

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

Case Type: Supervised Administration

In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
OBJECTION TO PETITION TO
PERMANENTLY REMOVE COMERICA
BANK & TRUST, N.A. AS PERSONAL
REPRESENTATIVE**

REDACTED

INTRODUCTION

Sharon Nelson, Norrine Nelson, and John Nelson (the "Nelsons") have made one thing abundantly clear: they are unhappy with the current status of the Estate of Prince Rogers Nelson (the "Estate"). Comerica Bank & Trust, N.A. ("Comerica" or the "Personal Representative") greatly regrets the Nelsons' displeasure with the status of the Estate and is committed to continuing to work with all of the Heirs to honor Prince's legacy, maximize the value of the Estate, and ultimately transition the assets of the Estate to the Heirs.

Unfortunately, rather than attempting to work cooperatively with the Personal Representative to address any concerns, the Nelsons have resorted to filing a Petition replete with objectively false statements and baseless personal attacks in a misguided attempt to remove the Personal Representative. The Nelsons are certainly entitled to their own opinions, but they are not entitled to their own facts. As set forth herein, the purported bases for the Petition are all either fabricated by the Nelsons (such as the "undisclosed" transfer of audio and visual assets or alleged failures to communicate with the Heirs or protect estate intellectual property) or are a

result of circumstances outside of the Personal Representative's control (such as the Nelsons' entertainment advisor's refusal to sign a non-disclosure agreement, and the fact that the Personal Representative cannot make distributions to the Heirs until it receives the taxing authorities' positions on the estate taxes owed by the Estate). In reality, the Nelsons and their entertainment advisor simply want to exercise complete control over the Estate and are upset that the Personal Representative—making decisions for the benefit of all of the Heirs—on certain occasions disagrees with their positions.

The Personal Representative and the team it has assembled are uniquely qualified to administer an estate of this complexity and magnitude. The Personal Representative respectfully requests that the Court deny the Petition in its entirety and allow the Personal Representative to continue to administer the Estate for the benefit of all of the Heirs.

OBJECTION

I. STANDARD ON PETITION TO REMOVE A PERSONAL REPRESENTATIVE.

Minnesota Statutes § 523.3-611 provides that an interested person may petition for removal of a personal representative for cause. Cause for removal exists:

when removal is in the best interests of the estate, or if it is shown that a personal representative . . . intentionally misrepresented material facts in the proceedings leading to the appointment, or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of office, or has mismanaged the estate or failed to perform any duty pertaining to the office.

Minn. Stat. § 524.3-611(b). Although Minnesota caselaw provides only limited guidance regarding the standard for removal, other courts interpreting identical or substantially similar provisions based of the Uniform Probate Code have explained that a party seeking to remove a personal representative bears a heavy burden. *See, e.g., Gresham v. Strickland*, 784 So.2d 578, 581 (Fla. Dist. Ct. App. 2001) (“Generally, removal . . . should be predicated upon a clear showing of abuse or wrongdoing in the actual administration of the [estate]”). The petitioner

seeking removal “assume[s] the burden of proving some valid grounds for removal.” *Matter of Estate of Robbin*, 747 P.2d 869, 871 (Mont. 1987). “An order of removal of (a personal representative) is harsh and severe; and irregularities not directly harmful in the management of the estate will be overlooked.” *Id.*

Minnesota courts have removed personal representatives in only limited circumstances, such as when the personal representative failed to comply with specific statutory duties, or where there was gross mismanagement of the estate. For example, the Minnesota Court of Appeals affirmed the district court’s removal of a personal representative when he did not file the estate’s inventory within the time required by statute, and the inventory, once filed, was “inaccurate and incomplete.” *In re Estate of Loewe*, No. CO-89-1077, 1989 WL 138989, at *1-2 (Minn. Ct. App. Nov. 21, 1989). Similarly, the Minnesota Court of Appeals affirmed a removal order when the personal representative mismanaged the estate by grossly undervaluing assets in a sale for his own benefit. *In re Estate of Anderson*, No. A15-1513, 2016 WL 3582414, at *3-4, 6 (Minn. Ct. App. July 5, 2016).

When an interested party seeks to remove a personal representative based on allegations that it has mismanaged an estate, courts require that the mismanagement involve either self-dealing or a pattern of multiple harmful or inept actions. *See id.* (finding self-interested estate mismanagement constituting cause for removal where the personal representative sold estate’s farm land to his son, with whom the personal representative engaged in farming operations, for \$1.6 million when the land was valued at more than \$2.9 million); *see also Gresham*, 784 So.2d at 581 (noting precedent that “minimal mismanagement” is insufficient to warrant removal) (citing *Estate of Murphy*, 336 So.2d 697, 698-99 (Fla. Ct. App. 1976) (holding that removal was improper when the estate was not prejudiced or harmed by personal representative’s late filing of

an accounting)); *In re Estate of Nelson*, 794 P.2d 677, 679 (Mont. 1990) (affirming removal of personal representative for misappropriation of estate funds when evidence strongly suggested that personal representative transferred \$60,648.60 to his own checking account by forging decedent's signature on checks while decedent was in a coma).

Courts have declined to remove a personal representative merely because the heirs and the personal representative disagree about a particular transaction or course of action. *See In re Kramek Estate*, 710 N.W.2d 753, 759-60 (Mich. Ct. App. 2005) (holding that "ordinary dispute" between personal representative and heirs regarding terms of an estate settlement agreement was not a legitimate basis for removal when the dispute could be handled expeditiously by the parties and the trial court and the dispute did not otherwise cause harm to the estate). Moreover, while a court may consider conflicts between the heirs and a personal representative in analyzing a removal petition, the existence of such conflicts alone will not provide cause for removal unless they are accompanied by severe and injurious behavior. *See In re Estate of Giebel*, No. A13-0213, 2013 WL 6223508, at *1, *3 (Minn. Ct. App. Dec. 2, 2013) (affirming district court's order removing personal representative due to "considerable animosity" between personal representative and heirs when personal representative refused to share information about the probate action, threatened to charge heirs fees when they requested information, automatically blocked all the heirs' emails, and scheduled depositions of the heirs to uncover their "alleged improprieties"); *Matter of Estate of Sumpter*, 419 N.W.2d 765, 770 (Mich. Ct. App. 1988) ("Personal animosity between the personal representative and one beneficiary of the estate is an insufficient reason for removal"); *see also In re Murphy's Estate*, 336 So.2d 697, 699 (Fla. Dist. Ct. App. 1976) ("The mere fact that a certain hostility has arisen between a beneficiary and the [personal representative] absent some showing of wrongdoing on the part of the [personal

representative] or other factors which will prejudice the administration does not warrant such drastic action as removal.”).

II. THE PERSONAL REPRESENTATIVE MOVED AUDIO AND VISUAL CONTENT FROM PAISLEY PARK TO A SECURE FACILITY TO SAFEGUARD THE ASSETS AFTER MONTHS OF DISCUSSION AND CONSULTATION WITH THE HEIRS.

Foremost among the criticisms raised by the Nelsons is their allegation that the Personal Representative surreptitiously removed audio and visual assets from Paisley Park and sent the assets to an Iron Mountain facility in California, where, the Nelsons contend, it will be subject to “theft, loss, damage, leaks, and the risk that the contents will not be properly inventoried, evaluated, or copied.” (Pet. ¶ 19.) According to the Nelsons, these actions were not disclosed in advance to the Nelsons and demonstrate that the Personal Representative “mismanaged the Estate” and “wasted and failed to protect valuable Estate assets.” (*Id.* ¶ 11.) Unfortunately for the Nelsons, these criticisms—like the vast majority of the allegations included in the Petition—are a complete fantasy of the Nelsons’ own creation. In reality, the Estate’s audio and video assets were subject to a much greater risk of theft, loss, and damage at Paisley Park than at Iron Mountain’s secure entertainment storage and archiving facility. Moreover, the Personal Representative began discussing its decision to move the assets with the Heirs several months before any move occurred.

A. Removing the Estate’s Audio and Video Assets from Paisley Park Was Necessary to Safeguard Against Theft, Loss, and Degradation.

The Nelsons’ objection to moving the Estate’s audio and video material appears to rest primarily on their erroneous belief that Paisley Park is “the best location for the material” and that it was “kept secure” there. (Pet., ¶¶ 15, 19.) As documented by expert consultant reports and observed by the Personal Representative and Iron Mountain’s staff on site, the audio and video material stored at Paisley Park was not being properly preserved or securely stored.

Contrary to the Nelsons' allegation, the Personal Representative has not "failed to prepare detailed accounting, failed to catalogue, failed to barcode, and generally failed to professionally employ best practices to protect and administer" the audio and video assets at Paisley Park." (Pet. ¶ 16.) To the contrary, the Personal Representative began the process of creating a detailed inventory of the audio and video material housed at Paisley Park almost immediately after it was appointed. Comerica as an institution committed several of its employees to oversee this effort, including an individual with expertise and background in running, auditing, and inventorying bank trust asset vaults. More specifically, the Personal Representative created a customized Access database to log and track inventory and trained its staff on the database and inventory procedures. (Wolfe Dec. ¶ 2.) In March 2017, the Personal Representative began the inventory process on-site at Paisley Park. Item by item, the Personal Representative logged each asset's description, condition, and location. (*Id.*, ¶ 4.) Each asset was assigned a unique number and barcode that corresponded to its entry in the inventory database. (*Id.*) By August 11, 2017, the Personal Representative had entered nearly [REDACTED] assets into its database and since then, the number has increased to nearly [REDACTED]. The inventory process is now approximately 90% complete. (*Id.*, ¶ 5.)

During the inventory process, the Personal Representative discovered several circumstances that caused it concern regarding the safety and longevity of the Estate's assets at Paisley Park. (Wolfe Dec. ¶ 6.) First, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*, ¶ 3.) Second, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*, ¶ 6.) Third, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*) Fourth, none of the spaces being used for storage—including the vault—appeared to have climate control systems sufficient to preserve audio and video material. During its inventory, the Personal Representative discovered several indications of damage and degradation due to poor humidity and temperature controls. It encountered cardboard boxes that were adhered to shelves and had to be peeled off, mold and water damage on the materials, rusting film canisters, degrading film that smelled of vinegar (a sign of acetate degradation), and evidence of water intrusion on walls and ceilings in the vault and elsewhere. (*Id.*) Fifth, Paisley Park is now a museum and open to the public, further heightening security concerns. (*Id.*)

The Personal Representative’s concerns are echoed in [REDACTED]

[REDACTED]

[REDACTED]. Contrary to the Nelsons’ allegation in the Petition, [REDACTED]

[REDACTED] (Pet. ¶ 18.)

Rather, his report noted that:

[REDACTED]

[REDACTED]

(November 10, 2017 Declaration of Andrea Bruce (“Bruce Dec.”), Ex. B.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(*Id.* at 2.)

The Personal Representative’s concerns regarding Paisley Park were also confirmed by the February 2017 report of Stillwater Consultants, LLC (“Stillwater”), an expert security consultant that the Personal Representative hired to evaluate Paisley Park. The Stillwater report noted [REDACTED] (Bruce Dec. ¶

8 & Ex. C.) Specifically, the Stillwater expert expressed concern over [REDACTED]

[REDACTED] and noted during a walk-through of the vault that

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*, Ex. C.)

Based on these deficiencies in the security and the storage conditions generally at Paisley Park, the Personal Representative concluded that it was in the best interest of the Estate to store the Decedent’s irreplaceable audio and video assets elsewhere. Indeed, [REDACTED]

[REDACTED]

[REDACTED] (Bruce Dec., ¶¶ 9, 10.)

B. Iron Mountain's Hollywood Facility Is the Optimal Location for Storing and Archiving the Estate's Audio and Video Assets.

After researching and vetting storage and archiving facilities, the Personal Representative and its entertainment advisor chose to transfer the audio and video assets from Paisley Park to Iron Mountain Entertainment Services' facility in Hollywood, California based on its unique and specialized entertainment storage and archiving capabilities.

Contrary to the Nelsons' allegation that moving the Estate's assets to Iron Mountain's facility "exposed them to theft, loss, damage, [and] leaks," the move was completed under strict security protocols and supervised by the Personal Representative. (Pet. ¶ 19.) In fact, an officer from Comerica supervised the loading of the Estate's assets onto Iron Mountain's trucks at Paisley Park, personally sealed the trucks, monitored the trucks by GPS, flew to Los Angeles, and then personally verified and broke the seals upon the trucks' arrival at Iron Mountain's Hollywood facility. The Carver County Sherriff's Office was also notified of the heightened activity at Paisley Park when the assets were loaded onto Iron Mountain's trucks. (Wolfe Dec. ¶ 9.) Each of the Estate's assets was assigned a unique barcode that matches the inventory database. The assets were scanned at Iron Mountain's facility upon unloading and scanned again upon their placement in the Estate's vault at Iron Mountain. (Bricker Dec., ¶¶ 6-7.) At Iron Mountain's Hollywood facility, the Estate's assets are stored in a private vault that is climate controlled and protected by state-of-the-art security. (*Id.*, ¶¶ 9-10.)

The Nelsons' allegation that "there will be little if any ability to control access" to the assets at Iron Mountain is also baseless. (Pet. ¶ 17.) Access to the Estate's private vault is controlled by the Personal Representative, closely monitored, and limited to only select Iron Mountain and Comerica representatives or other parties specifically authorized by the Personal Representative. (Bruce Dec., ¶ 15; Bricker Dec., ¶ 11.)

The Personal Representative also chose Iron Mountain's Hollywood facility because it houses a specialized archiving studio staffed by expert engineers specialized in the restoration and digitization of audio and video material. (Parkin Dec., ¶ 4.) This enables the Estate to access and digitize the audio and video content without having to remove the assets from Iron Mountain's secure facility.¹ It also permits the Estate to preview content for its entertainment partners with greater convenience and less expense, as most of the Estate's entertainment partners or potential partners are based nearby in Los Angeles. In fact, the Estate has already utilized Iron Mountain's studio to access content from the vault to assist in its negotiation of the proposed entertainment transaction with [REDACTED]. (November 10, 2017 Declaration of Troy Carter ("Carter Dec."), ¶ 6.) To minimize costs, the Estate plans to primarily archive and digitize audio and video content on an as-needed basis as it enters into entertainment deals for the content. By archiving and digitizing the materials based on demand, the Estate may be able to shift a portion of the costs (which otherwise could total [REDACTED]) to its entertainment partners. (Bruce Dec., ¶ 14.)

Ultimately, the Nelsons' belief that Paisley Park is the "best place" to store the Estate's audio and video materials is fatuous and ill-advised. As thoroughly documented by expert consultants and the observations of both Comerica and Iron Mountain representatives who were on site, Paisley Park provides neither the security nor the storage conditions required to preserve and safeguard such a valuable trove of materials. Thus, the Personal Representative acted in the

¹ The Nelsons suggest that the Personal Representative should have stored the Estate's assets at an Iron Mountain facility in the Twin Cities. Iron Mountain's Twin Cities facilities, however, are intended for storage of paper documents and not specialized for entertainment assets like the Hollywood facility. The Twin Cities' facilities would not provide the privacy, security, or climate controls required for proper storage and preservation of the Estate's audio and video assets, much less the archival equipment and expertise necessary to access and digitize the Estate's audio and video content. (Bricker Dec., ¶ 13.)

Perhaps the most obvious demonstration of the Personal Representative's transparency regarding the movement of asset to Iron Mountain was the lengthy and detailed report it provided to the Court at the September 29th meeting, at which the Nelsons were present. Indeed, at that meeting, the Personal Representative proudly touted the inventory and transportation of these assets as a hallmark of its accomplishments as fiduciary. (Bruce Dec., ¶ 17.) If the Personal Representative truly harbored any intent to hide the asset transfer from the Heirs or had any reason to believe that the decision to transfer the assets was the source of any dispute, its detailed report to the Court belied any such intent or knowledge. The fact that the Nelsons allege that they "only learned that portions of the Vault had been moved from one of the other heirs long after the move, rather than from Comerica directly" and that "Comerica also failed to communicate such a move at the Court ordered status meeting on September 29, 2017," is demonstrably false. (Pet. ¶ 15)

What may be most distressing about the Nelsons' assertions is that they did not bring these concerns to the Personal Representative before contacting the press and filing their Petition. Had the Personal Representative been aware of the Nelsons' concerns, it could and would have worked diligently to allay those concerns as it has done with other questions the Heirs have raised. Ironically, the Personal Representative advised the Heirs that the asset move would be conducted at night and disclosed to as few persons as possible, because of the sensitivity and mystique around "the Vault" and the desire to avoid a needless and harmful public uproar. (Bruce Dec., ¶ 18.) Unfortunately, the Nelsons' approach to this issue seems designed specifically and unnecessarily to incite such a reaction. (*Id.*, Ex. F.)

D. The Personal Representative Complied with the Court's March 22, 2017 Order.

Finally, the Nelsons allege that the Personal Representative violated the Court's March 22, 2017 Order by transferring assets from Paisley Park to the Iron Mountain facility without providing the Heirs 14 days' notice and the opportunity to seek relief from the Court. The Court's Order requires the Personal Representative to follow this procedure "prior to entering into any transaction under which the Personal Representative reasonably anticipates receiving more than \$2 million in value." (March 22, 2017 Order ¶ 3.) The transfer of assets to Iron Mountain's facility is not a transaction generating more than \$2 million (or, in fact, any income) for the Estate. As the Nelsons acknowledge, it is—at most—only a "first step" toward such transactions. (Pet. ¶ 14.) Thus, the Personal Representative was not required to provide 14 days' notice and opportunity to object. Rather, it was required to keep the Heirs informed regarding the Estate's assets, which it did. (March 22, 2017 Order ¶ 3.)

III. THE PERSONAL REPRESENTATIVE HAS VIGOROUSLY PROTECTED THE ESTATE'S INTELLECTUAL PROPERTY ASSETS.

The Nelsons next assert that the Personal Representative is either unwilling or unable to defend the Estate's intellectual property assets from unauthorized use. To the contrary, the record demonstrates the Personal Representative's extensive and successful efforts to establish and protect the Estate's intellectual property rights. Furthermore, the limited "evidence" the Nelsons submitted to attempt to support their assertion is incomplete, unpersuasive, or actually validates the Personal Representative's efforts to protect the Estate's intellectual property assets.

A. The Personal Representative Proactively Broadened the Estate's Intellectual Property Rights, While Also Monitoring and Responding to Infringement.

The Personal Representative's work to protect the Estate's intellectual property takes a three-pronged approach: (1) affirmatively obtaining and extending intellectual property rights

and protections, including many that were not previously established; (2) monitoring and taking action against infringement of the Estate's rights; and (3) commencing or responding to litigation related to intellectual property rights. The Personal Representative routinely provides the Nelsons and other Heirs with regular and extensive updates regarding its efforts, and addresses the Heirs' feedback and other concerns related to the intellectual property.

1. Obtaining Additional Intellectual Property Protections.

While Prince had certain intellectual property protections in place during his lifetime, not all intellectual property was protected, including items most likely to be used or licensed. (*See* Declaration of Ann Dunn Wessberg ("Wessberg Dec."), ¶ 2.) Accordingly, the Personal Representative has worked to ensure that trademark applications have been and are being filed and prosecuted to achieve broader and deeper trademark rights, both in the United States and internationally. (*Id.*) To realize the most value from these efforts, the Personal Representative analyzed use and sale patterns to focus on the geographic areas with the most activity. (*Id.*) Since February 2017, more than 120 new applications have been filed worldwide, including in the United States and fifty other countries, and additional work has been done to prosecute existing filings. (*Id.* at ¶ 3 & Ex. A.)

Following its appointment, counsel for the Personal Representative also created a catalogue of the Estate's more than 1,000 existing copyright registrations, as well as known songs for which copyright registrations have not yet been filed. (*Id.* at ¶ 4.) Because copyright protections exist even without formal registration, additional copyright registrations have been and will continue to be filed as circumstances—such as litigation—require. (*Id.*) The Personal Representative has also commenced efforts to ensure that the Estate has appropriate domain

names and related rights. (*Id.* at ¶ 5.) This will help minimize confusion in the marketplace as to legitimate sources of the Decedent’s music and other intellectual property. (*Id.*)

2. *Monitoring and Enforcement Actions.*

The Personal Representative also hired MarkMonitor, Inc. (“MarkMonitor”) to provide monitoring and enforcement services related to online use of the Estate’s intellectual property. (Affidavit of ██████████ (“MarkMonitor Aff.”), ¶ 2.) MarkMonitor offers various services related to establishing and protecting brands, including by using industry-leading technology and expertise to discover and take action against infringement occurring in a wide variety of digital channels, including websites, paid searches, social media, mobile apps, e-commerce marketplaces, and the major file-sharing networks. (*Id.* at ¶ 4.) MarkMonitor has an excellent reputation; indeed, over half of Fortune 100 companies use MarkMonitor to protect their brand. (*See id.*)

MarkMonitor is providing two main types of services to the Estate—brand protection and anti-piracy. (*Id.* at ¶ 5.) MarkMonitor’s brand protection services for the Estate focus on detecting and taking action against online sales of unauthorized or otherwise infringing merchandise and other physical products. (*Id.* at ¶ 6.) These services have significantly reduced the availability and sale of infringing products and digital content on marketplaces, websites, and social media channels. (*See generally id.* at Ex. A.) Since April 7, 2017, MarkMonitor has reviewed 37,161 marketplace listings, 4,989 URLs, and 4,271 social media links. (*Id.*) Takedown demands following identified infringement have led to 8,660 marketplace listings being removed across multiple platforms (such as eBay, Amazon, Etsy, and iOffer) and 584 website links being shut down across 158 websites. (*Id.*) As of the end of October, takedown compliance is high at a rate of 96.8%. (*Id.*) A conservative estimated value of goods

removed—based on an assumption of only one available item for every listing—is more than \$1.6 million. (*Id.*) Given that, for example, most Amazon listings advertise available quantities of thirty, it is possible that the value of goods removed is more than \$50 million. (*See id.*)

MarkMonitor’s anti-piracy services for the Estate focus on detecting and taking action against unauthorized use of certain audio or video content. (*Id.* at ¶ 7.) When MarkMonitor initially became involved, there was a large volume of infringing links discovered. (*See id.* at Ex. B.) Since then, successful enforcement efforts have led to the removal of tens of thousands of infringing links to Prince albums, videos, and songs. (*See id.*) For example, during MarkMonitor’s first full week of service to the Estate (April 24, 2017 through April 30, 2017), 3,268 unique host URLs leading to unauthorized use of one or more Prince songs were identified; and by the end of that week’s enforcement efforts, 3,017 of those unique host URLs were offline. (*Id.*) By the most recent full week for which a report is available (October 23, 2017 through October 29, 2017), the number of unique host URLs making unauthorized use of Prince songs had dropped to 347, and by the end of that week, 224 of those were offline. (*Id.*) In addition, from April 21, 2017 through October 30, 2017, MarkMonitor also sent 214,714 notices related to the use of peer to peer networks to illegally distribute copyrighted Prince works, and separately achieved the removal of 8,377 search engine links to sites with unauthorized Prince content. (*Id.*)

In addition to MarkMonitor’s services related to online monitoring and enforcement, counsel for the Personal Representative oversees monitoring of trademark offices throughout the world. (Wessberg Dec., ¶ 6.) This monitoring identifies any applications for trademarks that are similar to the Estate’s trademarks, so that the Personal Representative can oppose any potentially infringing applications. (*Id.*)

3. *Intellectual Property-Related Litigation.*

The Personal Representative also threatens, commences, or responds to litigation related to the Estate's intellectual property rights as necessary to protect such rights. For particularly egregious or damaging infringement identified by MarkMonitor or others, the Personal Representative causes its counsel to send a cease and desist letter (in addition to other enforcement actions taken by MarkMonitor) or take other protective action, such as disputing or seeking cancellation of trademarks and copyrights claimed by third parties. (Wessberg Dec., ¶ 7 & Ex. B.) The Personal Representative would then be prepared for further action or litigation if appropriate resolutions are not reached. (*See id.* at ¶ 7.)

In addition, since its appointment, the Personal Representative has commenced or been involved in at least eight separate legal actions on behalf of the Estate (or related entities) pertaining to the Estate's intellectual property assets. (Declaration of Lora M. Friedemann, ¶ 2.) For example, the Personal Representative is prosecuting a lawsuit in the United States District Court for the District of Minnesota, in which it asserts copyright infringement claims against Roc Nation and others, and seeks both damages and injunctive relief. (*Id.*) Separately, Ian Boxill, a former Paisley Park sound engineer, attempted to release an entire album of previously-unreleased Prince music. (*Id.* at ¶ 3.) The Personal Representative filed a lawsuit and obtained a temporary restraining order and preliminary injunction preventing Mr. Boxill from distributing the unreleased works, and ordering Mr. Boxill to return the recordings. (*Id.*) As a final example of these protective efforts, the Personal Representative commenced a lawsuit against an individual who created karaoke videos of several Prince songs and posted them on YouTube. (*Id.* at ¶ 4.) When YouTube removed the videos, the individual claimed "fair use," and YouTube would have reposted the videos had the Personal Representative not taken legal action. (*Id.*)

Despite these efforts and successes, protecting intellectual property rights is a continuous, ongoing process. (*See* MarkMonitor Aff., ¶ 8; Bruce Dec., ¶ 20.) For example, if enforcement is successful against one infringer, it is common for a different infringer to emerge to fill the marketplace void left after the successful enforcement action. (MarkMonitor Aff., ¶ 8.) As a result, monitoring and enforcement efforts can reduce and stabilize the amount of infringement, but it is virtually impossible to achieve zero infringement at any one time, particularly with intellectual property that has the scope and fame of that of the Estate. (*Id.*) Accordingly, the Personal Representative intends to continue working with MarkMonitor and counsel to carefully monitor and vigorously enforce the Estate's intellectual property rights. (Bruce Dec., ¶ 20.)

4. *Regular Reports to the Heirs Regarding Intellectual Property Protection Efforts and Results.*

The Personal Representative provides the Nelsons and other Heirs with regular and extensive reports regarding the intellectual property protection efforts and results—including regarding litigation and MarkMonitor's services—and works to address concerns the Heirs have regarding the intellectual property. (Bruce Dec., ¶ 21.) For example, in early June 2017—after MarkMonitor's first full month of service—the Personal Representative provided the Heirs with a written summary of MarkMonitor's services and results for both the brand protection and anti-piracy initiatives, along with reports containing the underlying data. (*Id.* at Ex. G.) In July 2017, MarkMonitor presented at a meeting with the Heirs, including with a visual presentation and handouts for the Heirs. (*Id.* at ¶ 22.) Less than ten days after that meeting, the Personal Representative provided a written summary and additional data that responded to certain questions and concerns raised by the Heirs. (*Id.* at Ex. H.) The Personal Representative continues to provide regular summaries with supporting data related to the monitoring and enforcement of the Estate's intellectual property. (*Id.* at ¶ 23 & Exs. I-J.)

In addition, as demonstrated by the Nelson's own exhibit, the Personal Representative coordinates with MarkMonitor to address specific concerns of the Heirs. (*See* Pet., Ex. B.) The Personal Representative has invited the Nelsons and other Heirs to report any items they find that may be an unauthorized use of the Estate's intellectual property, so that the Personal Representative can work with MarkMonitor to research and, if necessary, take enforcement action. (*See* Bruce Dec., ¶ 24 & Ex. G.) The Personal Representative reminded the Heirs that preventing infringement is like a game of "whack-a-mole." (*See id.* ¶ 26 & Ex. I.) Notwithstanding the moving targets and scope of the task, MarkMonitor is making headway and achieving excellent compliance results. (*Id.* at ¶ 26.)

B. The Limited "Evidence" Presented by the Nelsons Fails to Validate Their Assertions Regarding the Intellectual Property.

Despite regular communications and reports by the Personal Representative regarding its and MarkMonitor's results, the Nelsons ignore the extensive success achieved by the Personal Representative enforcing the Estate's intellectual property rights. Instead, the Nelsons attempt to use purported infringement by a person identified as ██████████ to support their assertion that the Personal Representative has failed to defend against unauthorized use. (Pet., ¶ 23 & Ex. B.) What is shown by the Nelsons' Exhibit B, but the Nelsons fail to acknowledge, is that the Personal Representative and MarkMonitor quickly worked to address the Nelsons' concerns regarding ██████████. Specifically, in April 2017, the Nelsons' business advisor Charles Spicer contacted the Personal Representative, expressing concern that ██████████ was advertising Prince video content for sale—at that time, of Prince's performance at the Montreaux Jazz Concert. (Pet., Ex. B.) Within two days, the Personal Representative responded with initial research results and confirmation that it had notified MarkMonitor to take action. (*Id.*) Just three days after that, the Personal Representative followed up with the additional information that the Estate

does not actually own the rights to the video of that concert. (*Id.*) It noted, nevertheless, that MarkMonitor had been alerted and would take appropriate actions regarding infringements. (*Id.*) Since initial enforcement efforts, it appears that [REDACTED] has posted at least one other Prince-related item for sale, as identified by the Nelsons in the days before they filed the Petition. (*See id.*) To address the Nelsons' specific concerns about this one infringer or potential infringer, the Personal Representative is coordinating with MarkMonitor to ensure special and specific ongoing monitoring and enforcement. (Bruce Dec., ¶ 25.)

The Petition also attaches a few Google search results of Prince items for sale from two days prior to the Petition filing. (Pet., Ex. B.) As described above, intellectual property protection is an ongoing process, and MarkMonitor has made extensive headway in only approximately six months. In any event, it is unrealistic to think that there will ever be a sustained state of zero infringement. (*See* MarkMonitor Aff., ¶ 8.) Accordingly, the Nelsons' ability to locate a few infringers on the eve of their Petition filing does not support their assertion that the Personal Representative is not defending the Estate's intellectual property assets from unauthorized use. Indeed, the information provided herewith establishes that the Personal Representative is zealously and successfully protecting the Estate's intellectual property.

IV. THE PERSONAL REPRESENTATIVE HAS PRIORITIZED COMMUNICATIONS WITH THE HEIRS, INCLUDING THROUGH TWICE MONTHLY MEETINGS AND REGULAR COMMUNICATIONS REGARDING THE ESTATE AND ITS ASSETS.

Third, the Nelsons allege at least nine separate times in the Petition that the Personal Representative is not adequately communicating with the Heirs, as if repeating the statement enough will make it true. Setting mere allegations aside, the actual record in this matter establishes that the Personal Representative has provided the Heirs a level of access,

communication, and input into the administration of the Estate that far exceeds what was provided by Bremer Trust or what is required of a personal representative under Minnesota law.

As an initial matter, the Personal Representative encourages the Court to review the minutes of its regularly scheduled twice-monthly Heirs meetings, which are attached as Exhibits Z-QQ to the Declaration of Andrea Bruce. As set forth in the minutes, the Personal Representative spends on average two hours with the Heirs at each meeting discussing the administration of the Estate, including existing and prospective business transactions, litigation, taxes, real estate, and estate expenses and cash-flow. The Nelsons have chosen not to attend many of the recent Heirs meetings, which appears to be the source of their misunderstandings regarding the Estate. (Bruce Dec., ¶ 28.) The Personal Representative wants to keep all of the Heirs informed and participating in the Estate, but communication is a two-way street, and the Personal Representative cannot force the Nelsons to take part in the administration of the Estate if they choose not to engage.²

Additionally, the Personal Representative communicates via email with the Heirs, on average on a daily basis (a total of more than 200 separate series of email communications since February 2017), on such varied topics as licensing requests, opportunities for the Heirs to participate in Estate-related activities (such as the Paisley Park Museum exhibition in London), and general concerns regarding the Estate. (Bruce Dec., ¶ 30.) Although it is not practical to file all communications with the Court, the Personal Representative will make them available for

² In an effort to keep the Heirs informed regarding the administration of the Estate, even when they do not attend the Heirs meeting, the Personal Representative sends the meeting minutes to all Heirs shortly after each meeting. In support of their Petition, the Nelsons now make the summary assertion that the minutes are inaccurate. Notably, however, despite an invitation from the Personal Representative to respond with any questions each time it sends the minutes to the Heirs, the Nelsons have never once responded to correct any alleged inaccuracies. (Bruce Dec., ¶ 29.)

review at the November 20, 2017 Hearing. As one of the Heirs mentioned during the September 29 meeting, and as the communications establish, “bankers’ hours” do not exist for the Personal Representative, and the two trust officers who are leading the management of the Estate—Ms. Aycock and Ms. Bruce—routinely make themselves available for communications with the Heirs early in the morning through late in the evening. (*Id.*, ¶ 31.) When the Personal Representative accepted this appointment, it committed to making communications with the Heirs regarding the administration of the Estate a priority. It has absolutely exceeded that commitment.

With respect to the assertion that the Personal Representative is not taking the Heirs’ wishes and concerns regarding the administration of the Estate seriously, that assertion is similarly inconsistent with the record. Two examples illustrate the point. First, the Estate received a [REDACTED]

[REDACTED]. (Bruce Dec., ¶ 32 Exs. JJ, LL.) Second, during a meeting between the Personal Representative, Sharon Nelson, and her advisors, Sharon Nelson requested detailed information regarding how the Paisley Park Museum was performing, accounting to the Estate, and where the Museum was depositing its funds. (*Id.*, ¶ 33.) In response, the Personal Representative sent all of the Heirs detailed accounting figures and incorporated a presentation regarding the financial performance of the Museum into the agenda at the May 9, 2017 Heirs Meeting. (*Id.*, Ex. GG.)

It appears that what the Nelsons are truly upset about is not that the Personal Representative does not communicate with them, but that the Personal Representative does not

always agree with them and follow their wishes regarding the administration of the Estate. But just because the Personal Representative ultimately decides to take an action that is different from what one or more of the Nelsons would prefer (*i.e.*, deciding to recommend seeking rescission of the UMG Agreement rather than litigating with UMG and WBR) does not mean the Personal Representative has not taken their preferences seriously. It means only that, consistent with its obligation as a fiduciary under Minnesota law, and using the collective expertise of its team members, the Personal Representative has exercised its obligation to act in what it believes are the best interests of the Estate. Indeed, prior to the Personal Representative's appointment, two other Heirs proposed imposing a series of restrictions on the Personal Representative as a condition of continuing to support its appointment. (Bruce Dec., ¶ 34 & Ex. K.) Counsel for the Nelsons defended the independence of the Personal Representative stating that his clients "will continue to oppose efforts by other Heirs' counsel to usurp the proper role of the Court appointed fiduciary." (*Id.*) The Nelsons were correct to defend the independence of the Personal Representative in January and the Personal Representative will continue, after consultation with the Heirs, to take actions that it believes are in the best interests of the Estate.

Next, the Nelsons accuse the Personal Representative of not providing them an inventory, an accounting, information about taxes, or updates on litigation and business plans related to the Estate. (Pet., ¶ 43)³ On the first item—the inventory—the statutory requirement to file an inventory for the Estate was satisfied by Bremer Trust. Minn. Stat. § 524.3-706. This fact

³ The Nelsons also state that the Personal Representative has not provided information regarding "where Estate funds are being deposited." (Pet., ¶ 43.) This statement is curious, since the Personal Representative provides the Heirs account statements on a monthly basis which show the balances of, and activity in, the Estate's account and all of the entity accounts at Comerica. (Bruce Dec., ¶ 37.) The Personal Representative has also implemented a process whereby on a monthly basis during Heirs meetings, it reserves time to discuss the account statements with the Heirs. (*Id.*)

notwithstanding, the Personal Representative prepared updated drafts of the inventory and accounting and posted both documents to the secure and confidential HighQ document sharing system prior to the September 29 meeting. (Bruce Dec., ¶ 35.) The log created by the HighQ system shows that counsel for the Nelsons has accessed both documents, so it is unclear what the Nelsons are referencing. (*Id.*) Similarly, the Personal Representative posted a copy of the estate tax return on July 25, 2017, and both Sharon Nelson and her attorneys have accessed and reviewed the return. (*Id.*, ¶ 35.) On August 21, 2017, the Personal Representative also mailed each of the Heirs a copy of IRS Form 8971, which provided detailed basis information about the assets of the Estate. (*Id.*, ¶ 36.) In addition, the Personal Representative discussed the Estate's tax obligations with the Heirs at length during the February 14 and August 1, 2017 Heirs Meetings (including by having the Personal Representative's in-house estate tax specialist speak on the topic at the August 1 meeting, at which all of the Nelsons were present). (*Id.*, Ex. LL.) With respect to litigation updates and "business plans," the Personal Representative provides regular litigation updates during the Heirs meetings (*see, e.g., Id.*, Exs. GG, HH, & PP), and the Estate's existing and prospective business transactions are the primary topic of literally every Heirs meeting. Indeed, whether it is the proposed █████ transaction, the UMG rescission, the moving of audio and visual assets to Iron Mountain, or even less substantial transactions such as the sale of real estate or licensing requests, the Personal Representative has thoroughly discussed the transactions with the Heirs, often over the course of multiple Heirs meetings, to allow the Heirs to provide input on the transactions. (Bruce Dec., Exs. Z-QQ.) While the Nelsons attempt to manufacture a narrative in their Petition that the Personal Representative is not adequately communicating with the Heirs, that false narrative simply cannot stand up to the factual record.

Finally, the Nelsons allege that the Personal Representative has shown “partiality towards certain Heirs,” including by having “private meetings with them concerning the Estate.” (Pet., ¶ 38.) While it is correct that the Personal Representative has held communications and meetings with individual Heirs, that in no manner demonstrates favoritism. It is both customary and consistent with the Personal Representative’s role as a fiduciary to make itself available for discussions with individual Heirs regarding matters of concern personal to that Heir. Indeed, the Personal Representative has met individually with Sharon Nelson, her counsel, and entertainment advisors to discuss Sharon Nelson’s ideas and concerns regarding the Estate, as well as spent considerable time and resources working to negotiate a license requested by Mr. McMillan to allow Sharon Nelson to use rights that belong to the Estate, on a gratis basis, for her personal project related to her father’s music. (Bruce Dec., ¶ 38.) Counsel for the Personal Representative also worked with counsel for the Nelsons to develop the argument that was presented on October 26, 2017 in the Minnesota Court of Appeals in support of their joint opposition to the attorneys’ fee appeal made by two other Heirs. (November 10, 2017 Declaration of Joseph J. Cassioppi (“Cassioppi Dec.”), ¶ 3.) The Nelsons have not and cannot establish that the Personal Representative has violated any duty of impartiality to the Heirs.

V. THE PERSONAL REPRESENTATIVE HAS PROPERLY DECLINED TO PROVIDE CONFIDENTIAL INFORMATION REGARDING THE ESTATE TO THE NELSONS’ ENTERTAINMENT ADVISOR BASED ON HIS REFUSAL TO EXECUTE A NON-DISCLOSURE AGREEMENT.

Fourth, the Nelsons assert that the Personal Representative has improperly refused to involve their entertainment advisor in decision-making related to the Estate, including by not allowing Mr. McMillan to attend Heirs meetings or agreeing to “negotiate reasonable terms of a non-disclosure agreement related to McMillan.” (Pet., ¶ 22.)

The Personal Representative understands and respects that this Estate is complex, and that accordingly, the Nelsons wish to have someone advise them regarding the Estate's entertainment assets. But the Nelsons' chosen entertainment advisor suffers from a myriad of conflicts. These conflicts are troubling and by no means insignificant. They include his apparent simultaneous representation of the Estate and the Nelsons during the period of the special administration (*see* Cassioppi Dec., Ex. C at p. 109:24-25), a dispute between Mr. McMillan and Alfred Jackson related to an agreement and loan made by Mr. McMillan to Mr. Jackson (in an apparent attempt to garner Mr. Jackson's support for his bid to serve as a personal representative of the Estate) (*see id.* at pp. 183:22-184:23; May 3, 2017 Aff. of Thomas Kane, Ex. 5; May 3, 2017 Mem. in Opp'n to Motions to Quash Subpoena Duces Tecum to L. Londell McMillan), and the fact that his activities as entertainment advisor for Bremer Trust have spawned two significant conflicts for the Estate—the dispute with Jobu Presents and the rescission of the UMG Agreement (and the corresponding return of ██████████ to UMG, without Mr. McMillan or Mr. Koppelman agreeing to return the ██████████ they were paid as a commission on the failed transaction). Moreover, the Personal Representative is aware of at least one instance where Mr. McMillan has gone out into the marketplace and attempted to negotiate a transaction for the benefit of only his clients using Estate assets.

Specifically, after the Personal Representative notified the Heirs that it was negotiating a transaction with ██████████ related to ██████████, the Personal Representative learned that Mr. McMillan attempted to negotiate a separate ██████████ to benefit his clients. (Bruce Dec., ¶ 39 & Exs. L, NN.) When ██████████ contacted the Estate's publishing administrator—UMPG—to discuss obtaining clearance to use the Estate's intellectual property for ██████████, the Personal Representative informed UMPG that such clearance

rights would interfere with the ██████ transaction, but nevertheless offered to discuss the matter with ██████. (*Id.*, Ex. L.) When Mr. McMillan learned that the Personal Representative was considering speaking with ██████ (a conversation that never took place) and had indicated that it was disinclined to grant the requested clearance rights, he responded by threatening legal action against the Estate for “interference of ██████ with Prince Heirs.” (*Id.*)

Mr. McMillan’s conflicts, as well as his insistence on representing in the marketplace that he has the ability to deliver the Estate’s intellectual property rights in connection with projects for his clients, have made communications between the Personal Representative and the Nelsons extremely difficult. Because of Mr. McMillan’s conduct, the Personal Representative has been forced to carefully consider, and in some instances limit, the information it can share with the Heirs based on the risk that the Nelsons might provide that information to Mr. McMillan, who could then use it in a manner that is contrary to the interests of the Estate. (Bruce Dec., ¶ 40.) Indeed, although the Nelsons criticize the Personal Representative for declining to allow Mr. McMillan to attend Heirs Meetings, one of the primary reasons why such attendance is not possible is the adversity Mr. McMillan created with Mr. Jackson, as well as his conflicts with Omarr Baker.⁴

⁴ When the Personal Representative agreed to accept appointment as personal representative to the Estate, it committed to holding “monthly meetings among the heirs and the Comerica team.” (Bruce Dec., Ex. A at 3.) At various times, counsel for certain Heirs as well as entertainment advisors have sought to attend the Heirs meetings and in each instance the Personal Representative has declined the requests. (Bruce Dec., ¶ 40.) Even setting aside the conflicts among the Heirs, their counsel, and Mr. McMillan, the Personal Representative believes that having individual representatives of the Heirs attend the Heirs meetings will stifle conversation and the free exchange of ideas among the Heirs and the Personal Representative and will substantially increase legal fees for all parties. Instead, the Personal Representative has offered to meet (and has in fact met) separately with particular Heirs and their advisors to discuss issues related to the Estate. (*Id.*)

Nevertheless, the Personal Representative has attempted to accommodate the Nelsons' desire to provide Mr. McMillan with access to confidential Estate information so that he can advise the Nelsons. Specifically, after Mr. McMillan agreed in open court to execute a non-disclosure agreement with the Estate, and consistent with this Court's March 22 Order authorizing the Personal Representative to approve the form of non-disclosure agreements between the Estate and third-party representatives of the Heirs, the Personal Representative provided Mr. McMillan the Estate's form non-disclosure agreement, versions of which have been executed by more than 75 individuals and entities to whom the Estate has provided confidential information. (Cassioppi Dec., Ex. A at p. 110:10-15; March 22, 2017 Order at 7; Bruce Dec., ¶ 42 & Ex. M.) Mr. McMillan responded by entirely rewriting the agreement, to the point where it would do little to prevent disclosure of confidential and sensitive information, including by removing protections on information disclosed orally, any restrictions on his company Northstar Enterprises from disclosing information, and the ability of the Estate to obtain a protective order in the event of a compelled disclosure. (Bruce Dec., ¶ 42 & Ex. M.) While the Estate was willing to accommodate Mr. McMillan by removing a non-disparagement provision, to date, Mr. McMillan has refused to sign the Estate's NDA, despite the fact that the NDA is substantially similar to the agreement Mr. McMillan executed with Bremer Trust. (Bruce Dec., ¶ 43 & Ex. N.)⁵ While the Personal Representative is continuing to attempt to resolve this issue with Mr. McMillan, it simply is unwilling to negotiate-away important safeguards

⁵ Just this week, the Nelsons have shifted their position to asserting that Mr. McMillan does not need to execute a new NDA because of the existence of the NDA with Bremer Trust. (Bruce Dec., Ex. O.) While the Personal Representative wishes that were the case, the Bremer Trust NDA

(Bruce Dec., Ex. N at 2.)

regarding the Estate's information, particularly since it knows that Mr. McMillan is out in the marketplace attempting to compete with the Estate. (Bruce Dec., ¶ 44.)

Next, the Nelsons contend that the Personal Representative is not giving adequate consideration to Mr. McMillan's advice regarding management of the Estate's entertainment assets. But the Nelsons and Mr. McMillan appear to misunderstand his limited current role. Assuming he executes an NDA, Mr. McMillan will be free to discuss with his clients their issues and concerns regarding the Estate, and the Personal Representative (again, premised on Mr. McMillan agreeing to execute an NDA) has offered to meet again with the Nelsons and Mr. McMillan to discuss the same, but that does not mean that Mr. McMillan should expect to have any role in managing the Estate's assets or in advising the Personal Representative. Having spent a substantial portion of its term mitigating the fall-out from failed entertainment transactions negotiated by Mr. McMillan during his time as advisor to Bremer Trust, the Personal Representative is simply not interested in unsolicited advice from Mr. McMillan regarding how he would manage the entertainment assets of the Estate if he were still its advisor.

In addition, although the Nelsons claim that the Personal Representative is not complying with its duty to communicate with them, they fail to acknowledge that their own entertainment advisor is actively attempting to prevent the Personal Representative from discussing entertainment matters with the Nelsons. Specifically, Mr. McMillan (without copying his clients) sent the Personal Representative an email on September 22, 2017 requesting that the Personal Representative not communicate directly with the Nelsons:

Let's agree that I will have my legal counsel speak with your counsel if you do not speak directly with my clients without my permission since I have an agreement as their business manager and advisor. Is that satisfactory?

(Bruce Dec., Ex. L.) Indeed, Mr. McMillan went so far as to threaten the Personal Representative with legal action unless the Personal Representative ceased “engaging with [the Nelsons] on business without contacting me directly as their exclusive business advisor and manager” (*Id.*) As the Personal Representative has repeatedly informed Mr. McMillan, it has committed to both the Heirs and the Court that it will engage in robust and thorough communications with the Heirs related to the Estate. Absent direction otherwise from the Court, the Personal Representative does not intend to allow Mr. McMillan (or anyone else for that matter) to stifle those communication efforts.

VI. THE PERSONAL REPRESENTATIVE HAS DILIGENTLY WORKED TO MONETIZE THE ESTATE’S ENTERTAINMENT ASSETS.

Fifth, the Nelsons criticize the Personal Representative’s entertainment advisor, as well as assert that the Personal Representative is not adequately monetizing the Estate’s entertainment assets. Exposed to the facts, both criticisms fail.

A. Troy Carter Is Well Qualified To Serve As The Entertainment Advisor For The Estate And Is Not Subject To Conflicts.

With respect to Troy Carter, the Nelsons assert that: (1) he is “inexperienced;” (2) prior to the September 29, 2017 meeting, they were unaware Mr. Carter was affiliated with the Spotify streaming service; (3) Mr. Carter has a conflict of interest based on an unspecified contract between the Estate and Spotify; and (4) Mr. Carter’s compensation is excessive. The Nelsons are wrong across the board.

As an initial matter, the Personal Representative utilized a rigorous nationwide search and request for proposal process to select an entertainment advisor that started with a pool of 15 candidates, eight of whom were interviewed by the Personal Representative, before it ultimately retained Mr. Carter. (Bruce Dec., ¶¶ 45-46 & Ex. P.) The Personal Representative selected Mr. Carter based on his more than twenty years of experience in the music industry, his management

of some of the music industry's most prominent artists, his vision for the management of the Estate's entertainment assets, and his unparalleled relationships with the Estate's current and prospective entertainment partners. (Bruce Dec., ¶ 47.) Mr. Carter's curriculum vitae and two Harvard Business School Case Studies analyzing Mr. Carter's success managing Lady Gaga during her rise to prominence as a global music phenomenon are attached as Exhibits A-C to the Declaration of Troy Carter. Mr. Carter is uniquely and eminently qualified to serve as the entertainment advisor for this Estate and any suggestion otherwise is baseless.

Second, the Nelsons' assertion that they were unaware of Mr. Carter's position at Spotify—where he serves as Global Head of Creative Services—is not credible. Indeed, the Nelsons' entertainment advisor Mr. McMillan solicited Mr. Carter's assistance placing his daughter's music on Spotify during 2016 and sent Mr. Carter an email at his Spotify email address on April 6, 2017 congratulating him on his appointment with the Estate:

Hey Troy, I heard the news that Comerica hired you to assist them. Welcome aboard and give me a call soon. All the best!"

Regards,

Londell

(Bruce Dec., Ex. R.) Mr. Carter's role at Spotify was also prominently featured in news coverage when his role with the Estate was announced and, as confirmed by Omarr Baker, was specifically discussed with the Heirs when the appointment was announced at an Heirs Meeting. (Bruce Dec., Ex. S; Nov. 9, 2017 Affidavit of Omarr Baker ("Baker Aff."), ¶ 4.)

Third, Mr. Carter's role at Spotify does not present a conflict of interest. [REDACTED]

[REDACTED]. (Bruce Dec., ¶ 49.)⁶ [REDACTED]

⁶ The Nelsons' belief that the Estate has an agreement with Spotify may be based on the fact that Prince compositions ([REDACTED]) are available on the

[REDACTED]

[REDACTED]

[REDACTED]

(Bruce Dec., ¶ 49.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Cassioppi Dec., Ex. C at pp. 172:8 – 173:10.)

Spotify streaming service (as well as the Apple, Google, and Pandora services). However, that is as a result of

[REDACTED]

(Bruce Dec., ¶ 50.) Notably, Spotify and the other streaming services began streaming Prince music prior to the Personal Representative retaining Mr. Carter. (*Id.*)

[REDACTED]

(*Id.*)

Second, although Mr. McMillan and Mr. Koppelman negotiated and were paid on multiple transactions during their terms as entertainment advisors for the Estate, there is an extraordinary amount of time and attention required to administer the agreements in the years that follow the negotiation of each agreement. (Carter Dec., ¶ 9.) Mr. McMillan and Mr. Koppelman were paid their substantial commissions despite providing little to no services to the Estate in connection with the administration of the agreements entered-into by Bremer Trust. As a result, the Personal Representative is compensating Mr. Carter not just for new deals, but for the day-to-day management of agreements entered into by both Prince and Bremer Trust for which he received no commission. (Bruce Dec., ¶ 52.) Indeed, Mr. Carter's roles for the Estate include reviewing and analyzing synchronization license request, managing the Estate's relationships with record labels, UMPG, Bravado, and other entertainment partners, managing public relations for the Estate, assisting with developing and implementing an intellectual property strategy, assisting with litigation and settlement discussions, specific project-based work (i.e., [REDACTED]), vetting, evaluating, and negotiating entertainment opportunities, leading weekly status calls interspersed with daily emails with the Personal Representative, and developing and implementing the overall entertainment strategy for the Estate. (Carter Dec., ¶ 2.) These efforts require Mr. Carter's daily attention to the Estate. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Bruce Dec., ¶ 52.)

B. The Personal Representative Is Monetizing The Assets Of The Estate.

Unable to find fault with Mr. Carter's experience, qualifications, or compensation, the Nelsons turn to criticizing his actions as entertainment advisor. Contrary to the Nelsons' empty allegations, Mr. Carter has deftly managed the Estate's entertainment assets for the ultimate benefit of all of the Heirs.

1. Troy Carter has implemented an entertainment strategy designed to stabilize, organize, and monetize the Estate's entertainment assets.

Upon being retained by the Estate, Mr. Carter implemented a three-part "stabilize, organize, and monetize" strategy to protect and monetize the Estate's entertainment assets. (Carter Dec., ¶ 3.) With respect to stabilization, Mr. Carter immediately reached-out to the Estate's entertainment partners to assure them that they had an engaged partner, and to quell concerns based on pending threats by UMG to rescind one of the Estate's largest deals. (*Id.*) Indeed, when Mr. Carter was retained, UMG was poised to commence a lawsuit against the Estate, Bremer Trust and its entertainment advisors for fraudulent inducement, but Mr. Carter was able to leverage his longstanding relationship with key executives at UMG to negotiate an orderly rescission agreement, rather than protracted and damaging litigation. (*Id.*) Mr. Carter also focused on implementing public relations, branding, and crises management strategies, as well as supporting the Estate's litigation team in connection with [REDACTED]. (*Id.*)

For organization, Mr. Carter prioritized the storage, archiving, and restoration of the Estate's audio and visual assets, including assisting the Personal Representative to vet and retain Iron Mountain. [REDACTED]

[REDACTED]. (Carter Dec., ¶ 4.)

For monetization, Mr. Carter has negotiated agreements with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7

[REDACTED]

(*Id.*, Ex. U at 6.)

[REDACTED]

[REDACTED] (*Id.*) These efforts, and the challenges involved, demonstrate that this Estate has the potential to generate substantial value for the Heirs for years to come, but that potential will be wasted if the Heirs insist on fighting amongst themselves and with the Personal Representative.

- 2. *The Personal Representative is properly managing Prince's post-WBR albums.*

As a specific example of what they argue are the Personal Representative's failings in connection with the Estate's entertainment assets, the Nelsons assert that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*, ¶ 5.)

3. *The Personal Representative is generating value for the Estate and protecting Prince's brand through use of its publishing approval rights.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Bruce Dec., Ex. W.)

Ultimately, based on how rarely Prince authorized the use of his intellectual property for commercial purposes during his lifetime, there is a significant demand for the materials in the marketplace. (Carter Dec., ¶ 8.) The Personal Representative has the ability to be selective and strategic in the opportunities it selects to pursue and those it does not. Under the guidance of Mr. Carter, the Personal Representative is carefully but deliberately exercising its approval rights under its publishing agreement with UMPG to maximize value for the Estate, while not diluting the Prince brand. (*Id.*)

VII. THE COURT APPROVED RESCISSION OF THE EXCLUSIVE DISTRIBUTION AND LICENSE AGREEMENT WITH UMG RECORDINGS, INC.

Undeterred by the fact that they previously litigated—and did not prevail on—this exact issue, the Nelsons next assert that the Personal Representative should be removed because it agreed to rescind the Exclusive Distribution and License Agreement between the Estate and UMG Recordings, Inc. (the “UMG Agreement”). This argument fails both as a matter of law and fact.

On the law, the Court approved rescission of the UMG Agreement, and the Nelsons did not appeal from that ruling, so their argument is barred by the law of the case doctrine. *See Employers Nat. Ins. Co. v. Breaux*, 516 N.W.2d 188, 191 (Minn. Ct. App. 1994).

On the facts, the Nelsons’ assertion is premised on nothing more than guesswork regarding what might have occurred had the Personal Representative taken a different approach

in responding to Warner Bros. Records, Inc.'s ("WBR's") and UMG Recordings, Inc.'s ("UMG's") claims of conflicting rights. In the hypothetical world presented by the Nelsons, if the Personal Representative had insisted on performance of the UMG contract, WBR would have (inexplicably) decided to cede what it viewed as valuable intellectual property rights to its competitor UMG, and UMG, in turn, would have abandoned its threats of litigation against the Estate.⁸

After thoroughly investigating the competing claims of WBR and UMG,⁹ the Personal Representative concluded that there was a substantial likelihood that, in the absence of rescission, the Estate would end up in risky, expensive and protracted bi-coastal litigation against both WBR and UMG, while a portion of the Estate's most valuable music catalog sat unexploited by either WBR or UMG. The Court agreed with the Personal Representative and granted its motion for rescission, finding it was in the best interest of the Estate to rescind the UMG Agreement. (*See* July 13, 2017 Order (noting that UMG's threats "do[] not appear to be a bluff" and concluding that refusing to rescind the UMG agreement would have been the "more treacherous" course of conduct).) The Nelsons have not presented any new or different facts in support of their current Petition that were not already presented to the Court in connection with their opposition to the rescission motion. Ultimately, the second special administrator will provide a report to the Court detailing whether Bremer Trust, Mr. McMillan, or others will face liability to the Estate based on the facts and circumstances that led to the rescission of the UMG

⁸ It is worth noting that UMG's threats of litigation were not based on any action taken (or not taken) by the Personal Representative. Rather, they were precipitated by the alleged misrepresentations of the Nelsons' entertainment advisor, Mr. McMillan. (*See* May 17, 2017 Cassioppi Dec., Ex. O at 3.)

⁹ The Personal Representative's investigation is detailed in its May 17, 2017 Memorandum in Support of Motion to Rescind UMG Agreement and its June 9, 2017 Reply Memorandum.

Agreement. But in the meantime, rescission of the UMG Agreement lends no support to the Nelsons' Petition.

VIII. THE PERSONAL REPRESENTATIVE CANNOT CURRENTLY MAKE DISTRIBUTIONS TO THE HEIRS.

A. The Personal Representative Cannot Make Distributions To The Heirs Until, At A Minimum, The IRS And MNDOR Notify The Estate On Their Positions Of The Amount Of Estate Tax Owed By The Estate.

Seventh, the Nelsons criticize the Personal Representative for not making distributions to the Heirs. However, the Court has expressly prohibited the Personal Representative from making distributions while appeals are outstanding from its heirship orders. (May 18, 2017 Order at ¶ 6.) Moreover, as explained at length at the September 29 meeting, the Personal Representative cannot make distributions to the Heirs while any creditor claims remain outstanding because if it were to do so, and the Estate did not have sufficient assets to pay all creditors, the Personal Representative would be personally liable for all distributions made to the Heirs. *See* 31 U.S.C. § 3713(b); Treas. Reg. 20.2002-1 (“[I]f the executor pays a debt due by the decedent’s estate or distributes any portion of the estate before all the estate tax is paid, he is personally liable, to the extent of the payment or distribution, for so much of the estate tax as remains due and unpaid.”); Minn. Stat. § 524.3-807(b)(2).

The Internal Revenue Service (“IRS”) has taken an extremely aggressive position in an analogous proceeding—the estate of Michael Jackson—asserting that the estate owes up to \$700 million in taxes and penalties, primarily based on disputes related to the valuation of Mr. Jackson’s name, image, and likeness. (Bruce Dec., Ex. X.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*, ¶ 59.) Until the Personal Representative learns the IRS and MNDOR’s positions, it simply is not able to make distributions to the Heirs (as would be the case with any responsible fiduciary). (*Id.*, ¶ 60.) Nor can the Estate make disguised distributions to the Nelsons under the guise of “compensation” for “valuable time and expenses,” when the Personal Representative has not requested or received any services from the Nelsons. (Pet., ¶ 37; Bruce Dec., ¶ 60.)

The Personal Representative understands the Nelsons’ frustration that this is the case, but their statement that the Personal Representative should “promptly work with Petitioners to resolve these issues and generate sufficient income to satisfy any tax obligations” indicates that they have not given careful consideration to, and have unrealistic expectations of, the tax position of the Estate. (Pet. ¶ 53.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].¹⁰ Until then, the Personal Representative will work to continue to generate revenue for the Estate, both to meet the Estate’s tax obligations and for ultimate distribution to the Heirs.

¹⁰ The Nelsons state “Comerica has indicated that it could take up to fourteen years to close the Estate.” (Pet., ¶ 52.) They are incorrect. What the Nelsons are referring to is a discussion between the Personal Representative and the Heirs related to the Estate’s tax election under 26 U.S.C. § 6166, which allows (but does not require) the Estate to pay-off a portion of the Estate’s tax obligation over a 15-year period from Prince’s death. (Bruce Dec., ¶ 62 & Ex. AA.) The length of the administration of the Estate will depend on the IRS and MNDOR’s determinations of the amount of estate tax owed by the Estate and the ability for the Estate to generate sufficient cash to allow for an early pay-off of tax obligations, but the Personal Representative does not have any reason to believe that Estate will need to remain open for 15 years.

B. The Personal Representative Converted The Caretaker Agreements Established By Bremer Trust To Market Leases.

Norrine Nelson also accuses the Personal Representative of engaging in favoritism by

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*)

C. The Personal Representative Has Not Advised Heirs To Enter Into “High-Interest Loans”; To The Contrary, The Personal Representative Has Counseled Caution With Lending Relationships.

Finally, the Nelsons assert that the Personal Representative has recommended that the Nelsons enter into “high interest loans” with third-parties. (Pet., ¶¶ 37-38.) However, the very exhibits they cite as purportedly supporting this assertion instead belie it. Specifically, the Nelsons cite to Exhibits F and G to their Petition. Exhibit F is [REDACTED]

[REDACTED] (*Id.*, Ex. F.) The Nelsons do not explain how the Personal Representative could possibly have recommended that they enter into a loan agreement that predated the Personal Representative's appointment. Exhibit G is [REDACTED] that, prior to reviewing the Petition, the Personal Representative had never seen. (Bruce Dec., ¶ 65.) The Personal Representative certainly has not, and would not, agree to the provisions set forth in the June 27 letter, as it would improperly interfere with the Personal Representative's independence. (*Id.*)

As explained during the September 29 meeting, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*) In conversations with the Heirs, the Personal Representative has emphasized that they are free to engage in any transactions they wish related to their expectancy interests in the Estate, but that they should exercise caution, particularly in light of uncertainty of when the assets of the Estate will be distributed to the Heirs. (*Id.*, ¶ 67.)

The Nelsons' allegation that the Personal Representative "recommended [the Nelsons] enter into high interest loans," has no basis in fact, is not supported by any evidence, and should be summarily rejected by the Court.

IX. THE NELSONS' ASSERTIONS THAT THE PERSONAL REPRESENTATIVE IS UNABLE TO ADMINISTER THIS ESTATE AND HAS NOT TREATED THEM WITH RESPECT—LIKE THE MAJORITY OF THE ALLEGATIONS IN THEIR PETITION—ARE CATEGORICALLY FALSE.

Finally, and in a transparent attempt to distract from the complete absence of evidence that supports their Petition, the Nelsons resort to asserting that the Personal Representative is not competent to administer the Estate and accusing the two trust officers managing the Estate of being “aggressive, temperamental, rude, and condescending.” (Pet., ¶ 47.) While these baseless and unprofessional criticisms would ordinarily not merit a response, the Nelsons have repeated them enough both in filings with this Court and in public statements that the Personal Representative is compelled to respond with the hope of putting an end to these improper comments.

First, in accordance with their theory that if they repeat a theme enough, it will become true, the Nelsons' Petition is replete with assertions that the Personal Representative “is out of depth,” has a “lack of experience,” and is incapable of managing the assets of the Estate. (*See, e.g.,* Pet., ¶¶ 25, 30.) The Nelsons go so far as to assert that the Personal Representative “intentionally misrepresented” its capabilities to manage the Estate's entertainment assets. (*Id.*, ¶ 10.) These assertions betray a fundamental misunderstanding of the role and function of a professional corporate fiduciary as well as a disregard for the record.

Comerica Bank & Trust, N.A. (“Comerica”) routinely administers large and complex estates and has a specific department—led by Ms. Bruce—that specializes in administering unique assets, like the entertainment assets of this Estate. (Bruce Dec., ¶ 3.) Each estate and trust administered by Comerica is different, but Comerica applies the same general approach to all engagements which involve the ongoing operation of complex business entities—it puts the administrative framework in place (including asset protection, financial management, and

general oversight) and then retains outside experts to advise and in some instances operate the businesses. (*Id.*)

Comerica is also a wholly-owned subsidiary of one of the largest financial institutions in the United States and, as a result, has access to specialized internal resources, including Comerica Incorporated's Entertainment Group. (Bruce Dec., ¶ 3.) Additionally, Comerica has as an internal resource the trust officer who administered the Estate of Elvis Presley. (*Id.*) However, despite these internal resources, the Personal Representative never told the Heirs that it intended to or could manage the entertainment assets of the Estate using only internal Comerica personnel. To the contrary, the Personal Representative unambiguously notified the Heirs in its September 2016 response to the Heirs' request for proposal that it, if selected, it intended to retain outside experts to, among other tasks, manage the entertainment assets of the Estate:

How you would propose to manage the entertainment assets?

Due to the specialized nature of the entertainment assets, Comerica would retain outside expertise to provide guidance on the evaluation, management, and monetization and commercial optimization of these assets. Input from the heirs would be sought and considered as outlined above.

(Bruce Dec., Ex. A.) What's more, in a discussion with the Nelsons prior to the Personal Representative's selection, Ms. Bruce candidly advised the Nelsons that if they were talking to any corporate fiduciary that was representing that it had the internal capabilities to manage the entertainment assets of the Prince Estate, that the corporate fiduciary was lying to them (including, because an individual with those capabilities would not be working at a bank, making a banker's salary). (*Id.*, ¶ 5.)

Working with Mr. Carter, counsel, and the internal team at Comerica, the Personal Representative has done an admirable job generating value from the Estate's entertainment assets, despite immediately upon appointment being handed the dispute with UMG and WBR

and facing counterproductive actions by the Nelsons. The Personal Representative intends to continue working to generate value for the Estate to ensure that it can pay the Estate's tax obligation, close the Estate, and distribute the assets to the Heirs.

With respect to the personal allegations levied against Ms. Aycock and Ms. Bruce, the Nelsons cite to Sharon Nelson's March 10, 2017 Affidavit, which she previously submitted to the Court in connection with her opposition to the Personal Representative's request that the Court clarify the application of existing protocols and orders to the Personal Representative. As the Personal Representative responded when Sharon Nelson first made these allegations: "any suggestion that the Personal Representative has been disrespectful of, or has otherwise acted inappropriately towards, any of the Non-Excluded Heirs is false." (March 15, 2017 Response at 1.) Time has not converted Sharon Nelson's inaccurate statements from March to accurate statements now that it is November. Because both the Personal Representative and the Court have already addressed this matter, the Personal Representative refers the Court to its March 15 filing. (*See also* Nov. 19 Baker Aff., ¶ 3.)

To the extent that the Nelsons are purporting to allege new, unspecified, criticisms of the Personal Representative and its employees, such allegations are similarly without a basis in fact. The two trust officers who are managing this Estate have provided the Heirs unparalleled access and communications regarding the Estate and its assets. The Estate is extremely fortunate to have such experienced, dedicated, and patient trust officers administering the Estate, and it is disappointing that the Nelsons have resorted to false attacks on their characters because of their general frustrations with the Estate.¹¹ The Personal Representative understands that the

¹¹ The Nelsons appear to not appreciate or care that when they or their entertainment advisor make public statements accusing the Personal Representative of being "evil," having "lied" and engaged in "deceit," or operating a "Plantation," they damage the Estate and all of the Heirs by

administration of an estate is often an emotionally charged and overwhelming experience for heirs. Personal representatives often bear the brunt of frustrations based on the nature of estates and must be able to forge ahead in light of the same. Despite the unfounded attacks on its character, competence, and integrity, the Personal Representative remains committed to administering the Estate with transparency and dignity. The Personal Representative will continue to work to build, repair, and strengthen its relationship with all of the Heirs, but building (or repairing) a relationship requires engagement from all parties and, to date, the Personal Representative has not had willing partners in the Nelsons. For the benefit of the Estate and all of the Heirs, the Personal Representative sincerely hopes that this changes soon.

* * * * *

WHEREFORE, for the reasons set forth herein, Comerica Bank & Trust, N.A., respectfully requests that the Court enter an order:

1. Denying in its entirety the Petition to Permanently Remove Comerica Bank & Trust, N.A. as Personal Representative;¹² and
2. Granting such other relief as is appropriate.

discouraging prospective partners from engaging in transactions with the Estate. (Bruce Dec., Ex. Y.) Indeed, each time a prospective partner chooses not to do business with the Estate as a result of the Nelsons' actions, it reduces income available to the Estate and makes it more difficult to pay all tax liabilities and close the Estate.

¹² The Personal Representative has attempted in this Objection to respond to all of the allegations in the Nelsons' 56-count Petition. However, to the extent not specifically admitted herein, the Personal Representative denies all of the allegations, claims, and requests for relief sought by the Nelsons.

Respectfully Submitted,

Dated: November 10, 2017

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