

**STATE OF MINNESOTA
COUNTY OF CARVER**

DISTRICT COURT

**FIRST JUDICIAL DISTRICT
PROBATE DIVISION**

In re:

Case Type: Special Administration

Estate of Prince Rogers Nelson,

Court File No. 10-PR-16-46

FILED UNDER SEAL

**MEMORANDUM IN SUPPORT OF
MOTION TO APPROVE PAYMENT OF
ENTERTAINMENT AND ESTATE ADMINISTRATION
ATTORNEYS' FEES FOR PERIOD APRIL 23, 2016
THROUGH JANUARY 31, 2017**

Frank Wheaton (“Attorney”) hereby submits this memorandum in support of his Motion for an order approving payment of certain attorneys’ fees and costs from the Estate of Prince Rogers Nelson (the “**Estate**”) for services performed by Attorneys during the period April 23, 2016 through January 31, 2017.

The fees are relating to Attorneys entertainment services as Heirs’ Representative and certain other non- entertainment services.

FACTUAL BACKGROUND¹

A. Attorneys Services As Designated Heirs’ Representative

On October 6, 2016, this Court issued an order (“**Order**”) approving six “short-form deals” (the “**Approved Deals**”) while authorizing the Special Administrator to negotiate and execute final long-form agreements based on the Approved Deals (“**Long-Form Agreements**”). The Order also authorized the Non-Excluded Heirs to participate in the appointment of Representatives

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

Frank K. Wheaton, with Robert Labate and Ken Abdo, served as a Representative throughout the duration of the attorneys entertainment period in which all were appointed to work with the Special Administrator and Advisors. The Long-Form Agreements were complex, with limited time to review, comment on, and to propose language for each agreement, Messrs. Wheaton and Labate utilized the services of other H&K attorneys and related counsel during this period of negotiation and drafting of the Long-Form Agreements. Among others, Justin Bruntjen, Steve Siltan and Jorge Hernandez-Toraño assisted in the process.

During the latter period of the negotiations, Wheaton, Labate and others assisted with negotiating and drafting of Long-Form Agreements with GMR, which was executed on December 30, 2016, and with Universal Music Group, executed on January 12, 2017. In addition, Wheaton and Labate reviewed and provided comments regarding other entertainment deals and opportunities presented to the Estate during this period. Part of the process included a negotiated Protocol for Finalizing Court-Approved Entertainment Agreements, which was initially proposed by Mr. Abdo, and amended by the Special Administrator and later approved by this Court, -- which enabled the Special Administrator and the Heirs to work together productively. This work is described in greater detail in Attorneys Invoices and in Mr. Wheaton’s Affidavit, as summarized below.

1. **GMR Performance Rights Licensing Agreement**

1. As a result of the Order, the Special Administrator was authorized to negotiate and execute six (6) Long-Form Agreements through the contracted Advisors 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).

The Global Music Rights (GMR) Long-Form Agreement provides GMR with the right to

[REDACTED],
[REDACTED]. In connection with the GMR Agreement, First Tennessee Bank and the
Estate executed a [REDACTED] to GMR,
which will also [REDACTED]
[REDACTED]

Over a period of six weeks, following discussions amongst Mr. Wheaton and other Heirs’
counsel, we provided significant comments to and conducted many conferences with counsel for
the Special Administrator regarding the GMR Agreement, GMR’s Standard Terms and
particularly with respect to the First Tennessee Note and Security documents which required
extensive revision. The final form of the GRM 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.

2. UMG Exclusive Distribution and License Agreement

The UMG Long-Form Agreement provides Universal Music Group with: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The UMG Agreement provides [REDACTED]

[REDACTED] The UMG Agreement was especially complex and required exhaustive efforts on the part of all attorneys involved.

The Special Administrator uploaded the first draft of the UMG Long-Form Agreement on HiQ on December 18, 2016 for review and comment by the Heirs. Representatives and Attorneys recognized that the December 18, 2016 draft presented yet more issues including, but not limited to, [REDACTED]

[REDACTED]

During the next six weeks, Wheaton worked closely with Labate and other counsel cooperatively with the Special Administrator, Advisors and counsel to achieve an agreement acceptable to the Special Administrator and to the heirs. Each week and sometimes daily, there were new sets of revisions. Discussion and conversation regarding these matters took place two-three times per week. Telephone conferences were several per day. Ultimately, the negotiations among counsel with Wheaton and Labate as Heirs' Counsel Representatives resulted in a successful UMG Long-Form Agreement acceptable to all parties and executed by the Special Administrator on January 31, 2017.

3. The UMG Consultancy Agreement.

Wheaton and Labate were the Attorney Representatives chosen to work with the Special Administrator for the UMG Consultancy Agreement. The UMG Consultancy Agreement proved to be an important element of the September 8, 2016 Deal Term Letter submitted by UMG with [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 Mr. Wheaton and other counsel, Mr. Labate authored a letter on behalf of the heirs to this Court objecting to the Consultancy Agreement and requesting [REDACTED]

Following a telephonic hearing held by this Court on January 31, 2017, subsequently, 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

Attorneys analyzed, commented on and consulted with Heirs counsel and with the Special Administrator on other entertainment opportunities presented to the Estate throughout the duration of this case. Of particular note, and consistent with this memorandum in support of the entertainment related activities, the team of Attorneys offered comments and expertise to the remainder contracts open to the Estate. Wheaton and Labate often hosted conference calls for all the Heirs' Counsel and Special Administrator regarding other contracts that remained unsigned such as that of the Prince Channel for 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 Heirs Representatives.

Attorney is a constant contributor to any conversation that takes place with the Estate. Many of the opportunities that are proposed to the Estate are discussed with the other Heirs' Counsel, Special Administrators (past and present) and others, if necessary. The component parts

of the Attorney invoices are reflective of these voluminous interactions with all facets of the Estate.

5. Transition to Comerica as Personal Representative

The four Long-Form Agreements negotiated and executed 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, Wheaton is interacting with Labate and H&K regarding charts that will be prepared to provide a summary of key provisions of each Executed Agreement. The charts will 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 its Second Application.

B. Attorneys Non-Entertainment Services

It is important to note that the non-entertainment services rendered by Attorneys all benefitted the Estate of Prince Rogers Nelson and not necessarily, Alfred Jackson, our client and one of the Non-Excluded Heirs. Attorney worked voluminous hours in excess of the hours documented in his respective invoices submitted in Exhibit A of the Wheaton motion and affidavit. However, for purposes of continuity, the brief arguments presented below will further reiterate and validate our position with respect to the non-entertainment services rendered.

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 for services rendered on behalf of the Estate where "the services of an attorney for any interested person contributes 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 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 has reiterated that the Court is keenly aware of the extraordinary and complex nature of this proceeding. The enormity of the tax concern itself speaks to the concern of both this Court and the Special Administrator. All matters are considered complex in this case from the unique nature of the intellectual property and the most valuable assets contained therein; and the real property that provides added value to the estate. Appraisals, taxes, heirs, counsel and new law(s) (the “Prince” law referendum) have made this case almost *sui generis*, or one of a kind in nature.

Given the size, nature, and complexity of the Estate and the number of interested persons involved in this matter, Attorneys have managed to become integral to the process under the wisdom and leadership of this Court and the Special Administrators assigned. These efforts, and the collective efforts of all counsel and all parties have led to the successful conclusion of millions of dollars in new contracts and residual income for the Estate. While Attorneys’ efforts will benefit the Estate by helping it achieve the best “deals” possible, Alfred Jackson, individually, has not benefited from our efforts. However, the Estate has benefitted tremendously. Ultimately, as an adjudicated heir, Mr. Jackson will see his just reward.

In the event a will or child of the decedent was (or is) discovered during these intervening months, Attorneys’ entertainment related efforts (and non-entertainment related efforts) will have provided no benefit to Alfred Jackson whatsoever. Should Alfred Jackson successfully become a certified heir, Attorneys’ efforts and expertise assisted all the ultimate heirs. For that reason, Attorney seeks reimbursement from the Estate for its efforts.

II. Summary of Time and Labor for Entertainment Related Efforts, the Results of Which Have Benefited the Estate

Attorney has rendered services and incurred expenses from April 23, 2016 through January 31, 2017 as more fully described and set forth in the concurrently filed Affidavit of Frank K. Wheaton and in the Monthly Invoices and Invoice for Attorney Entertainment Fees Attached as Exhibit A. A summary of these services is provided in sections A and B above.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court authorize and direct the Special Administrator to pay \$1,051,636.00. This includes \$247,824.00 in attorneys' fees for its entertainment related efforts, \$799,128.00 in non-entertainment fees incurred through the administration of the Estate, and \$4,684.00 in expenses incurred.

Dated: March 21, 2017

Respectfully submitted,

FRANK K. WHEATON, ESQ.
AND ASSOCIATES
ATTORNEYS &
COUNSELORS AT LAW

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