

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
REPLY IN SUPPORT OF PETITION
TO APPROVE THIRD INTERIM
ACCOUNTING****[REDACTED]**

INTRODUCTION

The Court directed the Personal Representative to submit a reply memorandum in support of its Petition to Approve Third Interim Accounting and requested that the reply include: (1) a summary of legal proceedings to which the Estate is currently a party; and (2) a summary of Troy Carter's activities and compensation from February 2019 to the present. The requested summaries are below.

The Court also provided Omarr Baker leave to file any response to the objection raised by Sharon, John, and Norrine Nelson. Mr. Baker did not submit a filing, but Sharon, John, and Norrine Nelson filed a supplemental objection to the Petition, without seeking or obtaining leave of Court. The Court should reject the Nelsons' attempt to submit an untimely additional objection. Even if the Court accepts the filing, the Nelsons have not identified any improper expenses associated with the accounting and the Court should grant the Personal Representative's Petition in its entirety.

REPLY**I. SUMMARY OF LEGAL PROCEEDINGS INVOLVING THE ESTATE.¹****A. *Sharon Nelson v. Comerica Bank & Trust, N.A. & Andrea Bruce***

Ms. Nelson brought claims against Comerica and two of its employees, all of which were dismissed by the District Court. The Court of Appeals affirmed most aspects of the dismissal order, but reversed and remanded on Ms. Nelson's civil assault claim. The parties are in discovery and anticipate a trial during May 2021. The Personal Representative is not aware of the amount Ms. Nelson is seeking in damages. The Estate has incurred \$98,618.56 in fees and costs for the services of Fredrikson in defense of this matter. (September 16, 2020 Declaration of Andrea Bruce ("Bruce Dec."), ¶ 2.)

B. *James Brandon v. NPG Records, Inc. et al. (U.S. Dist. Ct. S.D.N.Y.)*

This is the second lawsuit that Mr. Brandon has brought against the Estate for copyright infringement. In the first case, brought in the United States District Court for the Southern District of Florida, the Court dismissed Mr. Brandon's claims, finding that he had failed to state a claim against the Estate or the other defendants. Because of that first judgment, and following substantial motion practice, the federal court in New York entered an order on April 30, 2020 dismissing Mr. Brandon's second lawsuit based on the doctrine of collateral estoppel. Mr. Brandon appealed and the case is currently before the United States Court of Appeals for the Second Circuit. Mr. Brandon has not specified the damages he is seeking. The Estate has

¹ [REDACTED]

incurred \$131,243 for the services of Fredrikson and \$22,581 for Kennedys CMK LPP, the Estate's counsel in New York, in defense of this matter. (Bruce Dec., ¶ 3.)

C. Italian Litigation (Italy, United Kingdom, Canada)

Two songwriters and the predecessor to the Italian Warner Chappell affiliate brought a copyright lawsuit against Prince and an affiliated entity in Italy during the 1990s, which resulted in an award of money damages and injunctive relief that was affirmed by the Supreme Court of Italy during 2015. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Estate has incurred \$114,895.50 for the services of Fredrikson; €135,097.91 for Trevisan & Cuonzo, the Estate's counsel in Italy; CAD \$45,128.66 for Aird & Berlis LLP and Farris, the Estate's counsel in Canada; and £110,363.34 for Russells, the Estate's counsel in the United Kingdom, in defense of this matter. In addition, a small portion of the attorneys' fees charged to the Estate by Arnold Porter Kaye Scholer (which represented Prince during his lifetime and provided consulting and legal services to Bremer Trust and the Personal Representative) related to the Italian litigation. (Bruce Dec., ¶ 4.)

D. *Madison Dube v. NPG Music Publishing, LLC et al.* (U.S. Dist. Ct. Minn.)

Ms. Dube filed a lawsuit against the Estate and related entities during November 2019, asserting that Bremer Trust, N.A., in its capacity as special administrator for the Estate, improperly authorized the use of certain photographs for which Ms. Dube holds copyrights. The Estate and related entities answered and filed a declaratory judgment counterclaim asserting that the Estate has contractual rights associated with photographs taken by Ms. Dube during Prince's lifetime. [REDACTED]

[REDACTED] Ms. Dube did not articulate a damages figure, but sought the profit earned by the Estate on two albums that used her photographs and other merchandise as well as injunctive relief. The Estate has incurred \$257,329 in fees and costs for the services of Fredrikson in defense of this matter. (Bruce Dec., ¶ 5.)

E. *Comerica Bank & Trust, N.A. v. Steven Parke* (U.S. Dist. Ct. Minn.)

The Estate brought a breach of contract action during March 2020 against Mr. Parke based on a book he wrote in violation of a privacy agreement he entered into prior to Prince's death. The Estate sought a minimum of \$500,000 in damages and declaratory relief. Mr. Parke asserted a counterclaim seeking a determination that he owns the copyright to photographs taken of Prince during his lifetime. [REDACTED]

[REDACTED] The Estate has incurred \$43,832 in fees and costs for the services of Fredrikson related to this matter. (Bruce Dec., ¶ 6.)

F. *Advisor Reimbursement Litigation*

Peter Gleekel, in his capacity as second special administrator ("SSA"), has brought a proceeding seeking to require Charles Koppelman (through CAK Entertainment, Inc.) and L. Londell McMillan (through NorthStar Enterprises Worldwide, Inc.) to return the \$3.1 million

commission they received in connection with the UMG Agreement. The matter is set for an evidentiary hearing beginning on October 13, 2020. The Estate has incurred \$221,515.22 in fees and costs for the services of Larson King related to the prosecution of this matter. (Bruce Dec., ¶ 7.)

G. *Jobu Presents, LLC v. Charles Koppelman, et al.* (Carver Cnty.)

The lawsuit arising out of the failed tribute concert involves multiple claims asserted by multiple parties. As it relates to the Estate, the SSA has asserted claims against Mr. Koppelman, CAK, Mr. McMillan, NorthStar, and Jobu Presents, LLC. The SSA is seeking at least \$7 million against Jobu for breach of contract, at least \$2 million from Mr. Koppelman/CAK based on the undisclosed loan made by Mr. Koppelman to Jobu, and \$116,000 from Mr. McMillan/NorthStar based on Mr. McMillan's refusal to return his \$116,000 commission when the transaction did not move forward. The Estate has incurred \$365,764.23 in fees and costs for the services of Larson King related to the prosecution of this matter. (Bruce Dec., ¶ 8.)

II. SUMMARY OF ACTIVITIES OF TROY CARTER.

Troy Carter and members of his team (first, through Atom Factory LLC and later, through Q&A Talent Management, Inc.) (collectively, "Carter") has served as entertainment advisor to the Estate since early 2017. Carter's rights and obligations are set forth in an "advisor agreement," which was last amended on March 31, 2019 ("Amendment"). (Bruce Dec., ¶ 9.) Under the Amendment, Carter's roles and duties include managing the executive level relationships with the Estate's entertainment partners, procuring new partnerships for entertainment transactions, guiding creative strategy, project timing, and rollout, creative review and approvals related to existing and new deals, and the provision of licensing requests and creative feedback. (*Id.*)

Carter has negotiated or closed the following transactions since February 1, 2019:

- **Amendment and Extension of UMPG Agreement.** [REDACTED]
- **Netflix/First Avenue Concert.** [REDACTED]
- **Sign O' the Times and 1999.** Super-deluxe album deals [REDACTED]
- **Originals.** Album deal [REDACTED]
- [REDACTED]
- **'I Feel For You' Single.** Single release negotiated with Warner Bros. [REDACTED]
- **Merch Traffic.** [REDACTED]
- **Music Today.** [REDACTED]
- [REDACTED]
- **Peloton.** Negotiated Name, Image, Likeness agreement with fitness platform [REDACTED]
- [REDACTED]
- [REDACTED]

• [REDACTED]

(Bruce Dec., ¶ 10.)

In addition to these new deals and extensions, Carter (primarily Mr. Carter and his colleague Suzy Roo) spends a considerable amount of time advising the Estate and administering existing deals, including those entered into during the tenure of Bremer Trust, N.A. Indeed, one of the reasons that the Personal Representative and Carter agreed to a monthly fee (in combination with a five percent commission on new deals) is because many of the large dollar entertainment transactions available to the Estate were already finalized at the time of the Personal Representative's appointment. In other words, although the entertainment advisors for Bremer Trust received millions of dollars of commissions for the transactions finalized during their tenures, Carter has to actually administer those deals.² (Bruce Dec., ¶ 11.)

Examples of Carter's administrative activities include: a standing weekly call with Comerica and its creative and legal teams; access and guidance to the team as-needed in between weekly calls; participation in partner meetings and calls; creative implementation of the [REDACTED] and other deals, including as it relates to working with executives as well as the partners' creative team on [REDACTED] and strategy; brand building and management; music publishing opportunity and synchronization license

² After the UMG Agreement was rescinded by the Court, Carter negotiated a replacement transaction with Sony, [REDACTED]

[REDACTED] (Bruce Dec., ¶ 12.)

guidance; press release and media guidance; work with the Random House memoir release [REDACTED]; work with the Sirius Prince channel [REDACTED]; extensive activity associated with the launch of the Prince catalogue on the TikTok platform [REDACTED] and the initiation and implementation of the CBS Grammy Tribute to Prince [REDACTED] and resulted in a significant increase in downloads and streams of Prince’s music. (Bruce Dec., ¶ 13.)

The Estate also excluded certain types of deals from those on which Carter earns commissions under the Amendment. [REDACTED]

[REDACTED]

[REDACTED] (Bruce Dec., ¶ 14.)

[REDACTED]

The Personal Representative continues to believe that Carter's services are vital to its effective administration of the Estate. Mr. Carter's relationships and level of professionalism have been vital in sourcing and maintaining entertainment and other creative opportunities, particularly in light of the reputational damage caused by failed transactions that predated his tenure. Although Carter's compensation is significant, it continues to remain lower, as a percentage of deal revenue, than the compensation of his predecessors and Carter's compensation is commensurate with the significant value provided to the Estate.

III. SHARON, JOHN, AND NORRINE NELSON'S OBJECTIONS TO THE PETITION ARE WITHOUT BASIS AND SHOULD BE DENIED BY THE COURT.

The Personal Representative filed its Petition and Third Interim Accounting on July 24, 2020. The Nelsons did not request additional information, object, or otherwise respond until 11:57 p.m. on Friday September 4, 2020, when they sent a short email objecting to alleged "excessive legal fees of Fredrikson & Byron." At the hearing, counsel for Omarr Baker requested, and the Court granted, leave for Mr. Baker to submit any necessary response to the Nelson's objections. The Nelsons did not request and the Court did not grant the Nelsons leave to file a supplemental objection. They did so regardless. On that ground, alone, the Court should disregard the supplemental objection. *Broehm v. Mayo Clinic Rochester*, 2003 WL 951886, at *5 (Minn. Ct. App. Mar. 11, 2003), rev'd in part on other grounds, 690 N.W.2d 721 (Minn. 2005) (affirming exclusion of arguments raised in untimely memorandum).

Even if the Court considers the supplemental objection, the Nelsons' arguments fail on the merits. The Nelsons assert that they have requested detailed information related to the expenses of the Estate, and in particular the expenses of Fredrikson, but the Personal Representative has refused to provide the requested information or had provided information that

“lacks details, specificity, and they are general, vague and does not allow for a detailed review for accountability or accuracy.” (Supp. Obj. at 2.)

The Nelsons’ position is both inaccurate and disingenuous. It is inaccurate because, despite the Nelsons attempt to manufacture a false narrative otherwise, the Personal Representative keeps the Heirs regularly informed regarding all aspects of the administration of the Estate, including its income and expenses. This includes detailed monthly account statements for all accounts (including the accounts for all entities owned by the Estate) that describe what each entry and transaction represents. (Bruce Dec., ¶ 17.) Based on questions raised by Heirs regarding certain vendors identified in the monthly Comerica account statements, the Personal Representative prepared and sent a “cheat sheet” identifying what services each vendor provides for the Estate. (*Id.*)³ Additionally, the Personal Representative provides quarterly income statements and balance sheets for the Estate and its managed entities. (*Id.*) The Personal Representative also provides updates at every Heirs meeting regarding the activities of Mr. Carter, performance and activities under current entertainment transactions, and potential transactions that are in the pipeline. (*Id.*, ¶ 18.) With respect to the Nelsons’ primary complaint—regarding the fees of the Personal Representative’s counsel—the Nelsons receive a monthly update regarding the amount of fees, as well as the regular fee affidavits which include every invoice with detailed time entries. The Personal Representative also provides regular updates on third-party litigation as part of the Heirs’ meetings. (*Id.*) To the extent that the Nelsons do not believe they have sufficient information regarding the activities of counsel (or

³ Among other entries, the vendor cheat sheet provided to the Heirs identified the respective roles of many of entities identified in the Nelsons’ supplemental objection for which they claim not to have adequate information, including CliftonLarsonAllen and Tri Star, Xact Data Discovery, and High Q. (Bruce Dec., ¶ 17.)

any of the expenses of the Estate for that matter) they have no one to blame except themselves based on their failure to review the substantial information provided or to follow-up with any specific questions or concerns.

The Nelsons' position is disingenuous because if they truly had any questions related to specific line items on the accounting, they could have simply asked for more information on those items. The Personal Representative did not receive a single question, comment, or request for additional information from the Nelsons regarding the accounting until the September 4 email to the Court. The fact that the Nelsons ignored the accounting until midnight on the last business day before the hearing exposes their objection for what it really is—just the latest in a never-ending series of false criticisms of the Personal Representative.

The Personal Representative's response to the Nelsons' objections to specific line items in the accounting is set forth below:

1. Expense of Administration \$7,315,031.71

Without any context or support, the Nelsons raise a blanket objection to literally all expenses incurred by the Estate during the accounting period. Without any specifics regarding what the Nelsons are challenging or why, the Personal Representative cannot respond to this aspect of the objection. The Personal Representative stands by the reasonableness and appropriateness of all of the administration expenses.

2. Accounting Fees of CliftonLarsonAllen \$19,000 and Tri Star Sports & Entertainment Group \$65,844.62

As has been discussed with the Heirs on multiple occasions, CliftonLarsonAllen LLP ("CLA") served as the accounting firm for Prince and many of his entities prior to his death, during the tenure of Bremer Trust, and initially following the appointment of the Personal Representative. The Personal Representative subsequently made the decision to move the

majority of the Estate's accounting work to Tri Star Sports & Entertainment Group ("Tri Star"), which specializes in accounting for individuals and entities in the music and other entertainment industries. [REDACTED]

[REDACTED] Tri Star's fees during the accounting period related primarily to the preparation of tax returns and the financial statements and other financial information prepared in response to the requests of the Heirs. (Bruce Dec., ¶ 19.)

3. Administration Fees – Business Atom Factory, LLC . . . \$144,593.93

Addressed above.

4. Q&A Talent Management, Inc. . . . \$271,245.36

Addressed above.

5. Shot Tower Capital LLC – Financial Modeling \$129,266.23

The Estate uses Shot Tower Capital LLC (and its principal, David Dunn) to perform financial modeling for potential entertainment transactions (to assist with negotiating those transactions), assist in creating and updating the cash flow projections for the Estate, [REDACTED]

[REDACTED] Shot Tower's service's during the accounting period included work on the following projects: modeling record deal performance; [REDACTED] updating the cash flow projections; modeling potential income in connection with record deal evaluations; assembling information in response to requests from the Heirs and their representatives; [REDACTED]

[REDACTED] (Bruce Dec., ¶ 20.)

6. Carey Olsen Cayman Limited \$2,500

Carey Olson served as counsel for the Estate in in the Cayman Islands in connection with the Estate’s lawsuit with the Tidal entities, specifically related to an entity located in the country of which Prince was an owner. These fees were previously approved by the Court as part of the attorneys’ fee and cost submissions the Personal Representative files three times per year. (Bruce Dec., ¶ 21.)

7. Xact Data Discovery \$62,411.31

The Personal Representative utilized Xact Data Discovery to scan the significant volume of hard copy business and financial records from during Prince’s lifetime, and to maintain those records within a searchable database hosted by Xact. This database is utilized by the Estate and its legal and financial advisors on a frequent basis with respect to rights and project research, clearance documentation, litigation research, and historical financial transactions. The fees charged during the accounting period represent Xact’s monthly data hosting fee, the costs of extracting documents related to the Brandon lawsuit, and scanning and uploading new records into the system. (Bruce Dec., ¶ 22.)

8. Appraiser Fees – Diversified Real Estate Svcs \$10,428.00 and Gurr Johns, Inc. \$96,232.72.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Bruce Dec., ¶ 23.)

9. Fredrikson & Byron – Attorney Fees & Costs – Estate Admin \$927,591.10

Fredrikson’s attorneys’ fees and costs have all been previously approved by the Court for the time period encompassed by this accounting period. (July 18, 2019 Order; Nov. 20, 2019 Order; Mar. 17, 2020 Order.)

10. Gilbert Mediation Center, LTD. \$104,287.44

The Nelsons do not explain the basis for their objection to the fees charged by Justice Gilbert, which are associated with his activities as the court-appointed mediator and moderator for the Estate.

11. High Q Inc. \$55,000

High Q is the online data portal that the Estate has been utilizing since prior to Comerica’s appointment as the Personal Representative, for purposes of securely storing and sharing confidential information with the Heirs, their counsel, and certain third-parties. For example, at the request of certain Heirs, the Personal Representative has utilized High Q to share financial information regarding the Estate with potential lenders for Heirs that have entered into non-disclosure agreements with the Estate. High Q charges a flat fee of \$55,000.00 per year for use of its site. (Bruce Dec., ¶ 24.)

12. Larson King, LLP \$39,665.42

The fees of the Second Special Administrator have all been previously approved by the Court for the time period encompassed by this accounting period. (July 18, 2019 Order; Nov. 20, 2019 Order; Mar. 17, 2020 Order.)

13. Boyarski Fritz, LLP \$349,752.46

The fees of the Estate's entertainment counsel have all been previously approved by the Court for the time period encompassed by this accounting period. (July 18, 2019 Order; Nov. 20, 2019 Order; Mar. 17, 2020 Order.)

14. Fredrikson & Byron fees of \$710,642.85

Fredrikson's attorneys' fees and costs have all been previously approved by the Court for the time period encompassed by this accounting period. (July 18, 2019 Order; Nov. 20, 2019 Order; Mar. 17, 2020 Order.)

15. Lando & Anastasi, LLP \$18,534.16

The firm served as local counsel in federal court in Rhode Island for the Estate's copyright infringement lawsuit against Kian Habib. The Court entered a permanent injunction in favor of the Estate and awarded the Estate its attorneys' fees during May 2020. (Bruce Dec., ¶ 25.) These fees and costs were previously approved by the Court.

16. Walsh, Pizzi O'Reilly Falanga \$1,250.85

The firm served as local counsel in federal court in New Jersey for the Estate's anti-cybersquatting lawsuit against Domain Capital, LLC. The Court approved the Estate's settlement agreement with Domain Capital whereby the Estate purchased the Prince.com domain name from the entity. (Bruce Dec., ¶ 26.) These fees and costs were previously approved by the Court.

17. Comerica Personal Representative Fees \$895,000.00

The Personal Representative's fees and expenses have all previously been approved by the Court for the time period encompassed by this accounting period. (July 18, 2019 Order; Nov. 20, 2019 Order; Mar. 17, 2020 Order.)

18. Comerica Personal Representative Expenses \$66,646.40

The Personal Representative's fees and expenses have all previously been approved by the Court for the time period encompassed by this accounting period. (July 18, 2019 Order; Nov. 20, 2019 Order; Mar. 17, 2020 Order.)

19. Property Maintenance 115 King Creek Rd \$3,280.27 for microwave oven

During the accounting period, this residence was leased by Omarr Baker. The microwave and range were not operational and needed to be replaced. The total cost for the replacement was \$3,280.27. (Bruce Dec., ¶ 27.)

20. Misc. Real Estate Expenses, 539 Newton Ave \$123,106.91

This residence is leased by Tyka Nelson. A pipe froze, resulting in substantial damage to the property. The total cost of the repair and remediation was \$123,106.91. As set forth on page eight of the accounting, the Estate received \$107,298.03 (the loss amount minus the deductible and depreciation) in insurance proceeds during June and December 2019 related to the damage. In addition, Tyka Nelson reimbursed the Estate \$3,423.80 for an overpayment related to damage to personal property (which reimbursement is also reflected on page eight of the accounting). (Bruce Dec., ¶ 28.)

CONCLUSION

For the reasons set forth herein and those set forth in its Petition, the Personal Representative respectfully requests that the Court allow the Third Interim Accounting.

Dated: September 16, 2020

/s/ Joseph J. Cassioppi

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