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STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

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

In re Estate of Prince Rogers Nelson, Decedent.

CAK ENTERTAINMENT, INC. AND CHARLES KOPPELMAN'S MEMORANDUM ADRESSING THE *DAHLBERG* FACTORS AND IN OPPOSITION TO ENTRY OF A TEMPORARY INJUNCTION

INTRODUCTION

CAK Entertainment, Inc. ("CAK") and Charles Koppelman ("Mr. Koppelman") submit this Memorandum of Law in response to the Court's request for briefing with respect to the factors set forth in Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.3d 314 (Minn. 1965) applicable to the Court's determination whether to enter a temporary injunction pending the Court's final determination of the present proceeding. As will be more fully explicated below, application of the Dahlberg factors mandates that the Court decline to enter a temporary injunction under the circumstances presented here in light of the unassailable and dispositive conclusion that the Estate[1] has failed, and will be unable, to demonstrate that it will suffer irreparable harm in the absence of injunctive relief. Indeed, as the SSA's Fee Motion admittedly concerns only alleged monetary injury—concerning funds that the Estate voluntarily relinquished *years ago*—it is axiomatic under Minnesota law that the Estate has an adequate remedy at law and will not suffer irreparable harm in the absence of an injunction.

[1] Capitalized terms used herein shall have the same meaning ascribed to those terms in CAK and Mr. Koppelman's Memorandum of Law in Opposition to Second Special Administrator's Motion for Refund of Fees (the "Opposition to Fee Motion").

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While the manifest adequacy of a legal remedy and concomitant failure of the SSA to demonstrate that the Estate will suffer immediate irreparable injury in the absence of an injunction alone require the denial of injunctive relief, even if the Court is inclined to inquire into the remaining Dahlberg factors, those considerations likewise do not support entry of an injunction. Specifically, in light of, *inter alia*, both the plain terms of the Advisor Agreement—which do not support the SSA's argument that the Advisors (*i.e.*, CAK and NorthStar) should be compelled to return monies paid to them as commissions under that Agreement—and the myriad of unresolved (and likely disputed) factual issues material to the Court's ultimate determination of the SSA's Fee Motion, the present factual record is insufficient to support a finding of likelihood of success by the Estate on the merits of its claim. And, the remaining Dahlberg factors are, at best, neutral and thus neither independently lend support for the entry of the extraordinary remedy of injunctive relief at this stage of the proceedings nor "cure" or affect the fact that, as noted above, the SSA will be unable to satisfy the irreparable harm and likelihood of success components of the analysis.

For those reasons, and as further discussed below, upon application of the Dahlberg factors, the Court should decline to enter injunctive relief with this matter at its present procedural posture, and should permit the parties to proceed to discovery on the SSA's Fee Motion so that the Motion can be resolved on the merits with a fully developed factual record.

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ARGUMENT[2]

I. THE LEGAL STANDARD FOR ENTRY OF INJUNCTIVE RELIEF.

"A temporary injunction is an extraordinary equitable remedy. Its purpose is to preserve the status quo until adjudication of the case on the merits. Not every change in circumstances merits such relief, however. Because a temporary injunction is granted prior to a complete trial on the merits, it should be granted *only* when it is clear that the rights of a party will be irreparably injured before a trial on the merits is held." Miller v. Foley, 317 N.W.2d 710, 712 (Minn. 1982) (citations omitted) (emphasis added). In Dahlberg, the Minnesota Supreme Court identified five factors that courts must consider in making that determination: (1) "The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief"; (2) "The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial"; (3) "The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief"; (4) "The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal"; and (5) "The administrative burdens involved in judicial supervision and enforcement of the temporary decree." Dahlberg Bros., Inc., 272 Minn. at 265.

Not a single one of those factors militates in favor of injunctive relief in the present proceedings; indeed, at least one of those factors—concerning the "relative harm" to the

[2] As the factual background and procedural history of this matter are set forth comprehensively in, *inter alia*, CAK and Mr. Koppelman's previously filed Opposition to Fee Motion (and in the November 25, 2019 Opinion of the Court of Appeals), CAK and Mr. Koppelman will not burden the Court with a further recitation of those facts here, but they instead respectfully refer the Court to those filings and Opinion.

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parties—*requires* that the Court decline to enter a temporary injunction in the present circumstances.

II. THE ESTATE'S FAILURE AND INABILITY TO ESTABLISH THAT IT WILL SUFFER IRREPARABLE HARM ABSENT A TEMPORARY INJUNCTION MANDATES THE DENIAL OF INJUNCTIVE RELIEF.

The critical second factor of the Dahlberg analysis, *i.e.*, the relative harm suffered by either party, is dispositive of the present issue and mandates that the Court decline to issue a temporary injunction in respect of the SSA's Fee Motion. In that regard, under well-established Minnesota law, the "relative harm" Dahlberg factor has been defined to "includ[e] whether the moving party would suffer irreparable harm absent a temporary injunction" (Bromen Office 1, Inc. v. Coens, A04-946, 2004 WL 2984374, at *3 (Minn. Ct. App. Dec. 28, 2004)), a threshold determination that, if not satisfied, *requires the denial of injunctive relief without consideration of the remaining factors*. See Medtronic, Inc. v. Advanced Bionics Corp., 630 N.W.2d 438, 451 (Minn. App. Ct. 2001) (Failure to establish irreparable harm is "by itself, a sufficient ground for denying a temporary injunction."); U Otter Stop Inn v. City of Minneapolis, No. A05-1335, 2006 WL 771936, at *3 (Minn. Ct. App. Mar. 28, 2006) (same); Minn. Chamber of Commerce v. Minn. Pollution Control Agency, No. 62-CV-10-11824, 2012 Minn. Dist. LEXIS 194, *27-28 (Minn. Dist. Ct. Ramsey Co. 2d Dist. May 10, 2012) ("[T]he threshold question [in determining whether to enter injunctive relief] is whether there is immediate and irreparable injury that constitutes a ground for the issuance of the injunction and whether that party does not have an adequate remedy at law. The failure to meet this burden is, in and of itself, a sufficient basis on which to deny the relief.").

Here, it is beyond legitimate dispute that the Estate not only possesses an adequate legal remedy, and thus will *not* suffer irreparable injury absent an injunction—a consideration

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that, standing alone, requires the Court to decline to enter a temporary injunction—but that, in any event, a balancing of the relative harms also clearly favors the denial of injunctive relief. In that regard, as more fully discussed below, the "relative harm" factor forecloses injunctive relief for at least three independent reasons: (1) as the Estate's alleged injuries are purely economic, *i.e.*, monetary, and thus plainly can be compensated through an award of money damages, that alleged harm is, by definition, not irreparable; (2) as the Estate has been without the funds at issue for years, an injunction unquestionably would alter rather than preserve the status quo, and would not address any immediate, real and substantial injury, which Minnesota law requires for the entry of such relief; and (3) even if the Court were nonetheless to balance the relative harms to the parties resulting from the granting or denial of an injunction, it is readily apparent that the harm that CAK, a private business, would suffer in the face of an injunction requiring it to pay significant sums into an escrow account years after it received those funds far outweighs any injury to the Estate—which is reportedly worth $200 million—that would result if the Court, as it properly should, declines to enter an injunction at this stage of the proceedings.

First, since the alleged injuries upon which the SSA predicates his Fee Motion are solely monetary in nature, that supposed harm is *ipso facto* not irreparable. "Irreparable harm occurs when a party has no adequate legal remedy." Bromen Office 1, Inc., 2004 WL 2984374, at *3. "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence [of a temporary injunction] are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the course of litigation, weighs heavily against a claim of irreparable harm." Miller, 317 N.W.2d at 713. Thus, "[w]here injury is primarily economic, grounds for a temporary injunction are not established." Bromen Office 1, Inc., 2004 WL 2984374, at *4; see also U Otter Stop Inn, 2006

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WL 771936, at *4 ("[T]he district court determined that it was possible that some, if not all, appellants would eventually go out of business. Appellants' economic injuries, however, can be adequately compensated with monetary damages and this is generally insufficient to establish irreparable harm."); see also Progress Land Co. v. Soo Line R.R. Co., No. A03-1895, 2004 WL 1489011, at *6 (Minn. Ct. App. Jul. 6, 2004) ("Temporary injunctive relief is justified if the threatened irreparable harm renders the relief available ineffective or impossible to grant at a later time. The injury must be significant and irreparable in the sense that money damages cannot properly compensate for the loss.") (internal citations omitted); North Star Int'l Trucks, Inc. v. Navistar, Inc., No. A10-864, 2011 WL 9173, at *23 (Minn. Ct. App. Jan. 4, 2011) (where "any injury to respondents is fully compensable with money damages, … injunctive relief [is] inappropriate").

Here, the Estate's request for relief, which, instructively, it characterizes as a "Motion for Refund of Fees," is not only "primarily economic" (which would in itself require the denial of injunctive relief, see Bromen Office 1, Inc., 2004 WL 2984374, at *4); it is *solely* economic. The Motion is predicated entirely on the SSA's assertion that there has been a supposed "overpayment" of money to the Advisors in the form of their contractual commissions, and the concomitant request that the amount of that alleged "overpayment" be refunded to the Estate. As the Estate's alleged damages are thus *entirely* economic in nature, and monetary damages will provide complete relief in the (unlikely) event that the Estate prevails at the conclusion of these proceedings, the grounds necessary to enter injunctive relief plainly have not been established. See, *e.g.*, Miller, 317 N.W.2d at 714 (reversing grant of temporary injunction as "financial and emotional injuries" were not irreparable notwithstanding that the "loss of [the movants'] incomes will mean their families will be unable to meet their monthly expenses"); Bromen Office 1, Inc.,

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2004 WL 2984374, at *6 (affirming denial of request for temporary injunction where the "claim is grounded in financial losses, something readily compensated by a damage award," and thus irreparable harm not established); Earl C. Hill v. Bloomington Post 550 v. City of Bloomington, A05-637, 2006 WL 389835, at *5 (Minn. Ct. App. Feb. 21, 2006) (same); Rexton, Inc. v. State, 521 N.W.2d 51, 54 (Minn. Ct. App. 1994) (same).

Second, in addition to establishing that "there is no adequate legal remedy … the party requesting a temporary injunction must demonstrate … that an injunction is *necessary* to prevent irreparable injury." North Star Int'l Trucks, Inc., 2011 WL 9173, at *17 (citing U.S. Bank Nat'l Assn. v. Angeion Corp., 615 N.W.2d 425, 434 (Minn. Ct. App. 2000), *review denied* (Minn. Oct. 25, 2000)) (emphasis added); see also Cherne Indus., Inc. v. Grounds & Assocs., Inc., 278 N.W.2d 81, 92 (Minn. 1979). "A temporary injunction will not be granted unless it clearly appears that there is an *immediate* prospect that [the movant] would otherwise suffer an *irreparable* injury." Schmidt v. Gould, 172 Minn. 179, 180, 215 N.W. 215, 215 (Minn. 1927) (emphasis added). Thus, "[a]n injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear. The threatened injury must be real and substantial." Hollenkamp v. Peters, 358 N.W.2d 108, 111 (Minn. Ct. App. 1984) (quoting AMF Pinspotters, Inc. v. Harkins Bowling, Inc., 260 Minn. 499, 504 (Minn. 1961)); see also Geske v. Marcolina, 642 N.W.2d 62, 68 (Minn. Ct. App. 2002) ("The apprehension of injury must be well-grounded, which means that there is a *reasonable probability* that a real injury for which there is no adequate remedy at law will occur if the injunction is not granted.") (emphasis in original); AMF Pinspotters, Inc., 260 Minn. at 504 ("Injunctive relief should be awarded only in clear cases, reasonably free from doubt, and when necessary to prevent great and irreparable injury."). Even putting aside, for the moment, the ineluctable conclusion that the Estate has an adequate legal

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remedy, there is not a single fact before the Court that demonstrates, or even suggests, that the Estate will suffer immediate, real and substantial injury absent an injunction.

In that regard, the Estate's present claim is predicated on its request for a refund of monies paid to the Advisors in September of 2016, *i.e.*, *over three years ago*, in respect of the terminated Jobu transaction, and in July of 2017, *i.e.*, *two and a half years ago*, in respect of the rescinded UMG transaction. As such, a temporary injunction directing the payment of money that the Estate has been without *for years*, by definition, would not address, much less serve to prevent, the "immediate prospect" of a "certain, substantial, and irreparable" injury, Dahlberg, 137 N.W.2d at 321 n.12, and would not "preserve the status quo," Miller, 317 N.W.2d at 712. Precisely to the contrary, requiring the Advisors to pay substantial sums of money into escrow at this stage of the proceedings—prior to discovery or an evidentiary hearing—would hardly address an "immediate" alleged injury and would serve only to alter (rather than preserve) years of status quo to the significant detriment of the Advisors.

Moreover, "[t]o be granted an injunction, the moving party must offer more than a mere statement that it is suffering or will suffer irreparable injury." Advance Contract Equip. & Design LC v. LaMere, No. A15-0084, 2015 WL 5089167, at *5 (Minn. Ct. App. Aug. 31, 2015). The Estate, in *sub silentio* acknowledgement that there is simply no basis for the entry of interim injunctive relief on a claim on which an adequate legal remedy is available, has never requested the entry of such relief. And the SSA certainly has not offered any, let alone compelling evidence to justify the entry of the extraordinary remedy of an injunction. This deficiency provides yet an additional, independent reason why the Court properly should decline to enter an injunction here. See Morse v. Waterville, 458 N.W.2d 728, 730 (Minn. Ct. App. 1990) (holding that the district court "abused its discretion in granting a temporary injunction

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because there was no extraordinarily strong showing that irreparable harm was threatened"), *review denied* (Minn. Sep. 28, 1990).

Third, notwithstanding the indisputable—and dispositive—fact that irreparable injury is not threatened here, as the Estate is seeking only monetary relief, even if the Court nonetheless were to balance the relative harms the parties would likely suffer in the event of the Court's issuance or denial of a temporary injunction, that analysis plainly militates against injunctive relief. In that regard, CAK is a functioning private business, whereas the Estate is a conglomeration of assets, which, according to Court filings in the underlying probate proceedings, has a value of approximately $200 million. (See Affidavit of Laura Halferty in Support of Motion to Approve Recommended Deals, dated September 27, 2016, at ¶ 5.) As such, it would appear self-evident that the temporary deprivation of the use of the funds at issue here—funds which have not been available to the Estate for years—would harm CAK far more than it would the Estate. And, in any event, the temporary injunction previously entered by the Court in its Order & Memorandum on Second Special Administrator's Motion for Return of Fees issued on March 11, 2019 (the "March 11 Order") directed the payment of the funds into escrow, not to the Estate. In such circumstances, if the Court were to issue an injunction similar to the directive contained in its March 11 Order, CAK would be forced to relinquish the funds at issue prior to an adjudication on the merits of the Estate's claim, but the Estate would not have use of those funds pending the final determination of these proceedings. While this outcome unquestionably would cause significant harm to CAK, it would not benefit the Estate at all as the Estate would be unable to access and utilize those funds. Conversely, absent an injunction, neither CAK nor the Estate would be put to significant imposition at this juncture, the status quo would be maintained (a further reason to deny injunctive relief, which is intended to maintain,

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not alter, the status quo), and the Estate nonetheless would be in the same position at the conclusion of these proceedings as it is now, regardless of the final outcome.

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For the foregoing reasons, the Court must, upon consideration of the critical "relative harm" Dahlberg factor, decline to enter temporary injunctive relief.

III. THE REMAINING DAHLBERG FACTORS DO NOT SUPPORT THE ENTRY OF INJUNCTIVE RELIEF.

While the Estate's inability to demonstrate that will suffer irreparable harm absent the Court's entry of an injunction is, standing alone, dispositive of the issue and requires that the Court decline to enter injunctive relief, the remaining Dahlberg factors likewise do not support the entry of a temporary injunction. In that regard, as further discussed below, the Estate has not demonstrated a likelihood that it will prevail on the merits of its claim, and neither the parties' preexisting relationship nor public policy considerations or administrative concerns provide grounds for the issuance of an injunction.

A. The Estate Has Not Demonstrated a Likelihood That It Will Prevail on the Merits of its Claim, a Deficiency That Further Supports the Denial of Injunctive Relief.

Further underscoring the inappropriateness of injunctive relief in the present circumstances, on the factual record presently before the Court, there is no evidentiary basis to conclude that the Estate is likely to prevail on the merits of the claim asserted in the Fee Motion (indeed, the facts on the current record compel the contrary conclusion) and grounds have not been established that support, let alone mandate, the issuance of the extraordinary remedy of a temporary injunction. In that regard, it is not only apparent from the present record that ample basis exists for the Court to deny the Fee Motion in light of the plain and unambiguous language of the Advisor Agreement and the undisputed actions of the Estate, but, to the extent that factual

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issues may exist that arguably may affect that determination, under well-established Minnesota law, the possible existence of such disputed material factual issues weighs heavily *against* the Court's entry of injunctive relief.

1. The Estate's Arguments in Support of the Fee Motion Are Undermined By the Terms of the Advisor Agreement and the Estate's Own Undisputed Conduct, Considerations That, Standing Alone, Should Preclude the Entry of Injunctive Relief.

As an initial matter, as discussed in detail in CAK and Mr. Koppelman's Opposition to the Fee Motion, the Advisors earned their commissions under the unambiguous terms of the Advisor Agreement and there is no basis under the Agreement to compel the Advisors to return those commissions. The Advisor Agreement provides that the Advisors are entitled to a fixed percentage commission on all Gross Monies received by the Estate in connection with Commissionable Contracts (as those terms are defined in the Advisor Agreement). Pursuant to the plain and unambiguous language of paragraph 6(d)(ii) of the Advisor Agreement, those commissions "shall be deemed to have [been] earned . . . simultaneously with the payment" to the Estate of the amounts generated by the transactions upon which the Advisors' commissions are predicated. As such, under the express terms of the Advisor Agreement, the commissions are "earned" once the underlying transactional payment is received by the Estate regardless of whether the Estate later voluntarily chooses to rescind the agreement that generated those transactional payments. The Advisor Agreement does not contain any language that suggests, let alone requires, that the Advisors must return their "earned" commissions if the Estate later decides to reverse the transactions upon which the earned commissions were calculated.[3]

[3] In fact, the Advisor Agreement expressly provides that the Advisors shall *not* be deprived of their earned commissions in respect of a Commissionable Contract even if the duration of that Contract is subsequently "extended, amended, replaced, modified or substituted under [a] materially different arrangement and structure." (Advisor Agreement § 6(a).) Here, the Estate did, in effect, "replace, modify or substitute" the duration of the UMG Agreement by rescinding the UMG Agreement and then entering

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Moreover, it is undisputed that the Estate made a voluntary business decision—without any determination having been made on whether a conflict actually existed between the rights claimed by UMG and WBR in the recordings at issue and notwithstanding the inclusion in the UMG Agreement of a provision that would have protected the Estate in the event of such an actual conflict between those rights—not only to rescind the UMG Transaction, but, inexplicably, to also "refund" to UMG the commissions paid to CAK in respect of that transaction even though the Estate had never received those funds.[4] The Advisors may not properly be held responsible for the Estate's voluntary (and highly questionable) choice to "return" funds that the Estate had never received in the first instance. Indeed, taken to its logical conclusion, the position advanced by the SSA in the Fee Motion would compel the conclusion that the Estate may, at *any* time and for *any* reason, decide to terminate or rescind a transaction pursuant to which the Advisors had been paid a commission, and in such circumstances, the Advisors would be required to disgorge their earned contractual commissions because the Estate, as a result of its own decision, now claims that it did not "benefit" from that transaction—a less than compelling argument to be sure.

In its March 11 Order, this Court observed that Minn. Stat. § 525.515 does not "mandate that the Court [undertake a determination of the reasonableness of the Advisors' fees] in a vacuum, without regard to the Advisor Agreement." (March 11 Order at 5.) In its Order remanding the matter for consideration of the Dahlberg factors, the Court of Appeals agreed, observing that, while consideration of the merits of the Fee Motion was "beyond the scope of the

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into a different arrangement (with Sony) in respect of transactions that were the subject of the UMG Agreement.

[4] As CAK was not paid any commissions in respect of the terminated Jobu Transaction, and thus there is nothing for CAK to "refund" to the Estate in connection therewith, CAK and Mr. Koppelman will not separately address that transaction in this Memorandum, but reserve all rights in respect thereof.

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[Court of Appeals'] review, … the terms of the Advisor Agreement may dictate the outcome of the Estate's [Fee Motion]." (Opinion dated November 25, 2019, Appeal Nos. A19-0503 & A19-0507 (the "November 25 Opinion"), at pp. 15-16.) Consideration of those bargained-for contractual terms; recognition of the fact that this Court previously and expressly found the Advisors' commission in respect of the UMG Transaction to be "reasonable"; and acknowledging the undisputed facts concerning the Estate's own questionable conduct in precipitously rescinding the UMG Transaction and returning to UMG *more* than UMG had paid the Estate in the first instance, standing alone, properly should compel the Court to decline to enter injunctive relief on the grounds that the SSA has not demonstrated a likelihood of success on the merits of the Fee Motion.

2. The Undeveloped Factual Record and Likely Existence of Disputed Factual Issues Weigh Heavily Against the Entry of Injunctive Relief, In Any Event.

This Court similarly observed in its March 11 Order that "many factors were involved in the termination of the Jobu agreement and rescission of the UMG agreement," and thus ordered that the parties undertake discovery and proceed to an evidentiary hearing with respect to the funds at issue in the UMG Transaction. (March 11 Order at 2.) There indeed exist a number of factual matters that likely will be disputed by the parties with respect to that transaction and that ultimately will be material to the Court's determination of the Fee Motion. By way of illustrative example, significant factual issues exist concerning, *inter alia*, the Estate's relationship with both UMG and WBR; the Estate's communications with UMG and WBR with respect to the UMG Agreement and the WBR Agreement; the communications between UMG and WBR with respect to the rescission of the UMG Agreement; the language and intent of the provisions of the UMG Agreement concerning the rights granted to UMG and any protections afforded to the Estate in respect of any conflict that might arise in connection with the same; the

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language and intent of the provisions of the WBR Agreement on which it based its assertions of conflict with rights granted by the Estate to UMG; the Estate's internal communications and discussions concerning rescission of the UMG Agreement; the Estate's communications concerning, and the reasoning behind, its decision to return to UMG both the advance paid to the Estate and the commissions paid by UMG directly to the Advisors; and the Estate's decisions to proceed with rescinding the UMG Transaction and refunding the advance and Advisors' commissions without first consulting the Advisors.

That the foregoing factual issues appear to be significantly disputed by the parties, and plainly are material to the Court's ultimate determination of the Fee Motion, provide yet further grounds for the denial of temporary injunctive relief, as the same further support the conclusion that the Estate will be unable (and has failed) to demonstrate a likelihood of success on its claim at this stage of the proceedings. See Pacific Equip. & Irrigation v. Toro Co., 519 N.W.2d 911, 918 (Minn. Ct. App. 1994) (As a temporary injunction is granted before discovery and a full evidentiary hearing, "[i]f there is a close factual dispute which could go either way at a trial on the merits, a court should be reluctant to issue a preliminary injunction."); see also Wakefield v. Anchor Bancorp, Inc., 416 N.W.2d 814, 820 (Minn. Ct. App. 1987) ("When material facts are at issue, detailed findings of fact are required to support the granting of a temporary injunction.").

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As the Estate has not satisfied its burden of demonstrating a likelihood that it will prevail on its claim at the conclusion of these proceedings, the Court properly should decline to enter a temporary injunction and should permit the matter to proceed to discovery so that the Court may render its ultimate determination on the Fee Motion, following an evidentiary hearing, on a fully developed factual record. See id. (holding that, without detailed factual

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findings, "[t]he record does not support the grant of the extraordinary remedy of a temporary injunction.").

B. Neither the Parties' Preexisting Relationship Nor Public Policy or Administrative Concerns Support the Entry of Injunctive Relief.

In addition to the Estate's failure and inability to demonstrate either that it will suffer irreparable harm absent an injunction—which, standing alone, requires the denial of injunctive relief—or that it is likely to prevail on the merits of the Fee Motion at this preliminary stage—which also properly should result in the denial of a temporary injunction—the remaining three Dahlberg factors also do not support the Court's entry of that extraordinary remedy.

With respect to the parties' preexisting relationship, Courts have held that where "the essence of the relationship between the parties is . . . contractual," the nature of that relationship "does not favor granting a temporary injunction." Emerge Cmty. Dev. v. Minn. Dep't of Empl. & Econ. Dev., No. A18-0555, 2018 WL 6273106, at *11 (Minn. Ct. App. Dec. 3, 2018). That is precisely the nature of the relationship between the Estate and CAK, which are contractual counterparties to the Advisor Agreement. As such, the parties' respective rights and obligations—including the Advisors' rights to receive and retain their earned commissions—necessarily are as set forth in that Agreement. As discussed above and in the Opposition to Fee Motion, the plain language of the Advisor Agreement compels the conclusion that the Advisors have no contractual obligation to refund to the Estate monies paid to them as earned contractual commissions—a conclusion that, as the Court of Appeals observed may very well be the case (November 25 Opinion at p. 16), will be outcome determinative in the present context.

Similarly, the factors concerning the "administrative burden" the Court would undertake in judicial oversight and enforcement of an injunction and the impact of an injunction on public policy do not favor entry of injunctive relief. While it may be that the Court's issuance *vel non*

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of a temporary injunction would not impose any significant administrative burden on the Court, the factor concerning public policy weighs, if anything, against the issuance of an injunction. While, as this Court has observed, the facts underlying these proceedings are unique in nature, it bears serious judicial consideration that issuance of a mandatory injunction requiring an estate representative or agent to disgorge—*even temporarily*—fees earned in connection with that agent's work performed for the benefit of the estate under a judicially approved transaction, without discovery, a full evidentiary hearing or any finding of wrongdoing, may dissuade others—including individuals with highly specialized knowledge such as the Advisors, who the Estate acknowledges brought significant value to the Estate in connection with the monetization of Estate assets—from serving as agents or representatives of other estates in the future. This is a significant policy consideration that further buttresses the conclusion that the Court should decline to enter injunctive relief against the Advisors.

CONCLUSION

Based on the foregoing, CAK Entertainment, Inc. and Charles Koppelman respectfully request that the Court decline to enter injunctive relief and permit this matter to proceed to discovery and its just resolution on the merits, following an evidentiary hearing and on a fully developed factual record.

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Dated: December 20, 2019

BERENS & MILLER, P.A.

/s/Barbara P. Berens
Barbara P. Berens, #209788
Erin K. Fogarty Lisle, #238168
Carrie L. Zochert, #291778
3720 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
bberrens@berensmiller.com
elisle@berensmiller.com
czochert@berensmiller.com

ROSENBERG, GIGER & PERALA P.C.

John J. Rosenberg, *pro hac vice*
Brett T. Perala, *pro hac vice*
1330 Avenue of the Americas, Suite 1800
New York, NY 10019
jrosenberg@rglawpc.com
bperala@rglawpc.com

Attorneys for CAK Entertainment, Inc. and Charles Koppelman