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(with revised redactions, per this Court's Order, dated July 24, 2017)

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In re:

Estate of Prince Rogers Nelson,
Deceased.

Court File No. 10-PR-16-46

MEMORANDUM IN SUPPORT OF
MOTION TO APPROVE PAYMENT OF
ATTORNEYS' FEES AND EXPENSES FOR PERIOD
NOVEMBER 16, 2016 THROUGH JANUARY 31, 2017

Holland & Knight LLP (“**H&K**” or “**Petitioner**”), former counsel of record for Tyka Nelson (“**Tyka**”), hereby submits this memorandum in support of its Motion for an order approving payment of certain of Tyka’s attorneys’ fees and costs from the Estate of Prince Rogers Nelson (the “**Estate**”) for services performed by H&K during the period November 16, 2016 through January 31, 2017 (the “**Second Application Period**”) relating to H&K entertainment services as Heirs’ Representative and certain non-entertainment services.

FACTUAL BACKGROUND¹

A. H&K Services As Designated Heirs’ Representative

On October 6, 2016, this Court issued an order (“**Order**”) approving six “short-form deals” (the “**Approved Deals**”) and authorized the Special Administrator to negotiate and execute final long-form agreements based on the Approved Deals (“**Long-Form Agreements**”).

¹ On December 12, 2016, H&K submitted a fee application for the period September 23, 2016 through November 15, 2016 (the “**Initial Fee Application**”). The Factual Background, memorandums and affidavits submitted in support of the Initial Fee Application are incorporated herein by reference, as are capitalized terms defined in the Initial Fee Application. Redacted H&K invoices supporting both the Initial Fee Application and the Second Fee Application are submitted herewith. Finally, H&K was substituted out as counsel of record on January 4, 2017 but continued to provide limited advice regarding entertainment deals being negotiated by the Estate.

The Order also authorized the Nelson Heirs to appoint representatives (“**Representatives**”) to offer input and assistance to the Special Administrator and its Advisors on behalf of the Nelson Heirs regarding the Long-Form Agreements.² Order at p. 3, ¶ 5.

Robert Labate served as a Representative during the Initial and Second Application Periods.³ Because the Long-Form Agreements were complex, with limited time to review, comment on, and to propose language for each agreement, Mr. Labate enlisted several other H&K attorneys during negotiation and drafting of the Long-Form Agreements and for consideration of other proposed deals. Among others, Jorge Hernandez-Toraño, because of his extensive knowledge of the music industry, made frequent and important contributions to the Long-Form Agreement negotiations, Frank Keldermans and Richard Bixter revised and worked closely with Special Administrator’s counsel on the First Tennessee loan and security agreements executed in connection with the GMR Long-Form Agreement, and Lisa Kpor was responsible for obtaining draft documents posted on the secure Stinson HighQ website (often late at night) and providing Heirs’ counsel with those and many other documents, comments and revisions during the negotiations process.

During the Second Application Period, H&K assisted with negotiating and drafting of Long-Form Agreements with GMR, executed on December 30, 2016, and with Universal Music Group, executed on January 12, 2017. In addition, H&K attorneys reviewed and provided comments regarding other entertainment deals and opportunities presented to the Estate during

² The Order authorized the Special Administrator to negotiate and execute six (6) Long-Form Agreements, of which, four (4) agreements were ultimately executed, namely, with **Global Music Rights** (for performing rights licenses), **Universal Music Publishing Group** (for music publishing administration); **Universal Music Group** (for distribution and licensing of certain sound recording masters); and **Bravado International Group Merchandizing Services** (for licensing of trademark and merchandizing rights).

³ On or about November 10, 2016, Frank K. Wheaton replaced Ken Abdo as the second Representative. During the Second Application Period, Mr. Wheaton worked closely with Mr. Labate and other H&K attorneys to complete Long-Form Agreements with GMR and UMG and to analyze and comment on other entertainment opportunities.

the Second Application Period and negotiated a Protocol for Finalizing Court-Approved Entertainment Agreements – initially proposed by the Paternal Heirs’ counsel, Mr. Abdo, amended by the Special Administrator, and later approved by this Court, -- which enabled the Special Administrator and the Heirs to work together productively.⁴ This work, as described in greater detail in the H&K Invoices and in Mr. Labate’s Affidavit, is summarized below.

1. GMR Performance Rights Licensing Agreement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Over a period of six weeks, following discussions with Mr. Wheaton and other Heirs’ counsel, H&K provided significant comments to, and conducted many conferences with counsel for the Special Administrator regarding the GMR Agreement, GMR’s Standard Terms and the First Tennessee Note and Security Documents – the latter of which required extensive revisions. The final form of the GMR Long-Form Agreement, together with the First Tennessee Loan and Security Documents, were approved by the Heirs and executed by the Special Administrator on December 30, 2016.

⁴ While most of H&K services relating to negotiation and entry of the Protocol Order were rendered during the Initial Application Period, the existence of clear and cooperative protocols for negotiating Long-Form Agreements enabled the Heirs, the Special Administrator and its Advisors to conduct negotiations more effectively.

2. UMG Exclusive Distribution and License Agreement

[REDACTED]

[REDACTED] Because of the complexity of the UMG Agreement and because it concerned certain rights to the Vault Masters, it was the most challenging of the four Long-Form Agreements to negotiate.

The first draft of the UMG Long-Form Agreement was posted on December 18, 2016 for review and comment by the Heirs. [REDACTED]

[REDACTED]

During the next six weeks, H&K worked closely and cooperatively with the Special Administrator’s Advisors and counsel to achieve an agreement acceptable to the Special Administrator and to the Heirs. For each set of revisions – sometimes twice per week – H&K prepared new comments, reviewed those comments with other Heirs counsel, and participated in

numerous conferences with the Advisors and with special counsel retained just for negotiation of the UMG Agreement.

These negotiations resulted in a UMG Long-Form Agreement acceptable to all parties which was executed by the Special Administrator on January 31, 2017.

3. **The UMG Consultancy Agreement.**

[REDACTED]

[REDACTED]

[REDACTED] Yet, the form of the Consultancy Agreement presented to the Heirs in mid-January, 2017, was wholly unacceptable to three of the Heirs. After discussions with the Special Administrator proved fruitless, Mr. Labate, as an Heirs' Representative, submitted a letter to this Court objecting to the Consultancy Agreement and requesting direct access to special counsel and UMG to complete negotiation of the Consultancy Agreement.

Following a telephonic hearing held by this Court on January 31, 2017, Mr. Labate, Mr. Wheaton and Mr. Hernandez-Toraño, conferred and spoke with the Special Administrator's special UMG counsel, Jeffrey Greenberg and Barry Perlman, to propose changes to the Consultancy Agreement, which were reviewed with all Heirs' counsel. As a result of these collaborative efforts, UMG agreed to extensively modify the Consultancy Agreement, which is now acceptable to all Heirs and which will result in substantial payments directly to Heirs upon execution of the Agreement.

4. **Review of Other Entertainment Opportunities**

H&K analyzed, commented on and consulted with Heirs counsel and with the Special Administrator on other entertainment opportunities presented to the Estate during the Second

Application Period. For example, H&K provided extensive comments to the Sirius XM Long-Form Agreement and chaired several discussions with Heirs counsel and the Special Administrator regarding the benefits and burdens of the proposed Prince Channel on Sirius. Ultimately, the Special Administrator decided not to proceed with either the Pandora or Sirius agreements, but only after extensive analysis by and deliberation with the Representatives.

The Special Administrator and the Advisors also considered other entertainment opportunities, each of which were analyzed by the Representatives and discussed at length with Heirs' counsel during the Second Application Period. Some of these opportunities, referred to in the H&K invoices, have been discussed with Comerica, as the Personal Representative, and, at the appropriate time, may be presented to this Court for approval.

5. Transition to Comerica as Personal Representative

The four Long-Form Agreements negotiated and executed during the Initial and Second Application Periods are complex and Comerica's responsibilities during the next phase – exercising the Estate's rights and responsibilities under the Executed Agreements – is equally important and demanding. To assist the Heirs and Comerica in these duties, H&K is preparing charts summarizing key provisions of each Executed Agreement, which provide a guide for identifying issues requiring immediate attention by the Estate. A copy of the Key Provisions Chart prepared by H&K for the UMG Agreement is filed under seal in support of this Second Application.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. H&K Non-Entertainment Services

1. Search for Successor Special Administrator / Administrator

As set forth in extensive detail in the Initial Fee Application, H&K led efforts to contact and organize a group of personal representative candidates and schedule of a panel of interviews with all non-excluded heirs and their counsel. H&K attorneys also participated in and conducted interviews and had further discussions regarding the advantages and disadvantages of various candidates with all counsel and the non-excluded heirs. From those efforts, Comerica was selected as the candidate on which the parties could agree.

As a result of these interviews, H&K filed a petition to appoint the successor personal representative and prepared the necessary paperwork. Only H&K filed a petition to appoint just Comerica, which was the action and order entered by the Court. All other petitions included requests for co-successor administrators and were not granted. In addition, H&K filed a petition to determine the heirs of the Estate. The petition is beneficial to the Estate as a whole because this mechanism will determine the heirs; it is not beneficial to only one non-excluded heir. The petition remains pending, and it is our understanding that it will be ruled upon when the claims of all those not included in the non-excluded heirs category are decided.

Following the extensive process to select a corporate successor Special Administrator, H&K learned for the first time that Londell McMillan was being proposed as co-successor administrator. At the request of the non-excluded heirs supporting Mr. McMillan, H&K participated in an interview and listened to Mr. McMillan's three hour pitch. After this meeting,

and after some investigation into whether Mr. McMillan would be an appropriate candidate, it was determined that he lacked the necessary qualifications and had conflicts of interest that would bar his appointment. H&K subsequently began working on a response to the request for his appointment. Ultimately, Mr. McMillan was not appointed due to the lack of unanimous support. As such, H&K's efforts were consistent with the end result and benefited the Estate as a whole.

2. Efforts Related to the PRINCE ACT

The Court is likely familiar with the PRINCE Act, an unsuccessful bill that was brought before the Minnesota Legislature shortly after Mr. Nelson's death. All of the non-excluded heirs repeatedly told H&K that this Act was very important to each of them, and that they wanted to see it get passed. It was important to have the efforts for its passage begin before the Legislature reconvened in January 2017, but the Special Administrator informed the non-excluded heirs that it was not going to take action to start the process since their tenure was limited. As a result, H&K led the effort to find local lobbyists to work with all counsel and non-excluded heirs for the passage of the PRINCE Act. Because the Special Administrator had confirmed that it was not going to take steps to get the Act passed and time was of the essence, these efforts were for the benefit of the Estate in its entirety. A local firm was identified that had the consent of the non-excluded heirs. However, H&K was substituted out as counsel of record prior to the formal retention of the lobbying firm. It is unclear whether the non-excluded heirs decided to subsequently pursue this opportunity.

ARGUMENT

I. Minnesota Law Provides for the Payment of Attorney's Fees, Costs and Expenses Where the Services Have Benefitted the Estate

Minnesota law allows for the payment of attorney's fees from the Estate where "the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person." In such cases, the "attorney shall be paid such compensation from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services." Minn. Stat. § 524.3-720; *see also In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999) ("Van Den Boom [a remainder beneficiary], as an interested person, acted for the benefit of the estate by keeping a major asset intact. His attorney is entitled to fees.").

The Court uses the following factors to determine whether attorneys' fees sought in a probate proceeding are just and reasonable:

- (1) the time and labor required;
- (2) the experience and knowledge of the attorney;
- (3) the complexity and novelty of problems involved;
- (4) the extent of the responsibilities assumed and the results obtained; and
- (5) the sufficiency of assets properly available to pay for the services.

Minn. Stat. § 525.515(b).

As previously noted by the Special Administrator in its July 29, 2016 fee petition:

"Where, as here, the Court has extensive experience with a probate matter and there is a voluminous court file recording the work of counsel, the Court is on firm ground to exercise its discretion to determine an award for the reasonable fees and costs. *In re Bush's Estate*, 230 N.W.2d 33, 38-42 (Minn. 1975) (affirming attorney fee award where the Court was intimately familiar with the estate dispute and work performed by the attorneys); *In re Estate of Weisberg*, 64 N.W.2d 370, 372 (Minn. 1954)(affirming attorney fee

award and holding that the size of the total estate is important factor when determining reasonable fee awards).”

The Special Administrator is correct that the Court is well aware of the extraordinary nature of this proceeding and the complexity of the various issues facing the Estate, including one of the most unique collection of assets in Minnesota history, much of which requires significant effort and expertise to monetize. Additionally, the sheer number of individuals claiming to be heirs of the Estate has posed particular challenges for the Special Administrator and the siblings of the decedent who have been left uncertain of their legal status as the Court sorts through the various legal claims and the Estate attempts to conduct its business.

Given the size, nature, and complexity of the Estate and the number of interested persons involved in this matter, H&K has managed significant undertakings that have benefited the Estate and its ultimate beneficiaries. These efforts, chiefly the assistance provided during the sophisticated and complex negotiations of entertainment deals advanced by the Special Administrator, ultimately improved the final agreements that were entered into by the Estate.

While H&K’s efforts will benefit the Estate by helping it achieve the best “deals” possible, Tyka individually has not benefited from H&K’s efforts, particularly since Tyka is not yet an adjudicated heir. H&K’s efforts that related to probate matters, as more fully described above and in the accompanying affidavit, also benefitted the Estate as a whole and not Tyka individually. Moreover, in the event a will or child of the decedent was (or is) discovered during these intervening months, H&K’s efforts will have provided no benefit to Tyka whatsoever. Even if Tyka is an heir, H&Ks efforts and expertise assisted all of the ultimate heirs. Accordingly, H&K seeks reimbursement from the Estate for its efforts.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court authorize and direct the Administrator to pay \$415,377.00 in attorneys' fees (specifically \$187,502.50 in entertainment related fees and \$227,874.50 in non-entertainment related fees) and \$568.00 in costs to Holland & Knight LLP from the assets of the Estate.

Respectfully submitted,

Dated: March 3, 2017

HOLLAND & KNIGHT LLP

/s/ Robert Barton

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