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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 your March 13, 2020 subpoena duces tecum. The SSA objects to the document requests as improper under Minnesota Rules of Civil Procedure 26.02, 34, and 45 and the scope of relevant discovery as articulated in the Court’s April 20, 2020 Scheduling Order. In the event you amend the subpoena to address the objections, and to comply with the Rules and the Court’s order, we will responsibly respond to the same. On the other hand, if you intend to stand on each definition and document request in the subpoena, it will be incumbent, under Rule 45.03, on your client to bring a motion to compel before His Honor.

Before addressing the objectionable nature of the definitions and document requests in the subpoena, we feel it appropriate to generally address the responsibilities of one serving a subpoena under Rule 45 of the Minnesota Rules of Civil Procedure. “[A]n attorney responsible for the issuance and service of a subpoena shall take reasonable



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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).<sup>1</sup>

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 NorthStar/McMillan 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.

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<sup>1</sup> 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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The subpoena NorthStar/McMillan caused to be served on the SSA is overbroad and seeks irrelevant information beyond the Court's Order. First, all of the requests seek documents dating back to January 1, 2014, more than two and one-half years prior to Prince's death and well before this probate matter was even commenced. With this time period, the extremely overbroad categories of documents requested, and the many categories that bear no relevance to the issues in dispute in the motion for fees, it is readily apparent that no regard was given to your obligations under Rule 45.

Second, each request calls for "all documents and communications" rather than documents sufficient to show. Requests that ask for "all" or "any" are not reasonably particular. The insertion of "communications" in each request further compounds the objectionable nature of the requests in that the definition of "communication" seeks not only documents that may be in the SSA's possession but also any of which the SSA has "knowledge, information or belief." In a nutshell, NorthStar/McMillan 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 documentation, to the extent the 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 a number of requests, 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. Thus, we ask that you communicate with counsel for Comerica in an effort to address confidentiality issues including those arising from the fact that the Court has earlier prevented Mr. McMillan from access to confidential information in the Probate proceeding.

Asking for confidential documents the SSA does not control is a symptom of a failure on your part to tailor document requests specifically to the SSA as opposed to the "kitchen sink" approach taken in the document requests. The 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 retained 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. Moreover, Mr. McMillan was the one principally involved with UMG and Warner Brothers in negotiating terms, was the

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author or recipient of virtually all communications pertaining to the negotiations, and was involved in the motion to modify, having availed himself of the opportunity to object to the motion. It thus begs the question as to why NorthStar/McMillan 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 be sought from the putative source of those documents, not the SSA. Indeed, with a number of the requests, this source is NorthStar/McMillan. Rather than simply asking for any conceivable document pertaining, even remotely, to UMG Agreement, its rescission per Court Order or the 2014 Warner Brothers Agreement, NorthStar/McMillan should have first reviewed their own documents and then and only then carefully crafted requests for relevant documents not already in their possession. *See* Minn. R. Civ. P. 26.02(b) (considering a party's relative access to relevant information when considering what must be produced). In fact, from the documents the SSA obtained during its investigation, it is obvious that many of the documents truly relevant to the issues in dispute are in NorthStar/McMillan's possession. If they are not, then it follows that NorthStar/McMillan has destroyed the documents, and in which case, a whole other set of issues would come in to play.

Finally, a number of the documents requests, specifically nos. 1, 2, 7, 8, 9, and 17 seek (or at least seem to seek given the terribly broad nature of the request) information protected as attorney work product and for which NorthStar/McMillan cannot credibly argue it has a substantial need, the failure to produce would create an undue hardship for them, 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 NorthStar/McMillan 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 responds as follows:

### **DEFINITIONS**

1. 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.
2. 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.

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3. 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.

4. 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.

5. 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.

6. The SSA objects to the definition of "Representative" 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 "document" and "writing" 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.

8. The SSA objects to the definition of "communication(s)" as overly broad, unduly burdensome, vague, and ambiguous because it seeks items "of which You have knowledge, information or belief" regardless of if the SSA has possession of any such item.

9. The SSA objects to the obligation that NorthStar/McMillan seek to impose on the SSA in paragraph 22 of Exhibit A to the subpoena on the grounds that it purports to impose obligations on the SSA not provided in the Minnesota Rules of Civil Procedure.

10. The SSA objects to the time period set forth in paragraph 23 of Exhibit A on the grounds that it is overbroad, unduly burdensome, and seeks documents that are not relevant to any of the issues in dispute.

11. The SSA objects to the obligations paragraph 24 of Exhibit A seeks to impose on the SSA to the extent they are inconsistent with those imposed by the Minnesota Rules of Civil Procedure.

12. The SSA objects to the obligations paragraph 25 of Exhibit A seeks to impose on the SSA to the extent documents that the SSA received electronically from third parties do not contain each of the metadata fields listed in said paragraph 25. In addition, the SSA objects to the instruction to the extent it seeks to have the SSA affix production or attachment numbers to any electronically produced documents because the documents received by the SSA from third parties were provided to the SSA with production and/or attachment numbers and to require the SSA to renumber the documents represents an undue burden.

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## 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, the later group of which is equally available to your clients through court records. It also bears repeating that NorthStar/McMillan were principally involved and responsible for communicating and negotiating in respect of the UMG Agreement. As such, many, if not all, of the relevant documents are as readily accessible to you from NorthStar/McMillan's own files as from the SSA. Against that backdrop, the SSA responds to the following document requests.

1. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents and communications." Objection is also made on the grounds that the request is overbroad, unduly burdensome, vague, and ambiguous in that it is not tailored to any specific fact but blanketly seeks anything learned by the SSA in the Court Ordered investigation. The SSA also objects to the request on the grounds that it seeks documents that are not relevant to the issues in dispute. So too is objection made on the grounds that the request seeks the production of confidential/proprietary information of the Estate. Lastly, the SSA objects to the request on the grounds that it seeks the disclosure of information protected by as work product.

2. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents and communications." Objection is also made on the grounds that the request is vague and ambiguous in that it is not tailored to any fact or issue and also seeks documents that are not relevant to the issues in dispute. So too is objection made on the grounds 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 and communications." The request is also objectionable on the grounds 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 and communications." The request

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is also objectionable on the grounds 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 and communications." The SSA also objects to this request on the grounds that it is overbroad and unduly burdensome because the request is not addressed to any issue in dispute. Objection is also made on the grounds 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 and communications." The SSA also objects to this request on the grounds that it is vague and ambiguous in that it seeks documents concerning any "conflict" "relating to the rights and/or intellectual property" without defining "conflict" or the nature of the intellectual property sought to be addressed in the request. Objection is also made on the grounds 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 and communications." Objection is also made on the grounds and to the extent it seeks documents protected by the work product doctrine.

8. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents and communications." Objection is also made on the grounds that the request is vague and ambiguous in that it seeks any documents relating to NorthStar without any attempt to limit the request to any specific issue, topic, or matter. Objection is also made on the grounds that the request seeks documents not relevant to the issues in dispute. The SSA also objects to the request on the grounds and to the extent it seeks documents protected by the work product doctrine.

9. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents and communications." Objection is also made on the grounds that the request is vague and ambiguous because it does not limit the request to any specific issue, topic, matter, or provision. Objection is also made on the grounds that the request seeks documents not relevant to the issues in dispute. The SSA also objects to the request on the grounds and to the extent it seeks documents protected by the work product doctrine.

10. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests "all documents and communications." Objection is also made on the grounds that it is vague and ambiguous because it does not define

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“designs” or “schemes.” Objection is also made on the grounds that the request is unduly burdensome because with respect to WBR’s “attempts to acquire” or “attempts to negotiate an amendment,” NorthStar/McMillan were privy to those attempts and negotiations and thus, the documents are readily or more accessible to NorthStar/McMillan from their own files. The SSA also objects to the request on the grounds that it seeks documents that are not relevant to the issues in dispute.

11. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it requests “all documents and communications.” Objection is also made on the grounds that the request is overbroad, vague, and ambiguous because it seeks documents pertaining to any heir without regard to any issue, topic, or matter. The SSA also objects to the request on the grounds that the request seeks documents that are not relevant to the issues in dispute.

12. The SSA objects to this request on the grounds that it is overly broad and unduly burdensome in that it requests “all documents and communications.” It is also overly broad and vague because it is not limited in any respect to any specific issue or rights and does not define “actual or potential.” The SSA also objects to the request on the grounds that it seeks documents that are not relevant to the issues in dispute.

13. The SSA objects to this request on the grounds that it is overly broad and unduly burdensome in that it requests “all documents and communications.” The request is also objected to on the grounds that the requested documents are equally available to NorthStar/McMillan from the Court files in this Probate matter. Objection is also made on the grounds that the request purports to require the SSA produce documents that, to the extent they may exist and are not already part of the Probate Court’s file, are in the possession of Comerica and/or Fredrikson. The SSA also objects to the request on the grounds that it seeks documents that are not relevant to the issues in dispute.

14. The SSA objects to this request on the grounds that it is overly broad and unduly burdensome in that it requests “all documents and communications.” Objection is also made on the grounds that it purports to require the SSA to produce documents in the possession of Bremer, Stinson, Comerica and/or Fredrikson.

15. The SSA objects to this request on the grounds that it is overbroad and unduly burdensome in that it request “all documents and communications.” It also objectionable because it is cumulative and duplicative of requests addressed above. The SSA also objects to the request to the extent it broadly and without specification seeks documents regarding the UMG Agreement without reference to any specific issue, term, provision, or matter and thus, seeks documents that are not relevant to the issues in dispute.

16. The SSA objects to this request on the grounds that it is overly broad and unduly burdensome in that it requests “all communications.” The SSA also objects to the

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request on the grounds that it is vague and ambiguous because it does not define designs, schemes, or concepts and because it does not attempt to limit the request to any particular issue, subject matter, task, or responsibility. Objection is also made on the grounds that the request attempts to require the SSA to produce documents, if they exist, in the possession of Comerica, Bremer, Heirs and/or their representatives and NorthStar, the latter of which is more accessible to NorthStar than the SSA. The SSA also objects to the request on the ground that it seeks documents not relevant to the issues in dispute.

17. The SSA objects to this request on the grounds that it is overly broad and unduly burdensome in that it requests "all documents and communications." The SSA also objects to the request on the grounds that it is vague and ambiguous because it does not define designs, schemes, or concepts, because it is not limited to any specific person, and because it does not attempt to limit the request to any particular issue, provision, or term of the UMG Agreement. Objection is also made on the ground that the request attempts to require the SSA to produce documents, if they exist, in the possession of Comerica. It is also duplicative and cumulative of requests addressed above. The SSA also objects to the request on the ground that it seeks documents protected from disclosure by the work product doctrine. It is also objectionable because it seeks documents that are not relevant to the issues in dispute, specifically the SSA's understanding and purpose of Section 1.8 or the meaning of "pressing and distribution."

18. The SSA objects to this request on the grounds that it is overly broad and unduly burdensome in that it requests "all documents and communications." Objection is also made on the ground that it attempts to require the SSA to produce documents, if they exist, in the possession of Comerica. It is also objectionable because it seeks documents that are not relevant to the issues in dispute, specifically the SSA's understanding and knowledge of the 2014 WBR Agreement. The SSA also objects to the request to the extent it requests the production of documents protected from disclosure by the work product doctrine.

In addition to these objections, and except with respect to the SSA's work product, 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. As noted, Mr. McMillan was 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 properly obtained from Comerica/Fredrikson. The fact that you have subpoenaed identical documents that logically are already in the possession of NorthStar/McMillan amplifies the overbreadth and burden of your requests.

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

We are willing meet and confer on your subpoena and its overbreadth. However, barring agreement the SSA does not intend to produce any documents unless and until ordered by the court in response to a motion to compel.

Sincerely,

LARSON • KING, LLP

*s/ Peter J. Gleekel*

**PETER J. GLEEKEL**

PJG/bp

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