STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

CASE TYPE: Special Administration

In the Matter of:

Estate of Prince Rogers Nelson

Decedent.

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

REPORT AND RECOMMENDATION OF THE SECOND SPECIAL ADMINISTRATOR CONCERNING THE RESCISSION OF THE UNIVERSAL MUSIC GROUP AGREEMENT [REDACTED VERSION]

Peter J. Gleekel and Larson • King, LLP were appointed the Second Special Administrator of Decedent's estate pursuant to Minn. Stat. § 524.3-617 and the Court's Letters of Special Administration dated August 18, 2017. Authority was limited to, among other things, the following:

1. Conducting an independent examination of the facts, circumstances and events relating to the rescission of the UMG Agreement including, but not limited to, the negotiations and considerations in respect of the UMG Agreement and all those persons and entities involved and/or aware of said negotiations and determining whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the rescission; and
2. Analyze and report in writing to the Court with respect to whether pursuing any such claim(s) related to the rescission of the UMG Agreement is in the best interests of the Estate.

Pursuant to the Letters of Special Administration, an independent investigation and examination was conducted to determine whether the Estate has a reasonable basis for a claim(s) against any person or entity in connection with the rescission of the UMG Agreement. The investigation consisted of the review of considerable documentation and interviews of numerous individuals who not only were involved and/or aware of the negotiations in respect of the UMG Agreement but, also individuals involved or aware of the negotiations of the April 16, 2014 Agreement between Warner Brothers Records, Inc. ("WB"), on the one hand, and Prince Rogers Nelson ("Prince"), PRN Music Corporation, Paisley Park Enterprises and NPG Records, Inc., on the other.

The documents, including agreements, correspondence and emails relating to the appointment that were reviewed include, but are not necessarily limited to, the following:

- The 1977 Agreement between Prince[1] and WB;
- The 1983 Agreement between Prince and WB;
- The 1986 Agreement between Prince and WB;
- The 1993 Revised Statement of Agreement between Prince and WB;
- The April 16, 2014 WB Agreement ("The 2014 WB Agreement");
- The July 29, 2014 Agreement between WB and NPG Records, Inc.;
- Proposed amendments to the 2014 WB Agreement;
- The October 18, 2016 amendment to the 2014 WB Agreement;

[1] With respect to the above Agreements, Prince includes his entities PRN Music Corporation, Paisley Park Enterprises and/or NPG Records, Inc.

Filed in First Judicial District Court
12/15/2017 3:24 PM
Carver County, MN
State of Minnesota
9/21/2018 5:04 PM

- Correspondence, including emails, between the Special Administrator, its counsel, and/or its advisors regarding the 2014 WB Agreement and proposed amendments;
- Drafts of the UMG Agreement;
- The UMG Agreement;
- Correspondence, including emails, between the Special Administrator, its counsel, and/or its advisors regarding the UMG Agreement and negotiations with respect thereto;
- The January 4, 2017 preliminary valuation [redacted];
- Correspondence, including emails, from counsel for Heirs concerning drafts of the UMG Agreement;
- The July 19, 2017 appraisal report of [redacted];
- Correspondence, including emails, concerning the 2014 WB Agreement and negotiations in connection therewith; and
- Correspondence between counsel for WB, UMG and the Personal Representative regarding the UMG Agreement and the 2014 WB Agreement and rescission of the UMG Agreement.

In connection with the independent examination, counsel for the Personal Representative, Comerica Bank & Trust, N.A. ("Comerica"), produced over 1,000 pleadings, though many were duplicates due to the fact that there were both sealed and redacted versions of the same pleadings, consisting of over 28,000 pages. Comerica's counsel also provided contract documents referenced above that totaled approximately 500 pages. Electronic files of Ms. Rhonda Trotter of Arnold & Porter Kaye Scholer LLP who represented Prince in connection with the 2014 WB Agreement were also reviewed. Additionally, Counsel for the Special Administrator, Bremer Trust, pursuant to request, produced 1,618 documents consisting of approximately 9,800 pages. Also reviewed were relevant passages of the book entitled "All You Need to Know About the Music Business, Ninth Edition" authored by Donald S. Passman, an expert in the music and industry recognized as such by parties to this matter.

Interviews of the following persons who were either involved or reviewed the WB and/or UMG Agreements, or were involved on behalf of Prince in negotiating the WB Agreement, as well as counsel for Comerica, in light of their involvement on behalf of the Estate in respect of the motion to rescind the UMG Agreement, and as follows, were conducted:

- Joseph Cassioppi and Mark Greiner of Fredrikson & Byron, counsel to the Personal Representative Comerica.
- L. Londell McMillan, entertainment advisor to the estate while Bremer Trust served as the Special Administrator.
- Laura Halferty; Cate Heaven Young, and Traci Bransford of Stinson Leonard Street, LLP ("SLS"). Ms. Bransford served as entertainment counsel for the Special Administrator and was involved in the UMG Agreement. Ms. Halferty

was the relationship partner on the matter and rendered probate counsel. Ms. Heaven Young was involved with the UMG Agreement.

- David Dunn of Shot Tower Capital, a consulting expert retained by the Special Administrator in connection with a preliminary valuation of Prince's intellectual property.
- Rhonda Trotter of Arnold & Porter Kaye Scholer LLP, who negotiated the 2014 WB Agreement on behalf of Prince.
- Phaedra Ellis-Lamkins who was employed by Prince and was involved in the negotiations of the 2014 WB Agreement.
- Van Jones who had knowledge of the 2014 WB Agreement.
- Jason Boyarski of Boyarski Fritz, LLP who was involved in the negotiations pertaining to the UMG Publishing Agreement, and who has been retained by the Personal Representative, Comerica, as entertainment counsel.
- Troy Carter of Atom Factory, the entertainment advisor retained by the Personal Representative, Comerica.
- Ken Abdo and Adam Gislason of Fox Rothschild who represented certain Heirs at a point in time of this matter, and who were involved in commenting on, among other things, the UMG Agreement.

In addition to the foregoing individuals, an invitation to counsel for all of the included Heirs was extended to meet with the Second Special Administrator to have an opportunity to provide any information they deemed appropriate with respect to the independent examination. Counsel for Omarr Baker, Steven Silton and Thomas Kane, were the only ones who accepted the

invitation and met with the Second Special Administrator. Counsel for the other included Heirs, while receiving the invitation, did not accept the invitation and thus, the Second Special Administrator did not meet with the other included Heirs or their counsel.

FACTUAL BACKGROUND

THE 2014 WB AGREEMENT

At the time of Prince's death in April of 2016, recordings initially released by WB ("WB Masters"), and that included Prince's major hits from 1979 to 1995, were under license to WB pursuant to that certain Agreement dated April 16, 2014 (the "2014 WB Agreement").[2] The parties to the 2014 WB Agreement were WB, on the one hand, Prince, PRN Music Corporation, Paisley Park Enterprises, Inc., and NPG Records, Inc. on the other. The 2014 WB Agreement and the rescinded UMG Agreement were the focus of the examination and investigation.

The 2014 WB Agreement consists of a [redacted]

[2] [redacted]

[redacted]

. . .

[redacted]

- [redacted]

THE 2014 WB AGREEMENT NEGOTIATIONS

As rescission of the UMG Agreement called into question [redacted], those individuals representing Prince in the negotiations of that Agreement were interviewed. Ms. Rhonda Trotter, counsel for Prince, negotiated the 2014 WB Agreement and was interviewed twice. Ms. Trotter indicated that Prince's objective in negotiating the 2014 WB Agreement was two-fold. First, to gain ownership and control of his Masters. Second, to earn the respect of WB and place Prince on a more level status with WB; one that was more akin to a business partnership rather than being "owned" as Prince had perceived pursuant to the terms of the earlier agreements. In sum, Prince wanted ownership of the WB Masters and thus the rights to his creations. Ms. Trotter indicated that the economic structure of the 2014 WB Agreement with respect to the rights in the U.S. was about respect and fairness. According to Prince's then representatives, he was not fighting for complete independence of WB but rather respect more of a partnership relationship with the Label. An [redacted]

[redacted] In addition, it was vitally important that the Agreement be worded in a manner understandable by Prince because he had not completely understood all of the language in earlier recording agreements.

[redacted] The provision was, understandably, a result of compromise between the parties in that WB was not prepared to transition exclusively to a distribution deal on day one.

Ms. Trotter further observed that with the 2014 WB Agreement, Prince had been satisfied that his goals in earning back control and ownership of his Masters, and respect from WB had

been accomplished. In fact, thereafter, Prince entered into two additional deals with WB. By Agreement dated July 29, 2014, [redacted] He also entered into a Joint Venture Agreement with WB for the release of a new album and a Purple Rain reissue.

THE ADVISOR AGREEMENT

The Special Administrator, Bremer Trust, was represented by SLS, during the term of its appointment. Ms. Traci Bransford of SLS served as entertainment counsel for the Special Administrator. To assist the Special Administrator in commercially exploiting Prince's sound recordings and other intellectual property, the Special Administrator petitioned the Court to employ entertainment industry experts. On June 8, 2016, the Court authorized the Special Administrator to engage entertainment industry experts. The Court authorized the Special Administrator initially for a period to November 2, 2016 and retained approval of any entertainment or intellectual property exploitation agreements recommended by the experts. The authorization was subsequently extended through January of 2017.

The Special Administrator entered into an Advisor Agreement with Northstar Enterprises Worldwide, Inc. (providing the services of L. Londell McMillan) and CAK Entertainment, Inc. (providing the services of Charles Koppelman) on June 16, 2016. The Advisor Agreement was amended and extended on September 14, 2016 to be co-existent with the date the Special Administrator ceased to be the Special Administrator. [redacted]

[redacted]

[redacted]

[redacted]

. . .

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

. . .

[redacted]

. . .

[redacted]

. . .

[redacted]

THE UMG NEGOTIATIONS

Upon execution of the Advisor Agreement, the Advisors began negotiations of entertainment deals to exploit and monetize Prince's sound recordings and other intellectual property. As part of the process, a copy of the 2014 WB Agreement was sent to Mr. McMillan on June 17, 2016 by SLS. Mr. McMillan recognized the relevancy of the 2014 WB Agreement to the performance of the advisory services and represented to SLS that "we shall review the Agreement in detail." Approximately one week thereafter, Mr. McMillan received from counsel for WB a binder of the WB and Prince agreements. Included within the agreements sent to Mr. McMillan were [redacted]. Mr. McMillan did not state during his interview that the Advisors reviewed the WB Agreements entered into by Prince prior to the 2014 WB Agreement that settled issues pertaining to those earlier WB Agreements.

When questioned about the prior WB Agreements, SLS indicated awareness of those agreements but, they were of minimal concern because the "2014 Agreement was an integrated document" and SLS was under the understanding that the 2014 WB Agreement incorporated all of the catalog and royalties. Thus, the prior WB Agreements were of "minimal concern." Moreover, while SLS spoke with Ms. Trotter and Ms. Ellis-Lamkins, both of whom mentioned the 2014 WB Agreement in their communications, neither was ever asked for their interpretation of the terms of the 2014 WB Agreement, or anything about the negotiations of it.

Shortly after executing the Advisor Agreement, Mr. McMillan entered into discussions with UMG to exploit Prince's recordings including the WB Masters, NPG Masters and Vault Masters. With respect to the WB Masters, as early as August 4, 2016, [redacted]

In addition to UMG, the Advisors were in contact with other recording companies to request proposals for the exploitation of Prince's work including BMG and WB. In August, [redacted] WB subsequently amended the proposal to, among other things, [redacted]

By letter dated September 8, 2016, UMG proposed a deal for the distribution and marketing of Prince's recordings including the WB Masters, NPG Masters and Vault Masters. [redacted] By letter dated September 22, 2016, WB's Chairman and CEO, Cameron Strang, wrote to Mr. Craig Ordal, President of Bremer Trust, stating:

[redacted]

In a Memorandum filed on September 28, 2016, the Heirs, in opposing the short-form agreement with UMG, [redacted]

[redacted]

Upon authorization from the Court, the Special Administrator through its entertainment counsel at SLS and the Advisors, principally Mr. McMillan, negotiated the final agreement with UMG. The initial drafts of the Agreements assumed that [redacted]

While negotiations on a final agreement with UMG were under way, WB continued to inquire about expanding its rights with respect to Prince's recordings. On October 18, 2016, WB communicated a new proposal [redacted]

By email dated October 27, 2016 from Mr. McMillan to Michael Seltzer of UMG, [redacted]

On or about November 10, 2016, the Special Administrator retained the Meister Seelig & Fein law firm to assist it, SLS, and the Advisors in representation of the Estate in connection with the review and negotiation of the UMG Agreement. The Meister Seelig firm and its partners Barry Perlman and Jeff Greenberg were responsible to negotiate with UMG's lawyers to finalize the UMG Agreement. However, Mr. McMillan and lawyers from SLS remained actively involved in the process.

On November 15, 2016, Mr. McMillan sent to Messrs. Greenberg and Perlman, and SLS the fifth draft of the UMG Agreement. The draft was redlined not only to show changes made from the fourth draft but also from the first draft. [redacted]

[redacted]

By date of December 22, 2016, Mr. McMillan, with input from the lawyers at Meister Seelig and lawyers at SLS prepared a summary of the "UMG Exclusive Distribution and License Agreement" mark-up/comments. [redacted] In their interviews, SLS and Mr. McMillan stated that it was the consensus of all of those involved in the negotiations and review of the UMG Agreement including, SLS, Mr. McMillan and Meister Seelig, [redacted]

[3] On November 15, 2016, Mr. McMillan also circulated to Meister Seelig and SLS UMG's September 8, 2016, proposal, i.e. the "short form."

[redacted]

The lawyers at SLS indicated that as of December 22, 2016 UMG was still asking for confirmation of [redacted] On December 22, 2016, there was a conference call involving Mr. McMillan, SLS, Meister Seelig and Heirs' counsel to discuss the existing draft UMG Agreement. One of the issues raised by Heirs' counsel, at least generally, was the [redacted] Similar concerns were raised by Heirs' counsel on or about January 17, 2017, when Heirs' counsel stated:

> [redacted]

By date of January 4, 2017, Shot Tower Capital delivered to SLS its preliminary valuation of Prince Roger Nelson's Estate Recorded Music Assets. [redacted] Shot Tower Capital further observed that:

Filed in First Judicial District Court
12/15/2017 3:24 PM / State of Minnesota
9/21/2018 5:04 PM / Carver County, MN

- [redacted]

. . .

[redacted]

In his interview, Mr. Dunn of Shot Tower Capital, indicated his understanding that [redacted].

In connection with [redacted] SLS did not discuss with counsel for WB [redacted]

On January 31, 2017, the UMG Agreement was executed by UMG and the Special Administrator. During a telephone conference with the Court on January 31, 2017, the Court approved the UMG Agreement.

Among other things, the [redacted]

among other things. Central to this investigation, pursuant to

. . .

THE RESCISSION OF THE UMG AGREEMENT

Effective February 1, 2017, the Personal Representative, Comerica, was appointed, replacing the Special Administrator. Following a press release issued by UMG announcing the UMG Agreement, and on February 10, 2017, WB wrote to the Personal Representative alleging that it held, among other rights, all . WB also contacted UMG directly in response to the UMG press release making the same assertion.

Thereafter, and on February 22, 2017, UMG wrote to the Personal Representative [redacted]

The Personal Representative then embarked on an investigation of the claims being made by WB, and attempted to negotiate a resolution of the issue with UMG. Despite those efforts, UMG demanded rescission of the UMG Agreement. Having conducted its investigation and being unsuccessful in negotiating a resolution with UMG, the Personal Representative moved the Court for approval of rescission of the UMG Agreement as being in the best interests of the Estate. On Page 2 of its Reply Memorandum filed on June 9, 2017, the Personal Representative set forth the reasons that it concluded it to be in the best interests of the Estate to obtain an Order rescinding the UMG Agreement. Consistent with its duty to act in the best interests of the Estate, [redacted] As articulated by the Personal Representative in its June 9, 2017 Reply Memorandum in Support of Motion To Approve Rescission of Exclusive Distribution and License Agreement:

[redacted]

ANALYSIS

A personal representative has broad powers to administer an estate and stands in a fiduciary relationship with the estate. *Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 739 (Minn. Ct. App. 1995) (review denied) (Minn. Sept. 28, 1995). The Minnesota Probate Code (adopted from the Uniform Probate Code) sets forth the following relevant definitions:

> "Fiduciary" includes personal representative, guardian, conservator and trustee.
>
> "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who will perform substantially the same function under the law governing their status.

Minn. Stat. § 524.1-201(18)(40).

A personal representative and special administrator are required to act as a "prudent person dealing with the property of another" and "consistent with the best interests of the estate." Minn. Stat. § 524.3-703(a). A fiduciary must exercise that degree of care that "[persons] of common prudence ordinarily exercising their own affairs." *In re: Estate of Janke*, 258 N.W. 311, 313 (Minn. 1935) (*quoting Harding v. Canfield*, 75 N.W. 1112 (Minn. 1898)); *see also In re: Estate of Allard*, 2015 WL 9263998, at *9 (Minn. Ct. App. December 21, 2015) (A personal representative must manage the estate's assets under the level of care of a prudent person dealing with the property of another).

A personal representative acting prudently for the benefit of the estate may properly:

> [E]mploy persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

> [P]rosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties.

Minn. Stat. § 524.3-715(21)(22).

Consistent with the foregoing, a fiduciary, such as a personal representative or special administrator, is under a legal obligation to delegate to and employ a specific agent reasonably. This obligation is a corollary of the obligation of a personal representative to observe the standards of care dealing with the estate assets that would be observed by a prudent person dealing with the property of another. *See*, Minn. Stat. § 524.3-703(a).

As Minn. Stat. § 524.3-715(21) authorizes a personal representative or special administrator to hire agents with specialized skills and to "act without independent investigation upon their recommendations" the special administrator or personal representative is not liable to the estate for the "errors, omissions or malfeasance of the estate's agents" unless the delegation or reliance is unreasonable. *In re: Estate of Gangloff*, 743 S.W.2d 498, 502-504 (Mo. Ct. App. 1987) (analyzing the same statutory language as in Minn. Stat. § 524.3-715(21)); *see also In re: Estate of Anderson*, No. A15-1513, 2016 WL 3582414, at *3 (Minn. Ct. App. July 5, 2016) (Finding the personal representative not liable because he recently relied on his attorney's expert advice on the method of selling estate property).

There has been nothing revealed by the investigation that the Special Administrator acted unreasonably in retaining experts and agents to assist in monetizing the assets of the Estate and specifically with respect to the UMG Agreement. Given the complexity of the issues and the specialized nature of the entertainment industry, there does not appear to be a reasonable basis for a claim against the Special Administrator. The Special Administrator acted prudently and

reasonably in retaining SLS, the Advisors, and the Meister Seelig firm to advise and assist with respect to the UMG Agreement.

That does not, however, end the analysis. As indicated above, Minn. Stat. § 524.3-715(22) requires that a personal representative, acting reasonably for the benefit of the estate "prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties." Stated otherwise, if the Special Administrator determines that an agent has breached its duty, the personal representative has a duty to bring an action against the agent on behalf of the Estate. *See, e.g., RESTATEMENT (SECOND) OF TRUSTS § 177 cmt.(a)* (requiring trustee to take "reasonable steps" to remedy an agent's breach of duty). *See, also,* Charles M. Bennett *When the Fiduciary's Agent Errs – Who Pays the Bill – Fiduciary, Agent or Beneficiary?*, 28 Real Prop. Prob. & Tr. J. 429, 468 (Fall 1993) ("Moreover, as a matter of public policy, the law should encourage fiduciaries to retain experts who can make the best possible decisions for the beneficiaries. When an expert errs, the law should place the responsibility for damages on the party that rendered the erroneous advice."). *See also, Professional Fiduciary, Inc. v. Silverman*, 713 N.W.2d 67, 71 (Minn. Ct. App. 2006).[4] The issues of the legal fees and costs incurred by SLS and Meister Seelig, [redacted] the Advisors, and any other potential damage to the Estate, must thus be considered.

[4] A successor personal representative (i.e., one appointed after the termination of another personal representative) retains the rights of the initial personal representative and "[e]xcept as otherwise ordered by the Court, the successor personal representative has the powers and duties in respect of the continued administration which the former personal representative would have had if the appointment had not been terminated." Minn. Stat. § 524.3-613.

With respect to SLS and Meister Seelig, attorneys have a duty "to exercise that degree of care and skill that is reasonable under the circumstances, considering the nature of the undertaking." *Prawer v. Essling*, 282 N.W.2d 493, 495 (Minn. 1979); *Sjobeck v. Leach*, 6 N.W.2d 819, 822 (Minn. 1942).

As it pertains to the Advisors, representative experts in the entertainment industry, Minnesota law provides that "one who undertakes to render professional services is under a duty to the person for whom the services to be performed to exercise such care, skill, and diligence as [those] in the profession ordinarily exercise under like circumstances." *City of Eveleth v. Ruble*, 225 N.W.2d 521, 524 (Minn. 1974).

As an aside, the Second Special Administrator is aware of an argument that has earlier been implicitly made by SLS that the firm was not engaged as an entertainment subject matter expert in connection with the administration of the Estate. The record reviewed does not support that assertion. Ms. Bransford has considerable experience in the entertainment industry and, in fact, was represented as entertainment counsel as part of the SLS team. 7/29/16 Under Seal Affidavit of Laura E. Krishnan N.K.A. Halferty Entertainment Counsel. Moreover, in Ms. Bransford's September 27, 2016 Affidavit filed under seal, she represented to the Court that she specialized in representing clients in the sports, entertainment and media industries. Moreover, the review of the considerable documentation pertaining to the UMG Agreement and the interview of SLS leads to the conclusion that SLS was materially involved in consideration of the 2014 WB Agreement and the terms of the UMG Agreement. As noted above, SLS indicated during its interview that there [redacted]

It is the conclusion of the Second Special Administrator that the interpretation of the [redacted] At most, it is ambiguous.

The operative clause is set forth in full below for the sake of analysis and clarity:

[redacted] Courts that have addressed the "now or hereafter known" language have recognized the phrases as embodying rights to digital download/recordings. *See, e.g., Reinhardt v. Wal-Mart Stores, Inc.*, 547 F. Supp.2d 346, 355 (S.D.N.Y. 2008); *Silvester v. Time Warner, Inc.*, 763 N.Y.S.2d 912, 917 (N.Y. Sup. Ct. 2003), *affirmed sub nom. Silvester v. Time Warner, Inc.*, 787 N.W.2d 870 (2005); *Greenfield v. Philles Records, Inc.*, 98 N.Y.2d 562, 572 (2002).

Significantly, neither SLS, the Advisors nor Meister Seelig reviewed the earlier WB Agreements [redacted] despite either having the agreements or access to

Filed in First Judicial District Court
12/15/2017 3:24 PM
9/21/2018 5:04 PM
Carver County, MN

them. The Second Special Administrator is of the belief that had they done so, there would have been material questions raised concerning the scope of the rights granted to UMG in the UMG Agreement in respect of the WB Masters that required further investigation, analysis and diligence.

It is troubling that neither SLS, the Advisors, nor Meister Seelig discussed with Ms. Trotter, the lawyer representing Prince in the negotiations of the 2014 WB Agreement, or representatives of WB, their positions on the scope of the rights subject to the Distribution Period in the 2014 WB Agreement. Rather, as SLS indicated, no one was ever asked for an interpretation of the terms of the 2014 WB Agreement or the negotiations in connection therewith because of the belief shared by all concerned that they were of minimal concern. As SLS and Mr. McMillan stated in their interviews, the position that the Distribution Period and the referenced pressing and distribution in connection therewith referred to "physicals only" was based solely on a read of the 2014 WB Agreement and what has been claimed to be "industry standard." Apart from considerations of industry standards, the appropriate skill, care and diligence that should have been exercised in this highly public and complex estate should have lead to, at a minimum, a careful review of the Agreements referenced in the 2014 WB Agreement and the terms and obligations thereunder that were the subject of the negotiated settlement embodied in the 2014 WB Agreement.

[redacted], in significant part, been addressed above with respect to the term "Records." The Second Special Administrator is aware of arguments that have been advanced that the Distribution Period does not include anything but "physicals" [redacted]

[redacted] The Agreement itself, and Ms. Trotter confirmed, that an issue in the negotiations from Prince's perspective, [redacted] Ms. Trotter confirmed that Prince wanted to be assured, in light of the class action, [redacted]

Moreover, other than Affidavits filed in this matter, the Second Special Administrator has not found any support for an assertion [redacted]. Donald Passman, recognized by both SLS and Mr. McMillan as an expert in the music business, states the following with respect to pressing and distribution deals:

> If you are truly a record company in your own right, then this is the deal for you. It gives you the most autonomy and control of your life, as well as the highest profit margin. . . .
>
> **A pressing and distribution agreement (**or **P&D** deal) is exactly that – the company agrees to manufacture records for you (although in some situations this isn't even so; the product is manufactured elsewhere), and then to distribute them solely as a wholesaler. This means you sell the records to the distributing entity for a wholesale price less a negotiated distribution fee (which covers the distributing company's overhead, operations, and profit). . . . Unless you're a really large label, or have massive bargaining power, the distribution company

> will only handle your physical records if they also get the exclusive right to distribute your digital records. Even though their distribution costs are less for digital, they will insist on the same distribution fee for both physical and digital product, and unless you have a lot of clout, this is hard to change. Their argument is that the physical business is dwindling, that they can't make money if they don't have digital, and there are significant costs in managing the hundreds of users and millions of plays, in the digital world.

Donald Passman, *All You Need to Know About the Music Business*, 219-20 (Ninth Edition 2015).

The autonomy and control incident to a pressing and distribution deal is consistent with the goals [redacted]

In addition to [redacted] appropriate prudence and care most likely should have had someone speak with Ms. Trotter and/or WB concerning their position on the scope of the [redacted] While understandably WB may have been viewed as biased, the question could have been asked in connection with the proposals submitted by WB. As to Ms. Trotter, nothing in the investigation has revealed any bias on her part.

Additionally, there were a number of cautionary flags pertaining to the Distribution Period while the UMG Agreement was being negotiated. As set forth above, [redacted] In its letter of September 22, 2016 to the Special Administrator, WB stated "We believe, but are by no means certain, [redacted] On October 18, 2016, WB wrote to the Advisors stating that WB was [redacted]

[redacted]

Indeed, in his mark-up/comments outline of December 22, 2016 sent to SLS and Meister Seelig, among others, Mr. McMillan stated "**Let us Confirm:** [redacted]

So too did the Heirs in their September 28, 2016 objection to the UMG Agreement raise a concern and did so again when commenting on the draft UMG Agreement.

The interpretation of the rights encompassed in the Distribution Period of the 2014 WB Agreement became all the more critical [redacted]

In conclusion, the exercise of reasonable care and skill under the circumstances would have led to increased due diligence on the issue including, but not limited to, a thorough review of the earlier WB Agreements, a full and thorough discussion with Ms. Trotter and, if still a reasonable question, a conversation with WB concerning what rights it contended, at the time, it had arising out of the 2014 WB Agreement. Because these actions were not taken, it is concluded that there exists a reasonable basis for a claim against SLS, Meister Seelig, and the Advisors in connection with the UMG rescission. It reasonably appears that had these actions

been taken, the conclusion that the [redacted]

At a minimum the operative term is ambiguous. Thus, parol evidence would be admissible to determine the parties' intent with respect to the term. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). The parol evidence that would most likely be relevant to such a determination would be testimony and documents from Ms. Trotter, Prince's lawyer, in connection with the 2014 WB Agreement negotiations, and former executives of WB involved in those negotiations and their lawyers. As indicated above, that parol evidence would, in all likelihood, lead a factfinder to the conclusion that the [redacted]

The issue with respect to the Meister Seelig firm's fees is straightforward. While the Meister Seelig firm performed legal services pursuant to its engagement by the Special Administrator on the UMG Agreement, that firm was not paid any sums in respect of those services. Thus, the Second Special Administrator does not believe it in the best interest of the Estate to pursue that firm in that respect because there are no fees to recover.

As to SLS, there exists a reasonable basis to pursue a claim for repayment to the Estate of those fees and costs paid to SLS in respect of the work performed on the UMG Agreement. To that end, it is recommended that SLS be required to account to the Personal Representative and/or the Court for all such fees and costs and a claim be pursued for recovery of same.

It is the further recommendation that there exists a reasonable basis for a claim against the Advisors for repayment of [redacted]

In addition to the belief that the requisite degree of care, skill and diligence required under the circumstances was not exercised by SLS, Meister Seelig, and the Advisors, it would be unjust for SLS and the Advisors to maintain the sums they have received in respect of the UMG Agreement. Stated otherwise, there exists a reasonable basis to pursue a claim for unjust enrichment against each. Both have received something of value in the nature of an unjust action and are not entitled to it and under the circumstances; it would be unjust to permit them to retain it. *See, In re: Estate of Neuman*, 819 N.W.2d 211, 216 (Minn. Ct. App. 2012) *citing First Nat'l Bank of St. Paul v. Ramier*, 311 N.W.2d 502, 504 (Minn. 1981).

Alternatively, the fees and costs paid to SLS and the commission to the Advisors are analogous to damages to the Estate in the form of overcharged fees. In the case of overcharged fees, the Court has the power to order repayment of such excessive compensation to the Estate.

> The propriety of employment of any person by a personal representative including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the personal representative for personal representative's services, may be reviewed by the Court. Any person who has received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

Minn. Stat. § 524.3-721; *see also In re: Estate of Neuman*, 819 N.W.2d 211, 219 (Minn. Ct. App. 2012). This is the case because "[t]he reimbursement of overcharged personal representative fees is analogous to a case of improperly charged attorney's fees. If attorney's fees are improperly charged to the estate, they are returned to the estate because the improper fees constituted damage or loss to the estate." *In re: Estate of Sweetland*, 770 A.2d 1017, 1020 (Maine 2001); *see also Bookman v. Davidson*, 136 So. 3d 1276, 1280-81 (1st DCA Fla. 2014) (finding based upon language similar to Minn. Stat. § 524.3-721, the Court may properly order disgorgement of fees for an estate's attorney).

There also exists a reasonable basis to pursue a claim against the Advisors for repayment of [redacted] on the grounds that the rescinded UMG Agreement does not constitute a commissionable contract. The compensation provision of the Advisory Agreement [redacted] In light of the Court's rescission of the UMG Agreement, a decision correctly made as in the best interests of the Estate, it makes no sense to conclude that the Estate has received anything of value that would entitle the Advisors to a commission. Apart from the fact that it appears that the Advisors did not comport themselves with the requisite care, skill and prudence called for under the circumstances, [redacted] Simply stated, the Advisors were entitled to a commission upon performance of a task; the task of which was [redacted]. It would be a perversion of the Advisor Agreement if [redacted] Moreover, the Advisor Agreement obligated the Estate [redacted]

The Letters of Special Administration also asked that it be reported to the Court whether or not pursuing any such claims related to the rescission of the UMG Agreement is in the best

interests of the Estate. The Second Special Administrator believes that pursuit of the foregoing claims against SLS and the Advisors for the fees, costs and commissions paid by the Estate are in the best interests of the Estate. The amounts at issue are liquidated and thus, it should not cost the Estate considerable sums to fix the value of the damage to the Estate. Moreover, mindful of the considerable press that the Estate has generated, and particularly with respect to the various disputes that have arisen, none of the intellectual property of the Estate would be directly implicated in pursuing said claims. In other words, pursuit of the claims addressed above would not constitute a cloud on title of any of the assets owned and controlled by the Estate nor would it appear to potentially dilute the value of any of the intellectual property or brand of Prince. The Estate has suffered considerable out of pocket expenses in the form of the fees and costs paid to SLS and the Advisors for professional and expert services for which no value was received. Under the circumstances, the Second Special Administrator believes it is in the best interests of the Estate to pursue those out of pocket expenditures. To not pursue the claims, would allow these parties to unjustly enrich themselves at the expense of the Estate.

With respect to other damage to the Estate, consideration has been made concerning recovery of the fees and costs incurred by the Estate in connection with the investigation of WB and UMG's claims upon announcement of the UMG Agreement, and the motion practice that resulted in the Order rescinding the UMG Agreement. There exists a reasonable basis to pursue a claim for recovery of those fees and costs against SLS, Meister Seelig, and the Advisors for same. Under Minnesota law when attorneys' fees and expenses are claimed in litigation that has been caused by the act of a party that caused the litigation, those fees and costs are recoverable. *Hill v. Okay Const. Co.*, 252 N.W.2d 107, 121 (Minn. 1977) (citations omitted). Here, the fees

and costs incurred by the Estate in connection with the investigation and motion of the Personal Representative to obtain the Rescission Order were caused by SLS, Meister Seelig, and the Advisors as outlined above.

It is believed that pursuit of the damage to the Estate for recovery of the fees and costs incurred by the Personal Representative in respect of the rescission of the UMG Agreement is in the best interests of the Estate for the same reasons articulated above with respect to recovery of the fees and costs charged to the Estate by SLS in connection with the UMG Agreement and the Advisors' [redacted]

Finally, consideration has been made as to whether or not there is a reasonable basis for a claim for damages to the Estate for any diminution in value of any of the assets of the Estate arising out of the rescission of the UMG Agreement. As addressed above, [redacted] Both valuation experts, Shot Tower Capital and Dahl Consulting, report that in the case of a deceased artist, such as Prince, there is an increase in sales and thus royalty income within the first year of death, and that precipitously declines to pre-death levels within approximately one year after death. [redacted] Thus, with respect to posthumous releases only,

and on a gross basis, [redacted]

There is a reasonable basis for a claim against SLS, Meister Seelig, and the Advisors for the damage to the Estate arising out of the delay in the commercial exploitation of the NPG Masters and the Vault Masters (posthumous releases). *See, Jerry's Enterprises v. Larkin, Hoffman, Daly & Lindgren, LTD*, 711 N.W.2d 811 (Minn. 2006). However, one must be mindful of the fact that the rights of WB relevant to any of Prince's works prior to 2000 [redacted]

In light of the [redacted], it is a more difficult call as to whether or not it is in the best interests of the Estate to pursue claims for the damage to the Estate arising out of the delay of the commercial exploitation of the NPG Masters and any posthumous releases that would be made from any of the Vault Masters. [redacted] Pursuing a claim against SLS, Meister Seelig, and the Advisors for these additional damages would likely cost the Estate many hundreds of thousands of dollars in attorneys' fees and expert costs. To litigate the claims, the Estate would be required to pay counsel for the Personal Representative attorneys' fees and costs, as well as experts to more definitively quantify the damage to the Estate. The "return on investment" of the additional litigation costs associated with pursuit of a claim for this latter category of damages is thus questionable. In addition, unlike the claim for a recovery of attorneys' fees and costs, and the Advisors' fees, the amount at issue would be far less certain

and call into question the value of these assets owned by the Estate. It is believed that the Personal Representative is in a far better position to render a conclusion as to whether or not pursuit of this aspect of damage to the Estate is in the best interests of the Estate in light of the foregoing and what is a more definitive calculation of the likely damage to the Estate. Accordingly, the Second Special Administrator defers to the Personal Representative, its counsel, and the Court, as to whether or not damages for diminution in value to any of the assets of the Estate should be pursued assuming claims are pursued for the fees, costs and commissions paid in respect of the UMG Agreement, the Personal Representative's investigation thereof, and the motion to rescind the UMG Agreement. If those claims are not pursued, it does not appear to be in the best interests of the Estate to pursue only claims for damages for a diminution of the value of the NPG Masters and Vault Masters given the likely litigation costs and the [redacted]

Date: December 15, 2017

LARSON • KING, LLP

By: *s/ Peter J. Gleekel*
Peter J. Gleekel (#149834)
2800 Wells Fargo Place
30 East Seventh Street
St. Paul, Minnesota 55101
Telephone: (651) 312-6500
Facsimile: (651) 312-6618
Email: pgleekel@larsonking.com

SECOND SPECIAL ADMINISTRATOR

1680422