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May 1, 2020

VIA EMAIL

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Re: *In re Estate of Prince Rogers Nelson*

Court File No.: 10-PR-16-46

Counsel:

In our capacity as Second Special Administrator ("SSA") to the Estate of Prince Rogers Nelson ("the Estate"), we write in response and to object to the March 17, 2020 subpoena of CAK Entertainment, Inc. ("CAK") seeking both documents and a deposition of the SSA. The SSA objects to both the document requests and the deposition as improper under Minnesota Rules of Civil Procedure 26.02, 30, 34, and 45 and the scope of relevant discovery as articulated in the Court's April 20, 2020 Scheduling Order. Unless, that aspect of the subpoena calling for the deposition of the SSA is withdrawn, we will move for a protective order precluding the deposition. Additionally, this letter is intended to offer CAK an opportunity to modify the document requests in its subpoena in compliance with the Rules and the Court's Order. If CAK so refuses, and as to the document requests it will be incumbent, under Rule 45.03, on CAK to bring a motion to compel before His Honor.



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"[A]n attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." Minn. R. Civ. P. 45.03(a). Parties that fail to adhere to this requirement and necessitate court involvement are subject to sanctions such as paying the attorneys' fees of the burdened party. *Id.* This is because a court *must*, at least, limit a subpoena where it "subjects a person to undue burden," Minn. R. Civ. P. 45.03(c)(1)(D), or seeks irrelevant information. *See e.g., Roberts v. Shawnee Mission Ford, Inc.*, 352 F.3d 358, 360–62 (8th Cir. 2003).¹

If the subpoenaing party seeks confidential or irrelevant information or information that would otherwise impose an undue burden on the responding party, then the subpoena should be quashed unless the subpoenaing party shows "a substantial need for the testimony or materials that cannot otherwise be met without undue hardship." Minn. R. Civ. P. 45.03(c)(2). Even a subpoena seeking relevant information will be quashed "where no need is shown, or compliance would be unduly burdensome, or where harm to the person from whom discovery is sought outweighs the need of the person seeking discovery of the information." *Miscellaneous Docket Matter # 1 v. Miscellaneous Docket Matter # 2*, 197 F.3d 922, 925 (8th Cir. 1999). Therefore, any requests that are facially irrelevant or impose an undue burden require CAK to make a showing of a *substantial* need before the SSA is obligated to respond.

The Court's April 20, 2020 order makes clear what is relevant to this proceeding under Minnesota Statute Section 524.3.-721:

[T]he Court makes the preliminary ruling that the [SSA] does not need to establish that the UMG Agreement overlapped the Warner Brothers Agreement but, instead, that the Estate had reasonable and articulable concerns about the overlap such that, considering the other alternatives available to the Estate, it was reasonable and prudent for the Estate to rescind the agreement. Further, the [SSA] would need to prove that the entertainment advisors knew, or had reason to know, of the potential for overlap, before recommending the approval of the UMG Agreement.

¹ Federal courts' interpretations of federal rules of procedure may provide guidance on interpretation of parallel state rules of procedure. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997); *Black v. Rimmer*, 700 N.W.2d 521, 526 (Minn. App. 2005). *Compare* Fed. R. Civ. P. 45(d)(3) with Minn. R. Civ. P. 45.03(c).

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CAK's subpoena is overbroad and seeks irrelevant information beyond the Court's Order. First, all of the requests are without a time limitation and are the type of ill-crafted requests not allowed by the rules. Minn. R. Civ. P. 34.02(b)(1) ("The request must set forth with **reasonable particularity** each time or category of items to be inspected" (emphasis added).) "The test for reasonable particularity is whether the request places the party upon reasonable notice of what is called for and what is not." *Inline Packaging, LLC v. Graphic Packing Int'l, Inc.*, Court File No. 15-cv-3183 (ADM/LIB), 2016 WL 7042117, at *12 (D. Minn. July 25, 2016). Second, each request calls for "all documents." Requests that ask for "all" or "any" are thus not reasonably particular. Every single request by CAK lacks a temporal limitation and contains the unrestricted quantifier "all." CAK has thus failed to provide "reasonable notice" of what is called for and what is not as relates to what is relevant as determined by the Court's order.

Third, much of the information, to the extent CAK's requests are understood, is confidential and outside of the SSA's control to produce without a confidentiality agreement acceptable to Comerica. *See* Minn. R. Civ. P. 45.03(c)(2) (allowing a court to quash a subpoena that request disclosure of confidential commercial information). To the extent the SSA has any documents associated with the UMG and WBR agreements, which is the focus of nearly every request by CAK, almost every document, including the agreements themselves, are confidential. The SSA has no control or authority to alter or breach that confidentiality. Rather, that determination rests with the personal representative, Comerica, and its counsel. In fact, your clients have subpoenaed documents from Comerica and Fredrikson largely identical to those served on the SSA.

Asking for confidential documents the SSA does not control is a symptom of CAK's failure to tailor its document requests specifically to the SSA. CAK's requests for documents concerning the UMG and WBR agreements, Fredrikson's investigation, and the rescission motion appear to purposely ignore the fact that the SSA was not appointed by the Court until well after all of the relevant events transpired. The SSA was not responsible for the creation of any document prior to its report on the UMG agreement. Since CAK has also subpoenaed UMG, WBR, Comerica, and Fredrikson, it begs the question as to why CAK would seek this information from the SSA, other than to unduly burden and harass the SSA. Any documents that predate the SSA's involvement should, and have in fact, been sought from the putative source of those documents, not the SSA. Indeed, with a number of the requests, this would include CAK requesting the documents either from itself or its co-advisor NorthStar/McMillan, the person admittedly primarily responsible for communicating and negotiating with UMG. For example, Request 12 asks the SSA to produce communications that included CAK or Koppelman. *See* Minn. R. Civ.

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P. 26.02(b) (considering a party's relative access to relevant information when considering what must be produced).

While most of the documents sought are not the SSA's documents, some of the document requests, again to the extent they can be understood, seek documents that, to the SSA's knowledge do not exist. *Farmers Insurance Exchange v. West*, No. 11-cv-2297 (PAM/JJK), 2012 WL 12894845, *5 (D. Minn. Sept. 21, 2012) ("Of course, the Court cannot order any party to produce something in discovery that does not, in fact, exist.") For example, discussions regarding particular provisions of the UMG and WBR agreements. (*See, e.g.*, Requests 8 and 9.) At a minimum, CAK has no reason to believe the SSA would have such information when the SSA was not part of the creation of these agreements.

Much, if not all, of the information sought by CAK is already within or has been within CAK's possession. CAK likely had greater access to many of the documents it seeks (Requests 7, 10, 12, 13, 14) by virtue of its position as an advisor to the Estate at the time the UMG agreement was negotiated. To the extent these requests seek communications to which CAK was a party, CAK should still be in possession of all of them. Asking the SSA to now produce documents it may or may not have and which should already be in CAK's possession is an undue burden.

Finally, with respect to the document requests, a number of them, specifically nos. 5 and 6 seek information protected as attorney work product and for which CAK cannot credibly argue it has a substantial need, the failure to produce would create an undue hardship for CAK, or that the information cannot be obtained from another source. In fact, in the SSA's UMG Report and Recommendation to the Court, the SSA listed each person with whom it spoke. There is nothing prohibiting CAK from doing the same. Regardless, the SSA's Report and Recommendation to the Court and the investigation in respect thereof, are not relevant to the issues in dispute on the Estate's fee motion.

Turning to the definitions and document requests in your subpoena, the SSA specifically objects and responds as follows:

DEFINITIONS

1. The SSA objects to the definition of "Comerica" to the extent it attempts to impose upon the SSA the production of documents insulated from production by the attorney-client privilege and/or attorney work product.

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2. The SSA objects to the definition of "Bremer" to the extent it attempts to impose upon the SSA the production of documents insulated from production by the attorney-client privilege and/or attorney work product.

3. The SSA objects to the definition of "Stinson" to the extent it attempts to impose upon the SSA the production of documents insulated from production by the attorney-client privilege and/or attorney work product.

4. The SSA objects to the definition of "Fredrikson" to the extent it attempts to impose upon the SSA the production of documents insulated from production by the attorney-client privilege and/or attorney work product.

5. The SSA objects to the definition of "Estate" to the extent it attempts to impose upon the SSA the production of documents insulated from production by the attorney-client privilege and/or attorney work product.

6. The SSA objects to the definition of "SSA" to the extent it attempts to impose upon the SSA the production of documents insulated from production by the attorney-client privilege and/or attorney work product.

7. The SSA objects to the definition of "WBR Agreements" to the extent it seeks to include therein documents that are not relevant to the issues in dispute on the Estate's fee motion.

8. The SSA objects to the definition of "document" to the extent it attempts to impose obligations on the SSA not required by the Minnesota Rules of Civil Procedure including documents not within the possession of the SSA.

DOCUMENT REQUESTS

As noted above, the SSA was not appointed by the Court until well after the events, facts, and circumstances relevant to the fee motion transpired. Likewise, the SSA was not responsible for generating or maintaining any of the documents relating to those events, facts, or circumstances. In fact, the documents that were reviewed in connection with the SSA's Report and Recommendation to the Court on the UMG rescinded agreement, and noted in that report, were obtained from Fredrikson and Stinson and which totaled over 10,000 pages of documents and pleadings (which are equally available to your clients through court records). Against that backdrop, the SSA responds to the document requests as follows:

1. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including, without limitation." Objection is also made on the grounds that the request is vague and ambiguous in that it is not tailored to any specific provision(s) of the UMG Agreement and also seeks

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documents that are not relevant to the issues in dispute. So too is objection made on the ground that the request seeks the production of confidential/proprietary information of the Estate.

2. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including, without limitation." Objection is also made on the grounds that the request is vague and ambiguous in that it is not tailored to any specific provision(s) of the WBR Agreements and also seeks documents that are not relevant to the issues in dispute. So too is objection made on the ground that the request seeks the production of confidential/proprietary information of the Estate.

3. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." Objection is also made on the grounds that the request is vague and ambiguous in that it is not tailored to any specific provision(s) of the UMG Agreement. The request is also objectionable on the ground of undue burden to the extent it purports to request that the SSA produce pleadings filed and of record with the Court on the Estate's motion to rescind the UMG Agreement as well as documents that clearly are in the possession, custody and control of Comerica and/or Fredrikson.

4. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." Objection is also made on the grounds that the request is vague and ambiguous in that it is not tailored to any specific provision(s) of the UMG Agreement. The request is also objectionable on the ground of undue burden to the extent it purports to request that the SSA produce pleadings filed and of record with the Court on the Estate's motion to rescind the UMG Agreement as well as documents that clearly are in the possession, custody and control of Comerica and/or Fredrikson.

5. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." The SSA also objects to this request on the ground that it seeks the production of documents clearly protected from disclosure as attorney work product. Objection is also made on the ground that the request seeks documents that are not relevant to the issues in dispute.

6. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." The SSA also objects to this request on the ground that it seeks the production of documents clearly protected from disclosure as attorney work product. Objection is also made on the ground that the request seeks documents that are not relevant to the issues in dispute.

7. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation."

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Objection is also made on the ground and to the extent it seeks documents protected by the attorney-client privilege.

8. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." Objection is also made on the ground and to the extent it seeks documents protected by the attorney-client privilege.

9. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." Objection is also made on the ground and to the extent it seeks documents protected by the attorney-client privilege.

10. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." Objection is also made on the ground and to the extent it seeks documents protected by the attorney-client privilege.

11. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents, including without limitation." Objection is also made on the ground and to the extent it seeks documents protected by the attorney-client privilege.

12. The SSA objects to this request on the grounds that it is overly broad and unduly burdensome in that it requests "all correspondence ... Including, without limitation." It is also overly broad because it is not limited in any respect to any specific issue or provision in the UMG Agreement, and for that reason as well it seeks documents that are not relevant to the issues in dispute.

13. The SSA objects to this request on the ground that it seeks documents that are not relevant to the issues in dispute.

14. The SSA objects to this request on the ground that it seeks documents that are not relevant to the issues in dispute.

15. The SSA objects to this request on the grounds that it is overbroad and seeks documents that are not relevant to the issues in dispute.

In addition to these objections, except with respect to the SSA's work product, and as stated above, all of the documents requested are in the possession of the Personal Representative, Comerica, and its lawyers. Similarly, many of the requested documents are in the possession of your clients and/or your clients' co-advisor, NorthStar/McMillan (the one principally responsible for negotiating the UMG Agreement and the party who UMG asserted defrauded it into that agreement). Thus, objection is made to each request, except nos. 5 and 6, on the grounds that they are unduly burdensome in that the documents are readily available from other parties and, in the case of the Estate, more

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properly obtained from Comerica/Fredrikson. The fact that you have subpoenaed identical documents from them amplifies the overbreadth and burden of your request.

Nevertheless, assuming you are able to work out with Comerica/Fredrikson an acceptable confidentiality agreement, we are prepared to produce to you the documents referenced above that we received from Fredrikson and Stinson.

As to the deposition of the SSA, Judge Eide's Order makes it clear that the SSA has no unique personal knowledge that may credibly be characterized as relevant to the issues in dispute. His Honor has stated that the issues are whether "the Estate had reasonable and articulable concerns about the overlap such that, considering the other alternatives available to the Estate, it was reasonable and prudent for the Estate to rescind the agreement." The facts relevant to these issues lay uniquely with Fredrikson in their role as counsel to Comerica. As you know full well, it was Fredrikson as counsel to Comerica that was forced to deal with the situation upon Comerica being appointed the personal representative by the Probate Court, including communicating with Warner Brothers and UMG, investigating their allegations, and ultimately making the determination that it was in the Estate's best interests to move the Probate Court to rescind the UMG record agreement. Thus, it is obvious the information sought in the deposition of the SSA, as set forth in the Deposition Topics portion of your subpoena, can be and should be obtained from other witnesses. The fact that the subpoena you have served on Fredrikson contains identical deposition topics of those in the SSA subpoena magnifies the obviousness of this fact. By way of example, you have asked the SSA to testify on "Fredrikson's investigation concerning the negotiation, drafting and terms of the UMG Agreement and WBR's claims or assertions of rights in or to recordings that were the subject of the UMG Agreement." Can you honestly say that Fredrikson is not the proper source of this information as opposed to the SSA?

We have not addressed each and every document request and deposition topic in this letter as to do so would unnecessarily lengthen it given the abject overbreadth of the scope of the subpoena in that it seeks discovery of the SSA's work product, seeks discovery on matters as that are not relevant to any claim or defense, and that it is unreasonably cumulative and duplicative of discovery you have served on others.

We are willing meet and confer on CAK's subpoena and its overbreadth. However, barring agreement, the SSA does not intend to produce any documents unless and until agreement with respect to confidentiality is reached with counsel for Comerica or ordered

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by the court in response to a motion to compel. Unless the deposition request is withdrawn, we will move to quash it.

Sincerely,

LARSON • KING, LLP

s/ Peter J. Gleekel

PETER J. GLEEKEL

PJG/bp
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cc: William Tipping (via email)
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