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

November 9, 2018

Re: *In the Estate of Prince Rogers Nelson* (Court File No. 10-PR-16-46)

Dear Judge Eide:

On behalf of L. Londell McMillan ("McMillan") and NorthStar Enterprises Worldwide, Inc. ("NorthStar Enterprises") (together, "NorthStar"),[1] I write in response to this Court's Order for Submissions dated October 30, 2018. That Order invited the parties to respond to the Second Special Administrator's October 23, 2018 letter regarding the scope of the Court's October 17, 2018 Order (the "New Discharge Order"), which reinstated a March 27, 2017 Order (the "Original Discharge Order") discharging "Bremer Trust and its agents" from "any and all liability to the Estate of Prince Rogers Nelson associated with its Special Administration of the Estate."

The former Special Administrator, Bremer Trust, N.A. ("Bremer"), has since responded that, contrary to the language in both the Original Discharge Order and the New Discharge Order, Bremer did not intend to seek a full release and discharge from liability of *all* of its agents, only those who were not presently targets of investigation and potential litigation by the SSA. (*See* letter from Julian Zebot dated November 6, 2018). Both of the Court's discharge orders are clear in their language. In fact, the Original

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[1] For purposes of this submission, reference is made to the collective "NorthStar" without waiver of the corporate formalities and protections provided by law with respect to any potential liability of NorthStar Enterprises as opposed to Mr. McMillan personally. It should be noted that McMIllan is not a party to the Advisor Agreement described herein and should not be a party to any action brought by the Estate or its representatives.

Discharge Order dated March 27, 2017 was issued long before the SSA was appointed, so it clearly was not intended to exempt out potential claims against those who would become targets of a yet to be appointed SSA. Even more importantly, for the legal and equitable reasons discussed below, the Court should direct a complete discharge of all entities retained by Bremer in connection with its administration of the Estate, including NorthStar.

Arguably, the first question that arises is whether NorthStar is an "agent" of Bremer. It is essential that the Court make a determination on this point, and should it determine that NorthStar is an agent, NorthStar should be discharged as set forth herein. Alternatively, if this Court determines no agency relationship exists, NorthStar should still be discharged under well-established principles of fairness and equity.

NorthStar Enterprises and its co-advisor, CAK Entertainment LLC (collectively, the "Advisors"), served as entertainment advisors for Bremer under the June 16, 2016 Advisor Agreement between the Advisors and Bremer (the "Advisor Agreement"). The Advisor Agreement designated Bremer as the sole decision-maker on all deals and transactions negotiated or presented by the Advisors and required specifically that:

> Advisor shall not enter into any agreements, oral, written, or otherwise, that relate to or involve the Artist, Administrator, or any of the Estate's property (including intellectual or personal property) or rights without the prior written consent of Administrator. (Advisor Agreement at p.2, §5).

Consistent with the Advisor Agreement, all decisions to enter into deals or transactions for the benefit of the Estate—including the Jobu and UMG transactions for which the Advisors are presently being targeted under quasi-judicial authority conferred by this Court upon the SSA without discovery or due process to the Advisors—were ultimately approved and executed by Bremer, its attorneys, and this Court, not by the Advisors. For example, it was Bremer that made the decision to enter into the contract with UMG. This might have been at the Advisors' recommendation, but Bremer was the ultimate decision-maker. If that decision was in contravention of the rights of Warner Bros.—a fact that Bremer and the Advisors all vigorously disputed—why would the party that made the final decision, Bremer, be discharged while the Advisors, who merely made a recommendation, continue to face litigation? It would be inequitable for the Court to dismiss the party who made the decision to enter into the UMG and Jobu contracts while leaving the Advisors who merely made recommendations potentially liable. Similarly, these deals were subsequently terminated and/or rescinded by Jobu and Bremer in the case of Jobu, and by the subsequent Personal Representative, Comerica, in the case of UMG, as a result of those fiduciaries' exclusive and independent business decisions made over the objections raised by both of the Advisors and, in the case of UMG, by Bremer also.

Ostensibly, due to its Common Interest Agreement with Bremer, Comerica was prohibited from investigating the circumstances leading to the termination and rescission of the Jobu and UMG agreements and never evaluated for itself the advice the Advisors presented to Bremer in connection with those deals. Had it done so, Comerica would have discovered that, on numerous occasions during the negotiations of the Jobu and UMG deals, Bremer did *not* always agree with the Advisors and instead opted to take the advice of its other agents and attorneys over that of the Advisors, particularly over that of NorthStar. For example, with respect to the Jobu transaction, the record will show that Jobu was chosen by Bremer to be the promoter of the Tribute Concert against the recommendation of NorthStar, which had serious reservations about Jobu's ability to perform. It would be perverse to hold that Bremer—which made the decision to go forward with Jobu and sign the contract—is discharged from any liability in connection with the Jobu transaction, while the Advisor who warned against dealing with Jobu is somehow subject to a claim.

Nonetheless, the SSA's investigation and self-serving findings suggest the potential liability of the Advisors and Bremer's own attorneys for flaws in the UMG deal. (*See* SSA's Report dated December 15, 2017 at pp. 26-30). There also exists considerable question as to whether the Estate has any lawful rights under the Jobu deal, despite the SSA's investigation conclusions. There is no question that neither the Tribute Concert nor the Jobu deal was an asset of the Estate at the time of Prince's death or originated by the Estate. In fact, as set forth in the Affidavit of Laura Halferty dated January 30, 2017, at ¶¶5-6, ¶¶ 18-19, the Tribute Concert was originated by the family and was only handled by Bremer as an accommodation to the family. NorthStar made this point to Bremer and its counsel on more than one occasion, yet only NorthStar will remain potentially liable if Bremer is discharged. Unless all parties are discharged, Bremer should not now be able to walk away from the fallout of the decisions made by it and its attorneys and pin liability for those decisions on Advisors who had no power to act or make decisions otherwise. As it stands now, these various Estate entities and their legal counsel have made outcome-determinative decisions for which they avoid liability with each subsequent discharge request, ultimately leaving only the Advisors potentially liable to the Estate with no means of asserting their own counter and cross claims against the parties previously discharged. At the very least, regardless of any liability Bremer may or may not have with regard to the UMG and Jobu deals, Bremer owes additional fees to NorthStar and CAK Entertainment under the Advisor Agreement for multiple other entertainment deals and should not be discharged from those liabilities at this stage.

Although, arguably, the Advisor Agreement did not create an agency relationship between the Advisors and Bremer due to the limitations on the Advisor's decision-making authority, if the Advisors were agents of Bremer, they should not be held liable for acts for which the principal has been discharged. Under Minnesota law, "a principal is liable for the act of an agent committed in the course and within the scope of the agency and not for a purpose personal to the agent." *Semrad v. Edina Realty, Inc.,* 493 N.W.2d 528, 535 (Minn. 1992) (internal citations omitted). "Specifically, the principal is held vicariously liable to another, irrespective of its own fault, for the actionable conduct of its agent." *Nadeau v. Melin*, 110 N.W.2d 29, 34 (1961). Further, "[w]here one is employed or directed by another to do an act in his behalf, not manifestly wrong, the law implies a promise of indemnity by the principal for damages resulting proximately from the good-faith execution of the agency." *Hoch v. Duluth Brewing & Malting Co.*, 173 Minn. 374, 375–76, 217 N.W. 503, 504 (1928).

Certainly, then, there is no basis for liability of an agent (or any party) alone when it had no decision-making authority to act at all. For purposes of this submission, NorthStar does not proffer that Bremer committed any wrongdoing during its tenure as Special Administrator.[2] At the same time, however, there is no basis in law or in equity for holding an agent liable for acts performed on behalf of a principal and within the scope of the agent's responsibilities without also holding the principal liable. Because "[t]he agent's authority cannot be greater than the authority of the principal," (*see Hockemeyer v. Pooler,* 130 N.W.2d 367, 377 (1964)), it should not follow then that an agent's liability can be greater than that of the principal where the agent is acting within the scope of its authority.

Further, nowhere does Minnesota law support the proposition that an agent should be liable for a principal's acts that are inconsistent with that agent's own acts or advice. Further, it is unjust and inequitable to discharge the "fiduciary" of an Estate while holding its uninsured, contracted experts liable for the fiduciary's own failure to act in the best interest of the Estate. In other words, a fiduciary charged with acting in the best interest of an Estate should not be able to absolve itself from liability, even though it remains responsible for all decisions and duties performed on behalf of the Estate, simply by hiring experts to offer advice (which it may or may not choose to follow). Consistent with the public policy rationale underlying the employment principles of *respondeat superior*, regardless of Bremer's wrongdoing or lack thereof, liability for acts committed within the scope of its agents' responsibilities should be allocated to Bremer or not at all. *See Lange v. National Biscuit Co.*, 211 N.W.2d 783, 785 (1973) ("Such liability stems not from any fault of the employer, but from a public policy determination that liability for acts committed within the scope of employment should be allocated to the employer as a cost of engaging in that business.").

To carve the Advisors out from any discharge of Bremer and its other agents, including Bremer's attorneys who ultimately managed, drafted, and executed the contested Jobu and UMG deals, creates an inequitable result that runs afoul of well-established agency and employment law principles. Again, for the avoidance of doubt, NorthStar is not asserting here that Bremer should be held liable for any of its actions, but instead is asserting that either all should be discharged or none should be discharged.

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[2] Neither did NorthStar commit any wrongdoing; in fact, NorthStar helped to generate millions of dollars for the Estate (the likes of which have yet to be replaced) under very contentious and challenging circumstances, the same of which were largely responsible for Bremer's decision to resign from its fiduciary duties and ending the term of the Advisors.