

**STATE OF MINNESOTA
COUNTY OF CARVER**

**DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION**

In Re:

**Estate of Prince Rogers Nelson,
Deceased.**

**Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide**

REDACTED

**MEMORANDUM OF LAW IN
OPPOSITION TO COMERICA BANK &
TRUST, N.A.'S MOTION TO APPROVE
RESCISSION OF EXCLUSIVE
DISTRIBUTION AND LICENSE
AGREEMENT**

INTRODUCTION

Make no mistake: The Personal Representative's Motion is essentially a request to the Court that Comerica Bank & Trust, N.A. ("Comerica" or also referred to as "Personal Representative") do nothing to protect significant Estate assets already in hand; that having taken no part in over half a year of negotiating the deal with Universal Music Group ("UMG"), it now wants no part either in defending it. It asks this Court to bless its strategy without giving the Court or the Heirs evidence of a reasoned analysis based on the particular circumstances of the individual Estate despite the immense harm to the Estate both immediately and into the future if the rescission goes forward. Instead, the record suggests that Comerica has allowed Warner Bros. ("WBR") to exploit its unfamiliarity with the Estate and thwart a deal reached with an industry giant and competitor, UMG. Accordingly, Sharon L. Nelson, Norrine P. Nelson, and John R. Nelson ("Sharon", "Norrine", and "John", or collectively referred to as "SNJ") oppose Comerica's request to rescind the UMG deal.

FACTUAL BASIS

UMG is the largest record company in the world and several of its senior executives had working relationships with Prince. (June 6, 2017 Nelson Aff. at ¶ 6.) On February 9, 2017, UMG sent out a press release, trumpeting its deal valued more [REDACTED] with the Estate for the distribution of his music. (See May 17, 2017 Comerica Memorandum (“May 17, 2017 Memo”), at 5.) This deal was reached after approximately seven months of negotiations with a Minnesota company, Bremer Trust, N.A. (“Bremer”), serving as the Estate’s Special Administrator, and Bremer’s counsel and advisors. (*Id.* at 3–4.) It provided immediate benefit to Prince’s fans. (June 6, 2017 Nelson Aff. at ¶ 7.) As the Court is aware, Bremer and its advisors, had previously taken on sorting out an Estate that was in disarray. In addition to those efforts, Bremer and its advisors coordinated several lucrative deals for the Estate, generating capital with immediate and long-term benefits to the Estate, while navigating vociferous objections and careful scrutiny from the Court.

To help obtain and negotiate those deals, Bremer had retained services of entertainment attorneys for review of the transactions in addition to undisputed industry experts, including L. Londell McMillan, an industry expert who advised Mr. Nelson for years, as well as another industry expert, Charles Koppelman. (*Id.* at 3.) The UMG deal was reviewed by [REDACTED] [REDACTED]¹ (*See id.* at 4.) And it was reviewed by this Court, which ultimately approved the deal after the parties’ exhaustive review. (*Id.*) The announcement that Prince’s work, including previously-unreleased music from one of the country’s most loved and mourned artists, caught the attention of the music world. It was picked up by national publications such as *Billboard*² and the

¹ Of note, Kenneth Abdo, prior counsel for Sharon, Norrine, and John, participated in several deals and noted that Prince [REDACTED].

² “Prince Estate Selects Universal to Manage NPG Records Catalog, Unreleased Works,” *available at* <http://www.billboard.com/articles/business/7685869/universal-music-prince-npg-catalog-licensing-recordings>. Last accessed June 6, 2017.

*New York Times*³, and even made international news.⁴ More importantly, the deal provided the Estate with a notable asset, [REDACTED], and the continued relationship with UMG.

It also caught the attention of Warner Brothers (“WBR”), one of UMG’s competitors who had failed to secure rights obtained by UMG. The company’s historically contentious relationship with Prince is well documented in the press. The very next day after the UMG deal was announced, February 10, 2017, outside counsel for WBR wrote to Comerica to state that it had a confidential deal that may conflict with the UMG deal. (May 17, 2017 Memo, at 5.) By that time, WBR was already in contact with UMG and it rejected UMG’s request to share the purportedly conflicting contractual provisions on February 11, 2017. (May 17, 2017 Cassioppi Aff. at Ex. F.) Despite advising Comerica that it [REDACTED] that the UMG deal violated WBR’s rights, WBR asserted that [REDACTED] [REDACTED] (Id. at Exs. E and F.)

Also within that time frame, WBR issued its own announcement seemingly with Comerica’s approval of the reissue of Purple Rain album with previously unreleased music and concert film.⁵

Comerica’s briefing makes no references to any communications before that time with UMG, Bremer, or Bremer’s advisors to address WBR’s concerns. (May 17, 2017 Brief at p. 6.) After over a week with apparently no communication while Comerica held [REDACTED], UMG wrote to Comerica, Bremer, and Bremer’s advisors on February 22, 2017. (May 17, 2017

³ “Prince’s Post-1995 Albums and Music From His Vault Will Be Released by Universal,” available at https://www.nytimes.com/2017/02/09/arts/music/prince-estate-universal-music-group-vault.html?_r=0. Last accessed June 6, 2017.

⁴ “Universal Music in private Prince songs deal,” available at <http://www.bbc.com/news/business-38927235>. Last accessed June 6, 2017.

⁵ “Prince’s ‘Purple Rain’ Reissue Packed with Unreleased Music, Concert Films,” available at <http://www.rollingstone.com/music/news/princes-purple-rain-reissue-packed-with-unreleased-music-w466431>. Last accessed June 6, 2017.

Cassioppi Aff. at Ex. G.) UMG took no position regarding the veracity of WBR's assertions, but insisted on receiving copies of the relevant WBR agreements and indicated that it would consider litigation. (*Id.*) According to UMG, Comerica indicated UMG [REDACTED] outlined in the February 22, 2017 correspondence, but declined to provide the WBR agreements at issue. (*Id.* at Ex. K.)

Comerica responded on February 23, 2017 via letter and rather than offer any reassurance, sought to distance itself from the UMG deal, noting that it was not appointed until February 1, 2017 and although it had [REDACTED] with WBR, it offered no concrete steps or any comment on the agreement. (*Id.* at Ex. H.) The next correspondence by Comerica is dated March 10 and 27, 2017 when Comerica communicated with counsel for WBR. (*Id.* at Exs. I and J.) UMG was seemingly left to wonder whether Comerica was going to alleviate its concerns about the rights UMG had just paid [REDACTED] for earlier. Following receipt of the March 27, 2017 correspondence from WBR, Comerica shared [REDACTED] versions of letters between Comerica and WBR. (*Id.* at Ex. K.) Comerica apparently offered what was perceived as a [REDACTED] for following up with WBR and UMG again demanded documentation that would allow it to assess the rights at issue. (*Id.*)

Apparently frustrated with the lack of information or assurance despite the significant payment and almost two months' passing since the deal's announcement, counsel for UMG wrote to Comerica on April 4, 2017, noting that viewing the correspondence between WBR and Comerica had [REDACTED] regarding the scope of WBR's rights as it was [REDACTED] in light of the redactions. (*Id.* at Ex. K.) Rather than take any action to force WBR to share its

purportedly conflicting contract rights, Comerica responded on April 7, 2017 with one sentence addressed to the disclosure issue; [REDACTED]

[REDACTED] (*Id.* at Ex. L.) With respect to the ongoing deal issues, Comerica indicated that its entertainment advisor who was just retained in March, Troy Carter, would reach out to discuss resolving the matter. (*Id.*)

After a conversation on April 11, 2017, Comerica wrote again on April 14, 2017 to suggest

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] UMG responded that day indicating that the proposal was unacceptable and was [REDACTED] (*Id.* at Ex. N.) It demanded its money back and threatened litigation. (*Id.*)

UMG followed-up via letter on April 19, 2017 after Comerica requested the factual bases for UMG's positions. (May 17, 2017 Cassioppi Aff. at Ex. O.) UMG noted that Comerica's positions on WBR's rights placed [REDACTED] as Comerica declined to say that WBR's assertions regarding the June 30, 2018 reversion lacked merit. (*Id.*) UMG continued to threaten litigation, but offered to mutually rescind the contract if the funds were returned. (*Id.*) UMG followed up on April 25, 2017 noting that it would consider releasing the Estate's prior representatives as well and provided a proposed rescission agreement with a deadline for accepting the agreement. (May 17, 2017 Cassioppi Aff. at Ex. P.)

Comerica wrote back noting that the previous Estate representatives denied any wrongdoing and noting a [REDACTED]

[REDACTED]. Comerica referenced [REDACTED] with rescission and apparently for the first time, offered to arrange a meeting among UMG, Comerica, Bremer, and Bremer's representatives with counsel to discuss other resolution efforts. (May 17, 2017 Cassioppi Aff. at Ex. P.) However, Comerica also asked for an extension regarding the rescission agreement response. (*Id.*) UMG rejected the proposal on April 27, 2017. (May 17, 2017 Cassioppi Aff. at Ex. R.)

In the meantime, Comerica still suspected that [REDACTED] it asserted as evidenced in Comerica's additional correspondence to WBR dated April 26, 2017. (May 17, 2017 Cassioppi Aff. at Ex. S.) Indeed, Comerica laid out three arguments calling WBR's assertion into question, [REDACTED]

WBR did not respond until at least May 3, 2017. (May 17, 2017 Cassioppi Aff. at Ex. T.) It reasserted its previous positions [REDACTED]. Without any additional follow-up noted in the record with Bremer or any entertainment experts, Comerica advised the Heirs on May 4, 2017 that it would be filing a motion to obtain the Court's approval to rescind the UMG deal. (June 6, 2017 Dahl Aff. at Ex. A, May 4, 2017 e-mail from J. Cassioppi.) Of note, there is minimal record of efforts between Bremer and Comerica to collaborate despite the common interest agreement approved by the Court.

The correspondence demonstrates that Comerica declined to involve Bremer or Bremer's advisors in the matters developing with UMG early on, despite its admitted lack of familiarity with the Estate's assets. It never sought the Court's assistance in disclosing the WBR provisions in dispute to UMG to allow UMG to assess the situation early on and did not propose a meeting with Bremer and Bremer's advisors until almost two months after WBR created the dispute. All the while, UMG was left in the dark with a new personal representative unwilling to provide any assurance that UMG had the rights it paid [REDACTED] for or any meaningful attempt to force WBR to show its hand. Indeed, for the last several months [REDACTED]

[REDACTED]

[REDACTED]

It worked, even though many lawyers, parties, and industry experts had reviewed and approved the UMG deal and presumably, [REDACTED]. As the Court is aware, the Heirs sought significant input into the UMG deal at issue and none of them previously raised any concern for potential conflict with [REDACTED]⁶ Comerica recommends to this Court that the Estate not defend the agreement because it has been "unable to rule out" one of WBR's "assertion[s]" about the conflict. (*See* May 17, 2017 Memo, at 9.) In doing so, Comerica is depleting the assets that belong to the Heirs (as recently determined by the Court) and is inconsistent with every interpretation of WBR's rights offered in the case to-date by anyone [REDACTED], including Sharon. (June 6, 2017 Nelson Aff. at ¶ 12.)

⁶ One of their attorney's, Van Jones was significantly involved in the WBR deal. (Jan 12, 2017 Hg. Tr. at p. 138) ("And so when we finally got that deal we negotiated, there were three people in the room when Prince signed that deal: Prince, Phaedra and myself"). As an aside, he also now appears to be affiliated with Roc Nation, an entity currently involved in litigation against the Estate. "Roc Nation Welcomes Van Jones to the Family," available at <http://rocnation.com/roc-nation-welcomes-van-jones-to-the-family/>. Last accessed June 6, 2017.

Indeed, Comerica seeks permission to rescind the deal and, in the purported “best interests of the estate,” to return ██████████ to UMG, and return a treasure trove of Prince’s previously unreleased music to the Vault. SNJ object to the rescission and believe Comerica’s handling of the matter demonstrates being unprepared to administer the Estate’s assets as it failed to provide significant detail regarding the situation to the Heirs or work with Bremer and its advisors to defend the UMG deal. (June 6, 2017 Nelson Aff. at ¶¶ 8-11, 13-14.) In addition, the rescission will harm the Estate’s business reputation. (*Id.* at ¶ 15.) As noted by Omarr Baker’s attorneys, “Rescinding the UMG Agreement will result in substantial damage to the Estate, not only as a result of the cost of entering into the agreement . . . but also as a result of the damage to the PRN brand and the inability to obtain a suitable replacement. (June 5, 2017 Letter to the Court from T. Kane.) Because the Personal Representative’s role is to *act* in the best interests of the Estate to preserve its assets, including (when necessary) to sue or be sued on behalf of the estate, and because the failure of the Estate to defend the deal it spent so much effort in negotiating will result in present and future irreparable harm contrary to the Estate’s interest, Heirs Sharon L. Nelson, Norrine P. Nelson, and John R. Nelson oppose Comerica’s motion.

ARGUMENT

This Court has previously recognized the “extraordinary circumstances of this Estate and the interests of the Non-Excluded Heirs.” (Mar. 22, 2017 Order, at 2.) Precisely for this reason, it is essential that the suitable Personal Representative be “equipped by temperament, experience, and sagacity to discharge the trust with fidelity, prudence, and promptness . . . having regard to the special conditions of each estate and those interested in it as creditors, legatees, and next of kin.” *In re Crosby's Estate*, 15 N.W.2d 501, 506 (Minn. 1944). Moreover, as Personal Representative, Comerica has a duty to protect and preserve the assets of the Estate for proper distribution to the rightful heirs. *See* Minn. Stat. § 524.3-703; *In re Lund's Estate*, 217 Minn. 617, 626, 15 N.W.2d

426, 431 (1944); *In re Simmons' Estate*, 214 Minn. 388, 397-98, 8 N.W.2d 222, 226-27 (1943); *Estate of Falk*, No. C6-90-1834, 1991 WL 6380, at *2 (Minn. Ct. App. Jan. 29, 1991). While it also has the statutory authority to refuse performance of contracts under Minn. Stat. § 524.3-715, this ability is in the context of the broader requirement that the Personal Representative must act in its fiduciary role. In other words, Comerica is only justified in rescinding this deal if the refusal to perform is based on experience, prudence, and made regarding the “special conditions” of the Estate.

At least two problems exist with Comerica’s request. First, Comerica fails to create an adequate record of its position to justify obtaining the Court’s approval, and second, rescission will cause irreparable harm to the Estate given the Estate’s interest in preserving the deal. Regardless of whether the Court grants rescission, SNJ respectfully submit that limited discovery should be conducted regarding the developments with WBR.

I. Comerica Fails to Offer Evidence Allowing for Meaningful Judicial Review of the Proposed Rescission.

First, Comerica does not engage in the cost-benefit analysis in which any experienced Personal Representative would engage. In support of its rescission request, Comerica offers generalized assertions that rescission is necessary “to avoid protracted litigation.” (May 17 Memo, at 11.) It further claims that “the Estate’s potential liability exceeds the cost of rescission,” and that a loss at trial could lead to liability [REDACTED] (May 17 Memo, at 13.) Hanging in the balance is an approximately [REDACTED], less expenses already incurred, to the Estate on one side. On the other side is . . . an analysis that Comerica has not provided.

For example, what is the chance of a loss at trial? Is there any real exposure for the punitive damages Comerica references? How much more is the Estate likely to spend in attorneys’ fees in cases where Comerica enforces the contract versus cases where it rescinds it? (*Id.* at 13–14.) How

many other companies are interested in the rights like the rights granted under the UMG deal, and how much less will they pay than UMG would pay under the contract? If other offers were on the table, would those offers still be on the table, despite knowing that the Personal Representative will run up the white flag at the first sign of trouble? If the Estate “would incur a significant loss of income while the litigation is pending” because of lost royalties (*Id.* at 14), how much income in lost royalties will the Estate lose while spending another seven months or so negotiating another deal? In short, what does Comerica opine as to the validity of WBR’s arguments? Comerica’s memorandum leaves the reader—and the Heirs—with more questions than answers.

It is apparent that Comerica provides no analysis that would answer these questions. For instance, Comerica lists having consulted with eight individuals, but gives no hint as to their conclusions, either by letter or affidavit. (May 17 Memo, at 7.) Comerica’s listing of eight individuals with whom it has consulted should be taken with a grain of salt, given that it does not tell the Court what their conclusions were—especially considering Mr. McMillan’s informed and forceful rejection of Comerica’s position and Bremer’s unequivocal support of the UMG deal. Instead, Comerica is taking the position that it is easier just to remain safely in the harbor. Here, the issue is not only that Comerica holds the wrong position, but that it fails to take a real position at all.

In similar contexts, a fiduciary is derelict in its duty by failing to engage in this sort of analysis. Boards of directors do not gain the deference of the business judgment rule if they fail to thoroughly analyze the decisions they make. *Janssen v. Best & Flanagan*, 662 N.W.2d 876, 889 (Minn. 2003) (“[Special litigation committee] also gave no indication that he had undertaken the careful consideration of all the germane benefits and detriments to [Appellant non-profit] that is indicative of a good faith business decision”). An insurer may be liable for breach of its fiduciary

duty of good faith for failing to properly evaluate a claim. *Kissoondath v. U.S. Fire Ins. Co.*, 620 N.W.2d 909, 916 (Minn. Ct. App. 2001) (citing *Boerger v. American Gen. Ins. Co.*, 257 Minn. 72, 76–77, 100 N.W.2d 133, 136–37 (Minn. 1959)). Comerica should be held to no less of a duty to properly evaluate the legal questions involved, rather than resorting to vague statements about the dangers of litigation without even taking a position on the veracity of the claims.

Second, Comerica fails to take a position and its memorandum ignores obvious problems with its own logic. For instance, it openly requests that “the Court should issue guidance on whether the Estate should investigate and pursue recovery of the [REDACTED] paid to McMillan and Koppelman.” (May 17 Memo, at 14.) “Pursue recovery” here is a euphemism for “sue.” Yet the result of such a suit would be exactly the litigation Comerica claims that it seeks to avoid. Inevitably, the subject of the lawsuit would be whether McMillan and Koppelman should return the funds based on UMG’s allegations of fraud about the nature of the two agreements. (May 17, 2017 Memo, at 6.) This is the very litigation Comerica insists it is trying to prevent because it “cannot rule out” a conflict. (*Id.*, at 13.) The same issues are likely to be relevant to either suit and any other litigation related to the rescission as alluded to by Omarr Baker, and the same questions of fact, discovery, and ultimate legal conclusions are likely to result either way. Comerica ignores the obvious fact that whether initiated by WBR, UMG, a consultant accused of fraud, other Heirs, or the Estate itself, litigation is potentially inevitable. The evidence from Comerica’s own memorandum indicates that it is racing for shelter instead of fighting for the deal so many people put so much time, effort, and money into negotiating. It is one thing to make a wrong judgment, but wholly another to not make any judgment at all.

Third, Comerica’s statements about the dispute between WBR and UMG reveal that Comerica fails to take a position on the issue central to the rescission request of whether WBR’s

rights conflict with the UMG deal. Comerica's memorandum lays out at some length what it examined and who it consulted. (May 17 Memo, at 7.) But Comerica fails offer any affidavits of these purported experts, or even summarize their conclusions. Moreover, there's no suggestion that Comerica has consulted with any experts on entertainment litigation. Even more significant is its apparent conclusion: That after review, "the Estate is not guaranteed a favorable outcome in the litigation" because "the Personal Representative cannot rule out the possibility that the UMG Agreement and 2014 WBR Agreement are in conflict." (*Id.* at 13.) This is not a conclusion that the deals are in conflict, or even that they are not in conflict, but that the cost of enforcing them could *possibly* outweigh the benefits. Comerica apparently just does not know.

Comerica's position is not a conclusion. It is a capitulation. Comerica asks the Court to allow it to rescind the deal because it is in the unique position of not knowing in advance the outcome of litigation. But Minnesota statutes specifically anticipate a personal representative having to sue or be sued as an integral part of administering an estate. Minn. Stat. § 524.3-703(c); § 524.3-715(22). This leads to the suggestion that Comerica has not engaged in a true cost-benefit analysis of litigating the deal or is refusing to share the details of the review with the Court or the Heirs despite the request for judicial approval.

Comerica's apparent inability to decide (one way or another) whether the ■■■ contracts conflict is one of the reasons that Sharon, Norrine, and John requested a co-Personal Representative who was familiar with the sort of issues that have confounded Comerica. As Sharon Nelson testified, the Estate could not afford to wait for the next personal representative to go through "Prince 101" as Comerica seemingly attempted to do while trying to navigate a dispute in its first weeks as personal representative with UMG, an industry giant, and WBR, a long-time Prince antagonist. SNJ's petition for Mr. McMillan to be appointed as co-Personal Representative

now appears prescient, as Mr. McMillan has experience dealing with contracts in the music industry, more than a decade of representing Prince, and has dealt before with the sort of bullying in which WBR is currently engaged. Even if it were not Mr. McMillan, a personal representative ought to have the experience and expertise to handle exactly this sort of situation and make a decision on whether the contracts conflict. Comerica is unable to do so, and so for this reason alone, its motion should be denied.

Comerica's actions confirm SNJ's concerns expressed during the personal representative selection. Instead of protecting the Estate's rights akin to Bremer's swift response in the TIDAL litigation, Comerica appeased WBR early on by seeking WBR's analysis and input while doing nothing to assuage the concerns raised by UMG, the industry leader that just provided [REDACTED] to the Estate. Comerica was admittedly skeptical of WBR's claims and appeared uncertain of those same claims as of April 27, 2017, yet allowed WBR to thwart UMG's deal without even attempting to force WBR to disclose the relevant contract provisions to UMG. Comerica's actions invited UMG's demand for rescission.

Of note, the only entity to conclude that the deals conflict to date is WBR, which certainly has an interest in the rescission moving forward. Comerica's refusal to defend the UMG deal is problematic given the exhaustive review of the deal, Bremer's ongoing support for the deal, and the contract analysis. SNJ will not belabor the exhaustive review of the UMG deal before the Court's approval as stated above, but note that Bremer continues to support the deal as expressed in its June 1, 2017 correspondence letter to the Court and Mr. McMillan supports the deal as well. Conversely, Comerica offers no details of its review. In short, the sheer volume of support for the UMG deal undermines Comerica's position.

With respect to the specific contractual terms, SNJ will not rehash those terms and joins in anticipated pleadings from Mr. McMillan with respect to the contractual analysis. Moreover, courts generally disfavor rescinding contracts. *See Spiess v. Brandt*, 230 Minn. 246, 41 N.W.2d 561 (Minn. 1950) (cautioning against setting aside written instruments upon weak and inconclusive evidence). The plain meaning of [REDACTED]

[REDACTED]
[REDACTED] This is consistent with [REDACTED] Bremer's unequivocal support of the UMG deal. As such WBR's positions appear to be unfounded and certainly do not justify rescission. Under these circumstances, Comerica fails to make an adequate showing to justify the Court approved the proposed rescission.

II. Comerica's Request Will Do Extensive and Perhaps Irreparable Damage to The Estate

Recognizing the high-stakes decision to rescind a multi-million-dollar contract while the Estate is trying to maximize the value of the estate, Comerica seeks this Court's blessing to back out of the contract. Comerica's request and response to the situation, however, are inconsistent with its fiduciary duty to the Estate and its Heirs to protect the assets, including the [REDACTED] [REDACTED] and the relationship with UMG. No doubt Comerica would feel safer behind the breakwater of an Order from this Court approving the deal, but to do so, Comerica should have provided this Court sufficient information to make this review meaningful. Compared to the scant case the Personal Representative makes in support of its motion to surrender, the potential damage to the Estate demonstrates exactly why this Court's Order—and anticipation of prospective relief—was necessary.

Here, Comerica's refusal will do—and has already done—more damage than even WBR's attack. Because Comerica has refused to defend the deal, UMG has demanded [REDACTED] back—[REDACTED]—raising the specter of litigation no matter what decision this Court issues. (May 17, 2017 Memo, at 14–15.) Also, because Comerica refused to defend the deal, unsubstantiated and frivolous allegations that Bremer and its representatives committed fraud have pervaded the press coverage of the event, clouding the issues involved in the Estate.⁷ Perhaps more importantly, Comerica's refusal to defend the deal has damaged the Estate's ability to effectively enter deals for the Estate's intellectual property. Comerica has made it clear that the Estate will leave its business partners to doubt the reliability of their contracts, capitulate to threats, back out of contracts, and allow distribution rights to become clouded in the press room rather than enforce its rights in the courtroom or at the negotiating table. WBR has recognized and acted on this capitulation—[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

⁷ See, e.g., "Universal Accuses Prince Estate of Fraud, Requests Deal Be Canceled," *available at* <http://www.rollingstone.com/music/news/universal-accuses-prince-estate-of-fraud-seeks-to-end-deal-w481868>. Last accessed June 6, 2017.

██████████, this is a recognition by WBR that Comerica has undermined the decision of Bremer Trust and all the other parties who negotiated the deal, and more importantly, that Comerica's decision not to take a position early on emboldened WBR in forcing its competitors to withdraw their payments to the Estate.

UMG, meanwhile, has expressed that it was also relying on Comerica to review the deal, since it did not have the ability to do so itself. (*See also* May 30, 2017 UMG Recording, Inc.'s Joinder in Comerica Bank & Trust, N.A.'s Motion To Approve Rescission of Exclusive Distribution and License Agreement) ("As the Personal Representative cannot provide UMG assurances that WBR does not in fact hold conflicting rights") In addition to failing to defend the deal, Comerica's actions antagonized Universal as it seemingly engaged in initial and more frequent contact with WBR regarding the situation, despite the pending payment from UMG and allowing WBR to announce the Purple Rain Deluxe album within just days of the UMG deal press release. Worse yet, after several requests for assurances or for the WBR contract provisions at issue, Comerica responded with settlement proposals and never attempted to disclose the WBR contracts to UMG via the Court or otherwise. In taking these actions, Comerica put the advance from UMG in doubt and damaged the relationship with UMG, a titan in the record industry.

Here, Comerica proposes to throw away the time, money, and resources put forth by Bremer and its counsel and consultants, the Non-Excluded Heirs and their counsel and consultants, and the Court in securing a deal with a well-known, global corporation. In addition to offering the best financial deal at the time, UMG offers reputable and sophisticated anti-piracy and copyright protection on a global basis and worked with the Estate to make the deal despite the challenging circumstances in getting the Estate in order. Allowing Comerica to back out of the deal on behalf of the Estate certainly commits waste of the resources already expended. But it also makes any

future deals less likely, less valuable, and subject to much more scrutiny. The waste of [REDACTED] [REDACTED] already expended will be a small proportion of the time, money, and effort expended in the future if Comerica can rescind the UMG Agreement. Indeed, Comerica's proposed rescission is particularly harmful given the lack of any proposed alternative for the anticipated monetary losses with rescission to replace [REDACTED] [REDACTED]. The opportunities presented by UMG and the benefits of the deal warrant protection and Comerica's request for rescission should be rejected.

III. SNJ Request Discovery Regarding the Proposed Rescission.

The Court has significant discretion in authorizing discovery in this matter or ordering production of information. SNJ request discovery regarding WBR's contract terms and similar dealings. In addition, SNJ seek information to direct discovery to Comerica to obtain information regarding its efforts and review of the purported conflict between the UMG and WBR deals. As indicated above, Comerica's briefing and supporting materials fail to delineate the information necessary to assess the proposed rescission and Comerica's response to the situation with UMG and WBR. More specifically, the pleadings fail to delineate the results of the consultations regarding WBR's assertions, the depth of Comerica's efforts to assess the situation, the details of the consultations conducted, the timeliness of Comerica's response and investigation, or other efforts to protect the Estate. The stakes to are too high not to fully assess Comerica's actions and the bases for the proposed rescission. At a minimum, authorization for rescission should be withheld pending disclosure of the conflicting WBR provisions to UMG. Accordingly, SNJ respectfully request that the Court exercise its discretion to Order discovery into these matters.

CONCLUSION

Instead of taking a position on any possible conflict between the WBR and UMG Agreements, the Personal Representative has brought a motion claiming that the decision was too

hard, and it should be allowed to do nothing – with the Court’s approval and without any detailed showing of its analysis. If Comerica cannot be relied upon to draw on the experience of qualified lawyers and industry experts to take a position and stand by it, the assets of the Estate will never realize their full worth, valuable recordings of Prince’s legacy will remain unheard, and the timidity of the Comerica will leave the Estate worse off. It is the Personal Representative’s responsibility to act in the best interests of the Estate. In this motion, it has failed to do so. For these reasons, SNJ respectfully submit that Personal Comerica’s motion for rescission be denied.

Respectfully submitted,

Dated: June 6, 2017

HANSEN, DORDELL, BRADT, ODLAUG
& BRADT, P.L.L.P.

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