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State of Minnesota
5/22/2020 12:27 PM

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) **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR A PROTECTIVE ORDER AND TO QUASH SUBPOENA DUCES TECUM AND AD TESTIFICANDUM**

Pursuant to Minnesota Rules of Civil Procedure 26.03 and 45, Warner Records Inc., formerly known as Warner Bros. Records Inc. ("WBR"), respectfully submits this memorandum of law in support of its motion to quash the Subpoena Duces Tecum (the "Document Subpoena") and Ad Testificandum (the "Deposition Subpoena," and together with the Document Subpoena, the "WBR Subpoenas") issued by CAK Entertainment, Inc. ("CAK") to WBR and in support of its motion for a protective order regarding the Subpoena Ad Testificandum issued by NorthStar Worldwide, Inc. ("NorthStar") to Marc Cimino (the "Cimino Subpoena") in the proceeding *In re: Estate of Prince Rogers Nelson*, 10-PR-16-46 (the "Proceeding").

I. INTRODUCTION

The WBR Subpoenas seek documents and testimony from WBR that are either duplicative of documents and testimony that CAK will receive directly from the Estate of

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

Prince Rogers Nelson (the "Estate"), a party in the Proceeding, or that are otherwise irrelevant to the issues to be decided at the October evidentiary hearing regarding the agreement between the Estate and UMG Recordings, Inc. ("UMG"), which was entered into on January 31, 2017 and subsequently rescinded, and which authorized UMG to distribute and market certain recordings by Prince Rogers Nelson (the "UMG Agreement"). Accordingly, the WBR Subpoenas are objectionable on numerous grounds and should therefore be quashed.

CAK issued the WBR Subpoenas in connection with the evidentiary hearing scheduled before this Court on October 13, 14 and 15, 2020. There are two issues to be resolved at that hearing: (1) whether the Estate "had reasonable and articulable concerns about the overlap [between the UMG Agreement and the WBR Agreement[1]] such that, considering the other alternatives available to the Estate, it was reasonable and prudent for the Estate to rescind the agreement;" and (2) "whether the entertainment advisors [CAK and NorthStar] knew, or had reason to know, of the potential for the overlap, before recommending the approval of the UMG Agreement." (Apr. 20, 2020 Order, at 3.)

The first issue relates solely to the ***Estate's*** concerns that led to rescission. Any such concerns would necessarily be evidenced by documents in the possession of the Estate (or available through testimony by representatives of the Estate), and the Estate

[1] The "WBR Agreement" refers to the agreement entered into on April 16, 2014 between Prince (and entities affiliated with Prince), on the one hand, and WBR, on the other hand, authorizing WBR to distribute and market certain recordings by Prince Rogers Nelson.

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

has ***already agreed to produce*** such documents and information. As those materials are available from a party, there is no basis to burden WBR, a non-party, with searching for and producing duplicative documents. And any materials in WBR's possession regarding the WBR Agreement or the UMG Agreement that the Estate does ***not*** already possess are irrelevant to the issue identified by the Court; WBR's internal documents, not shared with the Estate, cannot shed light on the ***Estate's*** concerns about the overlap between the two agreements.

The second issue relates solely to what the ***entertainment advisors*** knew regarding the overlap between the UMG Agreement and the WBR Agreement. Such knowledge would be evidenced by documents in the possession of the entertainment advisors, including CAK, at the time they recommended the approval of the UMG Agreement. If WBR also has such documents, they are necessarily duplicative of materials held by the entertainment advisors. As with the first issue, any WBR materials that were ***not*** shared with the advisors are irrelevant, as they could not have informed the entertainment advisors' knowledge regarding the overlap between the agreements.

In addition to the foregoing, the WBR Subpoenas are overbroad and unduly burdensome. For example, the Document Subpoena seeks all "WBR Agreements," which is defined not only as the WBR Agreement, but as "all agreements between WBR on the one hand and Prince or any entity affiliated with Prince . . . on the other" including any drafts thereof. WBR's relationship with Prince has spanned approximately 40 years; the myriad agreements between the parties, including any drafts thereof, would be extremely burdensome to produce and irrelevant to the evidentiary hearing. Another

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

request seeks "[a]ll correspondence and other communications between WBR and UMG concerning rights in Prince's recorded music." In addition to the relevance objections noted above, the sheer breadth of this request—unlimited as to time and specific subject matter—is extraordinary. This Court should not permit CAK's thinly veiled fishing expedition into WBR's contractual relationships and confidential business communications.

Finally, WBR also moves for a protective order with respect to the Cimino Subpoena. Although Mr. Cimino is currently the Chief Operating Officer at Universal Music Publishing Group ("UMPG"), the music publishing group of companies within the Universal Music Group, Mr. Cimino previously served as Executive VP and Head of Business and Legal Affairs at WBR until December 2014, having originally joined the Business and Legal Affairs department in July 2004. During his time at WBR, Mr. Cimino was a principal negotiator and the primary draftsperson of the WBR Agreement. WBR understands that UMG is moving to quash the Cimino Subpoena. However, should Mr. Cimino be compelled to testify, WBR respectfully requests that inquiry be restricted to Mr. Cimino's knowledge and experience at UMPG. Inquiry should not be permitted into matters regarding his employment at WBR because those matters are confidential, protected by the attorney-client and attorney work product privileges, and far beyond the scope of the October evidentiary hearing.

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

II. FACTS.

A. WBR is a Non-Party.

WBR is a record label within Warner Music Group and headquartered in Los Angeles, California. (Declaration of Brad Cohen ("Cohen Decl.") ¶ 2.) For over 40 years, WBR has had the exclusive worldwide rights to manufacture, promote, market, sell, distribute and license certain sound recordings embodying the musical performances of Prince Rogers Nelson. (*Id.* ¶ 3.) WBR is not now and never has been a party to the Proceeding. (*Id.* ¶ 4.)

B. The Rescinded UMG Agreement.

This Court is well versed in the facts that give rise to this dispute. Prince died on April 21, 2016. *In re Estate of Nelson*, 936 N.W.2d 897, 901 (Minn. Ct. App. 2019). Thereafter, Bremer Trust N.A. ("Bremer") was appointed as Special Administrator of the Estate. Bremer entered into contracts with CAK for the services of Charles Koppelman and NorthStar for the services of L. Londell McMillan. *Id.* at 901-02. CAK and NorthStar were to act as advisors to the Estate to monetize the Estate's intellectual property. *Id.* at 902. In exchange for their services, and pursuant to an "Advisor Agreement," CAK and NorthStar were to be paid a fixed ten percent commission on gross monies paid to the Estate pursuant to agreements entered into by the Estate that resulted from services provided by CAK and NorthStar. *Id.*

One such agreement entered into by the Estate was the UMG Agreement. The UMG Agreement authorized UMG to distribute and market certain Prince recordings. *Id.*

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

In exchange for those rights, UMG paid $31 million to the Estate, which kept $27.9 million and paid $3.1 million to CAK and NorthStar as their commission. *Id.* at 902-03.

Shortly after January 31, 2017, WBR learned of the UMG Agreement and contacted Comerica, recently the personal representative of the Estate, because WBR had a contractual interest—pursuant to the WBR Agreement—in certain rights in Prince recordings that were purportedly granted by the Estate to UMG under the UMG Agreement. *Id.* at 903. The Estate ultimately rescinded the UMG Agreement and refunded the entire $31 million to UMG. *Id.*

Following the rescission of the UMG Agreement, this Court appointed the Second Special Administrator ("SSA") and granted him authority to conduct "an independent examination of the facts, circumstances and events relating to the rescission of the UMG Agreement." *Id.* Pursuant to the Court's directive, the SSA conducted an investigation and found actionable conduct by CAK and NorthStar. *Id.* The SSA then brought a motion under Minn. Stat. § 524.3-721 seeking an order requiring CAK and NorthStar to refund the $3.1 million in commissions paid in connection with the rescinded UMG Agreement. *Id.* On March 11, 2019, this Court granted the SSA's motion and ordered CAK and NorthStar to refund commissions to the Estate in a designated escrow account. *Id.*

CAK and NorthStar appealed. The Minnesota Court of Appeals affirmed in part, reversed in part, and remanded. *Id.* at 901. As applicable here, the Court of Appeals determined that this Court was within its authority to assess the reasonableness of the fees paid to CAK and NorthStar under Minn. Stat. § 524.3-721. *Id.* at 908. The Court of

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

Appeals also remanded for consideration of the factors set forth in *Dahlberg Bros., Inc. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965).

C. The Evidentiary Hearing.

Consistent with the Court of Appeals' decision, on December 31, 2019, this Court issued a Scheduling Order and Memorandum setting an evidentiary hearing. The evidentiary hearing—originally scheduled for April 28 and April 30, 2020—was to address "what, if any, compensation [CAK and NorthStar] are entitled to retain from the rescinded UMG transaction." (Dec. 31, 2019 Order, at 1.)

On March 26, 2020, the Court held a telephonic conference, the purpose of which was to "clarify the purpose of the evidentiary hearing." (Apr. 20, 2020 Order, at 1.) Following the conference, the Court issued a Scheduling Order and Memorandum; critically, the Court stated that the order was intended to "assist the parties in determining what discovery is *necessary* and to frame the issues for the evidentiary hearing." (*Id.* (emphasis added).) The Court described the first issue for the final evidentiary hearing as whether "the Estate had reasonable and articulable concerns about the overlap [between the UMG Agreement and the WBR Agreement] such that, considering the alternatives available to the Estate, it was reasonable and prudent for the Estate to rescind the agreement." (*Id.* at 3.) The second issue is whether the "entertainment advisors knew, or had reason to know, of the potential for the overlap, before recommending the approval of the UMG Agreement." (*Id.*) Expressly not before the Court is whether "the UMG Agreement overlapped [with] the Warner Brothers Agreement." (*Id.*)

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

In a subsequent Scheduling Order and Memorandum, the Court struck the evidentiary hearing set for April and instead scheduled a "final evidentiary hearing" for October 13, 14 and 15, 2020. (May 7, 2020 Order, at 1.)

D. The WBR Subpoenas; The Cimino Subpoena.

Despite the limited focus of the evidentiary hearing, on March 18, 2020, CAK served the WBR Subpoenas on WBR.[2] (Cohen Decl. ¶ 5.) The WBR Subpoenas, attached to the Cohen Decl. as **Exhibit A**, seek to compel WBR to produce all documents relating to WBR's business with Prince, (Exhibit A at 11), and also seek to compel WBR to appear for deposition regarding *all* of WBR's business dealings regarding Prince's recordings for approximately 40 years. (*Id.* at 10.) Moreover, the Document Subpoena seeks "all" documents and testimony related to the UMG Agreement and WBR Agreements (including the WBR Agreement), regardless of whether those documents and testimony were or are in the possession of the Estate, were known or considered by the Estate at the time of rescission, or were known or considered by the entertainment advisors at the time they recommended the approval of the UMG Agreement. (*Id.* at 7.)

The breadth of CAK's requests is staggering, and each and every one is directed at information that either will be produced by the Estate or that is far beyond the scope of the evidentiary hearing (*e.g.*, internal WBR communications that were never transmitted to the Estate, and therefore, could not have been considered by the Estate when it elected to rescind the UMG Agreement). For example, CAK seeks:

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[2] CAK issued substantively identical subpoenas to UMG.

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

- all "WBR Agreements" and related correspondence, defined as "all agreements between WBR on the one hand and Prince or any entity affiliated with Prince . . . on the other hand" including any drafts thereof (*Id.* at 16, 20.)
- "[a]ll documents . . . concerning claims or assertions by WBR of any rights in or to recordings that were the subject of the UMG Agreement." (*Id.* at 20.)
- "[a]ll correspondence . . . concerning the . . . rescission . . . of the UMG Agreement. (*Id.* at 21.)
- "[a]ll correspondence and other communication between WBR and UMG concerning rights in Prince's recorded music." (*Id.*)
- "[a]ll documents . . . concerning the decision of Comerica and/or the Estate to seek rescission of the UMG Agreement." (*Id.* at 22.)

The Deposition Subpoena's topics mirror the overbroad and irrelevant document requests, and are not restricted to information known by the Estate at the time of rescission and/or information known by the entertainment advisors at the time they recommended the approval of the UMG Agreement. For example, CAK seeks to depose WBR on, *inter alia*, the "negotiation, drafting and terms of the WBR Agreements" and "[any] valuation, appraisal or other financial analysis or summary of the value of the rights in the Prince recordings that were the subject of the . . . WBR Agreements." (*Id.* at 18.) The remaining topics are similarly overbroad and objectionable.

In addition to the WBR Subpoenas, NorthStar issued the Cimino Subpoena to "Universal Music Group, Inc. through Mark [sic] Cimino." The Cimino Subpoena, attached to the Cohen Decl. as **Exhibit B**, sets the deposition of Mr. Cimino for August 19, 2020.

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

E. WBR Met and Conferred with CAK.

On May 12, 13 and 18, 2020, counsel for WBR met and conferred with counsel for CAK. (Declaration of Eric Ruzicka ("Ruzicka Decl.") ¶ 3.) WBR raised its concerns regarding the overbreadth of the WBR Subpoenas and the irrelevance of the documents and deposition testimony being sought. (*Id.*) CAK proposed small, conditional adjustments it was willing to make if WBR fully complied with all remaining requests. (*Id.*) CAK's proposed modifications regarding indisputably overbroad requests—*e.g.*, CAK stated it was willing to forego the request for any and all ***drafts*** of any agreements between Prince and WBR (but not the request for the final agreements and related correspondence)—did nothing to diminish the overall burden inflicted on WBR to prepare for the deposition and search for and produce documents. (*Id.* ¶ 4.) Nor did CAK's conditional and limited concessions eliminate the core flaw, namely, that its requests seek information not germane in any way to the final evidentiary hearing. (*Id.* ¶ 4.)

For example, it remains CAK's position that WBR's ***internal*** discussions regarding the UMG Agreement and the SSA's related investigation are somehow relevant to whether or not the Estate had an articulable basis for rescission. (*Id.* ¶ 4.) WBR's internal discussions have no bearing on what the Estate knew and whether the Estate's concerns reasonably justified rescission. Moreover, the only WBR employees involved in any discussions regarding the UMG Agreement and the SSA's related investigation are attorneys and their communications with each other are protected by privilege. It also remains CAK's position that documents related to WBR's negotiation and drafting of the

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

WBR Agreement—*i.e.*, documents from 2014 and earlier—are relevant. (*Id.*) But the only possible reason to seek WBR's internal documents from 2014 (and earlier) is to re-litigate issues that have been thoroughly investigated by the SSA, resolved by this Court and affirmed by the Minnesota Court of Appeals, such as whether there was in fact any overlap between the UMG Agreement and the WBR Agreement. Those issues are expressly not before the Court at the October evidentiary hearing and cannot justify the Document Subpoena. (Apr. 20, 2020 Order, at 3.) Finally, it remains CAK's position that WBR must furnish a witness in response to the Deposition Subpoena. (Ruzicka Decl. ¶ 4.)

III. ARGUMENT.

The Court issued its April 20, 2020 Scheduling Order and Memorandum for the express purpose of "assist[ing] the parties in determining what discovery is necessary." (Apr. 21, 2020 Order, at 3.) Instead of heeding the Court's Order, CAK continues to insist that WBR respond to the overly broad WBR Subpoenas, even though any relevant documents and other information sought therein will be produced by the Estate, and the remaining documents and information sought by the WBR Subpoenas are demonstrably *irrelevant* to the issues in the evidentiary hearing. Accordingly, WBR requests that the Court grant its Motion to Quash.

Further, should the Court not grant UMG's motion to quash the Cimino Subpoena and instead allow NorthStar to depose Mr. Cimino, WBR respectfully requests that the inquiry be restricted to Mr. Cimino's knowledge and experience at UMPG. Inquiry

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

should not be permitted into irrelevant and privileged matters regarding his employment at WBR.

A. Standard.

Under Minn. R. Civ. P. 26.02(b), discovery must be limited to matters that are "relevant to any party's claim or defense" and "proportional to the needs of the case." Proportionality is informed by the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Minn. R. Civ. P. 26.02(b). Under Rule 26.03, and for good cause shown, this Court "may make any order . . . to protect a party or person from . . . undue burden or expense," including an order "that the discovery not be had." Minn. R. Civ. P. 26.03. "[T]he court shall exercise its power with liberality in issuing orders which justice requires for the protection of parties or witnesses from unreasonable annoyance, expense, embarrassment, or oppression." *Sumstad v. Wilson*, 2009 WL 173506, at *3 (Minn. Ct. App. Apr. 21, 2009) (citation omitted) (internal quotation marks omitted).

Further, Minnesota Rule of Civil Procedure 45.03(a) imposes a burden on a subpoenaing party to "take reasonable steps to avoid imposing under burden or expense on a person subject to that subpoena." Minn. R. Civ. P. 45.03(a). If a party or attorney breaches this obligation, the Court "shall" impose "an appropriate sanction." *Id.* Similarly, under Rule 45.03(c), the Court "*shall* quash or modify the subpoena if it . . . requires disclosure of privileged or other protected matter . . . or . . . subjects a person to undue burden." (Emphasis added.)

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

B. The Records and Testimony Sought are Irrelevant or Duplicative.

As a threshold matter, information sought in discovery must be relevant to the action. Minn. R. Civ. P. 26.02(a). Information that has no bearing on the determination of an action *on its merits* is not subject to discovery, and may not be obtained via subpoena. *Roberts v. Whitaker*, 178 N.W.2d 869, 877 (Minn. 1970) (affirming the quashing of a subpoena because the court was "not convinced that [the] subpoena could be reasonably expected to disclose evidence material and relevant"); *Jeppesen v. Swanson*, 68 N.W.2d 649, 657 (Minn. 1955); *see also Webster v. Schwartz*, 81 N.W.2d 867, 870 (Minn. 1957) (same). Here, the only records that can be provided solely by WBR—*i.e.*, documents that cannot be produced by the Estate or by CAK—are not relevant to this evidentiary hearing.

The only relevant documents that may be in WBR's possession regarding the two narrow issues to be determined at the evidentiary hearing are (1) WBR's communications with the Estate and (2) WBR's communications with the entertainment advisors. The first category of documents was also sought from the Estate and the Estate agreed to produce them. (Ruzicka Decl. ¶ 2.) The Estate also agreed to produce documents and other information in its possession relevant to its "reasonable and articulable concerns about the overlap" between the UMG Agreement and the WBR Agreement that led to its decision to rescind the UMG Agreement. (*Id.*) CAK should not be permitted to burden a non-party with requests for the same documents that a party to this Proceeding has already agreed to produce. *In re Marriage of Grazzini-Rucki*, 2015 WL 134039, at *3 (Minn. Ct. App. Jan. 12, 2015) (party seeking discovery must "use other and less

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

burdensome avenues to obtain and introduce evidence . . . before issuing subpoenas to [a] nonparty"); *see also Sanders v. White*, 2016 WL 1389045, at *2 (Minn. Dist. Ct. Jan. 29, 2016) (quashing non-party subpoena because it was "not the least-burdensome way to obtain information"). Indeed, it would be more convenient, less burdensome, and less expensive for CAK to obtain these communications from the Estate.

The second category of documents is already in the possession of the entertainment advisors and cannot justify the Document Subpoena. *Sumstad v. Wilson*, 2009 Minn. App. Unpub. LEXIS 110, at *9-10 (Minn. Ct. App. Jan. 27, 2009) (subpoena imposed undue burden because other evidence was available on the same issue); *Souter v. Fastenal Co.*, 2017 Minn. App. Unpub. LEXIS 924, at *20 (Minn. Ct. App. Nov. 13, 2007) (affirming denial of subpoena because "additional documents, additional testimony would only be duplicative" (internal quotation marks omitted)); *see also* Minn. R. Civ. P. 26.02(b)(3)(i) (limiting discovery when it is "unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive").

All other documents sought by the Document Subpoena are irrelevant. Requests directed at *internal* communications between and among WBR personnel—*i.e.*, requests 3, 4, 5, 6, 8, 9, 13, 14, 15, 16 and 17—are immaterial to what the Estate knew when it approved the UMG Agreement or what the entertainment advisors knew when they recommended the approval of the UMG Agreement. Likewise, requests directed at communications between UMG and WBR that were *not* transmitted to the Estate or the entertainment advisors—*i.e.*, requests 3, 4, 5, 6, 7, 8, 10, 12, 14 and 16—are also

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

irrelevant. Discussions solely between and among UMG and WBR, even those regarding the issue of rescission, do not inform whether the entertainment advisors knew of the overlap between the WBR Agreement and the UMG Agreement when they recommended the approval of the UMG Agreement. Nor can such internal discussions support whether the Estate had an "articulable" basis for rescinding the UMG Agreement. Only those communications in the possession of the Estate can support the Estate's rescission decision and the Estate has agreed to produce all communications it received from WBR. (Ruzicka Decl. ¶ 2.)

The Deposition Subpoena also seeks irrelevant testimony that is duplicative of the (irrelevant) information sought by the Document Subpoena. Testimony from WBR regarding its internal "negotiation" and "drafting" of the WBR Agreement at the time that agreement was entered into (*see* Cohen Decl., Ex. A at 18) is irrelevant to whether and what the Estate and the entertainment advisors actually knew about the WBR Agreement in 2017—three years later. Likewise, testimony from WBR regarding any "valuation" and "appraisal" it conducted for any agreements it had regarding Prince's recordings for a period of over 40 years, (*see id.*), is simply not germane to the October evidentiary hearing. In all events, the Deposition Subpoena utterly disregards the Court's Order that discovery be restricted to "necessary" matters in dispute. (Apr. 20, 2020 Order, at 3.)

C. The Subpoenas Impose an Undue Burden and Expense on WBR.

When ruling on WBR's Motion, this Court must also "balance the need of the party to inspect the documents or things against the harm, burden, or expense imposed upon the person subpoenaed." *Ciriacy v. Ciriacy*, 431 N.W.2d 596, 599 (Minn. Ct. App.

1988). Here, however, there is nothing to balance. The only (in)equity is the undue burden WBR will incur if it must respond to the overbroad and irrelevant WBR Subpoenas. Accordingly, the Court should quash the WBR Subpoenas under Minn. R. Civ. P. 45.03.

CAK's "need . . . to inspect the documents" sought in the Document Subpoena is nonexistent given the limited nature of the October evidentiary hearing and the Estate's agreement to produce the responsive documents in its possession. In stark contrast, the undue burden that WBR will incur in responding to the Document Subpoena is immense. The Document Subpoena is not limited to any reasonable time and extends to the entirety of WBR's approximately 40-year relationship with Prince, including deals and agreements that predate Prince's death. (Cohen Decl., Ex. A at 14-22.) Similarly, each document request contains expansive language seeking "*All* documents and communications," "*All* . . . Agreements, including all drafts and prior versions thereof," "*All* correspondence and communications," and "*Any* valuation, appraisal or other financial analysis or summary of the value of rights in the Prince recordings." (*Id.* at 20-22 (emphases added).) Providing information responsive to these all-encompassing requests for a period of approximately 40 years would be burdensome, time consuming, expensive, and pointless, given the narrow scope of the October evidentiary hearing.

The Document Subpoena also seeks information on matters to which WBR was not a party, such as "[t]he negotiation, drafting, and terms of the UMG Agreement," "[c]laims or assertions by UMG that its entry into the UMG Agreement was induced by fraud, misrepresentation or omission," and "the payments of commissions or other

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

amounts to the Advisors." (*Id.*) Requiring WBR to incur the expense of scouring its documents to confirm that no responsive documents exist is inconsistent with the discovery rules and the limited nature of the October evidentiary hearing.

The Deposition Subpoena imposes a different, although equally onerous, burden on WBR. As a legal matter, the testimony sought by the Deposition Subpoena is privileged and protected from disclosure. The only individuals involved in the negotiation and drafting of the WBR Agreement were attorneys or were advised by attorneys. The same is true of the individuals who interacted with the Estate regarding WBR's contractual interest in certain rights in Prince recordings that were purportedly granted by the Estate to UMG under the UMG Agreement. Accordingly, their internal communications and work product are privileged. *Kobluk v. University of Minnesota*, 574 N.W.2d 436, 440 (Minn. 1998). Subjecting WBR to the time and expense of a deposition that seeks information that cannot be disclosed is the definition of undue burden. *See Ossenfort v. Associated Milk Producers, Inc.*, 254 N.W.2d 672, 681 (Minn. 1977) (discovery rules "do[] not abrogate attorney-client privilege"). Moreover, the fact that the Deposition Subpoena exclusively seeks privileged information reinforces that it is not narrowly tailored to the two issues to be decided at the October evidentiary hearing.

The only WBR employees who had any involvement or communications concerning the rights dispute leading to the rescission of the UMG Agreement three years ago are attorneys who are no longer with the company. (Cohen Decl. ¶ 6); *see also EEOC v. Maryland Cup Corp.*, 785 F.2d 471, 479 (4th Cir. 186) (company not required to comply with subpoena to the extent it seeks information from persons not under the

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

company's control). In addition to WBR's other objections, CAK's insistence on the Deposition Subpoena is an exercise in futility.

The undue burden imposed by the WBR Subpoenas is exacerbated by the history of this case. The WBR Subpoenas represent yet another attempt by the entertainment advisors to re-litigate the overlap between the UMG Agreement and the WBR Agreement, even though that issue will not be before the Court in October. (Apr. 20, 2020 Order, at 3.) Indeed, many of the requests in the WBR Subpoenas are targeted at tangential communications that may have occurred at or near the time of rescission but are irrelevant to the October evidentiary hearing, such as internal WBR communications that were never shared with the Estate or the entertainment advisors. At best, the WBR Subpoenas are an underhanded attempt to engage in a fishing expedition under the guise of seeking discovery in connection with the October evidentiary hearing. At worst, the WBR Subpoenas disregard this Court's prior Orders altogether. CAK's pursuit of discovery from WBR that is plainly not "necessary," as limited by the Court, is yet another basis for granting WBR's motion to quash the WBR Subpoenas. *See* Minn. R. Civ. P. 45.03(a) (parties issuing subpoenas have a duty to avoid imposing an undue burden on recipients).

D. CAK Has Not Arranged for Reasonable Compensation.

Minnesota Rule of Civil Procedure requires a party issuing a subpoena to make arrangements for the reasonable compensation of non-party witnesses prior to the deadline for producing documents or furnishing a witness for deposition. *See* Minn. R. Civ. P. 45.02(d). Similarly, Minnesota Rule of Civil Procedure 45.03 entitles non-parties

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

that will provide testimony or documents regarding "a profession, business, or trade, or relating to knowledge, information, or facts obtained as a result of activities in such profession, business, or trade . . . to reasonable compensation for the time and expense involved in preparing for and giving such testimony or producing documents." Minn. R. Civ. P. 45.03(d). In short, the requirement to award expenses incurred by a non-party in testifying and producing subpoenaed documents is not discretionary. *Bowman v. Bowman*, 493 N.W.2d 141, 143 (Minn. Ct. App. 1992).

Here, responding to the WBR Subpoenas would necessitate WBR to expend significant resources, employee time, and attorney time. Yet CAK and its attorneys have failed to make any advance arrangements to compensate and reimburse WBR for the time and expense of responding to the WBR Subpoenas, and its failure to do so further supports WBR's motion. To the extent WBR is compelled to respond to the WBR Subpoenas, it requests reasonable compensation and reimbursement for all actual costs, the value of employee time, and the reasonable attorneys' fees it will incur.

E. To the Extent it is Permitted At All, the Cimino Subpoena Must be Limited to Mr. Cimino's Employment at UMPG.

Pursuant to Minn. R. Civ. P. 26.03 and 45.03, WBR also moves for a protective order with respect to the Cimino Subpoena. Should this Court compel Mr. Cimino to submit to deposition over UMG's objection, his testimony should be limited to his employment at UMPG.

Mr. Cimino's employment in WBR's Business and Legal Affairs department from July 2004 through December 2014 and related work regarding the WBR Agreement (all

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

of which pre-dated Prince's death) are irrelevant to the issues to be decided at the October evidentiary hearing. (Cohen Decl. ¶ 8.) Indeed, the *actual* overlap between the WBR Agreement and the UMG Agreement—a topic Mr. Cimino may be familiar with as a principal negotiator and the primary draftsperson of the WBR Agreement—is expressly *not* at issue. (Apr. 20, 2020 Order, at 3.) The relevant issues are (1) whether the Estate reasonably perceived an overlap when it approved the UMG Agreement in or about January 2017 and (2) what the entertainment advisors knew about the overlap when they recommended the approval of the UMG Agreement in or about January 2017. (*Id.*) The end of Mr. Cimino's employment with WBR predates these events by over two years. It is not a relevant topic for deposition.

Relatedly, WBR has serious concerns that inquiry of Mr. Cimino will devolve into an unwarranted investigation into WBR's confidential commercial information, including privileged matters. Minn. R. Civ. P. 26.03(a)(7) (allowing district court to order that confidential commercial information need not be disclosed in deposition). As a member of, and eventually the head of, the Business and Legal Affairs department at WBR, Mr. Cimino was necessarily privy to numerous confidential and privileged communications between and among WBR and its counsel. (Cohen Decl. ¶ 8.) Those confidential and privileged communications informed Mr. Cimino's negotiation and drafting of the WBR Agreement. It would defy logic to permit inquiry into Mr. Cimino's negotiation and drafting of the WBR Agreement when the Court has already recognized that the WBR Agreement itself contains a confidentiality clause that must be strictly honored in this Proceeding. (Order and Memorandum Granting Motion to Approve Rescission of

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

Exclusive Distribution and License Agreement, at 4.) As a result, an appropriate protective order from this Court is necessary. *Polycast Technology Corp. v. Uniroyal, Inc.*, 129 F.R.D. 621, 628 (S.D.N.Y. 1990) (holding that if there is a strong likelihood that a former employee possesses privileged material, an appropriately tailored protective order should be issued). If allowed, the deposition of Mr. Cimino should be limited to his employment at UMPG.

F. WBR Should Be Granted Attorneys' Fees, Costs and Disbursements.

The narrow scope of the October evidentiary hearing, as set forth in the Court's April 20, 2020 Scheduling Order, makes clear that CAK's continued pursuit of the WBR Subpoenas is without an adequate basis in law or in fact. CAK's refusal to withdraw the unreasonable and unnecessary WBR Subpoenas forced WBR to file the instant motion. WBR therefore moves for an award of attorneys' fees, costs and disbursements incurred in connection with this motion, pursuant to Minn. R. Civ. P. 45.03(a). WBR respectfully requests permission to submit, within 28 days of the filing of an order granting its motion, an affidavit to the Court regarding the reasonable attorneys' fees and costs WBR incurred in bringing this motion.

Filed in District Court
State of Minnesota
5/22/2020 12:27 PM

IV. CONCLUSION.

For the foregoing reasons, WBR respectfully requests that this Court issue an order quashing the WBR Subpoenas. WBR also respectfully requests that this Court issue a protective order, for good cause shown, limiting the deposition of Mr. Cimino under the Cimino Subpoena to his knowledge and experience as an employee of UMPG.

Dated: May 22, 2020

DORSEY & WHITNEY LLP

By */s/ Eric A.O. Ruzicka*

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State of Minnesota
5/22/2020 12:27 PM

ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

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