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STATE OF MINNESOTA

COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

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

In Re:

Estate of Prince Rogers Nelson,
Decedent.

REDACTED

OMARR BAKER AND ALFRED JACKSON'S SUPPLEMENTAL OBJECTIONS TO BREMER TRUST, NATIONAL ASSOCIATION'S DISCHARGE FROM LIABILITY

INTRODUCTION

Omarr Baker ("Baker") and Alfred Jackson ("Jackson"), by and through counsel, submit these supplemental objections to Bremer Trust, National Association's ("Bremer" or "Special Administrator") discharge from liability.[1]

Without the benefit of discovery, Baker and Jackson have learned that the Special Administrator—through its agents Charles Koppelman ("Koppelman") and L. Londell McMillan ("McMillan") (collectively, the "Advisors")—financially backed the original tribute promoter, Jobu Presents, LLC ("Jobu Presents"). Recently retained emails and audio recordings between Koppelman and a representative of Jobu Presents demonstrate that just after the Estate of Prince Rogers Nelson (the "Estate") entered the Tribute agreement with Jobu Presents, Koppelman provided financing to Jobu Presents in August 2016. (*See* Affidavit of Vaughn Millette.) These

[1] On April 12, 2017, the Court issued an order staying Bremer's discharge "pending further order of the Court." (*See* Order Staying Discharge of Special Administrator, filed April 12, 2017.) Baker and Jackson rely on the stayed nature of this discharge to file these supplemental objections. If the Court interprets the stay as not holding the record open for this issue—and that a request to bring a motion for reconsideration based on the new evidence pursuant to MINN. GEN. R. PRAC. 115.11 or another procedure is appropriate—Baker and Jackson will do so.

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funds were subsequently provided to the Estate as an advance under the agreement that Jobu Presents signed with the Estate. More troubling is the audio recording, which illustrates that Koppelman conspired with Bremer to return the advance to Jobu Presents, with the understanding that it would be returned to Koppelman. (*Id.*) In the audio recording, Koppelman states: "I was responsible for you getting back your [redacted] . . . I told Bremer to send it." (*Id.*)

This evidence shows, at a minimum, Bremer's conflict of interest and a breach of its fiduciary duty under established Minnesota law. None of this information was disclosed to the Non-Excluded Heirs[2] or to the Court around the time that the Estate contracted with Jobu Presents. At the very least, this new information necessitates discovery to determine the exact circumstances surrounding, among other things, the decision to retain Jobu Presents over other established promoters, the circumstances under which Jobu Presents received the loan from Koppelman, and Bremer's decision to return the advance to Jobu Presents. As this Court is aware, Jobu Presents was chosen over Live Nation, an established concert promotor. Bremer's conduct without question deprived the Estate of certain income from a Live Nation promoted Tribute.

BACKGROUND

Prince Rogers Nelson (the "Decedent") was an international music icon. He died intestate, leaving behind a complex estate. As such, the Court's role in the Estate has been not only to oversee an intestate proceeding, but also to take on the unusual task of reviewing, analyzing, and approving select entertainment deals related to the Decedent's artistic work. In the course of its work as Special Administrator, Bremer was required to obtain the Court's approval to enter any agreement

[2] Pursuant to the Court's July 29, 2016 Order Regarding Genetic Testing Protocol and Heirship Claims following the June 27, 2016 Hearing and Judgment and subsequent orders, the Non-Excluded Heirs are defined in this proceeding as Omarr Baker, Alfred Jackson, John Nelson, Norrine Nelson, Sharon Nelson, and Tyka Nelson.

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on behalf of the Estate. Bremer has a fiduciary duty to ensure those deals were negotiated with care and without substantial conflicts of interest.

Baker and Jackson now know that with respect to at least two agreements, the Special Administrator faces potential claims for breach of fiduciary duty. The first is with respect to newly-discovered information regarding the agreement with [redacted] The second is with respect to newly-discovered information regarding the Tribute agreement with Jobu Presents. (*See* Affidavit of Vaughn Millette.) As previously raised with the Court,[4] Bremer mismanaged the Prince Tribute Concert in part by entering a later-rescinded agreement with Jobu Presents. Ironically, it was always believed that Bremer's misconduct regarding the Tribute Concert related solely to Bremer's choice of an unproven promoter and the mishandling of the returned advance.[5] Now it has become clear that the agreement with Jobu Presents was tainted by an undisclosed conflict of interest.

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[3] On April 5, 2017, Baker and Jackson learned that [redacted] s threatening imminently and seemingly inevitable litigation. In light of this revelation, at the very least, Baker and Jackson argued that Bremer's discharge must be delayed. *See* Omarr Baker and Alfred Jackson's Supplemental Objections to Bremer Trust, National Associations Final Accounts through January 31, 2017, filed April 7, 2017. As Baker and Jackson prepared to bring this issue before the Court, the Court discharged Bremer from any and all liability. *See* Order Granting Special Administrator's Request to Approve Payment of Special Administrator's and Attorneys' Fees and Costs through January 31, 2017 and Final Accounts and Inventory ("Discharge Order"), filed April 5, 2017, p. 5. After reviewing Baker and Jackson's subsequent filing, the Court stayed Bremer's discharge. *See* Order Staying Discharge of Special Administrator ("Stay Order"), filed April 12, 2017.

[4] Baker and Jackson respectfully direct the Court to the objections filed on January 11, 2017, the supplemental objections filed on January 19, 2017, the reply in support of the objections filed on January 30, 2017, and the objections filed on March 8, 2017.

[5] In fact, in response to the objections raised about Jobu Presents, the Court directed the Personal Representative, Comerica Bank & Trust, N.A. (the "Personal Representative") to "investigate and make an informed decision regarding whether any action should be pursued for the return of the advance paid by Jobu Presents to the Estate for the right to conduct the Tribute Concert, which advance was subsequently returned to Jobu Presents." (*See* Discharge Order, p. 5.)

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It is apparent the Court understands the impact of any potentially forthcoming litigation on Bremer's discharge. *See* Order Staying Discharge of Special Administrator ("Stay Order"), filed April 12, 2017. Moreover, less than a week after the Stay Order, Baker and Jackson learned that Bremer's mismanagement with respect to Jobu Presents runs much deeper than just the Estate's return of the advance. In fact, Jobu Presents—without any disclosure to the Court or the Non-Excluded Heirs—received the funds for that advance from none other than Charles Koppelman, one of the entertainment industry advisors and Bremer's agent. Koppelman loaned substantial funds to Jobu Presents (*see* Affidavit of Vaughn Millette), which then entered an agreement with Bremer on behalf of the Estate. As part of that agreement, Jobu Presents advanced [redacted] received from Koppelman to the Estate. As the Court now knows, Jobu Presents subsequently demanded and the Special Administrator returned the advance to Jobu Presents.[6]

If Koppelman loaned the advance to Jobu Presents (or otherwise induced the Estate to enter the agreement with Jobu Presents), it was in his role as an advisor to the Special Administrator.

The Court further directed the Personal Representative to "investigate and make an informed decision regarding whether any action should be pursued for the return of the commission paid to L. Londell McMillan in connection with the agreement with Jobu Presents to conduct the Tribute Concert." (*Id.*) It was for this reason and others that Baker and Jackson presumed that Bremer required the Personal Representative to enter into the Common Interest Agreement, which in essence prevents the Personal Representative from making a claim against Bremer. (*See* Order for Transition from Special Administrator to Personal Representative, filed Jan. 20, 2017, pp. 3-4.)

[6] *See, e.g.*, Affidavit of Steven H. Silton in Support of the Purported Heirs to the Estate's Objection to the Court Approving Any Contracts Entered by the Entertainment Industry Experts, filed Sept. 27, 2016; Supplemental Objections to Final Account through 11/30/16, Final Account from 12/1/16 through 12/31/16, and Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator, filed Jan. 19, 2017, pp. 8-12; The Special Administrator's Reply to Objections by Omarr Baker, Tyka Nelson, and Roc Nation to the Special Administrator's Petition for Discharge, filed Jan. 26, 2017; Reply in Support of Objections to Final Account through 11/30/16, Final Account from 12/1/16 through 12/31/16, and Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator, filed Jan. 30, 2017, pp. 6-8.

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(*See* Transcript of January 12, 2017 Proceedings, p. 45) (Bremer represented to the Court that McMillan and Koppelman were "agents who assisted in the Estate administration"). This creates a substantial liability for Bremer. Furthermore, the Estate could lose additional assets because of Bremer's mismanagement. If the allegations in the correspondence involving Koppelman are true, Bremer should not (and indeed, cannot) be discharged. As previously raised, the parties have not been allowed to receive any discovery prior to discharge, and the Special Administrator has failed to disclose crucial information.

If the facts surrounding Koppelman's conduct with Jobu Presents are true, entering into the subsequently rescinded Jobu Presents agreement could be a significant breach of Bremer's fiduciary obligations to the Estate. The Jobu Presents issue has cost the Estate significant amounts of potential revenue, and will likely cost the Estate significant future opportunities. The information regarding Koppelman's loan is brand new. Since this only came to light in the second week of April—and nothing about Koppelman's interactions with Jobu Presents was previously disclosed by Bremer—the parties had no time to obtain the information and present it to the Court. Similarly, the Court did not have the proper opportunity to consider whether Bremer should be discharged with respect to the Jobu Presents agreement. The Court should continue to stay the discharge of Bremer at a minimum until it is determined whether entering into the Jobu agreement was a breach of its fiduciary obligations to the Estate.

A. Procedural History Surrounding the Special Administrator's Discharge from Liability and the Court's Subsequent Stay Order

Baker and Jackson direct the Court to the "Procedural History" incorporated in Baker's Memorandum in Support of Objections to Bremer Trust, National Association's Final Accounts through January 31, 2017, filed with the Court on March 8, 2017. On March 17, 2017, Bremer filed a response to Baker's objections. (*See* Bremer Trust's Response to Omarr Baker's Objections

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to Bremer Trust's Accounting through January 31, 2017, filed March 17, 2017.) On March 18, 2017, the Court held the accounting issue "shall be considered for approval on or after March 18, 2017." (*See* Scheduling Order Relating to Approval of Attorneys' Fees, Final Accounting and Extension of Powers, filed Feb. 22, 2017, p. 2.)

The Court held it would discharge Bremer "upon the final approval of the final accounts and the fee statements and the submission to the Court of a receipt of the assets shown on the final accounting signed and filed by Comerica Bank & Trust." (*See* Second Order Relating to the Transition from Special Administrator to Personal Representative, filed Jan. 31, 2017, p. 3.) On March 22, 2017, two weeks after the deadline to submit objections to Bremer's accounting and discharge, the Personal Representative uploaded documents relating to its correspondence with [redacted] to a data room for the Non-Excluded Heirs. (*See* Affidavit of Steven H. Silton, filed April 7, 2017, Exs. A-G.) In the documents, [redacted] and gave the Personal Representative a deadline of Friday, April 7, 2017 to respond, otherwise [redacted] (*See* Affidavit of Steven H. Silton, filed April 7, 2017, Ex. G, p. 2.)

The same day the Non-Excluded Heirs received a copy of [redacted], the Court discharged Bremer and its agents "from any and all liability associated with its Special Administration of the Estate. This portion of the Order is stayed until Comerica Bank & Trust has filed a receipt of the assets shown on the Final Accounts." (*See* Order Granting Special Administrator's Request to Approve Payment of Special Administrator's and Attorneys' Fees and Costs through January 31, 2017 and Final Accounts and Inventory, filed April 5, 2017, p. 5.)

On April 7, 2017, Baker and Jackson filed supplemental objections to Bremer's accounting and discharge based on the new information regarding [redacted] (*See* Omarr Baker and Alfred Jackson's Supplemental Objections to Bremer Trust, National Associations Final Accounts

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through January 31, 2017, filed April 7, 2017.) Baker and Jackson argued that the documents, in particular [redacted] called into question the Special Administrator's discharge, the royalties received by the Special Administrator's entertainment industry advisors, and the financial assets of the Estate. In response, the Court stayed Bremer's discharge. (*See* Stay Order.)

B. The Facts Surrounding Execution of the Agreement with Jobu Presents Implicates the Special Administrator and Its Entertainment Industry Advisers

The Court stayed Bremer's discharge on April 12, 2017. The same day, Baker and Jackson received additional information that further caused concern about the Special Administrator's role in the agreement executed with Jobu Presents. A brief timeline of the events surrounding the execution and subsequent rescission of the Jobu Presents agreement is below.[7]

As the Court knows, the Special Administrator, on the recommendation of its counsel (Stinson Leonard Street LLP) and the Advisors, engaged Jobu Presents to promote the Tribute Concert. Jobu Presents was formed in March 2016. Bremer recommended and chose Jobu Presents over Live Nation, a longstanding and well respected promoter.[8] While Bremer's representative

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[7] Jobu Presents filed a lawsuit in which it bases its claim for rescission on material misrepresentations by Koppelman and McMillan that impaired Jobu Presents' ability to perform under the July 7, 2016 Agreement, as described in the Affidavit of Vaughn Millette submitted with this Supplemental Objection and in Jobu Presents' April 21, 2017 lawsuit.

[8] Live Nation Entertainment, Inc. (NYSE: LYV) is an entertainment company that engages in producing, marketing, and selling live concerts for artists. The company employs more than 5,000 employees and brought in $5.38 billion in revenue in 2011. It formed from the merger of Live Nation and Ticketmaster in 2010, and operates through four business segments: Concerts, Ticketing, Artist Nation, and Sponsorship and Advertising. The Concerts segment involves the global promotion of live music events in their owned and operated venues and in rented third-party venues, the operation and management of music venues and the production of music festivals across the world. *See, e.g.*, Live Nation Entertainment, Inc., *available at* https://www.nyse.com/quote/XNYS:LYV; *see also* https://www.forbes.com/companies/live-nation-entertainment/; http://www.livenationentertainment.com/.

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Deborah Fasen was familiar with Live Nation, she had not heard of the relatively new Jobu Presents until the Advisors recommended it. (*See* Transcript of January 12, 2017 Proceedings, p. 95.) In fact, it was Koppelman who "sought and received a third proposal from Jobu Present[s]." (*See* The Special Administrator's Reply to Objections by Omarr Baker, Tyka Nelson, and Roc Nation to the Special Administrator's Petition for Discharge, filed Jan. 26, 2017, p. 3.) The Special Administrator's counsel represented that "[t]he [Jobu] numbers are substantially better than any other proposed on both the guarantee and the splits." (*Id.*, internal citations omitted.) The Non-Excluded Heirs and the Court have received no other justification—economic, experience, or otherwise—for hiring Jobu Presents over Live Nation. It was the Advisors who guided Bremer on choosing the promoter of the Tribute Concert, including recommending Jobu Presents as a capable promoter for the event. (*Id.*; Transcript of January 12, 2017 Proceedings, p. 96.)

On June 30, 2016, Bremer's counsel invited the Non-Excluded Heirs to a meeting to discuss the Tribute Concert. (*See* Affidavit of Laura Halferty, filed Jan. 26, 2017, ¶ 8, Ex. A.) Following the meeting, Bremer's counsel sent a summary of the proposals for the Tribute Concert that McMillan had prepared. (*Id.*, ¶ 9, Ex. B.)

In coordinating the Tribute Concert, the Special Administrator held out the Advisors to the Non-Excluded Heirs as having authority coordinate the Tribute Concert, including entering the agreement with Jobu Presents. Bremer knowingly permitted its agents to act on its behalf, and it was on behalf of Bremer that the Advisors entered the agreement with Jobu Presents. The agreement with Jobu Presents is addressed to the "Advisors of the Estate of Prince Rogers Nelson" and signed by Susan K. Albrecht, Executive Vice President at Bremer Trust, N.A. (*See* Affidavit of Steven H. Silton, filed Jan. 19, 2017, Ex. A, hereinafter "Jobu Agreement.") Pursuant to the

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language in the agreement, the Advisors were agents with authority from the Special Administrator to coordinate the Tribute Concert.

On July 7, 2016, the Jobu Agreement was executed. It provided for a [redacted] guarantee payable 1/3 within five days of signing the agreement, 1/3 ten days after tickets for sale, and 1/3 10 days after the show. (*See* Jobu Agreement, p. 1.) The Jobu Agreement further provided for revenue sharing on certain types of receipts, 60/40 or 100%. Notably, there is no provision in the Jobu Agreement for a return of guaranteed payments. (*Id.*) The first 1/3 of the [redacted] payable within five days of signing the agreement. Pursuant to the Advisor Agreement, Koppelman and McMillan were entitled to [redacted] Individually, each would be entitled to [redacted]

After Bremer signed the Jobu Agreement, one of the Advisors—Charles Koppelman—loaned money to Jobu Presents. Jobu Presents claims the loan was forced upon it. (*See* Affidavit of Vaughn Millette.) While the amount Koppelman loaned—or whether he loaned the money with a signed agreement at all—is not known exactly, the promissory note and the Recording suggest it was [redacted] If this is true, the amount Koppelman loaned to Jobu Presents is approximately the same amount that Jobu Presents subsequently advanced to the Estate. (*See* Affidavit of Steven H. Silton, filed Jan. 19, 2017, Ex. C.) Bremer represented that it received a wire transfer of [redacted] from Jobu Presents. (*See* Affidavit of Steven H. Silton, filed Sept. 29, 2016, Ex. 7.) [redacted] was the amount advanced to the Estate after Jobu Presents removed the Advisors' [redacted] commission. Jobu Presents paid McMillan a commission of [redacted] for "his share of the commission on the advance under the Advisory Agreement." (*Id.*) In the same email, Bremer's counsel represented to Baker and Jackson's counsel that Koppelman told Bremer "he did not receive payment." (*Id.*) If Koppelman in fact loaned the full advance to Jobu Presents, he would

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not logically collect his commission on the Jobu Agreement. It appears that Koppelman may have kept his [redacted] of the advance and loaned the net amount to Jobu Presents.

Once Bremer signed the Jobu Agreement and advanced [redacted] to the Estate, relations quickly deteriorated between Jobu Presents and the Estate. According to Vaughn Millette of Jobu Presents, the relationship between the Advisors and Jobu Presents had already deteriorated. While it is unclear what exactly happened, it appears that the Advisors, acting as agents of the Special Administrator, are alleged to have misrepresented information about the obtainable talent to Jobu Presents and whether the Tribute Concert was a charitable event (which it was not). Jobu Presents subsequently backed out of the agreement signed with the Special Administrator.

On July 7, 2016, Jobu Presents entered into an Agreement with Estate of Prince Rogers Nelson for production of the anticipated Prince Tribute Show based on material representations by the Estate and its "monetization" experts Charles Koppelman and Londell McMillan with respect to artist talent secured and charity component for the Tribute Show. (Vaught Millette Aff., 1; April 21, 2017 Complaint, § 20). On August 24, 2016, Jobu Presents sent a letter to the Advisors terminating its involvement with the Tribute Concert. In the letter, Jobu Presents alleged (i) the Tribute Concert will not have a charitable component and (ii) the Advisors failed to obtain talent. (*See* Affidavit of Steven H. Silton, filed Jan. 19, 2017, Ex. B.) As of August 29, 2016, Jobu Presents had already paid the Estate a [redacted] advance. (*See* Affidavit of Laura Halferty, filed Jan. 26, 2017, ¶ 15.) The same day, Jobu Presents sent a letter to the Special Administrator's counsel Traci Bransford reiterating the same. In the letter, Jobu Presents confirmed termination of its relationship with the Estate. (*See* Affidavit of Steven H. Silton, filed Jan. 19, 2017, Ex. C, the "August 29 Rescission Demand.") Jobu Presents alleged that the Advisors (i) misrepresented the business plan and (ii) failed to secure talent as promised. (*Id.*) Finally, Jobu Presents alleged that

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lack of information, inconsistencies, and false information the Advisors gave Jobu Presents and others in the music community raised questions of the Estate's dealings and transparency, along with the personal motives and integrity of the Advisors to the Estate. Jobu Presents ended its letter with a demand for [redacted] back plus damages, costs, and expenses of [redacted] (*Id.*) The [redacted] million is presumably the sum of the commission to Koppelman, commission to McMillan, and the advance to the Special Administrator. As stated it equals the 1/3 advance required to be paid by Jobu Presents.

On September 8, the Special Administrator responded to the August 29 Rescission Demand. (*See* Affidavit of Steven H. Silton, filed Jan. 19, 2017, Ex. D.) In this letter, written by Bremer's counsel David Crosby, the Special Administrator categorically refused to return payments to or reimburse Jobu Presents for any expenses. On September 9, 2016, litigation counsel for Jobu Presents sent a demand letter in response to the Estate's September 8 letter in which Jobu Presents emphasized the damages caused by Mr. McMillan and Mr. Koppelman as well as Bremer Bank and the Estate's failure to monitor their selected "experts." (A true and correct copy of the September 9, 2016 demand letter is attached as Exhibit B to Millette Aff.; April 21, 2017

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[9] The context of this timeline may be helpful for the Court. Bremer received the August 29 Rescission Letter just one day before the telephonic hearing with the Court regarding the Warner Brothers agreement. In requesting approval of the Warner Brothers agreement, Bremer argued that the Warner Brothers agreement would have resulted in the payment of a [redacted] advance to the Estate. The Non-Excluded Heirs argued that the [redacted] would be earned by the Estate regardless, due to a 2014 Agreement that the Decedent entered with Warner Brothers. Additionally, the Non-Excluded Heirs argued that the new agreement would result in a superfluous 10% commission being paid to the Advisors, Koppelman and McMillan. This would have caused a loss of [redacted] to the Estate. The Court subsequently refused to approve the Special Administrator entering into the Warner Brothers agreement. *See* Order Regarding the Proposed Amended Agreement with Warner Brothers Records, Inc., filed under seal Aug. 31, 2016. At the time, the Advisors had lost a substantial commission. The facts surrounding the Jobu Agreement suggest they were trying to augment their earnable commission and make it appear that other transactions were successful.

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Complain, § 56, Ex. E). On September 12, Bremer's counsel informed Baker and Jackson's counsel that Jobu Presents had advanced [redacted] to the Estate—not the [redacted] alleged in the August 29 Rescission Demand. (*See* Affidavit of Steven H. Silton, filed Sept. 27, 2016, Ex. 7.) In the same email, Bremer's counsel represented that Jobu Presents paid McMillan a commission of [redacted] for "his share of the commission on the advance under the Advisory Agreement." (*Id.*) According to Bremer, Koppelman did not receive payment. (*Id.*)

On September 14, various Non-Excluded Heirs' counsel reached out to Bremer, frustrated with the confusion surrounding Jobu Presents' rescission and the status of the Tribute Concert. (Affidavit of Steven H. Silton, Ex. A.) In response, Bremer's counsel sent a "Tribute Concert Status Update" from Koppelman and McMillan. (*Id.*) This email was the first indication that the Advisors—particularly McMillan—would produce the Tribute Concert. Nothing in this correspondence indicated that with respect to the Tribute Concert, the Advisors were acting or had acted outside the scope of their role with the Special Administrator.

On September 15, the Special Administrator and Jobu Presents spoke by telephone. Because the Special Administrator "believed that litigation would likely result," the Special Administrator entered into a September 15 interim agreement with Jobu Presents in which the Special Administrator agreed (a) to pay Jobu Presents [redacted] under a reservation of rights by September 26; and (b) to mediate the dispute shortly after the completion of the Prince Tribute Show. (*See* April 21, 2017 Complaint, § 57; the Special Administrator's Reply to Objections by Omarr Baker, Tyka Nelson, and Roc Nation to the Special Administrator's Petition for Discharge, filed Jan. 26, 2017, p. 7; Affidavit of Laura Halferty, filed Jan. 26, 2017, Ex. H, K.) Bremer waited to inform the Non-Excluded Heirs and the Court until *after* it had returned the advance to Jobu

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Presents.[10] (*Id.*) This prevented the Non-Excluded Heirs from approaching the Court and requesting the Estate hold the advance until the matter with Jobu Presents was resolved.

Jobu Presents paid McMillan a commission in the amount of [redacted] This payment represented his portion of the commission on the [redacted] payment that was due to the Estate pursuant to the Jobu Agreement. (*See* Affidavit of Steven H. Silton, filed Sept. 27, 2016, Ex. 7; Transcript of January 12, 2017 Proceedings, pp. 96-97.) McMillan never returned the commission. Even though Jobu rescinded the Tribute agreement, the Special Administrator never compelled McMillan to return the commission. (*Id.*)

After rescission of the Jobu Agreement, McMillan stepped in and promoted the Tribute Concert himself. In an article published in the *Star Tribune* in advance of the Tribute Concert, McMillan represented himself as "one of the principal concert organizers." (*See* Affidavit of Steven H. Silton filed on September 27, 2016, Ex. 1; *see also* Exs. 5 to 12.) Bremer represented that McMillan's work "as co-promoter or producer of the October 13 tribute concert was outside the scope of his Advisor Agreement with the Estate." (*See* Affidavit of Laura Halferty, filed Jan. 26, 2017, ¶ 18, Ex. E.) Incidentally and coincidentally, Bremer also represented that the Estate was "not a party to the contract that controlled the rights and obligations of the relevant parties with

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[10] Bremer's counsel represented in an affidavit that he negotiated the advance return in mid-September 2016 and informed the Non-Excluded Heirs of the advance return "[s]hortly thereafter." *See* Affidavit of David R. Crosby, filed Jan. 26, 2017, ¶ 4. While the wording "shortly thereafter" is vague, Baker and Jackson dispute that they were informed of the advance return promptly. Baker's counsel first learned details of the advance return at the January 12, 2017 hearing. (*See* Affidavit of Steven H. Silton, ¶ 3.) Additionally, the correspondence attached to the Affidavit of Laura Halferty filed on January 26, 2017 was not previously introduced before the Court.

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respect to the tribute concert that went forward on October 13, 2016, at the Xcel Energy Center."[11] (*Id.*, ¶ 19, Ex. F.)

Subsequently, Koppelman spoke with Vaughn Millette of Jobu Presents. (*See* Affidavit of Vaughn Millette.) A recording and transcript of the conversation is attached to the Affidavit of Vaughn Millette (the "Recording"). According to the recording provided to the Court, Jobu Presents never repaid the loan to Koppelman due to (a) the pending reservation of rights and future mediation with the estate; and (b) damages incurred by Jobu both under the July 7 Agreement and resulting from Mr. Koppelman's tortious misconduct after rescission. On the Recording, Koppelman states he worked with Bremer to return the advance to Jobu Presents. (*Id.*) Ostensibly, this was for the purpose of ensuring Jobu Presents subsequently repaid its loan to Koppelman. In the Recording, Koppelman demands repayment of his loan to Jobu Presents. (*Id.*) The Recording further indicates pending litigation between Koppelman (the Special Administrator's agent) and Jobu Presents. (*Id.*)

Baker and Jackson are aware that only the Special Administrator, McMillan, and Koppelman know exactly why the Jobu Presents deal deteriorated, and the full extent of Bremer's agents' involvement.[12] The Special Administrator represented to the Court that with respect to the conflict with Jobu Presents, "a mediation will take place sometime after Comerica begins its term as personal representative." (*See* Affidavit of David Crosby, filed Jan. 26, 2017, ¶ 5.) Baker and Jackson have no information about whether this mediation actually took place.

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[11] At the time, Baker and Jackson were unclear on why Bremer was extricating itself from its role in the Tribute Concert. Now, it appears Bremer was attempting to immunize itself from liability.

[12] Jobu Presents' April 21, 2017 Complaint; however, indicates Jobu Presents' beliefs as to why the relationship deteriorated—due to the misconduct by the "Experts" and Bremer's failure to perform any oversight.

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The loan from Koppelman to Jobu Presents, implicates the Special Administrator's discharge, the royalties received by the Advisors (including the unreturned commission from McMillan), the financial assets of the Estate, and the impact of this conduct on the Prince brand. These issues must be fully understood before the Court can consider discharging the Special Administrator.

ARGUMENT

In addition to the newly discovered facts outlined above, Baker and Jackson respectfully refer the Court to the prior objections to Bremer's final accounts and discharge filed on January 11, January 19, January 30, March 8, and April 7, 2017 and included here by reference. Baker and Jackson reference in the below section only new objections to Bremer's discharge based on the loan from Koppelman to Jobu Presents.

A. The Special Administrator Cannot Be Discharged Without a Full Understanding of the Scope of Its Involvement in the Dealings between Jobu Presents and Koppelman at a Formal Evidentiary Hearing.

A period of discovery and an evidentiary hearing would serve to clarify the outstanding issues relating to Bremer's accounting and discharge, including, but not limited to, the scope of Bremer's involvement with the ongoing dispute between Koppelman and Jobu Presents. This is imperative in light of the newly-discovered loan from Koppelman to Jobu Presents as well as the research for the loan.

The execution of the Jobu Agreement, the loan from Koppelman, the rescission of the Jobu Agreement, and McMillan's retention of his commission all took place while Bremer was still the Special Administrator.[13] (*See* Order for Amended Letters, filed Jan. 31, 2017, p. 1.) Baker and

[13] The Court has directed the Personal Representative to "investigate and make an informed decision regarding whether any action should be pursued" with respect to the Jobu Presents

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Jackson only became aware of the contractual arrangement between Koppelman and Jobu Presents on April 13, 2017. The facts of this dispute are evolving and warrant further review.

What is more, the interactions between Koppelman and Jobu Presents has not—to Baker or Jackson's knowledge—ever been part of the Court's record. Bremer has consistently failed to provide support for its argument that any disclosure that is not part of the court record (for example, documents on HighQ) is sufficient for a fiduciary accounting and discharge—because no authority supports this. Documents that are not part of the record cannot be incorporated into the formal accounting submitted to the Court.[14]

The documents detailing the dispute between Koppelman and Jobu Presents are clearly relevant to Bremer's discharge. And yet, they have never been disclosed to the Court. Bremer should not be discharged for anything it has failed to put into the record, and the Court should not grant Bremer a full discharge without ensuring it disclosed everything relevant to the discharge and has not caused damage to the Estate.

1. Bremer's Involvement in the Dispute between Koppelman (its Agent) and Jobu Presents May Rise to the Level of a Breach of Fiduciary Duty.

The Special Administrator's involvement in negotiating the agreement with Jobu Presents—which was later rescinded and cost the Estate guaranteed payments—may rise to the level of a breach of fiduciary duty. A special administrator is a fiduciary who must observe a

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advance and McMillan's commission. *See* Discharge Order, p. 5. The loan from Koppelman; however, is newly discovered information and not subject to the Discharge Order.

[14] As stated in the January 30 Objections, in conducting their review, appellate courts review only the information that was presented in that tribunal. *See* MINN. R. CIV. APP. P. 110.01 ("The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases"); *see also* Jeffrey C. Robbins, *New Evidence on Appeal*, 96 MINN. L. REV. 2017 (2016) ("An appellate court can properly consider only the record and facts before the district court and thus ***only those papers and exhibits filed in the district court can constitute the record*** on appeal") (emphasis added).

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reasonable standard of care when dealing with the estate assets of another. *See* Minn. Stat. § 524.3-703(a). The Special Administrator has the duty to settle and distribute the Estate in compliance with the terms of applicable law "as expeditiously and efficiently as is consistent with the best interests of the estate." *Id.* In performing such duties, the Special Administrator must exercise its authority in "the best interests of successors to the estate." *Id.*; *see also In re Estate of Allard*, No. A15-0296, 2015 Minn. App. Unpub. LEXIS 1165, at *4 (Minn. Ct. App. Dec. 21, 2015); *Estate of Gile*, No. C7-96-124, 1996 Minn. App. LEXIS 987 (Minn. Ct. App. Aug. 20, 1996). Where the Special Administrator exercises its power over the Estate improperly, it may be held liable for any loss or damage that results from a breach of fiduciary duty. *See* Minn. Stat. § 524.3-712; *In re Estate of Neuman*, 819 N.W.2d 211, 218 (Minn. Ct. App. 2012) (holding that "[i]f a personal representative breaches her fiduciary duty, she is liable to interested persons for damage or loss resulting from [the breach] to the same extent as a trustee of an express trust") (internal citations omitted). In this case, the loan from Koppelman (who is Bremer's agent) to Jobu Presents suggests Special Administrator may have asserted its power over the Estate improperly, and is liable for the damage that resulted from this breach of fiduciary duty. *Id*.

The Special Administrator indisputably owes a fiduciary duty to the Estate. *See* Minn. Stat. § 524.3-703(a); *Estate of Neuman*, 819 N.W.2d at 216; *Swenson v. Bender*, 764 N.W.2d 596, 601 (Minn. Ct. App. 2009) (per se fiduciary relationships include trustee-beneficiary). As such, the Special Administrator must manage the Estate's assets under the level of care of "a prudent person dealing with the property of another." *Id.* This requires the Special Administrator to settle and distribute the Estate in the best interests of the Estate. *Id.*; *D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. App. 1997) (holding that a "[f]iduciary duty is the highest standard of duty implied by law"); *In re Estate of Michaelson*, 383 N.W.2d 353, 355-56 (Minn. App. 1986) (affirming removal

of estate's personal representative who had "a conflict of interest with the general interests of the estate"). "Put another way, faced with the choice between one's own pecuniary interests and the interests of the entity to whom [the Special Administrator] owes a fiduciary duty, **a fiduciary must eschew the self-dealing, entity-injuring option**." *Estate of Neuman*, 819 N.W.2d at 218 (emphasis added). "A fiduciary is prohibited from self-dealing in violation of the trust placed in her . . . The duties arising from a fiduciary relationship are often described as duties of care, good faith, and candor." *Swenson*, 764 N.W.2d at 603 (internal citations omitted); *see also Thompson v. Wenzel & Assocs.*, No. CV-11-5450, 2012 Minn. Dist. LEXIS 234, at *14-15 (Minn. 10th Dist. Jan. 9, 2012).

Minnesota probate courts may hold an evidentiary hearing regarding an accounting and discharge from liability even *after* the fiduciary is replaced. *See generally Lorberbaum v. Huff*, 765 N.W.2d 919, 922 (Minn. Ct. App. 2009); *In re Estate of Stewart*, No. A04-808, 2005 Minn. App. LEXIS 62 (Minn. Ct. App. Jan. 11, 2005). This is especially crucial in the case of a potential breach of fiduciary duty. Whether a fiduciary duty has been breached is a question of fact for the district court. *See, e.g.*, *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 778 (Minn. App. 2006) (the district court is "the trier of fact in determining the equitable remedy for a breach of fiduciary duty . . ."); *Christensen v. Bonemma*, 395 N.W.2d 440, 442-43 (Minn. App. 1986).

Koppelman's loan to Jobu Presents raises questions about the Special Administrator's level of care and due diligence in negotiating and managing the Tribute Concert—which may rise to the level of a breach of fiduciary duty. For example, (1) the extent of Bremer's knowledge regarding the loan, (2) the reason that necessitated the loan, and (3) the overall impact of the loan on the Tribute Concert and the public appearance of the Estate are all relatively unknown. In contrast, if

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Live Nation—a well-respected (and solvent) entity—had promoted the Tribute Concert, the Estate may have received significant revenue.

The ongoing dispute between Koppelman and Jobu Presents also creates additional questions about the appropriateness of Bremer's discharge at this stage. The Court should exercise its authority to allow discovery and hold an evidentiary hearing regarding the Special Administrator's role in the rescinded Jobu Agreement.[15]

2. Koppelman and McMillan are Agents of the Special Administrator with Respect to the Execution and Subsequent Rescission of the Jobu Agreement.

After Jobu Presents rescinded its agreement with the Estate, the Special Administrator represented to the Non-Excluded Heirs that "Mr. McMillan's work on the family tribute concert after August 30, 2016 was outside of his duties as an advisor to the Special Administrator." (*See* The Special Administrator's Reply to Objections by Omarr Baker, Tyka Nelson, and Roc Nation to the Special Administrator's Petition for Discharge, filed Jan. 26, 2017, p. 5; Affidavit of Laura Halferty, filed Jan. 26, 2017, ¶¶ 18-19, Exs. E-F.)

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[15] In its March 17 response to Baker's objections, the Special Administrator admonished Baker for requesting discovery and an evidentiary hearing regarding Bremer's accounting and discharge, stating "the Court already scheduled and held an evidentiary hearing on January 12, 2017." *See* Bremer Trust's Response to Omarr Baker's Objections to Bremer Trust's Accounting through January 31, 2017, filed March 17, 2017, pp. 3-4. But no discovery was allowed, which rendered a hearing meaningless. Additionally, there has been no opportunity for the Court to address Bremer's conduct as Special Administrator *after* January 12, even though the special administration lasted through January 31, 2017. Nor was the information regarding Koppelman and Jobu Presents known prior to the January 12 hearing. Baker and Jackson's objective with these supplemental objections is to ensure a proper review of the <u>all</u> the facts relevant to Bremer's discharge. On April 5, 2017, the Court denied a request to allow discovery and schedule an evidentiary hearing regarding "the allowance of the fees of the Special Administrator and its attorneys, and approval of the Final Accounts." *See* Discharge Order, p. 4. However, the Court has not ruled on the possibility of discovery and an evidentiary hearing regarding Bremer's <u>discharge</u>. Furthermore, the Court stayed Bremer's discharge on April 12, 2017. *See* Stay Order. In light of the newly discovered evidence, a period of discovery and an evidentiary hearing on these issues is imperative.

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Baker and Jackson dispute this assertion. But even if this is accepted by the Court, the Special Administrator has never indicated—nor does it have authority to support—that any of the Advisor's actions with respect to the Tribute Concert *before* August 30, 2016 were outside of the scope of their duties as Advisors to the Special Administrator. McMillan prepared and presented initial proposals for the Tribute Concert to the Non-Excluded Heirs on June 30, 2016, in the scope of his role as Advisor. (*See* Affidavit of Laura Halferty, ¶ 9, Ex. B.) Koppelman loaned money to Jobu Presents in August 2016. (*See* Affidavit of Vaughn Millette.) Additionally, Bremer has held the Advisors out to the Court as "agents who assisted in the Estate administration." (*See* Transcript of January 12, 2017 Proceedings, p. 45.) These events occurred during the special administration, and Koppelman's actions with respect to Jobu Presents were within the scope of his duties as Bremer's Advisor and agent. There is little doubt that Koppelman and McMillan's actions with respect to the Tribute Concert are attributable to the Special Administrator—and will most likely result in liability.

Further discovery and an evidentiary hearing may determine the Special Administrator's liability for failing to control its agents—Koppelman and McMillan. An agency fiduciary relationship results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act. *Jurek v. Thompson*, 241 N.W.2d 788 (Minn. 1976); *Lee v. Peoples Cooperative Sales Agency*, 276 N.W. 214 (Minn. 1937); RESTATEMENT (SECOND) OF AGENCY § 1 (1958). In order to create an agency there must be an agreement, but not necessarily a contract between the parties. RESTATEMENT (SECOND) OF AGENCY § 1, comment b (1958). An agreement may result in the creation of an agency relationship although the parties did not call it an agency and did not intend the legal consequences of the relation to follow. *Id.*

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As a principal, the Special Administrator is vicariously liable for the conduct of its agents, the Advisors. "[A] principal is liable for the acts of an agent committed in the course and within the scope of the agency and not for a purpose personal to the agent." *Semrad v. Edina Realty, Inc.*, 493 N.W.2d 528, 535 (Minn. 1992); *Hockemeyer v. Pooler*, 130 N.W.2d 367, 377 (Minn. 1964); *see also* RESTATEMENT (SECOND) OF AGENCY § 140. Implied or "apparent" authority arises when:

> The principal must have **held the agent out as having authority**, or must have **knowingly permitted the agent to act on its behalf**; furthermore, the party dealing with the agent must have actual knowledge that **the agent was held out by the principal as having such authority or had been permitted by the principal to act on its behalf**; and the proof of the agent's authority must be found in the conduct of the principal, not the agent.

Foley v. Allard, 427 N.W.2d 647, 652 (Minn. 1988) (emphasis added). Both Koppelman and McMillan acted as agents of the Special Administrator with respect to the Tribute Concert and their interactions with Jobu Presents—and Bremer held them out as such. From June 2016, when the Special Administrator signed the Advisor Agreement with Koppelman and McMillan, the Advisors became agents of the Special Administrator. In the Jobu Agreement (signed by Bremer), Bremer held the Advisors out as agents. If Koppelman loaned the money to Jobu Presents which was later advanced to the Estate, this implicates Bremer's role in the Jobu Agreement. As a principal, Bremer is liable for the actions of its agents and may be liable for a breach of fiduciary duty in at least two ways.

First, the Special Administrator may be liable for breach of fiduciary duty for allowing its agent, Koppelman, to loan funds to Jobu Presents. If Koppelman (1) convinced Bremer to enter the Jobu Agreement, and (2) loaned the money to Jobu Presents which was later advanced to the Estate, Koppelman (as Bremer's agent) may potentially be liable for a failure to disclose his dual representation. A fiduciary duty is "[a] duty of utmost good faith, trust, confidence, and candor

owed by a fiduciary . . . to the beneficiary . . . ; a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of the other person . . . ." Black's Law Dictionary 581 (9th ed. 2009); *see also Anderson v. Anderson*, 197 N.W.2d 720, 725–26 (Minn. 1972) (holding that where a fiduciary failed to disclose the dual representation, the fiduciary had breached the duty of loyalty).[16]

Bremer, in turn, may be liable for its own role in Koppelman's conflict with Jobu Presents. The Special Administrator reviewed the Jobu Agreement, or at the very least is deemed as a matter of law of to have read and accepted the agreement, as its representative executed the same. *See* Jobu Agreement at p. 2; *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010) ("When the language is clear and unambiguous, [courts] enforce the agreement of the parties as expressed in the language of the contract."). Bremer knew or should have known that Koppelman's loan to Jobu Presents would impede performance of the Jobu Agreement. Even if Bremer was unaware of Koppelman's loan and chose to delegate review of the Jobu Agreement to its agents, the Advisors, that further implicates both the Special Administrator for a lack of oversight and the Advisors for

[16] Courts in multiple jurisdictions have also held that trustees or other entities who engage in self-dealing are liable for breach of fiduciary duty. *See, e.g., Stegemeier v. Magness*, 728 A.2d 557 (Del. 1999) (holding co-administrator of estate and trustee breached fiduciary duty by conveying real estate that was to be part of the corpus of the trust to a corporation owned by them and this breach was not "cured" when a disinterested co-administrator executed the deed); *Jones v. Ellis*, 551 So. 2d 396 (Ala. 1989) (finding trustee breached fiduciary duty by failing to properly manage trust and maintain its value in directly causing decline in value of corporate stock owned by trust and using position as director of corporation to rob the trust he guarded of any value it might have); *Riley v. Rockwell*, 747 P.2d 903 (Nev. 1987) (ruling it is a breach of a trustee's fiduciary obligation to become a co-owner of property with the trust because there is a greater tendency for self-dealing); *Morrissey v. Curran*, 650 F.2d 1267 (2d Cir. 1981) (finding trustees are held to strict standard of undivided loyalty that prohibits undisclosed self-dealing; even if beneficiary consents, trustee must nevertheless establish the reasonableness and fairness of the transaction); *Williamson v. Williamson*, 407 F. Supp. 370 (E.D. Va. 1976) (holding executrix overcame presumption of fraud resulting from self-dealing by clear and satisfactory evidence; mere preponderance of the evidence would not have sufficed).

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at *17-18 (Minn. Ct. App. July 5, 2016) (finding a breach of fiduciary duty when personal representative sold property below fair market value due to "a substantial conflict of interest"). The very facts surrounding the execution and subsequent rescission of the Jobu Agreement (including Koppelman's loan) suggest this conflict of interest must be investigated prior to Bremer's discharge.

3. The Common Interest Agreement between the Personal Representative and the Special Administrator Should Be Amended in Light of the Newly-Discovered Information.

The Court has directed the Personal Representative to "investigate and make an informed decision regarding whether any action should be pursued" with respect to the Jobu Presents advance and McMillan's commission. (*See* Discharge Order, p. 5.) However, the Personal Representative's ability to impartially decide "whether any action should be pursued" against the Special Administrator is encumbered by the Common Interest Agreement that the Personal Representative and the Special Administrator signed.

On January 20, 2017, the Court filed an order transitioning from the Special Administrator to the Personal Representative. (*See* Order for Transition from Special Administrator to Personal Representative, filed Jan. 20, 2017, the "Transition Order.") In the Transition Order, the Court granted the Personal Representative and the Special Administrator's request to enter into a Common Interest Agreement. (*Id.*, p. 3.) The Special Administrator demanded that the Personal Representative enter the Common Interest Agreement before the Special Administrator would transfer the Estate-related assets and documents in its possession. As part of the Common Interest Agreement, the Special Administrator and the Personal Administrator "cannot, at any time, be adverse to each other in connection with this Estate." (*Id.*, pp. 3, 4.)

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In light of Bremer's conflict of interest, Baker and Jackson request the Court set aside the Common Interest Agreement. If the Special Administrator and the Personal Representative cannot be adverse to each other, the Personal Representative cannot reasonably "investigate and make an informed decision" regarding the Special Administrator's liability with respect to the conduct surrounding the Jobu Agreement. At a minimum, the Court should modify Common Interest Agreement in order to allow the Personal Representative to conduct the full and impartial investigation needed as to these issues.

The multitude of issues surrounding this newly discovered information makes it inappropriate to grant the Special Administrator a discharge from liability. As such, Baker and Jackson respectfully request the Court continue the stay on the Special Administrator's discharge until the full extent of this conflict with Jobu Presents is understood. The Court and the Estate deserve an explanation.

CONCLUSION

In light of the newly-discovered information regarding the interactions between and among Charles Koppelman, L. Londell McMillan, and Jobu Presents, LLC, the Court must put Bremer Trust, National Association's discharge to an evidentiary hearing. It would be a discredit to the Decedent's Estate to grant Bremer's discharge from liability without at least holding a hearing on these issues—especially considering the role of Bremer's agents in the rescinded agreement with Jobu Presents, LLC.

For all the foregoing reasons, Omarr Baker and Alfred Jackson respectfully reiterate the objections filed on January 11, 2017, the supplemental objections filed on January 19, 2017, the reply in support of the objections filed on January 30, 2017, the objections filed on March 8, 2017, the supplemental objections filed on April 7, 2017, and submit these supplemental objections to

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Bremer's discharge. Baker and Jackson request the Court allow a reasonable time for discovery and put the objections to a formal evidentiary hearing.

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