection with finalizing the UMG Agreement;
- David Dunn of Shot Tower Capital, who was engaged as a consulting expert by the Special Administrator in connection with the valuation and exploitation of the Decedent's intellectual property;
- Rhonda Trotter of Arnold & Porter Kaye Scholer LLP, who negotiated the 2014 WBR Agreement on behalf of the Decedent; and
- Troy Carter of Atom Factory, the entertainment advisor retained by the Personal Representative.

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(*Id.*)

On March 10, 2017, the Personal Representative sent a letter to WBR with detailed questions related to WBR's position on its rights under the 2014 WBR Agreement. (*Id.* Ex. I.) In response, WBR sent a letter to the Personal Representative on March 27, 2017, setting forth the basis for its position. (*Id.* Ex. J.) Specifically, WBR stated that the 2014 WBR Agreement provides it with [redacted] WBR explained the context of the 2014 WBR Agreement and its rights under earlier agreements with the Decedent. (*Id.*) WBR also stated that it had informed the Special Administrator of this right under the 2014 WBR Agreement in its correspondence with the Special Administrator's advisors. (*Id.*) Specifically, on October 18, 2016, WBR wrote to McMillan and Koppelman, stating that WBR was [redacted] (*Id.* (enclosing October 18, 2016 letter).) Finally, WBR pointed to language in one of the proposals it sent to the Special Administrator, which proposed [redacted] and which WBR asserted only made sense if [redacted] (*Id.*)[2]

[2] In addition, on April 26, 2017, the Personal Representative sent a letter to WBR with arguments raised by the Special Administrator regarding why it believed WBR's position was wrong. That letter and WBR's response are attached as Exhibits S and T, respectively, to the Declaration of Joseph J. Cassioppi.

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Ultimately, the Personal Representative concluded that some of the claims regarding inconsistencies between WBR's and UMG's rights were without merit.[3] However, the Personal Representative has been unable to rule out WBR's assertion that it holds [redacted].

VII. THE PERSONAL REPRESENTATIVE ATTEMPTED NUMEROUS TIMES TO NEGOTIATE A RESOLUTION WITH UMG; UMG IS DEMANDING RESCISSION.

Over the course of nearly three months, the Personal Representative sought to negotiate a mutually beneficial resolution with UMG. (*See id.* ¶¶ 16-22.) The Personal Representative's counsel has communicated with UMG's counsel by phone and correspondence numerous times in an attempt to address and assuage UMG's concerns during the Personal Representative's investigation and, ultimately, to negotiate a resolution of the matter. (*Id.* ¶ 16.) The Personal Representative sent formal proposals for settlement and discussed settlement informally with UMG through Mr. Carter. (*Id.* ¶¶ 18-19, 22.) The Personal Representative even went so far as to offer to set up a meeting with the Personal Representative, UMG, the Special Administrator, and McMillan—but UMG declined. (*Id.* Ex. Q.) Instead, UMG continued to demand assurances from the Personal Representative that no overlap exists between the rights conveyed by the WBR and UMG contracts or, alternatively, rescission of the UMG Agreement. (*See id.* Ex. R.)

After seeking additional information from the Special Administrator and the attorneys that represented the Special Administrator in connection with the UMG Agreement, on April 7, 2017, the Personal Representative informed UMG of its conclusions, stating that, although the Estate had not reached a final determination, it could not definitively rule out the possibility of overlapping rights [redacted]. (*Id.* Ex. L.) In its letter, the

[3] The Personal Representative has concluded, for example, that there is no inconsistency or overlap between WBR's and UMG's rights to Vault Masters.

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Personal Representative sought to open a dialogue with UMG to resolve its outstanding concerns. (*Id.*)

On April 14, 2017, the Personal Representative wrote to UMG again, offering to return a portion of the advance and amend the UMG Agreement to extend the term of UMG's [redacted]. (*Id.* Ex. M.) UMG immediately rejected the Personal Representative's offer, refusing to engage in further discussion, demanding rescission, and threatening litigation against the Estate. (*See id.* Ex. N.) Specifically, UMG stated:

> The offer proposed by your letter on behalf of the Estate is unacceptable to Universal, and is not even a foundation for further discussions. I will reiterate what I have repeatedly said: Universal has been misled and defrauded in connection with the License Agreement and insists upon rescission of the agreement and the return of its money, full stop.
>
> The alternative to the Estate's agreement to rescind is litigation. It is beyond dispute at this point that Universal was promised exclusive rights that the Estate knowingly could not convey, and Universal was therefore fraudulently induced to enter into the License Agreement.

(*Id.*)

Next, in a letter dated April 19, 2017, UMG stated that it is entitled to rescission because it was fraudulently induced to enter into the UMG Agreement by representatives of the Estate who told UMG that WBR would [redacted]. (*See id.* Ex. O.) Specifically, UMG stated that [redacted] (*Id.*)

On April 25, 2017, UMG reiterated its demand for rescission of the UMG Agreement in exchange for mutual releases and threatened to file a claim with this Court and in California, [redacted] (*Id.* Ex. P.) UMG alleged "Universal

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was defrauded by the Estate and its former representatives to enter into the License Agreement under false pretenses . . . ." (*Id.*)

The Personal Representative responded on April 26, 2017, stating that the Special Administrator and its advisors insist that there is no overlap between the rights possessed by UMG and WBR. (*Id.* Ex. Q.) In its letter, the Personal Representative made a final proposal to resolve the dispute, which consisted of offering to return a larger portion of the advance and providing UMG with an extended term [redacted]. (*Id.*) UMG rejected this proposal the following day. (*Id.* Ex. R.) In its rejection letter, UMG asserted that it would not have entered into the UMG Agreement at all if it had known that it would not possess [redacted] (*Id.*) UMG reiterated its position that the UMG Agreement was a product of "material misrepresentations" made by the Special Administrator and its representatives and threatened to immediately sue the Estate if it did not agree to rescind the agreement. (*Id.*)

VIII. THE RESCISSION AGREEMENT.

For the reasons set forth below, the Personal Representative has concluded that it is in the best interest of the Estate to avoid protracted litigation and instead to rescind the UMG Agreement in exchange for a mutual release. Accordingly, the Personal Representative and UMG have negotiated and finalized a rescission agreement, which the Personal Representative submits to the Court as Exhibit U to the Declaration of Joseph J. Cassioppi (the "Rescission Agreement"). The Rescission Agreement provides that the Personal Representative will return the [redacted] advance paid by UMG; the UMG Agreement will be rescinded and considered void *ab initio*; and UMG on the one hand, and the Estate and NPG Records, Inc., on the other

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hand, agree not to sue each other and to release each other from all claims and liability relating in any way to the UMG Agreement. (*See id.* Ex. U.)

IX. THE INSTANT MOTION.

The Personal Representative has informed counsel for Tyka Nelson, Sharon Nelson, Norrine Nelson, John R. Nelson, Omarr Baker, and Alfred Jackson (the "Non-Excluded Heirs") of its decision to rescind the UMG Agreement and none has yet voiced an objection. Accordingly, the Personal Representative now moves the Court pursuant to Paragraph 9 of the Court's March 22, 2017 Order to approve the rescission of the UMG Agreement based on the terms set forth in the Rescission Agreement.

ARGUMENT

I. THE COURT SHOULD GRANT THE PRESENT MOTION BECAUSE RESCINDING THE UMG AGREEMENT AND AVOIDING LITIGATION IS IN THE BEST INTEREST OF THE ESTATE.

The Personal Representative has a duty to administer the Estate for the benefit of those interested in the Estate and has the authority to enter into transactions on its behalf. *See* Minn. Stat. §§ 524.3-703, 524.3-711, 524.3-715. Pursuant to Paragraph 9 of the Court's March 22, 2017 Order, the Personal Representative may seek Court approval of any transaction, even if such approval is not required by the Court's Order or by the Minnesota Probate Code. Accordingly, the Personal Representative requests that the Court approve the Rescission Agreement. Rescinding the UMG Agreement is in the best interest of the Estate because the potential liability, attorneys' fees, and opportunity costs associated with litigation exceed the cost of rescission.

If the Court does not approve rescission of the UMG Agreement, the Personal Representative will almost certainly face litigation in both California and New York. In its correspondence, UMG has made it abundantly clear that it intends to sue the Estate (and likely

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the Special Administrator, McMillan, and Koppelman) [redacted]. Such litigation would likely proceed in California, [redacted]. Because any resolution of UMG's claims necessarily implicates WBR and its claimed rights, the Estate may be required to litigate against WBR as well. Litigation against WBR would likely proceed in New York, [redacted]. Thus, the alternative to rescinding the UMG Agreement is engaging in costly and uncertain litigation with UMG and WBR in California and New York courts, respectively. Such litigation is against the best interest of the Estate for several reasons.

First, the Estate is not guaranteed a favorable outcome in the litigation. Based on its investigation, the Personal Representative cannot rule out the possibility that the UMG Agreement and 2014 WBR Agreement are in conflict. In other words, there is a possibility that a court will determine that the Special Administrator granted rights to UMG that were already held by WBR, specifically [redacted].

Second, the Estate's potential liability exceeds the cost of rescission. If UMG were to prevail on its claims against the Estate, the Estate would likely face potential liability in excess of [redacted]. For example, based on its asserted fraud claim, UMG may seek to recover lost profits and other consequential damages, reliance damages, punitive damages, and/or attorneys' fees against the Estate. Thus, the Estate's liability risk in litigation exceeds the cost of rescission.

Third, regardless of the outcome, litigating against UMG and WBR would likely cost the Estate millions of dollars in attorneys' fees and costs. To litigate against UMG and WBR, the Estate would be required to retain two sets of local counsel, conduct voluminous document

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discovery, take and defend numerous depositions, hire experts, and subpoena third parties across the country. Thus, even assuming the Estate were to win, it would likely incur attorneys' fees and costs totaling millions of dollars.

Fourth, and perhaps most importantly, the Estate would incur a significant loss of income while the litigation is pending. Since WBR's claims of inconsistent rights arose immediately after the UMG Agreement was announced, UMG has not acted to exploit the intellectual property rights under the UMG Agreement. As a result, the Decedent's assets are not being exploited to their maximum potential and the Estate has been losing royalty income. As long as a dispute regarding UMG's rights remains pending, UMG would likely continue not to exploit its rights under the UMG Agreement and yet the Estate would not be free to exploit them either. Thus, litigation would essentially shelve many of the Estate's most valuable intellectual property assets for the foreseeable future. This would result in the loss of significant royalty income to the Estate and would potentially damage the value of those assets going forward.

In contrast, rescinding the UMG Agreement and returning the [redacted] advance to UMG in exchange for mutual releases will limit the Estate's exposure to potential liability, avoid the cost and delay associated with litigation, and enable the Personal Representative to negotiate new licensing and distribution deals that fully and properly exploit the value of the Decedent's sound recordings for the benefit of the Estate. For these reasons, the Personal Representative respectfully requests that the Court grant its Motion and approve the rescission of the UMG Agreement.

II. THE COURT SHOULD ISSUE GUIDANCE ON WHETHER THE ESTATE SHOULD INVESTIGATE AND PURSUE RECOVERY OF THE [redacted] COMMISSION PAID TO MCMILLAN AND KOPPELMAN.

If the Court grants this Motion, the Personal Representative respectfully requests that the Court also issue guidance on whether the Personal Representative should investigate and, if

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warranted, pursue the repayment of the [redacted] commission paid to McMillan and Koppelman in connection with the UMG Agreement. As the Court is aware, [redacted] percent of UMG's [redacted] advance against royalties under the UMG Agreement, or [redacted], was paid to McMillan and Koppelman pursuant to their agreement with the Special Administrator. Yet, to rescind the UMG Agreement, the Estate is required to repay the entire [redacted] advance, leaving the Estate with a [redacted] loss.

McMillan and Koppelman's retention of the [redacted] commission on the UMG Agreement may be unlawful and/or inequitable for the following reasons. First, the [redacted] paid under the UMG Agreement was an advance against royalties earned under the agreement and the Estate has earned no royalties under the UMG Agreement. Second, once the UMG Agreement is rescinded, it will be void *ab initio*, meaning it will be as if the Estate had never executed the agreement in the first place. Third, UMG has cited representations made by McMillan as the basis for its claim that the Estate fraudulently induced UMG to enter into the UMG Agreement and its corresponding demand for rescission. Under such circumstances, McMillan and Koppelman may be required to refund to the Estate their [redacted] commission. The Personal Representative requests that the Court issue guidance regarding whether the Personal Representative should investigate and, if warranted, pursue recovery of the commission payment.

CONCLUSION

Because the Personal Representative has concluded that it is in the best interest of the Estate to avoid litigation and rescind the UMG Agreement, the Personal Representative respectfully requests that the Court grant this Motion, approve the Rescission Agreement, and provide direction to the Personal Representative regarding whether it should investigate and, if

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warranted, pursue recovery of the commission paid to McMillan and Koppelman for the UMG Agreement.

Respectfully submitted,

Dated: May 17, 2017

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