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STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,
Decedent.

Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide

REDACTED

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

INTRODUCTION

Omarr Baker, by and through counsel, brings this response in support of Comerica Bank & Trust, N.A.'s ("Comerica" or "Personal Representative") Motion to Approve Rescission of Exclusive Distribution and License Agreement (the "Motion"). Shortly after its appointment, the Personal Representative of the Estate of Prince Rogers Nelson (the "Estate") faced claims of conflicting rights to the sound recordings of Prince Rogers Nelson ("Prince" or "Decedent") held by Warner Bros. Records, Inc. ("WBR") and UMG Recordings, Inc. ("UMG"). The former Special Administrator of the Estate, Bremer Trust, N.A. ("the Special Administrator" or "Bremer"), negotiated the Exclusive Distribution and License Agreement at issue (the "UMG Agreement"), and executed it on January 31, 2017, the last day of its term.

Baker's objective in bringing this response is twofold. First, to voice support for the Personal Representative's motion to approve rescission of the UMG Agreement. Second, to the extent the Court decides to approve rescission of the UMG Agreement, the order approving rescission ***should not*** simultaneously discharge the Special Administrator from liability or make

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any findings that would support the Special Administrator's discharge. Baker's fully supports rescission as a necessity of fact and law; however, he does not support the rescission as an operation of Comerica's discretion.

Based on the limited facts provided in the Motion, ample grounds seem to exist for UMG to compel rescission of the UMG Agreement. However, if the Court determines that facts exist that substantially militate against UMG's right to rescind, or that additional information is necessary to make a determination, Baker would request the Court continue this Motion until all facts have been discovered and the Court can make a definitive ruling that the rescission is not merely a consensual agreement by Comerica and UMG.

When the Special Administrator requested the Court's approval of the UMG Agreement, Baker voiced opposition—it was poorly drafted and included future and at times unspecified rights ([redacted]). When, after nearly five months, the short-form of the UMG Agreement could not be negotiated into a final conforming agreement, the Special Administrator continued to push for execution of the UMG Agreement on the last day of the Special Administrator's term, January 31, 2017. Bremer provided no explanation as to the reason the Personal Representative should not review this important document. At that time, a material term of the 2016 short form agreement [redacted] was admittedly unfinished. Now, it is becoming clear that not only was the UMG Agreement ill-conceived and badly drafted, it also directly violates the Estate's existing contractual rights. Bremer's conduct did and continues to damage the Estate. The rescission of the UMG Agreement will necessarily cause substantial financial harm to the Estate—not only in the loss of a potentially irreplaceable advance, but also with regard to damage to Prince's brand.

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The nature and extent of this harm must be determined in a process that allows all facts to be discovered and for a proper vetting of Bremer and its agents' conduct. To the extent the Court believes an order approving rescission would necessarily provide for Bremer's discharge from liability, Baker would reluctantly object to the same. A process must be established to determine who, if any, party is liable for the damage to the Estate caused by the execution and subsequent unwinding of the UMG Agreement.

BACKGROUND

To fully understand Comerica's instant motion, it is necessary to have a brief review of not only the circumstances surrounding the UMG Agreement, but also [redacted]

A. The Court [redacted] in August 2016.

Prince's longtime partner has been and remains WBR. While Prince had historic disputes with WBR and its prior iterations, WBR was essentially Prince's distribution partner for the entirety of his life.[1] As this Court is aware, the Special Administrator requested that this Court approve [redacted]

The first core music deal proposed by the Special Administrator was [redacted] The Heirs[2] objected [redacted] The Special Administrator argued that [redacted]

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[1] While L. Londell McMillan makes much of his personal participation in Prince's battles with WBR which lead to his Emancipation album in 1996, Prince subsequently entered multiple deals with WBR.

[2] Pursuant to the Court's May 17, 2017 order, the Decedent's heirs are Omarr Baker, Alfred Jackson, Sharon Nelson, Norrine Nelson, John R. Nelson, and Tyka Nelson (the "Heirs"). These are the same individuals previously referred to as the Non-Excluded Heirs. *See* Order Determining Intestacy, Heirship & McMillan Matters, filed May 18, 2017.

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[redacted] (*See* Letter to Judge Kevin W. Eide from Liz Kramer, filed under seal Aug. 30, 2016.) Conversely, the Heirs argued that [redacted] (*See* Letter to Judge Kevin W. Eide from Adam P. Gislason, filed under seal Aug. 30, 2016.) Additionally, the Heirs argued that [redacted] (*Id.*) This would have caused [redacted] (*Id.*) The Court subsequently [redacted]

During the Special Administrator's negotiation of [redacted], it ostensibly reviewed the prior agreements with WBR. In fact, WBR has maintained that it informed the Special Administrator and its advisors of all of the Decedent's prior agreements with WBR.[3] Similarly, in its time entries submitted to the Court, Bremer's counsel represented that [redacted][4] This is inconsistent with what Bremer has communicated to Comerica. (*See, e.g.*, Mem. in Sup. of Mot. to Approve Rescission, filed May

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[3] *See* May 31, 2017 Letter from Joe Cassioppi (counsel for the Personal Representative) to Judge Kevin W. Eide attaching a letter from Chris Tayback (counsel for WBR) to Joe Cassioppi dated May 25, 2017, filed on May 31, 2017) ("Mr. McMillan previously had access to the April 2014 Agreement when he was acting on behalf of the Estate."); Affidavit of Steven H. Silton, Ex. A, filed on June 6, 2017 ("the Table of Contents of the Binder of WBR/Prince agreements [was] provided to Mr. McMillan on June 22, 2016"); Affidavit of Craig Ordal, filed under seal on Sept. 27, 2016, Ex. A (Letter from Cameron Strong (Chairman & CEO of WBR) to Craig Ordal dated Sept. 22, 2016) [redacted]

[4] In the time entries of Stinson Leonard Street's timekeepers [redacted] *See* Affidavit of Laura E. Krishnan, filed under seal July 29, 2016, Ex. C.

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17, 2017, at pp. 3-4) ("It is unclear what analysis the Special Administrator or its advisor L. Londell McMillan conducted . . .).

B. The UMG Agreement Was Approved on the Last Day of the Special Administrator's Term.

After [redacted], the Special Administrator—at the behest of its experts—shifted gears. Instead of merely [redacted], the Special Administrator moved to replace the Estate's recording partner with UMG, and provide UMG with [redacted][5] There was no explanation for this change in direction. The Special Administrator (1) [redacted] apparently without the necessary due diligence.

The Court was not provided any detail as to Bremer's reasons for proposing these two deals with UMG, as contrasted with [redacted] Moreover, no explanation has been produced as to why a singular agreement would include such separate and distinct rights. It appears that the purpose was to maximize the commission to the entertainment industry experts and to obfuscate the Court's order [redacted]

At the beginning of the process to negotiate the Estate's entertainment deals, the Court held that [redacted]

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[redacted]

(*See* Amended Order Granting in Part the Special Administrator's Motion to Approve Recommended Deals & Denying Motion to Void Advisor Agreement, filed under seal Oct. 6, 2016, ¶ 5, emphasis added.) Converting [redacted] was a long process.

On January 20, 2017, the Court held that Bremer would cease to serve as Special Administrator of the Estate after January 31, 2017. (*See* Order for Transition from Special Administrator to Personal Representative, filed Jan. 20, 2017, p. 1.) In the same order, the Court held the Personal Representative and the Special Administrator must enter into a Common Interest Agreement. (*Id.*, p. 3.) The Common Interest Agreement was required by Bremer before the Special Administrator would transfer the Estate-related assets and documents in its possession to the Personal Representative. The Court approved the Common Interest Agreement and stated that as a condition of the transfer from Special Administrator to Personal Representative, the two entities cannot be adverse to each other:

> **As a result of the Common Interest Agreement, Bremer Trust**, Patrick A. Mazorol, and Stinson Leonard Street, LLP, on the one hand, **and Comerica** and Fredrikson & Byron, P.A., on the other hand, ***cannot*, at any time, be adverse to each other in connection with this Estate.**

(*Id.*, p. 4 ¶ 9) (emphasis added.) The Personal Representative and the Special Administrator signed the court-approved Common Interest Agreement shortly thereafter.

Despite Bremer's impending exit, the UMG Agreement remained incomplete and unfinished. On January 31, 2017, the Court, pursuant to an expedited telephone hearing, approved

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the UMG Agreement.[6] This was the last day of the Special Administrator's term. As discussed above, the approved UMG Agreement is in fact comprised of [redacted] (*See* Mem. in Sup. of Mot. to Approve Rescission, filed May 17, 2017, at pp. 4-5.) At the hearing regarding the UMG Agreement, Baker argued that [redacted] (*See* Letter to Judge Kevin W. Eide, filed under seal Jan. 31, 2017.) [redacted] (*See* Amended Order Granting in Part the Special Administrator's Motion to Approve Recommended Deals & Denying Motion to Void Advisor Agreement, filed under seal Oct. 6, 2016.) The Heirs, represented by three experienced entertainment lawyers[7] who had knowledge of these types of deals, evaluated the UMG Agreement, recommended the Estate *not* enter the UMG Agreement, and communicated the same to the Court. Over objections from select Heirs, the Court approved the UMG Agreement.

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[6] Entertainment counsel for Bremer at that hearing was Cate Heaven-Young, whose role previously had been limited—Traci Bransford was general lead entertainment counsel. Ms. Bransford billed 274 hours in January, ostensibly relating to the only unfinished entertainment deal: the UMG Agreement.

[7] Pursuant to its October 6 order, the Court [redacted] *See* Amended Order Granting in Part the Special Administrator's Motion to Approve Recommended Deals & Denying Motion to Void Advisor Agreement, filed under seal Oct. 6, 2016, ¶ 5. The original two representatives were Ken Abdo (counsel for Sharon, Norrine, and John Nelson) and Bob Labate (counsel for Tyka Nelson). Sharon, Norrine, and John Nelson replaced Ken Abdo and the Lommen Abdo firm with Randall Sayers and Nate Dahl, who did not participate in the entertainment deals. As early as September, 2016, Sharon Nelson was working directly with McMillan on "business interests." *See* Affidavit of Omarr Baker, filed under seal Sept. 27, 2016.

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Effective February 1, the Court appointed Comerica as the Personal Representative of the Estate. The Court also held that it would discharge the Special Administrator "upon the final approval of the final accounts and the fee statements and the submission to the Court of a receipt of the assets shown on the final accounting signed and filed by Comerica Bank & Trust." (*See* Second Order Relating to the Transition from Special Administrator to Personal Representative, filed Jan. 31, 2017, p. 3.)

On March 22, the Personal Representative informed the Heirs of its ongoing correspondence with WBR and UMG regarding disputes over the UMG Agreement. (*See* Affidavit of Steven H. Silton, filed April 7, 2017, Exs. A-F.) On April 5, UMG demanded rescission of the UMG Agreement. (*Id.*, Ex. G.) The Personal Representative informed the Heirs' counsel of the same. (*Id.*) On April 5, the same day the Heirs received a copy of UMG's rescission demand, the Court discharged the Special Administrator "from any and all liability associated with its Special Administration of the Estate." (*See* Order Granting Special Administrator's Request to Approve Payment of Special Administrator's and Attorneys' Fees and Costs through January 31, 2017 and Final Accounts and Inventory ("Discharge Order"), filed April 5, 2017, p. 5.)

On April 7, Omarr Baker and Alfred Jackson brought the issues regarding the UMG Agreement to the Court's attention. (*See* Omarr Baker and Alfred Jackson's Supplemental Objections to Bremer Trust, National Association's Final Accounts through January 31, 2017, filed April 7, 2017.) On April 11, after receipt of Baker and Jackson's filing, the Court stayed the Special Administrator's discharge from liability pending further order of the Court. (*See* Order Staying Discharge of Special Administrator, filed April 12, 2017.) The stay was issued because "[t]he Court ha[d] learned that litigation may be forthcoming which may relate to the actions taken by the Special Administrator." (*Id.*)

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The following response is filed in support of the Personal Representative's request for rescission of the UMG Agreement. However, to the extent the Court approves rescission, the Court should also ensure that disposition of the present motion does **not** discharge the Special Administrator from liability or support the Special Administrator's discharge in any capacity.

ARGUMENT

A. The Court Should Ensure Disposition of the Personal Representative's Motion for Approval of Rescission of the UMG Agreement Does Not Also Decide the Special Administrator's Discharge from Liability.

The Personal Representative's basis for requesting the Court's approval to rescind the UMG Agreement is to avoid "costly and uncertain litigation with UMG and WBR." (*See* Mem. in Sup. of Mot. to Approve Rescission, filed May 17, 2017, at pp. 12-14) ("[T]he 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.") In other words, the reason the Personal Representative gives the Court for rescinding the UMG Agreement is a cost analysis—litigation with UMG and WBR is too costly and too uncertain to be in the best interest of the Estate.

The Personal Representative accurately described its decision to request approval to rescind the UMG Agreement as a way to settle WBR's claim "that the Special Administrator sold rights to UMG that WBR already holds based on its previous agreements with the Decedent." (*See* Mem. in Sup. of Mot. to Approve Rescission, filed May 17, 2017, at 1.) Because 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," the Personal Representative deemed it in the best interest of the Estate to rescind the agreement. (*Id.*) That is, the Personal Representative could not assure the Heirs and the Court that if the UMG Agreement were litigated, the Estate would prevail.

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The Personal Representative's reason for rescinding the UMG Agreement was **not**, as the Special Administrator described it, "the Personal Representative's business judgment." (*See* Letter to Judge Kevin W. Eide, filed May 23, 2017, p. 2.) No facts exist in the record to even imply that an independent business reason exists to rescind an agreement which took months to negotiate, [redacted] In addition, the public relations and brand damage that is and will result is almost unquantifiable. There exists a serious dispute between WBR and UMG which can be avoided by rescinding the UMG Agreement. This dispute cannot be simplified as a matter of Comerica reaching a different conclusion from Bremer regarding the business merits of the agreement.

The dispute brewing between WBR and UMG is certainly a valid reason to request rescission—and the Personal Representative is well within its right to request approval to rescind and save the Estate from the time expense of litigation. However, it is worth noting two points. First, nowhere in its memorandum does the Personal Representative conclude whether or not UMG and WBR's allegations in their entirety have a valid factual basis. Second, nowhere in its memorandum does the Personal Representative conclude whether or not the Special Administrator is responsible for the now-failed UMG Agreement.[8]

[8] While it took no position regarding the Special Administrator's liability for the UMG Agreement, the Personal Representative correctly indicates that the Court should determine whether the commissions paid to the Special Administrator's entertainment industry advisors—L. Londell McMillan and Charles Koppelman—in connection with the UMG Agreement should be repaid. *See* Mem. in Sup. of Mot. to Approve Rescission, filed May 17, 2017, at pp. 14-15. Baker sees no value to the Estate in allowing the advisors to keep the commissions. If the UMG Agreement is rescinded, there is no commissionable act that deserves payment. As a result, the advisors should immediately repay the Estate.

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The reason the Personal Representative takes no position as to the Special Administrator's liability is simple. The court-ordered Common Interest Agreement *precludes* the Personal Representative from doing just that. The Court ordered the Personal Representative and the Special Administrator to enter a Common Interest Agreement. Pursuant to that Common Interest Agreement, the Special Administrator and the Personal Administrator "cannot, at any time, be adverse to each other in connection with this Estate." (*See* Order for Transition from Special Administrator to Personal Representative, filed Jan. 20, 2017, p. 3.) Following the Court's order, the Personal Representative has appropriately abstained from making any statements adverse to the Special Administrator with respect to the UMG Agreement.

The Common Interest Agreement creates a unique problem for this Estate. With the Personal Representative unable to pursue any claims adverse to the Special Administrator, it is somewhat unclear who *should* bring any adverse claims against the Special Administrator. And there are undoubtedly potential claims that exist. Baker acknowledges that the mere existence of a loss is not definitive of culpability on behalf of Bremer. However, a process for determining whether liability exists, and any damages that result from that liability, must be established.

On the limited factual record available, Bremer's conduct is dubious. For example, it is not credible for Bremer to maintain that prior to entering the UMG Agreement, it did not receive copies of the Decedent's prior agreements with WBR. Counsel for Bremer's submitted time entries appear to indicate receipt of the WBR agreements prior to execution of the UMG Agreement.[9] It

[9] What is more, the Special Administrator appears to be less than forthcoming even with the Personal Representative, despite the Common Interest Agreement in place. Among other things, Bremer and its counsel indicated to Comerica [redacted] However, this is belied by the time entries [redacted] *See* Affidavit of Laura E. Krishnan, filed under seal July 29, 2016, Ex. C. It is possible that additional

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stretches credibility to suggest that during the Special Administrator's negotiation of the WBR agreement, it did not review the prior agreements with WBR.[10] As a second example, the Special Administrator pushed the UMG Agreement through on January 31, over objections from Baker and other Heirs that material terms of the short form agreement were not complete. (*See* Letter to Judge Kevin W. Eide, filed under seal Jan. 31, 2017.) Finally, as Baker has previously raised with the Court, the Special Administrator's conduct with respect to the Tribute Concert and Jobu Presents, LLC, raises additional serious questions about whether it acted in the best interest of the Estate, breached its fiduciary duty and caused damage to the Estate.[11]

In its June 1, 2017 correspondence to the Court, Bremer makes a singular contractual argument in support of the UMG Agreement's enforceability that is based solely on the 2014 WBR Agreement. In addition, Bremer's counsel referenced a more detailed "contract analysis," which has not, despite demand, been proven to the Heirs' counsel. (*See* Affidavit of Steven H. Silton,

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documents related to the UMG Agreement may exist, and the Court should compel the Special Administrator to provide them.

[10] In fact, WBR has maintained that it informed the Special Administrator and its advisors of the Decedent's prior agreements with WBR. *See* May 31, 2017 Letter from Joe Cassioppi (counsel for the Personal Representative) to Judge Kevin W. Eide attaching a letter from Chris Tayback (counsel for WBR) to Joe Cassioppi dated May 25, 2017, filed on May 31, 2017) ("Mr. McMillan previously had access to the April 2014 Agreement when he was acting on behalf of the Estate."); Affidavit of Steven H. Silton, Ex. A, filed on June 6, 2017 ("the Table of Contents of the Binder of WBR/Prince agreements [was] provided to Mr. McMillan on June 22, 2016"); Affidavit of Craig Ordal, filed under seal on Sept. 27, 2016, Ex. A (Letter from Cameron Strong (Chairman & CEO of WBR) to Craig Ordal dated Sept. 22, 2016) [redacted]

[11] Baker respectfully directs the Court to the objections filed on January 11, 2017, the supplemental objections filed on January 19, 2017, the reply in support of the objections filed on January 30, 2017, the objections filed on March 8, 2017, and the supplemental objections filed on April 24, 2017.

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filed June 6, 2017, Ex. B.) In light of the simple but elegant argument Comerica makes, Bremer's illusionary and secret arguments are suspect at best and legally without merit.

On April 24, 2017, Baker and Jackson—in light of the growing issues surrounding the Special Administrator's conduct—requested the Court set aside the Common Interest Agreement. (*See* Omarr Baker and Alfred Jackson's Supplemental Objections to Bremer Trust National Association's Discharge from Liability, filed April 24, 2017, pp. 24-25.) At a minimum, Baker and Jackson requested the Court modify the Common Interest Agreement in order to allow the Personal Representative to conduct the full and impartial investigation the Court had previously ordered pursuant to its April 5, 2017 order.[12] (*See* Discharge Order, p. 5.)

As of June 2017, the Common Interest Agreement is still in place. If the Special Administrator and the Personal Representative cannot be adverse to each other pursuant to the Common Interest Agreement, the Personal Representative cannot reasonably investigate the Jobu Presents advance and Mr. McMillan's commission, as required pursuant to the Court's order. More importantly, if the Special Administrator breached its breach of fiduciary duty in *any capacity at all*, the court-ordered Common Interest Agreement precludes the Personal Representative from bringing such a claim.

For this reason, it is imperative the Court abstain from discharging Special Administrator from liability until a full and fair investigation into its conduct has taken place and the Court has

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[12] In the Discharge Order, the Court ordered the Personal Representative to "investigate and make an informed decision regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents." *See* Discharge Order, p. 5. The Court further directed the Personal Representative to "investigate and make an informed decision regarding whether any action should be pursued for the return of the commission paid to L. Londell McMillan in connection with the agreement with Jobu Presents to conduct the Tribute Concert." *Id.*

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fully heard and ruled on any forthcoming claims for breach of fiduciary duty. At the very least, the Court should abstain from ruling on the Special Administrator's discharge from liability as part of the present motion. As previously raised with the Court, there are several issues *in addition to* rescission of the UMG Agreement which must be addressed prior to the Special Administrator's discharge. These issues include, but are not limited to, the Jobu Presents, LLC complaint, retention of L. Londell McMillan's commission related to the same, and Charles Koppelman's loan to Jobu Presents, LLC. Until the Heirs, the Estate, and the Court have fully considered these issues, the Special Administrator cannot and should not be discharged from liability.

B. Discharging the Special Administrator as Part of a Ruling on this Motion May Bar Any Forthcoming Claims for Breach of Fiduciary Duty Pursuant to the Doctrines of Res Judicata and Collateral Estoppel.

If the Court discharges the Special Administrator from liability as part of deciding this Motion or if the Court makes any findings supporting Bremer's discharge as part of deciding this Motion, it may collaterally estop any forthcoming claims for breach of fiduciary duty. The Court should ensure in deciding this Motion that pursuant to the doctrines of res judicata and collateral estoppel, the parties in this action are not precluded from litigating Bremer's discharge and potential breach of fiduciary duty. *See Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004); *Kaiser v. Northern States Power Co.*, 353 N.W.2d 899, 902 (Minn. 1984); *Olson v. Auto-Owners Ins. Co.*, 659 N.W. 2d 283 (Minn. Ct. App. 2010) (applying res judicata as an absolute bar to subsequent litigation when (1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter); *Illinois Farmers Ins. Co. v. Reed*, 662 N.W.2d (Minn. 2003) (applying collateral estoppel when (1) the issue was identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3)

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the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue).

The Court should ensure its ruling regarding the present Motion for approval to rescind the UMG Agreement does not have any collateral estoppel/res judicata effect on the Special Administrator's discharge from liability.

C. Discharging the Special Administrator as Part of a Ruling on this Motion May Interfere with the Law of the Case.

The law-of-the-case doctrine ordinarily applies where an appellate court has ruled on a legal issue and remanded the case to the lower court. *Anderson v. Anderson*, No. A16-2006 (Minn. Ct. App. May 30, 2017) (citing *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994)). However, Minnesota courts also provide that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *State v. Miller*, 849 N.W.2d 94, 98 (Minn. App. 2014). If the Special Administrator is discharged from liability at this stage or if the Court makes findings supporting Bremer's discharge, future claims involving breach of fiduciary duty may interfere with the law of the case. *Emp'rs Nat'l Ins. Co. v. Breaux*, 516 N.W.2d 188, 191 (Minn. Ct. App. 1994), *review dismissed* (Minn. Sept. 16, 1994) (the law-of-the-case doctrine "may also be applied to unappealed [district] court decisions made at an earlier stage of the same case"); *see also Arizona v. California*, 460 U.S. 605, 618 (1983) ("when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case"). In ruling on the present Motion for approval to rescind the UMG Agreement, Baker urges the Court to ensure its ruling does not contradict the law-of-the-case doctrine with respect to Bremer's discharge.

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D. The Court Should Issue Guidance on Whether the Personal Representative and/or Select Heirs May Pursue Claims for Breach of Fiduciary Duty Against the Special Administrator.

If the Court grants the Personal Representative's Motion, Baker respectfully requests that in addition to abstaining from ruling on the Special Administrator's discharge from liability, the Court also issue guidance on whether the Personal Representative and/or select Heirs have standing to investigate and, if warranted, pursue claims for breach of fiduciary duty against the Special Administrator. As the Court is aware, many issues remain regarding the Special Administrator's conduct and whether it was in the best interest of the Estate. Simply rescinding the UMG Agreement does nothing to determine whether Bremer is entitled to a discharge from liability.

After a period of reasonable discovery and investigation, it may be determined that the Special Administrator breached its fiduciary duty to the Estate. Under such circumstances, the Personal Representative may be precluded from bringing a claim pursuant to the Common Interest Agreement. It follows that the only other parties in a position to bring a claim would be the Heirs. Baker requests that the Court issue guidance regarding whether the Personal Representative and/or select Heirs should investigate, and if warranted, have standing to bring claims for breach of fiduciary duty against the Special Administrator.

CONCLUSION

Omarr Baker supports the Personal Representative's conclusion that it is in the best interest of the Estate to avoid litigation and rescind the UMG Agreement. However, Baker respectfully requests that should the Court agree with the Personal Representative and grant the Motion, it abstain from simultaneously ruling on the Special Administrator's discharge from liability. Baker further requests the Court provide direction regarding whether the Personal Representative and/or

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select Heirs have standing to investigate and, if warranted, pursue claims for breach of fiduciary duty against the Special Administrator.

Dated: June 6, 2017.

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