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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,

Decedent.

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

NORTHSTAR'S MEMORANDUM OF LAW IN OPPOSITION TO THE ESTATE'S MOTION FOR SUMMARY JUDGMENT

The NorthStar Parties ("NorthStar") hereby submit this Memorandum of Law in Opposition to the Second Special Administrator (SSA) Peter Gleekel's Motion for Summary Judgment Seeking A Refund of the Entertainment Advisors' Commission-Based Fees.

INTRODUCTION

The SSA's motion for summary judgment virtually ignores the controlling provision of the Advisor Agreement that makes it clear that upon rescission of the UMG contract, the Advisors are not required to return the commissions that they received. Paragraph 6(a) of the Advisor Agreement clearly and unambiguously states that if a Commissionable Contract is "extended, amended, replaced, modified or substituted" after the term, the Advisors are not entitled to receive a new commission on the replacement contract, but they are entitled to retain the commission received on the original Commissionable Contract. The SSA's Statement of "Undisputed Material Facts" devotes almost four pages to a discussion of the Advisor Agreement, but doesn't even mention this key language in paragraph 6(a) of the Agreement which addresses what happens when a Commissionable Contract is later amended or replaced. Later, in the Argument portion of his memorandum, the SSA makes a brief and half-hearted attempt to address the language of

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paragraph 6(a), seeking to make a nonsensical distinction between a contract that is "replaced" or "substituted" and the UMG contract that was "rescinded" and then replaced with a later contract with Sony. The SSA argues unconvincingly that this matter does not concern a replacement or substitution within the meaning of paragraph 6(a). In reality, what happened here is exactly what paragraph 6(a) of the Advisor Agreement was intended to address. Under the clear and unambiguous language of that paragraph, the Advisors are not required to return their commissions, and they are entitled to summary judgment as a matter of law.

In contrast, there is nothing in the Advisor Agreement that says commissions must be returned upon rescission of a Commissionable Contract, or which would support summary judgment in favor of the SSA. In the event the Court does not agree with the Advisors that paragraph 6(a) is controlling and requires the Advisors' retention of commissions as a matter of law, the Court certainly cannot rule as a matter of law that the SSA is entitled to summary judgment. The SSA's motion for return of commissions is brought under the portion of the Probate statue allowing recovery of "excessive compensation," the application of which raises numerous questions of fact. Many of the factual issues that the Court would need to address are set forth in the Court's Order of April 20, 2020 which was reaffirmed on June 19, 2020. If the Court determines that it cannot rule in favor of the Advisors as a matter of law, it certainly cannot rule for the SSA without first determining whether the Estate had a reasonable and articulable concern about overlap between the UMG and Warner Brothers contracts; whether the Advisors knew or had reason to know of an overlap; whether the Advisors did work for which they should be compensated prior to the date of any such knowledge; and whether the Advisors' work provided a benefit to the Estate in negotiating the replacement contract with Sony. There are numerous additional material factual issues concerning negotiation of the Advisor Agreement and both

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negotiation and rescission of the UMG contract that must be resolved before the Court could rule for the SSA.

For these reasons, and for the reasons outlined later in this memorandum and in NorthStar's July 8th Memorandum in Support of its Motion for Summary Judgment, the NorthStar parties request that the Court grant them summary judgment. Alternatively, the court should deny the SSA's Motion for Summary Judgment pending resolution of disputed questions of material fact.

APPLICABLE LAW

Under Rule 56.03, summary judgment is appropriate only where the movant establishes that there are no genuine issues as to any material fact and, as a result, the movant is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. The evidence must be viewed in the light most favorable to the non-moving party. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 847 (Minn. 1995). Summary judgment is not appropriate when reasonable persons might draw different conclusions from the evidence presented. *DLH, Inc. v. Russ,* 566 N.W.2d 60, 69 (Minn. 1997). If any doubt exists about a disputed issue of material fact, then the motion for summary judgment must be denied. *Murphy v. Wood*, 545 N.W.2d 52, 53 (Minn. App. 1996). Further, all inferences from circumstantial evidence and all doubts must be resolved against the moving party. *Forsblad v. Jepson*, 292 Minn. 458, 45-60, 195 N.W.2d 429 (1972).

On summary judgment, a court cannot weigh evidence. *Fairview Hospital and Healthcare Svs.v. St. Paul Fire and Marine Ins. Co.*, 535 N.W.2d 337, 341 (Minn. 1995). A court cannot grant summary judgment merely because the case might not survive a directed verdict motion at trial. *Carl v. Pennington*, 364 N.W.2d 455, 457 (Minn. App. 1985). Even it appears unlikely that a party will prevail at trial, a court still cannot grant summary judgment. *City of Coon Rapids v. Suburban Eng'g, Inc.*, 167 N.W2d 493, 497 (Minn. 1969). It is improper for the court to examine the quantum of evidence on a summary judgment motion. *Murphy v. Country House, Inc.*, 240 N.W.2d

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507, 512 (Minn. 1976). Any doubt as to the existence of a genuine fact issue must be resolved in favor of its existence. *Rathbun*, 219 N.W.2d at 646.

ARGUMENT

I. UNDER THE CLEAR AND UNAMBIGUOUS TERMS OF THE ADVISOR AGREEMENT, THE ADVISORS CANNOT BE REQUIRED TO RETURN THEIR COMMISSIONS AS A MATTER OF LAW.

A. The Advisor Agreement Plainly and Unambiguously Provides That the Advisors May Retain Their Commission For All Commissionable Contracts, Including the UMG Agreement.

As addressed fully in the NorthStar Parties' Memorandum in Support of its initial Motion for Summary Judgment filed on July 8, 2020, the plain language of the Advisor Agreement states that in the event a Commissionable Contract is extended, amended, replaced, modified or substituted, the Advisors are entitled to retain commissions for all Commissionable Contracts. (Declaration of L. Londell McMillan in support of NorthStar's Motion for Summary Judgment (hereinafter, "LLM Decl."), Ex. B ¶ 6(a)). The SSA claims that "harmonizing" the provisions of the Advisor Agreement will show that, contrary to the contract's plain language, the parties actually intended that the Advisors must refund any commissions earned on a Commissionable Contract that the Estate, in its sole discretion, decides to later rescind. There is no basis for the SSA's interpretation, which misconstrues both the plain language of the Advisor Agreement and the parties' intent. The Advisor Agreement's relevant provisions are plain and unambiguous and the agreement as a whole reflects the intent of the parties that the Advisors would retain commissions that they had fully earned consistent with the express language of Paragraphs 6(a) and 6(d)(ii).

The "Commissions" provision in subparagraph 6(a) of the Advisor Agreement provides that a "written contract" for licensing or sale of the Artist's rights or for the rendering of Entertainment Industry services within the Term of the Advisor Agreement (or executed up to 120

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days thereafter) is a "Commissionable Contract." (*Id.* ¶ 6(a). Additionally, this provision states that, apart from any subsequent amendment, modification, extension, replacement or substitution that is "materially different [in] arrangement or structure" and occurs after the Advisors' Term (and without the Advisors' involvement), it "is not intended to deprive" the Advisors of their commission on "all other Commissionable Contracts." (*Id.*). The use of the inclusive phrase "all other Commissionable Contracts" (which plainly encompasses later-rescinded contracts) and the structure of the provision show that the parties did not intend to carve out further, additional circumstances under which the Advisors would be unable to retain their commissions, apart from the post-Term, materially different "amendments, modifications, extensions, replacements or substitutions" previously defined. Paragraph 6(a) was the subject of extensive negotiations, which did not contemplate additional circumstances under which the Advisors would be deprived of a Commission apart from those expressly set forth in the final Advisor Agreement. (*See* LLM Decl., Ex. C).

The SSA pays little heed to the controlling language of paragraph 6(a) of the Advisor Agreement apart from his assertion that it is inapplicable based on the absence of the specific term "rescission." (Memorandum of Law in Support of the Estate's Motion for Summary Judgment (hereinafter "SSA Mot.") at 13-14). However, the later replacement or substitution of a Commissionable Contract, which is expressly included in paragraph 6(a), necessarily requires the rescission of that initial Commissionable Contract. *See, e.g.*, *Cooperative Refinery v. Consumers Pub*, 190 F.2d 852, 856 (8th Cir. 1951) (holding that a substituted contract "rescinds" and "supersedes" the earlier contract, and that "such superseding is a matter of necessary, and therefore implied, legal effect"); *Clark v. Otto B. Ashbach Sons, Inc.*, 241 Minn. 267, 277 (Minn. 1954); *Richards v. Allianz Life Ins. Co.*, 133 N.M. 229, 239 (N.M. Ct. App. 2002) ("Any concern about a

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failure to properly terminate one of the earlier contracts becomes irrelevant upon the determination of substitution").

By expressly allowing the Advisors to retain commissions on "all other commissionable contracts" in the event of a later non-commissionable replacement or substitution, the parties intended that such commissions would be retained by the Advisors even where a Commissionable Contract was later rescinded through a replacement or substitution, according to the plain meaning of those terms. Here, the UMG Agreement was rescinded by the Estate and replaced with a materially similar agreement with Sony Music Entertainment. (LLM Decl. ¶ 17).

The purpose of any contract is to confer some income or benefit to a contracting party. But contracts are mutual, and a contract must be interpreted according to the parties' mutual intent at the time of contracting. *Carl Bolander & Sons, Inc. v. United Stockyards Corp.*, 215 N.W.2d 473, 476 (Minn. 1974). The Advisor Agreement's purpose was both to generate income for the Estate and to fairly compensate the Advisors.[1] Importantly, the Advisor Agreement sets forth that the Advisors will provide the Estate with a wide range of specialized benefits, including "expertise, management, monetization abilities, advice and services," and it expresses the parties' intent for the Advisors to earn commissions as compensation for the time, labor and resources expended in providing these benefits to the Estate. (*See* LLM Decl. ¶¶ 5, 6(a)) ("Administrator hereby agrees to promptly pay commissions (the "Commission") to Advisor"). Paragraph 6, which sets forth "Compensation," is a key section in the Advisor Agreement and takes up more than a page and

[1] The "Gross Monies" provision set forth in subparagraph 6(c) merely provides a complex and necessary definition of what income and benefits qualify as "Gross Monies" in the compensation and accounting provisions of the Advisor Agreement. Whether read individually or with other provisions, it contains no implication or suggestion that the parties intended that a commission on a Commissionable Contract, once fully earned by the Advisors, must later be refunded if the Estate decides to rescind the Commissionable Contract.

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half – nearly 25% - of the six page contract. The provisions of the Advisor Agreement do not, either separately or as a whole, evidence an intent of the parties to condition the Advisor's retention of their fully earned commissions on the Estate's decision, at any time and for any reason, to rescind a contract. Rather, since the plain language of the Advisor Agreement sets forth the Advisors' entitlement to retain their commission on all Commissionable Contracts, the SSA's motion for summary judgment should be denied.

B. Under The Plain Meaning of the Advisor Agreement, the Advisors Fully Earned Their Commission Simultaneously With the Estate's Receipt of Income From The UMG Agreement.

The language of the Advisor Agreement shows the parties' intent to construe the term "earn" consistent with its plain meaning. "In discerning the plain ordinary meaning of a word or phrase, [Courts] consider the common dictionary definition of the word or phrase." *State v. Brown*, 792 N.W.2d 815, 822 (Minn. 2011). Black's Law Dictionary defines "earn" as "1. To acquire by labor, service, or performance. 2. To do something that entitles one to a reward or result, whether it is received or not." *Black's Law Dictionary* (7th ed.) (1999) at 525; *see also Stuart v. Midwest/Northern, Inc.*, 2001 Minn. App. LEXIS 1347, at *7 (Minn. Ct. App. Dec. 18, 2001); *Awuah v. Coverall N. Am., Inc.*, 952 N.E.2d 890, 896 (Mass. 2011); *Kern v. Loomis*, 2006 Ind. App. Unpub. LEXIS 655, at *10 (Ind. Ct. App. Dec. 11, 2006).

Paragraph 6(d)(ii) of the Advisor Agreement provides that "Advisor shall be deemed to have earned Advisor's Commissions simultaneously with the payment to Administrator or Administrator's affiliates of Gross Monies." (LLM Decl., Ex. C ¶ 6(d)(ii)). This provision expressly states that immediately upon the payment to the Estate, the Advisors have satisfied all contractual requirements necessary to receive their commission. Had the parties to the Advisor Agreement intended that the Advisors' satisfaction of all contractual requirements to receive a commission would be conditional on the Estate's later decision whether to rescind the contract, as

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the SSA asserts, the parties could very easily have replaced the phrase "earned . . . simultaneously with the payment" with a phrase making the commissions "subject to" or "conditioned on" the Estate's receipt and continued retention or long term recognition of income.

As expressed through the Advisor Agreement, the parties' intent was that the Advisors would provide the Estate with a wide range of specialized benefits, including "expertise, management, monetization abilities, advice and services," and that the Advisors would provide at least nine specific categories of Services. (LLM Decl., Ex. C ¶ 5). While the Services the Advisors agreed to provide were substantial and wide-ranging, the means by which the Advisors were to be compensated for performance of these Services was strictly limited: the Advisors would earn a 10% commission simultaneously with the Estate's receipt of income from a Commissionable Contract based on the licensing and sale of Prince's assets, or based on other Entertainment Industry Services.

One of the reasons why the Advisors negotiated to retain commissions in the event of a modification or replacement of a contract is that they performed many services that everyone understood would not result in Commissionable Contracts. For example, the Advisors reviewed and negotiated proposed transactions and agreements submitted to the Estate from various outside parties looking to monetize various Prince Estate IP, including, but not limited to, merchandise deals, touring agreements, television programs and tribute concerts; and consulted frequently with Bremer and the heirs in regard to these proposals and other matters. Thus, the commissions the Advisors were paid on Commissionable Contracts were intended, at least in part, to reimburse them not only for the contracts that resulted in "Gross Monies" to the Estate, but also for other services that everyone understood would not ever lead to "Gross Monies." The key distinction is that the Advisors were not paid <u>for</u> the deals they made, but were paid for performance of their

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Services from the deals that they made. The parties' intent in negotiating this arrangement is consistent with an interpretation of "earn" according to its plain and ordinary meaning. The Advisors "earned" their commission from the UMG Agreement for the performance of their extensive and wide-ranging Services.

There is no basis for the SSA's assertion that the Term "earn" should not be construed according to its plain and ordinary meaning, but construed instead to impose a wholly unexpressed requirement that the Advisors' retention of an earned commission remains conditioned on the Estate's decision, at any time and for any reason, to rescind a Commissionable Contract. Rather, the provisions setting forth the Advisors' services and compensation demonstrate that "earned" was intended to be applied consistent with its plain and ordinary meaning.

C. A Rescinded Contract Cancels the Obligations between the Parties to the Rescinded Contract; However it Does Not Cancel Commissions Earned By A Third Party Derived from the Rescinded Contract.

While the SSA claims that a rescinded contract is treated as if it never existed, this argument misses the point, and is contrary to Minnesota law. While the obligations between the parties to a rescinded contract may be deemed non-existent, a rescinded contract does not cancel or invalidate commissions earned by a third party for procurement of the rescinded contract. *See, e.g.*, *Century 21-Birdsell Realty, Inc. v. Hiebel*, 379 N.W.2d 201, 205 (Minn. App. 1985); *Andrews v. Flour City Paper Box Co*., 22 N.W. 340 (Minn. App. 1928); *Bychowski v. ERA Tempo Realty, Inc*., 274 Ill. App.3d 1093, 1094 (Ill. App. Ct. 1995); *see also* discussion in NorthStar's Motion for Summary Judgment at 16-17.

The cases cited by the SSA are limited to the effect of rescission on the obligations owed between parties to the rescinded contract (and indeed, the court in *Knopf v. Olson*, 1995 Minn. App. LEXIS. 1105, at *7 (Minn. App. 1995) held that that where an agreement was rescinded, a broker that was not party to the rescinded contract "could not be held responsible for restoring the

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status quo"). Finally, although the SSA claims it would be "absurd" for a broker to keep his commission where a contract was rescinded due to a mutual mistake of the contracting parties, courts have not agreed. In fact, courts have rejected the position that the SSA is asserting here, instead reaching the conclusion that he labels absurd. For example, in *Robert Langston, Ltd. v. McQuarrie*, 741 P.2d 554, 558 (Utah Ct. App. 1987), the court held that once a broker had fulfilled its contractual obligations, "it is irrelevant that . . . the sale agreement was rescinded years later" on the basis of mutual mistake. *See also Bell v. Turner*, 2013 Ohio App. LEXIS 1238, at *19-20 (Ohio App. 2013) (rejecting argument that, based on mutual mistake, "the court could not logically rescind the [contract] and let the [broker] keep her commission") and the Minnesota cases cited in the preceding paragraph.

D. The Advisor Agreement Does Not Contain Any Provision Requiring That the Advisors Must Assume The Risk That The Estate Will Later Decide to Rescind A Commissionable Contract.

The SSA does not - because he cannot - point to any provision in the Advisor Agreement showing that the Advisors agreed to "assume the risk" that the Estate may, at any time and for any reason, decide to terminate or rescind a transaction from which the Advisors had earned a contractually mandated commission, and thereby force the Advisors to disgorge their commissions. Nor does the SSA have any basis to infer any such assumption of risk based on the parties' intent. Had the Estate actually intended this result at the time the Advisor Agreement was negotiated, it had every opportunity to include a provision specifying that the Advisors' retention of a commission would be conditioned on the Estate's later rescission of a Commissionable Contract. Having failed to include any such provision, the Estate cannot now seek to read this provision into the Advisor Agreement by claiming it is "inferred" or "implied" by the "intent" of the parties.

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E. The Terms of the Advisor Agreement Control the Fee Dispute.

The SSA's claim that Minn. Stat. 524.3-721 supersedes the contractual language of the Advisor Agreement as a matter of law should be rejected. If the language of paragraph 6(a) had stated that "in the event of rescission of a Commissionable Contract, the Advisors keep their commissions," the SSA would no doubt agree that this language controls, and such language would preclude any argument under the statute that the commissions were "excessive" as a result of the rescission. In NorthStar's view, that's exactly what paragraph 6(a) of the Advisor Agreement does say – just using the terms "substituted" and "replaced" instead of "rescinded." But the words mean the same thing.

As discussed above, the SSA's assertion that the Advisor's commissions are contingent on the Estate's long-term retention of some "value" or "benefit" lacks any support in the language and intent of both the Advisor Agreement. and the statute As the Court of Appeals recognized in its November 25, 2019 decision, "the terms of the Advisor Agreement may ultimately dictate whether Advisors are entitled to retain their commissions" and may "dictate the outcome" of the Estate's Fee Motion. Importantly, the Court of Appeals' November 25, 2019 decision did not require the Court to disregard the terms of the Advisor Agreement that govern the compensation payable to the Advisors, and accordingly such terms should control this matter in favor of a *post-hac* inquiry into what may or may not have been considered "reasonable."

The key distinction between this case and the attorney's fees cases to which Minn. Stat. 524.3-721 has largely been applied are that in the typical attorney retainer agreement, the amount and scope of legal services to be performed are left largely to the discretion of the attorney, resulting in frequent disputes over whether certain categories of legal work and/or the amount of time spent in performing legal services were necessary or reasonable. In contrast, the Advisor Agreement, which was agreed to by the parties and Court-approved, provides that the Advisors'

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compensation is based on a fixed percentage of income received by the Estate through contractually-defined contracts whose terms are drafted and approved by the Estate. The Advisors have no discretion over, or control of, the amount paid to them because it is based on a fixed percentage of contracts whose value is set by the Estate. For this reason, the concerns that implicate Minn. Stat. 524.3-721 in attorney fee disputes are not present here and the plain language of the Advisor Agreement properly governs the determination of the SSA's Fees Motion. *See Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 455 (Minn. Ct. App. 1998) (("[C]ourts have no authority to invalidate unwise or improvident agreements or to rewrite them so as to achieve a fairer bargain for one party or another"); *Gretsch v. Vantium Capital, Inc*., 846 N.W.2d 424, 435 (Minn. 2014); *see also* U.S. Const. art. I, § 10, cl. 1 ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts."); Minn. Const. art. I, § 11 ("No . . . law impairing the obligation of contracts shall be passed"). Accordingly, the Court should reject the SSA's claim that, as a matter of law, Minn. Stat. 524.3-721 supersedes the contractual language of the Advisor Agreement in connection with the parties' dispute over the Fees Motion.

II. THE ADVISORS ARE ENTITLED TO RETAIN THEIR COMMISSION AS A MATTER OF LAW. IN CONTRAST, THE SSA'S MOTION FOR SUMMARY JUDGMENT ALLEGING EXCESSIVE COMPENSATION UNDER MINN. STAT. 524.3-721 CANNOT BE GRANTED BECAUSE THERE ARE NUMEROUS MATERIAL FACTS IN DISPUTE.

A. The Court's Determination of Whether The Advisors Received "Excessive Compensation" Under Minn. Stat. 524.3-721 Raises Significant Issues of Fact.

Even if the Court does not agree with the Advisors that Paragraph 6(a) is controlling, the Court cannot rule as a matter of law that the SSA is entitled to summary judgment allowing recovery of commission as "excessive compensation" under Minn. Stat. 524.3-721. It is well-established that under Minn. Stat. 525.15 and 524.3-721, the reasonable value of services is a question of fact. *In re Estate of Reiman*, 2012 Minn. App. Unpub. LEXIS 1, at *9 (Minn. Ct. App.

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2012); *In re Estate of Weisberg*, 64 N.W.2d 370, 371 (Minn. 1954). As the SSA sets forth in his brief, determination of "reasonable" compensation for services requires the Court to weigh and apply a number of fact-intensive considerations, including, *inter alia*, "the time and labor involved" and "the extent of the responsibilities assumed." (SSA Mot. at 19) (citing Minn. Stat. 524.3-719(b) and 525.15(b)). The Court recognized that the SSA's allegations of "excessive compensation" raise significant issues of fact where it ruled, in both its April 20, 2020 and June 19, 2020 Orders, that the evidentiary hearing would address multiple factual issues, including "work done prior to the point at where the advisors knew, or should have known, that the agreements potentially would overlap," and "work done in developing UMG Agreement might have been used in the development of the agreement that ultimately replaced the Agreement."

The SSA claims that the Advisors have failed to show they provided any value to the Estate but entirely ignore the undisputed facts setting forth the Advisors' procurement of the UMG Agreement which resulted in the Estate's receipt of a $31 million payment from UMG, and which was later rescinded by decision of the Estate. (NorthStar's Motion for Summary Judgment at 5-7). The Advisors have submitted evidence establishing the time and labor they provided to the Estate in connection with procurement of the UMG Agreement. (LLM Decl. ¶ 6). Additionally, determining the alleged excessiveness of the Advisors' compensation raises additional issues of fact, including the time and labor expended by the Advisors on Services separate from the UMG Agreement, and the extent to which the Advisors' contributions were incorporated in the Sony Entertainment agreement that replaced the UMG Agreement.[2]

[2] The SSA also argues, without citation, that this Court cannot find that the Advisors incurred any reasonable fees without the Advisors identifying all their time and labor "specifically, and in detail." This argument is baseless. In making a reasonableness determination, the Court may rely on any evidence it finds to be relevant and probative of the factors set forth in the relevant statutes.

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In view of the relevant caselaw, the existence of issues of fact and this Court's prior identification of factual issues for the evidentiary hearing, the reasonableness of the Advisor's compensation is an issue of fact that is not appropriate for resolution at the summary judgment stage.

B. Determination of Whether the Rescission of the UMG Agreement Was Rescinded Based on a Business Decision of Comerica Is an Issue of Fact.

While the SSA claims that the Estate's rescission of the UMG Agreement cannot, as a matter of law, have been a "business decision," it mischaracterizes both the factual record and this Court's decision granting the motion to rescind and raises significant issues of fact. The Court recognized that the basis for the Estate's decision to rescind the UMG Agreement was and would remain a critical and disputed factual issue where it directed, in both its April 20, 2020 and June 19, 2020 Orders, that the SSA would have the burden of establishing at the evidentiary hearing 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 UMG Agreement."[3] Additionally, issues of fact surround the basis for Comerica's unexplained decision to refund to UMG the full $31 million, including the Advisors' $3.1 million commission that had originally been paid directly from UMG to the Advisors.

See In re Estate of Gosnell, 20067 Minn. App. Unpub. 910, at *7 (Minn. Ct. App. 2006) ("In making a determination of the reasonableness of the fees charged . . . the district court is given significant deference within the statutory framework").

[3] Additionally, NorthStar believes there are additional issues of fact that are intertwined with the issues identified by the Court and which must also be considered in determining the Fee dispute. These include: (i) whose duty or responsibility it was to analyze the possibility of an overlap; (ii) whether there actually was an overlap or infringement of the WBR Agreement; (iii) was Comerica and/or UMG's decision to rescind the UMG Agreement based on legitimate concerns regarding an overlap, or was the decision based on additional motivations such as compensation or commissions; and (iv) whether alternative arrangements were discussed with WBR and/or UMG in timely fashion, such that rescission could have been avoided.

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Moreover, NorthStar has put forth facts that raise issues as to the reasonableness of Comerica's decision to rescind. These include (i) Comerica's refusal to provide UMG with a copy of the 2014 WBR Agreement or to promptly move for a court order compelling such disclosure, such that at the time Comerica sought rescission, UMG had never seen the actual WBR contractual language (LLM Decl. ¶ 14); and (ii) Comerica's failures to provide UMG with timely and sufficient assurances, and failures to propose resolution through Paragraph 1.8 of the UMG Agreement for nearly a month, at which point UMG was set in its position that it had been wrongfully induced. (*Id*. at ¶¶ 10, 14).

The Court's April 20, 2020 and June 19, 2020 rulings concerning the scope of the evidentiary hearing indicate that the Court did not intend its decision on the motion to rescind to be dispositive of the reasonableness of Comerica's decision to rescind. Rather, the Court recognized the continued existence of issues of fact that must be resolved at the evidentiary hearing. The issue is therefore not appropriate for resolution at the summary judgment stage.

CONCLUSION

For the foregoing reasons, and as further set forth in NorthStar's July 8th Memorandum in Support of its Motion for Summary Judgment, the NorthStar Parties respectfully request that the Court grant them summary judgment. Alternatively, the court should deny the SSA's Motion for Summary Judgment pending resolution of disputed questions of material fact.

BASSFORD REMELE
A Professional Association

Dated: July 17, 2020

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