

STATE OF MINNESOTA
COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
DISTRICT COURT
PROBATE DIVISION

Court File No. 10-PR-16-46
Judge Kevin W. Eide

In re:

Estate of Prince Rogers Nelson,

MEMORANDUM IN OPPOSITION
TO MOTION TO APPROVE THE
SETTLEMENT AGREEMENT

Decedent. [REDACTED]

INTRODUCTION

Heirs Sharon Nelson, Norrine Nelson, and John Nelson (collectively “SNJ”) oppose
Comerica Bank & Trust, N.A.’s (“Comerica”) motion to approve the settlement agreement¹
 (“SA”) between [REDACTED]

[REDACTED] on the other hand. The Court should
deny the motion based on a number of the SA’s critical flaws: [REDACTED]

[REDACTED]

¹ The SA is attached to Comerica’s February 16, 2018 Notice of Motion and Motion to Approve
Settlement Agreement [REDACTED] as Exhibit A.

[REDACTED]

FACTS AND PROCEDURAL POSTURE²

[REDACTED]

[REDACTED]

² The bulk of the facts known to SNJ are largely contained within Comerica’s moving papers, the SA, and the February 21, 2018 minutes to the heirs’ meeting attached to the Johnson Declaration as Exhibit 1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARGUMENT

Preliminarily, SNJ object to the way the SA was presented to them. In reality, [REDACTED]

[REDACTED] Thus,

Comerica should have followed the Court’s process for disclosing entertainment deals articulated in the March 22, 2017 Order, and the Court should view this as [REDACTED]

[REDACTED].

Personal representatives are empowered to “prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties.” Minn. Stat. § 524.3-715(22). Moreover, the personal representative may “satisfy and settle claims and distribute the estate as provided in this chapter....” Minn. Stat. § 524.3-715(27). “When a [creditor’s] claim against the estate has been presented in any manner, the personal representative may, *if it appears for the best interest of the estate*, compromise the claim....” Minn. Stat. § 524.3-813. In determining whether to approve the proposed compromise of a claim, the Court should consider the objections of the beneficiaries,

and look to whether the compromise was reasonable and whether the evidence substantiated the claim. *In re Estate of Dahle*, 384 N.W.2d 556, 559-60 (Minn. Ct. App. 1986).

A balancing of the various pros and cons of the SA demonstrates that it is not in the best interests of the Estate and should not be approved by the Court. The positives that have been articulated by Comerica are:

[REDACTED]

In contrast, there are a greater number of negatives that will occur if the Court authorizes the SA. Specifically:

[REDACTED]

The balance of these positives and negatives demonstrates the unreasonableness of the SA. Moreover, it appears that there is insufficient evidence to justify the claims [REDACTED]

[REDACTED]

[REDACTED] Moreover, the Estate has the potential to recover substantial damages as well as its attorneys' fees and costs if it is successful.

Under 17 U.S.C § 504, the Estate stands to recover either its actual damages [REDACTED] of Prince's intellectual property or statutory damages. "...[T]he copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually...in a sum of not less than \$750 or more than \$30,000 as the court considers just." 17 U.S.C. § 504(c)(1). "In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages

[REDACTED]

to a sum of not more than \$150,000.” 17 U.S.C. § 504(c)(2). “Willful infringement,” under this statute, is defined as infringement “with knowledge that the defendant’s conduct constitutes copyright infringement.” *Danjaq, LLC v. Sony Corp.*, 263 F.3d 942, 957 (9th Cir. 2001)(quoting *Columbia Pictures Television v. Krypton Broad.*, 106 F.3d 284, 293 (9th Cir. 1997)). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Even assuming a modest amount of statutory damages [REDACTED] demonstrates that the Estate should be pursuing statutory damages rather than settlement. In *Capital Records, Inc. v. Thomas-Rasset*, the Eighth Circuit Court of Appeals found that \$9,250 was a reasonable amount of statutory damages per song to assess against an individual who had used a file sharing website to make twenty-four copyrighted songs publicly available. 692 F.3d 899 (8th Cir. 2012). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 5

No matter how you look at the statutory damages, they represent the potential for substantial recovery to the Estate.

Not only does the Estate have a viable claim for substantial statutory damages, but it also would likely obtain recovery of its attorneys’ fees and costs incurred in the litigation. “As part of the remedy in a copyright infringement action, ‘the court may also award a reasonable attorney’s fee to the prevailing party.’” *Pearson Educ. Inc. v. Almgren*, 685 F.3d 691, 695 (8th Cir. 2012) (quoting 17 U.S. C. § 505). “The trial court’s ‘equitable discretion’ to award attorney’s fees to a prevailing party under § 505 is ‘to be exercised in an evenhanded manner by considering factors such as whether the lawsuit was frivolous or unreasonable, the losing litigants’ motivations, the need in a particular case to compensate or deter, and the purposes of the Copyright Act.’”

Pearson Educ., Inc., 685 F.3d at 695-96 (quoting *Action Tapes, Inc. v. Mattson*, 462 F.3d 1010, 1014 (8th Cir. 2006)). As discussed above, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

CONCLUSION

SNJ respectfully request that the Court deny the motion to approve the settlement agreement. By throwing in the towel now, the Estate loses out on the opportunity to pursue

substantially greater amounts in litigation than it will receive under the terms of the SA. In essentially surrendering, the Estate also stands to make itself a target of other potential infringers who will see the Estate as unwilling to actually fight to defend its intellectual property.

SKOLNICK & JOYCE, P.A.

Dated: April 11, 2018

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