

**STATE OF MINNESOTA****DISTRICT COURT****COUNTY OF CARVER****FIRST JUDICIAL DISTRICT  
PROBATE DIVISION**

In the Matter of:

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

Honorable Kevin W. Eide

The Estate of Prince Rogers Nelson,

Decedent

**THE SECOND SPECIAL  
ADMINISTRATOR'S MEMORANDUM  
OF LAW IN SUPPORT OF MOTION TO  
QUASH SUBPOENA OF  
KOPPELMAN/CAK****INTRODUCTION**

This matter is before the Court on the motion of the Estate of Prince Rogers Nelson ( the “Estate”), through the Court appointed Second Special Administrator ( “SSA”), to quash a subpoena for the deposition of the SSA served by one of the former expert entertainment advisors Charles Koppelman and his wholly owned company, CAK Entertainment, Inc. (“Koppelman/CAK”). The SSA, Mr. Gleekel, is an attorney for the Estate (“SSA”). Koppelman/CAK have also served nearly identical subpoenas on Comerica Bank and Trust (“Comerica”), Fredrikson and Byron (Comerica’s lawyers), UMG Records, and Warner Records. Without apparent regard for what party can provide first hand knowledge of the information sought, or what information is relevant to the motion for a refund of the advisors’ fees, Koppelman/CAK has employed a scorched earth strategy to deposition discovery. Part of this strategy is to seek to depose opposing counsel, Mr. Gleekel, despite the fact the SSA was initially appointed by this Court approximately one year after the events at issue on the Fee Motion, was appointed to investigate and report to the Court on the existence of any potential legal claims arising out of this Court’s Order on the Estate’s motion to rescind the UMG Agreement, and subsequently to pursue claims arising out of the rescinded UMG Agreement. Stated otherwise, the

effort to depose the SSA ignores the fact that the SSA was not involved in the transactions at issue, has no first hand knowledge of any of the relevant facts but rather, acquired any knowledge through his investigation and thus, is not in a position to provide any competent testimony at the evidentiary hearing on the fee issue before this Court. Indeed, the investigation of the SSA constitutes attorney work product and is protected from disclosure absent limited circumstances, none of which are present. Even were the SSA's deposition a consideration, the topics noticed place an undue burden on Mr. Gleekel when viewed through this Court's defined scope of the evidentiary hearing. When stripped of all pretense, it is readily apparent that the sole aim of the Koppelman/CAK subpoena is work-product and/or harassment. Thus, the subpoena should be quashed.

### **BACKGROUND**

Koppelman/CAK's subpoena arises out of the continuing litigation over the SSA's motion for refund of excessive compensation paid to, among others, Koppelman/CAK. *See* Minn. Stat. § 524.3-721. This Court is familiar with the underlying factual basis for the SSA's motion. The SSA incorporates by reference its previous memorandum, affidavit, and exhibits in support of its motion for refund (herein, "Fee Motion").

#### **A. Koppelman/CAK's Subpoena.**

On March 17, 2020, Koppelman/CAK served upon the SSA a subpoena requesting documents<sup>1</sup> and noticing a deposition of Peter J. Gleekel.<sup>2</sup> (Gleekel Decl., Ex. B.) In the "definitions" section of the subpoena, Koppelman/CAK defined "SSA" as "the Second Special Administrator of the Estate, Peter Gleekel and Larson • King, LLP, and any and all of their past and present employees,

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<sup>1</sup> The SSA objected in a letter to counsel for Koppelman/CAK dated May 1, 2020 to the document requests, a copy of which is attached to the Declaration of Peter J. Gleekel ("Gleekel Decl.") Ex. A. The SSA has yet to receive a response to the letter and therefore is not seeking relief in this motion from the document requests.

<sup>2</sup> The CAK Defendants did not notice the deposition of Peter J. Gleekel *in his capacity as* Second Special Administrator; the subpoena is addressed to Mr. Gleekel personally.

agents, attorneys, representative, consultants and any other person acting, or purporting to act, on their behalf.”<sup>3</sup> (*Id.*) The subpoena set forth the following twelve topics for examination.

1. The negotiation, drafting and terms of the UMG Agreement.
2. The negotiation, drafting and terms of the WBR Agreements, including, without limitation, the 2014 WBR Agreement.
3. Claims or assertions by WBR of rights in or to recordings that were the subject of the UMG Agreement.
4. The decision to rescind the UMG Agreement, and the rescission thereof.
5. Claims or assertions by UMG that its entry into the UMG Agreement was induced by fraud, misrepresentation or omission.
6. The decision to return to UMG amounts paid to the Estate and the Advisors under or in respect of the UMG Agreement.
7. Communications with UMG, WBR, Comerica, Fredrikson, the Estate, the Heirs (or any of them), NPG, Bremer, Stinson, the Advisors (or either of them), Charles Koppelman or L. Londell McMillan concerning the UMG Agreement and/or the rescission thereof.
8. The payment of commissions or other amounts to the Advisors from or in respect of the UMG Agreement and communications related thereto.
9. Any valuation, appraisal or other financial analysis or summary of the value of rights in the Prince recordings that were the subject of the UMG Agreement or the WBR Agreements.
10. 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.
11. The SSA’s investigation concerning the UMG Agreement and the rescission thereof.
12. The SSA Report.

(*Id.* at 9-10.)

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<sup>3</sup> This is broader than this Court’s Order *creating* the Second Special Administrator. (*See* Doc. ID # 1987) (“Peter J. Gleekel and the law firm Larson King, LLP is hereby appointed the Second Special Administrator of Decedent’s estate.”)

Koppelman/CAK also subpoenaed Comerica Bank and Trust (“Comerica”), Fredrikson and Byron (“Fredrikson”), UMG Recordings, Inc. (“UMG”), and Warner Records (“WBR”), all of whom were instrumentally involved in the events at issue and the parties who have first hand knowledge of the facts relevant to the Court’s determination of the fee motion. In fact, these subpoenas contain *identical* topics for examination as the subpoena served on Mr. Gleekel. (Gleekel Decl., Exs. C-F.) The Comerica subpoena contains 11 deposition topics which are identical to topics 1 through 11 in the Gleekel subpoena. (Ex. C at 9-10.) The Fredrikson and UMG subpoenas are identical to the Comerica subpoena (i.e., topics 1 through 11 of the Gleekel subpoena). (Exs. D at 9-10, E at 14-15.) The WBR subpoena contains nine topics; the topics are identical to topics 1 through 5, 7, and 9 through 11 of the Gleekel subpoena. (Ex. F at 14.) In sum, Koppelman/CAK seeks identical information from five parties on nine topics (i.e., topics 1-5, 7, 9-11 of Gleekel subpoena) and from four parties on two topics (i.e., topics 6 and 8 of Gleekel subpoena). The only topic particular to the Gleekel subpoena is topic 12: “the SSA Report” submitted to this Court on the Rescinded UMG Agreement.

**B. This Court’s April 20, 2020 Scheduling Order.**

On April 20, 2020, this Court issued its “Scheduling Order – Motion for Commission Reimbursement” (herein “the Scheduling Order”). (Doc ID # 3962.) Within the Scheduling Order, this Court initially provided general guidance: “This motion for refund is by the [SSA] in an attempt to show that the entertainment advisors to the Estate received excessive compensation. The burden of proof would be by the preponderance of the evidence.” (*Id.* at 3.) This Court then addressed those issues relevant to the determination on the SSA’s motion that seeks a refund of commissions associated with the court ordered rescission of the UMG Agreement:

As to the UMG Agreement rescission, the 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 of 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 the overlap, before recommending the approval of the UMG Agreement.

(*Id.*) With this ruling, this Court intended “to assist the parties in determining what discovery is necessary and to frame the issues for the evidentiary hearing.” (*Id.*)

The issue before this Court by way of this motion is whether Koppelman/CAK’s subpoena to the SSA falls within the scope of permissible discovery. It does not.

## **ARGUMENT**

### **I. Standard of Review.**

Unless otherwise inconsistent with the probate code, the Minnesota Rules of Civil Procedure govern “pleadings, practice, procedure and forms in all probate proceedings.” Minn. Stat. § 524.1-304. “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case, considering...the parties’ relative access to relevant information...the importance of the discovery in resolving the issues and whether the burden or expense of the proposed discovery outweighs its likely benefit. Minn. R. Civ. P. 26.02(b). One means by which parties obtain information is through the subpoena power. *See generally* Minn. R. Civ. P. 45. That power, though, is not limitless. “On timely motion, the court on behalf of which a subpoena was issued **shall** quash or modify the subpoena if it requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden.” Minn. R. Civ. P. 45.03(c)(1)(C), (D) (emphasis added). Further, a court may quash or modify a subpoena if the subpoena “requires disclosure of a trade secret or other confidential research, development, or commercial information.” Minn. R. Civ. P. 45.03(c)(2)(A).

### **II. The SSA, Mr. Gleekel, is an Attorney Appointed By the Court for the Estate and Not a Proper Deponent.**

While the onus may ordinarily be on the party moving to quash a subpoena, when a party seeks to depose opposing counsel, the burden shifts to the proponent of the deposition to show that

(1) no other means exists to obtain the information than to depose opposing counsel, (2) the information sought is relevant and nonprivileged, and (3) the information is crucial to the preparation of the case. *Shelton v. Am. Motors Corp.*, 805 F.2d 1323, 1327(8th Cir. 1986).<sup>4</sup> While it is obvious, it bears repeating, there is no doubt Mr. Gleekel is an attorney opposing Koppelman/CAK on this motion. Therefore, Koppelman/CAK must make the requisite showing that deposing opposing counsel is proper; if they cannot, then the subpoena must be quashed. Before considering the specific factors articulated in *Shelton*, it is important for this Court to understand the extraordinary nature of the Koppelman/CAK subpoena.

Mr. Gleekel is not a party to this lawsuit; he is one of the Estate's attorneys in his capacity as SSA.<sup>5</sup> See *Miscellaneous Docket Matter # 1 v. Miscellaneous Docket Matter # 2*, 197 F.3d 922, 927 (8th Cir. 1999) ("The court affords particular consideration to burdens placed on nonparties.") Mr. Gleekel was originally appointed to serve as SSA to investigate and report to this Court on potential claims arising out of the rescinded UMG Agreement because Comerica could not due to the common interest agreement between Comerica and Fredrikson on the one hand and Bremer and Stinson on the other. See Order Appointing Second Special Administrator, *In re Estate of Nelson*, Court File No. 10-PR-16-46 (Minn. Dist. Ct. Aug. 21, 2017) (Doc. ID # 1987). The appointment was subsequently expanded to pursue the claims identified in the SSA's Report and Recommendation on the Rescinded UMG Agreement. See Order Expanding Authority of the Second Special Administrator, *In re Estate of Nelson*, Court File No. 10-PR-16-46 (Minn. Dist. Ct., Feb. 2, 2018) (Doc. ID # 2283); see also Minn. Stat.

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<sup>4</sup> See *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997) (stating Minnesota courts look to federal law for guidance when interpreting Minnesota rules, particularly when the language in the federal and state rules is identical); compare Minn. R. Civ. P. 45.03 with Fed. R. Civ. P. 45(d).

<sup>5</sup> Symptomatic of the CAK Defendants approach to discovery in this matter, Mr. Gleekel has been noticed for a deposition in his personal capacity. However, to the extent the CAK Defendants true aim is to depose Mr. Gleekel *in his capacity as* the SAA, the analysis remains the same. In either scenario, he is and has been since the initial appointment an attorney for the Estate. His deposition is presumptively not allowed and his work product is protected from disclosure.

§ 524.3-614(2) (“A special administrator may be appointed...where a general personal representative cannot or should not act.”) Accordingly, the SSA’s appointment in this Probate is limited. *See* Minn. Stat. § 524.3-617 (“A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties as prescribed in the order.”) The SSA was retained for the particular purpose of investigating potential claims on behalf of the Estate and pursuing those claims “on behalf of the Estate.” *See* Order & Mem. Approving Litigation, *In re Estate of Nelson*, Court File No. 10-PR-16-46 (Minn. Dist. Ct., June 14, 2018) (Doc. ID # 2666). This Court’s Orders make clear Mr. Gleekel is and always has been an attorney for the Estate in his capacity as the SSA.

The baseline assumption is opposing counsel cannot be deposed. Taking opposing counsel’s deposition is viewed negatively and should only “be employed in limited circumstances.” *Shelton*, 805 F.2d at 1327. While the rules do not prohibit an opposing attorney from being deposed, a deposition of opposing counsel “provides a unique opportunity for harassment; it disrupts the opposing attorney’s preparation for trial, and could ultimately lead to disqualification of opposing counsel if the attorney is called as a trial witness.” *Marco Island Partners v. Oak Development Corp.*, 117 F.R.D. 418, 420 (N.D. Ill. 1987).

Questioning the attorney on the other side of a case implicates the attorney-client relationship, threatens to intrude on the attorney-client privilege, jeopardizes the attorney’s work product, and raises the question of whether the attorney must withdraw or be disqualified from further representation because he or she has become a material witness. The potential to use such a request for improper purposes is also great.

*Williams v. Wellston City School Dist.*, No. 2:09-cv-566, 2010 WL 4513818, at \*3 (S.D. Ohio Nov. 2, 2010).

Deposing the SSA appears to represent an attempt to gain an unfair advantage; it is by all reasonably objective bases for an improper purpose. Mr. Gleekel has no first-hand knowledge of the events that give rise to the Estate’s motion for refund of excessive compensation paid to

Koppelman/CAK. This Court appointed Mr. Gleekel and his firm to serve as the SSA, investigate potential claims on behalf of the Estate, and pursue those claims nearly two years after *all* of the operative events transpired. *All* of the relevant witnesses, the primary actors, in respect of the UMG Agreement and the decision to move to rescind that Agreement that give rise to the Estate's motion can and have been subpoenaed by Koppelman/CAK. It is improper and an unnecessary burden to seek testimony from Mr. Gleekel that clearly asks him to testify as to what other more knowledgeable witnesses, who have first hand knowledge of the relevant facts, have said to the SSA or what those witnesses' documents contain; not to mention it is obviously harassment. *See* Minn. R. Evid. 602 ("A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.") Moreover, asking Mr. Gleekel's thoughts on the failed UMG transaction and subsequent rescission represents an attempt to ascertain work product. *See* Minn. R. Civ. P. 45.03(c)(1)(C) (requiring a subpoena to be quashed if it seeks "privileged or other protected matter"). This is not a permissible reason to depose opposing counsel. Nor is what the SSA may have thought about the facts relevant.

Despite discouraging the unusual practice of taking a deposition of opposing counsel, courts have identified narrow circumstances in which opposing counsel may be deposed. *Int'l Controls and Measurements Corp. v. Honeywell Int'l, Inc.*, Case No. 0:18-mc-00059-DSD-KMM, 2018 WL 5994189, at \*3 (D. Minn. Nov. 15, 2018). The proponent of the deposition must demonstrate three things: "(1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." *Id.* (quoting *Shelton*, 805 F.2d at 1327). Importantly, this test is a departure from the traditional analysis on a motion to quash. When a party seeks to depose opposing counsel, the **burden is on the proponent of the deposition**. "This difficult burden...intended to guard against the 'harassing practice of deposing opposing counsel ... that does nothing for the administration of justice but rather

prolongs and increases the costs of litigation, demeans the profession, and constitutes an abuse of the discovery process.” *Pamida, Inc. v. E.S. Originals, Inc.*, 281 F.3d 726, 729-30 (8th Cir. 2002) (quoting *Shelton*, 805 F.2d at 1330). Koppelman/CAK cannot make the requisite showing on any, let alone all, of the three elements.

**a. Other means exist to obtain the information.**

The information sought with the deposition of Mr. Gleekel, save work product, can be obtained elsewhere – all of it. Nearly all of the topics, except topics 11 and 12, predate Mr. Gleekel’s involvement with the Probate. But even topics 11 and 12 are entirely dependent on those antecedent events. The SSA’s report concerning the UMG transaction listed every source the SSA consulted in preparing that report: all witnesses, all documents, and all legal authority. *See* Doc. ID # 2237. None of the factual content of the report can be attributed to the SSA. All of the factual information was derived from witnesses and documents to which Koppelman/CAK have equal access. Koppelman/CAK should be directed to seek from those individuals that were involved in the relevant events – the people who wrote the agreements, who were involved in the communications, who authored the documents, and who made the decisions – those facts they seek in discovery on the motion. In other words, the witnesses competent to provide testimony relevant to the issues on the SSA’s Fee Motion.

Further, on a number of the topics on which the SSA’s deposition has been subpoenaed, it is obvious the SSA does not possess first-hand knowledge, but, rather, any knowledge of the SSA was gained through the SSA’s court directed investigation. For example, topics 1 and 2 ask about the “negotiation, drafting and terms” of the UMG Agreement and the WBR Agreements. Mr. Gleekel was not involved in negotiating, drafting, or finalizing these agreements. He cannot discern anything from the agreements other than what any other person reading the agreements can discern. It is peculiar Koppelman/CAK would even ask about the UMG Agreement since they were Advisors *at*

*the time it was drafted and directly involved therein at the time.* Yet, Koppelman/CAK demand Mr. Gleekel testify to such. This absurdity demonstrates the ill-formed nature of the subpoena.

The only topics on which Mr. Gleekel has direct first hand knowledge is the SSA's investigation and report (topics 11 and 12). However, these topics do permit a deposition because the investigation and report does not contain *any* new or novel facts, which can be the only reason for the deposition. The only addition is the SSA's legal analysis, which is not subject to a deposition. Everything relied upon for the report and reviewed in the investigation is stated in the report. Mr. Gleekel, as already stated, has no first-hand knowledge of those events, communications, or agreements. Because that information can be obtained elsewhere, a deposition of Mr. Gleekel is improper.

**b. The information sought is irrelevant and privileged.**

None of the "information" that can be obtained from Mr. Gleekel is first-hand knowledge. It is therefore irrelevant. Mr. Gleekel's impressions about events, communications, and agreements does not make a fact more or less likely for purposes of this motion, *see* Minn. R. Evid. 401, and constitutes work product. *See* Minn. R. Civ. P. 26.02(d). Because all of the factual information sought by Koppelman/CAK can be obtained elsewhere, the only original information sought is Mr. Gleekel's work product – i.e., his mental impressions of the documents and testimony surrounding the UMG transaction and rescission. Which is to say, all of the information sought by Koppelman/CAK is privileged. By attempting to access this verboten realm Koppelman/CAK assume another stringent test, which they cannot meet. In addition to failing the test to depose opposing counsel, Koppelman/CAK can make no showing for obtaining Mr. Gleekel's work product.

Work product protection "was designed to prevent 'unwarranted inquiries into the files and mental impressions of an attorney,' and recognizes that it is 'essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel.'" *Simon v.*

*G.D. Searle & Co.*, 816 F.2d 397, 400 (8th Cir. 1987) (*quoting Hickman v. Taylor*, 329 U.S. 495, 510–11 (1947)).<sup>6</sup>

[A] party may obtain discovery of documents and tangible things otherwise discoverable pursuant to Rule 26.02(b) and prepared in anticipation of litigation...only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Minn. R. Civ. P. 26.02(d). As discussed, Koppelman/CAK can obtain the underlying relevant facts – the unprotected aspect of work product – from other sources who have first-hand knowledge, not hearsay. Koppelman/CAK have shown they know they can do this by serving subpoenas on Comerica, Fredrickson, WBR, and UMG. There is no hardship in making Koppelman/CAK obtain the facts they seek through this route, *since they have already taken the action to do so* – by unartfully regurgitating the same subpoena sent to Mr. Gleekel. The only plausible reason for seeking to depose the SSA on the topics on what these parties know, did or documents they authored, is to seek mental impressions, conclusions, opinions, and legal theories of the SSA. This Court must protect Mr. Gleekel from such a flagrant abuse of subpoenaing opposing counsel. The information sought is privileged work product; the deposition is improper.

**c. Second-hand interpretation and work-product is not crucial to Koppelman/CAK'S preparation.**

Koppelman/CAK would undoubtedly like to have Mr. Gleekel's work-product. Indeed, the SSA anticipates Koppelman/CAK will respond to this motion with linguistic acrobatics and citation to inapposite authority to try to sway this Court toward allowing the deposition of Mr. Gleekel by

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<sup>6</sup> See Minn. R. Civ. P 26.02, *2006 advisory committee cmt.* (noting the Minnesota rule conforms with Fed. R. Civ. P. 26(b)).

arguing that as the SSA he was not acting as a lawyer to the Estate in investigating claims on behalf of the Estate, but it was only until this Court's Order expanding the SSA's authority to pursue those claims was the SSA a lawyer of the Estate. Any such attempt is a distinction without merit. *See, e.g., SEC v. Rosenfeld*, No. 97 CIV 1467 (RPP), 1997 WL 576021, at \*2-3 (S.D.N.Y. Sept. 16, 1997). The SSA's work-product cannot be discovered because Koppelman/CAK do not have a substantial need for it. Mr. Gleekel's interpretation of the events that led to the UMG rescission are contained within the SSA's report, which is based entirely on facts Mr. Gleekel did not perceive first-hand. Mr. Gleekel's mental impressions, conclusions, opinions, and legal theories are entitled to absolute protection. Minn. R. Civ. P. 26.02(d). To draw a sports analogy, Koppelman/CAK have the players and the film to study; Koppelman/CAK want the playbook. The subpoena should be quashed.

### **III. The Deposition Topics Identified by Koppelman/CAK are Irrelevant and Impose an Undue Burden.**

It is important to understand discussion of the deposition topics is not necessary because Koppelman/CAK have not and cannot justify deposing opposing counsel in the first instance. However, even if this Court considers the substance of the deposition topics, no more than a cursory review is needed to conclude their objectionable nature. Koppelman/CAK have inappropriately inverted the burden. Instead of serving a well-crafted subpoena with targeted deposition topics to the SSA and other parties, Koppelman/CAK have served nearly identical subpoena on five parties. Put another way, Koppelman/CAK created one subpoena and then sent it to every party they deem involved in this motion. Such irresponsible discovery puts the burden on the individual parties to object to the extent the universal subpoena does not apply in order to isolate, for Koppelman/CAK, the appropriate scope of inquiry. Rule 45 demands more effort of Koppelman/CAK that has been exerted here.

“A party or an attorney responsible for the issues and service of a subpoena **shall** take reasonable steps to **avoid imposing undue burden**...on a person subject to that subpoena. The

court...**shall enforce this duty** and impose upon the party or attorney in breach of this duty an appropriate sanction.” Minn. R. Civ. P. 45.03(a) (emphasis added); *cf. Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 638 (D. Minn. 2000) (finding in order for a corporate representative deposition notice to be proper “the requesting party must take care to designate, with *painstaking specificity*, the particular subject areas that are intended to be questioned and that are relevant to the issues in dispute” (emphasis added).)

Aside from the impropriety of subpoenaing opposing counsel for a deposition, Koppelman/CAK’s deposition topics are not crafted with precision and impose an undue burden. Minnesota courts have not defined an “undue burden” in the context of a subpoena. *Hirsi v. ARCH Language Network, Inc.*, A18-1076, 2019 WL 1591800, at \*7 (Minn. App. Apr. 15, 2019). But, other courts have observed “generally a court must balance the potential value of the information to the party seeking it against the cost, effort, and expense to be incurred by the person or party producing it.” *Taber v. Ford Motor Co.*, case no. 17-09005-MC-W-SWH, 2017 WL 3202736, at \*2 (W.D. Mo. July 27, 2017); *see also American Elec. Power Co., Inc. v. United States*, 191 F.R.D. 132, 136 (S.D. Ohio 1999) (stating that the competing factors include “relevance, the need of the party for the documents, the breadth of the document request, the time period covered by it, the particularity with which the documents are described and the burden imposed” and that “the status of a person as a non-party is a factor that weighs against disclosure” (internal quotation marks and citations omitted)); *EEOC v. Ford Motor Credit Co.*, 26 F.3d 44, 47 (6th Cir. 1994) (determining whether a burden is undue requires the court to weigh “the likely relevance of the requested material ... against the burden ... of producing the material.”). “[C]oncern for the unwanted burden thrust upon non-parties is a factor entitled to special weight in evaluating the balance of competing needs.” *Miscellaneous*, 197 F.3d at 927. With these considerations, the Koppelman/CAK subpoena imposes an undue burden on the SSA.

1. The negotiation, drafting and terms of the UMG Agreement.

The SSA was not a party to the UMG Agreement or involved in its “negotiation, drafting and terms.” Koppelman/CAK presumably were. Yet, regardless of Koppelman/CAK’s involvement with the day-to-day aspects of the UMG Agreement, Koppelman/CAK were entertainment advisors for the Estate at the time the UMG Agreement was negotiated and consummated. Many of the emails discussing the UMG Agreement included Koppelman. CAK/Koppelman therefore have more immediate access to this information and a better understanding of this topic than does the SSA. *See* Minn. R. Civ. P. 26.02(b). Asking Mr. Gleekel, then, can only be an attempt to obtain work-product. This topic imposes an undue burden.

2. The negotiation, drafting and terms of the WBR Agreements, including, without limitation, the 2014 WBR Agreement.

This topic is facially odd. Koppelman/CAK are asking Mr. Gleekel for information about agreements that Prince or his representatives negotiated with WBR in 2014. It strains credulity to suggest Mr. Gleekel could be a source of information on this topic. Moreover, instead of serving this topic only on the party who can answer it, WBR, Koppelman/CAK served it on everyone. It should go without saying the terms of the WBR Agreements speak for themselves. The negotiation and drafting are irrelevant because the SSA is not charged with demonstrating the 2014 WBR Agreement *actually* infringed on the UMG Agreement, though it did, but that it was reasonable consideration in respect of the motion to rescind the UMG Agreement. This can be done by reading the WBR Agreement, and making inquiry of Comerica/Fredrickson concerning their analysis of the same in connection with the motion to rescind the UMG Agreement. Asking Mr. Gleekel about this, if not an attempt to obtain work-product, seeks information irrelevant to the Fee Motion. This topic imposes an undue burden.

3. Claims or assertions by WBR of rights in or to recordings that were the subject of the UMG Agreement.

Similar to Topic Two, Koppelman/CAK have chosen to serve a subpoena on everyone asking about actions that are expressly attributed to WBR. Because this information is more properly obtained from WBR (and Comerica/Fredrikson), asking Mr. Gleekel (about events and communications to which he was not a party) adds nothing to discovery. Mr. Gleekel's understanding of any claims asserted by WBR would be based on hearsay from individuals Koppelman/CAK should ask directly. In seeking to obtain these "facts" from the SSA, Koppelman/CAK are actually seeking Mr. Gleekel's impressions (i.e., work product). This is proscribed. This topic imposes an undue burden.

4. The decision to rescind the UMG Agreement, and the rescission thereof.

As is a running theme throughout these topics, Koppelman/CAK are asking Mr. Gleekel about events that occurred years before his involvement with the Estate as appointed by this Court as the SSA to investigate claims on behalf of the Estate, and subsequently pursue those claims. The competent source as to the decision to move this Court for rescission is Comerica/Fredrikson. The SSA's mental impressions on the decision to move for rescission are work-product and afforded absolute protection. This topic imposes an undue burden.

5. Claims or assertions by UMG that its entry into the UMG Agreement was induced by fraud, misrepresentation or omission.

This is the same analysis as Topic Three. Koppelman/CAK have subpoenaed UMG, Comerica and Fredrikson this topic imposes an undue burden.

6. The decision to return to UMG amounts paid to the Estate and the Advisors under or in respect of the UMG Agreement.

This is the same analysis as Topics Three and Five. Koppelman/CAK have subpoenaed UMG, Comerica and Fredrikson the parties involved in the topic. Other than regurgitating what these parties said or did, the SSA's deposition on this topic adds nothing, it poses an undue burden as well.

7. Communications with UMG, WBR, Comerica, Fredrikson, the Estate, the Heirs (or any of them), NPG, Bremer, Stinson, the Advisors (or either of them), Charles Koppelman or L. Londell McMillan concerning the UMG Agreement and/or the rescission thereof.

This topic is, again strangely, seeking a deposition of Mr. Gleekel to ask about communications to which he was not a party but to which Koppelman, at least in part, was a party. Regardless, the communications speak for themselves. But more importantly, since Koppelman was a party to them, Koppelman does not need to depose Mr. Gleekel to obtain access to the communications. All that remains is Mr. Gleekel's impressions of the communications – i.e., work-product. This topic imposes an undue burden.

8. The payment of commissions or other amounts to the Advisors from or in respect of the UMG Agreement and communications related thereto.

Mr. Gleekel was not involved in the payment of commissions to the Advisors. He was not retained by the Estate until well afterward. The motion before this Court should make that obvious. The SSA is seeking refund of compensation for the rescinded UMG Agreement. Estate. Whether the payments were excessive is for this Court to determine. Any communications related to the commissions speak for themselves. Thus, Mr. Gleekel has no facts to offer in this regard. His conclusions and impressions on whether the commissions should have been paid, are not only work-product but so too irrelevant. This topic imposes an undue burden.

9. Any valuation, appraisal or other financial analysis or summary of the value of rights in the Prince recordings that were the subject of the UMG Agreement or the WBR Agreements.

It is difficult to respond to this topic because it is so far awry. The scope of this motion is whether the Advisors received excessive compensation in respect of the rescinded UMG Agreement, and whether they should have reasonably foreseen it as infringing on the prior 2014 WB Agreement. Valuation of those agreements is irrelevant. The only valuation of consequence is whether the Advisors delivered any value to the Estate by attempting to enter into an agreement with UMG for

rights already committed to WBR. Beyond being irrelevant, Mr. Gleekel would have no such information because the failed UMG Agreement and the WBR Agreements would have been valued before his involvement with the Estate, not to mention the “value” was reflected in the consideration recited in the agreements. This topic imposes an undue burden.

10. 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.

Koppelman/CAK’s characterization of this topic demonstrates the SSA is not a proper deponent. It is undisputed Mr. Gleekel was not part of Fredrikson’s investigation and was not appointed as SSA until well after the conclusion of the investigation. Any deposition could only be seeking Mr. Gleekel’s conclusions and impressions regarding Fredrikson’s investigation, which is work-product. This topic imposes an undue burden.

11. The SSA’s investigation concerning the UMG Agreement and the rescission thereof.

While the SSA has firsthand knowledge of his investigation concerning the rescinded UMG transaction, the investigation is irrelevant. What the SSA discovered in the investigation cannot be used at the motion hearing. The SSA is charged with the burden prescribed by this Court through its previously filed motion papers and the evidence presented at the hearing. All of the sources consulted in the investigation were listed by the SSA in its report. The SSA did not create any facts, and it did not hide its method. Koppelman/CAK have equal access to the facts considered in the investigation. A deposition cannot reveal anything new. This topic imposes an undue burden.

12. The SSA Report.

The SSA Report has no precedential value, but Koppelman/CAK treat it as if it does. The SSA Report is not a finding by this Court. It is not evidence for this motion. The SSA Report is a compilation of hearsay and legal analysis. The hearsay is based upon testimony and documents – some of which are outside the scope of this hearing – to which Koppelman/CAK have equal access. The

Report, which Koppelman/CAK have, sets forth the sources on which it is based. To the extent Koppelman/CAK want to ask Mr. Gleekel about the SSA's legal analysis, they cannot. This is not permissible questioning for a deposition as it can only be an attempt to ascertain work-product. This topic imposes an undue burden.

#### **IV. The SSA Should be Awarded Attorneys' Fees.**

The SSA should be awarded attorneys' fees for being forced to bring this motion. Minn. R. Civ. P. 45.03(a). Koppelman/CAK served an overbroad subpoena that made no attempt to identify specific areas appropriate for examination of the SSA. Rather, Koppelman/CAK sent nearly the identical subpoena to the Estate, Comerica, Fredrikson, WBR, and UMG. Cutting and pasting a subpoena to ask five different parties for identical information is not taking "reasonable steps" to avoid an undue burden. By taking a scorched earth approach to discovery on the Fee Motion, including the subpoena on the SSA, Koppelman/CAK have imposed an undue burden in demanding information that is not only more readily ascertainable from other sources but, also impermissible work product of the SSA. This irresponsible approach to discovery should not go undeterred. This Court should impose sanctions, **as required by Rule 45.03**, on Koppelman/CAK in the form of the attorneys' fees incurred by the SSA in bringing this motion.

#### **CONCLUSION**

For all of the reasons set forth above, this Court should quash Koppelman/CAK's subpoena to depose the SSA or Mr. Gleekel and impose sanctions for their efforts to do so.

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