

REDACTED

STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re: Estate of Prince Rogers Nelson,

Court File No. 10-PR-16-46
Hon. Kevin W. Eide

Decedent.

**MEMORANDUM OF LAW
IN SUPPORT OF VERIFIED
PETITION FOR TEMPORARY
RESTRAINING ORDER,
INJUNCTIVE RELIEF,
MANDATORY DISCLOSURE,
AND EMERGENCY HEARING**

Project Panther Ltd. ("Project Panther"), Aspiro AB ("TIDAL") and WiMP Music AS ("WiMP") and together with TIDAL and Project Panther, the "Petitioners") respectfully submit this Memorandum of Law, along with the Affidavit of Rodney J. Mason (the "Mason Aff."), in support of their Verified Petition for a Temporary Restraining Order, Injunctive Relief, Mandatory Disclosure and Emergency Hearing (the "Verified Petition"), pursuant to Section 524.3-607 of the Minnesota Probate Code (the "Probate Code") and Rule 65 of the Minnesota Rules of Civil Procedure (the "MRCP").

PRELIMINARY STATEMENT

Petitioners bring their Verified Petition in order to protect valuable and unique rights that Prince Rogers Nelson (the "Decedent") bestowed upon Petitioners prior to his untimely and unfortunate passing. As a result of the Decedent's well-known and professed affinity for the artist-centric business model of the TIDAL streaming service, the Decedent agreed that Petitioners could offer the Musical Assets¹ for digital streaming, inclusive of the Decedent's next new album, on TIDAL, and that TIDAL would be the only service that could advertise and

¹ Terms not otherwise defined in this Preliminary Statement shall have the meaning ascribed to them below.

promote the streaming of Decedent's music by using his name and likeness, for a period of five years. These important and bargained-for rights of Petitioners are – quite simply – being ignored. Indeed, rather than engage with Petitioners in a manner that would have preserved the parties' productive business relationship and the Decedent's artistic vision, the predecessor to the Personal Representative unsuccessfully sought to dismiss Petitioners' claim against the Estate on contrived procedural grounds. Now, after this Court has already held that Petitioners have stated a claim against the Estate, the current Personal Representative is refusing to provide even basic information as to whether Petitioners' rights are being violated through actual or prospective arrangements with other streaming services. This silence is in the face of widespread media reports indicating that the Musical Assets will be broadly available on other digital streaming services in connection with the Grammy Awards ceremony on February 12, 2017, where apparently the Decedent is appropriately set to be honored with a star-studded tribute. The instant Verified Petition seeks to remedy these wrongs through what has become critical and necessary injunctive relief.

Specifically, the Verified Petition seeks, among other things, an immediate order restraining the Personal Representative from finalizing or proceeding with any deals that would endanger Petitioners' interest in the Estate and, especially, the Decedent's promise that digital streaming services other than TIDAL could not use his name and likeness in connection with advertising, marketing and promotion of those services. Absent the requested injunctive relief and if the Personal Representative is not restrained, Petitioners' unique and irreplaceable rights in the Musical Assets will be irrevocably eroded. The Verified Petition also requests an order directing the Personal Representative to confirm that its actions are not and will not be in violation of the Decedent's agreements with Petitioners – fundamental information that, if

provided, will eliminate the climate of guesswork that the Personal Representative has brought on and which has exposed the Estate to costly litigation. The relief requested in the Verified Petition is of the utmost urgency in light of the imminent rights violation that is already, or may be, occurring, and a hearing on this matter should be held as soon as possible.

STATEMENT OF FACTS

The facts upon which Petitioners' application is based are set forth in the Verified Petition submitted herewith, the contents of which are briefly summarized here for the Court's reference, though not set forth in full.

Petitioners are parties to agreements with the Decedent and entities owned or controlled by him prior to his death, and are interested parties in the estate of the Decedent (the "Estate") because the Estate holds and controls certain musical assets (the "Musical Assets") to which Petitioners possess contractual and other rights. Verified Petition ¶ 1. Specifically, Petitioners were granted certain digital streaming rights in connection with the Musical Assets by virtue of numerous written and oral agreements and a substantial course of dealing between the Decedent and/or his entities, including NPG Records, Inc. ("NPG Records") and NPG Music Publishing, LLC ("NPG Publishing," and together with NPG Records, the "NPG Entities"), and Petitioners. *Id.*

Pursuant to the Court's Order for Transition from Special Administrator to Personal Representative, dated January 20, 2017, Comerica Bank & Trust, N.A. (the "Personal Representative" or "Comerica") was appointed as Personal Representative of the Estate as of February 1, 2017. *Id.* at ¶ 3. Prior to Comerica's appointment, Bremer Trust, N.A. (the "Former Special Administrator") served as special administrator of the Estate from April 27, 2016 until January 31, 2017. *Id.* Pursuant to a Common Interest and Information Sharing Agreement between the Former Special Administrator and Comerica, as approved and adopted by the Court,

the Personal Representative has access to all Estate information maintained by the Former Special Administrator before Comerica took over responsibility for the Estate, inclusive of all privileged or confidential information possessed by the Former Special Administrator during its term. *Id.* A Petition was filed by several entities and affiliated parties on November 11, 2016 seeking Allowance of Claim and Additional Relief concerning, among other things, the Musical Assets (the “November 2016 Petition”). *Id.* at ¶ 4. The November 2016 Petition outlined the nature of the rights of Petitioners in the Musical Assets and, accordingly, their interest in the Estate. *Id.* Specifically, the November 2016 Petition highlighted, among other things,

[REDACTED]

Shortly after the parties signed the Equity Term Sheet, the Decedent delivered one new and previously unreleased album for streaming on the TIDAL service, but did not deliver a

[REDACTED]

by Petitioners and the Former Special Administrator on January 6, 2017, on January 31, 2017, the Court entered Findings of Fact, Conclusions of Law, Order & Memorandum on the November 2016 Petition (the “Petition Order”). *Id.* at ¶ 11; *see generally* Petition Order. The Petition Order largely granted the relief sought in the November 2016 Petition, finding that the May 27th Letter was sufficient to put the Former Special Administrator on notice of Petitioners’ claimed contractual relationship with the Decedent and the NPG Entities and, therefore, finding that Petitioners had adequately stated and timely submitted a claim against the Estate. Verified Petition ¶ 11; Petition Order at 6 ¶¶ 7, 9–10. The Petition Order further found that “the record indicates Decedent (or the NPG Entities) granted [Petitioners] some rights with respect to exploitation of some of the Estate’s musical assets.” Verified Petition ¶ 11; Petition Order at 8 (emphasis in original). Accordingly, the Former Special Administrator, and by extension, Comerica, have been on notice of Petitioners’ interest in the Estate since at least May 27, 2016,

since the date the November 2016 Petition was filed, namely November 11, 2016. Verified Petition ¶ 11; *see* Petition Order at 3 ¶ 14–15, 6 ¶ 7. While the Petition Order denied the request for Additional Relief (as defined in the November 2016 Petition), the Petition Order made clear that the merits of the November 2016 Petition would be decided by the Court (or the court in the parties’ federal copyright lawsuit) at a later time after the benefit of discovery. Verified Petition ¶ 11; *see* Petition Order at 7.

Despite the rights granted to Petitioners [REDACTED] the Court’s findings in the Petition Order [REDACTED] recent media reports suggest that the Personal Representative, or its predecessor the Former Special Administrator, has entered into or is entering into business arrangements with digital

streaming services other than TIDAL in connection with the Musical Assets, which may impair Petitioners' rights. Verified Petition ¶ 12. On January 30, 2017, Billboard.com published an article entitled "Purple Spotify Billboards Suggest that Prince's Music Will Be Available on Major Streaming Service by Grammy Night" (the "Billboard Article").³ *Id.* at ¶ 13; Ex. 2. The Billboard Article discusses a series of purple-colored advertisements bearing the Spotify logo which appeared on the date of the article across New York City in some of its most high-traffic areas, such as the Union Square subway station. Verified Petition ¶ 13; Ex. 2. The article points to the advertisements as evidence that the Musical Assets may soon be available for digital streaming on Spotify and, while noting that the Estate had declined comment, quotes "sources close to the situation" as confirming that "both Spotify and Apple Music are on board to launch at least some of Prince's Warner [Music] catalog in time for the Grammys." Verified Petition ¶ 13; Ex. 2. On January 31, 2017, the *Minnesota Star Tribune* ran a similar article entitled "Prince's Music May Soon Be Unlocked on Spotify and Other Streaming Sites."⁴ Verified Petition ¶ 13; Ex. 3. Likewise, on January 30, 2017, the *New York Post* reported, in an article entitled "Prince's Top Songs to Hit Streaming Services Night of Grammys," that according to a "music insider", certain of the Musical Assets would be available for digital streaming on Apple Music, Spotify, Pandora Google Play and Deezer.⁵ Verified Petition ¶ 14; Ex. 4.

Collectively, these and other widely-distributed media reports and advertisements suggest that the Estate has consummated (or soon will consummate) agreements with digital streaming outlets other than TIDAL for the distribution of the Musical Assets in which Petitioners have an

³ A true and correct copy of the Billboard Article is submitted herewith as Exhibit 2 to the Mason Aff.

⁴ A true and correct copy of the article in the *Minnesota Star Tribune* is submitted herewith as Exhibit 3 to the Mason Aff.

⁵ A true and correct copy of the article in the *New York Post* is submitted herewith as Exhibit 4 to the Mason Aff.

interest, with such exploitation set to commence on or about February 12, 2017 in connection with the upcoming Grammy Awards ceremony at which, it has been reported, a star-studded and rightful tribute to the Decedent will take place. Verified Petition ¶ 15.

Thus, upon reading the numerous published reports, by e-mail dated January 31, 2017, counsel for Petitioners wrote to counsel for the Former Special Administrator and counsel for the Personal Representative requesting that they “confirm, on behalf of the Estate, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] No response to this e-mail was received. Verified Petition ¶ 16. Petitioners followed up by letter dated February 1, 2017 to counsel for the Personal Representative, requesting confirmation that the Estate had not entered into any agreements with music streaming services or undertaken any action [REDACTED]

[REDACTED]⁷ *Id.* at ¶ 17; Ex. 6. By letter dated February 2, 2017, counsel for the Personal Representative refused to provide Petitioners with the requested confirmation, citing the Court’s denial of the request for Additional Relief.⁸ Verified Petition ¶ 17; Ex. 7. Counsel for Petitioners followed up with an email the same day, noting that the Petitioners were simply seeking to confirm whether the Estate had or was about to

⁶ A true and correct copy of the January 31, 2017 email from Petitioners’ counsel is submitted herewith as Exhibit 5 to the Mason Aff.

⁷ A true and correct copy of Petitioners’ February 1, 2017 letter is submitted herewith as Exhibit 6 to the Mason Aff.

⁸ A true and correct copy of the Personal Representative’s February 2, 2017 letter is submitted herewith as Exhibit 7 to the Mason Aff.

breach an agreement with Petitioners.⁹ Verified Petition ¶ 17; Ex. 8. Counsel for the Personal Representative again stonewalled Petitioners, referring back to their February 2, 2017 letter.¹⁰ Verified Petition ¶ 17; Ex. 9.

This refusal to provide any meaningful information concerning rights to which this Court already has ruled the Petitioners may pursue and seek discovery on is consistent with the complete lack of transparency with which the Former Special Administrator conducted itself in the face of similar and repeated requests by Petitioners for basic information, and is in spite of the Personal Representative’s fiduciary obligations to the Estate and its creditors. Verified Petition ¶ 18. Indeed, this continued stonewalling has unnecessarily subjected the Estate to litigation and expense. *Id.*

Any agreement by the Estate providing a digital streaming service with [REDACTED]

[REDACTED]

[REDACTED] Further, any claim by the Estate that [REDACTED]

[REDACTED] Either way, Petitioners would be stripped of the benefit of the bargain they struck with the Decedent – [REDACTED]

[REDACTED]

⁹ A true and correct copy of the February 2, 2017 email from Petitioners’ counsel is submitted herewith as Exhibit 8 to the Mason Aff.

¹⁰ A true and correct copy of the February 2, 2017 email from the Personal Representative’s counsel is submitted herewith as Exhibit 9 to the Mason Aff.

Unless immediate, temporary and permanent injunctive relief are granted, Petitioners will be irreparably harmed because the name and likeness rights granted by the Exclusivity Restriction, as well as Petitioners' rights to offer the Decedent's next new album for digital streaming exclusively during the Exclusivity Period and then thereafter, will be irreversibly impinged upon should the Personal Representative be permitted to go forward with any digital streaming deals that, for example, allow the competing service to advertise that the Decedent's works are now available on their service. Verified Petition ¶ 20; Ex. 1 at 1–2.

LEGAL STANDARD

Minnesota courts have broad discretion to issue temporary restraining orders. *See McFadden Lambert Co. v. Winston & Newell Co.*, 209 Minn. 242, 245, 296 N.W. 18, 20 (1941) (“[T]emporary restraining orders or injunctions rest largely upon judicial discretion.”); *Jet Burger Sys., Inc. v. State*, No. C8-87-1808, 1988 WL 22946, at *1 (Minn. Ct. App. Mar. 15, 1988) (same).¹¹ With respect to probate matters such as this, Section 524.3-607 of the Probate Code provides:

On petition of any person who appears to have an interest in the estate, the court by temporary order may restrain a personal representative from performing specified acts of administration, disbursement, or distribution, or exercise of any powers or discharge of any duties of office, or make any other order to secure proper performance of a duty, if it appears to the court that the personal representative otherwise may take some action which would jeopardize unreasonably the interest of the applicant or of some other interested person.
Minn. Probate Code § 524.3-607(a).

Similarly, Rule 65.01 of the MRCP, made applicable to this probate matter pursuant to Section 524.1-304 of the Probate Code, allows the Court to grant injunctive relief where an applicant can show “immediate and irreparable injury, loss, or damage . . . from specific facts shown by affidavit or by the verified complaint[.]” Minn. R. Civ. P. 65.01.

¹¹ True and correct copies of all unpublished or non-Minnesota cases cited herein are attached as Exhibits 10–19 to the Mason Aff.

As set forth by the Minnesota Supreme Court, a party is entitled to injunctive relief, like that requested by the Verified Petition, when it is determined that the following factors militate in favor of issuing an injunction: “(1) the relationship between the parties before the dispute arose; (2) the harm plaintiff may suffer if the injunction is denied, compared to the harm inflicted on defendant if the injunction is granted; (3) the likelihood that the party will prevail on the merits; (4) public policy considerations; and (5) administrative burdens imposed on the court if the injunction issues.” *M.G.M. Liquor Warehouse Int’l, Inc. v. Forsland*, 371 N.W.2d 75, 77 (Minn. Ct. App. 1985) (citing *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314, 321-22 (1965)).

As discussed more fully below, in light of the Personal Representative’s utter disregard for Petitioners’ rights in the Estate, Petitioners have established their entitlement to injunctive relief under both Section 524.3-607 of the Probate Code and Rule 65.01 of the MRCP, as well as entitlement to the other relief sought by the Verified Petition.

ARGUMENT

I. Petitioners Satisfy the Standards of Section 524.3-607 of the Probate Code

Section 524.3-607 of the Probate Code provides that on the petition of an interested party, a court may temporarily restrain the personal representative of an estate from performing acts of administration and “make any other order to secure proper performance of a duty” in situations where the personal representative is taking actions that unreasonably jeopardize the applicant’s interest in the estate. Minn. Probate Code § 524.3-607(a). As contemplated by the statute, an unreasonable threat to a clear interest in the Estate is precisely the situation confronting Petitioners and for which the Personal Representative must be restrained.

Petitioners undoubtedly are “interested persons” in connection with the Estate within the meaning of Section 524.1 of the Probate Code. “Interested persons” is defined by the Probate Code to include “heirs, devisees, children, spouses, *creditors*, beneficiaries and *any others having a property right in or claim against the estate of a decedent*, ward or protected person which may be affected by the proceeding.” *See* Minn. Probate Code § 524.1 (emphasis added) (also noting that “[t]he meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.”). In the Petition Order, the Court found that Petitioners, as known creditors, have adequately and timely stated a claim against the Estate. Petition Order at 6 ¶ 7, 9–10; Verified Petition ¶ 11. On this basis, Petitioners are “interested persons” with respect to the Estate and have the requisite standing to seek temporary restraint of the Personal Representative under Section 524.3-607 of the Probate Code.

Moreover, and as set forth in the Verified Petition, the Personal Representative is apparently carrying out an “act of administration” that will unreasonably and irreparably undermine Petitioners’ interest in the Estate. That is, the Personal Representative is engaging in a breach of the Equity Term Sheet to the extent it is proceeding with or seeking to enter into agreements with digital streaming services other than TIDAL that confer to such services (i) the right to offer for digital streaming the Decedent’s next, previously unreleased album during the Exclusivity Period or (ii) the right to use the Decedent’s name or likeness for promotional purposes, in violation of the Equity Term Sheet’s Exclusivity Restriction. *See* Verified Petition ¶¶ 6, 8, 19; Ex. 1 at 1–2. As such, the unique and exclusive rights of Petitioners stand to be eroded by the conduct of the Personal Representative. Verified Petition ¶¶ 19–20.

Accordingly, Petitioners have satisfied the standards set forth in Section 524.3-607 of the Probate Code and are entitled to an order temporarily restraining the Personal Representative.

II. Petitioners Are Entitled to an Order Pursuant to Rule 65.01 of the MRCP Enjoining the Personal Representative From Violating the Equity Term Sheet

A. Nature of the Parties' Relationship

In determining whether to grant injunctive relief, Minnesota courts look to the pre-dispute relationship between the parties because “[t]he purpose of a temporary restraining order is to maintain the status quo of the parties’ relationship until a decision on the merits can be reached.” *Dexon Computer, Inc. v. Modern Enter. Sols., Inc.*, No. A16-0010, 2016 WL 4069225, at *7–8 (Minn. Ct. App. Aug. 1, 2016) (citation omitted). Here, a restraining order would maintain the existing status quo between Petitioners and the Estate.

Put differently, the issuance of injunctive relief would ensure that the contractual relationship between Petitioners and the Estate is not contravened in any way. *See* Verified Petition ¶¶ 20, 23. Without such relief, the Personal Representative will be free to enter into and move forward under agreements with digital streaming services other than TIDAL in a manner that breaches the parties’ Equity Term Sheet. *See Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 229–30 (Minn. Ct. App. 2002) (granting injunctive relief because it would “maintain the [parties’] existing relationship under [their] agreement” and opining that “injunctive relief based on a contract must be coextensive with the terms of the contract”); *see also* Verified Petition ¶ 20; [REDACTED] An injunction is necessary to maintain the status quo between the parties “until a decision on the merits can be reached” as the Court has acknowledged in the Petition Order that the substantive claims in the November 2016 Petition will be addressed at a later time in the instant matter or by the court overseeing the parties’ federal court copyright case. *See* Petition Order at 8; *see also Prolife Minnesota v. Minnesota*

Pro-Life Comm., 632 N.W.2d 748, 753–54 (Minn. Ct. App. 2001) (upholding grant of temporary restraining order “until opportunity is afforded to decide the matter on the merits”). Accordingly, injunctive relief will bridge-the-gap and safeguard the parties’ contractually agreed upon status quo until such time as a merits hearing is held.

**B. Petitioners Will Suffer
 Irreparable Harm Without Injunctive Relief**

Petitioners will suffer irreparable harm if injunctive relief is not granted. Minnesota courts have held that injunctive relief is necessary to prevent irreparable harm to a claimant’s rights, for which there is no legal remedy. *See, e.g., Dexon*, 2016 WL 4069225 at *7; *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. Ct. App. 2001) (“A party seeking a temporary injunction must show that legal remedies are inadequate and that an injunction is necessary to prevent irreparable injury.”). Here, the claims at issue concern rights afforded by the Exclusivity Restriction as well as the right to offer the the Decedent’s next new album for digital streaming during the Exclusivity Period – unique rights that the Court already has styled as “not traditional claims against an Estate.” *See* Petition Order at 7. Accordingly, Petitioners are without an adequate remedy at law because the harm that will befall Petitioners if injunctive relief is not granted is difficult to precisely compute. *See Metro. Sports Facilities Comm'n v. Minnesota Twins P'ship*, 638 N.W.2d 214, 223 (Minn. Ct. App. 2002) (“When there is difficulty and uncertainty in determining damages, it may be far better to prevent the injury through a temporary injunction than to attempt to compensate the injured party after the injury has occurred.”).

Moreover, courts repeatedly have held that a prospective or continuing breach of exclusive rights, [REDACTED] often constitutes irreparable harm sufficient to award injunctive relief. *See, e.g., Ferry-Morse Seed*

Co. v. Food Corn, Inc., 729 F.2d 589, 591, 592 (8th Cir. 1984) (finding irreparable harm based on prospective loss of exclusive license agreement and attendant competitive disadvantage, and upholding preliminary injunction ordering defendant to, among other things, “refrain from other acts as provided in the exclusive license agreement”); *Minnesota-Iowa Television Co. v. Watonwan T.V. Imp. Ass’n*, 294 N.W.2d 297, 309 (Minn. 1980) (ordering party to contract with exclusivity provision to comply with the terms of the contract); *see also Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1263 (10th Cir. 2004) (“[A] breach of an exclusivity clause almost always warrants the award of injunctive relief.”). Relevant factors for the Court’s consideration include “difficulty in calculating damages, the loss of a unique product, and existence of intangible harms such as loss of goodwill or competitive market position.” *Dominion Video Satellite*, 356 F.3d at 1264; *see also Tom Doherty Assocs., Inc. v. Saban Entm’t, Inc.*, 60 F.3d 27 (2d Cir. 1995) (finding irreparable harm where plaintiff business would lose ability to sell unique product pursuant to parties’ exclusive publishing agreement, which loss would affect or cause indeterminate losses to other aspects of plaintiff business); *Green Stripe, Inc. v. Berny’s Internacionale*, 159 F. Supp. 2d 51, 56–57 (E.D. Pa. 2001) (irreparable harm arises from denial of ability to sell unique product and inability to obtain market substitute). Here, should the Personal Representative consummate or proceed with digital streaming agreements that contravene [REDACTED]

Petitioners will immediately lose the value of the rights afforded by the Equity Term Sheet and stand to suffer negative business ramifications as a result. Verified Petition ¶ 20.¹² Indeed,

¹² [REDACTED]

See Bi-Rite Enters., Inc. v. Bruce Miner Poster Co., 616 F. Supp. 71, 76 (D. Mass. 1984), *aff’d sub nom. Bi-Rite Enters., Inc. v. Bruce Miner Co.*, 757 F.2d 440 (1st Cir. 1985) (“In light of the ephemeral nature of stardom in the

Petitioners could be stripped of one of the key benefits of the bargain they struck in the Equity Term Sheet – [REDACTED]

In contrast to the harm Petitioners will suffer without injunctive relief, the Estate will not be harmed if injunctive relief is granted. Indeed, the Estate is free to enter into deals with other streaming services to allow them to stream the Musical Assets, [REDACTED]

[REDACTED] Further, maintaining the parties' status quo will preserve the benefits that the Estate enjoys [REDACTED] and will minimize the time, cost and expense of additional litigation.

Accordingly, the Personal Representative's actions on behalf of the Estate will irreparably harm Petitioners' [REDACTED], and, therefore, injunctive relief is appropriate.

C. Petitioners are Likely to Succeed on the Merits of Their Claim Against the Estate

A primary factor in determining whether to grant injunctive relief is the likelihood that the movant will prevail on the merits of its underlying claim. *See In re Commitment of Hand*, 878 N.W.2d 503, 509 (Minn. Ct. App. 2016), *review denied* (June 21, 2016).¹³ Petitioners can

popular music industry, plaintiffs' rights of publicity may be commercially valuable for only a short period of time"); *Factors Etc., Inc. v. Creative Card Co.*, 444 F. Supp. 279, 285–86 (S.D.N.Y. 1977), *aff'd sub nom. Factors Etc., Inc. v. Pro Arts, Inc.*, 579 F.2d 215 (2d Cir. 1978) ("The Court concludes that there is a rush to capitalize on the Presley image in this postmortem period, and that if Factors has exclusive property rights in the manufacture and marketing of Presley souvenir merchandise, as it so appears, then it must be protected at this time.").

¹³ While New York law arguably may apply to the likelihood of success analysis [REDACTED]

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more than adequately show that they are likely to succeed on their claims against the Estate as set forth herein.

Significantly, this Court has already determined that Petitioners have adequately stated a claim to and interest in the Estate under the Probate Code on the basis of, at a minimum, the Equity Term Sheet. *See* Verified Petition ¶ 11; Petition Order at 6 ¶ 10. In the Petition Order the Court recently found that “the record indicates Decedent (or the NPG entities) granted Roc Nation some rights with respect to the exploitation of some of the Estate’s musical assets.” *See* Verified Petition ¶ 11; Petition Order at 8 (emphasis in original). The Court also entered “findings of fact” stating that the Equity Term Sheet was an agreement between Project Panther and the Decedent, executed by the Decedent in his personal capacity. Petition Order at 3–4 ¶ 15. Moreover, the Court entered additional findings of fact with respect to Petitioners’ performance under the parties’ agreements, finding that Petitioners have made all necessary installment payments to the Decedent or his entities, totaling \$3 million. *See id.* at 2 ¶ 10; *see also* Ex. 1 at 3. On these and other bases, the Court largely granted Petitioners’ November 2016 Petition. *See* Petition Order at 6; Verified Petition ¶ 11.

As to the merits of Petitioners’ claim against the Estate set forth in the November 2016 Petition, the Equity Term Sheet clearly sets forth the rights held by Petitioners – which they ultimately will be able to successfully enforce against the Estate.¹⁴ As discussed above and set

York and Minnesota law are in full accordance on this prong of the injunctive relief analysis. Accordingly, Petitioners’ request for relief is meritorious under either standard. *See Terrell v. Terrell*, 279 A.D.2d 301, 303, 719 N.Y.S.2d 41 (1st Dep’t 2001) (holding that a movant for injunctive relief is not required to show conclusively that it would prevail on the merits, but rather, must only establish a prima facie cause of action, leaving actual proof of the case to be established upon further court proceedings) (quoting *McLaughlin, Piven, Vogel, Inc. v. W.J. Nolan & Co.*, 114 A.D.2d 165, 173, 498 N.Y.S.2d 146, 152 (2d Dep’t 1986)).

¹⁴ For purposes of the instant submission, Petitioners are not setting forth a full exposition of their rights to the Musical Assets, but rather are explaining the likelihood of success with respect to that portion of Petitioners’ claim that is based upon [REDACTED] in the Equity Term Sheet, the document most operative to the relief requested herein.

forth more fully in the Verified Petition, pursuant to the Equity Term Sheet the Decedent unequivocally and unambiguously granted various rights to Petitioners, including (i) the right to exclusively offer for digital streaming on the TIDAL service the Decedent's next, previously unreleased album during the Exclusivity Period and then thereafter; and [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Verified Complaint at ¶¶ 6, 8, 19–20; [REDACTED] Accordingly, these aspects of the Petitioners' claim to and interest in the Estate cannot be in question.

Petitioners are likely to succeed on the merits of their claim against the Estate and are therefore entitled to injunctive relief.

D. Public Policy Weighs in Favor of Protecting Petitioners' Rights

In the injunction context, Minnesota law requires consideration of “[t]he aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.” *Dahlberg*, 137 N.W.2d at 321–22. There is no Minnesota public policy that militates against issuing an injunction for the purpose sought here – namely, to ensure that a valid agreement containing exclusivity terms is not violated. *See* Verified Petition ¶ 20. Indeed, Minnesota's clear public policy is to uphold and enforce valid business contracts such that contract counterparties are afforded the full benefit of their bargain. *See Currie State Bank v. Schmitz*, 628 N.W.2d 205, 210 (Minn. Ct. App. 2001) (“Parties who sign plainly written documents must be held liable, otherwise such documents would be entirely worthless and chaos would prevail in [Minnesota's] business relations.”); *see also Medtronic, Inc.*, 630 N.W.2d at 456. Moreover, well-settled policies underlying the administration of probate estates dictate that

such administration should unfold in an orderly manner for the benefit of all stakeholders, mindful of the fiduciary obligations that a personal representative owes to creditors. *Vold v. Moe*, No. C2-88-1085, 1988 WL 42517, at *1 (Minn. Ct. App. Oct. 11, 1988) (opining that “[a] personal representative is a fiduciary who shall observe the standards of care in dealing with the estate assets that would be observed by a prudent person dealing with the property of another” and that a personal representative “named . . . on the basis of representation of special skills or expertise . . . is under a duty to use those skills”). This policy will only be furthered by granting the relief requested by Petitioners because doing so will avoid additional waste of Estate resources and will ensure that at least this component of the Estate’s contingent assets are being administered in an orderly fashion. *See* Verified Petition ¶¶ 18, 24.

Accordingly, public policy weighs in favor of granting Petitioners’ request for injunctive relief.

E. Enforcing Injunctive Relief Would Not be Burdensome on the Court

Finally, there will be minimal administrative burden imposed on the Court if it were to issue an injunction against the Personal Representative. In connection with its appointment as fiduciary for the Decedent’s Estate, the Personal Representative already has consented to “submit[] to the jurisdiction of the Court in any proceeding relating to th[is] [probate] matter that may be instituted by any person interested in th[e] Estate.” *See* Comerica Acceptance of Appointment as Personal Representative and Oath by Corporation ¶ 2. Furthermore, this Court has *in rem* jurisdiction over the *res* that is the subject of the Verified Petition – *i.e.*, the Decedent’s Musical Assets and the Equity Term Sheet to which the Decedent is a party, among other things. *See Voita v. Parrish*, No. A14-1101, 2015 WL 1013906, at *2 (Minn. Ct. App. Mar. 9, 2015) (“A probate court has exclusive jurisdiction over actions ‘to determine how

decedents' estates subject to the laws of this state are to be administered, expended and distributed.”) (quoting Minn. Stat. § 524.3–105); *see also Voita*, 2015 WL 1013906 at *2. (“The probate court has concurrent jurisdiction of any other action in which the personal representative may be a party.”). As such, the issuance of an injunction concerning the Musical Assets and the Personal Representative would not unduly burden the Court in light of the Court’s already-existing jurisdiction over the Personal Representative and the Musical Assets, as well as the administrative ease with which the Court has access to the Personal Representative.

III. An Emergency Hearing on this Matter is Required

As set forth herein and in the Verified Petition, Petitioners’ rights to the Musical Assets and interest in the Estate are being threatened on an imminent basis. *See* Verified Petition ¶¶ 20–21. Media reports have made clear that the Musical Assets are likely to be available for digital streaming on services other than TIDAL as soon as February 12, 2017 – the date of the Grammy Awards ceremony during which the Decedent seemingly will be appropriately honored with a tribute to his legacy. *See id.* at ¶¶ 12–14; Exs. 2–4. Petitioners, therefore, require a hearing on the Verified Petition as soon as possible given that a violation of their rights may be immediately forthcoming or already underway. Section 524.3-607(b) of the Probate Code provides that a petition for an order restraining a personal representative “shall be set for hearing *within* ten days unless the parties agree otherwise.” Minn. Probate Code § 524.3-607(b) (emphasis added). Accordingly, the relevant statute contemplates that the Court may set a hearing within a relatively short window, and it is respectfully submitted that the Court do so for February 8, 2017 in light of the exigent circumstances at issue and the fact that the Court already is conducting a hearing in this probate matter on the same date. *See* Verified Petition ¶ 24. Finally, granting Petitioners an emergency hearing will not in any way prejudice the Personal Representative, which has been on notice of Petitioners’ concerns for some time, including through repeated

correspondence over the course of the past week. *See id.* at ¶¶ 15–16; Exs. 5–9. If the Personal Representative has not breached or will not breach [REDACTED] it can simply say so. If not, an immediate hearing clearly is warranted.

IV. Petitioners Are Entitled to Basic Information from the Personal Representative

The Personal Representative has stonewalled Petitioners at every turn when they have requested basic and fundamental information concerning their rights. Verified Petition ¶¶ 17–18; Exs. 7, 9. In doing so, the Personal Representative has cited the Petition Order’s disallowance of Petitioners’ request for Additional Relief. Exs. 7, 9; Petition Order at 6 ¶ 11. The Petition Order, however, also found that that “discovery or further Court rulings may establish that the Estate is indebted to Roc Nation for repayment . . . or other relief as yet to be determined.” Petition Order at 7. Accordingly, the information sought by Petitioners – which is nothing more than a straightforward confirmation of whether the Estate is a party to any agreements that contravene the Equity Term Sheet and, specifically, the Exclusivity Restriction (Verified Petition ¶¶ 16–17; Exs. 5–6, 8) – is precisely the sort of information contemplated by the Petition Order and which will determine whether the Estate is indebted to Petitioners for “repayment...or other relief.” *See* Petition Order at 7. Moreover, the provision of information requested by Petitioners would be in keeping with the Personal Representative’s fiduciary obligations not to embroil the Estate in needless and costly litigation, to which the Estate already has been exposed by virtue of the Personal Representative’s pattern of baseless silence.

CONCLUSION

For the aforementioned reasons, Petitioners respectfully request that the Court set an emergency hearing on the Verified Petition for February 8, 2017, the date on which the Court has scheduled a hearing on the Petition of Phaedra Ellis-Lamkins, at which time Petitioners will seek

an order pursuant to Minnesota Probate Code Section 524.3-607 and Rule 65.01 of the MRCP:

(i) temporarily and permanently enjoining the Personal Representative from entering into any agreements with digital streaming services other than TIDAL which convey to such digital streaming services digital streaming rights to the Decedent's next new album during the Exclusivity Period; (ii) temporarily and permanently enjoining the Personal Representative from entering into any agreements with digital streaming services other than TIDAL which convey to such digital streaming services the right to use the Decedent's name and/or likeness to promote, advertise or market the digital streaming service; (iii) to the extent the Estate already is a party to an agreement with a digital streaming service other than TIDAL, requiring the Personal Representative to ensure that such digital streaming service does not violate the Exclusivity Restriction or the Exclusivity Period with respect to the Decedent's next new album; and (iv) requiring the Personal Representative to immediately provide information to Petitioners which is limited to the portion of any agreement between the Estate and a digital streaming service other than TIDAL insofar as that provision or provisions concerns the Exclusivity Restriction and the Exclusivity Period.

Dated: February 6, 2017

Respectfully Submitted,

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