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June 26, 2017

The Honorable Kevin W. Eide
Judge of the District Court
Carver County Justice Center
604 East 4th Street
Chaska, MN 55318

Re: The Estate of Prince Rogers Nelson
Court File No. 10-PR-16-46

Dear Judge Eide:

Pursuant to the Court's June 15, 2017 Order, on behalf of UMG Recordings, Inc., attached please find correspondence from attorney Scott Edelman, admitted *pro hac vice*.

Please do not hesitate to contact me if you have any questions.

Best regards,

MORRISON SUND PLLC

/s/ Ryan R. Dreyer

Ryan R. Dreyer

RRD/kjw
Enclosures

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June 26, 2017

VIA E-FILEThe Honorable Kevin W. Eide
Judge of the District Court
Carver County Justice Center
604 East 4th Street
Chaska, MN 55318Re: *In re the Estate of Prince Rogers Nelson*
Court File No. 10-PR-16-46

Dear Judge Eide:

We write on behalf of UMG Recordings, Inc. (“UMG”) to address the narrow question posed by the Court’s June 15, 2017 Order (the “Order”); namely, whether, and to what extent, UMG’s review of the 2014 WBR Agreement affects the Personal Representative’s pending Motion to Approve Rescission of Exclusive Distribution and License Agreement (the “Motion”), and UMG’s demand for rescission.

As directed by the Court, UMG has reviewed the 2014 WBR Agreement. In addition, with the agreement of WBR and the other parties, UMG has been provided with and has reviewed numerous documents filed under seal by the parties in connection with the Motion.¹ UMG’s outside and internal litigation counsel have also had multiple conversations with the interested parties to the Motion, including L. Londell McMillan and his counsel (Alan I. Silver of Bassford Remele); counsel for Sharon L. Nelson, Norrine P. Nelson, and John R. Nelson (Nathaniel A. Dahl of Hansen, Dordell, Bradt, Odlaug & Bradt, P.L.L.P.); counsel for

¹ These materials include the Personal Representative’s May 17, 2017 Memorandum in Support of its Motion; Joseph J. Cassioppi’s May 17, 2017 Declaration; the Personal Representative’s June 9, 2017 Reply in Support of the Motion; Joseph J. Cassioppi’s June 9, 2017 Supplemental Declaration; Omarr Baker’s June 6, 2017 Response in Support of the Motion; Nathaniel A. Dahl’s June 6, 2017 Affidavit; L. Londell McMillan’s June 6, 2017 Memorandum of Law in Opposition to the Motion; L. Londell McMillan’s June 6, 2017 Declaration; Virgil Roberts’s June 6, 2017 Declaration; Sharon L. Nelson, Norrine P. Nelson, and John R. Nelson’s June 6, 2017 Memorandum of Law in Opposition to the Motion; Sharon L. Nelson’s June 6, 2017 Affidavit; Steven H. Silton’s June 8, 2017 Affidavit; Omarr Baker’s June 9, 2017 Reply in Support of the Motion; and Steven H. Silton’s June 9, 2017 Affidavit. Counsel for WBR also provided UMG with WBR’s July 2014 Agreement with NPG Records, Inc. Counsel for Bremer Trust, National Association (“Bremer Trust”) also provided UMG with a letter memorandum containing its analysis of the relevant provisions of the UMG Agreement and 2014 WBR Agreement.

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Bremer Trust (Liz Kramer and Laura Halferty of Stinson Leonard Street LLP); outside counsel for WBR (Christopher Tayback of Quinn Emanuel); an executive for WBR (Emio Zizza) with knowledge of the 2014 WBR Agreement; and counsel and advisors for the Personal Representative (Joseph J. Cassioppi and Mark Greiner of Fredrikson & Byron, P.A., and Troy Carter and Jason Boyarski).

Our thorough review has only confirmed that rescission is necessary because of the material misrepresentations and nondisclosures made by the Estate's prior representatives to induce UMG to enter a deal that was immediately contested by WBR. While WBR's agreement may be ambiguous, the rights promised to UMG by the Estate's prior representatives were not. UMG was promised in the UMG Agreement [REDACTED]

[REDACTED]. *See* May 17, 2017 Cassioppi Decl., Exh. C (UMG Agreement), ¶ 2.1.1.

But just days after the UMG Agreement was publicly announced, WBR claimed [REDACTED] that conflict with the rights purportedly granted to UMG under the UMG Agreement. *See id.*, Exh. F. WBR has since advised UMG that [REDACTED]—in contravention of the rights purportedly granted to UMG—and has expressly warned UMG that if UMG attempts to [REDACTED], it will file suit against UMG. UMG did not pay [REDACTED] to acquire rights that would immediately be subject to a conflicting claim by a third party. Had UMG known that such a cloud would be cast over the UMG Agreement immediately following its public announcement, it would not have proceeded with the deal.

UMG has considered the numerous filings and competing contentions of the Nelson heirs, Bremer Trust, Mr. McMillan (together, the "Opposing Parties"), WBR, Omarr Baker, and the Personal Representative. As discussed in more detail below, we are not able to say which side is right or whether either side is correct in its interpretation of the 2014 WBR Agreement. Both WBR and Opposing Parties are adamant in their positions, and each side advances different arguments than UMG would if it were a party to the 2014 WBR Agreement. In our June 22 conversation with Mr. McMillan, the Nelson heirs, and counsel and advisors to the Personal Representative, Mr. McMillan acknowledged that the WBR Agreement "could have been drafted better," and "there is no dispute that these rights are confusing." However, we wish to emphasize that for purposes of the instant Motion, the Court need not (and, on the record before it, cannot) reach a determination of whether WBR's or Opposing Parties' interpretation of the 2014 WBR Agreement is correct. This is because the Personal Representative's Motion is not based on resolving the dispute over the 2014 WBR Agreement, but rather, on the existence of this dispute, which was not previously

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disclosed to UMG, and which will prevent UMG from exercising the rights it believed it had acquired without litigation brought by WBR.

I. The 2014 WBR Agreement Is Ambiguous and Cannot be Understood or Resolved by a Court On the Face of the Document Itself.

The relevant section of the 2014 WBR Agreement for purposes of the Motion is Section 2(b)(1), which provides the following:

[REDACTED]

2014 WBR Agreement ¶ 2(b)(1). This language is ambiguous on its face. WBR contends [REDACTED]

Opposing Parties contend [REDACTED]

[REDACTED]. In contrast, [REDACTED]. As discussed more fully below, given the facial ambiguity of this language, and the varying and conflicting interpretations of this provision offered by WBR, Opposing Parties, and the Personal Representative, neither UMG nor any court is in a position to determine based on the text of the 2014 WBR Agreement alone the extent to which the grant of rights to UMG under the UMG Agreement and the rights granted to WBR under the 2014 WBR Agreement are in conflict.

First, the parties dispute [REDACTED]

[REDACTED] WBR is adamant that it does, and has assured us that all of the witnesses involved in the negotiation and drafting of this agreement will so testify. WBR contends [REDACTED]

[REDACTED] 2014 WBR Agreement, ¶ 2. WBR also contends [REDACTED]

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² WBR then also explains [REDACTED]. On the other hand, Opposing Parties contend [REDACTED]. See, e.g., June 6, 2017 McMillan Opp., pp. 6-7.

While Opposing Parties have also argued [REDACTED]

[REDACTED] Further, Section 3(c) states [REDACTED]. Id. ¶ 3(c). In other words, both sides use [REDACTED] within the 2014 WBR Agreement to argue their position.

Second, the heirs assert in their September 28, 2016 filing objecting to the UMG Agreement (see June 9, 2017 Supp. Cassioppi Decl., Exh. A, p. 12) [REDACTED]

[REDACTED] Opposing Parties claim [REDACTED].³ On the other hand, WBR's current Head of Business & Legal Affairs and Senior Vice President, Emio Zizza, pointed UMG to Section 6(d) of the

² The 2014 WBR Agreement [REDACTED]

[REDACTED] See May 17, 2017 Cassioppi Decl., ¶ 4; see also *id.*, Exh. T (May 3, 2017 Tayback Ltr), pp. 2-3.

³ This is a different position than Mr. McMillan took in his October 31, 2016 email to UMG, in which he stated [REDACTED]. See May 7, 2017 Cassioppi Decl., Ex. B.

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2014 WBR Agreement, which WBR believes contain multiple provisions supporting its interpretation. WBR states [REDACTED]

[REDACTED] . See 2014 WBR Agreement, ¶ 6(d)(i)

[REDACTED] WBR also points to Section 6(d)(ii), which states that [REDACTED]

[REDACTED] See *id.*, ¶ 6(d)(ii). WBR contends [REDACTED]

[REDACTED] . Finally,

WBR points to Section 6(d)(iv), which states [REDACTED]

[REDACTED] See *id.*, ¶ 6(d)(iv). WBR states that it would have made no sense for WBR to have assumed these obligations through the [REDACTED]

[REDACTED]

See also June 9, 2017 Supp. Cassioppi Decl., Exh. C (excerpt of *All You Need to Know about the Music Business* (9th ed. 2015), by Donald S. Passman). In contrast, Opposing Parties have already offered a declaration from an attorney stating his belief that [REDACTED] See June 6, 2017 Roberts Declaration, ¶¶ 8-10.

The uncertainty concerning [REDACTED] [REDACTED] is established in and of itself by the various conflicting and shifting interpretations provided by WBR, Opposing Parties, and the Personal Representative. And as noted by the Personal Representative, even the heirs' interpretation of the 2014 WBR Agreement has evolved over time, from the six heirs' September 28, 2016 Opposition filing to the three Nelson heirs' Opposition to the Motion. See June 9, 2017 Personal Representative Reply Br., pp. 5-7. UMG, a stranger to the 2014 WBR Agreement, is unable to determine whose interpretation is correct at this juncture and in this proceeding. To reach such a determination, UMG—and any court attempting to resolve this question—would need to review and analyze the relevant extrinsic evidence in order to understand the parties' intent when drafting Section 2(b)(1). See, e.g., *Pouch Terminal, Inc. v. Hapag-Lloyd (Am.) Inc.*, 569 N.Y.S.2d 122, 123 (1991) (“Where . . . the language of a contract is susceptible of varying but reasonable interpretations, the parties may submit extrinsic evidence as an aid in

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construction, and the resolution of the ambiguity is for the trier of fact.”). Such litigation would undoubtedly involve document and deposition discovery, as well as expert discovery and testimony, which would not resolve in a year and would surely continue into the license period at issue [REDACTED]. And while that litigation is pending, no planning to exploit these rights or exploitation of these rights would take place.

II. Rescission Remains Necessary Because UMG Was Fraudulently Induced to Enter Into the UMG Agreement.

UMG’s demand for rescission is based both on affirmative misrepresentations and failures to disclose. Indeed, in the UMG Agreement, the Estate represented [REDACTED] (see, e.g., May 17, 2017 Cassioppi Decl., Exh. C (UMG Agreement), ¶ 15.1(vi)), [REDACTED]

[REDACTED]. In particular, the Estate represented that:

- [REDACTED] (*Id.*, ¶ 15.1(iv) (emphasis added).)
- [REDACTED] (*Id.*, ¶ 15.1(v) (emphases added).)

It has become even more clear to UMG since the filing of the Motion that it was sold rights over which the seller knew a conflict existed but which it failed to disclose. Indeed, only recently, following publication of the June 8, 2017 *Billboard* article that reported on a September 2016 sealed filing (which has now been furnished to UMG for review), did UMG become aware that the Estate and its prior representatives *did in fact* have knowledge of these claims and impediments that would interfere with and impair the exercise of UMG’s rights under the UMG Agreement months before it was executed. In their September 28, 2016 filing, Prince’s heirs objected that [REDACTED]

[REDACTED] See June 9, 2017 Supp. Cassioppi Decl. Exh. A, p. 11. For this reason, the heirs characterized the UMG Agreement as [REDACTED]

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[REDACTED]

*Id.*⁴ Therefore, as early as September 2016, the Estate's representatives were aware of a potential conflict between the rights being offered to UMG and the rights granted to WBR under the 2014 WBR Agreement, yet never disclosed these concerns and objections to UMG.⁵ This failure to disclose directly contravenes the above representations and warranties contained in the UMG Agreement, and is evidence of fraudulent conduct in the form of knowingly false disclosures and material non-disclosures.

The Estate's representatives were also on notice from WBR that it claimed broad and exclusive licensing rights to [REDACTED]. For example, in a letter sent to the Bremer Trust on September 22, 2016, WBR wrote:

[REDACTED]

June 9, 2017 Supp. Cassioppi Decl., Exh. B (Exh. A to September 27, 2016 Ordal Affidavit) (emphasis added). Less than a month later, on October 18, 2016, WBR stated in a letter to Mr. McMillan and Mr. Koppelman that WBR was [REDACTED]

[REDACTED] May 17, 2017

⁴ UMG is aware that Bremer Trust views the September 28, 2016 filing differently, believing that the heirs' opposition to the proposed UMG deal was based solely on [REDACTED]. However, this explanation is belied by the heirs' concern set forth in the September 28, 2016 opposition that WBR might believe it has [REDACTED]. See June 9, 2017 Supp. Cassioppi Decl., Exh. A, p. 12 (first full bullet point).

⁵ Mr. McMillan has argued to UMG that he and the Estate's prior representatives did inform UMG that the UMG Agreement was in some sense "negotiated in a cloud" due to the prior rights agreements to which the UMG Agreement was subject. However, as UMG has made clear to Mr. McMillan in response to that claim, while some rights at issue in the agreement may have been the subject of uncertainties of which UMG was made aware, the rights central to the *current* dispute (*i.e.*, [REDACTED]) were expressly represented by the Estate and its representatives to be clean and clear. These rights at issue were not the subject of any uncertainty on UMG's part when it executed the agreement, in part because of the representations and warranties that the Estate provided to UMG, as discussed herein.

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Cassioppi Decl., Exh. J (attachment to March 27, 2017 Tayback Letter) (emphasis added). These letters further demonstrate that the Estate's prior representatives were aware of WBR's claim that [REDACTED]. But again, they failed to disclose WBR's conflicting understanding of its rights to UMG, instead making representations and warranties that they knew were false.

This failure to disclose [REDACTED] [REDACTED] reinforces the case for rescission of the UMG Agreement. While this Court need not resolve the legal question of whether UMG would be entitled to rescission in a separate court proceeding, the fact that UMG would be so entitled only bolsters the merits of the Personal Representative's Motion. Indeed, under [REDACTED] (See May 17, 2017 Cassioppi Decl. Exh. C, ¶ 18.3)—this failure to disclose entitles UMG to rescission. *Danzig v. Jack Grynberg & Assocs.*, 161 Cal. App. 3d 1128, 1138 (1984) (“It is well established that a party to an agreement induced by fraudulent misrepresentations *or nondisclosures* is entitled to rescind . . .”) (emphasis added). At a minimum, the Estate's prior representatives were mistaken in their belief that the rights granted to UMG would not be disputed by WBR following execution of the UMG Agreement. This mutual mistake is also grounds for rescission of the UMG Agreement. See Cal. Civ. Code §§ 1566-1567, 1689(b)(1); *Guthrie v. Times-Mirror Co.*, 51 Cal. App. 3d 879, 884 (1975) (“a mutual mistake, whether of fact or law, which affects an essential element of the contract and is harmful to one of the parties is subject to rescission by the party harmed”).

If the Personal Representative's Motion to approve our mutual Rescission Agreement is not granted, UMG will have no choice but to seek legal rescission of the UMG Agreement by filing suit against the Estate in federal court [REDACTED] based on fraud and mutual mistake, and will pursue additional claims against the Estate's prior representatives for damages that will far exceed [REDACTED]. Mutual rescission of the UMG Agreement in this forum is therefore in the best interests of both the Estate and UMG because it resolves this otherwise intractable dispute without the expense of lengthy litigation that will tie up these key rights for years. UMG appreciates the manner in which the Court has conducted its consideration of this issue, and respectfully requests that the Court grant the Personal Representative's Motion and approve the Rescission Agreement.

Sincerely,



Scott A. Edelman