

DOCUMENT 1375

(with revised redactions, per this Court's Order, dated July 24, 2017)

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In re:

Estate of Prince Rogers Nelson,
Deceased.

Court File No. 10-PR-16-46

**AFFIDAVIT OF ROBERT J. LABATE
IN SUPPORT OF MOTION TO APPROVE PAYMENT
OF ATTORNEYS' FEES AND EXPENSES FOR PERIOD
NOVEMBER 16, 2016 THROUGH JANUARY 31, 2017
REGARDING ENTERTAINMENT LAW SERVICES**

AFFIDAVIT OF ROBERT J. LABATE

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Pursuant to Minnesota Statutes, section 358.116, I, Robert J. Labate, under penalty of perjury, affirm as follows:

1. I am an attorney duly licensed to practice law before all courts in the States of California, Illinois and New Mexico. I am admitted to practice in this matter *pro hac vice*, and if called as a witness, I could and would competently testify to the facts stated herein based on my own personal knowledge.

2. I am a Partner at Holland & Knight LLP (“**H&K**”), counsel for Tyka Nelson for entertainment matters. I submit this affidavit in support of H&K’s motion for approval of payment of attorneys’ fees and costs for the period between November 16, 2016 through January 31, 2017 (the “**Second Application Period**”) from assets of the Estate.

3. H&K was retained by Tyka Nelson (“**Tyka**”) on September 23, 2016 to provide legal services and specialized advice regarding the Estate of Prince Rogers Nelson (the “**Estate**”).

4. Pursuant to an order of this Court, dated October 6, 2016, approving six “short-form deals” (the “**Approved Deals**”), this Court authorized the Nelson Family to appoint representatives (“**Representatives**”) to offer input and assistance to the Special Administrator and its Advisors on behalf of the Nelson Heirs regarding negotiation of final long-form agreements (the “**Long-Form Agreements**”).¹

5. I serve as one of two designated Representatives.² Because the Long-Form Agreements were complex, with limited time to review, comment on, and to propose language for each agreement, I enlisted several other H&K attorneys during negotiation and drafting of the Long-Form Agreements and consideration of other proposed deals.

6. For example, Jorge Hernandez-Toraño, because of his extensive knowledge of the music industry, made frequent and important contributions to the Long-Form Agreement negotiations. In addition, Frank Keldermans and Richard Bixter revised and worked closely with Special Administrator’s counsel on the First Tennessee loan and security agreements executed in connection with the GMG Long-Form Agreement. Also, Lisa Kpor was responsible for obtaining draft documents posted on the secure Stinson HighQ website (often late at night) and providing Heirs’ counsel with those and many other documents, comments and revisions during the negotiations process.

7. During this time period, as a Representative, I engaged in frequent communication with counsel for the other family members, the Special Administrator, the Special Administrator’s Entertainment Advisors (the “**Advisors**”), and the other Representatives appointed to offer input and assist in negotiating revisions to the Distribution and License

¹ The Order authorized the Special Administrator to negotiate and execute six (6) Long-Form Agreements, 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).

² Additional details regarding my appointment as a Representative and related events are described in my affidavit in support of H&K’s Initial Fee Application, dated December 12, 2016. That affidavit contains information related to my qualifications as a Representative and biographies of other H&K attorneys who have worked on this matter.

Agreement with Universal Music Group (“**UMG**”) and the Music Performance Rights License Agreement with Global Music Rights, LLC (“**GMR**”).

Activities as Representative.

8. During the Second Application Period, H&K assisted with the negotiation and drafting of Long-Form Agreements with GMR, executed on December 30, 2016, and with Universal Music Group (“**UMG**”), executed on January 12, 2017.

9. In connection with the UMG Agreement, H&K was directly involved in negotiations with UMG and drafting of a [REDACTED] Consultancy Agreement (the “**Consultancy Agreement**”) between the individual Heirs and UMG.

10. In addition, H&K attorneys reviewed and provided comments to the Heirs regarding many other potential entertainment deals and opportunities presented to the Estate during the Second Application Period.

11. Finally, during the Second Application Period, H&K advocated for entry of a Protocol for Finalizing Court-Approved Entertainment Agreements (the “**Protocol**”). The Protocol – initially proposed by the Paternal Heirs’ counsel, Mr. Abdo, amended by the Special Administrator, and subsequently modified and entered by this Court – enabled the Special Administrator and the Heirs to work together in a cooperative and productive manner for the completion of the GMR and UMG Long-Form Agreements. This work, as described in greater detail in the H&K Invoices, is summarized below.

12. These fees if awarded are tax deductible by the Estate and thus will reduce the Estate’s overall tax burden.

13. H&K has also provided services that benefitted Tyka individually. H&K is not petitioning for the payment of fees incurred for those services from the Estate and those fees are not included herein.

Negotiation of the GMR Agreement.

14. The proposed GMR Long-Form Agreement was initially posted on the secure Stinson HighQ site on November 7, 2016 and, following significant revisions and the creation of Loan and Security Agreements, was executed on December 30, 2016.

15. During that seven-week period, Jorge Hernandez-Toraño and I prepared comments and proposed changes to the draft GMR Agreement, reviewed those comments and changes with other Heirs counsel, and participated in numerous conferences and exchanges of emails with the Advisors and with special counsel, Jason Boyarski, who had been retained by the Special Administration for negotiation of the GMR Agreement.

16. Among other issues, the Heirs worked with Mr. Boyarski so that the GMR Agreement conformed to other Long-Form Agreements [REDACTED]

[REDACTED]

17. H&K attorneys, Frank Keldermans and Rick Bixter worked closely with counsel for the Special Administration to substantially revise the First Tennessee Note and Security documents. [REDACTED]

[REDACTED]

18. The terms of the GMR Agreement was thoroughly vetted by the Representatives with Heirs counsel and changes were explained throughout the negotiations. Accordingly, when the GMR Long-Form Agreement was executed by the Special Administrator on December 30, 2016, it had the support of the Heirs.

Negotiation of the UMG Agreement.

19. [REDACTED]

[REDACTED]

20. [REDACTED]

[REDACTED] Because of the complexity of the UMG Agreement and because it concerned certain rights to the Vault Masters, it was the most challenging of the four Long-Form Agreements to negotiate.

21. The first draft of the UMG Long-Form Agreement was posted on December 18, 2016 for review and comment by the Heirs. Yet, all parties acknowledged that the December 18th draft required far-reaching revisions to dozens of provisions, including those concerning delivery of masters, vault album releases, digital licensing, cross-collateralization of WB revenue, termination rights, royalty payments, representations and warranties, and indemnification.

22. During the next six weeks, H&K worked closely and cooperatively with the Special Administrator’s Advisors and special counsel – Jeff Greenberg and Barry Perlman -- to achieve an agreement acceptable to all parties. For each set of revisions – sometimes twice per week – H&K prepared new comments, reviewed those comments with other Heirs counsel, and participated in numerous conferences with the Advisors and with special counsel retained just for negotiation of the UMG Agreement.

23. Dozens of substantive changes were made to the UMG Long-Form Agreement which involved [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

24. At the end of the six weeks of negotiations, the UMG Agreement was enormously better for the Estate thanks to the collective efforts of the Special Administrator, its Advisors and special counsel and the Representatives.

Negotiation of the Consultancy Agreement.

25. [REDACTED]

[REDACTED]

[REDACTED]

26. 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 the Special Administrator proved fruitless, Mr. Labate, as an Heirs' Representative, submitted a letter to this Court objecting to the Consultancy Agreement and requesting direct access to special counsel and UMG to complete negotiation of the Consultancy Agreement.

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

28. Among other things, the following are improvements to the Consultancy Agreement, suggested by the Representatives, that made their way to the final version:

■ [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

29. As a Representative, I negotiated the terms of the Consultancy Agreement with significant assistance from Mr. Wheaton and Mr. Hernandez-Toraño, and UMG has agreed to a form of Agreement that is now acceptable to all of the Heirs.

Review and Negotiation of Other Entertainment Matters.

30. H&K analyzed, commented on and consulted with Heirs counsel and with the Special Administrator on other entertainment opportunities presented to the Estate during the Second Application Period.

31. For example, H&K provided extensive comments to the Sirius XM Long-Form Agreement and chaired several discussions with Heirs counsel and the Special Administrator regarding the benefits and burdens of the proposed Prince Channel on 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 the Representatives.

32. The Special Administrator and the Advisors also considered other entertainment opportunities, each of which were analyzed by the Representatives and discussed at length with Heirs' counsel during the Second Application Period.

33. Some of these opportunities, referred to in the H&K invoices, have been discussed with Comerica, as Personal Representative, and, at the appropriate time, may be presented to this Court for approval.

34. The four Long-Form Agreements negotiated and executed during the Initial and Second Application Periods 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.

35. To assist the Heirs and Comerica in these duties, H&K is preparing charts summarizing key provisions of each Executed Agreement, which provide a guide for identifying issues requiring immediate attention by the Estate. For example, a copy of the Key Provisions Chart prepared by H&K for the UMG Agreement is filed under seal in support of this Second Application.

36. Additionally, while we were not involved in instituting the infringement action, H&K reviewed various filings related to the petition and copyright suit involving Roc Nation LLC. We also attended a hearing on Roc Nation's petition and participated in multiple teleconferences with the Special Administrator's counsel, counsel for the family members and the Advisor's counsel to discuss the impact of the infringement proceeding on the GMR and UMG Deals. We negotiated key carve-out provisions for the Roc Nation claimed rights in both agreements.

37. Although H&K provided advice to Tyka individually, for which reimbursement is not sought, the following H&K fees are sought for reimbursement for entertainment related legal services provided from November 16, 2016 through January 31, 2017 that benefited the Estate as whole:

<u>H&K Professional</u>	<u>Hourly Rate</u>	<u>Hours Expended</u>	<u>Total</u>
Christopher W. Boyett, Partner	\$790/hr	0.8	\$632.00
Frank Keldermans, Partner	\$760/hr	19.1	\$14,516.00
Jorge L. Hernandez-Toraño, Partner	\$750/hr	25.5	\$19,150.00
Vivian L. Thoreen, Partner	\$750/hr	1.7	\$1,275.00
Stacie P. Nelson, Partner	\$725/hr	11.8	\$8,555.00
Robert J. Labate, Partner	\$720-\$750/hr	133.8	\$97,167.00
Edward Diaz, Partner	\$600-\$625/hr	31.6	\$19,070.00
Robert Barton, Associate	\$550/hr	3.8	\$2,090.00
Richard A. Bixter, Associate	\$400-\$450/hr	21.5	\$8,775.00
Lisa M. Brown Kpor, Associate	\$380/hr	35.9	\$13,642.00
Jane Marie Russell, Associate	\$365/hr	6.9	\$2,518.00
Josefina Hernandez, Paralegal	\$280/hr	0.4	\$112.00
Total		292.8	\$187,502.50

38. H&K's entertainment-related legal fees are in the total amount of \$187,502.50 for services sought by this Motion. I and other attorneys at H&K have reviewed the original time entries for the legal fees submitted by H&K and affirm that the work was actually performed for the benefit of the Estate, was necessary for the proper administration of the Estate, and that the fees are reasonable given (1) the time and labor required; (2) the complexity and novelty of the transactions involved; and (3) the extent of the responsibilities assumed and the results obtained. The coordination of work required over several sophisticated and complex disciplines, and the time demands required finds the pending fee request reasonable under these unique circumstances. Furthermore, our firm's hourly rates and overall charges are fair when compared against the fees charged for comparable work for similar firms in other major metropolitan areas.

39. Given the complexity of the litigation, the Entertainment deals the Estate is negotiating and the results achieved, \$187,502.50 is a just and reasonable amount to be requested.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: March 3, 2017

/s/ Robert J. Labate
Robert J. Labate